

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

Filed: 7/25/05  
49th Day: 9/12/05  
180th Day: 1/21/06  
Staff: DP  
Staff Report: 11/22/05  
Hearing Date: 12/16/05

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-04-132

**APPLICANT:** Grant and Holly Van Every

**AGENT:** Schmitz & Associates, Inc.

**PROJECT LOCATION:** 22760 Saddle Peak Road, Topanga (Los Angeles County)

**PROJECT DESCRIPTION:** Construction of a two story, 28' 9" high, 3,392 sq. ft. single-family residence with attached 475 sq. ft., two-car garage, septic system, pool, spa, retaining wall, 1,515 sq. ft. paving for driveway and turnaround, and 210 cu. yds. of grading (100 cu. yds. cut; 110 cu. yds. fill; 10 cu. yds. import) at 22760 Saddle Peak Road, Topanga, Los Angeles County.

**Lot area:** 2.01 acres  
**Building coverage:** 2,958 sq. ft.  
**Pavement coverage:** 10,005 sq. ft.  
(8,490 sq. ft. existing, 1,515 sq. ft. proposed)  
**Landscape coverage:** 46,500 sq. ft. (1.06 acres)  
**Height:** 28' 9" above existing grade  
**Parking spaces:** 2

**LOCAL APPROVALS RECEIVED:** Los Angeles County Approval in Concept, Los Angeles County Conditional Use Permit No. 2153, Los Angeles County Health Department conceptual approval for private sewage disposal system, Los Angeles County Fire Department approval of Preliminary Fuel Modification Plan and approval of driveway and turnaround access areas.

**SUBSTANTIVE FILE DOCUMENTS:** Malibu/Santa Monica Mountains Land Use Plan, "Plan Review Report, Proposed Residence and Swimming Pool, Lot 10, Tract 34964, 22760 Saddle Peak Road" by Robertson Geotechnical, Inc., March 16, 2005; "Updated Engineering Geologic and Geotechnical Engineering Evaluation, Proposed Residence, Lot 10, Tract 34964, 22760 Saddle Peak Road" by Robertson Geotechnical, Inc., February 25, 2004; "Trail Easement Delineation" by John Mac Neil, Licensed Land Surveyor; CDP No. 5-83-766 (Goodstein and Watson); 5-84-274 (Goodstein and Watson); September 7, 1984 Memorandum, Approved Final Conditions for 5-84-274; CDP No. 5-84-274-A1 (Watson); 5-84-274-A2 (Zwan); 5-89-1193 (Brenner); 5-89-1136 (Brenner); 5-90-891 (Zwan); 5-91-123 (Miller); 4-92-216 (Zwan); 4-97-227 (Treiger).

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **APPROVAL** of the proposed project with **ELEVEN (11) SPECIAL CONDITIONS** regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control plans, (4) assumption of risk, (5) removal of natural vegetation, (6) future development, (7) habitat impact mitigation, (8) pool/spa drainage and maintenance, (9) structural appearance, (10) lighting restriction, and (11) deed restriction. The standard of review for the proposed project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu/Santa Monica Mountains Land Use Plan serve as guidance.

**STAFF RECOMMENDATION:**

**I. Approval with Conditions**

The staff recommends that the Commission adopt the following resolution:

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 4-04-132 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**II. Standard Conditions**

**1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or

authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

**2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

**3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

**4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. Special Conditions**

#### **1. Plans Conforming to Geologic Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic reports: "Plan Review Report, Proposed Residence and Swimming Pool, Lot 10, Tract 34964, 22760 Saddle Peak Road" by Robertson Geotechnical, Inc., dated March 16, 2005, and the "Updated Engineering Geologic and Geotechnical Engineering Evaluation, Proposed Residence, Lot 10, Tract 34964, 22760 Saddle Peak Road" by Robertson Geotechnical, Inc., dated February 25, 2004. These recommendations, including those concerning foundations, grading, retaining walls, sewage disposal, and drainage, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

#### **2. Drainage and Polluted Runoff Control Plans**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The final plans shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant

load of stormwater leaving the developed site. The plans shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85<sup>th</sup> percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

### **3. Landscaping and Erosion Control Plans**

Prior to issuance of a Coastal Development Permit, the applicant shall submit two sets of final landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the criteria set forth below. All development shall conform to the approved landscape and erosion control plans.

#### **A. Landscaping Plan**

- (1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. No plant species listed as problematic and/or invasive by

the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.

- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. All areas previously disturbed during creation of the existing building pad and driveway or temporarily disturbed during construction shall be weeded of non-native plants and planted with native plants in accordance with the densities permitted by the fire department approved Final Fuel Modification Plan for the residence. Plantings should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Native seeds used for revegetation shall be collected from areas as close to the restoration and landscaping sites as possible. During grading and remediation activities, topsoil, where possible, shall be separated from other soil and, upon completion of grading or remediation activities, replaced or used on other restoration or revegetation sites. Revegetation and planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Temporary irrigation systems may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil and geotechnical engineers, but in no case shall the irrigation systems be in place longer than two (2) years.
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (4) The permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- (5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term Final Fuel Modification Plan submitted pursuant to this special condition. The Final Fuel Modification Plan shall include details regarding the types, sizes, and location of plant materials to be removed, and how often thinning is to occur. The applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

- (6) Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B of the Final Fuel Modification Plan approved by the Los Angeles County Fire Department pursuant to subsection (5) above. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Nine (9) below.
- (7) The use of rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum Bromadiolone or Diphacinone) shall not be used.
- (8) Vertical landscape elements shall be planted around the proposed residence to soften views of the development as seen from Saddle Peak Road and the Tuna Canyon Trail. All landscape elements shall be native/drought resistant plants.

## **B. Interim Erosion Control Plan**

- (1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (2) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

### **C. Monitoring**

Five (5) years from the date of occupancy, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. Failure to comply with deadlines to submit the landscape monitoring reports will result in a violation of the subject permit and the commencement of enforcement proceedings, including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

### **4. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement.

### **5. Removal of Natural Vegetation**

Removal of natural vegetation for the purpose of fuel modification for the development approved pursuant to this permit shall not commence until the local government has issued a building or grading permit(s) for the development approved pursuant to this Coastal Development Permit.

### **6. Future Development Restriction**

This permit is only for the development described in Coastal Development Permit 4-04-132. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit 4-04-132. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by these permits, including but not limited to the single-family residence, garage, swimming pool, spa, septic system, hardscaping, clearing or other disturbance of vegetation, or grading other than as provided for in the approved fuel modification/landscape plan, erosion control and drainage plans prepared pursuant to Special Conditions Two (2) and Three (3), shall require an amendment to Coastal Development Permit 4-04-132 from the Commission or shall require additional coastal development permits from the Commission or from the applicable certified local government.

## **7. Habitat Impact Mitigation**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat (ESHA) that will be disturbed by the proposed development, including by fuel modification requirements on the project site (based on the Final Fuel Modification Plan approved by the Los Angeles County Fire Department). The chaparral areas on the site shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries. The delineation map shall indicate the total acreage for all chaparral onsite that will be impacted by the proposed development, including the fuel modification areas. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification requirements by one of the three following habitat mitigation methods:

### **A. Habitat Restoration**

#### **1) Habitat Restoration Plan**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a



statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

## 2) Open Space Deed Restriction

No development, as defined in Section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

## 3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

## **B. Habitat Conservation**

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in Section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

## **C. Habitat Impact Mitigation Fund**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral habitat ESHA. The fee shall be calculated as follows:

### 1) Development Area, Irrigated Fuel Modification Zones

The in-lieu fee for these areas shall be \$12,000 per acre within the development area and any required irrigated fuel modification zones. The total acreage shall be based on the map delineating these areas required by this condition.

## 2) Non-irrigated Fuel Modification Zones

The in-lieu fee for non-irrigated fuel modification areas shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral and coastal sage scrub habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority. The fee shall be used for the acquisition or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

## 8. Pool and Spa Drainage and Maintenance

By acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to properly maintain pool water pH, calcium, and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

## 9. Structural Appearance

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-04-132. The palette samples shall be presented in a format not to exceed 8 1/2" x 11" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, retaining walls, driveway, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones). Including shades of green, brown and gray with no white or light shades, galvanized steel, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and materials authorized pursuant to this special condition. Alternative colors or materials for future repainting, resurfacing, or new windows may only be applied to the structures authorized by Coastal Development Permit 4-04-132 if such changes are specifically authorized by the Executive Director as complying with this special condition.

## 10. Lighting Restriction

- A. The only outdoor night lighting allowed on the subject parcel is limited to the following:
- 1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
  - 2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
  - 3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

#### **11. Deed Restriction**

Prior to the issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to these permits, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of these permits as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. Project Description and Background**

The applicant proposes to construct a two-story, 3,392 sq. ft. single-family residence with a maximum height of 28 feet, 9 inches above existing grade. The proposed project includes a 475 sq. ft. attached two-car garage, septic system, retaining wall, pool, spa, 1,515 sq. ft. of paving for driveway and turnaround area, and 210 cu. yds. of grading (100 cu. yds. cut; 110 cu. yds. fill; 10 cu. yds. import) (**Exhibit 4-6**). Proposed development will occur on an existing graded building pad accessible off a private drive extending south and east from Saddle Peak Road. Grading of the building pad and driveway was authorized under Coastal Development Permit No. 5-84-274 (Goodstein and Watson) and consisted of excavating a level pad at the ridgecrest of the parcel, placement of fill on the pad to facilitate fine grading, and cut and fill grading to create the driveway and private access road.

The proposed project site is located on a 2.01-acre parcel (APN 4438-039-017; Lot 10 of Tract 34964) on the southern side of Saddle Peak Road, a designated Scenic Highway, within the Santa Monica Mountains in Los Angeles County (**Exhibit 1-3**). The subject parcel contains an existing building pad, driveway, and native chaparral vegetation situated atop a knoll at an elevation of about 2,400 feet above sea level, just south of a major ridge and Saddle Peak Road. The west and south sides of the building pad descend to an existing private access road and a neighboring single-family residence. Further west and south is a steep mountain side slope that descends to Las Flores Canyon. Much of this steep hillside area west of the subject parcel is a designated open space easement recorded per a special condition imposed by Coastal Development Permit (CDP) No. 5-84-274 (Goodstein and Watson) (**Exhibit 7**). A drainage ravine exists to the east of the subject property. A designated open space easement, also recorded as per a special condition imposed by CDP No. 5-84-274, lies on the easternmost portion of the subject parcel (**Exhibit 7**). The proposed development area does not encroach upon this restricted area. The north side of the building pad descends a few hundred feet to Saddle Peak Road. Other residences are situated at a distance to the north and northwest along Saddle Peak Road. The area surrounding the parcel is characterized by natural ridges and hillside covered predominantly with dense undisturbed chaparral vegetation.

The subject parcel was created in January 1984 when the Commission approved CDP No. 5-83-766 (Goodstein and Watson) for a subdivision that created eight lots from three 20-acre parcels. The applicant did not take action on this permit and chose to re-apply by submitting a new Coastal Development Permit application in April of 1984 for subdivision of the three 20-acre parcels. Consequently, Coastal Development Permit No. 5-84-274 (Goodstein and Watson) was approved for a subdivision that created 14 lots from the three 20-acre parcels, in addition to construction (grading) of building pads and three driveways. Conditions for the permit included transfer of development credits and offers-to-dedicate a public trail easement to connect with the Tuna Canyon Trail, a viewing park and viewing area, and open space easements.

In 1987, the applicant applied to amend CDP No. 5-84-274 in order to modify special condition (2), which required an offer-to-dedicate a public viewing platform. The

amendment, CDP No. 5-84-274-A1 (Watson), was approved by the Commission and replaced the offer-to-dedicate a public viewing platform condition with payment of an in-lieu fee to be used for funding improvements to the Tuna Canyon Trail.

A second amendment to CDP No. 5-84-274 was approved by the Commission in 1991. The applicant, an owner of two of the 14 parcels, proposed to delete the requirement in special condition 3 (c), Open Space Easements, which prohibited the applicant from interfering with pedestrian use of the existing fire break road on-site. The Commission found that the fire access roads were no longer needed and alternative access would be provided. The amendment, CDP No. 5-84-274-A2 (Zwan), was approved with a special condition requiring dedication of a new trail easement offer-to-dedicate along a driveway serving the applicant's property to the sandstone rock outcropping which provides scenic views. The trail easement is not located on the parcel that is subject to this application, but is located on an adjoining parcel. There are no public trails or trail easements on the subject site.

In addition, six residences have been previously approved by the Commission within this subdivision along Saddle Peak Road. CDP No. 5-89-1136 (Brenner) was approved for a 5,200 sq. ft. home on Lot 2 and CDP 5-89-1193 (Brenner) was approved for a 4,490 sq. ft. home on Lot 13. These two permits were approved with landscaping and geologic recommendations. In addition, CDP No. 4-92-216 (Zwan) was approved for a 5,239 sq. ft. residence on Lot 3 with landscaping, future improvements, and geologic recommendations conditions. Subsequently, CDP No. 5-90-891 (Zwan) was approved for an 11,877 sq. ft. residence on Lot 6 and CDP No. 5-91-123 (Miller) was approved for a 4,511 sq. ft. residence on Lot 14. These contained conditions relating to landscaping, drainage control, future improvements, and conformance with geologic recommendations. CDP No. 4-97-227 (Treiger) was approved for a 4,100 sq. ft. residence on Lot 11, with conditions regarding landscaping, drainage and erosion control, wildfire liability waiver, conformance with geologic recommendations, and future improvements. The approved residence on Lot 11 lies just south of the subject parcel and shares the existing private access road (**Exhibit 3**).

The proposed development will be located on the existing building pad at essentially existing grade. Proposed grading, consisting of 100 cubic yards of cut and 110 cubic yards of fill, will serve to prepare the site for development and meet Fire Department access requirements. The applicant has submitted a Preliminary Fuel Modification Plan for the proposed project that has been approved by the Los Angeles Fire Department. This plan shows clearance of vegetation (Zone A and B) up to 100 feet from the residence and thinning of vegetation up to 200 feet from the residence. The proposed fuel modification area partially overlaps with the fuel modification area for the existing single-family residence south of the subject property (CDP 4-97-227). Fuel modification for the proposed residence will require removal and thinning of approximately 1.47 acres of additional native chaparral vegetation that is not required for fuel modification for the adjacent residence (**Exhibit 9**).

## B. Geologic and Wildfire Hazard

The proposed development is located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section **30253** of the Coastal Act states in pertinent part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

### Geology

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The applicant has submitted a Plan Review Report, dated March 16, 2005, and an Updated Engineering Geologic and Geotechnical Engineering Evaluation for the Proposed Residence, dated February 25, 2004 prepared by Robertson Geotechnical, Inc. The reports evaluate the engineering properties, relative stability, and geologic structure of the earth materials underlying the subject property with respect to the proposed development on the previously graded building pad. The reports conclude that "construction of the proposed single family home with private sewage disposal system and swimming pool are considered feasible from an engineering geologic and soils engineering standpoint provided our advice and recommendations are made a part of the plans and are implemented during construction." In addition, the Robertson Geotechnical, Inc. reports state that:

*Hillside developments involve risks that are not found in conventional flatland developments and these risks can never be eliminated. This report and the referenced reports present an assessment of the risks involved in the development and recommendations to minimize the risks. It is the opinion of the undersigned, based on the findings of the referenced engineering geologic and geotechnical engineering exploration and observations, and provided our recommendations are followed, the proposed residence with private sewage disposal system and pool will be safe against hazards from landslide, settlement,*

*or slippage and that the proposed residence with private sewage disposal system and pool will have no adverse affect on the geologic stability of the property outside the building site.*

In order to ensure that the recommendations of the geologic consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition One (1)**, requires the applicant to incorporate the recommendations cited in the geotechnical reports into all final design and construction plans. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant, shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions Two (2) and Three (3)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition Three (3)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. **Special Condition Three (3)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission notes that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Three (3)**.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building



permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Five (5)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

**Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restriction on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restriction are imposed on the subject property.

The Commission finds that the proposed project, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties, as outlined in §30253 of the Coastal Act.

### **Wildfire**

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combined with the natural characteristics of the native vegetation pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition Four (4)**, the assumption of risk, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of Special Condition No. 4, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30253 of the Coastal Act.

### **C. Environmentally Sensitive Habitat Areas**

Section **30230** of the Coastal Act states that:

***Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.***

Section 30231 states:

***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.***

Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

***"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer

areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an Environmentally Sensitive Habitat Area (ESHA) determination one must focus on three main questions:

- 1) Is a habitat or species rare or especially valuable?
- 2) Does the habitat or species have a special nature or role in the ecosystem?
- 3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Monica Mountains is itself rare and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 10**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP<sup>1</sup>.

For any specific property within the Santa Monica Mountains, it is necessary to meet three tests in order to assign the ESHA designation. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? Second, is the habitat undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

The subject site is a 2.01-acre lot with an existing building pad and driveway located on a knoll on the south flank of a major ridge within the Santa Monica Mountains. Large areas of undisturbed chaparral habitat surround the subject parcel, particularly to the northeast and southwest. A single-family residence is located south of the site. The fuel modification requirements of the neighboring residence to the south has previously resulted in the clearance and thinning of all vegetation to the south and southeast of the subject parcel. Due to the important ecosystem role of chaparral in the Santa Monica Mountains, and the fact that the subject parcel contains relatively undisturbed chaparral vegetation (with the exception of the permitted, existing building pad and the previously permitted access road), and is part of a large, unfragmented block of habitat, the

---

<sup>1</sup> Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

Commission finds that the chaparral habitat on and surrounding the subject parcel meets the definition of ESHA under the Coastal Act.

The proposed development will be entirely located within the existing, previously graded building pad and driveway area near an existing private access road. Grading (100 cu. yds. cut and 110 cu. yds. fill) is proposed on the previously graded portions of the parcel to prepare the site for development and to meet Los Angeles County Fire Department access road requirements. Clearance and thinning of native chaparral vegetation 200 feet north and northeast of the proposed residence will be required (**Exhibit 9**). The fuel modification required for the residence will be the only development to extend into chaparral ESHA. No feasible alternative building locations exist on the parcel to reduce this impact.

As explained above, the area surrounding the existing building pad and driveway constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that “environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.” Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a single-family residence on an existing, permitted building pad that is not considered ESHA. However, the applicant’s proposed project will require the removal of native chaparral ESHA as a result of fuel modification required for fire protection of the proposed residence. As single-family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicant purchased the property in 2003. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use as Rural Land II (which allow residential development at a maximum density of one dwelling unit per five acres). At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on this fact, along with the presence of an existing and approved building pad and residential development on nearby parcels, the applicant had reason to believe that they had purchased a parcel on which they would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. The parcel is 2.01 acres with an existing building pad and access road and there are other, scattered residential developments to the north and south of the site. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction,

the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

As discussed above, the proposed development will be approved in order to provide an economically viable use. Siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the maximum extent feasible. In this case, no other feasible alternative location on the site for a residence exists without additional grading and the removal of more native vegetation.

In past permit actions, the Commission has limited development within or adjacent to chaparral ESHA to a 10,000 sq. ft. development area, excluding driveways and fire turn around areas. In this case, not including the area of the driveway and turnaround, the proposed development area is less than 10,000 sq. ft. Therefore, the development area proposed by the applicant conforms to the maximum development area of 10,000 sq. ft. that the Commission has typically allowed in similar situations on sites containing ESHA. However, given the location of ESHA on the site, there will still be significant impacts to ESHA resulting from fuel modification around the residence. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP<sup>2</sup>.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.

Zone B (Irrigated Zone) is usually required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.

Zone C (Thinning Zone) is usually required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California

---

<sup>2</sup> Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub and chaparral habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wren-tit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)<sup>3</sup>. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and “edge” many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral<sup>4</sup>.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms “super colonies” that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area<sup>5</sup>. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat<sup>6</sup>. These native ants are the primary food resource for the native coast horned lizard, a California “Species of Special Concern.” As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments<sup>7</sup>. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms<sup>8</sup>. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod

---

<sup>3</sup> Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

<sup>4</sup> Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

<sup>5</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

<sup>6</sup> Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

<sup>7</sup> Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

<sup>8</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.



predator species are seen and more exotic arthropod species are present than in undisturbed habitats<sup>9</sup>.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.<sup>10</sup> In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds<sup>11</sup>.

While these impacts resulting from fuel modification can be reduced through siting and design alternatives for new development, they cannot be completely avoided, given the high fire risk and the extent of ESHA on the site. The Commission finds that the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification zone.

In this case, the applicant's Preliminary Fuel Modification Plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification, with adjustments made due to the proximity of a private access road and neighboring property fuel modification. Zone "A" (setback zone) is shown in a radius extending approximately 20 feet from the proposed structure. Zone "B" (irrigation zone) extends 100 feet from the proposed structure. Zone "C" (thinning zone) extends for a distance of 100 feet beyond the "A" and "B" zones primarily north and east of the proposed structure. The fuel modification zones extend across the entire parcel, and beyond the parcel boundaries to the north and east.

The ESHA area affected by the proposed development does not include the existing graded building pad or the existing driveway that was previously approved by the Commission pursuant to CDP No. 5-84-274. As such, the ESHA areas that will be impacted by the proposed project will be limited to the fuel modification/brush clearance areas that are required.

The Commission has identified three methods for providing mitigation for the unavoidable and permanent loss of ESHA resulting from development, including habitat

---

<sup>9</sup> Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

<sup>10</sup> Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

<sup>11</sup> Hughes, L. and M. Westoby. 1992. *Capitula* on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on and offsite. These three mitigation methods are provided as three available options for compliance with **Special Condition Seven (7)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in **Special Condition Seven (7), subpart A**.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in **Special Condition Seven (7), subpart B**.

The third habitat impact mitigation option is an in-lieu fee for habitat conservation as provided for in **Special Condition Seven (7), subpart C**. The fee is based on the habitat types in question, the cost per acre to restore or create the comparable habitat types, and the acreage of habitat affected by the project. In order to determine an appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, the Commission's biologist contacted several consulting companies that have considerable experience carrying out restoration projects. Overall estimates varied widely among the companies, because of differences in the strategies employed in planning the restoration (for instance, determining the appropriate number of plants or amount of seeds used per acre) as well as whether all of the restoration planting, monitoring and maintenance was carried out by the consultant or portions are subcontracted. Additionally, the range of cost estimates reflect differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc. Larger projects may realize some economy of scale.

Staff has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were \$9,541, \$12,820, and \$13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the required in-lieu

fee for habitat mitigation is \$12, 000 (rounded down from the average figure of \$12,089 to simplify administration) per acre of habitat.

The Commission finds that the in-lieu fee of \$12,000 per acre is appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site and the “A” zone required for fuel modification), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the “B” zone or any other irrigated zone required for fuel modification). In these areas, complete removal or significant removal of ESHA, along with irrigation completely alters the habitat and eliminates its value to the native plant and animal community.

ESHA modified for the “C” zone that is thinned but non-irrigated (required for fuel modification) is certainly diminished in habitat value, but unlike the building site, “A” zone, “B” zone, and any other irrigated zone, habitat values are not completely destroyed. Native vegetation in the “C” zone is typically required to be thinned, and shrubs must be maintained at a certain size to minimize the spread of fire between the individual plants. This area is not typically required to be irrigated. As such, the Commission finds that it is not appropriate to require the same level of in-lieu fee mitigation for impacts to ESHA within a non-irrigated “C” zone required for fuel modification. Although the habitat value in the “C” zone (or any other non-irrigated zone) is greatly reduced, it is not possible to precisely quantify the reduction. The Commission’s biologist believes that the habitat value of non-irrigated fuel modification zones is reduced by at least 25 percent (and possibly more) due to the direct loss of vegetation, the increased risk of weed invasion, and the proximity of disturbance. The Commission finds that it is also less costly and difficult to restore chaparral habitat when some of the native vegetation remains, rather than when the entire native habitat is removed. Because of the uncertainty and the inability to precisely quantify the reduction in habitat value, the Commission concludes that it is warranted to impose a mitigation fee of \$3,000 per acre (one quarter of the cost of full restoration) for the “C” zone or other non-irrigated fuel modification zone.

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Mountains Recreation and Conservation Authority for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition Seven (7), subpart C.**

The Commission has determined that in conjunction with siting new development to minimize impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA. The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new

development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Three (3)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

The Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition Three (3)**, prohibits the use of rodenticides containing any anticoagulant compounds on the subject property.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Five (5)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by Special Condition Five (5) avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission notes that streams and drainages, such as the drainage ravine located downslope of the property, provide important habitat for plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to or upslope of coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat.

The Commission finds that potential adverse effects of the proposed development on riparian and aquatic habitats of these streams may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition Two (2)**, the Drainage and Polluted Runoff Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best

Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, and building pad area is conveyed offsite in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways. Special Condition Two (2) will ensure implementation of these and other BMPs to reduce polluted runoff.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Ten (10)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Furthermore, fencing of the site would adversely impact the movement of wildlife through the chaparral ESHA on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the building pad area as required in **Special Condition Three (3)**.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Six (6)**, the future development restriction, has been required. **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30240, and 30107.5 of the Coastal Act.

#### **D. Water Quality**

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native

vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.***

The project site is located in the Las Flores Canyon hydrologic sub-area of the Topanga watershed. While no development is proposed in any natural drainages onsite, the proposed development will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically

conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85<sup>th</sup> percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Two (2)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

In addition, the applicant proposes to construct a swimming pool and spa that may use chemicals such as chlorine and algaecides that if drained from the site may be harmful to plants and animals in nearby environmentally sensitive habitat areas and creeks. The Commission notes that the proposed project is conditioned to incorporate the recommendations of the project's consulting geologists and geotechnical engineer related to the construction of the swimming pool and spa and to incorporate adequate site drainage and erosion control.

However, the Commission also notes that both leakage and periodic maintenance drainage of the proposed swimming pool and/or spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing the instability of the site and adjacent properties and potential impacts from pool chemicals (i.e. pool water algaecides, chemical pH balancing, and other water conditioning chemicals) on ESHA and the watershed. Therefore, the Commission imposes **Special Condition Eight (8)** on the subject application, which requires the applicant to use a non-chemical water purification system and to maintain proper pH, calcium and alkalinity balance in a manner that any runoff or drainage from the pool and spa will not include excessive chemicals that may adversely affect the environmentally sensitive habitat areas.

Furthermore, interim erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Three (3)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

The applicant is proposing to construct a septic system, consisting of a 3,000 gallon septic tank and seepage pits, to accommodate the sewage of the proposed development. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets

the requirements of the plumbing code. The County of Los Angeles' minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils within the Santa Monica Mountains, among other criteria. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

## E. Visual Resources

Section 30251 of the Coastal Act states:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area. The Commission is required to review the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public.

The subject site is located on Lot 10 of the approved 14-lot subdivision on 60-acres authorized under CDP No. 5-84-274 (Goodstein and Watson). The subdivision is located within a rural area characterized by expansive, naturally vegetated mountains. In the permit for the subdivision the Commission found that there would be impacts on public views and recreational opportunities resulting from the subdivision and subsequent development of single-family residences. However, the Commission found that with an off-to-dedicate a trail and public viewing area (later replaced by an in-lieu payment pursuant to CDP No. 5-84-274-A1) the impacts would be properly mitigated and the subdivision would be consistent with the visual protection policies of the Coastal Act. In approving the subdivision the Commission approved the locations of the building sites as submitted. Although the building sites were approved, the Commission found that the individual houses would be assessed for impacts on an individual basis as individual lots were developed.

The subject site is located on the southern side of Saddle Peak Road, a designated Scenic Highway, within the Santa Monica Mountains. Saddle Peak Road weaves



among the hilltops of an area designated as a Significant Ridgeline, having both ocean and inland views. The Malibu/Santa Monica Mountains Land Use Plan designates the vicinity of the site as a "Scenic Area" (**Exhibit 11**). Therefore, potential impacts to public views of the ocean and canyon areas resulting from new development must be evaluated. The subject lot contains an existing, graded building pad and driveway situated atop a knoll immediately south of a major ridge. The applicant proposes to construct a two-story, 3,392 sq. ft. single-family residence with attached 475 sq. ft. garage, septic system, retaining wall, pool, and spa on the existing pad. The residence will be 28 feet, 9 inches high above existing grade. The west and south sides of the building pad descend to an existing private access road and a neighboring single-family residence. Further west and south is a steep mountain side slope that descends to the floor of Las Flores Canyon. Other residences within the subdivision are located a significant distance to the north and northwest along Saddle Peak Road. The Commission has approved six residences within this 14-lot subdivision to date. The area surrounding the property to the northeast and southwest is primarily undeveloped.

Normally, in assessing visual impacts, the Commission would examine alternative site locations, grading, and the size of the building pad. In this case, the building site was previously approved by the Commission in the underlying approval of the coastal permit that created the 14-lot subdivision. Consequently, all of the grading for the subdivision building pads has been completed. However, any additional grading on the individual lots, when proposed for development with the single-family residences, must be found to be in substantial conformance with the grading plan as approved by CDP No. 5-84-274. The applicant proposes grading, consisting of a total of 100 cu. yds. cut and 110 cu. yds. fill (60 cu. yds. cut, 90 cu. yds. fill for the building pad and 40 cu. yds. cut, 20 cu. yds. fill for the access road), to prepare the site for development and to meet Los Angeles County Fire Department access road requirements. In comparing the proposed grading with the grading plan as approved by CDP No. 5-84-274, the proposed building pad and driveway are in substantially the same location and at the same elevation as the 5-84-274 plans. Therefore, the Commission finds that proposed grading is consistent with previously approved grading on the site.

As stated above, the Commission is required to review the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public. Given the location of the project site on a significant ridgeline within a scenic viewshed, the proposed development will impact views from public roads and trails. The maximum height of the proposed residence will be 28 feet, 9 inches above existing grade, which is under the 35-foot height limit requirement of the Malibu/Santa Monica Mountains Land Use Plan. In addition, in past permit actions the Commission has permitted residences within this subdivision that are 35 feet in height. The proposed site is visible from Saddle Peak Road to the north and Las Flores Canyon Road to the southwest. The development will not block any blue water views from Saddle Peak Road to the north.

A few public trails are located in the vicinity of the project site (**Exhibit 12**). The Backbone Trail, which runs east to west, is located a significant distance north of the

project site along the northern side of Saddle Peak Ridge and drops into Hondo Canyon. The Tuna Canyon Trail runs north to south and crosses a portion of Lot 14 of the subdivision to the southwest of the project site (**Exhibit 3**). The intent of the Tuna Canyon Trail is to connect the Backbone Trail to Tuna Canyon and Pacific Coast Highway. The subject property is visible from portions of the Tuna Canyon Trail. However, due to the topography of the surrounding area, the subject site is not visible from the Backbone Trail. A public trail easement, dedicated and recorded pursuant to CDP 5-84-274, is located on a ridgeline north of the subject property along Saddle Peak Road, at the northern extent of the subdivision (**Exhibit 8**). However, the subject site is not visible from this trail easement location. Another public trail easement was dedicated in the project vicinity pursuant to 5-84-274-A2 (Zwan). This public trail easement is located on the north side of a driveway serving Lots 5 and 6 of the subdivision and leads to a sandstone rock outcropping which provides scenic views. The proposed residence will be visible from this public trail easement and public overlook area.

Since the project site will be visible from Saddle Peak Road, Las Flores Canyon Road, portions of the Tuna Canyon Trail, and a public trail easement to the north, mitigation to address potential visual impacts is needed for the proposed residence. The visual impact of the proposed structures can be minimized by requiring these structures be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Nine (9)**.

Further, **Special Condition Three (3)** requires that the landscape plan be designed with vertical elements to partially screen and soften the visual impact of the structure with trees and shrubs as viewed from Saddle Peak Road, Las Flores Canyon Road, and public trails of the project site. Visual impacts can be further reduced by the use of appropriate and adequate landscaping. Therefore, **Special Condition Three (3)** requires the applicant to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of Special Condition Three (3) will soften the visual impact of the development from public view areas. To ensure that the final approved landscaping plans are successfully implemented, Special Condition Three (3) also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time. Special Condition Three (3) also requires native vertical landscaping elements around the proposed residence to soften views of the residence from public view areas.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat.

Therefore, **Special Condition Ten (10)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Finally, regarding future developments or improvements, certain types of development on the property, normally associated with a single-family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, is reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition Six (6)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Further, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alteration of natural landforms. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## F. Local Coastal Program

Section 30604 of the Coastal Act states:

***a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the

Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

**G. California Environmental Quality Act**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.