

CALIFORNIA COASTAL COMMISSION

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

Filed: 5/2/05
270th Day: 1/27/06
Staff: Johnson
Staff Report: 12/22/05
Hearing Date: 1/13/06



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO: 4-04-118

APPLICANT: Karl Zimmermann **AGENT:** Brent Schneider

PROJECT LOCATION: 1500 Decker Canyon Road, Los Angeles County

PROJECT DESCRIPTION: Construct a one story, 25 foot high, 4,998 sq. ft., single family residence, attached three car, 1,272 sq. ft. garage, septic system, driveway and motorcourt, 232 cubic yards of cut, 232 cubic yards of fill, 11,000 sq. ft. of site restoration, and landscaping on an existing graded pad.

Lot area:	5.14 acres
Building Pad Area:	9,917 sq. ft.
Building coverage:	6,270 sq. ft.
Pavement coverage:	13,699 sq. ft.
Ht above fin grade:	25 ft.

LOCAL APPROVALS RECEIVED: Los Angeles County approval in concept, conceptual septic system approval, preliminary fuel modification plan approval, preliminary road access approval.

SUBSTANTIVE FILE DOCUMENTS: Limited Engineering Geologic Report, dated February 17, 2005 by Mountain Geology; Geotechnical Update Report and Seismic Information dated December 3, 2003, by Advanced Geotechnical Services; Geotechnical Update Report, dated September 7, 2005, by Advanced Geotechnical Services, Inc.; Final Engineering Geologic Report, dated December 16, 1993; by Advanced Geotechnical Services; Preliminary Percolation Testing, a dated February 24, 1990 by Vista Geology; Hydrology and Hydraulic Calculations, dated 6/15/2004, by L. Liston & Associates; Biological Report, dated April 5, 2005, by Andrew Forde, Biological Consultant.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **Approval** of the proposed project with special conditions relating to plans conforming to geotechnical engineer's recommendations, landscaping and erosion control, removal of natural vegetation, wildfire waiver of liability, drainage and polluted runoff control, structural appearance, future development restriction, deed restriction, open space restriction, lighting restriction, native vegetation restoration/revegetation plan, habitat impact mitigation, and condition compliance. The proposed project is located within the Decker Canyon area and includes chemise chaparral determined to be ESHA. The residence is proposed on an existing graded

building pad created as a result of the Commission's approval of Coastal Permit No. 5-91-865 which divided one parcel into two parcels and graded two building pads; this project site and pad is one of these two parcels. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act.

STAFF NOTE

DUE TO PERMIT STREAMLINING ACT REQUIREMENTS THE COMMISSION MUST ACT ON THIS PERMIT APPLICATION AT THE JANUARY 2006 COMMISSION HEARING AS THE APPLICANT HAS EXTENDED THE TIME FOR COMMISSION REVIEW FOR A TOTAL OF 270 DAYS.

I. Approval with Conditions

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No 4-04-118 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permits 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 the 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 permits 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 Geotechnical Engineer's Recommendations.

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the Limited Engineering Geologic Report, dated February 17, 2005 by Mountain Geology; Geotechnical Update Report and Seismic Information dated December 3, 2003, by Advanced Geotechnical Services; Geotechnical Update Report, dated September 7, 2005, by Advanced Geotechnical Services, Inc.; Final Engineering Geologic Report, dated December 16, 1993; by Advanced Geotechnical Services; Preliminary Percolation Testing, a dated February 24, 1990 by Vista Geology. These recommendations addressing foundation design, moisture barrier and sand for beneath slabs, footing observations and moisture penetrations, soils generated from footings and sand fills, drainage, and slope planting and maintenance shall be incorporated into all final design and construction plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, 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. Landscaping and Erosion Control Plans

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit 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 final landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The final plans shall

incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

A) Landscaping and Erosion Control Plans

1) All graded & 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. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.

3). The landscape plan shall be designed in a manner that minimizes impacts to canyon views from the public road, Decker Canyon Road. Vertical elements, including trees and shrubs shall be used in order to partially screen and soften the visual impacts of the development as viewed by the public from Decker Canyon Road. 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 fuel modification plan submitted pursuant to this special condition. The 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. In addition, 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.) The use of Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

7.) 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 (6) above. The fencing type and location shall be illustrated on the landscape plan. Any fencing located adjacent to Decker Canyon Road shall be of a visually permeable design in order to preserve canyon views across the site. Fencing shall also be subject to the color requirements outlined in Special Condition No. 6 below.

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 should grading take place during the rainy season (November 1 - March 31) the applicant shall install or construct temporary sediment basins (including debris basins, de-silting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geo-fabric covers or other appropriate cover, install geo-textiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out 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 the coastal zone or to a site within the coastal zone 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 geo-textiles 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 the receipt of the Certificate of Occupancy for the residence , 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.

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.

3. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification for the development approved pursuant to these permits 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.

4. Wildfire Waiver of Liability

By acceptance of this permit; the applicant acknowledges and agrees (i) That the site maybe 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 Commissions 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 arising from any injury or damage due to such hazards.

5. Drainage and Polluted Runoff Control Plan

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan 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 plan 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 stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, 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 30th 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 amendment(s) or new Coastal Development Permit(s) are required to authorize such work.
- (e) The Permittee shall complete this 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.

6. 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 4-04-118. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, water well equipment and tank, 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 and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by coastal development permit 4-04-118 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. Future Development Restriction

This permit is only for the development described in Coastal Development Permit 4-04-118. 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 4-04-118. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation and fencing, other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition No. 2 shall require an amendment to Coastal Development Permit 4-04-118 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. Deed Restriction

Prior to 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 this permit, 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 this permit 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.

9. 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.

10. NATIVE VEGETATION RESTORATION / REVEGETATION PLAN

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of restoration / revegetation plans. The plan shall include a grading plan, prepared by a licensed civil engineer to restore the area on the subject parcel where vegetation removal and grading occurred (about 10,000 sq. ft.) to the contours existing prior to the vegetation removal and grading. The plan shall also include a landscaping and erosion control plan, including an irrigation plan, prepared by a qualified habitat restoration consultant. The landscaping and erosion control plan shall be reviewed and approved by the consulting civil engineer to ensure that the plan is in conformance with the applicable recommendations regarding slope stability. The restoration and revegetation plan shall include, but not be limited to, the following criteria:

- (a) A detailed grading plan, prepared by a licensed professional civil engineer, that illustrates remedial grading to restore area beyond the 10,000 sq. ft. approved building pad and 2,100 sq. ft. turnaround area to its approximate topography that existed on site prior to the removal of the vegetation and grading including the addition of topsoil, if needed. The plan shall include temporary erosion control measures such as: geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored slope is completed. These erosion control measures shall be required on the project site prior to and concurrent with the initial grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction. All sediment shall be removed to an appropriate disposal site, approved by the Executive Director, either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- (b) A revegetation program, prepared by a qualified habitat restoration consultant with credentials acceptable to the Executive Director, that utilizes only native plant species that have been obtained from local Santa Monica Mountains

genetic stock, and are consistent with the surrounding native plant community. Native seeds shall be collected from areas as close to the restoration site as possible. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation. The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil engineer, but in no case shall the irrigation system be in place longer than two (2) years. The restored area shall be planted within thirty (30) days of completion of the remedial grading operations.

- (c) The restoration/revegetation plan shall be implemented within ninety (90) days of the issuance of this permit. Revegetation shall meet the performance standards within five (5) years and shall be repeated, if necessary, to provide such coverage. The Executive Director may extend this time period for good cause. Plantings shall 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 the revegetation requirements.
- (d) A monitoring program shall be prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31st each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first four (4) years, then the monitoring program shall be extended for a sufficient length of time so that the success and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site meets the performance standards by the end of the five (5) year monitoring period, and all vegetation is able to survive without additional outside inputs, such as supplemental irrigation.

- (e) At the end of the five year period, a final detailed report shall be submitted, for the review and approval of the Executive Director, that indicates whether the on-site landscaping is in conformance with the revegetation / restoration plan approved pursuant to this Special Condition. The final report shall include photographic documentation of plant species and plant coverage. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicants shall be required to submit a revised or supplemental restoration program to compensate for those portions of the original plan that were not successful. The revised, or supplemental, restoration program shall be processed by the applicant/landowner as an amendment to this Coastal Development Permit.

11. 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 fuel modification and brush clearance requirements on the project site and adjacent property. The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries if the fuel modification/brush clearance zones extend onto adjacent property. The delineation map shall indicate the total acreage for all chaparral ESHA both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. The existing graded pad and driveway is excluded from the total acreage of ESHA impacted. 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 Santa Monica Mountains Conservancy 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 Santa Monica Mountains Conservancy, 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 habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Santa Monica Mountains Conservancy. The fee shall be used for the acquisition or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

12. Open Space Deed Restriction

No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur in the Open Space Area as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

- a. Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition No. 2;
- b. Drainage and polluted runoff control activities pursuant to Special Condition No. 2 and Special Condition No. 5;
- c. Planting of native vegetation and other restoration activities, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit;
- d. Construction and maintenance of public hiking trails, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit; and
- e. Existing easements for roads, trails, and utilities.

PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction, prepared by a licensed surveyor, of the portion of the subject property affected by this condition, as generally described on Exhibit 7 attached to the findings in support of approval of this permit.

13. CONDITION COMPLIANCE

Within 120 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with

this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to construct a one story, 25 foot high, 4,998 sq. ft., single family residence, attached three car, 1,272 sq. ft. garage, septic system, driveway and motorcourt, 232 cubic yards of cut, 232 cubic yards of fill, about 11,000 sq. ft. of site restoration, and landscaping on an existing graded pad. (Exhibits 1 - 5).

The proposed project site is located within the Decker Canyon Road area north of Encinal Canyon Road (Exhibit 1). The subject parcel was created as a result of the approval of Coastal Permit No. 5-91-865 (Imhof) which subdivided a 16.86 acre parcel into two parcels, 5.25 and 11.61 acres. The subject parcel is the 5.25 acre parcel (gross) which is 5.14 acres (net) in size without the adjoining roadway. In addition, site grading was approved to create access driveways and building pads on each of the created parcels. On the subject parcel, 1,370 cubic yards of cut and 1,200 cubic yards of fill were approved creating a 10,000 sq. ft. flat building pad. However, a review of historic aerial photographs by Commission staff indicates that the previous property owner constructed the existing pad larger than was approved by the Commission in non-compliance with the coastal development permit. The applicant has submitted a detailed site survey which indicates that the existing as-built building pad is approximately 23,000 sq. ft. in size. Initially, the applicant proposed to expand this pad to 26,414 sq. ft. to accommodate a 2,239 sq. ft. fire department turnaround area and to lower the elevation of the proposed garage to reduce its overall height as requested by the Los Angeles County Environmental Review Board. At the request of Staff, the applicant is now proposing to reduce the size of the existing building pad to no more than 10,000 sq. ft. in area. The revised project description also serves to reduce the proposed grading. The proposed flat building pad will be 9,917 sq. ft. with an additional 2,100 sq. ft. area for the required Fire Department turnaround area. The applicant proposes to re-grade the remaining existing flat pad area beyond the area proposed for the revised building pad and turnaround area and restore the area to an approximation of its previously existing topography and plant the regraded area with native vegetation, thereby restoring this area to prevent its use as a yard. As a result of this revised project, the applicant has substantially reduced the size of the flat pad and proposed yard area and has also deleted the formerly proposed RV parking area and a pool/spa area to accommodate the proposed one story residence on the reduced 9,917 sq. ft. flat building pad.

Coastal Permit No. 5-91-865 also required an open space deed restriction to protect a designated Wildlife Corridor and drainage area, create an open space area and habitat protection area. The parcel includes non-native grassland and a disturbed building pad

area on the eastern third of the site and chemise chaparral on the western two thirds of the site according to the applicant's Biological Report dated April 5, 2005 by Forde Biological Consultants (Exhibit 9).

The Los Angeles County Environmental Review Board found the proposed development on February 23, 2004 to be consistent with modifications recommending that: wildlife usage of the area be encouraged by relocating pool equipment enclosure and vegetable garden closer to the residence; maintain manzanita and red-shank on the property; no perimeter fencing to be installed except for pool security fencing; fuel modification Zone B should be eliminated replacing it with a larger Zone C to lessen potential for erosion and impacts to native vegetation, thin native vegetation on slopes, avoid irrigation outside of Zone A within which drip irrigation should be used, use wood chips and mulch generated from chipping existing on-site vegetation instead of planting ground cover in Zone C; exterior lighting shall be directed downward, of low intensity, at low height and shielded to prevent illumination of surrounding properties, security lighting, if any is used, shall be on motion detector; use earth tone colors of surrounding areas on all structures, to minimize visual impacts to the viewshed. The Los Angeles County Department of Regional Planning Staff approved this proposed project with a condition requiring the applicant to submit a landscape/fuel modification and site plan incorporating ERB's comments and recommendations to the Department for review prior to submittal to the Fire Department and that landscaping shall provide an erosion preventative and visual screening function and shall consist of only locally indigenous plants.

The subject parcel is surrounded by large irregular sized parcels with the exception of five one-acre or less parcels located to the south along the eastern side of Decker Canyon Road.

B. Hazards and Geologic Stability

The proposed development is located in the Malibu/Santa Monica Mountains area, 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

The applicant has submitted the following reports that address geological conditions on the site: Limited Engineering Geologic Report, dated February 17, 2005 by Mountain Geology; Geotechnical Update Report and Seismic Information dated December 3, 2003, by Advanced Geotechnical Services; Geotechnical Update Report, dated September 7, 2005, by Advanced Geotechnical Services, Inc.; Final Engineering Geologic Report, dated December 16, 1993; by Advanced Geotechnical Services; Preliminary Percolation Testing, a dated February 24, 1990 by Vista Geology

The geologic consultants have found the geology of the proposed project site to be suitable for the construction of the proposed residence. They have identified no landslides or other geologic hazards on the site. The report states that:

It is our opinion that the proposed building and grading will be safe from the hazards of landslide, settlement or slippage and the grading work will not adversely affect adjacent properties, provided our recommendations of the referenced reports are properly followed.

The geologic and geotechnical engineering consultants conclude that the proposed developments are feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The Geotechnical and Engineering Geology Reports contains several recommendations to be incorporated into project addressing foundation design, moisture barrier and sand for beneath slabs, footing observations and moisture penetrations, soils generated from footings and sand fills, drainage, and slope planting and maintenance to ensure the stability and geologic safety of the proposed project site and adjacent property. To ensure that the recommendations of the consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition No. 1**, requires the applicant to incorporate the recommendations cited in the Geotechnical and Engineering Geology Reports noted above 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 minimize erosion and add to the geologic stability of the project sites. To ensure that adequate drainage and erosion control are included in the proposed developments, the Commission requires the applicant to submit drainage and interim erosion control plans, as specified in **Special Conditions Nos. 2 and 5**. **Special Condition No. 5** requires

the applicant to maintain a functional drainage system at the subject site to insure that run-off from the project site is diverted in a non-erosive manner to minimize erosion at the site for the life of the proposed development. Should the drainage system of the project site fail at any time, the applicant will be responsible for any repairs or restoration of eroded areas as consistent with the terms of **Special Condition No. 5**.

The Commission also 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 No. 2** requires the applicant to submit and implement landscaping plans. **Special Condition No. 2** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project sites.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-native and invasive plant species with high surface/foilage 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.

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 No. 3**. 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 No. 3** 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 finds that the proposed project, as conditioned, will minimize potential geologic hazards of the project site and adjacent properties.

Wild Fire

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 combine with the natural

characteristics of the native vegetation to 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 No. 4**, the wildfire waiver of liability, 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.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

C. 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 reservation 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. The subject site is located within a rural area characterized by expansive, naturally vegetated mountains and hillsides.

The applicant proposes to construct a one story, 25 foot high, 4,998 sq. ft., single family residence, attached three car, 1,272 sq. ft. garage, septic system, driveway and motorcourt, 232 cubic yards of cut, 234 cubic yards of fill, site restoration, and landscaping on existing graded pad. The existing pad size of about 23,000 sq. ft. is proposed to be reduced to 9,917 sq. ft. with an additional 2,100 sq. ft. turnaround area. The applicant proposes to re-grade the remainder of the existing pad to an approximation of its previously existing topography and restore the re-graded area with native plant vegetation. (Exhibits 1-6).

This proposed development is located within the Decker Canyon Road area north of Encinal Canyon Road (Exhibit 1). The parcel includes non-native grassland and a

disturbed building pad area on the eastern third of the site and chemise chaparral on the western two thirds of the site according to the applicant's Biological Report dated April 5, 2005 by Forde Biological Consultants.

Decker Canyon Road is designated a priority three scenic highway in the Malibu/Santa Monica Mountains Land Use Plan. This Land Use Plan states:

Decker Road – Extends from PCH to Mulholland Highway. Ocean vistas, deep valleys and canyons, and rugged mountains are features of many scenic vistas.

Because of the topography of the area, and the location of the proposed development on a small knoll located as close as 175 feet from Decker Canyon Road, the development will be highly visible from the scenic Latigo Canyon Road. There is no alternative building location on this parcel that would significantly reduce visual impacts. In addition, the applicant has minimized the proposed grading for the project, which is proposed only within the immediate area of the building pad and driveway to prepare the site for construction of the new development. The applicant proposes a one-story 25 foot high single family residence. The 23,000 sq. ft. existing pad is proposed to be reduced to 9,917 sq. ft. with an additional 2,100 sq. ft. for a turnaround area. The remainder of the existing pad will be re-graded to an approximation of its previous topography and restored with native plant vegetation. The area where the proposed 9,917 sq. ft. pad is located is only sparsely vegetated with disturbed native and non-native vegetation that does not qualify as ESHA. The proposed access road/driveway is designed to meet the minimum standards required for Fire Department access. Therefore, the Commission finds, in consideration of the character of the area, that the proposed development is sited and designed to fit in with the character and scale of the surrounding area.

Although the project is designed in a manner consistent with the character of the surrounding area, the project will still result in unavoidable adverse impacts to visual resources due to its high visibility along Decker Canyon Road, a designated scenic highway as discussed above. Therefore, the Commission finds that it is necessary to require mitigation measures to minimize visual impacts associated with development of the project site that include finishing the structure in a color consistent with the surrounding natural landscape and, by incorporating windows of a non-reflective glass type to minimize impacts on public views. To ensure visual impacts associated with the colors of the structures 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 by **Special Condition No. 6.**

Visual impacts associated with proposed grading, and the structure itself, can be further reduced by the use of appropriate and adequate landscaping. As such, **Special Condition No. 2** requires the applicant to prepare a landscape plan relying primarily on native, non-invasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. **Special Condition No. 2** also requires the use of some vertical elements, such as the use of trees and large shrubs,

to partially screen the proposed structures and soften the visual impact of the development from public views along Decker Canyon Road from the north, east and south. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition No. 2** 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.

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 beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. There is environmentally sensitive habitat and a wildlife corridor downslope of the project site located to the west. Therefore, **Special Condition No. 9**, the Lighting Restriction, 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.

Finally, regarding future developments or improvements, certain types of development to 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, are reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition No. 7**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Finally, **Special Condition No. 8** 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.

The proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or character of the surrounding area. Therefore the Commission finds that, as conditioned, the proposed development is consistent with section 30251 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.

As described in detail in the previous sections, the applicant proposes to construct a one story, 25 foot high, 4,998 sq. ft., single family residence, attached three car, 1,272 sq. ft. garage, septic system, driveway and motorcourt, 232 cubic yards of cut, 232 cubic yards of fill, site restoration, and landscaping on an existing 9,917 sq. ft. graded pad.

The proposed development will result in an increase in impervious surface at the subject site, which in turn decreases the infiltrative function and capacity of existing permeable land on site. Reduction in permeable space therefore 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 project 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 sites. 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 to accommodate (infiltrate, filter or treat) the runoff from the more frequent storms, rather than for the largest infrequent storms, results in improved BMP performance at lower cost.

For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The American Society of Civil Engineers (ASCE) and the Water Environment Federation (WEF) have recommended a numerical BMP design standard for storm water that is derived from a mathematical equation to maximize treatment of runoff volume for water quality based on rainfall/runoff statistics and which is economically sound.¹ The maximized treatment volume is cut-off at the point of diminishing returns for rainfall/runoff frequency. On the basis of this formula and rainfall/runoff statistics, the point of diminishing returns for treatment control is the 85th percentile storm event. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition No. 5**, 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.

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 No. 2** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an on-site private sewage disposal system to serve the residence. The Commission has found that conformance with the provisions of the plumbing code, as demonstrated by evidence of the local government's review and approval of the septic system design is protective of coastal resources.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan and

¹ *Urban Runoff Quality Management, WEF Manual of Practice No. 23, ASCE manual and Report on Engineering Practice No. 87.* WEF, Alexandria, VA; ASCE, Reston, VA. 259 pp (1998); Urbonas, Guo, and Tucker, "Optimization of Stormwater Quality Capture Volume," in *Urban Stormwater Quality Enhancement - Source Control, Retrofitting, and Combined Sewere Technology, Proceedings of an Engineering Foundation Conference*, Harry C. Torno, ed. October 1989. New York: ASCE, pp. 94-110.

to provide evidence of County approval of the septic system, is consistent with Section 30231 of the Coastal Act.

E. Environmentally Sensitive Resources

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.

Section 30231 of the Coastal Act requires 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 ESHA determination one must focus on three main questions:

- 1) Is a habitat or species rare?
- 2) Is the habitat or species especially valuable because of its 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 the memo "Designation of ESHA in the Santa Monica Mountains, dated March 25, 2003 by John Dixon (Exhibit 8), 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 LCP².

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?

Commission staff visited the subject property on August 31, 2005 and confirmed that the western two thirds of the subject parcel beyond and below the graded pad included chaparral vegetation on the slopes and primarily non-native grasses on the pad. The chaparral vegetation is part of a large contiguous area of chaparral habitat that extends relatively undisturbed to the west and south of the subject parcel and to properties beyond (Exhibits 9 and 10).

The proposed project will result in direct and indirect impacts to plant and wildlife habitat as a result of constructing the project and the modification of native vegetation surrounding the project for fuel clearance purposes. The existing pad, about 23,000 sq.

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

ft. in size, will be reduced to about 9,917 sq. ft. plus an additional 2,100 sq. ft. for the turnaround area. The chaparral surrounding the residence, including the restored area, will be modified up to 200 feet from the proposed structure.

In order to carry out the applicant's proposal to conduct restorative grading and revegetate the existing pad area beyond the proposed 9,917 sq. ft. building pad/development area and the 2,100 sq. ft. area for the required Fire Department turnaround area, a restoration program will be developed and implemented on about 11,000 sq. ft. of the disturbed existing pad that will not be utilized for the proposed improvements and that only native vegetation found in the immediate area be used for revegetation. The restoration of this area is necessary to minimize erosion on the site and sedimentation into Cold Creek and to replace the habitat value of this former chaparral area. The restoration of this area beyond the building pad minimizes the loss of chaparral ESHA, decreases landform alteration, erosion and sedimentation. Further, to restore the area where unpermitted removal of vegetation occurred it is necessary to re-grade the area to an approximation of its previously existing topography, add new top soil as needed and revegetate this area to minimize further onsite erosion and sedimentation offsite into the Decker Canyon Creek ESHA. In order to carry out the applicant's proposal to conduct this site restoration, **Special Condition No. 10** is required to be implemented. This restoration and revegetation plan shall include grading, landscaping, irrigation and erosion control plans prepared by a qualified habitat restoration consultant and be implemented within 90 days of the issuance of this coastal permit.

The applicant submitted an untitled Biology report, dated April 5, 2005, by Andrew Forde, Forde Biological Consultants. This report surveys the current site conditions and vegetation specifically identifying the plant species as chemise chaparral plant communities on the western slopes with a small amount of fragmented native and non-native species on the graded pad (Exhibit 9). The applicant's biological consultant concludes that: "... Chemise chaparral is the most dominant chaparral type in Ventura, Los Angeles, San Bernardino, Riverside, and San Diego Counties. Because chemise chaparral is neither rare or especially valuable; it does not meet the definition of ESHA unless it supports special status species." However, the consultant agrees that the natural watercourse on the property qualifies as ESHA: "Wetlands and streambeds are also considered ESHA. A natural watercourse located along the western boundary of the property meets the definition of ESHA. There is no riparian vegetation associated with the watercourse. The watercourse may potentially be used as a corridor by transient American badger."

However, the chemise chaparral located on the site is adjacent to a large unfragmented expanse of similar undisturbed chaparral located to the west and south of the subject parcel. Therefore, due to the important ecosystem roles of chaparral in the Santa Monica Mountains (detailed in Exhibit 8), and the fact that the subject site is relatively undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral on the subject property meets the definition of ESHA under the Coastal Act.

The Commission has required through permit actions in the chaparral ESHA in the Santa Monica Mountains, that a building pad shall not to exceed 10,000 sq. ft. pad. Through past permit actions, the Commission has limited the development area for residential development in ESHA to a maximum development area of 10,000 square feet in order to cluster development and minimize the adverse impacts to ESHA from fuel modification requirements. In this case, the applicant proposes to reduce the existing unauthorized building pad on site to allow for a building pad totaling 9,917 sq. ft. in size that is consistent with past Commission action.

As noted above, the majority of this parcel constitutes 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 parcels to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence and attached garage, which will require the removal of a limited amount of chaparral ESHA as a result of constructing the building pad and for fuel modification for fire protection purposes. As such residential development does not have to be located within ESHAs to function, the Commission does not consider residential related development 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 for \$375,000. This parcel was designated in the County's certified Land Use Plan in 1986 for residential use. Residential development has previously been approved on other parcels in the vicinity that generally contained the same type of habitat as the applicant's parcel. 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 existing and approved residential development on nearby parcels, the applicant had reason to believe that they had purchased parcels on which they would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject property, such as a recreational park or a nature preserve, although possible are not feasible as they would not provide the owner an economic return on the investment. The subject property consists of 5.14 acres and is surrounded by vacant private lands. According to the applicant, there are no offers to purchase the property from any public park agency. 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 on the subject parcel 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 this residential development on this parcel 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 on the parcel 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 within ESHA 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 greatest extent feasible while minimizing the alteration of natural landforms. However, given the location of ESHA on this parcel, there will still be significant impacts to ESHA resulting, not only from the creation of the proposed building pad, but also from the required fuel modification area around the approved development on this parcel. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP³.

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 required to extend from the outermost edge of Zone A to a maximum of 100 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 required to extend from the outermost edge of Zone B up to 200 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California 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. However, in this case, the typical fuel modification zone on this parcel

³ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

would extend from the approved structures up to 200 feet into chaparral ESHA located to the west of and along the slope of the building pad.

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, all located within the applicant's parcel.

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 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 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)⁴. 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 chaparral⁵.

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 area⁶. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat⁷. 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 developments⁸. 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 mutualisms⁹. 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

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

⁹ 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 habitats¹⁰.

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.¹¹ 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 seeds¹².

While these impacts resulting from fuel modification can be reduced through siting and designing alternatives for new development, they cannot be completely avoided, given the high fire risk and the location of ESHA on the subject parcel. 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 on the subject parcel. In this case, the ESHA area affected by the proposed development including the areas impacted by fuel modification or brushing is estimated to be between 1 to 2 acres in size onsite.

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

Impact of Development and Fuel Modification

The proposed project will result in direct and indirect impacts to plant and wildlife habitat as a result of constructing the project and the removal and modification of native vegetation surrounding the project. The existing pad, about 23,000 sq. ft. in size, will be reduced in size with the implementation of the applicant's proposal to reduce the pad to

¹⁰ Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

¹¹ Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

¹² 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.

the approved 10,000 sq. ft. or less size. The three fuel modification zones are discussed further below.

In this case, the ESHA area affected by the proposed development does not include the 9,917 sq. ft. building pad/development area and the 2,100 sq. ft. area for the required Fire Department turnaround area and driveway since those areas were previously graded and denuded of ESHA pursuant to CDP 5-91-865. However, as previously discussed in detail, approximately 11,000 sq. ft. of additional graded pad area was also constructed on site without the required coastal development and in non-compliance with CDP 5-91-865. The area where the unauthorized grading occurred was previously vegetated with the same chaparral vegetation as the surrounding site and would constitute ESHA if not for the unauthorized grading/vegetation clearance that was conducted by a previous property owner. The applicant is proposing to restore the unpermitted 11,000 sq. ft. of additional graded pad area to an approximation of its previously existing topography as part of this application. In addition, the 11,000 sq. ft. area to be restored is located entirely within the required fuel modification zones of the new proposed residence. As such, the ESHA areas that will be impacted by the proposed project is the approximately 11,000 sq. ft. area where the unpermitted grading has previously occurred and the required fuel modification areas on the slopes beyond the edges of the graded pad and the northwest corner of the driveway. The precise area of chaparral ESHA that will be impacted by the proposed development has not been calculated. However, based on the applicant's approved fuel modification plan, it appears to be between 1 and 2 acres. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA on, and adjacent to, the site that will be impacted by the proposed development including the areas affected by the construction of the driveway and building pad and their surrounding fuel modification and brushing activities (based on the final fuel modification plan approved by the Los Angeles County Fire Department), as required by **Special Condition No. 11**.

The Commission has identified three methods for providing mitigation for the unavoidable loss of ESHA resulting from development, including habitat 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 the project site. These three mitigation methods are provided as three available options for compliance with **Special Condition No. 11**. 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 No. 11, 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 chaparral ESHA. This mitigation method is provided for in **Special Condition No. 11, subpart B**.

The third habitat impact mitigation option is an in-lieu fee for habitat conservation. 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 determined 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 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.

In this case, the applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of three zones of vegetation modification. Zones "A" (setback zone), extending 20 feet from the structures, and "B" (irrigation zone) are shown extending in a radius of 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of another 100 feet beyond the "A" and "B" zones. As discussed above, the ESHA area affected by the proposed development does not include the building pad or driveway since those areas were previously graded and denuded of ESHA prior to the effective date of the Coastal Act. As such, the ESHA areas that will be impacted by the proposed project are the required fuel modification areas on the slopes beyond the edges of the graded pad and driveway. The appropriate in-lieu fee calculation would then be based on \$12,000 per acre for any irrigated fuel modification area (the "A" and "B" Zones) and \$3,000 per acre of un-irrigated fuel modification area (zone "C").

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Santa Monica Mountains Conservancy for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition No.11, subpart C**.

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 No. 3**. 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 No. 3** 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 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 No. 2** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. In addition, the Commission notes that rodenticides containing anticoagulants have been linked to the death of sensitive predator species including mountain lions and raptors. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition No. 2** also prohibits the use of any rodenticides containing anticoagulants on the subject site.

The Commission notes that streams and drainages, such as a tributary of Decker Creek located about 200 feet west and south of the project site, provides important habitat for chaparral 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 coastal streams and natural drainages results in potential adverse impacts to chaparral and 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. Sheet flow and minor drainages onsite transmits runoff directly beyond the subject parcel into Decker Creek, as such, the Commission finds that potential adverse effects of the proposed development on riparian habitat of this stream 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 No. 5**, the Drainage and Polluted Run-off 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 off-site in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways.

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 beaches, 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 No. 9**, Lighting Restriction, 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 proposed setback from the sensitive habitat area and natural topography in concert with the lighting restrictions will attenuate the impacts of unnatural light sources and will not impact sensitive wildlife species.

Furthermore, fencing of the subject three lots would adversely impact the movement of wildlife through the chaparral ESHA, except for fencing identified on the landscape plan immediately surrounding the proposed structural developments on the lot (within Zone B), and a gate at the entrance to the driveway at Latigo Canyon Road. Therefore, the Commission finds it is necessary to prohibit fencing of the entire property. Fencing shall extend no further than Zone B of the final fuel modification plan approved by the Los Angeles County Fire Department. The fencing type and location shall be illustrated on the landscape plan as required in **Special Condition No. 2**.

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 No. 7**, the future development restriction, has been required.

In addition, to permanently ensure that no further development occurs on the site outside of the proposed development area, **Special Condition No. 12** prohibits all development outside of the proposed development area as shown in Exhibit 7. As a result of Coastal Permit No. 5-91-865, an irrevocable offer to dedicate open-space easement and declaration of restrictions is recorded on western portion of the subject property in the area of the drainage for the purposes of an easement for open space, wildlife corridor preservation and habitat preservation. This previously recorded easement is also partially located on the adjoining parcel to the north, which was a part of the subdivision approved in Coastal Permit No. 5-91-865. However, the open space easement required by CDP 5-91-865 was only recorded on the western portion of the subject site and does not provide protection of all ESHA areas on site. Therefore, **Special Condition No. 12** has been required specifically to provide protection for the remaining areas of ESHA on site that are located outside of the approved development area as shown in Exhibit 7 and which are not otherwise already protected by the previously recorded open space easement required pursuant to CDP 5-91-865. This

new restriction will only apply to the portion of the property that is not already covered by the previously recorded open space easement and which is also located outside of the approved development area. Finally, **Special Condition No. 8** 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, and 30240 of the Coastal Act.

F. Violation

Development has occurred on the subject site without the required coastal development permit including grading and removal of chaparral vegetation on approximately 11,000 sq. ft. of additional area beyond the 10,000 sq. ft. building pad area previously authorized by Coastal Development Permit 5-91-865.. When the applicant purchased this property in 2003, the unpermitted grading and removal of chaparral vegetation had already occurred. No evidence could be found that this grading and vegetation removal received a coastal development permit from the Commission. To resolve this unpermitted grading and vegetation removal, the applicant proposes to re-grade the 11,000 sq. ft. area to an approximation of its previously existing topography and replant the disturbed area with native vegetation . In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions as a prerequisite to the issuance of this permit, as required by **Special Condition No. 13** within 120 days of Commission action. Only as conditioned, is the proposed development consistent with the Coastal Act.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

G. 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 that conforms with 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).

H. CEQA

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.

Exhibit 1
4-04-118
Project Site

Exhibit 2
4-04-118
Site Plan

Exhibit 4
4-04-118
Floor Plan

Exhibit 3
4-04-118
Site Plan
Detail

Exhibit 5
4-04-118
Elevations

Exhibit 6
4-04-118
Restoration
Area

Exhibit 7
4-04-118
Open
Space Area

Exhibit 8
4-04-118
Site
Chaparral

See aerial
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