

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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VENTURA, CA 93001  
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Staff: LKF-V  
Staff Report: 12/23/05  
Hearing Date: 1/13/06

### **STAFF REPORT: APPEAL** **DE NOVO REVIEW**

**LOCAL GOVERNMENT:** City of Carpinteria

**LOCAL DECISION:** Approval with Conditions

**APPEAL NO.:** A-4-CPN-05-040

**APPLICANT:** M. Timm Development Corporation

**AGENT:** Matt Easter

**APPELLANTS:** Commissioners Caldwell and Wan; Carpinteria Creek Committee; and Richard & Sherry Diaz, Thomas L. Richards, Rochelle Terry, D.Q. Leonard, Stephen D. & Laura L. Manriquez, and Bernard W. & Judith C. Jones.

**PROJECT LOCATION:** 1497 Linden Avenue in the City of Carpinteria, Santa Barbara County.

**PROJECT DESCRIPTION:** Subdivision of a 5.89-acre parcel into 27 residential lots and the development of 27 single family residences, including 24 market-rate and three affordable residences. The proposed lots range in size from 4,662 sq. ft. to 13,030 sq. ft., with one 32,275 sq. ft. subdivision improvement lot to be developed as a private street that provides a non-motorized public access easement. The structures include 12 single-story single family residences, maximum 18 feet in height (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 15 two-story residences, maximum 26 feet in height, with 14 separate floor plans ranging from 1,676 sq. ft. to 3,600 sq. ft. Additionally, the project includes the construction of sidewalks; utilities; drainage system, including vegetated drainage swale; public access provisions including a ten foot wide footbridge over Franklin Creek, a five foot wide pathway through the site crossing over the footbridge, and the construction of a five foot wide pathway off-site through Franklin Creek Park to Sterling Avenue; traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue; native riparian landscaping in the 50 foot buffer area along Franklin Creek and offsite in Franklin Creek Park; other landscaping; submittal of annual biological reports on the creek setback area, and payment of an annual processing fee to allow City review of the reports; and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guesthouse, garage, maintenance building, nursery office, pavement, and non-native landscaping.

**SUBSTANTIVE FILE DOCUMENTS:** City of Carpinteria Local Coastal Program; Mitigated Negative Declaration (MND), Mission Terrace (M. Timm Development), adopted February 14,

2005; City of Carpinteria Coastal Development Permit No. 03-1122-TM-DP/VAR/MOD/CDP/DA approved February 28, 2005; Development Agreement By and Between: City of Carpinteria, and Mission Terrace, LLC, a California Limited Liability Corporation and the Simon Family Trust, dated February 28, 2005; "Geotechnical Engineering Report," Earth Systems Southern California, June 2002; Petition re: Franklin Creek from Richard Diaz, dated April 27, 2005; Letter re: Appeal of A-4-CPN-05-040 from The Carpinteria Creek Committee, dated October 20, 2005; Letter from Rachel Tierney, consulting biologist, re: drainage channel located on the southern boundary of Mission Terrace project site at 1497 Linden Avenue, Carpinteria, CA, dated November 16, 2005.

### **SUMMARY OF STAFF RECOMMENDATION**

On April 13, 2005, the Commission found that substantial issue exists with respect to the appellants' assertions that the project is not consistent with creek protection and water quality standards of the City of Carpinteria's certified Local Coastal Program (LCP). Staff recommends that the Commission **approve** the proposed project with **sixteen (16) special conditions** regarding conformance with geologic recommendations, landscape plans, erosion sediment control plans, water quality management plan, removal of excess graded material, construction mitigation plan, assumption of risk, lighting and noise restrictions, covenants, conditions, and restrictions (CC&Rs), residential area height restrictions, buyer's acknowledgement, open space restriction, signage and education program, revised project plans, final tract map, and incorporation of the City of Carpinteria's conditions of approval. As conditioned, adverse impacts to coastal resources will be minimized, consistent with the applicable policies of the City of Carpinteria's Local Coastal Program (LCP).

## **I. STAFF RECOMMENDATION**

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. A-4-CPN-05-040 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

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

### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the certified Local Coastal Program for the City of Carpinteria and the public access and public recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

### 1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic report ("Geotechnical Engineering Report," Earth Systems Southern California, June 2002). These recommendations, including those concerning construction, foundations, grading, retaining walls, and additional services, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, retaining walls, 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. Landscape Plans

- A. Prior to issuance of the Coastal Development Permit, the applicants shall submit two (2) sets of landscaping plans for all landscaped areas to be installed by the permittee and landscape guidelines prepared by a landscape architect or other qualified specialist for

review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (1) All areas disturbed and/or denuded by the development shall be re-vegetated and maintained to prevent erosion into coastal waters. To minimize the need for irrigation all landscaping shall consist primarily of drought resistant, non-invasive plants. Irrigated lawn may be planted within the individual residential lots. Such lawn shall be selected from the most drought tolerant species or subspecies.
  - (2) The required creek setback area, as shown in **Exhibit 12**, (with the exception of the required Santa Barbara County Flood Control easement), shall be planted with appropriate native riparian landscape materials. The plantings shall include riparian native tree species and shrubs of sufficient density and height to screen the proposed residences as viewed from Franklin Creek Park and to restrict access within the setback area to the proposed trail. Plantings shall be completed within 90 days of the completion of construction on Lots 14 through 18.
  - (3) The proposed plantings in Franklin Creek Park shall consist of appropriate native riparian tree and shrub species.
  - (4) No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the private residential lots.
  - (5) The use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance shall be prohibited, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.
  - (6) 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;
  - (7) Final landscaping guidelines for residential lots shall be completed and submitted for review and approval by the Executive Director prior to the issuance of the coastal development permit. The guidelines shall state that landscaping shall be installed by the landowner consistent with the guidelines within 180 days of initial occupancy of each residence approved by this permit. The guidelines shall be consistent with the requirements of this coastal development permit.
  - (8) The proposed trail within the creek setback, on the subject property and in Franklin Creek Park, shall be no greater than five feet in width.
- B. Prior to issuance of the coastal development permit, the permittee shall submit landscape palette lists to be incorporated into the landscaping guidelines, subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the development; 2) a representative list of the non-native, non-invasive common garden plant species that may be planted in the residential lots; and 3) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the lists of approved plants as reviewed and approved by the Executive Director. These lists shall remain available for public consultation at the California Coastal Commission, the City of Carpinteria, and the

homeowners association established for the development. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

- C. Prior to issuance of the coastal development permit, the permittee shall submit for review and approval by the Executive Director final landscaping plans for all common areas of the residential development area. The plans shall be modified in accordance with the requirements of the special conditions of this permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. The applicable covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all landscaping be consistent with the landscaping guidelines approved by the Executive Director. The requirements of this special condition shall be incorporated directly into the CC&R's.
- E. Five years from the date of the receipt of the Certificate of Occupancy for the first residence, the applicants 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 certifies the on-site landscaping 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 this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised 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.
- F. In order to implement the applicant's proposal to submit and fund City of Carpinteria review of annual monitoring reports for the creek setback area, the applicant shall submit to the City, on an annual basis for the life of the proposed project, beginning one year from the date of installation of native riparian landscaping in the creek setback area (Lot A), a biological report analyzing the condition of the creek setback area (Lot A). The reports shall be prepared by a City approved biologist and shall document the condition of the native riparian habitat, including the health of native trees and other plants. The reports shall also address compliance with the Creeks Preservation Program, including evidence of any disturbance or development within the creek setback area. The reports shall include recommendations for any necessary corrective action to ensure compliance with the Creeks Preservation Program and the final landscape plan approved pursuant to this special condition. The Homeowners Association associated with the subject development shall pay an annual processing fee to the City of Carpinteria to allow the City to review the annual biological reports.

### **3. Erosion and Sediment Control Plan (Construction Phase)**

- A. Prior to issuance of a coastal development permit, the permittee shall submit two (2) sets of an erosion and sediment control plan, prepared by a qualified engineer, for review and approval by the Executive Director. The plan shall incorporate the following criteria:
- (1) The plan shall include controls on grading (i.e. timing and amounts), best management practices for staging, storage, and disposal of construction and excavated materials, design specifications for sediment basins and other erosion control measures, and landscaping /revegetation of graded or disturbed areas as required below.
  - (2) The plan shall include a site-specific polluted runoff control plan that demonstrates how runoff will be conveyed from impermeable surfaces into permeable areas of the property in a non-erosive manner, and how development will treat or infiltrate stormwater prior to conveyance off-site during construction. The plan shall specify that should grading take place during the rainy season (November 1 – April 15) the permittee shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside 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 geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### **4. Water Quality Management Plan (WQMP)**

- A. Prior to issuance of the coastal development permit, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall incorporate structural and non-structural Best Management Practices (BMPs) designed to reduce, to the maximum extent practicable, the volume, velocity and

pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the specifications above, the plan shall include the following information and shall be in substantial conformance with the following requirements:

- (1) Pre-development and expected post-development peak runoff rate and average volume. Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.
- (2) Site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff. Appropriate structural and non-structural BMPs shall be designed and implemented to minimize water quality impacts to surrounding coastal waters.
- (3) Drainage improvements (e.g. locations of diversion/conveyances for upstream runoff).
- (4) Potential flow paths where erosion may occur after construction.
- (5) Methods to accommodate onsite percolation. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible.
- (6) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized.
- (7) All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
- (8) Measures to treat, infiltrate, and/or filter runoff from impervious surfaces on the subject parcels and to discharge the runoff in a manner that avoids erosion, gulying on or downslope of the subject site, the need for upgrades to municipal stormdrain systems, discharge of pollutants to coastal waters, and other potentially adverse impacts. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
- (9) Information describing how the post-construction BMPs have been designed to meet the following standard: BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 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.
- (10) A long-term plan and schedule for the monitoring and maintenance of all BMPs. All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to September 30th each year; (2) during each month between September 30th and April 30<sup>th</sup> of each year and, (3) at least twice during the dry season.
- (11) Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.

- B. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications. As soon as a homeowner's association (HOA) or similar entity comprised of the individual owners of the proposed residential lots is created, responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications shall be transferred to the HOA.
- C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. The applicable covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all development be carried out in accordance with the Water Quality Management Plan approved by the Executive Director.

## **5. Removal of Excess Graded Material**

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

## **6. Construction Mitigation Plan**

- A. All construction plans and specifications for the project shall indicate that impacts to Franklin Creek shall be avoided and that the California Coastal Commission has not authorized any development in Franklin Creek. Said plans shall clearly identify Franklin Creek and its associated buffer zone. Prior to issuance of the coastal development permit, the permittee shall submit a final construction mitigation plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to Franklin Creek consistent with this approval. The plan shall include the following requirements and elements:
  - (1) Construction equipment, materials, or activity shall not be placed in any location that would result in discharge of material into Franklin Creek or its designated buffer.
  - (2) No construction materials, debris, or waste shall be placed or stored where it may enter storm drains or be subject to wind erosion and dispersion;
  - (3) No construction equipment shall be stored within Franklin Creek and its designated buffer zone.
  - (4) The plan shall include, at a minimum, a site plan that depicts the following components: limits of the staging area(s); construction corridor(s); construction site; location of construction fencing and temporary job trailers with respect to Franklin Creek.



- (5) The plan shall indicate that construction equipment, materials or activity shall not occur outside the designated staging area(s) and construction zone and corridors identified on the site plan required by this condition.
- (6) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include the construction site and any temporary access roads, construction corridor(s), staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (7) Protective fencing shall be placed around the outermost limits of the protected zones of native trees within and adjacent to the construction area prior to the commencement of construction activities, and shall be maintained in place for the duration of all construction. The protected zone of a native tree shall extend five feet from the dripline or 15 feet from the trunk of the tree, whichever is greater. No construction, grading, or materials storage shall be allowed within the fenced exclusion areas, or within the protected zones of any on-site native trees. Any development approved within the protected zone of a native tree shall be constructed using only hand-held tools.
- (8) The use of herbicides shall be minimized by using manual removal methods to eliminate undesired vegetation whenever possible.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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

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

## **8. Lighting and Noise Restrictions**

- A. The only outdoor night lighting allowed on Lots 14, 15, 16, 17, and 18 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 Lots 14, 15, 16, 17, and 18 and no lighting for aesthetic purposes is allowed.
- C. Loud, stationary equipment (e.g. air conditioners, etc.) on Lots 14, 15, 16, 17, and 18 shall be located away from the riparian setback area or provided with enclosures to minimize impacts to wildlife.
- D. The covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all lighting and loud, stationary equipment be consistent with the plans approved by the Executive Director. The requirements of this special condition shall be incorporated directly into the CC&R's.

## **9. Covenants, Conditions, and Restrictions (CC&R's)**

Prior to issuance of the coastal development permit, and prior to recordation of any covenants, conditions and restrictions (CC&R's) associated with the subdivision approved by this Permit, said CC&R's shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of insuring compliance with the standard and special conditions of this coastal development permit. The CC&R's shall include the following:

- (1) The permittee shall establish covenants, conditions and restrictions (CC&R's) for the proposed residential lots located within the subdivision. The CC&R's shall reflect the requirements of all special conditions of this coastal development permit.
- (2) The CC&R's for the proposed subdivision shall indicate that Lot A within the subdivision shall be maintained by a common entity (e.g. master homeowner's association) in accordance with the special conditions of this permit.

Prior to issuance of the Certificate of Occupancy for the first residence, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The CC&Rs shall state that the Special Conditions of this Coastal Development Permit and City of Carpinteria Conditions of Approval shall not be eliminated or changed without authorization from the Coastal Commission.

## **10. Residential Area Height Restrictions**

The heights of residential structures and appurtenances shall be as identified in the final plans approved by the Executive Director consistent with the following maximum heights shown in **Exhibit 16**: 15 to 18 feet for the 12 single story residences (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 23.5 to 26 feet for the 15 two story

residences. Future development shall conform to the heights shown in **Exhibit 16** unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment to this permit is required.

## **11. Buyer'(s) Acknowledgment**

- A. Prior to issuance of this coastal development permit, the owner(s) of the property that is the subject of this permit shall agree that before any sale or transfer of any of that property or any interest in that property that occurs before completion of all public amenities required in this permit ("Improvements"), the owner-seller shall secure a letter from the buyer of the property (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is restricted by the special conditions of the permit and restrictions recorded on the property pursuant thereto, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that buyer-turned-seller shall secure from its buyer a letter to the same effect.
- B. Subsequent to the issuance of this coastal development permit, and prior to the sale or transfer of any of the property or any interest in the property that is the subject of this permit that occurs before completion of all of the Improvements, the owner of the property being sold shall secure a letter from the buyer (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is therefore restricted by the special conditions of this permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the opening to the public of public trails and other public access and recreation amenities, and furthermore, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to close of escrow on any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.
- C. A copy of such letter(s) shall be provided to the Executive Director of the Commission and the Community Development Director of the City of Carpinteria before close of escrow.

## **12. Open Space Restriction**

- A. No development, as defined in Section 30106 of the Coastal Act, or agricultural activities, shall occur within Lot A as shown on the Final Tract Map approved pursuant to **Special Condition Fifteen (15)** and as described and depicted in **Exhibit 12** attached to the findings in support of approval of this permit except for the following activities, if approved through a separate coastal development permit:
  - 1. Habitat restoration, including maintenance of native riparian habitat and restoration of the banks of Franklin Creek;

2. Installation, repair, or upgrading of utilities;
3. Construction or maintenance of water quality management structures;
4. Construction and maintenance of public trails and bridges and associated appurtenances;
5. Existing easements for roads, trails, flood control, and utilities.

### **13. Signage & Education Program**

- A. Prior to the issuance of the Certificate of Occupancy for the first residence, the permittee shall submit, for the review and approval of the Executive Director, plans showing the location, size, design, and content of all signs to be installed.
- B. Within thirty (30) days of issuance of the certificate of occupancy for the first residence by the City of Carpinteria, the permittee shall install permanent signage that notifies the public's right for pedestrian and bicycle access through the new subdivision as shown in **Exhibit 11**.
- C. Animal waste control measures (e.g., mutt-mitt dispensers) shall be implemented. Mutt-mitt dispensers shall be installed and maintained by the Developer/Homeowner's Association at the proposed trailhead within the development. Educational displays/signs and a trash receptacle shall be installed at the trailhead to provide information about water quality in Franklin Creek and the downstream Carpinteria Salt Marsh, and appropriate education materials shall be incorporated into the Homeowners' Association CC&Rs. The displays and/or signs shall include information pertaining to animal waste and surface water pollution prevention.
- D. The required signs shall be maintained in good condition and replaced when necessary.

### **14. Revised Project Plans**

Prior to issuance of the coastal development permit, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of final revised vesting tentative tract map and project plans. The revised final vesting tentative tract map and project plans shall reflect the following:

- A. The required creek setback area, as shown in **Exhibit 12**, shall be included as a separate lot, Lot A, of the proposed subdivision;
- B. Lots 14, 15, 16, 17, and 18 shall be reconfigured to reflect the incorporation of the creek setback area into a separate lot, Lot A, as described above.
- C. The proposed chain-link and split-rail fence with gates shall be replaced by a continuous six-foot high solid wall, or, alternatively, a six-foot high wall comprised of a 2.5-foot in height wrought iron fence with a 3.5-foot high solid wall base shall be constructed along the entire length of the boundary between the required riparian setback area and the backyards of Lots 14, 15, 16, 17, and 18, with the exception of the five foot wide trail access easement, in order to help contain domestic animals and backyard activities within the residential area. No gates in the wall shall be allowed. Prior to issuance of the

coastal development permit, the permittee shall submit final revised plans showing the location, design, height and materials of all such walls for the review and approval of the Executive Director.

- D. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- E. The covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall incorporate the backyard enclosure/fencing restrictions required by this special condition for Lots 14, 15, 16, 17, and 18.

### **15. Final Tract Map**

Recordation of the Final Tract Map for the subdivision authorized herein shall only occur following issuance of the coastal development permit. Prior to recordation of the Final Tract Map for the subdivision authorized herein, the applicant shall submit to the Executive Director, for review and approval, a copy of such map. The Final Tract Map shall reflect the requirements imposed by **Special Condition Fourteen (14)** above and shall state on the map that Lot A is restricted to use as open space and may not be modified or eliminated without authorization from the California Coastal Commission. The Final Tract Map shall include an informational sheet to be recorded with the map that shall include all of the mitigation measures, conditions, agreements, and specific plans required by the Commission and the City of Carpinteria for approval of the project.

Prior to implementation of the Development Plan for this project, the applicant shall submit to the Executive Director, for review and approval, evidence that the Final Tract Map was executed and recorded in conformance with the requirements outlined above and specified in the City of Carpinteria's conditions of approval.

### **16. City of Carpinteria's Conditions**

The applicant shall comply with all of the City's conditions attached to the City of Carpinteria approval of 99-881-DP/CDP as shown in **Exhibit 2**. Prior to the issuance of Coastal Development Permit A-4-CPN-05-040, the applicant shall submit evidence of such condition compliance for the review and approval of the Executive Director. Should any conflict arise between the City's conditions of approval and **Special Conditions One (1) through Fifteen (15)** set forth above, **Special Conditions One (1) through Fifteen (15)** shall prevail and shall supercede the conflicting requirement(s) of the City's condition(s).

The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans as described in this staff report shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

### A. Project Description and Background

#### 1. Project Description

The applicant proposes to subdivide a 5.89-acre parcel into 27 residential lots and construct 27 single family residences, including 24 market-rate and three affordable residences. The proposed lots range in size from 4,662 sq. ft. to 13,030 sq. ft., with one 32,275 sq. ft. subdivision improvement lot to be developed as a private street that provides a non-motorized public access easement. The structures include 12 single-story single family residences, maximum 18 feet in height (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 15 two-story residences, maximum 26 feet in height, with 14 separate floor plans ranging from 1,676 sq. ft. to 3,600 sq. ft. Additionally, the project includes the construction of sidewalks; utilities; drainage system, including vegetated drainage swale; public access provisions including a ten foot wide footbridge over Franklin Creek, a five foot wide pathway through the site crossing over the footbridge, and the construction of a five foot wide pathway off-site through Franklin Creek Park to Sterling Avenue; traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue; native riparian landscaping in the 50 foot buffer area along Franklin Creek and offsite in Franklin Creek Park; other landscaping; submittal of annual biological reports on the creek setback area, and payment of an annual processing fee to allow City review of the reports; and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guesthouse, garage, maintenance building, nursery office, pavement, and non-native landscaping (**Exhibits 11 – 16**).

The proposed residences feature a variety of plan types and elevations with fairly similar exterior styles that incorporate traditional architectural elements such as gables, hip roofs, and shutters. The colors include varying shades of earth tones ranging from off-white to beige. The exterior materials consist of stucco and wood siding with brick accents, in earth tone colors. The applicant proposes to restrict the residences to the following maximum heights in perpetuity: 18 feet for the one-story residences (or 20 and 22 feet for Lots 26 and 27 along Linden Avenue respectively) and 26 feet for the two-story residences, as specifically designated for each lot (**Exhibit 16**).

The applicant proposes construction of an approximately 690 foot long, 42-foot wide (50-foot wide at the entrance of the development) privately-maintained subdivision street, with an additional approximately 120 foot long cul-de-sac, to serve the residences in the development including rolled curbs, gutters and 4-foot wide sidewalks on both sides of the street. The applicant proposes dedication to the City of a 42-foot wide non-motorized public easement over the entire width and length of the street to allow for pedestrian and bicycle access to a proposed public trail and footbridge that crosses Franklin Creek and Franklin Creek Park. Other improvements include frontage improvements along Linden Avenue, traffic calming and control measures and devices along Linden Avenue, dedication of additional 3,467 sq. ft. road right of way along Linden Avenue, sidewalk improvements, landscaping, a drainage improvements, and undergrounding of utilities (**Exhibits 11 – 15**).

## 2. Background

The project site is a 5.89-acre parcel located in the Canalino neighborhood north of Highway 101 and the Downtown Core area of the City of Carpinteria. This neighborhood is characterized by single-family residences, several churches, and a number of public facilities including Carpinteria High School, Canalino Elementary School, and school district administrative offices (**Exhibits 6 – 7**).

The subject parcel is located immediately south of a church, west of Linden Avenue, and north of an established residential neighborhood. The subject site is located immediately east of Franklin Creek, and opposite Franklin Creek Park, an approximately 1.1 acre linear “micropark” that parallels the west side of the creek and includes a grassy area and landscape trees for passive recreation, a playground, and the southern terminus of the Franklin Creek hiking and biking trail. A fifteen foot wide flood control access easement is located parallel to the creek along the western boundary of the parcel.

Franklin Creek is contained within a concrete box channel from the base of the Santa Ynez Mountains foothills approximately one mile north of the subject site, to its outlet at Carpinteria Salt Marsh, approximately one mile south of the site. Franklin Creek, within the city limits, does not contain sensitive habitat; however, the quality of water in Franklin Creek impacts the sensitive wetland habitat of Carpinteria Salt Marsh, a designated Environmentally Sensitive Habitat Area (ESHA) in the City of Carpinteria and Santa Barbara County Local Coastal Plans (LCPs) (**Exhibits 6, 17**).

The subject site is a nearly level parcel that slopes gently in a west-southwesterly direction towards Franklin Creek. Existing grades on the site range from 28.5 feet above sea level (asl) adjacent to Linden Avenue, to 19 feet asl adjacent to Franklin Creek. The subject site currently contains a commercial nursery, including shade structures, nursery office, maintenance shed, and plant storage areas, as well as a single-family residence, guesthouse, garage, driveway, and other paved areas (**Exhibit 18**).

The LCP designates the subject parcel for Low-Density Residential use, and the 7-R-1 single-family zoning district. The 7-R-1 zoning district allows for a maximum of 4.6 units per acre, with a minimum net lot area of 7,000 sq. ft. which allows, on this site, a base buildout of 27 units. The applicant proposes 27 residential units, with lot size variance for three parcels that will contain affordable single-family residences. The City’s zoning code allows lot size variances for parcels, such as the three noted above, that provide affordable housing opportunities (**Exhibit 7**).

The site is also subject to several provisions of the City’s Creeks Preservation Program, which was certified on October 15, 2004 as an amendment to the implementation ordinance of the LCP and which implements creek protection and water quality policies in the updated LUP. These provisions include a minimum setback of 50 feet from the top of creek banks, limited exceptions to the setback for resource-dependent and existing legal non-conforming development, development application requirements, post-construction mitigation, and a comprehensive water quality program consistent with the Phase II Permit requirements administered by the Central Coast Regional Water Quality Control Board (RWQCB). Due to the channelized condition of Franklin Creek, the site is not subject to the Flood Hazard (FH) Overlay District (**Exhibits 4, 8, 17**).

On October 8, 2003, the applicant submitted an application to the City of Carpinteria for a Development Plan, Tract Map, Variance, Modification, Coastal Development Permit, and Development Agreement to subdivide the parcel into single family residential lots. A Mitigated Negative Declaration (MND) was prepared for the project and adopted by the City Council on February 14, 2005. The City Council approved the project via Resolution No. 4928 and Ordinance No. 604 on February 14, 2005. Changes to the conditions of approval were subsequently approved by the City Council on February 28, 2005. The resolution and conditions of approval are attached as **Exhibit 2**.

Appeals of the City's action were filed by Commissioners Caldwell and Wan; Carpinteria Creek Committee; and Richard & Sherry Diaz, Thomas L. Richards, Rochelle Terry, D.Q. Leonard, Stephen D. & Laura L. Manriquez, and Bernard W. & Judith C. Jones. On April 13, 2005, the Commission found that substantial issue exists with respect to the appellants' assertions that the project is not consistent with creek protection and water quality standards of the City of Carpinteria's certified Local Coastal Program (LCP).

### 3. Standard of Review

On August 6, 2002 the Commission approved an amendment for an updated Land Use Plan for the City of Carpinteria LCP. The amendment was certified by the Commission on April 10, 2003. Although many of the LUP policies became effective upon certification, or became effective upon adoption of subsequent amendments to the City's Implementation Program (IP), many others will only become effective once additional amendments are made to the City's IP. In such case, the applicable policies are those included in the previously certified City of Carpinteria LCP (as certified on January 22, 1980 and subsequently amended). Conversely, many of the policies included in the previously certified City of Carpinteria LCP have been superceded by the new policies that became effective upon Commission certification of the LUP amendment, or upon certification of subsequent IP amendments such as the City's Creeks Preservation Program. Thus the standard of review for the proposed project includes policies from both the previously certified City of Carpinteria LCP and the recent LUP update, as well as implementation policies of the City's Creeks Preservation Program. The applicable policies for each issue area are listed at the beginning of Sections B through F below.

## **B. Hazards and Geologic Stability**

The proposed development is located in an area of the City of Carpinteria that is subject to seismically induced hazards and fire. The City of Carpinteria Local Coastal Program (LCP) contains the following development policies related to hazards that are applicable to the proposed development:

Section 30253 of the Coastal Act, which is incorporated as part of the Carpinteria LCP, 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.**

In addition, the following LUP policies are applicable in this case:

- 3-8**        ***Applications for grading and building permits, and applications for subdivision shall be reviewed for adjacency to threats from, and impact of geologic hazards arising from seismic events, tsunami runup, landslides, beach erosion, or other hazards such as expansive soils and subsidence areas. In areas of known geologic hazards, a geologic report may be required. Mitigation measures shall be applied where necessary.***
- 3-14**        ***All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural landforms and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited to development as evidenced by competent soils, geology, and hydrology investigation and reports shall remain in open space.***
- 3-15**        ***For necessary grading operations, the smallest practical area of land shall be exposed at any one time during the development phase, and the length of exposure shall be kept to the shortest practicable amount of time. The clearing of land shall be avoided during the winter rainy season and all measures for removing sediments and stabilizing slopes shall be in place before the beginning of the rainy season.***
- 3-16**        ***Sediment basins (including debris basins, desilting basins, or silt traps) shall be required in conjunction with the initial grading operations and maintained throughout the development process. All sediment shall be retained on site unless removed to an appropriate disposal location.***
- 3-17**        ***Temporary vegetation, seeding, mulching, or other suitable stabilization method shall be used to protect soils subject to erosion that have been disturbed during grading or development. All cut and fill slopes in a completed development shall be stabilized immediately with planting of native annual grasses and shrubs, or appropriate non-native plants with accepted landscaping practices.***
- 3-18**        ***Provision shall be made to conduct surface runoff waters that will occur as a result of development to storm drains or suitable watercourses to prevent erosion. Drainage devices shall be designed to accommodate increased runoff resulting from modified soil and surface conditions as a result of development.***
- OSC-6f**      ***Carry out and maintain all permitted construction and grading within stream corridors in such a manner so as to minimize impacts on biological resources and water quality such as increased runoff, creek bank erosion, sedimentation, biochemical degradation, or thermal pollution.***
- S-1**         ***Minimize the potential risks and reduce the loss of life, property and the economic and social dislocations resulting from earthquake (rupture or shaking) and liquefaction in the planning area and from seismically-induced tsunamis.***

- S-4**        *Minimize the potential risks and reduce the loss of life, property and the economic and social dislocations resulting from flooding.*
  
- S-4a**       *All new development proposed in the 100-year floodplain must adhere to the County of Santa Barbara Floodplain Management Ordinance, Chapter 15-A of the County Code.*
  
- S-4, IM10** *Compliance with the City's Floodplain Management Measures will be required prior to issuance of building permits for any type of individual development project proposed in the 100-year floodplain.*
  
- S-5**        *Minimize the potential risks and reduce the loss of life, property and the economic and social dislocations resulting from urban and wildland fires.*
  
- S-5a**       *All new structures must adhere to the Carpinteria-Summerland Fire Protection District Ordinance and the Santa Barbara County Fire Department Ordinances, where applicable.*
  
- S-5b**       *All new structures, whether inside or outside the urban limit zone, must adhere to the city Fire Sprinkler Ordinance.*

The Carpinteria LCP requires that new development be sited and designed to minimize risks to life and property from geologic and fire hazards. In addition, the LCP includes measures to prevent erosion that may be caused by development. As noted above, the proposed project site is subject to fire and seismically induced hazards. Due to the channelized condition of Franklin Creek, the site is not subject to the Flood Hazard (FH) Overlay District.

In accordance with Policy 3.8 of the Carpinteria LCP, the applicant has submitted a geologic report ("Geotechnical Engineering Report," Earth Systems Southern California, June 2002) that evaluates the geologic stability of the subject site in relation to the proposed development. Based on their evaluation of the site's geology and the proposed development the consultants have found that the project site is suitable for the proposed project. The report concludes:

***The site is suitable for the proposed development from a Geotechnical Engineering standpoint provided that the recommendations contained in this report are successfully implemented into the project.***

The geotechnical engineering consultants conclude that the proposed development is feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The submitted geologic reports contain several recommendations to be incorporated into project construction, foundations, grading, retaining walls, and drainage, and additional services to ensure the stability and geologic safety of the proposed project site and adjacent property. To ensure that the recommendations of the consultants have been incorporated into all proposed development, the Commission, as specified in **Special Condition One (1)**, requires the applicant to comply with and incorporate the recommendations contained in the submitted geologic reports into all final design and construction, and to obtain the approval of the geotechnical consultants prior to commencement of construction. Final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development, as approved by the Commission, which may be recommended by the consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicant to submit erosion and sediment control and water quality management plans, as specified in **Special Conditions Three (3)** and **Four (4)**.

Furthermore, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition Two (2)** requires the applicant to submit landscaping plans that utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/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. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Two (2)**.

As noted above, the proposed project site is also subject to hazards from fire. The City of Carpinteria has included, as conditions of local approval, requirements to ensure that the project complies with all applicable fire safety ordinances. In order to ensure that the proposed project minimizes hazards due to fire, it is necessary to require the applicant to comply with these fire safety regulations. Accordingly, **Special Condition Sixteen (16)** requires the applicant to submit evidence of compliance with all of the City's conditions attached to the City's approval of 99-881-DP/CDP, including the conditions requiring compliance with applicable fire safety regulations.

Nonetheless, the Commission recognizes that development, even as designed and constructed to incorporate all recommendations of the geologic consultants, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that due to the possibility of erosion, liquefaction, earthquake, and fire, the applicants shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants to waive any claim of liability against the Commission, its employees, and agents, for damage to life or property that may occur as a result of the permitted development. The applicants' assumption of risk, as required by **Special Condition Seven (7)**, when executed and recorded on the property deed, will show that the applicants are aware of and appreciate the nature of the hazards associated with development of the site, and that may adversely affect the stability or safety of the proposed development.

For these reasons, therefore, the Commission finds that the proposed project, as conditioned, is consistent with the Carpinteria LCP's policies for the minimization of risks resulting from hazards.

### C. Water Quality

New development 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.

The Carpinteria LCP provides for the protection of water quality. Carpinteria LCP policies require that new development minimize sedimentation and contamination of surface waters, and include drainage devices that are designed to accommodate increased runoff due to development. The LCP also provides policies for the protection of stream corridors, which are discussed in further detail in Section D., Sensitive Habitat.

Section 30231 of the Coastal Act, which is incorporated as a policy of the Carpinteria LCP, states that:

***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.***

In addition, the following LCP policies concerning water quality are applicable in this case:

**OSC-6e**                    ***Natural drainage patterns and runoff rates and volumes shall be preserved to the greatest degree feasible by minimizing changes to natural topography, and minimizing the areas of impervious surfaces created by new development.***

**OSC-6f**                    ***All development shall be evaluated for potential adverse impacts to water quality and shall consider Site Design, Source Control and Treatment Control BMPs in order to minimize polluted runoff and water quality impacts resulting from the development. In order to maximize the reduction of water quality impacts, BMPs should be incorporated into the project design in the following progression: (1) Site Design BMPs, (2) Source Control BMPs, and (3) Treatment Control BMPs.***

**OSC-6, IM 32**            ***In order to protect watersheds in the City, all construction related activities shall minimize water quality impacts, particularly due to sediments that are eroded from project sites and are conveyed to receiving waters, by implementing the following measures:***

- a. **Proposed erosion and sediment prevention and control BMPs, both structural and non-structural, such as:**
  - **Stabilize disturbed areas with vegetation, mulch, geotextiles, or similar method**
  - **Trap sediment on site using fiber rolls, silt fencing, sediment basin, or similar method**
  - **Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site**
  - **Prevent blowing dust from exposed soils.**
- b. **Proposed BMPs to provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials, such as:**
  - **Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials**
  - **Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies**
  - **Provide sanitary facilities for construction workers**
  - **Provide adequate disposal facilities for solid waste produced during construction and recycle where possible.**

**OSC-6, IM 33**

**In order to protect watersheds in the City, all development shall minimize water quality impacts, particularly due to storm water discharges from existing, new and redeveloped sites by implementing the following measures:**

- a. **Site design BMPs, including but not limited to reducing imperviousness, conserving natural areas, minimizing clearing and grading and maintaining predevelopment rainfall runoff characteristics, shall be considered at the outset of the project.**
- b. **Source control Best Management Practices (BMPs) shall be preferred over treatment control BMPs when considering ways to reduce polluted runoff from development sites. Local site and soil conditions and pollutants of concern shall be considered when selecting appropriate BMPs.**
- c. **Treatment control BMPs, such as bio-swales, vegetate retention/detention basins, constructed wetlands, stormwater filters, or other areas designated to control erosion and filter stormwater pollutants prior to reaching creeks and the ocean, shall be implemented where feasible.**
- d. **Structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the**

**85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.**

- e. **Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPs. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility. The City, property owners, or homeowners associations, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.**

**OSC-10c                    Degradation of the water quality of groundwater basins, nearby streams or wetlands, or any other waterbody shall not result from development. Pollutants such as sediments, litter, metals, nutrients, chemicals, fuels or other petroleum hydrocarbons, lubricants, raw sewage, organic matter and other harmful waste shall not be discharged into or alongside any waterbody during or after construction.**

**OSC-10, IM 53            Provide storm drain stenciling and signage for new stormdrain construction in order to discourage dumping into drains. Signs shall be provided at creek public access points to similarly discourage creek dumping.**

The City's Water Quality Protection Regulations, which are part of its Creeks Preservation Program, implement the LCP policies listed above. These regulations are included as **Exhibit 3** of this report.

As described in detail in the previous sections, the applicant proposes to subdivide a 5.89-acre parcel into 27 single family residential lots and construct 27 single family residences, sidewalks, utilities, drainage system, ten foot wide footbridge over Franklin Creek, five foot wide pathway through the site crossing over the footbridge, five foot wide pathway through Franklin Creek Park to Sterling Avenue, traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue, native riparian landscaping in the 50 foot buffer area along Franklin Creek and in Franklin Creek Park, other landscaping, and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guesthouse, garage, maintenance building, nursery office, pavement, and non-native landscaping.

The proposed project is located adjacent to Franklin Creek. Franklin Creek is contained within a concrete box channel from the base of the Santa Ynez Mountains foothills approximately one mile north of the subject site, to its outlet at Carpinteria Salt Marsh, approximately one mile south of the site. Current drainage from the site is by sheet flow into Franklin Creek and a concrete drainage channel that parallels the parcel's southern property line.

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. The creation of 27 residential parcels with the associated residences, streets, driveways, and patios will significantly increase the amount of impervious surfaces across the 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 development consistent with the water quality protection policies of the Carpinteria LCP, the Commission finds it necessary to require the applicant to submit a Water Quality Management Plan (WQMP), as required by the City's Water Quality Protection Regulations, that incorporates Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. **Special Condition Four (4)** requires the implementation and maintenance of a WQMP designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. Fully implemented, the WQMP will reduce or eliminate the resultant adverse impacts to the water quality and biota of coastal streams.

Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

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 Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85<sup>th</sup> percentile

storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Four (4)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

In addition, the Commission finds that implementation of erosion and sediment control measures during construction, as required by the City's Water Quality Protection Regulations, will further minimize adverse impacts to coastal waters. **Special Condition Three (3)** therefore requires the applicant to submit, for the review and approval of the Executive Director, a construction phase erosion and sediment control plan that includes BMPs for site management, runoff control, temporary erosion control, and rainy season measures including stabilizing any stockpiled fill with geofabric covers or other erosion-controlling materials, installing geotextiles or mats on all cut and fill slopes, and closing and stabilizing open trenches to minimize potential erosion from wind and runoff water. In addition, **Special Condition Six (6)** requires the applicant to submit a Construction Mitigation Plan, as required by Implementation Measure 2.4.3 of the Creeks Preservation Program, that includes provisions for staging, fencing, and other construction activities that will minimize construction-related impacts to Franklin Creek and other resources on and adjacent to the project site.

The Commission also finds that landscaping of disturbed areas on the subject site will reduce erosion and sedimentation of coastal waters provided that minimal surface irrigation is required. Therefore, **Special Condition Two (2)** requires the applicant to submit landscaping plans, that require all areas disturbed and/or denuded by the development to be revegetated and maintained with primarily native, drought-resistant plants to prevent erosion into coastal waters.

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 finds that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that the use of such vegetation results in potential adverse effects such as erosion and sedimentation of adjacent waterbodies. Native species, alternatively, tend to have a deeper root structure than non-native, invasive species and therefore aid in preventing erosion.

In addition, the use of invasive, non-indigenous plant species tends to supplant native species. Increasing urbanization in this area has caused the loss or degradation of major portions of the native habitat and loss of native plant seed banks through grading and removal of topsoil. Moreover, invasive groundcovers and fast growing trees that originate from other continents that have been used as landscaping in this area have invaded and seriously degraded native plant communities adjacent to development. Such changes have resulted in the loss of native plant species and the soil retention benefits they offer.

In order to minimize the potential for chemical pollution of Franklin Creek and the downstream Carpinteria Salt Marsh, **Special Condition Two (2)** also prohibits the use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.



The applicant proposes to cut 4,200 cu. yds. of earth on the site, and utilize 3,000 cu. yds. as fill, thus producing 1,200 cu. yds. of excess graded material. The Commission finds that stockpiling excavated material may contribute to increased erosion at the site and sedimentation of Franklin Creek and downstream waters. In order to ensure that excavated material will not be stockpiled on site, **Special Condition Five (5)** requires the applicant to remove all excess graded material from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Carpinteria LCP.

#### **D. Sensitive Habitat/ Creek Protection**

The Carpinteria LCP provides numerous policies for the protection of creeks and creek habitat, as well as a comprehensive Creeks Preservation Program (CPP) to implement these policies. As noted above, the proposed project is located adjacent to Franklin Creek, and is therefore subject to many of the City's provisions for creek protection.

The following policies are applicable to the proposed development:

Section 30231 of the Coastal Act, which is incorporated as part of the Carpinteria LCP, 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 of the Coastal Act, which is incorporated as part of the Malibu LCP, 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.***

In addition, the following LCP policies are applicable in this case:

- CD-11**            *Development should fit quietly into the area's natural and introduced landscape, deferring to open spaces, existing natural features and native and sensitive habitats.*
- CD-11a**           *Landscape planning shall be respectful of the natural character of the City and enhance existing native plant communities and environmentally sensitive habitat areas.*
- CD-12**            *Ensure that lighting of new development is sensitive to the character and natural resources of the City and minimizes photopollution to the maximum extent feasible.*
- OSC-1**            *Protect, preserve, and enhance local natural resources and habitats.*
- OSC-1b**           *Prohibit activities, including development, that could damage or destroy biological resource areas.*
- OSC-1, IM6**      *Determine appropriate methods for the preservation of sites that include ESHA. These methods may include land purchase, tax relief, purchase of development rights, or other methods. Where these methods are not feasible, the city should ensure through permit review that development does not result in any significant disruption of habitat identified on a site or on adjacent sites.*
- OSC-6**            *Preserve the natural environmental qualities of creekways and protect riparian habitat.*
- OSC-6a**           *Support the preservation of creeks and their corridors as open space, and maintain and restore riparian habitat to protect the community's water quality, wildlife diversity, aesthetic values, and recreation opportunities.*
- OSC-6b**           *Protect and restore degraded creeks on City-owned land where protection and restoration does not interfere with good flood control practices.*
- OSC-6c**           *When alterations to creeks are permitted by the Coastal Act and policies herein, the creek shall be protected by only allowing creek bank and creek bed alterations where no practical alternative solution is available, where the best mitigation measures feasible have been incorporated, and where any necessary State and federal permits have been issued. Creek alterations should utilize natural creek alteration methods where possible (e.g. earthen channels, biotechnical stabilization). Nothing in this policy shall be construed to require the City to approve creek alterations not otherwise allowed herein and by the Coastal Act.*
- OSC-6d**           *Carry out and maintain all permitted construction and grading within stream corridors in such a manner so as to minimize impacts on biological resources and water quality such as increased runoff, creek bank erosion, sedimentation, biochemical degradation, or thermal pollution.*

- OSC-6, IM 25** *A setback of 50 feet from top of the upper bank of creeks or existing edge of riparian vegetation (dripline), whichever is further, shall be established and maintained for all development. This setback may be increased to account for site-specific conditions. The following factors shall be used to determine the extent of an increase in setback requirements:*
- a. soil type and stability of the stream corridor*
  - b. how surface water filters into the ground*
  - c. types and amount of riparian vegetation and how such vegetation contributes to soil stability and habitat value*
  - d. slopes of the land on either side of the stream*
  - e. location of the 100 year floodplain boundary, and*
  - f. consistency with other applicable adopted plans, conditions, regulations and/or policies concerning protection of resources.*
- Where existing buildings and improvements, conforming as to use but nonconforming as to the minimum creek setback established herein, are damaged or destroyed by fire, flood, earthquake or other natural disaster, such buildings and improvements may be reconstructed to the same or lesser size and in the same general footprint location, provided that reconstruction shall be inaugurated by the submittal of a complete construction application within 24 months of the time of damage and be diligently carried to completion.*
- OSC-6, IM 26** *Prior to issuance of a development permit, all projects shall conform with the applicable habitat protection policies including but not limited to the General Plan/Local Coastal Plan, Open Space Bluffs Master Program, Creek Preservation Ordinance, and the Zoning Ordinance.*
- OSC-6, IM 28** *Prohibit all development within stream corridors except for the improvement of fish and wildlife habitat, development necessary for flood control purposes, (where no other method to protect existing structures in the floodplain is feasible and where protection is necessary for public safety), and bridges and trails (where no alternative route/location is feasible and, when supports are located within stream corridor setbacks, such locations minimize impacts on critical habitat). All development shall incorporate the best mitigation measures feasible to minimize impact to the greatest extent.*
- OSC-6, IM 29** *Limit all development within stream corridors, including dredging, filling and grading, to activities necessary for the construction specified in policy # 28 (see above) and to public hiking/biking and equestrian trails. When such activities require removal of riparian plant species, revegetation with local native riparian plants shall be required. Minor clearing of vegetation may be permitted for hiking/biking and equestrian trails.*
- OSC-6, IM 30** *Prohibit further concrete channelization or other major alterations of streams in the city with the exception of natural habitat enhancement projects, or when the City finds that such action is necessary to protect existing structures and that there are no less environmentally damaging alternatives. Where alteration is permitted, best feasible mitigation shall be a condition of the project.*

**OSC-6f**                    ***Carry out and maintain all permitted construction and grading within stream corridors in such a manner so as to minimize impacts on biological resources and water quality such as increased runoff, creek bank erosion, sedimentation, biochemical degradation, or thermal pollution.***

**OSC-7**                    ***Conserve native plant communities.***

The City's Creeks Preservation Program (CPP) implements the LCP creek protection policies listed above. The CPP implementation measures are included as **Exhibit 4** of this report.

As noted above, the applicant proposes to subdivide a 5.89-acre parcel into 27 single family residential lots and construct 27 single family residences, sidewalks, utilities, drainage system, ten foot wide footbridge over Franklin Creek, five foot wide pathway through the site crossing over the footbridge, five foot wide pathway through Franklin Creek Park to Sterling Avenue, traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue, native riparian landscaping in the 50 foot buffer area along Franklin Creek, other landscaping, and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guesthouse, garage, maintenance building, nursery office, pavement, and non-native landscaping.

The proposed development is located adjacent to Franklin Creek. Franklin Creek is contained within a concrete box channel from the base of the Santa Ynez Mountains foothills approximately one mile north of the subject site, to its outlet at Carpinteria Salt Marsh, approximately one mile south. Franklin Creek, within the city limits, does not contain sensitive habitat; however, the quality of water in Franklin Creek impacts the sensitive wetland habitat of Carpinteria Salt Marsh, a designated Environmentally Sensitive Habitat Area (ESHA) in the City of Carpinteria and Santa Barbara County Local Coastal Plans (LCPs).

The proposed development is also located adjacent to a gunite drainage channel that parallels the property's southern boundary. The channel bottom contains significant quantities of silt and supports hydrophytic vegetation including cattails, willow, and watercress. In response to concerns raised by the Carpinteria Creeks Committee, staff has investigated the history, function, and habitat value of the channel to determine whether it could be considered a creek or a tributary to Franklin Creek. Based on a site visit, consultation with the City, analysis of drainage system plans and historic maps, and a biological report submitted by the applicant, staff has determined that from approximately 1950 to the early 1970s, the subject drainage channel contained the main flows of Franklin Creek. However, today the drainage channel receives input only from the subject site and from urban storm drains in an approximately 100 acre area located to the east of the site, and receives no input from any natural creek or from groundwater. Thus the drainage channel lacks the hydrologic connectivity necessary to be considered a creek. Furthermore, while the existing hydrophytic vegetation has some habitat value, it is supported only by collected silt in a gunite flood control channel. Section 13252 of the Coastal Act exempts maintenance of public flood control works from coastal permit requirements. Thus the existing vegetation and the silt that supports it could be removed at any time for flood control purposes. For all of these reasons, the drainage channel and associated vegetation is not a creek and therefore is not protected by the provisions of the Creeks Preservation Program.

As noted above, LUP Policy OSC-6, IM 25 requires a minimum 50-foot setback from top of bank of creeks for all development. CPP Implementation Measure 2.1.3 clarifies allowable development within stream corridors, which include creeks and their applicable setbacks. CPP Implementation Measure 2.1.3 allows “fish and wildlife enhancement projects,” such as the proposed planting of native riparian vegetation in the setback area, and flood control measures, such as the 15 foot wide flood control access road to be located within the setback. CPP Implementation Measure 2.1.3 also allows construction of bridges and public trails, such as those proposed by the applicant, within creek setback areas. CPP Implementation Measure 2.7.2 specifies that trails in creek setback areas must not be paved, must be no greater than five feet in width, and must minimize disturbance to sensitive creek resources such as riparian vegetation. CPP Implementation Measure 2.1.3 does not allow construction of patios, fences, or other residential amenities within stream corridors, such as those approved by the City but found by the Commission, at its April 2005 meeting, to raise substantial issue with regard to the City’s creek protection policies.

The applicant has subsequently revised their proposed project to locate all development, with the exception of the proposed planting of riparian vegetation, flood control access easement, bridge, and trail, outside of the required 50-foot setback from Franklin Creek. As proposed, the creek setback area extends across five residential lots (Lots 14, 15, 16, 17, and 18). The applicant proposes to construct a five-foot high chain link and split rail fence along the boundary between the backyards of the lots adjoining the creek setback area and the setback area in order to prevent use of the setback area by residents. The applicant also proposes to offer a conservation easement, to be accepted by the future homeowner’s association (HOA), for the setback area. The setback area would, however, remain a part of each individual property owner’s lot, and each backyard fence would have a gate allowing access into the setback area.

CPP Implementation Measure 2.1.3 states that development, including any structure, feature, or activity, that would significantly fragment habitat or create significant barriers to the movement of fish and wildlife is prohibited in creek setback areas. As proposed, the lot configuration and would fragment the setback area into portions of five separate lots and the gated fencing would allow ready access to the area by individual property owners, thus increasing the likelihood that backyard activities would extend into the setback area. Such everyday use of the setback area by homeowners and their pets cannot be regulated, nor can the placement of structures such as barbecues, lawn furniture, and play equipment or the level of noise and activity be controlled. Ownership of and access to the setback area would encourage the individual property owners of Lots 14 through 18 to consider and use the area as a part of their property. In contrast, consolidating the setback area into a single lot, and constructing a solid wall between the setback area and individual backyards, would ensure the establishment and maintenance of the area as open space.

Fragmented ownership of the setback area would also complicate restoration of the adjacent reach of Franklin Creek, which is called for in the Creeks Preservation Program (CPP). CPP Implementation Measure 2.10.4 designates Franklin Creek Park, located opposite Franklin Creek from the project site, as the “focal point” for restoration efforts along Franklin Creek, including dechannelization measures and planting of riparian vegetation. Implementation Measure 2.10.4 implements, in part, LUP Policy S-4e, which requires the City to identify and pursue opportunities to eliminate existing concrete channels. In addition, CPP Implementation Measures 2.10.1 and 2.10.5 require the City to explore public acquisition, and encourage private preservation, of areas adjacent to creeks.

The required 50-foot setback provides an opportunity for future dechannelization of the reach of Franklin Creek that was identified in CPP Implementation Measure 2.10.4 as a priority site for restoration. Specifically, restoration of this section of the creek would require some recontouring or “laying back” of the currently vertical creek banks, both in Franklin Creek Park and on the subject site. Recontouring the creek banks would be much more feasible if the proposed creek setback area consisted of a single lot rather than portions of five separately owned parcels.

Therefore, in order to ensure that no development, as defined by CPP Implementation Measure 2.1.3, occurs within the required creek setback area, and to ensure that the required creek setback area is available for any future restoration of Franklin Creek, it is necessary to require the creek setback area to be configured as a single lot, maintained by a common entity, and restricted as open space. Accordingly, **Special Condition Fourteen (14)** requires the applicant to submit the final revised tentative tract map and project plans that show the required creek setback area as a separate lot (Lot A), and reconfiguring Lots 14, 15, 16, 17, and 18 to reflect the consolidation of the creek setback area within Lot A. In addition, **Special Condition Nine (9)** requires the Covenants, Conditions, and Restrictions (CC&R's) associated with the subdivision to indicate that Lot A shall be maintained by a common entity such as the Homeowner's Association. Lastly, **Special Condition Twelve (12)** stipulates that no development shall occur on the lot with the following exceptions (if approved through a separate coastal development permit): habitat restoration, including maintenance of native riparian habitat and restoration of the banks of Franklin Creek; installation, repair or upgrading of utilities; construction or maintenance of water quality management structures; construction and maintenance of public trails and bridges and associated appurtenances; and existing easements for roads, trails, flood control and utilities.

In order to further ensure that no structures, features, or activities occur that would reduce the habitat value of the setback area, and to clearly establish the boundary between the setback area and adjacent backyards, it is also necessary to require construction of a barrier that would prevent homeowners and their companion animals from entering the setback area. Accordingly, **Special Condition Fourteen (14)** requires that the chain-link and split-rail fence with gates proposed on Lots 14, 15, 16, 17, and 18 be replaced with a contiguous six-foot high solid wall, or alternatively, a 2.5 foot high wrought iron fence with a 3.5 foot high solid wall base in order to help contain domestic animals and backyard activities within the residential area.

As noted above, the applicant proposes to plant native riparian species in the creek setback area and offsite in Franklin Creek Park, consistent with CPP Implementation Measure 2.1.3. In order to ensure that the applicant's proposal is effectively implemented, **Special Condition Two (2)** requires the applicant to submit final landscaping plans, for the review and approval of the Executive Director. The landscape plans required by **Special Condition Two (2)** must indicate that only appropriate native riparian landscape materials shall be planted in the creek setback area, and that such materials must be planted at a density such that the only access to the setback area would be along the proposed trail. **Special Condition Two (2)** further requires that the proposed plantings in Franklin Creek Park consist of appropriate native riparian tree and shrub species.

The applicant also proposes to submit to the City, on an annual basis, a report analyzing the condition of the creek setback area. The report would be prepared by a City approved biologist and would address compliance with the Creeks Preservation Program and the project's approved landscape plan, and would recommend any necessary corrective action to ensure compliance. The applicant further proposes that the project's Homeowners Association pay an annual processing fee to the City to allow review of the annual biological report, and that this

requirement be included in the Homeowners Association's CC&Rs. Implementation of this proposal would help ensure that no development occurs within the creek setback area and that the proposed native riparian habitat is maintained. Therefore, in order to ensure that the applicant's proposal is effectively implemented, **Special Condition Two (2)** requires the applicant to submit annual reports, prepared by a City approved biologist, documenting the condition of the creek setback area and compliance with the Creeks Preservation Program and the project's final approved landscape plan. **Special Condition Two (2)** further requires payment of an annual processing fee to the City to allow review of the annual biological reports, and requires the applicant to incorporate these requirements directly into the CC&R's.

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. 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 Carpinteria area.

In order to further minimize adverse effects to the proposed riparian habitat, **Special Condition Two (2)** requires all disturbed and graded areas of the site to be landscaped with appropriate native plant species. In order to minimize the potential for chemical pollution of Franklin Creek, **Special Condition Two (2)** also prohibits the use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.

As noted above, the project site is located adjacent to Franklin Creek. In addition, the proposed project includes construction of a trail and landscaping offsite in Franklin Creek Park, as well as construction of a bridge across Franklin Creek. CPP Implementation Measure 2.4.3 requires applicants for projects adjacent to creeks to submit a Construction Mitigation Plan prior to permit issuance. The Construction Mitigation Plan must include provisions for the protection of native trees, creek areas, and other biological resources within and adjacent to construction areas. Such measures include delineation of the construction area, placement of protective fencing around the protected zones of native trees, and minimization of the use of herbicides. Accordingly, **Special Condition Six (6)** requires the applicant to submit a Construction Mitigation Plan containing numerous construction site management measures for protection of the creek and any native trees that may be on or adjacent to the proposed area of development.

In order to further ensure that impacts to creeks and creek habitat are minimized, CPP Implementation Measure 2.4.5 requires applicants to submit a Post-Construction Mitigation Plan prior to permit issuance. The Post-Construction Mitigation Plan must include mechanisms for the permanent protection of natural areas, landscaping with appropriate native species, and post-construction water quality provisions as required by **Special Conditions Two (2), Three (3), Four (4), Nine (9), Twelve (12) and Fourteen (14)** of this permit, which are discussed above. The Post-Construction Mitigation Plan must also include an agreement to provide informational materials to future occupants that ensure that restrictions and protective standards and conditions of the project are recognized and complied with for the life of the project. Accordingly, **Special Condition Eleven (11)** requires the owner of the property to agree, prior to the issuance of the coastal development permit, that before any sale of any of the property, the owner-seller shall secure a letter from the buyer of the property (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or

development of the land is restricted by the special conditions of the permit and restrictions recorded on the property pursuant thereto, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect. **Special Condition Eleven (11)** further requires the applicant to secure such letter(s) and provide them to the Executive Director and the City's Community Development Director before the close of escrow.

The Post-Construction Mitigation Plan also requires exterior lighting to be minimized and loud, stationary equipment to be located away from creeks or provided with enclosures to minimize potential impacts to wildlife. Therefore, in order to ensure that light and noise that the adjacent creek and proposed creek setback area is subjected to is minimized, **Special Condition Eight (8)** limits night lighting and loud stationary equipment on the five lots adjacent to the creek setback area (Lots 14, 15, 16, 17, and 18).

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with the sensitive habitat protection provisions of the Carpinteria LCP.

## **E. Visual Resources**

The Carpinteria LCP provides for the protection of visual resources, including coastal streams. The LCP requires that new residential development on or adjacent to streams be sited and designed to prevent adverse impacts on the visual quality of the resource. In addition the LCP policies require that new development be compatible with the scale and character of surrounding development, and the city's "small beach town" image.

Section 30251 of the Coastal Act, which is incorporated as a policy of the Carpinteria LCP, states that:

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

In addition, the following LCP policies are applicable in this case:

**CDS3-1** ***Preserve and strengthen the visual and physical connections between this (Santa Monica, Canalino and El Carro Neighborhoods) subarea, the downtown and other neighborhoods and districts in the city.***

**CD-1** ***The size, scale, and form of buildings, and their placement on a parcel should be compatible with adjacent and nearby properties, and with the dominant neighborhood or district development pattern.***



- CD-3** *The design of the community should be consistent with the desire to protect views of the mountains and the sea (California Coastal Act of 1976 Section 30251).*
- CDS3-3** *Ensure that new development is sensitive to the scale and character of existing neighborhoods, and consistent with the city's "small beach town" image.*
- OSC-6a** *Support the preservation of creeks and their corridors as open space, and maintain and restore riparian habitat to protect the community's water quality, wildlife diversity, aesthetic values, and recreation opportunities.*
- OSC-13** *Preserve Carpinteria's visual resources.*

The proposed project is located in the Canalino neighborhood north of Highway 101 and the Downtown Core area of the City of Carpinteria. This neighborhood is characterized by single-family residences and several public and community facilities including Carpinteria High School, Canalino Elementary School, Carpinteria School District administrative offices, and a number of churches. The community facilities are a mixture of low-lying one-story buildings and more prominent two to three story structures. Adjacent residential development to the south and east includes older subdivisions with primarily one-story single-family residences, although several houses adjacent to the site have been upgraded to two stories. A more recent forty-unit residential subdivision, "The Meadows", which contains two story single-family homes of similar bulk and size as the approved development, is located one block north of the subject site.

Franklin Creek Park is located immediately opposite Franklin Creek from the subject site. The proposed project includes construction of 27 single-family residences ranging from 15 to 26 feet high. The project includes construction of two one-story, 15 foot and 18 foot high single-family residences and two two-story, 25 foot and 23.5 foot single-family residences on Lots 14 through 17 approximately 65 feet from the eastern creek bank, and 115 feet from the park, and an additional two-story, 25 foot high single-family residence on Lot 18 approximately 75 feet from the eastern bank and 125 feet from the park. The project also includes planting of medium/large canopy native trees (such as California Sycamore and Coast Live Oak), smaller canopy native trees (such as Red Willow and Toyon), and other riparian vegetation in the required 50-foot creek setback area west of the residences in order to screen the development. Construction of the homes on Lots 17 and 18 would partially block views from the southern portion of the park to sub-ridgeline areas of the mountains located northeast of the site. However, the proposed homes would not affect the primary view of the mountains from the park, which is seen to the north **Exhibit (17)**. In addition, the proposed landscaping would screen and reduce the impact of the homes on this view. Therefore, in order to ensure that the applicant's proposal to screen the proposed homes with native riparian landscaping is effectively implemented, **Special Condition Two (2)** requires the applicant to plant and maintain riparian native tree species and shrubs of sufficient density and height to screen the proposed residences as viewed from Franklin Creek Park.

In summary, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Carpinteria LCP.

## F. Cumulative Impacts of Development

Section 30250(a) of the Coastal Act, which is incorporated as a policy of the Carpinteria LCP, states that:

***New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.***

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

***The incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.***

Section 30252 of the Coastal Act, which is incorporated as a policy of the Carpinteria LCP, states that:

***The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.***

In addition, the following LCP policies are applicable in this case:

- LU-1**      ***Establish the basis for orderly, well planned urban development while protecting coastal resources and providing for greater access and recreational opportunities for the public.***
  
- LU-1b**     ***Where policies in the Land Use Element overlap, the policy that is most protective of resources (e.g., land, water, air, etc.) shall take precedence.***
  
- LU-1c**     ***Ensure that the type, location and intensity of land uses planned adjacent to any parcel designated open space / recreation or agriculture (as shown on Figure LU-1) are compatible with these public resources and will not be detrimental to the resource.***

- LU-3a** *New development shall occur contiguous to existing developed areas of the city. Higher density in certain residential neighborhoods and for residential uses in commercial districts shall be provided as a means to concentrate development in the urban core consistent with zoning designations, particularly where redevelopment of existing structures is proposed.*
- LU-3i** *Ensure the provision of adequate services and resources, including parking, public transit, and recreational facilities, to serve proposed development.*
- LU-3l** *Land use designations established on the City's land use map that permit a range of residential densities should not be interpreted to permit development that is incompatible with the existing development pattern in an area. A density within the allowable range that is most compatible with the predominant pattern of development in the area should be used as the guide for determining the appropriateness of the proposed development.*

In addition, Section 14.50.120 of the City's certified Zoning Ordinance states:

***In reviewing a development plan, the planning commission or city council may consider modification of requirements of the base zoning district in which the proposed development is located, including building height, yard setback, parking, building coverage or landscaping, if it is determined that such modification is necessary to accommodate an innovative project which will result in at least one of the following public benefits:***

- i. Energy efficient heating/cooling; or***
- ii. Provision of affordable housing units through mix of housing types, innovative design and construction techniques, or other means; or***
- iii. Provision of a larger amount of open space or landscaping than the minimum requirement of the district.***

The Commission has reviewed land division applications to ensure that newly created or reconfigured parcels are of sufficient size, have access to roads and other utilities, are geologically stable and contain an appropriate potential building pad area where future structures can be developed consistent with the resource protection policies of the Coastal Act. In particular, the Commission has ensured that future development on new or reconfigured lots can minimize landform alteration and other visual impacts, and impacts to environmentally sensitive habitat areas. The Commission has required that all new or reconfigured lots have adequate public services and maintain and enhance public access to the coast. Policies LU-1 through LU-3l of the LCP further require new developments to be compatible and contiguous with existing development, protective of coastal resources, and supplied with adequate public services.

As stated previously, the applicant proposes to subdivide a 5.89-acre parcel into 27 single family residential lots: 24 market-rate and three affordable lots ranging from 4,662 sq. ft. to 13,030 sq. ft. in size, and one 32,275 sq. ft. subdivision improvement lot to be developed as a private street with non-motorized public access easement. The proposed project also includes construction of 12 single-story single family residences, maximum 18 feet in height (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 15 two-story residences, maximum 26 feet in height, with 14 separate floor plans ranging from 1,676 sq. ft. to 3,600 sq. ft.; sidewalks; utilities; drainage system, including vegetated drainage swale;

public access provisions including a ten foot wide footbridge over Franklin Creek, a five foot wide pathway through the site crossing over the footbridge, and a five foot wide pathway through Franklin Creek Park to Sterling Avenue; traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue; native riparian landscaping in the 50 foot buffer area along Franklin Creek; other landscaping; and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guest house, garage, maintenance building, nursery office, pavement, and non-native landscaping.

The proposed project would cluster development in an area surrounded by existing residential and institutional development with adequate public services. The Carpinteria Valley Water District will provide water to the project and the Carpinteria Sanitary District will supply a sewer connection and services to the project. The City, in their February 15, 2004 attached findings for the resolution of approval for the project, analyzed the potential project impact on public services, traffic, and recreation facilities as follows:

***The proposed project, with the conditions outlined in Attachment C of the Resolution, is consistent with...the relevant General Plan objectives and policies related to Land Use, Community Design, and Open Space, Recreation & Conservation. The project would not adversely affect coastal resources, and does not involve any adverse impacts to sensitive habitat, viewsheds or recreation areas....***

***The project would be consistent with General Plan Land Use Element Objective LU-1 in that it would establish an orderly, well-planned urban development providing the necessary and adequate community services. The project would create a minor increase in demand for community services, however it does not have the potential to adversely affect necessary community services. Fire protection, water supply, and police protection services are currently provided to the site, and would continue to be provided. The public agencies and utilities have indicated an ability to serve the proposed project. Annexation of the project to the Carpinteria Sanitary District would be required, and the District has indicated an ability to serve the project. The project would not significantly affect off-site area traffic circulation, according to the traffic impact report prepared for the project.***

The Commission finds that the project would not substantially impact traffic, public services, or use of recreational facilities in the vicinity of the project area. Additionally, the applicant has proposed dedication of a 42 foot wide pedestrian access easement that would extend across the development from Linden Avenue along the proposed private street, a 5-foot wide trail running from the end of the private street across a proposed ten foot wide bridge over Franklin Creek and continuing through Franklin Creek Park to Sterling Avenue. The proposed trail would enhance connections within the Canalino neighborhood and public access to Franklin Creek park consistent with the City's LCP. Finally, the project would be located in an area with adequate public services and adjacent to existing developed areas.

The subject parcel is designated for Low-Density Residential use, and is located within the 7-R-1 single-family zoning district. The 7-R-1 zoning district allows for a maximum of 4.6 units per acre, with a minimum net lot area of 7,000 sq. ft. which allows, on this site, a base buildout of 27 units. The City, in their October 19, 2004 staff report to the Planning Commission, analyzed the project's conformance with the 7-R-1 zoning as follows:

*The site is located in the Single Family Residential (7-R-1) District, which allows for single-family residences with minimum lot sizes of 7,000 square feet. The purpose of the Single Family Residential (7-R-1) District is to reserve areas appropriate for single-family living at a range of parcel sizes and population densities consistent with the characteristics of a residential neighborhood...*

*As shown in the following table (see Exhibit X of this report), the project would be consistent with the City's development standards for the 7-R-1 zone district and the City's Subdivision Ordinance, with the exception of the following, for which variances or modification would be required: (1) setbacks for the proposed flag lot (Lot 25) (variance); (2) width of the flag lot staff (Lot 25) (variance); (3) minimum lot size for three of the proposed lots (Lots 3, 8, and 9 – all affordable units) (modification); (4) minimum width for Lots 3 and 9 (affordable units) (modification); and (5) the front yard setback for Lots 8, 9, 19, 20, 21, 22, 23, 10 and 17 (modification).*

The City's discussion of the variances and modifications, as well as the table referred to above, is included as **Exhibit 5** of this report. The variances and modifications do not result in any substantial adverse impacts, individually or cumulatively, to coastal resources and are consistent with the purpose and intent of the 7-R-1 zone district.

As discussed in Section D. above, in order to ensure that no development occurs within the required creek setback area, and to ensure that the required creek setback area is available for any future restoration of Franklin Creek, it is necessary to require the creek setback area to be configured as a single lot. The creek setback area currently extends across five of the proposed lots (Lots 14, 15, 16, 17, and 18). Consolidating the creek setback area as a single lot will thus require reducing the square footage of Lots 14 through 18 to remove the portion of each lot that is within the creek setback area. The result will be that three of the lots, Lots 15, 16, and 17, will no longer meet the minimum lot size, but will instead be 5,052 sq. ft., 5,649 sq. ft., and 6,425 sq. ft. respectively. In addition, Lots 15 and 16 would no longer meet the required lot depth standard. Therefore, additional modifications would be necessary. As noted above, Section 14.50.120 of the City's certified Zoning Ordinance allows modifications to base zoning district requirements for projects that provide "a larger amount of open space or landscaping than the minimum requirements of the district." The proposed project, by virtue of providing a separate parcel containing the creek setback area and restricting the parcel to open space uses, provides a larger amount of open space/landscaping than required by the zone district, which only requires residential landscaping. The required modifications are also consistent with the purpose and intent of the 7-R-1 zone district and would not result in any substantial adverse impacts, individually or cumulatively, to coastal resources. On the contrary, the additional modifications would facilitate protection of the creek setback area and any future restoration of Franklin Creek.

The Commission notes that the City included, as local conditions of approval, numerous requirements relating to the provision of public services and the dedication of public access easements, and the construction of the proposed trail and bridge. In order to ensure that the proposed project is adequately served by public services and includes the proposed public easements and recreational amenities, it is necessary to require the applicant to comply with these requirements. Accordingly, **Special Condition Sixteen (16)** requires the applicant to submit evidence of compliance with all of the City's conditions attached to the City's approval of 99-881-DP/CDP, including the conditions requiring compliance with applicable fire safety regulations.

For the reasons stated above, the Commission finds that the project is consistent with Sections 30250, 30105.5, and 30252 of the Coastal Act, as well as the policies of the LCP with respect to cumulative impacts of development.

**G. California Environmental Quality Act**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmentally 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 which 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.