

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-05-150

APPLICANT: Madalon K. Witter

AGENT: Sherman Stacey and Pete Petrovsky

PROJECT LOCATION: 2100 McReynolds Road, Santa Monica Mountains (Los Angeles County)

APN NOS.: 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, 4465-006-055

PROJECT DESCRIPTION: Request for approval of restoration and development plan for a 45.31-acre property. The property consists of 45.31 acres that the County Assessor identifies as seven parcels. This parcel configuration was not authorized in compliance with the permit requirements of the Coastal Act and the applicant proposes, in a separate application (CDP Application No. 4-05-151), to combine and resubdivide the property into three parcels. The proposed lot line adjustment is not a part of this proposal. The proposed plan consists of three components:

1. Identification of "vested areas", shown on the plan as an approximately 2.09-acre area with stables, pens, sheds and a single family residence in the southeast corner of the property; an additional approximately 2.62-acre area in the center of the property containing stables and numerous structures (as well as the vested garage); an approximately 13,000 sq. ft. existing garden; an approximately 14,000 sq. ft. area surrounding the vested water well and pump; and an approximately 6,000 sq. ft. area with a non-vested well and pump. Development within the areas the applicant identified as "vested areas" includes numerous graded roads, driveways, and pads, 11 mobile homes, three single family residences, one garage, seven storage sheds, four metal storage containers, six lean-tos attached to trailers or motor homes, numerous storage containers, three fences, two concrete structures, four stable areas containing pens, barns, and horses, numerous power and telephone lines, numerous abandoned vehicles, and numerous water wells and tanks.¹

¹ Due to the transient nature of the structures on site, it is difficult to establish an exact inventory of development on the site at any given time. Therefore, all accounts of on-site development in this report must be considered approximate.

2. Identification of proposed “development areas” for the three lots proposed under a separate application, CDP Application No. 4-05-151. These areas are in addition to the areas identified as vested by the applicant, and include an approximately 2.66-acre area on the proposed Lot 1; an approximately 17,000 sq. ft. water tank site on the proposed Lot 2; and seven development areas on the proposed Lot 3, including an approximately 1.52-acre house site, an approximately 24,000 sq. ft. barn site, an approximately 16,000 sq. ft. stable area, an approximately 6,000 sq. ft. tank site, an additional approximately 11,000 sq. ft. water tank site, and an approximately 10,000 sq. ft. area that is not identified for any use. The applicant proposes to remove all mobile homes (estimated as ten trailers) and associated utility lines located within the development areas, but does not propose other restoration of these sites.
3. Identification of areas for “restoration”. These areas, which total approximately 2.71 acres, include an existing pad on the west side of the property, and several road areas. The applicant’s proposed method of restoration consists of no further disturbance of the restoration areas, thus allowing “natural” regrowth of vegetation. The proposal does not state that existing development within the restoration areas (which consists of two trailers, a yurt, and an outhouse) will be removed.

The proposed restoration and development plan also shows other development that is not included within the vested, development, or restoration areas, including approximately 6.69-acres of cleared and disturbed areas, and numerous roads totaling approximately 4.31-acres that lead to the various proposed building areas and other parts of the property.

Combined area of all lots	45.31 acres
Estimated developed area	~25 acres
<i>Proposed vested area (Lot 1)</i>	~14,000 sq. ft.
<i>Proposed future development area (Lot 1)</i>	~2.66 acres
<i>Proposed vested area (Lot 2)</i>	~3.05 acres
<i>Proposed future development area (Lot 2)</i>	~17,000 sq.ft.
<i>Proposed vested area (Lot 3)</i>	~2.09 acres
<i>Proposed future development area (Lot 3)</i>	~3.47 acres
<i>Other existing unpermitted developed area</i>	~ 11 acres
<i>Proposed area of natural regrowth</i>	~ 2.71 acres

LOCAL APPROVALS RECEIVED: County of Los Angeles Department of Regional Planning, Approval in Concept, January 28, 1999.

SUBSTANTIVE FILE DOCUMENTS: “Engineering Geology Feasibility Report,” Earth Systems Southern California, March 6, 2003; Coastal Development Permit (CDP) No. P-2-17-78-2706 (Burrett); CDP No. 5-82-277 (Richardson/Brooke); CDP No. 4-94-052 (Burrett); Claim of Vested Rights File No. VR-4-97-1 (Witter); Violation File No. V-4-92-030; Cease and Desist Order and Restoration Order File Nos. CCC-05-CD-08 and CCC-05-RO-05.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **DENIAL** of the proposed project, which would allow extensive development to remain and to occur on a 45.31 acre site within chaparral, oak woodland, and riparian environmentally sensitive habitat areas and would not minimize hazards, cumulative impacts on coastal resources, and impacts to environmentally sensitive habitat areas (ESHA), water quality, and visual resources as required by Sections 30230, 30231, 30240, 30250, 30251, and 30253 of the Coastal Act. The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) serve as guidance.

The subject property is an approximately 45.31-acre site in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 8**). The project site consists of 45.31 acres, which the County Assessor's Office has identified as seven parcels. These parcels were not authorized in compliance with the Coastal Act. In a separate application (CDP Application No. 4-05-151) also to be heard at the February 2006 Commission meeting, the applicant proposes to combine and resubdivide the seven parcels into three parcels (**Exhibits 13 - 14**).

The subject site contains extensive unpermitted physical development, including unpermitted grading; removal of major vegetation; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; and water wells and water tanks. Since 1992, the Commission has made efforts to address the unpermitted development on the subject site, through cease and desist orders and other enforcement action and litigation. To date, the unpermitted development remains on the project sites. An excerpt from the July 28, 2005 CDO and RO staff report, which details the history of violations on the subject property and related Commission action, is included as **Exhibit 6** of this report.

The subject site is characterized by mountainous terrain with elevations ranging from 1800 feet to 2200 feet above sea level. The site is accessible by a series of private, unpermitted dirt roads and McReynolds Road, which connects the south-east boundary of the property to Latigo Canyon Road. While scattered residential development is located south of the project site, the site is surrounded on the west, north, and east by the Castro Crest complex of the Santa Monica Mountains National Recreation Area. The site is visible from various public viewing points, including along the Backbone Trail, that afford scenic vistas of the relatively undisturbed natural area. The property is located within a wildlife corridor², and contains large, contiguous areas of chaparral and oak woodlands, as well as an intermittent blue-line stream, recognized by the United States Geological Survey (USGS), and its associated riparian oak woodland habitat (**Exhibits 9 - 10 and 15 - 16**). Commission staff biologist John Dixon has visited the site, most recently on August 22, 2005, and has confirmed that the chaparral and oak woodland habitat on the site constitutes ESHA.

² The Malibu/Santa Monica Mountains Land Use Plan designates certain areas as wildlife migration corridors, and considers them to be "Sensitive Environmental Resources".

As noted above, extensive areas of the site have been cleared, graded and developed with mobile homes and other structures since 1977 without benefit of a coastal development permit. In addition, other areas of the site were cleared, graded and developed prior to 1977 without the required local approvals, and thus were determined by the Commission to not be vested in Vested Rights Determination No. V-4-97-1. The Commission did, however, determine that a limited amount of development, including a water well and pump on Assessor's Parcel No. (APN) 4465-006-054, a 600 sq. ft. garage on APN 4464-024-020, a 384 sq. ft. single family residence, a 168 sq. ft. storage structure, and electrical facilities with valid permits serving permitted developments, was vested (**Exhibit 4**).

Aerial photographs from 1976 indicate that areas on the property that were subsequently cleared and developed consisted of native chaparral habitat, and in the south central portion of the site, oak woodland. It is reasonable to assume that areas cleared and graded prior to 1976 also consisted of native chaparral habitat and oak woodland. In determining the extent of ESHA on the subject site, the Commission must consider the condition of the subject site prior to any unpermitted or non-vested development. Thus, the entire site, with the exception of the limited development determined to be vested by Vested Rights Determination No. V-4-97-1, constitutes environmentally sensitive habitat.

The applicant's proposal is intended to address matters concerning the unpermitted development, as identified in Section 4.1 of a 1998 settlement agreement between the Commission and the applicant. As shown on the submitted site plan, the applicant's proposal contains three components: First, it identifies areas that the applicant claims are vested pursuant to Vested Rights Determination No. V-4-97-1. The areas identified on the site plan, however, do not reflect the decision made in Vested Rights Determination No. V-4-97-1, which only authorized one water well and pump, three small structures, and electrical facilities with valid permits serving permitted developments. In contrast, the submitted site plan incorrectly identifies as vested development an approximately 2.09-acre area with stables, pens, sheds and a single family residence in the southeast corner of the property; an additional approximately 2.62-acre area in the center of the property containing stables and numerous structures (as well as the vested garage); an approximately 13,000 sq. ft. existing garden; an approximately 13,000 sq. ft. area surrounding the vested water well and pump; and an approximately 6,000 sq. ft. area with a non-vested well and pump. Development within the "vested areas" shown on the proposed plan includes numerous graded roads, driveways, and pads, 11 mobile homes, three single family residences, one garage, seven storage sheds, four metal storage containers, six lean-tos attached to trailers or motor homes, numerous storage containers, three fences, two concrete structures, four stable areas containing pens, barns, and horses, numerous power and telephone lines, numerous abandoned vehicles, and numerous water wells and tanks (**Exhibits 4, 11**).

Secondly, the proposed plan identifies proposed development areas for the three lots proposed under a separate application, CDP Application No. 4-05-151. These areas are in addition to the areas identified as vested by the applicant, and include an approximately 2.66-acre area on the proposed Lot 1, approximately half of which is located within a riparian oak woodland; an approximately 17,000 sq. ft. tank site on the proposed Lot 2; and seven development areas distributed throughout the proposed Lot 3, including an approximately 1.52-acre house site, an approximately 24,000 sq. ft. barn site, an approximately 16,000 sq. ft. stable area, an approximately 6,000 sq. ft. tank site, an additional approximately 11,000 sq. ft. tank site, and an approximately 10,000 sq. ft. area that is not identified for any use. The applicant proposes to remove all mobile homes (estimated as ten trailers) and associated utility lines located within

the development areas, but does not propose other restoration of these sites and does not propose the removal of any other development from the property.

Lastly, the proposed plan identifies areas for restoration. These areas, which total approximately 2.71 acres, include an existing pad on the west side of the property, and several road areas. The applicant's proposed method of restoration consists of no further disturbance of the restoration areas, thus allowing "natural" regrowth of vegetation. The proposal does not state that existing development within the restoration areas (which consists of at least two trailers, a yurt, and an outhouse) will be removed; thus it must be assumed that the applicant proposes to retain it. Staff notes that unaided regrowth of vegetation is not an activity that requires a coastal development permit; neither is it an activity that is likely to result in restoration of native habitat, particularly given that the subject areas have been graded and exposed to non-native plant materials and the applicant does not propose any removal of non-native vegetation or planting of native vegetation.

The proposed restoration and development plan also includes other development that is not included within the vested, development or restoration areas, including approximately 6.69-acres of cleared and disturbed areas, and numerous roads totaling approximately 4.31-acres that lead to the various proposed building areas and other parts of the property.

In summary, the applicant's proposal is inconsistent with Coastal Act policies for the protection of environmentally sensitive habitat, water quality, and visual resources, and the minimization of hazards and cumulative impacts on coastal resources; furthermore, alternatives exist that would be consistent with Coastal Act policies. Therefore, staff recommends denial of the subject application.

I. STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-05-150 for the development proposed by the applicant.*

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter Three of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter Three. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant requests approval of a restoration and development plan for a 45.31-acre property (**Exhibit 11**). The proposed plan consists of the following three components:

Vested Development

The proposed plan identifies areas that the applicant claims are vested pursuant to Vested Rights Determination No. V-4-97-1 (**Exhibit 4**). The areas identified on the site plan, however, do not reflect the decision made in Vested Rights Determination No. V-4-97-1, which only authorized one water well and pump, three small structures, and electrical facilities with valid permits serving permitted developments. In contrast, the submitted site plan incorrectly identifies as vested an approximately 2.09-acre area with stables, pens, sheds and a single family residence in the southeast corner of the property; an additional approximately 2.62-acre area in the center of the property containing stables and numerous structures (as well as the vested garage); an approximately 13,000 sq. ft. existing garden; an approximately 14,000 sq. ft. area surrounding the vested water well and pump; and an approximately 6,000 sq. ft. area with a non-vested well and pump. Development within the vested areas identified by the applicant on the proposed plan includes numerous graded roads, driveways, and pads, 11 mobile homes, three single family residences, one garage, seven storage sheds, four metal storage containers, six lean-tos attached to trailers or motor homes, numerous storage containers, three fences, two concrete structures, four stable areas containing pens, barns, and horses, numerous power and telephone lines, numerous abandoned vehicles, and numerous water wells and tanks.

Proposed Development Areas

Secondly, the proposed plan identifies proposed development areas for the three lots proposed under a separate application, CDP Application No. 4-05-151. These areas are in addition to the areas identified as vested by the applicant, and include an approximately 2.66-acre area on the proposed Lot 1, approximately half of which is located within a riparian oak woodland; an approximately 17,000 sq. ft. tank site on the proposed Lot 2; and seven development areas on the proposed Lot 3, including an approximately 1.52-acre house site, an approximately 24,000 sq. ft. barn site, an approximately 16,000 sq. ft. stable area, an approximately 6,000 sq. ft. tank site, an additional approximately 11,000 sq. ft. tank site, and an approximately 10,000 sq. ft. area that is not identified for any use. The applicant proposes to remove all mobile homes (estimated as ten trailers) and associated utility lines located within the development areas, but does not propose other restoration of these sites.

Restoration Areas

Lastly, the proposed plan identifies areas for restoration. These areas, which total approximately 2.71 acres, include an existing pad on the west side of the property, and several road areas. The applicant's proposed method of restoration consists of no

further disturbance of the restoration areas, thus allowing “natural” regrowth of vegetation. The proposal does not state that existing development within the restoration areas (which consists of two trailers, a yurt, and an outhouse) will be removed; thus it must be assumed that the applicant proposes to retain it. Staff notes that unaided regrowth of vegetation is not an activity that requires a coastal development permit; neither is it an activity that is likely to result in restoration of native habitat, particularly given that the subject areas have been graded and exposed to non-native plant materials and the applicant does not propose any removal of non-native vegetation or planting of native vegetation.

The proposed restoration and development plan also shows other development that is not included within the vested, development or restoration areas, including approximately 6.69-acres of cleared and disturbed areas, and numerous roads totaling approximately 4.31-acres that lead to the various proposed building areas and other parts of the property. The applicant’s proposal is intended to address matters concerning the unpermitted development, as identified in Section 4.1 of a 1998 settlement agreement between the Commission and the applicant (**Exhibit 5**).

The subject property is an approximately 45.31-acre site in the Santa Monica Mountains area of unincorporated Los Angeles County (**Exhibit 8**). The project site consists of 45.31 acres that the County Assessor identifies as seven parcels; however, this parcel configuration was not authorized in compliance with the permit requirements of the Coastal Act. In a separate application (CDP Application No. 4-05-151) also to be heard at the February 2006 Commission meeting, the applicant proposes to combine and resubdivide the seven parcels into three parcels (**Exhibits 13, 14**).

The subject site contains extensive unpermitted physical development, including unpermitted grading; removal of major vegetation; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; and water wells and water tanks. Since 1992, the Commission has made efforts to address the unpermitted development on the subject site, through cease and desist orders and other enforcement action and litigation. An excerpt from the July 28, 2005 CDO and RO staff report, which details the history of violations on the subject property and related Commission action, is included as **Exhibit 6** of this report.

The subject site is characterized by mountainous terrain with elevations ranging from 1800 feet to 2200 feet above sea level (**Exhibit 10**). The site is accessible by a series of private, unpermitted dirt roads and McReynolds Road, which connects the south-east boundary of the property to Latigo Canyon Road. While scattered residential development is located south of the project site, the site is surrounded on the west, north, and east by the Castro Crest complex of the Santa Monica Mountains National Recreation Area. The site is visible from various public viewing points, including along the Backbone Trail, that afford scenic vistas of the relatively

undisturbed natural area. The property is located within a wildlife corridor³, and contains large, contiguous areas of chaparral and oak woodlands, as well as an intermittent blue-line stream, recognized by the United States Geological Survey (USGS), and associated riparian oak woodland habitat (**Exhibits 10, 15, 16**). Commission staff biologist John Dixon has visited the site, most recently on August 22, 2005, and has confirmed that the chaparral and oak woodland habitat on the site is ESHA.

Extensive areas of the site have been cleared, graded and developed with mobile homes and other structures since 1977 without benefit of a coastal development permit. In addition, other areas of the site were cleared, graded and developed prior to 1977 without the required local approvals, and thus were determined by the Commission to be not vested in Vested Rights Determination No. V-4-97-1. The Commission also determined that a limited amount of development, including a water well and pump on Assessor's Parcel No. (APN) 4465-006-054, a 600 sq. ft. garage on APN 4464-024-020, a 384 sq. ft. single family residence, a 168 sq. ft. storage structure, and electrical facilities with valid permits serving permitted developments, was vested (**Exhibit 4**).

Aerial photographs from 1976 indicate that areas on the property that were subsequently cleared and developed consisted of native chaparral habitat, and in the south central portion of the site, oak woodland. It is reasonable to assume that areas cleared and graded prior to 1976 also consisted of native chaparral habitat and oak woodland. In determining the extent of ESHA on the subject site, the Commission must consider the condition of the subject site prior to any unpermitted or non-vested development. Thus, as described in greater detail below, the entire site, with the exception of the limited development determined to be vested by Vested Rights Determination No. V-4-97-1, is considered environmentally sensitive habitat.

Previous Commission Action

On April 10, 1978, the Commission conditionally approved CDP No. P-2-17-78-2706, authorizing the subdivision of a 15.33-acre parcel identified into three, approximately 5-acre parcels (**Exhibit 2**). The Commission, to address its concerns regarding increased residential density on the parcels and in the surrounding area, imposed a special condition requiring recordation of a deed restriction limiting development on the parcels to one-single family residence per parcel, and prohibiting future subdivision of the parcels. The deed restriction was recorded on July 7, 1978.

Parcel Map No. 7155 was recorded pursuant to CDP No. P-2-17-78-2706, identifying three 5-acre parcels identified as APNs 4465-006-047, 4465-006-048, and 4465-006-049. A current Assessor's Parcel Map indicates that one of the original 5-acre parcels, APN 4465-006-048, has been illegally subdivided into two parcels: APN 4465-006-054, a 4.32-acre parcel; and 4465-006-055, a 0.14-acre parcel (**Exhibit 14**).

On March 12, 1980, Chris Brookes and Richard Brookes Jr. submitted CDP Application No. 5-82-377 to subdivide a 39.41-acre parcel, identified as APN 4464-024-004, into three 12-acre parcels and one 6-acre parcel. The 39.41-acre parcel was located immediately north of the 15.33-acre parcel that was subdivided pursuant to CDP No. P-2-17-78-2706. On August 25, 1982, the Commission approved CDP No. 5-82-377, with conditions, authorizing the subdivision

³ The Malibu/Santa Monica Mountains Land Use Plan designates certain areas as wildlife migration corridors, and considers them to be "Sensitive Environmental Resources".

of the parcel into three parcels, not the four that were proposed by the Brookes' (**Exhibit 3**). Parcel Map Waiver No. 7154 was recorded on March 8, 1984, in accordance with the CDP. A current Assessor's Parcel Map shows that, in addition to the three parcel-subdivision that was authorized under CDP No. 5-82-377, the original parcel, APN 4464-024-004, has been subject to three attempted unpermitted subdivisions, resulting in division of the original parcel into six parcels (**Exhibit 14**).

Commission staff first became aware of the presence of unpermitted development on the subject property on May 19, 1992. Subsequent site visits confirmed that extensive development had been undertaken on the property and a search of Commission records concluded that no CDPs were obtained for the development. Since 1992, Commission staff has made efforts to address the unpermitted development through cease and desist orders and other enforcement action. In addition, on August 11, 1998, the Commission made a vested rights determination with regards to development on the property. The results of that determination are included as **Exhibit 4** of this report. In October 1998, the Commission, the applicant, Madalon Witter, and Douglas Richardson (who was at that time the property manager and a prior owner of the site) entered into a settlement agreement. The settlement agreement directed Ms. Witter and Mr. Richardson to file complete CDP applications to remove or retain the unpermitted development and to correct the unpermitted subdivision of the property. Ms. Witter submitted separate applications for a lot line adjustment and a restoration/development plan on October 29, 2002. The applications remained incomplete for almost a year, were not completed as required, and were ultimately returned to Ms. Witter on September 18, 2003.

Commission staff commenced cease and desist and restoration order proceedings in January 2005 in order to compel removal of the extensive unpermitted development on the property and restoration of the severely impacted and extremely valuable habitat on the property. The hearing on Cease and Desist Order (CDO) CCC-05-CD-08 and Restoration Order (RO) CCC-05-RO-05 was scheduled for the August 12, 2005 meeting; however, the hearing was postponed at the request of the applicant. An excerpt from the July 28, 2005 CDO and RO staff report, which details the history of violations on the subject property and related Commission action, is included as **Exhibit 6** of this report.

The applicant submitted the current applications on August 18, 2005 (**Exhibit 7**).

B. CUMULATIVE IMPACTS

Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new developments. Section 30250 (a) of the Coastal Act states:

- (a) *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 only 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 surrounding parcels.***

Section 30252 of the Coastal Act states:

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 non-automobile 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.

Pursuant to Coastal Act Sections 30250 and 30252 cited above, new development raises issues relative to cumulative impacts on coastal resources. The Coastal Act requires that new development be permitted within, contiguous, or in close proximity to existing developed areas or, if outside such areas, only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The basic goal of the Coastal Act is to concentrate development in or near developed areas able to accommodate it, thereby promoting infilling and avoiding sprawl into areas with significant resource value. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu and Santa Monica Mountains area in past permit action. The Commission has also recognized that construction of additional dwelling units on a site where a primary residence exists intensifies the use of the subject parcel. The intensified use creates additional demands on public services, such as water, sewage, electricity, and roads. Thus, additional dwelling units pose potential cumulative impacts in addition to the impacts otherwise caused by the primary residential development.

Based on the requirements of Coastal Act Section 30250 and 30252, the Commission has limited the development of additional dwelling units on residential parcels in the Malibu and Santa Monica Mountain areas to one second unit per parcel with a maximum of 750 sq. ft. habitable interior square footage. In addition, the issue of additional units on lots with primary residences has been the subject of past Commission action in certifying the Malibu/Santa Monica Mountains Land Use Plan (LUP). In its review and action on the LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft.) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that the small size of units (750 sq. ft.) and the fact that they are likely to be occupied by one, or at most two people, such units would have less impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints such as water, sewage, and electricity) than an ordinary single family residence.

The additional dwelling unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different forms which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, or farm labor unit; and 2) a guesthouse, with or without separate kitchen facilities. Past Commission action has consistently found that both second units and guest houses inherently have the potential to cumulatively impact coastal resources. Thus, conditions on coastal development permits and standards within LCP's have been required to

limit the size and number of such units to ensure consistency with Chapter Three policies of the Coastal Act in this area.

The applicant's proposal involves retaining eighteen unpermitted residential units on three proposed lots, including thirteen mobile homes, four small single family residences, and a yurt. The mobile homes and other residences are in many cases served by electric utilities and contain plumbing fixtures that discharge into the ground without benefit of septic systems. In addition, the proposal involves the designation of multiple sites for future residential development. These areas include an approximately 2.66-acre area on the proposed Lot 1 and an approximately 1.52-acre house site on the proposed Lot 3, in addition to seven other sites for horse facilities, water tanks, and other uses totaling approximately 1.53 acres and scattered throughout the property. The applicant's proposal, as shown on the submitted plan, also includes approximately 6.69-acres of cleared and disturbed areas, and numerous roads totaling approximately 4.31-acres that lead to the various proposed building areas and other parts of the property.

The land use designations of the certified Malibu/Santa Monica Mountains LUP provide guidance on the maximum allowable density and intensity of land use that may be permitted in any particular area. The LUP assigns three density categories for the proposed project site: Mountain Land, which allows one dwelling unit for twenty acres of land; Rural Land I, which allows one dwelling unit for ten acres of land; and Rural Land II which allows one dwelling unit for five acres of land. The land use designations criss-cross the entire property; therefore each proposed new parcel contains more than one land use designation. Approximately 23 acres of the approximately 45-acre property is designated as Mountain Land; approximately 8 acres is designated as Rural Land I; and approximately 14 acres is designated as Rural Land II.⁴ The applicant proposes a lot combination and resubdivision that would result in three parcels.

In addition to the base land use designations, the project site is also designated as a wildlife corridor in the LUP, and is thus subject to a sensitive environmental resource area overlay. The wildlife corridor overlay restricts grading and vegetation removal on each parcel to

That necessary to accommodate the residential unit, garage, and one other structure, once access road and minimum brush clearance required by the Los Angeles County Fire Department...The standard for a graded building pad shall be a maximum of 10,000 square feet.

The overlay also stipulates that

- ***Structures shall be clustered to minimize the effects on sensitive environmental resources***
- ***Structures shall be located as close to the periphery of the designated (area) a feasible, or in any location in which it can be demonstrated that the effects of development will be less environmentally damaging.***
- ***Structures and uses shall be located as close as possible to existing roadways and other services to minimize the construction of new infrastructure.***

⁴ It is important to note, however, that the boundary of the property, prior to the unpermitted subdivisions, included a fourth approximately 9,300 sq. ft. lot, identified by the County as APN 4464-024-019, which is under separate ownership and is not included in this application. This parcel was not authorized in a coastal development permit, and contains a portion of a residential structure located on the parcel immediately south. Development on the property identified by the County as APN 4464-024-019 is not addressed in this permit application.

- ***New on-site access roads shall be limited to a maximum length of 300 feet or one-third of the parcel depth, whichever is smaller. Greater lengths may be allowed provided that the County Engineer and Environmental Review Board determine that there is not an acceptable alternative and that a significant impact will not be realized and shall constitute a conditional use.***
- ***The cleared area shall not exceed 10% of the area excluding access roads.***
- ***Site grading shall be accomplished in accordance with stream protection and erosion control policies.***
- ***Designated environmentally sensitive streambeds shall not be filled. Any crossings should be accomplished by a bridge.***
- ***Approval of development shall be subject to review by the Environmental Review Board.***

While the applicant's proposal including the lot line adjustment proposed in CDP 4-05-151 meets the maximum density that would allowed under the guidance of the LUP, the number of structures and roads and the amount of cleared and disturbed ground greatly exceeds the density and intensity of development allowed by the LUP, and is not consistent with the development standards required by the LUP in designated wildlife corridors. The applicant's proposal also greatly exceeds the limit of one secondary unit per legal parcel, which is a standard that has been consistently upheld by the Commission in past permit actions. In those actions, the Commission has consistently found that development of secondary units intensifies the use of residential parcels, creating additional demands on public services, such as water, sewage, electricity, and roads. The project, as proposed, does not minimize the amount of landform alteration, provides for development areas on each parcel that are far in excess of 10,000 sq. ft., and does not cluster development areas or cluster structures. The applicant's proposal demonstrates, in fact, the increased impacts associated with multiple dwelling units and associated infrastructure in sensitive resource areas, as discussed in Sections C. and D. below.

Furthermore, there are alternatives to the proposed project. A 10,000 sq. ft. development area, located as close as feasible to McReynolds Road, could be identified on each of the proposed three parcels, as reconfigured pursuant to Special Condition One (1) of CDP No. 4-05-151. These development areas could be clustered to the maximum extent feasible and could be located to minimize brush clearance, particularly on the adjacent National Park Service property. One single family residence, garage, and one additional structure could be constructed within each building area, and the length of access roads could be minimized. These development areas would not exceed 10% of the size of each lot. **Exhibit 15** identifies alternative building sites on each lot, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151, that meet the required development standards. Therefore, the Commission finds that there are feasible alternatives to the proposed project that would not result in significant adverse effects on the environment and would be consistent with the Chapter 3 policies of the Coastal Act.

As such, the Commission finds that the proposed redivision will not minimize cumulative impacts to coastal resources and is therefore inconsistent with Section 30250(a) of the Coastal Act.

C. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Section 30230 of the Coastal Act states that:

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

Section 30231 states:

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

Section 30240 states:

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

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

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

Section 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

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

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 1**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP⁵.

Further, woodlands that are native to the Santa Monica Mountains, such as oak woodlands, are important coastal resources. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife species, contribute nutrients to watersheds, and are important scenic elements in the landscape. In the Santa Monica Mountains, coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeeberry, and poison oak. Coast live oak woodland is more tolerant of salt-laden fog than other oaks and is generally found nearer the coast⁶. Coast live oak also occurs as a riparian corridor species within the Santa Monica Mountains. The important ecosystem functions of oak woodlands and savanna are widely recognized⁷. These habitats support a high diversity of birds⁸, and provide refuge for many species of sensitive bats⁹. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats. Therefore, because of their important ecosystem functions and vulnerability to development, the Commission finds that oak woodlands and savanna within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

The subject property is an approximately 45.31-acre site in the Santa Monica Mountains area of unincorporated Los Angeles County. The site is characterized by mountainous terrain with elevations ranging from 1800 feet to 2200 feet above sea level. The site is accessible by a series of private, unpermitted dirt roads and McReynolds Road, which connects the south-east boundary of the property to Latigo Canyon Road. While scattered residential development is

⁵ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

⁶ NPS 2000. op. cit.

⁷ Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72-76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

⁸ Cody, M.L. 1977. Birds. Pp. 223-231 in Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

⁹ Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

located south of the project site, the site is surrounded on the west, north, and east by the Castro Crest complex of the Santa Monica Mountains National Recreation Area.

The property is located within a wildlife corridor¹⁰, and contains large, contiguous areas of chaparral and oak woodlands, as well as an intermittent blue-line stream, recognized by the United States Geological Survey (USGS), and its associated riparian oak woodland habitat. Commission staff biologist John Dixon has visited the site, most recently on August 22, 2005, and has confirmed that the chaparral and oak woodland habitat on the site is ESHA.

Extensive areas of the site have been cleared, graded and developed with mobile homes and other structures since 1977 without benefit of a coastal development permit. In addition, significant portions of the site were cleared, graded and developed prior to 1977 without the required local approvals, and thus were determined by the Commission to be not vested in Vested Rights Determination No. V-4-97-1. The Commission did, however, determine that a limited amount of development, including a water well and pump on Assessor's Parcel No. (APN) 4465-006-054, a 600 sq. ft. garage on APN 4464-024-020, a 384 sq. ft. single family residence, a 168 sq. ft. storage structure, and electrical facilities with valid permits serving permitted developments, was vested.

Aerial photographs from 1976 indicate that areas on the property that were subsequently cleared and developed consisted of native chaparral habitat, and in the south central portion of the site, oak woodland. It is reasonable to assume that areas cleared and graded without permits prior to 1976 also consisted of native chaparral habitat and oak woodland. In determining the extent of ESHA on the subject site, the Commission must consider the condition of the subject site prior to any unpermitted or non-vested development. Thus, the entire site, with the exception of the limited development determined to be vested by Vested Rights Determination No. V-4-97-1, is considered environmentally sensitive habitat.

Therefore, due to the important ecosystem roles of oak woodland and chaparral in the Santa Monica Mountains (detailed in **Exhibit 1**), and the fact that the subject site is (with the exception of unpermitted or non-vested development) relatively undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral and oak woodland habitat on and surrounding the subject site, including such habitat that has been removed or impacted by the above-described unpermitted and non-vested development, meets the definition of ESHA under the Coastal Act.

The applicant's proposal is intended to address matters concerning the unpermitted development, as identified in Section 4.1 of a 1998 settlement agreement between the Commission and the applicant. As shown on the submitted site plan, the applicant's proposal contains three components: First, it identifies areas that the applicant claims are vested pursuant to Vested Rights Determination No. V-4-97-1. The areas identified on the site plan, however, do not reflect the decision made in Vested Rights Determination No. V-4-97-1, which only authorized one water well and pump, three small structures, and electrical facilities with valid permits serving permitted developments. In contrast, the submitted site plan incorrectly identifies as vested development an approximately 2.09-acre area with stables, pens, sheds and a single family residence in the southeast corner of the property; an additional approximately 2.62-acre area in the center of the property containing stables and numerous structures (as well as the vested garage); an approximately 13,000 sq. ft. existing garden; an

¹⁰ The Malibu/Santa Monica Mountains Land Use Plan designates certain areas as wildlife migration corridors, and considers them to be "Sensitive Environmental Resources".

approximately 13,000 sq. ft. area surrounding the vested water well and pump; and an approximately 6,000 sq. ft. area with a non-vested well and pump. Development within the areas the applicant identifies as vested on the proposed plan includes numerous graded roads, driveways, and pads, 11 mobile homes, three single family residences, one garage, seven storage sheds, four metal storage containers, six lean-tos attached to trailers or motor homes, numerous storage containers, three fences, two concrete structures, four stable areas containing pens, barns, and horses, numerous power and telephone lines, numerous abandoned vehicles, and numerous water wells and tanks.

Secondly, the proposed plan identifies proposed development areas for the three lots proposed under a separate application, CDP Application No. 4-05-151. These areas are in addition to the areas identified as vested by the applicant, and include an approximately 2.66-acre area on the proposed Lot 1, approximately half of which is located within a riparian oak woodland; an approximately 17,000 sq. ft. tank site on the proposed Lot 2; and seven development areas distributed throughout the proposed Lot 3, including an approximately 1.52-acre house site, an approximately 24,000 sq. ft. barn site, an approximately 16,000 sq. ft. stable area, an approximately 6,000 sq. ft. tank site, an additional approximately 11,000 sq. ft. tank site, and an approximately 10,000 sq. ft. area that is not identified for any use. The applicant proposes to remove all mobile homes (estimated as ten trailers) and associated utility lines located within the development areas, but does not propose other restoration of these sites.

Lastly, the proposed plan identifies areas for restoration. These areas, which total approximately 2.71 acres, include an existing pad on the west side of the property, and several road areas. The applicant's proposed method of restoration consists of no further disturbance of the restoration areas, thus allowing "natural" regrowth of vegetation. The proposal does not state that existing development within the restoration areas (which consists of two trailers, a yurt, and an outhouse) will be removed; thus it must be assumed that the applicant proposes to retain it. Staff notes that unaided regrowth of vegetation is not an activity that requires a coastal development permit; neither is it an activity that is likely to result in restoration of native habitat, particularly given that the subject areas have been graded and exposed to non-native plant materials and the applicant does not propose any removal of non-native vegetation or planting of native vegetation.

The applicant's proposal, as shown on the submitted plan, also includes other development that is not included within the vested, development or restoration areas, including approximately 6.69-acres of cleared and disturbed areas, and numerous roads totaling approximately 4.31-acres that lead to the various proposed building areas and other parts of the property.

As explained above, the project site and the surrounding area (with the exception of the limited development determined to be vested by Vested Rights Determination No. V-4-97-1,) constitutes an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development within ESHA to only those uses that are dependent on the resource. As described above, the applicant's proposal involves retaining several acres of graded roads and pads, eighteen unpermitted residential units on three proposed lots, including thirteen mobile homes, four small single family residences, and a yurt, as well as numerous appurtenant structures, sheds, debris piles, vehicles, and other structures. In addition, the proposal involves the designation of multiple sites for future development of single family residences, horse facilities, water tanks, and other uses totaling approximately six acres and scattered throughout the property. The applicant's proposal, as

shown on the submitted plan, also includes approximately 6.69-acres of additional cleared and disturbed areas, and numerous roads that lead to the various proposed building areas and other parts of the property.

The applicant's proposal involves extensive removal and disturbance of ESHA both for the developments themselves as well as for fuel modification and brush clearance that would be required by the Los Angeles County Fire Department around each habitable structure for fire protection purposes. As single-family residences, mobile homes, water tanks, horse facilities, roads, and the other miscellaneous items found on the site do not have to be located within ESHA to function, the Commission does not consider them to be uses dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the applicant's proposal, because such development would result in significant disruption of habitat values and would not be a use dependent on those sensitive habitat resources.

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

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner. As such, similar to the actions the Commission has taken on many coastal development permits for residential development on parcels containing ESHA, the Commission may approve one residence on each legal parcel that is sited and designed to minimize impacts to ESHA. In addition, the Commission has already determined that a limited amount of development, including a water well and pump on Assessor's Parcel No. (APN) 4465-006-054, a 600 sq. ft. garage on APN 4464-024-020, a 384 sq. ft. single family residence, a 168 sq. ft. storage structure, and electrical facilities with valid permits serving permitted developments, was vested. The additional development that the applicant proposes in this application is far in excess of one residence on each legal parcel sited and designed to minimize impacts to ESHA.

As noted above, the applicant's proposal involves both retention of existing unpermitted development, and approval of future development areas. In order to evaluate the potential impacts of the proposed project, it is necessary to look at both the impacts of the existing

unpermitted development that the applicant proposes to retain, and well as the impacts that are likely to result from the ultimate development of the proposed development areas.

As described above, the applicant is proposing to retain approximately 22.97-acres of developed areas (including the proposed “vested areas”, “development areas”, and other undesignated areas that contain unpermitted development) on the project sites, while allowing areas that total approximately 2.71-acres to revegetate naturally. The removal or disturbance of habitat and the development of roads, structures, wells, water tanks, equestrian facilities, etc. will have significant adverse impacts on ESHA.

The proposed development areas are very large and are not clustered on the project site. For Lot 1 (as proposed to be reconfigured), a vested area of 14,000 sq. ft. and a future development area of 2.66-acres are proposed for this lot. Approximately one-half of the 2.66-acre area would be located within oak woodland ESHA. Removal of habitat to accommodate such a large development area would be substantial. Additionally, given the proposed location of the development area within and adjacent to an oak woodland, significant impacts to the individual oaks and to the woodland as a whole can be expected.

In past permit actions, the Commission has recognized the importance of the habitat area provided by oak woodlands or savannas. Oak woodlands, and often associated riparian areas, have been identified as extremely important to the fish and wildlife resources of California. They are recognized for supporting a wide variety of wildlife species by providing food, nesting, and roosting cover, and in many instances, important understory vegetation. In addition, hardwoods benefit fishery resources by preventing the erosion of hillsides and stream banks, moderating water temperatures by shading, and contributing nutrients and food-chain organisms to waterways (California Department of Fish and Game, Hardwood Policies, 1985).

Oaks are easily damaged and are very sensitive to disturbances that occur to the tree or the surrounding environment. Their root system is extensive, but surprisingly shallow, radiating out as much as 50 feet beyond the spread of the tree leaves, or canopy. The ground area at the outside edge of the canopy, referred to as the dripline, is especially important: the tree obtains most of its surface water and nutrients here, as well as conducts an important exchange of air and other gases (Los Angeles County Regional Planning Oak Tree Ordinance).

Siting a 2.66-acre development area within and adjacent to an oak woodland will have significant adverse impacts through the potential removal of trees, encroachment into their driplines, removal of understory vegetation, soil compaction and paving in the rootzone, addition of irrigation water, and the introduction of human intrusion.

Additionally, the application includes a vested area identified by the applicant of 3.05-acres and a development area of 17,000 sq. ft. containing a water tank site on Lot 2. Further, the applicant identifies an additional vested area of 2.09-acres containing stables, pens, sheds, and a residence, as well as seven separate development areas totaling 3.47-acres on Lot 3. Removal of primarily chaparral habitat to accommodate such large development areas would be substantial. Not only would habitat value be lost in the development areas through the removal of the vegetation cover, but much of the rest of the ESHA on the site would be impacted by the fragmentation of the habitat across the site. The proposed vested and development areas are not clustered. Rather, they would be scattered across most of the approximately 45.31-acre project site. The value of the remaining undisturbed ESHA for animals and birds on the site would be significantly reduced. The subject property has been identified as located within a wildlife migration corridor. However, as designed, it is unlikely that the site could maintain its

wildlife corridor functions. Given the scattered locations and intensity of development as proposed to be sited on the parcels, the movement of animals across the site would be severely limited, if not eliminated by the proposed level of human intrusion.

In addition to the habitat fragmentation and impacts to wildlife migration, the lack of clustering would also result in impacts from the development of several roads to serve the scattered locations. The project includes numerous roads that criss-cross the site and extend to the scattered development areas. Not only did the development of these numerous roads require significant removal of ESHA vegetation, but their locations further fragment the remaining ESHA on the site and limit wildlife migration. Additionally, if residential development were approved in the proposed scattered locations, the roads would need to be improved to the standards of the Los Angeles County Fire Department, including their maximum grade and minimum width requirements (20 feet wide). This would, in most cases, require additional grading and vegetation removal to meet the road standards.

The amount of grading and landform alteration necessary to create the proposed development areas, including building pads and roads, while not quantified by the applicant, would be substantial. The grading or disturbance of such a large area of the project sites (approximately 22.97-acres) would expose a huge area to erosion. As discussed in detail below, the removal of native vegetation and the grading or disturbance of soils on the site will significantly increase the amount of soil erosion, leading to the sedimentation of the blue-line stream on the site and coastal waters downstream, including other streams and ultimately the ocean.

Finally, given the location of ESHA on the project site, the proposed project would result in significant removal of vegetation for the required fuel modification and brush clearance areas around existing unpermitted structures that the applicant proposes to retain, and future structures within the proposed development areas. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP¹¹.

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

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

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

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

¹¹ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

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

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

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

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

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

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow,

Western scrub-jay, Northern mockingbird)¹². It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge effect of fragmentation by expanding the amount of cleared area and “edge” many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral¹³.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms “super colonies” that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area¹⁴. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat¹⁵. These native ants are the primary food resource for the native coast horned lizard, a California “Species of Special Concern.” As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments¹⁶. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms¹⁷. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats¹⁸.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.¹⁹ In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native

¹² Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

¹³ Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

¹⁴ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

¹⁵ Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

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

¹⁷ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

¹⁸ Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

¹⁹ Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds²⁰.

Siting measures exist that can reduce the impacts of fuel modification. Such measures include clustering of building areas so that fuel modification radii overlap, reduction of the size of building areas, and location of building areas within existing developed areas and away from sensitive habitat areas.

The proposed project entails the retention of existing unpermitted development at several locations on the project site, including a large (approximately 2.09-acre) area immediately adjacent to National Park Service property. In addition, the proposed project includes the designation of nine other development areas scattered across the property. The proposed project does not cluster development to the maximum extent feasible, and does not minimize clearance of native vegetation for fuel modification purposes. On the contrary, the proposed project would result in extensive disturbance to and clearance of ESHA for the development itself as well as for the required fuel modification, as shown in **Exhibit 12** of this report.

The Commission notes that the significant unpermitted clearance evident in aerial photos does not represent the extent of brush clearance required for all of the existing unpermitted structures on the site that the applicant proposes to retain. An officer of the Los Angeles County Agricultural Commissioner/Weights and Measures Department Weed Abatement Division recently informed staff that the Brush Clearance Unit of the Los Angeles County Fire Department has issued a notice of 410B Violation for failure to conduct brush clearance on the subject property for fire safety purposes. Staff informed the officer that the majority of structures on the site were unpermitted and that a permit application regarding those structures was to be heard at the February meeting. To staff's knowledge, the unit has postponed clearance of the property until a decision is made on this application.

Specifically, construction of the unpermitted development that the applicant proposes to retain, or include within future development areas, including all roads and pads, has resulted in clearance of approximately 20 acres of chaparral habitat, and disturbance to approximately two acres of riparian oak woodland habitat. In addition, the unpermitted development that the applicant proposes to retain would entail additional acres of brush clearance that has not yet occurred. Approval of the proposed future development areas, including remnant structures that are not proposed to be removed, would result in an additional clearance and disturbance of chaparral and oak woodland habitat, as well as up to 22 acres of fuel modification for future structures built in the development areas. The result would be the clearance of the majority of the 45.31-acre parcel.

The Commission has limited the development area for residential development in ESHA to a maximum development area of 10,000 square feet in order to cluster development and minimize the adverse impacts to ESHA from the development itself as well as the associated fuel modification requirements. The Commission has consistently required development to be located no closer than 100 feet from riparian ESHA, in order to protect the biological integrity of

²⁰ Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

the ESHA, provide space for transitional vegetated buffer areas, minimize human intrusion, and protect the quality of coastal waters consistent with Sections 30231 and 30240 of the Coastal Act. The certified Malibu/Santa Monica Mountains LUP also provides guidance on the maximum amount of development that can should be allowed in ESHA and other sensitive environmental resource areas like wildlife corridors in order to minimize impacts. The project site is designated as a wildlife corridor in the LUP, and is thus subject to a sensitive environmental resource area overlay. The wildlife corridor overlay restricts grading and vegetation removal on each parcel to

That necessary to accommodate the residential unit, garage, and one other structure, once access road and minimum brush clearance required by the Los Angeles County Fire Department...The standard for a graded building pad shall be a maximum of 10,000 square feet.

The overlay also stipulates that

- ***Structures shall be clustered to minimize the effects on sensitive environmental resources***
- ***Structures shall be located as close to the periphery of the designated (area) a feasible, or in any location in which it can be demonstrated that the effects of development will be less environmentally damaging.***
- ***Structures and uses shall be located as close as possible to existing roadways and other services to minimize the construction of new infrastructure.***
- ***New on-site access roads shall be limited to a maximum length of 300 feet or one-third of the parcel depth, whichever is smaller. Greater lengths may be allowed provided that the County Engineer and Environmental Review Board determine that there is not an acceptable alternative and that a significant impact will not be realized and shall constitute a conditional use.***
- ***The cleared area shall not exceed 10% of the area excluding access roads.***
- ***Site grading shall be accomplished in accordance with stream protection and erosion control policies.***
- ***Designated environmentally sensitive streambeds shall not be filled. Any crossings should be accomplished by a bridge.***
- ***Approval of development shall be subject to review by the Environmental Review Board.***

The applicant's proposal thus greatly exceeds the maximum amount of development that would be allowable under the policies and provisions of the LUP in designated wildlife corridors, including the 10,000 sq. ft. pad size limit consistently applied by the Commission in past permit actions. The proposal does not cluster development and includes a 2.66-acre future development area within and adjacent to the canopy of a riparian oak woodland ESHA. The proposed restoration areas, which total approximately 2.71 acres, will be subjected to no further disturbance and will be allowed to revegetate. However, unaided regrowth of vegetation is not an activity that requires a coastal development permit; neither is it an activity that constitutes restoration, particularly given that the subject areas have been graded and exposed to non-native plant materials.

In conclusion, the proposed development would result in significant adverse impacts to ESHA, including removal of habitat, fragmentation of habitat, and restriction of wildlife migration, as described above. The project has not been sited or designed to minimize such impacts. The development is not clustered, nor has the density or intensity of development on each parcel

been limited in order to protect ESHA. Furthermore, there are alternatives to the proposed project. A 10,000 sq. ft. development area, located as close as feasible to McReynolds Road, could be identified on each of the proposed three parcels, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151. These development areas could be clustered to the maximum extent feasible and could be located to minimize brush clearance and provide a buffer from the adjacent National Park Service property. One single family residence, garage, and one additional structure could be constructed within each building area, and the length of access roads could be minimized, provided that these development activities satisfy local and Coastal development permitting requirements. These alternative development areas would not exceed 10% of the size of each lot. **Exhibit 15** identifies alternative building sites on each lot, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151, that meet the required development standards.

Therefore, the Commission finds that there are feasible alternatives to the proposed project that would substantially reduce adverse effects on ESHA.

As such, the Commission finds that the proposed development will not minimize impacts to ESHA and is therefore inconsistent with Section 30240 of the Coastal Act.

D. WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act States:

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

Non-point source pollution is the pollution of coastal waters (including streams and underground water systems), by numerous sources that are difficult to identify on an individual basis. Non-point source pollutants include suspended solids, coliform bacteria and nutrients. These pollutants can originate from many different sources such as overflow septic systems, storm drains, runoff from roadways, driveways, rooftops and horse facilities. In addition, erosion can result in sedimentation of coastal waters.

The project site is located on mountainous terrain near Latigo Canyon Road in the Santa Monica Mountains. The site is located within the upper Escondido Canyon watershed. A United

States Geological Survey (USGS)-designated intermittent blue-line stream that is tributary to Escondido Creek, crosses the southern portion of the project site. The stream is located within a riparian oak woodland.

As noted above, the applicant requests approval of a restoration and development plan to retain as-built development, including numerous graded roads, driveways, and pads, 13 mobile homes, three single family residences, one garage, seven storage sheds, one yurt, one outhouse, four metal storage containers, six lean-tos attached to trailers or motor homes, numerous storage containers, three fences, two concrete structures, four stable areas containing pens, barns, and horses, numerous power and telephone lines, numerous abandoned vehicles, numerous water wells and tanks, and assorted trash and debris. The applicant's proposal also includes the designation of multiple sites for future residential development. These areas include an approximately 2.66-acre area on the proposed Lot 1 and an approximately 1.52-acre house site on the proposed Lot 3, in addition to seven other sites for horse facilities, water tanks, and other uses totaling approximately two acres and scattered throughout the property. The applicant's proposal, as shown on the submitted plan, also includes approximately 6.69-acres of unidentified cleared and disturbed areas, and numerous roads that lead to the various proposed building areas and other parts of the property. The applicant's proposal thus represents a significant increase in the amount of existing and potential impervious surfaces at the subject site.

An increase in impervious surface at the subject site decreases the infiltrative function and capacity of existing permeable land on site, therefore leading 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 such as 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.

Several unpermitted mobile homes and single-family residential structures that the applicant proposes to retain contain plumbing fixtures that discharge into the ground without benefit of septic systems. In addition, the applicant proposes to retain four existing horse facilities for continuing and future use. Drainage over the entire property is by sheet flow runoff.

Confined animal facilities, such as those proposed to be retained by the applicant, are one of the most recognized sources of non-point source pollutants since these types of developments are cleared of vegetation and have concentrated sources of animal wastes. Use of horse corrals generates horse wastes, which includes manure, urine, waste feed, and straw, shavings and/or dirt bedding which can be significant contributors to pollution. In addition, horse wastes contain nutrients such as phosphorous and nitrogen as well as microorganisms such as coliform bacteria which can cause eutrophication and a decrease in oxygen levels resulting in clouding, algae blooms, and other impacts affecting the biological productivity of coastal waters.

When the pollutants are swept into coastal waters by storm water or other means, they 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 that provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; acute and sublethal toxicity in marine organisms leading to adverse changes in

reproduction and feeding behavior; and human diseases such as hepatitis and dysentery. 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.

The applicant's proposal also entails extensive removal of native vegetation. Specifically, construction of the unpermitted development that the applicant proposes to retain, or include within future development areas, including all roads and pads, has resulted in clearance of approximately 20 acres of chaparral habitat, and disturbance to approximately two acres of riparian oak woodland habitat. In addition, the unpermitted development that the applicant proposes to retain would entail additional acres of brush clearance that has not yet occurred, including on adjacent National Park Service property. Approval of the proposed future development areas, including remnant structures that are not proposed to be removed, would result in an additional clearance and disturbance of chaparral and oak woodland habitat, as well as up to approximately 22 acres of clearance for required fuel modification for future structures built in the proposed development areas. The result would be the clearance of the majority of the 45.31-acre parcel.

Removal of vegetation can result in increased erosion. Removal of vegetation exposes soils to erosion by wind, water, and human disturbance, and removes the root network that holds surface sediments in place. This is particularly true for areas containing native plant species, which are typically characterized by well-developed and extensive root structures in comparison to their surface/foilage weight. As noted above, one of the most important ecological functions of chaparral is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define chaparral have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas.

Erosion adjacent to streams can result in increased sedimentation, thereby reducing the biological productivity and quality of coastal waters. Surface soil erosion has been established by the United States Department of Agriculture, Natural Resources Conservation Service, as a principal cause of downstream sedimentation known to adversely affect riparian and marine habitats. Suspended sediments have been shown to absorb nutrients and metals, in addition to other contaminants, and transport them from their source throughout a watershed and ultimately into the Pacific Ocean. The construction of single family residences in sensitive watershed areas has been established as a primary cause of erosion and resultant sediment pollution in coastal streams. In this case, the extent of development, including the clearance of vegetation and the exposure of bare soils on the project sites is greatly in excess of the extent of development associated with a single family residence on each parcel.

As discussed above, the discharge of pollutants, including sediment, can cause significant negative impacts to streams. The proposed retention of the unpermitted development and designation of extensive future development areas would allow an increase in impervious surfaces far exceeding the minimum required for residential use of the property. The applicant's proposal also entails after-the-fact approval for an extensive dirt road network, numerous graded pads, and horse facilities, as well as approval for use of large areas as future horse facilities. In addition, the applicant's proposal includes retention of existing unpermitted development that contains plumbing that discharges into the ground without benefit of septic systems.

In addition, the applicant's proposal includes a 2.66-acre future development area within and adjacent to the canopy of a riparian oak woodland ESHA. Section 30231 requires maintenance of natural vegetation buffer areas that protect riparian habitats, and minimal alteration of natural streams. As discussed in Section C. above, the Commission has consistently required development to be located no closer than 100 feet from riparian ESHA, in order to protect the biological integrity of the ESHA, provide space for transitional vegetated buffer areas, minimize human intrusion, and protect the quality of coastal waters consistent with Sections 30231 and 30240 of the Coastal Act. Approval of the proposed development areas would sanction a large area of development within and immediately surrounding a blue-line stream, inconsistent with Sections 30231 and 30240 of the Coastal Act.

The applicant does propose restoration of some areas. The proposed restoration areas, which total approximately 2.71 acres, will be subjected to no further disturbance and will be allowed to revegetate naturally. However, unaided regrowth of vegetation is not an activity that requires a coastal development permit; neither is it an activity that is likely to result in restoration of native habitat, particularly given that the subject areas have been graded and exposed to non-native plant materials and the applicant does not propose any removal on non-native vegetation or planting of native vegetation.

Furthermore, there are alternatives to the proposed project that minimize impervious surfaces and reduce the potential for erosion and sedimentation of streams. A 10,000 sq. ft. development area could be identified on each of the proposed three parcels, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151. These development areas could be clustered to the maximum extent feasible and could be located to minimize brush clearance. One single family residence, garage, and one additional structure could be constructed (or retained) within each building area, and the length of access roads could be minimized, provided that these development activities satisfy local and coastal development permitting requirements. **Exhibit 15** identifies alternative building sites on each lot, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151, that meet the required development standards.

In summary, the proposed development does not maintain and restore biological productivity and water quality of coastal waters. Therefore, the proposed development is inconsistent with Sections 30230 and 30231 of the Coastal Act.

E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

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

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. In addition, the following policies of the Malibu-Santa Monica Mountains Land Use Plan (LUP) provide guidance:

P125 *New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.*

P130 *In highly scenic areas, and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:*

- *be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.*
- *minimize the alteration of natural landforms*
- *be landscaped to conceal raw-cut slopes*
- *be visually compatible with and subordinate to the character of its setting*
- *be sited so as not to significantly intrude into the skyline as seen from public viewing places*

P131 *Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.*

P137 *Clustering of development in suitable areas shall be encouraged as a means to facilitate greater view protection.*

The subject site is located within a rural area characterized by expansive, naturally vegetated mountains and hillsides. While scattered residential development is located south of the project site, the site is surrounded on the west, north, and east by the Castro Crest complex of the Santa Monica Mountains National Recreation Area. The project site is visible from various public viewing points, including along the Backbone Trail, that afford scenic vistas of the relatively undisturbed natural area. The scenic nature of the area is reflected in the certified Malibu-Santa Monica Mountains Land Use Plan (LUP), which designates several ridgelines in the area, including the Castro Crest and a lower ridgeline that crosses the northern portion of the site, as scenic ridgelines.

As noted above, the applicant requests approval of a restoration and development plan to retain as-built development, including numerous graded roads, driveways, and pads, 13 mobile homes, three single family residences, one garage, seven storage sheds, one yurt, one outhouse, four metal storage containers, six lean-tos attached to trailers or motor homes, numerous storage containers, three fences, two concrete structures, four stable areas containing pens, barns, and horses, numerous power and telephone lines, numerous abandoned vehicles, numerous water wells and tanks, and assorted trash and debris. This development is found at several locations on the project site, including a large (approximately 2.09-acre) area immediately adjacent to National Park Service property. The applicant's proposal also includes the designation of multiple sites for future residential development. These areas include an approximately 2.66-acre area on the proposed Lot 1 and an approximately 1.52-acre house site on the proposed Lot 3, in addition to seven other sites for horse facilities, water tanks, and other uses totaling approximately two acres and scattered throughout the property. The applicant's proposal, as shown on the submitted plan, also

includes approximately 6.69-acres of cleared and disturbed areas, and numerous roads that lead to the various proposed building areas and other parts of the property. The unpermitted roads, graded pads, and other development are visible from nearby trails and public land.

As detailed in Sections C. and D. above, the proposed project does not cluster development to the maximum extent feasible and does not minimize clearance of native vegetation for fuel modification purposes. On the contrary, the proposed project would result in extensive disturbance to and clearance of native vegetation for the development itself as well as for the required fuel modification, as shown in **Exhibit 12** of this report.

Specifically, the unpermitted development that the applicant proposes to retain, or include within future development areas, including all roads and pads, would result in clearance of approximately 20 acres of chaparral habitat, and disturbance to two acres of riparian oak woodland habitat. In addition, the development that the applicant proposes to retain would entail additional acres of brush clearance that has not yet occurred, including immediately adjacent to National Park Service property. Approval of the proposed future development areas, including remnant structures that are not proposed to be removed, would result in an additional clearance and disturbance of chaparral and oak woodland habitat, as well as up to approximately 22 acres of clearance for required fuel modification for future structures built in the development areas. The result would be the clearance of the majority of the 45.31-acre parcel.

The proposed project also does not minimize landform alteration. A considerable amount of grading has occurred to construct the numerous roads and pads in the mountainous terrain on site. No calculation of all of the unpermitted grading exists; however, approximately 25 acres of clearance and disturbance has occurred on the subject property.

Alternatives exist to the proposed project that minimize landform alteration and visual impacts. A 10,000 sq. ft. development area could be identified on each of the proposed three parcels, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151. These development areas could be clustered to the maximum extent feasible and could be located to minimize visual prominence. One single family residence, garage, and one additional structure could be constructed (or retained) within each building area, and the length of access roads could be minimized, provided that these development activities satisfy local and coastal development permitting requirements. In order to reduce landform alteration and the visual impacts of denuded pad areas and roads, the remainder of the parcel could undergo restorative grading and revegetation with native plant assemblages compatible with the existing native chaparral and oak woodland habitat on site. The restoration program could also include removal of non-native and invasive plant species, aeration and improvement of compacted soils within the oak woodland, and monitoring to ensure the success of the restoration. **Exhibit 15** identifies alternative building sites on each lot, as reconfigured pursuant to recommended Special Condition One (1) of CDP No. 4-05-151, that would minimize visual impacts.

In summary, the proposed development does not protect visual resources and minimize landform alteration. Therefore, approval of the unpermitted development, as proposed, is inconsistent with Section 30251 of the Coastal Act.

F. VIOLATION

Development has occurred on the subject site without the required coastal development permit, including, but not limited to, unpermitted grading; removal of major vegetation; attempted

subdivisions; placement of solid materials and erection of structures including, but not limited to: twenty-three trailers and/or mobile homes; four single-family residences; four areas with stables, barns, pens, and horses; two concrete structures; one large garage; seven storage sheds; one outhouse; one yurt; numerous storage containers; six lean-tos attached to trailers or motor homes; four wooden or metal fences; power transmission and distribution lines; telephone lines; numerous driveways and/or roads; pipes; abandoned vehicles including cars, boats, trucks, and buses; tents; trash (including five large deposit areas); construction materials (including wood, metal, glass, and concrete materials); construction equipment including one bulldozer; water wells and water tanks. The unpermitted development occurred prior to submission of this permit application. A separate permit application, CDP Application No. 4-05-151 (Witter), addresses the unpermitted subdivisions.

The applicant is requesting after-the-fact approval for the unpermitted development, with the exception of approximately ten trailers, which the applicant proposes to remove. As discussed above, the proposed project is not consistent with the hazards, cumulative impacts, environmentally sensitive habitat areas (ESHA), water quality, and visual resources policies of the Coastal Act and is denied. The Commission's enforcement division will evaluate further actions to address these matters.

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

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act states:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter Three policies of the Coastal Act. The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter Three. As discussed, there are alternatives to the project that would conform with the hazards, cumulative impacts, ESHA, water quality, and visual resources of the Coastal Act. Therefore, the Commission finds that approval of the proposed development would prejudice the County's ability to prepare a Local Coastal Program for the Santa Monica Mountains area that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The Commission finds that the proposed project will have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. There are feasible alternatives available that would lessen the adverse effects of the development. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.