

**CALIFORNIA COASTAL COMMISSION**

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



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Commission Action:

## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-05-151

**APPLICANT:** Madalon Witter

**AGENTS:** 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:** Lot line adjustment combining and resubdividing seven illegally subdivided parcels into three parcels totaling approximately 45.31 acres. The parcels contain a significant amount of unpermitted physical development, including grading for roads and building pads, major vegetation clearance, and numerous structures including four single family residences and 23 mobile homes, all of which is addressed in the January 27, 2006 staff report on Coastal Development Permit Application No. 4-05-150. The property also includes development that was determined to be vested by Vested Rights Claim Determination No. V-4-97-1, 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 (location unknown), a 168 sq. ft. storage structure (location unknown), and electrical facilities serving the vested development. No physical development is proposed as part of this application.

<u>Parcel No.</u>	<u>Existing Area (in acres)</u>
4464-024-020	8.92
4464-024-021	1.00
4464-024-022	7.14
4464-024-023	8.83
4464-024-024	13.57
4465-006-054	5.59
4465-06-55	0.24

<u>Proposed Lot No.</u>	<u>Proposed Area (in acres)<sup>1</sup></u>	<u>Included Parcel Nos.</u>
Lot 1	6.59	4465-006-054 4424-024-021
Lot 2	25.43	4465-006-055 4424-024-020 (in part) 4424-024-023 (in part) 4424-024-024 (in part)
Lot 3	13.29	4424-024-022 4424-024-020 (in part) 4424-024-023 (in part) 4424-024-024 (in part)

**LOCAL APPROVALS RECEIVED:** County of Los Angeles Department of Regional Planning, Approval in Concept, January 5, 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 **approval** of the proposed project with **five (5) special conditions** regarding revised plans, no future subdivision restriction, deed restriction, development areas, and condition compliance.

The applicant proposes a lot line adjustment combining and resubdividing seven illegally subdivided parcels into three parcels totaling approximately 45.31 acres (**Exhibits 11, 12**). The subject property is located in mountainous terrain near Latigo Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County. The current configuration of the subject parcels, as well as an additional parcel, APN 4464-024-019, which is under separate ownership and is not included in this permit application, is the product of four attempted unpermitted subdivisions that were accomplished through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without the benefit of any coastal development permit. Prior to the unpermitted subdivisions, the Commission had, in two separate coastal development permit actions for two land divisions, approved four lots within the area now comprised of the seven subject parcels and APN 4464-024-019. The proposed lot line adjustment would not restore the approved parcel configuration, but would consolidate the

<sup>1</sup> Proposed areas shown differ from those submitted by the applicant, and are based on the existing parcel areas, as shown on the Los Angeles County Assessor's Parcel Maps, as well as planimeter readings of the submitted plans taken by staff. Proposed areas are therefore approximate.

seven unpermitted parcels into three parcels, consistent with the number of parcels approved previously by the Commission (**Exhibit 11**).

The parcels contain a significant amount of unpermitted physical development, including grading for roads and building pads, vegetation clearance, and numerous structures including 23 mobile homes, all of which is addressed in the January 27, 2006 staff report on Coastal Development Permit Application No. 4-05-150. The property also includes development that was determined to be vested by Vested Rights Claim Determination No. V-4-97-1, 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 (location unknown), a 168 sq. ft. storage structure (location unknown), and electrical facilities serving the vested development (**Exhibit 4**). No physical development is proposed as part of this application.

Since 1992, the Commission has made efforts to address the unpermitted development on the subject site, including the unpermitted subdivisions, 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 property is located near Latigo Canyon Road in the Santa Monica Mountains area of unincorporated Los Angeles County. The site is surrounded on the west, north, and east by the Castro Crest complex of the Santa Monica Mountains National Recreation Area and 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 corridor<sup>2</sup>, 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 (**Exhibit 9**). The entire site, with the exception of the developed areas determined to be vested by Vested Rights Determination No. V-4-97-1, contains habitat that qualifies as environmentally sensitive habitat.

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. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

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

## I. STAFF RECOMMENDATION

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-05-151 pursuant to the staff recommendation.*

### **Staff Recommendation of Approval:**

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

### **Resolution to Approve the Permit:**

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

## II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

### **1. Revised Plans**

Prior to issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, revised project plans that relocate the northeastern line of Lot 1 as shown in **Exhibit 13**.

### **2. No Future Subdivision Restriction**

- A. The owner of parcels APN 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, 4465-006-055 agrees, on behalf of herself and all successors and assigns, that after the combination and resubdivision of the above seven parcels, as approved by Coastal Development Permit No. 4-05-151 and shown as described and depicted in an Exhibit attached to Notice Of Intent To Issue Permit (NOI) that the Executive Director issues for this permit, that: no further subdivision of any of the three resulting lots shall occur, unless such further subdivision is solely for the express purpose of transferring property as open space to a public agency or nonprofit organization acceptable to the Executive Director.
- B. PRIOR TO THE ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction, prepared by a licensed surveyor, of the subject properties affected by this condition, as generally described on **Exhibit 13** attached to the findings in support of approval of this permit.

### **3. Deed Restriction**

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

### **4. Development Areas**

Any future development (approved pursuant to a coastal development permit) on each lot (Lots 1 through 3) shall be located within a development area of 10,000 sq. ft. in size or less, including but not limited to all structures and grading, but not including the area of one driveway and the required fire department turn-around access area, generally located in the areas shown in **Exhibit 14**. Should site-specific geologic reports required for construction indicate that any of the building areas shown in **Exhibit 14** are not suitable for construction, alternative building area(s) may be allowed provided that such building areas are no greater than 10,000 sq. ft. in size and are approved as an amendment to this permit or as a new Coastal Development Permit(s).

## **5. Condition Compliance**

Within ninety (90) days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND BACKGROUND**

The applicant proposes a lot line adjustment combining and resubdividing seven illegally subdivided parcels into three parcels totaling approximately 45.31 acres (**Exhibits 11, 12**). The parcels contain a significant amount of unpermitted physical development, including grading for roads and building pads, major vegetation clearance, and numerous structures including four single family residences and 23 mobile homes, all of which is addressed in the January 27, 2006 staff report on Coastal Development Permit Application No. 4-05-150. The property also includes development that was determined to be vested by Vested Rights Claim Determination No. V-4-97-1, 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 (location unknown), a 168 sq. ft. storage structure (location unknown), and electrical facilities serving the vested development (**Exhibit 4**). No physical development is proposed as part of this application.

The property is an approximately 45.31-acre site in the Santa Monica Mountains area of unincorporated Los Angeles County, and is characterized by mountainous terrain with elevations ranging from 1800 feet to 2200 feet above sea level (**Exhibits 8, 16**). 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 (**Exhibits 8, 16**). The project site is located in a scenic area, surrounded by public open space and recreation areas and 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 corridor<sup>3</sup>, 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**). Although significant areas of the site have been cleared, graded and developed with mobile homes and other structures, no clearance or other development has been permitted in any CDP and only limited development has been determined by the Commission to be vested. Therefore the condition of the site must be considered as it was prior to the unpermitted development. As discussed in Section C. below, with the exception of development determined to be vested by Vested Rights Determination No. V-4-97-1, the entire site qualifies as environmentally sensitive habitat.

The property is identified by the Los Angeles County Assessor as APNs 4464-024-020, 4464-024-021, 4464-024-022, 4464-024-023, 4464-024-024, 4465-006-054, and 4465-006-055 (**Exhibit 11**).<sup>4</sup> The current configuration of these seven parcels, as well as an additional parcel, APN 4464-024-019, which is under separate ownership and is not included in this permit application, is the product of four attempted unpermitted subdivisions that were accomplished through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without the benefit of a coastal development permit. Prior to the unpermitted subdivisions, the Commission had, in two separate actions, approved four lots within the area now comprised of the seven subject parcels and APN 4464-024-019 (**Exhibit 11**).

On April 10, 1978, the Commission conditionally approved CDP No. P-2-17-78-2706, authorizing the subdivision of a 15.33-acre parcel into three, approximately 5-acre parcels identified as APNs 4465-006-047, 4465-006-048, and 4465-006-049 (**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, creating the 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 (see **Exhibit 11**). This subdivision was not approved under P-2-17-78-2706, and no additional CDP was issued for the subdivision. Therefore, the creation of 4465-006-054 and 4465-006-055 constitutes an attempted unpermitted subdivision undertaken in violation of the Coastal Act, the existing CDP, and the deed restriction, recorded pursuant to the CDP as a means of curtailing the density of development in the area.

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, authorizing the subdivision of the parcel into three parcels (see **Exhibit 3**). Parcel Map Waiver No. 7154 was recorded on March 8,

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

<sup>4</sup> As discussed further herein, only four of these parcels are actually legal parcels under the Coastal Act.

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, three more than were legally created (**Exhibit 11**). None of the six parcels retain the same configuration as the three lots approved by the Commission in CDP No. 5-82-377.

The 15.33-acre parcel (subject of CDP No. P-2-17-78-2706) and the 39.41-acre parcel (subject of CDP No. 5-82-377) are adjacent to each other. Subsequent to the approval of these CDPs (P-2-17-78-2706 and 5-82-377), the applicant carried out four unpermitted subdivisions involving approximately 45-acres of land (including all of the 39.41-acre parcel, and part of the 15.33-acre parcel) that were accomplished through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without the benefit of any coastal development permit. The result of these unpermitted actions was the creation of eight illegal parcels where the Commission had permitted the creation of four parcels (**Exhibit 11**).

As previously discussed, one of these eight unpermitted parcels, identified as APN 4464-024-019, is under separate ownership and is not included in this permit application. Seven of the unpermitted parcels are all owned by the applicant and are part of the subject CDP application to redivide, through a lot line adjustment, the seven lots into three lots. The proposed lot line adjustment would not restore the approved parcel configuration, but would consolidate the seven unpermitted parcels into three parcels, consistent with the number of parcels approved previously by the Commission. Specifically, the proposed project would merge APNs 4464-024-021 and 4465-006-054 to create a new Lot 1; APN 4465-006-055 and parts of APNs 4464-024-020, 4464-024-023, and 4464-024-024 to create a new Lot 2; and APN 4464-024-022 and parts of APNs 4464-024-020, 4464-024-023, and 4464-024-024 to create a new Lot 3 (**Exhibit 12**).

#### Other Commission Action

The project site has been the subject of Commission action subsequent to the issuance of CDP Nos. P-2-17-78-2706 and 5-82-377. 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 is the property manager and a prior owner of the site) entered into a settlement agreement, to avoid further enforcement action and litigation (**Exhibit 5**). 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**

Section 30250(a) of the Coastal Act provides that new development be located within or near existing developed areas able to accommodate it, with adequate public services, where it will not have significant adverse effects, either individually or cumulatively, on coastal resources:

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

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

The Coastal Act requires that new development, including land divisions, 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. Further, 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 reviewed land division applications to ensure that newly created or reconfigured parcels are of sufficient size, have access to roads and other utilities, are geologically stable and contain an appropriate potential building pad area where future structures can be developed consistent with the resource protection policies of the Coastal Act. In particular, the Commission has ensured that future development on new or reconfigured lots can minimize landform alteration and other visual impacts, and impacts to environmentally sensitive habitat areas.

The Commission has considered several projects that the applicants and the County of Los Angeles treated as “lot line adjustments” which actually resulted in major reconfiguration of lot

lines amongst several lots [4-96-28 (Harberger, et. al.) 4-96-150 (Rein, et. al.), 4-96-189 (Flinkman), 4-96-187 (Sohal), 4-04-026 (Malibu Ocean Ranches, LLC, et.al.)]. In these cases, the Commission has considered the proposed projects to actually be “redivisions” or resubdivisions of land whereby existing property boundary lines are significantly modified to redivide the project site into the same number or fewer wholly reconfigured lots. The Commission has analyzed these proposals just as it analyzes a new subdivision of lots. The Commission has only permitted such redivisions where adequate fire access and other public services are available and where the resultant lots could be developed minimizing impacts to coastal resources.

The applicant proposes to combine and resubdivide seven illegally subdivided parcels into three parcels totaling approximately 45.31 acres. The current configuration of these seven parcels, as well as an additional parcel, APN 4464-024-019, which is under separate ownership and is not included in this permit application, is the product of four attempted unpermitted subdivisions that were accomplished through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without the benefit of any coastal development permit. Prior to the unpermitted subdivisions, the Commission had, in two separate actions, approved four lots within the area now comprised of the seven subject parcels and APN 4464-024-019 (CDP Nos. P-2-17-78-2706 and 5-82-877).

The proposed lot line adjustment would not restore the approved parcel configuration, but would consolidate the seven unpermitted parcels into three parcels, consistent with the number of parcels approved previously by the Commission. Specifically, the proposed project would merge APNs 4464-024-021 and 4465-006-054 to create a new Lot 1; APN 4465-006-055 and parts of APNs 4464-024-020, 4464-024-023, and 4464-024-024 to create a new Lot 2; and APN 4464-024-022 and parts of APNs 4464-024-020, 4464-024-023, and 4464-024-024 to create a new Lot 3.

The land use designations of the certified Malibu/Santa Monica Mountains LUP provide with respect to the maximum allowable density and intensity of land use that may be permitted in any particular area. The Land Use Plan designates the proposed project site for three density categories: 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. 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. Based on these designations, the LUP would allow a maximum of four units on the property. The applicant proposes a lot combination and resubdivision that would result in three parcels. In addition, a fourth approximately 9,300 sq. ft. lot, APN 4464-024-019, which is under separate ownership and is not included in this application, was subdivided from the original parent parcel without benefit of a coastal development permit. Although this lot cannot be addressed in this permit application, it is appropriate to consider it in reviewing allowable density on the site. Based on these density designations, the proposed reconfigured parcels conform to the maximum allowable densities.

As discussed in Sections C. and D. below, the proposed reconfigured parcels, as conditioned by Special Conditions One (1) through Five (5), may be developed without significant adverse impacts to coastal resources. However, the Commission has concerns that current or future property owners may consider proposing a land division of the proposed parcels in the future. Any future subdivision of any of the reconfigured parcels would not be consistent with the cumulative impacts, visual resources, ESHA, and water quality policies of the Coastal Act.

Specifically, development of the subject sites with more than three residences would result in significantly greater adverse cumulative impacts associated with increased runoff from impervious surfaces, water quality impacts from polluted runoff and additional septic effluent, landform alteration, visual impacts, fuel modification, and other clearance of vegetation. Therefore, to ensure that the subject properties will never be further subdivided, **Special Condition Two (2)** requires the applicant to agree that no future subdivisions of the three subject parcels may occur. The proposed deed restriction will limit residential development to three large lots which may each feasibly be developed with a single family residence.

Therefore, the Commission finds that the proposed project, as conditioned, will not create impacts to coastal resources on an individual or cumulative basis. Thus, for all the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30250 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 LCP<sup>5</sup>.

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 coast<sup>6</sup>. 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 recognized<sup>7</sup>. These habitats support a high diversity of birds<sup>8</sup>, and provide refuge for many species of sensitive bats<sup>9</sup>. Typical wildlife in this habitat

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

<sup>6</sup> NPS 2000. op. cit.

<sup>7</sup> 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.

<sup>8</sup> 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,

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 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 corridor<sup>10</sup>, 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, riparian, and oak woodland habitat on the site is ESHA.

Significant 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 did, however, determine that a limited amount of development, including three small structures, a water well and pump, and electrical facilities serving the vested structures, were 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 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 development determined to be vested by Vested Rights Determination No. V-4-97-1, can be 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

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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

<sup>9</sup> 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.

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

impacted by the above-described unpermitted and non-vested development, meets the definition of ESHA under the Coastal Act.

The applicant proposes a lot line adjustment combining and resubdividing seven illegally subdivided parcels into three parcels. The current configuration of the subject parcels, as well as an additional parcel, APN 4464-024-019, which is under separate ownership and is not included in this permit application, is the product of four attempted unpermitted subdivisions that were accomplished through a complicated series of grant deeds, boundary line adjustments, and Certificates of Compliance obtained through the Los Angeles County Department of Regional Planning, and without the benefit of a coastal development permit. Prior to the unpermitted subdivisions, the Commission had, in two separate actions, approved four lots within the area now comprised of the seven subject parcels and APN 4464-024-019. The proposed lot line adjustment would not restore the approved parcel configuration, but would consolidate the seven unpermitted parcels into three parcels, consistent with the number of parcels approved previously by the Commission.

However, given the location of ESHA on the site and on adjacent properties, there will still be impacts to ESHA resulting from any future development of the three proposed parcels, including the construction of a pad, driveway, and fire department turnaround for each parcel, as well as the required fuel modification area around any habitable structures. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP<sup>11</sup>.

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

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

Zone B (Irrigated Zone) is 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 buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

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

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

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the 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. 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)<sup>12</sup>. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and “edge” many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral<sup>13</sup>.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms “super colonies” that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area<sup>14</sup>. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat<sup>15</sup>. These native ants are the primary food resource for the native coast horned lizard, a California “Species of Special Concern.” As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments<sup>16</sup>. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms.<sup>17</sup> The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats<sup>18</sup>.

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

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

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

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

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

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

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

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

<sup>19</sup> 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 seeds<sup>20</sup>.

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.

Although no improvements or physical development are proposed in this application, the applicant has submitted conceptual plans for proposed building areas as part of an associated but separate application for a restoration / development plan (CDP No. 4-05-150) (**Exhibit 10**). It appears that the conceptual development would result in multiple building sites of over 10,000 sq. ft. in size. In addition, the building sites do not cluster development to the maximum extent feasible, and do not minimize clearance of native vegetation for fuel modification purposes. Further, the only potential building area on Lot 1 would be located within a riparian oak woodland.

Through past permit actions, the Commission has limited the development area for residential development in ESHA to a maximum development area of 10,000 square feet in order to cluster development and minimize the adverse impacts to ESHA from fuel modification requirements. In the case of the proposed Lots 2 and 3, alternative building sites exist that would cluster development and minimize clearance of native vegetation in ESHA, including on adjacent National Park Service property. These sites are identified in **Exhibit 14**.

On the proposed Lot 1, however, no feasible building site exists that would allow for a minimum 100 foot setback from the dripline of riparian ESHA. In past permit actions, 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, and minimize human intrusion. Furthermore, Section 30231 requires maintenance of natural vegetation buffer areas that protect riparian habitats. Therefore, in order to minimize impacts to the riparian oak woodland ESHA, it is necessary to reconfigure the proposed Lot 1, and thus the adjacent proposed Lot 2, in order to provide a building area that allows an adequate setback from the riparian oak woodland ESHA. Accordingly, **Special Condition One (1)** requires the applicants to submit revised plans relocating the northeastern line of Lot 1 as shown in **Exhibit 13**.

In addition, in order to ensure that development on the newly configured lots is located to minimize impacts to ESHA, the Commission finds it necessary to limit any future development on each lot (Lots 1, 2, and 3) to a maximum building pad area of 10,000 sq. ft., generally located in the areas shown in **Exhibit 14**, as specified in **Special Condition Four (4)**. The applicant has submitted a geologic report ("Engineering Geology Feasibility Report," Earth Systems Southern California, March 6, 2003) that indicates that the building areas shown in **Exhibit 14** are suitable for proposed development. However, more in-depth, site-specific geologic studies will be required prior to any future construction. Therefore, **Special Condition Four (4)** provides that,

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

should site-specific geologic reports indicate that any of the building areas shown in **Exhibit 14** are not suitable for construction, alternative building area(s) may be allowed provided that such building areas are no greater than 10,000 sq. ft. in size and are approved as an amendment to this permit or as a new Coastal Development Permit(s).

Finally, **Special Condition Three (3)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

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

## **D. 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.

The proposed lot line adjustment would combine seven illegally subdivided parcels into three parcels consistent with the number of parcels previously approved by the Commission on the subject site. The proposed lot configuration, as revised to minimize impacts to ESHA pursuant to **Special Condition One (1)** (see Section C. above), would allow clustering of development within the lower, less visually prominent southern portion of the property and in the area of existing vested development, consistent with Policy 137 of the LUP. This portion of the property is also closer to McReynolds Road and existing residential development to the south. Potential building sites on each of the proposed lots that would minimize visual impacts, including landform alteration and visual prominence, are identified in **Exhibit 14**.

Therefore, in order to ensure that development on the newly configured lots is located to minimize visual impacts and landform alteration, the Commission finds it necessary to limit any future development on each lot (Lots 1, 2, and 3) to a maximum building pad area of 10,000 sq. ft., generally located in the areas shown in **Exhibit 14**, as specified in **Special Condition Four (4)**. The applicant has submitted a geologic report ("Engineering Geology Feasibility Report," Earth Systems Southern California, March 6, 2003) that indicates that the building areas shown in **Exhibit 14** are suitable for proposed development. However, more in-depth, site-specific geologic studies will be required prior to any future construction. Therefore, **Special Condition Four (4)** provides that, should site-specific geologic reports indicate that any of the building areas shown in **Exhibit 14** are not suitable for construction, alternative building area(s) may be allowed provided that such building areas are no greater than 10,000 sq. ft. in size and are approved as an amendment to this permit or as a new Coastal Development Permit(s).

For the reasons set forth above, the Commission finds that the proposed development, as conditioned, is consistent with Section 30251 of the Coastal Act.

## ***E. VIOLATION***

Unpermitted development has occurred on the subject parcel prior to submission of this permit application including, but not limited to, unpermitted subdivisions resulting in the creation of seven unpermitted parcels. In addition, as discussed in Section A. of this report, there is additional unpermitted development on the subject site that is the subject of numerous enforcement actions as well as litigation. The subject permit application addresses the

unpermitted subdivisions only. The applicant requests approval to combine the seven parcels created by the unpermitted subdivisions, and resubdivide them into three parcels.

In order to ensure that the matter of unpermitted development addressed in this application is resolved without delay after approval of the application, **Special Condition Five (5)** requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 90 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

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.

## **F. 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 Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicants. As conditioned, the proposed project will not create significant adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area that is consistent with the policies of Chapter 3 of the Coastal Act as required by §30604(a).

## **G. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

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