

CALIFORNIA COASTAL COMMISSION

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

Filed: 12/22/05
180th Day: 6/20/06
Staff: James Johnson
Staff Report: 4/26/06
Hearing Date: 5/11/06
Commission Action:



Th 19 c, d, & e

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO./APPLICANT: 4-05-043 (Kabir Sundher)

APPLICATION NO./APPLICANT: 4-05-044 (Spoony Sundher)

APPLICATION NO./APPLICANT: 4-05-045 (Tej Sundher)

AGENTS: Raubi Sundher, Erick Mason, Susan McCabe

PROJECT LOCATIONS:

Application No. 4-05-043: 21875 Briarbluff Drive, Malibu, Los Angeles County

Application No. 4-05-044: 21877 Briarbluff Drive, Malibu, Los Angeles County

Application No. 4-05-045: 21865 Briarbluff Drive, Malibu, Los Angeles County

PROJECT DESCRIPTIONS: These three separate applications are for the construction of a single family residence with related ancillary development on each of three separate contiguous parcels which will share a common driveway more specifically described as follows:

Application No. 4-05-043: Application of Kabir Sundher to construct a 4,754 sq. ft., 28 ft. - 37 ft. high, single family residence; 990 sq. ft., 3-car, partial underground garage; motorcourt; driveway; pool; septic system; approximately 2,993 cu. yds. of grading (2,383 cubic yards of cut and 610 cubic yards of fill) with and additional 650 cubic yards of grading for removal and recompaction); and retaining walls.

Application No. 4-05-044: Application of Spoony Sundher to construct a 6,052 sq. ft., 30 ft. high, single family residence; 875 sq. ft., 3-car garage; motorcourt; driveway; pool; septic system; 5,470 cu. yds. of grading (4,661 cubic yards of cut and 809 cubic yards of fill); and retaining walls.

Application No. 4-05-045: Application of Tej Sundher to construct a 3,739 sq. ft., 29 ½ ft high, single family residence; 746 sq. ft., 3-car garage; motorcourt; driveway; pool; tennis court; septic system; 5,066 cu. yds. of grading (4,985 cubic yards of cut and 81 cubic yards of fill) with an additional 707 cubic yards of grading for removal and recompaction; and retaining walls.

LOCAL APPROVALS RECEIVED:

Application Nos. 4-05-043, 044, and 045: Approval in Concept from Los Angeles County Regional Planning Department; Los Angeles County Health Department Approval in Concept for Private Sewage Disposal System; and Los Angeles County Fire Department Approval of Preliminary Fuel Modification Plan.

SUBSTANTIVE FILE DOCUMENTS:

Application Nos. 4-05-043, 044, 045: Engineering Geologic & Geotechnical Engineering Investigations by Stratra-Tech, Inc., dated February 28, 2005; Biological Study, dated July 26, 2005, by Klaus Radtke, Geo Safety, Inc.; Coastal Permit Application No. 4-03-107, Singh and Sundhers.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project in Application No. 4-05-043 with 12 Special Conditions addressing 1) Plans Conforming to Geologic Recommendations, 2) Landscaping, Erosion Control and Fuel Modification Plans, 3) Removal of Natural Vegetation, 4) Assumption of Risk, Waiver of Liability and Indemnity, 5) Future Development Restriction, 6) Structural Appearance, 7) Lighting Restriction, 8) Deed Restriction, 9) Drainage and Polluted Run-Off Control Plan, 10) Pool Drainage and Maintenance, 11) Habitat Impact Mitigation, Open Space Restriction, and 12) Conservation Easement.

Staff recommends **approval** of the proposed project in Application No. 4-05-044 with 10 Special Conditions addressing 1) Plans Conforming to Geologic Recommendations, 2) Landscaping, Erosion Control and Fuel Modification Plans, 3) Removal of Natural Vegetation, 4) Assumption of Risk, Waiver of Liability and Indemnity, 5) Future Development Restriction, 6) Structural Appearance, 7) Lighting Restriction, 8) Deed Restriction, 9) Drainage and Polluted Run-Off Control Plan, 10) Pool Drainage and Maintenance,

Staff recommends **approval** of the proposed project in Application No. 4-05-045 with 11 Special Conditions addressing 1) Plans Conforming to Geologic Recommendations, 2) Landscaping, Erosion Control and Fuel Modification Plans, 3) Removal of Natural Vegetation, 4) Assumption of Risk, Waiver of Liability and Indemnity, 5) Future Development Restriction, 6) Structural Appearance, 7) Lighting Restriction, 8) Deed Restriction, 9) Drainage and Polluted Run-Off Control Plan, 10) Pool Drainage and Maintenance, and 11) Conservation Easement. .

The subject site is located on the east slope of the Carbon Canyon watershed within the Santa Monica Mountains of Los Angeles County between Rambla Pacific and Las Flores Canyon Roads. The standard of review for these permit applications is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu/Santa Monica Mountains Land Use Plan serve as guidance. The proposed projects, as conditioned, are consistent with all applicable policies of the Coastal Act.

I. STAFF RECOMMENDATIONS:

A. Approval With Conditions Application No. 4-05-043 (Kabir Sundher):

MOTION: I move that the Commission approve Coastal Development Permit No. 4-05-043 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

B. Approval With Conditions Application No. 4-05-044 (Spoony Sundher):

MOTION: I move that the Commission approve Coastal Development Permit No. 4-05-044 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves the Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant

adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

C. Approval With Conditions Application No. 4-05-045 (Tej Sundher):

MOTION: I move that the Commission approve Coastal Development Permit No. 4-05-045 pursuant to the staff recommendation.

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. STANDARD CONDITIONS:

(Note: These Standard Conditions are applicable to all three Coastal Development Permit Nos. 4-05-043, 4-05-044, and 4-05-045.)

1. Notice of Receipt and Acknowledgment. The permits are not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of these permits and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, these permits 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(s) 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 permits may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permits.

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:

A. SPECIAL CONDITIONS FOR CDP 4-05-043 (KABIR SUNDHER):

(Note: These Special Conditions are applicable to Coastal Development Permit No. 4-05-043)

1. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the Engineering Geologic & Geotechnical Engineering Investigation, dated February 28, 2005 by Strata-Tech, Inc.. These recommendations (including those concerning onsite disposal, proposed grading, foundations on bedrock, lateral loads – spread footings, cast in place friction piles, retaining walls, seismic design, expansive soils, floor slabs, concrete flatwork, temporary excavations, drainage, supplemental consulting, and engineering consultation testing and observation) shall be incorporated into all final design and construction plans, and must be reviewed and approved by the consultant prior to commencement of development.

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

2. LANDSCAPE EROSION CONTROL AND FUEL MODIFICATION PLANS

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final landscaping, prepared by a licensed landscape architect or a qualified resource specialist, and erosion control/drainage plans prepared by a licensed engineer for review and approval by the Executive Director. The final landscaping and erosion control/drainage plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. All development shall conform to the approved landscaping and erosion control plans. The final plans shall incorporate the following criteria:

A) Landscaping and Erosion Control Plans

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist

primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U. S. Federal Government shall be utilized within the property.

- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required
- 5) Vegetation within 20 feet of the proposed residence and garage may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The final fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. Fuel modification and brush clearance shall be minimized to the maximum extent feasible consistent with minimum vegetation clearance requirements of the Forestry Department of Los Angeles County. In addition, the applicant shall submit evidence that the final fuel modification plan, as revised has been reviewed and approved by the Los Angeles County Fire Department, Forestry Division, Fire Prevention Bureau. Any irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed residence and garage shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
6. Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B of the final fuel modification plan approved by the Los Angeles County Fire Department pursuant to subsection Four (4) above. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition No. Six (6) below.

7. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
8. The plan shall include vertical elements, such as trees and shrubs, which will partially screen the appearance of the proposed structures as viewed from the Briarbluff Drive.

B) Interim Erosion Control Plan

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

C) Monitoring

Five (5) years from the date of completion of the proposed development, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The

supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

3. REMOVAL OF NATURAL VEGETATION

Removal of natural vegetation for the purpose of fuel modification within the 100-foot zone surrounding the proposed structures shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 100-200 foot fuel modification zone shall not occur until commencement of construction of the structures approved pursuant to this permit.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

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

5. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No.4-05-043. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall **not** apply to the entire subject Parcel. Accordingly, any future improvements on the property, including but not limited to the residence, garage, landscaping, fencing, gates, or grading, and clearing of vegetation other than as provided for in the approved fuel modification landscape and erosion control plan prepared pursuant to Special Condition Number Two (2), shall require an amendment to Permit No. 4-05-043 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. STRUCTURAL APPEARANCE

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development, permit no. 4-05-043. The palette samples shall be presented in a format not to exceed 8 1/2" X 11" X 1/2" in size. The palette shall include the colors proposed

for the all of the roofs, trims, exterior surfaces, retaining walls, driveways, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones). Including shades of green, brown and gray with no white or light shades, galvanized steel, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-043 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. LIGHTING RESTRICTION

A. The only outdoor night lighting allowed on the subject property are limited to the following to minimize night time intrusion of light and disruption of wildlife traversing this area at night within this rural area:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas and driveways, on the site. This lighting shall be limited to fixtures that do not exceed two feet in height, that are directed downward, and use incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
2. Security lighting attached to the residence, garage, studio, caretakers residence and gazebo that is controlled by motion detectors is limited to incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of Lumens, unless a higher wattage is authorized by the Executive Director.
3. The minimum lighting necessary for safe vehicular use of the driveway. That lighting shall be limited to incandescent bulbs that do not exceed 60 wafts, or energy efficient bulbs such as compact florescent That do not exceed a 12-watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.

B. No lighting on the including the slopes and flat areas, and no lighting for aesthetic purposes is allowed.

8. DEED RESTRICTION

Prior to issuance of the coastal development permit the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to these permits, the California Coastal Commission has

authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of these permits as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN

Prior to the issuance of the Coastal Development Permit No. 4-05-043 the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

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

10. POOL DRAINAGE AND MAINTENANCE

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for review and approval of the Executive Director, a written pool maintenance plan, that contains an agreement to install and use a no chlorine or low chlorine purification system and a

program to maintain proper pH, calcium and alkalinity balance in a manner that any runoff or drainage from the pool will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, the plan shall, at a minimum: 1) prohibit discharge of chlorinated pool and 2) prohibit discharge of chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters. The Permittee shall undertake development and maintenance in compliance with this pool maintenance agreement and program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

11. HABITAT IMPACT MITIGATION

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

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

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees

to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

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

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

2) Open Space Deed Restriction

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

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

3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore

or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

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

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

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

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Santa Monica Mountains Conservancy to mitigate adverse impacts to chaparral habitat ESHA. The fee shall be calculated as follows:

1. Development Area, Irrigated Fuel Modification Zones

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

2. Non-irrigated Fuel Modification Zones

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

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

12. Open Space Conservation Easement

No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the “open space conservation easement area”, as shown in **Exhibit 22** except for:

Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition Two or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission; drainage and polluted runoff control activities pursuant to Special Condition Nine and Special Condition Two, construction and maintenance of public hiking trails, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit; and construction and maintenance of roads, trails, and utilities pursuant to existing easements, if approved by the Commission in a new coastal development permit.

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority (“MRCA”) on behalf of the people of the State of California an open space conservation easement over the “open space conservation easement area” described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 22**. The recorded document shall reflect that no development shall occur within the open space conservation easement area except as otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

B. SPECIAL CONDITIONS FOR CDP 4-05-044 (SPOONY SUNDHER)

(Note: These Special Conditions are applicable to Coastal Development Permit No. 4-05-044)

1. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the Engineering Geologic & Geotechnical Engineering Investigation, dated February 28, 2005 by Strata-Tech, Inc.. These recommendations (including those recommendations concerning onsite disposal, proposed grading, foundations on bedrock, lateral loads – spread footings, cast in place friction piles, retaining walls, seismic design, expansive soils, floor slabs, concrete flatwork, temporary excavations, drainage, supplemental consulting, and engineering consultation testing and observation) shall be incorporated into all final design and construction plans, and must be reviewed and approved by the consultant prior to commencement of development.

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

2. LANDSCAPE EROSION CONTROL AND FUEL MODIFICATION PLANS

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final landscaping, prepared by a licensed landscape architect or a qualified resource specialist, and erosion control/drainage plans prepared by a licensed engineer for review and approval by the Executive Director. The final landscaping and erosion control/drainage plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. All development shall conform to the approved landscaping and erosion control plans. The final plans shall incorporate the following criteria:

A) Landscaping and Erosion Control Plans

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U. S. Federal Government shall be utilized within the property.

- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required
- 5) Vegetation within 20 feet of the proposed residence and garage may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The final fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. Fuel modification and brush clearance shall be minimized to the maximum extent feasible consistent with minimum vegetation clearance requirements of the Forestry Department of Los Angeles County. In addition, the applicant shall submit evidence that the final fuel modification plan, as revised has been reviewed and approved by the Los Angeles County Fire Department, Forestry Division, Fire Prevention Bureau. Any irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed residence and garage shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 6) Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B of the final fuel modification plan approved by the Los Angeles County Fire Department pursuant to subsection Four (4) above. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition No. Six (6) below.
- 7) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 8) The plan shall include vertical elements, such as trees and shrubs, which will partially screen the appearance of the proposed structures as viewed from the Briarbluff Drive.

B) Interim Erosion Control Plan

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

C) Monitoring

Five (5) years from the date of completion of the proposed development, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

3. REMOVAL OF NATURAL VEGETATION

Removal of natural vegetation for the purpose of fuel modification within the 100-foot zone surrounding the proposed structures shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 100-200 foot fuel modification zone shall not occur until commencement of construction of the structures approved pursuant to this permit.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

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

5. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No.4-05-044. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall **not** apply to the entire subject Parcel. Accordingly, any future improvements on the property, including but not limited to the residence, garage, landscaping, fencing, gates, or grading, and clearing of vegetation other than as provided for in the approved fuel modification landscape and erosion control plan prepared pursuant to Special Condition Number Two (2), shall require an amendment to Permit No. 4-05-044 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. STRUCTURAL APPEARANCE

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development, permit no. 4-05-044. The palette samples shall be presented in a format not to exceed 8 1/2" X 11" X 1/2" in size. The palette shall include the colors proposed for the all of the roofs, trims, exterior surfaces, retaining walls, driveways, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones). Including shades of green, brown and gray with no white or light shades, galvanized steel, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal

Development Permit Nos. 4-05-044 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. LIGHTING RESTRICTION

- A.** The only outdoor night lighting allowed on the subject property are limited to the following to minimize night time intrusion of light and disruption of wildlife traversing this area at night within this rural area:
- 1.** The minimum necessary to light walkways used for entry and exit to the structures, including parking areas and driveways, on the site. This lighting shall be limited to fixtures that do not exceed two feet in height, that are directed downward, and use incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
 - 2.** Security lighting attached to the residence, garage, studio, caretakers residence and gazebo that is controlled by motion detectors is limited to incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of Lumens, unless a higher wattage is authorized by the Executive Director.
 - 3.** The minimum lighting necessary for safe vehicular use of the driveway. That lighting shall be limited to incandescent bulbs that do not exceed 60 wafts, or energy efficient bulbs such as compact florescent That do not exceed a 12-watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
- B.** No lighting on the including the slopes and flat areas, and no lighting for aesthetic purposes is allowed.

8. DEED RESTRICTION

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

9. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN

Prior to the issuance of the Coastal Development Permit No. 4-05-044 the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

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

10. POOL DRAINAGE AND MAINTENANCE

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for review and approval of the Executive Director, a written pool maintenance plan, that contains an agreement to install and use a no chlorine or low chlorine purification system and a program to maintain proper pH, calcium and alkalinity balance in a manner that any runoff or drainage from the pool will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, the plan shall, at a minimum: 1) prohibit discharge of chlorinated pool and 2) prohibit discharge of chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters. The Permittee shall undertake development and maintenance in compliance with this pool maintenance agreement and program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

C. SPECIAL CONDITIONS FOR CDP 4-05-045 (TEJ SUNDHER)

(Note: These special Conditions are applicable to Coastal Development Permit Nos. 4-05-045)

1. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the Engineering Geologic & Geotechnical Engineering Investigation, dated February 28, 2005 by Strata-Tech, Inc.. These recommendations (including those recommendations concerning onsite disposal, proposed grading, foundations on bedrock, lateral loads – spread footings, cast in place friction piles, retaining walls, seismic design, expansive soils, floor slabs, concrete flatwork, temporary excavations, drainage, supplemental consulting, and engineering consultation testing and observation) shall be incorporated into all final design and construction plans, and must be reviewed and approved by the consultant prior to commencement of development.

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

2. LANDSCAPE EROSION CONTROL AND FUEL MODIFICATION PLANS

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final landscaping, prepared by a licensed landscape architect or a qualified resource specialist, and erosion control/drainage plans prepared by a licensed engineer for review and approval by the Executive Director. The final landscaping and erosion control/drainage plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. All development shall conform to the approved landscaping and erosion control plans. The final plans shall incorporate the following criteria:

A) Landscaping and Erosion Control Plans

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U. S. Federal Government shall be utilized within the property.

- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required
- 5) Vegetation within 20 feet of the proposed residence and garage may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The final fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. Fuel modification and brush clearance shall be minimized to the maximum extent feasible consistent with minimum vegetation clearance requirements of the Forestry Department of Los Angeles County. In addition, the applicant shall submit evidence that the final fuel modification plan, as revised has been reviewed and approved by the Los Angeles County Fire Department, Forestry Division, Fire Prevention Bureau. Any irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed residence and garage shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 6). Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 7) The plan shall include vertical elements, such as trees and shrubs, which will partially screen the appearance of the proposed structures as viewed from the Briar Bluff Drive.

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

- 2) The plan shall specify that should grading take place during the rainy season (November 1 - March 31) the applicant shall install or construct temporary sediment basins (including debris basins, de-silting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geo-fabric covers or other appropriate cover, install geo-textiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geo-textiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five (5) years from the date of completion of the proposed development, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

3. REMOVAL OF NATURAL VEGETATION

Removal of natural vegetation for the purpose of fuel modification within the 100-foot zone surrounding the proposed structures shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 100-200 foot fuel modification zone shall not occur until commencement of construction of the structures approved pursuant to this permit.

4. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

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

5. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No.4-05-045. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall **not** apply to the entire subject Parcel. Accordingly, any future improvements on the property, including but not limited to the residence, garage, landscaping, fencing, gates, or grading, and clearing of vegetation other than as provided for in the approved fuel modification landscape and erosion control plan prepared pursuant to Special Condition Number Two (2), shall require an amendment to Permit Nos.4-05-045 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. STRUCTURAL APPEARANCE

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development, permit no. 4-05-045. The palette samples shall be presented in a format not to exceed 8 1/2" X 11" X 1/2" in size. The palette shall include the colors proposed for the all of the roofs, trims, exterior surfaces, retaining walls, driveways, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones). Including shades of green, brown and gray with no white or light shades, galvanized steel, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-045 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. LIGHTING RESTRICTION

- A.** The only outdoor night lighting allowed on the subject property are limited to the following to minimize night time intrusion of light and disruption of wildlife traversing this area at night within this rural area:
1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas and driveways, on the site. This lighting shall be limited to fixtures that do not exceed two feet in height, that are directed downward, and use incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
 2. Security lighting attached to the residence, garage, studio, caretakers residence and gazebo that is controlled by motion detectors is limited to incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent that do not exceed a 12 watt rating, or bulbs generating the equivalent amount of Lumens, unless a higher wattage is authorized by the Executive Director.
 3. The minimum lighting necessary for safe vehicular use of the driveway. That lighting shall be limited to incandescent bulbs that do not exceed 60 watts, or energy efficient bulbs such as compact florescent That do not exceed a 12-watt rating, or bulbs generating the equivalent amount of lumens, unless a higher wattage is authorized by the Executive Director.
- B.** No lighting on the including the slopes and flat areas, and no lighting for aesthetic purposes is allowed.

8. DEED RESTRICTION

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

9. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN

Prior to the issuance of the Coastal Development Permit No. 4-05-045 the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

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

10. POOL DRAINAGE AND MAINTENANCE

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for review and approval of the Executive Director, a written pool maintenance plan, that contains an agreement to install and use a no chlorine or low chlorine purification system and a program to maintain proper pH, calcium and alkalinity balance in a manner that any runoff or drainage from the pool will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, the plan shall, at a minimum: 1) prohibit discharge of chlorinated pool and 2) prohibit discharge of chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters. The Permittee shall undertake development and maintenance in compliance with this pool maintenance agreement and

program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

11. Open Space Conservation Easement

No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the "open space conservation easement area", as shown in **Exhibit 23** except for:

Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition two or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission; drainage and polluted runoff control activities pursuant to Special Condition nine and Special Condition Two, construction and maintenance of public hiking trails, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit; and construction and maintenance of roads, trails, and utilities pursuant to existing easements, if approved by the Commission in a new coastal development permit.

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority ("MRCA") on behalf of the people of the State of California an open space conservation easement over the "open space conservation easement area" described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 23**. The recorded document shall reflect that no development shall occur within the open space conservation easement area except as otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. PROJECT DESCRIPTIONS AND HISTORY

1. Project Descriptions

The three separate coastal development permit applications which are addressed in this combined staff report are for the construction of a single family residence with related ancillary development on each of the three separate contiguous parcels which will share a common driveway and are described in detail below:

Application No. 4-05-043:

The applicant proposes to construct a 4,754 sq. ft., approximately 28 ft. to 37 ft. high, single family residence, 990 sq. ft.; 3-car, partial underground garage; motorcourt; driveway; pool; septic system; and numerous retaining walls on "Parcel 1" at 21875 Briarbluff Drive (Exhibits 3, 4, 9 – 12). A portion of a common driveway shared with Parcels 2 and 3 noted in Applications 4-05-044 and 045 is also included in this subject application including a cul-de-sac.

The proposed project also includes a total amount of grading consisting of approximately 2,993 cu. yds. of grading (2,383 cubic yards of cut and 610 cubic yards of fill). In addition, approximately 650 cubic yards of grading for removal and recompaction will occur. Approximately 1,773 cubic yards of excavated material will be exported to a disposal site located outside the Coastal Zone. The details of this proposed grading include:

Structures:

830 cubic yards of cut, 830 cubic yards of export.

Fire access and remedial fill slope:

1059 cubic yards of cut and 550 cubic yards of fill

Driveways, sideyard, pool yard:

494 cubic yards of cut, 60 cubic yards of fill

The subject site will be accessed from Briarbluff Drive across two adjoining vacant parcels located to the south of the subject parcel. These two adjoining parcels include proposed residences filed as related CDP Application Nos. 4-05-044 and 4-05-045, which are also included in this combined staff report.

Application No. 4-05-044:

The applicant proposes to construct a 6,052 sq. ft., 28 ft. to 30 ft high, single family residence; 875 sq. ft., 3-car, motorcourt; driveway; pool; septic system; with numerous retaining walls on "Parcel 2" at 21877 Briarbluff Drive (Exhibits 5, 6, 13 – 15). A portion of a common driveway leading to this subject building site is shared with Parcel 3 (which is also

included as part of related CDP Application 4-05-045) is also included in this subject application.

The proposed project also includes a total amount of grading consisting of 5,470 cu. yds. of grading (4,661 cubic yards of cut and 809 cubic yards of fill). In addition, approximately 1,313 cubic yards of grading for removal and recompaction will occur. Approximately 3,852 cubic yards of excavated material will be exported to a disposal site located outside the Coastal Zone. The details of this proposed grading include:

Structures:

1,259 cubic yards of cut, 85 cubic yards of fill, and 1,174 cubic yards of export.

Fire access and remedial fill slope:

905 cubic yards of cut, 344 cubic yards of fill, 561 cubic yards of import.

Driveways, sideyard, pool yard:

2,497 cubic yards of cut, 380 cubic yards of fill, 2,117 cubic yards of export.

The subject site will be accessed from Briarbluff Drive across one adjoining parcel (Parcel 3) located to the south of the subject parcel. A portion of a common driveway leading to this subject building site is shared with Parcels 1 and 3 noted in Application Nos. 4-05-043 and 045 which is also included in this subject application. These adjoining parcels include separate proposed residences filed as related CDP Application Nos. 4-05-043 and 045, which are also included in this combined staff report..

Application No. 4-05-045:

The applicant proposes to construct a 3,739 sq. ft., 29.5 ft. single family residence; 746 sq. ft., 3-car garage; motorcourt; driveway; pool, septic system; and numerous retaining walls on "Parcel 3" at 21865 Briarbluff Drive (Exhibits 7, 8, 16 – 20). A portion of a common driveway leading to this subject building site is shared with Parcels 1 and 2 (noted in the two related CDP Application Nos. 4-05-043 and 044) which is also included in this subject application.

The proposed project also includes a total amount of grading consisting of 5,066 cu. yds. of grading (4,985 cubic yards of cut and 81 cubic yards of fill). In addition, approximately 707 cubic yards of grading will occur for removal and recompaction. Approximately 4,904 cubic yards of excavated material will be exported to a disposal site located outside the Coastal Zone. The details of this proposed grading include:

Structures:

1,614 cubic yards of cut and 1,614 cubic yards of export.

Fire access and remedial fill slope:

1,523 cubic yards of cut, 1,523 cubic yards of export.

Driveways, sideyard, pool yard:

1,848 cubic yards of cut, 81 cubic yards of fill, 1,767 cubic yards of export.

The subject site will be accessed from Briarbluff Drive along a common driveway and then direct to the building site located on the southwest portion of the subject parcel.

Staff has worked with the applicants to reduce the quantity of the proposed grading and the size of the building pads to the minimum necessary, consistent with Los Angeles County Fire Department requirements, to construct these proposed residences and attached garages each with a pool and one with a tennis court on Parcel 3.

2. History and Location

These three parcels were the subject of a re-division of three lots and lot line adjustment approved by the Commission on September 10, 2004. Coastal Permit Waiver No. 4-03-107-W consisted of the after-the-fact approval of the re-division of three vacant parcels and a minor lot line adjustment. No new parcels were created and no physical development was proposed at the time. The size of the resulting parcels are 2.29 acres for Parcel 1 (Application No. 4-05-043), 3.05 acres for Parcel 2 (Application No. 4-05-044), and 2.51 acres for Parcel 3 (Application No. 4-05-045). Parcel 3 located along Briar Bluff Drive had at one time been developed with a single family residence which had been destroyed by fire in the past. The three subject parcels are located on a hillside which rises in elevation from Briarbluff Road, which is located to the south. Parcel 1 is located furthest upslope and is the highest in elevation while Parcel 3 (located adjacent to Briarbluff Road) is the lowest in elevation. (Exhibits 1-8)

These three parcels are located at the northwest corner of Briarbluff Drive and Azurelee Drive between Rambla Pacifico on the west and Las Flores Canyon on the east. Parcel 3 has street frontage on Briarbluff Drive where the common driveway for the three parcels originates from Briarbluff Drive. Parcels 1 and 2 do not have street frontage on either Briarbluff or Azurelee Drives. The subject sites are vacant and covered with relatively undisturbed mixed chaparral vegetation on portions of Parcels 1 and 3. The remaining portions of the parcels, and nearly all of Parcel 2, includes lands which have been disturbed as a result of fuel modification for residential development on adjoining properties, including a former residence on an adjacent property at 21877 Briarbluff Drive which burned in the Malibu Fire of 1993.

Surrounding land uses include residentially developed properties to the west, southwest, and east. There is one vacant parcel located immediately south of Azurelee Road and numerous vacant parcels located to the north and northeast of the subject sites which are relatively undisturbed and vegetated with dense chaparral vegetation (Exhibit 24).

B. 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. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area. The Commission is required to review the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public. In this case, the proposed resubdivision (including the identification of two future building pads on two of the lots) and the construction of the new residence, garage, retaining walls and driveway raises two issues regarding the siting and design of new development including: (1) whether or not public views from public roadways will be adversely effected; and, (2) whether or not public views from public trails will be effected.

The subject site is located in a partial developed area, with residentially developed parcels located immediately to the west, southeast, and west and additional vacant parcels located to the south, and north of the subject site. Although two of the proposed building sites, Parcels 1 and 2, are located along a descending ridgeline, staff notes that they will be located well below the significant ridgelines in the area located to the north about Rambla Pacifico. The proposed building site for Parcel 3 is located at the base of the descending ridgeline (adjacent to the road) where a relatively flat area is located. Staff notes that the building locations will be readily visible from public roadways located to the south, west, and east, and public streets including Rambla Pacifico, Azurelee Drive, and Briar Bluff Drive. The proposed development will not be visible from either Hume Road or Las Flores Canyon Road or any public lands or trails.

Within areas of the Santa Monica Mountains with chaparral and coastal sage scrub, which is considered ESHA, the Commission has required, through past permit actions, that development be clustered on a lot and the building pad size not exceed 10,000 sq. ft. as measured from the top of the cut slope to the bottom of the fill slope, excluding the size of the necessary fire truck hammerhead turnaround area, to minimize impacts on this sensitive habitat and the surrounding watershed.

The proposed project includes construction of a new common driveway which will access each of the three subject parcels, as well as a fourth parcel which is not a part of this application. The proposed driveway is the minimum length necessary to access all three of the subject parcels. The proposed grading to create this common driveway is divided among the three parcels in a manner identifying the portion of the common driveway that is necessary to access each parcel. The proposed grading and landform alteration that will occur for the construction of the residence on Parcel 1 (as proposed in Application No. 4-05-043) would involve approximately 2,383 cubic yards of cut, 610 cubic yards of fill, 650 cubic yards of removal and recompaction for remedial grading of the adjacent slope and would result in 1,773 cubic yards of material to export to a disposal site located outside the

Coastal Zone. The majority of the proposed grading is for the portion of the proposed common driveway that will serve this subject Parcel 1. Additional grading quantities for the initial portions of the shared common driveway are attributed to the other two parcels (Parcels 2 and 3) noted below. The proposed building pad on Parcel 1 requires 830 cubic yards of cut material which will be exported offsite. The remainder of the proposed grading is for the individual driveway, side yard and pool yard areas.

The proposed grading and landform alteration that will occur for the construction of the residence on Parcel 2 (as proposed in Application No. 4-05-044) would involve approximately 4,661 cubic yards of cut, 809 cubic yards of fill, 1,313 cubic yards of removal and recompaction for remedial grading of the adjacent slope, and would result in 3,852 cubic yards of material to export to a disposal site located outside the Coastal Zone. The majority of the proposed grading is for the portion of the proposed common driveway that will serve this subject Parcel 2. Additional grading quantities for the initial portions of the shared common driveway are attributed to the other two parcels (Parcels 1 and 3) noted above and below. The proposed building pad on Parcel 2 requires 1,259 cubic yards of cut, 85 cubic yards of fill, and will result in 1,174 cubic yards of export. The remainder of the proposed grading is for the individual driveway, side yard and pool yard areas.

The proposed grading and landform alteration that will occur for the construction of the residence on Parcel 3, as proposed in Application No. 4-05-045, would involve of 4,985 cubic yards of cut, 81 cubic yards of fill, 707 cubic yards of removal and recompaction for remedial grading of the adjacent slope, and 4,904 cubic yards of export to a disposal site located outside the coastal zone. The majority of the proposed grading is for the portion of the proposed common driveway that will serve this subject Parcel 3. Additional grading quantities for the initial portions of the shared common driveway are attributed to the other two parcels (Parcels 1 and 2) noted above. The proposed building pad on Parcel 3 requires 1,614 cubic yards of cut and 1,614 cubic yards of export. The remainder of the proposed grading is for the individual driveway, side yard, pool yard and tennis court areas.

The Commission finds that the three proposed residences have been designed in a manner that will cluster development to allow for overlapping fuel modification zones between each of the three residences in order to minimize the amount of vegetation removal that will occur both on and offsite. However, even though the proposed residences will be clustered, the proposed development will be visible from public viewing areas and will result in some unavoidable adverse impacts to views from public roads located to the west, south and east, including Rambla Pacifico, Azurlee Drive, and Briar Bluff Drive. Visual impacts associated with proposed grading, and the structures themselves, can be reduced by the use of appropriate and adequate landscaping. In past permit actions in the Santa Monica Mountains, the Commission has found that the use of native plant materials in landscaping plans can soften the visual impact of construction in the Santa Monica Mountains. The use of native plant materials to revegetate graded and cleared areas on the subject site, can reduce the adverse effects of erosion, which can degrade visual resources in addition to causing increased siltation pollution in downslope areas, streams, and ESHAs while also serving to soften the visual appearance of development within areas of high scenic quality. Therefore, **Special Condition Two (2)** of CDPs 4-05-043, 044, and 045 requires the applicants to ensure that the vegetation on site remains visually compatible with the native

flora of surrounding areas. Implementation of Special Condition Two (2) for CDPs 4-05-043, 044, and 045 will soften the visual impact of the development from public view areas. In addition, **Special Condition Number Two** (2) has been required to ensure that vertical elements, such as trees and shrubs, are planted on site which partially screen the appearance of the proposed structures as viewed from Rambla Pacifico, Azurlee Drive, and Briar Bluff Drive. To ensure that the final approved landscaping plans are successfully implemented, Special Condition Two (2) for CDPs 4-05-043, 044, and 045 also requires the applicants to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

The visual impact of the proposed structures and driveway can be further reduced by requiring these structures be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows associated with the proposed development be of a non-reflective glass type. In order to ensure that the structural appearance, i.e. color of the residence, garage, roofs, retaining walls, and driveway and the potential glare of the glass windows, will not create adverse visual impacts from the public trails, the Commission finds it necessary to require the applicant to use colors compatible with the colors found in the surrounding area for exterior materials of the proposed structures and driveway and non-glare glass for all proposed windows as required by **Special Condition Number Six** of CDPs 4-05-043, 044, and 045.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. In this case, not only the subject site visible from public roads but the subject Parcels 1 and 2 also contains environmentally sensitive habitat. Therefore, **Special Condition Number Seven** of CDPs 4-05-043, 044, and 045 requires that night lighting, if any, shall be the minimum necessary for lighting, directed downward, be of low intensity, at low height and shielded; security lighting, if any, shall be controlled by motion detector to avoid creating adverse night time visual impacts. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity lighting and security lighting controlled by a motion detector will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area.

Further, regarding future developments or improvements, certain types of development to the property, normally associated with single-family residences, which might otherwise be exempt from the requirement for a coastal permit, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with each parcel, which might otherwise be exempt, is reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition Number Five** of CDPs 4-05-043, 044, 045, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act and that residential development will be limited to the identified building location identified by the applicant. In addition, **Special Condition Number Eight** of CDPs 4-05-043, 044, and 045 requires the applicants

to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject properties and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the Application Nos. 4-05-043, 044, and 045, as conditioned, minimize adverse effects to public views and minimizes the alternation of natural landforms. Therefore, the Commission finds that the proposed projects, as conditioned, are consistent with Section 30251 of the Coastal Act.

C. HAZARDS AND GEOLOGIC STABILITY

In Application Nos. 4-05-043, 044 and 045, the proposed development is located in the Malibu/Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

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

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

1. Geology

The applicant proposes in Application Nos. 4-05-043, 044, and 045 to construct three residences and associated development as noted above in the project description.

The applicants have submitted three separate reports entitled, Engineering Geologic & Geotechnical Engineering Investigation, by Strata-Tech, dated February 28, 2005. Each of these reports conclude that:

It is the opinion of the undersigned that if constructed in accordance with our recommendations and properly maintained as presented in our report, (1) the proposed structure(s) will be safe against hazard from landslide, settlement, or slippage, and that (2) the proposed building or grading construction will have no adverse effect on the stability of property outside the building site. The nature and extent of the tests conducted for purposes of this declaration are, in the opinion of the undersigned, in conformance with generally accepted practice in the area. Test findings and statements of professional opinion do not constitute a guarantee or warranty, expressed or implied.

The geology and engineering consultants conclude that the proposed three developments are feasible and will be free from geologic hazard provided their recommendations are

incorporated into the proposed development. These reports included several recommendations to be incorporated into the construction of each project: foundations on bedrock, lateral loads – spread footings, cast-in-place friction piles, lateral loads – piles, retaining walls, seismic design, expansive soils, concrete flatwork, temporary excavations, drainage, supplemental consulting. To ensure that the recommendations of these consultants have been incorporated into all proposed development the Commission, as specified in **Special Condition Number One** of CDPs 4-05-043, 044, and 045, requires the applicants to comply with all the recommendations of the consulting geologist and engineer as conforming to all recommendations for the proposed projects. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pads will minimize erosion and add to the geologic stability of the project sites. To ensure that adequate drainage and erosion control are included in the proposed developments the Commission requires the applicants to submit drainage and interim erosion control plans certified by the consultants, as specified in **Special Condition Numbers Two and Nine** of CDPs 4-05-043, 044, and 045.

The Commission also finds that landscaping of graded and disturbed areas on the subject site will serve stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. **Special Condition Number Two** of CDPs 4-05-043, 044, 045 also requires the applicants to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project sites.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission notes that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion as required by **Special Condition Number Two** of CDPs 4-05-043, 044, 045.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition No. Three** of CDPs 4-05-043, 044, 045. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition No. Three** of CDPs 4-05-043, 044, 045 avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission finds that the proposed projects, as conditioned, will serve to minimize potential hazards of the project site and adjacent properties.

2. Wild Fire

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

Due to the fact that the proposed projects are located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition No. Four** of CDPs 4-05-043, 044, 045, the assumption of risk, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of **Special Condition No. Four** of CDPs 4-05-043, 044, 045, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted projects.

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

D. Environmentally Sensitive Resources

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

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

Section **30231** states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface

water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 states:

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

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

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

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

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

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Monica Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in the memo "Designation of ESHA in the Santa Monica Mountains, dated March 25, 2003 by John Dixon (Exhibit 21), 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 LCP¹.

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

Commission staff visited the subject property on August 12, 2004. Staff confirmed that the majority of Parcel 1 consists primarily of chaparral vegetation with a small area of non-native grass in the vicinity of the building site. Staff also confirmed that the majority of Parcel 2 consisted primarily of non-native grasses and very limited non contiguous chaparral, and that the majority of Parcel 3 consisted primarily of chaparral vegetation with the exception of the immediate vicinity of the building site and tennis court which is characterized as an existing disturbed area that is vegetated with non-native grasses (Exhibit 24). The areas of non-native grasses on Parcels 2 and 3 appear to be the result of past fuel modification for an existing residence located on an adjacent neighboring parcel to the southwest and a previously existing residence on another neighboring parcel located to the southeast which burned in the Malibu Fire in 1993.

The chaparral vegetation on Parcels 1 and 3 are part of a large contiguous area of chaparral habitat that extends relatively undisturbed to the north and west of the two subject Parcels 1 and 3.

The applicant submitted four reports addressing the biological resources on site for the three subject parcels and surrounding vicinity, including one discussion titled: "Biological Study For Properties located within or Adjacent to Potential Environmentally Sensitive Habitat Areas" dated 7-25-2005, by Klaus Radtke, Ph.D. Geo Safety, Inc. In addition, there are three separate reports for each of the subject Parcels 1, 2, and 3 each titled: "Biological Study" dated July 26, 2005 by Klaus Radtke.

In the report titled: "Biological Study For Properties located within or Adjacent to Potential Environmentally Sensitive Habitat Areas", an alternatives analysis was presented that concluded given the present approved lot line configurations and steep topography, alternative building sites for Parcel 1 are virtually non-existent. Parcel 1 is identified as entirely located within an ESHA. The applicant had originally proposed to grade a building pad significantly larger than 10,000 sq. ft. in area. In order, to minimize impacts to environmentally sensitive habitat and minimize landform alteration, Staff requested that the applicant reduce the size of the proposed building pad to less than 10,000 sq. ft. in size. This report further notes that except for a reduction in the size of the pool or their elimination, there is little room to further reduce the impact of development on Parcel 1. At the request of Staff, the applicant has reduced the size of the building pad to only 9,991 sq. ft. in area, including the size of yard and pool area.

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

The report titled "Biology Study for 21873 Briarbluff Drive, Malibu (Parcel 1)" by Klaus Radtke, states that the undisturbed portion of Parcel 1 consists of Greenbark Ceanothus chaparral. To the north beyond Parcel 1, the native vegetation is classified as Laurel Sumac Chaparral. Fuel modification for Parcel 1 will extend 200 feet from the building site and overlaps the fuel modification required for Parcels 2 and 3 to the south.

The report titled "Biology Study for 21877 Briarbluff Drive, Malibu (Parcel 2)" by Klaus Radtke, identifies that the native vegetation within and southerly and westerly of the development footprint on Parcel 2 has been almost entirely removed due to overlapping fuel modification zones from nearby residences on adjacent properties. The first residence was located about 110 feet to the south of Parcel 2 at 21877 Briarbluff Drive. This residence was destroyed during the September 25, 1993 Topanga Fire and was not rebuilt. The second residence is located at 2688 Rambla Pacifico about 220 feet to the southwest of Parcel 2 and is still existing.

In addition, the report titled "Biology Study for 21865 Briarbluff Drive, Malibu (Parcel 3)" by Klaus Radtke, also identifies that the native vegetation has been almost entirely removed on the project site within the 200 foot circular fuel modification zone of the overlapping nearby residences and former residences which have been constructed on neighboring properties. The fuel modification zone for the existing residence on the neighboring parcel at 2688 Rambla Pacifico overlaps the western 100 to 200 foot zone fuel modification zone for the new proposed residence on Parcel 3. The existing residence located on the neighboring parcel at 2736 Rambla Pacifico (to the south) also overlaps the 100 to 200 foot fuel modification zone for the new proposed residence on Parcel 3. In addition, although extensive native Ceanothus chaparral vegetation, which constitutes ESHA, is located north of the subject site's entrance driveway along Briar Bluff Drive, this area of native vegetation will not be impacted by any of the proposed development on Parcel 3.

Based on the above reports and inspection of the site by Commission staff, the Commission finds that native chaparral, which constitutes ESHA, is located on the western portion of Parcel 1 and the northeastern portion of Parcel 3. Parcel 2 does not contain any areas that are predominantly vegetated with chaparral and does not contain any ESHA. The above referenced biology reports state that there are no state or federal listed threatened, endangered, or otherwise special-status wildlife species observed or detected on site. Therefore, due to the important ecosystem roles of chaparral in the Santa Monica Mountains (detailed in Exhibit 21), and the fact that portions of Parcels 1 and 3 are relatively undisturbed and part of a large, unfragmented block of chaparral habitat which extends offsite to the north and northwest, the Commission finds that the chaparral on the subject property meets the definition of ESHA under the Coastal Act.

Through past permit actions, the Commission has limited the development area for residential development in ESHA to a maximum development area of 10,000 square feet in order to cluster development and minimize the adverse impacts to ESHA from fuel modification requirements. In this case, the applicant proposes a building pad of 9,991 sq. ft. in size on Parcel 1 consistent with past Commission action. On Parcels 2 and 3 the proposed development areas and their associated 200 ft. radius fuel modification zones will

not be located within ESHA or result in any adverse impacts to ESHA. Parcel 2 does not include any ESHA and its fuel modification zone will completely overlap the fuel modification zones for both Parcels 1 and 3. In addition, although there is ESHA located on portions of Parcel 3, the proposed development area, including the residence and tennis court, will be located entirely within the existing fuel modification areas of the existing and former residences on neighboring parcels and will not overlap onto the ESHA located to the northeastern portion of Parcel 3. Therefore, the development areas on Parcels 2 and 3 are not subject to maximum development area of 10,000 sq. ft.

As noted above, portions of Parcels 1 and 3 constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development within ESHA to only those uses that are dependent on the resource. As part of the proposed CDP Application 4-05-043, the applicant proposes to construct a single family residence, garage, and pool on Parcel 1 which will require the removal of chaparral ESHA as a result of the fuel modification for fire protection purposes that will be required for the new proposed development. Since residential development does not have to be located within ESHAs to function, the Commission does not consider residential related development to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

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

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

to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the three applicants purchased these three parcels, each approximately 2 to 3 acres in size, in January 2001 for an unknown amount of money. The parcels are designated in the County's certified Land Use Plan (1986) for residential use. Residential development has previously been approved on other parcels in the vicinity that generally contained the same type of habitat as the applicant's parcel. At the time the applicant purchased the parcels, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on this fact, along with the presence of existing and approved residential development on nearby parcels, the applicant had reason to believe that they had purchased parcels on which they would be able to build a residence on each parcel.

The Commission finds that in this particular case, other allowable uses for the subject property, such as a recreational park or a nature preserve, although possible are not feasible as they would not provide the owner an economic return on the investment. The subject three parcels are surrounded by other residentially developed parcels located to the west, south and east. There are currently no offers to purchase the subject parcels from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for these sites other than residential development. The Commission finds, therefore, that outright denial of all residential use on these parcels would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

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

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the properties.

As discussed above, the proposed development on Parcel 1 will be approved within ESHA in order to provide an economically viable use. The construction of the residence on Parcel 1,

pursuant to CDP Application 4-05-043, in its proposed location, is sited in a manner to allow for the clustering of development with the other proposed development of Parcels 2 and 3 and use of a single common driveway for all three parcels. Therefore, the Commission finds that the proposed configuration of the three subject parcels together with the proposed building sites will serve to minimize adverse impacts to ESHA to the maximum extent feasible.

The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP². Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

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

Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 100 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.

Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 200 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels. In this case, required fuel modification zone on this parcel will extend from the approved structures up to 200 feet into chaparral ESHA.

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

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

(Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

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

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

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

³ 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.

fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral⁴.

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 area⁵. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat⁶. 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 developments⁷. 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 mutualisms⁸. 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 habitats⁹.

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.¹⁰ In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ 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.

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

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

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 seeds¹¹.

While these impacts resulting from fuel modification can be reduced through siting and designing alternatives for new development, they cannot be completely avoided, given the high fire risk and the location of ESHA on the subject parcel. The Commission finds that the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification on the subject parcel. In this case, the ESHA area affected by the proposed development including the areas impacted by fuel modification or brushing is estimated to be between 3 to 4 acres in size both on and offsite.

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

In this case, the proposed development areas on Parcels 2 and 3, and their associated 200 ft. radius fuel modification zones, will not be located within or result in any adverse impacts to ESHA. Parcel 2 does not include any ESHA and its fuel modification zone will completely overlap the fuel modification zones for both Parcels 1 and 3. In addition, although there is ESHA located on portions of Parcel 3, the proposed development area, including the residence and tennis court, will be located entirely within the existing fuel modification areas of the existing and former residences on neighboring parcels and will not overlap onto the ESHA located to the northeastern portion of Parcel 3. However, the proposed development on Parcel 1 will result in the loss of ESHA on both Parcel 1, 3, and some offsite areas.

As such, the Commission notes that the ESHA area affected by the proposed development on Parcel 1 does not include the building pads or driveway since those areas were previously graded and denuded of ESHA prior to the effective date of the Coastal Act. As such, the ESHA areas that will be impacted by the proposed project on Parcel 1 are the required fuel modification areas on the slopes beyond the edges of the graded pad and driveway. The precise area of chaparral ESHA that will be impacted by the proposed development has not been calculated. However, based on the applicant's approved fuel modification plan, it appears to be between 2 and 3 acres. Therefore, in regards to the proposed development on Parcel 1, the Commission finds that it is necessary to require the applicant to delineate the ESHA, both on and offsite, that will be impacted by the proposed development and the surrounding fuel modification and brushing activities (based on the final fuel modification plan approved by the Los Angeles County Fire Department), as required by **Special Condition No. 11** of CDP 4-05-043.

¹¹ 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 Commission has identified three methods for providing mitigation for the unavoidable loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on the project site. These three mitigation methods are provided as three available options for compliance with **Special Condition No. 11** of CDP 4-05-043. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in **Special Condition No. 11, subpart A** of CDP 4-05-043.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact chaparral ESHA. This mitigation method is provided for in **Special Condition No. 11, subpart B** of CDP 4-05-043.

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

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

Based on this averaging, the required in-lieu fee for habitat mitigation is \$12, 000 (rounded down from the average figure of \$12,089 to simplify administration) per acre of habitat.

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

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

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

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Santa Monica Mountains Conservancy for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition No.11, subpart C** of CDP 4-05-043.

Regarding the related CDPs 4-05-044 and 045, the above condition regarding habitat mitigation that is required for CDP 4-05-043 has not been required because the fuel modification zones for the development proposed by those applications will not affect ESHA on the subject properties or adjoining properties and are part of an overlapping fuel modification zone area resulting from the proposed development on Parcel 1 pursuant to CDP 4-05-043. In addition, the development proposed in CDPs 4-05-044 and 045 do not directly affect ESHA as the development is proposed within previously disturbed areas as a result of fuel modification zones on surrounding properties.

The Commission has determined that in conjunction with siting new development to minimize impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA. The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition No. Two** of CDPs 4-05-043, 044, and 045 requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

The Commission notes that streams and drainages, such as a tributary of Corral Canyon Creek located about 1,500 feet north east and east of the project site, provides important habitat for riparian plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat. Sheet flow and minor drainages onsite transmits runoff directly beyond the subject parcel into Corral Canyon Creek located about 1,500 feet north east and east of the project site, as such, the Commission finds that potential adverse effects of the proposed development on riparian habitat of this stream may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition No. Nine** of CDPs 4-05-043, 044, and 045, the Drainage and Polluted Run-off Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures,

impervious surfaces, and building pad area is conveyed off-site in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition No. Seven** of CDPs 4-05-043, 044, 045, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the proposed setback from the sensitive habitat area and natural topography in concert with the lighting restrictions will attenuate the impacts of unnatural light sources and will not impact sensitive wildlife species.

Furthermore, fencing of the subject parcel would adversely impact the movement of wildlife through the chaparral ESHA, except for fencing identified on the landscape plan immediately surrounding the proposed structural developments on the parcel and a gate at Corral Canyon Road. Therefore, the Commission finds it is necessary to limit fencing to within the perimeter of Zone B of the fuel modification plan as required in **Special Condition No. Two** of CDPs 4-05-043, 044, and 045.

In addition, the Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition Two (2)**, prohibits the use of rodenticides containing any anticoagulant compounds on the subject properties.

In addition, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition No. Five** of CDPs 4-05-043, 044, and 045, the future development restriction, has been required. In addition, **Special Condition No. Eight** of CDPs 4-05-043, 044, and 045 requires the applicant to record a deed restriction that imposes the terms and conditions of these 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.

In order to permanently ensure that no further development occurs on the portions of Parcels 1 and 3 located outside of the proposed development area and considered ESHA, the Commission finds it necessary to also require CDP 4-05-043 include **Special Condition Twelve (12)**, and CDP 4-05-045 include **Special Condition Eleven (11)** which requires the applicants to grant to the Mountains Conservation and Recreation Authority, an open space and conservation easement on the property where all development outside of the proposed development area as generally shown in Exhibits 22 and 23, respectively for Parcels 1 and 3 will be prohibited. As required by **Special Condition Twelve (12)** of CDP 4-05-043 and by **Special Condition Eleven (11)** of CDP 4-05-045, the open space and conservation easement will run with the land and will prohibit all development, with the exception of fuel modification, drainage control activities carried out in accordance with **Special Conditions Two (2) and Three (3)** of CDPs 4-05-043 and 045, slope remediation, and construction and maintenance of public hiking trails. The easement will further insure that any potential buyers are aware of the restriction on further development before they purchase the property. Further, **Special Condition Twelve (12)** of CDP 4-05-043 and **Special Condition Eleven (11)** of CDP 4-05-045 allows planting of native vegetation and other restoration activities, if approved by the Coastal Commission as an amendment to this coastal development permit or through a new coastal development permit. Roads, trails, and utilities within existing easements will also be allowed within the open space restriction area. Any future easements associated with the establishment of public trails shall also be permitted in the open space conservation easement area. Staff would note that in the recent past, the Commission has required open space and conservation easements on similar projects with an option to record either a direct grant of easement or an offer to dedicate an easement, if an accepting agency had not yet been identified. However, on February 1, 2006, the governing board of the Mountains Recreation and Conservation Authority (MRCA) adopted a resolution whereby it agrees to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area. As such, **Special Condition Twelve (12)** of CDP 4-05-043 and **Special Condition Eleven (11)** of CDP 4-05-045 requires a direct grant of the open space and conservation easement to the MRCA.

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

E. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

Section **30231** of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where

feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

As described in detail in the previous sections, the applicant is proposing to develop each of the subject parcels with a new single-family residence, garage, and pool. The proposed building pad is located upslope from a tributary leading to Corral Canyon Creek a stream that contains sensitive riparian habitat. The site is considered a “hillside” development, as it involves sloping hillside terrain with soils that are susceptible to erosion.

The proposed development will result in an increase in impervious surface at the subject sites, which in turn decreases the infiltrative function and capacity of existing permeable land on site. Reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed developments consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed sites. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for

volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition No. Nine** of CDPs 4-05-043, 044, and 045, and finds this will ensure the proposed developments will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

In addition, the proposed projects are conditioned to also implement a pool drainage and maintenance plans to prevent uncontrolled drainage of the proposed swimming pools such that drainage of pool water does not result in discharge of chemically treated water to coastal streams and drainages. The pool and hot tub drainage and maintenance plan, as detailed in **Special Condition No. Ten** of CDPs 4-05-043, 044, and 045 requires the applicant to submit a written pool maintenance plan that contains an agreement to install and use a no chlorine or low chlorine purification system and a program to maintain proper pH, calcium and alkalinity balance in a manner such that any runoff or drainage from the pool will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, **Special Condition No. Ten** of CDPs 4-05-043, 044, and 045 prohibits discharge of pool water into a street, storm drain, creek, canyon, drainage channel, or other location where it could enter receiving waters.

Furthermore, interim erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition No. Two** of CDPs 4-05-043, 044, and 045 is necessary to ensure the proposed developments will not adversely impact water quality or coastal resources.

Finally, the proposed development include the installation of an on-site private sewage disposal system to serve the residential structures. The applicant has submitted a Septic Approval in Concept from the Los Angeles County Health Department confirming that a sewage disposal system may be constructed on the subject parcel, determining that the systems meet the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of coastal resources.

For the reasons set forth above, the Commission finds that the proposed projects, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, are consistent with Section 30231 of the Coastal Act.

F. Local Coastal Program

Section 30604 of the Coastal Act states:

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

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

G. CEQA

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

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

Click on this link to go to Exhibits