

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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Staff: James Johnson  
Staff Report: 3/1/2007  
Hearing Date: 3/15/2007



## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-05-141

**APPLICANT:** Jeffery Biebuyck

**AGENTS:** Nathan Otto, Charles Santos

**PROJECT LOCATION:** 24677 Dry Canyon Cold Creek, Calabasas, Los Angeles County

**PROJECT DESCRIPTION:** Construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer after-the-fact grading within the dripline of two oak trees; a total of 4,783 cu. yds. of proposed and after-the-fact grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The application also includes after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342, and restoration and replanting of a portion of the as-graded slope along the southern and western boundary of the primary driveway and on a secondary driveway with native vegetation in the area beyond the graded area required to construct the proposed project to be completed after project construction.

Lot Area:	3.59 acres
Building Pad:	13,238 sq/ft
Building Coverage:	3,696 sq/ft
Paved Coverage:	9,000 sq/ft
Landscape Coverage:	5,000 sq. ft.
Parking Spaces:	5
Ht Above Finish Grade:	28 ft.

**LOCAL APPROVALS RECEIVED:** Approval in Concept: Los Angeles County Regional Planning Department; Los Angeles County Department of Health Services; Preliminary Fuel Modification Approval, County of Los Angeles, Fire Department; Approved Grading and Access, County of Los Angeles, Fire Department.

**SUBSTANTIVE FILE DOCUMENTS:** Update Geologic and Soils Engineering Investigation by GeoConcepts dated November 4, 2004 and Supplemental Report No. 1 dated May 1, 2006; Nathan and Gina Otto Residential Property Bio Constraints and Opportunities, by Baker and Rappaport dated May 2006; Conditional Certificate of Compliance #88-0342 recorded as document 88-1097866 on July 13, 1988; Certificate

of Compliance #88-0342 Clearance of Conditions recorded as document 05-1939410 on August 12, 2005; Coastal Permit No. 4-04-121, Miran; Coastal Permit No. 4-04-086, Murchland.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **APPROVAL** of the proposed project with EIGHTEEN (18) SPECIAL CONDITIONS regarding (1) geologic recommendations, (2), assumption of risk, (3) landscaping and erosion control plans, (4) native vegetation restoration / revegetation plan, (5) removal of natural vegetation, (6) habitat impact mitigation, (7) drainage and polluted runoff control plan, (8) future development restriction, (9) structural appearance, (10) lighting restrictions, (11) deed restriction, (12) removal of temporary construction trailer, (13) open space deed restriction, (14) revised project plans, (15) removal of excess excavated material, (16) cumulative impact mitigation, (17) indemnification by applicant and (18) condition compliance.

The applicant requests approval to construct a new two story residence with a detached garage/guest house, covered patio; a pool and spa; a retaining wall; drainage swales, a driveway, a septic system, a temporary construction trailer, and 4,783 cu. yds. of combined as-built and new proposed grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction, and restoration and revegetation of an as-built graded area all on a 3.59 acre lot. The application also includes the request for after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342, and restoration and replanting of a portion of the as-graded slope along the southern and western boundary of the primary driveway in the areas beyond the proposed development area, and on a secondary driveway all with native vegetation, following project construction. Construction of the residence, garage/guest house and driveway requires the removal of chaparral ESHA as a result of construction and for fire protection purposes.

Staff discovered during the processing of this application that the putative existing lot was purportedly created between 1956 and 1963, not in compliance with State and County Subdivision regulations at that time. Further attempts at creation of the lot occurred in 1988 with submittal of an application for a certificate of compliance, but due to the noncompliance with the regulations, the County issued a *conditional* certificate of compliance, which was not authorized by a coastal development permit. Thus, no legal lot was created at that time. In addition, an unknown quantity of grading and vegetation removal was performed in the 1980's by a previous property owner and a second area of the site was later graded between 2001 and 2006 without the required Coastal Development Permit by a prior property owner.

The project site is a vacant 3.59 acre lot (APN 4455-039-008) accessed from a private driveway from Dry Canyon Cold Creek Road near the intersection with Mulholland Highway in the Santa Monica Mountains. The property is located within relatively undisturbed chaparral habitat considered to be environmentally sensitive habitat area (ESHA). The project site includes native chaparral on nearly the entire property, which

is considered environmentally sensitive habitat. A portion of this vegetation has been removed as a result of unpermitted development. The project site is not located within the Cold Canyon Significant Watershed, but drains into Dry Canyon Cold Creek which then drains to Cold Canyon Creek. Both Dry Canyon Cold Creek and Cold Canyon Creek includes riparian habitat that is considered environmentally sensitive habitat.

Standing alone, Section 30240 would require the denial of the proposed development to prevent adverse impacts to ESHA from the construction of the proposed development. However, Section 30010 provides that the Commission cannot construe the Coastal Act as authorizing the denial of a permit in a manner that will take private property for public use. To avoid a "taking" of private property, the Commission must allow a reasonable residential development on the applicant's parcel. The total proposed development area for the project is approximately 13,238 sq. ft. The development, as modified by Special Condition No. 14 to reduce the development area to 10,000 sq. ft. or less will be sited and designed to minimize landform alteration and the removal of ESHA to the maximum extent possible, while still providing a residential use of the site.

The proposal also includes the request for after-the-fact approval of Certificate of Compliance #88-0342 to legalize the subject lot. The subject 3.59-acre lot was created by deed in between 1956 and 1963 as part of a five-lot subdivision. This five-lot subdivision was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes. The Commission has previously approved two coastal permits for residential development on the subject lot but it has not approved anything on the remaining four lots. However, two of those other lots in this subdivision have existing residential development that has been in place since 1964 and 1966, as it was constructed soon after the original actions to create the five-lot subdivision. Lastly, the subject lot is not in common ownership with the other contiguous lots created from the parent parcel and has not been so since the late 1950s. In fact, it has changed hands at least three times just in the last 10 years or so.

The standard of review for the proposed permit application is the Chapter Three policies of the Coastal Act. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

## **STAFF RECOMMENDATION:**

**MOTION:** I move that the Commission approve Coastal Development Permit No. 4-05-141 pursuant to the staff recommendation.

## **STAFF RECOMMENDATION OF APPROVAL:**

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

### **I. Resolution for Approval with Conditions**

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

### **II. Standard Conditions**

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

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. Special Conditions**

#### **1. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the Update Geologic and Soils Engineering Investigation by GeoConcepts dated November 4, 2004 and Supplemental Report No. 1 dated May 1, 2006. These recommendations shall be incorporated into all final design and construction plans including all recommendations concerning existing fill, foundations, settlement, excavations, retaining walls, slabs on grade, sewage disposal system and plan review and plan notes. All plans must be reviewed and approved by the consultants prior to commencement of the 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 to the proposed development approved by the Commission, which may be recommended by the consultants shall require an amendment(s) to the permit or a new coastal permit(s).

#### **2. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY**

By acceptance of this permit; the applicant acknowledges and agrees (i) that the site may be subject to hazards from 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.

#### **3. LANDSCAPE, EROSION CONTROL AND FUEL MODIFICATION PLANS**

**Prior to issuance of a coastal development permit,** the applicant shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The drainage and erosion control plans shall be reviewed and stamped by a geotechnical engineer confirming stability of the site. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

**A) Landscaping Plan**

- 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. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or 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 or maintained 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. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. The landscape plan shall be designed with vertical elements to partially screen and soften the visual impact of the structures and driveway with trees and shrubs as viewed from the public lands, proposed and existing public trails to the north, east and southeast;
- 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 house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials

- to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
  - 7) Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B of the final fuel modification plan approved by the Los Angeles County Fire Department pursuant to subsection (5) above, except for an entry gate and fencing along the driveway. 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. Nine (9).

**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 grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed

soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

**C) Monitoring**

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a 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.

**4. NATIVE VEGETATION RESTORATION / REVEGETATION PLAN**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of restoration / revegetation plans. The plan shall include a grading plan, prepared by a licensed civil engineer to restore the area on the subject parcel where unauthorized vegetation removal and grading has previously occurred (about 2,000 sq. ft.) beyond the area of proposed grading for the proposed primary driveway and building pad (as shown on Exhibit 10) and a secondary driveway to an approximation of the original topography that existed prior to the unpermitted vegetation removal and grading (which is the area of the dirt roadway leading south to north on the eastern most portion of the lot). The plan shall also include a revegetation and erosion control plan, including an irrigation plan, prepared by a qualified habitat restoration consultant. The revegetation and erosion control plan shall be reviewed and approved by the consulting civil engineer and geotechnical engineer to ensure that the plan is in conformance with the applicable recommendations regarding slope stability. The restoration and revegetation plan shall include, but not be limited to, the following criteria:

- (a) A detailed grading plan, prepared by a licensed professional civil engineer, that illustrates remedial grading to restore the slope to an approximation of the

contours existing prior to the removal of the vegetation and grading including the addition of topsoil in the areas of the site shown on Exhibit 10. The plan shall include temporary erosion control measures such as geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored slope is completed. These erosion control measures shall be required on the project site prior to and concurrent with the initial grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction. All sediment shall be removed to an appropriate disposal site, approved by the Executive Director, either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (b) A revegetation program, prepared by a qualified habitat restoration consultant with credentials acceptable to the Executive Director, which utilizes only native plant species that have been obtained from local Santa Monica Mountains genetic stock, and are consistent with the surrounding native plant community. Native seeds shall be collected from areas as close to the restoration site as possible. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation. The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil engineer, but in no case shall the irrigation system be in place longer than two (2) years. The restored area shall be planted within thirty (30) days of completion of the remedial grading operations.
- (c) Implementation of the restoration plan shall commence within ninety (90) days of the issuance of this permit. Revegetation shall provide ninety percent (90%) coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. The Executive Director may extend this time period for good cause. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.
- (d) A monitoring program, prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31<sup>st</sup> each year), a written report, for the review and approval of the Executive Director, prepared

by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first two (2) years, then the monitoring program shall be extended for a sufficient length of time so that the success and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site is adequate to provide ninety percent (90%) coverage by the end of the five (5) year monitoring period, all replacement/relocated oak trees are surviving, and all vegetation is able to survive without additional outside inputs, such as supplemental irrigation.

- (e) At the end of the five year period, a final detailed report shall be submitted, for the review and approval of the Executive Director, that indicates whether the on-site landscaping is in conformance with the revegetation / restoration plan approved pursuant to this Special Condition. The final report shall include photographic documentation of plant species and plant coverage. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicants shall be required to submit a revised or supplemental restoration program to compensate for those portions of the original plan that were not successful. The revised, or supplemental, restoration program shall be processed by the applicant/landowner as an amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is required.

B. 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. REMOVAL OF NATURAL VEGETATION**

Removal of natural vegetation for the purpose of fuel modification within the 20-foot zone surrounding the proposed structure 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 20-200 foot fuel modification zone shall not occur until commencement of construction of the structure approved pursuant to this permit.

## **6. 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 that are “environmentally sensitive habitat area” (ESHA), that will be disturbed by the proposed development, (including all as-graded and new proposed flat pads and access roads/driveways and their related cut/fill slopes, all areas where vegetation will be removed as a result of fuel modification for the proposed residence but not including any areas where vegetation clearance has already occurred as a result of the required 200 ft. radius fuel modification for an existing residence on an adjacent property, and all areas where vegetation removal has already occurred but is being authorized after the fact through this permit). The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries where the fuel modification/brush clearance zones extend onto adjacent property. The delineation map shall indicate the total acreage for all chaparral ESHA both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. 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 Mountains Recreation and Conservation Authority 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 Mountains Recreation and Conservation Authority, 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 Mountains Recreation and Conservation Authority. The fee shall be used for the acquisition, permanent preservation or restoration of chaparral habitat in the Santa Monica Mountains coastal zone. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

## **7. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN**

**Prior to the issuance of the Coastal Development Permit**, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, 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 30<sup>th</sup> 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.

## **8. FUTURE DEVELOPMENT RESTRICTION**

This permit is only for the development described in Coastal Development Permit No.4-05-141. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) and (b) shall **not** apply to the entire property. Accordingly, any future improvements to the entire property, including but not limited to the residence, garage, fencing and gate, 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 No. Three (3), and Native Vegetation Restoration / Revegetation, Special Condition No. Four (4) shall require an amendment to Permit No. 4-05-141 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

## **9. 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, including the driveway pavement authorized by the approval of coastal development permit 4-05-141. 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, driveway, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones), including shades of green, brown and gray with no white or light shades, and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-141 if such changes are specifically authorized by the Executive Director as complying with this special condition.

## **10. LIGHTING RESTRICTION**

**A.** The only outdoor night lighting allowed on the subject parcel 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 and garages that are 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 remainder of the parcel, including the slopes and other areas, and no lighting for aesthetic purposes is allowed.

#### 11. 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.

#### 12. REMOVAL OF TEMPORARY CONSTRUCTION TRAILER

With the acceptance of this coastal permit, the applicant agrees that the temporary construction trailer on the site shall be removed within two years of the issuance of this coastal development permit or within thirty (30) days of the applicants receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of temporary trailers.

### 13. 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 20** 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 No. Three (3); drainage and polluted runoff control activities pursuant to Special Condition No. Seven (7); 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 20**. 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.

### 14. REVISED PROJECT PLANS

**Prior to issuance of the Coastal Development Permit**, the applicant shall submit for the review and approval of the Executive Director, two complete sets of revised project plans which shall:

Reduce the size of the total development area on site to no more than 10,000 sq. ft. (including the two flat pad areas for the residence and guest house, the portion of the driveway between the turnaround and the guest house, and all cut/fill slopes but not including any grading or cut/fill slopes required for the emergency vehicle hammerhead turnaround and the portion of the driveway on site located between the turnaround and the access road located offsite to the east). Revised floor and elevation plans for the residence, garage/guest house shall also be submitted for the review and approval of the Executive Director, if necessary to reduce the size of the total development area (including all cut/fill slopes) to a total of 10,000 sq. ft. or less as noted above. The revised grading

plan shall be completed and signed by a licensed engineer confirming the size of the total development area as noted above and include any revisions to the quantities of cut and fill grading and export as required by the revised grading plan to limit the cut and fill to no more than the proposed total of 4,781 cubic yards. An amendment to this coastal permit is required if the total cut and fill grading on site will exceed 4,781 cubic yards of material.

**15. REMOVAL OF EXCESS EXCAVATED MATERIAL**

**Prior to the issuance of the Coastal Development Permit**, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

**16. CUMULATIVE IMPACT MITIGATION**

The applicant shall mitigate the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains by ensuring that development rights for residential use have been extinguished on the equivalent of one (1) building site in the Santa Monica Mountains Coastal Zone through a Transfer of Development Credit (TDC) transaction.

**Prior to the issuance of the Coastal Development Permit**, the applicant shall complete the following steps to ensure that the development rights are extinguished on the lot(s) equivalent to one Transfer of Development Credit (TDC):

- 1) The applicant shall provide, for the review and approval of the Executive Director, evidence that the TDC lot(s) to be extinguished qualify with the criteria for TDC donor lots established in past Commission actions.
- 2) No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur on the TDC lot(s) except for:

Brush clearance required by Los Angeles County for permitted structures on adjacent parcels; planting of native vegetation and other restoration activities, if approved by the Commission in a coastal development permit; construction and maintenance of public hiking trails, if approved by the Commission in a coastal development permit; and existing easements for roads, trails, and utilities

- 3) The applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate, an open space easement over the TDC lot(s) to be restricted for TDC credit for the purpose of development right extinguishment. The recorded easement document shall include a formal legal description and graphic depiction, prepared

by a licensed surveyor, of the entire parcel(s). The recorded document shall reflect that development in the parcel(s) is restricted as set forth in this permits condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. Such grant of easement or offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assigns, and any such offer to dedicate shall be irrevocable.

- 4) The applicant shall provide evidence, for the review and approval of the Executive Director, that the TDC lot extinguished in Section 3 above has been combined with an adjacent lot(s) that is developed or developable and held in common ownership. The combined lot shall be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, taxation, or encumbrance. The applicant shall execute and record a deed restriction, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the parcels being combined and unified. 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.
- 5) The applicant shall submit, for the review and approval of the Executive Director, a title report for the combined lot created by the TDC lot(s) and the developed or developable lot(s) that demonstrates that the open space easement grant or offer to dedicate required in Section 3 above is on the title.

#### **17. INDEMNIFICATION BY APPLICANT**

Liability for Costs and Attorneys Fees: By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

#### **18. CONDITION COMPLIANCE**

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

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

#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

##### **A. Project Description and Background**

###### **1. Project Description**

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; five retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer after-the-fact grading within the dripline of two oak trees; a total of 4,783 cu. yds. of proposed and after-the-fact grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The application also includes after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342 (Exhibit 13), and restoration and replanting of a portion of the as-graded slope along the southern and western slopes of the primary driveway and on a secondary driveway with native vegetation in the area beyond the graded area required to construct the proposed project to be completed after project construction. (Exhibit 10).

The project site is located within the inland area of the Santa Monica Mountains about four and one half miles inland along the west side of Mulholland Highway near its intersection with Dry Canyon Cold Creek Road (Exhibits 1 and 2). The project site is a vacant 3.59 acre lot (APN 4455-039-008) accessed by a private driveway from Dry Canyon Cold Creek Road. The area surrounding the parcel is characterized by natural hillsides covered predominantly with undisturbed chaparral and oak trees. There is undeveloped land located to the west of the subject lot and to the south. There are seven existing residences located on nearby lots to the northeast, east and southeast along Dry Canyon Cold Creek Road and Mulholland Highway. There is one residence located on the adjacent lot to the north.

The property is located within and is surrounded to the west and south by relatively undisturbed chaparral habitat that this Commission considers to be environmentally sensitive habitat area (ESHA). The project site includes native chaparral on nearly the entire property, which is considered environmentally sensitive habitat, and 28 oak trees. A portion of this chaparral vegetation was removed without the required coastal development permit between the 1980's and 2006. In addition, unpermitted grading occurred on site creating two driveways and a flat pad area also between the 1980's and 2006. This application includes this after the fact vegetation removal and grading.

The project site is not located within the Cold Canyon Significant Watershed, but drains into Dry Canyon Cold Creek, which has riparian habitat that is considered environmentally sensitive habitat. The site is accessed along an existing common driveway from Dry Canyon Cold Creek Road.

The 3.59-acre project site is located on a lot that is roughly a trapezoid in shape with two approximately parallel northeast-trending property boundaries with a small valley between them. The western boundary is near the ridge of a north-south trending ridge. Past unpermitted grading has created an approximate 300 foot long dirt primary driveway which connects west from an existing paved common driveway (which also accesses three lots located to the southeast) to an existing flat pad and an approximate 260 foot long dirt secondary driveway along the eastern portion of the property. An existing paved driveway created, prior to 1977, accesses the subject lot and provides access to three other developed lots located to the east along Mulholland Highway. In addition, the existing level pad on site where the proposed residence and guest house is located was constructed without the required coastal permit and has been cut into the hillside with ascending slopes to the west to the ridge above and descending slopes to the south, east and north. Maximum topographic relief is about 150 feet. Ascending slopes from the as-built pad have a gradient of 2:1 or less (horizontal to vertical) with the exception of the steeper 25 foot high cut slope adjacent to the pad on the west side. Descending slopes are generally a 2:1 gradient or less.

The parcel drains to the east into a tributary leading to Dry Canyon Creek, which then leads to Cold Canyon Creek. The subject lot includes relatively undisturbed chaparral vegetation, except where the unpermitted removal of about 0.37 acres of formerly undisturbed Bigpod Ceanothus Chaparral vegetation has occurred as the result of the unpermitted grading to create the existing building pad and two driveways/access roads on site. A review of the Commission's historic aerial photographs from 1977 indicate that the subject lot was completely vegetated with chaparral vegetation which was part of a larger undisturbed chaparral habitat which extended offsite to the west and south (Exhibit 21). Approximately one acre of chaparral vegetation was removed on the northern portion of the subject lot as a result of the fuel modification requirements for an existing residence located on the lot immediately to the north. The subject lot includes 28 oak trees ranging in size from 14 inches to 67 inches in circumference 4 ½ feet above mean natural grade. Although none of the 28 oak trees is proposed to be removed, the unpermitted grading that has previously occurred on site has encroached into the driplines of two of the existing oak trees on site.

At the request of staff, the applicant has reduced the size of the initially proposed residential and garage building pads from about 24,000 sq. ft. to a total of 13,238 sq. ft., as noted on Exhibits 7 and 12. The applicant has not provided an itemized listing of the as-built grading and the proposed grading to create the driveway and building pad areas. The applicant has provided a grading plan totaling both as-graded and new proposed grading as 4,783 cu. yds. of grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The applicant is proposing, as part of the subject application, to restore the area on the

subject site where unpermitted grading occurred between 2001 and 2006 (immediately west and south of the as-graded driveway) and the secondary as-graded driveway created in the 1980's as shown on Exhibit 10.

The proposed residence will be located on the existing as-built approximate 3,000 sq. ft. graded and cleared flat area located about 120 feet from the as-built private access driveway and about 350 feet from Mulholland Highway. The residence will be cut further into the hillside and will require additional cut and fill grading to create the building pad areas (including removal and recompaction grading for the building pad area) for the residence and garage/guest house. The applicant proposes to regrade and plant a portion of the slope along the southern and western boundary of the driveway with native vegetation following construction. The applicant also proposes to restore and plant a secondary driveway located on the eastern portion of the lot. In addition to the residence and driveway, a septic tank is proposed immediately adjacent to the house. The proposed septic seepage pit system will be located on the northwest portion of the building pad.

The applicant has submitted a preliminary Fuel Modification Plan for the proposed residence that has been approved by the Los Angeles County Fire Department. This plan calls for clearance and thinning of vegetation 200 feet west, south, east, and north of the proposed residence. As a result of the existing residence located on the neighboring adjacent parcel to the northwest, vegetative thinning and clearance has already occurred on the subject lot as a result of fuel modification.

## **2. Property History**

### **a. Unpermitted Lot**

According to Los Angeles County's file record for Conditional Certificate of Compliance 88-0342 (file information was obtained by Commission staff directly from Los Angeles County Department of Regional Planning; Exhibits 15 and 16), the subject lot was created as one of 5 lots that were created as a result of an unauthorized 5-lot subdivision of a single parcel between 1956 and 1958, achieved through the execution of grant deeds for each of the separate portions of the pre-existing lot. This County record also indicates that the subject lot was created on August 30, 1963, in non-compliance with the applicable laws and regulations existing at that time. In addition, County staff have confirmed that the subject parcel was created in violation of the applicable laws and regulations because at the time the five parcels were created between 1956 and 1957, the subdivision regulations allowed no more than four lots or parcels to be created out of a single lot by deed. The creation of more than four lots by a subdivision (as occurred in this case) would have required the approval of a Tract Map by Los Angeles County. The Conditional Certificate of Compliance 88-0342 specifically states "[t]he above described parcel was not created in compliance with State and County Subdivision regulations." (Exhibit 13)

Therefore, because the subject lot was not created in compliance with the laws and regulations at the time of its original creation in 1963, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 88-0342) in 1988 in order to authorize the lot after-the-fact in regards to compliance with the Subdivision Map Act. The Coastal Act requires that one secure a coastal development permit prior to undertaking development, including the division of land. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit only if all other necessary and required permits were obtained. However, in this case, the unpermitted subdivision of land that was first attempted prior to the effective date of the Coastal Act on January 1, 1977, can not be considered vested or “grandfathered” development because it occurred in non-compliance with the applicable laws and regulations and without the required approvals. As such, the application of the property owner for a certificate of compliance in 1988 and the subsequent issuance of the 1988 Conditional Certificate of Compliance, which “legalized” this lot for purposes of the Subdivision Map Act, is considered a form of land division and, therefore, required a coastal development permit, pursuant to the provisions of the Coastal Act.

There is no record of a Coastal Development Permit issued for the creation of this lot either before or after the July 13, 1989 recording of Conditional Certificate of Compliance 88-0342. Therefore, the subject lot was purportedly created in an illegal manner prior to the effective date of the Coastal Act, and the Conditional Certificate of Compliance 88-0342 was issued and recorded without the required Coastal Development Permit. A “Clearance of Conditions in Certificate of Compliance 88-0342” was recorded August 12, 2005, which confirmed that the conditions in Certificate of Compliance 88-0342, such as road rights of way, were completed and the lot was now considered by Los Angeles County to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

The applicant is now requesting after-the-fact approval for the creation of the subject lot through this coastal development permit, which is discussed in detail below (Section VI. F. Cumulative Impacts).

b. Prior Approved Coastal Permits on Subject Lot

On August 8, 1990, the Commission approved Coastal Development Permit (CDP) No. 5-89-1115 (Gault) to construct a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This Coastal Permit was extended once to August 8, 1993 and was issued March 17, 1992 with three special conditions addressing a landscape plan, future development restriction, and plans conforming to geologic recommendations. The applicants submitted a second extension request, however, it was received after the expiration of the coastal permit. Although a copy of the 1988 certificate of compliance was submitted in conjunction with the application for CDP 5-89-1115, the applicant did not request authorization for the creation of the lot, and the Commission’s approval of CDP 5-89-1115 did not involve such authorization, instead being based on the incorrect premise

that the subject site had been legally created prior to the effective date of the Coastal Act because this lot had been shown on a map titled "1978 County of Los Angeles Buildout Survey" and that, therefore, the lot was considered as a legal lot.

Subsequently, on October 13, 1993, the Commission approved a second coastal permit, Coastal Administrative Permit No. 4-93-152 (Gault), to construct the same residence as previously approved by Coastal Permit No. 5-89-1115 (Gault) consisting of a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This staff report again confirmed that this lot was included in the 1978 County of Los Angeles buildout survey stating that "[a]ccording to the County of Los Angeles the subject lot was created in 1963. Therefore, the subject lot was counted in the 1978 County of Los Angeles buildout survey." Coastal Administrative Permit No. 4-93-152 was extended three times until October 13, 1998 when this permit expired (Coastal Administrative Permit No. 4-93-152, E1, E2, E3). However, Coastal Administrative Permit No. 4-93-152 was not determined to be effective (not issued) as all of the special conditions were not completed by the applicant prior to the issuance of this Permit.

c. Residential Development on Two of the Five Illegal Lots

A review by Staff of the historic aerial photographs for this area (Exhibits 21 and 22) confirmed that, prior to any CDP applications on the subject lot, a residence had been constructed on each of two of the five unauthorized lots. These residential developments were constructed in 1964 and 1966 and existed prior to the effective date of the Coastal Act in 1977. There are no records that any coastal permits were ever approved for any subsequent development on either of these two residentially developed lots or the other two remaining vacant lots after 1977.

## **B. Geologic and Wildfire Hazard**

The proposed development is located in the Santa Monica Mountains, 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 the property.

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

***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***

***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site***

***or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

## **Geology**

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The applicant has submitted the Update Geologic and Soils Engineering Investigation by GeoConcepts dated November 4, 2004 and Supplemental Report No. 1 dated May 1, 2006. This report addresses the geologic conditions on the site, including drainage, subsurface conditions, groundwater, landslides, faulting, and seismicity.

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer after-the-fact grading within the dripline of two oak trees; a total of 4,783 cu. yds. of proposed and after-the-fact grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The application also includes after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342, and restoration and replanting of a portion of the as-graded slope along the southern and western boundary of the primary driveway and on a secondary driveway with native vegetation in the area beyond the graded area required to construct the proposed project to be completed after project construction.

The 3.59-acre project site is located on a lot that is roughly a trapezoid in shape with two approximately parallel northeast-trending property boundaries with a small valley between them. The western boundary is near the ridge of a north-south trending ridge. An as-built approximate 300 foot long dirt primary driveway which connects west to an existing flat pad from a existing paved common access driveway to three other lots located to the southeast. There is also an approximate 260 foot long dirt secondary driveway along the eastern portion of the property. An existing paved driveway created, prior to 1977, accesses the subject lot and provides access to three other developed lots located to the east along Mulholland Highway. In addition, the existing level pad on site where the proposed residence and guest house is located was constructed without the required coastal permit and has been cut into the hillside with ascending slopes to the west to the ridge above and descending slopes to the south, east and north. Maximum topographic relief is about 150 feet. Ascending slopes from the as-built pad have a gradient of 2:1 or less (horizontal to vertical) with the exception of the steeper 25 foot high cut slope adjacent to the pad on the west side. Descending slopes are generally a 2:1 gradient or less. There is a second unpermitted access road on site extends approximately 260 ft. in length along the eastern portion of the lot parallel to the common paved driveway.

The parcel drains to the east into a tributary leading to Dry Canyon Creek, which then leads to Cold Canyon Creek and Malibu Canyon Creek. The subject lot includes relatively undisturbed chaparral vegetation with the exception of approximately 0.37 acres of the lot where the removal of about 0.37 acres of formerly undisturbed Bigpod Ceanothus Chaparral vegetation has occurred as the result of previous unpermitted grading to create the existing building pad and two driveways.

The geologic consultant, GeoConcepts, Inc., has found the geology of the proposed project site to be suitable for the construction of a single-family residence. The geologic and geotechnical engineering consultants in their geologic and engineering report state that:

*“It is the finding of this corporation, based upon the subsurface data, that the proposed project will be safe from landslide, settlement or slippage and will not adversely affect adjacent property, provided this corporation’s recommendations and those of the County of Los Angeles and Uniform Building Code are followed and maintained.”*

The engineering geologic and geotechnical consultant conclude that the proposed developments are feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The geologic and geotechnical reports contains several recommendations to be incorporated into project construction, design, drainage, foundations, and sewage disposal to ensure the stability and geologic safety for the proposed project site and adjacent properties.

In order to ensure that the recommendations of the geologic consultant have been incorporated into all proposed development, the Commission, as specified in **Special Condition No. One (1)**, requires the applicant to incorporate the recommendations cited in the geotechnical reports into all final design and construction plans. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant, shall require an amendment to the permit or a new coastal development permit.

The Commission notes that there remains some inherent risk in building in the Santa Monica Mountains, which are prone to landslides and destruction from wildfire. The Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition No. Two (2)**. The assumption of risk will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure

stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Condition Nos. Three (3) and Four (4)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition No. Three (3)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. **Special Condition No. Three (3)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/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. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition No. Three (3)**. Additionally, the restoration of the unpermitted dirt road spanning the eastern portion of the property, shall, according to **Special Condition No. Four (4)**, include weeding of non-native plants and planting of native species as allowed in the approved Final Fuel Modification Plan for the proposed residence.

In addition, to ensure that excess excavated material is moved off site so as not to contribute to unnecessary landform alteration, the commission finds it necessary to require the applicant to dispose of the material at an appropriate disposal site or to a site that has been approved to accept material, as specified in **Special Condition No. Fifteen (15)**.

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. Five (5)**. 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. Five (5)** 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.

**Special Condition No. Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on the 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.

The Commission finds that the proposed project, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties, as outlined in §30253 of the Coastal Act

### **Wildfire**

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

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition No. Two (2)**, 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. No. Two (2)**, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

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

### **C. Environmentally Sensitive Habitat Areas**

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

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

***long-term commercial, recreational, scientific, and educational purposes.***

Section 30231 states:

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

Section 30240 states:

***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***

***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

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

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

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

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa 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 Exhibit 17, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP<sup>1</sup>.

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?

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; retaining walls; drainage swales, a driveway, a septic system, a temporary construction trailer after-the-fact grading within the dripline of two oak trees; a total of 4,783 cu. yds. of proposed and after-the-fact grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The application also includes after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342 (Exhibit 13), and restoration and replanting of a portion of the as-graded slope along the southern and western boundary of the primary driveway and on a secondary driveway with native vegetation in the area beyond the graded area required to construct the proposed project to be completed after project construction. (Exhibit 10).

The project site is located within the inland area of the Santa Monica Mountains about four and one half miles inland along the west side of Mulholland Highway near its intersection with Dry Canyon Cold Creek Road (Exhibits 1 and 2). The project site is a

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

vacant 3.59 acre lot (APN 4455-039-008) accessed from a private driveway from Dry Canyon Cold Creek Road. The area surrounding the parcel is characterized by natural hillsides covered predominantly with undisturbed chaparral and oak trees. Undeveloped land vegetated with chaparral is located to the west of the subject lot and to the south. There are seven existing residences located to the northeast, east and southeast lots along Dry Canyon Cold Creek Road and Mulholland Highway. There is one residence located on the adjacent lot to the north.

The property is located within and is surrounded to the west and south by relatively undisturbed chaparral habitat considered to be environmentally sensitive habitat area (ESHA). The project site includes native chaparral on nearly the entire property, which is considered environmentally sensitive habitat and 28 oak trees. A portion of this vegetation has been removed without the required coastal development permit in order to construct the two as-built driveways and flat building pad where the applicant is proposing to locate the residence. The applicant is proposing to portions of these graded areas beyond the area now proposed for this project as part of this pending permit application. The project site is not located within the Cold Canyon Significant Watershed but drains into Dry Canyon Cold Creek that includes riparian habitat that is considered environmentally sensitive habitat.

The 3.59-acre project site is located on a lot that is roughly a trapezoid with two approximately parallel northeast-trending property boundaries with a small valley between them. The western boundary is near the ridge of a north-south trending ridge. Past unpermitted grading has created an approximate 300 foot long driveway cut westerly from the existing paved driveway accessing three other developed lots located to the east along Mulholland Highway. In addition, the existing level pad on site where the proposed residence and guest house is located was constructed without the required coastal permit and has been cut into the hillside with ascending slopes to the west to the ridge above and descending slopes to the south, east and north. This near level pad cut is into the hillside has ascending slopes to the west to the ridge above (where an existing residence constructed in 1966 is located), and descending slopes to the south, east and north. Maximum topographic relief is about 150 feet. Ascending slopes from the pad have a gradient of 2:1 or less (horizontal to vertical) with the exception of the steeper 25 foot high cut slope adjacent to the pad on the west side. Descending slopes are generally a 2:1 gradient or less. There is a second existing unpermitted 260 foot long narrow driveway on the eastern portion of the lot which is parallel to the existing paved common driveway which accesses 3 lots located to the southeast.

The parcel drains both to the east into a tributary leading to Dry Canyon Creek which then leads to Cold Canyon Creek. The subject lot includes relatively undisturbed chaparral vegetation, except for the unpermitted removal of about 0.37 acres of formerly undisturbed Bigpod Ceanothus Chaparral vegetation. In addition, although no oak trees have been removed on site, the previously completed as-built grading encroached into the driplines of two oak trees on site. The unpermitted vegetation removal and grading resulted from the construction of the existing building pad and two driveways. A review of the Commission's historic aerial photographs from 1977 indicates that the subject lot

was entirely vegetated with undisturbed chaparral vegetation which was part of a larger chaparral habitat community which extended offsite to the west and south (Exhibit 21). In addition, approximately one acre of chaparral vegetation has been removed from the northern portion of the subject lot as a result of the required fuel modification for the existing residence located on the adjacent lot immediately to the north for fuel modification purposes. The residence that is proposed on the subject site as part of this application will be located within a portion of the site that will overlap with the existing fuel modification zone for the neighboring residence.

At the request of staff to reduce the development area to a maximum of 10,000 sq. ft., the applicant has reduced the size of the initially proposed residential and garage building pads beyond the turnaround area from about 24,000 sq. ft. to a total of 13,238 sq. ft., as noted on Exhibits 7 and 12.

The applicant has not provided an itemized listing of the after-the-fact grading and the proposed grading to create the driveway and building pad areas. The applicant has provided a grading plan totaling after-the-fact and proposed grading as 4,783 cu. yds. of grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The applicant is proposing, as part of the subject application, to restore the slopes located beyond the area proposed for the development building pad areas and the secondary driveway.

The proposed residence will be located on the existing approximate 3,000 sq. ft. as-built graded and cleared flat area located about 120 feet from the private common access driveway and about 350 feet from Mulholland Highway. The residence will be cut further into the hillside and will require additional cut and fill grading to create the building pad areas (including removal and recompaction grading for the building pad area) for the residence and garage/guest house. The applicant proposes to regrade and plant a portion of the slope along the southern and western boundary of the driveway with native vegetation beyond the graded area required to construct the proposed project following construction.

The applicant has submitted a preliminary Fuel Modification Plan for the proposed residence that has been approved by the Los Angeles County Fire Department. This plan calls for clearance and thinning of vegetation 200 feet west, south, east, and north of the proposed residence. As a result of the existing residence located to the northwest, vegetative thinning and clearance has occurred on the subject lot as a result of fuel modification. The fuel modification that will be required for the proposed residence will overlap with the existing fuel modification zone for the existing residence on the neighboring property to the north.

The applicant has submitted a Biological Study for the property, prepared by Blair Baker and Jessica Rappaport in May 2006. In this report, the biological consultants describe the subject parcel as primarily vegetated with native Bigpod Ceanothus Chaparral. Approximately 0.37 acres of the chaparral was previously removed on site without a coastal permit as a result of the construction of the as-built driveways and building pad.

The subject lot also includes 28 oak trees ranging in size from 14 inches to 67 inches in circumference measured at 4 ½ feet above mean natural grade. Although the applicant is not proposing to remove any of the 28 oak trees, the Commission notes that the previously completed unpermitted grading on site encroached into the driplines of two of the oak trees. These two oak trees (*Quercus agrifolia*) are both 24 inches in circumference measured at 4 ½ feet above mean natural grade and are located on the south side of the proposed primary driveway in an area proposed by the applicant to be restored and revegetated as required by **Special Condition No. Four (4)**. As a result, the formerly vegetated area beneath their driplines will be restored to protect the oak trees.

An aerial photograph taken in 1977 from the Commission's historic photographic records shows the site to be fully vegetated in what appears to be chaparral vegetation similar to the native species currently found on most portions of the property and surrounding properties located to the west and south (Exhibit 21). Due to the important ecosystem role of chaparral in the Santa Monica Mountains (detailed in Exhibit 17), and the fact that the subject parcel is relatively undisturbed, with the exception of the unpermitted two graded access driveways and graded pad, and part of a large, unfragmented block of habitat, the Commission finds that the chaparral habitat on and surrounding the subject site meets the definition of ESHA under the Coastal Act. The Commission also finds that had grading and vegetative clearance not occurred to create the existing unpermitted two driveways and a pad on the property, these areas would also be vegetated with native chaparral vegetation and likely meet the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area 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 on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a single-family residence on the parcel. The majority of the development is proposed to be located in areas currently supporting chaparral ESHA or on the existing unpermitted dirt road on the property, which likely supported chaparral ESHA before creation of the road. As single-family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences 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 that will take private property for public use. Application of Section 30010

may overcome the presumption of denial in some instances. The subject of what government action results in a “taking” was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow him or her to undertake the proposed project, and that project denial would deprive the owner-applicant of all economically viable use of the property, 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. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with the property owner’s reasonable investment-backed expectations regarding the development of the property.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant of all reasonable economic use of his or her property, 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 30010 clarifies that Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicant purchased the property in July, 2006 for approximately \$750,000. Although the 1988 Conditional Certificate of Compliance (“CoC”) was recorded against the property indicating that the original subdivision was not performed in compliance with applicable laws, CoCs generally indicate the recognition of a lot, and nothing in the recordation of the CoC revealed that it was issued without a coastal development permit. So the title search would not have indicated the legal status of the lot. The parcel was designated in the County’s certified Land Use Plan in 1986 for residential use as Rural Land III, which allows for residential development at a maximum density of one dwelling unit per 2 acres. At the time the applicant purchased the parcel, the County’s certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on this fact, the purchase price, the presence of existing residential development on nearby parcels, and the Commission’s approval of two coastal permits to construct residential development (CDPs 5-89-1115 and 4-93-152 (Gault), the applicant had reason to believe that he had purchased a lot on which they would be able to build a residence.<sup>2</sup>

The Commission finds that in this particular case, other uses for the subject site such as a recreational park or a nature preserve, are not feasible on lands zoned by the County of Los Angeles for residential development and such uses would not provide the owner

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<sup>2</sup> The Commission notes that at least this last factor does not apply to the other two undeveloped lots within the purported subdivision. Accordingly, the analysis in this report is not necessarily transferable to those lots. Whether those lots warrant retroactive legalization and/or are developable is not before the Commission at this time, and the Commission takes no position on these questions.

an economic return on the investment. The parcel is 3.59 acres and there are other residential developments to the north, the northeast, east, and southeast of the site. Public parkland and open space has been acquired in the vicinity east of Mulholland Highway but there is currently not an offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case, there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that given the totality of the circumstances, outright denial of all residential use would interfere with reasonable investment-backed expectations and/or deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of his 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 construe or implement the Coastal Act in such a way as to take his property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

As discussed above, the proposed development will be approved within ESHA in order to provide an economically viable use. Siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the maximum extent feasible consistent with the provision of an economically viable residential use. In this case, very steep terrain on the property limits the potential locations for siting of a residence. The proposed building site is located on a 3,000 sq. ft. area that has been cleared and graded in association with the unpermitted grading on the subject property. More importantly, the residence is proposed in a location where the required fuel modification for the new residence will overlap with the existing fuel modification zone for the existing residence on the adjacent property and will therefore, serve to minimize vegetation removal. Therefore, regardless of the fact of the unpermitted grading that has occurred on site, the Commission finds that there are no feasible alternative locations on the site for a residence that would not result in greater

amounts of grading and removal of native vegetation and that; therefore, the proposed building location is the environmentally preferred alternative.

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 resulting from both landform alteration and vegetation clearance. In this case, the applicant is proposing to construct two separate flat pad/development areas for the residence and garage/guest house that would be approximately 13,238 sq. ft. in combined size. Therefore, in order to bring the size of the two building pads into conformance with the Commission's normally required maximum 10,000 sq ft. development area (which includes the building pad and all cut/fill slopes), **Special Condition No. Fourteen (14)** is necessary to require the applicant to submit revised grading and site plans for the review and approval of the Executive Director that reduce the size of the two graded building pads (including all cut/fill slopes) to a total of 10,000 sq. ft. or less (including all cut/fill slopes but not including the area of the emergency vehicle hammerhead turnaround and the cut and fill grading areas necessary to construct the turnaround area and residential access driveway to reach the turnaround).

In addition, **Special Condition No. Fourteen (14)** also requires that revised floor and elevation plans for the residence, garage/guest house shall also be submitted for the review and approval of the Executive Director, if necessary, to reduce the size of the two building pads (including all cut/fill slopes) to a total of 10,000 sq. ft. or less as noted above. The revised grading plan shall be completed, stamped and signed by a licensed engineer to confirm the size of these building pads as measured above and include any revisions to the quantities of cut and fill grading and export as required by the revised grading plan to limit the cut and fill to no more than the proposed total of 4,783 cubic yards. An amendment to this coastal permit is required if the total cut and fill grading on site exceeds 4,783 cubic yards of material.

The proposed residence, garage/guest house, septic system, driveway, and the fuel modification area required for the residence will be located in chaparral habitat considered ESHA that would have been considered ESHA if it had not been cleared, and which the Commission must still treat as ESHA for purposes of this application, since the clearing was done without the required Coastal Development Permit. Additionally, the applicant has secured Los Angeles Fire Department Fuel Modification Plans for the residence that limit the irrigated Zone B to a maximum of 100 feet from the residence. Zone C, where vegetation is thinned, but not cleared, would extend from the edge of Zone B to 100 feet from Zone B a total of 200 feet from the residence. Additionally, the applicant has proposed restoration of those portions of the site where unpermitted grading occurred along the access driveway beyond the area proposed to be graded for the driveway and the building pad area once construction is complete. The second driveway along the eastern portion of the property is also proposed to be

restored to chaparral habitat. **Special Condition No. Four (4)** ensures completion of these restoration activities consistent with other landscaping requirements for the property. Therefore, the development area as conditioned through **Special Condition No. Fourteen (14)** conforms to the maximum development area of 10,000 sq. ft. that the Commission has typically allowed in similar situations on sites containing ESHA. However, given the location of ESHA on the site, there will still be significant impacts to ESHA resulting from construction of the residence, septic system, garage/guest house, driveway, and fuel modification area around the residence. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP<sup>3</sup>.

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

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

Zone B (Irrigated Zone) is usually 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 usually required to extend from the outermost edge of Zone B up to a maximum of 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.

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

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

vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

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

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

Northern mockingbird)<sup>4</sup>. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and “edge” many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral<sup>5</sup>.

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms “super colonies” that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area<sup>6</sup>. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat<sup>7</sup>. These native ants are the primary food resource for the native coast horned lizard, a California “Species of Special Concern.” As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments<sup>8</sup>. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms<sup>9</sup>. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats<sup>10</sup>.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.<sup>11</sup> In South Africa the Argentine ant displaces native ants

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<sup>4</sup> Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

<sup>5</sup> Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

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

<sup>7</sup> Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

<sup>8</sup> Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

<sup>9</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

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

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

as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds<sup>12</sup>.

While these impacts resulting from fuel modification can be reduced through siting and design alternatives for new development, they cannot be completely avoided, given the high fire risk and the extent of ESHA on the site. 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 zone.

In this case, the applicant's fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification, with adjustments made due to the proximity of neighboring parkland and retaining walls on the property. Zones "A" (setback zone) is shown in a radius extending approximately 20 feet from the proposed structure. The "B" Zone (irrigation zone) extends from the outer edge of Zone A to 100 feet from the proposed structure. The "C" Zone (thinning zone) extends for a distance of 200 feet, beyond the "A" and "B" zones, from the proposed structure. As such, the ESHA areas that will be permanently impacted by the proposed project include a portion of the fuel modification area for the project and the residence, garage/guest house, driveway, slope remediation, and septic system. The precise area of ESHA that will be impacted by the proposed development has not been calculated. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA (including both new proposed and as-built driveways and building pads where unpermitted vegetation clearance has previously occurred) both on and offsite that will be impacted by the proposed development including the areas affected by fuel modification and brushing activities (but not including any areas that have already been cleared of vegetation as a result of the required 200 ft. radius fuel modification zone for an existing residence on an adjacent property located to the northwest), as required by **Special Condition No. Six (6)**.

The Commission has identified three methods for providing mitigation for the unavoidable and permanent 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 and offsite. These three mitigation methods are provided as three available options for compliance with **Special Condition No. Six (6)**. The first method is to provide mitigation through the restoration of an area of degraded habitat

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<sup>12</sup> Hughes, L. and M. Westoby. 1992. *Capitula* on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

(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. Six (6), subpart A.**

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in **Special Condition No. Six (6), subpart B.**

The third habitat impact mitigation option is an in-lieu fee for habitat conservation as provided for in **Special Condition No. Six (6), subpart C.** 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 has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were \$9,541, \$12,820, and \$13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the required in-lieu fee for habitat mitigation is \$12, 000 (rounded down from the average figure of \$12,089 to simplify administration) per acre of habitat.

The Commission finds that the in-lieu fee of \$12,000 per acre is appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be

removed (building site and the "A" zone required for fuel modification), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification). In these areas, complete removal or significant removal of ESHA, along with irrigation completely alters the habitat and eliminates its value to the native plant and animal community.

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

In this case, the applicant's approved fuel modification plan shows the use of the three zones of vegetation modification. Zones "A" (setback zone) is shown extending 20 feet from the structure. Zone "B" (irrigation zone) extends 80 beyond Zone "A." Zone "C" (thinning zone) is provided for a distance of 200 feet beyond Zone "B," except to the west where it extends to Las Virgenes Road. Brush clearance will not be required on adjacent properties. As discussed above, the ESHA area affected by the proposed development does not include the existing disturbed County owned road easement area previously 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 area and the areas where the residence, garage, septic tank, stairway, and a portion of the driveway will be sited. 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) or developed area and \$3,000 per acre of un-irrigated fuel modification area (zone "C") or brush clearance area.

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Mountains Recreation and Conservation Authority for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition No. Six (6), subpart C.**

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. Three (3)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Additionally, **Special Condition No. Four (4)** ensures that the applicant proposal to restore and revegetate the unpermitted secondary driveway and related cut/fill slopes along the primary driveway (as shown on Exhibit 10) is successfully implemented and includes use of native plant species.

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 No. Three (3)**, prohibits the use of rodenticides containing any anticoagulant compounds on the subject property.

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. Five (5)**. 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. Five (5)** 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 notes that streams and drainages, such as streams located downslope of the property, provide important habitat for 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 or upslope of 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.

The Commission finds that potential adverse effects of the proposed development on riparian and aquatic habitats of these streams 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. Seven (7)**, the Drainage and Polluted Runoff 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 offsite in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways. **Special Condition No. Seven (7)** will ensure implementation of these and other BMPs to reduce polluted runoff.

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, 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. Ten (10)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Furthermore, fencing of the site would adversely impact the movement of wildlife through the chaparral ESHA on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the building pad area (and no further than Zone B of the approved Fuel Modification Plan) and driveway entry area as required in **Special Condition No. Three (3)**.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition No. Eight (8)**, the future development restriction, has been required. **Special Condition No. Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on

use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30240, and 30107.5 of the Coastal Act.

#### **D. Water Quality**

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

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

The project site is located in the upper Dry Canyon Creek watershed. Cold Canyon Creek and Malibu Creek are located downstream of the property. While no development is proposed in drainages onsite, the proposed residential development described above will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These

impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water 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 site. 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.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85<sup>th</sup> percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition No. Seven (7)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure 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. Three (3)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an onsite private sewage disposal system to serve the residence. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## **E. Visual Resources**

Section 30251 of the Coastal Act states:

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

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. 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.

The subject site is located within a rural area characterized by expansive, naturally vegetated mountains. The Malibu/Santa Monica Mountains Land Use Plan (LUP) protects visual resources in the Santa Monica Mountains. Mulholland Highway is recognized as a priority scenic highway, while Stunt Road is also recognized as a scenic highway as well (Exhibit 1). A portion of the proposed two story residence will be visible from Dry Canyon Cold Creek Road, which is located about 500 feet to the north of the project site; although this road is not a designated scenic highway pursuant to the LUP. The proposed project is not visible from Mulholland Highway. In addition, the subject site would also be visible from the planned "Stokes Ridge Trail", a future public trail identified by the Los Angeles County Department of Parks and Recreation, Malibu/Santa Monica Mountains Trail System Map adopted by the Commission in June 1983, which traverses Dry Canyon Cold Creek immediately adjacent to the project site in a north-south direction (Exhibit 18). A portion of this planned Stokes Ridge Trail, traverses north along Dry Canyon Cold Creek Road and then continues both west within the Thousand Peaks subdivision and east across Dry Canyon Creek and Mulholland Highway and then climbs east to the ridge joining the existing Calabasas Cold Creek Trail (follows the Calabasas Peak Motorway) that traverses north-south across the ridge top to Calabasas Peak.

In addition, to the south of the subject site (south of the intersection of Mulholland Highway and Stunt Road) are three trails (two of these trails are planned future trails and one trail is an existing trail currently used by hikers) all identified on the adopted Malibu/Santa Monica Mountains Trail System Map. The two future planned trails

include another portion of the Calabasas Cold Creek that traverses west – east and the Stunt High Trail that connects near Stunt Road on the east to the existing Backbone Trail on the west. The third identified trail is the existing Backbone Trail that crosses east – west across the top of the Santa Monica Mountains. Public Lands owned by the Santa Monica Mountains Conservancy (SMMC) are located to the east of the subject site at Calabasas Peak, and along Stunt Road which includes an existing Upper Stunt High Trail leading to the existing Backbone Trail (Exhibit 19). Additional public lands are located south of the intersection of Mulholland Highway and Stunt Road near Saddle Peak that include the Malibu Creek State Park, and various properties owned by the Mountains Restoration Trust.

The applicant proposes to construct a 4,607 sq. ft., 28 ft. high, two-story single family residence with an attached 230 sq. ft. garage; a 256 sq. ft. covered patio; a detached 24 ft. high guest house/garage with a 650 sq. ft. garage on the first floor and a 600 sq. ft. guest house on the second floor; a 145 sq. ft. covered patio; a pool and spa; a retaining wall; drainage swales, a driveway, a septic system, a temporary construction trailer after-the-fact grading within the dripline of two oak trees; a total of 4,783 cu. yds. of proposed and after-the-fact grading (3,756 cu. yds. of cut; 1,027 cu. yds. of fill) and 620 cubic yards of additional grading for removal and recompaction. The application also includes after-the-fact approval of the subject lot that was created pursuant to Certificate of Compliance # 88-0342, and restoration and replanting of a portion of the as-graded slope along the southern and western boundary of the primary driveway and on a secondary driveway with native vegetation in the area beyond the graded area required to construct the proposed project, to be completed after project construction.

This proposed development is located within the Mulholland Corridor near its intersection with Stunt Road. There are numerous existing residences located to the northeast, east, and southeast along Dry Canyon Creek. Adjacent to the subject parcel to the west and south are vacant lands with chaparral vegetation. In the review of this project, the Commission reviews the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public.

In addition, to assess potential impacts to public views where new development will be visible from public areas, the Commission examines the building site, the proposed grading, and the size of the building pad and structures. The construction of the proposed residence, garage/guest house raises, two issues regarding the siting and design: one, whether or not public views from public roadways will be adversely impacted, or two, whether or not public views from public lands and trails will be impacted.

The proposed project includes the request for approval of both as-built and new proposed grading totaling 4,783 cubic yards (3,756 cu. yds. of cut, 1,027 cu. yds. of fill, and 620 cu. yds. of removal and recompaction for the building pad) and the construction of five retaining walls. The proposed residence, garage/guest house, and retaining walls, will be visible to a limited degree from a portion of Dry Canyon Cold Creek Road located to the northeast creating an impact to public views.

Thus, the Commission finds that the proposed 28 foot high residence and 23 ft. 9 inch high garage/guest house will be visible to a limited degree from Dry Canyon Cold Creek Road at a distance of about 500 feet. The visibility of this development from a portion of Dry Canyon Cold Creek Road which is also a portion of the planned Stokes Ridge Trail, will be limited to only along the section of this road and trail located about 500 feet to the northeast from the proposed development due to the sharp and blind curves along this Road.

More importantly, the proposed residence and garage/guest house will not be visible from Mulholland Highway, a designated scenic highway, in both the northbound and southbound directions due to an intervening hilltop and substantial intervening mature riparian vegetation, sycamores and oak trees located along Dry Canyon Creek. The proposed residence, garage/guest house, retaining walls and driveway will be visible from the portion of the planned future Stokes Ridge Trail (Exhibit 18) which leads to the top of the ridge about one third to one half mile to the east connecting to the existing Calabasas – Cold Creek Trail that traverses an area also about one half mile to the east along the ridgeline. The proposed project will also be visible from SMMC public lands at the top of Calabasas Peak also located about one half of a mile to the east. This public view from a distance between one third to one half of a mile of the existing residence and the proposed project is against the backdrop of a chaparral vegetated hillside adjacent to the project site. There are no feasible alternative building locations on the subject lot that would significantly reduce visual impacts of the proposed project additions.

As viewed from the planned and existing public trails to the south (a portion of the planned Calabasas – Cold Creek Trail, the existing Stunt High Trail, and the existing Backbone Trail) and the public lands located to the south, the proposed residence, garage/guest house, retaining walls and driveway will either not be visible or its visibility will be limited due to the distance from these public trails and lands which are as close as one mile. Since the proposed development will be visible from the planned Stokes Ridge Trail, the special conditions of approval recommended below are necessary to ensure consistency with Coastal Act Section 30251.

In previous permit actions, the Commission has found it is necessary to require mitigation measures to minimize visual impacts associated with new proposed residential addition that include finishing the exterior of the residence, garage/guest house, retaining walls and driveway with a color consistent with the surrounding environment and, by incorporating windows for the residence and garage/guest house of a non-reflective glass type to minimize impacts on public views.

Therefore, in order to ensure that the public views of the proposed development on site and its visual impacts are minimized, **Special Condition No. Nine (9)** requires that 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: (1) all existing structures on site (including, but not limited to, the residence, garage/guest house, retaining walls and driveway). The

palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, retaining walls, driveway, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

Visual impacts associated with proposed grading, and the structures themselves, can be further reduced by the use of appropriate and adequate landscaping. As such, **Special Condition No. Three (3)** requires the applicant to prepare a revised landscape plan relying on native, non-invasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of **Special Condition No. Three (3)** will partially screen the proposed residential structure, retaining walls, and driveway and soften the visual impact of the development from public views from portion of the planned Stokes Ridge Trail located about 500 feet from the subject property, the eastern portion of this planned trail located to the east about one third to one half mile, the existing Calabasas Cold Creek Trail, and the SMMC public lands located to the south about one mile. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition No. Three (3)** also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

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. Therefore, in order 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, the Commission limits the nighttime lighting of the property, residence, garage/guest house, and driveway to that necessary for safety as outlined in **Special Condition No. Ten (10)**.

In addition, regarding future developments or improvements, certain types of development to the property, normally associated with the residence and garage/guest house, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. In past permit actions, the Commission has found that future additions to or expansion of the residence and detached accessory structures may result in adverse impacts to coastal resources, including public views. Therefore, **Special Condition No. Eight (8)** has been required to ensure that any future development or improvements normally associated with the proposed residence, garage/guest house, which might otherwise be exempt, are reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. Finally, **Special Condition No. Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

As discussed in Section IV. C. Environmentally Sensitive Habitat Areas, outright denial of all residential use of the property would interfere with reasonable investment-backed expectations of the applicant and/or deprive the property of all reasonable economic use in a manner that Section 30010 of the Coastal Act makes clear the Chapter 3 policies do not require. In chaparral ESHA areas in the Santa Monica Mountains, the Commission has required, through past permit actions, that development be clustered on a lot and the total development area (including the building pad and cut/fill slopes but not including the required fire department turnaround the portion of the driveway necessary to reach the turnaround) not exceed 10,000 sq. ft. to minimize impacts on the sensitive habitat. In this case, the proposed project has will be required by **Special Condition No. Fourteen (14)** to reduce the site of the building pad to a maximum 10,000 sq. ft. Additionally, the development has been sited on a relatively flat area as the result of unpermitted grading so as to reduce landform alternation and removal of native vegetation. As such, the proposed structures will be sited to minimize impacts to coastal resources to the extent feasible, while still providing adequate residential use of the site.

Therefore, the Commission finds that the proposed project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alternation of natural landforms. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## **F. Cumulative Impacts**

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. Section **30250(a)** of the Coastal Act states:

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

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

***[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.***

The applicant is requesting after-the-fact approval of one lot (APN 4455-039-008) which was created as part of a purported five lot subdivision. Based on a review of file documents for Conditional Certificate of Compliance 88-0342 that were provided to Commission staff by the Los Angeles County Department of Regional Planning (Exhibits 14 and 15), staff has confirmed that between 1956 and 1963 five putative lots were purportedly created from a single 13.4 acre parcel. The subject 3.59-acre lot was first described, as one of these 5 lots, between 1956 and 1958. Specifically, the County records also indicate that subject site was created on August 30, 1963. In addition, County staff have stated that the subject parcel was created in violation of the applicable laws and regulations because at the time the five parcels were created between 1956 and 1957, the subdivision regulations allowed no more than four lots or parcels to be created by deed. The creation of more than four lots from one (as was attempted in this case) would have required the approval of a Tract Map by Los Angeles County. The Conditional Certificate of Compliance 88-0342 specifically states “[t]he above described parcel was not created in compliance with State and County Subdivision regulations.” (Exhibit 13)

Therefore, because the subject lot was not created in compliance with the laws and regulations applicable at the time of its original identification, the County of Los Angeles issued a Conditional Certificate of Compliance (CC 88-0342) in 1988 in order to authorize the lot after-the-fact in regards to compliance with the Subdivision Map Act. The Coastal Act requires a coastal development permit prior to undertaking development, including the division of land. The vested rights exemption allows the completion or continuance of development that was commenced prior to the Coastal Act without a coastal development permit only if all other necessary and required permits were obtained. However, in this case, the unpermitted subdivision of land that was first attempted prior to the effective date of the Coastal Act on January 1, 1977, can not be considered vested or “grandfathered” development because it occurred in non-compliance with the applicable laws and regulations and without the required approvals. As such, the application of the property owner for a certificate of compliance in 1988 and the subsequent issuance of the 1988 Certificate of Compliance which “legalized” this lot for purposes of the Subdivision Map Act is considered a form of land division and, therefore, requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective.

There is no record of a Coastal Development Permit issued for the creation of this lot either prior to or after the July 13, 1989 recording of Conditional Certificate of Compliance 88-0342. Since the Conditional Certificate of Compliance 88-0342 was recorded without the required Coastal Development Permit, it was not legally effective, and no legal lot was created. A “Clearance of Conditions in Certificate of Compliance 88-0342” was recorded August 12, 2005, which confirmed that the conditions of Certificate of Compliance 88-0342, such as road rights of way were completed and the lot was now considered by Los Angeles County to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

According to Los Angeles County, the properties with the following assessor's parcel numbers were originally included in the 13.5-acre area encompassed by the unpermitted five-lot subdivision: 4455-039-014; 4455-039-015; 4455-039-008; 4455-039-011; 4455-039-013 (Exhibit 2).

The Commission typically reviews the creation of lots through a subdivision of land in a comprehensive manner and not on a piecemeal basis. The Commission's review typically entails an analysis of the individual and cumulative impacts of the proposed subdivision on coastal resources. To accomplish this the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUP and surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire subdivision.

In this case, a comprehensive analysis of the purported land divisions, which sought to create a total of five separate parcels, is not possible because the lots have been sold to multiple owners, and the successor to only one of those buyers is before the Commission at this time. In addition, the property owned by that buyer is property on which the Commission has twice permitted development. On the other four lots no coastal permits have been issued nor have applications for such permits been filed since 1977, the effective date of the Coastal Act. It's important to note that two of these five lots have included residential development since 1964 (APN 4455-039-013 located at 24753 Mulholland Highway) and 1966 (APN 4455-039-015 located at 24671 Dry Canyon Cold Creek Road) respectively according to Real Quest property records

In addition, on August 8, 1990, the Commission approved Coastal Permit No. 5-89-1115 (Gault) to construct a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This Coastal Permit was extended once to August 8, 1993 and was issued March 17, 1992 with three special conditions addressing a landscape plan, future development restriction, and plans conforming to geologic recommendation. The applicants submitted a second extension request; however, it was received after the expiration of this coastal permit. Although a copy of the 1988 certificate of compliance was submitted in conjunction with the application for CDP 5-89-1115, the applicant did not request authorization for the creation of the lot, and the Commission's approval of CDP 5-89-1115 did not involve such authorization, instead being based on the incorrect premise that the subject site had been legally created prior to the effective date of the Coastal Act because this lot had been shown on a map titled "1978 County of Los Angeles Buildout Survey" and that, therefore, the lot was considered as a legal lot.

Subsequently, on October 13, 1993, the Commission approved a second coastal permit, Coastal Administrative Permit No. 4-93-152 (Gault), to construct the same residence as previously approved in Coastal Permit No. 5-89-1115 (Gault) consisting of

a 3,603 sq. ft., 35 ft. high single family residence with septic system and 6,684 cu. yds. of grading at 24677 Dry Canyon Cold Creek Road. This staff report again confirmed that this lot was included in the 1978 County of Los Angeles buildout stating that “[a]ccording to the County of Los Angeles the subject lot was created in 1963. Therefore, the subject lot was counted in the 1978 County of Los Angeles buildout survey.” Coastal Administrative Permit No. 4-93-152 was extended three times until October 13, 1998 (Coastal Administrative Permit No. 4-93-152, E1, E2, E3).

The subject lot and adjacent lots that were subject to the underlying subdivision are in separate ownerships and the current landowners were not involved in the original subdivision of the original parent parcel. The Commission recently addressed this specific situation in the approval of the Malibu Local Coastal Program (LCP). Although the Malibu LCP is not the standard of review for development in unincorporated Los Angeles County, the LCP provides policy guidance regarding the certificate of compliance issue in this particular case. The Commission found in the approval of the Malibu LCP that:

***A land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 except the minimum parcel size, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm’s length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired the parcel prior to certification of the LCP in a good-faith, arm’s length transaction. (Sections 15.3 (C) and (D)). These provisions will prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.***

In this case, the Commission has previously approved two separate coastal permits for development on the subject lot created from the parent parcel, the applicant purchased the property in a good faith, arm’s length transaction (see findings on page 34 regarding the scope of purchaser’s constructive notice of the legality of the lot), and the subject parcel is not in common ownership with any other contiguous lot created from the parent parcel. Based on the above set of facts, in addition to the other factors discussed on page 34, the Commission finds that approval of the certificate of compliance is appropriate in this case. Given the facts of this particular case, denial of

the coastal development permit would result in an unreasonable hardship to the applicant who purchased this property in good faith without knowing the subject parcel was created without the benefit of a coastal development permit. However, the creation of an additional parcel in the Santa Monica Mountains will result in potential adverse cumulative impacts to coastal resources and therefore mitigation is required as discussed below.

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition of any authorization for land divisions and multi-unit projects, participation in the Transfer Development Credit (TDC) program as mitigation, such as has been done in past actions including CDPs P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-98-281 (Cariker), 4-00-028 (Layman), 4-00-044 (Blank Par-E, LLC), 4-01-046 (PCH-Tyler Associates, Inc.), and 4-04-121 (Miran). The TDC program has resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects and to optimize the location of existing lots while allowing development to proceed consistent with the requirements of §30250(a). In summary, the Commission has found that the TDC program, or a similar technique to retire development rights on selected lots, remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny such projects, based on the provisions of §30250(a) of the Coastal Act.

The applicant is requesting approval to legalize the 3.59-acre subject lot, which was created through an unpermitted five-lot subdivision. Staff's review indicates that the incremental contribution to cumulative impacts would be the creation, in this case, of one additional lot. As described above, the subject lot and other four lots that were part of the previous subdivision are held in separate ownerships. At such time as development is proposed on one or more of the other parcels, the Commission will consider the cumulative impacts associated with the creation of that or those lots and, if the Commission decides to approve such development, determine the appropriate mitigation that should be required. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation are associated with

the development of an additional lot in this area. Therefore, the Commission finds it necessary to impose cumulative impact mitigation requirements as a condition of approval of this permit in order to insure that the cumulative impacts of the creation of an additional buildable lot is adequately mitigated.

Therefore, **Special Condition No. Sixteen (16)** requires the applicant to mitigate the cumulative impacts of the development of this property, either through purchase of one (1) TDC or participation along with a public agency or private nonprofit corporation in retiring habitat or watershed land in amounts that the Executive Director determines will retire the equivalent potential building site [I don't see this second option in SC 16]. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

### **G. Unpermitted Development**

Unpermitted development has occurred on the subject parcel prior to submission of this permit application including, but not limited to, the creation of the subject lot and grading and clearing of vegetation for two dirt driveways, one flat pad area, and graded slopes.

The subject lot was created as part of a five lot subdivision sometime between 1956 and 1963. The five lot subdivision that created the subject lot did not comply with the requirements of the Subdivision Map Act and/or Los Angeles County Planning and Zoning ordinances. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (#88-0342) for the property to "legalize" the lot pursuant to the Subdivision Map Act. The 1988 Certificate of Compliance which "legalized" this lot pursuant to the Subdivision Map Act is the first legal recognition of this lot within the subdivision and, therefore, required a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the Certificate of Compliance. The applicant is now requesting after-the-fact approval to authorize the subject parcel as it was created pursuant to the 1988 Certificate of Compliance in order to address the unpermitted development. **Special Condition No. Sixteen (16)** requires the applicant to mitigate the cumulative developments associated with creation of a new lot by extinguishing development rights on one building site in the Santa Monica Mountains.

Development in the form of grading an unknown quantity of cut and fill, the clearance of about 0.37 acres of chaparral vegetation for two dirt driveways and one flat pad area has also occurred on the subject site without the required coastal development permits. The applicant is proposing, as part of this application, restoration and replanting of that portion of the grading that is beyond the proposed graded driveway and building pad in addition to the restoration of an unpermitted secondary driveway on the eastern portion of the lot. In addition, as part of this pending application, the applicant is requesting after-the-fact approval for one of the as-built flat pad area and the existing primary driveway. In order to ensure that the applicant's proposal to restore these areas is successful, **Special Condition No. Four (4)** requires the application to submit final restoration / revegetation plans that will include the restoration of the flat pad/graded

area located west and south of the primary driveway and on the secondary driveway as shown on Exhibit 10, for review by the Executive Director. These plans shall include use of native drought resistant plants and monitoring for a period no less than five years.

In order to ensure that the matter of unpermitted development is resolved in timely manner, **Special Condition No. Eighteen (18)** requires the applicant satisfy all conditions of this permit, which are prerequisite to the issuance of this permit within 120 days of commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

## **H. Local Coastal Program**

Section 30604 of the Coastal Act states, in part:

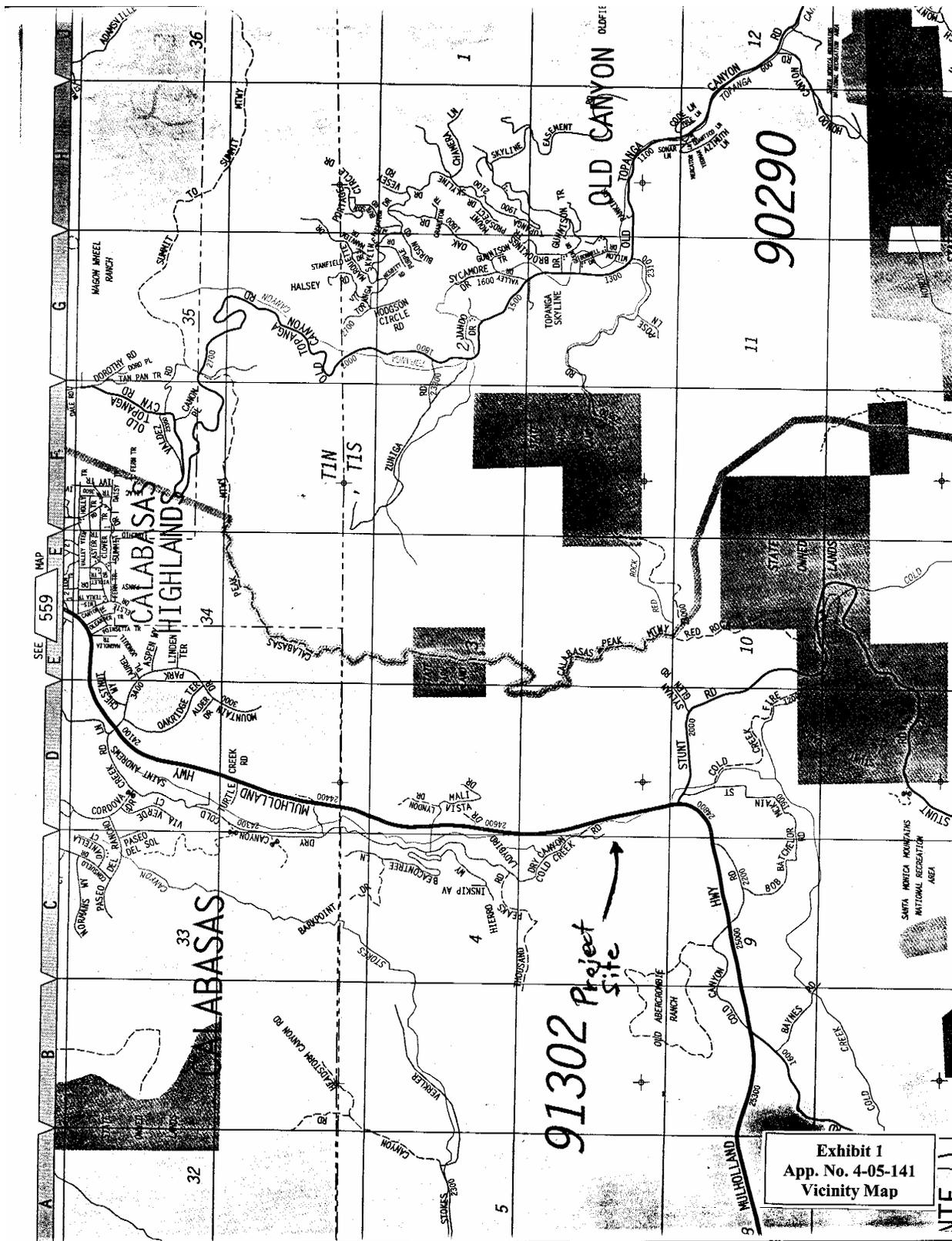
***a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the 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 permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts inconsistent with the Chapter 3 policies of the Coastal Act and is found to be consistent with the applicable policies contained therein. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles's ability to prepare a Local Coastal Program for this area of the Santa Monica Mountains that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

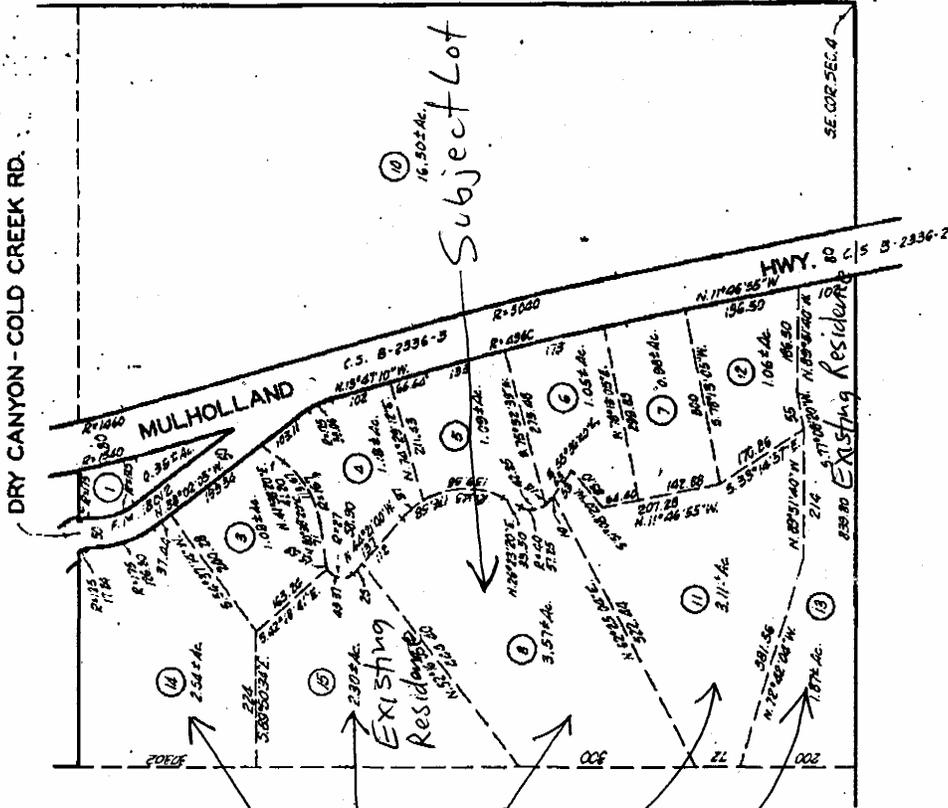
## **I. California Environmental Quality Act**

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through clustering structures, prohibiting development outside of the approved development area as required by the granting of an open space and conservation easement, and identifying an appropriate location for disposal of excess cut material. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA), restricting structure color (visual resources), requiring future improvements to be considered through a CDP, and employing non-chlorine water purification for the swimming pool (water quality). As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.



S.E. 1/4, S.E. 1/4 SEC. 4



T. I. S., R. 17W.

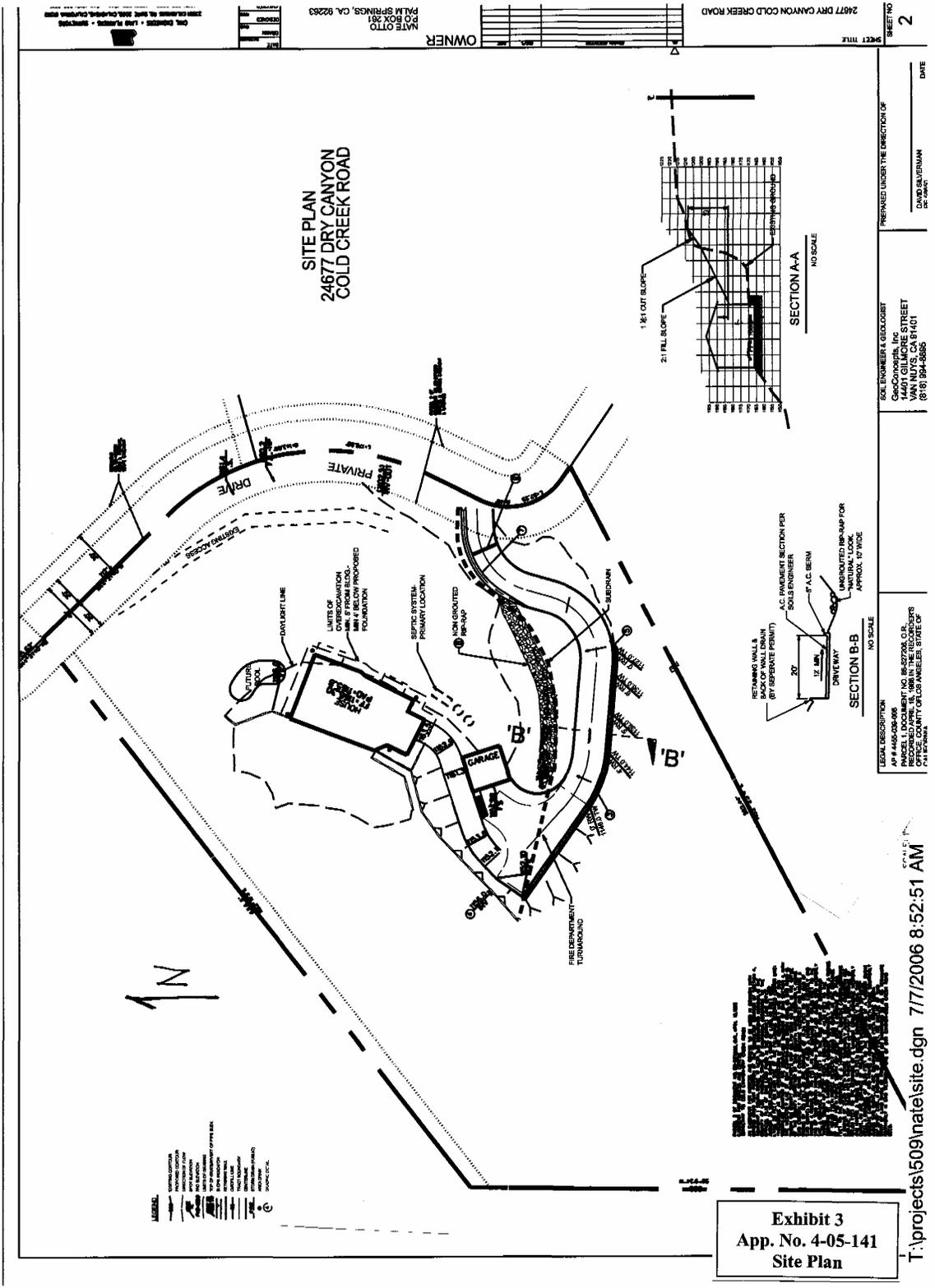
4455	39
SCALE 1" = 200'	

Five Lot  
Subdivision

Exhibit 2
App. No. 4-05-141
Assessor Parcel
Map - 5 Lot
Subdivision

CODE  
4986

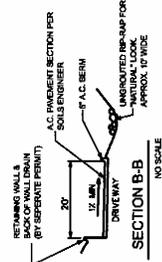
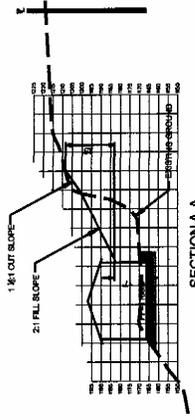
FOR PREP. ACCUM'T. SEE.



OWNER  
NATE OTTO  
181  
PALM SPRINGS, CA 92263

DATE TITLE  
SHEET NO. 2

SITE PLAN  
24677 DRY CANYON  
COLD CREEK ROAD



SOIL ENGINEER & GEOLOGIST  
GEOLOGICAL ENGINEERING STREET  
VAN NUYS, CA 91401  
(818) 994-8885

LEGAL DESCRIPTION  
PARCELS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

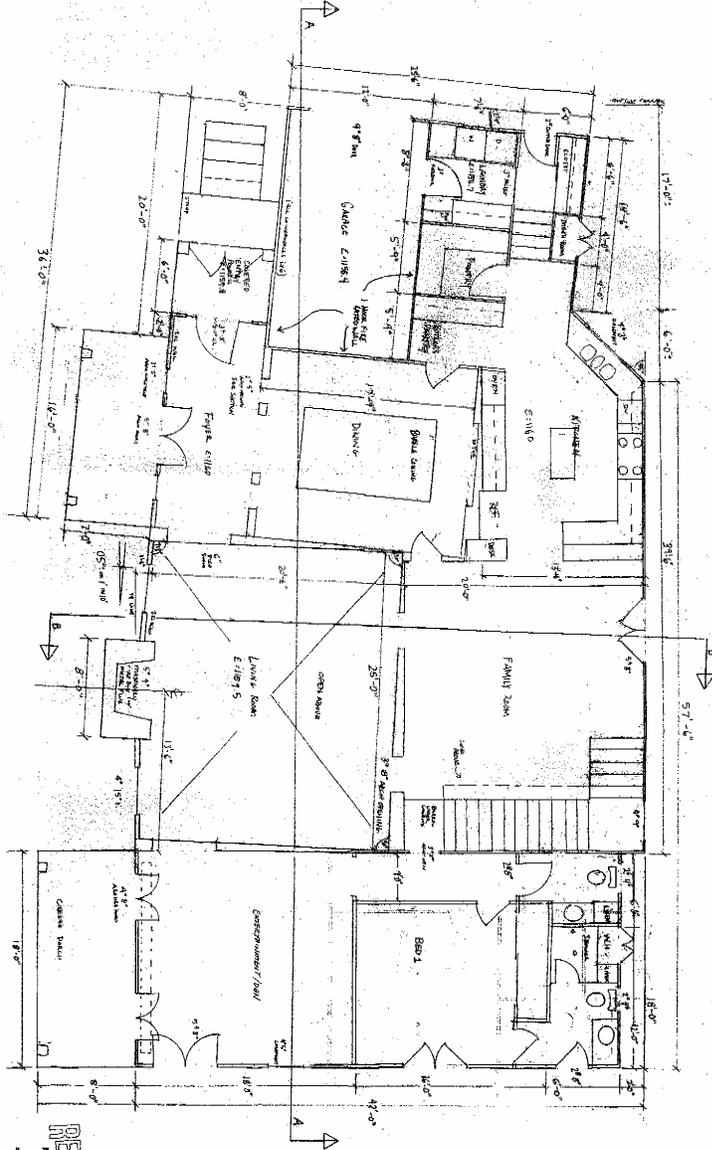
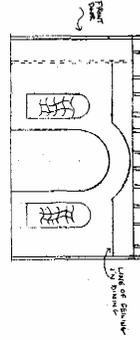
Exhibit 3  
App. No. 4-05-141  
Site Plan

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RECEIVED  
FEB 27 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Profile View of Stair  
Rough Sizing / Approximate Dimensions



RECEIVED  
MAY 1 11 2007

Exhibit 4  
App. No. 4-05-141  
Residence 1<sup>st</sup>  
Floor Plan

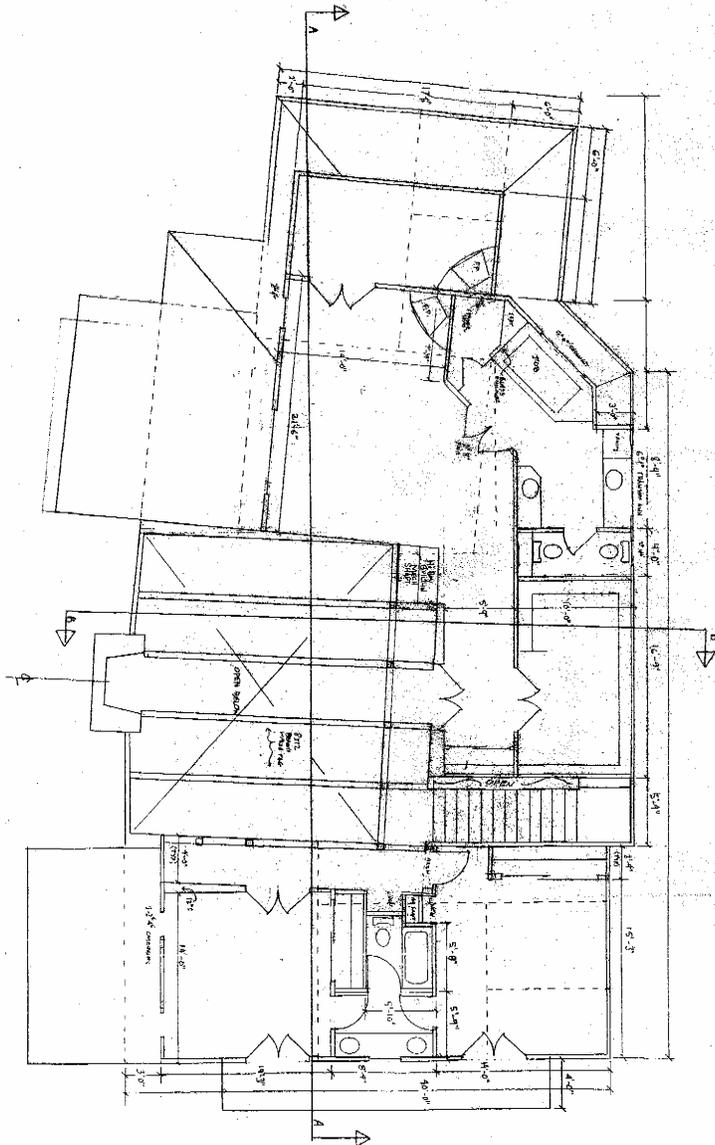
1<sup>st</sup> FLOOR PLAN

PROPERTY LOCATION  
DRY CANYON GOLD CREEK ROAD  
APN 445-00408

MITHANI & QINA OTTO  
P.O. BOX 281  
PALM SPRINGS, CA 92261  
(760) 338-2125

DATE

NO.	DATE	DESCRIPTION
1	1/18/07	1st Floor Plan
2	1/18/07	2nd Floor Plan
3	1/18/07	3rd Floor Plan
4	1/18/07	4th Floor Plan
5	1/18/07	5th Floor Plan
6	1/18/07	6th Floor Plan
7	1/18/07	7th Floor Plan
8	1/18/07	8th Floor Plan
9	1/18/07	9th Floor Plan
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13	1/18/07	13th Floor Plan
14	1/18/07	14th Floor Plan
15	1/18/07	15th Floor Plan
16	1/18/07	16th Floor Plan
17	1/18/07	17th Floor Plan
18	1/18/07	18th Floor Plan
19	1/18/07	19th Floor Plan
20	1/18/07	20th Floor Plan



**Exhibit 5**  
**App. No. 4-05-141**  
**Residence 2<sup>nd</sup>**  
**Floor Plan**

DATE: 1/24/04  
BY: [Signature]  
CHECKED: [Signature]  
SCALE: AS SHOWN

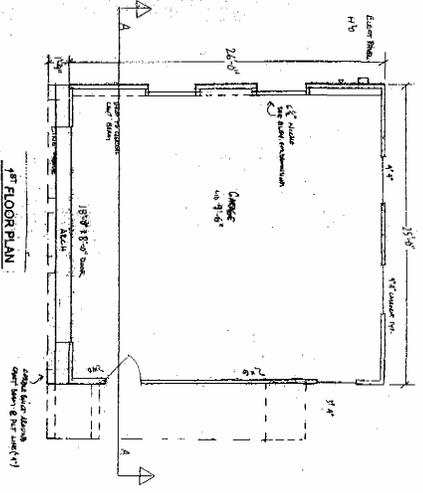
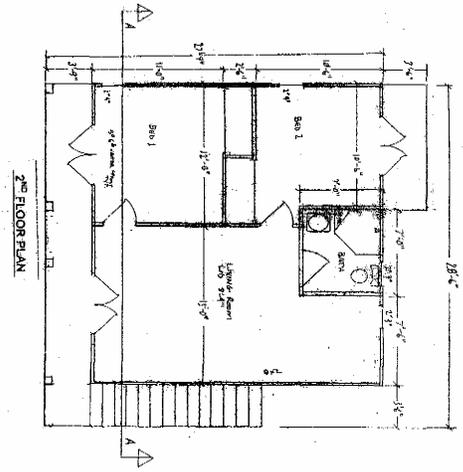
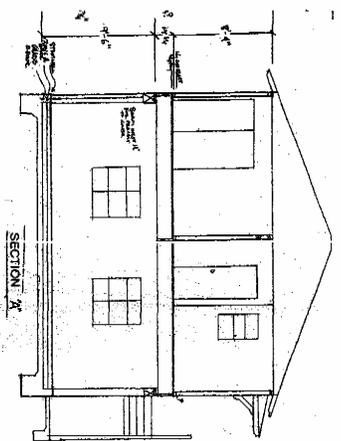
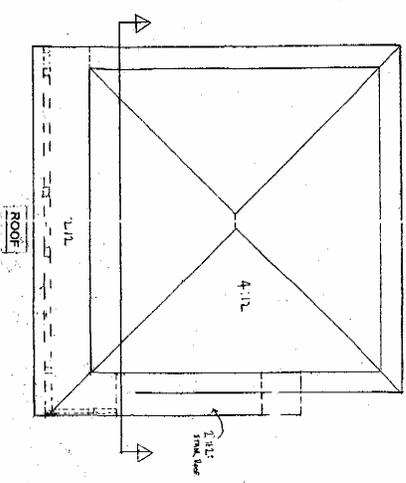
NO.	REVISION
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**2<sup>ND</sup> FLOOR PLAN**

PROPERTY LOCATION  
DRY CANYON COLD CREEK ROAD  
APN 4456-028-008

NATSIAN & ORIA OTTO  
P.O. BOX 381  
PALM SPRINGS, CA 92250  
(760) 333-0138

DATE: 1/24/04  
BY: [Signature]  
CHECKED: [Signature]  
SCALE: AS SHOWN



**Exhibit 6**  
**App. No. 4-05-141**  
**Garage/Guest**  
**House**  
**1<sup>st</sup> Floor Plan**

**REMOVED**  
DATE 2.4.2005  
BY [illegible]

600 sq ft  
14,437 sq ft  
157,447 sq ft

Sheet	AS
-------	----

**GUEST HOUSE - GARAGE**

PROPERTY LOCATION  
DEVELOPER: [illegible]  
APN: 445-055-008

NATHAN & GWYNETH OTTO  
P.O. BOX 261  
PALM SPRINGS, CA 92263  
(760) 834-1138

DATE	
BY	
REVISION	





<p>PROPERTY LOCATION 3875 DANFORTH DRIVE FREMONT, CA 94538 MTHA &amp; SHIA GTTS P.O. BOX 281 FREMONT, CA 94538 PH: 408-908-0088</p>	<p><b>ELEVATIONS</b> <b>GUEST HOUSE - GARAGE</b></p>	<p>DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____ SHEET: <b>AT</b> TOTAL SHEETS: _____</p>
<p style="text-align: center;"><b>FRONT</b></p>	<p style="text-align: center;"><b>RT. SIDE / EAST</b></p>	<p style="text-align: center;"><b>RECEIVED</b> AUG 2 4 2008 CITY OF FREMONT PLANNING DEPARTMENT</p>
<p style="text-align: center;"><b>LEFT SIDE / WEST</b></p>	<p style="text-align: center;"><b>BACK</b></p>	<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p><b>Exhibit 9</b> <b>App. No. 4-05-141</b> <b>Garage/Guest</b> <b>House Elevations</b></p> </div>





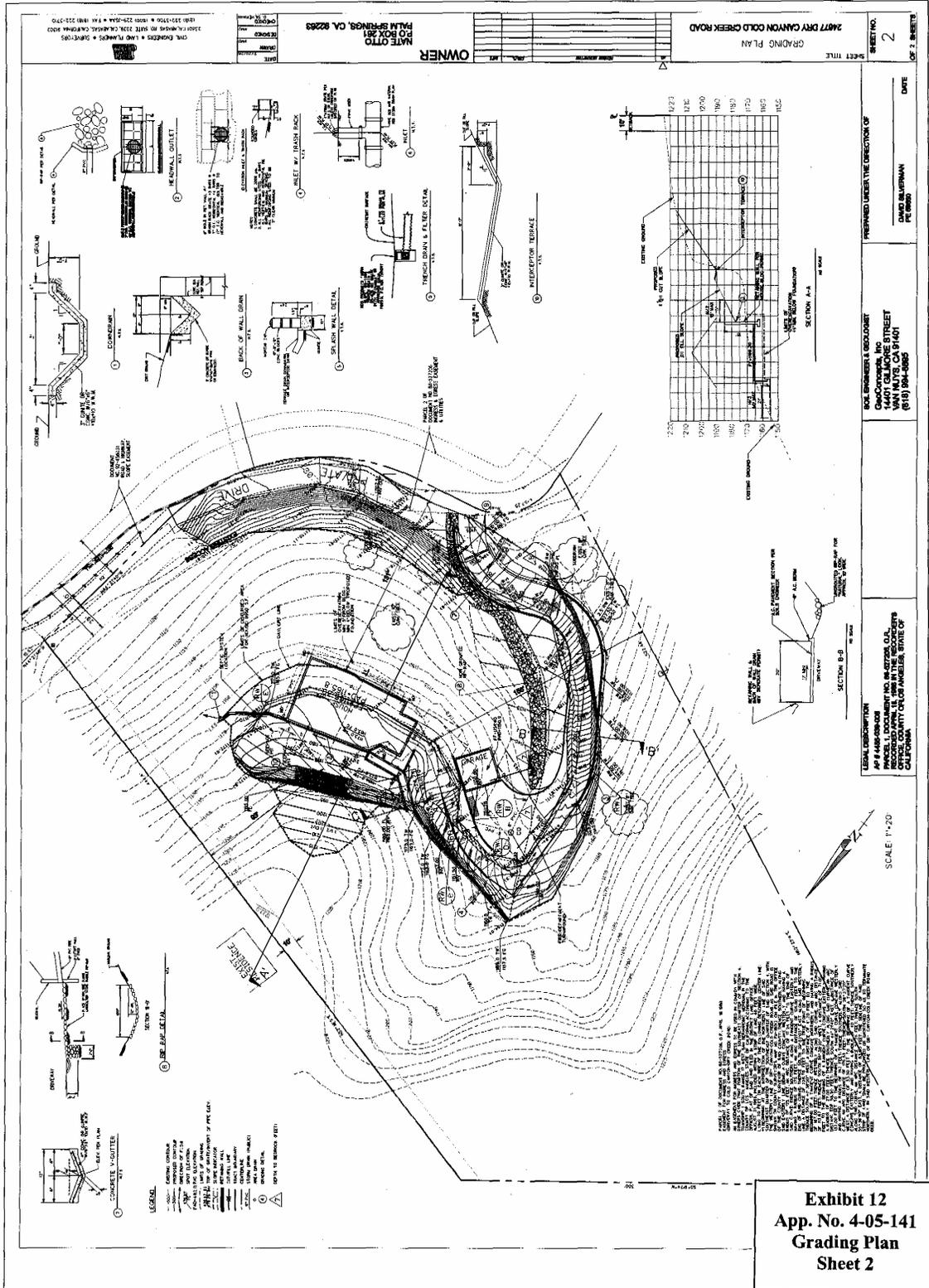


Exhibit 12  
App. No. 4-05-141  
Grading Plan  
Sheet 2

88 1097868

RECORDING REQUESTED BY

Department of Regional Planning  
320 West Temple Street  
Room 1186, Hall of Records  
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name Gregory Joe Gault  
Street 14216 Nordhoff St.  
City Panorama City, Ca. 91402

RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA

4 MIN. PAST 8 A.M. JUL 13 1988

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3

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL CERTIFICATE OF COMPLIANCE CC88-0342

REQUEST FOR CERTIFICATE OF COMPLIANCE

I/We the undersigned owner(s) of record (and/or vendee(s) pursuant to a contract of sale) in the following described property within the unincorporated territory of the County of Los Angeles, hereby REQUEST the County of Los Angeles to determine if said property described below complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State

Signature on file

Signature on file

Signature on file

Signature <i>ANN</i>	Signature <i>B. PAYNE</i>	Signature <i>Gregory J. Gault</i>	Signature <i>Teri Gault</i>
Name (typed or printed) ANN	Name (typed or printed) B. PAYNE	Name (typed or printed) Gregory J. Gault	Name (typed or printed) Teri Gault
Date	Date	Date	Date

LEGAL DESCRIPTION  
(TYPED)

PARCEL 1

That portion of the southeast quarter of the southeast quarter of Section 4, Township 1 South, Range 17 West, San Bernardino meridian, in the County of Los Angeles, state of California, according to the official plat of said land filed in the District Land Office, August 31, 1896, described as follows:

Beginning at the southeasterly corner of said southeast quarter of the southeast quarter of said Section 4; thence North 0' 09' 26" East, along the westerly line of said southeast quarter of the southeast quarter, a distance of 272.00 feet to the true point of beginning; thence North 0' 09' 26" East, along said westerly line, a distance of 300 feet; thence North 52' 16' 05" East a distance of 444.40 feet; thence South 44' 21' 40" East a distance of 112.00 feet to the beginning of a tangent curve concave westerly and having a radius of 143.00 feet; thence southerly along said curve, an arc distance of 176.58 feet; Thence South 26' 23' 20" West, a distance of 33.50 feet to the beginning of a tangent curve concave easterly and having a radius of 40.00 feet; thence southerly along said curve, an arc distance of 57.25 feet; thence south 55' 36' 40" East a distance of 10.00 feet; thence south 62' 25' 04" West a distance of 522.44 feet to the true point of beginning.

PARCEL 2

An easement for ingress and egress to be used in common with others over that portion of the southeast quarter of the southeast quarter of Section 4, Township 1 South, Range 17 West, San Bernardino meridian, in the county of Los Angeles, state of California, according to the official plat of said land filed in the District Land Office, August 31, 1896, included within a strip of land, 40 feet wide, lying 20 feet on each side of the following described center line:

Beginning at the intersection of the northerly line of said southeast quarter of the southeast quarter of said Section 4 with the westerly line of Dry Canyon-Cold Creek Road as said road is shown on county surveyor's map No. FM-18012 on file in the office of the county surveyor of said county; thence southerly along said westerly line, being a curve concave westerly and having a radius of 125 feet, an arc distance of 17.24 feet to the end of said curve; thence southerly along a tangent curve concave easterly and having a radius of 175 feet an arc distance of 126.80 feet to the end of said curve; thence South 38' 02' 05" East, along said westerly line, a distance of 236.78 feet to the true point of beginning; thence

AMB# 4455:39(8)

62-01-40-76 Revised 6/85

Exhibit 13  
App. No. 4-05-141  
Conditional  
Certificate of  
Compliance 88-0342

76R592P

p91of3

APPLICANT: Gregory Joe Gault  
14216 Nordhoff St. Panorama City, Ca. 91402

**CERTIFICATE OF COMPLIANCE**  
CONTINUATION

South 41° 38' 20" West a distance of 41.20 feet to the beginning of a tangent curve, concave northerly and having a radius of 167.00 feet; thence westerly, along said curve, an arc distance of 113.67 feet; thence South 80° 38' 20" West a distance of 71.00 feet to the beginning of a tangent curve, concave easterly and having a radius of 27.00 feet; thence southerly, along said curve, an arc distance of 58.90 feet; thence South 44° 21' 40" East, a distance of 137.00 feet to the beginning of a tangent curve concave westerly and having a radius of 143 feet; thence southerly along said curve, an arc distance of 176.58 feet; thence South 26° 23' 20" West a distance of 33.50 feet to the beginning of a tangent curve concave easterly and having a radius of 40 feet; thence southerly, along said curve, an arc distance of 57.25 feet; thence South 55° 36' 40" East a distance of 63.00 feet.

The side lines of said 40 foot strip of land shall be prolonged or shortened so as to terminate northerly in said westerly line of Dry Canyon Cold-Creek Road.

88-1097668

4455-039-008

APPLICANT GAULT, Gregory & Teri

PAGE 3/3

**CONDITIONAL CERTIFICATE OF COMPLIANCE**

CONTINUATION

CC 88-0342

**DETERMINATION OF CONDITIONAL COMPLIANCE**

The above described parcel was not created in compliance with State and County Subdivision regulations. Under current State law, THE PROPERTY MAY BE SOLD, LEASED, FINANCED OR OTHERWISE CONVEYED WITHOUT RESTRICTION. HOWEVER, THE CONDITIONS LISTED BELOW MUST BE FULFILLED BEFORE ISSUANCE OF A BUILDING PERMIT OR OTHER DEVELOPMENT APPROVAL. These conditions are in addition to any permit requirements which may be imposed.

**CONDITION(S):**

1. PROVIDE a Topographic Road Plan as EVIDENCE-ALL-WEATHER Vehicular Access a Public-Street SATISFACTORY to the Planning Director.
2. OFFER for Road-Right-of-Way any portion of the subject property within 30 feet of the center-line for the Roads shown on the above Plan and Slope-Easements adjacent thereto, to the SATISFACTION of County Public Works Officials.
3. OFFER said Right-of-Way as Easements to other property owners in Section 4, Township 1 South, Range 17 West.
4. DEDICATE to the County the Right-to-Restrict Erection of buildings and/or other structures, because the property and/or its access is within a Flood-Prone and/or other High-Hazard area.
5. OFFER Right-of-Way for a Drainage Channel or conduit to the satisfaction of County Public Works Officials.

**NOTES:**

Prospective purchasers should check site conditions and applicable development codes to determine whether the property is suitable for their intended use.

Prior to authorization to build on this property, the applicant will be required conform to the County building regulations. Such regulations include, but are not limit to, programs for appropriate sanitary sewage disposal and water supply for domestic use and fire suppression.

Geologic, soil and/or drainage conditions on the subject property may limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

Projects which may affect an endangered species, wetlands, a stream bed or any other waters of the United States, will require a permit from the Department of the Army, Corps of Engineers.

88-1097868



4455-39-8  
DEPARTMENT OF REGIONAL PLANNING  
County of Los Angeles, State of California

By: Signature on file

Title: Administrator, Subdivision Admin. Div.

Date: JUL 13 1988

Lr

pg. 3 of 3



RECORDING REQUESTED BY:

Department of Regional Planning  
320 W. Temple Street  
Room 1360, Hall of Records  
Los Angeles, CA 90012

05 1939410

2

WHEN RECORDED MAIL TO:

Name: Nathan and Gina Otto

Mailing  
Address: P.O. Box 261

City, State Palm Springs, CA  
Zip Code: 92263-0261

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TITLE(S)

RECEIVED  
FEB 27 2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Clearance of Conditions in  
Certificate of Compliance

88-0342

Exhibit 14  
App. No. 4-05-141  
Clearance of Conditions  
Certificate of  
Compliance 88-0342

Pg 1 of 2

3

05 1939410



RECORDING REQUESTED BY:  
Department of Regional Planning  
320 W. Temple Street  
Room 1360, Hall of Records  
Los Angeles, CA 90012

WHEN RECORDED MAIL TO:  
Name: Nathan and Gina Otto  
Mailing Address: P.O. Box 261  
City, State: Palm Springs, CA  
Zip Code: 92263-0261

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**CERTIFICATE OF COMPLIANCE**  
**88-0342**  
**CLEARANCE OF CONDITIONS**

The owner(s) and/or holder(s) of a title interest in the real property within the unincorporated territory of the County of Los Angeles, having satisfied the conditions as enumerated in the **CONDITIONAL CERTIFICATE OF COMPLIANCE**, recorded as Document No. **88-1097868**, on **July 13, 1988**, complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) and the County Subdivision Ordinance (Ord. 4478, County of Los Angeles).

**Nathan F. Otto and Gina A. Otto**

OWNER(S)

NOTES:

**THIS CERTIFICATE DOES NOT CONSTITUTE A BUILDING PERMIT.** Prior to authorization to build on this property, the applicant will be required to conform to the County Building regulations. Such regulations include, but are not limited to; programs for appropriate sanitary sewage disposal, water supply for domestic use and fire suppression.

**GEOLOGIC**, soils and/or **Drainage Conditions** may exist on the subject property, which could limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

**DETERMINATION OF COMPLIANCE**

I hereby certify that the subject parcel complies with the applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance and may be developed and/or sold, financed, leased or transferred in full compliance with all applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance.

APN: 4455-039-008



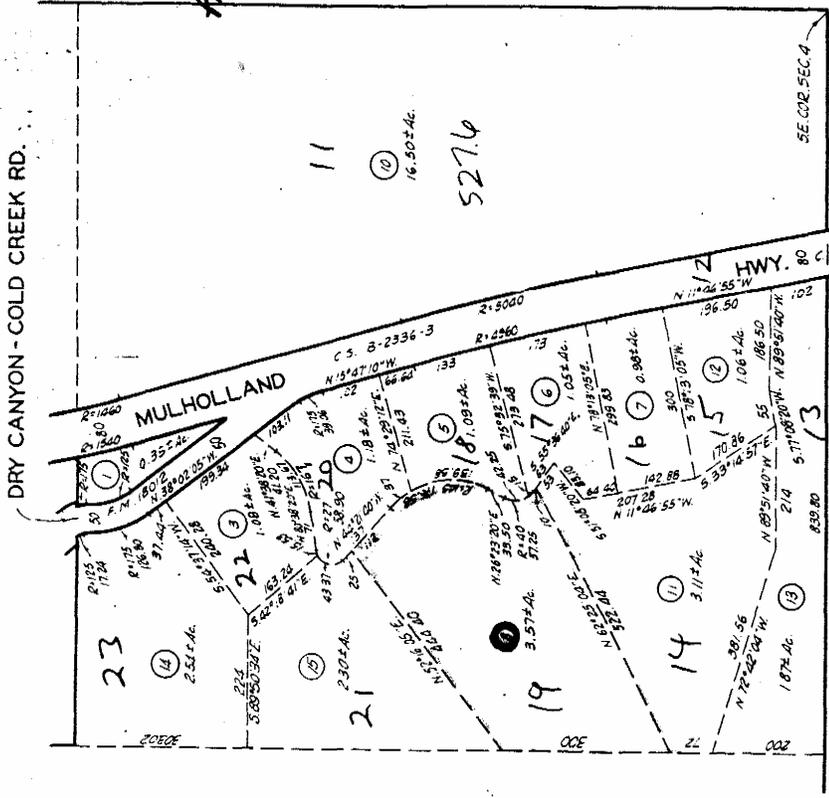
DEPARTMENT OF REGIONAL PLANNING  
County of Los Angeles  
James E. Hartl, AICP  
Director of Planning

DEPARTMENT OF REGIONAL PLANNING

By: Signature on file  
Title: Administrator, Current Planning Division  
Date: August 11, 2005  
Pg 2 of 2

*ANDERSON to 8/14/63  
# 925 loc 8/30/63  
FIG CREAT*

S.E. 1/4, S.E. 1/4 SEC. 4



T. 1 S., R. 17 W.

35 | 39  
2007  
58-0342

*6813-14*

Exhibit 15  
App. No. 4-05-141  
Conditional C of C 88-  
0342 Los Angeles County  
File APN Map

CODE  
4988

FOR PREV. ASSMT. SEE:  
4-55 - 39

SHEET 2 C.C. No. 88-0342

When was this property first created in its present configuration? \_\_\_\_\_

What property did the Grantor (subdivider) own in one parcel, or several contiguous parcels, before he started dividing it? Arb No (s). \_\_\_\_\_

Legal Description(s): pt. of SE 1/4 of Sec. 4 T15 R17W

Acquisition information for underlying parcel(s):

Grantor	Grantee	Doc. W & Rec. Date	O.R. Book and Page	Dated Date	I.R.S. D.T./T.	A.M.B. PE & Pcl	T.I. Arb.#
<u>Hetman</u>	<u>to Hodel</u>			<u># 638</u>	<u>Rec</u>	<u>10/14/56</u>	
<u>2</u>	<u>"</u>	<u>to Dufour</u>		<u># 225</u>	<u>Rec</u>	<u>10/11/56</u>	
<u>3</u>	<u>"</u>	<u>to Swick</u>		<u># 454</u>	<u>Rec</u>	<u>5/16/57</u>	
<u>4</u>	<u>"</u>	<u>to Walls</u>		<u># 477</u>	<u>Rec</u>	<u>4/11/57</u>	

Total number of parcels created by subdivider, ± 5

Creation information on all of these parcels:

Grantor	Grantee	Doc.# & Rec. Date	O.R. Book and Page	Dated Date	I.R.S. D.T./T.	A.M.B. PE & Pcl	T.I. Arb.#
<u>5</u>	<u>"</u>	<u>to</u>	<u>"</u>	<u># 361</u>	<u>Rec</u>	<u>3/6/58</u>	

± 5 parcels

Minor Violation

Anderson to Slater # 925 Rec 8/30/63  
Big Creation

Exhibit 16  
App. No. 4-05-141  
Conditional C of C 88-0342 Los Angeles County  
File Sheet 2 - Lot  
Creation Dates

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



MEMORANDUM

FROM: John Dixon, Ph.D.  
Ecologist / Wetland Coordinator

TO: Ventura Staff

SUBJECT: Designation of ESHA in the Santa Monica Mountains

DATE: March 25, 2003

In the context of the Malibu LCP, the Commission found that the Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, areas of undeveloped native habitat in the Santa Monica Mountains that are large and relatively unfragmented may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state. This is the only place in the coastal zone where the Commission has recognized chaparral as meeting the definition of ESHA. The scientific background presented herein for ESHA analysis in the Santa Monica Mountains is adapted from the Revised Findings for the Malibu LCP that the Commission adopted on February 6, 2003.

For habitats in the Santa Monica Mountains, particularly coastal sage scrub and chaparral, there are three site-specific tests to determine whether an area is ESHA because of its especially valuable role in the ecosystem. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? The requisite information for this test generally should be provided by a site-specific biological assessment. Second, is the habitat largely undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation? This should be documented with an aerial photograph from our mapping unit (with the site delineated) and should be attached as an exhibit to the staff report. For those habitats that are absolutely rare or that support individual rare species, it is not necessary to find that they are relatively pristine, and are neither isolated nor fragmented.

**Designation of Environmentally Sensitive Habitat in the  
Santa Monica Mountains**

The Coastal Act provides a definition of "environmentally sensitive area" as: "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 30107.5).

EXHIBIT 17  
APP NO. 4-05-141  
ESHA Memo  
Page 1 of 24

There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The first test of ESHA is whether a habitat or species is rare. Rarity can take several forms, each of which is important. Within the Santa Monica Mountains, rare species and habitats often fall within one of two common categories. Many rare species or habitats are globally rare, but locally abundant. They have suffered severe historical declines in overall abundance and currently are reduced to a small fraction of their original range, but where present may occur in relatively large numbers or cover large local areas. This is probably the most common form of rarity for both species and habitats in California and is characteristic of coastal sage scrub, for example. Some other habitats are geographically widespread, but occur everywhere in low abundance. California's native perennial grasslands fall within this category.

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, many areas within the Santa Monica Mountains may meet this test because they provide habitat for endangered species, protect water quality, provide essential corridors linking one sensitive habitat to another, or provide critical ecological linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable." This test is met for relatively pristine areas that are integral parts of the Santa Monica Mountains Mediterranean ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem as detailed below.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the Santa Monica Mountains, as in most areas of southern California affected by urbanization, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes.

### **Ecosystem Context of the Habitats of the Santa Monica Mountains**

The Santa Monica Mountains comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California.

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California's coastal sage scrub, chaparral, oak woodlands, and associated riparian areas have analogues in just a few areas of the world with similar climate. Mediterranean ecosystems with their wet winters and warm dry summers are only found in five localities (the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia). Throughout the world, this ecosystem with its specially adapted vegetation and wildlife has suffered severe loss and degradation from human development. Worldwide, only 18 percent of the Mediterranean community type remains undisturbed<sup>1</sup>. However, within the Santa Monica Mountains, this ecosystem is remarkably intact despite the fact that it is closely surrounded by some 17 million people. For example, the 150,000 acres of the Santa Monica Mountains National Recreation Area, which encompasses most of the Santa Monica Mountains, was estimated to be 90 percent free of development in 2000<sup>2</sup>. Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology<sup>3</sup>. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists<sup>4</sup>.

In addition to being a large single expanse of land, the Santa Monica Mountains ecosystem is still connected, albeit somewhat tenuously, to adjacent, more inland ecosystems<sup>5</sup>. Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency<sup>6</sup> identified wildlife corridors and habitat connectivity as the top conservation priority. In a letter to governor Gray Davis, sixty leading environmental scientists have endorsed the

<sup>1</sup> National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.

<sup>2</sup> Ibid.

<sup>3</sup> Harris, L. D. 1988. Edge effects and conservation of biotic diversity. *Conserv. Biol.* 330-332. Soule, M. E., D. T. Bolger, A. C. Alberts, J. Wright, M. Soric and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. *Conserv. Biol.* 2: 75-92. Yahner, R. H. 1988. Changes in wildlife communities near edges. *Conserv. Biol.* 2:333-339. Murphy, D. D. 1989. Conservation and confusion: Wrong species, wrong scale, wrong conclusions. *Conservation Biol.* 3:82-84.

<sup>4</sup> Crooks, K. 2000. Mammalian carnivores as target species for conservation in Southern California. p. 105-112 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2<sup>nd</sup> Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2<sup>nd</sup> Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. and R. F. Noss. 1998. Do habitat corridors provide connectivity? *Conserv. Biol.* 12:1241-1252. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: *Metapopulations and Wildlife Conservation*, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

<sup>5</sup> The SMM area is linked to larger natural inland areas to the north through two narrow corridors: 1) the Conejo Grade connection at the west end of the Mountains and 2) the Simi Hills connection in the central region of the SMM (from Malibu Creek State Park to the Santa Susanna Mountains).

<sup>6</sup> California Resources Agency. 2001. Missing Linkages: Restoring Connectivity to the California Landscape. California Wilderness Coalition, Calif. Dept of Parks & Recreation, USGS, San Diego Zoo and The Nature Conservancy. Available at: <http://www.calwild.org/pubs/reports/linkages/index.htm>

conclusions of that report<sup>7</sup>. The chief of natural resources at the California Department of Parks and Recreation has identified the Santa Monica Mountains as an area where maintaining connectivity is particularly important<sup>8</sup>.

The species most directly affected by large scale connectivity are those that require large areas or a variety of habitats, e.g., gray fox, cougar, bobcat, badger, steelhead trout, and mule deer<sup>9</sup>. Large terrestrial predators are particularly good indicators of habitat connectivity and of the general health of the ecosystem<sup>10</sup>. Recent studies show that the mountain lion, or cougar, is the most sensitive indicator species of habitat fragmentation, followed by the spotted skunk and the bobcat<sup>11</sup>. Sightings of cougars in both inland and coastal areas of the Santa Monica Mountains<sup>12</sup> demonstrate their continued presence. Like the "canary in the mineshaft," an indicator species like this is good evidence that habitat connectivity and large scale ecological function remains in the Santa Monica Mountains ecosystem.

The habitat integrity and connectivity that is still evident within the Santa Monica Mountains is extremely important to maintain, because both theory and experiments over 75 years in ecology confirm that large spatially connected habitats tend to be more stable and have less frequent extinctions than habitats without extended spatial structure<sup>13</sup>. Beyond simply destabilizing the ecosystem, fragmentation and disturbance

<sup>7</sup> Letters received and included in the September 2002 staff report for the Malibu LCP.

<sup>8</sup> Schoch, D. 2001. Survey lists 300 pathways as vital to state wildlife. Los Angeles Times. August 7, 2001.

<sup>9</sup> Martin, G. 2001. Linking habitat areas called vital for survival of state's wildlife Scientists map main migration corridors. San Francisco Chronicle, August 7, 2001.

<sup>10</sup> Noss, R. F., H. B. Quigley, M. G. Hornocker, T. Merrill and P. C. Paquet. 1996. Conservation biology and carnivore conservation in the Rocky Mountains. *Conserv. Biol.* 10: 949-963. Noss, R. F. 1995. Maintaining ecological integrity in representative reserve networks. World Wildlife Fund Canada.

<sup>11</sup> Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 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 Open-File Report 00-62. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: *Metapopulations and Wildlife Conservation*, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

<sup>12</sup> Recent sightings of mountain lions include: Temescal Canyon (pers. com., Peter Brown, Facilities Manager, Calvary Church), Topanga Canyon (pers. com., Marti Witter, NPS), Encinal and Trancas Canyons (pers. com., Pat Healy), Stump Ranch Research Center (pers. com., Dr. Robert Wayne, Dept. of Biology, UCLA). In May of 2002, the NPS *photographed* a mountain lion at a trip camera on the Back Bone Trail near Castro Crest – Seth Riley, Eric York and Dr. Ray Sauvajot, National Park Service, SMMNRA.

<sup>13</sup> Gause, G. F. 1934. The struggle for existence. Baltimore, William and Wilkins 163 p. (also reprinted by Hafner, N.Y. 1964). Gause, G. F., N. P. Smaragdova and A. A. Witt. 1936. Further studies of interaction between predators and their prey. *J. Anim. Ecol.* 5:1-18. Huffaker, C. B. 1958. Experimental studies on predation: dispersion factors and predator-prey oscillations. *Hilgardia* 27:343-383. Luckinbill, L. S. 1973. Coexistence in laboratory populations of *Paramecium aurelia* and its predator *Didinium nasutum*. *Ecology* 54:1320-1327. Allen, J. C., C. C. Brewster and D. H. Slone. 2001. Spatially explicit ecological models: A spatial convolution approach. *Chaos, Solitons and Fractals.* 12:333-347.

can even cause unexpected and irreversible changes to new and completely different kinds of ecosystems (habitat conversion)<sup>14</sup>.

As a result of the pristine nature of large areas of the Santa Monica Mountains and the existence of large, unfragmented and interconnected blocks of habitat, this ecosystem continues to support an extremely diverse flora and fauna. The observed diversity is probably a function of the diversity of physical habitats. The Santa Monica Mountains have the greatest geological diversity of all major mountain ranges within the transverse range province. According to the National Park Service, the Santa Monica Mountains contain 40 separate watersheds and over 170 major streams with 49 coastal outlets<sup>15</sup>. These streams are somewhat unique along the California coast because of their topographic setting. As a "transverse" range, the Santa Monica Mountains are oriented in an east-west direction. As a result, the south-facing riparian habitats have more variable sun exposure than the east-west riparian corridors of other sections of the coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region. The many different physical habitats of the Santa Monica Mountains support at least 17 native vegetation types<sup>16</sup> including the following habitats considered sensitive by the California Department of Fish and Game: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals (listed, proposed for listing, or species of concern) are known to occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem.

The Santa Monica Mountains are also important in a larger regional context. Several recent studies have concluded that the area of southern California that includes the Santa Monica Mountains is among the most sensitive in the world in terms of the number of rare endemic species, endangered species and habitat loss. These studies have designated the area to be a local hot-spot of endangerment in need of special protection<sup>17</sup>.

Therefore, the Commission finds that the Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine,

<sup>14</sup> Scheffer, M., S. Carpenter, J. A. Foley, C. Folke and B. Walker. 2001. Catastrophic shifts in ecosystems. *Nature* 413:591-596.

<sup>15</sup> NPS. 2000. op.cit.

<sup>16</sup> From the NPS report (2000 op. cit.) that is based on the older Holland system of subjective classification. The data-driven system of Sawyer and Keeler-Wolf results in a much larger number of distinct "alliances" or vegetation types.

<sup>17</sup> Myers, N. 1990. The biodiversity challenge: Expanded hot-spots analysis. *Environmentalist* 10:243-256. Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. A. Kent. 2000. Biodiversity hot-spots for conservation priorities. *Nature* 403:853-858. Dobson, A. P., J. P. Rodriguez, W. M. Roberts and D. S. Wilcove. 1997. Geographic distribution of endangered species in the United States. *Science* 275:550-553.

physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California. The Commission further finds that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of substantially intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act.

### **Major Habitats within the Santa Monica Mountains**

The most recent vegetation map that is available for the Santa Monica Mountains is the map that was produced for the National Park Service in the mid-1990s using 1993 satellite imagery supplemented with color and color infrared aerial imagery from 1984, 1988, and 1994 and field review<sup>18</sup>. The minimum mapping unit was 5 acres. For that map, the vegetation was mapped in very broad categories, generally following a vegetation classification scheme developed by Holland<sup>19</sup>. Because of the mapping methods used the degree of plant community complexity in the landscape is not represented. For example, the various types of "ceanothus chaparral" that have been documented were lumped under one vegetation type referred to as "northern mixed chaparral." Dr. Todd Keeler-Wolf of the California Department of Fish and Game is currently conducting a more detailed, quantitative vegetation survey of the Santa Monica Mountains.

The National Park Service map can be used to characterize broadly the types of plant communities present. The main generic plant communities present in the Santa Monica Mountains<sup>20</sup> are: coastal sage scrub, chaparral, riparian woodland, coast live oak woodland, and grasslands.

#### Riparian Woodland

Some 49 streams connect inland areas with the coast, and there are many smaller drainages as well, many of which are "blue line." Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of all the plant communities in the area<sup>21</sup>. At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the

<sup>18</sup> Franklin, J. 1997. Forest Service Southern California Mapping Project, Santa Monica Mountains National Recreation Area, Task 11 Description and Results, Final Report. June 13, 1997, Dept. of Geography, San Diego State University, USFS Contract No. 53-91S8-3-TM45.

<sup>19</sup> Holland R. F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Dept. of Fish and Game, Natural Heritage Division, Sacramento, CA. 95814.

<sup>20</sup> National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11 in this document.)

<sup>21</sup> Ibid.

sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles<sup>22</sup>. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

Riparian habitats and their associated streams form important connecting links in the Santa Monica Mountains. These habitats connect all of the biological communities from the highest elevation chaparral to the sea with a unidirectional flowing water system, one function of which is to carry nutrients through the ecosystem to the benefit of many different species along the way.

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing<sup>23</sup>, and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work<sup>24</sup> has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage

<sup>22</sup> Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

<sup>23</sup> USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

<sup>24</sup> Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. *Southwestern Naturalist*. (in Press).

scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat<sup>25</sup>. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed<sup>26</sup>. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost<sup>27</sup>. Writing at the same time as Faber, Bowler asserted that, "[t]here is no question that riparian habitat in southern California is endangered."<sup>28</sup> In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances<sup>29</sup>. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.<sup>30</sup> In addition impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish<sup>31</sup>. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

<sup>25</sup> Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

<sup>26</sup> Dr. Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

<sup>27</sup> Faber, P.A., E. Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.

<sup>28</sup> Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 in Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.

<sup>29</sup> Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. *Conservation Biology* 11(3):793-796.

<sup>30</sup> Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. *Ecology* 79(2):740-745.

<sup>31</sup> Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. *Conservation Biology* 10(4):1155-1162.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, the native riparian habitats in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

#### Coastal Sage Scrub and Chaparral

Coastal sage scrub and chaparral are often lumped together as "shrublands" because of their roughly similar appearance and occurrence in similar and often adjacent physical habitats. In earlier literature, these vegetation associations were often called soft chaparral and hard chaparral, respectively. "Soft" and "hard" refers to differences in their foliage associated with different adaptations to summer drought. Coastal sage scrub is dominated by soft-leaved, generally low-growing aromatic shrubs that die back and drop their leaves in response to drought. Chaparral is dominated by taller, deeper-rooted evergreen shrubs with hard, waxy leaves that minimize water loss during drought.

The two vegetation types are often found interspersed with each other. Under some circumstances, coastal sage scrub may even be successional to chaparral, meaning that after disturbance, a site may first be covered by coastal sage scrub, which is then replaced with chaparral over long periods of time.<sup>32</sup> The existing mosaic of coastal sage scrub and chaparral is the result of a dynamic process that is a function of fire history, recent climatic conditions, soil differences, slope, aspect and moisture regime, and the two habitats should not be thought of as completely separate and unrelated entities but as different phases of the same process<sup>33</sup>. The spatial pattern of these vegetation stands at any given time thus depends on both local site conditions and on history (e.g., fire), and is influenced by both natural and human factors.

In lower elevation areas with high fire frequency, chaparral and coastal sage scrub may be in a state of flux, leading one researcher to describe the mix as a "coastal sage-chaparral subclimax."<sup>34</sup> Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire history.<sup>35</sup> In transitional and other settings, the mosaic of chaparral and coastal sage

<sup>32</sup> Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

<sup>33</sup> Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. (See attached comment document in Appendix).

<sup>34</sup> Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. Ecological Monographs 41:27-52.

<sup>35</sup> Gray, K.L. 1983. Competition for light and dynamic boundary between chaparral and coastal sage scrub. Madrono 30(1):43-49. Zedler, P.H., C.R. Gautier and G.S. McMaster. 1983. Vegetation change in response to extreme events: The effect of a short interval between fires in California chaparral and coastal sage scrub. Ecology 64(4): 809-818.

scrub enriches the seasonal plant resource base and provides additional habitat variability and seasonality for the many species that inhabit the area.

*Relationships Among Coastal Sage Scrub, Chaparral and Riparian Communities*

Although the constituent communities of the Santa Monica Mountains Mediterranean ecosystem can be defined and distinguished based on species composition, growth habits, and the physical habitats they characteristically occupy, they are not independent entities ecologically. Many species of plants, such as black sage, and laurel sumac, occur in more than one plant community and many animals rely on the predictable mix of communities found in undisturbed Mediterranean ecosystems to sustain them through the seasons and during different portions of their life histories.

Strong evidence for the interconnectedness between chaparral, coastal scrub and other habitats is provided by "opportunistic foragers" (animals that follow the growth and flowering cycles across these habitats). Coastal scrub and chaparral flowering and growth cycles differ in a complimentary and sequential way that many animals have evolved to exploit. Whereas coastal sage scrub is shallow-rooted and responds quickly to seasonal rains, chaparral plants are typically deep-rooted having most of their flowering and growth later in the rainy season after the deeper soil layers have been saturated<sup>36</sup>. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer<sup>37</sup>. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November<sup>38</sup>. In contrast, chamise chaparral and bigpod ceanothus flower from April to June, buck brush ceanothus flowers from February to April, and hoaryleaf ceanothus flowers from March to April.

Many groups of animals exploit these seasonal differences in growth and blooming period. The opportunistic foraging insect community (e.g., honeybees, butterflies and moths) tends to follow these cycles of flowering and new growth, moving from coastal sage scrub in the early rainy season to chaparral in the spring<sup>39</sup>. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher<sup>40</sup>, bushtit, cactus wren, Bewick's wren and California towhee. At night bats take over the role of daytime insectivores. At least 12 species of bats (all of which are considered sensitive) occur in

<sup>36</sup> DeSimone, S. 2000. California's coastal sage scrub. *Fremontia* 23(4):3-8. Mooney, H.A. 1988. Southern coastal scrub. Chap. 13 in Barbour, M.G. and J. Majors; Eds. 1988. *Terrestrial vegetation of California*, 2<sup>nd</sup> Edition. Calif. Native Plant Soc. Spec. Publ. #9.

<sup>37</sup> Schoenherr, A. A. 1992. *A natural history of California*. University of California Press, Berkeley. 772p.

<sup>38</sup> Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.

<sup>39</sup> Ballmer, G. R. 1995. What's bugging coastal sage scrub. *Fremontia* 23(4):17-26.

<sup>40</sup> Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. *Ecol. Monog.* 37:317-350.

the Santa Monica Mountains<sup>41</sup>. Five species of hummingbirds also follow the flowering cycle<sup>42</sup>.

Many species of 'opportunistic foragers', which utilize several different community types, perform important ecological roles during their seasonal movements. The scrub jay is a good example of such a species. The scrub jay is an omnivore and forages in coastal sage scrub, chaparral, and oak woodlands for insects, berries and notably acorns. Its foraging behavior includes the habit of burying acorns, usually at sites away from the parent tree canopy. Buried acorns have a much better chance of successful germination (about two-fold) than exposed acorns because they are protected from desiccation and predators. One scrub jay will bury approximately 5000 acorns in a year. The scrub jay therefore performs the function of greatly increasing recruitment and regeneration of oak woodland, a valuable and sensitive habitat type<sup>43</sup>.

Like the scrub jay, most of the species of birds that inhabit the Mediterranean ecosystem in the Santa Monica Mountains require more than one community type in order to flourish. Many species include several community types in their daily activities. Other species tend to move from one community to another seasonally. The importance of maintaining the integrity of the multi-community ecosystem is clear in the following observations of Dr. Hartmut Walter of the University of California at Los Angeles:

"Bird diversity is directly related to the habitat mosaic and topographic diversity of the Santa Monicas. Most bird species in this bio-landscape require more than one habitat for survival and reproduction." "A significant proportion of the avifauna breeds in the wooded canyons of the Santa Monicas. Most of the canyon breeders forage every day in the brush- and grass-covered slopes, ridges and mesas. They would not breed in the canyons in the absence of the surrounding shrublands. Hawks, owls, falcons, orioles, flycatchers, woodpeckers, warblers, hummingbirds, etc. belong to this group. Conversely, some of the characteristic chaparral birds such as thrashers, quails, and wrentits need the canyons for access to shelter, protection from fire, and water. The regular and massive movement of birds between riparian corridors and adjacent shrublands has been demonstrated by qualitative and quantitative observations by several UCLA students<sup>44</sup>."

Thus, the Mediterranean ecosystem of the Santa Monica Mountains is a mosaic of vegetation types linked together ecologically. The high biodiversity of the area results

<sup>41</sup> Letter from Dr. Marti Witter, NPS, dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

<sup>42</sup> National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

<sup>43</sup> Borchert, M. I., F. W. Davis, J. Michaelsen and L. D. Oyler. 1989. Interactions of factors affecting seedling recruitment of blue oak (*Quercus douglasii*) in California. *Ecology* 70:389-404. Bossema, I. 1979. Jays and oaks: An eco-ethological study of a symbiosis. *Behavior* 70:1-118. Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

<sup>44</sup> Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

from both the diversity and the interconnected nature of this mosaic. Most raptor species, for example, require large areas and will often require different habitats for perching, nesting and foraging. Fourteen species of raptors (13 of which are considered sensitive) are reported from the Santa Monica Mountains. These species utilize a variety of habitats including rock outcrops, oak woodlands, riparian areas, grasslands, chaparral, coastal sage scrub, estuaries and freshwater lakes<sup>45</sup>.

When the community mosaic is disrupted and fragmented by development, many chaparral-associated native bird species are impacted. In a study of landscape-level fragmentation in the Santa Monica Mountains, Stralberg<sup>46</sup> found that the ash-throated flycatcher, Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, and California towhee all decreased in numbers as a result of urbanization. Soule<sup>47</sup> observed similar effects of fragmentation on chaparral and coastal sage scrub birds in the San Diego area.

In summary, all of the vegetation types in this ecosystem are strongly linked by animal movement and foraging. Whereas classification and mapping of vegetation types may suggest a snapshot view of the system, the seasonal movements and foraging of animals across these habitats illustrates the dynamic nature and vital connections that are crucial to the survival of this ecosystem.

#### Coastal Sage Scrub

"Coastal sage scrub" is a generic vegetation type that is inclusive of several subtypes<sup>48</sup>. In the Santa Monica Mountains, coastal sage scrub is mostly of the type termed "Venturan Coastal Sage Scrub." In general, coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall. Under the moist conditions of winter and spring, they grow quickly, flower, and produce light, wind-dispersed seeds, making them good colonizers following disturbance. These species cope with summer drought by dying back, dropping their leaves or producing a smaller summer leaf in order to reduce water loss. Stands of coastal sage scrub are much more open than chaparral and contain a greater admixture of herbaceous species. Coastal sage scrub is generally restricted to drier sites, such as low foothills, south-facing slopes, and shallow soils at higher elevations.

<sup>45</sup> National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701. and Letter from Dr. Marti Witter, NPS, Dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

<sup>46</sup> Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: A Santa Monica Mountains case study. p 125-136 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2<sup>nd</sup> Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.

<sup>47</sup> Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. *Conserv. Biol.* 2: 75-92.

<sup>48</sup> Kirkpatrick, J.B. and C.F. Hutchinson. 1977. The community composition of Californian coastal sage scrub. *Vegetatio* 35:21-33; Holland, 1986. op.cit.; Sawyer and Keeler-Wolf, 1995, op.cit.

The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Drier sites are dominated by more drought-resistant species (e.g., California sagebrush, coast buckwheat, and *Opuntia* cactus). Where more moisture is available (e.g., north-facing slopes), larger evergreen species such as toyon, laurel sumac, lemonade berry, and sugar bush are common. As a result, there is more cover for wildlife, and movement of large animals from chaparral into coastal sage scrub is facilitated in these areas. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens, coyotes, and coast horned lizards<sup>49</sup>, but most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

Of the many important ecosystem roles performed by the coastal sage scrub community, five are particularly important in the Santa Monica Mountains. Coastal sage scrub provides critical linkages between riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for local endemics, supports rare species that are in danger of extinction, and reduces erosion, thereby protecting the water quality of coastal streams.

Riparian woodlands are primary contributors to the high biodiversity of the Santa Monica Mountains. The ecological integrity of those riparian habitats not only requires wildlife dispersal along the streams, but also depends on the ability of animals to move from one riparian area to another. Such movement requires that the riparian corridors be connected by suitable habitat. In the Santa Monica Mountains, coastal sage scrub and chaparral provide that function. Significant development in coastal sage scrub would reduce the riparian corridors to linear islands of habitat with severe edge effects<sup>50</sup>, reduced diversity, and lower productivity.

Most wildlife species and many species of plants utilize several types of habitat. Many species of animals endemic to Mediterranean habitats move among several plant communities during their daily activities and many are reliant on different communities either seasonally or during different stages of their life cycle. Without an intact mosaic of coastal sage scrub, chaparral, and riparian community types, many species will not thrive. Specific examples of the importance of interconnected communities, or habitats, were provided in the discussion above. This is an essential ecosystem role of coastal sage scrub.

A characteristic of the coastal sage scrub vegetation type is a high degree of endemism. This is consonant with Westman's observation that 44 percent of the species he sampled in coastal sage scrub occurred at only one of his 67 sites, which were

<sup>49</sup> National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

<sup>50</sup> Environmental impacts are particularly severe at the interface between development and natural habitats. The greater the amount of this "edge" relative to the area of natural habitat, the worse the impact.

distributed from the San Francisco Bay area to Mexico<sup>51</sup>. Species with restricted distributions are by nature more susceptible to loss or degradation of their habitat. Westman said of this unique and local aspect of coastal sage scrub species in California:

"While there are about 50 widespread sage scrub species, more than half of the 375 species encountered in the present study of the sage scrub flora are rare in occurrence within the habitat range. In view of the reduction of the area of coastal sage scrub in California to 10-15% of its former extent and the limited extent of preserves, measures to conserve the diversity of the flora are needed."<sup>52</sup>

Coastal sage scrub in southern California provides habitat for about 100 rare species<sup>53</sup>, many of which are also endemic to limited geographic regions<sup>54</sup>. In the Santa Monica Mountains, rare animals that inhabit coastal sage scrub<sup>55</sup> include the Santa Monica shieldback katydid, silvery legless lizard, coastal cactus wren, Bell's sparrow, San Diego desert woodrat, southern California rufous-crowned sparrow, coastal western whiptail, and San Diego horned lizard. Some of these species are also found in chaparral<sup>56</sup>. Rare plants found in coastal sage scrub in the Santa Monica Mountains include Santa Susana tarplant, Coulter's saltbush, Blockman's dudleya, Braunton's milkvetch, Parry's spineflower, and Plummer's mariposa lily<sup>57</sup>. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.<sup>58</sup>

One of the most important ecological functions of coastal sage scrub in the Santa Monica Mountains is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define coastal sage scrub have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas. The native shrubs of this community are resistant not only to drought, as discussed above, but well adapted to fire. Most of the semi-woody shrubs have some ability to crown sprout after

<sup>51</sup> Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. *Ecology* 62:170-184.

<sup>52</sup> Ibid.

<sup>53</sup> Atwood, J. L. 1993. California gnatcatchers and coastal sage scrub: The biological basis for endangered species listing. pp.149-166 *In: Interface Between Ecology and Land Development in California*. Ed. J. E. Keeley, So. Calif. Acad. of Sci., Los Angeles. California Department of Fish and Game (CDFG). 1993. The Southern California Coastal Sage Scrub (CSS) Natural Communities Conservation Plan (NCCP). CDFG and Calif. Resources Agency, 1416 9<sup>th</sup> St., Sacramento, CA 95814.

<sup>54</sup> Westman, W.E. 1981. *op. cit.*

<sup>55</sup> Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

<sup>56</sup> O'Leary J.F., S.A. DeSimone, D.D. Murphy, P.F. Brussard, M.S. Gilpin, and R.F. Noss. 1994. Bibliographies on coastal sage scrub and related malacophyllous shrublands of other Mediterranean-type climates. *California Wildlife Conservation Bulletin* 10:1-51.

<sup>57</sup> Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

<sup>58</sup> NPS, 2000, *op. cit.*

fire. Several CSS species (e.g., *Eriogonum cinereum*) in the Santa Monica Mountains and adjacent areas resprout vigorously and other species growing near the coast demonstrate this characteristic more strongly than do individuals of the same species growing at inland sites in Riverside County.<sup>59</sup> These shrub species also tend to recolonize rapidly from seed following fire. As a result they provide persistent cover that reduces erosion.

In addition to performing extremely important roles in the Mediterranean ecosystem, the coastal sage scrub community type has been drastically reduced in area by habitat loss to development. In the early 1980's it was estimated that 85 to 90 percent of the original extent of coastal sage scrub in California had already been destroyed.<sup>60</sup> Losses since that time have been significant and particularly severe in the coastal zone.

Therefore, because of its increasing rarity, its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, coastal sage scrub within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

#### Chaparral

Another shrub community in the Santa Monica Mountain Mediterranean ecosystem is chaparral. Like "coastal sage scrub," this is a generic category of vegetation. Chaparral species have deep roots (10s of ft) and hard waxy leaves, adaptations to drought that increase water supply and decrease water loss at the leaf surface. Some chaparral species cope more effectively with drought conditions than do desert plants<sup>61</sup>. Chaparral plants vary from about one to four meters tall and form dense, intertwining stands with nearly 100 percent ground cover. As a result, there are few herbaceous species present in mature stands. Chaparral is well adapted to fire. Many species regenerate mainly by crown sprouting; others rely on seeds which are stimulated to germinate by the heat and ash from fires. Over 100 evergreen shrubs may be found in chaparral<sup>62</sup>. On average, chaparral is found in wetter habitats than coastal sage scrub, being more common at higher elevations and on north facing slopes.

The broad category "northern mixed chaparral" is the major type of chaparral shown in the National Park Service map of the Santa Monica Mountains. However, northern mixed chaparral can be variously dominated by chamise, scrub oak or one of several species of manzanita or by ceanothus. In addition, it commonly contains woody vines and large shrubs such as mountain mahogany, toyon, hollyleaf redberry, and sugarbush<sup>63</sup>. The rare red shank chaparral plant community also occurs in the Santa Monica Mountains. Although included within the category "northern mixed chaparral" in

<sup>59</sup> Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, July 2, 2002

<sup>60</sup> Westman, W.E. 1981. op. cit.

<sup>61</sup> Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

<sup>62</sup> Keely, J.E. and S.C. Keeley. Chaparral. Pages 166-207 in M.G. Barbour and W.D. Billings, eds. North American Terrestrial Vegetation. New York, Cambridge University Press.

<sup>63</sup> Ibid.

the vegetation map, several types of ceanothus chaparral are reported in the Santa Monica Mountains. Ceanothus chaparral occurs on stable slopes and ridges, and may be dominated by bigpod ceanothus, buck brush ceanothus, hoaryleaf ceanothus, or greenbark ceanothus. In addition to ceanothus, other species that are usually present in varying amounts are chamise, black sage, holly-leaf redberry, sugarbush, and coast golden bush<sup>64</sup>.

Several sensitive plant species that occur in the chaparral of the Santa Monica Mountains area are: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom<sup>65</sup>. Several occurring or potentially occurring sensitive animal species in chaparral from the area are: Santa Monica shieldback katydid, western spadefoot toad, silvery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.<sup>66</sup>

Coastal sage scrub and chaparral are the predominant generic community types of the Santa Monica Mountains and provide the living matrix within which rarer habitats like riparian woodlands exist. These two shrub communities share many important ecosystem roles. Like coastal sage scrub, chaparral within the Santa Monica Mountains provides critical linkages among riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for sensitive species, and stabilizes steep slopes and reduces erosion, thereby protecting the water quality of coastal streams.

Many species of animals in Mediterranean habitats characteristically move among several plant communities during their daily activities, and many are reliant on different communities either seasonally or during different stages of their life cycle. The importance of an intact mosaic of coastal sage scrub, chaparral, and riparian community types is perhaps most critical for birds. However, the same principles apply to other taxonomic groups. For example, whereas coastal sage scrub supports a higher diversity of native ant species than chaparral, chaparral habitat is necessary for the coast horned lizard, an ant specialist<sup>67</sup>. Additional examples of the importance of an interconnected communities, or habitats, were provided in the discussion of coastal sage scrub above. This is an extremely important ecosystem role of chaparral in the Santa Monica Mountains.

Chaparral is also remarkably adapted to control erosion, especially on steep slopes. The root systems of chaparral plants are very deep, extending far below the surface and

<sup>64</sup> Ibid.

<sup>65</sup> Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

<sup>66</sup> Ibid.

<sup>67</sup> A.V. Suarez. Ants and lizards in coastal sage scrub and chaparral. A presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

penetrating the bedrock below<sup>68</sup>, so chaparral literally holds the hillsides together and prevents slippage.<sup>69</sup> In addition, the direct soil erosion from precipitation is also greatly reduced by 1) water interception on the leaves and above ground foliage and plant structures, and 2) slowing the runoff of water across the soil surface and providing greater soil infiltration. Chaparral plants are extremely resistant to drought, which enables them to persist on steep slopes even during long periods of adverse conditions. Many other species die under such conditions, leaving the slopes unprotected when rains return. Since chaparral plants recover rapidly from fire, they quickly re-exert their ground stabilizing influence following burns. The effectiveness of chaparral for erosion control after fire increases rapidly with time<sup>70</sup>. Thus, the erosion from a 2-inch rain-day event drops from 5 yd<sup>3</sup>/acre of soil one year after a fire to 1 yd<sup>3</sup>/acre after 4 years.<sup>71</sup> The following table illustrates the strong protective effect of chaparral in preventing erosion.

Soil erosion as a function of 24-hour precipitation and chaparral age.

Years Since Fire	Erosion (yd <sup>3</sup> /acre) at Maximum 24-hr Precipitation of:		
	2 inches	5 inches	11 inches
1	5	20	180
4	1	12	140
17	0	1	28
50+	0	0	3

Therefore, because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

#### Oak Woodland and Savanna

Coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeeberry, and poison oak. Coast live oak woodland is more

<sup>68</sup> Helmers, H., J.S. Horton, G. Juhren and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. *Ecology* 36(4):667-678. Kummerow, J. and W. Jow. 1977. Root systems of chaparral shrubs. *Oecologia* 29:163-177.

<sup>69</sup> Radtke, K. 1983. *Living more safely in the chaparral-urban interface*. General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.

<sup>70</sup> Kittredge, J. 1973. *Forest influences — the effects of woody vegetation on climate, water, and soil*. Dover Publications, New York. 394 pp. Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. (Table 1). The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. *FireSmart: protecting your community from wildfire*. Partners in Protection, Edmonton, Alberta.

<sup>71</sup> Ibid.

tolerant of salt-laden fog than other oaks and is generally found nearer the coast<sup>72</sup>. Coast live oak also occurs as a riparian corridor species within the Santa Monica Mountains.

Valley oaks are endemic to California and reach their southern most extent in the Santa Monica Mountains. Valley oaks were once widely distributed throughout California's perennial grasslands in central and coastal valleys. Individuals of this species may survive 400-600 years. Over the past 150 years, valley oak savanna habitat has been drastically reduced and altered due to agricultural and residential development. The understory is now dominated by annual grasses and recruitment of seedlings is generally poor. This is a very threatened habitat.

The important ecosystem functions of oak woodlands and savanna are widely recognized<sup>73</sup>. These habitats support a high diversity of birds<sup>74</sup>, and provide refuge for many species of sensitive bats<sup>75</sup>. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats.

Therefore, because of their important ecosystem functions and vulnerability to development, oak woodlands and savanna within the Santa Monica Mountains met the definition of ESHA under the Coastal Act.

### Grasslands

Grasslands consist of low herbaceous vegetation that is dominated by grass species but may also harbor native or non-native forbs.

### California Perennial Grassland

Native grassland within the Santa Monica Mountains consists of perennial native needlegrasses: purple needlegrass, (*Nassella pulchra*), foothills needlegrass, (*Nassella lepida*) and nodding needlegrass (*Nassella cernua*). These grasses may occur in the same general area but they do not typically mix, tending to segregate based on slope

<sup>72</sup> NPS 2000. op. cit.

<sup>73</sup> Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72-76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

<sup>74</sup> Cody, M.L. 1977. Birds. Pp. 223-231 in Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

<sup>75</sup> Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

and substrate factors<sup>76</sup>. Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland<sup>77</sup>. Native perennial grasslands are now exceedingly rare<sup>78</sup>. In California, native grasslands once covered nearly 20 percent of the land area, but today are reduced to less than 0.1 percent<sup>79</sup>. The California Natural Diversity Database (CNDDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDDB considers grasslands with 10 percent or more cover by purple needlegrass to be significant, and recommends that these be protected as remnants of original California prairie. Patches of this sensitive habitat occur throughout the Santa Monica Mountains where they are intermingled with coastal sage scrub, chaparral and oak woodlands.

Many of the raptors that inhabit the Santa Monica Mountains make use of grasslands for foraging because they provide essential habitat for small mammals and other prey. Grasslands adjacent to woodlands are particularly attractive to these birds of prey since they simultaneously offer perching and foraging habitat. Particularly noteworthy in this regard are the white-tailed kite, northern harrier, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, golden eagle, American kestrel, merlin, and prairie falcon<sup>80</sup>.

Therefore, because of their extreme rarity, important ecosystem functions, and vulnerability to development, California native perennial grasslands within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

#### California Annual Grassland

The term "California annual grassland" has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin. The dominant species in this community include common wild oats (*Avena fatua*), slender oat (*Avena barbata*), red brome (*Bromus madritensis* ssp. *Rubens*), riggut brome, (*Bromus diandrus*), and herbs such as black mustard (*Brassica nigra*), wild radish (*Raphanus sativus*) and sweet fennel (*Foeniculum vulgare*). Annual grasslands are located in patches throughout the Santa Monica Mountains in previously disturbed areas, cattle pastures, valley bottoms and along roadsides. While many of

<sup>76</sup> Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, 1722 J St., Suite 17, Sacramento, CA 95814.

<sup>77</sup> Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

<sup>78</sup> Noss, R.F., E.T. LaRoe III and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degradation. Biological Report 28. National Biological Service, U.S. Dept. of Interior.

<sup>79</sup> NPS 2000. op. cit.

<sup>80</sup> NPS 2000. op. cit.

these patches are dominated by invasive non-native species, it would be premature to say that they are never sensitive or do not harbor valuable annual native species. A large number of native forbs also may be present in these habitats<sup>81</sup>, and many native wildflowers occur primarily in annual grasslands. In addition, annual grasslands are primary foraging areas for many sensitive raptor species in the area.

Inspection of California annual grasslands should be done prior to any impacts to determine if any rare native species are present or if any rare wildlife rely on the habitat and to determine if the site meets the Coastal Act ESHA criteria.

### **Effects of Human Activities and Development on Habitats within the Santa Monica Mountains**

The natural habitats of the Santa Monica Mountains are highly threatened by current development pressure, fragmentation and impacts from the surrounding megalopolis. The developed portions of the Santa Monica Mountains represents the extension of this urbanization into natural areas. About 54% of the undeveloped Santa Monica Mountains are in private ownership<sup>82</sup>, and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation<sup>83</sup>. Development and associated human activities have many well-documented deleterious effects on natural communities. These environmental impacts may be both direct and indirect and include the effects of increased fire frequency, of fire clearance, of introduction of exotic species, and of night lighting.

#### Increased Fire Frequency

Since 1925, all the major fires in the Santa Monica Mountains have been caused by human activities<sup>84</sup>. Increased fire frequency alters plant communities by creating conditions that select for some species over others. Strong resprouting plant species such as laurel sumac, are favored while non-sprouters like bigpod ceanothus, are at a disadvantage. Frequent fire recurrence before the non-sprouters can develop and reestablish a seed bank is detrimental, so that with each fire their chances for propagation are further reduced. Resprouters can be sending up new shoots quickly, and so they are favored in an increased fire frequency regime. Also favored are weedy and invasive species. Dr. Steven Davis in his abstract for a Coastal Commission

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<sup>81</sup> Holstein, G. 2001. Pre-agricultural grassland in Central California. *Madrono* 48(4):253-264. Stromberg, M.R., P. Kephart and V. Yadon. 2001. Composition, invasibility and diversity of coastal California grasslands. *Madrono* 48(4):236-252.

<sup>82</sup> National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

<sup>83</sup> Swenson, J. J., and J. Franklin. 2000. The effects of future urban development on habitat fragmentation in the Santa Monica Mountains. *Landscape Ecol.* 15:713-730.

<sup>84</sup> NPS, 2000, op. cit.

Workshop stated<sup>85</sup> "We have evidence that recent increases in fire frequency has eliminated drought-hardy non-sprouters from chaparral communities near Malibu, facilitating the invasion of exotic grasses and forbs that further exacerbate fire frequency." Thus, simply increasing fire frequency from about once every 22 years (the historical frequency) to about once every 12 years (the current frequency) can completely change the vegetation community. This has cascading effects throughout the ecosystem.

### Fuel Clearance

The removal of vegetation for fire protection in the Santa Monica Mountains is required by law in "Very High Fire Hazard Severity Zones"<sup>86</sup>. Fuel removal is reinforced by insurance carriers<sup>87</sup>. Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone. In such high fire hazard areas, homeowners must often resort to the California FAIR Plan to obtain insurance. Because of the high risk, all homes in "brush areas" are assessed an insurance surcharge if they have less than the recommended 200-foot fuel modification zone<sup>88</sup> around the home. The combination of insurance incentives and regulation assures that the 200-foot clearance zone will be applied universally<sup>89</sup>. While it is not required that all of this zone be cleared of vegetation, the common practice is simply to disk this zone, essentially removing or highly modifying all native vegetation. For a new structure not adjacent to existing structures, this results in the removal or modification of a minimum of three acres of vegetation<sup>90</sup>. While the directly impacted area is large, the effects of fuel modification extend beyond the 200-foot clearance area.

### Effects of Fuel Clearance on Bird Communities

The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wren-tit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species

<sup>85</sup> Davis, Steven. Effects of fire and other factors on patterns of chaparral in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

<sup>86</sup> 1996 Los Angeles County Fire Code Section 1117.2.1

<sup>87</sup> Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.

<sup>88</sup> Fuel Modification Plan Guidelines. Co. of Los Angeles Fire Department, Fuel Modification Unit, Prevention Bureau, Forestry Division, Brush Clearance Section, January 1998.

<sup>89</sup> Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

<sup>90</sup> Ibid.

(mourning dove, American crow, Western scrub-jay, Northern mockingbird)<sup>91</sup>. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral<sup>92</sup>.

#### Effects of Fuel Clearance on Arthropod Communities

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area<sup>93</sup>. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat<sup>94</sup>. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments<sup>95</sup>. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms<sup>96</sup>. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod

<sup>91</sup> Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125-136 in Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

<sup>92</sup> Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. *Conserv. Biol.* 11:406-421.

<sup>93</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056.

<sup>94</sup> Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. *Conservation Biology* 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. *Oecologia* 105:405-412.

<sup>95</sup> Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. *Conservation Biology* 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. *Ecological Applications* 10(3):711-725.

<sup>96</sup> Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. *Ecology* 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. *Ecology* 65(4):1031-1037.

predator species are seen and more exotic arthropod species are present than in undisturbed habitats<sup>97</sup>.

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.<sup>98</sup> In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds<sup>99</sup>.

#### Artificial Night Lighting

One of the more recently recognized human impacts on ecosystem function is that of artificial night lighting as it effects the behavior and function of many different types of organisms<sup>100</sup>. For literally billions of years the only nighttime sources of light were the moon and stars, and living things have adapted to this previously immutable standard and often depend upon it for their survival. A review of lighting impacts suggests that whereas some species are unaffected by artificial night lighting, many others are severely impacted. Overall, most impacts are negative ones or ones whose outcome is unknown. Research to date has found negative impacts to plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals, and a detailed literature review can be found in the report by Longcore and Rich<sup>101</sup>.

#### **Summary**

In a past action, the Coastal Commission found<sup>102</sup> that the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the Santa Monica Mountains, is rare and especially valuable because of its relatively pristine

<sup>97</sup> Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

<sup>98</sup> Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. *Nature* 413:635-639.

<sup>99</sup> Hughes, L. and M. Westoby. 1992. *Capitula* on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. *Functional Ecology* 6:642-648.

<sup>100</sup> Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

<sup>101</sup> Ibid, and Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.

<sup>102</sup> Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the Santa Monica Mountains that are discussed above are ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife, providing the opportunity for unrestricted wildlife movement among habitats, supporting populations of rare species, and preventing the erosion of steep slopes and thereby protecting riparian corridors, streams and, ultimately, shallow marine waters.

The importance the native habitats in the Santa Monica Mountains was emphasized nearly 20 years ago by the California Department of Fish and Game<sup>103</sup>. Commenting on a Draft Land Use Plan for the City of Malibu, the Regional Manager wrote that, "It is essential that large areas of land be reclassified to reflect their true status as ESHAs. One of the major needs of the Malibu LUP is that it should provide protection for entire drainages and not just stream bottoms." These conclusions were supported by the following observations:

"It is a fact that many of the wildlife species of the Santa Monica Mountains, such as mountain lion, deer, and raccoon, have established access routes through the mountains. They often travel to and from riparian zones and development such as high density residential may adversely affect a wildlife corridor.

Most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including chapparal (sic) or grassland. For example, hawks nest and roost in riparian areas, but are dependent on large open areas for foraging. For the survival of many species, particularly those high on the food chain, survival will depend upon the presence of such areas. Such areas in the Santa Monica Mountains include grassland and coastal sage scrub communities, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life."

This analysis by the Department of Fish and Game is consonant with the findings of the Commission in the case of the Malibu LCP, and with the conclusion that large contiguous areas of relatively pristine native habitat in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

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<sup>103</sup> Letter from F. A. Worthley, Jr. (CDFG) to N. Lucast (CCC) re Land Use Plan for Malibu dated March 22, 1983.







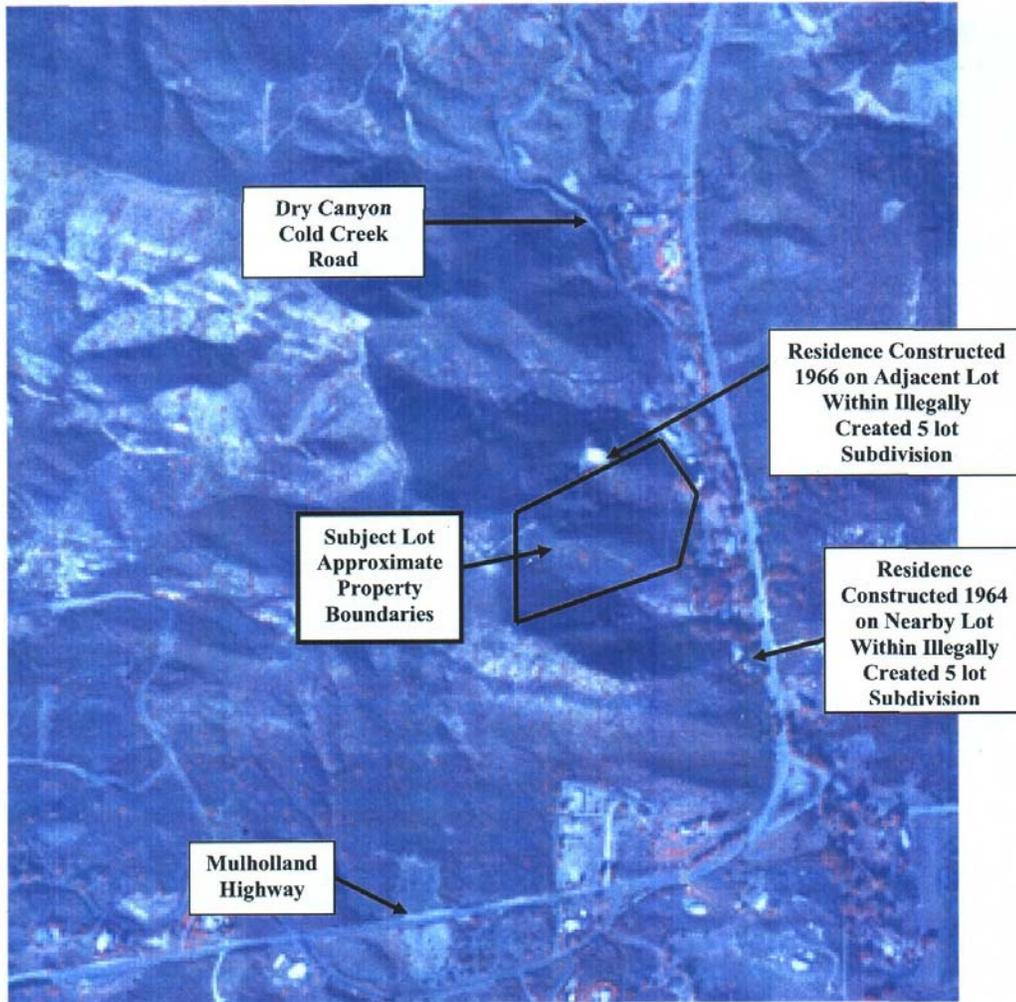


Exhibit 21  
App. No. 4-05-141  
1977 Aerial  
Photograph



Exhibit 22  
App. No. 4-05-141  
2001 Aerial  
Photograph