

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Th 31f

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-08-021

APPLICANT: Randall & Sharon Wixen

AGENTS: Vitus Matare, Lynn Heacox

PROJECT DESCRIPTION: Construct a one story, 17 ft. high, 740 sq. ft. guest house with an attached 700 sq. ft. two car garage, 977 sq. ft. covered patio/eave, driveway, septic system, 520 sq. ft. solar photovoltaic system on roof of guest house, and 50 cubic yards of cut, and 16 cubic yards of fill grading.

PROJECT LOCATION: 1950 McKain Street, Calabasas, Santa Monica Mountains; Los Angeles County (APN: 4455-021-046)

Parcel Area:	1.72 acres
Building Coverage:	5,836 sq. ft.
Development Area:	7,980 sq. ft.
Driveway Coverage:	1,892 sq. ft.
Maximum Height:	17 ft.

MOTION & RESOLUTION: Page 3

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **Approval** of the proposed project with ten special conditions relating to plans conforming to geotechnical engineer's recommendations; landscaping erosion control, and fuel modification plans; assumption of risk; drainage and polluted runoff control; future development restriction; deed restriction; removal of excess excavated material, structural appearance, lighting restrictions, and inspection. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act.

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu – Santa Monica Mountains Land Use Plan (LUP) serve as guidance.

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Exhibit 9.Aerial Photo

LOCAL APPROVALS RECEIVED: County of Los Angeles Fire Department Prevention Bureau Preliminary Fuel Modification Plan Approval, dated 8/16/2006; County of Los Angeles, Department of Regional Planning Approval-In-Concept, dated

1/30/2007; County of Los Angeles Fire Department, Approved Fire Access, dated 6/26/2007.

SUBSTANTIVE FILE DOCUMENTS: Report of Engineering Geology Study, dated October 11, 2006 by Mountain Geology, Inc.; Geotechnical Engineering Investigation, dated October 30, 2006 by Calwest Geotechnical; Biological Resource Evaluation, 1950 McKain Street, Calabasas, Los Angeles County, California, by Compliance Biology, dated April 12, 2007.

I. STAFF RECOMMENDATION

APPROVAL WITH CONDITIONS

MOTION: *I move that the Commission approve Coastal Development Permit No 4-08-021 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. STANDARD CONDITIONS

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 Geotechnical Engineer's Recommendations.

By acceptance of this permit, the applicants agree to comply with the recommendations contained in the Report of Engineering Geology Study, dated October 11, 2006 by Mountain Geology, Inc.; Geotechnical Engineering Investigation, dated October 30, 2006 by Calwest Geotechnical. These recommendations, including recommendations concerning foundations, grading, and drainage, shall be incorporated into all final designs and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

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

2. Landscaping, Erosion Control, and Fuel Modification Plans

Prior to issuance of the coastal development permit, the applicant shall submit landscaping, erosion control, and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping, erosion control, and fuel modification 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 and include plants of varying heights and shall soften the visual impact of the development from public view areas located to the south, southwest, and southeast of the development site. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
3. Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
4. Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
5. Additional fencing of the entire property is prohibited. Any new fencing shall extend only to the perimeter of the development area (building pad) and driveway. Any new fencing, including its location and type shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition 8 below.
6. 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.

B) Interim Erosion Control Plan

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
2. The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric

covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

3. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with 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) Fuel Modification Plans

Vegetation within 20 feet of the proposed accessory structure (guest house) may be removed to mineral earth, vegetation within a 200-foot radius of the 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 guest house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

D) 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.

3. Assumption of Risk

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

4. Drainage and Polluted Runoff Control Plan

Prior to 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 the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system

or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

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

5. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. 4-08-021. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to any of the development governed by this permit. Accordingly, any future improvements to any portion of the development governed by this permit, including but not limited to the guest house/garage (or conversion of any portion of the garage to habitable space or addition of a door or other interior ingress between the non-habitable garage and the guest unit), covered patio/eave shall require an amendment to Coastal Development Permit No. 4-08-021 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Deed Restriction

Prior to issuance of the coastal development permit, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the applicants have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. 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.

7. 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.

8. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-08-021. 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 roofs, trims, exterior surfaces, driveways, retaining walls, fences, 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.

The approved structures shall be colored and constructed 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. 4-08-021 if such changes are specifically authorized by the Executive Director as complying with this special condition.

9. Lighting Restrictions

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
2. Security lighting attached to the residence, garage, and barn shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

10. Inspections

- A. By acceptance of this permit, the applicant irrevocably authorizes, on behalf of himself and his successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit, including the special conditions set forth herein, and to document their findings (including, but not limited to, by taking notes, photographs, or video), subject to Commission staff providing 24 hours advanced notice to the contact person indicated pursuant to paragraph B prior to entering the property, unless there is an imminent threat to coastal resources, in which case such notice is not required. If two attempts to reach the contact person by telephone are unsuccessful, the requirement to provide 24 hour notice can be satisfied by voicemail, email, or facsimile sent 24 hours in advance or by a letter mailed three business days prior to the inspection. Consistent with this authorization, the applicant and his successors: (1) shall not interfere with such inspection/monitoring activities and (2) shall provide any documents requested by the Commission staff or its designated agents that are relevant to the determination of compliance with the terms of this permit.
- B. ***Prior to issuance of the coastal development permit***, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION

The applicants propose to construct a one story, 17 ft. high, 740 sq. ft. guest house with an attached 700 sq. ft. two car garage, 977 sq. ft. covered patio/eave, driveway, septic system, 520 sq. ft. solar photovoltaic system on roof of guest house, and 50 cubic yards of cut, and 16 cubic yards of fill grading (Exhibits 2-9). The cut grading is proposed to

create the guest house foundation and driveway, while the foundation of the former fire damaged residence located adjoining the proposed guest house will be removed and filled to direct water away from the slope along Cold Creek and north to McKain Street. All excess cut materials will be exported to an approved disposal site located outside the coastal zone. The existing and proposed driveways and walkways consist of 1,892 sq. ft. of decomposed granite on the site.

The proposed project site is located at 1950 McKain Street, Calabasas, in the Santa Monica Mountains, unincorporated Los Angeles County (Exhibit 1). The site is developed with a one story 3,100 sq. ft. single family residence and detached 651 sq. ft. garage that was originally built prior to the effective date of the Coastal Act in 1968.

The proposed new building site is a relative flat pad area located at the northwest corner of the subject parcel. The applicant initially proposed to construct the guest house on the area where the foundation of a former burned and demolished residence was located. This former residence is located immediately south of the new proposed building site near the slope leading to Cold Creek on the southwest portion of the parcel. Within the adjoining slope dropping about 50 feet to the creek channel, the creek channel includes an oak woodland with a few mature sycamore trees as compared to the common riparian habitat along creek corridors. At the request of Staff, the applicant considered three alternative locations to construct the proposed guest house on the subject parcel. The applicant has chosen an alternative site that locates the proposed guest house in the northwest corner of the subject parcel adjacent to McKain Street. This alternative site is located north of the former burned residence and as a result will be located further from the adjacent oak woodland extending the setback from the proposed guest house to the canopy of the oak woodland to 80 feet and to the canopy of riparian trees to 128 feet (Exhibit 8). Staff believes the proposed alternative site is the environmentally preferred location on the subject parcel.

Given the limited size of the structure as well as the distance and elevation from the Backbone Trail and portions of Malibu Creek State Park located to the south, public views of the structure will be minimal due to the distance and topography. The potential visibility will be further reduced by the mature landscaping that exists on the site and new proposed landscaping.

In addition, the subject parcel has been subdivided without the required coastal permit. The original parcel appears to have been about 10 acres in size (extending about 1000 feet to the south of the subject lot. However, on 12/23/1971, a previous property owner subdivided the property through foreclosure creating a separate 8.21 acre lot to the south which was subsequently sold to Mountains Restoration Trust on 10/16/2001. The applicants have explained that the unpermitted parcel located to the south was parceled off and sold to the Mountains Restoration Trust by a previous property owner. The subject parcel is part of a 2 or more parcel/lot land division, which occurred without the required coastal permit. The proposed guest house will be located on the same "resultant" lot as the existing residence. No development exists, or is proposed on the unpermitted lot located to the south. Regardless, the proposed guest house is separate

and not directly related or affected by this unpermitted land division issue and, therefore, is not addressed as part of this application. The Commission's Enforcement Division will evaluate further actions to address this matter.

The applicant submitted an initial coastal permit application (CDP 4-07-015) that was filed on 7/19/2007 and extended by the applicant to the maximum of 270 days for Commission review under the Permit Streamlining Act. In order to allow adequate time for the applicant and staff to address the coastal issues raised by the proposed project, the applicant withdrew CDP Application No. 4-07-015 on 2/26/2008, resubmitting it as CDP Application No. 4-08-021 which was filed on 2/26/2008 and the applicant again extended the review period to the maximum 270 day time limit under the Permit Streamlining Act for Commission review which now ends November 22, 2008. Therefore, the Commission must act on this application no later than the November 2008 meeting.

B. ENVIRONMENTALLY SENSITIVE HABITAT

Section 30240 of the Coastal Act protects environmentally sensitive habitat areas (ESHA) by restricting development in and adjacent to ESHA. 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.

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of environmentally sensitive habitats. The Coastal Commission has applied the following relevant policies as guidance in the review of development proposals in the Santa Monica Mountains.

P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas

identified by the Department of Fish and Game as being appropriate for ESHA designation.

- P63** *Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.*
- P68** *Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.*
- P69** *Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, 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.*
- P74** *New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.*
- P82** *Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*
- P84** *In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.*

1. Project Description and Site Specific Biological Resource Information

The subject site is located on the south side of McKain Street, just north of Cold Creek and south of one of the intersections between Mulholland Highway and Cold Canyon Road along the north side of Cold Canyon. Cold Creek is a designated blue-line stream located just beyond the subject parcel to the south. The developed portion of the parcel is relatively flat, with the southern portion sloping south towards Cold Creek. Elevations range from about 994 feet above sea level at McKain Street down to about 960 feet above sea level. Cold Creek is located about 940 feet above sea level.

The site is currently developed with a single family residence and detached garage. A small cabin was constructed in the mid 1920's on the western portion of the site which burned in a 1971 wildfire. The proposed guest house is located immediately north of the former cabin.

The applicant submitted the Biological Resource Evaluation, listed in the Substantive File Documents, which addresses the habitats present on the project site. The report

identifies one vegetation/habitat community on the project site consisting of coast live oak woodland. The southeast portion of the site where the residence is located includes numerous mature coast live oak trees associated with the oak woodland canyon below within the creek area and a few sparsely scattered understory plants including toyon, laurel sumac and coyote brush. The canopy of these oak trees extends over portions of the roof of the existing residence; there is no setback from the edge of this oak woodland canopy from the existing residence. There are a few mature sycamore trees located beyond the subject site within the creek area on the western slope of the creek. The remainder of the parcel includes oak trees and native landscaping near the residence, non-native grass, fruit trees and a garden on the western portion of the parcel. The Biological Resource Evaluation concludes there is evidence that considerable efforts have been made in eradicating non-native plant species from this area, including pine trees. No significant wildlife species were identified on the subject site.

A map of the habitats on the site was also prepared by the biological consultant. Commission staff visited the subject property on July 30, 2008 and confirmed that the site description and aerial maps provided in the Evaluation were accurate. While there is scattered residential development in the area, there is undisturbed, contiguous oak woodland habitat to the south, southeast, and southwest across Cold Creek. Exhibit 9 is a 2007 aerial photograph of the project site and immediate surrounding area.

According to public information, the applicant purchased the subject parcel in May of 2005 for a price of \$2,189,000.00. The parcel was designated in the Los Angeles County Land Use Plan for residential use. The Rural Land III land use designation applies to the property that allows residential development at a maximum density of 1 dwelling unit per 2 acres of land. The parcel is 1.72-acres in size, and there are other scattered, residential developments in the same area. Public parkland has been acquired in this general vicinity, the Malibu Creek State Park. There is currently no offer to purchase the property from any public park agency.

At the request of Staff, the applicant has reviewed numerous alternative project sites for the proposed guest house. The revised project now includes a site on the western portion of the parcel set adjacent to the Los Angeles County front yard and side yard setbacks adjacent to McKain Street on the portion of the parcel located within the fuel modification area of the existing residence and garage on the subject parcel.

Not including the area of the driveway or turnaround, the proposed development area for the guest house is estimated by the applicant to measure approximately 2,144 sq. ft. The existing development area of the residence and garage is approximately 5,836 sq. ft. The applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a total radius of approximately between 0 to 150 feet from the proposed structures due to the Oak woodland. A "C" Zone (thinning zone) is provided for a distance of 35 - 50 feet beyond

the “A” and “B” zones to a maximum of 75 feet to the south in the direction of Cold Creek yet about 35 feet beyond the creek (Exhibit 7).

2. ESHA Designation on the Project Site.

Pursuant to Section 30107.5, in order to determine whether an area constitutes an ESHA, and is therefore subject to the protections of Section 30240, the Commission must answer three questions:

- 1) Is there a rare species or habitat in the subject area?
- 2) Is there an especially valuable species or habitat in the area, which is determined based on:
 - a) whether any species or habitat that is present has a special nature, OR
 - b) whether any species or habitat that is present has a special role in the ecosystem;
- 3) Is any habitat or species that has met either test 1 or test 2 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

If the answers to questions one or two and question three are “yes”, the area is ESHA.

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean 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. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission’s Ecologist, Dr. John Dixon¹ (hereinafter “Dr. Dixon Memorandum”), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including

¹ The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-esh-memo.pdf>

vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodlands are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP².

As described above, the project site contains sensitive Oak Woodland habitat on the project site. This Oak Woodland habitat, which is part of the Cold Creek corridor, and the areas to the southwest, south and southeast which are beyond the project site are part of a large, contiguous block of pristine native vegetation including a few sycamore trees considered riparian habitat. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the Oak Woodland habitat on the project site does not meet the definition of ESHA in the Coastal Act.

3. Siting and Design Alternatives to Avoid ESHA

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the Santa Monica Mountains to avoid a taking of property. As detailed above, the proposed development area (including both the existing residence on site and the new proposed guest house) conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within this development area. , The proposed guest house will be located on an existing flat pad entirely within a previously developed portion of the subject site adjacent to the access road, McKain Street.

As currently proposed by the applicant, the guest house is located on a site that is set back 80 feet or more from the oak woodland canopy and approximately 130 feet from Cold Creek located downslope. Commission staff has visited the site and confirmed that there are no feasible locations on site that would provide for a greater setback from the oak woodland canopy. In past permit actions, the Commission has typically required that new development be set back 100 ft. or more from ESHA in order to provide an adequate buffer. However, in this case, the Commission finds that although the proposed guest house will only be located approximately 80 ft. from the canopy of

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

the adjacent oak woodland, there are unique, site-specific factors which would allow for the reduced setback while still avoiding any adverse impacts to the adjacent ESHA. In this case, the existing residence is located within the canopy of the oak woodland with no buffer. The new proposed guest house, although clustered near the residence, will also be located more than 80 ft. further from the oak woodland/riparian areas on site than the existing residence on site and is not expected to result in any additional cumulative impacts to the adjacent ESHA. Further, due to overlapping fuel modification zones from the existing residence on the subject site and an existing residence on the neighboring parcel immediately north of the site, no new or additional fuel modification requirements are necessary for the proposed guest house. Thus, the proposed guest house is not expected to result in any new adverse impacts to the oak woodland on site and the oak woodland/riparian habitat areas off site. As such, the Commission concludes that the proposed siting and design of the project will avoid impacts to ESHA. Thus, the proposed project will not result in any new impacts to ESHA due to its location.

4. Fuel Modification

While impacts resulting from development within ESHA can be reduced through siting and design alternatives for new development and by ensuring that the remaining ESHA on the site is permanently protected, they cannot be completely avoided, given the location of ESHA on and around the project site, the high fire risk in the Santa Monica Mountains, and the need to modify fuel sources to protect life and property from wildfire.

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 will 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 Los Angeles County Fire Department, which include a setback zone immediately adjacent to the structure (Zone A) where all native vegetation must be removed, an irrigated zone adjacent to Zone A (Zone B) where most native vegetation must be removed or widely spaced, and a thinning zone (Zone C) where native vegetation may be retained if thinned or widely spaced although particular high-fuel plant species must be removed. The combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels. In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned. The Commission has found in past permit actions, that a new residential development (with a 10,000 sq. ft. development area) within ESHA with a full 200 foot fuel modification radius will result in impact (either complete removal, irrigation, or thinning) to ESHA habitat of four to five acres.

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. As

discussed in the Dr. Dixon Memorandum³, 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. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The applicant has submitted a Los Angeles County Fire Department approved fuel modification plan dated 8/16/06. The plan indicates that because the guest house is located within the current fuel modification area of the existing residence on site and the overlapping fuel modification area of an existing residence located on the adjoining parcel to the north, no additional fuel modification or vegetation clearance is required for the proposed guest house. Further, the plans indicate that no fuel modification is required within the creek corridor or within the oak woodland. The proposed guest house is clustered with regard to the existing residence within a development area of 7,980 sq. ft.. The applicant has revised the proposed project to relocate the guest house immediately adjacent to the existing access roadway in order to increase its setback from the oak woodland to the maximum extent feasible (80 feet from the oak canopy and 128 feet from the riparian canopy). The Los Angeles County Fire Department has approved a fuel modification plan for the initially located guest house as identified in Exhibit 7. The currently proposed guest house is located further north and west to increase the setback from the oak woodland. The Los Angeles County Fire Department approved fuel modification plan provides that no fuel modification, except for the removal of dead and downed wood, is required for the oak woodland and riparian area located along the creek area nor within the oak woodland adjacent to the existing residence. Due to the overlapping fuel modification zones for the existing residence and the residence located on the adjoining parcel to the north, no additional fuel modification is required on site for the proposed guest house. Thus, the proposed project will not result in any new impacts to ESHA due to fuel modification requirements.

5. Additional Mitigation Measures to Address Additional ESHA Impacts

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. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive

³ The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-esh-memo.pdf>

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. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area that are not directly and immediately affected by the proposed development, **Special Condition 2** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

In addition, the Commission has found that night lighting of ESHA areas in the Malibu/Santa Monica Mountains may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, **Special Condition 9**, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

Furthermore, fencing of the property would adversely impact the movement of wildlife through the ESHA and wildlife migration corridor on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the development area (building pad) and driveway. This is required to be shown on the landscaping plan, required in **Special Condition 2**

Finally, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing guest houses and related repair and maintenance activities may be inappropriate here. In recognition of that fact, and 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 5**, the future development restriction, has been required.

Finally, **Special Condition 6** 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 thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Finally, in order to ensure that the terms and conditions of this permit are adequately implemented, **Special Condition 10** authorizes Commission staff to enter onto the property (subject to 24 hour notice to the property owner) to undertake site inspections for the purpose of monitoring compliance with the permit.

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

C. HAZARDS AND GEOLOGIC STABILITY

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.

The proposed development is located in the Malibu/Santa Monica Mountains area, an area historically subject to significant natural hazards including, but not limited to, landslides, erosion, flooding and wild fire. The submitted geology, geotechnical, and/or soils reports referenced as Substantive File Documents conclude that the project site is suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development. The reports contain recommendations to be incorporated into the project plans to ensure the stability and geologic safety of the proposed project, the project site, and the adjacent properties. To ensure stability and structural integrity and to protect the site and the surrounding sites, the Commission requires the applicant to comply with the recommendations contained in the applicable reports, to incorporate those recommendations into all final design and construction plans, and to obtain the geotechnical consultant's approval of those plans prior to the commencement of construction.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer.

Further, the Commission finds that, for the project to ensure stability and avoid contributing significantly to erosion, all slopes and disturbed areas of the subject site must be landscaped, primarily with native plants, to stabilize disturbed soils and reduce erosion resulting from the development.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk condition, the applicant acknowledges the nature of the

fire and/or geologic hazard that exists on the site and that may affect the safety of the proposed development.

The proposed grading will not be balanced on the project site and will result in a surplus of graded material. Excavated materials that are placed in stockpiles are subject to increased erosion, and if retained upon the site, such materials may contribute to additional unpermitted landform alteration. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, the Commission requires the applicant to remove all excavated material from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

- Special Condition 1. Plans Conforming to Geotechnical Engineer's Recommendations
- Special Condition 2. Landscaping, Erosion Control, and Fuel Modification Plans
- Special Condition 3. Assumption of Risk
- Special Condition 4. Drainage and Polluted Runoff Control Plan
- Special Condition 7. Removal of Excess Excavated Material

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

D. WATER QUALITY

Section 30231 of the Coastal Act states that:

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

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

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to minimize the potential for such adverse impacts to water quality resulting from drainage runoff both during construction and in the post-development stage, the Commission requires the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site, including: 1) sizing post-construction structural BMPs to accommodate (infiltrate, filter, or otherwise treat) the runoff from all storms up to and including the 85th percentile storm runoff event; 2) implementing erosion control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping.

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or surrounding areas from the use of a septic system. The existing on-site septic system is sufficient to handle the additional waste stream from the proposed accessory structure. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30231 of the Coastal Act:

- Special Condition 2. Landscaping, Erosion Control, and Fuel Modification Plans
- Special Condition 4. Drainage and Polluted Runoff Control Plan
- Special Condition 7. Removal of Excess Excavated Material

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

E. VISUAL IMPACTS

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.

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of visual resources. The Coastal Commission, as guidance in the review of development proposals in the Santa Monica Mountains, has applied these policies.

- P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.***
- P125 New development shall be sited and designed to protect public views from LCP- designated highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on a sloped terrain should be set below road grade.***
- P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.***
- P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:***
 - Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LUP.***
 - Minimize the alteration of natural landforms***
 - Be landscaped to conceal raw cut slopes***
 - Be visually compatible with and subordinate to the character of its setting.***
 - Be sited so as to not significantly intrude into the skyline as seen from public viewing places.***
- P131 Where feasible, prohibit placement of structures that will break the ridgeline views, as seen from public places***
- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.***

P142 *New development along scenic roadways shall be set below the road grade on the down hill side wherever feasible, to protect designated scenic canyon and ocean views.*

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. In the review of this project, Commission staff analyzed the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public. Staff examined the building site, the size of the proposed structure, and alternatives to the size, bulk and scale of the structure. The development of the guest house raises the issue of whether or not views from public viewing areas will be adversely affected.

The subject site is located in a low density residential area south of Mulholland Highway and Cold Canyon Road in the Malibu/Santa Monica Mountains. The applicant proposes to construct a one story, 17 ft. high, 740 sq. ft. guest house, attached 700 sq. ft. two car garage, 977 sq. ft. covered patio/eave, driveway, septic system, 520 sq. ft. solar photovoltaic system on roof of guest house, 50 cubic yards of cut grading, 16 cubic yards of fill grading, and export remainder to an approved disposal site located outside the coastal zone.

The proposed building site is located at an elevation of approximately 994 feet above sea level. The subject parcel ranges from 994 to 960 feet elevation above sea level. Slopes south of the building site descend toward Cold Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 130 feet away from the proposed building site. The proposed building pad and driveway drain north to McKain Street, eventually leading to Cold Creek. Existing residences are located to the north, west and northeast of the subject site. The Backbone Trail is located about 4,000 feet to the south of the project site.

Given the limited size of the structure as well as the distance (4,000 feet) and elevation difference (over 1,000 feet higher) from the Backbone Trail and portions of Malibu Creek State Park located to the south, public views of the structure will be minimal due to the distance and topography. The potential visibility will be further reduced by the mature landscaping that exists on the site, new landscaping and design restrictions identified below. Mitigation is needed to address potential public visual impacts for the proposed guest house from the south. The visual impact of the proposed structure can be minimized by requiring this structure to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicants to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition 8**.

Visual impacts can be further reduced by the use of appropriate and adequate landscaping, including visually screening on the south, southwest, and southeast sides of the guest house. Therefore, **Special Condition 2** requires the applicants to ensure that the vegetation on site remains visually compatible with the native flora of

surrounding areas. Implementation of **Special Condition 2** will soften the visual impact of the development from public view areas. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition 2** also requires the applicants to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time. The proposed 520 sq. ft. roof mounted solar photovoltaic panels are located on the south facing roof area and therefore, will be visible to a limited degree from public lands although will be screened by existing mature vegetation located along the creek.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby public lands and scenic roads. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The area south of the subject site contains environmentally sensitive habitat. Therefore, **Special Condition 9** 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 nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Finally, regarding future developments or improvements, certain types of development on the property, normally associated with a guest house and garage, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the guest house/garage (or conversion of any portion of the garage to habitable space), covered patio/eave, which might otherwise be exempt, is reviewed by the Commission for compliance with the visual resource policies contained in Section 30251 of the Coastal Act. **Special Condition 5**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Further, **Special Condition 6** 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 property.

Therefore, the Commission finds that the project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alteration 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

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

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or,

where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30252 of the Coastal Act states that:

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

New development raises coastal issues related to cumulative impacts on coastal resources. The construction of a second unit on the site where a primary residence exists intensifies the use of a parcel increasing impacts on public services, such as water, sewage, electricity and roads. New development also raises issues as to whether the location and amount of new development maintains and enhances public access to the coast.

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

The second unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of

different forms which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, or farm labor unit; and 2) a guesthouse, with or without separate kitchen facilities. Past Commission action has consistently found that both second units and guesthouses inherently have the potential to cumulatively impact coastal resources. Thus, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act in this area.

In this case, the applicants propose the construction of a 740 sq. ft. detached accessory structure with an attached 700 sq. ft. garage, and 977 sq. ft. of covered patio/eave. This proposed structure is not intended to be occupied as a separate residential second unit. In fact, no kitchen facilities are proposed to be included in this structure. The plans show the proposed structure as a one-story building with no interior access or doorway proposed between the non-habitable garage and habitable 740 sq. ft. guest unit. All of the proposed development will be located on the existing flat pad, therefore, it will not result in the removal of ESHA. The guest house is located within the fuel modification area of the existing residence and the overlapping fuel modification area of the existing residence located on the adjoining parcel to the north across McKain Street. The Los Angeles County Fire Department has approved a fuel modification plan for the initially located guest house as identified in Exhibit 7. The currently proposed guest house is located further north and west to increase the setback from the oak woodland. The Los Angeles County Fire Department approved fuel modification plan provides that no fuel modification, except for the removal of dead and downed wood, is required for the oak woodland and riparian area located along the creek area nor within the oak woodland adjacent to the existing residence. Therefore, impacts to ESHA will be avoided. Further, as conditioned in this report and described in the above findings, the proposed project would have no impact on coastal resources.

However, future improvements to the proposed accessory structure such as additional square footage, addition of kitchen facilities, or conversion of the structure/garage as a residential second unit or guest house could raise issues with regard to individual or cumulative impacts to coastal resources, including the potential for fuel modification associated with additions or improvements to extend into environmentally sensitive habitat areas. Such improvements and their potential impacts must be addressed by the Commission to ensure conformance with the Chapter 3 policies of the Coastal Act.

To ensure that any additions or improvements that could further intensify the use of the structure will be reviewed by the Commission, the Commission requires, pursuant to **Special Condition No. 5**, that any additions or improvements related to the structure, that may otherwise be exempt from coastal permit requirements (including but not limited to conversion of the non-habitable space or installation of a door or other ingress between the guest unit and the garage), shall be reviewed by the Commission for consistency with the resource protection policies of the Coastal Act.

Additionally, the Commission requires, pursuant to **Special Condition No. 6**, 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.

The Commission finds that, as conditioned, the proposed development is consistent with Sections 30250 and 30252 of the Coastal Act.

G. VIOLATION

Development has occurred on the subject site without the required coastal development permits including, but not limited to, subdividing the subject lot to create an adjoining lot to the south without the required coastal permit. The original parcel appears to have been about 10 acres in size (extending about another 1000 feet to the south of the subject lot. However, on 12/23/1971, a previous property owner subdivided the property through foreclosure creating a separate 8.21 acre lot to the south which was subsequently sold to Mountains Restoration Trust on 10/16/2001. The subject parcel is part of a 2 or more parcel/lot land division, which occurred without the required coastal permit. The proposed guest house will be located on the same "resultant" lot as the existing residence. No development exists, or is proposed on the unpermitted lot located to the south. Regardless, the proposed guest house is separate and not directly related or affected by this unpermitted land division issue and, therefore, is not addressed as part of this application. The Commission's Enforcement Division will evaluate further actions to address this matter.

Although development has taken place prior to the submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to any alleged violations 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:

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

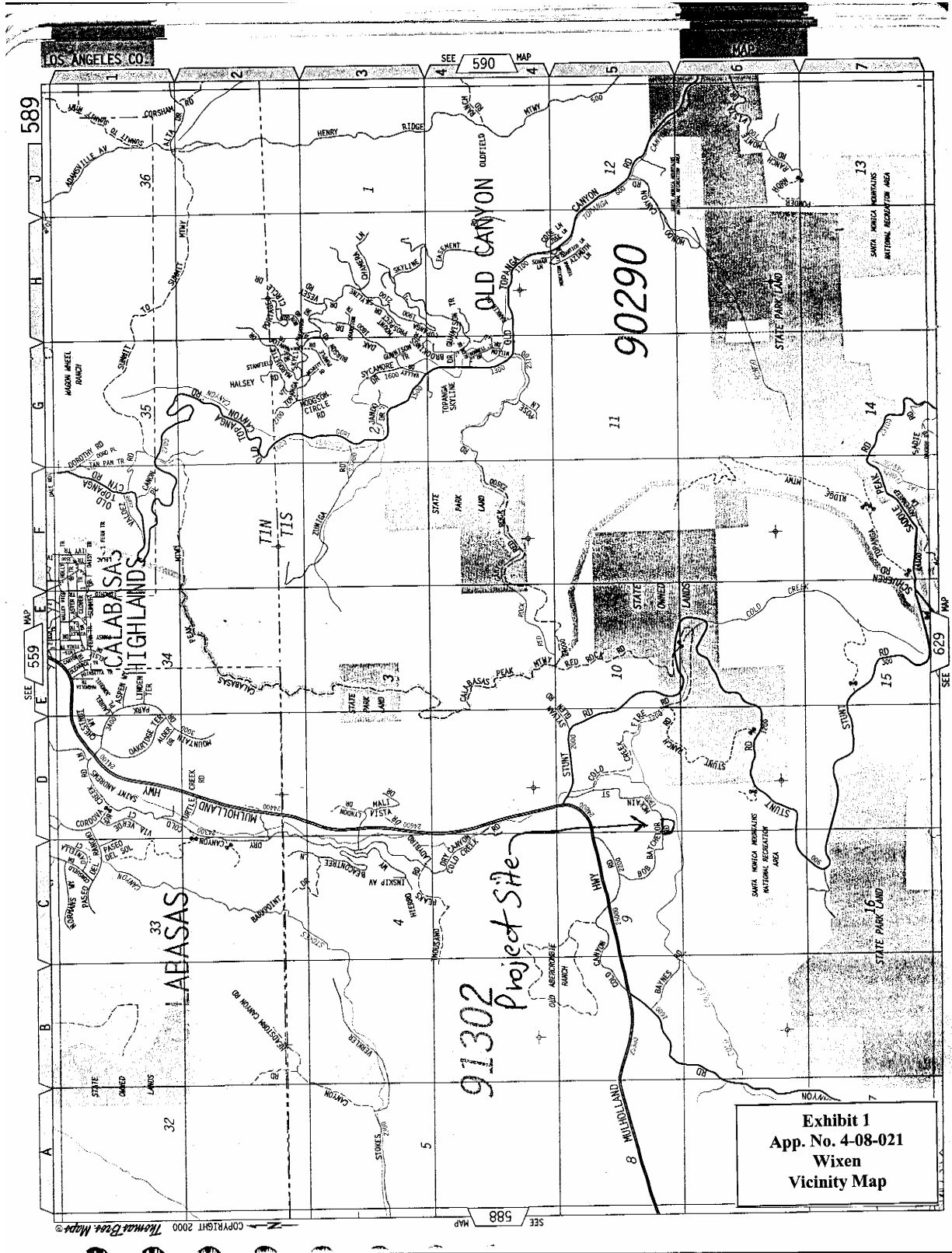
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with

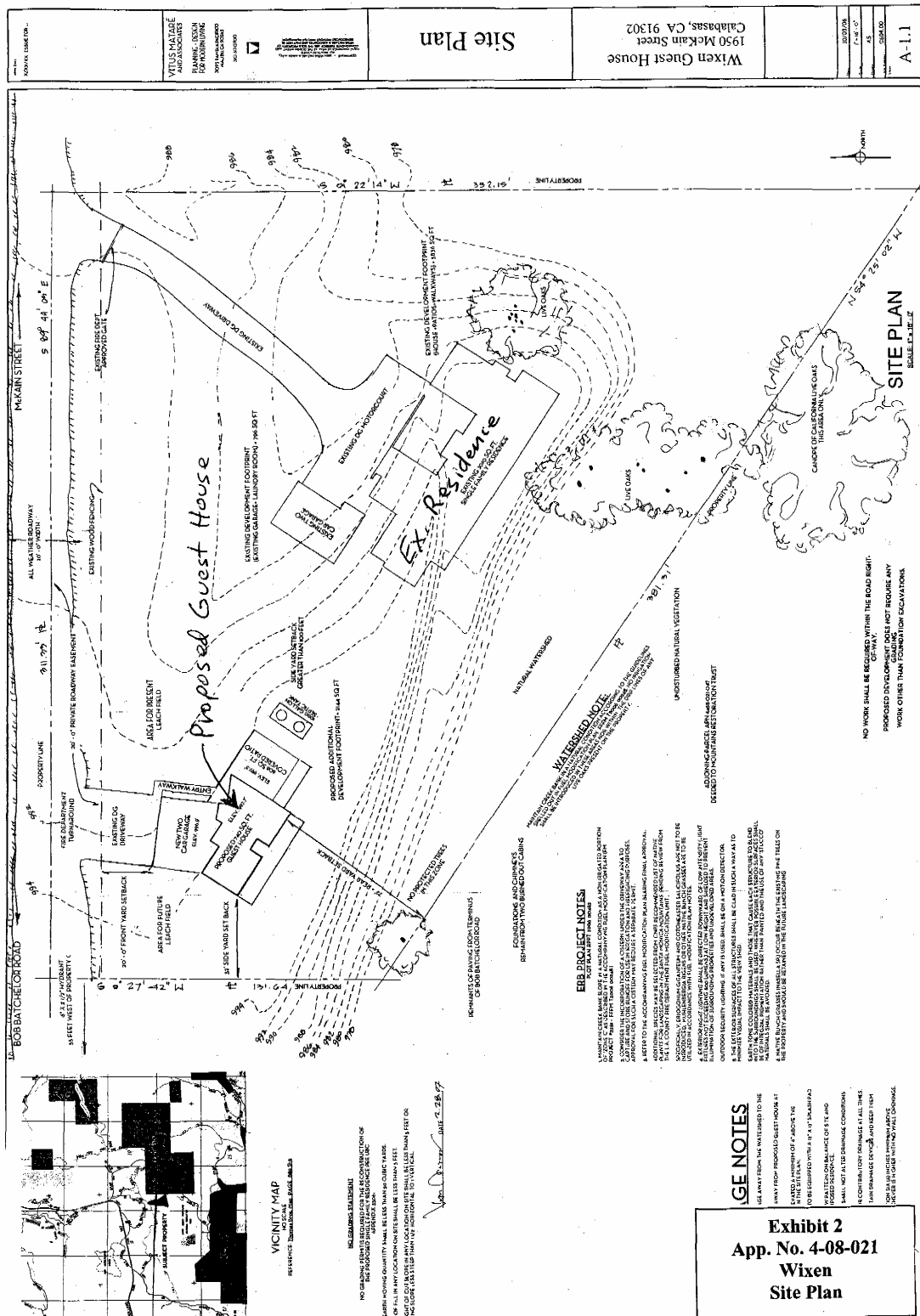
Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicants. As conditioned, the proposed development will not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

I. CEQA

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

The Commission 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 above, the proposed development, as conditioned, is consistent with the policies of the Coastal Act. As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. 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.









NORTH ELEVATION



SOUTH ELEVATION

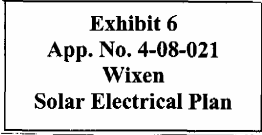
IMPROVED FIRE PROTECTION CONSTRUCTION TECHNIQUES

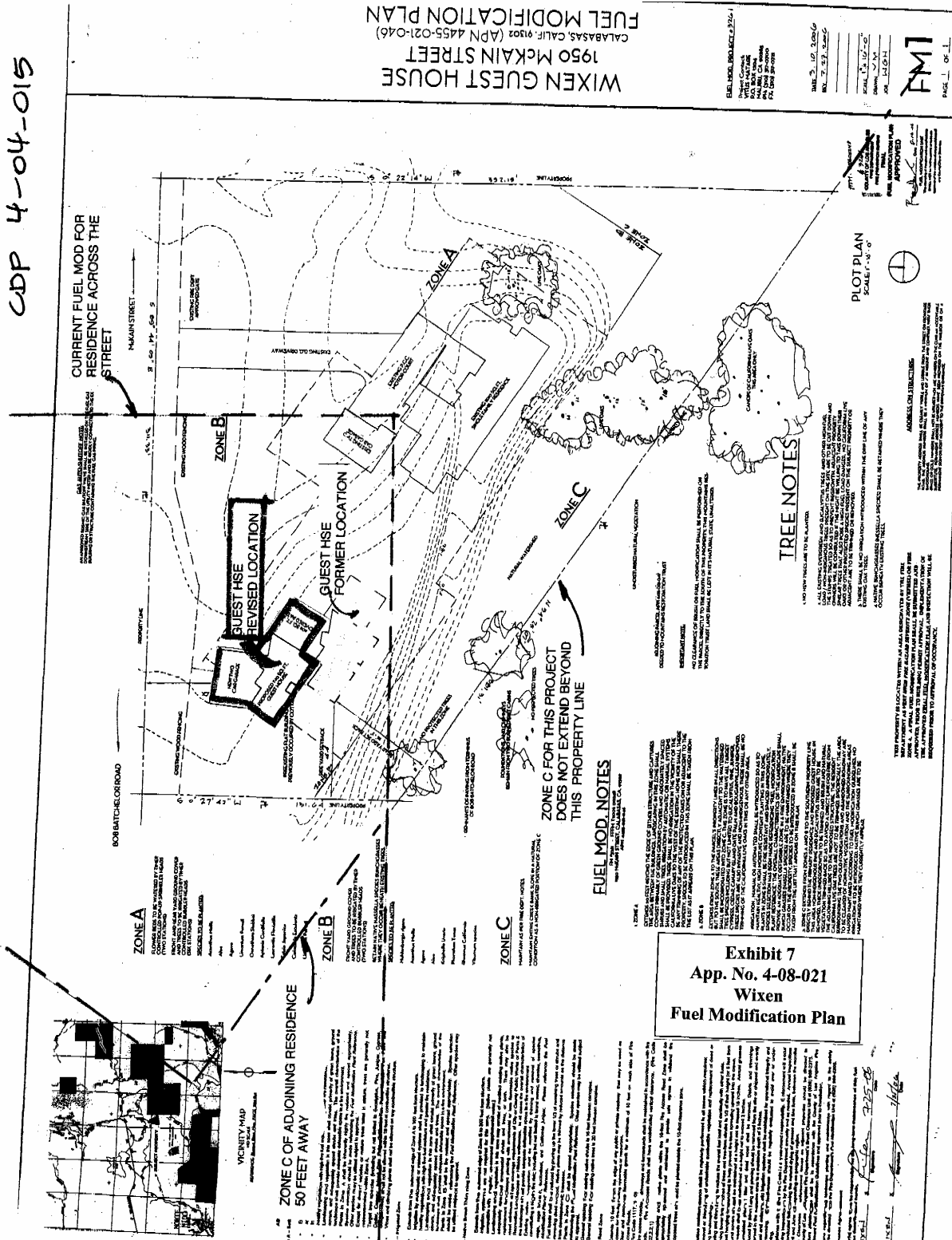
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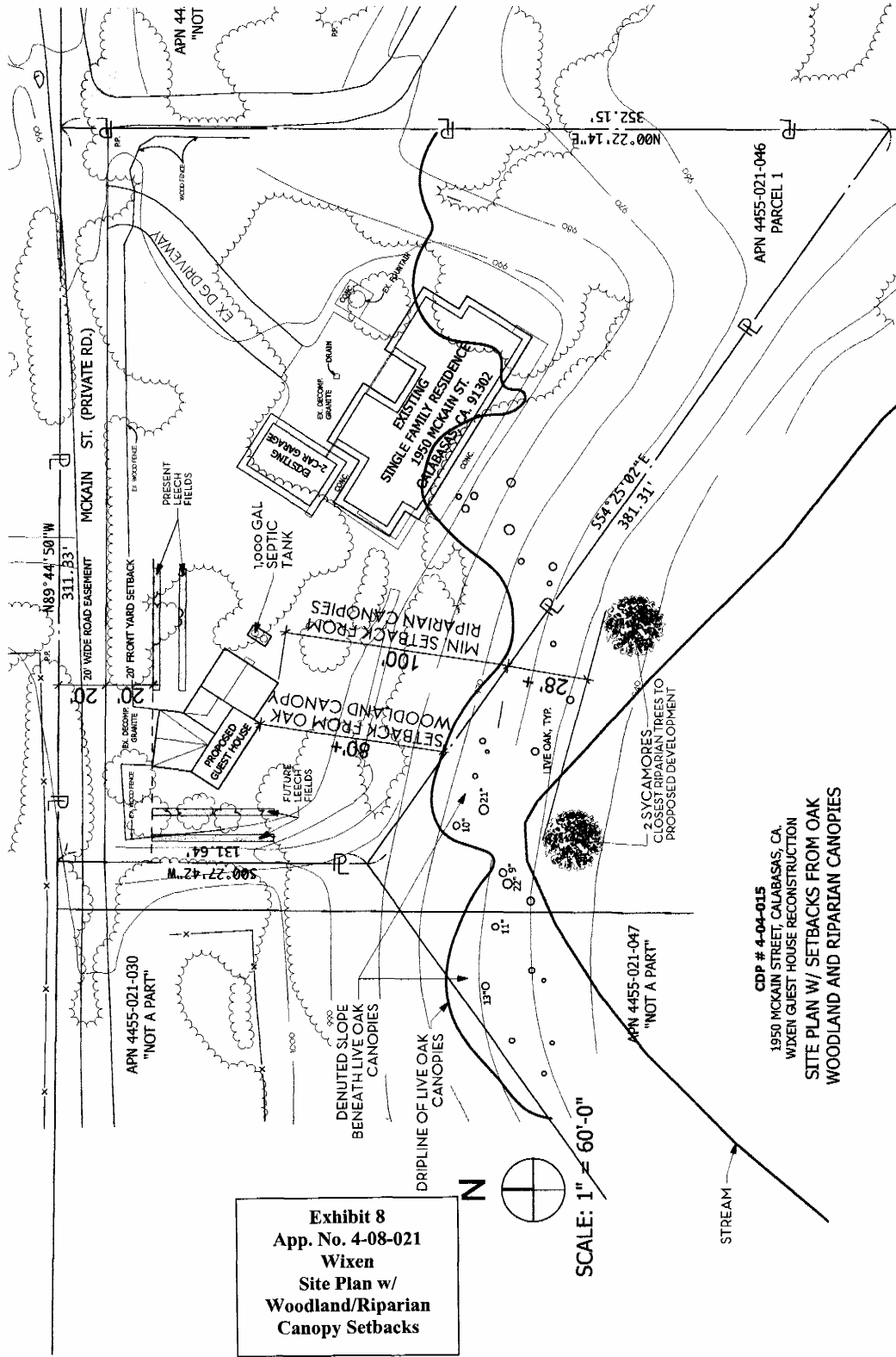
CLASS "A" ROOF SYSTEM CONSISTING OF CEMENT ROOF TILE OVER CLASS A UNDERLAYMENT, TOTAL ROOF SYSTEM TO WEIGH LESS THAN 75 POUNDS PER SQUARE FOOT.

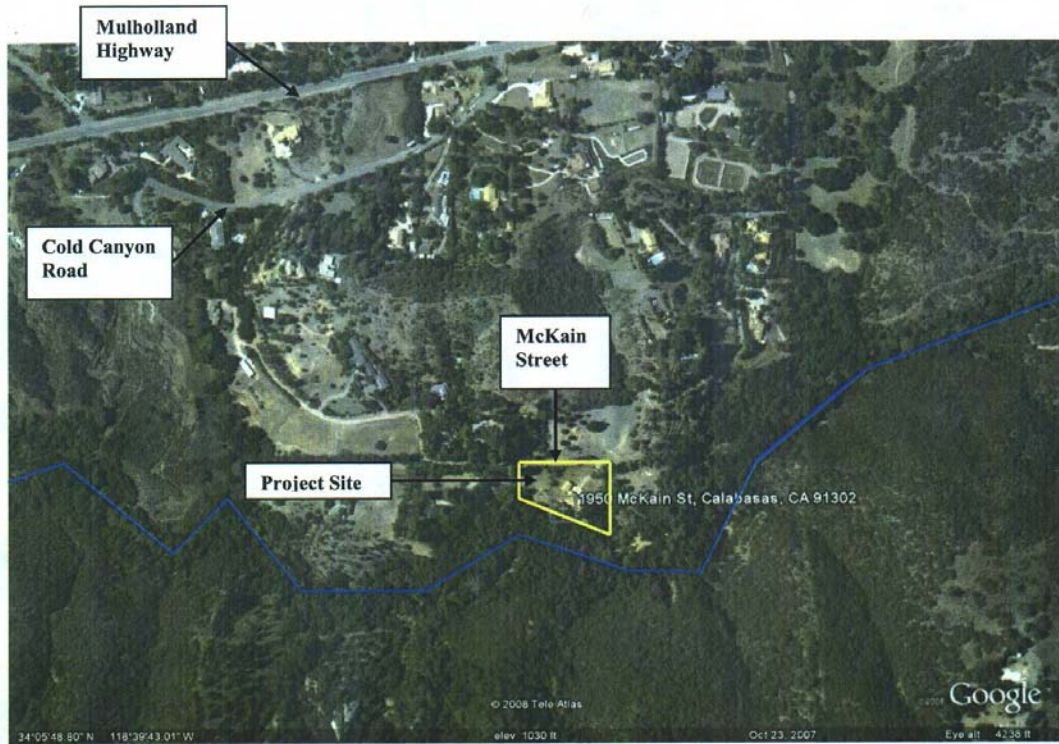
Exhibit 4
App. No. 4-08-021
Wixen
North & South
Elevations

[illegible]









- Cold Creek (Approx.)
- Property Boundary (Approx.)

Exhibit 9
App. No. 4-08-021
Wixen
Aerial Photo