CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Staff:	A. Tysor
Staff Report:	3/27/08
Hearing Date:	4/9/08

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO: 4-07-001

APPLICANT: Bao Hoang

PROJECT LOCATION: 2388 Mar Vista Ridge Road, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct a 3 story, 35 ft. high, 3,044 sq. ft. single family residence with a first floor 5 car garage and storage area, septic system, water well, 1,100 cu. yds. grading (690 cu. yds cut and 320 cu. yds fill), and placement of temporary construction trailer on the site during construction. The application also includes a request for after-the-fact approval of the subject parcel, which was recognized pursuant to Certificate of Compliance #82-208399, and a proposal for restoration of unpermitted grading and vegetation removal back to natural conditions.

Lot area:	**420,790 sq. ft. (9.66 acres)**
Building coverage:	**3,388 sq. ft.**
Ht. above finished grade:	**35 ft.**

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with **eighteen (18) special conditions** relating to plans conforming to (1) geotechnical engineer's recommendations, (2) landscaping and erosion control, (3) assumption of risk, (4) drainage and polluted runoff control, (5) removal of natural vegetation, (6) structural appearance, (7) lighting restriction, (8) habitat impact mitigation, (9) future development restriction, (10) deed restriction, (11) open space conservation easement, (12) site inspection, (13) removal of temporary construction trailer, (14) cumulative impact mitigation, (15) native vegetation restoration/ revegetation plan, (16) condition compliance, (17) removal of excess excavated material, and (18) final approved fuel modification plans.

The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu–Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act and the LUP.

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concept, dated March 14, 2007; Los Angeles County Department

of Health Services Approval-in-Concept for septic system, dated June 29, 2007; Los Angeles County Fire Department Preliminary Fuel Modification Plan Approval, dated January 25, 2005; Los Angeles County Fire Department Access Approval, dated April 19, 2007.

SUBSTANTIVE FILE DOCUMENTS: "Geologic Observation for Proposed On-site Sewage Disposal System," prepared by GeoSystems, Inc., dated September 26, 2006.; Update Letter Addressing Current Grading Plan, prepared by GeoSystems, Inc., dated April 8, 2004; "Response to Geologic and Geotechnical Engineering Review Sheets dated January 20, 1999 and January 21, 1999," prepared by GeoSystems, Inc., dated October 8, 1999.; "Response to Geologic and Geotechnical Engineering Review Sheets," prepared by GeoSystems,Inc., dated September 6, 1996.; "Updated Soils and Engineering Geologic Report for Proposed Residence and Guest House," prepared by GeoSystems, dated August 30, 1995.; Biological Assessment prepared by ENSR International, dated September 8, 2004; CDP No. 4-95-196 (Russell); CDP No. 4-95-196-E1 (Russell); CDP No. 4-95-196-E2 (Russell); CDP No. 4-95-196-E3 (Hoang); CDP No. 4-95-196-T1 (Hoang).

I. Approval with Conditions

A. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No 4-07-001 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. Standard Conditions

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

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any 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 applicant agrees to comply with the recommendations contained in each of the reports prepared by GeoSystems, Inc. for the site, including: "Geologic Observation for Proposed On-site Sewage Disposal System," dated September 26, 2006; Update Letter Addressing Current Grading Plan, dated April 8, 2004; "Response to Geologic and Geotechnical Engineering Review Sheets dated January 20, 1999 and January 21, 1999," dated October 8, 1999.; "Response to Geologic and Geotechnical Engineering Review Sheets," dated September 6, 1996.; "Updated Soils and Engineering Geologic Report for Proposed Residence and Guest House," dated August 30, 1995. These recommendations shall be incorporated into all final design and construction plans, including recommendations concerning grading, foundation, retaining walls, sewage disposal, and drainage.

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

2. Landscaping and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicant shall submit final 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 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 Native Plants for Landscaping in the Santa Monica Mountains, updated August 2007. 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 shall be primarily 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.

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) 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 the approved final approved fuel modification plan. Irrigated lawn, turf and ground cover planted within the first 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.

5) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

6) Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B shown on the approved long-term fuel modification plan dated January 25, 2007 submitted for this project. 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 Six (6) below.

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 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 applicants 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

(1) Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicants 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 whether 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.

(2) 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 applicants, 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, 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 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 arising from any injury or damage due to such hazards.

4. Drainage and Polluted Runoff Control Plan

A. *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 applicants 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.

B. 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. Removal of Natural Vegetation

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

6. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-07-001. 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, 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. 4-07-001 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. Lighting Restriction

A. The only outdoor night lighting allowed on the subject 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 and garage 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.

8. Habitat Impact Mitigation

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat (ESHA) that will be disturbed by the proposed development, including fuel modification on the project site and brush clearance requirements on adjacent property. 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, if the fuel modification/brush clearance zones extend onto adjacent property, adjacent parcel boundaries. 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. A 200-foot clearance zone from the

proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. 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/brush clearance 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/brush clearance area. The habitat restoration area may either be onsite or offsite within the coastal zone either in the City of Malibu or elsewhere 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 applicants shall submit written evidence to the Executive Director that the property owner has irrevocably agreed to allow the restoration work, maintenance and monitoring required by this condition and 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 applicants 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. Should supplemental restoration be required, the applicants 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 the supplemental restoration areas. At the end of the five-year period, a final 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 applicants shall submit an application for an amendment to the coastal development permit for an alternative mitigation program and shall implement whatever alternative mitigation program the Commission approves, as approved.

The habitat restoration work approved in the restoration plan shall be carried out 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 applicant shall submit evidence that the applicants have executed and recorded a deed restriction (if the applicants are not the owners, then the applicants shall submit evidence that the owner has executed and recorded the 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 on which the restoration area lies 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 applicants fail 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 the issuance of the coastal development permit, the applicants shall (or, if the applicants are not the owner of the habitat conservation site, then the owners of the habitat conservation site shall) execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over the entirety of a legal 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 applicants 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(s) is/are 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, Off-site Brush Clearance**

   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's Coastal Habitat Impact Mitigation Fund for the acquisition, or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

9. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. 4-07-001. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6) the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to any future development on any portion of the parcel. Accordingly, any future improvements to any portion of the property, including but not limited to the residence, garage, septic system, landscaping, and removal of vegetation or grading other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition Two (2), shall require an amendment to Coastal Development Permit No. 4-07-001 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. 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 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.

11. Open Space Conservation Easement

A. 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** 9 except for:

1. Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition Eighteen (18) or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission;

2. Drainage and polluted runoff control activities required and approved pursuant to:
   a. The drainage and runoff control plans approved pursuant to Special Condition Four (4) of this permit; and
   b. The landscaping and erosion control plans approved pursuant to Special Condition Two (2);

3. If approved by the Commission as an amendment to this coastal development permit or a new coastal development permit,
   a. construction and maintenance of public hiking trails, and
   b. construction and maintenance of roads, trails, and utilities consistent with existing easements.

B. 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 9.** The recorded easement 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 (other than existing easements for roads, trails, and utilities) that 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.

12. Site Inspection

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.

13. **Removal of Temporary Construction Trailer**

By acceptance of this permit, the applicant agrees that the temporary construction trailer shall be removed within two years of the issuance of this coastal development permit or within sixty (60) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever occurs first, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of a temporary construction trailer. After the trailer is removed, the site disturbed by its placement shall be revegetated within 60 days consistent with the requirements of Special Condition Number One (1).

14. 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 activities undertaken for roads, trails, and utilities pursuant to existing easements.

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. The recorded document shall reflect that development in the parcel is restricted as set forth in this permit's condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) 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(s) extinguished in Section 3 above have 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.

15. <u>Native Vegetation Restoration/ Revegetation Plan</u>

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 graded area (just east of the proposed development site) where unauthorized vegetation removal and grading has occurred (as shown on **Exhibit 14**) and an approximation of the original topography that existed prior to the unpermitted vegetation removal and grading. 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 14. 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 31st 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 applicant 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.

16. 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 provision of Chapter 9 of the Coastal Act.

17. 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.

18. Final Approved Fuel Modification Plans

A. ***Prior to issuance of the Coastal Development Permit***, the applicant shall submit, for the review and approval of the Executive Director, Final Approved Los Angeles County Fire Department Fuel Modifications Plans.

B. The Permitee shall undertake development in accordance with the final approved site plan(s) and elevations, grading plan(s), and fuel modification plan(s). 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 Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

1. Project Description

The applicant is proposing to construct a 3-story, 35 ft. high, 3,044 sq. ft. single family residence with a first floor 5 car garage and storage area, septic system, water well, 1,100 cu. yds. grading (690 cu. yds cut and 320 cu. yds fill), and placement of temporary construction trailer on the site during construction only. (**Exhibits 2-7**) The application also includes a request for after-the-fact approval of the subject parcel, which was recognized pursuant to Certificate of Compliance #82-208399, further explained below. (**Exhibits 10-11**).

The subject 9.66 acre lot (APN 4461039-001)[1] is located in the Santa Monica Mountains within the Solstice Canyon Watershed and is immediately adjacent to the Escondido Canyon Wildlife Corridor, which connects Latigo and Solstice Canyons. The site is located on an undeveloped hillside parcel along the north side of Mar Vista Ridge Road located just to the east of the intersection of Latigo Canyon Road and McReynolds Road. The Solstice Canyon blue line stream is approximately 200 feet south of the site. National Park Service ("NPS") property is located directly west of the site. Additionally, although an undeveloped 9.89 acre parcel is located adjacent to the site to the east, NPS property bounds that site to the north and east. The house is sited on the lowest elevations on the property ranging about from 1995 ft. to 2005 ft. elevations. (**Exhibit 2**)

At the request of staff, the applicant reduced the amount of the initially proposed development. The applicant eliminated from project plans a guest house and second access road, a gazebo, water tanks, and a reflecting pond. The proposed residence is proposed to be constructed on an existing flat pad area adjacent to Mar Vista Ridge Road. The applicant submitted a preliminary Fuel Modification Plan for the proposed residence that has been approved by the Los Angeles County Fire Department. This plan, although it includes approval of the guest house, which is not now proposed, calls for clearance and thinning of vegetation 200 feet on all sides of the proposed residence. This area has not yet been cleared for fuel modification purposes and will require

[1] From time to time, this report will refer to the project site as an existing lot, in part for convenience, and in part because the staff recommendation is to approve the creation of the lot. These references do not change the fact that the lot does not currently legally exist, as it was effectively created, for Subdivision Map Act purposes, through a Conditional Certificate of Compliance in 1982, and that creation was not authorized by the required coastal development permit. Similarly, this report sometimes refers to the other purported lots in the purported four-lot subdivision of which the project site is a part as existing lots.

removal of chaparral habitat that meets the definition of Environmentally Sensitive Habitat Area ("ESHA"), as described below. (**Exhibit 13**) The entire parcel is ESHA except for the portions of the property subject to previously unpermitted grading on the southern portion of the property, which should likely be considered ESHA as well, given that the grading was unpermitted. (**Exhibit 14**)

2. Property History

a. Unpermitted Development

Two flat pads currently exist on the site due to previously unpermitted past grading activity, one area has mostly grown back to natural conditions and the other pad remains cleared. The estimated previous grading for the two flat pad areas was approximately 2,200 cubic yards in total. Analysis of historical 1977 infrared aerial photographs of the site show no land disturbance or evidence of grading. However, 1986 aerial photographs of the site depict two flat pad graded areas. Thus, grading on the site took place between 1977 and 1986, and there is no evidence that a coastal development permit was obtained to authorize this development. This grading was subsequently permitted by the Commission in 1996, after-the-fact, pursuant to CDP No. 4-95-196. However, this permit has since expired. Additionally, unpermitted grading and vegetation clearance has been conducted on the site since the previous coastal development permit approval in 1996. This grading and vegetation clearance is located in an area on the property not authorized for development by the previous permit and this grading and clearance was not permitted after-the-fact by the previous approval. (**Exhibit 14**) Analysis of the Commission's 2001 aerial photographs of the site show that this unpermitted grading and vegetation clearance on the south eastern property boundary appeared subsequent to the Commission's previous approval of development on the site in 1996. This application includes a request for after-the-fact approval of this unpermitted development on the southeastern property boundary.

b. Prior Approved Coastal Development Permit on Subject Lot

On January 11, 1996, the Commission approved with special conditions Coastal Development Permit (CDP) No. 4-95-196 (Russell) for construction of a new two-story, 3,186 sq. ft. 15 ft. high single family residence, 676 sq. ft. guest house, corral, septic system, 2,200 cu. yds of grading and placement of a temporary construction trailer on site. Conditions of approval included landscaping and erosion control plans, drainage and erosion control plans, compliance with geologic recommendations, a structural appearance restriction, a future development restriction, a fencing restriction, a restriction requiring removal of temporary construction trailer, and a wildfire waiver of liability. This permit was later assigned to Bao Hoang on June 28, 2000, after his purchase of the subject parcel. Subsequent to the initial approval, the Commission approved three extensions to CDP No. 4-95-197, which included CDP Nos. 4-95-196-E1, 4-95-196-E2, and 4-95-196-E3. CDP No. 4-95-196 subsequently expired on January 11, 2001 because the applicant did not commence construction.

c. Unpermitted Lot

According to Los Angeles County's file record for Conditional Certificate of Compliance (CC 82-208399) (**Exhibit 10**) the subject lot was created as a result of an unauthorized four lot subdivision. These four lots, created by deed in 1972, were not created in compliance with the applicable laws and regulations at the time. The Subdivision Map Act (SMA) sets statewide standards for the division of land that are implemented by local governments through their ordinances. Effective March 4, 1972, the SMA required that divisions of fewer than five parcels must be approved through a parcel map and divisions of five or more lots must be approved through a tract map. Prior to March 4, 1972, the SMA did not require approval for divisions of fewer than five parcels (although the division of five or more parcels did require a tract map approval). However, the SMA did provide that a local government could adopt ordinances to regulate the division of fewer than five parcels, so long as the provisions of such an ordinance were not inconsistent with the SMA. The County of Los Angeles adopted Ordinance No. 9404 (effective September 22, 1967) to regulate land divisions of fewer than five parcels. This ordinance (**Exhibit 12**) required the approval of a "Certificate of Exception" for a "minor land division", which was defined as: "…any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels…". This ordinance provided standards for road easements, and other improvements. After March 4, 1972, when the SMA required a parcel map for divisions of fewer than five parcels, the County abandoned the "Certificate of Exception" requirement and began requiring the approval of a parcel map instead.

The purported land division that created the subject lot for SMA and County purposes occurred through the recordation of three deeds, on March 1, 1972. The creation of four lots from one parcel was a "minor land division" that required the approval of a certificate of exception, pursuant to Los Angeles County Ordinance No. 9404. There is no evidence that any certificate of exception was approved by the County for this land division. The contents of the County's 1982 certificate of compliance file does not contain evidence of any certificate of exception for the subject land division, and the applicant has not provided any other evidence that such approval was granted by the County before the three deeds were recorded in 1972.

Based on these facts, the County determined, in its review of an application for a certificate of compliance, that the subject lot was not created in compliance with the laws and regulations applicable at the time of its original identification in 1972. The County of Los Angeles therefore issued a Conditional Certificate of Compliance (CC 82-208399) in 1982 (recorded on February 26, 1982) in order to legalize the lot after-the-fact for purposes of the Subdivision Map Act. This Conditional Certificate of Compliance specifically states that "[t]he above described parcel was not created in compliance with State and County Subdivision regulations." (**Exhibit 10**)

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, among other things, 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 (January 1, 1977) can not be considered vested or "grandfathered" development because it did not occur in compliance with the applicable laws and regulations and with the required approvals. As such, the application of the property owner for a certificate of compliance and the subsequent issuance of the Conditional Certificate of Compliance (CC 82-208399) in 1982 and the 1994 Clearance of Conditions Certificate of Compliance (CC 94-1022929), both of 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 (APN 4461-039-001) either prior to or after the February 26, 1982 recording of Conditional Certificate of Compliance (CC 82-208399). Since the Conditional Certificate of Compliance (CC 82-208399) 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 82-208399 was recorded on May 26, 1994 (CC 94-1022929), which confirmed that the condition of Certificate of Compliance 82-208399 to record a road right-of-way easement was completed. By issuing the Clearance of Conditions (CC 94-1022929), Los Angeles County indicated that it then considered the lot to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

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

B. Hazards and Geologic Stability

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

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

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Geology

The proposed development site is located in the Santa Monica Mountains on an undeveloped hillside parcel along the north side of Mar Vista Ridge Road located about .5 miles to the east of the intersection of Latigo Canyon Road and McReynolds Road. The subject property is located on steep slopes on a southern face of a prominent ridgeline in the Solstice Canyon Watershed. Bedrock on the site consists of poorly bedded to massive siltstone and fine-grained siltstone interbedded with lesser amounts of basalt. The bedrock is slightly to moderately fractured. Drainage at the site consists essentially of sheet flow runoff of precipitation derived primarily within property boundaries and contiguous properties.

The applicant has submitted several reports addressing geologic conditions on the site prepared by GeoSystems, Inc., including: "Geologic Observation for Proposed On-site Sewage Disposal System," dated September 26, 2006; Update Letter Addressing Current Grading Plan, dated April 8, 2004; "Response to Geologic and Geotechnical Engineering Review Sheets dated January 20, 1999 and January 21, 1999," dated October 8, 1999.; "Response to Geologic and Geotechnical Engineering Review Sheets," dated September 6, 1996.; "Updated Soils and Engineering Geologic Report for Proposed Residence and Guest House," dated August 30, 1995. The geologic consultants have found the geology of the proposed project site to be suitable for the construction of the proposed residential development. They have identified no landslides or other geologic hazards on the site. An Update letter by GeoSystems, Inc. dated August 4, 2004 states that:

> "It is the finding of this firm that the proposed building and/or grading will be safe and that the site will not be affected by an hazard from landslide, settlement, or slippage, and the completed work will not adversely affect adjacent property, in compliance with the County code, provided our recommendations are followed."

The geologic and geotechnical engineering consultants conclude that the proposed development is feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The geotechnical reports contain several recommendations to be incorporated into the project including grading, foundations, concrete slabs, drainage, sewage system, and excavations. To ensure that the recommendations of the consultants have been incorporated into all proposed development, the Commission, as specified in **Special Condition One (1),** requires the applicant to incorporate the recommendations cited in the geotechnical

report 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 applicant's consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building 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 final drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions Two (2)** and **Four (4)**.

In addition, the applicant is proposing approximately 1,100 cu. yds. grading (690 cu. yds cut and 320 cu. yds fill). 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 Two (2)** requires the applicants to utilize and maintain native and non-invasive 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 Two (2)**.

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 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 Five (5)** avoids loss of natural vegetation 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 Ten (10) requires the applicants to record a deed restriction that imposes the terms and conditions of this permit as a restriction on the use and

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

The Commission finds that the proposed project, as conditioned, will minimize potential geologic hazards on the project site and adjacent properties, as required by Section 30253 of the Coastal Act.

Wild Fire

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

Due to the fact that the proposed 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 Three (3)**, assumption of risk, the applicants acknowledge 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 Three (3)**, the applicants also agree 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 Section 30253 of the Coastal Act.

C. Environmentally Sensitive Resources and Water Quality

Section 30231 of the Coastal Act states:

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

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

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.

P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table l 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.

P72 Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.

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.

P81 To control runoff into coastal waters, wetlands and riparian areas, as required by Section 3023l of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.

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.

Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. Section 30240 of the Coastal Act states that environmentally sensitive habitat areas ("ESHAs") must be protected against significant disruption of habitat values.

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 ask four questions:

1) What is the area of analysis?
2) Is there a rare habitat or species in the subject area?
3) Is there an especially valuable habitat or species in the area, based on:
    a) Does any habitat or species present have a special nature?
    b) Does any habitat or species present have a special role in the ecosystem?
4) Is any habitat or species that has met test 2 or 3 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself both rare and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. In addition, habitat areas that provide special, important roles in that ecosystem are especially valuable and meet the third criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral provide habitat that has 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 13**, 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[2].

For any specific property within the Santa Monica Mountains, it is necessary to satisfy two tests in order to assign the ESHA designation. The first question is whether there is a species or habitat in the subject area that is either rare or especially valuable. This requires that the existing habitat is properly identified, for example as coastal sage scrub or chaparral, and it generally requires that any habitat at issue be relatively pristine and that it be part of a large, contiguous block of relatively pristine native vegetation. The second test is whether the habitat or species is easily disturbed or degraded by human activities and developments.

The subject property is located in the Solstice Canyon Watershed. Solstice Canyon comprises about 2,880 acres of land situated west of Corral Canyon. The watershed includes both the main canyon and Dry Canyon, a small tributary to the east. The canyon contains significant wildlife values and includes a perennial stream and riparian woodland with stands of sycamore and white alder. The northern portion of the watershed, comprising approximately 825 acres is state and federal park land. Some of the southern portion, comprising approximately 400 acres of the watershed is also parkland. The majority of lots on the eastern side of the watershed are large parcels, 40 to 80 acres in size. The western portion of the watershed is characterized by smaller sites. There are over forty of these smaller lots in the middle portion of the watershed and the applicant's parcel is among the smallest of these.

More specifically, the subject 9.66-acre property is located on an undeveloped hillside parcel along the north side of Mar Vista Ridge Road about .5 miles to the east of the intersection of Latigo Canyon Road and McReynolds Road. The site is well vegetated and, with the exception of the two graded pad areas and a third graded/cleared area all located on the southern portion of the property next to Mar Vista Ridge Road, the site is largely undisturbed. While there is some scattered residential development in the area, the site is surrounded by undisturbed contiguous chaparral habitat. **Exhibit 14** is an aerial photograph of the immediate area around the project site. The applicant provided a biological assessment of the project site conducted by ENSR International consultants dated September 8, 2004. The biological assessment states that the general area where the project is located has steep topography with typical chaparral vegetation. Dominant species are Laurel Sumac (Malosma laurina), Big-pod ceanothus (Ceanothus megacarpus) and Chamise (Adenostoma fasciculatum). As seen from aerial

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

photographs of the area, this chaparral habitat is contiguous with adjacent undeveloped properties consisting of chaparral habitat.

Therefore, due to the important ecosystem roles of chaparral in the Santa Monica Mountains (detailed in Exhibit 13), and the fact that the subject site contains relatively undisturbed native chaparral vegetation that is part of a large, unfragmented block of habitat, the Commission finds that the mixed chaparral and chamise chaparral vegetation on and surrounding the project site meets the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area (excluding disturbed graded areas on the site) constitutes an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The applicants propose to construct a single family residence on the parcel. The development is proposed to be located on an area of the site that was previously disturbed. However, the construction of a residence in that location will still require the removal of chaparral ESHA as a result of fuel modification for fire protection purposes. 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's Takings jurisprudence from decisions such as *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S. Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of governmental action may result 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 that applicant of <u>all</u> 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 ability to develop 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 1999 for approximately $58,000 according to tax assessments available as public information. Although the 1982 Conditional Certificate of Compliance ("CoC") was recorded against the property indicating that the original subdivision was not performed in compliance with applicable laws, CoCs indicate the recognition of a lot, and nothing in the recordation of the CoC revealed the fact that it was issued without a coastal development permit. Thus, a title search would not have indicated to the purchaser the legal status of the lot. The applicant's property is located in the Solstice Canyon Watershed. In certifying the Malibu/Santa Monica Mountains Land Use Plan (LUP) in 1986, the Commission approved the designation of Solstice Canyon as one of eight Significant Watersheds, an approved the Solstice Canyon Blue Line Stream as one of the many inland ESHAs. In addition, the LUP designated the canyons and riparian habitat within each Significant Watershed as Environmentally Sensitive Habitat Areas (ESHAs). The parcel was designated in the County's certified LUP in 1986 as Mountain Land, which allows for 1 dwelling unit per 20 acres. However, based on the purchase price, the Commission's prior approval (in 1996) of a Coastal Development Permit for residential development of the property (CDP No. 4-95-196) , and the fact that CDP 4-95-196 was still effective at the time of his purchase, the applicant had reason to believe that he purchased a lot on which he would be able to build a residence.[3]

The Commission finds that in this particular case, other uses for the subject site that might be allowable under Section 30240 and 30231, such as a recreational park or a nature preserve, are not feasible and would not provide the owner of the subject lot with any economic return on his investment. There is currently no 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 on the project site would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

[3] The Commission notes that at least this last factor does not apply to the other three undeveloped lots within the purported 1972 subdivision. Accordingly, the analysis in this report is not necessarily applicable 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.

Next, the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the project site 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 on the subject property can be allowed to permit the applicant a reasonable economic use of his/her 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/her 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 greatest extent feasible consistent with the allowance for an economically viable residential use. In this case, in 1996 the Commission originally approved a 3,186 sq. ft. house with a 676 sq. ft. guest house and a corral and 2,200 cubic yards of grading on the site. The new project the applicant is proposing is a 3,044 sq. ft. single family residence, septic system, water well, and 1,100 cu. yds. of grading. The new proposed project requires substantially less grading, landform alteration, and native vegetation removal than the originally proposed project. The residence will be smaller than previously permitted and a proposed guest house, gazebo, pond, and other accessway have been eliminated from project plans and no corral is proposed. Any other alternative location on the site would require more grading and the removal of more native vegetation. The proposed building pad is within the maximum development area of 10,000 sq. ft. that the LUP references and that the Commission has typically allowed in similar situations on sites containing ESHA, or sites within designated Significant Watershed and Wildlife Corridor areas. All proposed structures are located within the eastern existing building pad. No alternatives exist that would avoid all impacts to ESHA. The proposed building site on the parcel is located as close as feasible to existing roads and services, as it is located directly adjacent to Mar Vista Ridge Road on a previously disturbed graded pad. As such, the Commission concludes

that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible.

However, given the location of ESHA on the site, there will still be significant, unavoidable impacts to ESHA resulting from the required fuel modification area around the proposed structure. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP[4].

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 extend from the edge of the protected structures to a minimum of 20 feet beyond those edges. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.
>
> Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.
>
> Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

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

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B,

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

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

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

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

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

Northern mockingbird)[5]. 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[6].

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[7]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[8]. 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[9]. 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[10]. 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[11].

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[5] 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.

[6] 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.

[7] 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.

[8] 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.

[9] 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.

[10] 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.

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

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.[12] 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[13].

The cumulative impacts of development on all existing legal lots containing ESHA in the Santa Monica Mountains, including the impacts from the fuel modification that is required by the Fire Department in conjunction with such development and/or brushing, is substantial. As discussed above, these adverse impacts to ESHA can be reduced by considering project alternatives and mitigation measures, but they cannot be completely avoided. Siting and design alternatives have been considered for the proposed project. The proposed development area conforms to the maximum development area of 10,000 sq. ft. that the Commission has typically allowed in similar situations on sites containing ESHA. All proposed structures are located within this development area. However, even with these measures, destruction of ESHA will result from construction of this project. Therefore, this project is inconsistent with Section 30240 of the Coastal Act, and is only being allowed to avoid a taking of private property for public use, as discussed above. To find consistency with Section 30240 to the maximum extent feasible, while providing an economic use consistent with reasonable investment-backed expectations, the remaining ESHA on the property must be preserved. The Commission finds that this project constitutes the maximum amount of ESHA destruction that is allowed on this property to provide an economic use consistent with reasonable investment-backed expectations. The most effective way to preserve the remaining ESHA on the site is through an open space conservation easement held by the Mountains Recreation and Conservation Authority that prohibits development on the remainder of the site now and in the future.

Under the terms of this condition (**Special Condition 11**), an open space and conservation easement over the open space area (shown in Exhibit 9) will be granted by the applicant to the Mountains Recreation and Conservation Authority ("MRCA"), a joint powers authority. As detailed in Special Condition 11, the open space and conservation easements will run with the land and will prohibit all development, with the exception of fuel modification, drainage control activities carried out in accordance with

[12] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.
[13] 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.

Special Condition Four (4), and construction and maintenance of roads, trails and utilities pursuant to existing easements. The easement will further ensure that any potential buyers are aware of the restriction on further development before they purchase the property.

The MRCA is a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat. The MRCA manages and provides ranger services for almost 50,000 acres of public lands and parks that it owns or are owned by the Santa Monica Mountains Conservancy. The governing board of the MRCA has agreed to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area.

The Commission finds that requiring an open space and conservation easement held by the MRCA is the most effective way to preserve the remaining ESHA on the property. The MRCA is a public agency that has park rangers and other staff active in the Santa Monica Mountains area to monitor open space areas to ensure that the restrictions are followed. The MRCA acquires and manages properties for recreation and conservation purposes in the Santa Monica Mountains. MRCA staff and park rangers routinely monitor properties under MRCA management in the Santa Monica Mountains and enforce State law and local ordinances. Therefore, the MRCA is better able to monitor open space and conservation easements than Commission staff. Further, an easement will be recorded against the title to the property and thus provide notice to future owners of the limitations that apply to the open space conservation area, reducing the risk of a future irreparable violation of the restriction.

It is important that the property owner record an easement to MRCA rather than simply record an open space deed restriction. Although a deed restriction should notify future owners of the restriction in the same manner that a recorded easement would, it would not be as effective in preserving the remaining ESHA for two reasons, as explained below. First, a deed restriction is not as reliable because a property owner can record another document purporting to rescind the deed restriction. Although any attempt to rescind a deed restriction required by a coastal development permit ("CDP") without an amendment to that CDP authorizing such a rescission would constitute a violation of the CDP and the Coastal Act, the County Recorder's office is likely to allow recordation of a rescission without the required Coastal Commission authorization. Indeed, the Commission has experienced the phenomenon of property owners recording documents purporting to modify deed restrictions recorded pursuant to CDP requirements. *See*, *e.g.*, Commission findings for CDP Amendment F7453-A2 (Stephenson), approved March, 2005, and Violation File V-6-04-010 (Del Mar Estates). On the other hand, because an easement necessarily involves more than one person, the County Recorder would not likely record a document purporting to rescind an easement unless the easement holder were also to sign the document. Thus, a

condition requiring a deed restriction is much easier to violate, and therefore much less protective, than a condition requiring an easement.

Second, the Legislature has recently adopted new provisions to the Government Code specifically sanctioning the use of conservation easements for this purpose and changing procedures to ensure that they are prominent in searching title to property. In 2001, the Legislature adopted a new requirement that County Recorders keep a separate and "comprehensive index of conservation easements." *See* Cal. Gov't Code § 27255(a).

As such, the Commission finds that the requirement of an open space and conservation easement is the most effective method of ensuring that the remaining ESHA on the subject parcel will be conserved in the future. In addition, the Commission concludes that an open space easement that allows only the easement holder and no other entity to enter the property for inspection purposes does not interfere with the fee title owner's right to exclude the general public. It therefore does not constitute a significant invasion of the fee title owner's property interest.

As described above, the proposed project will be sited to minimize the amount of required fuel modification because the proposed structures are clustered within a development area of less than 10,000 sq. ft., and ESHA will be protected on the remainder of the property. However, while direct impacts to ESHA through the removal of vegetation would be avoided on the site outside of the development and fuel modification areas, through the open space conservation easement, indirect impacts to habitat within the open space area will still result from the presence of the proposed development and human activities taking place on the site. The placement of development within an ESHA area will result in habitat fragmentation. Wildlife either living on the site or migrating across the property will undoubtedly avoid areas with noise, lighting or other human activity. As described above and in Exhibit 13, fuel modification activities result in conversion of habitat and impacts to insects, birds, and other organisms even outside of the fuel modification area. Further, even though no development will be permitted within the open space area, there will be a net loss of ESHA area on the project site. The Commission finds that there are feasible mitigation measures available that would compensate for the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the development area, fuel modification and brush clearance. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification area on the project area.

In this case, the applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the three zones of vegetation modification that extend a total of 200 feet from the proposed structures. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 50 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 150 feet beyond the "A" and "B" zone.

The precise area of chaparral 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 on the site that will be impacted by the proposed development including the areas affected by fuel modification and brushing activities (based on the final fuel modification plan approved by the Los Angeles County Fire Department), as required by **Special Condition Eight (8)**.

The Commission has identified three methods for providing mitigation for the unavoidable loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat as a result of the project. These three mitigation methods are provided as three available options for compliance with **Special Condition Eight (8)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in Special Condition Eight (8), 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 chaparral ESHA. This mitigation method is provided for in Special Condition Eight (8), subpart B.

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

Staff determined the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were $9,541, $12,820, and $13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the required in-lieu fee for habitat mitigation is $12,000 (rounded down from the average figure of $12,089 to simplify administration) per acre of habitat.

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

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

In this case, the applicant’s approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones “A” (setback zone) and “B” (irrigation zone) are shown

extending in a radius of approximately 50 feet from the proposed structures. A “C” Zone (thinning zone) is provided for a distance of 150 feet beyond the “A” and “B” zones. As discussed above, the ESHA areas affected by the proposed development does not include the disturbed area or driveway since those areas were previously disturbed prior to the effective date of the Coastal Act. As such, the ESHA areas that will be impacted by the proposed project are the required fuel modification areas on the slopes beyond the proposed pad and driveway. The appropriate in-lieu fee calculation would then be based on $12,000 per acre for any irrigated fuel modification area (the “A” and “B” Zones) and $3,000 per acre of un-irrigated fuel modification area (zone “C”).

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the 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 Eight (8), subpart C.

The Commission has determined that in conjunction with siting new development to minimize impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA.

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Two (2)** requires that landscaping consist primarily of native plant species and that invasive plant species shall not be used.

The Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition Two (2)**, disallows 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 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 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 recognizes that new development in the Santa Monica Mountains has the potential not only to impact sensitive habitat through grading, construction, and fuel modification as discussed above, but also 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. The Commission notes that streams and drainages, such the blue line stream located about 200 feet from the property, provides important habitat for chaparral 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 Four (4)**, the Drainage and Polluted Runoff Control Plan, which requires the applicants 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 4 will ensure implementation of these and other BMPs to reduce polluted runoff. Additionally, Special Condition 4 requires all graded areas to be replanted with native vegetation so as to reduce erosion and sediment laden runoff into coastal waterways.

The proposed development 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 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Four (4)**, 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 measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Two (2)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

The proposed development includes the installation of an on-site septic system to serve the residence. The applicant's geologic consultants performed percolation tests and evaluated the proposed septic system as reported in "Geologic Observation" report by

GeoSystems, Inc. dated September 26, 2006. The report concludes that the site is suitable for the septic system and there would be no adverse impact to the site or surrounding areas from the use of a septic system. Finally, 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.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains 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 Seven (7)** 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 rural and relatively undisturbed area at night. 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. The site is within the Solstice Canyon Watershed, as designated by the Malibu/Santa Monica Mountains Land Use Plan. Therefore, the Commission finds it is necessary to limit fencing, if any, to Zone B of the applicant's Fire Department-approved preliminary fuel modification plan (50 feet from structures), as required in **Special Condition Two (2)**.

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 Nine (9)**, the future development restriction, has been required. Additionally, **Special Condition Ten (10)** requires the applicants to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

In conclusion, as discussed in detail 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 greatest extent feasible consistent with the allowance for an economically viable residential use. The proposed development is the alternative

that will minimize impacts. In addition, mitigation measures described above have been required that will further reduce impacts to ESHA and water quality.

The Commission therefore finds that the project, as conditioned, will protect ESHA against any significant disruption of habitat values, consistent with Section 30240 of the Coastal Act. The project, as conditioned, will maintain the biological productivity and quality of coastal waters by minimizing adverse effects of waste water, controlling runoff, and minimizing erosion. Therefore, the Commission finds that, as conditioned, the project is consistent with Section 30231 of the Coastal Act.

D. Visual Resources

Section 30251 of the Coastal Act states:

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

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 residence raises the issue of whether or not views from public viewing areas will be adversely affected.

The applicant is proposing to construct a 3-story, 35 ft. high, 3,044 sq. ft. single family residence with a first floor 5 car garage and storage area, septic system, water well, 1,100 cu. yds. grading, and placement of temporary construction trailer on the site during construction only. The subject 9.66 acre lot is located in the Santa Monica Mountains within the Solstice Canyon Watershed and is immediately adjacent to the Escondido Canyon Wildlife Corridor, which connects Latigo and Solstice Canyons. The site is located on an undeveloped hillside parcel along the north side of Mar Vista Ridge Road located about .5 miles to the east of the intersection of Latigo Canyon Road and McReynolds Road. The Solstice Canyon blue line stream is approximately 200 feet south of the site. National Park Service property is located directly west of the site. Although an undeveloped 9.89 acre parcel is located adjacent to the site to the east, NPS property bounds that site to the north and east. A mapped trail is also located along the eastern boundary of the subject property. The residential development will be visible from public park land to the north and west. However, the ridge along the eastern boundary of the site will minimize view impacts of the residence from park land to the east. At the request of staff, the applicant reduced the amount of the initially proposed development. The applicant eliminated from project plans a guest house and second

access road, a gazebo, water tanks, and a reflecting pond. The guest house would have been located at a high elevation on the property at the south east boundary and would have created adverse view impacts from public park land to the east. The proposed residence is proposed to be constructed on an existing flat pad area adjacent to Mar Vista Ridge Road. All proposed structures have been clustered on one pad area less than 10,000 sq. ft. in size and designed to reduce landform alteration and removal of native vegetation that is considered environmentally sensitive habitat. Additionally, the residence is proposed to be sited on the lowest elevations on the property ranging about from 1995 ft. to 2005 ft. elevations. As such, the proposed structures will be sited and designed to minimize impacts to visual resources to the extent feasible.

Since the project site will be unavoidably visible from public viewing areas, mitigation to address potential visual impacts is needed for the proposed residence. The visual impact of the proposed structures can be minimized by requiring these structures 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 structures 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 Six (6)**.

Visual impacts can be further reduced by the use of appropriate and adequate landscaping. Therefore, **Special Condition Two (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.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Seven (7)** 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 single-family residence, 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 entire property, 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 Nine (9)**, 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 Ten (10)** requires the applicants to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject 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.

E. 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.***

<u>Lot Creation</u>

The applicant is requesting after-the-fact approval of the lot that is the project site (APN 4461-039-001). This lot was created as one of four lots that were created by deed from one parent parcel in 1972, as explained in greater detail below. The owner of the lot in

1982 applied for and was granted a conditional certificate of compliance by the County of Los Angeles that indicated that the parcel was not created in compliance with the laws in place at the time of its creation. The owner did not obtain a coastal development permit to legalize the parcel. At the request of staff, the applicant provided the available information from the County of Los Angeles' file for the certificate of compliance as well as a chain of title for the subject lot, including a title report, copies of all deeds referenced in the title report, and exhibits showing the configuration of the subject and surrounding lots as they changed over time. Based on this evidence, staff was able to determine the chronology and method of lot creation.

The earliest information provided indicates that the subject property was part of an 80 acre parcel that was the eastern half of the Northwest quarter of Section 21, Township 1 South, Range 18 West, San Bernardino meridian, in the County of Los Angeles, State of California. The original configuration of land, which was one parcel, now currently encompasses 8 separate parcels, APNs 4461-039-001 (subject property), 4461-039-002, 4461-039-901 (Federal Land) and APNs 4461-040-001, 4461-040-002, 4461-040-003, 4461-040-004, and 4461-040-005. (**Exhibit 8**)

This original 80 acre parcel was granted by Tax Deed (Instrument No. 19323-301) from the County of Los Angeles to John Klune in 1942. (**Exhibit 8**) There is a deed transferring the south half of the 80 acres from John Klune to Robert M. Shoup and Betty T. Shoup by Grant Deed (Instrument No. 469) on July 22, 1964, recorded on July 24, 1964. The legal description that is part of this deed only references: "the south half of 80 acres" without a metes and bounds description of the line separating the south half from the north half. So, it must be assumed that this split resulted in an even split of two 40-acre halves with a straight dividing boundary between the two. Additionally, there is a deed transferring the north half of the 80 acres from John Klune to Roy Vander by Grant Deed (Instrument No. 470) recorded on July 22, 1964. The legal description that is part of this deed only references: "the north half of 80 acres", without a metes and bounds description of the line separating the north half from the south half. So, again it must be assumed that this resulted in an even split between the north and south halves (for 40 acres each).

Robert Shoup subsequently transferred to Roy Vander by Grant Deed (Instrument No. 45), dated December 20, 1971, a different portion of the 80-acre property (the northern portion), currently referred to as parcels with APNs 4461-039-001 (subject property), 4461-039-002, 4461-039-901 and APN 4461-040-001. This deed was accompanied by a metes and bounds description that references, for the first time, a northern portion of the original 80-acre parcel that is not exactly 40 acres. Instead, it contains approximately 40.47acres, resulting in a split between the north and south portions that is irregular. (**Exhibit 8**).

Roy Vander then purported to split the north "half" of the 80 acres into four parcels on March 1, 1972, by transferring ownership of three of these parcels, through grant deed,

to three different owners. The fourth lot was retained by Roy Vander and later sold in 1981. These lots are now referred to as APNs 4461-039-001 (subject property), 4461-039-002, 4461-039-901 and 4461-040-001, shown in Exhibit 8. This is the first point in time that the subject parcel, APN 4461-039-001, existed in its present configuration. The subject parcel was transferred from Roy Vander to Donald Fry and Edna Fry by Grant Deed (Instrument No. 3874), dated February 29, 1972 (recorded on March 1, 1972).[14]

These four lots, created by deed in 1972, were not created in compliance with the applicable laws and regulations at the time. The Subdivision Map Act (SMA) sets statewide standards for the division of land that are implemented by local governments through their ordinances. Effective March 4, 1972, the SMA required that divisions of fewer than five parcels must be approved through a parcel map and divisions of five or more lots must be approved through a tract map. Prior to March 4, 1972, the SMA did not require approval for divisions of fewer than five parcels (although the division of five or more parcels did require a tract map approval). However, the SMA did provide that a local government could adopt ordinances to regulate the division of fewer than five parcels, so long as the provisions of such an ordinance were not inconsistent with the SMA. The County of Los Angeles adopted Ordinance No. 9404 (effective September 22, 1967) to regulate land divisions of fewer than five parcels. This ordinance (**Exhibit 12**) required the approval of a "Certificate of Exception" for a "minor land division", which was defined as: "…any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels…". This ordinance provided standards for road easements, and other improvements. After March 4, 1972, when the SMA required a parcel map for divisions of fewer than five parcels, the County abandoned the "Certificate of Exception" requirement and began requiring the approval of a parcel map instead. The land division that created the subject lot occurred, through the recordation of three deeds, on March 1, 1972. The creation of four lots from one parcel was a "minor land division" that required the approval of a certificate of exception, pursuant to Los Angeles County Ordinance No. 9404. There is no evidence that any certificate of exception was approved by the County for this land division. The contents of the County's 1982 certificate of compliance file (provided to staff by the applicant) does not contain evidence of any certificate of exception for the subject land division, and the applicant

[14] The subject parcel was subsequently transferred from Donald and Edna Fry to Canyon Design and Construction, Inc. in 1977 by Grant Deed (Instrument No. 77-1071371). Canyon Design and Construction, Inc. then executed a Deed of Trust on September 6, 1977 (Instrument No. 77-1110438) in favor of Donald and Edna Fry who assigned their entire interest to Robert Shoup and Wilma Jean Shoup, trustees of the Shoup Family Trust on May 23, 1986 (Instrument No. 86-648137). Orange Coast Holding Company (trustee) then transferred the parcel by Trustee's Deed (Instrument No. 88-770055) to Wilma Jean Shoup on May 9, 1988. Wilma Jean Shoup subsequently transferred title by Grant Deed (Instrument No. 88-1005836) to Henry Russell, Jr. and Yvonne Russell on May 31, 1988 (recorded on June 24, 1988). Henry Russell and Yvonne Russell then transferred the property by Grant Deed (Instrument No. 99-2015950) to Bao Q. Hoang on October 12, 1999 (recorded on October 27, 1999).

has not provided any other evidence that such approval was granted by the County before the three deeds were recorded in 1972.

Based on these facts, the County determined, in its review of an application for a certificate of compliance, that the subject lot was not created in compliance with the laws and regulations applicable at the time of its original identification in 1972. The County of Los Angeles therefore issued a Conditional Certificate of Compliance (CC 82-208399) in 1982 (recorded on February 26, 1982) in order to authorize the lot after-the-fact in regards to compliance with the Subdivision Map Act. This Conditional Certificate of Compliance specifically states that "[t]he above described parcel was not created in compliance with State and County Subdivision regulations." (**Exhibit 10**) 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, among other things, 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 (January 1, 1977), can not be considered vested or "grandfathered" development because it did not occur in compliance with the applicable laws and regulations and with the required approvals. As such, the application of the property owner for a certificate of compliance and the subsequent issuance of the Conditional Certificate of Compliance (CC 82-208399) in 1982 and the 1994 Clearance of Conditions Certificate of Compliance (CC 94-1022929), both of 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 (APN 4461-039-001) either prior to or after the February 26, 1982 recording of Conditional Certificate of Compliance (CC 82-208399). Since the Conditional Certificate of Compliance (CC 82-208399) 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 (CC 82-208399) was recorded on May 26, 1994 (CC 94-1022929), which confirmed that the condition of Certificate of Compliance (CC 82-208399) to record a road right-of-way easement, was completed. By issuing Clearance of Conditions (CC 94-1022929), Los Angeles County considered the lot to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

With regard to the southern portion of the original 80 acres, this portion was defined with an irregular northern boundary and consists of four parcels that are currently referred to as APNs 4461-040-002, 4461-040-003, 4461-040-004, and 4461-040-005,. The chain of title and deeds were not provided for the subsequent lot splits of this south portion, and the Commission does not have sufficient documentation to determine how and when each of the four lots was split. However, the Commission issued a CDP for a single family development on parcel 4461-040-005 (CDP 4-02-013) in 2002. This

approval did not explicitly involve authorization for the creation of the lot because the approval was based on the premise that the subject site had been legally created.

Factors Considered for Development on Lot Created by an Unpermitted Land Division

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 review necessarily includes the analysis of the individual and cumulative impacts of the 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, 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 proposed subdivision.

In this case, a comprehensive analysis of the land division in 1972, which created four 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 the applicant is property on which the Commission has already permitted development once before. On the other three lots, no coastal permits have been issued nor have applications for such permits been filed since 1977, the effective date of the Coastal Act, nor has any development commenced prior to 1977 on the other three lots (APNs 4461-039-002, 4461-038-901, and 4461-040-001).

On January 11, 1996, the Commission approved, with special conditions, Coastal Development Permit (CDP) No. 4-95-196 (Russell) for construction of a new 3,186 sq. ft., 15 ft. high single family residence, 676 sq. ft. guest house, corral, septic system, 2,200 cu. yds of grading and placement of a temporary construction trailer on the subject site at 2388 Mar Vista Ridge Road (formerly referred to as 27979 Borna Drive). Conditions of approval included landscaping and erosion control plans, drainage and erosion control plans, compliance with geologic recommendations, a structural appearance restriction, a future development restriction, a fencing restriction, a restriction relating requiring removal of temporary construction trailer, and a wildfire waiver of liability. This permit was later assigned to Bao Hoang on June 28, 2000, after his purchase of the subject parcel. Subsequent to the initial approval, the Commission approved three extensions to CDP No. 4-95-197, which included CDP Nos. 4-95-196-E1, 4-95-196-E2, and 4-95-196-E3. CDP No. 4-95-196 subsequently expired on January 11, 2001 because the applicant did not commence construction and did not apply for another extension prior to the expiration date of the permit. The previous approval of CDP No. 4-95-196 did not involve authorization for the creation of the lot because the approval was based on the incorrect premise that the subject site had been legally created prior to the effective date of the Coastal Act.

The Commission has addressed similar situations of unpermitted land divisions in past CDP actions [including 4-04-032 (Hannon), 4-04-121 (Miran), and 4-05-141 (Biebuyck)] for development proposed on a lot that was not created in compliance with the laws in effect at the time of its creation. Factors considered by the Commission in its review of such development includes: 1) whether the applicant carried out the unpermitted land division that created the parcel or acquired the parcel later in a good faith, arm's length transaction, and if the latter, whether the applicant had reason to know of the illegal subdivision; 2) whether the lots involved in the unpermitted land division are in common or separate ownership; 3) whether any of the unpermitted lots has been developed; and 4) whether the Commission has previously approved a CDP(s) for development on the proposed project site or other lots involved in the unpermitted land division, and if such CDP(s) is effective.

In CDP 4-04-032 (Hannon), the Commission approved the creation of a lot because the Commission had already approved a permit for residential development on one of the parcels created from the same parent parcel, the applicant purchased the property in a good faith, arm's length transaction, and the subject parcel was not in current ownership with any other contiguous parcels created from the parent parcel. In that case, the Commission also found that it was necessary to require the applicant to mitigate the cumulative impacts of creating the parcel through the retirement of the development rights on an existing parcel in the Santa Monica Mountains through a Transfer of Development Credit (TDC) transaction. In approving CDP 4-04-121 (Miran), the Commission similarly found that the project parcel had been created as the result of an unpermitted land division, but that the owner acquired the parcel in a good faith, arm's length transaction and several other parcels created in the same unpermitted land division were already developed, including three that the Commission had approved in earlier CDP's. The Commission required the applicant to retire one TDC as mitigation for the impacts of creating one new parcel. In the case of CDP 4-05-141 (Biebuyck), the Commission found that the owner acquired the parcel in a good faith, arm's length transaction, that five other parcels created in the same unpermitted land division were already developed with single family residences, and that the Commission had previously approved development on the project site, although the CDP had expired before the applicant acquired the property. The Commission approved the creation of the project site, subject to the mitigation of the cumulative impacts of an additional parcel through the retirement of one TDC.

In this case, the applicant purchased the property in a good faith, arm's length transaction, the subject parcel is not in common ownership with any other contiguous lot created from the parent parcel, and the Commission has previously approved a coastal development permit for residential development on the subject property (CDP 4-95-196) created from the parent parcel and this was effective at the time the applicant purchased the property. Additionally, as explained above, the Commission approved a coastal development permit for residential development on another nearby parcel (CDP 4-02-013) created from the same 80 acre parent parcel. The applicant purchased the property in 1999 for approximately $58,000 according to tax assessments available as

public information. Although the 1982 Conditional Certificate of Compliance ("CoC") was recorded against the property indicating that the original subdivision was not performed in compliance with applicable laws, CoCs indicate the recognition of a lot, and nothing in the recordation of the CoC revealed the fact that it had been issued without a coastal development permit. In addition, a Clearance of Conditions had been recorded on title to the property as well, suggesting that the lot was now fully developable. Thus, a title search would not have indicated to the purchaser the legal status of the lot. The parcel was designated in the County's certified LUP in 1986 as Mountain Land, which allows for 1 dwelling unit per 20 acres. However, based on the purchase price, the Commission's approval of a Coastal Development Permit for the property in 1996 (CDP No. 4-95-196) for residential development, the fact that CDP 4-95-196 was still effective at the time of his purchase, and the fact that a residence was built with a CDP on a nearby parcel created from the same parent parcel, the applicant had reason to believe that the purchased a lot on which he would be able to build a residence.

Based on the above set of facts, the Commission finds that approval of the land division created through 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 adverse cumulative impacts to coastal resources, particularly considering the ESHA present on and surrounding the project site. Although the cumulative impacts cannot be completely avoided, they can be reduced through the mitigation measures 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 to development permits 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) and 4-01-046 (PCH-Tyler Associates, Inc.), 4-04-121 (Miran), and 4-05-141 (Biebuyck). 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 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 9.66-acre subject parcel, which was created through an unpermitted four lot subdivision in 1972. 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 the three other lots that were part of the two previous subdivisions 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. Fourteen (14)** requires the applicant to mitigate the cumulative impacts of the creation of the subject lot through a land division and the development of this property 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. The process for extinguishing the development rights is detailed in Special Condition No. 14. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

F. Unpermitted Development

Unpermitted development occurred on the subject parcel prior to submission of this permit application including, but no limited to, the creation of the subject lot and grading and clearing of vegetation for two flat pad areas and a third area of grading and vegetation clearance next to the south eastern property boundary. The subject lot was created as part of a four lot subdivision in 1972. As explained above in Section E., the four 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 1982, the County of Los Angeles issued a Conditional Certificate of Compliance (#82-208399) for the property to "legalize" the lot pursuant to the Subdivision Map Act. The

1982 Certificate of Compliance which "legalized" this lot pursuant to the Subdivision Map Act constitutes a land division that requires 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 1982 Certificate of Compliance in order to address the unpermitted development. **Special Condition Fourteen (14)** 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.

Presently, two flat pads currently exist on the site due to previously unpermitted past grading activity, one area has mostly grown back to natural conditions and the other pad remains cleared. The estimated previous grading for the two flat pad areas was approximately 2,200 cubic yards in total. Analysis of historical 1977 infrared aerial photographs of the site show no land disturbance or evidence of grading. However, 1986 aerial photographs of the site depict two flat pad graded areas. Thus, grading on the site took place between 1977 and 1986 without the benefit of a coastal development permit, but was subsequently permitted by the Commission after-the-fact pursuant to CDP No. 4-95-196. However, unpermitted grading and vegetation clearance has been conducted on the site since the previous coastal development permit approval in 1996. This grading and vegetation clearance is located in an area on the property not authorized for development by the previous permit and this grading and clearance was not permitted after-the-fact by the previous approval. (**Exhibit 14**) Analysis of the Commission's 2001 aerial photographs of the site show that this unpermitted grading and vegetation clearance on the south eastern property boundary appeared subsequent to the Commission's previous approval of development on the site in 1996. This application includes after-the-fact approval of this unpermitted development on the southeastern property boundary. **Special Condition Fifteen (15)** requires the applicant to restore the graded/disturbed area, located near the south eastern property boundary adjacent to Mar Vista Ridge Road located just to the east of the proposed building site, back to natural conditions and requires the applicant to submit final restoration/ revegetation plans that will include the restoration of the graded area as shown in **Exhibit 14**, for review by the Executive Director. These plans shall include use of native drought resistant plants and monitoring for a period of no less than five years.

In order to ensure that the matter of unpermitted development is resolved in timely manner, **Special Condition Sixteen (16)** requires the applicant to 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. Additionally, **Special Condition Twelve (12)**, site inspection, is necessary to ensure compliance with **Special Condition Fifteen (15)**, restoration of the area subject to unpermitted vegetation and removal.

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.

G. Local Coastal Program

Section 30604 of the Coastal Act states:

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

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

G. California Environmental Quality Act

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

The Commission 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 amendment include the avoidance of impacts to ESHA through clustering structures, prohibiting development outside of the approved development area as required by the open space easement, and prohibiting the removal of native vegetation prior to commencement of construction. Mitigation measures required to minimize impacts include requiring the retirement of one TDC, drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA and visual), restricting structure color (visual resources), and requiring future improvements to be considered through a CDP. Finally, the habitat impact mitigation condition is a measure required to compensate for impacts to ESHA. 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.

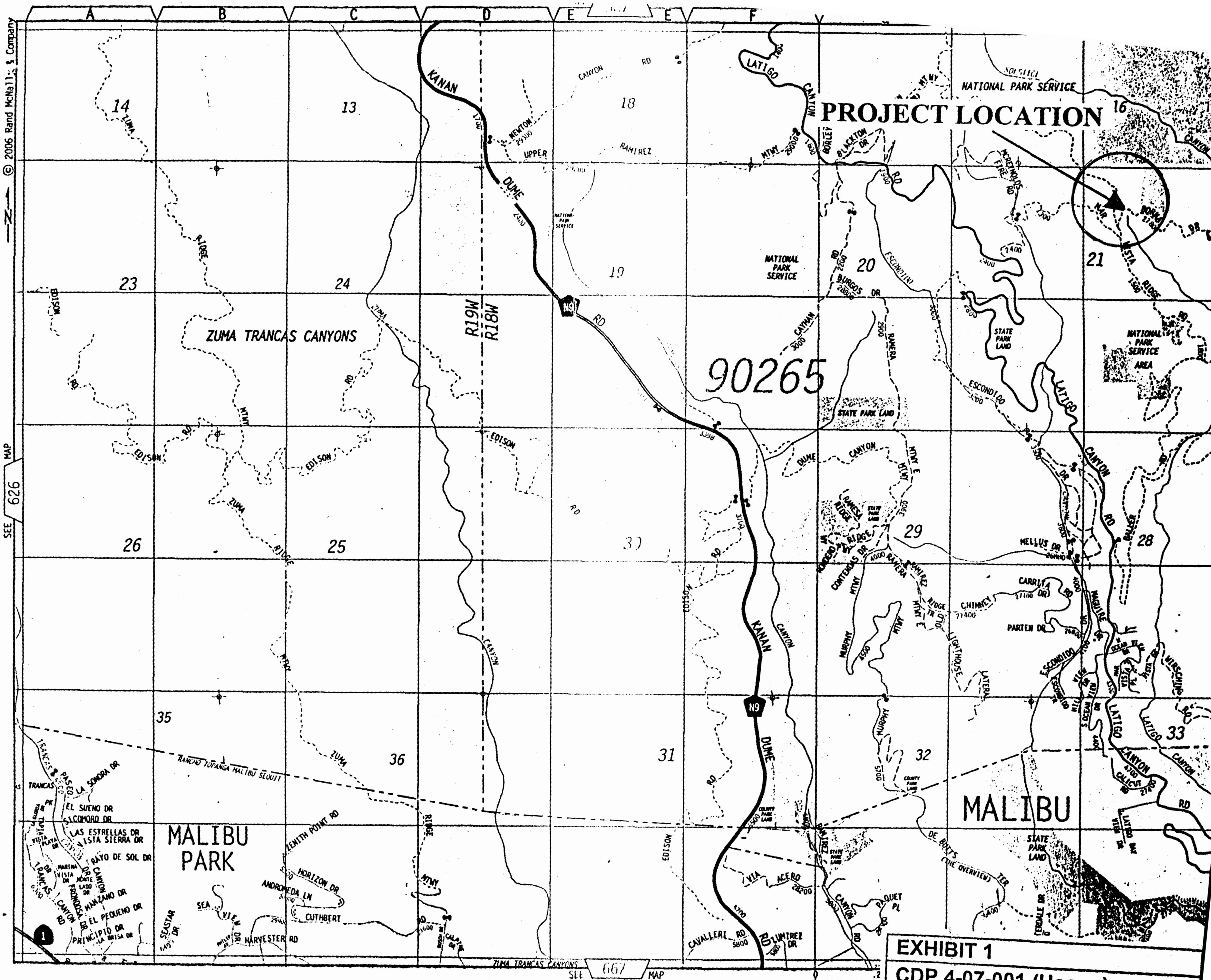
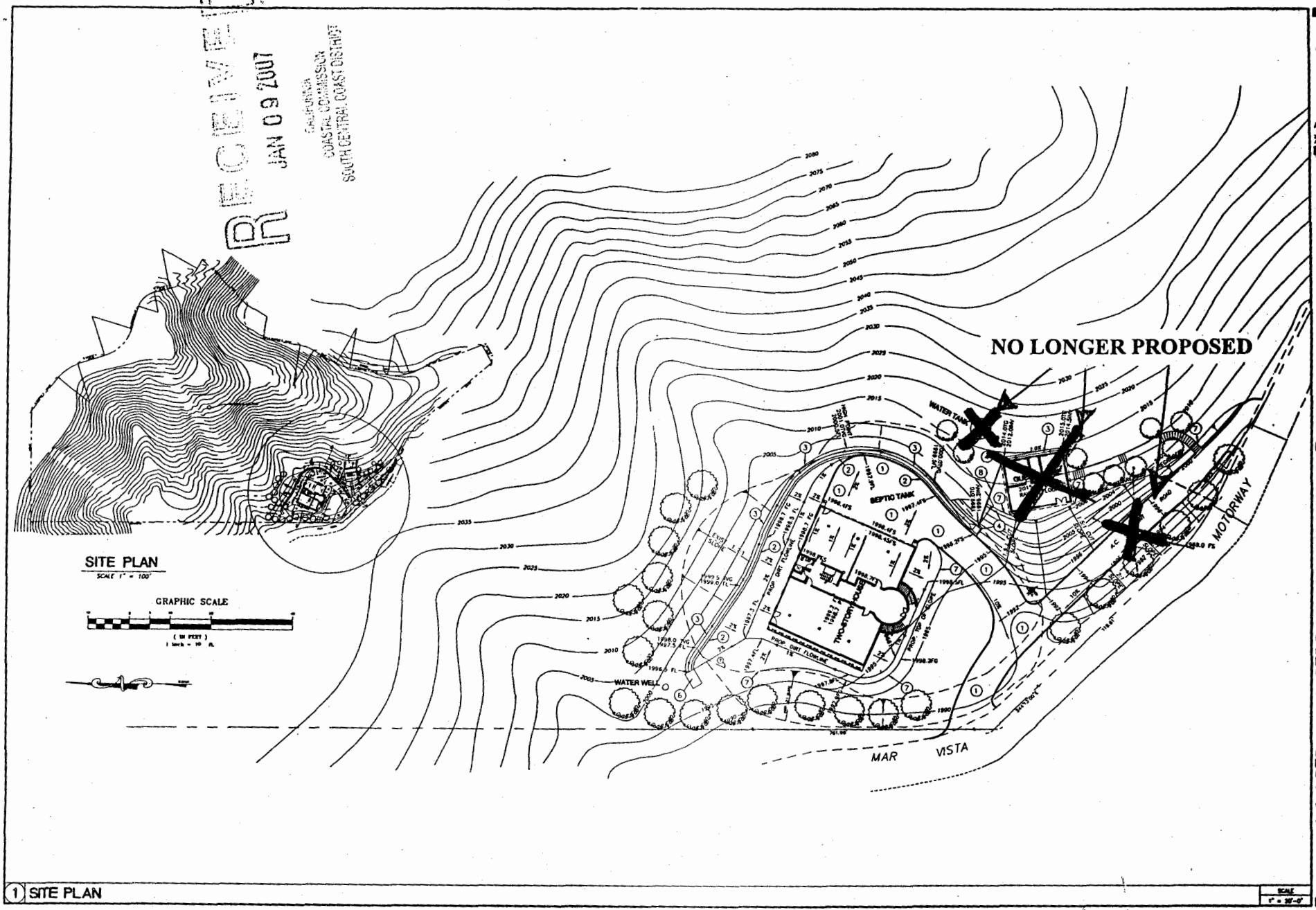


EXHIBIT 1
CDP 4-07-001 (Hoang)
Project Location

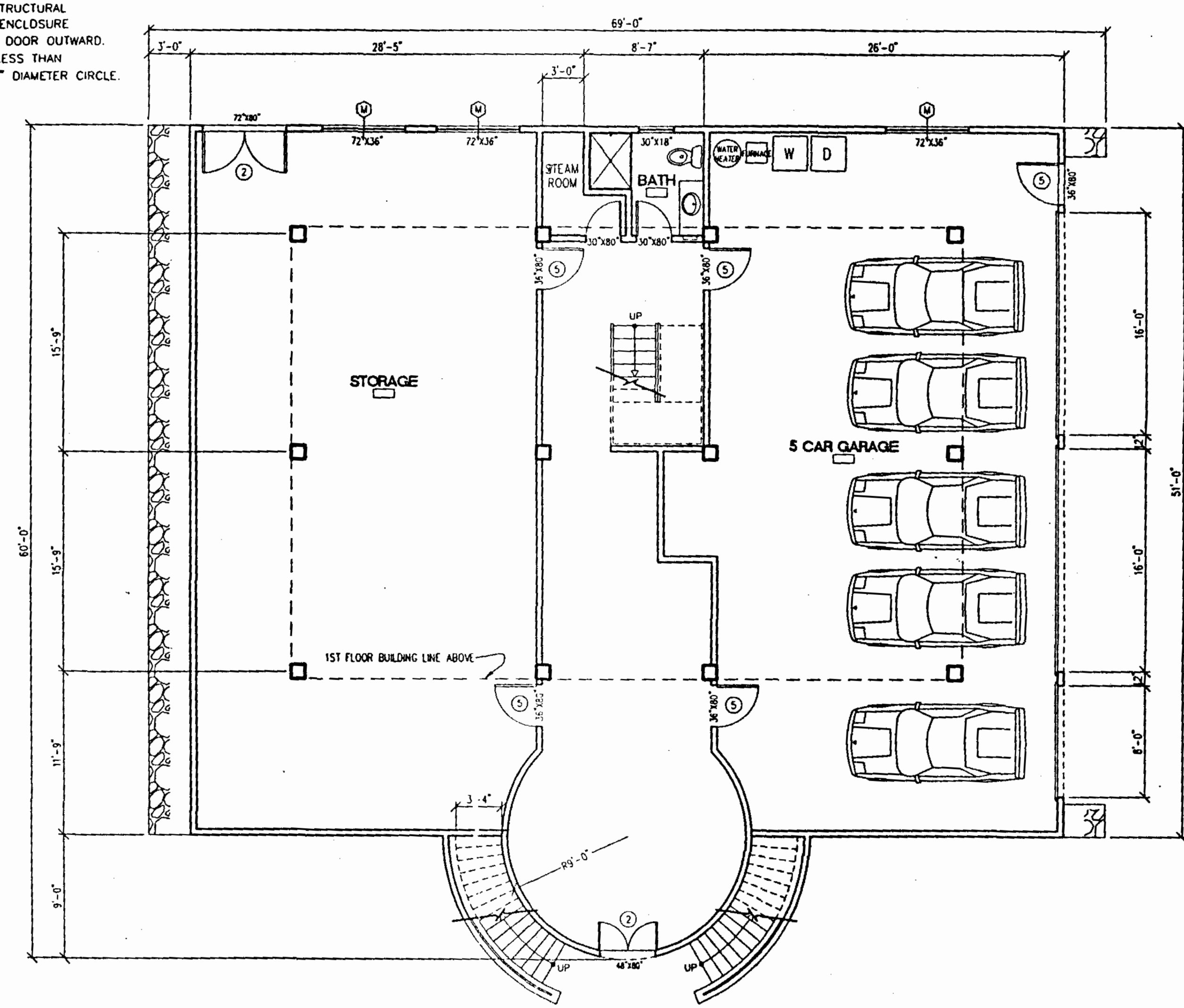


1 SITE PLAN

EXHIBIT 2
CDP 4-07-001 (Hoang)
Site Plans

NOTE:

1. ALL TOILETS MUST BE 1.6 GALLONS PER FLUSH COMPLIANT.
2. ALL SHOWER AND TUB-SHOWER SHALL HAVE EITHER A PRESSURE BALANCE OR A THERMOSTATIC MIXING VALVE.
3. WALL COVERING SHALL BE CEMENT PLASTER, TILE OR APPROVED EQUAL TO 70" ABOVE DRAIN AT SHOWERS OR TUB WITH SHOWERS. MATERIALS OTHER THAN STRUCTURAL ELEMENTS SHALL BE MOISTURE RESISTANT. GLASS ENCLOSURE DOORS AND PANELS MUST BE CATEGORY II. SWING DOOR OUTWARD. NET AREA OF SHOWER RECEPTOR SHALL BE NOT LESS THAN 1,024 SQ.IN. OF FLOOR AREA AND ENCOMPASS 30" DIAMETER CIRCLE.



(1) BASEMENT FLOOR PLAN

SCALE 1/4" = 1'-0"

ARCHITECT SUNS

PROJECT NAME: NEW HOUSE

CLIENT: BAO HOANG

PLOT PLAN

PROJECT NO.:

DRAWING TITLE: BASEMENT FLOOR PLAN

PREPARED BY:

ISSUE DATE:

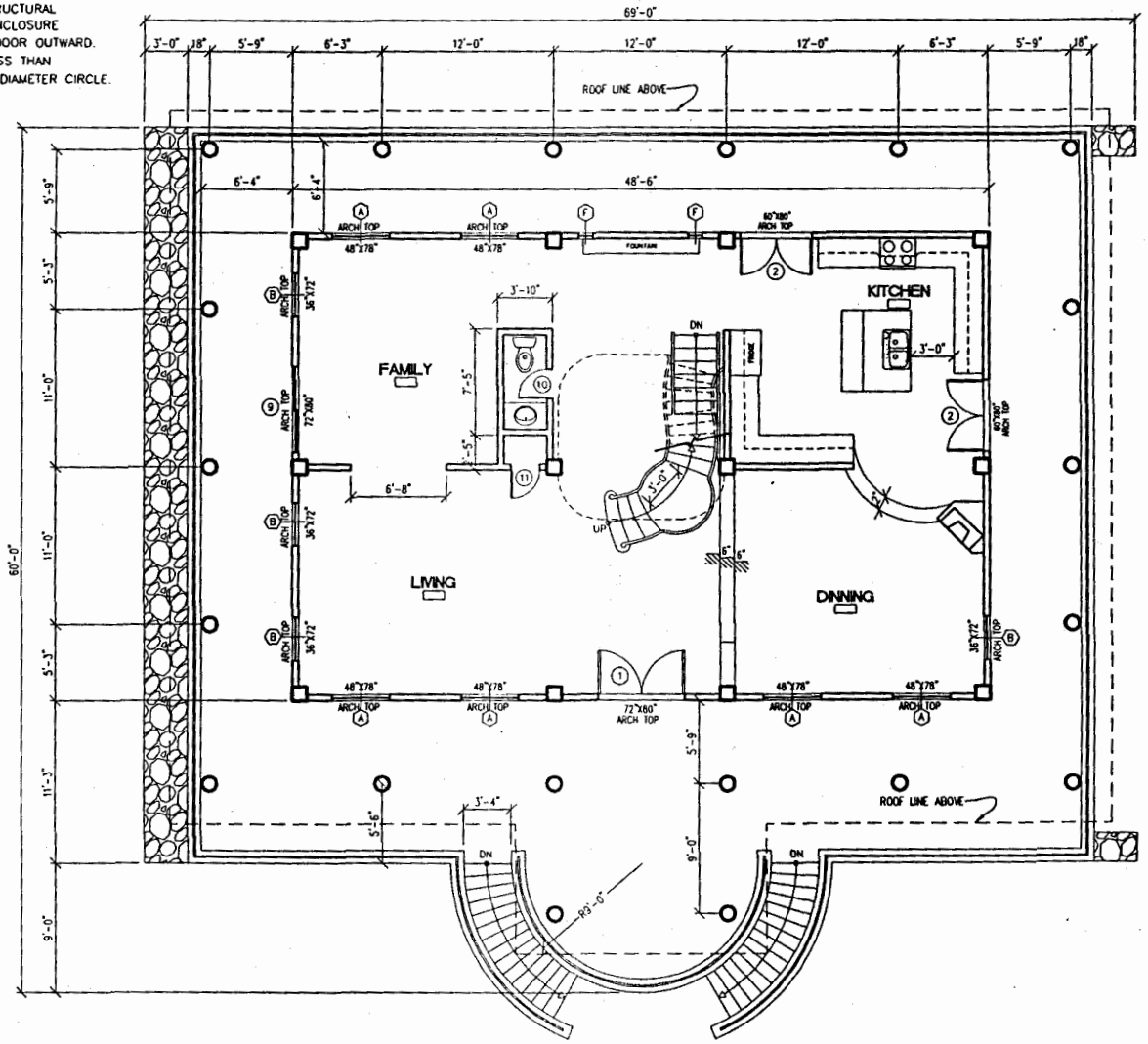
EXHIBIT 3

CDP 4-07-001 (Hoang)

Basement Floor Plan

NOTE:

1. ALL TOILETS MUST BE 1.6 GALLONS PER FLUSH COMPLIANT.
2. ALL SHOWER AND TUB-SHOWER SHALL HAVE EITHER A PRESSURE BALANCE OR A THERMOSTATIC MIXING VALVE.
3. WALL COVERING SHALL BE CEMENT PLASTER, TILE OR APPROVED EQUAL TO 70" ABOVE DRAIN AT SHOWERS OR TUB WITH SHOWERS. MATERIALS OTHER THAN STRUCTURAL ELEMENTS SHALL BE MOISTURE RESISTANT. GLASS ENCLOSURE DOORS AND PANELS MUST BE CATEGORY II. SWING DOOR OUTWARD. NET AREA OF SHOWER RECEPTOR SHALL BE NOT LESS THAN 1,024 SQ.IN. OF FLOOR AREA AND ENCOMPASS 30" DIAMETER CIRCLE.



1 1ST FLOOR PLAN

SCALE 1/4" = 1'-0"

ARCHITECT SUNG,

NEW HOUSE

FLOOR PLAN

PROJECT NO :

DRAWING TITLE

1ST FLOOR PLAN

PREPARED BY

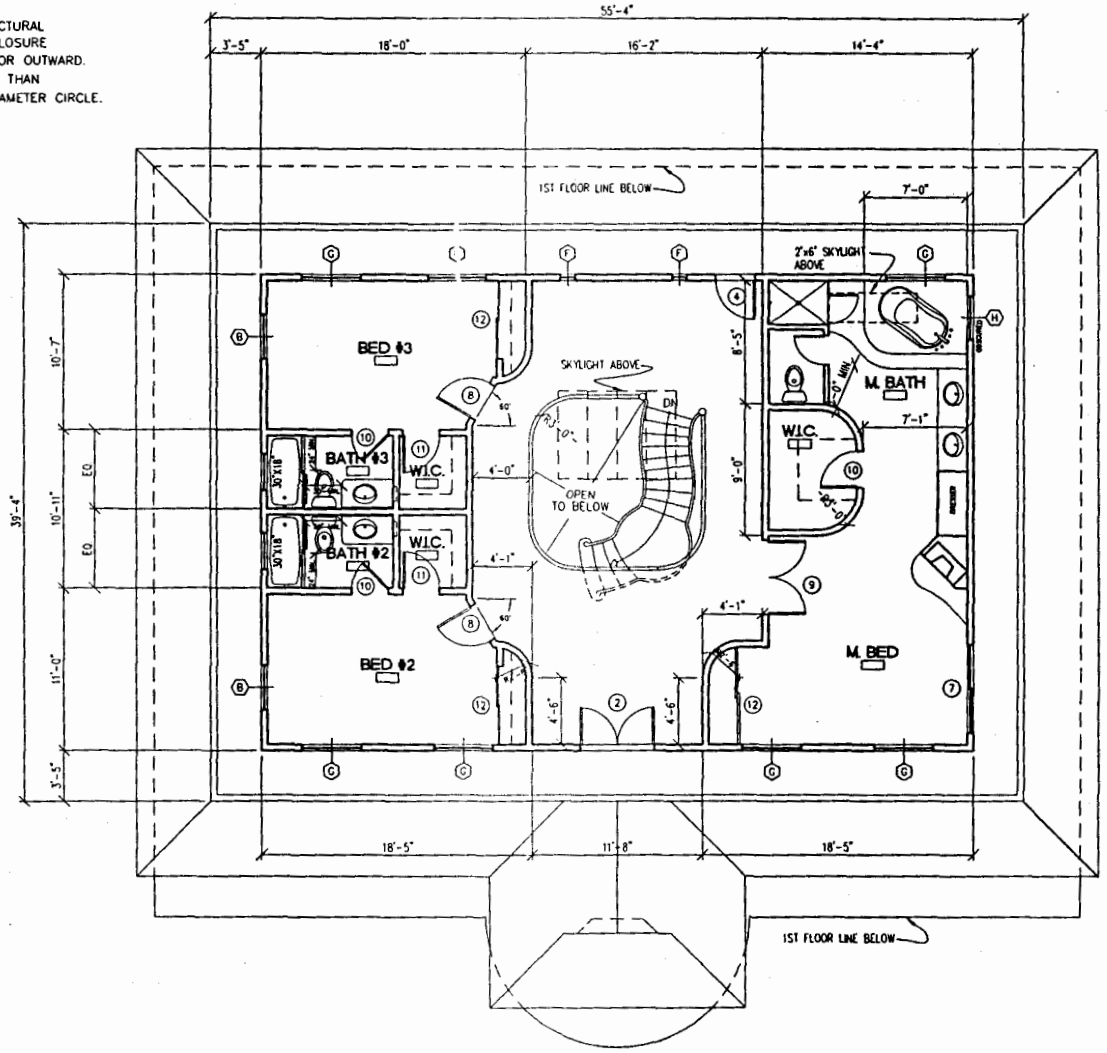
ISSUE DATE: 03/

CP 10

EXHIBIT 4
CDP 4-07-001 (Hoang)
First Floor Plan

NOTE:

1. ALL TOILETS MUST BE 1.6 GALLONS PER FLUSH COMPLIANT.
2. ALL SHOWER AND TUB-SHOWER SHALL HAVE EITHER A PRESSURE BALANCE OR A THERMOSTATIC MIXING VALVE.
3. WALL COVERING SHALL BE CEMENT PLASTER, TILE OR APPROVED EQUAL TO 70" ABOVE DRAIN AT SHOWERS OR TUB WITH SHOWERS. MATERIALS OTHER THAN STRUCTURAL ELEMENTS SHALL BE MOISTURE RESISTANT. GLASS ENCLOSURE DOORS AND PANELS MUST BE CATEGORY II. SWING DOOR OUTWARD. NET AREA OF SHOWER RECEPTOR SHALL BE NOT LESS THAN 1,024 SQ.IN. OF FLOOR AREA AND ENCOMPASS 30" DIAMETER CIRCLE.



1 2ND FLOOR PLAN

SCALE 1/4" = 1'-0"

ARCHITECT SUNS, INC.

PROJECT NAME: NEW HOUSE

OWNER: BAO HOANG

PLOT PLAN

PROJECT NO: 02

DRAWING TITLE

2ND FLOOR PLAN

PREPARED BY: E.Y.

ISSUE DATE: 03/10

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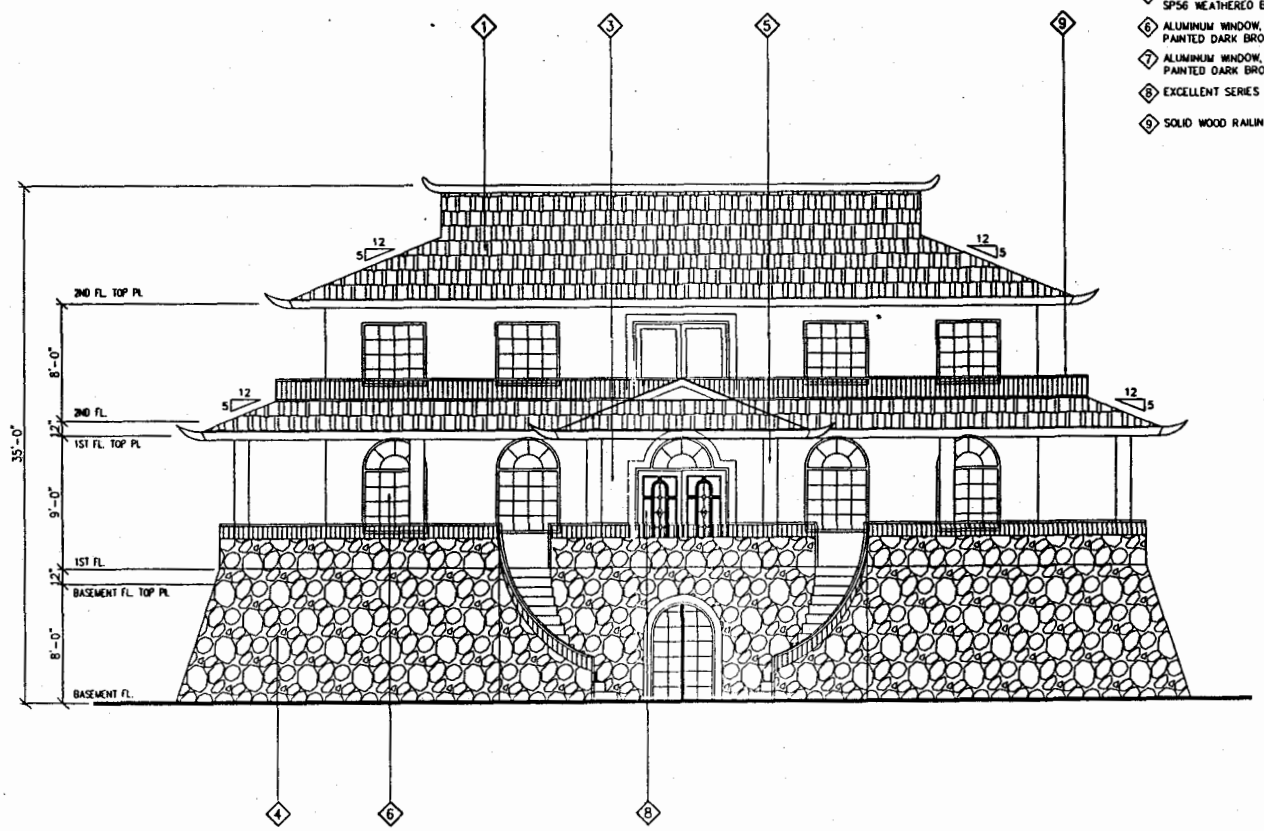
CP 10

EXHIBIT 5
CDP 4-07-001 (Hoang)
Second Floor Plan

ELEVATION MATERIAL LEGEND

1. MEDIUM OR HEAVY WEIGHT CONCRETE TILE ROOF EL MORADO BLEND (LHC 8709) BY "EAGLE LITE", ICBO-4660
2. BUILT-UP ROOF, CLASS B, BY "JOHNS MANVILLE", ICBO-5026
3. 7/8" EXTERIOR CEMENT PLASTER STUCCO BY "LA HABRA" X-48 MEADOWBROOK
4. STREAM STONE, WINTER (CSV-2072) WITH 15% SKIMMERS (CSV-2081) BY "CULTURED STONE"
5. ROOF FACIA, TRIM, & COLUMN, PAINT BY "DUNN EDWARD" SP56 WEATHERED BROWN
6. ALUMINUM WINDOW, DUAL-GLAZED WITH GRID, BY "INTERNATIONAL" PAINTED DARK BROWN
7. ALUMINUM WINDOW, DUAL-GLAZED, BY "INTERNATIONAL" PAINTED DARK BROWN
8. EXCELLENT SERIES DOOR (509C) BY "ESCON"
9. SOLID WOOD RAILING PAINTED BROWN



1 FRONT ELEVATION

ARCHITECT SUNS, INC.

PROJECT NAME: NEW HOUSE

OWNER: BAO HOANG

PLOT PLAN 24576

PROJECT NO: 02217

DRAWING TITLE

SOUTH ELEVATION

PREPARED BY: EYJK

ISSUE DATE: 03/15/04

SCALE 1/4" = 1'-0"

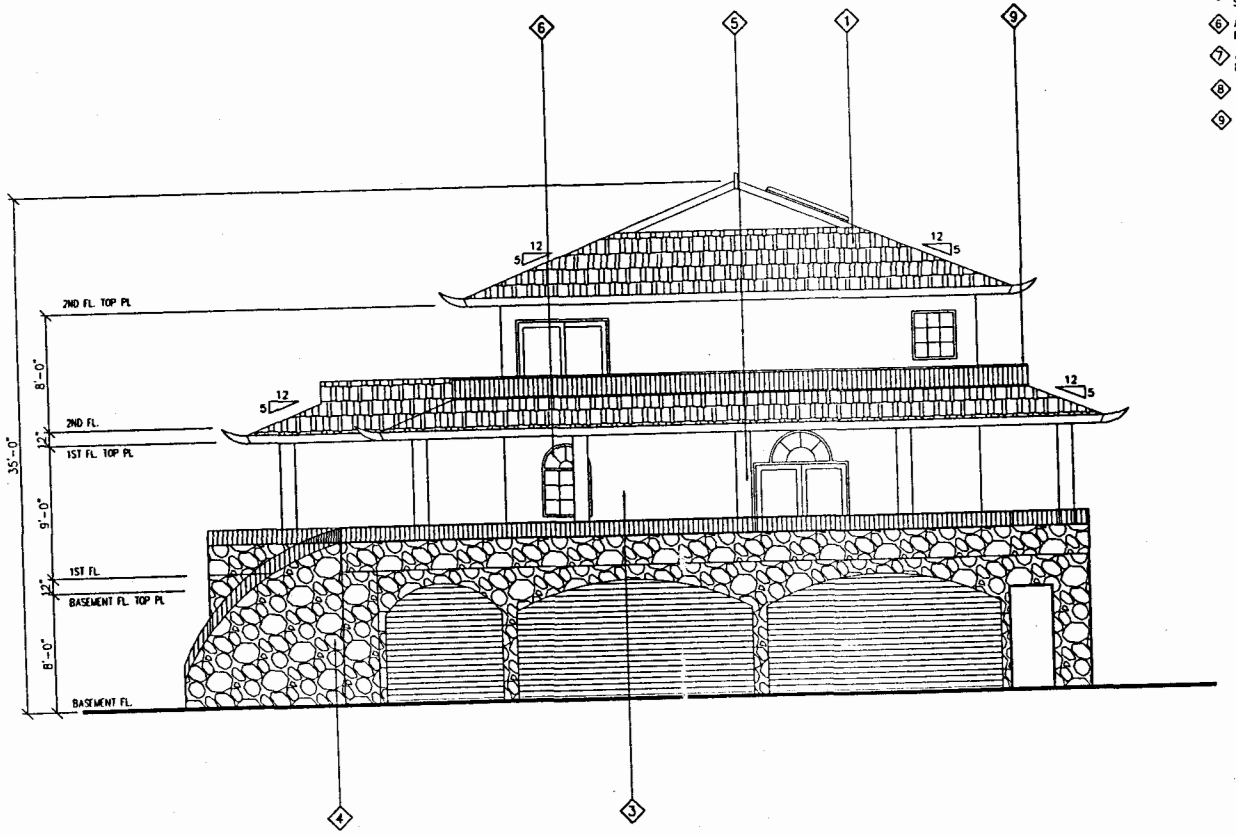
A 6

OF 10

EXHIBIT 6
CDP 4-07-001 (Hoang)
Front Elevation

ELEVATION MATERIAL LEGEND

1. MEDIUM OR HEAVY WEIGHT CONCRETE TILE ROOF EL MORADO BLEND (LHC 8709) BY "EAGLE LITE", ICBO-4660
2. BUILT-UP ROOF, CLASS B, BY "JOHNS MANVILLE", ICBO-5028
3. 7/8" EXTERIOR CEMENT PLASTER STUCCO BY "LA HABRA" X-48 MEADOWBROOK
4. STREAM STONE, WINTER (CSV-2072) WITH 15% SKIMMERS (CSV-2081) BY "CULTURED STONE"
5. ROOF FACIA, TRIM, & COLUMN, PAINT BY "DUNN EDWARD" SP56 WEATHERED BROWN
6. ALUMINUM WINDOW, DUAL-GLAZED WITH GRID, BY "INTERNATIONAL" PAINTED DARK BROWN
7. ALUMINUM WINDOW, DUAL-GLAZED, BY "INTERNATIONAL" PAINTED DARK BROWN
8. EXCELLENT SERIES DOOR (509C) BY "ESCON"
9. SOLID WOOD RAILING PAINTED BROWN



1 RIGHT ELEVATION

SCALE 1/4" = 1'-0"

ARCHITECT SUNS, INC.

PROJECT NAME: NEW HOUSE

CLIENT: BAO HOANG

PLOT PLAN

PROJECT NO:

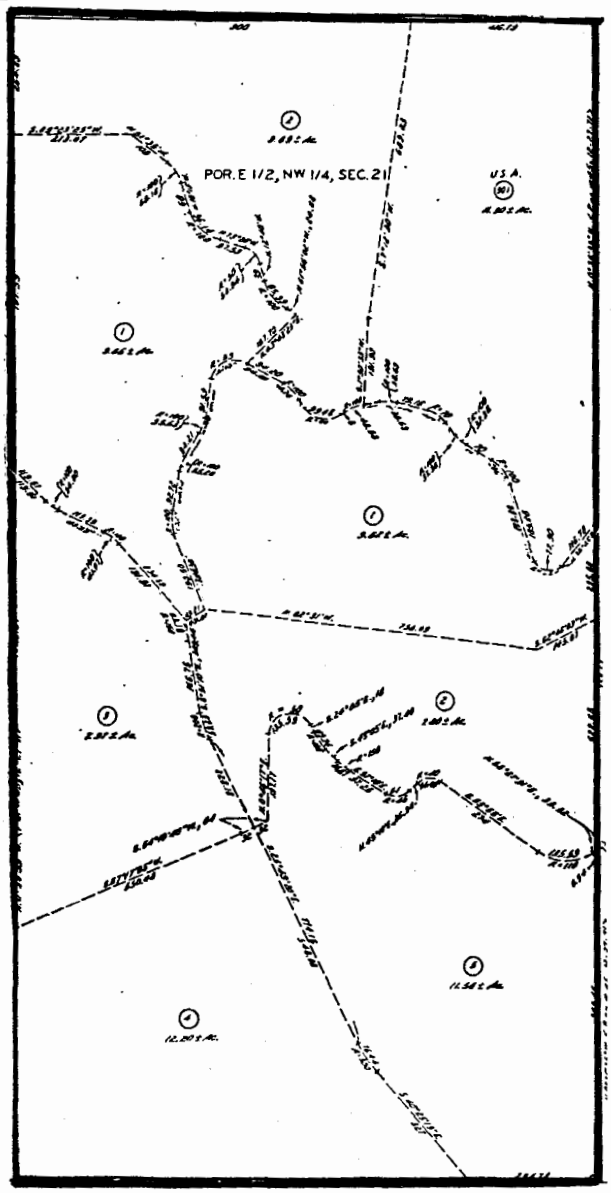
DRAWING TITLE: EAST ELEVATION

PREPARED BY:

ISSUE DATE:

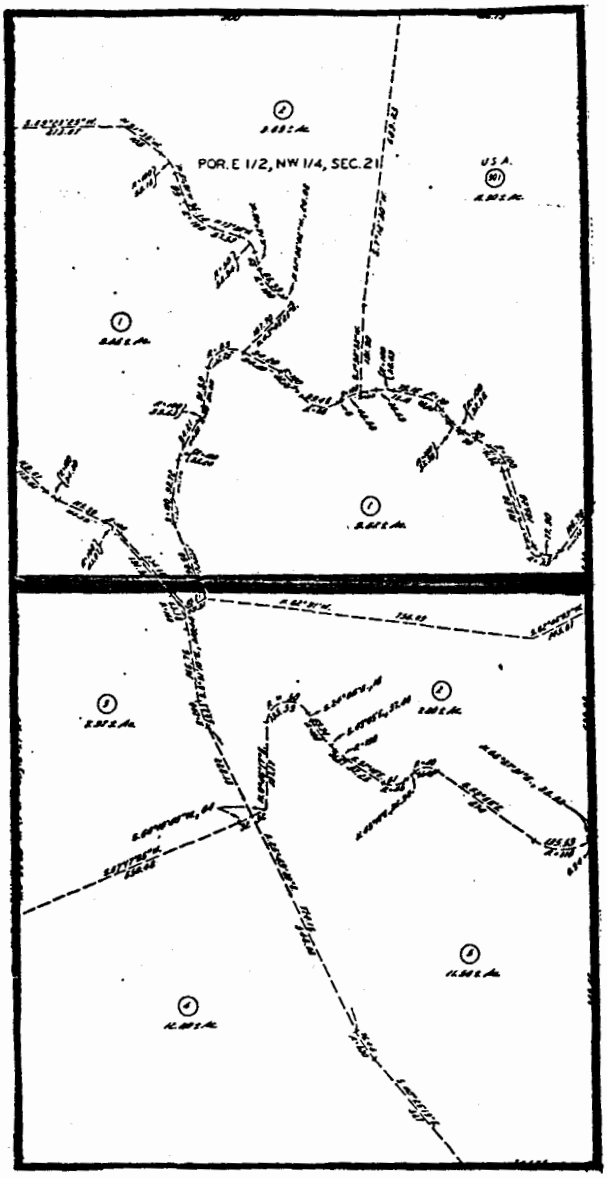
OF

EXHIBIT 7
CDP 4-07-001 (Hoang)
Right Elevation



1942

This original 80 acre parcel was granted by Tax Deed (Instrument No. 19323-301) from the County of Los Angeles to John Klune in 1942.

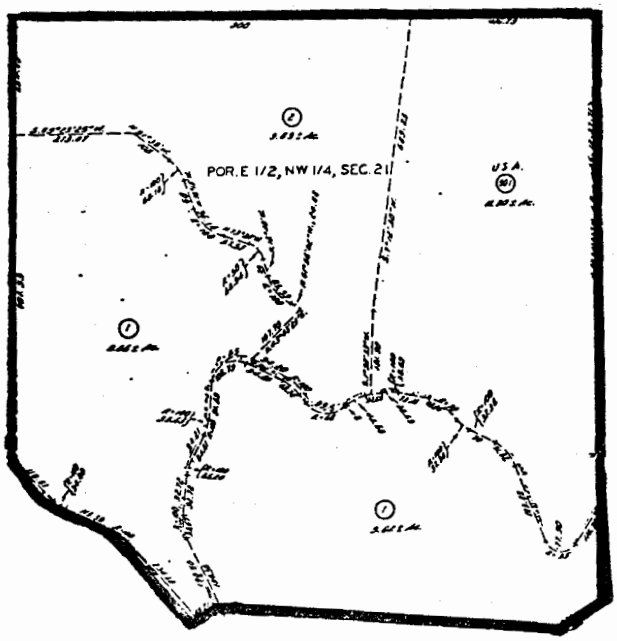


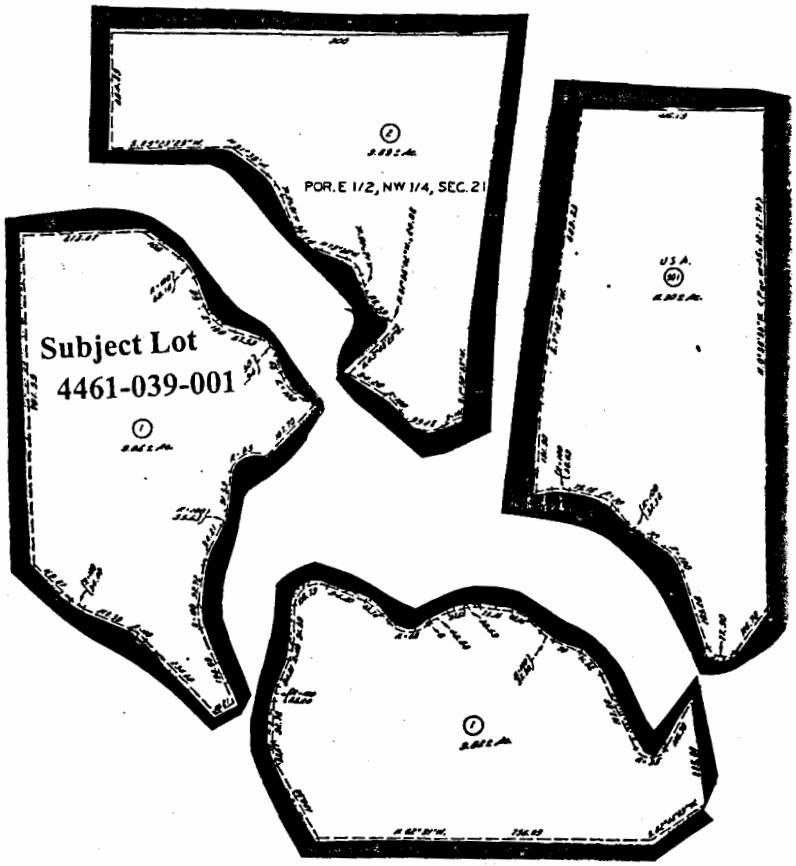
1964

-John Klune transferred the south half of the 80 acres to Robert M. Shoup and Betty T. Shoup by Grant Deed (Instrument No. 469) on July 22, 1964, recorded on July 24, 1964. The legal description that is part of this deed only references: "the south half of 80 acres" without a metes and bounds description of the line separating the south half from the north half.

- John Klune transferred the north half of the 80 acres to Roy Vander by Grant Deed (Instrument No. 470) recorded on July 22, 1964. The legal description that is part of this deed only references: "the north half of 80 acres" without a metes and bounds description of the line separating the north half from the south half.

EXHIBIT 8
CDP 4-07-001 (Hoang)





1971

Robert Shoup transferred to Roy Vander by Grant Deed (Instrument No. 45), dated December 20, 1971, this portion of the 80 acres, which encompasses approximately 40.47 acres.

1972

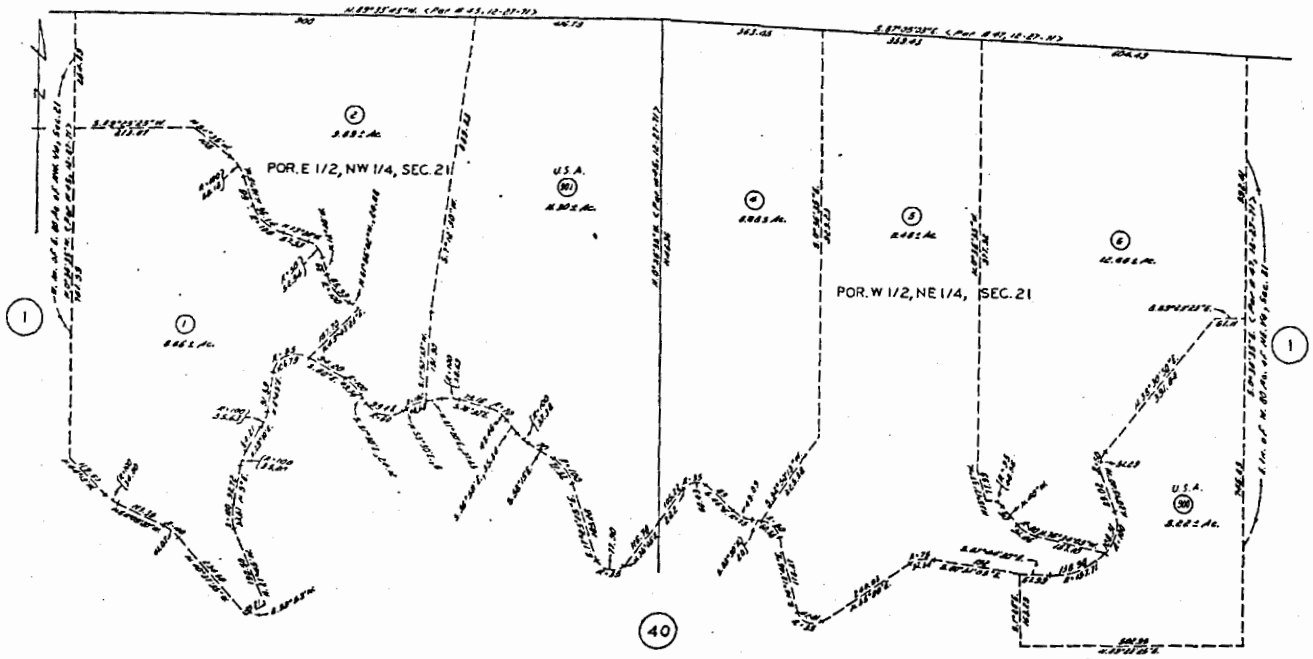
Roy Vander split the north "half" of the 80 acres into four parcels on March 1, 1972, by transferring ownership of three of these parcels, through grant deed, to three different owners. This is the first point in time that the subject parcel, APN 4461-039-001, existed in its present configuration.

4461 | 39

SCALE 1" = 200'

720725808

BK. 4464



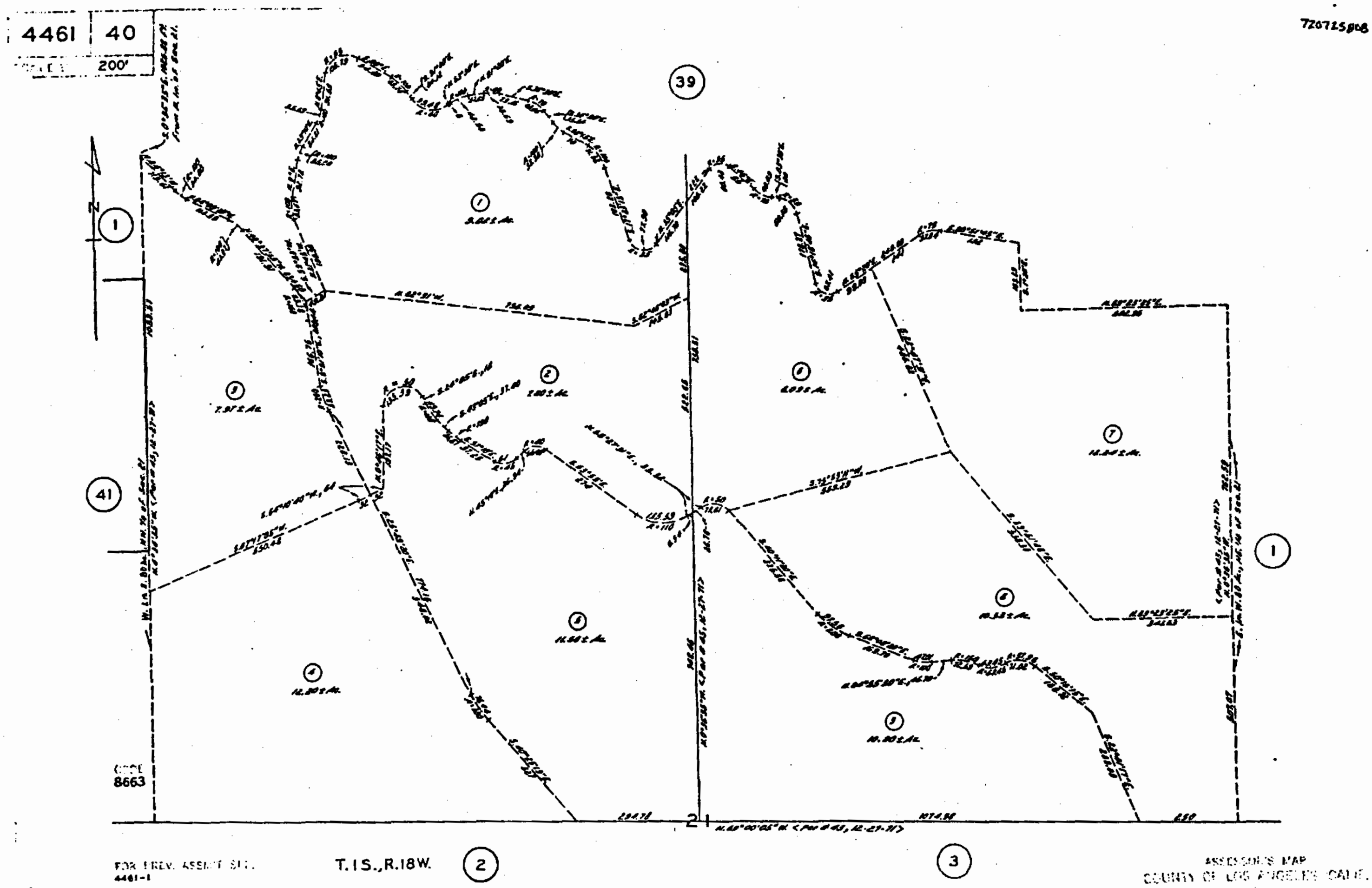
CODE
8663

FOR PREV. ASSM'T SEE:
4461-1

T. 1S., R. 18W.

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

720725908


4461 40
200'
39
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41
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CODE
8663
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T.1 S., R.18 W.
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3
FOR PREV. ASSM'T SEE
4461-1
ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

82- 208399

RECORDING REQUESTED BY

Department of Regional Planning
320 West Temple Street
Room 1381, Hall of Records
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name: BILL BERGENTHAL
Street: 1740 CENTINELA
City: L.A. CA. 90025

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
21 MIN. PAST. 10 A.M. FEB 26 1982

FEE $6 3B

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CONDITIONAL CERTIFICATE OF COMPLIANCE 22223

REQUEST FOR CERTIFICATE OF COMPLIANCE

I/We the undersigned owner(s) of record (and/or vendee(s)) 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 of California) and the County Subdivision Ordinance (Ord. 4478, County of Los Angeles).

CANYON DESIGN AND CONSTRUCTION, INC

Signature	Signature	Signature
By: BILL BERGENTHAL		
Name (typed)	Name (typed)	Name (typed)
2/11/82		
Date	Date	Date

LEGAL DESCRIPTION (TYPED)

PARCEL 1:

That portion of the northwest quarter of Section 21, Township 1 South, Range 18 West, San Bernardino meridian, in the County of Los Angeles, State of California, according to the official plat of said land, described as follows:

Beginning at the intersection of the Westerly line of the East 80 acres of said Northwest quarter, with the Southerly boundary line of the land described in Parcel 1 of deed to Roy J. Vander, recorded on December 27, 1971 as Instrument No. 45 in Book D5299 Page 922 of official Records, in the office of the County Recorder of said County, thence along said boundary line as follows:

South 44° 13' 00" East 119.61 feet; southeasterly along a tangent curve concave Northeasterly, having a radius of 100 feet, an arc distance of 34.80 feet, tangent to said curve, South 64° 09' 20" East 113.39 feet; Southeasterly along a tangent curve concave Southwesterly, having a radius of 100 feet, an arc distance of 41.07 feet; tangent to said curve, South 40° 37' 35" East 234.60 feet; and North 59° 53' 00" East, 49.21 feet; thence along the center line of that certain strip of land, 40 feet wide, described in Parcel 2 of said deed to Roy J. Vander. Northerly and Easterly to the Northwesterly terminus of that certain course therein, described in said Parcel 2 as having a bearing and length of South 60° 00' 00" East 94.20 feet; thence leaving said center line, North 43° 43' 23" East, 157.70 feet; thence North 61° 56' 02" west 24.88 feet to the beginning of a tangent curve concave Northeasterly and having a radius of 100 feet; thence Northwesterly along said curve, an arc distance of 85.99 feet; thence tangent to said curve, North 12° 40' 00" West, 39 feet to the beginning of a tangent curve, concave Southwesterly and having a radius of 50 feet, thence Northwesterly along said curve, an arc distance of 52.94 feet; thence tangent to said curve, North 73°20' 00" West 57.59 feet to the beginning of a tangent curve concave Northeasterly and having a radius of 100 feet; thence Northwesterly along said curve, an arc distance of 96.14 feet; thence tangent to said curve, North 18°15' 00" West 68 feet to the beginning of a tangent curve concave Southwesterly and having a radius of 100 feet; thence

52-01-10-78 (Revised)

EXHIBIT 10
CDP 4-07-001 (Hoang)

APPLICANT: Canyon Design and Construction PAGE 2

CONDITIONAL CERTIFICATE OF COMPLIANCE 22223
CONTINUATION

Northwesterly along said curve, an arc distance of 58.18 feet; thence tangent to said curve, North 51° 35' 00" West, 105 feet; thence South 89° 23' 25" West 273.07 feet to the Westerly line of the East 80 acres of said Northwest quarter; thence along said Westerly line South 0° 36' 35" East, 761.99 feet to the point of beginning.

82- 208359

22-P1-9/74

CONDITIONAL CERTIFICATE OF COMPLIANCE 22223

CONTINUATION

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):

Offer for road right-of-way any portion of the subject property within 32 feet of the centerline for BALLER ROAD, for BORNA DRIVE and the radius at the intersection of said right-of-way and slope easements adjacent thereto to the satisfaction of the County Road Department.

NOTE:

Water and access requirements may be imposed as a condition of permit approval pursuant to Sections 13.301 and 13.208 of the Fire Code.

Drainage, geologic and soils conditions on the subject property may limit development or necessitate that remedial measures be taken in order to obtain a building permit.

82- 208399

A.M.B. 4461-39-1

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles, State of California
Norman Murdoch, Planning Director

DEPARTMENT OF REGIONAL PLANNING

By: _____

Title: Chief, Subdivision Admin. Div.

Date: FEB 26 1992

END OF RECORDED DOCUMENT

94-1022929

RECORDING REQUESTED BY

Department of Regional Planning
320 West Temple Street
Room 1381, Hall of Records
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name Henry Russell, Jr.
Street 2660 Lander Court
City Newbury Park, CA 91320

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
21 MIN PAST 8 AM MAY 26 1994

FEE $7 F

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

CC-22223

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. 82-208399, on February 26, 1982; 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.)

OWNER(S): Henry Clay Russell, Jr. & Yvonne Marie Russell

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.

AMB. 4461-039-001

DEPARTMENT OF REGIONAL PLANNING

By Raymond P. Rastri

Title Administrator, Land Use Reg. Div.

Date May 25, 1994

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

98C194 - 08-80-3/79 -

EXHIBIT 11
CDP 4-07-001 (Hoang)

ORDINANCE NO. 9404

An ordinance amending Ordinance No. 4478, the Subdivision Ordinance relating to minor land divisions and payments for improvements.

The Board of Supervisors of the County of Los Angeles do ordain as follows:

Section 1. Section 15.5 of Ordinance No. 4478 entitled "Subdivision Ordinance," adopted March 19, 1945, is amended to read:

Section 15.5. LEASE. Lease includes an oral as well as a written lease, tenancy at will, month to month or similar tenancy. For the purposes of this ordinance, each building, existing or proposed, in which one or more spaces are leased or are proposed to be leased, shall occupy an individual parcel of land, and the erection of two or more such buildings on a parcel of land shall constitute a division for the purpose of lease, except that accessory buildings, when erected solely for use by lessees of space within a single principal building, may occupy the same parcel of land as the principal building.

Sec. 2. Section 16.7 is added to said Ordinance No. 4478, to read:

Section 16.7. PLOT PLAN MAP. The term "Plot Plan Map" refers to those maps submitted for the purpose of obtaining a certificate of exception as set forth in Article XII.

Sec. 3. Section 20 of said Ordinance No. 4478 is amended to read:

Section 20. SUBDIVISION. This ordinance applies the term "Subdivision" to certain divisions of land which

EXHIBIT 12

are not defined as "Subdivisions" by the Subdivision Map Act. Therefore, for the purpose of this ordinance, the term "Subdivision" shall refer to any parcel or contiguous parcels of land, improved or unimproved, which are divided for the purpose of sale, lease or financing, whether immediate or future, into five or more parcels by a sole subdivider within any period of time, except that the term "Subdivision" shall not refer to:

(a) Land dedicated for cemetery purposes under the Health and Safety Code of the State of California.

(b) The leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, commercial building, or trailer park.

(c) Division by mineral, oil, or gas leases.

(d) Divisions of land resulting in parcels having a minimum gross area of forty (40) acres.

The term "Subdivision" shall also refer to a condominium project, as defined in Civil Code Section 1350, containing five or more condominiums, and a community apartment project, as defined in Business and Professions Code Section 11004, containing five or more parcels.

Sec. 4. Section 21 is added to said Ordinance No. 4478 to read:

Section 21. MINOR LAND DIVISION. The term "Minor Land Division" refers to any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels, except that "Minor Land Division" does not include:

(a) Land dedicated for cemetery purposes under the Health and Safety Code of the State of California.

(b) The leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, commercial building, or trailer park.

(c) Division by agricultural, gas, oil, or mineral leases.

(d) The division for the purpose of financing of land zoned for industrial or commercial development.

(e) The leasing of vehicle parking areas or space for outdoor advertising.

(f) Leasing or financing of land or buildings which serve as a functional unit of a hospital, school, or church.

(g) The conveyance or transfer of land required by Court decree.

(h) A division of land defined by this ordinance as a subdivision or resubdivision.

(i) Divisions of land created by the acquisition of land by government agencies, including but not restricted to those divisions created by the opening or widening of a public street, flood control channel or other public improvement by dedication, condemnation, or purchase.

(j) The division or redivision of land which results in parcels having a minimum gross area of forty acres or parcels which result from the normal breakdown of an undersized section of land into quarter-quarter sections.

(k) The division of land for operating public utility purposes and the conveyance of land by a public utility to a contiguous ownership.

Sec. 5. Section 22 of said Ordinance No. 4478 is amended to read:

Section 22. RESUBDIVISION. For the purposes of this

ordinance, the term "Resubdivision" shall refer to any portion of a subdivision designated as a lot or as contiguous lots on a final map or a parcel map filed in compliance with the provisions of Section 7 in the office of the Recorder of this County, which is divided or re-aligned for the purpose of sale, lease, or financing, whether immediate or future, by the person, partnership, corporation, or association which filed the final map or parcel map.

Sec. 6. Section 23 is added to said Ordinance No. 4478 to read:

Section 23. DIVISION OF LAND. For the purposes of this ordinance, the term "Division of Land" shall refer to subdivisions, resubdivisions, and minor land divisions.

Sec. 7. Section 41 of said Ordinance No. 4478 is amended to read:

Section 41. MAJOR AND SECONDARY HIGHWAYS. If the Master Plan of Highways shows any highway so located that any portion thereof lies within any proposed division of land, such portion shall be shown as a highway or part of a highway within such division in the general location shown on the Master Plan of Highways unless the Advisory Agency finds that there is a reasonable probability that the Master Plan will be so amended as to remove or change the location of any portion of such highway within the proposed division or unless an exception is granted pursuant to Section 6.

The right of way of a section line or a quarter-section line road which lies within the boundaries of a division of land which is not shown on the Master Plan of Highways

but which the Advisory Agency finds is the probable location of a Master Plan Highway shall be shown as follows:

(a) 100 feet (50 feet from the center line) for all section line roads and

(b) 80 feet (40 feet from the center line) for all quarter-section line roads.

Sec. 8. Sections 58, 58.1, and 81 are added to said Ordinance No. 5578 to read respectively:

Section 58. APPROVED ACCESS. Each parcel created by a minor land division described by Section ~~301.1(a)~~ 302(a) EMS shall be provided with a means of vehicular access as provided by this section. For the purposes of this section, and Section ~~301.2~~ 303, the term "On-Site Access" EMS shall refer to a proposed easement for vehicular access which is located within the boundaries of a minor land division, and the term "Off-Site Access" shall refer to an easement for vehicular access which is located outside the boundaries of a minor land division and is not an improved or maintained public street or highway. Off-site access shall be documented by either a recorded easement or a policy from a title insurance company which delineates and insures the existence of a valid easement. A parcel shall be deemed to have approved access when either of the following conditions applies:

(a) The parcel has a frontage on an improved or maintained public street or highway or on approved off-site access which connects with an improved or maintained public street or highway.

(b) The parcel has frontage on a proposed easement for on-site access, as shown on an approved plot plan

map, and such proposed easement connects directly or by means of approved off-site access with an improved or maintained public street or highway.

Proposed easements for on-site access shall be located so as to provide for the future development of parcels adjacent to them. On-site access shall be sixty-four (64) feet in width, except that proposed easements peripheral to the minor land division shall be thirty-two (32) feet in width, when, in the opinion of the Director of Planning, topography permits future widening of the proposed easement within a contiguous property. Off-site access shall have a minimum width of thirty-two (32) feet on one side of a normal section breakdown line or property line or a minimum of forty (40) feet in other locations and an alignment which is defined and is topographically feasible for the passage of vehicles.

Section 58.1. EXCEPTIONS. In cases of undue hardship, the Director of Planning shall determine that either of the following may serve as an acceptable alternate to an improved or maintained public street or highway:

(a) A proposed highway shown on the Master Plan of Highways, unless the Director of Planning finds that there is a reasonable probability that the Master Plan will be amended so as to remove or relocate that portion of the proposed highway which is to serve as an alternate to an improved or maintained public street or highway.

(b) A section or quarter-section line or a publicly travelled and maintained road or fire trail which, in the opinion of the Director of Planning, is the probable

location of a future street or highway.

The Director of Planning may modify the minimum width requirements of Section 58 where he finds that topographic features, title limitations, or other conditions make it impossible or impractical for the subdivider to comply with such provisions.

Section 81. TENTATIVE MINOR LAND DIVISION MAPS. The preparation and processing of tentative minor land division maps shall be carried out in accordance with the provisions of Article XII. All other tentative maps shall be prepared and processed in accordance with Article VI.

Sec. 9. Section 89 of said Ordinance No. 4478 is amended to read:

Section 89. FEES. At the time of submission, the person submitting a tentative map, shall pay a filing fee of:

(a) Fifty dollars, plus

(b) The following amount per lot within the land to be divided by the tentative map.

(1) Eight dollars for each of the first twenty-five lots, plus

(2) Six dollars for each of the next twenty-five lots, plus

(3) Two dollars for each of the next fifty lots, plus

(4) One dollar for each additional lot in excess of one hundred lots.

If additional lots are added to the tentative map prior to approval by the Advisory Agency the subdivider shall pay the additional fee according to the above schedule. Where a lot is required by the provisions of

Section 73 such lot shall be omitted in calculating the amount of the filing fee.

Sec. 10. Sections 191.1 and 191.2 are added to said Ordinance No. 4478 to read respectively:

Section 191.1. IMPROVEMENTS - LOT SIZES IN EXCESS OF 10 ACRES. Notwithstanding the provisions of any other section, no improvements shall be required when one or both of the following conditions apply:

(a) Each parcel resulting from a division of land has a minimum gross area of twenty (20) acres or is a one-half part of a quarter-quarter section resulting from the normal division of an undersized section of land;

(b) Each parcel resulting from a division of land has a minimum gross area of ten acres or is a quarter-quarter-quarter section, resulting from the normal division of an undersized section of land and having a minimum gross area of nine acres, and the entire division of land is zoned A-1, A-2, or D-2 by Ordinance 1494.

As used in this section, the term "improvements" does not refer to required monuments.

Section 191.2. REQUIREMENTS FOR MINOR LAND DIVISIONS. Improvements shall not be required as a condition precedent to filing a parcel map on a minor land division where the Advisory Agency finds that such improvements would be greater than those serving adjacent developed parcels unless such improvements are necessary for the development of parcels within the division of land.

Sec. 11. Sections 192.4 and 195 of said Ordinance No. 4478 are amended to read respectively:

Section 192.4. WATER MAINS AND FIRE HYDRANTS. The subdivider shall install or agree to install, water

mains and fire hydrants adequate for the general use of the lot owners and for fire protection to the division of land. This section shall not apply where either of the following conditions exists:

(a) All lots on the division of land map contain a minimum gross area of two and one-half acres, and the area is within a single family residential or agricultural zone and is zoned with a required area of two and one-half acres or more.

(b) All lots on the division of land map contain a minimum gross area of two and one-half acres, or all lots contain a minimum gross area of two and one-quarter acres, which acreage resulted from the normal division of an undersized section of land, all lots are within a single family residential or agricultural zone, and the Advisory Agency determines that it is impossible or impractical for the subdivider to comply with the provisions of this section. In making its decision the Advisory Agency shall consider the report of the Forester and Fire Warden on the availability of a water system and on the fire hazard to watershed, adjoining properties, or existing and proposed individual structures.

The water mains and fire hydrants required by this section shall comply in all respects with all statutes, ordinances, rules and regulations applicable at the time of installation. Such water mains and fire hydrants also shall be designed, and constructed to deliver the fire flow as determined by the Los Angeles County Forester and Fire Warden pursuant to the specifications of service, design and construction in Chapter II of Ordinance No. 7834, entitled "Water Ordinance." adopted August 2, 1960, and in all other respects conform to said ordinance.

Section 195. STREET IMPROVEMENTS - 2 1/2 ACRE MINIMUM LOT SIZE. When all lots shown on a final map contain a minimum gross area of two and one-half acres, or all lots contain a minimum gross area of two and one-quarter acres, which acreage resulted from the normal division of an undersized section of land, and all lots are within a single family residential or agricultural zone, the subdivider may, with the consent of the Advisory Agency, elect to comply with the provisions of this section in lieu of complying with the road improvement requirements of Section 191.

(a) ACCESS ROAD. Provide public access to the subdivision from a maintained public highway or road. Such public access shall be improved in accordance with engineering plans approved by the Road Commissioner with grading, necessary drainage structures, and 24 feet of desert mix pavement in accordance with specifications thereof on file in the office of the Road Commissioner. The Road Commissioner shall not require that the subdivider grade to a width of more than 60 feet.

(b) PERIPHERAL ROADS, HIGHWAYS, AND SECTION LINE OR QUARTER SECTION LINE ROADS. Grade to full width or 60 feet, whichever is less, all streets peripheral to the subdivision, all Master Plan Highways, and section or quarter section line roads within the subdivision in accordance with engineering plans approved by the Road Commissioner. Such engineering plans shall be limited to the design of improvements to be installed. Such streets and highways shall be shown as private and future streets on the final map and shall have a minimum right-of-way of forty feet.

(c) INTERIOR ROADS. All other roads within the subdivision shall be contour graded to 24 feet in width and of native soil roadway, and shall be shown on the final map as full-width private and future streets. Engineering plans showing future center line grades and drainage information shall be submitted to the Road Commissioner for approval. Grading shall be done to the satisfaction of the Advisory Agency prior to filing the final map. If the subdivider elects not to grade prior to filing the final map, street grading shall be performed in accordance with the engineering plans approved by the Road Commissioner but shall be limited to a width of 24 feet.

Sec. 12. Section 198 is added to said Ordinance No. 4478 to read:

Section 198. COST OF IMPROVEMENT. Improvements required by this article shall be installed and constructed by the subdivider at his expense, and shall not be paid for by any special assessment lien, tax, bonded indebtedness, or other charge against the land or real property within the subdivision, except:

(a) The cost of installing pipes and other facilities for the transmission of water may be paid for in whole or in part from revenues collected from the customers served at regular established water rates for the water company, pursuant to regulations of the Public Utilities Commission where applicable, or by a Public Agency (as defined in Section 4401 of the California Government Code) from the net operating income only, as payment for the sale of water thereto.

(b) As provided in Sections 11543, 11543.5, 11543.6, 11544, and 11545 (Sewer and Drainage Reimbursement Contracts) of the Subdivision Map Act or other reimbursement enabling acts.

All outstanding or remaining assessments on the land of the subdivision established for improvements constructed under special assessment district proceedings shall be paid by the subdivider.

Sec. 13. Article XII of said Ordinance No. 4478 is renumbered to be Article XX. Section 301 of said Ordinance No. 4478 is renumbered to be Section 1001.

Sec. 14. Article XII is added to said Ordinance No. 4478 to read:

ARTICLE XII - MINOR LAND DIVISIONS.

Section 301. PROHIBITION OF TRANSFER OF TITLE, SALE, LEASE OR FINANCING. A person, partnership, corporation, or association shall not sell, lease, finance, or transfer title to a minor land division, or portion thereof, until a parcel map thereof has been filed in the office of the Recorder of this County in full compliance with the provisions of Sections 11535(d) and 11575 through 11580 of the Subdivision Map Act and all applicable provisions of this ordinance or until a certificate of exception has been issued in compliance with the provisions of Section 303. Nothing in this section shall be construed to prohibit an offer or contract to sell provided that such offer or contract is conditioned upon compliance with the provisions of this section and such provisions are fully completed prior to passage of title or right of possession to the buyer.

The provisions of this section shall not apply to any parcel or parcels of a minor land division sold

transferred, leased or financed in full compliance with or exempt from any law, including this or any other ordinance of this County, regulating the design and improvement of such divisions in effect at the time the division was established.

A person, partnership, corporation, or association may fulfill the requirements of this section by filing a final map on a minor land division.

No building shall be constructed, nor shall a permit for the construction of a building be issued, nor shall a portion of any parcel be used when not conforming to the provisions of this section.

Section 302. CERTIFICATE OF EXCEPTION PERMITTED. Providing that there is no conflict with the provisions of the Zoning Ordinance, a subdivider may obtain a certificate of exception in lieu of filing a parcel map or a final map for the following minor land divisions:

(a) Those in which each resulting parcel contains a minimum of two and one-half acres gross area; or those in which each resulting parcel contains a minimum of two and one-quarter acres gross area and any one of the following conditions applies:

(1) The parcel of land comprising the division was a parcel of record prior to the date of enactment of this section.

(2) The parcel of land comprising the division is a lot shown on a final map or parcel map filed in the office of the County Recorder, or a parcel shown on an approved Record of Survey map.

(3) The parcel of land comprising the division is result of the normal breakdown of an undersized section of land.

(b) Those in which the resulting number of parcels remains the same or is decreased.

(c) The leasing of land, provided that no street or highway openings or widenings or drainage or sanitary sewer easements are required pursuant to the standards of Articles IV and IX.

Section 303. PROCEDURE FOR CERTIFICATE OF EXCEPTION. A person requesting a certificate of exception pursuant to Sections 301 and 302 shall submit a statement of ownership as specified in Section 312(b) and a plot plan map of the proposed division, based on record data and information on file in the office of the County Engineer or in a regional office of the County Engineer, with sufficient detail to justify an exception. Off-site access, if required, shall be indicated on the plot plan map.

The Director of Planning shall identify, date and review the plot plan map, and within five (5) working days issue a certificate of exception or deny approval of the plot plan map. If at any time during the determination period the Director of Planning finds that the plot plan map or supporting documents are improperly prepared or are insufficient to make a determination, and the subdivider is so notified, the determination period may be extended by mutual agreement for a period of time not to exceed forty (40) days from the date of submission.

Where a subdivider does not possess an easement for off-site access, as required by Section 58, the Director of Planning may waive the requirement for such easement and approve the plot plan map for design only, provided the Director finds that the subdivider has

exhausted every reasonable means to obtain the required easement, and that it is probable that the future division of adjacent properties will provide a means of access to the parcels which lack approved access. The Director of Planning shall indicate on the approved plot plan map that the division of land does not have approved access.

If a certificate of exception is issued, the Director of Planning shall forward one copy each to the applicant and to the County Engineer. If a certificate of exception is disapproved, the Director of Planning shall forward to the applicant written notice of the disapproval together with a complete statement of the reasons for the action.

A subdivider need not submit a plot plan map to receive a certificate of exception for a minor land division described by Section 302(c) when the subdivider has submitted and received approval for a plot plan pursuant to the provisions of Section 728 of Ordinance 1494, the Zoning Ordinance, provided that the subdivider requests issuance of the certificate of exception at the time that the plot plan is submitted for approval.

Section 304. PLOT PLAN FEES. At the time of submission, the applicant shall pay a processing fee of $28.00 for each plot plan map.

Section 305. REVISED PLOT PLANS. If, at any time subsequent to the receipt of a certificate of exception for a minor land division, the subdivider finds that minor adjustments to the configuration of one or more of the parcels within the division are necessary and the Director of Planning determines that such changes

do not constitute a new division of land, the subdivider may file a revised plot plan map. The Director of Planning shall process such maps in accordance with the provisions of Section 303, except that the determination period shall be not more than one (1) working day. No fee shall be charged for processing revised plot plans.

Section 306. APPEAL TO THE ADVISORY AGENCY ON CERTIFICATES OF EXCEPTION. A subdivider dissatisfied with any action taken by the Director of Planning pursuant to Sections 303 or 305, may file a written appeal with the Advisory Agency within fifteen (15) days after such action. The Advisory Agency shall hear the appeal within fifteen (15) days or at its next succeeding regular meeting, unless the subdivider consents to a continuance. Upon conclusion of the hearing, the Advisory Agency shall within seven (7) days, declare its findings based upon the testimony and documents produced before it. It may sustain, modify, reject, or overrule any action of the Director of Planning, provided that such action is not inconsistent with the provisions of this ordinance, or any other applicable ordinance or statute.

Section 307. APPEAL TO BOARD OF SUPERVISORS ON CERTIFICATE OF EXCEPTION. The subdivider may appeal any action taken by the Advisory Agency pursuant to Section 306 to the Board of Supervisors by written notice to the Clerk of the Board in the same manner and subject to the same provisions as prescribed for subdivisions by Section 11552(b) of the Subdivision Map Act.

Section 308. SUBMISSION. A tentative minor land division map shall be submitted at an office of the

Regional Planning Commission or of the County Engineer for transmittal to the Advisory Agency for review and approval prior to filing a parcel map or a final map on a minor land division.

Section 309. FEES. Processing fees for tentative minor land division maps shall be collected from the subdivider in accordance with the provisions of Sections 89 and 90.

Section 310. MAP NUMBER. The subdivider shall apply to the Advisory Agency for a map number prior to submission of a tentative minor land division map. Subsequent to the assignment of a map number, the subdivider shall place the number on each tentative or parcel map of the minor land division, and the number shall not thereafter be changed or altered in any manner upon any such map of the minor land division unless another number is assigned by the Advisory Agency, except that this number shall not appear on a parcel map when filed with the County Recorder.

Section 311. TENTATIVE MINOR LAND DIVISION MAP - FORMAT AND MATTERS REQUIRED. The tentative minor land division map shall be a reproducible print, legibly drawn to a scale of sufficient size to show full detail, including the following information:

(a) North point, date, and scale.

(b) The map number.

(c) The dimensions and record boundaries of the total ownership.

(d) Sufficient dimensions and record boundaries so as to define the boundaries of the proposed minor land division.

(e) The approximate boundaries, dimensions, and area of each proposed parcel.

(f) A number for each parcel.

(g) General information as to locations, names, widths, and improvements of all adjoining highways, streets, or ways.

(h) The widths and approximate alignments of all easements, whether public or private, for access, drainage, sewage disposal, and public utilities which are existing or are proposed by the subdivider.

(i) Actual street names or an identifying letter for proposed streets.

(j) Approximate contours where topography controls the design or alignment of parcels and streets or other easements.

(k) The approximate location of existing structures or improvements, shown to scale, provided that if it is impossible or impractical to describe such structures or improvements on the tentative map, such information shall be submitted on a separate sheet.

(l) The approximate location and direction of flow of all defined water courses.

(m) A vicinity map, if necessary to show the location of the division in relation to the nearest existing cross streets.

Section 312. WRITTEN STATEMENTS. The subdivider shall submit with the tentative minor land division map a written statement containing the following information:

(a) A legal description of all ownerships comprising a part of the proposed minor land division.

(b) A statement that the subdivider is the record owner of all real property comprising the proposed minor land division, or that the record owner(s) consent to t

submission of the map.

(c) The method of sewage disposal for each parcel.

(d) The source of domestic potable water supply for each parcel.

(e) A clear statement of the proposed use of the property.

Any of the information required pursuant to this section may be shown on the face of the tentative minor land division map.

Section 313. COPIES. The subdivider shall submit sufficient copies of the tentative minor land division map to permit the Advisory Agency to furnish copies to other county departments, which in the opinion of the Advisory Agency may have an interest in the proposed minor land division.

Section 314. DISTRIBUTION. Upon submission of the tentative minor land division map, the Advisory Agency shall transmit copies to each member of the Subdivision Committee, as listed in Section 31, and to other agencies which in the opinion of the Advisory Agency have an interest in the proposed minor land division.

Section 315. DEPARTMENTAL REVIEW. County departments to which a copy of the tentative minor land division map is transmitted shall, within a period of not more than fifteen (15) days after receipt by the department, file with the Advisory Agency a report either approving of the tentative map as submitted, or indicating what changes are necessary to make the tentative map conform to the requirements of the Subdivision Map Act and of this ordinance coming under its jurisdiction. Failure of a County department to file a report on a tentative map before the expiration of the specified

review period shall be deemed as approval by the department of the maps as submitted.

Section 316. REPORT TO SUBDIVIDER. Any reports or recommendations on the tentative minor land division map submitted to the Advisory Agency shall be submitted in writing to the subdivider prior to final action on the map by the Advisory Agency. This provision shall be deemed complied with when such reports or recommendations are placed in the mail, directed to the subdivider at his designated address and bearing the proper postage.

Section 317. ADVISORY AGENCY ACTION. The Advisory Agency shall approve, conditionally approve, or disapprove the tentative minor land division map within twenty-four (24) working days after the date of submission. The Advisory Agency shall report its action directly to the subdivider. The time limits for acting and reporting on tentative maps as specified in this section may be extended by mutual consent of the subdivider and the Advisory Agency. The Advisory Agency may delegate its authority to act on tentative minor land division maps to the Director of Planning. The subdivider may appeal actions taken by the Director of Planning pursuant to this section to the Advisory Agency in the same manner and subject to the same provisions as prescribed for certificates of exception by Section 306.

Section 318. CRITERIA FOR REJECTION. The Advisory Agency, or the Director of Planning, when so delegated, may reject a tentative minor land division map, if the only practical use which can be made of the division as proposed is a use prohibited by any ordinance, statute, law, or other valid regulation.

Section 319. DURATION OF APPROVAL. The approval

or conditional approval of a tentative minor land division map shall extend for a period of twelve (12) months from the date of action by the Advisory Agency in the event that a parcel map is filed and for a period of eighteen (18) months from the date of action by the Advisory Agency in the event that a final map is filed. Upon written application, the Advisory Agency may grant an extension not to exceed one year.

Section 320. APPEAL TO BOARD OF SUPERVISORS. The subdivider may appeal the decision of the Advisory Agency on the tentative minor land division map to the Board of Supervisors by written notice to the Clerk of the Board within fifteen (15) days after the Advisory Agency's action in the same manner and subject to the same provisions as prescribed for subdivisions by Section 11552(b) of the Subdivision Map Act.

Section 15. This ordinance shall be published in the Metropolitan News a newspaper printed and published in the County of Los Angeles.

Chairman

ATTEST:

Clerk of the Board of Supervisors
of the County of Los Angeles

I hereby certify that at its meeting of August 22, 1967, the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

Ayes: Supervisors and

Noes: ~~Supervisors~~ None

Clerk of the Board of Supervisors
of the County of Los Angeles

Effective date September 22, 1967

~~Operative date~~

APPROVED AS TO FORM
HAROLD W. KENNEDY
County Counsel
By
Assistant

EHG:cc
4/21/65

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

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 13
CDP 4-07-001 (Hoang)

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.

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[1]. 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[2]. Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology[3]. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists[4].

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[5]. 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[6] 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

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[1] National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.

[2] Ibid.

[3] 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. Sorice 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.

[4] 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), 2nd 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), 2nd 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.

[5] 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).

[6] 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[7]. 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[8].

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[9]. Large terrestrial predators are particularly good indicators of habitat connectivity and of the general health of the ecosystem[10]. 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[11]. Sightings of cougars in both inland and coastal areas of the Santa Monica Mountains[12] 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[13]. Beyond simply destabilizing the ecosystem, fragmentation and disturbance

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[7] Letters received and included in the September 2002 staff report for the Malibu LCP.

[8] Schoch, D. 2001. Survey lists 300 pathways as vital to state wildlife. Los Angeles Times. August 7, 2001.

[9] 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.

[10] 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. Conerv. Biol. 10: 949-963. Noss, R. F. 1995. Maintaining ecological integrity in representative reserve networks. World Wildlife Fund Canada.

[11] 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.

[12] 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.

[13] Gause, G. F. 1934. The struggle for existence. Balitmore, 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)[14].

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[15]. 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[16] 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[17].

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,

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[14] Scheffer, M., S. Carpenter, J. A. Foley, C. Folke and B. Walker. 2001. Catastrophic shifts in ecosystems. Nature 413:591-596.

[15] NPS. 2000. op.cit.

[16] 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.

[17] 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[18]. 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[19]. 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[20] 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[21]. 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

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[18] 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.

[19] 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.

[20] 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.)

[21] 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[22]. 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[23], 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[24] 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

[22] 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.

[23] 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.

[24] 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[25]. 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[26]. 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[27]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that riparian habitat in southern California is endangered."*[28] 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[29]. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.[30] 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[31]. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

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[25] Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

[26] Dr, Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

[27] 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.

[28] 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.

[29] 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.

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

[31] 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.[32] 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[33]. 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."[34] Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire history.[35] In transitional and other settings, the mosaic of chaparral and coastal sage

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[32] Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

[33] 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).

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

[35] 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[36]. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer[37]. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November[38]. 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[39]. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher[40], 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

[36] 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, 2nd Edition. Calif. Native Plant Soc. Spec. Publ. #9.
[37] Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.
[38] Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.
[39] Ballmer, G. R. 1995. What's bugging coastal sage scrub. Fremontia 23(4):17-26.
[40] Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. Ecol. Monog.37:317-350.

the Santa Monica Mountains[41]. Five species of hummingbirds also follow the flowering cycle[42].

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[43].

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[44]."

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

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[41] 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.

[42] 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

[43] 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.

[44] 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[45].

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[46] 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[47] 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[48]. 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.

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[45] 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.

[46] 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), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.

[47] 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.

[48] 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[49], 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[50], 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 the 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

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[49] 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.

[50] 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[51]. 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."[52]

Coastal sage scrub in southern California provides habitat for about 100 rare species[53], many of which are also endemic to limited geographic regions[54]. In the Santa Monica Mountains, rare animals that inhabit coastal sage scrub[55] 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[56]. 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[57]. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.[58]

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

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[51] Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology 62:170-184.

[52] Ibid.

[53] 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 9th St., Sacramento, CA 95814.

[54] Westman, W.E. 1981. op. cit.

[55] 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.

[56] 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.

[57] 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.

[58] 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.[59] 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.[60] 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[61]. 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[62]. 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[63]. The rare red shank chaparral plant community also occurs in the Santa Monica Mountains. Although included within the category "northern mixed chaparral" in

[59] Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, July 2, 2002
[60] Westman, W.E. 1981. op. cit.
[61] Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.
[62] 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.
[63] 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[64].

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[65]. 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.[66]

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[67]. 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

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[64] Ibid.

[65] 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.

[66] Ibid.

[67] 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[68], so chaparral literally holds the hillsides together and prevents slippage.[69] 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[70]. Thus, the erosion from a 2-inch rain-day event drops from 5 yd^3/acre of soil one year after a fire to 1 yd^3/acre after 4 years.[71] 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^3/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

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[68] 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.

[69] 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.

[70] 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.

[71] Ibid.

tolerant of salt-laden fog than other oaks and is generally found nearer the coast[72]. 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[73]. These habitats support a high diversity of birds[74], and provide refuge for many species of sensitive bats[75]. 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

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[72] NPS 2000. op. cit.

[73] 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.

[74] 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

[75] 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[76]. Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland[77]. Native perennial grasslands are now exceedingly rare[78]. In California, native grasslands once covered nearly 20 percent of the land area, but today are reduced to less than 0.1 percent[79]. The California Natural Diversity Database (CNDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDB 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[80].

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), ripgut 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

[76] 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.
[77] 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.
[78] 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.
[79] NPS 2000. op. cit.
[80] 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[81], 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[82], and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation[83]. 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[84]. 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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[81] 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.

[82] 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.

[83] 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.

[84] NPS, 2000, op. cit.

Workshop stated[85] "*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"[86]. Fuel removal is reinforced by insurance carriers[87]. 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[88] around the home. The combination of insurance incentives and regulation assures that the 200-foot clearance zone will be applied universally[89]. 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[90]. 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, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species

[85] 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.

[86] 1996 Los Angeles County Fire Code Section 1117.2.1

[87] 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.

[88] Fuel Modification Plan Guidelines. Co. of Los Angeles Fire Department, Fuel Modification Unit, Prevention Bureau, Forestry Division, Brush Clearance Section, January 1998.

[89] 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.

[90] Ibid.

(mourning dove, American crow, Western scrub-jay, Northern mockingbird)[91]. 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[92].

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[93]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[94]. 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[95]. 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[96]. 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

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[91] 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.

[92] 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.

[93] 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.

[94] 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.

[95] 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.

[96] 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[97].

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.[98] 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[99].

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[100]. 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[101].

Summary

In a past action, the Coastal Commission found[102] 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

[97] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.
[98] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.
[99] 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.
[100] . 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.
[101] Ibid, and Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.
[102] 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[103]. 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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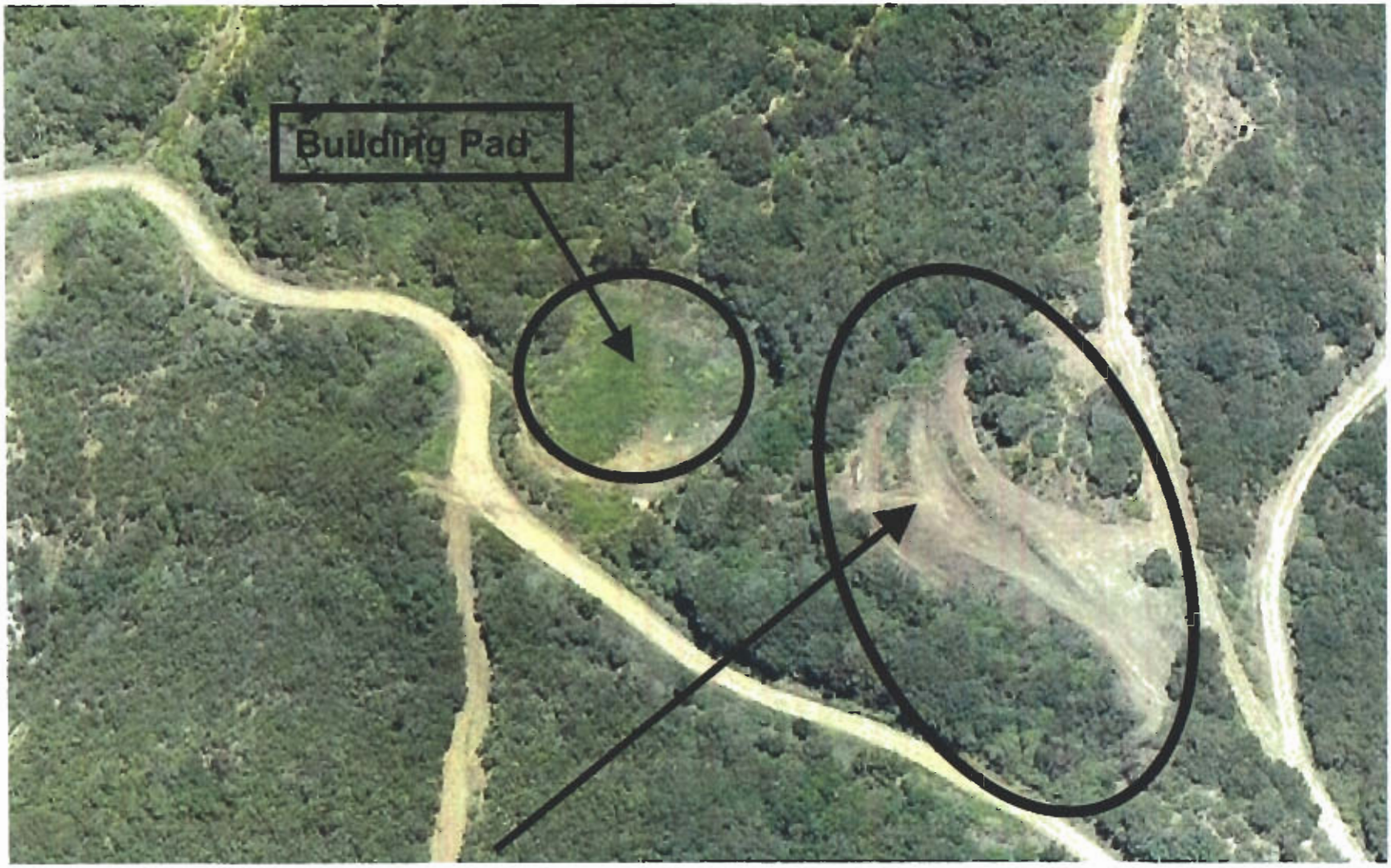
[103] Letter from F. A. Worthley, Jr. (CDFG) to N. Lucast (CCC) re Land Use Plan for Malibu dated March 22, 1983.



Approximate Area of Unauthorized Vegetation Removal and Grading to be Restored

Exhibit 14
CDP 4-07-001 (Hoang)
Restoration Area