

**CALIFORNIA COASTAL COMMISSION**

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



# Th 11d

## ADDENDUM

**DATE:** July 8, 2008  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item 11d, Application No. 4-06-081 (Dziadulewicz) Malibu, Los Angeles County, Thursday, July 10, 2008

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The purpose of this addendum is to clarify special conditions and attach and respond to a letter received from the National Park Service (NPS) dated July 7, 2008.

Note: ~~Strike through~~ indicates text to be deleted from the June 20, 2008 staff report and underline indicates text to be added to the June 20, 2008 staff report.

- 1.) In order to clarify the intent and to address concerns raised by NPS in their letter dated July 7, 2008, the following Special Condition shall be revised as follows on Page 7 of the June 20, 2008 staff report:

### 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. 4-06-081. 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. All building surfaces, including siding and roofing, shall consist of non-glare and non-reflective materials.

- 2.) In order to clarify the intent, Special Condition Eighteen (18) shall be revised as follows on Page 18 of the June 20, 2008 staff report:

## 18. Revised Plans

***Prior to issuance of the coastal development permit***, the applicant shall submit, for the review and approval of the Executive Director, two sets of revised building plans (site plan, floor plans, elevations, etc.). The house, accessory garage, water tank, and pool shall be in the location shown on June 2007 site plans; however, the revised plans must also show the proposed solar panels on the lower flat pad area, ~~and the~~ proposed shed, ~~and~~ The revised plans shall show that the previously proposed water tank to the southeast of the site has been deleted from the plans.

- 3.) The National Park Service (NPS) submitted a letter (attached) on July 7, 2008 commenting on the proposed project and special conditions as described in the June 20, 2008 staff report for CDP 4-06-081. NPS requests that the Commission deny the proposed accessory garage because they assert that the accessory garage is not in conformance with the easement NPS holds over the subject property. However, the Commission has no Coastal Act basis to prohibit the accessory garage within the 10,000 square foot allowable development area. Nevertheless, Special Condition Sixteen (16) requires the applicant to obtain NPS approval of their project prior to issuance of the permit. Therefore, NPS will still have the authority to deny the accessory garage and other development they deem inconsistent with the NPS conservation easement regardless of the Commission's action. Further, NPS has asked the Commission to modify Special Condition Eight (8) to require that NPS, rather than the Mountains Recreation and Conservation Authority (MRCA), receive the in-lieu fee if the applicant chooses the in-lieu fee option under Special Condition Eight (8)(C). An existing Memorandum of Understanding between the Commission and MRCA governs the transfer of these in-lieu funds specifically for the acquisition, or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone. However, staff notes that Special Condition Eight (8) does not prohibit MRCA from transferring the in-lieu fee received for this property to NPS. Additionally, to address the concerns of NPS regarding structural appearance, Special Condition Six (6) has been revised to assure that the building surfaces are comprised of non-reflective and non-glare materials.



## United States Department of the Interior

NATIONAL PARK SERVICE  
Santa Monica Mountains National Recreation Area  
401 West Hillcrest Drive  
Thousand Oaks, California 91360-4207

In reply refer to:  
L76 (SAMO/112-55)

July 7, 2008

California Coastal Commission  
South Central Coast Area  
89 S. California St., Suite 200  
Ventura, CA 93001

Dear Commissioners:

The National Park Service has reviewed the June 20, 2008, Coastal staff report for proposed Coastal Development Permit (CDP) No. 4-06-081, posted as Agenda Item 11d for the Thursday, July 10, Commission meeting. Per the staff report, the applicant requests approval for construction of a 3-story geodesic dome-style, 3,717 sq. ft. single family home, with detached accessory garage, driveway, septic system, solar panel array, retaining wall, pool, and 1,460 cu. yds. of grading. The application includes a request for after-the-fact approval for a 10,000 gallon water tank and 16 sq. ft. shed. The project site is located on a 9.68-acre parcel at 24593 Mulholland Highway (APN 4472-006-023) in the Santa Monica Mountains.

Development of the property is subject to the terms of a conservation easement purchased by the National Park Service in 1983. The conservation easement contains 17 items addressing "acts which the grantor promises to do or refrain from doing upon the land..." (Grant of Easement for NPS Tract No. 112-55, December 5, 1983). Our following comments, therefore, are regulatory in nature versus our typical advisory role for development of privately owned property within the Santa Monica Mountains National Recreation Area. The comments are organized by subject headings in the Coastal staff report.

### Project Description

We recommend the Commission not approve construction of the proposed detached accessory garage. Approval would be in conflict with the terms of the NPS easement. Item No. 2 in the NPS easement allows for development of one single family residence and one accessory structure on the subject property. The project description includes several structures that may be interpreted per the easement as the additional accessory structure: the proposed detached accessory garage, solar panel array, retaining wall, and pool; and the existing 10,000-gallon water tank and 16 square-foot shed. We have determined that the 10,000-gallon water tank represents the one accessory structure, and the detached accessory garage would be a second accessory structure. While the other structures are additional facilities, we have determined

they are generally supportive of sustainable energy production, are within a 10,000 square-foot development footprint, and are not visually intrusive.

Special Condition No. 6 – Structural Appearance

We request adding a statement to use non-glare/non-reflective siding and roofing materials in addition to the listed selection of colors. We would establish this requirement per Item No. 2 in the NPS easement that allows for Superintendent review and approval of proposed development.

Special Condition No. 8 – Habitat Impact Mitigation (In-Lieu Fees)

We find the appropriate recipient agency for the in-lieu fees is the NPS. The National Park Service regularly implements habitat restoration projects within the national recreation area that would be consistent with the terms for habitat restoration outlined in the Coastal staff report. Furthermore, federal taxpayer dollars acquired the NPS easement interest in the property, and therefore, the in-lieu fees would most appropriately be spent on restoration projects on other federal parkland within the national recreation area. We have discussed the special condition with MRCA staff, and they are supportive of conveying in-lieu fees directly to the NPS instead of MRCA.

Special Condition No. 11 – Open Space Conservation Easement

We find the proposed open space conservation easement in favor of the Mountains Recreation and Conservation Authority (MRCA) is appropriate. Item No. 12 of the NPS easement requires NPS written approval of any additional easements or other rights over the land. Prior to recording the easement in favor of MRCA, the applicant must submit to the Superintendent the proposed easement, complete with the legal description of the easement boundaries, allowed uses, etc., as described in the Coastal staff report. After the Superintendent's written approved, the easement may be recorded.

Special Condition No. 15 – Pool and Spa Drainage and Maintenance

We find the special condition appropriate. It should be noted, however, that some non-chlorinated pool sanitation systems can be equally or more impacting than chlorination. Per Item No. 2 in the NPS easement, the applicant should provide detail on the proposed pool sanitation system for Superintendent review and approval.

The subject property is within the Arroyo Sequit Significant Watershed, as noted in the staff report. A blue-line stream that drains into the Arroyo Sequit East Fork runs in a southerly direction approximately 800 feet from the proposed pool location. Arroyo Sequit creek hosts the federally listed endangered steelhead trout. It is imperative to protect the water quality of Arroyo Sequit drainage for the purposes of steelhead habitat protection.

Local Approvals Received/Special Condition No. 16 – NPS Approval

Special Condition No. 16, requiring documentation of the NPS's approval of the subject development, is appropriate per the terms of the NPS easement. Several local approvals have been received since at least 2005 for the subject project. As yet, we have not received from the applicant/landowner any verbal approach or written request for review and approval of development plans. Item No. 2 in the NPS easement requires the landowner to submit plans for development to the Superintendent for approval.

Special Condition No. 17 – Native Habitat Restoration/Revegetation Plan

We thank the Coastal staff for conditioning a restoration plan for the removal of vegetation in the southeast portion of the property and find the condition appropriate. Item No. 7 of the NPS easement forbids cutting, destroying, or removing of native vegetation unless authorized by the Superintendent or to meet local fire codes. The restoration of this area will correct unauthorized vegetation clearance from the past.

Special Condition No. 18 – Revised Plans

The revised plans should reflect the input of the NPS per Special Condition No. 16 – NPS Approval, and per Item No. 2 of the NPS easement.

Thank you for the opportunity to comment. If you have questions, please call Ray Sauvajot at (805)370-2339.

Sincerely,



Woody Smek  
Superintendent

cc: Greg Gress, Chief, Pacific Land Resources Program Center, Pacific West Region,  
National Park Service  
Joe Edmiston, Executive Director, Santa Monica Mountains Conservancy  
Ron Schafer, Superintendent, Angeles District, State Department of Parks and  
Recreation  
District Manager, Resource Conservation District of the Santa Monica Mountains

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# Th 11d

Filed: 2/1/08  
180<sup>th</sup> Day: 7/30/08  
Staff: A. Tysor  
Staff Report: 6/20/08  
Hearing Date: 7/10/08



## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO:** 4-06-081

**APPLICANT:** Jim and Helen Dziadulewicz

**PROJECT LOCATION:** 24593 Mulholland Hwy., Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a 3-story geodesic dome-style, 3,717 sq. ft. single family home, with detached accessory garage, driveway, septic system, solar panel array, retaining wall, pool, and 1,460 cu. yds. of grading. The application includes a request for after-the-fact approval for a 10,000 gallon water tank and 16 sq. ft. shed.

<b>Lot area:</b>	<b>9.68 acres</b>
<b>Building coverage:</b>	<b>2,983 sq. ft.</b>
<b>Ht. above finished grade:</b>	<b>27 ft.</b>

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with **eighteen (18) special conditions** relating to (1) plans conforming to 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) oak tree protection, monitoring, and mitigation, (14) final approved fuel modification plans, (15) pool and spa drainage and maintenance, (16) National Park Service approval, (17) native restoration/revegetation plan, and (18) revised 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 Environmental Review Board Approval, dated June 20, 2005; Los Angeles County Department of Regional Planning Approval-in-Concept, dated August 31, 2005; Updated Los Angeles County Department of Regional Planning Approval-in-Concept, dated August 30, 2007; Los Angeles County Department of Health Services Approval-in-Concept for septic system, dated June 15, 2006; Los Angeles County Fire Department Preliminary Fuel Modification Plan Approval, dated February 22, 2005; Los Angeles County Fire Department Access Approval-in-concept, dated April 5, 2007.

**SUBSTANTIVE FILE DOCUMENTS:** “General Habitat Assessment” for 34593 Mulholland Highway prepared by Ecological Sciences, Inc., dated March 2007; “Botanical Resources Survey” for 34593 Mulholland Highway, prepared by Ecological Sciences, Inc. dated June 2007; “Geologic and Geotechnical Engineering Investigation” for proposed single-family residence 34593 Mulholland Highway, prepared by GSC GeoSoils Consultants, Inc., dated October 18, 2005.

## **I. Approval with Conditions**

### **A. STAFF RECOMMENDATION**

**MOTION:** *I move that the Commission approve Coastal Development Permit No 4-06-081 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 the reports prepared for the site, including the "Geologic and Geotechnical Engineering Investigation" for proposed single-family residence 34593 Mulholland Highway, prepared by GSC GeoSoils Consultants, Inc., dated October 18, 2005. 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 final approved fuel modification plan . 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.
- 7) The upper flat pad area to the northeast of the proposed residence, outside of the approved development area, shall be revegetated with native plant species (appropriate for Fuel Modification Zone C), 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.

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 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (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 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the 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. 4-06-081. 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. 4-06-081 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. The location and acreage of on-site fuel modification shall be based on the Final Fuel Modification Plans required by Special Condition Fourteen (14). 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 pursuant to this special condition shall be provided for impacts to the chaparral ESHA on the subject lot 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. 4-06-081. 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 landscape plan prepared pursuant to Special Condition Two (2) and the fuel modification plan required by Special Condition Fourteen (14), shall require an amendment to Coastal Development Permit No. 4-06-081 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 8** 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 Fourteen (14) 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 8**. 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. **Oak Tree Protection, Monitoring, and Mitigation**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, which specifies replacement tree locations, tree or seedling size planting specifications, and a ten-year monitoring program with specific performance standards to ensure that the replacement planting program is successful. At least thirty (30) replacement seedlings, less than one year old, grown from acorns collected in the area, shall be planted in appropriate habitat areas on the subject parcel or at an offsite location approved by the Executive Director, as mitigation for adverse impacts to three oak trees (Oak Tree #1, #4, and #5) due to grading and widening of the driveway for fire department access which may significantly impact the oak tree root zones. The applicant shall commence implementation of the approved oak tree replacement planting program concurrently with the commencement of construction on the project site. An annual monitoring report on the oak tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. If monitoring indicates the oak trees are not in conformance with or has failed to meet the performance standards specified in the monitoring program approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental planting plan for the review and approval of the Executive Director. The revised planting plan shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

To ensure that all oak trees located on the subject parcel are protected during construction activities, temporary protective barrier fencing shall be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction

operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then temporary flagging shall be installed on all oak trees to ensure protection during construction. The permittee shall also follow the oak tree preservation recommendations that are enumerated in the "Botanical Resources Survey," prepared by Ecological Sciences, Inc., dated June 2007.

A biological consultant, arborist, or other resource specialist shall be present on-site during all construction operations and shall be directed to immediately notify the Executive Director if unpermitted activities occur or if any oak trees are damaged, removed, or impacted beyond the scope of the work allowed by Coastal Development Permit 4-06-081. This monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. Should any of the other oak trees (Oak Tree #2, #3, or #6) be damaged or removed as a result of construction activities, at least ten replacement oak seedlings, less than one year old, grown from acorns collected in the area, shall be planted in appropriate habitat areas on the subject parcel or at an off-site location as mitigation approved by the Executive Director. In that case, the applicant shall submit, for the review and approval of the Executive Director, a supplemental oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a monitoring program with specific performance standards to ensure that the replacement planting program is successful. An annual monitoring report on the supplemental oak tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. Upon submittal of the replacement planting program, the Executive Director shall determine if an amendment to Permit No. 4-06-081, or an additional coastal development permit, from the Commission is required.

**14. 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, Fuel Modification Plans for the approved development that have been granted Final Approval by the Los Angeles County Fire Department.

B. The Permittee 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

**15. Pool and Spa Drainage and Maintenance**

By acceptance of this permit, the applicant agrees to install a no chlorine or low chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

**16. National Park Service Approvals**

***Prior to issuance of the Coastal Development Permit***, the applicant shall obtain, and submit for the review and approval of the Executive Director of the Coastal Commission, evidence of all necessary approvals required by the easement held over the property by the National Park Service, document No. 83-1534392, including approval by the National Park Service Superintendent of the recordation of a open space conservation easement required by **Special Condition Eleven (11)**, above.

**17. Native Vegetation Restoration/ Revegetation Plan**

**A. *Prior to issuance of the coastal development permit***, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of restoration / revegetation plans for the cleared pathway on the southeastern portion of the property. The plan shall also include a revegetation and erosion control plan, including an irrigation plan, prepared by a qualified habitat restoration consultant. The restoration and revegetation plan shall include, but not be limited to, the following criteria:

- (a) 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, 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.

- (b) 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.
- (c) A monitoring program, prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31<sup>st</sup> each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first two (2) years, then the monitoring program shall be extended for a sufficient length of time so that the success and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site is adequate to provide ninety percent (90%) coverage by the end of the five (5) year monitoring period, and all vegetation is able to survive without additional outside inputs, such as supplemental irrigation.
- (d) 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.

**18. Revised Plans**

*Prior to issuance of the coastal development permit*, the applicant shall submit, for the review and approval of the Executive Director, two sets of revised building plans (site plan, floor plans, elevations, etc.). The house, accessory garage, and pool shall be in the location shown on June 2007 site plans; however, the revised plans must also show the proposed solar panels on the lower flat pad area, the proposed shed, and shall show that the previously proposed water tank to the southeast of the site has been deleted from the plans.

**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 geodesic dome-style 3,717 sq. ft. single family home, with detached accessory garage, driveway, septic system, solar panel array, retaining wall, water tank, pool, and 1,460 cu. yds. of grading. (**Exhibits 2-7**). The project also includes after-the-fact approval for the 10,000 gallon water tank which is currently located near the northeasterly flat pad area and a 16 sq. ft. shed located between the two flat pad areas along the ridge. The applicant also proposes to revegetate a footpath/trail that was cleared on the site extending from the flat pad area on the ridgeline to the eastern property boundary. The solar panels are proposed to be placed on the southerly flat pad area over the seepage pits. **Special Condition Eighteen (18)** requires the applicant to submit revised plans showing the proposed solar panels located on the southern pad area, the shed, and showing no water tank proposed for the southeast portion of the property. The applicant has proposed several different changes to the project and has submitted several sets of plans, but no one single set of plans shows all the presently proposed development.

The project site is a vacant 9.68 acre parcel (Assessor's Parcel Number 4472-006-023) on Mulholland Highway in the Santa Monica Mountains. (**Exhibit 1**) Elevations on the site range from 866 feet to 1,080 feet on the ridge at the northeast and southeast corners of the parcel. Most of the site comprises a southwest to northeast trending ridge with steep slopes. The site contains an approximately 1,500 ft. long dirt driveway

accessing two flat graded pad areas along the southwest to northeast trending ridgeline roughly in the center of the property. According to an analysis of historical aerial photographs of the subject site, the driveway and flat pad areas appear to have been constructed prior to the January 1, 1977 effectiveness date of the Coastal Act. Other than the flat pad areas, and driveway, the parcel consists of steep terrain and dense vegetation. Development in the area is sparse, except scattered single-family residences to the east of the subject parcel. The site is located within the Arroyo Sequit Significant Watershed and the site is surrounded, although not immediately, to the north and west by National Park Service property.

The Commission previously approved a Coastal Development Permit for a single family residence on the parcel, CDP No. 5-87-184, but records indicate that the permit was not issued. Additionally, in 1983, the National Park Service purchased a conservation easement over the 9.68 acre parcel. (Exhibit 10). The easement restricts development on the site to one single-family residence located on one of the existing flat pad areas. The easement also allows an accessory building on one of the pads with written approval of the National Park Service Superintendent and utilities necessary for the residence. Tree removal and brush clearance is prohibited without the written approval of the National Park Service Superintendent.

## **B. Hazards and Geologic Stability**

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

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

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



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

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

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

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

1. Plans Conforming to Geotechnical Engineer's Recommendations
2. Landscaping and Erosion Control Plan
3. Assumption of Risk, Waiver of Liability and Indemnity
4. Drainage and Polluted Runoff Control Plan
14. Final Approved Fuel Modification Plans

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**

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

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

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

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

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

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 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 the surrounding parcels.***

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

***P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.***

***P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.***

***P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.***

***P69 Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

- 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.*
- P82** *Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*
- P84** *In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.*

## **1. Project Description and Site Specific Biological Resource Information**

The subject site is located on the north side of Mulholland Highway in the Santa Monica Mountains within the Arroyo Sequit Significant Watershed near National Park Service Property and Leo Carillo State Park. The National Park Service holds a conservation easement over the property, but allows for the development of a single-family residence on one of the two flat pad areas constructed prior to the effectiveness date of the Coastal Act. Other than the two flat pad areas along the ridge and the driveway, the parcel consists of steep terrain and dense vegetation. Development in the area is sparse, except scattered single-family residences to the east of the subject parcel. A vast area of National Park Service property is nearby (although not directly adjacent) to the north and west.

According to the biological assessments for the site, (listed in the Substantive File Documents) submitted by the applicant, the primary vegetation community present on the site and adjacent to the site is classified as chaparral and sage scrub. The northwest facing slopes support primarily large, dense chaparral shrubs reaching more than six feet in height. On the southeast facing slopes, the smaller shrubs dominate with an open cover of sage scrub. More specifically, according to the General Habitat Assessment report, the dominant plants present within the native chaparral and scrub communities include large shrubs including laurel sumac (*Malosma laurina*), bigpod and greenbark ceanothus (*Ceanothus megacarpus*, *C. spinosus*), chamise (*Adenostema fasciculata*), with sugarbush (*Rhus ovata*), and bigberry manzanita (*Arctostaphylos glauca*). Lower shrubs include buckwheat (*Eriogonum fasciculatum*, *E. cinerium*), black sage (*Salvia mellifera*), bush sunflower (*Encelia californica*), as well as native

needlegrasses (*Nassella spp.*), giant rye (*Leymus condensatus*) and yucca (*Yucca whipplei*). Ferns and bryophytes occur in shaded areas sheltered by rock outcrops and along the road cut near the site entrance. Additionally, six coast live oak trees (*Quercus agrifolia*) are present on the site. A map of these habitats on the site was prepared by the biological consultant.

According to public information, the applicant purchased the subject parcel in 2004 for \$340,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. The land use designation that applies to the property is Mountain Land II, allowing residential development at a maximum density of 1 dwelling unit per 20 acres of land.

The project has been designed to cluster all development on the existing disturbed area near the northeast portion of the site. Any alternative location on the site would likely include the removal of more native vegetation and require more earth disturbance. Not including the area of the driveway or turnaround, the proposed development area is estimated by the applicant to measure less than 10,000 sq. ft. The applicant's fuel modification plan (preliminarily 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 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones.

## 2. ESHA Designation on the Project Site.

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

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

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

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively

pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission's Ecologist, Dr. John Dixon<sup>1</sup> (hereinafter "Dr. Dixon Memorandum"), which is incorporated as if set forth in full herein.

Unfortunately, coastal sage scrub, chaparral, oak woodland and riparian habitats are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine stands of coastal sage scrub, chaparral, oak woodland, and riparian habitats are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>2</sup>.

As described above, the project site contains pristine chaparral and coastal sage scrub habitat that is part of a large, contiguous block of pristine native vegetation. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the chaparral and coastal sage scrub habitat on the project site meets the definition of ESHA in the Coastal Act.

### **3. Resource Dependent Use.**

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

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

The Commission finds that the project site and the surrounding area constitutes an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require both the complete removal of ESHA from the home site and fuel modification for fire protection purposes around it, the proposed project would also significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would therefore 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 United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

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

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by the Commission on sites in the immediate area. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site

as ESHA. Based on these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the 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 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.

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 similar habitat areas 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, notwithstanding Section 30240, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

#### **4. Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values**

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to "take" the 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 assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence and accessory structures, and the use of the development by residents will result in unavoidable loss of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size

of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the Santa Monica Mountains to avoid a taking of property. As detailed above, the proposed development area conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within this development area. Although a smaller development area would reduce the ESHA loss somewhat, the reduction would not be significant. Nor are there other resources such as streams, riparian areas, or visual resources that would be protected by a smaller development area. As such, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

Further, **Special Condition Two (2)** requires revegetation of the northeast flat pad that was constructed prior to the effectiveness date of the Coastal Act. Although no structures are proposed for that area, revegetation is necessary to assure that development does not expand beyond the approved development area (which extends to the pool) to minimize impacts to ESHA to the greatest extent feasible. **Special Condition Two (2)**, requires the applicant to revegetate the upper flat pad area to the northeast of the proposed residence, outside of the approved development area, with native plant species (appropriate for Fuel Modification Zone C), 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.

## 5. Open Space Conservation.

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. The Commission finds that for the project to be consistent with Section 30240 to the maximum extent feasible, while providing a reasonable economic use, this project must constitute the maximum amount of ESHA destruction on the site and the remaining ESHA on the property must be preserved in perpetuity.

The Commission finds that the most effective way to assure ESHA preservation on the site is the granting of an open space conservation easement to the Mountains Recreation and Conservation Authority (a joint powers authority) that prohibits



development on the remainder of the site now and in the future. The Mountains Recreation and Conservation Authority (MRCA) is a public agency that represents 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 that are owned by the Santa Monica Mountains Conservancy. In the course of its normal duties, the MRCA park rangers and other staff are better able to monitor open space areas to ensure that the restrictions are followed 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. 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.

It is important that the property owner grant 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 the following two reasons. 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 was 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 project site will be conserved in the future. Finally, 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.

In conclusion, the Commission finds that it is necessary to require the applicant to grant an open space easement to the MRCA over the open space area on the project site in order to insure that the remaining ESHA will be preserved, as detailed in **Special Condition Eleven (11)**. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

## 6. Habitat Impact Mitigation

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

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

Obviously, native vegetation that is cleared and replaced with ornamental species or substantially removed and widely spaced will be lost as habitat and watershed cover. As discussed in the Dr. Dixon Memorandum<sup>3</sup>, the cumulative loss of habitat cover also

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

reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The Commission has identified three appropriate methods for providing mitigation for the unavoidable loss of ESHA resulting from development; namely, habitat restoration, habitat conservation, and the payment of an in-lieu fee for habitat conservation. The Commission finds that any of these measures is appropriate in this case to mitigate the loss of ESHA on the project site. 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.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat of a similar type as that impacted equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA.

The third habitat impact mitigation option is the payment of 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 comparable habitat types, and the acreage of habitat affected by the project. The Commission has, in past permit decisions, determined the appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, based on research carried out by the Commission's biologist. A range of cost estimates was obtained that reflected 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.

The Commission has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). The in-lieu fee found by the Commission to be appropriate to provide mitigation for the habitat

impacts to ESHA areas where all native vegetation will be removed (building site, the “A” zone required for fuel modification, and off-site brush clearance areas), 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) is \$12,000 per acre. Further, the Commission has required a fee of \$3,000 per acre for areas where the vegetation will be thinned, but not irrigated (“C” zone or other non-irrigated fuel modification zone).

The acreage of ESHA that is impacted must be determined based on the size of the development area, required fuel modification (as identified on the final fuel modification plan approved by the Los Angeles County Fire Department) on the site, and required brush clearance off-site. The Commission finds that it is necessary to require the applicant to delineate the total acreage of ESHA on the site (and offsite brush clearance areas, if applicable) that will be impacted by the proposed development, and provide mitigation to compensate for this loss of habitat, through one of the three methods described above, and required by **Special Condition Eight (8)**. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

## 7. Additional Mitigation Measures to Address Additional ESHA Impacts

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area that are not directly and immediately affected by the proposed development, **Special Condition 2** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

In addition, the Commission has found that night lighting of ESHA areas in the Malibu/Santa Monica Mountains may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, **Special Condition 7**, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is

commonly found in this rural and relatively undisturbed area and that traverses the area at night.

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

Additionally, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and to ensure that any future structures, additions, change in landscaping or intensity of use at the project site that may otherwise be exempt from coastal permit requirements are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition 9** the future development restriction, has been required.

Further, **Special Condition 10** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Lastly, unpermitted development occurred on the subject parcel prior to submission of this permit application, including vegetation clearance for a pathway extending from the southeastern portion of the pad upslope onto the adjacent property. Analysis of historical 1977 infrared aerial photographs of the site does not show this development existing on the site. Additionally, this development was not permitted after-the-fact by the previous approval in 1987. To ensure that previously disturbed ESHA is restored to maintain habitat value consistent with resource protection policies of the Coastal Act, **Special Condition Seventeen (17)** requires the applicant to restore the disturbed pathway back to natural conditions and requires the applicant to submit final restoration/revegetation plans for the area (area shown in Exhibit 9), 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. **Special Condition Twelve (12)**, site inspection, is necessary to ensure compliance with **Special Condition Seventeen (17)**, restoration of the area subject to unpermitted vegetation and removal.

## 8. Oak Tree Impacts

Six coast live oak trees (*Quercus agrifolia*) are present on the property along the driveway and near Mulholland Highway. The biological report identified three trees that

will likely be impacted by driveway widening for fire access requirements, including Oak Tree #1, Oak Tree #5, and Oak Tree #4. (Exhibit 9) Oak Tree #1 is located along the switchback of the access road in the north-central portion of the site and has seven trunks and is nearly 20 ft. tall. This oak tree may be impacted by driveway widening for fire requirements, according to the oak tree report. Oak Tree #5 hangs on the edge of the road cut for Mulholland Highway at the entrance to the property. The main trunk measures nearly 10.5 inches in diameter and is three feet from grade with low branches. Despite that an estimated 40 percent of roots were intact within the shallow soil upslope of the trunk, the report states that the tree appears healthy with a moderately dense crown and that this tree may be impacted by road development for the project and will continue to lose anchorage as the road cut erodes. Oak Tree #4 is located just northeast of Tree#1 along the driveway and may also be impacted by additional road expansion for fire access requirements. The biologist indicated that if mitigation is required, the low-lying area northeast of Oak Tree #6 could accommodate the planting of several oak trees.

Through past permit actions on residential development in the Santa Monica Mountains the Commission has found that native oak trees are an important coastal resource. As required by Section 30250 of the Coastal Act, the proposed new development can be approved only where it will not have impacts on coastal resources. Additionally, oak trees are an important component of the visual character of the area and must be protected in order to ensure that the proposed development is visually compatible with this character, as required by Section 30251 of the Coastal Act. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. Areas near the subject site are considered to be ESHA as they contain large tracts of contiguous, relatively undisturbed oak woodland and chaparral habitat. Furthermore, individual oak trees such as those on the subject site do provide habitat for a wide variety of wildlife species and are considered to be an important part of the character and scenic quality of the area.

Oak trees are a part of the California native plant community and need special attention to maintain and protect their health. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree. Oak trees provide important habitat and shading for other animal species, such as deer and bees. Oak trees are very long lived, some up to 250 years old, relatively slow growing becoming large trees between 30 to 70 feet high, and are sensitive to surrounding land uses, grading or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss.

The article entitled "Oak Trees: Care and Maintenance" prepared by the Forestry Department of the County of Los Angeles states:

*Oaks are easily damaged and very sensitive to disturbances that occur to the tree or in the surrounding environment. The root system is extensive but surprisingly shallow, radiating out as much as 50 feet beyond the spread of the tree leaves, or canopy. The ground area at the outside edge of the canopy, referred to as the dripline, is especially important: the tree obtains most of its surface water and nutrients here, as well as conducts an important exchange of air and other gases.*

This publication goes on to state:

*Any change in the level of soil around an oak tree can have a negative impact. The most critical area lies within 6' to 10' of the trunk: no soil should be added or scraped away. . . . Construction activities outside the protected zone can have damaging impacts on existing trees. . . . Digging of trenches in the root zone should be avoided. Roots may be cut or severely damaged, and the tree can be killed. . . . Any roots exposed during this work should be covered with wet burlap and kept moist until the soil can be replaced. The roots depend on an important exchange of both water and air through the soil within the protected zone. Any kind of activity which compacts the soil in this area blocks this exchange and can have serious long term negative effects on the trees. If paving material must be used, some recommended surfaces include brick paving with sand joints, or ground coverings such as wood chips . . .*

As stated above, the site contains 6 coast live oak trees. In past permit actions, the Commission has required that the removal of native trees, particularly oak trees, or encroachment of structures into the root zone be avoided unless there is no feasible alternative for the siting of development. The applicant has explored other alternative designs to reduce impacts to oak trees, but due to the fact that oak trees already exist along the previously disturbed and graded access road and the need for road improvements for fire department access, the applicant was not able to design the project to avoid encroachment into the protected zones of three oak trees.

**Special Condition Thirteen (13)** requires the planting of thirty (30) oak trees as mitigation for impacts to Oak Tree #1, #4, and #5 adjacent to the driveway because root zones will be impacted due to widening for fire department access. There are no other alternatives that can be employed to avoid or reduce impacts to oak trees because the location of the existing driveway was constructed prior to the effective date of the Coastal Act (January 1, 1977) and other alternative locations for the driveway would require removal of ESHA and would require more earthwork. Additionally, **Special Condition Thirteen (13)** provides for oak tree protection, monitoring, and mitigation. To ensure that all oak trees located on the subject parcel are protected during construction activities, **Special Condition Thirteen (13)** requires that temporary protective barrier fencing shall be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction operations cannot feasibly be carried out in any

location with the protective barrier fencing in place, then temporary flagging must be installed on all oak trees to ensure protection during construction. Additionally, **Special Condition Thirteen (13)** requires that a biological consultant, arborist, or other resource specialist shall be present on-site during all construction operations on site that are in proximity to any of the six oak trees and shall be directed to immediately notify the Executive Director if unpermitted activities occur or if any oak trees are damaged, removed, or impacted beyond the scope of the work allowed by Coastal Development Permit 4-06-081. This monitor will have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

Further, if any of Oak Trees #2, #3, or #4 are damaged or removed as a result of construction activities, **Special Condition Thirteen (13)** requires at least ten replacement plants to be planted on the project site or another location, approved by the Executive Director, as mitigation. In that case, the applicant shall submit, for the review and approval of the Executive Director, a supplemental oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a monitoring program to ensure that the replacement planting program is successful. An annual monitoring report on the supplemental oak tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years.

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

#### **D. 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.*

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



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

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

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

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

2. Landscaping and Erosion Control Plan
4. Drainage and Polluted Runoff Control Plan
14. Final Approved Fuel Modification Plans

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

## **E. Visual Resources**

Section 30251 of the Coastal Act states:

***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where***

***feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

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 geodesic dome-style, 3,717 sq. ft. single family home, with detached accessory garage, driveway, septic system, solar panel array, retaining wall, water tank, pool, and 1,460 cu. yds. of grading. The project also includes after-the-fact approval for the 10,000 gallon water tank which is currently located near the northeasterly flat pad area and a 16 sq. ft. shed located between the two flat pad areas along the ridge. The applicant also proposes to revegetate a footpath/trail that was cleared on the site extending from the flat pad area on the ridgeline to the eastern property boundary. The solar panels are proposed to be placed on the southerly flat pad area over the seepage pits. Elevations on the site range from 866 feet to 1,080 feet on the ridge at the northeast and southeast corners of the parcel. Most of the site comprises a southwest to northeast trending ridge with steep slopes. The site contains an approximately 1,500 ft. long dirt driveway accessing two flat graded pad areas along the southwest to northeast trending ridgeline roughly in the center of the property. Other than the flat pad areas, and driveway, the parcel consists of steep terrain and dense vegetation. National Park Service Property is located to the north and west of the site and only scattered residential development is located to the east of the site.

The applicant has provided a visual analysis of the property showing photographs taken from the Backbone Trail north of Mulholland Highway looking towards the subject site. The subject site will be visible from portions of the Backbone Trail. The applicant also provided visual simulations of the proposed residence from various points along Mulholland Highway. The simulations show that the dome structures (residence and accessory garage) will be partially visible from points along Mulholland Highway, but views of the structure will be reduced at points due to intervening terrain and due to the mountainous topography of the area. Additionally, the structure has been clustered on one existing pad area (graded prior to the effective date of the Coastal Act), with a development area of 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. The applicant explored alternative locations on the property to site the house, including locating the residence on an area directly adjacent to Mulholland Highway on a lower elevation and locating the residence on the existing southwesterly pad. However, these alternative locations would require more landform alteration and additional removal of environmentally sensitive habitat area, and would not reduce view

impacts. 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.

## **F. Unpermitted Development**

Unpermitted development occurred on the subject parcel prior to submission of this permit application including vegetation clearance for a pathway extending from the southeastern portion of the pad upslope onto the adjacent property. A 10,000 gallon water tank and a 16 sq. ft. wooden pump house/shed existing on the flat pad areas are also unpermitted. The applicant is now requesting after-the-fact approval to authorize the water tank and the pump house structure. Analysis of historical 1977 infrared aerial photographs of the site does not show this development existing on the site. Additionally, this development was not permitted after-the-fact by the previous approval in 1987. **Special Condition Seventeen (17)** requires the applicant to restore the disturbed pathway back to natural conditions and requires the applicant to submit final restoration/ revegetation plans as shown in Exhibit 9, 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. **Special Condition Twelve (12)**, site inspection, is necessary to ensure compliance with **Special Condition Seventeen (17)**, 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:

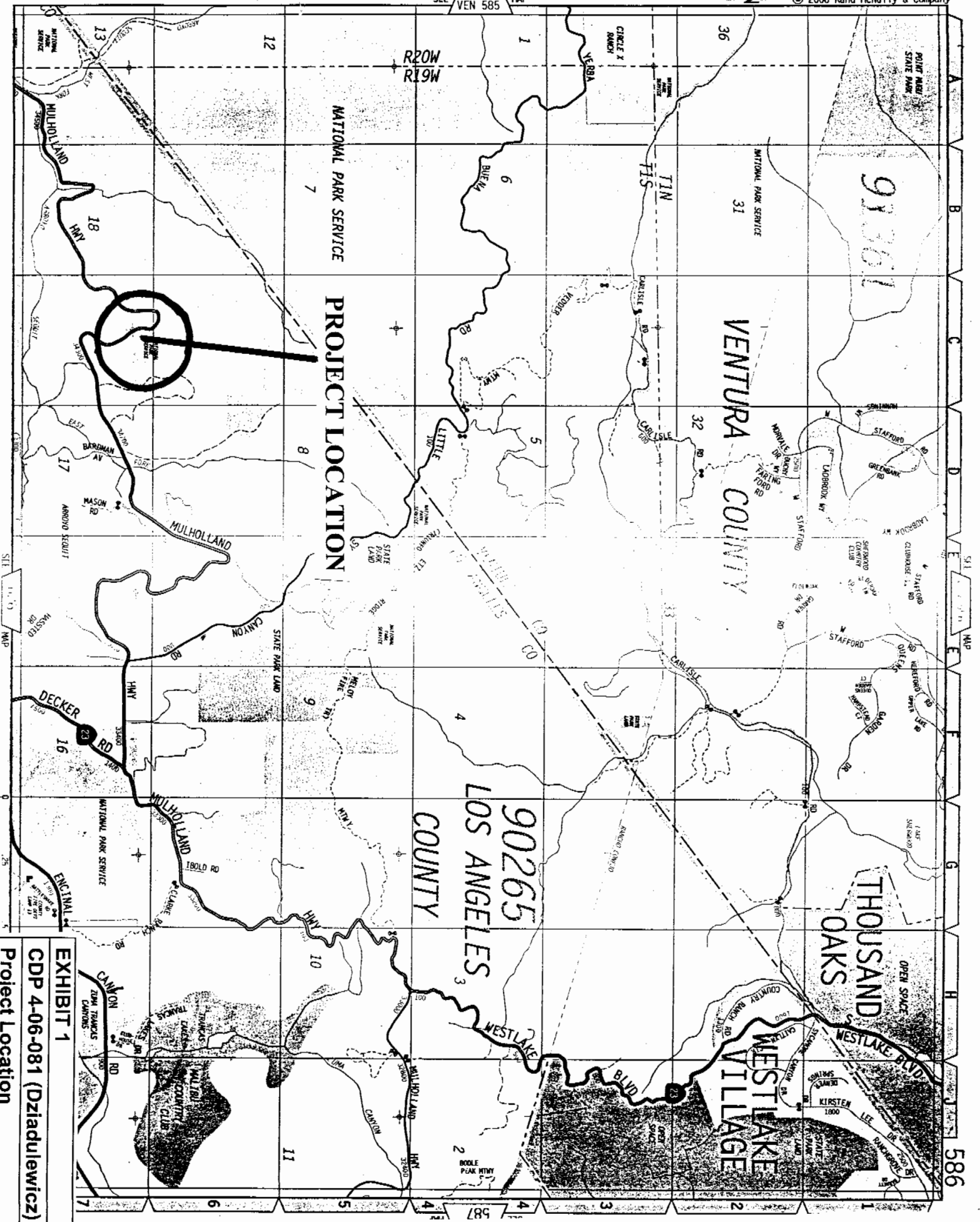
*a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the 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).

## **H. 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, 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.



**PROJECT LOCATION**

90265  
LOS ANGELES  
COUNTY

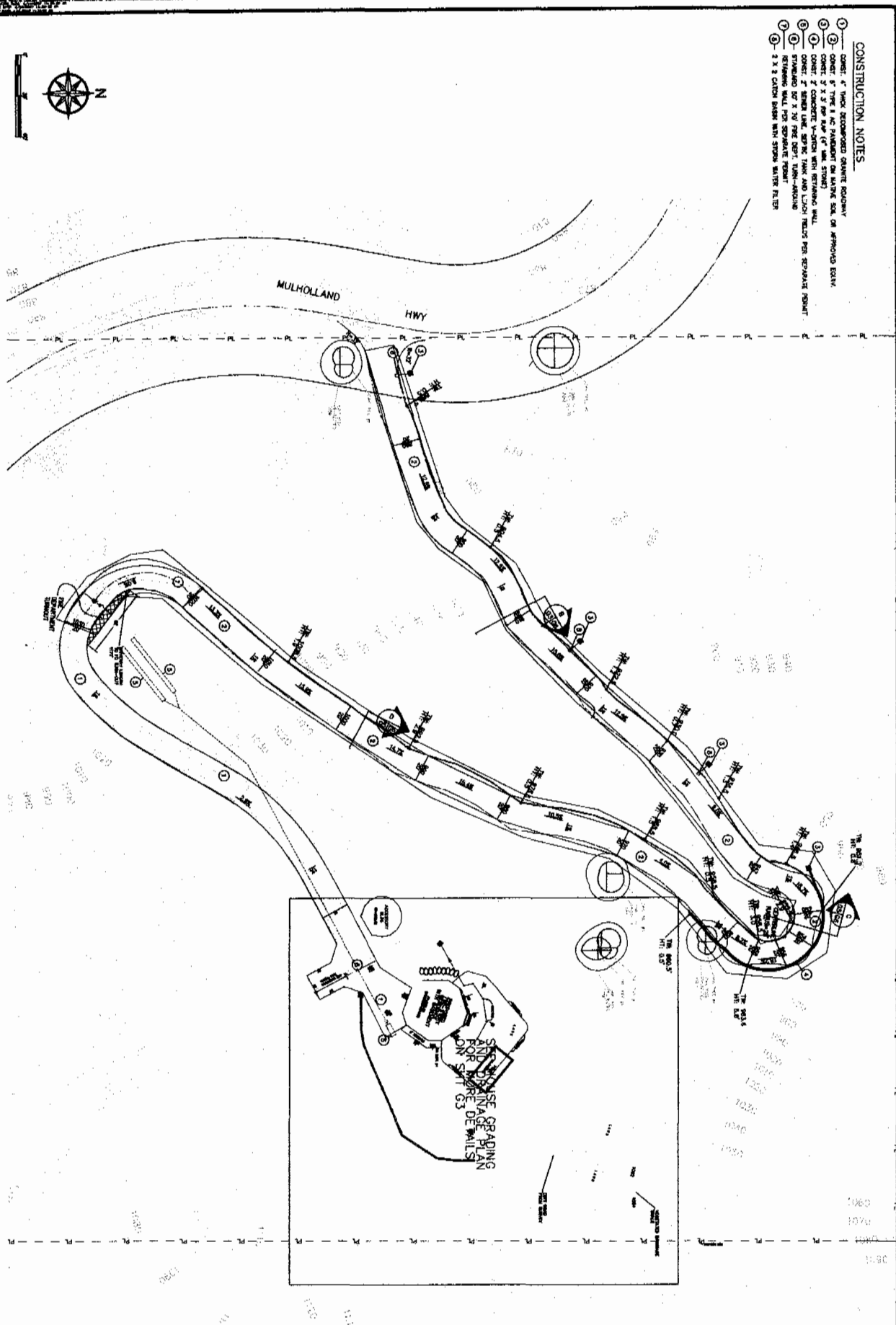
VENTURA  
COUNTY

THOUSAND  
OAKS

WESTLAKE  
VILLAGE

**EXHIBIT 1**  
**CDP 4-06-081 (Dziadulewicz)**  
**Project Location**

- CONSTRUCTION NOTES**
- ① - CONST. 4" THICK REINFORCED CONCRETE ROADWAY
  - ② - CONST. 6" THICK 14C PAVEMENT ON MATURE SOIL OR APPROX. EQVA.
  - ③ - CONST. 2" X 2" PER SQ. FT. (4" MAX. STOPS)
  - ④ - CONST. 2" CONCRETE V-DITCH WITH RETAINING WALL
  - ⑤ - CONST. 2" SLOPE LINE, SLOPE 1:1 AND LITCH BELLS FOR SEPARATE FLOW
  - ⑥ - RETAINING WALL, 12" SEPARATE FLOW
  - ⑦ - 2" X 2" CATCH BASIN WITH STORM WATER FILTER



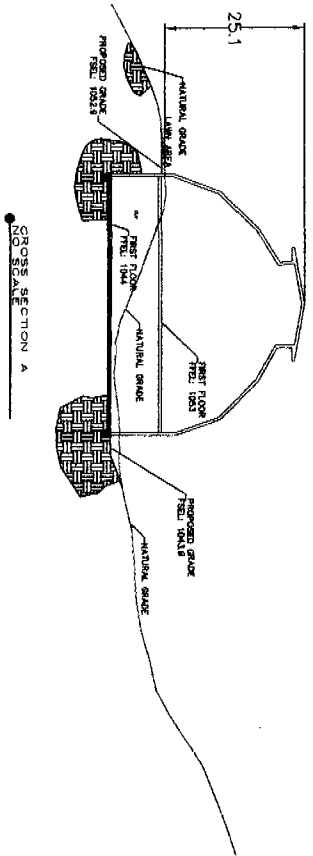
These plans do not show the solar panels. Final plans showing all development must be submitted pursuant to Special Condition 18.

**EXHIBIT 2**  
**CDP 4-06-081 (Dziadulewicz)**  
 Site Plans/ Preliminary Grading Plans  
 G4 of 5

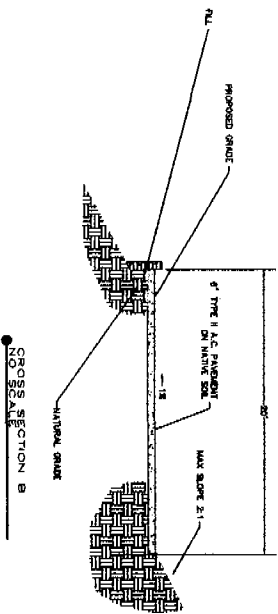
	<p><b>SITE GRADING AND DRAINAGE PLAN</b></p> <p>34593 MULHOLLAND MALIBU CALIFORNIA</p>	<p><b>AHSIRT ENGINEERING</b>        2025 HOLLYWOOD AVE        HOLLYWOOD CA 90260        PHONE: 310-774-0000        FAX: 310-774-0004</p>	<p><b>AHSIRT ENGINEERING</b></p>
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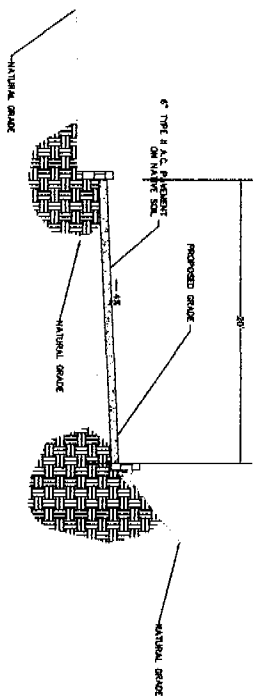




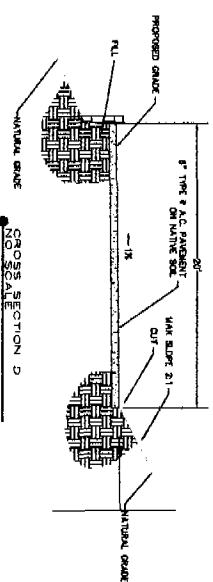
CROSS SECTION A  
NO SCALE



CROSS SECTION B  
NO SCALE



CROSS SECTION C  
NO SCALE



CROSS SECTION D  
NO SCALE

DATE: 12/14/07  
BY: J.A. BR. 10476

AHSIRT  
ENGINEERING  
3210 HOLLEN AV.  
COSTA MESA, CA 92626  
PHONE: 949-441-0244  
FAX: 949-441-0244

CROSS SECTIONS  
34593 MULHOLLAND  
MALIBU CALIFORNIA

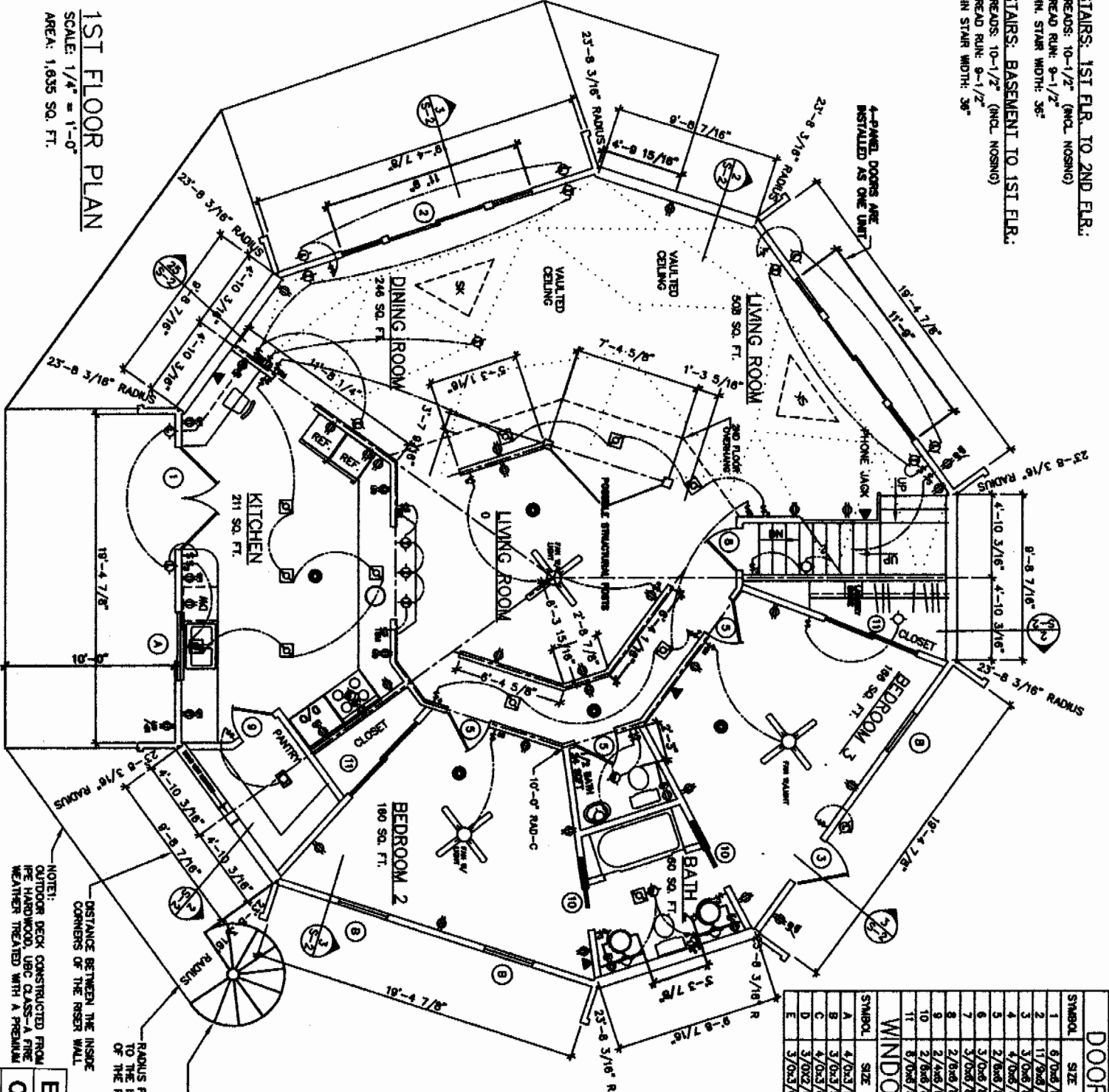


DATE: 12/14/07  
BY: J.A. BR. 10476  
CHECKED BY: T.M. 10476  
SCALE: T.M.  
SHEET NUMBER: G5 of 5

EXHIBIT 4  
CDP 4-06-081 (Dziadulewicz)  
Cross Sections



STAIRS: 1ST FLR. TO 2ND FLR.  
 TREADS: 10'-1/2" (INCL. NOSING)  
 TREAD RUN: 9'-1/2"  
 MIN. STAIR WIDTH: 36"  
 STAIRS: BASEMENT TO 1ST FLR.  
 TREADS: 10'-1/2" (INCL. NOSING)  
 TREAD RUN: 9'-1/2"  
 MIN. STAIR WIDTH: 36"



1ST FLOOR PLAN  
 SCALE: 1/4" = 1'-0"  
 AREA: 1,635 SQ. FT.

DOOR SCHEDULE			
SYMBOL	SIZE	QTY	TYPE
1	6/0x8/8	1	FRENCH 2 PANEL TELEFERRED
2	11/8x8/0	2	S.L.G. 4 PANEL TELEFERRED
3	3/0x8/8	1	FRENCH TELEFERRED
4	4/0x8/8	2	FRENCH 2 PANEL TELEFERRED
5	2/8x8/8	2	SOLID WOOD FLUSH
6	3/0x8/8	2	1 3/4" SOLID WOOD
7	3/0x8/8	1	1 HR FIRE RATED
8	2/8x8/8	1	SOLID WOOD (NOTE)*
9	2/4x8/8	1	SOLID WOOD FLUSH
10	2/8x8/8	2	POCKET DOOR
11	8/0x8/8	3	CLOSET DOOR (WOOD)

WINDOW SCHEDULE			
SYMBOL	SIZE	QTY	TYPE
A	4/0x3/8	1	DOUBLE CASEMENT
B	3/0x3/8	3	CASEMENT
C	4/0x3/0	1	DOUBLE CASEMENT
D	3/0x2/0	10	AWNING
E	3/0x3/0	2	CASEMENT

\*RIGHT-FITTING, SELF-CLOSING  
 \*\*CASEMENT WINDOW WEETS  
 REQUIREMENTS FOR EGRESS

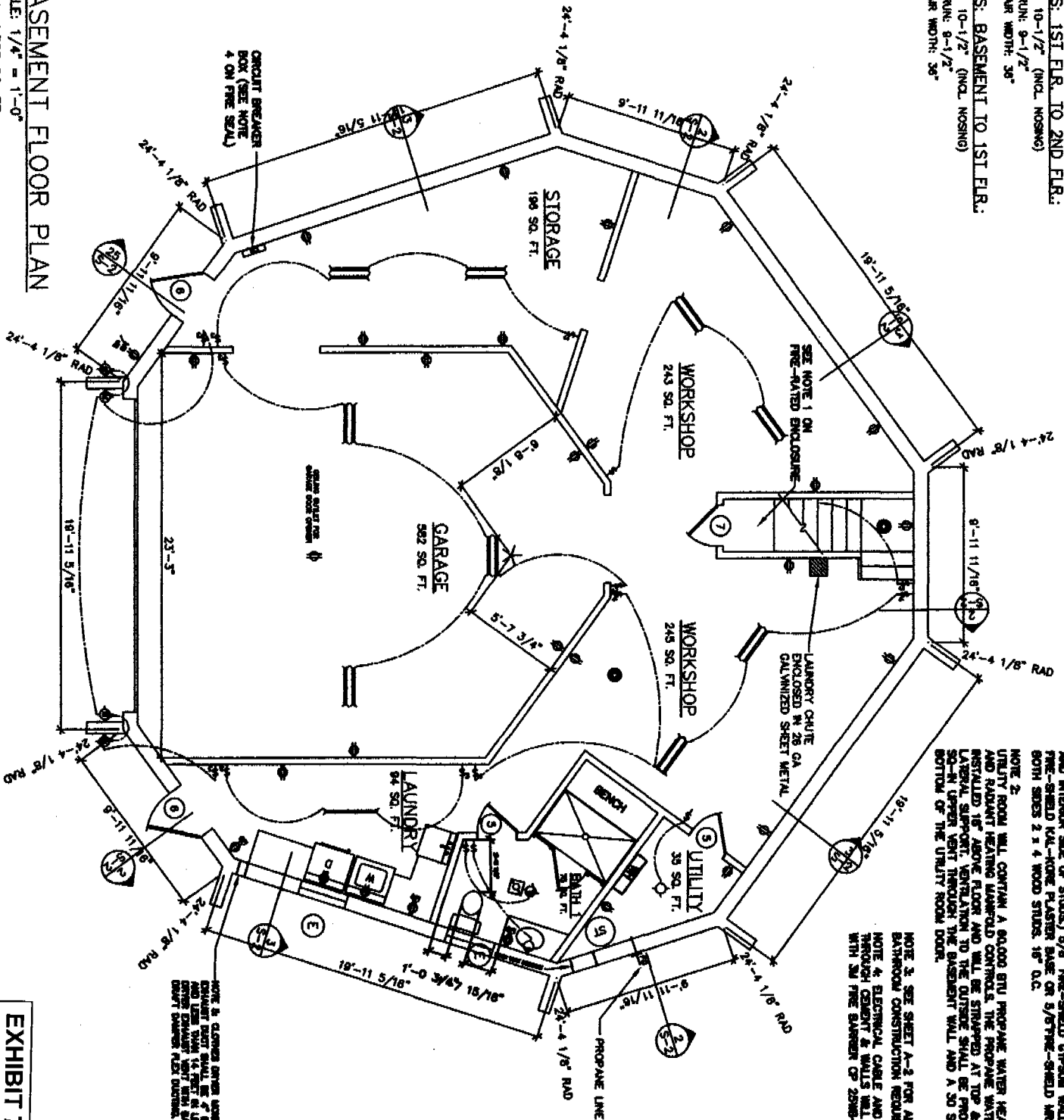
EXHIBIT 6  
 CDP 4-06-081 (Dziadulewicz)  
 First Floor Plan

AMERICAN  
 INGENUITY .INC.  
 8777 HOLIDAY SPRINGS RD  
 ROCKLEDGE, FL 32855-5805  
 PH. 321-639-8777 USA

DOMI PLANS FOR:  
**DZIADULEWICZ RESIDENCE**  
 SHEET TITLE:  
**1ST FLOOR PLAN**

DRAWN BY: DR.J.  
 CHECKED BY:  
 DATE: 04/28/07  
 DRAWING NO: 480\_DZIADULEWICZ  
 REVISION: - 1

STAIRS: 1ST FLR. TO 2ND FLR.  
 TREADS: 10'-1/2" (INCL. NOSING)  
 TREAD RUN: 9'-1/2"  
 MIN. STAIR WIDTH: 36"  
 STAIRS: BASEMENT TO 1ST FLR.  
 TREADS: 10'-1/2" (INCL. NOSING)  
 TREAD RUN: 9'-1/2"  
 MIN. STAIR WIDTH: 36"



NOTE 1: FIRE-RATED ENCLOSURE CONSTRUCTION ON UNDERSIDE OF STAIRWAY LANDING AND INTERIOR SIDE OF STUDS) 5/8" FIRE-SHIELD GYPSUM WALLBOARD, 5/8" FIRE-SHIELD KIL-DRY PLASTER BASE OR 5/8" FIRE-SHIELD MR BOARD NEEDED BOTH SIDES 2 x 4 WOOD STUDS. 16" O.C.

NOTE 2: UTILITY ROOM WILL CONTAIN A 60,000 BTU PROPANE WATER HEATER/STORAGE TANK AND RADIANT HEATING MANIFOLD CONTROLS. THE PROPANE WATER HEATER WILL BE INSTALLED 18" ABOVE FLOOR AND WILL BE STRAPPED AT TOP & BOTTOM FOR LATERAL SUPPORT VENTILATION TO THE OUTSIDE SHALL BE PROVIDED WITH 30" MIN. UPPER VENT THROUGH THE BASEMENT WALL AND A 30" SQ-IN VENT AT THE BOTTOM OF THE UTILITY ROOM DOOR.

NOTE 3: SEE SHEET A-2 FOR ALL BATHROOM CONSTRUCTION REQUIREMENTS

NOTE 4: ELECTRICAL CABLES AND CONDUIT THROUGH CEILING & WALLS WILL BE CEILING WITH 3/8" FIRE BARRIER CP 2588+ CHALK

**BASEMENT FLOOR PLAN**

SCALE: 1/4" = 1'-0"  
 AREA: 1,588 SQ. FT.

EXHIBIT 7  
 CDP 4-06-081 (Dziadulewicz)  
 Basement Floor Plan

**AMERICAN  
 INGENUITY** .INC.

8777 HOLIDAY SPRINGS RD  
 ROCKLEDGE, FL 32855-5805  
 PH. 321-639-6777 USA

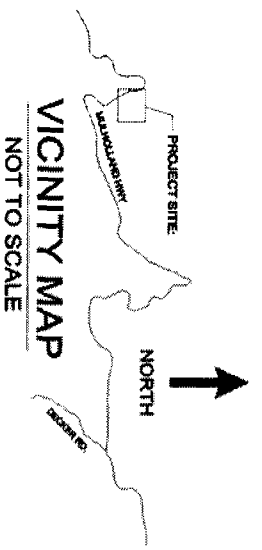
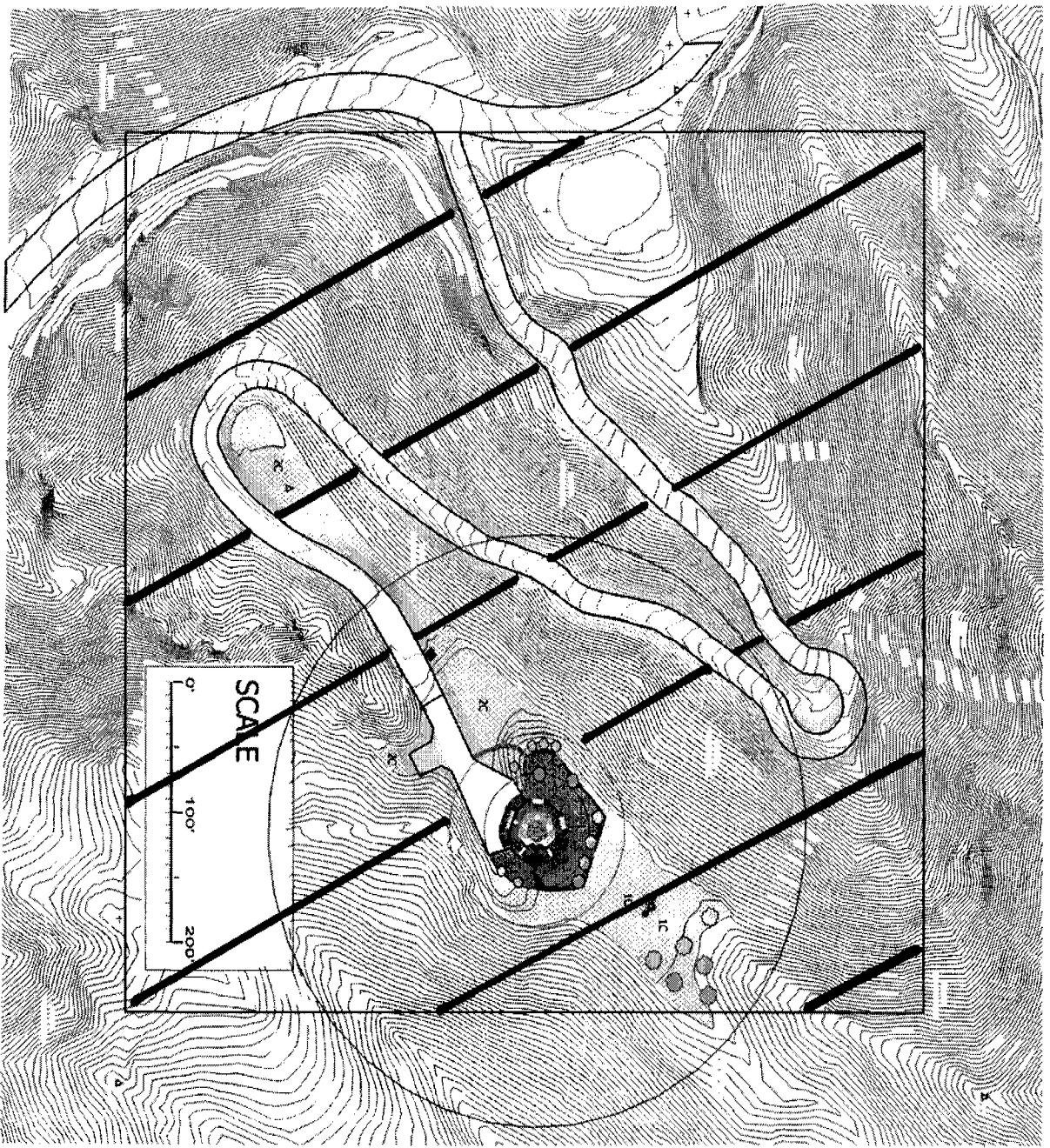
DOMS PLANS FOR:  
**DZIADULEWICZ RESIDENCE**

SHEET TITLE:  
**BASEMENT FLOOR PLAN**

DRAWN BY: DR.J.  
 CHECKED BY:  
 DATE: 04/28/07  
 DRAWING NO: 480\_DZIADULEWICZ  
 REVISION: - 1

SHEET NO.

The **Open Space Conservation Easement** shall apply to all areas on the subject property, outside of the Final Los Angeles County Fire Department approved Fuel Modification Zone B, as generally shown on this exhibit by the cross-hatching.



↓ Not final approved fuel mod

**LEGEND**

LEGEND	COLOR
ZONE A: 20' FROM STRUCTURE	[Dark Gray Box]
ZONE B: 30' FROM STRUCTURE	[Medium Gray Box]
ZONE C: 200' FROM STRUCTURE	[Light Gray Box]
ACCESS ROAD CLEARING 10' ON BOTH SIDES	[White Box]
PATIO AREA	[Dark Gray Box]
LAWN AREA	[Medium Gray Box]
NATIVE GRASS PLANTINGS	[Light Gray Box]

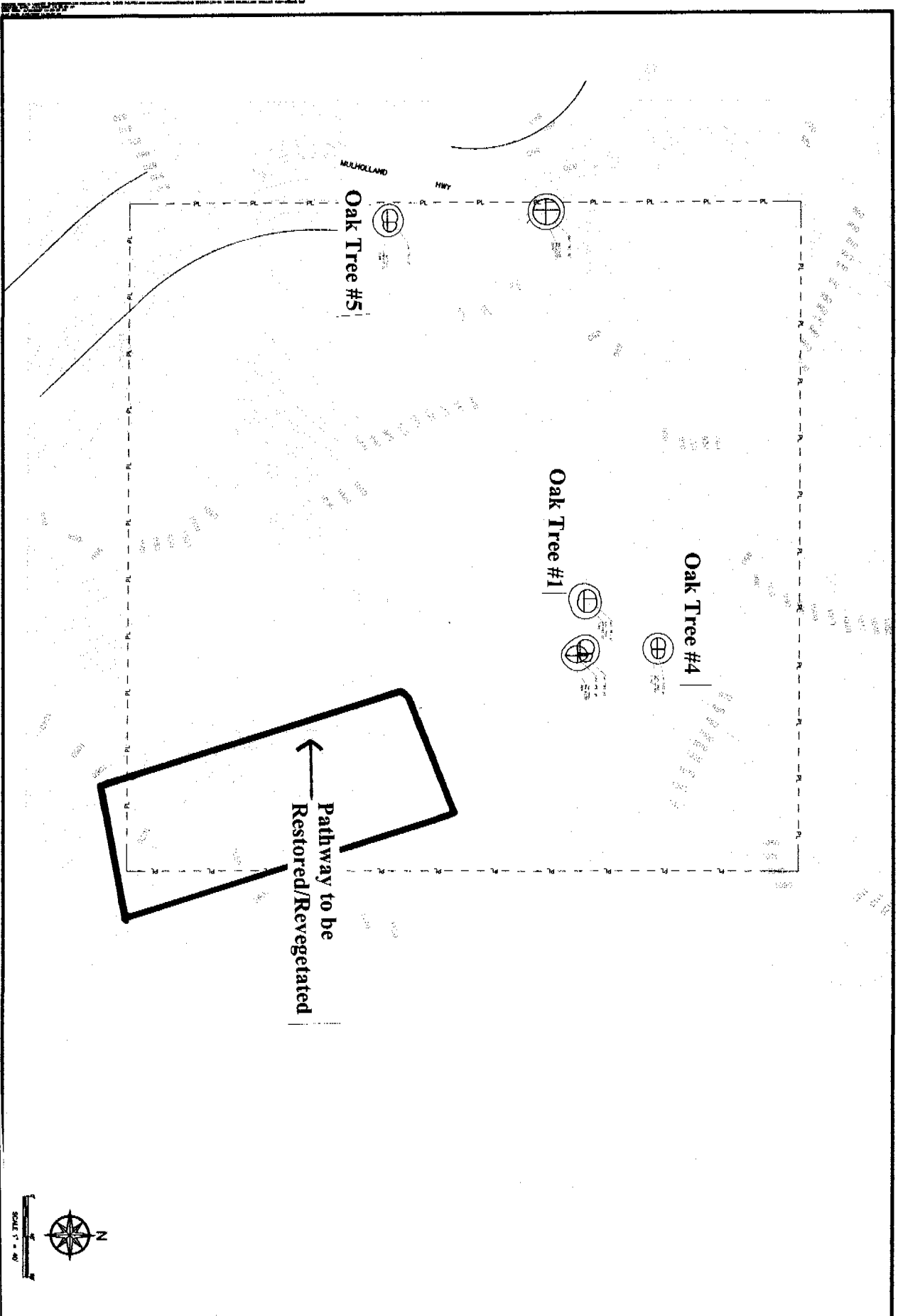
NOTE: ALL FUEL MODIFICATION ZONES AND ACCESS ROAD CLEARING SPECIFICATIONS WHERE DETERMINED BY THE L.A. FIRE DEPT. FIRE PREVENTION BUREAU

NOTE: REFERENCE ATTACHED SHEETS FOR DETAILED PLANTS LIST AND IRRIGATION PLAN

**LANDSCAPE PLAN**

APN: 4472-006-023  
 ADDRESS: 34593 MULHOLLAND HWY MALIBU, CA 90264  
 DESIGNED BY: PACIFIC RIDGE DEV DATE: 1 MAY 06

**EXHIBIT 8**  
 CDP 4-06-081 (Dziadulewicz)  
 Open Space Conservation Easement Area



**EXHIBIT 9**

**CDP 4-06-081 (Dziadulewicz)**

**Restoration Area and Oak Tree Locations**

7910538 - C. Hoff 83 1534392

AFTER RECORDING RETURN TO:

Santa Monica Mountains  
National Recreation Area  
22900 Ventura Blvd.  
Woodland Hills, CA 91364

AREA: SANTA MONICA MOUNTAINS  
NATIONAL RECREATION AREA

TRACT: 112-55

FEE \$7	T
	4

GRANT OF EASEMENT

THIS INSTRUMENT, made this 5th day of December 19 83,

between Salvatore John Tela, a single man, hereinafter referred to as the GRANTOR, and the UNITED STATES OF AMERICA and its assigns, hereinafter referred to as the GRANTEE,

WITNESSETH, that the GRANTOR, for and in consideration of the sum of FORTY TWO THOUSAND AND NO/100 DOLLARS (\$42,000.00), to the GRANTOR in hand paid by the GRANTEE, the receipt of which is hereby acknowledged, does by these presents, Grant, Bargain, Sell, Warrant and Convey unto the GRANTEE and its assigns, forever, a permanent and assignable conservation easement of the nature and character and to the extent and for the purpose set forth on pages 3 and 4 (Exhibit A) hereof, in, upon, over and across all that tract or parcel of land lying and being in the County of Los Angeles, State of California, described as follows:

The south one-half of the west one-half of the southwest one-quarter of the southwest one-quarter of Section 8, Township 1 south, Range 19 west, of San Bernardino base and meridian according to the official plat filed in the District Land Office on April 10, 1900.

This area described contains 9.63 acres±.

The interest in the lands described herein is being acquired as a Conservation Easement by the National Park Service for the use and benefit of the Santa Monica Mountains National Recreation Area and the easement is appurtenant to the National Recreation Area.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the GRANTEE and its assigns forever and said GRANTOR for himself, his heirs, executors and administrators, does covenant with the GRANTEE and its assigns, that he is well and lawfully seised in fee of the lands and premises aforesaid and has good right to sell and convey the same in the manner and form aforesaid, and that the same are free from all encumbrances, except existing easements for public roads and highways, public utilities, railroads, pipelines, and subject to the following outstanding rights in third parties:

A public road and highway easement granted to the County of Los Angeles recorded in Book 7781 Page 10, in Book 7042 Page 16R and in Book 7803 Page 9 of official records of Los Angeles County, California.

A public road and highway easement granted to the County of Los Angeles recorded December 21, 1934 in Book 13197 Page 22 of official records of Los Angeles County, California.

One-third of all oil and minerals in and under said land, as reserved by D.C. Hutchon and Ferne L. Hutchon, husband and wife, in deed recorded March 21, 1956 in Book 50659 Page 156 of official records of Los Angeles County, California.

4472-6-23

RECORDED IN OFFICIAL RECORDS OF LOS ANGELES COUNTY, CA	
DEC 28 1983	AT 8 A.M.
Recorder's Office	

6  
5  
7

EXHIBIT 10
CDP 4-06-081 (Dziadulewicz)
NPS Conservation Easement



GRANTOR will warrant and defend GRANTEE and its assigns in the quiet and peaceable possession of the above bargained and granted interest in the lands and premises herein described against all persons lawfully claiming or to claim the whole or any part thereof.

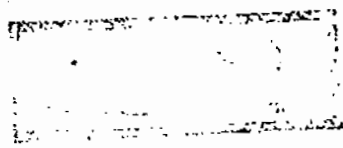
IN WITNESS WHEREOF, the GRANTOR hereunto set his hand the day and year above written.

*Salvatore John TELA*  
\_\_\_\_\_  
SALVATORE JOHN TELA

State of: CALIFORNIA )ss  
County: SANTA CRUZ

On this 5th day of DECEMBER, 1983 before me,  
a Notary Public, personally appeared SALVATORE JOHN TELA  
known to me to be the persons described in and who executed the within  
instrument and acknowledged to me that HE  
executed the same.

My Commission Expires:  
7-26-85



*Viki S. Mandarino*  
Notary Public in and for said  
State of CALIFORNIA  
County of SANTA CRUZ

83 1534392

EXHIBIT "A"

SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA  
CONSERVATION EASEMENT - TERMS AND CONDITIONS

AS USED HEREIN, THE FOLLOWING DEFINITIONS SHALL APPLY:

"The land" means all the land covered by this easement, as described herein or in attachments hereto.

"The Superintendent" means the Superintendent of the Santa Monica Mountains National Recreation Area and/or his designated representative.

"Grantor" means the individual, individuals or other legal entities who convey the easement on the land to the United States as well as their successors and assigns.

"Accessory Buildings and Structures" mean barns, storage sheds, animal shelters, garages and other similar structures, but not guest houses.

THE RESTRICTIONS HEREBY IMPOSED ON THE LAND, THE ACTS WHICH THE GRANTOR PROMISES TO DO OR REFRAIN FROM DOING UPON THE LAND, AND THE RIGHTS IN AND TO THE LAND GRANTED TO THE UNITED STATES OF AMERICA AND ITS ASSIGNS BY THE GRANTOR ARE AS FOLLOWS:

1. The said land shall not be used for any purpose other than single-family residential use without written approval of the Superintendent.
2. The Grantor shall be allowed one single family residence for the land described in the Grant of Easement Deed, which is to be located on one of the pads currently existing on the property. An accessory building may also be constructed on one of the pads with the written approval of the Superintendent. Plans for the location of new buildings or structures shall be submitted to the Superintendent for approval. Plans for installation of utilities necessary to the reasonable use and enjoyment of a single family residence will be automatically approved provided the installation of said utilities is accomplished underground in such a manner so as to do the least possible damage to the terrain and vegetation.
3. The grantor reserves the right to perform all regular and ordinary maintenance to all existing structures, buildings, grounds and access roads; to replace, for any reason, any existing structure with another of the same size and in the same locations, and; to repair, or rebuild to no greater than the former size, any existing buildings or structures which are damaged by fire, storm or other casualty.
4. No structural changes or additions shall be made to the exterior of any of the buildings on said land without written approval from the Superintendent.
5. No trailer, motor home or mobile home shall be used on the land as a substitute for a residential building or other structure, except that should the dwelling be rendered uninhabitable by fire, storm or casualty, or the owner elects to replace the dwelling, or a new dwelling is being constructed. A trailer may be placed upon said land on a temporary basis not to exceed one year while the original dwelling is being rebuilt or replaced or a new dwelling is being constructed. The current existence of a trailer on the property may continue for the term of the tenancy. The trailer shall be removed from the premises upon termination of their tenancy. Once removed, such units or vehicles will not be permitted unless they serve a purpose permitted in the first two sentences of this paragraph.

83 1534392

6. No new signs, billboards or advertisements shall be displayed or placed upon said land unless written approval is first obtained from the Superintendent, except that the Grantor expressly reserves the right and privilege to place or display a sign or signs not greater than 24" x 36" in size, advertising the proposed sale or lease of the real property and the Grantor also expressly reserves the right and privilege of placing and displaying signs of the same size as mentioned above to post the land against unauthorized use by third parties. Signs that blink or move are not authorized.
7. There shall be no cutting, destroying or removal of any trees, brush or other flora, unless authorized in writing by the Superintendent except for vegetative clearing required by local fire codes. The Grantor reserves the right to clear and restore trees and shrubs that are damaged or disturbed by the forces of nature; the right to gather, remove, and use dead wood; and the right to prune or selectively thin trees to maintain existing views from the dwelling situated on the land. When the grantor desires to cut, destroy or remove any trees, brush or other flora in excess of local fire code requirements, grantor shall provide the Superintendent with a plan or description of what is proposed and the reason therefore. In reviewing such requests the Superintendent shall take into consideration the extent of the clearing on other properties in the vicinity.
8. Plantings of non-native plants are authorized within a radius prescribed by local fire code requirements for the protection of buildings or structures. All other new plantings by the Grantor shall be confined to native plants characteristic of the general area surrounding said land unless otherwise permitted in writing by the Superintendent.
9. The land shall at all times be kept in a neat and orderly condition and no trash or debris shall be placed upon the land or allowed to accumulate thereon.
10. General topography of the landscape, including watercourses, shall remain in its natural condition and no excavation or topographic changes may be made on the land without the written approval of the Superintendent.
11. There shall be no construction of new roads or change in the course of existing roads on the land except as may be authorized in writing by the Superintendent.
12. No additional easements or other rights of way of any kind shall be granted over the land to any party or parties by the Grantor without written approval of the Superintendent.
13. Approval of a requested action shall be deemed to have been granted if the Superintendent has not responded to a written request within thirty (30) working days from receipt of the letter of request.
14. The Superintendent shall be permitted, upon giving reasonable verbal or written notice to the landowner, to enter upon said land in order to ascertain compliance with the restrictions and covenants of this easement. Prior arrangement for entrance on said land is not necessary for reasons of emergency or safety.
15. No animals shall be kept on the land without prior approval of the Superintendent, with the exception of common household pets and common farm animals.
16. The approvals granted by the Superintendent in the implementation of this instrument do not exempt the grantor from compliance with the requirements of applicable regulatory bodies.
17. This easement does not grant the public any right of ingress or egress over or across said land, or any other rights of usage.
18. This easement shall run with the land and bind the Grantor, his successors and assigns in perpetuity.

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