

CALIFORNIA COASTAL COMMISSION

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



ADDENDUM

DATE: August 4, 2008
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 22b, Thurs., August 7, 2008, CDP App. No. 4-05-064 (Conrad)

The purpose of this addendum is to replace Exhibit 10 of the staff report with the attached exhibit in order to clarify that zone B of the applicant's approved fuel modification plan is not a part of the open space easement area.

 open space area



Conrad 4-05-064
Fuel Modification Zones
1" = 120'

Exhibit 10
4-05-064 (Conrad)
Open Space Area
(Revised 8/4/08)

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Th 22b

Filed: 3/12/08
 49th Day: 4/30/08
 180th Day: 9/8/08
 Staff: D. Christensen
 Staff Report: 7/23/08
 Hearing Date: 8/7/08
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION No.: 4-05-064

APPLICANT: Christian and Pamela Conrad

PROJECT LOCATION: 1280 Latigo Canyon Road, Santa Monica Mountains, Los Angeles County (APN 4464-022-026)

PROJECT DESCRIPTION: The applicant is proposing to construct a two-story, 4,883 sq. ft. single-family residence, septic system, retaining walls, Fire-Department turnaround, 7,500-gallon water tank, widen and pave existing driveway, 2,844 cu. yds. of grading (1,206 cu. yds. cut; 1,638 cu. yds. fill; 432 cu. yds. import), and request for after-the-fact approval of an existing water well.

Lot Area:	9.5 acres
Building Coverage:	3,256 sq. ft.
Paved Area:	3,000 sq. ft.
Landscaped Area:	1,000 sq. ft.
Ht. Abv. Fin. Grade:	28 ft.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval of CDP 4-05-064** with **twelve (12) special conditions** relating to plans conforming to geotechnical engineer's recommendations, assumption of risk, drainage and polluted runoff control, landscaping and erosion control, removal of natural vegetation, oak and sycamore tree protection, habitat impact mitigation, lighting restriction, structural appearance, future development restriction, deed restriction, and open space conservation easement. 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.

LOCAL APPROVALS RECEIVED: County of Los Angeles Department of Regional Planning, Revised Approval-in-Concept, November 27, 2007; County of Los Angeles Environmental Health Services, Sewage Disposal System Design Approval, January 24, 2001; County of Los Angeles Fire Department, Final Fuel Modification Plan Approval, April 23, 2007; County of Los Angeles Fire Department, Fire Prevention Engineering

Approval, July 31, 2007; County of Los Angeles Department of Health Services, Well Permit, April 24, 1989; County of Los Angeles Department of Public Works-Geotechnical and Materials Engineering Division, Geologic and Soils Engineering Review Sheet Recommendation of Approval, dated July 22, 2002.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan; "Geotechnical Site Investigation and Deep Percolation Testing," Gorian & Associates, Inc., September 29, 2000; "Revised Percolation Test Calculations," Gorian & Associates, Inc., October 19, 2000; "Supplemental Report for Deep Percolation Testing," Gorian & Associates, Inc., November 8, 2000; "Supplemental Report Regarding Footing to Slope Setback," Gorian & Associates, Inc., December 6, 2001; "Geotechnical Update," Gorian & Associates, Inc., May 8, 2002; "Addendum to Geotechnical Update," Gorian & Associates, Inc., May 14, 2002; "Geotechnical Update," Gorian & Associates, Inc., August 31, 2004; "Drainage Study," Peak Surveys Inc., May 2005; "Geotechnical Update," Gorian & Associates, Inc., October 2, 2007; Army Corps of Engineers-Los Angeles District Letter, dated July 25, 2007, stating project is not subject to Corps' jurisdiction; California Department Fish & Game letter, dated September 7, 2007, stating Streambed Alteration Agreement not required; "Biological Assessment for 1280 Latigo Canyon Road," Forde Biological Consultants, July 24, 2007; Memorandum from Forde Biological Consultants, dated November 20, 2007.

I. STAFF RECOMMENDATION

Approval with Conditions

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-05-064 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 "Geotechnical Site Investigation and Deep Percolation Testing," dated September 29, 2000; "Supplemental Report Regarding Footing to Slope Setback," dated December 6, 2001; "Geotechnical Update," dated May 8, 2002; "Addendum to Geotechnical Update," dated May 14, 2002; "Geotechnical Update," dated August 31, 2004; and "Geotechnical Update," dated October 2, 2007, all of which were prepared by Gorian & Associates, Inc. These recommendations, including recommendations concerning foundations, grading, retaining walls, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

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

2. Assumption of Risk

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.

3. Drainage and Polluted Runoff Control Plan

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

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

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

4. Landscaping and Erosion Control Plans

Prior to issuance of a Coastal Development Permit, the applicant shall submit final landscaping, erosion control, and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping, erosion control, and fuel modification plans:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- 4) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 5) Vertical landscape elements shall be included in the landscape plan that are designed, upon attaining maturity, to screen the residence to minimize impacts of

the development on public views from Latigo Canyon Road located south of the site.

- 6) Fencing of the entire property is prohibited. Fencing shall extend no further than the building pad area. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition No. 9 below.
- 7) No permanent irrigation is permitted within the protected zone (defined as a five foot radius outside the dripline, or 15 feet from the trunk, whichever is greater) of any oak tree on the project site or adjacent property, and landscaping within the oak tree protected zones shall be limited to native oak tree understory plant species.

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

temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Fuel Modification Plans

Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

D) Monitoring

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

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

5. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 50 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 50-200 foot fuel modification

zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit.

6. Oak and Sycamore Tree Protection

To ensure that all other oak and sycamore 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 and sycamore trees and retained during all construction operations.

7. Habitat Impact Mitigation

Prior to issuance of a 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 and brush clearance requirements on the project site and adjacent property. The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and, if the fuel modification/brush clearance zones extend onto adjacent property, adjacent parcel boundaries. The delineation map shall indicate the total acreage for all chaparral ESHA, both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains

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

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification/brush clearance area. The habitat restoration area may either be onsite or offsite within the coastal zone either in the City of Malibu or elsewhere in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains and shall be designed to restore the area in question for habitat function, species

diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite, the applicant 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 applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. Should supplemental restoration be required, 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 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 applicant 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 applicant has executed and recorded a deed restriction (if the applicant is not the owner, then the applicant 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 applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to the issuance of the coastal development permit, the applicant shall (or, if the applicant is not the owner of the habitat conservation site, then the owner 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 applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel(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, permanent preservation or restoration of chaparral habitat in the Santa Monica Mountains coastal zone. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

8. 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.

9. Structural Appearance

Prior to issuance of a Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-05-064. 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 with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-064 if such changes are specifically authorized by the Executive Director as complying with this special condition.

10. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. 4-05-064. 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 with attached garage, landscaping, grading, or removal of vegetation other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition 4, shall require an amendment to Coastal Development Permit No. 4-05-064 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

11. Deed Restriction

Prior to issuance of a Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has 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.

12. Open Space Conservation Easement

No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the “open space conservation easement area”, as shown in **Exhibit 10** except for:

1. Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan approved pursuant to Special Condition No. 4 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 No. 3 of this permit; and
 - b. The landscaping and erosion control plans approved pursuant to Special Condition No. 4 of this permit;
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, if approved by the Commission.

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 10**. The recorded document shall reflect that no development shall occur within the open space conservation easement area except as

otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) which the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes to construct a new two-story, 28 ft. high, 4,883 sq. ft. single family residence, septic system, retaining walls, Fire-Department turnaround, 7,500-gallon water tank, widen and pave existing driveway, 2,844 cu. yds. of grading (1,206 cu. yds. cut; 1,638 cu. yds. fill; 432 cu. yds. import), and request for after-the-fact approval of an existing water well (**Exhibits 4-7**).

The approximately 9.5-acre subject property is located along the north side of Latigo Canyon Road, east of Kanan Dume Road, in the Santa Monica Mountains (**Exhibits 1-3**). The property is accessed by an existing unimproved dirt road off Latigo Canyon Road. The existing dirt road leads to an existing graded pad, both of which were developed prior to the effective date of the Coastal Act (January 1, 1977). There is also an existing water well on the property that was installed more recently, without the benefit of a coastal development permit. The applicant is requesting after-the-fact authorization of the water well as part of the proposed project.

Topographically, the property is located on a ridge spur with descending, south-facing hillside terrain that sustains a dense growth of native chaparral vegetation. Total relief on the subject property is 300 feet. Two drainage ravines are situated just east and west of the existing building pad. The existing dirt access road crosses the western drainage. Site drainage is generally by sheet flow to the ravines and culverted beneath Latigo Canyon Road. Two native Western Sycamore trees (*Platanus racemosa*) and native California Mugwort (*Artemisia douglasiana*) are present in the area of the western drainage ravine on-site, near where the drainage enters a culvert beneath Latigo Canyon Road (**Exhibit 8**). There is also a Coast Live Oak tree (*Quercus agrifolia*) located on the eastern portion of the building pad on the site (**Exhibit 8**). A Malibu/Santa Monica Mountains Land Use Plan-designated wildlife migration corridor area and blue line stream are located downslope of the subject property and Latigo Canyon Road.

The proposed project site is located along Latigo Canyon Road, which is a scenic area and can be viewed from various points along Latigo Canyon Road. In addition, the proposed project is located upslope and north of Newton Canyon Hillside, which is a designated scenic element in the Malibu/Santa Monica Mountains Land Use Plan.

Lot Legality

Staff review of chain of title documentation for the subject property indicates that the parcel was created legally prior to the effective date of the Coastal Act and is therefore considered a legal parcel. However, because the County issued Conditional Certificates of Compliance (which usually indicate lot illegality) for the property, the issue warrants further explanation.

In 1987, and in 1995, the County of Los Angeles issued a Conditional Certificate of Compliance (No. 9893 and No. 95-0242) to recognize the subject property pursuant to the Subdivision Map Act. In 1989, the County issued a Clearance of Conditions on Certificate of Compliance No. 9893. In 1996, the County issued a Clearance of Conditions on Certificate of Compliance No. 95-0242. It is unclear why the County issued two Conditional Certificates of Compliance for the subject parcel within a few years. However, by issuing the Clearance of Conditions, Los Angeles County indicated that it then considered the lot to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance.

The applicant provided staff with complete chain of title documentation to shed light on when and how the parcel was created. The subject parcel was created in its current configuration by grant deed in 1944. Minor land divisions, such as the split from one parcel into two that occurred in this case to create the subject parcel, did not require permits at that time. In 1973, the subject parcel and a small adjacent “sliver” parcel to the east were conveyed as one parcel by grant deed. Then in 1976, the subject parcel was separated from the small adjacent parcel to the east by deed and essentially restored back to its original 1944 configuration. The parcel now exists as it had when it was legally created in 1944. See **Exhibit 9** for a visual depiction. Since these “redivisions” occurred prior to the effective date of the Coastal Act in 1977, coastal development permits were not required. However, redivision of the subject parcel in 1973 and again in 1976 was not in compliance with the requirements of the Subdivision Map Act, and therefore the subject parcel was not recognized by the County as a legal lot until the County issued the Conditional Certificate of Compliance in 1987 and Clearance of Conditions in 1989. At that point, the landowner should have obtained a coastal development permit to provide Coastal Act authorization for the effective creation of the parcel that was occurring for Subdivision Map Act purposes. Although no such permit was obtained, because the subject parcel was ultimately restored to its original, legal configuration in 1976, the parcel can be treated, for Coastal Act purposes, as being configured in the same way that the County now views it as existing pursuant to the Subdivision Map Act and local ordinances. Based on these facts, the Commission finds that the subject parcel was created legally prior to the effective date of the Coastal Act and is therefore considered a legal parcel.

Past Commission Action on the Property

The Commission has previously approved residential development on the subject parcel in 2001 (CDP No. 4-01-020 (Norland)), consisting of construction of a 4,443 sq. ft.

single-family residence with attached garage, septic system, retaining walls, water tanks, water well, 560 cu. yds. grading, and improvements to the existing driveway. Special conditions of approval included conformance with geologic recommendations, drainage and polluted runoff control, landscaping and erosion control, assumption of risk, structural appearance, revised plans to omit a greenhouse structure, and future improvements deed restriction. The permit was issued September 16, 2002. However, the permit expired in September 2003 because the applicant did not commence construction of the approved development and did not request a permit extension prior to expiration.

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:

- Special Condition 1. Plans Conforming to Geotechnical Engineer's Recommendations
- Special Condition 2. Assumption of Risk, Waiver of Liability and Indemnity
- Special Condition 3. Drainage and Polluted Runoff Control Plan
- Special Condition 4. Interim Erosion Control Plans and Construction Responsibilities
- Special Condition 4. Landscaping and 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 Habitat

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

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

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

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

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

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

- P57** *Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.*
- P63** *Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.*
- P68** *Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.*
- P69** *Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*
- 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 approximately 9.5-acre subject property is located along the north side of Latigo Canyon Road, east of Kanan Dume Road, in the Santa Monica Mountains. The property is accessed by an existing unimproved dirt road off Latigo Canyon Road. The existing dirt road leads to an existing graded pad, both of which were developed prior to the

effective date of the Coastal Act. Topographically, the property is located on a ridge spur with descending, south-facing hillside terrain that sustains a dense growth of native chaparral vegetation. Total relief on the subject property is 300 feet. Two drainage ravines are situated just east and west of the existing building pad. The existing dirt access road crosses the western drainage. Site drainage is generally by sheet flow to the ravines and culverted beneath Latigo Canyon Road. Two native Western Sycamore trees (*Platanus racemosa*) and native California Mugwort (*Artemesia douglasiana*) are present in the area of the western drainage ravine on-site, near where the drainage enters a culvert beneath Latigo Canyon Road. There is also a Coast Live Oak tree (*Quercus agrifolia*) located on the eastern portion of the building pad on the site. A Malibu/Santa Monica Mountains Land Use Plan-designated wildlife migration corridor area and blue line stream are located downslope of the subject property and Latigo Canyon Road.

When the Commission considered the previous coastal development permit (CDP No. 4-01-020) associated with the subject property, the site was not mapped as an environmentally sensitive habitat area (ESHA) in the Malibu/Santa Monica Mountains Land Use Plan (LUP), and native chaparral vegetation in the Santa Monica Mountains was not considered an especially valuable habitat type that met the definition of ESHA under the Coastal Act. The Malibu/Santa Monica Mountains Land Use Plan (LUP) certified by the Coastal Commission in 1986 contains a tiered approach to sensitive resource designation. In applying this policy approach to numerous permit decisions that have come before the Commission since 1986, such as CDP 4-01-020, Commission staff has concluded that the tiered approach often does not adequately protect lands that rightfully meet the definition of ESHA under the Coastal Act. The Commission has found, in past permit actions, that many areas located in the Santa Monica Mountains Coastal Zone meet the Coastal Act definition of ESHA even though they may contain some other resource designation, such as Wildlife Migration Corridor.

The subject parcel contains relatively undisturbed chaparral vegetation (with the exception of the previously disturbed driveway area), and is part of a large, unfragmented block of habitat. The applicant submitted a Biological Assessment, listed in the Substantive File Documents, which addresses the habitats present on the project site. The report identifies two vegetation/habitat communities on the project site. A map of the habitats was also prepared by the biological consultant (**Exhibit 3**). The report describes these habitats thus:

Disturbed Habitat

An existing building pad and access road exists on-site, which are mostly devoid of vegetation. However, a limited amount of non-native species also occurs there.

Chamise Chaparral

The property is almost entirely made up of this plant community. Chamise (*Adenostoma fasciculatum*) and laurel sumac (*Malosma laurina*) dominate. Several oak trees are also interspersed among the chaparral vegetation.

In addition, there are two isolated native Western Sycamore trees (*Platanus racemosa*) and native California Mugwort (*Artemisia douglasiana*) present in the area of the western drainage ravine on-site, near where the drainage enters a culvert beneath Latigo Canyon Road (**Exhibit 8**).

Based on Commission staff review of the Biological Assessment and aerial photographs of the site, with the exception of the building pad and access road that existed prior to the Coastal Act, the subject property consists of undisturbed native chaparral vegetation that is part of a large, contiguous block of habitat to the north, east, and west.

According to public information, the applicant purchased the subject parcel in 2003 for \$380,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. Two land use designations apply to the property which are: Mountain Land, that allows residential development at a maximum density of 1 dwelling unit per 20 acres of land; and Rural Land II, that allows 1 dwelling unit per 5 acres. The parcel is approximately 9.5-acres in size, and there are other scattered, residential developments in the same vicinity. There is no public parkland or public open space directly adjacent to the subject property. There is currently no offer to purchase the property from any public park agency.

The project has been designed to place all development on the existing graded building pad that is situated in close proximity to Latigo Canyon Road. Any alternative location on the site would involve more grading and the removal of more native vegetation. Not including the area of the driveway or turnaround, the proposed development area is estimated by the applicant to measure approximately 9,809 sq. ft. The applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 50 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 150 feet beyond the "A" and "B" zones.

2. ESHA Designation on the Project Site

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

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

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

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission’s Ecologist, Dr. John Dixon¹ (hereinafter “Dr. Dixon Memorandum”), which is incorporated as if set forth in full herein.

Unfortunately, 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 LCP².

As described above, the project site, except for the existing graded pad and access road, contains pristine chamise chaparral 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 habitat on the project site meets the definition of ESHA in the Coastal Act.

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

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

3. Resource Dependent Use

The Commission finds that the subject property and the surrounding area constitutes an environmentally sensitive habitat area (ESHA), with the exception of the existing graded building pad and access road on-site. 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 removal of ESHA only from fuel modification for fire protection purposes around the proposed residence, the project would 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 residential fuel modification 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 the subject property and 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 required fuel modification, 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.

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 No. Twelve (12)**. 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 around the project site, the high fire risk in the Santa Monica Mountains, and the need to modify fuel sources to protect life and property from wildfire.

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

Obviously, native vegetation that is cleared and replaced with ornamental species or substantially removed and widely spaced will be lost as habitat and watershed cover. As discussed in the Dr. Dixon Memorandum³, the cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The 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

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

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 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 No. Seven (7)**. 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 4** 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 8**, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

Furthermore, fencing of the property would adversely impact the movement of wildlife through the ESHA and wildlife migration corridor on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the development area (building pad), turnaround, and driveway. This is required to be shown on the landscaping plan, required in **Special Condition 4**.

The Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition 4**, disallows the use of rodenticides containing any anticoagulant compounds on the subject property.

In order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition 5**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by Special Condition 5 avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

Further, as discussed above, there is an oak tree near the proposed development area and two sycamore trees adjacent to the access road. Through past permit actions on residential development in the Santa Monica Mountains the Commission and has found that native trees are an important coastal resource. 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 species, contribute nutrients to watersheds, and are important scenic elements in the landscape. The oak and sycamore trees on the site do provide some habitat for a wide variety of wildlife species and is considered to be an important part of the character and scenic quality of the area. The applicant has submitted plans that map the drip line of on-site oak and sycamore trees in relation to the proposed development. The proposed project has been designed to not require removal or encroachment of the oak tree. Although the sycamore trees are in close proximity to proposed access road improvements, the applicant also proposes to protect those in place. However, to ensure the oak tree is not adversely affected by irrigation or inappropriate landscaping, **Special Condition 4** includes a provision that prohibits permanent irrigation within the dripline or within the five-foot protected zone of oak trees and limits landscaping within the dripline and protected zone to native oak tree understory plant species. To ensure that the oak and sycamore trees are protected during grading and construction activities, **Special Condition 6** requires the applicant to install protective barrier fencing around the dripline of on-site oak and sycamore trees during construction operations.

Finally, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing 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 10**, the future development restriction, has been required.

Lastly, **Special Condition 11** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of

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

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

D. Water Quality

Section 30231 of the Coastal Act states that:

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

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

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

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

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or

surrounding areas from the use of a septic system. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

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

- Special Condition 3. Drainage and Polluted Runoff Control Plan
- Special Condition 4. Interim Erosion Control Plans and Construction Responsibilities
- Special Condition 4. Landscaping and 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 Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area.

The proposed project site is located on Latigo Canyon Road, east of Kanan Dume Road in a sparsely developed area of the Santa Monica Mountains. To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which the proposed development is visible, such as beaches, parks, trails, and scenic highways. The proposed development will be located on an existing level pad that was created prior to the Coastal Act. Proposed grading is required to widen the driveway according to Fire Department safety standards, to slightly lower the building pad and to install retaining walls to support the development on the pad. The proposed development has been sited and designed to minimize visual impacts and to be consistent with development existing in the area, however, the property is located on Latigo Canyon Road and just north of the Newton Canyon

Hillside, a designated Scenic element in the Malibu/Santa Monica Mountains LUP. The proposed project will be visible from Latigo Canyon Road. The Commission has, in past decisions, required that development visible from scenic roads or other public areas minimize impacts to visual resources. Due to the highly visible nature of the proposed development from public scenic vistas, the Commission finds it necessary to require mitigation measures to minimize visual impacts associated with development of the project site.

The visual impact of the proposed structure can be minimized by requiring the structure to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition No. Nine (9)**.

Visual impacts associated with the proposed structure can be further reduced by the use of appropriate and adequate landscaping. **Special Condition No. Four (4)** requires that vertical screening elements be incorporated into the landscape plan to soften views of the proposed residence and associated structures from Latigo Canyon Road. In addition, Special Condition 4 requires the applicant to prepare a landscape plan relying mostly on native, non-invasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. The implementation of Special Condition 4, therefore, will help to partially screen and soften the visual impact of the development as seen from the scenic road. In order to ensure that the final approved landscaping plans are successfully implemented, Special Condition 4 also requires the applicant to revegetate all disturbed areas in a timely manner, and includes a monitoring component, to ensure the successful establishment of all newly planted and landscaped areas over time.

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. Therefore, **Special Condition No. Eight (8)** 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 property, which might otherwise be exempt, is reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition No. Ten (10)**, 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 No. Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the proposed 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 has occurred on the subject parcel prior to submission of this permit application including, but not limited to, installation of a water well. The subject permit application addresses the unpermitted development, as well as the new development proposed in the subject application.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violations 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 projects will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed 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

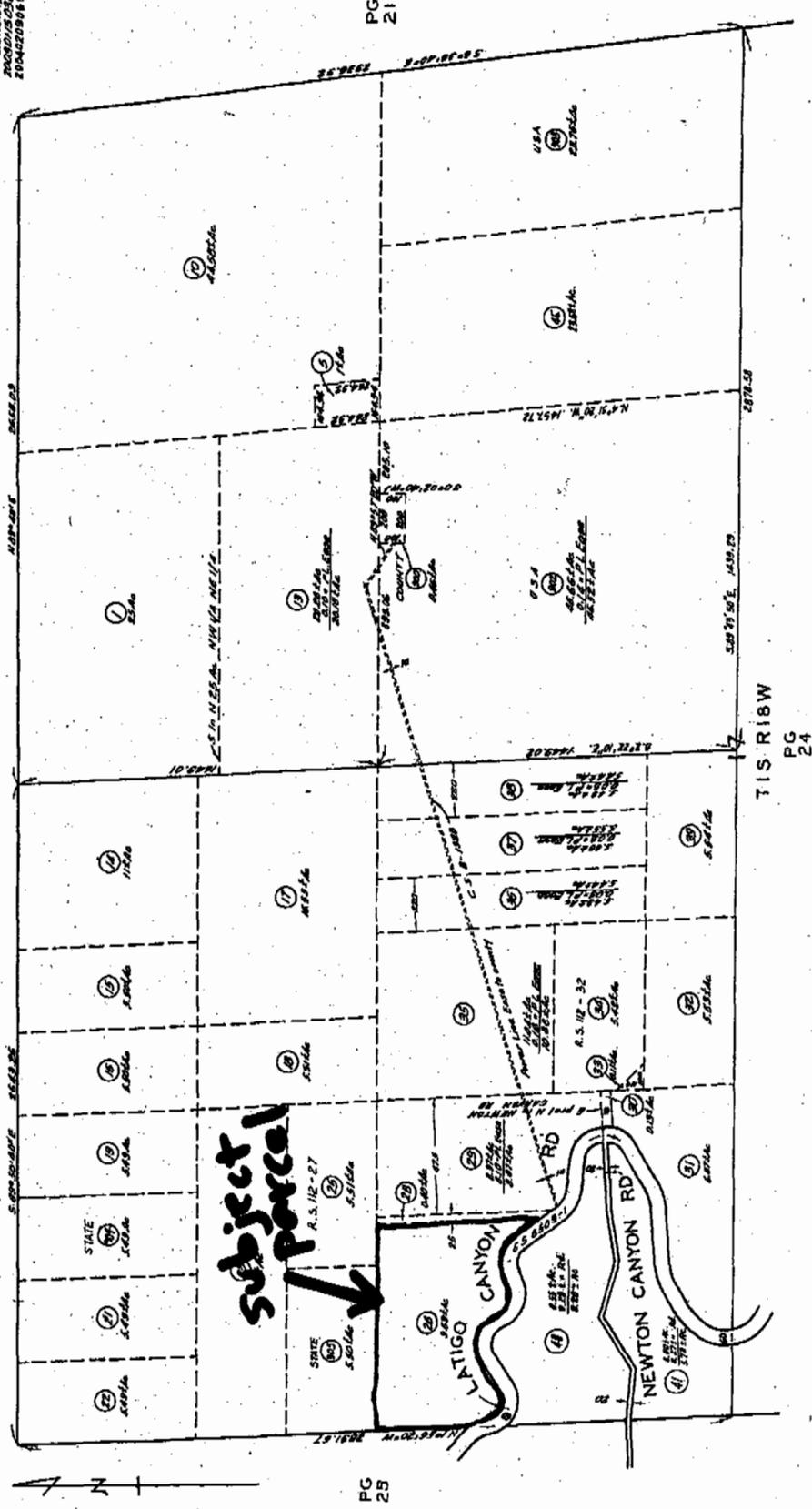
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 proposed project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through siting, clustering, and prohibiting development outside of the approved development area as required by the granting of an open space and conservation easement. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), native tree protection (ESHA), limiting lighting (ESHA), requiring future improvements to be considered through a CDP, and employing construction best management practices (water quality). Finally, habitat impact mitigation 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.

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4464 22
 SCALE 1" = 400'
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 OFFICE OF ASSESSOR
 COUNTY OF LOS ANGELES

2004



SECTION LINES PER CS B-733

FEB 09 2004

Exhibit 2
 4-05-064 (Conrad)
 Parcel Map

Vegetation Map: 1280 Latigo Canyon, Malibu, Los Angeles County, California



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Exhibit 3
4-05-064 (Conrad)
Aerial View

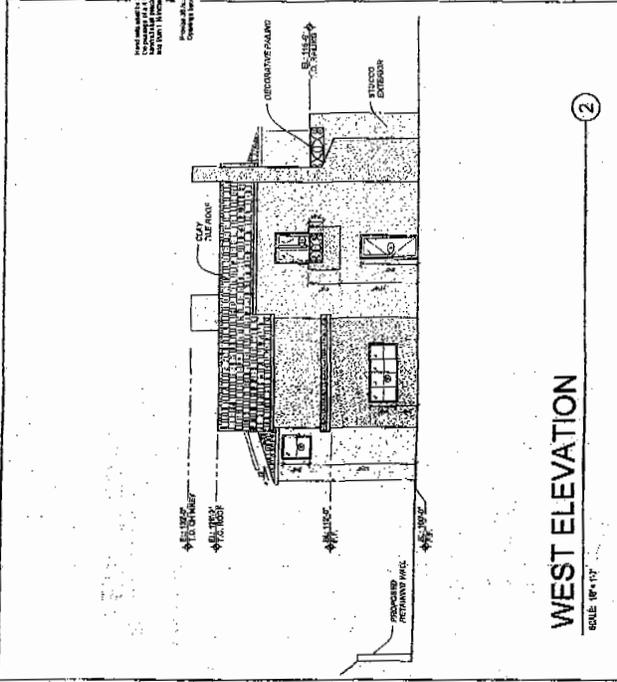
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 MALIBU, CA 90265

CONRAD RESIDENCE
 1280 LATIGO CANYON RD
 MALIBU, CA 90265

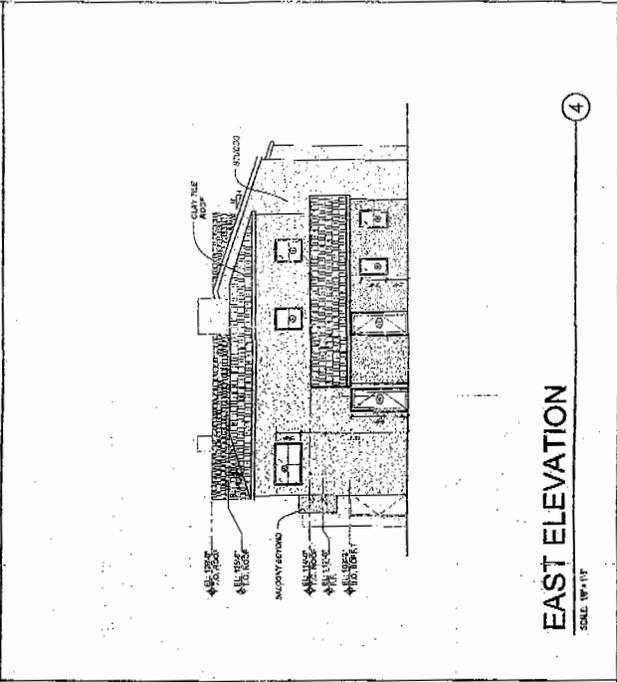
ELEVATIONS

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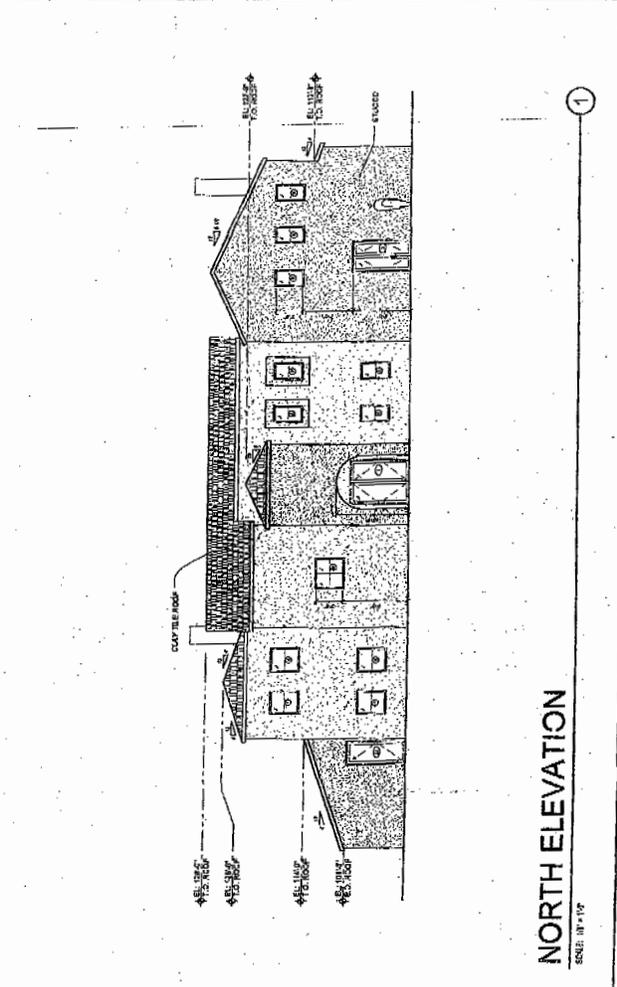
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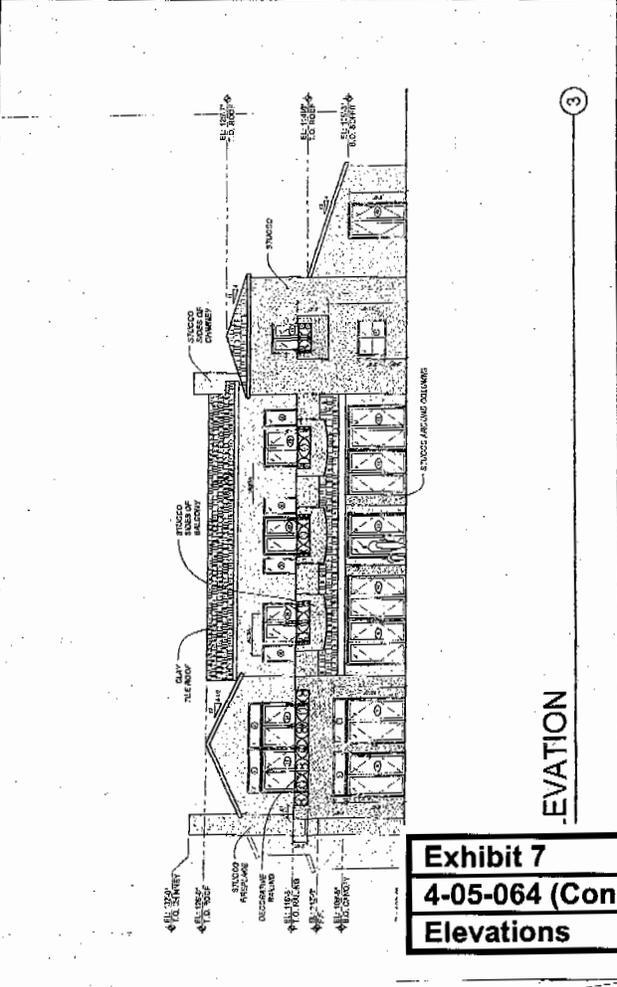
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 SCALE: 1/8" = 1'-0"



EAST ELEVATION
 SCALE: 1/8" = 1'-0"

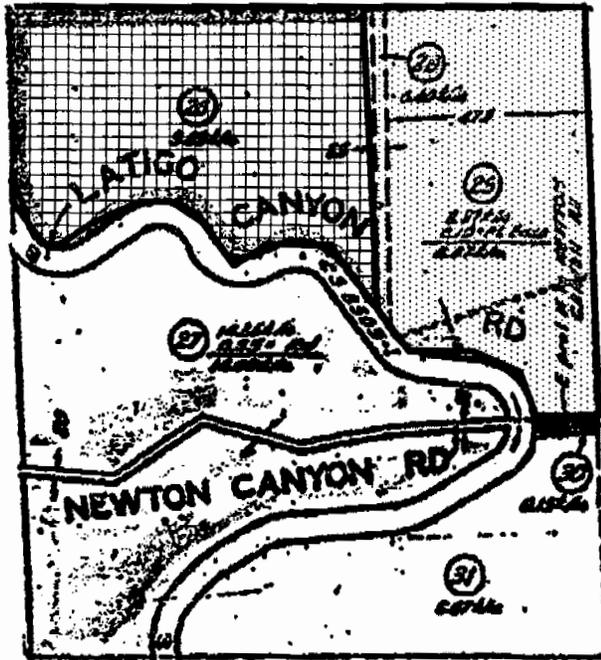


NORTH ELEVATION
 SCALE: 1/8" = 1'-0"

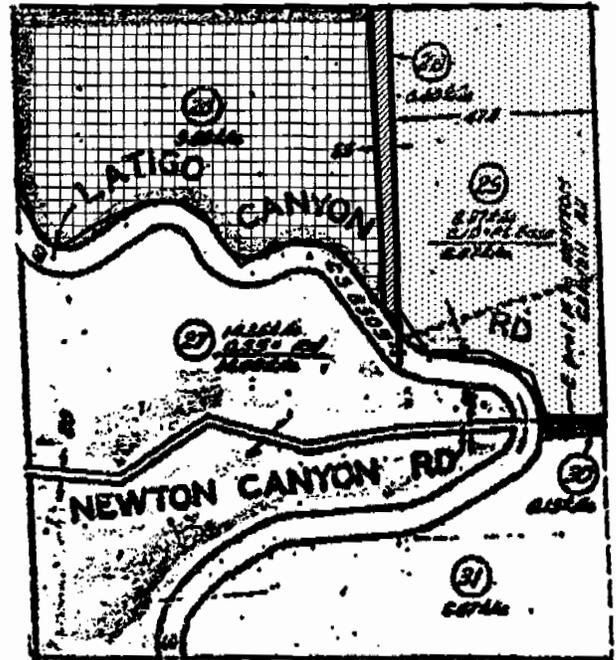


SOUTH ELEVATION
 SCALE: 1/8" = 1'-0"

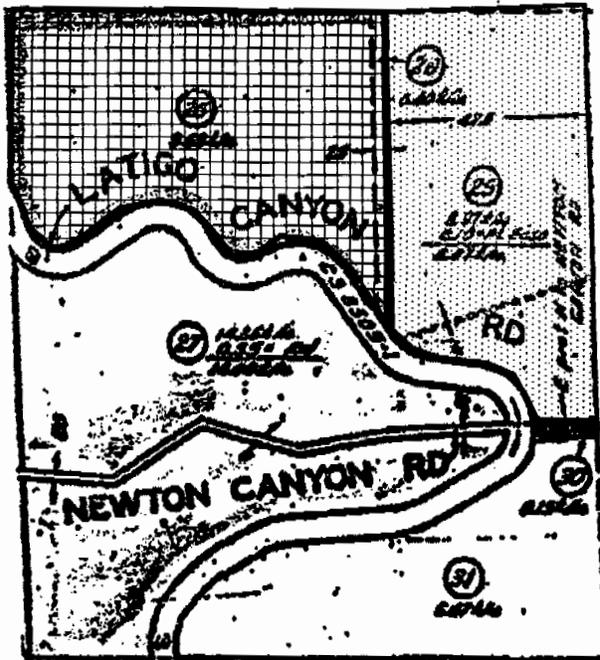
Exhibit 7
4-05-064 (Conrad)
Elevations



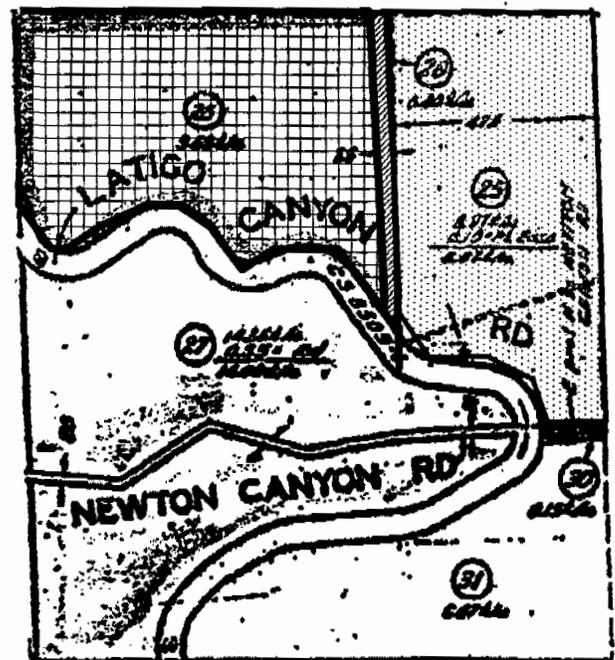
 Subject parcel, as created by grant deed in 1944



 Subject parcel
 Adjacent "sliver" parcel, created from adjacent parcel  in 1956

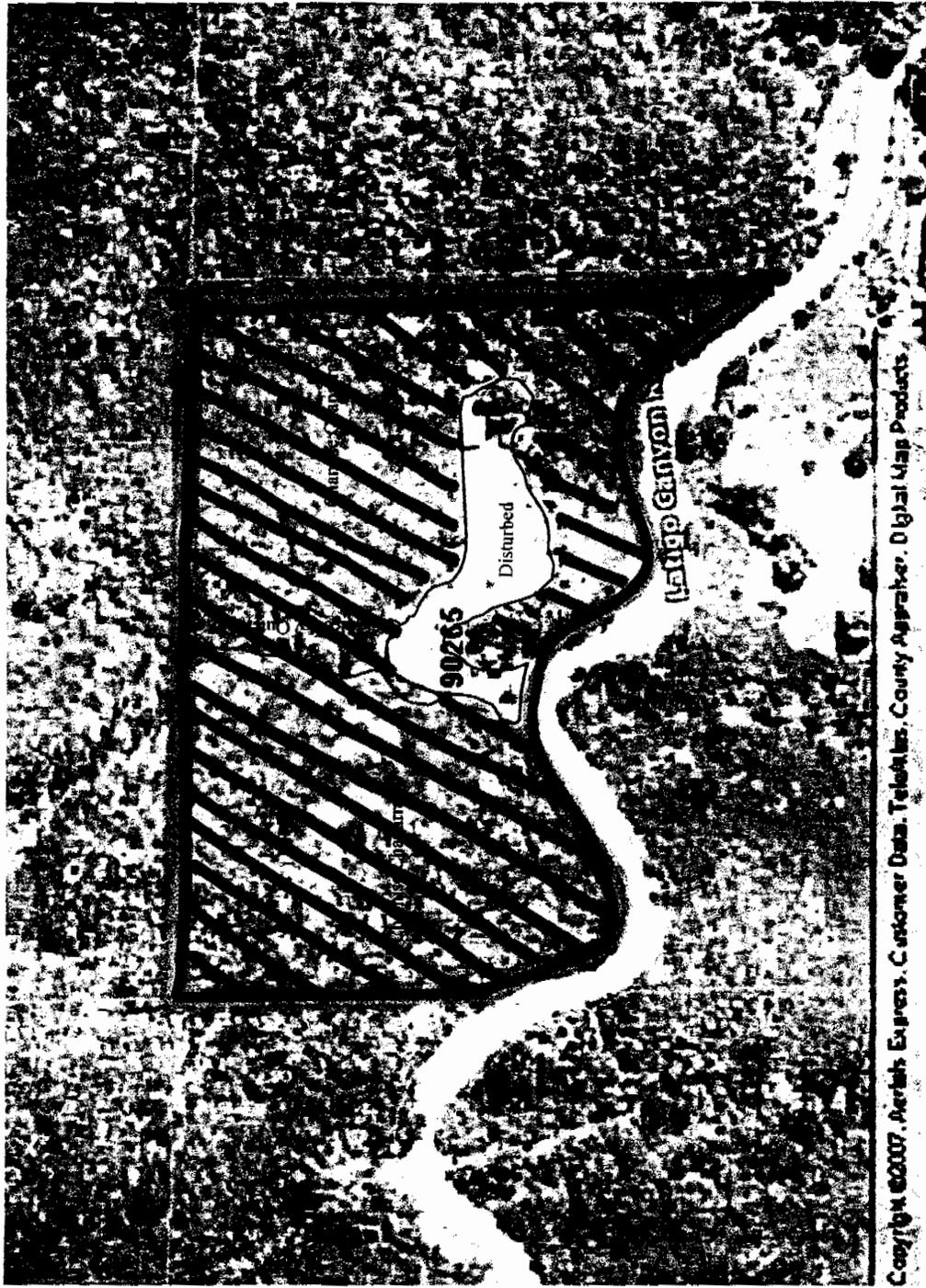


 Subject parcel and adjacent "sliver" parcel conveyed as one parcel by deed in 1973



 Subject parcel separated from "sliver" parcel by deed in 1976, thereby restoring subject parcel to its original 1944 configuration.

Vegetation Map: 1280 Latigo Canyon, Malibu, Los Angeles County, California



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 open space area

Exhibit 10
4-05-064 (Conrad)
Open Space Area