

CALIFORNIA COASTAL COMMISSION

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**STAFF REPORT: REGULAR CALENDAR**

APPLICATION No.: 4-07-101

APPLICANT: Dennis Smith

AGENT: Jai Pal Khalsa

PROJECT LOCATION: 2575 Applefield Lane, Santa Monica Mtns. (Los Angeles Co.)

PROJECT DESCRIPTION: Construction of a two-story, 33-ft. high, 6,290 sq. ft. single-family residence with 2,445 sq. ft. subterranean basement/garage, septic system, 1,000-ft. long, 16 to 20-ft. wide access road with three hammerhead turnarounds, keystone retaining walls, and 11,266 cu. yds. of grading (6,288 cu. yds. cut, 4,978 cu. yds. fill). The application also includes restorative grading and revegetation of previously graded roadways and a pad area, and request for after-the-fact approval to retain an existing water well, 10,000-gal underground water tank, an existing ground-mounted solar panel array with utility shed and fencing, and to temporarily retain existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed during construction.

MOTION & RESOLUTION: Page 4

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concept, dated July 23, 2007; Los Angeles County Fire Department Access Approval, dated April 19, 2007; Los Angeles County Fire Department Preliminary Fuel Modification Plan Approval, dated June 20, 2006; Los Angeles County Department of Environmental Health Services Conceptual Approval for Private Septic System, dated March 10, 2006; Los Angeles County Department of Environmental Health Services Well Yield Test Permit; Los Angeles County Department of Public Works Geotechnical and Materials Engineering Division Recommendation of Grading Plan Approval, dated October 8, 2008.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains 1986 Certified Land Use Plan (LUP); "Restoration and Monitoring Plan for 2575 Applefield Lane" prepared by Compliance Biology Inc., dated November 2007; "Biological Resource Evaluation for 2575 Applefield Lane" by Compliance Biology Inc., dated May 25, 2006; "Biological Inventory" by Klaus Radtke, dated July 12, 2003; "Response to County of Los Angeles Review Sheets" by Subsurface Designs Inc., dated April 14, 2008 and July 2, 2008; "Response to County of Los Angeles Review Sheets" by Geosystems Inc., dated August 14, 17, 2006; "Limited Geologic and Soils Engineering Investigation for Proposed Access Driveway" by Subsurface Designs Inc., dated April 30, 2007; "Updated Soils and Engineering-Geologic Report" by Geosystems, Inc., dated October 6, 2005; "Preliminary Soils and Engineering Geologic Investigation" prepared by Geosystems Inc., dated December 5, 2002.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of CDP 4-07-101 subject to **seventeen (17) special conditions** relating to plans conforming to geotechnical engineer's recommendations, assumption of risk, drainage and polluted runoff control, landscaping and erosion control, structural appearance, lighting restriction, future development restriction, deed restriction, habitat impact mitigation, open space conservation easement, site inspection, removal of natural vegetation, removal of temporary structures, condition compliance, revised plans, and final restoration/revegetation plans. The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act.

The proposed project site is located on an approximately 15-acre property on a descending slope below a north-south trending ridge in the southeastern portion of the Santa Monica Mountains. The property contains extensive chaparral environmentally sensitive habitat area. The project site is located on a hillside slope below an LUP-designated "significant ridgeline" and is visible from portions of Tuna Canyon Road to the south, which affords scenic vistas of the relatively undisturbed natural area. Unpermitted development has occurred on the subject site. Based on information submitted by the applicant and analysis of aerial photography and site reconnaissance by staff, the Commission notes that development (consisting of removal of major vegetation and grading of roads and building "pad", installation of a water well and underground water tank, installation of a ground-mounted solar array with utility shed and fencing, construction and placement of various structures including a single-wide mobile home, travel trailer, two storage containers, and a shed) was carried out on the subject property after the effective date of the Coastal Act (January 1, 1977) without the required coastal development permits. In fact, the majority of the existing unpermitted development occurred between 2001 and present according to aerial photographs.

The applicant proposes construction of a two-story, 33-ft. high, 6,290 sq. ft. single-family residence with 2,445 sq. ft. subterranean basement/garage, septic system, 1,000-ft. long, 16 to 20-ft. wide access road with three hammerhead turnarounds, keystone retaining walls, and 11,266 cu. yds. of grading (6,288 cu. yds. cut, 4,978 cu. yds. fill). The application also includes restorative grading (the volume of restorative grading is included in the total proposed grading amount) and revegetation of previously graded roadways and a pad area, and request for after-the-fact approval to retain an existing water well, 10,000-gal underground water tank, an existing ground-mounted solar panel array with utility shed and fencing, and to temporarily retain existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed during construction. The project site contains habitat that meets the definition of ESHA and the project will have adverse impacts on ESHA. The proposed residence is not a resource dependent use, but will be approved to permit the applicant a reasonable economic use of the property. The structure is sited to minimize significant disruption of habitat values and the development area conforms to 10,000 square feet. The project is conditioned to require revised plans for relocation of an existing underground water tank closer to the developed portion of the site and for final restoration/revegetation plans to ensure that unpermitted graded areas are successfully restored in a manner that is protective of chaparral ESHA. A grant of an open space easement is also required in order to ensure that the remaining ESHA on the site will be preserved. Mitigation is required for the loss of ESHA due to the development and the required fuel modification around the structure.

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I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-07-101 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 all of the geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, 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, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire and erosion; (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. **Permanent Drainage and Polluted Runoff Control Plan**

A. ***Prior to issuance of the Coastal Development Permit***, the applicant shall submit to the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified licensed professional. The Plan shall include detailed drainage and runoff control plans

with supporting calculations. The plans shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather runoff leaving the developed site. The consulting licensed civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- (1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- (2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- (3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
- (4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands, consistent with **Special Condition 5, Landscaping and Fuel Modification Plans**. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design shall be utilized for any landscaping requiring water application.
- (5) All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
- (6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary. The consulting engineer shall provide plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The engineer shall certify that the design of the device minimizes the amount of rock and/or other hardscape necessary to meet the sizing requirements.
- (7) Post-construction structural 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 storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

- (8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- (9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans shall be approved by the project consulting geotechnical engineer.
- (10) 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.

B. The final Drainage and Runoff Control Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting licensed civil engineer, or qualified licensed professional, or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

4. Interim Erosion Control Plans and Construction Responsibilities

A. ***Prior to the issuance of the Coastal Development Permit***, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices plan, prepared by licensed civil engineer or qualified water quality professional. The consulting civil engineer/water quality professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

1. Erosion Control Plan

- (a) 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 plan and on-site with fencing or survey flags.

- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- (d) 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.
- (e) The 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.
- (f) 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.

2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.

- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. The final Interim Erosion Control and Construction Best Management Practices plan, shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

5. Landscaping and Fuel Modification Plans

Prior to issuance of the Coastal Development Permit, the applicant shall submit two sets of final landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist. The consulting landscape architect or qualified landscape professional shall certify in writing that the final Landscape and Fuel Modification plans are in conformance with the following requirements:

A) Landscaping Plan

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within thirty (30) 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 (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time 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 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) Fencing of the entire property is prohibited. Fencing shall extend no further than the approved development 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 6, Structural Appearance**, below.

B) 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.

C) Conformance with Commission Approved Site/Development Plans

The Permittee shall undertake development in accordance with the final Landscape and Fuel Modification Plans. The final Landscape and Fuel Modification Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

D) Monitoring

Three years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit to 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 requirements specified in this condition, the applicant, or successors in interest, shall submit, within 30 days of the date of the monitoring report, a revised or supplemental landscape plan, certified by a licensed Landscape Architect or a qualified Resource Specialist, that specifies additional or supplemental landscaping measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. This remedial landscaping plan shall be implemented within 30 days of the date of the final supplemental landscaping plan and remedial measures shall be repeated as necessary to meet the requirements of this condition.

6. Structural Appearance

Prior to issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of this Coastal Development Permit. 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 this Coastal Development Permit if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. Lighting Restriction

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

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

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Future Development Restriction

This permit is only for the development described in this Coastal Development Permit. 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 the development governed by this Coastal Development Permit. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized

by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation other than as provided for in the approved landscape plan prepared pursuant to **Special Condition 5, Landscaping and Fuel Modification Plans**, shall require an amendment to this Coastal Development Permit from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. Deed Restriction

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

10. Habitat Impact Mitigation

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, a map delineating all areas of chaparral and coastal sage scrub 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 and coastal sage scrub 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 and coastal sage scrub 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 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 issuance of the Coastal Development Permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to issuance of the Coastal Development Permit, the applicant shall (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 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 and coastal sage scrub 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, any required irrigated fuel modification zones, and required off-site brush clearance areas (assuming a 200-foot radius from all structures). 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 (on-site) 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 and/or coastal sage scrub 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 habitat in the Santa Monica Mountains coastal zone, with priority given to the acquisition of or extinguishment of all development potential on properties containing environmentally sensitive habitat areas and properties

adjacent to public parklands.. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

11. Open Space Conservation Easement

A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the "open space conservation easement area", as shown in **Exhibit 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 5, Landscaping and Fuel Modification Plans**, 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 3, Permanent Drainage and Runoff Control Plan**, of this permit; and
 - b. The landscaping and erosion control plans approved pursuant to **Special Condition 4, Interim Erosion Control & Construction Best Management Practices Plan, and Special Condition 5, Landscaping and Fuel Modification Plans**, of this permit;
- (3) Restoration activities required and approved pursuant to the restoration/revegetation plans approved pursuant to **Special Condition 17** of this permit;
- (4) If approved by the Commission as an amendment to this coastal development permit or a new coastal development permit,
 - a. construction and maintenance of public hiking trails; and
 - b. construction and maintenance of roads, trails, and utilities consistent with existing easements.

B. ***Prior to issuance of the Coastal Development Permit***, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority ("MRCA") on behalf of the people of the State of California an open space conservation easement over the "open space conservation easement area" described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 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.

12. Site Inspection

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

Prior to issuance of the Coastal Development Permit, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.

13. Removal of 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.

14. Removal of Temporary Structures

The applicant shall remove the temporary residential mobile home, construction trailer, storage containers, and shed on the site within two years of the issuance of this coastal

development permit or within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the approved residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of temporary mobile home and construction trailers. The Executive Director may grant additional time for good cause.

15. Condition Compliance

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

16. Revised Plans

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, two sets of final, revised project plans that reflect the entirety of the approved project. The revised plans shall relocate the existing 10,000-gallon underground water tank to adjacent to the solar panel array along the existing road (Road F of Exhibit 9) that is north of the proposed building pad. In addition, the revised plans shall relocate the existing temporary mobile home structure and storage container that is situated on the unpermitted graded pad to either the area of the proposed hammerhead turnarounds or immediately adjacent to the proposed temporary travel trailer next to the development area.

The Permittee shall undertake development in accordance with the final approved 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 Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

17. Restoration / Revegetation Plan

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final restoration/revegetation plans. Areas where re-grading and complete restoration with native plants shall occur include the following (and as generally shown on **Exhibit 9**):

- 1) The 400-ft. long existing road (Road A) in the southern portion of the subject parcel leading from Applefield Lane to the proposed building pad;

- 2) The approximately 5,000 sq. ft. existing graded building “pad” where the existing water well, mobile home, and storage container are situated;
- 3) The 300-ft. long existing Road C and 250-ft. long existing Road D that extend north from the proposed access road in the northeast corner of the property (including the area of the existing underground water tank that shall be removed and relocated per Special Condition No. 16 above);
- 4) The 300-ft. long existing Road E in the north portion of the property.
- 5) The 280-ft. long existing knoll-top road (Road H) situated to the south of the proposed building pad.

In addition, partial restoration with native plants to retain a 5-ft. wide maintenance path shall occur along the 300-ft. long existing road (Road F) to the north of the proposed building pad (and as generally shown on **Exhibit 9**).

The restoration and revegetation plan shall include, but not be limited to, the following criteria:

- (a) A revegetation program, prepared by a qualified habitat restoration consultant, that utilizes only native chaparral plant species that are consistent with the surrounding native plant community. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort, including standards for chaparral areas within the required fuel modification zone(s), and standards for areas not subject to fuel modification. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation. The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, but in no case shall the irrigation system be in place longer than two (2) years. Restoration areas within Fuel Modification Zone C (the thinning zone) shall be planted with chaparral species consistent with the surrounding habitat and with spacing and flammability requirements of the Forestry Department of Los Angeles County.
- (b) A detailed restorative grading plan, including grading cross-sections, prepared by a licensed professional civil engineer in consultation with a licensed engineering geologist, that illustrates remedial grading to recontour the restoration areas to appropriately blend in with the surrounding natural topography. The plan shall identify the relocation sites for the existing water tank, temporary mobile home and storage container required pursuant to Special Condition 16 above. The plan shall include temporary erosion control measures such as geofabrics, silt fencing, sandbag barriers, or other measures to control erosion until revegetation of the restored areas is

completed. These erosion control measures shall be required on the project site prior to and concurrent with the initial grading operations and shall be maintained throughout the process to minimize erosion and sediment to runoff waters during construction.

- (b) The restoration plan shall be implemented concurrent with project construction. Revegetation shall meet the performance standards appropriate for chaparral habitat, as detailed in Section (a) above within five (5) years and shall be repeated, if necessary, to meet the performance standards. The Executive Director may extend this time period for good cause. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the revegetation requirements.
- (c) A monitoring program, prepared by a qualified environmental resource specialist. The monitoring program shall demonstrate how the approved revegetation and restoration performance standards prepared pursuant to section (b) above shall be implemented and evaluated for compliance with this Special Condition. The program shall require the applicant to submit, on an annual basis for a period of five years (no later than December 31st each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the restoration plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the plantings. If these inputs are required beyond the first four (4) years, then the monitoring program shall be extended for a sufficient length of time so that the success and sustainability of the project is ensured. Successful site restoration shall be determined if the revegetation of native plant species on-site is adequate to meet the performance standards appropriate for chaparral habitat, as detailed in Section (a) above by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation.
- (d) At the end of the five year period, a final detailed report shall be submitted, for the review and approval of the Executive Director, that indicates whether the on-site landscaping is in conformance with the revegetation / restoration plan approved pursuant to this Special Condition. The final report shall include photographic documentation of plant species and plant coverage. If this report indicates that the restoration project has in part, or in whole, been

unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental restoration program to compensate for those portions of the original plan that were not successful. The revised, or supplemental, restoration program shall be processed as an amendment to this Coastal Development Permit.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant proposes construction of a two-story, 33-ft. high, 6,290 sq. ft. single-family residence with 2,445 sq. ft. subterranean basement/garage, septic system, 1,000-ft. long, 16 to 20-ft. wide access road with three hammerhead turnarounds, keystone retaining walls, and 11,266 cu. yds. of grading (6,288 cu. yds. cut, 4,978 cu. yds. fill) (**Exhibits 3-6**). The application also includes restorative grading and revegetation of previously graded roadways and a pad area, and request for after-the-fact approval to retain an existing water well, 10,000-gal underground water tank, an existing ground-mounted solar panel array with utility shed and fencing, and to temporarily retain existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed for use during construction (**Exhibits 3 and 7**).

The proposed project site is located on an approximately 15-acre property at 2575 Applefield Lane, on a descending slope below a north-south trending ridge in the southeastern portion of the Santa Monica Mountains, unincorporated Los Angeles County (APN 4448-022-004) (**Exhibits 1-2**). The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates the subject parcel as a combination of Rural Land I and Rural Land II, allowing one dwelling unit per five/ten acres. Site elevations range from approximately 2,200 feet at the northernmost portion of the property, down to approximately 1,800 feet at the southernmost portion of the property near Applefield Lane. The parcel is located within the Tuna Canyon watershed, where site slopes descend in a southern direction toward an on-site drainage ravine that runs down the middle of the property and continues south beneath Applefield Lane. Tuna Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream, is situated approximately 1,000 feet south of the property.

The site is accessed from Applefield Lane, an existing private road that extends west from Saddle Peak Road and traverses the southern portion of the subject property. To access the proposed building site in the central portion of the property, the applicant proposes an approximately 1,000 linear foot long, 16-20 foot wide access drive that extends in a northwesterly diagonal direction from an off-site portion of Applefield Lane. The road has already been rough graded, but will need to be widened and improved. About half of the proposed access road traverses the southwest corner of the adjacent

parcel to the east, however, the applicant has obtained an access easement from the neighboring property owner.

With the exception of existing unpermitted development described in detail below, the subject hillside property largely consists of undisturbed native chaparral vegetation that is part of a large contiguous area of native chaparral habitat. Existing residential development is located a significant distance to the north, east and west of the subject site. In closer proximity, the Commission has recently approved residential development on two adjacent properties:

1. In September 2008 the Commission conditionally approved Coastal Development Permit (CDP) No. 4-06-089 (Richardson) on the adjacent parcel to the east for construction of a 2-story, 24 ft. high, 3,660 sq. ft. single family residence with attached garage, water tanks, septic system, solar panels, 450 ft. long driveway with turnaround area, temporary construction trailer and residential mobile home, retaining walls, approximately 3,285 cu. yds. of cut grading for the residence, 2,685 cu. yds. of cut grading for the driveway/turnaround, 2,500 cubic yards of restorative fill grading for removal/restoration of existing roads on site involving full restoration/revegetation of 1,450 linear ft. of existing dirt roadways, and partial restoration of 420 linear ft. of two existing roadways with 10 ft. wide maintenance paths planted with native grass over "Grasspave" geogrid system. This permit has not been issued yet as all "prior to issuance" special conditions have not been met.
2. In February 2009 the Commission conditionally approved CDP No. 4-08-027 (Kline) on the adjacent parcel to the south for construction of a 26 ft. high, 3,008 sq. ft. single family residence with detached garage/studio and guesthouse, pool, septic system, retaining walls, hammerhead turnaround, temporary construction trailer, 170 cu. yds of grading (cut), and paving an 800-ft. long portion of Applefield Lane. This permit has not been issued yet as all "prior to issuance" special conditions have not been met.

A vast area of public park land, owned by the Santa Monica Mountains Conservancy, is located approximately 4,000 feet west of the subject parcel within Las Flores Canyon. A second area of public lands is located approximately 2,500 feet to the north, owned by the National Park Service. There are no existing or mapped public trails on or adjacent to the subject property. The project site is located on a hillside slope below an LUP-designated "significant ridgeline" and is visible from portions of Tuna Canyon Road to the south, which affords scenic vistas of the relatively undisturbed natural area. However, due to intervening topography, the project site is not visible from Saddle Peak Road or public parkland in the vicinity.

Existing Unpermitted Development

Unpermitted development has occurred on the subject site. Based on information submitted by the applicant and analysis of aerial photography and site reconnaissance by staff, the Commission notes that development (consisting of removal of major vegetation and grading of roads and building "pad", installation of a water well and underground water tank, installation of a ground-mounted solar array with utility shed and fencing, construction and placement of various structures including single-wide

mobile home, two travel trailers, two storage containers, and a shed) was carried out on the subject property after the effective date of the Coastal Act (January 1, 1977) without the required coastal development permits. This development currently exists on the subject property, with the exception of one travel trailer, which the applicant has indicated was removed from the site.

The majority of the existing unpermitted development occurred between 2001 and present according to aerial photographs. Roadways on the property are evident in the earliest aerial photographs available to the Commission, 1968 and 1977. From this evidence it appears these roadways pre-dated the effective date of the Coastal Act, however, the roadways were not consistently maintained since that time as there is evidence that they had become significantly overgrown with vegetation from disuse and were more recently cleared and re-graded (between 2001 and 2002).

The applicant purchased the subject property in November 2001. The applicant asserts that the roads that currently exist on the property have existed since prior to 1968, and that brush clearance has occurred to maintain them. The only new grading that the applicant states has taken place is 444 cu. yds. cut and 444 cu. yds. fill for construction of a pad where the existing unpermitted mobile home, storage container, and water well are located. However, it is evident from aerial photographs dating from 1968 to present that significant grading and major vegetation removal has occurred since the applicant acquired the property in late 2001, and well beyond what existed prior to the effective date of the Coastal Act.

Table 1 below is an inventory of existing development on the property with an analysis of the presence of existing development on available aerial photographs over time, and how the applicant proposes to resolve the development in the subject permit application. For clarity, the various existing road segments have been assigned letters that correspond to a labeled 2007 aerial photo attached as **Exhibit 9**. As can be seen on Table 1, road segments B, C, D, E, and F are the only existing development on the property that appear to pre-date the Coastal Act. However, road segments B, C, D, E, and F become largely revegetated with native vegetation between 1977 and 1990, and remain largely vegetated until between 2001 and 2002, except road B which remained vegetated until after 2005. No grading occurred along road segments A, G, or H prior to the effective date of the Coastal Act and are therefore not visible in the early 1968 and 1977 photographs. Roads A and H first appear in the 1990 photograph and remain present in subsequent aerial photos, with a notable change between 2001 and 2002 in which the roads appear newly cleared/graded. Road G is first discernable in the 2001 photograph, but appears newly cleared/graded in the 2002 photograph. The remaining existing development listed on Table 1 (building pad and various structures) was carried out between 2001 and 2002 and therefore first appears in the 2002 aerial photograph and remains present in subsequent aerial photos, except for the travel trailer, which first appears in the 2005 photograph (**Exhibit 8**). Based on all available evidence,

Table 1

Unpermitted Development*	1968 Aerial	1977 Aerial	1990 Aerial	2001 Aerial	2002 Aerial	2005 Aerial	2007-Present Aerial	Applicant Proposes to:
Road A	Absent	Absent	Present **	Present	Appears newly cleared/graded	Present	Present	Restore and revegetate
Road B (Proposed Access Road)	Present **	Present	Largely revegetated but discernable	Largely vegetated but discernable	Mostly vegetated except north portion cleared	Partially vegetated but discernable	Appears newly graded/cleared	Retain and improve for driveway
Road C	Present **	Present	Revegetated but discernable	Vegetated but discernable	Appears newly graded/cleared	Present	Present	Partial restore and revegetate
Road D	Present **	Present	Revegetated but discernable	Vegetated but discernable	Appears newly graded/cleared	Present	Present	Partial restore and revegetate
Road E	Present **	Present	Revegetated but discernable	Vegetated but discernable	Appears newly graded/cleared	Present	Present	Revegetate
Road F	Present **	Present	Largely revegetated but discernable	Vegetated but discernable	Appears newly graded/cleared	Present	Present	Retain, restore to 5-10' wide maintenance path
Road G	Absent	Absent	Absent	Mostly revegetated but discernable **	Appears newly graded/cleared	Present	Present	Revegetate
Road H	Absent	Absent	Present **	Present	Present	Present	Present	Restore and revegetate
Building "Pad"	Absent	Absent	Absent	Absent	Present **	Present	Present	Restore and Revegetate
Solar Panel Array with Utility Shed & Fencing	Absent	Absent	Absent	Absent	Present **	Present	Present	Retain
Travel Trailer	Absent	Absent	Absent	Absent	Absent	Present **	Present	Retain Temp. During Const.
Mobile Home Structure	Absent	Absent	Absent	Absent	Present **	Present	Present	Retain Temp. During Const.
Storage Containers (2)	Absent	Absent	Absent	Absent	Present **	Present	Present	Retain Temp. During Const.
Shed	Absent	Absent	Absent	Absent	Present **	Present	Present	Retain Temp. During Const.

* Excepting an existing 10,000-gal. underground water tank and an existing water well, which cannot be seen from aerial photographs, but the applicant has acknowledged are existing unpermitted development that is proposed to be retained as part of proposed project.

** Earliest photo appearance

the existing development on the subject property (consisting of removal of major vegetation and grading of roads and building "pad", installation of a water well and underground water tank, installation of a ground-mounted solar array with utility shed and fencing, construction and placement of various structures including single-wide mobile home, travel trailer, two storage containers, and shed) was carried out after the effective date of the Coastal Act (January 1, 1977). No coastal development permit was applied for or approved for any of the existing development on the property.

Permit Application History

The applicant has submitted two previous coastal development permit (CDP) applications for development on the subject property. Both applications were returned to the applicant for reason of incompleteness.

On February 6, 2003, the applicant submitted a CDP application (No. 4-03-008) proposing construction of a 29 ft. high, 5,536 sq. ft. single family residence with 620 sq. ft. attached garage, 1,507 sq. ft. detached garage/shop, 750 sq. ft. guest house, 6,000 sq. ft. motorcourt, aviary, mixed gardens, sheds, pool, well, water tank, solar panels, septic system, driveway, 9,600 cu. yds. grading, and temporary construction mobile home and trailer on the subject property. The submitted application was incomplete for purposes of filing and staff sent a letter to the applicant, dated March 6, 2003, notifying him of the items needed to complete the application. Follow-up letters were sent to the applicant on March 27 and September 4, 2003 outlining the remaining items needed to complete the application. Among the significant items requested was grading plans, County Fire Department approval of fuel modification plans, alternatives analysis, approved County Geologic Review Sheet, and clarification/quantification of various elements of the proposed project. Having not received a response or additional information from the applicant for approximately seven months, staff returned the application to the applicant on March 24, 2004 and advised him to re-submit when the application was complete.

On October 13, 2005, the applicant submitted a new CDP application (No. 4-05-168) for development on the subject property. The proposed project was very similar to the previously proposed project but included several changes to the configuration of the development. The applicant proposed construction of a two-story, 29 ft. high, 6,060 sq. ft. single family residence with attached 675 sq. ft. garage, detached 1,500 sq. ft. three car garage/shop, detached 750 sq. ft. guesthouse with 2 car garage, swimming pool, aviary, sheds, water tank, water well, driveway, retaining walls, and a temporary construction mobile home and trailer. Again, the submitted application was incomplete for purposes of filing and staff sent a letter to the applicant, dated October 17, 2005, notifying him of the items needed to complete the application. Among the significant items requested was County Fire Department approval of fuel modification plans, alternatives analysis, approved County Geologic Review Sheet, update to geology/soils report, update to biology report, and clarification/quantification of various elements of the proposed project, particularly in regards to as-built development and plan discrepancies. On February 27, 2006, June 30, 2006, and August 4, 2006 staff

responded to the applicant's submittals of additional information. While some of the requested items were submitted by the applicant, not all were and subsequent modifications to the proposed project required additional information and clarification for application filing.

On August 31, 2006, Commission staff visited the project site. Given the known violation aspects of the project, Commission Enforcement Supervisor, N. Patrick Veasart, attended the site visit. During the visit the applicant's agent, Jai Pal Khalsa, informed staff that due to problems encountered with the design of the proposed access road, an alternate access route would now be proposed and new plans would be forthcoming.

Mr. Veasart, in a letter dated September 5, 2006, notified the applicant that unpermitted development witnessed on the property during our site visit must be included on project plans and addressed in the project description. Staff received a letter from the applicant on September 12, 2006 that included an updated project description of how he proposes to resolve the unpermitted development through the permit application. However, no accompanying details or plans of the modified project were received. It was not until March 12, 2007 that the applicant submitted grading plans for the modified project. Yet the applicant still had not provided staff with an approved County Geologic Review Sheet (which had been requested by staff since 2003), or all the information needed regarding the modified project. Therefore, staff returned the application to the applicant on March 27, 2007 and advised him to re-submit when the application was complete.

Staff was clear from the beginning what was required to file the application complete and schedule it for a Commission hearing. Unfortunately, the applicant was less than cooperative in providing the requested information. Besides requesting details regarding as-built development on the property and how the applicant was to resolve those elements, among the significant items staff had asked for was an analysis of project alternatives to minimize adverse impacts, as well as typical preliminary County approvals. In addition, due to the mapped landslide area on the property and its proximity to proposed development and the steep topography of the property, staff requested a County-approved Geologic Review Sheet for all proposed development.

The County Geotechnical and Materials Engineering Division reviews and analyzes geologic/soils reports associated with proposed development to verify compliance with County Building and Grading Code requirements. The Division will not recommend approval of project plans until they receive all the information needed for complete review and until project plans are in conformance with the County Building and Grading Code. In addition, the Division will not recommend approval until the applicants apply for a County Grading or Building Permit and submit final working drawings. It is true that the geologic review process requires an applicant to provide a significant amount of information to the County regarding the geology and engineering of a proposed project. For this reason, Commission staff only requires an applicant to provide evidence of such review prior to filing an application complete in cases with complex geology or soils, or where there are significant geologic hazards present. This requirement was

necessary in this case both to ensure that the geologic, soils and geotechnical reports provide the necessary information, and more importantly, to ensure that the proposed project will meet the County standards regarding such issues as maximum slope angle for cut and fill slopes, remedial grading, siting of roads and pads, foundation design, etc. It has been the Commission's experience that for projects on sites with complex geologic issues, including landslides, the County geologic review process often results in significant project redesign that can greatly alter the area of the site that will be impacted, as well as the significance of impacts. Without this information, the Commission cannot ensure that it is considering the true impacts of a proposed project.

On August 13, 2007, several months after Commission staff returned Application No. 4-05-168 to the applicant for incompleteness, the applicant submitted the subject permit application (No. 4-07-101). However, the application was still incomplete and staff sent several letters to the applicant outlining the remaining items needed to complete the application. In October 2008 the applicant provided staff with a County-approved Geologic Review Sheet for the proposed project, which was the last remaining item to complete the application. On October 29, 2008, the subject application was deemed complete for filing. On March 25, 2009, the applicant and Commission staff agreed to extend the time for decision on the permit application by 90 days.

Parcel Legality

The County of Los Angeles issued a Certificate of Exception 10190 on January 12, 1968 which indicates that the parcel was created legally through the approval of a "minor land division", which was defined by the County of Los Angeles as: "...any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels..." (The minor land division process was in effect in Los Angeles County between 1967 and 1972). On March 30, 1981, the County of Los Angeles issued Certificate of Compliance No. 3712. The County's issuance of the Certificate of Exception No. 10190 on January 12, 1968, for the property was considered by Los Angeles County to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance at the time of creation. Therefore, the subject parcel had been legally created prior to the effective date of the Coastal Act, and the 1981 Certificate of Compliance was unconditional.

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 subject property contains steep hillside topography, as well as a mapped landslide area to the southwest of the proposed development area. Due to the site's complex geological constraints, during review of the subject permit application staff had requested a County-approved Geologic Review Sheet for all proposed development. On October 8, 2008 the County Geotechnical and Materials Engineering Division recommended approval of the proposed grading plan, finding that the plan is in conformance with the County Building and Grading Code. 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 and graded areas restored, 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 and erosion, 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: Permanent Drainage and Polluted Runoff Control Plans

Special Condition 5: Landscaping and Erosion Control Plans

Special Condition 17: Restoration/Revegetation Plan

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. 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 and aquatic resources 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, reductions in groundwater recharge 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 and aquatic resources resulting from 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 and dry weather flows leaving the developed site, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment 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: Permanent Drainage and Polluted Runoff Control Plans

Special Condition 4: Interim Erosion Control Plans and Construction Responsibilities

Special Condition 5: Landscaping and Erosion Control Plans

Special Condition 14: Removal of Native Vegetation

Special Condition 17: Restoration/Revegetation Plan

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

D. ENVIRONMENTALLY SENSITIVE HABITAT

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.*
- P68** *Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.*
- P69** *Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*
- P72** *Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.*
- P74** *New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.*
- P81** *To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.*
- P82** *Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*
- P84** *In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.*

Project Description and Site Specific Biological Resource Information

The applicant proposes construction of a two-story, 33-ft. high, 6,290 sq. ft. single-family residence with 2,445 sq. ft. subterranean basement/garage, septic system, 1,000-ft. long, 16 to 20-ft. wide access road with three hammerhead turnarounds, keystone retaining walls, and 11,266 cu. yds. of grading (6,288 cu. yds. cut, 4,978 cu. yds. fill). The application also includes restorative grading and revegetation of previously graded roadways and a pad area, and request for after-the-fact approval to retain an existing water well, 10,000-gal underground water tank, an existing ground-mounted solar panel array with utility shed and fencing, and to temporarily retain existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed during construction.

The subject approximately 15-acre property is situated on a descending slope below a north-south trending ridge in the southeastern portion of the Santa Monica Mountains. The parcel is located within the Tuna Canyon watershed, where site slopes descend in a southern direction toward an on-site drainage ravine that runs down the middle of the property and continues south beneath Applefield Lane. Tuna Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream, is situated approximately 1,000 feet south of the property. While there is some scattered residential development in the area, the surrounding area is rural and relatively undeveloped in nature. Existing residential development is located a significant distance to the north, east and west of the subject site. In closer proximity, the Commission has recently approved residential development on an adjacent property to the east and adjacent property to the south.

According to the 2003 and 2006 Biological Assessments for the site (listed in the Substantive File Documents) submitted by the applicant, the primary vegetation community present on the site and adjacent to the site is classified as ceanothus chaparral, consisting of California buckwheat (*Eriogonum fasciculatum*), black sage (*Salvia mellifera*), sawtoothed goldenbush (*Hazardia squarrosa*), sugar bush (*Rhus ovata*), California broom (*Lotus sciparius*), and chamise (*Adenostoma fasciculatum*). In 1993 the site burned in the Old Topanga-Malibu Fire. Since that time, woody chaparral vegetation along with coastal sage scrub components recovered well and provided largely a 100% crown cover on natural slopes.

However, as discussed previously, there are several existing dirt roads, cleared areas, and various structures on site that are devoid of vegetation and contain primarily non-native plant species along their perimeter. While it appears a few of the existing roadways pre-date the effective date of the Coastal Act, the roadways were not consistently maintained (and became significantly revegetated with native vegetation from disuse) and were more recently cleared and re-graded (between 2001 and 2002). Therefore, it is evident that the unpermitted development on the property (consisting of removal of major vegetation and grading of roads and a building "pad", installation of a water well and underground water tank, installation of a ground-mounted solar array with utility shed and fencing, construction and placement of various structures including single-wide mobile home, two travel trailers, two storage containers, and a shed) was carried out after the effective date of the Coastal Act (January 1, 1977) without the required coastal development permits. The applicant has stated that one of the travel trailers has been removed from the site. The applicant proposes to retain the existing

water well, underground water tank, and ground-mounted solar array with utility shed and fencing as part of the proposed project, and to temporarily retain the existing single-wide mobile home, a travel trailer, two storage containers, and a shed on-site for use during construction.

In evaluating proposed projects, the Commission considers all development, including existing unpermitted development, as if it were not already constructed, and considers the condition of the site prior to any unpermitted development. In the case of the subject site, prior to the unpermitted development, the entire subject hillside property, with the exception of Applefield Lane, consisted of undisturbed native chaparral vegetation. In addition, the native chaparral vegetation on-site is part of a large contiguous area of native chaparral habitat.

According to public information, the applicant purchased the subject parcel in 2001 for \$350,000. The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates the subject parcel for residential use, as a combination of Rural Land I and Rural Land II (allowing one dwelling unit per five/ten acres). The parcel is 15-acres in size, and there are other scattered, residential developments in the same area. Public parkland has been acquired in this general vicinity, the Santa Monica Mountains National Recreation Area, but there is no parkland or public open space directly adjacent to the project site (although there are significant areas of parkland nearby). There is currently no offer to purchase the property from any public park agency.

ESHA Designation on the Project Site

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

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

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

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

pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission's Ecologist, Dr. John Dixon¹ (hereinafter "Dr. Dixon Memorandum"), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodlands are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP².

As described above, the project site contains pristine chaparral habitat that is part of a large, contiguous block of pristine native vegetation. In evaluating proposed projects, the Commission considers all development, including existing unpermitted development, as if it were not already constructed, and considers the condition of the site prior to any unpermitted development. In the case of the subject site, prior to the unpermitted development, the entire subject hillside property, with the exception of Applefield Lane, consisted of undisturbed native chaparral 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.

Resource Dependent Use

The Commission finds that the project site and the surrounding area constitutes an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require both the complete removal of ESHA from the home site and fuel modification for fire protection purposes around it, the proposed project would also significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would therefore require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

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

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by

the Commission on sites in the immediate area. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. There is currently no offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the project site would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the project site would create a nuisance under California law. Other houses have been constructed in similar situations in similar habitat areas in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

In conclusion, the Commission finds that, notwithstanding Section 30240, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to "take" the property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence, and the use of the development by residents will result in unavoidable loss

of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the Santa Monica Mountains to avoid a taking of property.

The applicant proposes construction of a two-story, 33-ft. high, 6,290 sq. ft. single-family residence with 2,445 sq. ft. subterranean basement/garage, septic system, 1,000-ft. long, 16 to 20-ft. wide access road with three hammerhead turnarounds, keystone retaining walls, and 11,266 cu. yds. of grading (6,288 cu. yds. cut, 4,978 cu. yds. fill). The application also includes restorative grading (utilizing the 1,300 cu. yds. of excess excavated soil generated by the project) and revegetation of previously graded roadways and a pad area, and request for after-the-fact approval to retain an existing water well, 10,000-gal underground water tank, an existing ground-mounted solar panel array with utility shed and fencing, and to temporarily retain an existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed during construction.

Proposed Development Area

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. The applicant has worked with Commission staff for a number of years on project alternatives and has finally arrived at a project that conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within a 10,000 sq. ft. development area on a single building pad. 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.

The proposed development area is situated in the central portion of the property that is approximately 500 feet north of Applefield Lane. Due to the presence of an ancient landslide area in the southwest quarter of the property and steep slopes and the presence of a drainage ravine in the southeast quarter of the property, the proposed development area could not be located any closer to Applefield Lane to reduce the length of access road and further minimize impacts to ESHA. The applicant considered siting the development area on an existing unpermitted graded "pad" where the existing unpermitted mobile home, storage container, and water well are situated to reduce the length of the proposed access road by 200 feet. However, that pad is located in a

natural drainage ravine that has been modified by unpermitted grading and vegetation removal. Siting residential development in this area would require substantially more grading and further modification of a natural drainage feature. Rather than site development on the pad within the drainage ravine, the applicant proposes to carry out restorative grading of the pad to restore natural contours and revegetate with native plants following construction of the residence and removal of the existing temporary construction trailers. As such, the Commission concludes that the proposed siting and design of the proposed residence will minimize impacts to ESHA to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

Proposed Access Road

Siting and design alternatives have also been considered in order to identify the alternative for road access that can avoid and minimize impacts to ESHA to the greatest extent feasible. The applicant has worked with Commission staff for a number of years now to come up with an access road configuration that meets Fire Department requirements while also minimizing impacts to ESHA to the extent feasible. As previously discussed, there are several existing unpermitted roads that criss-cross the subject property. The applicant proposes to restore most of the existing roads on the property, with the exception of Roads B and G, which the applicant proposes to utilize for access, and Road F and portion of Road C/D, which the applicant proposes to reduce to 5-10' wide maintenance paths.

The applicant had initially proposed to provide access to the proposed development area from an existing, unpermitted dirt road (Road A) up from Applefield Lane that runs alongside an on-site drainage ravine. While this road would have been a more direct route to the proposed development area, the presence of very steep slopes, a natural drainage, and nearby landslide debris made construction of the road to meet Fire Department access requirements infeasible without significant grading (11,300 cu. yds. cut and 15,950 cu. yds. fill) and landform alteration. As such, the applicant proposes to restore/revegetate existing Road A and instead utilize another existing, unpermitted dirt road that comes up from the adjacent property to the east. The road has already been rough graded, but will need to be widened and improved. The proposed access road is approximately 1,000 linear feet long, 16-20 feet wide and extends in a northwesterly diagonal direction from an off-site portion of Applefield Lane. Approximately 350 linear feet of 4 to 8-ft. high keystone retaining wall will be installed along the uphill side of the road. To reduce the amount of grading and the extent of cut slopes, the applicant has reduced the width of portions of the access road, from 20 to 16 feet. Typically the Los Angeles County Fire Department requires a 20-ft. wide minimum road width for access roads. However, in this case, Los Angeles County Fire Department has approved the reductions in road width for portions of the road.

Given the steep topography of the subject hillside property and presence of a mapped landslide area in the southwestern portion of the property, there are limited options for providing access to a future building pad from Applefield Lane. The proposed access

road had historically existed in its existing location since prior to 1968. While it had significantly overgrown with vegetation in intervening years, it appears this old road follows the most direct route from Applefield Lane to the building location on-site while avoiding landslide and drainage ravine areas. Of the access alternatives explored by the applicant, it appears that the proposed access route from Applefield Lane will minimize grading and landform alteration to the extent feasible. In conclusion, the Commission finds that the proposed access road route has been sited and designed to minimize impacts to ESHA to the extent feasible and no alternatives exist that would avoid or further reduce impacts to ESHA.

Accessory Development

As previously discussed, there are several existing, unpermitted graded roads and structures on the subject property. In evaluating proposed projects, the Commission considers all development, including existing unpermitted development, as if it were not already constructed, and considers the condition of the site prior to any unpermitted development. In the case of the subject site, prior to the unpermitted development, the entire subject hillside property, with the exception of Applefield Lane, consisted of undisturbed native chaparral vegetation that meets the definition of ESHA under the Coastal Act. The existing, unpermitted graded areas on-site contribute to the degradation of ESHA. In an effort to resolve the violations as part of the subject permit application for residential development of the site, the applicant proposes to:

- Retain the existing water well, 10,000-gal underground water tank, and ground-mounted solar panel array with utility shed and fencing;
- Temporarily retain the existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed during construction of the proposed residence;
- Restore/revegetate the graded “pad” and existing roads on the property (utilizing the 1,300 cu. yds. of excess excavated soil generated by the project), with the exception of Roads B and G, which the applicant proposes to utilize for an access drive, and Road F and portion of Road C/D, which the applicant proposes to reduce to 5-10’ wide maintenance paths.

Road F, approximately 300 feet in length, is situated a short distance upslope from the proposed building site. Along Road F there is an existing ground-mounted solar array with utility shed and fencing around it that the applicant proposes to retain as part of the proposed project, while also reducing the width of Road F to 5-10’ wide for use as a maintenance path. The existing ground-mounted solar panel array with utility shed has been sited in close proximity to the proposed residence. However, an access path to the array will be required for periodic maintenance. The Commission finds that in order to minimize impacts to ESHA to the maximum existing feasible, the proposed maintenance path shall be the minimum necessary (5 feet in width) for reasonable access. As such, **Special Condition No. Seventeen (17)** specifies that existing Road F behind the proposed development area be partially restored to a 5-ft. maximum width maintenance path.

Roads C and D are situated in the northeast corner of the property. An existing, unpermitted underground water tank that the applicant proposes to retain as part of the proposed project is located on Road D, at the far northeast corner of the property. The applicant proposes to restore much of Roads C and D, however, a portion of Roads C and D that lead from the proposed access road to the existing underground water tank is proposed to be retained as a 5-10' wide maintenance path. However, the Commission finds that the existing water tank has not been sited to minimize impacts to ESHA. The water tank is approximately 500 feet away from the proposed development area and will require a 300-ft. long maintenance path up a steep slope from the access road. There are alternative locations on-site for placement of the water tank to eliminate the need for an additional graded area within undisturbed ESHA. Therefore, in order to ensure that the proposed project avoids significant disruption of ESHA to the maximum extent feasible, **Special Condition No. Sixteen (16)** requires the applicant to submit revised plans for relocation of the existing 10,000-gal. underground water tank to adjacent to the proposed solar panel array along Road F behind the proposed development area. **Special Condition No. Seventeen (17)** is also required to ensure that the existing water tank site and road up to it are also restored as part of the final approved restoration plan.

Several of the existing structures on the property that are proposed to be removed from the site following construction of the proposed project (travel trailer, one storage container, and a shed) are currently located in areas either within or near the proposed building site and are appropriately situated for use during construction. However, there is an existing single-wide mobile home structure and a storage container (proposed for retention during construction only) on a pad that is proposed to be restored. To ensure that restoration of unpermitted graded areas can occur concurrent with project construction, these temporary structures shall be relocated to either the area of the proposed hammerhead turnarounds or immediately adjacent to the proposed temporary travel trailer next to the development area, as detailed in **Special Condition No. Sixteen (16)**. To ensure that the applicant's proposal to remove the temporary construction structures is implemented so that the project does not exceed the maximum amount of development that the Commission has typically allowed in similar situations on sites containing ESHA (10,000 sq. ft.), **Special Condition No. Fourteen (14)** is required. Special Condition 14 specifies that the applicant shall remove all temporary construction trailers/containers from the site within two years of the issuance of this coastal development permit or within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of such structures.

Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

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. Only as conditioned will the proposed project minimize impacts to ESHA, as required by Section 30240 of the Coastal Act.

Habitat Impact Mitigation

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

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

Obviously, native vegetation that is cleared and replaced with ornamental species or substantially removed and widely spaced will be lost as habitat and watershed cover. As discussed in the Dr. Dixon 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 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.

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>

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 condition 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. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

Additional Mitigation Measures to Address Additional ESHA Impacts

As previously discussed, there are several existing graded roads on the subject property that were cleared without benefit of a coastal development permit. The applicant proposes, as part of this project, to restore/revegetate the graded areas not being utilized for the proposed residential project with native chaparral plant species. In past permit actions on residential development in the Santa Monica Mountains the Commission has allowed habitat restoration within chaparral ESHA and has required disturbed chaparral ESHA to be restored, provided that restoration and revegetation is implemented successfully and in a manner consistent with all ESHA protection policies.

In this case, restoration of previously graded and disturbed areas is necessary to ensure the project's consistency with Section 30240 of the Coastal Act. The existing, unpermitted graded areas on-site contribute to the degradation of ESHA, as well as water quality by increased erosion and sedimentation. Therefore, in order to ensure that all existing, unpermitted graded areas (Roads A, C, D, E, H and the "pad") are restored and that the restoration/revegetation is successfully implemented in a manner that is protective of chaparral ESHA, **Special Condition No. Seventeen (17)** requires the applicant to submit a final, comprehensive restoration/revegetation plan that includes provisions for remedial grading and planting of native species compatible with the natural topography and surrounding chaparral plant community. In order to ensure that the restoration is successful and implemented in a timely manner, Special Condition 17

requires the applicant to implement the restoration/revegetation plan concurrent with project construction and to submit annual performance reports during a five-year monitoring period. If the restoration is in part, or in whole, unsuccessful, Special Condition 17 requires the applicant to submit a revised or supplemental restoration plan.

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, the Commission 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, the Lighting Restriction condition 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 on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the approved development area. This is required to be shown on the landscaping plan.

Additionally, 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 require that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. This limitation avoids loss of natural vegetation coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission also 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, the future development restriction is required.

Further, the Commission requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property. Finally, in order to ensure that the terms and conditions of this permit are adequately implemented, the Commission conditions the applicant to allow staff to enter onto the property (subject to 24 hour notice to the property owner) to undertake site inspections for the purpose of monitoring compliance with the permit.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30240 of the Coastal Act:

- Special Condition 5.** Landscaping and Fuel Modification Plans
- Special Condition 7.** Lighting Restriction
- Special Condition 8.** Future Development Restriction
- Special Condition 9.** Deed Restriction
- Special Condition 10.** Habitat Impact Mitigation
- Special Condition 11.** Open Space Conservation Easement
- Special Condition 12.** Site Inspection
- Special Condition 13.** Removal of Natural Vegetation
- Special Condition 14.** Removal of Temporary Structures
- Special Condition 16.** Revised Plans
- Special Condition 17.** Restoration/Revegetation Plan

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

E. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

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.

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

- P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.**
- P125 New development shall be sited and designed to protect public views from LCP- designated highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on a sloped terrain should be set below road grade.**
- P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.**
- P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:**
- Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LUP.**
 - Minimize the alteration of natural landforms**
 - Be landscaped to conceal raw cut slopes**
 - Be visually compatible with and subordinate to the character of its setting.**
 - Be sited so as to not significantly intrude into the skyline as seen from public viewing places.**
- P131 Where feasible, prohibit placement of structures that will break the ridgeline views, as seen from public places**
- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.**
- P142 New development along scenic roadways shall be set below the road grade on the down hill side wherever feasible, to protect designated scenic canyon and ocean views.**

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. 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 an approximately 15-acre property on a descending slope below a north-south trending ridge in the southeastern portion of the Santa Monica Mountains. The applicant proposes construction of a two-story, 33-ft. high, 6,290 sq. ft. single-family residence with 2,445 sq. ft. subterranean basement/garage, septic system, 1,000-ft. long, 16 to 20-ft. wide access road with three hammerhead turnarounds, keystone retaining walls, and 11,266 cu. yds. of grading (6,288 cu. yds. cut, 4,978 cu. yds. fill). The application also includes restorative grading and revegetation of previously graded roadways and a pad area, and request for after-the-fact approval to retain an existing water well, 10,000-gal underground water tank, an existing ground-mounted solar panel array with utility shed and fencing, and to temporarily retain existing single-wide mobile home, one travel trailer, two storage containers, and a tool shed during construction.

Site elevations range from approximately 2,200 feet at the northernmost portion of the property, down to approximately 1,800 feet at the southernmost portion of the property near Applefield Lane. The parcel is located within the Tuna Canyon watershed, where site slopes descend in a southern direction toward an on-site drainage ravine that runs down the middle of the property and continues south beneath Applefield Lane. A vast area of public park land, owned by the Santa Monica Mountains Conservancy, is located approximately 4,000 feet west of the subject parcel within Las Flores Canyon. A second area of public lands is located approximately 2,500 feet to the north, owned by the National Park Service. There are no existing or mapped public trails on or adjacent to the subject property. The project site is located on a hillside slope below an LUP-designated "significant ridgeline" and is visible from portions of Tuna Canyon Road to the south, which affords scenic vistas of the relatively undisturbed natural area. However, due to intervening topography, the project site is not visible from Saddle Peak Road or public parkland in the vicinity.

The proposed project has been clustered on one 10,000 sq. ft. pad area, and designed and conditioned to reduce landform alteration and removal of native vegetation that is considered environmentally sensitive habitat. Alternative siting locations would require more landform alteration and additional removal of environmentally sensitive habitat area, and would not reduce view impacts. As such, the proposed structure will be sited and designed to minimize impacts to visual resources. However, the visual impact of the proposed structure, including the retaining walls and driveway can be minimized by requiring these structures to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structures and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Six (6)**.

Visual impacts can be further reduced by the use of appropriate and adequate landscaping. Therefore, **Special Condition Two (2)** requires the applicant to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. To ensure that the final approved landscaping plans are successfully implemented, Special Condition 2 also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time. The proposed as-built ground-mounted solar array is located behind the residence within Fuel Modification Zone B, and therefore, will not be visible from public roads or lands.

The unpermitted as-built grading and structures on the property that replaced chaparral and coastal sage scrub vegetative communities are visible from portions of Tuna Canyon Road. The proposed project includes restorative grading and revegetation of previously graded roadways and a pad area that will not be used for the proposed residential development, and request for after-the-fact approval to temporarily retain an existing single-wide mobile home, a travel trailer, two storage containers, and a tool shed on-site during construction. Restoration of graded areas and removal of temporary accessory structures will mitigate for adverse impacts to visual resources. However, to ensure that site restoration/revegetation is successfully implemented to mitigate for adverse impacts to visual resources, **Special Condition No. Seventeen (17)** requires the applicant to submit a final restoration/revegetation plan that includes provisions for remedial grading and planting of native species compatible with the surrounding natural topography and chaparral plant community, to be implemented concurrent with project construction. And to ensure that the applicant's proposal to remove the temporary structures is implemented, **Special Condition No. Fourteen (14)** is required, which specifies that the applicant shall remove the temporary construction trailers/containers from the site within two years of the issuance of this coastal development permit or within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of such structures.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby public lands and scenic roads. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition No. Seven (7)** limits night lighting of the site in general, limits lighting to the developed area of the site, and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Finally, regarding future developments or improvements, certain types of development on the property, normally associated with a single-family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this

area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, is reviewed by the Commission for compliance with the visual resource policies contained in Section 30251 of the Coastal Act. **Special Condition Nine (9)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Further, **Special Condition Ten (10)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the property.

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

F. UNPERMITTED DEVELOPMENT

Unpermitted development occurred on the subject parcel prior to submission of this permit application including, but not limited to, removal of major vegetation and grading of roads and building “pad”, installation of a water well and underground water tank, installation of a ground-mounted solar array with utility shed and fencing, construction and placement of various structures including a single-wide mobile home, travel trailer, two storage containers, and a shed. The unpermitted development occurred prior to submission of this permit application.

The applicant is now requesting after-the-fact approval to retain the existing water well, 10,000-gal underground water tank, solar panel array with utility shed and fencing, and a couple of graded roads to accommodate residential development of the property. In addition, the applicant proposes restorative grading and revegetation of previously graded roadways and a pad area that will not be used for the proposed residential development and to temporarily retain the existing single-wide mobile home, a travel trailer, two storage containers, and a shed during construction as part of the proposed project.

As described in greater detail above, **Special Condition Sixteen (16)** requires the applicant to submit revised plans that relocate the existing underground water tank to the proposed developed portion of the site. **Special Condition Seventeen (17)** requires the applicant to submit a final, comprehensive restoration/revegetation plan for the restoration of various unpermitted graded areas of the site, as well as for the former water tank site and water tank access road. In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions that are a prerequisite to the issuance of this permit, within 180 days of Commission action, as detailed in **Special Condition No. Fifteen (15)**.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of a portion of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. The Commission's enforcement division will evaluate further actions to address this matter.

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 avoid or minimize adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. The following special conditions are required to assure the project's consistency with Section 30604 of the Coastal Act:

Special Conditions 1 through 17

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 (CEQA)

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

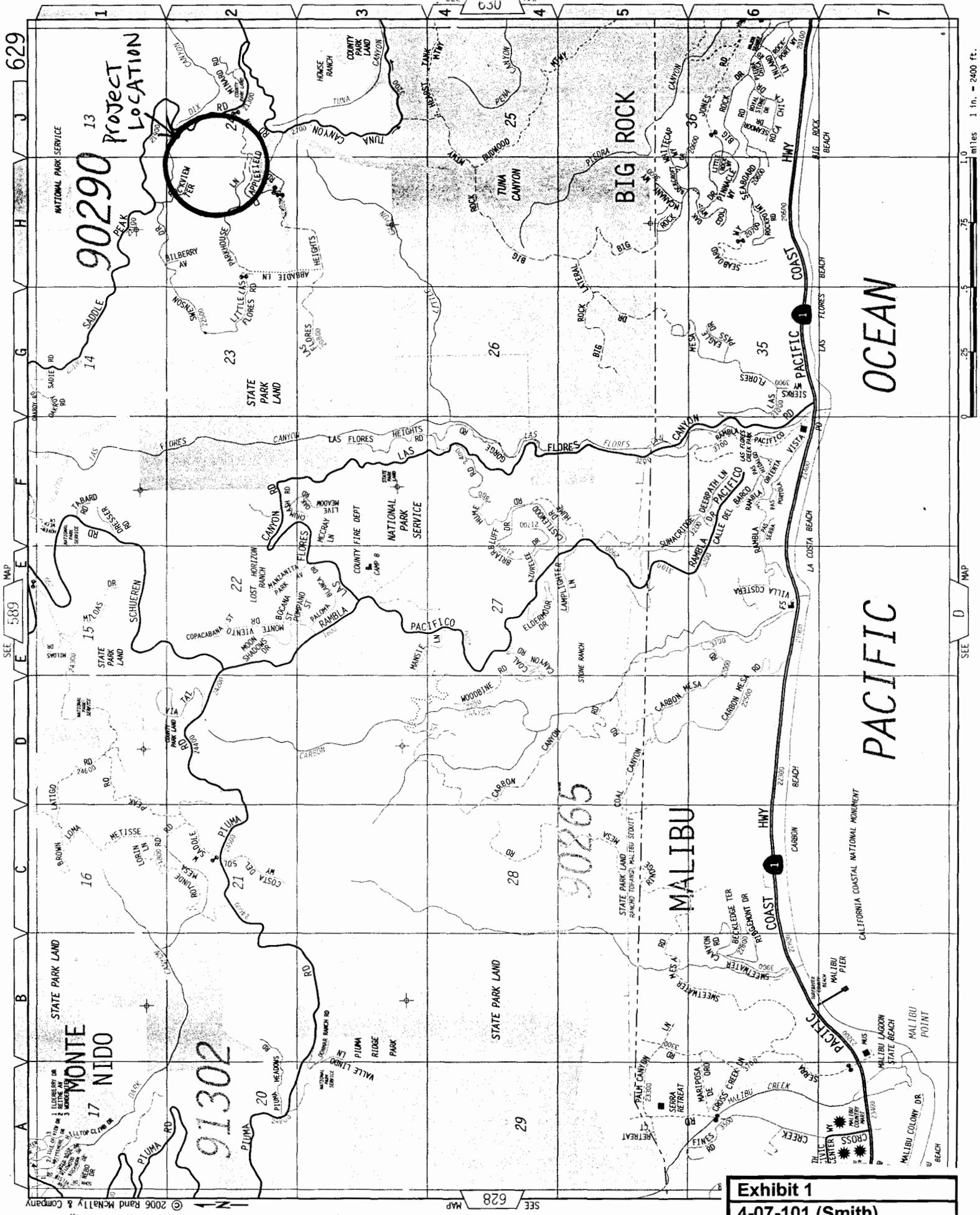
which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through clustering development onto a single pad, and by prohibiting development outside of the approved development area as required by the granting of an open space conservation easement. Mitigation measures required to minimize impacts include requiring restoration/revegetation of disturbed graded areas (ESHA, water quality, and visual resources), removal of temporary structures (ESHA and visual resources), drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA), restricting structure color (visual resources), and requiring future improvements to be considered through a CDP. Finally, the habitat impact mitigation condition is a measure required to compensate for impacts to ESHA.

The following special conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

Special Conditions 1 through 17

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.



SEE 589 MAP
 SEE 629 MAP
 A B C D E F G H J
 1 2 3 4 5 6 7
 13 14 15 16 17 20 21 22 23 25 26 27 28 29

90290

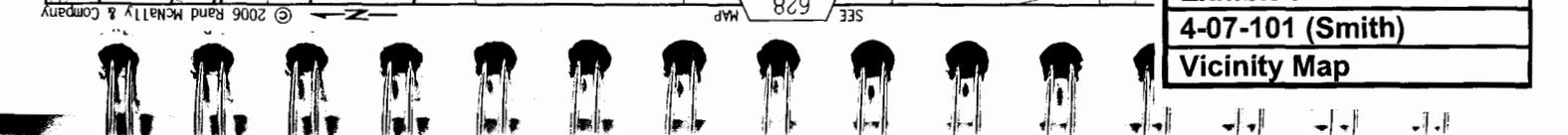
Project Location

91302

90265

Exhibit 1
4-07-101 (Smith)
Vicinity Map

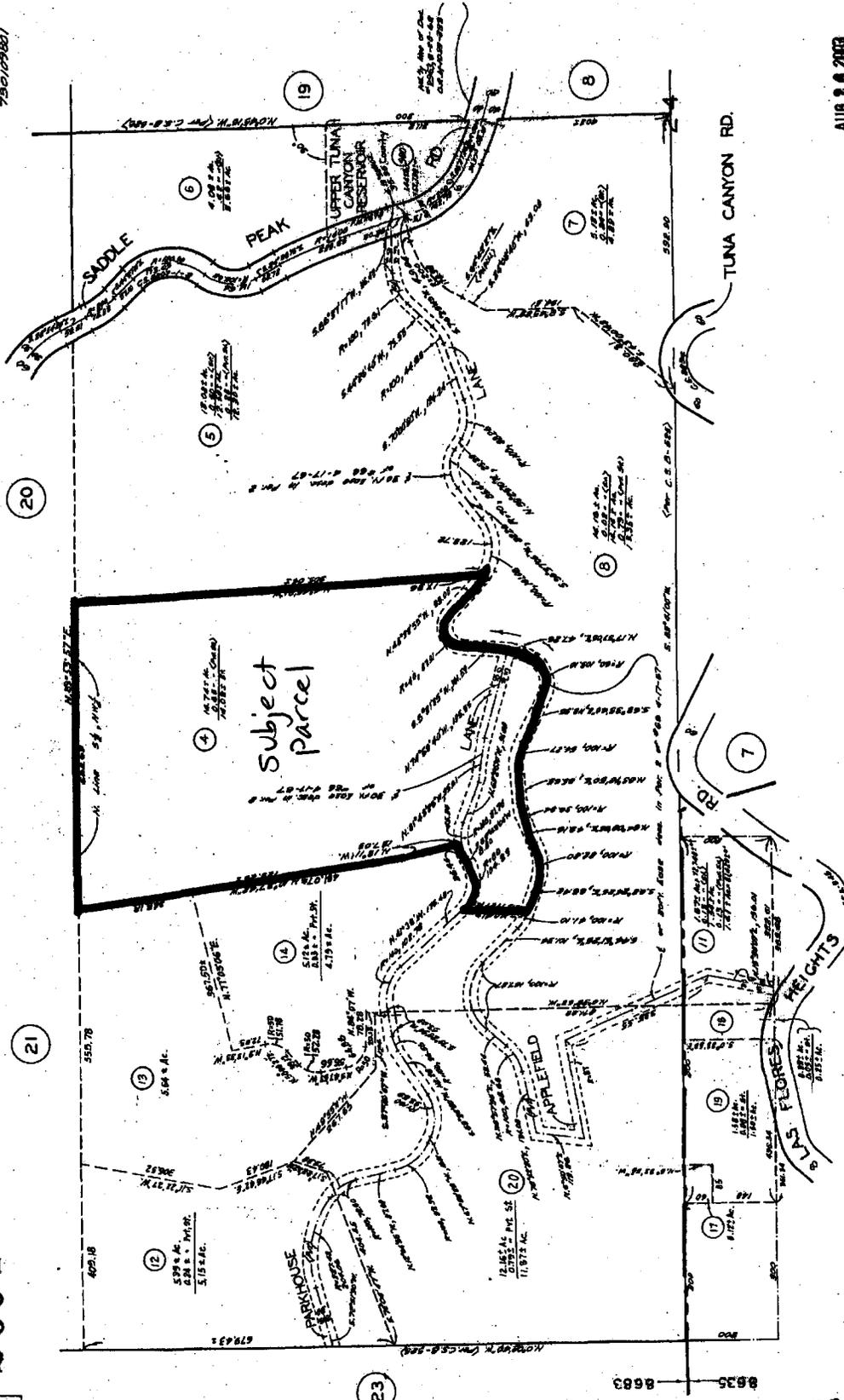
1.0 miles 1 in. = 2400 ft.



9407187901002-07
 26054616174264-17
 CS0514500
 6/11/2005
 4300 5:00 AM
 750/10901

2004

4448 22
 SCALE 1" = 200'



AUG 26 2003

ASSESSOR'S MAP
 COUNTY OF LOS ANGELES, CALIF.

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

CODE
 8635
 8683

FOR PREV. ASSMT SEE
 4448 - 56

Exhibit 2
 4-07-101 (Smith)
 Parcel Map

REVISIONS	DATE	BY

PREPARED BY:
JIMMY TODOROV
 REGISTERED CIVIL ENGINEER
 148 NORTH ALHAMBRA DRIVE
 WEST HOLLYWOOD, CALIFORNIA 90240
 Cal. #14878
 Cell: 310.379.7131

CLIENT: **MR. DENNIS SMITH**

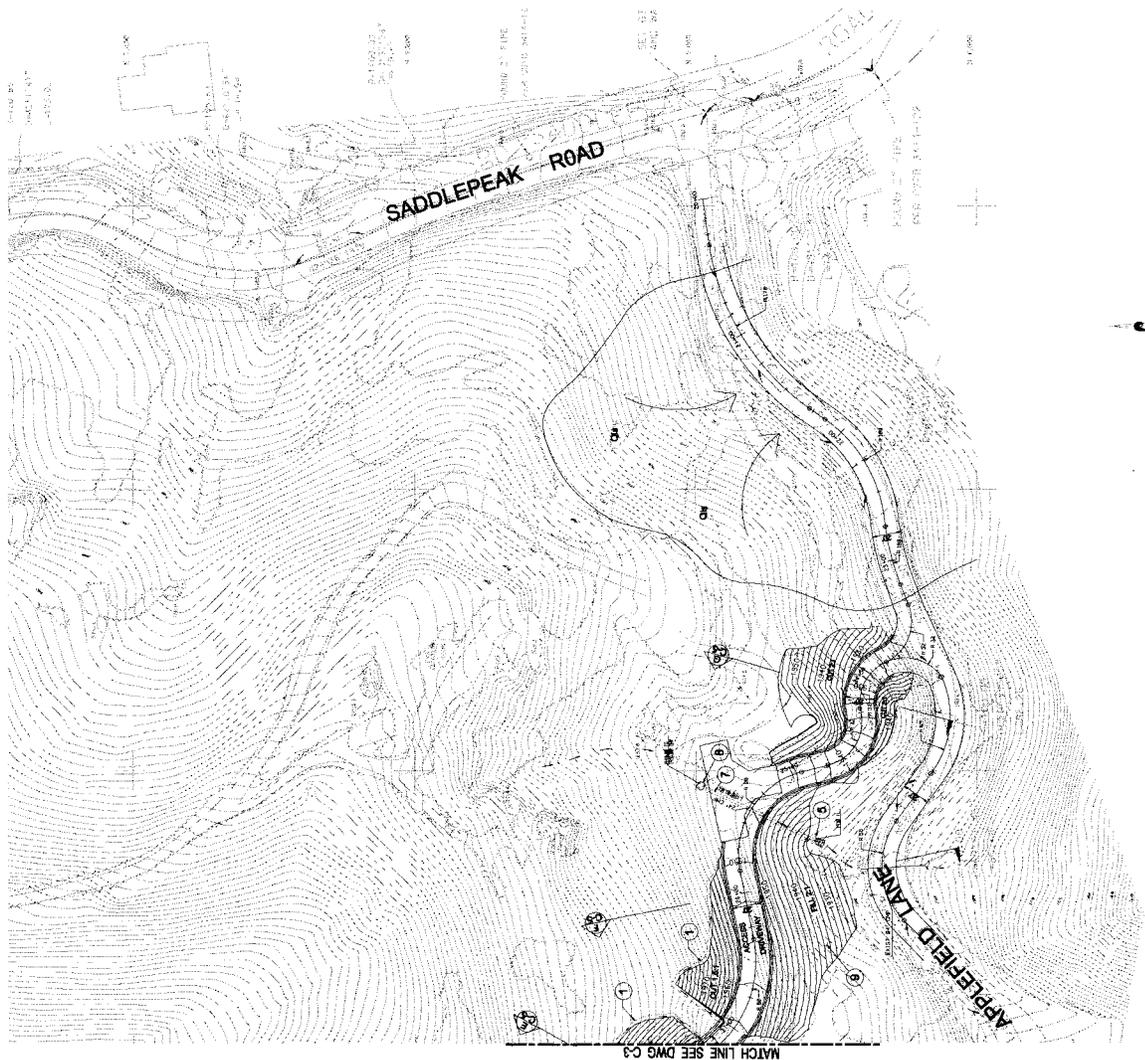
2575 APPLEFIELD LN
 TOPANGA, CA 90290

CONCEPT GRADING AND DRAINAGE PLAN SH2
 APN 4448-022-005
 2575 APPLEFIELD LN
 TOPANGA, CA 90290
 FOR THE PROPERTY AT:

DATE: 06/04/2008
 SCALE: 1" = 40.0'
 DRAWN: JT
 CHECKED: JT
 JOB NO.: 18
 SHEET NO.:

C-4

NOTES:
 1. FOR CONSTRUCTION SYMBOLS SEE DWG. C-3



SCALE: 1" = 40'
 0 40 80 120'

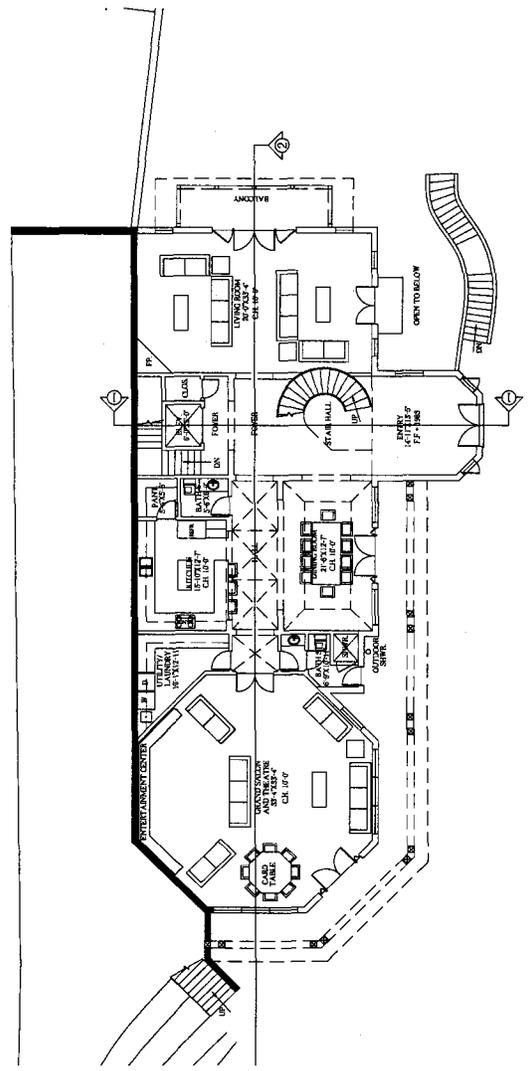
N 4500'

KHALSA & ASSOC./TRG LA
 ARCHITECTURE - PRESERVATION - INNOVATION
 3604 HOLDRIDGE AVENUE
 LOS ANGELES CA 90016
 TEL: 310/559-7088 FAX 329-0050
 E-Mail: jaipta@kgl.com

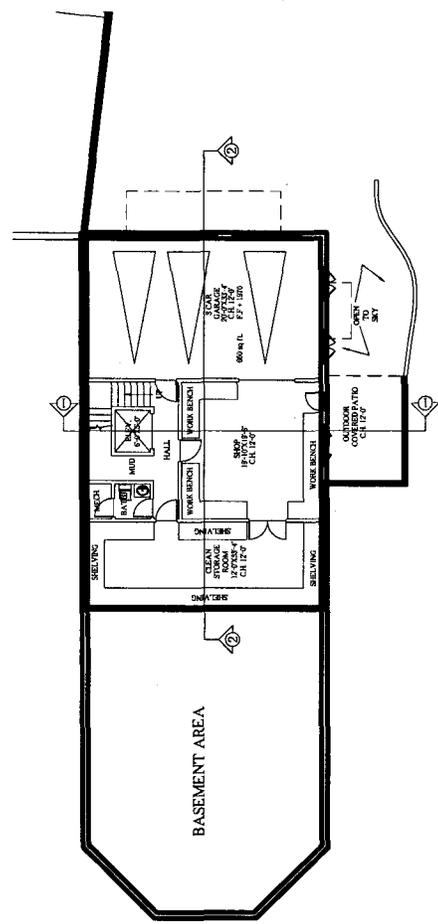
SMITH RESIDENCE & GUEST HOUSE
 2575 APPLEFIELD LANE
 TOPANGA, CA 90290

SURVEY/REMARKS 4-9-2002
 SITE & BLOCK INFORMATION 5-5-2002
 GRADING & DRAINAGE 6-3-2002
 REGIONAL PLANNING A/C 8-11-2002
 COUNTY PLANNING 8-11-2002
 COASTAL COMMISSION 8-11-2002
 CALIFORNIA DEPARTMENT OF PUBLIC WORKS
 COUNTY OF LOS ANGELES 9-2-2002
 LOCAL PLANNING AGENCY 9-2-2002
 COUNTY COMMISSION 10-2-2002
 BLOCK 14
 A/C RP ALT 8-14-06
 REGISTRATION

A1.1



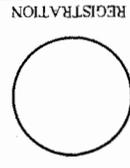
1ST FLOOR PLAN
 1/8" = 1'-0"
 3100 SQ. FT.



GARAGE PLAN
 1/8" = 1'-0"
 GARAGE AREA = 660 SQ. FT.
 STAIR/STORAGE & STAIR/ELEV. = 1066 SQ. FT.
 BASEMENT/CRAWLSPACE = 1579 SQ. FT.
 TOTAL = 2415 SQ. FT.

Exhibit 4
4-07-101 (Smith)
1st Floor, Garage Plan

A2.1

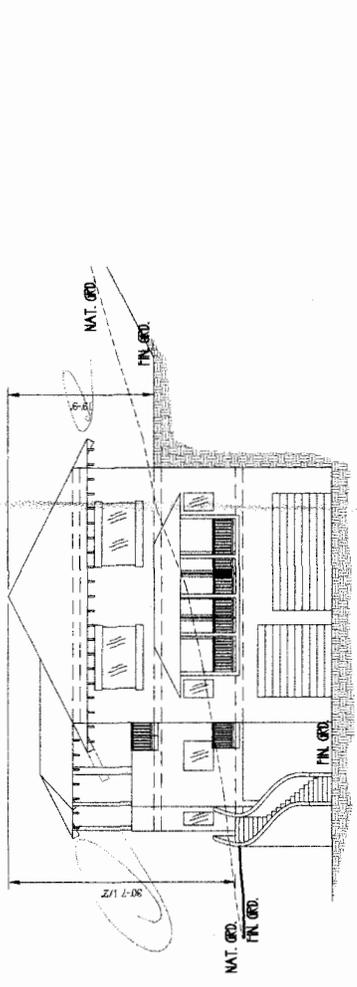


REGISTRATION

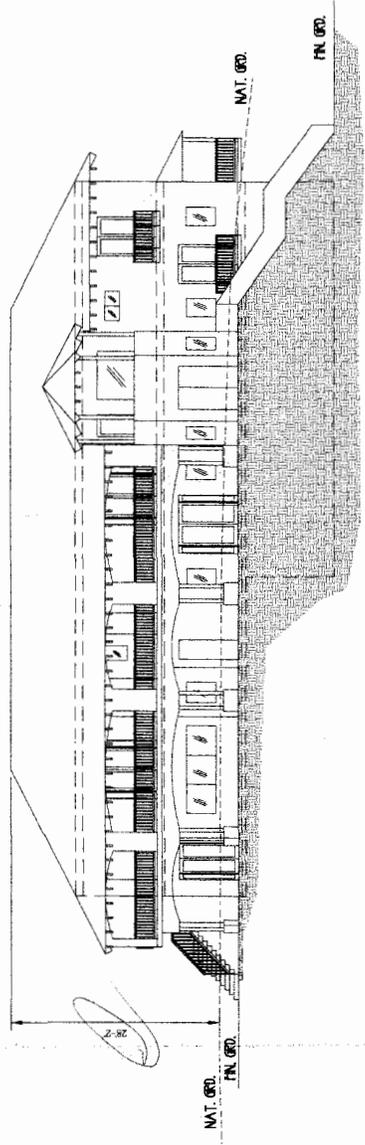
SURVEY PERMITS
 LICENSED PROFESSIONAL ARCHITECT
 CIVIL - GRADING & DRAINAGE
 REGIONAL PLANNING A.C.
 COASTAL COMMISSION 9702
 COASTAL COMMISSION 9702
 GRADING PERMIT
 BUILDING PERMIT

SMITH RESIDENCE & GUEST HOUSE
 2575 APPLEFIELD LANE
 TOPANGA, CA 90290

KHALSA & ASSOC./TRG LA
 ARCHITECTURE - PRESERVATION - INNOVATION
 3604 HOLMREGE AVENUE
 LOS ANGELES CA 90016
 TELE 310/559-7088 FAX 359-0050
 E-Mail jaipal@tkgla.com



EAST BUILDING ELEVATION
1/8" = 1'-0"



SOUTH BUILDING ELEVATION
1/8" = 1'-0"

Exhibit 6
 4-07-101 (Smith)
 Elevations

REVISIONS
DATE

PREPARED BY: JIMMY TODOROV
REGISTERED CIVIL ENGINEER
WEST HOLLYWOOD, CALIFORNIA 90240
TOPANGA, CA 90290

CUSTOMER: MR. DENNIS SMITH
2575 APPLEFIELD RD
TOPANGA, CA 90290

APN 4448-02-005
2575 APPLEFIELD LN
TOPANGA, CA 90290

DATE: 04/20/2019
SCALE: 1" = 40'-0"
DRAWN: JT
CHECKED: JT
JOB NO.: 18
SHEET NO.: 18

C-3A

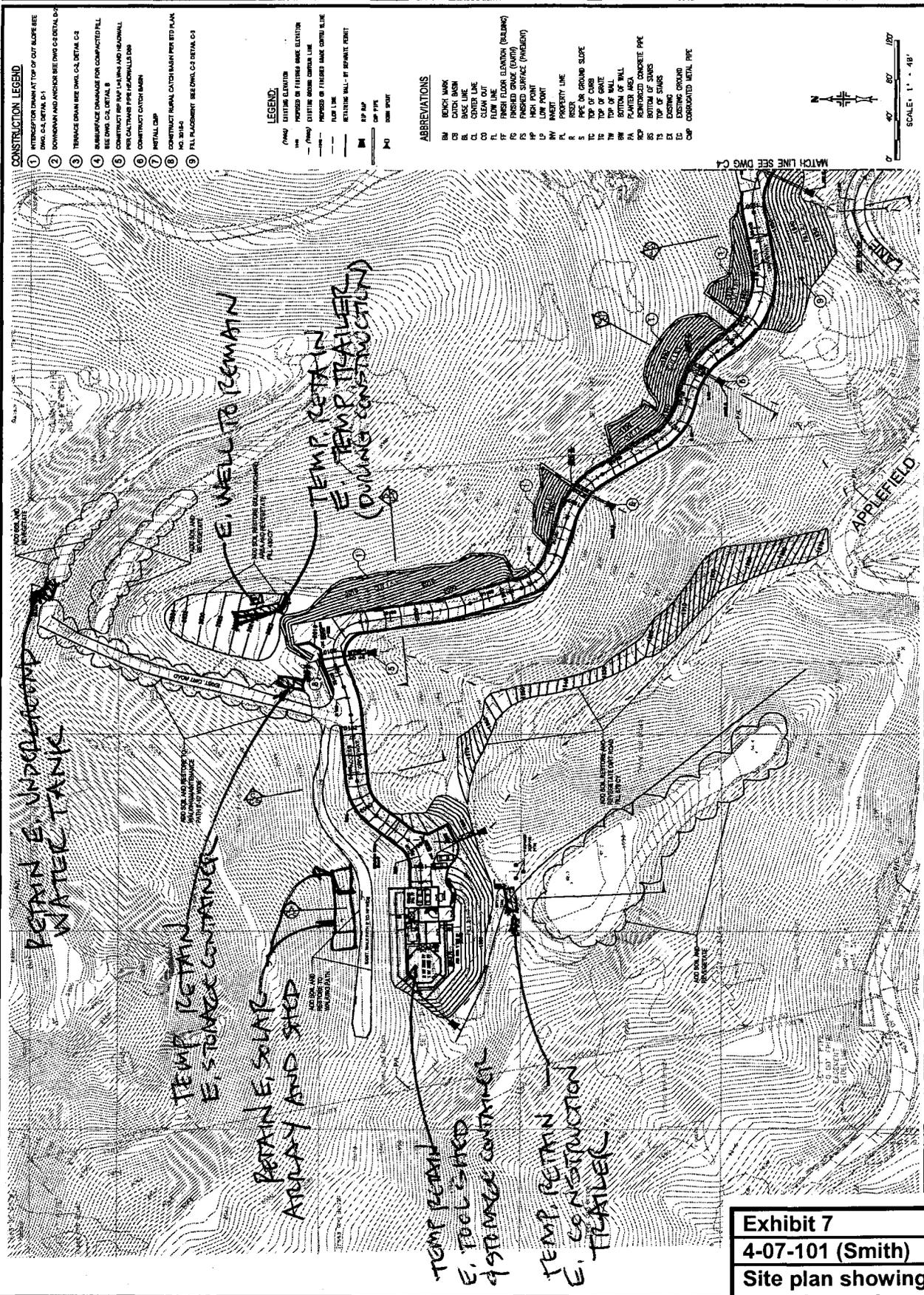


Exhibit 7
4-07-101 (Smith)
Site plan showing proposed retention and removal of existing structures







 *open space area*

CE-1	SHEET NO. 16	CHECKED: JT	DATE: 06/10/2009	CONSERVATION EASEMENT PLAN	CLIENT: MR. DENNIS SMITH		PREPARED BY: JIMMY TODOROV REGISTERED CIVIL ENGINEER No. 10079 (Exp. 6/30/09) 148 NORTH ALMONT DRIVE WEST HOLLYWOOD, CALIFORNIA 90245
	FOR THE PROPERTY AT APN 4448-022-005 2575 APPLEFIELD LN TOPANGA, CA 90290	DRAWN: JT DATE: 06/10/2009	2575 APPLEFIELD RD TOPANGA, CA 90290	Exhibit 10 4-07-101 (Smith) Open Space Area			