

CALIFORNIA COASTAL COMMISSION

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 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION No.: 4-08-022

APPLICANT: Tom Elliott

PROJECT LOCATION: 1522 Decker Canyon Road, Santa Monica Mountains (Los Angeles Co.)

PROJECT DESCRIPTION: The applicant is proposing to construct a two-story, 28-ft. high, 4,413 sq. ft. single-family residence with 1,129 sq. ft. attached garage, swimming pool, septic system, 300-ft. long driveway with hammerhead turnaround, retaining walls, after-the-fact 6-ft. high chain-link perimeter fencing, and 1,498 cu. yds. of grading (749 cu. yds. cut, 749 cu. yds. fill).

Lot Area:	2 acres
Building Coverage:	3,018 sq. ft.
Paved Area:	9,000 sq. ft.
Landscaped Area:	17,148 sq. ft.
Ht. Abv. Fin. Grade:	28 ft.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **DENIAL** of the subject permit application. The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu-Santa Monica Mountains Land Use Plan (LUP) serve as guidance.

The applicant proposes to construct a single-family residence on an approximately 2-acre property along Decker Canyon Road in the Santa Monica Mountains. To the south of the subject parcel are several single family residences along Decker Canyon Road. To the north of the parcel is vacant land that has been disturbed to some degree by past grading and brush clearance activities. To the east of the parcel is a large area of vacant land that contains relatively undisturbed native chaparral vegetation. Much of this area, to the northeast, is National Park Service land. The subject site is located in an area designated as a Wildlife Corridor (between the Arroyo Sequit Significant Watershed and the Trancas Canyon Significant Watershed) in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP).

In 1999 the Commission had approved residential development on the subject parcel (CDP 4-99-015 (Goebels)) that included a main residence and detached garage on the existing knoll-top

pad on the eastern portion of the site and a guest unit/garage in the western portion of the site. This permit has since expired. However, at the time the Commission considered CDP Application No. 4-99-015, native chaparral vegetation in the Santa Monica Mountains was not yet recognized as an especially valuable habitat type that met the definition of ESHA under the Coastal Act. The area was, however, mapped as a Wildlife Migration Corridor in the LUP and the Commission found it important to maintain the habitat value of the mature chaparral area to the east of the property for migrating wildlife. As such, the Commission found in its approval of CDP No. 4-99-015 that the project would minimize impacts to the chaparral habitat only because it included a 6-ft. high, 66-ft. long fire retardant wall between the proposed residential development and the east property boundary to avoid fuel modification requirements within the mature chaparral area to the east. At that time, the Los Angeles County Fire Department had approved the fire retardant wall in lieu of fuel modification to the east of the house. The Commission found that the wall would minimize the project's effects upon the chaparral habitat that is of value to migrating wildlife in the corridor. Since that time, the Commission has regularly found, in numerous past permit actions, that many areas located in the Santa Monica Mountains Coastal Zone meet the Coastal Act definition of ESHA even though they may contain no resource designation or some other resource designation, such as Wildlife Migration Corridor.

The subject 2-acre property has historically been disturbed and currently consists of non-native ruderal vegetation. An existing residence is situated on an adjacent parcel to the south and its associated fuel modification radius encroaches into much of the western portion of the subject property. In addition, an existing graded pad that pre-dates the effective date of the Coastal Act is situated on a knoll in the eastern portion of the site. As such, the subject property is disturbed and does not meet the definition of ESHA in the Coastal Act. However, the area east and northeast of the property consists of chaparral habitat that is part of a large, contiguous block of pristine native vegetation and meets the definition of ESHA in the Coastal Act.

The applicant had originally proposed to construct a residential development similar to that previously approved in CDP 4-99-015, consisting of a two-story, 4,358 sq. ft. single-family residence with a 796 sq. ft. attached garage on the existing knoll-top pad in the eastern portion of the property, and a detached 1,401 sq. ft. guest house/garage in the western portion of the property. Proposed grading under this proposal included a total of 2,560 cu. yds. (1,293 cu. yds. cut, 1,267 cu. yds. fill) and the proposed development area exceeded 15,000 sq. ft. In processing the subject permit application, Commission staff asked for an alternatives analysis to limit the proposed development area to no more than 10,000 sq. ft., which is the maximum development area the Commission has allowed for projects in the Santa Monica Mountains that the Commission is compelled to approve notwithstanding their negative impact on ESHA. Staff also requested the applicant analyze the feasibility of siting all proposed development closer to Decker Canyon Road (in the area of the proposed guest house) to avoid vegetation removal/thinning for fuel modification purposes within the undisturbed native chaparral area to the east that meets the definition of ESHA under the Coastal Act.

In response to the issues raised by staff in processing the application, the applicant has omitted the proposed guest house, redesigned/reconfigured the proposed main residence and attached garage on the knoll-top pad to provide a larger setback from the rear/east property boundary and ESHA, and reduced the proposed development area to 9,990 sq. ft. The redesign has increased the structure's rear yard/ESHA setback from 34 feet to 106 feet. Given Fire Department fuel modification requirements for fire protection, approximately 100-ft. of the required 200-ft. fuel modification radius around the proposed structures would not be able to be contained on the project site. As such, brush clearance would be required on the neighboring property off-site, which would encroach into off-site ESHA. While the revised proposal would

reduce impacts to off-site ESHA, the project as proposed would still have unavoidable impacts to the off-site ESHA. The applicant has stated that he is unwilling to relocate the residence to the western portion of the property due to the loss of mountain views that would result.

The proposed siting of the residential development is not consistent with Section 30240 of the Coastal Act or the guidance policies of the LUP because residential development is not a resource-dependent use, because the habitat removal associated with the proposed construction (including the required fuel modification areas) will not protect ESHA against any significant disruption of habitat values, and because the proposed development would not be "as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources." In addition, the proposed as-built chain link fencing around the perimeter of the property inhibits the free passage of wildlife within ESHA and the designated Wildlife Corridor, which does not protect ESHA against any significant disruption of habitat values. Furthermore, alternatives exist to accommodate construction of a single-family residence on the property while avoiding impacts to off-site ESHA, consistent with Coastal Act policies. Therefore, staff recommends **denial** of the subject application.

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concept, dated February 25, 2008; Los Angeles County Fire Department approval of access and turnaround areas, dated April 2, 2008; Los Angeles County Fire Department approval of Final Fuel Modification Plan, dated March 25, 2008; Los Angeles County Department of Health Services, Conceptual Approvals for Private Septic Systems, dated October 9, 2007.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan (LUP); The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D; "Biological Assessment," prepared by Forde Biological Consultants, dated February 7, 2007; "Geologic and Soils Engineering Exploration," prepared by Grover Hollingsworth and Associates Inc., dated March 27, 2007; "Drainage Study," by The G4 Group Inc., dated March 2008; Coastal Development Permit No. 4-99-015 (Goebels).

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION I: *I move that the Commission approve Coastal Development Permit 4-08-022 pursuant to the staff recommendation.*

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion (through adoption of staff's recommended "no" vote) will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes to construct a two-story, 28-ft. high, 4,413 sq. ft. single-family residence with 1,129 sq. ft. attached garage, swimming pool, septic system, 300-ft. long driveway with hammerhead turnaround, retaining walls, after-the-fact 6-ft. high chain-link perimeter fencing, and 1,498 cu. yds. of grading (749 cu. yds. cut, 749 cu. yds. fill) (**Exhibits 3-8**). The proposed project site is an approximately 2-acre, rectangular-shaped parcel located on the east side of Decker Canyon Road, north of Encinal Canyon Road and south of Mulholland Highway in the Santa Monica Mountains, Los Angeles County (**Exhibits 1-2**). The west portion of the property adjacent to Decker Canyon Road consists of gently sloping terrain that then ascends in a northeast direction, up to a fairly level graded knoll-top pad (**Exhibit 12**). Site elevations range from 670 feet in the western portion of the property to 720 feet in the eastern portion of the property. The existing graded knoll-top pad has been documented by Commission staff to date back to the 1960's. As such, the graded pad and an approximately 300-ft. long road up to it along the north property boundary, pre-date the effective date of the Coastal Act. The property has been disturbed since that time and periodically cleared/mowed. More recently (since the effective date of the Coastal Act), a chain-link fence has been constructed along the property's perimeter without benefit of a coastal development permit. The applicant is proposing to retain this fencing as part of the proposed project.

According to the applicant's submitted Biological Assessment, prepared by Forde Biological Consultants, the property contains non-native ruderal vegetation, with the exception of a few small native toyon (*Heteromeles arbutifolia*) trees. The biological assessment also states that a large area of native chaparral vegetation exists to the east, beginning at the applicant's eastern property boundary, that meets the Coastal Act definition of an environmentally sensitive habitat area (ESHA). The subject site is located in an area designated as a Wildlife Corridor (between the Arroyo Sequit Significant Watershed and the Trancas Canyon Significant Watershed) in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) (**Exhibit 11**).

To the south of the parcel are several single family residences along Decker Canyon Road. To the north of the parcel is vacant land that has been disturbed to some degree by past grading and brush clearance activities. To the east of the parcel is a large area of vacant land that contains relatively undisturbed native chaparral vegetation. Much of this area, to the northeast, is National Park Service land.

The site is not visible from any public viewing areas.

Prior Commission Action

The Commission has previously approved residential development on the subject parcel. In 1999 the Commission approved CDP 4-99-015 (Goebels) for a 3,800 sq. ft., 26 ft. high, two story single family residence, detached 3-car garage adjacent to residence on an existing 7,900 sq. ft. pad atop a low knoll, fire department turnaround at upper mouth of existing driveway, 18 ft. high, two-story, additional detached 4-car garage with 800 sq. ft. first floor and 750 sq. ft. guest unit on second floor, six ft. high, approximately 66 linear ft., non-combustible fire wall along partial property line, swimming pool, septic system, and 170 cu. yds. of grading (95 cu. yds. cut and 75 cu. yds. fill), subject to special conditions regarding landscape and erosion control plans, conformance with geologic recommendations, a future development restriction, and a waiver of liability regarding wildfire risks (**Exhibit 9**). The permit was issued April 27, 2000. However, the permit expired on May 11, 2001 because the property owner at the time did not commence construction of the approved development and did not request a permit extension prior to expiration.

At the time the Commission considered CDP Application No. 4-99-015, native chaparral vegetation in the Santa Monica Mountains was not yet recognized as an especially valuable habitat type that met the definition of ESHA under the Coastal Act. The area was, however, mapped as a Wildlife Migration Corridor in the LUP and the Commission found it important to maintain the habitat value of the mature chaparral area to the east of the property for migrating wildlife. As such, the Commission found in its approval of CDP No. 4-99-015 that the project would minimize impacts to the chaparral habitat only because it included a 6-ft. high, 66-ft. long fire retardant wall between the proposed residential development and the east property boundary to avoid fuel modification requirements within the mature chaparral area to the east. At that time, the Los Angeles County Fire Department had approved the fire retardant wall in lieu of fuel modification to the east of the house. The Commission found that the wall would minimize the project's effects upon the chaparral habitat that is of value to migrating wildlife in the corridor.

The Malibu/Santa Monica Mountains Land Use Plan (LUP) certified by the Coastal Commission in 1986 contains a tiered approach to sensitive resource designation. In applying this policy approach to numerous permit decisions that have come before the Commission since 1986, such as CDP 4-99-015, the Commission has concluded that the tiered approach often does not adequately protect lands that meet the definition of ESHA under the Coastal Act but nevertheless fall into one of the lower tiers in the LUP

system. The Commission has found, in past permit actions, that many areas located in the Santa Monica Mountains Coastal Zone meet the Coastal Act definition of ESHA even though they may contain no resource designation or some other resource designation, such as Wildlife Migration Corridor.

As discussed in further detail later in this report, the area east of the property contains a large contiguous area of native chaparral vegetation that the Commission finds meets the Coastal Act definition of ESHA.

Subject Permit Application

The applicant had originally proposed to construct a residential development similar to that previously approved in CDP 4-99-015. The applicant proposed a two-story, 4,358 sq. ft. single-family residence with a 796 sq. ft. attached garage on the existing knoll-top pad in the eastern portion of the property, and a detached 1,401 sq. ft. guest house/garage in the western portion of the property (**Exhibit 10**). The applicant also proposed to improve an existing 300-ft. long, 20-ft. wide driveway to the upper pad. Proposed grading under this proposal included a total of 2,560 cu. yds. (1,293 cu. yds. cut, 1,267 cu. yds. fill) and the proposed development area exceeded 15,000 sq. ft. A major departure from the project approved in CDP 4-99-015 is that the applicant did not propose to include the construction of the fire retardant wall between the proposed residential development and the east property boundary. In processing the application, Commission staff asked for an alternatives analysis to limit the proposed development area to no more than 10,000 sq. ft., which is the maximum development area the Commission has allowed for projects in the Santa Monica Mountains that the Commission is compelled to approve notwithstanding their negative impact on ESHA. Staff also requested the applicant analyze the feasibility of siting all proposed development closer to Decker Canyon Road (in the area of the proposed guest house) to avoid vegetation removal/thinning for fuel modification purposes within the undisturbed native chaparral area to the east that meets the definition of ESHA under the Coastal Act.

In response to the issues raised by staff in processing the application, the applicant has omitted the proposed guest house, redesigned/reconfigured the proposed main residence and attached garage on the knoll-top pad to provide a larger setback from the rear/east property boundary and ESHA, and reduced the proposed development area to 9,990 sq. ft. The redesign has increased the structure's rear yard/ESHA setback from 34 feet to 106 feet. As such, the 100-ft.-wide Zone C (thinning zone) of the required 200-ft. fuel modification radius would encroach into off-site ESHA. The applicant has stated that he is unwilling to relocate the residence to the western portion of the property where the guest house had previously been proposed due to the loss of mountain views that would result.

The applicant has asked the Los Angeles County Fire Department if they would approve the construction of a fire wall in lieu of a full 200-foot radius of fuel modification and/or brush clearance beyond the northeastern and eastern property lines, as had been done

for the previously approved development at this site in 1999. The Fire Department representative replied that they no longer allow the substitution of fire walls for the full 200 feet of fuel modification/brush clearance, given the lack of effectiveness of fire walls for fire protection in this area. In order to comply with the mandatory County Fire Department requirements, the current application therefore effectively proposes brush clearance of off-site ESHA, some of which would be on National Park Service land.

B. Environmentally Sensitive Habitat

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

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

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

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

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

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

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

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

P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

1. Project Description and Site Specific Biological Resource Information

The proposed project site is an approximately 2-acre, rectangular-shaped parcel located on the east side of Decker Canyon Road, north of Encinal Canyon Road and south of Mulholland Highway in the Santa Monica Mountains, Los Angeles County. The west portion of the property adjacent to Decker Canyon Road consists of gently sloping terrain that then ascends in a northeast direction, up to a fairly level graded knoll-top pad. Site elevations range from 670 feet in the western portion of the property to 720 feet in the eastern portion of the property. The existing graded knoll-top pad has been documented by Commission staff to date back to the 1960's. As such, the graded pad and an approximately 300-ft. long road up to it along the north property boundary, pre-date the effective date of the Coastal Act. The property has been disturbed since that time and periodically cleared/mowed. More recently (after the effective date of the Coastal Act), a chain-link fence has been constructed along the property's perimeter without benefit of a coastal development permit. The applicant is seeking after-the-fact approval of this fence as part of this application, in order to be able to retain this fencing as part of the proposed project.

The subject site is located in an area designated as a Wildlife Corridor (between the Arroyo Sequit Significant Watershed and the Trancas Canyon Significant Watershed) in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP). To the south of the parcel are several single family residences along Decker Canyon Road. To the north of the parcel is vacant land that has been disturbed to some degree by past grading and brush clearance activities. To the east/northeast of the parcel is a large area of vacant land that contains relatively undisturbed native chaparral vegetation. Much of this area, to the northeast, is National Park Service land.

According to the applicant's submitted Biological Assessment, prepared by Forde Biological Consultants (February 2007), the subject property contains non-native ruderal vegetation, with the exception of a few small native toyon (*Heteromeles arbutifolia*) trees. The Biological Assessment also states that a large area of native chaparral vegetation exists to the east, beginning at the applicant's eastern property boundary, that meets the Coastal Act definition of an environmentally sensitive habitat area (ESHA). Based on Commission staff review of the Biological Assessment and aerial photographs of the site and surrounding area, staff concurs with the above characterization of the area.

The applicant proposes to construct a two-story, 28-ft. high, 4,413 sq. ft. single-family residence with 1,129 sq. ft. attached garage, swimming pool, septic system, 300-ft. long driveway with hammerhead turnaround, retaining walls, after-the-fact 6-ft. high chain-link perimeter fencing, and 1,498 cu. yds. of grading (749 cu. yds. cut, 749 cu. yds. fill) on the subject property. The proposed development area is 9,990 sq. ft. The residential

development is proposed on the existing knoll-top pad at the eastern portion of the property and approximately 106 feet from the rear/east property boundary and the off-site native chaparral habitat. The applicant's approved fuel modification plan shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones. As such, the 100-ft. Zone C (thinning zone) of the required 200-ft. fuel modification radius for the residence would not be contained within the property. The brush clearance that would be required off-site up to 200 feet from the proposed structure would encroach into the off-site chaparral habitat to the east/northeast.

2. ESHA Designation on the Project Site

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

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

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

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem is contained 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.

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>

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

The subject 2-acre property has historically been disturbed and currently consists of non-native ruderal vegetation. An existing graded pad that pre-dates the effective date of the Coastal Act is situated on a knoll in the eastern portion of the site. An existing residence is situated on an adjacent parcel to the south and its associated brush clearance radius encroaches into much of the western portion of the subject property. It appears that at least a portion of the area where vegetation has been removed on the site is in excess of what is required for the adjacent residence or to maintain the existing driveway and pad on the subject site. As such, the subject property is disturbed and does not meet the definition of ESHA in the Coastal Act. However, the area east and northeast of the property consists of chaparral habitat that is part of a large, contiguous block of pristine native vegetation. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the chaparral habitat adjacent to the project site meets the definition of ESHA in the Coastal Act.

3. Resource Dependent Use and Habitat Degradation

The Commission finds that the surrounding area east and northeast of the property constitutes an environmentally sensitive habitat area (ESHA), and brush clearance requirements associated with the proposed residence on the subject parcel will encroach into the off-site ESHA area. While the applicant has reduced potential impacts to off-site ESHA by reconfiguring the proposed residence upon the knoll-top pad, the proposed project will still have unavoidable impacts to ESHA. Given Fire Department fuel modification requirements for fire protection, the 100-ft. Zone C (thinning zone) of the required 200-ft. fuel modification radius around proposed structures would not be

² The Commission's "Revised Findings" in support of its September 13, 2002 adoption of the City of Malibu Local Coastal Program were adopted on February 6, 2003.

contained within the property or limited to non-ESHA areas. The brush clearance that would be required off-site up to 200 feet from the proposed structure would still encroach into off-site ESHA.

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, as is the case for the proposed residence, 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.

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.

Section 30240(a) of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. As neither single-family residences nor fuel modification needs to be located within ESHA to function, single-family residences and associated fuel modification are not uses dependent on ESHA resources. Section 30240(a) also requires that ESHA be protected against significant disruption of habitat values. As the proposed residential development will require removal of ESHA from brush clearance for fire protection purposes, the project would significantly disrupt the habitat value in those locations. In addition, the proposed as-built 6-ft. high chain link fencing around the perimeter of the property inhibits the free passage of wildlife within a designated Wildlife Corridor and within ESHA, inconsistent with Section 30240(a) of the Coastal Act. Finally, Section 30240(b) requires that development adjacent to ESHA be sited and designed to prevent impacts that would significantly degrade the ESHA, and again, the proposal would site the main structure in a location that would require significant degradation of the adjacent ESHA. Section 30240 therefore requires denial

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>

of the project, as proposed, because the project would result in significant disruption and degradation of habitat values, and residential fuel modification is not a use dependent on those sensitive habitat resources.

As discussed previously, in 1999 the Commission had approved residential development on the subject parcel (CDP 4-99-015 (Goebels)) that included a main residence and detached garage on an existing knoll-top pad and a guest unit/garage in the western portion of the property. This permit has since expired, however, at the time the Commission considered CDP Application No. 4-99-015, native chaparral vegetation in the Santa Monica Mountains was not yet recognized as an especially valuable habitat type that met the definition of ESHA under the Coastal Act. The area was, however, mapped as a Wildlife Migration Corridor in the LUP and the Commission found it important to maintain the habitat value of the mature chaparral area to the east of the property for migrating wildlife. As such, the Commission found in its approval of CDP No. 4-99-015 that the project would minimize impacts to the chaparral habitat only because it included a 6-ft. high, 66-ft. long fire retardant wall between the proposed residential development and the east property boundary to avoid fuel modification requirements within the mature chaparral area to the east. At that time, the Los Angeles County Fire Department had approved the fire retardant wall in lieu of fuel modification to the east of the house. The Commission found that the wall would minimize the project's effects upon the chaparral habitat that is of value to migrating wildlife in the corridor. Since that time, the Commission has regularly found, in numerous past permit actions, that many areas located in the Santa Monica Mountains Coastal Zone meet the Coastal Act definition of ESHA even though they may contain no resource designation or some other resource designation, such as Wildlife Migration Corridor.

Since the time CDP 4-99-015 was approved, two circumstances have changed that must be factored into Commission analysis of the proposed project: 1) large, contiguous areas of native chaparral vegetation in the Santa Monica Mountains are now recognized as an especially valuable habitat type that meet the definition of ESHA under the Coastal Act, even though such areas may not have been designated ESHA in the Los Angeles County LUP, and 2) Los Angeles County Fire Department no longer allows fire walls in lieu of providing the full 200-foot radius of fuel modification and/or brush clearance around all flammable structures.

In the case of the proposed project, the off-site areas of native chaparral vegetation are considered ESHA that must be protected against any significant disruption of habitat value, and brush clearance requirements associated with the proposed residential development does not serve to avoid and minimize impacts to ESHA to the greatest extent feasible. The applicant has asked the Los Angeles County Fire Department if they would allow the construction of a fire wall on the project site in lieu of the full 200-foot radius of fuel modification and/or brush clearance requirement (as had been done for the previously approved development at this site in 1999 and a significant reason why the Commission had previously approved siting development on the knoll-top pad),

and the Fire Department replied that they no longer allow that substitution given the lack of effectiveness of fire walls alone for fire protection in this area.

The proposed siting of the residential development is not consistent with Section 30240 of the Coastal Act or the guidance policies of the LUP because residential development is not a resource-dependent use, because the habitat removal associated with the proposed construction (including the required fuel modification areas) will not protect ESHA against any significant disruption of habitat values, and because the proposed development would not be “as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.”

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

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant’s property nor unreasonably limit the owner’s reasonable investment-backed expectations of the subject property. Approvable alternatives to the proposed development exist.

Alternatives must be considered to determine if there is an alternative project that would lessen or avoid the significant environmental impacts to ESHA to such an extent that it would be consistent with the ESHA protection policies listed above. An alternative is a description of another activity or project that responds to the major environmental impacts of the project identified through the Commission’s analysis.

The most obvious alternative that may be approvable for this site would be to move the proposed development to the western portion of the property (**Exhibit 13**). The western portion of the site could accommodate construction of a single-family residence while also avoiding impacts to off-site ESHA. The subject parcel is rectangular-shaped, extending approximately 430 feet eastward from Decker Canyon Road. The west portion of the property adjacent to Decker Canyon Road consists of gently sloping terrain that then ascends in a northeast direction up to a graded knoll-top pad. The alternative site identified by staff is located within the gently-sloping western portion of property nearer Decker Canyon Road and adjacent development to the south. This area of the site has historically been disturbed, associated with fuel modification for the residence to the south, and is farther away from off-site ESHA areas. Construction of a residence in this location would avoid fuel modification in ESHA. The Commission had previously approved a guest house in this location, pursuant to CDP 4-99-015. In addition, the applicant of the subject permit application had originally proposed a guest house in this location that the applicant’s consulting geologic engineer stated was a suitable site for the development. And according to the grading plans associated with each of the two previous guest house proposals in this area of the property, the amount of required grading was minimal. Therefore, there is substantial evidence to conclude that construction of a single-family residence in this alternative location is feasible, located nearer existing roads and residences, and would not involve a significant amount of grading or landform alteration. In sum, a feasible alternative exists to accommodate residential development on the property that avoids impacts to ESHA. In

addition, there exist fencing siting and design alternatives that would allow for safe passage of wildlife and could be found consistent with the ESHA protection policies of the Coastal Act.

In processing the subject permit application, Commission staff had asked the applicant to analyze the alternative of siting the proposed residential development within the western portion of the property. However, the applicant has stated that he is unwilling to relocate the residence to the western portion of the property due to the loss of mountain views that would result. Although the alternative of re-siting the residence is clearly feasible, the Commission cannot redesign the project.

Although the Commission presents this alternative in an effort to assist the applicant by identifying a potentially approvable alternative project, the Commission cannot now guarantee that any given alternative would receive Coastal Act approval when it is presented in the future. This is true for many reasons, among them that (1) the Commission reviews each project independently when it is presented, along with the required information about impacts to Coastal resources, (2) the composition of the Commission may not be the same as it is now, and the Commission may interpret the governing standards differently, view the facts differently, or simply exercise its discretion differently; and (3) the specific details of the project presented may raise additional issues that the general description listed below does not anticipate.

Nevertheless, with those caveats in mind, it appears that development could be designed on the subject site such that it would avoid 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 deeper within existing disturbed areas rather than near the edge of those areas and within 200 feet of undisturbed habitat areas, locating development as close to existing roads and public services as feasible, as suggested by policy P74 of the LUP, and locating structures near other residences in order to minimize additional fuel modification.

5. Conclusion

For the reasons discussed above, the Commission finds that the proposed project does not protect ESHA from significant disruption of habitat values and has not been sited and designed in a manner that would prevent impacts that would significantly degrade the off-site ESHA. The project is therefore not consistent with Section 30240 of the Coastal Act. Finally, the proposed project is inconsistent with Policies 68, 69, and 74 of the Malibu/Santa Monica Mountains Land Use Plan, which the Commission uses as guidance. As discussed, there are feasible alternatives that would avoid the significant disruption of habitat values. The applicant has declined to propose such an alternative. The project must therefore be denied.

C. Unpermitted Development

Unpermitted development occurred on the subject parcel prior to submission of this permit application including, but not limited to, construction of chain-link fencing along the perimeter of the property. The applicant is now requesting after-the-fact approval for retention of the fencing pursuant to this application. The Commission is denying this application for the reasons discussed in full in the preceding sections of this report. Therefore, pursuant to the staff recommendation, the Commission's enforcement division will evaluate further actions to address this matter.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

D. Local Coastal Program

Section 30604 of the Coastal Act states:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter 3. The proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

E. California Environmental Quality Act

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

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

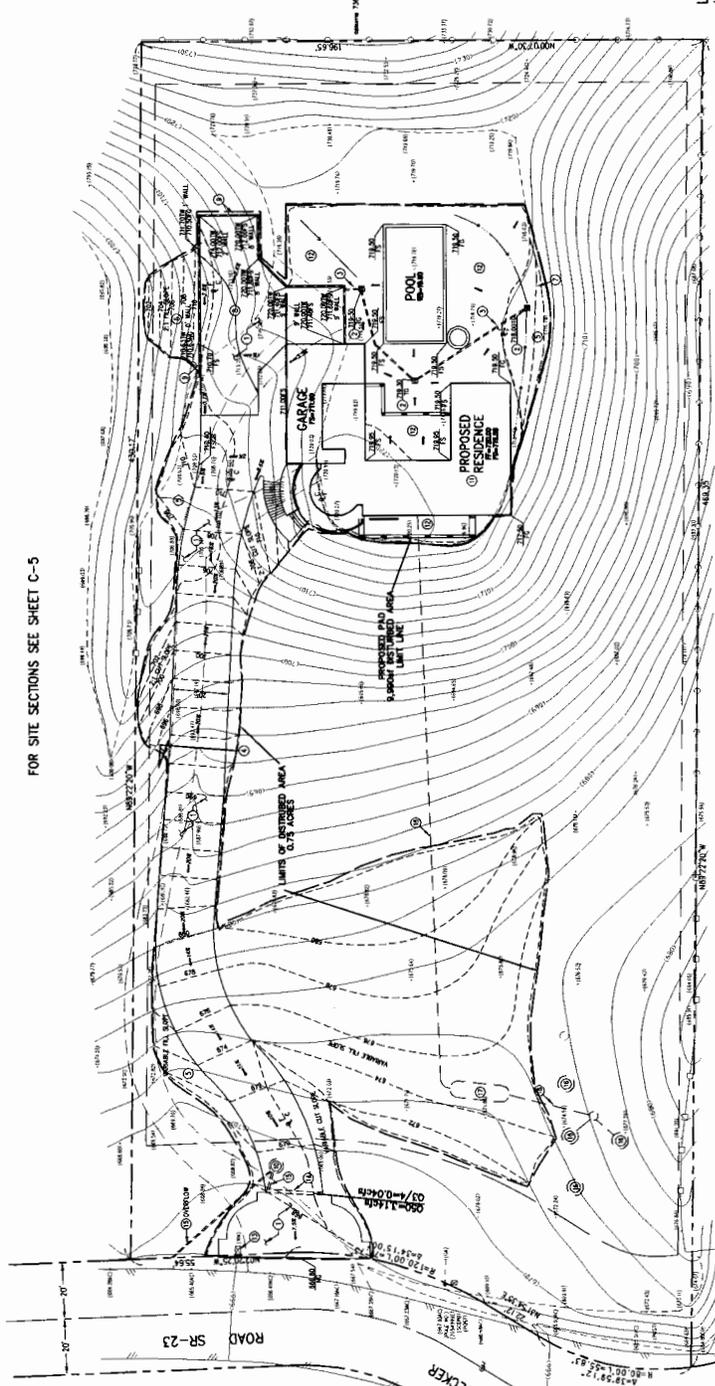
The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development is not consistent with the policies of the Coastal Act. There are feasible alternatives that would avoid the adverse environmental effects of the project, including the alternative to site residential development within the western portion of the property, for the reasons listed in this report. Therefore, the Commission finds that the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA.

CONSTRUCTION NOTES

- 1. CONSTRUCT PERMITS & SUBMITTALS FOR SOILS REPORT
- 2. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 3. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 4. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 5. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 6. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 7. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 8. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 9. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 10. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 11. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 12. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 13. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 14. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 15. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 16. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 17. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 18. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 19. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2
- 20. CONSTRUCT 1/2" CATCH BASINS PER AMESON PRODUCTS PER DETAIL 2 SHEET C-2

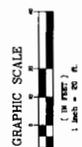
FIRE DEPT. DRIVEWAY GRADES
 LENGTH OF PROPOSED DRIVEWAY = 335'
 STARTING GRADE = 866.80'
 END GRADE = 417.00'
 LENGTH OF 20% GRADE = 132'

FOR SITE SECTIONS SEE SHEET C-5



LEGEND:

- 1. EXISTING GRADE
- 2. PROPOSED GRADE
- 3. PROPOSED DRIVEWAY
- 4. PROPOSED POOL
- 5. PROPOSED GARAGE
- 6. PROPOSED RESIDENCE
- 7. PROPOSED DRIVEWAY
- 8. PROPOSED DRIVEWAY
- 9. PROPOSED DRIVEWAY
- 10. PROPOSED DRIVEWAY
- 11. PROPOSED DRIVEWAY
- 12. PROPOSED DRIVEWAY
- 13. PROPOSED DRIVEWAY
- 14. PROPOSED DRIVEWAY
- 15. PROPOSED DRIVEWAY
- 16. PROPOSED DRIVEWAY
- 17. PROPOSED DRIVEWAY
- 18. PROPOSED DRIVEWAY
- 19. PROPOSED DRIVEWAY
- 20. PROPOSED DRIVEWAY



PRELIMINARY GRADING PLAN
 1522 DECKER ROAD, MALIBU
 PORTION OF THE NE 1/4, SW 1/4 SECTION 16, T10N, R19E, W10E, S.B.M.
 IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA



PREPARED BY: **THE G4 GROUP INC.**
 CONSULTING ENGINEERS
 11500 WILSON BLVD., SUITE 100
 LOS ANGELES, CA 90024
 PHONE: (818) 315-8810 FAX: (818) 315-8816

PROJECT INFORMATION:

GENERAL INFORMATION OR
 EARTHWORK VOLUMES
 CLIENT: G4 GROUP INC.
 PROJECT LOCATION: 1522 DECKER ROAD, MALIBU, CA 90262
 PROJECT NUMBER: 03-037
 PROJECT ADDRESS: 1522 DECKER ROAD, MALIBU, CA 90262
 PROJECT OWNER: G4 GROUP INC.
 PROJECT NUMBER: 03-037

EARTHWORK QUANTITIES BREAKDOWN:

BUILDING PAD MAIN INFILL	138.00 CY	FILL
LANDSCAPE FILL TO BALANCE SITE	0.00 CY	0.00 CY
LANDSCAPE FILL TO BALANCE SITE	138.00 CY	138.00 CY
SITE DEPARTMENT TURN-AROUND	203.10 CY	203.10 CY
REMOVAL & RECOMPACT PROPOSED RESIDENCE		= 885 C.U. YARDS

OTHER SHEET

DECKER ROAD, MALIBU
 SECTION 16, T10N, R19E, W10E, S.B.M.
 LOS ANGELES, STATE OF CALIFORNIA

Sheet C-2
 SHEET NO. 0710
 DATE: JULY 2009

Sheet C-1
 SHEET NO. 0710
 DATE: JULY 2009

Exhibit 4
 4-08-022 (Elliott)
 Grading Plan

VENTURA CO
LOS ANGELES CO

PROJECT SITE

East Fork

WILDLIFE CORRIDOR (LUP)

Canyon

Canyon

Canyon

Canyon

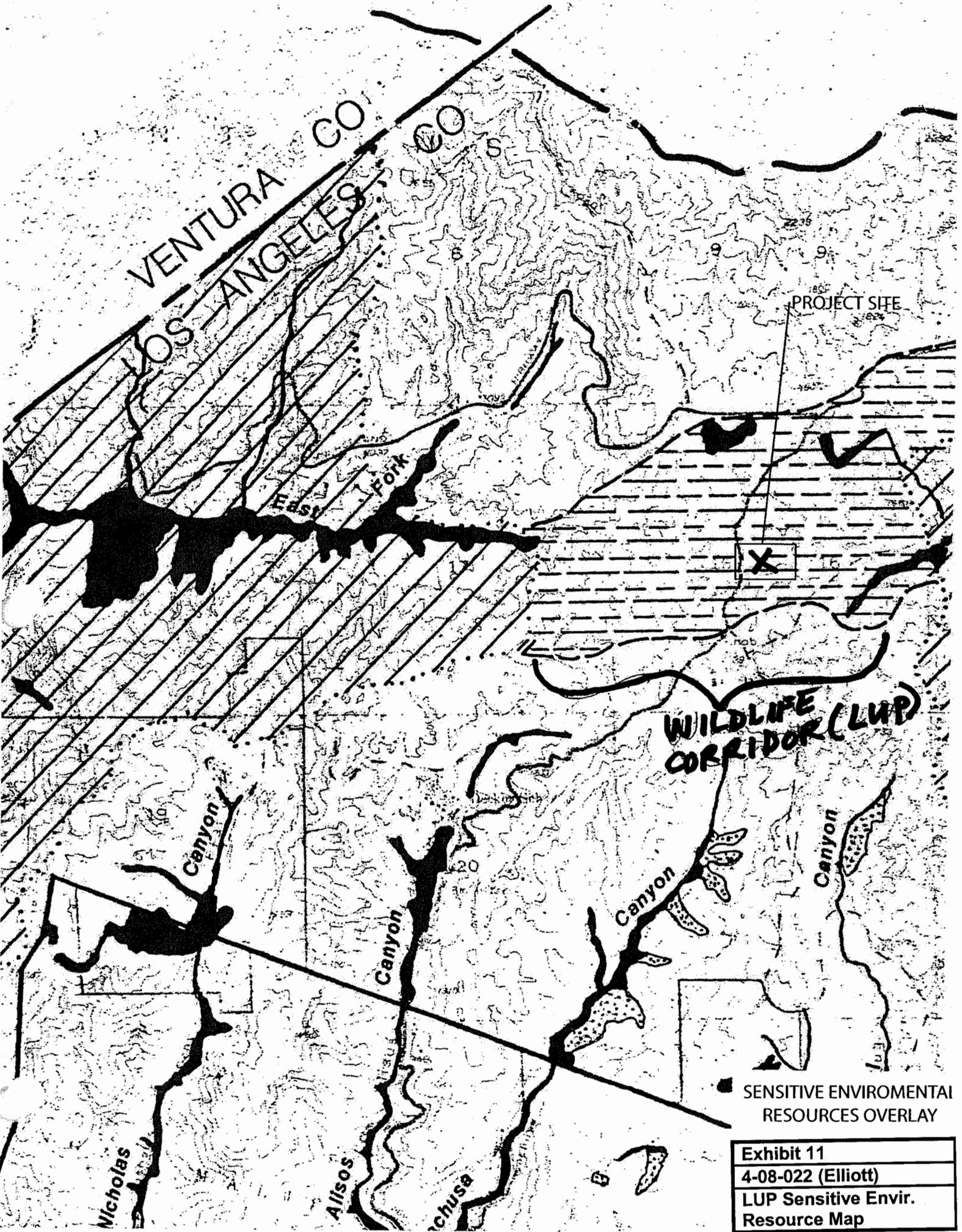
Nicholas

Allisos

chusa

SENSITIVE ENVIROMENTAL
RESOURCES OVERLAY

Exhibit 11
4-08-022 (Elliott)
LUP Sensitive Envir.
Resource Map



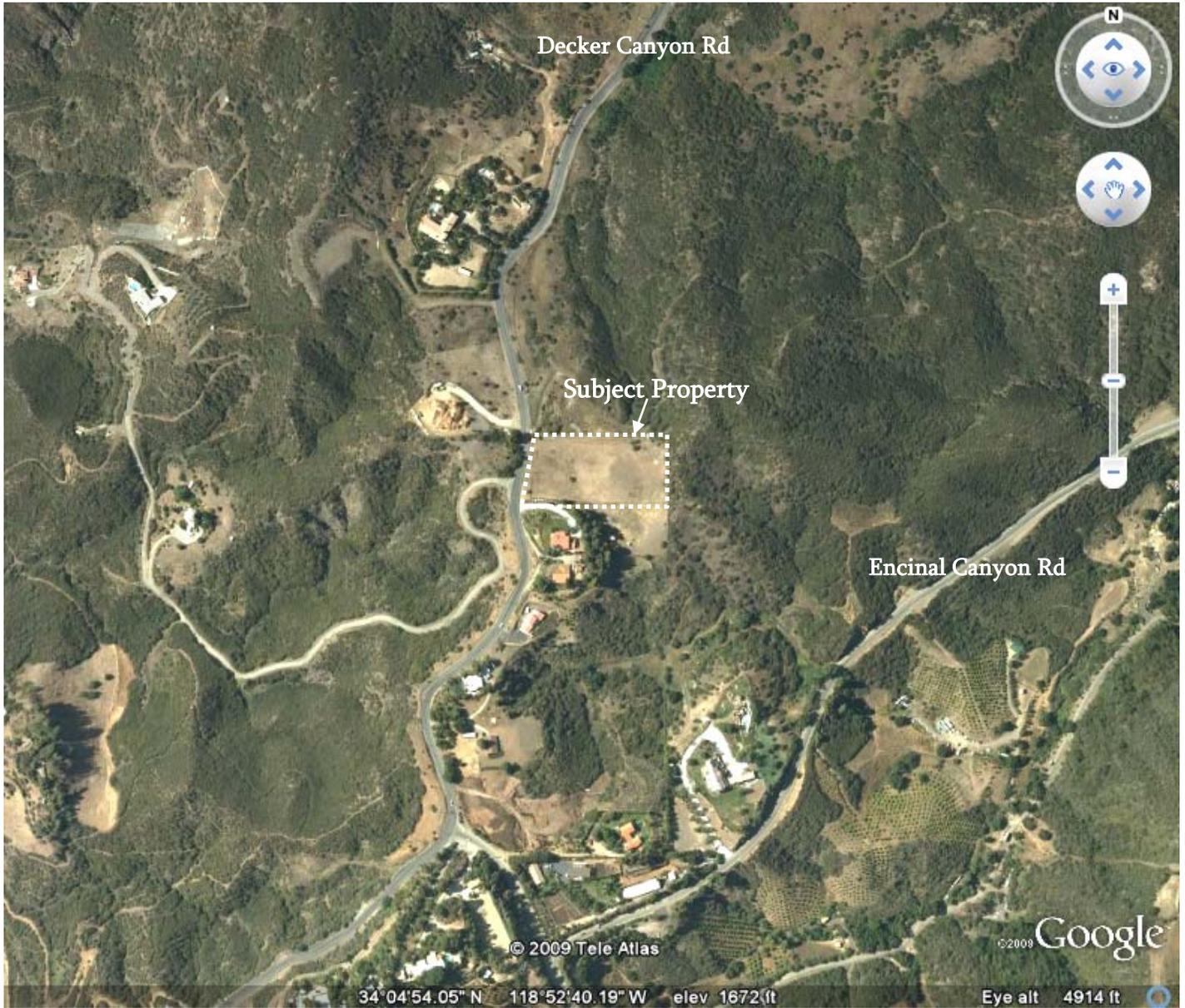


Exhibit 12
4-08-022 (Elliott)
Aerial View

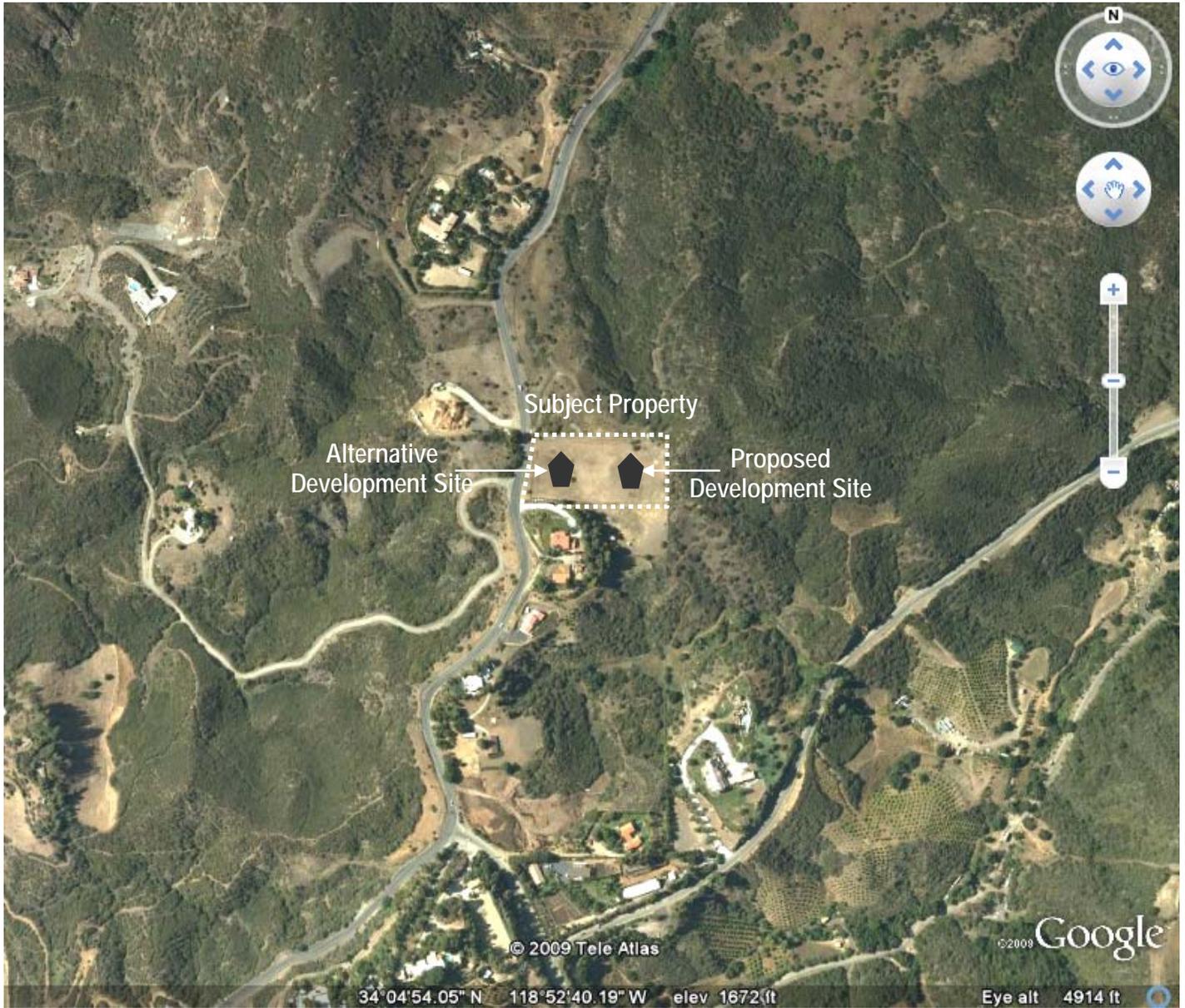


Exhibit 13
4-08-022 (Elliott)
Aerial View with
Proposed and
Alternative Sites