

CALIFORNIA COASTAL COMMISSION

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



W 24b

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STAFF REPORT: REGULAR CALENDAR

APPLICATION No.: 4-10-070

APPLICANT: Tom Elliott

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

PROJECT DESCRIPTION: Construction of a 28-ft., 10-in. high, 3,854 sq. ft. single-family residence with 1,543 sq. ft. attached garage, swimming pool, 5,000 gallon water tank, septic system, driveway, and 5,415 cu. yds. of grading (1,797 cu. yds. cut, 3,618 cu. yds. fill). The applicant also seeks after-the-fact approval of 6-ft. high chain-link perimeter fencing.

MOTION & RESOLUTION: Page 3

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **approval** of the proposed development with conditions.

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.

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concept, dated July 28, 2010; County Environmental Review Board (ERB) Recommendations, dated October 29, 2007; Los Angeles County Fire Department approval of access and turnaround areas, dated April 27, 2011; Los Angeles County Fire Department approval of Preliminary Fuel Modification Plan, dated December 22, 2010; Los Angeles County Department of Health Services, Conceptual Approvals for Private Septic Systems, dated March 22, 2011.

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; Biological Assessment Update Memo by Forde Biological Consultants, dated October 7, 2010; "Geologic and Soils Engineering Exploration," prepared by Grover Hollingsworth and Associates Inc., dated November 30, 2010; Coastal Development Permit No. 4-08-022 (Elliott); Coastal Development Permit No. 4-99-015 (Goebels).

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EXHIBITS

- Exhibit 1. Location Map
 - Exhibit 2. Parcel Map
 - Exhibit 3. Site Plan
 - Exhibit 4. Floor Plans
 - Exhibit 5. Elevations
 - Exhibit 6. Aerial View
 - Exhibit 7. LUP Sensitive Environmental Resources Map
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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. 4-10-070 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. Drainage and Polluted Runoff Control Plan

A. *Prior to issuance of the Coastal Development Permit*, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan, including supporting calculations. The plan shall be prepared by a licensed civil engineer or qualified licensed professional and shall incorporate Best Management Practices (BMPs) including site design and source control measures designed to control pollutants and minimize the volume and velocity of stormwater and dry weather runoff leaving the developed site. In addition to the specifications above, the consulting 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) BMPs should consist of site design elements and/or landscape based features or systems 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 on site, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
- (2) 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 should be utilized for any landscaping requiring water application.
- (3) All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Erosion and Sediment Control Conditions for this Coastal Development Permit.
- (4) Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains.
- (5) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
- (6) 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 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 should grading take place during the rainy season (November 1 – March 31) 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; 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 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 Zone B (irrigated zone) of the Fire Department-approved Fuel Modification Plan. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in **Special Condition 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 Coastal 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. Revised Plans

A. **Prior to issuance of the Coastal Development Permit**, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final revised project plans. All plans must be drawn to scale with dimensions shown. The final revised project plans and project description shall reflect the following:

- (1) Removal of existing perimeter fencing.
- (2) Any proposed fencing shall extend no further than Zone B (irrigated zone extending 100 feet from approved structure) of the Fire Department-approved Fuel Modification Plan.

B. 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 legally required.

11. 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.

12. Pool and Spa Drainage and Maintenance

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

13. Site Inspection

A. 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.

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

14. Removal of Existing Perimeter Fencing

The applicant shall remove the existing unpermitted perimeter fencing on the site within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the approved residence from the County of Los Angeles.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant proposes to construct a 28-ft., 10-in. high, 3,854 sq. ft. single-family residence with 1,543 sq. ft. attached garage, swimming pool, 5,000 gallon water tank, septic system, driveway, and 5,415 cu. yds. of grading (1,797 cu. yds. cut, 3,618 cu. yds. fill). The applicant also seeks after-the-fact approval of 6-ft. high chain-link perimeter fencing (**Exhibits 3-5**).

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. 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) (**Exhibits 6-7**).

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 activities which created a building pad and driveway pursuant to CDP No. 5-89-048. 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.

Decker Canyon Road is designated a "priority three" scenic highway in the Malibu/Santa Monica Mountains Land Use Plan (LUP). The Land Use Plan states: "Decker Road-

Extends from PCH to Mulholland Highway. Ocean vistas, deep valleys and canyons, and rugged mountains are features of many scenic vistas.” The subject property and proposed development is located adjacent to Decker Canyon Road. As such, the proposed development will be unavoidably visible from Decker Canyon Road to the west, as well as National Park Service land to the northeast.

Los Angeles County Environmental Review Board (ERB) Review

Since the subject property is located in an LUP-designated Wildlife Corridor, the County ERB reviewed a previously proposed project on the property for consistency with the LUP. The originally proposed project included a guest house in the western portion of the property and a main residence in the eastern portion of the property approximately 34 feet away from the off-site undisturbed chaparral vegetation. On October 29, 2007, the ERB provided a number of recommendations for the project, which included the elimination of perimeter fencing to facilitate wildlife passage, adherence to a 10,000 sq. ft. maximum pad area and a 300 foot maximum long driveway, elimination of the detached guest unit/garage, modifications to the landscaping plan, and structure color and exterior lighting restrictions. Since that time, the applicant has redesigned the proposed development dramatically in order to cluster development and avoid fuel modification requirements in adjacent ESHA. However, the applicant is still proposing perimeter fencing of the subject parcel. Staff notes that the LUP serves as guidance only, and it is the Chapter 3 policies of the Coastal Act that are the Commission’s standard of review for the proposed project. Consistent with the ERB’s recommendation regarding perimeter fencing, and as discussed later in this staff report, the Commission finds that perimeter fencing would result in adverse impacts to wildlife migration, inconsistent with the LUP and Coastal Act Section 30240, and that the alternative of limiting site fencing to Zone B of the applicant’s approved fuel modification plan is necessary to find that the proposed project is consistent with the Chapter 3 policies of the Coastal Act.

B. PAST 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. 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, so the Commission made no ESHA determination for the site. 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. The project included a 6-ft. high, 66-ft. long fire retardant wall between the proposed residential development and the east property boundary to avoid the need for removal of vegetation off-site within the mature chaparral area to the east. At that time, the Los Angeles County Fire Department had approved the fire retardant wall as an adequate alternative to the requirement for the neighboring property owner to carry out off-site brush clearance to the east of the house. Because the project successfully avoided the need for removal of the chaparral habitat, the Commission found that the project would not impair the habitat values it sought to protect. 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.

In addition, in 2009, the Commission denied a subsequent coastal development permit application (CDP Application 4-08-022) for the construction of a two-story, 28-ft. high, 4,413 sq. ft. single-family residence with 1,129 sq. ft. attached garage, swimming pool, 5,000 gallon water tank, septic system, 300-ft. long driveway with hammerhead turnaround, retaining walls, and 1,498 cu. yds. of grading on the subject property. The applicant proposed development on the knoll-top pad in a way that provided a 106 foot rear yard/ESHA setback. Since brush clearance would encroach approximately 94 feet into off-site ESHA, staff could not recommend approval of that project because it would not protect ESHA against any significant disruption of habitat values. Furthermore, the Commission found that feasible alternatives existed to accommodate construction of a single-family residence on the property while avoiding impacts to off-site ESHA, consistent with Coastal Act policies. On November 5, 2009, the Commission denied CDP Application No. 4-08-022 by a 12-0 vote.

The application that is the subject of this staff report represents the applicant's redesign of the project in order to avoid impacts to off-site ESHA by relocating all new proposed

residential development further west (closer to Decker Canyon Road) consistent with the direction given to the applicant by the Commission pursuant to its action on CDP Application 4-08-022.

C. HAZARDS AND GEOLOGIC STABILITY

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

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

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

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

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

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire 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:** Drainage and Polluted Runoff Control Plans
- Special Condition 4:** Interim Erosion Control
- Special Condition 5:** Landscaping and Erosion Control Plans

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

D. WATER QUALITY

Section **30231** of the Coastal Act states that:

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

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality 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. Additionally, both leakage and periodic maintenance drainage of the proposed swimming pool, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing the instability of the site and adjacent properties and potential impacts from pool chemicals (i.e. pool water algaecides, chemical pH balancing, and other water conditioning chemicals).

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 12: Pool Drainage and Maintenance

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

E. VISUAL RESOURCES

Section **30251** of the Coastal Act states:

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

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. 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. Development of the

proposed residence raises two issues regarding the siting and design: (1) whether or not public views from public roadways will be adversely affected; or, (2) whether or not public views from public lands and trails will be affected.

Decker Canyon Road is designated a "priority three" scenic highway in the Malibu/Santa Monica Mountains Land Use Plan. The Land Use Plan states: "Decker Road- Extends from PCH to Mulholland Highway. Ocean vistas, deep valleys and canyons, and rugged mountains are features of many scenic vistas." The subject property and proposed development is located adjacent to Decker Canyon Road, as well as National Park Service land to the northeast.

The proposed two-story residence will have a maximum height of 28 feet 10 inches from existing grade at any given point. The residence is designed to be stepped into the hillside. The proposed building site and design minimizes the amount of grading and landform alteration necessary for the project and there are no siting alternatives where the building would not be visible from public viewing areas. The development has been clustered on one pad area and designed to avoid removal of native vegetation that is considered environmentally sensitive habitat. However, the proposed development will be unavoidably visible from Decker Canyon Road to the west, as well as National Park Service land to the northeast.

The proposed structure is compatible with the character of other residential development in the area. The proposed structure height is consistent with the maximum height (35 feet above existing grade) that the Commission has permitted in past decisions in the Santa Monica Mountains and with the maximum height (35 feet) allowed under the guidance policies of the Malibu/Santa Monica Mountains LUP. In addition, the development would be partially screened by vegetation.

Even with vegetative screening, the proposed development will be unavoidably visible from public viewing areas. The Commission has considered siting and design alternatives that would avoid or reduce any impacts to visual resources. Relocating the residence further east and on the existing flat pad area on site (as previously proposed by the applicant pursuant to CDP Application 4-08-022) would be more visible from the adjacent park lands. Moreover, this alternative would result in significantly greater adverse impacts to ESHA due to the need for vegetation clearance for fuel modification requirements on adjacent park land in conflict with other Chapter 3 resource protection policies. Thus, in this case, there is no feasible alternative whereby the structure would not be visible from public viewing areas. To minimize the visual impacts associated with development of the project site, the Commission requires: that the structure be finished in a color consistent with the surrounding natural landscape; that windows on the development be made of non-reflective glass; use of appropriate, adequate, and timely planting of native landscaping to soften the visual impact of the development from public view areas; and a limit on night lighting of the site to protect the nighttime rural character of this portion of the Santa Monica Mountains.

In recognition that future development normally associated with a single-family residence, that might otherwise be exempt, has the potential to impact scenic and visual resources of the area, the Commission requires that any future improvements on the

subject property shall be reviewed by the Commission for consistency with the resource protection policies of the Coastal Act through a coastal development permit.

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

The following special conditions are required to assure the project's consistency with Section 30251 of the Coastal Act:

Special Condition 5: Landscaping and Fuel Modification Plans

Special Condition 6: Structural Appearance

Special Condition 7: Lighting Restriction

Special Condition 8: Future Development Restriction

Special Condition 9: Deed Restriction

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

F. ENVIRONMENTALLY SENSITIVE HABITAT

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

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

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

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

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

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

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

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

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

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

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

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

P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.

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 activities which created a building pad and driveway pursuant to CDP No. 5-89-048. 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.

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-eshamemo.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.

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.

The applicant proposes to construct a 28-ft., 10-in. high, 3,854 sq. ft. single-family residence with 1,543 sq. ft. attached garage, swimming pool, 5,000 gallon water tank, septic system, driveway, and 5,415 cu. yds. of grading (1,797 cu. yds. cut, 3,618 cu. yds. fill) on the subject property. In addition, the applicant has proposed to retain existing unpermitted perimeter fencing as part of the proposed project. The residential development is proposed in the central portion of the property and approximately 200 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 be entirely contained within the property and not affect the off-site chaparral habitat to the east/northeast. Therefore, the proposed residential development has been sited and designed to protect ESHA against any significant disruption of habitat values.

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.

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.

In addition, the applicant is requesting after-the-fact approval for an existing unpermitted perimeter fence located along the property boundaries. In past permit actions, the Commission has found that perimeter fencing of property located within or adjacent to ESHA would adversely impact the movement of wildlife and has limited new fencing to Zone B of the applicant's fuel modification plan (approximately 100 ft. from approved structures). Moreover, in this case, the subject site is specifically located within a designated Wildlife Corridor pursuant to the certified LUP. Therefore, in order to minimize adverse impacts to wildlife, Special Condition Ten (10) requires that the applicant submit revised plans, for the review and approval of the Executive Director, which delete the existing unpermitted perimeter fencing on the property and limit any new fencing to Zone B (irrigated zone) of the applicant's Fire Department-approved fuel modification plan, which extends 100 feet from the approved residential structure. This change is required to be shown on both the final revised project plans and the final landscaping plan for the project. In addition, Special Condition Fourteen (14) requires that the applicant remove the existing unpermitted perimeter fencing on the site within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the approved residence from the County of Los Angeles.

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.** Revised Plans
- Special Condition 13.** Site Inspection
- Special Condition 14.** Removal of Existing Unpermitted Perimeter Fencing

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

G. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without the required coastal development permit which includes the installation of perimeter fencing. Staff has reviewed Commission records and confirmed that the fencing has not previously received a coastal permit from this Commission. This application includes the request for after-the-fact approval for the above referenced unpermitted development.

However, for the reasons discussed in detail in the preceding section, **Special Condition Ten (10)** requires the applicant submit plans, for the review and approval of the Executive Director, which delete the existing unpermitted perimeter fencing on the property and limit any new fencing to Zone B (irrigated zone) of the applicant's Fire Department-approved fuel modification plan, which extends 100 feet from the approved residential structure. In addition, **Special Condition Fourteen (14)** requires the applicant to remove the existing unpermitted perimeter fencing on the site within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the approved residence from the County of Los Angeles.

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. The following special condition is required to assure the project's consistency with all applicable Chapter 3 policies of the Coastal Act:

Special Condition 11. Condition Compliance

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 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.

H. LOCAL COASTAL PROGRAM (LCP) PREPARATION

Section **30604(a)** of the Coastal Act states that:

- 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 coastal 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 14

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).

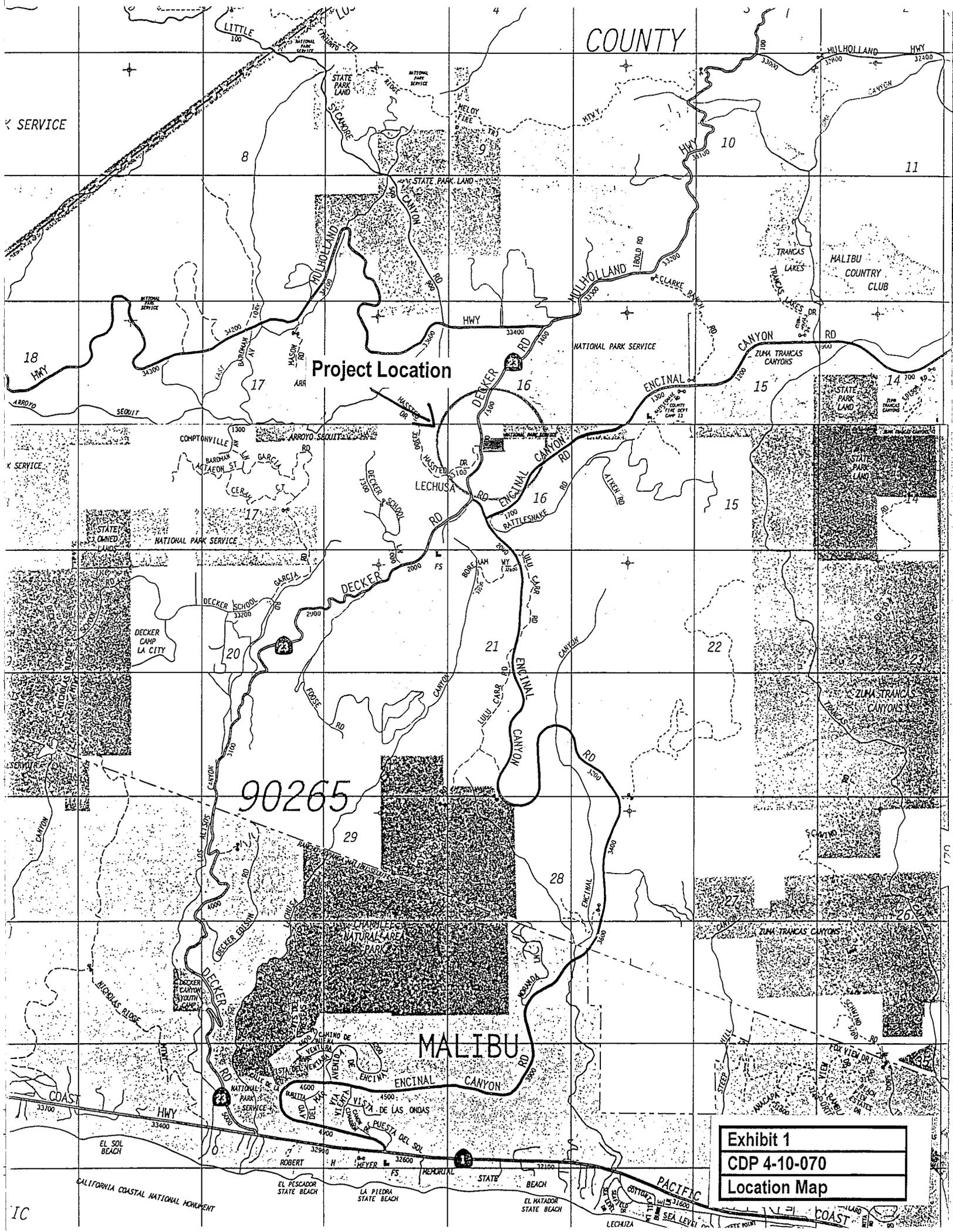
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. 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 14

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.



COUNTY

Project Location

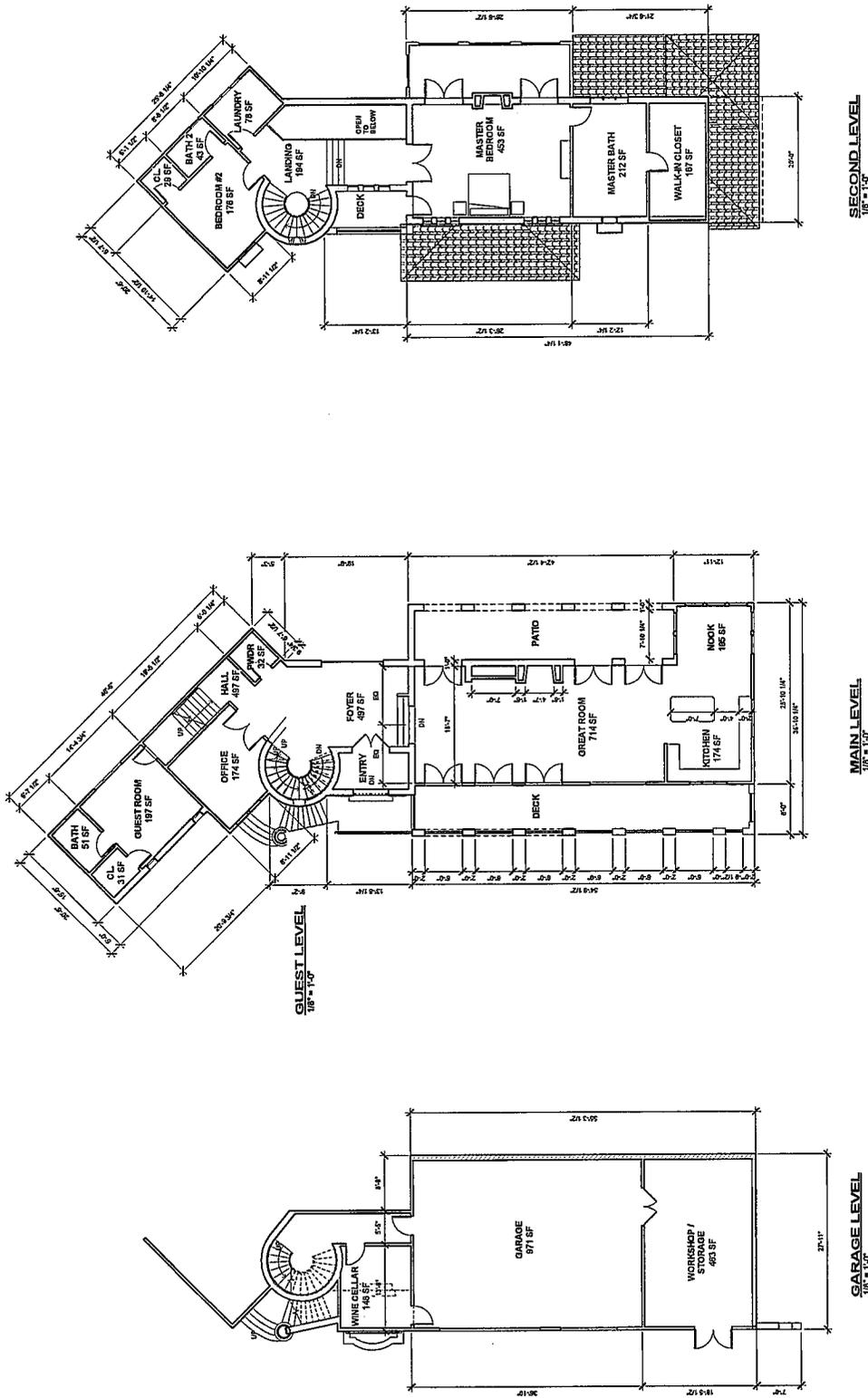
90265

MALIBU

Exhibit 1
CDP 4-10-070
Location Map

IC

ELLIOTT RESIDENCE
 1522 DECKER CANYON ROAD, MALIBU, CALIFORNIA



CONCEPTUAL FLOOR PLANS - RESIDENCE 200' FROM ESHA

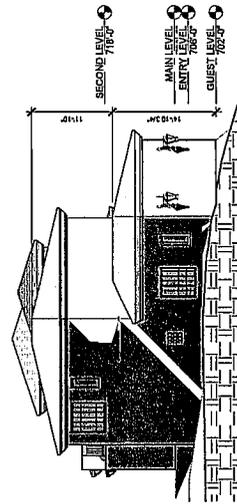
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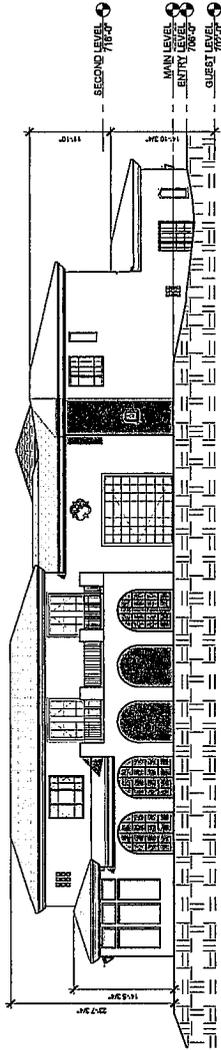
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Exhibit 4
CDP 4-10-070
Floor Plans

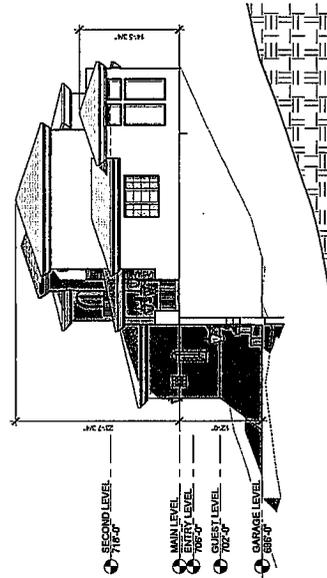
ELLIOTT RESIDENCE
1522 DECKER CANYON ROAD, MALIBU, CALIFORNIA



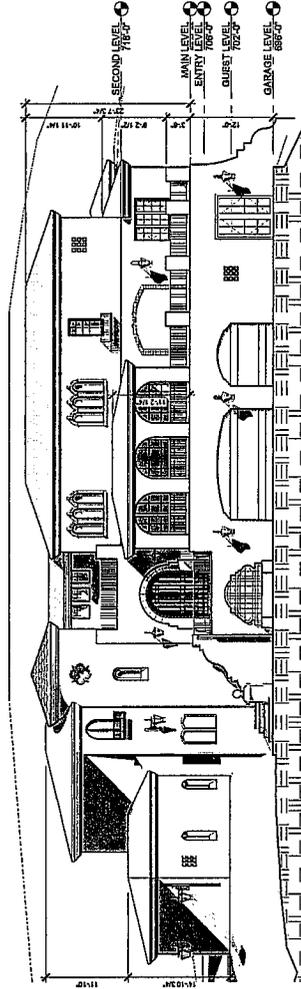
PROPOSED NORTH (LEFT) ELEVATION
1/8" = 1'-0"



PROPOSED EAST (REAR) ELEVATION
1/8" = 1'-0"



PROPOSED SOUTH (RIGHT) ELEVATION
1/8" = 1'-0"



PROPOSED WEST (FRONT) ELEVATION
1/8" = 1'-0"

PROPOSED ELEVATIONS

4/2010 11:04:21 AM

Exhibit 5
CDP 4-10-070
Elevations

RECEIVED
DEC 21 2010
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

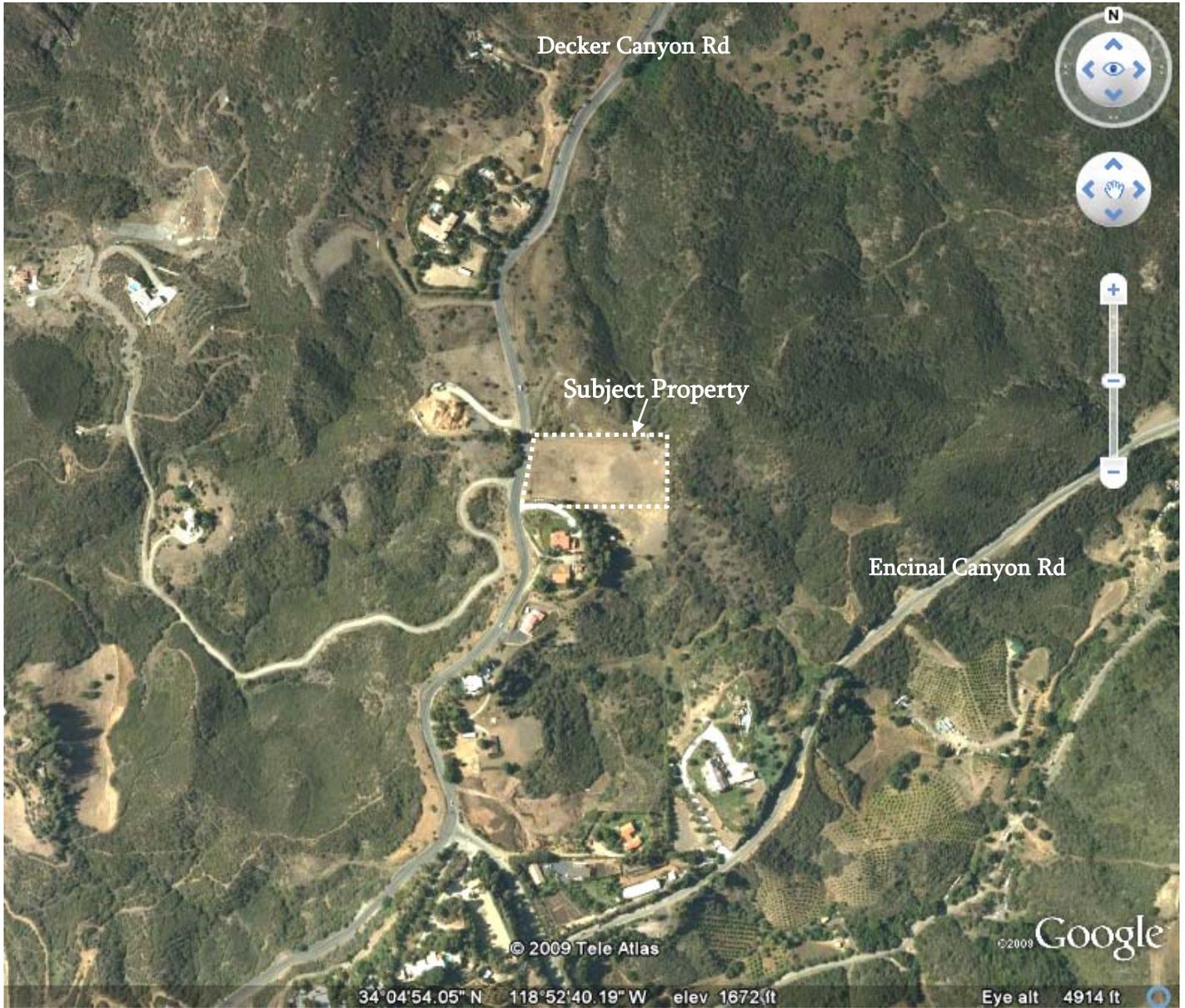
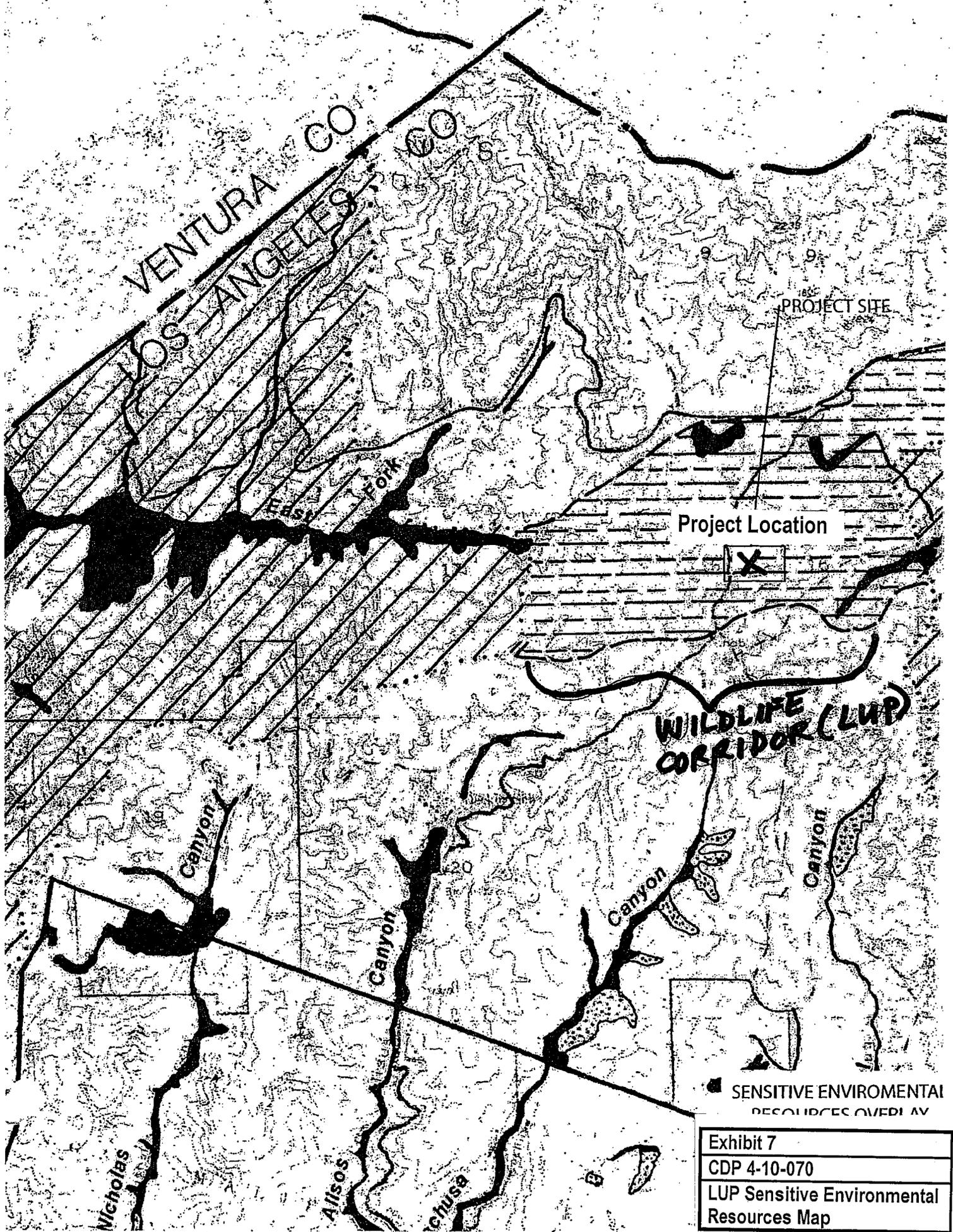


Exhibit 6
4-10-070
Aerial View



VENTURA CO
LOS ANGELES CO
SAN DIEGO CO

PROJECT SITE

East Fork

Project Location

WILDLIFE
CORRIDOR (LUP)

SENSITIVE ENVIROMENTAL
RESOURCES OVERLAY

Exhibit 7
CDP 4-10-070
LUP Sensitive Environmental Resources Map