

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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**Th 17c**

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**STAFF REPORT: REGULAR CALENDAR**

**Application No.:** 4-12-019

**Applicant:** David Bersohn

**Agent:** Eric Lloyd Wright & Associates

**Project Location:** 24810 Piuma Road, Santa Monica Mountains, Los Angeles Co.

**Project Description:** Construct a 3,003 sq. ft., 26 ft. high single family residence, 800 sq. ft. under house carport and workshop, 150 sq. ft. pump house with well and solar panel array, 2 water tanks, driveway, retaining walls, septic system, outdoor patio, temporary construction trailer, 20 ft. wide driveway gate, and 2,418 cu. yds. new grading (1,209 cu. yds. cut, 422 cu. yds. fill, 767 cu. yds. export).

**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. Following is a summary of the main issues raised by the project and how they are resolved by staff's recommendation:

- **Environmentally Sensitive Habitat Area.** The project site contains habitat that meets the definition of ESHA and the project will have adverse impacts on ESHA. The proposed residence is not a resource dependent use, but will be approved to permit the applicant a reasonable economic use of the property. The structures are sited to minimize significant

disruption of habitat values and the development area conforms to 10,000 square feet. The project is conditioned to require the grant of an open space easement in order to ensure that the remaining ESHA on the site will be preserved. Mitigation is required for the loss of ESHA due to the development and the required fuel modification around structures.

- **Oak Tree Protection.** The project site contains several oak trees. The proposed development is sited to avoid the removal or the encroachment of development within the protected zone of any oak tree. The project is conditioned to require the implementation of oak tree protection measures during construction.
- **Visual Resources.** The proposed structure will be visible from public viewing areas and has the potential to adversely impact visual resources. The proposed structure is sited and designed to minimize visual impacts. The project is conditioned to utilize exterior colors consistent with the surrounding natural landscape; that windows on the development be made of non-reflective glass; implement appropriate, adequate, and timely planting of native landscaping to soften the visual impact of the development from public view areas; and incorporate a limit on night lighting of the site to protect the nighttime rural character of this portion of the Santa Monica Mountains.

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## APPENDICES

Appendix 1 Substantive File Documents

## EXHIBITS

- Exhibit 1. Vicinity Map
- Exhibit 2. Parcel Map
- Exhibit 3. Site Plan
- Exhibit 4. Floor Plans
- Exhibit 5. Elevations
- Exhibit 6. Cross-Sections
- Exhibit 7. Open Space Area (shows only a portion of the parcel)

**LOCAL APPROVALS RECEIVED:** County of Los Angeles Department of Regional Planning, Approval in Concept, dated 12/27/10; County of Los Angeles Environmental Health Services, Sewage Disposal System Conceptual Approval, dated 1/14/08; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan Approval, dated 2/14/08; County of Los Angeles Fire Department, Fire Prevention Engineering Approval, dated 12/19/07.

## I. MOTION AND RESOLUTION

The staff recommends that the Commission adopt the following resolution:

### **Motion:**

*I move that the Commission **approve** Coastal Development Permit No 4-12-019 pursuant to the staff recommendation.*

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:**

*The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

### 1. Plans Conforming to Geotechnical Engineer's Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in all of the geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

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

### 2. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such

hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

### **3. Permanent Drainage and Polluted Runoff Control Plan**

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a qualified licensed professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plans shall incorporate long-term post-construction Best Management Practices (BMPs) that protect water quality and minimize increases in runoff volume and rate in the project design of developments in the following order of priority:

- a. Site Design BMPs: Project design features that reduce the creation or severity of potential pollutant sources, or reduce the alteration of the project site's natural stormwater flow regime. Examples are minimizing impervious surfaces, preserving native vegetation, and minimizing grading.
- b. Source Control BMPs: Methods that reduce potential pollutants at their sources and/or avoid entrainment of pollutants in runoff, including schedules of activities, prohibitions of practices, maintenance procedures, managerial practices, or operational practices. Examples are covering outdoor storage areas, use of efficient irrigation, and minimizing the use of landscaping chemicals.
- c. Treatment Control BMPs: Systems designed to remove pollutants from stormwater, by gravity settling of particulate pollutants, filtration, biological uptake, media adsorption, or any other physical, biological, or chemical process. Examples are vegetated swales, detention basins, and storm drain inlet filters. Where post-construction treatment of stormwater runoff is required, treatment control BMPs (or suites of BMPs) shall, at a minimum, be sized and designed to treat, infiltrate, or filter stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, or the 85th percentile, 1-hour storm event (with an appropriate safety factor of 2 or greater) for flow-based BMPs.

The 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) Projects shall incorporate Low Impact Development (LID) techniques in order to minimize stormwater quality and quantity impacts from development, unless a credible and compelling explanation is provided as to why such features are not feasible and/or appropriate. LID strategies use small-scale integrated and distributed management practices, including minimizing impervious surfaces, infiltrating stormwater close to its source, and preservation of permeable soils and native vegetation.
- (2) Post-development runoff rates from the site shall be maintained at levels similar to pre-development conditions.
- (3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such

features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.

- (4) Landscape plants shall have low water and chemical treatment demands and be consistent with **Special Condition 5, Landscaping and Fuel Modification Plans**. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design shall be utilized for any landscaping requiring water application.
- (5) All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit and, if applicable, in accordance with engineered plans prepared by a qualified licensed professional.
- (6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed where needed to prevent erosion. Plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system shall be prepared by a qualified licensed professional. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The qualified, licensed professional shall ensure that all energy dissipaters use the minimum amount of rock and/or other hardscape necessary to protect the site from erosion.
- (7) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15<sup>th</sup> each year) and at regular intervals as necessary between October 15<sup>th</sup> and April 15<sup>th</sup> of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- (8) For projects located on a hillside, slope, or which may otherwise be prone to geologic instability, site drainage and BMP selection shall be developed concurrent with the preliminary development design and grading plan, and final drainage plans shall be approved by a licensed geotechnical engineer or engineering geologist.
- (9) 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 affected 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 necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed 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.

#### **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 a qualified, licensed professional. The qualified, licensed professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan are in conformance with the following requirements:

##### 1. Erosion Control Plan

- (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- (d) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.
- (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.
- (g) All temporary, construction related erosion control materials shall be comprised of bio-degradable materials (natural fiber, not photo-degradable plastics) and must be removed



when permanent erosion control measures are in place. Bio-degradable erosion control materials may be left in place if they have been incorporated into the permanent landscaping design.

## 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 permitted disposal site or recycled at a permitted 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 necessary changes to the Coastal Commission approved site/development plans required by a qualified, licensed 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, revised 2007. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- (4) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- (5) Fencing of the entire property is prohibited. Fencing shall extend no further than the approved development area. The fencing type and location shall be illustrated on the

landscape plan. Fencing shall also be subject to the color requirements outlined in **Special Condition 6, Structural Appearance**, below.

**B) Fuel Modification Plans**

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

**C) Conformance with Commission Approved Site/Development Plans**

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

**D) Monitoring**

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

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

## 6. Structural Appearance

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of this Coastal Development Permit. The palette samples shall be presented in a format not to exceed 8½” x 11” x ½” in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by this Coastal Development Permit if such changes are specifically authorized by the Executive Director as complying with this special condition.

## 7. Lighting Restriction

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

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

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

## 8. Future Development Restriction

This permit is only for the development described in this Coastal Development Permit. Pursuant to Title 14 California Code of Regulations section 13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and (b) shall not apply to the development governed by this Coastal Development Permit. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation other than as provided for in the approved landscape plan prepared pursuant to **Special Condition 5, Landscaping and Fuel Modification Plans**, shall require an amendment to this Coastal Development Permit from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

## 9. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## 10. Habitat Impact Mitigation

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a map delineating all areas of chaparral and coastal sage scrub habitat (ESHA) that will be disturbed by the proposed development, including fuel modification and brush clearance requirements on the project site and adjacent property. The chaparral and coastal sage scrub ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and, if the fuel modification/brush clearance zones extend onto adjacent property, adjacent parcel boundaries. The delineation map shall indicate the total acreage for all chaparral and coastal sage scrub ESHA, both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

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

### A. Habitat Restoration

#### 1) Habitat Restoration Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral and/or coastal sage scrub habitat equivalent to the area of chaparral and/or coastal sage scrub ESHA impacted by the proposed development and fuel modification/brush clearance area. The habitat restoration area may either be onsite or offsite within the coastal zone either in the City of Malibu or elsewhere in the Santa Monica Mountains. The habitat restoration area shall be delineated on a

detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite, the applicant shall submit written evidence to the Executive Director that the property owner has irrevocably agreed to allow the restoration work, maintenance and monitoring required by this condition and not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been, in part or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. Should supplemental restoration be required, the applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating the supplemental restoration areas. At the end of the five-year period, a final report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an application for an amendment to the coastal development permit for an alternative mitigation program and shall implement whatever alternative mitigation program the Commission approves, as approved.

The habitat restoration work approved in the restoration plan shall be carried out prior to occupancy of the residence.

## 2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act, shall occur in the habitat restoration area, as shown on the habitat restoration site plan required pursuant to (A)(1) above.

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit evidence that the applicant has executed and recorded a deed restriction (if the applicant is not the owner, then the applicant shall submit evidence that the owner has executed and recorded the deed restriction), in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic

depiction and narrative legal descriptions of both the parcel on which the restoration area lies and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### 3) Performance Bond

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

## **B. Habitat Conservation**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall (or, if the applicant is not the owner of the habitat conservation site, then the owner of the habitat conservation site shall) execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over the entirety of a legal parcel or parcels containing chaparral and/or coastal sage scrub ESHA. The chaparral and/or coastal sage scrub ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence, the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel(s) is/are larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

## **C. Habitat Impact Mitigation Fund**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence, for the review and approval of the Executive Director, that payment for compensatory mitigation has been provided to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral and coastal sage scrub habitat ESHA. The payment shall be calculated as follows:

**1. Development Area, Irrigated Fuel Modification Zones, Off-site Brush Clearance**

The payment for these areas shall be \$12,000 per acre within the development area, any required irrigated fuel modification zones, and required off-site brush clearance areas (assuming a 200-foot radius from all structures). The total acreage shall be based on the map delineating these areas required by this condition.

**2. Non-irrigated Fuel Modification Zones**

The payment for non-irrigated fuel modification areas (on-site) shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment for mitigation to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the payment required to mitigate adverse impacts to chaparral and/or coastal sage scrub habitat ESHA, in accordance with this condition. After review and approval of the payment calculation, the payment shall be made to the Mountains Recreation and Conservation Authority's Coastal Habitat Impact Mitigation Fund for the acquisition, permanent preservation or restoration of habitat in the Santa Monica Mountains coastal zone, with priority given to the acquisition of or extinguishment of all development potential on properties containing environmentally sensitive habitat areas and properties adjacent to public parklands.. The payment may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

**11. Open Space Conservation Easement**

A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the "open space conservation easement area", as generally shown in **Exhibit 7** except for:

- (1) Construction and (upon securing any necessary coastal development permit) maintenance of the access driveway and driveway gate, septic system, well, pump house with solar panel array, and two water tanks approved by the Commission in this coastal development permit and as generally shown on Exhibit 7.
- (2) Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan approved pursuant to **Special Condition 5, Landscaping and Fuel Modification Plans**, or other fuel modification plans required and approved by the Commission pursuant to a different CDP(s) issued by the Commission;
- (3) Drainage and polluted runoff control activities required and approved pursuant to:
  - a. The drainage and runoff control plans approved pursuant to **Special Condition 3, Permanent Drainage and Runoff Control Plan**, of this permit; and
  - b. The landscaping and erosion control plans approved pursuant to **Special Condition 4, Interim Erosion Control & Construction Best Management Practices Plan, and Special Condition 5, Landscaping and Fuel Modification Plans**, of this permit;



- (4) Planting of native vegetation and other restoration activities, if approved by the Commission as an amendment to this coastal development permit or a new coastal development permit;
- (5) If approved by the Commission as an amendment to this coastal development permit or a new coastal development permit,
  - a. construction and maintenance of public hiking trails; and
  - b. construction and maintenance of roads, trails, and utilities consistent with existing easements.

**B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority (“MRCA”) on behalf of the people of the State of California an open space conservation easement over the “open space conservation easement area” described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 7**. The recorded document shall reflect that no development shall occur within the open space conservation easement area except as otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) that the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

## **12. Site Inspection**

- A. By acceptance of this permit, the applicant irrevocably authorizes, on behalf of 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.

### **13. Removal of Natural Vegetation**

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure approved pursuant to this permit.

### **14. Removal of Excavated Material**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

### **15. Oak Tree Protection**

To ensure that the oak trees located to the northwest of the proposed building site on the subject parcel are protected during construction activities, temporary protective barrier fencing shall be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then flagging shall be installed on trees to be protected. The permittee shall also follow the oak tree preservation recommendations that are enumerated in the Oak Tree Report referenced in the Substantive File Documents.

### **16. Lot Combination**

- A. By acceptance of this permit, the applicant agrees, on behalf of himself and all successors and assigns with respect to the subject property, that: (1) All portions of the land currently known as APN 4456-037-055 (formerly described as APN 4456-037-015 and APN 4456-037-016) shall henceforth be considered and treated as a single parcel of land for all purposes, including but not limited to sale, conveyance, lease, development, taxation or encumbrance; and (2) the single parcel so described shall not be divided.
- B. *Prior to issuance of the Coastal Development Permit*, the applicant shall execute and record a deed restriction against the entire property at issue, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. To the extent that there is any argument that the areas identified by the separate assessor's parcel numbers listed above constitute separate parcels for Subdivision Map Act (SMA) purposes, this action shall function to recombine and unify those parcels for the purpose of the SMA. The deed restriction shall include a legal description and graphic depiction of the entire property at issue. The deed restriction shall run with the land, binding all successors and assigns, and

shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

### **17. Removal of Temporary Construction Trailer**

With the acceptance of this coastal permit, the applicant agrees that the temporary construction trailer on the site shall be removed within two years of the issuance of this coastal development permit or within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of temporary trailers.

### **18. Protection of Mariposa Lillies**

To ensure that the Catalina Mariposa Lilies (CNPS List 4.2 Plant) adjacent to the building pad area are not disturbed during construction activities, temporary protective barrier fencing shall be installed around the Lilies and retained during all construction operations.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND BACKGROUND**

The applicant proposes to construct a 3,003 sq. ft. 26 ft. high single family residence, 800 sq. ft. under house carport and workshop, and a 150 sq. ft. metal and block pump house with well and solar array, two 5,000 gallon water tanks, approximately 450 ft. long driveway, retaining walls, septic system, outdoor patio, temporary construction trailer, 20 ft. wide driveway gate, and 2,418 cu. yds. of new grading (1,209 cu. yds. cut, 422 cu. yds. fill, and 767 cu. yds. export). The applicant is proposing to retain the northern portion of the site (formerly APN 4456-037-015) as undeveloped land.

The 32.82 acre site is located at 24810 Piuma Road in the Santa Monica Mountains, about 2.5 miles north of the City of Malibu, 1 mile east of Malibu Canyon Road, and about 6 miles south of Highway 101 in unincorporated Los Angeles County. (Exhibits 1-2) Piuma Road bisects the property, with the 6.52 acre portion of the site located to the south of Piuma Road and the 26.30 acre portion of the site located to the north of Piuma Road. The entire parcel owned by the applicant is 32.82 acres in size (the current APN is 4456-037-055, although the assessor's parcel map previously showed the property as two different parcels- APN 4456-037-016 (6.52 acres) and APN 4456-037-015 (26.30 acres) -further explained below). The adjacent property to the west is developed with a single family residence (24851 Piuma Road) and the adjacent property to the south is developed with a single family residence (24800 Piuma Road).

The proposed project site is located within a portion of the Malibu Canyon Significant watershed, at an elevation of approximately 1,600 to 1,700 feet above mean sea level. The general topography of the southern site, the proposed building location, is a ridgeline with

moderate south and southwest facing slopes and steep erosional slopes occurring on the north and east boundaries of the site. Soils on the site are a sandy clay loam with eroded soils occurring on the steep, more northerly facing slopes. The topography of the northern portion of the site, not proposed to be developed, is mountainous with canyons and steep slopes.

A driveway presently exists on the south side of the building site on the southern portion of the property and appears to have been constructed prior to the effective date of the Coastal Act, January 1, 1977, according to review of historical aerial photographs. According to the applicant, the estimated amount of earthwork that took place for the existing dirt driveway constructed prior to the effective date of the Coastal Act consists of 828 cu. yds grading (414 cu. yds. cut, 256 cu. yds. fill, and 158 cu. yds. export). The applicant is proposing to use this existing driveway to access the building pad with additional improvements in order to meet the Los Angeles County Fire Department Access requirements.

The proposed development site is located in a scenic area and the development will be intermittently visible from various public viewing points, including Piuma Road and potentially State Park lands to the south and west of the project site. However, view impacts are reduced due to intervening mountainous topography in the area. No alternative siting or design options exist on the parcel in which the development would be significantly less visible from public viewing areas.

The applicant is not proposing to construct any development on the northern 26.20 acre portion of the site (formerly known as APN 4456-037-015). The entire property is designated as "Significant Watershed" in the Malibu/Santa Monica Mountains LUP. Additionally, from an analysis of current aerial photographs, the entire northern portion of the property (formerly known as APN 4456-037-015) contains contiguous, undisturbed native chaparral and sage scrub, also considered to be ESHA. Additionally, the southern portion of the site (formerly known as APN 4456-037-016), where the residence is proposed to be located, is also ESHA except for the existing pre-coastal access driveway. According to the biological assessment submitted by the applicant, the site contains coastal sage scrub, chaparral habitat, and oak woodland habitat.

#### Parcel Legality

As evidence of lot legality, the applicant submitted an unconditional Certificate of Compliance No. 2867, Recorded as Document No. 81-298186, issued by the County of Los Angeles on March 24, 1981 for the property. Piuma Road crosses the property and the Los Angeles County Tax Assessor's Office had previously assigned two separate Assessor's Parcel Numbers (APN) for each of the two portions of the property on each side of the road, even though the property has been held as one lot. The 6.52 acre portion south of Piuma Road was formerly known as APN 4456-037-016 and the 26.30 acre portion north of Piuma Road was formerly known as APN 4456-037-015, although now the entire 32.82 acre parcel is currently known as APN 4456-037-055. The Certificate of Compliance indicates that the entire parcel was created in compliance with the laws in effect at the time of creation. Additionally, Leonard Erlanger from the Los Angeles County Department of Regional Planning confirmed that there was no violation found in the creation of the subject parcel on August 15, 1966, of either the State Subdivision Map Act or the Los Angeles County Subdivision Ordinance; therefore, the parcel is legal. The applicant has included the entire 32.82 acre property as part of the application and only proposes to build on the southern part of the property to the south of Piuma Road.. Special Condition 16 of

this CDP will require the applicant to record a deed restriction across the entire 32.82 lot to reflect that the entire 32.82 acres is one parcel in order to ensure that the potential impacts to coastal resources from a future split of the parcel are avoided.

## **B. PAST COMMISSION ACTION**

In February 2009, the Commission approved Coastal Development Permit (CDP) No. 4-07-132 (Bersohn.) for construction of a 3,003 sq. ft., 26 ft. high single family residence, 720 sq. ft. under house carport and workshop, 150 sq. ft. pump house with well and solar array, 2 water tanks, driveway, septic system, outdoor patio, temporary construction trailer, 20 ft. wide driveway gate, and 1,625 cu. yds. of grading (1,279 cu. yds. cut and 346 cu. yds. fill). Conditions of approval included plans conforming to geotechnical engineer's recommendations, assumption of risk, waiver of liability and indemnity, permanent drainage and polluted runoff control plan, interim erosion control plans and construction responsibilities, landscaping and fuel modification plans, structural appearance, lighting restriction, future development restriction, deed restriction, habitat impact mitigation, open space conservation easement, site inspection, removal of natural vegetation, oak tree protection, lot combination, removal of temporary construction trailer, removal of excavated material, protection of mariposa lilies, and revised plans

In June 2011, the Commission approved an immaterial amendment CDP No. 4-07-132-A1, which included modifications to shift the footprint of the residence (17 ft. to the south and 18 feet to the west), increase the height of residence from finished grade by 2 feet (structural building height will remain the same), modify the retaining wall lengths and heights, adjust the configuration of hammerhead turnaround, and increase the grading amount for the residence and pad to 2,418 cu. yds. (1,209 cu. yds. cut, 442 cu. yds. fill, and 767 cu. yds. export). Changes to the grading were due to the fact that 933 cu. yds. of export was erroneously omitted from the approved project description (resulting in 2,558 cu. yds. of previously approved grading) and grading amounts for the driveway were not included in the originally approved project (for approval of an additional 414 cu. yds cut and 256 cu. yds. fill for the amended project). However, the permit expired and the applicant has submitted the subject application for the same project as previously approved pursuant to CDP No. 4-07-132-A1.

## **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: Permanent Drainage and Polluted Runoff Control Plans
- 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.

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 13: Removal of Native Vegetation
- Special Condition 14: Removal of Excavated Material

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

## **E. 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 1 and all other policies of this LCP.*
- P68 *Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.*
- P69 *Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*



- P72 Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.*
- P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.*
- P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*
- P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.*

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

The 32.82 acre site is located about 2.5 miles north of the City of Malibu, 1 mile east of Malibu Canyon Road, and about 6 miles south of Highway 101. The proposed project site is located within a portion of the Malibu Canyon Significant watershed, at an elevation of approximately 1,600 to 1,700 feet above mean sea level. The general topography of the southern site, where the residence is proposed to be located, is a ridgeline with moderate south and southwest facing slopes and steep erosional slopes occurring on the north and east boundaries of the site. Soils on the site are a sandy clay loam with eroded soils occurring on the steep, more northerly facing slopes. The topography of the northern portion of the site, not proposed to be developed, is mountainous with canyons and steep slopes.

The applicant submitted the Biological Assessment, listed in the Substantive File Documents, which addresses the habitats present on the project site. The report identifies several vegetation/habitat communities on the project site. According to the report, the dominant plants observed in Mixed Sage Scrub vegetation found on the site include: California sagebrush (*Artemisia californica*), black sage (*Salvia mellifera*), purple sage (*Salvia leucophylla*), laurel sumac (*Malosma laurina*), and giant wild-rye (*Leymus condensatus*). In addition, the following species were also observed in this community, including California walnut (*Juglans californica* ssp. *californica*), white sage (*Salvia apiana*), ashy-leaf buckwheat (*Eriogonum cinereum*), and saw-tooth goldenbush (*Hazardia squarrosa* var. *grindelioides*). The report also identified Coastal Sage Chaparral Scrub along the north and east boundaries of the site, where the dominant plants include: black sage, California sagebrush, greenbark ceanothus (*Ceanothus spinosus*), and mountain mahogany (*Cercocarpus betuloides*) and where lower concentrations of species observed include: toyon (*Heteromeles arbutifolia*), scrub oak (*Quercus berberidifolia*), and blue elderberry (*Sambucus mexicana*). Twenty ordinance size oaks, protected by the County of Los

Angeles Oak Tree Protection Ordinance, occur in these woodlands. Additionally, two California Walnut Woodland areas occur on the site and non-native grassland is also found on the site. Coast Live Oak Woodlands are located on the north and east boundaries of the site. The report states that these woodlands are dominated solely by coast live oak (*Quercus agrifolia*) and other chaparral species such as greenbark ceanothus and mountain mahogany.

A map of the habitats on the site was also prepared by the biological consultant. The map indicates that approximately 11 Catalina mariposa lilies exist in two locations on the project site. The Catalina mariposa lily (*Calochortus catalinae*) is ranked on the California Native Plant Society List 4.2. The plants in this category are not rare, but they are of limited distribution or infrequent throughout a broader area in California, and their vulnerability or susceptibility to threat appears relatively low at this time. The locations of the surveyed lilies are outside of the immediate development area; however, to ensure that the Catalina Mariposa Lilies (CNPS List 4.2 Plant) adjacent to the building pad area are not disturbed during construction activities, temporary protective barrier fencing is required to be installed around the Lilies and retained during all construction operations.

The project site is undisturbed, except for a driveway that was constructed prior to the effective date of the Coastal Act, January 1, 1977, and comprised of coastal sage scrub, chaparral and oak woodland habitat areas. While there is scattered residential development in the area and more intense residential development in the small lot subdivision of Monte Nido north of the project site, there is undisturbed, contiguous coastal sage scrub, chaparral habitat, and oak woodland habitat directly to the north, east, and west of the site.

According to public information, the applicant purchased the subject parcel in 2005 for \$670,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. Two land use designations apply to the property which are: Mountain Land, that allows residential development at a maximum density of 1 dwelling unit per 20 acres of land and Rural Land I, that allows 1 unit per 10 acres. The entire parcel is 32.82 acres in size (currently known as APN 4456-037-055, but formerly described as APN 4456-037-015 and APN 4456-037-016). A single family residence is located on the adjacent property to the north/west and a single family residence is located on the adjacent property to the south. Public parkland has been acquired in this general vicinity, the Santa Monica Mountains National Recreation Area, but there is no parkland or public open space directly adjacent to the project site. There is currently no offer to purchase the property from any public park agency.

The project has been designed to use the existing pre-Coastal access driveway and to cluster all structures near the disturbed driveway. Any alternative location on the site would likely include the removal of more native vegetation. Not including the area of the driveway or turnaround, the proposed development area is estimated by the applicant to measure 5,342 square feet. The applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones.

## 2. ESHA Designation on the Project Site

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

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

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

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission’s Ecologist, Dr. John Dixon<sup>1</sup> (hereinafter “Dr. Dixon Memorandum”), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak

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

woodland, and riparian woodlands are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>2</sup>.

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

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

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

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

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable

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

economic use, the Commission may be required to allow some development even if a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by the Commission on sites in the immediate area. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible to build a residence.

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

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

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

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

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

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence and accessory structures, and the use of the development by residents will result in unavoidable loss of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

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

### **5. Open Space Conservation**

This project is inconsistent with Section 30240 of the Coastal Act, and is only being allowed to avoid a taking of private property for public use. The Commission finds that for the project to be consistent with Section 30240 to the maximum extent feasible, while providing a reasonable economic use, this project must constitute the maximum amount of ESHA destruction on the site and the remaining ESHA on the property must be preserved in perpetuity.

The Commission finds that the most effective way to assure ESHA preservation on the site is the granting of an open space conservation easement to the Mountains Recreation and Conservation Authority (a joint powers authority) that prohibits development on the remainder of the site now and in the future. The Mountains Recreation and Conservation Authority (MRCA) is a public agency that represents a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat. The MRCA manages and provides ranger services for almost 50,000 acres of public lands and parks that it owns or that are owned by the Santa Monica Mountains Conservancy. In the course of its normal duties, the MRCA park rangers and other staff are better able to monitor open space areas to ensure that the restrictions are followed than Commission staff. Further, an easement will be recorded against the title to the property and thus provide notice to future owners of the limitations that apply to the open space conservation area, reducing the risk of a future irreparable violation of the restriction. The governing board of the MRCA has agreed to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area.

It is important that the property owner grant an easement to MRCA rather than simply record an open space deed restriction. Although a deed restriction should notify future owners of the restriction in the same manner that a recorded easement would, it would not be as effective in preserving the remaining ESHA for the following two reasons. First, a deed restriction is not as reliable because a property owner can record another document purporting to rescind the deed restriction. Although any attempt to rescind a deed restriction required by a coastal development permit (“CDP”) without an amendment to that CDP authorizing such a rescission would constitute a violation of the CDP and the Coastal Act, the County Recorder’s office is likely to allow recordation of a rescission without the required Coastal Commission authorization. Indeed, the Commission has experienced the phenomenon of property owners recording documents purporting to modify deed restrictions recorded pursuant to CDP requirements. *See, e.g.,* Commission findings for CDP Amendment F7453-A2 (Stephenson), approved March 2005, and Violation File V-6-04-010 (Del Mar Estates). On the other hand, because an easement necessarily involves more than one person, the County Recorder would not likely record a document purporting to rescind an easement unless the easement holder was also to sign the document. Thus, a condition requiring a deed restriction is much easier to violate, and therefore much less protective, than a condition requiring an easement.

Second, the Legislature has recently adopted new provisions to the Government Code specifically sanctioning the use of conservation easements for this purpose and changing procedures to ensure that they are prominent in searching title to property. In 2001, the Legislature adopted a new requirement that County Recorders keep a separate and “comprehensive index of conservation easements.” *See* Cal. Gov’t Code § 27255(a). As such, the Commission finds that the requirement of an open space and conservation easement is the most effective method of ensuring that the remaining ESHA on the project site will be conserved in the future. Finally, the Commission concludes that an open space easement that allows only the easement holder and no other entity to enter the property for inspection purposes does not interfere with the fee title owner’s right to exclude the general public. It therefore does not constitute a significant invasion of the fee title owner’s property interest.

In conclusion, the Commission finds that it is necessary to require the applicant to grant an open space easement to the MRCA over the open space area on the project site (that area outside of the approved development area on the 6.52 acre area south of Piuma Road and the 26.3 acre portion of the property to the north of Piuma Road) in order to insure that the remaining ESHA will be preserved. Only as conditioned will the proposed project minimize impacts to ESHA, as required by Section 30240 of the Coastal Act.

## **6. Habitat Impact Mitigation**

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

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location

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

Obviously, native vegetation that is cleared and replaced with ornamental species or substantially removed and widely spaced will be lost as habitat and watershed cover. As discussed in the Dr. Dixon Memorandum<sup>3</sup>, the cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The Commission has identified three appropriate methods for providing mitigation for the unavoidable loss of ESHA resulting from development; namely, habitat restoration, habitat conservation, and payment for mitigation. The Commission finds that any of these measures is appropriate in this case to mitigate the loss of ESHA on the project site. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat of a similar type as that impacted equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size

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



than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA.

The third habitat impact mitigation option is the payment for mitigation of impacts to habitat. The payment is based on the habitat types in question, the cost per acre to restore or create comparable habitat types, and the acreage of habitat affected by the project. The Commission has, in past permit decisions, determined the appropriate payment for the restoration or creation of chaparral and coastal sage scrub habitat, based on research carried out by the Commission's biologist. A range of cost estimates was obtained that reflected differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc.

The Commission has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). The payment amount found by the Commission to be appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, the "A" zone required for fuel modification, and off-site brush clearance areas), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification) is \$12,000 per acre. Further, the Commission has required a payment of \$3,000 per acre for areas where the vegetation will be thinned, but not irrigated ("C" zone or other non-irrigated fuel modification zone).

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

## **7. Protection of Oaks**

The project site contains oak woodlands that are interspersed with chaparral and coastal sage scrub habitat that meet the definition of ESHA. Through past permit actions in the Santa Monica Mountains, the Commission has found that native oak trees are an important coastal resource, especially where they are part of a larger woodland or other habitat area that is ESHA. As required by Section 30250 of the Coastal Act, the proposed new development can be approved only where it will not have impacts on coastal resources. Additionally, oak trees are an important component of the visual character of the area and must be protected in order to ensure that the proposed development is visually compatible with this character, as required by Section 30251 of the Coastal Act. Furthermore, native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. Individual oak trees such as those

on or adjacent to the subject site do provide habitat for a wide variety of wildlife species and are considered to be an important part of the character and scenic quality of the area.

Oak trees are easily damaged. They are shallow-rooted and require air and water exchange near the surface. The oak tree root system is extensive, extending as much as 50 feet beyond the spread of the canopy, although the area within the “protected zone” (the area around an oak tree that is five feet outside the dripline or fifteen feet from the trunk, whichever is greater) is the most important. Oaks are therefore sensitive to surrounding land uses, grading or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree.

Obviously, the removal of an oak tree results in the total loss of the habitat values of the tree. Encroachments into the protected zone of an oak tree can also result in significant adverse impacts. Changes in the level of soil around a tree can affect its health. Excavation can cut or severely damage roots and the addition of material affects the ability of the roots to obtain air or water. Soil compaction and/or pavement of areas within the protected zone will block the exchange of air and water through the soil to the roots and can have serious long term negative effects on the tree.

In order to ensure that oak trees are protected so that development does not have impacts on coastal resources and so that the development is compatible with the visual character of the area, the Commission has required, in past permit actions, that the removal of native trees, particularly oak trees, or encroachment of structures into the root zone be avoided unless there is no feasible alternative for the siting of development.

**a. Project Impacts**

The Oak Tree Report, listed in the Substantive File Documents, indicates that 20 coast live oak trees are present on the site. The proposed project does not include removal or encroachment into any of the oak tree canopy driplines or oak tree protected zones (5 feet from the outer limits of the tree dripline or 15 feet from the trunk, whichever is greater). However, according to the report, six coast live oak trees occur within 200 feet from the grading limit line, but these trees are not proposed to be removed or damaged.

**b. Oak Tree Protection Measures**

Although no construction is proposed directly within the protected zone of the oak woodland located to the north west of the building pad, the Commission finds that impacts to oak trees will be minimized by employing protective measures during project construction. Encroachment during construction could result in impacts including, but not limited to: root cutting or damage, compaction, trunk or branch removal or trimming, changes in drainage patterns, and excess watering. Further, the introduction of development within a woodland will interrupt the oak canopy coverage and will lessen the habitat value of the woodland as a whole. Therefore, the applicant shall follow the oak tree preservation recommendations contained in the Oak Tree Report referenced in the substantive file documents. Additionally, the Commission requires the

applicant to install temporary protective barrier fencing around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees located in the woodland to the northwest of the building site and retained during all construction operations. If required construction operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then temporary flagging must be installed on all oak trees to ensure protection during construction.

### **8. Additional Mitigation Measures to Address Additional ESHA Impacts**

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

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

Furthermore, fencing of the property would adversely impact the movement of wildlife through the ESHA and wildlife migration corridor on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the approved development area, turnaround, and driveway. This is required to be shown on the landscaping plan.

Additionally, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to require that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. This limitation avoids loss of natural vegetation coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

Further, the proposed 2,418 cu. yds. grading (1,209 cu. yds. cut, 422 cu. yds. fill, 767 cu. yds. export) will result in excess cut material. In order to ensure that this excess material is disposed of in a manner that avoids impacts to ESHA and minimizes erosion and sedimentation, the

Commission requires the applicant to provide evidence of the location where the excess cut material will be placed. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

As part of the project, the applicant proposes to maintain a temporary construction trailer on the project site during the development of the project. In order to ensure that potential impacts of maintaining the construction trailer onsite permanently are avoided, the Commission finds it necessary to require the applicant to remove the construction trailer within two years of issuance of this CDP, or within 30 days of receiving the certificate of occupancy for the approved residence.

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:

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|-----------------------|---|
| Special Condition 5.  | Landscaping and Fuel Modification Plans   |
| Special Condition 7.  | Lighting Restriction                      |
| Special Condition 8.  | Future Development Restriction            |
| Special Condition 9.  | Deed Restriction                          |
| Special Condition 10. | Habitat Impact Mitigation                 |
| Special Condition 11. | Open Space Conservation Easement          |
| Special Condition 12. | Site Inspection                           |
| Special Condition 13. | Removal of Natural Vegetation             |
| Special Condition 14. | Removal of Excavated Material             |
| Special Condition 15. | Oak Tree Protection                       |
| Special Condition 17. | Removal of Temporary Construction Trailer |
| Special Condition 18. | Protection of Mariposa Lilies             |

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

## **F. 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 area is located within a relatively rural area characterized by expansive, naturally vegetated mountains and hillsides. The proposed development site is located in a scenic area and the development will be intermittently visible from various public viewing points, including Piuma Road and potentially State Park lands to the south and west of the project site. 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.

The proposed residence is 2-stories with a maximum height of 26 feet from existing grade at any given point. The residence is low in height and designed to be built into the hillside, forming to the profile of the existing slope. The applicant submitted an alternatives analysis and a visual simulation of the residence as proposed within the existing topography. According to the analysis, the residence is partially hidden from views along Piuma Road due to intervening topography. Additionally, proposed building site and design minimizes the amount of grading and landform alteration necessary for the project. There are no siting alternatives where the building would not be visible from public viewing areas. Therefore, the proposed structures are sited and designed to protect views to the extent feasible.

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. 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.

## **G. LOCAL COASTAL PROGRAM PREPARATION**

Section 30604(a) 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 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 18

Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

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

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

Special Conditions 1 through 18

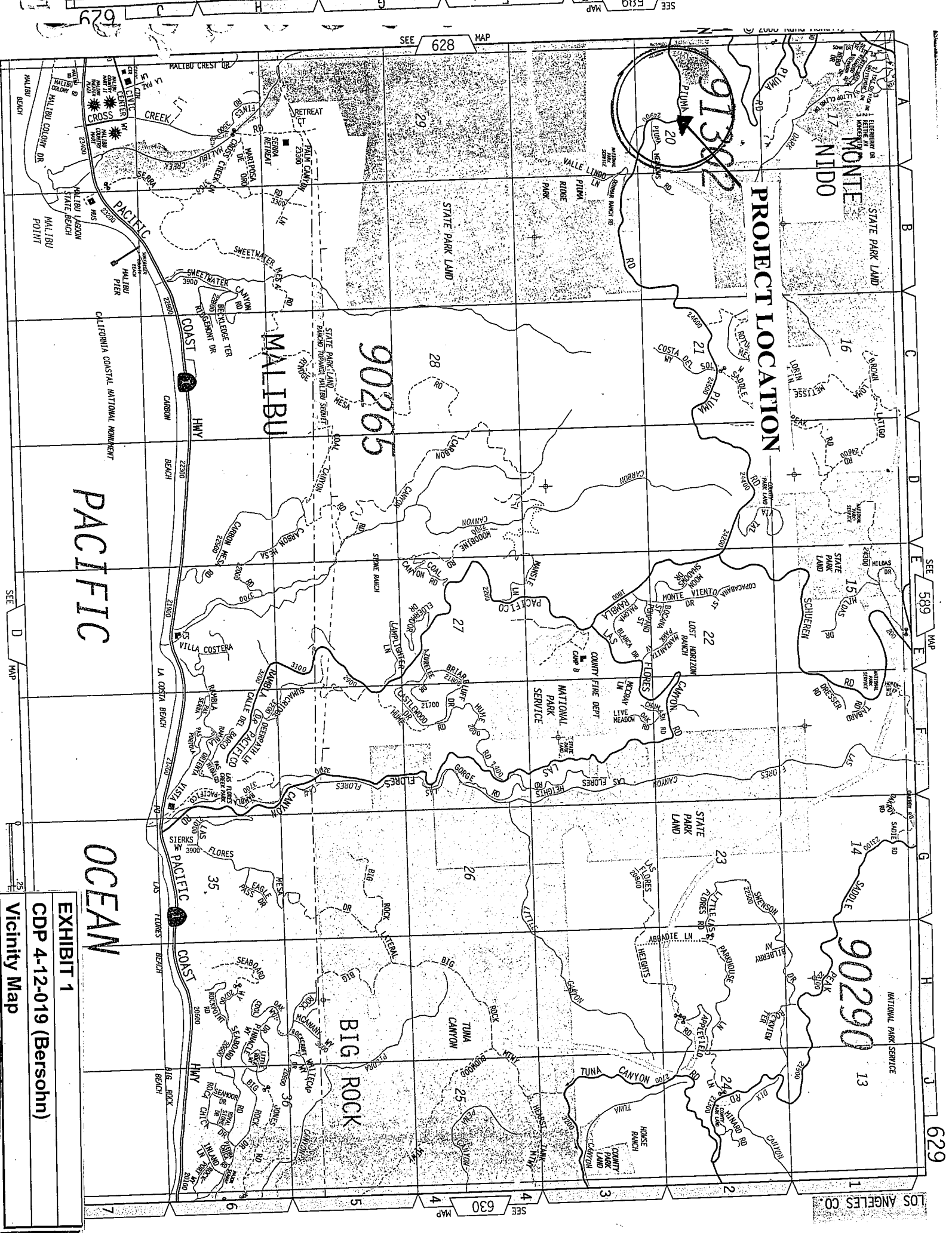
As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX 1**

### **Substantive File Documents**

Certified Malibu/Santa Monica Mountains Land Use Plan; The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph.D; "Biological Assessment- Bersohn Residence," prepared by Impact Sciences, Inc., dated May 2007; "Bersohn Residence- Oak Tree Report," prepared by Impact Sciences, Inc., dated October 2007; "Preliminary Geologic & Soils Engineering Investigation," prepared by SubSurface Designs, Inc., dated April 17, 2007; Certificate of Compliance CC-2867, Issued by Los Angeles County Department of Regional Planning on March 24, 1981, Recorded as Document No. 81-298186; Coastal Development Permit 4-07-132 (Bersohn), and Coastal Development Permit 4-07-131-A1 (Bersohn).





**PROJECT LOCATION**

**91382**  
 PLUM

**90265**

**90290**

**PACIFIC**

**OCEAN**

**EXHIBIT 1**  
**CDP 4-12-019 (Bersohn)**  
**Vicinity Map**

SEE 589 MAP

MAP 628

SEE 589 MAP

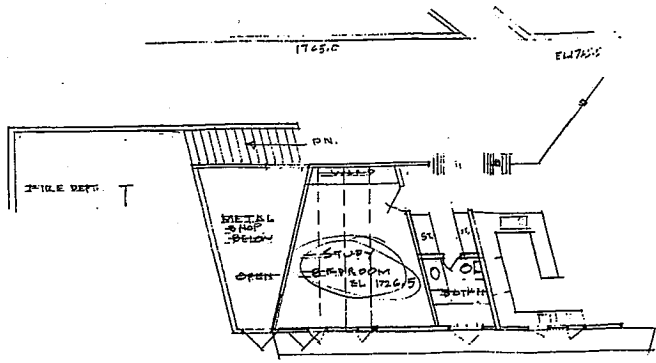
MAP 629

SEE 630 MAP

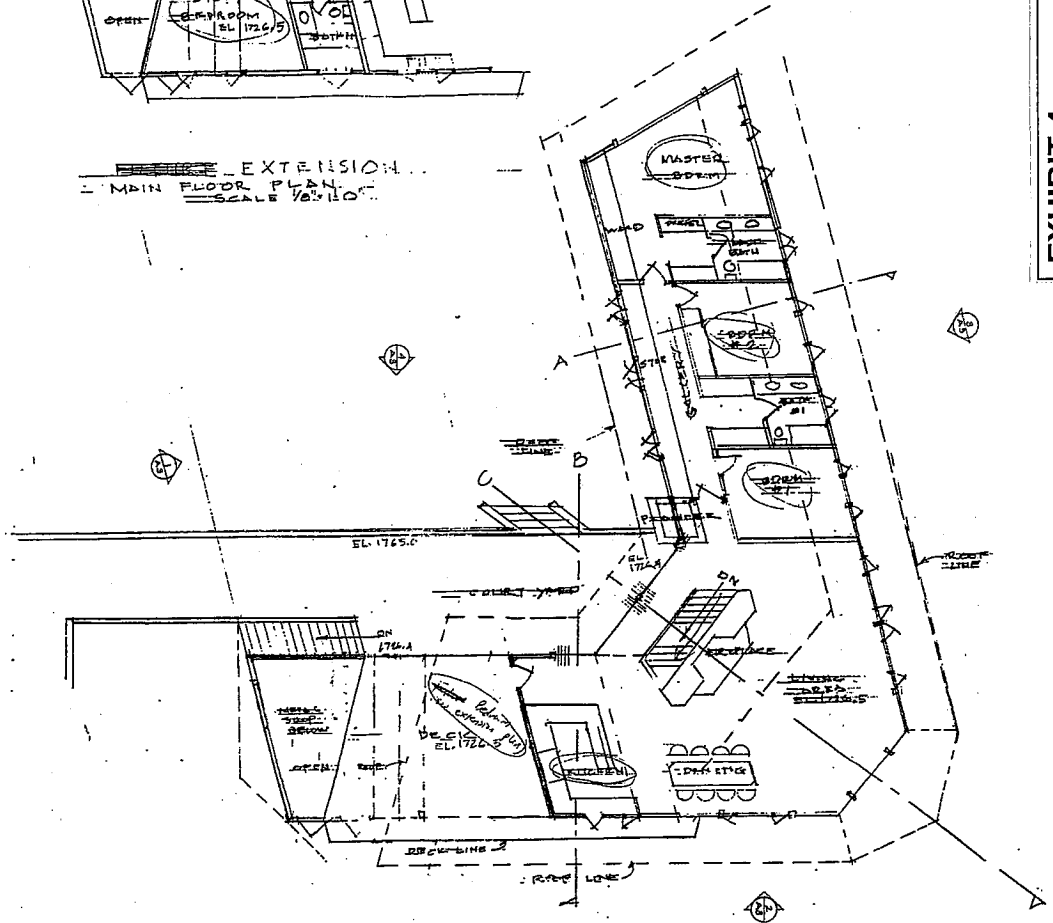
LOS ANGELES CO



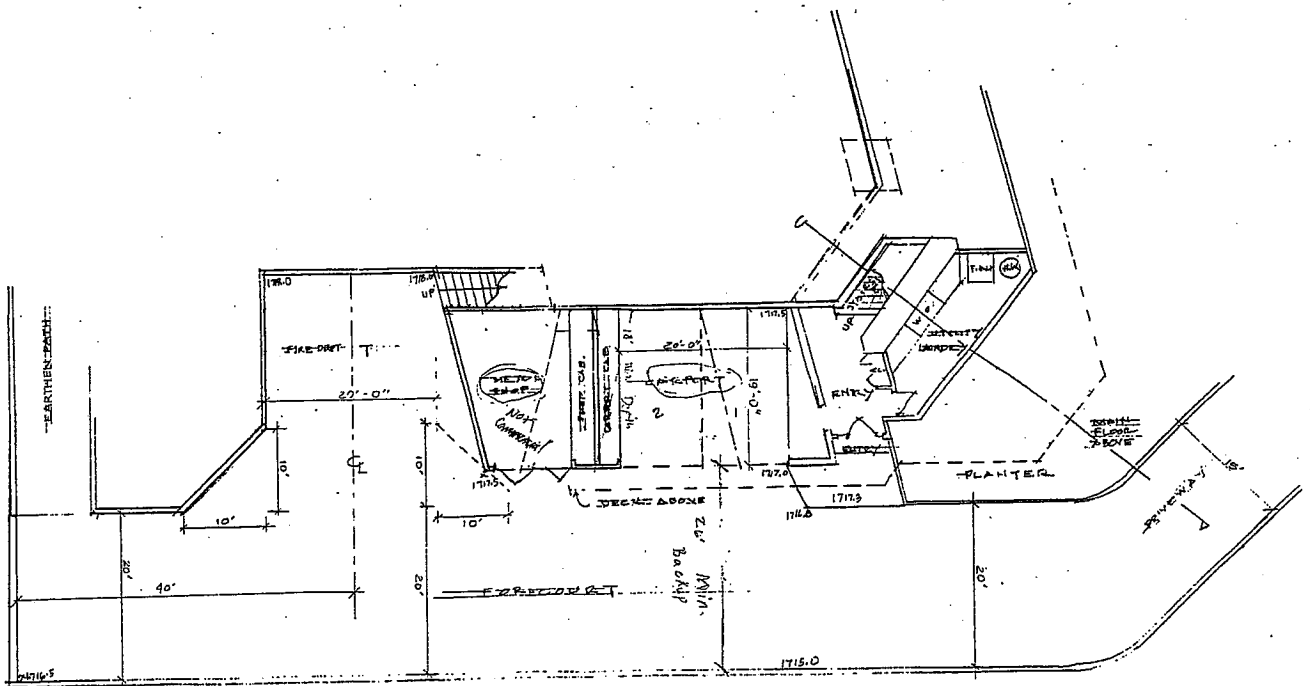




EXTENSION  
 MAIN FLOOR PLAN  
 SCALE 1/8"=1'-0"



MAIN FLOOR PLAN  
 SCALE 1/8"=1'-0"



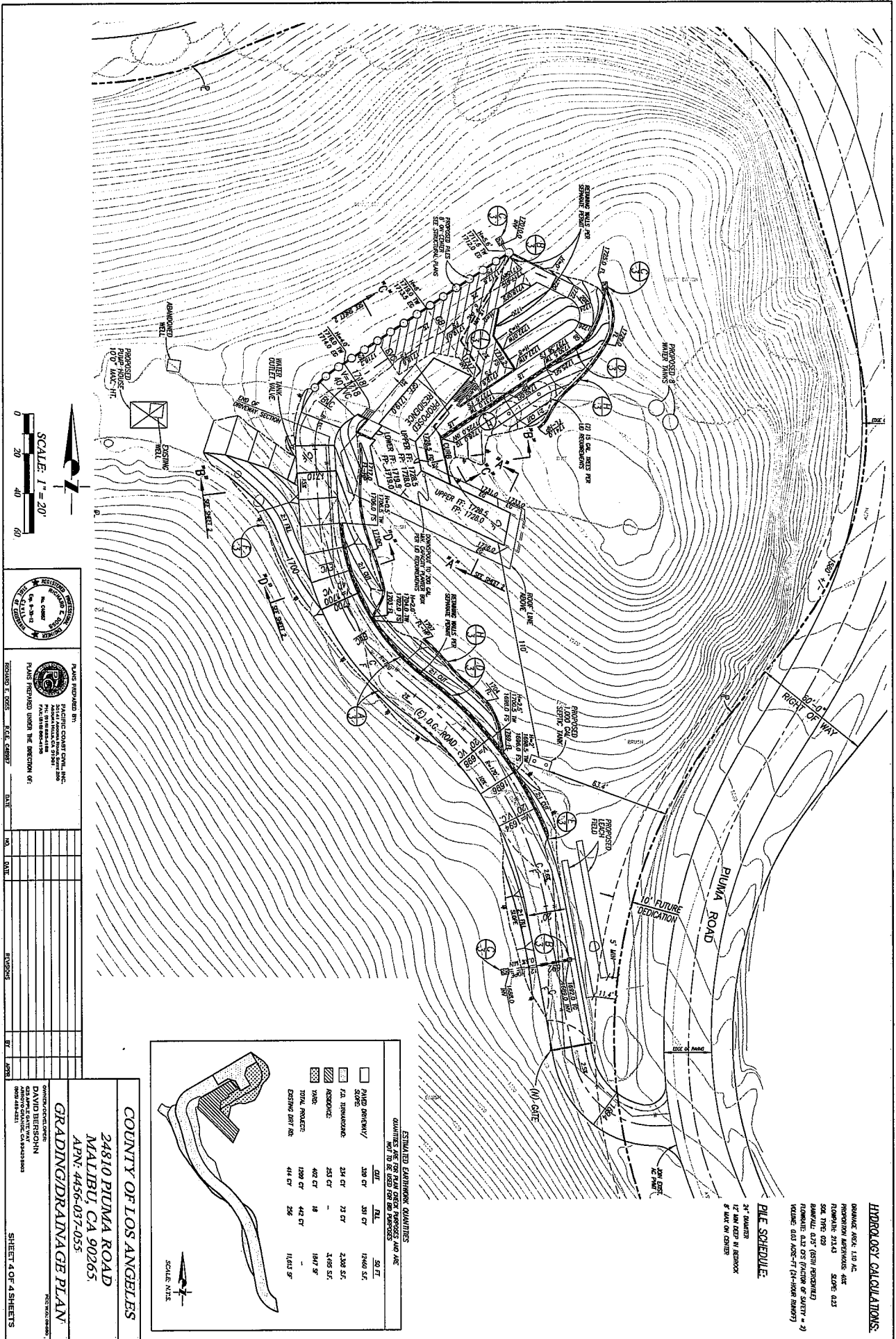
GROUND FLOOR PLAN  
 SCALE 1/8"=1'-0"

EXHIBIT 4

CDP 4-12-019 (Bersohn)

Floor Plans





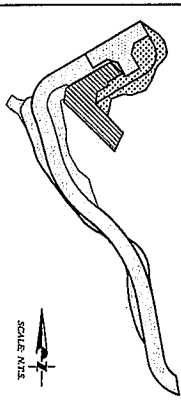
SCALE: 1" = 20'



PACIFIC COAST CIVIL, INC.  
 24810 PUMA ROAD  
 MALIBU, CA 90265  
 PLAN REVIEWED UNDER THE SUPERVISION OF:  
 DAVID BERSOHN

NO.	DATE	REVISIONS

COUNTY OF LOS ANGELES  
 24810 PUMA ROAD  
 MALIBU, CA 90265  
 APN: 4456-037-055  
**GRADING/DRAINAGE PLAN**  
 DAVID BERSOHN  
 CIVIL ENGINEER  
 LICENSE NO. 4456-037-055  
 SHEET 4 OF 4 SHEETS



ESTIMATED EXHIBIT QUANTITIES  
 QUANTITIES ARE FOR PAID ORDER PURPOSES AND ARE NOT TO BE USED FOR PROGRESS

DESCRIPTION	QTY	UNIT	EST. VALUE
PAID DRAINAGE	208	CT	19460 SF
PAID EROSION CONTROL	234	CT	2308 SF
PAID ASPHALT	402	CT	1407 SF
PAID TOTAL PROJECT	1288	CT	17815 SF
EXISTING DIRT	444	CT	-
TOTAL	1732	CT	17815 SF

**HYDROLOGY CALCULATIONS:**  
 DRAINAGE AREA: 110 AC  
 PROPORTION METHOD: 0.05  
 RAINFALL: 2.13 IN  
 SLOPE: 0.25  
 SOIL TYPE: C2  
 FLOW VELOCITY: 0.57 (FROM PERCENTAGE)  
 TIME OF TRAVEL: 1.5 MIN  
 VOLUME: 643,405 CF (14,400 GALLONS)

**PILE SCHEDULE:**  
 24" DIAMETER  
 48" SPACING  
 4' MAX. DEPTH

**EXHIBIT 6**  
**CDP 4-12-019 (Bersohn)**  
**Preliminary Grading Plan**

BERSOHN RESIDENCE

