

**CALIFORNIA COASTAL COMMISSION**

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# Th23b

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 4-13-0265

**Applicant:** John Jennings and Sasha Tarnopolsky

**Project Location:** 23855 Saddle Peak Road, Santa Monica Mountains, (Los Angeles County)

**Project Description:** The conversion of an existing 1,995 sq. ft. telecommunications facility building, built prior to certification of the Coastal Act, into a residential structure, including interior remodeling; plumbing and electrical upgrades; and the widening of an existing, approximately 2,220 ft. long access driveway from approximately 10-15 ft. in width to 20 ft. in width; and approximately 35 cubic yards of cut grading. The proposed project also includes the request for after-the-fact approval of an existing septic system.

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### SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed development with 15 special conditions as listed on pages 5-16 of this report.

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu – Santa Monica Mountains Land Use Plan (LUP) serve as guidance. The project site is located on a 1.07 acre property which was originally developed in the early 1970's, prior to the effective date of the Coastal Act of 1976, as a telecommunications facility operated by 'Pacific Telephone'. The subject property is located on top of a visually prominent ridgeline, designated as a significant ridgeline by the certified Malibu/Santa Monica Mountains Land Use Plan, within a rural area of the Santa Monica Mountains. The current property owners are proposing to utilize one of the existing former

telecommunications structures on the site as a residence and are requesting to remodel and upgrade the interior of the 1,995 sq. ft. steel and concrete structure, which was previously used as an equipment building. The use of the site for residential occupancy would be consistent with Los Angeles County's zoning and land use designation for the property, which allows for residential use.

Widening and paving of the existing 2,220 ft. long dirt access roadway which connects the site to Saddle Peak Road is also proposed as part of the project in order to provide adequate access for residential use of the property. While the proposed project is characterized as a minor interior remodel of an existing building and does not involve any substantial physical redevelopment on the subject property, the approximately 10-15ft. wide dirt access road on site must be widened to 20 ft. in width in order to comply with the Los Angeles County Fire Department requirements. Although the increase in width of the road itself to 20 ft. in width will occur within previously disturbed areas of the site, the additional 10 ft. of vegetation clearance on each side of the road that will be necessary to meet the County Fire Department fuel modification requirements will result in impacts to environmentally sensitive habitat area (ESHA). No additional fuel modification will be required around the existing structure on site; however, mitigation is required for the loss of ESHA due to the vegetation clearance/fuel modification associated with the widened road. Additionally, several oak trees are located alongside the existing access driveway. However, the proposed development will 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.

While the existing approximately 75 ft. high tower on the site is highly visible from public roads and trails in the surrounding area, it was constructed prior to certification of the Coastal Act and is a legal non-conforming use. Furthermore, the subject project proposes no modification or alterations to the existing approximately 75 ft. high tower. This case presents a unique circumstance in that the project is limited to relatively minor modifications to the existing steel and concrete bunker and minor roadway widening, with the attendant ESHA impacts and, as such, the proposed project will not increase the degree of non-conformity of the existing pre-Coastal Act tower. In order to further ensure that the existing visual impacts resulting from the pre-Coastal Act, non-conforming structure are not increased as part of the proposed project, Special Condition 11 prohibits the use of any new lights on the tower structure, including any lights on the stairway and multiple deck/platforms located on the different levels of the tower structure, other than the minimum necessary for aviation safety. In addition, Special Condition 11 requires the applicant to monitor the stability of the structure over time to ensure that if the structure poses a threat to public safety or becomes a hazard, then the property owner shall be responsible for demolishing/removing the tower subject to a coastal development permit. Furthermore, Special Condition 6 requires that the existing concrete structure to be converted to a residence on site utilize only exterior colors consistent with the surrounding natural landscape including shades of green, brown and gray (including the existing concrete gray finish); and Special Condition 7 requires 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. As such, any potential coastal issues associated with the proposed project have been adequately addressed and resolved through the project design and proposed conditions of approval.

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## APPENDICES

Appendix 1 Substantive File Documents

### EXHIBITS

- Exhibit 1. Location Map
- Exhibit 2. Site Plan
- Exhibit 3. Site Aerial
- Exhibit 4. Aerial Property View
- Exhibit 5. Proposed Access roadway
- Exhibit 6. View of Subject Tower

**LOCAL APPROVALS RECEIVED:** County of Los Angeles Department of Regional Planning, Approval in Concept, dated 5/6/13; County of Los Angeles Environmental Health Services, Sewage Disposal System Conceptual Approval, dated 2013; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan Approval, dated 2013;

## 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. 4-13-0265 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. Final Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final site, development and staging and storage plans to the Executive Director for review and written approval. Said plans shall first be reviewed and approved in writing by the County of Los Angeles. Said plans shall also be in substantial conformance with the plans submitted by the applicant dated 5/23/12 and 9/4/13 with this application and shall include the following:

- a. The location and dimensions of the subject tower and a written note stating that the existing tower on site to be retained is an existing, legally non-conforming structure constructed prior to certification of the California Coastal Act and is not approved as a part of Coastal Development Permit 4-13-0265.
- b. The delineation and identification of the applicant's existing roadway easements in relation to the footprint of the final proposed access roadway.

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

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

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the proposed improved access roadway, including supporting calculations. The plan shall be prepared by a qualified licensed professional and shall incorporate Best Management Practices (BMPs) including site design and source control measures designed to control pollutants and minimize the volume and velocity of stormwater and dry weather runoff leaving the roadway. In addition to the specifications above, 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) The plans incorporate long-term post-construction Best Management Practices (BMPs) that protect water quality and minimize increases in runoff volume and rate. Structural treatment control is generally unnecessary for Minor category projects. BMPs should be prioritized in the following manner:

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.

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 should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps); temporary drains and swales ; sand bag barriers; silt fencing; stabilize any stockpiled fill with geofabric covers or other appropriate cover; install geotextiles or mats on all cut or fill slopes; and close and stabilize open trenches as soon as possible. Basins shall be sized to handle not less than a 10 year, 6 hour duration rainfall intensity event.

##### 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 disposal site or recycling plant is permitted to accept the type of waste generated and the Executive Director has been notified or 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, dated February 5, 1996. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property (or allowed to naturalize or persist? Why is this construction non-parallel?).
- (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.

## **B) Fuel Modification Plans**

Some clearance or thinning may be allowed on either side of the existing access roadway. 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 the equipment building proposed to be altered or modified in this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray (maintaining the existing concrete gray finish is acceptable) 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 4, 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 access road widening, including fuel modification and brush clearance requirements on the project site and adjacent properties. The chaparral and coastal sage scrub ESHA areas on the site and adjacent properties 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, which will be impacted by the proposed development, including the fuel modification/brush clearance areas. As identified by the submitted application materials, no fuel modification will occur on the adjacent National Park Service land or State of California parkland. 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 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. Non-Conforming Structure**

**A.** No improvements to the existing legally non-conforming tower are permitted by this coastal development permit. The exact location and dimensions of the subject tower will be depicted on the revised final plans required pursuant to Special Condition No. 1. Additionally, the addition of any lights to the tower (including, but not limited to, any lighting of the stairway and all decks/platforms) will be prohibited, except for those necessary to meet the requirements for aviation safety.

**B.** The property owners shall be responsible for monitoring the condition of the non-conforming structure over time. If the monitoring reveals that the structure becomes a hazard or poses a threat to public safety then the property owner shall be responsible to remove the structure subject to the requirement to obtain a new coastal development permit..

**C.** The permittee shall undertake the development in accordance with the revised final plans required pursuant to Special Condition No.1 above. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

**D.** Nothing in this permit is intended to act as a limitation on the police power of Los Angeles County or limit in any way the ability of the County of Los Angeles to lawfully order removal of the tower, when in the County's judgment such action is necessary and appropriate to preserve public health, safety, or welfare.

## **12. Removal of Natural Vegetation**

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

## **13. 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.

#### **14. Oak Tree Monitoring**

To ensure that all other oak trees located on the subject parcel and along the proposed access road 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.

The applicant shall retain the services of a biological consultant or arborist with appropriate qualifications acceptable to the Executive Director. The biological consultant or arborist shall be present on site during all grading activities within 50 feet of any oak tree. The consultant shall immediately notify the Executive Director if unpermitted activities occur or if habitat is removed or impacted beyond the scope of the work allowed by this Coastal Development Permit. This monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

An annual monitoring report shall be submitted for the review and approval of the Executive Director for each of the ten years. Should any of these trees be lost or suffer worsened health or vigor as a result of this project, the applicant shall plant replacement trees on the site at a rate of 10:1. If replacement plantings are required, the applicant shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a ten-year monitoring program with specific performance standards to ensure that the replacement planting program is successful. An annual monitoring report on the oak tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. Upon submittal of the replacement planting program, the Executive Director shall determine if an amendment to this coastal development permit, or an additional coastal development permit is required.

#### **15. Condition Compliance**

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



## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

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

The applicants propose to remodel an existing 1,995 sq. ft. telecommunications facility equipment building, constructed in 1972, to allow for residential occupancy. The proposed project will include interior remodeling, minor upgrades to the existing electrical and plumbing utilities of the structure, modifications to some existing exterior walls to create additional window and door openings, 35 cubic yards of cut grading and subsequent paving of a 2,210 linear foot access roadway section to provide adequate fire truck access to the subject structure, as well as construction of nine (9) 1 ft. to 3 ft. high sections of retaining walls to stabilize the sides of the improved roadway. The applicant is also requesting after-the-fact approval of an existing 1,500 gallon septic tank and 40 ft. deep septic leach pit installed in 2005 without the required coastal development permit. The proposed project will not modify or expand the existing footprint of the subject equipment building structure, which was constructed in 1972, prior to certification of the Coastal act.

The site is located at 23855 Saddle Peak Road, in the Topanga area of the Santa Monica Mountains. The subject 1.07 acre site is located on top of a promontory ridgeline and is adjacent to a popular public hiking trail, called the Backbone Trail, which is located immediately north of the subject site. There are no other single family residences in the immediate area and the closest structure to the subject site is a County maintained water storage tank located on the neighboring property to the west. While the public hiking trail is located to the north and directly adjacent to the subject site on National Park Service Land, no portion of the Backbone Trail crosses the subject property. This trail provides a link throughout scenic regions of the the Santa Monica mountains national recreation area and extends over the National Park Service property located directly to the north and east of the subject site. The proposed project will not impact or obstruct the continued use of and access to this particular portion of the Backbone Trail.

The subject site is located atop an elevated ridgeline within the Santa Monica Mountains, which is designated as a significant ridgeline pursuant to the certified 1986 Malibu/Santa Monica Mountains Land Use Plan, and exists as a mostly leveled pad, containing an existing 1,995 sq. ft. equipment building, two parking spaces, and an adjacent, although non-attached, approximately 75 ft. high steel and concrete tower, located on a 2,400 sq. ft. concrete base pad. The subject site is bounded by State of California Parkland to the south, Los Angeles County-owned land to the west, and National Park Service Land to the north and east. Environmentally sensitive native chaparral habitat is located on the surrounding parkland properties and borders the majority of the subject site. The property itself has been previously developed and contains limited patches of native vegetation on either side of the existing graded pad, where the existing equipment building and tower are situated. There are no streams or wetlands located on the subject site or within the immediate vicinity. Access to the subject property is gained from a 2,210 ft. long unpaved roadway, which has historically been maintained by Los Angeles County to provide continued access to its water storage tank facility located on a separate property adjacent to the subject site. The applicants hold access easements over the roadway in order to ensure continued access to their property.

The project site is located in a scenic area, visible from various public viewing points including Saddle Peak Road and the public trail on National Park Service Land located to the north of the subject site (Exhibit 13). The subject site was developed in the early 1970's prior to the effective date of the Coastal Act pursuant to Los Angeles County Special Use Permit 2037.. This permit remains effective for the subject site and authorizes the construction and operation of a 96 ft. high antenna tower structure (although the applicant has indicated that the existing tower located on site is only approximately 75 ft. in height). Subsequently, a Los Angeles County building permit, issued in 1972, authorized construction of the 1,995 sq. ft. telecommunications equipment building structure, which is now proposed to be converted to residential use as part of the proposed project. Although Los Angeles County does not have a certified Local Coastal Program, the County designated zoning for the site is "A-1-1" which allows residential uses. In addition, the County's certified Land Use Plan designates the site as "Rural Land I" which also allows for residential use of the site. No previous coastal development permits have been issued for any development on the subject site, although the same applicants of this CDP application had previously submitted a CDP application in 2008 for a similar development as described herein, which was later withdrawn.

## **B. ENVIRONMENTALLY SENSITIVE HABITAT**

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

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

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

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

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

- 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 1.07 acre subject site is located on top of Saddle Peak Road on a promontory ridgeline within the Topanga area of the Santa Monica Mountains. It is surrounded by National Park Land and California State Park Land to the north, south, and east, which sustain large contiguous areas of pristine environmentally sensitive habitat area (ESHA). In addition, a small property owned by Los Angeles County abuts the subject site to the west which has been developed with an existing water tank storage facility. The project site is located on a graded level pad situated at the beginning of a relatively flat ridgetop terrace extending a few miles to the northeast from the subject site. Vegetated steep slopes descend immediately to the south of the subject site down

towards the main Saddle Peak Road below. The subject site has been previously developed prior to the effective date of the Coastal Act and is relatively barren of vegetation.

The applicant submitted the Biological Assessment prepared by Steve Williams and dated 9/12/13, listed in the Substantive File Documents, which addresses the habitat present on the project site and the surrounding area. The report identifies that the area surrounding the subject site is largely dominated by Chamise (*Adenostoma fasciculatum*) and Greenbark Ceanothus (*Ceanothus spinosus*) with four Coast Live Oak trees located along the 2,210 ft. long access road.

According to public information, the applicant purchased the subject parcel in 2005 for \$950,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. The land use designation applicable to the property is "Rural Land I" which allows for 1 unit per 1-5 acres.. Public parkland has been acquired in this general vicinity, the Santa Monica Mountains National Recreation Area, and there is national parkland with public trails located directly adjacent to the project site. However, there is currently no offer to purchase the subject property from any public park agency.

The 1.07 acre subject site had been previously graded, cleared of almost all vegetation and developed, prior to certification of the Coastal Act, with the exception of some chaparral habitat remaining outside of the fenced developed pad. The existing structures on the subject site are not proposed to be demolished, undergo substantial physical alteration, or expansion as part of the proposed project. The proposed use of the existing equipment building as a residence would not require any additional fuel modification to occur on the property. The approximately 10-15 ft. wide dirt access road on site must be widened to 20 ft. in width in order to comply with the Los Angeles County Fire Department requirements. Although the increase in width of the road itself to 20 ft. in width will occur within previously disturbed areas of the site, the additional 10 ft. of vegetation clearance on each side of the road that will be necessary to meet the County Fire Department fuel modification requirements will result in impacts to environmentally sensitive habitat area (ESHA). In this case, the proposed project does not include any expansion of the existing structures on site and the applicant has submitted a Fuel Modification Plan approved by the Los Angeles County Fire Department that no additional fuel modification requirements will be required to allow for the residential use of the site. However, there will be some new fuel modification required on either side of the access roadway as a result of its expansion.

### **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 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 roadway prism contains habitat that is part of a large, contiguous block of pristine native vegetation. Approximately 3,200 sq. ft. of native chaparral is located within the roadway easement on either side of the existing road accessway that would be cleared as a result of vegetation clearance for fuel modification requirements. 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.

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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>

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

Accordingly, the Commission finds that the habitat bordering the length of the access roadway meets the definition of ESHA in the Coastal Act.

## **2. Resource Dependent Use**

The Commission finds that habitat on the portion of the project site where the vegetation clearance will occur in order to comply with Los Angeles County Fire Department fuel modification requirements 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 remodel an existing Telecommunications Facility structure that was built prior to the effective date of the Coastal Act, in order to allow for residential use on the property. As neither single-family residences nor telecommunication facilities have to be located within ESHA to function, these developments would not be considered uses dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. However, the proposed project constitutes a unique circumstance in that the proposed road widening would be necessary in order to comply with Fire Department requirements regardless of whether the subject site continued to be maintained as a Telecommunications Facility or is converted to residential use. Additionally, fuel modification will be required on either side of the 2,210 ft. long road accessway. As such, the proposed project would also significantly disrupt the habitat value in this location. Application of Section 30240, by itself, would therefore require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

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

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

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by the Commission on sites in the surrounding region. 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 and the applicant has no reason to believe that the subject property could not be repurposed for residential use.

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 use. Especially considering that the property is currently in private ownership and will not be used for telecommunication purposes. 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 the use of this property as a residence would create a nuisance under California law. While this is a very particular circumstance due to the nature of the existing pre-coastal developments on the site, the development proposed by the applicant is minor and on its own will not create or contribute to a nuisance. The County's Health Department has not reported evidence of septic system failures on the site. 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, pollution, 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.

### **3. 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 otherwise avoid application of the policies of the Coastal Act, including Section 30240,. 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 use of the property as a residence will require vegetation removal for the required fuel modification and will result in unavoidable loss of ESHA. While no substantial redevelopment on the subject property is proposed, the use of the pre-coastal building as a residence will result in some ESHA impacts due to the required fuel modification for the structure and the access roadway. The building pad and two existing structures on site were developed prior to certification of the Coastal Act and have not been modified or altered since

their initial construction in the early 1970s. The applicants are not proposing any substantial redevelopment of the property, and the only significant physical development proposed as part of the proposed project would be the expansion and paving of the proposed access roadway.

Therefore, in this unusual case, there are no siting and design alternatives that could avoid or minimize impacts to ESHA. Additionally, the proposed access roadway is the minimum width necessary to provide for required fire department access. 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 use of the property provides a reasonable economic use.

#### **4. 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. However, as previously explained, the fuel modification required for the proposed project will be contained entirely within the subject property limits and the associated roadway prism. In addition, 10 ft. of vegetation clearance is typically required on each side of roadways, such as the 10-15 ft. wide access road on the subject site that is proposed to be widened to 20 ft.

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.

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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>



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 residential use of a property, 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 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 adjacent to the access

road. The Commission finds that it is necessary to condition the applicant to delineate the total acreage of ESHA on the site and on either side of the improved access roadway 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 as applied here in light of Section 30010.

## **5. Protection of Oaks**

The project site contains four (4) individual oak trees that are interspersed with the chaparral habitat located along the length of the 2,210 ft. long access roadway within an area that meets 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 4 oak trees are located adjacent to the subject access roadway in the immediate vicinity of the proposed project site. The proposed roadway expansion and paving will not require the removal of any of the existing oak trees. Furthermore, the proposed roadway expansion and paving will not encroach into the protected zone of any of the four existing oak trees.

Even though no direct impacts to any existing oak trees are proposed to result as part of the subject project, the Commission finds that the potential for any unforeseen impacts to oak trees on the project or adjacent sites can be minimized or avoided by employing protective measures during project construction. As such, in order to avoid any potential adverse impacts to oak trees, Special Condition 14 requires that the applicant 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 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. Further, Special Condition 14 requires that a biological consultant, arborist, or other resource specialist shall be present on-site during all construction operations on site and shall be directed to immediately notify the Executive Director if unpermitted activities occur or if any oak trees are damaged, removed, or impacted beyond the scope of the work allowed by this coastal development permit. This monitor will have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

**6. 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.

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

The Commission also finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and to ensure that any future structures, additions, change in landscaping or intensity of use at the project site that may otherwise be exempt from coastal permit requirements are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, the future development restriction is required. In addition, the existing approximately 75 ft. high tower on site constitutes an existing, non-conforming structure. Any new improvements or changes to this structure may increase the non-conformity of the structure. To ensure that new improvements or changes to this structure do not increase the non-conformity of the structure or result in new adverse impacts to ESHA, Special Condition Eleven (11) clarifies that no additions or improvements to the tower are approved as part of this permit and prohibits the use of any new lights on the tower structure, including any lights on the stairway and multiple deck/platforms located on the different levels of the tower structure, other than the minimum necessary for aviation safety. In addition, Special Condition 11 requires the applicant to monitor the stability of the structure over time to ensure that if the structure poses a threat to public safety or becomes a hazard, then the property owner shall be responsible for demolishing/removing the tower subject to a coastal development permit.

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.

As described above, 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. Nonetheless, the Commission must still assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, subject only to their limitations against taking the property. The following special conditions are required, as determined in the findings above, to assure that the project is consistent with Section 30240 of the Coastal Act to the maximum extent possible:

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 12.	Removal of Natural Vegetation
Special Condition 14.	Oak Tree Monitoring

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act, as limited by Section 30010.

**C. 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 rural region characterized by expansive, naturally vegetated mountains and hillsides. The site is visible from Saddle Peak Road, a public road, approximately 200 feet away below the subject property to the east. Additionally, the development will be visible from a section of the public backbone trail on national park land to the northeast of the subject site. The proposed project raises two issues regarding the protection of visual resources in the area: (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 subject site contains two existing structures, both constructed prior to certification of the Coastal Act as part of a telecommunications facility, which was completed and in operational use in the 1970’s. The first is a steel and concrete microwave tower structure, which was built when the property was owned by pacific telephone in the 1970’s. The tower was constructed pursuant to a Special Use Permit issued by Los Angeles County in 1970, which authorized the tower to be 96 ft. in height. As described in the submitted project materials, the as-built height of the tower is approximately 75 ft. The tower is visible from many surrounding public roadways including Saddle Peak road, located below the subject site, and the public backbone trail located directly adjacent to the subject site on National Park Service land. While the tower is visually obtrusive throughout the surrounding area, it has become a point of interest to hikers along the backbone trail. The 75ft. tall tower exists as a legally non-conforming structure, such that , if it were constructed today it would be non-conforming with the height restriction policies for development on the subject property. However, the applicants are not proposing any work, improvements or other alterations to the existing tower as part of this application. As such,

although the tower does result in visual impacts to the surrounding area, the proposed project will not increase the degree of non-conformity of the structure or increase its visibility. Additionally, in order to further ensure that the tower does not increase in visibility in the future; Special Condition Eleven (11) prohibits the property owners from installing lights on any portion of the subject tower (including on the stairway and on any of the multiple decks/platforms) except the minimum lighting necessary for aviation safety purposes.

The second existing structure on the subject property is a 1,995 sq. ft., 18 ft. tall, concrete and steel building, which was built to be used as the equipment center and operational building for the telecommunications facility. The building has not been substantially modified, remodeled, or otherwise altered since its initial construction. No expansion of the height or footprint of the existing building is proposed as part of the subject project. The only work proposed to this existing structure consists of an interior remodel to include the addition of windows and doors to the structure and minor improvements to the existing interior electrical and plumbing facilities. The existing structure is currently not visible from any public roadways and the proposed improvements will not increase its visibility. However, the existing structure is visible from the directly adjacent public backbone trail. While the existing structure is visible from this public trail, the structure is a concrete building with a greyish color, which is not visually obtrusive or prominent. The proposed project does not involve any substantial demolition or reconstruction of the existing building. Additionally, there is no alternative location on the subject site which would reduce the visibility of the existing structure proposed for residential use. To minimize any potential visual impacts associated with residential of the project site, the Commission requires: that the structure either be maintained with its current gray concrete finish or 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

### Special Condition 11. Non-Conforming Structure

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 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 main project elements proposed on the subject property are limited to the minor interior remodeling of an existing structure and after the fact approval of a 1,500 gallon septic system. As such, no expansion of impervious surfaces will occur on the subject property.

However, the proposed development will still result in an increase in impervious surfaces, due to the proposed widening and paving of the existing 2,210 ft. long access road and construction of nine retaining wall segments, which will vary from 1-3 ft. in height. The paving and expansion of the access roadway will result in an increase in the volume and velocity of stormwater runoff that can be expected to leave the area and eventually be discharged to coastal waters, including streams, wetlands, and estuaries downslope.

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 roadway prism, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment control measures during construction and post construction.

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or surrounding areas from the use of a septic system. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets

the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

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

- Special Condition 3: Permanent Drainage and Polluted Runoff Control Plans
- Special Condition 4: Interim Erosion Control Plans and Construction Responsibilities
- Special Condition 5: Landscaping and Erosion Control Plans
- Special Condition 14: Removal of Native Vegetation

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

### **E. GEOLOGIC HAZARDS**

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. While only minor remodeling and upgrades to an existing structure are proposed on the subject site, the applicant is proposing to widen and improve an existing 2,210 ft. long road access way to facilitate residential use of the site. The submitted geologic and soils engineering exploration report referenced as a Substantive File Document concludes that the project site and access roadway are suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development. The report contains 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.

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 2: Assumption of Risk, Waiver of Liability and Indemnity

Special Condition 3: Roadway Permanent Drainage and Polluted Runoff Control Plans

Special Condition 4: Interim Erosion Control Plans and Construction Responsibilities

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

#### **F. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the required coastal development permit, consisting of the removal of an existing pre-coastal septic system and the installation of a new 1,500 gallon septic system and construction of an associated leach field.

The applicant is proposing after the fact approval for installation of the 1,500 gallon septic system and associated leach field as part of this application. 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.

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

#### **G. LOCAL COASTAL PROGRAM 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 15

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, 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 n. 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:

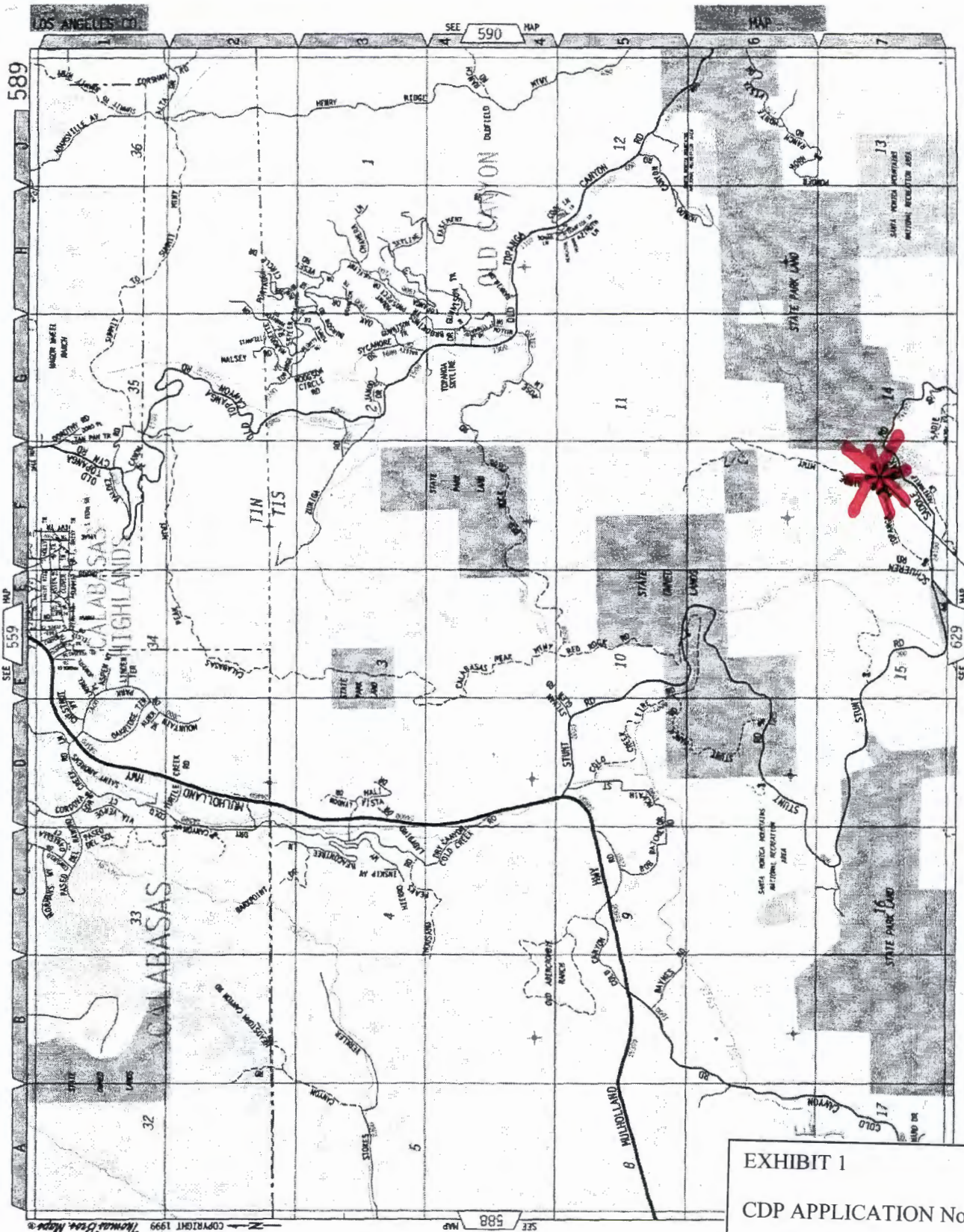
Special Conditions 1 through 15

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 Report dated 9/12/13, Oak Tree Report dated 9/12/13, Letter from National Park Service Dated 2/15/11, Geologic and Soils Engineering Report dated 12/6/11, Los Angeles County Geologic Review Sheet dated 2/11/13.



PROJECT SITE:  
23855 SADDLE PEAK RD.

TY MAP:  
AS BROS. MAP NO. 589

EXHIBIT 1  
CDP APPLICATION No. 4-13-0265  
LOCATION MAP



**DRY DESIGN**  
 5775 BIRCH RD  
 LOS ANGELES, CA 90048  
 (310) 591-1188  
 (310) 591-1189

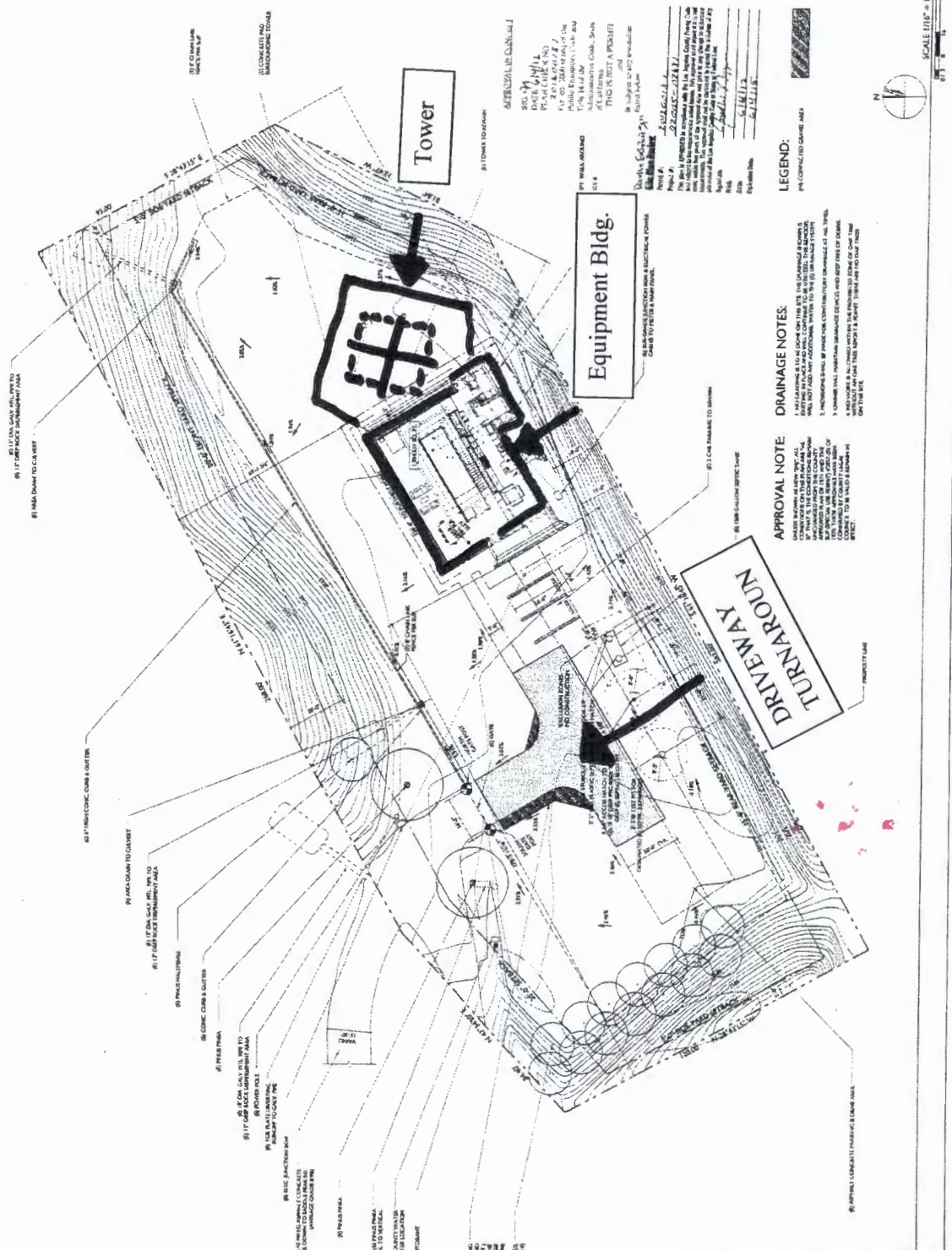
**CONSTRUCTION DOCUMENTS**  
 23835 Saddle Peak Road  
 Topanga, CA 90290

DATE	2013.03.27
REVISION	21.000.002
DESCRIPTION	REVISION
DATE	2013.03.27
REVISION	21.000.002
DESCRIPTION	REVISION

**SITE PLAN**  
 SCALE 1/4" = 1'-0"

**A-0.3**

DEPT. OF REGIONAL PLANNING  
 APPROVED  
 Page 1 of 41



**Equipment Bldg.**

**Tower**

**DRIVEWAY TURNAROUND**

**LEGEND:**  
 PER CONTRACTED GRAVITY AREA

**APPROVAL NOTE:**  
 THE CITY OF LOS ANGELES HAS REVIEWED THE SITE PLAN AND FOUND IT TO BE IN ACCORDANCE WITH THE CITY OF LOS ANGELES DEVELOPMENT ORDINANCES AND THE CITY ENGINEERING DEPARTMENT'S COMMENTS.

**DRAINAGE NOTES:**  
 THE DRAINAGE PLAN HAS BEEN REVIEWED AND FOUND TO BE IN ACCORDANCE WITH THE CITY OF LOS ANGELES DEVELOPMENT ORDINANCES AND THE CITY ENGINEERING DEPARTMENT'S COMMENTS.

**EXHIBIT 2**  
**CDP APPLICATION No. 4-13-0265**  
**SITE PLAN**



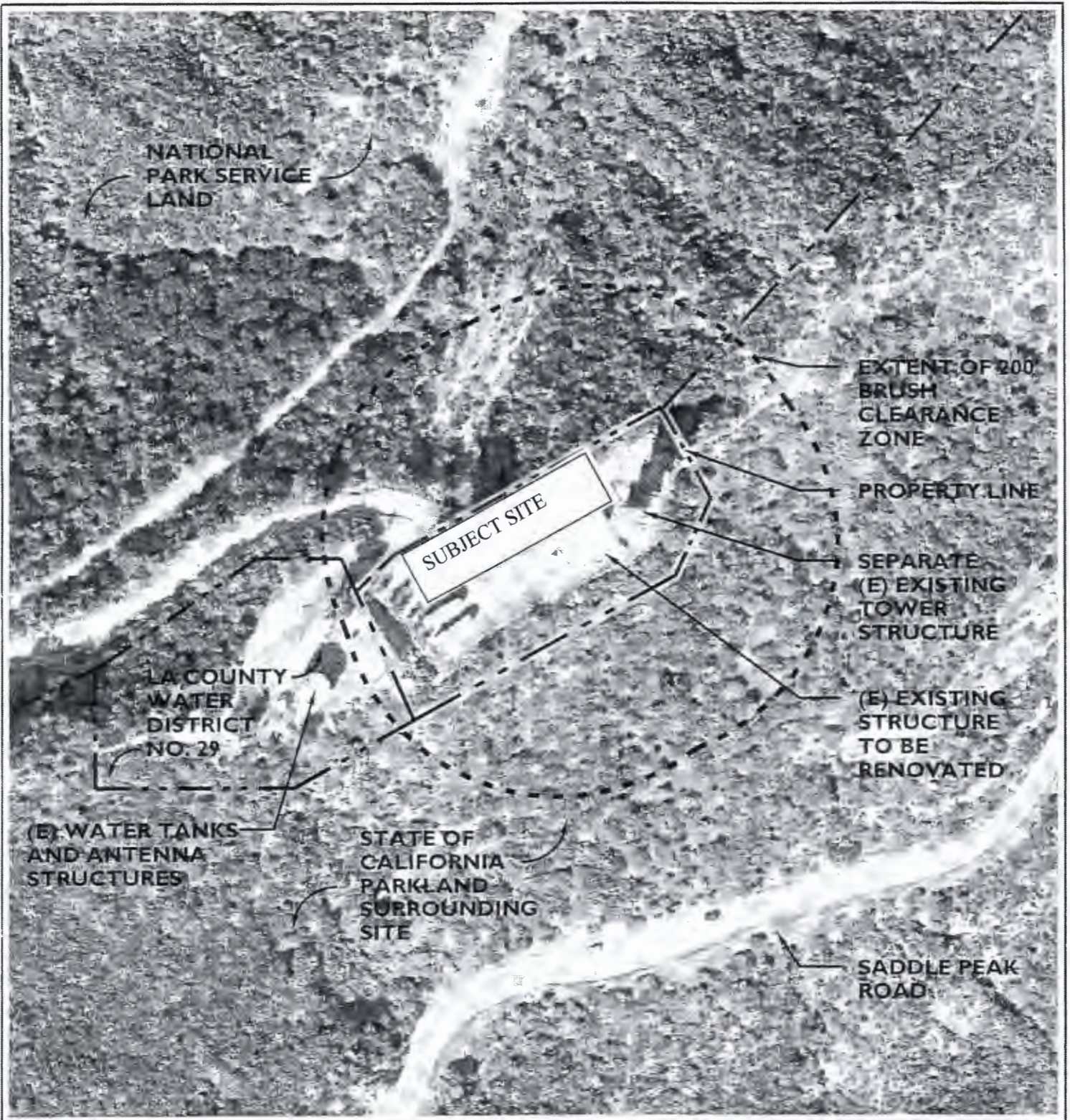


EXHIBIT 3

CDP APPLICATION No. 4-13-0265

SITE AERIAL





STRUCTURE ON SITE IS EXISTING WITH BRUSH CLEARANCE REQUIREMENTS IN EFFECT. NO ADDITIONAL CLEARANCE REQUIREMENTS FOR THE PROPOSED REMODEL.

EXHIBIT 4

CDP APPLICATION No. 4-13-0265

AERIAL PROPERTY VIEW

Project Address: 23855 Saddle Peak Road  
Topanga, California 90290











EXHIBIT 6

CDP APPLICATION No. 4-13-0265

VIEW OF SUBJECT TOWER