

**CALIFORNIA COASTAL COMMISSION**

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**Th23a & Th23b**

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**STAFF REPORT: PERMIT AMENDMENTS**

**Application Numbers:** 4-05-069-A3 & 4-13-0256-A1

**Applicant:** Thomas Uger

**Agent:** Schmitz & Associates

**Project Location:** 2161 Encinal Canyon Road, Santa Monica Mountains, Los Angeles County (APN 4472-026-019)

**Description of Project Approved in 4-05-069:** Construction of a one story, 2,174 sq. ft. single family residence, 825 sq. ft. detached three-car garage, driveway, turnaround, septic system, water tank, approximately 5,265 cu. yds. of grading (4,424 cu. yds. cut, 841 cu. yds. fill), 1,056 cu. yds. of removal and re-compaction, and after-the-fact approval of an existing water well.

**Description of Project Approved in 4-13-0256:** Adjust the lot lines of two parcels approximately 1.5 acres and 38 acres in size (Parcel One: APN 4472-027-005 and Parcel Two: APNs 4472-026-017 and 4472-026-018), to create two parcels approximately 7 acres and 32 acres in size. The project also included designation of a 10,000 sq. ft. building site on one of the reconfigured parcels.

**Description of Proposed Amendment 4-05-069-A3:** Restoration of an existing 353 ft. long driveway, including 976 cu. yds. of fill and revegetation with native species, construction of a new 348 ft. long driveway (102 cu. yds. of cut, 16 cu. yds. of fill), and after-the-fact approval of approximately 2,755 sq. ft. of vegetation removal undertaken to build the new driveway.

**Description of Proposed Amendment 4-13-0256-A1:** Modify the configuration of the recorded open space conservation easement area to allow for construction of a new driveway.

**Staff Recommendation:** Denial

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the proposed amendments. The standard of review for the amendment requests are the policies and provisions of the certified Los Angeles County – Santa Monica Mountains Local Coastal Program (LCP).

The applicant is proposing CDP Amendment 4-05-069-A3 to restore the existing, previously approved 353-foot-long driveway, including 976 cubic yards of fill and revegetation with native species, to construct a new 348-foot-long driveway, including 102 cubic yards of cut and 16 cubic yards of fill to comply with current Los Angeles County Fire Department (LACFD) standards, and to request after-the-fact approval of approximately 2,755 square feet of vegetation removal. Because the proposed driveway is located within the open space conservation easement area required pursuant to CDP 4-13-0256, the applicant has also proposed CDP Amendment 4-13-0256-A1 to modify the configuration of the easement area so that the easement would no longer cover the location of the proposed driveway. The project site is located at 2161 Encinal Canyon Road in the Santa Monica Mountains portion of Los Angeles County, as depicted on Exhibits 1 and 2.

In March 2006, the Commission approved CDP 4-05-069 for the construction of a one-story, 2,174 square foot single family residence, three-car garage, driveway, turnaround, septic system, water tank, after-the-fact approval of an existing water well, and associated grading all within a 10,000 square foot building site on the subject site. In January 2009, before the permit was issued, immaterial amendment 4-05-069-A1 was approved and slightly revised the grading plan for the previously approved development. The grading approved in this CDP has been completed, and as such, the approved pad and subject driveway have been constructed and currently exist.

In December 2014, the Commission approved CDP 4-13-0256 for a lot line adjustment between two parcels. Parcel One was identified by APN 4472-027-005, and was also the subject of CDP 4-05-069 described above, and Parcel Two was identified by APNs 4472-026-017 and 4472-026-018, as depicted on Exhibit 3. The subject lot line adjustment resulted in the creation of two newly reconfigured parcels that are currently identified by APNs 4472-026-019 (subject parcel) and 4472-026-018. This CDP also included the designation of a 10,000 square foot building site on one of the newly reconfigured parcels (APN 4472-026-018). A 10,000 square foot building site for the other newly reconfigured parcel (APN 4472-026-019) had already been designated through CDP 4-05-069.

On October 10, 2014 the Los Angeles County – Santa Monica Mountains LCP was effectively certified by the Commission. The Commission no longer has jurisdiction over new CDPs in this area since the LCP was certified. However, the proposed changes to the development would require modification of the driveway and open space conservation easement area authorized by two Commission-issued CDPs, and amendments to those CDPs would be necessary to legally modify the development that was previously approved. The Commission retains authority over CDPs granted by the Commission, including amendments to Commission-granted CDPs such as the subject amendment requests, as well as the authority to enforce the terms and conditions of Commission-granted CDPs. As explained further below, Staff is recommending that the Commission deny these CDP amendments to modify the driveway configuration and open space

conservation easement area. Commission Enforcement Staff will consider options to address any unpermitted grading or vegetation removal that has already taken place within the open space conservation easement area, as well as any other development on site that is not authorized pursuant to the Coastal Act or LCP.

Although the amendments before the Commission propose to modify development approved in Commission CDPs, the standard of review for the subject amendment requests is the certified LCP. As such, the Commission must determine if the proposed development would conflict with any provisions of the LCP.

The biological resource protection approach certified by the Commission for the Santa Monica Mountains LCP designates H1 and H2 habitat, which both constitute ESHA. In this case, there are streams and oak woodland habitat on and near the subject site that are designated H1 habitat. The LCP requires new development to provide a 100-foot H1 habitat buffer measured from the outermost edge of the H1 habitat area, as well as an additional 100-foot H1 Quiet Zone measured from the edge of the H1 buffer, for a total of a 200-foot restricted area. The LCP requires H1 Buffers and Quiet Zones to protect the integrity of nearby ESHA by minimizing disturbance. In this case, the applicant has proposed after-the-fact approval of 2,755 square feet of vegetation removal and relocation of the subject driveway to a location within the designated H1 Quiet Zone based upon the fact that the applicant has asserted that the existing driveway no longer conforms to the LACFD access requirements.

Pursuant to the certified LCP, new development is not permitted in the H1 Quiet Zone except for resource-dependent uses, non-irrigated fuel modification required by the Fire Department for lawfully-established structures, and other uses in very limited circumstances. An access road to a lawfully-permitted use is only allowed within the H1 Quiet Zone when there is no other feasible alternative. In this case, a feasible alternative has already been approved and constructed pursuant to CDP 4-05-069 in the form of the existing driveway. As part of the application materials for CDP 4-05-069, a previous applicant submitted LACFD approval of the existing driveway, which indicated that the driveway met all LACFD standards. Furthermore, when CDP Amendment 4-05-069-A1 was processed to modify the grading quantities of the subject development, a new LACFD approval for the existing driveway was also submitted, once again indicating that the existing driveway met all LACFD standards. As part of the proposed amendments, the applicant has provided no evidence from the Fire Department which indicates that the existing road or turnaround would be subject to additional Fire Department review and no evidence that the previously approved design would no longer be acceptable. Furthermore, even if evidence were provided which indicated that the existing driveway would need to be modified to comply with LACFD standards, the applicant has provided no analysis which describes the type of work or amount of grading that would be necessary to modify the design of the existing driveway. As a feasible alternative to siting development within the H1 Quiet Zone exists in the form of the existing driveway, relocation of the driveway would be inconsistent with the resource protection policies and provisions of the LCP.

Furthermore, the new driveway alignment proposed in CDP Amendment 4-05-069-A3 would encroach into the open space conservation easement area required by CDP 4-13-0256. Because construction of the proposed driveway into the open space easement area would not be consistent with the terms of the easement, the applicant has proposed to modify the location of the easement area through CDP Amendment 4-13-0256-A1 (Exhibit 6). Specifically, the applicant

has proposed to remove the area where the proposed driveway would be located from the easement area, and to add a portion of land that was previously excluded from the easement area to the easement area so that the total area protected by the easement would remain the same. However, the only reasonable justification for amending the open space conservation easement area that has already been accepted by MRCA would be to facilitate lawful development in the area. In this case, even if the easement were amended, the habitat protection policies of the LCP preclude any development from taking place in the area unless no feasible alternative exists. As discussed above, a feasible alternative does exist in this case, in the form of the previously approved existing driveway.

The LCP also requires new development be clustered to the maximum extent feasible to minimize impacts to biological resources. As depicted in Exhibit 5, the existing driveway is designed in such a way that it is clustered with the building pad, and is located entirely within the LACFD approved fuel modification zone for the approved residence. Conversely, the proposed driveway joins the building pad at the northwest corner, runs north away from the pad, and is not located entirely within the fuel modification zone for the approved residence. The proposed driveway would also require further fuel modification along its edges, and would therefore result in additional unallowable adverse impacts to habitat within the H1 Quiet Zone. Furthermore, although the applicant proposes to revegetate the existing driveway, because it is located within the fuel modification zone for the approved residence, the restored area would never be fully functioning ESHA as it would consistently be subject to disturbance (including thinning) to meet LACFD fuel modification requirements.

The proposed new driveway is 5 feet shorter than the existing driveway, and would require approximately 843 cubic yards less grading to construct. The applicant's representative has asserted that because the proposed driveway is shorter than the existing driveway and would require less grading, it is the least environmentally damaging alternative. However, in this case, the comparison of the length or grading necessary for the two driveways is not a true evaluation of alternatives because landforms on the site have already been altered through the approved 961 cubic yards of grading for the existing driveway. An additional 976 cubic yards of restorative grading is proposed to mimic a more natural slope in the area of the existing driveway. While this area is proposed to be revegetated, it is within the required fuel modification area for the future home. As the vegetation planted in this area would have to be managed to minimize fuel loads, it is unlikely to ever appear like a natural slope. The certified LUP requires that all new development be sited and designed to minimize grading, alteration of physical features, and vegetation clearance. The proposed project, including after-the-fact approval of 2,755 square feet of vegetation removal, 976 cubic yards of restorative grading for the existing driveway, and 118 cubic yards of additional grading for the proposed driveway would result in increased grading, alteration of physical features, and vegetation clearance inconsistent with the LCP.

For all of these reasons, the proposed CDP amendment cannot be found consistent with the certified LCP. Therefore, Staff recommends that the Commission **deny** CDP Amendment Numbers 4-05-069-A3 and 4-13-0256-A1. The motions and resolutions to adopt the staff recommendation of denial of the permit amendments can be found on page 6.

**Table of Contents**

**I. MOTIONS AND RESOLUTIONS.....6**

A. DENIAL OF CDP AMENDMENT NUMBER 4-05-069-A3 ..... 6

B. DENIAL OF CDP AMENDMENT NUMBER 4-13-0256-A1 ..... 6

**II. FINDINGS AND DECLARATIONS .....7**

A. AMENDMENT DESCRIPTION AND BACKGROUND ..... 7

C. BIOLOGICAL RESOURCES ..... 10

D. LANDFORM ALTERATION ..... 19

E. UNPERMITTED DEVELOPMENT..... 22

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT ..... 23

**APPENDICES**

Appendix 1 Substantive File Documents

**EXHIBITS**

- Exhibit 1 – Vicinity Map**
- Exhibit 2 – Aerial View**
- Exhibit 3 – Configuration of Parcels**
- Exhibit 4 – Map of Habitat Types on Subject Parcel**
- Exhibit 5 – Road Locations**
- Exhibit 6 – Open Space Conservation Easement Areas**

## **I. MOTIONS AND RESOLUTIONS**

The staff recommends that the Commission adopt the following resolutions:

### **A. DENIAL OF CDP AMENDMENT NUMBER 4-05-069-A3**

#### **Motion:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 4-05-069 for the development as proposed by the applicant.*

#### **Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **Resolution to Deny the Permit Amendment:**

*The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of the Los Angeles County – Santa Monica Mountains Local Coastal Program. Approval of the permit amendment would not comply with the California Environmental Quality Act because there are further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

### **B. DENIAL OF CDP AMENDMENT NUMBER 4-13-0256-A1**

#### **Motion:**

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 4-13-0256 for the development as proposed by the applicant.*

#### **Staff Recommendation of Denial:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

#### **Resolution to Deny the Permit Amendment:**

*The Commission hereby denies the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies of the Los Angeles County – Santa Monica Mountains Local Coastal Program. Approval of the permit amendment would not comply with the California Environmental Quality Act because there are further feasible mitigation measures or alternatives that*

*would substantially lessen any significant adverse impacts of the development on the environment.*

## **II. FINDINGS AND DECLARATIONS**

### **A. AMENDMENT DESCRIPTION AND BACKGROUND**

#### **Amendment Description and Project Location**

The applicant is proposing to amend CDP 4-05-069 to restore the existing, previously approved 353-ft.-long driveway, which would include 976 cubic yards of fill and revegetation with native species, to construct a new 348-ft.-long driveway, including 102 cubic yards of cut and 16 cubic yards of fill, and to request after-the-fact approval of approximately 2,755 square feet of vegetation removal. Because the proposed driveway is located within the open space conservation easement area required pursuant to CDP 4-13-0256, the applicant has also proposed to amend that CDP to modify the configuration of the easement area so that the easement would no longer cover the location of the proposed driveway.

The project site is located at 2161 Encinal Canyon Road in the Santa Monica Mountains portion of Los Angeles County, as depicted on Exhibits 1 and 2. The Santa Monica Mountains LCP designates the area as the Rural-Coastal Zone. This zone allows for residential development that is consistent with the goals of preserving the rural character and scenic quality of the Coastal Zone, and minimizing the impacts of future development on the region's coastal and environmental resources. The site is surrounded largely by undeveloped hillsides, although scattered single family residences are located in close proximity.

The subject parcel is located between Encinal Canyon Road and Lulu Carr Road (an existing dirt road), and consists of a steeply sloping knoll with elevations ranging between 1475 and 1530 feet above mean sea level and grades from 1.5:1 to 3:1. The subject parcel is located within a large, contiguous area of chaparral vegetation punctuated with oak woodland and riparian vegetation in drainages and canyon bottoms. An existing building pad and driveway, constructed pursuant to CDP 4-05-069, are also located on the parcel. As depicted on Map 2: Biological Resources of the Santa Monica Mountains Land Use Plan (LUP), the subject parcel contains H1, H2, and H3 habitat (Exhibit 4). The project site is visible from various public viewpoints, and Encinal Canyon Road, which is located immediately adjacent to the subject parcel, is designated as a major road and scenic route on LUP Map 3: Scenic Resources. Furthermore, public trails are located west of the subject parcels, and are depicted on LUP Map 4: Recreation.

#### **Permit and Violation History**

##### **Coastal Development Permit 4-05-069**

In March 2006, the Commission approved CDP 4-05-069 for the construction of a one-story, 2,174 square foot single family residence, 825 square foot detached three-car garage, driveway, turnaround, septic system, water tank, after-the-fact approval of an existing water well, and 5,200 cubic yards of grading (4,660 cubic yards cut, 540 cubic yards fill) all within a 10,000 square foot building site on APN 4472-027-005, which at the time this CDP was approved, was approximately 1.5 acres in size, as depicted on Exhibit 3. This permit was approved subject to fourteen special conditions, which included a future development restriction and habitat impact

mitigation to mitigate for impacts to Environmentally Sensitive Habitat Areas (ESHA) that would result from construction of the approved development.

Prior to the approval of CDP 4-05-069, portions of the subject property had been disturbed by previous clearing and grading of an access driveway and small pad, without benefit of a CDP. In addition, several abandoned vehicles, appliances, and other discarded items were located on the site. The unpermitted development was located within the area where the building site and driveway were proposed and within the associated fuel modification area. However, because the clearance and grading occurred sometime between 1977 and 1986, and because the project site contained undisturbed chaparral vegetation, contiguous with a large area of contiguous chaparral habitat that existed as of the January 1, 1977 (effective date of the Coastal Act), the entire site was considered ESHA.

In January 2009, before the permit was issued, immaterial amendment 4-05-069-A1 was approved. This amendment slightly revised the grading plan for the previously approved development, modifying the total amount of grading to 5,265 cubic yards (4,424 cubic yards cut, 841 cubic yards fill), and 1,056 cubic yards of removal and re-compaction. On December 7, 2009, CDP 4-05-069 was issued. In May 2015, the applicant's representative requested a vesting determination to establish if a substantial portion of the development approved in 4-05-069 (as amended) had been completed prior to the expiration date of the CDP. Based upon information provided by the applicant, Commission Staff determined that a substantial amount of the development had been completed, and that CDP 4-05-069 is vested.

### **Coastal Development Permit 4-13-0256**

In December 2014, the Commission approved CDP 4-13-0256 for a lot line adjustment between two parcels approximately 1.5 acres and 38 acres in size. Parcel One was identified by APN 4472-027-005, and was also the subject of CDP 4-05-069 described above, and Parcel Two was identified by APNs 4472-026-017 and 4472-026-018, as depicted on Exhibit 3. The subject lot line adjustment resulted in the creation of two newly reconfigured parcels approximately 7 acres and 32 acres in size that are currently identified by APNs 4472-026-019 and 4472-026-018, respectively. The proposed project also included the designation of a 10,000 square foot building site on the newly reconfigured 32-acre parcel (APN 4472-026-018). A 10,000 square foot building site for the newly reconfigured 7-acre parcel (APN 4472-026-019) had already been designated through CDP 4-05-069.

This permit was approved pursuant to four special conditions, and because this CDP was processed after certification of the LCP, the standard of review was the policies and provisions of the certified LCP. As depicted on Map 2: Biological Resources of the Santa Monica Mountains LUP, the parcels subject to this CDP contain H1, H2, and H3 habitat. Both H1 and H2 habitat constitute ESHA, and areas designated as H3 constitute existing legally developed areas. Because the policies and provisions of the Santa Monica Mountains LCP specifically require the recordation of open space easements or deed restrictions in order to ensure that approved building site areas are limited and that the remaining H1 and H2 habitat on the project site is protected, Special Condition 1 required recordation of an open space conservation easement, which is depicted on Exhibit 6. This easement was recorded and accepted by the Mountains Recreation and Conservation Authority. After the additional conditions were fulfilled, the subject CDP was issued on April 21, 2016.



At the time that CDP 4-13-0256 was approved, Parcel Two was comprised of two APNs (4472-026-017 and 4472-026-018) due to the fact that a prior owner of this parcel attempted to subdivide the parcel without the required CDP. As the previous owners did not obtain a CDP for the subdivision, Commission enforcement staff opened an enforcement investigation, and subsequently recorded a notice of violation against the property. However, the approved lot line adjustment in conjunction with the required special conditions resolved this violation.

#### **4-05-069-A3 and 4-13-0256-A1 Amendment History**

As described above, approval of CDP 4-05-069 and 4-13-0256 resulted in the creation of two parcels, each with a 10,000 square foot development area (Exhibit 3). The subject parcel (APN 4472-026-019) contains an existing building site and driveway approved pursuant to CDP 4-05-069, and the remaining portion of the property is covered by the open space conservation easement area required pursuant to CDP 4-13-0256.

In June 2017, the applicant submitted amendment request 4-05-069-A2 to modify the location of the approved driveway and fire department turnaround. The applicant stated that the driveway changes were proposed to conform to then-current LACFD standards. The proposed location of the new driveway and turnaround was within the open space conservation easement area required pursuant to Special Condition 1 of CDP 4-13-0256. Because this amendment requested to locate a new driveway and turnaround within the open space easement area, which was specifically required for habitat protection purposes, Commission staff found that the proposed modifications would not be consistent with the conditions of CDP 4-13-0256, and would lessen and avoid the intended effect of the terms and conditions of CDP 4-05-069. As such, this amendment request was rejected.

Following discussions between Commission staff and the applicant's representatives regarding the open space easement area, in July 2018, the applicant submitted two amendment requests, 4-05-069-A3 and 4-13-0256-A1, which are now before the Commission. Specifically, in the currently proposed applications, the applicant is proposing to amend CDP 4-05-069 to restore the existing, previously approved driveway, to construct a new driveway, and to request after-the-fact approval of approximately 2,755 square feet of vegetation removal. Because the proposed driveway is located within the open space conservation easement area required pursuant to CDP 4-13-0256, the applicant has also proposed to amend that CDP to modify the configuration of the easement area so that the easement would no longer cover the location of the proposed driveway.

The applicant has stated that the proposed modifications to the previously approved driveway design and location are necessary to conform to current LACFD standards. The existing driveway diverges from Lulu Carr Road south of the approved building pad, and approaches the pad from the southeast. It is 353 feet long, and required 170 cubic yards of cut and 791 cubic yards of fill for a total of 961 cubic yards of grading, plus 1,056 cubic yards of removal and re-compaction. The new driveway proposed in Amendment 4-05-069-A3 diverges from Lulu Carr Road north of the approved building pad, and approaches the pad from the northwest, as depicted in Exhibit 5. It is 348 feet long, and would require 102 cubic yards of cut and 16 cubic yards of fill, for a total of 118 cubic yards of grading.

When the application for 4-05-069-A3 was submitted in July 2018, the applicant proposed after-the-fact approval for the new driveway, and the grading estimates provided to staff were 1,450 cubic yards of cut and 145 cubic yards of fill, for a total of 1,595 cubic yards of grading. The proposal also included 1,305 cubic yards of fill to restore the grade of the existing, previously approved driveway. Grading plans, prepared and stamped by a registered engineer, which reflected those amounts were provided to staff.

Following staff’s request for clarification regarding the grading plans, the applicant’s agent submitted additional information in October 2018. This submittal changed the quantity of after-the-fact grading for the new proposed driveway, and stated that 1,176 cubic yards of grading had already been performed. The applicant’s agent also stated that the amount of additional grading required to finish the new driveway would be 316 cubic yards of cut and 17 cubic yards of fill, for a total of 333 cubic yards. This was significantly less than the original quantities given.

Following further discussions with staff, the applicant’s agent submitted additional information on February 6, 2019. This submittal stated that the previously cited after-the-fact grading quantity of 1,176 cubic yards was actually part of CDP 4-05-069, and thus should not be included in the analysis for the proposed new driveway. It was further stated that the grading estimates for the proposed new driveway and restoration of the previously approved driveway had been recalculated. This submittal is the currently proposed project, and includes 102 cubic yards of cut and 16 cubic yards of fill for the proposed new driveway, and 976 cubic yards of fill for the restoration of the previously approved, existing driveway.

All of the grading estimates provided by the applicant are summarized in the table below.

<b>Submittal Date</b>	<b>ATF Grading</b>	<b>New Driveway Cut</b>	<b>New Driveway Fill</b>	<b>Existing Driveway Restoration</b>
7/18/2018	Not given	1,450 cu. yds.	145 cu. yds.	1,305 cu. yds.
10/10/2018	1,176 cu. yds.	316 cu. yds.	17 cu. yds.	1,305 cu. yds.
2/6/2019 (current proposal)	0 cu. yds.	102 cu. yds.	16 cu. yds.	976 cu. yds.

**C. BIOLOGICAL RESOURCES**

Policy CO-33 of the Santa Monica Mountains Land Use Plan states (in relevant part):

*Sensitive Environmental Resource Areas (SERAs) are areas containing habitats of the highest biological significance, rarity, and sensitivity. SERAs are divided into two habitat categories – H1 habitat and H2 habitat – that are subject to strict land use protections and regulations.*

*1. H1 habitat consists of areas of highest biological significance, rarity, and sensitivity--alluvial scrub, coastal bluff scrub, dune, native grassland and scrub with a strong component of native grasses or forbs, riparian, native oak, sycamore, walnut and bay woodlands, and rock outcrop habitat types. Wetlands, including creeks, streams, marshes, seeps and springs, are also H1 habitat. Coast live and valley oak, sycamore, walnut, and bay woodlands are all*

*included in H1 habitat. H1 habitat also includes populations of plant and animals species (1) listed by the State or Federal government as rare, threatened or endangered, listed by NatureServe as State or Global-ranked 1, 2, or 3, and identified as California Species of Special Concern, and/or (2) CNPS-listed 1B and 2 plant species<sup>3</sup>, normally associated with H1 habitats, where they are found within H2 or H3 habitat areas.*

*2. H2 habitat consists of areas of high biological significance, rarity, and sensitivity that are important for the ecological vitality and diversity of the Santa Monica Mountains Mediterranean Ecosystem. H2 habitat includes large, contiguous areas of coastal sage scrub and chaparral-dominated habitats. ...*

Policy CO-36 of the Santa Monica Mountains Land Use Plan states:

*SERA habitat (H1 and H2) and H3 habitat categories are depicted on Map 2 Biological Resources of the Santa Monica Mountains LUP (“Biological Resources Map”). The precise boundaries of these habitat categories shall be determined on a site-specific basis, based on substantial evidence and a site-specific biological surveys inventory and/or assessment required by the LCP when a development proposal is submitted. This LCP contains a procedure, as enunciated in Policy CO-37, to both confirm the habitat types and locations depicted on the map and establish on the basis of substantial evidence the appropriate habitat category. Any area not designated as a habitat category on the Biological Resources Map that meets the criteria of a habitat category shall be accorded all the protection provided for that habitat category in the LCP.*

Policy CO-37 of the Santa Monica Mountains Land Use Plan states:

*The habitat categories as depicted on the Biological Resources Map may be adjusted based upon substantial biological evidence and independent review by the County Biologist and ERB as set forth in this Element. Based on substantial evidence, a resource on any site may be classified or reclassified from one category to a higher or lower category. Where the County finds that the physical extent of habitats on a project site are different than those indicated on the Biological Resources Map, the County shall make findings as part of the CDP regarding the physical extent of the habitat categories and detailed justification for any classification or reclassification of habitat categories at the project site based on substantial evidence. Where the County finds that the physical extent of habitats on a project site are different than those indicated on the Biological Resources Map, the Biological Resources Map shall be modified accordingly, as part of a map update indicated below, and such a modification shall be considered an LCP amendment and subject to approval by the Coastal Commission as set forth in Policy CO-38. The County may take action on the CDP, applying the appropriate LCP policies and standards for protection of the habitat categories present, even if the Biological Resources Map of the LUP has not yet been amended.*

Policy CO-40 of the Santa Monica Mountains Land Use Plan states:

*Any area mapped as, or meeting the definition of, H1, H2, H2 High Scrutiny, or H3 habitat shall not be deprived of protection as that habitat category, as required by the policies and provisions of the LCP, on the basis that habitat has been damaged or eliminated by natural disaster (e.g. landslide, flooding, etc.), or impacted by illegal development or other illegal*

*means, including removal, degradation, or elimination of species that are rare or especially valuable because of their nature or role in an ecosystem.*

Policy CO-43 of the Santa Monica Mountains Land Use Plan states:

*New development shall avoid H2 Habitat (including H2 High Scrutiny Habitat), where feasible, to protect these sensitive environmental resource areas from disruption of habitat values. H2 High Scrutiny Habitat is considered a rare and sensitive H2 Habitat subcategory that should be given protection priority over other H2 habitat and should be avoided to the maximum extent feasible. Where it is infeasible to avoid H2 habitat, new development shall be sited and designed to minimize impacts to H2 habitat. If there is no feasible alternative that can eliminate all impacts to H2 habitat, then the alternative that would result in the fewest or least significant impacts to H2 habitat shall be selected. Impacts to H2 habitat that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated.*

Policy CO-57 of the Santa Monica Mountains Land Use Plan states, in relevant part:

*New non-resource-dependent development shall also provide an additional 100-foot “Quiet Zone” from H1 habitat where feasible (measured from the outer edge of the 100-foot H1 habitat buffer required above). New development is not permitted in the H1 habitat Quiet Zone except resource-dependent uses, non-irrigated fuel modification required by the Fire Department for lawfully-established structures, and the following other uses in very limited circumstances: ... (2) an access road to a lawfully-permitted use when there is no other feasible alternative to provide access to public recreation areas or development on a legal parcel, as long as impacts to H1 habitat and H1 buffer are avoided to the maximum extent feasible, and unavoidable impacts are minimized and mitigated; ...*

Policy CO-64 of the Santa Monica Mountains Land Use Plan states:

*Where multiple SERA protection policies and permitted uses are applicable, the policy that is most restrictive and protective of the habitat resource shall regulate development.*

Policy CO-67 of the Santa Monica Mountains Land Use Plan states:

*Coastal development permits for the development of uses allowed within or adjoining H1 and H2 habitat shall include an open space conservation easement over the remaining H1 habitat, H1 habitat buffer, or H2 habitat, in order to avoid and minimize impacts to biological resources.*

Policy CO-74 of the Santa Monica Mountains Land Use Plan states, in relevant part:

*New development shall be clustered to the maximum extent feasible and located as close as possible to existing roadways, services and other developments to minimize impacts to biological resources.*

Section 22.44.1890 of the Santa Monica Mountains Local Implementation Program states, in relevant part:

*Development is prohibited in the following habitats, with the exception of the permitted uses listed below. Notwithstanding the allowable uses detailed in Sections 22.44.1700 through 22.44.1780, only the following uses may be permitted within each of the following habitat areas...*

*C. H1 Habitat Area.*

- 1. Resource-dependent uses in accordance with Section 22.44.1920.M, including the following:*
  - a. Public accessways and trails, including directional signs.*
  - b. Interpretive signage designed to provide information about the value and protection of the resources.*
  - c. Restoration projects where the primary purpose is restoration of the habitat.*
  - d. Invasive species eradication projects if they are designed to protect and enhance habitat values.*
  - e. Low-impact campgrounds, where no significant impacts to H1 Habitat resources will occur.*
- 2. Non-resource-dependent uses, limited to the following:*
  - a. Public works projects to repair or protect existing public roads, consistent with subsection F of Section 22.44.1920.*
  - b. Access road consistent with subsection C of Section 22.44.1920 to a lawfully-permitted use only where all of the following apply:*
    - i. There is no other feasible alternative to provide access to public recreation areas or development on a legal parcel;*
    - ii. Removal of H1 habitat area is avoided to the maximum extent feasible;*
    - iii. Any stream crossing within H1 is accomplished by bridging with the bridge columns located as far outside streambeds and banks as feasible, shared bridges are used for providing access to multiple development sites, and removal or other impacts to riparian vegetation is minimized to the greatest extent feasible;*
    - iv. Removal or encroachment into the protected zones or driplines of oak, sycamore, walnut, bay, or other native trees are avoided: if encroachment into the protected zones or driplines of such trees is unavoidable, root bridges shall be incorporated into the road design to avoid impacts to tree roots; and,*
    - v. All feasible mitigation measures have been provided to avoid significant disruption of H1 habitat values. Mitigation for the removal or permanent impacts to H1 habitat shall include, but not be limited to restoration/enhancement of like habitat, in accordance with subsections C, D, and E of Section 22.44.1950.*
- 3. All development approved within woodland or savannah habitat shall protect native trees in accordance with subsection K of Section 22.44.1920.*
- 4. No development of any non-resource-dependent use other than the two listed here shall be approved within H1 habitat, unless such use has first been considered in an LCP amendment, pursuant to the provisions of Section 22.44.700, that is certified by the Coastal Commission.*

*D. H1 Habitat Buffer (all land within 100 feet of H1).*

- 1. Public accessways and trails, including directional signs.*
- 2. Interpretive signage designed to provide information about the value and protection of the resources.*

3. *Restoration projects where the primary purpose is restoration of the habitat.*
  4. *Invasive species eradication projects if they are designed to protect and enhance habitat values.*
  5. *Low-impact campgrounds.*
  6. *Public works projects to repair or protect existing public roads, consistent with subsection F of Section 22.44.1920.*
  7. *Access road, consistent with subsection C of Section 22.44.1920, to a lawfully-permitted use only where all of the following apply:*
    - a. *There is no other feasible alternative to provide access to public recreation areas or development on a legal parcel;*
    - b. *The road is sited and designed to prevent impacts which would significantly degrade H1 Habitat;*
    - c. *The road is compatible with the continuance of H1 Habitat; and*
    - d. *All feasible mitigation measures have been provided to minimize adverse environmental effects.*
  8. *A development not permitted in H1 Habitat Buffer may be approved only where all of the following apply:*
    - a. *The project site is on a lawfully created parcel;*
    - b. *The development is the minimum necessary to provide the landowner a reasonable economic use of the property, and in no case shall it exceed the maximum standards provided in Sections 22.44.1910 and 22.44.1920;*
    - c. *There is no other feasible alternative building site location that can avoid the H1 Habitat Buffer;*
    - d. *The maximum feasible buffer width is provided between the development and the H1 Habitat area;*
    - e. *The development is sited and designed to prevent impacts that would significantly degrade H1 Habitat; and,*
    - f. *All feasible mitigation measures have been provided to minimize adverse environmental effects.*
- E. *H1 Quiet Zone (all land within 100 feet of H1 Habitat Buffer).*
1. *Non-irrigated fuel modification required by the Fire Department for lawfully-established structures.*
  2. *Public accessways and trails, including directional signs.*
  3. *Interpretive signage designed to provide information about the value and protection of the resources.*
  4. *Restoration projects where the primary purpose is restoration of the habitat.*
  5. *Invasive species eradication projects if they are designed to protect and enhance habitat values.*
  6. *Campgrounds, low-impact.*
  7. *Public works projects to repair or protect existing public roads, consistent with subsection F of Section 22.44.1920.*
  8. *Access road, consistent with subsection C of Section 22.44.1920, to a lawfully-permitted use only where all of the following apply: there is no other feasible alternative to provide access to public recreation areas or development on a legal parcel; no fuel modification required by the Fire Department would extend into the H1 Habitat Buffer; the road is sited and designed to prevent impacts which would significantly degrade H1;*

*and all feasible mitigation measures have been provided to minimize adverse environmental effects.*

*9. Equestrian pasture outside of the fuel modification area for the principal permitted use, consistent with subsection E and F of Section 22.44.1940, only where all of the following apply: the development is sited and designed to ensure that no Fire Department required fuel modification extends into H1 Habitat or H1 Habitat Buffer, it will not significantly degrade H1 habitat, and will not adversely affect wildlife usage, including movement patterns, of the local area or region.*

*10. Confined animal facilities, consistent with Section 22.44.1950, only if existing fuel modification for the principal permitted use is located within the Quiet Zone, the facilities are located on slopes of 3:1 or less, the facilities will not require fuel modification to extend into H1 habitat or the H1 habitat buffer, and subject to the recommendation of the ERB.*

*11. Public recreation facilities, only if the Quiet Zone area is developed and/or disturbed by an historic, legally established use.*

*12. A development not permitted in H1 Habitat Quiet Zone may be approved only where all of the following apply:*

- a. The project site is on a lawfully created parcel;*
- b. The development is the minimum necessary to provide the landowner a reasonable economic use of the property, and in no case shall it exceed the maximum standards provided in Sections 22.44.1910 and 22.44.1920;*
- c. There is no other feasible alternative building site location that can avoid the H1 Quiet Zone;*
- d. The maximum feasible Quiet Zone width is provided between the development and the H1 Habitat Buffer;*
- e. The development is sited and designed to prevent impacts that would significantly degrade H1 Habitat; and*
- f. All feasible mitigation measures have been provided to minimize adverse environmental effects.*

*13. If an area designated as the Quiet Zone contains areas of other mapped Habitat Categories (e.g., H2, H3) and the proposed development includes more than one habitat category, the development standards, including the permitted uses, that are most restrictive shall regulate the entire development of the area.*

Section 22.44.1900 of the Santa Monica Mountains Local Implementation Program states, in relevant part:

*New development adjacent to H1 habitat shall provide native vegetation buffer areas to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted within buffers.*

*A. H1 Habitat Buffer. New non-resource dependent development shall provide a buffer of no less than 100 feet from H1 Habitat, unless otherwise provided in subsection D of Section 22.44.1890.*

*B. H1 Habitat Quiet Zone. New development shall also provide an additional 100-foot Quiet Zone from H1 Habitat where feasible (measured from the outer edge of the 100 foot H1 Habitat buffer required above), unless otherwise provide in subsection E of Section 22.44.1890.*

The Santa Monica Mountains LCP designates three habitat categories: H1 habitat, H2 habitat, and H3 habitat. H1 habitat is defined by Policy CO-33 as an area of the highest biological significance, rarity, and sensitivity, and includes streams, riparian, and oak, sycamore, walnut, and bay woodland habitat areas. Policy CO-55 designates a buffer of no less than 100 feet to be maintained surrounding H1 zones, and Policy CO-57 also designates an additional 100-foot “Quiet Zone” (measured from the outer edge of the 100-foot habitat buffer) where feasible. H2 habitat is defined by Policy CO-33 as an area of high biological significance, rarity, and sensitivity, and includes large, contiguous areas of coastal sage scrub and chaparral-dominated habitats. Both H1 and H2 habitats are collectively described as Sensitive Environmental Resource Areas (SERAs), and these designations also meet the definition of ESHA under the Coastal Act. The LCP policies and provisions require that H1 and H2 habitat must be protected against any significant disruption of habitat values, and they generally only allow resource dependent uses in H1 and H2 habitat, consistent with Section 30240 of the Coastal Act. H3 habitat is defined by Policy CO-34 as areas that would otherwise be designated as H2 habitat, but the native vegetation communities have been significantly disturbed or removed as part of lawfully-established development. While H3 habitat does not constitute a “SERA”, or ESHA, the County has determined that these areas provide important biological functions that warrant specific development standards for the siting and design of new development.

The Biological Resources Map of the certified LUP depicts a mixture of H1 habitat, H1 Buffer, H1 Quiet Zone, H2 habitat, and H3 habitat on the subject site, as shown in Exhibit 4. Specifically, the existing building pad and driveway approved by CDP 4-05-069 are depicted as H3 habitat. A large contiguous area of H2 habitat is located south and east of this H3 habitat area. Two blue line streams and oak woodland habitat areas descend west from the subject parcel, and are designated as H1 habitat. Extending from the designated H1 habitat is a 100-foot H1 Buffer, and a 100-foot H1 Quiet Zone extends from the outer edge of the buffer. The location of the proposed driveway is within an area that is mapped as H3 habitat within an H1 Quiet Zone.

Policy CO-37 of the LUP provides that although the designated sensitive habitat categories are generally depicted on the Biological Resources Map, the precise boundaries of the habitat categories shall be determined based on a site-specific biological inventory and/or assessment at the time development is proposed. Based on substantial evidence, a resource on any site may be classified or reclassified from one category to a higher or lower category. Policy CO-36 further provides that any area not previously designated on the Biological Resources Map that meets the criteria of a habitat category (H1, H2, H3) shall be accorded all the protection provided for that habitat category in the LCP. Furthermore, Policy CO-40 requires that any area that is mapped as or that meets the definition of H1, H2, or H3 habitat shall not be deprived of protection as that habitat category on the basis that the habitat has been damaged, eliminated, or impacted by illegal removal.

In this case, the proposed driveway is located in an area that has been designated on the LUP Biological Resources Map as H3 habitat that is within an H1 Quiet Zone around H1 oak



woodland habitat located just offsite to the west of the subject parcel. As described above, the applicant's proposal includes a request for after-the-fact approval of approximately 2,755 square feet of vegetation removal that occurred along the length of the proposed driveway. In order to determine when this unpermitted vegetation removal occurred, Staff reviewed aerial photographs, which indicate that the illegal vegetation removal took place sometime between 1982 and 1986. When the aerial review of habitat in the Santa Monica Mountains was conducted by Commission and County staff to create the Biological Resources Map for the LCP, this area was designated as H3 habitat due to its disturbed nature. It was beyond the scope of that habitat mapping review to determine the legal status of every development visible from the aerial photographs.

The applicant's biologist has prepared a site specific biological assessment (dated October 9, 2018), which indicates that the vegetation surrounding the proposed driveway location, where the unpermitted vegetation removal took place, consists of coastal sage scrub, which supports Catalina Mariposa lily (CNPS Rank 4.2) and native grasses. Pursuant to Policy CO-33, large, contiguous areas of coastal sage scrub habitat constitute H2 habitat. As depicted on the Biological Resources Map, H2 habitat areas are mapped on either side of the illegally disturbed area, consistent with the findings of the applicant's biological assessment. As such, had the habitat along the proposed driveway not been illegally removed, it would have been part of a large, contiguous H2 habitat area. Pursuant to Policy CO-40, any area mapped as, or meeting the definition of, a habitat category shall not be deprived of protection as that habitat category on the basis that the habitat has been impacted by illegal development. Thus while the subject area is designated as H3 habitat on the Biological Resources Map of the LUP, it met the criteria of H2 habitat before it was impacted by illegal vegetation clearance, and as such must be considered H2 habitat. Furthermore, in CDP 4-05-069 the Commission found the habitat areas present on the project site met the definition of ESHA, and as such, conditioned the permit to require payment of a habitat impact mitigation fee to mitigate for adverse impacts to ESHA that would result from construction of the approved development. Additionally, CDP 4-13-0256 was conditioned to require recordation of the subject open space conservation easement area (which covers the area where vegetation was illegally removed and where the proposed driveway would be located) due to the fact that the habitats on the project site constitute ESHA and should be preserved in perpetuity.

In addition to being designated as H2 habitat, the proposed driveway location is also within the H1 Quiet Zone. The LCP requires H1 Buffers and Quiet Zones to protect the integrity of nearby ESHA (in this case, two blue line streams and an oak woodland area) by minimizing disturbance. Buffers and Quiet Zones provide physical distance between development and H1 habitat (ESHA) areas, which helps avoid or minimize impacts from lighting, noise, and other human activities. Additionally, Buffers and Quiet Zones provide area for infiltration of runoff and non-point source pollution before it is introduced to streams or other coastal waters. LUP Policy CO-64 states that where multiple SERA protection policies and permitted uses are applicable, the policy that is most restrictive and protective of the habitat resource shall regulate development. In this case, the H1 Quiet Zone standards are more protective and restrictive than the H2 habitat policies, and therefore the H1 Quiet Zone policies and provisions must be applied within the mapped H1 Quiet Zone area.

Pursuant to Policy CO-57, new development is not permitted in the H1 Quiet Zone except for resource-dependent uses, non-irrigated fuel modification required by the Fire Department for

lawfully-established structures, and other uses in very limited circumstances. An access road to a lawfully-permitted use is only allowed within the H1 Quiet Zone when there is no other feasible alternative. In this case, a feasible alternative has already been approved and constructed pursuant to CDP 4-05-069 in the form of the existing driveway. As part of the application materials for CDP 4-05-069, a previous applicant submitted LACFD approval of the existing driveway, which indicated that the driveway met all LACFD standards. Furthermore, when CDP Amendment 4-05-069-A1 was processed to modify the grading quantities of the subject development, a new LACFD approval for the existing driveway was also submitted, once again indicating that the existing driveway met all LACFD standards. The approved driveway and turnaround were graded, thereby vesting CDP 4-05-069. The approved residence can be constructed on the site pursuant to CDP 4-05-069 without further CDP approval. As part of the proposed amendments, the applicant has provided no evidence from the Fire Department that the house construction would be subject to further Fire Department review with regard to the road and turnaround, and no evidence which indicates that the previously approved design would no longer be acceptable. Furthermore, even if evidence was provided which indicated that the existing driveway would need to be modified to comply with Fire Department standards, the applicant has provided no analysis which describes the type of work or amount of grading that would be necessary to modify the design of the existing driveway. Therefore, the proposed driveway is not an allowable use within the H1 Quiet Zone pursuant to the LCP H1 habitat protection policies and provisions.

Further, even if the H1 Quiet Zone policies and provisions did not apply to the subject area of the site, the coastal sage scrub habitat present constitutes H2 habitat (as described in detail above). Policy CO-43 of the LCP states that: "New development shall avoid H2 Habitat (including H2 High Scrutiny Habitat), where feasible, to protect these sensitive environmental resource areas from disruption of habitat values". In this case, it is feasible for a driveway and turnaround for the approved residence to avoid H2 habitat because one has already been approved and constructed pursuant to CDP 4-05-069 in the form of the existing driveway. Therefore, the proposed driveway would not be an allowable use within the H2 habitat on the project site pursuant to the LCP policies and provisions that require H2 habitat protection.

Policy CO-74 of the LCP requires that new development is clustered to the maximum extent feasible to minimize impacts to biological resources. As depicted in Exhibit 5, the existing driveway is designed in such a way that it is clustered with the building pad, and is located entirely within the approved LACFD fuel modification zone for the approved residence. Conversely, the proposed driveway joins the building pad at the northwest corner, runs north away from the pad, and is not located entirely within the fuel modification zone for the approved residence. The proposed driveway would also require further fuel modification along its edges, and would therefore result in additional unallowable adverse impacts to habitat within the H1 Quiet Zone. Furthermore, although the applicant proposes to revegetate the existing driveway, because it is located within the fuel modification zone for the approved residence, the restored area would never be fully functioning ESHA as it would consistently be subject to disturbance (including thinning) to meet LACFD fuel modification requirements.

As mentioned above, due to the variety of sensitive habitats present on the subject property and the fact that the applicant received a reasonable economic use of the property through vesting CDP 4-05-069 which allows for residential development on the subject site, CDP 4-13-0256 (which created the subject parcel through a lot line adjustment) included Special Condition 1,

which required the dedication of an open space conservation easement that covers the remaining portion of the property located outside of the approved building pad and the area surrounding Lulu Carr Road (Exhibit 6). Following approval of CDP 4-13-0256, the Mountains Recreation and Conservation Authority (MRCA) accepted the subject easement. As specified in Special Condition 1, the subject easement requires that no development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur within the identified open space conservation easement area except for fuel modification required by LACFD; drainage and polluted runoff control activities; planting of native vegetation; construction and maintenance of public hiking trails, and construction and maintenance of roads, trails, and utilities consistent with existing easements if approved by the County of Los Angeles in a CDP.

As described above, the new driveway alignment proposed in CDP Amendment 4-05-069-A3 would encroach into this open space conservation easement area. Because construction of the proposed driveway into the open space easement area would not be consistent with the terms of the easement, the applicant has proposed to modify the location of the easement area through CDP Amendment 4-13-0256-A1 (Exhibit 6). Specifically, the applicant has proposed to remove the area where the proposed driveway would be located from the easement area, and to add a portion of land that was previously excluded from the easement area to the easement area so that the total area protected by the easement would remain the same. However, the only reasonable justification for amending the open space conservation easement area that has already been accepted by MRCA would be to facilitate lawful development in the area. In this case, even if the easement were amended, the LCP habitat protection policies and provisions that apply to the underlying habitat designations preclude the proposed driveway from taking place in the area unless no feasible alternative exists. As has been discussed extensively, a feasible alternative does exist in this case, in the form of the previously approved driveway. As such, the proposed amendments cannot be found consistent with LUP policies CO-43, CO-57, and CO-74 (and the corresponding Implementation Plan provisions) of the LCP and must be denied.

For the reasons discussed in detail above, the Commission finds that the permits, as proposed to be amended to allow for new development in H1 Quiet Zone and to modify the configuration of the existing open space conservation easement area, are not consistent with the biological resource protection policies and provisions of the certified Santa Monica Mountains LCP. Furthermore, retention of the existing driveway is an available alternative that achieves consistency. Therefore the permit amendment applications are denied.

#### **D. LANDFORM ALTERATION**

Policy CO-76 of the Santa Monica Mountains Land Use Plan states:

*All new development shall be sited and designed so as to minimize grading, alteration of physical features, and vegetation clearance in order to prevent soil erosion, stream siltation, reduced water percolation, increased runoff, and adverse impacts on plant and animal life and prevent net increases in baseline flows for any receiving water body.*

Policy CO-79 of the Santa Monica Mountains Land Use Plan states:

*Access roads that are wholly new, incorporate any portion of an existing access road, or require the widening, improvement, or modification of an existing, lawfully-constructed road in order to comply with County Fire Department access development standards shall comply with the following:*

- a. No more than one access road or driveway with one hammerhead-type turnaround area providing access to the one approved building site area may be permitted as part of a development permitted in H2 habitat or H2 High scrutiny habitat, unless a secondary means of access is specifically required by the Fire Department to protect public safety.*
- b. An access road or driveway shall only be permitted concurrently with the use it is intended to serve, except for the approval of geologic testing roads.*
- c. Grading, landform alteration, and vegetation removal for access roads and driveways shall be minimized to the greatest extent feasible. The length of the one access road or driveway shall be the minimum necessary to provide access to the one approved building site area on a legal parcel. The alignment and design of the access road or driveway shall avoid impacts to H1 and H2 habitat, or if avoidance is not feasible, shall minimize such impacts. In no case shall new on-site or off-site access roads, or driveways as measured from the nearest public road, exceed a maximum of 300 feet or one-third the parcel depth, whichever is less, unless the County finds, based on substantial evidence, that a variance of this standard is warranted.*
- d. The width and grade of an access road or driveway and the size of the hammerhead turnaround approved shall be the minimum required by the Fire Department for that development project.*

Policy CO-131 of the Santa Monica Mountains Land Use Plan states:

*Site and design new development to minimize adverse impacts on scenic resources to the maximum extent feasible. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas through measures that may include, but not be limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height, clustering development, minimizing grading, incorporating landscape and building material screening elements, and where appropriate, berming.*

Policy CO-134 of the Santa Monica Mountains Land Use Plan states:

*The length of roads or driveways shall be minimized, except where a longer road or driveway would allow for an alternative building site location that would be more protective of scenic resources, H1 and H2 habitat areas, or other coastal resources. Driveway slopes shall be designed to follow the natural topography, unless otherwise required by the Fire Department. Driveways that are within or visible from a scenic resource shall be a neutral color that blends with the surrounding landforms and vegetation.*

Section 22.44.1260.C.5 of the Santa Monica Mountains Local Implementation Program states:

*All grading shall be performed in a manner that minimizes disturbance to the natural landscape and terrain through design features for the project such as, but not limited to,*

*conforming to the natural topography, locating the building pad in the area of the project site with the least slope to minimize flat pads on slopes, utilizing split-level or stepped pad designs on slopes, clustering structures, locating the project close to a paved street traveled by the public, reducing building footprints, and minimizing hardscape, the height and length of cut and fill slopes and retaining walls. Grading shall also be accompanied by other project features that maximize preservation of visual quality and rural community character through design features such as, but not limited to, use of landform grading techniques so that graded slopes blend with the existing natural terrain of the site and surrounding area, and use of locally-indigenous vegetation for concealment of the project. A list of locally-indigenous vegetation appropriate for the Coastal Zone shall be maintained by the Director.*

Section 22.44.1350.B.2 of the Santa Monica Mountains Local Implementation Program states:

*Building sites, streets, and driveways shall be sited and designed to minimize grading and landform alteration and mimic the natural contours of the hillsides.*

The Santa Monica Mountains LCP mandates that all new development be sited and designed to minimize grading and vegetation clearance. The policies and provisions of the LCP also prioritize the conservation of SERAs by requiring that roads and driveways be designed to minimize their impacts on the environment. Additionally, the LCP requires that development be sited and designed to minimize adverse impacts to scenic resources to the maximum extent feasible.

As previously described, the driveway approved as part of 4-05-069 has been constructed and is 353 feet long, as measured from Lulu Carr Road (Exhibit 5). It required 170 cubic yards of cut and 791 cubic yards of fill, for a total grading amount of 961 cubic yards. The existing design also included 1,056 cubic yards of removal and re-compaction. This existing driveway has an average grade of approximately 6%, and the fire department turnaround has an average grade of approximately 4%. The driveway proposed as part of 4-05-069-A3 would be 348 feet long, as measured from Lulu Carr Road (Exhibit 5). It would allegedly require 102 cubic yards of cut and 16 cubic yards fill, for a total grading amount of 118 cubic yards. The proposed driveway has an average grade of approximately 9%, and the fire department turnaround has an average grade of approximately 2%. As a component of the subject amendments, the applicant has also proposed to restore the topography of the existing driveway with 976 cubic yards of fill and to revegetate with native species.

The proposed new driveway is 5 feet shorter than the existing driveway, and would allegedly require approximately 843 cubic yards less grading to construct. The applicant's representative has asserted that because the proposed driveway is shorter than the existing driveway and would require less grading, that it is the least environmentally damaging alternative. However, in this case, the comparison of the length or grading necessary for the two driveways is not a true evaluation of alternatives because landforms on the site have already been altered through the approved 961 cubic yards of grading for the existing driveway. An additional 976 cubic yards of restorative grading is proposed to mimic a more natural slope in the area of the existing driveway. While this area is also proposed to be revegetated, it is within the required fuel modification area for the future home. As the vegetation planted in this area would have to be managed to minimize fuel loads, it is unlikely to ever appear like a natural slope. Policy CO-76 of the LUP requires that all new development be sited and designed to minimize grading,

alteration of physical features, and vegetation clearance. The proposed project, including after-the-fact approval of 2,755 square feet of vegetation removal, 976 cubic yards of restorative grading for the existing driveway, and 118 cubic yards of additional grading for the proposed driveway would result in increased grading, alteration of physical features, and vegetation clearance inconsistent with Policy CO-76.

Furthermore, as a component of the Commission's approvals of CDP 4-05-069 and CDP Amendment 4-05-069-A1, LACFD reviewed the existing driveway and turnaround design and found them to be consistent with Fire Department access standards. While the applicant's representatives have asserted that the existing driveway must be modified to comply with current LACFD access standards, they have provided no evidence from the Fire Department that the house construction would be subject to further Fire Department review with regard to the road and turnaround, and no evidence which indicates that the previously approved design would no longer be acceptable. Additionally, they have not provided any analysis which describes what measures would be necessary to modify the design of the existing driveway to comply with current LACFD standards. Lastly, the applicant has not submitted approval-in-concept from the LACFD for the proposed driveway.

The subject parcel is located adjacent to and is visible from Encinal Canyon Road, which is designated as a Scenic Route by LUP Policy CO-126. The approved development on the subject site will be visible from two hiking trails mapped on LUP Map 4: Recreation. Pursuant to Policy CO-131, new development should be sited and designed to minimize adverse impacts on scenic resources. Additionally, Section 22.44.1260.C.5 and Section 22.44.1350.B.2 of the LIP require that grading minimize disturbance to the natural landscape and terrain and that development is clustered. The existing driveway is located in a clustered configuration immediately adjacent to the approved residence, within the LACFD approved fuel modification zone. This clustered configuration minimizes landform alteration and impacts to scenic resources because the development is located in a more compact configuration. The location of the proposed driveway would extend approximately 148 feet beyond the fuel modification area of the approved residence into H1 Quiet Zone. This proposed driveway alignment would result in a configuration that is not clustered and that could increase adverse impacts on scenic and visual resources, including those seen from nearby trails. As such, the proposed amendments cannot be found consistent with LUP policies CO-76, CO-79, and CO-131 (and the corresponding Implementation Plan provisions) and must be denied.

For the reasons discussed in detail above, the Commission finds that the permits, as proposed to be amended to allow for additional landform alteration on the site and to modify the configuration of the existing open space conservation easement area, are not consistent with the landform alteration and visual resource policies and provisions of the certified Santa Monica Mountains LCP. Furthermore, retention of the existing driveway is an available alternative that achieves consistency. Therefore the permit amendment applications are denied.

#### **E. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act have occurred on the property including, but not limited to, unpermitted grading and clearing of vegetation. As previously noted, the unpermitted vegetation removal in the area of the proposed new driveway first occurred sometime between 1982 and

1986. Based on available aerial photographs, this area has been periodically cleared since then. Although Special Condition One (1) of Commission-issued CDP No. 4-13-0256 required this area to be protected as open space, vegetation removal has occurred since that CDP was issued in 2016. Commission denial of the CDP amendment to modify the open space conservation easement area will preclude the applicant from legalizing those portions of the unpermitted vegetation removal located within the open space conservation easement area. Commission enforcement staff will therefore consider options to address the unpermitted development within the open space conservation easement area, as well as any other development on site that is not authorized pursuant to the Coastal Act or LCP.

Although development has taken place prior to submission of the permit amendment applications, consideration of these applications by the Commission has been based solely upon the policies and provisions of the Santa Monica Mountains LCP. Commission review and action on these permit amendments does not constitute a waiver of any legal action with regard to the alleged violations, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 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. There have been no public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development is not consistent with the policies and provisions of the certified Santa Monica Mountains Local Coastal Program. There are feasible alternatives that would avoid the adverse environmental effects of the project for the reasons listed in this report. Therefore, the Commission finds that the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA. Pursuant to CEQA Guidelines (14 CCR) Section 15042 "a public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed." Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal resources that would occur if the projects were approved as proposed. Accordingly, the Commission's denial of the project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

## **APPENDIX 1**

### **Substantive File Documents**

File for CDP No. 4-05-069; File for CDP No. 4-05-069-A1; File for CDP No. 4-05-069-A2; File for CDP No. 4-13-0256; Certified Los Angeles County – Santa Monica Mountains LCP; L.A. County Fire Department Approval for CDP 4-05-069; L.A. County Fire Department Approval for CDP 4-05-069-A1; Open Space Conservation Easement Deed (L.A. County Records Doc. #20151172679); Deed Restriction (L.A. County Records Doc. #062754513); Preliminary Geologic & Soils Engineering Investigation prepared by SubSurface Designs, Inc., dated January 16, 2003; Ecological Findings for the Malibu Area prepared by J.C. Allen, dated December 24, 2001; Earthwork Quantity Calculations prepared by GeoWorks, Inc., dated October 11, 2018; Biological Resource Evaluation prepared by Compliance Biology, Inc., dated May 11, 2009; Biological Assessment prepared by Cooper Ecological Monitoring, Inc., dated October 9, 2018.