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STAFF REPORT: PERMIT AMENDMENT

Application No.: 4-06-001-A3

Applicant: Atlas Surrey, LLC

Agent: Schmitz & Associates

Location: 2945 Seabreeze Drive, Santa Monica Mountains; Los Angeles County (APN 4457-016-040)

Description of Original Project Approved in 2006: Construction of a two-story, 800 sq. ft. single family residence, 410 sq. ft. attached two-car garage, 496 sq. ft. deck, driveway, septic system, and landscaping.

Proposed Amendment: Increase the maximum allowable gross structural area (GSA) for the approved single-family residence by 600 sq. ft. through the retirement of development rights on two non-contiguous lots within the El Nido Rural Village, and after-the-fact approval to add 600 sq. ft. of habitable space in the understory of the approved single-family residence. The addition involved 43.68 cu. yds. of grading (cut).

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed amendment. The standard of review for the amendment request is the policies and provisions of the certified Los Angeles County-Santa Monica Mountains Local Coastal Program (LCP).

The subject CDP amendment requests to increase the maximum allowable gross structural area (GSA) for the residence on the property by 600 sq. ft. through the retirement of development

rights on two non-contiguous lots within the El Nido Rural Village. This increase in GSA is requested to allow for after-the-fact authorization of an unpermitted 600 sq. ft. habitable area that was constructed in the understory of the single-family residence.

Throughout the Santa Monica Mountains coastal zone there are a number of areas that were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "Rural Villages", are comprised of parcels less than one acre in size. The total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources, particularly given the small size and steepness of most of the parcels. To minimize individual and cumulative impacts to coastal resources within Rural Villages, a Slope Intensity Formula is applied to new development on each parcel to determine the allowable GSA on a property. In order to reduce potential buildout within Rural Villages, the maximum allowable GSA may be increased only through the extinguishment of development rights on other undeveloped lots within the same Rural Village.

The subject property is located within the El Nido Rural Village. In 2006, prior to certification of the County's LCP, the Commission approved the development of the single-family residence on the site pursuant to CDP No. 4-06-001. In its approval of the CDP, the Commission applied the Slope Intensity Formula for development within Rural Villages and determined that the allowable GSA on the property was limited to 500 sq. ft. However, Special Condition 8 of the CDP allowed the applicant to increase the GSA by 300 sq. ft. for each non-contiguous lot within the El Nido Rural Village that had its development rights extinguished. The applicant extinguished development rights on one lot within the El Nido Rural Village and was permitted to construct an 800 sq. ft. single-family residence. As part of the original CDP application the applicant also proposed a 1,127 sq. ft. basement. However, since the proposed basement area would have been substantially enclosed and could be used for storage, or easily converted to habitable space, Special Condition 9 required the applicant to eliminate the basement or retire the development rights on additional parcels to increase the allowable GSA by 1,127 sq. ft. The applicant provided revised plans to eliminate the basement prior to issuance of the CDP. Thus, a basement area was not included in the Commission's original approval of the project. However, a 600 sq. ft. basement was constructed in the understory portion of the residence, in violation of CDP No. 4-06-001. The applicant is now proposing to resolve the violation in the subject amendment request.

The Los Angeles County-Santa Monica Mountains Local Coastal Program (LCP) was effectively certified by the Commission in October 2014 and is now the standard of review for new development within the Santa Monica Mountains coastal zone. The LCP implements the same Slope Intensity Formula and GSA limitations previously used by the Commission for development within Rural Villages, and similarly, the LCP allows the GSA to be increased for each lot within the same Rural Village as the project site that has its development rights retired. In the case of the subject CDP amendment, the applicant has purchased two vacant lots within the El Nido Rural Village that are eligible for retirement and has submitted evidence that a public agency is willing to accept the subject retirement lots in fee title following recordation of an Open Space Deed Restriction over both lots. Staff is recommending Special Condition 10 to ensure that retirement of the lots is effectuated consistent with the requirements of Section 22.44.2140 of the County's Local Implementation Program (LIP). Additionally, because the

proposed amendment includes after-the-fact approval of unpermitted development, Commission staff is recommending Special Condition 11 to ensure that the unpermitted development is resolved in a timely manner by requiring that the applicant fulfill all of the Special Conditions as a prerequisite to the issuance of this permit amendment, and that it do so within 180 days of Commission action on this amendment. Commission staff is also recommending changes to Special Conditions 6, 8, and 9 to reflect the revised project and to require the applicant to record a new deed restriction prior to the issuance of this permit amendment that will supersede and replace the existing deed restriction recorded pursuant to the original permit action. The other original special conditions remain in full force and effect. In addition, the proposed understory area is located completely within the profile of the approved single-family residence and does not change the visual profile, nor the overall height, of the structure that was previously approved by the Commission. As conditioned, the proposed amendment is consistent with the policies and provisions of the certified Los Angeles County-Santa Monica Mountains LCP.

Therefore, Staff recommends that the Commission **approve** CDP Amendment No. 4-06-001-A3 as conditioned. The motion and resolution to adopt the staff recommendation of approval of the permit amendment is found starting on page 5.

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APPENDICES

[Appendix A - Substantive File Documents](#)

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the proposed amendment to Coastal Development Permit No. 4-06-001 pursuant to the staff recommendation.*

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit Amendment:

The Commission hereby approves the coastal development permit amendment on the grounds that the development as amended and subject to conditions, will be in conformity with the policies of the Los Angeles County-Santa Monica Mountains Local Coastal Program. Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD AND SPECIAL CONDITIONS

NOTE: Appendix B, attached, includes all standard and special conditions that apply to this permit, as approved by the Commission in its original action and modified and/or supplemented by all subsequent amendments, including this amendment number 4-06-001-A3. All of the Commission's adopted special conditions [and any changes in the project description proposed by the applicant and approved by the Commission in this or previous actions] continue to apply in their most recently approved form unless explicitly changed in this action. New conditions and modifications to existing conditions imposed in this action on Amendment 4-06-001-A3 are shown in the following section. Language proposed to be added by Commission staff is shown in underline and language proposed to be deleted by Commission staff is shown in ~~strikethrough~~. Within Appendix B, changes to the previously approved special conditions are also shown in bold. This will result in one set of adopted special conditions.

6. Deed Restriction

Prior to issuance of the coastal development permit amendment, the applicants 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 that will supersede and replace the existing deed restriction recorded pursuant to the original permit action, 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.

8. Cumulative Impacts Mitigation

Prior to issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, evidence that all potential for future development has been permanently extinguished on any lot within the El Nido small lot subdivision, or within the Malibu Bowl small lot subdivision, to comply with the requirements of the slope intensity formula in accordance with Policy 271(b)(2) of the previously certified 1986 Malibu/Santa Monica Mountains Land Use Plan provided such lot is either a) legally merged with an adjacent developed or developable parcel(s) or b) dedicated in fee title to a public agency. The maximum allowable gross structural area of 500 sq. ft. may be increased by 500 sq. ft. upon extinguishment of development rights on a lot contiguous to the building site, or by 300 sq. ft. upon extinguishment of the development rights of a lot that is not contiguous to the subject lot but which is within the El Nido small lot subdivision or within the Malibu Bowl small lot subdivision, consistent with this special condition. Should the applicants fail to submit the evidence of lot extinguishment required by this Special Condition, the applicants must submit plans demonstrating that the maximum gross structural area for the residence is no more than 500 sq. ft., consistent with subsection ~~b~~a. of **Special Condition Nine (9)** below.

9. Revised Plans

Prior to issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, revised project plans that:

- ~~a. eliminate the basement area through structural design measures. These measures must include removing the floor and windows and providing no interior access between the understory and the residence.~~
- ~~b~~a. demonstrate that all substantially enclosed residential and storage areas, excluding garages or carports designed for storage of autos, shall not exceed the maximum allowable gross structural area of 500 sq. ft. The plans may reflect an increase in square footage for lots that have been retired in accordance with **Special Condition Eight (8) ~~Seven (7)~~** above (300 sq. ft. for a lot which is not contiguous to the building site but which is within the El Nido small lot subdivision or elsewhere within the Corral Canyon watershed).

10. Cumulative Impacts Mitigation

Prior to issuance of the coastal development permit amendment, the applicant shall submit, for the review and approval of the Executive Director, evidence that all potential for future residential development has been permanently extinguished on APNs 4457-017-008 and 4457-017-009 within the El Nido Rural Village to allow the maximum allowable gross structural area of 800 sq. ft. to be increased by 600 sq. ft. in accordance with Section 22.44.2140 of the Santa Monica Mountains Local Coastal Program, provided such lots are deed restricted and transferred in fee title to a public agency, consistent with the following:

- a. The applicant shall provide evidence of the purchase of fee title or development rights on two lots that have not been previously retired or otherwise restricted, and the recordation of an open space deed restriction, recorded free of prior liens including tax liens and encumbrances which the Executive Director determines may affect the interest being conveyed, that applies to the entirety of the lots used to increase the GSA, that ensures that the future development on the lots is prohibited and that restrictions are enforceable; except for:
 1. Brush clearance required by Los Angeles County for permitted structures on adjacent parcels;
 2. Planting of native vegetation and other restoration activities, if approved by Los Angeles County in a Coastal Development Permit;
 3. If approved by Los Angeles County in a new coastal development permit:
 - a) Construction and maintenance of public hiking trails; and
 - b) Construction and maintenance of roads, trails, and utilities consistent with existing easements.

and

- b. The applicant shall provide evidence that fee title to the lots used to increase the GSA has been successfully transferred to the Mountains Recreation and Conservation Authority after the recordation of the deed restriction listed in subsection (a) above and that the document effectuating the conveyance has been recorded with the County Recorder. The permittee shall provide evidence that the ownership transfer and the open space deed restriction appear on a preliminary report issued by a licensed title insurance company for the lots used to increase the GSA.

11. Condition Compliance

Within 180 days of Commission action on this coastal development permit amendment 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 amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

III. FINDINGS AND DECLARATIONS

A. PROJECT BACKGROUND AND AMENDMENT DESCRIPTION

Project Background

The project site consists of a 5,230 sq. ft. parcel at 2945 Sea Breeze Drive within the El Nido Rural Village located in the Santa Monica Mountains. The property is situated on a southwest-facing slope that descends at an approximately 1.5:1 grade (**Exhibits 1-2**). In 2006 the Commission approved CDP No. 4-06-001 for construction of an 800 sq. ft. single-family residence, 410 sq. ft. attached two-car garage, 496 sq. ft. deck, driveway, septic system, landscaping, and no grading. The El Nido Rural Village is an area where the Commission has consistently applied the Slope Intensity Formula to establish a maximum gross structural area (GSA) for projects, based on the size and slope of the property. Based on the formula, the total allowable GSA for the subject property was 500 sq. ft. and Special Condition Eight (8) allowed the applicant to increase the GSA by 300 sq. ft., and thus allow for an 800 sq. ft. single-family residence if all future development potential was permanently extinguished on another lot within the El Nido Rural Village. The applicant satisfied that condition by extinguishing development rights on one lot within the El Nido Rural Village and was permitted to construct an 800 sq. ft. single-family residence.

As part of the original CDP application the applicant also proposed a 1,127 sq. ft. basement. However, since the proposed basement area would have been substantially enclosed and could be used for storage, or easily converted to habitable space, Special Condition 9 required the applicant to eliminate the basement or retire the development rights on additional parcels to increase the allowable GSA by 1,127 sq. ft. The applicant provided revised plans to eliminate the basement prior to issuance of the CDP. Thus, a basement area was not included in the Commission's original approval of the project. However, a 600 sq. ft. basement was constructed in the understory portion of the residence, in violation of CDP No. 4-06-001. The applicant is now proposing to resolve the violation in the subject amendment request.

In June 2014 the applicant submitted an application to amend the CDP (No. 4-06-001-A1) to reduce the maximum roof height of the approved single family residence; however it appeared to Commission staff that development of the approved single-family residence had not commenced within the two year expiration date pursuant to Standard Condition Two (2) of the CDP and the permit had expired. Therefore, because the permit appeared to have expired Commission staff rejected application No. 4-06-001-A1. In August 2014 the applicant submitted a vesting determination request providing evidence that a substantial portion of the development approved in the CDP had been completed prior to the expiration date and after reviewing the information submitted with the vesting determination Commission staff confirmed that the CDP was in fact vested. Later in 2014, the CDP was amended (No. 4-06-001-A2) to modify the architectural style, window locations, and roof style of the approved single-family residence and the residence height was reduced by 3'-11" for a maximum height of 30'-11" above existing grade.

Proposed Amendment Description

The subject amendment proposes to increase the maximum allowable GSA for the approved single-family residence by another 600 sq. ft. through the retirement of development rights on two non-contiguous lots within the El Nido Rural Village and to obtain after-the-fact authorization for the 600 sq. ft. habitable space that was constructed in the understory of the single-family residence (**Exhibit 3**). In total, the proposed habitable space in the understory required 43.68 cu. yds. of grading (cut). The applicant has already purchased two vacant, eligible lots within the El Nido Rural Village to retire through the recordation of an open space deed restriction on each lot and has indicated that a public agency, the Mountains Recreation and Conservation Authority, is interested in accepting the two restricted lots in fee title.

B. CUMULATIVE IMPACTS

Policy LU-13 of the Santa Monica Mountains Land Use Plan states (in relevant part):

Minimize the individual and cumulative impacts to coastal resources incurred by the building of existing parcels in sensitive and constrained areas and allow for new development in less-constrained areas. This shall be achieved by using one or more of the following strategies:

- *Slope Intensity Formula*

...

Policy LU-32 of the Santa Monica Mountains Land Use Plan states (in relevant part):

Restrict the mass, scale, and total square footage of structures within Rural Villages to avoid the cumulative impacts of development of small constrained parcels on coastal resources by applying the Slope Intensity Formula to residential development...

Section 22.44.2140.A of the Santa Monica Mountains Local Implementation Plan states (in relevant part):

A. Slope Intensity Formula.

1. Establishment and purpose. The slope intensity formula is established to implement certain policies related to residential developments in antiquated subdivisions and on small parcels subject to the LUP. The formula establishes development standards in hillside and other areas to limit the impact of development in these areas. Preservation of important coastal resources and scenic features will also be accomplished through the use of this formula.

2. Applicability. Construction of residential units or accessory uses on any lot or parcel of land within any Rural Village identified in Section 22.44.2120, with the exception of Upper Latigo, shall be subject to the provisions of this subsection.

3. Calculation of gross structural area.

a. *The maximum allowable gross structural area of a residential unit to be constructed on a lot shall be determined by the following formula:*

$$GSA = (A/5) \times [(50-S)/35] + 500$$

Where: GSA = the allowable gross structural area of the permitted development in square feet. The GSA shall include the total floor area of all enclosed residential and storage areas, but does not include vent shafts or the first 400 square feet of garages or carports designed for the storage of autos.

A = the area of the building site in square feet. The building site is delineated by the applicant and may consist of all or a designated portion of the one or more lots comprising the project location. All permitted development, including but not limited to, all structures, roads, driveways, septic systems, water wells, water tanks, patios, and decks must be located within the designated building site.

S = the average slope of the building site in percent as calculated by the formula:

$$S = I \times L/A \times 100$$

Where: S = average natural slope in percent.

I = contour interval in feet, at not greater than 25-foot intervals, resulting in at least five contour lines.

L = total accumulated length of all contours lines of interval "I" in feet.

A = the area of the building site in square feet.

b. All slope calculations shall be based on natural, not graded conditions. Maps of a scale generally not less than one inch equals 10 feet (1"=10'), showing the building site and existing slopes, prepared by a licensed surveyor or registered professional civil engineer, shall be submitted with the application. If slope is greater than 50 percent, enter 50 for S in the GSA formula.

...

d. *The maximum allowable GSA as calculated above may be increased as follows:*

...

ii. Add 300 square feet or 7.5 percent of the total lot area, whichever is less, for each vacant lot in the same Rural Village but not contiguous with the designated building site, provided that such lot(s): was (were) not previously retired; is (are) combined with other developed or developable building sites; and all potential for residential

development on such lot(s) is permanently extinguished, as required in subsection d.iv;

...

iv. Any CDP that includes an increase to the maximum allowable GSA pursuant to subsections d.i or d.ii shall include a condition requiring the applicant to submit sufficient evidence that all of the following steps have been completed for either one of the following two methods:

....

(B) Open Space Deed Restriction and Transfer in Fee Title to a Public Entity;

(1) The applicant shall provide evidence of the purchase of fee title or development rights on one or more sites that have not been previously retired or otherwise restricted, and the recordation of an open space deed restriction, recorded free of prior liens including tax liens and encumbrances which the Director determines may affect the interest being conveyed, that applies to the entirety of the site(s) used to increase the GSA, that insures that the future development on the lot(s) is prohibited and that restrictions are enforceable; and

(2) Evidence that fee title to the site(s) used to increase the GSA has been successfully transferred to a public entity after the recordation of the deed restriction listed in subsection (B)(1) above and that the document effectuating the conveyance has been recorded with the County Recorder. The permittee shall provide evidence that the ownership transfer and the open space deed restriction appear on a preliminary report issued by a licensed title insurance company for the site(s) used to increase the GSA.

e. All of the above procedures must be approved by County Counsel for form and legal sufficiency to assure that the purposes intended are accomplished.

f. Only those floor-area requirements for single-family residences contained in this LIP shall apply.

g. Any CDP approved for the construction of a structure(s) in a Rural Village shall include a condition requiring that any future improvements to the approved development will require an amendment or new CDP. The condition shall require the applicant to record a deed restriction free of prior liens, including tax liens and encumbrances which the Director determines may affect the interest being conveyed that applies to the entirety of the project site(s), that states that any future structures, future improvements, or change of use to the permitted structures shall be subject to a minor CDP, including but not limited to, any grading, clearing or other disturbance of vegetation shall require the approval of an amendment to the CDP or the approval of an additional CDP, and that the exemptions otherwise provided in subsections A.1 or A.2 of Section 22.44.820 shall not apply and that

the entirety of the development on the site shall be limited by the GSA. The permittee shall provide evidence that the deed restriction appears on a preliminary report issued by a licensed title insurance company for the project site.

h. The GSA cannot be modified other than through subsection c above.

...

Rural Villages

Throughout the Santa Monica Mountains coastal zone there are a number of areas that were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "Small Lot Subdivisions" or "Rural Villages", are comprised of parcels less than one acre in size, but more typically range from 4,000 to 5,000 sq. ft. The cumulative development constraints common to Rural Villages were documented by the Coastal Commission and the Santa Monica Mountains Comprehensive Planning Commission in the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development in the Santa Monica Mountains Coastal Zone". The study acknowledged that the existing Rural Villages can only accommodate a limited amount of additional new development due to major constraints to buildout of these areas. As such, the Commission and the County of Los Angeles have found that the total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources, particularly given the small size and steepness of most of the parcels. Future development of the small parcels in rural villages will result in tremendous increases in demand on road capacity, services, recreational facilities, beaches, water supply, and associated impacts to water quality, geologic stability and hazards, rural community character, and contribution to fire hazards.

In order to minimize the cumulative impacts associated with developing these parcels, the Los Angeles County-Santa Monica Mountains Local Coastal Program (LCP) includes Land Use Plan (LUP) Policies LU-13 and LU-32 requiring new development within Rural Villages to minimize individual and cumulative impacts to coastal resources by applying a Slope Intensity Formula to determine the allowable Gross Structural Area (GSA) on a property. Similarly, Section 22.44.2140.A of the Local Implementation Plan (LIP) details the formula for calculating GSA, and the Section also allows the maximum GSA to be increased through the extinguishment of development rights on lots within the same Rural Village as a subject site. This is because when a lot is retired within the same Rural Village, there is a reduced potential buildout and thus there is a reduction in the development pressures related to water usage, septic capacity, traffic, geologic hazards, and habitat loss. Section 22.44.2140 goes on to specify the process for extinguishing development rights on another lot as well as requiring that any CDP approved for construction in a Rural Village include a condition demonstrating that the development rights on lots used to increase the GSA have been extinguished. In addition, Section 22.44.2140 requires that any CDP approved for the construction of a structure in a Rural Village shall also include a condition requiring that a future improvements restriction be recorded against the property, which would require that any future structures, additions or improvements to the property be

reviewed by the County (or Commission, where applicable) to ensure compliance with the policies of the LCP regarding cumulative impacts.

Project Consistency

In the subject CDP amendment, the applicant is proposing to increase the existing maximum allowable GSA of 800 sq. ft. by an additional 600 sq. ft. through the retirement of development rights on two non-contiguous lots within the El Nido Rural Village to allow for after-the-fact approval of 600 sq. ft. of habitable space in the understory of the existing single-family residence (**Exhibit 3**). Consistent with LUP Policies LU-13 and LU-32 above limiting the amount of new development within Rural Villages as a means to protect coastal resources, new development on the project site is still constrained by the allowable GSA of 800 sq. ft. as calculated by the Slope Intensity Formula plus the previous extinguishment of development rights on another lot within the El Nido Rural Village. While allowable GSA within Rural Villages is limited pursuant to the aforementioned policies, Section 22.44.2140 of the LIP allows the GSA of properties within Rural Villages to be increased by 300 sq. ft. for each non-contiguous lot in the same Rural Village that has its development rights extinguished. Therefore, the proposal to increase the GSA by 600 sq. ft. through the extinguishment of development rights on two lots is consistent with Section 22.44.2140. Additionally, Section 22.44.2140 requires the extinguishment of development rights to be effectuated in one of two ways, either through an Open Space Easement Dedication and merging the retired lots with one or more adjacent developable parcel or through an Open Space Deed Restriction and transfer in fee title to a public agency. In this case, the applicant has purchased two vacant lots that are eligible for retirement and has submitted evidence that a public agency is willing to accept the subject retirement lots in fee title following recordation of an Open Space Deed Restriction over both lots.

In order to implement the applicant's proposal and ensure that the extinguishment of development rights has been properly completed, the Commission finds that the addition of **Special Condition 10** is necessary to ensure that the open space deed restriction recordation and transfer of the properties proposed to be retired is properly completed consistent with the requirements of the LCP. Additionally, minor modifications to **Special Conditions 8 (Cumulative Impacts Mitigation) and 9 (Revised Plans)** of the original CDP are necessary to delete the requirement to eliminate the basement area in order to reflect the addition of an understory basement area as proposed in this amendment request.

Section 22.44.2140 of the County's LIP also requires that a CDP for new development within a Rural Village shall include a condition requiring the recordation of a future improvements restriction stating that future structures, improvements, or change of use to the permitted structures shall require an amendment to the CDP or the approval of an additional CDP. Because a future improvements deed restriction was already recorded against the property pursuant to **Special Condition 5** of the original CDP consistent with the requirements of Section 22.44.2140, the restriction would continue to apply and an additional future improvements restriction is not necessary.

Lastly, Commission approval of the original CDP included **Special Condition 6**, which required the applicant to record a deed restriction imposing the terms and conditions of the permit as restrictions on the use and enjoyment of the property and provided any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property. Because the subject CDP amendment includes the addition of two new special conditions as well as minor modifications to existing special conditions, the original deed restriction recorded pursuant to Special Condition 6 will need to be superseded with a new deed restriction to ensure that all of the special conditions, including both new and modified conditions as well as the originally approved conditions, are effectively executed and recorded against the property. As such, the Commission finds that a modification to **Special Condition 6** is necessary to require the applicant to record a new deed restriction prior to the issuance of this CDP amendment that will supersede and replace the existing deed restriction recorded pursuant to the original permit action.

For the reasons set forth above, the Commission finds that the proposed amendment, as conditioned, is consistent with the policies and provisions of the Santa Monica Mountains LCP regarding cumulative impacts.

C. VISUAL RESOURCES

Policy CO-76 of the Santa Monica Mountains Land Use Plan states (in relevant part):

All new development shall be sited and designed so as to minimize grading...

Policy CO-80 of the Santa Monica Mountains Land Use Plan states (in relevant part):

New development shall be sited and designed to minimize the amount of grading consistent with the grading requirements of the LCP...

Policy CO-108 of the Santa Monica Mountains Land Use Plan states:

Site and design new development to minimize the amount of grading and the alteration of natural landforms.

Policy CO-114 of the Santa Monica Mountains Land Use Plan states (in relevant part):

New development shall be sited and designed to minimize the height and length of manufactured cut and fill slopes...

Policy CO-128 of the Santa Monica Mountains Land Use Plan states:

New development shall be subordinate to the character of its setting.

Policy CO-143 of the Santa Monica Mountains Land Use Plan states:

All new structures shall avoid large cantilevers or understories. Cantilevers and understories shall be maintained and covered with materials that blend with the surrounding landscape.

Policy LU-31 of the Santa Monica Mountains Land Use Plan states:

Within Rural Villages, limit the mass, scale, and total square footage of structures to minimize grading, landform alteration, and protect environmental and scenic resources.

Policy LU-38 of the Santa Monica Mountains Land Use Plan states:

Limit structure height to ensure protection of scenic resources and compatibility with surrounding settings.

Section 22.44.1250.B of the Santa Monica Mountains Local Implementation Plan states:

...every residence and every other building or structure in the Coastal Zone shall have a height not to exceed 30 feet above natural or finished grade, whichever is lower...

Policies CO-128 and CO-143 require new development to be subordinate to the surrounding landscape and avoid large cantilevers or large understories. Policy LU-38 limits the height of new structures to be compatible with the surrounding settings, and Section 22.44.1250.B specifically limits structure heights to 30 feet above natural or finished grade.

As previously discussed, the project site is located within the El Nido Rural Village, a dense subdivision of parcels less than 5,000 sq. ft. in size, and most parcels within the subdivision have been developed with primarily two-story, single-family residences. The subject parcel is located on a hillside within the interior of the subdivision; however, the site is situated northeast of Solstice Canyon Park and the Solstice Canyon Trail and is visible from public viewing areas in the park and along the trail. In order to minimize impacts on public views, **Special Condition 7** of the CDP required the residence to be finished in an earth-tone color that is compatible with the surrounding environment.

The subject CDP amendment request is for after-the-fact approval of a 600 sq. ft. habitable space in the understory of the existing single-family residence. Due to the location of the existing single-family residence within the interior of the Rural Village and the existing, developed two-story residences surrounding the parcel, the proposed understory will be compatible with the surrounding settings consistent with Policies CO-128 and LU-38. Additionally, the color of the as-built understory is consistent with the color palette and material specifications of existing **Special Condition 7**. As such, the proposed amendment is consistent with Policy CO-143.

Finally, Section 22.44.1250.B requires that every building or structure in the Coastal Zone shall have a height not to exceed 30 feet above natural or finished grade; however, Commission approval of the original CDP (prior to certification of the Santa Monica Mountains LCP) allowed for a single-family residence at a maximum height of 30'-11". Because the proposed understory will be located completely within the profile of the approved single-family residence there will

be no change in the height approved by the Commission and there will be no change in the visual profile of the structure.

In addition to the requirements above requiring new development to be subordinate to the surrounding landscape, the LUP also requires new development to limit the amount of grading. Policies CO-76, CO-80, and LU-31 require new development to minimize grading, and Policies CO-108 and CO-114 specifically require new development to be sited so as to minimize the alteration of natural landforms and minimize the height and length of cut and fill slopes.

The CDP previously approved by the Commission included development of an 800 sq. ft. single-family residence with attached garage and deck. No grading was included in the Commission's approval of the project. As a result of the steeply downward sloping natural grade of the site, the construction of the single story, single-family residence at the highest elevation created an understory area by including walls around the foundation system that is reflected on the approved site plan for the original project. However, the Commission's original approval of the project required that no interior or exterior access to this understory be allowed and required that the slope within the understory area be left in its natural topography since substantial enclosure and finishing of the understory area would otherwise require the retirement of additional lots to increase the site's GSA and the applicant was not willing to do that at the time. As discussed previously, the subject CDP amendment application now requests after-the-fact approval of a 600 sq. ft. habitable space in the understory area of the single-family residence. Construction of the habitable understory area required 43.68 cu. yds. of grading (all cut) and this minimal amount of grading is consistent with the mandates of Policy CO-76, CO-80 and LU-31 for new development to minimize grading. Additionally, because the understory area is located beneath the single-family residence and within the building profile previously approved by the Commission, the grading required for the new development will minimize the alteration of natural landforms, consistent with LUP Policies CO-108 and CO-114.

For the reasons set forth above, the Commission finds that the proposed amendment, as conditioned, is consistent with the policies and provisions of the Santa Monica Mountains LCP regarding visual resources and grading.

D. UNPERMITTED DEVELOPMENT

As previously mentioned, the proposed amendment request includes after-the-fact approval of a 600 sq. ft. habitable understory area that involved 43.68 cu. yds. of grading. In order to ensure that the development approved after-the-fact by this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions as a prerequisite to the issuance of this permit amendment, as required by **Special Condition 11**, and to do so within 180 days of the Commission action on this amendment. The Executive Director may grant additional time for good cause.

Although development has taken place prior to Commission action on this permit amendment, consideration of the application by the Commission is based solely upon policies of the certified LCP. Commission action on this permit amendment application does not constitute a waiver of any legal action with regard to the unpermitted development nor does it constitute an admission

as to the legality of any development undertaken on the subject site without a coastal development permit or permit amendment. Issuance of the CDP and compliance with all of the terms and conditions of this permit will result in resolution of the aforementioned violation of the Coastal Act on the subject property.

E. 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 modified by any conditions of approval, is consistent with any applicable requirement 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 proposed development may have on the environment.

The Commission incorporates its findings on conformity with Coastal Act policies at this point as if set forth in full. As discussed above, the project as proposed to be amended has been conditioned to be consistent with policies and provisions of the certified Santa Monica Mountains Local Coastal Program. No public comments regarding potential significant adverse environmental effects of the project amendment were received prior to preparation of the staff report. As specifically discussed in these above findings, which are hereby incorporated by reference, mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the activity may have on the environment, and the project will not have any significant impacts within the meaning of CEQA. Therefore, the Commission finds that the proposed amended development, as conditioned to mitigate the identified impacts, is consistent with the requirements of the Coastal Act to conform to CEQA.

4-06-001-A3 (Atlas Surrey, LLC)

APPENDIX A

Substantive File Documents:

File for CDP No. 4-06-001; File for CDP No. 4-06-001-A1; File for CDP No. 4-06-001-A2;
Certified Los Angeles County-Santa Monica Mountains Local Coastal Program.

APPENDIX B

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.

SPECIAL CONDITIONS:

1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicants agree to comply with the recommendations contained in the submitted geologic report (“Engineering Geologic Report,” Mountain Geology, Inc., December 15, 2003; “Engineering Geologic Update Letter,” Mountain Geology, Inc., December 2, 2005; “Geotechnical Engineering Investigation,” CalWest Geotechnical, January 21, 2004; “Update Geotechnical Engineering Report,” CalWest Geotechnical, December 8, 2005). These recommendations, including those concerning surficial stability, construction, foundations, grading, and drainage, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

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

2. Drainage and Polluted Runoff Control Plans

Prior to the Issuance of the Coastal Development Permit, the applicants shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

3. Landscaping and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicants shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) 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 October 4,

1994. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. 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) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
 - 5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
 - 6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- B) Interim Erosion Control Plan
- (1) 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 project site with fencing or survey flags.
 - (2) 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. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicants shall submit for the review and approval of 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 performance standards specified in the landscaping plan approved pursuant to this permit, the applicants, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

4. Wildfire Waiver of Liability

By acceptance of this permit, the applicants agree to indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

5. Future Development

This permit is only for the development described in Coastal Development Permit No. 4-06-001. Pursuant to Title 14 California Code of Regulations §13250(b)(6), the exemptions otherwise provided in Public Resources Code §30610(a) shall not apply to the entire parcel. 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 and fencing, other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition No. 3 shall require an amendment to Coastal Development Permit 4-06-001 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Deed Restriction

Prior to issuance of the coastal development permit **amendment**, the applicants 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 **that will supersede and replace the existing deed restriction recorded pursuant to the original permit action**, 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.

7. Structural Appearance

Prior to the 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 Coastal Development Permit No. 4-06-001. The palette samples shall be presented in a format not to exceed 8½” x 11” x ½” in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal

Development Permit No. 4-06-001 if such changes are specifically authorized by the Executive Director as complying with this special condition.

8. Cumulative Impacts Mitigation

Prior to issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, evidence that all potential for future development has been permanently extinguished on any lot within the El Nido small lot subdivision, or within the Malibu Bowl small lot subdivision, to comply with the requirements of the slope intensity formula in accordance with Policy 271(b)(2) of the previously certified 1986 Malibu/Santa Monica Mountains Land Use Plan provided such lot is either a) legally merged with an adjacent developed or developable parcel(s) or b) dedicated in fee title to a public agency. The maximum allowable gross structural area of 500 sq. ft. may be increased by 500 sq. ft. upon extinguishment of development rights on a lot contiguous to the building site, or by 300 sq. ft. upon extinguishment of the development rights of a lot that is not contiguous to the subject lot but which is within the El Nido small lot subdivision or within the Malibu Bowl small lot subdivision, consistent with this special condition. Should the applicants fail to submit the evidence of lot extinguishment required by this Special Condition, the applicants must submit plans demonstrating that the maximum gross structural area for the residence is no more than 500 sq. ft., consistent with subsection **a.** of Special Condition Nine (9) below.

9. Revised Plans

Prior to the issuance of the coastal development permit, the applicants shall submit, for the review and approval of the Executive Director, revised project plans that:

- a. demonstrate that all substantially enclosed residential and storage areas, excluding garages or carports designed for storage of autos, shall not exceed the maximum allowable gross structural area of 500 sq. ft. The plans may reflect an increase in square footage for lots that have been retired in accordance with **Special Condition Eight (8)** above (300 sq. ft. for a lot which is not contiguous to the building site but which is within the El Nido small lot subdivision or elsewhere within the Corral Canyon watershed).

10. Cumulative Impacts Mitigation

Prior to issuance of the coastal development permit amendment, the applicant shall submit, for the review and approval of the Executive Director, evidence that all potential for future residential development has been permanently extinguished on APNs 4457-017-008 and 4457-017-009 within the El Nido Rural Village to allow the maximum allowable gross structural area of 800 sq. ft. to be increased by 600 sq. ft. in accordance with Section 22.44.2140 of the Santa Monica Mountains Local Coastal Program, provided such lots are deed restricted and transferred in fee title to a public agency consistent with the following:

- a. **The applicant shall provide evidence of the purchase of fee title or development rights on two lots that have not been previously retired or**

otherwise restricted, and the recordation of an open space deed restriction, recorded free of prior liens including tax liens and encumbrances which the Executive Director determines may affect the interest being conveyed, that applies to the entirety of the lots used to increase the GSA, that insures that the future development on the lots is prohibited and that restrictions are enforceable; except for:

- 1. Brush clearance required by Los Angeles County for permitted structures on adjacent parcels;**
- 2. Planting of native vegetation and other restoration activities, if approved by Los Angeles County in a Coastal Development Permit;**
- 3. If approved by Los Angeles County in a new coastal development permit:
 - a) Construction and maintenance of public hiking trails; and**
 - b) Construction and maintenance of roads, trails, and utilities consistent with existing easements.****

and

- b. The applicant shall provide evidence that fee title to the lots used to increase the GSA has been successfully transferred to the Mountains Recreation and Conservation Authority after the recordation of the deed restriction listed in subsection (a) above and that the document effectuating the conveyance has been recorded with the County Recorder. The permittee shall provide evidence that the ownership transfer and the open space deed restriction appear on a preliminary report issued by a licensed title insurance company for the lots used to increase the GSA.**

11. Condition Compliance

Within 180 days of Commission action on this coastal development permit amendment 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 amendment. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.