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**SMMC
Item 14
Attachment
April 25, 2011**

November 23, 2009

California Coastal Commission
89 South California Street, Suite 200
Ventura, California 93001-2801

Sweetwater Mesa-Malibu Five Estate Project Application Nos.

4-07-067 Lunch Properties

4-07-068 Vera Properties

4-07-146 Mulryan

4-07-147 Morleigh Properties

4-07-148 Mulryan and Morleigh Properties

4-08-043 Ronan Properties

Dear Commission Members:

As the principal State planning agency for the Santa Monica Mountains zone, the Santa Monica Mountains Conservancy (Conservancy) offers the following comments on the six above-referenced, fully-integrated Coastal Development Permit applications in Malibu. The six parcels involved are an integral part of a public viewshed with statewide significance that is within reach of over ten million Los Angeles metropolitan area residents and thousands of tourists. Our staff has worked with the applicants' representatives and they have been most forthcoming with information.

Unfortunately, it is impossible to construct the five homes strung over a mile of ridgeline and 7,800 feet of water main without resulting in unavoidable significant adverse visual and ecological impacts. The only combination of homes that could be constructed without such unavoidable significant adverse impacts is Application 4-07-067 (Lunch) as proposed and Application 4-07-068 (Vera) if the house is removed from the ridgeline. These homes would need to be on wells.

The applicant's representative will show a Vera Property constraints analysis showing that the alternative location is on landslide material and would be more visible from the

northwest. We disagree with this visibility conclusion and contend that the adjacent proposed access road is far more geologically constrained than this alternative, off-ridge house site.

The remaining three applications rely on a section of road that is wholly inconsistent with many key sections of the Coastal Act addressed below. A place exists to put a house on APN 4453-005-092 (Application 4-07-146) below this extreme section of road. However, the applicant's representatives have told our staff that landslide conditions would make such a house too costly to secure to bedrock. Under that conclusion (which we disagree with) APN 4453-005-092 is an unbuildable parcel. That misfortune of the applicant should not be balanced on the back of the public's Coastal Zone resource by rewarding him with a buildable replacement lot. The economic cost of meeting Coastal Act provisions is not a Coastal Act issue. Cost is also not a valid reason for failure to meet the hazard, visual, and habitat policies of the Act. In addition LEED certified construction is good, but it is not required under the Coastal Act nor is it a substitute for meeting Coastal Act policies.

Need for Independent Analysis of Road Feasibility as Proposed

For the following reasons we urge the Commission to require an independent investigation on the construction feasibility of the entire one-mile-long section of road that is proposed to connect the five subject houses from the Malibu City line. The Commission staff has not received adequate information on the feasibility of the access road proposed to reach the Ronan (Application 4-08-03), Morleigh (Application 4-07-147), and Mulryan (Application 4-07-146) properties as it is depicted on the detailed plan set submitted to the Commission staff.

Our staff has consulted with a grading expert and has reason to believe that the grading impacts that would result from the road are far more extensive than represented. For example, the excavation behind the retaining walls for the proposed 500-foot-long and 50-foot-high cut slopes does not appear to be represented in the earth work calculations. In addition, where the steep road section begins a 19 percent and 1,000-foot-high climb, the plans show a large section of fill designed to reduce the grade. This fill is placed on the same ancient landslide material that according to the applicant's representatives is not suitable for a house. In such case, the area beneath the fill must be excavated and re-compacted before fill is placed on top. This additional excavation is on a slope and would result in a significantly larger grading footprint than represented on the submitted grading plans. We believe that even a brief consultation with Los Angeles County geologists would confirm this fact.

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The scores of piles represented as necessary to support this extreme section of road would also take several years to install. The applicant's figures that this road can be put in with just 43,260 cubic yards of cut seem to be underestimated.

Our understanding is that a road with a 19 percent grade over a stretch of 1,000-feet must have several 50-foot-long grade breaks with a nine percent grade. A 20 percent road requires such grade breaks every 150 feet. The proposed road has none.

Across the Board Inconsistencies with the Coastal Act

The Coastal Act is the standard of review for the subject projects. None of the five projects is consistent with the Coastal Act. Each of the five projects is inconsistent with Section 30240 because each would result in permanent and significant disruption of Environmentally Sensitive Habitat Area (ESHA).

Each project requires an average of 1800-feet of permanent twenty-foot-wide road through ESHA, resulting in a per project average of 36,000 square feet of direct permanent ESHA impact area without including retaining wall excavation, cut and fill slopes, and drainage dissipaters. In addition approximately 5,000 feet of total driveway length will require ten feet of brush clearance on each side. That clearance alone creates another 100,000 square feet of permanent ESHA impact, equivalent to ten 10,000 square-foot building sites. These driveways are not LEED-certified.

Each project also is inconsistent with Section 30250 because each does not locate development in close proximity to either existing development or adequate public services. Instead, individually and cumulatively, the projects would result in adverse impacts to coastal resources. The request for a 7,800-foot-long water line best illustrates this inconsistency.

All five projects are not consistent with Section 30251 because the scenic and visual qualities of the property are considered a resource of public importance. All five projects would cause major alterations to natural landforms and would result in a significant diminution of public viewsheds. All but the highest house (Ronan Application 4-08-03) requires a minimum of 751 feet of new 20-foot-wide roadway construction on each subject parcel. The average amount of common roadway on the four other parcels is 1,818 feet. Driveways of that length are completely antithetical to the resource preservation purposes of the Coastal Act.

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All five projects are located deep into a wildland fire zone and do not minimize risk to life and property in an area of high fire hazard, which is inconsistent with Section 30253. It is hard to imagine a project or set of projects that could be more inconsistent with this Section. If the Mulryan 4-07-146, Morleigh 4-07-147, and Ronan 4-08-043 applications are approved, the value of this Section of the Coastal Act would be greatly eviscerated. If these three applications are approved without an independent analysis of the feasibility of their access road, it would be further eviscerated.

Takings Issues

In its assessment of the five subject home applications and the sixth Lot Line Adjustment application (04-07-148), we urge the Commission to consider the following linkages between the six projects. They all have the same consultants and spokesperson. They all have shared easements and provide symbiotic components to each other—such as offsite hammerhead road turnarounds, drainage dissipaters, and utilities. Nobody is fooled by the separation of the projects. Only archaic protections for LLLPs prevent full disclosure of the actual property ownership or else this project would be addressed under the California Environmental Quality Act (CEQA) as a single project.

The applicant derives numerous advantages from this CEQA immunity and suffers no pitfalls. Beautiful LEED certified homes do not balance out a continuous chain of average 1,800-foot-long driveways into a core habitat of the Coastal Zone portion of the Santa Monica Mountains .

The Conservancy asserts that because each of the projects is inconsistent with the Coastal Act, each project can only be approved under the takings clause. Because of the severity of the potential ecological and visual impacts, we assert that a thorough analysis of the takings value of each project must be conducted prior to the upcoming public hearing to determine, based on the cost and ownership of each parcel, the basis for reasonable investment-backed expectations.

Such an analysis must address what the applicants paid for the properties. It is our understanding that the only property that has changed ownership since the current applicants took title is the Lunch Properties LLLP, which was formerly owned by Morleigh Properties LLLP. What was the nature of this exchange?

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This letter puts forth feasible alternatives for reasonable economic use of the Vera and Mulryan properties. Houses are routinely built on areas with similar safety factors, although they are less desirable to the applicant(s). There is no takings issue with a denial of applications 04-07-068 and 4-07-146.

A place exists to put a house on Mulryan (APN 4453-005-092 Application 4-07-146) below the most difficult section of road without a lot line adjustment. We assert that a house with 50-foot deep caissons can easily be located in this broad “meadow” outside of ESHA. If the applicant is correct that this proposal is impossible, then we urge the Commission not to approve Application 04-07-148, which is a lot line adjustment that shifts the Mulryan house over 800 feet north and 350 feet higher.

It is not a good public policy decision to reward those who buy an unbuildable lot with a site worth a lot of money. Why would the Commission approve a lot line adjustment that facilitates one-half-mile of additional roadway to two lots deep into a significant viewshed and core habitat area? There is no automatic entitlement to a lot line adjustment and therefore no takings issue with a denial of applications 04-07-148 and 4-07-146.

Again we urge the Commission to require an independent analysis of the proposed road feasibility north of the Lunch LLLP site. If that analysis shows the road as infeasible as proposed, then the onus is on the applicants to show that applications 4-08-043 (Ronan) and 4-07-147 (Morleigh) are viable and no takings issue has to be addressed.

Project Setting

The subject Sweetwater Mesa ridgeline, located just east of Malibu Creek State Park, is the most prominent landform along the coast between Topanga Canyon Boulevard (SR 27) and the Ventura County line, other than the main spine of Santa Monica Mountains itself. This north-south trending ridgeline is flanked by the 11,000-acre Malibu Creek State Park core habitat to the west and is part of a 2,900-acre roadless habitat block (see attached figure). Many square miles of both roadless and trail-less Coastal Zone wilderness surround the five proposed ridgeline compounds and their greater-than-one-mile-long access road.

The following spatial examples of the extent of this roadless area (shown on the attached figure) illustrate the remoteness of the five subject parcels. For example, the shortest line from Malibu Canyon Road, through the property, to the most westerly homes in Carbon Canyon is 2.3 miles as the crow flies. The roadless area is so wide at one point that a 3.75-mile-long line can be drawn through the property from Malibu Canyon Road to Rambla

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Pacifico Street. This line spans three distinct Santa Monica Bay watersheds. The attached oblique aerial photograph of the subject ridgeline shows these spatial relationships.

Major Transformation of Core Santa Monica Mountains Natural Area

The combination of a greater than one mile long road (with up to 70-foot-high and 500 foot-long fill slopes), five houses averaging 9,460-square-feet, and a 7,800-foot-long water line (with accompanying access road) represents a dramatic change for this easternmost extension of the Malibu Creek core habitat area. Add 2.7 acres of paved road surface, several acres of fill slopes with concrete V-ditch systems (like a mass graded subdivision has), and over 11.5 acres of permanent brush clearance and the subject 156 acres have gone through a huge transformation.

Policy 68 of the Malibu LUP states, “Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.”

Policy 91 of the Malibu LUP states, “All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.”

Visibility of Each Project from Public Areas

All of the houses and driveway segments will be plainly visible from public areas. The applicant has made a valiant effort to blend the houses into the landscape but there is no way to make a 9,000-square-foot house with lots of windows invisible. During some times of day the houses would not be distinguishable but other times of day the sun angle would make them obvious. Plus the naked eye picks up details that photographic simulations do not.

A minimum of three houses will be clearly visible from Pacific Coast Highway, Malibu Lagoon State Park, Malibu Legacy Park, Malibu Bluffs Park, and Malibu Canyon Road. Several of the houses and driveway segments also will be visible from the proposed Coastal Slope Trail. This alignment courses through the southern end of the 156-acre property.

The viewshed impacts from this trail will be visible both from the Malibu Canyon side and from the Las Flores Canyon Road, Carbon and Coal Canyon trail sections.

Four of the five houses are located on the primary ridgeline. The southernmost house (Vera LLLP) can indisputably be moved off of the ridgeline and closer to the access road. This change would significantly reduce grading, impacts to ESHA and visual impacts. There is no justification under the Coastal Act not to relocate this house off of one of the most prominent ridgelines in the Santa Monica Mountains.

Less Obvious Impacts to be Analyzed

Any homes on the subject 156-acre site will be set against a dark sky in a light-element-free landscape spanning many square miles. Currently the site is comprised of unimpeded core habitat for animals and an unmarred daytime and nighttime viewshed. Because of the site's statewide significance, a nighttime viewshed analysis for each home compound is critical to understand permanent potential impacts. That impact analysis also must extend to the potential adverse impact on core habitat carrying capacity for insects, mammals, and reptiles.

The proposed greater-than-one-mile-long road essentially severs the subject 2,900 acre roadless area with a twenty-foot-wide path of pavement, guard rail structures, massive long retaining walls, numerous cut and fill slopes, concrete V-ditch systems, and energy dissipaters.

It is imperative that there be immutable conditions that no portion of the greater-than-one-mile-long road be lit in any manner.

Even with just a 150-foot-radius brush clearance zone around the center of each housing compound (not around the edge of the habitable structures as usually calculated at 200 feet) and just 10 feet of brush clearance on each side of the road, the project will produce a minimum of 11.5 acres of permanent fuel modification zone.

As proposed, any single proposed house with its associated section of roadway would result in an unavoidable significant adverse impact to a viewshed of statewide significance. When you add the minimum 2.25 acres of additional fuel modification zone per home on a ridgeline, the degree of those significant visual impacts substantially expands.

The applicants may say that the fuel modification zones will be greatly irrigated. Irrigation would help mitigate the visual impact but would result in extensive permanent use of water supplies. If the 7,800-foot-long waterline from Costa del Sol is denied by the Commission, requiring the five homes to use wells and trucked-in water, it is likely that extensive fuel modification irrigation will make those wells go dry and prevent implementation of the permanent irrigation mitigation measures. In addition, the ground water pumping could have adverse ecological impacts. Irrigation of fuel modification zones creates additional impacts in the semi-arid Santa Monica Mountains. Most importantly irrigation spreads the reach of Argentine ants and does alter the natural composition of native plant species in an area. On balance, fuel modification zone irrigation is a potential mitigation measure that unfortunately results in unavoidable additional adverse impacts.

The net result is that the houses should be clustered in the southern third of the 156 acres to share fuel modification zones and be closer to better potential groundwater sources and potential arrangements with Water Works District No. 29.

No one is forcing the applicant to build at the highest elevation sites. The water issues associated with this choice should not result in otherwise avoidable visual and ecological impacts to the Public Trust.

Growth-Inducing, Visual, and Ecological Impacts of 7,800-Foot-Long Water Main

The applicant's proposal to run an eight-inch water main to the site from the north with an accompanying dirt access road is fraught with additional growth-inducing, visual and ecological impacts. The applicant is using the same legal maneuver to run the water line to the farthest house. We urge the Commission to deny Application No. 4-07-068, which includes the whole 7,800-foot waterline extension.

The waterline would serve all five houses and clearly many other existing and potential new houses between Piuma Road and the site. The potential future impacts of the line far exceed the obvious impacts of the current proposal. Our concern is not so much that the waterline access road itself with all its retaining walls would facilitate growth. It is that the water will be brought into the proximity of an area with limited development. Many acres of ESHA would be disturbed by the pipeline.

Short of doing a pro forma for each potential undeveloped private parcel benefiting from the water line extension, it is speculation whether the new water availability would increase development. However, many of the houses in the subject neighborhood have failing wells

and require supplemental trucked-in water in the summer. That fact says a lot about whether or not a new water main could facilitate new residential development. The applicants downplay the catalyst of extending a new water main.

In addition, where houses already exist on private parcels, proximity to a new water main increases the likelihood of more agricultural, equestrian, non-native landscaping-type uses along with economic justification for expanded structure sizes and guest houses.

It is a circular argument to assert that wells are not feasible because piped water reduces impacts and improves fire fighting. That argument is a rationale to plumb the Santa Monica Mountains National Recreation Area.

Need for Conservation Easements on Every Lot

The statewide visual and ecological significance of the site warrants permanent protection of all areas not approved for development. The only way to guarantee such permanent protection is with conservation easements to public park agencies. The Mountains Recreation and Conservation Authority (MRCA) or the National Park Service are the most appropriate agencies.

The conservation easements must prohibit all disturbance other than fire department required fuel modification within 200 feet of habitable structures. Drip irrigation of native plants species approved by the easement holder should be the only other allowed use. It is critical that no non-native plants, lighting, pathways, or fencing of any type be allowed in the easements.

We urge the Commission to require a direct dedication of these easements and that the legal descriptions for the easements be drawn within 15 feet of any approved development.

We also urge the Commission to require limited conservation easements over all of the subject access roads and driveways to prevent any future road or driveway lighting. Such lighting, even if minimal, would greatly alter the impact footprints of the projects.

Impact of Road Through MRCA Fee Simple Parkland

We urge the Commission and staff to require all possible mitigation measures to reduce the visual and ecological impacts of the required road through MRCA parkland.

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Need for Coastal Slope Trail Dedication

The attached Coastal Slope Trail alignment through the subject property is critical for a functional trail of regional significance. The proposed trail alignment goes through two of the subject lots APNs 4453-005-092 and 018 (Applications 4-07-068 and 4-07-146). One of those applications is associated with the discretionary waterline and the other one with the discretionary lot line adjustment.

We urge the Commission not to approve any projects involving APNs 4453-005-092 and 018 without adequate trail easements on both of the subject parcels. Fortunately the proposed trail is located as far away from those two proposed houses as possible.

Adequate trail easements should be broad enough to guarantee optimal trail alignment and the ability to make adjustments if there are land failures. Said easements must be a minimum of 100-foot-wide running along the parcel boundaries.

The trail easements must come as direct dedications to the MRCA or the National Park Service.

The applicant has proposed to the MRCA that the Coastal Slope Trail alignment only cross the access road once. The current alignment has it crossing three times as the trail switchbacks up slope. A ten percent grade is the maximum multi-agency standard for new trails. That grade reduces erosion and maintenance costs and the overall user experience is better and much safer for equestrians. We believe the applicant's suggested alignment will work, but cannot confirm that yet.

The applicant's suggestion for a single road-trail interface requires a retaining wall ramp leading up to the raised roadbed. The other side the trail exits onto a cut slope. The grade of the applicant's proposed trail is not known at this time. Clearly a compromise solution must be achieved to not require any section of trail to exceed ten percent grade. We applaud the applicant's effort to create a functional and scenic trail alignment.

Please address any questions to Paul Edelman of our staff at the above address and by phone at (310) 589-3200 ext. 128.

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Sincerely,

A handwritten signature in purple ink, appearing to read "R. P. Schafer", is positioned above the printed name.

RONALD P. SCHAFER

Chairperson