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**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 89 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
 (805) 641-0142

Filed: 10/14/98  
 49th Day: 11/30/98  
 180th Day: 04/10/99  
 Staff: MH-V  
 Staff Report: 10/15/98  
 Hearing Date: 11/3--6/98

**STAFF REPORT: PERMIT AMENDMENT****APPLICATION NO.: 5-91-436 (Remand)-A1****APPLICANT: Rancho Malibu      AGENT: Judy Davidoff, Esq., Baker & McKenzie****PROJECT LOCATION:** Encinal Canyon Road, approximately 2.2 miles north of the intersection of Encinal Canyon Road and Pacific Coast Hwy., Malibu (Los Angeles Co.)**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Subdivision of a 254.5 net acre parcel on 8 separate parcels into 51 single-family lots plus one lot for a sewage treatment plant, one road lot, 3 open-space lots, equestrian trail, development of roads, building pads, utilities, on-site sewage treatment plant, and 830,000 cubic yards of grading (415,000 cubic yards of cut and 415,000 cubic yards of fill).**DESCRIPTION OF AMENDMENT:** Subdivision of 254.5 net acre parcel into 46 (from 51) single-family lots, 3 open space lots, 1 sewage treatment lot, and 1 road lot, and 824,200 cubic yards of grading, (412,100 cubic yards of cut and 412,100 cubic yards of fill, a reduction in grading of 5,800 cubic yards). The area disturbed by grading and construction is reduced from 38.5 acres to 38.3 acres. (See Exhibits 1-3).**LOCAL APPROVALS RECEIVED: N/A****SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permits: 5-91-436 (Rancho Malibu) and 5-91-436 (Remand); Malibu/Santa Monica Mountains Land Use Plan; CEQA Environmental Findings for Conditional Use Permit 91-315 and Oak Tree Permit 91-315, Vesting Tentative Tract No. 46277 (Revised), State Clearinghouse No. 88050410, February, 1998.**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

**In this case, the Executive Director has determined that the proposed amendment is material.**

**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission determine that the approved project, as revised by the proposed amendment, is consistent with the requirements of the Coastal Act.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval**

The Commission hereby approves the amendment to the coastal development permit, as conditioned herein, on the grounds that the development is in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**NOTE:** All standard and special conditions attached to the previously approved permit attached hereto as Exhibit 4 remain in effect, except for Special Condition 3, which is hereby revised as follows:

**Existing Special Condition 3:**

**3. Future Grading for Single-Family Development**

Prior to issuance of the permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that the development of single-family residences and appurtenant structures shall be located within the graded pad areas or designated building areas on Lots No. 26 and 27 approved pursuant to this permit (as shown on Vesting Tentative Tract Map No. 46277, dated 6/1/93) and that any additional grading or placement of structures outside the graded area or designated building areas shall require a new coastal development permit from the Commission or its successor agency.

**Revised Special Condition 3:**

**3. Future Grading for Single-Family Development**

Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that the development of a single-family residence and appurtenant structures shall be located within the graded pad area or designated building area on Lot 23 approved pursuant to this amended permit (5-91-436 (Remand)-A1) (as shown on Revised Vesting Tentative Tract Map No. 46277, dated 6/1/93 and revised 4/7/98) and that any additional grading or placement of structures outside the graded area or designated building areas shall require a new coastal development

permit from the Commission or the applicable local government agency with a certified Local Coastal Program.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **II. Findings and Declarations.**

### **A. Amendment Description**

The project approved by the Commission on August 11, 1993, pursuant to application no. 5-91-436 (Remand) includes the subdivision of a 254.5 net acre parcel on 8 separate parcels into 51 single-family lots plus one lot for a sewage treatment plant, one road lot, 3 open-space lots, equestrian trail, development of roads, building pads, utilities, on-site sewage treatment plant, and 830,000 cubic yards of grading (415,000 cubic yards of cut and 415,000 cubic yards of fill).

The applicant's amendment proposes to subdivide the 254.5 net acre parcel into 46 (from 51) single-family lots, 3 open space lots, 1 sewage treatment lot, and 1 road lot, with 824,200 cubic yards of grading (412,100 cubic yards of cut and 412,100 cubic yards of fill, resulting in a reduction in grading by 5,800 cubic yards). (See Exhibits 1--3).

The subject site is located in the Malibu/Santa Monica Mountains area, in the southwesterly portion of Los Angeles County, northwest of Trancas Beach and east of Encinal Canyon. The site is approximately 1,400 feet from Pacific Coast Highway at its southernmost boundary.

Specifically, the proposed amendment would:

- Reconfigure Lots 26, 27, 6 and 40, deleting the building pads shown on previously approved Lots 26 and 27 as well as the access bridge to these lots (a building pad will be sited on new Lot 23 at the edge of former Lot 26 immediately adjacent to the pads on adjacent lots.
- Eliminate two lots located south of Rocky Point Place by adjusting lot lines to reduce the total number of lots south of Rocky Point Place from 19 to 17.
- Eliminate one lot in the vicinity of the northwest corner of Rancho Malibu Road and Lois Land by combining Lots 36 and 37.
- Reconfigure lots located northeast of the intersection of A Street and Lois Lane to comply with the direction of Los Angeles County to the applicant to relocate Lots 26 and 27 into the main development envelope.
- Reduce total grading volumes by 5,800 cubic yards.
- Reduce the total development envelope from 38.5 acres to 38.3 acres.
- Reduce the project's visual impacts on the view corridor of Charmlee Park
- Reduce project impacts on the Steep Hill Canyon ESHA by relocating development 250 feet further away from the creek and removing the access bridge across the creek that was previously required to access the parcels shown as Lots 26 and 27 on the eastern ridge.

**B. Background**

In September 1990 the applicant originally submitted an application (5-90-650) for a 69-lot subdivision with 3,828,000 cubic yards of grading (1,978,000 cubic yards of cut and 1,850,000 cubic yards of fill). The project was scheduled for a December 1990 Commission hearing. Staff recommended denial of the proposed project at that time due to the amount of grading and landform alteration, visual impacts and impacts to biotic resources posed by the project. The applicant postponed the hearing and eventually submitted revised plans which reduced grading to 3,093,000 cubic yards, reduced pad sizes and shortened the length of the access road. Staff still felt that the potential impacts to coastal resources posed by the project were not adequately mitigated and continued to recommend denial. At a scheduled hearing in March 1991, the applicant requested a second postponement and subsequently withdrew the application.

The applicant then submitted a new application, 5-91-436, with revised plans proposing 55 lots and 1,014,000 cubic yards of grading in June 1991. The Commission approved that proposal with extensive special conditions on July 18, 1991.

The original permit holder, Anden/VMS Rancho Malibu Venture, assigned the permit to BMIF/BSLF II Rancho Malibu Limited Partnership in December of 1992. The new permit holder is a publicly traded real estate trust managed by Banyan Management Corp., with individual shareholders in California and elsewhere.

Following Commission approval of the coastal development permit in July, 1991, the project was subsequently remanded back to the Commission as the result of a court order in the case of City of Malibu v. California Coastal Commission, et al., Ventura County Superior Court, No. 119633. This litigation involved a challenge by the City of Malibu to the Commission's July, 1991 permit approval. The court focused on impacts related to development on the eastern ridge, including visual impacts, landform alteration/grading impacts, and impacts on the Steep Hill Canyon Environmentally Sensitive Habitat Area (ESHA). The court ordered the Commission to set aside its decision to approve the permit and to reconsider the project in light of the decision.

The Commission approved 5-91-436 (Remand) on August 11, 1993. Approved project revisions in response to the court's decision included a reduction in grading from the 1,014,000 cubic yards previously approved to a total of 830,000 cubic yards. The reduction in grading was achieved by eliminating all development, except for two single-family lots, on the eastern ridge, realigning the entrance road, and reducing the road standards. The number of residential lots was reduced from 55 to 51 and the average pad size was reduced from 16,297 sq. ft. to 13,980 sq. ft. The Commission's decision on remand was also challenged and was upheld by both the trial court and court of appeal.

Additional litigation subsequently ensued in which the Commission was not involved as a party. The proposed amendment request presently under consideration stems from a resultant settlement agreement between the parties in that litigation. See Statement of Decision, La Chusa Highlands Property Owners Association, Inc. v. County of Los Angeles; Board of Supervisors of County of Los Angeles, Los Angeles County Superior Court Case No. BS039789, (Exhibit 5). A key issue

in the lawsuit included the question of whether the County of Los Angeles had accurately applied its own fire code requirements in reviewing the cul-de-sac arrangement of the entrance and arterial roads of the subdivision. The parties agreed to eliminate two outlying lots (the controversial lots that remained on the eastern ridge of the subdivision after the remanded approval) as the result, as these lots posed particularly difficult challenges for emergency access and would have introduced ignition sources to the most remote reaches of the proposed subdivision. In addition, the removal of the outlying sites on the eastern ridge will result in a reduction in visual impacts in these areas and provide enhanced clustering of proposed development with other approved development.

### **C. Visual Resources and Landform Alteration**

Section 30251 of the Coastal Act states that:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

In addition, the certified Malibu/Santa Monica Mountains LUP includes the following policies regarding protection of visual resources, which may be used as guidance by the Commission and are applicable to the proposed development. The Commission as guidance, in the review of development proposals in the Santa Monica Mountains has applied these policies.

- P125** *New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.*
- P129** *Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.*
- P130** *In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:*
- *be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP;*
  - *minimize the alteration of natural land forms;*
  - *be landscaped to conceal raw-cut slopes;*
  - *be visually compatible with and subordinate to the character of its setting;*
  - *be sited so as not to significantly intrude into the skyline as seen from public viewing places.*

- P131** *Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.*
- P134** *Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.*
- P135** *Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.*

The proposed amendment eliminates the access road through Steep Hill Canyon and relocates the two outlying lots (previously Lots 26 and 27) from the eastern ridge of the property into the area northeast of the intersection of A street and Louis Lane Road. Six lots are now clustered in this area where four previously existed. Five other lots are eliminated within the main development envelope through lot combinations and reconfigurations. These modifications have resulted in a 5,800 cubic yard reduction in grading and a decrease in the total development envelope from 38.5 acres to 38.3 acres.

The applicant's proposed amendment would reduce visual impacts of the approved project by deleting two outlying building sites and the access road located on the eastern ridge in Steep Hill Canyon. The elimination of proposed development in this portion of the site will reduce the individual and cumulative landform alteration and visual effects of the project. In addition, the project's visual impacts as viewed from Charmlee Park will be reduced by eliminating certain lots that were visible from the Park and by lowering the elevation of other lots to remove them from the Park view corridor. Specifically, these changes will eliminate from view approximately 12 lots previously visible from Charmlee Park by preserving a knoll that would previously have been graded, eliminating one lot on the northern side of Rocky Point Place, and eliminating two lots and lowering the elevation of selected lots along the south side of Rocky Point Place.

Relocating the two lots from the eastern ridge to the area northwest of the intersection of A Street and Louis Lane will result in an increase in the development envelope in this area. The proposed grading necessary to construct Lots 23, 24 and 28 will result in an expansion of the development envelope in these areas by approximately 100 – 200 feet to the north. The grading for the building pads on Lots 23, 24 and 28 include cut slopes that extend 100 feet (maximum) upslope. Although the modifications will result in an expansion of the development envelope in this area, no additional public view impacts will result. In addition, resiting Lots 26 and 27 to the main development envelope eliminates the public view impacts that would have resulted from development on the eastern ridge, the most visually prominent ridge on the site. Furthermore, the overall development envelope has been reduced from 38.5 acres to 38.3 acres.

Special Condition Nos. 4 (Landscape and Erosion Control Plans) and 6 (Site Specific View Analysis for Single-Family Structures) remain in full force and effect, as do all other Special Conditions of Commission approval of CDP 5-91-436 (Remand) with the exception of Special Condition 3 as explained above. These conditions ensure that the visual impacts resulting from grading and construction of individual residences will be mitigated.

For these reasons, the Commission finds that the project, with the proposed amendment, will not result in significant, new adverse impacts to scenic public views in this area of the Santa Monica Mountains. The Commission further finds that the overall visual impacts of the project, with the proposed amendment, will be further mitigated by the elimination of the eastern ridge building sites and the lowering of the elevation of previously visible lots. Thus, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

**D. Geologic Stability and Hazards**

Section 30253 of the Coastal Act states in part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The Malibu/Santa Monica Mountains certified Land Use Plan also provides policy guidance, in regards to geologic hazards, as follows:

- P147** *Continue to evaluate all new development for impact on, and from, geologic hazard.*
- P148** *Continue to limit development and road grading on unstable slopes to assure that development does not contribute to slope failure.*
- P149** *Continue to require a geologic report, prepared by a registered geologist, to be submitted at the applicant's expense to the County Engineer for review prior to approval of any proposed development within potentially geologically unstable areas including landslide or rock-fall areas and the potentially active Malibu Coast-Santa Monica Fault Zone. The report shall include mitigation measures proposed to be used in the development.*
- P150** *Continue Hillside Management procedures as contained in Ordinance No. 82-0003 for proposed development on sites with an average slope greater than 25 percent (4:1). Grading and/or development-related vegetation clearance shall be prohibited where the slope exceeds 2:1, except that driveways and/or utilities may be located on such slopes where there is no less environmentally damaging feasible alternative means of providing access to homesites located on slopes of less than 50%, where no alternative homesites exist on the property, and where maximum feasible mitigation measures are taken.*

**Geologic Stability**

The revised vesting tentative tract map eliminates 20,000 cubic yards of previously approved grading by reducing lots from 51 to 46. An additional 11,000 cubic yards of grading are eliminated by the relocation of previously approved building sites on previously designated lots 26 and 27 (shown on Exhibit 3). 25,200 additional cubic yards of grading are required for lots designated as 23, 24 and 25 on the revised plan (Exhibit 3). The net change in grading is the elimination of 5,800

cubic yards of grading (2,900 cubic yards of cut and 2,900 cubic yards of fill) previously approved for the subdivision.

In addition to the reduction in total grading, the revised plan proposed pursuant to the applicant's amendment request clusters development with other approved building sites and reduces the overall development envelope from 38.5 acres to 38.3 acres of the total 254.5 net acres comprising the subdivision.

The proposed amendment also eliminates the previously approved bridge crossing of a blue line stream that was necessary to access building sites on Lots 26 and 27 as shown on Exhibit 2. This change will reduce hazards potentially caused by flooding conditions and will also avoid any potential impacts that may previously have been threatened to the sensitive habitat area of the stream corridor (Steep Hill ESHA).

The modified building envelope locates building pads within stable, competent geologic formations capable of supporting single family residences, based on the geological analysis prepared by Pacific Soils and Engineering and submitted in support of CDP application 5-91-436.

The special conditions of Coastal Development Permit 5-91-436(Remand) continue to apply to the permit as amended herein (except as noted above regarding Special Condition 3), and therefore all applicable mitigation measures previously required by the Commission for site stabilization, drainage and erosion control, landscape and fuel modification, and grading analysis and management continue to apply to the project and will ensure that all impacts associated with grading and construction of the project are mitigated. Therefore, the Commission finds the project as amended is consistent with Section 30253 of the Coastal Act.

### **Wild Fire**

As stated previously, the proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The proposed amendment eliminates the outlying building sites previously shown (Exhibit 2) on Lots 26 and 27 on the project's eastern ridge. These sites required a bridged access over a stream crossing. The elimination of construction in these outlying areas will not only concentrate development more closely within the core building envelope, but will eliminate the risks to life and property posed by establishing ignition sources in these areas and exposing residents to the potential difficulties and delays in emergency access to the sites. The resultant concentration of development therefore increases the overall emergency defensibility of the subdivision.

For all of the reasons set forth above, therefore, the Commission finds that the project, as amended and conditioned, is consistent with the applicable requirements of Coastal Act Section 30253.



**E. Environmentally Sensitive Habitat Areas**

Coastal Act Section 30231 and 30240 provide policies protective of Environmentally Sensitive Habitat Areas:

**Section 30231.**

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

**Section 30240.**

*(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

In addition, the certified LUP, which the Commission has relied on as guidance in past permit decisions, contains the following policies specifically applicable to riparian ESHAs:

**P 57** *Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.*

**P 72** *Open Space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.*

**P82** *Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*

***P 84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.***

***P 86 A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.***

A key change proposed by the applicant's amendment is greater consolidation of the building sites within the core development area and the resultant elimination of outlying building sites on the eastern ridge, near the environmentally sensitive habitat area and blue line stream identified as the Steep Hill ESHA. The parcels containing the ESHA were previously designated as Lots 26 and 27 on Exhibit 2. The remaining building site on new Lot 23 (see Exhibit 3) has been setback as far as possible from the ESHA, for a total buffer area of 700 feet (previously only 450 feet) from the creek. In addition, the previously approved bridge crossing spanning the blue line stream has been completely eliminated. This change eliminates any adverse effects on the sensitive riparian habitat that may have been caused by construction or maintenance activities associated with the bridge.

As noted above, **Special Condition 3** as revised herein requires the applicant to record a deed restriction agreeing to seek a new permit for any additional grading or placement of structures that may be considered for Lot 23 (as shown on Exhibit 3) in the future. This condition ensures that potential impacts to the sensitive habitat areas of Lot 23 are specifically considered before any additional development of the site could be approved.

In addition, the amendment reduces total grading by 5,800 cubic yards and reduces the total area disturbed by development from a total of 38.5 to 38.3 acres, thereby reducing the cumulative effects of grading and habitat disturbance of the project as a whole.

For these reasons, the Commission finds that by consolidating development, reducing disturbance near the Steep Hill ESHA, and requiring future scrutiny of any additional development of Lot 23 (revised Special Condition 3), and conformance to the special conditions that continue to apply pursuant to the Commission's previous permit approval, the project is therefore consistent with the applicable requirements of Coastal Act Sections 30231 and 30240.

#### **F. Local Coastal Program**

Section 30604(a) of the Coastal Act states that:

***Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project, as amended, will be in conformity with the provisions of Chapter 3 if certain conditions and revised conditions continue to be incorporated into the project and accepted by the applicant. As amended, and as conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3.

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

**G. California Environmental Quality Act**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, 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 effects which the activity would have on the environment.

The proposed development, as amended and as conditioned, will not have any significant adverse effects on the environment, within the meaning of CEQA. Therefore, the Commission finds that the proposed project, as amended and as conditioned, has been adequately mitigated and is consistent with CEQA and with the policies of the Coastal Act.

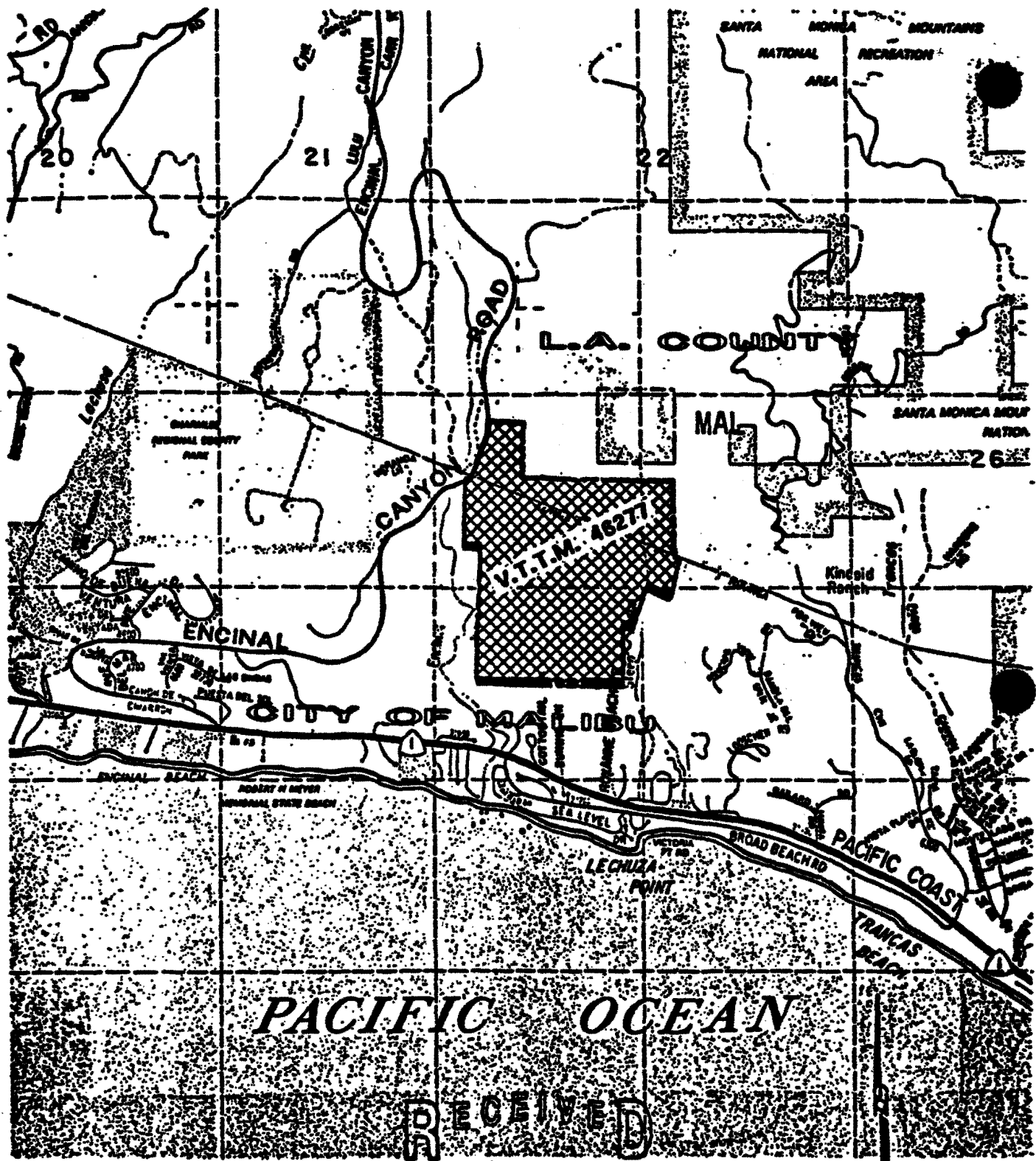


EXHIBIT NO. 1  
 APPLICATION NO.  
 5-91-436  
 Vicinity Map  
 California Coastal Commission

JUL 26 1993  
 CALIFORNIA  
 COASTAL COMMISSION  
 SOUTH COAST DISTRICT

**VICINITY MAP**

EXHIBIT NO. 1  
 APPLICATION NO.  
 Rancho Malibu  
 5-91-436 (Remand)-A1  
 Vicinity Map



COASTAL COMMISSION 51 RESIDENTIAL LOT PROJECT

RECEIVED

OCT 1 1991

COASTAL CC  
SOUTH CENTRAL

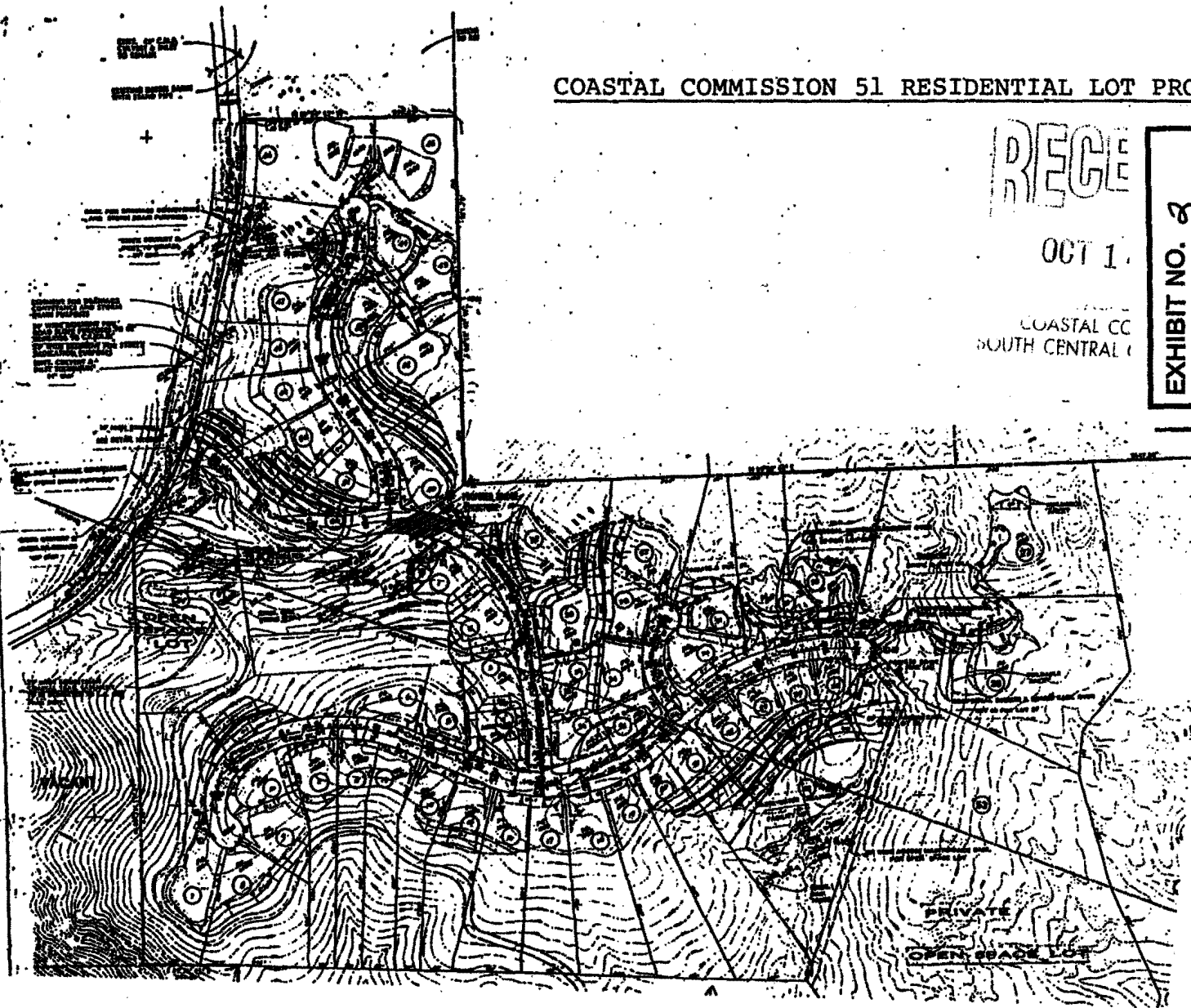
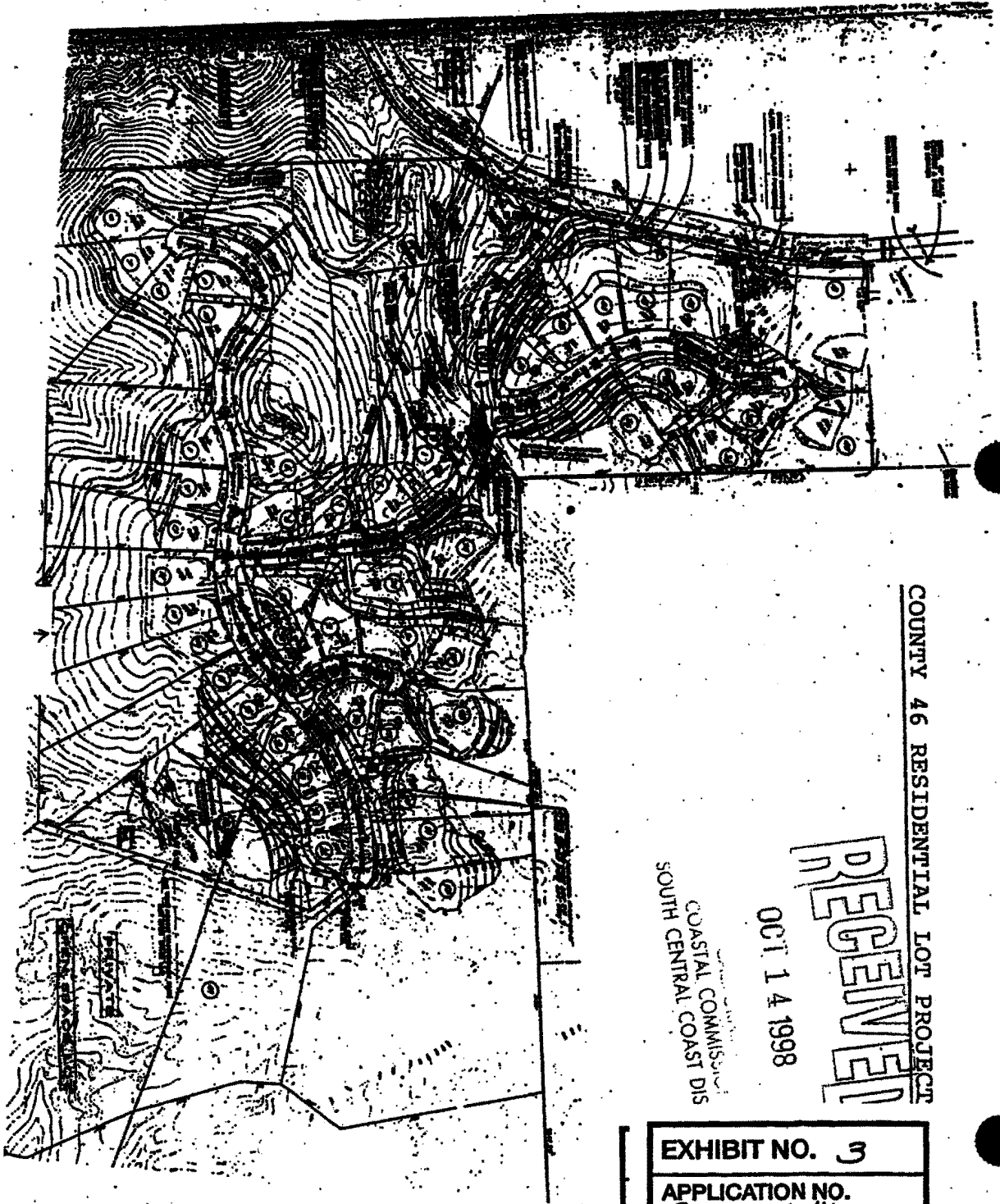


EXHIBIT NO. 2
APPLICATION NO. <i>Racche Malibu</i>
5-91-436 (Remand)-A1
51-Lot Subdivision Project



COUNTY 46 RESIDENTIAL LOT PROJECT

RECEIVED

OCT 14 1998

COASTAL COMMISSION  
SOUTH CENTRAL COAST DIST

EXHIBIT NO. 3
APPLICATION NO. <i>Rancho Malibu</i>
<i>5-91-436 (Remand)-A1</i>
<i>46-lot Subdivision</i>

**CALIFORNIA COASTAL COMMISSION**

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LONG BEACH, CA 90802-4416  
(310) 990-5071

Filed: 7/23/93  
49th Day: 9/10/93  
180th Day: 1/19/94  
Staff: A. Padilla  
Staff Report: 6/26/91  
Hearing Date: 9/14-17/93  
Commission Action:

**STAFF REPORT: ADOPTED FINDINGS**

APPLICATION NO.: 5-91-436 (Remand)

APPLICANT: BMIF/BSLF II Rancho Malibu

AGENT: Baker & McKenzie,  
Attorneys at Law

PROJECT LOCATION: Encinal Canyon Road, approximately 2.2 miles north of the intersection of Encinal Canyon Road and Pacific Coast Highway.

PROJECT DESCRIPTION: Subdivision of a 270 gross acre on 8 separate parcels into 51 single-family lots plus 1 lot for a sewage treatment plant, 1 road lot, and 3 open-space lots, equestrian trail, development of roads, building pads, utilities, on-site sewage treatment plant, and 830,000 cubic yards of grading (415,000 cu. yds. of cut and 415,000 cu. yds. of fill).

Lot Area	270 acres gross
Plan Designation	5- Rural Land III (1du/2ac) 4- Rural Land II (1du/5ac) 3- Rural Land I (1du/10ac) 2-Mountain Land (1du/20)
Project Density	.19 du/ac

LOCAL APPROVALS RECEIVED: Approval In Concept, Tentative Tract Map 46277, Conditional Use Permit and Oak tree permit No. 87-291, Los Angeles County Regional Planning Commission.

**SUBSTANTIVE FILE DOCUMENTS:**

1. Certified Malibu/Santa Monica Mountains Land Use Plan.
2. Revised Draft Environmental Impact Report; Vesting Tentative Tract Map 46277; SCH No. 88050410.
3. Rancho Malibu Technical Reports, by Impact Sciences, Inc., July 13, 1993; Rancho Malibu Map Packet, June 1, 1993; Rancho Malibu Revised Project Analysis Booklet; Project Grading Comparative Analysis Booklet; February 1993 Viewshed Analysis Photograph Exhibit.
4. Coastal Development Permits: 5-89-1149 (Thorn); 5-89-872 (Javid); 5-89-948 (Vanjani); 5-88-300 (Lachman); 5-88-600 (Trancas Town); 5-88-938 (Bennett).
5. CDP #5-91-436(Anden).
6. Revised South Entrance Alternative Plan (dated 6/1/93)
7. Temporary Haul Road and Staging Area Map (dated 6/1/93)
8. Revised Drainage Concept Plan (dated 6/1/93)
9. Revised Project Analysis Booklet
10. Project Grading Comparative Analysis
11. Rancho Malibu Project Visual Resources
12. Rancho Malibu Project Summary
13. Photographs and Exhibits submitted by applicant and oppoi hearing.

EXHIBIT NO. <i>4</i> <i>39 pages total</i>
APPLICATION NO. <i>Rancho Malibu</i>
<i>5-91-436 (Remand)-A1</i>
<i>5-91-436 (Remand)</i> <i>Adopted Findings</i>

**COMMISSION ACTION:** The Commission approved the proposed project with special conditions relating to grading, mitigating the cumulative impacts of development, visual resource protection, landscaping, erosion control, geology, wastewater treatment, archeological resources, and open space and trail dedications.

**DATE OF COMMISSION ACTION:** August 11, 1993

**COMMISSIONERS ON PREVAILING SIDE:** Neely, Rick, Williams, Wright, Vincent, Calcagno, Doo, Gwyn.

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on August 11, 1993 approving with conditions the permit for the subdivision of 270 gross acres on 8 separate parcels into 51 single-family lots plus 1 lot for a sewage treatment plant, 1 road lot, and 3 open-space lots, equestrian trail, development of roads, building pads, utilities, on-site sewage treatment plant, and 830,000 cubic yards of grading (415,000 cu. yds. of cut and 415,000 cu. yds. of fill).

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**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions.**

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**II. Standard Conditions.**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Conditions.

#### 1. Submittal of Final Grading Plans

Prior to issuance of the permit, the applicant shall submit for review and approval of the Executive Director, final grading plans which include grading for the roads, building pads, wastewater treatment facility, bridge embankments, and any other areas to be graded with quantities verified by the County of Los Angeles.

#### 2. Grading Monitor

Prior to commencing grading the applicant shall retain the services of an independent consultant with appropriate technical qualifications selected from a list provided to the applicant by the Executive Director to periodically monitor the grading during the course of the work performed under the terms of the approved grading plan. The consultant shall immediately notify the Executive Director if there is any departure from the approved grading plan and all work shall stop on that portion of the project until authorized to proceed by the Executive Director. Any substantial change from the approved grading plan shall require an amendment to the permit. Prior to initiation of other on-site improvements the consultant shall submit a report, for the review and approval of the Executive Director, upon completion of grading certifying that the grading was performed in conformance with the approved grading plan.

#### 3. Future Grading for Single-family Development

Prior to issuance of the permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that the development of single-family residences and appurtenant

structures shall be located within the graded pad areas or designated building areas on lots no. 26 and 27 approved pursuant to this permit (as shown on Vesting Tentative Tract Map No. 46277, dated 6/1/93) and that any additional grading or placement of structures outside the graded area or designated building areas shall require a new coastal development permit from the Commission or its successor agency.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

#### **4. Landscaping and Erosion Control Plans**

Prior to issuance of permit, the applicant shall submit landscaping and erosion control plans prepared by a licensed landscape architect and engineer for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To screen or soften the visual impact of development all landscaping shall consist primarily of native plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated November 23, 1988. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) 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 90 days and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils including all existing roadways, not including proposed roads and pads;
- (c) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

#### **5. Drainage and Erosion Control Plans**

Prior to issuance of permit the applicant shall submit, for review and approval by the Executive Director, final drainage facility and erosion control plans designed by a licensed engineer which assures that no increase in peak run-off rate from the site would result from the construction of the proposed project, as a result of a ten-year, six-hour rainstorm. The drainage and erosion control plans shall include, but not be limited to, a system which

collects run-off from all building pads, and all impervious surfaces and directs it to on-site drainage facilities which shall include, but not be limited to, detention/desilting basins. Should any erosion, either on-site or off-site, result from drainage from the site the applicant shall be responsible for any necessary repairs and/or restoration.

**6. Site Specific View Analysis for Future Single-Family Structures**

All future proposed single-family structures shall be subject to a site specific view analysis to determine the visual impact of the proposed structure on the surrounding area. Each individual lot, depending on the visual impact, may be subject to mitigation measures, such as visual setbacks and height restrictions to mitigate the visual impact of the development. Prior to the issuance of the permit, the applicant shall submit to the Executive Director for his approval a provision containing notice of this requirement to all future lot purchasers to be incorporated into the project's Covenants, Conditions and Restrictions. Prior to first lot sale the applicant shall supply notice to the Executive Director that the Covenants, Conditions and Restrictions containing this provision has been approved by the California Department of Real Estate and recorded with the County.

**7. Restriction on future structure and roof color**

Prior to issuance of the permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which restricts the color of the future single-family residences and ancillary structures to natural earth tones, compatible with the surrounding earth colors (white tones will not be acceptable).

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

**8. Revised Trail Alignment**

Prior to issuance of permit the applicant shall submit, for review and approval by the Executive Director, a revised trail map showing that the western end of the proposed trail is realigned to the north to connect with Encinal Canyon Road. The applicant shall submit evidence that the County has reviewed and approved the realignment.

**9. Dedications, Easements and Restrictions**

Prior to the issuance of the permit, the applicant as landowner shall prepare the following legal instruments and maps for the review and approval of the Executive Director:

**(a) Open Space Dedication.**

Applicant shall prepare a map which depicts the open space area shown on Exhibit 7 and an irrevocable offer to dedicate this area to the National Park Service, State of California Parks and Recreation Department, Santa Monica Mountains Conservancy or other public agency deemed appropriate by the Executive Director. The offer to dedicate fee title shall be for open

space purposes including habitat and visual resource protection. The document shall stipulate that any public agency accepting such dedication shall not grade, landscape, or remove vegetation, except for that necessary for the future development of a trail for hiking and equestrian use.

The offer of dedication shall be recorded free of prior liens except for tax liens and free of encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of ninety (90) years, such period running from the date of recording. Evidence of recordation of the approved document is required prior to release of the permit.

**(b) Wastewater Treatment Facilities.**

Applicant shall prepare a map which depicts the wastewater treatment facilities, spray field, and necessary access(es) as generally shown on Exhibit 8 and an easement in favor of the County of Los Angeles over these lands. The purpose of the easement shall be to allow the county to operate, inspect and maintain the approved sewer facilities. Prior to the sale of any Lots approved by this permit, the applicant shall submit proof that the County has accepted the easement as approved by the Executive Director and the fully executed document has been recorded.

**(c) Private Open Space Deed Restriction**

Prior to issuance of the permit, the applicant shall prepare a Map which depicts all portion of the residential lots except for the areas proposed to be graded, required for fire protection or to be dedicated for a public trail as generally shown on Exhibit 8 and a deed restriction which limits the use of the restricted areas to open space activities and prohibits vegetation removal, except as required by the County of Los Angeles for fire protection, grading and any structural development. The Map and deed restriction shall be submitted for the review and approval of the Executive Director and, upon approval, shall be promptly recorded.

**(d) Trail Dedication**

Prior to issuance of permit, the applicant shall submit an irrevocable offer to dedicate a twenty-foot wide public access trail easement from the eastern boundary of the subject property traversing across the property to Encinal Canyon Road, which borders along a portion of the western boundary of the property (generally depicted in Exhibit 9 of the staff report).

The irrevocable offer shall be of a form and content approved by the Executive Director, free of prior encumbrances except for tax liens, providing the public the right to pass and repass over the noted route limited to hiking and equestrian uses only. The dedicated trail easement shall not be open for public hiking and equestrian usage until a public agency or private association approved by the Executive Director agrees to accept responsibility for maintenance and liability associated with the trail easement.

The offer shall run with the land in favor of the State of California binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for the statutory period of ninety (90) years, such period running from the date of recording.

**10. Government Approvals**

Prior to issuance of the Permit, applicant shall submit the following information for the review and approval of the Executive Director:

(a) Evidence that the Regional Water Quality Control Board has reviewed and approved the proposed waste water treatment facility and have issued any necessary permits.

(b) Evidence that the California Department of Fish and Game have reviewed the proposed siting and operation of the wastewater treatment facility and have determined there will be no adverse impacts to the stream, riparian vegetation

(c) Evidence that the County of Los Angeles has reviewed, approved and will accept responsibility for the operation of the proposed wastewater treatment facilities.

Any significant changes to the proposed project resulting from the approval of any of the agencies listed above shall require an amendment to the permit.

**11. Oak Tree Permit Compliance**

Prior to the issuance of the coastal development permit the applicant shall submit, subject to the review and approval of the Executive Director, a written agreement that the proposed project will comply with the mitigation requirements of the County of Los Angeles' Oak Tree Permit for the removal of five (5) on-site oak trees. Mitigation requirements include, but are not limited to, replacing adversely impacted trees at a 2 to 1 ratio.

**12. Haul Roads and Staging Area**

Staging areas and haul roads shall be restricted to areas subject to grading by this permit except those haul routes depicted on the Temporary Haul Road and Staging area Exhibit Map (dated 6/1/93) or as approved by the Executive Director. Haul roads outside the approved grading areas shall be restored and revegetated to their natural state within 30 days from the completion of the project's grading operation, consistent with Special condition #4 of this permit. Temporary erosion/sedimentation fencing shall be installed along the limits of the grading for the haul roads that are located within the drainages. Such fencing shall remain in place until the area is restored and revegetated.

**13. Utility Location Plan Map**

Prior to issuance of permit the applicant shall submit, for review and approval by the Executive Director, a plan showing that all on-site utilities are located within the graded areas approved under this permit.

**14. Irrigation Plan**

Prior to issuance of permit, the applicant shall submit, subject to the review and approval of the Executive Director, an irrigation plan for the water supplied by the waste water treatment plant. The plan shall be reviewed and approved by a licensed engineer, landscape architect and certified biologist to ensure that there is adequate area for irrigation, that the plan is compatible with the approved landscaping plan (condition #4) and that there will no adverse impacts to the native vegetation caused by the irrigation water.

**15. Monitoring System for Sewage Treatment Plant**

Prior to issuance of permit the applicant shall submit, subject to the review and approval of the Executive Director, a plan indicating a monitoring system to be installed to detect discharge from the leachfield. The Plan shall also include procedures that will be followed in the event that discharge is released from the leachfield.

**16. Cumulative Impact Mitigation.**

Prior to the issuance of the Coastal Development Permit, the applicants shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on forty-three (43) building sites (number subject to confirmation by Executive Director prior to issuance of the Coastal Development Permit based on the number of TDC's being equal to the number of building lots permitted under this permit [51 lots] less the number of existing legal building lots currently existing on the proposed site) in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

- a) one of the five lot retirement or lot purchase programs contained in the Malibu/Santa Monica Mountains Land Use Plan (Policy 272, 2-6);
- b) a TDC-type transaction, consistent with past Commission actions;
- c) participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites.

Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

**17. Plans Conforming to Geologic Recommendation**

All recommendations contained in the Engineering Geologic Report prepared by Pacific Soils engineering, INC. dated June 15, 1993, regarding the proposed development shall be incorporated into all final design and construction

including grading, and drainage. All plans must be reviewed and approved by the consultant. Prior to transmittal of the permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans. The geologic restricted use area shall be delineated and recorded on the final parcel map.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes, as determined by the Executive Director, in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

#### **18. Archeological Resources**

Prior to issuance of the permit, the applicant shall agree in writing that a qualified archaeologist and an authorized representative of the Native American Heritage Commission shall be present on-site during all grading and that should archaeological (or paleontological) resources be discovered, all activity which could damage or destroy these resources shall be temporarily suspended until the site has been examined by a qualified archaeologist (or paleontologist) and mitigation measures have been developed and implemented to address the impacts of the project on archaeological (or paleontological) resources. Such mitigation measures shall be reviewed and approved by the State Office of Historic Preservation prior to implementation and resumption of development. Any substantial changes in the proposed development approved by the Commission, which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

#### **19. Treatment Plant Construction**

Prior to issuance of the permit, applicant shall submit, for the review and approval of the Executive Director, a detailed plan of the wastewater treatment plant site and adjacent riparian area. The plan shall clearly indicate the location of the riparian vegetation and provide for the placement of a temporary erosion/sedimentation fencing along the outer limit of the grading. The plan shall also show that the grading and leachfield are a minimum of 50 feet from the riparian vegetation and that all structures are a minimum of 100 feet away. All construction and grading activities shall remain north or outside of the riparian area. Prior to commencement of construction and grading, staff shall inspect the fenced area to ensure that the riparian/ creek habitat is adequately protected.

#### **20. Terms of Permit**

The terms and conditions of this permit shall supersede any conflicting reservations or other information placed on any of the plans or maps submitted as part of this application.

#### **IV. Findings and Declarations.**

This project is here on remand from the Superior Court of Ventura Following judgment entered in favor of the City of Malibu against the Commission.

**A. Project Description**

The applicant is proposing to subdivide an approximately 270 acres gross, consisting of 8 separate parcels, into 51 single-family residential lots, 1 road access lot, 1 lot for a waste water treatment plant, and 3 public open space lots and a private open space lot. The project will also include a public hiking/equestrian trail dedication, construction of a private access road, two vehicular bridges for drainage crossings, building pads, utilities, and a 25,000 gallons per day waste water treatment facility.

The access road will include the construction of two bridges that cross on-site drainages. The first bridge will be approximately 110 feet in length to access the main development area. The second bridge will be approximately 40 feet in length to serve two proposed lots on the eastern ridge.

The project will involve a total of approximately 830,000 cu. yds. of grading consisting of 415,000 cu. yds. of cut and 415,000 cu. yds. of fill for the construction of the building pads and private access road.

The subject site is located northwest of Trancas Beach and east of Encinal Canyon in the Malibu/Santa Monica Mountains area in Los Angeles County (See Exhibit 1). The subject site is approximately 1,400 feet from Pacific Coast Highway at its southern most boundary, however, the entrance of the property is located off and east of Encinal Canyon Road, approximately 2.3 miles north of the intersection of Pacific Coast Highway and Encinal Canyon Road. Encinal Canyon Road and Pacific Coast Highway are considered Scenic Highways.

The site is surrounded with a scattering of residential development and a number of public recreational areas. To the west of the project site, beyond Encinal Canyon Road, is Charmlee Regional County Park. To the north and northeast is the Santa Monica Mountains National Recreational Area. To the east of the subject site, traveling in a north-south direction, is Trancas Canyon Trail. To the south, across Pacific Coast Highway, are the public beaches.

Topographically the site consists of a relatively flat plateau dissected by three north-south trending canyons (See Exhibit 2). The intervening ridges extend to near the southern property boundary where they form a prominent cliff which descends rapidly to Pacific Coast Highway. The site also contains two smaller canyons that drain westerly from the site into Encinal Canyon. Natural slope gradients range from .5:1 along steep canyon flanks to nearly flat gradients along ridgelines. Maximum on-site relief is approximately 1,000 feet.

Two of the on-site north-south trending canyons—Steep Hill Canyon, located in the extreme eastern portion of the property, and East Encinal Canyon, located in the central portion of the site,—contain U.S.G.S. designated blue line streams. The blue line stream and associated riparian area within Steep Hill Canyon is designated as an Environmentally Sensitive Habitat Area (ESHA) in the Malibu/Santa Monica Mountains Land Use Plan.

Site vegetation is primarily coastal sage scrub and mixed chaparral with sporadic areas of oak woodland. The site contains approximately 214



**California Live Oaks (Quercus agrifolia).**

The certified Malibu/Santa Monica Mountains Land Use plan designates the site as Mountain Land (1du/20 ac), Rural Land I (1du/10ac), Rural Land II (1du/5ac), and Rural Land III (1du/2ac). Based on the County's certified LUP and density restrictions the maximum permitted density for the site is 69 lots (See Exhibit 3).

**Background**

In September 1990 the applicant originally submitted an application (5-90-650) for a 69 lot subdivision with 3,828,000 cubic yards of grading (1,978,000 cu. yds. of cut and 1,850,000 cu. yds. of fill). The project was scheduled for the December 1990 Commission hearing. Staff recommended denial of the proposed project due to the amount of grading and landform alteration, visual impacts and impacts to biotic resources. The applicant postponed from the hearing to work with staff to revise the project plan in order to mitigate the project's impacts. After numerous meetings with staff, the applicant submitted revised plans. The revised plan included a reduction in grading to 3,093,000 cubic yards, reduced pad sizes and a shortening in the length of the access road. Although the applicant revised the plans staff felt that the impacts were still not adequately mitigated and continued to recommend denial. At the March 1991 hearing the applicant requested a second postponement to continue to work with staff and further revise the proposed project. The Commission granted the postponement.

Due to scheduling the applicant withdrew the application and submitted a new application (5-91-436) with a new revised project plan in June 1991. The revised project reduced the area of landform alteration from 143 to 51.3 acres, the number of lots to 55 single-family lots and the amount of grading to 1,214,000 cubic yards.

At the Commission's July 18, 1991 hearing the Commission approved the proposed project with a number of special conditions. One of the special conditions required that grading be reduced by 200,000 cubic yards through modifications to the County's road standards.

The original permit holder, Anden/VMS Rancho Malibu Venture, assigned the permit to BMIF/BSLF II Rancho Malibu Limited Partnership in December of 1992. The new permit holder is a publicly traded real estate investment trust managed by Banyan Management Corp., with individual shareholders in California and elsewhere.

**Procedural Background - Consideration on Remand**

This project is here on remand from the Superior Court of Ventura following judgement entered in favor of the City of Malibu against the Commission.

The Commission previously considered a permit application for Rancho Malibu (then known as Anden/VMS) on July 17, 1991. The proposed project was a 254.5 acre subdivision of 55 residential lots plus one lot for a sewage treatment plant and one open space lot and included equestrian trails and streets. Staff recommended, in proposed condition number 1, elimination of 21 lots on the eastern ridge. The intent of this proposed special condition was to

remove development and related visual impacts on the visually prominent eastern ridge rather than simply reducing density. The Commission approved the project without eliminating the 21 lots, declining to adopt condition number 1.

The City of Malibu sued the Commission in mandate and won. The trial court ruled the Commission's decision was not supported by substantial evidence and the Commission's findings were inadequate. The focus of the lawsuit and the trial court ruling was the development on the eastern ridge. The trial court held:

"In conclusion, there having been significant scenic, landform, ESHA and grading impacts identified by the Commission staff and numerous public witnesses, pertaining to Anden's proposed coastal development, the Coastal Commission had the obligation to 'consider' those impacts affecting 'scenic and visual qualities' (Pub. Res. Code 30251) and to make specific findings that indicated its reasoning process in determining to grant the coastal development permit. The purpose of the requirement for findings is to ensure that the decision makers actually consider such statutorily-protected environmental concerns and the alternatives and mitigation measures suggested in response, before making their decisions. [ citation omitted.]

"Concluding, as it must, that the findings here were inadequate, and the evidence in the administrative record was insufficient to support the Coastal Commission's decision, this court grants the writ of mandate sought by the Petitioner City of Malibu. The Coastal Commission is directed to vacate its administrative order approving a coastal development permit for the project." (Statement of Decision.)

In denying a subsequent motion by Anden for a new trial, the Court clarified her previous decision, noting that she did not find there was no evidence which could support the approval of the permit:

"What the court said was that the Coastal Commission's findings failed to explain its analytical route from evidence to action, thereby precluding the public from knowing whether their concerns were considered at all, or, if considered, why the environmental effects of building on the eastern ridge were determined to be mitigated." (Minute Order denying motion for new trial, dated March 30, 1993.)

Anden filed an appeal. The Commission staff and the current owner engaged in lengthy negotiations to revise the project to meet the Court and the public's concerns. The Attorney General's Office and the owner's legal representatives assisted in the negotiations to insure compliance with the trial court decision. The City of Malibu participated in the initial negotiations, however, the City decided not to participate in any further negotiations. Once the City dropped out of negotiations the City had no further contact with Commission Staff. This revised project is the culmination of those efforts. As revised and conditioned, the project eliminates the lots in the location previously proposed for the eastern ridge, substantially reduces the grading required, eliminates all visual impacts on public roads and beaches, minimizes impacts to views from Charmlee Park, eliminates the adverse impacts on ESHAs and conforms to staff's prior recommendation of approval.

### Key Coastal Issues

This project raises several key issues with regard to Coastal Act policies: grading and landform alteration including drainage and erosion control (30250, 30251, 30253), visual impacts (30251), impacts on ESHAs (30230, 30231, 30240), and impacts on public access and recreational opportunities (30210, 30212, 30212.5, 30213, 30223, 30254, 30530). The project as revised and conditioned is consistent with these coastal policies. The principal changes in the project as revised are as follows. The project has been reconfigured to cluster development in the northern and northwestern portion of the site. The density has been reduced from 55 to 51 lots, the average building pad size has been reduced 14% from 16,297 to 13,980 square feet, and the average lot size has been reduced 22% from 75,972 to 59,098 square feet. The elimination of the lots as previously proposed on the eastern ridge with the consequent elimination of 1,650 linear feet of roadway preserves 99% of the eastern ridge as open space. The realignment of the project's access road to the south and reconfiguration of the development reduces the overall grading from the previously approved 1,014,000 cubic yards to 830,000 cubic yards with an attendant 25% reduction in the amount of landform alteration from 51.3 acres to 38.5 acres. Over 97% of the live oak trees will be preserved; the 5 to be removed will be replaced at a minimum of a 2 to 1 ratio. The relocation of the wastewater treatment plant from the eastern ridge to a site westerly of east Encinal Canyon and southerly of the development area eliminates impacts on the ESHA. The reconfiguration eliminates the potential for runoff near the Steep Hill Canyon ESHA and results in preservation of 86% of the entire site as open space. As revised and conditioned, the project meets the concerns expressed in the trial court judgment and is consistent with the Coastal Act.

### B. Visual Resources/Landform Alteration

The proposed project raises visual impact concerns because of its visibility from parts of Charmlee Park. The following conditions are in response to these concerns: Condition #1 through #3 require final grading plans and conformity with such plans; Condition #4 and #5 requires landscaping and erosion control plans; Condition #6 requires a site specific view analysis for future structures and condition #7 imposes restrictions on structure and roof color.

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, the certified LUP contains the following policies regarding landform alteration and the protection of visual resources which are

applicable to the proposed development:

- P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.
- P90 Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.
- P91 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.
- P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.
- P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.
- P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:  
  
    be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.  
  
    minimize the alteration of natural landforms.  
  
    be landscaped to conceal raw-cut slopes.
- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.
- P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.

The project site is comprised of relatively flat bluffs, steep sideslopes, and intermittent stream channels. The site is flanked by two large canyons— Encinal Canyon occurs off-site near the site's western boundary and Steep Hill canyon located on-site in the eastern portion of the site. Scattered residential development surrounds the project site on all four sides. To the west of the project site and west of Encinal Canyon Road is Charmlee Regional County Park. To the north and northeast is the Santa Monica Mountains National Recreational Area. Paralleling the subject site to the east, in a north-south direction, is Trancas Canyon Trail. Pacific Coast Highway is

directly south and below the project site.

As indicated in the previous section the applicant proposes approximately 830,000 cubic yards of grading (415,000 cu. yds. of cut and 415,000 cu. yds. of fill) to construct the access road and building pads for the proposed project. Of the total, approximately 622,000 cubic yards of grading (75% of the total grading), consisting of 311,000 cu. yds. of cut and 311,000 cu. yds. of fill, is required for the construction of the proposed 4,770 linear feet of access road.

The entrance of the access road will be located in the northwestern portion of the property off of Encinal Canyon Road. The road entrance will be located in an east-west trending drainage up along the northern bank of the drainage. As the road heads up along the drainage a spur road branches off to the north into the northwestern portion of the site to serve the cluster of 11 single-family lots located in the far northwest corner of the property. The main road continues southeast to a crest of a primary ridge approximately 150 feet above the proposed entrance. At this point the road forks into two branches. One branch extends to the west approximately 900 feet and ends on a small knoll. The second branch is approximately 1,000 feet in length and extends to the east and ends at the two building sites on the eastern most ridge.

For the first 1,600 feet (from the entrance to the crest of the ridge) the grading plan indicates that approximately 521,000 cu. yds. of grading, or 62% of the total grading, is necessary. This portion of the road will cut approximately 45 vertical feet from the existing elevation and require the construction of a 110 foot long bridge over a west draining drainage course.

The amount of grading proposed to construct the building pads will be approximately 208,000 cu. yds. or 25% of the total grading. Per building pad this averages out to approximately 4,000 cu. yds. per lot. The residential building pads will range from 9,100 sq. ft. to 23,000 sq. ft. in area with an average pad size of approximately 13,980 sq. ft.

As proposed, the building pads are designed as large flat and split level pads terracing north to south along both sides of the proposed access road, which runs mainly along the ridge crests. The grading plan and slope chart provided by the applicant indicate that major cut slopes range from 25 to 80 vertical feet. Major fill slopes range from 25 to 75 feet.

In past permit action the Commission has restricted grading for proposed developments in order to minimize landform alteration and impacts on scenic resources both in undeveloped areas and existing developed areas on the coastal terrace. In its most recent actions on land divisions and development the Commission has denied projects due to landform alteration and visual impacts or conditioned approval on reducing the amount of proposed grading or the applicant has agreed to reduce the grading due to staff concerns. In 5-90-058 (Williams), for the subdivision of a 34.1 acre parcel into 5 lots off of Winding Way, the applicant's original project proposal included 128,674 cubic yards of grading for the construction of access roads and building pads. Due to concerns raised by staff relative to landform alteration and visual resource impacts the applicant revised the project design by eliminating grading on a prominent ridge, employing a split level pad design

and reducing overall grading to 24,390 cubic yards. In 5-89-1149 (Thorne), for the subdivision of 121.9 acres into 19 lots off of Latigo Canyon Road, the applicant's original project proposal included 280,000 cubic yards of grading for the construction of pad sites and access roads. Due to concerns raised by staff relative to grading and the associated visual and landform alteration impacts the applicant revised the project design by reducing building pad sizes and overall grading to 158,000 (79,000 cu. yds cut., 79,000 cu. yds. fill). In approving 5-89-872 (Javid) for the subdivision of a 45 acre parcel into 25 lots and 345,000 cubic yards of grading (216,900 cu. yds cut, 127,450 cu. yds. fill) for pads and access roads off of Morning View Drive, the Commission required the applicant to cluster lots and modify the grading as a special condition of approval. The Commission eliminated all grading for building pads and limited all grading to what was necessary for the construction of access roads and driveways. The future residential structures would have to be built to natural grade. In 5-88-300 (Lachman/Preferred Financial), for the subdivision of a 6.54 acre parcel and the construction of 38 condominium units and a road extension at the northeast corner of Lunita Road and Bailard Road the applicant's original project submission included 74,000 cubic yards of grading and would have created essentially one large building pad for the project. Due to concerns raised by staff relative to grading and landform alteration the applicant revised the project design to step most units up and down the existing slopes to conform to the existing topography (by notching the units into the hillside rather than creating flat terraces). Overall grading was reduced by 55 percent to 33,000 cubic yards. In approving permit no. 5-88-600 (Trancas Town Ltd.) for the subdivision of 35 acres on the west side of Trancas Canyon Road into 15 single-family lots and 52 condominiums the Commission required the applicant to reduce overall grading and landform alteration as special conditions of approval. Specifically, the applicant was required to eliminate four single-family lots, redesign four other lots to place structures on multiple levels at natural grade, and reduce pad sites to a maximum of 2,000 square feet and cut and fill slopes to a maximum of five feet. In approving permit no. 5-88-938 (Bennett) for the subdivision of 10 acres into four lots and 21,200 cubic yards of grading for pad sites and an access road on Sea View Drive north of the subject site the Commission also required the applicant to modify grading as a special condition of approval. The Commission restricted the pads to specific elevations on the site, limited pad size to 3000 square feet and restricted the height of cut and fill slopes to five feet at 2:1 slope ratios and 10 feet for 3:1 slope ratios. In a subdivision project located on Latigo Canyon, a applicant applied for a permit in 1980 (#80-7570) for the subdivision of a 35 acre parcel into 12 lots. The Commission denied the subdivision due to the cumulative impacts to coastal resources. Then in 1989 the project was before the Commission as a 9 lot subdivision with 161,000 cubic yards of grading. The Commission denied the project due to landform alteration and adverse impacts on visual resources. The applicant reapplied for a 9 lot subdivision with grading reduced to 37,000 cubic yards (5-90-665, Vanjani). The Commission approved the project with conditions to further mitigate the visual impacts.

In this particular case, although the total amount of grading is significant, the applicant has attempted to minimize the amount of grading and landform alteration given the site's topography and terrain. As stated earlier due to the topography and terrain of the site and the lack of accessibility to the buildable areas of the site, accessing the site is problematic and requires a

significant amount of grading (75% of the total grading). The applicant has attempted to minimize the amount of grading and landform alteration associated with the construction of the road by a number of design measures. One measure has been by incorporating the County's rural road standards into the proposed project, consistent with Policy 200 and 201 of the certified LUP. Policy 200 and 201 state that:

**P200** The Road Department and the Department of Regional Planning should establish a "rural" road classification (Limited Secondary) for selected mountain roads, allowing narrower pavement cross sections which more closely conform to topography to minimize grading. Such mountain roads shall be as shown on the Highway Plan Policy Map in the Area Plan adopted on December 28, 1981.

**P201** Review procedures and standards for road construction and institute changes that require increased consideration of aesthetic and environmental impacts. Roadway improvements permitted under this LCP shall be the least environmentally damaging feasible alternative available.

The applicant has been allowed by the County to incorporate into the road design rural road standards as opposed to urban standards, which were originally proposed as part of the previous Commission approved project. Incorporating the rural road standards into the project design has allowed the applicant to reduce the road widths from a maximum of approximately 64 feet to 36 feet and increase the road grades of the entrance road from a maximum of 10% to a maximum of 15%.

In addition to the reduction in road standards, the applicant is utilizing a 110 foot bridge to span an existing drainage. The bridge will eliminate a significant amount of grading which would have been necessary to cross the drainage and access the primary ridge where the majority of lots are being located.

The building pads will be located on the top of the ridges where the topography is relatively flat. The majority of the building pads will be located adjacent to the access road with short driveways incorporated into the pads. As designed, the road grading is incorporated into the creation of the building pads which significantly reduces grading for the pads. The average grading to construct the building pads has been estimated by the applicant's engineer as 4,000 cu. yds. This amount is consistent with past Commission permit decisions for the Malibu/Santa Monica Mountains. The proposed grading, where possible, will be contoured to conform with the existing natural terrain, whereby, further reducing the amount of grading required to construct the building pads and reducing the visual impact caused by engineered slopes that are inconsistent with the natural topography.

Based on a submitted visual analysis and on Staff's visual reconnaissance of the area, conducted after the site was strategically staked with poles and flagging representing locations and heights of residences, the visual impact of the proposed project has also been minimized. As indicated the proposed project is surrounded by public recreational areas. However, due to siting of the project and the on and off-site terrain, the visual impact of the project has been eliminated from some areas and reduced from others. From Pacific



coast Highway and from the neighboring beaches, such as El Matador State Beach, Trancas beach, and Zuma County Beach, the proposed grading and future construction of homes will not be significantly visible. The only beach area in which one or two dwellings will be visible is from Zuma County Beach, which is approximately 3 miles from the site. However, due to the distance and minor amount of development that will not be obstructed by the intervening ridges, the development will only be visible with the use of vision magnifying aids.

As proposed the development has largely been clustered within 38.2 acres or 14% of the site in the central and northwestern portion of the 270 acre property. Development along the most prominent ridge in the eastern portion of the site has all but been eliminated. An exception is that the applicant is proposing two building pads along the northern portion of the eastern ridge beyond the building cluster. Although the eastern ridge is the most prominent ridge on the site and is highly visible from the public recreational areas that surround the site, the two proposed building sites are located in an area that is not highly visible from most of the surrounding public areas due to intervening ridges.

The proposed project's most significant visual impacts will be from Encinal Canyon Road and from County and National park lands that surround the site. Although portions of the site are visible from Encinal Canyon Road, the applicant has minimized the impacts of the development by limiting the fill areas or manufactured slopes facing Encinal Canyon Road and by clustering development in the central portion of the site.

The most expansive views of the site occur from Charmlee Regional County Park, located to the west, and from the National Park Recreational Area located north and northeast of the project site. The park areas are located at elevations that are higher than the proposed site and offer panoramic views of the surrounding lower elevation areas which include the area of the project. From these locations, most of the project site, including graded slopes, access roads, and the future structures will be visible. However, by clustering development within 14% of the site in the north central and northwestern portion of the 270 acre site and leaving the majority of the eastern ridge as open space, impacts to the view corridors to the beach have been significantly reduced. Coastal views are generally south of the proposed location of the development, therefore, the development will be located outside of the coastal viewshed.

Although the applicant has designed the development to reduce the amount of grading, landform alteration, and visibility, the development will still have significant visual impacts from the surrounding public areas. However, if properly mitigated the proposed development's impacts will be significantly reduced to a point where the development could be found consistent with the Coastal Act.

To further mitigate the visual impact from the surrounding public areas from which the project will be visible, and to minimize the potential for erosion that this project will have due to the proposed grading, the applicant shall landscape all graded slopes with native vegetation to blend and screen the development from public views and submit an erosion control plan consistent with condition #4 and #5. Furthermore, to ensure that the future development of single-family structures are designed to mitigate any visual impacts



special condition #6 and #7 requiring a site specific visual impact analysis for each individual lot when development is proposed and a restriction on the color of future structures to earth tone colors to blend the development into the surrounding earth colors is necessary.

To ensure that grading complies with approved grading plans and with County standards Special condition #1 requires that the applicant submit final grading plans showing all grading for the roads, building pads, and bridge embankments and verification from the County of Los Angeles. In addition, to ensure that the project will be graded in conformance with the submitted grading plan condition #2 requires that a grading monitor be retained to monitor the grading activity. Special condition #3 requires that the applicant record a deed restriction that future development of residences and ancillary structures shall conform to the graded areas approved by this permit and that any additional grading shall require a coastal development permit. The Commission, therefore, finds that only as conditioned will the proposed project be consistent with Section 30251 of the Coastal Act and with all applicable policies of the LUP.

#### Concerns raised and Commission responses

1. An objection raised by one of the opponents is that the concentration of development exceeds the density otherwise permitted under the LCP for the acreage to be developed.

The opponent is only considering the land use designations and permitted densities of those designations that underlie the area to be developed. The Commission, in past permit action for projects within the Malibu/Santa Monica Mountains LUP area that are overlaid with multiple land use designations, has consistently taken the entire acreage of the site and permitted densities for each land use designation and taken the average for the entire site to determine the site's overall allowable density. This allows and encourages clustering of projects to minimize the construction of roads, infrastructure and grading. Clustering of development leaves larger undisturbed areas of open space and minimizes the impacts to the surrounding area.

2. The revised project should be reviewed by the County.

The initial project was reviewed and approved by the County. The initial project was a far more massive project and required the preparation of an Environmental Impact Report (Final EIR: Vesting Tentative Tract Map 46277; SCH No. 88050410). The EIR is conclusively presumed to be valid since there was no challenge to it, the Commission has specific environmental analyses addressing the issues raised and the project complies with the Coastal Act.

3. Opponents have stated that the extension of Rocky Point Place requires unnecessary grading.

Rocky Point Place is the western segment of the primary road on the western ridge that intersects the entrance road. This road follows the ridge line. The ridge line in this area is one of the flattest portions on the property and requires less grading than the majority of the other road segments. Moreover, in the original submittal Rocky Point Place extended even further. The length was shortened to its present length to reduce grading and landform

alteration and to eliminate impacts to the oak trees located in the southern area.

4. Opponents state that the project will have excessive and severe cut slopes.

The grading has been reduced to the maximum extent feasible. The cut slopes are mainly generated by the construction of the road with the lesser amount for creating pad areas. Because of the steep terrain and the necessity to access buildable areas cutting into the hillsides is unavoidable. All cut and fill slopes will be required to be landscaped for erosion control and visual enhancement purposes.

5. Opponents state that there is evidence that revegetation with native species is not feasible in disturbed cut and fill soil.

Such evidence has not been presented to the Commission. Based on the applicant's Rancho Malibu Technical Reports (July 13, 1993) and on the Commission's past permit action, where similar revegetation has been required, the Commission is not aware of any information or evidence that would support the opponent's contention.

6. The project will adversely affect views from Charmlee Park

Staff has visited the park and found that views will be only minimally affected. The site is partially visible from a limited number of areas. A portion of the site will be visible from the parking lot and picnic area near the entrance of the park. The site is also visible from a few trails that traverse the perimeter of the park. However, these trails are limited along the perimeter with the majority of the recreational trails located along the interior of the park. The applicant has also submitted a visual analysis (dated, February 1993) conducted from the park which also indicates that the visual impact will be minimal. By clustering development in the north and northwestern portion of the site unobstructed coastal views from the park are preserved.

7. A member of the Commission expressed a concern regarding the narrowness of the access roads.

The proposed roads have been reviewed and approved by the County, meeting their rural road standards for fire protection access. The application of these road standards to this project is consistent with the certified LUP and was required by the Commission in the original project to minimize grading and landform alteration.

C. Environmentally Sensitive Habitat Areas

The proposed project raises environmentally sensitive habitat impact concerns because of grading, construction of impervious surfaces, location of blue line streams and riparian vegetation in relation to the development, and the removal of watershed vegetation and oak trees. The following conditions are in response to these concerns: Condition #4 requires landscaping and erosion control plans; Condition #5 requires drainage and erosion control plans; Condition #9(a) requires an open space dedication, 9(b) requires an easement

to the County for the sewage treatment facilities; Condition #11 requires compliance with the County's oak tree mitigation measures; Condition #14 requires an irrigation plan; Condition #15 requires a monitoring system for sewage treatment plant; and Condition #19 requires a detailed plan of the treatment plant site and adjacent riparian area.

Sections 30230 and 30231 of the Coastal Act are designed to protect and enhance, or restore where feasible, marine resources and the biological productivity and quality of coastal waters, including streams:

Section 30230:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values:

Section 30240:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The site supports five major vegetation communities. These include coastal sage scrub (57.8%), chaparral (27.2%), naturalized grassland (10.3%), southern oak woodland (4.6%) and riparian woodland (0.1%).

Coastal sage scrub is mainly located in the southern two-thirds of the site and mixed chaparral in the remaining northeastern one-third. Oak woodlands

are scattered throughout the site and can generally be found within the drainages. There are approximately 214 oak trees within the site (originally the oak tree report that was submitted to the County stated that there were 143 oak trees, however, based on a more recent and thorough count, the total number of trees has increased). Riparian woodlands can also be found within the drainages. Based on the submitted EIR and the Technical Report's biological resource section there are no endangered, threatened or special species.

The two primary drainages—Steep Hill Canyon and East Encinal Canyon—contain U.S.G.S. designated blue line streams. The lower portion of the blue line stream within Steep Hill Canyon is designated as an Environmentally Sensitive Habitat Area (ESHA) in the Malibu/Santa Monica Mountains Land Use Plan. Steep Hill Canyon contains scattered sycamore and oak trees throughout the canyon. The southern portion of the drainage, in the steeper portions of the canyon, also contains Arroyo willow.

The drainage within East Encinal Canyon, although not designated as an ESHA, contains a significant California Live Oak woodland and riparian woodland consisting of sycamores and willows. The oak woodland within East Encinal Canyon contains approximately 73, or 34%, of the sites 214 oak trees. Policy 60 of the LUP states that:

- Oak woodlands (non-riparian) or savannahs located outside Significant Watersheds shall be considered as significant resources and are depicted on Figure 6.

The number of oak trees being removed due to the proposed development is 5. The trees being removed are located in the northwestern portion of the site. The oak trees within East Encinal Canyon or Steep Hill Canyon will not be removed. The northwestern portion of the site contains a large oak woodland within a east-west trending drainage. Although a few oak trees occur along the bottom of the drainage the majority of the trees are located further up on the south slope.

The entrance road is proposed on the north slopes of the drainage with some minor fill slopes encroaching near the bottom of the drainage. However, only two oak tree will be required to be removed within this drainage. One of the trees to be removed is located near the entrance. The second tree is located where a bridge crossing is proposed. The remaining trees within this drainage will not be adversely impacted by the development.

As indicated the drainage will be crossed by a bridge. The bridge will be 110 feet in length and will be approximately 30 feet above the bottom of the drainage. A second bridge, approximately 40 feet in length, will be located in the upper and narrower section of East Encinal Canyon serving the two most eastern located residential developments. The bridging of the drainages will protect the existing habitat values within the drainages and will continue to allow a natural continuity of the drainages. However, during the construction phase the drainages will be temporarily impacted. Temporary haul roads outside of the proposed road alignment will be constructed that will cross through two drainages. The first crossing will occur in the northwestern portion of the property in the location of the first bridge. The haul road

and placement of a culvert and fill within the drainage is required to access the residential lots and bridge area that are in the northern and northwestern portion of the site. The second crossing will occur in the upper East Encinal Canyon drainage (blue line stream). Once again this crossing is necessary to access the two pads on the eastern ridge and to construct the bridge. The haul road is aligned outside of the access road and bridge alignment because of the grade where the access road and bridge is proposed is too steep for the grading equipment, which would require more grading and greater disturbance of the drainage. Once the pads are graded and the bridge constructed the culverts and fill will be removed and the area restored to their natural state.

A second haul road will be utilized to access the central and western areas of the site. This road will follow the existing dirt road alignment and will require only a minor amount of grading on a small knoll for a vehicle turnaround area. This area will also be restored to its natural state once grading is completed.

Another part of the proposed development is the use of a wastewater treatment plant. The Malibu/Santa Monica Mountains Land Use Plan contains the following policy concerning small package wastewater treatment facilities:

P223 The construction of new small package wastewater treatment plants shall be prohibited, except in those areas where this is the desired long-term wastewater management solution selected by the County Engineer-Facilities.

The geology report states that permeability and percolation rates on-site are generally poor and are not considered adequate for leaching of sewage. Based upon studies and discussions with the Los Angeles County Department of Public Works it was determined by the applicant's consultants, Lockman and Associates, that a permanent, modular, small scale treatment facility would be optimum for this site.

The package treatment plant will be approximately 1,400 square feet in area. The treatment plant is designed to process a maximum of 25,000 gpd of sewage. The treatment plant will be located on a 43,400 square foot engineered pad within Lot 52 in the southeastern portion of the site. The site is on the west slope of East Encinal Canyon upslope from the blue line stream that intermittently flows down through the canyon.

The treatment plant will use an extended aeration treatment process capable of achieving an effluent quality above reclaimed water standards. The reclaimed water will then be temporarily retained on-site in a storage tank for use as irrigation water for vegetated areas of the development. The plant location will allow gravity feed of influent from the residential households.

The treatment facility will be completely self-contained with an influent equalization basin, with water and solids handling units including equipment for primary settling, aeration, clarification, aerobic sludge digestion, final filtration, and chlorine disinfection, and with a final 10-day storage tank for reclaimed effluent.

A leach field system is to be constructed beneath an open vegetated area

developed from fill material. The field will be constructed from materials derived from on-site soils that are expected to exhibit a percolation rate of approximately 6 to 15 minutes per inch, allowing discharge of approximately 0.8 gallons per day per square feet. The system will, therefore, require approximately 22,500 square feet of area to accommodate the volume of effluent to be discharged.

The leach field will be used for backup treatment in the event of a plant upset and for back-up overflow protection for the effluent storage tank. The leach field will have two sump pumps at the end or downslope of the leach fields in case of leakage from field. In the event of leakage the effluent will be collected by underground drain piping and conveyed to a sump which will return the flow back into the plant in order to avoid any leachate from entering the stream course.

As a condition of the County of Los Angeles' approval of the subdivision, once the treatment plant is constructed, the County's Department of Public Works will be responsible for the operation and maintenance of the treatment plant. To ensure that the County assumes responsibility and maintenance of the treatment plant and that the County has access to the treatment plant and irrigation area, condition #8b and #9c is required.

To ensure that adequate area exists for irrigation and that the proposed irrigation plan is compatible with the landscaping plan condition #14 requires that the applicant submit along with landscaping plans an irrigation plan, reviewed and approved by a certified biologist, showing all areas to receive irrigation water. The irrigation/landscaping plan shall be reviewed by a certified engineer and landscape architect to ensure that there is adequate area for irrigation by the treatment plant and that there will be no increase in peak run-off due to the proposed irrigation.

An irrigation system will be installed within the landscaped areas of the development. The wastewater, after being treated to the tertiary level, will be used as irrigation water. Tertiary treatment produces water of potable quality. As an additional back up to the system an area of approximately 7 acres on the eastern ridge will be used as a spray or irrigation field. This field will only be used in the event there is a plant upset and that the storage tanks and leachfield reaches capacity. However, it is anticipated that given the capacity of the tanks (10 days) and the leachfield (approximately 30 days), the system will be back on line before spraying is necessary. In the event that spraying is necessary, irrigating the proposed 7 acre site with, what amounts to an estimated 20 acre feet per year based on the estimated 17,850 gallons of wastewater generated per day per residence, the quantity of additional water is not significant. The spray will be directed over an area that exhibits percolation rates capable of handling the additional moisture content, which will reduce the potential for surface runoff and erosion. Furthermore, the area of spraying contains mostly naturalized grasslands. According to the biological study (Impact Sciences, Inc., July 13, 1993) this vegetation cover is capable of withstanding additional moisture content and will not be adversely impacted.

Based on the maps and information submitted by the applicant the construction of the pad and treatment facility will not encroach within the oak woodland or

riparian area of East Encinal Canyon. Based on the submitted maps the leachfield will be located over 75 feet from the oak woodland and riparian area. However, grading for the treatment facility may encroach within 50 feet of the riparian area. Policy 79 of the certified LUP states that all development should be set back at least 50 feet from the outer limit of designated environmentally sensitive riparian vegetation. In addition, the table one policies of the LUP state that all structures shall be setback a minimum of 100 feet from the outer limit of riparian vegetation in ESHAs (all designated blue line streams, such as the one within this canyon are considered ESHAs). To ensure that there is an adequate buffer between the sewage treatment facility and the riparian vegetation to protect the area from adverse impacts, consistent with the LUP, special condition #19, in part, requires that the applicant shall submit a plan that shows the outer limits of the riparian area and that all grading, leachfield, and structures are setback, consistent with the setbacks stated above, from the riparian area.

The submitted reports indicate that no groundwater aquifer, which could be impacted by percolating effluent, exists on-site. However, discharge into the adjacent intermittent blue line stream and riparian woodland could occur following plant upset or irrigation water holding tank overflow. The plant will be equipped with a warning system in case of plant failure, however, in the event of a plant failure and effluent is directed to the leach field there is no indication that there is an early warning system in place to prevent discharge from the leach field from entering the drainage courses. Therefore, condition #14 requires that the applicant install a monitoring system to detect discharge from the leach field and a contingency plan developed to minimize the potential for discharge into the canyons. Furthermore, to ensure that the system is approved by the County condition #10c requires that the applicant submit final County approval. The Commission, therefore, finds that only as conditioned will the proposed development be consistent with Section 30231 of the Coastal Act and policy 223 of the Malibu LUP.

The Department of Public Works for the County of Los Angeles, Department of Fish and Game, and the Regional Water Quality Control Board have reviewed the initial treatment facility. However, since their initial review the proposed project has been substantially modified in terms of number of lots, landscape area (area for treated irrigation water), and location of the treatment plant. All three agencies were requested by staff to review the treatment plant in light of the revised project. At the time of writing this report comments have been received from the County of Public Works and the California Regional Water Quality Control Board. Both agencies have conceptually approved the relocated treatment facility. At this time the Department of Fish and Game has not submitted comments. However, staff has spoke with them and they are in the process of reviewing the project.

As stated the proposed project site includes a mapped portion of the Steep Hill Canyon Environmentally Sensitive Habitat Area. The upper reaches of the Steep Hill Canyon are not designated as an ESHA. However, upper reaches still provide valuable grassland habitat for various species of animals that depend on grasslands. The Land Use Plan policies addressing protection of ESHAs are among the strictest and most comprehensive in addressing new development. In its findings regarding the Land Use Plan, the Commission has consistently emphasized the importance placed by the Coastal Act on protecting sensitive

environmental resources. The Commission found in its action certifying the Land Use Plan, in December 1986, that:

coastal canyons in the Santa Monica Mountains require protection against significant disruption of habitat values, including not only the riparian corridors located in the bottoms of the canyons, but also the chaparral and coastal sage biotic communities found on the canyon slopes.

The LUP contains several policies designated to protect ESHA's, from both the individual and cumulative impacts of development:

- P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated area which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.
- P60 Oak woodlands (non-riparian) or savannahs located outside Significant Watersheds shall be considered as significant resources and are depicted on Figure 6
- P72 Open Space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.
- P81 To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.
- P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.
- P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.
- P86 A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.



**P87** Require as a condition of new development approval abatement of any grading or drainage condition on the property which gives rise to existing erosion problems.

The proposed project will be limited to the north central and northwest portion of the site, with the exception of two lots located in the north eastern section. As currently proposed the grading for the roads and pads will affect approximately 38.5 acres (14.2%) of the total 270 acres (gross) site. The proposed project will remove approximately 38.5 acres of the total 226.4 acres of Coastal sage/Chaparral and 5 of the 214 oak trees. Except for the two lots in the northeastern portion of the site the eastern ridge will remain undeveloped. By leaving the majority of the eastern ridge undeveloped the existing natural vegetation and habitat will be preserved. Furthermore, by concentrating development away from the eastern ridge adverse impacts to the primary drainages caused by erosion and sedimentation due to loss of vegetation cover and construction activities will be avoided.

The revised project as designed will have unavoidable individual and cumulative effects on resources as defined in Sections 30240 (a) and (b) of the coastal Act. While five (5) oak trees and 38.5 acres of coastal sage and chaparral will be removed as a result of the project, the Commission finds that the applicant has mitigated these impacts by preserving 97% of the oak trees on-site; maintaining approximately 167 acres, 62% of the total acreage, in open space; limiting grading to only 14% of the site, and preserving riparian corridors and canyon areas. Although development will not encroach into a designated ESHA, oak or riparian woodlands, development will occur on the upper slopes above a drainage course that contains a oak and riparian woodland.

Overall grading will result in some loss of watershed cover that is important in protecting the drainages from erosion and sedimentation. However, the applicant has proposed to revegetate the graded and disturbed areas with native plant species. With the proposed mitigation, the removal of the vegetation will not directly or indirectly adversely impact existing habitat values, the oak woodland and riparian woodland, and the loss of vegetation will not lead to increased erosion and siltation which could adversely impact the biological productivity and quality of the canyon environments. Therefore, the Commission finds that as conditioned, habitat loss and ESHA impacts will not be significant.

As mitigation for the loss of native vegetation and to minimize the amount of erosion the applicant is proposing to revegetate all graded and disturbed areas with native plant species. To ensure that the proposed mitigation measure is carried out by the applicant condition #4 requires the applicant to submit to the Executive Director a landscaping plan showing that all graded areas are revegetated with native plant species. To ensure that erosion and siltation from the proposed grading will not adversely impact the sensitive habitat area within the canyon, special condition #5 requiring that a drainage and erosion control plan be submitted is necessary. Furthermore, condition #9 requires that the applicant record an offer to dedicate to a public agency all areas outside of the graded areas, and areas required for fire protection, to protect the habitat values of the area and for view protection. To ensure that the impact on the oak trees is adequately mitigated, consistent with the

County Oak Tree Ordinance, condition #11 requires that the applicant submit a written agreement stating that the project will conform with the County's oak tree permit requirements. In addition, condition #12 requires that the applicant submit plans indicating where equipment and materials will be stored to ensure that encroachment into the open space does not occur. Finally, condition #13 requires that the applicant submit plans indicating that all on-site utilities will be located within the approved graded areas to ensure that the placement of the utility lines will not encroach into any undisturbed habitat areas. The Commission, therefore, finds that only as condition will the proposed project be consistent with Sections 30230, 30231, and Section 30240 of the Coastal Act and the resource protection policies of the Malibu Land Use Plan.

Concerns raised and Commission responses

1. A concern raised by an opponent of the project is that the two most eastern lots (Lots 26 and 27) are within an ESHA.

As stated in the above section, the mapped Steep Hill Canyon ESHA is located in the lower portion of the site and no development will encroach within the ESHA.

2. One opponent stated that the relocated treatment plant has not received preliminary approval and the location's relationship to the riparian habitat is not clear.

One of the conditions of the permit is that the resited treatment plant be reviewed and approved by the responsible agencies. Furthermore, at the hearing Commission staff indicated that conceptual review and approval for the resited plant was received from the County of Public Works and the California Regional Water Quality Control Board. The Department of Fish and Game was in the process of reviewing the project. Moreover, based on the County's resource maps, Rancho Malibu Technical Reports (Biological Resources) prepared by Impact Sciences, Inc. (July 13, 1993), Geologic and Soils Engineering Report (June 15, 1993), and the applicant's site plans, the location of the plant is not within the riparian habitat and the location is otherwise suitable.

3. The project is located in an ESHA and should be reviewed by the Environmental Review Board (ERB); the impacts on the oak woodland habitat and impacts due to human encroachment, sedimentation, altered hydrological patterns and grading impacts on wildlife have not been adequately addressed.

Development does not encroach within any mapped ESHA. At the time of the original approval the ERB did not exist. However, the County can still send the project to ERB if the County decides a review is warranted. If this occurs and the County changes the project an amendment to the coastal development permit will be required.

The proposed project as indicated in the above section will not encroach within any oak woodland. The number of oak trees impacted has been significantly reduced from over 100 trees down to 5 trees. Although some oaks

will be removed appropriate mitigation is being required (Condition #11) consistent with the policies of the County's certified Land Use Plan and the Coastal Act.

Sedimentation and altered hydrological patterns is always a potential impact on the resources of the area whenever grading is proposed. However, as stated in the above section such impacts can be mitigated by ensuring that grading does not occur during the rainy season, drainage is controlled, site runoff remains the same as existing conditions, and all graded slopes are landscaped. All potential impacts have been addressed and appropriately mitigated.

4. The project, including the bridge construction will have adverse impacts on resources.

All impacts to resources will be mitigated as stated in the above section. Graded areas are required to be revegetated, impacted oak trees are to be replaced at a ratio of 2:1, stream crossing will be done by bridging which is required in the LUP and by the Commission to minimize impacts to drainages within blue-line streams or significant vegetation, run-off will be controlled, riparian areas will not be encroached upon and sedimentation devices will be required during construction to reduce any potential impacts. The proposed project and mitigation measures will be consistent with the LUP policies and the Coastal Act. Bridging of streams is considered the least environmentally damaging alternative.

5. Concern of placing leachfield in fill and potential treatment plant overflow into ESHA.

As stated in the above section the leachfield design was reviewed and approved by the various responsible agencies. The submitted Technical Report (dated July 13, 1993) discusses the wastewater treatment plant and indicates that the system will function properly without impacting the surrounding area. Moreover, in case of a system failure the plant is designed with a number of back up systems to ensure that wastewater will not flow into the nearby intermittent blue line stream or riparian habitat (for further discussion see above section).

6. Concern over impacts to endangered, threatened or special species.

The EIR and the Technical Report's Biological Resource section indicates that no such species are found on the site. No evidence has been brought to the Commission's attention indicating to the contrary.

#### E. Access and Recreation

The project raises access and recreation concerns because of cumulative impacts this development and others have on existing access and recreation opportunities. The following conditions are in response to these concerns: Condition #8 requires a realignment of the proposed trail and condition #9(d) requires the applicant to dedicate a trail easement across the property.

The Coastal Act requires the Coastal Commission to require maximum public access for every project and to reserve lands suitable for coastal recreation for that purpose. The Coastal Act also requires each development to provide adequate recreational lands to serve the needs of the development. Applicable sections of the Coastal Act provide as follows:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a)

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30212.5

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development, with public transportation, (5) assuring the potential for public transit from high intensity uses such as high-rise office building, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park

acquisition and development plans with the provision of on-site recreational facilities to serve the new development. (emphasis added).

Section 30254

. . . Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation, and visitor-serving land uses shall not be precluded by other development.

Section 30530

There is a need to coordinate public access programs so as to minimize costal duplication and conflicts and to assure that, to the extent practicable, different access programs complement one another and are incorporated within an integrated system of public accessways to and along the state's coastline. (emphasis added)

1. Background and Adopted Land Use Plan Policies

The proposed project is located on the Coastal Terrace north of Pacific Coast Highway and east of Encinal Canyon Road in Malibu. The Coastal Slope Trail traverses the southern portion of the subject site. This portion of the trail is not currently improved. The Coastal Slope Trail is a major trail that parallels the coast and serves as a link for hikers and horse riders from National Park Service lands, County Park lands and other areas to the coast. The applicant is proposing to dedicate a trail easement across the property to ensure continued public access.

In Malibu, the portion of an existing system of heavily used historic trails located on private property has been jeopardized by the conversion of open lands to housing. In order to preserve and formalize the public's right to use these trails, Los Angeles County adopted the Riding and Hiking Trails Master Plan for the Santa Monica Mountains, which is now adopted by ordinance into the highway element of the County's April 1982 General Management Plan for the Santa Monica Mountains National Recreation Area (which updated the June, 1984 Land Protection Plan). The trail system is also part of the certified Land Use Plan for the Malibu-Santa Monica Mountains Area. The system also includes the Backbone Trail, a main route leading from the heart of the metropolitan Los Angeles Area past Leo Carillo State Beach at the Ventura County-Los Angeles County border to Point Mugu State Park in Ventura County. Cross-mountain lateral trails link the major population center of the San Fernando Valley with the numerous State and County-operated mountain and beach parks between downtown Santa Monica and Point Mugu State Park. Two designated regional connector trails link the Malibu/Santa Monica Mountains trail system with a larger regional system which connects the beach and mountain areas with trails in the Simi Valley, San Gabriel Mountains, and inland areas. The trail network will make a very large number of destinations

available to hikers and equestrians. These destinations are quite varied in nature and thus have the potential of holding interest for many different persons. The choice includes highly scenic locations, such as Escondido Falls and the Castro Crags area; historic sites, including motion picture locations; and active group camps. Dramatic coastal views, including almost unmatched views of the Channel Islands, are available from points on the Backbone Trails, to which the coastal slope trail and Zuma Canyon Regional trail connects. These extraordinary coastal views are central to the coastal mountain recreation experience and, together with the fauna, flora, and climate specific to this area, are among the coastal resource values protected by the public access and recreation policies of the Coastal Act.

One of the trails identified in the adopted trail system is the Coastal Slope trail, which provides access between the growing sub-community on and above the coastal terrace and oceanfront beaches and parks and helps to connect such areas with other feeder trails and the remainder of the trail system. These trails have become important and commonly used recreational assets and a means of providing access to and links between natural, scenic, and recreational areas in the mountains.

In permitting residential areas in the Santa Monica Mountains to build out, planning agencies have found that to assure continued availability of the recreational resources of the mountains by the general public, compatible recreation facilities to serve both the residents of the new development and the existing recreational visitors must be provided. A comprehensive recreation plan for the Santa Monica Mountains has been adopted, as cited above, that includes acquisition by the National Park Service and the California Department of Parks and Recreation of extensive tracts of land for recreation, careful review of development near such areas to ensure that it is sited and designed to be compatible with recreational uses, and development of a system of scenic highways and hiking and equestrian trails to link the larger units together and to retain access to views, provide recreational opportunities, and provide an alternative mode of access to all areas of the mountains and adjacent coastal areas.

Los Angeles County incorporated the Riding and Hiking Trails Master Plan into the Land Use Plan certified by the Coastal Commission in December, 1986. The plan requires that trails identified in the Riding and Hiking Trails Master Plan be dedicated at the time of development of property on which the trails are located:

- P44 A trail dedication requirement shall be a condition of approval for new development as defined in Coastal Act Section 30212(b) where the property encompasses a mapped trail alignment, as indicated in Figure 3 of the LUP, or where the Coastal Commission has previously required trail easements. Nothing in this policy shall preclude relocating a trail that has historically been used by the public as a trail so long as the new trail is equivalent for purposes of public use. Both new development and the trail alignment shall be sited to provide maximum privacy for residents and maximum safety for trail users. Property owners and residents shall not be permitted to grade or develop the trail area in such a way as to render the trail unsafe or unusable. Where a trail is proposed prior to development occurring

in the area, credit shall be given to the landowner that will run with the land by formal agreement if a donation is involved. The dedication of a trail right-of-way shall give the landowner the right to request the County to deduct that area from the assessed area of that parcel for tax purposes. It is expressly understood that the public agency shall accept the public liability for operation of the trail.

The Coastal Slope Trail is commonly used by equestrians and hikers, and has been for a period of time in excess of five years. Although there is a strong likelihood that prescriptive rights have been established, the increased demands caused by residential build-out make it necessary to condition such development to formalize the public's right to continued use of these trails.

2. The proposed development and similar residential development plus commercial and recreational development as allowed in the approved Malibu Area Land Use Plan will have a substantially adverse impact on beaches, trails, and other recreational facilities in the Malibu-Santa Monica Mountains area in the form of congestion and overcrowding of the facilities themselves.

a. The existing capacity of recreational facilities, including the trail system and support facilities in the Malibu-Santa Monica Mountains area, is already inadequate to meet existing demand.

In 1980, the State Department of Parks and Recreation analyzed surveys originally done in the Parks and Recreation Information System study (PARIS) and updated at intervals and concluded that as of 1970, there was an unmet demand for approximately 5,700 miles of trails, 17,000 camping units, and 18,600 picnic sites in Planning District 8 (which includes Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties). Based upon application of those factors to population projections of the Department of Finance, by 1990 the unmet demand in District 8 is expected to increase to 11,780 miles of trail, 40,940 camping units, and 46,800 picnic sites. The National Park Service Planning staff estimates that at this time approximately 35 miles of trail have been completed within National Park Service sites, with approximately 30-40 additional trail miles planned. The Santa Monica Mountains Conservancy staff estimates 64 miles of trail within their holdings has been completed, with approximately 35 more planned to be developed. The State Department of Parks and Recreation administers major portions of the eastern part of the Backbone Trail along with trails in seven park units, for an estimated total of 172.25 miles (including smaller trails in the parks that are not part of the overall system), and the County of Los Angeles maintains 5 miles of trails in Charmlee County Park and 2.5 miles in Tapia County Park. The Santa Monica Mountains Restoration Trust administers an additional 2.75 miles.

The Department of Parks and Recreation's use statistics indicate that use of State-operated park units in Los Angeles County has been steadily rising, with visitation to reaching a total of 2,281,811 in fiscal year 1986-87. The Department also reported that passive recreational activities such as walking and horseback riding constitute 61 to 91% of the use of State parks in general. The staff of the Los Angeles County Department of Parks indicates that the Los Angeles County standards for park space and facilities are

generally based upon the Open Space Standards and Guidelines of the National Recreation and Parks Association, adopted in 1983. These provide for a park system that at a minimum includes a core system of parklands totaling 6.25 to 10.5 acres of developed open space per 1,000 population, plus "adjunct" parklands, the size and amount of which will vary from community to community but which must be taken into account when considering park needs. Staff of the Los Angeles County Parks Department indicates that in reviewing subdivisions, an ordinance-provided figure of 3 acres per thousand is utilized in applying Quimby Act provisions (Government Code Sec. 66477). More precise statistics on how existing recreational lands compare to these standards are not readily available; countywide the County-operated parks total approximately 72,000 acres; this includes some 41,000 acres of open space easement on Catalina Island and all local, regional, and community parks managed by the County Parks Department. The County acknowledges, however that it is substantially behind in acquiring new land to satisfy the aforementioned standards. State Parks staff indicates that the present square footage of park space per person is about 1/10th as much in Los Angeles County as is the case statewide. There is a need to expand the system to meet both present and future open space requirements.

Available data indicates that existing recreational facilities in the Malibu-Santa Monica Mountains area are currently experiencing sustained demand that is often over capacity. The State Department of Parks and Recreation maintains use statistics for units that provide overnight campsites, and can provide general estimates of the number of people turned away. In 86-87, for instance, 3,000 vehicles were turned away from Leo Carillo for camping and 5,390 from Point Mugu. The turnaway figures are based upon unit manager reports of the numbers of persons who stop and inquire even though a "full" sign has been posted; there is no record of the number of potential users who do not stop once they see the sign. Staff of the Santa Monica Mountain District, State Department of Parks and Recreation, estimate that the currently available 156 family, 43 overflow, and 4 group campsites at Point Mugu State Park, at the upcoast end of the trail system, are almost always full and have a substantial number of turnaways during the the peak recreational season, from May through September. During fiscal year 1986-87 more than 81,000 campsites were sold at Point Mugu, and during July-August-September 1987, campsites sold totaled 4,628, 4,763, and 2,877, respectively, virtually at capacity for most of this period. In addition, except for periods of bad weather, Parks reports that campsites are full during most weekends during the balance of the year. Leo Carillo State Beach, the only other state park unit within the Santa Monica Mountains area that presently provides camping, with 169 regular campsites, 118 overflow sites, and one group campsite, exhibits very similar use patterns; 96,300 campsites were sold during fiscal year 1986-87, with 4,600 sold in July of 1987, and 5,000 sold in August, 1987. Total visits to Leo Carillo increased from 999,000 in the 1985-86 fiscal year to 1,044,000 in 1986-87, a net increase of about 45,000 visitors. Total visitation at state-managed parks and beaches in the Santa Monica Mountains area was 2,747,000 in 1986-87, up from 2,712,000, also a substantial increase. No new facilities opened during this time, so these increased demands had to be absorbed by the existing facilities. Participation in activities accommodated at the Malibu/Santa Monica Mountain area parks is expected to continue to rise; the Department estimates that user activity days for District B (which includes Los Angeles County) for hiking



and backpacking will increase from 25,420,039 in 1980 to 34,035,195 in the year 2,000; activity days for camping will increase from 21,250,908 to 27,004,680; and activity days for horseback riding will rise from 11,048,373 to 13,974,591. Los Angeles County estimates also show a substantial increase: hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744 during the same period; and horseback riding from 6,561,103 to 7,511,873. In addition to the demands cited earlier for trail and related uses, the State Department of Parks and Recreation projects an increase in user activity days in District 8 in ocean swimming from 29,777,877 in 1980 to 35,945,772 in the year 2000, an increase in saltwater fishing from 5,899,093 to 7,725,946, an increase in body and board surfing from 22,474,744 to 27,103,817, and a rise in beachcombing from 4,528,342 to 5,619,844.

The current managers of the trail network, in addition to the Department of Parks and Recreation, the Santa Monica Mountains Conservancy, and the Santa Monica Mountains Restoration Trust, include the National Park Service and the Presbyterian Church, which maintains a retreat facility that also serves as a major trailhead in Temescal Canyon just north of Sunset Boulevard. Several of these managers, which provide controlled trail access with active management, such as ranger-led hikes or access via a permit system, report steadily increasing trail use and an increasing amount of conflict among the traditional users of the trails, and thus have found it desirable to adopt a reservation-only approach to public use to deal with limited trail and parking capacities. These include the Peter Strauss Ranch, until recently managed by the Santa Monica Mountains Conservancy; Rocky Oaks, managed by the National Park Service; and the Cold Creek Canyon Preserve, now managed by the Santa Monica Mountains Restoration Trust.

One management technique being used to minimize these conflicts and thus to help maximize compatible use of the current trail network is a restriction of the rapidly growing mountain bike user group. Due to the severity of the existing conflicts between mountain bikes and the other current users of the trail system (mountain bikes reach speeds of up to 40 mph on slopes and startle horses and hikers, and a number of accidents have occurred), the Southern Regional Director of the California Department of Parks and Recreation, on March 18, 1986, issued a directive prohibiting bicycles on all trails except those expressly posted to the contrary. The Santa Monica Mountains District Superintendent states that this was done "because of the conflicts between users (bicyclists), hikers and equestrians. Other considerations were erosion of trails and liability from mountain bike accidents." The Department considers that this closure was a necessary management tool to assure public safety, protect public resources, and deal with the existing unacceptable present level of conflict between mountain bikers and other users of the existing segments of the trail system.

The practical effect of such measures is a reduction in supply of trail segments for all uses. This aspect of the problem of meeting future demand is becoming increasingly clear as work on the trail system progresses and use of the system continues to increase. Conflicts such as those cited by the Department of Parks and Recreation Order 4-174, and the recent and very rapidly expanding popularity of mountain bikes, are raising a very fundamental question as to whether trail systems as originally designed will be sufficient

to meet future needs. To date, the most satisfactory manner found to deal with mountain bike-hiker/equestrian conflicts in other California coastal areas has been to divide the trail system into parts and to restrict use of designated trails to one or the other user group. In the Mount Tamalpais area north of the Golden Gate Bridge some trails have been designated for mountain bike use, thus effectively removing them from the trail mileage available for hikers and equestrians. This has the practical effect of lessening the trail mileage available for each type of user group. Accordingly, it would become necessary to increase the total trail mileage over that originally determined to be sufficient just to provide the same level of service that had originally been deemed appropriate. Conflicts may also make it necessary to increase the extent of physical separation between various users, thus further increasing the total number of trail miles needed to provide the desired level of service.

Another problem that is arising because of the current level of use is erosion on the trails. As noted above, the State Department of Parks and Recreation states that mountain bikes have been one cause of this erosion. Another is overuse of the trails. A recent study on management problems in designated wilderness areas points out that substantial erosion of wilderness trails over the last 10 years has been due primarily to the dramatic increase of foot and horse traffic on trails that were never designed to accommodate current volumes of use. Another report, "Effects of Hikers and Horses on Mountain Trails" (MacQuaid-Cook), states that "the great boom in outdoor recreation since 1970 has created crowded conditions in nature reserves, national forests and parks, interpretive sites and municipal recreation centers. People are 'taking to the hills' in droves and many thousands of once armchair travelers are now exploring the most wild and remote country they can find".

As this project and other development allowed in the approved Land Use Plan proceeds, the combination of the increasing use of the trails and the increasing level of conflicts among users will make it especially crucial to provide the additional trails that are needed to absorb the dramatic increase in demand and meet future needs generated by residential build-out, and thus fulfill Coastal Act Section 30212.5's mandate to distribute public facilities wherever appropriate and feasible "throughout an area so as to mitigate against the impacts, social and otherwise, or overcrowding or overuse by the public of any single area."

b. The existing capacity of the trail system and other recreational facilities is not adequate to meet the reasonably foreseeable increase in demand attributable to future development, including this development, in the Malibu-Santa Monica Mountains area.

The Malibu/Santa Monica Mountains Land Use Plan certified by the Commission on December 11, 1986 will allow build-out of 6,582 new residential dwelling units in addition to the approximately 6,000 dwelling units now existing in the planning area. The State Department of Finance utilizes an estimate of 2.62 persons per household for the year 2000 in Los Angeles County, which will result in an addition of approximately 17,245 persons in the Malibu-Santa Monica Mountains area. These new residents would be expected to make substantial use of the trail system, as do current residents; available data demonstrates that a substantial portion of the existing demand for trail use is being generated by residents of the Malibu-Santa Monica Mountains area. Tabulations prepared in September, 1987 summarizing participation in

organized hikes between July 18, 1986 and September 15, 1987 indicated that of a total of 41 hikes in which a total of 1,064 people signed rosters, 38% of the hikers lived within the Santa Monica Mountain area. These numbers reflect only scheduled and publicized leader-led hikes and do not include an estimate of

individual and family use of the trail system; a reasonable inference would be that at least as high a percentage of this unscheduled use would consist of persons living in close proximity to the trail system. Based upon per the projected increases in participation days in various recreational activities cited previously, an added population of 17,245 persons in the Malibu-Santa Monica Mountains area could be expected to create a demand for extensive acreage of new parks, additional miles of trails, and substantial new public beach areas.

In addition to the direct recreational needs created by the increased number of new residents at current activity levels, these new residents can be expected to exhibit significantly higher activity levels in the future. The March, 1983 revision of Recreation Needs in California: Report to the Legislature on the Statewide Recreation Needs Analysis, in addition to measuring current participation in various activities, surveyed two additional categories: activities people participate in and would like to do more of, and activities people have never tried but would like to try. In both categories, the survey showed that "desires for new or additional recreation are clearly directed toward outdoor, nature-oriented activities, rather than activities traditionally associated with the urban environment. Activities most people want to do more often include fishing, camping, swimming, and hiking/backpacking. Those that most people want to try are hiking/backpacking, sports, water skiing, downhill snow skiing, boating, and horseback riding." (emphasis added) A subsequent Department of Parks and Recreation survey titled "Public Opinions and Attitudes on Outdoor Recreation in California--1987" reinforced this support for activities carried out in a natural setting. In studying support for spending recreational funds, walking, camping in primitive areas and backpacking, and camping in developed sites with tent or vehicle ranked among the top five activities with strongest public support. Latent or unmet demand rankings again included in the high or moderate categories walking, horseback riding, camping, trail hiking and mountain climbing, and bird-watching, general nature study, and visiting natural areas.

Substantial public funds are being spent to increase the number, variety, and attractiveness of the facilities associated with the trails themselves, thus greatly increasing the usability of the system and increasing the incentive for area residents to take full advantage of this major recreational amenity. The County of Los Angeles recently obtained a coastal development permit for a major equestrian center in the Santa Monica Mountains, and substantial amounts of public funds have been budgeted for the development of riding rings, stabling areas, parking, and associated facilities. The equestrian center is planned to become another major trailhead, augmenting those already provided and planned elsewhere in the system. Large sums of public money are currently being spent and are planned to be spent in the near future to provide campgrounds, picnic and other day use areas, parking, water lines, and related improvements. One hundred new campsites are expected to be opened in Malibu Creek State Park in the spring of 1988. A group campground providing 100 sites is presently being constructed at Charmlee Regional Park and two

additional group campgrounds are authorized by the coastal development permit already approved for this site. Trail camps that will provide additional sites at two locations along the Backbone Trail are planned by the State Department of Parks and Recreation, and the National Park Service is planning a back-country campground. Major new public acquisitions, such as the Circle X Ranch, have recently been completed and substantial additional acquisitions by the National Park Service and other entities are planned. In addition, private services--veterinarian offices, tack, etc.--are readily available in this area. The scope of the planned trail system and related facilities is unmatched within the Southern California region, and furnishes a powerful incentive for those interested in trail use to locate near the system whenever possible.

As noted, the demand created by the number of new residents in the Malibu-Santa Monica Mountains area and the potential for greater-than-average demand for trail and related facilities from the new residents are expected to exceed substantially the capacity of the trail system, thus creating a need to add facilities. Additional demand is expected to be generated by persons, possibly including residents, not now using the trail system, based upon the expressed desires of large numbers of survey respondents to participate in hiking, horseback riding, and other forms of active outdoor recreation to an extent greater than they do now. Thus the existing discrepancy between supply and demand is expected to become substantially worse in the future, making it even more crucial to continue to expand the trail system and expand its capacity as residential development continues. If, as discussed above, it occurs that people who choose to live in the Santa Monica Mountains will have a higher than average propensity to own horses and engage in riding, the locally-generated demand for trail-related facilities will become steadily larger as population and use increases.

c. The Trail System will Provide Alternative Recreation Opportunities for Residents and Visitors.

Section 30252(6) of the Coastal Act provides that the location and amount of new development should ... assure(s) that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of on-site recreational facilities to serve the new development.

The future increase in population in the Local Coastal Plan area, as discussed above, in the Southern California region, and in Los Angeles and Ventura Counties, will create a substantially increased demand for recreation areas of all kinds, as noted, and particularly for coastal recreational sites, which are historically the most heavily used of all the recreational areas and the ones for which reservations first fill up. To some extent, the availability of alternative recreational facilities in the mountains--the trail system and associated amenities such as campsites--will provide an alternative destination for some of this demand that would otherwise further congest and overcrowd already inadequate existing facilities. The trail system and the existing and planned campgrounds which it makes available will provide extensive and important recreational resources in themselves. The trail system will be an attractive and extensive recreational use in itself. Hiking and horseback riding are recreational activities desired by many people, as noted in the cited Department of Parks and Recreation surveys. There is no

reason to believe that Santa Monica Mountains residents do not share these same interests.

The Santa Monica Mountains trail system is expected to meet a very substantial percentage of the future demand for trails in the Los Angeles area. The system is highly accessible to a very large number of people. There are major population areas on both sides of the mountains, and there are trailheads in the San Fernando Valley as well as in the West Los Angeles area and on the coast. The other major trail systems (San Gabriel Mountains, Antelope Valley, San Bernardino Mountains, San Jacinto Mountains) take longer to reach for a very large number of people. The Santa Monica Mountains trail system is relatively well-known. Guides and maps are becoming widely available. The system is accessible by public transit from a number of trailheads. The Parks study documents that public transit and knowledge of available recreation opportunities are important factors in use of available facilities, so the increasing knowledge of the Malibu/Santa Monica Mountain trail system and the access to it is expected to increase use levels.

The trail system provides an especially valuable summer alternative to visiting crowded beach parks, which are historically heavily used during hot weather and holiday periods. The weather is better on the coast and on the coastal slopes, especially during hot or smoggy periods. Inland trails are uncomfortably warm during much of the summer, which is a period of higher recreation activity. As overcrowding becomes more acute at the beachfront parks, the trails as well as the existing and proposed campgrounds which the trail system makes accessible are expected to become an increasingly necessary alternative recreational resource.

### 3. Increased Residential and Related Development Will Generate Substantial Additional Traffic and Worsen Levels of Traffic Congestion.

The Pacific Coast Highway Study (ACR 123) prepared by Caltrans (December, 1983) stated in the section on Recreational Influence that "Pacific Coast Highway is a designated scenic highway which provides spectacular vistas of natural and man-made features. The Pacific Ocean, the beaches and parks served by Pacific Coast Highway, and Pacific Coast Highway itself, constitute an integrated and irreplaceable recreational resource for the vast, growing population of the Los Angeles area. Approximately 23.5 million people visit the beach annually. Access to the beaches between Santa Monica and the Ventura County line, a distance of 33 miles, is through the mountains via four cross mountain roads and along Pacific Coast Highway." and further noted that "The beach area is such a sought after recreational resource during the summer months that on certain days congestion is inevitable." Caltrans further noted in the DRAFT Route Concept Report prepared for Pacific Coast Highway between the McClure Tunnel in Santa Monica and the Malibu Canyon Road intersection (8/14/84) that there are no alternate, parallel routes in the immediate vicinity of Pacific Coast Highway along this section. The ocean on one side and the rugged Santa Monica Mountains on the other have existed as barriers to highway development. The nearest parallel highway or route of any significance is Route 101 (Ventura Freeway) located 12.4 miles north of Route 1 via Route 27 (Topanga Canyon Boulevard). This report characterized PCH as presently "able to handle the traffic volume except for the stretch between Topanga Canyon and Sunset Boulevard". Section 30252 of the Coastal Act states that the location and amount of new development should maintain and enhance

public access to the coast by minimizing use of coastal access roads. Contrary to this requirement, the traffic studies done by Caltrans in 1983 and 1984 show that traffic generated by this and similar new residential development allowed in the approved Malibu/Santa Monica Mountains plan will increase vehicular use of coastal access routes and thus will have a detrimental effect upon the ability of the new residents and other recreationists to reach and enjoy recreation areas in Malibu and the Santa Monica Mountains and upon visitor enjoyment of the travel experience itself. Increased levels of traffic resulting from private development make it more difficult for recreational users to find parking and other support areas. The San Diego Regional Coastal Access Study (Prescott) points out that "vehicular traffic caused by people who are coming to or from recreation areas, or searching for off-site parking spaces, can often result in serious congestion of streets used for internal circulation within recreational zones. This problem is particularly severe when the same street network is used to accommodate high volumes of recreational traffic as well as traffic generated by local residents and local commercial/retail activities." Various studies have documented that the inability to reach an area because of traffic can foster a sense that an area is a private reserve, just as can an inability to find parking.

The population growth which results from the proposed and similar residential development will create much higher traffic levels than those existing today. In 1974 Caltrans studied the effect of anticipated additional development upon the ability of the public to reach and enjoy this recreational resource and issued its findings in a report entitled "DRAFT Route Concept Report for Pacific Coast Highway between the McClure Tunnel in Santa Monica and the Malibu Canyon Road Intersection". Caltrans used the LARTS model to forecast the year 2000 traffic estimates. The growth forecast was based on "SCAG's 82" growth Forecast Policy. In Traffic Analysis Zone 8004 (Malibu west of Malibu Canyon Road), this yielded an increase of residential population from 9,953 in 1980 to 25,300 in 2000, along with an estimated employment growth during the same period from 2,578 to 4,300. The estimated result was to increase the average daily traffic volumes in peak summer months from 46,000 in 1980 to 61,200 in the year 2000. With no improvements in the road, this was estimated to cause the level of service to deteriorate from Level D existing in 1980 to Level F in the year 2000. (Caltrans definitions are: Level D: borders on unstable flow; small increases in flow cause substantial disruption. 46 mph or more can be maintained. Freedom to move is severely limited. Traffic stream has little space to absorb disruptions; Level E: Extremely unstable. Cars spaced at 4 car lengths. Any disruptions to traffic stream causes disruptive wave. At capacity no ability to dissipate disruption. Substantial deterioration in service—average is 30 mph; Level F: Breakdown in flow: stop and go traffic. Breakdowns or bottleneck due to excess of cars at one point.) Only with improvements such as an added reversible lane that could provide a third lane in the commute direction did Caltrans estimate that Level of Service D could be maintained. Even with such improvements, the level of service would be no better in peak summer months in the year 2000 than it is now. The chief proposal of the Land Use Plan to deal with traffic is to add another lane on Pacific Coast Highway; no proposals for substantial expansion of the feeder road network are included in the plan.

On the basis of these studies, the Commission found in approving the Land Use Plan that the added residential development, plus commercial and recreational

development as allowed in the approved Malibu/Santa Monica Mountains Area Land Use Plan, will greatly increase both local and regional traffic levels, and so will make it much more difficult for users to reach beaches, parks, trails, and other recreational, historical, cultural, and educational facilities in the Malibu-Santa Monica Mountains area. The Commission specifically concluded that "the existing highway operates at poor levels of service which frustrate the ability of residents and visitors to use it" (emphasis added). The reasonably foreseeable increase in demand attributable to future development, including the present development request, is expected to result in a substantially greater adverse effect upon the ability of people to reach present and planned recreational facilities, since the new development will exacerbate existing traffic congestion. This conclusion is consistent with an earlier study (Burke, Coastal Access Analysis in California: An Assessment of Recreation Transportation Analysis in Coastal Planning) which concluded, based upon analytical studies of eight coastal areas, that residential traffic due to intense residential development in an urbanized part of Southern Orange County would account for 67% to 78% of future traffic volumes on certain transit routes, thereby limiting the amount of recreational traffic possible. Such an effect is inconsistent with Section 30252 of the Coastal Act, which states that the location and amount of new development should maintain and enhance public access to the coast and with Section 30254, which provides that public recreation, among other uses, shall not be precluded by other development when public works facilities have limited capacity.

4. The Trail System will Provide an Alternative Recreational Destination and will Serve as an Alternative Means of Transportation to Recreation Sites for Residents and Visitors.

As additional development such as the proposed project continues to increase traffic congestion, the trail system will provide an increasingly important recreational destination as well as an alternative means of access to desirable beach and nearshore recreational sites and related support facilities and destinations, such as existing and planned public campgrounds. Thus approval of this and other such projects must be conditioned to offset their impacts on public access to recreation sites. The Paradise Cove trail provides residences and visitors vertical access from the terrace area to the beach. It will serve day users, such as persons who take cross-mountain hikes or who use inland or crest trailheads and trails to gain access to existing and planned beach access points and park facilities. It will also serve members of the public using present and planned campsites in the Malibu-Santa Monica Mountains area. Continued regional growth and increased dispersion of residences, employment locations, service facilities, and commercial and recreational development will make these additions to the Santa Monica Mountains and regional movement networks increasingly important, especially in light of the magnitude of projected coastal-related recreation demand. To avoid a disproportionately large negative effect upon the public's present ability to reach and enjoy recreational pursuits, new residential development such as this project within the Malibu-Santa Monica Mountains area must be matched by continued implementation of the planned trail system and related facilities. The availability of trails and trail destinations will help keep people off the limited road system, and thus will help make available the existing and planned road capacity to serve beach users arriving from other parts of the Southern California metropolitan area. The level of residential build-out authorized by the Land Use Plan was approved only in association



with plan policies which require the development of on-site recreational opportunities which minimize use of coastal access roads. Unless the present development is conditioned to provide a trail system as an alternate form of recreational activity to beach use and as an alternate means of transportation access to other recreational facilities in the Santa Monica Mountains, as set forth in more detail below, it cannot be found to be consistent with the provisions of Section 30252 of the Coastal Act.

**5. Continued Residential Development has been Shown to have a Deterrent Effect upon Public Recreational Activities.**

Research has shown that a major deterrent to public use of recreational trails and similar public recreation areas and facilities is a perception by the public that the areas involved are private. The proposed development, along with the other similar development allowed by the approved Land Use Plan, will foster a sense of privatization in several ways. Because of the greatly increased level of private residential development, there will be a corresponding decrease in the perception that this and similar areas are available for public recreational use. As noted in The Cumulative Impacts of Shore zone Development at Lake Tahoe (Phillips Brandt Reddick McDonald and Grefe), "private backshore ownership often presents a physical or psychological barrier to (public users') use of a shore area, by implying private controls over the foreshore and nearshore," and "By implying private control over the shoreline, concentrations of private structures may act as a psychological deterrent to public use of the foreshore and nearshore." This effect would be comparable where trail users would regard a trail running near concentrations of private structures as being on private property. One study, "The Pressure for Shoreline Development: Spatial Concepts in Review" (Harrison), noted that spread development tends to preempt public access, partly due to the 'feeling of trespass' engendered by the predominance of private development.

Many potential users are not aware of the existence of the system or do not have enough information about how to use the system. This will be particularly true if there is pressure for the County to post the hillside streets for limited-time parking (as has happened in some coastal areas) or if certain shoulder or roadside areas are posted "no parking" to accommodate the increased levels of traffic caused by the new residential development or to improve sight lines or provide other safety features. An article in Proceedings of a Forum on Recreational Access to the Coastal Zone (Fawcett) noted that "recreational access is often limited by the highway network's traffic capacity and the amount of available parking." The deterring effect caused by the appearance that the area is private and that no public facilities exist is made worse by a lack of information, studies show. As stated in "The Influence of Information Signs on Visitor Distribution and Use" (Brown and Hunt), "Lack of information is a primary factor accounting for visitors jamming recreation sites, overflowing onto highway rights-of-way and blocking facilities. In attempting to gain an even distribution of visitors, the importance of information signing as a management tool is often overlooked." Another report, "A Model of Non-Use of Urban Leisure Services" (Goodbye), notes that "the most frequent reason cited by low income adults for their lack of participation (in park activities) was a lack of awareness of services available to them." The Parks study cited earlier emphasizes the importance of public knowledge of an area, and the ready availability of



information about it, in avoiding expensive under-utilization of publicly-provided recreational facilities--in effect, a de facto privatization of expensive public investments.

Development of future residential units in the approved plan will create a stronger perception of privateness in regard to the parcels involved and thus will contribute both directly and cumulatively to the public perception of this being an uninviting, non-pristine, and unavailable area. The resulting discouragement of public use, in addition to affecting the public perception of this particular parcel, will create a disincentive to use by the public of this portion of the Santa Monica Mountains trail system. This will lead to under-utilization of this facility and a consequent inefficiency in the use of the considerable public funds which have already been expended for planning and development of facilities in this area. Under-utilization of the trails network in this populous area of high demand will create an overly heavy demand for trail facilities in other areas, and there will be detrimental effects upon traffic congestion and beachfront park accessibility, and there will be additional travel as users travel from one portion of the region to another to utilize trails perceived as readily available.

The change in the visual nature of the area will also deter public use. Continued residential development such as that represented by this application will convert portions of the Santa Monica Mountains from an undeveloped wilderness appearance to that of a suburban residential neighborhood. Studies demonstrate that such a change affects users' perceptions of the nature and value of the recreational experience. "The Effects of People and Man-induced Conditions on Preferences for Outdoor Recreation Landscapes" (Carls), concludes that "the results...strongly indicate that numbers of people and levels of development have a notable effect on preference for outdoor recreation landscapes...the presence of greater numbers of people and higher levels of development, as elements of the landscape, tend to reduce preference." In "Recreational Use of the Coastal Zone: Effects of Crowding and Development" Carls notes that "there is growing evidence that esthetic factors, such as the number of people...have an important influence on choice of recreation facilities and over-all user satisfaction...people tend to select those places with lower levels of crowding and development;" further, "...as the number of people in a landscape scene increased, preferences for that scene decreased." Other studies report even stronger reactions by users. "The Assessment of Environmental Aesthetics in Scenic Highway Corridors" (Evans and Wood) noted that "even slight changes in adjacent roadside development affect significant changes in perception of roadside quality. People felt that with increasing human intrusion the corridor became proportionately more worthless, useless, cluttered, unpleasant, ugly, and drab. Increased development also reduced ratings of scenic quality and preferences." Another recent article, "Oil and Gas Development in a Coastal Landscape: Visual Preferences and Management Implications" (Nassauer), found that "apparent naturalness...strongly influenced preference. Naturalness was clearly noted in the description of landscape features and favored in ratings of landscape views."

In a recent study on visual carrying capacity, "Projecting the Visual Carrying Capacity of Recreation Areas" (Nieman and Futrell), it was shown that "individuals prefer less crowded areas for their recreational experiences...individuals are disturbed by what they perceive as crowded

conditions in outdoor recreation areas. This negatively affects their enjoyment level and, thus, the perceptual or visual carrying capacity of the recreation area is decreased or surpassed." It was also shown that "as the incidence of manmade elements in the landscape increased the percentage of very disturbed responses increased and vice versa for the non-disturbed responses." Another article, "Visual Impact of Development in Coastal Zone Areas" (Wohlwill), states that "there are...findings of a seeming pro-nature bias, notably with respect to highly scenic natural areas, including coastal-zone areas in particular, where the appearance of any built structure or development is apt to be evaluated negatively." (emphasis added)

The conclusions of these studies are consistent with some of the most distinct preferences expressed in the 1987 Parks survey on public opinions and attitudes on outdoor recreation cited above. Almost 90 percent of the participants approved of increasing the protection of scenery and the natural environment. Two-thirds approved of an increase in the number of wilderness areas where no vehicles or developments are allowed. On a specific question of support for developing more riding and hiking trails where no vehicles are allowed, 56.7% of respondents expressed the strongest possible support (5 on a scale of 5-1) and an additional 23.6% chose a ranking of 4. Support for the provision of open space in urban areas was almost as strong: 55% of participants ranked such a program as of highest support, a 5, and 22.7% gave it a ranking of 4.

Because of the factors noted above, development of the proposed project and of other similar development within the Santa Monica Mountains allowed by the certified plan would adversely affect recreational users' perceptions of the nature and value of the recreational use, a result inconsistent with Coastal Act provisions giving high priority to public recreational use.

## 6. Conclusion

For all the reasons discussed above, the Commission finds that the trail, as proposed by the applicant, is necessary and will, to a substantial extent, serve existing and future residents of the area, and will help meet the increased recreational demands that the increased numbers of residents will place on the recreational resources of the mountains and seashore. However, as currently proposed the western end of the trail ends at the property line that is shared by another owner. The trail does not connect with Encinal Canyon Road. This alignment will only be viable if the adjacent property owner develops his property and a public agency requires an easement or grants an easement. Furthermore, even if the property is developed it is uncertain that a trail easement would be feasible in this location. Although the easement follows an existing dirt road, the road may be required for access by the property owner which may preclude a trail easement. As proposed there are too many uncertainties with this portion of the alignment due to the separate ownership of the adjacent property. However, the applicant has frontage along Encinal Canyon Road approximately 200 feet to the north. Realigning and constructing a trail to join with Encinal Canyon Road will not require a significant amount of grading and will not adversely impact the existing oak trees if properly located. Therefore, as a condition of the permit the applicant shall submit a revised trail plan indicating that the trail will connect to Encinal Canyon Road. Furthermore, the applicant shall submit evidence that the County has reviewed and approved the trail alignment.

The trails will connect with park lands that serve people from the region and from outside the area, and will provide recreational opportunities that are an alternative to the beaches and will also provide an alternative mode of access to the mountain and beach areas, helping mitigate the increased traffic congestion caused by the new development. In all of these ways, approval of the application as conditioned to provide for the dedication of the trails and a connection between the two trails on the property, as stated above, the proposed project will be consistent with Sections 30210, 30212(a), 30212.5, 30213, 30223, 30250, 30252, 30254, and 30530 of the Coastal Act.

Because build-out of the present parcel and the balance of the older parcelized subdivisions will place a direct burden on the recreational and visual resources of the mountains, without the compensatory dedications that would have been required if they had subdivided at one time rather than piecemeal, it is necessary to provide dedications of planned public facilities as these subdivisions build-out so that the residential areas will provide recreation for the residents, and so that the latter will not overwhelm the recently acquired public recreational facilities. It has been the policy in the Santa Monica Mountains to integrate the neighborhood and the regional facilities in one planned system open to all. It is this system that is specifically identified as part of the certified Land Use Plan and the Area Plan trails map.

As provided in Condition #16, the applicant will dedicate a public access trails easement over the Coastal Slope Trail as depicted in Exhibit 3. As conditioned, the project is consistent with policy P44 of the certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan and Policies 30210, 30212(a), 30212.5, 30213, 30223, 30252, and 30530 of the Coastal Act.

#### Concerns raised and Commission Responses

1. Trail will not provide recreational opportunities or minimize impacts on access and the location of the trail is too steep for equestrian use.

The trail will provide such opportunities over the long term once the trail is accepted by a public agency and the trail constructed, as evidenced by the Trails Council's representative's comments at the hearing. The proposed trail is a connector trail serving to connect this trail with other areas of the Santa Monica Mountains. By providing a connector trail on site the overall trail system of the Santa Monica Mountains will be expanded, increasing the recreational opportunities for the Santa Monica Mountains and which will help distribute the demand placed on the areas limited recreational resources.

The Trails Council's representative stated at the hearing that the trail will not pose a safety hazard for riders. Mover, the County's park service has reviewed and approved the original alignment. The only change to the trail is at the entrance and will not significantly alter the gradient of the trail.

2. The Commission expressed the concern of the need for a parking area along Encinal Canyon Road to serve the trail and unobstructed access.

Staff and the Trails Council representative indicated that a parking area

would not be necessary since the proposed trail would be connector trail and that parking is generally provided at trail heads in various public areas, such as parks. Since Charmlee Park is located to the west of the development, the park would be the starting point.

The trail will not be gated so access will be uninterrupted and accessible for all members of the public.

3. Traffic generated by the development will create a hazard on Encinal Canyon Road.

There has not been any information submitted that would support such a claim. The EIR prepared for the project does not support this contention either. Moreover, traffic safety is an issuance that is usually addressed by the local agency.

**F. Cumulative Impacts of New Development.**

The proposed project raises cumulative impact concerns because of the creation of additional buildable lots. The following condition is in response to these concerns: Condition #16 requires the applicant to extinguish the development rights on 43 building sites.

Section 30250(a) of the Coastal Act states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The Malibu/Santa Monica Mountains Land Use Plan states in Policy 273d that:

In all other instances, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure consistent with the LCP. All land divisions shall be considered to be a conditional use.

Given the fact that the LUP is the most recent policy action taken by the Commission on development (including subdivisions) in the Santa Monica

Mountains, the applicant must comply with Policy 273d of the LUP which the Commission found consistent with Section 30250(a) of the Coastal Act. However, in this situation approximately three-quarters of the subject property is located south of the Malibu Sequit line. The Commission has consistently used this line to demarcate developed areas from undeveloped areas. The Commission has considered parcels south (seaward) of the line to be in the developed area of the coastal terrace. Those parcels north(landward) of the line are considered outside of the developed area. Therefore, in this situation, because the majority of the proposed development will be within the area considered developed (south of the Sequit line) the average lot size analysis required by Section 30250(a) is not applicable.

The Coastal Act requires that new development, including subdivisions and multi-family projects, be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent was to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

The certified Malibu/Santa Monica Mountains Land Use Plan (LUP) does not contain the TDC Program as a means of mitigating the cumulative impacts of the potential build-out of existing non-conforming lots. Instead the LUP contains in Policy 272, six alternative mitigation techniques to prevent both the build-out of existing small lots and the development of lots of less than 20 acres in designated Significant Watersheds in order to insure that land divisions and multiple-unit projects are consistent with the requirements of Section 30250(a). The six basic components of Policy 272 are as follows:

1. Application of a residential building cap of 6582 new units, of which no more than 1200 units shall be in designated small lot subdivisions;
2. Acquisition, by outright public purchase, non-conforming lots and lots in designated Significant Watersheds through the continuing acquisition, programs of several agencies;

3. Offering tax delinquent lots to adjoining lot owners, under attractive terms which would provide incentives for acquisition and consolidation into larger conforming parcels;
4. Offering incentives to owners of contiguous legally divided lots to voluntarily consolidate the lots into larger single holdings;
5. Empowering the County Community Redevelopment Agency to redevelop areas in order to achieve more appropriate lot and subdivision configurations and development sites;
6. Providing opportunities to owners of non-conforming lots to exchange their property for surplus governmental properties in more suitable development areas inside and outside the Coastal Zone.

The County currently does not have the mechanisms in place to implement any of these six programs. In several recent permit actions subsequent to certification of the LUP (5-86-592, Central Diagnostic Labs; 5-86-951, Ehrman and Coombs; 5-85-459A2, Ohanian; and 5-86-299A2 and A3, Young and Golling), the Commission found that until the County has the means to implement these programs, it is appropriate for the Commission to continue to require purchase of TDC's as a way to mitigate the cumulative impacts of new subdivisions and multi-residential development. In approving these permit requests, the Commission found that none of the County's six mitigation programs were "self-implementing" and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique to retire development rights on selected lots, remained a valid means of mitigating cumulative impacts in the interim period during which the County prepares its implementation program. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

As discussed above, the LUP contains six potential techniques to mitigate cumulative impacts, none of which are easily implemented at the present time. In the interim, the Commission has approved new subdivisions, but has continued to require purchases of TDC's as one of the alternative mitigation strategies. The Commission finds that it is necessary to impose a similar requirement on the applicant, in order to insure that the cumulative impacts of the creation of new building lots are adequately mitigated. Therefore, the number of required TDC's will equal the total number of building lots permitted under this permit (51 lots) less the number of existing legal building lots on the project site (8 lots). Therefore, condition #16 requires the applicant to mitigate the cumulative impacts of the subdivision of this property, either through purchase of forty-three (43) TDC's (number subject to confirmation by the Executive Director prior to issuance of the Coastal Development Permit) or by participation in one of the County's alternative programs. The Commission finds that as conditioned, the permit is consistent with Section 30250(a) of the coastal Act, and the land division policies of the Malibu/Santa Monica Mountains Land Use Plan.

## 6. Geology

The project raises geologic impact concerns because of the site's potential for geologic hazards. The following condition is in response to this concern: Condition #18 requires conformance with recommendations made by the consultant.

Section 30253 of the Coastal Act states in part that new development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The subject property is located in the east-west trending Santa Monica mountains which are a part of the Transverse Ranges geomorphic province. The western Santa Monica Mountains are composed of thick accumulations of lower and Middle Miocene Marine Sedimentary and Volcanic rocks. The bedrock units exposed on-site are a) Middle Miocene lower Topanga Formation; b) Lower Miocene Vagueros Formation; and c) Miocene intrusive basalts. The surficial earth materials mantling the bedrock units on-site consist of alluvium, colluvium and residual soils. The residual soils are comprised of black to brown clays.

Beds within the lower Topanga Formation and the Vagueros Formations are well-bedded and, in general, trend northeast with moderate to steep dips to the southeast. Variations of this general trend occur near inactive faults. Several inactive faults traverse the site in a north-easterly direction, accompanied by a conjugate east-west system. These inactive faults have produced moderately folded to locally tightly folded bedrock strata throughout the site.

The Transverse Ranges Province is distinctive for its east-west trend due, in part to fault-controlled mountain fronts and deep basins, as well as, a dynamic geologic and tectonic history compared with other parts of southern California. The earthquake hazard on this tract is considered average for southern California and damage from ground rupture is extremely unlikely inasmuch as no known active fault crosses the property. Although minor faults are present, there is no reason to consider them to be active.

Prior to the geologic firm's site investigation current geologic maps indicated that areas exist on-site which are affected by landsliding. It is the firm's opinion that the mapping was done on a reconnaissance-level. The firm conducted an exploration program consisting of numerous borings, trenches, shallow seismic traverse lines, air photo interpretation, literature research and field mapping. Based upon this information, it is the firm's opinion that no landslides are located within the subject property.

The geologic report concludes that development of the subject property appears feasible from a geologic and soils engineering viewpoint. The proposed



building sites will be free from the detrimental affects associated with landsliding, settlement and slippage and the proposed building or grading construction will not have an adverse affect on the geologic stability of property outside of the building sites provided that the recommendations made in the report with respect to site preparation, grading, pad design, and drainage are incorporated into the plans and implemented. To ensure that the proposed project will be safe from geologic hazard the applicant condition #1B requires that the applicant submit evidence that all recommendations made by the consulting geologist are incorporated into the plans. The Commission, therefore, finds that the proposed project, as conditioned, will be consistent with Section 30253 of the Coastal Act.

#### H. Archaeological Resources

The project raises archaeological resource impact concerns because of the possibility that the proposed project may disturb archaeological resources. The following condition is in response to this concern: Condition #1B requires a qualified archaeologist to be present on-site during all grading activity.

Section 30244 of the Coastal Act states that:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Policy 169 of the Malibu/Santa Monica Mountains Land Use Plan states that:

Site surveys performed by qualified technical personnel should be required for projects located in areas identified as archaeologically/paleontologically sensitive. Data derived from such surveys shall be used to formulate mitigating measures for the project.

If not properly located and designed, development can significantly impact archaeological resources. Excavation or grading for site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be lost. As so many archaeological sites have been destroyed or damaged as a result of development activity or natural processes, the remaining sites, even though they may be less rich in materials, have become increasingly valuable. Additionally, because archaeological sites if studied collectively may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites which remain intact. The greater province of the Santa Monica Mountains is the focus of one of the most important concentrations of archaeological sites in Southern California. Although most of the area has not been systematically surveyed to compile an inventory, the sites already recorded are sufficient in both numbers and diversity to predict the ultimate significance of these unique resources.

An Archaeological Boundary Test was conducted on the project site. The archaeological report is on file with the County of Los Angeles and the University of California at Los Angeles Archaeological Survey. An archival research and search of the maps, site records and manuscripts on file at the UCLA Archaeological Survey revealed that several archaeological surveys have



been completed adjacent to Encinal Canyon and the subject property.

Research has revealed that six archaeological sites have previously been recorded on the property and two previously unrecorded sites. None of the eight sites are large, complex or have much depth of deposit. Two sites were found to contain shallow subsurface deposits and retain the greatest archaeological potential. Another site consists of a single bedrock mortar in a low sandstone boulder. Several sites appear to be scatters without much appreciable depth and surface collecting has removed most artifacts. Another site consists of a series of small rock shelters, all badly vandalized.

Development would impact some of the archaeological sites. In the event that any cultural materials are encountered during the course of grading or construction anywhere on the subject property, the applicable procedures such as those established by the Council on Historic Preservation for the Protection and Preservation of Historic and Cultural Properties (36 CFR Part 8007) must be followed. In such an event, archaeological consultation should be obtained promptly so that an immediate assessment of the extent and significance of any cultural materials can be determined, and further recommendations made for the mitigation of any adverse impacts. Therefore, the Commission has determined that the subject permit will be conditioned (#18) to require the applicant to: (1) suspend all activity on the subject property should archaeological resources be discovered during any construction phase, (2) have a qualified archaeologist be present on-site to monitor all subsequent grading, and (3) implement mitigation measures developed to address project impacts on said resources. As conditioned, the Commission finds that any adverse impacts on archaeological resources will be mitigated and that the proposed development will be consistent with Section 30244 of the Coastal Act and Policy 169 of the Land Use Plan.

#### I. Additional Concerns Raised and Commission Response

1. The Commission is planning by condition by requiring the submittal of reports, final plans and such.

The Commission has draft and/or preliminary plans and seeks to insure that final plans are consistent with those plans that have already been reviewed by Commission staff. Moreover, any substantial variation would require an amendment to the permit. By placing conditions on the permit the Commission has set out sufficient criteria to be included so that it is the Commission who is making the discretionary decision, not staff. Furthermore, all cities, counties, and regulatory agencies typically attach conditions to approvals which modify, mitigate, etc.

#### J. Consideration of Alternatives

In reviewing this project from the beginning, the Commission has considered a number of alternatives ranging from the much larger, more intense project approved by the County to the project as previously approved by the Commission to this revised project. (See comparison of alternatives in Rancho Malibu Technical Reports, Introduction & Project Description.) The Commission also considered elimination of the two lots on the eastern ridge as an

alternative. (See discussion of two lots in Transcript of August 11, 1993 hearing at pages 65-66.) The location of those lots was previously the site of the wastewater treatment center which required substantially more grading. As proposed, the two lots will have little impact on the environment. The road will bridge the canyon rather than use a culvert and fill as previously contemplated. Bridging will be accompanied with revegetation and restoration of the road necessary to construct the bridge. The site is relatively flat and suitable for development. There is minimal grading required for the two lots, only 5,000 cu. yds., so the land form alteration will be minimal and the impacts of that alteration will not be significant. The lots will be visible from Charmlee Park but only as a part of the overall project thus the visual impacts of the lots considered alone will be insignificant. The visual impacts of the project as a whole have been minimized and mitigated such that it will be visible only from portions of Charmlee Park, primarily the parking area and isolated portions of the trail as testified to by staff. (Transcript of August 11, 1993 hearing, pages 49-50.) The visual impacts will not be significant.

The City of Malibu urged the Commission to deny the project. Based on the Commission's conclusion that the project has been mitigated so as to reduce any potential adverse impacts to a level of insignificance and the project as revised and mitigated is consistent with the Coastal Act, denial is not called for in this instance. The City also urged the Commission to consider, as alternatives, approval of only 20 lots rather than 51 or returning to the prior staff recommendation of 34 lots. However, the prior staff recommendation was based primarily upon the impacts of grading, landform alteration and visual impacts due to construction on the eastern ridge. By clustering the development, reducing the size of the lots and the building pads, reducing the width and length of the access road and eliminating almost all development on the eastern ridge, the significant impacts of the greater density have been mitigated and remaining impacts will not be significant. (See Transcript of August 11, 1993 hearing, pages 11-12.) The Commission has considered the Project Grading Comparison Analysis, the Revised Project Analysis and the various Technical Reports submitted by the applicant in support of the revised project. While it might be feasible to reduce the number of lots proposed, such a reduction would not substantially reduce the project's impacts since the greatest amount of grading, 75% of the total, is generated by the access road. (See Transcript of August 11, 1993 hearing, pages 11-12.)

Similarly, the Commission considered the visual impacts analyses prepared by the applicant and staff's personal observations of impacts on Charmlee Park as well as testimony and photographs presented by project opponents. As the analyses demonstrate, the project as revised will have no impacts on views from the public beaches or Pacific Coast Highway. The project will be visible from parts of Charmlee Park but only from the parking lot and along the perimeter of some of the trails on portions of the park, as staff testified and as evidenced in the visual analyses. In the remainder (majority) of the park area, the site is not visible. (See Transcript of August 11, 1993 hearing, pages 49-50 and visual analyses submitted by the applicant.) The Commission notes that photographs submitted by the opponents did not prove that impacts on the views from Charmlee Park would result. The Commission concludes that the project, as revised and mitigated, will not have significant impacts on public views.

The proposed density is consistent with the certified Malibu Land Use Plan, the clustering of development leaves the remainder of the site in open space, the Steep Hill ESHA is now over 450 feet from the closest proposed development area, all development is outside of the ESHA so no vegetation will be lost in the ESHA and residential runoff into the ESHA is eliminated. As revised, the visual impacts of the project on Charmlee Park have been greatly reduced and impacts on other public areas have been eliminated. Consequently, the Commission finds that any significant impacts of the project, as revised, have been mitigated so as to substantially lessen or avoid any significant adverse effect.

**K. Local Coastal Program:**

Section 30604(a) of the Coastal Act states that:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains LCP. The Certified LUP contains policies to guide the types, locations and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections regarding visual resources, cumulative impacts, access and recreation, geology, septic systems and archaeological resources. As conditioned, the proposed development is consistent with the applicable policies indicated in the preceding sections which are contained in the LUP. In addition, the proposal has been sited in conformance with the Land Use Plan map designations for residential development and is below the allowable density of the site. Therefore, the Commission finds that approval of the proposed development, with conditions, will not prejudice the County's ability to prepare a Local Coastal Program implementation program for Malibu and the Santa Monica Mountains which is consistent with the policies of Chapter 3 of the coastal Act as required by Section 30604(a).

**L. CEQA**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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)(i) 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 impact which the activity may have on the environment.

The Commission has possible alternatives to the proposed project as stated in

section I. Consideration of Alternatives. However, based on the information submitted and the analyses of the information, there is not an alternative available that will significantly reduce the adverse impacts to the surrounding resources. Moreover, there are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

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**FILED**  
LOS ANGELES SUPERIOR COURT

**MAR 25 1997**

JOHN A. CLARKE CLERK

BY F. Aldana DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

L.A. CHOSA HIGHLANDS PROPERTY OWNERS  
ASSOCIATION, INC.,

Petitioner,

v.

COUNTY OF LOS ANGELES; BOARD OF  
SUPERVISORS OF COUNTY OF LOS  
ANGELES,

Respondents.

BMIF/BSLF II RANCHO MALIBU; BANYAN  
MANAGEMENT CORP.; BANYAN MORTGAGE  
INVESTMENT FUND; BANYAN STRATEGIC  
LAND FUND II,

Real Parties in Interest.

) Case No. **BS039789**

) [EMPHASIZED] STATEMENT OF  
) DECISION

EXHIBIT NO. 5  
*10 pages total*  
APPLICATION NO.  
*Rancho Malibu*  
*5-91-436 (Remand) - A1*  
*Statement of Decision*  
*LA Co. Superior Court Case No.*  
*BS039789*

This special proceeding came regularly before the Court in  
Department 85 (the Honorable Robert H. O'Brien, Judge Presiding),  
for hearings on January 22, 1997 (ex parte application of  
respondents and real parties in interest for order denying  
petitioner's application for order striking opposition memoranda  
of points and authorities) and January 27, 1997 (petitioner's

1 motion for peremptory writ of administrative mandamus,  
2 petitioner's application for order striking opposition memoranda  
3 of points and authorities or indicating that such memoranda will  
4 not be considered, and ex parte application of respondents and  
5 real parties in interest for order denying petitioner's  
6 application for order striking opposition memoranda of points and  
7 authorities).

8       Appearing as attorneys were: Frank P. Angel of the Law  
9 Offices of Frank P. Angel on behalf of petitioner La Chusa  
10 Highlands Property Owners Association, Inc. (petitioner); Charles  
11 J. Moore, Principal Deputy County Counsel, for respondents County  
12 of Los Angeles and Board of Supervisors of County of Los Angeles  
13 (respondents); and Timothy A. Tosta of Baker & McKenzie on behalf  
14 of real parties in interest BMIF/BSLF II Rancho Malibu, Banyan  
15 Management Corp., Banyan Mortgage Investment Fund and Banyan  
16 Strategic Land Fund II (real parties in interest). The Court  
17 proceeded with the hearing based upon the representation of  
18 petitioner that it has, or will immediately upon demand, pay the  
19 full cost of the preparation of the administrative record.

20       The first amended petition for writ of administrative  
21 mandamus, answers, opening papers, reconstituted opposition  
22 papers, reply papers, and all other papers filed in this  
23 proceeding having been considered; the administrative record  
24 (volumes 1 through 45, numbered pages 1 to 13552) and supplements  
25 to administrative record (volume 1, containing exhibits 1 through  
26 3; and volumes 2 through 3, numbered pages 1 to 445), having been  
27 received into evidence and examined by the Court; and judicial  
28 notice having been taken of the subject matter of the request for

1 judicial notice of petitioner, dated November 8, 1996, and the  
2 request for judicial notice of real parties in interest, dated  
3 December 16, 1996. (Evid. Code, §§ 452, subds. (b), (c) & (h);  
4 Cal. Rules of Court, rule 323(b); Hensler v. City of Glendale  
5 (1994) 8 Cal.4th 1, 8, fn. 2 (judicial notice taken of zoning  
6 ordinance); Horn v. County of Ventura (1979) 24 Cal.3d 605, 615  
7 (same); Furey v. City of Sacramento (1979) 24 Cal.3d 862, 870, fn.  
8 5 (judicial notice taken of water and waste management plan);  
9 Washington v. County of Contra Costa (1995) 38 Cal.App.4th 890,  
10 897 (trial court's judicial notice of area plan affirmed); Dunn-  
11 Edwards Corporation v. South Coast Air Quality Management Dist.  
12 (1993) 19 Cal.App.4th 519, 522, fn. 2 (judicial notice taken of  
13 air quality management plan); Las Virgenes Homeowners Federation  
14 Inc. v. County of Los Angeles (1986) 177 Cal.App.3d 300, 307, fn.  
15 3, review den. (judicial notice taken of County General Plan,  
16 including the Malibu/Santa Monica Mountains Area Plan); Watson v.  
17 Los Altos School Dist. (1957) 149 Cal.App.2d 768, 772 (judicial  
18 notice taken of records of county planning department).)

19 Arguments having been presented and the matter having been  
20 submitted for decision on January 27, 1997; the Court having  
21 signed and entered an order on February 5, 1997, accepting the  
22 reconstituted opposition papers filed on behalf of respondents and  
23 real parties in interest, thus rejecting the application to strike  
24 filed January 15, 1997; and granting the first amended petition  
25 for writ of administrative mandamus while directing counsel for  
26 petitioner to prepare, serve and file in Department 85 a proposed  
27 statement of decision and proposed judgment within seven days of  
28 the Court's order of February 5, 1997; and, counsel for petitioner

1 having now prepared, served and filed the proposed statement of  
2 decision and proposed judgment, the Court adopts this statement of  
3 decision in support of its order granting the first amended  
4 petition for writ of administrative mandamus:

5 1. Petitioner challenges the legal validity of respondents'  
6 purported approval of certain development entitlements for a  
7 subdivision consisting of 46 single-family lots, one wastewater  
8 treatment plant lot, one street lot and three open-space lots  
9 (project). The development entitlements at issue consist of  
10 tentative tract map no. 46277 (revised), conditional use permit  
11 no. 91-315(3) and oak tree permit no. 91-315(3).

12 2. Petitioner further challenges the legal sufficiency of  
13 the final supplemental environmental impact report (SEIR) (State  
14 Clearinghouse no. 88050410) prepared for the project, and its  
15 certification by respondent Board of Supervisors (Board) of the  
16 County of Los Angeles (County).

17 3. The project site comprises 270.1 acres of land, located  
18 in the Encinal Canyon area of the unincorporated Malibu/Santa  
19 Monica Mountains coastal zone. Vehicular access to the project  
20 site is from Encinal Canyon Road only. The 46 residential lots  
21 are sited along a system of cul-de-sacs, which includes a 2,450-  
22 foot long trunk, Rancho Malibu Road. (Supp. A.R. Map. No. 2  
23 (approved tract map).) The project site lies in a designated very  
24 high fire hazard severity zone (former fire zone no. 4).

25 4. The first amended petition for peremptory writ of  
26 administrative mandamus -- the operative pleading -- contains six  
27 causes of action:  
28



1           4.1 First cause of action: alleging that specified  
2 portions of the SEIR are inadequate on the ground that they do not  
3 comply with the information disclosure requirements of CEQA and  
4 the CEQA Guidelines;

5           4.2 Second cause of action: alleging, inter alia, that  
6 the findings adopted by the Board on May 14, 1996, regarding  
7 certification of the SEIR, show a failure to consider the original  
8 environmental impact report (original EIR), which had been  
9 certified in 1990 for an earlier, different subdivision proposal  
10 on the project site; and that the Board's decision to approve the  
11 project was adopted prior to completion of the environmental  
12 review process, to wit, prior to the Board's certifying the SEIR;

13           4.3 Third cause of action: alleging that respondents  
14 have failed to provide for housing units for persons of low or  
15 moderate income or make findings regarding the feasibility of such  
16 housing units either in the project, or at another location within  
17 the County's coastal zone or within three miles thereof (Gov.  
18 Code, § 65590, subd. (d));

19           4.4 Fourth cause of action: alleging violations of the  
20 Subdivision Map Act (Gov. Code, § 66410 et seq.) on the ground  
21 that the proposed subdivision is inconsistent with the County's  
22 General Plan and that respondents failed to substantiate the  
23 findings required by Government Code section 66474;

24           4.5 Fifth cause of action: alleging that the proposed  
25 subdivision violates the County's Subdivision Ordinance (L.A.  
26 County Code, § 21.04.010 et seq.) on the ground that the  
27 applicable standards relating to the length of cul-de-sacs serving  
28

SENT BY:

8-18-88 ;12:48PM ;

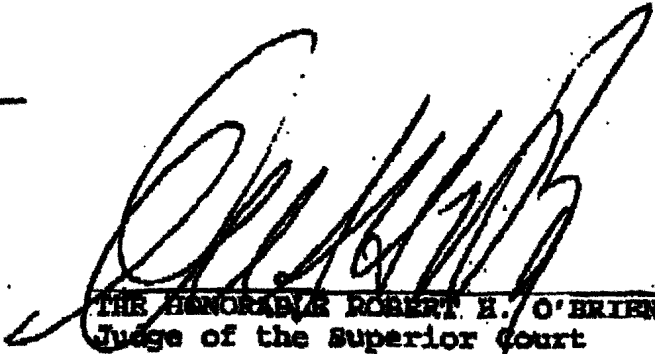
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Let judgment be entered accordingly.

DATED: MAR 25 1987



THE HONORABLE ROBERT H. O'BRIEN  
Judge of the Superior Court