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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-07-040

APPLICANTS: Rod and Ramona Spector

AGENTS: Drew Purvis and Edward Burg

PROJECT DESCRIPTION: Construction of a 4,453 sq. ft., 2-story single-family residence, 506 sq. ft. attached garage, 572 sq. ft. detached guesthouse with 483 sq. ft. garage below, driveway, retaining walls, septic system, 5,000-gal. water tank, and 1,217 cu. yds. of grading (274 cu. yds. cut, 943 cu. yds. fill). The application also includes a request for after-the-fact approval for creation of the subject parcel, which was first treated as a separate lot in 1997.

PROJECT LOCATION: 1721 Corral Canyon Road, Santa Monica Mountains, Los Angeles County (APN 4461-004-039)

MOTION & RESOLUTION: Page 4

LOCAL APPROVALS RECEIVED: Conditional Certificate of Compliance #95-0381A (2003); Clearance of Conditions in CC #95-0381A (2005); Los Angeles County Department of Regional Planning Approval-in-Concept, July 25, 2006; County of Los Angeles Environmental Health Services, Sewage Disposal System Design Approval, July 10, 2008; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan Approval, October 24, 2005; County of Los Angeles Fire Department, Fire Prevention Engineering Approval, December 14, 2006.

SUBSTANTIVE FILE DOCUMENTS: Certificate of Compliance (Exempt) #95-0381 (1997); Rescission of Certificate of Compliance (Exempt) No. 95-0381 (2003); Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains dated March 25, 2003 and prepared by Dr. John Dixon; Certified Malibu/Santa Monica Mountains Land Use Plan; Percolation Test Results and Septic System Design Report, Alpine Geotechnical, November 2006; "Geologic and Soils Engineering Investigation," Alpine Geotechnical, November 10, 2006; "Biological Assessment," by Forde Biological Consultants, June 28, 2007; South Coast Regional Commission CDP No. A-2-28-77-257 (Shultz/McDonald); CDP No. 5-87-390 (Iliff); CDP Application No. 5-91-719 (Iliff); CDP Application No. 4-99-253 (Greene); CDP Application No. 4-00-157 (Greene); CDP No. 4-98-157 (McDonald/Greene/Vidi Vici); CDP Waiver No. 4-01-231-W (Crink).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **denial** of the proposed project. The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu–Santa Monica Mountains Land Use Plan (LUP) serve as guidance.

The applicant proposes to construct a 4,453 sq. ft., 2-story single-family residence, 506 sq. ft. attached garage, 572 sq. ft. detached guesthouse with 483 sq. ft. garage below, driveway, retaining walls, and septic system, 5,000-gal. water tank, and to perform 1,217 cu. yds. of grading (274 cu. yds. cut, 943 cu. yds. fill) on an approximately five-acre property located at 1721 Corral Canyon Road, Santa Monica Mountains, Los Angeles County. A legal parcel of approximately 21-acres was divided into four properties through the recordation of four deeds; two were recorded on November 14, 1997 and two were recorded on December 31, 1997. The original parties to these deed transactions no longer own any of the four properties, as they have been sold to multiple owners, and the successor to only one of those buyers is before the Commission at this time. This land division that attempted to create four lots by deed in 1997, including the parcel that is the subject project site, occurred after the effective date of the Coastal Act (January 1, 1977). As such, the land division requires a coastal development permit, pursuant to the provisions of the Coastal Act, to be legally effective. No CDP was obtained for this land division. As such, the applicant is also requesting after-the-fact approval for creation of the subject lot that is the proposed project site.

The subject property is located in a rural area of the Santa Monica Mountains immediately west of Corral Canyon Road and southwest of the Malibu Bowl small lot subdivision. The property consists of moderate, southwest-facing hillside slopes that descend from Corral Canyon Road down to an unnamed drainage that is a tributary to Dry Canyon Creek. Dry Canyon Creek, designated as a blue line stream by the United States Geologic Service, is located approximately 500 feet south of the subject property. With the exception of the disturbed roadside portion of the property along Corral Canyon Road and an unpermitted dirt path that bisects the property, the entire five-acre property is densely vegetated with relatively undisturbed mixed chaparral vegetation that is part of a large, contiguous block of pristine native vegetation and constitutes an environmentally sensitive habitat area (ESHA). Additionally, the majority of the 21-acre legal "parent" parcel (with the exception of a Commission-approved stable with caretaker's unit and associated pre-Coastal Act dirt road and disturbed area) constitutes ESHA under the Coastal Act as it supports large areas of relatively undisturbed mixed chaparral, oak woodland, and riparian vegetation that are part of a much larger, contiguous stand of chaparral and associated plant communities.

The proposed construction of a single family residence within ESHA is not consistent with Sections 30231 or 30240 of the Coastal Act or the guidance policies of the LUP because residences are not resource-dependent uses and because the habitat removal associated with the proposed construction (including the development area and required fuel modification areas) will not protect ESHA against any significant disruption of habitat values. Furthermore, the after-the-fact land division aspect of the proposed project is not consistent with either the Chapter 3 resource protection policies in the Coastal Act, including Sections 30231 and 30240, or with the resource protection policies of the certified Malibu/Santa Monica Mountains LUP, because such land division would result in the eventual development of up to four residences, each with habitat removal for a development area, access road, and required fuel modification that would not protect ESHA against any significant disruption of habitat values. Additional residential

development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters in non-compliance with Section 30231 of the Coastal Act. Finally, construction of up to four residences on site would also require installation of additional septic systems which can also result in adverse impacts to water quality. As such, the proposed project will not maintain or restore the biological productivity of coastal waters or streams and will not protect ESHA against significant disruption of habitat values in direct conflict with Sections 30231 and 30240, and will not avoid significant adverse effects, either individually or cumulatively, on coastal resources, which is in direct conflict with Section 30250 of the Coastal Act and the guidance policies of the Los Angeles County Malibu/Santa Monica Mountains Land Use Plan. There are feasible alternatives that would avoid the adverse environmental and cumulative effects of the project, including the alternative to recombine the "parent" parcel into one ownership through coordination with the owners of the other lots that collectively make up the parent parcel. Once accomplished, the parties could sell the legal parent parcel and distribute the proceeds. Therefore, for the above reasons and for the reasons more fully explained in the following sections of this report, staff recommends that the Commission deny this application.

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I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-07-040 for the development as proposed by the applicant.***

STAFF RECOMMENDATION OF DENIAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **denies** a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicant proposes to construct a 4,453 sq. ft., 2-story single-family residence, 506 sq. ft. attached garage, 572 sq. ft. detached guesthouse with 483 sq. ft. garage below, driveway, retaining walls, and septic system, 5,000-gal. water tank, and to perform 1,217 cu. yds. of grading (274 cu. yds. cut, 943 cu. yds. fill) (**Exhibits 3-6**). The applicant also requests after-the-fact approval for creation of the subject parcel, which was first treated as a separate lot (by the County and the owner) in 1997.

The proposed project site is an approximately five-acre area located at 1721 Corral Canyon Road, unincorporated Los Angeles County (**Exhibits 1-2**), and designated by the County Assessor as APN: 4461-004-039 ("subject property"). The subject property is located in a rural area of the Santa Monica Mountains immediately west of Corral Canyon Road and southwest of the Malibu Bowl small lot subdivision. The property consists of moderate, southwest-facing hillside slopes that descend from Corral Canyon Road down to an unnamed drainage that is a tributary to Dry Canyon Creek. Dry Canyon Creek, designated as a blue line stream by the United States Geologic Service, is located approximately 500 feet south of the subject property. A portion of the property is located within an area designated by the Malibu/Santa Monica Mountains Land Use Plan as a significant watershed area. The applicant submitted a Biological Assessment (Forde Biological Consultants, 6/2007), listed in the Substantive File Documents, which addresses the habitats present on the project site. The report identifies the subject parcel as consisting primarily of southern mixed chaparral vegetation (that meets the Coastal Act definition of ESHA), with the exception of the northernmost portion of the property that is disturbed due to recent unpermitted vegetation clearance associated with geotechnical testing, as well as fuel modification associated with a residence across the street. An existing dirt path also bisects the middle of the property. However, according to historic aerial photographs from 1977, the existing dirt path that bisects the middle of the property was created after the effective date of the Coastal Act (January 1, 1977), and no coastal development permit was ever issued to authorize its creation. In fact, the Commission took enforcement action as a result of unpermitted development on the subject property and the surrounding property, which was resolved, at least in part, through the approval of CDP 4-98-157 (issued in 2000), in which the Commission authorized revegetation of the subject dirt path (**Exhibit 13**). With the exception of the disturbed roadside portion of the property along Corral Canyon Road and the unpermitted dirt path that bisects the property, the entire five acre property is densely vegetated with relatively undisturbed mixed chaparral vegetation that is part of a large, contiguous block of native vegetation which extends offsite to the south and west and constitutes an environmentally sensitive habitat area (ESHA) (**Exhibit 15**).

1. Description of Lot Creation and Chain of Title Information

As part of the permit application for CDP 4-07-040, the applicants submitted a copy of a certificate of compliance issued by Los Angeles County[1] as evidence that the property was a legally created parcel. As part of staff's initial review of the CDP submittal, staff requested additional information regarding the creation history of the parcel.[2] In order to have access to all applicable records regarding the creation of the subject parcel, staff requested and the applicant submitted a chain of title for the property. The chain of title includes all property deeds and other types of documents recorded against the title of the subject property, including those of the "parent parcel", meaning the lot from which the subject property was divided. Additionally, the applicant provided a map that shows the various configurations of parcels around the subject parcel as they existed over time, based on the legal descriptions from the recorded property deeds.

The subject property is part of the southeast quarter of the southeast quarter of Section 22 of Township 1 South, Range 18 West[3] (San Bernardino Meridian) in the County of Los Angeles. Following is as complete a description of the actions and dates that are pertinent to the creation of the subject property as could be derived from the chain of title provided by the applicant.

Date	From	To	Legal Description
4/4/1902	Williams and Cochran	Frederick Rindge	17 different Sections, including Section 22 of Township 1 South, Range 18 West (T 1S, R 18W)
12/16/1913	U.S. General Land Office (Patent)	Charles Johnson	160 acres, including the southeast quarter of the southeast quarter of Section 22 in T1S, R 18W, which constituted approximately 40-acres of the total patent
8/8/1931	Philbe and Harry Withers	M.P. Montgomery	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W that is north of the northerly line of Corral Canyon Road (approximately 11.59-acres)
5/8/1941	John Ritter	Edgar and Pearl Lynch	The southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W, excepting the portion that is north of the northerly line of Corral Canyon

[1] The review by Los Angeles County of the status of the subject property pursuant to the requirements of the Subdivision Map Act and the applicable county codes and its issuance of determination(s) including a certificate of compliance, rescission of certificate of compliance, issuance of a conditional certificate of compliance, and clearance of conditions are discussed in detail in the next section.

[2] From time to time, this report may refer to the subject project as an existing lot or parcel, or the "subject parcel," largely for convenience. These references do not change the fact that, as is explained below, the subject property is not a legal lot, as the actions that led the County to recognize it all occurred after 1977, and the creation of a new lot was never authorized by a coastal development permit, as has been required by the Coastal Act consistently since 1977. The same applies to any references to other purported lots created from the subject parcel's parent lot.

[3] The Public Land Survey System (PLSS) is a system that was employed to survey and describe public lands in the United States (outside the original colonies), particularly for titles and deeds. The PLSS utilizes a rectangular grid consisting of meridians and baselines to establish townships (approximately 6 miles square) to describe property with a grid that does not make reference to topography or physical features. Townships are further divided into 36 "Sections" (approximately 1 mile square) each consisting of approximately 640-acres in area. Public lands that were later transferred to private owners typically retain the PLSS nomenclature in the legal description of the property.

			and excepting a 1.84-acre parcel at the northwest corner of the section, adjacent to Corral Canyon Road
8/18/1995	David Gill [4]	Bernard McDonald aka Brian MacDonnaill	The southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W, excepting the portion that is north of the northerly line of Corral Canyon, excepting a 1.84-acre parcel at the northwest corner of the section, adjacent to Corral Canyon Road, and excepting a parcel (approximately 1-acre) contiguous to and east of the 1.84-acre parcel
12/19/1995	Bernard McDonald aka Brian MacDonnaill and Marsha Hale	Marsha Hale	The southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W, excepting the portion that is north of the northerly line of Corral Canyon, excepting a 1.84-acre parcel at the northwest corner of the section, adjacent to Corral Canyon Road, and excepting a parcel (approximately 1-acre) contiguous to and east of the 1.84-acre parcel
9/4/1997	Marsha Hale	Los Angeles County	Certificate of Compliance (CC 95-0378) (For property described as "Parcel C")
9/4/1997	Marsha Hale	Los Angeles County	Certificate of Compliance (CC 95-0379) (For property described as "Parcel B")
9/4/1997	Marsha Hale	Los Angeles County	Certificate of Compliance (CC 95-0380) (For property described as "Parcel A")
9/4/1997	Marsha Hale	Los Angeles County	Certificate of Compliance (CC 95-0381) (For property described as "Parcel D")
11/14/1997	Marsha Hale	Brian MacDonnaill [5]	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W described as "Parcel C" and as described in CC 95-0378
11/14/1997	Marsha Hale	Brian MacDonnaill [5]	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W described as "Parcel D" and as described in CC 95-0381
12/31/1997	Marsha Hale	Brian MacDonnaill Living Trust	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W described as "Parcel B" and as described in CC 95-0379
12/31/1997	Marsha Hale	Brian MacDonnaill Living Trust	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W described as "Parcel A" and as described in CC 95-0380
4/23/1998	Marsha Hale	Brian MacDonnaill [5]	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W described as "Parcel B" and as described in CC 95-0379
4/23/1998	Marsha Hale	Brian MacDonnaill [5]	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W described as "Parcel A" and as described in CC 95-0380
8/8/2001	Western Fidelity	Gerald Neiter	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W (same

[4] As receiver in Bernard McDonald aka Brian MacDonnaill vs. Kenneth Shultz and Cynthia Shultz, Los Angeles Superior Court Case No. BC 051806

[5] As Trustee of the Brian MacDonnaill Living Trust dated December 28, 1990

	Trustees (As Trustee of the Brian MacDonnaill Living Trust)		description as "Parcel D") (Trustee's Deed Upon Sale)
5/9/2003	Gerald Neiter	Los Angeles County	Rescission of Certificate of Compliance No. 95-0381
5/9/2003	Gerald Neiter	Los Angeles County	Conditional Certificate of Compliance No. 95-0381A
12/4/2003	Gerald Neiter	Rodney and Ramona Spector	A portion of the southeast quarter of the southeast quarter of Section 22 of T 1S, R 18W (same description as "Parcel D")

Based on the chain of title provided (the listing of each and every document recorded against title shown in **Exhibit 10**), it is clear that although many transactions have affected the property over time, there are a few distinct transactions that essentially created the parent parcel and purported to create, as a separate legal lot, the property that is the subject of this application. First, in 1913, public land was sold by the U.S. General Land Office to Charles Johnson that included the southeast quarter of the southeast quarter of Section 22 (T 1S, R 18W) which was approximately 40-acres in size. Later, in 1931, the 40-acre property was split (by deed transferring the approximately 11.59-acre northern site) into two parcels, one north and one south of Corral Canyon Road. In 1941, an approximately 1.84-acre parcel was split from the northwest corner of the lot south of Corral Canyon Road (by deed). It appears that these transactions whereby property was divided by the recordation of grant deeds occurred before there were ordinances regulating such divisions and before state law prevented such divisions, and so are presumed to have occurred legally. Thus, the parent parcel (formerly APN # 4461-004-011) of approximately 22-acres in size was first created in 1941. This parcel was transferred multiple times but remained one parcel in this same configuration (with the same legal description) for over fifty years (**Exhibit 16**).

In 1995, a grant deed was recorded purporting to divide an approximately 1-acre portion (located contiguous with and to the east of the 1.84-acre parcel that was previously divided in 1941) of APN 4461-004-011 from the remainder of that parcel. This removal of approximately 1-acre from the "parent parcel" is related to a lot line adjustment that was approved by Los Angeles County in 1989 but was not approved by the Commission, even though a lot line adjustment is a division of land that requires the approval of a CDP to be effective. The owner later applied for an after-the-fact CDP (CDP 5-91-719 (Iliff)) from the Commission that included this lot line adjustment. CDP 5-91-719 was approved, but the conditions of approval were never met and the CDP expired. After the purported division of the approximately 1-acre area from the parent parcel (APN 4461-004-011), the remainder of the parent parcel was then assigned APN 4461-004-034 (**Exhibit 16**). Hereafter, APN 4461-004-034 is referred to as the "parent parcel".

On November 14, 1997, two portions of APN # 4461-004-034 (identified as Parcel C and Parcel D) were identified in two separate deeds, thereby purporting to create three parcels. Further, on December 31, 1997, the remainder of the parent parcel was

identified as two separate lots (as Parcel A and Parcel B) in two additional deeds, thereby purporting to create two new parcels, for a total of four lots from the 21-acre parent parcel (APN 4461-004-037, 038, 039[6], and 040) (**Exhibit 16**). Each of the four deeds identified Marsha Hale as the "grantor" and Brian MacDonnaill as the "grantee". The original parties to these deed transactions no longer own any of the four existing properties. While the applicant's subject parcel (APN 4461-004-039) was subsequently sold to Gerald Neiter in 2001 in a trustee's sale, the remaining three parcels were subsequently held and conveyed in nearly common ownership--Jeff Greene acquired the three parcels (APNs 4461-004-037, 038, 040) from Brian MacDonnaill in 1998. Short Form Deeds of Trust were recorded for each of the three lots on November 14, 2007, in which the signatory for the owner was John Horleica of Croft Holding Corporation in each case. In 2008, Trustee's Deeds were recorded for each of the three lots in which Redwood Trust Deed Services, Inc. granted each parcel to a list of approximately ten investors possessing varying degrees of ownership. While there are common investors among the three parcels, each parcel investor list is different.

The transactions that purported to create the four lots, including the property that is the subject of this staff report, from the parent parcel all occurred after the effective date of the Coastal Act (January 1, 1977). As such, the land division required a coastal development permit, pursuant to the provisions of the Coastal Act, to be effective. No CDP was obtained for this land division. The applicant is requesting after-the-fact approval for creation of the subject parcel that is the proposed project site.

2. Coastal Permit History on APN 4461-004-011 and 4461-004-034

The Commission has previously approved development on the parent parcel, of which the subject parcel was a part prior to 1997. In 1977 the South Coast Regional Commission approved CDP No. A-2-28-77-257 (Shultz/McDonald) for construction of a 880 sq. ft. stable with 1-bedroom caretaker's unit at the far south end of APN 4461-004-011 (**Exhibit 11**). An access road that existed prior to the effective date of the Coastal Act (January 1, 1977) provided access to the approved stable structure from Lookout Road.

In 1992, the Coastal Commission approved CDP No. 5-91-719 (Iliff) for additions to an existing residence on an adjacent parcel (APN 4461-004-016) and an after-the-fact lot line adjustment between APN 4461-004-016 and APN 4461-004-011. The lot line adjustment would have conveyed an approximately 1-acre area of APN 4461-004-011 (which was then vacant) to the adjacent developed parcel, and the County Assessor's office assigned new numbers to the reconfigured parcels: the conveyed 1-acre was assigned its own APN (4461-004-033), and the reconfigured parcel from which the 1 acre was taken was assigned APN 4461-004-034 (**Exhibit 16**). However, conditions of approval for CDP 5-91-719 were never met, and the permit expired. It was not until 2001 that the adjacent property owner resolved the as-built development associated with the expired permit by applying for a CDP waiver (No. 4-01-231-W (Crink)) to retain

[6] Applicant's parcel that is the subject of this staff report.

the as-built additions to the residence and the lot configuration created through the earlier lot line adjustment/merger. The Commission approved the CDP waiver application in 2002. Since the County Assessor's office had assigned the 1-acre area conveyed through the lot line adjustment a separate parcel number, the property owner rectified that error by merging adjacent APN 4461-004-016 and 4461-004-033, and the County Assessor's office assigned it APN 4461-004-045 (**Exhibit 16**).

Unpermitted development, consisting of construction of multiple structures (including a large workshop, Arizona Crossing in a blue line stream, a culvert in a natural drainage, a well, a spa, and the placement of multiple trailers), dumping of a substantial quantity of trash and debris, removal of native vegetation, extension of existing dirt roads, and minor grading to construct terraces for an avocado orchard on hillside slopes, had previously occurred on the subject parent parcel (APN 4461-004-034) and two adjacent parcels to the south (4461-005-054 & 055). The unpermitted development on all three sites was resolved pursuant to CDP No. 4-98-157 (McDonald, Greene, Vidi Vici) for site restoration/revegetation, issued by the Commission in 2000 (**Exhibit 12**). All unpermitted structures were removed from the site and all disturbed and graded areas were revegetated/restored[7].

The application materials submitted as part of CDP 4-98-157 show the parent parcel (one of the six parcels that were part of the application) as one parcel, with the APN 4461-004-034. The proof of legal interest submitted was a 1997 tax bill for APN 4461-004-034, which listed Marsha Hale as the owner (the applicants provided this tax bill even though Hale had already transferred ownership of the four unpermitted parcels in November and December of 1997). The project plans show the parent parcel as one lot (**Exhibit 13**). However, the staff report for CDP No. 4-98-157 noted that during the course of processing the application staff discovered an updated assessor's parcel map that showed four assessor's parcels for four separate portions of APN 4461-004-034, suggesting a land division. Although staff did not have a chain of title or other information regarding the date and method of the purported creation of these four parcels, it appeared that the County Assessor's office believed that a land division had occurred, despite the fact that it was done without the required coastal development permit. Staff noted that the applicants had not included the apparent unpermitted land division as part of application 4-98-157. Nevertheless, because no permanent development of any of the sites was proposed at the time (only restoration or removal of unpermitted development), and the unpermitted land division was not directly related to the proposed restoration, the issue was not resolved in CDP 4-98-157. However, the Commission did conclude in its action that a future follow-up coastal development permit application would be required to address the apparently unpermitted land division. No subsequent CDP application to address the land division was ever sought by the property owner.

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[7] Although revegetation efforts were undertaken pursuant to the plans approved in CDP 4-98-157, the required monitoring reports were never submitted to Commission staff. Given that several of the unpermitted roads and other disturbed areas on the parent parcel remain disturbed and devoid of vegetation, it is apparent that the revegetation was not completely successful and/or that additional disturbance has occurred on the site.

3. Coastal Permit History on Purportedly Subdivided Parcels

No development has been approved by the Commission specifically for any of the four parcels that were purported to be created by grant deeds from the parent parcel in 1997. Each is currently vacant, with the exception of the previously mentioned stable with caretaker's unit that was approved by the Commission in 1977 at the far south end of what is now designated by the County as APN 4461-004-037 (**Exhibit 15**). However, Commission records indicate the receipt of two coastal permit applications for development associated with two of the four parcels purported to be created from parent parcel APN 4461-004-034. In 1999, the owner of APNs 4461-004-037 and 038 applied for a coastal permit to construct a single family residence on APN 4461-004-038 (Application No. 4-99-253 (Greene)). The application was withdrawn by the applicant, but later re-submitted as CDP Application No. 4-00-157 in 2000 for construction of a single family residence as well as a lot line adjustment among APNs 4461-004-037, 038, and 4461-005-054. Commission staff sent the applicant a letter in August 2000 requesting additional information in order to file the application complete. One of the items requested was evidence of legality of the subject parcels. Staff never received the requested information and the application remained incomplete. In sum, the applicant does not have a legally created separate parcel because no coastal development permit was approved for the division of land into separate parcels.

B. CUMULATIVE IMPACTS

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 only 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 surrounding parcels.***

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

> ***[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.***

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the avoidance of cumulative impacts on coastal resources. The Coastal

Commission has applied the following relevant policy as guidance in the review of development proposals in the Santa Monica Mountains.

P271 ***New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. The land use plan map is inserted in the inside back pocket. All properties are designated for a specific use. These designations reflect the mandates of the California Coastal Act, all policies contained in this Local Coastal Plan, and the constraints and sensitivities of resources present in the coastal zone. All existing zoning categories will be modified as necessary to conform with and carry out the LCP land use plan.***

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with all policies and standards contained herein. Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments. In those areas in which a resource management overlay applies, development of the underlying land use designation must adhere to the special policies, standards, and provisions of the pertinent designation.
…

<u>Mountain Land</u>. Generally very rugged terrain and/or remote land characterized by very low-intensity rural development. Principal Permitted uses would include: very low-intensity residential development. Low-intensity recreational uses, the undeveloped or open space portions of rural and urban developments, and lower cost visitor residential and recreational uses designed for short-term visitor use such as hostels, tent camps, recreational vehicle parks, and similar uses are permitted as a conditional uses, provided that any residential use for more than short term visitor occupancy shall not exceed the intensity of use of the equivalent residential density. The following maximum residential density standards shall apply:

Mountain Land - one dwelling unit per 20 acres average, consistent with other policies of the LCP.

<u>Rural Land</u>. Generally low-intensity, rural areas characterized by rolling to steep terrain usually outside established rural communities. Principal permitted land uses shall include: large lot residential use. Low-intensity commercial recreational uses, agriculture activities, the less intensively developed or open space portions of urban and rural developments, and lower cost visitor residential and recreational uses designed for short-term visitor use such as hostels, tent camps, recreational vehicle parks, and similar uses are permitted as a conditional use, provided that any residential use for more than short term visitor occupancy shall not exceed the intensity of use of the equivalent residential density. The following maximum residential density standards shall apply:

Rural Land I - one dwelling unit per ten acres average, consistent with other policies of the LCP.

Rural Land II - one dwelling unit per five acres average, consistent with other policies of the LCP.

> ***Rural Land III - one dwelling unit per two acres average, consistent with other policies of the LCP.***
>
> ***Residential I. Residential areas usually characterized by a grouping of housing units on gently sloping or flat terrain often within established rural communities.***
>
> ***Residential I - the maximum residential density standard is one dwelling unit per acre average.***

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area, particularly those of subdivisions, multi-family residential development, and second residential units, all of which result in increased density and increased strain on the limited infrastructure of the area. It is particularly critical to evaluate the potential cumulative impacts of increased density given the existence of thousands of undeveloped and poorly sited parcels in the mountains, many of which were created through methods that complied with applicable laws in place decades ago in antiquated subdivisions. Furthermore, there are an undetermined number of "parcels" that purportedly have been divided off of larger lots but without the required permits that have not yet been discovered by the Commission. Although it is not possible to predict how many such illegal "parcels" exist, the Commission has found many cases where the review of a development proposal in the Santa Monica Mountains reveals evidence that the property was not created legally. Further, while it is not possible to predict when the owners may proceed with development proposals on illegal parcels, the Commission must assume, based on past experience and the character of the area, that the ultimate aim of most owners in the Santa Monica Mountains is to develop property with structures that will, in most cases, support a residential use.

The future development of the existing undeveloped parcels in conjunction with any increased density will result in tremendous increases in demands on road capacity, sewage and other services, recreational facilities, beaches, and associated impacts to water quality, geologic stability and hazards, rural community character, and contribution to fire hazards. In addition, future build-out of many lots located in environmentally sensitive areas will create adverse cumulative impacts on coastal habitat resources.

The Coastal Act requires a coastal development permit prior to undertaking "development", which includes: "…change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits…" (Coastal Act Section 30106). As previously discussed, a legal parcel of approximately 21-acres (APN 4461-004-034) was divided into four properties through the recordation of four deeds; two were recorded on November 14, 1997 and two were recorded on December 31, 1997. This land division that attempted to create four lots, including the parcel that is the project site, occurred after the effective date of the Coastal Act (January 1, 1977). As such, the land division requires a

coastal development permit, pursuant to the provisions of the Coastal Act, to be legally effective. No CDP was obtained for this land division. The applicant is requesting after-the-fact approval for creation of the subject parcel that is the proposed project site. As part of the permit application for CDP 4-07-040, the applicants submitted a copy of a certificate of compliance issued by Los Angeles County[8] as evidence that the property was a legally created parcel.

1. Subdivision Map Act Provisions and History of County Process

The Subdivision Map Act (SMA) [Cal. Gov't Code §§ 66410 *et seq.*] is a state law that sets statewide standards for the division of land that are implemented by local governments through their ordinances. Among other requirements, the SMA currently requires that all divisions of land must be approved by the local government through a parcel map (for the division of four or fewer parcels) or a tract map (for the division of five or more parcels). Prior to legislative changes to the SMA that were effective March 4, 1972, the SMA did not require approval for divisions of fewer than five parcels (although the division of five or more parcels did require a tract map approval).

However, prior to March 4, 1972, the SMA did provide that a local government could adopt ordinances to regulate the division of fewer than five parcels, so long as the provisions of such an ordinance were not inconsistent with the SMA. The County of Los Angeles adopted Ordinance No. 9404 (effective September 22, 1967) to regulate land divisions of fewer than five parcels. This ordinance required the approval of a "Certificate of Exception" for a "minor land division", which was defined as: "…any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels…". This ordinance provided standards for road easements, and other improvements. After March 4, 1972, when the SMA included a statewide requirement for the approval of a parcel map for divisions of fewer than five parcels, the County of Los Angeles abandoned the "Certificate of Exception" requirement and began requiring the approval of a parcel map instead.

The SMA contains provisions that prohibit the sale, lease, or finance of any parcels for which a final map approval is required until such map is approved and recorded. *See* Cal. Gov't Code § 66499.30. The SMA also provides that any owner of property may request that the local government determine whether the property complies with the provisions of the SMA and local subdivision ordinances. *Id.* at § 66499.35. If the local government, in this case, Los Angeles County, determines that the property complies, the County shall issue a "certificate of compliance" (C of C), which will be recorded[9]. If

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[8] The review by Los Angeles County of the status of the subject property pursuant to the requirements of the Subdivision Map Act and the applicable county codes and its issuance of determination(s) including a certificate of compliance, recission of certificate of compliance, issuance of a conditional certificate of compliance, and clearance of conditions are discussed in detail in the next section.

[9] This type of certificate of compliance, issued pursuant to Gov't Code section 66499.35(a), is commonly known as an "exempt," "unconditional," or "straight" C of C, in that it indicates that the parcel was created legally or before there were regulations, and it cannot be made subject to conditions.

the County determines that the property does not comply with the SMA or local ordinances, then it shall issue a "conditional certificate of compliance"[10]. The conditional C of C will be subject to conditions that would have been applicable to the division of the property at the time that the owner acquired it. If the applicant was the owner who divided the property in violation of the SMA, then the County may impose any conditions that would be applicable to a land division at the time the C of C is issued.

In this case, the chain of title supplied by the applicant contains evidence of several documents reflecting the County's determinations about the creation of four lots from what was one legal parcel in 1997. As detailed in the chart (on pages 6 to 8), four C of C's were recorded on September 4, 1997 (CC 95-0378, CC 95-0379, CC 95-0380, and CC 95-0381) for the four parcels that were purportedly created from the parent parcel (4461-004-034). The four C of C's each contain a "Determination of Compliance (E)", with the (E) indicating that each is an "exempt" C of C, or in other words, a C of C issued pursuant to the provisions of Section 66499.35(a) of the SMA. Each C of C contains the following statement: "I hereby certify that the above described parcel complies with the applicable provisions of the State Subdivision Map Act and of the County Subdivision Ordinance **having been exempt from said act and ordinance at the time of its creation** and may therefore be sold, leased, or transferred" (emphasis added).

It is impossible to see what basis existed for such a determination given that the chain of title clearly demonstrates that the parent parcel had existed as one lot with the same configuration (with exception of the lot line adjustment) for over fifty years. Furthermore, the four purported parcels derived from the parent parcel had not even been described in separate deeds by September 4, 1997, when the four C of C's were recorded. As described previously, two of the parcels were described in deeds recorded on November 14, 1997, and two were described in deeds recorded on December 31, 1997. At the time the four C of C's were recorded, the parent parcel existed as one lot. Finally, the four C of C's each contain a statement that each lot was exempt from said act and ordinance at the time of its creation. This statement cannot possibly be accurate, given the evidence. Even if the lots had been listed in deeds prior to the time the owner made application for the C of C's (which they were not), such creation of four parcels by deed was not legal in 1997. As described above, the division of four parcels required the approval of a parcel map as early as March 1972, or a certificate of exception between September 1967 and March 1972. For the creation of the four parcels by deed to have been exempt from the provisions of the SMA and the County of Los Angeles ordinances, such creation would therefore have to occurred prior to September 1967, which it did not.

Apparently in recognition of the fact that the C of C for the subject property was not a valid C of C pursuant to Section 66499.35(a), or in other words, not a valid "exempt" C of C, the County of Los Angeles rescinded C of C No. 95-0381 in 2003 (the applicants

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[10] This type of certificate of compliance is issued pursuant to Gov't Code § 66499.35(b).

have not provided any information about the status of the other C of C's issued for the other three parcels created from the parent parcel) (**Exhibits 7-8**). Los Angeles County staff has stated that the four C of C's issued in 1997 (CC Nos. 95-0378, 95-0379, 95-0380, and 95-0381) for the property making up the parent parcel were issued in error and were investigated as part of a fraud inquiry involving a County employee. However, in conjunction with the rescission of C of C No. 95-0381, the County also issued a new, conditional C of C. Conditional C of C No. 95-0381A was recorded for the subject property on the same date as the rescission (**Exhibit 9**). The fact that it is a conditional C of C (pursuant to Section 66499.35(b) of the SMA) indicates that the parcel was not created in compliance with the SMA or the Los Angeles County ordinances.

2. Lot Legality Under the Coastal Act

The applicants' representative, Edward Burg, of Manatt, Phelps, & Phillips sent a letter to Commission staff[11] arguing that, despite this history, the subject property is a legal lot under the SMA and that the Commission has no authority to review the status of the lot or to contest its validity. Mr. Burg's letter contends that the 1997 Certificate of Compliance issued by Los Angeles County confirmed that the subject property was a legal lot. The letter further states that the applicant has determined that the 2003 conditional certificate of compliance issued after the 2003 rescission of the 1997 Certificate of Compliance was issued in error because the condition required (road dedication) had already been satisfied (**Exhibit 14**).

Burg argues that the Commission lacks authority to revisit the County's determination(s) (through the issuance and rescission of a C of C, subsequent issuance of a conditional C of C, and later clearance of C of C conditions) regarding the validity of the subject property. He states that:

> When an applicant proposes a lot split or other subdivision, the Coastal Commission has statutory jurisdiction over such a division of land in the coastal development process. But that is not the case here. Instead, the Commission is attempting to revisit and *review* the outcome of a subdivision process handled by another jurisdiction, the County of Los Angeles. The Commission lacks authority to act as some sort of *uber*-appellate body, reviewing determinations previously made by other bodies.

Burg also argues that the Commission failed to challenge the County's issuance of the C of C for the subject parcel within the 90 day statute of limitations of the decision, and is therefore barred from doing so now. He states that:

> The whole purpose of the certificate of compliance procedure is to resolve any issues of uncertainty concerning the validity of a legal lot. Here, these issues were resolved in 1997, and reconfirmed on June 3, 2005. The time to dispute that resolution expired 90 days later. The Commission cannot now attempt to rely on the definition of "development" in Pub. Resources Code §30106 in order to reopen the determination as

[11] Letter dated May 15, 2008 from Edward G. Burg of Manatt, Phelps, & Phillips, LLP to Commission Analyst Deanna Christensen

to the legality of the Spectors' lot when the Spectors are *not* seeking to accomplish any further division of their land.

The Commission disagrees that it is attempting to review the actions of Los Angeles County, or that it is barred from considering a coastal development permit application for the subject unpermitted land division. As discussed above, it is not possible to ascertain the basis for the County's determination, given the available evidence. However, the County's review of the history of the subject property, pursuant to the requirements of the SMA, as discussed in detail above, is only background information to the Commission's consideration of the subject CDP application. It is not relevant to the question of conformance with the requirements of the Coastal Act. The County of Los Angeles did not have legal authority[12] to determine if the division of one parcel into four lots conformed to the Coastal Act, through the issuance of a coastal development permit, either in 1997 or 2003, even if the owners had applied for such a permit (which they did not). Furthermore, the County's issuance of C of C(s) did not purport to constitute any determination with regard to the requirements of the Coastal Act.

The Commission, in reviewing the after-the-fact request for the division of land that created the subject property for conformity to the Coastal Act, is not attempting to revisit or review the County's actions that were taken pursuant to the provisions of the SMA. Rather, the Commission finds that the subdivision of one parcel into four lots in 1997 without any Coastal Act review constitutes a violation of the Coastal Act that cannot be excused by Los Angeles County's issuance of C of Cs. The Coastal Act requires that any person wishing to undertake development in the coastal zone obtain a coastal development permit, in addition to any local permits that might be required [Cal. Pub. Res. Code §30600(a)]. The Coastal Act defines development to include any "change in density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act, and any other division of land, including lot splits." Id. at §30106. No coastal development permit was sought by the owner or issued by the Commission for the division of the subject property (division of one parcel into four lots by deed in 1997), and the property has, therefore, not been legally subdivided.

3. Applicants' Arguments in Detail

a. The Subdivision Map Act as a Comprehensive System Designed to Provide Finality and Certainty

Mr. Burg argues that the SMA is a comprehensive system for regulating land divisions and that it provides for the issuance of C of Cs in order to provide certainty regarding the legality of parcels of land. Because C of Cs were issued for the Spectors' lot in 1997 and again in 2003, Mr. Burg argues that the legality of that lot is unreviewable. However, the cases that he cites for the propositions about the comprehensiveness of

[12] Pursuant to Section 30519 of the Coastal Act, such authority is only delegated to local governments that have a certified Local Coastal Program. Los Angeles County did not and does not have a certified LCP for the Santa Monica Mountains area.

the SMA and the finality of C of Cs[13] all involved land outside of the Coastal Zone, so they had no occasion to consider the relationship between the SMA and the *later-enacted* Coastal Act. In fact, *all* of the SMA cases Mr. Burg cites were either decided prior to the Coastal Act (in the case of *Keizer v. Adams* (1970) 2 Cal.3d 976) or involved land outside the Coastal Zone, with the possible exception of *Kirk v. County of SLO* (1984), 156 Cal.App.3d 453; and none of them contemplates the possibility that there might be other applicable law regulating property owners' ability to subdivide their land. On the other hand, the Los Angeles County Code itself recognizes that the SMA is *not* a comprehensive scheme in the special case of the Coastal Zone, as it requires that a coastal development permit be obtained for the issuance of a certificate of compliance in the Coastal Zone. *See* LA County Code section 21.60.070.

Moreover, other cases have specifically addressed the relationship between these two statutory schemes and consistently held that the Coastal Act must prevail in the case of a conflict, as it represents "a major statement of overriding public policy regarding the need to preserve the state's coastal resources not only on behalf of the people of our state, but on behalf of the people of our nation." *South Central Coast Regional Commission v. Pratt Construction Co., Inc.* (1982) 128 Cal.App.3d 830, 844. In fact, one of the cases cited by Mr. Burg held that:

> Even if there were a conflict between the Subdivision Map Act and the Coastal Act, statutory construction principles require a specific statute to prevail over a general statute. (Code Civ. Proc., § 1859; *Loken v. Century 21-Award Properties* (1995) 36 Cal. App. 4th 263, 272-273 [42 Cal. Rptr. 2d 683].) The Legislature enacted the Coastal Act to protect the coast statewide, while it generally gave local government power to regulate local subdivisions throughout the state (Gov. Code, § 66411). However, local regulation of property within the particular area of the coastal zone gives way to the state's authority to preserve the coast's natural resources; otherwise the Coastal Act's purposes would be hindered and the Coastal Act would not specifically refer to the Subdivision Map Act.

Ojavan Investors v. Cal. Coastal Com. (1997) 54 Cal.App.4th 373, 388.

Mr. Burg also cites the statutory provision of the SMA regarding certificates of compliance, apparently in support of his assertion that the C of C process is supposed to be dispositive, but, tellingly, that section states that the certificate of compliance process is intended to give property owners a means to obtain a determination as to whether the property at issue complies with "the provisions of this division [the SMA] and of local ordinances enacted pursuant to this division." It is *not* intended to resolve questions regarding potential violations of *other* state laws such as the Coastal Act that may be involved in the creation of a parcel. *See* Gov't Code § 66499.35(a).

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[13] *Stell v. Jay Hales Development Co.* (1992) 11 Cal. App. 4th 1214; *Hunt v. County of Shasta* (1990) 225 Cal.App.3d 432; and *Le Gault v. Erickson* (1999) 70 Cal.App.4th 369.

b. The Innocent Purchaser Defense

Mr. Burg also claims that the applicants purchased the subject property believing it to be a legal parcel, and he argues that it is a basic principle of the SMA that innocent purchasers are not to be held accountable for the illegal actions of their predecessors, citing to *Stell v. Jay Hales Development Co.* (1992) 11 Cal. App. 4th 1214, 1227-28, and *Keizer*, *supra*, 2 Cal.3d at 980. However, *Stell* only stated that the SMA is a comprehensive scheme (see above) and that the decision to issue a certificate of compliance "rested peculiarly with [the City]," which may have been true in that case, but is clearly not true within the Coastal Zone.

Keizer did hold that the SMA does not hold purchasers accountable for violations carried out by their grantors "of which [they have] neither knowledge nor means of discovery." *Id.* However, that final caveat is a significant limitation on the holding, especially in a case such as this one, where it is not the case that the applicants had no means of discovery of the problem. In *Keizer*, the Court emphasized that the local agency "fail[ed] to suggest any feasible method by which an individual purchaser could" determine the legality of the lot, *id.* at 979, because its illegality derived from the fact that the party who sold the subject lot to the plaintiff also issued nine other grant deeds to sell off nine other portions of the parent lot, all without any subdivision approval.

In the instant case, Mr. Burg states that the Spectors "are clearly innocent purchasers. They did everything the law provides to assure themselves that they were purchasing a legally subdivided lot". However, he does not elaborate on the law(s) to which he is referring or explain what measures the applicants took to investigate the creation history of the project site. While the applicants may have investigated the legality of the parcel with regard to the requirements of the SMA (as evidenced by the C of Cs on title), they have provided no evidence that they made inquiries regarding the approval of any coastal development permit issued for the creation of four lots by deed in 1997. If they had, it would have been easy for the Spectors to determine the status of their lot.

The applicants are not unacquainted with the existence of the Coastal Commission or the provisions of the Coastal Act. They previously sought and were granted a coastal development permit (CDP No. 4-99-107) for the development of a single-family residence on a legal parcel in the Santa Monica Mountains that had previously been created through a subdivision that was approved both by Los Angeles County and the Coastal Commission. Further, a review of the chain of title for the subject property clearly shows that it first existed in its current configuration in 1997, when the provisions of the Coastal Act were in effect for the area. It is not unreasonable to expect that, in all due diligence, the applicants would have inquired whether the subject land division had been approved in a coastal development permit. In fact, as discussed in detail above, the Commission has taken several coastal development permit actions on the approximately 21-acre parent parcel of which the subject property is a part. Review of this permit record demonstrates that the parent parcel was, at the time of those actions, one legal parcel and that no coastal development permit was ever approved to split that parcel into four lots. The coastal development permit record is public information and

would have been provided to the applicants at their request. *Keizer*'s oft-cited holding that "[t]he [SMA] does not require the innocent purchaser to suffer for a violation by his grantor" was only adopted for cases where the innocent purchaser "has neither knowledge nor means of discovery."

In addition, Keizer's holding was about whether *the SMA* holds innocent purchasers accountable; it did not purport to address whether any *other* statutory scheme, such as the Coastal Act, may impose liability on such purchasers. Any subdivision that was not authorized under the Coastal Act creates the potential for increased development density in protected areas, and thus constitutes a nuisance for which case law indicates subsequent owners may be held responsible for rectifying. *See, e.g., CEEED v. California Coastal Zone Conservation Comm'n* (1974) 43 Cal.App.3d 306; *Leslie Salt Co. v. San Francisco Bay Conservation & Development Comm'n* (1984) 153 Cal.App.3d 605.

Finally, in *Keizer*, the appellant County (which was defending its denial of a building permit on the basis that the applicant sought the permit to build on an illegal lot) argued that the County ordinance had been amended to authorize denial of a building permit if there was a violation of the SMA ordinances, regardless of purchaser's knowledge. The court rejected that argument, but it did so on the basis that the amendment had not been effective at the time of the County's action. However, a similar provision was later added to the SMA, and that provision *was* effective in 1997, at the time of the subdivision at issue in this case. *See* Gov't Code § 66499.34, previously Bus. & Prof. Code § 11538.1, added in 1972, Stats.1972, c. 706, p. 1287, § 2. Thus, the *Keizer* case is actually obsolete for the proposition for which Mr. Burg cited it. Moreover, *Scrogings v. Kovatch* (1976) 64 Cal.App.3d 54, 58, limited the holding in *Keizer*, holding that although some forms of relief are not available against innocent purchasers, others remain available, including that local governments can exercise their police powers to deny development on lots subdivided in violation of valid regulations.

c. The SMA's 90-day Statute of Limitations and "Collateral Attacks"

Mr. Burg argues that the SMA's 90-day statute of limitations (Government Code section 66499.37) should apply and that Commission review should be precluded as a "collateral attack" on Los Angeles County's issuance of its C of Cs, brought after the running of the statute of limitations. In support of these arguments, he cites *Stell*, *supra*, 11 Cal. App. 4th at 1227; *Le Gault v. Erickson* (1999) 70 Cal.App.4th 369, 374; and *Kirk*, *supra*, 156 Cal.App.3d at 459. However, in *Stell,* the plaintiffs sought to stop their neighbors construction of a house by bringing a nuisance action in which they argued, among other things, that the subject subdivision was illegal under the county's subdivision ordinance. *Id.* at 1224. The court held that the plaintiffs were attempting to employ nuisance law as a back door means of attacking an alleged violation of the SMA. It was in that context that the court held that they were attempting to circumvent the SMA, its remedies, and its statute of limitations. *Id.* at 1228 (plaintiffs sought to use "the cloak of a nuisance action ... to set aside indirectly the conveyance [of property, and] thus … to do indirectly what is not permitted as a remedy by section 66499.32").

Conversely, the Commission's position in the subject case is not predicated on the SMA in any way. It is wholly based on the Coastal Act, rendering the *Stell* holding inapposite. Nor is this Commission seeking to set aside the conveyance of the property. It is only passing on the question of the consistency of the proposed development with the policies of the Coastal Act, which highlights yet another distinction, in that the instant action involves the assertion of jurisdiction by a governmental regulatory body, which is not subject to the same analysis as is a nuisance dispute between neighbors. Finally, the holding in *Stell* was also based on the court's recognition that the City's issuance of the C of C in that case was based on a "determination [that] rested peculiarly with that governmental body," *id.* at 1227, which is not the case here. As indicated above, even the County Code recognizes that Coastal Act review (which is conducted by the Commission until the County has a certified Local Coastal Program) is needed for the issuance of a certificate of compliance.

The *Le Gault* and *Kirk* cases are even less applicable. *Le Gault* dealt only with the construction of a limitation in Government Code section 66499.32(b), involving when a buyer can void a real property sale. And the holdings in *Kirk* related to the SMA statute of limitations were simply that it applies whether the agency's action is discretionary or ministerial and begins to run when the agency renders its original decision.

Finally, the Commission has had specific experience with this sort of claim. Although the resulting Court of Appeals decision is unpublished, the case of *Cal. Coastal Com. v. Alves* (1986) 222 Cal.Rptr. 572, 581, is directly on point. In that case, the Commission filed a complaint against owners, developers, and subdividers of a 105-acre parcel in San Mateo County. The defendants argued that they were protected by the 90-day statute of limitations in Government Code section 66499.37, and the trial court agreed. The Court of Appeals reversed, holding as follows:

> "The defect in respondents' position respecting the statute of limitations is that the Commission is not proceeding under the Subdivision Map Act, nor is it challenging "the decision of an advisory agency, appeal board or legislative body concerning a subdivision...." Concededly, the Commission is asserting that respondents' subdivision of the property constitutes an unapproved "development" in contravention of the Act. But the validity of the subdivision under the Subdivision Map Act is not at issue here. The Commission has instead brought suit under authority of the Coastal Act . . . .
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> "In our view, then, the present proceeding is not one to attack or review a decision "concerning a subdivision" within the meaning of Government Code section 66499.37. The Coastal Act imposes separate and independent requirements with which the Commission asserts respondents did not comply."

Cal. Coastal Com. v. Alves (1986) 222 Cal.Rptr. 572, 581.

d. Fundamental Fairness and the Availability of Remedies

Finally, Mr. Burg argues that the Commission's proposed action would be fundamentally unfair, as it would leave the Spectors with no remedy. Even if this were true, it would

not present any legal basis upon which the Commission could abandon its obligation to review the proposed subdivision according to the applicable standard of review. However, for the reasons listed below, it is most likely untrue that the Spectors have no legal recourse. Mr. Burg also argues that: "…because the Spectors have no remedy against their predecessors in title, a refusal by the Commission to recognize the legality of the lot notwithstanding the certificate of compliance would deprive them of all economically viable use of their property and violate their right to substantive due process".

First, the SMA specifically preserves other remedies, and it specifically mentions remedies to which a public agency may be entitled. *See* Gov't Code § 66499.33 (the SMA "does not bar any legal, equitable or summary remedy to which any aggrieved . . . public agency, or any person . . . may otherwise be entitled"). This could give the Spectors the ability to pursue any number of claims, such as fraud claims.

Second, although the Commission's review of the proposed development is not an attack on the C of C, it bears mentioning that the County did rescind its 1997 C of C in 2003, six years after it was originally issued, so the County obviously takes the position that an issued C of C is not necessarily final or unreviewable. If the County were to decide, based on the Commission's action, to take a similar approach, then Government Code section 66499.32(b) could be interpreted to give the Spectors a cause of action for damages against the subdivider and any intervening owners who had knowledge.

The Spectors may also have claims against their title insurance company. Alternatively, if their title insurance policy contains an exclusion for lot legality issues, that, in and of itself, should have raised a red flag and put the Spectors on notice that they needed to investigate the matter independently.

Finally, there is at least one feasible project alternative available to the applicants with regard to the unpermitted land division; namely, coordination with the owners of the other areas that collectively make up the parent parcel to recombine the lots, for SMA purposes. Once accomplished, they could sell the legal parent parcel, and distribute the proceeds. To the extent the applicants argue that they cannot be expected to do so, or that they could not possibly obtain the cooperation of the other property owners, we would simply note that similar arguments were made in the context of another illegal subdivision less than two miles from the subject property as the crow flies. Nevertheless, just this year, after the Commission instituted litigation to resolve the matter, the property owners in that matter entered into a settlement agreement with the Commission committing to take precisely the approach described at the beginning of this paragraph.

For all of these reasons, the Commission does not agree that denial of the subject CDP would be fundamentally unfair or would deprive the applicants of a remedy or of all economically viable use of their property.

4. Factors Considered for Development on Lot Created by an Unpermitted Land Division

With the applicant's challenges to the Commission's jurisdiction out of the way, we turn to the merits of the application. We limit our discussion of cumulative impacts to the impacts associated with the preliminary request for after-the-fact *Coastal Act* approval of the subdivision. The Commission typically reviews the creation of lots through a land division in a comprehensive manner and not on a piecemeal basis. The Commission's review necessarily includes the analysis of the individual and cumulative impacts of the land division on coastal resources, as well as an analysis of project alternatives that would eliminate or reduce impacts. To accomplish this, the Commission reviews the proposed lot sizes and lot configurations to ensure each lot can be developed consistent with the Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a land division and determine consistency with Chapter Three Policies of the Coastal Act, the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire proposed land division.

In this case, a comprehensive analysis of the proposed land division, which would create four separate parcels (including the subject parcel), is not possible because the resulting lots have been sold to multiple owners, and the successor to only one of those buyers is before the Commission at this time. The applicant has provided sufficient information for the Commission to review the environmental impacts of development on the subject property, but no information regarding the other three parcels that were purportedly created from the parent parcel.

The applicant is requesting approval to legalize the subject parcel, which was purportedly created through an unpermitted land division after the effective date of the Coastal Act (January 1, 1977). It appears that the incremental contribution to cumulative impacts from the proposed development would be the creation, in this case, of one additional lot, presumably leading to the existence of one addition residence in this area. However, if the Commission were to approve the creation of the subject parcel, it could be seen as providing tacit approval of the entire illegal land division, in essence creating four lots from one parent parcel. In this case, as discussed in greater detail later in this report, the property contains habitat area that meets the definition of ESHA. Development of the parent parcel with four separate residences (or four separate developments of virtually any sort, for that matter) would result in the significant disruption of habitat values that would be unavoidable, given the location of ESHA on the site and the configuration of the parcel (as currently recognized by the County). Furthermore, the potential impacts of the proposed development cannot be considered to include only those direct impacts attributable to the construction of one residence on the property, but the impacts must also be considered cumulatively.

Creation of four additional parcels in the Santa Monica Mountains will result in adverse cumulative impacts to coastal resources. The unpermitted 4-lot land division that purportedly created the subject parcel would result in the creation of four potentially

developable lots. As discussed in greater detail below, in consideration of Coastal Act Section 30010 and federal "takings" jurisprudence the Commission would likely approve the construction of a single family residence on each of four such created parcels in order to provide the owner a reasonable economic use (assuming that such approval would not constitute a nuisance under State law) notwithstanding the fact that this would have unavoidable impacts to ESHA given the lot configuration and extent of ESHA on the sites. If four lots were developed with residences instead of only the one legal parcel, this would increase the density and intensity of use on the property four-fold, and the impacts of grading and vegetation removal for creating building footprints, access roads, and complying with Fire Department fuel modification requirements, installation of septic systems, and other development associated with single family home development would be approximately four times greater than would otherwise occur if the property was developed as a legal single lot only. The intensified use would create additional demands on public services, such as water, electricity, and roads.

Land Use Plan Guidance

The Commission has, in past permit actions in the Santa Monica Mountains, used the policies of the certified Los Angeles County Land Use Plan (LUP) as guidance in reviewing development proposals. In the case of land divisions, the Commission has considered the consistency of the proposed parcels with the maximum density allowed under the land use designations of the LUP, as well as the other applicable policies. In this case, the LUP designates the parent parcel of which the subject property is a part with a mosaic of land use designations. The LUP designates portions of the parent parcel as "*M2 - Mountain Land*" (1 unit/20 acres maximum), "*Rural Land I*" (1 unit/10 acres maximum), "*Rural Land II*" (1 unit/5 acres maximum), and "*Residential I*" (1 unit/acre maximum). The applicant did not provide information regarding what the allowable density would be for the parent parcel given the land use designations of the site. Staff estimated how much acreage of the approximately 21-acre parent parcel was assigned to each land use designation to calculate an estimated maximum dwelling unit density. This indicates that the maximum density that could be allowed for the 21-acre parent parcel would be approximately five (5) dwelling units, which would be an average of approximately 4.2 acres per parcel.

However, it is important to note that the LUP specifically states that the densities are maximums and that all other applicable policies must also be met. Additionally, the LUP policies state that in those areas in which a resource management overlay applies, development of the underlying land use designation must adhere to the special policies, standards, and provisions of the pertinent designation. Although this site is not designated as ESHA on the LUP Sensitive Environmental Resource Area (SERA) Map, pursuant to Policy 57 of the LUP any undesignated areas which meet the ESHA criteria and which are identified through the biotic review process or other means are also subject to the SERA overlay and the provisions of the ESHA policies. In this case, as discussed in detail below, the Commission finds that the habitats present on the site meet the definition of ESHA. As such, the Commission would use the provisions of Table 1 of the LUP and all other ESHA protection policies of the LUP as guidance in

considering the proposed land division. According to Table 1, only resource dependent uses (such as nature observation, research/education, or passive recreation) are allowed within ESHA. The proposed land division would allow for up to four new residences. As described below, a residence is not a use that is dependent on ESHA to function, so it is not a resource-dependent use. Therefore, the proposed use of the property is not consistent with the LUP. Furthermore, Table 1 requires that land alteration and vegetation removal including brushing shall be prohibited within ESHA. Given the proposed parcel configuration and location of ESHA, the removal of vegetation can not be avoided. The Commission must conclude that although the proposed division of the parent parcel into four lots would meet the **maximum** density allowed under the LUP land use designations, the property is also subject to the SERA overlay and the ESHA policies of the LUP, which would not allow for subdivision of the parent parcel. As such, the Commission finds that the proposed project is not consistent with the guidance policies of the LUP.

5. Conclusion

In conclusion, the Commission finds that the after-the-fact land division aspect of the proposed project will result in almost a four-fold increase in significant and unavoidable adverse cumulative impacts to ESHA and water quality as discussed in detail below. As such, the Commission concludes that the proposed development will not avoid significant adverse effects, either individually or cumulatively, on coastal resources, which is in direct conflict with Section 30250 of the Coastal Act, and the guidance policies of the Los Angeles County Malibu/Santa Monica Mountains Land Use Plan, and therefore must be denied.

C. ENVIRONMENTALLY SENSITIVE RESOURCES AND WATER QUALITY

Section 30231 of the Coastal Act states:

> ***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 states:

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

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

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

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

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

> ***P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map, 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 & Game as being appropriate for ESHA designation.***
>
> ***P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table l and all other policies of this LCP.***
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> ***P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.***
>
> ***P69 Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. Section 30240 of the Coastal Act states that environmentally sensitive habitat areas (“ESHAs”) must be protected against significant disruption of habitat values.

1. ESHA Designation on the Project Site

Pursuant to Section 30107.5, in order to determine whether an area constitutes an ESHA, and is therefore subject to the protections of Section 30240, the Commission must answer three questions:

1) Is there a rare species or habitat in the subject area?
2) Is there an especially valuable species or habitat in the area, which is determined based on:
    a) whether any species or habitat that is present has a special nature, OR
    b) whether any species or habitat that is present has a special role in the ecosystem;
3) Is any habitat or species that has met either test 1 or 2 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

If the answers to questions one or two and question three are "yes", the area is ESHA.

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission's Ecologist, Dr. John Dixon[14] (hereinafter "Dr. Dixon Memorandum"), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the

[14] The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at http://www.coastal.ca.gov/ventura/smm-esha-memo.pdf

direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodlands are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP[15].

The proposed project site (APN: 4461-004-039) is an approximately five-acre property located in a rural area of the Santa Monica Mountains immediately west of Corral Canyon Road and southwest of the Malibu Bowl small lot subdivision. The property consists of moderate, southwest-facing hillside slopes that descend from Corral Canyon Road down to an unnamed drainage that is a tributary to Dry Canyon Creek. Dry Canyon Creek, designated as a blue line stream by the United States Geologic Service, is located approximately 500 feet south of the subject property. A portion of the property is located within an area designated by the Malibu/Santa Monica Mountains Land Use Plan as significant watershed area.

The applicant submitted a Biological Assessment (Forde Biological Consultants, 6/2007), listed in the Substantive File Documents, which addresses the habitats present on the project site. The report identifies the subject parcel as consisting primarily of southern mixed chaparral vegetation, with the exception of the northernmost portion of the property that is disturbed due to recent geotechnical testing as well as fuel modification associated with a residence across the street. The report also states that the mixed chaparral vegetation on the site meets the Coastal Act definition of ESHA. An existing dirt path also bisects the middle of the property. However, according to historic aerial photographs from 1977, the existing dirt path that bisects the middle of the property was created after the effective date of the Coastal Act (January 1, 1977). In fact, as part of CDP 4-98-157 (McDonald, Greene, Vidi Vici) issued in 2000, the Commission required revegetation of the subject dirt path. Staff has confirmed that with the exception of the disturbed roadside portion of the property along Corral Canyon Road and the unpermitted dirt path that bisects the property, the entire five-acre property is densely vegetated with relatively undisturbed chaparral vegetation that is part of a large, contiguous block of pristine native vegetation that extends to the south and west. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the mixed chaparral habitat on the project site meets the definition of ESHA in the Coastal Act.

Proposed construction of residential development on the property, including vegetation removal for both the development area as well as required fuel modification, and the

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[15] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

use of the development by residents, will result in unavoidable loss of ESHA given the location of ESHA on the site and the configuration of the parcel (as created illegally). However, the application also includes request for after-the-fact approval of creation of the subject property, purportedly created through an unpermitted land division after the effective date of the Coastal Act (January 1, 1977). The Commission typically reviews the creation of lots through a subdivision of land in a comprehensive manner and not on a piecemeal basis. The Commission review necessarily includes the analysis of the individual and cumulative impacts of the subdivision on coastal resources, as well as an analysis of project alternatives that would eliminate or reduce impacts. To accomplish this, the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUP, surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act, the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire proposed subdivision.

In this case, a comprehensive analysis of the unpermitted land division, which purported to create four separate parcels (including the subject parcel) is not possible because the lots have been sold to multiple owners, and the successor to only one of those buyers is before the Commission at this time. The applicant has provided sufficient information for the Commission to review the environmental impacts of development of the proposed residence on the subject property, but no information regarding the other three parcels that were also purportedly created from the parent parcel. Thus, lacking a biological assessment for the three adjacent parcels that were part of the illegal land division, it was necessary for Commission staff to review all available information in order to determine the presence of ESHA across the entire parent parcel. Commission Staff Ecologist, Dr. Jonna Engel, reviewed current and historic aerial imagery of the area, the applicant's biological assessment for the subject property, and vegetation maps from the National Park Service for the Santa Monica Mountains. Dr. Engel prepared a memo (Exhibit 17), dated March 16, 2009, regarding her ESHA determination on the parent parcel. The memo states that:

> According to the vegetation mapping, native habitats dominate the site and include the following communities; 'live oak (*Quercus agrifolia*) woodland', 'California bay (*Umbellularia californica*) woodland', 'big pod ceanothus (*Ceanothus megacarpus*) chaparral', 'greenbark ceanothus (*C. spinosus*) chaparral', 'California sagebrush/purple sage (*Artemesia californica-Salvia leucophylla*) coastal sage scrub', and 'purple sage (*S. leuophylla*) coastal sage scrub'. In addition to these native habitats, the "parent" parcel also includes areas mapped and identified as 'native and non-native herbaceous' and 'urban-herbaceous/cleared'.

The areas of the parent parcel that are identified as non-native plant communities or disturbed include cleared areas directly adjacent to Corral Canyon Road and an area at the southern end of the parcel where the only previously permitted development (stable structure) is located. The memo states that review of current and historical aerial

photographs of the site and the Biological Assessment (Forde Biological Consultants, 6/2007) confirms that the plant communities identified on the NPS maps are supported on the parent parcel.

Dr. Engel concludes that the majority of the parent parcel (with the exception of a Commission-approved stable with caretaker's unit and associated pre-Coastal Act dirt road and disturbed area) constitutes ESHA as it supports large areas of relatively undisturbed mixed chaparral, oak woodland, and riparian vegetation that are part of a much larger, contiguous stand of chaparral and associated plant communities. The native habitats on the parent parcel meet the definition of ESHA under the Coastal Act because of their important roles in that ecosystem and because they are clearly easily degraded by human activities. Accordingly, the Commission finds that based on this evidence, the live oak woodland, California bay woodland, big pod ceanothus chaparral, greenbark ceanothus chaparral, California sagebrush/ purple sage coastal sage scrub, and purple sage coastal sage scrub habitats on the parent parcel meet the definition of ESHA contained in Section 30107.5 of the Coastal Act and are therefore subject to the protections of Section 30240 of the Coastal Act.

2. Single Family Residence

The applicant proposes to construct a 4,453 sq. ft., 2-story single-family residence, 506 sq. ft. attached garage, 572 sq. ft. detached guesthouse with 483 sq. ft. garage below, driveway, retaining walls, septic system, 5,000-gal. water tank, and 1,217 cu. yds. of grading (274 cu. yds. cut, 943 cu. yds. fill) in the northwest corner of the subject property, adjacent to Corral Canyon Road. The proposed development area is estimated to occupy approximately 7,000 sq. ft. The applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones.

For the reasons explained above, the parent parcel of which the subject property is a part (excluding the Corral Canyon roadside and the pre-Coastal Act disturbed areas) constitutes an ESHA pursuant to Section 30107.5. Section 30240 of the Coastal Act requires that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

The applicant proposes to construct a single family residence on the subject property (as well as after-the-fact approval of a four-lot land division that created the subject property). As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require both the complete removal of ESHA from the home site and fuel modification for fire protection

purposes around it, the proposed project would also significantly disrupt the habitat value in those locations.

With regard to the guidance policies of the Los Angeles County Malibu/Santa Monica Mountains Land Use Plan (LUP), although this site is not designated as ESHA on the LUP Sensitive Environmental Resource Area (SERA) Map, pursuant to Policy 57 of the LUP any undesignated areas which meet the ESHA criteria and which are identified through the biotic review process or other means are also subject to the SERA overlay and the provisions of the ESHA policies. As described above, the Commission finds that the habitat areas on the parent parcel meet the ESHA criteria. As such, the Commission would use the provisions of Table 1 of the LUP and all other ESHA protection policies of the LUP as guidance in considering the proposed land division. According to Table 1, only resource dependent uses (such as nature observation, research/education, or passive recreation) are allowed within ESHA. The project includes the construction of a residence and the proposed land division would allow for up to a total of four new residences. A residence is not a use that is dependent on ESHA to function, so it is not a resource-dependent use. Therefore, the proposed use of the property is not consistent with the LUP. Furthermore, Table 1 requires that land alteration and vegetation removal including brushing shall be prohibited within ESHA. Given the proposed parcel configuration and location of ESHA, the removal of vegetation cannot be avoided.

Application of Section 30240 and the guidance policies of the LUP, by themselves, would therefore require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources. However, in similar cases where residential development has been proposed within ESHA, the Commission has also considered Section 30010, and the United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Other Supreme Court precedent establishes that another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all

reasonable economic use, the Commission may be required to allow some development even if a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

So, if the subject property were a legal parcel, it is likely that the single family residence proposed as part of the subject application could be approved (with restrictions designed to minimize impacts[16]) in order to provide a reasonable economic use, notwithstanding its unavoidable impacts to ESHA. Yet, as previously discussed in detail, the subject project site is not a legally created parcel. Federal takings jurisprudence has also generally held that the unit of analysis for determining whether a taking has occurred, meaning the geographic area the courts will review to determine if any economic value remains, is the legal lot. See, e.g., Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U.S. 302, 327, 331, 122 S.Ct. 1465, 1481, 1483.

Because the actual legal lot is the parent parcel of which the subject property is only a subset, the Commission's review of the proposal to build a house on the subject property should be conducted by reviewing the whole of the parent parcel to determine, among other things, the best location on that larger lot for the placement of any sort of development. Such an analysis is not entirely possible in the present case because the remainder of the parent parcel is not part of the subject property before the Commission and the applicants have provided no information about potential siting or design alternatives, including the potential of minimizing impacts by locating development on another area of the parent parcel. Nonetheless, review of aerial photographs of the site (Exhibit 15), coupled with vegetation mapping of the site (as described above) indicates that an alternative development site exists on the parent parcel that would result in fewer impacts to ESHA than the development area proposed in the subject application. The alternative site is located directly adjacent to Corral Canyon Road, near the southeastern property line of the parent parcel (just northwest of the terminus of Lockwood Road). There is an existing, relatively flat area adjacent to the road that could accommodate a single family residence without a significant amount of grading. It appears that this area has been disturbed since prior to the Coastal Act, so removal of vegetation that constitutes ESHA would be minimized by placing development in this area. Additionally, a development area in this location would be clustered more closely to the existing development within the Malibu Bowl small lot subdivision and could realize some overlap of required fuel modification area. The other areas of the site

[16] Although Section 30010 prohibits the Commission from acting in such a way as to "take" property, it does not authorize the Commission to ignore the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing those policies in a way that would take property. Aside from this limitation, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, the Commission must still apply Section 30240 as much as possible by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat to the extent that can be done without taking the property.

appear to slope more steeply from Corral Canyon Road and would therefore require more grading. Further, the other areas of the site are better vegetated with ESHA than this southeastern area and would therefore require more vegetation removal to develop a single family residence and to carry out the required fuel modification. Based on the available evidence, including historic and current aerial photographs as well as vegetation mapping, the Commission finds that the alternative development site would require less grading and vegetation removal and therefore result in fewer impacts to coastal resources. In conclusion, the Commission finds that the proposed residence must be denied because: 1) the proposed project would be located within ESHA, would result in significant disruption of habitat values, and is not a use dependent on those sensitive habitat resources; 2) the subject property is not a legally created parcel; and 3) there is an alternative building site location where one residence could be developed on the legally created "parent parcel" that would minimize disruption of habitat values to the greatest extent feasible, but this location is not within the property owned by the applicant.

3. Land Division

The applicants request after-the-fact authorization for creation of the subject five-acre property. It would appear that the incremental contribution to cumulative impacts to coastal resources from the proposed land division would be the increased density associated with the creation of additional lot. However, if the Commission were to approve the creation of the subject parcel, it could be seen as providing tacit approval of the entire illegal land division, in essence creating four lots from one parent parcel. In that case, the unpermitted 4-lot land division that created the subject parcel would result in the creation of four developable lots, which, in conjunction with Coastal Act Section 30010 and federal "takings" jurisprudence (as previously discussed), would inevitably allow for the construction of four residences that would have unavoidable impacts to ESHA given the lot configuration and extent of ESHA on-site. Since the eventual approval of four residences is an obviously foreseeable result of the proposed after-the-fact approval of the creation of the subject project site, the Commission must consider the cumulative impacts of all four potential residences on ESHA.

Again, the probable future development of the proposed four parcels would be four residences with habitat removal for development areas, access driveways, and required fuel modification. As previously described, residential development is not a resource-dependent use, as required by the ESHA policies of the Coastal Act and the guidance policies of the LUP. Additionally, such residences would not protect ESHA against significant disruption of habitat values. If four lots were developed with residences within the ESHA instead of only the one legal approximately 21-acre parent parcel (identified as APN 4461-004-034), this would increase the density and intensity of use on the site four-fold, and the impacts of grading and vegetation removal for creating building footprints, access roads, and complying with Fire Department fuel modification

requirements[17], installation of septic systems, and other development associated with single family home development would be approximately four times greater than would otherwise occur if the property was developed as a legal single lot only (some overlap of required fuel modification area would be realized between four residences so the impact of vegetation removal would be somewhat less than four times that required for one residence). Accordingly, division of the approximately 21-acre parent parcel into four lots and creation of the subject parcel is not consistent with Section 30240 of the Coastal Act or the sensitive habitat protection policies of the LUP.

Further, the Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality because changes such as the removal of native vegetation, the increase in impervious surfaces, and the introduction of new residential uses cause increases in runoff, erosion, and sedimentation and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants, as well as effluent from septic systems.

In this case, the proposed division of land would create four developable parcels that would most likely allow for additional residential development on site. In addition to an almost four-fold increase in the removal of native vegetation, additional residential development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters in non-compliance with Section 30231 of the Coastal Act. In addition, construction of up to four residences on site would also require installation of additional septic systems and an overall increase in the amount of effluent that would be discharged on the site, which can also result in unacceptable adverse impacts to water quality. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health. Therefore, for the above reasons, the proposed division of one parcel into four lots would result in adverse impacts to coastal waters in conflict with Section 30231 of the Coastal Act.

4. Conclusion

As discussed in detail above, the proposed construction of a single family residence within ESHA is not consistent with Sections 30231 or 30240 of the Coastal Act or the guidance policies of the LUP because residences are not resource-dependent uses and because the habitat removal associated with the proposed construction (including the development area and required fuel modification areas) will not protect ESHA against any significant disruption of habitat values. Furthermore, the proposed after-the-fact creation of the subject property through a four–lot land division is not consistent with either the Chapter 3 resource protection policies in the Coastal Act, including Sections

[17] The Commission has found in past permit actions, that a new residential development within ESHA with a full 200 foot fuel modification radius will result in impact (either complete removal, irrigation, or thinning) to ESHA habitat of four to five acres.

30231 and 30240, or with the resource protection policies of the certified Malibu/Santa Monica Mountains LUP, because such land division would result in the eventual development of up to four residences, each with habitat removal for a development area, access road, and required fuel modification that would not protect ESHA against any significant disruption of habitat values. This would allow for up to four residences, which are not resource-dependent, within ESHA. Additional residential development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters in non-compliance with Section 30231 of the Coastal Act. Finally, construction of up to four residences on site would also require installation of additional septic systems which can also result in adverse impacts to water quality.

Therefore, the Commission finds that the proposed project will not maintain or restore the biological productivity of coastal waters or streams and will not protect ESHA against significant disruption of habitat values in direct conflict with Sections 30231 and 30240, and must be denied.

D. UNPERMITTED DEVELOPMENT

Unpermitted development occurred on the subject parcel prior to submission of this permit application including, but not limited to, land division of APN 4461-004-034 into four separate lots (APNs: 4461-004-037, 038, 039, and 040), and vegetation removal and grading. The applicant is now requesting after-the-fact approval for creation of APN 4461-004-039 pursuant to this application. The Commission is denying this application for the reasons discussed in full in the preceding sections of this report. Therefore, pursuant to the staff recommendation, the Commission's enforcement division will evaluate further actions to address this matter.

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

E. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act states:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter 3. The proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development is not consistent with the policies of the Coastal Act. There are feasible alternatives that would avoid the adverse environmental effects of the project, including the alternative to recombine the parent parcel into one ownership, for the reasons listed in this report. Therefore, the Commission finds that the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA.

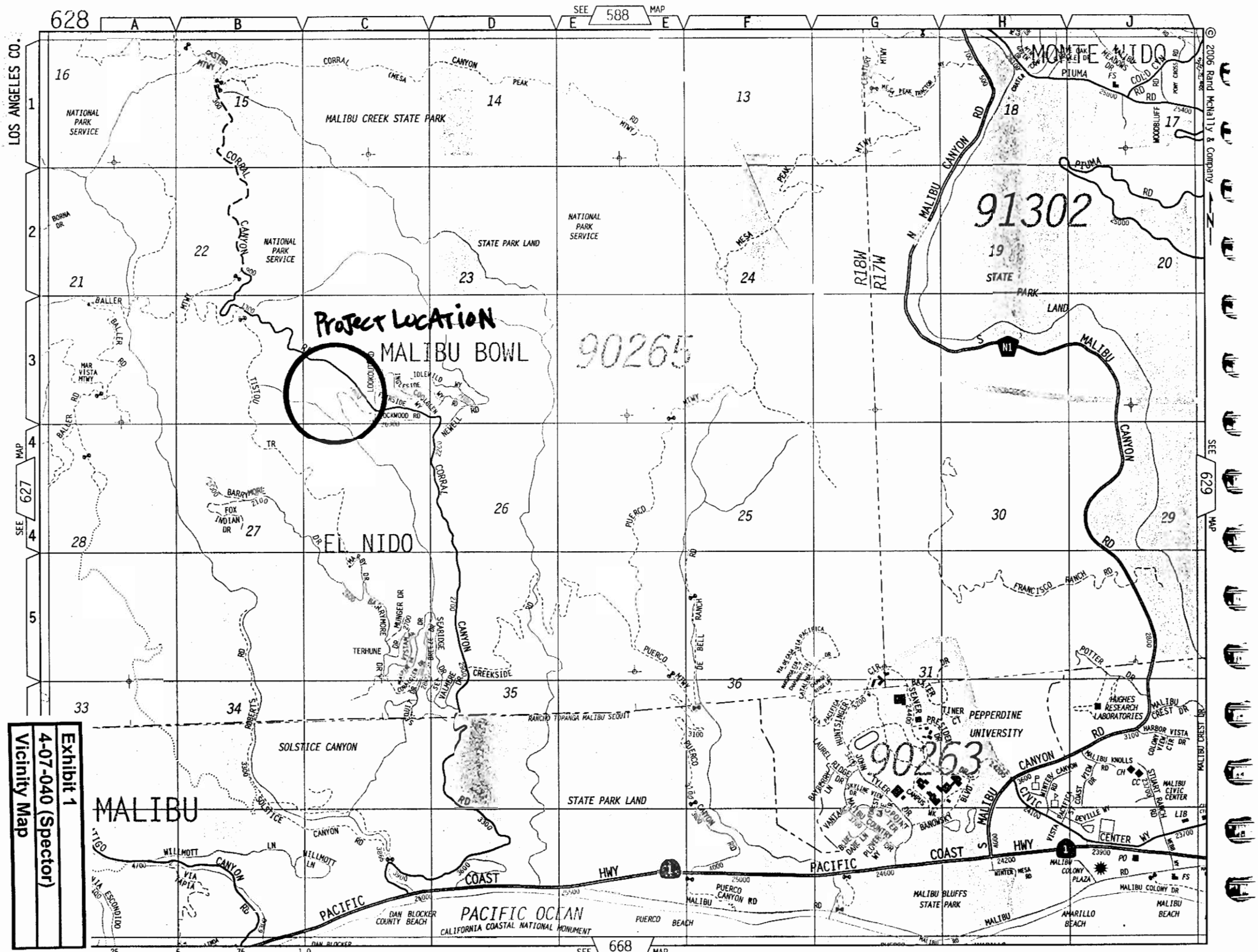
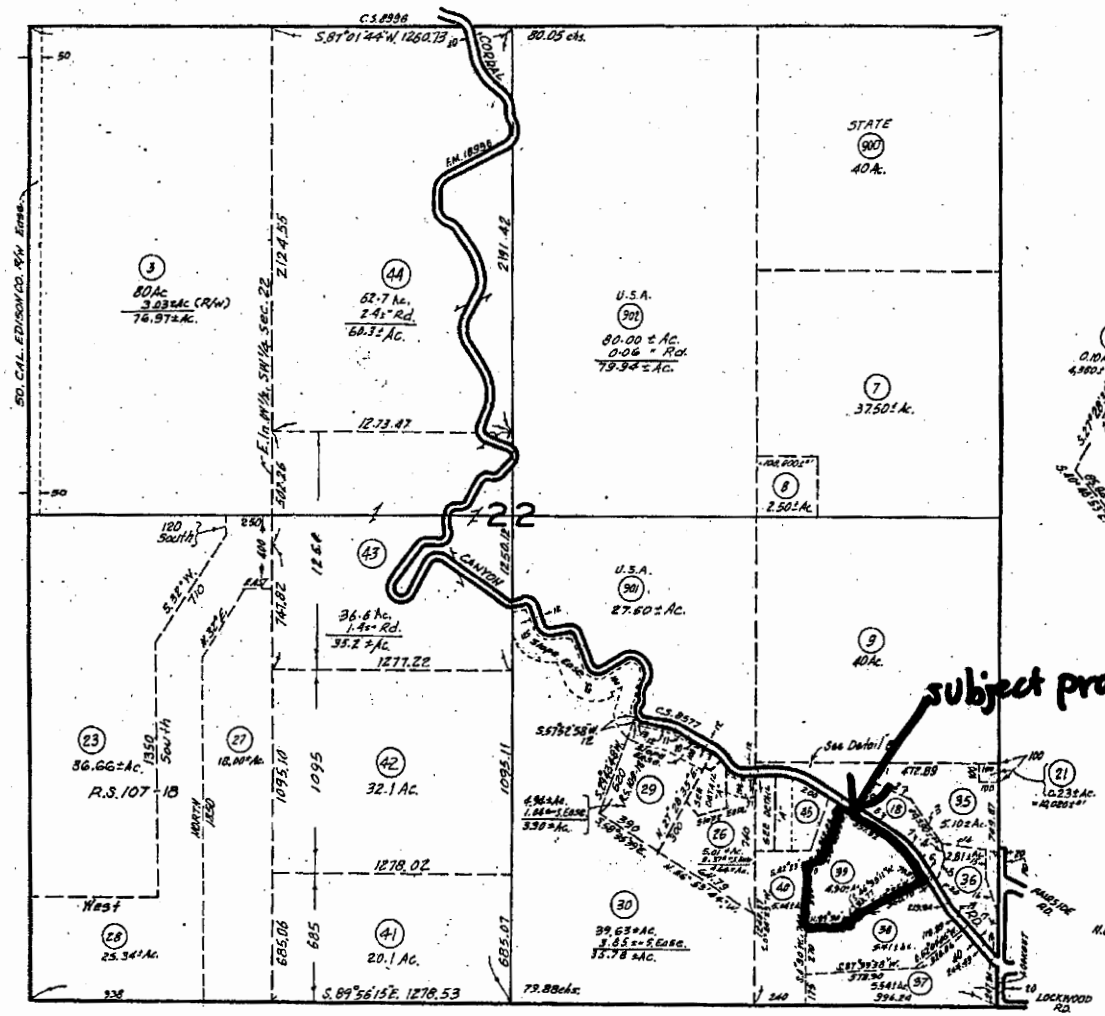


Exhibit 1
4-07-040 (Spector)
Vicinity Map

4461	4
CALE 1" =	600'

2006

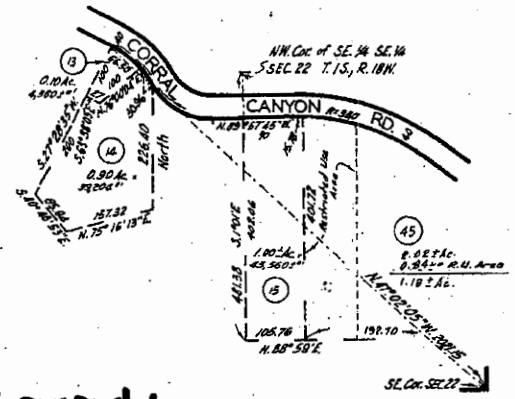


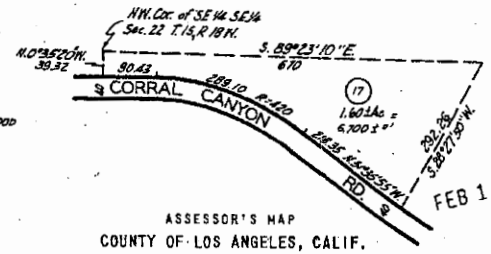
T. 1S., R. 18W.

SCALE 1"=200'

DETAIL A

DETAIL B





1. S.28°27'30"W.	140'
2. S.65°50'57"E.	242.54'
3. S.28°16'10"E.	292.18
4. S.10°23'10"E.	100.22
5. S.12°28'30"W.	136.65
6. N.51°45'45"W.	189.59
7. R=320	180.03
8. N.52°35'55"W.	257.90
9. N.28°27'30"E.	152.26
10. N.62°31'55"W.	129.59
11. R=180	58.79
12. N.81°14'10"W.	123.89
13. R=70	60
14. S.82°23'10"E.	233.60
15. S.0°15'40"E.	150
16. S.18°17'07"E.	145.67
17. S.0°15'40"E.	259.31
18. R=80	3.65
19. N.41°44'15"W.	268.36
20. N.31°46'45"W.	103.12

REVISED
10-28-64
11-13-64
12-14-64
10-2-65
820326609
820510
821202502
2-18-81
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*200407190200100I)-07
*200607190200100Z)-07
*200602140Z-07

FEB 14 2006

CODE
REG 3

REV. ASSM'T. SEE: 482-224

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

Exhibit 2
4-07-040 (Spector)
Parcel Map

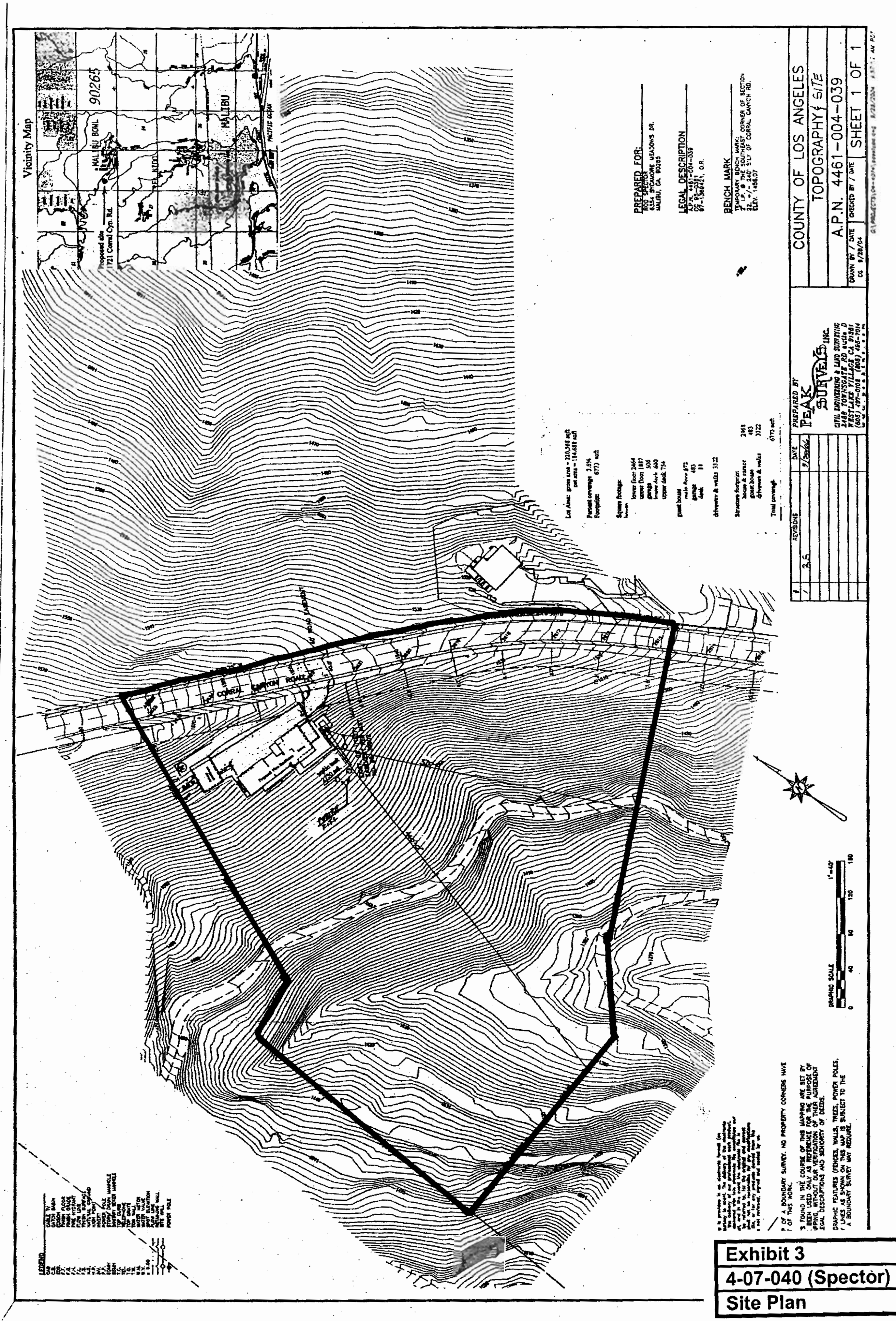
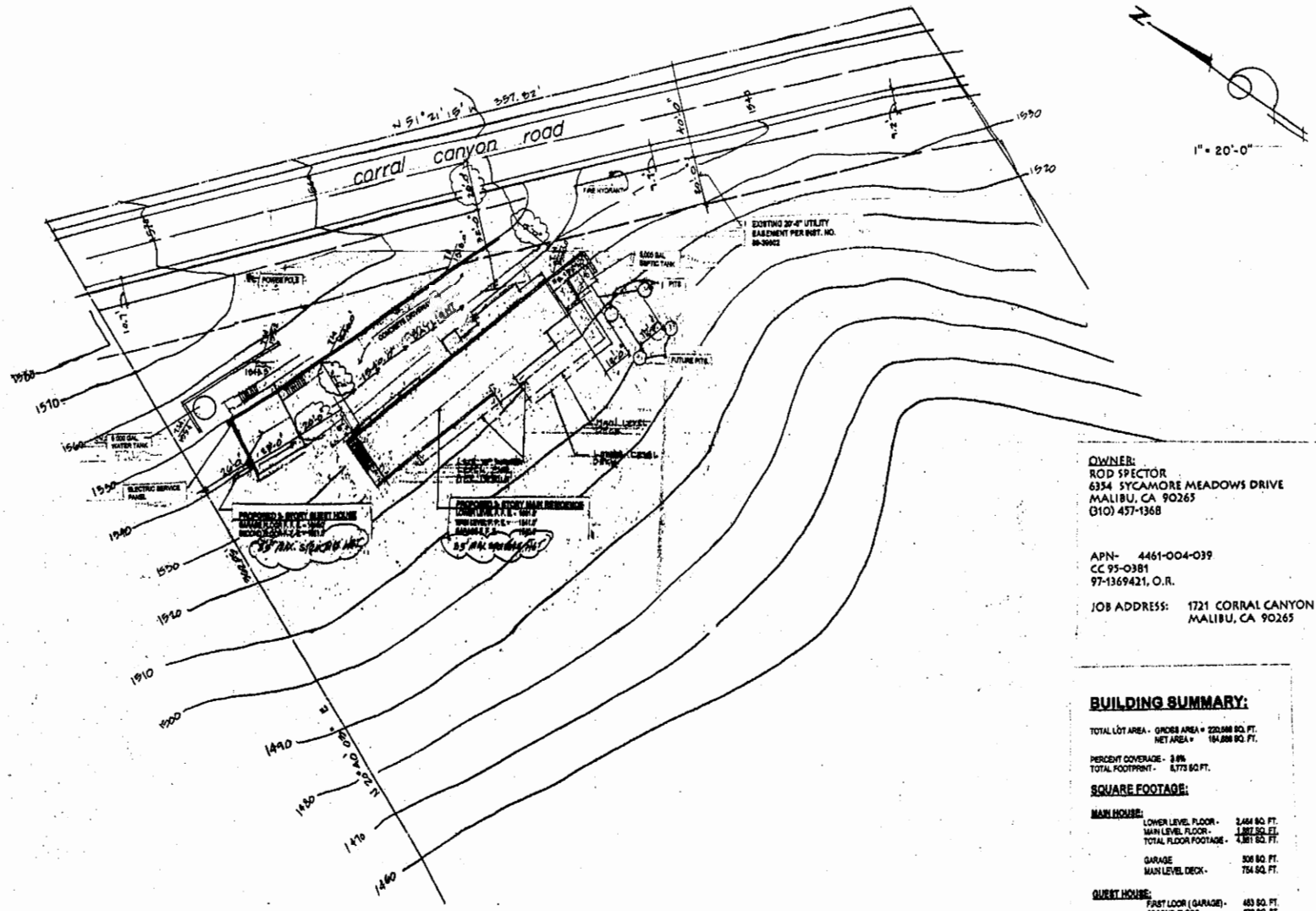


Exhibit 3

4-07-040 (Spector)

Site Plan



site plan

OWNER:
ROD SPECTOR
6354 SYCAMORE MEADOWS DRIVE
MALIBU, CA 90265
(310) 457-1368

APN- 4461-004-039
CC 95-0381
97-1369421, O.R.

JOB ADDRESS: 1721 CORRAL CANYON ROAD
MALIBU, CA 90265

BUILDING SUMMARY:

TOTAL LOT AREA - GROSS AREA = 220,666 SQ. FT.
NET AREA = 184,808 SQ. FT.

PERCENT COVERAGE - 3.6%
TOTAL FOOTPRINT - 6,773 SQ.FT.

SQUARE FOOTAGE:

MAIN HOUSE:

LOWER LEVEL FLOOR -	2,464 SQ. FT.
MAIN LEVEL FLOOR -	1,987.50 SQ. FT.
TOTAL FLOOR FOOTAGE -	4,451.50 SQ. FT.
GARAGE	506 SQ. FT.
MAIN LEVEL DECK -	754 SQ. FT.

GUEST HOUSE:

FIRST LOOR (GARAGE) -	483 SQ. FT.
SECOND FLOOR-	672 SQ. FT.
SECOND FLR. DECK	68 SQ. FT.
DRIVEWAY AND WALK	3,322 SQ. FT.

STRUCTURE FOOTPRINT:

HOUSE & GARAGE	2,956 SQ. FT.
GUEST HOUSE	483 SQ. FT.
DRIVEWAY & WALK	3,322 SQ. FT.
TOTAL COVERAGE-	6,773 SQ. FT.

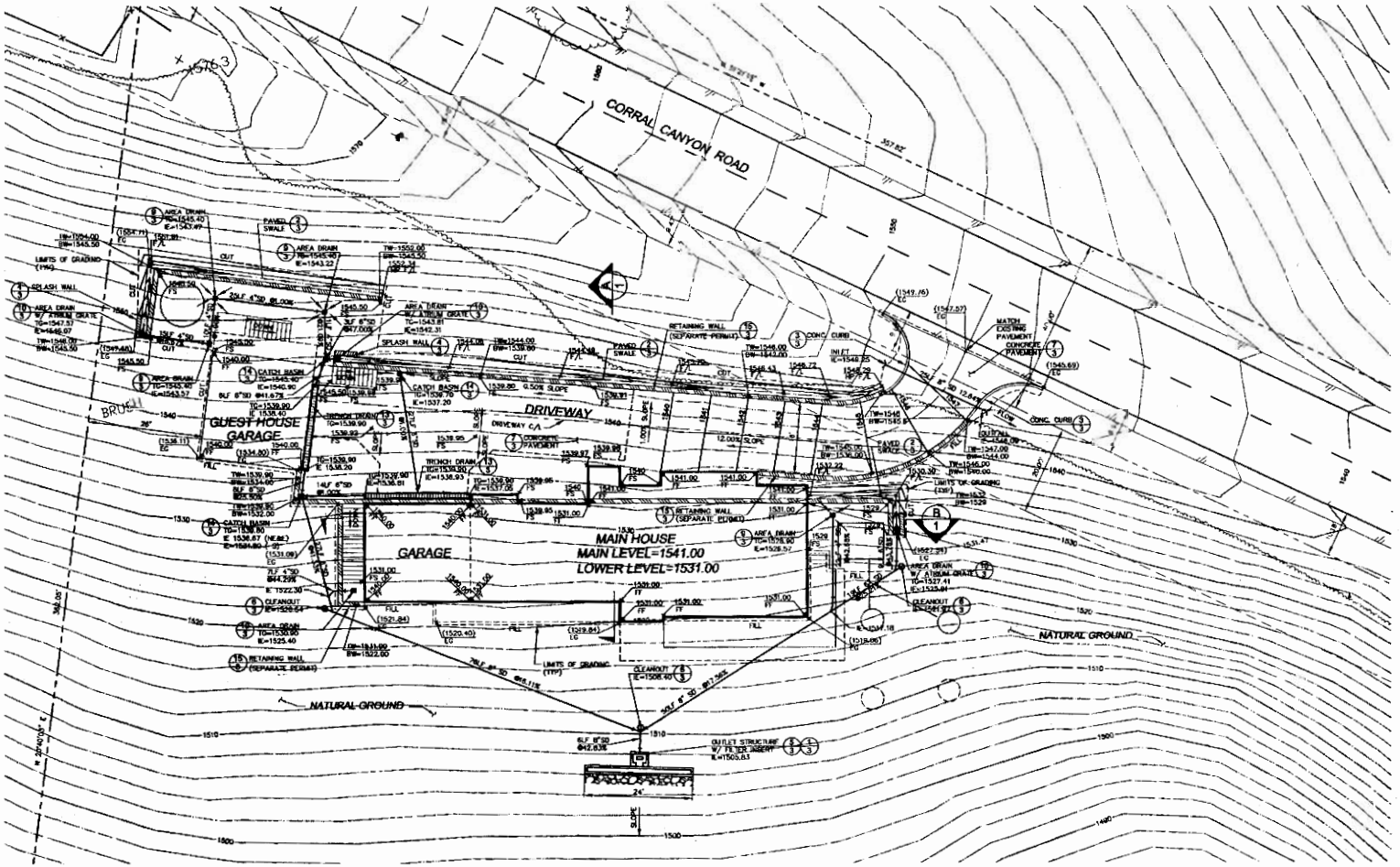
REVISIONS	BY
5/20/04	RS

Roy's Drafting Service
957 Carnation Avenue
Costa Mesa, CA 92626
ph 714.549.4768
Roy Sarabi

PROPOSED RESIDENCE
ROD SPECTOR
1721 Corral Canyon Road
Malibu, CA 90265

DRAWN
CHKD BY
SCALE
JOB NO
SHEET
A-1
OF SHEETS

Ex. 3



LEGEND:

PROPERTY LINE:
STREET CENTERLINE:
MONUMENT:
BASIS OF BEARINGS: (B.O.B.)
ENCROACHMENT: (ENCR.)
CLEAR: (CLR.)
STREET LIGHT (ST.LT.)/POWER POLE:
ASPHALT (A/C):
BUILDING:
CHAIN LINK FENCE (C.L.F.):
WOOD FENCE:
WIRE FENCE:
WROUGHT IRON FENCE:
CONCRETE (CONC.):
MANHOLE (M.H.):
IRRIGATION CONTROL VALVE:
TREES/TREE LINE:
CUT/FILL LINE
PERCOLATION TEST HOLE
EXPLORATORY TEST TRENCH
RETAINING WALL

ABBYREVIATIONS:

A.C.	ASPHALT CONCRETE
C.F.	CURB FACE
C/L	CENTER LINE
CONC.	CONCRETE
EG	EXISTING GROUND
FG	FINISHED GRADE
FS	FINISHED SURFACE
F.F.	FINISHED FLOOR
F/L	FLOW LINE
G.B.	GRADE BREAK
M.H.	MANHOLE
HP	HIGH POINT
R.D.	ROOF DRAIN
P.A.	PLANTING AREA
P/L	PROPERTY LINE
P.P.	PROPERTY POLE
PVMT.	PAVEMENT
P.C.C.	PORTLAND CEMENT CONCRETE
R	RIDGE OR RADIUS
SD	STORM DRAIN
SS	SANITARY SEWER
TC	TOP OF CURB
TW	TOP OF WALL
TG	TOP OF GRATE
IE	INVERT ELEVATION
TYP.	TYPICAL

NO.	DATE	BY	APPR	REVISIONS
	12/04/05	RT		ADD GRADING AND STORM DRAINAGE

SHEET 2 OF 3
GRADING AND DRAINAGE PLAN FOR:

SPECTOR RESIDENCE
1721 CORRAL CANYON ROAD
MALIBU, CA 90265

W.O. 200507 DATE: DECEMBER 04, 2005

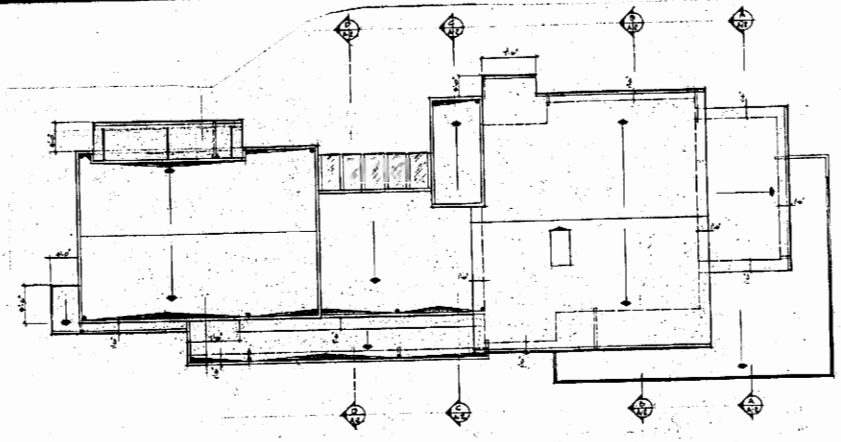
Servtec Consultants Inc.
Civil Engineering, Land Planning, Surveying, Government Affairs
THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION

Kenneth R. Wiemiller, RCE 26633 Date

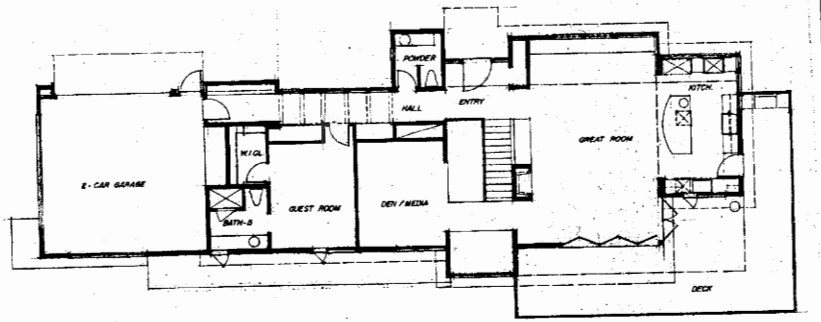
Servtec Consultants Inc.
Civil Engineering, Land Planning, Surveying, Government Affairs
4343 Reyes Drive, Tarzana, CA 91356-5227
Voice: 818-342-8676
Fax: 818-343-1834
Email: servtec@adelphia.net

DEC 05 2005

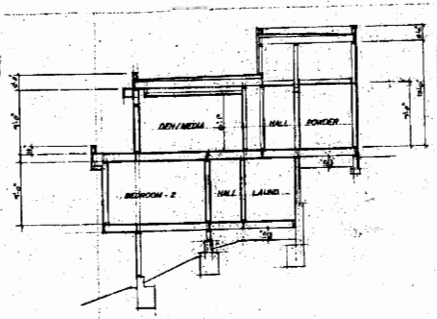
Exhibit 4
4-07-040 (Spector)
Grading Plan



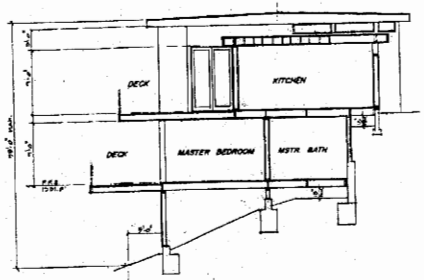
roof plan



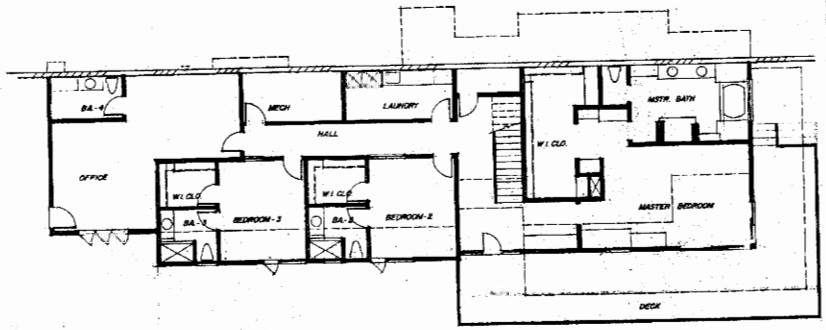
main level floor plan



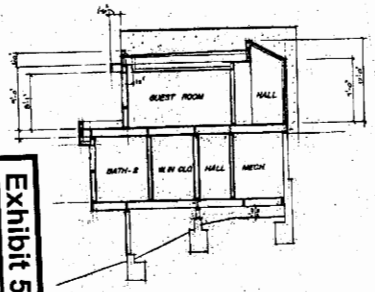
section C - C



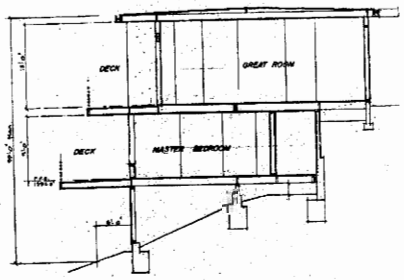
section A - A



lower level floor plan



section D - D



section B - B

main house plan

REVISIONS	BY

Ray's Drafting Service
957 Carnation Avenue
Costa Mesa, CA 92626
ph:714.549.4768
Roy Sasaki

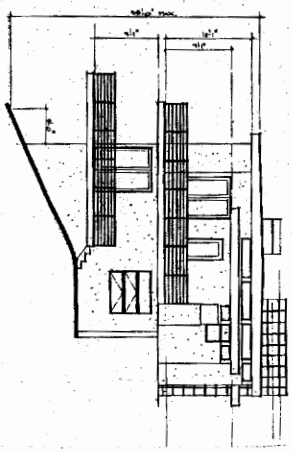
PROPOSED RESIDENCE
ROD SPECTOR
1721 Corral Canyon Road
Malibu, CA 90265

DRAWN	
CHECKED	
DATE	
SCALE	
JOB NO.	
SHEET	A-2
OF	SHEETS

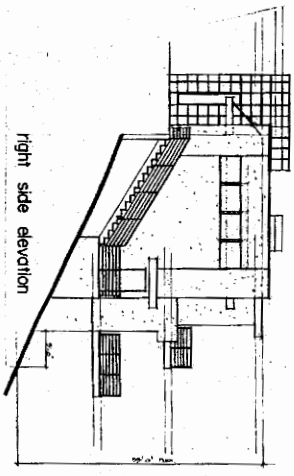
Exhibit 5
4-07-040 (Spector)
Residence Floor Plan and Elevations

ex. 5

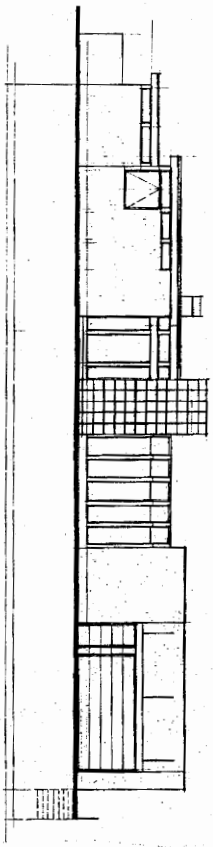
left side elevation



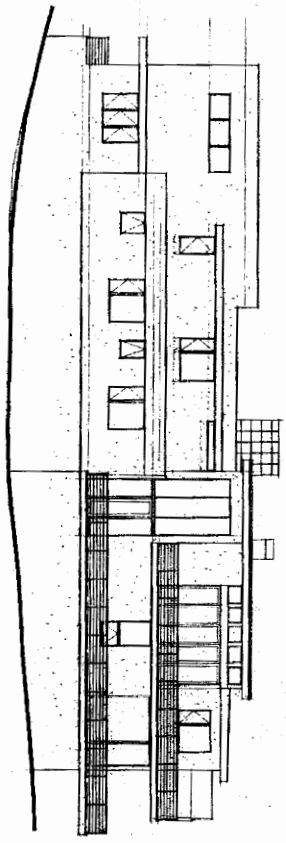
right side elevation



front elevation



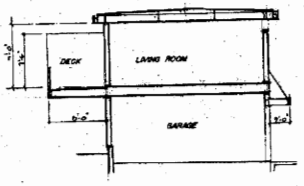
rear elevation



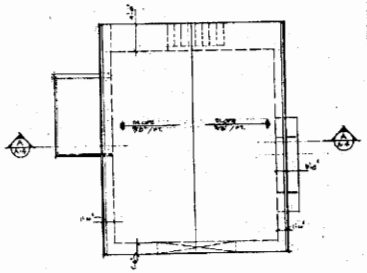
A-3

PROPOSED RESIDENCE
ROD SPECTOR
1721 Corral Canyon Road
Malibu, CA 90265

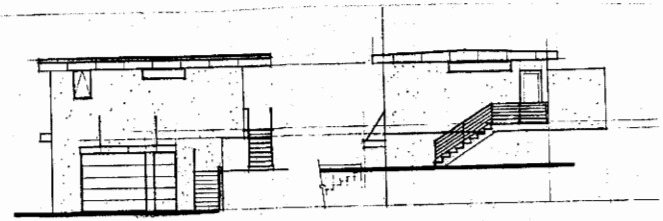
Roy's Drafting Service
957 Canadian Avenue
Costa Mesa, CA 92626
ph:714.549.4768
Roy Sasaki



section A-A

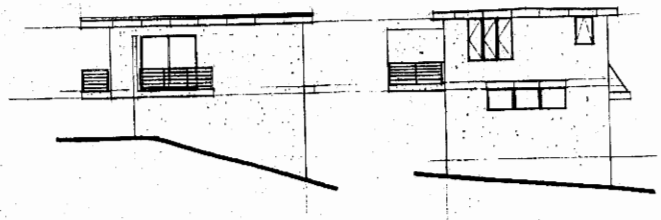


roof plan



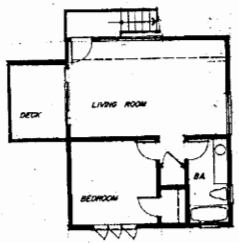
left side elevation

front elevation

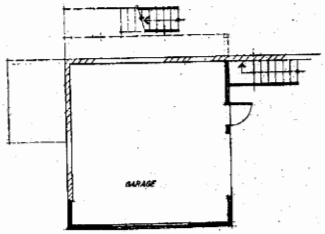


right side elevation

rear elevation



second floor plan



first floor plan

guest house plan

REVISIONS	BY

Roy's Drafting Service
957 Carnation Avenue
Costa Mesa, CA 92626
ph:714.549.4168
Roy Sasaki

PROPOSED RESIDENCE
ROD SPECTOR
1721 Corral Canyon Road
Malibu, CA 90265

DRAWN	
CHECKED	
DATE	
SCALE	
JOB NO.	
SHEET	A-4
OF SHEETS	

Exhibit 6
4-07-040 (Spector)
Guest Unit Floor Plan and Elevations

RECORDING REQUESTED BY

Department of Regional Planning
320 West Temple Street
Room 1195, Hall of Records
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name: MARSHA HALE

Street: POST OFFICE BOX 3640

City: MANHATTAN BEACH CA 90266

COPY of Document Recorded 97 1369421

Has not been compared with original
Original will be returned when
processing has been completed.
LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK

SEP 4 1997

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

CC 95-0381

REQUEST FOR CERTIFICATE OF COMPLIANCE

I/We the undersigned owner(s) of record (and/or vendee(s) pursuant to a contract of sale) in the following described property within the unincorporated territory of the County of Los Angeles, hereby REQUEST the County of Los Angeles to determine if said property described below complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) and the Los Angeles Code, Title 21 (Subdivisions).

Signature	Signature	Signature
Marsha Hale		
MARSHA HALE		
Name (typed or printed)	Name (typed or printed)	Name (typed or printed)
4/16/97		
Date	Date	Date

LEGAL DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 18 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 4, 1900, DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE, ALONG THE EASTERLY LINE OF SAID SECTION 22, NORTH 00°01'00" WEST 247.24 FEET TO THE NORTHERLY LINE OF CORRAL CANYON ROAD, A 40.00 FOOT ROAD AS SHOWN ON COUNTY SURVEYORS MAP NUMBER 8577, ON FILE IN THE OFFICE OF THE SURVEYOR OF LOS ANGELES COUNTY, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 90.00 FEET, A RADIAL LINE BEARS SOUTH 46°45'03" WEST; THENCE, ALONG SAID NORTHERLY LINE IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 02°15'37", AN ARC DISTANCE OF 3.55 FEET; THENCE, TANGENT TO SAID CURVE, NORTH 40°59'20" WEST, 363.38 FEET; THENCE, NORTH 31°31'05" WEST, 292.71 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 520.00 FEET; THENCE, ALONG SAID CURVE IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 19°50'10", AN ARC DISTANCE OF 180.03 FEET; THENCE, TANGENT TO SAID C
WEST 357.82 FEET; THENCE, LEAVING SAID NORTHERLY LINE, SOUTH 20°4(

Exhibit 7
4-07-040 (Spector)
Certificate of Compliance No. 95-0381

CERTIFICATE OF COMPLIANCE

CONTINUATION

CC 95-0381

THENCE, SOUTH 82°23'58" WEST 70.00 FEET; THENCE, SOUTH 00°30'00" WEST 745.00 FEET TO THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE, SOUTH 87°47'15" EAST 996.24 FEET TO THE POINT OF BEGINNING..

EXCEPT THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE, ALONG THE EASTERLY LINE OF SAID SECTION 22, NORTH 00°01'00" WEST 247.24 FEET TO THE NORTHERLY LINE OF CORRAL CANYON ROAD, A 40.00 FOOT ROAD AS SHOWN ON COUNTY SURVEYORS MAP NUMBER 8577, ON FILE IN THE OFFICE OF THE SURVEYOR OF LOS ANGELES COUNTY, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 90.00 FEET, A RADIAL LINE BEARS SOUTH 46°45'03" WEST; THENCE, ALONG SAID NORTHERLY LINE IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 02°15'37", AN ARC DISTANCE OF 3.55 FEET; THENCE TANGENT TO SAID CURVE, NORTH 40°59'20" WEST, 363.38 FEET; THENCE, NORTH 31°31'05" WEST, 219.84 FEET; THENCE, LEAVING SAID NORTHERLY LINE, SOUTH 62°35'00" WEST 360.10 FEET; THENCE, SOUTH 46°33'11" WEST 93.77 FEET; THENCE, NORTH 89°30'00" WEST 248.16; THENCE, SOUTH 00°30'00" WEST 445.00 FEET TO THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE, SOUTH 87°47'15" EAST 996.24 FEET TO THE POINT OF BEGINNING.

RESERVING THAT PORTION DESCRIBED AS FOLLOWS, LYING WITHIN HEREIN DESCRIBED PARCEL 1.

A STRIP OF LAND 30.00 FEET WIDE LYING 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID SECTION 22, DISTANT NORTH 00°01'00" WEST 192.64 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE, SOUTH 70°39'46" WEST 128.66 FEET; THENCE, SOUTH 86°16'17" WEST 91.18 FEET; THENCE, NORTH 70°15'40" WEST 77.85 FEET; THENCE, NORTH 34°02'39" WEST 231.26 FEET; THENCE, NORTH 02°09'17" WEST 48.85 FEET; THENCE, NORTH 27°21'57" WEST 47.59 FEET; THENCE, NORTH 48°36'21" WEST 60.59 FEET; THENCE, NORTH 24°31'06" WEST 82.60 FEET; THENCE, NORTH 00°19'24" EAST 38.44 FEET; THENCE, NORTH 25°42'45" WEST 29.83 FEET; THENCE, NORTH 53°47'37" WEST 53.72 FEET; THENCE, NORTH 37°41'51" WEST 99.87 FEET; THENCE, SOUTH 83°19'01" WEST 72.59 FEET; THENCE, NORTH 80°58'45" WEST 33.08 FEET; THENCE, NORTH 53°09'49" WEST 82.64 FEET; THENCE, NORTH 63°16'50" WEST 106.97.

THE SIDELINES SHALL BE PROLONGED OR SHORTENED TO TERMINATE ON THE WEST LINE OF HEREIN DESCRIBED PARCEL 1 AND IN THE EASTERLY LINE OF SAID SECTION 22.

AMB: 4461:004:034 PORTION

ex.7

CERTIFICATE OF COMPLIANCE

CONTINUATION

CC 95-0381

NOTES:

Prior to authorization to build on this property, the applicant will be required to conform to the County Building regulations. Such regulations include, but are not limited to; programs for appropriate Sanitary Sewage Disposal, Water Supply for Domestic use and Fire Suppression.

GEOLOGIC, soils and/or Drainage Conditions may exist on the subject property which could limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

DETERMINATION OF COMPLIANCE (E)

I hereby certify that the above described parcel complies with the applicable provisions of the State Subdivison Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation, and may therefore be sold, financed, leased or transferred.

NOTE

This determination DOES NOT GUARANTEE that the subject property meets current design and improvement standards for subdivided parcels. Prospective purchasers should check site conditions and applicable development codes to determine whether the property is suitable for their intended use

DEPARTMENT OF REGIONAL PLANNING

By: [signature]

Title: Administrator, Land Use Reg. Div.

Date: SEPTEMBER 3, 1997

AMB: 4461:004:034 POR.

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles, State of California
James E. Hartl, AICP
Director of Planning

eh

ex.rev.4/96

ex.7

RECORDING REQUESTED BY

Department of Regional Planning
320 West Temple Street
Room 1195, Hall of Records
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name: MARSHA HALE

Street: POST OFFICE BOX 3640

City: MANHATTAN BEACH CA 90266

COPY of Document Recorded 97 1369421

Has not been compared with original
Original will be returned when
processing has been completed.
LOS ANGELES COUNTY REGISTRAR-RECORDER/COUNTY CLERK

SEP 4 1997

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

CC 95-0381

REQUEST FOR CERTIFICATE OF COMPLIANCE

I/We the undersigned owner(s) of record (and/or vendee(s) pursuant to a contract of sale) in the following described property within the unincorporated territory of the County of Los Angeles, hereby REQUEST the County of Los Angeles to determine if said property described below complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) and the Los Angeles Code, Title 21 (Subdivisions).

Signature	Signature	Signature
Marsha Hale		
MARSHA HALE		
Name (typed or printed)	Name (typed or printed)	Name (typed or printed)
4/16/97		
Date	Date	Date

LEGAL DESCRIPTION

A PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 18 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON APRIL 4, 1900, DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE, ALONG THE EASTERLY LINE OF SAID SECTION 22, NORTH 00°01'00" WEST 247.24 FEET TO THE NORTHERLY LINE OF CORRAL CANYON ROAD, A 40.00 FOOT ROAD AS SHOWN ON COUNTY SURVEYORS MAP NUMBER 8577, ON FILE IN THE OFFICE OF THE SURVEYOR OF LOS ANGELES COUNTY, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 90.00 FEET, A RADIAL LINE BEARS SOUTH 46°45'03" WEST; THENCE, ALONG SAID NORTHERLY LINE IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 02°15'37", AN ARC DISTANCE OF 3.55 FEET; THENCE, TANGENT TO SAID CURVE, NORTH 40°59'20" WEST, 363.38 FEET; THENCE, NORTH 31°31'05" WEST, 292.71 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 520.00 FEET; THENCE, ALONG SAID CURVE IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 19°50'10", AN ARC DISTANCE OF 180.03 FEET; THENCE, TANGENT TO SAID CURVE, NORTH 51°21'15" WEST 357.82 FEET; THENCE, LEAVING SAID NORTHERLY LINE, SOUTH 20°40'03" WEST 362.05 FEET;

CERTIFICATE OF COMPLIANCE

CONTINUATION

CC 95-0381

THENCE, SOUTH 82°23'58" WEST 70.00 FEET; THENCE, SOUTH 00°30'00" WEST 745.00 FEET TO THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE, SOUTH 87°47'15" EAST 996.24 FEET TO THE POINT OF BEGINNING..

EXCEPT THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE, ALONG THE EASTERLY LINE OF SAID SECTION 22, NORTH 00°01'00" WEST 247.24 FEET TO THE NORTHERLY LINE OF CORRAL CANYON ROAD, A 40.00 FOOT ROAD AS SHOWN ON COUNTY SURVEYORS MAP NUMBER 8577, ON FILE IN THE OFFICE OF THE SURVEYOR OF LOS ANGELES COUNTY, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 90.00 FEET, A RADIAL LINE BEARS SOUTH 46°45'03" WEST; THENCE, ALONG SAID NORTHERLY LINE IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 02°15'37", AN ARC DISTANCE OF 3.55 FEET; THENCE TANGENT TO SAID CURVE, NORTH 40°59'20" WEST, 363.38 FEET; THENCE, NORTH 31°31'05" WEST, 219.84 FEET; THENCE, LEAVING SAID NORTHERLY LINE, SOUTH 62°35'00" WEST 360.10 FEET; THENCE, SOUTH 46°33'11" WEST 93.77 FEET; THENCE, NORTH 89°30'00" WEST 248.16; THENCE, SOUTH 00°30'00" WEST 445.00 FEET TO THE SOUTH LINE OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE, SOUTH 87°47'15" EAST 996.24 FEET TO THE POINT OF BEGINNING.

RESERVING THAT PORTION DESCRIBED AS FOLLOWS, LYING WITHIN HEREIN DESCRIBED PARCEL 1.

A STRIP OF LAND 30.00 FEET WIDE LYING 15.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE EASTERLY LINE OF SAID SECTION 22, DISTANT NORTH 00°01'00" WEST 192.64 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 22; THENCE, SOUTH 70°39'46" WEST 128.66 FEET; THENCE, SOUTH 86°16'17" WEST 91.18 FEET; THENCE, NORTH 70°15'40" WEST 77.85 FEET; THENCE, NORTH 34°02'39" WEST 231.26 FEET; THENCE, NORTH 02°09'17" WEST 48.85 FEET; THENCE, NORTH 27°21'57" WEST 47.59 FEET; THENCE, NORTH 48°36'21" WEST 60.59 FEET; THENCE, NORTH 24°31'06" WEST 82.60 FEET; THENCE, NORTH 00°19'24" EAST 38.44 FEET; THENCE, NORTH 25°42'45" WEST 29.83 FEET; THENCE, NORTH 53°47'37" WEST 53.72 FEET; THENCE, NORTH 37°41'51" WEST 99.87 FEET; THENCE, SOUTH 83°19'01" WEST 72.59 FEET; THENCE, NORTH 80°58'45" WEST 33.08 FEET; THENCE, NORTH 53°09'49" WEST 82.64 FEET; THENCE, NORTH 63°16'50" WEST 106.97.

THE SIDELINES SHALL BE PROLONGED OR SHORTENED TO TERMINATE ON THE WEST LINE OF HEREIN DESCRIBED PARCEL 1 AND IN THE EASTERLY LINE OF SAID SECTION 22.

AMB: 4461:004:034 PORTION

Ex. 7

CERTIFICATE OF COMPLIANCE

CONTINUATION

CC 95-0381

NOTES:

Prior to authorization to build on this property, the applicant will be required to conform to the County Building regulations. Such regulations include, but are not limited to; programs for appropriate Sanitary Sewage Disposal, Water Supply for Domestic use and Fire Suppression.

GEOLOGIC, soils and/or Drainage Conditions may exist on the subject property which could limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

DETERMINATION OF COMPLIANCE (E)

I hereby certify that the above described parcel complies with the applicable provisions of the State Subdivison Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation, and may therefore be sold, financed, leased or transferred.

NOTE

This determination DOES NOT GUARANTEE that the subject property meets current design and improvement standards for subdivided parcels. Prospective purchasers should check site conditions and applicable development codes to determine whether the property is suitable for their intended use

AMB: 4461:004:034 POR.

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles, State of California
James E. Hartl, AICP
Director of Planning

DEPARTMENT OF REGIONAL PLANNING

By: [signature]

Title: Administrator, Land Use Reg. Div.

Date: SEPTEMBER 3, 1997

eh

ex.rev.4/96

Ex. 7

RECORDING REQUEST BY

Department of Regional Planning
320 West Temple Street
Room 1382 Hall of Records
Los Angeles, California 90012

WHEN RECORDED MAIL TO

Name: Paul McCarthy

Mailing Address: 320 West Temple Street
Room 1382 Hall of Records

City, State Zip Code: Los Angeles, CA 90012

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RESCISSION OF CERTIFICATE OF COMPLIANCE

This Rescission of Certificate of Compliance affects the real property within the unincorporated territory of the County of Los Angeles, State of California described as follows:

That Portion of the Southeast quarter of the Southeast quarter of Section 22, Township 1 South, Range 18 West, San Bernardino Meridian, in the County of Los Angeles, State of California, according to the Official Plat of said land filed in the District Land Office on April 4, 1900, more fully described on EXHIBIT "A" attached hereto and by this reference made a part hereof.

The ORIGINAL CERTIFICATE OF COMPLIANCE, Case No. 95-0381, dated September 03, 1997 and recorded September 04, 1997, as Document Nos. 97-1369421 of Official Records, is now null and void and hereby rescinded.

I, Gerald I. Neiter, as owner of the herein described real property, acknowledge, agree and accept this Rescission of Certificate of Compliance dated this date, and agree that the Certificate of Compliance dated September 03, 1997 as Case No. 95-0381 and recorded on September 04, 1997 as Instrument No. 97-1369421 of Official Records is now hereby rescinded and has no further force and effect.

Gerald I. Neiter, Owner

Date: January 27, 2003

DEPARTMENT OF REGIONAL PLANNING

By: Paul McCarthy for

Title: Administrator, Current Planning Division

Date: January 7, 2003

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles, State of California
James E. Hartl, AICP
Director of Planning

APN: 4461-004-039

Exhibit 8
4-07-040 (Spector)
Rescission of Certificate of Compliance No. 95-0381

EXHIBIT "A"

A portion of the Southeast quarter of the Southeast quarter of Section 22, Township 1 South, Range 18 West, San Bernardino Meridian, in the County of Los Angeles, State of California, according to the Official Plat of said land filed in the District Land Office on April 4, 1900, described as follows:

Beginning at the Southeast corner of said Section 22; thence, along the Easterly line of said Section 22, North 00° 01' 00" West 247.24 feet to the Northerly line of Corral Canyon Road, a 40.00 foot road as shown on county Surveyors Map Number 8577, of file in the office of the surveyor of Los Angeles County, said point being on a curve concave Northeasterly and having a radius of 90.00 feet, a radial line bears South 46° 45' 03" West; thence, along said Northerly line in a Northwesterly direction through a central angle of 02° 15' 37" an arc distance of 3.55 feet; thence, tangent to said curve, North 40° 59' 20" West, 363.38 feet; thence, North 31° 31' 05" West, 292.71 feet to the beginning of a tangent curve, concave Southwesterly and having a radius of 520.00 feet; thence, along said curve in a Northwesterly direction through a central angle of 19° 50' 10", an arc distance of 180.03 feet; thence, tangent to said curve, North 51° 21' 15" West357.82 feet; thence, leaving said Northerly line, South 20° 40' 03" West 362.05 feet; thence, South 82° 23' 58" West 70.00 feet; thence, South 00° 30' 00" West 745.00 feet to the South line of said Section 22; thence, along said South line, South 87° 47' 15" East 996.24 feet to the point of beginning.

Except therefrom that portion described as follows:

Beginning at the Southeast corner of said Section 22; thence, along the Easterly line of said Section 22; North 00° 01' 00" West 247.24 feet to the Northerly line of Corral Canyon Road, a 40.00 foot road as shown on County Surveyors Map Number 8577, on file in the Office of the Surveyor of Los Angeles County, said point being on a curve concave Northeasterly and having a radius of 90.00 feet, a radial line bears South 46° 45' 03" West; thence, along said Northerly line in a Northwesterly direction through a central angle of 02° 15' 37" an arc distance of 3.55 feet; thence, tangent to said curve, North 40° 59' 20" West, 363.38 feet; thence, North 31° 31' 05" West 219.84 feet; thence leaving said Northerly line, South 62° 35' 00" West 360.10 feet; thence, South 46° 33' 11" West 93.77 feet; thence, North 89° 30' 00" West 248.16; thence, South 00° 30' 00" West 445.00 feet to the South line of said Section 22; thence along said South line, South 87° 47' 15" East 996.24 feet to the Point of Beginning.

ex. 8

RECORDING REQUESTED BY

Department of Regional Planning
320 West Temple Street
Room 1360 Hall of Records
Los Angeles, California 90012

WHEN RECORDED MAIL TO:

Name: Mr. Gerald I. Neiter, Esq.

Street: 1925 Century Park East, Suite 2000

City: Los Angeles, California
Zip Code: 90067

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

CC95-0381A

REQUEST FOR CERTIFICATE OF COMPLIANCE

I/We the undersigned owner(s) of record (and/or vendee(s) pursuant to a contract of sale) in the following described property within the unincorporated territory of the County of Los Angeles, hereby REQUEST the County of Los Angeles to determine if said property described below complies with the provisions of the Subdivision Map Act (sec. 66410 et seq., Government Code, State of California) and the Los Angeles Code, Title 21 (Subdivisions).

Signature	Signature	Signature
Gerald I. Neiter		
Name (typed or printed)	Name (typed or printed)	Name (typed or printed)
January 27, 2003		
Date	Date	Date

LEGAL DESCRIPTION

See EXHIBIT "A" attached hereto and by this reference made a part hereof.

Exhibit 9
4-07-040 (Spector)
Conditional Certificate of Compliance No. 95-0381A & Clearance of Conditions

OWNER (S): Gerald I. Neiter

CERTIFICATE OF COMPLIANCE
CONTINUATION

CERTIFICATE OF COMPLIANCE NO.: **95-0381A CONDITIONAL**

Conditions:

1. Make an offer for a private and future road right-of-way over the Northeasterly 10 feet of the subject property, to the satisfaction of the Department of Public Works.

APN: 4461-004-039

NOTES:
Prior to authorization to build on this property, the applicant will be required to conform to the County Building regulations. Such regulations include, but are not limited to; programs for appropriate sanitary sewage disposal, water supply for domestic use and fire suppression.

GEOLOGIC, soils and/or Drainage Conditions may exist on the subject property, which could limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

DETERMINATION OF COMPLIANCE

I hereby certify the above described parcel complies with the applicable provisions of the State Subdivisions Map Act and of the County Subdivision Ordinance, having been exempt from said act and ordinance at the time of its creation, and may therefore be sold, financed, leased or transferred.

NOTE:
This determination DOES NOT GUARANTEE that the subject property meets current design and improvement standards for subdivided parcels. Prospective purchasers should check site conditions and applicable development codes to determine whether the property is suitable for their intended use.

CERTIFICATE OF COMPLIANCE

Pursuant to the provisions of the Subdivisions Map Act (Sec. 66410 et. Seq., Government Code, State of California) and the County Subdivision Ordinance (Title 21 of the Los Angeles County Code). I hereby certify that I have reviewed the above-described division of real property and have found it to be in conformance with all requirements of the Subdivision Map Act and of the County Subdivision Ordinance.

DEPARTMENT OF REGIONAL PLANNING

By: Paul E. Hoffman for

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles
James E. Hartl, AICP
Director of Planning

Title Administrator, Current Planning Div.

Date May 2, 2003

ex. 9

EXHIBIT "A"

A portion of the Southeast quarter of the Southeast quarter of Section 22, Township 1 South, Range 18 West, San Bernardino Meridian, in the County of Los Angeles, State of California, according to the Official Plat of said land filed in the District Land Office on April 4, 1900, described as follows:

Beginning at the Southeast corner of said Section 22; thence, along the Easterly line of said Section 22, North 00° 01' 00" West 247.24 feet to the Northerly line of Corral Canyon Road, a 40.00 foot road as shown on county Surveyors Map Number 8577, of file in the office of the surveyor of Los Angeles County, said point being on a curve concave Northeasterly and having a radius of 90.00 feet, a radial line bears South 46° 45' 03" West; thence, along said Northerly line in a Northwesterly direction through a central angle of 02° 15' 37" an arc distance of 3.55 feet; thence, tangent to said curve, North 40° 59' 20" West, 363.38 feet; thence, North 31° 31' 05" West, 292.71 feet to the beginning of a tangent curve, concave Southwesterly and having a radius of 520.00 feet; thence, along said curve in a Northwesterly direction through a central angle of 19° 50' 10", an arc distance of 180.03 feet; thence, tangent to said curve, North 51° 21' 15" West357.82 feet; thence, leaving said Northerly line, South 20° 40' 03" West 362.05 feet; thence, South 82° 23' 58" West 70.00 feet; thence, South 00° 30' 00" West 745.00 feet to the South line of said Section 22; thence, along said South line, South 87° 47' 15" East 996.24 feet to the point of beginning.

Except therefrom that portion described as follows:

Beginning at the Southeast corner of said Section 22; thence, along the Easterly line of said Section 22; North 00° 01' 00" West 247.24 feet to the Northerly line of Corral Canyon Road, a 40_00 foot road as shown on County Surveyors Map Number 8577, on file in the Office of the Surveyor of Los Angeles County, said point being on a curve concave Northeasterly and having a radius of 90.00 feet, a radial line bears South 46° 45' 03" West; thence, along said Northerly line in a Northwesterly direction through a central angle of 02° 15' 37" an arc distance of 3.55 feet; thence, tangent to said curve, North 40° 59' 20" West, 36 3.38 feet; thence, North 31° 31' 05" West 219.84 feet; thence leaving said Northerly line, South 62° 35' 00" West 360.10 feet; thence, South 46° 33' 11" West 93.77 feet; thence, North 89° 30' 00" West 248.16; thence, South 00° 30' 00" West 445.00 feet to the South line of said Section 22; thence along said South line, South 87° 47' 15" East 996.24 feet to the Point of Beginning.

ex.9

RECORDING REQUEST BY

WHEN RECORDED MAIL TO

Name: Rodney A. Spector and Ramona Spector

Mailing Address: 6354 Sycamore Meadows Drive

City, State Zip Code: Malibu, CA 90265

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

CLEARANCE OF CONDITIONS in CC 95-0381A

The owner (s) and/or holder (s) of a title interest in the real property within the unincorporated territory of the County of Los Angeles, having satisfied the conditions as enumerated in the CONDITIONAL CERTIFICATE OF COMPLIANCE, Recorded as Document No. 03-1335959, on 5-7-2003 : Complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) the County Subdivision Ordinance (Ord. 4478, County of Los Angeles).

OWNER (S): **Rodney A. Spector and Ramona Spector**

NOTES:
Prior to authorization to build on this property, the applicant will be required to conform to the County Building regulations. Such regulations include, but are not limited to: programs for appropriate sanitary sewage disposal, water supply for domestic use and fire suppression.

GEOLOGIC, soils and/or Drainage Conditions may exist on the subject property, which could limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

DETERMINATION OF COMPLIANCE

I hereby certify the above-described parcel complies with the applicable provisions of the State Subdivisions Map Act and of the County Subdivision Ordinance and may be developed and/or sold, financed, leased or transferred in full compliance with all applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance.

APN: 4461-004-039

DEPARTMENT OF REGIONAL PLANNING

By: [signature]

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles
James E. Hartl, AICP
Director of Planning

Title Administrator, Current Planning Division

Date June 2, 2005

ex. 9

Exhibit 10
4-07-040 (Spector)
Inventory of Recorded Title Documents Associated with Property

TYPE OF DOCUMENT	INSTRUMENT NO.	BOOK	PAGE	RECORDING DATE	FIRST PARTY	SECOND PARTY
GRANT DEED	15	1565	138	04/04/02	WILLIAMS	FREDRICK H. RINDGE
PATENT	112	12	279	12/16/13	UNITED STATES OF AMERICA	CHARLES J. JOHNSON
GRANT DEED	129	6079	28	06/15/15	CHARLES J. JOHNSON	O. J. WEBBER
GRANT DEED	346	28	130	02/04/21	O. J. WEBBER	CHARLES J. JOHNSON
GRANT DEED	347	28	134	02/04/21	CHARLES J. JOHNSON	PHILBE WITHERS
GRANT DEED	1061	2945	299	04/03/24	PHILBE WITHERS, ETAL	COUNTY OF LOS ANGELES
GRANT DEED	1864	5618	292	04/15//26	PHILBE WITHERS, ETAL	COUNTY OF LOS ANGELES
GRANT DEED	1431	9434	315	11/15/29	PHILBE WITHERS	PAUL J. OTTO
GRANT DEED	1125	10105	91	06/19/30	HARRY O.WITHERS	ARTHUR C. WEBB
GRANT DEED	227	11110	8	08/08/31	HARRY O.WITHERS	M. P. MONTGOMERY
GRANT DEED	228	10991	311	08/08/31	M. P. MONTGOMERY	TERESA K. SCHARFENBERG
QUITCLAIM DEED	229	11038	211	08/08/31	ARTHUR C. WEBB	M.P. MONTGOMERY
QUITCLAIM DEED	230	11066	142	08/08/31	PAUL J. OTTO	M. P. MONTGOMERY
GRANT DEED	144	11219	342	12/08/31	TERESA K. SCHARFENBERG	H. E.SCHARFENBERG
GRANT DEED	831	11912	149	11/21/32	HARRY OWEN WITHERS	ARTHUR C. WEBB
CERTIFICATE OF SALE	677	12772	68	04/25/34	DEAN	HARRY OWN WITHERS
TRUSTEE'S DEED	754	12899	227	08/08/34	SECURITY FIRST NATIONAL BANK	JOHN C. RITTER
GRANT DEED	429	15003	269	06/09/37	JOHN C. RITTER	MAX R BAETCKE
GRANT DEED	838	15706	318	05/04/38	MAX R. BAETCHE	HOME INVESTMENT CO.
GRANT DEED	764	18347	387	05/08/41	JOHN C. RITTER	EDGAR J. LYNCH
GRANT DEED	1723			12/31/65	PEARL A. LYNCH	JAMES V. DOOLEY, ETAL
QUITCLAIM DEED	2428			01/05/66	PLOTNIK	PEARL A. LYNCH
QUITCLAIM DEED	1861			02/02/71	JAMES V. DOOLEY, ETAL	GARDNER
GRANT DEED	1723				PEARL A. LYNCH	JAMES V. DOOLEY, ETAL
GRANT DEED	2140			08/12/71	SECTURITY TITLE INS. CO	PEARL A. LYNCH
GRANT DEED	829			07/08/75	PEARL A. LYNCH	KENNETH M. SHULTZ, ETAL
GRANT DEED	3286			12/09/75	PEARL A. LYNCH	KENNETH M. SHULTZ, ETAL
GRANT DEED	4134	D6902	917	12/12/75	KENNETH M. SHULTZ, ETAL	KENNETH M. SHULTZ, ETAL
GRANT DEED	77-911452			08/18/77	KENNETH M. SHULTZ, ETAL	KENNETH M. SHULTZ, ETAL
GRANT DEED	86-1714378			12/10/86	BRIAN MACDONNAILL	BRIAN MACDONNAILL, TRUSTEE
QUITCLAIM DEED	90-309731			02/26/90	BERNARD MCDONALD	BERNARD MCDONALD, ETAL
QUITCLAIM DEED	93-684806			04/12/93	BERNARD MCDONALD	BERNARD MCDONALD, ETAL
GRANT DEED	95-1359603			08/18/95	BAIVD A. GILL, RECEIVER	BERNARD MCDONALD
QUITCLAIM DEED	95-2019362			12/19/95	BERNARD MCDONALD	MARSHA HALE
EASEMENT DEED	97-469889			03/27/97	MARSHA HALE	BERNARD MCDONALD, ETAL
GRANT OF WATER WELL	97-469890			03/27/97	BERNARD MCDONALD	
CERTIFICATE OF COMPLIANCE	97-1369418			09/04/97	MARSHA HALE	COUNTY OF LOS ANGELES
CERTIFICATE OF COMPLIANCE	97-1369419			09/04/97	MARSHA HALE	COUNTY OF LOS ANGELES

ex.10

TYPE OF DOCUMENT	INSTRUMENT NO.	BOOK	PAGE	RECORDING DATE	FIRST PARTY	SECOND PARTY
CERTIFICATE OF COMPLIANCE	97-1369420			09/04/97	MARSHA HALE	COUNTY OF LOS ANGELES
CERTIFICATE OF COMPLIANCE	97-1369421			09/04/97	MARSHA HALE	COUNTY OF LOS ANGELES
AGREEMENT	97-1444630			09/18/97	BRIAN MACDONNAILL, TRUSTEE	MARSHA HALE
QUITCLAIM DEED	97-1807519			11/14/97	MARSHA HALE	BRIAN MACDONNAILL, TRUSTEE
QUITCLAIM DEED	97-1807520			11/14/97	MARSHA HALE	BRIAN MACDONNAILL, TRUSTEE
QUITCLAIM DEED	97-2048205			12/31/97	MARSHA HALE	BRIAN MACDONNAILL, TRUSTEE
QUITCLAIM DEED	97-2048206			12/31/97	MARSHA HALE	BRIAN MACDONNAILL, TRUSTEE
QUITCLAIM DEED	98-681205			04/23/98	MARSHA HALE	BRIAN MACDONNAILL, TRUSTEE
QUITCLAIM DEED	98-681206			04/23/98	MARSHA HALE	BRIAN MACDONNAILL, TRUSTEE
CERTIFICATE OF COMPLIANCE	99-2213279			12/01/99	MARSHA HALE	
GRANT DEED	01-1447187			08/08/01	WESTERN FIDELITY, TRUSTEE	GERALD I. NEITER
RESCISSION OF CERTIFICATE OF COMPLIANCE	03-1335958			05/09/03	GERALD I. NEITER	
CERTIFICATE OF COMPLIANCE	03-1335959			05/09/03	GERALD I. NEITER	
QUITCLAIM DEED	04-1911549			07/27/04	MARGARET P. NEITER	GERALD I. NEITER
GRANT DEED	04-1911550			07/27/04	GERALD I. NEITER	RODNEY A. SPECTOR
CLEARANCE OF CONDITIONS	05-1302752			06/03/05	RODNEY A. SPECTOR	
GRANT DEED	05-2047766			08/25/05	RODNEY A. SPECTOR	RODNEY A. SPECTOR, TRUSTEE
AGREEMENT	06-0781187			04/10/06	LAS VIRGENES MUNICIPAL WATER DISTRICT	RODNEY A. SPECTOR
COVENANT	06-1300525			06/13/06	RODNEY A. SPECTOR	

STATE OF CALIFORNIA — EDMUND G. BROWN JR., *Governor*

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P. O. BOX 1450
LONG BEACH, CALIFORNIA 90801
213/590-5071 714/846-0648.

FILE COPY

COASTAL DEVELOPMENT PERMIT

Application Number: A-2-28-77-257

Name of Applicant: Kenneth & Cynthia Shultz, Bernard McDonald

4239 Stern Avenue, Sherman Oaks, CA 91423

Permit Type:
- ☐ Emergency
- ☐ Standard
- ☒ Administrative

Development Location: 1901 Lookout Rd.

Malibu, CA (Malibu Bowl-Corral Canyon)

Development Description: Construct a 880 sq. ft. stable with 1 bedroom-living quarters, 14' AFG on a 145' acre lot. Install 3 power poles to connect electricity to stable.

I. The South Coast Commission finds that:

A. The proposed development, or as conditioned, is:

1. In conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of local government to prepare a local coastal program in conformity with said chapter.

2. If located between the nearest public road and the shoreline of any body of water in the coastal zone is in conformity with public access and public recreation policies of Chapter 3, California Coastal Act of 1976.

3. That there are/are no feasible alternatives, tion measures, as provided in the California Act, available which would substantially les adverse impact that the development as fina on the environment.

Exhibit 11
4-07-040 (Spector)
CDP A-2-28-77-257 Staff Report & Approved Plans

II. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

Condition/s Met On N/A By lh

III. Whereas, at a public hearing, held on March 14, 1977 (date) at Torrance by a unanimous ~~vote~~ ____ vote permit application number A-2-28-77-257 is approved.

IV. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until a copy of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

VI. Work authorized by this permit must commence within two years from the date of the Regional Commission vote upon the application. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

VII. Issued on behalf of the South Coast Regional Commission on March 15, 1977.

M. J. Carpenter
Executive Director
lh/ss

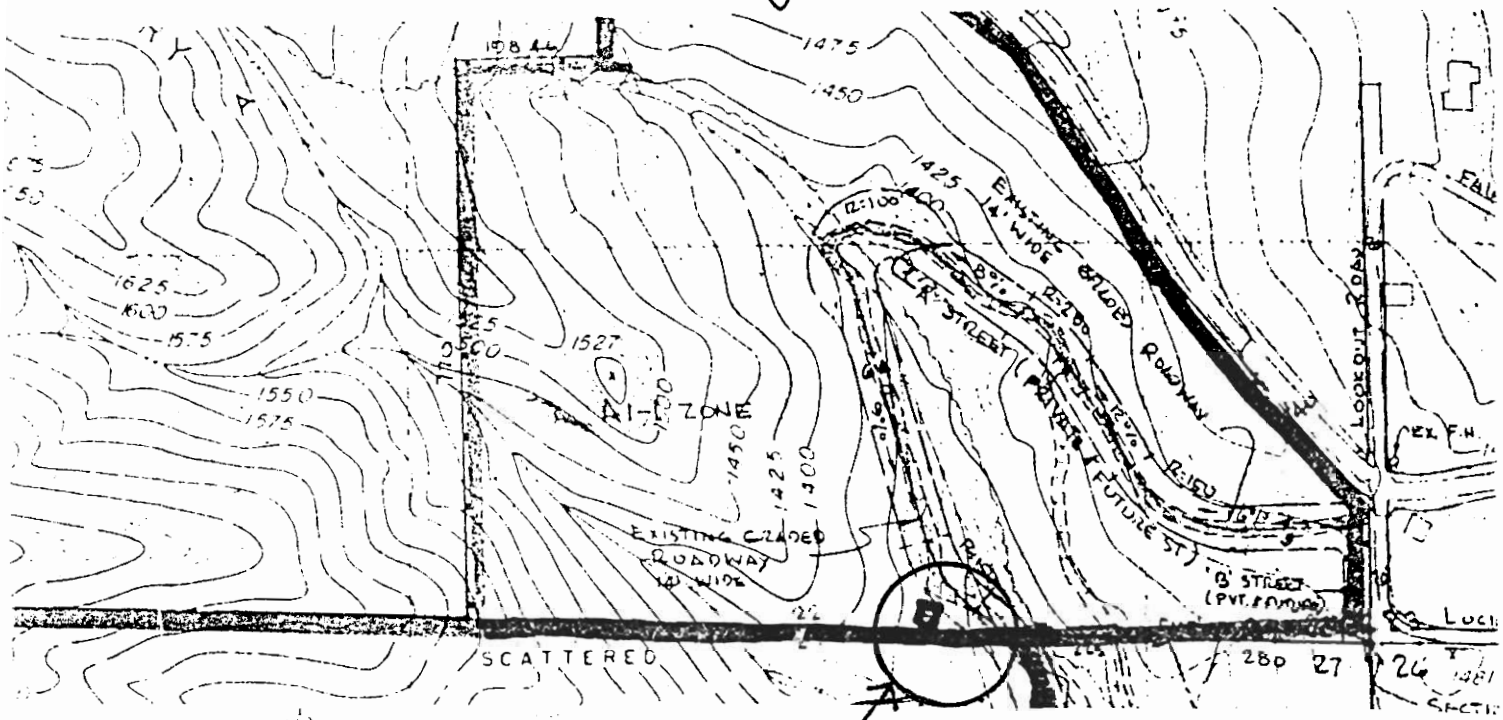
I, _____, permittee/agent, hereby acknowledge receipt of Permit Number A-2-28-77-257 and have accepted its contents.

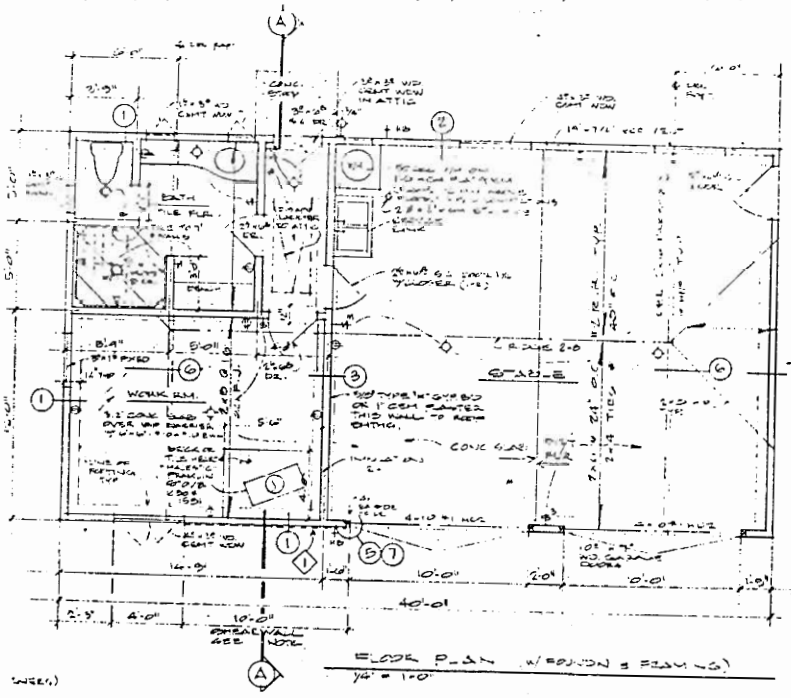
_____ (date)

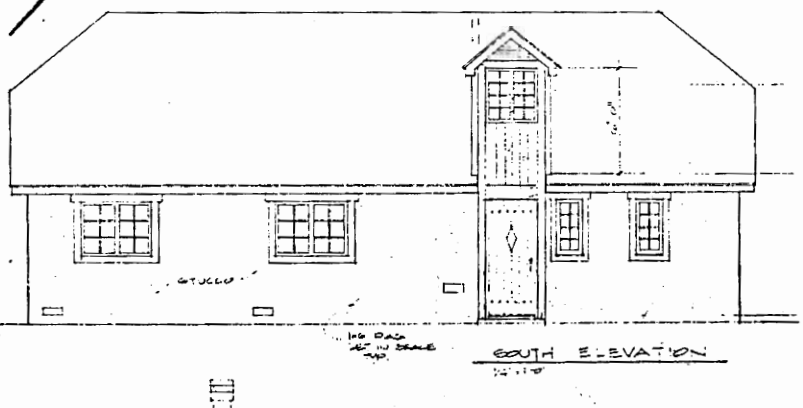
_____ (signature)

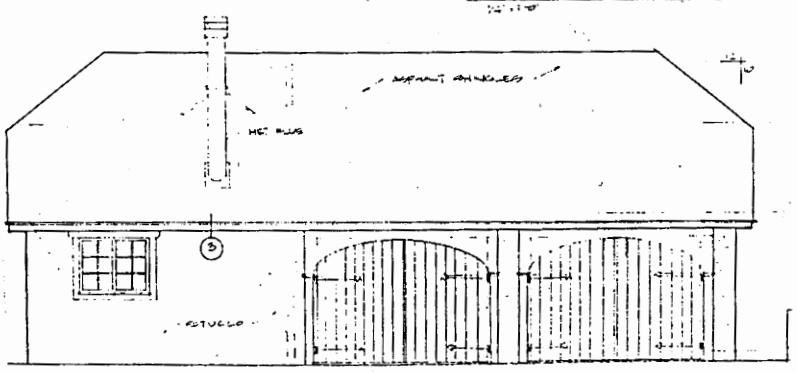
CDP NO.
A-2-28-77-257

APN 4461-004-011









ex. 11

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STATE OF CALIFORNIA -- THE RESOURCES AGENCY GRAY DAVIS, *Governor*

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

Filed:	9/21/99
49th Day:	11/9/99
180th Day:	3/19/00
Staff:	S. Hudson
Staff Report:	9/23/99
Hearing Date:	October 12, 1999
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

permit issued 6/14/00

APPLICATION NO.: 4-98-157

APPLICANTS: Bernard McDonald, Jeff Greene, and Vidi Vici, Inc.

AGENT: Klaus Radtke

PROJECT LOCATION: Six separate parcels in the vicinity of 1901 South Lookout Drive/Corral Canyon Road (APNs: 4461-004-004 & 034 and 4461-005-052, 053, 054 & 055); Malibu, Los Angeles County.

PROJECT DESCRIPTION: Revegetate and restore 6 separate parcels. Restoration will include revegetation of previously disturbed upland and riparian areas and 1,126 cu. yds. of grading (563 cu. yds. cut and 563 cu. yds. fill) to restore a filled drainage. Restoration will also include the removal of an unpermitted Arizona Crossing, a culvert, a well, a spa, multiple trailers/structures, and various debris.

LOCAL APPROVALS RECEIVED: Approval in Concept Los Angeles County Regional Planning Department, Approval by Los Angeles County Environmental Review Board.

SUBSTANTIVE FILE DOCUMENTS: Restoration Report by Klaus Radtke, PH.D. revised 10/6/98; Landform and Vegetation Restoration Report by California Environmental dated 4/98; Proposed Restoration Grading Plans Geologic and Engineering Report by California Environmental dated 6/4/97.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with six (6) special conditions regarding implementation and completion of the Revegetation/Restoration Plan, Revegetation/Restoration Monitoring Program, construction monitoring, plans conforming to geologic recommendation, removal of an existing well, and condition compliance. Portions of the subject site are designated by the Malibu/Santa Monica Mountains Land Use Plan as environmentally sensitive habitat area (ESHA) and/or as significant watershed area. In addition, several natural drainages and ravines are located on site including a designated blueline stream. Development, consisting of the construction and placement of various structures, grading, dumping of trash/debris, and removal of vegetation, has occurred on the subject site without the required coastal development permits. The applicant is not proposing to retain any of the unpermitted development. All unpermitted structures have been previously removed by the applicant (with the exception of one well which is proposed to be removed as part of the proposed project). The proposed project will serve to restore and revegetate all disturbed areas on the subject site to an approximation of their condition before the unpermitted development occurred.

Exhibit 12
4-07-040 (Spector)
CDP 4-98-157 Staff Report

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, as conditioned, 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 governments 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 effects 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 on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as 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 term or 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 development during construction, 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. Implementation and Completion of the Vegetative and Grading Restoration Plans

The applicant shall implement and complete the Restoration Program prepared by Klaus Radtke, PH.D. (outlined in the Restoration Report by Klaus Radtke revised 10/6/98 and the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98) within 45 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

2. Revegetation/Restoration Monitoring Program

(a) Prior to the issuance of a coastal development permit the applicant shall submit, for the review and approval of the Executive Director, a five (5) year Revegetation Monitoring Program, prepared by a environmental resource specialist, which outlines revegetation and restoration performance standards to ensure that revegetation efforts, as required by Special Condition One (1), at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation. The monitoring program shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) showing the area of the project site to be restored prior to restoration.

(b) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the project site. If these inputs are required beyond the first four years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs.

(c) At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this Coastal Development Permit. The final report shall also confirm that the existing unpermitted well located on the "Upper" Site (APN 4461-004-004) has been removed consistent with Special Condition Five (5).

3. Construction Monitoring

The applicant shall retain the services of an environmental resource specialist with appropriate qualifications acceptable to the Executive Director. The environmental resource specialist shall be present on site during all grading activity. Protective fencing shall be used around all oak trees which may be disturbed during grading activities. The consultant shall immediately notify the Executive Director if unpermitted activities occur or if habitat is removed or impacted beyond the scope of the work allowed by Coastal Development Permit 4-98-157. This monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. If significant adverse effects or damage occur to any oak trees on site as a result of grading activity, the applicant shall be required to submit a revised, or supplemental, restoration program to adequately mitigate such adverse effects at 10:1 oak tree replacement ratio. The revised, or supplemental, restoration program shall be processed as an amendment to this coastal development permit.

4. Plans Conforming to Geologic Recommendation

All recommendations contained in the Proposed Restoration Grading Plans Geologic and Engineering Report by California Environmental dated 6/4/97 shall be incorporated into all final design and construction including grading and drainage. All plans must be reviewed and approved by the geologic consultant. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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 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.

5. Removal of Existing Well

The applicant shall remove the existing well located on the "Upper" Site (APN:4461-004-004) shown on the grading plan prepared by John E. Vigil dated September 1998, prior to the completion of the five (5) year Revegetation/Restoration Monitoring Program required by Special Condition Two (2).

6. Condition Compliance

Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to revegetate and restore 6 separate parcels. Restoration will include revegetation of previously disturbed upland and riparian areas and 1,126 cu. yds. of grading (563 cu. yds. cut and 563 cu. yds. fill) to restore a filled drainage. Restoration will also include the removal of an unpermitted Arizona Crossing, a culvert, a well, a spa, multiple trailers/structures, and various debris.

The subject site consists of six separate parcels approximately 265 acres in combined size located in a primarily rural area of the Santa Monica Mountains immediately west of Corral Canyon Road (Exhibit 1). The proposed restoration will occur in three separate areas on the subject site (approximately 4.5 acres in combined size) where unpermitted development has previously occurred: (1) the "Upper Site" *(APN: 4461-004-004)*, (2) the "Central Site" *(APNs: 4461-005-052 & 053),* and (3) the "Lower Site" *(APNs: 4461-004-034 and 4461-005-054 & 055)* as shown on Exhibit 2. Portions of each of the three sites are located within areas designated by the Malibu/Santa Monica Mountains Land Use Plan as environmentally sensitive habitat area (ESHA) and/or as significant watershed area. In addition, several natural drainages and ravines are located on each of the three sites and a stream, designated as a blue line stream by the United States Geologic Service, crosses a portion of the "Lower Site."

Existing Development on the subject site includes a dirt road network, constructed prior to the Coastal Act, which extends across each of the three sites. In addition, an existing well, water tank, underground water pipes, and a large pad area were also constructed on the "Lower Site" prior to the passage of the Coastal Act. An existing 880 sq. ft. barn with a one bedroom living quarters is also located on the "Lower Site" and was permitted by the Commission in 1977 subject to Coastal Development Permit A-2-28-77-257. The Commission notes that only a small portion of the existing 880 sq. ft. barn/caretaker's unit is designated for residential use and that the structure is not a single family residence. The Commission further notes that any future improvements to the existing structure (including conversion of the entire structure to residential use) would require a coastal development permit. The applicant is not proposing any improvements to the existing barn/caretaker's unit as part of this application. In addition, Coastal Development Permit 4-96-073 was also issued for a minor lot line adjustment between the four parcels located on the "Central" and "Lower" Sites (APNs: 4461-005-052, 053, 054 & 055).

Unpermitted development has also occurred on the subject site. Based on information submitted by the applicant and analysis of aerial photography and site reconnaissance by staff, the Commission notes that development (consisting of the construction and placement of various structures, grading, dumping of trash/debris, and removal of

vegetation as listed in greater detail in Table 1 below) was carried out on the subject site between 1977 and 1993 without the required coastal development permits.

TABLE 1: SUMMARY OF DEVELOPMENT AND RESTORATION

"Upper" Site *(APN: 4461-004-004)*

Previously Approved/Pre-Coastal Act Development:
- Dirt road.

Unpermitted Development:
- Grading within a natural drainage ravine (approximately 563 cu. yds. of material was excavated from the ravine slopes and placed on floor of the ravine to block drainage and create level site).
- Dumping of substantial quantities of trash and debris in drainage ravine.
- Removal of native vegetation.
- Installation of a well.

Restoration Status: All trash and debris have been previously removed from site to appropriate location outside of Coastal Zone. Restorative grading, revegetation of all disturbed areas, and removal of unpermitted well are proposed as part of this application.

"Central" Site" *(APNs: 4461-005-052 & 053)*

Previously Approved/Pre-Coastal Act Development:
- Dirt road.

Unpermitted Development:
- Placement of unpermitted structures (including a trailer, shed, and a portion of a large boat).
- Dumping of substantial quantities of trash and debris.
- Removal of native vegetation.

Restoration Status: All unpermitted development (all structures and trash/debris) have been previously removed from site to appropriate location outside of Coastal Zone. Restoration of all disturbed areas (consistent with Vegetative and Grading Restoration Plans by Klaus Radtke revised 10/6/98) has been previously completed.

"Lower" Site *(APNs: 4461-004-034 and 4461-005-054 & 055)*

Previously Approved/Pre-Coastal Act Development:
- Dirt road.
- Graded pad area.
- Well/pump/pipes/water tank.
- 880 sq. ft. barn/caretaker's unit.

Unpermitted Development:
- Construction of multiple structures (including a large workshop, Arizona Crossing in a blue line stream, a culvert in a natural drainage, a well, a spa, and the placement of multiple trailers).
- Dumping of a substantial quantity of trash and debris.
- Removal of native vegetation.
- Extension of existing dirt roads.
- Minor grading to construct terraces for an avocado orchard on hillside slopes.

Restoration Status: All unpermitted structures (including the workshop, Arizona Crossing, culvert, well, spa, all trailers) and all trash/debris have been previously removed from the project site to location outside of Coastal Zone. Orchard destroyed by wildfire in 1980's. Revegetation/restoration of all disturbed and graded areas, including all unpermitted road extensions (consistent with Vegetative and Grading Restoration Plans by Klaus Radtke revised 10/6/98) has been previously completed.

The Commission filed a lawsuit in 1992 seeking relief for the above referenced unpermitted development. The suit has been stayed, pending efforts to resolve the matter. The proposed application is for restoration of the subject site only, the applicant is not proposing to retain any of the unpermitted development on site. All unpermitted structures (with the exception of one well on the "Upper" Site) and all trash and debris have already been removed from the subject site by the applicant to an appropriate location outside the Coastal Zone. In addition, all previously disturbed areas on the "Lower" and "Central" sites where unpermitted development has occurred have already been revegetated/restored by the applicant consistent with the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98. The proposed 1,126 cu. yds. of grading for restoration and revegetation will be located on the "Upper" Site in order to restore a natural drainage to its original topography.

In addition, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit including the apparent subdivision of the "Upper" Site into four new lots, the apparent subdivision of the "Lower" Site into four new lots, and a lot line adjustment between the "Lower" Site and an adjacent site. This additional unpermitted development is not included as part of this application and will require a future follow-up coastal development permit to resolve the apparently unpermitted subdivisions and lot line adjustment.

B. Environmentally Sensitive Habitat Area

Section **30230** of the Coastal Act states that:

> ***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** states:

> ***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 **30236** states:

> ***Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water***

supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section **30240** states:

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

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural 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:

The Commission notes that portions of each of the three sites (the "Upper," "Lower," and "Central" Sites) are located within areas designated by the Malibu/Santa Monica Mountains Land Use Plan as either environmentally sensitive habitat area (ESHA) or as significant watershed area. In addition, several natural drainages and ravines are located on each of the three sites and a stream, designated as a blue line stream by the United States Geologic Service, crosses a portion of the "Lower Site."

To assist in the determination of whether a project is consistent with Section 30230, 30231, 30236, and 30240 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains LUP for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Sections 30230, 30231, 30236, and 30240 of the Coastal Act, Policy 76 of the LUP provides that channelizations, dams, or other substantial alterations of stream courses shown as blue line streams shall be limited to necessary water supply projects, flood control projects, or the improvement of fish and wildlife habitat. Policy 78 provides that road crossings shall be accomplished by the least environmentally damaging feasible method. Policy 79 provides that new development shall be setback at least 50 ft. from the canopy of sensitive riparian vegetation. In addition, Policy 82 provides that grading shall be minimized for all new development to ensure the potential adverse effects of runoff and erosion to coastal waters and streams are minimized.

The Commission notes, based on information submitted by the applicant and analysis of aerial photography and site reconnaissance by staff, that the subject site has been subject to various development carried out between 1977 and 1993 without the required coastal development permits. The unpermitted development (including the placement of fill within a natural drainage, construction of a culvert within a natural drainage, construction of a concrete Arizona Crossing with a designated blueline stream, dumping of trash/debris, and the removal of vegetation), as listed in greater detail in Table 1, was located within, or within close proximity to: blue line streams, natural drainages, and ESHA. The Commission further notes that such development would not be consistent with either the above referenced sections of the Coastal Act or with the above referenced policies of the Malibu/Santa Monica Mountains LUP.

However, in the case of the proposed project, the applicant is not proposing to retain any of the unpermitted development and has submitted a Revegetation/Restoration Plan to restore all disturbed areas on the subject site to an approximation of their condition prior to all unpermitted development. All unpermitted structures (with the exception of one well on the "Upper" Site) and all trash and debris have already been removed from all three sites by the applicant to an appropriate location outside the Coastal Zone. The proposed Revegetation/Restoration Plan will include the removal of all non-native/invasive plant species located within the disturbed areas on the subject site including Eucalyptus trees, Castor Bean, Myoporum, Fennel, Iceplant, Bamboo, and other invasive species. Revegetation will consist of seeding all disturbed areas with native plant species. In addition, 30 oak trees (from 15-gallon containers) will be planted. Twenty oak trees will be planted on the "Upper" Site. Ten oak trees have already been planted on the "Lower" Site. All disturbed riparian and drainage areas will be restored to their original configuration and the stream banks will be planted with native riparian plant species. The applicant's environmental specialist has indicated that the proposed Revegetation/Restoration Plan will provide 90% coverage of all previously disturbed areas on site within 3-4 years. Staff notes that the proposed Restoration/Revegetation Plan is consistent with other revegetation programs required by the Commission in past permit actions where unpermitted development has occurred and that the proposed plan will serve to adequately restore the subject site to an approximation of its pre-unpermitted development condition.

The Commission notes that the majority of the proposed restoration has been previously implemented. All previously disturbed areas on the "Lower" and "Central" sites where unpermitted development has occurred have been previously revegetated/restored by the applicant consistent with the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98. Therefore, Special Condition Two (2) requires the applicant to submit annual reports indicating the success or failure of the restoration effort for a period of five years to ensure that all revegetation and restoration which has been previously completed on the "Lower" and "Central" sites is successful. If the restoration effort is in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental restoration program. In addition,

the applicant is proposing to remove the unpermitted well located on the "Upper" site upon completion of the five year Revegetation and Restoration Monitoring Program in order to utilize the well for the proposed revegetation. Therefore, Special Condition Five (5) has been required to ensure that the applicant's proposal to remove the existing unpermitted well is implemented.

Staff notes that the unpermitted road extensions located on the "Lower" Site were created primarily at natural grade with only minor grading. Restoration of the unpermitted road extensions is limited to minor grading by hand and revegetation of disturbed areas. In addition, no restorative grading is proposed or required on the "Lower" Site to restore the area where minor terracing for the orchard occurred. Staff notes that the area where the unpermitted orchard was located in 1977 has naturally revegetated with native plant species after the wildfire in the early 1980's destroyed the orchard. Staff further notes that the minor amount of grading to create the orchard terracing is not visible and has not resulted in any significant landform alteration on the subject site. Therefore, the Commission notes that further disruption of the naturally revegetated area where the previous orchard was located to conduct minor restorative grading would result in new adverse effects to the habitat value of the site and that restoration of this area should be limited to removal of non-native/invasive plant species as recommended in the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98.

In addition, the proposed restoration plan includes approximately 1,126 cu. yds. of new grading to restore the drainage channel on the "Upper" Site (where unpermitted grading has occurred) to its original topography. The applicant has previously submitted a Vegetative and Grading Restoration Plan to revegetate all disturbed and graded areas on the project site (including the proposed natural drainage to be restored on the "Upper" Site). Therefore, Special Condition One (1) has been required to ensure that the Vegetative and Grading Restoration Plan submitted by the applicant is implemented and that all areas of the subject site where unpermitted development has occurred (including the natural drainage to be restored on the "Upper" Site) are restored and revegetated with native vegetation. In order to ensure that the proposed revegetation is successful, Special Condition Two (2) also requires the applicant to submit annual reports indicating the success or failure of the restoration effort for a period of five years. If the restoration effort is in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental restoration program.

The Commission also notes that the proposed restorative grading and revegetation of the natural drainage course on the "Upper" Site and the proposed removal of a culvert and Arizona Crossing with revegetation on the "Lower" Site will be located within riparian areas and that such development requires approval from the California Department of Fish and Game. In the case of the proposed project, the applicant has submitted an approved Streambed Alteration Agreement dated 11/24/98 from the California Department of Fish and Game allowing for the proposed restoration activity

subject to the condition that the grading/revegetation activity will be implemented consistent with the recommendations contained within the Restoration Report by Klaus Radtke revised 10/6/98.

Further, the Commission notes that the proposed grading for restoration on the "Upper" Site will be located in close proximity to several oak trees and that such grading may result in potential adverse effects to oak trees on the subject site. In order to ensure that any potential adverse effects to the oak trees on the project site are minimized, Special Condition Three (3) requires the applicant to retain the services of an environmental resource specialist to be present on site during all grading activity. In addition, Special Condition Three (3) also requires the use of protective fencing around all oak trees which may be disturbed by the proposed grading.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

C. Geologic Stability

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 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.

Based on information submitted by the applicant, staff analysis of aerial photography, and site reconnaissance, the Commission notes that unpermitted grading and dumping of debris between 1977 and 1993 has resulted in the partial filling of the drainage channel/ravine located on the "Upper" Site. All debris and trash on the "Upper Site" have been previously removed by the applicant to an appropriate disposal site outside the Coastal Zone. The proposed restoration project includes approximately 1,126 cu. yds. of new proposed grading (563 cu. yds. cut and 563 cu. yds. fill) to restore the natural drainage channel/ravine located on the "Upper Site" to its previously existing topography. The applicant's geologic and engineering consultant has indicated that the

proposed grading for restoration will serve to improve the geologic stability of the subject site. The Proposed Restoration Grading Plans Geologic and Engineering Report by California Environmental dated 6/4/97, states:

> ***The proposed restorative grading will improve the slope stability of the existing fill slopes by removing these poorly compacted and non-engineered slopes. All proposed fill slopes are recommended to be at a gradient of 3:1 or less. Anticipated fill slopes will be less than 10 feet in height. The proposed slopes are considered to be grossly and surficially stable.***
>
> ...
>
> ***Based upon the subsurface exploration, it is our findings that the proposed restorative grading is feasible. This work should be done pursuant to the advice and recommendations as indicated below.***

The Commission further notes that the geologic and engineering consultants have included a number of geotechnical recommendations which will increase the stability and geotechnical safety of the site. Therefore, to ensure that the recommendations of the geologic geotechnical consultant are incorporated into the project plans, the Commission finds that it is necessary to require the applicant, as required by Special Condition Four (4), to submit project plans certified by the consulting geologic and geotechnical engineers as conforming to their recommendations. In addition, the Commission notes that although the proposed grading to restore the drainage channel on the "Upper" Site to its previous topography will improve geologic stability on the subject site, the proposed grading activity will also result in potential erosion of the steep slopes on site. Erosion can best be minimized by requiring the applicant to revegetate all disturbed and graded areas of the site with native plants, compatible with the surrounding environment. The applicant has previously submitted a Vegetative and Grading Restoration Plan to revegetate all disturbed and graded areas on the project site. Thus, Special Condition One (1) requires that the Vegetative and Grading Restoration Plan submitted by the applicant is implemented to ensure that all proposed disturbed and graded areas are stabilized and vegetated.

Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

D. Visual Resources

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 subordinated to the character of its setting.

As previously discussed in detail, development (including grading and removal of vegetation) has occurred on the subject site without the required coastal development permit (Table 1). The Commission notes that the areas of the subject site where the unpermitted development has occurred are visible from Corral Canyon Road and that the unpermitted development has resulted in adverse effects to public views.

In the case of this project, the applicant is not proposing to retain any of the unpermitted development. The applicant has previously submitted a Vegetative and Grading Restoration Plan to revegetate all disturbed and graded areas on the project site where unpermitted development has occurred. The proposed Revegetation/Restoration Plan will serve to restore the subject site to an approximation of its condition prior to all unpermitted development. Therefore, Special Condition One (1) has been required to ensure that the Vegetative and Grading Restoration Plan submitted by the applicant is implemented and to minimize any adverse effects to public views from the unpermitted development on site. In order to ensure that the proposed revegetation is successful, Special Condition Two (2) also requires the applicant to submit annual reports indicating the success or failure of the restoration effort for a period of five years. If the restoration effort is in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental restoration program.

Therefore, for the reasons discussed above, the Commission finds that the proposed development, as conditioned, is consistent with Section 30251 of the Coastal Act.

E. Violations

Development has occurred on the subject site (including construction and placement of several structures, trailers, grading, dumping of trash/debris, and removal of vegetation) without the required coastal development permits. The applicant is not proposing to retain any of the unpermitted development. All unpermitted structures (with the exception of one well on the "Upper" Site) trailers and debris have already been removed by the applicant to an appropriate location outside the Coastal Zone. The proposed project will serve to restore all disturbed areas on the subject site to an approximation of their condition prior to all unpermitted development.

To ensure that the proposed restoration is carried out in a timely manner, Special Condition Six (6) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The applicant has submitted a Vegetative and Grading Restoration Plan which will provide for restoration of all portions of the project site which have been previously disturbed by unpermitted development. Special Condition One (1) has been required to

ensure that that the Vegetative and Grading Restoration Plan will be implemented in a timely manner.

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

In addition, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit including the apparent subdivision of the "Upper" Site into four new lots, the apparent subdivision of the "Lower" Site also into four new lots and a lot line adjustment between the "Lower" Site and an adjacent site. This additional unpermitted development is not included as part of this application and will require a future follow-up application for a coastal development permit that seeks to resolve the apparently unpermitted subdivisions and lot line adjustment.

F. Local Coastal Program

Section 30604 of the Coastal Act states that:

> ***a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local 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 will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. 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 conditioned, will not prejudice the City'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. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

SMH-VNT

File SMH/permits/regular/4-98-157 mcdonald

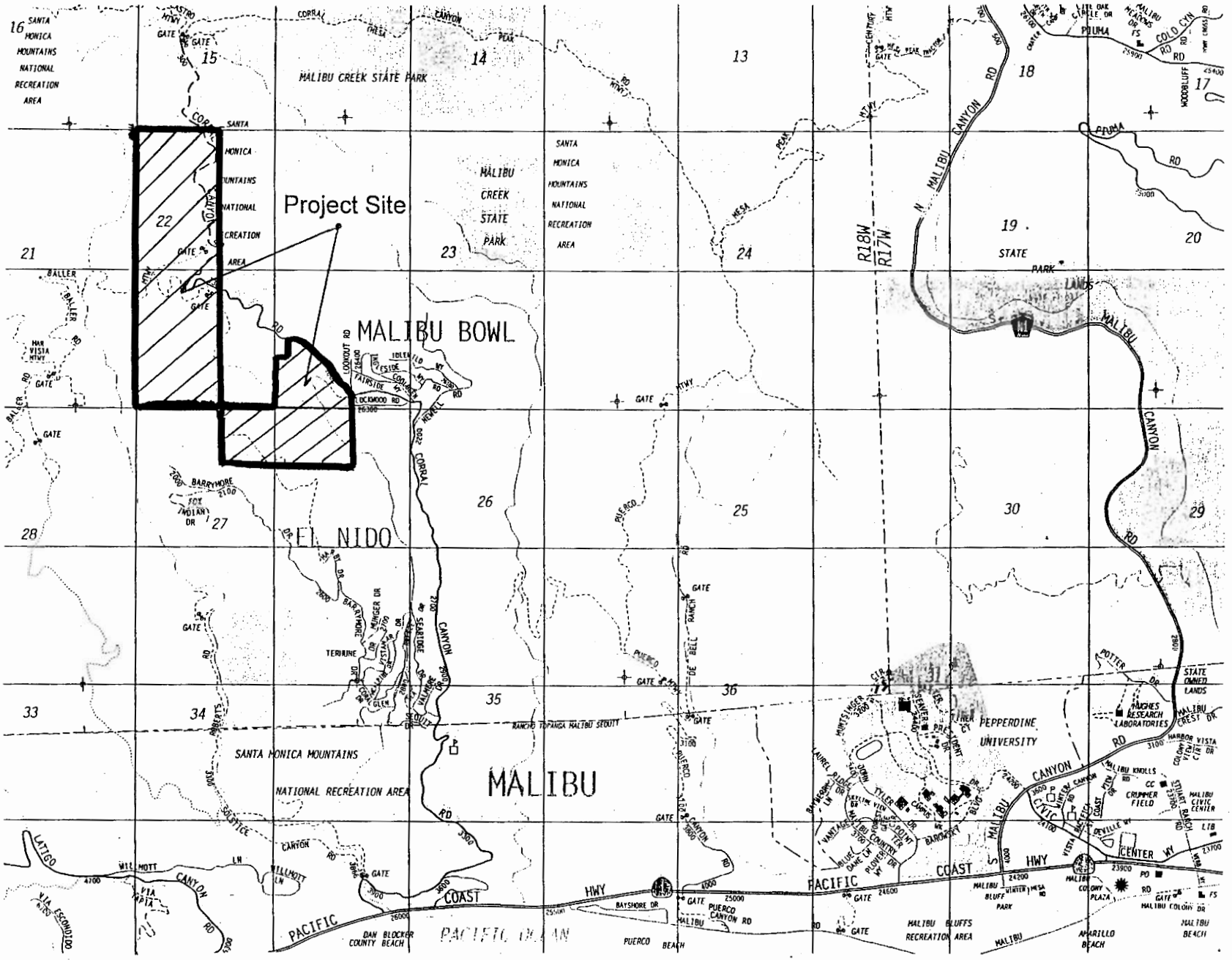


EXHIBIT 1
CDP 4-98-157 (McDonald/Greene & Vidi Vici)
Location Map

ex.12

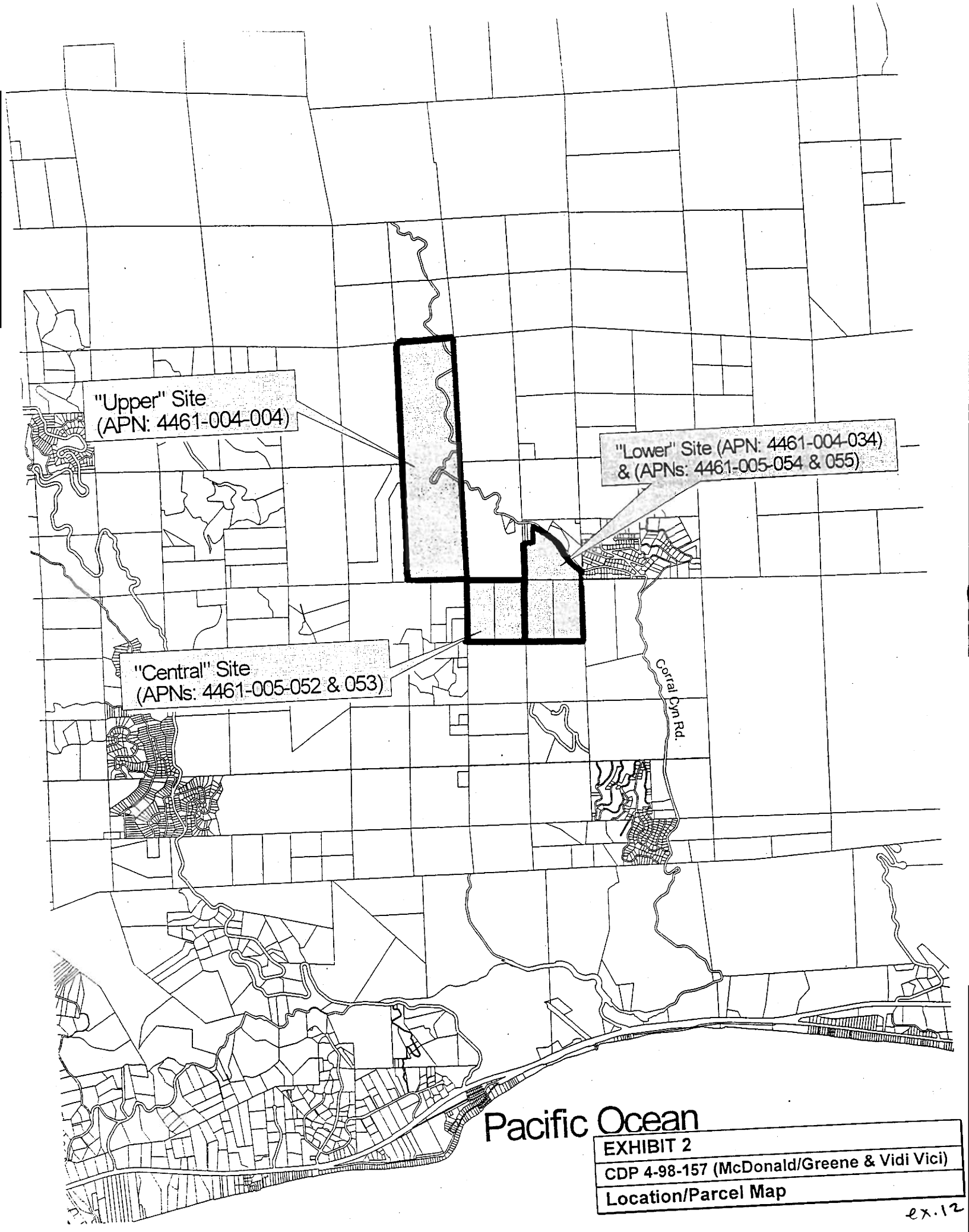
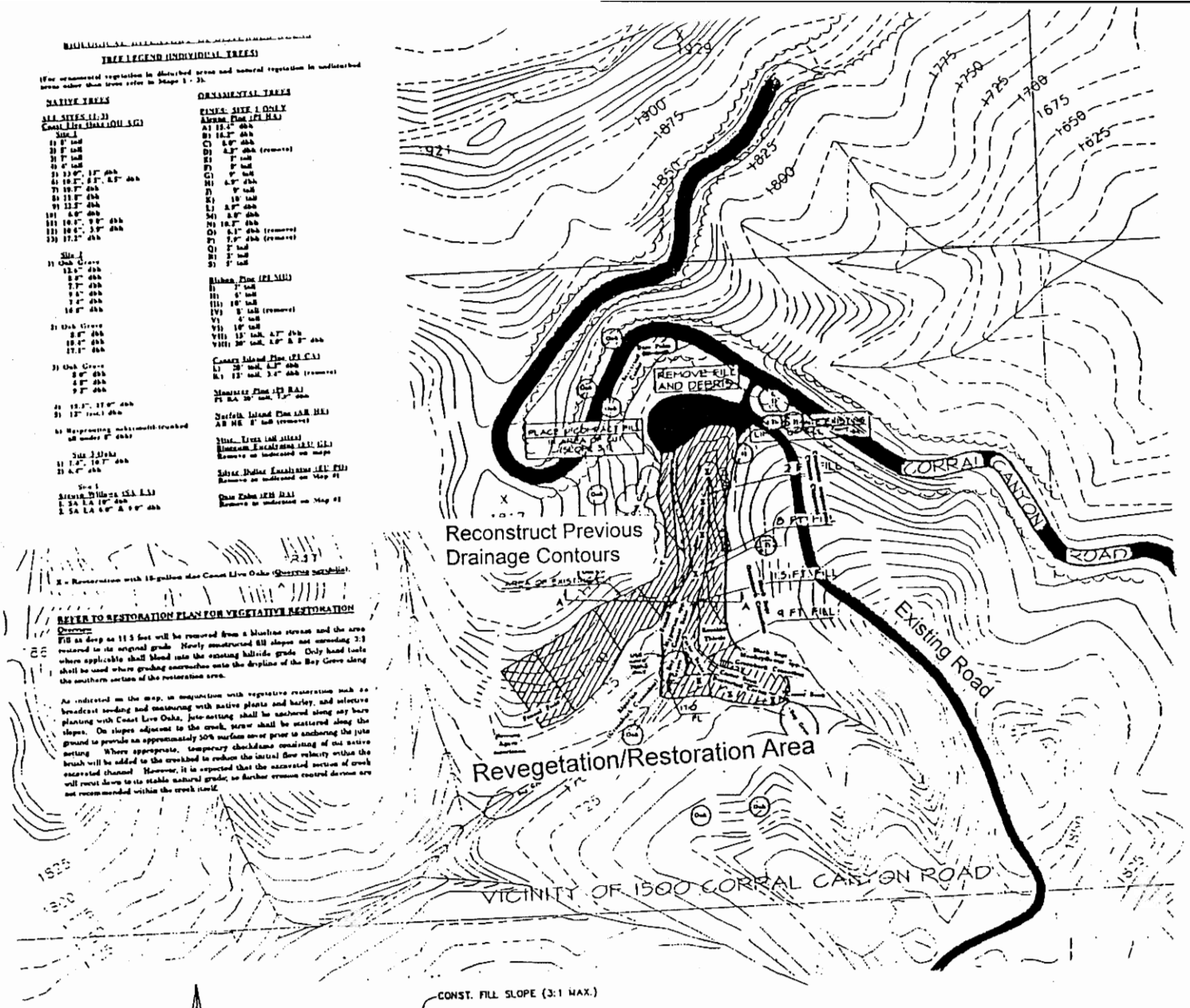


EXHIBIT 2
CDP 4-98-157 (McDonald/Greene & Vidi Vici)
Location/Parcel Map

ex. 12



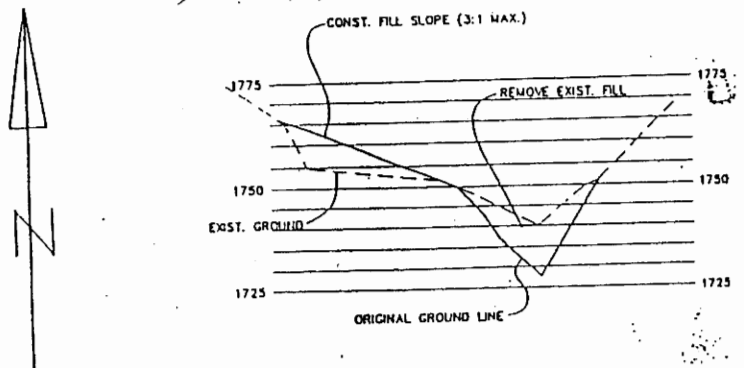


EXHIBIT 3

CDP 4-98-157 (McDonald/Greene & Vidi Vici)

Revegetation/Restoration Plan (Upper Site)

ex. 12

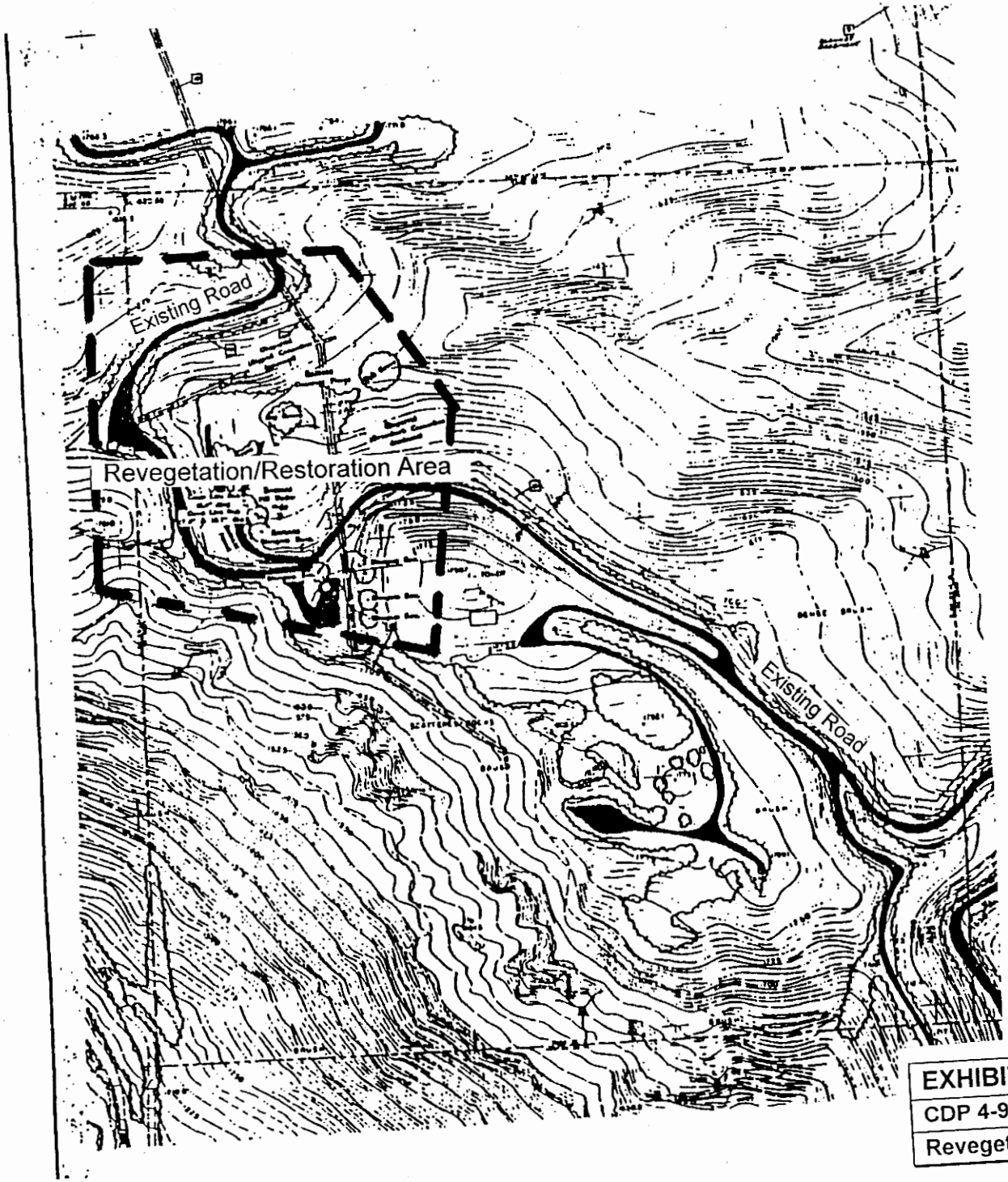
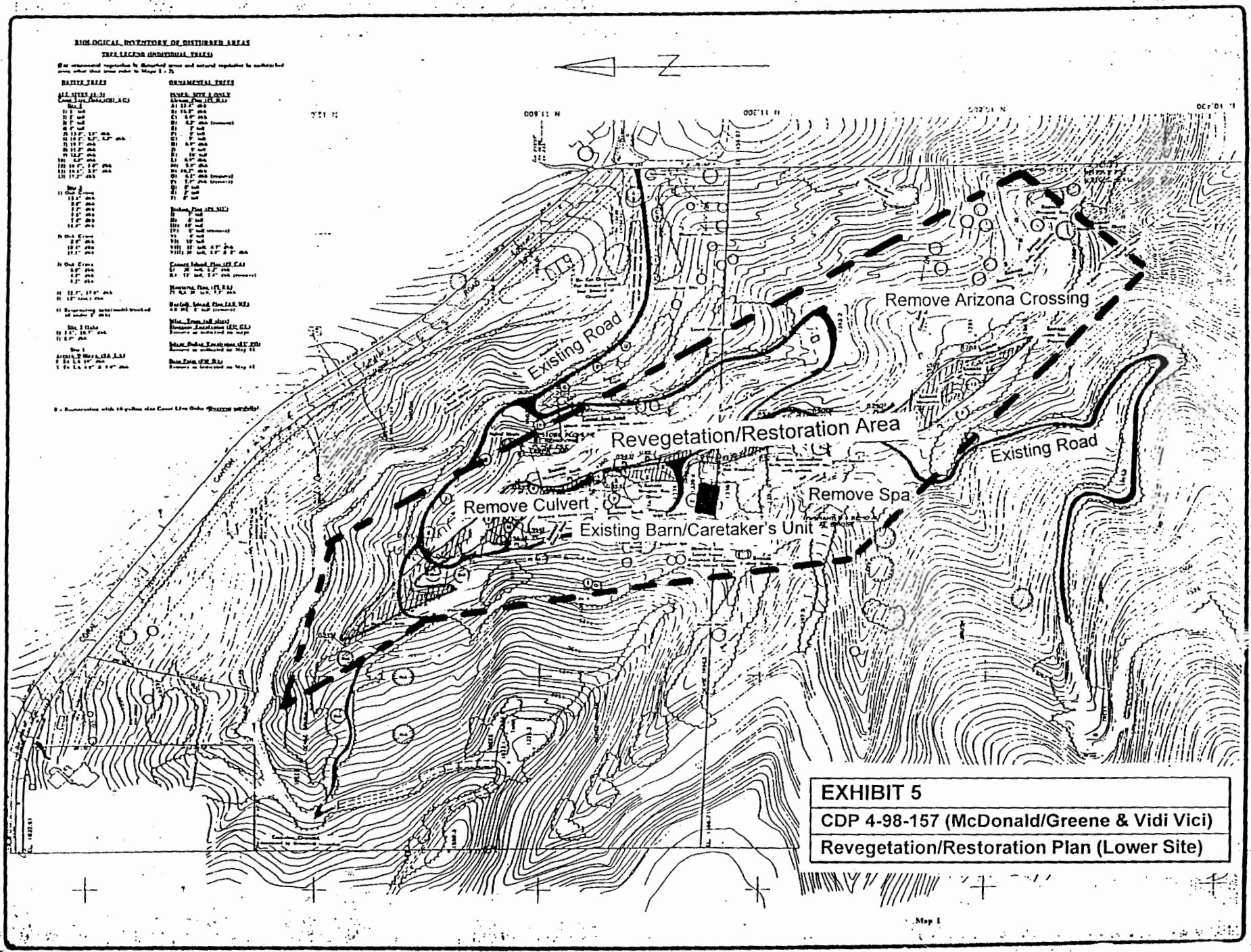


EXHIBIT 4
CDP 4-98-157 (McDonald/Greene & Vidi Vici)
Revegetation/Restoration Plan (Central Site)

ex. 12


Existing Road
Revegetation/Restoration Area
Remove Arizona Crossing
Existing Road
Remove Culvert
Existing Barn/Caretaker's Unit
Remove Spa
EXHIBIT 5
CDP 4-98-157 (McDonald/Greene & Vidi Vici)
Revegetation/Restoration Plan (Lower Site)

VICINITY OF 1500 CORRAL CYN. RD. AND 1901 LOOKOUT RD.

Exhibit 13
4-07-040 (Spector)
CDP 4-98-157 Restoration Plan

manatt
manatt | phelps | phillips

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May 15, 2008

Client-Matter: 41394-030

Deanna Christensen
Coastal Program Analyst
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: CDP Application No. 4-07-040 (Spector)
1721 Corral Canyon Rd (APN 4461-004-039)

Dear Ms. Christensen:

We have been retained by the applicants, Rod and Ramona Spector, concerning the above-referenced application for a coastal development permit (CDP).

Your November 20, 2007 letter asserts that the Commission needs "evidence of lot legality" to determine the completeness of the Spectors' application. You have asked for "mapped legal descriptions" for the chain of title documentation previously provided by the Spectors.

We are enclosing the mapped legal descriptions you requested, for your information. However, for the reasons explained below, the Coastal Commission has no authority to contest the validity of the Spectors' lot, either in the guise of withholding a completion determination or in the course of rendering a decision on the CDP application. Accordingly, we request that the Spectors' application be accepted as complete and that it be processed accordingly.

Background Facts

On September 4, 1997, Certificate of Compliance 95-0381 was recorded in the official records of Los Angeles County as Doc. No. 97-1369421. (Exhibit A to this letter.) This Certificate of Compliance confirmed that APN 4461-004-039 ("the Property") was a legal lot.

Exhibit 14
4-07-040 (Spector)
Edward Burg letter dated May 15, 2008

On May 9, 2003, Rescission of Certificate of Compliance 95-0381 was recorded as Doc. No. 03-1335958. (Exhibit B to this letter.) On the same day, a Conditional Certificate of Compliance No. 95-0381A was recorded for the Property as Doc. No. 03-1335959. (Exhibit C to this letter.) The condition required "an offer for a private and future road over the Northeasterly 10 feet of the subject property, to the satisfaction of the Department of Public Works."

On July 27, 2004, the Spectors acquired the Property by grant deed from Gerald I. Neiter. (Exhibit D to this letter.) The Spectors determined that the 2003 Conditional Certificate of Compliance was issued in error because, in fact, the road dedication condition had been previously satisfied, in 1988. The County of Los Angeles confirmed the previous road dedication in its April 21, 2005 letter to the Spectors. (Exhibit E to this letter.) Accordingly, on June 3, 2005, the County recorded its Clearance of Conditions in Certificate of Compliance 95-0381A, Doc. No 05-1302752. (Exhibit F to this letter.) The Clearance of Conditions states:

> "I hereby certify the above-described parcel complies with the applicable provisions of the State Subdivision Map Act and the County Subdivision Ordinance and may be developed and/or sold, financed, leased or transferred in full compliance with all applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance."

A Certificate of Compliance serves the purpose of confirming the validity of a lot, under Gov't Code § 66499.35. The certificate of compliance procedure is part of the Subdivision Map Act (SMA), "a comprehensive scheme to regulate divisions of land [which] provides specific procedures and remedies for those who are aggrieved by a government agency's determination on subdivision matters." (*Stell v. Jay Hales Development Co.*, 11 Cal. App. 4th 1214, 1227 [1992].) Significantly, Courts have long recognized that the SMA "does not require innocent purchasers to suffer for the violations of the grantor or his predecessors." (*Stell*, 11 Cal. App. 4th at 1228; *Keizer v. Adams*, 2 Cal. 3d 976, 980 [1970].) The certificate of compliance procedure serves this purpose, by allowing purchasers to obtain a definitive confirmation of the validity of a

lot that they can count on before they expend significant sums on the development process.

In short, the Spectors were entirely innocent purchasers of the Property in 2004. The 2003 Conditional Certificate of Compliance was erroneously recorded because the "condition" purportedly imposed by it had in fact been previously satisfied. The Property's status as a legal lot was properly confirmed in the 1997 Certificate of Compliance, and was properly reconfirmed in the 2005 Clearance of Conditions. The Spectors were never required to take any action to validate the subdivision. They have never sought to subdivide their Property, and do not seek to do so now.

The Commission Lacks Authority to Revisit the Determination Regarding the Validity of the Spectors' Lot

The Spectors recognize that they need to obtain a CDP to build on the Property. However, a CDP is only required for "development" in the coastal zone. (Pub. Resources Code §§ 30101.5; 30600(a).) "Development" includes " subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits. . ." (Pub. Resources Code § 30106.) This is the provision you reference in your November 20, 2007 letter.

The problem, however, is that it is simply inapplicable here. The Spectors' CDP Application No. 4-07-040 does *not* include any subdivision, or any other division of land. As explained above, the Spectors' lot was purchased as a separate lot, and the Spectors have proposed no change whatsoever in the physical boundaries of their lot. When an applicant proposes a lot split or other subdivision, the Coastal Commission has statutory jurisdiction over such a division of land in the coastal development process. But that is not the case here. Instead, the Commission is attempting to revisit and *review* the outcome of a subdivision process handled by another jurisdiction, the County of Los Angeles. The Commission lacks authority to act as some sort of *uber*-appellate body, reviewing determinations previously made by other bodies.

Acting under Gov't Code § 66499.35, the County determined in both 1997 and 2005 that the lot purchased by the Spectors was a legal lot. The SMA contains a 90-day statute of limitations to challenge any action concerning a subdivision. (Gov't Code § 66499.37.)

The SMA's 90-day statute of limitation applies to *any* challenge concerning the propriety of issuance of a certificate of compliance under Gov't Code § 66499.35. (*Kirk v. County of San Luis Obispo*, 156 Cal. App. 3d 453, 459 [1984].)

The short statute of limitations contained in Gov't Code § 66499.37 ensures that judicial resolution of SMA disputes occurs as expeditiously as possible. "Such expedition is necessary because delay in the resolution of these disputes is ultimately reflected in increased development and housing costs." (*Hunt v. County of Shasta*, 225 Cal. App. 3d 432, 442 [1990].) The 90-day SMA statute of limitations has been applied in all sorts of contexts involving certificates of compliance. In *Kirk*, 156 Cal. App. 3d 453, the statute was applied to preclude an untimely challenge by the lot owner himself, following the County Board of Supervisors' denial of the owner's application for a certificate of compliance. In *Hunt*, 225 Cal. App. 3d 432, the statute was applied even though the County Board failed to obtain a majority of the required supervisorial votes to take action on the certificate of compliance request (due to recusal of two of the supervisors).

In *Stell*, 11 Cal. App. 4th 1214, the Court made clear that the 90-day statute of limitations could not be evaded by an indirect challenge to the purportedly illegal subdivision. The lot owner in *Stell* had obtained a certificate of compliance from the City of La Canada-Flintridge in 1989. After construction of a single-family residence commenced on the lot, certain neighbors brought an action in nuisance, seeking to halt the construction based in part on what they claimed was an illegal subdivision. The trial court granted the lot owner's motion for non-suit, and the Court of Appeal affirmed. It wrote:

> "The City of La Canada-Flintridge issued a certificate of compliance regarding lot 12, thus certifying that the division of the lot was in accordance with applicable law and ordinances. This finding by the city deflects any claim of merger, and the trial court was correct in determining that *review **in any form** of the local agency's determination was barred by the applicable 90-day statute of limitations*." (*Stell*, 11 Cal. App. 4th at 1228, emphasis added.)

Thus, the *Stell* Court made clear that a challenge *in any form* to an agency's decision on a certificate of compliance must be filed and served within 90 days of the decision, or it is barred.

Here, the Spectors are *not* seeking to subdivide their parcel. By asking the Spectors to prove "evidence of lot legality," the Commission is actually seeking to review the decision on lot legality – and issuance of a certificate of compliance – already made by the County. But it is too late to revisit that decision. Like the neighbors in *Stell*, the Commission is seeking to do indirectly what it is barred from doing directly under Gov't Code § 66499.37.

The bar applies regardless of whether the Commission received notice of the County's actions on the certificate of compliance. This is so for several reasons.

First, Gov't Code § 66499.37 contains no exception to the 90-day statute based on lack of personal knowledge or notice. And the purpose of the recording statutes is to give notice to the world, including the Commission, thereby preventing such a claim of lack of knowledge.

Second, in holding that the County could not withhold a building permit to an innocent purchaser of an illegally divided lot , the Supreme Court in *Keizer v. Adams*, 2 Cal. 3d 976 (1970) rejected the County's argument that "the heavy burden upon the county, with its staff of employees, in checking each of the many recordings in Santa Cruz County" allowed the County to transfer the onus of discovering illegal lots to purchasers. As the Supreme Court explained:

> "The act does not require the innocent purchaser to suffer for a violation by his grantor, of which he has neither knowledge nor means of discovery." (*Keizer*, 2 Cal. 3d at 980.)

Third, application of the statute of limitations against the Commission follows from the principle established by the Commission itself in *Ojavan Investors Inc. v. California Coastal Com.*, 26 Cal. App. 4th 516 (1994). In *Ojavan*, the Commission issued CDPs to two landowners in 1979 and 1990, conditioned on their participation in a transfer of

development credits (TDC) program. Pursuant to the TDC program, the landowners retired the development rights to other lots, and a notice was recorded that the other lots had been combined into a single parcel. Notwithstanding the recorded notices, in 1991 Ojavan and others purported to purchase and resell individual parcels from the combined lots. The Commission issued cease and desist orders, and Ojavan's lawsuit to overturn the Commission's action was dismissed on statute of limitations grounds. The Court held that the 60-day statute of limitations to challenge the original 1979 and 1990 CDPs (under Pub. Resources Code § 30801) applied – even though Ojavan did not own the parcels at the time and thus had received no notice of the issuance of the CDPs. The Court of Appeal wrote:

> "Contrary to appellants' assertion, there is nothing fundamentally unfair or 'Kafkaesque' about their inability because of a lack of standing to have challenged coastal development permits issued years ago to other parties and their present inability to challenge, because of the statute of limitations, the same permits which now affect them. To the contrary, it would be illogical and unfair to grant third parties, such as appellants, the right to challenge permits when such a challenge would be time barred if brought by the party who was initially granted the permit. A permit holder must have legal confidence after a definite point in time in investing financial resources to implement the approved development. Once the 60-day statute of limitations has run, the permit issued must be deemed good as against the world." (*Ojavan*, 26 Cal. App. 4th at 525.)

The same rationale applies here to the 90-day statute of limitations under the SMA. The *Ojavan* Court recognized that the challenge to the Commission's actions in that case was really a thinly disguised attempt to attack the CDPs themselves – an attack which was barred by the 60-day statute of limitations in Pub. Resources Code §30801. Similarly here, the Commission's desire to revisit the question of lot legality is a thinly disguised attempt to attack the County-issued certificate of compliance itself – an attack barred by the 90-day statute of limitations in Gov't Code § 66499.37. In both *Ojavan* and this case,

the short statutes exist so that any legal uncertainty as to the validity of the government's action will be raised and resolved quickly, thereby allowing financing and development to proceed without uncertainty once the statute runs. (Compare *Ojavan*, 26 Cal. App. 4th at 525 [policy supporting the 60-day statute of limitations in Pub. Resources Code § 30801] with *Hunt*, 225 Cal. App. 3d at 442 [policy supporting the 90-day statute of limitations in Gov't Code § 66499.37].)

The whole purpose of the certificate of compliance procedure is to resolve any issues of uncertainty concerning the validity of a legal lot. Here, these issues were resolved in 1997, and reconfirmed on June 3, 2005. The time to dispute that resolution expired 90 days later. The Commission cannot now attempt to rely on the definition of "development" in Pub. Resources Code § 30106 in order to reopen the determination as to the legality of the Spectors' lot when the Spectors are *not* seeking to accomplish any further division of their land.

At The Very Least, the Commission Should Issue an After-the-Fact Permit

While the Commission lacks jurisdiction to punish the Spectors for any potential subdivision sins of their predecessors in title, the Spectors' goal is to appropriately develop the Property. Accordingly, the Spectors would not object to issuance of an after-the-fact permit by the Commission.

Fundamental fairness compels this result here. The Spectors are clearly innocent purchasers. They did everything the law provides to assure themselves that they were purchasing a legally subdivided lot.

Indeed, the issued certificate of compliance leaves the Spectors without any effective remedy against any of their predecessors in the chain of title. Ordinarily, the buyer of an illegally subdivided lot has the right to void the deed within one year after discovery of the SMA violation, or may bring an action against the illegal subdivider to recover any damages the buyer suffered. (Gov't Code § 66499.32.) However, these remedies are not available to the Spectors here:

> "The provisions of this section shall not apply to the conveyance of any parcel of real property identified in a certificate of compliance filed pursuant to Section 66499.35 or identified in a recorded final map or parcel map, from and after the date of recording." (Gov't Code § 66499.32(b).)

This provision was construed by the Court in *Le Gault v. Erickson*, 70 Cal. App. 4th 369 (1999). The Court held that the statutory language quoted above prevents a buyer from unwinding a sale of a lot confirmed by a certificate of compliance. The Court gave this example:

> " 'A' buys a parcel of real property from 'B.' Subsequent to the sale, 'A' seeks to void the contract because he learned the property had been improperly subdivided. 'B' presents a certificate of compliance, which states the property at issue has, in fact, been properly subdivided. 'A' is now precluded under section 66499.32 from voiding the deed regardless of other evidence he may have." (*Le Gault*, 70 Cal. App. 4th at 374.)

The *Le Gault* Court's construction of the statutory language lends further support to the salutary purpose of the overall statutory scheme – once a certificate of compliance is issued (and not timely challenged), the validity of the subdivision is resolved for all time.

Here, the statute means that, even if the Spectors' lot had been illegally subdivided by a predecessor in title, the Spectors have no remedy against their predecessor because the certificate of compliance operates to defeat any such claim. The abject unfairness of the situation cries out for issuance of an after-the-fact permit.

We note that each of the other three lots (i.e., APNs 4461-004-037, -038, and -040) originally created from the former parent lot (i.e., APN 4461-004-034) appear to have interrelated histories of ownership. Short Form Deeds of Trust and Assignment of Rents were recorded for each of the other three lots on the same day, November 14, 2007; in each case, the signatory for the owner was John Horlieca, as president of Croft

Holding Corporation, a Nevada corporation. (See Doc. No. 20072542414 [for APN 4461-004-037]; Doc. No. 20072542399 [for APN 4461-004-038]; and Doc. No. 20072542395 [for APN 4461-004-040]; copies of each attached, respectively, as Exhibits G, H and I to this letter.) In 2008, Trustee's Deeds were recorded pursuant to 2006 deeds of trust for each parcel; each of these Trustee's Deeds lists the same address for the owners: 375 "E" Street, Suite 120, Santa Rosa, CA 95404. (See Document. No. 20080177937 [for APN 4461-004-037]; Doc. No. 20080656896 [for APN 4461-004-038]; and Doc. No. 20080177939 [for APN 4461-004-040]; copies of each attached, respectively, as Exhibits J, K, and L to this letter.) The Commission may want to investigate requiring a recombination of these lots.

We believe that an after-the-fact permit (if necessary) is the proper result here. While the Commission is certainly entitled to pick and choose the cases it wishes to litigate, it is also well aware of the time-worn adage that "bad facts make bad law." Where the Commission has overstepped its authority in other areas, Courts have not hesitated to say so. (*See, e.g., Security National Guaranty, Inc. v. California Coastal Commission*, 159 Cal. App. 4th 402 [2008] [Commission exceeded authority by designating ESHA after certification of LCP]; *Schneider v. California Coastal Commission*, 140 Cal. App. 4th 1339 [2006] [Commission lacked authority to consider ocean boaters' view of coastline from the water]; *City of Half Moon Bay v. Superior Court*, 106 Cal. App. 4th 795 [2003] [Commission lacked jurisdiction to consider appeal from court-ordered CDP].)

Moreover, because the Spectors have no remedy against their predecessors in title, a refusal by the Commission to recognize the legality of the lot notwithstanding the certificate of compliance would deprive them of all economically viable use of their property and violate their right to substantive due process. (*Lucas v. So. Carolina Coastal Council*, 505 U.S. 1003 [1992]; *Crown Point Development, Inc. v. City of Sun Valley*, 506 F. 3d 851 [9th Cir. 2007].)

Upon your further review, we request that the Commission accept the Spectors' CDP application as complete, and appropriately process the application. If the Commission disagrees with the Spectors' legal position, the Spectors are willing to resolve the

dispute by issuance of an after-the-fact permit. If the Commission is unwilling to take either route, please advise me so the Spectors can proceed accordingly.

Sincerely,

Edward G. Burg

cc: Rod and Ramona Spector
Drew D. Purvis
Steve Hudson, Supervisor of Planning and Regulations

Enclosures:
Site Plan Exhibit (2 Sheets)

Exhibits:
Exhibit A – September 4, 1997 Certificate of Compliance 95-0381
Exhibit B – May 9, 2003 Rescission of Certificate of Compliance 95-0381
Exhibit C – May 9, 2003 Conditional Certificate of Compliance 95-0381A
Exhibit D – July 27, 2004 Grant Deed to Spectors
Exhibit E – April 21, 2005 County of Los Angeles letter to Spectors
Exhibit F – June 3, 2005 Clearance of Conditions in Certificate of Compliance 95-0381A
Exhibit G – November 14, 2007 Short Form Deed of Trust for APN 4461-004-037
Exhibit H – November 14, 2007 Short Form Deed of Trust for APN 4461-004-038
Exhibit I – November 14, 2007 Short Form Deed of Trust for APN 4461-004-040
Exhibit J – Trustee's Deed for APN 4461-004-037
Exhibit K – Trustee's Deed for APN 4461-004-038
Exhibit L – Trustee's Deed for APN 4461-004-040

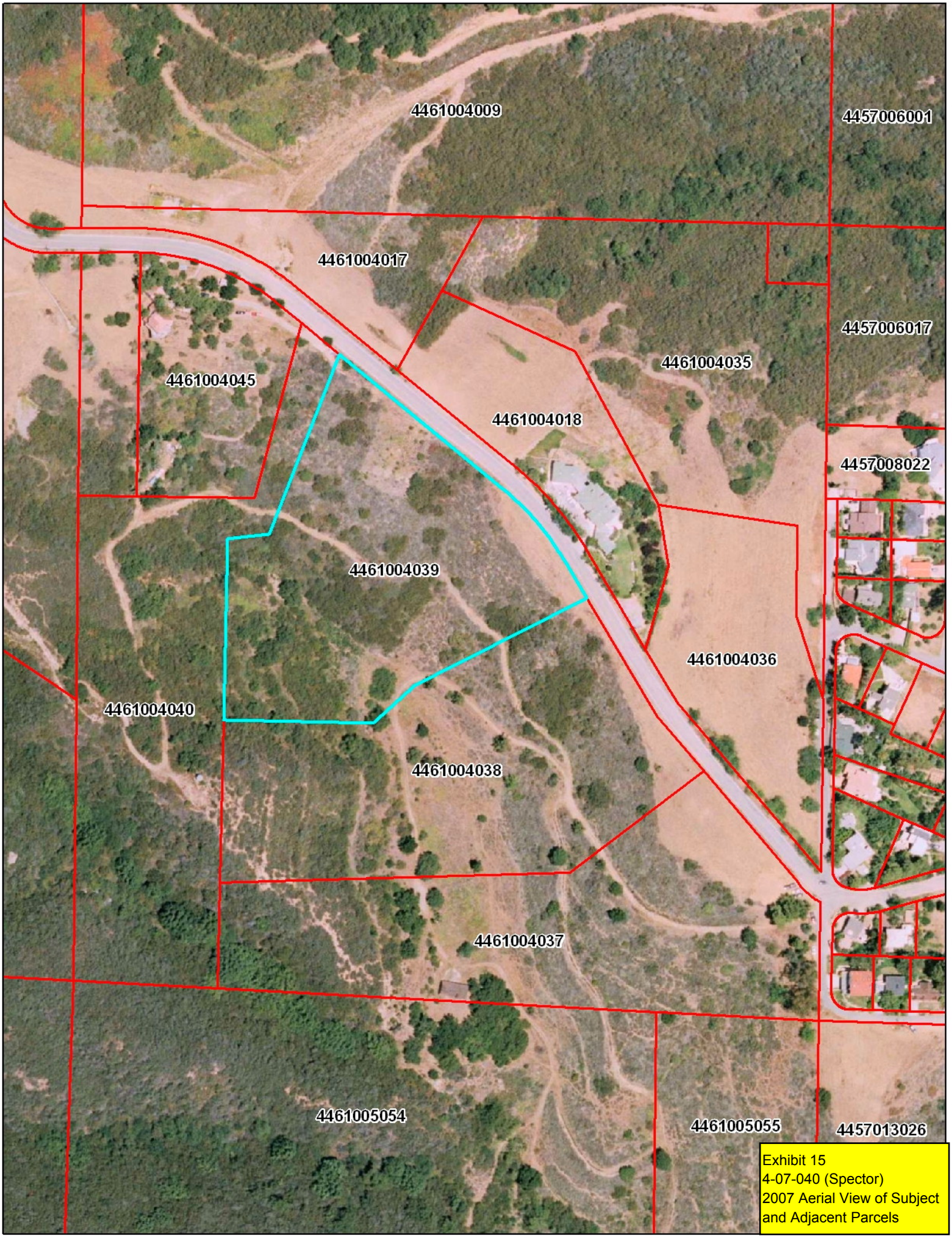
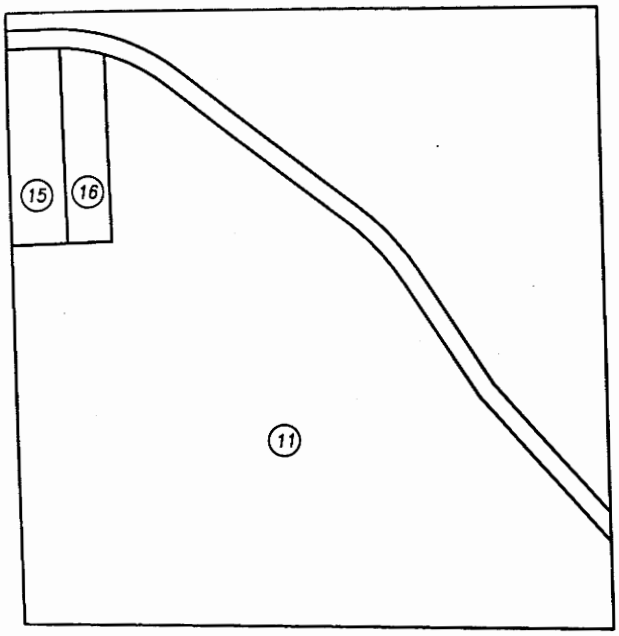
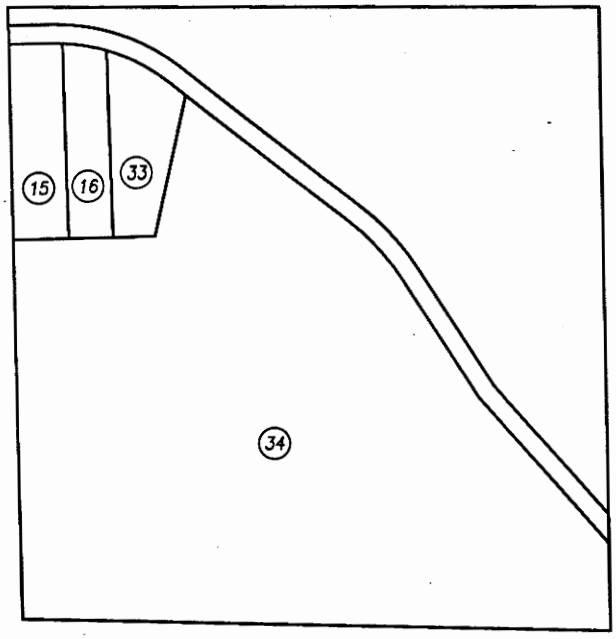


Exhibit 15
4-07-040 (Spector)
2007 Aerial View of Subject and Adjacent Parcels

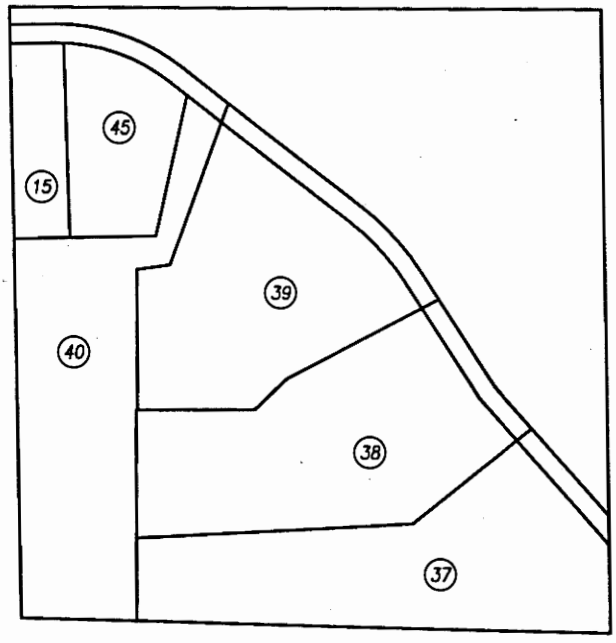
APN 4461-004



APN 4461-004-011 created by grant deed in 1941. Remains in this configuration until 1995.



APN 4461-004-016 acquired a portion of APN 4461-004-011 pursuant to a lot line adjustment in 1995 (however, the portion of land adjusted was assigned a separate APN by the County Assessor - 4461-004-033). Parent Parcel 4461-004-011 then became APN 4461-004-034.



APN 4461-004-034 divided by grant deeds in 1997, thereby creating subject parcel 4461-004-039 and 4461-004-037, 038, and 040.

To reflect that APN 4461-004-033 and APN 4461-004-016 are one legal parcel pursuant to the 1995 lot line adjustment, they were assigned a single APN, 4461-004-045.

Exhibit 16
4-07-040 (Spector)
Depiction of "Parent Parcel" Configuration Changes

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

M E M O R A N D U M

FROM: Jonna D. Engel, Ph.D.
Ecologist

TO: Deanna Christensen
Coastal Analyst

SUBJECT: 1721 Corral Canyon Road ESHA determination

DATE: March 16, 2009

Documents Reviewed:

Forde, Andrew McGinn. June 28, 2007. Biological Assessment; 1721 Corral Canyon Road (4461-004-039), Malibu, Los Angels (sic) County, California. Prepared by Forde Biological Consultants for Rod Spector.

Aerial Information Systems (AIS), Environmental Systems Research Institute (ESRI), California Department of Fish and Game, California Native Plant Society and National Park Service. 2007. Preliminary Spatial Vegetation Data of Santa Monica Mountains National Recreation Area and Environs. USGS-NPS Vegetation Mapping Program, Santa Monica Mountains National Recreation Area, Thousand Oaks, CA.

The subject property at 1721 Corral Canyon Road and the associated 21-acre “parent” parcel falls within an area of the Santa Monica Mountains that has been mapped by the National Park Service to identify vegetation alliances using aerial imagery in a cooperative effort of several governmental agencies. According to the vegetation mapping, native habitats dominate the site and include the following communities; ‘live oak (*Quercus agrifolia*) woodland’, ‘California bay (*Umbellularia californica*) woodland’, ‘big pod ceanothus (*Ceanothus megacarpus*) chaparral’, ‘greenbark ceanothus (*C. spinosus*) chaparral’, ‘California sagebrush/purple sage (*Artemesia californica-Salvia leucophylla*) coastal sage scrub’, and ‘purple sage (*S. leuophylla*) coastal sage scrub’. In addition to these native habitats, the “parent” parcel also includes areas mapped and identified as ‘native and non-native herbaceous’ and ‘urban-herbaceous/cleared’.

Plants associated with the oak woodland community include, toyon (*Heteromeles arbutifolia),* California blackberry (*Rubus ursinus*), bracken fern (*Pteridium aquilinum*), and poison oak (*Toxicodendron diversilobum*). Plants associated with the California bay community include California blackberry (*Rubus urcinus)* and canyon gooseberry (*Ribes menziesii*). Plants associated with the chaparral communities include laurel

Exhibit 17
4-07-040 (Spector)
Dr. Engel ESHA Memo

sumac (*Malosma laurina*), chamise (*Adenostema fasciculatum*), hoary-leaved ceanothus (*C. crassifolius*), and black sage (*Salvia mellifera*). And plants associated with the coastal sage scrub communities include, ash-leaf buckwheat (*Eriogonum cinereum*), California Brickelbush (*Brickellia californica*), coyote brush (*Baccharis pilularis*), and giant wild rye (*Leymus condensatus*).

After reviewing current and historical aerial photographs of the area and the Biological Assessment by Forde Biological Consultants (2007) for the subject property, I've confirmed that the subject property and the "parent" parcel supports these plant communities.

The non-native plant communities defined as 'urban/disturbed or built-up' and 'urban-herbaceous/cleared' occur adjacent to Corral Canyon Road. A narrow finger that coincides with a natural canyon bottom and which bisects the southern end of the parcel is defined as 'native and non-native herbaceous'. This area is also associated with the only development on the parcel which consists of an old stable structure. It appears that this area was cleared sometime in the distant past and has been periodically disturbed such that it now is an open meadow-like area characterized by native and non-native grasses and other herbaceous species. Other than these small patches of disturbed, non-native habitat, the "parent" parcel consists of contiguous patches of pristine native woodland, chaparral, and coastal sage scrub habitat characteristic of the Santa Monica Mountains.

In its findings for the Malibu Local Coastal Plan, the Commission found that the Mediterranean Ecosystem in the Santa Monica Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant unusually high biological diversity. The Commission also found that, within the Santa Monica Mountains, native habitats, including chaparral, that are large, relatively unfragmented, and that have not been significantly degraded may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their rarity throughout the state.

The 21 acre "parent" parcel supports large areas of relatively undisturbed native woodland, chaparral, and coastal sage scrub habitats. The vegetation on this property is part of a much larger, contiguous stand of native plant communities within the Santa Monica Mountains. The biological assessment that focuses on five acres in the northern corner of the "parent" parcel concludes that Southern Mixed Chaparral and Venturan Coastal Sage Scrub dominate the site and constitute ESHA under section 30107.5 of Coastal Act. Section 30107.5 states that " "Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in the ecosystem and which could be easily disturbed or degraded by human activities and developments". The additional 16 acres consists of native woodland, chaparral and coastal sage scrub habitats that also meet the definition of ESHA under the Coastal Act because of their important roles in that ecosystem and because they are clearly easily degraded by human activities.