EXHIBIT 13
4-09-013

a. Letter from Dr. J. Robert Hatherill, dated August 11, 2008

b. Letter from Ron Schafer, California Dept. of Parks and Recreation District Superintendent, dated November 14, 2008

c. Letter from Heal the Bay, dated June 23, 2009

d. Letters from Heal the Bay, dated February 3, 2009 and April 6, 2009

e. Letter from Malibu Surfing Association, dated February 3, 2009

f. Letters from Mark Abramson, Santa Monica Baykeeper, dated February 3, 2009 and April 7, 2009

g. Letter from Sandra Albers, Santa Monica Mountains Resource Conservation District, dated April 7, 2009

h. Letter from the applicant's attorney, Sherman Stacey, dated March 31, 2009

August 11, 2008

Ms. Deanna Christensen
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

RE: CDP Application Number 4-98-024

Dear Ms. Christensen,

It is a pleasure to write this letter in support of the existing creek bank stabilization effort and proposed mitigation of the west bank of Malibu Creek. In addition to numerous site visits to the lower Malibu Creek study area, I have extensively reviewed the "Lower Malibu Creek Emergency Revetment Geomorphic, Bank Erodibility, and Alternatives Analysis prepared by Pacific Advanced Civil Engineering, (PACE) and the Malibu Creek Vegetative Restoration Plan prepared by Impact Sciences. The studies identify the best action plan for flood- bank protection, creek hydraulic suitability, costs, re-vegetation and maintaining minimal environmental impacts. As a former faculty member of the Environmental Studies Program, University of California at Santa Barbara, I am qualified to review the mitigation measures presented herein.

The goals of the mitigation plan will substantially improve and:
- Protect the Western bank along Lower Malibu Creek from further erosion;
- Re-vegetate the area to create a native flora riparian habitat and;
- Improve the aesthetics of lower Malibu Creek.

The enhanced riparian corridor will include the installation of fascines of arroyo willow along the revetment perimeter to create overhanging vegetation adjacent to lower Malibu Creek. This action will likely attenuate the steep slope of the revetment and will be aesthetically pleasing.

Removing non-native species and planting a mixture of native shrubs and trees will improve the riparian habitat value. This action will increase the habitat area for the tidewater goby (Eucyclogobius newberryi), as the shaded areas of the creek are the preferred habitat of the tidewater goby. The extensive planting of native vegetation will dramatically improve the aesthetics of lower of Malibu Creek and support and provide a habitat for the native fauna.

I strongly support the proposed mitigation plans for the west bank of Malibu Creek, prepared by PACE and Impact Sciences. If you require additional information, please do not hesitate to contact me [jhatherill@delmar.edu].

Sincerely,

Dr. J. Robert Hatherill
Professor

AUG 14 2008

ex. 13a

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State of California • The Resources Agency
Arnold Schwarzenegger, *Governor*
DEPARTMENT OF PARKS AND RECREATION • P.O. Box 942896 • Sacramento, CA 94296-001
Ruth G. Coleman, *Director*

Angeles District
1925 Las Virgenes Road
Calabasas, CA 91302
(818) 880-0350

November 14, 2008

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

Re: **Vegetation Restoration Plan for the Mariposa Land Property at Malibu Creek City of Malibu, California**

Dear Mrs. Christensen,

The California Department of Parks and Recreation, Angeles District, has reviewed the above referenced Restoration Plan and offers the following comments for your consideration.

This property has a long history and several proposals have been reviewed by State Parks. As with past plans, we have two concerns with the current proposal. First, leaving the rip-rap in place with its current 1:1 slope configuration is not a solution to mitigating the erosion problem next to the Mariposa Land Property. Second, using willow fascine and minimally erodible component to fill in interstitial spaces in between rip-rap is not a known or proven restoration method. Each concern is discussed in detail below.

Rip-rap Configuration

The placement of the rip rap was granted as an emergency permit during the1997-1998 wet season. It is known that hardened structures on stream banks change the hydrology of the creek. Evidence of this is apparent with the current emergency project, as well as the grouted rip-rap and chain link fencing upstream of the project. The unconsolidated nature of the boulders and their un-engineered placement has continued to contribute to an unstable site for vegetation development. This is evident by the absence of vegetation along the 500-foot stretch of rip-rap adjacent to the Mariposa Land property.

Now that the emergency has passed, it is justifiable that the applicant take the time to design a sustainable bio-engineered project. We suggest the rip-rap be removed to create a sustainable soft bio-engineered slope. If rip-rap can not be removed it should be modified with vegetation and other materials to create a soft bio-engineered slope. Using vegetation and other materials to soften the land-water

interface is known to improve ecological features without compromising the engineered integrity of the shoreline (Best Management Practices for Soft Engineering, U.S. Fish and Wildlife Services July 9, 2008).

Design considerations should include tying into the top of the existing slope with a slope that is 3:1. A 3:1 slope will widen the creek channel; thus, reducing water velocities along the edges of the creek. Reduced velocities will in turn encourage deposition of suspended sediment and help begin the process of establishing a soil matrix for vegetation growth. In addition, slopes that are 3:1 can be stabilized with riparian vegetation which provides shade for aquatic species and filters urban runoff.

Willow Fascines & Filling Interstitial Spaces

We are concerned with the proposed attachment of willow bundle fascines to rip-rap as a way to establish willows at the rip-rap water interface. Additionally, the suggestion to later fill in interstitial spaces (after 2-3 years) with minimally erodible material to establish vegetation cover is also a concern. To our knowledge, neither of these approaches is a proven restoration methodology.

As discussed above, we suggest utilizing a soft engineering approach to re-design the slope. This technique should combine live and dead vegetation with other materials to create a slope that can be planted with willow stakes (*Salix spp.*) and other native plants. Unlike the proposed willow bundle fascines, many examples of stream bank stabilization projects that utilize willow stakes can be found in California. Planting of willow stakes is a known method to reduce erosion, encourage deposition of suspended sediment, and improve wildlife habitat associated with the immediate streambank.

Overall, our suggestions focus on eliminating and/or reducing impacts from the current rip-rap configuration while providing natural bank stabilization. Hard structures are known to have a high failure rate and are difficult areas to re-establish vegetation. Softer bio-engineered solutions are now recognized as more sustainable than rock rip-rap. If you have any questions or need any clarification of the information in this letter, please call Environmental Scientist, Kristi Birney, at the number listed above, extension 104. She can also be reached by email at kbirney@parks.ca.gov .

Thank you for your consideration of these comments in this matter.

Sincerely,

Ron Schafer
District Superintendent

ex. 13b

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June 23, 2009

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Submitted via email to jainsworth@coastal.ca.gov and dchristensen@coastal.ca.gov.

Re: Map and pictures to support opposition position to CDP Application No. 4-98-024 to permanently retain 500 linear feet of rock rip-rap revetment on Malibu Creek at 3728 Cross Creek Road.

Dear Coastal Commissioners,

On June 22, 2009, Heal the Bay scientists, accompanied by Baykeeper staff, mapped onsite riprap and illegally developed areas, with GPS to an accuracy of 5 cm. This letter includes mapped and photographed areas of the Mariposa Land Co. site, which are relevant to CDP Application No 4-989-024.

The results of our mapping efforts are attached as Figure 1, which clearly delineates the unpermitted development on the site (referenced in our April 6, 2009 letter to the Commission). Photos of this area are attached as Figures 7-11. Development within the fenced area is visible in Figures 8-11. A photograph of the large white trailer visible in the later aerial photos (Figures 5 & 6) clearly shows surrounding intensive development that includes a road (Figure 11). The illegally fenced area and all enclosed unpermitted structures and development were constructed post 1979, with most development having occurred between 1986 and 2004, as indicated in the attached aerial photos of the area from 1979, 1986, 2002, 2004, and 2008 (Figures 2-6). Black line polygons were added as a layer to these aerial photographs in order to clearly delineate the area of unpermitted construction. The polygons appear to be slightly different sizes due to the different angles from which aerial photos were taken; however, they delineate the same area on the ground.

In addition to mapping the described unpermitted developments, Heal the Bay mapped areas of failing riprap and unstable stream bank downstream from the riprap. Linear areas mapped in Figure 1 include grouted concrete and portions of failing grouted concrete that are within a fenced area marked with a State Park sign. Areas of failing grouted riprap are visible in Figure 12. Also included in Figure 1 is the linear area of loose boulder concrete placed by Mariposa Land Co. and the area of unstable stream bank downstream of all riprap areas. There are multiple failures along the entire length of loose boulder riprap; two of these loose boulder riprap failures are visible in Figures 13 and 14. Areas of undercut loose boulder riprap, which we measured to 1.3 m, are mapped in Figure 1, and are visible in Figure 15. The entire length of stream bank on the subject site and downstream from riprap areas is clearly eroded and unstable (Figure 16).

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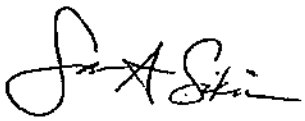
The attached maps and photos clearly demonstrate that the property owners are in violation of their development permits and that the areas indicated in Figures 1-11 have been illegally developed over the last 20 years. Furthermore, the current placement of riprap on the stream bank of Malibu Creek is not only in violation of state and local coastal resource protection and development laws (as indicated in April 6, 2009 letter), but the riprap onsite is failing and promoting downstream erosion and bank instability. Finally, this stretch of creek is home to the federally endangered tidewater goby, and the riprap associated with this project is located in prime freshwater goby habitat (see Figure 1). This species requires soft bottom stream for its reproduction, and the concrete rip-rap is compromising its critical habitat.

Please contact us with any questions or for higher resolution copies of any of these photos. We appreciate the opportunity to provide information related to this site, and we hope it can be used to recommend a "soft" bioengineered solution at this location, which would restore riparian habitat and some floodplain connectivity in this region.

Sincerely,

/s/



Alison J. Lipman, Ph.D.
Stream Team Manager
Heal the Bay

Sarah Abramson Sikich
Director of Coastal Resources
Heal the Bay

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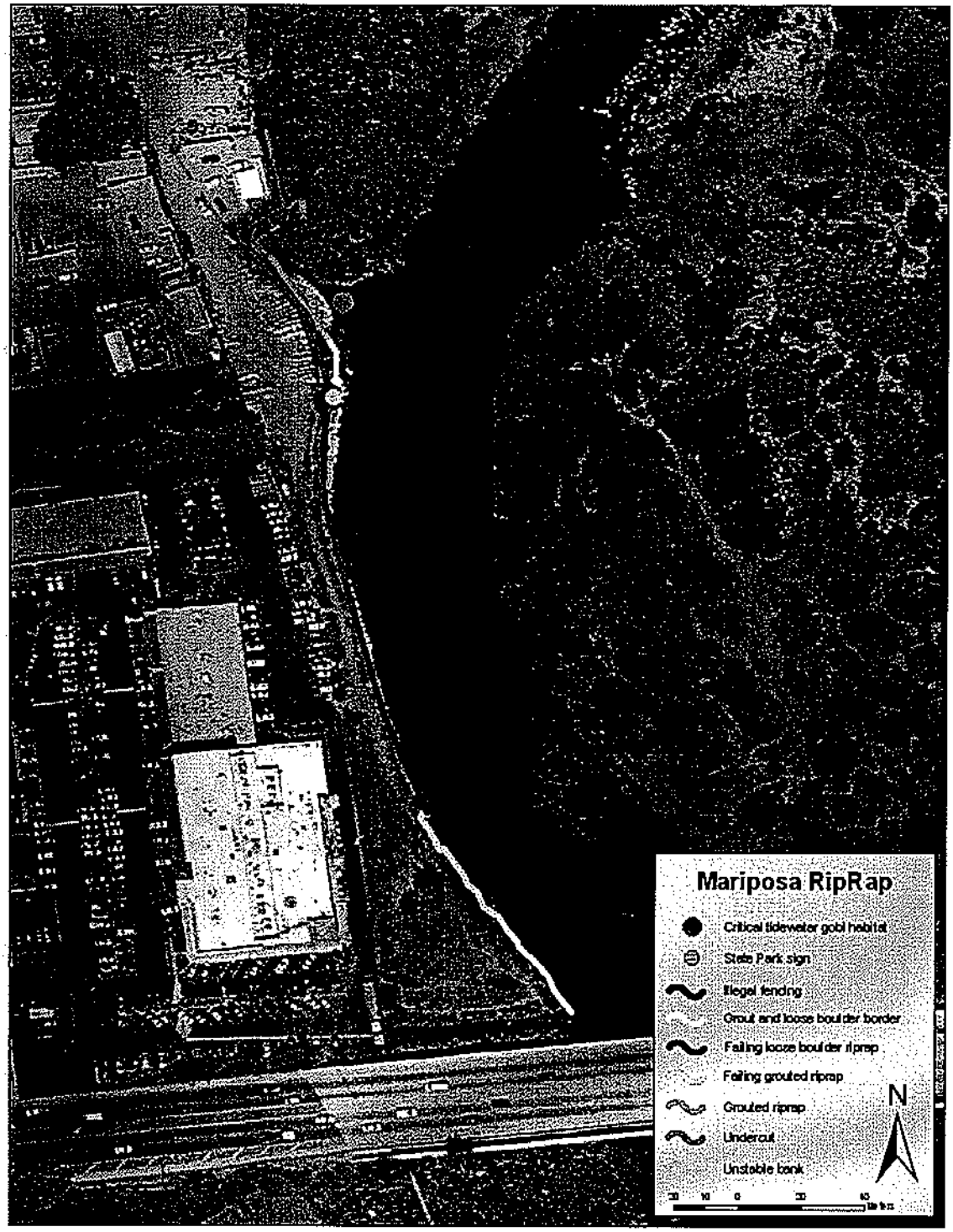

Figure 1. Mariposa RipRap area on Malibu Creek, mapped June 22, 2009 by Heal the Bay and Baykeeper staff.

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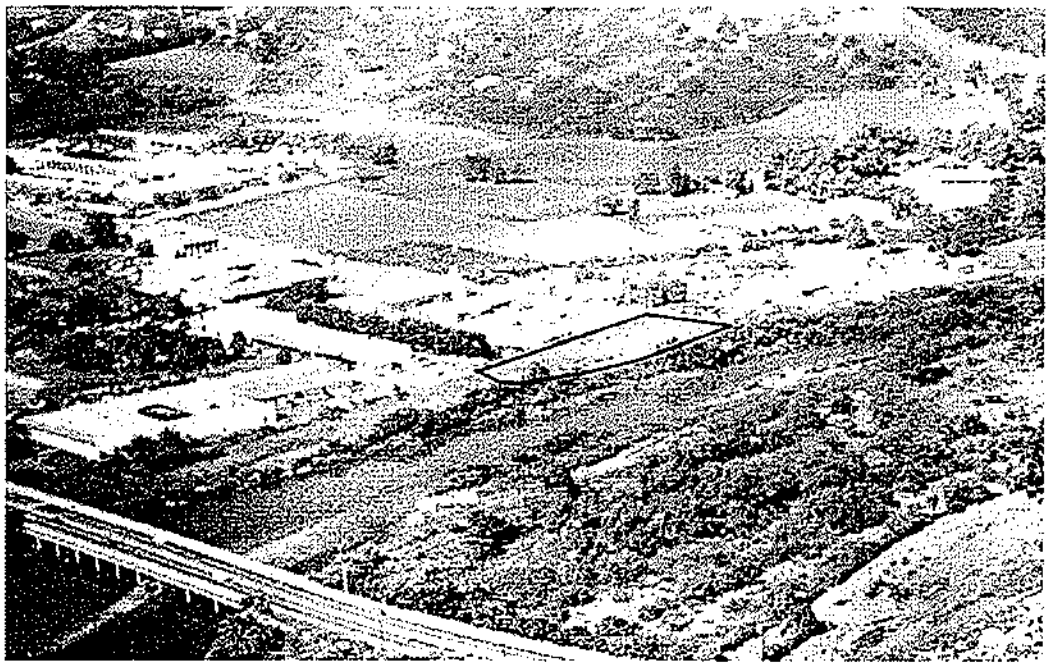

Figure 2. Malibu Creek, 1979, with polygon overlay of illegally fenced and developed area. Copyright (C) 2002-2009 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

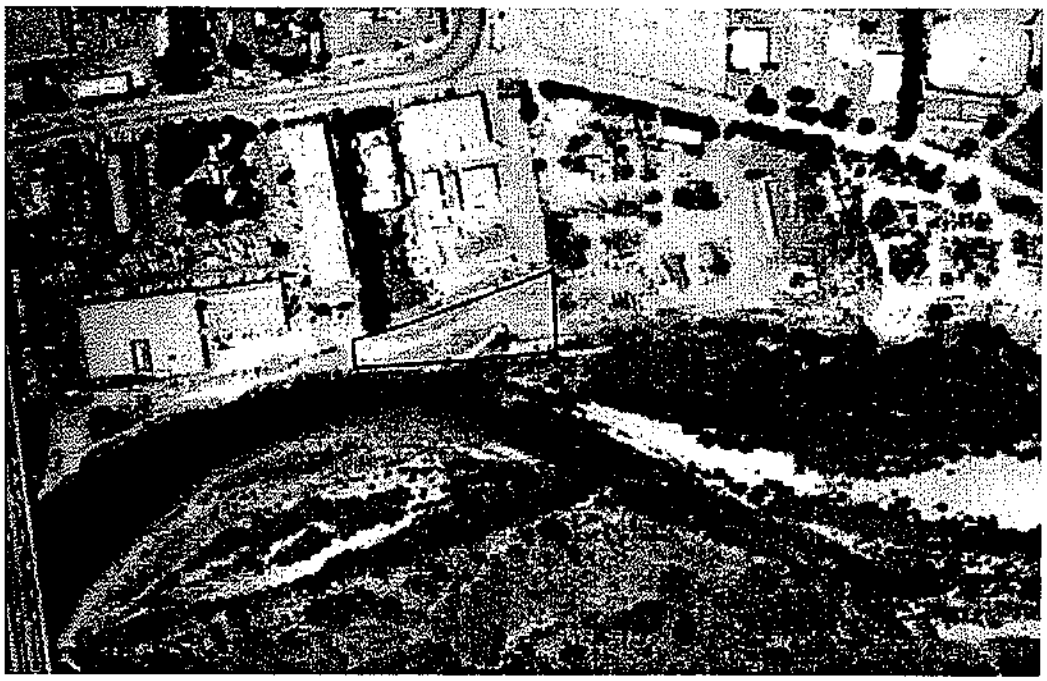

Figure 3. Malibu Creek, 1986, with polygon overlay of illegally fenced and developed area. Copyright (C) 2002-2009 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org

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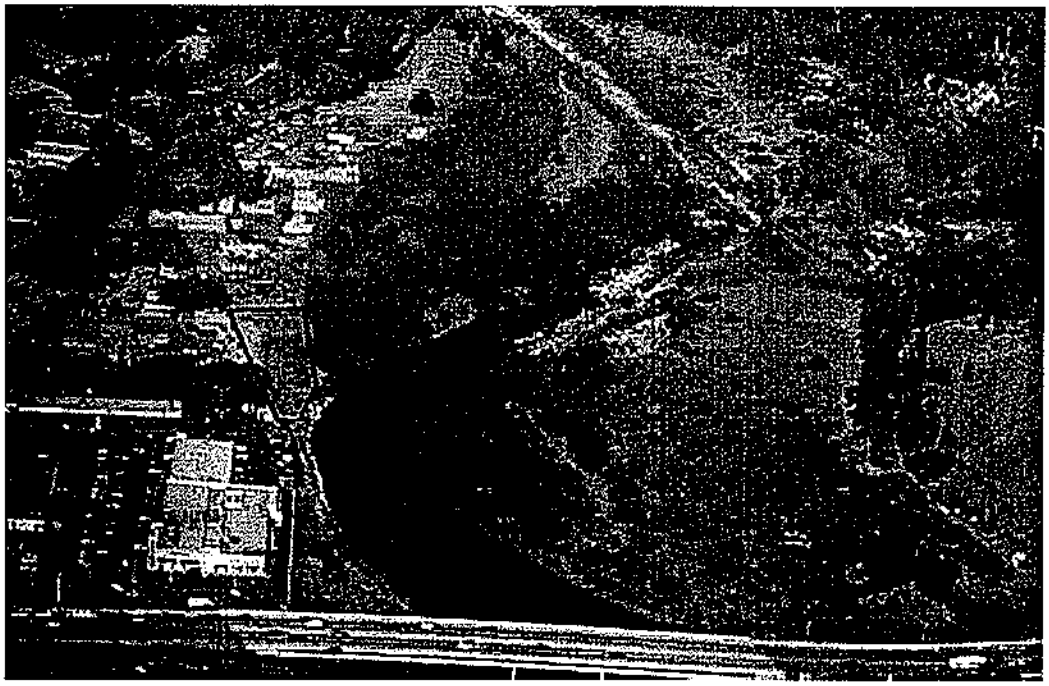

Figure 4. Malibu Creek, 2002, with polygon overlay of illegally fenced and developed area. Copyright (C) 2002-2009 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

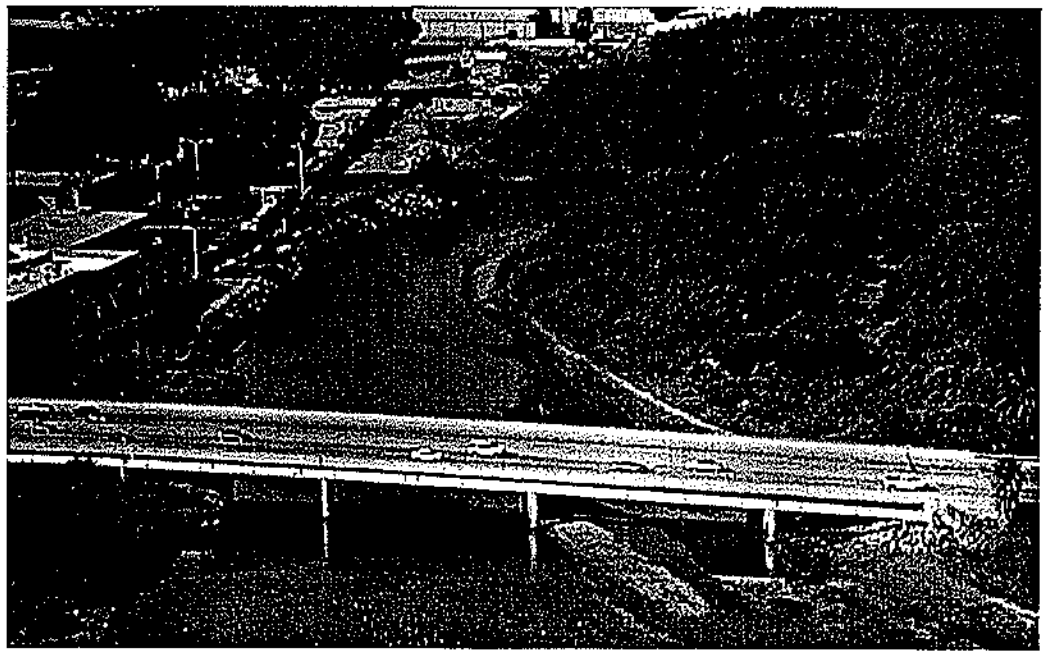

Figure 5. Malibu Creek, 2004, with polygon overlay of illegally fenced and developed area. Copyright (C) 2002-2009 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

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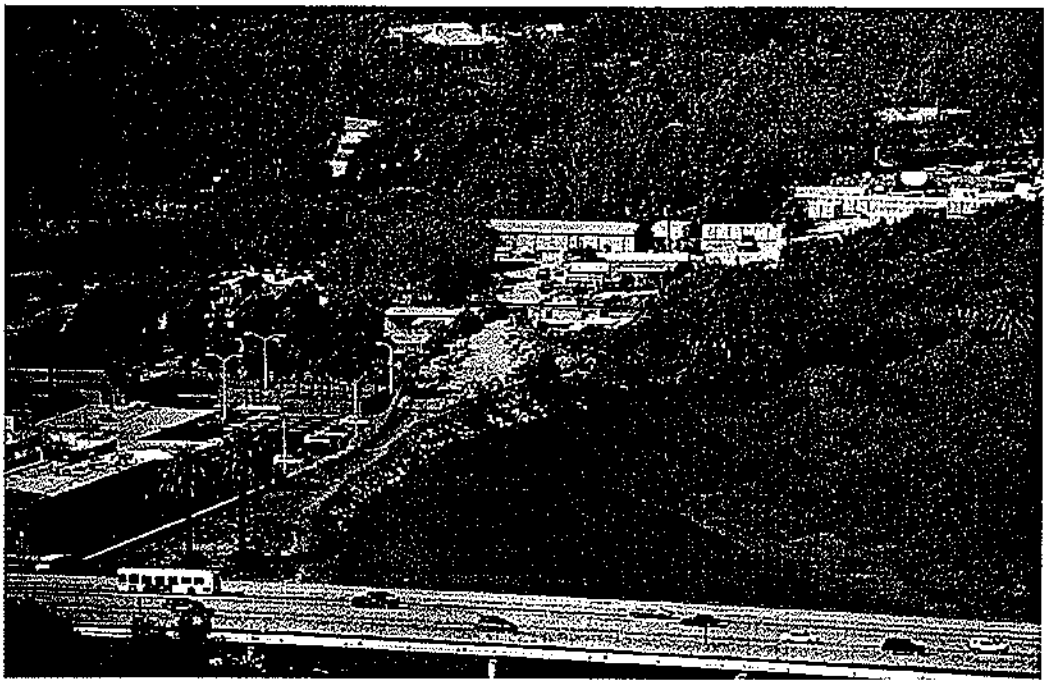

Figure 6. Malibu Creek, 2008, with polygon overlay of illegally fenced and developed area. Copyright (C) 2002-2009 Kenneth & Gabrielle Adelman, California Coastal Records Project, www.Californiacoastline.org.

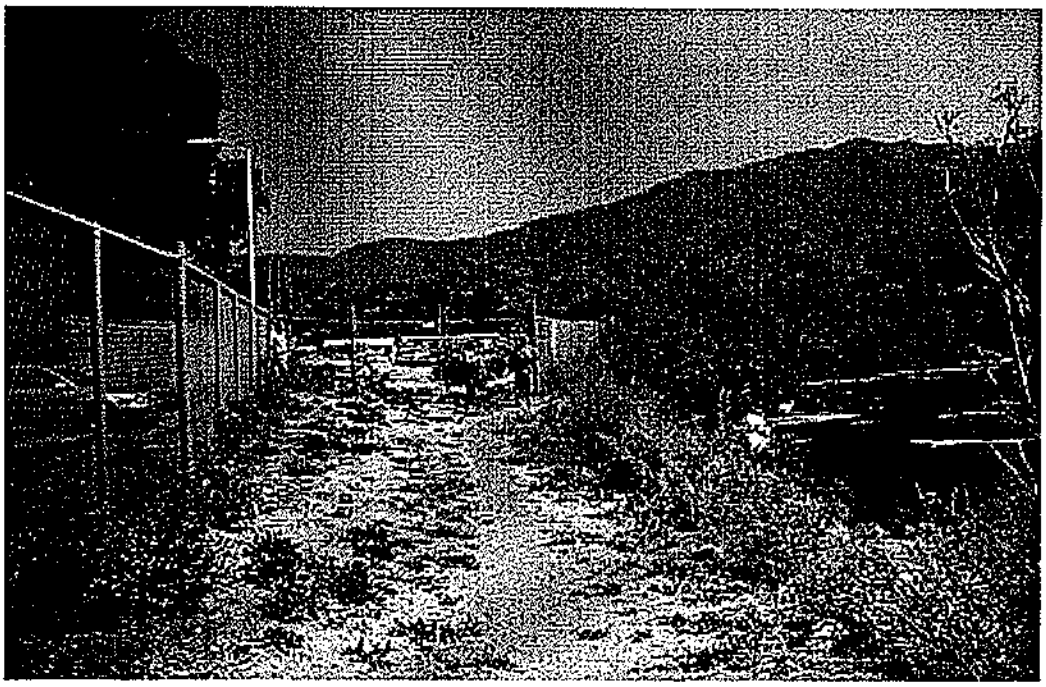

Figure 7. Illegally fenced area developed by Mariposa Land Co. on Malibu Creek. North facing picture taken from vantage point south of illegally fenced area, on June 22, 2009.

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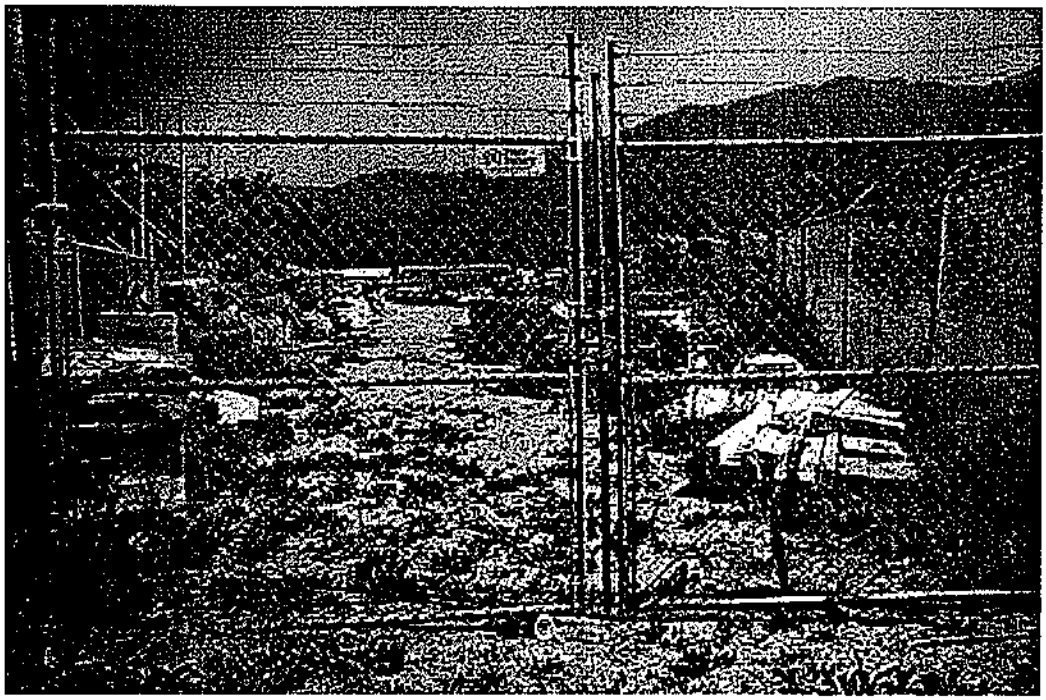

Figure 8. Illegally fenced area constructed by Mariposa Land Co. on Malibu Creek. North facing picture taken just south of illegally fenced area, on June 22, 2009.

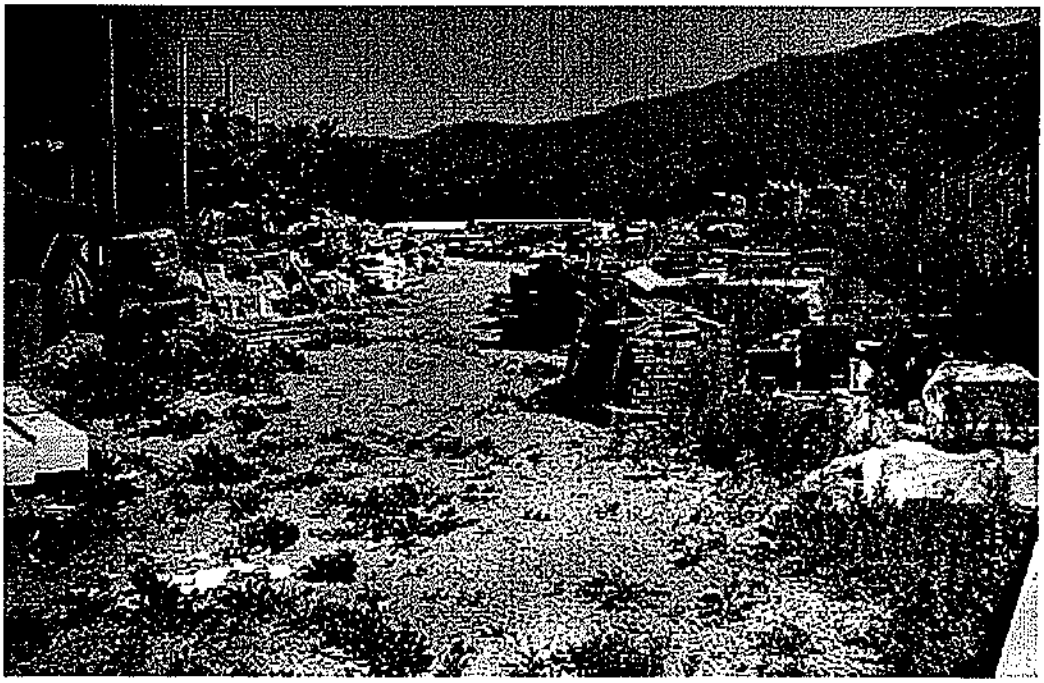

Figure 9. Inside illegally fenced area constructed by Mariposa Land Co. on Malibu Creek. North facing picture taken just south of illegally fenced area, on June 22, 2009.

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Figure 10. Inside illegally fenced area constructed by Mariposa Land Co. on Malibu Creek. West facing picture taken just east of illegally fenced area, on June 22, 2009.

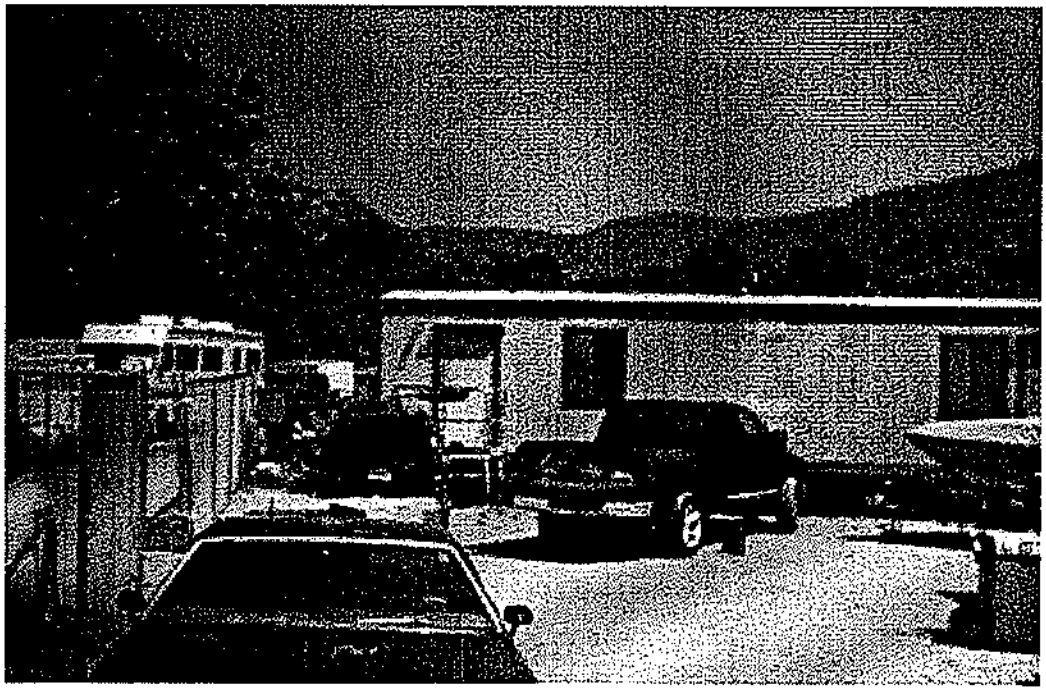

Figure 11. Inside illegally fenced area constructed by Mariposa Land Co. on Malibu Creek. North facing picture taken of trailer visible in Figures 5 & 6, on June 22, 2009.

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Figure 12. Failing grouted riprap. West facing picture taken from Malibu Creek on June 22, 2009.

Figure 13. Failing loose boulder riprap placed by Mariposa Land Co. West facing picture taken from Malibu Creek on June 22, 2009.

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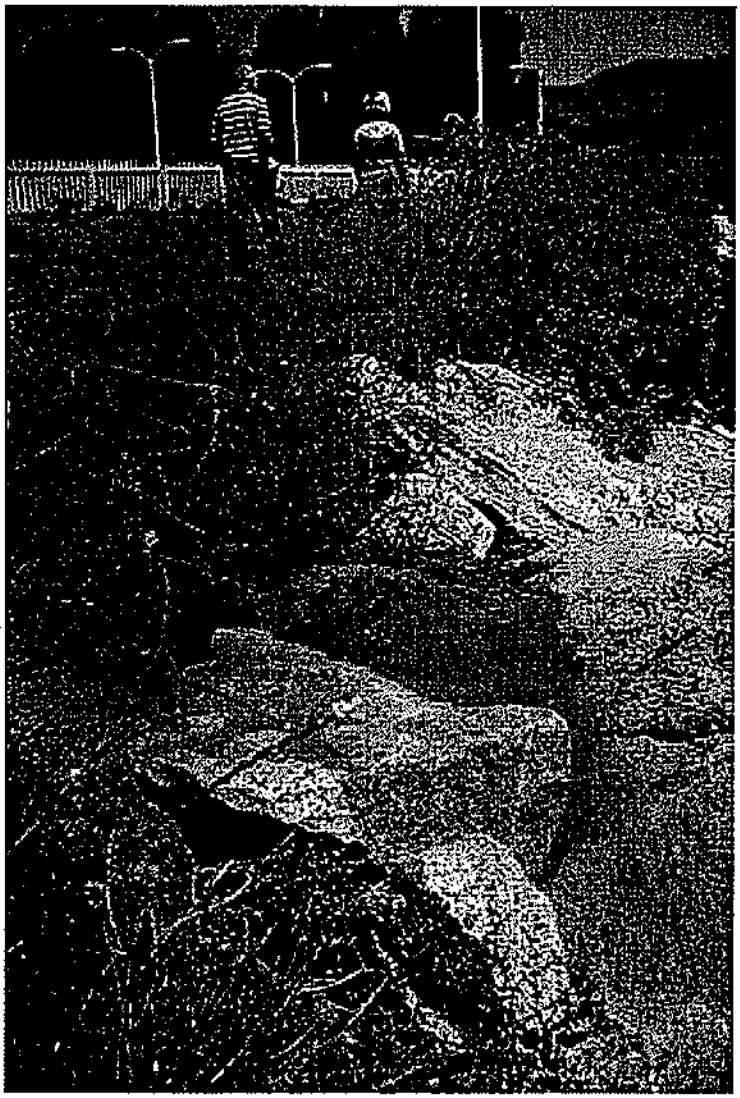

Figure 14. Failing loose boulder riprap placed by Mariposa Land Co. on Malibu Creek. North facing picture taken on June 22, 2009.

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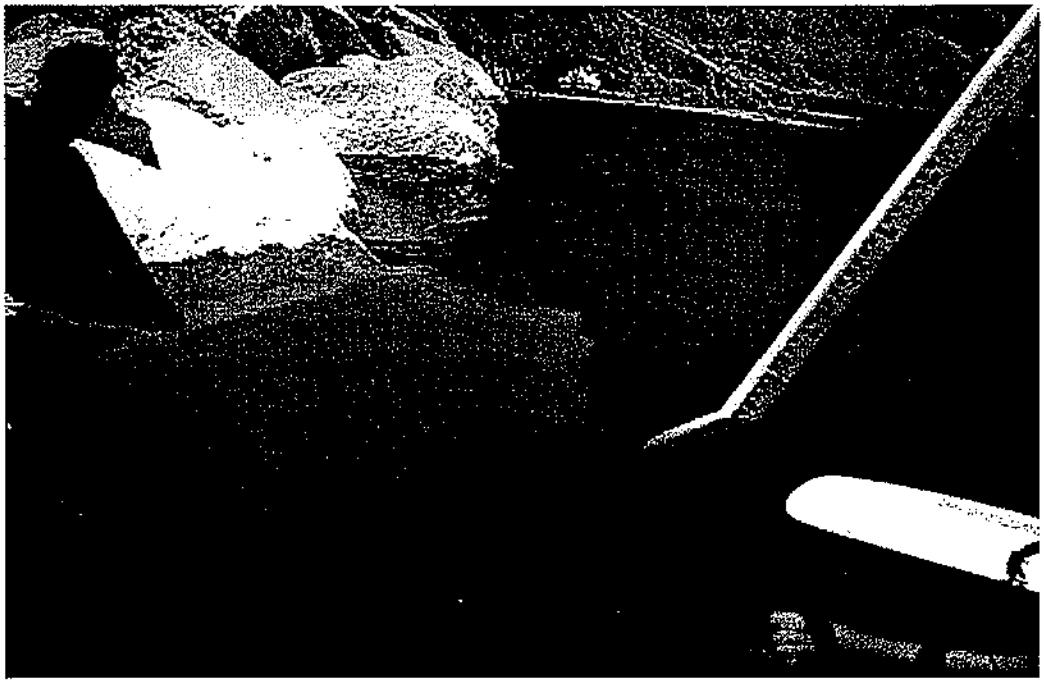

Figure 15. Undercut loose boulder riprap placed by Mariposa Land Co. North facing picture taken from Malibu Creek on June 22, 2009.

Figure 16. Unstable stream bank on Mariposa Land Co property, south of loose boulder riprap. West facing picture taken from Malibu Creek on June 22, 2009.

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February 3, 2009

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001
Via fax: (805) 641-1732

Re: Opposition to CDP Application No. 4-98-024 to permanently retain 500 linear feet of rock rip-rap revetment on Malibu Creek at 3728 Cross Creek Road

Dear Coastal Commissioners:

Heal the Bay has reviewed Application No. 4-98-024, submitted by the Mariposa Land Company, which requests permission to permanently retain approximately 500 linear feet of rock rip-rap revetment along the west bank of lower Malibu Creek. After thorough review, Heal the Bay urges the Coastal Commission to deny this application. The proposed project is in direct conflict with numerous policies in the California Coastal Act, as well as the City of Malibu's Local Coastal Program ("LCP"), as it will negatively affect habitat that is designated environmentally sensitive habitat area ("ESHA"). Additionally, we believe the methods presented for revegetation of the impacted riparian zone will not achieve the stated goal of restoring upland and riparian habitat and will further exacerbate erosion and sediment loading of the Malibu Creek and Lagoon. Due to the proximity of this site to the ecologically important Malibu Lagoon, an environmentally responsible long-term, "soft" bioengineered solution is needed.

As stated in the staff report, this application is based on a previously issued emergency permit (Emergency CDP No. 4-98-024-G) and development, which has been unlawfully retained for the past 10 years. This permit was granted for an emergency situation during an El Niño year and was never intended to help the applicant permanently harden this stretch of the lower Malibu Creek and avoid meeting the conditions of the Coastal Act. As stated in the staff report, to obtain a full Coastal Development Permit, an application must be within 60 days of issuance of the emergency permit; otherwise, the emergency work shall be removed within 150 days of the emergency permit date.

Heal the Bay's Stream Team has over 10 years of experience in research and restoration of native riparian and scrub habitats in the Malibu Creek Watershed. The Malibu Creek and Lagoon are sensitive habitats that face disturbance from water quality impairments, hardened stretches upstream in the creek, and other factors in the watershed. The Malibu Creek and Lagoon are listed on the Clean Water Act section 303(d) list of Impaired Water Bodies for sediment, bacteria, and nutrients. Efforts are currently underway by the California Coastal Conservancy and State Parks to restore the ecologically significant Malibu Lagoon based on a restoration plan Heal the Bay helped develop.

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The Malibu Creek and lagoon also are home to important species. The Malibu Creek is listed by the National Oceanic and Atmospheric Administration as critical habitat for the southern California steelhead trout (*Oncorhynchus mykiss*), according to the Federal Register (Vol. 70. Number 170), and for tidewater goby (*Eucyclogobius newberryi*), according to Federal Register: January 31, 2008 (Volume 73, Number 21). Both of these species are federally listed as endangered.

Heal the Bay submitted a letter in 2005 to the City of Malibu opposing the Negative Declaration submitted for this project. We have provided that letter as an attachment, as most of our initial concerns are still valid and have not been adequately addressed in this application. We also address additional concerns, which are further detailed in this letter:

The following issues are of major concern to Heal the Bay in regards to the current application:

- The proposed project does not consider or has rejected environmentally superior alternative scenarios, as required by the City of Malibu LCP;
- The proposed project is in direct conflict with the California Coastal Act and City of Malibu LCP ESHA policies;
- The proposed project fails to address the fencing area, storage buildings, and the grouted rip-rap armoring directly upstream of the site, which contribute to stream bank erosion and habitat degradation;
- The streambank slope should be recontoured to better protect the area from further erosion; and
- The revised revegetation plan will not adequately restore upland and riparian habitat and it will exacerbate impacts from streambank hardening.

1. <u>The proposed project does not consider or has rejected environmentally superior alternative scenarios, as required by the City of Malibu LCP.</u>

The proposed project will have serious negative impacts to sensitive habitat areas designated as ESHA in the lower Malibu Creek system, including Malibu Lagoon. The presence of concrete rip-rap in the stream and riparian ecosystems negatively impacts and changes the stream's natural morphology, hydrologic balance, sediment regime, habitat provision, species composition, and natural chemical and biological processes.[1] A "soft" bioengineered solution, instead of one reliant on stream bank hardening, would create less impact to ecologically sensitive features at the site and downstream, and has not been adequately proposed or assessed.

[1] J. Craig Fischenich, 2003, "The Effects of Riprap on Riverine and Riparian Ecosystems" a report published by the US Army Corps of Engineers, Engineer Research and Development Center.

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As we outlined in our previous letter (Discussion Point #2), the presence of rip-rap as a permanent measure to redesign the stream bank for flood control measures is not a workable long-term solution and will have significant negative impacts onsite and downstream. A "soft" bioengineered solution is not only preferable, but it is mandated in section 3.32 of the Malibu LCP (Discussion Point #5). As further discussed below, the proposed project does not adequately demonstrate the feasibility of a "soft" bioengineered solution at this site.

Relying on the hardening of a stream bank for bank stabilization, where there are feasible non-hardening alternatives, is inconsistent with Chapter 3, section 3.2 of the LCP, which states, "Channelizations or other substantial alterations of streams shall be prohibited except for...2) flood protection for existing development where there is no other feasible alternative,...Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources..., and shall include maximum feasible mitigation measures to mitigate unavoidable impacts." The project applicant has failed to demonstrate that a bioengineered bank stabilization project is adequate at this site. A "soft" bioengineered solution would meet the project goals of protecting existing structures, flood control, and habitat protection, and it would be compliant with Coastal Act and LCP policies (see Discussion Point #3 in the attached letter).

For example, alternative #6 proposed in the staff report, which features the construction of a concrete floodwall and revegetation of creek bank, is a viable alternative that is consistent with Coastal Act and LCP policies. Rejection of this alternative was based largely on cost, which is not an adequate reason under the Coastal Act, especially considering the impacts of the preferred alternative to the Malibu Creek and Lagoon and its associated aquatic life, including the federally endangered southern steelhead trout, a state-listed threatened species, and the tidewater goby, which are detailed in the attached letter (Discussion Point #2). Alternative #6 was also rejected based upon the potential erosional effects this alternative "could" have at the stream bank; however, sufficient evidence supporting this conclusion was not provided in the staff report.

We urge you to deny this application and instead recommend the removal of the existing rip-rap paired with a "soft" or bioengineered solution to stabilize the stream bank (such as that provided in Alternative #6), as this approach is consistent with the Coastal Act and LCP. Implementing a bioengineered solution at the site will effectively restore native riparian and upland trees, shrubs, and other vegetative components of the riparian zone, while preventing additional erosional impacts and sediment loading downstream that are associated with hardened revetments.

2. <u>The proposed project is in direct conflict with California Coastal Act and City of Malibu LCP ESHA policies</u>

The proposed project will result in further degradation to environmentally sensitive habitat area ("ESHA") at this location. Downstream scour and sediment loading from the existing rip-rap at this site already impact the lower Malibu Creek and Lagoon. The Malibu Creek is designated a

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ESHA. The staff report states that although Malibu Creek itself meets the definition of an ESHA, the disturbed west bank does not. We disagree with this conclusion. According to the Coastal Act and City of Malibu LCP, the west stream bank of lower Malibu Creek and the adjacent riparian buffer zone are designated and protected as ESHA. As such, it is the responsibility of the applicant and the Coastal Commission to ensure that this environmentally sensitive area is protected, according to law, and that impacts to this area and the contiguous areas of Malibu Creek and Malibu Lagoon are minimized and mitigated to the fullest extent possible.

According to the City of Malibu LCP the disturbed west bank should be considered ESHA. The City of Malibu Local Implementation Plan ("LIP"), Chapter 4.3.B.2, defines ESHA as, "Any habitat area that contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law." The Malibu Creek and Lagoon are critical habitat for the federal endangered southern steelhead and tidewater goby, and therefore, should be considered ESHA based on requirements under the LIP.

Furthermore, according to the City of Malibu Land Use Plan ("LUP"), lower Malibu Creek and its corresponding riparian area are considered part of ESHA. Section 3.1 of the LUP states, "The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem." The area considered in the proposed project contains both stream and riparian habitat, and should be protected as ESHA under the LUP.

The project area is also mapped as ESHA in the City Malibu LCP. Section 3.6 of the LUP states "Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated." Coastal Commission staff contend in their report that, "Work will take place along a bank that has obviously been disturbed over the years, both by the erosive forces of Malibu Creek and by disturbance from adjacent development in the floodplain. As such, the subject bank is not considered ESHA." Under the LUP, degradation of habitat is not sufficient justification for loss of ESHA protections.

Moreover, Section 30240 of the Coastal Act requires that both ESHA and ESHA buffers be protected from development and activities that cause degradation.[2] Armored stream banks are one of three major causes of downstream bank erosion and sedimentation, based on Heal the Bay's Stream Team mapping efforts in the Malibu Creek Watershed. In addition to the hardened stream bank, the proposed project also features permanent submerged rip-rap within Malibu

[2] California Coastal Act section 30240 (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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Creek, which Coastal Commission staff already recognizes as ESHA since it is a blue-line stream. Approval of a permanent hardened revetment in Malibu Creek is inconsistent with the ESHA policies of the Coastal Act and the City of Malibu LCP, as it will cause further degradation of stream and riparian habitat in this area.

3. **The proposed project fails to address the fencing area, storage buildings, and the grouted rip-rap armoring directly upstream of the site, which contribute to stream bank erosion and habitat degradation.**

The contribution of upstream fencing, storage buildings, and rip-rap armoring to stream bank erosion and habitat degradation was discussed extensively in our previous letter (Discussion Point #3, Discussion Point #5 e. Bullet 8), yet it is still not addressed in the current proposal. The cumulative effects of these structures, which are contiguous to the project area, on both flood control and habitat impairment, must be addressed in this proposal and staff report. As outlined in our previous letter, both the fencing and storage area were illegally built in the riparian buffer zone, on the subject parcel, upstream of the subject stretch of riprap. These structures, in combination with the proposed downstream rip-rap revetment, will contribute to further bank erosion, failure of the bank downstream, and sediment loading to the stream and lagoon. Finally, the combined negative effects of these structures on the project area make it impossible to correctly assess the actual impacts of the described alternatives, as they may contribute to the failure of any of the proposed alternatives. The applicant has a long history of violating the Coastal Act and even now, while requesting Coastal Commission approval, has neglected to to remove these structures and restore the area. The presence of these structures must be addressed and included in the design of an environmentally superior alternative, and the illegal structures (fence and storage facilities) must be removed.

4. **The stream bank slope should be recontoured to better protect the area from further erosion.**

In a November 14, 2008 letter to the Coastal Commission, The California Department of Parks & Recreation (the owner and manager of downstream, impacted Malibu Lagoon State Park) recommends that a slope of 3:1 would be more suitable to habitat restoration at the site. However, under Special Condition #2, the staff report recommends recontouring the stream bank to a 2:1 slope. Insufficient evidence is provided in the staff report to substantiate the effectiveness of recontouring at a 2:1 slope. We urge the Commission to deny this project, and instead recommend a solution that is consistent with the Department of Parks & Recreation recommendation, as this would better support rehabilitation of native riparian flora, while also helping to mitigate high velocity flow at the site, and thus onsite erosion.

Furthermore, more information is needed regarding the geotextile fabric proposed to be used in the stream bank stabilization effort. Although the use of a geotextile fabric filter might be necessary to prevent soil loss during revegetation efforts, the applicant does not describe what type of product will be used. We recommend that only biodegradable materials be considered for long-term placement, as the use of non-degradable plastic-based material could have negative impacts on the riparian floral and

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faunal communities, as well as to downstream recipients of possible degraded materials. The long-term placement of plastic-based materials would further hinder the growth of vegetation at the site. Plastic-based filter fabrics are designed for use such as for placement under permeable concrete, and not for habitat restoration purposes. A full analysis of the material to be used on the slope would be needed to further address potential impacts to the ecosystem.

Moreover, depending on the material used for the geotextile fabric filter, it is possible that the filter fabric will create an artificial layer on top of the soil, under which plant and animal life will not be able to thrive. The high possibility of this effect is acknowledged in the applicant's restoration plan itself, where it is stated that holes will need to be cut in the filter fabric to accommodate the willow plantings.

5. **The revised revegetation plan will not adequately restore upland and riparian habitat and it will exacerbate impacts from stream bank hardening.**

The restoration goal within this project is "to create approximately 0.59 acres of riparian and upland habitat," however, the proposed restoration activities will simply not result in adequate habitat restoration. In the attached letter we address the faulty of design of the revegetation plan for this project (Discussion Point #4). We also find that the added revisions by Coastal Commission staff and per recommendations of scientists at Impact Scientists, do little to better the plan from an ecological viewpoint. For example, the plant list included in this application is limited to very few species. No habitat in Southern California consists of only nine species of plants, and we recommend more plant diversity be built into a proposed restoration at this site. Furthermore, the effects of disturbance to the rip-rap from the planted willows when they reach a mature size and overgrow the width of spacing between rip-rap blocks has not been addressed in the staff report. Heal the Bay's Stream Team has documented numerous rip-rap plantings that have failed throughout the watershed. Future concrete breakage and other impacts from mature willows associated with the proposed project should be considered in the staff analysis.

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Conclusion

Heal the Bay opposes this project and strongly urges the Coastal Commission to deny this application, which would result in the permanent hardening of this lower reach of the Malibu Creek. In fact, we have testified previously urging the Commission to move forward on enforcement action against the applicant because of the egregious violations of the Coastal Act. Rather than moving forward on enforcement, Commission staff unconscionably went against the recommendations of State Parks, City of Malibu LCP policies and ESHA requirements to recommend a severely flawed streambank stabilization project. The application is not supported by sound ecology, and it is in direct conflict with the Coastal Act and City of Malibu LCP. The emergency rip-rap located at this site has detrimentally impacted the natural resources and water quality in the Malibu Creek and Lagoon for the past ten years. Approval of this project will have long-term negative impacts from stream bank erosion and sediment loading on the Malibu Creek and Lagoon and will potentially compromise future habitat restoration efforts in these areas. Significant financial investments have been made by the State Coastal Conservancy and the City of Malibu to improve water quality and enhance habitat at Malibu Lagoon and Surfrider Beach. Restoration of Malibu Lagoon, at considerable taxpayer expense, will begin soon and this project will likely negatively impact this restoration. As one of the few remaining coastal wetlands in Los Angeles County, it is critical that the Malibu Lagoon be protected and restored.

We urge the Commission to recommend a "soft" bioengineered solution at this location, which would restore riparian habitat and some floodplain connectivity in this region. Restoration is preferable to continued degradation. A "soft" bioengineered solution would also be more cost effective, as it would not require regular maintenance and repair. We appreciate the opportunity to comment on this staff report; please contact us if you have any questions.

Sincerely,

/s/	/s/	/s/
Alison J. Lipman, Ph.D. Stream Team Manager Heal the Bay	Sarah Abramson Sikich Director Coastal Resources Heal the Bay	Mark Gold D.Env. President Heal the Bay

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August 4, 2005

City of Malibu Planning Division
Attn: IS No. 03-003
23815 Stuart Ranch Road
Malibu, Ca 90265

Submitted via email to Raneika Brooks-McClain rbrooks@ci.malibu.ca.us

Re: Opposition to the Mitigated Negative Declaration (MDN) No. 04-002 for 3738 Cross Creek Road (APN 4452-011-036)

Dear Raneika Brooks-McClain,

Heal the Bay has reviewed the Mitigated Negative Declaration No. 04-002 for 3738 Cross Creek Road (APN 4452-011-036) ("MDN") and vigorously opposes its certification. The MDN is in direct conflict with numerous policies in the City of Malibu's Local Coastal Plan (LCP), LCP Land Use Plan, and LCP Local Implementation Plan.

First of all, this issue is currently an open enforcement case for the California Coastal Commission and thus it is not appropriate for the City to issue the MDN at this time. Second, the MDN is not compliant with the LCP as it fails to present or consider an environmentally superior alternative or any viable alternatives for that matter, and thus is not consistent with applicable laws. This is inconsistent with the principles of CEQA as well. Third, not only will the proposed mitigation and solution to this recurring problem set forth in the MPN not work, it does not utilize current design criteria for installing planned rip-rap to prevent failure. Heal the Bay strongly disagrees with numerous assertions made by City planning staff and the applicant regarding the significance of impacts associated with the loose boulder rip-rap in Malibu Lagoon. Due to the sensitive nature of the resources in the immediate area, a full EIR that incorporates a long-term environmental alternative should be required for this project. We are at a loss as to why the City of Malibu would review a mitigated negative declaration for a project that falls under Coastal Commission jurisdiction and which has been in violation of the Coastal Act and without a valid Coastal Permit since at least September of 1998. Indeed, this project is currently an open enforcement case for the Coastal Commission. In short, the overall plan as proposed is inconsistent with existing coastal policies and plans, will not function properly and will lead to further degradation of water quality and habitat over the long term.

I. Discussion

The following issues were of major concern in our review of the proposed mitigated negative declaration:

- Non-compliance with their Coastal Permit from September 1998 to present; no mitigation to correct violations;

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- Failure to design a sustainable environmentally sound project or alternatives analysis;
- Failure to address fencing and proposed rip-rap armoring directly upstream
- Proposed planting of existing rip-rap
- Inadequate mitigation to address impacts and no assessment of downstream impacts.

1. Non compliance with Emergency Coastal Permit from September 1998 to present; no mitigation or attempt to correct violations.

The emergency permit ("Permit") was granted by the Coastal Commission to protect structures during an emergency situation (El Nino) and was never intended to help the applicant avoid meeting the conditions of the Coastal Act. Moreover, the applicant did not even meet the conditions required in the Permit to make the emergency work permanent. The applicant is therefore in violation of their Permit conditions and has been since September of 1998. The intent of an emergency permit is not to allow for the permanent placement of structures that damage waters of the United States and fill wetlands, but to protect property during extreme conditions using temporary measures. This is clearly in the Permit dated February 20, 1998, Emergency Permit Application Number 4-98-024-G, in Attachment 7, Page 2, Bullet Point 4 and "Important" note.

> *Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the director.*
>
> ***IMPORTANT***
> ***Condition # 4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a coastal permit must be obtained. A regular permit would be subject to all the provisions of the California Coastal Act and may be conditioned accordingly.***

Bullet 7 on the same page states:

> *The regular Coastal Development permit application shall include an analysis of all other alternatives for shoreline, bluff, or stream bank protection prepared by a qualified engineer.*

The applicant did not submit an application for a new Coastal Permit to make the emergency work permanent. Nor did the applicant conduct an analysis of all other alternatives for stream bank protection. Instead, the applicant now, 7 years later, is trying to make the rip rap permanent through a mitigated negative declaration, which also contains so analysis of alternatives. This is not consistent with the Permit or the Coastal Act.

Further, the proposed MND fails to recognize the serious impacts caused to the ecosystem by the installation of the rip-rap in 1998 and the significant impacts that have occurred during the time in which the applicant has been in violation of their temporary Permit (September 1998 to date), as well as ignores the requirement to comply with the provisions of the Permit and to correct the situation. Allowing the rip-rap to become a permanent solution will degrade water quality and habitat downstream including critical

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habitat for the federally endangered steelhead trout and tidewater goby. Exhibit 1 shows Heal the Bay's map of this area; special notice should be paid to the stream bank erosion downstream of the rip-rap at issue. This is a continual source of sediment loading to Malibu Lagoon. Fine sediments are considered a significant source of phosphates in the summer months and contribute to eutrophication in the Lagoon (Malibu Lagoon Restoration and Enhancement Plan, June 2005). The existing rip-rap on site is already failing (toe undercut) and this lateral and downward channel erosion further exacerbates sediment loading to Malibu Lagoon. Malibu Lagoon is on the State 303(d) List of Impaired Water Bodies for algae, eutrophication, and sediment. The City should not allow further exacerbation of these already existing impairments to the Creek and Lagoon, both of which are important ecologically and economically to the City.

2. Failure to design a sustainable environmentally sound project or provide alternative analysis.

The current emergency solution (rip-rap) is neither sustainable nor sound. This is clearly evidenced by the fact that the existing rip-rap on site is already failing (toe undercut) and will need to be repaired and maintained in perpetuity. The applicant is aware of this problem, as they have requested, as part of the MND, to:

> "maintain the existing rock revetment including the recovery of migrated boulders that may be moved by future storm events, placement of additional rock only to replace migrated boulders when they can not be recovered."

However, every time boulders are replaced and the rip-rap repaired more degradation of water quality and habitat will occur. Heal the Bay has mapped over 70 miles of streams in the Malibu Creek Watershed and has documented 987 individual bank armoring projects, of which 62% were failing or had failed. Loose boulder rip-rap accounted for 403 of the mapped bank armoring projects and had a failure rate of 74.9%, and grouted or concreted boulder rip-rap accounted for 173 of the mapped bank armoring projects with a failure rate of 68.2%. Armored stream banks were one of three major causes of downstream bank erosion and sedimentation identified in the Draft State of Malibu Creek Watershed Report. Luce and Abramson, June 2005. The data analyzed in that report clearly demonstrated the ineffectiveness of bank hardening, especially rip-rap, as well as the damage that armored stream banks cause to downstream resources.

Due to the proximity of this site to Malibu Lagoon its sensitive resources, a sustainable environmentally responsible long-term solution is needed. Heal the Bay strongly urges the applicant and the City of Malibu to re-contour the stream banks and use soft bioengineered solutions to stabilize the banks for the long term. Bioengineered solutions will afford greater strength and protection against bank erosion and will promote vegetation to shade the stream and uptake pollutants. *See* Nelsen, Chirbas, and Myrowich, "Turf Reinforcement Mattings: An EPA-recognized stormwater BMP" in Stormwater at 64 (March/April 2005. A vegetated buffer zone would also intercept storm water runoff before it gets to the Malibu Creek and assist in meeting the upcoming TMDLs for nutrients and sediments. Any plan should create a vegetated buffer to stabilize the banks along the entire stream reach and should involve removing the fencing that is forcing stream flows into the bank instead of allowing energy dissipation through vegetated buffer overbank flows. This will ultimately increase the ecological benefits to the creek, eliminate the need for long term maintenance, and dissipate energy.

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The alternatives evaluation in Attachment 10 of the MND is incomplete and grossly misleading. For example, to suggest an alternative to concrete the banks like the Los Angeles River and then to compare that alternative to the proposed rip-rap alternative in an attempt to show that the proposed solution is more environmental is misguided and insulting to the public. No evaluation was done for bioengineering using soft materials, nor has this type of alternative been explored at any level of detail. Notably, such an evaluation is required by the LCP. The applicant also has not demonstrated that bioengineering and restoration can not accomplish flood protection and would not be feasible. Heal the Bay has discussed this issue with numerous stream restoration experts, all of whom have concluded that bioengineering is feasible at this site. The applicant must consider and compare bioengineered alternatives in order to make a valid assertion that the proposed alternative is the more environmental solution.

In fact, during the development of the Malibu Lagoon Restoration and Enhancement Plan, completed in June 2005, a preliminary evaluation of the conditions at this site was performed by the consultants. They found that energy dissipation could be accomplished and could be integrated into the final design of the lagoon restoration if the applicant were willing to do so. To create a sustainable long-term solution, the applicant should consider an alternative that would re-contour the slopes of the entire reach up to the grouted rip-rap, restore riparian vegetation, and create the widest possible vegetated buffer zone. This would allow streamflows to overtop into a vegetated buffer area where scour velocity can be slowed and energy dissipated. This alternative would require laying back the slope of the existing bank and possibly installing a floodwall in front of the shopping center as far back as possible. These suggestions would be consistent with policies 3.8, 3.23, 3.32, 3.34 ,3.88 and 3.121 of the City of Malibu's LCP Land Use Plan and the Hydromodification section 17.9 paragraph B of the LCP Local Implementation Plan. Thus, there is a viable and feasible environmental alternative that could have been considered may be implemented. Yet the applicant did not even describe such an alternative in its analysis. This must be done before any MND can be approved.

3. Failure to address adjacent fencing and grouted rip-rap armoring directly upstream, which contribute to the stabilization problem.

The analyses in the MND fails to address or consider the impacts of the grouted rip-rap and fence placement directly upstream on the applicants property, both of which contribute to bank erosion and bank failure downstream. If all of three of these elements are not addressed together, existing erosion and bank failure problems will continue to occur, and the resulting maintenance activities will continue to jeopardize water quality and habitat in the lagoon.

The attached 1997 aerial photo (Exhibit 3) clearly shows that the upstream fencing did not exist prior to the bank erosion. If it had been built prior to the rip-rap, it would have been eliminated when the stream bank eroded. Thus it must have been built either at or after the construction of the rip-rap, and without a Coastal Permit. Further, a comparison of Exhibit 2 taken in 2004 and Exhibit 3 taken in 1997 clearly shows the loss of vegetation that occurred within the fenced area. The steep bank that supports the fencing forces higher volumes and velocity water to scour the stream bank contributing to its failure. As there is no mention of the fencing in the temporary Permit, and there is no other Coastal Permit allowing this fencing, it should be removed. Similarly, the grouted rip-rap upstream of the project (Exhibits 1 and 2) actually deflects flows toward the project stream bank and likely induces scouring of that bank.

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Clearly, if the fencing and upstream rip-rap [illegible] ignored, there is an even higher likelihood that the proposed stabilization will continue to fail.

4. Proposed planting of existing rip-rap.

The applicant's proposal to plant the existing rip-rap simply will not work. The current installation techniques for installing "planted rip-rap" involve the use of underlayment and surface matting, purposefully sized and spaced boulders to accommodate planting and retain soils, special soil amendments below and within the rip-rap, and integration of a planting plan as part of the design. The current rip-rap is already failing and was not designed to accommodate planting. The pore spaces proposed for planting will leak top soil and any soil amendments into Malibu Lagoon, contributing even more sediment and nutrients into already impaired waters. This same poorly-conceived idea of simply burying rip-rap and planting the area above the water level was attempted just upstream at the new Serra Retreat Bridge; it failed spectacularly in the first month. In addition, Heal the Bay's Stream Team has documented numerous rip-rap plantings that have failed throughout the watershed. A real, sustainable, environmentally sound long-term solution needs to be designed for this site. In addition, any solution must address the source of bank scour such as steepened banks with fencing and the grouted rip-rap upstream.

5. Inadequate mitigation to address impacts and no assessment of downstream impacts.

Although Heal the Bay strongly urges the city to deny the MND in its entirety, for the sake of completeness we offer the following specific comments and recommendations on the document itself. In that regard, each of the following impact assessments and/or mitigation measures in the MND are fatally flawed.

a. Biological Resources

First, we strongly disagree with the assessment of the following impacts in Section D: Biological Resources of the MND and the evaluation of these impacts (pp.13-16). In fact, as each of these impacts will actually be potentially significant, the applicant's MND should be denied and a full EIR conducted.

Bullet 1. The MND states that the impact to steelhead trout and tidewater goby habitat are less than significant. As discussed above, the ongoing erosion caused by the rip-rap to the downstream banks and the channel down cutting that contribute fine sediments are major factors in the summer algal blooms and eutrophication in the lagoon. Tidewater goby prefer sand substrate for rearing and breeding. Malibu Lagoon Restoration and Enhancement Plan, June 2005. Further, low dissolved oxygen in the lagoon has been responsible for fish kills in the past and has the reasonable potential to cause future fish kills that could affect goby and/or steelhead trout. The project as proposed will do nothing to reduce downstream erosion or down cutting and does pose a potentially significant impact to both species.

Bullet 2. The existing rip-rap has and continues to prevent riparian vegetation growth. This was further exacerbated by the installation of the upstream fence well within the 100 ft buffer zone as well as the subsequent clearing of the property behind the fence for vehicle storage. The proposed project does not restore the previous extent of riparian buffer vegetation. Thus, it constitutes a potentially significant impact.

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Bullet 3. Continued downstream erosion and [illegible] will substantially degrade water quality and habitat in a federally protected wetland. Lack of [illegible] vegetation, lost connectivity of the floodplain, and the inability to infiltrate stormwater runoff [illegible] will continue to adversely impact the wetland habitat and water quality. Thus, Bullet 3 also should be considered a potentially significant impact.

Bullet 4: Increased sedimentation of the lagoon, particularly the increase in fine sediment and loss of sandy substrate, has the reasonable potential to interfere with tidewater goby breeding habitat and should be listed as a potentially significant impact.

Bullet 6. The current loose boulder rip-rap and fencing are in the riparian buffer ESHA and conflict with the following sections of Malibu's Local Coastal Plan, Land Use Plan:

> 3.23 State Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance (minimum 100ft.) and physical barriers to human intrusion.
> 3.32 Channelizations or substantial alterations of streams shall be prohibited except for flood protection of existing development where there is no feasible alternative and bioengineering shall be preferred for flood protection over rip-rap channels.
> 3.34 Bioengineering methods or "soft solutions" should be developed as an alternative to constructing rock revetments, vertical retaining walls or other "hard structures" along lower Malibu Creek. If bioengineering methods are demonstrated to be infeasible, then other alternatives may be considered. Any applications for protective measures along lower Malibu Creek shall demonstrate that existing development in the Civic Center is in danger from flood hazards, that the proposed protective device is the least environmentally damaging alternative, that it is sited and designed to avoid and minimize impacts to the habitat values of the riparian corridor along the creek and the recreational and public access use of State Park property along the creek, and that any unavoidable impacts have been mitigated to the maximum extent feasible.
> 3.88 Buffer areas shall be provided around wetlands to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of sufficient size to ensure biological integrity and preservation of the wetland they are designed to protect, but in no case shall they be less than 100 feet in width.
> 3.121 Alteration or disturbance of streams or natural drainage courses or human-made or altered drainage courses that have replaced natural streams or drainages and serve the same function, shall be prohibited, except where consistent with Policy 3.32. Any permitted stream alterations shall include BMPs for hydromodification activities.

This project also is in conflict with the City of Malibu, Local Implementation Plan, Section 17.9: Hydromodification, Paragraph B:

> Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources, including the depletion of

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groundwater, and shall include maximum feasible mitigation measures to mitigate unavoidable impacts. Bioengineering, where feasible alternative exists, is the only acceptable method of bank stabilization and flood protection for new development, and the preferred method for redevelopment. Where armoring of stream banks has failed, streambanks shall be stabilized using bioengineered structures, unless no feasible alternative exists. Any permitted stream alterations shall include BMPs such as incorporating vegetation in structure design, deflecting flow from eroding stream banks, and reshaping the eroding bank and establishing vegetation.

Clearly the applicant should state in Bullet 6 that the project will cause potentially significant impacts.

b. The MND Contains Non-Meaningful Conditions

Second, the third paragraph on Page 15 of the MND states that the project will be conditioned such that if the stream bank fails it will be replaced using bioengineered methods. As stated earlier, the rip-rap and adjacent fencing currently does not have a valid Coastal Permit. In addition, it is subject to the conditions and requirements of the LCP, which requires consideration of a bioengineered solution. Yet this MND application requests the ability to repair the structure in perpetuity, thus ensuring that bioengineering will never occur. So for all practical purposes, this condition is irrelevant and meaningless. This is clearly in conflict with City and State Coastal Programs and Policies and should be corrected. The applicant should be required to use bioengineering and restore the riparian buffer to the maximum extent practicable and be brought into compliance with the Coastal Act and Malibu's LCP. (Notably, this paragraph of the MND acknowledges the feasibility of using bioengineering at this site.)

c. Proposed Mitigation Measures

Third, the proposed mitigation measures on page 15 are flawed.

Bullet 1 requires monitoring for three years of the invasive removal program and vegetation restoration components. This is not long enough to establish success and we recommend that 5 years be the minimum monitoring requirement. Further, 5 years was the recommended monitoring and eradication time frame in the Attachment 10 report prepared for the applicant.

Herbicides should not be applied this close to the lagoon. We recommend mechanical removal at the time the stream bank is recontoured and hand removal throughout the 5 year period. Additionally, the Attachment 10 report recommends removal or treatment of invasive vegetation twice a year. Heal the Bay has extensive experience in hand removing exotic invasive vegetation in this area and we strongly suggest a minimum of 6 removal visits each year for the 5 year duration. Additionally, before and after photos taken at permanent photo points should be integrated into the monitoring and reporting program.

Bullet 3: We recommend that a certified botanist or native plant expert be onsite during all construction activities and vegetation removal activities.

Bullet 9: We recommend that all plant stock be acquired through State Parks and locally harvested by State Parks Resource Ecology Personnel. This is critical to maintain the genetic diversity within Malibu

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Lagoon State Park. In addition, we believe that the revegetation plan is wholly inadequate and needs to be prepared in conjunction with the Resource Ecologist at State Parks to insure appropriate plant materials and revegetation techniques are utilized.

Bullet 12: We recommend extending the monitoring period to 5 years, requiring that a certified botanist or native plant expert be present on site during all removal activities, and requiring photo point monitoring from permanently established photo points.

d. Geology and Soils

Fourth, the analysis in MND Section F Geology and Soils is incomplete and flawed:

Bullet 2: The project does and will continue to result in substantial soil loss through downstream bank erosion and channel down cutting. The project as proposed does little, if anything, to rectify this problem. In addition, if topsoil is placed in the current rip-rap spaces that were not engineered to accommodate plantings this dirt will fall through the holes or be washed away into Malibu Lagoon. These constitute potentially significant impacts, which are ignored completely in the impacts discussion in section F. They must be addressed.

No mitigation has been proposed for soil loss by erosion or soil dumping into the creek during installation. The applicant must state how erosion and sediment loading will be eliminated and /or mitigated during the installation process.

e. Hydrology and Water Quality

Fifth, Section H: Hydrology and Water Quality is incomplete and flawed:

Bullet 3 and 4: The grading associated with rip-rap installation, the rip-rap, the removal of vegetation and compaction of soils for vehicle and other storage in the fenced area, and the elimination of riparian buffer all reduce the capacity for stormwater infiltration and intercept of polluted stormwater runoff. These cumulatively have substantially altered the drainage pattern on site and decreased the ability to dissipate energy during storm events. In addition, the rip-rap has created downstream bank erosion by transferring energy downstream and channel down cutting has occurred due to increased volume and scour velocities associated with these alterations. The Lagoon is already impaired for sediment and eutrophication, which are being received as a result of this project. The proposed "fix" does little, if anything, to rectify these problems. Bullets 3 and 4 should both state the project would cause potentially significant impacts. These impacts and their mitigation are not adequately addressed in the MND.

Bullet 8: The fencing and equipment storage area, which were illegally installed without a Coastal Permit, is within a 100 year flood hazard area and does redirect flood flows. It is these structures that have eliminated riparian vegetation and buffer area which contribute to the higher scour velocities and larger volumes of water that are causing the current rip-rap to fail. This constitutes a potentially significant impact. The applicant should discuss this impact and appropriate mitigation in Bullet 8.

II. Conclusion

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We urge the City of Malibu to deny the mitigated negative declaration. The MND for this site is wholly inadequate and is in direct conflict with the State Coastal Act and Malibu's own Local Coastal Plan Land Use Plan and Imp- term sustainable solution to this recurring problem. In fact during the creation of the Lagoon Restoration and Enhancement Plan, the applicant refused to have the consulting team research and present other solutions for this site. This site is within Malibu Lagoon, one of the few remaining coastal wetlands in Los Angeles County. Significant financial resources and investment have been spent and will be spent in the near future by the State and the City of Malibu to improve water quality and enhance habitat at Malibu Lagoon and Surfrider Beach. Further, this site was considered one of the highest priority restoration sites to enhance Malibu Lagoon throughout the 6 year planning, facil tation, and design process that culminated in June 2005 with the Malibu Lagoon Restoration and Enhancement Plan. This 6-year effort involved diverse and varied stakeholders including landowners, homeowner associations, government agencies and environmental groups. The proposed project will not work and will continue to degrade water quality and critical habitat for the federally endangered tidewater goby and southern steelhead trout. In addition, the rip-rap will require maintenance and repair in perpetuity, each time further degrading habitat and water quality. A bioengineered solution that restores some floodplain connectivity and restoration of riparian vegetation would be more cost effective and would be consistent with the Coastal Act and Malibu's Local Coastal Plan, as well as with the overall restoration effort for Malibu Lagoon and Surfrider Beach.

Heal the Bay has worked closely with the City of Malibu on numerous wastewater, stormwater, Malibu Lagoon, and Surfrider Beach water quality issues. Presently, as a demonstration of our good faith Heal the Bay supported the Civic Center conceptual wastewater and stormwater management plan and we worked very closely with the city on their urban runoff treatment facility. In addition, Heal the Bay spearheaded the effort to complete the Malibu Lagoon Restoration and Enhancement Plan. Any action other than the denial of the project proponent's MND will be detrimental to our mutual efforts to clean up and restore Malibu Lagoon and Surfrider Beach. The emergency rip-rap bank stabilization has already had a detrimental impact on Malibu Lagoon's natural resources and water quality for seven years. At this point, the City shouldn't consider any project short of a full-blown stream bank and riparian buffer restoration plan with a mitigation component for historic damages caused by the emergency rip-rap bank modification.

We appreciate the opportunity to comment on this MND.

Sincerely,

/s/ /s/ /s/

Mark Abramson
Stream Team Manager
Heal the Bay

Heather Hoecherl Esq.
Director Science and Policy
Heal the Bay

Mark Gold D.Env.
Executive Director
Heal the Bay

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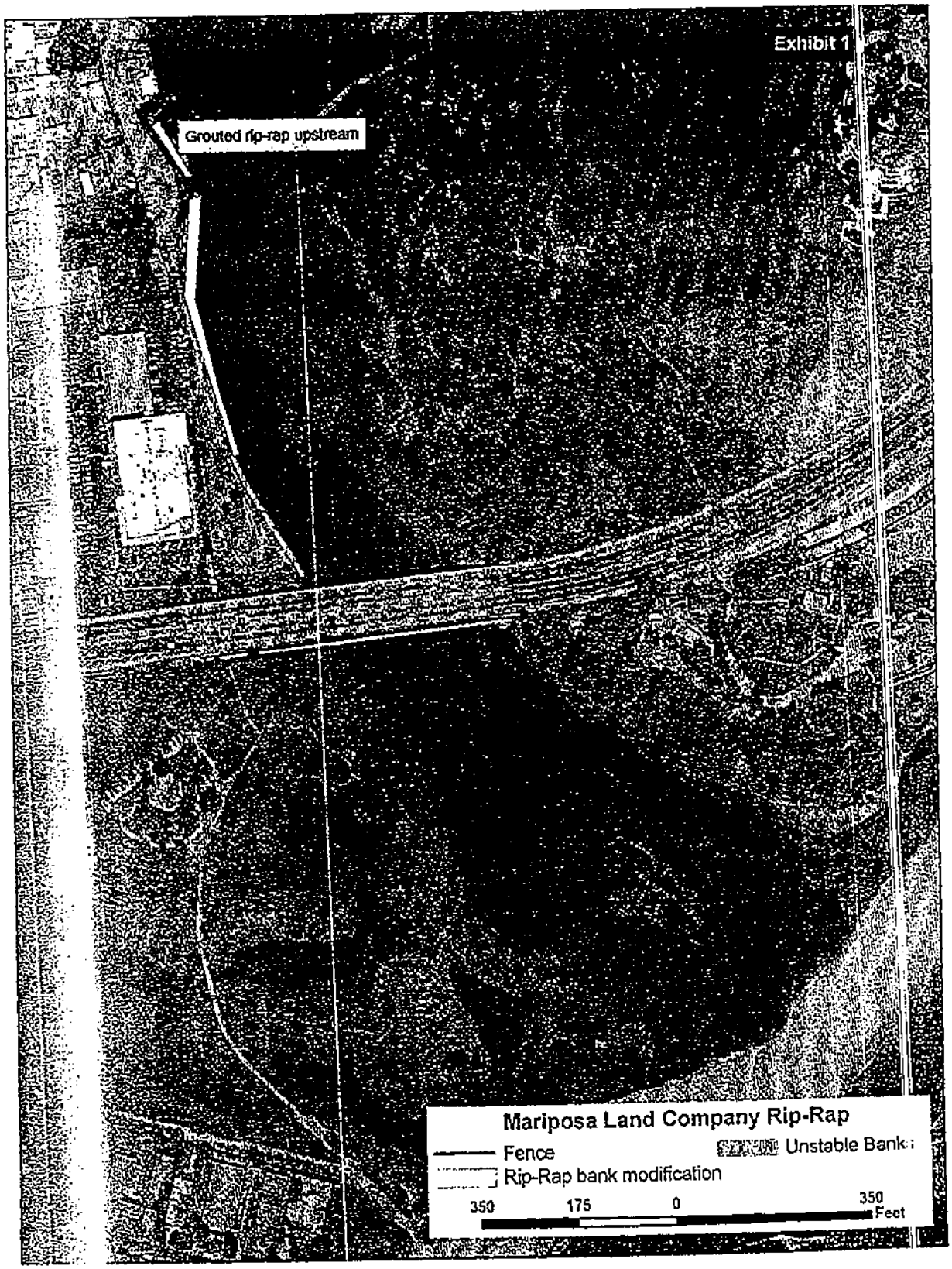

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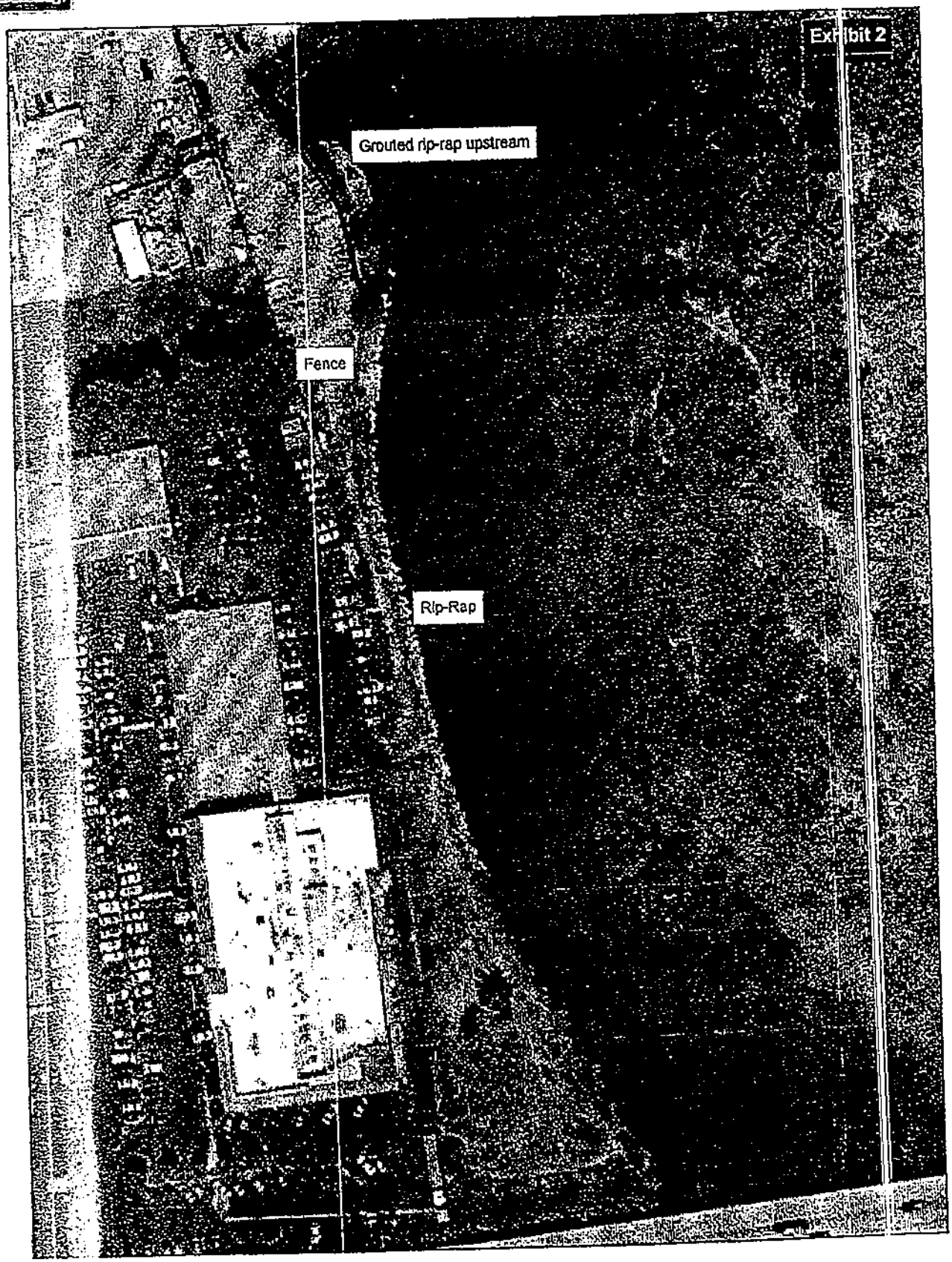

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April 6, 2009

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001
Via fax: (805) 641-1732

Re: Opposition to CDP Application No. 4-09-013 to permanently retain 500 linear feet of rock rip-rap revetment on Malibu Creek at 3728 Cross Creek Road

Dear Coastal Commissioners:

Heal the Bay has reviewed Application No. 4-09-013, submitted by the Mariposa Land Company, which requests permission to permanently retain approximately 500 linear feet of rock rip-rap revetment along the west bank of lower Malibu Creek. Heal the Bay urges the Coastal Commission to deny this application based on the detailed written comments we submitted on February 3, 2009 (Attachment A) and the concerns outlined below. The proposed project is in direct conflict with numerous policies in the California Coastal Act, as well as the City of Malibu's Local Coastal Program ("LCP"), as it will negatively affect habitat that is designated environmentally sensitive habitat area ("ESHA").

In our previous letter we raised concerns that the subject stream bank should be designated ESHA, and therefore the proposed project should be designed to provide the most ESHA protection. The staff report states that this concern is addressed in section B of the staff report, yet that section has not been updated since the previous staff report on application 04-98-024.

Malibu Creek is a USGS-designated blue-line stream, which constitutes ESHA. Malibu Creek and its riparian corridor are also designated as ESHA in the certified Malibu LCP. Section 30240 of the Coastal Act requires that both ESHA and ESHA buffers be protected from development and activities that cause degradation. Heal the Bay has found through our Stream Team mapping efforts that armored stream banks are one of three major causes of downstream bank erosion and sedimentation. In addition to the hardened stream bank, the proposed project also features permanent submerged rip-rap within Malibu Creek, which is also discordant with City of Malibu LCP and Coastal Act policies. Approval of a permanent hardened revetment in Malibu Creek and its buffer is inconsistent with the ESHA policies of the Coastal Act and the City of Malibu LCP, as it will cause further degradation of stream and riparian habitat in this area. Instead, we support a bioengineered solution, as it will be the most protective of the streambank, restore some floodplain connectivity and restore riparian vegetation.

ex. 13d

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We also stated in our February 3, 2009 letter that the grouted rip-rap at an upstream storm drain outlet and an adjacent fenced storage area are unpermitted and should be included in the scope of work for the subject permit. Staff responds in the current report that this development is, "is unrelated to the project proposed in the subject permit application and in a location that is outside the Commission's retained jurisdiction." Aerial photographs and planning document schematics demonstrate that this area is, in fact, on part of the project applicant's property, and is therefore subject to this permit (Attachments B and C). Furthermore, it is unclear how that area would be outside of the Commission's retained jurisdiction, as properties to the north, south, east and west of that property all fall within the Coastal Zone.

The staff report and proposed permit fail to address the emergency permit (Emergency CDP No. 4-98-024-G) and associated development, which has been unlawfully retained and contributed to water quality and habitat degradation in the Malibu Creek and Lagoon for the past 10 years. In addition, the permanent rip-rap proposed within this application will require regular maintenance and repair, which will further degrade habitat and water quality in the Malibu Creek and Lagoon. We urge the Commission to deny this permit application and recommend that a bioengineered solution be designed for this site. A soft bioengineered solution will be the most protective of the streambank, restore some floodplain connectivity and restore riparian vegetation. Moreover, a bioengineered solution is consistent with the Coastal Act and the City of Malibu LCP, and will be the most cost-effective long-term solution for stabilization at this site.

Sincerely,

Sarah Abramson Sikich
Coastal Resources Director

ex. 13 d

Malibu Surfing Association

A non-profit organization
Federal Tax ID 95-4459007

PO Box 2683
Malibu, California
90265-7683 USA

msasurfing.org

February 3, 2009

VIA FEDERAL EXPRESS

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Re: Agenda Item: Th2.6a
Application No.: 4-98-024

To Whom It May Concern:

Malibu Surfing Association was founded by members of the Malibu community more than 40 years ago and we are intimately involved with the past, present, and future of Malibu Lagoon and Surfrider Beach. Many of our members are residents of the City of Malibu and we are an entirely volunteer association. We speak on behalf of our members whose views represent those of the surfing community and the 1.5 million visitors to Malibu Surfrider Beach who should be able to use this recreational resource without fear of water borne illness.

This letter shall constitute our objection to the California Coastal Commission Staff Report and recommendations, related to the Mariposa Land Company Application (4-98-024) for a permit to make permanent the 500 ft. stretch of riprap along the west bank of lower Malibu Creek, at their site at 3738 Cross Creek Road.

We are joining in and concurring with Heal the Bay's comment letter which is being submitted contemporaneously. In particular, we believe that the Staff Report and recommendations still fail to address the following:

1. The project, and the Coastal Commission's review of it, still defends illegal hardening of a streambank of Malibu Creek, which is designated as riparian habitat ESHA (Ecologically Sensitive habitat Area) by all interpretations of the Coastal Act and Chapter 3 of the City of Malibu LCP Land Use Plan. Even if this area were not designated ESHA, it would still be well within the legally protected 100 ft. buffer of Malibu Creek;

2. The proposal of the plan to "create riparian habitat," even with revisions by the Coastal Commission, is a false one, for the following reasons:

    a. The proposed 2:1 slope is still too steep to create viable habitat;

ex. 13 e
ex. 13

Re: Agenda Item: Th2.6a
Application No.: 4-98-024

b. The idea that concrete riprap can support native riparian flora and fauna, many of which depend on a sandy substrate, is absurd;

c. The idea to use a "geotextile filter fabric" as an underlay to the riprap could cause potential additional problems to the environment, depending on material used (many are plastic-based); and

d. The inclusion of only a handful of plant species in the revegetation plan does not constitute "habitat".

3. The proposal still does not address the illegal fence and 400 ft. of riprap located upstream and contiguous to the site;

4. Both the Coastal Act and the City of Malibu LCP Land Use Plan clearly state that impacts to ESHA and buffer areas to protect existing structures are allowed only when there are no "feasible alternatives." There are feasible alternatives to this plan that have not been considered. One is the creation of a flood wall on the existing parking structure, to protect the entire property; and

5. The current proposed plan could necessitate further impact to the creek, due to described construction activities.

Thank you for taking the time to consider our comments.

Sincerely,

Joseph S. Melchione, Chairman
Environmental Committee
Malibu Surfing Association

JSM/so

Malibu Surfing Association

A non-profit organization
Federal Tax ID 95-4459007

PO Box 2683
Malibu, California
90265-7683 USA

msasurfing.org

April 7, 2009

VIA FAX AT: (805) 641-1732

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Re: Opposition to CDP Application No. 4-09-013 to permanently retain 500 linear feet of rock rip-rap revetment on Malibu Creek at 3728 Cross Creek Road

Dear Coastal Commissioners:

Malibu Surfing Association was founded by members of the Malibu community more than 40 years ago and we are intimately involved with the past, present, and future of Malibu Lagoon and Surfrider Beach. Many of our members are residents of the City of Malibu and we are an entirely volunteer association. We speak on behalf of our members whose views represent those of the surfing community and the 1.5 million visitors to Malibu Surfrider Beach who should be able to use this recreational resource without fear of water borne illness.

Malibu Surfing Association would like to join in on opposing the CDP Application No. 4-09-013 for the reasons set forth in Heal the Bay's letter which is attached hereto for your ready reference.

Sincerely,

Joseph S. Melchione, Chairman
Environmental Committee
Malibu Surfing Association

JSM/so
Attachment

cc: Michael Blum, President
Malibu Surfing Association (via email w/attachment: Michael.blum@gmail.com)

cc: Sarah Sikich, Coastal Resources Director
Heal the Bay (via email w/attachment: ssikich@healthebay.org)

SANTA MONICA BAYKEEPER

February 3, 2009
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Re: Follow-up to Emergency Coastal Development Permit No: 4-98-024, Placement of Rock Rip Rap Along Lower Malibu Creek – DENY Permit Application

Dear Commissioners,

My name is Mark Abramson. I am the Director of Watershed Programs for Santa Monica Baykeeper. I have been monitoring water quality, biological communities, and restoring stream and wetland habitats throughout the Santa Monica Mountains for more than 12 years. I have also been commenting on this specific project for more than 10 years. This project remains relatively unchanged despite the fact that the Coastal Commission has recommended that the applicant restore the area and has denied the applicants previous Coastal Development Permits to leave the rip-rap on this site. The Santa Monica Baykeeper strongly urges the Commission to deny staff's recommendation on CDP ***Permit Application 4-98-024 with 13 special conditions to address the unpermitted loose boulder rip-rap on the applicant's property that was installed in 1998 as "an emergency permit".***

While the staff recommendations of the 13 special conditions improve the project they are wholly inadequate and do not restore the streambanks of Malibu Creek and Lagoon and will likely not work as staff intends. The staff report and proposed permit fails to address the 10 plus years of with the emergency permit and water quality degradation of Malibu Creek and Lagoon caused by the unpermitted rip-rap. The project as proposed is not compliant with the Coastal Act, the Malibu Local Coastal Plan LUP or LIP.

Additionally, staff has incorrectly stated that the project area in question is not ESHA. We vehemently disagree with this unfounded assertion. The disturbances on this site have been wholly caused by the property owner and the site has been maintained purposely in this unnatural state. Directly upstream and downstream of the project site Malibu Creek and Lagoon has intact riparian and wetland vegetation. If not for the activities of the landowner and the rip-rap installed on the site, this location would also have extensive riparian and wetland vegetation.

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Additionally, this area supports and is critical habitat for two federally endangered fish species: steelhead trout and tidewater goby. This deliberate degradation and destruction of ESHA should not be validated or encouraged as the staff is proposing here with its recommendation to approve the CDP.

In addition, the proposed permit does not address persistent Coastal Act violations that have occurred on the same parcel and constitute impermissible encroachment into the stream buffer area. These same violations exacerbate conditions that cause or contribute to streambank erosion and degrade water quality downstream. The staff report makes no recommendation to correct these violations.

The proposed staff solution to create planted rip-rap does not incorporate proper techniques or reflect current practices. Finally, the planting plan is woefully inadequate to restore riparian habitat and ESHA buffer back to this site.

In short, the overall plan as proposed is inconsistent with existing Coastal Act policies and the Malibu Local Coastal Plan; it will not function properly and will lead to further degradation of water quality and habitat over the long term.

I. **Background:**

Rip rap does a poor job of stabilizing stream banks and causes or contributes to downstream erosion and sediment loading. Based on my specific experience in the Malibu Creek Watershed I believe that the rip rap proposed by this project is a wholly inadequate approach to stream bank stabilization in the Lower Malibu Creek.

I have mapped over 70 miles of streams in the Malibu Creek Watershed and documented 987 individual bank armoring projects, of which 62% were failing or had failed. Loose boulder rip-rap accounted for 403 of the mapped bank armoring projects and had a failure rate of 74.9%, and grouted or concreted boulder rip-rap accounted for 173 of the mapped bank armoring projects with a failure rate of 68.2%. Armored stream banks were one of three major causes of downstream bank erosion and sedimentation identified in the Draft State of Malibu Creek Watershed Report. (Luce and Abramson, June 2005). The data analyzed in that report clearly demonstrated the ineffectiveness of bank hardening, especially rip-rap, as well as the damage that armored stream banks cause to downstream resources.

II. **Noncompliance with Emergency Coastal Permit from September 1998 to present; no mitigation or attempt to correct violations.**

The emergency permit ("Permit") was granted by the Coastal Commission to protect structures during an emergency situation (El Nino) and was never intended to help the applicant avoid meeting the conditions of the Coastal Act. Moreover, the applicant did not even meet the conditions required in the Permit to make the emergency work permanent. The applicant is therefore in violation of the Permit conditions and has been since September of 1998.

The intent of an emergency permit is not to allow for the permanent placement of structures that damage waters of the United States and fill wetlands, but to protect property during extreme conditions using temporary measures. This is clearly in the Permit dated February 20, 1998, Emergency Permit Application Number 4-98-024-G, in Attachment 7, Page 2, Bullet Point 4 and "Important" note.

Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the director.

IMPORTANT
Condition # 4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a coastal permit must be obtained. A regular permit would be subject to all the provisions of the California Coastal Act and may be conditioned accordingly.

Bullet 7 on the same page states:

The regular Coastal Development permit application shall include an analysis of all other alternatives for shoreline, bluff, or stream bank protection prepared by a qualified engineer.

The applicant did not submit an application for a new Coastal Permit to make the emergency work permanent. Nor did the applicant conduct an analysis of all other alternatives for stream bank protection. Instead, the applicant now, 11 years later, is trying to make the rip-rap permanent with this application, which also contains no real analysis of alternatives. This is not consistent with the Coastal Act or the City of Malibu's LUP or LIP.

Further, the staff report fails to recognize the serious impacts caused to the ecosystem by the installation of the rip-rap in 1998 and the significant impacts that have occurred during the time in which the applicant has been in violation of their temporary Permit (September 1998 to date), as well as ignores the requirement to comply with the provisions of the Permit and to correct the situation. Allowing the rip-rap to become a permanent solution will degrade water quality and habitat downstream including critical habitat for the federally endangered steelhead trout and

tidewater goby. Exhibit 1 shows the map of this area; special notice should be paid to the stream bank erosion downstream of the rip-rap at issue. This is a continual source of sediment loading to Malibu Lagoon. Fine sediments are considered a significant source of phosphates in the summer months and contribute to eutrophication in the Lagoon (Malibu Lagoon Restoration and Enhancement Plan, June 2005). The existing rip-rap on site is already failing (toe undercut) and this lateral and downward channel erosion further exacerbates sediment loading to Malibu Lagoon. Malibu Lagoon is on the State 303(d) List of Impaired Water Bodies for algae, eutrophication, and sediment.

Santa Monica Baykeeper requests the Commission require the applicant to address the entire stream reach from the Civic Center Drain approximately 860 ft downstream to the Shell Drain (Exhibit 4). Addressing the entire streambank is essential to a successful stable final project. Additionally, we request that property owner be assessed significant fines and penalties for the years of non-compliance and environmental degradation caused by this non-compliance. The applicant has been in non-compliance for more than 10 years (over 3,650 days). Even if the Commission issued a minimum fine of $ 500.00 dollars per day, the applicant would owe at least $ 1,825,000 as of today.

III. Failure to address adjacent unpermitted fencing and grouted rip-rap armoring directly upstream contribute to the stabilization problem.

The proposed special conditions specifically exclude the grouted rip-rap and fence placement directly upstream on the applicant's property on the same parcel (Exhibits 1 through 3), both of which contribute to bank erosion and bank failure downstream. If all three of these elements are not addressed together, existing erosion and bank failure problems will continue to occur and the resulting maintenance activities will continue to jeopardize water quality and habitat in the lagoon.

The attached 2004 and1997 and aerial photos (Exhibits 2 & 3 respectively) clearly shows that the upstream fencing did not exist prior to the bank erosion. Further, a comparison of Exhibit 2 taken in 2004 and Exhibit 3 taken in 1997 clearly shows the loss of vegetation that occurred within the fenced area. The steep bank that supports the fencing forces higher volumes and velocity water to scour the stream bank contributing to its failure. As there is no mention of the fencing in the temporary Permit, and there is no other Coastal Permit allowing this fencing, it should be removed. Similarly, the grouted rip-rap upstream of the project (Exhibits 1 and 2) actually deflects flows toward the project stream bank and likely induces scouring of that bank. Clearly, if the fencing and upstream rip-rap elements are ignored, there is an even higher likelihood that the proposed stabilization will continue to fail.

We urge the Commission to require the property owner to address the entire stream reach from the outlet of the Civic Center Drain to the Shell Drain approximately 860 ft. (Exhibit 4). The restoration should include removal of the unpermitted fencing and all material storage in that area. The restoration should require the reestablishment of the riparian vegetation and stream ESHA buffer. Staff recommends laying back the streambank to a 2-1 slope. Creating a 3-1 slope is more appropriate and better reflects the slopes of streambanks upstream and downstream of the project site in this area. Additionally a 3-1 slope would allow for far superior energy dissipation of stream flows and re-vegetation of the site.

IV. **The current loose boulder rip-rap, grouted rip-rap, and fencing are in the riparian ESHA and riparian buffer ESHA.**

The existing unpermitted structures and proposed recommendations in the staff report conflict with the following sections of the Coastal Act, Malibu's Local Coastal Plan, Land Use Plan.

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.

3.23 State Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance (minimum 100ft.) and physical barriers to human intrusion.

3.32 Channelizations or substantial alterations of streams shall be prohibited except for flood protection of existing development **where there is no feasible alternative and bioengineering shall be preferred for flood protection over rip-rap channels.**

3.34 Bioengineering methods or "soft solutions" should be developed as an alternative to constructing rock revetments, vertical retaining walls or other "hard structures" along lower Malibu Creek. If bioengineering methods are demonstrated to be infeasible, then other alternatives may be considered. Any applications for protective measures along lower Malibu Creek shall demonstrate that existing development in the Civic Center is in danger from flood hazards, that the proposed protective device is the least environmentally damaging alternative, that it is sited and designed to avoid and minimize impacts to the habitat values of the riparian

corridor along the creek and the recreational and public access use of State Park property along the creek, and that any unavoidable impacts have been mitigated to the maximum extent feasible.

3.88 Buffer areas shall be provided around wetlands to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of sufficient size to ensure biological integrity and preservation of the wetland they are designed to protect, but in no case shall they be less than 100 feet in width.

3.121 Alteration or disturbance of streams or natural drainage courses or human-made or altered drainage courses that have replaced natural streams or drainages and serve the same function, shall be prohibited, except where consistent with Policy 3.32. Any permitted stream alterations shall include BMPs for hydromodification activities.

This project also is in conflict with the City of Malibu, Local Implementation Plan, Section 17.9: Hydromodification, Paragraph B:

Any channelization or stream alteration permitted for one of these three purposes shall minimize impacts to coastal resources, including the depletion of groundwater, and shall include maximum feasible mitigation measures to mitigate unavoidable impacts. Bioengineering, unless no feasible alternative exists, is the only acceptable method of bank stabilization and flood protection for new development, and the preferred method for redevelopment. Where armoring of stream banks has failed, streambanks shall be stabilized using bioengineered structures, unless no feasible alternative exists. Any permitted stream alterations shall include BMPs such as incorporating vegetation in structure design, deflecting flow from eroding stream banks, and reshaping the eroding bank and establishing vegetation.

V. Alternatives Analysis is inadequate and conflicts with Malibu's LCP and LUP.

It appears that all the alternatives analyzed were done either by Commission staff and or the environmental community and not the applicant. In fact, other than what the applicant has proposed the project engineers state that all other alternatives are not feasible and/or more environmentally damaging. Santa Monica Baykeeper is currently managing the Lagoon Restoration and Enhancement project on behalf of California State Parks and the State Coastal Conservancy directly downstream of the project site. We had offered to include the Mariposa Land Company's rip-rap area as part of our original design and engineering for the Lagoon project but the property owner refused. Our engineers stated from their initial review that a project could be designed using soft bio-engineering solutions at this location. No review (other

than the applicant's consultants statements) has been conducted that adequately excludes soft bio-engineering. Also many of the other hybrid alternatives i.e. using geo-textiles, using rip-rap in the low flow channel and re-vegetating the upper bank have been successfully used on larger rivers (Ohio River) with significantly higher stream velocities and scour. Finally, the staff recommendations to plant the spaces between newly placed rip-rap is wholly inadequate and will not work. There are specific techniques required when installing planted rip-rap to better ensure vegetation will grow and establish. These techniques have been employed on Las Virgenes Creek upstream in the watershed and on Las Flores Creek in an adjacent watershed. We strongly recommend that only soft bio-engineered approaches be employed at this site but even if the Commission determined that planted rip-rap was needed a firm that knows how to design and install this technique must be required. Additionally, we need to see an engineered plan showing how this technique will be employed. Just describing it in a staff report is inadequate and inappropriate.

We urge the Commission to require soft bio-engineering at the site. Natural vegetation exists without armoring directly upstream and downstream of this location. Further, we are not employing any armoring in the Lagoon project directly downstream of the project site. The floodwall/ soft bio-engineered alternative accomplishes both property protection and real streambank restoration even though we believe that the floodwall is unnecessary.

VI. The current design has not employed the use of large woody debris to deflect flows from the streambank.

Santa Monica Baykeeper would strongly recommend that large woody debris be installed along two locations adjacent to the streambank. The woody debris should be anchored to the bank using the techniques in the Salmonid Habitat Restoration Manual produced by the California Department of Fish and Game. Additionally, this woody debris should be placed facing upstream to deflect flows away from the streambank design and installation should follow the procedures outlined in the Salmonid Habitat Restoration Manual produced by the California Department of Fish and Game. This will have two beneficial effects: 1. It will help deflect flows away from the streambank while allowing the vegetation to become established and 2. It will provide instream habitat for steelhead trout and tidewater goby.

VII. The Commission should require a Hazard Analysis Critical Control Point Plan (HACCP) to prevent the transport of New Zealand Mudsanils (NZMS) to other streams and watersheds.

Malibu Creek was identified as having NZMS in 2005 benthic macroinvertebrate samples. Santa Monica Baykeeper and the Santa Monica Bay Restoration Commission have conducted annual NZMS surveys on Malibu Creek 2006-2008. NZMS have dramatically increased their density

and geographic distribution since they were first discovered. NZMS are easily transported to uninfected waterbodies by attaching themselves to clothing (especially footwear) and equipment and hitching a ride to a new waterbody. NZMS have been recorded in densities greater than 500,000 organisms per square yard and simply outcompete our native benthic macroinvertebrates, such as dragonflies, which are a critical food source for fish and other aquatic wildlife. NZMS reproduce asexually or through cloning; it only takes one snail to start a new colony.

It is strongly recommended that measures be implemented to prevent the spread of this noxious invader. Clothing and footwear should be frozen for 48 hours after having contact with the stream. Construction workers must be required to strictly follow this protocol. Additionally, any equipment that has contacted the stream including heavy equipment should be pressure washed, steam cleaned and allowed to thoroughly dry out for 72-hours before being transported to another site. Requiring all contractors to complete a HACCP plan that is then approved by the Commission who understand how NZMS are transported is essential. Santa Monica Baykeeper and the Santa Monica Bay Restoration Commission are happy to review any HACCP plans.

VIII. Conclusion

We urge the Commission to deny this permit. The CDP, even incorporating commission staff recommendations for this site, is wholly inadequate and is in direct conflict with the State Coastal Act and Malibu's own Local Coastal Plan LUP and LIP.

The project site is within Malibu Lagoon, one of the few remaining coastal wetlands in Los Angeles County. Significant financial resources and investment have been spent and will be spent in the near future by the State to improve water quality and enhance habitat at Malibu Lagoon and Surfrider Beach. Further, the project site was considered one of the highest priority restoration sites to enhance Malibu Lagoon throughout the 6-year planning, facilitation, and design process that culminated in June 2005 with the Malibu Lagoon Restoration and Enhancement Plan. In fact during the creation of the Lagoon Restoration and Enhancement Plan, the applicant refused to have the consulting team research and present other solutions for this site.

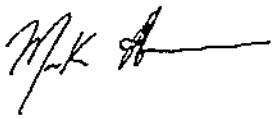
As proposed the project will continue to degrade water quality and critical habitat for the federally endangered tidewater goby and southern steelhead trout. In addition, the rip-rap will require maintenance and repair in perpetuity, each time further degrading habitat and water quality in the Lower Malibu Creek and Lagoon. A bioengineered solution will be the most protective of the streambank, restore some floodplain connectivity and restore riparian vegetation – all critically needed to restore stream function and natural processes in this area. Moreover, soft bioengineering will be more cost effective and is consistent with the Coastal Act and

Malibu's Local Coastal Plan, as well as with the overall restoration effort for Malibu Lagoon and Surfrider Beach.

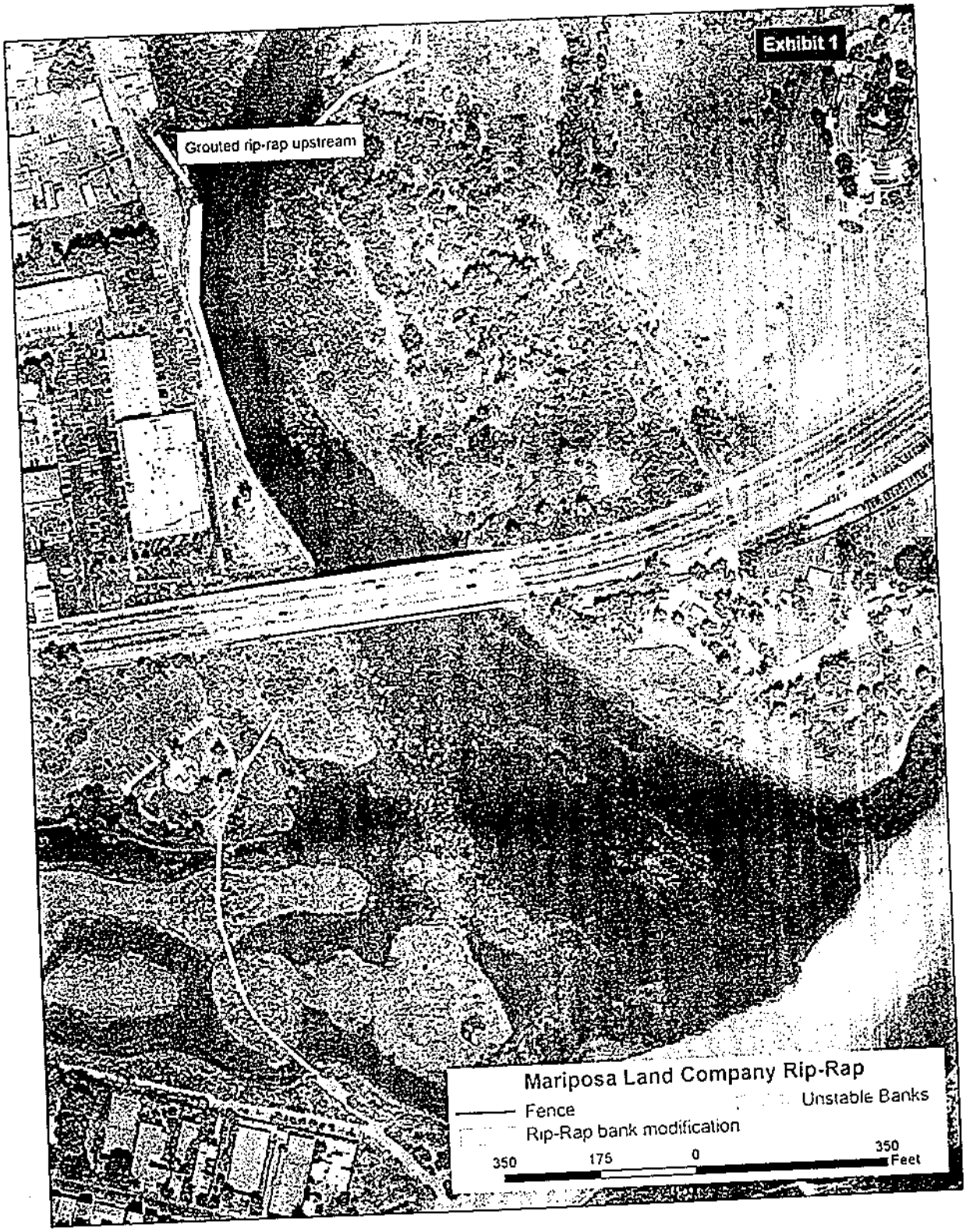
The emergency rip-rap bank stabilization has already had a detrimental impact on Malibu Lagoon's natural resources and water quality for more than ten years. At this point, the Commission shouldn't consider any project short of a full-blown stream bank and riparian buffer restoration plan that encompasses the entire approximate 860 ft. stream reach (Exhibit 4) with a mitigation component and fines for the historic damages caused by the emergency rip-rap bank modification. The proposed project even with staff recommendations fails to accomplish this. Consequently, the application for CDP should be DENIED.

We appreciate the opportunity to comment on this CDP.

Sincerely,



Mark Abramson
Director of Watershed Programs
Santa Monica Baykeeper



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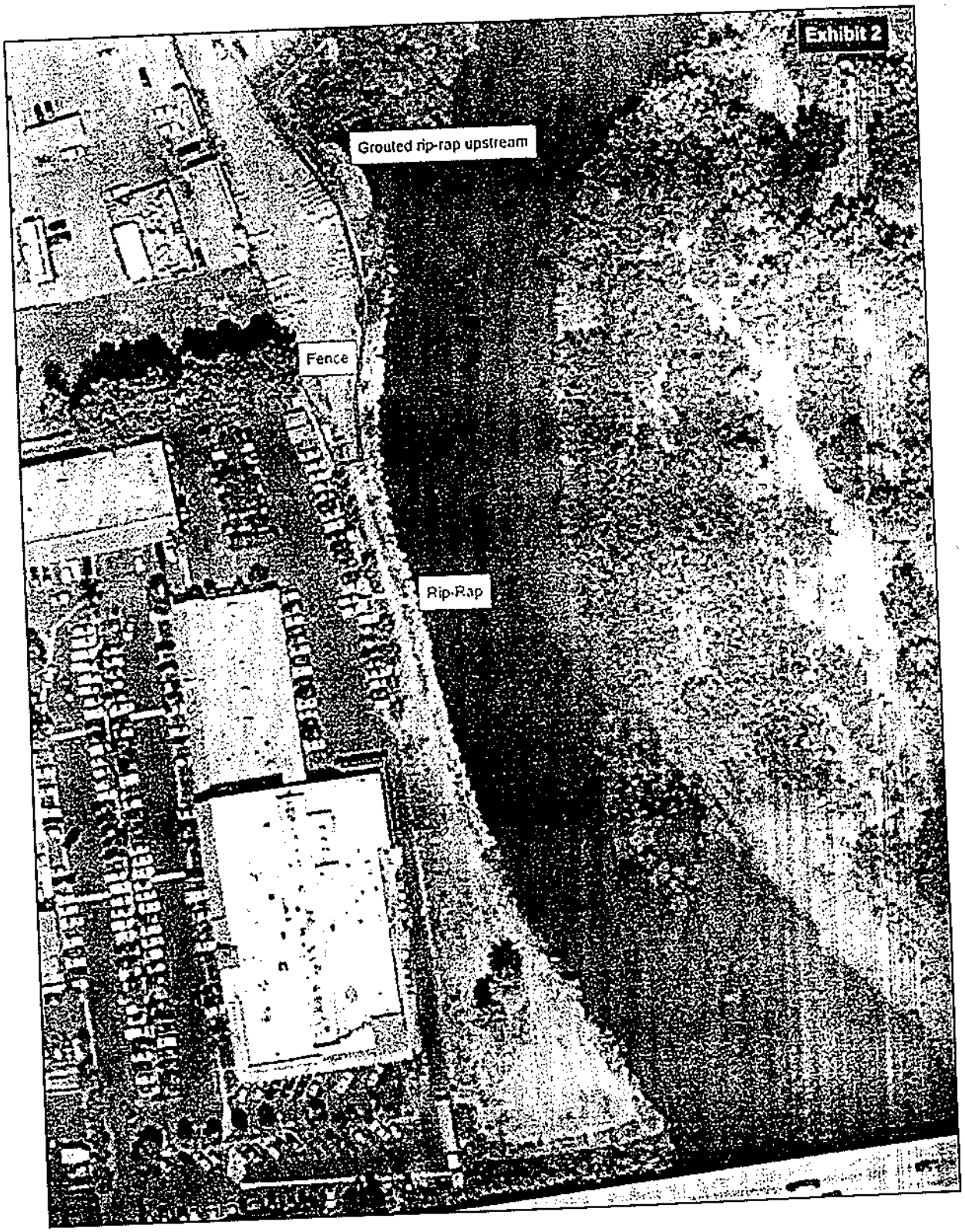

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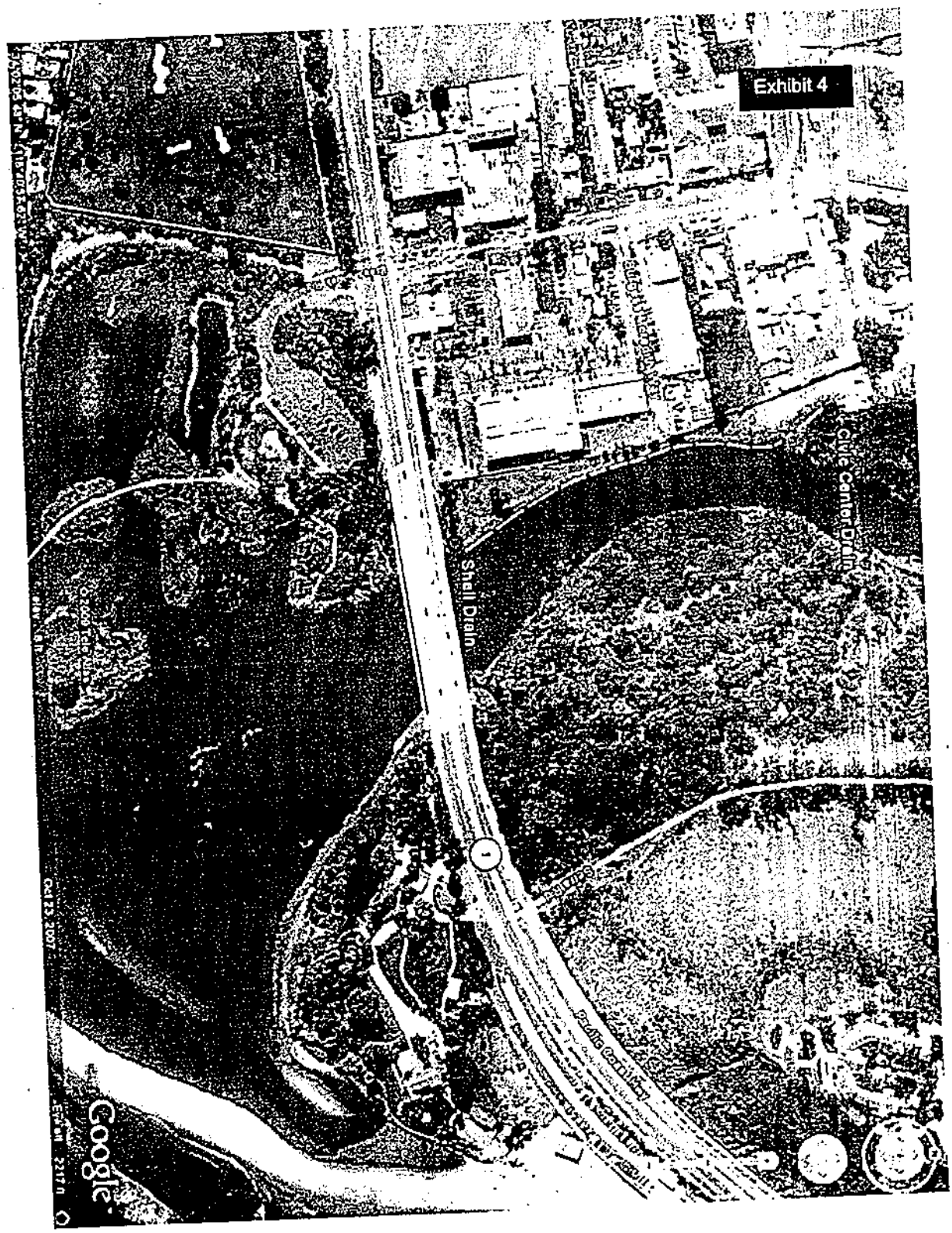

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ex.13f

SANTA MONICA BAYKEEPER

Item Th 9c

RECEIVED
APR 08 2009
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

April 7, 2009

California Coastal Commission
South Central Coast Area
89 South California St., Suite 200
Ventura, CA 93001

Re: Opposition to CDP Application No. 4-09-013 to permanently retain 500 linear feet of rock rip-rap revetment on Malibu Creek at 3728 Cross Creek Road

Dear Coastal Commissioners:
Santa Monica Baykeeper (SMBK) has reviewed Application No. 4-09-013, submitted by the Mariposa Land Company, to permanently retain approximately 500 linear feet of rock rip-rap revetment along the west bank of lower Malibu Creek. SMBK urges the Coastal Commission to deny this application based on the detailed written comments we submitted on February 3, 2009 (Attachment A) and the concerns outlined below.

In 2005, State Parks and the California Coastal Conservancy offered to include the specific parcel subject to CDP Application No. 4-09-013 as part of the comprehensive Malibu Lagoon Restoration project at no cost to the project applicant. The larger Malibu Lagoon Restoration project design involved substantial engineering and monitoring that could have included the subject parcel resulting in a restored and fully-functional stream bank. Inexplicably, this offer was repeatedly refused by Mariposa Land Company and the parcel did not become part of the larger restoration effort. This resulted in continued degradation of water quality and sedimentation to the Malibu Creek and Lagoon ESHA, potentially impacting two federally endangered aquatic species (Tidewater goby and Steelhead trout). The Coastal Commission should not allow the perpetuation of this continued disregard and violation of the Coastal Act and the authority of the Commission to protect our coastal resources from pollution and ill-conceived development. Mariposa Land Company's CDP Application No. 4-09-013 should therefore be denied.

The proposed project is in direct conflict with numerous policies in the California Coastal Act, as well as the City of Malibu's Local Coastal Program ("LCP"), as it will negatively affect habitat that is designated as ESHA. In our previous letter we raised concerns that the subject stream bank should be designated ESHA, and therefore the proposed project should be designed to provide the most ESHA protection. Although the staff report states that this concern is addressed in its section B, that section has not been updated since the staff report on the previous application 04-98-024 and in fact no new information regarding ESHA has been added.

Malibu Creek is a USGS-designated blue-line stream, which constitutes ESHA. Malibu Creek and its riparian corridor are also designated as ESHA in the certified Malibu LCP. Section 30240 of the Coastal Act requires that both ESHA and ESHA buffers be protected from development and activities that cause degradation. Surveys that I conducted throughout the Malibu Creek Watershed document that armored streambanks are one of three major causes of downstream bank erosion and sedimentation. Moreover, these types of armoring have the highest rates of failure of any type of stream bank armoring projects (74.9 % failure rate for loose boulder rip-rap and 68.2 % for grouted rip-rap). In fact, the exact same streambank subject to this permit application was previously rip-rap before it failed during the 1998 storm events.

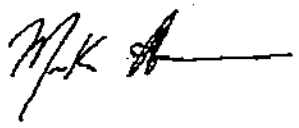
In addition to the hardened streambank, the proposed project also features permanent submerged rip-rap within Malibu Creek and Lagoon, which is undoubtedly ESHA and is designated critical habitat for the federally endangered Tidewater goby and southern Steelhead trout. Approval of a permanent hardened revetment in Malibu Creek, Lagoon, and their buffers is inconsistent with the ESHA policies of the Coastal Act and the City of Malibu LCP, as it will cause further degradation of stream, wetland, and riparian habitat in this area. Instead, we support a bioengineered solution, as it will be the most protective of the streambank, restore some floodplain connectivity and restore riparian vegetation.

In our February 3, 2009 letter we also pointed out that the grouted rip-rap at an upstream storm drain outlet and an adjacent fenced storage area on the same parcel owned by Mariposa Land Company are unpermitted and should be included in the scope of work for the subject permit (Exhibit 1 and 2). It is highly unlikely that the project as described in the CDP application will be successful if the upstream grouted rip-rap area that currently is putting pressure on the proposed area downstream is not addressed. This entire contiguous stream reach must be sloped back and restored if the project is to succeed.

Staff responded in the current report that this development "is unrelated to the project proposed in the subject permit application and in a location that is outside the Commission's retained jurisdiction." Aerial photographs and parcel data gathered from the City of Malibu clearly shows that this upstream area is on the same parcel and is therefore subject to this permit (Exhibits 1 and 2). Furthermore, it is unclear how that area would be outside of the Commission's retained jurisdiction, as properties to the north, south, east and west of that property all fall within the Coastal Zone. The staff report and proposed permit fail to address the emergency permit (Emergency CDP No. 4-98-024-G) and associated development, which has existed unpermitted and has contributed and continues to contribute to water quality and habitat degradation in Malibu Creek and Lagoon for more than 10 years. In addition, the permanent rip-rap proposed within this application will require regular maintenance and repair, which will further degrade habitat and water quality in the Malibu Creek and Lagoon.

We urge the Commission to deny this permit application and recommend that a bioengineered solution be designed for this site. A soft bioengineered solution will be the most protective of the streambank, restore some floodplain connectivity and restore riparian vegetation in Malibu Creek and Lagoon. We strongly object to the lack of alternatives analysis and the heavy reliance of the Coastal Commission Staff on the project applicant's engineer. In addition, the entire contiguous stream reach must be addressed to ensure the success of the project and protection of the ESHA. In order for the Coastal Commission or the public to truly evaluate the impacts of the project as proposed by either the project applicant or the Commission Staff actual engineered drawings, and a fully thought-out planting plan should be provided for review. A bioengineered solution is consistent with the Coastal Act and the City of Malibu LCP, and will be the most cost-effective long-term solution for stabilization at this site.

Sincerely,



Mark Abramson
Director of Watershed Programs
Santa Monica Baykeeper

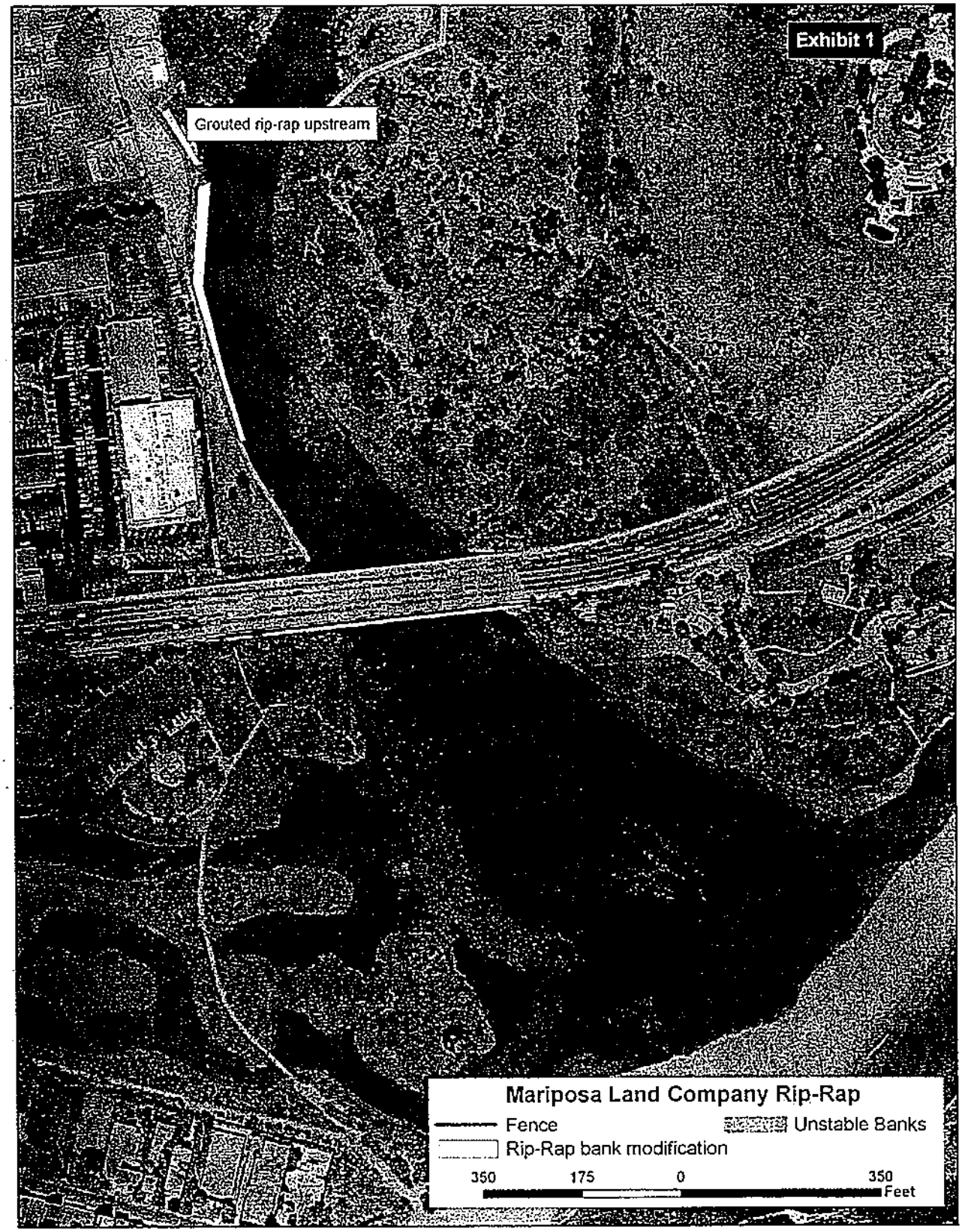


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Exhibit 2

http://maps.digitalmapcentral.com/CommView/Malibu/CV/index.html
Edit View Favorites Tools Help
Google
Malibu Community View
Community View
Property APN 4452011036
APN: 4452011036
Address: 3880 CROSS CREEK RD , MALIBU CA 90265
Living Sft:
Acres: 2.44
Lot frontage:
Lot depth:
Legal description: FOR DESC SEE ASSESSOR'S MAPS
Land Sft: 106480
Land use: 420
Year built:
Assessed value:
TBM Page:
$212,494
Submit
Parcel information
Maps (*) = added information select a map below)
Streets
Tax
Recycled paper

RESOURCE CONSERVATION DISTRICT
OF THE
SANTA MONICA MOUNTAINS

30000 MULHOLLAND HIGHWAY, AGOURA HILLS, CALIFORNIA 91301
MAIL: P.O. BOX 638, AGOURA HILLS, CALIFORNIA 91376-0638
(818) 597-8627 FAX (818) 597-8630

A Political Subdivision
of the State of California

DANIEL C. PREECE
Executive Officer

April 7, 2009

California Coastal Commission
South Central Coastal Area
89 South California St., Suite 200
Ventura, CA 93001
Via fax (805) 641- 1732

RE: CDP Application 4-98-024: Rip-rap revetment on Malibu Creek at 3738 Cross Creek Road

Dear Coastal Commissioners:

The Resource Conservation District of the Santa Monica Mountains (RCDSMM) has reviewed the Coastal Development Permit Application 4-98-024 submitted by the Mariposa Land Company, concerning the permanent placement and continued maintenance of an approximately 500-foot linear riprap revetment along Malibu Creek. Our organization previously commented on this project in 2005 (Appendix A) and our chief concerns remain the same.

As already emphasized by Heal the Bay, the project does not comply with Section 30236 of the Coastal Act:

> "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."

In fact, the project has not conducted a thorough study of bioengineering alternatives. Furthermore, the existing rip-rap may diminish habitat of local federally endangered species, the tidewater goby (*Eucyclogobius newberryi)* and southern steelhead trout (*Oncorhynchus mykiss*). The RCDSMM has been active in the conservation and management of the populations of tidewater gobies and southern steelhead trout within Malibu Creek and Lagoon since the lagoon restoration commenced in 1984.

ex. 13g

Tidewater Goby

The proposed rip-rap occurs within the lower portion of Malibu Creek, which is within the "LA-1: Malibu Lagoon" unit a 64-acre critical habitat unit designated by the U.S. Fish and Wildlife Service, outlined in the "Revised Designation of Critical Habitat for the Tidewater Goby; Final Rule" (Volume 73, No. 21). (Appendix C)

LA-1 is one of the two remaining extant populations of the tidewater goby within Los Angeles County, both of which have been designated as critical habitat units. The LA-1 unit contains the biological features that are essential to the conservation of the species, or its Primary Constituent Elements (PCEs). According to the Final Rule, the PCEs for this species are the following:

1. Persistent, shallow (in the range of about 0.1 to 2 m), still-to-slow-moving, aquatic habitat most commonly ranging in salinity from 0.5 ppt to about 10 to 12 ppt, which provides adequate space for normal behavior and individual and population growth;
2. Substrates (e.g., sand, silt, mud) suitable for the construction of burrows for reproduction;
3. Submerged and emergent aquatic vegetation, such as *Potamogeton pectinatus, Ruppia maritima, Typha latifolia,* and *Scirpus* spp. that provides protection from predators; and
4. Presence of a sandbar(s) across the mouth of a lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, thereby providing relatively stable water levels and salinity.

Malibu lagoon contains PCEs 1, 2 and 3, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

In June of 2005, the RCDSMM, in partnership with Heal the Bay, conducted a survey of tidewater gobies in Malibu Lagoon (see Appendix B) and observed over 400 individuals. A total of six sample sites were selected to provide an overview of all potential habitat types in the lagoon, except for the deep thalweg in the center (which was too deep to seine effectively). Sites conform to those proposed for continued post restoration monitoring, plus a known tidewater goby site upstream of the PCH bridge (TG1). Seining was conducted in conformance to the pre and post project monitoring plan protocol, as noted in the Draft Malibu Lagoon Monitoring Plan, the Lagoon Restoration and Enhancement Project Monitoring Plan, and the Lagoon Restoration and Enhancement Quality Assurance Project Plan.

Southern Steelhead Trout

The project site is also within federally designated critical habitat for the Southern California Evolutionary Significant Unit of endangered southern steelhead trout (Appendix D). Presence of individuals has also been well-documented by RCDSMM biologists upstream of the existing rip-rap along the west bank of Malibu Creek. Monthly snorkel surveys of Malibu Creek, conducted by the RCDSMM since 2001, have found that steelhead trout utilize pools along Malibu Creek up to the pool just below Rindge Dam.

Steelhead PCEs include:

1. Freshwater spawning sites with water quantity and qualityconditions and substrate supporting spawning, incubation and larval development.
2. Freshwater rearing sites with water quantity and floodplain connectivity to form and maintain physical habitat conditions and support juvenile growth and mobility; water quality and forage supporting juvenile development; and natural cover such as shade, submerged and overhanging large wood, log jams and beaver dams, aquatic vegetation, large rocks and boulders, side channels, and undercut banks.
3. Freshwater migration corridors free of obstruction with water quantity and quality conditions and natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, side channels, and undercut banks supporting juvenile and adult mobility and survival.

4. Estuarine areas free of obstruction with water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater;
5. Nearshore marine areas free of obstruction with water quality and quantity conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation;
6. Offshore marine areas with water quality conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation.

Conclusion

Section 7 of the Endangered Species Act (ESA) states that each Federal agency shall insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. It requires the review of specific projects so as to avoid and minimize adverse impacts to federally-listed species, where another federal permit is required. The federal nexus created by the U.S. Army Corps of Engineers' issuance of a Regional General Permit for this project may trigger the need for a Section 7 consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). The USFWS manages impacts to the tidewater goby, and the NMFS manages anadromous species, including the southern steelhead trout. The Coastal Commission should ensure that both the USFWS and NMFS have reviewed the project in order to properly address these issues.

We request that the applicant be required to analyze bioengineering alternatives to the streambank stabilization along the existing rip rap structure. Bioengineering is a well-founded restoration method, encouraged by the Natural Resources Conservation Service (NRCS) in situations where it is a technically sound restoration method as a substitute for the more frequently used methods (rip-rap revetment, etc.) that are much less desirable from an environmental perspective. Bioengineering techniques have been proven to provide valuable fish and wildlife habitat, along with improving water quality rather than diminish it like traditional approaches.

The RCDSMM appreciates the chance to comment on this CDP application. We ask that the Coastal Commission requires the replacement of the existing rip rap with a bioengineered alternative, and deny the current application. Further analysis of more sustainable erosion control systems are necessary, and appropriate wildlife agency reviews/permits should be sought for federally endangered species impacts, if not already done so.

Sincerely,

Sandra Albers
Conservation Biologist
Resource Conservation District of the Santa Monica Mountains

ex. 13 g

APPENDIX A: RCDSMM Comment Letter 2005

RESOURCE CONSERVATION DISTRICT
OF THE
SANTA MONICA MOUNTAINS

122 NORTH TOPANGA CANYON BOULEVARD · TOPANGA, CALIFORNIA 90290
(310) 455-1030 · FAX (310) 455-1172

DANIEL C. PRESCE
District Manager

August 5, 2005

Raneika Brooks-McClain
Associate Planner
City of Malibu
Planning Division
Attn: IS No. 03-003
23815 Stuart Ranch Road
Malibu, CA 90265

IS No. 03-003 , 3738 Cross Creek Road

Dear Raneika Brooks-McClain,

The Resource Conservation District of the Santa Monica Mountains (RCDSMM) appreciates the opportunity to provide comments on IS No. 03-003 and Mitigated Negative Declaration No. 04-002 concerning the permanent placement and continued maintenance of an approximately 500-foot linear riprap revetment along Malibu Creek. These are our chief concerns:

1. Any unresolved enforcement issues with the Coastal Commission should be settled before the MND is certified

2. The document fails to include review by the USFWS who may require a permit for impacts to federally endangered species present at site: the Tidewater Goby and Southern Steelhead Trout.

3. The proposed ongoing maintenance of the riprap is an admission of failure. The riprap is already undercut; this type of creekside hard armoring is outdated and possesses a long history of failure and exacerbation of downstream erosion and sedimentation, in this case into endangered species habitat. This emergency stop-gap measure does not provide a sustainable and environmentally sound solution to future high water events.

4. Alternative erosion solutions, such as riprap removal and re-sloping with a deeply-rooted vegetated buffer, are not analyzed in the MND. As such, the MND is in violation of CEQA for not providing an analysis of an environmentally superior alternative.

5. The proposed addition of topsoil and plantings into gaps in the riprap will fail to allow root contact with the slope soil, resulting in shallow-rooted plantings which may easily die and/or wash away during flood events. Vegetation should be planted directly into re-contoured slope substrate (which requires riprap removal), thereby creating a strong root network to fortify bank against erosion. This is the most sustainable solution requiring the least maintenance and least impact to the Tidewater Goby and Steelhead Trout habitat.

Thank you for listening to our concerns with this project. The RCDSMM asks Malibu to not approve the MND as it appears. Further analysis of more sustainable erosion control systems are necessary, appropriate wildlife agency permits

should be sought for federally endangered species impacts and any ongoing violations need to be resolved before CEQA approval.

Respectfully,

Steve Wilkins
Conservation Biologist
Resource Conservation District of the Santa Monica Mountains

ex. 13 g


Malibu Lagoon Fish Seine 6-20-05
Spot Check Points
Seine Stations
C Channel Bridge
N
60 30 0 60 120
Meters
Station 1
2
3
6
4

ex. 13 g

Add copy given to Hope

LAW OFFICES OF
GAINES & STACEY LLP
1111 BAYSIDE DRIVE, SUITE 150
CORONA DEL MAR, CALIFORNIA 92625

TELEPHONE
(949)219-2000
FAX
(949)219-9908

FRED GAINES
SHERMAN L. STACEY
LISA A. WEINBERG
REBECCA A. THOMPSON
NANCI S. STACEY
KIMBERLY RIBLE
ALICIA B. HARTLEY

March 31, 2009

Th 9c

Commissioners
California Coastal Commission
45 Fremont Street, #2000
San Francisco, California 94105

Re: Application for Permit No. 4-09-013 (Mariposa Land Company)
Maintenance of Rock Protection along Malibu Creek, Malibu

Dear Commissioners:

On Wednesday, April 9, 2009, I will appear before you on behalf of Mariposa Land Company, the Applicant in Application No. 4-09-013, for the public hearing on its Application to maintain the existing rock bank protection along its property immediately north of Pacific Coast Highway on the west bank of Malibu Creek. The Staff Recommendation effectively denies the Application and requires the Applicant through Special Conditions to remove the existing rock bank protection, grade the bank of Malibu Creek, and replace the rock over a filter fabric on the newly graded bank. The net change for this extraordinary measure is a minor relocation of the rock at an unfeasible cost.

The rock bank protection has been in place for more than 10 years. No adverse effects from the existence of the rock bank protection have been observed or documented. The rocks were lawfully installed based upon an Emergency Permit issued by the Executive Director and appropriate Army Corps of Engineers procedures. The emergency arose in February of 1998 when significant heavy rainfall caused unanticipated erosion. The high waters of Malibu Creek removed up to 20 feet along the Applicant's property adjoining the Cross Creek Plaza Shopping Center.

Observing the extreme erosion on its property, the Applicant was concerned that it may have liability to the shopping center owner if it did not take reasonable steps to prevent further erosion to prevent the shopping center from being damaged. Before 1981 a property owner was protected from liability because the property owner owed no duty to adjoining owners to prevent damage from natural conditions. However, a California Supreme Court ruling in 1981 placed that protection in doubt. A property owner might owe a duty of care to assure that natural

Applicant - Exhibit 1
4-09-013 (Mariposa)

EX. 13 h

conditions on its property do not damage adjoining property when those natural conditions can be reasonably corrected. *Sprecher v. Adamson* (1981) 30 Cal.3d 358. Unsure as to its duties and unwilling to risk liability, the Applicant elected to purchase and place rock to protect the bank at a cost of $60,000 rather than risk damage to the adjoining Shopping Center.

The rock was carefully placed by an experienced contractor and has functioned without failure, deterioration or harm for more than 10 years. Although comments in the Staff Report and by opponents claim that the rock was "unengineered" or "temporary", subsequent evaluation of the placement of the rock by professional engineers has found no basis on which to criticize the rock bank protection. An experienced contractor installed it without the benefit of the prior stamp of an engineer. This is not a basis for finding it inadequate. It is currently approved by engineers for the Applicant, the City of Malibu and Army Corps of Engineers. Moreover, the rock bank protection has successfully functioned as intended since installation. When installed, the Applicant certainly did not look upon the 1400 tons of rock as temporary.

The Applicant followed the proper procedures by seeking and receiving an emergency permit. This application is a follow up for that emergency permit. Before this application could be made, Staff required that the Applicant obtain numerous engineering and environmental studies and obtain approvals from the City of Malibu, California Department of Fish & Game and U.S. Army Corps of Engineers. Each of these agencies asked for additional work as did the Commission Staff. This took considerable time. Ultimately, all other agencies gave approval to maintain the rocks as existing.

Staff now recommends that the rock bank protection be removed only for the same rock to be put back in substantially the same location after limited grading of the bank and the placement of a filter fabric. The recommended mitigation by revegetation is the same as the Applicant proposes. The change proposed by Staff comes at a cost of more than $1,000,000. As will be shown below, taking the rock out (much of which is below water) and grading the bank is far more difficult, and causes substantially more environmental harm, than the original placement of the rock on the existing bank in 1998. It is not feasible for the Applicant to make such an expenditure to to protect the shopping center (which it does not own) while at the same time being required to intentionally excavate its own property.

1. **The Staff Agrees That Under the Coastal Act, the Applicant is Entitled to Protect the Malibu Creek Bank and that Rock is the Appropriate Method of Protection but the Staff Requires a Revision to the Project which is Not Feasible.**

The Staff and the Applicant are in agreement on the two critical points which support approval of a rock wall to prevent erosion. First, the erosion of the bank of Malibu Creek in the vicinity of the Shopping Center poses a serious risk to the fire lanes, septic disposal field and buildings of the Shopping Center. Second, the placement of rock on the bank is the least environmentally damaging alternative to protect the bank. Staff agrees that the rock placed by the Applicant provides protection to the bank. (See, Memorandum of Lesley Ewing, Staff

Report Exhibit 11.) Staff also agrees that the revegetation plan for mitigation proposed by the Applicant is reasonable. (See, Memorandum of Jonna Engel, Staff Report Exhibit 12.) The essential difference is whether the slope of the face of the rock can average 1.7 to 1 (the Applicant's position) or must be not less than 2 to 1 (the Staff position).

The establishment of a rock wall to protect the bank is permitted under Public Resources Code Section 30236 as a "flood control project where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development." There is no dispute that the west bank of Malibu Creek north from the Pacific Coast Highway bridge has become subject to severe erosion over the past 35 years.

In the enclosed booklet under Tab 1 is a series of photographs from 1962, 1977, 1981 and 2000. In 1962, the course of Malibu Creek was essentially straight from the vicinity of the Cross Creek Road crossing to the Pacific Coast Highway bridge. (See also, Staff Report, p. 12-13.) The 1962 photograph also shows how much land lay between the course of Malibu Creek and the Shopping Center property line. Over the next 35 years, accretion on the west bank of Malibu Creek to the north and accretion on the east bank of Malibu Creek on the southern end of this course created a significantly curved watercourse. The curve moved the main channel into a direct line with the Applicant's property and the Shopping Center. Substantial rains in 1998 gave the Malibu Creek waters the power to erode the bank by 20 feet as the creek was forced to turn almost 90 degrees to go under Pacific Coast Highway bridge. The Staff agrees that the protection of the bank is necessary to protect existing development. (Even if the Shopping Center were not threatened, the Applicant has a right to protect its own land from erosion. To the extent the Coastal Act, or the Commission in administering the Coastal Act purports to prohibit such protection, results in a taking of the Applicant's property by the State without compensation.)

The Staff also agrees that no method for protecting existing structures will work and is feasible other than a rock bank protection. However, the Staff Recommendation, at extraordinary cost which is not feasible, requires that the rock be removed and then put back again with very small change in the final result. Here the alternative design in the Staff Recommendation fails to meet the requirements of Section 30236 that the alternative design be "feasible". Feasible is defined in Public Resources Code Section 30108 as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, economic, social and technological factors." As detailed below, the adverse environmental effects of the Staff Recommendation, the economic demand upon the Applicant and the technological difficulty of dewatering the site in order to carry out the Staff Recommendation, all demonstrate that the Staff Recommendation is not feasible.

2. **The Staff Recommendation is Not the Least Environmentally Damaging Alternative.**

The Staff and the Applicant disagree on whether maintaining the rock bank protection as the Applicant proposes, or removing and then replacing the rocks as the Staff recommends, is the least environmentally damaging alternative. By Special Conditions, the Staff wants the existing rock bank protection to be removed, the bank graded back to a slope not more than 2 to 1, a filter blanket placed over the newly exposed soils and the rocks replaced. Mitigation with willow and other planting already proposed by the Applicant is also required.

Under the Coastal Act, the Commission can only adopt the Staff alternative if it finds that it is both feasible and the least environmentally damaging alternative. The Staff Report has little analysis of the impacts of its proposal and is inadequate as a CEQA document. The evidence shows that leaving the existing rock bank protection in place and mitigating with a revegetation plan as proposed by the Applicant is the least environmentally damaging alternative. This is supported by the reports and studies prepared by the Applicant's engineers and ecologists and by common sense.

The evidence will not support the Staff Recommendation. A coffer dam along a 500 foot portion of Malibu Creek, pumping out the water to allow access to remove the rocks, removal of the rocks, grading of the bank, placing a filter fabric and replacing the rocks only a few feet away from where they were before removal, with the same mitigation the Applicant proposes, is **not** the least environmentally damaging alternative.

a. **The Staff Alternative Creates Adverse Environmental Effects and an Engineering Solution that will be Less Effective.**

The Staff Alternative is based upon a theory that having the rocks at a slope not greater than 2 to 1 will be more like a natural bank and will enhance the potential success of the mitigation measures. The Staff claims that the majority of the rock is placed at 1 to 1 slope angle. This figure was taken from an estimate based on personal observation by a consulting biologist in 2000. This observation was demonstrated to be inaccurate, but it is cited repeatedly, and wrongly, as true. In 2008, the staff required a detailed survey of the rock bank protection. This was performed by David Grimes, a licensed surveyor with Grimes Engineering. The survey showed that the majority of the rock was laid at an angle closer to 1.7 to 1 with the steepest at 1.3 to 1 and the least at 2.1 to 1. Engineer David Jaffe made the slope calculations which are shown on Applicant's Exhibit, Tab 2. A comparison of the Staff Calculation of slope as shown on Staff Report Exhibit 6 is contained on the engineer's calculations and in each case shows the Staff calculation to have exaggerated the slope of the existing rock.

i. **Removal, Grading and Replacement of the Rock will Have Adverse Environmental Effects.**

To remove the rock, grade the bank, and replace the rock as required by the Staff Recommendation will have adverse environmental effects and will risk other significant adverse environmental effects which the Staff Report fails to recognize or analyze. The Commission must understand what it is approving if it accepts the Staff recommendation. The existing rocks will need to be removed and stockpiled. Half of the rocks are below the normal waterline and cannot be removed without removing the water from the area of work. In order to have the area of work accessible, it is necessary to have a coffer dam built of sheet pilings within Malibu Creek parallel to the shore, about 20 feet from the bottom of the rocks. A pile driver suspended from a crane or backhoe would drive piles into the creek bed to create the coffer dam.

Once the coffer dam is in place, the water trapped behind the cofferdam would need to be pumped out over the cofferdam and back into the Creek and Malibu Lagoon. A coffer dam cannot prevent leakage so pumps will necessarily operate continuously throughout the time of the work, estimated to be at least 6 weeks. From the top of the bank, equipment would lift the rocks (with a median weight of 4 tons each) and carry them to a location to stockpile. Lifting the rocks is far more difficult than placing them and often requires massive chains manually set around each rock. With chains in place, either backhoes or cranes are necessary to lift the rocks.

Once the rocks have been removed, large backhoes would grade back the bank to the Staff's desired 2 to 1 slope. Then a filter blanket would be laid over the bank and the rocks would be returned. In order to avoid damage to the filter blanket, placing the rocks is again more difficult than the original 1998 placement. Willow plantings through holes cut in the filter blanket would then be done as mitigation. The coffer dam would be removed. This is generally done by vibrating the piles to loosen the piles from embedding in the creek bottom. An illustration of the elements necessary to carry out the Staff Recommendation is included as Applicant's Exhibit, Tab 3, where the coffer dam, various heavy equipment and dewatering pumps are shown.

The Staff Report does nothing to analyze the environmental effects of this recommended alternative. The Staff Report brushes off the adverse environmental effects with a few sentences acknowledging, but not analyzing, these adverse effects. See, Staff Report, p. 25. The reasonably foreseeable adverse effects are as follows.

First, the laid back configuration of the rocks will increase sediment transport potential as compared to the existing configuration, thereby eroding the creek bottom at the base of the slope. PACE Engineering conducted a SAM Sediment Hydraulic analysis based on Army Corps of Engineers models and determined that the change recommended by the Staff would increase the transport potential for sediment passing the location. This allows sediment to be removed without replacement, resulting in a net deepening adjoining the rocks. It will also increase the potential for sediment entering the Malibu Lagoon, an adverse effect.

Second, the laid back configuration of the rocks will increase flood potential because it does not contain the creek waters as effectively. PACE Engineering conducted a HEC-RAS (Corps of Engineers River Analysis System) analysis of the change from laying back the slope even the small degree required by the Staff Recommendation. The analysis showed that there would be an increase in the potential for flooding beyond the rocks of up to 0.9 feet. (See Applicant's Exhibit, Tab 4.)

Third, In addition to the permanent increase in sediment transport potential, installation of the coffer dam, even with carefully designed BMP's, and reduction of the width of the creek, will adversely affect the sediments carried in the stream. Dewatering and then removal of the coffer dam by vibration will have an additional effect. The addition of fine sediments to Malibu Lagoon will affect water quality and decrease water infiltration through the sand bar. This may place the sand bar in jeopardy of premature breaching as water builds up behind the bar.

Fourth, there are adverse biological impacts to engendered species. The tidewater goby has been transplanted to the Malibu Lagoon and estuary where it had a natural habitat. Its range extends up to the location of the rocks. Without any consultation with the U.S Fish & Wildlife Service (which administers the Endangered Species Act), Special Condition No. 7 proposed by Staff purports to authorize a "qualified resource specialist" to capture and relocate any tidewater goby found to exist. This is unlawful without an incidental take permit from U.S. Fish & Wildlife Service since the Endangered Species Act prohibits not only killing, but harassing an endangered species.

Capturing any tidewater goby may prove difficult as the tidewater goby tends to burrow into the bottom, or seek shelter among rocks, when disturbed. A week of pile driving and a week of pile removal, four weeks of dewatering, operation of heavy equipment causing additional vibration, underwater noise, potential increased siltation of the Malibu Lagoon and other impacts inherent in carrying out the Staff Recommendation are all reasonably foreseeable to have a negative impact on the tidewater goby. Yet the Staff Report includes no analysis of those impacts on the tidewater goby or its critical habitat.

Fifth, in addition to the tidewater goby, the steelhead trout has been identified as an endangered species and the Malibu Lagoon and estuary as a protected habitat. The same construction requirements have the potential to affect steelhead trout, although their presence in the waters of Malibu Creek and Lagoon, is less documented than the tidewater goby. Again, the Staff concludes without consultation or analysis that constructing the Staff alternative design will have no effect on the steelhead trout or its habitat.

Sixth, no analysis of the impact on bird nesting has been done at all. The Applicant is required to do all of its work in April or May. (See Special Condition No. 5a.) No analysis of the effect of the work on bird nesting appears in the Staff Report.

Seventh, no analysis of the effects of the considerable heavy equipment necessary to carry out the project (including backhoes, cranes, pumps, trucks and other equipment) operating for many weeks in a sensitive location adjoining the creek, has been done. Simply the requirement of BMP's does not substitute for an analysis of the risk of adverse environmental effects. Surprisingly, Special Condition 5c prohibits construction equipment or activity which would have any impact on environmentally sensitive habitat areas, streams, wetlands or their buffers. Special Condition No. 5c effectively prohibits the Staff Recommendation because (a) 4 ton boulders cannot be removed without heavy construction equipment, (b) a coffer dam in the creek cannot be installed and removed without impacting the stream, (c) the creek bank cannot be graded to a 2 to 1 slope without heavy equipment, and (d) the rock bank protection cannot be replaced without heavy equipment. The Applicant can no more carry out the Staff Recommendation and comply with Special Condition No. 5c than the jewish slaves of pharaoh in Egypt could build bricks without straw. The simple difficulty of implementing Special Conditions Nos. 2, 5, 6 and 7 should inform the Commission that extensive risks of adverse environmental effects have simply been ignored.

ii. **The Benefits from Removal and Replacement of the Rocks Claimed by the Staff Do Not Arise.**

The staff claims a number of benefits arise from the change it recommends. First, the Staff Report says that it will protect Malibu Creek from disruption of habitat values, restore biological productivity and water quality to maintain optimum aquatic populations. (Staff Report, p. 26.) There is no evidence that the existing rocks disrupt habitat values, nor that removal and replacement of the rocks results in any change to habitat. There is no evidence that there is any effect of the existing rocks on biological productivity or water quality or that the removal and replacement of rocks restores anything that is affected by the existing rocks. Finally, there is no evidence that implementing the Staff Recommendation has any effect on "optimum aquatic populations".

The Commission cannot analyze this project by ignoring that the rocks that presently exist, do exist. This is not a violation where the Commission assumes that the project has not been implemented. This is a lawfully installed protection which the Applicant seeks to keep. Therefore, the comparison is not between what might have existed if the rocks had not been placed as they are today and the Staff Recommendation. The comparison must be between the rocks today and the changes the Staff Recommendation would require. If the rocks today have no adverse water quality, biological productivity, or disruption of habitat values (as was found by the City of Malibu under CEQA), then changing the project to what the Staff recommends does not "restore" biological productivity which was never lost, "restore" water quality which was not affected, protect from "disruption" of habitat values that were never disrupted, or assure "optimum aquatic populations" which were never reduced.

The real substance of what the Staff claims as benefits is limited to the alleged potential for the willows planting among the rocks to be more successful. (See Staff Report, Exhibit 12, page 2.) The balance of the revegetation plan is acceptable to the Staff, only the willows are claimed to benefit from the change in slope. Larry Lodwick of Impact Sciences disagrees and states that the willow cuttings placed among the existing rocks will be just as effective. (See Applicant's Exhibit, Tab 5).

The Staff also claims that the removal and replacement of rocks will reduce turbidity because of the filter blanket. However, there is no evidence that the existing rocks have caused any turbidity which needs to be reduced. To create additional turbidity, the existing rocks would have to suffer "piping" which is the erosion of soils behind the rocks. In the 10 years that the rocks have been in place, the engineers and biologists have not found any piping in the existing condition. Removing and replacing the rocks would increase turbidity from pile driving, grading and dewatering. No amount of best management practices can avoid this. The filter blanket on the newly graded soils is biodegradable and will be laced with holes for the willows. Ultimately, the Staff Recommendation reproduces most of the existing conditions.

iii. **Leaving the Existing Rocks in Place has No Adverse Environmental Effect.**

The Staff required that the Applicant obtain approval from the City of Malibu and that the City of Malibu evaluate the potential environmental effects under CEQA. The City did so and concluded that maintaining the existing rocks posed no risk of significant adverse environmental effect. Mitigation with vegetation replanting and control (with which the Impact Sciences plan is consistent) was required.

The Applicant's proposal to leave the existing configuration of rocks in place has none of the adverse effects that taking out the rock and replacing it would have. Army Corps of Engineers and Department of Fish & Game have both permitted the rocks to remain as they are. The willow planting mitigation proposed by the Applicant is identical to that proposed by the Staff. The Applicant will accept the performance conditions for the mitigation plan. The Staff can point to no evidence that leaving the rocks as they are has any adverse environmental effect.

iv. **The Changes Recommended by the Staff Result in Minimal Net Change.**

In the end, the Commission must be concerned with what has been gained from the tremendous effort required to implement the Staff Recommendation. Behind Tab 2 is a series of 7 cross-sections of the existing wall and of the effect of reducing the bank to a 2 to 1 slope prepared by Engineer Jaffe based on the Grimes survey. The existing wall lies at slopes from 1.3 to 1 to 2.1 to 1. The average is 1.7 to 1. This is not significantly different from the Staff requirement. The average distance that the Staff Recommendation would move the top of the rocks back from the creek is 4.3 feet. The average distance at the normal waterline is 26 inches.

The maximum distance at any point is 10.9 feet. All of this tremendous work required by the Staff moves the top of the rocks moved an average of 52 inches. It seems almost axiomatic that such a small change has no real environmental benefit. When weighed against the adverse environmental effects, the Commission should see that a reasonable mind would simply say the existing rocks should stay in place.

b. **It is Unreasonable to Require the Applicant to Assume the Risk of a Design that Its Engineer Believes will be Less Adequate.**

If the Staff Recommendation is adopted, Special Condition No. 1 requires that the Applicant assume the risk of the design recommended by the Staff and indemnify the Commission. This is unreasonable. The Applicant is prepared to assume the risk of the design which is recommended by his engineers. But when the Staff changes that design to one which the Applicant's engineers claim will increase the potential for flooding over the rock wall, it is not reasonable to make the Applicant take responsibility for a design which is less effective.

c. **It is Unreasonable to Expect that the Applicant Can Obtain Other Agency Approvals in less than 5 years.**

Having required a different engineering design, Special Condition No. 8 requires that the Applicant obtain all of the other necessary approvals from other agencies. This will now be a far more extensive process as other agencies are unlikely to consider the work necessary to implement the Staff Recommendation to be as benign as the Staff considers it. These other necessary approvals would include permits from and/or consultation with at least the following agencies: U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, National Marine Fisheries Service, Department of Fish & Game, Regional Water Quality Control Board, Department of Parks & Recreation, and City of Malibu.

As an example, the Commission should look at its own process. The Application was finally accepted as complete by the Staff on May 21, 2008. No staff report was prepared until January 22, 2009. The Applicant asked for its one continuance by right which the Staff could not agree to because the February meeting was the last meeting under the Permit Streamlining Act. In order to avoid the conflict, the Applicant and the Staff agreed to a withdrawal and new application. Even if the Commission takes action on April 9, 2009, it will have taken 11 months. Other agencies move just as slowly.

Commissioners should consider that by the time all of the other permits have been obtained, and after substantial expenditure by the Applicant, the revegetation plan and the willow cuttings in the existing rocks would be mature and complete. Impact Sciences has done a projection of the revegetation plan compared to the present circumstances which is Applicant's Exhibit, Tab 6. The Commission cannot hold the Applicant responsible for the lack of a revegetation plan to date because revegetation was not a part of the emergency permit and would have been unlawful without the Commission action on this Application.

The Commission should also consider the costs involved. PACE Engineering estimate that implementing the Staff Recommendation (without the costs of processing other necessary permits) will exceed $1,000,000. The existing rocks cost $60,000 to purchase and place. The applicant has already spent more than twice that amount on engineering and environmental studies. The Staff Recommendation places the burden on the Applicant to seek many other permits at a very high cost over a period of several years. This adds to the infeasible aspect of the Staff Recommendation.

3. **The Position of Heal the Bay, Baywatchers and Department of Parks & Recreation that a "Flood Wall" behind a "Soft" Protection of Soil and Plants has No Evidence to Support It.**

Heal the Bay, Baywatchers and the Department of Parks & Recreation each have opposed both the Application and the Staff Recommendation. The common thread of each opposition is that some form of "bioengineered" soft planting on a 3 to 1 slope will successfully protect the bank and the structures beyond the bank. No evidence is offered that such a "soft" form of protection will successfully resist the erosive forces of water as it is turned almost 90 degrees from the direction at which it flows directly at the Mariposa Land to go beneath the Pacific Coast Highway bridge. The Commission's action must be based upon fact and science, not hope and desire.

Heal the Bay and Baywatchers both suggest that the protection of the Shopping Center should be created by a "flood wall". No description of what a "flood wall" requires is given. In fact, a flood wall would be a vertical wall that would need foundations beneath the lowest water level of the creek and extend up to above flood level height. It needs foundations where erosion will not let the wall just fall over one day. There is no question that erosion of the "soft" bank solution will occur. The Applicant's property is on the outside curve of a sharp river bend which no amount of "soft" engineering will ever resist. Outside curves of rivers erode to steep, sharp banks. Inside curves accrete with deposits and push the outside curve even sharper. The pictures under Tab 1 show this inexorable process at work. As the owner of all of the relevant property, if State Parks really wanted to limit erosion on the west bank, it would remove major accretion from the east bank that forces the flow to erode the west bank.

Once the creek waters have eroded the soils in front of the wall (which is certain to happen), what would remain is a high (approximately 14 feet) vertical, concrete wall, with no plants, no soil and no mitigation. Somehow, Heal the Bay and Baywatchers recommend this as a less environmentally damaging alternative. Commission Staff agrees that the alternative does not meet the Coastal Act. Of course, all the environmental damage from removing the existing rock (coffer dam, dewatering, etc.) will occur. It is hard to see how allowing erosion of the entire bank back to a concrete "flood wall" causes less environmental damage.

The opponents' alternative also requires that all of the Applicant's land be eroded away. It is hard to see how this benefits the water quality or the Malibu Lagoon. Those eroded sediments have only one place to go. Only the Malibu Lagoon is downstream. The sediments have no other locations for deposition. Having spent so much effort to restore the Malibu Lagoon, it is surprising that State Parks courts erosion of new sediments to fill it in again.

4. **The Applicant is Prepared to Accept Suitable Special Conditions.**

The Applicant has prepared Special Conditions which would be appropriate if the Commission agrees to approve the maintenance of the rocks in the present location. (See, Applicant's Exhibits, Tab 7.) These Special Conditions are based upon the Special Conditions contained in the Staff Report, eliminating those that reflect requirements based upon the removal, grading and replacement of the rock.

The Applicant asks that the Commission adopt an amending motion to the motion recommended by the Staff and approve Permit No. 4-09-013 subject to the Special Conditions behind Tab 7.

Sincerely,

SHERMAN L. STACEY

SLS/sh

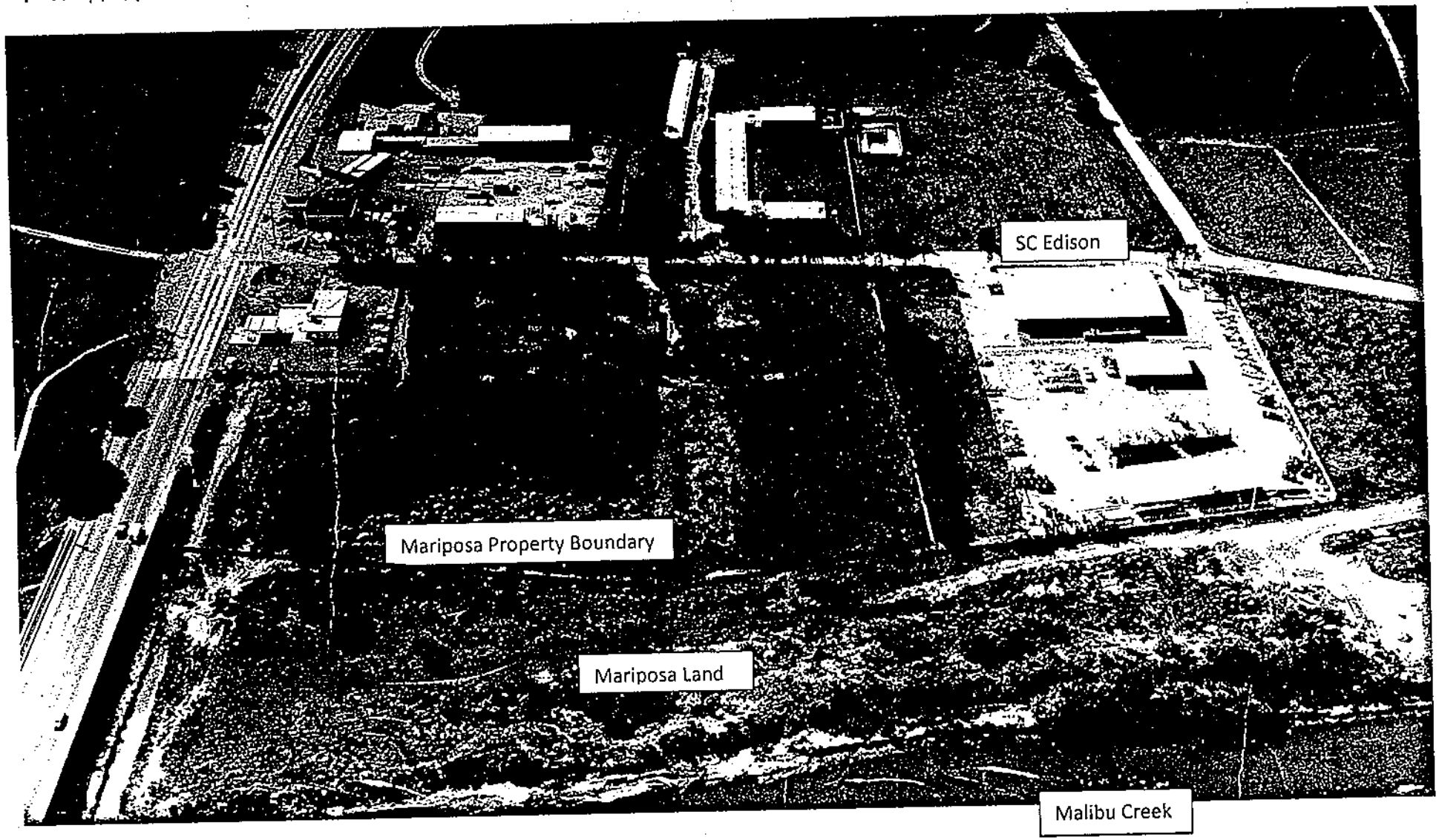
cc: All Commissioners and Alternates
Ventura Commission Office
Mr. Grant Adamson

APPLICATION FOR PERMIT NO. 4-09-013 (MARIPOSA Land Company)

California Coastal Commission

Applicant's Exhibits

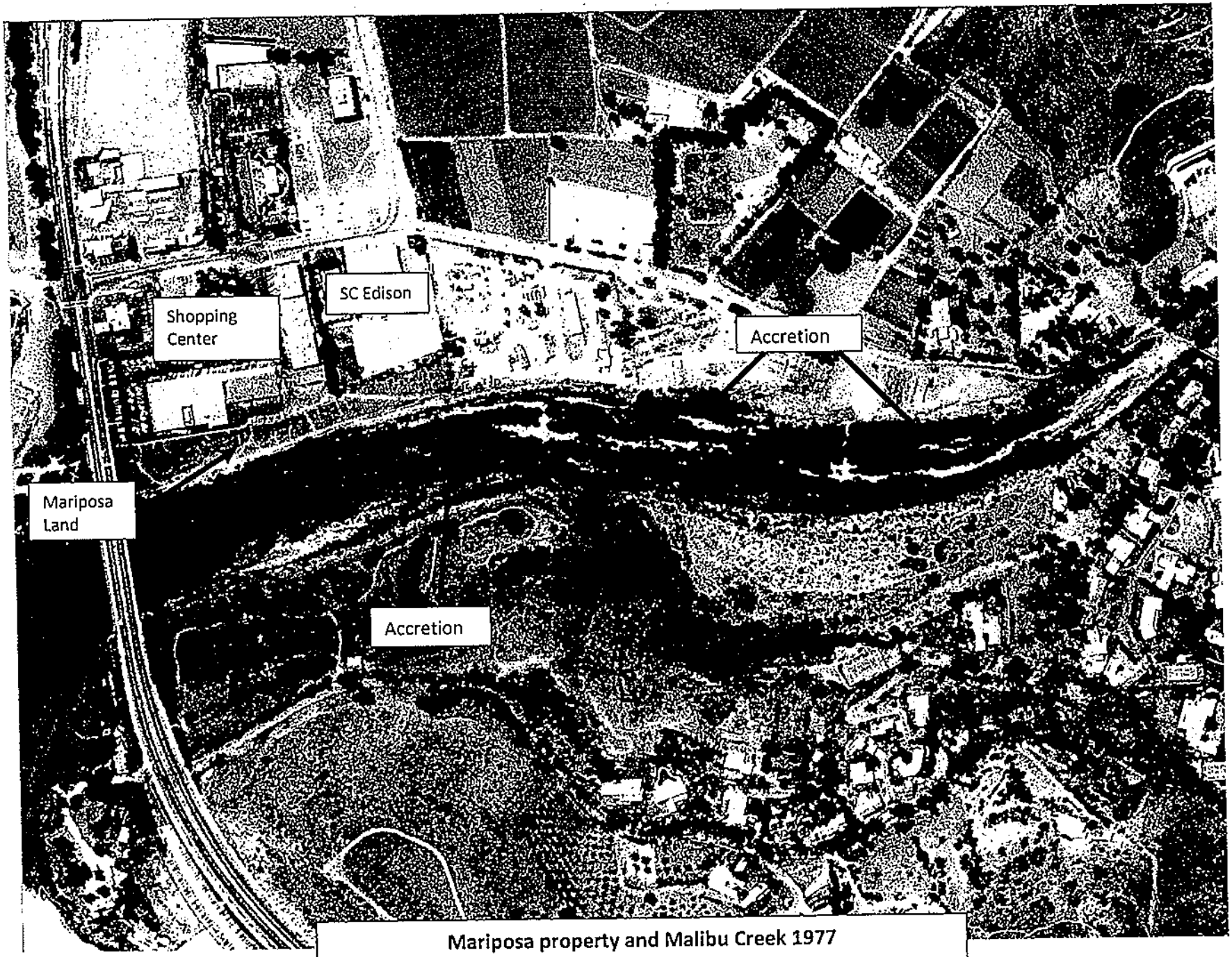
1. Sequence of 1962, 1977, 1981 and 2000 photographs of site showing boundaries.
2. Existing and Staff Recommendation Slope Comparison Analysis by David Jaffe, Professional Engineer.
3. Illustration of Method of Work Necessary to Carry Out Staff Recommendation including Coffer Dam, Pile Driver, Backhoe, Trucks, etc.
4. Letter from PACE Engineering regarding flooding impacts from Staff Recommendation design.
5. Letter from Impact Sciences regarding revegetation of Malibu Creek bank.
6. Illustration of existing and future conditions after implementation of Impact Sciences Revegetation Mitigation Plan.
7. Applicant's Proposed Substitute Motion and Special Conditions.



Malibu creek at PCH 1962

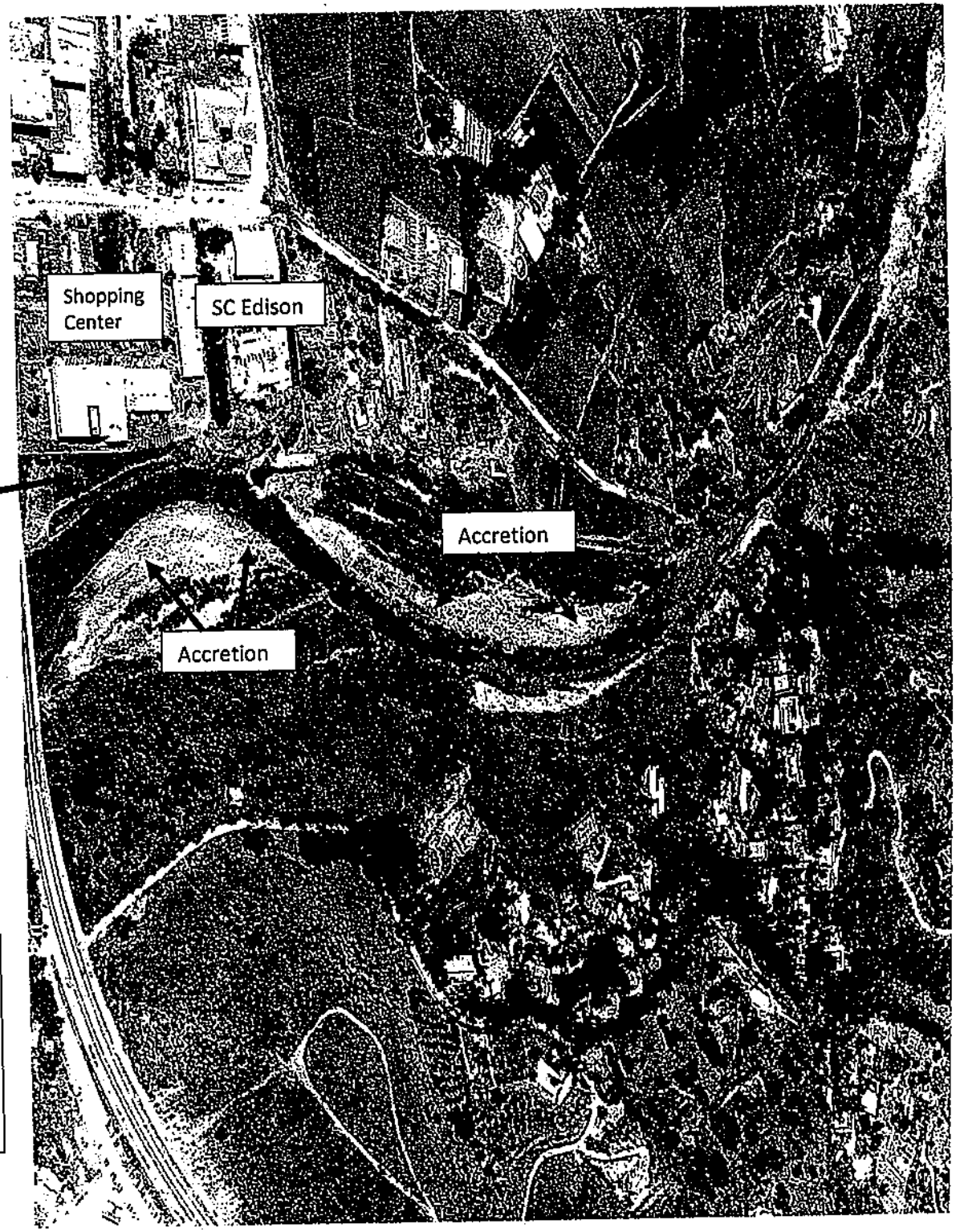
Creek along Mariposa Land is straight and land is wide.

EXHIBIT 1



Mariposa property and Malibu Creek 1977

Accretion along the river banks is curving the river to erode the



Malibu Creek along Mariposa Land – 1981

Increased Accretion moves the river course more directly at Mariposa

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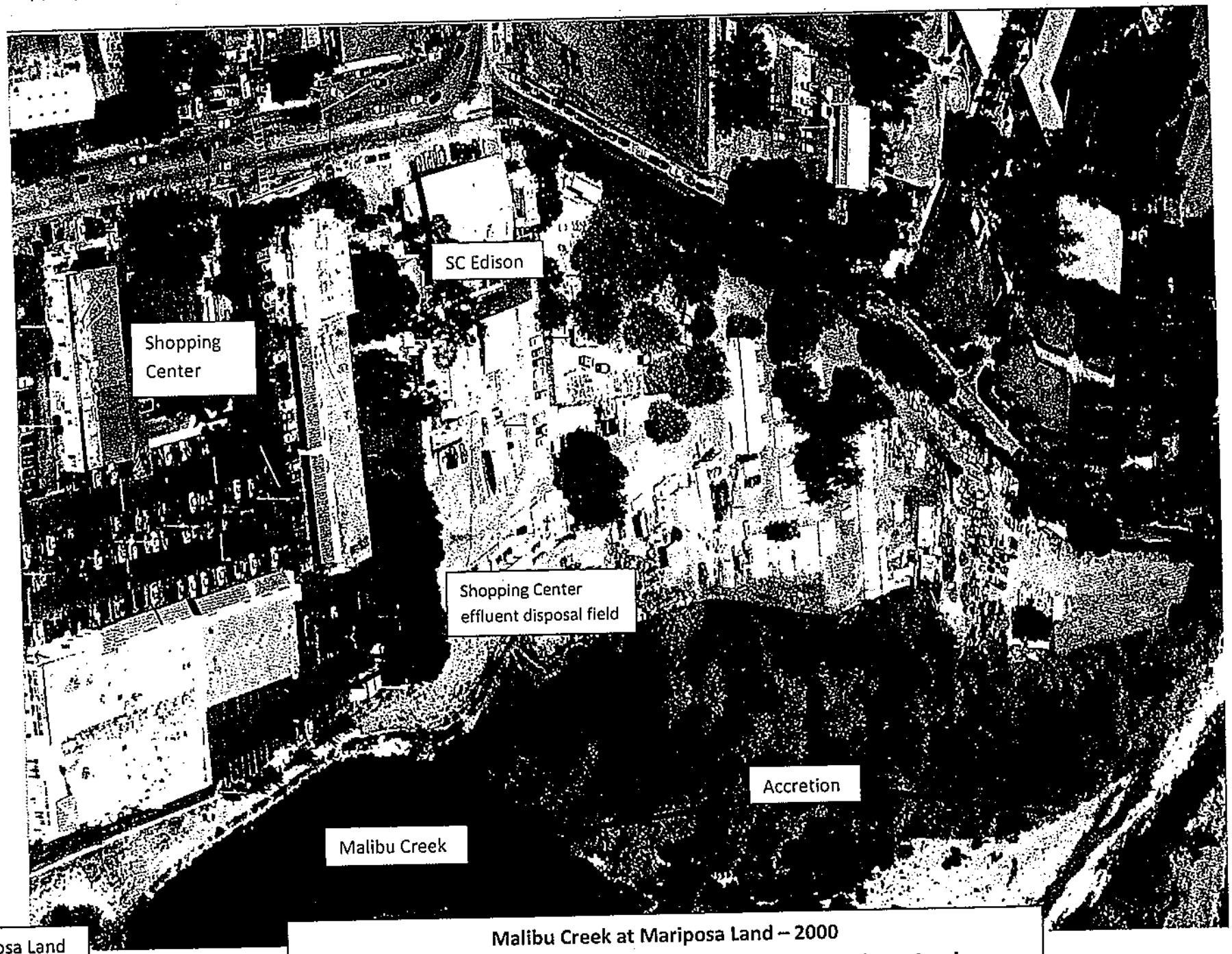
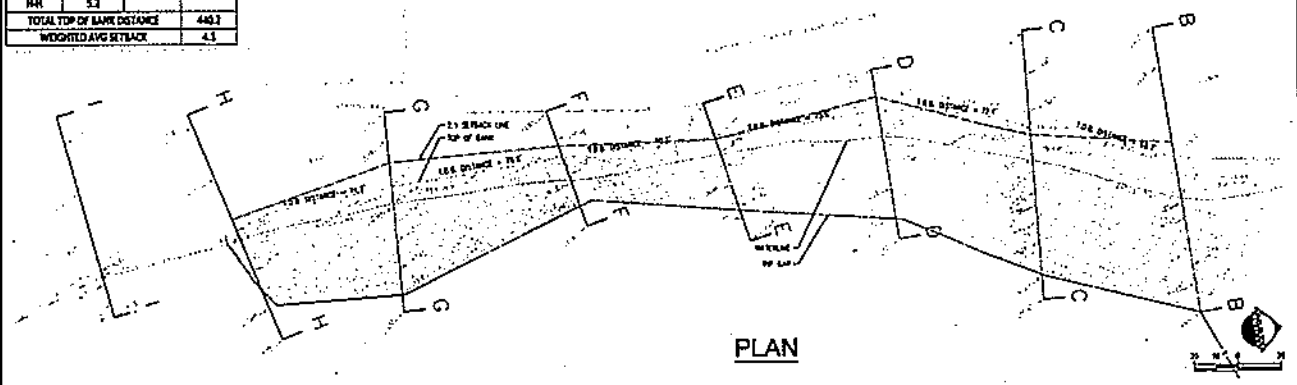


Malibu Creek at Mariposa Land – 2000
River Course now makes 90 degree bend abutting Mariposa Land
Only the existing rock protection prevents erosion of the adjoining shopping center and its newly built effluent disposal field

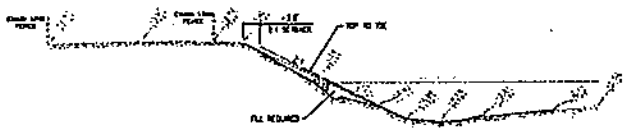
SECTION	2:1 SETBACK	AVG SETBACK	DIST
B-B	6.5	3.4	68.7
C-C	-3.8	1.3	72.4
D-D	6.4	3.1	75.5
E-E	-0.3	2.9	70.3
F-F	6.6	8.5	79.0
G-G	10.9	8.1	74.3
H-H	5.2		
TOTAL TOP OF BANK DISTANCE			440.2
WEIGHTED AVG SETBACK			4.5



PLAN

SECTION VIEW "B-B"
LOOKING NORTHERLY
SCALE: 1"=10'

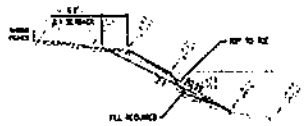
SECTION VIEW "C-C"
LOOKING NORTHERLY
SCALE: 1"=10'



SECTION VIEW "D-D"
LOOKING NORTHERLY
SCALE: 1"=10'

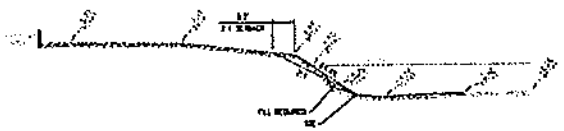
SECTION VIEW "E-E"
LOOKING NORTHERLY
SCALE: 1"=10'

SECTION VIEW "F-F"
LOOKING NORTHERLY
SCALE: 1"=10'

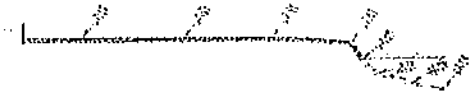


SECTION VIEW "G-G"
LOOKING NORTHERLY
SCALE: 1"=10'

SECTION VIEW "H-H"
LOOKING NORTHERLY
SCALE: 1"=10'



SECTION VIEW "I-I"
LOOKING NORTHERLY
SCALE: 1"=10'



ENGINEER'S SEAL (SLOPE STUDY ONLY):

GRIMES SURVEYING & MAPPING, INC.
5245 HUNTINGTON DRIVE SOUTH LOS ANGELES, CALIFORNIA 90032 (323)223-1011

SURVEY OF:

MALIBU CREEK

FILE NO: 2006184 SCALE: 1"=10' DATES SURVEYED: SEPTEMBER 12, 2006 PLOTTED: SEPTEMBER 25, 2006 MERRIL CALIFORNIA

SHEET 2 OF 2 SHEETS

SURVEYOR'S SEAL:

13h

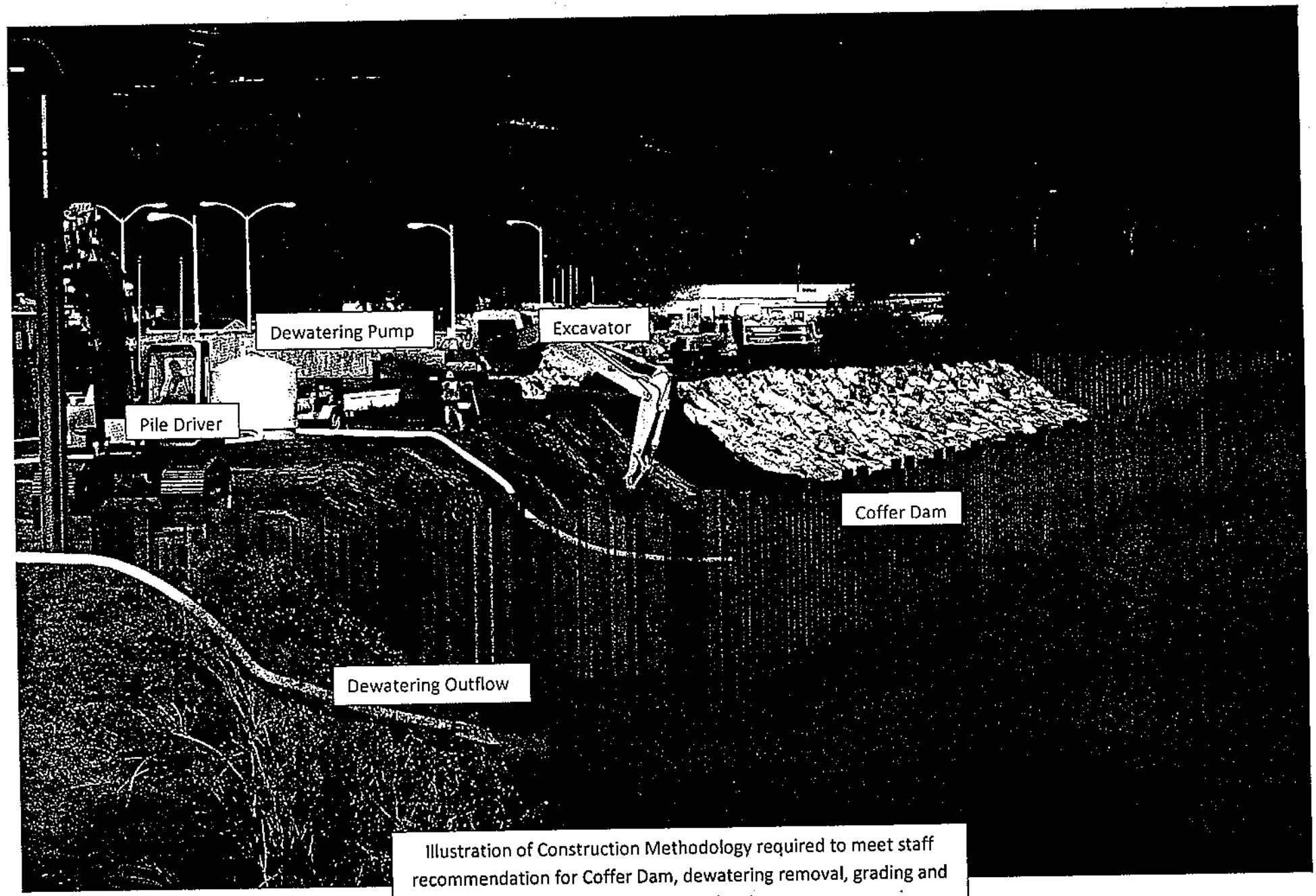


Illustration of Construction Methodology required to meet staff recommendation for Coffer Dam, dewatering removal, grading and replacement of rock.

EXHIBIT 3

PACE
Advanced Water Engineering

March 24, 2009

Fax (310) 456-3182

Page 1 of 2

Grant H. Adamson
Vice President
Mariposa Land Corporation
23852 Pacific Coast Hwy. #368
Malibu, CA 90265
Phone (310) 456-3230

Re: Malibu Creek Bank Restoration
Change in Depth for the Proposed Coastal Commission Improvements # 7856E

Dear Grant,

Attached, please find the results of the existing and proposed conditions HEC-RAS model of lower Malibu Creek. The model output for flow depth is shown in Table 1.

Please recall that the existing conditions model examines the hydraulics of the Creek during the 100-year event with the creek geometry in its present state. The proposed conditions geometry reflects the changes requested by CCC and represents the 2:1 side-slope on the west bank upstream of the HWY 101 Bridge. The revised slope is approximately 500 ft in length.

The results of the modeling indicate that, on average, the depth of flow during the 100-year discharge event will increase by 0.1 ft for the study reach as a whole, and with a 0.9 ft maximum water surface elevation increase.

It is important to note that the overbank area of the project site, as well as the adjacent property presently exists in the FEMA flood zone AO (Depth 2) indicating shallow flooding up to 2 ft (see enclosed FIRM panel 1541F). An increase of flow depth at this location has the potential to exacerbate flooding in the presently mapped location and adjacent to the project site.

Please feel free to contact me with any questions or comments regarding this project.

Sincerely,

David A. Jaffe, PhD, PE
Project Manager

DAJ/AS

P:\7856E\5-Administrative\Letters\Out\Adamson, Grant - Change in Depth 03-24-09.doc

EXHIBIT 4

(4)

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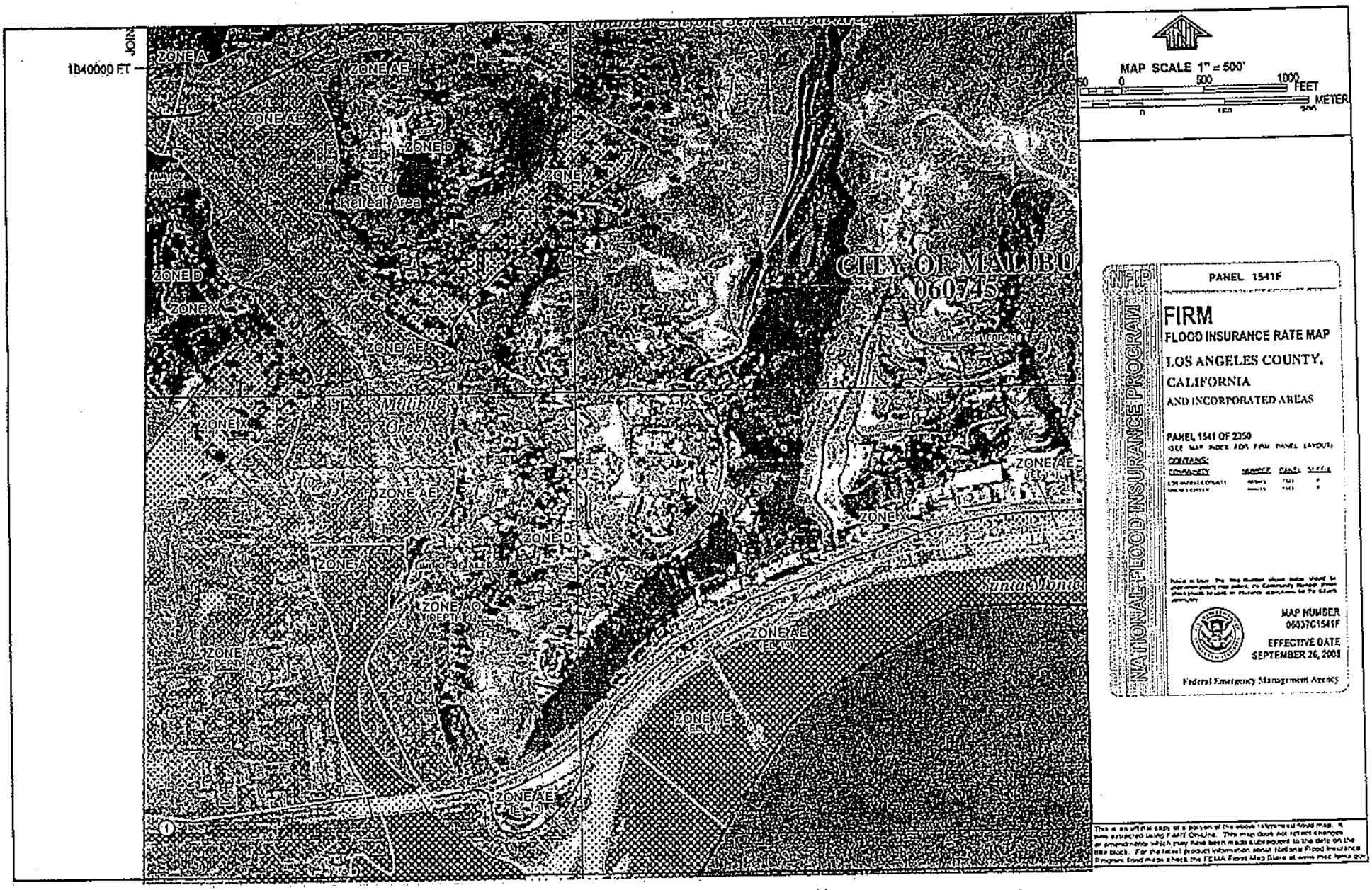
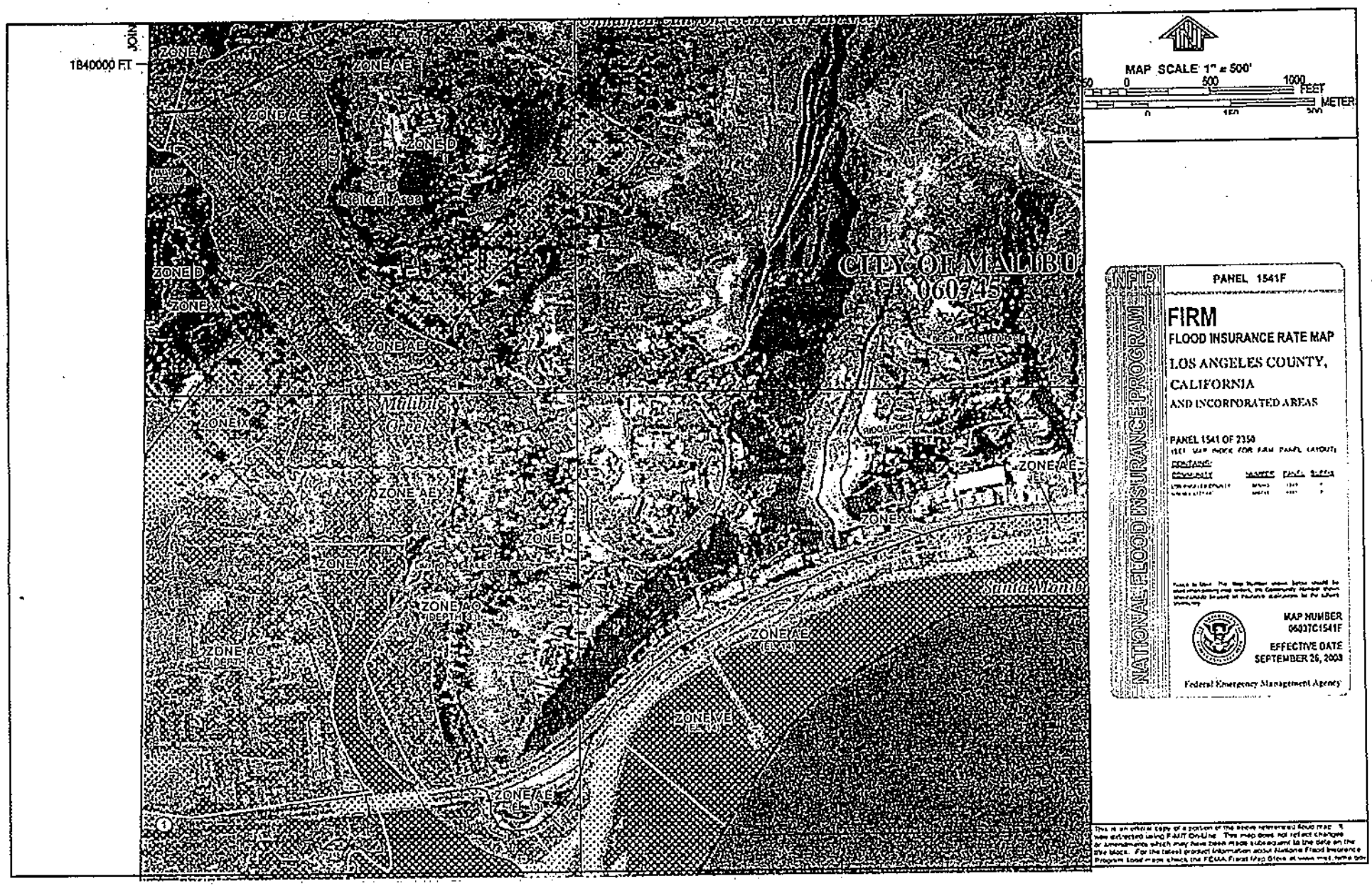
Table 1: Lower Malibu Creek Existing and Proposed (CCC) Depth (ft) by Section			
Section	Depth (ft) Existing	Proposed	Δ
2100	17.5	17.6	0.2
2070.36*	17.3	17.4	0.2
2040.73*	17.0	17.1	0.2
2011.1	15.9	16.1	0.2
2006.1	16.0	16.2	0.2
2001.1	15.9	16.1	0.1
1984.25*	15.9	16.0	0.1
1967.4*	15.8	15.9	0.1
1950.55*	15.7	15.9	0.1
1933.7*	15.7	15.8	0.1
1916.85*	15.7	15.8	0.1
1900	15.6	15.7	0.1
1883.33*	15.6	15.6	0.1
1866.66*	15.6	15.7	0.1
1850.*	15.7	15.8	0.1
1833.33*	15.8	15.9	0.1
1816.66*	15.8	16.0	0.1
1800	15.9	16.0	0.1
1783.33*	15.8	15.9	0.1
1766.66*	15.7	15.8	0.1
1750.*	15.5	15.6	0.1
1733.33*	15.4	15.5	0.1
1716.66*	15.2	15.3	0.1
1700	14.9	15.1	0.2
1683.33*	14.7	14.9	0.2
1666.66*	14.5	14.6	0.2
1650.*	14.3	14.3	0.0
1633.33*	14.2	14.0	-0.1
1616.66*	14.1	13.4	-0.6
1600	14.0	13.5	-0.5
1586.8*	13.9	13.5	-0.4
1573.6	13.8	13.5	-0.3
1568.5	13.8	13.5	-0.3
1563.2	12.7	12.7	0.1
1531.6*	11.3	12.2	0.9
1500	11.3	11.8	0.5
1400	11.0	11.2	0.2
1323	9.9	9.9	0.0
		Average=	0.1
		Maximum=	0.9

PACE





This is an official copy of a portion of the above referenced flood map. It was extracted using FEMA On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www.msc.fema.gov

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IMPACT SCIENCES | 20 YEARS

February 23, 2009

Grant Adamson
Mariposa Land Company
PO Box 2485
Malibu, California 90265

Attn: Grant Adamson

Re: Comments regarding revegetation of the Malibu Creek bank

Dear: Mr. Adamson:

I have reviewed the January 9, 2009 letter from Dr. Jonna Engle to Deanna Christensen of the Coastal Commission regarding the vegetation restoration plan prepared by Impact Sciences for your property. The second paragraph of her letter states that "vegetation has been able to naturally recruit among the rip rap. However, plants are unable to establish on the majority of the rip rap which stand at a steep 1:1 slope angle. It is my opinion that the stream bank restoration would be more successful if the proposed rip rap were to be laid back at a lesser slope angle, such as 2:1, which is more typical for vegetated rip rap bank stabilization designs."

The 1:1 slope was a figure mentioned prior to the survey by Edward P. Sternagle, a licensed surveyor, who determined the true slope, which in part is closer to a 1.7:1 angle. What Dr. Engle did not mention is that the mulefat shrubs that revegetated part of the stream bank are in areas that received sufficient sunlight for the seedlings to become established. The angle of the slopes and the depth of the rip rap in other parts of the stream bank preclude sunlight from penetrating to where seedlings might germinate, thereby not allowing the seedlings to photosynthesize, the process whereby the nutrients are produced for the developing seedlings.

The proposed willow cuttings should be sufficiently long to extend beyond the rip rap thereby allowing developing leaves to be exposed to sunlight, and undergo photosynthesis. The use of cutting would speed up and ensure success of the stream bank revegetation.

The letter also states that "placement of a bottom layer of fabric filter under the rip rap would reduce soil piping and turbidity from high flow events." As the rip rap has been stable for the 10 years since installation, without any sign of soil piping or turbidity, the need for this fabric is questionable. The placement and rooting of willow

EXHIBIT 5

cuttings should only increase stream bank stability. However, if the stable slopes are altered with the rip rap removed and the bank cut back, fabric filter would be required to control soil piping and reduce siltation caused by this new disturbance.

In conclusion, Malibu Creek's banks, where rip rap has been for the past 10 years, can be successfully revegetated if willows are installed in a manner that allows the plants access to the soil to root, stabilize the soil, and obtain nutrients. Furthermore, the manner of installation should permit access to sunlight for photosynthesis, without disturbing the stable banks currently present.

Very truly yours,
IMPACT SCIENCES, INC.

Larry Lodwick

Larry Lodwick
Associate Principal

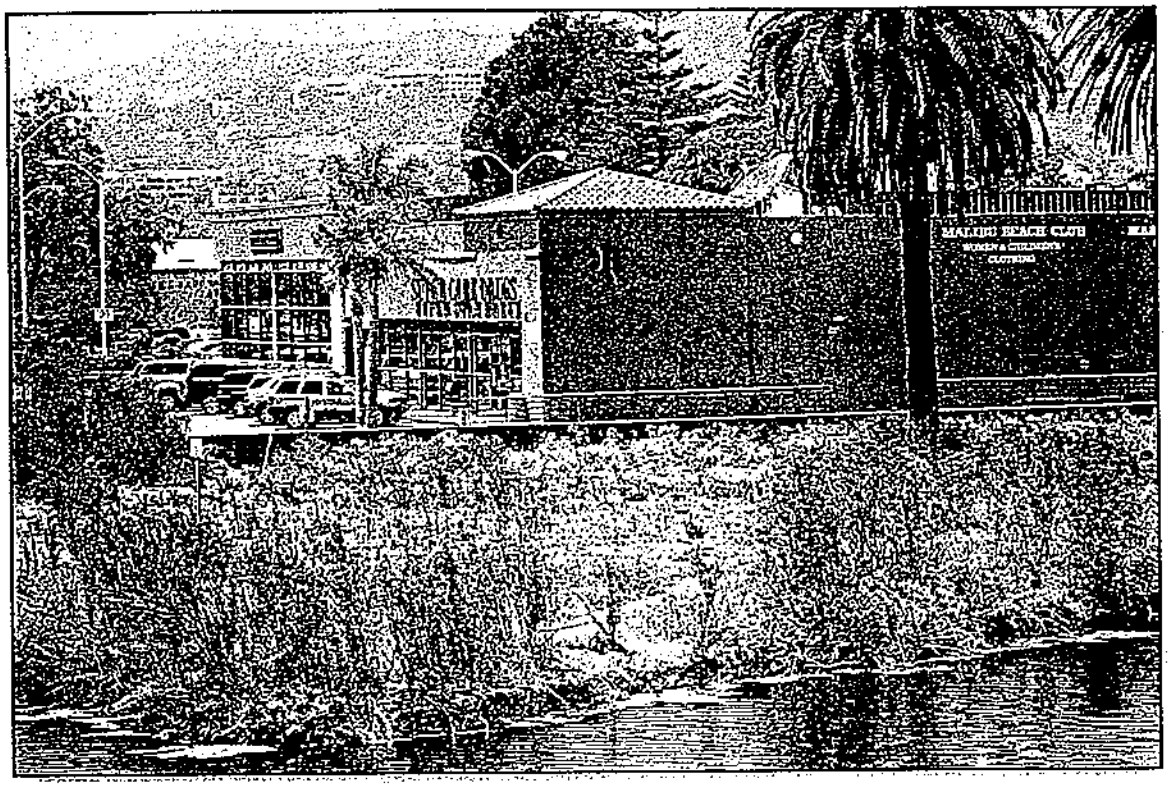


Photo 1 – South end of site

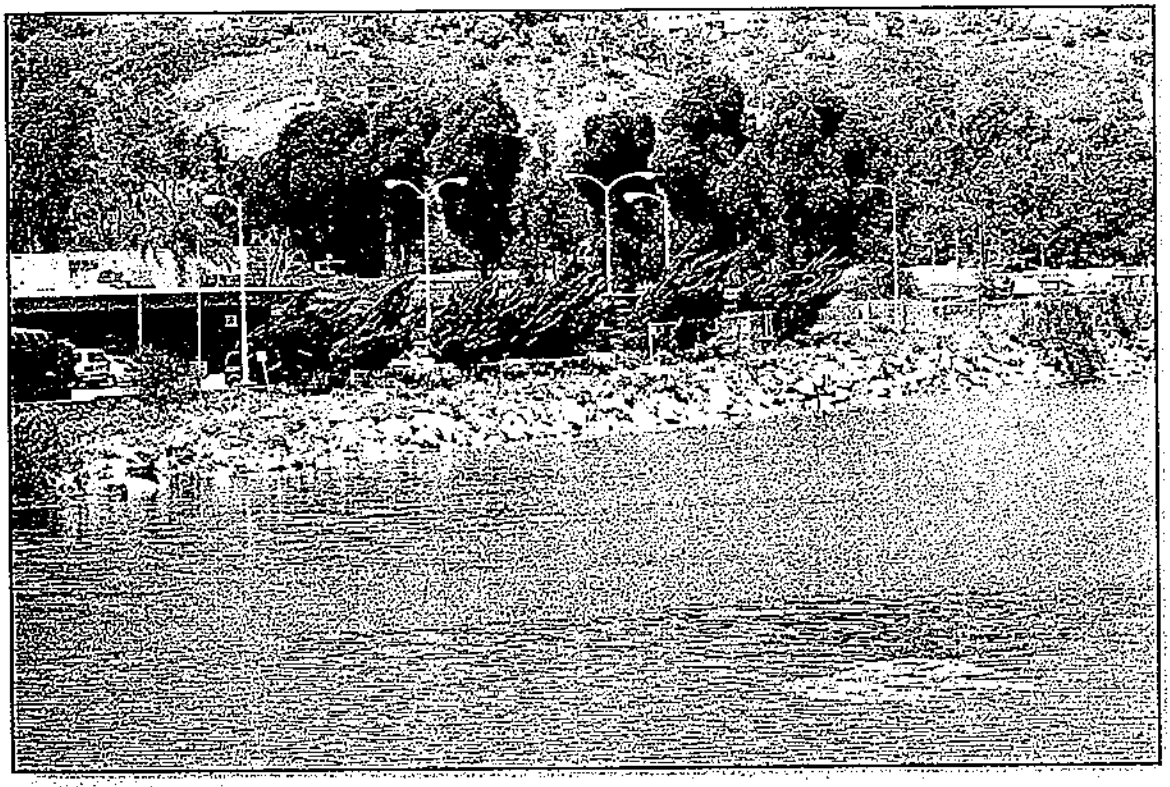


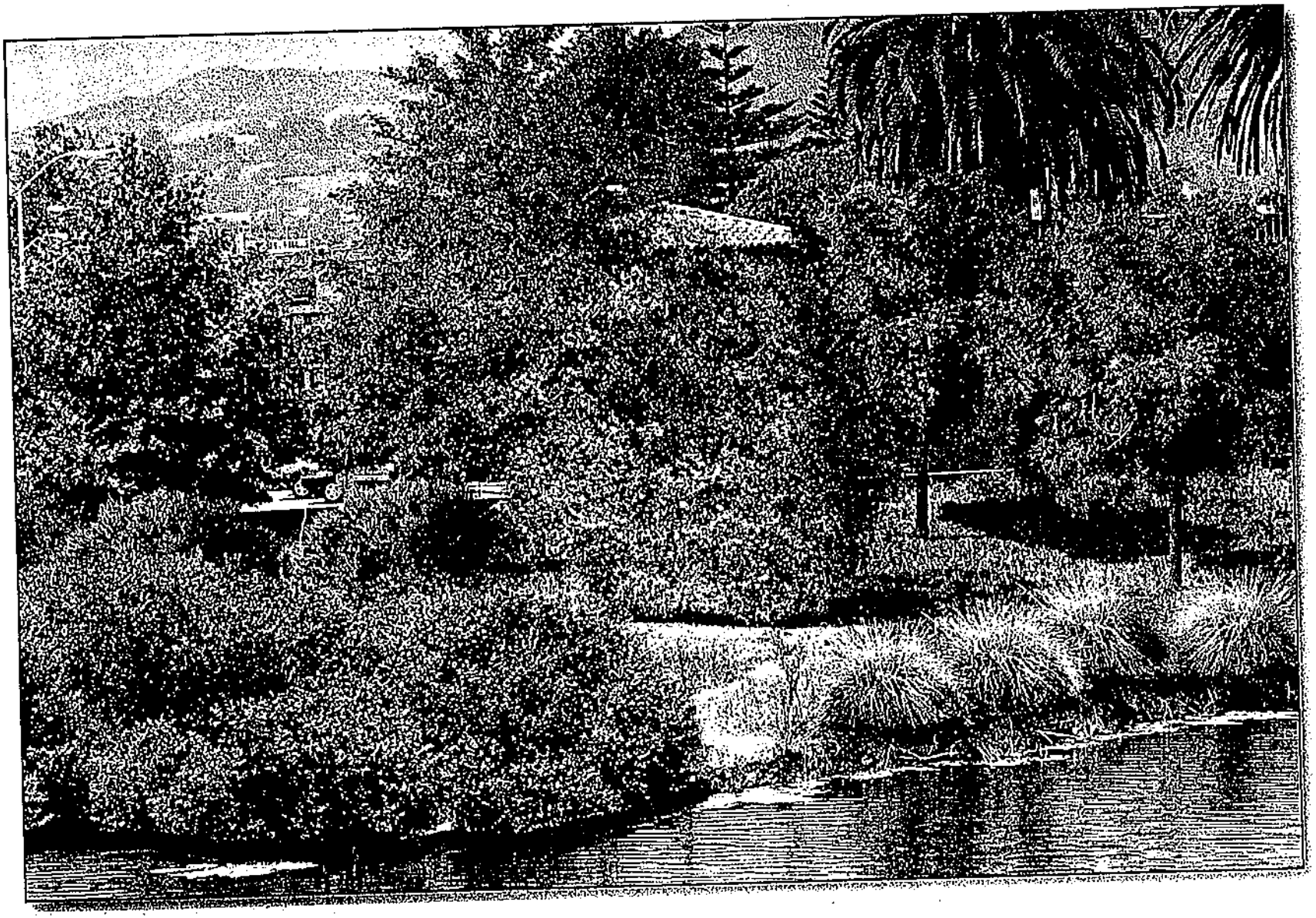
Photo 2 – North end of site

SOURCE: Impact Sciences, Inc. – August 2007

FIGURE 3

EXHIBIT 6 Photographs Depicting Current Site Conditions

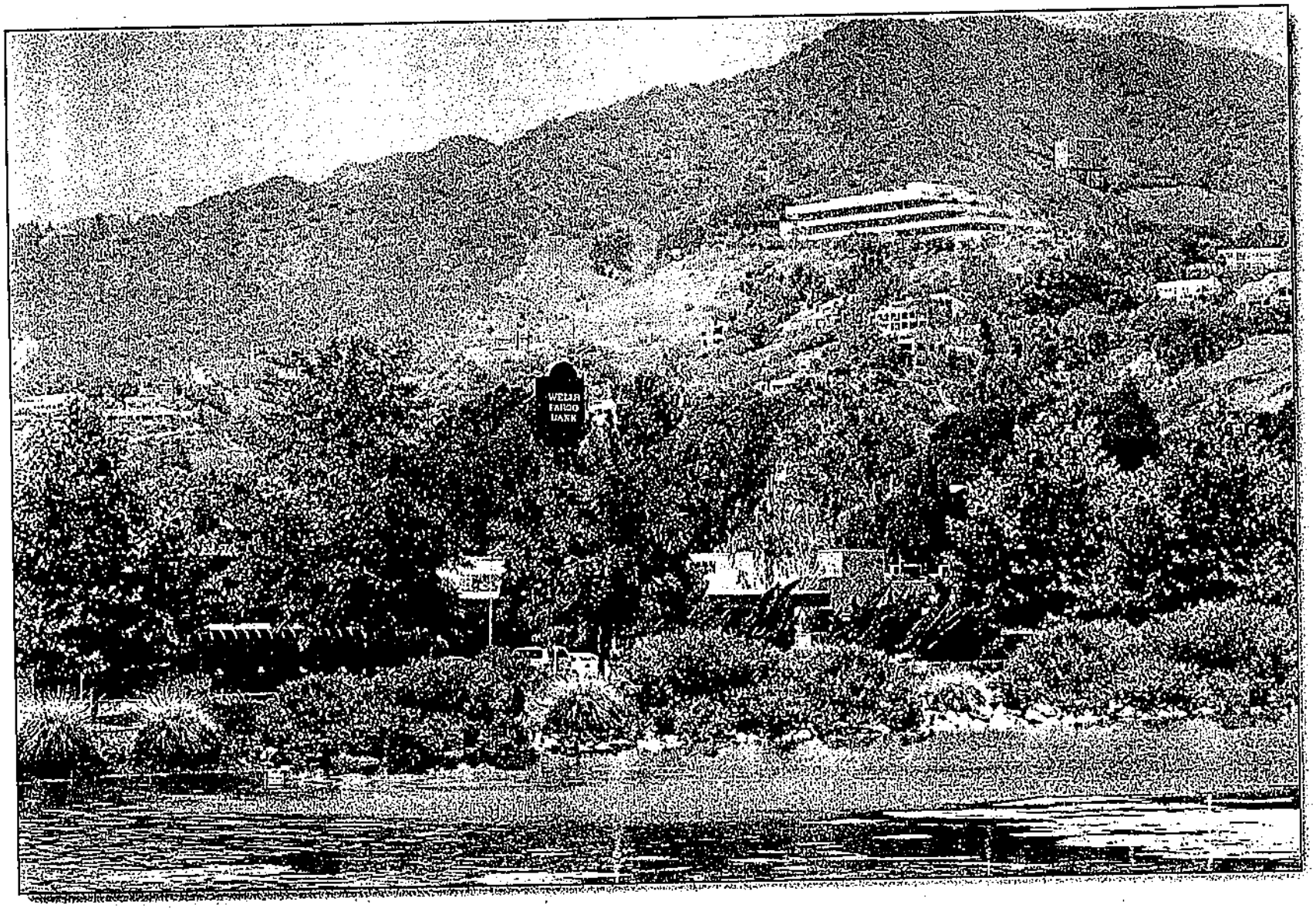
908-001-08/07



SOURCE: Impact Sciences - July 2007

FIGURE 6

Photograph Simulation of Mitigation (Year 5) – South End of Site



SOURCE: Impact Sciences - August 2007

FIGURE 7

Photograph Simulation of Mitigation (Year 5) – North End of Site

MOTION

I move a substitute motion approve to the Applicant's proposed development subject to the Standard Conditions and the Special Conditions set forth below and to adopt revised findings in support of such decision on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will be not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 10 feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

SPECIAL CONDITIONS

1. **Assumption of Risk**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. **Revegetation Implementation and Monitoring**

By acceptance of this permit, the applicant agrees to implement the approved "Vegetation Restoration Plan" (Impact Sciences Inc.). The plan shall be carried out under the direction of qualified biologist or resource specialist. 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 applicant shall submit, upon completion of the initial planting, a written report prepared by a qualified resource specialist, for the review and approval of the Executive Director, documenting the completion of the initial planting/revegetation work. This report shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) documenting the completion of the initial planning/revegetation work.

Five years from the initial planting completion date, the applicant shall submit for the review and approval of the Executive Director, a Revegetation monitoring Report, prepared by a qualified biologist or resource specialist, that certifies whether the on-site revegetation is in conformance with the revegetation plan approved pursuant to Special Condition 3 and has been implemented consistent with, and restoration has been successful as defined by, this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

3. **Maintenance Activities and Future Alterations**

The permittee shall maintain the permitted bank protection in its approved state. Any change in the design of the project or future addition/reinforcement of the approved structure beyond exempt maintenance as defined in Public Resources Code section 30610(d) and Section 13252 of Title 14 of the California Code of Regulations to restore the structure to its original condition as approved herein will require a coastal development permit. However, if (after inspection) it is apparent that the repair and maintenance is necessary, the permittee shall contact the Executive Director to determine whether a coastal development permit or an amendment to this permit is legally required, and, if required, shall subsequently apply for a coastal development permit or permit amendment foe the required maintenance.

4. **Deed Restriction**

Prior to issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2)imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the

event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

5. **Site Inspection**

A. By acceptance of this permit, the applicant irrevocably authorizes, on behalf of itself and its successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit, including the special conditions set forth herein, and to document their findings (including but not limited to, by taking notes, photographs, or video), subject to Commission staff providing 24 hours advanced notice to the contact person indicated pursuant to paragraph B prior to entering the property, unless there is an imminent threat to coastal resources, in which case such notice is not required. If two attempts to reach the contact person by telephone are unsuccessful, the requirement to provide 24 hour notice can be satisfied by voicemail, email, or facsimile sent 24 hours in advance or by a letter mailed three business days prior to the inspection. Consistent with this authorization, the applicant and its successors: (1) shall not interfere with such inspection/monitoring activities and (2) shall provide any documents requested by the Commission staff or its designated agents that are relevant to the determination of compliance with the terms of this permit.

B. ***Prior to issuance of the Coastal Development Permit***, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.

6. **Condition Compliance**

Within 180 days of Commission action on this coastal development permit application, or within such 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 Chapter 9 of the Coastal Act.

RECEIVED
FEB 2 3 2009
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATION

Date and time of communication:
(For messages sent to a Commissioner by mail or facsimile or received as a telephone or other message, date time of receipt should be indicated.)

January 29, 2009, 2:00 pm

Location of communication:
(For communications sent by mail or facsimile, or received as a telephone or other message, indicate the means of transmission.)

Conference Phone Call

Person(s) initiating communication:

Sherman Stacey, Gaines and Stacey

Person(s) receiving communication:

Bonnie Neely

Name or description of project:

Feb Coastal Agenda Items:
Th2.6a – 4-98-24 - Mariposa Land Co. Application, Malibu, LA County

Detailed substantive description of content of communication:
(If communication included written material, attach a copy of the complete test of the written material.)

Mr. Stacey, representing the applicant, explained that the project was a creek bank protection installed under emergency permit 10 years ago. Staff was recommending removing and reconfiguring the rock protection to a lesser slope by grading the bank but applicant objected because existing rocks gave better protection, there was an acceptable mitigation plan, and reconfiguring the slope would cause environmental damage over a large area. Stacey said the project has been approved by City, Army Crops, RWQCB, and Fish and Game. Staff recommendation would also split applicant's property without access. Removing and reconfiguring caused great damage for little benefit.

Signature of Commissioner

Date: January 29, 2009

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceedings and provide the Executive Director with a copy of any written material that was part of the communication.

Coastal Commission Fax: 415 904-5400

Exhibit 14
4-09-013 (Mariposa)
Ex Parte Communications

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

JAN 30 2009

Name or description of project, LPC, etc.: 4-98-024

Date and time of receipt of communication: 1/27/09 10:15am

Location of communication: 7727 Herschel Ave, La Jolla

Type of communication (letter, facsimile, etc.): Meeting

Person(s) initiating communication: Sherman Stacey

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

Stacey represents applicant. Stacey explained that project was a creek bank protection installed under emergency permit 10 years ago. Staff was recommending removing and reconfiguring the rock protection to a 2 to 1 slope. Applicant objected because existing rocks gave better protection and reconfigured slope would have greater damage over a greater area. Staff recommendation would also split Applicants property without access.

1/28/09
Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. IF it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at eh meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

ex. 14

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LPC, etc.: Application No. 4-09-013

Date and time of receipt of communication: March 12, 2009 – 11:30 am

Location of communication: Two Portola Plaza, Monterey

Type of communication (letter, facsimile, etc.): Meeting

Person(s) initiating communication: Sherman Stacey

Detailed substantive description of content of communication:

(Attach a copy of the complete text of any written material received.)

Stacey stated that he represented the Applicant. Stacey described that the applicant had installed a rock protection along Malibu Creek in 1998 under an emergency permit. Stacey described that the Staff supported rock protection but wanted the applicant to remove the rock, regrade the bank and replace the same rock in the same location at a flatter slope. Stacey said that the existing bank protection had no adverse impacts which the changes recommended by Staff would mitigate. Stacey stated that the only real claim made by Staff is that willow replanting among the rocks would be potentially more successful if the rocks were changed than it might be with the rocks in the present location. Stacey said that carrying out the Staff Recommendation would have adverse environmental effects by requiring construction within the creek and impacts on endangered species. Stacey stated that the evidence would show that leaving the existing rocks in place with the mitigation proposed by the applicant was the least environmentally damaging alternative. Stacey said that he would deliver written argument and evidence to all commissioners prior to the hearing.

3-30-09
Date

Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable

to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at eh meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

ex. 14