

**CALIFORNIA COASTAL COMMISSION**

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



# W8f

## ADDENDUM

**DATE:** July 7, 2009  
**TO:** Commissioners and Interested Parties  
**FROM:** South Central Coast District Staff  
**SUBJECT:** Agenda Item W8f, Wednesday, July 8, 2009, Coastal Development Permit No. 4-09-015 (Sternberg)

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1. The purpose of this addendum is to: add public comments and address any concerns raised.

In the attached letter dated July 6, 2009, Ms. Alicia Roberts stated her concern about bright lights on gate pillars at the entrance to Dr. Sternberg's driveway. She categorized these lights as a nuisance and asked that this issue be adequately addressed.

Although not specifically related to nearby development, the issue of lighting on the project site is addressed by Special Condition No. 7, Lighting Restriction. Specifically, Special Condition No. 7 states:

*A. The only outdoor night lighting allowed on the subject parcel is limited to the following:*

- (1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.*
- (2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.*
- (3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.*

*B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.*

As conditioned, any lighting on the project site will be designed to minimize impacts to environmentally sensitive resources and visual resources.

2. The applicant has requested to change the project description to include the following:

The construction of two 8 foot high masonry pillars and one 16 foot wide wrought iron gate that are 40 feet from Barrymore Drive and will not exceed the height of Barrymore Drive.

The project description (Page 1 of the staff report) should be modified as follows

*Construction of a 2,139 sq. ft., 25'9 ft. high from existing grade single family residence with attached 462 sq. ft. garage, two 501 sq. ft. attached decks, two 8 foot high masonry pillars and one 16 foot wide wrought iron gate that are 40 feet from Barrymore Drive, a private sewage disposal system, 774 cubic yards of grading (699 cu yards of cut and 75 cu yards of fill), construction of four retaining walls, and revegetation of all graded areas outside of the approved development area.*

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# W8f

Filed: 4/22/09  
 49th Day: 6/10/09  
 180th Day: 10/19/09  
 Staff: A. Berner  
 Staff Report: 6/19/09  
 Hearing Date: 7/8/09

## **STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-09-015

**APPLICANT:** Dr. James Sternberg

**AGENT:** Marney Randall

**PROJECT LOCATION:** 2501 Barrymore Drive, Malibu, Los Angeles County (APN: 4461-006-021)

**PROJECT DESCRIPTION:** Construction of a 2,139 sq. ft., 25'9 ft. high from existing grade single family residence with attached 462 sq. ft. garage, two 501 sq. ft. attached decks, private sewage disposal system, 774 cubic yards of grading (699 cu yards of cut and 75 cu yards of fill), construction of four retaining walls, and revegetation of all graded areas outside of the approved development area.

### **MOTION & RESOLUTION: Page 3**

**SUMMARY OF STAFF RECOMMENDATION:** Staff recommends **approval** of the proposed development with conditions.

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu – Santa Monica Mountains Land Use Plan (LUP) serve as guidance. Following is a summary of the main issues raised by the project and how they are resolved by staff's recommendation:

- **ENVIRONMENTALLY SENSITIVE HABITAT AREA.** The project site contains habitat that meets the definition of ESHA and the project will have adverse impacts on ESHA. The proposed residence is not a resource dependent use, but will be approved to permit the applicant a reasonable economic use of the property. The structure is sited to minimize significant disruption of habitat values and the development area conforms to 10,000 square feet. There is an open space easement across the undeveloped portions of the property in order to ensure that the remaining ESHA on the site will be preserved. Mitigation is required for the loss of ESHA due to the development and the required fuel modification around structures.
- **VISUAL RESOURCES.** The proposed structure will be visible from public viewing areas and will adversely impact visual resources. There are design alternatives that would avoid or reduce visual impacts. The project is conditioned to provide revised structure plans to redesign the residence.

## Table of Contents

<b>I. STAFF RECOMMENDATION.....</b>	<b>3</b>
<b>II. STANDARD CONDITIONS.....</b>	<b>4</b>
<b>III. SPECIAL CONDITIONS .....</b>	<b>4</b>
1. Plans Conforming to Geotechnical Engineer's Recommendations.....	4
2. Assumption of Risk, Waiver of Liability and Indemnity.....	5
3. Permanent Drainage and Polluted Runoff Control Plan.....	5
4. Interim Erosion Control Plans and Construction Responsibilities .....	7
5. Landscaping and Fuel Modification Plans.....	9
6. Structural Appearance.....	11
7. Lighting Restriction.....	11
8. Future Development Restriction.....	11
9. Deed Restriction.....	12
10. Habitat Impact Mitigation.....	12
11. Site Inspection.....	16
12. Condition Compliance .....	16
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>16</b>
A. PROJECT DESCRIPTION AND BACKGROUND.....	16
B. PAST COMMISSION ACTION.....	17
C. HAZARDS AND GEOLOGIC STABILITY.....	19
D. WATER QUALITY .....	20
E. ENVIRONMENTALLY SENSITIVE HABITAT.....	21
F. VISUAL RESOURCES.....	33
G. UNPERMITTED DEVELOPMENT.....	34
H. LOCAL COASTAL PROGRAM PREPARATION.....	35
I. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....	35

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## EXHIBITS

- Exhibit 1. Vicinity Map
  - Exhibit 2. Parcel Map
  - Exhibit 3. Project Plans
  - Exhibit 4. Open Space Easement
  - Exhibit 5. Aerial Analysis
  - Exhibit 6. Solstice Canyon Significant Watershed Map
  - Exhibit 7. Post-Fire Aerial (2007)
  - Exhibit 8. Revised Site Plan & Original Site Plan (5-88-148)
  - Exhibit 9. Kowalewsky Letter dated January 6, 2009
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**LOCAL APPROVALS RECEIVED:** County of Los Angeles Department of Regional Planning, Approval in Concept, dated 11/10/08; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan Approval, dated 12/8/08; County of Los Angeles Materials Engineering Section Review Sheet Approval, dated 1/27/2009.

**SUBSTANTIVE FILE DOCUMENTS:** Certified Malibu/Santa Monica Mountains Land Use Plan; The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D; "Soil Engineering Investigation, Proposed Residential Development, 2501 Barrymore Drive, Malibu Area, Los Angeles County, California," SWN Soiltech Consultants, Inc., 8/18/1987; "Preliminary Engineering Geologic Investigation for a 10.9 acre parcel located at approximately 2501 Barrymore Drive, Malibu, California," Donald B. Kowalewsky, Environmental & Engineering Geology, 8/12/1987; "Response to Coastal Commission inquiry, an addendum to Preliminary Engineering Geologic Investigation for 10.9 Acre Parcel Located at Approximately 2501 Barrymore Drive, Malibu, California," Donald K. Kowalewsky, Environmental & Engineering Geology, 4/29/1988; "Geologic approval of existing building site, 2501 Barrymore Drive, Malibu, California," Donald B. Kowalewsky, Environmental & Engineering Geology, 1/6/2009; "Private Sewage Disposal System Inspection Report," Darrell Roy Enterprises, Inc., 10/1/2008; Coastal Permit Application 5-88-148 (Sternberg).

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## **I. STAFF RECOMMENDATION**

The staff recommends that the Commission adopt the following resolution:

**MOTION:**        *I move that the Commission approve Coastal Development Permit No 4-09-015 pursuant to the staff recommendation.*

### **STAFF RECOMMENDATION OF APPROVAL:**

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

### **RESOLUTION TO APPROVE THE PERMIT:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the 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.

## II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. SPECIAL CONDITIONS

### 1. **Plans Conforming to Geotechnical Engineer's Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in all of the geology, geotechnical, and/or soils reports referenced as Substantive File Documents. These recommendations, including recommendations concerning foundations, sewage disposal, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

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

## **2. Assumption of Risk, Waiver of Liability and Indemnity**

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from wildfire and erosion; (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.

## **3. Permanent Drainage and Polluted Runoff Control Plan**

A. ***Prior to issuance of the Coastal Development Permit***, the applicant shall submit to the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified licensed professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plans shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather runoff leaving the developed site. The consulting licensed civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- (1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- (2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- (3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
- (4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands, consistent with **Special Condition 5, Landscaping and Fuel Modification Plans**. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design shall be utilized for any landscaping requiring water application.

- (5) All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
- (6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary. The consulting engineer shall provide plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The engineer shall certify that the design of the device minimizes the amount of rock and/or other hardscape necessary to meet the sizing requirements.
- (7) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15<sup>th</sup> each year) and at regular intervals as necessary between October 15<sup>th</sup> and April 15<sup>th</sup> of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- (9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans shall be approved by the project consulting geotechnical engineer.
- (10) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

B. The final Drainage and Runoff Control Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting licensed civil engineer, or qualified licensed professional, or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final



site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

#### **4. Interim Erosion Control Plans and Construction Responsibilities**

A. ***Prior to the issuance of the Coastal Development Permit***, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices plan, prepared by licensed civil engineer or qualified water quality professional. The consulting civil engineer/water quality professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

##### 1. Erosion Control Plan

- (a) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the plan and on-site with fencing or survey flags.
- (b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.
- (c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.
- (d) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible.
- (e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- (f) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

2. Construction Best Management Practices

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity

(m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. The final Interim Erosion Control and Construction Best Management Practices plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

## **5. Landscaping and Fuel Modification Plans**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit two sets of landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist. The consulting landscape architect or qualified landscape professional shall certify in writing that the final Landscape and Fuel Modification plans are in conformance with the following requirements:

### **A) Landscaping Plan**

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within thirty (30) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;

- (4) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- (5) Fencing of the entire property is prohibited. Fencing shall extend no further than the approved development area. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in **Special Condition 6, Structural Appearance**, below.

#### **B) Fuel Modification Plans**

Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

#### **C) Conformance with Commission Approved Site/Development Plans**

The Permittee shall undertake development in accordance with the final Landscape and Fuel Modification Plans. The final Landscape and Fuel Modification Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

#### **D) Monitoring**

Three years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit to the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the requirements specified in this condition, the applicant, or successors in interest, shall submit, within 30 days of the date of the monitoring report, a revised or supplemental landscape plan, certified by a licensed Landscape Architect or a qualified Resource Specialist, that specifies additional or supplemental landscaping measures to remediate those portions of the original plan that have failed or are not in

conformance with the original approved plan. This remedial landscaping plan shall be implemented within 30 days of the date of the final supplemental landscaping plan and remedial measures shall be repeated as necessary to meet the requirements of this condition.

## **6. Structural Appearance**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of this Coastal Development Permit. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by this Coastal Development Permit if such changes are specifically authorized by the Executive Director as complying with this special condition.

## **7. Lighting Restriction**

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

- (1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
- (2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- (3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

## **8. Future Development Restriction**

This permit is only for the development described in this Coastal Development Permit. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions

otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by this Coastal Development Permit. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation other than as provided for in the approved landscape plan prepared pursuant to **Special Condition 5, Landscaping and Fuel Modification Plans**, shall require an amendment to this Coastal Development Permit from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### **9. 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(s) 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.

#### **10. Habitat Impact Mitigation**

**Prior to issuance of the Coastal Development Permit**, the applicant shall submit, for the review and approval of the Executive Director, a map delineating all areas of chaparral and coastal sage scrub habitat (ESHA) that will be disturbed by the proposed development, including fuel modification and brush clearance requirements on the project site and adjacent property. The chaparral and coastal sage scrub ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and, if the fuel modification/brush clearance zones extend onto adjacent property, adjacent parcel boundaries. The delineation map shall indicate the total acreage for all chaparral and coastal sage scrub ESHA, both on and offsite that will be impacted by the proposed development, including the fuel modification/brush clearance areas. A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification/brush clearance requirements by one of the three following habitat mitigation methods:

## A. Habitat Restoration

### 1) Habitat Restoration Plan

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification/brush clearance area. The habitat restoration area may either be onsite or offsite within the coastal zone either in the City of Malibu or elsewhere in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite, the applicant shall submit written evidence to the Executive Director that the property owner has irrevocably agreed to allow the restoration work, maintenance and monitoring required by this condition and not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been, in part or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. Should supplemental restoration be required, the applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating the supplemental restoration areas. At the end of the five-year period, a final report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an application for an amendment to the coastal development permit for an alternative mitigation program and shall implement whatever alternative mitigation program the Commission approves, as approved.

The habitat restoration work approved in the restoration plan shall be carried out prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act, shall occur in the habitat restoration area, as shown on the habitat restoration site plan required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the applicant shall submit evidence that the applicant has executed and recorded a deed restriction (if the applicant is not the owner, then the applicant shall submit evidence that the owner has executed and recorded the deed restriction), in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel on which the restoration area lies and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) Performance Bond

***Prior to issuance of the Coastal Development Permit***, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

**B. Habitat Conservation**

***Prior to issuance of the Coastal Development Permit***, the applicant shall (or, if the applicant is not the owner of the habitat conservation site, then the owner of the habitat conservation site shall) execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over the entirety of a legal parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be



recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence, the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel(s) is/are larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

### **C. Habitat Impact Mitigation Fund**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral and coastal sage scrub habitat ESHA. The fee shall be calculated as follows:

#### **1. Development Area, Irrigated Fuel Modification Zones, Off-site Brush Clearance**

The in-lieu fee for these areas shall be \$12,000 per acre within the development area, any required irrigated fuel modification zones, and required off-site brush clearance areas (assuming a 200-foot radius from all structures). The total acreage shall be based on the map delineating these areas required by this condition.

#### **2. Non-irrigated Fuel Modification Zones**

The in-lieu fee for non-irrigated fuel modification areas (on-site) shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral and/or coastal sage scrub habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority's Coastal Habitat Impact Mitigation Fund for the acquisition, permanent preservation or restoration of habitat in the Santa Monica Mountains coastal zone, with priority given to the acquisition of or extinguishment of all development potential on properties containing environmentally sensitive habitat areas and properties adjacent to public parklands.. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

## **11. Site Inspection**

By acceptance of this permit, the applicant irrevocably authorizes, on behalf of the applicant and all 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 his 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.

***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.

## **12. Condition Compliance**

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

# **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

## **A. PROJECT DESCRIPTION AND BACKGROUND**

The applicant is proposing to construct a two-story, 2,601 sq. ft., single family dwelling, driveway and septic system with 774 cubic yards of grading (699 cut and 75 fill) and four retaining walls on a 10.2 acre parcel located approximately 1000 ft. northwest of the El Nido small lot subdivision on the southwest side of Barrymore Drive, an existing paved road. The project will also have an attached, two-car garage and two 501 sq. ft attached decks; one on each story (Exhibit 3).

The subject site is located at 2501 Barrymore Drive (Exhibit 2), south of the crest of the Santa Monica Mountains along the upper west facing flank of Solstice Canyon (Exhibit 1). The upper portion of the site, where the residence is proposed, is relatively gentle. Elevations of the property range from 825 feet above sea level in the southwest corner of the property to 1170 feet above sea level along Barrymore Drive and slopes vary from 4:1 at the building site to 1:1 along the west facing sloped below the site. The building site is located at approximately elevation 1110 to 1120 and the maximum height of the structure will be 25'9" above finished grade, and therefore the top of the structure will be located several feet below the street elevation.

The structure will be located in a visually sensitive area which contains little development and may be visible from portions of Solstice Canyon Park and Corral Canyon Road (Exhibit 5). However, due to the building site's distance from and the elevation below Barrymore Drive, and the presence of intervening ridges and existing development in the vicinity, no alternative siting or design options exist on the parcel in which the development would be significantly less visible from public viewing areas.

Past grading, (aerial photographs indicate that this grading was carried out prior to the effective date of the Coastal Act), on the site created a 15 ft. wide access road, now a permeable driveway, which splits into two roadways approximately 200 ft. from the entrance on Barrymore Drive. Before the split, approximately 100 ft. from Barrymore Drive, is a small graded pad. After the split, each road continues to two relatively level graded pad sites. The upper pad site is situated approximately 400 ft. from the Barrymore Drive entrance and the lower pad is approximately 600 ft. from the road entrance.

#### Parcel Legality

The subject parcel is located within the boundary of the Solstice Canyon Significant Watershed, as designated by the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) (Exhibit 6). The LUP designates the site as Mountain Land 2 (1 dwelling unit per 20 acres) due to the sensitivity of the site to resources impacts and limited development capacity within the watershed. The County issued a "Conditional Certificate of Compliance" on the subject site, however the applicant submitted a "Certificate of Exception" dated March 1969 which indicates that the parcel was created legally through the approval of a "minor land division", which was defined by the County of Los Angeles as: "...any parcel or contiguous parcels of land which are divided for the purpose of transfer of title, sale, lease, or financing, whether present or future, into two, three, or four parcels..." (The minor land division process was in effect in Los Angeles County between 1967 and 1972).

## **B. PAST COMMISSION ACTION**

This project is a rebuild from the 2007 Coral Canyon fire that destroyed nearly all existing development on the site (Exhibit 7). A residence was first approved on this parcel in August, 1988 under CDP No. 5-88-148 (Sternberg) and was for the construction of a single-family dwelling, attached garage, driveway and septic system

with 237 cubic yards of grading (150 cut and 87 fill). Dr. James Sternberg is the same applicant for the original permit, 5-88-148, as this permit, 4-09-015.

Under CDP 5-88-148, the applicant originally proposed to locate the residential structure on the upper pad and to construct a swimming pool on the lower pad. Due to concerns regarding the potential impacts of retaining two roads, the length of each road, and necessary grading (1370 cubic yards), the Commission required revised plans to relocate the residence to a location on the slope, nearer to Barrymore Road. The applicant submitted and Commission staff signed off on revised project plans to site the structure within approximately 300 ft. of the street entrance and eliminate the swimming pool, reducing the proposed grading to 237 cubic yards (150 cut and 87 fill) (Exhibit 8).

However, the applicant did not ultimately construct the development as it was approved in CDP 5-88-148. The unapproved as-built structure (that subsequently burned down) was similar, if not exactly, the same design as indicated in the applicant's original proposal in CDP No. 5-88-148. However, it was not sited in the approved area of the site. Rather, the as-built structure was constructed on the upper pad where the applicant had originally proposed to construct the residence. Pre-fire aerial photos indicate that the as-built residence resembled the design in the original conceptual plans. There is no information in the record that explains why the subject residence was not constructed in accordance with the approved CDP.<sup>1</sup> The applicant has not offered any explanation except to state that the consulting geologist for the project found the revised house site to be unsuitable from a geologic standpoint. The applicant has submitted a letter from the consulting geologist (for both the 1988 and 2009 applications), Donald B. Kowalewsky, wherein he states that the approved plans for the approved revised site in CDP No. 5-88-148 were "never considered, reviewed, nor approved by (my) office." Accordingly, Mr. Kowalewsky states the revised site to have "unfavorable geological conditions" and in order to construct a structure in that area, "the entire slope between the structure and Barrymore Drive would have had to be re-graded to remove unfavorable earth materials and replace those with properly compacted earth fill" resulting in an excess of 3,000 cubic yards of grading (Exhibit 9). Certainly, such information was not presented to the Commission at the time it considered CDP 5-88-148. In any case, the Commission must conclude that the as-built residence was constructed in violation of CDP 5-88-148 because the development that the applicant constructed was not consistent with the approved plans.

As previously stated, the residence on the subject site was destroyed by fire in the 2007 Corral Canyon Fire. The unpermitted siting of the as-built residence was not discovered by Commission staff until 2008 when the applicant applied for a disaster replacement exemption, pursuant to the provisions of Section 30610 (g) of the Coastal Act and staff reviewed the CDP records. Dr. Sternberg was not granted an exemption for a rebuild

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<sup>1</sup> Staff would note that the current practice is for Commission staff to sign CDP approved plans and send a copy to the Los Angeles County Building and Safety Department. In this way, Los Angeles County can verify that the applicant's grading and building plans submitted to the County for approval are consistent with the CDP approval. If the plans are revised, Los Angeles County staff will refer the applicant back to Commission staff for an amendment or other required approval.

because the as-built structure that existed prior to the fire was not consistent with CDP No. 5-88-148 (Exhibit 8).

Given the permitting history on the site and the fact that the previous development on the site was in violation of CDP 5-88-148, the proposed rebuilding of the subject single family residence on the project site has been considered as a new application. The proposed residence will be new construction on the previously graded pad. Additionally, the application includes a request for after-the-fact approval of the as-built driveway, including grading and retaining walls. Finally, the applicant proposes to revegetate all previously graded areas including a pad area near Barrymore where an unpermitted secondary structure (trailer) was previously located before it was destroyed by fire.

### **C. HAZARDS AND GEOLOGIC STABILITY**

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

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

The proposed development is located in the Malibu/Santa Monica Mountains area, an area historically subject to significant natural hazards including, but not limited to, landslides, erosion, flooding and wild fire. The submitted geology, geotechnical, and/or soils reports referenced as Substantive File Documents conclude that the project site is suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development. The reports contain recommendations to be incorporated into the project plans to ensure the stability and geologic safety of the proposed project, the project site, and the adjacent properties. To ensure stability and structural integrity and to protect the site and the surrounding sites, the Commission requires the applicant to comply with the recommendations contained in the applicable reports, to incorporate those recommendations into all final design and construction plans, and to obtain the geotechnical consultant's approval of those plans prior to the commencement of construction.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer.

Further, the Commission finds that, for the project to ensure stability and avoid contributing significantly to erosion, all slopes and disturbed areas of the subject site must be landscaped, primarily with native plants, to stabilize disturbed soils and reduce erosion resulting from the development.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. Due to the fact

that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire and erosion, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk condition, the applicant acknowledges the nature of the fire and/or geologic hazard that exists on the site and that may affect the safety of the proposed development.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

**Special Condition 1:** Plans Conforming to Geotechnical Engineer's Recommendations

**Special Condition 2:** Assumption of Risk, Waiver of Liability and Indemnity

**Special Condition 3:** Permanent Drainage and Polluted Runoff Control Plans

**Special Condition 5:** Landscaping and Erosion Control Plans

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

## **D. WATER QUALITY**

Section **30231** of the Coastal Act states that:

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

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

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to minimize the potential for such adverse impacts to water quality and aquatic resources resulting from runoff both during construction and in the post-development stage, the Commission requires the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping.

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or surrounding areas from the use of a septic system. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30231 of the Coastal Act:

**Special Condition 3:** Permanent Drainage and Polluted Runoff Control Plans

**Special Condition 4:** Interim Erosion Control Plans and Construction Responsibilities

**Special Condition 5:** Landscaping and Erosion Control Plans

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## **E. ENVIRONMENTALLY SENSITIVE HABITAT**

Section **30240** of the Coastal Act protects environmentally sensitive habitat areas (ESHA) by restricting development in and adjacent to ESHA. Section **30240** states:

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

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

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

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

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of environmentally sensitive habitats. The Coastal Commission

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

P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.

P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.

P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.

P69 Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

P72 Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.

P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.

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

P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.

## **1. Project Description and Site Specific Biological Resource Information**

The subject site is located south of the crest of the Santa Monica Mountains along the upper west facing flank of Solstice Canyon. The northeastern portion of the site, where the residence is proposed, is relatively gentle. Elevations of the property range from 825 feet above sea level in the southwest corner of the property to 1170 feet above sea level along Barrymore Drive and slopes vary from 4:1 at the building site to 1:1 along the west facing sloped below the site.

Past grading on the site created a 15 ft. wide access road which splits into two roads approximately 200 ft. from the entrance on Barrymore Drive. Before the split, approximately 100 ft. from Barrymore Drive, is a small graded pad. After the split, each road continues to two relatively level graded pad sites. The upper pad site is situated



approximately 400 ft. from the Barrymore Drive entrance and the lower pad is approximately 600 ft. from the road entrance. The northwestern, southern, and southeastern quarters of the site are well vegetated and undisturbed. Pursuant to a review of historic aerial photographs, staff has confirmed that the pads and access roads were cleared and graded prior to 1977, the effective date of the Coastal Act.

The subject parcel is naturally and predominantly vegetated with chaparral which extends offsite into a large contiguous system of chaparral habitat that constitutes an ESHA. There are no oak trees on the property. The chaparral vegetation on site burned in the Corral Canyon Fire in November 2007. However, the presence of chaparral vegetation on the site and the surrounding area prior to the fire, illustrate that this subject parcel is prime habitat for that vegetation community. Moreover, if left alone, the chaparral would grow back quickly. Fire is an integral part of the community dynamics of chaparral, and following the fire, the chaparral community is still there in the form of root crowns that will resprout and a seed bank that will generate new growth following the rainy season.

The subject parcel is located within the boundary of the Solstice Canyon Significant Watershed, as designated by the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) (Exhibit 6). The LUP designates the site as Mountain Land 2 (1 dwelling unit per 20 acres) due to the sensitivity of the site to resources impacts and limited development capacity within the watershed. Solstice Canyon comprises 2,880 acres of land situated west of Corral Canyon Road and west of Pacific Coast Highway. The watershed includes both the main canyon and Dry Canyon, a small tributary canyon to the east. The canyon contains significant wildlife values and includes a perennial stream, a waterfall and riparian woodland with stands of sycamore and white alder as well as high scenic values. In the past the area was known to contain nesting sites for the endangered peregrine falcon and may have potential for future reintroduction efforts. A trail providing a link from Malibu Creek State Park to Corral State Beach and picnic areas is provided through the canyon.

The project has been designed to place the residence in the northeastern quarter of the property on a previously graded pad, as close to Barrymore Drive as geologically feasible. Any alternative location on the site would likely include the removal of more native vegetation. Not including the area of the driveway or turnaround, the proposed development area is estimated by the applicant to measure approximately 5,713 sq. ft. The applicant's approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 100 feet from the proposed structures. A "C" Zone (thinning zone) is provided for a distance of 100 feet beyond the "A" and "B" zones.

## **2. ESHA Designation on the Project Site**

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

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

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

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission’s Ecologist, Dr. John Dixon<sup>2</sup> (hereinafter “Dr. Dixon Memorandum”), which is incorporated as if set forth in full herein.

Unfortunately, the native habitats of the Santa Monica Mountains, such as coastal sage scrub, chaparral, oak woodland and riparian woodlands are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodlands are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily

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<sup>2</sup> The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>3</sup>.

As described above, the project site contains pristine coastal sage scrub and chaparral habitat that is part of a large, contiguous block of pristine native vegetation. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the coastal sage scrub and chaparral habitat on the project site meets the definition of ESHA in the Coastal Act.

### 3. Resource Dependent Use

The Commission finds that the project site and the surrounding area constitute an environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require both the complete removal of ESHA from the home site and fuel modification for fire protection purposes around it, the proposed project would also significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would therefore require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the United States Supreme Court's decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner that will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Other Supreme Court precedent establishes that another factor that

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<sup>3</sup> Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even if a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by the Commission on sites in the immediate area. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. There is currently no offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the project site would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the project site would create a nuisance under California law. Other houses have been constructed in similar situations in similar habitat areas in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, Darrell Roy Enterprises, Inc., a general engineering contractor, has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

In conclusion, the Commission finds that, notwithstanding Section 30240, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

#### **4. Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values**

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to “take” the property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence and accessory structures, and the use of the development by residents will result in unavoidable loss of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the Santa Monica Mountains to avoid a taking of property. As detailed above, the proposed development area conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within this development area. Although a smaller development area would reduce the ESHA loss somewhat, the reduction would not be significant. Nor are there other resources such as streams, riparian areas, or visual resources that would be protected by a smaller development area. As such, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

#### **5. Open Space Conservation**

This project is inconsistent with Section 30240 of the Coastal Act, and is only being allowed to avoid a taking of private property for public use. The Commission finds that for the project to be consistent with Section 30240 to the maximum extent feasible, while providing a reasonable economic use, this project must constitute the maximum amount of ESHA destruction on the site and the remaining ESHA on the property must be preserved in perpetuity.

The Commission finds that the most effective way to assure ESHA preservation on the site is the granting of an open space conservation easement to the Mountains Recreation and Conservation Authority (a joint powers authority) that prohibits development on the remainder of the site now and in the future. The Mountains Recreation and Conservation Authority (MRCA) is a public agency that represents a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat. The MRCA manages and provides ranger services for almost 50,000 acres of public lands and parks that it owns or that are owned by the Santa Monica Mountains Conservancy. In the course of its normal duties, the MRCA park rangers and other staff are better able to monitor open space areas to ensure that the restrictions are followed than Commission staff. Further, an easement is recorded against the title to the property and thus provides notice to future owners of the limitations that apply to the open space conservation area, reducing the risk of a future irreparable violation of the restriction. The governing board of the MRCA has agreed to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area.

It is important that a property owner grant an easement to MRCA rather than simply record an open space deed restriction. Although a deed restriction should notify future owners of the restriction in the same manner that a recorded easement would, it would not be as effective in preserving the remaining ESHA for the following two reasons. First, a deed restriction is not as reliable because a property owner can record another document purporting to rescind the deed restriction. Although any attempt to rescind a deed restriction required by a coastal development permit (“CDP”) without an amendment to that CDP authorizing such a rescission would constitute a violation of the CDP and the Coastal Act, the County Recorder’s office is likely to allow recordation of a rescission without the required Coastal Commission authorization. Indeed, the Commission has experienced the phenomenon of property owners recording documents purporting to modify deed restrictions recorded pursuant to CDP requirements. See, e.g., Commission findings for CDP Amendment F7453-A2 (Stephenson), approved March 2005, and Violation File V-6-04-010 (Del Mar Estates). On the other hand, because an easement necessarily involves more than one person, the County Recorder would not likely record a document purporting to rescind an easement unless the easement holder was also to sign the document. Thus, a condition requiring a deed restriction is much easier to violate, and therefore much less protective, than a condition requiring an easement.

Second, the Legislature has recently adopted new provisions to the Government Code specifically sanctioning the use of conservation easements for this purpose and changing procedures to ensure that they are prominent in searching title to property. In 2001, the Legislature adopted a new requirement that County Recorders keep a separate and “comprehensive index of conservation easements.” See Cal. Gov’t Code § 27255(a). As such, the Commission finds that the requirement of an open space and conservation easement is the most effective method of ensuring that the remaining ESHA on the project site will be conserved in the future. Finally, the Commission concludes that an open space easement that allows only the easement holder and no

other entity to enter the property for inspection purposes does not interfere with the fee title owner's right to exclude the general public. It therefore does not constitute a significant invasion of the fee title owner's property interest.

In conclusion, the Commission finds that it is necessary to require an open space easement to the MRCA over the open space area on the project site in order to insure that the remaining ESHA will be preserved. In this case, an offer to dedicate an open space easement was previously recorded on the subject site in satisfaction of a special condition of CDP 4-88-148. On January 25, 1989, Dr. Sternberg executed and recorded a document that irrevocably offered to dedicate to a public agency or private association acceptable to the Executive Director, an easement for open space, view preservation, and habitat protection. This easement area includes the northwestern and southwestern edge of the property and a portion of the southern quarter of the property (Exhibit 4). On June 3, 2009, the MRCA board voted to accept this easement which restricts the property owner, and all future owners, from grading, landscaping, vegetation removal or placement of structures within the easement area. The open space area over which the applicant has offered to dedicate an open space area will serve to protect the remaining ESHA on the project site. Therefore, the Commission finds that in this case it is not necessary to require the applicant to grant an open space easement as a condition of the subject CDP, only because such an easement has already been offered and accepted by the MRCA.

## **6. Habitat Impact Mitigation**

While impacts resulting from development within ESHA can be reduced through siting and design alternatives for new development and by ensuring that the remaining ESHA on the site is permanently protected, they cannot be completely avoided, given the location of ESHA on and around the project site, the high fire risk in the Santa Monica Mountains, and the need to modify fuel sources to protect life and property from wildfire.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification will vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Los Angeles County Fire Department, which include a setback zone immediately adjacent to the structure (Zone A) where all native vegetation must be removed, an irrigated zone adjacent to Zone A (Zone B) where most native vegetation must be removed or widely spaced, and a thinning zone (Zone C) where native vegetation may be retained if thinned or widely spaced although particular high-fuel plant species must be removed. The combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels. In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned. The Commission has found in past permit actions, that a new residential development (with a 10,000 sq. ft. development area) within

ESHA with a full 200 foot fuel modification radius will result in impact (either complete removal, irrigation, or thinning) to ESHA habitat of four to five acres.

Obviously, native vegetation that is cleared and replaced with ornamental species or substantially removed and widely spaced will be lost as habitat and watershed cover. As discussed in the Dr. Dixon Memorandum<sup>4</sup>, the cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The Commission has identified three appropriate methods for providing mitigation for the unavoidable loss of ESHA resulting from development; namely, habitat restoration, habitat conservation, and the payment of an in-lieu fee for habitat conservation. The Commission finds that any of these measures is appropriate in this case to mitigate the loss of ESHA on the project site. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat of a similar type as that impacted equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA.

The third habitat impact mitigation option is the payment of an in-lieu fee for habitat conservation. The fee is based on the habitat types in question, the cost per acre to restore or create comparable habitat types, and the acreage of habitat affected by the project. The Commission has, in past permit decisions, determined the appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat based on research carried out by the Commission's biologist. A range of cost estimates was obtained that reflected differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required

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<sup>4</sup> The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>



at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc.

The Commission has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). The in-lieu fee found by the Commission to be appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, the "A" zone required for fuel modification, and off-site brush clearance areas), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification) is \$12,000 per acre. Further, the Commission has required a fee of \$3,000 per acre for areas where the vegetation will be thinned, but not irrigated ("C" zone or other non-irrigated fuel modification zone).

The acreage of ESHA that is impacted must be determined based on the size of the development area, required fuel modification (as identified on the fuel modification plan approved by the Los Angeles County Fire Department) on the site, and required brush clearance off-site. The Commission finds that it is necessary to condition the applicant to delineate the total acreage of ESHA on the site (and offsite brush clearance areas, if applicable) that will be impacted by the proposed development, and provide mitigation to compensate for this loss of habitat, through one of the three methods described above. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

## **7. Additional Mitigation Measures to Address Additional ESHA Impacts**

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area that are not directly and immediately affected by the proposed development, the Commission requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

In addition, the Commission has found that night lighting of ESHA areas in the Malibu/Santa Monica Mountains may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, the Lighting Restriction condition limits

night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

Furthermore, fencing of the property would adversely impact the movement of wildlife through the ESHA and wildlife migration corridor on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the approved development area, turnaround, and driveway. This is required to be shown on the landscaping plan.

The Commission also finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and to ensure that any future structures, additions, change in landscaping or intensity of use at the project site that may otherwise be exempt from coastal permit requirements are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, the future development restriction is required.

Further, the Commission requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property. Finally, in order to ensure that the terms and conditions of this permit are adequately implemented, the Commission conditions the applicant to allow staff to enter onto the property (subject to 24 hour notice to the property owner) to undertake site inspections for the purpose of monitoring compliance with the permit.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30240 of the Coastal Act:

- Special Condition 5.** Landscaping and Fuel Modification Plans
- Special Condition 7.** Lighting Restriction
- Special Condition 8.** Future Development Restriction
- Special Condition 9.** Deed Restriction
- Special Condition 10.** Habitat Impact Mitigation
- Special Condition 11.** Site Inspection

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act.

## F. VISUAL RESOURCES

Section **30251** of the Coastal Act states:

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

The structure will be located in a visually sensitive area which contains little development and may be visible from portions of Solstice Canyon Park and Corral Canyon Road (Exhibit 5). However, due to the building site's distance from and the elevation below Barrymore Drive, and the presence of intervening ridges and existing development in the vicinity, no alternative siting or design options exist on the parcel in which the development would be significantly less visible from public viewing areas. Development of the proposed residence, however, raises two issues regarding the siting and design: (1) whether or not public views from public roadways will be adversely affected; or, (2) whether or not public views from public lands and trails will be affected.

The proposed residence is two-stories with a maximum height of 26 feet from existing grade at any given point. The residence is designed to be stepped into the hillside. The proposed building site and design minimizes the amount of grading and landform alteration necessary for the project and there are no siting alternatives where the building would not be visible from public viewing areas. Furthermore, the development has been clustered on one pad area less than 10,000 sq. ft. in size and designed to reduce landform alteration and removal of native vegetation that is considered environmentally sensitive habitat. The proposed structure is sited and designed to minimize impacts to visual resources to the extent feasible.

The proposed structure is compatible with the character of other residential development in the area. The proposed structure height is consistent with the maximum height (35 feet above existing grade) that the Commission has permitted in past decisions in the Santa Monica Mountains and with the maximum height (35 feet) allowed under the guidance policies of the Malibu/Santa Monica Mountains LUP. In addition, the development would be partially screened by vegetation.

Even with vegetative screening, the proposed development will be unavoidably visible from public viewing areas. The Commission has considered siting and design alternatives that would avoid or reduce any impacts to visual resources. There is no feasible alternative whereby the structure would not be visible from public viewing areas. To minimize the visual impacts associated with development of the project site, the Commission requires: that the structure be finished in a color consistent with the surrounding natural landscape; that windows on the development be made of non-reflective glass; use of appropriate, adequate, and timely planting of native landscaping to soften the visual impact of the development from public view areas; and a limit on

night lighting of the site to protect the nighttime rural character of this portion of the Santa Monica Mountains.

In recognition that future development normally associated with a single-family residence, that might otherwise be exempt, has the potential to impact scenic and visual resources of the area, the Commission requires that any future improvements on the subject property shall be reviewed by the Commission for consistency with the resource protection policies of the Coastal Act through a coastal development permit.

Additionally, the Commission requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The following special conditions are required to assure the project's consistency with Section 30251 of the Coastal Act:

**Special Condition 5.** Landscaping and Fuel Modification Plans

**Special Condition 6.** Structural Appearance

**Special Condition 7.** Lighting Restriction

**Special Condition 8.** Future Development Restriction

**Special Condition 9.** Deed Restriction

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## **G. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the required coastal development permit. The as-built structure that burned down in 2007 was unpermitted because it was built in an unapproved location. As a result, the unapproved structure required an extended driveway and four retaining walls which are also considered unpermitted development. Additionally, there was a second unpermitted structure (trailer) on the property located approximately 100 ft. from Barrymore Drive and there is no evidence that this structure received a coastal permit from this Commission either; this structure also burned down in the 2007 fire. This application includes a request for after-the-fact approval of the existing portions of the driveway and retaining walls that were not approved pursuant to CDP No. 5-88-148. Additionally, the applicant proposes to revegetate all previously graded areas that are not approved for development in the subject application, including the pad of the former unpermitted secondary structure.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the Commission finds it necessary to require the applicant to fulfill all of the Special Conditions that are a prerequisite to the issuance of this permit, within 180 days of Commission action. The following special condition is required to assure the project's consistency with all applicable Chapter 3 policies of the Coastal Act:

## **Special Condition 12. Condition Compliance**

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

## **H. LOCAL COASTAL PROGRAM PREPARATION**

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

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed projects will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed development will avoid or minimize adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. The following special conditions are required to assure the project's consistency with Section 30604 of the Coastal Act:

### **Special Conditions 1 through 12**

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

## **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through clustering structures, and by prohibiting development outside of the approved development area as required by the granting of an open space conservation easement. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA), restricting structure color (visual resources), and requiring future improvements to be considered through a CDP. Finally, the habitat impact mitigation condition is a measure required to compensate for impacts to ESHA.

The following special conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

**Special Conditions 1 through 12**

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibit 1 – Vicinity Map

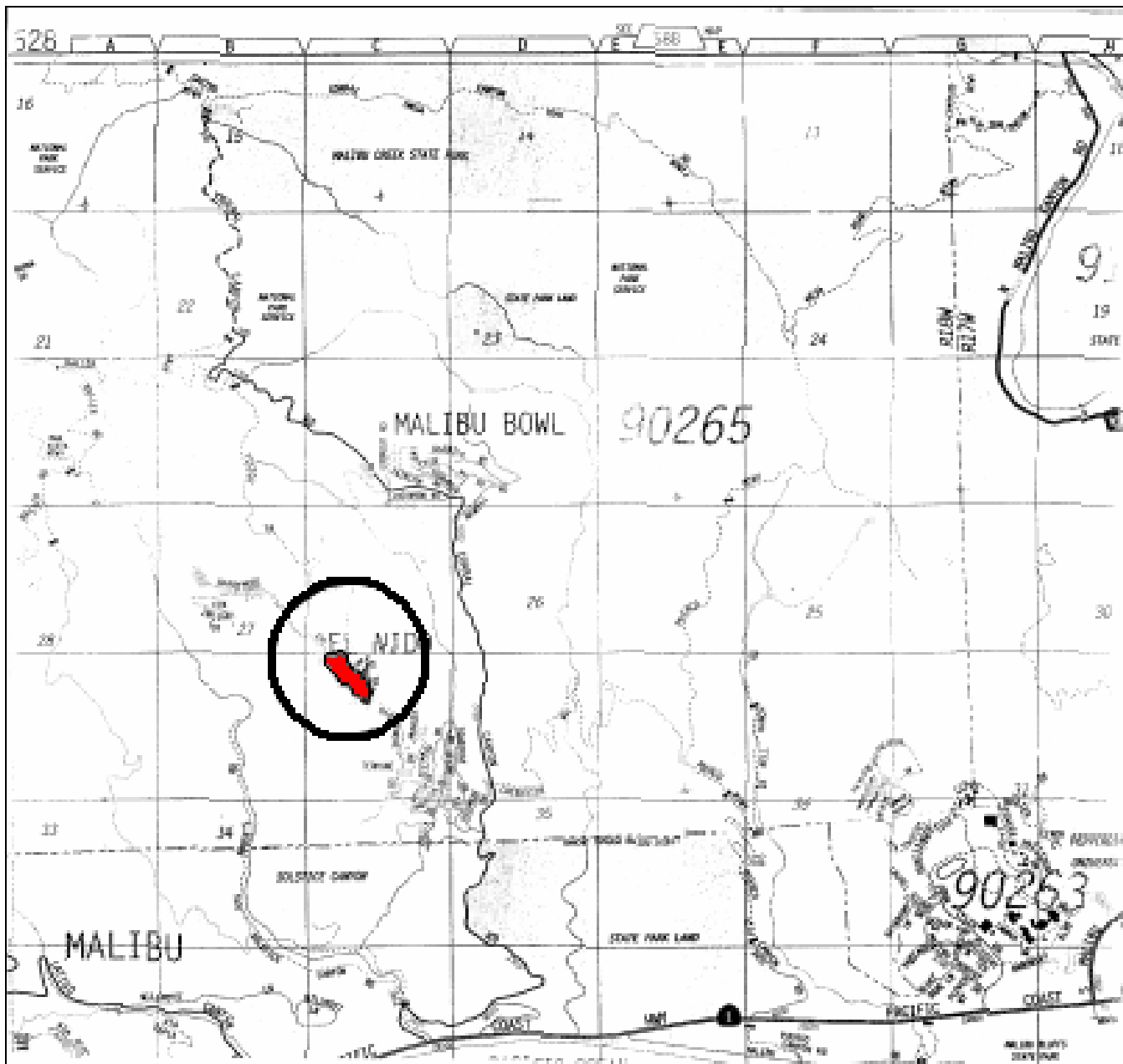
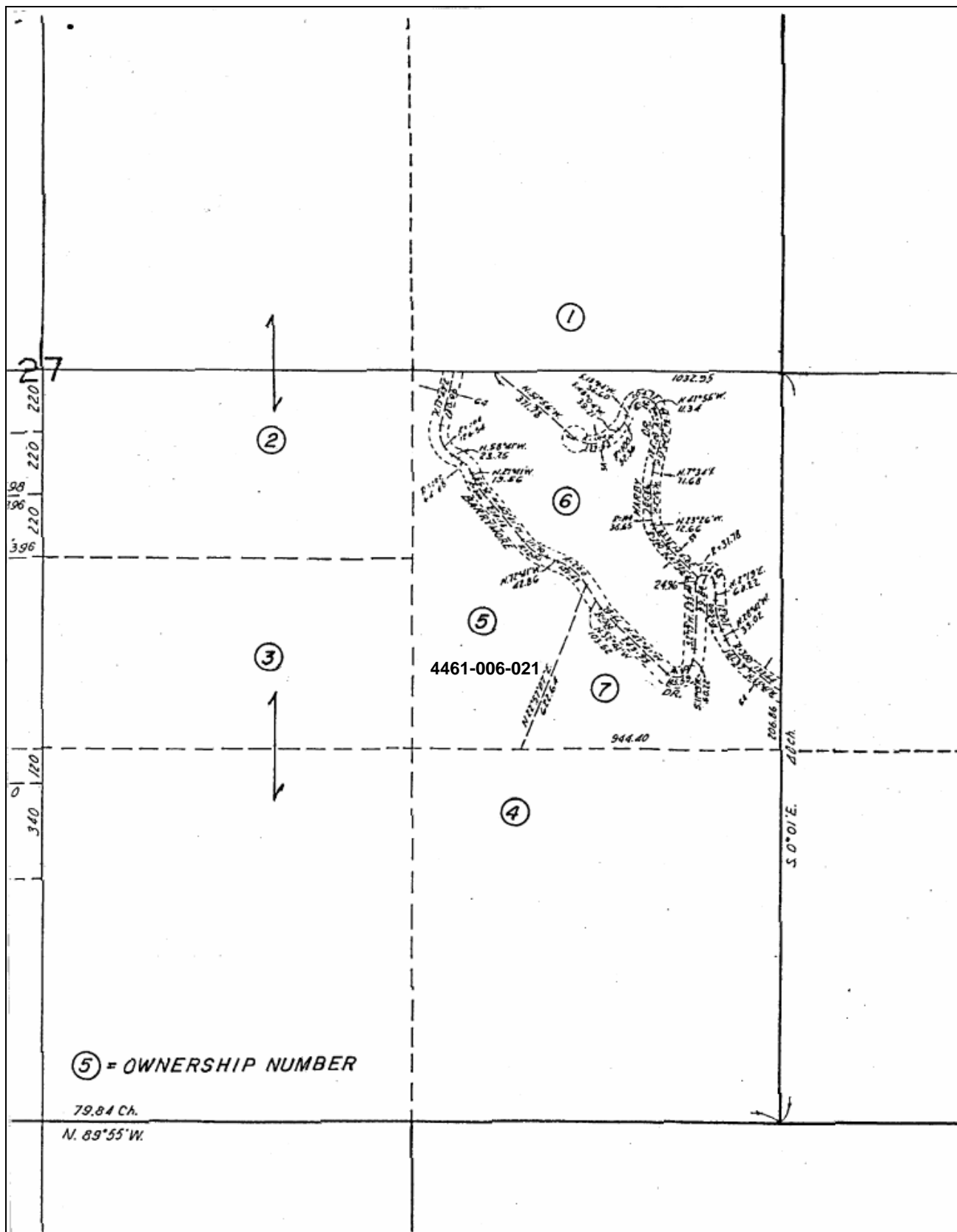


Exhibit 2 – Parcel Map







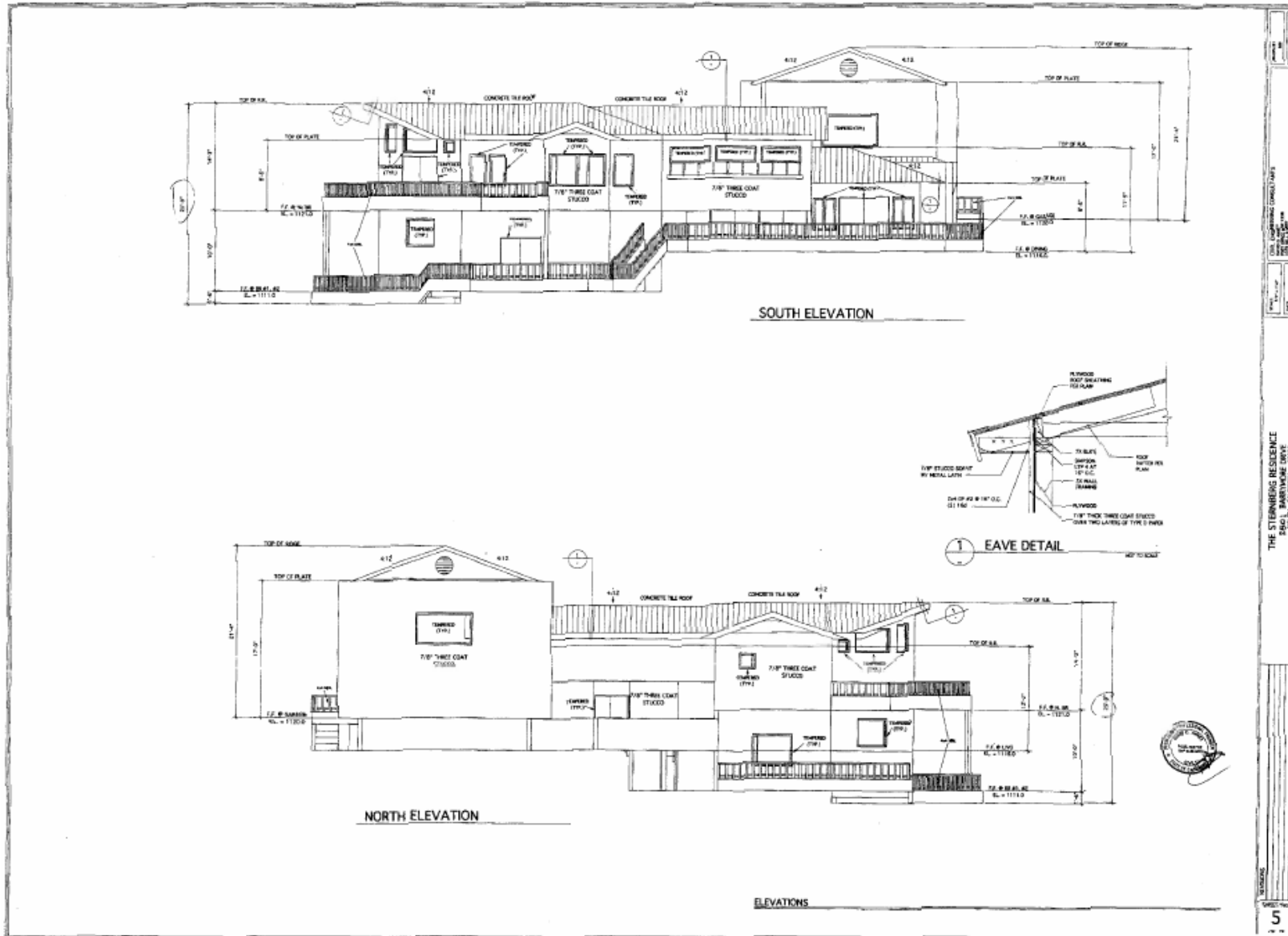






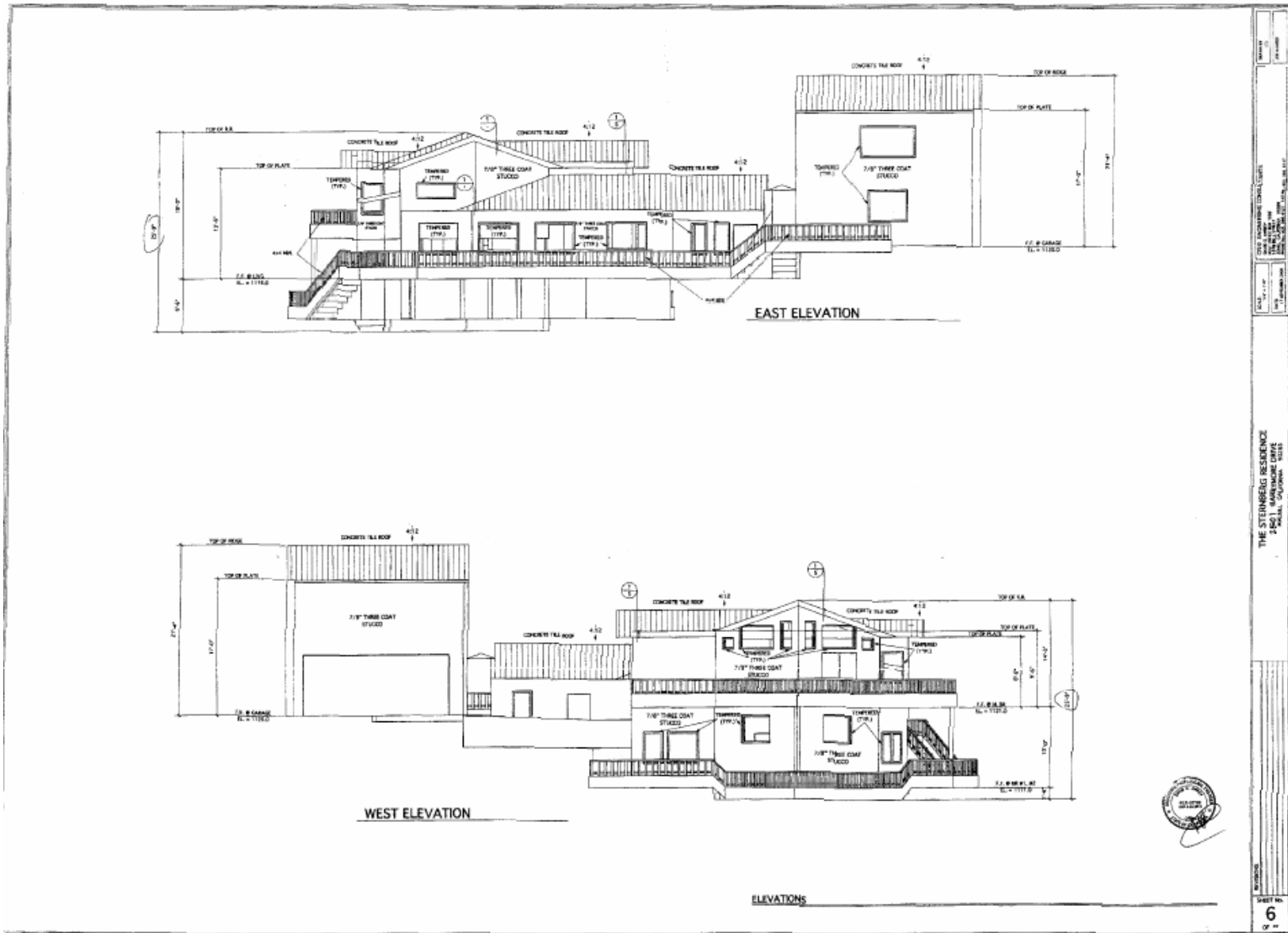
# Exhibit 3 – Project Plans

## Elevations



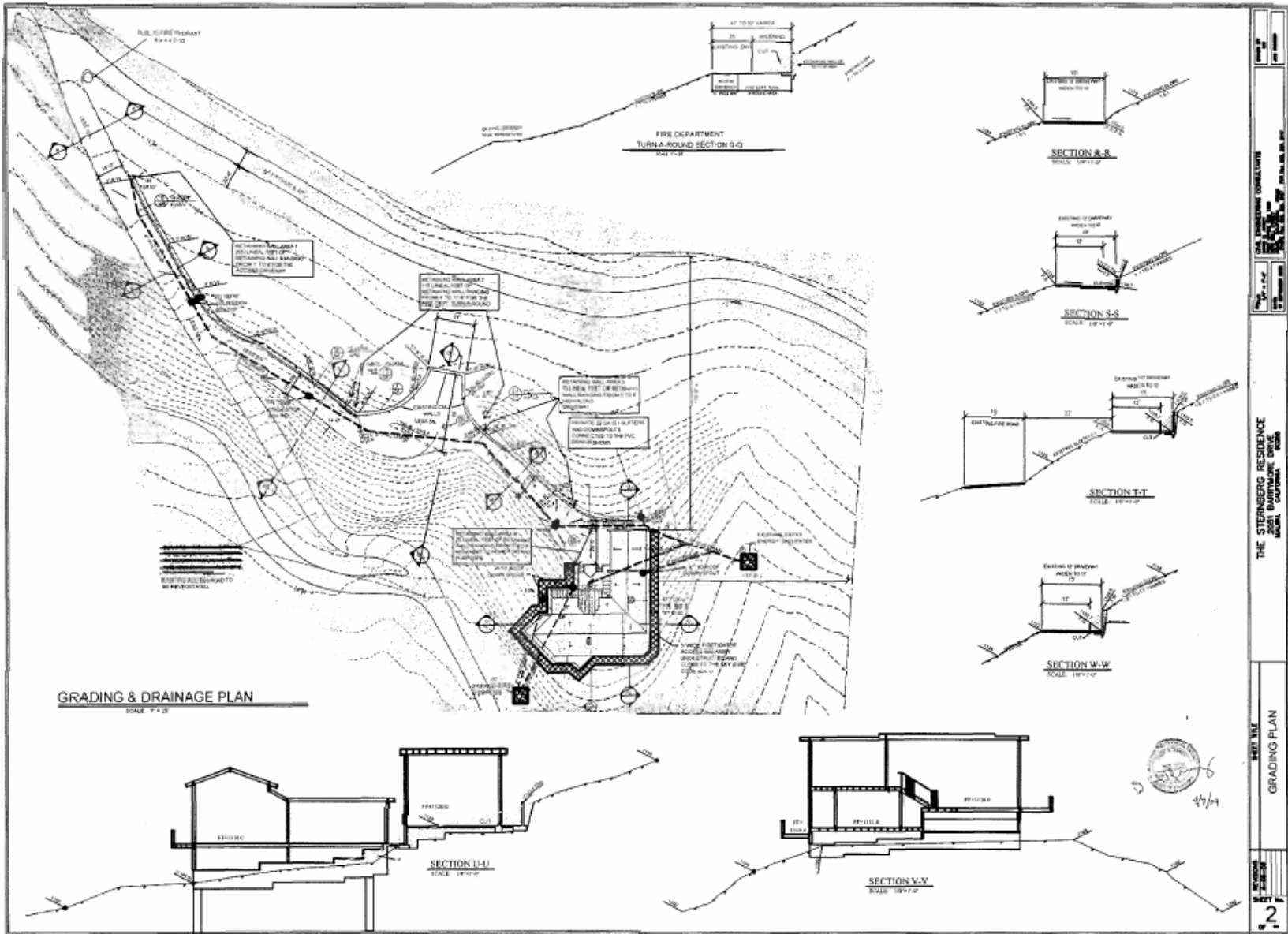
# Exhibit 3 – Project Plans

## Elevations



# Exhibit 3 – Project Plans

## Grading and Drainage Plan



# Exhibit 3 – Project Plans

## Landscape, Fuel Modification, & Vegetation Management Plan

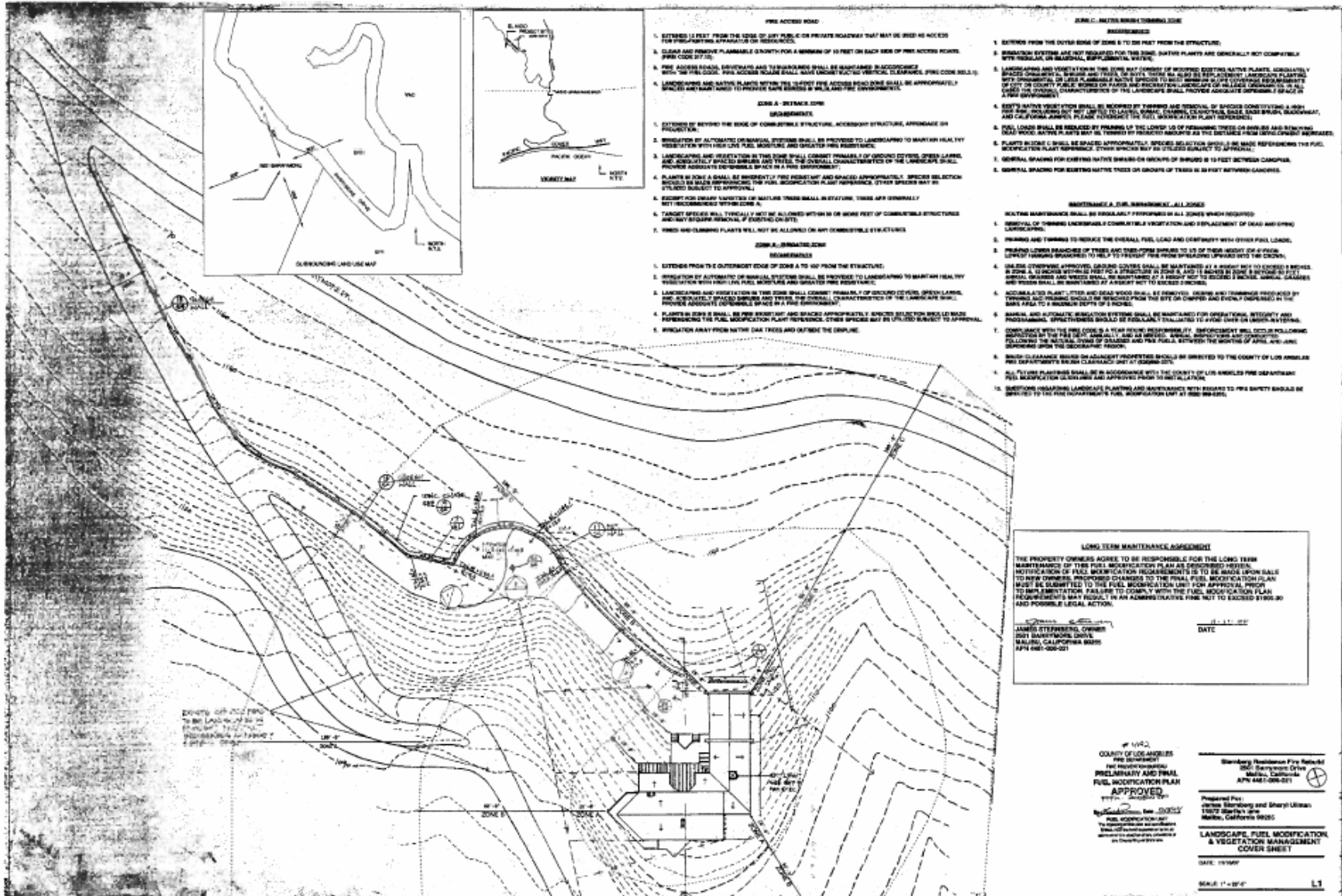
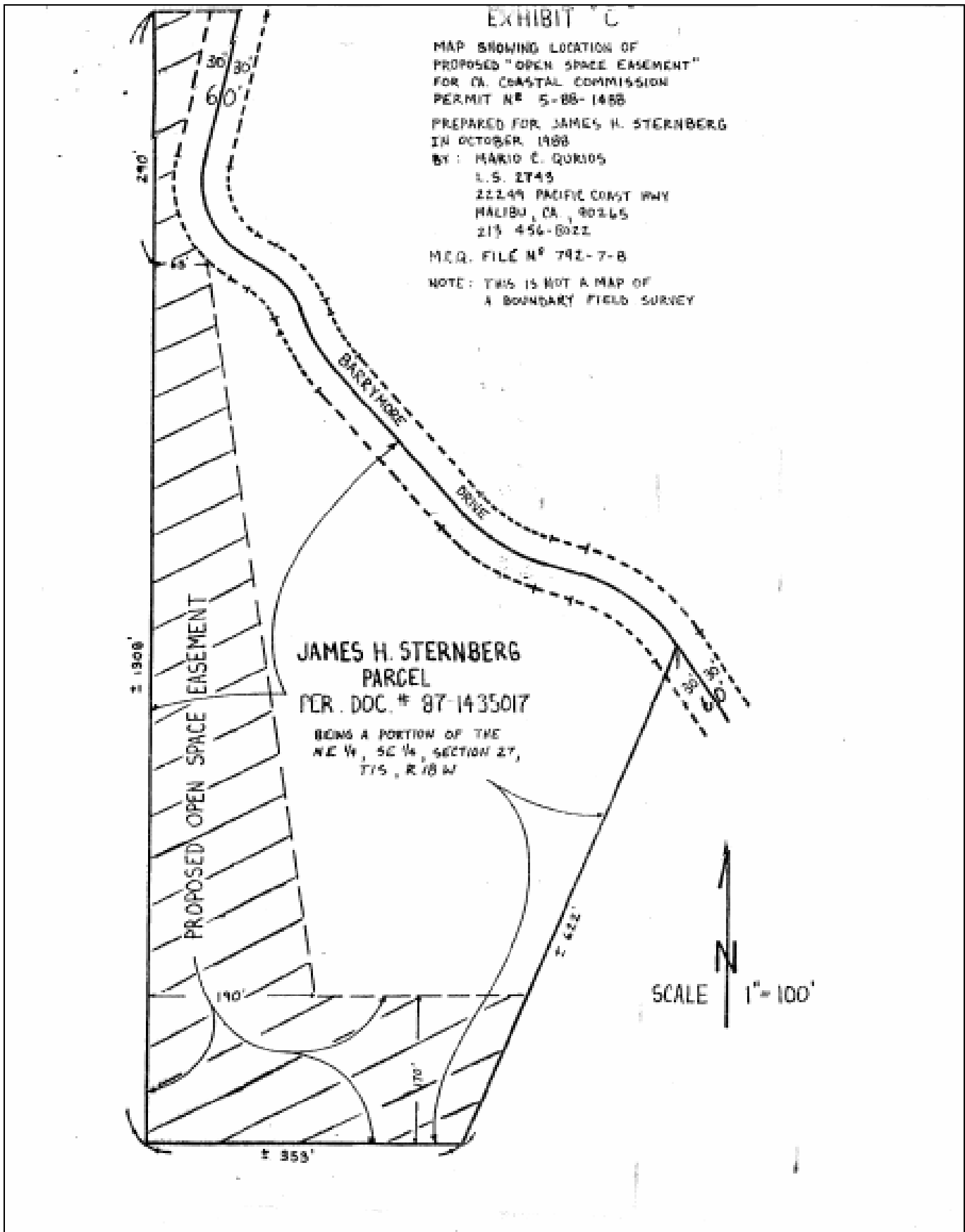


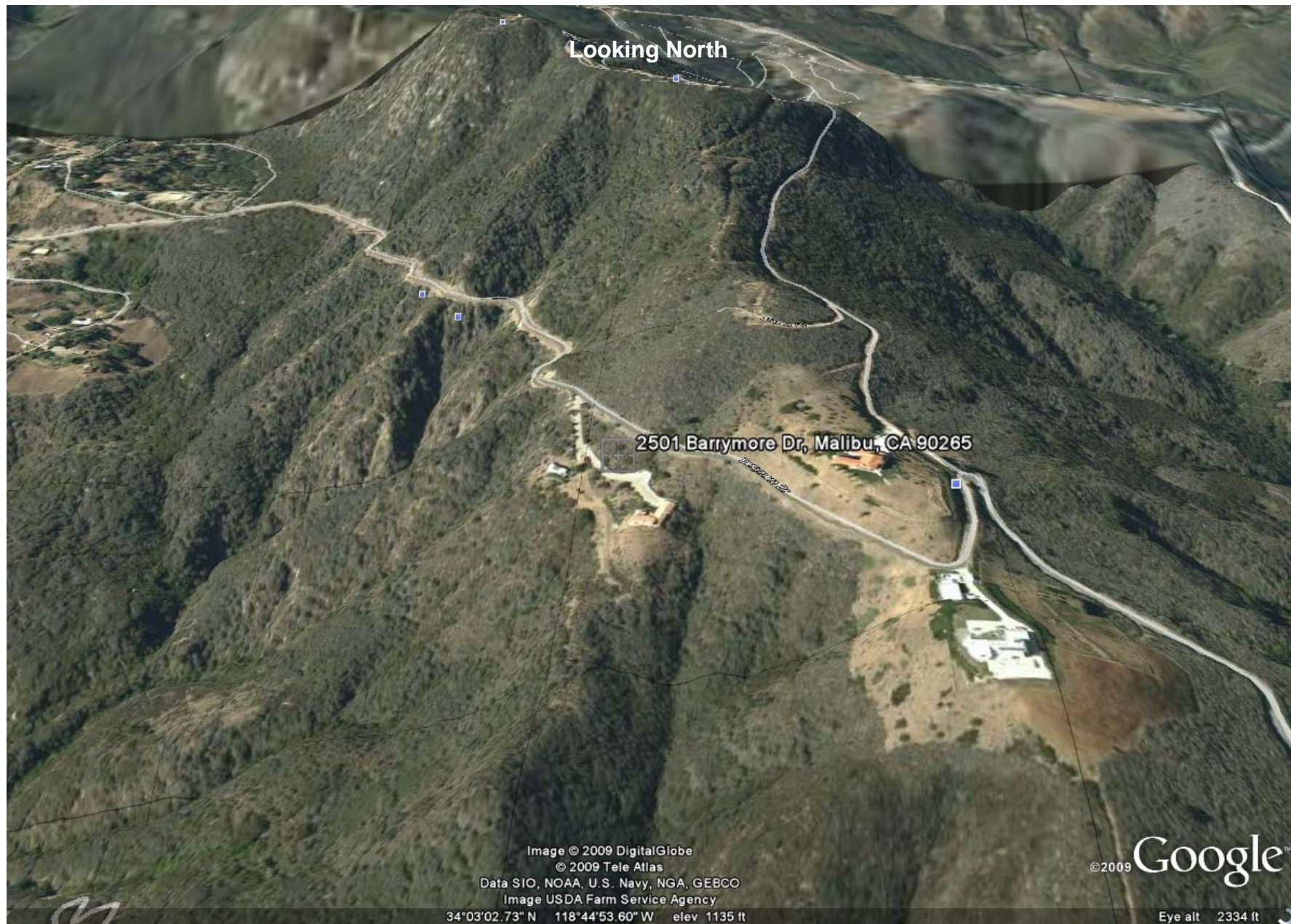




Exhibit 4 - Open Space Easement

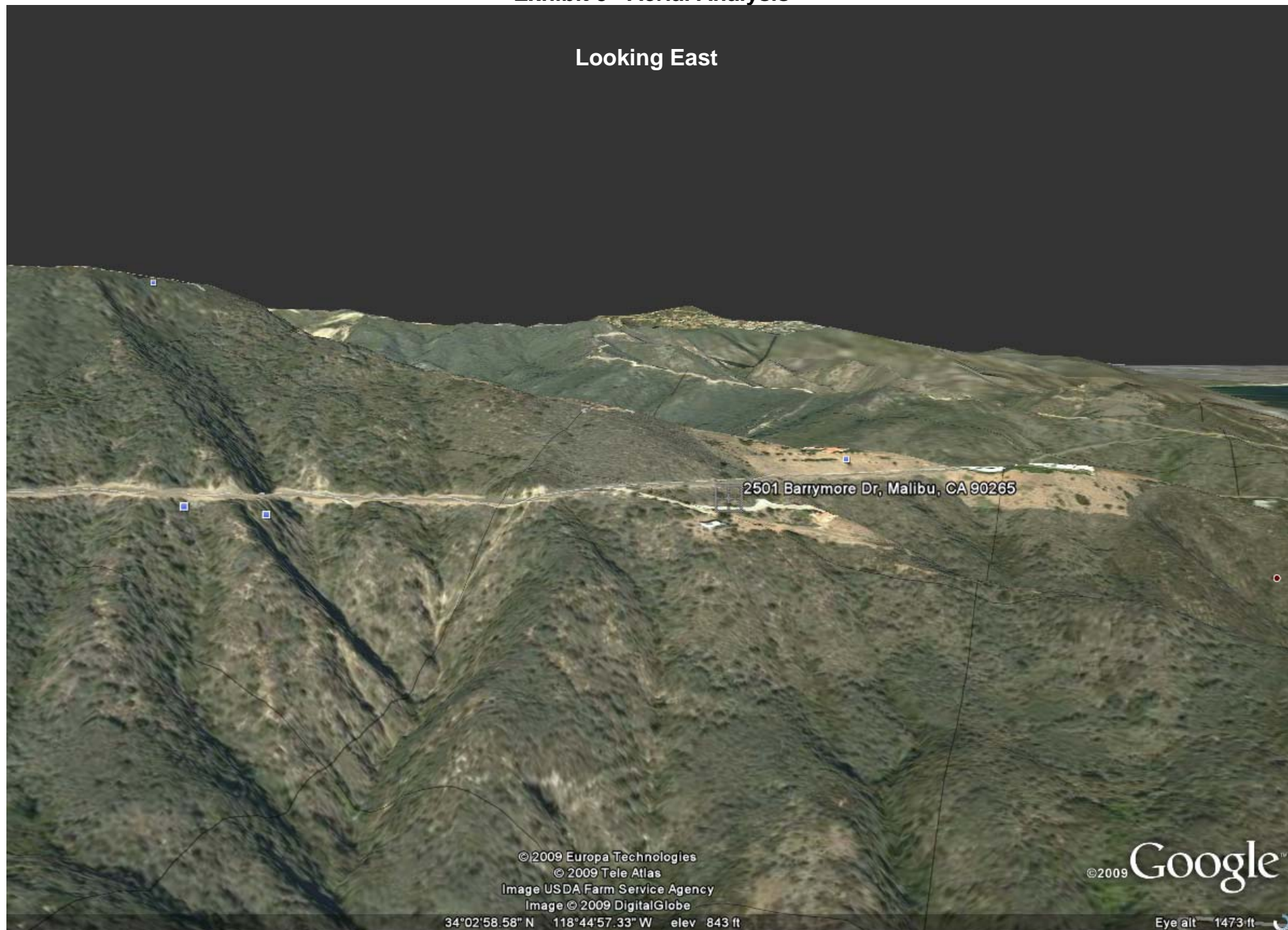


**Exhibit 5 –Aerial Analysis**



**Exhibit 5 –Aerial Analysis**

**Looking East**



**Exhibit 5 –Aerial Analysis**

**Looking Southeast**

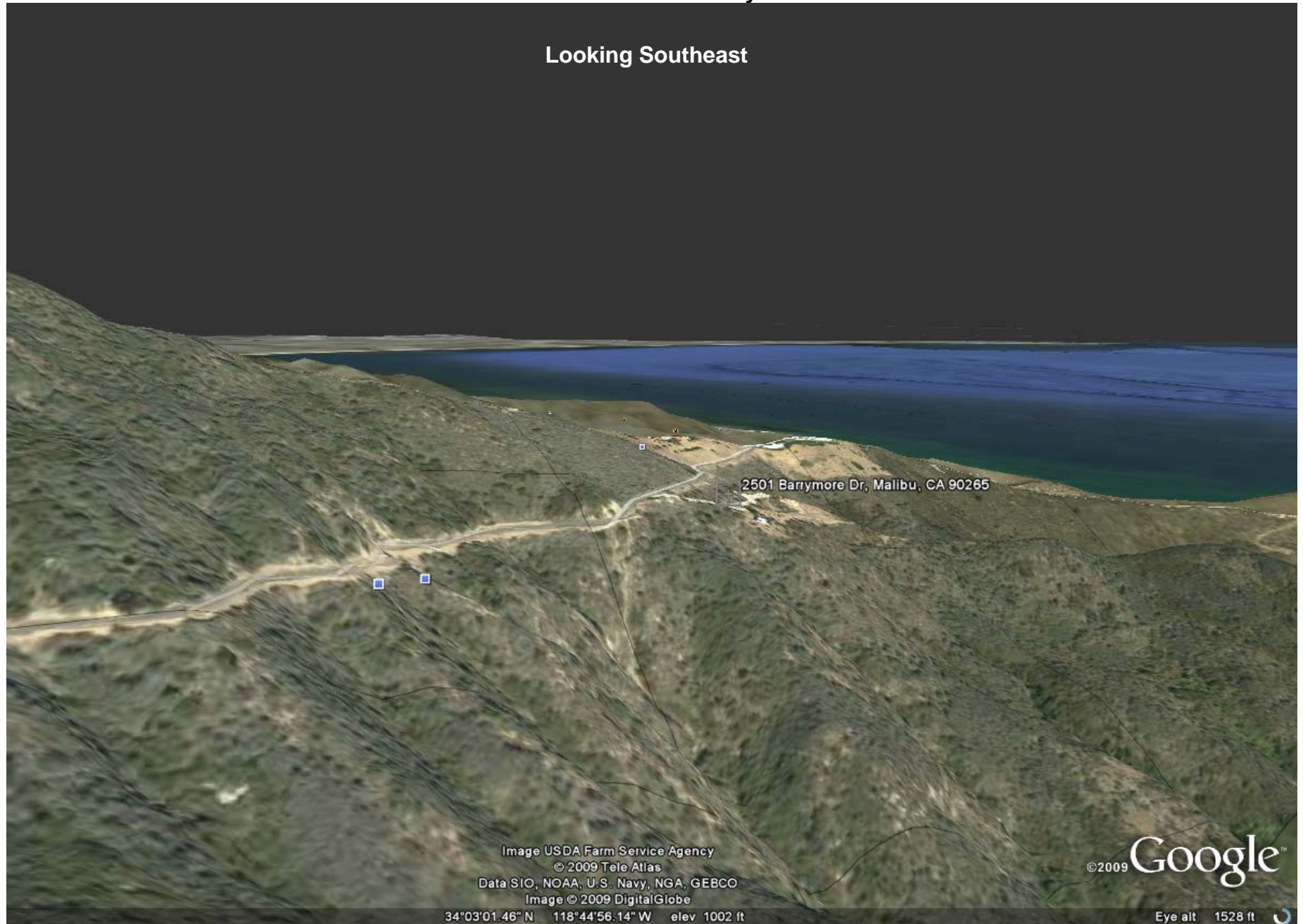


Image USDA Farm Service Agency

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Data SIO, NOAA, U.S. Navy, NGA, GEBCO

Image © 2009 DigitalGlobe

34°03'01.46" N 118°44'56.14" W elev 1002 ft

©2009 Google™

Eye alt 1528 ft



**California Coastal Commission**

**Exhibit 5 –Aerial Analysis**

Looking Northwest



Image U.S. Geological Survey  
© 2009 Tele Atlas  
Data SIO, NOAA, U.S. Navy, NGA, GEBCO  
© 2009 Europa Technologies  
34°02'55.24" N 118°44'38.67" W elev 1005 ft

©2009 Google™

Eye alt 3189 ft



**Exhibit 6 - Solstice Canyon Significant Watershed (blue)**

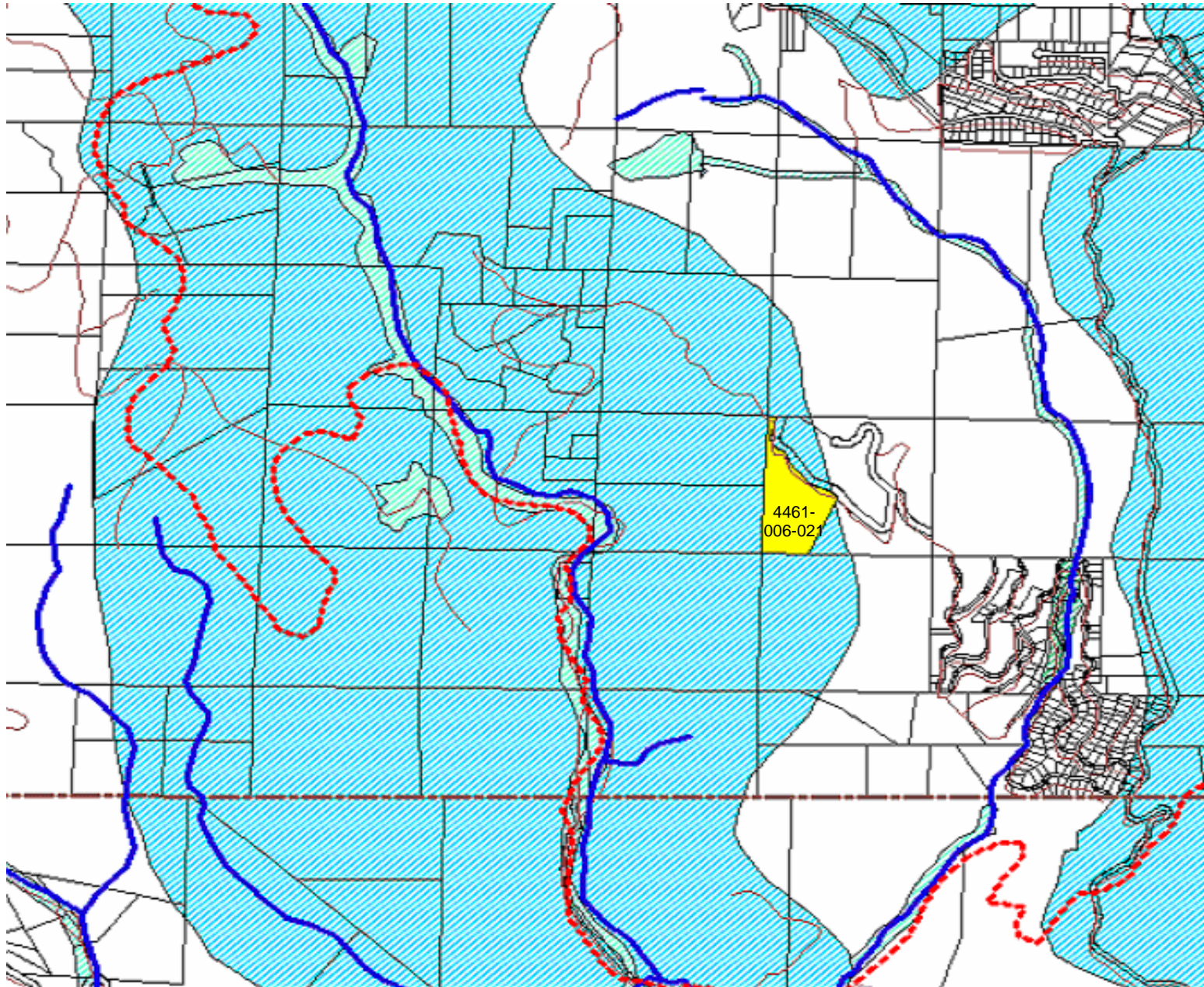


Exhibit 7 – Post Fire Aerial (2007)

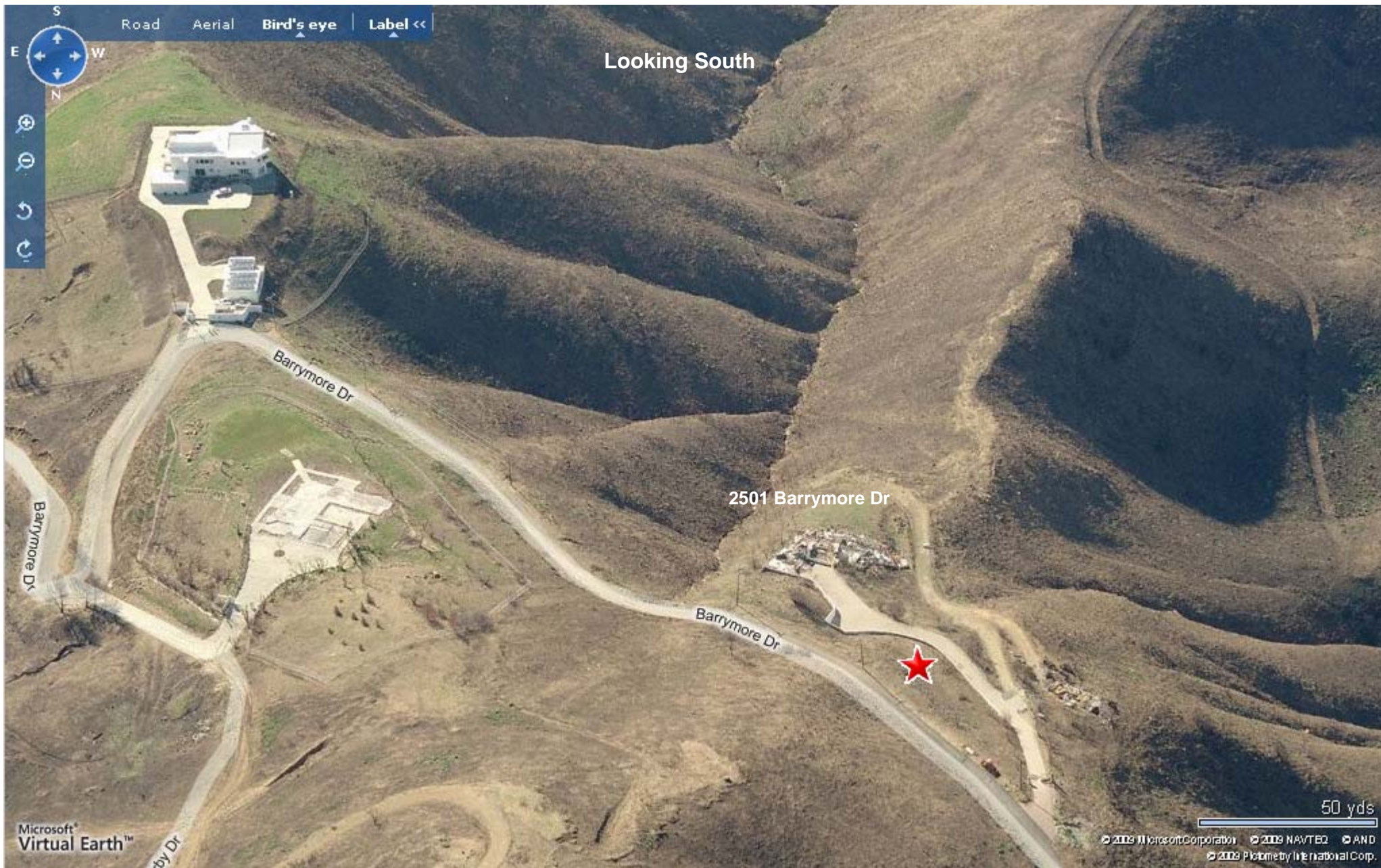
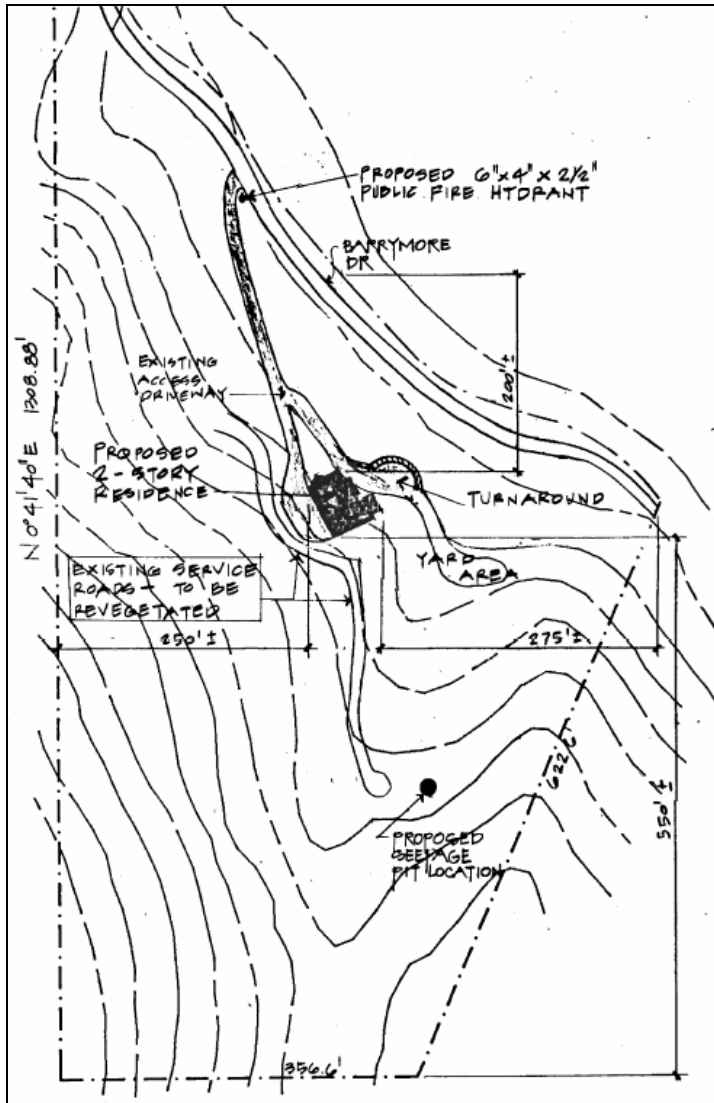




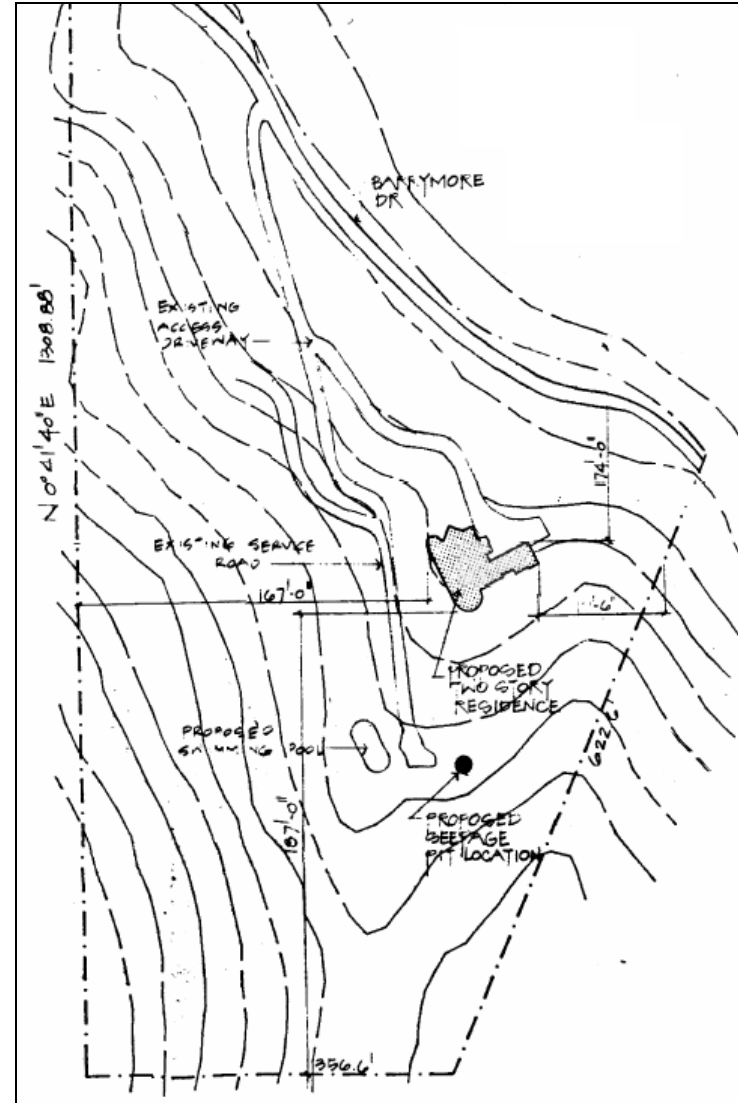
Exhibit 7 – Post Fire Aerial (2007)



Exhibit 8 – Revised Site Plan & Original Site Plan (5-88-148)



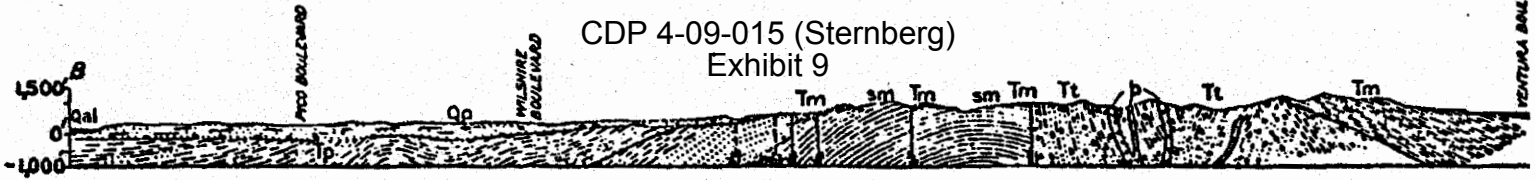
Revised (Approved) Plans (5-88-148)



Original (Unapproved) Plans (5-88-148)



CDP 4-09-015 (Sternberg)  
Exhibit 9



**Donald B. Kowalewsky**  
ENVIRONMENTAL &  
ENGINEERING GEOLOGY

**RECEIVED**  
FEB 17 2009

Dr. James Sternberg  
Malibu California 90265

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

January 6, 2009  
Job # 87113B3.001

Subject: Geologic approval of existing building site, 2501 Barrymore Drive, Malibu, California.

The undersigned engineering geologist prepared an engineering geologic report for the subject property on August 12, 1987 and two addendum reports in response to a Los Angeles County Geologic Review Sheet and for foundation modification during construction. Our original report stipulated an envelope (Plate 1) in which a habitable structure should be constructed. The structure was constructed within that envelope.

As a condition of approval of both Los Angeles County and California Coastal Commission, the building and grading plans for site development were reviewed and approved by this office by personal signature and stamp. The Coastal Commission specifically indicated in their project approval that "Prior to commencement of development, the applicant shall submit evidence to the Executive Director of the consultant's review and approval of all final design and construction plans". (Section III Para 5 page 4, File # 5-88-148).

This office did not approve any other portion of the property for construction. The approved envelope of construction was chosen by this office based on geologic conditions encountered. Once we stipulated the envelope, the project architect prepared specific plans to fit within that envelope. If plans had been submitted to this office for development on a portion of the property outside our recommended envelope, it would have been denied for two reasons

1. Any portion of the property outside our approved envelope did not have specific geotechnical investigation to establish suitability.
2. Less favorable to unfavorable geologic conditions exist on portions of the property.

After the 2007 Corral Canyon wildfire destroyed the residence at 2501 Barrymore Drive, this office was contacted by the owner and his representatives to determine what geologic update reports would be required for reconstruction using the same footprint. Los Angeles County Materials Engineering Division was contacted by this office to determine what they would require. I was informed that if the footprint of the structure was not changed, the County geologist would inspect the site and make a determination if additional geotechnical investigations would be needed. However, they also indicated that unless changed geologic conditions were observed, there would be no need for additional geotechnical reports.

More recently, I was notified that the California Coastal Commission believes that the house was placed in an area that was not approved by the Commission. I would like to make it very clear that the house was constructed in the location permitted by the County. Because the Commission stipulated that "Prior to commencement of development, the applicant shall submit evidence to the Executive Director of the consultant's review and approval of all final design and construction plans", and this office did in fact review and approve the plans for the exact footprint on which the house foundation currently exists, it appears that the Executive Director of the Commission must have been provided with those plans, and approved them.

Within the last month, I was provided two exhibits showing possible footprints for the dwelling that were apparently part of the Commission's approval packet. Exhibit 4 indicates the location of the "Original Site Plan". Exhibit 5 indicates the location of the "Revised Site Plan". The second site location was never considered, reviewed, nor approved by this office. I have never seen that document before. In fact, if I had been provided a copy of that map for opinion regarding suitability as a potential building site, I would have made the following observations.

1. The proposed building footprint on Exhibit 5 is northerly of a natural ravine that separates the footprints on Exhibits 4 and 5.
2. My geologic map (Plate 1, included herein for reference) shows the area on Exhibit 5 as underlain by colluvium and possible slump debris. (The topographic maps utilized for the Exhibits and the geologic plate are from different sources, however, the ravine is clear on both maps, allowing for a clear understanding of the relationship of the proposed footprint on Exhibit 5 to the unfavorable geologic conditions).
3. In order to construct a structure in the area shown on Exhibit 5, the entire slope between the structure and Barrymore Drive would have had to be re-graded to remove the unfavorable earth materials and replace those with properly compacted earth fill. The graded area would involve a fill slope that would be over 40 feet high. Assuming the depth of removals would be plus or minus 10 feet, the volume of grading would have

been in excess of 3000 cubic yards of removal followed by 3000 cubic yards of replacement. This amount of grading would have been simply to provide a stable slope above the building site. No determination was made regarding grading necessary for access or the actual house footprint.

4. Location of the house as shown on Exhibit 4, placed the structure below an existing stable slope, eliminating the necessity for remedial grading of the slope ascending from the house footprint.

In summary, it appears that the Executive Director of the California Coastal Commission either approved the existing building site or overlooked the fact that an alternative site was approved by the Commission. If the rationale for the site on Exhibit 5 was the difference in amount of grading necessary for development, then the persons making that decision failed to consider the geologic conditions associated with the site on Exhibit 5.

It has always been and remains my opinion that the existing building site is the best site from a geologic perspective. For whatever reason, it would be inappropriate to relocate the house footprint at this time.



Donald B. Kowalewsky  
Certified Engineering Geologist 1025

