

CALIFORNIA COASTAL COMMISSION

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



ADDENDUM

DATE: January 10, 2012

TO: Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: Agenda Item 26a, Wednesday, January 11, 2012
CDP Application No. 4-08-069 (Kies)

[Click here to go to the original staff report.](#)

The purpose of this addendum is to:

- 1) Correct Part 1 of the staff recommended two-part resolution, which shall be corrected to read as follows:

Part 1: Approval with Conditions of a Portion of the Proposed Development

The Commission hereby approves a coastal development permit for the following components of the proposal, as described in more detail in the staff report: the carport, after-the-fact approval of the driveway & walkway, after-the-fact approval of the existing channelization of the drainage and approval of further channelization, after-the-fact approval of several additions to the house, and approval of proposed new additions to the house; on the grounds that most of this development, as conditioned, will be in complete 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, and that a portion of this development is necessary to afford the applicant an equal opportunity to use and enjoy her house and would involve only minor deviations from Chapter 3 mandates that would not fundamentally alter the Commission's permit and coastal protection program. Approval of this portion 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.

- 2) Attach and respond to email correspondence staff has received from the applicant and the HUD investigator assigned to the case, dated January 6 and 10, 2012. The email correspondence received (attached as Exhibit 1 of this addendum) makes several statements, to which staff responds as indicated below:
 - a. First, the HUD investigator's January 6, 2012 email indicates that the applicant objects to the staff recommendation of denial for the proposed garage component of the project. The applicant asserts that the garage is a reasonable accommodation and necessary component of the improvements

to her residence to ameliorate her disabilities by providing protection from harsh weather elements when getting into and out of vehicles. The HUD investigator states that the staff report does not address this issue. In response, Commission staff would note that the staff report directly responds to the applicant's stated need for the proposed garage, and provides an analysis of impacts associated with the proposed garage and its necessity and reasonableness for ensuring that the applicant has an equal opportunity to enjoy her home. This analysis can be found on pages 37-38, 48-49, and 60 of the staff report.

- b. Second, the HUD investigator states her "understanding that CCC has not set forth any objective criteria or policy as to how to address reasonable accommodation requests to ensure compliance with the Fair Housing Act." She also requests "a written statement from CCC on criteria used to make this, and any other, reasonable accommodation requests [sic]." In response, Commission staff would note that page 31 of the staff report lays out the requirements established by the Fair Housing Act and the associated case law and explains the criteria that those authorities require the Commission to apply in assessing reasonable accommodation requests such as this one. If approved by the Commission, the findings in the staff report will become the official written statement of the Commission's action.
 - c. In another message from the HUD investigator sent later on January 6, she indicates that she has no information on how the Commission responded to the settlement offer that Mary Prem, of the Housing Equality Law Project, sent in late November. However, the HUD investigator was copied on the email response staff had sent to Ms. Prem on December 8, 2011 (see point 3, below).
 - d. Finally, the HUD investigator's January 10, 2012 email asserts that Commission staff has been non-responsive to a settlement offer that Ms. Prem sent to staff on November 22, 2011. However, the HUD investigator was copied on the email response staff had sent to Ms. Prem on December 8, 2011 (see point 3, below).
- 3) Correct an error in the second paragraph on Page 33 within Section IV.B.3 of the staff report discussing correspondence between Commission staff and a representative of the applicant, the following changes shall be made, as follows (deletions shown in ~~strikethrough~~, additions shown in underline):

In mid-November, 2011, Commission legal staff contacted Mary Prem, of HELP, who has been representing the applicant. Ms. Prem indicated that the applicant needed to make immediate changes to the property because the current condition required her to park on an incline and climb three flights of stairs in order to access her house. However, this assertion does not appear to be true, because the applicant has an existing relatively level parking area at the terminus of her existing paved driveway that she asserts she has used for parking for the last 15 years, and she has a paved pathway leading from that parking area to her

house that does not require her to ascend any stairs at all. ~~Ms. Prem also made a confidential communication to staff on November 22, 2011. As of the issuance of this report, that was the last communication between the Commission and Ms. Prem.~~ Ms. Prem also forwarded a settlement offer to staff on November 22, 2011, and staff responded on December 8, 2011, indicating that it would have to await the Commission meeting before providing a substantive response. Staff received no further response. The only other communication staff has received from Ms. Prem as of the date of this addendum was an email message on December 28, 2012 indicating that she had not yet received the hearing notice or staff report and asking about staff's response to her settlement proposal. Staff immediately responded by providing a copy of the report and information about how to obtain additional information from the Commission's website, and staff reiterated that it would respond further to the settlement proposal would be after the Commission meeting.

From: Brown-Hardnett, Donna G [<mailto:Donna.G.Brown-Hardnett@hud.gov>]
Sent: Fri 1/6/2012 9:22 AM
To: Alex Helperin
Cc:
Subject: CCC Hearing, 1/11/12

Mr. Helperin,

Below is a response from Complainant on the board's recommended denial of the permit to build a garage. It is my understanding that this Complainant is mobility impaired and as such, the garage is requested as a reasonable accommodation to her degenerating condition. It is also my understanding that CCC has not set forth any objective criteria or policy as to how to address reasonable accommodation requests to ensure compliance with the Fair Housing Act. Regardless, I will need a written statement from CCC on criteria used to make this, and any other, reasonable accommodation requests to continue processing this claim.

I receive your email referring me to the board's recommendation and supporting reasoning. This information does not seem to address Complainant's fundamental concern on why the following accommodation would be considered under the Fair Housing Act.

"....The garage is a necessary component of the improvements to my residence to ameliorate my disabilities by providing protection from harsh weather elements when getting into and out of vehicles. "

Ms. Kies has also indicated that her current disability is getting progressively worse. Can you please review and respond, to Ms. Kies' request for the board to recommend and approve the garage as a reasonable accommodation? It might also be helpful for you to inform the board that Ms. Kies objects to the recommendation on this point, based upon alleged violations of the Fair Housing Act in a current HUD action so that they are fully informed when they make the final decision.

Thank you,

Donna Hardnett

Addendum Exhibit 1 CDP 4-08-069 Correspondence
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From: Kies, Lynda R PWR [<mailto:Lynda.Kies@pwr.utc.com>]
Sent: Thursday, January 05, 2012 11:58 AM
To: Brown-Hardnett, Donna G
Cc: Mary Prem
Subject: CCC Hearing, 1/11/12

Dear Ms. Hardnett,

I hope the holidays were a wonderful and renewing time for you! I realize that in the rush of activities before vacations, some things doubtlessly get "lost in the shuffle". Shortly before Christmas I left a voicemail message for you regarding HUD attendance at the CCC hearing you negotiated. I just want to make sure to close the loop with you and re-iterate my request to have you and/or other HUD staff attend the CCC Hearing scheduled for January 11, 2012 (next Wednesday). I received a copy of the CCC Staff report after Christmas, which recommends complete DENIAL of the portion of my application for a permit to build a garage (and threatens reprisals for alleged "violations" for failure to convince Staff of the existence of various property improvements completed prior to my purchase of the property). The garage is a necessary component of the improvements to my residence to ameliorate my disabilities by providing protection from harsh weather elements when getting into and out of vehicles. Exposure to wind and water increases the likelihood that I may fall as I struggle with my mobility limitations as well as increasing the risks of contracting illnesses due to my immune system vulnerabilities, so I believe it is especially important to have HUD staff present at the hearing.

I appreciate your impartial, ongoing efforts to resolve this matter.

Very Truly Yours,

Lynda Kies
(310) 387-5702

Addendum Exhibit 1 CDP 4-08-069 Correspondence
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From: Brown-Hardnett, Donna G [mailto:Donna.G.Brown-Hardnett@hud.gov]

Sent: Tuesday, January 10, 2012 11:58 AM

To: Alex Helperin

Subject: RE: Kies, HELP v. CCC

Alex,

The following is additional information that you may find helpful as you assess your clients potential risk exposure in this HUD claim.

The Department is a neutral party in the action. The Department is concerned with the public interest of making sure all parties within it's jurisdiction acknowledge the protected classes under the fair housing act, in action and in policy. Under the fair housing Act "intent" is not a necessary element to prove a violation.

Absent a signed conciliation agreement by both parties, the Department is obligated to fully investigate the claims against Respondents. In the event the Department finds that a Respondent has made efforts to correct any violations **after** a claim is waged against them, said Respondents could still be found to have violated the Act upon further investigation. Should an investigation result in an adverse finding against Respondents, any corrective measures taken by Respondents would be duly noted for the purpose of damage calculations.

The Department offers conciliation by Agreement between the parties, by statue. Conciliation resolves the claim without admission of liability by either party. Conciliation also limits Complainants ability to seek further remedy under the Act. In cases like this one, it is recommended that the option of conciliation be seriously considered.

At this time, the Department's record shows that Complainants have extended an offer to CCC to conciliate, and CCC has been non responsive. Should the CCC decide to enter a conciliation agreement with Ms. Kies, it would stop an further investigation of this claim. Please keep the Department advised of your client's efforts in this area.

Thank you,

Donna Hardnett/EOS

At this point, the investigation remains ongoing. The Department continues to request documents from CCC, including reasonable accommodation policy, permit request from other residents, identification of other requests for reasonable accommodations, and the disposition of said requests. Also, to the extent that Ms. Kies continues to allege she was treated "differently" by CCC based upon her disability, and that she was asked to provide proof of more than other residents were required to provide, the Department will also review permit request for this claim as well.

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

W 26a

Filed: N/A
180th day: N/A
Staff: D. Christensen
Staff Report: 12/22/11
Hearing Date: 1/11/12



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-08-069

APPLICANT: Lynda Kies

PROJECT LOCATION: 1363 Oakwood Drive, Topanga Oaks Small Lot Subdivision, Santa Monica Mountains, Topanga, Los Angeles County (APN 4440-013-026)

PROJECT DESCRIPTION: Construct a new detached 432 sq. ft. carport on an existing "as-built" flat pad area approximately 1,500 sq. ft. in size and request for after-the-fact approval of a 60 ft. long, 20 ft. wide existing, as-built paved driveway and an as-built 60 ft. long, 4 ft. wide paved walkway from the existing, as-built driveway to the existing residence. The application also includes a request for: (1) after-the-fact approval of a partially-constructed concrete channelization of a 116 linear ft. segment of a natural drainage on the subject site involving construction of an 8 ft. wide concrete-bottom lined channel with 2 - 4 ft. high vertical retaining walls on each bank and (2) approval to complete the partially constructed drainage channelization.

The proposed project also includes a request for after-the-fact approval of several as-built additions to an existing 1,056 sq. ft. two-story structure (528 sq. ft. single-family residence above a 528 sq. ft. attached storage area) to allow for a 1,600 sq. ft. single family residence involving: 1) conversion of the 528 sq. ft. first-floor storage area to habitable residential space; 2) construction of a 450 sq. ft. addition to the residence involving enclosing portions of the existing first floor patio and second floor deck areas; 3) addition of 67 sq. ft. first floor exterior deck and a 112 sq. ft. second floor exterior deck; and 4) construction of a 25 linear ft., 8 ft. high retaining wall and an unenclosed 220 sq. ft. exterior staircase on the west side of the residence. Further, the application also includes a request for new additions to the residence including conversion of a 48 sq. ft. portion of the existing second-story deck to habitable space; construction of a new 240 sq. portion of the second story deck; and enclosure of the as-built 220 sq. ft. exterior staircase at west side of residence.

Finally, the proposed project also includes construction of a new 976 sq. ft. accessory structure (3-car garage and storage building) on an existing approximately 3,000 sq. ft. unpermitted graded pad supported by approximately 450 linear ft. of multiple existing, unpermitted timber and concrete retaining walls (ranging in height from 3' – 6') involving an unidentified quantity of grading and which would be accessed via an approximately 170 linear ft. segment of unpermitted dirt roadway on a steep slope.

MOTION & RESOLUTION: Page 7 & 8

SUMMARY OF STAFF RECOMMENDATION:

The project site is located within the Topanga Oaks Small Lot Subdivision in the Topanga area of the Santa Monica Mountains, Los Angeles County. The property is developed with an existing single-family residence. The property is located on a steep slope that ascends to the northwest from a natural drainage that follows the approximately 80 foot southern property boundary. The subject site and surrounding area contains disturbed and undisturbed coast live oak woodland and mixed chaparral vegetation. The property is situated within an LUP-designated Disturbed Significant Oak Woodland area.

Staff is recommending that the Commission approve all proposed development with the exception of a new 976 sq. ft. accessory structure (3-car garage and storage building), by adopting the two-part resolution summarized below. In addition, apart from either the development that staff is recommending the Commission approve or the development that staff is recommending the Commission deny, there is also additional unpermitted development for which the applicant has refused to seek after-the-fact authorization, and which is therefore not part of this application. The applicant alleges that this additional development was constructed prior to the effective date of the Coastal Act of January 1977. However, staff has explained to the applicant that the Commission needs evidence that the development pre-dated the Coastal Act's permitting requirements in order to recognize it as legal development. The applicant has not provided such evidence, nor has she submitted a vested rights claim for any of the as-built development. Accordingly, consistent with Commission practice, and as upheld by the courts (see, e.g., *LT-WR, L.L.C. v. California Coastal Commission* (2007), 152 Cal.App.4th 770, 797), in staff's assessment of the approvability of the application, staff treats the site as if that unpermitted development had not occurred.

The proposed 976 sq. ft. accessory building that staff is recommending the Commission deny would be located on an approximately 3,000 sq. ft. unpermitted graded pad that is among the unpermitted development that the applicant has refused to submit for Commission review and that is therefore not being addressed in this application. That pad is supported by approximately 450 linear ft. of multiple existing, unpermitted timber and concrete retaining walls (ranging in height from 3' – 6') that the applicant has also refused to submit for Commission review. All of this unpermitted development involved an unidentified quantity of grading and would be accessed via an approximately 170 linear ft. segment of unpermitted dirt roadway on a steep slope, which the applicant has also not made a part of this application. Moreover, the unpermitted graded pad area where the new 976 sq. ft. accessory structure is located is currently developed with an unpermitted fenced horse corral with 12 ft. x 14 ft. pipe shelter. The applicant is also not proposing to address the unpermitted horse facilities as part of this application. The Commission's Enforcement Division will consider options to address the unpermitted development on site.

The main Coastal Act issues raised by this project relate to stream alteration and water quality, environmentally sensitive habitat, and scenic/visual resources. The denial portion of the staff recommendation is for proposed development that would have significant adverse impacts to these resources that are inconsistent with the Chapter 3 policies in a manner that cannot be mitigated. The standard of review for any proposed project in this area are 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. Finally, one other body of law is relevant in this case as explained in the next paragraph.

The applicant has raised an issue related to state and federal laws prohibiting discrimination on the basis of disability and requiring the provision of reasonable accommodations when necessary to give persons with disabilities equal ability to the use of their house. At the beginning of 2011, more than three years after submitting her original application and receiving staff's initial response letter indicating what additional information was needed to complete the application, the applicant submitted a letter requesting "priority processing and approval of a [CDP] . . . for necessary disability-related improvements," and a "waiver of any and all laws, rules, policies and practices administered by the [Commission] that could impede urgent issuance of a [CDP]," citing the Federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), and the Americans with Disabilities Act (ADA). She did not, however, provide the information staff had been requesting for the past three years as necessary in order to complete the application, or the full application fee staff had indicated was due. In another exchange, in April and May of 2011, Staff indicated that the application was still incomplete. In or about September, the applicant filed a formal complaint against the Commission with the U.S. Department of Housing and Urban Development (HUD). In November, the HUD investigator assigned to the case requested that staff bring this matter to the Commission as soon as possible, notwithstanding the ongoing dispute regarding the application fee and the missing information, as an "accommodation" to the applicant. Although staff is unaware of any relationship between the applicant's alleged physical disabilities and her ability to provide the requisite application fee and information, staff agreed to bring the application to the Commission in January. Staff's recommendation on the merits of the application takes into account both the requirements of the Coastal Act and those of the FHA, FEHA, and ADA.

With that background, staff recommends that the Commission adopt a two-part resolution as follows:

Part 1: Approve the portion of the proposed coastal development permit consisting of: **(1)** a new detached 432 sq. ft. carport on an existing "as-built" flat pad area approximately 1,500 sq. ft. in size; **(2)** after-the-fact approval of a 60 ft. long, 20 ft. wide existing, as-built paved driveway and an as-built 60 ft. long, 4 ft. wide paved walkway from the driveway to the residence; **(3)** after-the-fact approval of the partially-completed

concrete channelization of a 116 linear ft. segment of the natural drainage on the subject site involving construction of an 8 ft. wide concrete-bottom lined channel with 2 - 4 ft. high vertical retaining walls on each bank; **(4)** new approval to complete the partially constructed drainage channelization; **(5)** after-the-fact approval of several as-built additions to an existing 1,056 sq. ft. two-story structure (528 sq. ft. single-family residence above a 528 sq. ft. attached storage area) to allow for a 1,600 sq. ft. single family residence involving: a) conversion of the 528 sq. ft. first-floor storage area to habitable residential space; b) construction of a 450 sq. ft. addition to the residence involving enclosing portions of the existing first floor patio and second floor deck areas; c) addition of 67 sq. ft. first floor exterior deck and a 112 sq. ft. second floor exterior deck; and d) construction of a 25 linear ft., 8 ft. high retaining wall and an unenclosed 220 sq. ft. exterior staircase on the west side of the residence; and **(6)** new additions to the existing residence including conversion of a 48 sq. ft. portion of the existing second-story deck to habitable space; construction of a new 240 sq. portion of the second story deck; and enclosure of the as-built 220 sq. ft. exterior staircase at west side of residence.

Part 2: Deny the portion of the proposed coastal development permit consisting of the new approval of a detached 976 sq. ft., 3-car garage and storage building.

In addition, staff is recommending that the portion of the proposed development to be approved be subject to thirteen (13) special conditions regarding submittal of revised plans, permit application filing fee, conformance with geotechnical recommendations, assumption of risk, drainage and runoff control plans, interim erosion control and construction responsibilities plan, future development restriction, deed restriction, site inspection, oak tree monitoring, oak tree mitigation, and condition compliance.

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LIST OF EXHIBITS

- Exhibit 1. Vicinity Map
- Exhibit 2. Parcel Map
- Exhibit 3. Former Brownhill Trail Easement
- Exhibit 4. Proposed Development Site Plan
- Exhibit 5. Proposed Open Concrete Drainage Channel
- Exhibit 6. Floor Plans and Elevations
- Exhibit 7. Applicant's Submitted Aerial Photos and Mr. Hicklin Letter
- Exhibit 8. October 11, 2011 CCC Response Letter to HUD
- Exhibit 9. Oak Tree Map
- Exhibit 10. Unpermitted Development West of Residence
- Exhibit 11. Residence, Driveway, Walkway, and Parking Area Recommended for Approval Per Staff Recommendation
- Exhibit 12. Los Angeles Co. 1986 Land Use Plan- Sensitive Environmental Resources Map
- Exhibit 13. Biological Consultant's Vegetation Map
- Exhibit 14. Aerial Photos – (a) 2008, (b) 1986, (c) 1977, (d) 1964
- Exhibit 15. Aerial View of Subject Property and Vicinity (2007 Aerial Photo)
- Exhibit 16. Site Photographs from March 2010 Site Visit

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concept, dated 9/10/07; Los Angeles County Fire Department, Preliminary Approval of Fuel Modification Plan, dated 10/1/08; Los Angeles County Division of Building and Safety Approval for interior remodel and retaining wall, dated 12/6/94; Los Angeles County Oak Tree Encroachment Permit 2004-00033, approved 5/16/07; Los Angeles County Fire Department - Forestry Division Emergency Oak Tree Evaluation, Tree Removal Authorizations dated November 17, 2005, September 8, 2004, May 27, 2004, and December 16, 2002; State Fish and Game Lake or Streambed Alteration Agreement, dated 12/28/09; California Regional Water Quality Control Board, Standard Certification for Proposed Kies Driveway Ditch Stabilization Project, dated 3/5/04; Los Angeles County Environmental Review Board Approval of Plot Plan 43553 with Modifications, dated 4/21/03; Los Angeles County Geologic and Soils Engineering Review Sheet – Approval Recommendation for retaining wall, channel, culvert at 1363 Oakwood Drive, Topanga, dated 12/4/02.

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; "Geotechnical Update for Preliminary Geotechnical Investigation" by Strata-Tech, Inc. dated October 9, 2004; "Oak Tree Report" by Trees, Etc., dated February 6, 2004; Oak Tree Report for Encroachment Permit, by Tree Life Concern, dated December 15, 2003; Hydrology Report For Kies Storm Channel, dated March 18, 2003, by Lynda Kies, Sr. Systems Engineer; Biological Resource Evaluation, 1362 Oakwood Drive, Topanga, California, dated September 17, 2008, by Compliance Biology; CDP No. 4-96-122-W; CDP No. 4-07-125; Alternatives Analysis – Drainage Channel Design Evaluation, by RJR Engineering, dated February 24, 2010; CDP 4-06-132 (Zadeh & Esplana); CDP 4-00-151 and CDP 4-03-061 (Yardley); CDP 4-07-126 (Mitchell).

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission adopt the staff recommendation for Coastal Development Permit 4-08-069 by adopting the two-part resolution set forth in the staff report.*

STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART

Staff recommends a **YES** vote on the following motion. This will result in the adoption of the following two-part resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Proposed Development

The Commission hereby **approves** a coastal development permit for: **(1)** a new detached 432 sq. ft. carport on an existing "as-built" flat pad area approximately 1,500 sq. ft. in size; **(2)** after-the-fact approval of a 60 ft. long, 20 ft. wide existing, as-built paved driveway and an as-built 60 ft. long, 4 ft. wide paved walkway from the driveway to the residence; **(3)** after-the-fact approval of the partially-completed concrete channelization of a 116 linear ft. segment of the natural drainage on the subject site involving construction of an 8 ft. wide concrete-bottom lined channel with 2 - 4 ft. high vertical retaining walls on each bank; **(4)** new approval to complete the partially constructed drainage channelization; **(5)** after-the-fact approval of several as-built additions to an existing 1,056 sq. ft. two-story structure (528 sq. ft. single-family residence above a 528 sq. ft. attached storage area) to allow for a 1,600 sq. ft. single family residence involving: a) conversion of the 528 sq. ft. first-floor storage area to habitable residential space; b) construction of a 450 sq. ft. addition to the residence involving enclosing portions of the existing first floor patio and second floor deck areas; c) addition of 67 sq. ft. first floor exterior deck and a 112 sq. ft. second floor exterior deck; and d) construction of a 25 linear ft., 8 ft. high retaining wall and an unenclosed 220 sq. ft. exterior staircase on the west side of the residence; and **(6)** new additions to the existing residence including conversion of a 48 sq. ft. portion of the existing second-

story deck to habitable space; construction of a new 240 sq. portion of the second story deck; and enclosure of the as-built 220 sq. ft. exterior staircase at west side of residence, on grounds that this 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 this portion 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.

Part 2: Denial of the Remainder of the Proposed Development

The Commission hereby **denies** the portion of the proposed coastal development permit that would authorize construction of a *detached, 976 sq. ft., 3-car garage and storage building* on the ground that this development would not conform with the policies of Chapter 3 of the Coastal Act, would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is not necessary to afford the applicant an equal opportunity to use and enjoy her house, and would constitute a fundamental alteration in the Commission's permit and coastal protection program. In addition, approval of this portion of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. 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. **Final Revised Plans**

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, two sets of final revised project plans. All plans must be drawn to scale with dimensions shown, with representative cross-sections, and shall be prepared and stamped by a licensed civil engineer.

- A. The final revised project plans shall show only the development on the subject property that legally existed prior to the effective date of the Coastal Act and/or is approved pursuant to this permit. The following development appears on the plans submitted with the subject application but shall be **deleted** in its entirety from the final revised plans:
- (1) the proposed detached 976 sq. ft., 3-car garage and storage building;
 - (2) all of the approximately 3,000 sq. ft. graded pad and fenced horse corral with covered pipe stall west of the residence;
 - (3) all portions of the unpaved road west of the approved carport that ascends a slope to the approximately 3,000 sq. ft. graded pad and fenced corral area; and
 - (4) all unpermitted grading, terraces, retaining walls, stairs, and fences west of the residence and north of the approved carport parking area (as generally shown on Exhibit 10).
- B. The final revised project plans shall also show that all horse facilities (including but not limited to the 12 ft. x 12 ft. covered pipe horse stall) on the as-built approximately 30 ft. x 50 ft. pad in the area of the approved 432 sq. ft. carport has been deleted from the final revised plans (See "G" on Exhibit 10). However, the final revised plans may include a one-story carport and/or garage structure that includes storage on the as-built approximately 30 ft. x 50 ft. pad in the area of the approved carport, provided that the parking and storage improvements on the existing pad do not require additional grading.

All other plans required to be submitted pursuant to Special Conditions 5 and 6 of this permit must be consistent with the approved Final Revised Plans required herein.

The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

2. **Permit Application Filing Fee**

Prior to issuance of the Coastal Development Permit, the applicant shall submit the remaining \$700 balance of the required permit application filing fee, applying the pre-2008 Commission Filing Fee Schedule to generate a required permit application filing fee for the proposed project of \$1,200.

3. 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 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).

4. 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.

5. 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 and the approved modified drainage channel. 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 appropriate for an oak woodland habitat which have low water and chemical treatment demands. 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. 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.
- (5) All slopes shall be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion Control Plan Conditions of 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, including the modified drainage channel. 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 15th each year) and at regular intervals as necessary between October 15th and April 15th 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.

6. 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.

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) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) and (b) 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, 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. 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.

11. Oak Tree Monitoring

To ensure that all oak trees located on the subject parcel are protected during construction activities, temporary protective barrier fencing shall be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then flagging shall be installed on trees to be protected. The permittee shall also follow the oak tree preservation recommendations that are enumerated in the Oak Tree Report referenced in the Substantive File Documents.

The applicant shall retain the services of a biological consultant or arborist with appropriate qualifications acceptable to the Executive Director. The biological consultant or arborist shall be present on site during all excavation, foundation construction, framing construction, and grading within 25 feet of any oak tree. The consultant shall immediately notify the Executive Director if unpermitted activities occur or if habitat is removed or impacted beyond the scope of the work allowed by this Coastal Development Permit. This monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

The applicant shall retain the services of a biological consultant or arborist with appropriate qualifications acceptable to the Executive Director to monitor all oak trees

that will be encroached upon (**Oak Trees No. 3-7, 10-13, 15, 18**) for a period of ten years, to determine if the trees are adversely impacted by the encroachment. An annual monitoring report shall be submitted (one year from the date construction commences and annually thereafter) for the review and approval of the Executive Director for each of the ten years. Should any oak trees be lost or suffer worsened health or vigor as a result of this project, the applicant shall plant replacement trees on the site at a rate of 10:1. If replacement plantings are required, the applicant shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a ten-year monitoring program with specific performance standards to ensure that the replacement planting program is successful. An annual monitoring report on the oak tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. Upon submittal of the replacement planting program, the Executive Director shall determine if an amendment to this coastal development permit, or an additional coastal development permit is required.

12. Oak Tree Mitigation

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other resource specialist, which specifies replacement tree locations, tree or seedling size planting specifications, and a ten-year monitoring program with specific performance standards to ensure that the replacement planting program is successful. At least 10 replacement seedlings, less than one year old, grown from acorns collected in the area, shall be planted on the project site, as mitigation for development impacts to **Oak Tree No. 9**, as identified by the Oak Tree Report referenced in the Substantive File Documents.

The applicant shall commence implementation of the approved oak tree replacement planting program concurrently with the commencement of construction on the project site and shall notify the Executive Director in writing when construction commences. An annual monitoring report on the oak tree replacement area shall be submitted (one year from the date construction commences and annually thereafter) for the review and approval of the Executive Director for each of the 10 years. If monitoring indicates the oak trees are not in conformance with or have failed to meet the performance standards specified in the monitoring program approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental planting plan for the review and approval of the Executive Director. The revised planting plan shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

13. 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. ENVIRONMENTAL SETTING AND PROJECT DESCRIPTION

The project site is located at 1363 Oakwood Drive within the Santa Monica Mountains, unincorporated Los Angeles County (Exhibits 1-2). The subject property is a single 1.12-acre parcel consisting of Lots 146, 147, 592, 593, 597, 598, and portions of Lots 594, 595, and 596 of Tract No. 6943 within the Topanga Oaks Small Lot Subdivision. The project site is located within the Topanga Creek watershed, at an elevation of between approximately 890 and 1,030 feet above sea level on the west slope of Henry Ridge. Slopes within the property are very steep, ascending to the northwest at gradients of 1:1 (horizontal to vertical) with localized areas near vertical. The property is designated as a disturbed sensitive oak woodland pursuant to the certified 1986 Malibu/Santa Monica Mountains Land Use Plan (Exhibit 12). In addition, a natural ephemeral drainage that is a minor tributary to Topanga Creek and not a designated blue-line stream crosses the property in a northwest to southeast direction along the approximately 80 foot southern property boundary. The upper portion of the drainage course is in a natural condition. The lower portion of the drainage course is adjacent to the applicant's existing unpermitted driveway and traverses the southwestern portion of the subject property before flowing across the Oakwood Drive Arizona-crossing (Exhibits 13 and 15).

1. Existing and Proposed Development

The steeply-sloping property is developed with a two-story single-family residence, adjacent to Oakwood Drive in the northeast corner of the property, which was originally constructed in the 1930's as an approximately 528 sq. ft. residence above a 528 sq. ft. first floor storage area. There are various terrace walls and posts surrounding all sides of the residence, with cinder block steps on grade from Oakwood Drive up to the east side of the residence. The applicant purchased the property in 1988. In 1995, the County issued a Building Permit to the applicant for several additions and modifications to the existing residence and attached decks. The applicant never approached the Coastal Commission at that time, and most of the additions and modifications were constructed without benefit of a Coastal Development Permit, including conversion of 528 sq. ft. of first floor storage area to habitable space, conversion of 450 sq. ft. of first floor patio slab area and second floor deck area to habitable space, addition of 67 sq. ft. to first floor deck, addition of 112 sq. ft. to second floor deck, and addition of 220 sq. ft. concrete slab and retaining wall to support an exterior staircase on the west side of the residence. Therefore, the applicant is requesting after-the-fact approval of these as-built additions and modifications to the residence (Exhibits 4 and 6). The applicant also

requests approval to complete a partially-constructed conversion of 48 sq. ft. of second floor deck to habitable space and for the enclosure of an existing 220 sq. ft. exterior staircase. The applicant also seeks approval for the conversion of an existing 240 sq. ft. patio cover to second floor deck (Exhibit 4).

The subject property is accessed from Oakwood Drive, which runs parallel to, and is located just west of, Topanga Canyon Boulevard, about two miles north of the intersection of Topanga Canyon Boulevard and Old Topanga Canyon Road. When the original Tract Map was recorded for this area in 1924, a 15-foot wide roadway easement, called Brownhill Trail, was dedicated to the County of Los Angeles along the southern boundary of the subject property and following the drainage course (Exhibit 3). However, the dedicated roadway was never developed, and there is no evidence in the record that an actual roadway ever existed in this area. The County officially vacated "Brownhill Trail" in 2003 after determining that it was impassable and not required for access. There is a 60 ft. long, approximately 20 ft. wide paved driveway to the south of the residence. This paved driveway was a part of the project for which the County issued a Building Permit in 1995 but that was constructed without benefit of a Coastal Development Permit. As such, the applicant now seeks after-the-fact approval of the as-built paved driveway.

The lower portion of the on-site drainage course is adjacent to the applicant's existing driveway and traverses the southwestern portion of the subject property before flowing across the Oakwood Drive Arizona-crossing. The applicant has stated that a wood-plank barn had been constructed directly adjacent to the drainage course (near the location of the new proposed carport) by a previous property owner; however, the applicant did not provide any evidence that the barn had been constructed with the required permits or approvals from Los Angeles County. Regardless, storm water flows within the drainage severely damaged the barn in the early 1990's, and in 1996, the applicant demolished the unpermitted barn. Significant bank erosion continued in this area following large storm events, and in 2002, storm water flows had undermined the southern edge of the unpermitted, as-built driveway and parking area. In order to prevent further erosion, the applicant began construction of an open concrete channel within the drainage in 2002. The concrete channel is presently approximately 8 feet wide by 52 feet long with a 4 foot vertical concrete side wall along the northern bank, which also acts as a structural wall retaining the applicant's existing driveway and parking area. However, the applicant failed to apply for, or obtain, both the required coastal development permit from the California Coastal Commission and the building permit from Los Angeles County for the channelization of the natural drainage. Although some work was completed on the southern bank wall, that wall was not completed (only the rebar was installed) because the County of Los Angeles' Division of Building and Safety issued a "stop work" order during construction for failure to obtain to the required approvals. As a result, storm water flows continued to erode the existing south bank slope, which caused a mature off-site oak tree on the south bank to fall onto the driveway and parking area of the subject property. The applicant is now requesting after-the-fact approval of the as-built open concrete channel and seeks authorization to complete the partially-constructed vertical concrete side wall along the south bank of the

drainage as part of the proposed project in order to prevent further erosion of the applicant's existing driveway and parking area (Exhibit 5).

Northwest of the existing, unpermitted, paved driveway and adjacent to the drainage channel is an unpermitted, unpaved, relatively flat parking and storage area, approximately 30 ft. wide by 50 ft. long (approximately 1,500 sq. ft.), with two existing unpermitted sheds (10 ft. x 12 ft. each), an unpermitted horse pipe stall (12 ft. x 12 ft.), and a large shade structure covering the barns and pipe stall. The applicant proposes to construct a 432 sq. ft. tandem carport within this area between the unpermitted sheds and pipe stall and the drainage channel (Exhibits 4 and 10). However, the applicant is not proposing to address the unpermitted sheds and horse facility as part of this application. A 60 ft. long, 4 ft. wide paved walkway extends from the south side of the residence down to the paved driveway and unpaved parking area. The applicant asserts that she has utilized the existing driveway, unpaved parking area, and walkway to access her residence for the past 15 years and that these elements represent the only feasible ADA-accessible area to park and access the residence. The applicant requests after-the-fact approval of the unpermitted driveway and walkway, in addition to authorization to construct a new 432 sq. ft. carport on the unpermitted parking area in order to provide covered parking (Exhibit 4). However, the applicant is not addressing the unpermitted grading necessary to create the as-built flat pad for the parking area in the subject application. The applicant has asserted that the existing driveway was constructed on grade and did not require any grading. Further, the applicant has indicated that the proposed carport would be placed on the existing parking area and would not require any grading.

West of the proposed carport location (in an area hereinafter described as the "Upper Site") there is an approximately 170 ft. long unpermitted dirt road that ascends a steep slope to a large, unpermitted, approximately 3,000 sq. ft. graded flat pad that has been developed with a fenced horse corral with an approximately 12' x 14' pipe shelter within it. The flat grading pad is supported by a large concrete retaining wall. The slope above the pad is also stabilized with a combination of railroad tie and keystone block walls. Moreover, the steep hillside slope between the corral pad and the unpermitted parking area downslope of it has also been graded and terraced with multiple retaining walls of various types. In addition, there is also a unpermitted shed, approximately 64 sq. ft. in size, located on a small graded pad between the northern bank of the natural drainage and the unpermitted road up leading up from the existing parking area on the lower flat pad to the unpermitted corral located on the upper unpermitted flat pad (Exhibit 10).

The subject permit application does not address the unpermitted, approximately 30 ft. wide by 50 ft. long fenced parking pad west of the driveway with two existing sheds, a pipe stall, and large shade structure, or the unpermitted "Upper Site" flat pad area that is the site of the unpermitted, approximately 3,000 sq. ft. unpermitted corral west of the residence (and the grading required to create it), the approximately 12' x 14' pipe shelter on that pad, all of the unpermitted retaining walls and terraces west of the residence, and the unpermitted unpaved graded road on the steep slope between the two pads. See Exhibit 10.

The applicant asserts that she has not developed any equestrian-related improvements since she purchased the property in 1988 and she believes all of the existing equestrian development on the property pre-dates the effective date of the Coastal Act in January 1977. However, the applicant has failed to provide any evidence to support this claim. In support of her assertion, the applicant has provided 1952, 1964 and 1978 aerial photographs of the area, in addition to a letter describing the subject property from Mr. F. Mallory Hicklin, whose family resided at a nearby property (1385 Oakwood Drive) from 1951 to 1998. The letter from Mr. Hicklin does not constitute substantive evidence that any of the above referenced development existed on the subject site and purports to describe his memories of the applicant's property from when he grew up in the neighborhood in the 1950's and 1960's. Mr. Hicklin's letter, attached as Exhibit 7, describes an old wooden barn in the south side of the property, with small horse corrals behind and in front of the barn, a dirt road that ran alongside the corrals and up to a water tank on a hill, and a large field with horse shelters and a small ceramics studio up on the hill behind the house. The letter from Mr. Hicklin does not describe the size or location of any of the features discussed with enough detail to allow an assessment of whether they resembled or were in the same location as similar features on the property today. Moreover, he does not state whether any of the previously existing development remained on the site and was present when the Coastal Act was enacted, and there is no evidence that the development he describes is the same as the development currently located on the Upper Site flat graded pad area.

Moreover, staff has reviewed the historic aerial photos submitted by the applicant, attached as Exhibit 7, and confirmed that none of the photographs show any of the development that the applicant claims had existed. In fact, the photographs clearly show that the graded, terraced, and cleared areas that exist today had not existed in 1952, 1964, or 1978 and that these areas were vegetated. Following standard Commission procedure, Commission staff reviewed other historic aerial photographs from 1977 to present as well. The pictures that staff reviewed, from 1977, 1986, 1994, 2001, and 2008, clearly indicate that significant vegetation removal, terracing, and grading west of the residence occurred at some point after 1986. In 1964, 1977, 1978, and 1986 aerial photographs, none of the existing pads, roads, or equestrian facilities are evident (Exhibits 7 and 14). In addition, when Commission staff visited the subject property in March 2010, it appeared that several of the retaining structures were constructed relatively recently using contemporary materials.

As such, the information the applicant has provided does not demonstrate that the 30 ft. wide by 50 ft. long parking area pad, with two existing sheds and a covered stall and shade structure, or any of the Upper Site flat pad development (the unpermitted approximately 3,000 sq. ft. graded pad and fenced corral west of the residence with an approximately 12 x 14' pipe shelter, all of the unpermitted retaining walls and terraces west of the residence, or the unpermitted unpaved graded road on the steep slope between the two pads) existed on the site prior to the effective date of the Coastal Act. In addition, there is no record of this development receiving a coastal development permit after the effective date of the Coastal Act; nor has the applicant submitted any

evidence that any of this development was authorized pursuant to any building or grading permit from the County of Los Angeles. Therefore, the available evidence indicates that the above referenced development was constructed without the required coastal development permits. The applicant has also never filed a vested rights claim, as is required in order to obtain an exemption from the Commission's permitting requirements. Cal. Code Regs., tit. 14, § 13200; *LT-WR, L.L.C. v. California Coastal Commission* (2007), 152 Cal.App.4th 770, 785. Moreover, the majority of the unpermitted development is not addressed as part of this application. Therefore, in assessing the impacts of the proposed development, the Commission treats those areas as if the unpermitted development has not occurred, and the Commission's enforcement division will evaluate further actions to address this matter.

2. Natural Resources Onsite

The subject site and surrounding area contains disturbed and undisturbed coast live oak woodland and mixed chaparral vegetation. The subject site is situated within an LUP-designated Disturbed Significant Oak Woodland area (Exhibit 12). Exhibit 13 contains a map of vegetation communities prepared by the applicant's biological consultant. The applicant's biological consultant mapped the existing graded pad and equestrian area west of the applicant's residence as cleared/disturbed. However, Commission staff review of historic aerial photographs indicate that the disturbed area west of the residence contained oak woodland and mixed chaparral vegetation prior to unpermitted vegetation removal and grading that appears to have occurred after 1986.

The applicant's 2003 Oak Tree Report, listed in the Substantive File Documents, indicates that there are 25 oak trees in the vicinity of the project: 11 on-site oak trees and 14 off-site oak trees that overhang onto the subject property. However, in 2004 the Los Angeles County Forestry Division authorized the emergency removal of two on-site oak trees adjacent to the residence (Oak Trees #1 and 16) because one tree was damaged from disease and another posed a fire hazard near utility lines and the residence. And in 2005, the Los Angeles County Forestry Division authorized the emergency removal of another oak tree (Oak Tree #14) because it was damaged from disease and posed a hazard. On May 16, 2007, Los Angeles County Department of Regional Planning approved an Oak Tree Permit allowing for encroachment into the protected zone of 15 oak trees associated with as-built additions to the existing residence and channelization of the on-site drainage. However, according to the applicant's Oak Tree Report, the proposed project would result in substantial encroachment into one (1) oak tree canopy dripline (Oak Tree #9), and minor encroachments into eleven (11) other oak tree canopy driplines (Oak Trees #3-7, 10-13, 15, 18). (See Exhibit 9). It is unclear how many other oak trees may have been removed as a result of unpermitted grading and vegetation removal to create the unpermitted road, terracing, and horse corral pad on the Upper Site.

There are existing residences on adjacent properties along Oakwood Drive to the north, south, and east of the project site. In the Santa Monica Mountains, the Los Angeles County Fire Department requires a 200-ft fuel modification (on-site) and/or brush

clearance (off-site) zone from combustible structures. In this case, the 200-ft fuel modification/brush clearance zone for the existing residence overlaps with existing fuel modification zones for existing adjacent residences. Therefore, the majority of the subject property is located within the 200 foot fuel modification radius of the subject residence and two adjacent residences to the north and south along Oakwood Drive.

The project site is located in a scenic area; however, visibility from public viewing points, such as Topanga Canyon Boulevard and public lands located to the east, is limited due to the topography and dense oak woodland vegetation on the site and the surrounding area. There are no existing or mapped public trails on or adjacent to the subject property.

3. Specific Project Application

The applicant requests approval to construct a new detached 432 sq. ft. carport on an existing "as-built" flat pad area approximately 1,500 sq. ft. in size and request for after-the-fact approval of a 60 ft. long, 20 ft. wide existing, as-built paved driveway and an as-built 60 ft. long, 4 ft. wide paved walkway from the existing, as-built driveway to the residence. The application also includes the request for: (1) after-the-fact approval of the partially-completed concrete channelization of a 116 linear ft. segment of the natural drainage on the subject site involving construction of an 8 ft. wide concrete-bottom lined channel with 2 - 4 ft. high vertical retaining walls on each bank and (2) approval to complete the partially constructed drainage channelization.

The project also includes the request for after-the-fact approval of several as-built additions to an existing 1,056 sq. ft. two-story structure (528 sq. ft. single-family residence above a 528 sq. ft. attached storage area) to allow for a 1,600 sq. ft. single family residence involving: 1) conversion of the 528 sq. ft. first-floor storage area to habitable residential space; 2) construction of a 450 sq. ft. addition to the residence involving enclosing portions of the existing first floor patio and second floor deck areas; 3) addition of 67 sq. ft. first floor exterior deck and a 112 sq. ft. second floor exterior deck; and 4) construction of a 25 linear ft., 8 ft. high retaining wall and an unenclosed 220 sq. ft. exterior staircase on the west side of the residence. Further, the application also includes request for new additions to the residence including conversion of a 48 sq. ft. portion of the existing second-story deck to habitable space; construction of a new 240 sq. portion of the second story deck; and enclosure of the as-built 220 sq. ft. exterior staircase at west side of residence.

Finally, the project also includes construction of a new 976 sq. ft. accessory structure (3-car garage and storage building) on an existing approximately 3,000 sq. ft. unpermitted graded pad supported by approximately 450 linear ft. of multiple existing, unpermitted timber and concrete retaining walls (ranging in height from 3' – 6') involving an unidentified quantity of grading and which would be accessed via an approximately 170 linear ft. segment of unpermitted dirt roadway on a steep slope. While the applicant's submitted permit application indicates that a 892 sq. ft. garage and storage building is proposed, the applicant's plans that were submitted with the permit

application indicate that the proposed 3-car garage and storage building is actually 976 sq. ft.

There is substantial existing unpermitted development on the property that the applicant is not addressing in the subject permit application, and which involved an unknown quantity of cut and fill grading.

The applicant has indicated that she suffers from chronic systemic illness and a degenerative congenital joint condition that leaves her immune system-compromised and mobility-impaired. She is not able to routinely climb stairs or traverse uneven terrain. The applicant has stated that the as-built driveway, proposed carport, and as-built walkway ramp are intended to allow for safe, ADA-compliant parking and access to the residence. The applicant has stated that the proposed partially-constructed enclosure of an existing 220 sq. ft. exterior staircase at the west side of the residence would allow installation of a chair-rail system to provide an ADA-compliant interior access between the first and second floors of her residence. In addition, the applicant asserts that the proposed conversion of an existing 240 sq. ft. patio cover to second story deck is intended to provide an ADA-compliant "Area of Rescue" that is clear-to-sky and accessible directly from the applicant's bedroom in case of emergency.

Below is a summary of the new proposed development, the unpermitted as-built proposed development, and the unpermitted as-built development that the applicant has not addressed in the subject permit application. See also Exhibits 4, 10 and 16.

Unpermitted As-built Development Addressed in the Subject Application
<ul style="list-style-type: none">▪ Conversions and additions to an existing single-family residence:<ul style="list-style-type: none">– conversion of 528 sq. ft. of first floor storage area to habitable space;– conversion of 450 sq. ft. of first floor patio slab area and second floor deck area to habitable space;– addition of 67 sq. ft. to first floor deck;– addition of 112 sq. ft. to second floor deck;– addition of 220 sq. ft. concrete slab and retaining wall to support an exterior staircase on the west side of the residence;– partial conversion of 48 sq. ft. of second floor deck to habitable space;– partial enclosure of an existing 220 sq. ft. exterior staircase.▪ Paved approximately 60 ft. long, 20 ft. wide driveway▪ Paved approximately 60 ft. long, 4 ft. wide walkway connecting existing driveway to the residence▪ Partial construction of 116 ft.-long open concrete channel within a natural drainage
Unpermitted As-built Development NOT Addressed in the Subject Application
<ul style="list-style-type: none">▪ Approximately 1,500 sq. ft. graded pad (which required an unidentified quantity of grading) with two sheds (approximately 10 ft. x 12 ft. each), one covered pipe stall (approximately 12 ft. x 12 ft.), and a large shade structure covering the sheds and stall, and a parking lane.▪ Approximately 3,000 sq. ft. graded pad (which required an unidentified quantity of grading) with fenced horse corral and a covered pipe stall (approximately 12 ft. x 12 ft.).

- Approximately 170 ft. long graded dirt road (which required an unidentified quantity of grading) between the as-built approximately 1,500 sq. ft. graded pad and the as-built approximately 3,000 graded pad with fenced horse corral.
- Approximately 450 linear ft. of multiple timber and concrete retaining walls, ranging from 3 to 6 ft. in height, supporting unpermitted terraces and pads
- Shed on a small graded pad (approximately 10 ft. x 12 ft.) (which required an unidentified quantity of grading)

New Proposed Development

- Conversions and additions to an existing single-family residence:
 - Completion of conversion of 48 sq. ft. of second floor deck to habitable space;
 - Completion of enclosure of an existing 220 sq. ft. exterior staircase.
 - Conversion of an existing 240 sq. ft. patio cover to second floor deck
- Completion of channelization of 116 ft. of a natural drainage
- Detached 432 sq. ft. tandem carport
- Detached 976 sq. ft., 3-car garage and storage building

Other Agency Approvals

On September 10, 2007, Los Angeles County Department of Regional Planning “Approved in Concept” the proposed project requested in this application. On May 16, 2007, Los Angeles County Department of Regional Planning approved an Oak Tree Permit for the retroactive encroachment into the protected zone of 15 oak trees for as-built additions to the existing residence and channelization of the on-site drainage. On April 21, 2003, the County Environmental Review Board recommended approval for channelizing a segment of the on-site drainage and additions to the existing residence provided that the applicant remove an invasive periwinkle plant species from the site and consult with the U.S. Army Corps of Engineers and the California Department of Fish & Game regarding proposed alteration of the ephemeral drainage. On December 4, 2002, Los Angeles County Department of Public Works – Geotechnical and Materials Engineering Division recommended approval of the proposed channelization of the on-site drainage.

On March 5, 2004, the California Regional Water Quality Control Board issued a Section 401 Water Quality Certification for the proposed as-built drainage channelization. In addition, California Department Fish & Game approved a Streambed Alteration Agreement (No. 1600-2003-5055) on October 21, 2003 for the proposed as-built channelization work. The Streambed Alteration Agreement requires that the property owner implement construction best management practices and mitigate, by payment of an in lieu mitigation fee to the Santa Monica Mountains Conservancy, at a 4:1 ratio for permanent impacts to approximately 800 sq. ft. (0.018 acre) of riparian habitat. Since the proposed channelization work was never completed and never received all required approvals, California Department Fish & Game has extended the term of their agreement approval.

Prior Commission Action

In 1996, the applicant and a neighboring property owner applied for a coastal development permit from the Commission to adjust the lot lines of their respective lots to result in two parcels that are each developed with an existing residence. On August 15, 1996, the Commission approved Coastal Development Permit Waiver No. 4-96-122-W (Kies and Lemelson) for the lot line adjustment. The applicant's property now consists of Lots 146, 147, 592, 593, 597, 598, and portions of Lots 594, 595, and 596 of Tract No. 6943 within the Topanga Oaks Small Lot Subdivision.

B. BACKGROUND AND APPLICATION PROCESSING

1. Original Application

On September 27, 2007, the applicant submitted CDP Application No. 4-07-125 for development at 1363 Oakwood Drive. The applicant's request in the application stated: "1) add enclosure at second story to existing staircase, existing foundation and existing first story retaining wall; 2) convert existing 4'x12' second story deck to habitable (addition to bedroom; remove 48 sq. ft. of deck); 3) convert existing patio cover to deck (add 240 sq. ft. deck); 4) modify existing deck framing (add 67 sq. ft. of deck); 5) convert existing drainage course to channel and swale; add 2-car tandem carport (432 sq. ft.); and 6) add 3-car tandem garage/storage (876 sq. ft.)".

According to Los Angeles County Tax Assessor records dated from 1991, the original residence on the property was constructed in the 1930's as a two-story structure with an estimated 500 sq. ft. of habitable space on the second floor and an estimated 500 sq. ft. of non-habitable storage on the first floor. The applicant purchased the property in 1988. The applicant submitted information indicating that numerous existing additions were approved December 6, 1994, by the Los Angeles County Building Department without a coastal development permit approved by the Coastal Commission. The applicant also indicated that the County determined that these additions were exempt from the permit requirements of the Coastal Act, and thus, Los Angeles County Building Permit No. BL9411070033 was issued in 1995 without a coastal development permit. These unpermitted as-built additions include: 1) conversion of 528 sq. ft. of first floor storage area to habitable space and conversion of 500 sq. ft. of first floor patio slab area and second floor deck area to habitable space; 2) 67 sq. ft. first floor deck addition; 3) 120 sq. ft. second floor deck addition; and 4) construction of a 4 ft. wide, 60 ft. long ADA-compliant walkway from existing driveway to the residence. These additions and conversions result in a two-story, 1,600 sq. ft. residence with first and second floor decks.

In addition, during staff's initial review of this application, it was discovered that a substantial amount of other unpermitted development had occurred on the subject property, including, but not limited to, grading of road and pads, vegetation clearance, retaining walls, sheds, equestrian corrals and shelters, and concrete channelization of

a section of the natural drainage course on site. Moreover, the new proposed carport and garage structures are both proposed on existing graded pads which, based on review of historical aerial photographs, appear to have been constructed after the effective date of the Coastal Act without the required coastal development permits. Because the new proposed carport and garage structures are proposed entirely on these unpermitted graded pads, the grading of those pads is considered integrally related development, i.e. the new structure is dependent on the existence of the unpermitted graded pad. Thus, any application for new structures (such as the garage and carport) that would be located on, and thus dependent upon, these unpermitted, "as-built" graded pad areas must also include the request for after-the-fact approval of these graded areas.

On October 24, 2007, Coastal Commission staff issued a letter notifying the applicant that multiple information items were necessary to complete CDP Application No. 4-07-125, including clarifying the unclear project description and plans to clearly show new proposed development, identify existing unpermitted development, and clarifying development for which the applicant was requesting after-the-fact approval. The applicant had paid a filing fee of \$250 with the application. The \$250 fee submitted was for a category of development consisting of a new single family dwelling that is 1,500 sq. ft. or less. Commission staff indicated in its incomplete letter to the applicant that the submitted filing was inadequate and the correct filing fee, which would be more, could not be determined yet until a complete project description and additional information was provided to understand the nature and scope of the proposed project.

About 10 months later, on August 25, 2008, CDP Application No. 4-07-125 was returned to the applicant for reason of incompleteness, since Commission staff did not receive any correspondence or any of the additional items that it requested in staff's October 24, 2007 letter. The applicant's submitted filing fee was also refunded. It is standard practice for Commission staff to return permit applications if no correspondence in response to an incomplete letter is received from the applicant within several months.

2. Resubmitted Application

On September 18, 2008, Commission staff had a meeting with the applicant to discuss her previous application that had been returned for incompleteness. The applicant then submitted a new CDP Application (which is the subject application, No. 4-08-069) for the proposed development. Since the Commission's fee schedule had increased significantly since the applicant's original permit application in 2007, as a result of a formal regulatory revision, the fee for the resubmittal was significantly higher than the original fee. However, at the applicants' request, Commission staff agreed to accept the new permit application pursuant to the previously applicable, lower fee schedule. The required permit application filing fee for the proposed project is \$1,200, pursuant to the pre-2008 Commission Filing Fee Schedule (the filing fee for "other" development based on development cost is \$600, in addition to the filing fee for after-the-fact development, which is double the regular filing fee).

In addition, at this meeting, the applicant indicated that she had constructed several previous additions and expansions to the existing residence since she purchased the property although she did not obtain, or submit an application for, any previous coastal development permit or exemption from the California Coastal Commission. Staff informed the applicant that additional information and plans showing these additions would be necessary in order for staff to determine whether the improvements would have been exempt at the time of construction or whether a coastal development permit was required. Moreover, staff informed the applicant that staff did not foresee any significant issues with the additions to the residence, and that an exemption determination could be requested by the applicant for the portions of the project the applicant believed may be exempt from coastal development permit requirements. However, given that the majority of her proposed development (and related unpermitted development), including the new accessory structures located on graded pads, roads, retaining walls, and channelization of the natural drainage, clearly did require a coastal development permit, staff informed the applicant that she could also include all proposed development and development for which she sought after-the-fact authorization (including the additions to the residence) as part of a single comprehensive application for a coastal development permit in order to both resolve the violations on site and authorize new proposed development and/or remove unpermitted development and restore portions of the site. At the conclusion of the meeting, the applicant submitted the same application for the same project description as she had previously submitted, without addressing the previously identified issues or including the items that staff had identified as necessary for a complete application. When the applicant submitted Application No. 4-08-069, a filing fee of \$250 was provided.

As a result, on October 15, 2008, Commission staff sent the applicant another letter notifying her of the multiple items necessary to complete this new application (4-08-069), including clarifying both the project description and plans to clearly show new proposed development, identify existing unpermitted development, and clarifying development for which she was requesting after-the-fact approval. Although the applicant requested approval of several types of development on the subject property, including after-the-fact approval of residential additions and the concrete channelization of a natural drainage, and a new garage/storage structure located at the end of an unpermitted road that extends up an extremely steep slope on site to an unpermitted graded pad where an unpermitted horse corral is currently located, the applicant did not provide information addressing the unpermitted grading, road, pads, or horse facilities on the property. In addition, Commission staff was requesting a current geology and soils report in order to demonstrate that the proposed development would be safe from hazards; an alternatives analysis for the proposed drainage channelization in order to assess the feasibility of other forms of bank protection that may allow more natural drainage characteristics; and an alternatives analysis for the proposed carport and garage in order to cluster development and minimize impacts to coastal resources. This additional information was needed in order for the application to be filed as a complete application and in order for Commission staff to be able to adequately analyze and

review the applicant's application for consistency with the Chapter 3 policies of the Coastal Act.

In 2009 there were numerous correspondence between the applicant and Commission staff regarding the information requested in staff's October 15, 2008 letter. None of the responses submitted by the applicant included all of the items requested by staff to complete the application. After each response, Commission staff notified the applicant of the remaining information necessary to complete the application.

On March 22, 2010, Commission staff visited the project site with the applicant and her engineer, Rob Anderson. During this site-visit meeting, Commission staff conveyed to the applicant and Mr. Anderson that, once the application was completed by the applicant, staff would likely be able to recommend approval of all proposed additions to the residence and those components of the project necessary to access her residence, including the driveway between the natural drainage and the residence (which was already in place) and either a carport or garage at the top of that driveway, and the ramp/path to the residence (which was also already in place). However, staff also reiterated that the unpermitted development on the Upper Site, including the unpermitted horse facilities, graded pads and supporting retaining walls for the horse facilities located on a steep slope above the residence, and various storage structures located on unpermitted graded pads under the canopies of oak trees, appeared to raise substantial issues regarding consistency with the Chapter 3 policies of the Coastal Act. Commission staff discussed the outstanding previously requested items necessary to complete the application and reiterated that staff would process this application as expeditiously as possible once the required items to complete the application had been submitted. On April 14, 2010, the applicant was re-notified by letter of items still outstanding to complete CDP Application No. 4-08-069.

As the applicant has been informed in multiple discussions, meetings, and letters, the "proposed" project plans submitted as part of her application show numerous unpermitted developments that have occurred on her property (the violations are shown on the proposed project plans as "existing") that, based on a review of Commission records and historic aerial photographs, appear to have been completed after the effective date of the Coastal Act on January 1, 1977, without the required coastal development permit. Although her application includes the after-the-fact request for the channelization of the natural drainage and was later amended by her to request after-the-fact approval of the additions to the single family residence, her application does not clearly address the other components of the unpermitted development on site, particularly, grading and construction for a private access road immediately adjacent to the drainage, grading of a pad for a parking area adjacent to the drainage, installation of two sheds and a pipe stall for equestrian facilities located on an unpermitted pad adjacent to the drainage, construction/installation of a further unpermitted shed located on a separate graded pad adjacent to the drainage, construction/installation of a large horse corral and pipe stall located on an unpermitted graded pad on a steeply sloped portion of the lot, and the

construction/installation of an unknown number of retaining walls on steep slopes supporting the pad for the horse corrals. Her application is further complicated by the fact that each of the components of her application that comprise newly proposed structures (including a new garage/storage and carport) are located on portions of the site where unpermitted development has already occurred, including the unpermitted graded pads upon which these new structures would be constructed.

Due to the interrelatedness of the new and unpermitted existing development on site, the applicant was asked repeatedly to either submit evidence that the "as-built" development on site has received the necessary governmental approvals at the time of their construction or clarify the proposed project description and plans by indicating whether she is now: (1) requesting after-the-fact approval for some or all the unpermitted development; (2) removing some or all of the unpermitted development and restoring the disturbed areas.

On July 16, 2010, July 26, 2010, and October 18, 2010, the applicant submitted additional information, an additional \$250 towards the \$1,200 filing fee (resulting in a total submittal of \$500), and a request for priority processing of the application, which she indicated was needed because her other agency approvals were set to expire soon. On October 20, 2010, staff restated that there were still other outstanding items that must be submitted in order for her application to be filed, including the full amount of the requested filing fee, a clarification of the project description, and plans to clearly show new proposed development, identify existing unpermitted development, and clarify development for which the applicant is requesting after-the-fact approval or removal and restoration. Then on November 2, 2010, Commission staff met with the applicant and explained that she must submit the items previously requested in the Commission's letter in order for the application to be filed as complete.

On December 1, 2010, the applicant submitted historic aerial photos with a statement that she believes the photographs constitute evidence that no unpermitted development occurred on site since the effective date of the Coastal Act (Exhibit 7). Commission staff reviewed the photographs. On January 14, 2011, Commission staff responded by letter indicating receipt of the aerial photos and notifying the applicant that the aerial photos did not provide evidence that any of the previously identified unpermitted development existed prior to the effective date of the Coastal Act. Staff reiterated that the previously requested items are still outstanding and had to be submitted to complete the application. Since the applicant could not provide evidence that the unpermitted development pre-dated the Coastal Act or received the necessary approvals, the existing unpermitted development would need to be addressed in the subject application by identifying the existing unpermitted development in the project description and plans and clarifying whether after-the-fact approval or removal and restoration were being sought.

3. Disability-Based Accommodation Demand and Formal Complaint

On January 27, 2011, the applicant submitted a letter to the Commission's Executive Director at the time, Peter Douglas, requesting "priority processing and approval of a [CDP] . . . for necessary disability-related improvements," citing the Federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), and the Americans with Disabilities Act (ADA). The letter also requested "a waiver of any and all laws, rules, policies and practices administered by the . . . Commission that could impede the urgent issuance of a [CDP]." A letter was attached from the applicant's doctor, Douglas Roy, M.D., stating, in part, that the applicant suffers from chronic systemic illness and a degenerative congenital joint condition that leaves her mobility impaired and immune system compromised. The doctor's letter indicated that the applicant is not able to routinely climb stairs or traverse uneven terrain. Although the applicant had previously informed staff that she had difficulty walking and that it was necessary for her to use a walking cane, this was the first time the applicant had indicated that she had a disability that necessitated special treatment or explained how it related to some of her proposed improvements.

The above-referenced laws create an affirmative duty for land use permitting agencies to make reasonable accommodations in rules, policies, practices, or services when accommodation may be necessary to afford disabled persons an equal opportunity to remain in their dwellings.¹ The accommodations required by these laws may involve changes to the policies and procedures for obtaining a permit or to the substantive requirements for obtaining a permit. However, these laws do not require accommodations that impose an undue financial burden on the permitting body or accommodations that would require a fundamental alteration in the nature of the permit program.² They also do not require that land use permitting agencies abandon their basic permitting requirements or waive their permitting fees.³ Thus, the applicant's invocation of these laws did not relieve her of her obligation to submit the appropriate permit fee and the information discussed above.

However, the applicant's letter had only a vague and cursory reference to the remaining informational deficiencies in her application, stating (at page 3) that the "standard process is extremely lengthy and costly and has already caused significant hardship to the Applicant." No explanation was provided as to what was preventing her from satisfying the informational requirements or why she felt she was still unable to do so more than three years after staff had clarified the nature of those requirements, nor did she indicate that her disability was in any way preventing her from satisfying those requirements. The letter provided even less of an explanation regarding the applicant's continuing failure to pay the application fee, simply stating (at page 3) that "fees have already been paid," with no recognition that the amount paid was less than half of the fee that Commission staff had indicated was due. Nor did

¹ 42 U.S.C. § 3604(f)(3)(B); *City of Edmonds v. Washington State Bldg. Council*, 18 F.3d 802, 806, *aff'd sub nom.*, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995) [FHA]; Cal. Gov. Code §§ 12927(c)(1), 12955(1) [FEHA]; *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F. 3d 725 [ADA].

² *City of Edmonds*, *supra*, 18 F.3d at 806; *Giebler v. M & B Associates*, 343 F.3d 1143, 1157 (9th Cir. 2003).

³ See, e.g., *United States of America v. Village of Palatine*, 37 F. 3d 1230 (7th Cir.1994) (permit requirements); *cf. Weinreich v. Los Angeles County Metropolitan Transp. Authority*, 114 F.3d 976 (9th Cir. 1997) (program does not discriminate on the basis of disability by requiring indigent to expend funds to satisfy program requirements).

the applicant's letter assert that her disability caused her to be unable to pay the full fee.

Commission staff again alerted the applicant to the information previously requested in the January 14, 2011 letter in order to process the application. On April 6, 2011, the applicant submitted a letter explaining the information she previously provided and restating the need for the proposed improvements. However, the applicant did not provide the items requested in previous Commission filing status letters necessary to complete the application. On May 20, 2011, Commission staff responded by sending the applicant a letter notifying her that the application remains incomplete pending the submittal of the previously requested items and stating that once the previously requested items necessary to complete the application for filing have been received, the item will be filed as complete and scheduled for a Commission hearing.

Commission staff provided consistent direction to the applicant regarding the additional items that must be provided in order for her application to be filed as complete. However, to date, the applicant has not provided all of the items necessary for a complete application, or even a clear project description.

In or about September, 2011, the applicant and her son filed a formal complaint against the Commission with the U.S. Department of Housing and Urban Development (HUD), claiming that the Commission (1) refused to provide municipal services, (2) failed to permit reasonable modifications, and (3) failed to make reasonable accommodations. At the same time, a non-profit organization known as the Housing Equality Law Project (HELP) filed a similar complaint with HUD on the applicant's behalf. HUD issued a form letter notifying the Commission of the complaints on September 28, 2011. Commission staff received the letters and contacted HUD for clarification at the beginning of October. The notices included a request for information, to which Commission staff responded on October 11, 2011. See Exhibit 8.

On October 11, 2011, Commission South Central Coast District Manager, Steve Hudson, had a telephone conversation with the HUD investigator assigned to the case, Donna Brown-Hardnett. Mr Hudson informed Ms. Brown-Hardnett that staff was willing to work with the applicant to resolve the matter and that staff would recommend approval of the additions to the residence and those access improvements that were determined to be necessary to provide Kies a reasonable accommodation for access to the residence. Mr. Hudson outlined the portions of the proposed development that staff would recommend approval of, and the portions of the proposed development that staff would not recommend approval of (which are consistent with the recommendation contained in this staff report), as well as the rationale for the recommendation. Ms. Brown-Hardnett inquired, among other things, about the zoning of the applicant's property and whether allowing the applicant to operate a commercial horse facility would be consistent with the Coastal Act or would be "an accommodation." Mr. Hudson explained that the horse facilities on the property were unpermitted development that the applicant was not addressing in the permit application and that if the applicant intended to keep them, regardless of whether they constituted a "private" or

“commercial” use, the applicant would need to obtain the required coastal development permit for the development and that the Chapter 3 policies of the Coastal Act are the standard of review.

Ms. Brown-Hardnett contacted the Commission’s Legal Division on October 28, 2011 after reviewing the information that Commission staff had submitted. She suggested that the Commission contact HELP to begin a formal HUD-facilitated conciliation process. Also in November, 2011, Ms. Brown-Hardnett talked to Commission legal staff again and urged that staff bring this matter to the Commission as soon as possible, notwithstanding the ongoing dispute regarding the application fee and the missing information, as an “accommodation” to the applicant. Although staff remained unaware of any relationship between the applicant’s alleged physical disabilities, on the one hand, and her ability to provide the requisite application fee and information, on the other, staff determined that it would bring the application to the Commission in January 2012.

In mid-November, 2011, Commission legal staff contacted Mary Prem, of HELP, who has been representing the applicant. Ms. Prem indicated that the applicant needed to make immediate changes to the property because the current condition required her to park on an incline and climb three flights of stairs in order to access her house. However, this assertion does not appear to be true, because the applicant has an existing relatively level parking area at the terminus of her existing paved driveway that she asserts she has used for parking for the last 15 years, and she has a paved pathway leading from that parking area to her house that does not require her to ascend any stairs at all. Ms. Prem also made a confidential communication to staff on November 22, 2011. As of the issuance of this report, that was the last communication between the Commission and Ms. Prem.

Although the applicant has still not provided all of the information staff requested in order to create a complete application or paid the full application fee (as explained below), in an effort to bring closure to this matter, to respond to the HUD complaint, and to expedite resolution of the applicant’s demands, Commission staff now brings the application forward for Commission action.

Permit Application Filing Fee

During processing of the subject permit application, one of the several items staff had requested the applicant provide was the full amount of the required permit application filing fee. Since the applicant’s original permit application for the proposed project that was returned for incompleteness was filed prior to a 2008 regulatory change that increased the Commission’s permit application fees, Commission staff agreed to accept the required filing fee under the pre-2008 fee schedule for the applicant’s resubmitted permit application. However, despite this compromise, the applicant has still not provided the full amount of the required filing fee. The required permit application filing fee for the proposed project is \$1,200 under the pre-2008 Commission Filing Fee Schedule (the filing fee for “other” development based on development cost is \$600, and a multiplier is applied for after-the-fact development, which is to double the regular

filing fee). To date, the applicant has paid \$500 of the required filing fee amount. Therefore, a balance of \$700 is due, payable to the California Coastal Commission. Therefore, it is necessary to impose **Special Condition 2**, which requires the applicant to submit the unpaid balance of the required permit application filing fee (\$700) prior to issuance of this Coastal Development Permit.

C. WATER QUALITY AND STREAM ALTERATION

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.

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of water quality and marine resources. The Coastal Commission has relied upon the following policies as guidance in its review of development proposals in the Santa Monica Mountains:

- P76** *In accordance with Section 30236 of the Coastal Act, channelizations, dams, or other substantial alterations of stream courses shown as blue line streams on the latest available USGS map should incorporate the best mitigation measures feasible, and be limited to 1) necessary water supply projects, 2) flood control projects that are necessary to protect public safety or existing structures, and 3) developments where the primary purpose is the improvement of fish and wildlife habitat.*
- P81** *To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.*

- P82** *Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*
- P86** *A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.*
- P96** *Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.*

Water Quality

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

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.

In past permit actions in the Santa Monica Mountains, the Commission has required development be located a minimum distance of 100 feet from streams, in addition to requiring the employment of best management practices to minimize runoff of pollutants, in order to protect water quality. The 100-foot setback is measured from the outer edge of the riparian canopy, or the top of bank where there is no riparian vegetation. This setback provides sufficient area for infiltration of runoff, prevention of erosion and sedimentation, minimization of the spread of invasive exotic plant and animal species, and to allow for an adequate and functional natural vegetation buffer consistent with Section 30231.

As discussed previously, a minor ephemeral drainage (that is not a designated blue-line stream) follows the approximately 80 foot southern property boundary in a northwest to southeast direction. Much of the site is under the canopy of disturbed oak woodland vegetation, with no riparian vegetation along the ephemeral drainage. The applicant seeks after-the-fact approval of a 60 ft. long, 20 ft. wide paved driveway between the drainage channel and the existing residence and a paved walkway between the

driveway and residence. Northwest of the driveway, and also adjacent to the drainage, is an existing unpermitted dirt pad, approximately 30 ft. wide by 50 ft. long (1,500 sq. ft.), upon which a new carport is proposed to provide covered parking that is not currently available on the property. The applicant asserts that she has utilized the existing driveway, dirt parking area, and walkway to access her residence for the past 15 years and these elements represent the only feasible ADA-accessible area to park and access the residence.

Alternatives have been analyzed to assess whether the unpermitted driveway and new carport on an unpermitted graded pad could be sited in an alternate location to provide an increased setback from the drainage channel and minimize potential impacts to water quality.

In this case, there are limited alternatives for siting a driveway and parking pad due to the topographic constraints and configuration of the subject property. The existing residence is located adjacent to Oakwood Drive in the steeply-sloping northeast corner of the property. The on-site drainage channel follows the southern boundary of the property adjacent to Oakwood Drive. In addition, the portion of the parcel adjacent to Oakwood Drive is further constrained by the road right-of-way of Oakwood Drive, a public road. Given these significant constraints, the only feasible location for a driveway and covered parking structure is between the residence and the drainage channel, which is where the unpermitted as-built driveway and parking area are located. Further, the length of driveway could not be reduced in this case due to the steep slope adjacent to Oakwood Drive that the driveway must ascend before reaching flatter topography upon which to construct a covered parking structure. There are no other locations on the property that would serve to reduce the length of the driveway, reduce grading or landform alteration, or increase the setback from the on-site drainage channel.

The existing unpermitted paved driveway, walkway between the driveway and residence, proposed new carport, and the existing unpermitted parking area pad upon which the new carport is proposed collectively provide the applicant with sufficient ADA-compliant covered parking and residence accessibility (Exhibit 11). As such, the Commission finds that the proposed driveway and carport development are sited and configured as far as feasible from the on-site drainage channel and are necessary and reasonable for safe parking and access to the existing residence. In addition, the proposed as-built and new additions to the existing residence are substantially confined to the footprint of the existing residence and are sited as far as feasible from the on-site drainage.

In order to minimize the potential for such adverse impacts to water quality resulting from drainage 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 leaving the developed site, including: 1) sizing post-construction structural BMPs to accommodate (infiltrate, filter, or otherwise treat) the runoff from all storms up to and including the 85th percentile storm runoff event; 2) implementing erosion control measures during construction and

post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping. In addition, the Commission requires that appropriate drainage and velocity reducing devices be incorporated to prevent erosion at the inlet and outlet junctures of the proposed modified channel.

The applicant has also proposed a detached 976 sq. ft. garage and storage structure on an existing unpermitted approximately 3,000 sq. ft. graded pad utilizing an existing unpermitted dirt road (on the Upper Site, which is beyond the proposed carport location and on a steep slope west of the residence). Numerous unpermitted retaining walls of various types have been constructed to support terraces and the unpermitted graded pad of the proposed garage structure. The applicant has not provided any information pertaining to how much grading was required to construct the as-built graded pad and road. The proposed garage location would not serve to minimize grading, removal of native vegetation, or impervious surfaces, and would not provide a greater setback from the drainage channel because the unpermitted graded pad, retaining walls, and access road that it relies upon are located on a very steep slope, adjacent to the drainage channel, and within ESHA and the protected zones of oak trees. Further, the proposed garage structure would require fuel modification per County Fire Department requirements, which would encroach into undisturbed native mixed chaparral vegetation this is considered environmentally sensitive habitat area.

The applicant has indicated that the proposed garage structure provides the applicant with a secondary location for covered parking and storage (the primary location being the proposed carport). The applicant has also indicated that the proposed garage provides the applicant with an ADA-accessible route to the second floor of her residence. However, there is steep sloping natural terrain between the garage pad and the residence, so it is unclear how the proposed garage would provide ADA-compliant access to the residence. In addition, the proposed paved driveway, paved walkway between the driveway and residence, carport, and the existing parking area pad upon which the carport is proposed collectively provide the applicant with abundant ADA-compliant covered parking and residence accessibility. The paved driveway and attached approximately 30 ft. x 50 ft. unpaved parking area provide sufficient and reasonable space for covered parking and storage structures (Exhibit 11). If the applicant desires a garage, carport, and/or storage structures, the existing paved driveway and attached approximately 30 ft. x 50 ft. unpaved parking area is where those structures should be sited in order to minimize grading, impervious surfaces, and the removal of natural vegetation to the maximum extent feasible, consistent with water quality and ESHA protection policies of the Coastal Act, as well as the relevant policies of the certified LUP. Therefore, siting alternatives exist for the proposed garage structure. In addition, the applicant has the opportunity to (and has indicated she would) install a chair-rail system within her residence in order to provide enhanced ADA-accessibility between the two floors so as to not require driving up a steep slope to the second floor. In sum, the proposed garage is not necessary to provide the applicant with an equal opportunity to remain in her home despite her disability.

In addition, the Commission finds that the proposed construction of a garage structure on the existing unpermitted pad and road would not maintain the quality of coastal waters due to the increase in grading, impervious surfaces, removal of native vegetation, which cause increases in runoff, erosion, and sedimentation. In addition, the Commission finds that it is not an accommodation that is necessary to provide her an equal opportunity to enjoy her home. Finally, given the adverse impacts it would have on multiple resources protected by the Coastal Act (due to the land alteration, the impacts on vegetation, the contribution to erosion, and the impact on water quality), it would fundamentally conflict with the nature of the Coastal Act program, and therefore would not be a reasonable accommodation. Therefore, the Commission requires the applicant to submit revised project plans for the review and approval of the Executive Director which shall show that all of the unpermitted as-built development west and north of the proposed carport parking pad area have been deleted (Special Condition No. 1). Special Condition No. 1 also provides that the applicant may site a garage and storage structure (to supplement or replace the proposed carport structure) on the approximately 1,500 sq. ft. as-built graded pad upon which the proposed carport is situated (provided no grading is required for the parking/storage improvements on the pad) in order to provide the applicant some flexibility regarding covered parking accommodations within an area that is appropriate for parking and storage structures. However, all equestrian facilities on the existing parking pad that are not being addressed by the applicant in the subject application must be deleted from the final revised plans pursuant to Special Condition 1. An equestrian facility adjacent to a drainage channel and within ESHA is inconsistent with the ESHA and water quality protection policies of the Coastal Act and is not development that is integral to the applicant parking and accessing her existing residence.

Stream Alteration

Pursuant to Coastal Act Section 30236, the substantial alteration of coastal streams is limited to necessary water supply projects, habitat improvement projects, and flood control projects where flood protection is necessary for public safety or to protect existing structures in the floodplain, and any of which must incorporate the best mitigation measures feasible.

A natural ephemeral drainage crosses the subject property in a northwest to southeast direction along the approximately 80 foot southern property boundary. This drainage is a tributary to Topanga Creek and is not a designated blue-line stream. The upper portion of the drainage course is in a natural condition. The lower portion of the drainage course is adjacent to the applicant's existing driveway. Significant erosion has occurred along the banks of the lower portion of the drainage following large storm events. In 2002, storm water flows had severely undermined the applicant's driveway and parking area. In order to prevent further erosion of the driveway, the applicant began constructing an open concrete channel within the drainage in 2002. However, the applicant did not obtain the necessary permits, including a Coastal Development Permit, for the channelization work within the drainage.

The concrete channel is approximately 8 feet wide by 52 feet long with a 4 foot vertical concrete side wall along the northern bank, which also acts as a structural wall retaining the applicant's existing driveway and parking area, and 32 ft. long inlet and outlet walls that are 2 ft. to 4 ft. high. The total length of the as-built modified channel, including the proposed inlet walls, channel, and outlet walls, is 116 ft. The southern bank wall has not been completed (only the rebar was installed) because the County of Los Angeles' Division of Building and Safety issued a "stop work" order during construction in 2002. As a result, storm water flows continue to erode the steep south bank of the drainage, which caused a large off-site oak tree to fall onto the driveway of the subject property.

The applicant proposes to complete the partially-constructed vertical concrete side wall along the south bank of the drainage as part of the proposed project in order to prevent further erosion. Without some form of bank protection, the hydraulics of the drainage would likely erode the north and south banks, perhaps significantly during a severe storm event, and threaten the applicant's existing driveway and parking area. In this case, the proposed channelization (both that which was already completed and the proposed additional work) can be permitted as a flood control project that is necessary to protect existing development consistent with Section 30236.

However, Section 30236 further limits streambed alterations for flood control to situations where no other method for protecting the existing structures in the floodplain is feasible, and it requires that the project incorporate the best mitigation measures feasible. In addition, the existing driveway and parking area for the residence, that the proposed open concrete channel is intended to protect, are unpermitted. Thus, they would not normally be treated as "existing" development. However, the applicant seeks new approval of a carport on an existing graded pad and after-the-fact approval of the 60 ft. long, 20 ft. wide paved driveway and a 60 ft. long, 4 ft. wide paved walkway between the paved driveway and the residence. As discussed above, the Commission finds that these improvements are a necessary and reasonable accommodation to provide her with equal access to her home. Therefore, in this case, these structures are treated as existing for purposes of the 30236 analysis.

Various bank stabilization design alternatives have been analyzed, as discussed below:

Widening and Bioengineering of the Drainage Channel: This alternative would involve removing the partially-constructed as-built open concrete channel, widening and reconstructing the channel banks at a more gradual slope, adding drop structures to reduce runoff velocities, and stabilizing the reconstructed slopes with geotextile fabric and riparian vegetation. The applicant's engineer has indicated that this alternative is not feasible because the drainage channel banks and adjacent hillside slopes are so steep that channel widening would require a large area and a lot of grading, landform alteration, and removal of oak trees to adequately lay back the slopes. In addition, widening of the drainage channel would encroach onto the neighbor's property and development to the south. Finally, widening the channel would severely limit the area where it would be feasible to construct a reasonable driveway and covered parking area for access to the residence. Commission Staff Coastal Engineer, Lesley Ewing, finds

this analysis to be valid. The Commission finds that due to the channel constraints and surrounding development, the site is not suited for a wider bioengineered option for drainage flow. Therefore, this would not be a feasible alternative that is consistent with all Chapter 3 policies of the Coastal Act.

Gabion Walls: This alternative would involve using gabion walls instead of concrete walls for bank stabilization. Gabion walls are steel mesh baskets filled with gravel used to provide resistance to lateral loading through weight. The applicant's engineer has indicated that this alternative is not hydraulically suitable to protect the channel banks because gabion walls are not effective for higher velocity and higher slope loading conditions. To provide the appropriate amount of protection in this case would require a large quantity of baskets and a large area to place them. This would require a larger area to be devoted to these structures, more grading, landform alteration, and removal of oak trees to provide adequate bank stabilization. The Commission finds this conclusion to be valid. Therefore, this would not be a feasible alternative that is consistent with all Chapter 3 policies of the Coastal Act.

Culvert Pipe System: This alternative would involve removing the as-built concrete channel and using a buried culvert pipe with headwall to convey storm water flows underground for the subject drainage reach. The applicant's engineer has indicated that this alternative would eliminate erosion of the channel banks, but would require greater maintenance to prevent debris clogging and is not a recommended private drain system by the County. The Commission finds this conclusion to be valid. Therefore, this would not be a feasible alternative that is consistent with all Chapter 3 policies of the Coastal Act.

Proposed Open Concrete Channel: The applicant's engineer has determined that the proposed open concrete channel is the minimum design necessary to prevent erosion of the proposed ADA-accessible driveway and parking area serving the applicant's existing residential development given the topographic, spatial and hydraulic characteristics of the site. The Commission finds this conclusion to be valid. In addition, the proposed concrete channel has been properly engineered for maximum function and stability to adequately protect existing development in the floodplain, consistent with Coastal Act Section 30236.

In addition, Commission staff would note that the proposed channelization project has been approved, or preliminarily approved, by other government agencies, including Los Angeles County Department of Regional Planning and Public Works, Los Angeles County Environmental Review Board, California Department of Fish & Game, and the California Regional Water Quality Control Board.

Therefore, the Commission finds: (1) approval, only as conditioned, of the portion of the proposed development consisting of (a) additions and modifications to the existing residence, (b) paved driveway with walkway to the residence, (c) carport, and (d) channelization of the drainageway are consistent with Section 30231 and 30236 of the Coastal Act, as well as the policies of the certified LUP listed above, and (2) the portion

of the proposed development consisting of a detached 976 sq. ft., 3-car garage and storage building is inconsistent with Section 30231 and 30236 of the Coastal Act and is neither a necessary nor a reasonable accommodation, and therefore must be denied.

In addition, the existing unpermitted development on the property, outlined in Section IV.A of this staff report, that is not being addressed by the applicant in the subject application will be addressed by the Commission's Enforcement Division as a violation of the Coastal Act.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30231 and 30236 of the Coastal Act:

Special Condition 1: Final Revised Plans

Special Condition 5: Drainage and Polluted Runoff Control Plans

Special Condition 6: Interim Erosion Control Plans and Construction Responsibilities

Special Condition 10: Site Inspection

Special Condition 13: Condition Compliance

D. ENVIRONMENTALLY SENSITIVE HABITAT AND VISUAL RESOURCES

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.

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.

Section 30250(a) of the Coastal Act states:

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

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

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.

Site Specific Biological Resource Information

The subject property is developed with a two-story single-family residence adjacent to Oakwood Drive that was originally constructed in the 1930's. The proposed project site is located within the Topanga Creek watershed, at an elevation of between approximately 890 and 1,030 feet above sea level on the west slope of Henry Ridge. Slopes within the property and surrounding area are very steep, ascending to the south and northwest at gradients of 1:1 (horizontal to vertical) with localized areas near vertical. A minor ephemeral drainage crosses the property in a northwest to southeast direction along the approximately 80 foot southern property boundary. The drainage is not mapped as a U.S.G.S. blue-line stream and does not contain any riparian vegetation. The subject site and surrounding area is situated within an LUP-designated Disturbed Significant Oak Woodland and contains sensitive disturbed and undisturbed coast live oak woodland and mixed chaparral vegetation.

Commission staff visited the subject property in March 2010 and confirmed that most of the property is located within a sensitive disturbed oak woodland with most oak trees concentrated in the developed portion of the site and the on-site drainage. There is very limited understory vegetation beneath the oak woodland canopy. As mapped by the applicant's biological consultant, there is mixed chaparral vegetation in the higher elevations in the northwest area of the subject property. There is undisturbed, contiguous mixed chaparral and oak woodland habitat in the far western corner of the property and off-site to the west and northwest of the property.

The applicant's biological consultant mapped the existing unpermitted equestrian area pads that are situated west of the applicant's residence on the Upper Site portion of the property as cleared/disturbed. However, Commission staff review of historic aerial photographs indicate that the disturbed area west of the residence contained oak woodland and mixed chaparral vegetation prior to unpermitted vegetation removal and grading that appears to have occurred after 1986. It is unclear how much of this cleared area was primarily oak woodland and how much was primarily chaparral since it appears that that elevation on the property marked a transition from oak woodland habitat in the lower elevations to mixed chaparral habitat in the higher elevations of this area.

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 Dixon⁴ (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 disturbed by human activity. Accordingly, these habitat types meet the definition of

⁴ 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>

ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP⁵.

As described above, the majority of the site contains disturbed sensitive oak woodland vegetation that is connected to a large contiguous area of undisturbed oak woodland and mixed chaparral vegetation to the west and northwest. Although much of the property is subject to fuel modification requirements for the existing residence and existing adjacent residences, fuel modification within oak woodlands that lack substantial understory vegetation typically consists only of the select removal of dead branches or branches too close to the habitable structure, without the need to compromise the integrity of the trees within the woodland. Therefore, the oak woodland vegetation on the property retains its habitat value and function within the larger oak woodland ecosystem in the area. As discussed above and in the Dr. Dixon Memorandum, these habitats are 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 oak woodland on the project site, which is where the proposed project is situated, meets the definition of ESHA in the Coastal Act.

There is also mixed chaparral vegetation in the northwest portion of the property, much of which is located within the required fuel modification zone of existing residences. Chaparral vegetation that is substantially removed and widely spaced due to fuel modification is lost as habitat and watershed cover and does not rise to the level of ESHA. Accordingly, the Commission finds that the mixed chaparral vegetation on the project site that is within 200 feet of existing residences does not meet the definition of ESHA in the Coastal Act. However, the mixed chaparral vegetation off-site to the west and in the far western corner of the project site that is outside fuel modification zones of existing residences meets the definition of ESHA in the Coastal Act.

Resource Dependent Use and Alternatives to Avoid and Minimize Significant Disruption of Habitat Values

Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. In this case, the subject property is developed with an existing single-family residence that provides a reasonable economic use. The applicant is proposing additions to an existing residence, an as-built driveway and walkway, a new carport, and a new garage on the property to provide covered parking and ADA-accessibility to the residence that is not currently available. As parking and accessibility improvements associated with existing residences do not have to be located within ESHA to function, such improvements are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. The Federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), and the Americans with Disabilities Act (ADA) create an affirmative duty for land use permitting agencies to make reasonable accommodations in rules, policies, practices, or services when accommodation may be

⁵ Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

necessary to afford disabled persons an equal opportunity to remain in their dwellings.⁶ The required accommodations may be to the policies and procedures for obtaining a permit or to substantive requirements for obtaining a permit. However, these laws do not require accommodations that would require a fundamental alteration in the nature of the permit program.⁷

Development can be sited and designed to avoid and 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 minimize impacts to ESHA to the greatest extent feasible.

Residential Additions

The existing, unpermitted additions to the existing residence for which the applicant is seeking after-the-fact approval and the proposed new additions have both been sited and designed within the existing developed portion of the residence site and would not result in significant disruption of habitat values.

Proposed Carport, Driveway, and Walkway

The proposed as-built paved driveway and paved walkway for which the applicant is seeking after-the-fact approval, and the proposed, new 432 sq. ft. carport structure on an as-built pad have been sited as close as feasible to existing development and is the minimum improvement necessary to provide ADA-compliant access to the residence. Due to the unique site constraints in this case (i.e. the steep grade and configuration of the property, and the location and configuration of the drainage channel, the existing residence, and oak trees that make up the oak woodland ESHA on the property), these driveway and parking improvements would not require extension of fuel modification requirements into any undisturbed areas, and would not require the removal or substantial encroachment into the protected zones of any oak trees given the location of existing trees in the area of this development. Most of the oak trees in the area of the drainage channel are located off-site, on the other side of the drainage channel than the applicant's driveway and residential development. Therefore, the root zones of the oak trees in these areas are primarily off-site and would not be significantly impacted by development of the proposed driveway, carport, and parking pad. In addition, these oak trees are within the fuel modification zone required for the existing house. Finally, no alternatives exist to situate a driveway and ADA-accessible parking further away from the drainage channel or outside of oak woodland ESHA. Given the unique

⁶ 42 U.S.C. § 3604(f)(3)(B); *City of Edmonds v. Washington State Bldg. Council*, 18 F.3d 802, 806, *aff'd sub nom.*, *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995) [FHA]; Cal. Gov. Code §§ 12927(c)(1), 12955(1) [FEHA]; *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F. 3d 725 [ADA].

⁷ *City of Edmonds*, *supra*, 18 F.3d at 806; *Giebeler v. M & B Associates*, 343 F.3d 1143, 1157 (9th Cir. 2003).

characteristics of the subject site, the proposed as-built paved driveway and paved walkway for which the applicant is seeking after-the-fact approval, and the proposed, new 432 sq. ft. carport structure on an as-built parking pad would not result in significant disruption of habitat values of the oak woodland ESHA on the site. Thus, these improvements would not be fundamentally incompatible with the goals embodied in Section 30240 and are both necessary and reasonable.

The Commission finds that the use of non-native and/or invasive plant species for erosion control results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects include the direct occupation or displacement of native plant communities. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species). 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 any landscaping for erosion control purposes 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.

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.

Therefore, the Commission finds that the portions of the proposed development summarized above, as conditioned, are largely consistent with Section 30240 of the Coastal Act and the applicable policies of the Malibu/Santa Monica Mountains Land Use Plan, which the Commission uses as guidance. In addition, the Commission finds that these improvements are an accommodation that is necessary to provide her an equal opportunity to enjoy her home.

Proposed Garage Structure

The applicant has also proposed a detached 976 sq. ft. garage and storage structure on an unpermitted as-built dirt road and pad on the Upper Site (upslope and to the west of the proposed carport location and on a steep slope west of the residence). Numerous unpermitted retaining walls of various types have been constructed to support terraces and the unpermitted pad of the proposed garage structure. The applicant asserts that the unpermitted pads and retaining walls pre-dated the effective date of the Coastal Act and has not provided any information pertaining to how much grading or native vegetation removal was required to construct the as-built garage pad, road, and associated retaining structures. The applicant has not provided any evidence to substantiate her assertion that the development pre-dated the Coastal Act. However, from staff review of historic aerial photographs, some of which were provided by the applicant, it appears that construction of the unpermitted pads and retaining structures west of the residence were constructed after 1986 and required substantial grading and native vegetation removal on the steep hillside slope. In addition, the proposed garage location and road to it are not located as close as feasible to existing development. As such, the new proposed garage on the existing unpermitted pad in the Upper Site area has not been sited to minimize grading, removal of vegetation, impacts to oak trees, or length of roadway. Further, the proposed garage structure would require fuel modification per County Fire Department requirements, which would extend the applicant's required fuel modification zone approximately 100 feet further than is currently required into undisturbed native mixed chaparral and oak woodland vegetation to the west that is considered ESHA.

The applicant has indicated that the proposed garage structure provides the applicant with a secondary location for covered parking and storage (the primary location being the proposed carport). The applicant has also indicated that the proposed garage provides the applicant with an ADA-accessible route to the second floor of her residence. However, there is steep sloping natural terrain between the garage pad and the residence so it is unclear how the proposed garage would provide ADA-compliant access to the residence. In addition, the applicant has the opportunity to (and has indicated she would) install a chair-rail system within her residence in order to provide enhanced ADA-accessibility between the two floors so as to not require driving up a steep slope to the second floor.

The proposed paved driveway, paved walkway between the driveway and residence, carport, and existing parking area pad upon which the carport is proposed collectively provide the applicant with abundant ADA-compliant covered parking and residence accessibility. The paved driveway and attached approximately 30 ft. x 50 ft. unpaved parking area provide sufficient and reasonable space for covered parking and storage structures (Exhibit 11). If the applicant desires a garage, carport, and and/or storage structures, the existing paved driveway and attached approximately 30 ft. x 50 ft. unpaved parking area is where those structures should be sited in order to minimize grading, length of roadway, and the removal of natural vegetation to the maximum extent feasible, consistent with water quality and ESHA protection policies of the Coastal Act, as well as the relevant policies of the certified LUP. Therefore, siting alternatives exist for the proposed garage structure.

Thus, the Commission finds that the proposed construction of a garage structure on the existing unpermitted pad and road would not minimize significant disruption of habitat values, making it inconsistent with Section 30240 of the Coastal Act and the applicable policies of the Malibu/Santa Monica Mountains Land Use Plan, which the Commission uses as guidance. In addition, the Commission finds that it is not an accommodation that is necessary to provide her an equal opportunity to enjoy her home. Finally, given the adverse impacts it would have on ESHA, one of the most important resources protected by the Coastal Act, allowing such development would fundamentally conflict with the nature of the Coastal Act program, and therefore would not be a reasonable accommodation. Therefore, the proposed garage structure must be denied. As such, the Commission requires the applicant to submit revised project plans for the review and approval of the Executive Director which shall show that all of the unpermitted as-built development west and north of the proposed carport area have been deleted.

In addition, the existing unpermitted development on the property, outlined in Section IV.A of this staff report, which is not being addressed by the applicant in the subject application.

Protection of Oak Trees

Through past permit actions in the Santa Monica Mountains, the Commission has found that native oak trees are an important coastal resource, especially where they are part of a larger woodland or other habitat area that is ESHA. As required by Section 30250 of the Coastal Act, the proposed new development can be approved only where it will not have significant adverse effects on coastal resources. Additionally, oak trees are an important component of the visual character of the area and must be protected in order to ensure that the proposed development is visually compatible with the character of the area, as required by Section 30251 of the Coastal Act. Furthermore, native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife. Individual oak trees such as those on or adjacent to the subject site do provide habitat for a wide variety of wildlife species and are considered to be an important part of the character and scenic quality of the area.

Oak trees are easily damaged. They are shallow-rooted and require air and water exchange near the surface. The oak tree root system is extensive, extending as much as 50 feet beyond the spread of the canopy, although the area within the "protected zone" (the area around an oak tree that is five feet outside the dripline or fifteen feet from the trunk, whichever is greater) is the most important. Oaks are therefore sensitive to surrounding land uses, grading or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree.

Obviously, the removal of an oak tree results in the total loss of the habitat values of the tree. Encroachments into the protected zone of an oak tree can also result in significant adverse impacts. Changes in the level of soil around a tree can affect its health. Excavation can cut or severely damage roots and the addition of material affects the ability of the roots to obtain air or water. Soil compaction and/or pavement of areas within the protected zone will block the exchange of air and water through the soil to the roots and can have serious long term negative effects on the tree.

In order to ensure that oak trees are protected so that development does not have unacceptable impacts on coastal resources and so that the development is compatible with the visual character of the area, the Commission has required, in past permit actions, that the removal of native trees, particularly oak trees, or encroachment of structures into the root zone be avoided unless there is no feasible alternative for the siting of development.

Oak Tree Impacts

The applicant's 2003 Oak Tree Report, listed in the Substantive File Documents, indicates that there are 25 oak trees in the vicinity of the project: 11 on-site oak trees and 14 off-site oak trees that overhang onto the subject property. However, in 2004 the Los Angeles County Forestry Division authorized the emergency removal of two on-site oak trees adjacent to the residence (Oak Trees #1 and 16) because one tree was damaged from disease and another posed a fire hazard near utility lines and the residence. And in 2005, the Los Angeles County Forestry Division authorized the emergency removal of another oak tree (Oak Tree #14) because it was damaged from disease and posed a hazard. On May 16, 2007, Los Angeles County Department of Regional Planning approved an Oak Tree Permit allowing for encroachment of 15 oak trees associated with as-built additions to the existing residence and channelization of the on-site drainage. However, according to the applicant's Oak Tree Report, the proposed project would result in substantial encroachment into one (1) oak tree canopy dripline (Oak Tree #9), and minor encroachments into eleven (11) other oak tree canopy driplines (Oak Trees #3-7, 10-13, 15, 18). Given the size and configuration of the

property, steepness of the slopes, and the location of oak trees over the majority of the site, the encroachment into 11 oak tree driplines cannot be feasibly avoided.

The applicant's Oak Tree Report does not address potential oak tree impacts that may have resulted from the unpermitted grading for a road and horse corral pad, retaining walls, and shade structures that are located west of the residence. The applicant is not addressing this unpermitted development in the subject permit application. As such, the unpermitted development not being addressed in this application will be addressed by the Commission's Enforcement Division as a violation of the Coastal Act.

For the as-built and new development that is proposed by the applicant, the project includes permanent encroachments within (in other words, portions of the proposed structures will be located within) the protected zone of oak trees on or adjacent to the site. The "protected zone" is defined as the area around an oak tree that is five feet outside the dripline or fifteen feet from the trunk, whichever is greater. Encroachments of development will result in impacts including, but limited to: root cutting or damage, compaction, trunk or branch removal or trimming, changes in drainage patterns, and excess watering. Further, the introduction of development within a woodland will interrupt the oak canopy coverage and will lessen the habitat value of the woodland as a whole. The impacts to individual oak trees range from minor to severe lessening of health, (including death) depending on the location and extent of the encroachments.

Given the location of the individual oak trees on or adjacent to the project site, there are no siting or design alternatives that can be employed to avoid or reduce encroachment impacts to the trees. In this case, the proposed encroachments of one of the oak trees (Oak Tree #9) immediately adjacent to the channelized drainage would be substantial. Specifically, the construction of the channel wall on the north bank of the drainage will be located very near the trunk of the tree and the proposed carport will encroach substantially into the protected zone. Given these impacts, it is likely that this tree will experience lessened health and possible death as a result. Therefore, the Commission requires the applicant to mitigate this impact in the form of planting ten replacement trees for the tree impacted. Resource specialists studying oak restoration have found that oak trees are most successfully established when planted as acorns collected in the local area or seedlings grown from such acorns. The Commission has found, through permit actions, that it is important to require that replacement trees be seedlings or acorns. Many factors, over the life of the restoration, can result in the death of the replacement trees. In order to ensure that adequate replacement is eventually reached, it is necessary to provide a replacement ratio of ten replacement trees for every tree removed or impacted to account for the mortality of some of the replacement trees. If there is suitable area on the project site, replacement trees should be provided on-site. The applicant is required to monitor the replacement trees for no less than ten years and provide a supplemental planting plan if the initial tree planting is not successful.

The other eleven proposed encroachments (Oak Tree #s 3-7, 10-13, 15, 18) that would result from the proposed project are relatively minor in the area of the residence and drainage channel. While the encroachments will adversely impact the health of the oak

trees, it is unlikely that it will significantly injure the tree's health or result in its death. However, such health and vigor effects may take several years to reveal themselves. In order to minimize such impacts and to provide mitigation for the loss or diminished health of any of the impacted trees, the Commission requires the applicant to provide monitoring of oak trees on the site where development will encroach within their protected zones, for a period of no less than 10 years. If the monitoring reveals that any of these ten trees die or suffer reduced health or vigor, replacement trees must be provided as mitigation.

Oak Tree Protection Measures and Monitoring

Finally, the Commission finds that impacts to oak trees on the project or adjacent site will be minimized by employing protective measures during project construction. The applicant shall follow the oak tree preservation recommendations contained in the Oak Tree Report referenced in the substantive file documents. Additionally, the Commission requires the applicant to install temporary protective barrier fencing around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then temporary flagging must be installed on all oak trees to ensure protection during construction. Further, the Commission requires that a biological consultant, arborist, or other resource specialist shall be present on-site during all future construction operations on site and shall be directed to immediately notify the Executive Director if unpermitted activities occur or if any oak trees are damaged, removed, or impacted beyond the scope of the work allowed by this coastal development permit. This monitor will have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Sections 30240, 30250, and 30251 of the Coastal Act:

- Special Condition 1.** Final Revised Plans
- Special Condition 5.** Permanent Drainage and Polluted Runoff Control Plans
- Special Condition 7.** Lighting Restriction
- Special Condition 8.** Future Development Restriction
- Special Condition 9.** Deed Restriction
- Special Condition 10.** Site Inspection
- Special Condition 11.** Oak Tree Monitoring
- Special Condition 12.** Oak Tree Mitigation
- Special Condition 13.** Condition Compliance

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240, 30250, and 30251 of the Coastal Act, and the applicable policies of the Malibu/Santa Monica Mountains Land Use Plan, which the

Commission uses as guidance, and the limitations imposed do not violate the requirements for reasonable accommodations.

E. CUMULATIVE IMPACTS

The proposed project includes the construction of additions to an existing single-family residence, which is defined under the Coastal Act as new development. New development raises issues with respect to cumulative impacts on coastal resources. Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new development.

Section 30250(a) of the Coastal Act states:

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

Section 30252 of the Coastal Act states:

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

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

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

Small Lot Subdivisions

The proposed project includes, in part, the as-built construction of approximately 1,000 sq. ft. of habitable additions to an existing single-family residence, within the Topanga Oaks Small Lot Subdivision. Small lot subdivisions in the Santa Monica Mountains are designated areas generally comprised of residentially-zoned parcels of less than one acre, but more typically ranging in size from 4,000 to 5,000 square feet. The Commission has found that the total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources, particularly given the small size and steepness of most of the parcels. The future development of the existing undeveloped small lot subdivision parcels will result in tremendous increases in demands on road capacity, services, recreational facilities, beaches, water supply, and associated impacts to water quality, geologic stability and hazards, rural community character, and contribution to fire hazards.

In order to minimize the cumulative impacts associated with developing these parcels, Policy 271(b)(2) of the certified Malibu/Santa Monica Mountains LUP, which has been used as guidance by the Commission in past permit actions, requires that new development in small lot subdivisions comply with the Slope Intensity Formula for calculating the allowable Gross Structural Area (GSA) of a residential unit. Past Commission action certifying the LUP indicates that the Commission considers the use of the Slope Intensity Formula appropriate for determining the maximum level of development that may be permitted in small lot subdivision areas, to minimize the cumulative impacts of such development, consistent with the policies of the Coastal Act. Additionally, the Commission has, through coastal development permit actions, consistently applied the Slope Intensity Formula to new development in small lot subdivisions. The basic concept of the formula assumes the suitability of development of small hillside lots should be determined by the physical characteristics of the building site, recognizing that development on steep slopes has a high potential for adverse impacts on resources. Following is the formula and description of each factor used in its calculation:

Slope Intensity Formula

$$GSA = (A/5) \times ((50-S)/35) + 500$$

GSA = the allowable gross structural area of the permitted development in square feet. The GSA includes all substantially enclosed residential and storage areas, but does not include garages or carports designed for storage of autos.

A = the area of the building site in square feet. The building site is defined by the applicant and may consist of all or a designated portion of the one or more lots comprising the project location. All permitted structures must be located within the designated building site.

S = the average slope of the building site in percent as calculated by the formula:

$$S = I \times L/A \times 100$$

I = contour interval in feet, at not greater than 25-foot intervals, resulting in at least 5 contour lines

L = total accumulated length of all contours of interval "I" in feet

A = the area being considered in square feet

Project Consistency

The proposed project includes, in part, the as-built construction of approximately 1,000 sq. ft. of habitable additions to an existing single-family residence on a 43,597 sq. ft. parcel within the Topanga Oaks Small Lot Subdivision. The subject parcel consists of what were several adjoining small lots and parts of additional lots (lots 146, 147, 592, 593, 597, 598 and portions of lots 594, 595, 596, of Tract 6943; APN 4440-013-026) that have been combined into one parcel per a recorded covenant and agreement that was required by Los Angeles County (Los Angeles Co. Instrument No. 03-0468458). Additionally, the Commission approved Coastal Development Permit Waiver No. 4-96-122-W for a lot line adjustment that created the subject parcel (and the neighboring lot). The applicant has not submitted a GSA calculation in conformance to Policy 271(b)(2) of the Malibu/Santa Monica Mountains LUP. However, Commission staff was able to estimate the applicant's maximum allowable GSA by utilizing a general site topographic map that was provided by the applicant. Staff has confirmed that the proposed additions to the existing residence (that result in a total residence size of 1,600 sq. ft.) conform to the estimated maximum allowable GSA for the property.

As designed, the proposed project will conform to the GSA allowed for the parcel, thereby minimizing cumulative impacts to coastal resources. However, future improvements on the subject property could cause adverse cumulative impacts on the limited resources of the subdivision. The Commission, therefore, requires a future improvements restriction on this lot, which would 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.

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 Sections 30250 and 30252 of the Coastal Act, as well as the Los Angeles County LUP:

Special Condition 8: Future Development Restriction

Special Condition 9: Deed Restriction

The Commission therefore finds that the proposed project, only as conditioned, is consistent with Sections 30250(a) and 30252 of the Coastal Act, as well as the guidance policies of the Malibu/Santa Monica Mountains Land Use Plan.

F. 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.

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 3:** Plans Conforming to Geotechnical Engineer's Recommendations
- Special Condition 4:** Assumption of Risk, Waiver of Liability and Indemnity
- Special Condition 5:** Drainage and Polluted Runoff Control Plans
- Special Condition 6:** Interim Erosion Control and Construction Responsibilities

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

G. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without the required coastal development permit and the Commission's Enforcement Division opened Violation File No. V-4-08-055 on October 22, 2008 to address said unpermitted development.

A portion of this existing unpermitted development is the subject of this application, consisting of: (1) conversion of 528 sq. ft. of first floor storage area to habitable space of existing 528 sq. ft. residence; (2) conversion of 450 sq. ft. of first floor patio slab area and second floor deck area to habitable space of the existing residence; (3) addition of 67 sq. ft. to first floor deck and 112 sq. ft. to second floor deck of existing residence; (4) addition of 220 sq. ft. concrete slab and retaining wall to support an exterior staircase on the west side of the residence; (5) conversion of 48 sq. ft. of second floor deck to habitable space of the residence; (6) enclosure of a 220 sq. ft. exterior staircase of the residence; (7) a 60 ft. long, 20 ft. wide paved driveway; (8) a 60 ft. long, 4 ft. wide ADA-compliant paved walkway connecting driveway to residence; (9) an approximately 1,500 sq. ft. graded parking area pad upon which a new carport is proposed; and (10) a 116 ft.-long open concrete channel in a natural drainage. The Commission is approving these proposed after-the-fact components of the subject application for the reasons discussed in full in the preceding sections of this report.

The remaining unpermitted development on the subject property that is not being addressed in the subject application, includes, but is not limited to, two sheds (approximately 10 ft. x 12 ft. each), one covered pipe stall (approximately 12 ft. x 12 ft.), and a large shade structure on an as-built graded pad that is being approved to provide an area for covered parking; an approximately 3,000 sq. ft. graded pad (which required an unidentified quantity of grading) with fenced horse corral and a covered pipe stall (approximately 12 ft. x 12 ft.); an approximately 170 ft. long graded dirt road (which required an unidentified quantity of grading) between the as-built approximately 1,500 sq. ft. graded pad and the as-built approximately 3,000 graded pad with fenced horse corral; a shed on a small graded pad (approximately 10 ft. x 12 ft.); and approximately 450 linear ft. of multiple timber and concrete retaining walls, ranging from 3 to 6 ft. in height, supporting unpermitted terraces and pads, will be addressed by the Commission's Enforcement Division as a violation of the Coastal Act.

No evidence has been presented that any of the unpermitted development noted above pre-dates the effective date of the Coastal Act or received the necessary coastal development permit(s). The Commission's Enforcement Division will consider further enforcement options to resolve the unpermitted development issues remaining after the Commission's action on this item.

In order to ensure that the unpermitted development component of the development approved by 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 13. Condition Compliance

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

H. LOCAL COASTAL PROGRAM

Section 30604 of the Coastal Act states:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act.

The preceding sections provide findings that a portion of the proposed project, consisting of additions to an existing residence, driveway, walkway, carport, and drainage channel modifications, will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and are accepted by the applicant. As conditioned, these portions of 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 13

Therefore, the Commission finds that approval of the portion of the proposed development identified above, 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).

However, the preceding sections also provide findings that a portion of the proposed project, consisting of a garage and storage structure, will not be in conformity with the provisions of Chapter 3. This portion of the proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of a portion of the proposed development would prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

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 above, a portion of the proposed development consisting of additions to an existing residence, driveway, walkway, carport, and drainage channel modifications, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures, which will minimize all adverse environmental effects, have been required as special conditions. 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 13

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 this portion of 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.

Further, a portion of the proposed development, consisting of a garage and storage structure, is not consistent with the policies of the Coastal Act. There are feasible

alternatives that would avoid the adverse environmental effects of the projects, for the reasons listed in this report. Therefore, the Commission finds that this portion of the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA.

J. DISCRIMINATION AND REASONABLE ACCOMMODATION CLAIMS

The applicant claimed that the FHA, the FEHA, and the ADA required the Commission to make certain changes to its normal practices. Those changes can be categorized as falling into three groups: (1) approval of physical development that might not otherwise be approvable, (2) waiver of the Commission's normal application fee, and (3) waiver of the normal informational requirements for the processing of a permit application. The first of those categories has been addressed at length above. Most of the development for which the applicant sought authorization, whether retrospectively (after-the-fact) or prospectively, has been approved, some of it pursuant to the normal Chapter 3 analysis, and some relying, in part, on the requirements in the above-referenced laws that the Commission provide reasonable accommodations when necessary to afford disabled persons an equal opportunity to remain in their dwellings. The development the Commission did not approve was found to be irreconcilably inconsistent with Chapter 3, unnecessary to ensure the applicant has an equal opportunity to enjoy her home, and/or unreasonable in that its approval would be fundamentally inconsistent with the Coastal Act.

As also noted above, the above referenced laws do not require that land use permitting agencies abandon their permitting requirements or waive their permitting fees.⁸ Although some limited case law has addressed the relationship between disabilities and financial hardship and the potential that accommodating disabilities may necessitate actions that may have a financial impact on the entity making the accommodation,⁹ no case law has required a waiver of application fees, some case law has actually confirmed that regulatory bodies can maintain their normal requirements despite their costs,¹⁰ and there has been no claim or showing of financial hardship in this case, much less financial hardship related to disability. Thus, the applicant is still required to submit the appropriate permit filing fee.

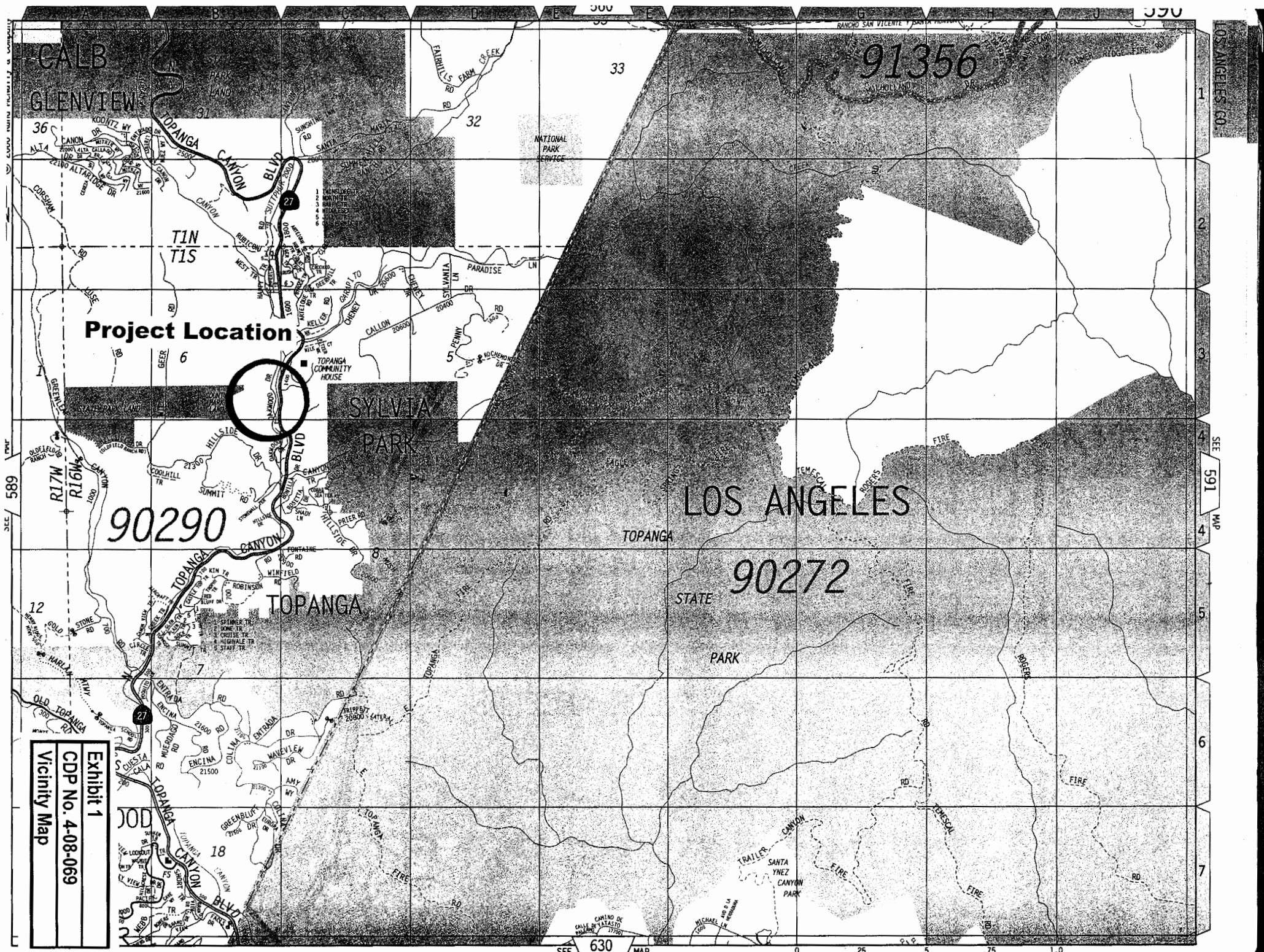
The third category is the request to expedite the processing of the permit application. The Commission notes that most of the development it finds approvable herein has been in place for many years already. Thus, the after-the-fact approval that the Commission now provides for that development had no impact on the applicant's access to her home, as it only changed the legal status of the development and did not

⁸ See, e.g., *United States of America v. Village of Palatine*, 37 F. 3d 1230 (7th Cir.1994) (permit requirements); cf. *Weinreich v. Los Angeles County Metropolitan Transp. Authority*, 114 F.3d 976 (9th Cir. 1997) (program does not discriminate on the basis of disability by requiring indigent to expend funds to satisfy program requirements).

⁹ See, e.g., *Giebeler v. M & B Associates*, 343 F.3d 1143 (9th Cir. 2003) (requiring a prospective landlord to accept an alternate form of proof of ability to pay for an apartment but noting that it was not requiring the landlord to accept lesser rent).

¹⁰ See *Weinreich v. Los Angeles County Metropolitan Transp. Authority*, 114 F.3d 976 (9th Cir. 1997) (program does not discriminate on the basis of disability by requiring indigent to expend funds to satisfy program requirements).

affect its presence. Accommodating the applicant's disability did not require expediting that change in legal status. As for the additional, new development that the Commission is approving, the factors that prevented it from going before the Commission sooner were entirely within the applicant's control. The applicant gave no explanation for how her disability affected her ability to complete the informational or monetary requirements to bring the application for that development to the Commission. Nevertheless, by reviewing this application prior to the applicant's submitting the full application fee or all of the requisite information, the Commission has made an accommodation to expedite its review.



Project Location

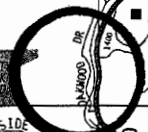


Exhibit 1
 CDP No. 4-08-069
 Vicinity Map

SEE 630 MAP

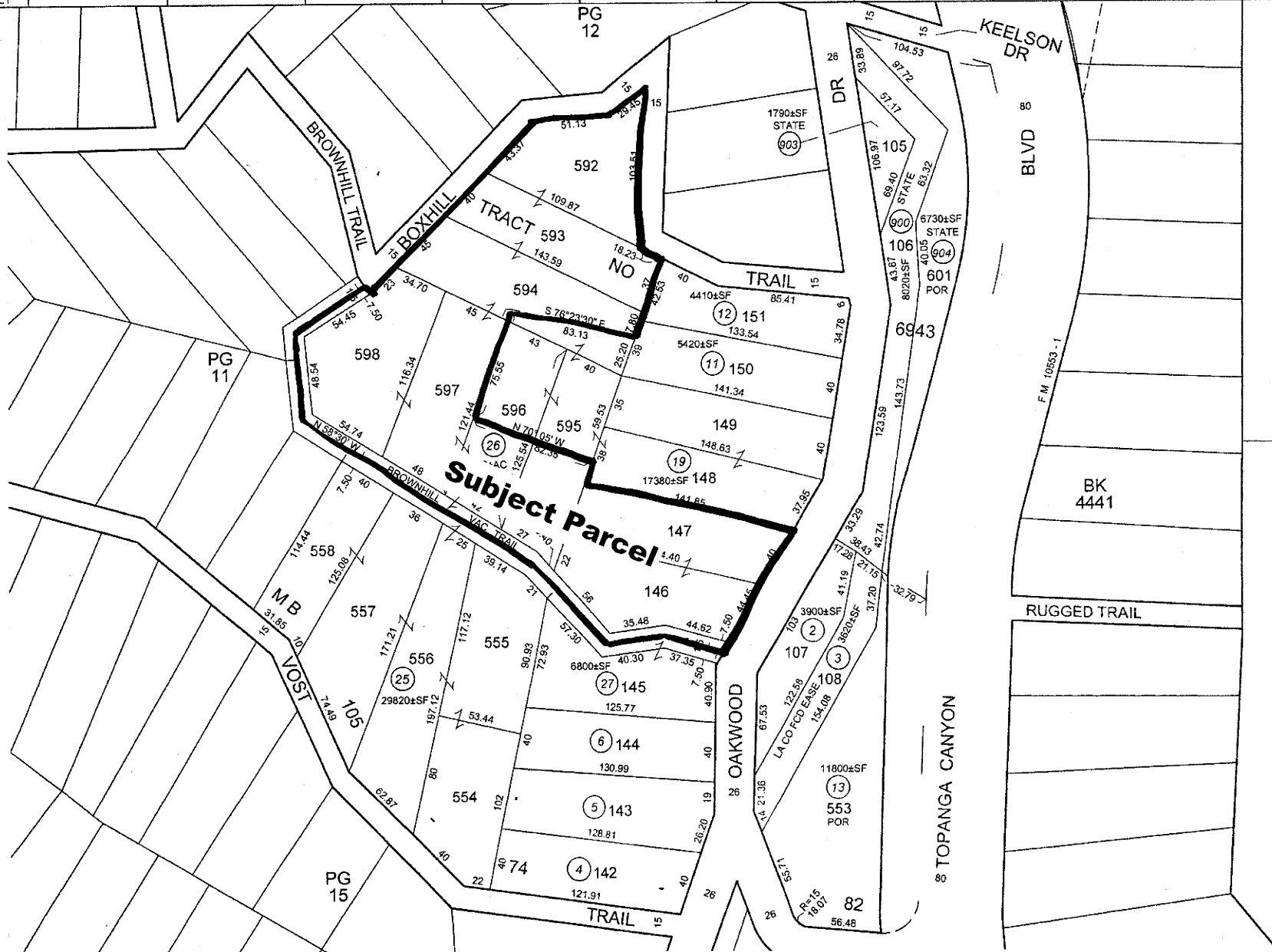
0 .25 .5 .75 1.0
 miles 1 in. = 2400 ft.

2011



MAPPING AND GIS SERVICES SCALE 1" = 60'

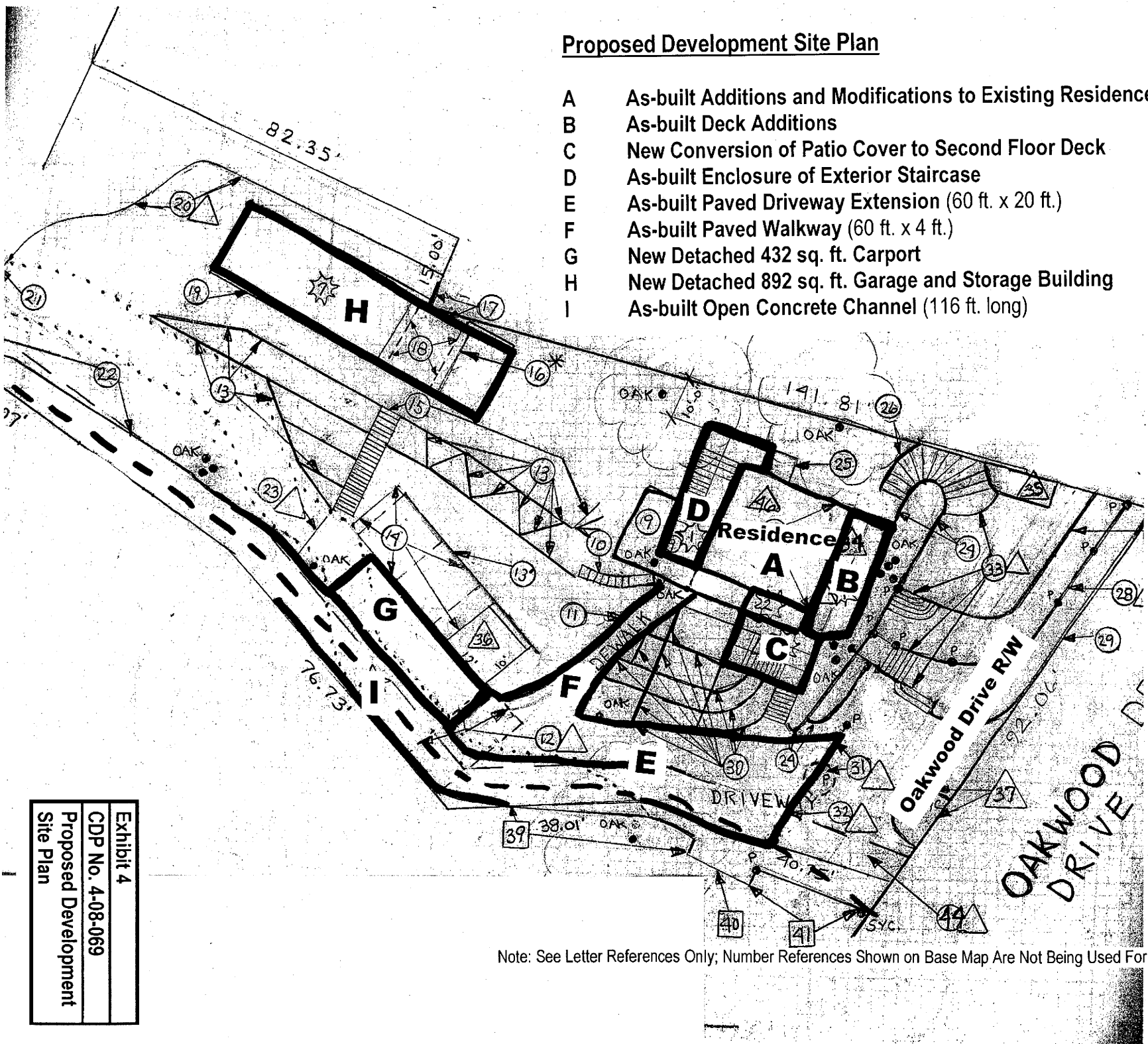
Exhibit 2
CDP No. 4-08-069
Parcel Map



Subject Parcel

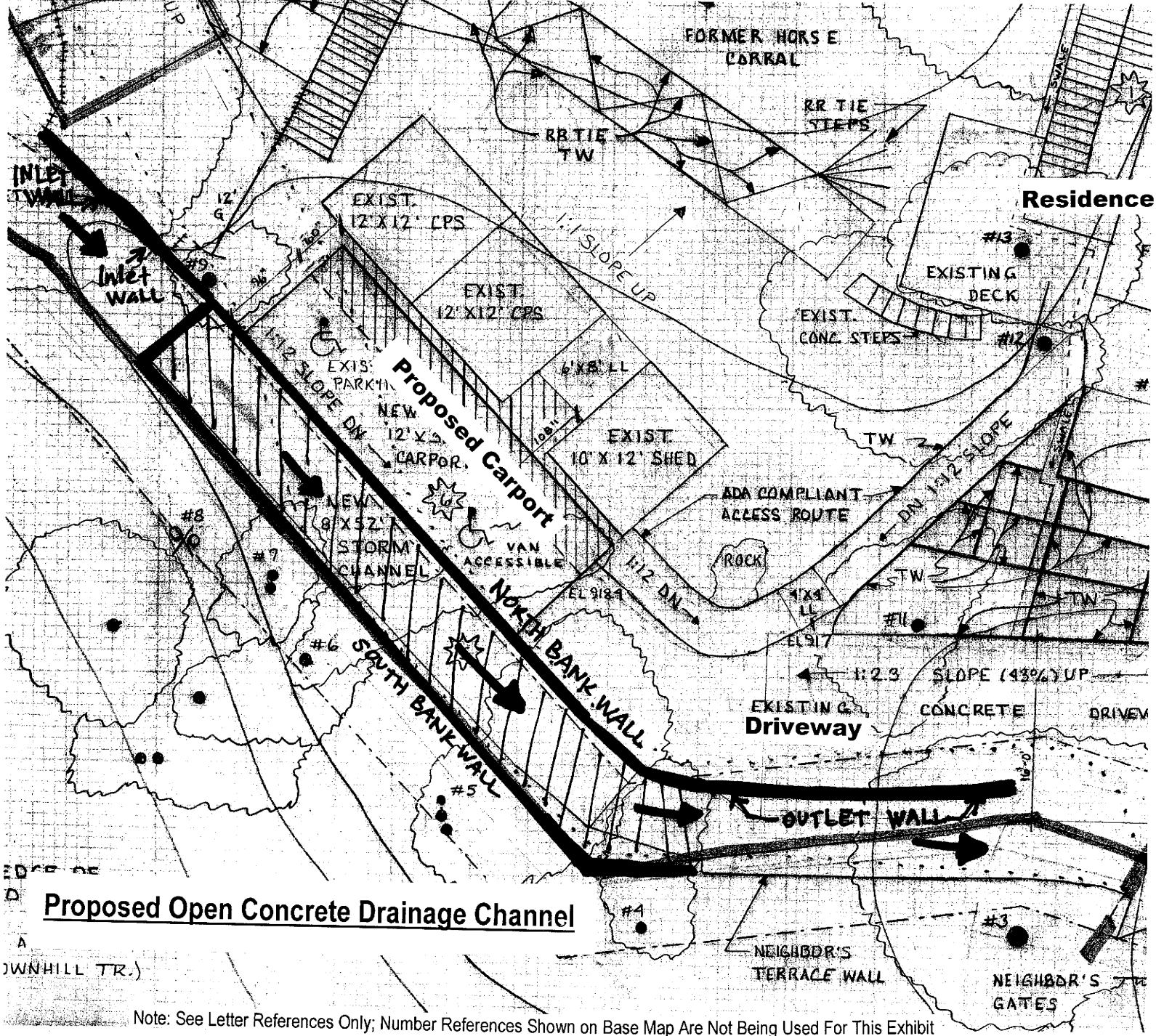
Proposed Development Site Plan

- A As-built Additions and Modifications to Existing Residence
- B As-built Deck Additions
- C New Conversion of Patio Cover to Second Floor Deck
- D As-built Enclosure of Exterior Staircase
- E As-built Paved Driveway Extension (60 ft. x 20 ft.)
- F As-built Paved Walkway (60 ft. x 4 ft.)
- G New Detached 432 sq. ft. Carport
- H New Detached 892 sq. ft. Garage and Storage Building
- I As-built Open Concrete Channel (116 ft. long)



Note: See Letter References Only; Number References Shown on Base Map Are Not Being Used For This Exhibit

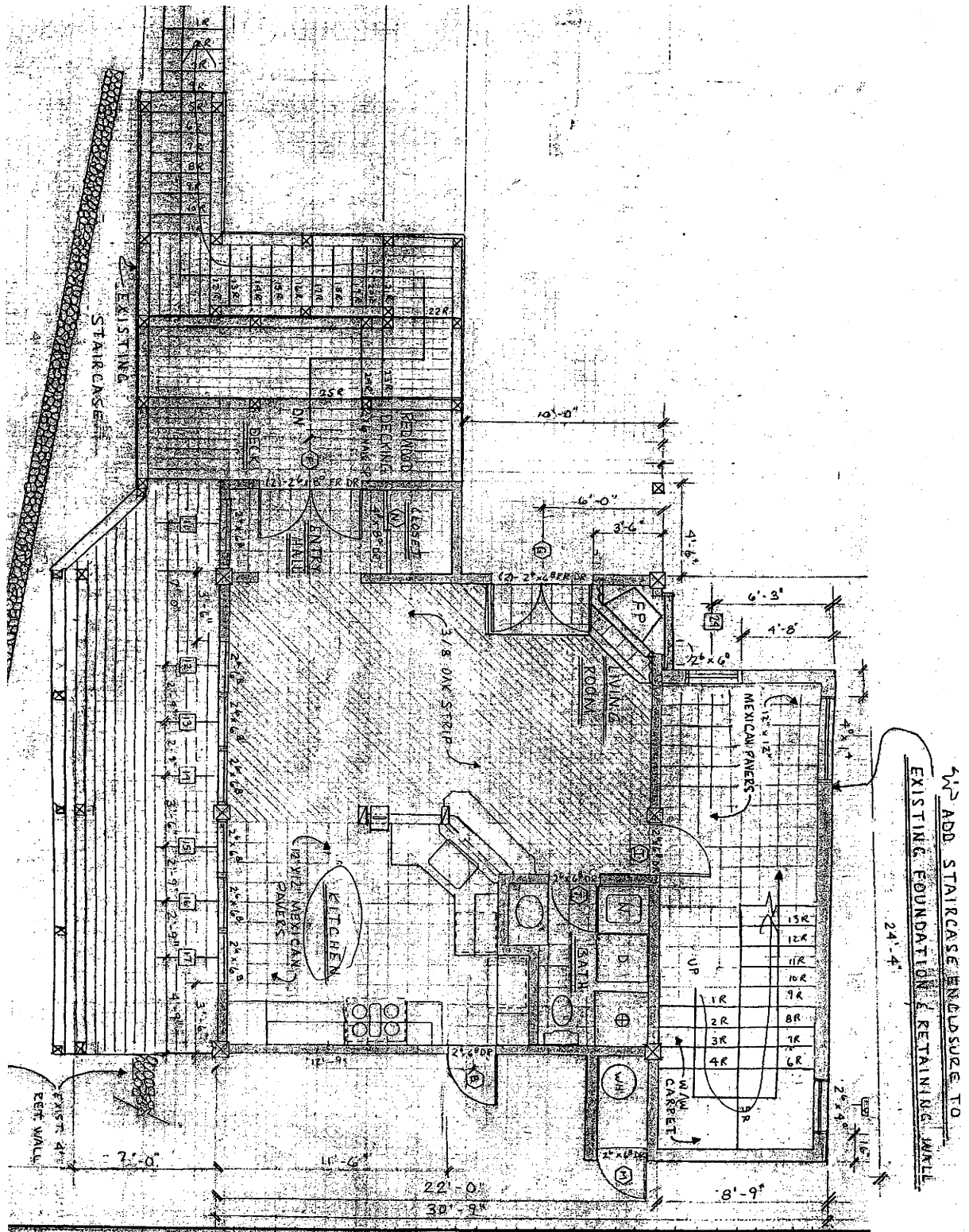
Exhibit 4
 CDP No. 4-08-069
 Proposed Development
 Site Plan



Proposed Open Concrete Drainage Channel

Note: See Letter References Only; Number References Shown on Base Map Are Not Being Used For This Exhibit

Exhibit 5
CDP No. 4-08-069
Proposed Open Concrete Drainage Channel



LOWER LEVEL FLOOR PLAN

STAIRCASE / ENCLOSURE
 DECK / PATIO COVER / AWNINGS

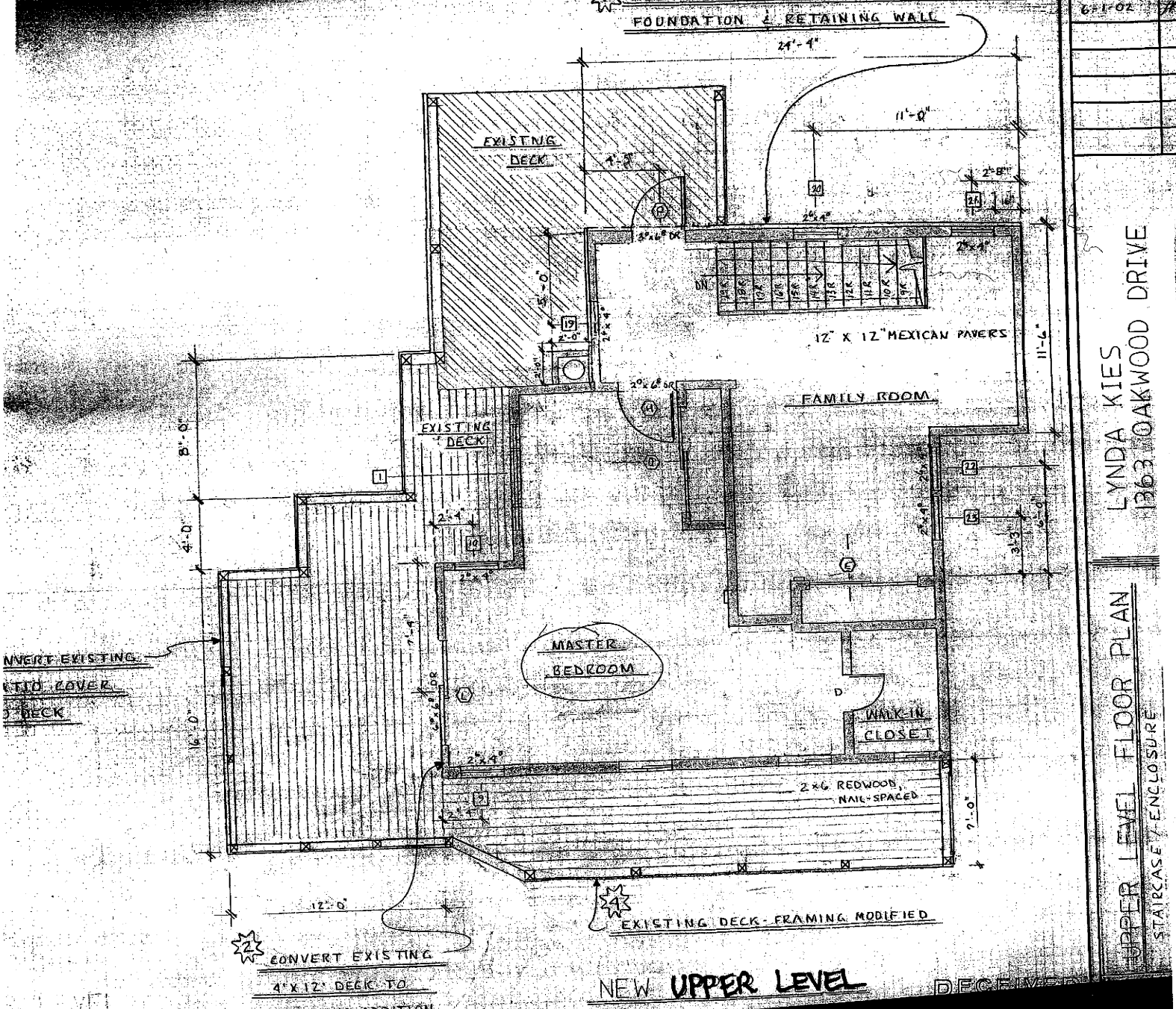
LYNDA KIES
 1363 OAKWOOD DRIVE
 TOWSON, CA 90200

Exhibit 6
 CDP No. 4-08-069
 Floor Plans and
 Elevations

FOUNDATION & RETAINING WALL

24'-1"

6-1-02



LYNDA KIES
363 OAKWOOD DRIVE

UPPER LEVEL FLOOR PLAN
STAIRCASE ENCLOSURE

INVERT EXISTING
STAIR COVER
TO DECK

2
CONVERT EXISTING
4' X 12' DECK TO
BED ROOM ADDITION

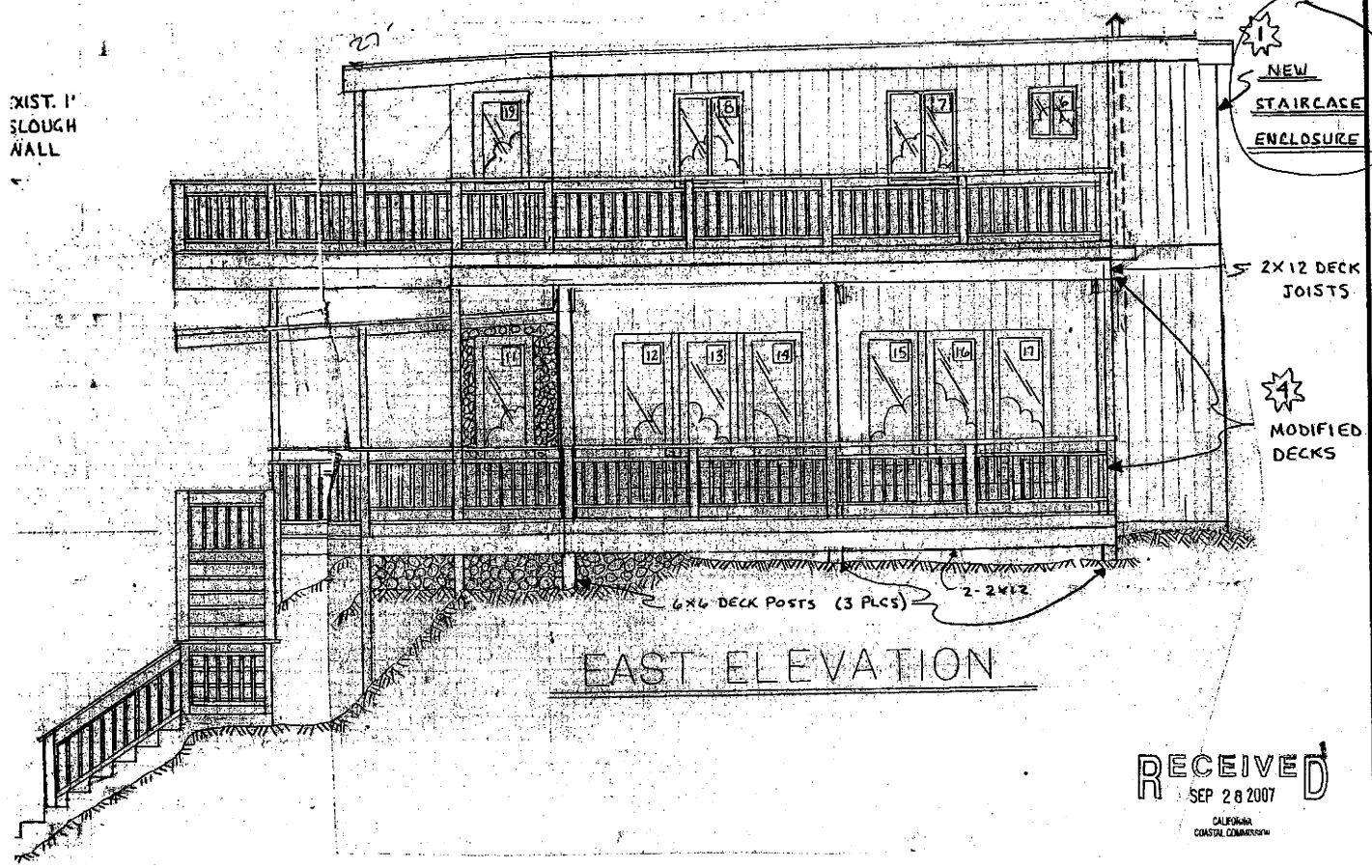
EXISTING DECK - FRAMING MODIFIED

NEW UPPER LEVEL

DECK

ex. 6

EXIST. 1" SLOUGH WALL

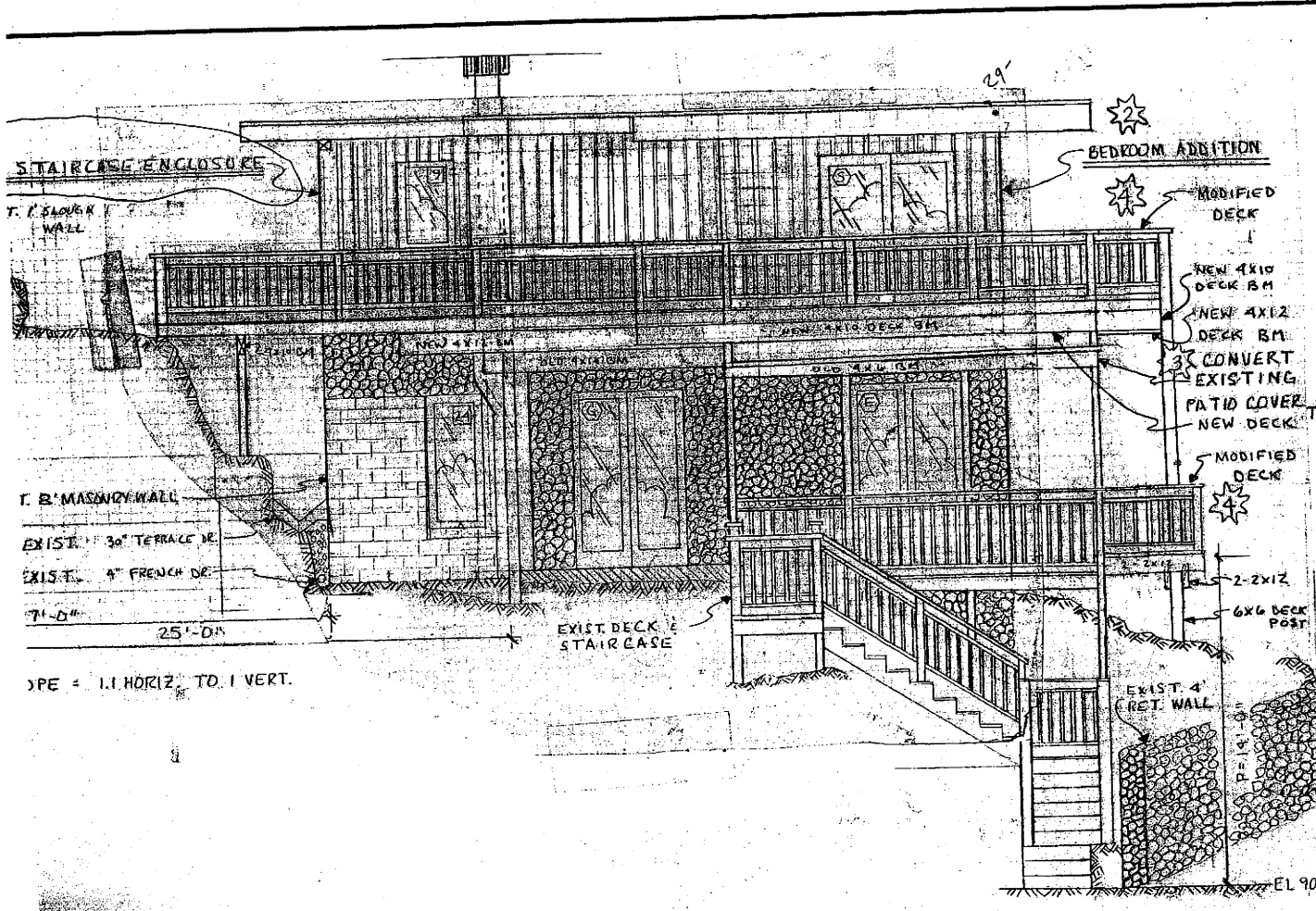


EAST ELEVATION

RECEIVED
 SEP 28 2007
 CALIFORNIA
 COASTAL COMMISSION

Date 6-15-02
 Scale 1/4" = 1'-0"
 Drawn JPK
 Job KIES
 Sheet 2

NEW ELEVATIONS
 STAIRCASE/ENCLOSURE & DECKS

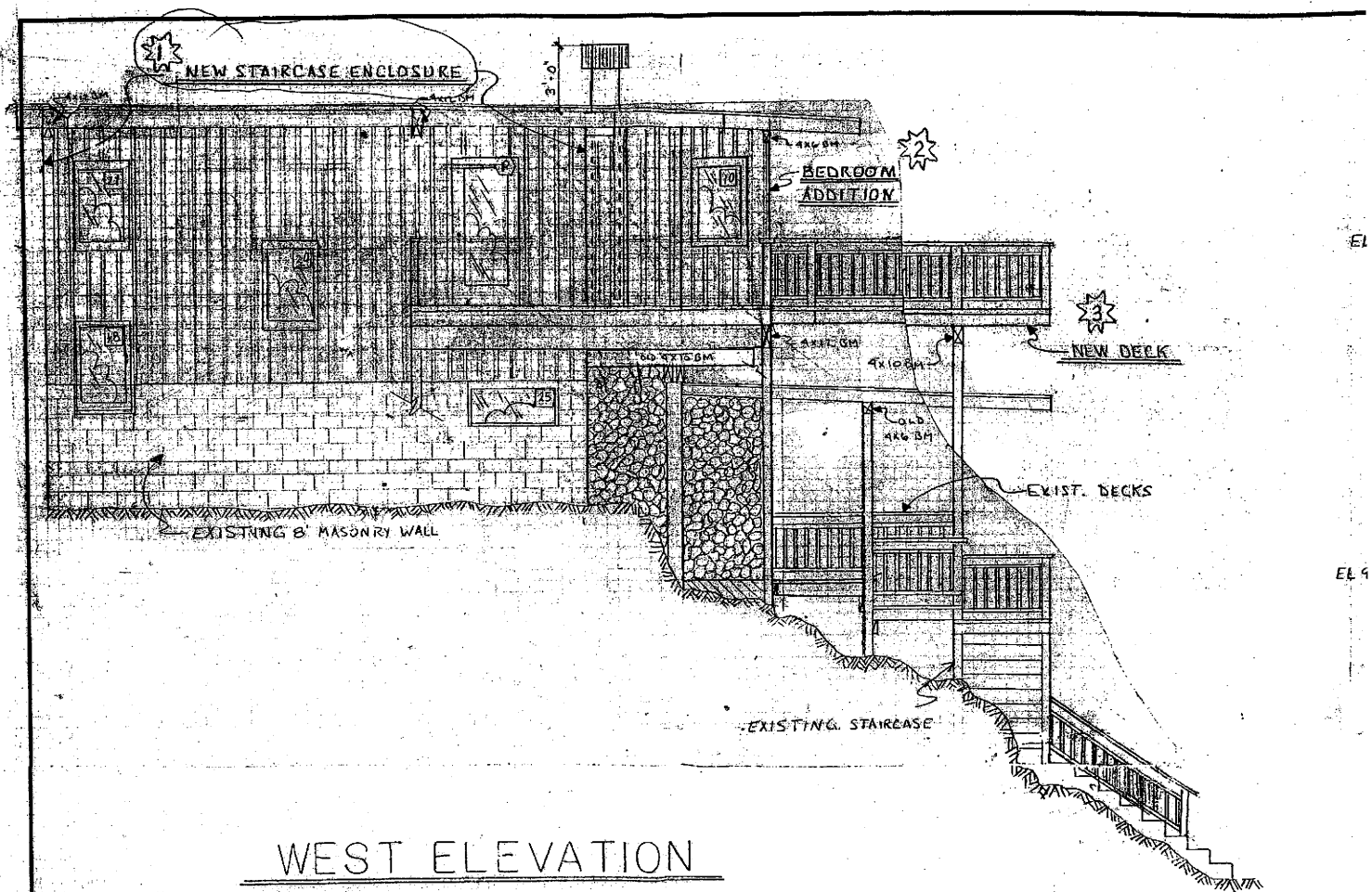


SOUTH ELEVATION

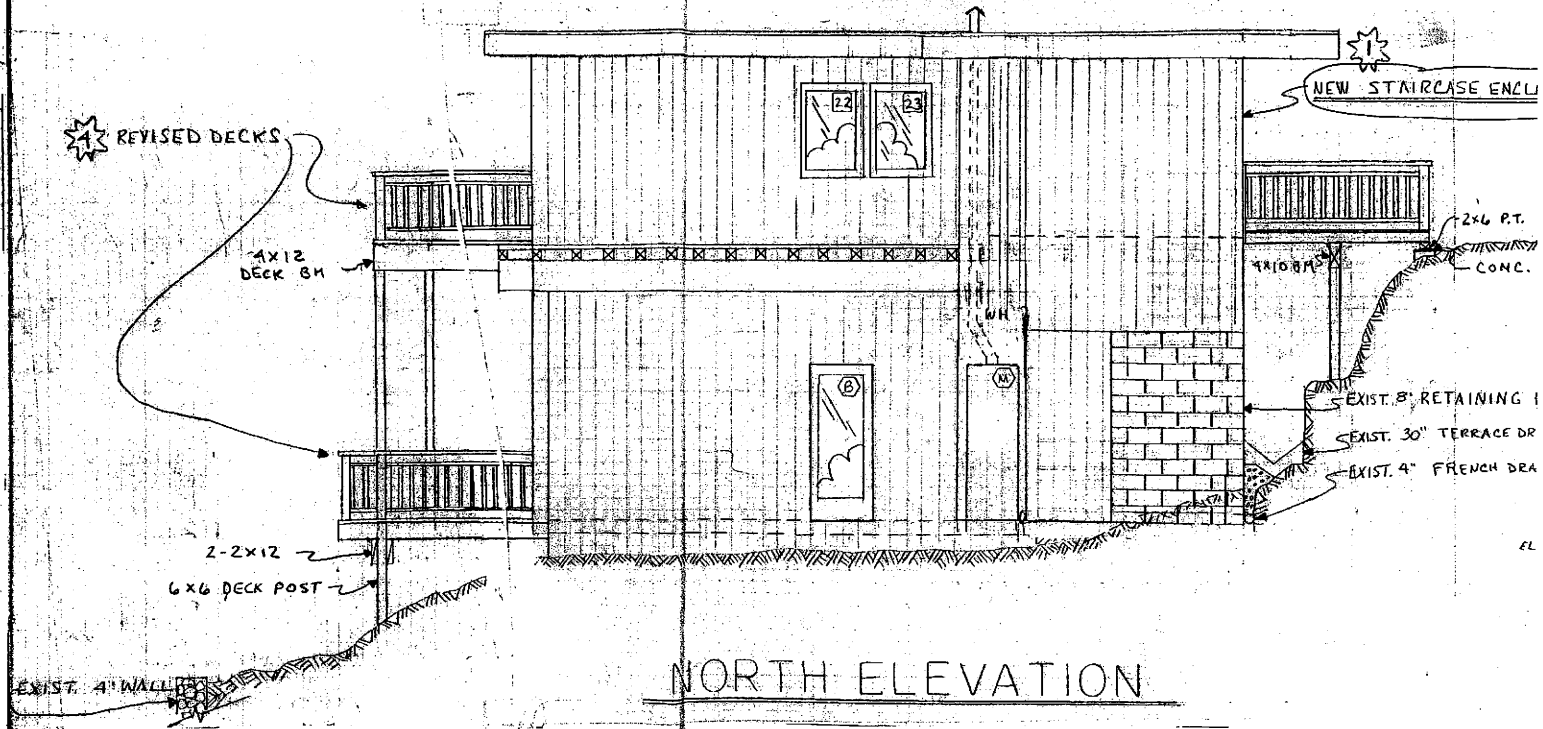
REVISIONS
 6-15-0

IDA KIES ARCHITECTURE

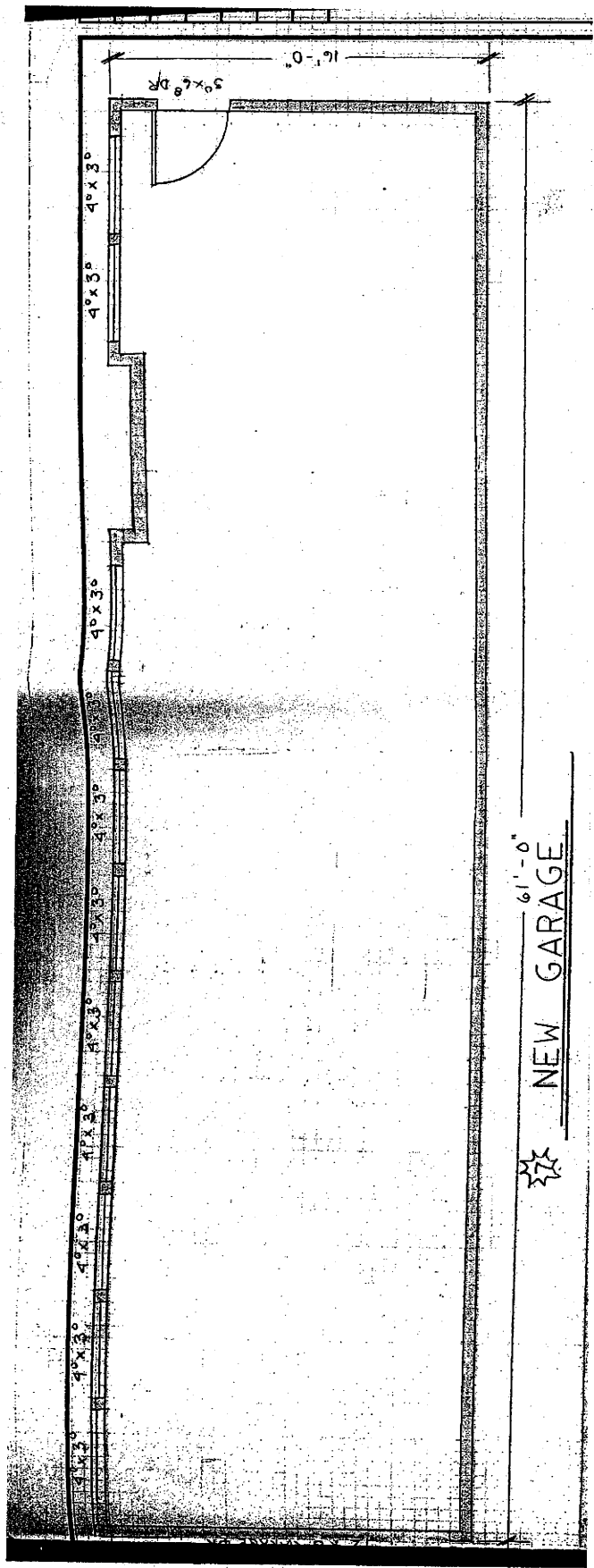
ex. 6



WEST ELEVATION

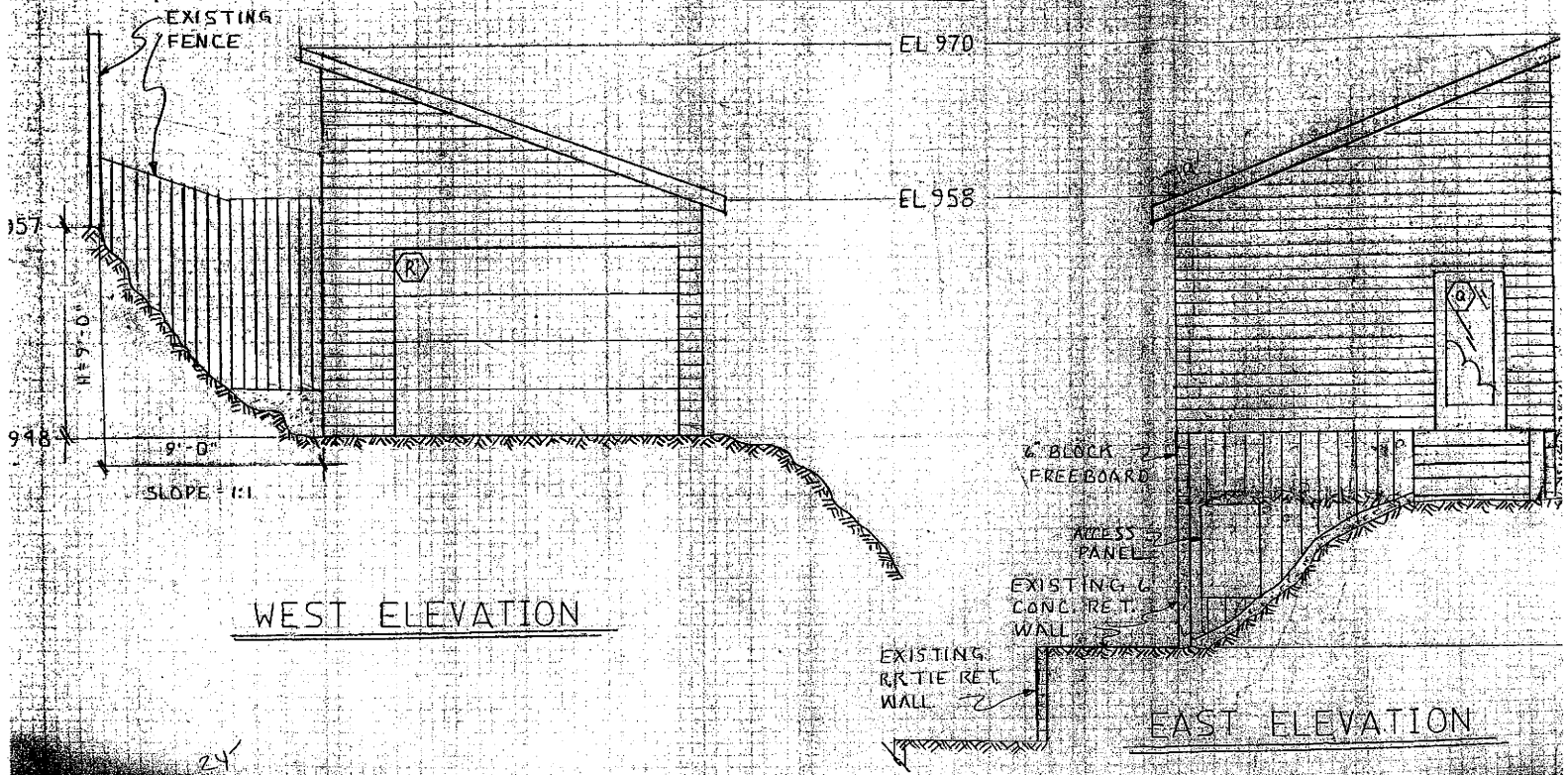


NORTH ELEVATION



NEW GARAGE 6'1" - 0"

NEW GARAGE



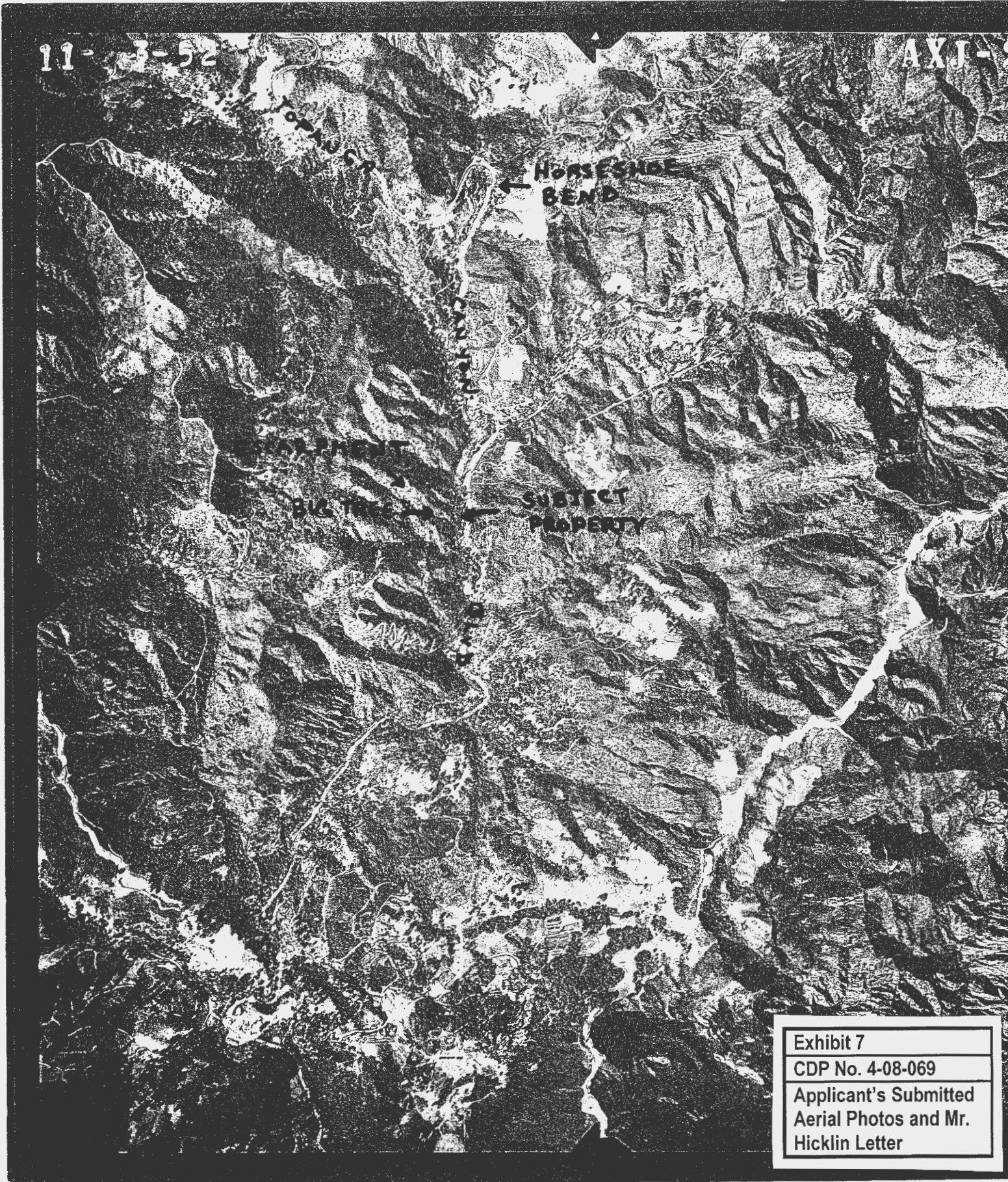
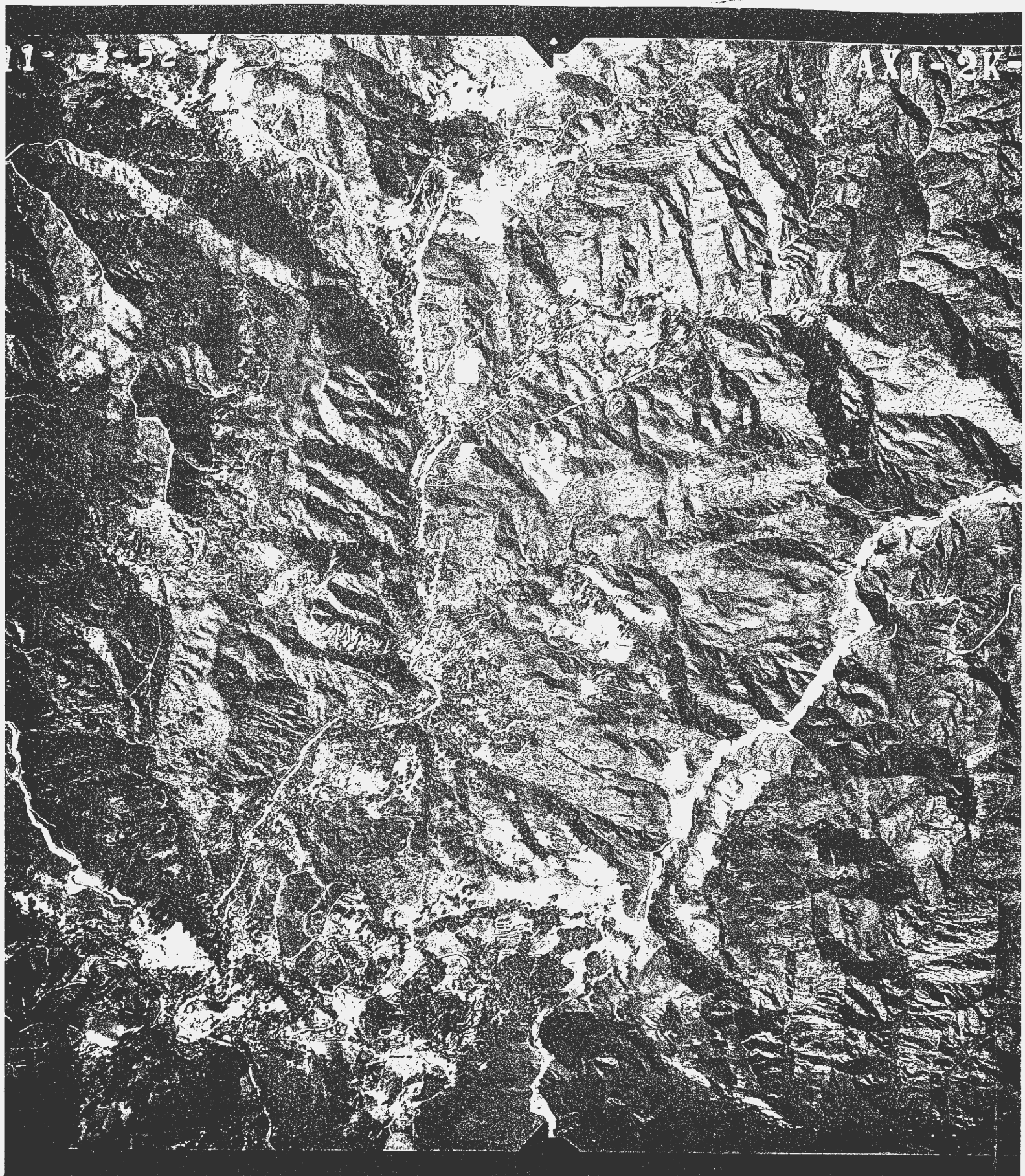


Exhibit 7
CDP No. 4-08-069
Applicant's Submitted Aerial Photos and Mr. Hicklin Letter

1-13-52

AXI-2K-



1952
United States Department of Agriculture

ex. 7



BIG TREE

**1385
OAKWOOD
(Hicklins)**

HORSE FIELD

HOUSE

RTE 101

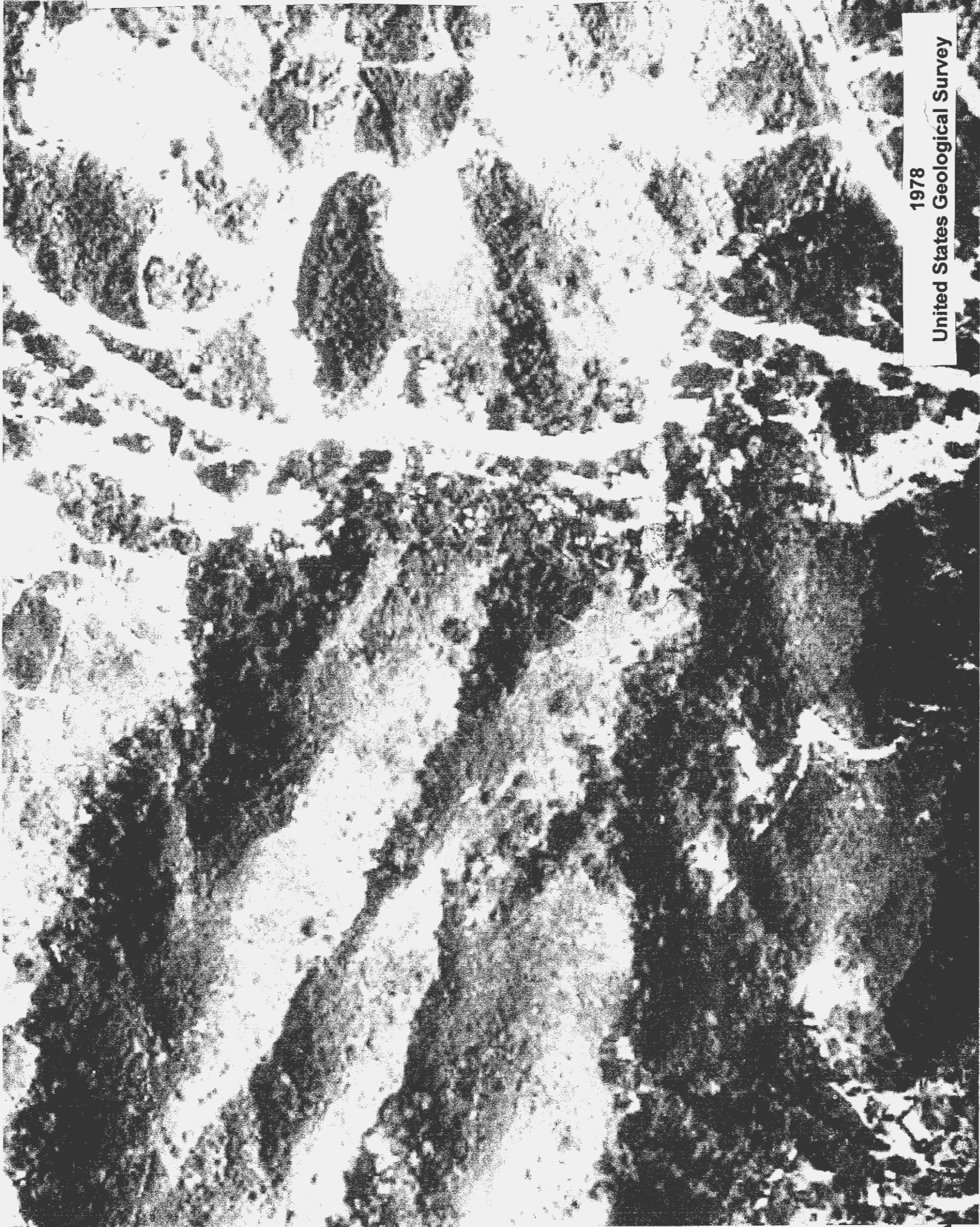
RTE 101



1978
United States Geological Survey



ex. 7



1978
United States Geological Survey

ex. 7

July 10, 2010

Dear Ms. Kies,

Per your request, I am writing this letter in response to your questions regarding your property on North Oakwood Drive in Topanga.

As I mentioned, my family lived at 1385 Oakwood Drive for almost 50 years. I grew up in that house with my brother and two sisters. My parents purchased the house in 1951 (while I was still in diapers). My father continued to live there after we all grew up until we sold the house in 1998, a couple of years before his death. As for your specific questions, this is what I remember.

Your property was owned by the Miller family, who lived there for at least 10 years before we bought our house until some time after I grew up and left home. My family and the Miller family lived there year-round. The rest of the houses on the street were used as vacation homes/rentals and were not always continuously occupied.

All the houses on our street had stone walls as well as railroad timbers used to shore up the hills.

The Millers always kept horses on their "mini" ranch for as long as I can remember, from the time I was a small boy. They had 3 daughters, a little bit older than the children in my family. As their daughters got older, my sisters used to ride the Millers' horses and help take care of them sometimes. They had a wooden barn on the south side of the property. It was divided in half, one side for horses and the other for a vehicle. I don't know when the barn was actually built, but it was pretty old, even when I was little. There was a small board-fenced corral in front of the barn and several small corrals in the back, as well as the large field for the horses on the hill behind the house. There were several open rain shelters with tin roofs for the horses in the field. The field was fenced with barbwire.

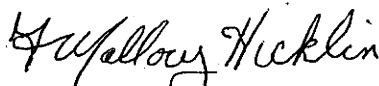
When I was growing up, Brownhill Road was paved for about the first 50 ft from where it intersects Oakwood. Beyond that, it was just a winding one-lane dirt road that ran alongside the Millers' horse corrals and behind the barn and on up the hill to a large oak tree. We had a 'fort' (like a clubhouse) that we built up in the tree where my brother and I used to play when we were young. The road had originally been used to deliver "trucked in" water to the Miller's water tank up on the hill behind their house. In the mid-1950's, my father had a well drilled at our house that was piped up to fill the Miller's water tank, which supplied household water to both their house as well as ours. It was my job every day after school to turn on the pump to make sure there was enough water in the tank. In the early 1960s, the County installed a public water system.

We had a television antenna high up on the hill with a long, long wire to our house. The tv reception went out a lot and we had to fix the wire often. Over the years we had to replace the antenna several times when it would get knocked over and broken by storms.

Mrs. Miller liked to make pottery and had a small ceramics studio up on the hill behind their house next to Brownhill Road. I don't believe it had electricity, but she did have a gas kiln up there, and a big stone potter's wheel. At one point, I remember a part of the long rock wall that held up the foundation gave way, damaging the building. I don't recall what year that happened, but my father helped Mr. Miller build a concrete wall to shore it up.

I hope this information helps you with the history of the neighborhood and your property.

Sincerely,



F. Mallory Hicklin

CALIFORNIA COASTAL COMMISSION

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



October 11, 2011

Donna Brown-Hardnett, Investigator
Office of Fair Housing and Equal Opportunity
611 W. 6th St., 10th Fl., Ste 1020
Los Angeles, CA 90017-3127

RE: Housing Discrimination Complaints
HUD Case No. 09-11-1175-8 (HELP v. CCC) & 09-11-1176-8 (Kies v. CCC)

Dear Ms. Brown-Hardnett:

Pursuant to section 810(a)(1)(B)(iii) of the Federal Fair Housing Act, 42 U.S.C. § 3610(a)(1)(B)(iii), this letter constitutes the preliminary answer of Respondent California Coastal Commission ("Commission") to the above-referenced complaints, which we received, under cover of letters dated September 28, 2011 ("Notice Letters"), on September 30, 2011. Last Friday, Ralph Douglass, Chief in the Investigations Branch of the Southern California office of HUD-FHEO, indicated to our counsel, Alex N. Helperin, that the above-referenced complaints had been assigned to you, and that this letter should therefore be addressed to you, but that we did not need to issue it prior to October 11, 2011. On October 4, Mr. Douglass also indicated to Mr. Helperin that we would not waive any rights by failing to include facts or arguments within this initial answer ("Answer"). Consistent with that representation, we hereby reserve our right to supplement this Answer with additional information and analysis in the future.

Finally, Mr. Douglass indicated that the Data Request Lists that accompanied the HUD Notice Letters are form documents, and as a result, some of the information requested on those lists may not be relevant to this case. Accordingly, per his directions, this Answer focuses on those questions that appear to be most relevant to the specific complaints at issue. Similarly, he agreed that, if we can resolve this matter without answering all of the questions, it would not be necessary for the Commission to answer the remaining questions. That said, the remainder of this letter does follow the outline in the Data Request Lists, repeating each question in order, and then providing the Commission's preliminary response.

1. State the legal name of your business and any other name(s) under which you do or have conducted business. Identify the nature of any federal financial assistance received by the subject property along with the project number.

Exhibit 8
CDP No. 4-08-069
October 11, 2011 CCC Response Letter to HUD

and

2. State type of legal business entity you are (i.e., corporation, partnership, limited partnership, sole proprietorship, etc.) Also, identify any agent for service of process.

Response: The Commission is not a business, but a governmental agency of the State of California, duly created and operating under the laws of said state, most specifically the California Coastal Act of 1976 (the "Coastal Act"). Cal. Pub. Res. Code ("PRC"), Division 20, §§ 30000 *et seq.* Pursuant to PRC section 30330, the Commission has "the primary responsibility for the implementation of the provisions of [the Coastal Act]." There was a predecessor agency to the Commission, known as the California Coastal Zone Conservation Commission. The Commission is not aware of any federal financial assistance received by the subject property. Service of process can be made on the Commission at its headquarters address: 45 Fremont St., 20th Fl.; San Francisco, CA 94105.

3. Identify and list the legal owners of the property in question by name, address, telephone number and type of ownership.

Response: The Commission has no independent knowledge of the names of the legal owners of the property in question or the type of ownership, but it is informed that the property is owned by Lynda Kies, as demonstrated by a 2003 grant deed of the property, apparently in fee simple. The address is 1363 Oakwood Drive; Topanga, CA 90290. The telephone number that the Commission has on file for Ms. Kies, which she provided in conjunction with her application, is (310) 387-5702.

4. List all persons and/or firms involved in the management of the property named in the complaint by name, address, telephone number, job title, and management responsibility. Also, identify any agent for service of process.

Response: The Commission has no knowledge of who or what firm may be involved in the management of the property named in the complaint.

5. State whether, at any time, you have been a party in any lawsuit or enforcement action brought under any fair housing law or civil rights act in any court of law or any governmental agency. If so, state the title or caption of the case, the case number, the name of the court or governmental agency where it was filed, the date of filing and the outcome.

Response: The Commission has no way of conclusively determining every matter in which it may have been a party in a lawsuit or enforcement action brought under any fair housing law or civil rights act in any court of law or any governmental agency. That said, we are aware that in mid-1993, a housing discrimination complaint was filed with HUD against the

Commission, among others. The caption appears to have been *Mannix et al. v. California Coastal Commission*, and the HUD case number was 099323461. The outcome was that HUD determined that the complainant was not an aggrieved party and so notified the Commission by letter dated July 23, 1993.

6. State any facts that you assert in response to the allegations in the complaint. Please state these facts chronologically by date.

Response: The following background information is relevant to understanding the chronology presented further below. The Commission is the state agency created by, and charged with administering, the Coastal Act, *supra*. Pursuant to that act (and specifically PRC § 30600(a)), any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit ("CDP"), with a few exceptions not relevant here. The subject property is within the Coastal Zone, as it is defined in the Coastal Act, and it is in an area where any CDP must be issued by the Commission. PRC §§ 30103, 30166, 30600(c). Pursuant to the Commission's regulations (Cal. Code regs., tit. 14, §§ 13000 *et seq.*), and in particular section 13053.5, and the Permit Streamlining Act (Cal. Gov't Code §§ 65920 *et seq.*), and in particular section 65952(a)(2), the Commission is not required to process CDP applications until a "completed application for the development project has been received and accepted as complete." PRC § 65952(a)(2).

Ms. Kies applied to the Commission for approval of a CDP authorizing several types of development on the subject property including after-the-fact approval of the concrete channelization of a natural drainage to protect an unpermitted driveway and parking area where she was proposing a new carport. However, she was not requesting after-the-fact approval of the as-built parking area or driveway or grading necessary to construct these areas. In addition, she was also requesting approval of a new garage/storage structure located at the end of an additional segment of unpermitted roadway that extends up an extremely steep slope on site to an unpermitted graded pad where an unpermitted horse corral is currently located; however, she was not requesting approval of the unpermitted grading, road, pads, or horse facilities. Thus, with the exception of the channelization, her application did not address any of the unpermitted development on site. Additional information was needed in order for the application to be filed as a complete application and in order for Commission staff to be able to adequately analyze and review Ms. Kies' application for consistency with the Chapter 3 policies of the Coastal Act. The incomplete application was compounded by the fact that Commission staff review of the application and historic information (including, but not limited to, aerial photos and Commission permit records) indicated that a significant amount of development had already occurred on the site after the effective date of the Coastal Act (January 1, 1977) but for which no CDP was ever approved, nor was any such application ever applied for by the property owner.

This unpermitted development, some of which is integrally related to the proposed development, appears to include: channelization of the natural drainage on site, grading and construction for a private access road immediately adjacent to the drainage, grading of a pad for a parking area adjacent to the drainage, installation of a shade structure and three tack sheds for

equestrian facilities located on an unpermitted pad adjacent to natural drainage, construction/installation of a further unpermitted shed located on a separate graded pad adjacent to natural drainage, construction/installation of a horse corral located on an unpermitted graded pad on a steeply sloped portion of the lot, and the construction/installation of an unknown number of retaining walls on steep slopes supporting the pad for the horse corrals.

As Ms. Kies has been informed in multiple discussions, meetings, and letters, the "proposed" project plans submitted as part of her application show numerous unpermitted developments that have occurred on her property (the violations are shown on the proposed project plans as "existing") that, based on a review of Commission records and historic aerial photographs, appear to have been completed after the effective date of the Coastal Act on January 1, 1977, without the required coastal development permit. Although her application includes the after-the-fact request for the channelization of the natural drainage and was later amended by her to request after-the-fact approval of the additions to the single family residence, her application does not clearly address the other components of the unpermitted development on site. Her application is further complicated by the fact that each of the components of her application that comprise newly proposed structures (including a new garage/storage and carport) are located on portions of the site where unpermitted development has already occurred, including the unpermitted graded pads upon which these new structures would be constructed.

Because of the interrelatedness of the new and unpermitted existing development on site, Ms. Kies was asked to either submit evidence that the "as-built" development on site has received the necessary governmental approvals at the time of their construction or clarify the proposed project description and plans by indicating whether she is now: (1) requesting after-the-fact approval for some or all the unpermitted development; (2) removing some or all of the unpermitted development and restoring the disturbed areas.

As described below, Commission staff has provided consistent direction to Ms. Kies several times regarding the additional items that must be provided in order for her application to be filed as complete. However, to date, Ms. Kies has still not provided all of the items necessary for a complete application, or even a clear project description, both of which are necessary for the Commission to determine whether the proposed development can be approved pursuant to the standards established by the Coastal Act, the Federal Fair Housing Act ("FHA"), and the Americans with Disabilities Act ("ADA").

Finally, it is critically important to note two facts. First, because the application has not been completed, it has not yet been brought to the Commission for review. Thus, there has been no denial of the merits of Ms. Kies' request for approval of development she claims is necessary to accommodate her disability. Secondly, components of the pending application that appear necessary in order for Ms. Kies to access her residence are already constructed and have already been in place for some time and are under no current threat of removal. Her pending request is, in part, the request for after-the-fact approval of a CDP for an as-built driveway, as-built parking area, and as-built access ramp to the residence from the as-built parking area, all of which appear to have been previously completed without the required coastal

permit. Thus, while her request is pending, she continues to enjoy the ability to use her house as intended.

The specific facts, presented in chronological order, are as follows:

September 27, 2007 Lynda Kies submitted CDP application 4-07-125 for development at 1363 Oakwood Drive. The applicant's request (as defined by the application) included a request for approval to: "1) add enclosure @ second story to existing staircase, existing foundation and existing first story retaining wall; 2) convert existing 4'x12' second story deck to habitable (addition to bedroom; remove 48 sq. ft. of deck); 3) convert existing patio cover to deck (add 240 sq. ft. deck); 4) modify existing deck framing (add 67 sq. ft. of deck); 5) convert existing drainage course to channel and swale; add 2-car tandem carport (432 sq. ft.); and 6) add 3-car tandem garage/storage (876 sq. ft.)."

October 24, 2007 Applicant notified by Coastal Commission staff letter of multiple items necessary to complete CDP Application 4-07-125, including clarifying the unclear project description and plans to clearly show new proposed development, identify existing unpermitted development, and clarify development for which applicant is requesting after-the-fact approval. During staff's initial review of this application, it was discovered that a substantial amount of unpermitted development had occurred on site, which is entirely located within an environmentally sensitive habitat area and oak woodland (as designated by the Malibu/Santa Monica Mountains Land Use Plan certified by the Commission in 1986), including, but not limited to, grading, vegetation clearance, driveway/road, several retaining walls, equestrian facilities including corrals, horse shelters, and multiple tack room/sheds, and concrete channelization of the natural drainage/stream tributary on site.

Moreover, the new proposed structures, including the car port and the garage were both located on graded pads which, based on review of historical aerial photographs, appeared to be constructed after the effective date of the California Coastal Act of 1976 without the required coastal development permit. Because the new proposed structures (including the garage/storage and the carport) are located entirely on these unpermitted graded pads; the development is considered integrally related, i.e. the new structure is dependent on the existence of the unpermitted graded pad. Thus, any application for new structures (such as the garage/storage and the carport) that would be located on, and thus dependent upon, these unpermitted, "as-built" graded pad areas must also include the request for after-the-fact approval of these graded areas.

August 25, 2008 Application 4-07-125 is returned to the applicant for incompleteness, the Commission having received none of the additional items that it requested in the preceding 10 months.

September 18, 2008 Commission staff met with Lynda Kies to discuss her previous application that had been returned for incompleteness. Lynda Kies submitted a new

CDP Application (designated as no. 4-08-069) for development at 1363 Oakwood Drive, Topanga, Los Angeles County, CA. (Note: Commission's fee schedule had significantly increased as a result of legislative action since original 2007 application. At Ms. Kies' request, staff agreed to accept the new application pursuant to the previously applicable, lower fee schedule.) In addition, at this meeting, the applicant indicated that she had constructed several previous additions and expansions to the existing residence since she purchased the property although she did not obtain, or submit an application for, any previous coastal development permit or exemption from the California Coastal Commission. Staff informed Ms. Kies that additional information and plans showing these additions would be necessary in order for staff to determine whether improvements would have been exempt at the time of construction or whether a coastal development permit was required.

Moreover, staff informed Ms. Kies that staff did not foresee any significant issues with the additions to the residence (including both the previously constructed additions and the new proposed additions). Staff informed that Ms. Kies that if she believed the additions to the residence were exempt, then she could submit a separate exemption application with the necessary fee for an exemption determination for review and a staff determination. However, given that the majority of proposed development (and related unpermitted development) clearly required a coastal development permit, including the new accessory structures located on graded pads, roads, retaining walls, channelization of the natural drainage, staff informed Ms. Kies that she could also include all proposed development (including the additions to the residence) as part of a single comprehensive application for a coastal development permit in order to both resolve the violations on site and authorize new proposed development and/or remove unpermitted development and restore portions of the site.

At the conclusion of the meeting, the applicant submitted the same application for the same project description as she had previously submitted without addressing the previously identified issues or including the items previously identified as necessary for a complete application.

- October 15, 2008 Applicant notified by Coastal Commission staff letter of multiple items necessary to complete CDP Application 4-08-69 including clarifying both the project description and plans to clearly show new proposed development, identify existing unpermitted development, and clarify development for which applicant is requesting after-the-fact approval.
- April 23, 2009 Response submitted by applicant to October 15, 2008 notification of incomplete application; however, this response failed to include all the items requested in the October 15th letter to complete the application.
- August 6, 2009 Applicant submits letter rescinding authorization for her agent.

- August 9, 2009 Commission staff responded by email, acknowledging that the applicant agreed to submit additional information pursuant to previous requests from Commission staff and that Commission staff would be available for a meeting as soon as scheduling allowed.
- August 10, 2009 Applicant submits e-mail message to Commission staff noting that she has collected additional information and requesting a meeting to present it
- September 21, 2009 Response submitted by applicant which did not include the items requested in previous Commission filing status letter necessary to complete the application.
- October 7, 2009 Response submitted by applicant which did not include all the items requested in previous Commission filing status letter necessary to complete the application.
- October 14, 2009 Applicant notified by letter of items still outstanding to complete CDP application 4-08-069
- November 2, 2009 Response submitted by applicant which did not include all the items requested in previous Commission filing status letter necessary to complete the application.
- November 17, 2009 Response submitted by applicant which did not include all the items requested in previous Commission filing status letter necessary to complete the application.
- December 1, 2009 Applicant notified by letter of items still outstanding to complete CDP application 4-08-069 and informing her that although Commission staff has received her written responses, those responses did not include the items previously requested in order to file her application as complete.
- March 11, 2010 Response submitted by applicant which did not include all the items requested in previous Commission filing status letter necessary to complete the application.
- March 22, 2010 Coastal Commission staff visited the project site with applicant's representative. Commission staff met with applicant and her engineer, Rob Anderson.

During this site-visit meeting, Commission staff discussed with applicant and Mr. Anderson that, once the application was completed by the applicant, staff would likely be able to recommend approval of all proposed additions to the residence and those components of the project necessary to access her residence, including after-the-fact approval of the portion of the driveway between the natural drainage and the residence and either a carport or garage on this same portion of the driveway, and the ramp/path to the residence. However, staff also reiterated that the other

unpermitted development on site, including the unpermitted horse facilities, graded pads and supporting retaining walls for the horse facilities located on a steep slope above the residence, and various storage structures located on unpermitted graded pads under the canopies of oak trees appeared to raise substantial issues regarding consistency with the Chapter 3 policies of the Coastal Act. Commission staff discussed the outstanding previously requested items necessary to complete the application and reiterated that staff would process this application as expeditiously as possible once the required items to complete the application had been submitted.

- April 14, 2010 Applicant re-notified by letter of items still outstanding to complete CDP application 4-08-069.
- July 16, 2010 Response submitted by applicant which did not include all the items requested in previous Commission filing status letter necessary to complete the application.
- July 26, 2010 Response submitted by applicant requesting priority processing of application; however, this response still did not include the items requested in previous Commission filing status letter necessary to complete the application.
- October 18, 2010 E-mail message from Lynda Kies to James Johnson indicating she had paid additional fees (\$250) and requesting staff to file application as complete.
- October 20, 2010 E-mail response from James Johnson to Lynda Keyes restating that as she was previously informed in our letters to her, the total application fee of \$1,600 has still not been submitted (only \$500 has been submitted by applicant, including recent submittal of \$250 referenced in 10/18/10 email). E-mail reiterates that there are still other outstanding items that must be submitted, in addition to the correct application fee, including clarifying the project description and plans to clearly show new proposed development, identify existing unpermitted development, and clarify development for which applicant is requesting after-the-fact approval or removal and restoration as discussed in detail with applicant and applicant's representative during the March 22, 2010 site visit.
- November 2, 2010 Commission staff met with Ms. Kies and explained that she must submit the items previously requested in the Commission's letter in order for the application to be filed as complete.
- December 1, 2010 Historic aerial photos submitted by applicant with statement that she believes these photographs constitute evidence that no unpermitted development occurred on site since the effective date of the Coastal Act.
- January 14, 2011 Coastal Commission staff responds by letter indicating receipt of aerial photos submitted on December 1, 2010, and notifies applicant that staff has reviewed the submitted aerial photographs and does not agree that the photographs

constitute evidence that any of the previously identified unpermitted development existed prior to the effective date of the Coastal Act. Staff reiterates that the previously requested items are still outstanding to complete CDP 4-08-069.

January 27, 2011 Applicant submits letter to the Commission requesting "a waiver of any and all laws, rules, policies and practices administered by the . . . Commission that could impede the urgent issuance of a [CDP]". Letter attached from Douglas Roy, M.D. stating, in part, that patient has history of cancer and was diagnosed in 2005 with a chronic system illness including degenerative congenital joint condition. Letter states she is not able to climb stairs or traverse uneven terrain.

April 6, 2011 Response submitted by applicant which did not include all the items requested in previous Commission filing status letter necessary to complete the application.

May 20, 2011 Applicant notified by letter that application remains incomplete pending the submittal of the previously requested items and stating that once the previously requested items necessary to complete the application for filing have been received, the item will be filed as complete and scheduled for a Commission hearing.

7. Identify and list by name, title, address, and telephone number each individual who was involved in or witnessed the act(s) alleged on the complaint form or who has knowledge of the information set forth in your response to this data request letter.

Response: The following individuals have been involved in the review of CDP applications 4-07-125 and CDP 4-08-069:

James Johnson, Coastal Program Analyst (retired)
Jenn Feinberg, Coastal Program Analyst (no longer with agency)
Shana Gray, Supervisor of Planning and Regulation
Steve Hudson, District Manager
John Ainsworth, Deputy Director
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001
(805) 585-1800

8. Identify any documents that support the facts referred to in your response to this data request letter. Describe these documents chronologically so that they can be identified and include a copy of these documents if possible. In addition, state the present location of each of these documents and the name, address and telephone number for the custodian of these documents.

Response: The applications (including supporting documents), letters, e-mail messages, etc. at issue are detailed in Response No. 6 above. Copies of those documents are included. However,

many of the documents (including geologic and engineering reports, aerial photographs, and full sized architectural and grading plans) contained in the referenced applications are lengthy, oversized, or otherwise not reproducible by our staff. These documents are available for review in the South Coast District office of the California Coastal Commission at 89 South California Street, Suite 200, Ventura, CA 93001. The telephone number is (805) 585-1800. Julie Reveles or Barbara Rodriguez of our clerical staff can make the files available for review.

9. Submit a copy of any documents or the contents of any file in your control concerning the complainant(s).

Response: Attached are copies of the CDPs applications, correspondence, and other information related to CDP Application files No. 4-07-125 and No. 4-08-069. However, as indicated in the prior response, many of the documents contained in the referenced application files are lengthy, oversized, or otherwise not reproducible by our staff. These documents are available for review in the South Coast District office as indicated above.

10. Please state if, on what basis, you had any knowledge of, any record of or regarded the Complainant [sic] as a disabled or handicapped person. Include in your statement the basis for any belief that the Complainant was not disabled or handicapped.

Response: Ms. Kies submitted a letter, dated January 28, 2011, from Douglas Roy, M.D., detailing several conditions that he states affect Ms. Kies and result in her having mobility and other limitations. We have no other information regarding this issue.

11. Please provide the following information if the Complainant has ever requested an accommodation of rules or services and/or modification of facilities related to the Complainant's disability or handicap.
- a. date(s) of requests,
 - b. substance of requests,
 - c. any documentation or action you requested from the Complainant to support a request, and
 - d. the steps you took in response to the request, including the outcome.
 - e. all justifications for the actions taken
 - f. the dates and methods (include copies of documents in your possession if applicable) that any person was notified of these justifications

Response: As noted in Response No. 6 above, Ms. Lynda Kies submitted a letter on January 27, 2011, requesting "priority processing and approval of a Coastal Development Permit pursuant to Application 4-08-069 for necessary disability-related improvements" and

requesting a "waiver of any and all laws, rules, policies, and practices administered by the California Coastal Commission which could impede the urgent issuance of a Coastal Development Permit for Application 4-08-069". The substance of the request was to approve the coastal development permit (4-08-069) or to waive the requirement to obtain a coastal development permit for 1) additions to the residence;; 2) completion of a partially constructed, unpermitted concrete channel within a natural drainage; and 3) a new carport located on the unpermitted pad/road adjacent to the creek, and 4) a new garage and storage room structure located on an unpermitted graded pad located on a steep slope where unpermitted horse corrals and facilities are currently located.

No additional documentation was requested by the Commission from Ms. Kies to confirm her alleged disabilities. As previously discussed, Commission staff did reiterate to Ms. Kies on several occasions, including multiple letters and meetings that Commission staff understands that Ms. Kies is entitled to those improvements which are necessary to allow her to continue use of her housing; however, the appropriate process for the Commission to act regarding her request for the proposed development would be to complete her pending application so that the Commission can act on this matter. In addition, she was informed that the items that had been consistently requested from her in order to complete her CDP application are necessary for staff to evaluate whether the proposed development will comply with the relevant policies of the Coastal Act.

The Commission's request for the additional items to complete her application is based on (1) Commission regulations (specifically those in Article 2 of Subchapter 1 of Chapter 5 of Division 5.5 of Title 14 of the California Code of Regulations: 14 C.C.R. §§13053.4-053.6) and (2) Commission staff's understanding that an accommodation is not considered reasonable if it would require a fundamental alteration in the nature of the program the Commission administers. The justifications for this action were (1) that those regulations require that Commission staff to collect and assess such information before filing an application as complete and (2) that Commission staff's understanding of the law required an analysis of the degree to which the requested accommodations would require such a fundamental alteration of the nature of the program in order to determine whether the FHA would require allowing such accommodations.

The end result is still to be seen, as Commission staff continues to await Ms. Kies' provision of the requested information to complete her application. Thus, neither Commission staff nor the Commission itself has yet taken action on the merits of Ms. Kies' request. However, the interim result is that, since Ms. Kies did not provide the requested items to complete her application, Commission staff has not yet forwarded the application to the Commission for review on the merits. In that interim period, instead of providing the additional information that the Commission needs, Ms. Kies apparently filed this complaint with HUD.

Commission staff has informed Ms. Kies on several occasions, that we are willing to work with her to resolve this matter in a timely manner. Moreover, staff acknowledges that Ms. Kies is entitled to those improvements which are necessary to allow her to continue use of her housing provided that such improvements are the least environmentally damaging feasible

alternative necessary to accomplish that goal and are designed to minimize or avoid adverse impacts to coastal resources to the extent feasible. The appropriate process for the Commission to act regarding her request for the proposed development would be for Ms. Kies to complete her pending application so that the Commission can act on this matter. Commission staff have been clear and consistent with Ms. Kies regarding the necessary items that must be submitted in order for her application to be complete and for staff to evaluate whether the proposed development will comply with the relevant policies of the Coastal Act. Although Ms. Kies has, to date, not submitted the previously requested items, staff remains willing to work with Ms. Kies to resolve this matter administratively pursuant to a coastal development permit application.

12. Please provide any information, including any document, which describes the nature of any liability to which the Respondents will be exposed if the Complainant's subject accommodation and/or modification request is granted. With this information please provide:
 - a. the source of each item of information,
 - b. when each item of information was acquired or received,
 - c. a description of any steps you took to verify the accuracy of each item of information received or acquired, and
 - d. the actions any Respondents took as a result of acquiring or receiving each item of information.

Response: This question appears to be inapplicable, but the Commission may need to have it clarified

13. Please provide the following information if within the past two years any other tenant of resident has requested an accommodation regarding rules or services, and/or modification of facilities related to that tenant's or resident's disability or handicap.
 - a. dates of requests,
 - b. substance of requests,
 - c. any documentation or action you requested from the tenant or resident to support a request,
 - d. the steps you took in response to the request, including the outcome,
 - e. all justifications for the actions taken or for no action taken, and

- f. the dates and methods by which the tenant of resident was notified of the justifications.

Include copies of documents in your possession for any and/or all of the above items.

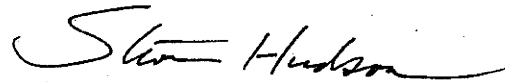
Response: This question appears to be inapplicable, as we are unaware of any tenants at the subject property.

14. Please state whether this project is the subject of any Low Income Housing Tax Credit. If so, please provide documentation of this tax credit.

Response: We are unaware of whether the project is the subject of a Low Income Housing Tax Credit.

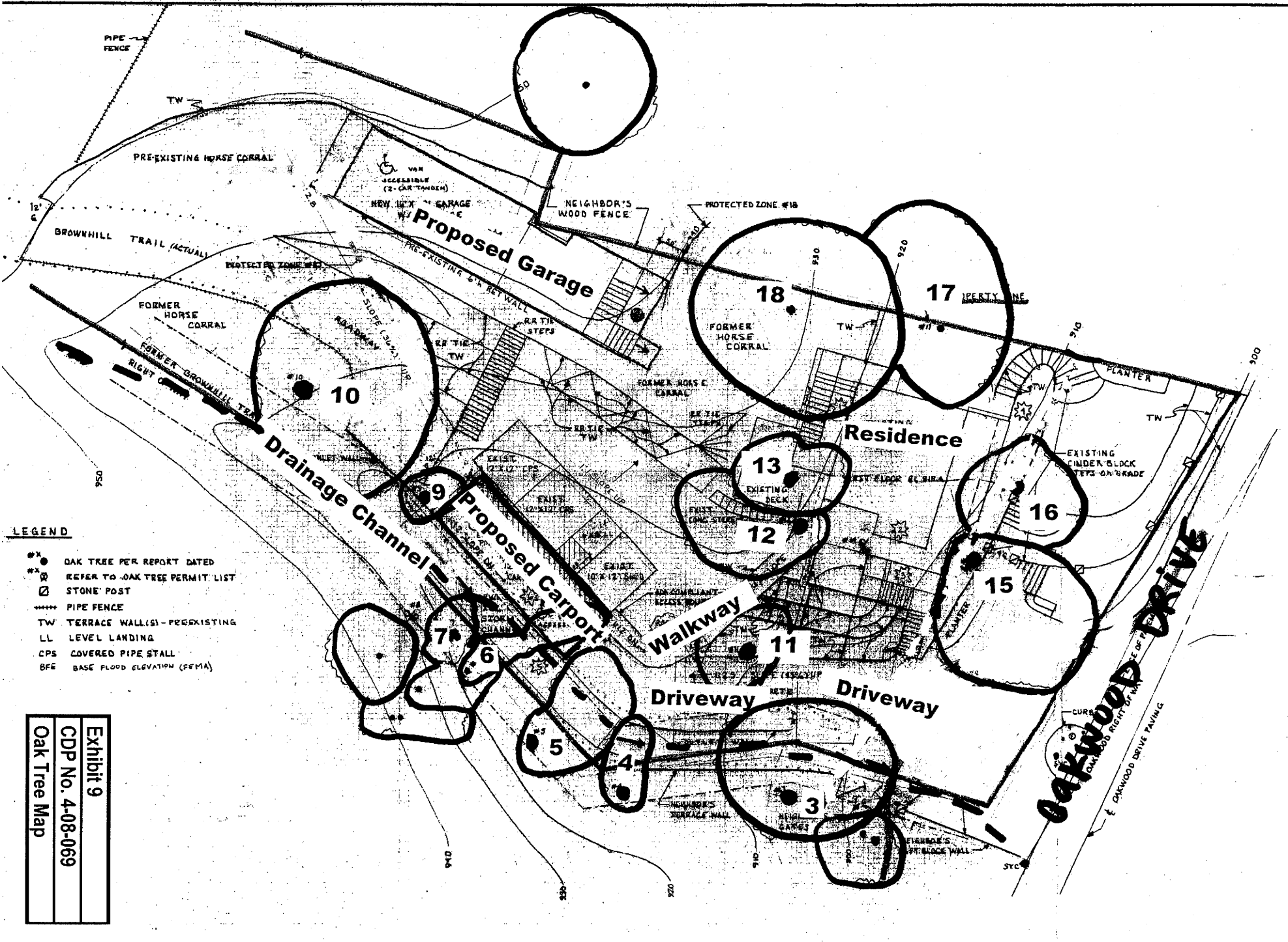
I declare under penalty of perjury that the foregoing is true and correct.

Sincerely,



Steve Hudson
District Manager

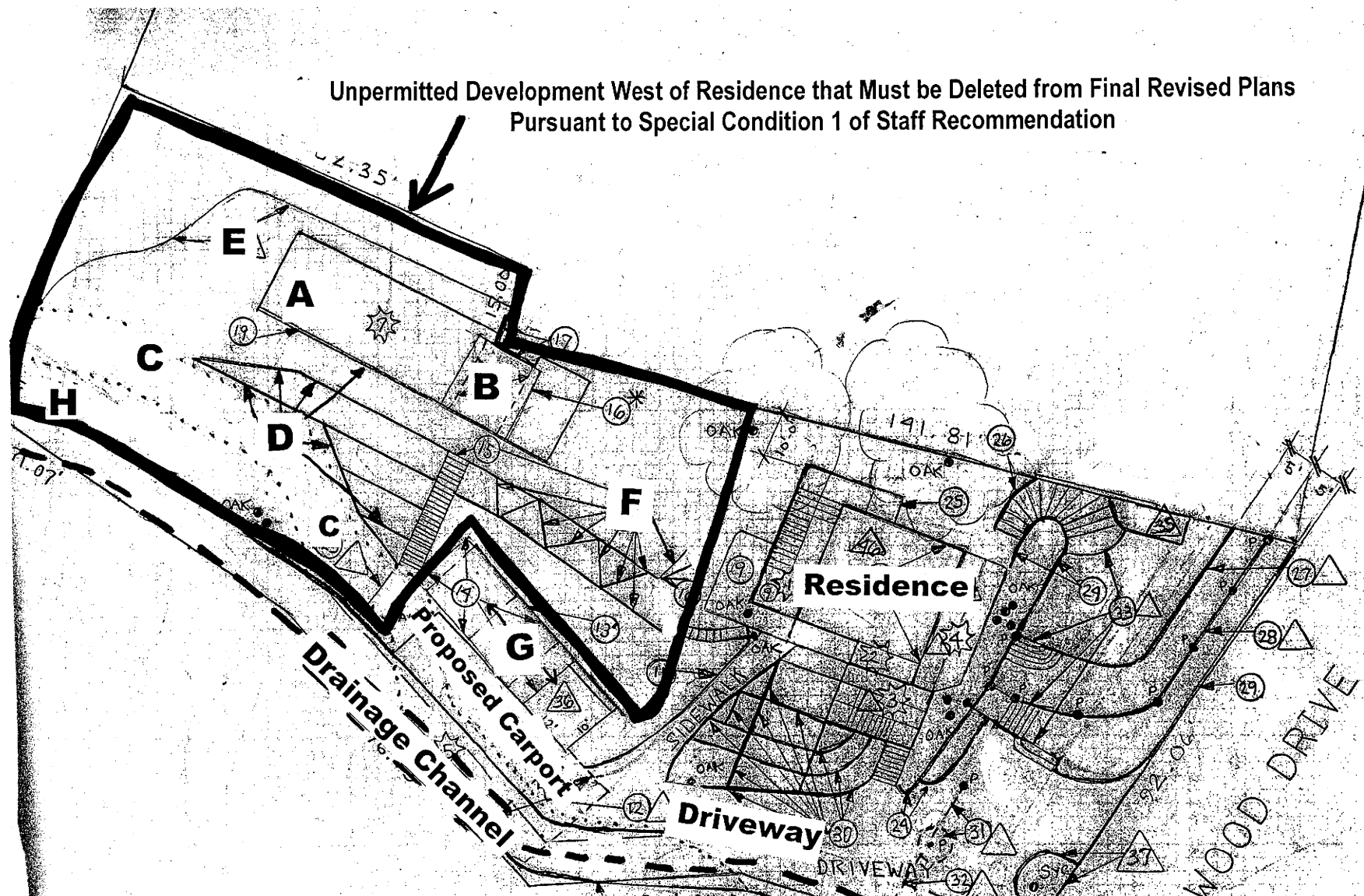
Encl. File documents and correspondence from CDP Applications 4-07-125 & 4-08-069



- LEGEND**
- OAK TREE PER REPORT DATED
 - REFER TO OAK TREE PERMIT LIST
 - STONE POST
 - PIPE FENCE
 - TW TERRACE WALL(S) - PREEXISTING
 - LL LEVEL LANDING
 - CPS COVERED PIPE STALL
 - BFE BASE FLOOD ELEVATION (FFMA)

Exhibit 9
CDP No. 4-08-069
Oak Tree Map

Unpermitted Development West of Residence that Must be Deleted from Final Revised Plans Pursuant to Special Condition 1 of Staff Recommendation



Existing Unpermitted Development Not Addressed in Application

- A Graded Pad and Fenced Horse Corral (approx. 3,000 sq. ft.)
- B Covered Pipe Stall (approx. 12 ft. x 12 ft.)
- C Graded Road (approx. 170 ft. long) and Fencing
- D Terraced Retaining Walls
- E Retaining Wall
- F Terraced Retaining Walls and Stairs
- G Two Sheds (approx. 10 ft. x 12 ft.), One Covered Pipe Stall (12 ft. x 12 ft.), and a Shade Structure on Graded Pad
- H Shed on Small Graded Pad (approx. 10 ft. x 12 ft., location approximate)

Note: See Letter References Only; Number References Shown on Base Map Are Not Being Used For This Exhibit

Exhibit 10
CDP No. 4-08-069
Unpermitted Development West of residence

**Residence, Driveway, Walkway, and Parking Area
Recommended for Approval Per Staff Recommendation**

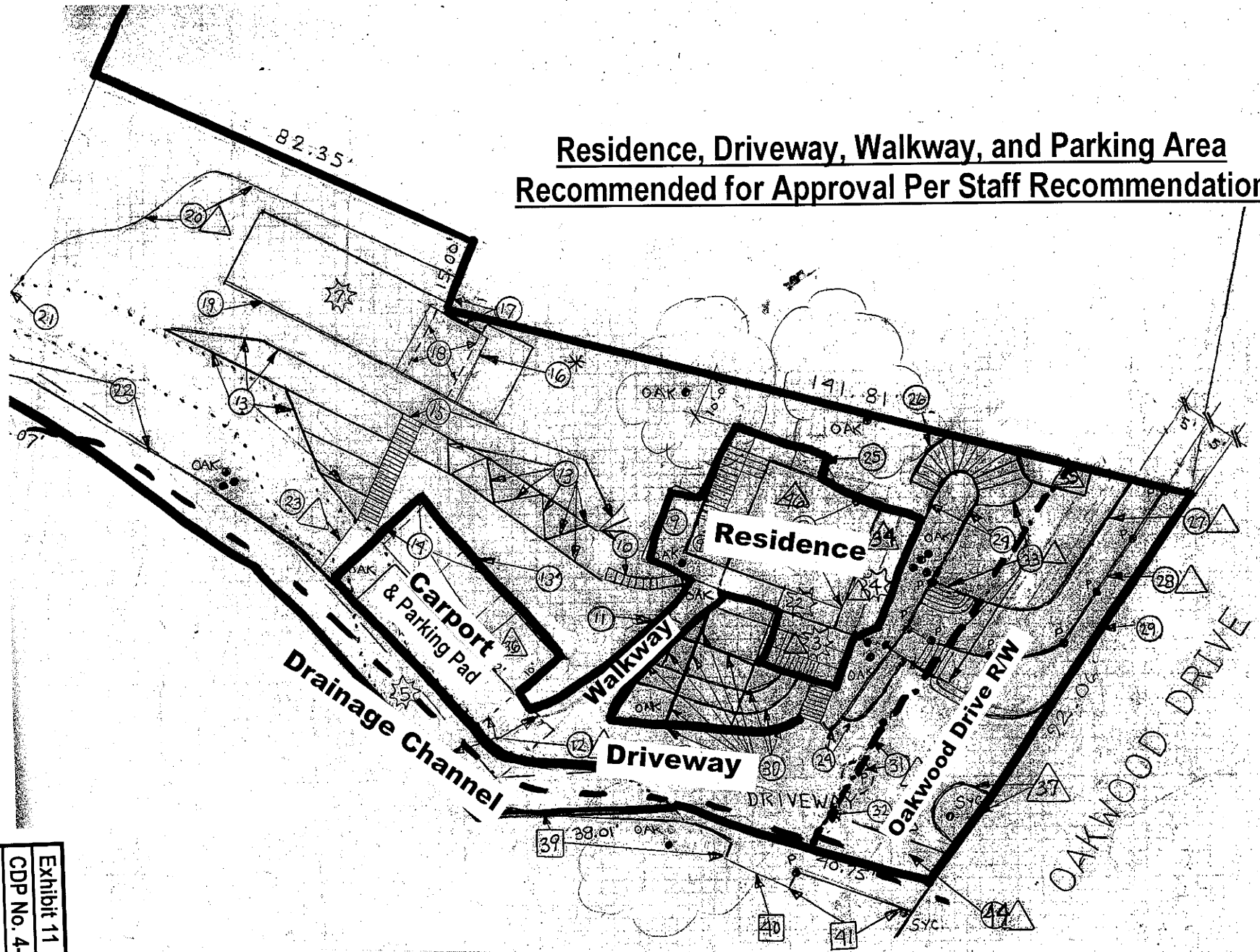
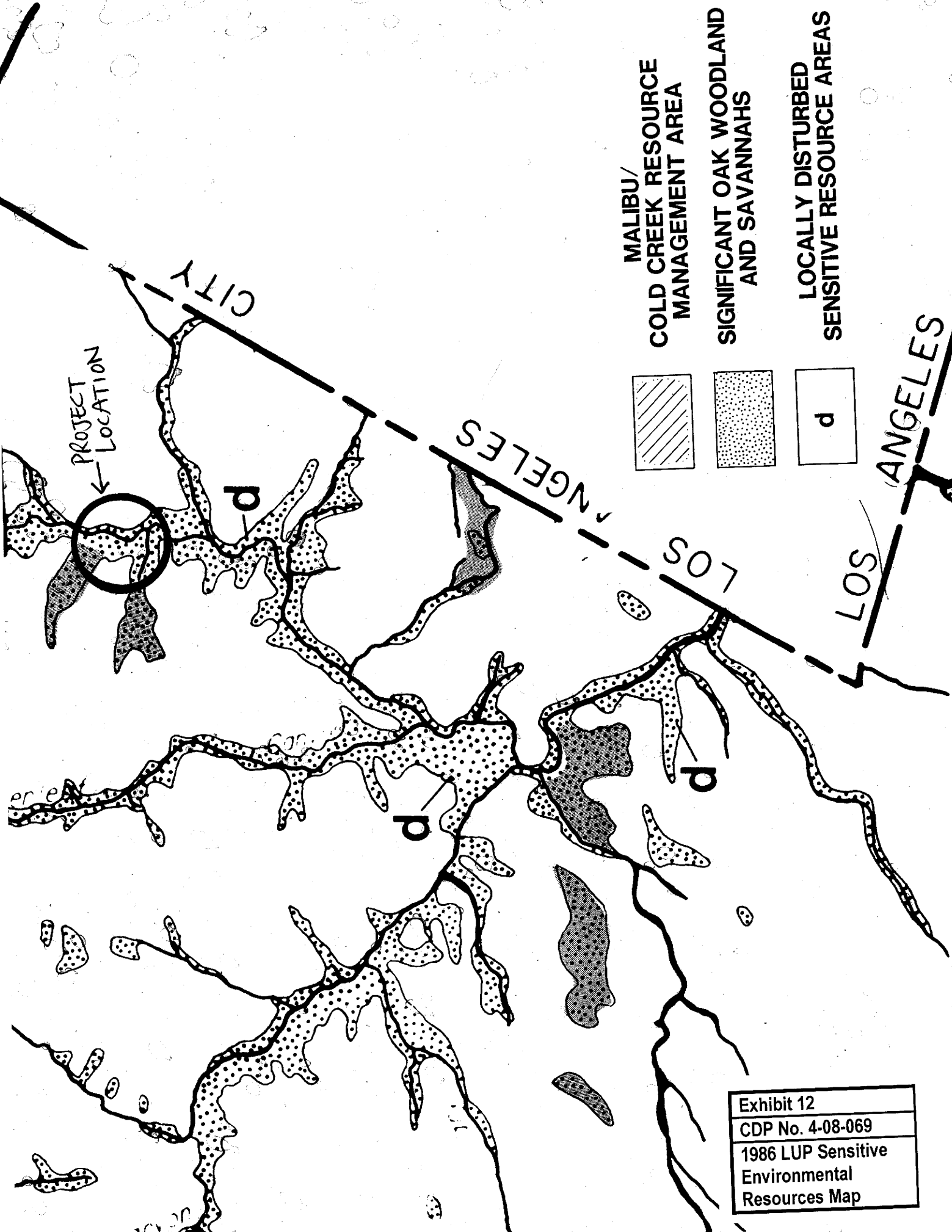


Exhibit 11
CDP No. 4-08-069
Residence, Driveway, Walkway, and Parking Area Recommended for Approval per Staff Recommendation

Note: See Letter References Only; Number References Shown on Base Map Are Not Being Used For This Exhibit



- MALIBU/
COLD CREEK RESOURCE
MANAGEMENT AREA
- SIGNIFICANT OAK WOODLAND
AND SAVANNAHS
- LOCALLY DISTURBED
SENSITIVE RESOURCE AREAS

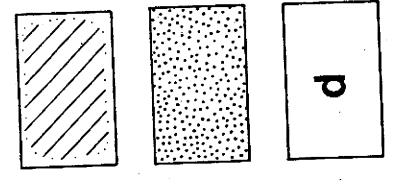


Exhibit 12
 CDP No. 4-08-069
 1986 LUP Sensitive
 Environmental
 Resources Map

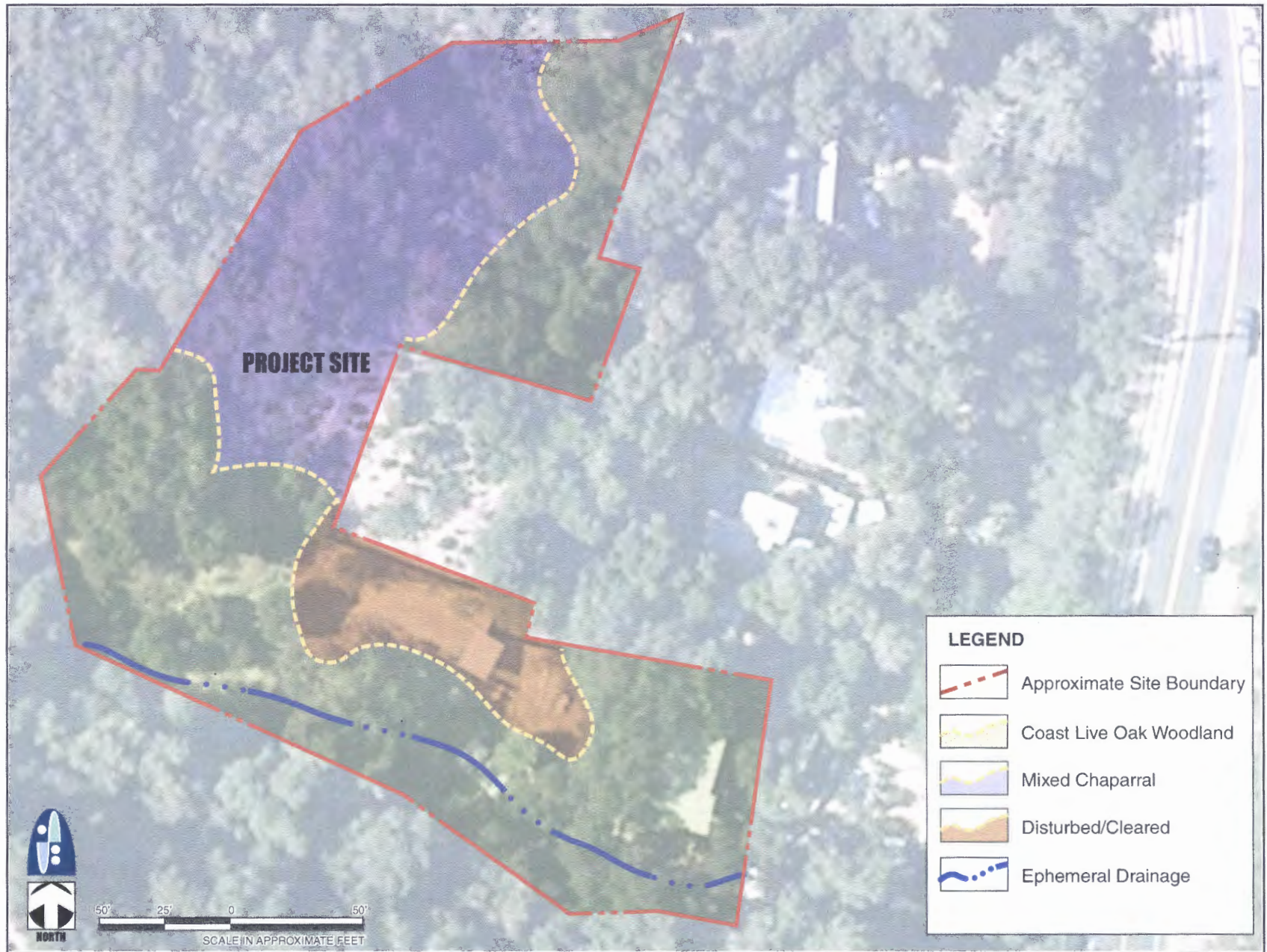
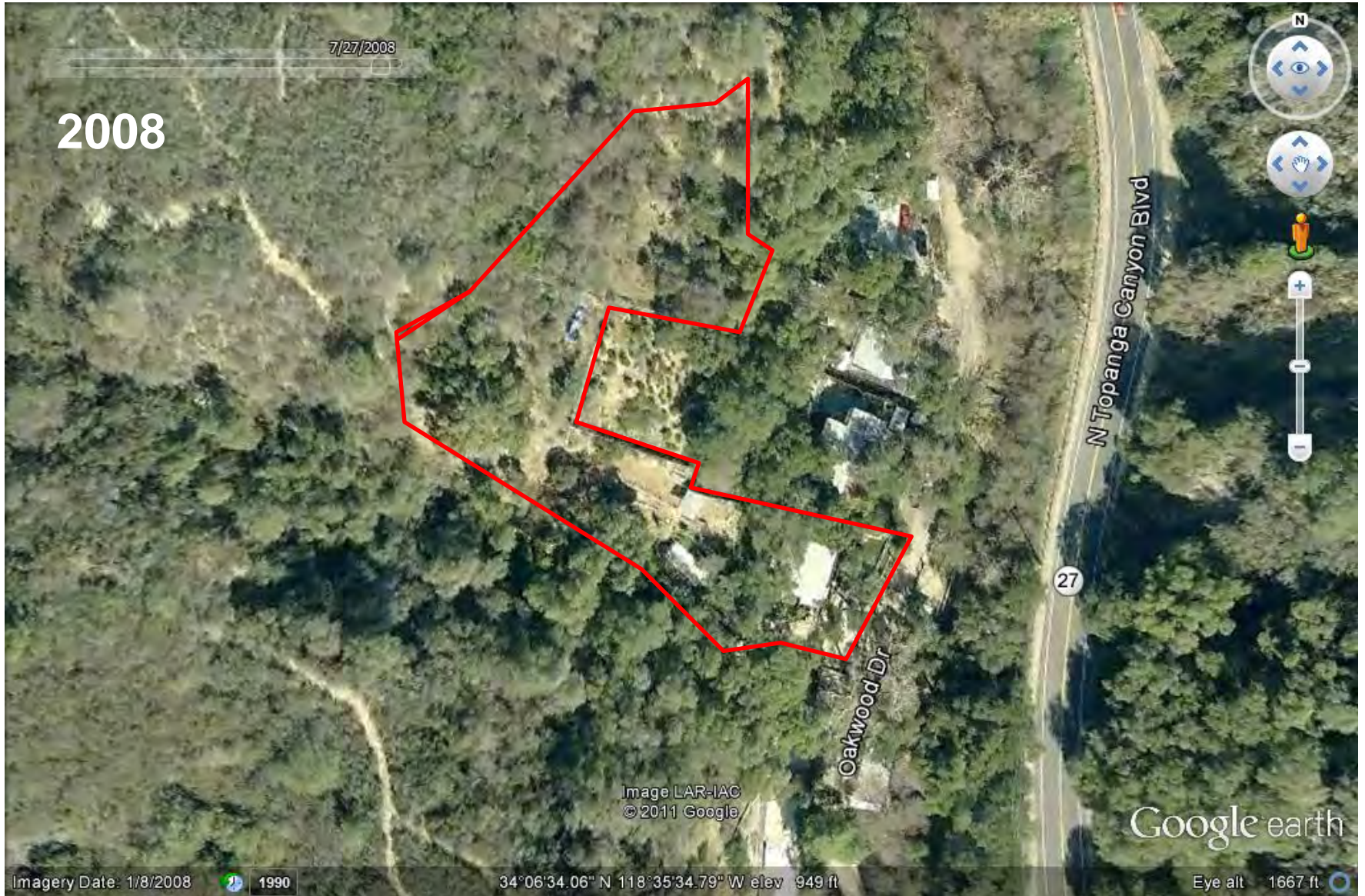


Exhibit 13
 CDP No. 4-08-069
 Biological Consultants' Vegetation Map



2008

7/27/2008

N Topanga Canyon Blvd

Oakwood Dr

Image LAR-IAC
© 2011 Google

Google earth

Imagery Date: 1/8/2008 1990

34°06'34.06" N 118°35'34.79" W elev 949 ft

Eye alt 1667 ft

Exhibit 14a

CDP No. 4-08-069

Aerial Photo - 2008

1986



Exhibit 14b
CDP No. 4-08-069
Aerial Photo - 1986

1977

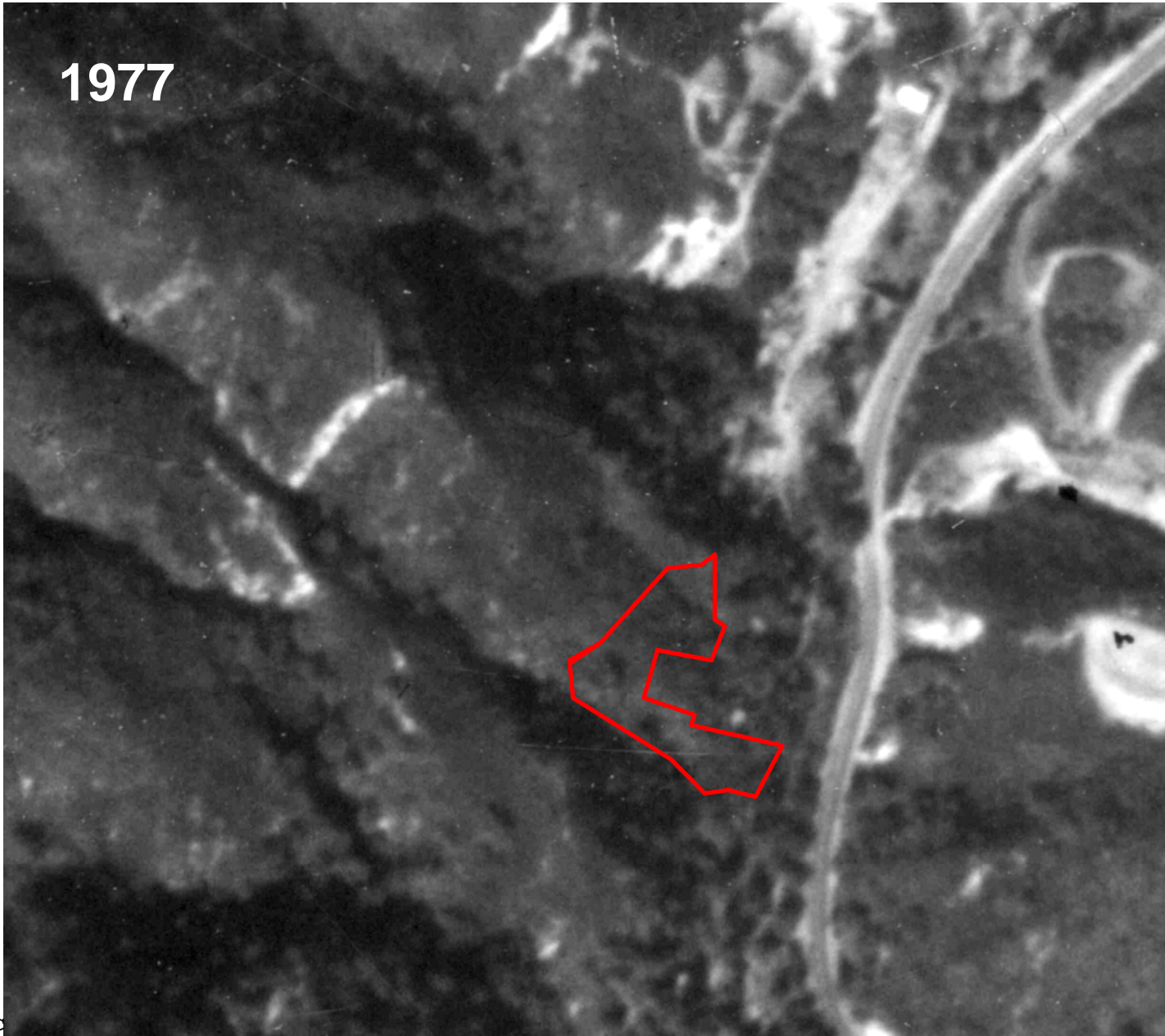


Exhibit 14c
CDP No. 4-08-069
Aerial Photo - 1977

1964

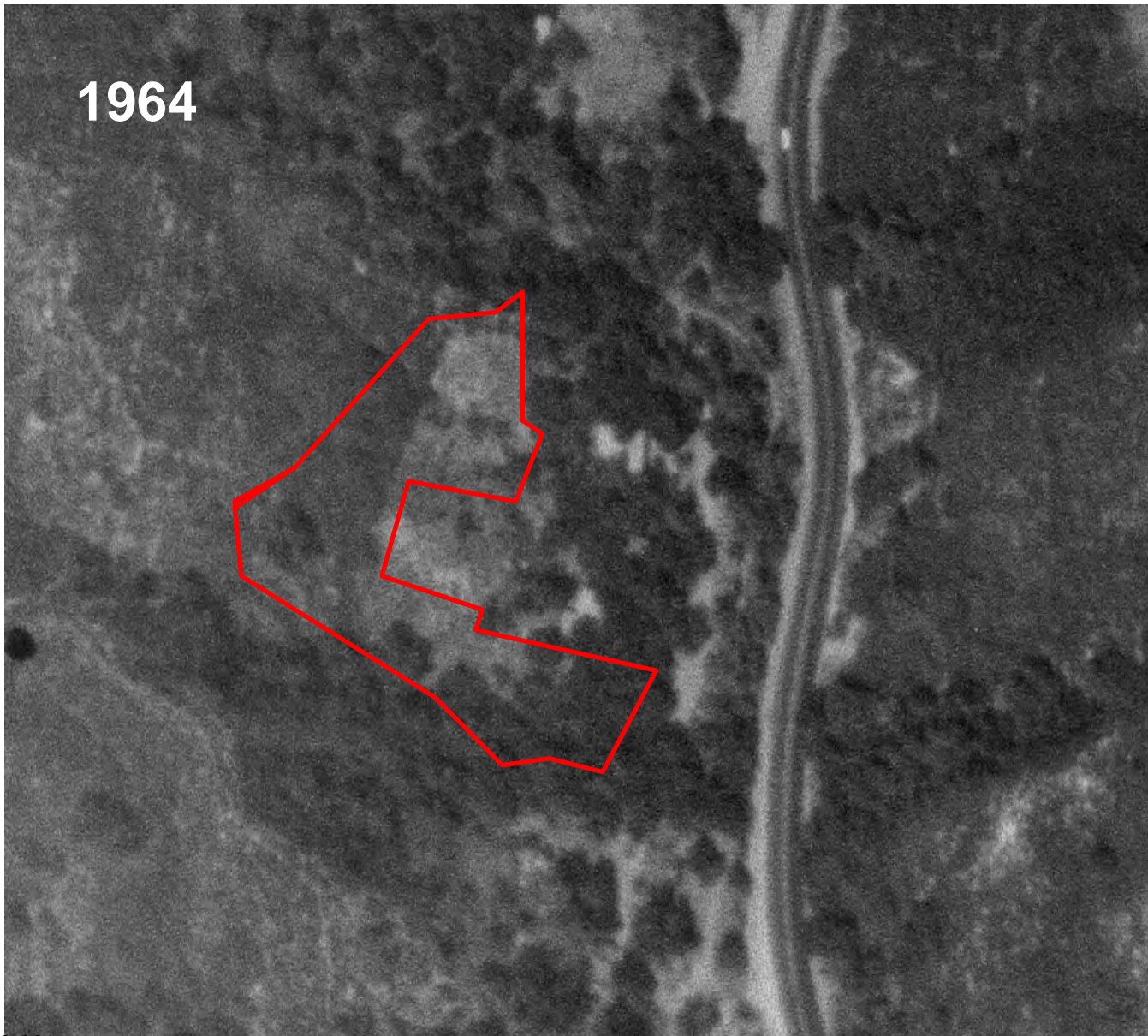
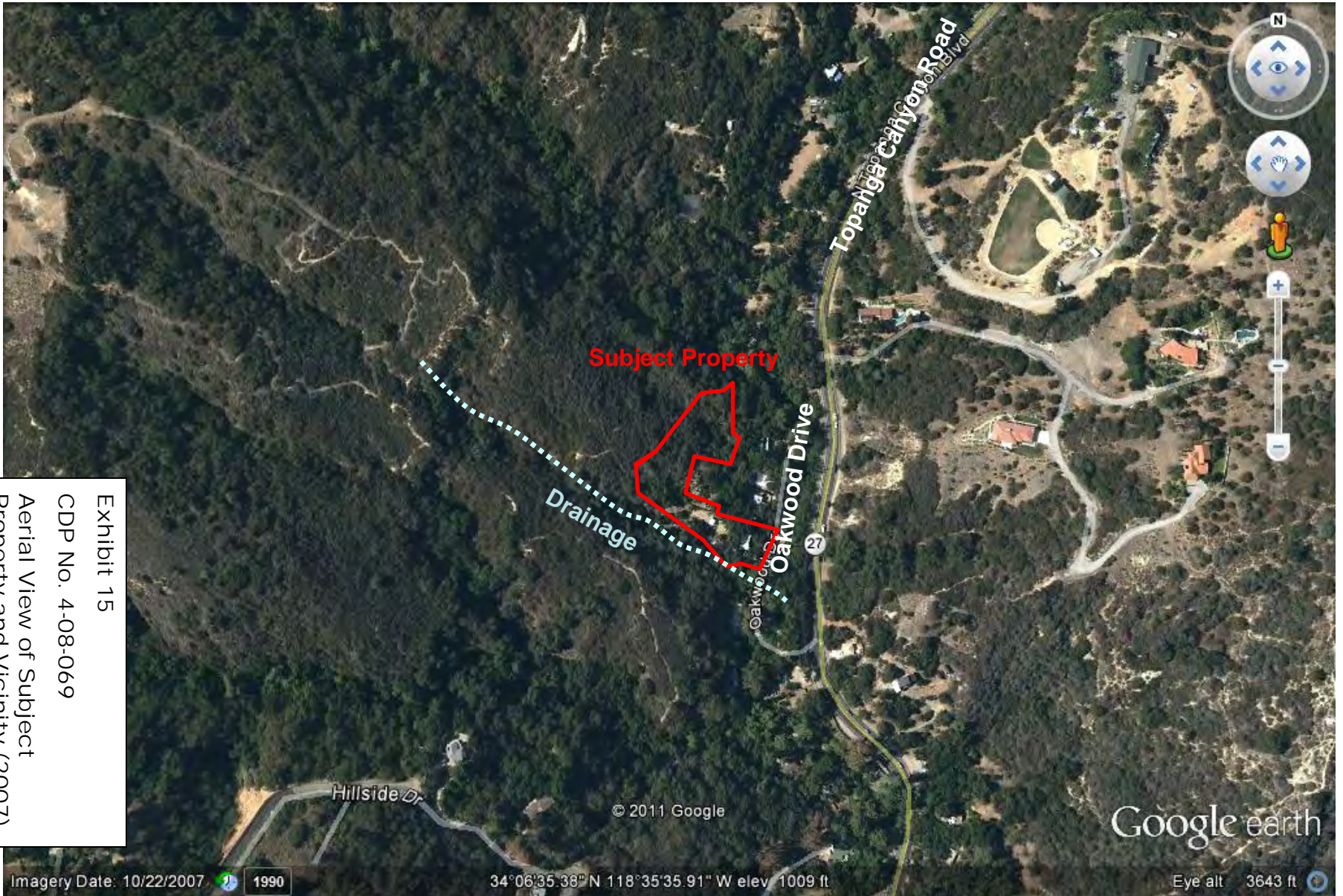


Exhibit 14d

CDP No. 4-08-069

Aerial Photo - 1964

Exhibit 15
CDP No. 4-08-069
Aerial View of Subject
Property and Vicinity (2007)



Imagery Date: 10/22/2007 1990

34°06'35.38"N 118°35'35.91" W elev. 1009 ft

Eye alt 3643 ft



Exhibit 16
CDP No. 4-08-069
Site Photographs
(March 2010)



Unpermitted Shed

Partially-Constructed Open Concrete Drainage Channel Looking Upstream



Unfinished South Bank of Concrete Drainage Channel



Unpermitted Road Between Driveway and Upper Corral Pad



Various Unpermitted Retaining Walls and Terraces



Unpermitted Road, Upper Corral Pad with Covered Pipe Stall, and Terraced Retaining Walls



Unpermitted Upper Corral Pad with Covered Pipe Stall and Retaining Walls



Sloping Natural Terrain Between Upper Corral Pad and Residence



Looking down from Upper Corral Pad at Retaining Walls and Parking Pad with Pipe Stall and Sheds