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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

100 SOUTH CALIFORNIA ST., SUITE 200

LOS ANGELES, CA 90001

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Filed: 11-7-96
49th Day: 12-26-96
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Staff: SPF-VNT *SPF*
Staff Report: 11-20-96
Hearing Date: December 10-13, 1996
Commission Action:



STAFF REPORT: REGULAR CALENDAR

Th 14b

APPLICATION NO.: 4-96-076

APPLICANT: Serra Canyon Property Owners Association AGENT: Sherman Stacey

PROJECT LOCATION: Serra Road, 200 feet North of Pacific Coast Highway,
City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Construction of a 105 square foot guard house; change ingress and egress of Serra Road to provide two lanes of ingress, one lane of egress; widen Serra Road to a maximum width of 55 feet at the guard house with no grading.

Lot area:	underlying lot of guardhouse: 15.33 acres
Building coverage:	105 sq. ft.
Pavement coverage:	approx. 3,800 new sq. ft.
Landscape coverage:	0 new
Ht abv fin grade:	18 feet

LOCAL APPROVALS RECEIVED: "Approval in Concept" from the City of Malibu. Fire Department "Approval in concept" for road width.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Applications 5-91-622 (Serra Retreat Homeowners Association) and 5-96-060 (Serra Canyon Property Owners Association).

SUMMARY OF STAFF RECOMMENDATION:

This is an after-the-fact permit for the construction of a guard house, and widening and changes to the ingress and egress of Serra Road. The guard house has been constructed; however it is not currently used and access has not changed on the road. In 1992 the Commission denied the identical project on the basis that the project would adversely impact public access. Staff again recommends that the Commission deny the proposed project on the basis that it will adversely affect public access to a State Park immediately adjacent to Serra Road, and it is not the least environmentally damaging feasible alternative. If the project is approved, neither the park rangers nor the public would have access to Malibu Lagoon State Park through Serra Road.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Denial

The Commission hereby denies a permit for the proposed development on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and CEQA, and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

STAFF NOTE

Pursuant to Section 13109 of the California Code of Regulations, following a final decision of a coastal development permit, an applicant can reapply to the Commission for substantially the same development after six months from the date of the final action. Therefore, this application is proposed under 13109 of the California Code of regulations. The proposed after-the-fact application is identical to the application that was before the Commission under 5-91-622 (Serra Retreat Homeowners Association) (See Exhibit 1). That permit application was denied by the Commission on June 10, 1992 based on adverse impacts to public access.

Pedestrian and Equestrian access to Malibu Lagoon State Park from Serra Road is available now; vehicular access is proposed for the future. Picnic tables and parking in the area accessed from Serra Road are included on the general plan as future improvements for this park. The proposed project would eliminate the current and future access to Malibu Lagoon State Park from Serra Road. Based on these adverse impacts to public access and recreational opportunities, the California Department of Parks and Recreation (P&R) opposes this project (See Exhibit 3). P&R also opposed the project in 1991 when proposed under the application 5-91-622. Two letters from P&R, submitted in response to CDP application 5-91-622, which address their concerns are included as Exhibits 5 and 6.

II. Findings and Declarations.

The Commission hereby find and declares as follows:

A. Project Description and Background

The applicant is proposing to construct a 110 square foot guard house at the entrance to Serra Canyon on Serra Road just north of Pacific Coast Highway, and widen that portion of Serra Road from Pacific Coast Highway to north of the guard house. The widening of the road is to allow for two lanes on ingress east of the guard house. The existing lane to the west of the guard house will become an egress lane. The guard house has been constructed and the paving of the road occurred. However, the guard house is not used and ingress/egress on this portion of the road has not changed. Currently access through this area is via the existing paved portion of the road which lies completely to the west of the proposed guard house.

The portion under consideration, in this permit, extends north from Pacific Coast Highway approximately 140 feet. The applicant is proposing to widen the

existing two lane, twenty foot wide road, by paving a portion of the road to the east of the existing pavement (this has already occurred). This area is relatively flat and free of vegetation. Vegetation clearance has occurred in this area in the past, and the area has been used for parking. The paving will create two entrance lanes on the east side of the guard house which will merge onto the existing road beyond the guard house.

Serra Road is currently a privately maintained twenty foot wide road. Although Serra Road, as built, is only twenty feet wide, the road is surveyed as a fifty foot wide easement for road and highway purposes. As Serra Road is a private road, the underlying property owners on either side of the road are the underlying property owner to the center line of the road. In this case, William O'Conner is the underlying property owner to the east of the centerline. On this property, the guard house is located, and the widening of the road has occurred. The property located immediately west of the road is a portion of Malibu Lagoon State Park, and is maintained by the California Department of Parks and Recreation (P&R). Currently the paved portion of the road is on this half of the easement. There is an entrance to the State Park located approximately 500 feet north of Pacific Coast Highway and 300 feet north of the proposed guard house.

Changes proposed on the State Park portion of the road include changing the current ingress/egress status of the road to egress only. Staff did inform P&R of the application and was invited to be a co-applicant pursuant to Section 30601.5 of the Coastal Act (See Exhibit 2). P&R has declined to be a co-applicant in this application and stated that they oppose the project (See Exhibit 3).

Changes on the eastern portion of the road include the guard house and widening of the road. No grading was necessary to construct the guard house; the area was flat and clear of vegetation. There is a single family residence, with a Sweetwater Mesa address, on the prominent knoll to the east of the guard house (5-88-443 O'Conner). The Serra Retreat Homeowners Association does have an easement for ingress and egress along the eastern portion of Serra Road. The easement also includes, in Section 1b. of the modification of easement terms, the right to construct a gate house in order to control pedestrian and vehicular access to and from the various parcels. The Department of Parks and Recreation (P&R) have ingress and egress rights over the existing paved portion of Serra Road, because it is on their property. However, P&R does not have easement rights over the portion of Serra Road on the eastern adjacent property.

The proposed change in ingress/egress will remove uninhibited access to the entrance to Malibu Lagoon State Park located along the west side of Serra Road, and instead place ingress access through private property on the eastern side of Serra Road. Neither the public nor P&R have an easement for this eastern portion of the road and thus would have no access to the State Park entrance. This state park entrance is located off Serra Road approximately 500 feet north of Pacific Coast Highway, 300 feet north of the proposed guard house site. This entrance accesses Malibu Creek State Park north of the mouth of the Lagoon on the north side of Pacific Coast Highway. Access to this park entrance is currently limited to pedestrians and equestrians as there are currently no provisions for public parking. However, park rangers do access the park by vehicles. In addition, P&R has stated that they would like to improve this area with picnic tables as described in the general plan for this park. Additional parking for the State Park is also proposed as a future improvement for this area. Currently, that area is maintained by Park Rangers.

There are no signs which direct the public to the State Park entrance. There are, however, signs which indicate that the road is private and trespassing is not allowed. Serra Road is a privately maintained road. However, the first 500 feet of Serra Road, from Pacific Coast Highway are on P&R property and as such is available to the public. Moving the ingress to the eastern side of the road easement would put the road on private property and eliminate this availability for the public to access the park entrance. Absent from this project is any proposed mechanism by which park users could access the park from Serra Road once the proposed project is complete.

The applicant asserted, under the previous application that the guard house and widening of the road are necessary to ensure the safety of the residents and their property, and that the placement of a guard house will deter crime in Serra Retreat area.

An additional reason proposed by the applicant in 1991 was the concern by the residents that when re-construction of the bridge over Malibu Creek, on Pacific Coast Highway commenced, the public would use Serra Road as an alternative route to the Civic Center area, increasing the traffic and possibility for traffic accidents. At this time, the bridge is complete. The applicant has not provided any evidence that increases in traffic have occurred during construction of the bridge, nor is it relevant at this time since the bridge is complete.

B. Development

Section 30106 of the Coastal Act defines development in part as "...on land...the placement or erection of any solid material or structures; construction. Section 30610 (a) provides that no coastal development permit shall be required for improvements to single family residences except for those classes of development specified by the Commission by regulation which involves a risk of adverse environmental effect and shall require a coastal development permit. Section 13250(b) states, in part, that a coastal development permit shall be required for any addition to a single family residence where the original permit issued for the original structure by the Commission indicated that any future additions would require a coastal development permit. This project involved the widening of an existing road and the construction of a guard house on a lot with an existing single family residence. The residence on this lot was approved under coastal development permit 5-88-443 (O'Conner), which contained a special condition requiring the recordation of a future improvements deed restriction. Under the terms of this deed restriction, any new development on the lot would require a new coastal development permit or an amendment to the existing coastal development permit. The Commission further concludes that even without a deed restriction the widening of a road and the construction of the guard house would require a coastal development permit. Therefore, the Commission finds that this project does require a coastal development permit.

C. Public Access

The Coastal Act requires the protection of maximum public access for every project where applicable and that lands suitable for coastal recreation be preserved. The Coastal Act also requires each development to provide and protect adequate recreational lands to serve the needs of the development. Applicable sections of the Coastal Act provide as follows:

Section 30210

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

Section 30212(a)

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

Section 30212.5

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

Section 30213

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

Section 30252

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

Section 30530

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

Currently there is pedestrian and equestrian public access to the State Park entrance located on Serra Road. And, as stated in the project description, although no vehicular access for the public currently exists, the Department

of Parks and Recreation may propose public access in the future. Currently slated for improvements in the general plan for the park, P&R would like to put picnic tables in this area. Parking in this area for park users has also been discussed; currently park rangers do park in this area.

The construction of a guard house on Serra Road between Pacific Coast Highway and the park entrance will impede the current pedestrian and equestrian public access, and proposed future vehicular access along Serra Road by eliminating the current access. By improving the road, the ingress to Serra Road would fall entirely on private property, instead of public park land where it is currently located. Neither the public, nor P&R have an easement to cross this private property. The proposed road alignment would not include a formal easement for the public or P&R to enter onto the private property side of Serra Road; thus, neither the public nor P&R could use the proposed ingress of Serra Road. Without provisions to protect the current access to the State Park, the proposed project will impede the current access. Thus, in order for this project to be consistent with the public access policies of the Coastal Act, the homeowners would need to provide pedestrian, equestrian and vehicular access to the public across Serra Road. This could most easily be accomplished by recording a formal document such as an easement, and providing for signage which makes it clear that access has been granted and is available to the public park users. However the applicants do not wish to grant an easement over Serra Road which would allow the general public access to Serra Canyon.

In previous discussions of this issue when the previous permit application was before the Commission, the applicant stated its willingness to grant pedestrian and equestrian access but not vehicular access. No plans were proposed which provided for pedestrian or equestrian access and no document was signed which granted such access. The applicant asserted that they would not impede pedestrian and equestrian access to the public State Park. In fact, the findings of the previous permit application state:

The applicant has stated that they will not impede pedestrian and equestrian access to the state park... The applicants have stated that they are willing to post signs on the property that state there is public pedestrian and equestrian access to Malibu Lagoon State Park from Serra Road.

However, since the first application in 1991, signs remain at the beginning of Serra Road which state "Private Property" and "No Trespassing." In the four and a half years since the applicants stated that they would not impede access, these signs have not been removed. In addition, the guard house has been in its proposed location. No resolution between the homeowners and P&R occurred regarding an easement on the eastern half of the road for P&R and the public. Thus, the homeowners have impeded public access to this parkland via Serra Road.

Although the Commission recognizes that Serra Road is privately maintained, signs stating "No Trespassing" or "Private Property" do deter people from using the trail to the park entrance. There is a psychological deterrent suggested by the use of signs that state "Private Property" and "No Trespassing," even if there were signs that stated that State Park access is available. The placement of two conflicting signs would confuse the park user and not necessarily notify such a park user of access. However, at this time, the only signs at Serra Road proclaim "Private Property. No Trespassing."

Thus, currently the signs at Serra Road impede public access, conflicting with the Coastal Act goal of maximizing public access. Moreover, even if signs which stated "State Park Access" were installed there is no guarantee that a guard would not restrict access or that the mere presence of a posted guard would not deter a number of people from using the entrance. As these scenarios are possible and the current signage does discourage public access, the Commission concludes that public access to the State Park is impeded.

Although the homeowners stated in the previous CDP application (5-91-622) that they would not impede pedestrian or equestrian access to the park via Serra Road, in the four and a half years since the previous permit application was denied, the "No Trespassing/Private Property" signs have not been removed. Nor have any signs indicating park access from Serra Road been installed.

In the previous permit application, the applicant had expressed concern and little willingness to allow public vehicular access to the state park entrance when P&R decides to expand the use of the state park. The applicant previously stated that since Serra Road is a private road, P&R does not have the legal right to expand the use of the ingress and egress easement to include the public. P&R stated that they currently have the legal right to allow the public vehicular access to the State park entrance because the road is on land that P&R owns. The actual physical road lies on that portion of the road easement which is on public land. As such, no easements are needed and the public can use the road.

As it currently exists, the public has the right to ingress on Serra Road to the P&R entrance. If the project were to be approved, the lanes of the road would be altered; only the egress lanes would be on that portion of the road easement owned by P&R. The ingress lanes would fall on that portion of the easement owned by a private property owner. To use the road on the private property, an easement would need to be granted by the underlying property owner. The property owner and the property owners association are not willing to grant easements for use of the road to P&R and the public. Since neither P&R nor the public have an easement to use Serra Road on the private property side of the easement, neither the park rangers nor the public could enter the State Park from Serra Road.

The homeowners could grant easement rights to P&R as well as the public if they so desired as the easement granted to the homeowners by the predecessors of P&R did not grant an exclusive easement. Thus, the grantor, or its successor could grant additional easements to others. This could be resolved through the granting of an easement by the landowner to P&R exclusively for P&R and the public to access the State Park.

Currently, despite almost four years of discussion and negotiation, P&R does not have an easement to enter onto the neighboring lot. There is no need, however, for P&R to access the adjacent property since the road is currently located entirely within P&R's portion of the easement road. If the road was widened, however; then P&R would need an easement for ingress and egress on the adjacent parcel. During the hearing proceedings of the previous permit application, the homeowners stated that they were willing to grant an easement to P&R for access across the easterly portion of Serra Road. However, the homeowners were not previously willing to grant an easement for the general public to access the State Park. At this time, all negotiations with P&R and the homeowners have failed. The applicant is not willing to provide public vehicular access in a documented formal agreement and recorded easement.

The Commission finds that an approval of this project can only occur if the applicant agrees to grant an easement to include P&R and provide for public vehicular access to the state park at such time that vehicular parking is also provided. The Commission finds that if the granting of the easement was to P&R only and thus precluded the public's right to use the road to access the park entrance, then the Commission could not approve this project for it would impede public access to state parkland and trails and would clearly be inconsistent with the Coastal Act. Since the homeowners are not willing to provide public access and currently inhibit public access through the placement of signs such "No Trespassing" and Private Property" signs there is an on-going adverse impact to public access and the public recreational opportunities in this area of the Coastal zone. The proposed project would preclude and adversely impact public access to a State Park, therefore, the Commission finds that this project creates adverse impacts to public access and public recreation and is inconsistent with the public access and recreational policies of the Coastal Act.

Finally, P&R has stated that it would not be possible to build a trail from Pacific Coast Highway that leads into this portion of the park due to archaeological resources. The area of the park north of Pacific Coast Highway and between the creek and Serra Road has been identified as an archaeological resource area. Any grading or disturbance in this area would be detrimental to the archaeological resources. Thus, the only access to this portion of the park from north of Pacific Coast Highway is through Serra Road.

In determining whether the Commission should approve the project with conditions or recommend denial of the project, it is necessary for the Commission to address alternative projects which would alleviate the current problems of public access. The first alternative would be for the applicant to agree to provide, through a formal, legal document, public pedestrian, equestrian and vehicular access through the eastern side of Serra Road to the state park entrance. This, along with changes in the language of the existing signs would provide for public access and would be consistent with the public access policies of the Coastal Act. As noted above, the homeowners are not amenable to this alternative.

A second alternative would be to relocate the guard house north of the state park entrance (See Exhibit 12). There is a gentle slope on the east side of the road north of the park entrance. It appears that it would be feasible to provide safe vehicular access into Serra Canyon. This site would require minimal grading and possibly, a retaining wall to allow for the placement of a guard house on the east side of the existing road. This proposal would still limit access to Serra Road without impeding the public access to the State Park. The homeowners claim that this location is not feasible as it would require "massive grading" to widen the road and that it is located on private property to which the homeowners do not have an easement. However, this is not true. Immediately north of the State Park entrance the property to the east, where grading would need to occur, is still owned by Mr. O'Conner. The homeowners do have an easement, as noted in the previous section, for the construction of the guard house on Mr. O'Conner's property. Moreover, no grading calculations have been submitted by the applicant; however, based on the fact that the slope is not steep, the grading would not be "massive."

A third alternative would be to install an electronic gate across Serra Road beyond the park entrance. This solution would also limit access onto Serra Road, provide public access to the state park entrance, not require grading

and thus have a minimal cost. Anacapa Estates in Trancas Canyon uses this type of gate to provide protection and safety to the residents in the area. The homeowners have not indicated their willingness to undertake this alternative.

At the north entrance to Serra Canyon, along Cross Creek Road, the Commission recently granted the Serra Canyon Property Owners Association approval of a project which included the installation of a mechanized automatic gate system to limit access into Serra Canyon from the northern end. That permit application, 4-96-60, was approved by the Commission in October of 1996. In that case, there were no public parkland or trails beyond the gate to which access would have been impeded. The Commission found in approving 4-96-060 that the placement of the electronic gate would not adversely impact coastal or recreational access or opportunities. Unlike that permit, this project will adversely affect public access and opportunities.

The Commission finds that there are feasible alternatives to this project which would not impact public access. The proposed project adversely impacts public access to a State Park, and as such, is inconsistent with the access and recreation policies of the Coastal Act.

D. Violation

Without the benefit of a coastal development permit, in June of 1991, the applicant constructed the guard house on Serra Road. Our enforcement staff notified the underlying property owner in July of 1991 that this work constituted "development" as defined in Section 30106 of the Coastal Act and that pursuant to Section 30600 of the Coastal Act required a coastal development permit. After this notice was sent to the underlying property owner, the applicant continued the unpermitted work and widened the road east of the guard house. In August of 1991 the homeowners association submitted an incomplete application for the retention of the guard house and paving. The Commission denied this permit application in June of 1992.

As indicated in the previous section regarding public access, the Commission determined that the project has negative impacts on public access availability. At all times, "No Trespassing" and "Private Property" signs have remained at the entrance to Serra Road. These signs do deter people from using Serra Road to access the Park land from north of Pacific Coast Highway. Likewise, although the guard house is not manned, its mere presence is a deterrent to trail users who may otherwise enter the State Park from Serra Road. Thus, the Commission finds that this development is creating on-going adverse resource impacts to the availability of public recreational facilities and access thereto.

The Commission notes that 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. Action of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

E. Local Coastal Program

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

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

On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains LCP. The Certified LUP contains policies to guide the types, locations and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections regarding public access. As proposed, the project will create adverse impacts and will be inconsistent with the policies contained in the LUP. On March 28, 1991, the City of Malibu incorporated and the project site is within the City boundaries. Therefore, the County of Los Angeles certified Malibu Land Use Plan is no longer legally effective for this area. However, it does still provide guidance on the implementation of the Coastal Act policies. Therefore, the Commission finds that approval of the proposed development will prejudice the City of Malibu's ability to prepare a Local Coastal Program implementation program for Malibu and the Santa Monica Mountains consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a), therefore, the project is denied.

F. 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)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As discussed in the preceding sections, there are feasible alternatives to the proposed development to eliminate the adverse impacts associated with denying public access to a State Park. However, the applicant is unwilling to modify the project to use one of these alternatives. The Commission, therefore, finds that the proposed project is not the least environmentally damaging feasible alternative and can not be found consistent with the requirements of the Coastal Act to conform to CEQA.

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CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA

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Comm. Action on Findings:

STAFF REPORT: REVISED FINDINGS

APPLICATION NO.: 5-91-622

APPLICANT: Serra Retreat Homeowners Association AGENT: Holly Cumberland

PROJECT LOCATION: 3908 Serra Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Placement of a guard gate on Serra Road at the entrance to Serra Retreat, and the widening of the existing road on a lot with an existing single family residence. No grading is required.

COMMISSION ACTION: Denial

DATE OF COMMISSION ACTION: June 10, 1992

COMMISSIONERS ON PREVAILING SIDE: Cervantes, Doo, Giacomini, Glickfeld, Moulton-Patterson, Neely, Wright, Yokoyama, Gwyn.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on June 10, 1992 denying the permit for the placement of a guard gate on Serra road and improvements to Serra Road on the basis that the project would impact public access.

STAFF RECOMMENDATION

I. Denial

The Commission hereby denies a permit for the proposed development on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

II. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Background

The applicant is proposing to construct a 95 square foot guard house at the entrance to Serra Retreat on Serra Road just north of Pacific Coast Highway, and widen that portion of Serra Road from Pacific Coast Highway to the proposed guard house. This property is located within the City of Malibu. The gate house is located within a twenty foot wide easement along Serra Road on the western edge of a 40 acre parcel, and has already been built. No grading was necessary to construct the guard house; the area was flat and clear of vegetation. There is a single family residence, with a Sweetwater Mesa address, on the prominent knoll to the east of the guard house (5-88-443 O'Conner). The property located immediately north and west of the guard house is a portion of Malibu Lagoon State Park, and is maintained by the California Department of Parks and Recreation (P&R). Access to the park is available from Serra Road, as well as Pacific Coast Highway.

The applicant states that the guard house and widening of the road are necessary to ensure the safety of the residents and their property, and that the placement of a guard house will deter crime in Serra Retreat area. In addition, the applicant states that since the road is private, they, and not the County or City, are liable for any injuries to any person or damage to any person's property that occurs on Serra Road. Finally, the residents would like to restrict access because the applicant believes that when re-construction of the bridge over Malibu Creek, on Pacific Coast Highway commences, the public will use Serra Road as an alternative route to the Civic Center area, increasing the traffic and possibility for traffic accidents.

Serra Road is currently a privately maintained twenty foot wide road. The portion under consideration, in this permit, extends north from Pacific Coast Highway approximately 140 feet. The applicant is proposing to widen the existing two lane, twenty foot wide road, by improving the curb at Pacific Coast Highway on the east side of the street, and paving a portion of the road to the east of the existing pavement. This area is relatively flat and free of vegetation. Vegetation clearance has occurred in this area in the past, and the area has been used for parking. The widening of the road will allow for a right hand turn lane and left turn lane leading out of Serra Retreat onto Pacific Coast Highway at the entrance. In addition, the paving will

create two entrance lanes on the east side of the guard house which will merge onto the existing road beyond the guard house. See exhibit 4 for an illustration of the proposed road widening.

Although Serra Road is only twenty feet wide, the road is surveyed as a fifty foot wide easement for the road and highway purposes. The property line of the properties to the east and west of the road is along the centerline of the fifty foot wide easement, or "paper road." The existing paved road is on the property to the west of the "paper" centerline, which as stated before, is State Park Land. The property line separating the two properties is approximately along the east edge of the pavement (See exhibit 3). The improvements to Serra Road are entirely on the parcel with the single family residence.

The Serra Retreat Homeowners Association does have an easement for ingress and egress along the strip of Serra Road. The easement also includes, in Section 1b. of the modification of easement terms, the right to construct a gate house in order to control pedestrian and vehicular access to and from the various parcels. The Department of Parks and Recreation (P&R) have ingress and egress rights over the existing paved portion of Serra Road, because it is on their property. However, they do not have easement rights over the portion of Serra Road on the eastern adjacent property.

There is a state park entrance located off Serra Road approximately 500 feet north of Pacific Coast Highway, 300 feet north of the proposed guard house site. This entrance accesses the north portion of Malibu Creek State Park. Access is limited to pedestrians and equestrians; there is currently no provisions for public parking. Park Rangers do access the park by vehicles. In addition, P&R may, at some time in the future, apply for improvements to this portion of the park, which may include parking.

B. Development

Section 30106 of the Coastal Act defines development in part as "...on land...the placement or erection of any solid material or structures; construction. Section 30610 (a) provides that no coastal development permit shall be required for improvements to single family residences except for those classes of development specified by the Commission by regulation which involves a risk of adverse environmental effect and shall require a coastal development permit. Section 13250(b) states, in part, that a coastal development permit shall be required for any addition to a single family residence where the original permit issued for the original structure by the Commission indicated that any future additions would require a coastal development permit. This project involved the widening of an existing road and the construction of a guard house on a lot with an existing single family residence. The residence on this lot was approved under coastal development permit 5-88-443 (O'Conner), which contained a special condition requiring the recordation of a future improvements deed restriction. Under the terms of this deed restriction, any new development on the lot would require a new coastal development permit or an amendment to the existing coastal development permit. The Commission further concludes that even without a deed restriction the widening of a road and the construction of the guard house would require a coastal development permit. Therefore, the Commission finds that this project does require a coastal development permit.

C. Public Access

The Coastal Act requires the protection of maximum public access for every project where applicable and that lands suitable for coastal recreation be preserved. The Coastal Act also requires each development to provide and protect adequate recreational lands to serve the needs of the development. Applicable sections of the Coastal Act provide as follows:

Section 30210

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

Section 30212(a)

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

Section 30212.5

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

Section 30213

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

Section 30252

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

Section 30530

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

In addition, to the policies of the Coastal Act, the Malibu Land Use Plan contains policies regarding the protection of public access. Although the certified Malibu/Santa Monica Mountains land Use Plan is no longer legally binding upon the new City, many standards contained in the LUP are still applicable to development within the City and will continue to be used as guidance. The Commission recognizes that the legal physical separation between the City and County boundary does not eliminate the natural interrelationship caused by topographic or resource characteristics (i.e. Significant Watersheds and ESHA's). This relationship must be taken into consideration in planning and regulation of development in the Santa Monica Mountains regardless of the defined boundary between City and County. Therefore, the Malibu/Santa Monica Mountains LUP will continue to be used in evaluating projects located within the City wherever applicable. The following polices apply to this project:

- P1 Provide recreational opportunities to meet the variety of recreation demands.
- P2 Provide for passive and educational, as well as active, recreational opportunities.
- P2b Provide for the widest feasible distribution of public recreational facilities, including parking facilities, throughout the Malibu/Santa Monica Mountains coastal zone, so as to avoid overcrowding or overuse by the public of any single area.
- P5 Encourage cooperation between departments to facilitate the multiple use of public rights-of-way consistent with public safety.
- P11 Encourage the Santa Monica Mountains National Recreation Area to provide a wide variety of outdoor recreation activities and opportunities to metropolitan Los Angeles.
- P12 Create an incentives program that would encourage landowners to make lands available for public recreational uses.
- P32 Provide a safe trail system throughout the mountain and seashore that can achieve the following:
 - o link major recreational facilities
 - o link with trail systems of adjacent jurisdictions
 - o Provide recreational corridors between the mountains and the coast

- o Provide for flexible, site-specific design and routing to minimize impact on adjacent property, communities, and fragile habitats. In particular, ensure that trails located within Environmentally Sensitive Habitat Areas are designed to protect fish and wildlife values.
 - o Provide connections with populated areas
 - o Provide for and be designed to accommodate multiple use (walking, hiking and equestrian) wherever appropriate.
 - o Facilitate linkages to community trail systems
 - o Provide for a diversity of recreational and aesthetic experiences
 - o Reserve certain trails for walking and hiking only.
 - o Prohibit public use of motorized vehicles on hiking/equestrian trails.
- P33 Protect the health and safety of trail users as well as adjacent residents.
- P34 Ensure that trails are used for their intended purpose and that trail use does not infringe upon or violate private property rights.
- P37 Design and locate trails and/or adjacent development so that neither intrudes unnecessarily on the environment of the other.

Currently there is pedestrian and equestrian public access to the state park entrance located on Serra Road. And, as stated in the project description, although no vehicular access for the public currently exists, the Department of Parks and Recreation may propose public access in the future. The construction of a guard gate on Serra Road between Pacific Coast Highway and the park entrance could impede the current pedestrian and equestrian public access, and proposed future vehicular access. By improving the road, the ingress to Serra Road would fall on private property. Neither the public, nor P&R have an easement to cross this private property. Without provisions to protect the current access to the State Park, the proposed project would impede the current access.

The applicant has stated that they will not impede pedestrian and equestrian access to the state park. In order to ensure that the current, and possible future, access to the state park entrance is not impeded, the applicant would need to post signs stating that access to the park is available. The applicants have stated that they are willing to post signs on the property that state there is public pedestrian and equestrian access to Malibu Lagoon State Park from Serra Road. Currently, though, there are "No Trespassing" signs located at the entrance to Serra Road. Although the Commission recognizes that Serra Road is privately maintained, signs stating "No Trespassing" or "Private Property" can deter people from using the trail to the park entrance. Moreover, there is a possible psychological deterrent to

use roads that state "Private Property" and "No Trespassing," even when there are signs that also state that state park access is available. Therefore, the applicant would have to be prohibited from posting such signs. However, the Commission finds that the placement or restrictions of signs will not guarantee that public access will not be impeded. Although such restrictions may allow public pedestrian and equestrian access to the state park, it would be difficult to ensure that a hired guard would not restrict access, or that the mere presence of a posted guard house would not deter a number of people from using the entrance.

Finally, these conditions could also not provide for public vehicular access, in the event that P&R expands the use of the park entrance to include a public parking lot, or unimpeded ingress by Park officials. One way to resolve this issue, could be through the granting of an easement by the landowner to P&R inclusive of the public using the State Park.

Previously, the applicant had expressed concern and little willingness to allow public vehicular access to the state park entrance if in the future P&R decides to expand the use of the state park. The applicant had stated that since Serra Road is a private road, P&R does not have the legal right to expand the use of the ingress and egress easement to include the public. P&R stated that they currently have the legal right to allow the public vehicular access to the state park entrance because the road is on land that P&R owns. P&R does not need an ingress and egress easement to cross the road which it owns; it is the homeowners who have a need for an easement for use of the road that is on P&R's property. In addition, the easement granted to the homeowners by the predecessors of P&R did not grant an exclusive easement. Thus, the grantor, or its successor could grant additional easements to others.

Currently, P&R does not have an easement to enter onto the neighboring lot. There is no need, however, for P&R to access the adjacent property since the road is currently located entirely within P&R's portion of the easement road. If the road was widened, however; then P&R would need an easement for ingress and egress on the adjacent parcel. The applicant has rescinded its original objection to grant an easement to P&R for access across the easterly portion of Serra Road. The applicant is now willing to grant an easement to allow for the right of P&R to pass and repass over the easterly half of Serra Road. Additionally, the applicant has stated that they are willing to allow the public to pass and repass over this portion of Serra Road with vehicles at such time that P&R expands the use of the inland side of Malibu Lagoon to include parking. Since there could be public vehicular access now, if parking existed, the Commission finds that an approval of this project could only occur if the applicant would agree to grant an easement to include P&R and provide for public vehicular access to the state park at such time that vehicular parking is provided. However, the Commission finds that if the granting of an easement precluded the public's right to use the road to access the park entrance, then the Commission could not approve this project for it would impede public access to state parkland and trails and would clearly be inconsistent with the Coastal Act and the Malibu Land Use Plan.

The homeowners met several times with members of P&R to negotiate this issue. The homeowner's have not been able to reach an agreement with State Parks regarding the granting of an easement. The Commission finds, therefore, that

due to the preclusion of state park vehicular access and in the event it is provided for in the future, public vehicular access, and the potential adverse impacts on pedestrian and equestrian access, this project is not consistent with the Coastal Act section stated above or the applicable policies of the Malibu Land Use Plan.

In determining whether the Commission should approve the project with conditions or recommend denial of the project, it is necessary for the Commission to address alternative projects which would alleviate the current problems of public access. One such alternative would be to relocate the proposed site for the guard house north of the State Park entrance. There is a gentle slope on the east side of the road, north of the park entrance, that would be a suitable alternative. This site would require minimal grading, and possibly a retaining wall, to allow for the placement of a guard house and entrance lanes. This proposal would still provide limited access to Serra road without impeding the public access to P&R. The homeowners have objected to this solution based on the cost involved with the project. A second feasible alternative, which would require no grading and also not impede public access, would be to install an electronic gate across Serra road beyond the state park entrance. This solution would limit access to the residences on Serra road, would not impact public access to the State Park, and would require little to no grading. Thus the gate would result in little impacts to landform alteration and create minimal visual impacts from Pacific Coast Highway. Anacapa Estates in Trancas Canyon uses this type of gate to provide protection and safety to the residents of the area. The homeowners have also raised objections to this solution stating that an electronic gate would prohibit patrons of Serra Retreat from being able to enter. Staff concluded that since the homeowners wish, at a future date, to place a second guard gate at the back entrance to Serra Road, entering from Cross Creek road, patrons could enter through that entrance since it would be manned by a guard. The Commission finds that both of these alternatives are more feasible than the proposed project unless an agreement was met between the homeowners, the landowner and state parks that would provide for unimpeded access to the state park by pedestrians, equestrians, and in the future, if needed, vehicles.

D. Violation

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. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

E. Local Coastal Program

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

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

On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains LUP. On March 28, 1991, the City of Malibu incorporated and the project site is within the City boundaries. Therefore, the County of Los Angeles certified Malibu Land Use Plan is no longer legally effective for this area. However, it does still provide guidance on the implementation of the Coastal Act policies. The Certified LUP contains policies to guide the types, locations and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections regarding public access. As proposed, the development will create adverse impacts and will be inconsistent with the policies contained in the LUP. The Commission finds that approval of the proposed development will prejudice the City's ability to prepare a Local Coastal Program implementation program for Malibu consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a); therefore, the project is denied.

F. 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)(1) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The Malibu Land Use Plan provides that:

P67 Any project or use which cannot mitigate significant adverse impacts as defined in the California Environmental Quality Act on sensitive environmental resources (as depicted on Figure 6) shall be denied.

and asserts in the general goals and objectives that the intention is to follow the policy that is most protective of resources. As discussed in the preceding sections, there are feasible alternatives to the proposed development to lessen the impact on the environment. The Commission, therefore, finds that the proposed project is not the least environmentally damaging feasible alternative and can not be found consistent with the requirements of the Coastal Act to conform to CEQA

2582E

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST. SUITE 200
VENTURA, CA 93001
(805) 541-0142



November 7, 1996

Russ Guiney
California Department of Parks and Recreation
1925 Las Virgenes Road
Calabasas, CA. 91302

Re: Coastal Development Permit Application 4-96-76 (Serra Canyon Homeowners Association)

Dear Mr. Guiney:

Our office has received an application for the installation of a guard gate and changes to the ingress and egress of Serra Canyon Road north of the intersection of Pacific Coast Highway in the City of Malibu.

The application has been completed for filing and is anticipated to be scheduled for the Commission hearing in December, 1996. The work involves the installation of a guard gate east of the centerline of the road, two lanes of ingress on the eastern side of the easement, and one lane of egress on the western side of the easement. All work is proposed within the road easement. Serra Canyon Road is private road; as such, the property owners on both sides of the road are the underlying property owners to the centerline of the road. In this case, the California Department of Parks and Recreation is the underlying property owner to the immediate west (APN: 4452-011-903); William O'Conner is the property owner to the east (APN: 4452-017-009).

Coastal Act Section 30601.5 states as follows:

All holders or owners of any interest of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant.

Pursuant to Section 30601.5 of the Coastal Act we are required to send this letter of invitation to you, inviting you to be a co-applicant if you choose. We understand that when this project was before the Commission previously (under coastal development permit 5-91-622) the Department of Parks and Recreation opposed the project. Please indicate if the Department of Parks and Recreation has changed its mind regarding this project and/or would like to be a co-applicant in this current application.

Should you desire additional information about the project application or the work proposed, please contact me at the above number.

Sincerely,

A handwritten signature in dark ink, appearing to read "Susan Friend".

Susan Friend
Coastal Program Analyst

cc: Sherman Stacey

1119V/SPF:VNT

Exhibit 2: Letter of invite as co-app.
4-96-076

DEPARTMENT OF PARKS AND RECREATION



Malibu Sector Office
39906 Pacific Coast Highway
Malibu, California 90265
310-457-8140

NOV 15 1996

November 15, 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST AREA

Susan Friend, Coastal Program Analyst
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Dear Ms. Friend:

In regard to Coastal Development Permit Application 4-96-76 (Serra Canyon Homeowners Association) the California Department of Parks and Recreation will not be a co-applicant and in fact opposes the granting of a permit for the existing gate house on Serra Canyon Road. For a number of years State Parks has tried to work with the homeowners association to address our concerns with regard to the gate house. They recently rejected an agreement which we felt would have met both our needs.

Among other things State Parks is concerned that this gate house will preclude access for the public and our employees to an area of Malibu Lagoon State Beach which the public has used for years and to which we have traditionally had administrative access. It will further impede or prohibit any future development of that area of the park. We feel these concerns could have been met by locating the gate house further to the north or by granting State Parks and the public access to the east of the gate house.

Please keep me advised of any hearings on this permit application. Thank you.

Sincerely,

Russell G. Guiney
Malibu Sector Superintendent

LAW OFFICES OF
SHERMAN L. STACEY
233 WILSHIRE BOULEVARD
SUITE 810
SANTA MONICA, CALIFORNIA 90401
TEL (310) 394-1183
FAX (310) 394-7841

RECEIVED

November 15, 1996

OFFICE
CALIFORNIA COASTAL COMMISSION
CENTRAL COAST OFFICE

BY FAX--805-641-1732

Ms. Susan Friend
California Coastal Commission
South Central Area
89 California Avenue, 2nd Floor
Ventura, California 93001

Re: Serra Canyon Property Owners Association
Application No. 4-96-76 - Gate House

Dear Susan:

The Serra Canyon Property Owners Association ("SCPOA") has considered alternatives for placement of the gate house at Serra Road. The location which was chosen was considered to be the only feasible alternative. The existing site already existed. There was available private land to the east of the roadbed to expand the road width (without grading) to allow for construction of the gate house without either interference with vehicular maneuvering or encroachment on the State Parks property side of the Serra Road easement. The owner of that property was willing to give an easement. No removal of soil or grading was required. The location was a sufficient distance from Pacific Coast Highway to allow for a queue of cars without any interference with the highway. The location is easily seen from the highway so that people are able to recognize whether they have chosen the correct road. There was sufficient room for vehicles to turn around and depart. There was even sufficient area for larger trucks, like fire engines, to turn around.

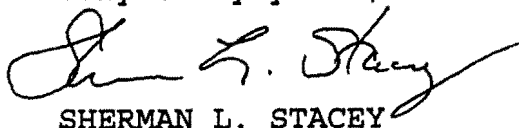
The option of placing the gate house farther north on Serra Road (where it would be beyond the boundary of the immediately adjacent State Park) property would not be feasible. As Serra Road proceeds north of the existing gate house site, the roadbed and easement reach the very margin of the canyon. The slope rises steeply to the west of Serra Road. Locating the gate house in this more northerly location would require massive grading and soil removal in order to widen the available road bed area to provide room for the gate house and room to turn cars, trucks and other vehicles around. It would also require private property on which SCPOA did not have an easement.

ICES OF
N L. STACEY

The option of placing the gate house where the existing gates are located is also not desirable. This location would have required the removal of trees and removal of a quantity of soil in order to provide the number of lanes required for a gate house operation. The most important reason for not locating the gate house at this location is that there is not enough room between the existing gate location and Pacific Coast Highway to safely hold a line of cars requesting entry into the canyon.

For many years during the summer months SCPOA employs a guard who is stationed northerly of the existing gates. The guard requests that at least 60 cars per day turn around because they are not authorized to use the private roads. The gate house was built in order to have a shelter for the guards as well as a more aesthetically pleasing entrance to the canyon.

Very truly yours,



SHERMAN L. STACEY

SLS:js

cc: Mr. Geoffrey Gee

[serra\fr12.ltr]

DEPARTMENT OF PARKS AND RECREATION

Santa Monica Mountains District
2860A Camino Dos Rios
Newbury Park, California 91320
(818) 706-1310

June 3, 1992

Mr. John V. Tunney
1801 Century Park East, Suite 1000
Los Angeles, California 90007

Dear Mr. Tunney:

Your most recent conversation with Russell G. Guiney, Malibu Sector Superintendent, had led me to conclude that we are at an impasse on the gatehouse issue at Malibu Lagoon State Beach. While we recognize your need to restrict access to your road for security and liability purposes, the California Department of Parks and Recreation cannot accept any project for your benefit that reduces our existing rights for public and administrative access and/or creates new costs or responsibilities for the taxpayers.

We must reject any proposals that would require us to relocate the gatehouse at our expense or the approval of the existing gatehouse location without specific provisions to assure permanent public access to all portions of our property. Creating access to our property by cutting a new road that would enter our property to the south of the existing gatehouse would have unacceptable impacts on the archeological resources of the area and would reduce the native vegetation. As a result, this option is also unacceptable to us. We are also unwilling to indemnify your association for any liability arising out of public vehicles passing your gatehouse and travelling across state land. Your non-exclusive easement allows you to maintain the road which enables you to determine the level of maintenance and other aspects of the road. Our inability to fully control the behavior of the public or your management of the road make it imprudent for us to indemnify your association.

This Department is unwilling to accept the gatehouse in its present location unless the homeowners agree to preserve and recognize our existing present rights, which are public and administrative rights for vehicle, equestrian and pedestrian access at no cost to the public for construction, maintenance, operation and or future relocation of the gatehouse.

Tunney
June 3, 1992
Page 2

Unless we are able to resolve our concerns and meet the above requirements, we will inform the California Coastal Commission of our concerns and our opposition to the approval of the gatehouse at its present location.

Sincerely,



Daniel C. Preece
Deputy Regional Director

**DEPARTMENT OF PARKS AND RECREATION**

Santa Monica Mountains District
2860A Camino Dos Rios
Newbury Park, California 91320
(818) 706-1310 or (805) 499-2112

December 6, 1991

Mr. Thomas W. Gwyn, Chairman
California Coastal Commission
245 West Broadway, Suite 380
Long Beach, California 90802

Dear Chairman Gwyn:

The Santa Monica Mountains District of the California Department of Parks and Recreation submits the following comments for Application No. 5-91-622 (Tuesday 6p), located at 3908 Serra Road in Malibu. We are concerned that approval of this application would impede public access to a portion of Malibu Lagoon State Beach.

The applicant proposes to place a guard house on Serra Road, just north of Pacific Coast Highway. Serra Road is a private road that serves a residential neighborhood. The road is within a fifty foot wide easement. The centerline of the easement is the eastern property boundary of Malibu Lagoon State Beach. Although only twenty-five feet of the fifty foot wide easement is on State Beach Property, the entirety of the existing paved part of the road is on the State Beach, so that for the length of the State Beach Boundary, the paved road is in public ownership.

The placement and operation of a guard house on this road will deter public access to this part of Malibu Lagoon State Beach. The applicant proposes to widen the road, onto the adjacent private property, so that the northbound lanes will pass to the right (east) of the guard house. Although the guard house itself is not on public property, it is clearly intended to control the entire road, including the part on State Land. We are concerned that both public pedestrian and vehicular access would be impeded. There is not currently public vehicular access to this portion of the State Beach; however, we must protect the State's ability to develop this site with parking, in the event that it is desired in the future.



Exhibit 6: Letter from P&R from previous
4-96-76 application 5-91-622

Mr. Thomas W. Gwyn
September 6, 1991
Page Two

In a letter attached to the Staff Report, the applicant's attorney states that it is the contention of the Serra Retreat Homeowners' Association that the State may not convert the private road into a public accessway merely because it owns a portion of the property on which Serra Road is located. We disagree with this contention. The public has the right to access any portion of State Park property, in spite of the existence of any easements on the property. The easement for Serra Road is not an exclusive easement, so that the State may grant additional easements on the road to whomever it chooses, so long as the rights of other easement holders are not obstructed. A specific easement does not need to be granted to provide public access; the land is already publicly owned.

State Park lands in the Santa Monica Mountains are crossed by numerous public and private easements. These easements do not exclude the public from using the land that they lie on. For example, a major connector trail to the Backbone Trail is burdened by a private road easement that leads to private residence. At this month's hearing, the Commission will consider a permit to pave this road (5-91-598, Randa, Tuesday 6m). Because the road is located in Malibu Creek State Park, the Staff Report recommends that a special condition be added that requires the applicant to recognize that the easement road is also a public trail. The condition precludes the placement of signs such as "PRIVATE PROPERTY, "NO TRESPASSING," or "KEEP OUT." By recommending this condition, staff has recognized that the existence of a private easement on public property does not preclude the public from using the area burdened by the easement.

Similarly, in a different case, Staff Counsel of the Department of Parks and Recreation provided the opinion that an encumbrance on Point Mugu State Park for a road and grazing easement does not include any restriction on park use of park property except as would be implied to prevent restriction of the easement holder's rights to grazing and the use of the road. The Department of Parks and Recreation has every right and the responsibility to the public to allocate that land to park purposes.

Moreover, the proposed guard house and road widening will prevent State Park personnel from accessing the State Beach land for maintenance and patrol purposes. As stated earlier, the existing northbound lane will be moved from its present location on State land to the adjacent private property to the east. The State of California was not granted easement rights to the portion of Serra Road that is not on State property, so the State does not have the right to travel on the proposed portion of the road that loops around the gate house to the east. Statements to the contrary made in the letter submitted by the attorney for the applicant are not correct. Park patrol and maintenance vehicles will be excluded from this portion of Malibu Lagoon State Beach, or would be required to travel on the portion of the road that remained on State property, which is

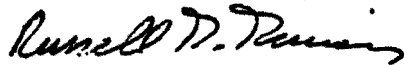
Mr. Thomas W. Gwyn
December 6, 1991
Page Three

to say that they would have to travel north on the southbound lane. That would be dangerous and unacceptable.

It is our belief that these concerns cannot be fully resolved with the guard house in its present location. Therefore, the application should either be denied, or approved on the condition that the guard house be moved north on Serra Road, to a point beyond the northern boundary of Malibu Lagoon State Beach.

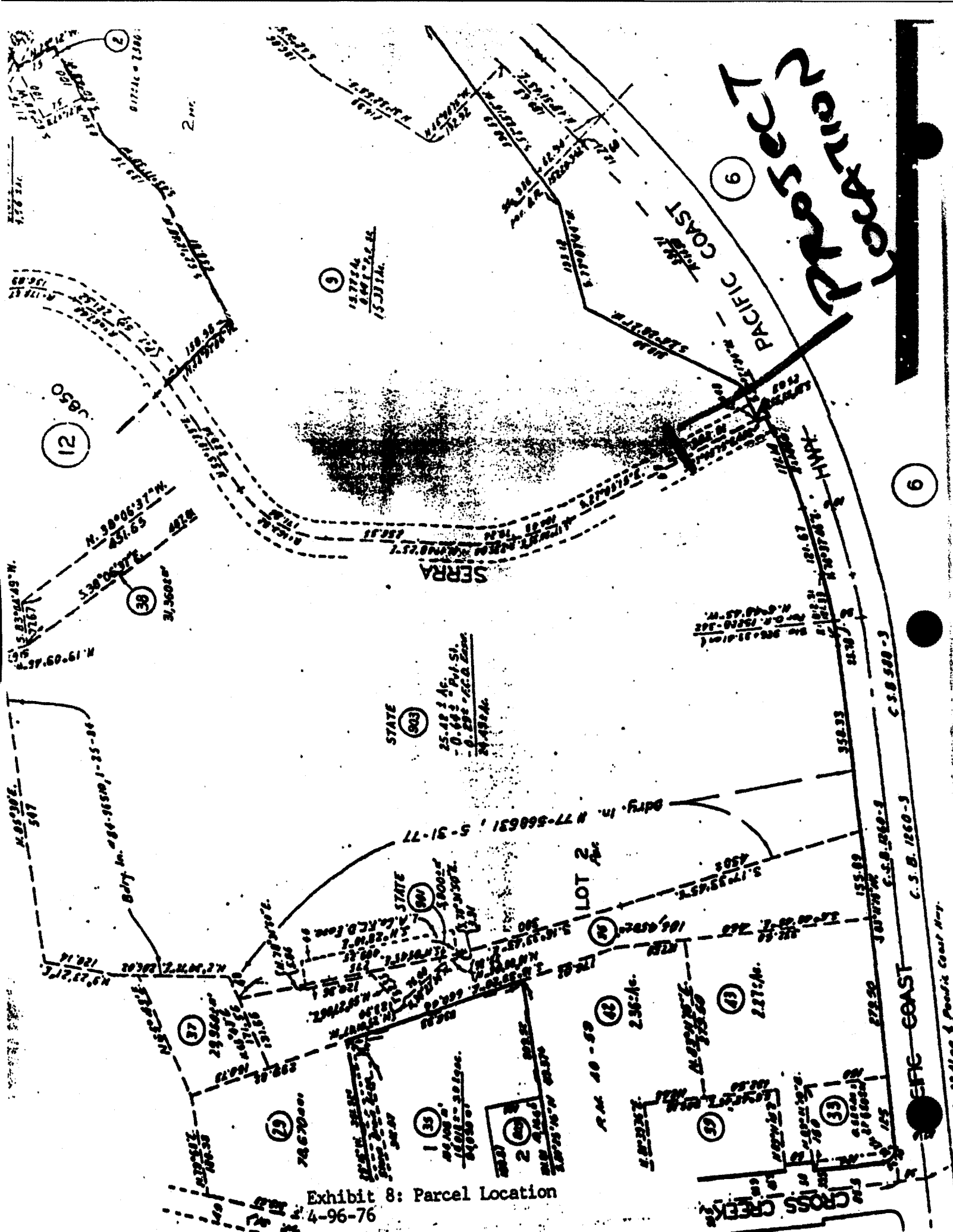
Thank you for the consideration of our comments.

Sincerely,



Russell G. Guiney
Malibu Superintendent

cc: ✓ Charles Damm, California Coastal Commission, South Coast Area
Tony Gross, National Park Service
Peter Ireland, Santa Monica Mountains Conservancy
Roger Willmarth, Environmental Review Section, California
Department of Parks and Recreation
Land Agent, Southern Region, California Department of Parks And
Recreation



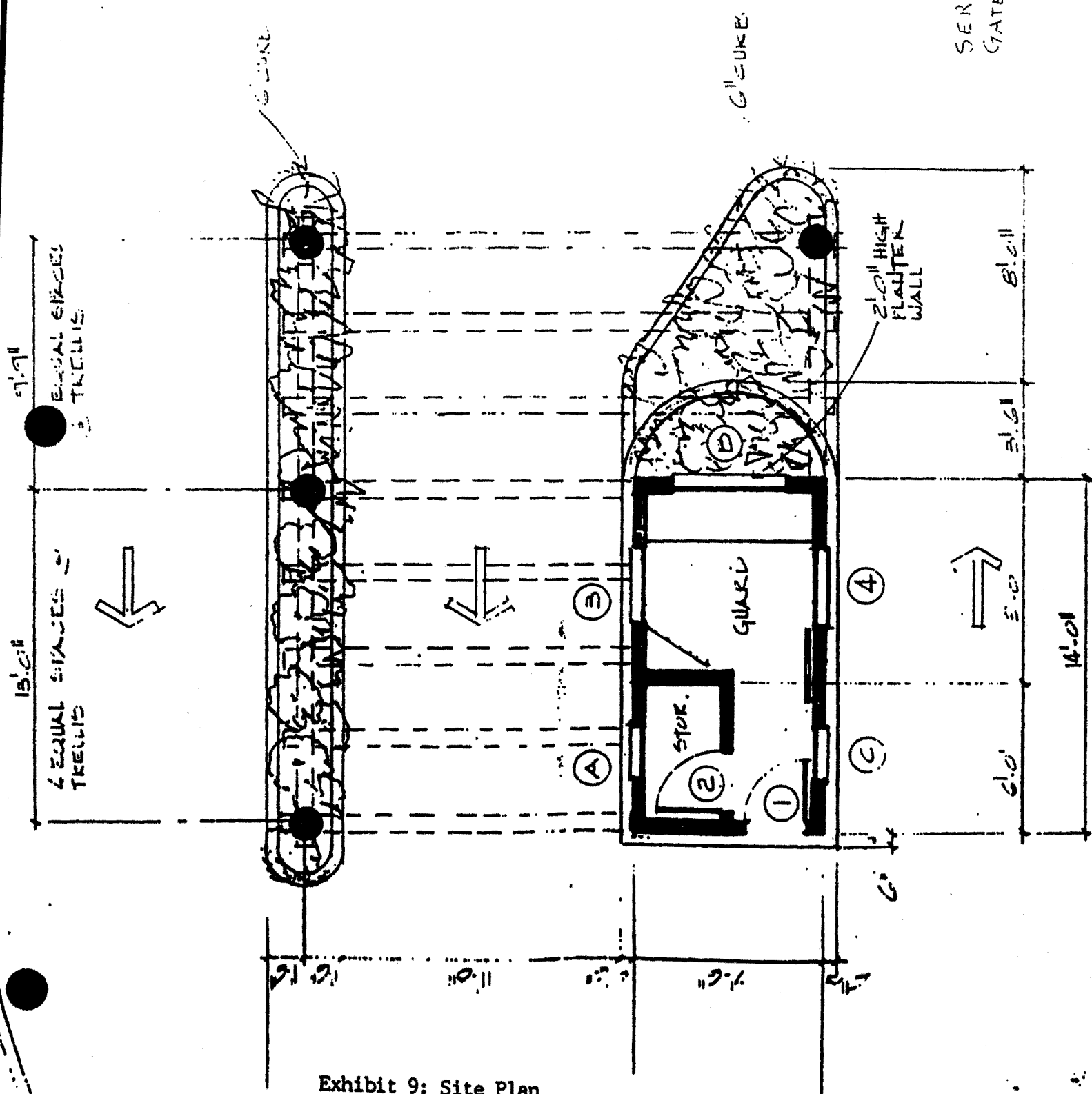
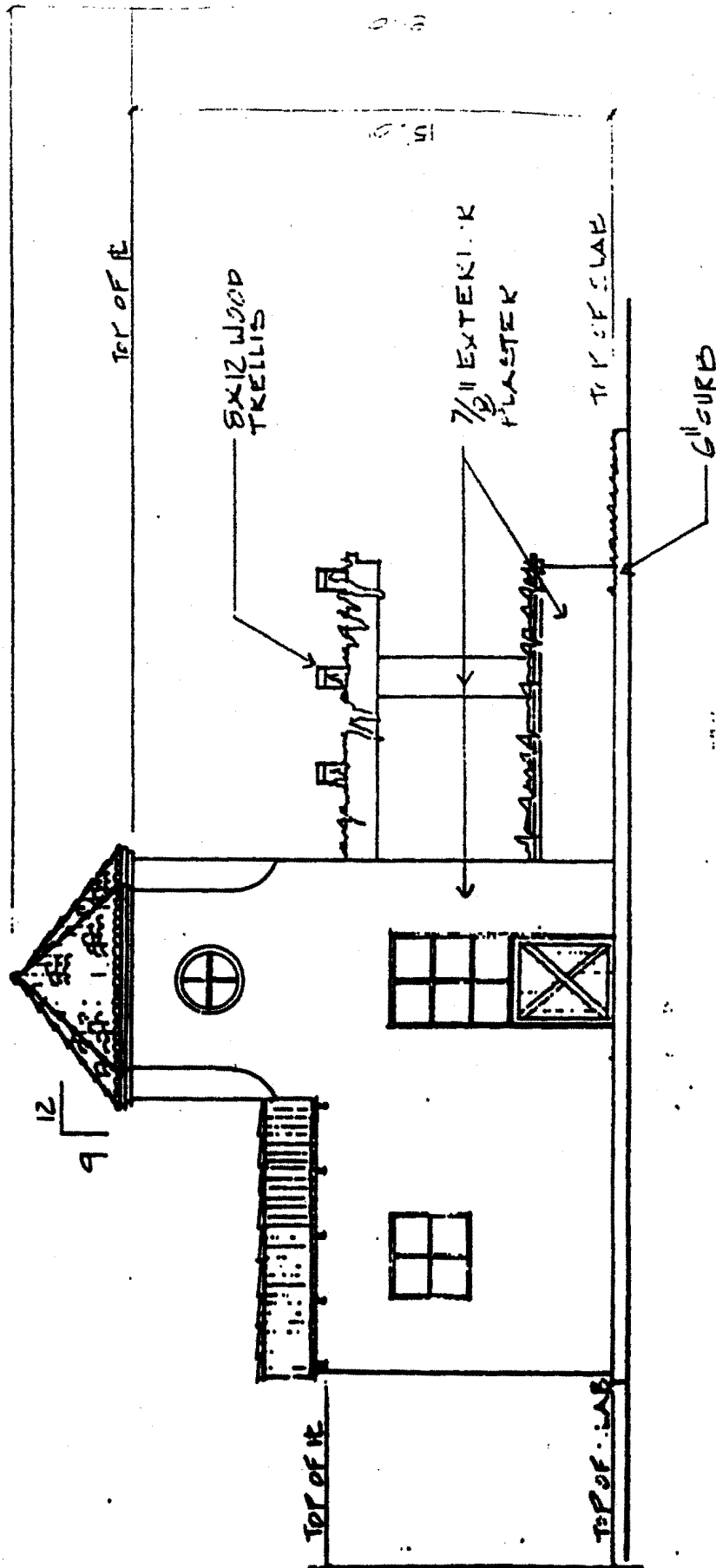


Exhibit 9: Site Plan
4-96-76



WEST ELEVATION

1/4" = 1'-0"

Exhibit 10: Elevation
4-96-76

Ref.:

U.S.G.S. Malibu Beach quad
Thomas Guide 1996
Page 629 A-7

Power pole
No P.B. 732

Anchors for
power pole to No.

State Parks

O'CONNER'S
4452-17-119

planting area

7.7' x 14.2' gate house
on conc. slab

Trellis 8' above
pavement

W'ly. edge of exist.
asphalt pavement

planting area

W'ly. edge of exist.
asphalt pavement

E of 50' wide easmt.

for road and highway
purposes per Indenture
recorded Jan. 22-1944
as Doc. No 973 in O.R.
Book 20517-382

Al: E'ly. line of Serra Road
easmt. it has been extended
E'ly. 20' max. by "Modifi-
cation of easement" doc.
recor. in 90-997775, O.R.

L. E. Wilson Co. utility box

Exist. pillar

Exist. tree

old pillar, now
moved to

4" Euc. tree
- 18" " "

RECEIVED

SEP 25 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

scale
1" = 20'

N'ly. R/W
of Pac. Coast Hwy.
per Hwy. Engrs map
VII-LA-CO-A, sh. 3

PACIFIC

COAST HWY.

PLOT PLAN OF
5' L.Y. PORTION OF
SERRA ROAD
(Private Street)

IN the City of Malibu
Los Angeles County, CA

Compiled at request
of: Mr. Geoffrey H. Gec
By: Quiros Surveying
22249 Pac. Coast Hwy.
Malibu, CA 90265
Ph: 310-456-8022

By Maria C. Quiros
L.S. 2743

Quiros file: 1. Exhibit 11: Paving and ingress/egress
4-96-76 plan

Aug. 16, 1996

CURRENT
LOCATION

