

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: April 2-12, 1996
Commission Action:

**RECORD PACKET COPY**STAFF REPORT: REGULAR CALENDAR**W15d**

APPLICATION NO.: 4-96-002

APPLICANT: PNC Mortgage

AGENT: Sherman Stacey

PROJECT LOCATION: 6087 Cavalleri Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Construction of a tennis court, pool, decking, landscaping, fencing, horse corrals, and a riding ring on a lot with an existing single family residence. The project also includes the restoration of a portion of the development on adjacent National Park Service property. 6,716 cubic yards of grading is required (3,363 cu. yds. cut, 3,353 cu. yds. fill)

Lot area:	3.5 acres
Building coverage:	0 new
Pavement coverage:	5,200 new sq. ft.
Parking spaces:	0 new
Plan designation:	Rural Land III (1du/2 ac.)
Project density:	1 du/3.5 ac.
Ht abv fin grade:	12 feet for tennis court

LOCAL APPROVALS RECEIVED: Permits from L.A. Co. Dept. of Building and Safety.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Applications P-10-3-77-2006 (Moretti), 5-90-078 (Neale), 5-90-661 (Allen), 5-91-328 (Contis), 5-91-836 (Allen), 4-92-201 (Fryzer), 4-92-206 (Tahmasebi); restoration order 4-92-206RO (Tahmasebi); an Engineering Geologic Reconnaissance Report by Mountain Geology dated June 5, 1995 prepared for Steve Powers; and an Engineering Geologic Reconnaissance Report by Solus Engineering dated January 20, 1996 prepared for PNC Mortgage.

SUMMARY OF STAFF RECOMMENDATION:

This is an after-the-fact permit application for improvements to a lot developed with an existing residence. The only development that has not occurred is the restoration of the NPS property. The restoration of .15 acre of the NPS property will enhance the area and have positive environmental impacts; restoration includes the removal of a lawn area and restoration of that area with native vegetation. This portion of the development will have positive effects on the environment by restoring a habitat area. The horse

corrals are located on a portion of the site graded prior to the effectiveness date of the Coastal Act. No new grading is proposed, and the horse corral will not create any adverse environmental or visual impacts. Both the restoration of NPS property and the horse corrals can be found consistent with the Chapter Three policies of the Coastal Act. However, the proposed tennis court, pool, hardscaping, riding ring and access road will have adverse visual, environmental, and geologic impacts on the site and neighboring areas. Therefore staff recommends that the Commission approve the proposed restoration of NPS property and horse corrals with special conditions regarding revised restoration plans, a monitoring program and the implementation and completion of work for the restoration of the .15 acre portion of land on NPS property and the horse corrals; and deny the tennis court, pool, landscaping, decking, riding ring and access road with 6,716 cubic yards of grading based on adverse impacts as noted above.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions and Denial

The Commission hereby grants a permit for that portion of the proposed development involving the restoration of .15 acre of land on NPS property and the horse corrals, subject to the conditions below, on the grounds that, as conditioned, those portions of the development that are approved will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

The Commission hereby denies a permit for that portion of the proposed development involving the construction of a tennis court, pool, landscaping, decking, riding ring and 6,716 cubic yards of grading, 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. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Revised Restoration and Planting Plan

Within sixty days of Commission approval the applicant shall submit, for the review and approval of the Executive Director, a detailed planting plan for the proposed restoration of the NPS property. This plan shall indicate that all non-native, invasive species shall be removed from the site and shall identify the types, sizes and locations of all plant material to be planted. The applicant shall use native chaparral species, consistent with the neighboring area, and shall not limit the plan to one type of chaparral species or to annual plants only. The applicant may use a mix of annuals, for erosion control, and chaparral species, for long-term restoration. Finally, this plan shall include the removal of the tennis court, pool deck and chain link fence which encroach onto National Park Service land. These areas shall be incorporated into the planting plan. The plan must be reviewed and approved by the National Park Service.

2. Monitoring Program

The applicant agrees to monitor the project to determine if a successful restoration of the NPS area has occurred. The applicant shall submit to the Executive Director, annual reports on the status of the restoration program, prepared by a qualified restoration specialist or other biologist with an expertise in restoration. These reports shall be required for a period of three years, and shall be submitted to the Executive Director no later than the first of May of each year. The first report shall be required at the completion of 1996-1997 rainy season, but no later than May 1, 1997.

The annual reports shall outline the success or failure of the restoration project and include further recommendations and requirements for additional restoration activities in order for the project to reach a complete restoration to its pre-violation status, as indicated in the approved restoration plan. If at any time, in the findings of the annual reports, the consulting biologist determines that additional or different plantings are required to restore the site to its original condition as indicated on the

restoration plan, the applicant shall be required to do additional plantings within thirty days of such a recommendation. Prior to implementing any changes, the revised planting plan must be submitted for the review and approval of the Executive Director. If at the completion of the third year of monitoring, the consulting specialist determines that the restoration project has in part, or in whole, been unsuccessful the applicant shall be required to submit a revised, supplemental program to compensate for those portions of the original program which were not successful. The revised or supplemental restoration program shall be processed as an amendment to the original coastal development permit.

3. Implementation and Completion of the Restoration Plan

The applicant agrees to implement and complete the restoration plan, including the removal of the portion of the tennis court and pool deck on the NPS property as well as the non-native, invasive vegetation, within 120 days of the issuance of this permit. The applicant may request a one-time sixty day extension for the commencement of the planting plan to allow for the planting at the beginning of the 1996/1997 rainy season. In any event, whether or not an extension is granted, all work must be completed no later than November 1, 1996.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and Background

This is an after-the-fact permit application for the construction of rear yard improvements which include the placement of a tennis court, pool, hardscaping, landscaping, fencing, horse corrals, an access road, riding ring, and restoration of .15 acre of property adjacent to the subject lot. Total grading for this development is 6,716 cubic yards (3,353 cu. yds. cut, 3,363 cu. yds. fill). Grading for the tennis court, pool and associated landscaping is 5,716 cubic yards; grading for the riding ring and access road totals 1,000 cubic yards. No grading was done for the horse corrals, and no grading is proposed for the restoration on NPS property. Landscaping, as well as a portion of the tennis court and pool deck, encroaches onto neighboring National Park Service property. The landscaping, totaling .15 acres, will be restored to a native habitat per a restoration plan prepared by the Topanga-Las Virgenes Resource Conservation District (See Exhibit 8). The applicant is also required, through an agreement with the National Park Service, to remove the pool deck and tennis court which encroach onto NPS property. The encroachment and proposed restoration plan can be seen in Exhibit 7 and 8. With the exception of the restoration of the NPS property, all proposed development is unpermitted and existing.

In a letter dated December 20, 1995, submitted by the applicant's agent, the agent questions that the filling of the drainage course was for a riding ring (See Exhibit 18). He states that there is no fencing or other evidence which supports that this is a riding ring. However, it is not necessary for an area to be fenced to be used for either lunging or riding horses. During a staff visit, the lessee told staff that this area was graded for a riding ring and that the access road was graded to provide access to this ring. No other

purpose or use for this area has been given to staff by the applicant. For identification purposes in this staff report, the area will be called a riding ring.

The site is located on the crest of a westerly trending secondary ridge. There are drainage courses on both the north and south side of this ridge; the southern drainage course is on the applicant's property. Relief across the property is 70 feet. Grading on the site has transformed the sloping ridge into three terraces. The upper terrace contains the residence and the horse corrals; the middle terrace the tennis court; and the lower terrace the swimming pool. The manufactured slope between the residence and the tennis court is approximately fourteen feet high; at the bottom of this slope there are small, 18 inch high retaining walls. The slope between the tennis court and the pool is three feet and there are no retaining walls. The riding ring is not located on these terraces but rather in the canyon south of the slope. There are no retaining walls for the access road or the riding ring.

The single family residence on this lot was approved under coastal development permit P-77-2006 (Moretti) which allowed for the construction of a two-story, 30 foot high, 4,500 square foot single family residence with an attached three-car garage and a maids quarters. The permit (Exhibit 12) was approved with three special conditions which required the submittal of revised plans indicating the use of pervious material on the access road, a deed restriction which limits the use of the structure to a single family residence and plans for the proposed drainage system to dispose of roof and surface runoff into gravel filled wells or other retention methods that maintain a rate of discharge at the level that existed prior to the development. The deed restriction, which was recorded, was required because the maid's quarters has an exterior access, and the Commission wanted to ensure that the residence was not converted into a duplex. According to a previous owner, the grading for the access road from Cavalleri Road and the residential pad was completed in the 1920s. Staff has not confirmed this date. The graded access road from Cavalleri Road and the building pad do exist on the 1977 aerial photographs, and thus the grading was done prior to the effective date of the Coastal Act. Even a written drawing of the site from the previous permit stated that the pad was relatively flat (See Exhibit 13). No grading was proposed with the application for the single family residence. Subsequent grading was done in 1984, 1986, 1988, and 1990. The tennis court was constructed in 1986; the riding ring in 1988 and the swimming pool in 1990.

The applicant originally applied for these developments under coastal development permit 4-94-170. That application was originally scheduled for the June 1995 hearing, but was postponed at the applicant's request. Rescheduling of this application for a future Commission hearing was deferred to provide an adequate amount of time for the applicant to respond to staff's recommendations. Staff informed the applicant of the partial approval and partial denial recommendation in May of 1995 and requested that the applicant supply any relevant information such as a geologic analysis of the site to determine the stability of the site and/or the feasibility of removing portions of the grading and the developments. This request was made to allow for a thorough analysis of the project against the Chapter Three policies of the Coastal Act. Staff also recommended that the applicant consider revisions to the project which could bring the project, or portions of it, into compliance with the Coastal Act. In December of 1995, the applicant retained another consultant, Sherman Stacey; he submitted a letter refuting some of the

findings drafted by staff. Subsequent to that letter, the application was withdrawn. A new application for the same development was submitted with additional information at staff's request. This additional information includes a biological assessment of the site and a geologic reconnaissance report. Finally, the material submitted for the original application, such as the plans, reports and additional information, are incorporated herein by reference to this application.

B. Development

Development is defined in Section 30106 of the Coastal Act to read, in part, as follows:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials;... construction, reconstruction, demolition, or alteration of the size of any structure..."

The proposed project involves the construction of several structures (a tennis court, swimming pool, decking, and horse corrals) and grading. These constitute development pursuant to Section 30106 of the Coastal Act. Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person wishing to perform or undertake any development in the Coastal Zone shall obtain a coastal development permit.

Section 30610(a) of the Coastal Act, on the other hand, exempts certain additions to single family residences, provided that the Commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require a coastal development permit. Section 13250 of the California Code of Regulations identifies those classes of development which would require a coastal development permit. Subsection 2 of 13250(b) requires that any significant alteration of landforms requires a coastal development permit. Grading is a significant landform alteration and is considered development under 30106 of the Coastal Act. Moreover, grading is not a development or structure normally associated with a single family residence. Thus, the grading that occurred requires a permit. Finally, tennis courts, recreation courts, horse barns, horse corrals and other horse facilities are also not "structures" normally associated with a single family residence, involve significant landform alteration, and require a coastal development permit prior to the commencement of development.

The applicant's agent, in a recent letter to staff stated that he believes the developments which occurred on site are exempt under 30610(a) of the Coastal Act. The agent claims that the riding ring, access road, tennis court and fencing are structures normally associated with a single family residence. The agent is correct that fencing and swimming pools are structures normally associated with a single family residence, as stated in Section 13250 of the Administrative Code of Regulations pursuant to Section 30610(a); however although tennis courts, riding rings and access roads may be common in the Los Angeles area and the Santa Monica Mountains, they are developments which involve significant landform alteration and are not structures normally associated with single family residences. As such they are not exempt under 30610(a). The fence is not exempt as it is located on National Park Service

property and not on a parcel with a single family residence; and the swimming pool is not exempt because it is located on a fill slope which would have required a coastal development permit.

Thus, none of the proposed work is exempt under Section 30610(a) of the Coastal Act. All development which has occurred, namely the grading, the tennis court, the horse corral, the riding ring, the access road to the riding ring, the swimming pool, and the hardscaping requires a coastal development permit.

C. Grading, Landform Alteration, and their Environmental and Visual Impacts

This project involves the restoration of a portion of NPS property and significant amounts of grading and landform alteration for rear yard improvements including a tennis court, swimming pool, horse corral, riding ring, access road, landscaping and decking. The Coastal Act sections regarding marine and land resources, grading, and landform alteration which are applicable in this case are as follows:

Section 30231

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

Section 30240

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

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

Section 30250(a)

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

Section 30251

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:

Part of this project calls for the restoration of a .15 acre portion of land adjacent to the subject property which is owned by the National Park Service (NPS). Currently, the site has been landscaped with an irrigated lawn and native and non-native vegetation. The edge of the tennis court and pool decking extend onto this NPS property. Under an agreement with the National Park Service, the applicant has agreed to remove these encroachments. The removal of the tennis court and fence is shown on the submitted site plan. However, the removal of the portion of the tennis court and pool decking is not shown on the submitted plans, nor is the removal of any of these encroachments stated on the restoration plan. Staff has contacted the National Park Service, and NPS confirmed that the agreement clearly stated that the applicant would remove the tennis court, fencing, and pool deck. The agreement between NPS and the applicant included the prepared restoration plan and the removal of the pool deck and tennis court which encroach onto NPS lands. A copy of the letter of agreement is shown in Exhibit 9.

Section 32040 of the Coastal Act mandates that environmentally sensitive habitat areas be protected against significant disturbances, and further states that development in areas adjacent to park areas prevent impacts on recreation areas. Without the removal of the tennis court, swimming pool decking and fence encroachments and a restoration of the lawn area to a native vegetated area, the site will not be consistent with Section 30240 of the Coastal Act. As it currently exists it has removed an area of native vegetation lessening the habitat value and impacting the wildlife and biological processes of the Santa Monica Mountains. Restoration of this encroachment area will restore and enhance the area bringing this portion of the project into compliance with Section 30240 of the Coastal Act.

NPS has agreed to the restoration of the NPS land and approved a restoration report prepared for the applicant by the Topanga-Las Virgenes Resource Conservation District. This restoration report (See Exhibit 8) requires the removal of non-native vegetation and the placement of native vegetation. It requires one year of monitoring of the site for the removal of any additional non-native, invasive vegetation. It does not, however, call for further monitoring to ensure a long term survivability of the planted vegetation. Moreover, this report does not include a detailed site plan for restoration but rather states several species of plants which may be used. Finally, it does not state that the tennis court and pool decking on NPS property will be removed. Therefore, the Commission finds it necessary for the applicant to submit two sets of a detailed restoration plan which identifies the types, sizes and locations of plants and/or seeding to be done on site, and shows the removal of the tennis court and pool decking which is on NPS property. The areas where these developments were located shall be a part of the restoration

plan. This plan shall be consistent with the submitted report, and reviewed and approved by NPS. Moreover, the applicant shall be required to implement this project within 90 days of the issuance of the permit and shall monitor the site for a period of three years following the initial restoration. These conditions are more fully described in special conditions 1 through 3. The project, as conditioned, is consistent with Sections 30231, 30240, 30250 and 30251 of the Coastal Act as it will enhance and protect parkland, will not create adverse impacts on coastal resources and will protect the visual quality in the area.

Another part of the proposed project calls for the placement of horse corrals near the residence on the existing building pad. No additional grading was done to place these horse corrals on site. Moreover, these horse corrals are located within 200 feet of the residence and are therefore within the fuel modification zone. Thus, the area where the horse corrals are is an area which must be thinned of vegetation for fire protection purposes. Vegetation clearance, for fire protection purposes, done for the residence, will also protect the horse corrals. Significant erosion from the horse corrals has not occurred. No drainage control devices are necessary as the horse corrals are not located on a steep slope and the area is landscaped above and below the horse corrals. Next, although the residence is visible from NPS property and the trails in the area, the horse corrals are not highly visible. The residence screens the horse corrals from the trails on NPS property. The horse corrals can be seen from Cavalleri Road, however, because they are clustered adjacent to the residence, they blend in with the residence and do not create an additional adverse visual impact. The horse corrals are located over 100 feet from the drainage course on site and there is no evidence that they have caused any adverse impacts to the drainage course in their present state. The Commission therefore find that this portion of the project, as proposed, is consistent with Sections 30231, 30240, 30250 and 30251 of the Coastal Act.

The remainder of the proposed development calls for 6,716 cubic yards of grading for backyard improvements. Specifically, the grading for the improvements proposed calls for 3,363 cubic yards of cut, and 3,353 cubic yards of fill. The riding ring, which fills in a drainage course, requires 1,000 cubic yards of grading (750 cubic yards cut and 250 cubic yards of fill) and the tennis court and pool require 5,716 cubic yards of grading (2,613 cu. yds. cut, and 3,103 cu. yds. fill). This amount is in addition to the grading done prior to the January 1, 1977 effective date of the Coastal Act. Grading done prior to 1977 includes the construction of an access road from Cavalleri Road to the property and the nearly one acre building pad on which the residence is located. No additional grading was requested in the 1977 permit for the residence. A sketch drawing of the site, which is in the permit file, states that the pad is "relatively flat" (Exhibit 13). The creation of the riding ring in the drainage course calls for seven feet of fill in the drainage course and a small cut slope to create a flat pad. The pad for the tennis court requires reducing the natural slope by ten feet and placing a ten foot high fill slope to create the flattened pad along the slope. And finally, the tennis court and pool are terraced down the hillside for a total of three terraces downhill of the residential building pad.

In the December 20, 1995 letter from Sherman Stacey (Exhibit 18), he stated that the grading calculations were incorrect as they were only an assessment by a civil engineer based on aerial photographs and a current survey of the site. The consultant for the applicant has concluded, after further review,

that errors and discrepancies may or may not exist in the grading calculations. According to the applicant's consulting engineering geologist, the deviation which may exist is due to the difficulty in determining surveys of land from aerial photographs as photographs may distort the actual topography. In any event, the applicant has no evidence to show that the grading was any less than calculated by their own consultants.

Unlike the restoration of the NPS parcel and the placement of horse corrals on an existing pad, the remaining portions of the project, which include the rear yard improvements, will have adverse impacts on the visual and environmental resources of the area. The project, more specifically described below, will not be compatible with the area, will disrupt the value of the resources in the area, and is inconsistent with the Chapter Three policies of the Coastal Act.

The resources of the immediate area include the National Park Service Land to the immediate north of the property, the drainage course on site and the Zuma Creek Watershed to the west of the property. On site there is a drainage course which continues offsite downstream and is highly vegetated with native vegetation. The site, including the drainage course on the southern side of the lot, drains into Zuma Creek. Moreover, the southern drainage course is a tributary to Zuma Creek. Zuma Creek is a U.S.G.S designated blue line stream and is recognized as an inland ESHA by the Commission. Moreover, Zuma Creek above the intersection of the subject tributary stream is within the Zuma Canyon Significant Watershed; below the intersection of the subject tributary Zuma Creek is within a designated oak woodland. The grading in the tributary is approximately 1,000 feet from Zuma Creek. Exhibit 4 shows the subject streams on the U.S.G.S topography map; Exhibit 5 shows the ESHAs related to Zuma Creek.

Any grading and landform alteration must be reviewed for compliance with Sections 30231, 30240, 30250 and 30251 of the Coastal Act. Section 30240(b) of the Coastal Act calls for the preservation of areas adjacent to parks and ESHAs, requiring that development be compatible with the continuance of habitat and recreation areas and be sited to prevent impacts which would degrade areas. Section 30231 of the Coastal Act mandates that development minimize the alteration of natural streams and protect the biological productivity and quality of coastal waters. Sections 30250 and 30251 of the Coastal Act address the preservation of public views, the minimization of landform alteration and requires that new development not have individual or cumulative effects on coastal resources. The portion of the project stated above does not comply with any of these sections.

To begin with, this amount of grading is clearly excessive and does not maintain the contours of the area. The grading for the terracing of the hillside and the construction of the tennis court, pool, and decking does not minimize the alteration of landforms as required in Section 30251 of the Coastal Act. The construction of these developments could have been done with significantly less grading. If the developments were moved onto the flatter portions of the site grading could have been significantly reduced. For example, the pool could be constructed closer to the residence where grading would be minimal or not necessary at all. The tennis court could be located adjacent to the residence on the flat portion of the lot instead of on a slope where the importation of fill was required to create a flat pad. Finally, if in the current location, the tennis court could have been cantilevered to reduce the amount of grading.

Because less grading and alteration of the natural topography was feasible, the project is considered to be excessive. Likewise, the filling of the drainage course alters the landform and is again inconsistent with Section 30251 of the Coastal Act as it does not maintain the natural landform and does have both individual and cumulative impacts on the area. The changes in the topography lead to changes in the drainage patterns of the site and lead to an increase in sedimentation. These changes were observed by staff during a visit of the site. The significant changes in the topography does not create a development that is compatible with the surrounding area. To the north of the subject site, the area is parkland and remains undisturbed. The remaining adjacent areas are sporadically built out with single family residences. However, the grading on these residences does not involve significant terracing of the lots. This project creates a series of flat pads which are not natural to the hillside slopes of the Santa Monica Mountains.

The applicant contends that the grading is not excessive when compared to other projects approved by the Commission in the Santa Monica Mountains. The letter submitted by the applicant's agent on December 21, 1995 refers to two subdivision projects and ten projects for single family residences. The first project referenced is 5-91-436 (Anden), a subdivision with grading for the access and roads and pads. Grading was minimized for this project, and limited to that necessary for the access road and building pads. Likewise the second project referenced in Mr. Stacey's letter is also a subdivision. This permit application, 5-90-665 (Vanjani), was for a nine lot subdivision of a 35 acre lot with grading for the access road and building pads. Grading was minimized for this development through special conditions requiring the height of cut slopes to be reduced on several of the lots. In both cases, the total amount of grading allowed exceeds the amount proposed in the subject application; however, in both referenced applications the grading was for access roads and building pads, not ancillary structures. Moreover, in each case, the Commission required that grading be minimized to reduce landform alteration and adverse environmental, visual and geologic impacts. Neither subdivision application allowed for grading for ancillary structures, as that would not minimize grading on site.

Finally, the ten applications for single family residences are applications 4-92-160 through 4-92-163 (Lough and World Wide Resources) and 4-93-144 through 4-93-149 (Lough and World Wide Resources). Applications 4-92-160 through 4-92-163, for single family residences with an average of 20,000 cubic yards of grading per lot, were never approved by the Commission. The applicants, facing a recommendation of denial by staff, withdrew the applications prior a Commission decision. Applications 4-93-144 through 4-93-149 for residences on the same lots subject to applications 4-92-160 through 4-92-163, were resubmitted with significant reductions in grading. These residences are located on a ridge above Latigo Canyon in an area accessed by Baller Motorway which was proposed to be widened and paved in the application for the ten residences. The latter applications were approved by the Commission with an average of 4,300 cubic yards of grading per site. The average amount of grading per lot includes the amount of grading for the improvements to the access road. Thus, the total grading on each site is less than 4,300 cubic yards. Moreover, the Commission required grading be minimized and did not approve any ancillary structures such as a tennis court or riding ring. Some of the applications included pools or guest houses, but in all cases, grading was limited to minimize landform alteration and excessive grading.

Thus, in all cases cited by the applicant, grading was minimized and when necessary reduced to avoid excessive grading and to minimize the adverse impacts associated with the grading. The analysis of these permits has shown that the Commission does minimize the amount of grading on site to the minimal amount required for the access road and residential building pad. Moreover, in each case, the amount of grading on the subject site exceeds the amount of grading allowed in each case presented by the applicant.

Next, although the area is not located within an environmentally sensitive habitat area, it is located adjacent to NPS parkland, and the drainage course on site drains into an ESHA which is within an oak woodland. Pursuant to Section 30240(b), development should be sited and designed to prevent impacts which degrade adjacent parklands and ESHAs and should be compatible with the area. This development is not compatible with the area because it creates flat pads, disrupting the topography and natural processes, as noted above. Moreover, the developments will clearly degrade the area by eliminating an area for habitat. The placement of the tennis court and pool with the decking, landscaping and grading covers nearly an acre of this 3.5 acre lot. This acre prior to development was covered with native vegetation and was used for wildlife habitat. It should be noted that a 1977 aerial photograph submitted by the applicant shows that this area was disturbed; however by 1979, the area where the backyard amenities are now sited was revegetated with native vegetation.

Thus, although the area was once disturbed, it had revegetated. Moreover, the immediately adjacent areas are still heavily vegetated. To allow for an increase of disturbance of all lots in Malibu would cause cumulative adverse impacts on the wildlife. Continued expansions of pads and building areas would create islands of parkland between developed tracts, with no corridors for wildlife in between. Without continuity of undisturbed land and corridor between parklands, animals can not migrate through different areas to maintain genetic diversity and insurance against overuse or overgrazing of any habitat area. It is therefore imperative to retain habitat values on lands adjacent to parkland even if the land is not an ESHA.

Similar to the tennis court, pool and decking, the filling of the drainage course also has adverse impacts on coastal resources by changing the water pattern, increasing siltation and erosion downstream, and removing a valuable habitat area. These impacts clearly contradict the mandates of Coastal Act Sections 30231 and 30240. The applicant contends that the grading for the riding ring did not alter any stream course and that the slopes have revegetated with natural foliage. Thus, the applicant contends that there are no adverse impacts resulting from placing a nearly 4,000 square foot riding area in a drainage course.

A drainage course is one in which water is directed from higher areas and then directed in a flow pattern to larger streams and eventually to the ocean. The drainage course on site collected water from the slopes above and directed it to Zuma Creek, a designated ESHA. Zuma Creek then flows to the ocean. Contrary to the arguments of the applicant, filling in this drainage course is inconsistent with Section 30231 of the Coastal Act which specifically mandates the prevention of interference with surface water flow and minimizing the alteration of natural streams.

The filling of the drainage course alters the water flows, velocities and pattern by blocking a previous waterway. No culvert was placed under the fill

slope, thus water which previously flowed through the drainage course will now sheet flow off the fill pad. The plants and soils which absorbed some of the water, decreasing the amount of run-off, are no longer available as they were removed and the area filled in with compacted fill. As a result the water will drain off site faster and in higher quantities. This will cause erosion downstream. Water will also create rills as it flows off the sides of the drainage course and from the road leading to the drainage course where vegetation has been removed. Erosion from the riding ring and slopes will be significant and will cause degradation and siltation on downslope properties. Erosion causes excessive soils to deposit downstream affecting the flora and fauna by changing the soil pattern and opening the seed bank for invasive plant species. Erosion from the road can already be seen. The riding ring itself, because it is unvegetated is subject to erosion adding to the siltation and degradation of the downslope properties. Thus, the filling of this drainage course changes the water pattern, flow and velocities, increases erosion and has negative effects both on and off site. The consulting geologist, for the lessee of the property, stated in his report that the illegal grading in a canyon area to the south of the residence (riding ring area) has altered the flow of natural drainage.

Moreover, the applicant's consulting biologist has confirmed that this drainage, although not a blue line stream, does carry water flows. Although no evidence of recent flows could be seen the biologist noted that the presence of a willow upstream of the drainage course indicates that above and/or below level water flows do occur. Thus, although not a blueline stream, this drainage plays an important role in the ecosystem by providing a wetland type habitat, and will contribute to erosion and siltation when disturbed.

Filling of this drainage course eliminated this water course for wildlife habitat. This drainage course is a tributary to Zuma Creek and acts as a wildlife habitat for animals which also use Zuma Creek. By filling in this drainage course, a wildlife habitat has been removed from use. Aerials of the site prior to its development show the area with vegetation. A vegetated drainage course, such as the subject drainage course, would be used by animals in the area as a water source as well as for food, shelter, and breeding areas. These impacts are clearly inconsistent with Sections 30231 and 30240 which mandate the protection of areas adjacent to ESHAs and parkland and requires the protection of the biological productivity of coastal waters.

There is no vegetation on the flat pad used as a riding ring. The slopes above the riding ring and the access road have revegetated; however almost 60% of the slopes are covered with non-native, exotic vegetation. These two factors contribute to the degradation of the area's wildlife value. For example, there is an abundance of Castor Bean, an invasive non-native exotic plant, on the slopes above the access road and riding ring. Castor Bean is now, due to the disturbance of the seed bank from the original grading, present downslope of the riding ring. Castor bean, as an invasive plant will outcompete the natives for soil coverage and sunlight, thus changing the ecological makeup of the area. This change will decrease the use of the area for wildlife and encourage changes in the types of wildlife that use the area. Finally, the spread of Castor Bean can be directly related to disturbance of the seed bank and the removal of native vegetation which resulted in the grading of the access road and riding ring.

The consulting geologist states that no grading may have occurred here at all. The consulting geologist stated in several places in the report that the riding area is natural. However, the report also states that the riding ring has cut slopes with native soil on top of the cut slopes. The consulting geologist further states that the area is vegetated with native vegetation and is completely overgrown. Finally, the report states that a deer path existed in the location of the foot path and that no new grading occurred for this path. These statements are contradicted by evidence as noted below. To begin with a site visit of the area and photographs of the site clearly show that grading occurred for the footpath and the riding ring. The site visit by staff showed that the riding area is not vegetated with native vegetation, and the slopes are vegetated with mostly non-native vegetation. This evidence, as stated above, shows that the site has been disturbed and graded. Finally, the footpath on the 1977 aerial that the geologist refers to is not in the same location as the existing footpath, thus there is no evidence that the path and riding area previously existed.

Under the Chapter Three policies of the Coastal Act, visual qualities of the area are required to be preserved as well as habitat qualities. Contrary to the mandates of Section 30251 of the Coastal Act, the terraced area with the tennis court and swimming pool will degrade the visual quality of the area as seen from parkland and trails. The project is located adjacent to National Park Service Lands. As such, the site is highly visible from this NPS parkland and the trails on this property (See Exhibit 6). This site is also visible from Cavalleri Road and the Coastal Slope Trail as it leaves Cavalleri Road. Section 30251 of the Coastal Act requires that the scenic and visual resources of an area be protected as a resource of public importance. Moreover, Section 30251 states that the alteration of natural landforms shall be minimized and compatible with the surrounding area. This project creates terraces down a east facing slope and fills in a drainage course; these activities significantly change the topography and alter the physical surroundings. These changes create negative visual impacts by altering the natural landforms and creating flat man-made pads. Landscaping would not mitigate the visual impact as the terraced slopes and the developments are large and visible from a distance. Many people use these trails, or visit parklands, to have a natural experience and view areas in their undisturbed states. By allowing significant developments to occur which are not compatible with the existing area, it disturbs the natural experience of the trail and park user.

The applicant contends that since the site is not located within a designated scenic area, as listed in the Malibu Land Use Plan, that the site is not subject to compliance with Section 30251 of the Coastal Act. However, Section 30251 of the Coastal Act calls for the protection of scenic quality as a resource of public importance. It states that development be designed and sited to protect public views, it does not state that this regulation only applies to areas in designated scenic areas. Moreover, as stated above, the site is visible from National Park Land and trails in the area. The cumulative effect of allowing excessive grading and terracing of sites in the Santa Monica Mountains will result in manufactured hillsides and not a rustic rural looking National Recreation area. The protection of views from these areas is of importance as stated in Section 30251 of the Coastal Act.

Section 30250(a) of the Coastal Act requires that new development not have adverse effects on coastal resources and specifies that these effects shall not result from either individual or cumulative activities. The excessive

grading which changes the landforms, also alters the water patterns of the area, reduces habitat values, and creates adverse visual impacts by removing the native vegetation, changing the topography and then covering the topography with an impervious surface.

The changes in the topography change the run-off patterns, by reducing the amount of water absorbed on site, increasing the amounts of run-off and increasing the velocities of runoff from the site. Likewise, the placement of impervious surfaces over a previously vegetated hillside reduces the amount of water previously absorbed on site by plants and the soil. These two actions change the water pattern, flows, and velocities off site. Water that previously drained into the site now drains off site at increased velocities, leading to changes downslope. With this extra water draining off site at increased rates, as water leaving a smooth surface will, there is an increase in erosion at the end of the pervious surfaces. There are increases in sedimentation and siltation off site and this degrades the area. Likewise, the change in the topography changes where water leaves the site and leads to new gullies and erosion on and off site. The applicant contends that the developments have not resulted in adverse effects from changing the water pattern. A visual inspection of the site by staff showed that erosion is occurring on site which increases sedimentation downstream. Other impacts, such as changes to the quantity and quality of water in underground water tables and aquifers can not be quantified without studying the underground water system, Such a review is beyond the capacity of this project.

Next, the applicant contends that the developments do not remove a valuable habitat area and thus the project is not inconsistent with Section 30250(a) of the Coastal Act. However, the cumulative effects associated with the removal of large areas of vegetation for ancillary structures include the removal of physical places for animals and plants to thrive. If all properties in the Santa Monica Mountains were allowed to defoliate large tracts of land, there would be no wildlife value in the Santa Monica Mountains. To only maintain the ESHAs would leave the ESHAs as islands of habitat surrounded by built-out areas. In order to protect ESHAs and maintain continuity throughout the Santa Monica Mountains ecosystem, it is necessary to preserve areas in their natural state. As proposed, this development removes a significant portion of the lot from providing a habitat value. The individual and cumulative effects of this development will be adverse to the coastal resources of the area.

In addition, the excessive grading and landform alteration of the tennis court, pool, and decking results in a loss of habitat in the immediate vicinity. This development removes the underlying areas from potential feeding, breeding and shelter sites for wildlife. Prior to the construction of these structures, the area was vegetated with chaparral plant species and provided a habitat for native animals. This vegetated area acted as a buffer area between the NPS parkland and the residence. Now, there is no buffer area between the graded, developed site and the NPS property. The buffer area, which is an undeveloped strip between the development and the natural areas which is not used by wildlife as readily, has now been extended beyond the residence onto NPS parkland. A portion of NPS parkland will have a reduced wildlife value because it is acting as a buffer strip, and therefore, NPS parkland is negatively affected by this development.

These individual adverse impacts would have a detrimental impact on NPS property and the entire Santa Monica Mountains, if residential lots were routinely allowed to do large amounts of grading and landform alteration for

ancillary structures. With every lot that is allowed to extend development to its property line with grading and the placement of impervious surfaces, there is a direct impact on adjacent land, as noted above. These adverse impacts are clearly inconsistent with Section 30250(a) of the Coastal Act.

The Commission has previously denied projects for tennis courts and other ancillary uses based on visual impacts and non-conformance with the surrounding area. For example, in 4-92-201 (Fryzer), the Commission denied the applicant's request for the construction of a 2,450 square foot paddle court finding that the development created adverse visual impacts with the placement of a large ancillary structure. In 5-90-327 (Javid), the Commission approved a large subdivision with a special condition which required that no grading for the placement of tennis courts or other ancillary structures would be allowed. This restriction was placed on site to protect the visual views of the area, to maintain the natural landforms of the area and leave development subordinate to the area. Both of these sites are located a few miles to the north of the subject site and are visible from Pacific Coast Highway and trails in the area.

More often, the Commission in past permit actions has, both in developed and undeveloped areas, restricted grading for proposed development, and denied projects based on excessive grading because it was determined that the development did not minimize landform alteration and individual and cumulative impacts on coastal resources. Further north of the subject site, off Saddlepeak Road, the Commission denied the after-the-fact permit request by Bernie Neale (5-90-078) for the importation of 2,294 cubic yards of fill on site to improve the backyard area with a swimming pool on a site with an existing single family residence. This was denied after the applicant already reduced the proposed project from 3,887 cubic yards of fill.

In 5-90-661 (Allen), the applicant was proposing an after-the-fact application to install a culvert and place 1,250 cubic yards of grading in a ravine on a lot with a single family residence. The Commission denied the project based on excessive grading, landform alteration and sensitive environmental resource impacts. After reducing the amount of grading several times, the applicant was finally granted a permit [4-92-202 (Allen)] when the project was reduced with the minimum amount of fill necessary, less than 100 cubic yards, to just cover the culvert. The Commission allowed the placement of the culvert in this ravine only after it was shown that the culvert was required due to a high water table on this site. In 5-91-328 (Contis), the Commission approved a project for the removal of a culvert and fill from a drainage course on Saddlepeak Road. The applicant originally applied to keep the culvert and 360 cubic yards of fill, but changed the project due to staff concerns. In the Commission's most recent actions involving the filling of drainage courses, the Commission not only denied an after-the-fact proposal to fill in a drainage area which was not an ESHA, but ordered the applicant to restore the site. This application, 4-92-206 (Tahmasebi), was denied by the Commission in October of 1994 for the filling of a drainage course for a portion of the residence and backyard improvements. The Commission found that the placement of the fill in the drainage course was excessive, did not minimize landform alteration, and created adverse impacts both on and off stream through an increase in erosion and siltation. The Commission immediately after denying this project approved a restoration order [4-92-206RO (Tahmasebi)] to require the applicant to remove the culvert and fill and restore the drainage course to its pre-violation condition.

CEQA requires that alternatives to a projects be reviewed prior to denying a project. There are alternatives to this project which could make this project approvable. One alternative is to redesign the tennis court and swimming pool area closer to the residence to reduce the terraced pads. The tennis court could be cantilevered to reduce grading. This would, however, not necessarily reduce the visual impacts. Another alternative would be to reduce the amount of development proposed on site. Given that there is a flattened area adjacent to the residence, this area could be used for the tennis court or swimming pool, instead of the horse corrals. Another example would be to remove the tennis court and put the swimming pool adjacent to the residence. With regards to the riding ring, the best alternative is no project. There is no development that could occur in the drainage area without the grading for the access road or without causing adverse impacts. Any alternative to this project would need to involve clustering the development, reducing the grading, and possibly reducing the amount of ancillary structures. However, none of these other alternatives are before the Commission at this time. Staff has provided ample time to the applicant to modify the proposed project. The applicant has not provided staff with any alternative designs or proposals. Therefore, the Commission finds that this portion of the project is inconsistent with Sections 30231, 30240, 30250(a), and 30251 of the Coastal Act and is therefore denied.

C. Geologic Hazards

Section 30253 of the Coastal Act states in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Staff notes that no geologic reports appeared to have been done prior to the grading for the ancillary structures. However, both the applicant and the lessee have provided staff with geologic reconnaissance reports of the site. The applicant has submitted a geologic reconnaissance report dated January 20, 1996 by Solus Geotechnical Corporation; the current lessee of the property submitted a geologic report dated June 5, 1995 and prepared by Mountain Geology, Inc. on behalf of himself. The report submitted by the lessee addresses the stability of the as-built project. This report was submitted prior to the applicant's consultant was provided access to the site. In this initial report, the consulting engineer has made the following observations:

Portions of the tennis court and pool decking derive support from loose, uncertified fill and are subject to differential settlement and distress.

The loose fill is subject to creep, erosion, and surficial failure.

Cut slopes have been created near-vertical and are considered non-conforming.

Illegal grading in a canyon area to the south of the residence (riding ring area), has altered the flow of natural drainage.

With respect to these observations the consulting geologist has concluded to the potential buyer (the lessee) that:

It is our opinion that purchase of the subject property represents a moderate risk with respect to geologic hazards such as landslides or active faults.

In the recently submitted report, submitted on behalf of the applicant, the consulting geologist has stated that although the fill was apparently placed on site without the supervision of a soils engineer and thus is considered potentially unstable, there is no evidence that the structures suffer from adverse settlement or creep. The consulting geologist for the applicant has made some observations about the site which contradict what the biologist, the lessee geologist and staff have observed on the site. These discrepancies include stating that the riding ring area does not appear to be graded and is completely overgrown with native plants; the slopes adjacent to the tennis court maintain their natural plant ground cover and that the area was used for farming prior to the construction of the residence. As stated in previous sections, the biologist has confirmed that the site is covered with more non-native vegetation than native vegetation and that the riding area is not vegetated. Moreover, staff review of historic aerials show that portions of the site were disturbed but there is no evidence to suggest that any farming ever occurred on this site. Finally, staff has seen erosion and surficial failure of the slopes on site.

The geology report by the applicant's consultant does make the findings that the site is not within the boundaries of any known landslide and that no active or potentially active faults are known to traverse the area. The consulting geologist further concludes that because the fill was put in place without supervision it is considered non-structural and not intended for support of structures. As such, the geologist considers the fill to be unstable and states that the fill may be subject to failure at some time in the future. Finally, the consulting geologist notes that the path to the riding ring is not considered suitable for passage by motorized vehicles or riders on horseback.

In order for a project to be found consistent with Section 30253 of the Coastal Act, the Commission must find that the project, with recommendations if necessary, would be free from hazards based on the consulting geologist's recommendations. When a consulting geologist finds that a project has a moderate or high risk associated with it, the project can not be found to be consistent with Section 30253 of the Coastal Act.

In this case, the applicant's consulting geologist has offered no recommendations to stabilize the site. The geologist consulted by the lessee

has stated that the potential for differential settlement may be reduced by improving and maintaining drainage on site. Specifically for site stability, the geologist recommends that all loose fill be removed and recompacted; additional grading occur to trim the near-vertical slopes to an acceptable level or construct retaining walls; portions of the tennis court and pool decking supported by loose fill shall be underpinned with footings; and that drainage devices should be checked for performance.

With regards to the construction of the tennis court, pool, decking, landscaping and riding ring, based on the findings of the submitted reports, which as stated above shows that the site as-built is not free from hazard, the Commission finds that the site as built is not consistent with Section 30253 of the Coastal Act as it does not provide for geologic stability. The tennis court and pool decking are not built on engineered fill slopes and as such are subject to failure. The stabilization of the near-vertical cut slopes would require additional grading or retaining walls; both these actions would be inconsistent with the Coastal Act as it would not minimize adverse impacts on coastal resources as noted in the preceding section. The fill of the drainage course is causing adverse geologic impacts by blocking water flow and increasing erosion. Moreover, the applicant's consulting geologist has stated that the path leading to the riding ring is considered unsafe for passage by horses. Thus, there is no safe access to this riding ring. In conclusion, the Commission finds that the project does not minimize geologic hazards, but rather creates an increased geologic hazard on site. The applicant has not supplied any alternatives to mitigate the risks which exist on site. Therefore, the portion of the project noted above as proposed shall be denied.

The applicant contends that since the tennis court and pool are not habitable structures that the stability of the site is not pertinent. Moreover, the applicant claims that although the report submitted by the lessee states that the site is subject to erosion and failures, none are cited in the report. These contentions are not accurate. To begin with, Section 30253 of the Coastal Act mandates geologic stability of sites and that development does not create adverse impacts off site; these mandates are not restricted to habitable developments. Any development proposed must not have adverse effects or lead to adverse effects off-site. The applicant's geologist has stated that there is no evidence that the fill was structurally engineered and thus is considered unstable. No evidence has been submitted which conclusively shows that this development is stable and will not lead to adverse effects on or off site. The information submitted by the lessee's geologist, as noted above, shows that there is some instability and that there is a potential for failure based on the inadequacies in construction. Finally, a site inspection has shown erosion and failures on the slopes adjacent to the tennis court and above the access road. Therefore, the developments noted above are not consistent with Section 30253 of the Coastal Act.

With regards to the restoration of the NPS parkland and the placement of the horse corrals, no grading or other development which requires geologic review is proposed. These portions of the proposed development will not therefore, have adverse geologic impacts and are therefore, as proposed consistent with Section 30253 of the Coastal Act.

D. Violation

The development of the tennis court, swimming pool, decking, landscaping, riding ring, access road and 6,716 cubic yards of grading all occurred prior to the submittal of this application. Discovery of this violation, by staff occurred in June of 1994. Some of the unpermitted grading on site occurred in 1984, and the tennis court was constructed prior to May of 1986. The swimming pool was constructed in 1990; the riding ring was constructed circa 1988.

When fill is imported onto a site and not compacted correctly or left without landscaping as in the case of the riding ring, the result is an increase in siltation from the fill slope into any coastal waters adjacent to the site. The fill in the drainage area causes run-off into the downstream portions of this drainage. This drainage course flows into Zuma Creek a U.S.G.S blue line stream and recognized EHSA. The increased flow of sediments into the drainage can be expected to also occur in the stream. The increased sediments in the water courses upsets the flow of water or the direction of flow. This in turn negatively affects the habitat value of the stream and the water quality of the stream. Finally, by filling the ravine on the applicant's property, there is a direct loss of habitat for those species which require a riparian type habitat for survival. The cumulative loss of habitat in the Santa Monica Mountains as development pressures increase is a serious problem.

In addition to the grading, the applicant placed impervious surfaces over much of the slope where the tennis court and pool are located. This changes the water patterns by increases velocities and decreasing the absorption of water into the ground. These changes alter the water table and affect the stability of the area. They also affect the habitat values and cause adverse impacts downstream with the changes in water patterns.

In this case the site, as it exists, represents a moderate risk from a geologic standpoint because of the improper engineering and construction of the tennis court, swimming pool, riding ring and access road. Moreover, there is an on-going loss of habitat from the removal of vegetation on this slope. Likewise from the development there is an on-going visual impact. Thus there are on-going impacts to coastal resources from the terraced backyard and developments.

Finally, the Commission notes that although development has taken place prior to the submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter Three policies of the Coastal Act. review of this permit does not constitute a waiver of any legal action with regard to an violation of the Coastal Act that may have occurred.

E. Local Coastal Program

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

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. However, on March 28, 1991 the City of Malibu was legally incorporated. Therefore, the previously certified County of Los Angeles Malibu/Santa Monica Mountains LUP is no longer legally binding within the City of Malibu and is therefore, no longer used within the City as a guidance document.

The proposed development as conditioned for approval, and as modified through the denial of Chapter Three inconsistent portions of the development, will not create adverse impacts and is consistent with Chapter 3 policies of the Coastal Act. The Commission finds that partial approval and partial denial of this project will not prejudice the ability of the City of Malibu to prepare a Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act. Therefore that portion of the development which can be approved is consistent with Section 30604 (a) of the Coastal Act.

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.

There are no negative impacts caused by the approval portion of the development which have not been adequately mitigated. Therefore, the portion of the project involving the restoration of NPS property is consistent with CEQA and the policies of the Coastal Act.

However, the remainder of the development, specifically the construction of the tennis court, swimming pool, decking, landscaping, riding ring and 6,716 cubic yards of grading, are not consistent with CEQA and the policies of the Coastal Act. There are feasible alternatives to this portion of the development which would lessen the impact on the environment. CEQA requires that alternatives be reviewed whether or not the project has been completed. One such alternative would be to redesign the project to reduce the grading. With regards to the tennis court and swimming pool, alternatives could include eliminating the tennis court and moving the swimming pool closer to the residence, or moving the swimming pool and/or tennis court to a flatter portion of the site. Another alternative site which is flatter is the location of the horse corral, south of the residence. A final alternative for the swimming pool and tennis court would be to put the swimming pool closer to the residence and cantilever the tennis court to reduce grading for both developments.

With regards to the riding ring and access road, the best alternative is no project. The riding ring is located in a drainage course and the access road is contributing to slope instability. An alternative to keep the riding ring,

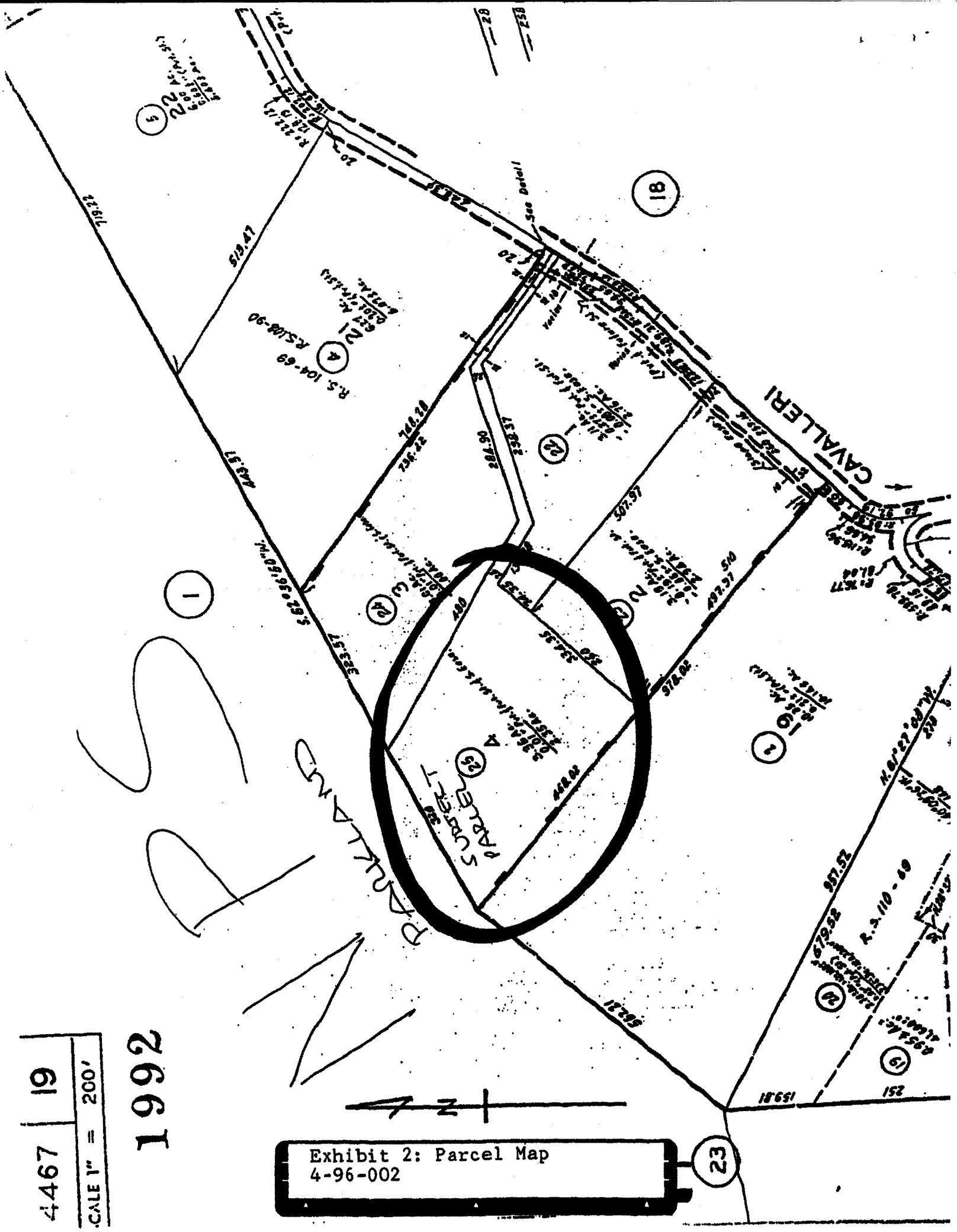
would be to eliminate some of the other appurtenant structures, such as the tennis court and swimming pool, to allow a ring closer to the residence on a flatter portion. There is not enough flat portions of the site to have all the proposed structures without adverse environmental, visual and geologic impacts. Therefore, any alternative must address the redesign, relocation and elimination of portions of the proposed developments. Finally, CEQA does allow for "no project" to be an alternative. In this case, the removal of all developments would be the best alternative for it would eliminate the grading and visual impacts and would not create a geologic hazard. The Commission, therefore, finds that the proposed development, with the exception of the portion of the development involving the restoration of the NPS property, is inconsistent with CEQA and the policies of the Coastal Act. There are feasible alternatives which would lessen or remove the adverse impacts caused by this development. Therefore, this development is denied.

1937M

4467 | 19
SCALE 1" = 200'

1992

Exhibit 2: Parcel Map
4-96-002



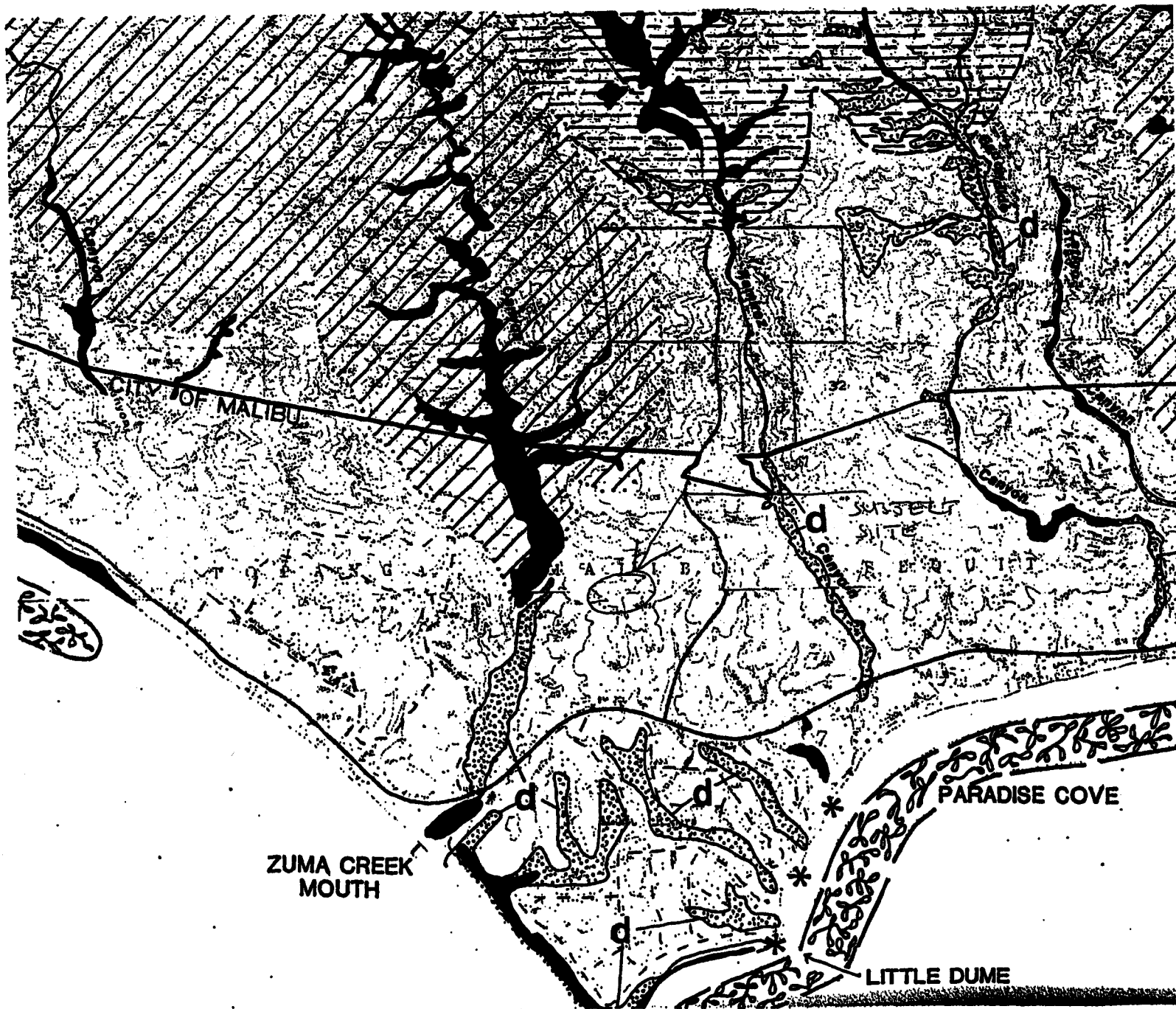


Exhibit 5: Resource Map
4-96-002

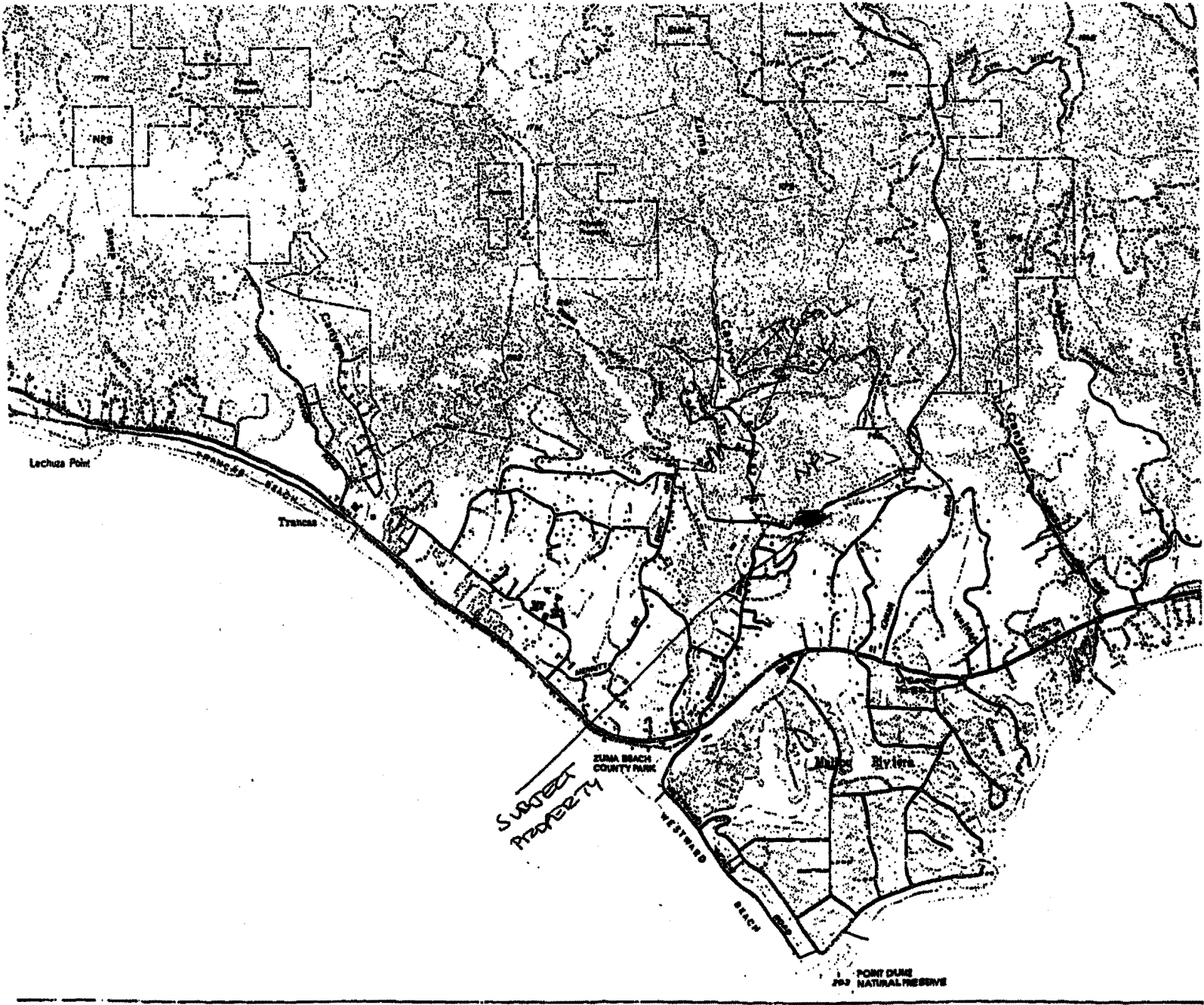
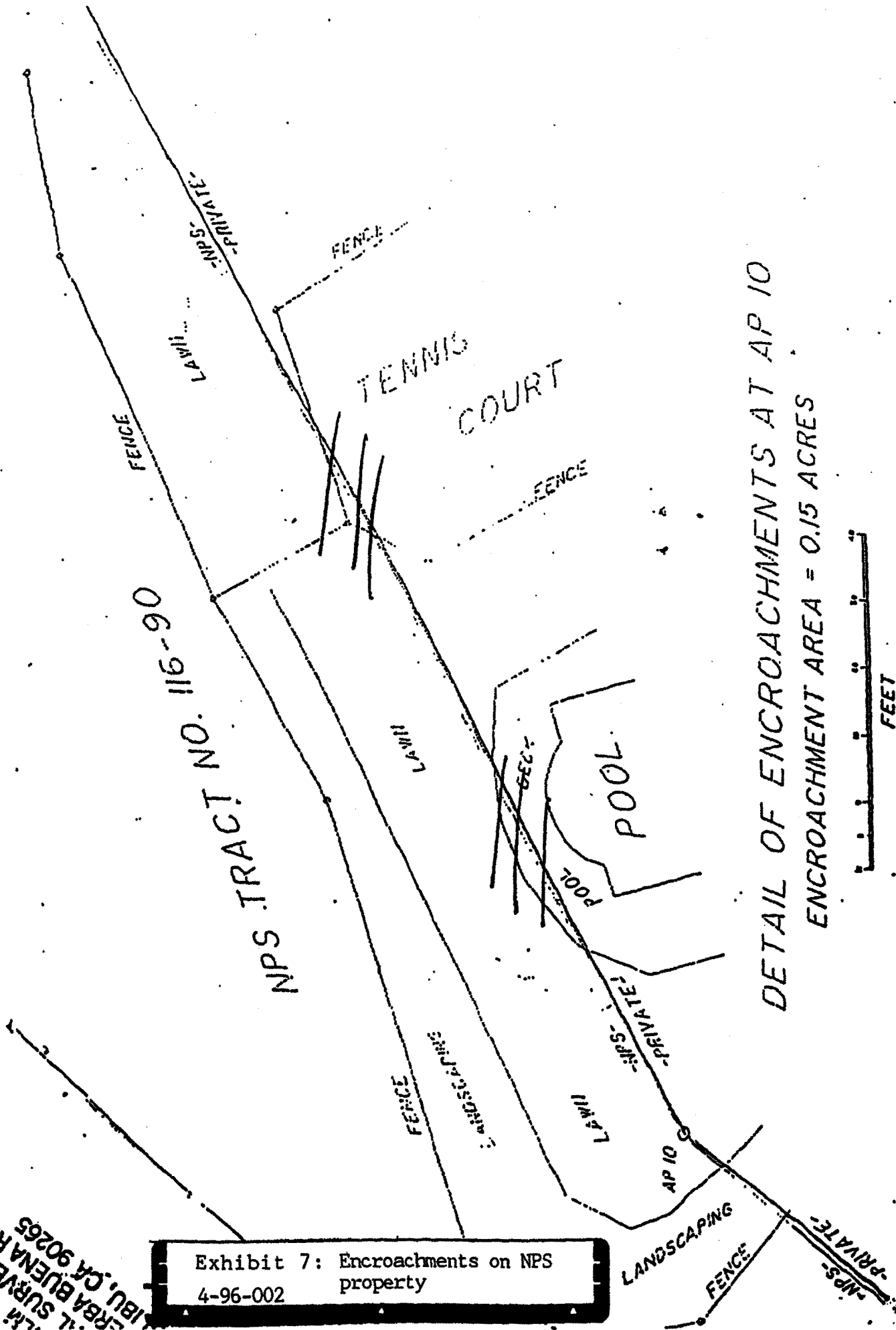


Exhibit 6: Trail Map
4-96-002

L.S. SURVEYS
1800 BUENA RD.
SAN DIEGO, CA 92108

Exhibit 7: Encroachments on NPS property
4-96-002



DETAIL OF ENCROACHMENTS AT AP 10
ENCROACHMENT AREA = 0.15 ACRES



**TOPANGA-LAS VIRGENES
RESOURCE CONSERVATION DISTRICT**

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MAR 01 1995

CALIFORNIA
COASTAL COMMISSION
SOUTHERN COAST DISTRICT

**RESTORATION PLAN FOR CAVALLERI DRIVE PROPERTY
ENCROACHMENT ON NATIONAL PARK SERVICE PROPERTY**

by Topanga-Las Virgenes Resource Conservation District Restoration Staff
May 13, 1994

SUBJECT: Ecological restoration of private property encroachment onto National Park Service property at 6087 Cavalleri Drive, Malibu

The upper portion of this 0.15 acre encroachment is level and currently planted in non-native grasses. A lawn occupies approximately 1/4-1/3 of the 0.15 acre. The slope currently is planted largely with African daisy and other nursery stock. Consistent with the disturbed soils of the garden, castor bean and fennel have invaded this and other sites on the property. Below the fence line, a typical coastal sage scrub community is present.

The current property owner, P.N.C. Mortgage, has requested that Topanga-Las Virgenes Resource Conservation District prepare a plan for restoration of this site.

In restoring this site, several considerations must be given attention:

1. Native plant species selected for restoration must be consistent with those naturally growing on the canyon slope;
2. Plants introduced must be of similar genetic stock to those found in the canyon;
3. Removal of exotic vegetation should occur with minimum disturbance to the soil, to prevent weed growth;
4. Highly invasive exotic plants on the property should be removed to prevent intrusion into newly planted areas in the Park;
5. An irrigation system needs to be installed so that plants will receive regular water during the first year, with a design that will prevent growth of surficial broad-leaved weeds. Soil moisture content needs to be monitored to ensure sufficient volume and sequences of water to plants. The watering system will be removed at the onset of winter rains in 1995.

WORK PLAN

EXOTIC PLANT REMOVAL: Removal of exotic plant species is necessary to ensure the short-term growth and long-term persistence and viability of the restored native plant community.

Non-native (exotic) plants will be sprayed with the herbicide Roundup. Roundup is the principle terrestrial herbicide used by government agencies, such as California Department of Parks and

Exhibit 8: Restoration Plan

4-96-002

Recreation, and by restoration ecologists in the private sector. It biodegrades efficiently and kills vegetation and roots quickly.

Procedure:

1. Spray with 2% Roundup.
2. Wait a minimum of two weeks.
3. Water and observe for regrowth of any exotic species
4. Re-apply herbicide if needed.

This procedure is necessary for controlling the invasion of exotic plant species and eliminates soil disturbance. We recommend that fennel (*Foeniculum vulgare*) and castor bean (*Ricinis communis*), both highly invasive species, be removed from all areas of the present residence. Owing to the invasive nature of these plants, their removal from the entire property is necessary to avoid chronic invasions into the newly restored National Park Service property. Private property owner approval is necessary for this action. If approval is denied, the TLVRCD will need to add maintenance time to the budget in order to ensure success of NPS property restoration.

PLANT SELECTION: TLVRCD restoration staff have visited the site to inventory species diversity and observe species composition on this predominantly coastal sage scrub north-facing slope within the National Park. Native seeds will be collected from areas adjacent to and contiguous with the 0.15 acre site. Plants will be selected from local genetic stock in the Santa Monica Mountains. Species will also be chosen on the basis of erosion control potential. Owing to the likelihood of some garden runoff, consideration has been given to selecting species that will tolerate some summer water.

At the slope top, species have been selected that are lower growing, and can be managed, if necessary, to reduce fuel-loading prior to the fire season.

The following plant list is consistent with our goals for the north-facing slope:

- * plants not on slope, but observed in nearby area

Trees:

California Black Walnut
 Mexican Elderberry

Juglans californica
Sambucus mexicana

Shrubs:

Mountain Mahogany
 Holly-leaved Cherry
 California Lilac
 Coffeeberry
 Mesa Bushmallow

Cercocarpus betuloides
Prunus illicifolia *
Ceanothus spinosus *
Rhamnus californica *
Malacothamnus fasciculatus *

Sub-shrubs - at slope tops and interspersed on slope:

Coastal Buckwheat
 Purple Sage
 California Sagebrush
 Fuchsia Flowering Gooseberry
 Bush Monkeyflower
 California Fuchsia
 California Sunflower

Eriogonum cinereum
Salvia leucophylla
Artemisia californica
Ribes speciosum
Mimulus longiflorus
Zauschneria californica
Encelia californica *

Native grassland:

Foothill Needlegrass
Blue-eyed Grass

Stipa lepida *
Sisyrinchium bellum *

SEED COLLECTION: Local seed will be collected in June at sites contiguous with this project.

ESTABLISH IRRIGATION SYSTEM: Irrigation may be a combination of techniques dependent upon local seasonal climate conditions (e.g. drought) and potential invasive species including gophers and exotic plants. Property owner at 6087 Cavalleri will supply water. Irrigation system will be removed at the onset of winter rains in 1995.

FENCING: Fencing, at request of National Park Service, will be installed by property owner of 6087 Cavalleri Drive. Wildlife passable fencing will be placed along the property line to protect the restoration area from human/domestic animal disturbance while the native plant community is becoming established. Spit-rail or post-and-rope fencing is appropriate, but other wildlife passable fence construction could also be used at the owner's discretion, providing it blends in with the surrounding area and is visually pleasing.

PLANTING: All plants will be planted with minimal soil disturbance and when no weed re-growth occurs after the Roundup treatment. Dead exotic plants will be clipped, but the roots will be left in place to minimize soil disturbance, with clearing only for planting of selected natives. At time of planting, there should be a deep watering to aid in establishment. Consistent with establishment of native plants, a hole will be dug to the depth of the container plant that is 1.5X the diameter of the container. Tree species, such as black walnut (*Juglans californica*) will be spaced 20 feet apart. Soil will be firmed in place, and a soil well around each plant will be formed to hold water.

MAINTENANCE AND MONITORING: Plant maintenance and monitoring will be conducted through the second summer after initial planting. For example, if all plants are in the ground by June, 1994, maintenance and monitoring would occur through the summer of 1995. Amount and regularity of plant watering will be determined by measuring soil moisture content. During the dry season, plants will be watered approximately one time/month for the first year. Should a dry or drought year occur, some water may be needed for the second summer. Any broad-leaved non-native plants that compete with the natives will be removed until there is continuous native cover. To minimize maintenance and to foster growth of newly established natives, invasive exotics (fennel, castor bean) must be removed from the property.

Photographic monitoring will be implemented at selected site quadrats to record restoration results.

TIMELINE

MAY 1994:

Planning phase

Develop plan in coordination with NPS Resource Management staff; submit plan for National Park Service approval prior to beginning work phase.

Work plan phase

Spray non-native vegetation with Roundup, water; repeat cycle if necessary.

Collect seed.

Remove fence - to be done by 6087 Cavalleri Drive property owner.

Install irrigation system.

Purchase native plants with local genetic seed stock (50% payment due to hold stock; 100% balance paid on delivery)

JUNE 1994:

Plant available stock after exotic species are extirpated.

Grow grasses - allow 6-8 weeks for planting.

JUNE 1994 TO FIRST RAINS OF RAINY SEASON:

Water and weed on monthly cycle.

JULY 1994 - SEPTEMBER 1994:

Plant native grasses and remaining plants in fall.

NOVEMBER 1994 - MARCH 1995 -- WINTER RAIN PERIOD

Remove weed growth; maintain on an as-needed basis.

SUMMER 1995:

Continue watering plants depending on drought conditions.

ONSET OF WINTER RAINS 1995:

Remove irrigation system.

RECOMMENDATIONS FOR PRIVATE PROPERTY LANDSCAPE MANAGEMENT

1. Remove invasive non-native plant species from property.
2. We also recommend that the lawn on the private property be converted into a native grassland. The TLVRCD will provide a species list upon request.

BREAKDOWN OF BUDGET COMPONENTS

PROJECT COORDINATION.....	2,800.00
- Interface with NPS and Contractors	
Project Supervisor	
60 hrs @ \$30/hr	1,800.00
Conservation Biologist	
20 hrs @ \$50/hr	1,000.00
EXOTIC PLANT REMOVAL.....	900.00
- Spray NPS property with Roundup.	
Remove exotic plants on property.	
Project Supervisor	
20 hrs @ \$30/hr	600.00
Revegetation Crew	
40 hrs @ \$7.50/hr	300.00
PLANT STOCK.....	2,186.06
- Purchase 1-gallon plants from Matilija Nursery	
350 @ \$3.50 each	1,225.00
8.25% Sales Tax	101.06
- Propagate Native Shrubs and Trees	
Propagation Specialist - Contractor	
Seed and bulb collection	
8 hrs @ \$20/hr	160.00
Growing plants for Fall 1994 planting	
\$0.70 per plant	600.00
Materials	
Bands, planter mix	100.00
PLANTING.....	2,100.00
- Trees, Shrubs, Sub-shrubs	
Project Supervisor	
40 hrs @ \$30/hr	1,200.00
Revegetation Crew	
120 hrs @ \$7.50/hr	900.00
MAINTENANCE & MONITORING.....	2,890.00
- Summer 1994 - 16 visits	
Project Supervisor	
32 hrs @ \$30/hr - 2 hrs/visit	960.00
Revegetation Crew	
64 hrs @ \$7.50/hr - 4 hrs/visit	480.00
- Winter 1994-95 - 6 visits of 4 hrs each	
Project Supervisor	
12 hrs @ \$30/hr	360.00
Revegetation Crew	
24 hrs @ \$7.50/hr	180.00
- Summer 1995 - 9 visits	
Project Supervisor	
18 hrs @ \$30/hr - 2 hrs/visit	540.00
Revegetation Crew	
36 hrs @ \$7.50/hr - 4 hrs/visit	270.00
- Materials for Irrigation	100.00
MATERIALS.....	425.00
- 2.5 gallons 100% Roundup	100.00
- Miscellaneous supplies	175.00
- Backpack sprayer, with harness	150.00
FINAL REPORT	210.00
- Project summary and photographs	
7 hrs @ \$30/hr	210.00
WORKPLAN TOTAL:	11,511.06
Project Administration/Bookkeeping (10%)	1,151.11

	\$12,662.17
ADDITIONAL WORK	
FENCING - NATIONAL PARK SERVICE REQUEST	Cost to be
See Asterisk (*) on Page 3 of Work Plan	Determined
	and Covered
	by Landowner

The National Park Service, P.N.C. Mortgage, and Topanga-Las Virgenes Resource Conservation District hereby approve the attached Restoration Plan for 6087 Cavalleri Drive, Malibu.

TOPANGA-LAS VIRGENES RESOURCE CONSERVATION DISTRICT



Dennis S. Washburn
President of the Board

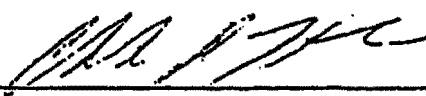
6-25-94 Date



Sean Manion
Conservation Biologist

7-5-94 Date

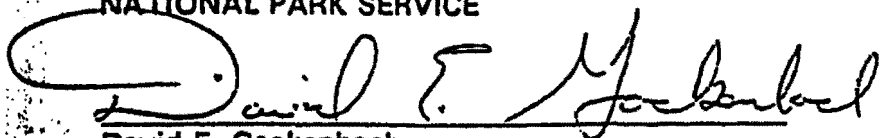
P.N.C. MORTGAGE



Name: **CHARLES R. HOECKER**
Title: **SECOND VICE PRESIDENT**

6/23/94 Date

NATIONAL PARK SERVICE



David E. Gackenbach
Superintendent, Santa Monica Mountains
National Recreation Area

7/12/94 Date

COOPERATIVE AGREEMENT AND CONTRACT
FOR A REVEGETATION PROJECT

This agreement is entered into this 25th day of June, 1994, between P.N.C. Mortgage and the Topanga-Las Virgenes Resource Conservation District, hereinafter called "the District."

P.N.C. Mortgage has requested that the District revegetate an area of national parkland located at 6087 Cavalleri Drive in Malibu. The Plan of Work for the revegetation will be an official attachment to this contract and represents the scope of the restoration project as agreed upon by P.N.C. Mortgage and the Park Service.

I. OBLIGATIONS OF THE DISTRICT

The District shall provide and be reimbursed for the following scope of services within the limit of its authority and resources:

- A. Development of a Plan of Work that will suit the needs of the site and will be approved by the Park Service prior to implementation.
- B. Utilize District personnel and contractors to complete the project pursuant to the Plan of Work.
- C. Perform the work following signature of approval of the Plan of Work by the Park Service.

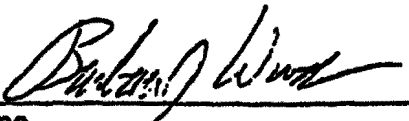
II. OBLIGATIONS OF P.N.C. MORTGAGE

- A. Upon receipt of invoices from the District, P.N.C. Mortgage shall pay the District directly for services rendered as described in Part I and for necessary materials, equipment, and tools. Payment is due on receipt of invoices and is delinquent after 30 days. A service charge of 1% per month will be added after 30 days.

This agreement will be in effect until project is completed by the date set forth on the attached Plan of Work and will remain within budget limits identified in the Plan.

The following signatories approve this contract on the 25th day of June, 1994.

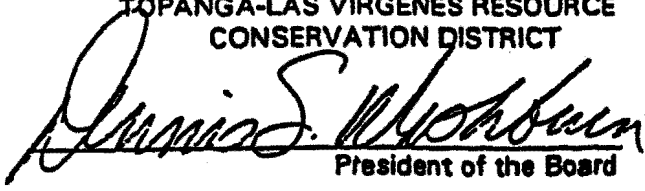
P.N.C. MORTGAGE



Name **BARBARA J. WOODMAN**
ASSISTANT SECRETARY

Date

TOPANGA-LAS VIRGENES RESOURCE
CONSERVATION DISTRICT



President of the Board

6-25-94
Date

Tedra →
shall with Jim B &
Pove

June 22, 1994

gdy 6/23/94

PNCMORTGAGE

Mr. David E. Gackenbach
Superintendent
United States Department of the Interior
National Park Service
30401 Agoura Road, Suite 100
Agoura Hills, CA 91301

JUN 23 1994

Dear Mr. Gackenbach:

In response to your letter of May 20, 1994 we will explain our plan to restore the encroachment.

As you are aware, we are proceeding with the proposal of the Topanga-Las Virgenes Resource Conservation District (RCD), a copy of the signed proposal is included with this letter. We also have an approved estimate from a contractor to remove the fence, pool deck and portion of the tennis court that is encroaching.

However, we have to get Coastal Commission approval before we can begin any of this work. We are hoping they will waive the permit but before we can even apply to Coastal they require written approval from the City of Malibu Planning Department. Malibu Planning has verbally told us they do not require permits for any of this work. We have requested their confirmation of this in writing by June 10, 1994.

Once we have the Malibu Planning letter we can then submit our plans to the Coastal Commission. We believe our request will be scheduled for the next Coastal Committee hearing and that the permit will be waived.

Upon receiving the clearance from Coastal, we are prepared to have RCD begin work. We are in the process of sending them a check to reserve some of the native plants from a nursery, per their request.

Our escrow is not proceeding as well. We have doubts the potential buyer being able to perform and have therefore requested a cancellation of that escrow. The buyer has denied that request so we are in a state of limbo in this escrow. For this reason we do not feel it necessary to have this buyer involved at this time.

Exhibit 9: Restoration Agreement
4-96-002

Page 2
June 22, 1994

We intend to either pay RCD in full at closing or to leave the money in escrow for the completion of the work. This will depend upon how far along the process is at the close of escrow.

We will have this matter included in any escrow that appears to be capable of closing. Our wording would be something to the effect of "Buyer is aware that the property had some of the pool decking, tennis court, landscaping and fencing encroaching on National Parkland. This encroachment is being rectified at no cost to buyer or the National Park Service. Buyer shall not interfere with this process and allow Topanga-Las Virgenes Resource Conservation District and its agents full access to the property until the process is completed. Completion will be when the plants mature and can grow on their own."

We hope this letter includes the information you requested. If you have any further questions please call Audrey Ann Boyle or Tom Dawson at (310)459-0481. We are trying to conclude this matter to your satisfaction in a timely manner.

Thank you.



Susan M. Peterson
Corporate Owned Property Manager
PNC Mortgage Corp. of America

cc: Audrey Ann Boyle
Tom Dawson
file

Trans File

L1425(SAMO)

VIA REGISTERED MAIL

AUG 11 1994

Susan M. Peterson
PNC Mortgage Corp. of America
568 Atrium Drive
Vernon Hills, Ill. 60061

Re: 6087 Cavalleri Road

Dear Ms. Peterson:

Thank you for your letter of June 22, 1994, describing the steps PNC Mortgage will take to rectify the encroachment of 6087 Cavalleri Road, Malibu, on National Park Service land.

Completion of all the steps outlined, including the escrow provisions regarding the buyer's notification and restoration funding, will result in a satisfactory resolution of this matter, with no need for subsequent legal action on the part of the National Park Service. We are forwarding copies of your correspondence to the Office of the U.S. Solicitor in San Francisco.

We appreciate your prompt attention to this matter and the cooperation you have extended to us as we worked toward a resolution that returns national parkland to the public and restores the natural environment. We will monitor the progress of the restoration plan being implemented by your contractor, the Topanga-Las Virgenes Resource Conservation District. To facilitate our monitoring, please submit any proposed changes to the restoration plan timeline to us in writing. If you should have any questions, please contact Tedra Fox at (818) 597-1036, ext. 220.

Sincerely,

David E. Gackenbach

David E. Gackenbach
Superintendent

TFOX:tf:8-11-94

11/25/94

APPLICATION FOR COMBINATION SWIMMING POOL PERMIT

TRACOR
CEB76 (3/78)

COUNTY OF LOS ANGELES BUILDING AND SAFETY

BUILDING ADDRESS 6087 CAVALIERI		BUILDING ADDRESS 6087 Cavalieri Rd	
CITY Malibu	ZIP 90265	LOCALITY Malibu	ASSESSOR Kanan
TRACT RAI	LOT NO. 123-41	USE ZONE RAI	MAP NO. 123-41
OWNER THOMAS SKALA	TEL. NO. 4575300	SPECIAL CONDITIONS	PARCEL
ADDRESS 6087 CAVALIERI		DISTRICT 9.2	STATISTICAL CLASS 31
CITY Malibu	ZIP 90265	VALUATION \$ 50,000	TYPE POOL
ARCHITECT OR ENGINEER THOMAS SKALA	TEL. NO.	FINAL DATE 10-17-90	PROCESSED BY [Signature]
ADDRESS 6087 CAVALIERI	TEL. NO.	FINAL BY [Signature]	
CONTRACTOR THOMAS SKALA	LIC. NO.		
ADDRESS	IC. CLASS		
CITY			
DESCRIPTION OF WORK SWIMMING POOL			
SPA			
SQ. FT. SIZE 100			
ELECTRICAL <input checked="" type="checkbox"/> Steel & Conduit Bonding Conduits, Conductors, Equipment			
PLUMBING <input checked="" type="checkbox"/> P-Trap Gas System Anti-Siphon			
MECHANICAL <input checked="" type="checkbox"/> Swimming Pool Heater			
APPLICANT (PRINT) THOMAS SKALA	TEL. NO. 4575300		
ADDRESS 6087 CAVALIERI RD			
P.C. Fee \$ 679.3	Permit Fee 752.00		
Investigation Fee 13.00	Insurance Fee 13.00		
Total Fee 765.00			

VALUATION
#2536A
#...21
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...6793E
0130-90

#4969A
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1.15132
..15132E
0509-90
#4970A
#...3
1.76500
..76500E
0509-90

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)
 Policy No. _____ Company _____
 Certified copy is hereby furnished.
 Certified copy is filed with the county building inspection department.

Date _____ Applicant _____
CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE
 (This section need not be completed if the permit is for one hundred dollars (\$100) or less.)
 I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner as to become subject to the Workers' Compensation Laws.

Date _____ Applicant _____
NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must furnish with comply with such provisions or this permit shall be deemed revoked.
LICENSED CONTRACTORS DECLARATION
 I hereby affirm that I am licensed under provisions of Chapter 9 commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.
 License Number _____ Lic. Class _____
 Contractor _____ Date _____
 I am exempt under Sec. _____
 B.&P.C. for this reason _____ Date _____

Signature _____ Date _____
SINGLE FAMILY HOME OWNER-BUILDER DECLARATION
 I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):
 I, as owner of the property, will do the plumbing and electrical work, I, or my employees with wages as their sole compensation, or a licensed contractor will do all other work and the structure is not intended or offered for sale (Section 7044 B&P Code).

CONSTRUCTION LENDING AGENCY
 I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Ch. C.)
 Lender's Name _____
 Lender's Address _____
 I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws relating to building, electrical, mechanical and plumbing construction, and hereby authorize representatives of this County to enter upon the above-referenced property for inspection purposes.
 [Signature] _____ 1/29/90
 Signature of Applicant or Agent _____
 Date _____

Exhibit 10: Permit for Pool
4-96-002

SEE REVERSE FOR EXPLANATORY LANGUAGE

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. _____ Company _____

Certified copy is hereby furnished.

Certified copy is filed with the county building inspection department.

Date _____ Applicant _____

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the work involved by the permit is for one hundred dollars (\$100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner to become subject to the Workers' Compensation Laws.

Applicant _____

NOTE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be void and revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 7000 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number _____ Lic. Class _____

Contractor _____ Date _____

I am exempt from the licensing requirements as I am a licensed architect or a registered professional engineer acting in my professional capacity (Section 7051, Business and Professions Code).

Reg. No. _____ Date _____

HOME OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and state laws relating to building construction, and hereby authorize _____ representatives of this County to enter upon the above mentioned property for inspection purposes.

Signature of Permittee _____ Date _____

76A641T
CE 807 (REV. 2-80)

APPLICATION FOR GRADING PERMIT

COUNTY OF LOS ANGELES

BUILDING AND SAFETY

FOR APPLICANT TO FILL IN		SITE ADDRESS <u>6087 Cavalleri Rd</u>	
SITE ADDRESS <u>6087 Cavalleri Rd</u>		LOCALITY <u>Malibu</u>	
LOT NUMBERS _____ BLOCK _____		NEAREST CROSS STREET <u>Kanan</u>	
TRACT NUMBER _____		DISTRICT NO. <u>7-2</u>	MAP NO. <u>127-04</u>
OWNER <u>James Paul Fox</u>		STATE HWY. YES <input type="checkbox"/> NO <input type="checkbox"/>	PROCESSED BY <u>Fairall</u>
MAIL ADDRESS <u>6087 Cavalleri Rd</u>		CUBIC YDS. HANDLED: <u>275</u>	
CITY <u>MALIBU</u> TEL. NO. <u>457-1136</u>		USE ZONE <u>A-1</u> SPECIAL CONDITIONS _____	
ENGINEER _____ STATE REG. NO. _____		GRADING CONTRACTOR _____ TEL. NO. _____	
MAIL ADDRESS _____		FINAL DATE <u>9/14/84</u> BY <u>Lawrence</u>	
CITY _____ TEL. NO. _____		ADDRESS _____	
PROPOSED USE OF GRADED SITE(S)			
<u>existing House</u>			
<u>Remedial Repair of</u>			
<u>Steps & Driveway</u>			
CHECK IF SUPERVISED GRADING <input type="checkbox"/>			
SIGNATURE OF APPLICANT <u>[Signature]</u>			
ADDRESS <u>6087 Cavalleri Rd</u> TEL. NO. <u>457-1136</u>			
SURETY \$ BOND _____		BOND NO. _____	
DATE FILED _____ REC'D BY _____			
CASH DEPOSIT \$ _____		REC'D BY _____ DATE FILED _____	
THIS IS A LIMITED TIME PERMIT			
ALL WORK AUTHORIZED MUST BE COMPLETED BY _____			
TIME LIMIT:			
EXTENDED TO: _____		BY: _____	
EXTENDED TO: _____		BY: _____	
P.C. Fee \$ _____		Permit Fee <u>100.-</u>	
_____		Issuance Fee <u>10.50</u>	
_____		Total Fee <u>110.50</u>	

VALIDATION

2981.3A
. . . . 4
1.110.50
..110.50E
0114-83

RECEIVED
OCT 7 1984
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SEE REVERSE FOR EXPLANATORY LANGUAGE

4-94-170

Exhibit 11: Grading Permit
4-96-002

INSPECTOR

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



COASTAL DEVELOPMENT PERMIT

FILE COPY

Application Number: P-10-3-77-2006

Name of Applicant: Bill Moretti

P. O. Box 4043, Malibu, CA 90265

Permit Type: Emergency
 Standard
 Administrative

Development Location: 6087 Cavalleri Road, Malibu, CA

Development Description: Construct a two-story, single-family dwelling
with attached three-car garage, two feet above centerline of frontage
road, with conditions.

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

See attached Page 3 for conditions.

Condition/s Met On 1/26/78 By ac eb jr ac

Exhibit 12: CDP 77-2006 for residence
4-96-002

A. The proposed development, or as conditioned;

1. The developments are in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and 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 of the California Coastal Act of 1976.
2. If located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone, the development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act of 1976.
3. There are no feasible alternatives, or feasible mitigation measures, as provided in the California Environmental Quality Act, available for imposition by this Commission under the power granted to it which would substantially lessen any significant adverse impact that the development, as finally proposed may have on the environment.

III. Whereas, at a public hearing, held on November 7, 1977 at Torrance by a unanimous ~~xx~~ vote permit application number P-10-3-77-2006 is approved.

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

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

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

VII. Issued on behalf of the South Coast Regional Commission on January 27, 197 8.


 M. J. Carpenter
 Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number P-10-3-77-2006 and have accepted its contents.

 (date)

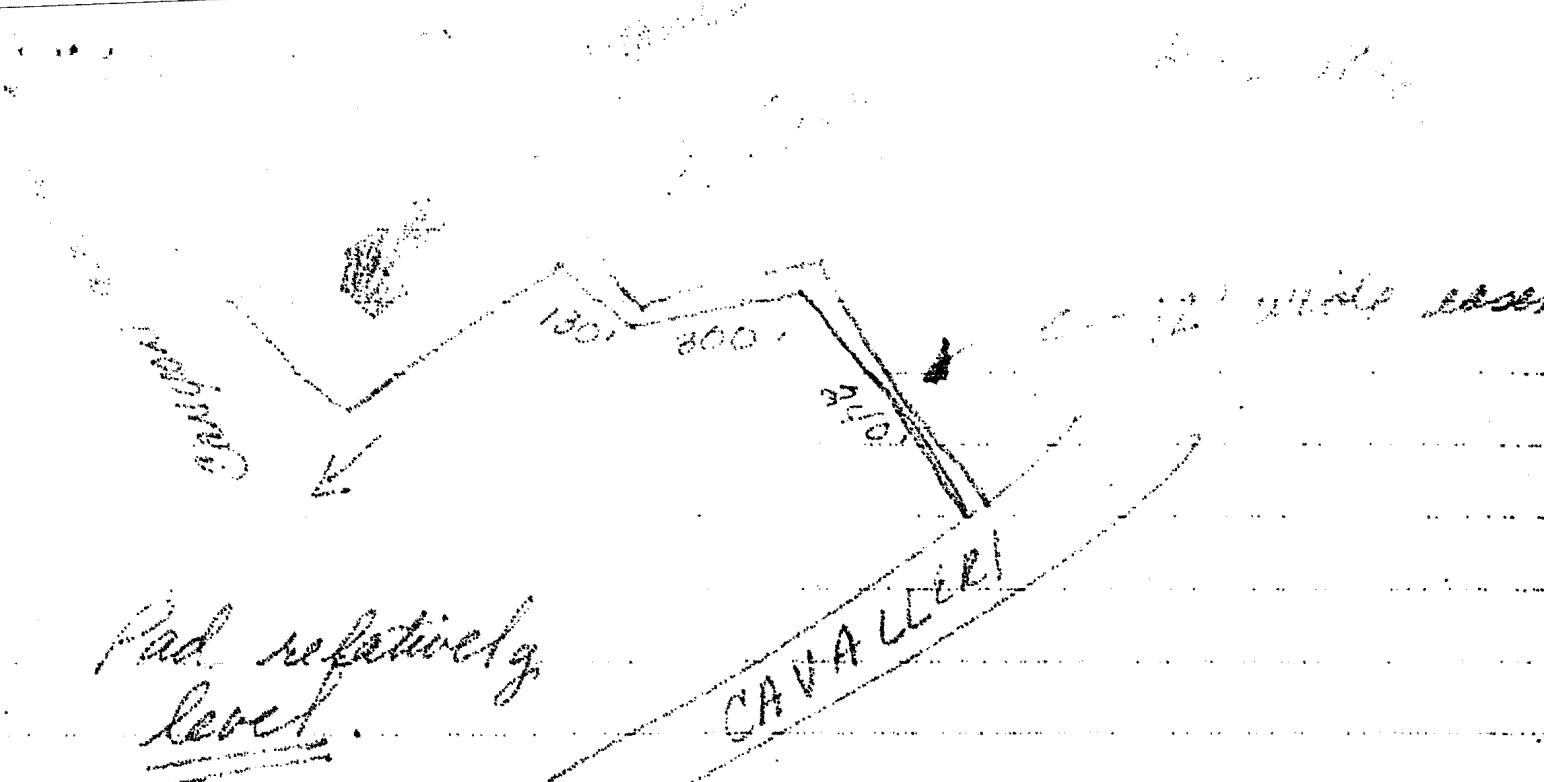
 (signature)

Conditions for P-77/2006

Prior to issuance of permit, applicant shall submit:

1. revised plans indicating the use of pervious material on the access road;
2. a deed restriction for recording which limits the use of the structures to a single-family dwelling; and
3. plans for a drainage system, that shall be constructed and maintained to dispose roof and surface runoff into gravel filled wells or other retention methods that maintain a rate of discharge at the level that existed prior to development, precluding the use of overland storm channels.

* * *



No geology problems.

- ① SF Deed restriction - maids room has exterior access
- ② Canyon - valley area justifies drainage condition even though 3 acre lot.



Exhibit 15: Aerial Photograph
4-96-002 circa 1979


An aerial photograph showing a rural landscape with various fields, roads, and structures. The terrain appears to be a mix of agricultural land and possibly some industrial or utility sites. The image is high-contrast, with dark shadows and bright highlights. A prominent road or path runs diagonally across the lower half of the frame. There are several rectangular structures, possibly buildings or sheds, scattered throughout the landscape. The overall scene is somewhat desolate and appears to be a remote or undeveloped area.

Exhibit 17: Aerial Photograph
4-96-002 circa 1983

TENNIS COURT

FILL DUMPED INTO CANYON SLOPE

Exhibit 17: Aerial Photograph
4-96-002 circa 1990

LAW OFFICES OF
SHERMAN L. STACEY
233 WILSHIRE BOULEVARD
SUITE 510
SANTA MONICA, CALIFORNIA 90401
TEL (310) 394-1163
FAX (310) 394-7841

December 20, 1995

RECEIVED

DEC 28 1995

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Ms. Susan Friend
California Coastal Commission
South Central Coast Area Office
89 S. California Street, Second Floor
Ventura, California 93001

Re: Application No. 4-94-170
PNC Mortgage Corporation
6087 Cavalleri Road, Malibu

Dear Ms. Friend:

This office has been retained to represent PNC Mortgage Corporation ("PNC") in connection with its Application for Permit No. 4-94-170 relating to development which took place prior to the date on PNC took title to the property at 6087 Cavalleri Road, Malibu (the "Property") by trustee's deed in foreclosure in January 1993. I am enclosing my authorization letter signed on behalf of PNC. PNC anticipates proceeding to public hearing on the application at the Commission meeting in Los Angeles in January.

PNC responded to requests from your office to file an application for a coastal development permit related to activities which took place prior to PNC's ownership. By filing an application for permit PNC was not intending to admit that PNC, or any predecessor to PNC, had performed any development which required a coastal development permit. Development which had been undertaken on the Property by others prior to PNC's ownership was not performed in violation of the Coastal Act of 1976.

The application for permit covers several development activities which your office has claimed were undertaken in violation of the permit requirements of the Coastal Act. These development activities include (1) grading to the west of the residence, (2) grading to the south of the residence, (3) construction of a tennis court, (4) construction of a swimming pool, (5) erection of fencing, (6) construction of walls and a deck, (7) installation of landscaping, and (8) installation of a riding ring. Portions of the swimming pool deck, tennis court, fencing and landscaping encroach upon adjoining property now owned by the National Park Service ("NPS").

Exhibit 18: Letter from Agent

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PNC's original purpose in making its application to the Commission was to obtain a permit to remove the encroachments in accordance with an agreement which PNC had reached with NPS. In response to requests from your office, PNC expanded the original application submitted in October 1994 to include the swimming pool and tennis court. Subsequently, on March 31, 1995, PNC's representative expanded the application further by letter to include the grading of a road leading to the drainage course on the west side of the Property, the placement of fill in this drainage course to use the area as a riding ring, and the placement of horse corrals behind the garage.

You have recommended to the Commission that only the corrals behind the garage and the restoration for NPS be approved. You have recommended that all of the remaining development be denied. PNC disagrees with this recommendation. PNC believes that findings under the provision of Chapter 3 of the Coastal Act can be made to approve the development which has taken place. PNC also believes that none of the development requires a permit under the Coastal Act because it is exempt under the provisions of Public Resources Code §30610(a). Finally, PNC believes that no continuing resource damage results from the improvements but that any attempt to restore the Property would result in resource damage.

1. The Development of the Tennis Court and Swimming Pool and the Riding Ring Are Consistent With The Coastal Act.

The Staff has recommended denial of the tennis court, swimming pool and riding ring and the grading associated with these improvements. The Staff Report contains the findings which the Commission is asked to adopt in support of that decision to deny a permit. These findings state that the portions of the improvements as to which the Staff Report recommends denial cannot be found consistent with the policies of Chapter 3 of the Coastal Act. PNC disagrees. PNC believes that the evidence will support the findings that the development which took place, even if a coastal development permit were required, is consistent with the Coastal Act.

a. The Grading and Associated Improvements Are Not Inconsistent with the Environmental Resource Protection Policies of the Coastal Act.

The first basis for the recommendation for denial of the tennis court, swimming pool, riding ring, access road, landscaping and decking is that the grading associated with their construction

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is somehow inconsistent with Public Resources Code §30231 and §30240. The amount of grading that is involved was determined not by any examination of any grading plan or assessment of actual events but on an estimate prepared by a civil engineer by comparing a 1965 survey of the area found in files of the Division of Highways (now CalTrans) to a current survey of the Property. The civil engineer compared the two drawings and made the assumption that all changes were associated with grading. This may not necessarily be the case.

As you are aware, I was recently retained on this matter. As such, although this application has been pending for many months, the state of evidentiary collection by PNC was not very advanced and I have had limited opportunity to collect evidence. PNC retained a geologist some time ago but the current occupant of the Property was uncooperative in allowing access so that the geologist was delayed in being able to perform a necessary onsite evaluation. That has now taken place and I expect to have a report shortly. I also requested the geologist obtain and examine a history of aerial photographs to try to ascertain when any particular improvements might have been undertaken.

The grading for the tennis court and swimming pool locations appears to have resulted from lowering the slope west of the residence by at most 9 feet. The majority of the materials cut from the west of the residence appear to have been deposited along the northerly slope. Some of the materials appear to have also been transported to the southerly drainage course. None of the grading or improvements invaded or altered any coastal stream. Some of the grading has moved the bottom of the southerly seasonal drainage course. It appears that the grading took place in 1983 and that the slopes have fully revegetated with natural foliage. Although the Commission has claimed that the southerly drainage course was filled to provide a "riding ring", observation of the area does not appear to show any fencing or other evidence of the use of the area for that purpose. I do not know what evidence supports the conclusion that the use of the southerly area was for a riding ring.

My collection of evidence as to the issues related to Public Resources Code §30231 and §30240 is continuing. I believe that the evidence will show that the plant communities which exist on the slopes believed to have been altered by grading are presently indistinguishable from the surrounding undisturbed areas. However, certain specific observations about the Staff Report can be made. The map reproduced as Exhibit 5 to the Staff Report is taken from Figure 6 to the Los Angeles County Land Use Plan

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certified by the Commission as consistent with the policies of Chapter 3 of the Coastal Act. The map identifies those areas designated by the County (and approved by the Commission) as being environmentally sensitive habitat areas ("ESHA") as defined in Public Resources Code §30240. Only the area shown in black is designated as an ESHA. See County LUP Policy P57. Other significant resources which are shown on Figure 6 include "Disturbed Sensitive Resources" (see LUP Policy P58), watersheds (see LUP Policy P59) and oak woodlands and savannahs (see LUP Policy P60).

The first thing I would note about Exhibit 5 is that the Property is not located within any of these areas. Although Zuma Creek is generally shown as an ESHA and is surrounded by a substantial watershed, the Property neither adjoins the ESHA nor is it in the watershed. Further, the Property is approximately 1/2 mile from the edge of the Disturbed Sensitive Resource ("DSR") area shown on Exhibit 5. I would further note that the drainage courses which are north and south of the residence on the Property drain not into the ESHA but into the Disturbed Sensitive Resource area. County LUP Policy 61b provides that standards applicable to the ESHA's or DSR's "shall be limited to those areas as depicted on Figure 6".

As to the application of Public Resources Code §30231 and §30240, the Staff Report treats the Property as though it were within a sensitive resource area, not as though it is 1/2 miles from any sensitive resource area. Neither of the drainage courses north or south of the Property are sensitive resource areas. There is no evidence that there has been any impact upon the DSR into which these drainage courses lead even though the grading has existed for the past 12 years. There is no causal connection made between the alteration of the topography and any specific or general impact on any resource whatsoever.

The staff report states that the tennis court, swimming pool and riding ring areas removed a valuable habitat area. This is not true. The area has no particular value which would distinguish it from any other land outside of the sensitive resource areas which the Commission and the County identified. Although you claim that the grading made changes to the water drainage patterns, you show no evidence that these changes have had any adverse impact whatsoever, even though 12 years have gone by to allow those adverse impacts to evidence themselves.

The Staff Report cites the Mountain Geology report for the conclusion that grading has "altered the flow of natural

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drainage" but there is no evidence in that report that this alteration has any adverse effect. Indeed, examination of the civil engineer's plan shows that the maximum area of alteration covers a distance of only 120 feet and that the line of flow enters from the same point as the natural condition and exits at the same point as the natural condition, descending for another 2,500 feet before intersecting Zuma Creek.

The Staff Report concludes that the grading is excessive. However, projects with similar grading have been approved by the Commission. I attempted to research files for such projects when I was at the Commission offices on December 15, 1995. However, the two files in which I was principally interested were not available. I would reference you to the project of Banyan in Encinal Canyon (Permit No. 5-91-436) where the Commission approved a subdivision of 51 homes with far more grading per parcel than has occurred on the Property. I would also refer you to the Latigo Vista project which I believe was file 5-90-665 where another substantial subdivision in Latigo Canyon was approved. Finally, I would refer you to the various applications from the Lough family in Latigo Canyon (4-93-144 through 149; 4-92-160 through 163). Again, I have not been able to fully research each of these project but I believe that they are illustrations of Commission approval of comparable grading in similar topographic circumstances.

b. The Improvements are Not in A Scenic Resource Area And Are Not Dissimilar to Many Other Improvements Visible in the Immediate Vicinity.

The last issue in the recommended findings about grading deals with Public Resources Code §30251 relating to scenic and visual qualities. The Staff Report did not include as an Exhibit the applicable portion of Figure 8 from the County LUP. Figure 8 is entitled "Visual Resources" and identifies scenic elements and viewshed boundaries. Special visual resource policies under Public Resources Code §30251 apply to these areas. If Figure 8 is examined, one would find that the Property is not within the scenic element in Lower Zuma Canyon and is also outside the boundary of the viewshed identified on the map.

The Property adjoins the NPS property. There are trails on the NPS property. However, many homes and tennis courts are equally visible from these trails. The existence of a national recreation area adjoining an incorporated municipality means that you will often have structures visible from the trails. I have hiked the nearest trail from Zuma Creek between the points where this residence becomes visible to the point where it can no longer

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be seen. Throughout this area of the trial numerous homes and improvements, including tennis courts, are constantly visible. Photographic evidence of these visual effects can easily be, and will be, presented at the public hearing.

c. The Recommended Findings On Hazards Will Not Be Supported by the Evidence.

The Staff Report places great reliance upon the Mountain Geology report in the recommended findings on Public Resources Code §30253. This report is quite cursory. I would note that it begins by stating that the swimming pool was constructed without permit, a fact which examination of the public records would show not to be true. The Staff Report uses the Mountain Geology report to support a conclusion that the grading on the Property constitutes some kind of hazard. The Mountain Geology report does not support that conclusion.

I will submit PNC's geology report as soon as I have it. As I have described, it was delayed due to Mr. Powers refusal to allow access on the Property. That issue has been resolved. However, my discussions with Dale Glenn, PNC's geologist, allow me to relate the following facts. First, no habitable structure is supported by any of the grading at issue here. It is true that portions of the tennis court and swimming pool deck are atop the fill slope. However, even were the fill slope to fail, this would pose no risk to the residence and would only affect the outdoor improvements. It seems little reason to destroy these improvements because there is an unquantified risk that they may suffer damage at some unknown date in the future.

Even the Mountain Geology report describes the fill as "a moderate amount". Although the report states that the fill soil is subject to erosion and surficial failures, it does not state that there is any evidence of such failures. Although the report identifies many potential hazards associated with hillside properties, it does not state that the residence on the Property is threatened in any manner by any of these hazards. Indeed, if I were a potential purchaser of the Property, as Mr. Powers sought unsuccessfully to be, these issues might cause concern about the loss of the improvements I was purchasing. However, these same risks do not justify a conclusion that there is a present danger for which the improvements need to be removed in order to remove them from the danger.

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2. No Coastal Development Permit Is Required.

Not all development requires a permit. There is some development which is exempt from permit requirements. The exemption which would apply here is for improvements to an existing single family residence. This exemption is contained in Public Resources Code §30610(a), which provides as follows:

"§30610. Exempt developments and areas

"Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas:

"(a) Improvements to existing single family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter."

As authorized by §30610(a), the Coastal Commission has adopted regulations defining the improvements to existing single family dwellings which would not be exempt. The relevant provisions of California Code of Administrative Regulations, Title 14, §13250, are as follows:

"§13250. Additions to Existing Single-Family Residences.

"(a) For purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered as a part of that structure:

"(1) All fixtures and other structures directly attached to a residence;

"(2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and

"(3) Landscaping on the lot.

"(b) Pursuant to Public Resources Code Section 30610(a), the following classes of development require a coastal development permit because they involve a risk of adverse environmental effects:

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"(1) Improvements to a single family structure: on a beach, wetland, or seaward of the mean high tide line in an area designated for protection as a small-scale neighborhood by resolution of the commission or a regional commission after public hearing; where the residence or proposed improvements would encroach within 50 feet of the edge of a coastal bluff.

"(2) Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 50 feet of the edge of a coastal bluff, or in areas of natural vegetation designated by resolution of the commission or regional commission after public hearing as significant natural habitat;

"(3) The expansion or construction of water wells or septic systems;

"(4) On property located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the commission or regional commission, improvement that would result in an increase of 10 percent or more of internal floor area of an existing structure or an additional improvement of 10 percent or less where in improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

"(5) In areas which the commission or a regional commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including, but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

"(6) Any addition to a single-family residence where the development permit issued for the original structure by the commission or regional commission indicated that any future additions would require a development permit."

There do not appear to be any limitations contained in Administrative Regulation Section 13250 which would make the

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construction of a tennis court, swimming pool, fencing and a riding ring require a permit. These types of improvements are quite common in the Malibu area and fall within the additions to existing single family dwellings which are permitted without permit. Many examples of these types of improvements being installed without permits can be found.

I know of no resolution of the Commission which designates the area where the Property is located as a significant natural habitat or a significant scenic resources area. The County LUP does designate Zuma Creek as an ESHA upstream from where the Property drains and a DSR where the Property drains but Zuma Creek is almost 1/2 mile from the Property. Even the designation in the LUP is not a resolution under §13250(b)(2). The NPS lands may be considered scenic but there is no resolution of the Commission making that designation for the purposes of §13250(b)(4). The County LUP shows specific scenic areas and viewsheds and the Property lies outside the boundaries of each.

The copy of the original permit for the house (Permit No. P-10-3-77-2006) does not contain a limitation that improvements to the residence will require a permit as contemplated by §13250(b)(6). I have not had the opportunity to examine the entire Commission file on Permit No. P-10-3-77-2006 but only the pages shown as Exhibits 12 and 13 to the staff report. There is a condition which limits the use of the residence to a single family dwelling. This appears to be related to the fact that the maid's room has a separate outside entrance and the condition is intended to prevent the separate rental of that room. This was common Commission practice in 1977.

I conclude from this evaluation that the improvements for which the Commission staff has requested that this application constitute an after the fact permit application did not require any coastal development permit from the Commission in the first place. I acknowledge that there was grading associated with these improvements. However, nothing in Regulation §13250 requires a coastal development permit because some grading may be associated with an improvement to an existing single family dwelling. Section 13250(b)(2) deals with alteration of natural land forms but does not apply to the Property. Section 13250(4) deals with significant non-attached structures but again does not apply to the Property. The Commission itself is the author of its regulations. I can only conclude that if the Commission did not write §13250 in a manner to require a permit for grading associated with an improvement which was otherwise exempt, then the Commission must have intended not to require a permit.

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3. PNC Mortgage Did Not Engage in Development.

The Staff Report recommends findings that the improvements on the Property for which the permit is sought were built in violation of the Coastal Act. Even if this were true, PNC did not build them. Further, they were complete before PNC lent money on the Property in October 1990. It is at least interesting to note that with all of the claims of resource damage made in the Staff Report that the grading in 1983, the tennis court in 1988, the swimming pool in 1990 all were completed and it was four years later that the Coastal Commission "discovered" that this had taken place. Indeed, the Commission did not even assert that there had been a violation until after PNC had foreclosed on the Property and taken title in January 1993.

I do not believe that the Commission can find that PNC violated the Coastal Act. Even if predecessors violated the permit requirements of the Coastal Act, those violations were complete, and the object of the violation in place, before PNC placed a deed of trust on the Property. As such the Commission may not enforce either a restoration obligation nor civil fines against PNC.

4. Conclusion.

I will present evidence in support of PNC's position at the hearing in January. To the extent that I receive written evidence from other sources prior to the hearing date, I will provide it to you promptly. I expect that most of the evidence will relate to the issues which I have presented in this letter.

Very truly yours,


SHERMAN L. STACEY

SLS/sh

cc: Ms. Susan Peterson
Mr. Tom Dawson
David K. Greene, Esq.
Carolyn Fank, Esq.

