

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

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Staff: S. Hudson *ja*  
Staff Report: 3/25/99  
Hearing Date: April 15, 1999  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 4 98-240**APPLICANT:** The Odyssey Program, LLC**AGENT:** James McGlothlin**PROJECT LOCATION:** 3504 Las Flores Canyon Road, City of Malibu; Los Angeles County

**PROJECT DESCRIPTION:** Restoration of riparian habitat and request for "after-the-fact" approval for landscaping, minor interior remodeling, the construction of a decomposed granite parking lot/drop-off area, a 112 sq. ft. storage shed, and the construction of an approximately 80 ft. long, 5 ft. high, non-retaining security wall.

Lot area:	0.81	acres
Building coverage:	3,152	sq. ft.
Pavement coverage:	8,211	sq. ft.
Landscape coverage:	20,667	sq. ft.
Parking spaces:	7	

**LOCAL APPROVALS RECEIVED:** City of Malibu Approval in Concept.

**SUBSTANTIVE FILE DOCUMENTS:** Odyssey Program Riparian Habitat Mitigation and Monitoring Plan by David Magney Environmental Consulting dated November 1998; CDPs 4-95-244 (Armstrong), 4-97-064 (Armstrong), and 4-98-136 (Armstrong).

**SUMMARY OF STAFF RECOMMENDATION**

The Commission approves the proposed project with four special conditions regarding implementation and completion of the Riparian Habitat Restoration and Monitoring Program, required approvals, assumption of risk, and condition compliance. The applicant is proposing the restoration of riparian habitat and requesting "after-the-fact" approval for landscaping, minor interior remodeling, the construction of a decomposed granite parking lot/drop-off area, a 112 sq. ft. storage shed, and the construction of an approximately 80 ft. long, 5 ft. high, non-retaining security wall. The project site has been previously developed with a school and is located adjacent to Las Flores Creek which is designated as a "Disturbed Sensitive Resource Area" by the Malibu/Santa Monica Mountains Land Use Plan.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions**

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development 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 effects on the environment within the meaning of the California Environmental Quality 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. Implementation and Completion of the Restoration/Landscape Plan and Riparian Habitat Monitoring Program**

The applicant shall implement and complete the Restoration/Landscape Plan prepared by Joyce Sung, ASLA, within 45 days of the issuance of this permit. The Executive Director may grant additional time for good cause. The applicant shall also implement and carry out to completion the Odyssey Program Riparian Habitat Mitigation and Monitoring Program by David Magney Environmental Consulting dated November 1998. As provided in the Riparian Habitat Mitigation and Monitoring Program, the applicant shall submit, on an annual basis, a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites.

During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the project site. If these inputs are required beyond the first two years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs. At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or 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 this Coastal Development Permit.

#### **2. Required Approvals**

Prior to the commencement of the riparian restoration activities, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the Department of Fish and Game and the Army Corp of Engineers, or evidence that such approvals are not required.

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

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from extraordinary hazard from fire, flooding, landslides, erosion, and mud and/or debris flows; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to

unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant, and landowner(s), shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

#### **4. Condition Compliance**

Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

### **IV. Findings and Declarations**

The Commission hereby finds and declares:

#### **A. Project Description and Background**

The applicant is proposing the restoration of riparian habitat and requesting "after-the-fact" approval for landscaping, minor interior remodeling, the construction of a decomposed granite parking lot/drop-off area, a 112 sq. ft. storage shed, and the construction of an approximately 80 ft. long, 5 ft. high, non-retaining security wall.

The project site is approximately 0.81 acres in size and is located adjacent to Las Flores Creek to the east and Las Flores Canyon Road to the west. Las Flores Canyon Creek and the project site are designated as a "Disturbed Sensitive Resource Area" by the Malibu/Santa Monica Mountains Land Use Plan. The site has been previously developed with an existing 2,121 sq. ft. classroom building, 1382 sq. ft. administration building, and children's playground facilities. The proposed remodeling is for interior

changes to the administration building and will not serve to increase the size of the existing structure.

The project site has been the subject of past Commission action. Coastal Development Permit (CDP) 4-95-244 (Armstrong) was approved by the Commission in 1995 for the "after-the-fact" request by the underlying property owner for the construction of a 2,121 sq. ft. classroom facility to replace a 1,014 sq. ft. structure destroyed by fire. CDP 4-95-244 was approved with six special conditions regarding the submittal of plans in conformance with geologic recommendations, landscaping, assumption of risk, future improvements, wildfire waiver of liability, and condition compliance. CDP 4-97-064 (Armstrong) was approved by the Commission in 1997 for the installation of a 1,200 sq. ft. trailer to replace an existing 720 sq. ft. trailer destroyed by fire. CDP 4-97-064 was approved subject to special conditions regarding the submittal of plans in conformance with geologic recommendations, assumption of risk, and wildfire waiver of liability. CDP 4-98-136 (Armstrong) was approved by the Commission in 1998 for the construction of timber mud flow and a wrought iron/masonry wall located along Las Flores Canyon Road on both the subject site and the Carden School site located adjacent to and north of the project site.

## **B. Environmentally Sensitive Habitat Area**

Section 30230 of the Coastal Act states that:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 states:

*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 states:

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

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values:

To assist in the determination of whether a project is consistent with Section 30230, 30231, and 30240 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains LUP for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Sections 30230, 30231, and 30240 of the Coastal Act, Policy 79 of the LUP provides that to buffer areas to protect sensitive riparian habitats shall be required. In addition, Policy 81 provides that that the maximum rate of stormwater runoff into riparian areas shall not exceed pre-development levels.

The subject site is located adjacent to Las Flores Creek and is characterized as a degraded riparian area due to previous development of the project site and surrounding area. Although the subject site is not located within an environmentally sensitive habitat area (ESHA), the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) indicates that the site is designated as a "Disturbed Sensitive Resource Area." The Commission notes that although this disturbed riparian habitat does not have the same biological significance as undisturbed ESHA, it is sufficiently valuable to warrant protection of the existing resources. The riparian habitat along the subject portion of Las Flores Creek does contain several unique and sensitive riparian plant and animal species. Plant species located on site include Coastal Live Oak (*Quercus agrifolia*) and California Sycamore (*Platanus recemosa*).

In past permit actions, the Commission has consistently required that new development be setback at least 50 ft. from the riparian corridor of undisturbed streams and at least 50 ft. from centerline of streams where the riparian corridor has been severely disturbed in order to minimize adverse effects to riparian habitat. However, in this case, the Commission notes that the subject site has been previously developed for use as an elementary school and that all developed portions of the site, although less than 50 ft. from the centerline of the stream, are separated from Las Flores Creek by an existing 14 ft. high masonry and timber debris wall located in the creek bed which was

constructed prior to the Coastal Act. The Commission further notes that all proposed development, with the exception of the riparian enhancement/restoration planting, will be located on the landward side of the existing 14 ft. high masonry wall within a previously developed area of the subject site and will not result in any new adverse effects to riparian habitat values.

Two existing fire-damaged sycamore trees (approximately 60 ft. in height) have been removed in conjunction with the proposed landscaping (which included the construction of a turf playground/ballfield area) without the required coastal development permit. The two Sycamore trees that were removed were located landward of the existing debris wall on the predominantly developed portion of the subject. However, the Commission notes that the removal of vegetation associated with, and in near proximity to, the functioning portion of the riparian corridor does result in adverse effects to the riparian habitat on site. The applicant has submitted a Riparian Habitat Mitigation and Monitoring Plan by David Magney Environmental Consulting dated November 1998 which states that:

*The trees removed were not of sufficient size to support large cavity-nesting birds and mammals, including Barn Owl, Great-horned Owl, and Raccoon. However, dead limbs and trunks of smaller trees, such as those removed, provide nesting habitat for smaller cavity-nesting birds such as woodpeckers...Since other California Sycamore trees are present nearby, some of which are significantly larger, the ecological loss of the two trees is not significant. However, their loss does contribute to a cumulative loss of riparian trees in the Las Flores Canyon ESHA; therefore, replacement on site is warranted.*

In past Commission actions regarding the restoration of sensitive habitat resources, the Commission has required the replacement of large Sycamore and Oak trees at a 10:1 ratio. The applicant has submitted a Restoration/Landscape Plan prepared by Joyce Sung, ASLA, that will provide for the planting of approximately 105 specimens of riparian plant species including: California Sycamore, Southern California Black Walnut, Pacific Blackberry, Narrowleaf Willow, Arroyo Willow, Mulefat, and Blue Elderberry to mitigate the loss of the two fire-damaged Sycamore trees. The restoration planting will be located in the riparian area on the subject site immediately adjacent to the creek on the creekside of the existing 14 ft. high debris wall. In addition, the landscaping component of the plan will also provide for the planting of 17 additional new California Sycamore Trees on the portion of the site which has been previously developed with school facilities (landward side of the existing debris wall). The Commission notes that the proposed restoration plan will provide for the replacement of the two removed Sycamore trees at an adequate replacement ratio and serve to enhance the habitat value of the riparian corridor on site. In addition, in past permit actions regarding the restoration of sensitive habitat resources, the Commission has further required that the applicant implement a 5-year monitoring program to ensure that the restoration effort is successful. In this case, the applicant has previously submitted a Riparian Habitat Mitigation and Monitoring Plan by David Magney Environmental Consulting dated November 1998 which the Commission notes will provide for adequate monitoring of the restoration project consistent with past Commission requirements. Therefore,

Special Condition One (1) has been required to ensure that the Restoration/Landscape Plan prepared by Joyce Sung, ASL, and the Riparian Habitat Mitigation and Monitoring Plan by David Magney Environmental Consulting dated November 1998 are implemented in a timely manner. In addition, the Commission notes that the proposed restoration planting will be located within a stream channel and will require additional approvals from the California Department of Fish and Game and the Army Corp of Engineers. Therefore, Special Condition Three (3) has been required to ensure that, prior to the commencement of the restoration activities within the stream channel, the applicant shall submit, for the review and approval of the Executive Director, evidence that all other required approvals have been obtained, or evidence that such approvals are not necessary.

Thus, for the reasons discussed above, the Commission notes that the proposed development will not result in any new adverse effects to the riparian habitat located on the project site. In addition, the proposed riparian habitat restoration and monitoring program will serve to mitigate the adverse effects that have resulted from the previous removal of the two fire-damaged Sycamore trees. Therefore, the Commission finds that the proposed amendment, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

### **C. Hazards**

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

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, 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

The Coastal Act requires that new development minimize the risk to life and property in areas of high fire hazard. The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the property.



The project site is located approximately 75 ft. from the east slope of Las Flores Canyon which ascends approximately 700 ft. at an approximate gradient of 40 to 50 degrees. In addition, the FEMA Flood Insurance Map indicates that the subject site is located within the flood zone. The Commission further notes that, following the 1993 Firestorm, consultants for the City of Malibu calculated that the burned watershed hydrology of Las Flores Canyon, when combined with the particularly steep, narrow topography and morphology, will create heightened flow rates during a 50-year flood event of approximately 8,264 cubic feet per second (cfs), or approximately 5,041 cfs above normal. Similarly, the Soil Conservation Service calculated that during a 100-year storm event under similar circumstances, approximately 273,400 cu. yds. of sediment debris would be generated. This sediment would be transported downstream via large debris flows that could sweep into the flood plain and damage the subject site. In addition, such debris flows would be characterized by the presence of large boulders and woody debris which would serve to increase the likelihood for damming and diversion of the creek to occur, further increasing the potential for damage to occur to the subject site. In past permit actions regarding new development on the project site, the Commission has found that the project site is located in an area subject to unusual hazard from wildfire, flooding, landslides, erosion, and mud and/or debris flows and has required the applicant to assume the risk inherent to development on the subject site. Therefore, due to the identified hazards present on the subject site, and as consistent with past Commission action, the Commission finds that the proposed new development can only be approved if the applicant assumes the liability from the associated risks as required by Special Condition Four (4). This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same. It should be noted that an assumption of risk deed restriction for hazardous conditions is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question.

Therefore, The Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

#### **D. Violations**

This application includes the after-the-fact request for landscaping, minor interior remodeling, the construction of a decomposed granite parking lot/drop-off area, a 112 sq. ft. storage shed, and the construction of an approximately 80 ft. long, 5 ft. high, non-retaining security wall

The applicant has submitted a Riparian Habitat Restoration Plan which will provide for restoration to mitigate the adverse effects to the habitat value of the site that has resulted from the removal of the two Sycamore trees without the required coastal development permit. Special Condition One (1) has been required to ensure that the Restoration/Landscape Plan prepared by Joyce Sung, ASL, and the Riparian Habitat Mitigation and Monitoring Plan by David Magney Environmental Consulting dated November 1998 are implemented in a timely manner. In addition, to ensure that the violation aspect of this application is resolved in a timely manner, Special Condition Four (4) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action.

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

#### **E. Local Coastal Program**

**Section 30604** 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 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. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

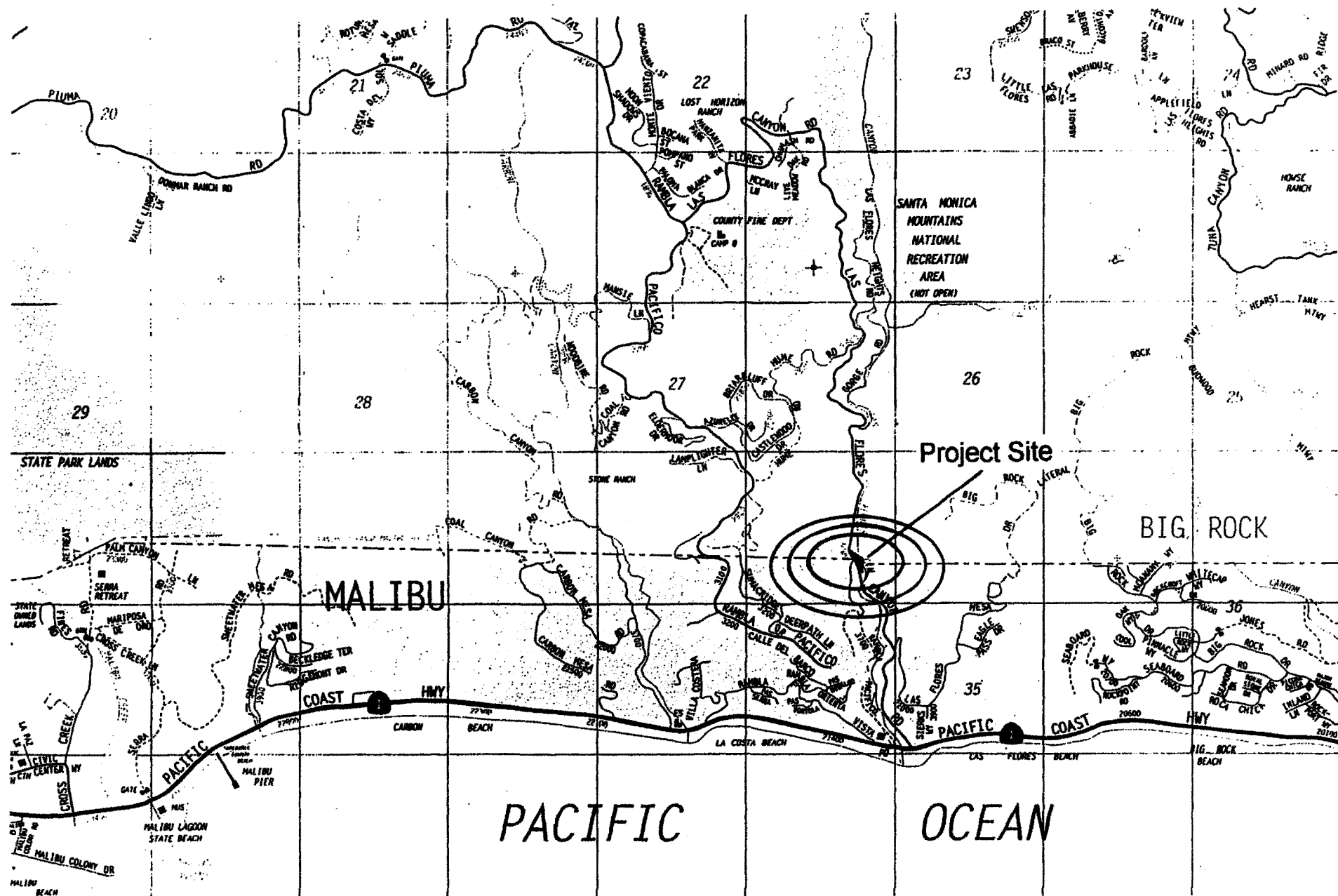
**F. CEQA**

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

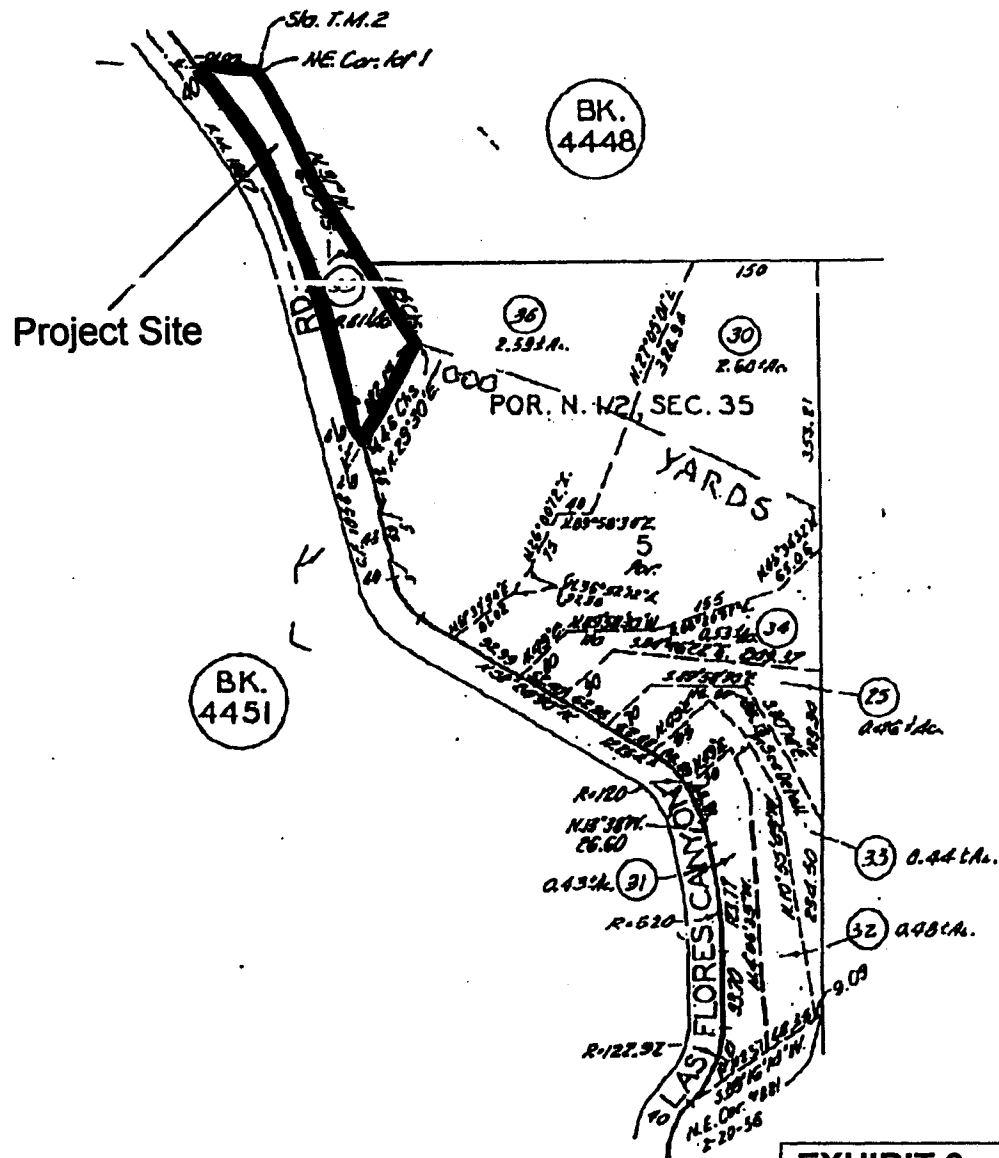
The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

**SMH-VNT**

File SMH/permits/regular/4-98-240 odyssey



<b>EXHIBIT 1</b>
<b>CDP 4-98-240 (Odyssey)</b>
<b>Location Map</b>



## Parcel Map

## Site Plan

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THE UNIVERSITY OF CHICAGO

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**RESEARCH**

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