

**CALIFORNIA COASTAL COMMISSION**

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Staff: JLR-LB *YIN*  
Staff Report: May 10, 1999  
Hearing Date: June 8-11, 1999  
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-98-301

APPLICANT: Rancho De Las Pulgas, Inc

PROJECT LOCATION: 16421 Pacific Coast Highway, Pacific Palisades

PROJECT DESCRIPTION: (1) Repair and replace an existing 7'10" chain link fence and Gate; (2) limit access over an unimproved pathway; (3) make new pathway with hand tools; (4) offer to dedicate to the Santa Monica Mountains Conservancy or other public agency a ten foot wide public vertical access easement; (5) clear vegetation from two segments of a concrete-lined flood control channel located in Las Pulgas Creek; (6) trim a partially fallen multi-trunk willow tree; and (7) plant/maintain creek bank area outside of the concrete-lined portions of the flood control channel.

LOCAL APPROVALS RECEIVED: Approval in Concept - City of Los Angeles

- SUBSTANTIVE FILE DOCUMENTS:
1. City adopted Brentwood-Pacific Palisades Community Plan
  2. CDP No. 5-90-974 [Millar]
  3. CDP No. 5-88-974 [Senturia]

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval with special conditions addressing public access, sensitive environmental habitat, erosion and future improvements.

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**STAFF NOTE:**

Following is a brief background description of the City of Los Angeles' authority to issue Coastal Development Permits prior to certification of their Local Coastal Program.

**Dual Permit**

Section 30600(b) of the Coastal Act allows local government to assume permit authority prior to certification of a Local Coastal Program. Under that section, local government must agree to issue all permits within its jurisdiction. In 1978, the City of Los Angeles opted to issue its own coastal development permits. Section 30601 establishes that in certain areas, and in the case of certain projects, a permit from both the Commission and local government will be required. Dual Permit Jurisdiction Section 30601 states:

**Section 30601.**

Prior to certification of the local coastal program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) or (d) of Section 30600, a coastal development permit shall be obtained from the Commission for any of the following:

- (1) Developments 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 line of the sea where there is no beach, whichever is the greater distance.
- (2) Developments not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.
- (3) Any development which constitutes a major public works project or a major energy facility.

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction area, the Coastal Act requires that the development which receives a Local Coastal Development Permit also obtain a permit from the Coastal Commission. For projects outside of this area, more than 300 feet from the inland extent of a beach, or the sea where there is no beach, or more than 100 feet from a wetland or stream or more than 300' from a coastal bluff, known as the Single Jurisdiction area, the City of Los Angeles Coastal Development

Permit is the only Coastal Development Permit required. Any local coastal development permit may be appealed to the Commission.

The proposed development is located within 300 feet of the top of the seaward face of a coastal bluff, and within 100 feet of a stream, an area that was designated as within the Dual Permit Jurisdiction area by the Commission pursuant to Section 13307 of the California Code of Regulations. Thus a coastal development permit is required from both the City and the Commission. The matter before the Commission will constitute the Commission's action on the coastal development permit.

**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 this permit is reported to the Commission. 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 in the application for permit, subject to any special conditions 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 project during its development, 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. Future Development

By acceptance of this permit, the applicant acknowledges that the subject permit is only for the development approved in Coastal Development Permit No. 5-98-301. Any future development as defined in Public Resources Code section 30106, including but not limited to, any future streambed alterations or vegetation removal, within the area governed by Coastal Development Permit No. 5-98-301 shall require an amendment to Permit No. 5-98-301 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

2. Prohibition on On-going Maintenance

No on-going maintenance of the channel or on-going debris clearance shall occur unless a new CDP is approved.

3. Public Rights

The Commissions' approval of this permit shall not constitute a waiver of any public rights which may exist on the property. The permittee or property owner shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

4. Evidence of Offer to Dedicate public vertical access easement

- a. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and

approval evidence that the applicant has executed and recorded an irrevocable offer to dedicate an easement for public vertical access in accordance with the terms of the Project Description as proposed by the applicant in Exhibit H and as generally depicted on Exhibit F.

- b. Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR Section 13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer.

5. Condition Compliance

Within 60 days of Commission action on this Coastal Development Permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6. Assumption of Risk, Waiver of Liability and Indemnity Agreement

a. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from floods, landslides and erosion (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

**b. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of subsection (a) 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.

c. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

**IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares as follows:

**A. Project Description and Location**

The applicant proposes to (1) repair and replace an existing 7'10" chain link fence and gate; (2) limit access over an unimproved pathway; (3) make new pathway with hand tools; (4) offer to dedicate to the Santa Monica Mountains Conservancy or other public agency a ten foot wide public vertical access easement; (5) clear vegetation from two segments of a concrete-lined flood control channel located in Las Pulgas Creek; (6) trim a partially fallen multi-trunk willow tree; and (7) plant/maintain some of the creek bank area outside of the concrete-lined flood control channel.

The proposed project is located in Las Pulgas Canyon. Las Pulgas Canyon extends from the Santa Monica Mountains to the coastline at Pacific Coast Highway (PCH). In this area, the canyon cuts down to beach level from an elevation of approximately 120 feet on the coastal terrace. This portion of the canyon is located directly inland of PCH. Will Rogers State Beach is located across Pacific Coast Highway from the property, seaward of the highway. Access from an existing canyon gate directly across PCH to the beach is possible, although a prudent individual would walk several hundred yards north to a light in order to cross the highway.

Las Pulgas Canyon is a privately owned 27-acre canyon and is the last undeveloped coastal canyon in the urbanized portion of the City of Los Angeles. There is an existing single-family residence on the property. The steep slopes and canyon bottom support dense coastal sage scrub and chaparral vegetation. Las Pulgas creek runs through the canyon bottom and is lined by willows, sycamores, riparian vegetation as well as non-native plants for much of its length. 2300 feet of the creek is located on this property. There are three segments of the 2300 foot creek bed that have been channelized. There are two concrete lined segments (235' and 220' in length) and a natural bottom segment. One portion of the creek is routed through an underground concrete pipe (260' in length).

The canyon habitat and landforms are disturbed. In the past, previous owners used the canyon to deposit excess earth from grading operations. The riparian area and canyon walls contain many invasive and exotic plants.

**B. Public Access and Prescriptive Rights**

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The major access issue in this permit is the closing of a pathway with an entrance adjacent to Pacific Coast Highway and the construction of a new pathway to a new entrance at Pacific Coast Highway. The applicant is thus proposing to realign the pathway approximately 50' westerly with no entrance gate adjacent to Pacific Coast Highway. In addition, the applicant is proposing to offer to dedicate a vertical access easement to the Santa Monica Mountains Conservancy or other public agency. The following public access provisions of the Coastal Act are relevant:

**Section 30210.**

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

**Section 30211.**

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

**Section 30214.**

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

- (1) Topographic and geologic site characteristics.
- (2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Recently, a group of local community activists enabled the Mountains Recreation and Conservation Authority to acquire a 1/3 acre parcel above the rim of Pulgas Canyon known as the Las Casas/Grenola view site. The parcel adjoins and is directly accessible from Grenola Avenue. This site has long provided residents and visitors to Pacific Palisades with panoramic views of Las Pulgas Canyon, Will Rogers State Beach and the coastline from Pacific Palisades to Santa Monica. The Mountains Recreation and Conservation Authority (MRCA), a joint powers authority, formed by the Santa Monica Mountains Conservancy, the Rancho Simi Recreation and Park District, has accepted a dedication of the property and agreed to manage it as a public scenic overlook.

The "Grenola " view site is a "mini-park" constructed on two former residential lots located at 316 Grenola Street. Grenola Street is a public neighborhood street in Pacific Palisades. There is public street parking on Grenola Street. The site is located on the coastal terrace, on the canyon rim, and provides views of the ocean. The trail that leads down to Las Pulgas Canyon begins at the view site. The upper portion of the trail and the view site was dedicated as a result of the Commission's action in 1990, when it approved 5-90-144 (Millar) a request for a single-family house on one of the lots. In approving the house, the Commission required dedication of a small viewing area and a trail leading down to the canyon. In approving the permit Commission found:



At its August [1990] hearing in Eureka, the Commission reviewed substantial evidence that demonstrates that there was historic access by the public from Grenola Street across both of the applicant's lots.

... The Commission found that the construction of the applicant's house would reduce access that presently exists across the property and that substantial evidence had been provided that prescriptive rights across the entire property existed [5-90-140].

Several years after approval of the house, the applicant for the house sold both lots, including the fee that underlay the upper portion of the trail to MRCA, a consortium that included the Santa Monica Mountains Conservancy. The lower portion of the trail, that led through the canyon and gave access to PCH and, ultimately, the beach, is located on the present applicant's property (Rancho De Las Pulgas, Inc.)

As stated above, the view site has been traditionally used as a trailhead that leads to an unimproved path that links the view site, through a portion of Las Pulgas Canyon to Pacific Coast Highway. Since the beach is seaward of PCH, the unimproved path leading from the view site facilitates access to the Pacific Ocean. Only the lower portion of the unimproved path is located on the applicant's property.

The applicant is proposing to close off access to the portion of a pioneered, unimproved path on his property. The applicant instead proposes to construct and dedicate a new trail. The proposed trail leads from the view site to PCH, a distance of approximately 300 feet. The upper end of the trail is located approximately 75 feet above the canyon bottom and descends from the view lot to PCH. The trail to be dedicated has been realigned approximately 50 feet westerly from a previous location. There is no gate at the trail end adjacent to the shoulder of PCH. (See Exhibit F) A more detailed description of the trail, as submitted by the applicant is provided in Exhibits F and H. It is anticipated that the offer to dedicate a vertical access easement will be accepted by the Santa Monica Conservancy. (See Exhibit G)

The closure of the existing unimproved pathway raises issue with Sections 30210 and 30211 of the Coastal Act because there is some evidence that over the years the pathway has been used by the public and therefore the potential for implied dedication exists over the property.

If the Commission finds that there is substantial evidence that the public has acquired a right of access to the sea across the property and relocation of the trail will interfere with that access, the proposed project would be inconsistent with Section 30210 and 30211 of the Coastal Act. Development inconsistent with Section 30210 and 30211 shall not be permitted.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an "implied dedication". The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the "prescriptive period" before an easement comes into being.

The rule that an owner may lose rights in real property if it is used without consent for the prescriptive period derives from common law. It discourages "absentee landlords" and prevents a landowner from a long-delayed assertion of rights. The rule establishes a statute of limitation, after which the owner cannot assert normal full ownership to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- a. The public has used the land for a period of five years or more as if it were public land;
- b. Without asking for or receiving permission from the owner;
- c. With the actual or presumed knowledge of the owner;
- d. Without significant objection or bona fide attempts by the owner to prevent or halt the use; and
- e. The use has been substantial, rather than minimal.

In general, when evaluating the conformance of a project with 30211, the Commission cannot determine whether public prescriptive rights actually do exist; rather, that determination can only be made by a court of law. However, the Commission is required under Section 30211 to prevent development from interfering with the public's right of access to the sea where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission must ensure that proposed development would not interfere with any such rights.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil code section 1009. That

section provides that if lands are located more than 1,000 yards from the Pacific Ocean and its bays and inlets, unless there has been a written, irrevocable offer of dedication or unless a governmental entity has improved, cleaned, or maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is within 1,000 yards of the sea; therefore, the required five-year period of use need not have occurred prior to March 1972 in order to establish public rights.

Even though the potential for implied dedication may exist on the property, there has not been a demonstration that such use amounts to a prescriptive right of access. Further, in order to deny or significantly modify development, the Commission must find that development of the parcel would interfere with such beach access and coastal recreation and would be inconsistent with the Chapter 3 policies of the Coastal Act.

Where there is substantial evidence of the existence of a public access right acquired through use, and a proposed development would interfere with that right, the Commission may deny a permit application under Public Resources Code Section 30211. As an alternative to denial, the Commission may condition its approval on the development being modified or relocated in order to preclude interference of adverse effect. This is because the Commission has no power to extinguish existing public rights, even though it may authorize development which affects the exercise of those rights.

A full assessment of the degree to which the criteria for implied dedication has been met in this case could only be made after a more intensive investigation of the issue has been performed. A survey of potential users of the site would provide very helpful information to augment the information staff has compiled.

However, in this case, although public prescriptive rights over the property has not been proven, the applicant has proposed to offer to dedicate a vertical access easement.

Section 30214 of the Coastal Act directs the Commission to implement the public access policies of the Act in a manner which balance various public and private needs. This section applies to all the public access policies, including those dealing with rights acquired through use. Therefore, the Commission must evaluate the extent to which the proposed public access is equivalent in time, place, and manner to the access use made of the site in the past.

The present applicant has offered to relocate the trail in a manner that will provide a better viewing area and will still provide access from the Grenola street view area (mini-park) to the PCH and the beach. Thus, the Commission finds that the public

access proposed by the applicant is equivalent in time, place and manner, to the access use that appears to have been made of the project area in the past.

Therefore, the Commission need not do an exhaustive evaluation to determine if substantial evidence of an implied dedication exists because regardless of the outcome of the investigation, the Commission could find the project consistent with Section 30211. If an investigation indicated substantial evidence of an implied dedication exists, the proposed project would not interfere with such public rights because it proposed access that is equivalent in time, place and manner to the access previously provided in the areas subject to implied dedication. If an investigation indicated that substantial evidence of an implied dedication was lacking, the Commission could find that with or without the proposed public access proposed by the applicant, the project would not interfere with the public's right of access where acquired through use and would be consistent with Section 30211.

Therefore, although there is an unresolved controversy as to the existence of public prescriptive rights, the applicant's proposed project protects the rights of the public consistent with Section 30211 of the Coastal Act. To ensure that the applicant follows through on his offer, which eliminates the need for a full evaluation of implied dedication, the Commission imposes Special Condition 4. In addition, the Commission finds that the potential for prescriptive rights over the property or portions of the property may exist and the applicant should be placed on notice that granting of this permit does not constitute a waiver of any public rights which may exist on the property. Therefore, the Commission imposes Special Condition 3. As conditioned, the Commission finds the proposed project consistent with the access policies of the Coastal Act.

C. Flood Control

Section 30236.

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

Section 30253.

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.

Las Pulgas Canyon drains the area between Temescal Canyon on the east and Santa Ynez Canyon on the west. The watershed is approximately 1.5 square miles in size. Portions of Las Pulgas creek have a natural channel bottom and other portions have been channelized by previous owners of this property. The streambed structure consists of either a pipe or an open channel with vertical concrete sidewalls and concrete bottom within portions of channel. The channel consists of either a concrete pipe or an open channel with vertical concrete sidewalls and a concrete bottom that is not continuous. The creek discharges into the Los Angeles County storm drain system that includes a box culvert under Pacific Coast Highway.

The applicant is proposing to remove vegetation and sediments from two sections of the concrete lined channel in the upper section of the Canyon. The applicant is also proposing to trim a partially fallen multi-trunk willow tree located in the lower canyon near the County's box culvert that goes under PCH. Following is a more detailed description as submitted by the applicant:

The photo-documented section for this part of the report attempts to clearly demonstrate that concrete-lined flood control devices (located at the top of a deep fill within the creek channel) that were clogged with soil as well as native and exotic vegetation were cleared according to accepted hydrological principles. Removed vegetation consisted largely of invasive exotic species such as Giant Reed. The excavated "fill" was initially piled along the concrete channel to be disposed of at a later date. Clearing of such concrete-lined channels for flood control purposes, even if these have been partially clogged with native plants, would not require off-site restoration. However, in retrospect, a stream alteration permit should have been requested from the Department of Fish and Game along with an Emergency permit from the Coastal Commission to carry out the work.

The removal of accumulated vegetation and sediment from the open channel sections at the storm drain will restore the conveyance capacity of the channel. According to the applicants Hydrology Analysis Report, without on-going maintenance, high storm flows could exceed the capacity of the channel, creating erosion that could cause a collapse of the steep slopes and landslides that toe out at the channel's edge. The applicant's report states that potential consequences of erosion include damaging sewer line facilities near the channel, additional scouring of the natural riparian habitat and additional pollution of a watercourse that ultimately will discharge the sediments in the ocean.

The Commission notes that there is a history of flooding and landslides in this canyon. After the applicant cleared the channel, landslides from adjacent lots have blocked the creek channel creating a pond. The applicant's consultant does not claim that the site is stable or that clearance will prevent all flooding. Therefore, neither the Commission nor the applicant can be assured of the stability of the canyon walls or the safety of the house located in the canyon.

Nevertheless, according to the applicant's Hydrology Analysis Report, the removal of the fallen tree will help to prevent blockage of the underground pipe portion of the channel. The consequences of blocking this pipe would be possible upstream flooding and sheet flow across Pacific Coast Highway. The removal of vegetation and sediments from the concrete-lined portions of the channel will restore the conveyance capacity of the channel. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30236 and 30253 of the Coastal Act.

**D. Environmentally Sensitive Habitat**

**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.

The applicant proposes to clear two U-shaped concrete-lined channels partially clogged with vegetation, debris and soil-measuring up to three feet in height. Weedy annuals and perennials, and native vegetation including willow trees had become established on the soil banks within the concrete channels and held the accumulated soil in place. According to the applicant's 1998 Wildland Resource Report, prepared by Geo Safety, Inc., the removed vegetation consists largely of exotic species such as Giant Reed. That report acknowledges that some native plant species such as chaparral and willows, have found their way into the channel from the uphill slopes. That report also states that "native willow propagules (seeds and cuttings) were washed onto the soil banks within the concrete channels almost exclusively from upstream sources". The applicant does not propose any vegetation removal in the natural portions of the streambed.

In 1989, Ralph Osterling Consultants, Inc. completed a Las Pulgas Canyon biological survey in anticipation of a potential proposal for a residential development within Las Pulgas Canyon. That survey was conducted to determine the amount of vegetation

that would be protected under the Federal Clean Water Act (qualifying as protected wetlands). Following is a summary of that report as submitted by the applicant:

. . . . He concluded that the 27-acre canyon (both forks) contains minor riparian conditions amounting to about 0.87 acres of riparian vegetation along 2300 lineal feet of stream channel qualifying as protected wetlands. The concrete-lined flood control channels were not included in these calculations as they did not meet the wetland requirements as set forth by the Corps of Engineers Wetlands Delineation Manual of 1987 using vegetation, hydrology, and soils as critical criteria. Summarizing his report, Osterling stated that due to the relative minor size of the wetlands and their disturbed character, the about 0.87 acres of riparian vegetation do not meet the Army Corps of Engineers criteria for regulation under the Clean Water Act but would be subject to a stream alteration permit from the California Department of Fish & Game (CDF&G). Additionally, there would be no significant loss of wildland habitat and no significant impact on sensitive species if the watercourse were to be affected by development. These findings are supported by Edwards in her biological survey when she summarized that no impacts on special status species (sensitive, endangered) are expected as a result of potential development because none were present and because their potential habitat is too confined and fragmented.

The applicant is proposing an on-going maintenance program in order to minimize erosion and reduce the spread of non-native plants from uphill and from the surrounding development. The applicant proposes that annual native plants will be seeded on a yearly basis on the sparsely vegetated slopes adjacent to the waterway. Specifically, the applicant proposes the following maintenance program:

Las Pulgas Canyon Basic Maintenance Program

1. Concrete-lined channels may be cleared of accumulated debris on a yearly basis or less often subject to a permit from the Dept. of Fish & Game or a letter of exemption stating that no permit is needed for such work.
2. No work shall be performed in the still-functioning riparian areas of the canyon, such as riparian areas where native plants are still present alone or in conjunction with non-native species and any areas where the channel is not concrete-lined or not channeled through storm drains, unless requested by Flood Control or other agencies having jurisdiction over the area and subject to a permit from the Department of Fish & Game or a letter of exemption stating that no permit is needed for such work.
3. The fill areas within the canyon and the level areas adjacent to the roadway and other areas may be cleaned on a yearly basis or less often for fire

protection to remove fire-hazardous fuels such as flammable annuals and non-native invasive species such as Mustard, Fennel, Tree Tobacco, and Castor Bean, etc.

4. Annual native plants may be seeded on a yearly basis or less often on sparsely vegetated slopes adjacent to riparian areas or roadways.

5. For maintenance of the main roadway into the canyon, gravel may be added on an as-needed basis.

The applicant's proposed on-going maintenance program will minimize potential erosion impacts on the streambed. The California Department of Fish & Game requires a streambed alteration agreement when work is performed in an artificial channel which has riparian habitat or in a natural drainage channel. The Department stated that because "the work performed was not substantial enough", no after the fact permit was required for the work done to date but that in the future a permit would be required prior to commencement of a project.

However, the applicant is applying for a permit to clear vegetation every year. Special Conditions No. 1 and 2, instead, requires the applicant to reapply for a new permit for any for any future vegetation clearance or streambed alterations. Because this year's proposed project is insignificant with regard to the amount and type of habitat removed, the Commission finds that that the proposed project for this year's clearance is consistent with the sensitive habitat provisions of the Coastal Act. However, any future development will require a new coastal development permit to evaluate potential impacts on sensitive environmental habitat.

In order to assess potential impacts on riparian habitat, the Commission is requiring that the applicant apply for a coastal development permit for any future streambed alteration project. Only as conditioned, can the Commission find that the proposed project is consistent with the environmentally sensitive habitat provisions of the Coastal Act.

**E. Local Coastal Programs**

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

Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with Chapter 3 (commencing with Section 30200) 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 Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local



government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.

In 1978, the Commission approved a work program for the preparation of Local Coastal Programs in a number of distinct neighborhoods (segments) in the City of Los Angeles. In the Pacific Palisades, issues identified included public recreation, preservation of mountain and hillside lands, grading and geologic stability. The continued use of Temescal Canyon as a recreation area was also an issue.

The City has submitted five Land Use Plans for Commission review and the Commission has certified two (Playa Vista and San Pedro). However, the City has not prepared a Land Use Plan for Pacific Palisades. In the early seventies, a general plan update for the Pacific Palisades had just be completed. When the City began the LUP process, in 1978, with the exception of this canyon and two tracts (a 1200-acre tract of land and an adjacent approximately 300-acre tract) which were then undergoing subdivision approval, all major tracts in the community were subdivided and built out. Consequently, the City concentrated its efforts on communities that were rapidly changing and subject to development pressure and controversy, such as Venice, Airport Dunes, Playa Vista, San Pedro, and Playa del Rey.

As discussed herein, the proposed project has been conditioned in order to be found consistent with Chapter 3. Thus, approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a certifiable Local Coastal Program. The Commission, therefore, finds that the proposed project is consistent with the provisions of Section 30604(a) of the Coastal Act.

**F. Consistency with the California Environmental Quality Act (CEQA)**

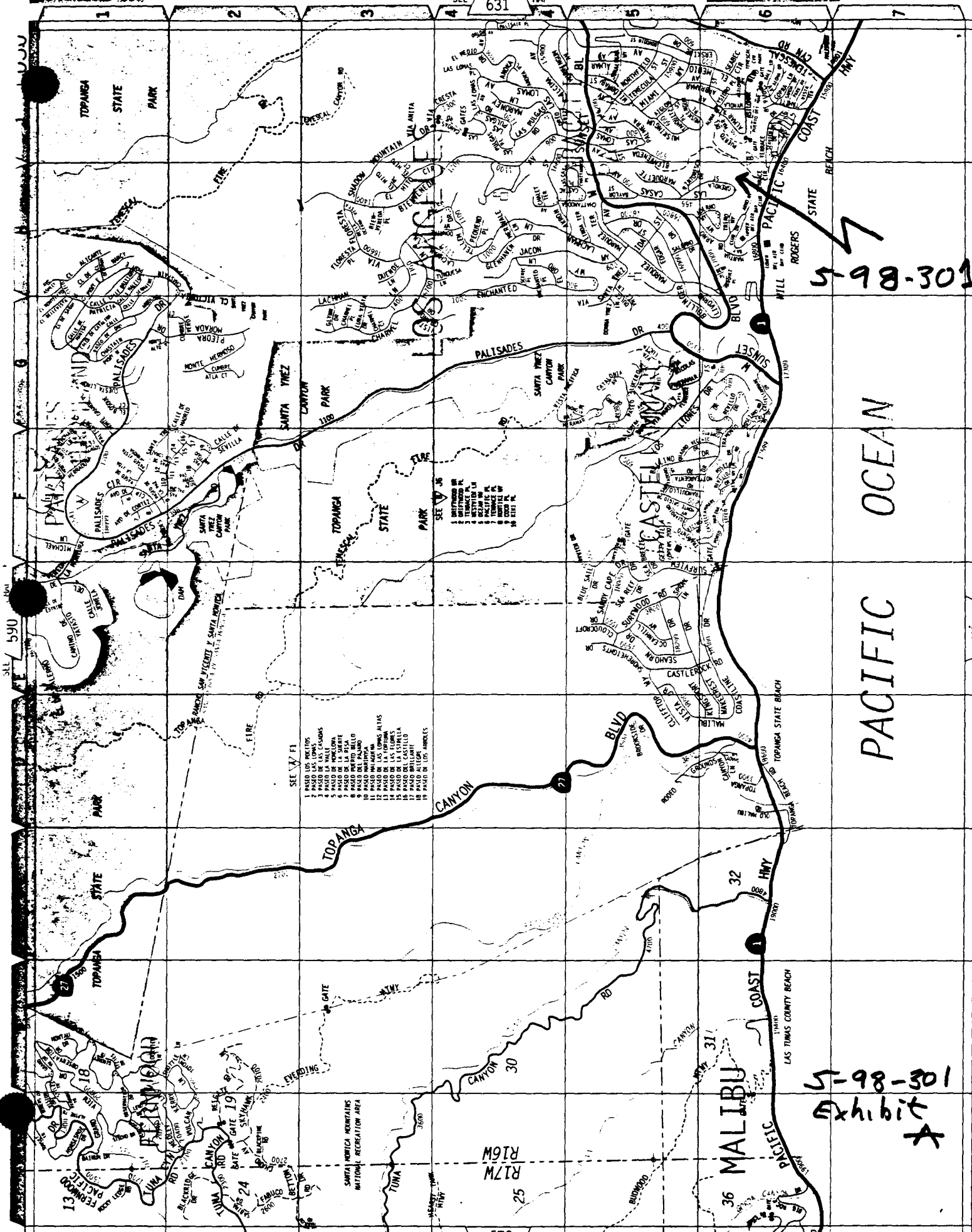
Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 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 proposed project has been conditioned in order to be found consistent with the public access and sensitive habitat policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**G. Unpermitted Development**

Prior to submitting the subject permit application, the applicant constructed the trail, fence and completed the streambed alterations. Although development has taken prior to Commission action on this coastal development permit, consideration of the application by the Commission is based solely upon Chapter 3 policies of the Coastal Act. Approval of the 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 development permit.

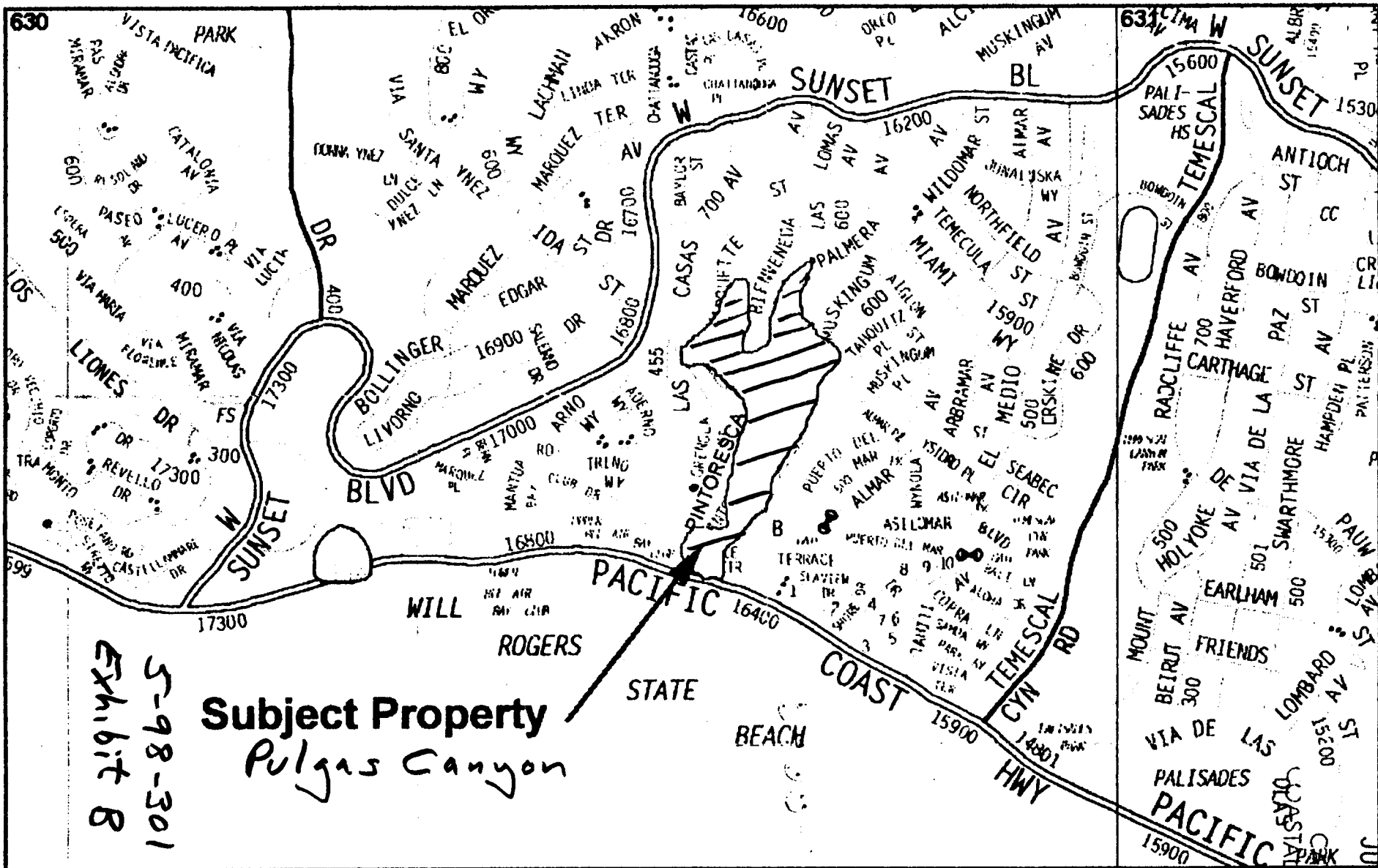
G:\jimand pam reports\jprev1 5-98-301 las pulgas staff report.doc



103-89-5

5-98-301  
Exhibit  
A

- SEE V F1
- 1 PASO DE LAS LOMAS
  - 2 PASO DE LAS CASAS
  - 3 PASO DE LA SERRA
  - 4 PASO DE LA SERRA
  - 5 PASO DE LA SERRA
  - 6 PASO DEL PALMADO
  - 7 PASO DEL PALMADO
  - 8 PASO DEL PALMADO
  - 9 PASO DEL PALMADO
  - 10 PASO DEL PALMADO
  - 11 PASO DEL PALMADO
  - 12 PASO DE LAS LOMAS ATLAS
  - 13 PASO DE LAS LOMAS ATLAS
  - 14 PASO DE LAS LOMAS ATLAS
  - 15 PASO DE LAS LOMAS ATLAS
  - 16 PASO DE LAS LOMAS ATLAS
  - 17 PASO DE LAS LOMAS ATLAS
  - 18 PASO DE LAS LOMAS ATLAS
  - 19 PASO DE LAS LOMAS ATLAS



# VICINITY MAP



**JPL Zoning Services, Inc**  
 6257 Van Nuys Blvd, #101  
 Van Nuys, CA 91401

JUL 27 1998

Area II - Coastal Access Trail



**Photo 11** - This aerial photo taken December 1997 shows lower Las Pulgas Canyon and the partially completed coastal access trail (Grenola viewsite to PCH hiking trail/foot path) to the left (Roll #56-10; 12-12-1997).

EXHIBIT C  
5-98-301

**SITE PLAN**

16421 Pacific Coast Highway

Pacific Palisades CA 90272

LAS PULGAS CANYON  
III-B & C FLOOD CHANNELS

**LEGEND**

**I. FENCE & GATE INSTALLATION**

(Replacement of Existing Fence & Gate)

**II. COASTAL ACCESS TRAIL**

(Realigned Grenola Viewsite to PCH Trail)

**III-A. REMOVAL OF WILLOW TREE**

(Removal of partially fallen multi-trunked tree potentially blocking stream-flow & culvert inlet under PCH)

**III-B & C. CLEANING CONCRETE FLOOD CHANNELS**

(Clearing of dirt & vegetation from two concrete flood channels measuring 235 feet and 220 feet in length and 14 to 23 feet in width, respectively)

LAS PULGAS CANYON

III-A TREE

I. GATE

COAST HIGHWAY

Exhibit D  
5-98-301

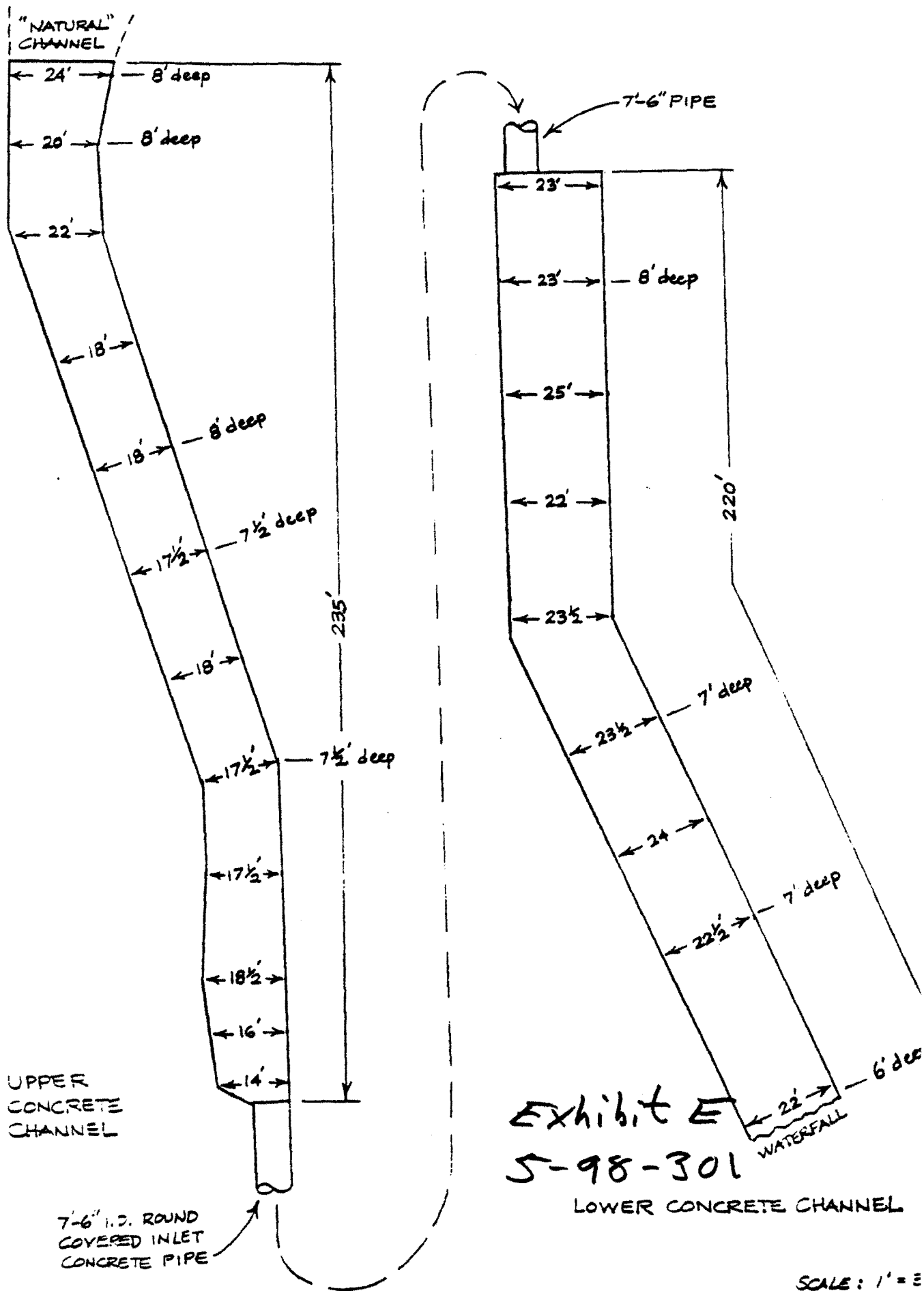
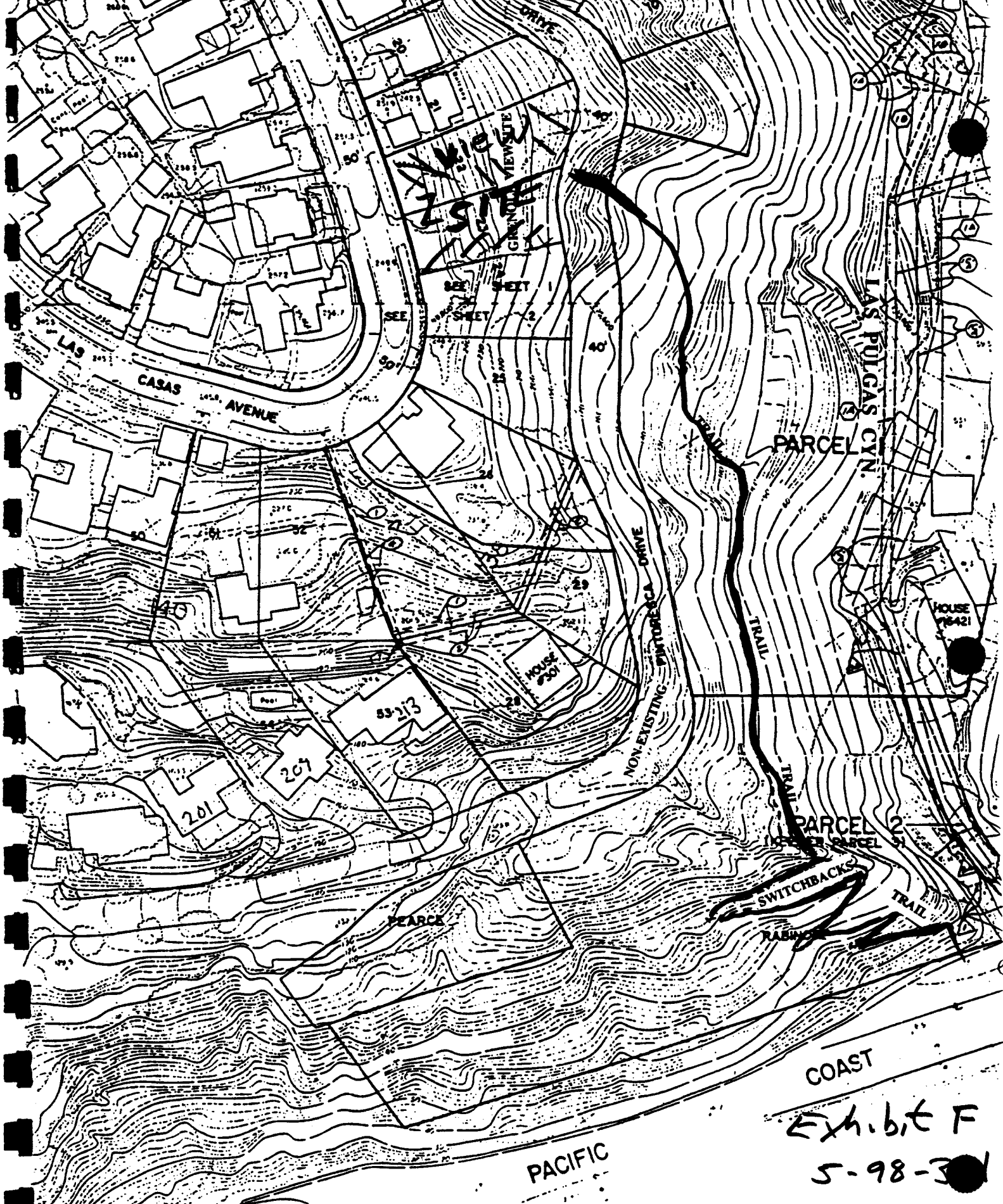


Figure 4 - The concrete-lined (sides & bottom) flood control channels.





**Figure 3 - Proposed realignment of Grenola Viewsite to PCH Trail.**

§ - 16421 Pacific Coast Highway (Rancho De Las Pulgas, Inc.)

Exhibit F  
5-98-3



**SANTA MONICA MOUNTAINS CONSERVANCY**

STREISAND CENTER FOR CONSERVANCY STUDIES  
5750 RAMIREZ CANYON ROAD  
MALIBU, CALIFORNIA 90265  
PHONE (310) 589-3200  
FAX (310) 589-3207

858

7272

310

X100



August 7, 1998

**RECEIVED**

AUG 13 1998

CALIFORNIA  
COASTAL COMMISSION

Pam Emerson  
Los Angeles County Supervisor  
California Coastal Commission  
245 West Broadway, Suite 380  
Long Beach, California 90801

**Las Pulgas Canyon Trail Dedication**

Dear Ms. Emerson:

Klaus Radtke of Geo Safety, Inc has contacted this agency regarding a potential dedication of a trail easement on and over Las Pulgas Canyon leading from a property known as the Grenola Viewsite to Pacific Coast Highway.

Public Resources Code Section 33207(a) provides in relevant part:

Areas offered for open space dedication or trail easement by any person...shall not be lost to public use.... The Conservancy shall serve as a repository for these lands and interest in land and for this purpose may accept dedication of fee title, easements, development rights, or other interests.

The Governing Board of the Santa Monica Mountains Conservancy, subject to approval of the State Coastal Conservancy as provided in Section 33203.5 of the Public Resources Code, has approved the acceptances by the Conservancy of a number of similar easements within its jurisdiction. If the Offer to Dedicate the trail is made staff will present the Offer to the Governing Board for consideration of the acceptance of the Offer.

Sincerely,

LAURIE C. COLLINS  
Senior Staff Counsel

Exhibit G  
5-98-301

LAW OFFICES  
**ALAN ROBERT BLOCK**  
A PROFESSIONAL CORPORATION

ALAN ROBERT BLOCK  
OF COUNSEL  
MICHAEL N. FRIEDMAN

1901 AVENUE OF THE STARS, SUITE 1610  
LOS ANGELES, CALIFORNIA 90067-6001  
E-MAIL arblock@worldnet.att.net  
TELEPHONE (310) 552-3336  
TELEFAX (310) 552-1850

OF COUNSEL  
MOSS, LEVITT & MANDELL, LLP

April 7, 1999

RECEIVED  
APR 08 1999  
CALIFORNIA  
COASTAL COMMISSION

California Coastal Commission  
South Coast Area  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, California 90802

Attention: Pam Emerson, Staff Planner

Re: CDP No. 5-98-301 (Rancho De Las Pulgas, Inc.)

Dear Pam:

Pursuant to our conversation of April 4<sup>th</sup>, 1999, please be advised that the Applicant, Rancho De Las Pulgas, Inc., herein proposes to dedicate to the Santa Monica Mountains Conservancy, and/or other public agency, a ten-foot-wide hiking trail/foot-path easement, along the same route, and including the existing three (3)-foot pathway, which would provide direct public access from Grenola Viewsite to Pacific Coast Highway.

This offer to dedicate the above-described access easement, the specific location of which has been delineated in documents already submitted to Dr. Klaus Radtke, is not conditioned on the actions or support of any person and/or organization, and should be made a part of the Project's description.

This offer to dedicate the above-referenced pathway for public access should not, in any manner, be viewed as an admission by the Applicant that prescriptive rights of any kind have been acquired by the public and/or any private association over the subject property, and/or any portion of Las Pulgas Canyon. The fact is, the Applicant vigorously contends that prescriptive rights do not exist over the subject property, and/or to any portion of Las Pulgas Canyon, and has offered the subject access-way as a reasonable attempt to avoid possible lengthy and expensive litigation over the issue of prescriptive rights, in which the Applicant strongly believes it would be successful defending.

As we have previously discussed, and as has been represented by staff, the hearing on the subject application will be scheduled for the Commission's May - 1999 agenda.

Exhibit H  
2 of 2  
5-98-301

California Coastal Commission  
Attention: Pam Emerson, Staff Planner  
Re: CDP No. 5-98-301 (Rancho De Las Pulgas, Inc.)  
Page 2

Naturally, should you have any questions, please telephone me at your earliest convenience.

Very truly yours,

**LAW OFFICES OF  
ALAN ROBERT BLOCK**  
A Professional Corporation

  
ALAN ROBERT BLOCK

ARB:ljn

cc: Barry Maiten  
Klaus Radtke, PhD  
Laurie Collins

Exhibit H  
2 of 2  
5-98-301

**DEPARTMENT OF FISH AND GAME**

330 Golden Shore, Suite 50  
Long Beach, CA 90802  
(310) 590-5133



May 22, 1998

Dear Mr. Maiten:

Per your request on 5-22-98, I am providing the following letter regarding streambed alterations at your Las Pulgas property located at 16421 Pacific Coast Highway, Pacific Palisades.

You informed me that you have cleaned debris, including live vegetation from a concrete lined channel which runs through the subject property. As you were aware, I had previously inspected the property for compliance with section 1600 et al of the Fish & Game Code. My opinion at the time and presently, is that work performed was not substantial enough to warrant criminal prosecution due to the failure to notify the Department prior to the initiation of project activities.

Any additional work, whether performed in an artificial channel which has riparian habitat or natural drainage, will require the submission to the Department of Fish & Game, a streambed alteration notification form and subsequent alteration agreement prior to the commencement of project activities.

Thank you for your time, and consideration toward the wildlife resources of the State of California.

Sincerely,  
*Jon R. Willcox*  
Jon R. Willcox  
Game Warden

cc:5230

Exhibit I  
5-98-301

## Seeding With Native Plants

The Las Pulgas Canyon Basic Maintenance Agreement for lower Las Pulgas Canyon signed by Barry Maiten, president of Rancho de Las Pulgas, Inc. for 16421 Pacific Coast Highway (lower Las Pulgas Canyon) states "annual native plant species may be seeded on a yearly basis or less often, on sparsely vegetated slopes adjacent to riparian areas or roadways."

Exhibit 1 identifies these areas where in future years maintenance with native plants may be done on the westerly facing creekbanks along the access road into the canyon and adjacent areas. The seeding will not be done as part of a restoration plan but on a maintenance basis. Barley contouring may also be incorporated into the ongoing seeding/maintenance project in areas where quick surface erosion control cover is desirable.

It is recognized that in drought years such maintenance seeding may not take hold because of limited rainfall but that maintenance seeding with native plant species on steep, harsh slopes adjacent to the creek will provide increased native cover over time. Such native cover, once established, will also slow down and reduce the spread of non-native species from the uphill and surrounding hilltop ornamental landscaping.

Exhibit J  
1 of 4  
5-98-301

Maintenance Seeding Carried Out On January 28, 1999

Exhibit 2 identifies the areas where maintenance seeding was carried out on January 28, 1999, in conjunction with a winter storm that, unfortunately, only deposited about 0.5" of rainfall. An extended drought has persisted in the area throughout January and February of 1999 (not enough rain to penetrate the soil to required depth for root establishment and long-term plant survival). These same areas may again be seeded during the winter of 1999-2000.

1999 Seed mix

Contour rows for emergency erosion control

Barley

Hordeum vulgare

Native Seed Mix used for contour rows as well as broadcast seeding

Ashy-leaf Buckwheat	<u>Eriogonum cinereum</u> (Seed mix #1 + #2) <sup>1</sup>
Common Buckwheat	<u>Eriogonum fasciculatum</u> (Seed mix #2)
Zorro Annual Fescue	<u>Festuca ovina</u> (Seed mix #1 + #2)
Deerweed	<u>Lotus (Helianthemum) scoparius</u> (Seed mix 2)
Common Sunflower	<u>Helianthus annuus</u> (Seed mix #1 + #2)
Purple Needlegrass	<u>Stipa</u> or <u>Nasella pulchra</u> (Seed mix #1 + #2)
Foothill Needlegrass	<u>Stipa</u> or <u>Nasella lepida</u> (Seed mix #1 + #2)
Purple Sage	<u>Salvia leucophylla</u> (Seed mix #2)

The seed mixes reflect the more harsh westerly facing slopes above the creek. Stipa/Nasella was added to the seed mix for the occasional pockets of perhaps deeper soil.

Exhibit ↓  
20F4  
5-98-301

<sup>1</sup> Seed mix #1: More level areas close to road. Seed mix #2: westerly facing slopes

**SITE PLAN**  
**Exhibit 1**  
16421 Pacific Coast Highway  
Pacific Palisades CA 90272

**LAS PULGAS CANYON**  
**III-B & C FLOOD CHANNELS**

**LEGEND**

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(Replacement of Existing Fence & Gate)

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(Clearing of dirt & vegetation from two concrete flood channels measuring 235 feet and 220 feet in length and 14 to 23 feet in width, respectively)

**I. GATE**

Exhibit D  
30 of 4  
5-98-301



**SITE PLAN  
EXHIBIT 2**  
16421 Pacific Coast Highway  
Pacific Palisades CA 90272

LAS PULGAS CANYON  
SEEDS  
III-B & C FLOOD CHANNELS

**LEGEND**

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LAS PULGAS CANYON

III-A TREE

I. GATE

COAST

HIGHWAY

Handwritten notes:  
105-86-5  
2-19-14  
404





Landslides  
in canyon  
● (shading)  
Pulga Canyon

Exhibit K  
5-98-301

