

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Comm Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-99-164

**APPLICANT:** Marian Olson

**AGENT:** Donald Schmitz

**PROJECT LOCATION:** 2737 South Fabuco Road, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construct a 4,000 sq. ft., 2 story single family residence with four car garage, swimming pool, septic system, and landscaping. Extend private road with water main and drainage improvements about 800 feet beyond approved road to adjoining parcel. Grade about 1,352 cubic yards for the residence and access road.

Lot area:	2.37 acres
Building coverage:	2,000 sq. ft.
Pavement coverage:	2,200 sq. ft.
Landscape coverage:	3,000 sq. ft.
Parking spaces:	4
Ht abv fin grade:	29 ft.
Plan Designation:	Mountain Land
Zoning:	one du/ 20 acres
Project Density	one du/ 2 acres

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval of the proposed project with seven (7) Special Conditions addressing landscape, erosion control and fuel modification plans, removal of natural vegetation, a road maintenance agreement, future development deed restriction, plans conforming to geologic recommendation, a wildfire waiver of liability, and removal of excavated material. The applicant requests approval to construct a single family residence on an existing lot and

road improvements located within an existing vacant residential subdivision. Grading to improve the access to two nearby residential building sites occurred in May 1999 (Coastal Permit No. 4-96-25, Jason and Coastal Permit No. 4-97-15, Sayles and Anderson). Although the project site proposed for the residence is located within the Tuna Canyon Significant Watershed, it is not located on or adjacent to any designated Environmentally Sensitive Habitat Area. The site is accessed from Tuna Canyon Road by private roadways and an approved, and partially constructed extension of Skyhawk, Chard, and Betton Roads (Coastal Permit No. 4-96-025, Jason). Additional improvements, extending Betton and Fabuco Roads about 800 feet, are proposed to access this site. The applicant has submitted a revised Fuel Modification Plan to reduce the size of the original fuel modification area approved in Coastal Permit No. 4-96-172 from a 300-foot radius to a 200-foot radius surrounding the proposed structure. In addition, two existing drainage culverts along Betton Drive and Fabuco Road will be replaced with larger culverts about 36 inches and 40 inches in diameter, respectively, as required by the Los Angeles County Building and Safety Department.

#### **STAFF NOTE:**

The Commission approved this project in December 1996 with five Special Conditions as Coastal Development Permit No. 4-96-172 valid for two years. At the Commission's April 15, 1999 meeting the applicant requested a one year permit time extension. More than three Commissioners objected to a one year extension of the permit on the ground that changed circumstances may have affected the project's consistency with the Coastal Act. As a result, this project is scheduled for a public hearing as a new application (Application No. 4-99-164) pursuant to California Code of Regulation Section 13169. At the April 1999 meeting, the Commission requested additional information on the issue of fire safety related to road access to and from the subject site; this issue is discussed on pages 11 and 12 of this report. Staff has reviewed this issue and concluded that the project will minimize risks to life and property in areas of high fire hazard consistent with Section 30253 of the Coastal Act.

**LOCAL APPROVALS RECEIVED:** Approval in Concept: Los Angeles County Regional Planning Department dated 9/24/96; Los Angeles County Department of Health Services, dated 8/1/96; Los Angeles County Fire Department, dated 6/25/96.

**SUBSTANTIVE FILE DOCUMENTS:** Geological/Geotechnical Engineering Report, dated May 6, 1996, and Percolation Data and Septic Design Report, dated May 1, 1996, prepared by Gold Coast GeoServices, Inc.; A Phase One Cultural Survey, dated January 19, 1996, prepared by Environmental Research Archaeologists; Tuna Canyon Significant Ecological Area: An Assessment of the Cumulative Impacts of the Potential Maximum Development, prepared for Tuna Mesa Property Owners

Association, by Phillips Brandt Reddick, Inc. dated January 8, 1978; Coastal Development Permit No. 4-96-025, Jason; Coastal Development Permit No. 4-97-015, Sayles, Coastal Permit No. 4-96-172, Olson; Coastal Permit Extension Request No. 4-96-172-E-1, Olson.

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### **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. LANDSCAPE, EROSION CONTROL, AND FUEL MODIFICATION PLANS**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit final landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The final landscaping and erosion control/drainage plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The final plans shall incorporate the following criteria:

##### **A) Landscaping and Erosion Control Plans**

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a

Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

- 5) Vegetation within 20 feet of the proposed residence and garage and driveway may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The final fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the final fuel modification plan, as revised, has been reviewed and approved by the Los Angeles County Fire Department, Forestry Division, Fire Prevention Bureau. Any irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 6) The final drainage/erosion control plan shall be implemented within 30 days of completion of final grading. By acceptance of this permit, the applicant agrees to maintain the drainage devices on a yearly basis in order to ensure that the system functions properly. Should the devices fail or any erosion result from the drainage from the project, the applicant or successor in interests shall be responsible for any necessary repairs and restoration.

**B) Interim Erosion Control Plan**

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geo-fabric covers or other appropriate cover, install geo-textiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geo-textiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

**C) Monitoring**

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

**2. REMOVAL OF NATURAL VEGETATION**

Removal of natural vegetation for the purpose of fuel modification within the 20 foot zone surrounding the proposed structure shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 20-200 foot fuel modification zone shall not occur until commencement of construction of the structure approved pursuant to this permit.

**3. ROAD MAINTENANCE AGREEMENT**

By acceptance of this Coastal Development Permit, the applicant agrees that should the proposed improvements to the access road or the proposed drainage structures fail or result in erosion, the applicant/landowner or successor interests shall be solely

responsible for any necessary repairs and restoration along the entire length of the access road as it crosses Betton Drive and Fabuco Road.

**4. FUTURE DEVELOPMENT DEED RESTRICTION**

- A. This permit is only for the development described in Coastal Development Permit No. 4-99-164. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall apply to the entire property. Accordingly, any future improvements to the entire property including the permitted residence and garage, and clearing of vegetation or grading, other than as provided for in the approved fuel modification landscape and erosion control plan prepared pursuant to Special Condition Number One (1), shall require an amendment to Permit No. 4-99-164 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction that shall supercede and replace the Deed Restriction recorded on October 16, 1997 as Instrument # 97-1620079, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development in the deed restriction and shall include legal descriptions 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.

**5. PLANS CONFORMING TO GEOLOGIC RECOMMENDATION**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval by the Executive Director, evidence of the Geologist and Engineer consultant's review and approval of all project plans. All recommendations contained in the submitted geologic report titled: Geologic/Geotechnical Engineering Report, dated May 6, 1996, prepared by Gold Coast GeoServices, shall be incorporated into all final design and construction including foundation systems, retaining walls, cut slopes and excavations, and site drainage. All plans must be reviewed and approved by the consultants.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission

which may be required by the consultants shall require an amendment to the permit or a new coastal permit.

**6. WILD FIRE WAIVER OF LIABILITY**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses, of liability arising out of the acquisition, design, construction, operations, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

**7. REMOVAL OF EXCAVATED MATERIAL**

The applicant shall remove all excavated or cut material consisting of approximately 534 cubic yards of material to an appropriate disposal site located outside in the Coastal Zone, except for the approximate 442 cubic yards of material proposed to be used for fill on the project site and roadways.

**IV. Findings and Declarations.**

**A. Project Description**

The project site is located within an undeveloped 16 lot subdivision about two miles inland northwest of Tuna Canyon and south of Fernwood area. The parcel is accessed about one quarter of a mile to the south of Tuna Canyon Road, to Skyhawk Lane, to Chard Avenue, to Betton Drive and lastly to Fabuco Road. (Exhibits 1, 2, 3, and 4) Although Chard, Betton and Fabuco are presently partially improved dirt roadways, two previous applicants have coastal permits to construct improvements along portions of these roads. Mark Jason (Coastal Development Permit 4-96-025), has Commission approval to construct about 1790 feet of road improvements to Skyhawk and Chard Roads and Betton Drive. Mr. and Mrs. Sayles and Mr. and Mrs. Anderson have Commission approval to construct about 340 feet of improvements to along Betton Drive beyond the access to the subject site. The applicant proposes to construct an approximate 800 foot extension of these road, drainage, and water improvements along Betton Drive and Fabuco Road to access the project site. An approximate 300 foot section of Betton Drive is proposed to be improved by the applicant to access the subject property and access the Sayles property further west along Betton Drive. Fabuco Road ends at the eastern edge of the subject parcel. The applicant's drainage improvements include replacing two existing culverts with larger culverts along Betton Drive and Fabuco Road, 36 inches and 40 inches in diameter, respectively. These roadway improvements provide for a maximum thirty (30) foot wide roadway to the project site, requiring about 135 cubic yards of cut and



about 201 cubic yards of fill. These road improvements are proposed to comply with Los Angeles County Fire Department and Building and Safety Department standards. The project site is a relatively flat 2.37 acre parcel; the building site is located in the central portion of the parcel on a small knob hill.

The applicant proposes to construct a 4,000 sq. ft., 2 story, 29 ft. high, single family residence, attached four car garages, motor courtyard, septic system, and swimming pool (Exhibits 5, 6, 7, 8 and 9). Constructing the residence will require grading of about 1,016 cubic yards; 775 cubic yards of cut and 241 cubic yards of fill. Excess cut of about 534 cubic yards is proposed to be exported to a disposal site outside the coastal zone.

Although the subject parcel is located within Tuna Canyon Significant Watershed, the site is located about one thousand feet from Tuna Creek, a designated Environmentally Sensitive Habitat Area (ESHA) and about 300 feet from the geographic area designated as the Tuna Canyon ESHA. The proposed project will not have direct or indirect significant impacts on this ESHA.

The improvements proposed by the applicant to the existing access roads discussed above, traverses four parcels enroute to the applicant's parcel. However, the applicant has provided evidence of the ingress and egress access easement over the road. Regarding the four property owners, across whose property the proposed road improvements are located, these individuals have been notified of this development pursuant to section 30601.5 of the Coastal Act. Section 30601.5 states as follows: "All holders or owners of any interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant." A total of four property owners were notified of the pending permit action under Section 30601.5 (Exhibits 4 and 10). Staff will inform the Commission at the August Commission meeting for this project if any of these property owners respond to these letters from staff.

**B. Previous Commission Action on Coastal Permit Time Extension**

In December 1996, the Commission approved Coastal Permit No. 4-96-172 for Marian Olson for the same residential project as proposed in this new application. Coastal Permit No. 4-96-172 was issued in May 1998. On December 11, 1998, the applicant requested a one year time extension for this Coastal Permit.

The Commission's regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or

2) Objection is made to the Executive Director's determination of consistency with the Coastal Act (14 C.C.R. Section 13169).

If three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional one-year period.

Staff received numerous letters of objection or requests for a public hearing on this request for a permit time extension. These letters are in the administrative record for Coastal Permit Time Extension Request No. 4-96-172-E-1.

In summary, the objection letters set forth a total of three issues that are asserted to constitute changed circumstances:

- (1) Loss of one fire escape route, Tuna Canyon Road, to Pacific Coast Highway
- (2) Cumulative impacts of sequential residential and road development projects;
- (3) Development impacts on West Coast Steelhead Trout within Tuna Canyon and in an adjoining Watershed;

At the April 15, 1999 public hearing, the Commission found that changed circumstances may have affected the project's consistency with the Coastal Act regarding the first two issues; fire safety ingress and egress to the subject site and cumulative impacts of development in this area. Regarding the first issue, since the project's approval in 1996, the status of Tuna Canyon Road (one of the public roads leading to the vicinity of the project site) has changed. The first three miles of Tuna Canyon Road landward of Pacific Coast Highway has been closed to two way traffic. Although it is now reopened one way downhill to the south as an accessway for regular traffic as well as for emergency situations, it could be closed in the future at any time due to landslide or geologic hazard along the road. Regarding the second issue, the Commission was concerned about development sprawl or expansion into this area that may result in cumulative impacts of development. Regarding the third issue, the Commission did not cite the potential development impacts on West Coast Steelhead Trout within Tuna Canyon and in an adjoining watershed as a changed circumstance that may have affected the project's consistency with the Coastal Act. The following is what the Commission found relative to these coastal issues.

#### **1. Fire Hazards of Road Closure**

The first issue will be discussed regarding the 1998 closure, as a result of a geologic hazard, and the later rerouting of traffic on Tuna Canyon Road to a one way direction creates inadequate access and a hazardous fire condition under Coastal Act Section

30253. The Commission reviewed the proposed project's risk to life and property in an area where there are fire hazards. The Commission acknowledged that the access status of Tuna Canyon Road has changed since the project was approved rerouting traffic on Tuna Canyon Road to a one way direction downhill to the south from its intersection with Saddle Peak Road to Pacific Coast Highway.

Coastal Act Section 30253 requires that new development minimize the risk of life and property in areas of high fire hazard.

**Coastal Act Section 30253 states (in part):**

New development shall:

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

The Coastal Act also recognizes that new development may involve the taking of some risk and requires 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, the potential cost to the public, as well as the individual's right to use the property. Vegetation in the Santa Monica Mountains consist of highly flammable coastal sage scrub and chaparral with the potential for frequent wild fires and a risk of wild fire damage to development that cannot be completely avoided or mitigated. In fact, the subject property burned in the 1993 Malibu Fire.

In an effort to address this issue, staff investigated the facts relative to ingress and egress to the subject site. Staff contacted Captain Jordon, of the Los Angeles County Fire Department on March 16, 1999 by telephone. Captain Jordon confirmed that Tuna Canyon Road was closed last year and is now a one-lane road south from its intersection with Saddle Peak Road to Pacific Coast Highway. Captain Jordan confirmed that even with the one-way nature and narrowing in a few locations of the two lane wide roadway the ingress and egress to the site is adequate and meets the minimum Fire Code Standards. A review of a road map of the area indicates that access to and from the site is available from Fabuco Road, to Betton Drive, to Chard Avenue, to Skyhawk Lane's intersection with Tuna Canyon Road (Exhibit 2). Access to and from this intersection is available to the east on Fernwood Pacific to Topanga Road. To the west access is available from Tuna Canyon Road to Saddle Peak to Schueren to Piuma and to Malibu Canyon Road or from Saddle Peak to Stunt Road to Mulholland Highway. These access routes are available even if Tuna Canyon Road from Saddle Peak to Pacific Coast Highway is closed in the future.

Staff requested further information on this fire safety issue in a letter dated May 18, 1999 to Captain James Jordon of the Los Angeles County Fire Department (Exhibit 12). Captain Jordon provided a response in a letter dated May 28, 1999 (Exhibit 13) to this issue related to the proposed single family residence at the subject site. Captain Jordon provided the following information.

First, the closure of Tuna Canyon Road to two-way traffic has no impact on the egress ability for the residents. Tuna Canyon Road is open from Saddle Peak Road to Pacific Coast Highway. This provides emergency egress for residents of the area. Your letter asks about the possible closure of the road in the future. The Fire Department is limited to looking at existing access. If we were to use possible closures of access roads, we would need to include Pacific Coast Highway, Malibu Canyon Road, Topanga Canyon Road, Kanan-Dume Road and many others. You may remember Kanan-Dume Road was closed for over a year due to a landslide. To consider the possible closure of these roads would effectively eliminate construction in the Santa Monica Mountains.

In the event of a wildfire, the Fire Department would use Topanga Canyon, not Tuna Canyon, as its ingress to the area. It is wider and allows more access to the neighborhoods in Topanga Canyon. The proposed residence has a number of emergency egress paths available, one of them being Tuna Canyon. A resident may also use Topanga Canyon Blvd or Saddle Peak Road. The current access meets the requirements of the Fire Code.

The above letter provides information that the current access to the site, as proposed to be improved by the applicant, meets the Los Angeles County Fire Code and that the closure of Tuna Canyon Road to two way traffic has no impact on the ingress and egress ability for the proposed residents at the subject site during fire emergency situations.

## **2. Cumulative Impacts of Development**

Regarding the second issue, the Commission addressed the issue of development extending into this area and the cumulative impacts of development.

### **Section 30250(a) of the Coastal Act states (in part):**

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.

Section 30105.5 of the Coastal Act states:

"Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Regarding Section 30250, the Coastal Act requires that new development be located in existing developed areas able to accommodate it, or other areas where it will not have significant adverse effects on coastal resources. The Coastal Act defines cumulatively or cumulative effect as the incremental effects of an individual project reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The individual and cumulative impacts of the proposed project were analyzed in this case as is required under Section 30250 (a) of the Coastal Act. The Commission reviewed individual and cumulative impacts of the development consistent with Section 30231 addressing the biological productivity and quality of coastal streams and with Section 30240 addressing environmentally sensitive habitats (ESHA).

The subject site is located on a 2.37 acre relatively flat lot within the Tuna Canyon Significant Watershed Area. Tuna Creek, a designated environmentally sensitive habitat is located about 1,000 feet to the south of the subject parcel; the geographic area designated as ESHA is about 300 feet south of the parcel. Tuna Canyon is designated a Significant Watershed Area because of the relatively undisturbed nature and presence of wildlife. However, a Significant Watershed is not considered an ESHA under the Coastal Act's definition of ESHA's, such as riparian vegetation, as the Watershed Area is dominated by vegetation and wildlife common to the Santa Monica Mountains. The Malibu/Santa Monica Mountains Land Use Plan (LUP) which was certified by the Commission in 1986, established specific policies and development standards to protect the resources of these relatively undisturbed watersheds. The Commission has used these LUP policies as guidance in their review of permit applications in the Santa Monica Mountains.

The Commission reviewed the report titled; "Tuna Canyon Significant Ecological Area: An Assessment of the Cumulative Impacts of Potential Maximum Development", prepared for the Tuna Canyon Property Owners Association by Steven Nelson, Director of Biological Science, Phillips, Brandt, Reddick, dated January 9, 1978. The purpose of this report was to provide a detailed resource inventory and analysis of the Tuna Canyon Watershed to be used by decision makers as advanced and additional environmental input to their planning process. It's important to note that this report is an objective analysis and assessment of cumulative impacts resulting from the potential buildout of the area. A second report documenting habitat values in the

Tuna Canyon Significant Watershed was prepared for Los Angeles County in 1976 by England and Nelson.

Many of the letters received regarding this time extension asserted that the Commission did not review the cumulative impacts of this area due to the sequential nature of the applications brought before the Commission one at a time by the applicants. However, the Commission specifically reviewed and analyzed the cumulative impacts of the potential buildout of the Tuna Canyon Watershed Area, including the Olson site. The 1978 Nelson report reviewed by the Commission provided an analysis and assessment of cumulative impacts resulting from the potential buildout of the area. This report concluded that continuing development in this area to the potential maximum density of parcels would result in about a 50% increase in the number of residences. A number of biological impacts were identified as a result of maximum development, however, due to the extremely low density of potential development in the area, some of these impacts are not expected to be significant. The Commission found that the report concluded that:

If the appropriate mitigation measures suggested in Section 6.0 (actually 7.0) are implemented, these impacts, and most others, can be effectively mitigated to levels that would not result in significant adverse impacts on a local or cumulative basis.

The Commission reviewed and found that this report's conclusion that unavoidable impacts are primarily related to the loss and degradation of habitat wildlife resources, and the destruction of valuable riparian habitat by severe erosion and siltation processes. The appropriate areas for development where both of these effects are most likely to be minimized are the more level, generally disturbed areas in the watershed. The subject site is located in the upper watershed area where the canyon is relatively level and disturbed with dirt roads. The Commission further found that the report further concluded that:

If development is geographically restricted in this manner, and all development complies with all of the mitigation measures suggested, unavoidable adverse impacts should not be expected to have significant cumulative effects on valuable downstream resources.

The Los Angeles County Land Use Plan (LUP) Policies and particularly those policies in Table 1 were developed as a result of the information in the reports and the 1978 report's suggestions to partially or completely mitigate impacts. The Commission found that these policies, including the Table 1 policies, reflect the development constraints and mitigation measures identified in the Nelson report. The Table 1 policies were found by the Commission and were certified in the LUP as consistent with the Coastal Act. These LUP policies were used by the Commission as guidance during the review and analysis of the subject project and were certified by the

Commission as consistent with the Coastal Act. The LUP designates this area as Mountain Land for residential development within specific limits. Policy 63 states that uses shall be permitted in Significant Watershed in accordance with Table 1 and all other policies of the LUP. Table 1 provides that residential uses are permitted for "existing parcels smaller than 20 acres in proximity to existing development and/or services, and/or on the periphery of the significant watershed", "at existing parcel cuts (buildout of parcels of legal record) in accordance with specified standards and policies..." Applicable Table 1 policies to Significant Watersheds include the following:

Allowable structures shall be located in proximity to existing roadways, services and other development to minimize the impacts on habitat.

Structures shall be located as close to the periphery of the designated watershed as feasible, or in any other location for which it can be demonstrated that the effects of development will be less environmentally damaging.

Stream beds in designated ESHA's shall not be altered except where consistent with Section 30236 of the Coastal Act.

Grading and vegetation removal shall be limited to that necessary to accommodate the residential unit, garage, and one other structure, on access road and brush clearance required by the Los Angeles County Fire Department. The standard for a graded pad shall be a maximum of 10,000 sq. ft.

New access roads shall be limited to a maximum length of 300 feet or one third of the parcel depth, whichever is smaller. Greater lengths may be allowed through conditional use, provided that the Environmental Review Board and County Engineer determine that there is no acceptable alternative.

Site grading shall be accomplished in accordance with the stream protection and erosion control policies.

It is important to note that the Los Angeles County LUP does not designate the Olson parcel as open space; residential development is a permitted use. The Commission analyzed the subject project relative to each of these policies including the Table 1 policies. As an example, the Commission found that the project was limited to 9,975 sq. ft. of area for site grading for the building pad consistent with the maximum 10,000 sq. ft. allowed by Table 1. Further, the Commission found that the project included a landscape and fuel modification plan that illustrated how the areas disturbed by development activities on site will be revegetated to provide erosion control and how native plants will be thinned rather than cleared to retain the erosion control characteristics of the property. The Commission also found that the proposed project

was located close to existing roads and services, and that the on-site access road, the driveway from the existing Fabuco Road to the residence and garage, will be less than 100 feet in length. Table 1 limits driveway length to 300 feet, the subject driveway was less than 300 feet in length. The proposed road improvements along Fabuco Road and Betton Drive will occur on an existing dirt roadway within the applicant's legal ingress and egress easement. The road width will be no wider than 30 feet and in some locations less than 30 feet to limit grading due to topographical constraints, as the minimum width allowed by the Los Angeles County Fire Department. The Commission found that development would be close to existing roads and services and that grading activities be minimized and that development be designed to minimize landform alteration. The Commission also found that the proposed development was located as close to the periphery of the designated watershed as feasible, and that streambeds and ESHA's were not altered and would be protected to the greatest extent possible.

The Commission was aware of and reviewed the fact that about 1,800 feet of the section of Benton Drive en route to Skyhawk Lane will be improved as part of the Commission approval of the development of the adjoining parcel owned by Mark Jason, Coastal Permit No. 4-96-025. The Jason project included a 1800 foot road improvement to South Chard Avenue and Betton Road which is also necessary to access the Olson project. The Olson project includes a 800 foot road improvement extending the improvement of Betton Drive and then improving Fabuco Road to the project site (Exhibit 4).

The Commission was aware of and reviewed the fact that there were vacant parcels in the area. The Commission was aware and reviewed the fact that other residential development was approved by the Commission in the vicinity and that future development applications may be reviewed Commission for other vacant parcels. The Commission had approved Coastal Permits for development in this portion of the watershed; specifically, Jason (Coastal Permit No. 4-96-025), Anderson (Coastal Permit No. 4-96-021), Lesavoy (Coastal Permit No. 4-95-031), Geer (Coastal Permit No. 4-94-124), and Andrews (Coastal Permit No. 4-92-122).

The Commission reviewed and analyzed the fact that the proposed project site is accessible due to a series of easements across a series of existing dirt roads. A grading and drainage plan was reviewed that illustrates how drainage will be conveyed off the road in a non-erosive manner after the construction of the road improvements. To address potential erosional impacts from the building site, the Commission required a special condition requiring the applicant to submit erosion control and drainage plans that illustrate how runoff will be conveyed from the project site in a non-erosive manner. The applicant submitted drainage plans indicating that drainage from the building site would drain north to Fabuco Road onto a rip rap dissipater and then west towards a drainage leading south eventually into Tuna Canyon Creek, a total distance of about 1,000 feet. The Commission also required



another special condition to ensure the road access and drainage improvements are maintained and any necessary repairs and restoration resulting from failure are done in the future, if needed. This condition also ensured that the road improvements and drainage structures function properly in the future to prevent erosion and sedimentation of nearby streams. The Commission found that because the project site is located in the upper canyon where the site is generally level with an existing dirt road leading to the graded site and building pad, no significant adverse impacts are expected.

The Commission further analyzed the potential for cumulative impacts as a result of potential future expansions of individual residential development that would be exempt from the requirement of obtaining a coastal permit, such as an addition to the residence. To address the potential for expanding the grading, vegetation removal, and impervious surfaces as a result of future development, the Commission required a special condition addressing the restriction of future improvements. This special condition required a deed restriction to ensure that future development at this site that would be otherwise exempt from Commission permit requirements will be reviewed for consistency with the Coastal Act. Therefore, the Commission found that the proposed project as approved with conditions addressed individual and cumulative impacts and was consistent with and conformed to Sections 30231, 30240, and 30250 (a) of the Coastal Act.

The Commission received numerous letters asserting that the Commission did not review cumulative impacts of this subject project and future projects particularly with concerns about the sequential timing of the applications. No evidence was provided in these letters to support the assertion that the sequential timing of applications created cumulative adverse impacts not reviewed by the Commission or affected the Commission's prior assessment of cumulative impacts of potential build out of residential uses and road improvements in the area. Staff is unaware of any other information that may raise new evidence of changed circumstances relative to cumulative impacts that was not analyzed in the original Olson coastal permit application. The sequential timing of applications to develop this area does not in itself have the potential to create cumulative impacts as the Commission has reviewed the potential buildout of all of the vacant lots within the entire Tuna Canyon Watershed, regardless of the sequence of the submittal of applications, their order of potential approval, or the order of development of each lot.

### **3. Steelhead Trout**

Regarding the third issue, the Commission did not find that there were changed circumstances that may have affected the project's consistency with the Coastal Act. There were letters received asserting that the subject project in this watershed would impact West Coast Steelhead Trout in local creeks and an adjoining watershed. The Commission reviewed individual and cumulative impacts of the development

consistent with Section 30231 addressing the biological productivity and quality of coastal streams, and with Section 30240 addressing environmentally sensitive habitats (ESHA). The Commission generally does review potential impacts to protected or sensitive species where their presence is known. The Commission did not address in the staff report potential development impacts specifically on a certain species known as the West Coast Steelhead Trout within Tuna Canyon and in an adjoining Watershed. The federally endangered steelhead trout (*Oncorhynchus mykiss*) was not identified as a protected species within Tuna Canyon Creek during the Commission's review and analysis of the subject project.

In an effort to clarify these assertions made by the writers of these three letters, staff requested in a letter dated March 12, 1999 additional information regarding the asserted existence of this species in the Tuna Canyon Creek Watershed or an adjoining Watershed and how this species may be significantly adversely impacted by this project.

In response, staff received three additional letters from these writers. The first letter dated March 16, 1999 was received from Toby Keeler, Co-Chair, Government Relations Committee of the Las Virgenes Homeowners Federation, Inc. This letter asserts that yearling West Coast Steelhead Trout were found in Topanga Creek last summer and that historical records indicate that significant numbers of the fish were in Topanga Creek and Malibu Creek. The second letter dated March 18, 1999 was received from David Totheroh. This letter asserts that according to information published in the Topanga Messenger (dated August 13, 1998) Steelhead Trout were discovered in Topanga Creek. The letter also asserts that runoff, erosion and sedimentation which can be easily foreseen as a result of the Olson and similar development plans in the watershed would have impacts on the habitat of the trout. The third letter dated March 16, 1999 was received from Herbert Petermann, VOICE Chair. This letter asserts that a biologist from the Resource Conservation District of the Santa Monica Mountains (RCDSMM) stated that another biologist from the National Marine Fisheries Service (NMFS) found a steelhead trout in Topanga Creek in August 1998. The letter notes that Topanga Creek is adjacent to Tuna Canyon. The letter also asserts that the RCDSMM biologist believes it is likely that steelhead trout also occur in the Tuna Canyon Creek Watershed. A copy of the same Topanga Messenger article dated August 13, 1998 and a copy of a Los Angeles Times article dated March 16, 1999 titled, "Salmon Protection Plan to Target Urban Habitats" were attached. This letter also asserts that any additional grading and building of roads or structures in the Tuna Canyon Watershed will adversely effect the survival of the steelhead trout by paving and building adjacent to stream beds which increases erosion, siltation, and degrades the natural habitat around watersheds. The Commission notes that all of these letters set forth assertions as to the existence of the identified species, however, none of the letters included actual evidence of the existence.

In an effort to investigate whether there is any actual evidence of the species' existence, Staff contacted Sean Manion, conservation biologist for the RCDSMM on March 19, 1999 to confirm whether the statements made in Mr. Petermann's letter are correct. Mr. Manion stated that the statement in Mr. Petermann's letter was a misunderstanding. Mr. Manion **did not state** that it is **likely** that Steelhead Trout also occurs in the Tuna Canyon Creek Watershed. Rather, he recalls that he stated the opposite: that it is "**unlikely** that Steelhead Trout are in Tuna Canyon Creek". Staff attempted to contact Mr. Anthony Spina with the National Marine Fisheries Service (NMFS) to confirm whether or not he discovered Steelhead Trout in Topanga Creek in August 1998. Unfortunately, Mr. Spina was unavailable until later in April 1999. In addition, Staff contacted Eric Shott, Fishery Biologist, with NMFS to determine if Steelhead Trout is present in the Tuna Canyon Creek watershed and confirm if Mr. Spina of the NMFS discovered Steelhead Trout in Topanga Creek as noted in the Topanga Messenger. The NMFS submitted a letter dated April 2, 1999 confirming that the existence of Steelhead Trout in these creeks is unlikely.

Therefore, no evidence was provided, nor has staff investigation discovered any, to support the assertion that Steelhead Trout was discovered in Tuna Canyon Creek. The alleged discovery of Steelhead Trout in Topanga Creek or local creeks is not relevant to development in Tuna Canyon Watershed because the watersheds are two separate and distinct watersheds. In other words, water falling within the Tuna Canyon Watershed does not flow into Topanga Canyon Creek, but rather it flows downhill into Tuna Canyon Creek. Further, no evidence was provided by the writers noted above or discovered by staff to support the assertion that a Steelhead Trout was found in Topanga Canyon Creek as noted in the Topanga Messenger Article. It's important to note that the reason this alleged discovery is not relevant is because Topanga Creek is located within a separate and distinct watershed from the Tuna Canyon Creek Watershed. Although these two watersheds are adjacent to each other they are not hydrologically connected and are distinct watersheds. Even if Steelhead Trout were discovered in Topanga Canyon Creek, there is no evidence that development in the Tuna Canyon Watershed would affect such species in Topanga Canyon Creek.

However, even if the Commission had evidence of the species' presence in Tuna Canyon Creek, this would not constitute changed circumstances. Even if this species were found in Tuna Canyon Creek, the Commission found in approving the subject development project that, as conditioned, the project would not create any significant adverse impacts to biological productivity and quality of coastal streams and wetlands appropriate to maintain optimum populations of marine organisms, control runoff, prevent substantial interference with surface water flow, maintain natural buffer areas that protect riparian habitats, and minimize alteration of natural streams. The Commission reviewed and analyzed the project and its site and found that no impacts would result from site disturbance and runoff for three reasons. These reasons include the site's substantial 1,000 foot distance from the upper portion of Tuna

Creek, the project's conformance with the guidance provided in Table 1 policies and other LUP policies, and as conditioned the project will minimize erosion from the site and sedimentation offsite. Further, no stream alteration or substantial interference with surface water flow was proposed, and no riparian habitats were effected by the project. Therefore, even if Steelhead Trout were discovered in Tuna Creek, it does not change the Commission's 1997 analysis or conclusions in the Olson Coastal Permit staff report, because no significant adverse effects would occur on either an individual or cumulative basis to Steelhead Trout as a result of the Olson project. Thus, although assertions were made that development in the Tuna Canyon Watershed would effect Steelhead Trout, no evidence was received or found by staff to support the assertions which would lead the Commission to question the prior decision to approve the subject development project. Even if these assertions were true and supported by actual evidence, there still wouldn't be changed circumstances because no significant adverse effects would occur on either an individual or cumulative basis to Steelhead Trout. As a result, the Commission did not find that there were any 'changed circumstances' relative to the issue of significantly adversely affecting Steelhead Trout that may have affected the project's consistency with the Coastal Act

In conclusion, on April 15, 1999, the Commission objected to a one year extension of coastal development permit 4-96-172 on the grounds that a potential fire escape route, Tuna Canyon Road, was impeded by recent landslide activity that could adversely impact ingress and egress to the subject property and that the extension of residential development into the upper Tuna Canyon watershed constituted changed circumstances that may affect the project's consistency with the Coastal Act. Pursuant to the California Code of Regulations, 14 C.C.R. Section 13169, the permit application was scheduled for a full public hearing as a new permit application (No. 4-99-164) for the August Commission meeting. As discussed above and in detail in the following findings below, the proposed project does not result in significant cumulative adverse impacts to coastal resources and the status of Tuna Canyon Road does not affect fire safety with regard to ingress and egress to the subject property, thus, the proposed project is consistent with the Chapter three policies of the Coastal Act.

**C. Environmentally Sensitive Resource Areas**

Section 30250(a) of the Coastal Act provides that new development be located within or near existing developed areas able to accommodate it, with adequate public services, where it will not have significant adverse effects, either individually or cumulatively, on coastal resources:

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.

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

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

Section 30231 of the Coastal Act is designed to protect and enhance, or restore where feasible, marine resources and the biologic productivity and quality of coastal waters, including streams. Section 30231 of the Coastal Act states as follows:

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.

In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values:

(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.

The project site is located within the Los Angeles County Land Use Plan designated Tuna Canyon Significant Watershed. The Tuna Canyon Significant Watershed Area includes about 1,524 acres of land in the coastal Santa Monica Mountains within the watersheds of Tuna and Pena Canyons. The terrain is extremely steep, generally greater than 30% slope, and rugged in this canyon. The majority of the subject site is relatively flat with the proposed building site on a small knob hill.

Tuna Creek, a designated Environmentally Sensitive Habitat Area (ESHA), is located about one thousand feet to the south of the subject parcel; the geographic area designated as ESHA is about three hundred feet south of the parcel. (See Exhibit 11) Due to the distance, the proposed residence and road improvements will not directly affect this ESHA. Tuna Canyon is designated a significant watershed because of the relatively undisturbed nature and the presence of wildlife. It is important to note that the 1978 Nelson Report identified all of the Tuna Canyon watershed as a significant ecological area. However, the Los Angeles County Land Use Plan certified by the Commission in 1986 changed the terminology to the Tuna Canyon Significant Watershed for both Tuna and Pena Canyon watershed while narrowing the ESHA designation for the Tuna Canyon Significant Ecological Area to generally the riparian vegetation along the two creeks, Tuna Canyon and Pena Creeks. (Exhibit 11) A Significant Watershed is not considered an ESHA under the Coastal Act definition of ESHA's, worthy of more stringent protection as an example for riparian vegetation, because they are dominated by vegetation and wildlife common throughout the Santa Monica Mountains. However, the certified LUP did establish specific policies and development standards to protect the sensitive resources of these relatively undisturbed watersheds.

The habitat values contained in the Tuna Canyon Significant Watershed have been well documented. A consultant's report prepared for Los Angeles County in 1976 by England and Nelson designates the Tuna Canyon Significant Watershed as a Significant Ecological Area (SEA). The report describes the concept of an SEA as follows:

The 62 significant ecological areas selected were chosen in an effort to identify areas in Los Angeles County that possess uncommon, unique or rare biological resources, and areas that are prime examples of the more common habitats and communities.

Thus, the goal of the project was to establish a set of areas that would illustrate the full range of biological diversity in Los Angeles County, and remain an undisturbed relic of what was once found throughout the region. However, to fulfill this function, all 62 significant ecological areas must be preserved in as near a pristine condition as possible ...

If the biotic resources of significant ecological areas are to be protected and preserved in a pristine state, they must be left undisturbed. Thus, the number of potential compatible uses is limited. Residential, agricultural, industrial, and commercial developments necessitate the removal of large areas of natural vegetation and are clearly incompatible uses.

The England and Nelson Report continues to state:

Tuna and Pena Canyons are the last drainages in the central and eastern Santa Monica Mountains that have not sustained development either in the watershed or between the canyon mouth and the coast. A year-round stream is present in Tuna Canyon. This resource is in itself limited in distribution in the Santa Monica Mountains, and most of Southern California. Due to this feature and its coastal exposure, the riparian woodland in the canyon bottom is in excellent health and supports healthy wildlife populations. Animals utilize the stream as a water source and forage in the chaparral and coastal sage scrub on adjacent hillsides.

The combined qualities of healthy vegetation, riparian woodland, surface moisture, no development, and an unobstructed opening to the coast are unique in the western Santa Monica Mountains and have caused the canyon to become an important area to migratory bird species. In addition to migratory songbirds, waterfowl have been seen in the canyon during migration.

A report titled "Tuna Canyon Significant Ecological Area: An Assessment of the Cumulative Impacts of the Potential Maximum Development," was prepared for the Tuna Canyon Property Owners Association by Steven Nelson, Director of Biological Science, Phillips Brandt Reddick, dated January 9, 1978. The purpose of the report was to provide a detailed resource inventory and analysis of the Tuna Canyon Significant Watershed to be used by decision makers as advanced and additional environmental input to their planning process. The report is an objective analysis and assessment of cumulative impacts resulting from the potential buildout of the area. Measures to partially or completely mitigate impacts were suggested. The subject site is mapped by the report as a chaparral biotic community typically with broad-leaf sclerophyllous vegetation with considerable diversity in species composition. Although, the subject site and surrounding area burned in the 1993 Malibu Fire; the chaparral and coastal sage vegetation appears to be returning.

The Malibu/Santa Monica Mountains Land Use Plan policies addressing protection of ESHA's and Significant Watersheds are among the strictest and most comprehensive in addressing new development. In its findings regarding the Land Use Plan, the Commission emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources. The Commission found in its action certifying the Land Use Plan in December 1986 that:

...coastal canyons in the Santa Monica Mountains require protection against significant distribution of habitat values, including not only the riparian corridors located in the bottoms of the canyons, but also the chaparral and coastal sage biotic communities found on the canyon slopes.

1. Protection of Environmental Resources

The Land Use Plan (LUP) includes several policies designed to protect the Watersheds, and ESHA's contained within, from both the individual and cumulative impacts of development. Many of these policies, particularly those in Table 1 were developed as a result of the information presented in the two above noted reports on Tuna Canyon Significant Watershed and Ecological Area. These policies are used by the Commission as guidance during the review of applications for coastal development permits.

P63 Uses shall be permitted in ESHA's, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table 1 and all other policies of the LCP.

Table 1 states that for "existing parcels smaller than 20 acres in proximity to existing development and/or services, and/or on the periphery of the significant watershed", residential uses are permitted: "at existing parcel cuts (build-out of parcels of legal record) in accordance with specified standards and policies..." The Table 1 policies applicable to Significant Watersheds are as follows:

Allowable structures shall be located in proximity to existing roadways, services and other development to minimize the impacts on the habitat.

Structures shall be located as close to the periphery of the designated watershed as feasible, or in any other location for which it can be demonstrated that the effects of development will be less environmentally damaging.

Streambeds in designated ESHA's shall not be altered except where consistent with Section 30236 of the Coastal Act.

Grading and vegetation removal shall be limited to that necessary to accommodate the residential unit, garage, and one other structure, one access road and brush clearance required by the Los Angeles County Fire Department. The standard for a graded building pad shall be a maximum of 10,000 sq. ft.

New on-site access roads shall be limited to a maximum length of 300 feet or one third of the parcel depth, whichever is smaller. Greater lengths may be allowed through conditional use, provided that the Environmental Review Board and County Engineer determine that there is no acceptable alternative.

Site grading shall be accomplished in accordance with the stream protection and erosion control policies.



Designated environmentally sensitive streambeds shall not be filled. Any crossings shall be accomplished by a bridge.

Other applicable Land Use Plan policies include:

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

P68 Environmentally sensitive habitat areas (ESHA's) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resources dependent use.

P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.

## **2. Stream Protection and Erosion Control**

The Land Use Plan (LUP) includes several policies designed to protect the Watersheds, and ESHA's while addressing stream protection and erosion control from both the individual and cumulative impacts of development.

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

P84 In disturbed areas, landscaping plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing covers to reduce heat output may be used. Within ESHA's and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.

P88 In ESHA's and Significant Watersheds and other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:

Structures should be clustered.

Grading for access roads and driveways should be minimized; the standard new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the County Engineer and Environmental Review

Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use.

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrologic, water percolation and runoff) to the maximum extent feasible.

P96 Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.

Past permit actions taken by the Commission generally reflect the goals contained in the certified LUP policies towards development in ESHA's and Significant Watersheds. Where the Commission has found that single-family development, including accessory structures, would not cumulatively or individually create adverse impacts on habitat or other coastal resources, or that adequate mitigation could be provided, it has been permitted. Although the certified LUP takes a different approach than some past permit decisions by allowing some residential development within SEAs and Significant Watersheds, subject to conformance with the policies stated above, the goal of the LUP remains the same; the protection of watersheds as viable units.

The applicant proposes to construct a 4,000 sq. ft., two story single family residence, attached garages, motor courtyard, septic system, and swimming pool. Constructing the residence will require grading of about 1,016 cubic yards; 775 cubic yards of cut and 241 cubic yards of fill. The residential development is limited to one site and does not include other development normally associated with residential development, including tennis courts, or equestrian facilities. The project also includes an approximate 800 foot extension of road and water improvements along Betton Drive and Fabuco Road to the project site. The roadway improvements provide for a maximum thirty foot wide roadway to the project site, requiring about 336 cubic yards of total grading (135 cubic yards of cut and 201 cubic yards of fill). Total grading for the entire project is about 1,352 cubic yards of material. The project site is a relatively flat 2.37 acre parcel; the building site is located in the central portion of the parcel on a small knob hill within the Tuna Canyon Significant Watershed.

#### **D. Cumulative and Individual Impacts of Development**

The 1978 report by Nelson provided an analysis and assessment of cumulative impacts resulting from the potential buildout of the area. The report concluded that continuing development in this area to the potential maximum density of parcels would result in about a 50 % increase in the number of residences. The report

Marian Olson

admitted that this buildout may be an overestimate of the ultimate conditions of development, representing a worst case condition. A number of biological impacts were identified as a result of maximum development, however, due to the extremely low density of potential development in the area, some of these impacts are not expected to be significant. The Report states:

If the appropriate mitigation measures suggested in Section 6.0 (actually 7.0) are implemented, these impacts, and most others, can be effectively mitigated to levels that would not result in significant adverse impacts on a local or cumulative basis.

The report indicated that unavoidable adverse impacts are primarily related to the loss and degradation of habitat wildlife resources, and the destruction of valuable riparian habitat by severe erosion and siltation processes. Those areas where both of these effects are most likely to be minimized are the more level, generally disturbed areas in the watershed. The subject site is located in the upper watershed area where the canyon is relatively level and disturbed with existing dirt roads. The Report concludes by stating:

If development is geographically restricted in this manner, and all development complies with all of the mitigation measures suggested, unavoidable adverse impacts should not be expected to have significant cumulative effects on valuable downstream resources.

The Nelson report was used by the County as the basis to develop the Table 1 policies as discussed below. These policies reflect the development constraints and mitigation measures identified in the Nelson report. The Table 1 policies were certified by the Commission as consistent with the Coastal Act.

To further address individual and cumulative impacts and appropriate mitigation measures in analyzing the proposed project for conformance with the resource protection policies of the Coastal Act, the Land Use Plan and with Table 1 policies will be addressed. For instance, Table 1 specifies that grading and vegetation removal shall be limited and that the standard for a graded building pad shall be a maximum of 10,000 sq. ft. In this case, the proposed building pad, including a minor amount of fill around the building, is to be no larger than 10,000 sq. ft. at 9,975 sq. ft..

Furthermore, the applicant has submitted preliminary and revised Landscape and Fuel Modification Plans for the proposed development (Exhibit 7). These Plans illustrate how the areas disturbed by development activities on site will be revegetated to provide erosion control and how native plants associated with this site will be "thinned" rather than "cleared" in order to retain the erosion control properties of this vegetation. The removal of this vegetation is required, as per the Los Angeles County Fire Department's Fuel Modification Standards, and the applicant has submitted a fuel

modification plan which indicates that only vegetation specially designated as "high fire hazard" will be completely removed as a part of this project. The proposed vegetation clearance area will be 20 feet surrounding the structure and driveway, while thinning of vegetation will be within the 50 to 200 foot radius surrounding the structure. Additionally, the revised Fuel Modification Plan (revised as compared to the original Plan approved in Coastal Permit No. 4-96-172) identifies only that vegetation which is located within a 200' (rather than the original 300 foot) radius of the residential structure will be subject to the County Fire Department's fuel modification requirements. In addition, Special Condition No. Two (2) is necessary to ensure that removal of natural vegetation for fuel modification purposes does not take place without the construction of the proposed single family residence. Unnecessary fuel modification is not permitted as it is contrary to the provisions of Section 30253 of the Coastal Act including ensuring site stability and avoiding adverse impacts of erosion and sedimentation. Therefore the project is in conformance with the Table 1 policies of the LUP as they pertain to the minimization of grading, vegetation removal, and the maximum allowable area of building pads.

Furthermore, Table 1 policies require that development be located close to existing roads and services, and that on-site access roads be limited to no more than 300' in length so that impacts to habitat are minimized. Additionally, LUP policies (P78, P82, P88, & P91) specify that grading activities be minimized and that development be designed to minimize landform alteration, and that said development is placed as close to existing services as possible. In the case of the proposed residence, no more than 1,016 cubic yards of grading is proposed. The building site is located on the flat portion of a small knob, thus minimizing the need for grading to create the flat building pad. Additionally, the structure is proposed to be located within 100' feet of the southern terminus of Fabuco Road, an existing dirt road and the legal easement owned by the applicant. As a result, the grading for the new on-site access driveway will be less than 100 feet in length. In regards to the proposed improvements on this easement, all development will occur on the existing dirt roadway within the applicant's legal ingress and egress easement. Although there is approximately 336 cubic yards of grading proposed along this easement, grading will occur along an approximate 800 foot section of the existing roadways along Fabuco Road and Betton Drive. The road width will be no wider than 30 feet and in some locations less than 30 feet to limit grading due to topographical constraints. Lastly, the applicant proposes to export about 534 cubic feet of cut material to a disposal site located outside the coastal zone. To ensure that the cut material is exported to an appropriate disposal site located outside the coastal zone, Special Condition No. Seven (7) is necessary to eliminate potential impacts of sedimentation and erosion on watersheds located within the coastal zone. Therefore, this grading is judged to be the minimum necessary in order for the applicant to comply with the requirements of the Los Angeles County Fire Department.

About 1,790 feet of the section of the route to Betton Drive, Skyhawk Lane and Tuna Canyon Road (beyond the road section on Betton Drive to be improved as proposed in this application) will be improved as part of the Commission's approval of an adjoining parcel (Mark Jason, Coastal Permit 4-96-025). Furthermore, as the grading is proposed along an existing dirt access road, no significant new impacts will occur to habitat adjacent to the project area. Therefore, the project is found to be generally in conformance with the LUP Table 1 policies that pertain to the proximity of new development to existing services and the minimization of landform alteration. These Table 1 policies are used as guidance by the Commission in the review of this application.

Table 1 policies also specify that development be located as close to the periphery of the designated watershed as feasible, and that streambeds, and ESHA's not be altered and that they are protected to the greatest extent possible. Additionally, LUP policy P96 specifies that water quality be protected from degradation resulting from development. The proposed project site is located on a lot that is about 300 feet from the boundary of the designated Environmentally Sensitive Habitat Area along Tuna Canyon and about 1,000 feet from Tuna Canyon Creek which includes designated ESHA. This general area includes other single family residences located in the vicinity, and in the past, the Commission has granted permits for development in this portion of the watershed; specifically, Jason, (Coastal Permit 4-96-025), Anderson (Coastal Permit 4-96-021), Lesavoy (Coastal Permit 4-95-031), Geer (Coastal Permit 4-94-124) and Andrews (Coastal Permit 4-92-122).

The applicant submitted a landscape plan indicating that all disturbed areas would be planted with drought resistant and native plant species. The applicant proposes to have the plan approved by the Los Angeles County Forestry Department as a fuel modification plan for the purpose of reducing fire hazards. Special Condition No. One (1) requires that the site be selectively cleared of native vegetation and grasses pursuant to Fire Department requirements for clearing and thinning the area up to 200 feet from the residence. The replacement plants provided in the landscape plan will minimize and control erosion while reducing the fire hazard of the site. The final landscape plan provides for the use of native plant materials, plant coverage and replanting requirements for all disturbed areas on the site and the submittal of a Fuel Modification Plan approved by the Los Angeles County Fire Department, Forestry Division, Fire Prevention Bureau. Also the plan needs to indicate that the planting of all disturbed areas will be adequate to provide for ninety percent coverage within two years. In addition, the plan should indicate that should grading occur during the rainy season sediment basins would be required. Special Condition No. One (1) provides for these revisions to the landscape and fuel modification plans.

Furthermore, the proposed project site is accessible due to an easement across a series of existing dirt roads. The applicant has submitted a grading and drainage plan that illustrates how and where drainage will be conveyed following improvements to

the existing access road. These plans illustrate that the above referenced drainage devices, as revised by the applicant to include larger replacement drainage devices (larger than the existing drainage devices proposed to be retained by the applicant in Coastal Permit No. 4-96-172), will convey the flows into existing natural drainage channels that currently handle flows from the unimproved access road. However, these plans do not illustrate how runoff is to be conveyed from the building pad of the proposed residence or how erosion will be minimized during construction. Therefore, the Commission finds it necessary to require the applicant to submit erosion control and drainage plans that illustrate how runoff will be conveyed from the project site in a non-erosive manner, as required by Special Condition No. One (1).

In addition, to ensure the access road and drainage improvements are maintained in the future, the Commission finds it necessary to require the applicant to be solely responsible for any necessary repairs and restoration resulting from this failure along the entire section of the access road proposed to be developed as a part of this permit. Further, this Special Condition is necessary to ensure the road improvements and drainage structures function properly in the future to prevent erosion and sedimentation of nearby streams, as required by Special Condition No. Three (3). Therefore, because the project site is located in the upper canyon where the site is generally level with an existing dirt road leading to the site and building pad, significant impacts are not expected.

Thus, as conditioned, the project is found to be in conformance with the guidance provided in the LUP Table 1 policies that pertain to locating development within designated watersheds and close to the periphery of designated ESHA's while protecting streams and ESHA's from alteration and disturbance to the greatest extent possible.

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the significant watersheds of the Malibu/Santa Monica Mountains region through past permit actions. This is due to the potential for future expansions of individual residential development which would be exempt from coastal development permit requirements. Specifically, the Commission notes concern about the potential for future impacts on coastal resources that may occur as a result of further development of the subject property. Specifically, the expansion of the building site and developed area would require more vegetation removal as required for fuel modification by the Los Angeles County Fire Department. Further, adding impervious surfaces to the site through future development or expansion could have adverse impacts on the existing drainage of the site, which in turn would have significant impacts on the Tuna Canyon watershed due to increased erosion and sedimentation. Therefore, the Commission finds it is necessary to require the applicant to record a future development deed restriction to ensure that expanded development at this site that would otherwise be exempt from Commission permit requirements will be reviewed for consistency with the coastal resource policies of the Coastal Act.

Special Condition No. Four (4) provides for a Future Development Deed Restriction that will supercede and replace the Deed Restriction recorded on October 16, 1997 as Instrument # 97-1620079, recorded previously pursuant to Coastal Permit No. 4-96-172.

Lastly, the County of Los Angeles Environmental Review Board (ERB) reviewed this project in May 1996. The ERB meetings are working sessions where the appointed ERB members serve in an advisory capacity to the Regional Planning Commission (or the County decision makers) providing recommendations on whether or not the project conforms to the policies of the County LUP. LUP Policy P64 indicates that projects shall be approved for coastal permits only upon a finding that the project is consistent with all policies of the LUP.

The ERB evaluation and recommendation to the County decision makers (the Regional Planning staff in this case) concluded that the proposed project was inconsistent with the policies of the County LUP. Although the reasons for this recommendation are unclear in the ERB minutes, it appears from staff's review of the minutes that the reasons may have been: (1) that the lot is distant from existing services and remote from existing roads, and (2) that the lot is eligible for lot retirement program. In addition, the ERB made a number of recommendations, many of which were included as conditions of the County approval.

Regarding the first reason, the subject site is connected to Tuna Canyon Road by private roadways known as Skyhawk Lane, Chard Avenue, Betton Drive, and Fabuco Road. The County has previously recognized these rights of way as traveled ways through approved certificates of exception, records of surveys, certificates of compliance, etc. As a result of the approval of a residence immediately north of the subject site, the Jason property at 20556 Betton Drive, about 1,790 feet of roadway will be improved to Fire Department standards from the Jason property to Tuna Canyon Road in order to access the future Jason residence. The length of the driveway from the proposed residence to the existing southern terminus of Fabuco Road is less than 300 foot maximum allowed in Table 1 policies as noted above. The applicant is proposing to pave an 800 foot extension from the approved paved access to the Jason property on the existing but unpaved roads, Betton Drive and Fabuco Road. Therefore, the Commission finds that the subject site is served by existing roads.

Regarding the second reason, the County Land Use Plan includes a policy, P271 (b) (3) that states that new residential uses would be permitted in Significant Watersheds in accordance with the policies, standards, and conditions of the LUP. It also states that where development of small parcels is determined to yield a potential for significant impacts, the parcel would be eligible to participate in the development rights retirement program. Policy P271-2a, which discourages development of lots of less than 20 acres in designated significant watersheds which are distant from

existing services and are determined by the ERB to potentially incur a significant adverse impact on the ESHA's or Significant Watersheds. In this case, the ERB did not determine that a significant adverse impact on either ESHA's or Significant Watersheds would occur. In fact, the ERB made a number of recommendations to the County decision makers to consider during the review process. Many of these recommendations were incorporated into the project design or conditions of the County's approval. As noted above, the lot is located near existing services. Therefore, the applicant's proposed project has complied with the Table 1 Policies in the LUP and is not compelled to participate in the County's voluntary lot retirement program. Further, the County does not have implementing ordinances to carry out the lot retirement program provided in the LUP.

One of the recommendations of the ERB included suggesting that vegetation clearance should not exceed 10% of the lot area. The applicant's lot is about 2.37 acres in size. The applicant has submitted a preliminary Landscape/Fuel Modification plan indicating that County Fire Department approval for the fuel modification will extend beyond the applicant's parcel boundaries to achieve a selective thinning of natural vegetation. The County's approval recognized that portions of the property included heavily sloping land within a Very High Fire Hazard Severity Zone. The County required approval of a County Fire Department Fuel Modification Plan balances safety policies of the Malibu LUP with other LUP policies to minimize significant impacts on the natural habitat. The County recognized that enforcing the full 200 foot clearance requirement would result in modifying the entire subject property as well as offsite properties of others. It appears that the County approval also recognized the non-conforming 2.7 acre size of the subject parcel. The certified Land Use Plan designates the subject site and surrounding area as Mountain Land, one dwelling unit per 20 acres. Because of the non-conforming size of the subject site, it is not feasible to meet the Land Use Plan Table 1 policy limiting land clearance to 10% of the lot area.

In addition, reducing the footprint of the residence, which is about 2,000 sq. ft. for the 4,000 sq. ft. two story structure, would not substantially reduce the area for fire clearance. Further, the 10% of the lot clearance limit was established when the County Fire Department only required a 100 foot radius clearance zone. As a result of numerous Santa Monica Mountain wildfires since 1986, the Fire Department has increased the approved fuel modification zone radius for new development to a 200 foot radius with selective cleared areas.

In conclusion, although the County ERB found the project inconsistent with the LUP, the ERB action was only a recommendation to the County decision makers. In this case, the County Department of Regional Planning staff, the County decision makers, found the proposed project consistent with the Los Angeles County Land Use Plan and acted to "Approve In Concept" the proposed project with conditions. These



conditions included recommendations by the ERB such as a landscape plan with native species consistent with current Fire Department standards.

The certified Los Angeles County Land Use Plan provides guidance to the Commission to consider. The Commission finds that the project meets the guidance provided in the LUP and the Table 1 policies as discussed above, contrary to the recommendation of the ERB. The Commission's standard of review for this project are the policies of the Coastal Act. Therefore, Commission finds that the project is located near existing developed areas able to accommodate it with adequate public services. And further the Commission finds that the project will not have significant adverse effects, either individually or cumulatively, on coastal resources. The Commission also finds that the biological productivity and quality of coastal waters and riparian habitat, ESHA, will be protected as a result of the proposed project, as conditioned.

Thus, the proposed project, as conditioned, will result in development that is consistent with and conforms with Sections 30231, 30240, and 30250(a) of the Coastal Act.

**E. Geologic and Fire Hazards**

Section 30253 of the Coastal Act states:

New development shall:

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

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

The proposed development is located in the Malibu area which is generally considered to be subject to an unusually high number of natural hazards. Geologic hazards common to the Malibu area 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.

The Commission reviews the proposed project's risks to life and property in areas where there are geologic, flood and fire hazards. Regarding the geologic hazard, the applicant submitted a geologic report titled "Geologic/Geotechnical Engineering

Report", dated May 6, 1996, prepared by Gold Coast GeoServices, Inc. This report states:

It is the opinion of the undersigned that the proposed structure(s) will be safe against hazard from landslide, settlement or slippage, and the proposed construction will have no adverse geologic effect on offsite properties. Assumptions critical to our opinion are that the design recommendations will be properly implemented during the proposed construction and that the property will be properly maintained to prevent excessive irrigation, blocked drainage devices, or other adverse conditions.

The recommendations in this geology report address the following issues: foundation systems, retaining walls, cut slopes and excavations, site drainage, and plan review. Based on the findings and recommendations of the consulting geologist and geotechnical engineer, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as all recommendations regarding the proposed development are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by these consultants as conforming to their recommendations, as noted in Special Condition No. Five (5) for the final project design, grading, drainage, and landscape and irrigation plans for the proposed project.

Minimizing erosion of the site is important to reduce geological hazards on the site and minimize sediment deposition in the drainages leading to Tuna Canyon Creek. The applicant has submitted a preliminary Landscape and Fuel Modification Plan for the proposed development. These plans incorporate the use of native species and illustrate how these materials will be used to provide erosion control to those areas of the site disturbed by development activities. These plans also illustrate that vegetation will be "thinned" rather than "cleared" for fuel modification purposes, thus allowing for the continued use of existing native plant materials for on-site erosion control. The thinning, rather than complete removal, of native vegetation helps to retain the natural erosion control properties, such as extensive and deep root systems, provided by these species.

In order to ensure that drainage from the residential building pad is conveyed from the site and into the watershed in a non-erosive manner and erosion is controlled and minimized during construction, the Commission finds it necessary to require the applicant to submit site drainage plans, as required by Special Condition No. One (1). Furthermore, the Commission finds it necessary to require the applicant, should the proposed improvements to the access road or the proposed drainage structures fail or result in erosion, to be solely responsible for any necessary repairs and restoration resulting from this failure along the entire section of the access road subject to this

permit. Special Condition No. Three (3) provides for such maintenance of the access roadways and drainage structures.

The Coastal Act also requires that new development minimize the risk to life and property in areas of high fire hazard. The Coastal Act also 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 his property.

Vegetation in the coastal areas of the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

At the Commission's April 15, 1999 meeting, the Commission objected to the applicant's requested time extension for Coastal Permit No. 4-96-172 because changed circumstances may have affected the project's consistency with the Coastal Act. The Commission was concerned about changes circumstances related to the recent closure of Tuna Canyon Road and its reopening as a one way route and its effect on the proposed residence. The section of Tuna Canyon Road leads from Pacific Coast Highway to its intersection with Saddle Peak Road, near the upper portion of Tuna Canyon.

Staff requested information on this fire safety issue in a letter dated May 18, 1999 to Captain James Jordon of the Los Angeles County Fire Department (Exhibit 12). Captain Jordon provided a response in a letter dated May 28, 1999 (Exhibit 13) to this issue related to the proposed single family residence at the subject site. This letter provided information that the current access to the site, as proposed to be improved by the applicant, meets the Los Angeles County Fire Code and that the closure of Tuna Canyon Road to two way traffic has no impact on the egress ability of the proposed residents at the subject site.

However, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. In fact, the property burned in the 1993 Malibu Fire. Through the waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard

which exists on the site and which may affect the safety of the proposed development, as incorporated by Special Condition Number Six (6).

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

**F. Archaeological Resources**

Section 30244 of the Coastal Act states that:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Policy 169 of the Malibu/Santa Monica Mountains Land Use Plan, which the Commission has relied on as guidance in past land use decisions in the Topanga area, states that:

Site surveys performed by qualified technical personnel should be required for projects located in areas identified as archaeologically / paleontologically sensitive. Data derived from such surveys shall be used to formulate mitigating measures for the project.

Archaeological resources are significant to an understanding of cultural, environmental, biological, and geological history. The Coastal Act requires the protection of such resources to reduce potential adverse impacts through the use of reasonable mitigation measures. Archaeological resources can be degraded if a project is not properly monitored and managed during earth moving activities conducted during construction. Site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be lost. As so many archaeological sites have been destroyed or damaged as a result of development activity or natural processes, the remaining sites, even though they may be less rich in materials, have become increasingly valuable. Further, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites which remain intact. The greater province of the Santa Monica Mountains is the locus of one of the most important concentrations of archaeological sites in Southern California. Although most of the area has not been systematically surveyed to compile an inventory, the sites already recorded are sufficient in both number and diversity to predict the ultimate significance of these unique resources.

The applicant submitted an archaeological report for the development site on the parcel. The report dated January 19, 1996 was prepared by E. Gary Stickel for the

footprint area of the residence. The project area is located in an area where 13 site surveys or excavations for cultural resources were done within a one mile radius.

Based on an evaluation of an intense site survey, no cultural resources were identified. Based on these negative findings, the consultant determined that further cultural resources management measures would not be relevant. That recommendation would change, however, if any artifacts or bone material were to be discovered during the construction of the residence. In such an event, construction work should cease until a professional archaeologist could inspect the parcel and assess the significance of any such finds. These are the appropriate Cultural Resources Management recommendations for the project in view of the findings of this research.

Therefore, the Commission finds that no adverse impacts on archaeological resources will occur as a result of the proposed development, and that the project, as proposed, is consistent with Section 30244 of the Coastal Act.

**G. Visual Resources.**

Section 30251 of the Coastal Act states that:

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 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.

In addition, the certified LUP contains the following policies regarding landform alteration and the protection of visual resources which are applicable to the proposed development:

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

P90 Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.

P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.

P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:

be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.

minimize the alteration of natural landforms.

Be landscaped to conceal raw-cut slopes.

P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.

The applicant proposes to develop a residence on a small knob located on a relatively flat parcel in a manner that has minimized the amount of landform alteration and grading. The entire building pad area for this site is less than 10,000 sq. ft. in size.

In the review of this project, the Commission reviews the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public. The Malibu/Santa Monica Mountains Land Use Plan protects visual resources in the Santa Monica Mountains. Tuna Canyon and Saddle Peak Roads are recognized as a "second priority scenic area" which are given special treatment when evaluating potential impacts caused by new development.

The Commission examines the building site, the proposed grading, and the size of the building pad and structures. The development of the residence and garage raises two issues regarding the siting and design: one, whether or not public views from public roadways will be adversely impacted, or two, whether or not public views from public trails will be impacted.

The siting, size and grading for the building pad will not be visible from Tuna Canyon Road. Tuna Canyon Road, a public roadway, encircles the vicinity of the project site to the south, west, and north. Because the residence is located on a flat south facing

plateau below the peak of immediate area, the site does not appear to be visible from Tuna Canyon Road to the west or north of the site. The site will also not be visible from Tuna Canyon Road to the south as the topography drops steeply from the plateau to a narrow and steep canyon where Tuna Canyon Road and Creek are located. However, the site will be visible from a short stretch of Saddle Peak Road, located about a half mile away. Therefore, there does not appear to be any short range public views from public roads to the project site less than a half mile of the building site.

In any event, the proposed grading for the building site is modest as the building pad will be cut into the top of a knob with a limited amount of fill placed along two flanks to create a flat building pad. As proposed by the applicant, the disturbed area is less than 10,000 square feet.

In regards to the proposed improvements to the applicant's easement along Betton Drive and Fabuco Road, these improvements will all occur along an existing dirt roadway, and the grading associated with this development, about 336 total cubic yards of grading (135 cubic yards of cut and 201 cubic yards of fill), will be spread out along a 800 foot section of these roads. This grading is judged to be the minimum amount necessary to meet the requirements of the Los Angeles County Fire Department. Furthermore, no significant cut or fill slopes will result from the above referenced grading, and no adverse or significant visual impacts are anticipated as no sections of the existing road are visible except from a short section of Saddle Peak Road located in the upper section of the Tuna Canyon Watershed, about a half mile away. Additionally, the proposed grading will be visible from some properties surrounding the Tuna Canyon area. However, the views from these properties are considered private views as opposed to public views that are addressed by the Coastal Act.

Regarding public trails, a existing equestrian and hiking trail, the Tuna Canyon trail, is located about two thirds of a mile to one mile south and west of the project site. Due to the distance, public views of the project site will be limited.

The Commission has found that the use of native plant materials in landscaping plans can soften the visual impact of construction in the Santa Monica Mountains. The use of native plant materials to revegetate graded areas reduces the adverse affects of erosion, which can degrade visual resources in addition to causing siltation pollution in ESHA's, and soften the appearance of development within areas of high scenic quality. The applicant has submitted a preliminary Landscape and Fuel Modification Plan that uses numerous native species compatible with the vegetation associated with the project site for landscaping and erosion control purposes (Exhibit 7). Furthermore, the Plan indicates that only those materials designated by the County Fire Department as being a "high fire hazard" are to be removed as a part of this project and that native materials that are located within a 200' radius of the residential

structure are to "thinned" rather than "cleared" for wildland fire protection. The vegetation located within 20 feet of the structure and the driveway will be cleared and replaced with native plant species that are less flammable.

Therefore, the Commission finds that the project as proposed minimizes impacts to public views to and along the coast. Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

#### **H. Septic System**

The Commission recognizes that the potential build-out of lots in the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

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

The applicant is proposing the installation of a new 1200 gallon septic tank, and two seepage pits to accommodate the sewage of the proposed development. The applicant has submitted approval from the County of Los Angeles Department of Health Services stating that the proposed septic system is in conformance with the minimum requirements of the County of Los Angeles Uniform Plumbing Code. The County of Los Angeles' minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

#### **I. 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 County of Los Angeles's ability to prepare a Local Coastal Program for this area of Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

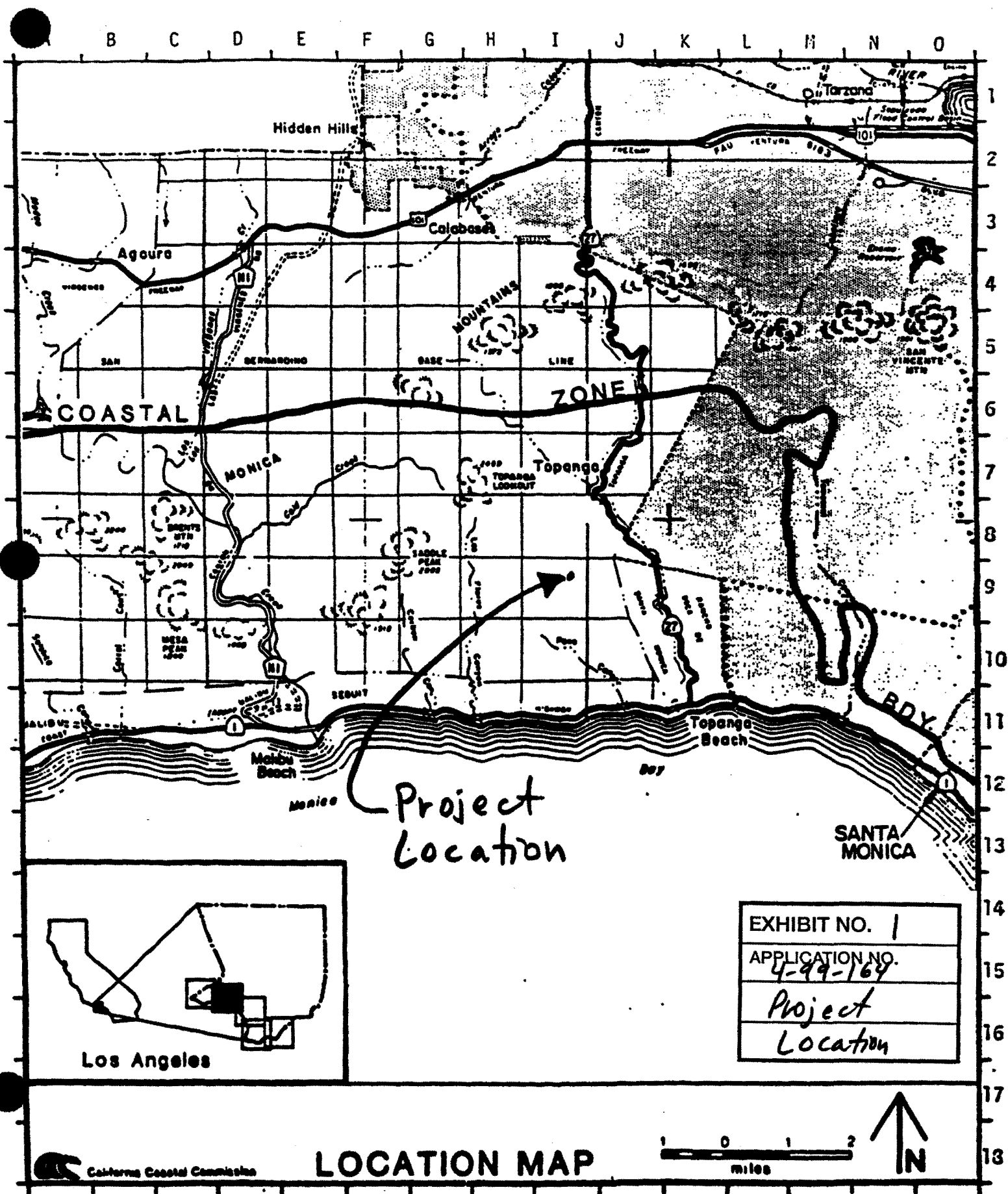
**J. California Environmental Quality Act (CEQA)**

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.

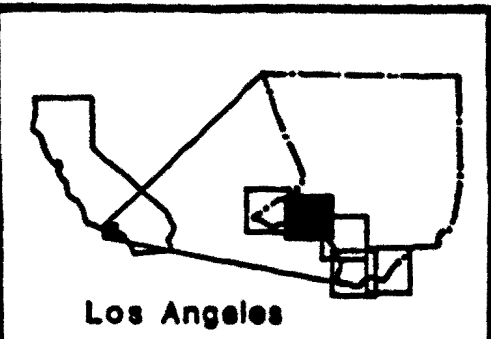
499164Olsonreport





Project Location

EXHIBIT NO. 1
APPLICATION NO. 4-99-169
Project
Location



Los Angeles



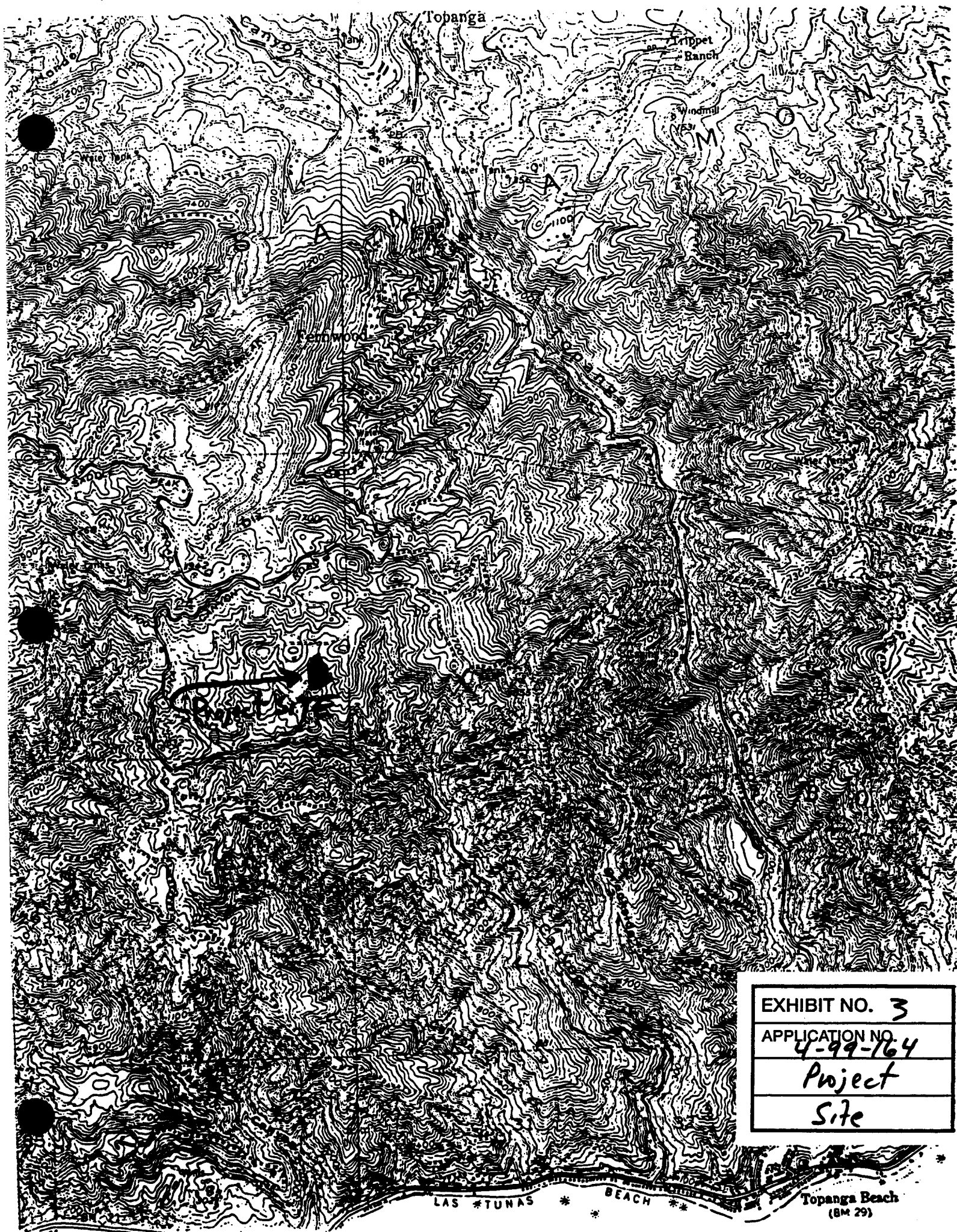


EXHIBIT NO. 3

APPLICATION NO. 4-99-164

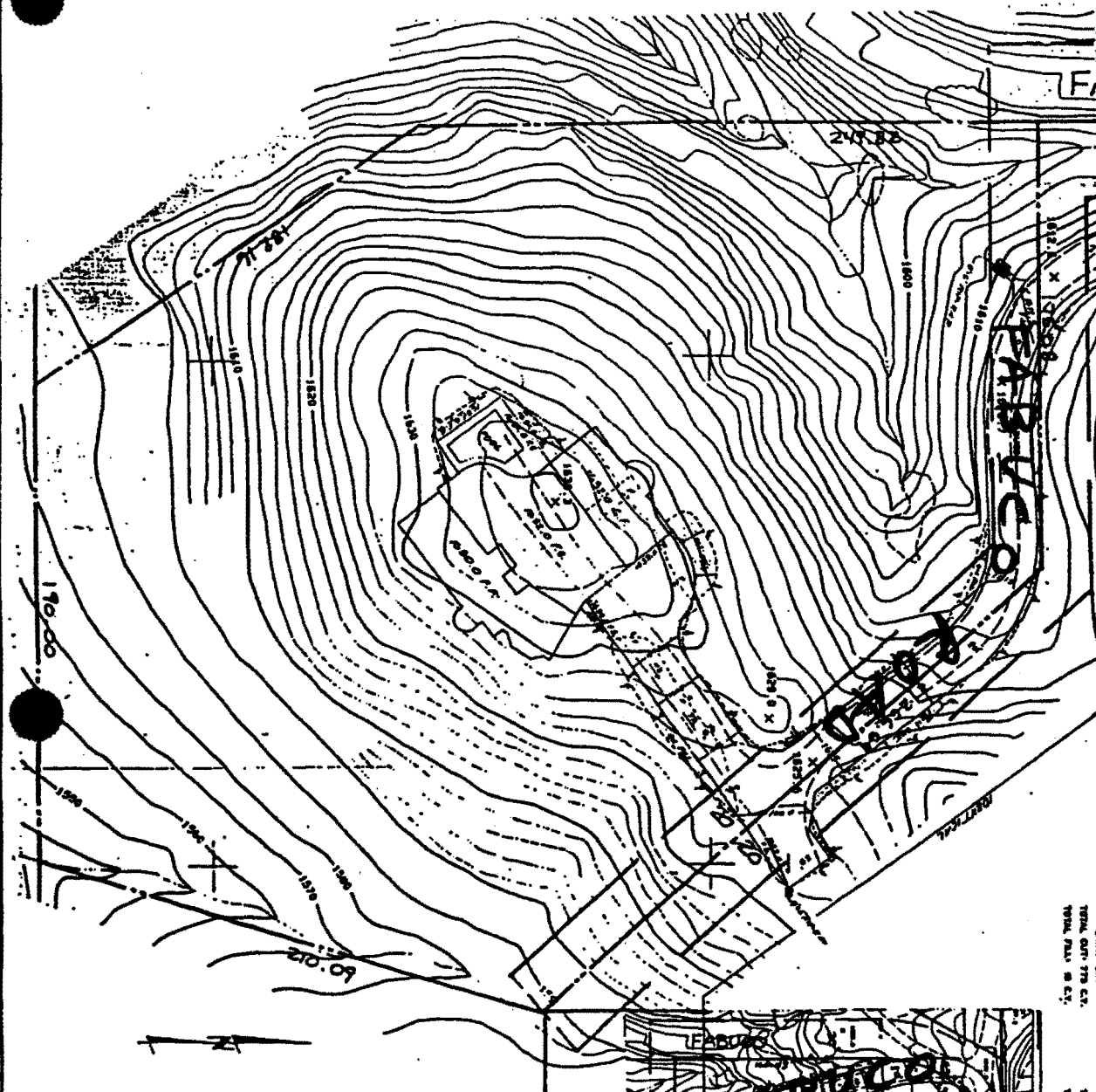
Project Site

LAS TUNAS

BEACH

Topanga Beach (BM 29)





TOTAL CUT 179 C.Y.  
 TOTAL FILL 8 C.Y.

TOTAL CUT 179 C.Y.  
 TOTAL FILL 8 C.Y.



DATE	1/1/64
BY	Y. L. L. L.
CHECKED	Y. L. L. L.
APPROVED	Y. L. L. L.
SCALE	1" = 40'

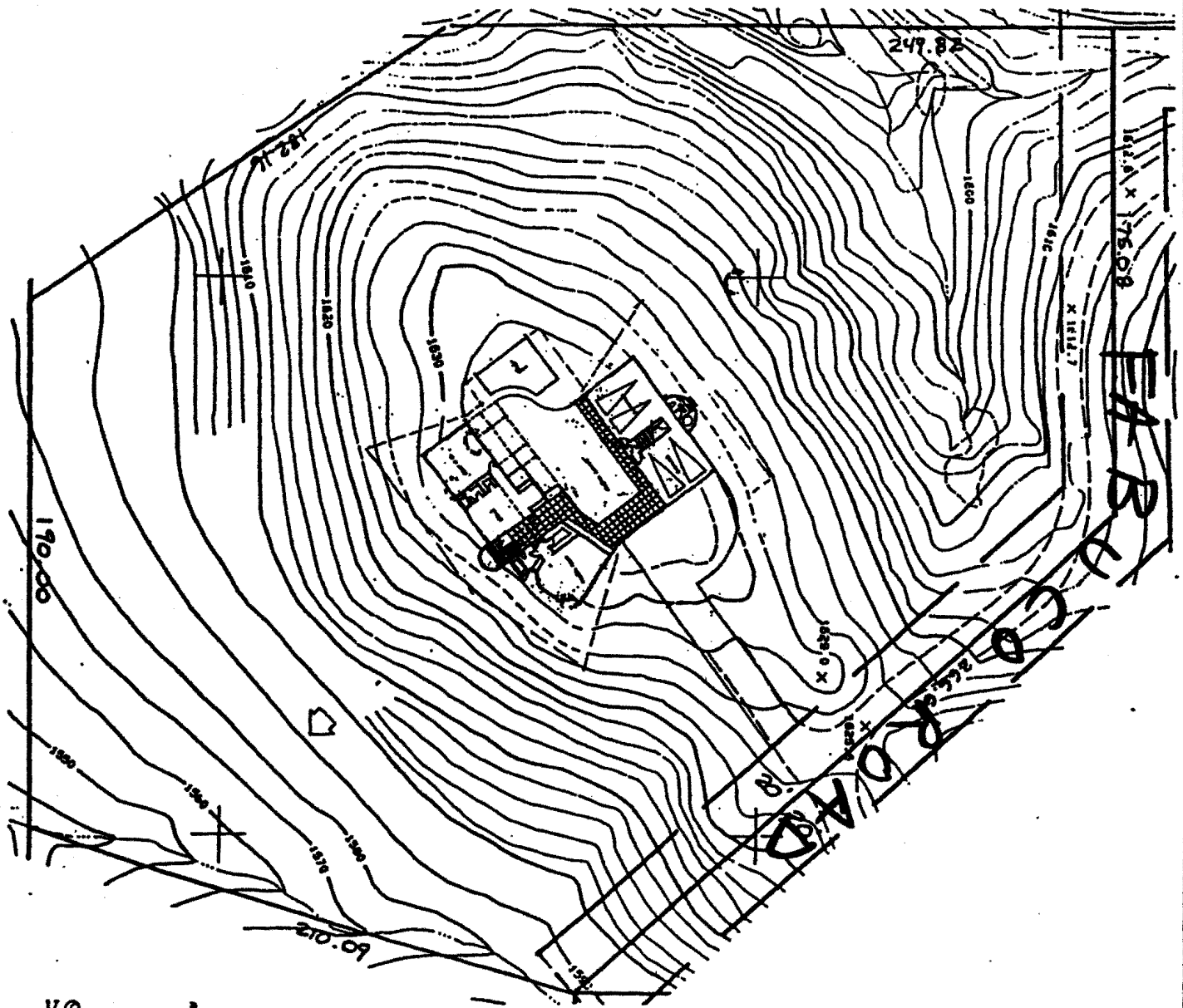
**Y. L. L. L. Engineering Co., Inc.**  
 75 BERRY AVENUE, NEWTON PARK, CO. 81200  
 (800) 400-0000

**GRADING PLAN**  
 2737 Fabuco Road

PREPARED FOR: Rolling View Estates, 40100 20th Street West, Lancaster, Co. 93290

EXHIBIT NO. 5  
 APPLICATION NO. 4-99-164  
 Grading Plan





SITE PLAN

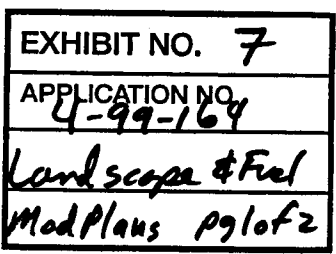


EXHIBIT NO. 6

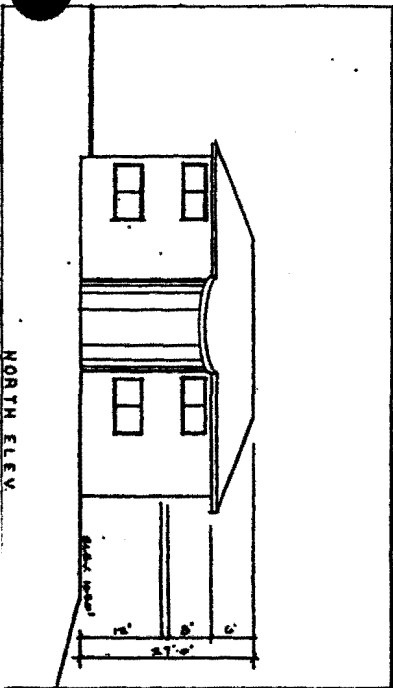
APPLICATION NO. 4-99-164

Site Plan

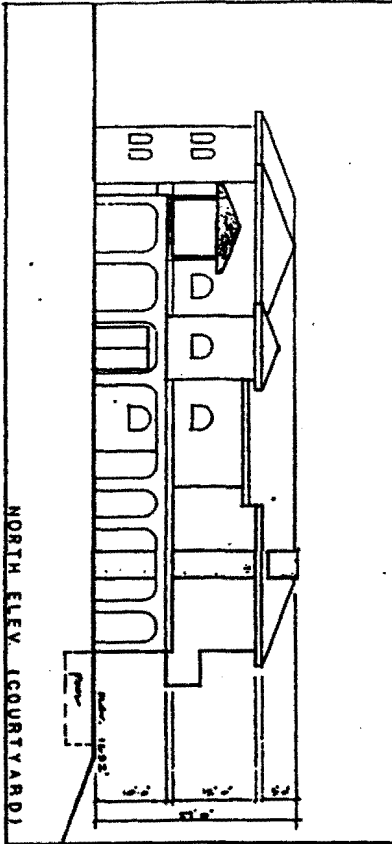


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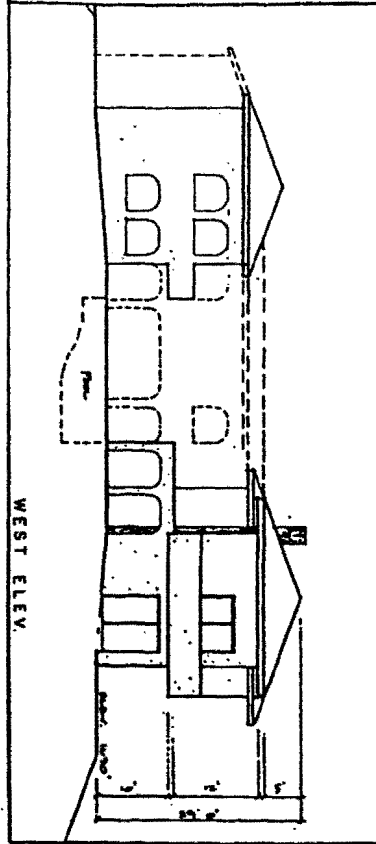




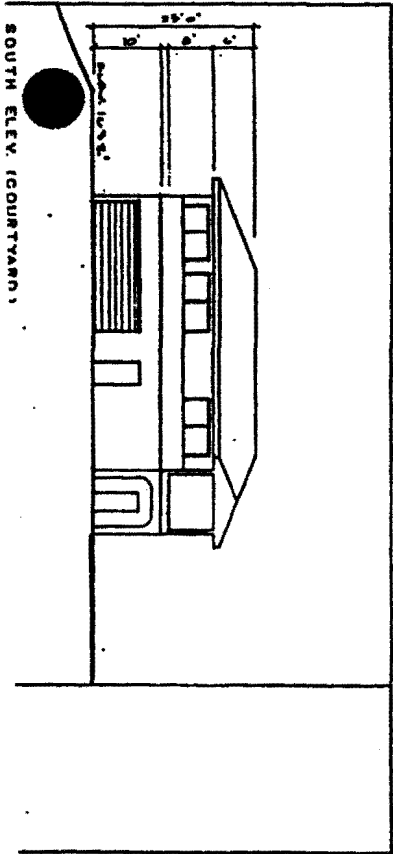
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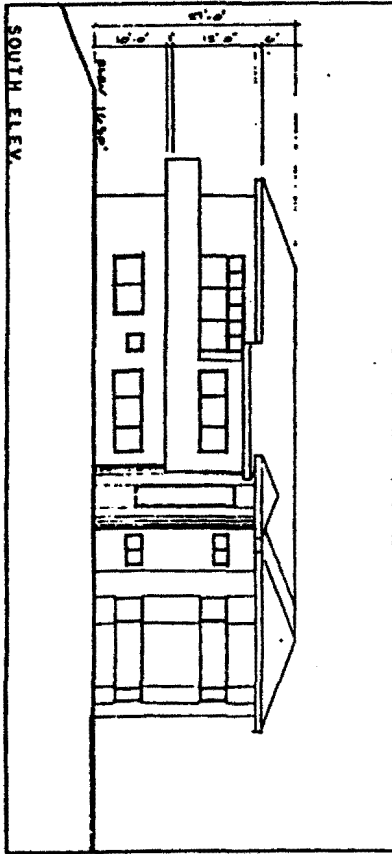
NORTH ELEV. (COURTYARD)



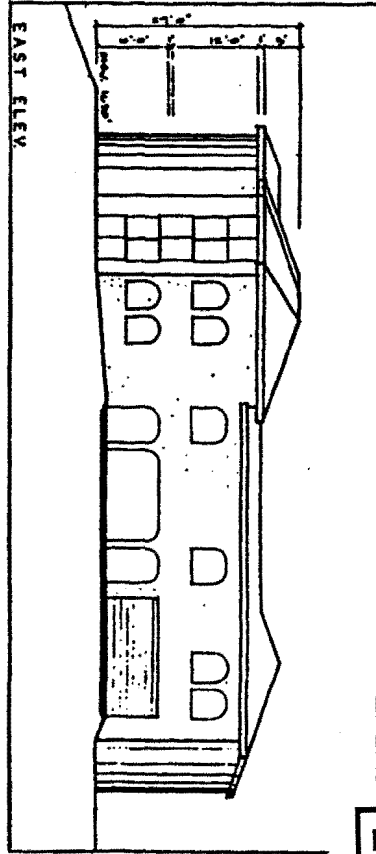
WEST ELEV.



SOUTH ELEV. (COURTYARD)



SOUTH ELEV.



EAST ELEV.

Proposed Milena Family Residence  
 MS Maria Olson  
 1501 Crystal Drive #933  
 Arlington, VA 22202

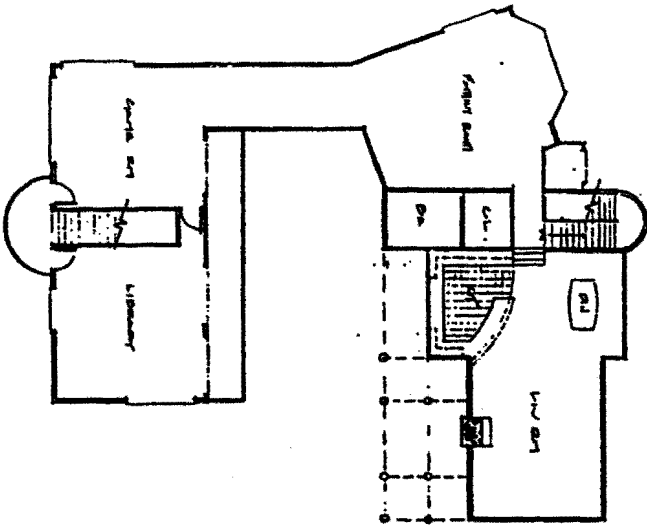
Prepared by  
 MUDJ DESIGN & DESIGN  
 ARCHITECT: JEFFREY A. BOWEN  
 (703) 574-7004

EXHIBIT NO. 8

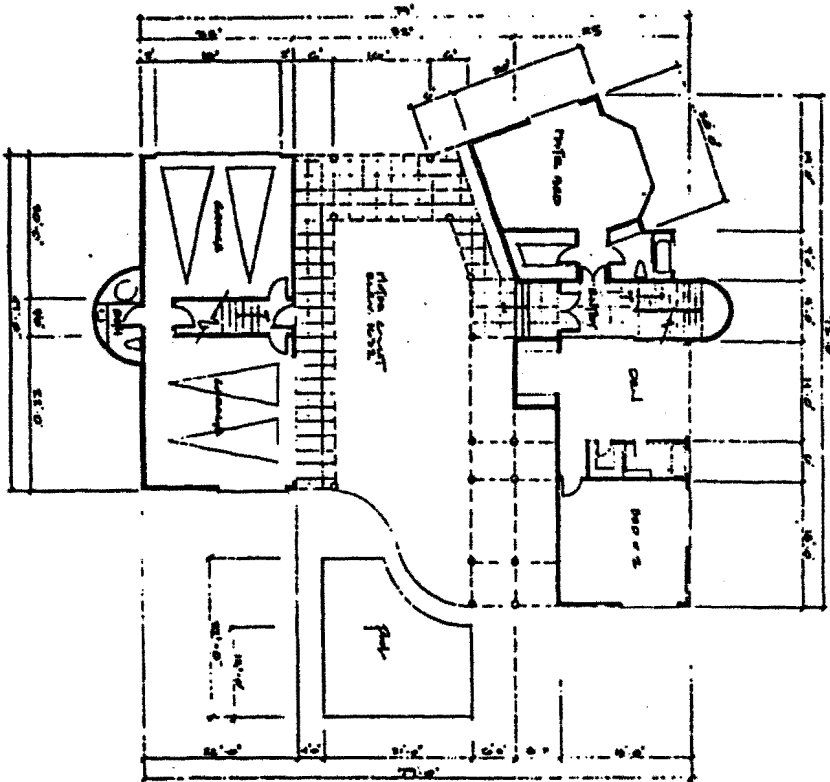
APPLICATION NO.

4-99-164

Elevations



SECOND FLOOR PLAN



FIRST FLOOR PLAN

Approved for release by the  
 Director, FBI  
 Date 10/1/84  
 By [Signature]

EXHIBIT NO. 9
APPLICATION NO. 4-99-164
Floor Plans

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA

89 SOUTH CALIFORNIA ST., SUITE 200

VENTURA, CA 93001

(5) 641-0142

July 21, 1999

John & Helen Lyons  
36443 N. 165th Street, East  
Llano, CA 93544

RE: Coastal Development Permit Application No. 4-99-164, Marian Olson, 2737 South Fabuco Road, Malibu

Dear John &amp; Helen Lyons;

This office has received an application from Marian Olson for the construction of a 4,000 sq. ft. two story single family residence with four car garage, swimming pool, septic system and landscaping at 2737 South Fabuco Road, Malibu. The application is filed and scheduled for a public hearing at the Coastal Commission's August 10 - 13, 1999 meeting.

In addition to the proposed residence, the applicant requests the approval for road and drainage improvements along a portion of Betton Drive and Fabuco Road and water main improvements to serve the proposed residence. These road improvements consist of about 800 feet and include about 336 cubic yards of grading to pave the roadways.

Coastal Act Section 30601.5 states as follows:

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

Because our records in the application file indicate that you are the owner of a fee interest in the property across which the road and drainage improvements and the water line extensions are proposed, the Commission is notifying you of the application pursuant to Section 30601.5. With this letter, staff are inviting you to join this application as a co-applicant if you so choose. If you wish to join as a co-applicant, you may indicate your agreement by signing and returning a copy of this letter. If you have any questions or need further information about this application and the proposed project, please call me at the number above.

Sincerely,



James Johnson  
Coastal Program Analyst

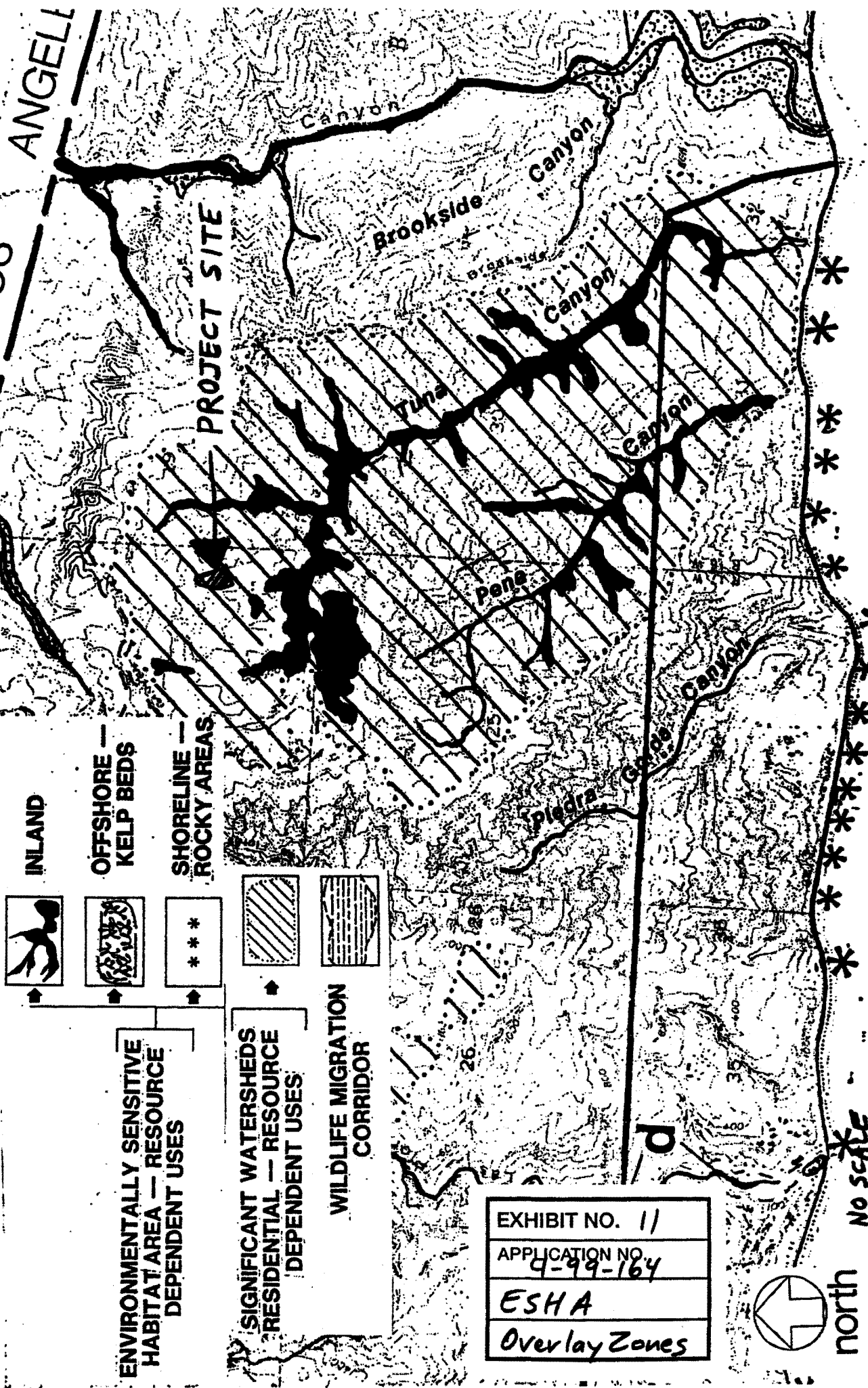
AGREED:

\_\_\_\_\_  
Name (Print)\_\_\_\_\_  
Signature\_\_\_\_\_  
Property Address

cc: Donald Schmitz  
499164olsoncoapplicants

EXHIBIT NO. 10
APPLICATION NO. 4-99-164
Co-Applicant
Invitation letter

# SENSITIVE ENVIRONMENTAL RESOURCES OVERLAY ZONES



INLAND

OFFSHORE — KELP BEDS

SHORELINE — ROCKY AREAS

SIGNIFICANT WATERSHEDS

RESIDENTIAL — RESOURCE DEPENDENT USES

WILDLIFE MIGRATION CORRIDOR

EXHIBIT NO. 11
APPLICATION NO. 9-9-164
ESHA
Overlay Zones

north  
 No scale

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
41 - 0142



May 18, 1999

Captain James Jordon  
Los Angeles County Fire Department  
23533 Civic Center Way  
Malibu, CA 90265

EXHIBIT NO. 12
APPLICATION NO. 4-99-164
Letter LACFD
page 1 of 2

RE: Proposed Olson Residence at 2737 South Fabuco Road, Malibu (Application No. 4-96-172)

Dear Captain Jordon;

This letter requests your written response regarding two fire safety issues for the proposed Olson Residence at 2737 South Fabuco Road, Malibu, in the Upper Tuna Canyon area.

The Commission has a pending application for a coastal development permit for a new residence at this location. As you may know, the Commission approved a coastal permit, (No. 4-96-172) in December 1996 for this same project, with conditions including among others that the permit was valid for a period of two years. Prior to the expiration, the applicant submitted a request for a one-year time extension, as the construction of the project had not commenced. Numerous objections were received from the public requesting a public hearing on this request as a result of noticing the requested time extension. On April 15, 1999, the Commission held a public hearing and voted to deny the request for a time extension of the subject coastal permit, due to changed circumstances. As a result, the project will be scheduled for a public hearing as a new application for a coastal permit in the near future.

One of the issues raised at the April 15, 1999 hearing was that the status of Tuna Canyon Road and whether it has changed with respect to the use of the road for two way traffic, and in particular for ingress and egress during emergency situations. As you know, the road was closed during and after the 1998 El Nino winter season, due to the existence of a major landslide feature, until it was reopened by Los Angeles County. Further it is anticipated that the road may be closed in the future to all traffic until funding can be found to repair the road or reroute it. An aspect of this issue related to fire safety was that Tuna Canyon Road is the only north to south egress from the upper Tuna Canyon area for residents to flee from fires that may originate in the area north of Tuna Canyon.

Based on the above discussion, does the partial closure (one way traffic) or potential future closure of Tuna Canyon Road result in a significant increased risk to residents or future residents of this area relative to emergency egress (evacuation of the area) and ingress for fire and emergency personnel? Are there alternative ingress and egress routes that emergency personnel and residents could utilize during a major fire in this area? Any additional information you could provide relative to these questions or any additional information regarding the

adequacy of the ingress and egress routes in this area during a fire would be greatly appreciated.

Regarding the second fire safety issue, is it possible to reduce the fuel modification area approved for the subject project? A copy of the plan provided by the applicant is attached. It is our understanding that the maximum fuel modification zone, as specified in the County's Fuel Modification Guidelines, is 200 feet from the residential structure. It is also our understanding from the applicant's agent that a fill area is required for fire safety purposes to create a larger flat pad around the residence as noted on the attached plan. Is it possible to reduce the size of the fill area, or eliminate it, on the north and south perimeter of the residence? Is it possible to construct a 'fire wall' to reduce the need for the fill area or the radius size of the fuel modification area? As we understand, a 'fire wall' is a stone or concrete block wall located just beyond a structure designed to deflect convection heat generated by an approaching wildfire away from the structure. Is it possible to reduce the fuel modification area through the use of other fire resistant building materials? Are there any other measures the applicant could incorporate into the project to minimize the geographic area effected by fuel modification that would be acceptable to the Fire Department in a revised Fuel Modification Plan?

Thank you for your time and assistance. Should you have any questions, please call.

Sincerely,

  
James Johnson  
Coastal Program Analyst

Cc: Don Schmitz

Attachments

Fuel Modification Plan  
Staff Report: Permit Extension Request

496172olsonnewapplicationletter

EXHIBIT NO. 12
APPLICATION NO. 4-99-164
Letter LACFD
page 2 of 2





# COUNTY OF LOS ANGELES

## FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294

May 28, 1999

EXHIBIT NO. 13

APPLICATION NO. 4-99-164

LACFD Response

page 1 of 2

P. MICHAEL FREEMAN  
FIRE CHIEF  
FORESTER & FIRE WARDEN

Mr. James Johnson  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, CA 93001

RECEIVED  
JUN 1 1999  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COMMUNITY

SUBJECT: COASTAL APPLICATION No. 4-96-172 2737 S. FABUCO RD, MALIBU

Dear Mr. Johnson:

This letter is a response to the life safety issues concerning the proposed single family residence at 2737 Fabuco Road, Malibu. First, the closure of Tuna Canyon Road to two-way traffic has no impact on the egress ability for the residents. Tuna Canyon Road is open from SaddlePeak Road to Pacific Coast Highway. This provides emergency egress for residents of the area. Your letter asks about the possible closure of the road in the future. The Fire Department is limited to looking at existing access. If we were to use possible closures of access roads, we would need to include Pacific Coast Highway, Malibu Canyon Road, Topanga Canyon Road, Kanan-Dume Road and many others. You may remember Kanan-Dume Road was closed for over a year due to a landslide. To consider the possible closure of these roads would effectively eliminate construction in the Santa Monica Mountains.

In the event of a wildfire, the Fire Department would use Topanga Canyon, not Tuna Canyon, as its ingress to the area. It is wider and allows more access to the neighborhoods in Topanga Canyon. The proposed residence has a number of emergency egress paths available, one of them being Tuna Canyon. A resident may also use Topanga Canyon Blvd or SaddlePeak Road. The current access meets the requirements of the Fire Code.

Your second issue concerns the fuel modification plan. Fabuco Road is considered by the Fire Department to be in an extra hazard area. The required brush clearance from structures is 200'. Requiring brush clearance in excess of 200' is prohibited by county ordinance. The Fuel Modification Unit does not require homeowners to increase flat pad size for additional fire safety. The fuel modification plan you sent me doesn't have an approval stamp from the Fire Department. Any areas shown as fill required by the Fire Department appear to be in error. I know of no mitigating factors available to reduce the

### SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS  
ARTESIA  
AZUSA  
BALDWIN PARK  
BELL  
BELLFLOWER  
BELL GARDENS

BRADBURY  
CALABASAS  
CARSON  
CERRITOS  
CLAREMONT  
COMMERCE  
COVINA

CUDAHY  
DIAMOND BAR  
DUARTE  
EL MONTE  
GLEN DORA  
HAWAIIAN GARDENS  
HAWTHORNE

HIDDEN HILLS  
HUNTINGTON PARK  
INDUSTRY  
IRVINDALE  
LA CANADA FLINTRIDGE  
LAKEWOOD  
LA MIRADA

LANCASTER  
LA PUENTE  
LAWDALE  
LOMITA  
MALIBU  
MAYWOOD  
NORWALK

PALMDALE  
PALOS VERDES ESTATES  
PARAMOUNT  
PICO RIVERA  
POMONA  
RANCHO PALOS VERDES  
ROLLING HILLS

ROLLING HILLS ESTATES  
ROSEMEAD  
SAN DIMAS  
SANTA CLARITA  
SIGNAL HILL  
SOUTH EL MONTE  
SOUTH GATE

TEMPLE CITY  
WALNUT  
WEST HOLLYWOOD  
WESTLAKE VILLAGE  
WHITTIER

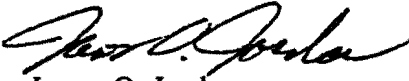
May 28, 1999

Page 2

200' size of the fuel modification zone. I would advise the homeowner to obtain preliminary fuel modification approval to determine the exact boundaries of the zone. Any specific questions regarding the fuel modification plan, landscape plan or irrigation plan should be addressed to our Fuel Modification Unit at 909-620-8287.

Should you have any additional questions, please call me.

Sincerely,



James O. Jordan

Fire Captain

Fire Prevention Division

EXHIBIT NO. 13
APPLICATION NO. 4-99-164
LACFD Response
page 2 of 2