

CALIFORNIA COASTAL COMMISSION

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Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-00-044

APPLICANT: Blank Par-E, LLC

AGENTS: Paul Shoop, Esq.; David V. Leanse, Esq.; and Malcolm Berman

PROJECT LOCATION: 27311 and 27315 Winding Way, Malibu, Los Angeles County

PROJECT DESCRIPTION: Subdivision of an 11.66 acre parcel into a 6 acre (Lot A) and a 5.67 acre parcel (Lot B); construction of a new 5,955 square foot single family residence with an attached 625 square foot garage, swimming pool, and private sewage disposal system with 3,780 cubic yards of grading for the single family residence (980 cut, 1,400 excavation, and 1,400 removal and recompaction) and 4,700 cubic yards of grading for the earth berm (1,700 cut and 3,000 fill) on Lot A; construction of a new 6,259 square foot single family residence with an attached 714 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,430 cubic yards of grading for the single family residence (850 cut, 180 fill, 1,000 excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B; and improvement to the driveways to access the two new single family residences on Lots A and B.

Area of Lot A:	6 acres
Building Coverage on Lot A:	6,580 square feet
Paved Area on Lot A:	23,096 square feet
Height Above Existing Grade on Lot A:	9 feet
Height Above Finished Grade on Lot A:	18 feet

Area of Lot B:	5.67 acres
Building Coverage on Lot B:	6,973 square feet
Paved Area on Lot B:	20,148 square feet
Height Above Existing Grade on Lot B:	11 feet
Height Above Finished Grade on Lot B:	18 feet

LOCAL APPROVALS RECEIVED: City of Malibu, Planning Department, Negative Declaration, April 24, 2000; City of Malibu, City Council, Ordinance No. 216 for Zone Map Amendment, September 25, 2000; City of Malibu, Archaeology Department,

Clearance with Conditions, March 22, 2000; City of Malibu, Archaeology Department, Clearance with Conditions, April 12, 2000; City of Malibu, Biological Review, Approval in Concept, August 10, 1999; City of Malibu, and Environmental Health Department, Approval in Concept, July 26, 1999.

SUBSTANTIVE FILE DOCUMENTS: Letter from Shoop & Leanse to the California Coastal Commission, "Parcel Map and 2 Residences for 27311-15 Winding Way, Malibu, January 4, 2001; Letter from Shoop & Leanse to the California Coastal Commission, "Blank Par-E," December 6, 2000; "Phase II Test Excavation and Determination of Significance on a Portion of CA-LAN-1879, 27315 Winding Way," W & S Consultants, November 13, 2000; Letter from the Santa Monica Mountains Conservancy to the California Coastal Commission, "Permit Application No 4-00-044 (split of 11.7 acres into 2 lots and for 2 residences," May 30, 2000; "Response to Geotechnical Issues, California Commission Letter," Miller Geosciences, Inc., April 6, 2000; "Second Supplement to Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project," Miller Geosciences, Inc., January 22, 2000; "Geology and Geotechnical Engineering Review Sheet," City of Malibu, January 7, 2000; "Supplement to Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project," Miller Geosciences, Inc., November 30, 1999; "Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project, Miller Geosciences, Inc., May 24, 1999; "Settlement Agreement," Two Blankenship, Inc., v. City of Malibu (Los Angeles County Superior Court Case No SC040948), June 12, 1998; "Closing Documents, "Settlement Agreement," Two Blankenship, Inc. v. State of California, Los Angeles Superior Court Case No. BC 101329, April 21, 1997; "Closing Documents, Settlement of Two Blankenship, Inc., v. State of California, Los Angeles Superior Court, Case No. BC101329 and Bargain Sale of Real Estate and Stock in Two Blankenship, Inc. to Mountains Recreation Conservation Authority," April 21-22, 1997; "Archaeological Reconnaissance and Recommendations for Avoidance or Phase 2 Archaeological Evaluation at 27311 Winding Way," Chester King, City of Malibu Archaeologist, May 29, 1995; "Preliminary Geotechnical Engineering and Engineering Geologic Report for a Single Family Residence 27311 Winding Way," Miller Geosciences, Inc., February 1, 1995; "Report of a Biological Assessment of the 148-Acre Escondido Canyon Site," Pacific Southwest Biological Services, Inc., October 11, 1989; "Preliminary Soils and Engineering Geologic Investigation Report," California Geo/Systems, Inc., September 26, 1989; "Report of a Biological Assessment of the 148-Acre Escondido Canyon Site," Pacific Biological Services, Inc., April 28, 1989; "Cultural Resources Reconnaissance of a Portion of Escondido Canyon, 148 Acres in Malibu," RMW Paleo Associates, March 7, 1989; Coastal Development Permits Coastal Development Permits P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), P-81-7713 (Los Angeles County), P-86-196 (Malibu Pacifica), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-90-1060 (Traub), 4-98-281 (Cariker), 4-98-306 (Winding Way), 5-90-515 (Shriner), 5-90-670 (Kirsten), 5-90-673 (Shriner), 5-90-781 (Newman), 5-90-921 (Landgate), 5-90-1068 (Morton), 5-90-1149 (Thorne), and 4-00-028 (Layman); and the certified Malibu Santa Monica Mountains Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **approval** of the proposed project with eleven (11) special conditions regarding geotechnical engineering consultant's recommendations, landscaping and erosion control, removal of vegetation assumption of risk, drainage and polluted runoff control, color restriction, future improvements, cumulative impact mitigation, archaeological resources, lighting restrictions, and local approval.

The project site is located northwest of Winding Way's eastern terminus in the City of Malibu above Escondido Canyon and is currently vacant. The project site is adjacent to the Coastal Slope Trail, which runs along Winding Way, and is directly above the Escondido Falls Trail, which runs along the bottom of Escondido Canyon. As a result, the proposed development must be evaluated for its effect upon sensitive visual resources. While no streams cross the site and no environmentally sensitive habitat area has been identified upon the subject site, the Escondido Canyon and the Escondido Canyon Creek blueline stream are located directly below the ridge upon which the site is located and is designated as an environmentally sensitive habitat area. In addition, archeological artifacts of undetermined significance have been detected on site by the City archaeologist and the applicant's archaeological consultant. Staff further notes that the site is subject not only to the risk of wildfire present throughout the Santa Monica Mountains, but is also subject to an unusual degree of geologic hazards (landslide, earthquake fault, and expansive soils). As a result, the geotechnical engineering consultant has made specific recommendations regarding the proposed development to ensure site stability. These special concerns and constraints associated with the proposed development are addressed in the staff report and in the special conditions set forth herein.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-00-044 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially

lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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. Plans Conforming to Geotechnical Engineering Consultant's Recommendations

All recommendations contained in the reports prepared by Miller Geosciences, Inc., dated January 22, 2000; November 30, 1999; May 24, 1999; and February 1, 1995 shall be incorporated into all final design and construction including recommendations concerning foundation, grading, drainage, and septic system plans and must be reviewed and approved by the consultant prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultant's review and approval of all final design and construction plans.

The final plans approved by the consultant 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 consultant shall require an amendment to the permit or a new coastal permit.

2. Landscaping Plan

Prior to issuance of a coastal development permit, the applicant shall submit revised landscaping and erosion control plans, prepared by a licensed landscape architect or qualified resource specialist, for review and approval by the Executive Director. The revised landscaping and erosion control plans shall be reviewed and approved by the geotechnical engineering consultant to ensure that the plans are in conformance with the consultant's recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

- 1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within sixty (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation and to screen and soften the visual impact of development, 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 February 5, 1996. Invasive, non-indigenous plant species that tend to supplant native species shall not be used. The plan shall include vertical elements, such as trees and shrubs, which partially screen the appearance of the proposed structures as viewed from the Coastal Slope Trail easement along Winding Way, which is adjacent to the subject site. Where plantings are visible from the Escondido Canyon Trail, exclusively native plantings shall be used that are visually harmonious and blend with the character of the surrounding undeveloped slopes. The plan shall also include the use of the Catalina Mariposa Lily (*Calochortus catalinae*). Pending site preparation, earthmoving, and grading activities, if any Catalina Mariposa Lily bulbs are excavated or disturbed, they shall be set aside and replanted in conjunction with the landscape plan. The plan shall specify the erosion control measures to be implemented and the materials necessary to accomplish short-term stabilization, as needed on the sites.
- 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 ninety (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 fifty (50) feet of the proposed house may be removed to mineral earth, vegetation within a two hundred (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 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 has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf, and ground cover planted within the fifty (50) 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) Fencing along the property boundaries of the site shall be of a design that is permeable to wildlife.

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, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles 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 throughout 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 of the coastal zone or within the coastal zone to a site 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 thirty (30) days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles 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 (5) 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 revised 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 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.

3. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the fifty (50) 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 fifty (50) to two hundred (200) foot fuel modification zone shall not occur until commencement of construction of the structures approved pursuant to this permit.

4. Assumption of Risk, Waiver of Liability, and Indemnity

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

- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of both of the applicant's parcels. 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. Drainage and Polluted Runoff Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

6. Color Restriction

The color of the structures, roofs, and driveway permitted hereby shall be restricted to a color compatible with the surrounding environment (white tones shall not be acceptable). All windows shall be comprised of non-glare glass.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, that reflects the restrictions stated above on the proposed development. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances 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.

7. Future Development Deed Restriction

This permit is only for the development described in Coastal Development Permit No. 4-00-044. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the entire parcel. Accordingly, any future improvements to the permitted single family residence structures, including but not limited to clearing of vegetation or grading, other than as provided for in the approved fuel modification, landscaping, and erosion control plans prepared pursuant to Special Condition Two (2), shall require an amendment to Permit No. 4-00-044 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, 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.

8. Cumulative Impact Mitigation

Prior to the issuance of the Coastal Development Permit, the applicants shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to the issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for

residential use have been extinguished on one (1) building site in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

- (a) A transfer development credit (TDC)-type transaction, consistent with past Commission actions; or
- (b) Participation along with a public agency or private non-profit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

9. Archaeological Resources

- A. By acceptance of this permit, the applicant agrees to have a qualified archaeologist(s) present on-site during all grading, excavation, and site preparation that involve earth moving operations. The number of monitors shall be adequate to observe the earth moving activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological materials. In the event that any significant archaeological resources are discovered during earth moving operations, grading and/or excavation in this area shall be halted and an appropriate data recovery strategy be developed, by the applicant's archaeologist, the City of Malibu archaeologist and the native American consultant consistent with CEQA guideline and subject to review and approval of the Executive Director.
- B. All recommendations contained in the report prepared by W & S Consultants, entitled "Phase II Test Excavation and Determination of Significance on a Portion of CA-LAN-1879, 27315 Winding Way," dated November 13, 2000 and the report prepared by Chester King, Malibu City Archaeologist, entitled "Archaeological Reconnaissance and Recommendations for Avoidance of Phase 2 Archaeological Evaluation at 27311 Winding Way," dated May 29, 1995, as well as any additional recommendations developed by the archaeologist(s) during project monitoring, shall be incorporated in to all final design and construction. If the consulting archaeologists' recommendations, based on discovery of significant archaeological remains, require a substantial modification or redesign of the proposed project plans, an amendment to this permit is required.

10. Lighting Restrictions

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which specifies that all outdoor night lighting shall be the minimum necessary, consistent with safety requirements, and shall be downward directed to minimize the nighttime intrusion of the light from the project into sensitive

habitat areas. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interests being conveyed.

11. Local Approval of Project Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, evidence of approval by the City of Malibu, Planning Department for the project, as proposed by the applicant.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the subdivision of an 11.66 acre parcel into a 6 acre (Lot A) and a 5.67 acre parcel (Lot B). In addition, the applicant is proposing to construct a new 5,955 square foot single family residence with an attached 625 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,780 cubic yards of grading for the single family residence (980 cut, 1,400 excavation, and 1,400 removal and recompaction) and 4,700 cubic yards of grading for the earth berm (1,700 cut and 3,000 fill) on Lot A and a new 6,259 square foot single family residence with an attached 714 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,430 cubic yards of grading for the single family residence (850 cut, 180 fill, 1,000 excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B. The applicant is also proposing to improve the driveways that will access the two new single family residences. These driveway improvements will consist of grading and paving two access roads that originate at the existing asphalt driveway along the southern property line in order to independently access each proposed single family residence.

The project site is currently vacant and is located northwest of Winding Way's eastern terminus in the City of Malibu (Exhibit 1) above Escondido Canyon. Topographically, the proposed building sites are situated along an east-west trending ridgeline and slopes descend to the north and south from 4:1 to 3:1 ratios (horizontal to vertical). Access to the site is currently via a paved driveway to the top of the northeast trending ridge. The area south of the project site is characterized as a built-out portion of Malibu consisting of similar residential development, although the area to the north, east, and southeast consists of parkland, maintaining the Escondido Falls Trail along the bottom of Escondido Canyon and Escondido Canyon Creek. The Escondido Falls Trail begins

at the terminus of Winding Way and continues along the stream and canyon bottom to a waterfall.

The project site has been the subject of litigation in the Los Angeles Superior Court between numerous parties, including the applicant's predecessor in interest, the California Coastal Commission, the State of California, the City of Malibu, the Santa Monica Mountains Conservancy, and the Santa Monica Mountains Conservancy, among others. Due to the complex nature of the litigation and connection to the current application for this CDP, a background discussion of this litigation is warranted and is described below in detail.

In 1984, a bank made a loan for 140 acres of land located in Escondido Canyon (of which the subject site was a part). This 140 acres included slopes of Escondido Canyon, bottom portions of Escondido Canyon, portions of the perennial Escondido Canyon Creek, an exceptional riparian woodland, relatively undisturbed coastal sage scrub, and other significant biological and habitat resources. In addition, the northern boundary of the 140 acre site terminated just before a sizeable waterfall that empties into a small pool. Incidentally, a biological survey of this area revealed an exceptional riparian woodland flanked by a relatively undisturbed coastal sage scrub growing on the adjacent slopes, with excellent shrub diversity.

In 1987, however, the bank acquired the 140 acres through foreclosure by its subsidiary, Two Blankenship, Inc. Two Blankenship, Inc., is the applicant's predecessor in interest. Two Blankenship, Inc., then sold an option on 120 acres consisting of Parcels A, B, C, D-1, and D-2 of the property to the Trust for Public Land (Exhibit 3). The Trust for Public Land then assigned its option to Parcel A to the Mountains Recreation Conservation Authority (MRCA) and the MRCA purchased this parcel in 1990 for a park. The Trust for Public Lands did not exercise its option on Parcels B, C, or D, however, and the option expired in 1991.

Subsequently, disputes arose between Two Blankenship, Inc., and state agencies, as the public continued to use the existing Escondido Falls Trail that traversed the subject 140 acres that Two Blankenship, Inc., was in the process of trying to sell, listing it with a real estate brokerage firm and advertising it in local and national publications. Further, Two Blankenship, Inc., asserted that prior to the incorporation of the City of Malibu, the zoning set forth by the County of Los Angeles for the property would have allowed for a maximum of 23 homes on the property, at approximately one residence per five acres. However, in 1995, the City of Malibu then designated the property as rural residential, permitting only one residence per 20 acres. Pursuant to these issues, Two Blankenship, Inc., then filed suit in the Los Angeles County Superior Court in 1996 and alleged that the rezoning of the property constituted an unconstitutional taking of private property for public use without just compensation or violated Two Blankenship, Inc.'s due process rights.

In 1997, Two Blankenship, Inc. and the State of California (including the California Coastal Commission and the Santa Monica Mountains Conservancy) entered into a

Settlement Agreement by which Two Blankenship, Inc., would sell parcels B, C, D2, and an easement for park purposes over D1 in fee to the MRCA for specified amounts. Further, under the Settlement Agreement also specified that Two Blankenship, Inc., would retain Parcel E for Two Blankenship, Inc.'s intent to build two residences and that upon receipt of approval from the City of Malibu and the California Coastal Commission to build those two houses or upon the close of escrow for the sale of stock of Two Blankenship, Inc., whichever occurs first, then Two Blankenship, Inc., will transfer Parcel D1 by gift in fee to the MRCA.

Although Two Blankenship, Inc., has conveyed 120 of the 140 acres to state agencies for parkland, Blank Par-E, LLC is still in the process of conveying Parcel D-1 consisting of 8.3 acres to a state agency for parkland. The applicant's agent has written a letter to Staff explaining why this final transfer has not occurred. That letter from Shoop & Leanse, dated December 6, 2000, states:

... Blank Par-E, LLC is currently complying with and performing the final act required of said applicant by the Settlement Agreement between Two Blankenship, Inc., (former name of Blank Par-E) and the State of California ...

On April 22, 1997, Blank Par-E conveyed to the State of California Mountain Recreation Conservation Authority ("MRCA") an easement to the 8.3 acre parcel known as "D-1."

Pursuant to Settlement Agreement Blank Par-E presently must convey title and fee of D-1 to the State of California MRCA. Blank Par-E is intent upon completing the conveyance of fee transaction as soon as possible. However, recently the title insurance company . . . issued a preliminary title report on "D-1" which indicates outstanding balance owing in Los Angeles County for real property taxes. We have addressed the County tax authorities with evidence that these taxes have been previously paid. Because their processing is slow, Paul Shoop has a personal Conference set this week with one of the County attorneys who represents the tax auditor of Los Angeles County in order to obtain some action by the County to clear up the putative tax bill matter so that Blank Par-E can convey title to MRCA a title free of liens and encumbrances.

In addition, the Settlement Agreement also set forth that neither the MRCA nor the SMMC would oppose the construction of two single family residences on Parcel E "on the basis that those, when built, may be visible from portions of the Escondido Canyon Natural Area comprised of Parcels "A", "B", "C", "D2", and "D1", at a date in the future" and would acknowledge this in a letter. Further, the Settlement Agreement also stated that the MRCA and the SMMC agree "that there is adequate public access in the surrounding area and that no public access or trail whatsoever is required or desirable over Parcel "E" for any purpose." The Settlement Agreement also required this to be acknowledged in a letter, which has been done (Exhibits 22 and 23).

Paragraph 4.6 of the Settlement Agreement also set forth:

The California Coastal Commission, Peter Douglas, and the Coastal Commission's employees, agents and attorneys agree that nothing which has transpired between Blankenship, the California Coastal Commission, its officers, employees, agents or attorneys will prejudice in any fashion the fair consideration of coastal permit

applications which Blankenship, or its successors may file, or seek to file, with the Coastal Commission.

Further, in the Settlement Agreement entered into between Blank Par-E and the City of Malibu in the action entitled, Two Blankenship, Inc. v. City of Malibu, both Blank Par-E and the City of Malibu agreed that upon approval of the parcel map, Blank Par-E shall have a "right to construct one single-family home on each of the two parcels." Certain limitations applied, however. The height of the residences would be limited to 18 feet, the gross floor area could not exceed 7,000 square feet (including garages and auxiliary structures), and specific color, landscape and drainage plans would also be required. The City of Malibu recently designated the subject site to be rural residential allowing one home per five acres and approved the parcel map subdividing the 11.7 acre Parcel E into two parcels, also a portion of the development requested under this CDP by the applicant. Although the applicant has not yet obtained an approval in concept from the City of Malibu, Planning Department, for the two single family residences, it appears that the proposed development conforms to the terms of that settlement agreement.

In addition, the Commission notes that a portion of the project site has been subject to past Commission action. Coastal Development Permit (CDP) 4-98-306 (Winding Way) was approved by the Commission in 1999. The applicant in CDP 4-98-306 had an interest in a road easement on the subject site. CDP 4-98-306 approved the improvement and paving of a portion of the driveway on the subject site in order for that applicant to access the site for the single family residence approved under CDP 4-98-306. As a result, a portion of the entry driveway to the subject site has been improved, paved, and widened to 20 feet in width.

Furthermore, existing dirt roads crossing the subject site were formerly used by the public and were mapped under the Certified LUP Trails Plan as a part of the Coastal Slope Trail. In addition, it appears that the public also a dirt trail/road that crossed the subject site in order to access what is now the Escondido Falls Trail. Through the California Coastal Commission's approval of Los Angeles County Winding Way and DeButts Terrace Water Improvement Project No. 29 (CDP P-81-7713), however, the County agreed to construct a hiking and equestrian trail along the entire right-of-way of Winding Way and DeButts Terrace. The County has completed the project and provided the hiking and equestrian trail along the entire right-of-way. As a result, the dirt road through the subject site is no longer necessary, as it was effectively replaced by the Coastal Slope Trail running along Winding Way (Exhibit 2). In addition, the parcels upon which the Escondido Falls Trail runs have also been turned into parkland and this trail, commencing on Winding Way, is open to the public and runs to the waterfalls to the north which are part of the Escondido Canyon Creek (Exhibit 2). Due to the re-routing of the Coastal Slope Trail along Winding Way and the entrance into the Escondido Falls Trail from Winding Way just east of the subject site, the Commission does not find it necessary to require an offer to dedicate any new trails across the applicant's parcel.

B. Hazards and Geologic Stability

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

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, 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 applicant has submitted a geologic report entitled, "Preliminary Geotechnical Engineering and Engineering Geology Report for a Single-Family Residence, 27311 Winding Way," prepared by Miller Geosciences, Inc., dated February 2, 1995, which states:

It is the finding of this firm that proposed building and or grading will be safe and that the building site will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property . . . provided our recommendations are followed.

The proposed development is located in the Malibu/Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Furthermore, in their report entitled "Supplement to Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project," dated November 30, 1999, Miller Geosciences, Inc. states:

The landslide feature previously mapped by Geosystems, Inc., and prior to that by Geosoils, Inc., is located north of the project. Borings by both previous consultants document its presence. The apparent direction of movement was to the northeast in the direction of the regional bedding and may be related to the bedding orientation as well as the proximity to the Malibu Coast Fault. Having been involved in the investigation by Geosystems, Inc., we are aware that the previous eastern limits were based on trench excavations and projections. Once again, no specific geomorphic evidence is present at the surface that clearly defines the eastern limits. This suggests that landslides are relatively old and may be related to wetter ancient climatic conditions.

Based on a review of the previously excavated test trenches and our continuous fault trenches, it is our opinion that the Geosystems trenches must have been misplotted and most likely are farther downslope than shown.

. . . Subsequently the limits of the landslide have been modified . . .

Based on the modified illustration of the postulated ancient landslide, the development proposed on both Lots A and B will be approximately 150 feet from the landslide (Exhibit 5).

Although the geotechnical engineering consultant, Miller Geosciences, Inc., state in their report entitled "Second Supplement to Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project," dated January 22, 2000, "it is our opinion that the landsliding will not affect the site," the close proximity of the proposed development to the landslide warrants consideration. This particular site's necessitates further review of the septic system and its potential to add effluent to the landslide mass. The applicant has submitted a report entitled "Supplement to Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project," by Miller Geosciences, Inc., dated November 30, 1999, which states that:

The information obtained from the new excavations indicates that the landslide is farther from the proposed septic systems than previously thought. The system will now be some 175 to 200 feet from the postulated landslide.

The effluent from the seepage pits is expected to disperse in a downward direction along steeply dipping fractures and bedding planes. Bedding planes dip to the north at moderate to steep angles. No evidence of structural closure was encountered. As a result, no mounding or excessive lateral migration of the effluent is anticipated. Since the landslide is to the southeast of the proposed septic system, it is our opinion the septic system will not influence the stability of the descending slopes.

Further, in their report entitled "Update Geotechnical Report and Review of Preliminary Grading Plan for 2 Lot Project," dated May 24, 1999, Miller Geosciences, Inc., state that "no special restrictions are considered necessary for seepage pit location on Parcel A." This report also states that based on the geologic conditions observed on Parcel B, "effluent will migrate downward along fractures and northeast-dipping bedding away from the landslide." The report goes on to find that:

Sustained, long-term use of the private sewage disposal system is not expected to adversely affect the site or adjacent site stability, or result in the mounding or daylighting of sewage effluent provided that our recommendations are followed.

In their report dated February 1, 1995, Miller Geosciences, Inc., also state the following, regarding faulting and seismicity on the subject site:

No known active faults lie beneath the proposed building site. The closest major fault is the Malibu Coast Fault approximately 1/4 mile north of the site. . . . The mapped trace of the Latigo Fault is located, at its closest point, 270 feet from the residence.

Furthermore, in their report dated November 30, 1999, Miller Geosciences, Inc., also find:

It is our finding that no evidence of faulting was observed in additional trenching. No change in the fault location is considered to be warranted. No changes in our previous recommendations are considered necessary. Currently the building is maintaining a 25-foot set-back from the previously established fault location..

Although in their report dated May 25, 1999, Miller Geosciences, Inc., state:

One of the residences has been shifted northeast of the single residence scenario. This location is considered close enough to a postulated landslide so that a stability calculation was considered necessary. Calculations along section B-B' indicate that the building site has a factor of safety in excess of the required minimums.

To enhance the stability of the driveway, it is recommended that either a buttress fill be constructed downslope of the road, or a row of soldier piles should be constructed along the downslope edge of the driveway.

However, in their report dated November 30, 1999, Miller Geosciences, Inc., state:

Based on our test pit excavation included herein, it is our finding that the landslide does not exist in the area of the proposed driveway for Parcel B.

In sum, the applicant has submitted numerous geotechnical engineering reports prepared by Miller Geosciences, Inc., including those dated January 22, 2000; November 30, 1999; May 24, 1999; and February 1, 1999, which incorporate numerous specific recommendations regarding construction, foundations, grading, sewage disposal, and drainage for the subject site. With regard to the foundation system and retaining walls for the proposed structures, the report dated November 30, 1999 states:

To mitigate against a potential for differential settlement across any cut fill transitions, it is recommended that all foundations penetrate any fill and bear into the bedrock . . .

It is recommended that all retaining walls bear in the bedrock using design recommendations provided . . .

Further, the Miller Geosciences, Inc., report dated May 25, 1999 states that "[c]onventional continuous footings are adequate for foundation support."

In addition, in their report dated February 1, 1995, Miller Geosciences, Inc., also state :

Soils on the site can be clayey and can have a high expansion potential. Design for floor slabs on natural ground or compacted fill should use recommendations for highly expansive soils. Selective grading is recommended such that granular bedrock materials are blended with the clayey soils to reduce the potential of expansivity. The compacted fill should be tested and soils verified for expansion potential once grading is completed.

Therefore, the Commission finds that based on the recommendations of the applicant's geotechnical engineering consultant, the proposed development is consistent with the requirements of Section 30253 of the Coastal Act, so long as the geotechnical engineering consultant's recommendations are incorporated into the final project plans and designs. Therefore, the Commission finds it necessary to require the applicant to submit final project plans that have been certified in writing by the geotechnical engineering consultant as conforming to all recommendations of the consultant, in accordance with **Special Condition One (1)**.

However, because there remains some inherent risk in building on sites in the immediate vicinity of landslides and earthquake faults and on expansive soils, such as the subject site, and due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wildfire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Four (4)**. This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

It should be noted that an assumption of risk deed restriction for hazardous geologic conditions and danger from wildfire is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. The Commission has required such deed restrictions for other development throughout the Malibu/Santa Monica Mountains region.

In addition, **Special Condition Two (2)** requires the implementation of landscaping and erosion control measures designed to reduce or eliminate potential erosion that might otherwise occur pursuant to the proposed development. As such, landscaping of the disturbed and graded areas on the subject property, as required by **Special Condition Two (2)**, will serve to enhance the geological stability of the site. In addition, interim erosion control measures implemented during construction will also minimize erosion and enhance site stability. The Commission finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to revegetate all disturbed and graded areas of the site with native plants, compatible with the surrounding environment.

The landscape plan required pursuant to **Special Condition Two (2)** requires the use of primarily native plant species. Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission finds that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native, invasive species and therefore aid in preventing erosion.

In addition, the use of invasive, non-indigenous plant species tends to supplant species that are native to the Malibu/Santa Monica Mountains area. Increasing urbanization in this area has caused the loss or degradation of major portions of the native habitat and loss of native plant seed banks through grading and removal of topsoil. Moreover, invasive groundcovers and fast growing trees that originate from other continents that

have been used as landscaping in this area have invaded and seriously degraded native plant communities adjacent to development.

Therefore, the Commission finds that in order to ensure site stability, the disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Two (2)**.

In addition, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds it necessary to impose a restriction on the removal of natural vegetation, as specified in **Special Condition Three (3)**. Through the elimination of premature natural vegetation clearance, erosion is reduced on the site and disturbance of the soils is decreased. Therefore, **Special Condition Three (3)** specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced.

The Commission finds that only as conditioned to incorporate all recommendations by the applicant's consulting geotechnical engineer, landscape and erosion control plans, and the assumption of risk deed restriction, will the proposed project be consistent with Section 30253 of the Coastal Act.

C. Visual Impacts

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and protected:

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, in past actions, the Commission has provided for protection of visual resources when reviewing development proposals in the Santa Monica Mountains. For example, the Commission has found that new development shall be sited and designed to protect public views from scenic highways, to and along the shoreline, and to scenic coastal areas, including public parklands. In addition, the Commission has found in past actions that structures shall be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. Furthermore, in highly scenic areas and along scenic highways, the Commission has found that new development shall be sited and designed to protect views to and along

the ocean and to and along other scenic features, minimize the alteration of natural land forms, conceal graded slopes, be visually compatible with and subordinate to the character of the setting, and not intrude into the skyline as seen from public viewing areas. In past actions, the Commission has also found that structures shall be sited to conform to the natural topography of the site, as is feasible.

As stated above, the applicant is proposing the subdivision of an 11.66 acre parcel into a 6 acre (Lot A) and a 5.67 acre parcel (Lot B). In addition, the applicant is proposing to construct a new 5,955 square foot single family residence with an attached 625 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,780 cubic yards of grading for the single family residence (980 cut, 1,400 excavation, and 1,400 removal and recompaction) and 4,700 cubic yards of grading for the earth berm (1,700 cut and 3,000 fill) on Lot A and a new 6,259 square foot single family residence with an attached 714 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,430 cubic yards of grading for the single family residence (850 cut, 180 fill, 1,000 excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B. The applicant is also proposing to improve the driveways that will access the two new single family residences. It is proposed to grade and pave two access roads that originate at the existing asphalt driveway along the southern property line in order to independently access each proposed single family residence.

The primary visual resource in the vicinity of the proposed project site is Escondido Canyon and the Escondido Falls Trail, which is located within the canyon. The Commission, in hearing and voting on several permit applications, has consistently required that new developments visible from the canyon minimize and mitigate impacts to visual resources as seen from the public trail. The Commission has required the resiting of development, height, color, and future development restrictions, as well as landscaping to minimize or eliminate any view of development from the trail. Most of the projects restricted in this way were located on the slopes on the west side of the canyon adjacent to DeButts Terrace, including CDPs 5-90-515 (Shriner), 5-90-670 (Kirsten), 5-90-673 (Shriner), 5-90-781 (Newman), 5-90-921 (Landgate), and 5-90-1068 (Morton). A subdivision was also approved on the slopes above the canyon to the east under CDP 5-90-1149 (Thorne), which had restrictions for future homes on lots visible from the canyon to minimize any visual impact.

In this case, the proposed project site is highly visible from portions of Escondido Canyon and the Escondido Falls Trail. The subject site is located to the southwest of the canyon, at the top of a ridge overlooking the canyon. As such, if the site were developed in a manner that was not sensitive to protecting visual resources from the trail, equestrians and hikers would gain a prominent view of both proposed single family residences from portions of the trail. In addition, the proposed development will also be highly visible from the Coastal Slope Trail, which follows Winding Way in this area.

The project site is located within a partially developed residential area consisting of similarly sized single family residences constructed on similarly sized lots. There are

existing large, single family residences to the south, southwest, and southeast of the site. The proposed project, therefore, will be consistent with the character of the surrounding area. Furthermore, the design of the residence will incorporate a measures to minimize negative visual impacts on public views. The residences are single story in design. In addition, the pads for the residences will be significantly lowered in order make the residences less visible from the Escondido Falls Trail. Further, earth berm features have been incorporated into the project design, which, in effect, will shield the residences from the Escondido Falls Trail completely (Exhibits 24, 25, 26, 27, and 28). However, due to the visible nature of the project, including the earth berms, as seen from the Coastal Slope Trail along Winding Way and the Escondido Falls Trail, the Commission finds it necessary to require mitigation measures to minimize visual impacts as seen from these scenic public resources.

Additionally, requiring the residence to be adequately landscaped can also mitigate visual impacts. Graded and disturbed slopes can have visual impacts and can contribute to erosion. While the proposed project will not be visible from the Escondido Falls Trail, it will be visible from the Coastal Slope Trail, which follows Winding Way in this area. In addition, while the two single family residences will not be visible from the Escondido Falls Trail, the earth berm created to shield the residences from the trail will be visible. In order to ensure that potential visual impacts from the graded and disturbed areas of the project site are minimized, including the earth berms, the Commission finds it necessary to require the applicant to prepare and implement a landscaping plan, comprised primarily of native vegetation, which provides for the revegetation of all graded and disturbed areas. The applicant must also monitor the landscaping and report to the Commission on the success of the revegetation in order to ensure that the landscaping is successful. The landscaping should consist of native, drought resistant plants and be designed to minimize and control erosion, as well as partially screen and soften the visual impact of the structures, grading, and earth berms, as seen from the Coastal Slope Trail along Winding Way and the Escondido Falls Trail, with vertical elements such as trees and shrubs. Furthermore, for that portion of the site facing Escondido Canyon, including the earth berms, the landscaping plan must be comprise exclusively of native vegetation in order to minimize the visual impact on the Escondido Falls Trail. In addition, fuel modification requirements can affect natural vegetation for up to 200 feet from the footprint of defensible structures. As a result, the fuel modification plan should be designed to reduce negative visual impacts from the Coastal Slope Trail along Winding Way and the Escondido Falls Trail from vegetation clearance. Therefore, the Commission finds that it is necessary to require the applicant to submit a landscape plan and to monitor the success of that plan, as specified in **Special Condition Two (2)**.

The Commission finds it necessary to require that the proposed residence be subject to the specific design restrictions set forth in **Special Condition Six (6)**. The purpose of these restrictions is to reduce the impacts of the proposed project on views from the Coastal Slope Trail that follows Winding Way in this area and from the Escondido Falls Trail. These restrictions limit the color of the proposed residence, garage, and associated roofs to colors compatible with the surrounding environment, and require the

use of non-glare glass for all windows. If fully implemented, this condition will reduce the negative impacts from the proposed development on the visual resources of the Coastal Slope Trail and Escondido Falls Trail.

Finally, future developments or improvements to the property have the potential to create significant adverse visual impacts as seen from the Coastal Slope Trail running along Winding Way and the Escondido Falls Trail. It is necessary to ensure that future developments or improvements normally associated with a single family residence, which might otherwise be exempt, be reviewed by the Commission for compliance with the visual resource protection policies of the Coastal Act. As a result, **Special Condition Seven (7)**, the future improvements deed restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act and to ensure that any proposal is designed to minimize impacts to visual resources and/or that appropriate mitigation measures are included in the project.

In summary, the proposed project, as conditioned, will not result in a significant adverse impact to the public views in this portion of the Santa Monica Mountains. Thus, the Commission finds that the proposed project is consistent, as conditioned, with Section 30251 of the Coastal Act.

D. Archaeological Resources

Section 30244 of the Coastal Act states:

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

Archaeological resources are significant to an understanding of cultural, environmental, biological, and geological history. The proposed development is located in a region of the Santa Monica Mountains, which contains one of the most significant concentrations of archaeological sites in southern California. The Coastal Act requires the protection of such resources to reduce the potential adverse impacts through the use of reasonable mitigation measures.

Degradation of archaeological resources can occur if a project is not properly monitored and managed during earth moving activities and construction. Site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be permanently lost. In the past, numerous archaeological sites have been destroyed or damaged as a result of development. As a result, the remaining sites, even though often less rich in materials have become increasingly valuable as a resource. 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 that remain intact.

The applicant is proposing the subdivision of an 11.66 acre parcel into a 6 acre (Lot A) and a 5.67 acre parcel (Lot B). In addition, the applicant is proposing to construct a new 5,955 square foot single family residence with an attached 625 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,780 cubic yards of grading for the single family residence (980 cut, 1,400 excavation, and 1,400 removal and recompaction) and 4,700 cubic yards of grading for the earth berm (1,700 cut and 3,000 fill) on Lot A and a new 6,259 square foot single family residence with an attached 714 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,430 cubic yards of grading for the single family residence (850 cut, 180 fill, 1,000 excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B. The applicant is also proposing to improve the driveways that will access the two new single family residences. These driveway improvements will consist of grading and paving two access roads that originate at the existing asphalt driveway along the southern property line in order to independently access each proposed single family residence.

The archaeological report prepared by Chester King, City Archaeologist, entitled, "Archaeological Reconnaissance and Recommendations for Avoidance or Phase 2 Archaeological Evaluation at 27311 Winding Way," dated May 29, 1995 assesses the potential for archaeological resources on Lot B of the proposed project site. The report states that the subject site is within the boundaries of a recorded prehistoric site identified as CA-LAN-1879. In his report dated April 11, 2000, "Archaeological Mitigation Conditions for 27311 Winding Way," Chester King states:

Artifacts have been found at CA-LAN-1879 and the condition of the soil at the site indicate[s] most of the site was a small to medium sized settlement occupied during the Early period and/or early Middle period (prior to ca. 300 BC.) . . . The boundaries of the site have not been determined and the frequencies of artifacts is not known. The proposed project at 27311 Winding Way is immediately east of the main site area. The site may extend into the project area. The project area is the flattest land in the vicinity of the site. It is possible that cemeteries or other features are present at the project site.

Chester King, City Archaeologist, also submitted a report entitled, "Archaeological Mitigation Conditions for 27315 Winding Way," dated March 22, 2000. That report states:

Archaeological site CA-LAN-1879 was recorded by RMW Paleo in 1989. The proposed project at 27315 Winding Way is within the boundaries of the site (Figure 1). I visited the project site in the company of Qun-Tan Shup on April 12, 1995. We walked the site area to obtain information concerning the distribution of artifacts in irregular transects less than 5 meters apart.

That report also states:

We observed stone tools, flakes of stone, fire altered rock and pieces of mussel shell. Our observations indicate that the western end of the ridge above 410 feet elevation and the southern slope of the ridge extending to the paved driveway south of the project area is within site CA-LAN-1879. Shell was found near the ridge top as was also fire altered

rock. It appears that residences were concentrated near the crest of the hill. The artifacts observed extending south of the ridge top were chipped stone artifacts and included many artifacts made from chert and chalcedony. Artifacts which have been found at the site and the condition of the soil at the site indicate most of the site was a small to medium sized settlement occupied during the Early period (prior to ca. 300 BC).

This report also finds:

Parcel A contains most of the site area and has been given the address 27315 Winding Way.

That report also states:

There have been no controlled archaeological investigations at the project site. The boundaries of the site have not been determined and the frequencies of artifacts is not known.

As a main area of an archaeological site appears to be on the subject property, particularly 27315 Winding Way (Lot A), the proposed development has the potential to adversely impact cultural resources. Due to these findings, W & S Consultants prepared a report entitled, "Phase II Test Excavation and Determination of Significance on a portion of CA-LAN-1879, 27315 Winding Way," dated November 13, 2000. Their report states:

A Phase II archaeological test excavation and determination of significance was conducted on a portion of site CA-LAN-1879 located within 27315 Winding Way . . . This included mapping, systematic surface collection, the hand excavation and water screening of eight 1x1 meter pits, as well as an analysis of the recovered archaeological assemblage. This portion of CA-LAN-1879 was found to contain a small and very low density but intact archaeological deposit covering an area approximately 250 square meters in size. Archaeological and soils stratigraphic evidence suggests that it dates to the Intermediate Period (800 to 3500 YBP) and that it served as seasonal campsite probably used by a single family unit for plant oriented subsistence practices.

Construction of the proposed project will therefore result in direct adverse impacts to cultural resources. It is recommended that these adverse impacts be mitigated by Phase III data recovery (salvage excavation).

This report also states:

Archaeological site CA-LAN-1879 is located on a high ridgeline overlooking the Pacific Ocean at Escondido Beach and Paradise Cove. . . .

The recorded location of archaeological site CA-LAN-1879, in fact, is restricted to the ridgeline area found in the southeastern quarter of this property.

Their report concludes:

The small, low density but intact archaeological deposit within the footprint of the proposed project area has the potential to provide scientifically valuable albeit limited

information about the prehistory of this region. Based on this fact, the construction of this project therefore has the potential to result in direct adverse impacts to cultural resources. It is recommended that these adverse impacts be mitigated through the salvage excavation (Phase III data recovery) of a scientifically consequential sample from the impact area.

To ensure that impacts to archaeological resources are minimized, **Special Condition Nine (9)** requires that the applicant have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation, and site preparation in order to monitor all earth moving operations. In addition, if any significant archaeological resources are discovered during construction, work shall be stopped and an appropriate data recovery strategy shall be developed by the archaeologist(s) and the Native American consultant(s), in consultation with the City of Malibu Archaeologist, consistent with California Environmental Quality Act (CEQA) guidelines.

The Commission further finds that it is necessary to require the applicant to implement all other recommendations contained in report entitled, "Phase II Test Excavation and Determination of Significance on a Portion of CA-LAN-1879, 27315 Winding Way," by W & S Consultants, dated November 13, 200 and in that report prepared by Chester King, City of Malibu Archaeologist, entitled, "Archaeological Reconnaissance and Recommendations for Avoidance or Phase 2 Archaeological Evaluation at 27311 Winding Way," dated May 29, 1995. Further, any recommendations developed by the consultants as part of any necessary data recovery plan shall be incorporated into the project. Finally, if the recommendations require a substantial modification or redesign of the proposed project, the applicant shall be required to submit an amendment to this permit.

Thus, the Commission finds that based on the findings of the archaeological reports and other available evidence, the proposed development, as conditioned to monitor the site, including both Lots A and B, during earth moving activities and to incorporate the recommendations of the archeological consultant(s) to mitigate any adverse impacts on archaeological resources, is consistent with Section 30244 of the Coastal Act.

E. Environmental Sensitive Habitat Area

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Acts states:

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

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

Sections 30230 and 30231 require that the biological productivity and quality of coastal waters and the marine environment be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, and maintaining natural buffer areas.

In addition, the Coastal Act defines environmentally sensitive habitat areas (ESHAs) as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. Section 30240 of the Coastal Act permits development in areas that have been designated as ESHA only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value. As previously mentioned, the Malibu/Santa Monica Mountains LUP has also designated this portion of Escondido Canyon and Escondido Canyon Creek as an ESHA, specifically an inland ESHA due to the extensive undisturbed riparian vegetation (Exhibit 6).

Although no portion of the subject site has been designated as ESHA, the proposed development on Lot B will be located (at the nearest edge of the residential structure) approximately 425 feet upslope from the Escondido Canyon and Escondido Canyon Creek environmentally sensitive habitat area (ESHA), while the proposed development on Lot A will be approximately 625 feet upslope from the ESHA. Escondido Canyon Creek is a perennial blue line stream designated by the U.S. Geological Survey and the riparian corridor is an inland ESHA, as shown on the sensitive environmental resource map of the certified LUP.

The applicant is proposing the subdivision of an 11.66 acre parcel into a 6 acre (Lot A) and a 5.67 acre parcel (Lot B). In addition, the applicant is proposing to construct a new 5,955 square foot single family residence with an attached 625 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,780 cubic yards of grading for the single family residence (980 cut, 1,400 excavation, and 1,400 removal and recompaction) and 4,700 cubic yards of grading for the earth berm (1,700 cut and 3,000 fill) on Lot A and a new 6,259 square foot single family residence with an attached 714 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,430 cubic yards

of grading for the single family residence (850 cut, 180 fill, 1,000 excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B. The applicant is also proposing to improve the driveways that will access the two new single family residences. These driveway improvements will consist of grading and paving two access roads that originate at the existing asphalt driveway along the southern property line in order to independently access each proposed single family residence.

As required by the Coastal Act and as the Commission has required in past permit actions, the proposed project will be adequately set back from the ESHA riparian corridor of Escondido Canyon and Escondido Canyon Creek. The development on Lot B, including the septic system, will be set back approximately 465 feet from the streambed of Escondido Canyon Creek, and over 425 feet from the creek's associated riparian corridor. The development on Lot A, including the septic system, will be set back approximately 750 feet from the streambed of Escondido Canyon Creek, and over 625 feet from the creek's associated riparian corridor. The area to be developed of the site will be located immediately outside, though not within, the Escondido Canyon and Escondido Canyon Creek ESHA area. The development site will be located just above Winding Way via the access driveways, on the upper portion of the site and will not be located on the slope of the canyon leading to the area designated as an ESHA.

The direct impacts of the proposed project, such as vegetation removal and hardscaping of the formerly natural areas of an undeveloped site, will be mitigated through the implementation of the applicable special conditions. **Special Condition Two (2)** requires a landscape plan comprised primarily of native plant species, in conjunction with an interim erosion control plan. The landscaping of the disturbed areas of the subject site, particularly with respect to particularly steep slopes, with native plant species will assist in preventing erosion and the displacement of native plant species by non-native or invasive species. Furthermore, **Special Condition Two (2)** also requires that all plant species located on that portion of the site behind the single family residences facing the Escondido Canyon shall be native species to this area. In addition, in their report dated April 28, 1989, Pacific Southwest Biological Services, Inc., mapped a portion of the subject site as containing this sensitive resource. Their report states:

An estimated 30-40 plants were noted in full flower at scattered locales in the grassland where Diablo clay occurs. Other individuals of this bulbous perennial may lie cryptically within the same habitat.

Although locally common in the Santa Monica Mountains, this lily is quite uncommon elsewhere; it is accorded moderate biological significance. A majority of the population should be set aside under any development plan for the site.

As a result, under **Special Condition Two (2)**, the landscape plan shall specifically include the use of the Catalina Mariposa Lily ("Calochortus catalinae"), as this sensitive species was noted in the biological survey of the site where the development is proposed and were noted on the site by Staff during a site visit (Exhibit 7).

excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B. The applicant is also proposing to improve the driveways that will access the two new single family residences. These driveway improvements will consist of grading and paving two access roads that originate at the existing asphalt driveway along the southern property line in order to independently access each proposed single family residence.

The Coastal Act requires that new development, including subdivisions and multi-family projects, be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. In past permit actions, the Commission has looked to the land use designations of the Malibu/Santa Monica Mountains Land Use Plan for guidance on the maximum density and intensity of land use that may be permitted in any particular area.

The proposed development is located in the coastal terrace at the base of the Santa Monica Mountains where the most extensive infrastructure and services are found. As stated previously, prior to the incorporation of the City of Malibu, the zoning set forth by the County of Los Angeles for the property would have allowed for a maximum of 23 homes on the property, at approximately one residence per five acres. However, in 1995, the City of Malibu then designated the property as rural residential, permitting only one residence per 20 acres. Subsequent to the Settlement Agreement between Two Blankenship, Inc., and the City of Malibu, the City of Malibu has recently designated the subject site to be rural residential, allowing one home per five acres and approved the parcel map subdividing the 11.7 acre Parcel E into the two parcels currently proposed under this application.

In addition, the criteria outlined in Section 30250 regarding 50 percent development of usable parcels in the area and minimum lot size are imposed for land divisions outside existing developed areas. In this case, the proposed project site is located on the coastal terrace, an area which the Commission has, in past decisions, recognized as an existing developed area. As such, this criteria is not applicable to the proposed project.

While the City of Malibu has made its own land use designations, the land use designations from the certified Los Angeles County LUP are instructive on the level of density that the Commission has previously found allowable consistent with the policies of the Coastal Act. In this case, the certified LUP designates the proposed project site for the Residential II Category, which allows one dwelling unit per five acres. The proposed project would result in a density of one dwelling per six acres on Lot A and a one dwelling unit per 5.67 acres on Lot B. This is in approximate proportion with what would have been allowed under the certified LUP. As such, the proposed project would be consistent with the density category.

In addition to assuring that newly created parcels are consistent with the maximum allowable density and intensity for each area, the Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact

problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer Development Credit (TDC) program as mitigation, such as been done in past actions including CDPs P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), P-86-196 (Malibu Pacifica), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-98-281 (Cariker), and 4-00-028 (Layman). The TDC program has resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a). In summary, the Commission has found that the TDC program, or a similar technique to retire development rights on selected lots, and remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny such projects, based on the provisions of Section 30250(a) of the Coastal Act.

The applicant is proposing to subdivide one parcel of land into two residential lots. The proposed number of residential units is consistent with the character of the area. The subject parcel is an existing legal parcel. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit regarding the legality of the existing parcel.

However, as discussed above, the Commission has approved new subdivisions, but has continued to require purchase of TDC's as one of the alternative mitigation strategies. Staff's review indicates that the incremental contribution to cumulative impacts would be the creation of one additional lot. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation are associated with the development of an additional parcel in this area. Therefore, the Commission determines that it is necessary to impose a TDC requirement on the applicant, in order to insure that the cumulative impacts of the creation of an additional legal buildable lot is adequately mitigated.

Therefore, **Special Condition Eight (8)** requires the applicant to mitigate the cumulative impacts of the subdivision of this property, either through purchase of one (1) TDC or participation along with a public agency or private nonprofit corporation in retiring habitat or watershed land in amounts that the Executive Director determines will

retire the equivalent potential building site. The Commission finds that, as conditioned, the proposed project is consistent with Section 30250 of the Coastal Act.

G. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation; increase of impervious surfaces; increase of runoff, erosion, and sedimentation; and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Furthermore, the Commission also recognizes that the potential build-out of lots in Malibu, 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:

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.

As described above, the proposed project includes the subdivision of an 11.66 acre parcel into a 6 acre (Lot A) and a 5.67 acre parcel (Lot B). In addition, the applicant is proposing to construct a new 5,955 square foot single family residence with an attached 625 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,780 cubic yards of grading for the single family residence (980 cut, 1,400 excavation, and 1,400 removal and recompaction) and 4,700 cubic yards of grading for the earth berm (1,700 cut and 3,000 fill) on Lot A and a new 6,259 square foot single family residence with an attached 714 square foot garage, swimming pool, decks, retaining wall, earth berm, and private sewage disposal system with 3,430 cubic yards of grading for the single family residence (850 cut, 180 fill, 1,000 excavation, and 1,400 removal and recompaction) and 3,050 cubic yards of fill grading for the earth berm on Lot B. The applicant is also proposing to improve the driveways that will access the two new single family residences. These driveway improvements will consist of grading and paving two access roads that originate at the existing asphalt driveway along the southern property line in order to independently access each proposed single family residence.

The conversion of the project site from its natural state will result in an increase in the amount of impervious surface and reduction in the naturally vegetated area. Further, use of the site for residential purposes will introduce potential sources of pollutants such as petroleum, household cleaners, and pesticides, as well as accumulated

pollutants from rooftops and other impervious surfaces and effluent from septic systems.

Furthermore, in their report dated February 1, 1995, Miller Geosciences, Inc., state:

Drainage is by sheet flow. Flows that are directed to the north, descend over the slopes to tributaries of Escondido Canyon. Flow on the south side of the ridge is collected by the access driveway which eventually directs it to Winding Way. No evidence of concentrated flow was noted.

All roof drainage should be collected in eave gutters that discharge directly into engineered nonerosive drainage devices.

This Miller Geosciences, Inc., report goes on to state:

Final grading shall provide positive drainage away from the footings and from the lot. ADDITIONALLY, proper drainage shall also be provided away from the building footing and from the lot during construction. Maintaining a proper drainage system will minimize the shrink/swell potential of the subsoils.

All pad and roof drainage should be collected and transferred to the driveway or other approved dispersal area in non-erosive drainage devices. Drainage should not be allowed to pond on the pad or against any foundation or retaining wall.

The proposed development will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to

the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter, or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e., the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Five (5)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act. Furthermore, **Special Condition Five (5)** also requires that the drainage plan direct all discharge runoff away from Escondido Canyon and Escondido Canyon Creek due to the sensitive ecological nature of that area, as evidenced by its designation as an inland ESHA. As a result, the drainage and polluted runoff plan should direct the flow toward Winding Way instead of the canyon area.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Five (5)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the applicant proposes to construct two new 1,500 gallon septic tank and disposal systems to service the two new single family residences. Percolation tests have been performed on the subject site. In addition, in their report dated May 25, 1999, Miller Geosciences, Inc., states:

All seepage pits should be capped at a minimum depth of 5 feet below the ground surface and at least 15 horizontal feet from any descending fill-bedrock or soil-bedrock contacts, whichever is deeper as determined by the engineering geologist during our observation once the pits have been excavated.

Furthermore, the Environmental Health Department of the City of Malibu has also given in concept approval for the proposed sewage disposal system. This conceptual approval by the City of Malibu indicates that the sewage disposal system for the project in this application comply with all minimum requirements of the Uniform Plumbing Code.

The Commission has found in past permit actions that conformance with the provisions of the plumbing, health, and safety codes is protective of resources and serves to minimize any potential for wastewater discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

H. Local Coastal Program

Section 30604 of the Coastal Act states:

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

I. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 that 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.

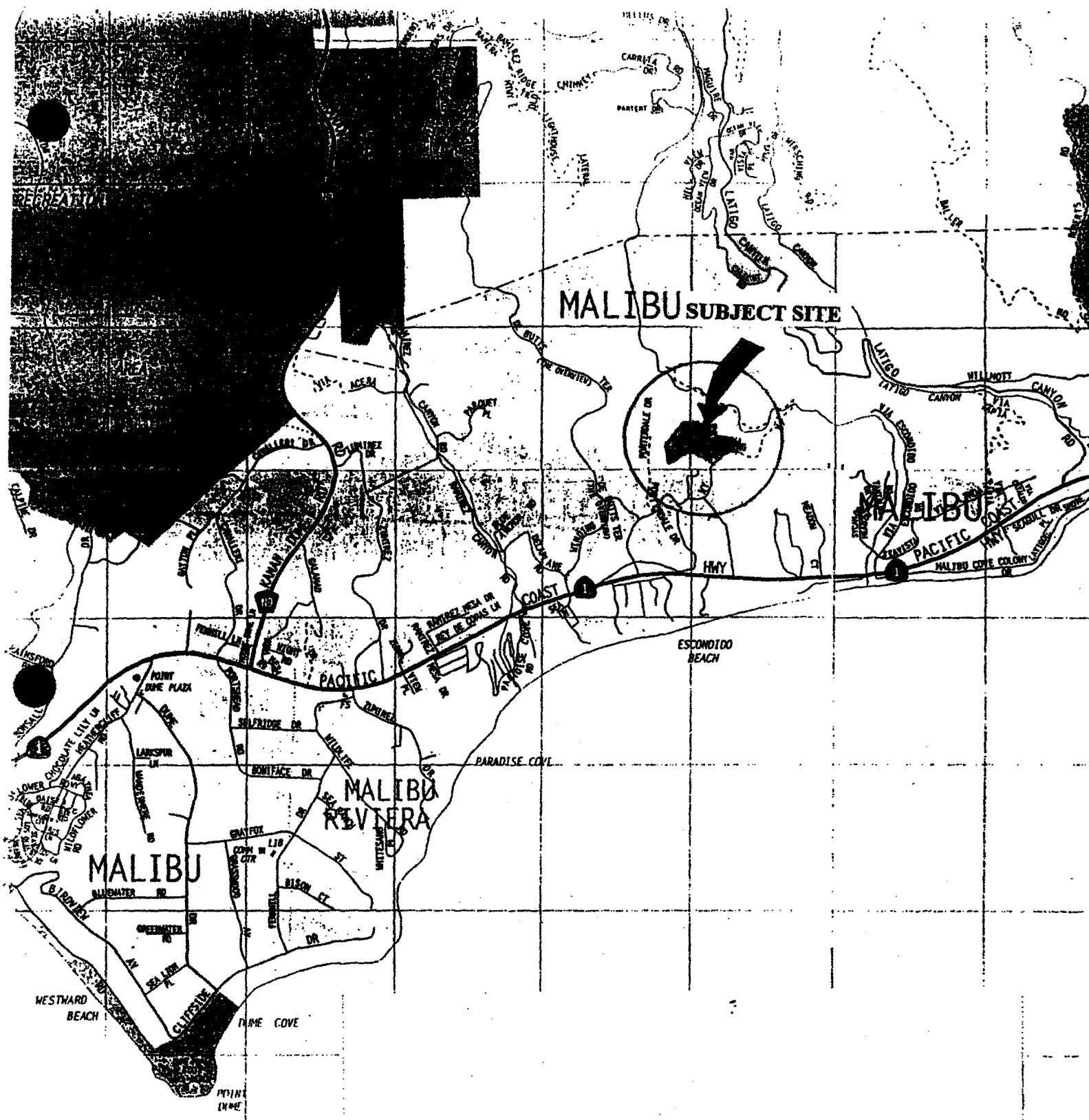


EXHIBIT 1
CDP 4-00-044 (Blank Par-E, LLC)
Location Map



1998

BK.
4465

N. 71° 54' E.
104253 N. 74° 54' E. (Per dead)

8
Par.

BK.
4467

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT
R.F. 534

CODE
10853

FOR PREV. ASSMT. SEE:
4460 - 2

SUBJECT PARCEL

1000 YDS.

34

35

ESCONDIDO FALLS TRAIL

RIDING
& HIKING

TRAIL

COASTAL SLOPE TRAIL
(along Winding Way)

7

5

3

4

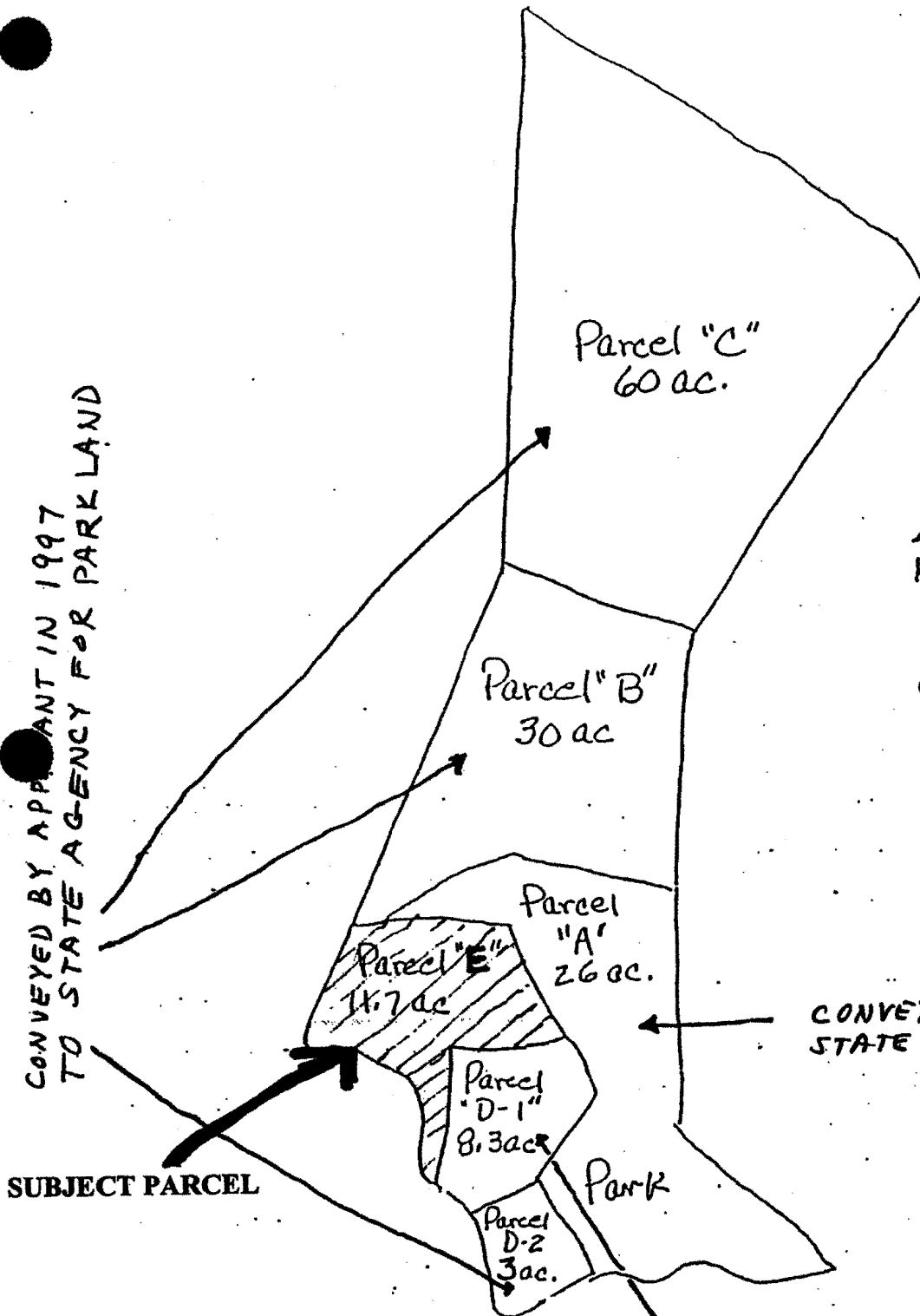
ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

EXHIBIT 2

CDP 4-00-044 (Blank Par-E, LLC)

Assessor Parcel Map

COASTAL PERMIT
NO. 4-00-044
BLANK PAR E,
APPLICANT



NOTE 1: BLANK PAR E, APPLICANT, WAS PREVIOUSLY KNOWN AS TWO BLANKENSHIP

NOTE 2: OF TWO BLANKENSHIP'S ORIGINAL 140 ACRE HOLDING, 128.3 ACRES HAVE BEEN CONVEYED TO STATE AGENCIES FOR USE AS PARKLAND. BLANK PAR

NOTE 3: PARCEL "E" IS APN 4400-002-006; LEGAL DESCRIPTION ATTACHED

NO. 4-00-044
SUBJECT PARCEL:



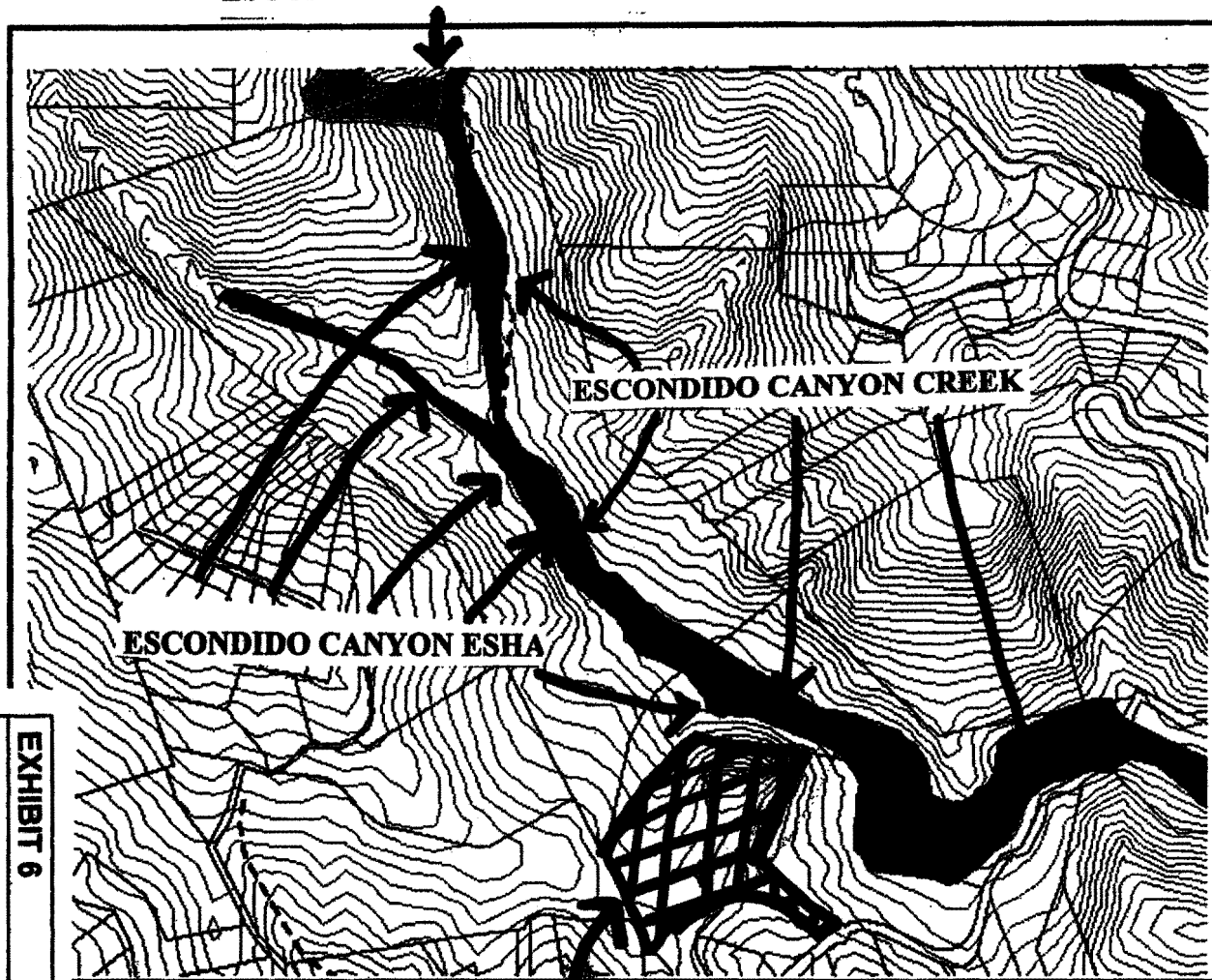
EXHIBIT 3

CDP 4-00-044 (Blank Par-E, LLC)

Parcel Map of Original 140 Acres

Map of Parcel E

ESCONDIDO WATERFALLS



- StrmsCCC
- laprcis
- esha (ESHA)
 - Coldcreek management area
 - inland
 - locally disturbed resources
 - oak woodlands and savannahs
 - significant watersheds residential
 - wildlife migration corridor
 - contours20ft

EXHIBIT 6
CDP 4-00-044 (Blank Par-E, LLC)
Resource Map

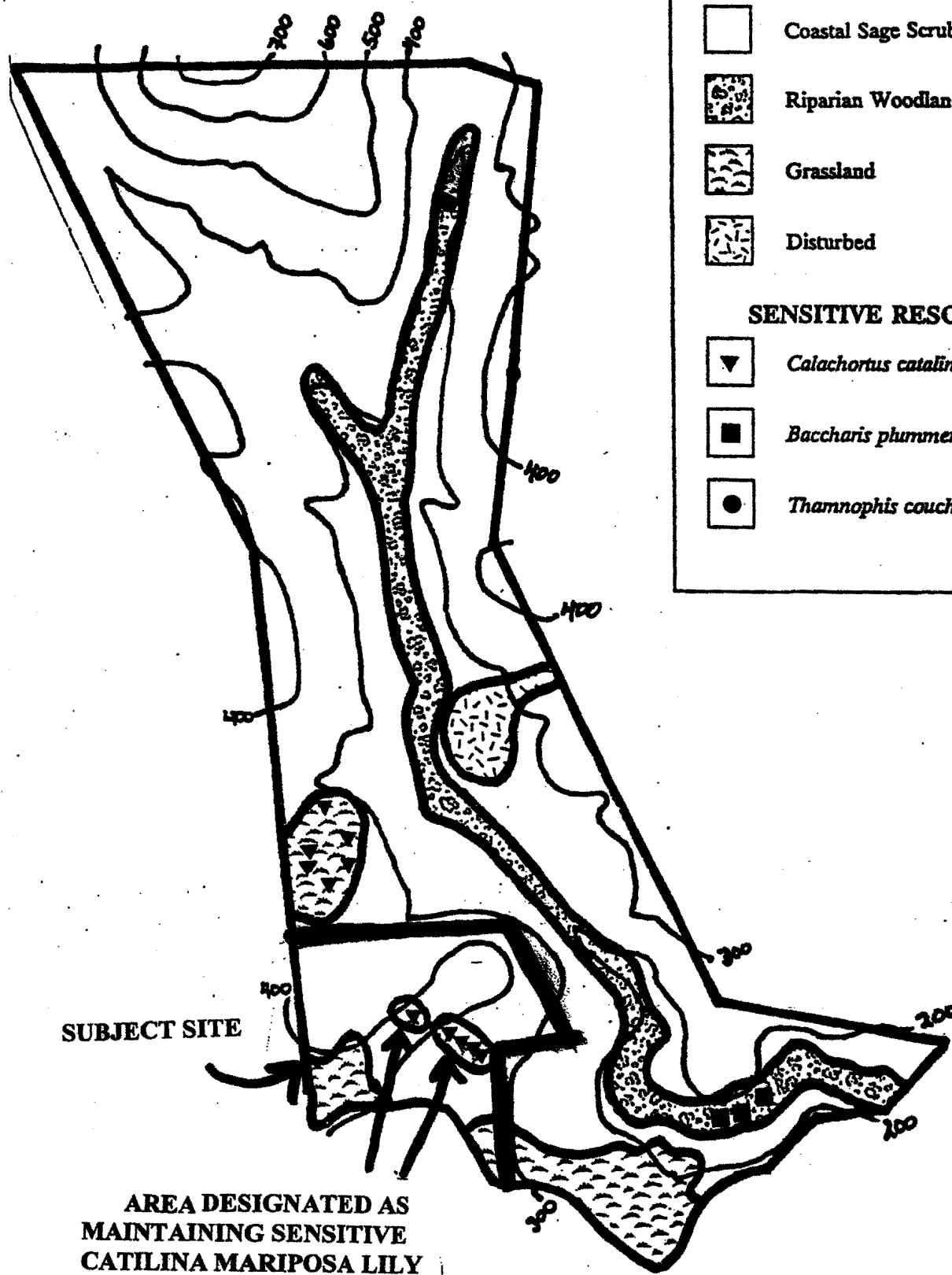


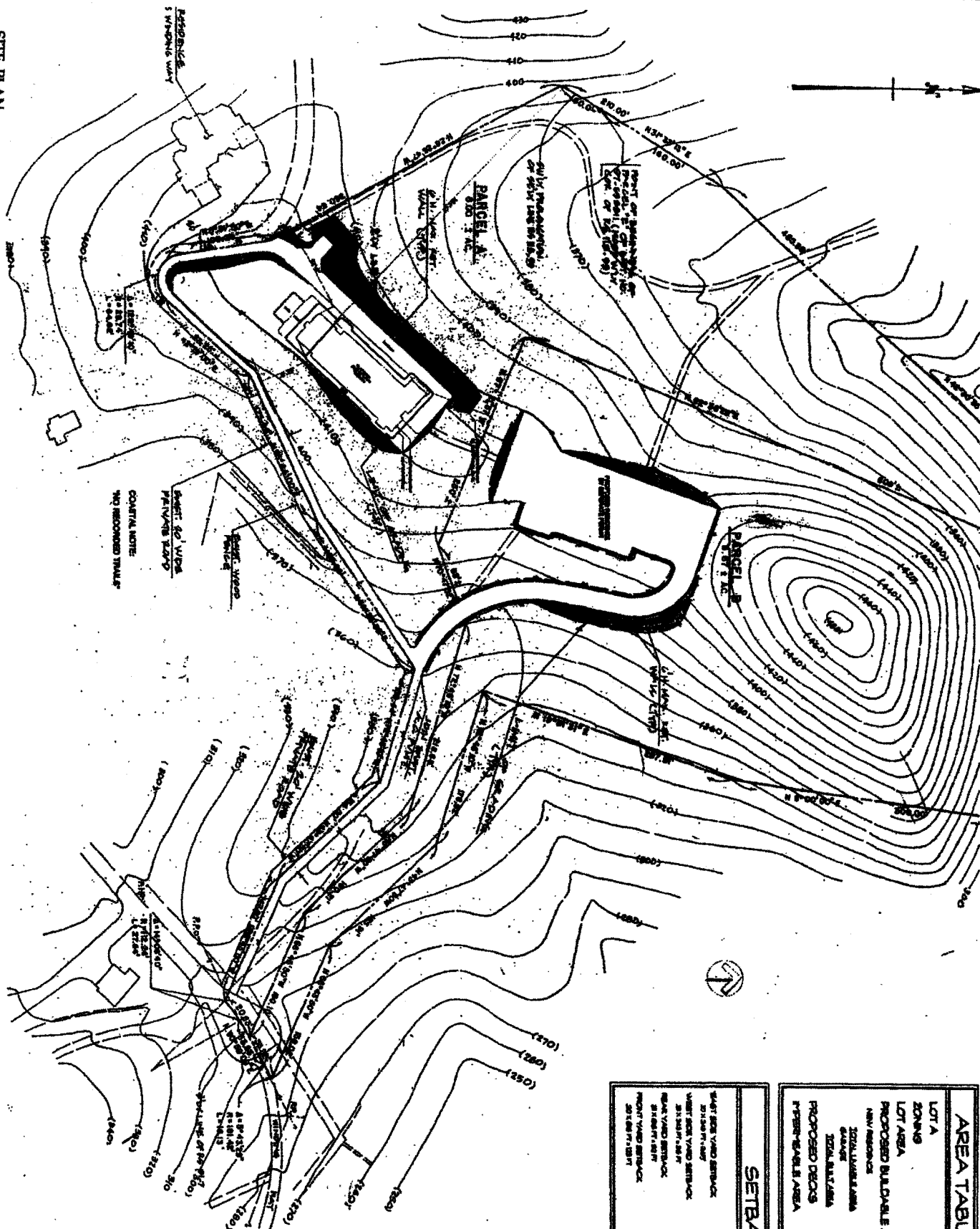
FIGURE 2. VEGETATION AND SENSITIVE RESOURCES

EXHIBIT 7

CDP 4-00-044 (Blank Par-E, LLC)

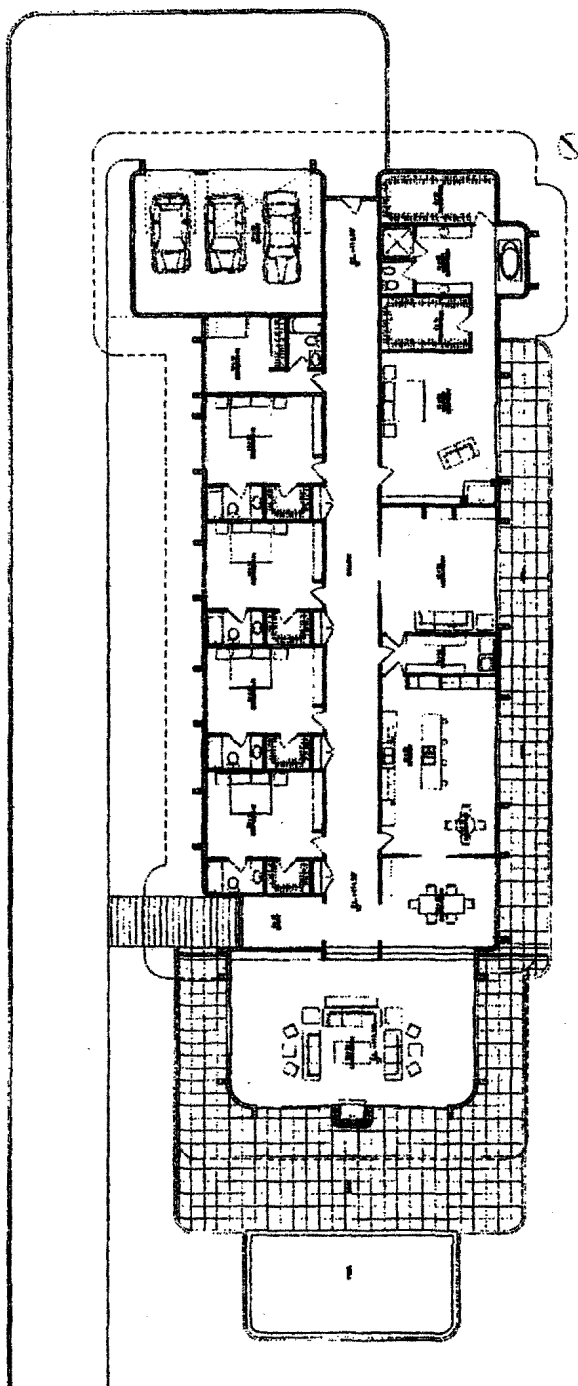
Vegetation and Sensitive Resources Map

SITE PLAN

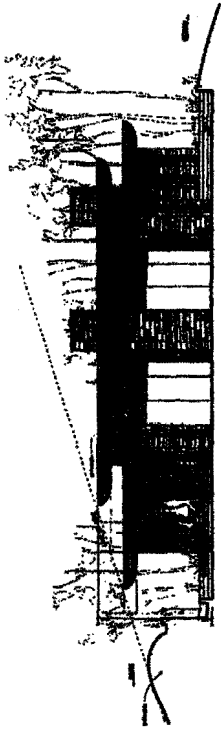


AREA TABULATIONS	
LOT A	6.00 ± ACRES
PROPOSED BUILDABLE AREA	6,580 S.F.
PROPOSED DECKS	2,405 S.F.
PROPOSED DRIVEWAY AREA	17,750 S.F.
SETBACKS	
FRONT YARD SETBACK	25'
REAR YARD SETBACK	25'
SIDE YARD SETBACK	25'
FRONT VEHICULAR SETBACK	25'
REAR VEHICULAR SETBACK	25'
FRONT VEHICULAR SETBACK	25'
REAR VEHICULAR SETBACK	25'

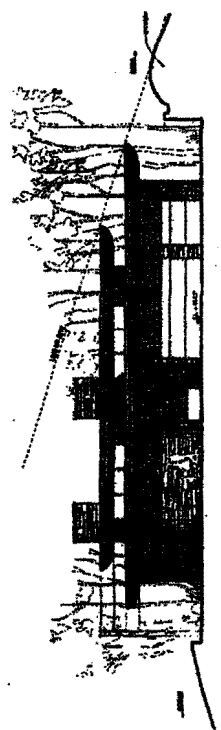
EXHIBIT 8
CDP 4-00-044 (Blank Par-E, LLC)
Site Plan, Lot A



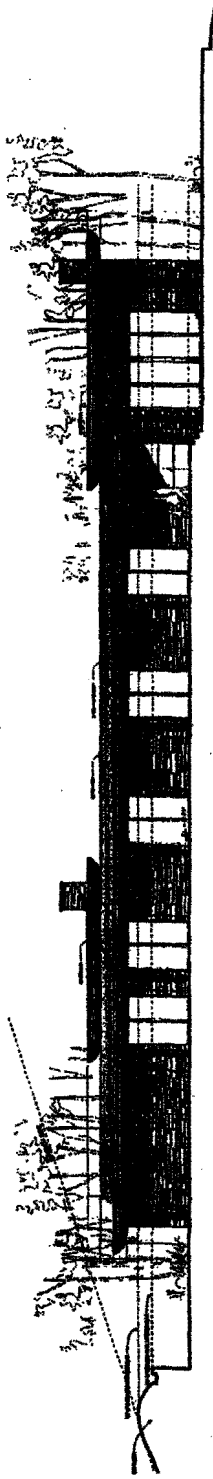
FLOOR PLAN



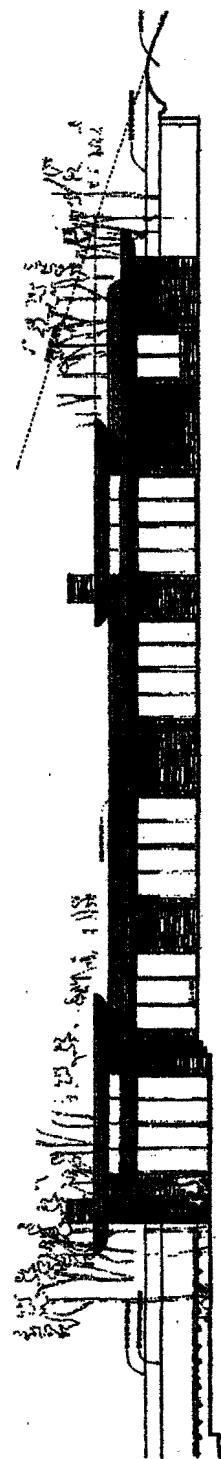
WEST ELEVATION



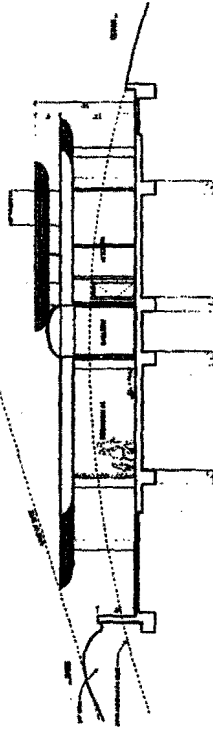
EAST ELEVATION



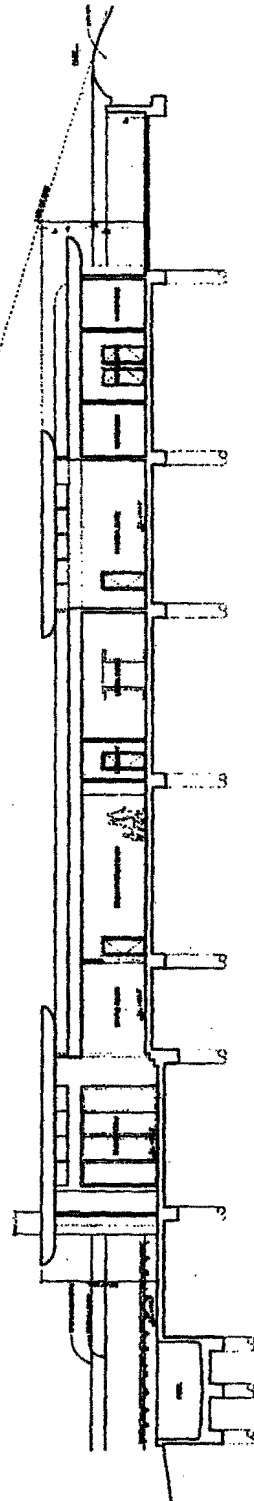
NORTH ELEVATION



SOUTH ELEVATION



SECTION A-A



SECTION B-B

EXHIBIT 14
CDP 4-00-044 (Blank Par-E, LLC)
Grading Plan Cross-Sections, Lot A

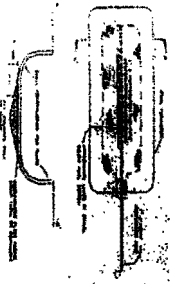
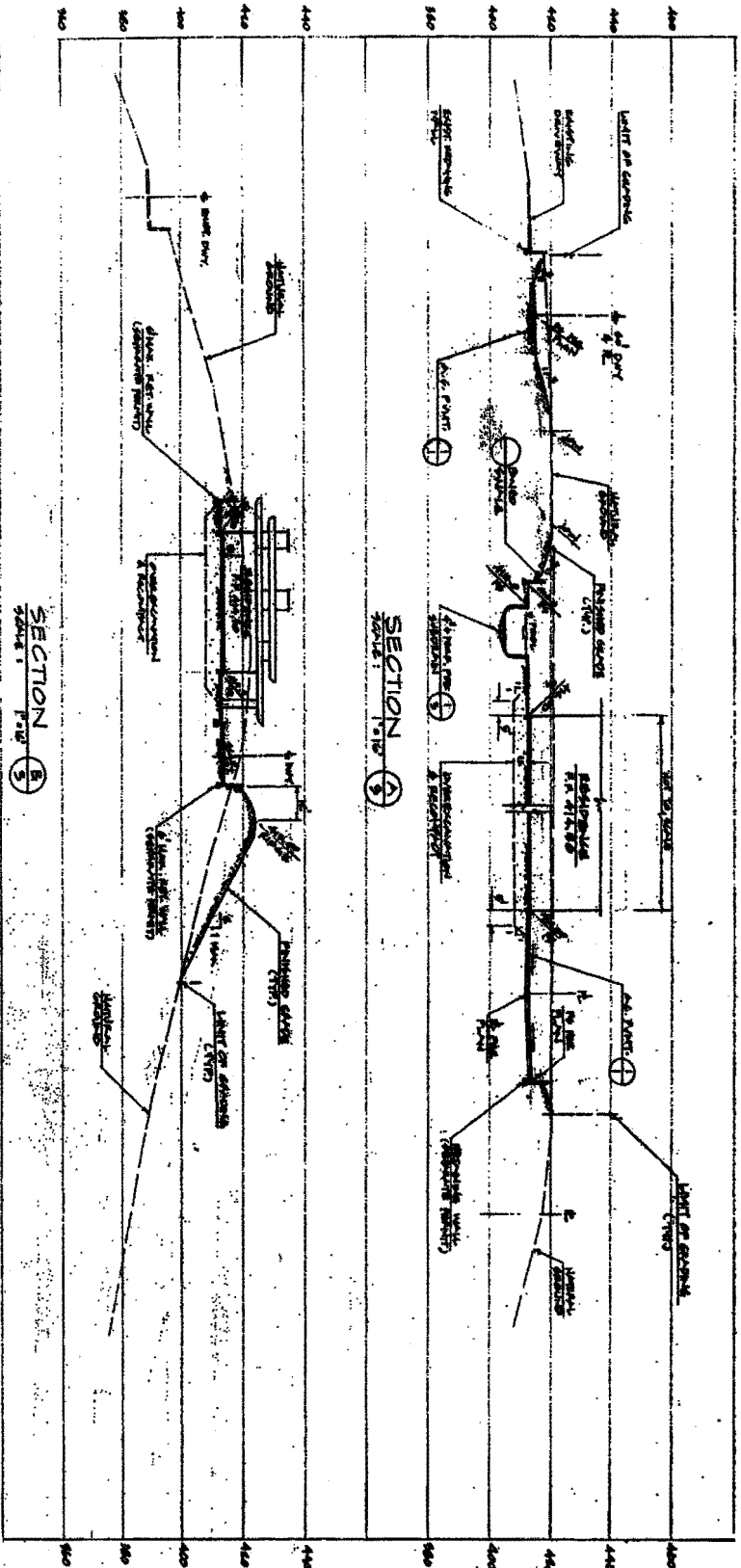


FIGURE 1: SITE PLAN

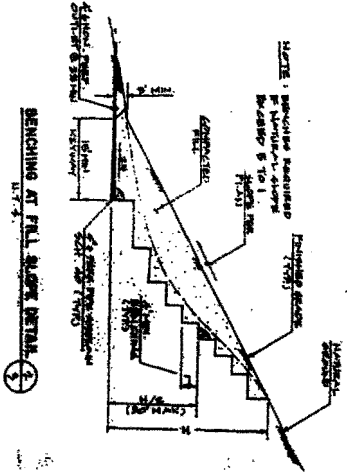


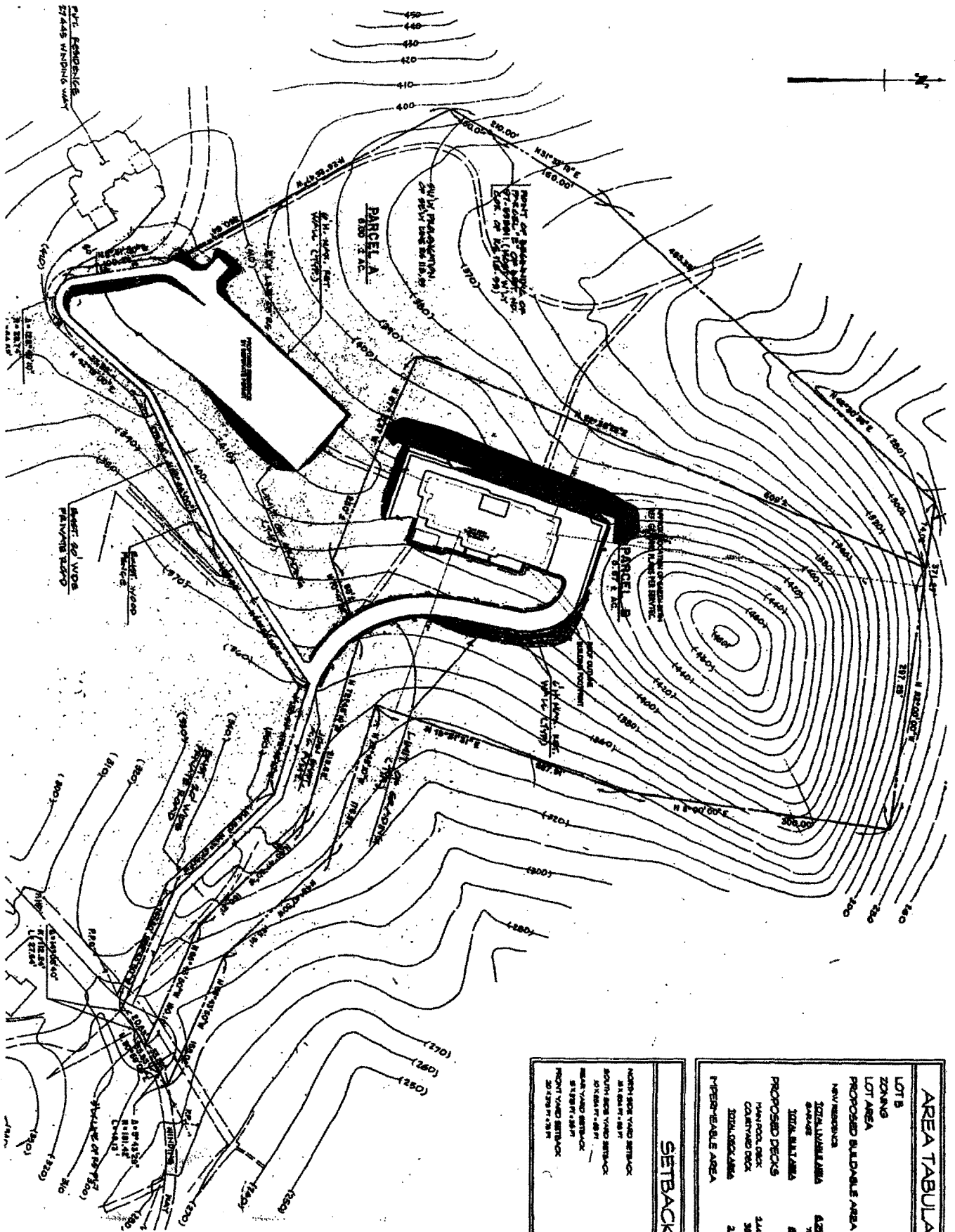
FIGURE 2: DITCH DETAIL

SHEET 3 OF 4
 GRADING PLAN FOR
 BLANK PAR E, LLC
 SITE ADDRESS: 27311 VANDER WAY - RANCHO A
 W.O. 200004 DATE: SEPT. 28, 2000

Grading Plan
 THE PLAN PREPARED UNDER MY DIRECT SUPERVISION IN
 ACCORDANCE WITH THE PROFESSIONAL SEAL AND EXISTING RECORDS
 OF THE PROJECT.

Grading Consultant, Inc.
 27311 VANDER WAY
 RANCHO A
 W.O. 200004
 DATE: SEPT. 28, 2000

SITE PLAN

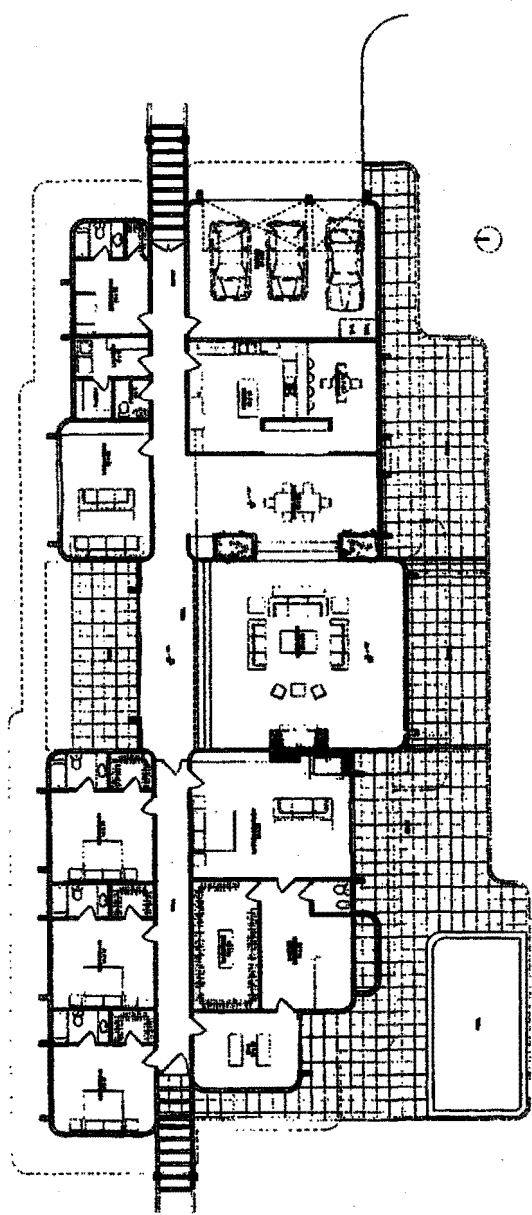


SETBACKS

NORTH SIDE YARD SETBACK	20'
SOUTH SIDE YARD SETBACK	20'
REAR YARD SETBACK	20'
FRONT YARD SETBACK	20'

AREA TABULATIONS

LOT B	28.20
ZONING	5.67 ~ Acres
LOT AREA	6,875 S.F.
PROPOSED BUILDABLE AREA	6,875 S.F.
NEW RESIDENCE	
TOTAL BUILDABLE AREA	6,875 S.F.
TOTAL BUILDABLE AREA	6,875 S.F.
PROPOSED DECKS	2,850 S.F.
POOL DECK	387 S.F.
COURT YARD DECK	2,463 S.F.
TOTAL DECK AREA	19,397 S.F.



FLOOR PLAN

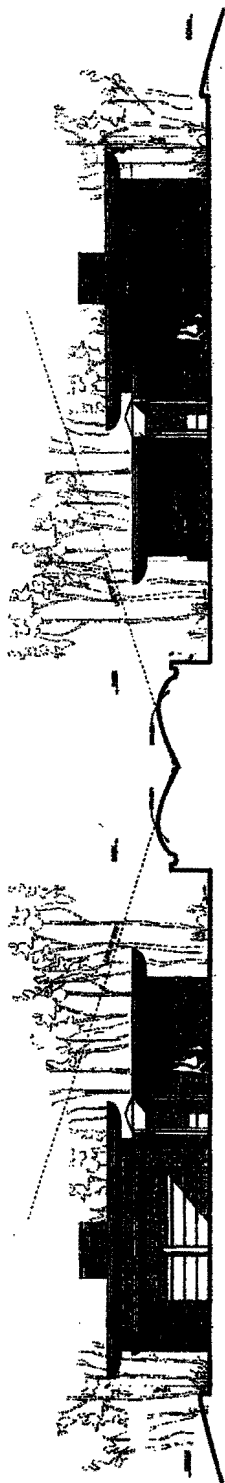
1	1/8"
2	1/4"
3	1/2"
4	3/4"
5	1"
6	1 1/4"
7	1 1/2"
8	1 3/4"
9	2"
10	2 1/4"
11	2 1/2"
12	2 3/4"
13	3"
14	3 1/4"
15	3 1/2"
16	3 3/4"
17	4"
18	4 1/4"
19	4 1/2"
20	4 3/4"
21	5"
22	5 1/4"
23	5 1/2"
24	5 3/4"
25	6"
26	6 1/4"
27	6 1/2"
28	6 3/4"
29	7"
30	7 1/4"
31	7 1/2"
32	7 3/4"
33	8"
34	8 1/4"
35	8 1/2"
36	8 3/4"
37	9"
38	9 1/4"
39	9 1/2"
40	9 3/4"
41	10"
42	10 1/4"
43	10 1/2"
44	10 3/4"
45	11"
46	11 1/4"
47	11 1/2"
48	11 3/4"
49	12"
50	12 1/4"
51	12 1/2"
52	12 3/4"
53	13"
54	13 1/4"
55	13 1/2"
56	13 3/4"
57	14"
58	14 1/4"
59	14 1/2"
60	14 3/4"
61	15"
62	15 1/4"
63	15 1/2"
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397	99"
398	99 1/4"
399	99 1/2"
400	99 3/4"
401	100"

BERMAN RESIDENCE B
27311 WINDING WAY
MALIBU, CA 90265

BARSOCCINI & ASSOCIATES, INC.
ARCHITECTS
MICHAEL E. BARSOCCINI, AIA - (310) 456-2625
3502 COAST VIEW DRIVE - MALIBU, CA 90265

ELEVATIONS

1/2" = 1'-0"

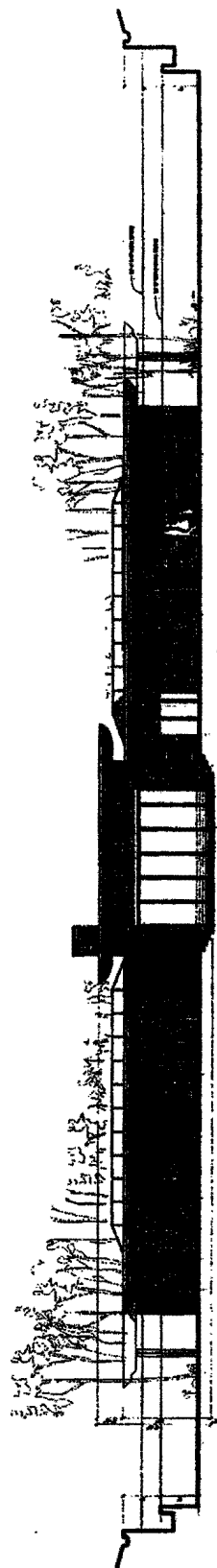


EAST ELEVATION

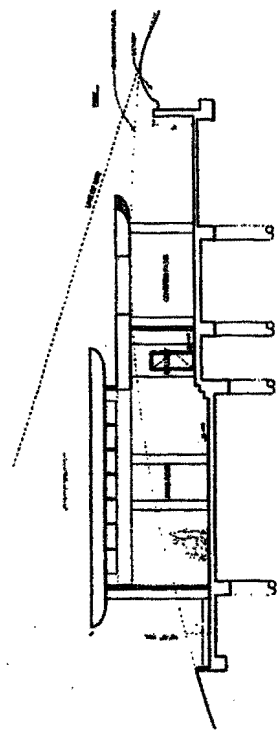
WEST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION



SECTION A-A

1. Any submission of a letter or a request for action must be approved by the Planning Office.
2. A copy of the funding request and relevant funding plans must be in the possession of a responsible person and available at all times at all times.
3. Expense must be paid in full for all funding requests and other requests.
4. Expenses must be paid for all funding requests at all times.

[illegible]

30" GUNITE SWALE

CLEAN OUT

MTS

con of practice.

CONC. SIDEWALK

AREA. DRAIN

1.5' - PAVED SWALE

12" X 12" CATCH BASIN

N. E. S. 17

TRENCH DRAIN

EXHIBIT 19
CDP 4-00-044 (Blank Par-E, LLC)
Grading Notes, Lot B

CIVIL ENGINEER
SENIOR DESIGN ENGINEER, IN
CHARGE OF DESIGN OF
ALL HIGHWAY PROJECTS
IN THE STATE OF CALIFORNIA
TEL. (916) 545-4076

SOIL ENGINEER
WILLIAM C. SCHWABER, INC.
10000 KILPATRICK AVE., P.O.
BOX 10000, DALLAS, TX 75210
TEL. (409) 899-5500

ARCHITECT

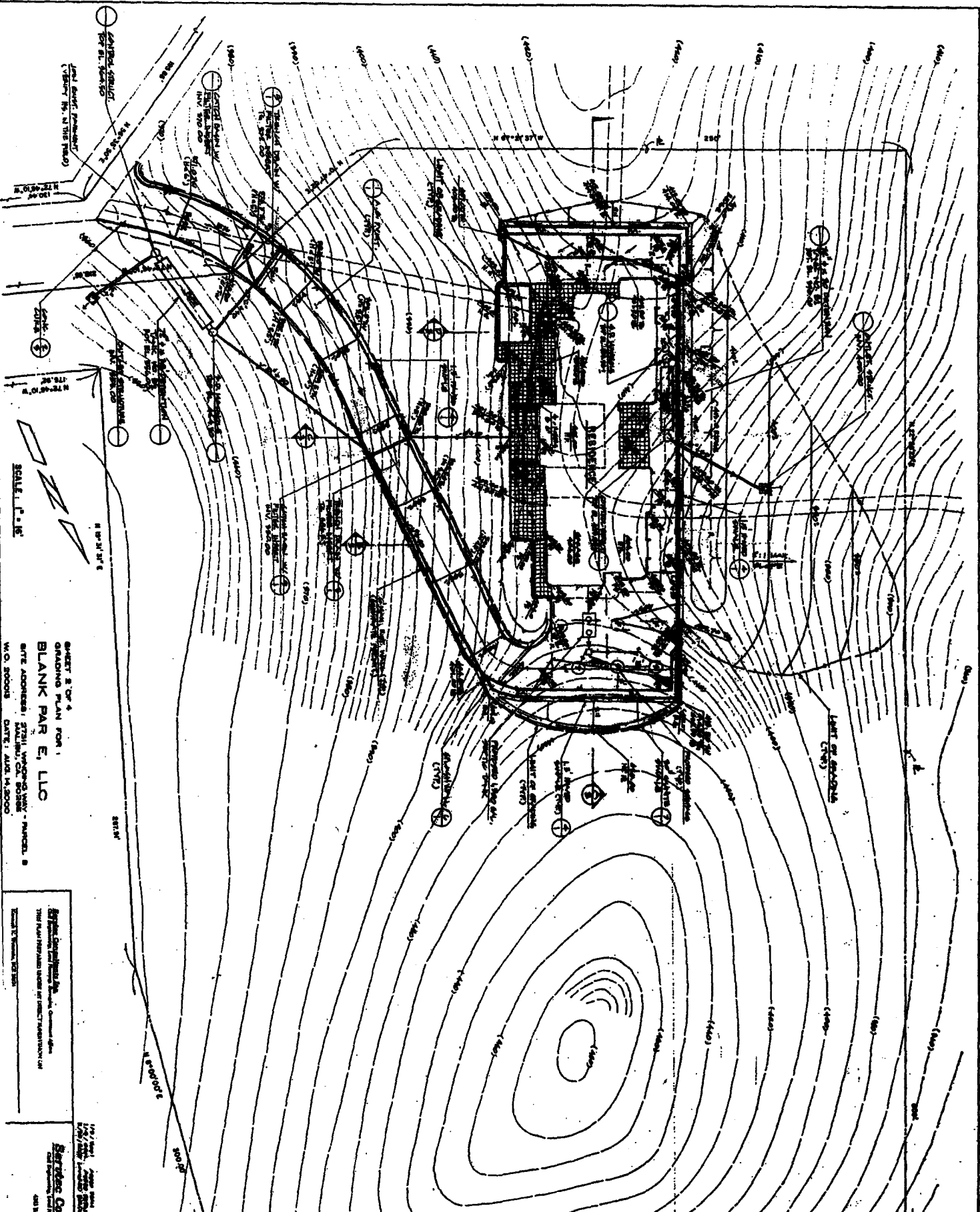
[illegible]

100

[illegible][illegible]

Service Consultants I
Call Separately 1-800-755-6677, Scientific Personnel
4353 Bayview Drive, Toronto, ON M3J 1K8
Vancouver 203-553-5577, 184-1
Fax 203-553-7100
Telex 330000
Cable 330000

inc.
1-800-368-5127
402-938-76
412-4634
1-800-368-5127



SHEET 2 OF 4
 GRADING PLAN FOR:
BLANK PAR E, LLC
 SITE ADDRESS: 27311 VANCOUVER WAY - PARCEL B
 W.O. 30003 DATE: AUG 14, 2000

Barbara Constance, Inc.
 THE PLAN HEREON UNDER MY CERTIFICATION OF
 10/15/00 IS TRUE AND CORRECT.

Barbara Constance, Inc.
 4000 1st Ave. Suite 100, San Diego, CA 92108
 Tel: 619-594-1111 Fax: 619-594-1112
 www.barbaraconstance.com

EXHIBIT 20
CDP 4-00-044 (Blank Par-E, LLC)
Grading Plan, Lot B

SANTA MONICA MOUNTAINS CONSERVANCY

RAMIREZ CANYON PARK
5750 RAMIREZ CANYON ROAD
MALIBU, CALIFORNIA 90265
PHONE (310) 589-3200
FAX (310) 589-3207



May 30, 2000

RECEIVED

JUN 05 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission
89 California Street, Suite 200
Ventura, CA 93001
Attn: Jack Ainsworth/Sabrina Tilles

**Permit Application Nol 4-00-044 (split of 11.7 acres into 2
lots and for 2 residences
Blank Par-E Applicant
APN 4460-002-006
27311 and 27315 Winding Way, Malibu**

Dear Commissioners:

I send this letter to you in my executive capacity for the Santa Monica Mountains Conservancy (SMMC) and the Mountains Recreation and Conservation Authority (MRCA), which own and operate the Escondido Canyon Natural Area.

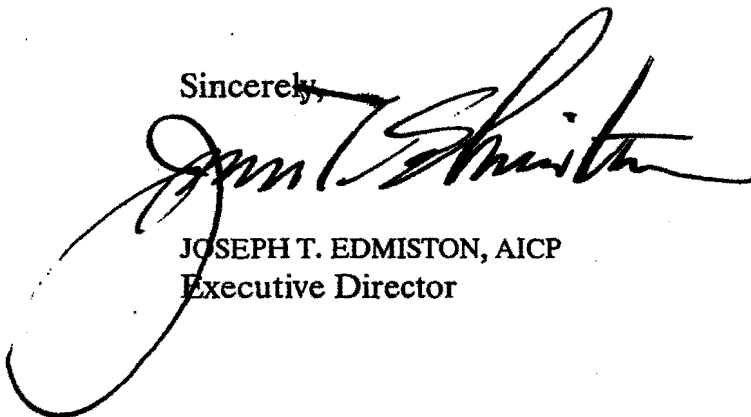
SMMC and MRCA have expressly authorize me to notify you that:

- 1) They do not oppose the subdivision described in the permit application referenced above nor do they oppose or object to the construction of the two single family residences proposed.
- 2) They acknowledge that this letter may be placed before the City of Malibu and the California Coastal Commission or other agencies as supporting the application(s) referenced above.
- 3) They stipulate that they will not oppose the construction of the two single family residences described above or other related structures on the basis that those residences, when built, may be visible from portions of the Escondido Canyon Natural Area.

EXHIBIT 22-A**CDP 4-00-044 (Blank Par-E, LLC)****SMMC Letter, Page 1 of 2**

- 4) They or their respective representatives acknowledge that there is adequate public access in the surrounding area and that no public access or trail is required or desirable over the Applicant's property.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Edmiston", written over the typed name.

JOSEPH T. EDMISTON, AICP
Executive Director

SHOOP & LEANSE

PAUL SHOOP

ATTORNEYS AT LAW
23805 STUART RANCH ROAD, SUITE 210
MALIBU, CALIFORNIA 90265
(310) 456-1957
FAX (310) 456-8109

DAVID V. LEANSE
OF COUNSEL

Delivered by Hand
January 4, 2001

California Coastal Commission
89 California Street, Suite 200
Ventura, CA 93001
Attn: Sabrina Tilles, Staff Planner

Coastal No. 4-00-044

Re: Parcel Map and 2 residences for
27311 - 15 Winding Way, Malibu

Dear Commissioners:

This letter addresses the fact that there is adequate public access in the area surrounding the Project and that no public access or trail is required or desirable over the Applicant's property.

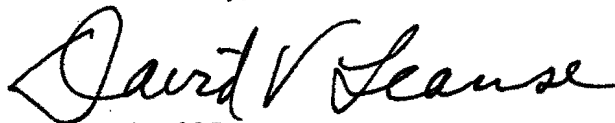
In the Settlement Agreement and Order thereon dated April 21, 1997 in the Los Angeles Superior Court Case of Two Blankenship, Inc. (Applicant's predecessor-in-title) vs. State of California No. BC 101329 it is expressly provided:

"[Joseph] Edmiston in his executive capacity for the SMMC and the MRCA, MRCA and SMMC further agree that they or their respective representatives will acknowledge in the above-reference letter [dated May 30, 2000 and attached hereto] that there is adequate public access in the surrounding area and that no public access or trail whatsoever is required or desirable over Parcel "E" [Project] for any purpose." Section 4, page 13, lines 23-28, inclusive.

Your files contain the entirety of the Settlement Agreement.

We appreciate your consideration.

Sincerely,



David V. Leanse
Agent for Applicant
Blank Par-E, LLC

DVL:ko
Enclosure

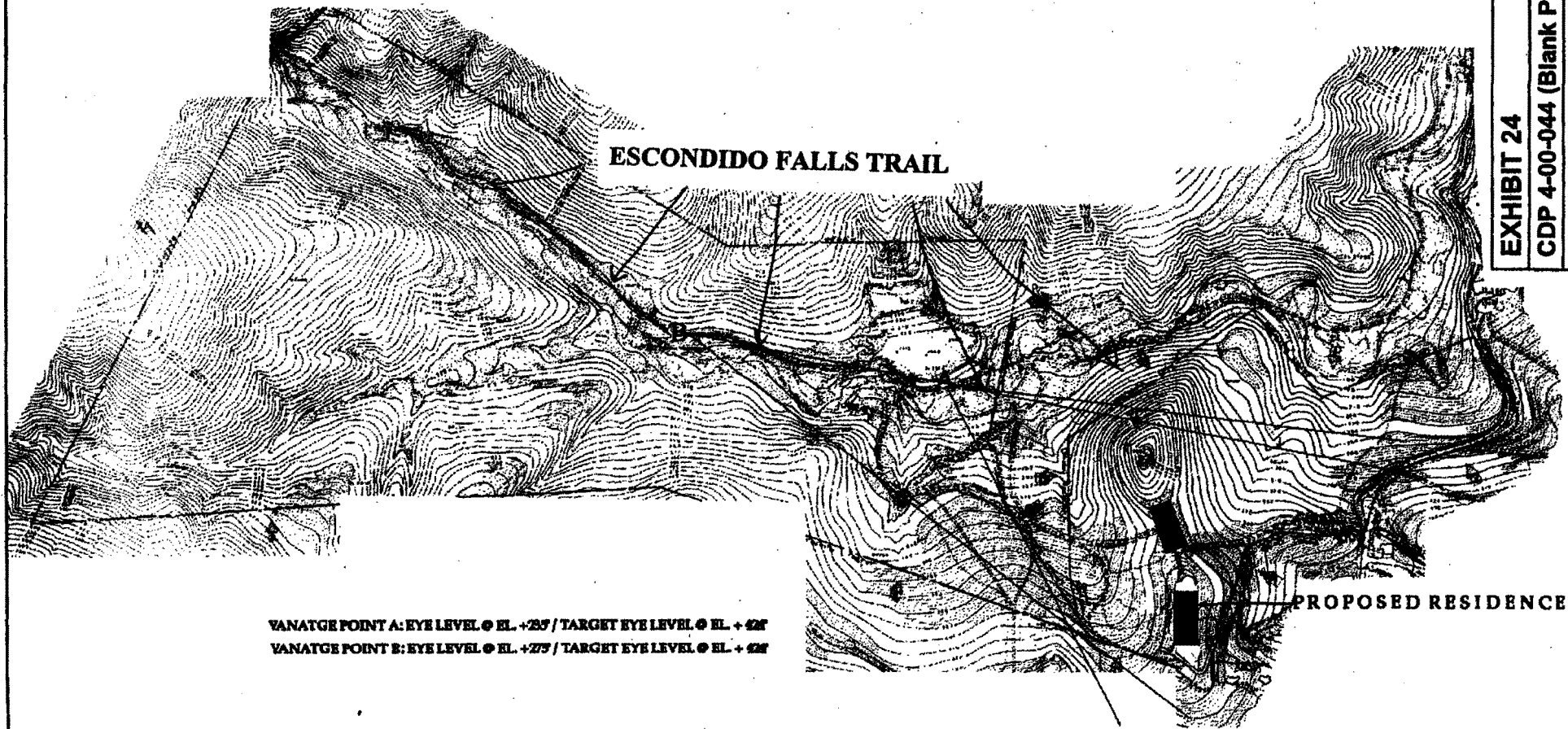
EXHIBIT 23
CDP 4-00-044 (Blank Par-E, LLC)
Letter from Shoop & Leanse

4-00-044

EXHIBIT 24

CDP 4-00-044 (Blank Par-E, LLC)

Site Map for Visual Impact Analysis



SITE MAP

BLANK PAR-E L.L.C.
27311 & 27315 Winding Way, Malibu

BARSOCCHINI & ASSOCIATES
A R C H I T E C T S
3502 COAST VIEW DRIVE, MALIBU, CA 90265
TELEPHONE (310) 456-3625 FAX (310) 456-7175

4-00-07

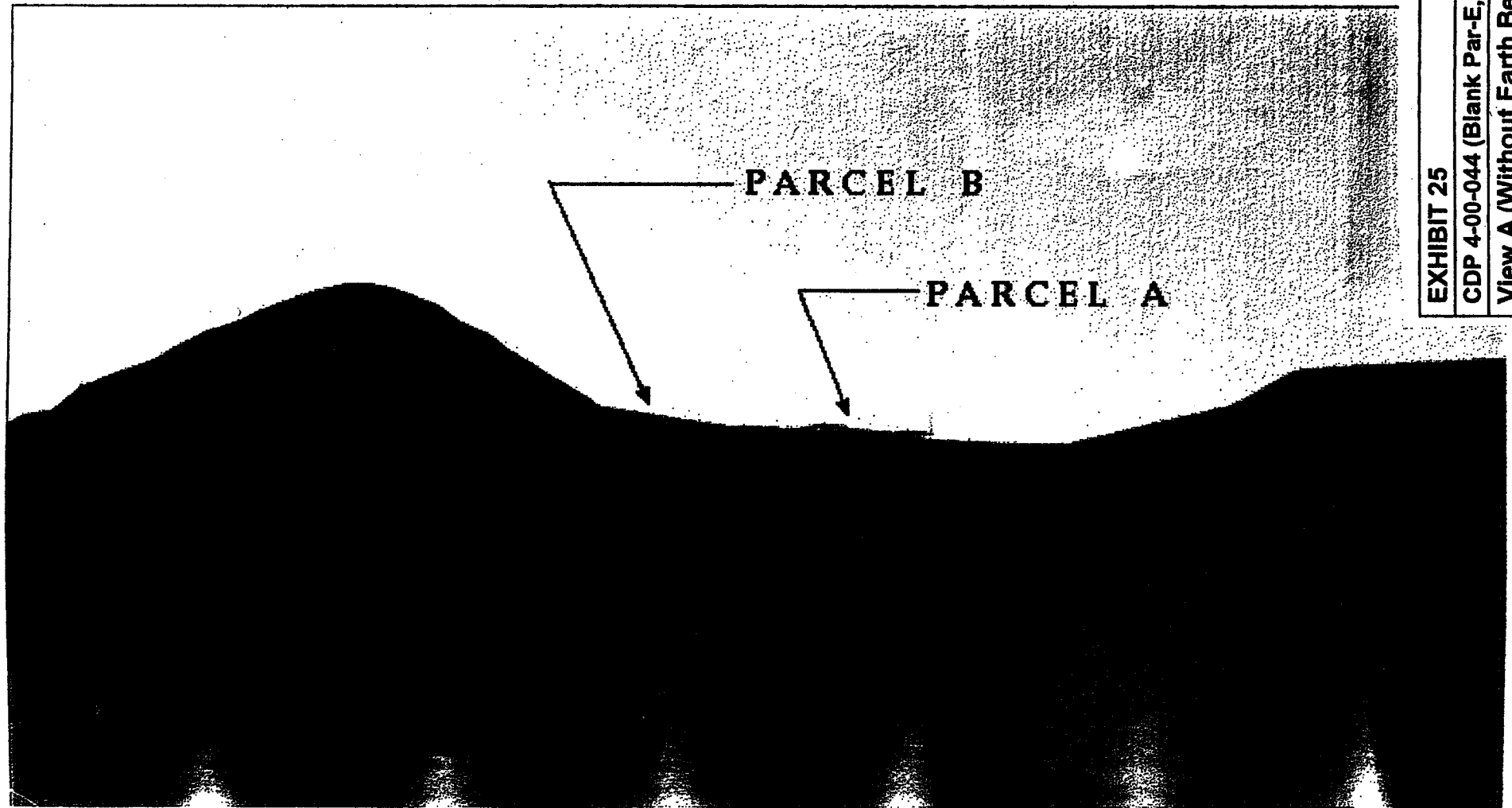


EXHIBIT 25

CDP 4-00-044 (Blank Par-E, LLC)

View A (Without Earth Berm)

VIEW A (without berms)
SHOWN WITHOUT LANDSCAPING

BLANK PAR-E LLC
27311 & 27315 Winding Way, Malibu

BARSOCCHINI & ASSOCIATES
A R C H I T E C T S
3502 COAST VIEW DRIVE, MALIBU, CA 90265
TELEPHONE (310) 456-3625 FAX (310) 456-7175

4-00-0

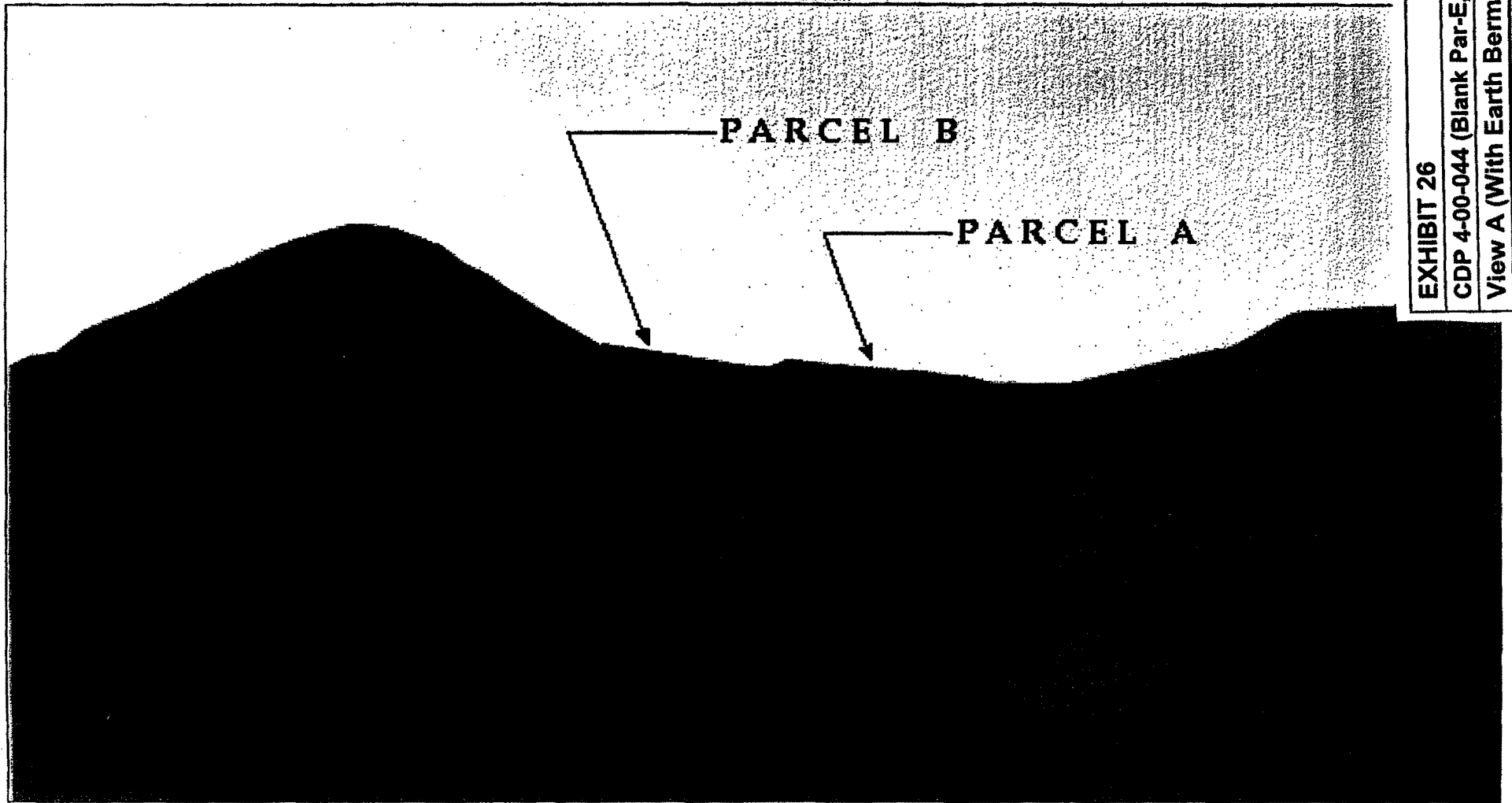


EXHIBIT 26

CDP 4-00-044 (Blank Par-E, LLC)

View A (With Earth Berm)

VIEW A (with berms)
SHOWN WITHOUT LANDSCAPING

BLANK PAR-E L.L.C.
27311 & 27315 Winding Way, Malibu

BARSOCCHINI & ASSOCIATES
A R C H I T E C T S
3502 COAST VIEW DRIVE, MALIBU, CA 90265
TELEPHONE (310) 456-3625 FAX (310) 456-7175

4-0000

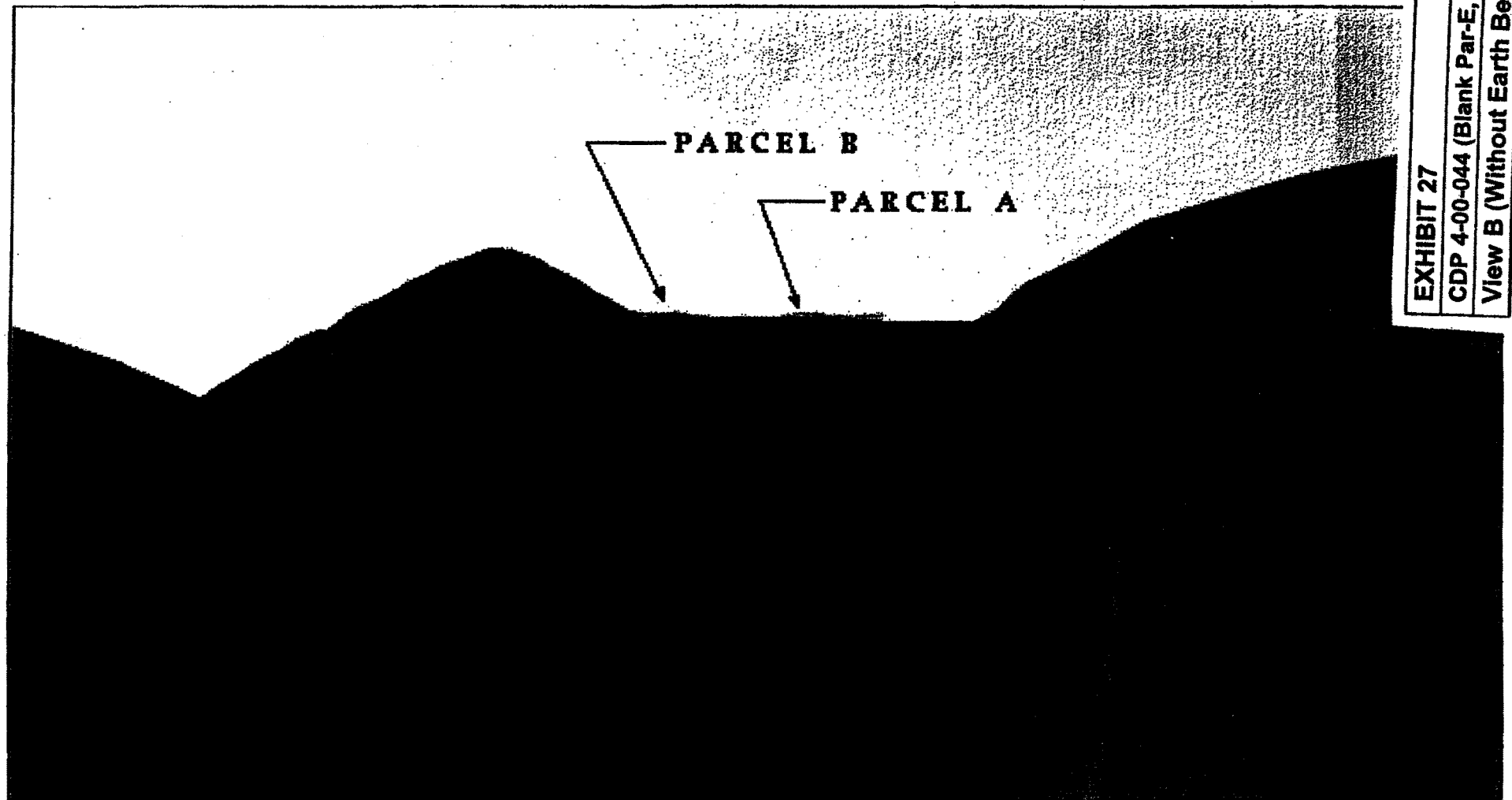


EXHIBIT 27

CDP 4-00-044 (Blank Par-E, LLC)

View B (Without Earth Berm)

VIEW B (without berms)
SHOWN WITHOUT LANDSCAPING

BLANK PAR-E L.L.C.
27311 & 27315 Winding Way, Malibu

BARSOCCHINI & ASSOCIATES
A R C H I T E C T S
3502 COAST VIEW DRIVE, MALIBU, CA 90265
TELEPHONE (310) 456-3625 FAX (310) 456-7175

4-00-

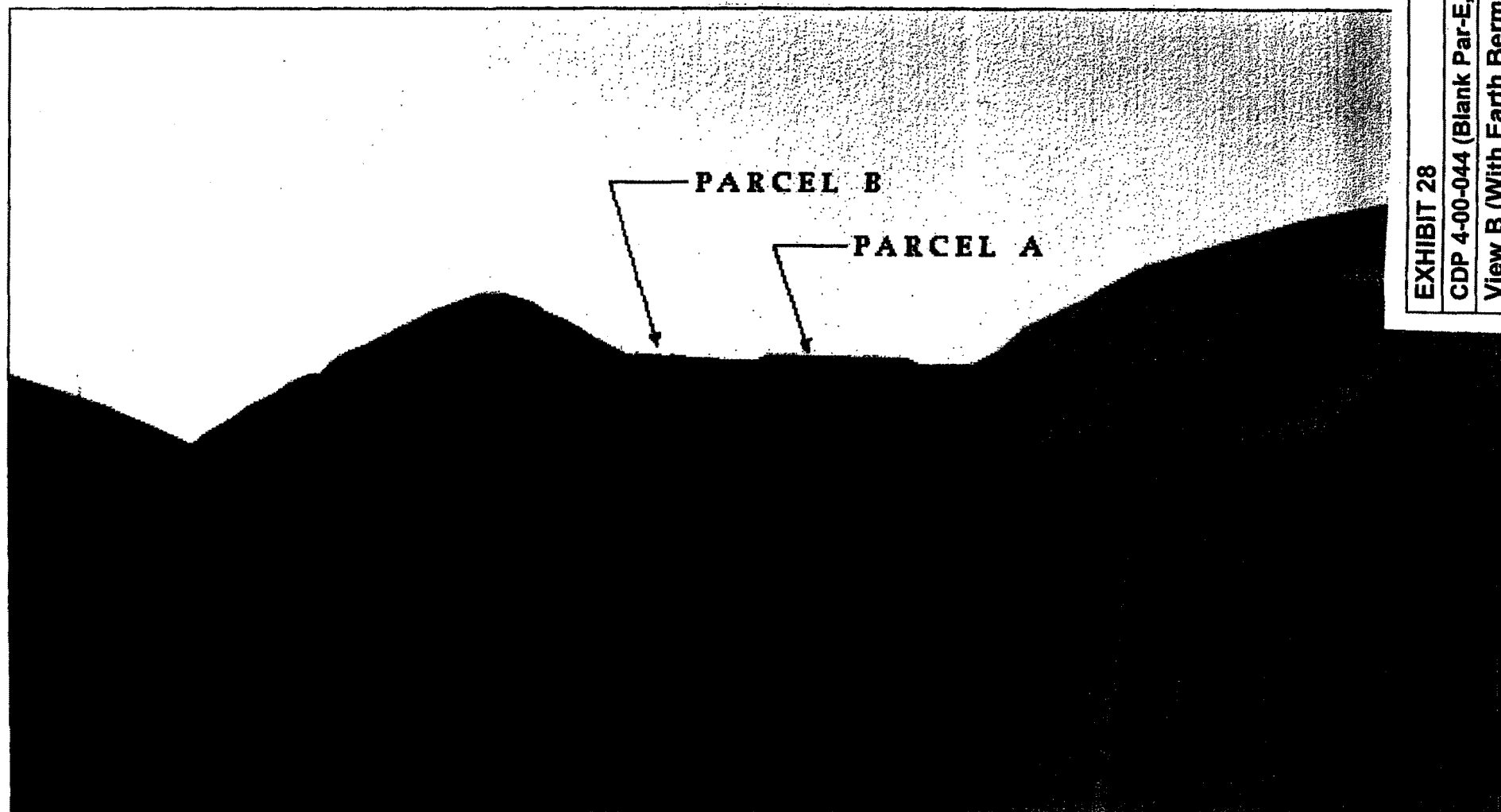


EXHIBIT 28

CDP 4-00-044 (Blank Par-E, LLC)

View B (With Earth Berm)

VIEW B (with berms)
SHOWN WITHOUT LANDSCAPING

BLANK PAR-E L.L.C.
27311 & 27315 Winding Way, Malibu

BARSOCCHINI & ASSOCIATES
A R C H I T E C T S
3502 COAST VIEW DRIVE, MALIBU, CA 90265
TELEPHONE (310) 456-3625 FAX (310) 456-7175

