CALIFORNIA COASTAL COMMISSION

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SOUTH CENTRAL COAST AREA 89 SOUTH CALIFORNIA ST., SUITE 200 ITURA, CA 93001 5) 585 - 1800





Filed: 12/6/00 49th Day: 1/24/01

180th Day: 6/4/01 Staff: J. Johnson &

Staff Report: 4/19/01 Hearing Date: 5/8/01 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-00-195

APPLICANTS: Mr. and Mrs. John Simons & Mr. Philip Rundel

PROJECT LOCATION: 643 & 645 Old Topanga Canyon Road, Topanga, Los Angeles

County

PROJECT DESCRIPTION: Divide a 19.1 acre parcel into two parcels, one 10.7 acres with existing single family residence the other a 8.4 acre parcel with a guest house and garage.

Existing Parcel Area: 19.1 acres
Proposed Parcel 1: 10.7 acres
Proposed Parcel 2: 8.4 acres

Plan Designation: Rural Land II, II, and Mountain Land

Zoning: 1 du / 2 acre, / 5 acres, / 20 acres

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed land division with Special Conditions addressing cumulative impact mitigation, future development deed restriction and condition compliance. The applicants are requesting approval of an "after the fact" land division. The project site is located in Old Topanga Canyon about four miles inland of the Coast and about one mile northwest of the intersection of Old Topanga Canyon Road with Topanga Canyon Boulevard. The proposed parcel sizes of one dwelling unit per eight and ten acres in size, respectively, are larger than the average size of the residential parcels located in the vicinity of the project site. The land division occurred in 1997 and 1998 through the recordation of Certificates of Compliance provided by Los Angeles County without benefit of a Coastal Development Permit.

LOCAL APPROVALS RECEIVED: Certificates of Compliance, County of Los Angeles, dated December 11, 1997 and March 19, 1998; County of Los Angeles Fire Department Approval, dated 11/2/00.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan; Coastal Permit No. 4-97-113, Eisenstein; Coastal Permit No. 4-97-055, Seva Corporation.

I. STAFF RECOMMENDATION

MOTION:

I move that the Commission approve Coastal Development Permit No. 4-00-195 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. <u>Notice of Receipt and Acknowledgment</u>. 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. <u>Expiration</u>. 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.** <u>Interpretation</u>. Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

- 4. <u>Assignment</u>. 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. <u>Terms and Conditions Run with the Land</u>. 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.

II. SPECIAL CONDITIONS

1. 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 issuance of this permit, the applicants 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 of Development Credit (TDC);
- b) participation along with a public agency or private nonprofit 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.

2. FUTURE DEVELOPMENT DEED RESTRICTION

- A. This permit is only for the development described in Coastal Development Permit No. 4-00-195. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6) and 13253 (b) (6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) and (b) shall apply to the entire property. Accordingly, any future improvements to the entire property including any future development and clearing of vegetation or grading, other than as provided for in any approved fuel modification landscape and erosion control plan, shall require an amendment to Permit No. 4-00-195 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- **B.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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.

3. CONDITION COMPLIANCE

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

IV. Findings and Declarations

A. <u>Project Description and Location</u>

The project site is located in Old Topanga Canyon on the south side of Old Topanga Canyon Road about one mile northwest of the intersection of Old Topanga Canyon Road and Topanga Canyon Boulevard. The site adjoins state and federal parkland along its south, southwest, and east boundaries. The site is accessed along a driveway serving the subject site and an adjoining residence to the northeast. The driveway crosses Old Topanga Creek. The site includes a single family residence, a guest house/garage, trailer, two sheds and a storage container. The trailer, two sheds and storage container are 'unpermitted' development which is the subject of Coastal Permit Application Number 4-00-196. The residence and guest house/garage was constructed as a result of Coastal Permit Number 5-85-582 (Exhibits 1 and 2). The site includes significant oak woodlands and grassland (Exhibit 3).

The applicants are requesting approval of an "after the fact" land division dividing the subject 19.1 acre parcel into two parcels, 8.4 and 10.7 acres in size (Exhibit 4). The land division was ordered in 1995 by the Los Angeles County Superior Court to effect a legal partition of community property due to a divorce. The land division was recorded through certificates of compliance in 1987 and 1988 by the applicants. The applicants have also dedicated three conservation easements totaling 12.5 acres of the 19.1 acre site between 1986 and 1995 (Exhibit 5). These easements were dedicated to protect the majority of the significant oak woodland on the subject property and expand the protected area along the south and eastern property boundaries with Santa Monica Mountains National Recreation Area. In 1986, a four-acre easement and a 6.5 acre easement were deeded as a "Grant of Conservation Easements and Declaration of Restrictions" to the Mountains Restoration Trust. In 1995, the applicants granted a two-acre conservation easement extension to the Mountains Restoration Trust. The property supports a number of sensitive plant and animal species according to the applicants.

The certified Los Angeles County Land Use Plan (LUP) designates portions of this parcel as Rural Land II, Rural Land II, and Mountain Land allowing one dwelling unit for two acres, five acres, and twenty acres, respectively.

B. New Development/ Cumulative Impacts

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

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

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

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

In addition, the certified Land Use Plan includes policy 271 regarding land divisions. This LUP policy cited below has been found to be consistent with the Coastal Act and therefore, may be looked to as guidance by the Commission in determining consistency of the proposed project with the Coastal Act. Policy 271 states, in part, that:

New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. The land use plan map is inserted in the inside back pocket

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with all policies and standards contained herein. Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments.

The Coastal Act requires that new development, including land divisions, be permitted within, contiguous with, or in close proximity to existing developed areas or if outside such areas, only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The land use designations in the Los Angeles County Land Use Plan provide guidance for the Commission to consider, among other issues, during the review of land divisions.

The applicants proposes a minor land division of one parcel into two parcels, each with residential development served by one access driveway. This parcel is located within Los Angeles County outside the residentially developed area commonly known as the Malibu terrace, located within the City of Malibu.

The Commission has reviewed land division applications to ensure that newly created parcels are of sufficient size, have access to roads and other utilities, are geologically stable and include appropriate building pad areas where future structures can be developed consistent with the resource protection policies of the Coastal Act. In particular, the Commission has ensured that future development on new parcels minimize landform alteration and impacts on visual and environmentally sensitive habitat area resources.

The land use designations will be addressed first. The County of Los Angeles processed certificates of compliance in 1997 and 1998 for the proposed "after the fact" land division. The applicants submitted a map identifying the three County land use designations on the property; Rural Land II, Rural Land III, and Mountain Land, providing one residential unit each for two, five and twenty acres, respectively. Over one half of the parcel is designated as one unit per two acres and less than the remaining one half of the parcel is designated as one unit per twenty acres. A very small portion of parcel is designated as one unit per five acres. The LUP density standard or guideline for this site calculates to about five dwelling units. The applicants are requesting a two lot subdivision to allow for two dwelling units. Given the proposed density for these parcels are less than what may be allowed under the LUP density guideline, the Commission finds that the proposed two lot subdivision is in substantial conformance with the LUP density guideline for these proposed parcels.

Although the subject parcel is in substantial conformance with the density guideline in the Los Angeles County LUP, the proposed land division must meet the standards of the Coastal Act. Section 30250 provides the standard of review for the Commission to consider when reviewing this application for a land division. The proposed land division is not located within a developed area, as the Commission has found development located within the Malibu terrace as the 'developed area' of the Santa Monica Mountains area. The subject site is located about four miles inland of the coast within an area the Commission has found to be the 'undeveloped area' in past Commission action. Coastal Act Section 30250 requires that new development, located outside existing developed areas, including this proposed land division, must meet three tests. These tests include: 1) the site must have adequate public services, 2) in locations where the development will not have significant adverse effects on coastal resources, and 3) land divisions outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area

have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Regarding the first test, adequate public services, the subject property with an existing single family residence and a guest house/garage is served by the following public services: water is provided by the Los Angeles County Water Works District; fire suppression is provided by the Los Angeles County Fire Department; a paved public road (Old Topanga Canyon Road) exists along the northern property boundary maintained by the County of Los Angeles Public Works Department; electric power is provided by Southern California Edison. Sewage disposal service is provided by an on-site private septic system, as is common in this area. Therefore, the proposed project is located in an area where adequate public services are available, and therefore, the project meets the first test.

Regarding the second test, first the issue of impacts to coastal resources on an individual basis will be discussed; cumulative impacts will be discussed next below. The applicants propose to divide one parcel into two parcels. The subject parcel after the land division will have a single family residence on one parcel and a guest house/garage on the other parcel connected by common driveway to Old Topanga Canyon Road. No additional development is proposed in this application. No additional development, landform alteration is proposed within areas of the site designated by the Los Angeles County Land Use Plan as Environmentally Sensitive Habitats on the property. Although the parcel is visible from portions of the Backbone Trail, no adverse visual impacts are expected as a result of the land division. Therefore, the proposed project, as conditioned, will not create impacts on coastal resources on an individual basis.

Regarding the issue of cumulative impacts to coastal resources, the Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu and Santa Monica Mountains area in past permit actions. The cumulative impact issue is important because of the existence of thousands of undeveloped and poorly sited parcels and multi-unit projects. The Commission has reviewed land division applications to ensure that newly created or reconfigured parcels are of sufficient size, have access to roads and other utilities, are geologically stable and contain an appropriate potential building pad area where future structures can be developed consistent with the resource protection policies of the Coastal Act. In particular, the Commission has ensured that future development on new or reconfigured lots minimizes landform alteration and other visual impacts, and impacts to environmentally sensitive habitat areas.

The Commission has found that minimizing the cumulative impacts of new development is especially critical in the Malibu/Santa Monica Mountains area because of the large number of lots which already exist, many in remote, rugged mountain and canyon areas. From a comprehensive planning perspective, the potential development of thousands of existing undeveloped and poorly sited parcels in these mountains would create cumulative impacts on coastal resources and public access over time. Because of the large number of existing undeveloped parcels and potential future development, the demands on road capacity, public services, recreational facilities, and beaches would be expected to grow tremendously.

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 of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program 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 was to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

In 1986, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan. The Plan contained six potential mitigation programs that if in place would adequately mitigate the cumulative impacts of new development. However, in approving the above cited permit requests, the Commission found that none of the County's six mitigation programs were defined in the LUP as "self-implementing" or adequate to offset the impact of increased lots in the Santa Monica Mountains and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique to retire development rights on selected lots, remained a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

Because the applicants propose to divide an existing parcel into two parcels, mitigation for cumulative impacts is necessary. 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 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 would be associated with the development or intensification of residential development of the additional lot in this area. Two of these three applicants (Simons) propose to convert and expand an existing guest house/garage into a larger single family residence in Coastal Permit Application Number 4-00-196 to be reviewed by the Commission separately as a result of separate ownership of each proposed parcel. Therefore, the Commission determines that it is necessary to impose Special Condition Number One on the applicants, in order to insure that the cumulative impacts of the creation of one additional legal lot is adequately mitigated. The Commission finds it necessary to require Special Condition Number One to require the applicants 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 to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites.

Regarding potential individual and cumulative impacts to coastal resources, the Commission is concerned about future development proposals that may occur as a result of future development of this property located within or adjacent to designated

Environmentally Sensitive Habitat Areas, as required by Section 30240 of the Coastal Act. Specifically, the expansion of the building sites and developed areas or development in new areas on site would require more vegetation removal as required by the Los Angeles County Fire Department. Further, adding impervious surfaces to the site through future development or expansion could have adverse impacts on existing on site drainage, which in turn could have significant impacts on the onsite and offsite designated oak woodland and riparian habitat along Topanga Canyon Creek due to increased erosion and sedimentation. Therefore, the Commission finds it is necessary to require the applicants to record a future improvements deed restriction to ensure that expanded development or future development at this site that would otherwise be exempt from Coastal Commission permit requirements will be reviewed for consistency with the Coastal Act. Special Condition number Two provides for a future improvements restriction to be recorded as a result of the approval of Coastal Permit Number 4-00-195.

Regarding the third test of Section 30250, a review of the surrounding developable parcels indicates that over 50 % of them are developed with residential development. A review of the average size of parcels within a quarter mile of the subject site, except for the parcels owned by the State or Federal government as park lands, was done by staff. This review indicated that the average size of the parcels is 7.67 acres which is less than the smaller of the two parcels (8.4 acres) proposed by the applicants in this application. Therefore, the applicants propose a land division where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels, thereby meeting the third test of Section 30250. As discussed above, this application, as conditioned, meets all of the applicable tests of Section 30250. Therefore, the Commission finds that, as conditioned, the proposed project is consistent with Section 30250 of the Coastal Act.

C. Violation

Although development that has taken place prior to the filing of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

The subject parcel was divided into two parcels through Certificates of Compliance recorded with the County of Los Angeles in 1997 and 1998. To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition Number Three requires that the applicant satisfy all conditions of this permit that are a prerequisite to issuance of the permit within ninety (90) days of Commission action.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

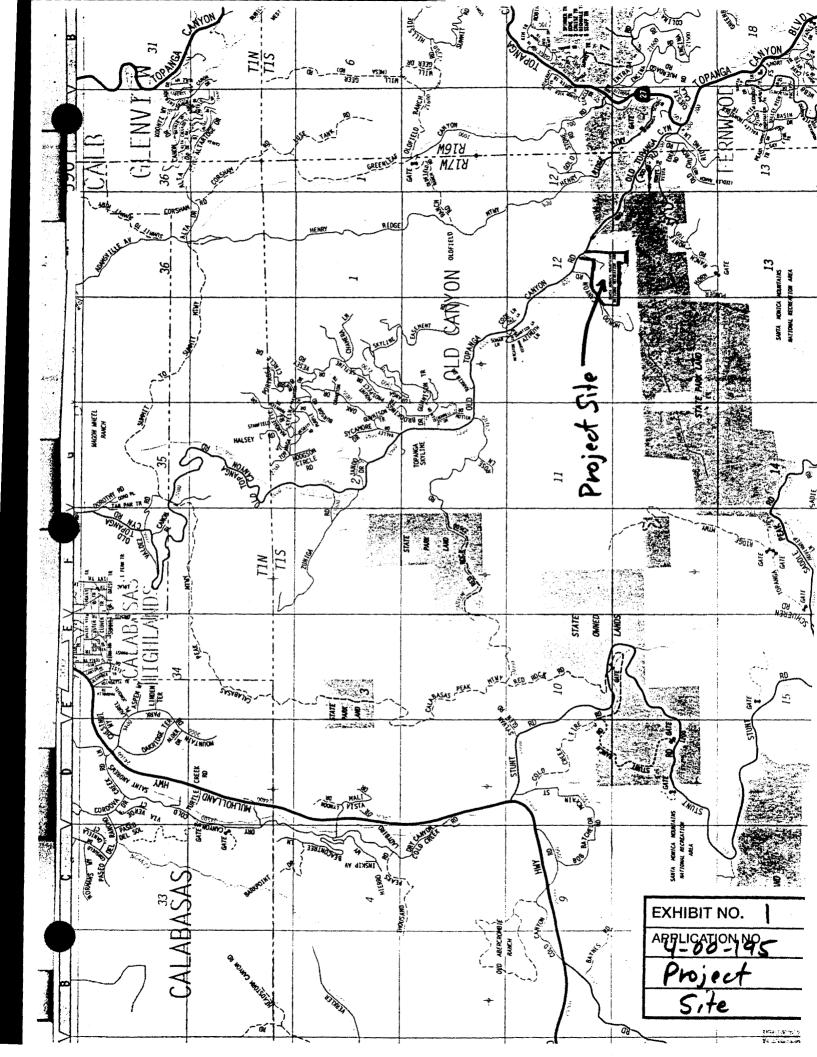
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections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

E. California Environmental Quality Act (CEQA)

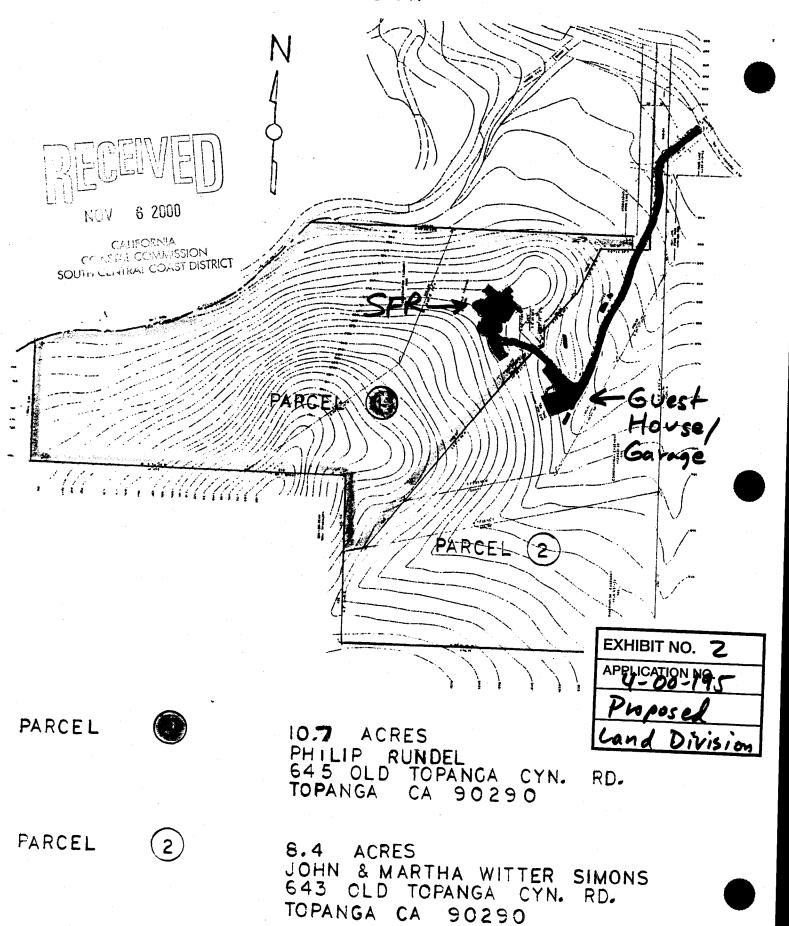
Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California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

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

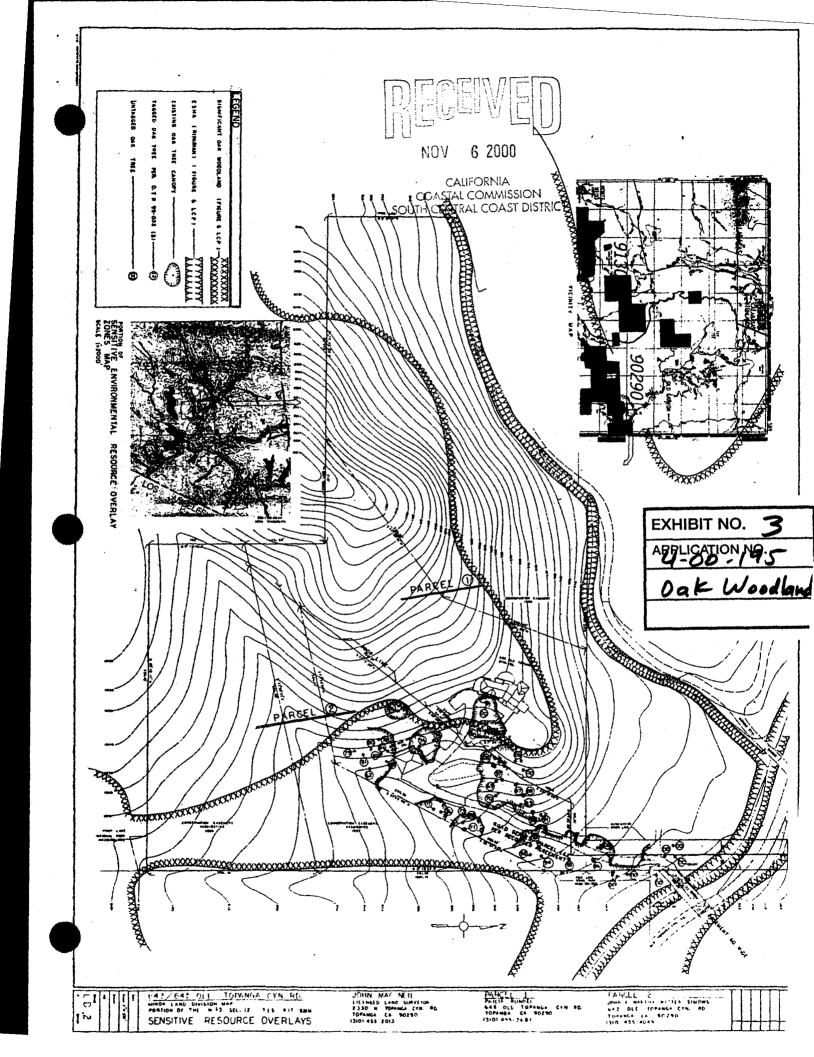
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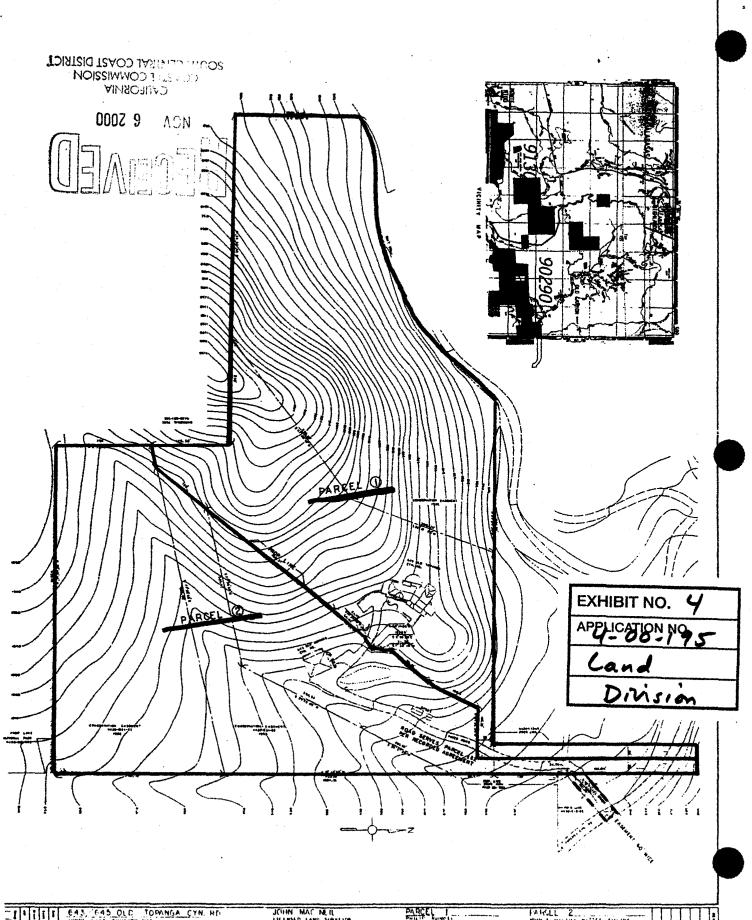


LAND DIVISION



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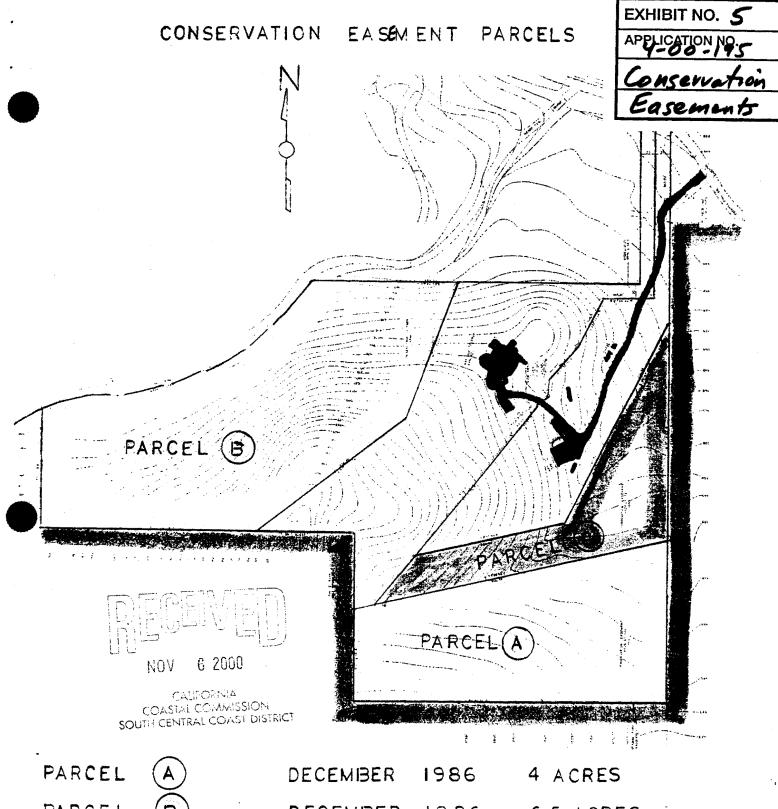


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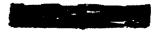


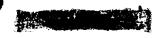
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DEVELOPED ROADS AND STRUCTURES

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