

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

RECORD PACKET COPY

Permit Action: 06/10/02
Request Submitted 07/09/02
Staff: S. Haswell
Staff Report: 10/17/02
Hearing Date: 11/05/02



STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO: 5-88-056-A1-R

APPLICANT: Howard and Terry Rubinroit

PROJECT LOCATION: 25351 Piuma Road, Calabasas, Los Angeles County

PROJECT DESCRIPTION: Request for after the-fact construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, drainage system, and irrigation system; the installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool. The applicant is also proposing to address after-the-fact development through the capping of a grey water outlet and connection to the existing septic system and removal of concrete from the eastern drainage on the site. The applicant is also requesting approval of a masonry pump enclosure for the water tank and a screen wall for the water tank.

COMMISSION ACTION: Approval with conditions of the construction and installation of a swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage and denial of the construction of a lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court.

DATE OF COMMISSION ACTION: June 10, 2002

SUBSTANTIVE FILE DOCUMENTS: Notice of Intent to Issue CDP 5-88-056-A1, dated July 22, 2002; Staff Report for CDP Amendment 5-88-056-A1, dated May 20, 2002; Addendum to Staff Report for CDP Amendment 5-88-056-A1, dated June 6,

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2002; Addendum to Staff Report for CDP Amendment 5-88-056-A1, dated June 7, 2002; Reporter's Transcript of Proceedings, CDP Amendment 5-88-056-A1, June 10, 2002; Cease and Desist Order CCC-01-CD-01, dated April 19, 2001; Reporter's Transcript of Proceedings, Cease and Desist Order CCC-01-CD-01, May 8, 2001; and Request for Reconsideration, including Exhibits 1, 2, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 3, 4, 5, 6, and 7, of that request, dated July 8, 2002.

PROCEDURAL NOTE:

Section 13109.2 of the California Code of Regulations provides that at any time within 30 days following a final vote upon an application for a coastal development permit, the applicant(s) of record may request that the Commission grant a reconsideration of any term or condition of a coastal development permit which has been granted.

The grounds for reconsideration of a permit action are provided in Section 30627 of the Coastal Act, which states in relevant part that:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

SUMMARY OF APPLICANTS' CONTENTIONS

The applicant contends that both bases provided in Section 30627 of the Coastal Act for the granting of reconsideration are met. The reconsideration request letter from the applicants is provided as Exhibit 1.

New Evidence:

Specifically, the applicants contend that relevant new evidence includes a letter dated June 24, 2002, prepared by Dr. Daryl Koutnik, Senior Biologist, Impact Analysis, Los Angeles County Department of Regional Planning, to Don Schmitz of Schmitz & Associates, which concludes among other things, that the subject property is not an environmentally sensitive habitat area ("ESHA") or adjacent to an ESHA; that riparian resources do not exist on or adjacent to the subject property; that the portion of the mapped blueline drainage adjacent to the subject property does not qualify as ESHA; and that the mapped blueline drainage qualifies as ESHA at a point no closer than ¼ of a mile from the subject property. The applicants assert that this new evidence demonstrates that the Commission's findings regarding biological and/or environmental issues and concerns under the Coastal Act, including whether the subject property is in or closely adjacent to an ESHA or the impacts of the blueline drainage are not

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supported by the evidence and are contrary to the only evidence submitted with the application and that this new information, in the exercise of reasonable diligence, could not have been presented at the hearing and has the potential of altering the Commission's decision on that portion of the application which was denied.

In addition, the applicants contend that additional relevant new evidence includes a photograph of the subject property showing the children's play area east of the pool and the portion of the chain link fence located within the area subject to the offer to dedicate an open space easement. The applicants assert that this photograph reveals that the children's play area is very small in size, is located immediately adjacent to the lawn area, and is covered with a thin layer of sand commonly found in the Coastal Zone. The applicants also argue that this photograph reveals that the portion of the chain link fence within the area subject to the offer to dedicate an open space easement follows the natural topography and contours of the land and is constructed in the least visually obtrusive location possible. The applicants state that this photograph was not supplied earlier because the staff report previously indicated that the "only serious objection" to the children's play area and this portion of the chain link fence was that these structures are located within the portion of the property subject to the offer to dedicate an open space easement. The applicants argue that since no Coastal Act policy is furthered by relocation of a portion of the chain link fence and that relocation of the chain link fence will increase any negative impact thereof, the Commission should reconsider the special condition that requires the relocation of this portion of the fence.

Error of Fact:

The applicants also state that the following mistakes of fact occurred: 1) That the information contained in the staff report dated May 20, 2002 ("staff report") regarding the presence of an ESHA on or closely adjacent to the subject property is not consistent with the Los Angeles County Sensitive Environmental Resources Area map and is not correct in the analysis of resources present on the subject site; 2) That the staff report's findings that the subject site is in an area of the "Dark Canyon" ESHA is inaccurate, as the riparian features specifically associated with the Dark Canyon drainage which could be considered ESHA are located no closer than 1,000 feet from the subject site; 3) That the staff report's findings that the subject site is located proximate to riparian vegetation, including vegetation associated with the blueline drainage are inaccurate, as no such resources exist on or adjacent to the subject site. 4) That the staff report's categorization of the drainage as a "blueline drainage" is arbitrary there is no substantiation or analysis of the riparian resources in the area of the subject property and the blueline drainage does not qualify as ESHA until its location more than ¼ of a mile from the subject site. 5) The staff report's findings that chaparral vegetation constitutes ESHA is not accurate, as the chaparral on the site is primarily chamise chaparral, the site is not intended to be wildlife habitat and abundant amounts of the same wildlife habitat exist in the areas surrounding the subject property, and the chaparral on the site is not rare to the area or the entire State. 6) The staff report's findings that the subject site is in or immediately adjacent to an ESHA is inconsistent

with the Los Angeles County Sensitive Environmental Resource Area map and with the present conditions of the site; 7) That representations were made to the Commission at the hearing on June 10, 2002 that no streambed alteration agreement was required by the California Department of Fish and Game when, in fact, Commission staff had taken notes pursuant to a telephone conversation that the effects of the sports court were not significant ; 8) The staff report's findings that the discussion of the parameters of the offer to dedicate an open space easement were inaccurate; 9) That the findings in the staff report regarding visual impacts of the proposed development are inaccurate; and 10) That the identity of the Commission staff person responsible for the staff report was inaccurate.

Mixed Error of Fact and Law and/or Law:

The applicants also argue that the following errors of "mixed fact and law and/or law" have occurred, which if corrected, have the potential of altering the Commission's decision on that portion of the amendment application that was denied, including: 1) The staff report's statements that the findings of Cease and Desist Order CCC-01-CD-01 ("CDO") apply to and are binding on the applicants with respect to the amendment application; 2) The determination by the Commission that portions of the proposed development should be denied due to the fact that they are located within the area of the property subject to the offer to dedicate an open space deed restriction constitutes a "further and full taking" of that portion of the property; and 3) The staff report findings are in error due to the fourteen additional reasons as set forth in the Paragraph 42 of the document entitled, "Declaration of Howard J. Rubinroit in Response to Staff Report: Permit Amendment."

The applicants request that the Commission reconsider that portion of its decision regarding the amendment denying any portion of the development subject to that application and reconsider the special condition of that amendment requiring a portion of the chain link fence to be relocated.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **deny** the reconsideration request. The applicants contend that there is new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter and that an error of fact or law has occurred which has the potential of altering the initial decision, including the denial of the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court and the imposition of Special Condition 2, requiring revised project plans. The Commission made clear and supportable findings for its action on June 10, 2002. Staff recommends that the Commission find there is no relevant new evidence that in the exercise of reasonable diligence could not have been presented at the hearing on the permit, that there was no error of fact or law with regard to the permit approval, and that the request for reconsideration is, therefore, denied.

STAFF RECOMMENDATION:

MOTION: *I move that the Commission grant reconsideration of Coastal Development Permit No. 5-88-056-A1*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on Coastal Development Permit Amendment 5-88-056-A1 on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The project site is a 2.76 acres lot, located at 25351 Piuma Road, in the Calabasas area of Los Angeles County. The subject site is situated on a steep northerly trending descending ridge, with drainages located to the east and west of the single family residence. Descending natural slopes are present on both sides of the ridge at gradients up to 1 ½ to 1 (horizontal to vertical). The subject site is also located within the upper portions of the Cold Creek Resource Management Area. In addition, the site is located adjacent to a blueline stream, which is a tributary to Cold Creek, and is an environmentally sensitive habitat area (ESHA). Further, the property is located in the vicinity of an area that is an ESHA and that has been recognized in previous Commission actions and referred to as Dark Canyon ESHA. The portions of the subject site, which have not been cleared of native vegetation, maintain chaparral vegetation. In addition, the property is highly visible from Piuma Road, the Backbone Trail, and public lands (including State Park lands) located adjacent to and in the vicinity of the site.

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In addition, there is a history of past Commission action on the subject site. On March 24, 1988, the Commission approved coastal Development Permit (CDP) 5-88-056 for construction of a four level 4,260 square foot, 28-foot high single family residence with a water well and a septic system on the subject site. At that time, Jack and Annie Moses and Ron and Marco Landry owned the property. The single family residence was approved to be located on one of two preexisting graded pads. As a result, that permit minimized landform alteration, as the single family residence and all proposed development was proposed and approved on one existing, graded pad adjacent to and immediately north of Piuma Road with only minor grading required to construct the driveway under CDP 5-88-056. Furthermore, in addition to the concentration of the development footprint on one existing graded pad adjacent to Piuma Road, the development approved under CDP 5-88-056 was also located on the upper portion of the slope and was set back from the blueline stream to the north, steep slopes on the site, and ESHA. In addition, the development footprint and fuel modification and landscape plan submitted pursuant to CDP 5-88-056 also minimized the disturbance of native vegetation, consisting mainly of undisturbed, mature chaparral. In approving CDP 5-88-056, the Commission also imposed special conditions in order to mitigate potential adverse impacts of the residential development on sensitive environmental and visual resources.

Special Condition 2 of CDP 5-88-056 required fuel modification and landscape plans to be submitted to the Commission staff for review and approval (Exhibit 18). The approved fuel modification and landscape plans that were submitted and approved prior to issuance of CDP 5-88-056 included the following statement:

It is the intent of the fuel modification plan to avoid vegetation clearance in any designated "OPEN SPACE" area as shown on the attached site plan including the drainage courses to the west and east of the building pad.

The fuel modification and landscaping plans submitted pursuant to CDP 5-88-056 limited the clearance of vegetation to a distance of 30 feet from any structure and the cutting of flammable vegetation to a height of 18 inches for another 70 feet, unless additional clearance was authorized or required by the Los Angeles County Fire Marshall.

In addition, Special Condition 4 of 5-88-056 required the previous applicants to execute and record an irrevocable offer to dedicate (OTD) an open space and conservation easement on the subject site prior to issuance of the CDP (Exhibits 17 and 18). This condition required that the open space easement encompass all the area on the property outside the boundary of the single graded pad on which the single family residence was proposed to be located. This OTD was required pursuant to the approval of CDP 5-88-056 to protect the remaining, undisturbed watershed cover and chaparral on the property and to limit adverse impacts on critical resources within the nearby blueline stream and ESHA that might arise from future development on the subject property. The findings for CDP 5-88-056 also state that the OTD would also aid

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in assuring that any future development would be located directly adjacent to the single family residence, ensuring that future development would be less disruptive to habitat values.

In past Commission actions, including CDP 5-88-056, open space or conservation easements have been required in order to protect undisturbed watershed cover and environmental resources located on parcels on which development is proposed. In addition, in past Commission actions, including CDP 5-88-056, where new development is proposed adjacent to blueline streams, riparian areas, and ESHA, open space or conservation easements have been required in order to protect those significant resources.

On August 8, 1988, pursuant to Special Condition 4 of CDP 5-88-056, the Moseses and the Landrys recorded the OTD an open-space easement, as Instrument No. 88-1246285, at the Los Angeles County Recorder's Office (Exhibit 17). The OTD prohibits "development as defined in Public Resources Code section 30106 . . . including but not limited to removal of trees and other major or native vegetation, grading, paving, installation of structures such as signs, buildings, etc." The language of the OTD indicates that its purpose is to "restrict development on and use of the Property so as to preserve the open-space and scenic values present on the property and so as to prevent the adverse direct and cumulative effects on coastal resources . . ." The OTD restricts the use of the open space easement to "natural open space for habitat protection, private recreation, and resource conservation uses," and prohibits development except as approved by the Coastal Commission in a subsequent permit.

Further, Special Condition 5 of CDP 5-88-056 required the prior applicants to record a document stating that any future development of the property (as defined in Public Resources Code Section 30106) would require either an amendment to CDP 5-88-056 or an additional coastal development permit (Exhibit 18). The Commission imposed this condition so that future development that would otherwise be exempt, such as certain improvements to the residence, would be subject to permit requirements. The purpose of this condition is to enable the Commission to ensure that future development does not damage the recognized adjacent blueline stream, and ESHA or habitat values on the subject site, such as the mature, extensive, and rich chaparral habitat. On August 8, 1988, the Moseses and the Landrys recorded the deed restriction, as Instrument No. 88-1246284 at the Los Angeles County Recorder's Office (Exhibit 17).

After meeting all special conditions, including those listed above, CDP 5-88-056 was issued to the Moseses and the Landrys on December 5, 1988 (Exhibit 18). Based on the final dates listed in the Los Angeles County permits for the single family residence, it appears that construction of the residence was completed by February 2, 1990. Subsequently, on February 14, 1990, title to the property was transferred to Howard and Terry Rubinroit, the current applicants and owners of the subject site.

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On June 10, 1997, Commission staff received a report of a possible violation of the Coastal Act on the subject site, including the construction of a sports court. On June 19, 1997, Commission staff confirmed the presence of a sports court in the area of the OTD open space easement. On this same date, Commission staff sent the Rubinroits the first of five letters requesting that they apply for an after-the-fact CDP for all unpermitted development on the subject property. The June 19, 1997 letter specifically identified the alleged violation as the sports court and excessive vegetation removal. While investigating the violation during the fall of 1998, Commission staff subsequently discovered additional unpermitted development, including the swimming pool and retaining wall.

On October 9, 1998, Commission staff sent the Rubinroits a notice of intent (NOI) to schedule a public hearing on the issuance of a cease and desist order by the Commission. This NOI described the violation as the unpermitted construction of the sports court, swimming pool and retaining wall. After Mr. Rubinroit indicated that he would file a complete CDP application, the Commission enforcement staff removed the cease and desist order from the Commission's agenda.

On January 29, 1999, the Rubinroits submitted two CDP applications to the Commission. They submitted CDP 4-99-023 for the construction of decking and fencing (of the sports court), and CDP 4-99-024 for the construction of a swimming pool, decking, fencing, carport and retaining wall. After receiving the CDP applications, Commission staff became aware of the presence of the carport, for which the main structural component is the associated retaining wall.

On December 1, 2000, the Rubinroits had not submitted the information required to complete either CDP application. As a result, on January 2, 2001, Commission staff sent the Rubinroits a second NOI to commence cease and desist order proceedings. The unpermitted development was described in this NOI as the construction of a sports court (decking and fencing), swimming pool, and retaining wall with a footnote referencing the carport. In order to review all of the unpermitted development at the same cease and desist order hearing, Commission staff issued an amended NOI to commence cease and desist order hearings on March 20, 2001 to include the unpermitted carport and other unpermitted development.

Following a public hearing, on May 8, 2001, the Commission issued Cease and Desist Order CCC-01-CD-01. The Rubinroits asserted numerous defenses seeking to prevent issuance of the Cease and Desist Order; however, the Commission found that these defenses were legally and/or factually deficient. The Rubinroits' defenses included assertions that some of the unpermitted development had not occurred at all and that other unpermitted development was exempt from permit requirements. These defenses were rejected. The Rubinroits raise some of these defenses again in the context of the permit amendment application. The Commission already addressed these issues raised by the Rubinroits in the Cease and Desist Order findings. The findings of the Cease and Desist Order have become final and are binding on the Rubinroits.

Therefore, the Commission did not address these defenses again in the findings on the permit amendment application. The Cease and Desist Order required, in part, that the Rubinroits submit a complete application to address all of the items of unpermitted development. The applicant subsequently combined the applications for CDP 4-99-023 and CDP 4-99-024 into an incomplete permit application that was submitted on July 31, 2001 and filed on April 10, 2002.

At the June 10, 2002 Commission hearing, the Commission considered the underlying amendment application in which the applicants proposed the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage. The proposed development raised issues under Sections 30230 and 30231 regarding water quality, 30240 regarding sensitive resources and ESHA, 30253 regarding hazards, and 30251 regarding scenic and visual resources.

The permit amendment application was scheduled for the May 7, 2002 hearing before the Commission. The applicants' agent, however, submitted a letter dated May 3, 2002 requesting a postponement so that the applicants "could have sufficient time to prepare a response to the staff recommendation." This letter also requested that the Commission continue the application to the subsequent June 2002 Commission hearing. On June 10, 2002, the Commission partially approved and partially denied the amendment application subject to the eight special conditions recommended by Commission staff (Exhibit 16). The special conditions relate to the geotechnical engineer's recommendations, revised project plans, landscaping and erosion control plans, removal of concrete from the eastern drainage, drainage and polluted runoff control plan, pool and spa drainage and maintenance plan, condition compliance, and implementation. Discussion of the Commission's action in this staff report is based on the transcript of the June 10, 2002 hearing as well as the findings in the staff report recommended for adoption by the Commission at the June 10, 2002 hearing.

B. Grounds for Reconsideration

The California Code of Regulations provide in Section 13109.2, that at any time within 30 days following a final vote upon an application for a coastal development permit, the applicant(s) of record may request that the Commission grant a reconsideration of any term or condition of a coastal development permit that has been granted.

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The grounds for reconsideration of a permit action are provided under Section 30627 of the Coastal Act, which states in relevant part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

Pursuant to Section 13109.2 of the California Code of Regulations, Commission staff shall prepare a staff report that makes a recommendation to the Commission on the merits of the request for reconsideration. Pursuant to Section 13109.5 of the California Code of Regulations, reconsideration of the permit shall be granted by a majority vote of the Commission. If reconsideration were granted, the application would be processed as a new application.

On July 9, 2002, Commission staff received a written request from the applicants for reconsideration of Coastal Development Permit Amendment application 5-88-056-A1 (Exhibit 1). The request for reconsideration comprises a number of contentions, as follows:

- 1. There is new evidence that, in the exercise of reasonable diligence, could not have been presented at the June 10, 2002 hearing on the amendment application.**

This new evidence, submitted with the reconsideration request letter, consists of a letter dated June 24, 2002, prepared by Dr. Daryl Koutnik, Senior Biologist, Impact Analysis, Los Angeles County Department of Regional Planning, to Don Schmitz of Schmitz & Associates and a photograph of the subject property showing the children's play area east of the pool and the portion of the chain link fence located within the area subject to the offer to dedicate an open space easement. The applicants state that although Dr. Koutnik was supplied a copy of the staff report for the June hearing on or about June 7, 2002, he was not authorized to prepare any comments regarding this staff report until on or about June 7, 2002, when he was asked by Los Angeles County Supervisor Yaroslovsky's office to prepare such a letter. The applicants argue that since Dr. Koutnik's comments were not prepared until June 24, 2002, this letter could not have been presented at the hearing on June 10, 2002. The applicants state that the photograph was not supplied earlier because the staff report previously indicated that the "only serious objection" to the children's play area and this portion of the chain link fence was that these structures are located within the portion of the property subject to the offer to dedicate an open space easement.

- 2. There were errors of fact that occurred.**

The applicants argue that the information contained in the staff report regarding the presence of an ESHA on or closely adjacent to the subject property is inaccurate; the

staff report's findings that the subject site is in an area of the "Dark Canyon" ESHA is inaccurate; the staff report's findings that the subject site is located proximate to riparian vegetation, including vegetation associated with the blueline drainage is inaccurate; the staff report's categorization of the drainage as a "blueline drainage" is arbitrary and inaccurate; the staff report's findings that chaparral vegetation constitutes ESHA is inaccurate; the staff report's findings that the subject site is in or immediately adjacent to an ESHA is inconsistent with the Los Angeles County Sensitive Environmental Resource Area map and with the present conditions of the site; representations made to the Commission at the hearing on June 10, 2002 that the total nature and extent of analysis of the project by the California Department of Fish and Game was that no streambed alteration agreement was required were incomplete in nature; the staff report's statements regarding the parameters of the offer to dedicate an open space easement are inaccurate; the findings in the staff report regarding visual impacts of the proposed development are inaccurate; and the identity of the Commission staff person responsible for the preparation of the staff report dated May 20, 2002 is inaccurate.

3. There were errors of mixed fact and law and/or law that occurred.

The applicants also argue that the staff report's statements that the findings of Cease and Desist Order CCC-01-CD-01 ("CDO") apply to and are binding on the applicants with respect to the amendment application are inaccurate; the determination by the Commission that portions of the proposed development should be denied due to the fact that they are located within the area of the property subject to the offer to dedicate an open space deed restriction constitutes a further and full taking of that portion of the property; no CDP or amendment should have been required for the proposed development; portions of the proposed development should have been considered exempt from Coastal Act requirements; the proposed development is consistent with the purposes and uses allowed by the OTD, Coastal Act, and CEQA; the original OTD condition appears to have constituted a per se taking; there was no grading or landscaping done by the applicants; the applicants had no knowledge of any restrictions or conditions on their ability to improve the portions of the subject site; permits received from Los Angeles County appear to control over the Coastal Commission's ability to designate or regulate sensitive habitat on the site; any violation, if one exists, is merely a technical one committed unknowingly; no harm has been suffered to the environment as a result of the proposed development; the applicants acted on good faith of their vested rights and will be irreparably harmed if required to remove any of the proposed development; targeting the applicants' property when the Commission has not acted on other properties in the area is unfair, improper, and a denial of equal protection; the Commission is guilty of laches and is barred from action by the statute of limitations; the staff report's findings are unsupportable and do not support denial of any of the proposed development; and Commission staff has acted wrongfully and in an attempt to deny the applicants due process and in violation of the separation of powers.

The applicants request that the Commission reconsider that portion of its decision regarding the amendment denying any portion of the development subject to that

application and reconsider the special condition of that amendment requiring a portion of the chain link fence to be relocated. Each of the applicants' contentions is discussed in further detail, below.

1. New Evidence

Section 30627 of the Coastal Act provides that the first basis for granting reconsideration of a permit action is that there is relevant new evidence that in the exercise of reasonable diligence could not have been presented at the hearing on the matter. The applicants contend that there is new evidence.

a. Applicants' Contention

The applicants state that there is new evidence, in the form of a letter dated June 24, 2002, prepared by Dr. Daryl Koutnik, Senior Biologist, Impact Analysis, Los Angeles County Department of Regional Planning, to Don Schmitz of Schmitz & Associates (Exhibit 2) and a photograph of the subject property showing the children's play area east of the pool and the portion of the chain link fence located within the area subject to the offer to dedicate an open space easement (Exhibit 3).

The applicants state that although Dr. Koutnik was supplied a copy of the staff report for the June hearing on or about June 7, 2002, he was not authorized to prepare any comments regarding this staff report until on or about June 7, 2002, when he was asked by Los Angeles County Supervisor Yaroslovsky's office to prepare such a letter. The applicants argue that since Dr. Koutnik's comments were not prepared until June 24, 2002, they could not have been presented at the hearing on June 10, 2002. The applicants state that the photograph was not supplied earlier because the staff report previously indicated that the "only serious objection" to the children's play area and this portion of the chain link fence was that these structures are located within the portion of the property subject to the offer to dedicate an open space easement.

With respect to this photograph, the applicants' reconsideration request states:

The photograph reveals that the "children's play area" is very small in area and is located immediately adjacent to the lawn area; that a portion thereof (to about the location of the tetherball pole) is located outside of the area purportedly subject to the offer to dedicate an easement ("OTD"); and that the portion of the "children's play area" located in the area purportedly subject to the OTD is "undeveloped" and merely covered with a thin layer of sand commonly found in the Coastal Zone. The photograph further shows that the portion of the chain link fence in the area purportedly subject to the OTD follows the natural topography and contours of the land, and was and is constructed in the least visually obtrusive location possible.

Regarding this photograph, the applicants' reconsideration request letter concludes:

Accordingly, since no Coastal Act policy is furthered by relocation of a portion of the chain link fence, and indeed, any negative visual impact thereof would be increased by such re-location, Applicants request reconsideration of the Commission's decision on the Application and in the CDP which imposes the condition that the eastern portion of the chain link fence be re-located.

b. Analysis

The applicants contend that the letter dated June 24, 2002, prepared by Dr. Daryl Koutnik, Senior Biologist, Impact Analysis, Los Angeles County Department of Regional Planning, to Don Schmitz of Schmitz & Associates constitutes "new evidence" under Section 30627 of the Coastal Act. As stated previously, however, Section 30627 of the Coastal Act provides that the first basis for granting reconsideration of a permit action is that there is relevant new evidence that in the exercise of reasonable diligence could not have been presented at the hearing on the matter.

The hearing before the Commission on this amendment application was June 10, 2002. Although the letter submitted with the reconsideration request is dated June 24, 2002, this letter could have been written and submitted prior to the June 10, 2002 hearing. In addition, at the time of the hearing and preparation of the staff report, Commission staff was already aware that the Los Angeles County Department of Regional Planning had conditionally approved in concept the proposed development. The application to the Los Angeles County Department of Regional Planning also went through the Environmental Review Board for recommendations. Further, in sum, the letter does not contain any information that was not presented by the applicants or the applicants' agent at the June 10, 2002 hearing. In addition, the staff report had taken into consideration the review that had already occurred at Los Angeles County's Regional Planning Department and Environmental Review Board. In fact, pages 22 to 32 of the staff report dated May 20, 2002 specifically discuss environmentally sensitive resources and water quality and these issues were also addressed at the Commission hearing.

Finally, through the exercise of reasonable diligence, it would have been possible for Los Angeles County to have submitted a letter regarding the subject site as agents and employees of the County, including Dr. Koutnik, had already reviewed the proposed development and conditions of the subject site as early as July of 2001. According to a letter submitted by the applicants' agent to Commission staff dated October 10, 2001, the applicants submitted an application to the Los Angeles County Department of Regional Planning on July 25, 2001 and had a hearing before the County's Environmental Review Board on September 17, 2001. As a result, County staff could have written a letter to the applicants' agent or to the Coastal Commission regarding the proposed development and in response to the staff recommendation prior to the June 10, 2002 hearing. Therefore, through the exercise of reasonable diligence, this evidence could have been submitted prior to the hearing. Furthermore, this letter does not contain any information or evidence that would change the outcome of the hearing.

In addition, the applicants have submitted a photograph of the subject property showing the children's play area east of the pool and the portion of the chain link fence located within the area subject to the offer to dedicate an open space easement that they assert constitutes new evidence. Likewise, the site conditions were considered in the staff recommendation and Commission action and were specifically discussed on pages 32 through 40 of the staff report dated May 20, 2002 (Exhibit 5). Further, through the exercise of reasonable diligence, this photograph could have been submitted to Commission staff prior to the June 10, 2002 hearing or could have been presented at the hearing by the applicants or the applicants' agent. Finally, this photograph does not contain any new information or evidence that would change the outcome of the staff recommendation or Commission decision on the subject amendment application. Commission staff had conducted site visits and taken photographs, as well. The information submitted by the applicants was considered in the staff report and findings and at the hearing on June 10, 2002 and does not constitute new evidence under the Coastal Act.

In conclusion, both the letter and the photograph, in the exercise of reasonable diligence, could have been presented at the hearing. Furthermore, neither document contains new information or evidence. In addition, none of the information in neither document would change the outcome of the Commission's decision. Therefore, the Commission finds that this is not relevant new evidence that supports a reconsideration of permit amendment 5-88-056-A1.

3. Error of Fact

Section 30267 of the Coastal Act provides that the second basis for granting reconsideration of a permit action is that an error of fact has occurred which has the potential of altering the initial decision. The applicants contend that such errors of fact have occurred.

a. Applicants' Contention

The applicants also argue in their request for reconsideration that mistakes of fact occurred in review of their amendment application. The applicants' reconsideration request states that the findings in the staff report, dated May 20, 2002 ("staff report"), "concerning the supposed presence of an ESHA on or closely adjacent to the Subject Property is not consistent with the Los Angeles Sensitive Environmental Resources Area map, nor is it correct in the analysis of the resources present on the Subject Property". In addition, the applicants' reconsideration request also states that the information contained in the staff report concerning the Subject Property being in an area of the Dark Canyon which is an ESHA, since the riparian features specifically associated with the Dark Canyon drainage which would be considered an ESHA are located no closer than at least a thousand feet distance from the Subject Property." The applicants also state that the staff report and findings statements that "the Subject Property is located proximate to riparian vegetation, including riparian vegetation

associated with the so-called blue line drainage" is a mistake of fact since "the actual riparian resources supported by the so-called blue line drainage do not exist on or adjacent to the Subject Property." The applicants also assert that the staff report and findings "categorizing the so-called blue line drainage as ESHA" is an "arbitrary categorization without any substantiation or analysis of the riparian resources in the area of the Subject Property." Further, the applicants argue that the staff report and findings that "chaparral vegetation on the Subject Property constitutes an ESHA" is a mistake of fact since "the chaparral on the Subject Property is primarily chamise chaparral, one of the most common types in California;" the property "is not intended to be a wildlife habitat, and abundant amounts of the same wildlife habitat exist in the areas surrounding the Subject Property;" and "chaparral on the Subject Property is not rare to the area or, indeed, in the entire State." In addition, the applicants argue that the staff report and findings that the property is "in or immediately adjacent to an ESHA" is "inconsistent with the Los Angeles County Sensitive Environmental Resource Area map and with the present nature, condition, and circumstances of and adjacent to the Subject Property."

The applicants also assert that the statements made to the Commission at the hearing on June 10, 2002 regarding the position of the California Department of Fish and Game ("DFG") on the sports court development were mistakes of fact (Exhibit 6). The applicants argue that Commission staff stated "no stream bed alteration agreement was required" when staff's written notes stated that the DFG staff stated that "the development is not w/in DFG jurisdiction" and that she "wouldn't call it significant (alteration of stream bed/bank)" (Exhibit 7).

In addition, the applicants set forth in their request for reconsideration that the information contained in the staff report, findings, and statements by a Commissioner at the hearing on June 10, 2002 that development proposed under the amendment application is located on an area "subject to an irrevocable offer to dedicate 'an open space easement,' and to a requirement to 'keep the property in open space for the period of time that the open space easement would run.'" The applicants state that there were mistakes of fact in this respect, as the offer to dedicate (OTD) an open space easement "provides that, among the permitted uses of the so-called 'Protected Land' subject to the OTD, is use for 'private recreation'"; that development in the area subject to the OTD is "not prohibited, but merely restricted"; and that "development approved by the Coastal Commission or its successor agency on a subsequent Coastal Permit" is fully allowed.

Furthermore, the applicants argue that the staff report and findings with regarding visual impacts of the proposed development contained mistakes of fact. The applicants assert that there are no significant viewpoints within a mile of the site, that the staff report and findings are contrary to "line of sight analysis submitted to the Commission by Applicants", and that "any impact is insignificant in comparison to the visual impact of the Applicants' house".

Lastly, the applicants argue that the identity of the Commission staff person responsible for the staff report dated May 20, 2002 is a mistake of fact.

b. Analysis

With respect to the applicants' request for reconsideration based on mistake of fact, Section 30627 of the Coastal Act states that the basis of the request for reconsideration may be that an error of fact has occurred which has the potential of altering the initial decision.

The applicants' arguments that the findings in the staff report regarding the location of the property in or adjacent to an ESHA constitute a mistake of fact were made and considered by the Commission prior to its action on the permit amendment. The findings in the staff report considered the applicants argument that ESHA was not present on the site and made a determination based on this issue. The staff report specifically discusses environmentally sensitive resources and water quality in relation to the proposed development and subject site, specifically from pages 22 to 32 (Exhibit 4), and that discussion is incorporated herein. Although there may be differing opinions regarding this information, the staff report and findings and Commission decision reflects the determinations that were made based on the information available. The applicants argue there was a mistake of fact in the Commission's decision. However, the applicants only raise a difference in interpretation of the information, not mistakes in fact. The applicants' subjective interpretation of the information does not constitute mistakes of fact, but rather a differing opinion. Further, the staff report and findings, particularly pages 22 to 32 (Exhibit 4), included information substantiating the Commission's decision regarding environmentally sensitive resources and water quality. In the findings for CDP 5-88-056-A1, the Commission correctly determined that the chaparral on the subject property and the chaparral and riparian vegetation in adjacent areas are ESHA. The Commission previously determined, in the findings for CDP 5-88-056, that nearby Dark Canyon is also ESHA, and attached conditions to CDP 5-88-056 to protect this ESHA, including the requirement for the OTD an open space and conservation easement for the protection of these sensitive resources (Exhibits 16 and 17). In the findings for CDP 5-88-056-A1, the Commission determined that the denied development was inconsistent with resource protection policies of the Coastal Act.

In addition, as stated previously, the applicants argue that the statements made to the Commission at the hearing on June 10, 2002 regarding the position of the DFG on the sports court were mistakes of fact. At this hearing, Commission staff stated that the DFG staff person believed that "no stream bed alteration agreement was required" (Exhibit 6). This is not a mistake of fact, as no stream bed alteration agreement was required by the DFG since the development was not within the DFG's jurisdiction. Further, if the sports court is not within the DFG's jurisdiction, it would follow that this structure does not constitute the alteration of a stream bed or bank. This does not mean that the sports court is insignificant development, but merely refers to the jurisdiction by the DFG. There was no misstatement of fact by Commission staff and no

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conflict between the statements made by Commission staff at the June 10, 2002 hearing and Commission staff's written notes of a conversation with a DFG representative (Exhibits 6 and 7).

A representative from the DFG told a Commission staff member on April 18, 2001 that the sports court development is not within DFG jurisdiction for requiring a streambed alteration permit (Exhibit 7). Within the context of deciding whether the sports court required such a permit, the DFG representative determined that the sports court development was not a significant alteration of the streambed or bank. This analysis by DFG does not include impacts to the riparian system other than such alterations to the stream that fall within the jurisdiction of DFG for reviewing permit applications for streambed alteration permits. The conclusion that DFG does not require a streambed alteration permit for the construction of the sports court does not mean that DFG conducted an analysis of the full impacts on the environment or the stream from the development. Regardless, the Commission is a separate agency than DFG and is responsible for determining compliance of development with the resource protection policies of Chapter Three of the Coastal Act. The Commission correctly determined, in its denial of portions of the development proposed under the permit amendment that the denied development is inconsistent with the policies of Chapter Three of the Coastal Act. For the reasons explained above, the information in the staff notes of the conversation with DFG do not have the potential to alter the Commission's decision.

In addition, the applicants also argue that information contained in the staff report and findings and statements made at the June 10, 2002 Commission hearing were mistakes of fact regarding the OTD open space easement. Again, the staff report and findings and statements made at the hearing do not constitute mistakes of fact. Rather, the applicants are interpreting the facts and law differently. The applicants disagree with the Commission's interpretation of the language of the OTD; however, there is no mistake about what that language is. Furthermore, these issues regarding the OTD open space easement were discussed in the staff report and findings, at the hearing, and in the cease and desist order. In fact, the staff report specifically discussed the OTD and proposed development in relation to the OTD on pages 10 to 15, 25, 28, 31, 32, 37, and 41 (Exhibit 8), and that discussion is incorporated herein. In addition, the adopted findings for Cease and Desist Order CCC-01-CD-01 ("CDO") also specifically addresses the OTD and proposed development in relation to the OTD on pages 2 to 3, 6 to 8, 11, 13 to 14, 17 to 18, 24 to 25, and 27 to 34 (Exhibit 9), and that discussion is incorporated herein. The applicants made similar arguments in defense of the CDO and these issues have already been appropriately addressed in both the CDO and the final action on the permit amendment application. For the reasons stated above and further explained in the documents cited above, the alleged mistake regarding the OTD does not have the potential to alter the Commission's decision.

The applicants' also argue that reconsideration should be granted based on mistakes of fact in the staff report and findings regarding visual impacts of the proposed development. Although the applicants may have a different opinion regarding the visual

impact of the proposed development, there were no mistakes of fact made in the staff report or findings regarding visual impacts. The issues raised by the applicants were appropriately addressed under the visual impacts section of the staff report and findings, specifically on pages 32 to 40 (Exhibit 13), and that discussion is incorporated herein. Further, the Commission correctly determined that although the visual impact of the applicants' house may be significant, the adverse impacts from the development that the Commission denied would have additional adverse visual impacts that are significant. For the reasons stated above and further explained in the report cited above, the alleged mistake regarding visual impacts does not have the potential to alter the Commission's decision.

Lastly, the applicants argue that the identity of the Commission staff person responsible for the staff report dated May 20, 2002 is a mistake of fact. Although the final staff report dated May 20, 2002 was not prepared by "S. Haswell", it was prepared by Commission staff. The identity of the Commission staff person who prepared the final staff report is not a material fact that would have changed the staff report, findings, or Commission decision on the amendment. In sum, this mistake of fact has no potential of altering the Commission's decision on the amendment application. As a result, this is not a valid basis for approval of the reconsideration request.

3. Error of Mixed Fact and Law and /or Law

Section 30267 of the Coastal Act provides that the second basis for granting reconsideration of a permit action is that an error of fact or law has occurred which has the potential of altering the initial decision. The applicants contend that mixed errors of fact and law and/or law have occurred that have the potential, if corrected, to alter the Commission's decision on that portion of the project that the Commission denied.

a. Applicants' Contention

The applicants argue that the staff report's statements that the findings of the CDO apply to and are binding on the applicants with respect to the amendment application are inaccurate. In addition, the applicants state that the determination by the Commission that portions of the proposed development should be denied due to the fact that they are located within the area of the property subject to the offer to dedicate an open space deed restriction constitutes a further and full taking of that portion of the property. The applicants also assert that no CDP or amendment should have been required for the proposed development; portions of the proposed development should have been considered exempt from Coastal Act requirements. Further, the applicants argue that the proposed development is consistent with the purposes and uses allowed by the OTD, Coastal Act, and CEQA. The applicants also state that the original OTD condition appears to have constituted a per se taking. The applicants also contend that there was no grading or landscaping done by the applicants on the subject site. Further, the applicants state that they had no knowledge of any restrictions or conditions on their ability to improve the portions of the subject site. In addition, the applicants

argue that permits received from Los Angeles County appear to control over the Coastal Commission's ability to designate or regulate sensitive habitat on the site. The applicants go on to argue that any violation, if one exists, is merely a technical one committed unknowingly. Furthermore, the applicants assert that no harm has been suffered to the environment as a result of the proposed development. The applicants also state that they acted on good faith of their vested rights and will be irreparably harmed if required to remove any of the proposed development. Further, the applicants state that targeting the applicants' property when the Commission has not acted on other properties in the area is unfair, improper, and a denial of equal protection. In addition, the applicants also argue that the Commission is guilty of laches and is barred from action by the statute of limitations. The applicants also state that the staff report's findings are unsupportable and do not support denial of any of the proposed development. Finally, the applicants also assert that Commission staff has acted wrongfully and in an attempt to deny the applicants due process and in violation of the separation of powers.

b. Analysis

The applicants argue that the staff report's statements that the findings of the CDO apply to and are binding on the applicants with respect to the amendment application are inaccurate. Following a public hearing, on May 8, 2001, the Commission issued Cease and Desist Order CCC-01-CD-01. The Rubinroits asserted numerous defenses seeking to prevent issuance of the CDO. Pursuant to the May 8, 2001 hearing, however, the Commission found that these defenses were legally and/or factually deficient. The Rubinroits' defenses included assertions that some of the unpermitted development had not occurred at all and that other unpermitted development was exempt from permit requirements. These defenses were rejected. The Rubinroits raised some of these defenses again in the context of the permit amendment application. The Commission had already addressed these defenses raised by the Rubinroits in the CDO findings and hearing and the findings of the CDO were final and are binding on the Rubinroits at the time of the June 10, 2002 hearing on the permit amendment application. As a result, the Commission was not required to address these defenses again pursuant to the permit amendment application.

In addition, the applicants state that the determination by the Commission that portions of the proposed development should be denied due to the fact that they are located within the area of the property subject to the offer to dedicate an open space deed restriction constitutes a further and full taking of that portion of the property. Further, the applicants argue that the proposed development is consistent with the purposes and uses allowed by the OTD, Coastal Act, and CEQA. The applicants also state that the original OTD condition appears to have constituted a per se taking. The applicants already raised these issues and they were considered by the Commission and addressed on pages 31 to 34 of the CDO (Exhibit 9). That discussion is incorporated herein. In the findings for the CDO, the Commission rejected the applicants' challenge of the requirement for the OTD as being a taking of this area. The Commission

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disagrees with the applicants' assertion that the Commission made a mistake of fact and/or law regarding a taking.

The OTD restricts the use of the open space easement to "natural open space for habitat protection, private recreation, and resource conservation uses" (Exhibit 17). CDP 5-88-056 required the dedication of this easement to "protect the remaining, undisturbed watershed cover on the property," and to limit adverse impacts on critical resources within the nearby ESHA that might arise from future development on the subject property. The language of the OTD indicates that its purpose is to "restrict development on and use of the Property so as to preserve the open-space and scenic values present on the property and so as to prevent the adverse direct and cumulative effects on coastal resources...". The OTD also prohibits removal of "native or major vegetation."

The Commission's denial of the development in the area subject to the OTD does not constitute a taking, for reasons including those set forth in the following paragraphs.

In *Hensler v. City of Glendale*, (1994) 8 Cal.4th 1), the California Supreme Court ruled that a taking only occurs when the economic use of the whole parcel, not simply a portion of the parcel, is denied. The applicants already have a 4,260 square foot house, a pool, spa, carport, patio area and several other items of development on the property. Therefore, the Commission's denial of development in the OTD areas clearly has not denied the applicants all economically viable use of the entire property.

In *Lucas v. South Carolina*, (1992) 505 US 1003, 112S CT 2886, the United States Supreme Court found that the regulations and restrictions in effect at the time the property was acquired must be considered when analyzing the reasonable investment-backed expectations associated with the purchase of the property (*Lucas supra*, at p. 1019, fn 8; citing *Penn Central Transportation Co. v. New York City* (1978) 438 US 104, 124, 98 S Ct 2646). The Commission had issued a CDP for the residence that required the recordation of the OTD and a deed restriction prohibiting future development without a CDP or amendment to CDP 5-88-056. In the findings for CCC-01-CD-01, the Commission determined that the applicants were on notice of the existence of the OTD and the deed restriction at the time they purchased the property. In addition, when the applicants purchased the property in 1988, the Coastal Act had been in effect for approximately 11 years. Therefore, the OTD and deed restriction recorded in the chain of title for the subject property, the CDP, as well as the Coastal Act itself were all in effect at the time the applicants acquired the property and should have been considered by the applicants in making an investment-backed decision regarding the cost of the property.

In *Lucas v. South Carolina*, the U. S. Supreme Court also found that an agency's decision could not be considered a taking if the property owner lacks the property right to undertake development. Based on the restrictions set forth in the OTD and the deed restriction, the applicants only have the right to undertake development on the subject

property if they first obtain a CDP or amendment. The applicants did not have the right to undertake the development that is the subject of this reconsideration request and underlying permit amendment application without obtaining a permit. Further, in considering amendment application 5-88-056-A1, the Commission determined that portions of the development are inconsistent with the Coastal Act.

The decision in *Lucas v. South Carolina* also found that an agency's decision could not be considered a taking if the use proposed would constitute a nuisance under common law. In the findings for the CDO, specifically pages 30 and 31 (Exhibit 9), the Commission determined that "the persistence of unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the current owners are liable for correcting. The Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance." The Commission has determined that the denied development that is the subject of this reconsideration request is inconsistent with the Coastal Act. Therefore, these portions of the development are a public nuisance since they remain unpermitted and are inconsistent with the resource protection policies of the Coastal Act.

Further, the applicants also presented these arguments regarding restriction of uses of development in the OTD area and their takings claim to the Commission before the Commission made a decision on the request to authorize the development under the permit amendment application. The Commission considered these arguments and still denied the development. For the reasons set forth above, the assertion that the denial of development resulted in a taking does not constitute a mistake of fact and/or law that has the potential to alter the Commission's decision regarding the permit amendment application.

The applicants argue that the Commission incorrectly determined that the denied development is not consistent with the specified use of the area subject to the OTD for private recreation. The limitation on uses in the OTD is not an authorization to undertake development; rather, it indicates that certain uses may be compatible with the intent of the easement. The OTD and the deed restriction required a CDP or amendment to CDP 5-88-056 be obtained prior to performing any development (Exhibit 18). The OTD also prohibits removal of native vegetation in the easement area (Exhibit 17). The Commission denied portions of the applicants' request to authorize this development, since it correctly determined that the development is inconsistent with the Coastal Act, as well as the recorded OTD and the terms and conditions of CDP 5-88-056. Therefore, this allegation does not constitute a mistake of law and/or fact that has the potential to alter the Commission's decision.

The applicants also assert that no CDP or amendment should have been required for the proposed development. The applicants also argue that portions of the proposed development should have been considered exempt from Coastal Act requirements. These issues now being raised in the reconsideration request were already raised by the applicants pursuant to the CDO. As a result, these issues have already been

considered by the Commission, were addressed on pages 23 to 25 of the CDO (Exhibit 10), which is incorporated herein, and would not alter the decision regarding the permit amendment application.

Section 30106 of the Coastal Act defines development as:

on land, in or under water, the placement or erection of any solid material or structure;... grading, removing, dredging, mining, or extraction of any materials;...construction, reconstruction, demolition, or alteration of the size of any structure; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations. . . As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

All of the development proposed under amendment 5-88-056-A1 and reviewed by the Commission meets the above definition of development. Consequently, the subject activities satisfy the definition of development contained in Section 30106 of the Coastal Act. This definition of development, based on Section 30106 of the Coastal Act, was also recorded with the Los Angeles County Recorder's Office as Exhibit C of the deed restriction and Exhibit D of the OTD open space easement (Exhibit 17). The requirement for obtaining a CDP or CDP amendment prior to conducting development on the subject property is provided for in Section 13250(b)(6) of the Public Resources Code, Special Condition 5 of CDP 5-88-056 (which required recordation of a deed restriction prohibiting future development on the property without a CDP or CDP amendment), and Special Condition 4 of CDP 5-88-056 (which required the recordation of an OTD of an open space easement) (Exhibits 17 and 18).

Pursuant to Section 30610(a) of the Coastal Act, improvements to a single family residence are exempt from permit requirements except under circumstances identified in Section 13250 of the Public Resources Code. Section 13250(a) indicates that the term "improvements" refers to structures directly attached to a residence or normally associated with a residence, such as garages, swimming pools, fences and storage sheds.

Section 13250(b)(6) states that the following improvements require a CDP:

Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

Special Condition 5 of CDP 5-88-056 required the recordation of a deed restriction prohibiting future development without a CDP or CDP amendment (Exhibit 18). Special Condition 5 contains one exception, which is that removal of vegetation for fire protection, as required by the County Fire Marshall, does not require a CDP. However, the removal of vegetation for fuel modification was specifically addressed in the Fuel

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Modification and Landscaping Plans, which limit the clearance of vegetation within the area defined by the open space easement OTD. Thus, under Section 13250(b)(6), any improvements to the residence or other development on the property require a CDP. The adopted findings for CDP 5-88-056 indicate that the deed restriction limiting future development was necessary to prevent cumulative adverse impacts to the ESHA and to make the development of the residence consistent with Section 30240 (b) of the Coastal Act. Therefore, to the extent that any of the development proposed under amendment 5-88-056-A1 qualifies as improvements to the residence, in light of the deed restriction required by Special Condition 5, they are not exempt from permit requirements pursuant to Section 13250(b)(6).

In addition, the requirement of Special Condition 4 of CDP 5-88-056 for recordation of the Open space easement OTD prohibits development within the area to which the OTD pertains in the absence of a permit for such development issued by the Commission. As in the case of the deed restriction, the adopted findings for CDP 5-88-056 state that the open space easement OTD was required to prevent cumulative adverse impacts to the ESHA and to make the development of the house consistent with Section 30240(b) of the Coastal Act.

The application for CDP 5-88-056 instructs the applicant to "describe the proposed development." The applicants are instructed to "include secondary improvements such as septic tanks, water wells, roads, etc." The applicants for this permit, Jack and Annie Moses, described the development as "construct single family residence, water well (and) septic system." Later in the application, the Moses state that there will be two covered parking spaces and two uncovered parking spaces and that no grading was being proposed. Therefore, the development proposed under amendment 5-88-056-A1 was not included development that was previously included in the description of the 5-88-056. Consistent with the description of the proposed development contained in the application for CDP 5-88-056, the adopted findings state that the applicants propose to "construct a 4,260 square-foot, 28-foot high (above existing grade), four-level single family residence with water well and septic system." Further, the plans that were approved by the Commission under 5-88-056 do not show any of the development proposed under the amendment.

As a result, all of the development proposed under the amendment 5-88-056-A1 required a CDP or CDP amendment. For the reasons already considered by the Commission and listed again above, none of the development proposed under the amendment 5-88-056-A1 was exempt or previously approved under the original permit.

The applicants also contend that there was no grading or landscaping done by the applicants on the subject site. The CDO required, in part, that the Rubinroits submit a complete application to address all of the items of unpermitted development. In completing the application, however, the applicants asserted that only minimal or no grading occurred for the construction of the sports court and decomposed granite area adjacent to the sports court and refused to provide staff with an engineer or geologist's

analysis of the amount of grading to document this claim. In issuing the CDO, however, the Commission already determined that grading had occurred in these areas, and that finding was and is final and binding. Although the Commission does not know the exact amount of grading that occurred, because the applicants refused to provide this information, the exact amount was not necessary to evaluate the applicants' proposal because no amount of grading would be consistent with the Coastal Act policy protecting ESHA. As discussed on page 26 of the staff report (Exhibit 11), and incorporated herein, even if only minimal (or even no) grading was performed, construction of the sports court and decomposed granite area still resulted in removal of native chaparral habitat in close proximity to a stream, which is inconsistent with the policy of the Coastal Act requiring the protection of ESHA and which states that only resource dependent uses (which the current proposal is not) may be allowed within ESHA. In addition, the applicants raised these issues pursuant to the CDO, specifically on pages 23 to 25 (Exhibit 10) and 30 to 31 (Exhibit 9), and that discussion is incorporated herein. As a result, these issues have already been fully considered by the Commission and there has not been a mistake of fact and/or law that would alter the decision regarding the permit amendment application.

Further, the applicants state that they had no knowledge of any restrictions or conditions on their ability to improve the portions of the subject site and that any violation, if one exists, is merely a technical one committed unknowingly. This defense was also raised by the applicants pursuant to the CDO proceedings and has been reviewed by the Commission. Section 30600(a) of the Coastal Act states that, "in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person. . . wishing to perform or undertake any development in the coastal zone. . . shall obtain a coastal development permit." Thus, the applicants are responsible for complying with the Coastal Act requirements regardless of knowledge. Ignorance of the law is not a defense and is not a valid reason for reconsideration. In addition, the recorded deed restriction limiting future development without a CDP or CDP amendment and the OTD served to put the applicants on notice of the requirements to obtain authorization from the Commission for development on the subject property. Even if the applicants' consultants knew about the OTD and the deed restriction and had enough knowledge of the CDP requirements to know that a CDP or CDP amendment was required for any future development on the subject property, then the applicants are expected to know that information regardless of whether the consultant passed that information on to the applicants.

The theory of imputed knowledge states that "an agent is under a duty to inform his principal of matters in connection with the agency that the principal would desire to know about. Even if he fails to do so, *the principal will in most cases be charged with such notice.*" (2 Witkin, *Summary of California Law* 9th, "Agency and Employment," 99; emphasis added.) In *Columbia Pictures Corp. v. DeToth* (1948) 87 Cal.App.2d 620, the Court of Appeal explained the doctrine of imputed knowledge as follows:

The fact that the knowledge acquired by the agent was not actually communicated to the principal . . . does not prevent operation of the rule. . . The

agent may have been guilty of a breach of duty to his principal, yet the knowledge has the same effect as to third persons as though his duty had been faithfully performed. The agent acting within the scope of his authority, is, as to the matters existing herein during the course of the agency, the principal himself.

In addition, Civil Code Section 2332 states:

NOTICE TO AGENT, WHEN NOTICE TO PRINCIPAL. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

Thus, even if the applicants' consultants did not inform them of the need to obtain a CDP, under the doctrine of imputed knowledge, the applicants are still responsible for complying with the provisions of the Coastal Act. If the applicants' consultants did not know about the CDP requirements or about the existence of the OTD and the deed restriction, the applicants are not excused from compliance with legal requirements. In acting on the permit application, the Commission determines whether the proposed development is consistent with Chapter Three of the Coastal Act. The applicants' assertion that they were not aware of the restrictions on the property or the requirement to obtain a permit is not relevant to this determination. Finally, these issues have already been considered by the Commission and were addressed on pages 29 to 31 of the CDO (Exhibit 9), which is incorporated herein. For the reasons state above, this does not constitute a mistake of fact and/or law that has the potential to alter the decision regarding the permit amendment application.

In addition, the applicants argue that advice and permits received from Los Angeles County appear to control over the Coastal Commission's ability to designate or regulate sensitive habitat on the site. Again, in the context of the CDO proceedings, the applicants made the same arguments, which were specifically addressed in pages 29 and 30 of CDO (Exhibit 9). As stated previously in the CDO, Section 30600(a) of the Coastal Act states that, "in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person. . . wishing to perform or undertake any development in the coastal zone. . . shall obtain a coastal development permit." Under California law, one public agency cannot impair the legal jurisdiction of another public agency by giving erroneous advice. (*California Tahoe Regional Planning Agency v. Day and Night Electric, Inc.* (1985) 163 Cal.App.3d 898.) Thus, regardless of whether the County failed to inform the applicants of the permit requirements or informed the applicants that no permit is required, the applicants are responsible for complying with the Coastal Act requirements. In addition, the recorded deed restriction limiting future development without a CDP or CDP amendment and the OTD served to put the applicants on notice of the requirements to obtain authorization from the Commission for development on the subject property. In addition, in acting on the permit application, the Commission determines whether the proposed development is consistent with Chapter Three of the Coastal Act. The applicants' assertion that they were given incorrect advice by the County is not relevant to this determination.

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The Commission has not delegated its development review authority to Los Angeles County for development in the area of the subject property since the Commission has not certified a LCP for this area. The Commission certified the Malibu/Santa Monica Mountains Land Use Plan (LUP) on December 11, 1986 and adopted findings in support of its certification of the LUP on January 15, 1987. The Implementation Plan (IP), needed to carry out the LUP and complete the Local Coastal Program (LCP) for this area has not been submitted to or certified by the Commission. Therefore, the Commission has not delegated its development review authority, pursuant to Section 30519 of the Coastal Act, for the unincorporated areas of Los Angeles County in the Santa Monica Mountains. The findings for CDP 5-88-056 cite policies of the Malibu/Santa Monica Mountains LUP in support of its determination regarding consistency of the development with the Coastal Act and the requirement for certain conditions. Although policies of the LUP have previously been cited for reference, the County's permits and regulations do not control, limit or supercede the authority of the Commission in reviewing permit applications or in designating or regulating sensitive habitat. Therefore, the Commission currently has the authority and obligation to determine which areas are ESHA pursuant to the definition in the Coastal Act (Public Resources Code section 30107.5) and to apply the policies of the Coastal Act that protect ESHA (Public Resources Code Section 30240).

The Rubinroits applied for permit amendment 5-8-056-A1 for development on the subject property. The Coastal Act required the Commission to evaluate the consistency of the development with the Chapter Three policies of the Coastal Act, which include Section 30240, the policy that protects ESHA. Therefore, the Commission was required to determine whether there is ESHA on or near the locations of the proposed development. In the findings for permit amendment 5-88-056-A1, the Commission determined that the chaparral vegetation on and near the property and the riparian vegetation near the property are ESHA. In the findings for CDP 5-88-056-A1, the Commission correctly determined that some of the development was resulting in removal of the chaparral vegetation which is ESHA and that this is not permitted under Section 30240 of the Coastal Act.. This conclusion does not represent a mistake of fact and/or law. Furthermore, the Commission also determined that the development that was denied would not be consistent with the terms of the offer to dedicate an open space easement recorded against the property as a condition of Permit No. 5-88-056. That recorded offer to dedicate an open space easement and the terms and conditions of Permit No. 5-88-056 prohibit the development proposed by the applicant in the easement area regardless of whether the native vegetation that would be impacted is ESHA. For all the reasons state above, the alleged mistake regarding ESHA does not have the potential to alter the Commission's decision.

Furthermore, the applicants assert that no harm has been suffered to the environment as a result of the proposed development and that, in fact, the development serves as a "firebreak". The applicants already raised this issue in the CDO proceedings. Further, it

was discussed on pages 35 and 36 of the CDO (Exhibit 12), and that discussion is incorporated herein. In addition, the findings of the staff report, specifically pages 22 to 43 (Exhibit 13), address the adverse impacts resulting from the development, and that discussion is incorporated herein. The Commission recognizes the fire hazard of the surrounding area and conditioned permit 5-88-056 and permit amendment 5-88-056-A1 to allow for removal of combustible vegetation to within specified limits from approved structures. The sports court is located over 250 feet from the residence, in an area outside of the permitted zones for fuel modification, however. In sum, the Commission correctly found that the proposed development has resulted in decline in the area and quality of available habitat, increased erosion, geological hazards, decreased water quality and adverse impacts to visual resources. For these reasons, the alleged mistake regarding harm to the environment does not have the potential to alter the Commission's decision.

The applicants also state that they acted on good faith of their vested rights and will be irreparably harmed if required to remove any of the proposed development. This issue was also raised by the applicants in the context of the CDO and was specifically discussed on page 36 of the CDO (Exhibit 12), and that discussion is incorporated herein. The process of applying for a vested rights determination was explained to the applicants previously and a vested rights application was mailed to them on May 21, 2001. The applicants have not submitted a vested rights application for consideration by the Commission staff, even though they have been on notice for over five years that the Commission considers certain development on the subject site to be in violation of the Coastal Act. Therefore, the applicant's purported reliance on an alleged vested right does not constitute a mistake of fact and/or law by the Commission, and does not have the potential to alter the Commission's decision.

Further, the issue of whether development should be removed is separate and distinct from the permit amendment application. In considering a permit or permit amendment application, the Commission reviews the development to determine if it complies with the Chapter Three policies of the Coastal Act. The applicants' assertion that they will be harmed if they must remove the denied development is not relevant to this determination. Further, the applicants have not submitted any evidence to demonstrate that removal of the development would be infeasible. For these reasons, this assertion does not demonstrate a mistake of fact and/or law and does not have the potential to alter the Commission's decision.

Further, the applicants state that targeting the applicants' property when the Commission has not acted on other properties in the area is unfair, improper, and a denial of equal protection. This issue was also raised by the applicants in the context of the CDO proceedings and was specifically reviewed on page 37 of the CDO (Exhibit 14), and this discussion is incorporated herein. As stated in the CDO, the applicants are the subject of the enforcement actions due to their failure to apply for a CDP or CDP amendment for their development, in violation of the conditions of a previously issued CDP. The Commission staff is investigating the applicants' assertion that there are

violations of the Coastal Act on properties in the vicinity of the subject property. Regardless of the results of this investigation, the Commission has the statutory right to enforce the Coastal Act with its cease and desist order powers, pursuant to Section 30810 of the Coastal Act. In acting on the applicant's permit amendment, the Commission determines whether the proposed development is consistent with the Chapter Three policies of the Coastal Act. These assertions are not relevant to that determination. Therefore, this assertion does not demonstrate a mistake of fact and/or law, and does not have the potential to alter the Commission's decision.

In addition, the applicants also argue that the Commission is guilty of laches and is barred from action by the statute of limitations. Again, the applicants raised this issue pursuant to the CDO proceedings and this issue was specifically addressed on pages 38 and 39 of the CDO (Exhibit 15), and that discussion is incorporated herein. Even though the Commission has correctly rejected the defense that it is guilty of laches and is barred by applicable statutes of limitation in its prior actions, the following paragraphs present an explanation of the Commission's rejection of this defense.

The doctrine of laches does not apply in this case. It is well settled that the equitable defense of laches "will not ordinarily be invoked to defeat policy adopted for the public protection" (*City of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 646.¹) In this case, the cease and desist order proceedings were initiated to bring the subject violations into compliance with the Coastal Act, which was adopted to protect coastal resources.

Even if the doctrine were applicable to this proceeding, it is well-established that "laches is an equitable defense that requires *both* unreasonable delay *and* prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors." (*Mt. San Antonio Comm. Coll. Dist. v. Pub. Emp. Rel. Bd.* (1989) 210 Cal.App.3d 178.) The applicants fail to explain either why they believe the Commission's actions involved delay that should be considered to be "unreasonable," or how any such delays have operated to their prejudice.

The applicants' argument that reconsideration should be granted based on the Commission's actions being barred by applicable statute of limitations is equally unavailing. As discussed above, the applicants' actions contributed to Commission staff's delay in enforcing the violations. After issuing the applicants a notice of intent to commence cease and desist proceedings on October 9, 1998, Mr. Rubinroit called Commission staff member Mary Travis to express his desire for an "amicable resolution." On November 12, 1998, Commission staff members Mary Travis and Nancy Cave called Mr. Rubinroit to discuss resolution. Mr. Rubinroit subsequently

¹ Accord: *Morrison v. California Horse Racing Board* (1988) 205 Cal.App.3d 211, 219 ("Where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection, laches may not be raised against a governmental agency.")

agreed to file two complete CDP applications. In reliance on this commitment by Mr. Rubinroit, the enforcement staff removed the cease and desist order hearing from the Commission's agenda. The discussions between staff and Mr. Rubinroit constituted settlement agreements that should not be used to argue delay by the Commission. In the case of *Transwestern Pipeline Company v. Monsanto Company* (1996) 46 Cal.App.4th 502, the Court of Appeal ruled that settlement negotiations weaken, if not completely refute an argument of unreasonable delay in bringing enforcement actions.

The applicants' statute of limitations defense is equally unavailing. The limitations periods the Rubinroits cite, Code of Civil Procedure Sections 315 and 338, are applicable, if at all, only to judicial enforcement proceedings. They have no applicability to administrative enforcement proceedings such as a cease and desist order proceeding brought by the Commission. In *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, the Court of Appeal ruled that statutes of limitations are products of legislative authority and control. At p. 816, the court noted that the law which governed the administrative enforcement proceeding at issue in that case:

noticeably lacks a statute of limitations. The legislature is presumably aware that there are statutes limiting the right to bring action in other, arguably analogous situations. Yet the legislature chose not to impose any limitation on the Board in this precise situation.

Similarly, the Coastal Act's limitation provision in Section 30805.5 does not on its face apply to the issuance of the CDO. Rather, it applies only to actions to recover civil fines and penalties. The Commission issued the cease and desist order against the Rubinroits to remedy a series of violations of the permit requirements of the Coastal Act, not to collect fines and penalties.

In sum, this argument now raised again by the applicants in the reconsideration request was previously considered by the Commission and was addressed in the CDO proceedings and the Commission appropriately determined that a coastal development permit is required for the development at issue. Therefore, the applicants fail to raise a mistake of fact or law that has the potential to alter the Commission decision on amendment 5-88-056-A1.

The applicants also state that the staff report's findings are unsupportable and do not support denial of any of the proposed development. On June 10, 2002, the Commission unanimously voted to partially approve and partially deny the Rubinroits' application for an amendment to CDP 5-88-056 to authorize the proposed development that was the subject of the CDO. The items of development that were denied by the Commission included the lighted sports court, lighted stairway extending from the pool area to the sports court and installation of decomposed granite on the eastern side of the sports court. The Commission also denied those portions of the following unpermitted development that extend into the area subject to the offer to dedicate an open space easement, including the sand fill play area east of the pool, irrigation system, chain link fence, and the water tank. The inclusion of the water tank in this list

of denied development is subject to a determination by the South Central District Office, based on documentation from the Los Angeles County Fire Department, to allow the water tank to remain in its current location in accordance with criteria established by the Commission. The Notice of Intent to Issue the Amendment 5-88-056-A1 reflects this in Special Condition 2 (Exhibit 16). The findings for the Commission's action on amendment application CDP 5-88-056-A1 included a determination that all of development that was denied is inconsistent with some or all of the resource protection policies of the Coastal Act, including Section 30253 regarding geologic stability and protection against erosion; Sections 30230 and 30231 regarding coastal waters; Section 30240 regarding ESHA; and Sections 30251 and 30253(5) regarding visual resources, community character, and minimization of natural landform alteration.

The findings for amendment 5-88-056-A1 also conclude that the chaparral and riparian vegetation on and in the vicinity of the subject site constitute ESHA for purposes of Section 30240 of the Coastal Act. In the findings for CDP 5-88-056-A1, the Commission correctly determined that the chaparral on the subject property and the chaparral and riparian vegetation in adjacent areas are ESHA. The Commission previously determined, in the findings for CDP 5-88-056, that nearby Dark Canyon is also ESHA, and attached conditions to CDP 5-88-056 to protect this ESHA, including the requirement for the OTD an open space and conservation easement for the protection of these sensitive resources. In the findings for CDP 5-88-056-A1, the Commission determined that the denied development was inconsistent with resource protection policies of the Coastal Act. Furthermore, the Commission found in its action on CDP 5-88-056-A1, that the denied development is inconsistent with the recorded offer to dedicate an open space easement and the terms and conditions of CDP 5-88-056, regardless of whether the native vegetation that would be affected was ESHA. For the reasons cited above, this assertion does not constitute a mistake of fact and/or law that has the potential to alter the Commission's decision.

Finally, the applicants also assert that Commission staff has acted wrongfully and in an attempt to deny the applicants due process and in violation of the separation of powers. The Commission disagrees with the assertion that it has been acting in violation of the United States and California Constitutions. Although a Sacramento County Superior Court judge ruled in the *Marine Forest Society vs. California Coastal Commission* case that the appointment of the Commissioners violates the separation of powers provision of the California Constitution, a stay of this decision has been issued and an appeal of this decision is pending before the California Court of Appeal. The courts have not taken any action to prevent the Commission from exercising its authority under the Coastal Act. Therefore, this assertion does not constitute a mistake or fact and/or law that has the potential to alter the Commission's decision.

The Commission finds that the applicants' claim of being deprived due process is also without merit. Pursuant to the review of the permit application, the Commission did not respond to arguments that were already rejected in the Commission's findings for the CDO. The findings for the CDO are final and binding since the applicants did not avail

themselves of the procedure for filing for a petition for a writ of mandate as directed by Section 30801 of the Coastal Act. Because the Rubinroits had the opportunity to seek judicial review of the Commission's decision on the CDO, but chose not to do so, they were not deprived of due process with respect to the determinations made in the CDO.

The Commission staff's refusal to recommend that the Commission postpone the hearing for amendment application CDP 5-88-056-A1 so that the applicants could file an application to amend or rescind the CDO did not result in a deprivation of due process. The Commission staff denied the applicants' request for a hearing to rescind or modify the CDO because the applicants did not meet the threshold test provided for in Section 13188 of Title 14 of the California Code of Regulations, which states the following:

A person to whom a Cease and Desist Order is directed may commence a proceeding for the purpose of rescinding or modifying that Cease and Desist Order only where the person demonstrates to the satisfaction of the executive director that there has been a material change in the facts upon which the order was issued.

In addition, the applicants also argue that they were advised by Commission staff that the CDO would have no effect on the application for CDP 5-88-056-A1 and that they otherwise would have applied earlier and more completely to modify or rescind the CDO. The applicants were free to propose to modify or rescind the CDO at any time. In fact, they did so and their request was rejected. Commission staff's statement that the CDO would not affect the amendment application was accurate, as the Commission's staff recommendation regarding the development proposed in the CDP 5-88-056-A1 application was based solely upon an analysis of consistency with the Chapter Three policies of the Coastal Act and the previously issued permit, CDP 5-88-056. Further, the issues resolved in the CDO findings include whether development that requires a coastal development permit or amendment occurred on the subject property. The findings for amendment CDP 5-88-056-A1 addressed the issues of whether the development proposed in the application complies with the Chapter Three policies of the Coastal Act. The Commission finds that there was no error of fact or law with respect to these issues that has the potential to alter the Commission's decision on permit amendment 5-88-056-A1.

C. Conclusion

The Commission finds that there is no relevant new evidence that in the exercise of reasonable diligence could not have been presented at the hearing on the permit and that there was no error of fact or law with regard to the permit approval. Further, the Commission finds that neither the new evidence submitted by the applicants nor their arguments regarding error of fact or law has the potential of altering the initial decision, including the denial of the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of

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the sports court and the imposition of Special Condition 2, requiring revised project plans. The Commission made clear and supportable findings for its action on June 10, 2002. Therefore, the applicants' reconsideration request is denied.

SIDLEY AUSTIN BROWN & WOOD LLP

CHICAGO
DALLAS
NEW YORK
SAN FRANCISCO
WASHINGTON, D.C.

555 WEST FIFTH STREET
LOS ANGELES, CALIFORNIA 90013
TELEPHONE 213 896 6000
FACSIMILE 213 896 6600
www.sidley.com
FOUNDED 1866

BEIJING
GENEVA
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(213) 896-6602

RECEIVED

WRITER'S E-MAIL ADDRESS
hrubinroit@sidley.com

JUL 09 2002

July 8, 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

VIA FEDERAL EXPRESS

California Coastal Commission
c/o South Central Coast Area Office
89 South California Street, Suite 200
Ventura, California 93001

Re: Application No. 5-88-056-A1 (the "Application"); Property: 25351 Piuma Road, Los Angeles County (the "Subject Property"); Applicants: Howard and Terry Rubinroit (the "Applicants")

To The Honorable Members of the California Coastal Commission:

Pursuant to the California Coastal Act, §§30626 and 30627 of the Public Resources Code, and Title 14, California Code of Regulations, Article 18, Reconsideration, ¶¶ 13109.1 to 13109.5, inclusive, Applicants hereby request reconsideration of 1) the terms and conditions of Coastal Development Permit 5-88-056-A1 ("CDP") insofar as it approves the after-the-fact development of the so-called chain link fence, but requires that the portion of the chain link fence located within the area purportedly subject to the offer to dedicate an easement be relocated; and 2) the denial of any of the "development" which is the subject of the Application.

This Request for Reconsideration ("Request") is made on the grounds that: 1) there exists relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the Application; and 2) errors of fact and/or law have occurred which, if corrected, have the potential of altering the Commission's decision on the Application and concerning the CDP.

The relevant new evidence consists of the following:

- a) Letter, dated June 24, 2002, from Dr. Daryl Koutnik, Senior Biologist, Impact Analysis, Los Angeles County Department of Regional Planning, to Don Schmitz of Schmitz & Associates, a true and correct copy of which is attached hereto as Exhibit 1, and incorporated herein by this reference. As stated in the Declaration of Howard J.

EXHIBIT 1	
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Rubinroit, dated June 9, 2002 ("Rubinroit Decl."),¹ at paragraph 19, Dr. Koutnik was provided a copy of the Staff Report respecting the Application but, until on or about June 7, 2002, apparently was not authorized to prepare any comments with respect thereto. On or about June 7, 2002, Dr. Koutnik was asked by Supervisor Yaroslavsky's office to prepare comments with regard thereto. *Id.* However, Dr. Koutnik's comments were not prepared until June 24, 2002, and were not and could not have been presented on or before the June 10, 2002 hearing (the "Hearing") on the Application.² Dr. Koutnik's June 24, 2002 letter supports the previous findings and conclusions of the only other qualified biologist to study and consider the Subject Property – Steve Nelson, Applicants' retained expert,³ and concludes, among other things, that the Subject Property is not an environmentally sensitive habitat area ("ESHA") or adjacent to an ESHA; that riparian resources do not exist on or adjacent to the Subject Property; and that the portion of the mapped blue-line drainage adjacent to the Subject Property does not qualify as ESHA, and, indeed, that the mapped blue-line drainage qualifies as ESHA at a point no closer than ¼ of a mile from the Subject Property. On the other hand, the Commission Staff was and is either unable or refuses to provide any information respecting the qualifications of any Commission personnel who actually performed any activities, including investigation or analysis, respecting the Subject Property, including in connection with the Application. See, Letter, dated June 7, 2002, from the Abe G. Doherty to Schmitz & Associates, a true and correct copy of which is attached hereto as Exhibit 3, and incorporated herein by this reference.⁴ Accordingly, none of the purported findings as to biological and/or environmental issues and concerns respecting the Subject Property required to be evaluated under the Coastal Act, including whether the Subject Property is in or closely adjacent to an ESHA or concerning the location, nature, and/or supposed impacts on the so-called blue-line drainage, are supported by any competent evidence; indeed, they are contrary to the only competent evidence submitted in connection with the Application.

b) Photograph of the Subject Property showing the so-called "children's play area" east of the pool, and the portion of the chain link fence located within the area purportedly subject to the offer to dedicate an easement, a true and correct copy of which attached hereto as Exhibit 4, and incorporated herein by this reference. The photograph

¹ A copy of the Rubinroit Decl. was filed with the Commission on June 10, 2002, and a copy thereof is attached hereto as Exhibit 2 for the convenience of the Commission.

² At the Hearing, Applicants made a request for a continuance and/or that the record be left open in part because of Dr. Koutnik's anticipated letter, but that request was denied.

³ To Applicants' knowledge, no Commission biologist visited the Subject Property in connection with the Application or otherwise, and, certainly, no Commission biologist ever requested or received Applicants' permission to enter onto and/or investigate the Subject Property.

⁴ Mr. Doherty's letter is dated June 7, 2002, and was received by Schmitz & Associates on June 10, 2002, the date of the Hearing on the Application.

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reveals that the "children's play area" is very small in area and is located immediately adjacent to the lawn area; that a portion thereof (to about the location of the tetherball pole) is located outside of the area purportedly subject to the offer to dedicate an easement ("OTD"); and that the portion of the "children's play area" located in the area purportedly subject to the OTD is "undeveloped" and merely covered with a thin layer of sand commonly found in the Coastal Zone. The photograph further shows that the portion of the chain link fence in the area purportedly subject to the OTD follows the natural topography and contours of the land, and was and is constructed in the least visually obtrusive location possible. This photograph was not earlier supplied in connection with the Application since the Staff Report indicated that the only serious objection to the "children's play area" and the portion of the chain link fence located in the area purportedly subject to the OTD were that they were in fact located in the area purportedly subject to the OTD. Immediately following the hearing, the Executive Director advised Applicant Howard Rubinroit that if moving a portion of the "chain link fence" would increase visual impact, the Staff would consider "the possibility of leaving the portion of the fence in the area subject to the offer to dedicate the open space easement in its current location." See, Notice of Intent to Commence Restoration Order Proceeding ("NOI"), dated June 20, 2002, page 2, footnote 2. Thereafter, the Executive Director indicated that he had concluded that such "possibility" was foreclosed by "the recent action by the Commission denying [the] application to approve the fence in its current location." *Id.* Accordingly, since no Coastal Act policy is furthered by re-location of a portion of the chain link fence, and, indeed, any negative visual impact thereof would be increased by such re-location, Applicants request reconsideration of the Commission's decision on the Application and in the CDP which imposes the condition that the eastern portion of the chain link fence be re-located.

The mistakes of fact include the following:

c) The information contained in the California Coastal Commission Staff Report, dated May 20, 2002 ("Staff Report") and in the CDP's purported findings concerning the supposed presence of an ESHA on or closely adjacent to the Subject Property is not consistent with the Los Angeles Sensitive Environmental Resources Area map, nor is it correct in the analysis of the resources present on the Subject Property. See Exhibit 1.

d) The information contained in the Staff Report and in the CDP's purported findings concerning the Subject Property being in an area of the Dark Canyon which is an ESHA, since the riparian features specifically associated with the Dark Canyon drainage which could be considered an ESHA are located no closer than at least a thousand feet distance from the Subject Property. See Exhibit 1.

e) The information contained in the Staff Report and in the CDP's purported findings that the Subject Property is located proximate to riparian vegetation, including

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riparian vegetation associated with the so-called blue line drainage, because the actual riparian resources supported by the so-called blue line drainage do not exist on or adjacent to the Subject Property. See Exhibit 1.

f) The information contained in the Staff Report and in the CDP's purported findings that categorize the so-called blue line drainage as ESHA, since it is an arbitrary categorization without any substantiation or analysis of the riparian resources in the area of the Subject Property. See Exhibit 1. In fact, the so-called blue line drainage adjacent to the Subject Property is not an ESHA, and the blue line drainage does not qualify as ESHA until its location more than a quarter of a mile from the Subject Property. See Exhibit 1.

g) The information contained in the Staff Report and in the CDP's purported findings that chaparral vegetation on the Subject Property constitutes an ESHA, because, inter alia, 1) the chaparral on the Subject Property is primarily chamise chaparral, one of the most common types in California; 2) the Subject Property is not intended to be a wildlife habitat, and abundant amounts of the same wildlife habitat exist in the areas surrounding the Subject Property; and 3) of the fact that the chaparral on the Subject Property is not rare to the area or, indeed, in the entire State. See Exhibit 1.

h) The information contained in the Staff Report and in the CDP's purported findings that the Subject Property is in or immediately adjacent to an ESHA, because such information is inconsistent with the Los Angeles County Sensitive Environmental Resource Area map, and with the present nature, condition, and circumstances of and adjacent to the Subject Property. See Exhibit 1.

i) The representations made to the Commission at the Hearing, in response to a question from Commissioner Dettloff, as to whether it was true "that Fish and Game was taking an entirely different position . . ." from that taken by the Commission, and/or that the total nature and "extent of" Fish and Games' determination simply "was that no stream bed alteration agreement was required . . ." ⁵ In fact, Mr. Abe Doherty's own handwritten report of his conversation with Cindy Wood of the Department of Fish and Game states that she found that the effects of the development of the sports court were not significant; i.e., that:

"She said that the development is not w/in DFG jurisdiction.
She wouldn't call it significant (alteration of stream bed/bank)."⁶

⁵ See, Reporter's Transcript of Proceedings ("Transcript"), page 40, ll 10-22, a true and correct copy of which is attached hereto as Exhibit 5.

⁶ See, April 18, 2001, Violation Investigation Report – Telephone Log, prepared by Abe Doherty, a true and correct copy of which is attached hereto as Exhibit 6.

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j) The information contained in the Staff Report and in the CDP's purported findings, and the statement made by Commissioner Reilly at the Hearing, that the development which is the subject of the Application is located on an area of the Subject Property subject to an irrevocable offer to dedicate "an open space easement," and to a requirement to "keep the property in open space for the period of time that the open space easement would run"⁷ In fact, the OTD provides that, among the permitted uses of the so-called "Protected Land" subject to the OTD, is use for "private recreation. . . ."⁸ Moreover, "development" on the "Protected Land" is not prohibited, but merely restricted, and "development approved by the Coastal Commission or its successor agency on a subsequent Coastal Permit" is fully allowed. Id.

k) The information contained in the Staff Report, reported by Staff at the Hearing, and contained in the CDP's purported findings respecting the supposed visual impacts of the proposed development, and the visibility of the proposed development from three supposedly significant view points within a mile of the Subject Property and from the Backbone Trail. In fact, there exist no "significant viewpoints" within a mile of the Subject Property, the information respecting the "significant viewpoints" reported by Staff is unsupported and unsupported, and, in fact, is contrary to the line of sight analysis submitted to the Commission by Applicants; and any impact is insignificant in comparison to the visual impact of Applicants' house which was permitted by the Commission in 1988.

l) The identity of the "Staff" person supposedly responsible for the Staff Report -- S. Haswell, as indicated on page 1 of the Staff Report. Applicants are informed and believe that Ms. Haswell is on extended leave from the Commission, and was on leave and did not participate in the preparation of the Staff Report issued on May 20, 2002.

The errors of mixed fact and law and/or of law which have occurred, and which, if corrected, have the potential of altering the Commission's decision on that portion of the Application which the Commission denied, include the following:

m) The Staff's claims in the Staff Report and the purported findings of the CDP that the purported findings of Cease and Desist Order CCC-01-CD-01 (the "CDO") apply to and are binding on the Applicants respecting the Application. In fact, and among other things, the supposed findings in connection with the CDO were unsupported by the evidence; those supposed findings are not and have never become final; the Commission is estopped to assert the applicability or finality of those supposed findings

⁷ See Transcript, page 41, ll 4-14 (emphasis supplied). A true and correct copy of that portion of the Transcript is attached hereto as Exhibit 7.

⁸ See, OTD, Exhibit A to Staff Report, a true and correct copy of which, for the convenience of the Commission, is attached hereto as Exhibit 8, and incorporated herein by this reference.

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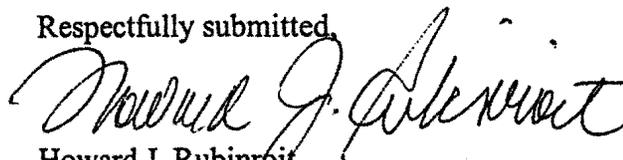
as to the Application, because, inter alia, Sabrina Haswell, a staff person in the Ventura office, advised Don Schmitz, Applicants' representative, that the CDO and its findings would not have any effect on the Application, and that the Application was complete and would be reviewed and determined on its merits, and, in reliance thereon, Applicants discontinued the efforts which they had announced to Staff and begun to implement to bring a proceeding under Section 13188 of Title 14, Division 5.5, Chapter 5, Sub-Chapter 8 of the California Code of Regulations to expunge or correct the errors in the CDO and its findings,⁹ and the Coastal Act requires the Commission to consider and determine the Application and to consider the evidence supplied in connection therewith fully on their merits.

n) The determination by the Commission that certain of the development which was and is the subject of the Application should be denied because they are located within the area supposedly subject to the OTD is a violation of the U.S. and California Constitutions, and constitutes a further and full taking of that portion of the Subject Property supposedly subject to the OTD, all without a consideration of the "nexus" of such a full and final taking to the public purpose to be achieved thereby, and without the payment of any consideration therefor.

o) Each and all of the grounds and bases stated in paragraph 42 of the Rubinroit Decl., Exhibit 2 hereto, all of which are incorporated herein by this reference.

Accordingly, Applicants hereby respectfully request that the Commission reconsider that portion of its decision on the Application and its decision and supposed findings in the CDP to the extent that they deny any of the development which was and is the subject of the Application, and further reconsider the condition in the CDP that a portion of the chain link fence be re-located.

Respectfully submitted,



Howard J. Rubinroit

HJR:sk

⁹ See, Exhibit G to Rubinroit Decl., Exhibit 2 hereto.



Los Angeles County
 Department of Regional Planning
 Director of Planning James E. Haril, AICP



June 24, 2002

Don Schmitz
 Schmitz And Associates
 29350 West Pacific Coast Highway, Unit 12
 Malibu, CA 90265

RE: Coastal Commission Staff Report, Application No. 5-88-056-A1 (May 20, 2002).

Dear Mr. Schmitz:

I have reviewed the California Coastal Commission Staff Report (Report) of May 20, 2002 for Application No. 5-88-056-A1 and find that information contained in B. Sensitive Environmental Resources concerning the presence of environmentally sensitive habitat area (ESHA) on the subject property is not consistent with the Los Angeles County Sensitive Environmental Resource Area map nor is it correct in the analysis of the resources present. The Report claims that chaparral and riparian ESIIAs are adjacent to the project site, a finding with which Los Angeles County can neither agree nor accept. The Report asserts that the Dark Canyon area is an ESHA and has been recognized as such in the past by the Coastal Commission. I can find no evidence that this is true other than the riparian features specifically associated with the Dark Canyon drainage (at least 1000 feet distant from the project site), resources which Los Angeles County designates as FSHA.

The Report maintains that this project site is proximate to riparian vegetation because of the depiction of a blue line stream on the Malibu Beach USGS Quadrangle. A blue line drainage is depicted to the north of the parcel on the USGS topographical map although actual riparian resources supported by this drainage do not exist adjacent to the project site. The Report arbitrarily categorizes a blue line stream as ESHA without any substantiation or analysis of the riparian resources present in that specific drainage. Los Angeles County does not recognize the blue line drainage adjacent to the project site as ESHA although the drainage does qualify as such much further downstream (more than a quarter mile from the project site).

The Report correctly identifies chaparral as the primary native habitat on the project site and surrounding areas but there is no specific identification of which subtype is actually present. The chaparral on site is primarily chamise chaparral, one of the most common types in California. The Report asserts that chaparral vegetation of the project site constitutes an ESHA because the plant species are used "for wildlife habitat rehabilitation and restoration." While it may be true that chaparral species are used for wildlife habitat rehabilitation and restoration, this is not relevant to the proposed project because the property is not intending to be wildlife habitat and plenty of this habitat exists in the surrounding areas. These chaparral species are certainly not rare in this location nor in the entire state. The County of Los Angeles does not recognize chaparral vegetation as qualifying for ESHA recognition and believes that the Coastal Commission is acting incorrectly when making such a finding since the Commission is not a legislative body. The County does not acknowledge any ESHA on the subject property nor in the immediate vicinity of the project site.

If you have any questions, please contact me at (213) 974-6461, Monday through Thursday between 7:30 a.m. and 6:00 p.m. Our offices are closed on Fridays.

Very truly yours,


 Daryl Koutnik, Senior Biologist
 Impact Analysis

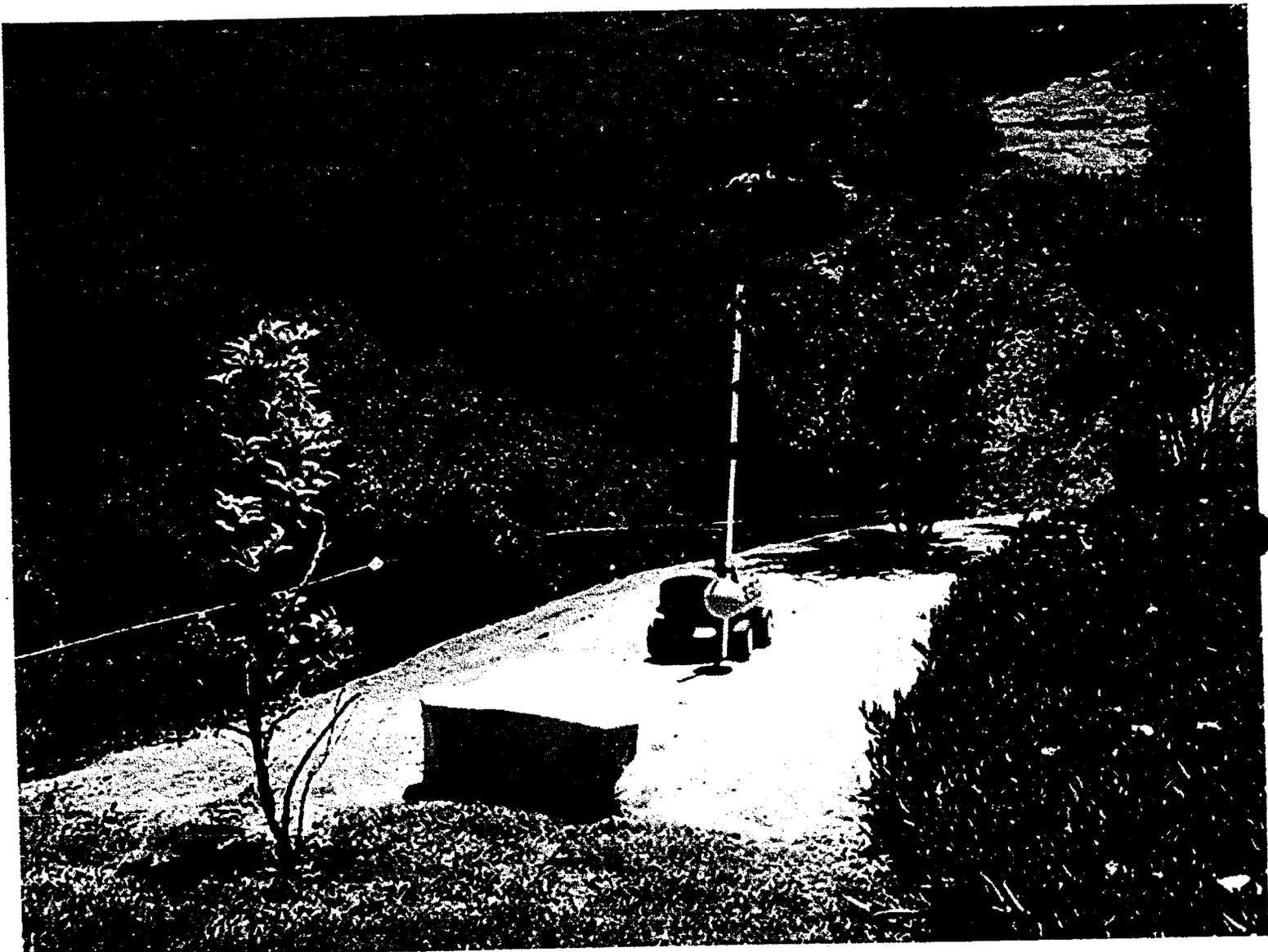


EXHIBIT 3
5-88-056-A1-R (Rubinroit)
Photograph submitted with Reconsideration Request

sports court, and installation of decomposed granite on the eastern side of the sports court from the project plans.

The Commission finds that, as conditioned to provide evidence of the geotechnical consultant's review and approval of the final plans, evidence of removal of the concrete debris from the eastern drainage area to an appropriate disposal location, revised plans, landscape, and fuel modification, the portions of the proposed development approved are consistent with Section 30253 of the Coastal Act.

B. Environmentally Sensitive Resources and Water Quality

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means 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 developments.

Section 30230 of the Coastal Act states:

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

Section 30231 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.

In addition, Section 30240 of the Coastal Act states:

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

EXHIBIT 4

5-88-056-A1-R (Rubinroit)

Portions of Staff Report, 5-88-056-A1, May 20, 2002

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

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat area ("ESHA") 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 developments." Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

Furthermore, in past Commission actions, the Commission has emphasized the importance placed by the Coastal Act on protection of sensitive environmental resources. Specifically, the Commission has required that new structures shall be located at least 100 feet from the outer limit of area designated as ESHA. In addition, in past actions, the Commission has required grading to be minimized to ensure that the potential negative effects of runoff and erosion on watershed and streams are lessened. In addition, the Commission has also denied permits for the placement of fill and structures within blueline streams and drainages.

As stated earlier, a blueline stream and chaparral and riparian ESHA are located adjacent to and/or on the subject site and the portion of the adjacent parcel for which an easement was granted to authorize the development related to the sports court. In addition, the Dark Canyon area in the vicinity of the subject site is ESHA and has been recognized as ESHA under past Commission actions. Further, as stated previously, the Coastal Act defines an environmentally sensitive area 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 developments." Chaparral, which occupies the surrounding area and portions of the subject site which have not been cleared of native vegetation, and the blueline stream and riparian habitat adjacent to the subject site are unique habitat areas that provide water, shelter, and migration corridors for wildlife. In addition, the chaparral on the subject site is part of an overall, large, contiguous, undeveloped area comprised of mature, rich chaparral habitat. Chaparral and riparian plant species are often used for wildlife habitat rehabilitation and restoration, in addition to watershed improvement. Due to this biological significance, areas of chaparral and riparian habitat, such as that on and adjacent to the subject site, have been considered ESHA pursuant to previous Commission actions. In addition, there are several oak trees located adjacent to the subject site, which are also an unique and significant resource.

Further, the subject site and the surrounding area is also within the Cold Creek Resource Management Area that has been recognized as an significant area by the Commission under past permit actions. In past Commission actions, the Commission has recognized that this designation this portion of the Santa Monica Mountains as the Cold Creek Resource Area reflects the unique resources that must be protected in the Cold Creek region, of which the subject site is a valuable part.

The benefits of chaparral and riparian areas are manifold, rendering these resources significant in many respects. For example, direct benefits of chaparral plant communities include increased water percolation to recharge groundwater, decreased storm runoff, healthy soil chemistry and structural integrity, and increased biological diversity resulting in decreased pest pressure for agriculture and landscaping. The direct benefits of riparian habitat include providing shade cover to moderate water temperature, stabilizing the stream banks to reduce erosion, providing food and shelter for wildlife migrating along the riparian corridor, and providing perching sites for birds that depend on streams for prey and water. Chaparral and riparian habitat also provide nesting and refuge sites for insectivorous birds. When these upland habitats are lost, insect balances in adjacent areas are altered. These imbalances can often result in chronic outbreaks of pests in agricultural areas and other vectors (such as mosquitoes) in urban areas. These plant communities are also important to species such as birds, mountain lions, deer, frogs, and tiger salamanders. Chaparral and riparian plant communities, including oak trees, provide shade and lower water temperatures in streams, thereby protecting fish and other aquatic life.³

As stated above, chaparral and riparian habitat communities have intrinsic aesthetic, environmental, and ecological values. In addition to providing shade, these resources help to stabilize soil on steep slopes, minimize noise, deflect wind, and filter dust and pollutants from the air⁴. In addition, these areas also provide habitat for a wide range of wildlife species and corridors to maintain genetic diversity between wildlife populations⁵. Chaparral and riparian habitat areas are becoming increasingly rare, however, due to increased direct and indirect impacts from development and other factors⁶. Over the past 200 years, human activities have dramatically changed the complexion of chaparral and riparian habitat areas, as vast acreages have been removed for intensive agriculture, forage production, and urban and residential development⁷. Chaparral and riparian and oak woodlands are not only rare and especially valuable due to their role in ecosystems, but they are also sensitive and may be easily disturbed or degraded by human activities and development.

³The California Oak Foundation, September 5, 2000.

⁴ *A Planner's Guide for Oak Woodlands*, University of California, Integrated Hardwood Range Management Program, 1993, page 5.

⁵ Id. at 6.

⁶ *Tracking a Mysterious Killer, The Relentless Spread of Sudden Oak Death*, California Coast & Ocean, Winter 2001-02, Elizabeth F. Cole, page 3.

⁷ *A Planner's Guide for Oak Woodlands*, University of California, Integrated Hardwood Range Management Program, 1993, page 2.

In sum, the environmental significance, increasing rarity, and susceptibility to disturbance from human activities, as detailed above, render chaparral and riparian plant communities environmentally sensitive habitat areas, as defined by Section 30107.5 of the Coastal Act. The chaparral habitat on the subject site and riparian habitat adjacent to the subject site are particularly significant, as the blueline stream to the north of the site drains into Cold Creek. In addition, there are two drainages on the subject site that filter into this blueline stream. Further, as stated previously, Dark Canyon to the north of the subject site has been recognized as ESHA under past Commission actions. Additionally, the project site is within the Cold Creek Management Area, as also recognized in past Commission actions.

The applicants have asserted that no harm has been suffered to the environment in the area of their property. The applicant have also argued that the area in which the existing single family residence is located is not sensitive habitat. Further, the applicants have also claimed that a blueline stream no longer traverses the property in the area of the sports court. However, the subject property is located directly adjacent to a stream that is an unnamed blueline stream that is a tributary to Cold Creek and does constitute ESHA. The stream is shown on the USGS Malibu Beach Quadrangle as a blueline stream and was observed by Commission staff as flowing within approximately fifty feet from the non-native sand or decomposed granite located adjacent to the sports court. This stream is located approximately sixty feet from the eastern portion of the sports court.

Furthermore, when the underlying project (construction of a four level, 4,260 square foot single family residence with a well and a septic system) was permitted, the Commission was concerned about the cumulative impacts on the Cold Creek Resource Management Area and ESHA, particularly impacts from runoff, as well as erosion from construction activities. To address this concern, the Commission conditioned the permit to require the landowner to obtain an amendment to CDP 5-88-056 or a new CDP before constructing any additional development on the property, including improvements that might otherwise be exempt from permit requirements, to record an OTD open space easement on the portion of the property outside of the development footprint for the single family residence and the graded pad upon which it was approved, and develop fuel modification and landscaping plans to minimize vegetation clearance in the open space area.

Those portions of the development that are proposed within the area covered by the OTD an open space deed restriction, in particular, have the potential to negatively impact the blueline stream, water quality, and ESHA that the Commission intended to protect through the standard and special conditions of the underlying CDP. The sports court proposed by the applicants is constructed down slope from the single family residence, adjacent to the drainages and blueline stream, and is within the area covered by the OTD an open space deed restriction. The Commission's files indicate that the pad for the sports court did not exist at the time the application for CDP 5-88-056 was reviewed. In fact, approximately 40 square feet of the sports court was constructed on the adjacent parcel not owned by the applicants. As a result, the applicants purchased an easement for this portion of the development on November 28, 2001.

Steve Nelson, the biological consultant hired by the Rubinroits, concluded that the nearest blueline stream was approximately 100 feet to the northeast of the sports court. With respect to the riparian canopy for the blueline stream, he concluded that the "canopy of this vegetation does not extend beyond 10 to 20 feet on either side of the flow line and does not come close to the affected area." However, the plans submitted by the Rubinroits show the stream as being located approximately sixty feet to the east of the sports court and fifty feet from the area of decomposed granite adjacent to the sports court. In addition, Steve Nelson based his analysis of the impacts of the removal of vegetation for the construction of the sports court on the conditions that existed after the area had already been graded and the native vegetation had already been removed. Therefore, his conclusion that "no impacts of consequence" resulted from the proposed development does not reflect the impacts that occurred pursuant to the grading and removal of vegetation in this area. The grading and removal of native vegetation associated with the construction of the sports court and placement of fill on the eastern side of the sports court will eliminate ESHA and result in adverse impacts to habitat, water quality, and alteration of floodwaters.

By increasing the amount of impervious surface area through the construction of the lighted sports court and lighted stairway extending from the pool area to the sports court, the amount of stormwater infiltration in the area is reduced, thereby potentially increasing the volume and velocity of sheet flow down the hillside, into the blueline stream that is a tributary to Cold Creek and ESHA. This increased surface transport of stormwater could result in increased erosion, changes in stream morphology, and impaired water quality. In addition, the removal of vegetation in this area to construct the sports court also harms the ESHA by reducing the amount and quality of available habitat and increasing the potential for erosion. The applicants assert that only minimal or no grading occurred for the construction of the sports court and decomposed granite area adjacent to the sports court, although they refused to provide staff with an engineer or geologist's analysis of the amount of grading to document this claim. In issuing the Cease and Desist Order, however, the Commission already determined that grading had occurred in these areas, and that finding is final and binding. Although the Commission does not know the exact amount of grading that occurred, because the applicants refused to provide this information, the exact amount is not necessary to evaluate the applicants' proposal because no amount of grading would be consistent with the Coastal Act policy protecting ESHA. Even if only minimal (or even no) grading was performed, construction of the sports court and decomposed granite area still resulted in removal of native chaparral habitat in close proximity to a stream, which is inconsistent with the policy of the Coastal Act requiring the protection of ESHA and which states that only resource dependent uses (which the current proposal is not) may be allowed within ESHA. The night lighting also has a negative impact on the riparian area and ESHA, as it has the potential to cause negative impacts to wildlife. In addition, the drainage system, grey water outlet, and irrigation system could also cause erosion and contribute to degradation of resources and water quality on the subject site.

In fact, as stated in the previous section, the applicants have submitted a report entitled, "Update Geological and Geotechnical Engineering Investigation," dated September 11, 2001, GeoSoils Consultants, Inc., which states:

Shallow surficial soils are subject to slope creep on the steeper descending slopes about the property. . . .

The sports court was constructed on the cut portion of the ridge with the removed material being placed as fill in the shallow swale to the west of the sports court. Minor erosion has occurred in the surficial soils at single locations on the east and west sides of the paving for the sports court. . . .

As described previously in this report, two areas of soil adjacent to the paved surface have experienced erosion, which is believed to have been present prior to installation of the sports court. Riprap or other erosion protection should be placed at these locations to mitigate further erosion.

This report raises concerns regarding the stability and erosion of portions of the subject site, particularly the steep slopes. In addition, this report states that there are currently problems regarding erosion adjacent to the paved surface of the sports court. Further, this report recommends the installation of riprap or other erosion protection devices adjacent to the sports court to "mitigate further erosion". Although the applicants are not currently proposing the installation of any riprap or other erosion protection devices adjacent to the sports court, the findings of the report referenced above indicate that this development would likely be required in the future. Therefore, further development would possibly be required in the future to stabilize the proposed sports court. As a result, the sports court could have adverse impacts on water quality and sensitive resources by increasing erosion. Further, the installation of decomposed granite on the eastern side of the sports court may also exacerbate erosion in this area and discourages the growth of native vegetation that would decrease scouring and erosion of the site. Further, both the proposed sports court and the decomposed granite adjacent to the sports court occupy an area that is not adjacent to the existing single family residence or graded pad upon which the existing single family residence is located. As a result, these structures create a fragmentation of the chaparral habitat on site and of the contiguous, open, undisturbed chaparral in the overall area that is devoid of such development. Therefore, the Commission finds that the proposal to amend the permit that authorized a single family residence on the subject site, but required an open space condition to protect ESHA, to allow accessory structures in the open space area would be inconsistent with the Coastal Act policy that requires protection of ESHA.

In addition to stating that "soils are subject to slope creep on the steeper descending slopes about the property," the report dated September 11, 2001, by GeoSoils Consultants, Inc., also states that the "area of shallow uncompacted fill on the slope below the swimming pool could be subject to surficial slope failure in the event of extended periods of heavy rainfall, or heavy landscape watering." The lighted stairway extending from the pool area to the sports court proposed by the applicants is located on the steep slopes of the site, which the applicants' consultant have stated are subject to creep. In addition, the lighted stairway extending from the pool area to the sports

court are also located below the swimming pool, in an area which the applicants' consultant states could be subject to surficial slope failure. Further, Commission staff noted during a visit to the subject site that there was visible evidence of surficial slumping below the swimming pool, in the area where the lighted stairway from the pool area to the sports court is proposed.

In addition to these potential direct impacts to the ESHA, the development within the area defined by the OTD may deter acceptance of the OTD. To date, the OTD has not been accepted. Acceptance of the OTD open space easement ensures that it will be maintained and that the integrity of the environmental resources on site will be preserved.

As a result, the Commission finds that the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court is likely to have adverse impacts on significant environmental resources and water quality. Due to these considerations, the Commission finds that those portions of the proposed development located within the area restricted by the OTD open space deed restriction, including the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with Sections 30230, 30231, 30240 of the Coastal Act.

As conditioned, however, that portion of the proposed development including the construction of the swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; placement of sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage are consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

Special Condition 2 requires revised project plans that delete the development that has not been approved in this permit amendment, i.e., the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court and that show a relocation of the eastern portion of the fence adjacent to the single family residence, certain portions of the irrigation system, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, and sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction. As conditioned, this development will be relocated within the development footprint approved pursuant to the underlying permit, CDP 5-88-056 and outside of the area subject to the open space deed restriction. In addition, **Special Condition 2** will also ensure that the adverse impacts to sensitive resources and water quality from the approved development will be minimized, as the development approved will be located entirely outside of the area restricted by the OTD and will be within the general

development footprint of the existing single family residence, thereby clustering development.

In addition, 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.

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.

The portion of the proposed development approved under this amendment 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 portion of the proposed development approved under this amendment 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 5**, and finds this will ensure the approved 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.

As stated previously, the proposed project includes a swimming pool and spa. There is the potential for swimming pools and spas to have deleterious effects on aquatic habitat if not properly maintained and drained. In addition, chlorine and other chemicals are commonly added to pools and spas to maintain water clarity, quality, and pH levels. Further, both leakage and periodic maintenance of the proposed pool and spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and may result in the transport of chemicals, such as chlorine, into coastal waters, adversely impacting intertidal and marine habitats. In order to minimize potential adverse impacts from the proposed swimming pool and spa, the Commission requires the applicant to submit a pool drainage and maintenance plan, as detailed in **Special Condition 6**. The plan shall include a separate water meter for the pool and spa, which will serve to monitor water levels of the pool and spa and identify leakage. The plan shall also include a description of the materials to be utilized to prevent leakage of the pool and spa shell and shall identify methods to control infiltration and run-off from periodic pool and spa drainage and regular maintenance activities. The Commission finds that, as conditioned to minimize potential impacts of the proposed pool and spa, this portion of the project is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

Furthermore, 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. In addition, the landscape and fuel modification plan required under **Special Condition 3**, as discussed previously, will also mitigate adverse impacts to native vegetation, surrounding resources, and water quality. Therefore, the Commission finds that **Special Condition 3** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

The removal of concrete from the eastern drainage will also improve water quality. In order to ensure that the applicants dispose of this removed concrete in an appropriate

location, **Special Condition 4** requires the applicant to dispose of this material outside of the Coastal Zone or obtain a new CDP or amendment to dispose of it within the Coastal Zone. Furthermore, **Special Condition 8**, which requires the applicant, within 60 days of issuance of this permit amendment, to cap the grey water outlet and properly connect it to the existing septic system, submit to the Commission written confirmation from the Los Angeles County Department of Health Services that this has been completed, and remove the concrete placed in the eastern drainage will also ensure that the potential adverse impacts from this unpermitted development that the applicant is proposing to resolve will be resolved in a timely manner.

In addition, the applicant is proposing to cap the existing grey water system that discharges on the slopes of the subject site and connect it to the existing septic system. The Environmental Health Department of the County of Los Angeles has given in concept approval for the septic system that is existing on the subject site and has also required the applicant to cap the grey water system and connect it to the existing septic system. This conceptual approval by the County of Los Angeles indicates that the sewage disposal system to which the grey water outlet will be connected to complies with all minimum requirements of the Uniform Plumbing Code. The final approval and verification that this capping has been performed, as required by **Special Condition 8**, will ensure that this has been completed.

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 portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Sections 30230, 30231, and 30240 of the Coastal Act. The Commission also finds that relocating the eastern portion of the fence adjacent to the single family residence, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, and sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction are a feasible alternatives that would substantially lessen significant adverse environmental impacts of the project. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the resource protection policies of the Coastal Act.

The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern

side of the sports court from the area covered by the OTD open space deed restriction is a feasible alternative that would substantially lessen significant adverse environmental impacts of the project.

C. Visual Resources

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 subordinated to the character of its setting.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, public parkland, and public trails. Further, the Commission has also required structures to be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, retaining walls, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline or public vistas as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

As stated previously, the subject site is a 2.76 acres lot, located at 25351 Piuma Road, in the Calabasas area of Los Angeles County. The property is situated on a steep northerly trending descending ridge, with drainages located to the east and west of the single family residence. Descending natural slopes are present on both sides of the ridge at gradients up to 1 ½ to 1 (horizontal to vertical). The subject site is also located within the upper portions of the Cold Creek Resource Management Area. In addition, the site is located adjacent to a blueline stream, which is a tributary to Cold Creek, and is an environmentally sensitive habitat area (ESHA). Further, the property is located in the vicinity of an area that has been recognized as an ESHA in previous Commission actions and which has specifically been referred to as Dark Canyon ESHA. The subject site maintains mature chaparral vegetation and is part of an overall area that is

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fairly undeveloped and which comprises a large, significant, and contiguous area of chaparral habitat. In addition, the subject site is highly visible from Pioma Road, the Backbone Trail, and public lands (including State Park lands) located adjacent to the site and in the vicinity of the site. The subject site is located in an area characterized by rugged open spaces, jagged rock outcroppings, hillsides, and wilderness areas.

In addition, the area surrounding the project site is rural in character, with wide-open spaces and vistas. A large network of publicly owned lands and trails in the region adds to this area's scenic nature and quality. For example, Malibu Creek State Park is located to the west of the subject site and State Park and National Park Service is also located nearby the site. In addition, the Backbone Trail passes to the north of the subject site. Those areas within the vicinity of the project site that are not publicly owned land are developed with single family residences in a manner that has preserved the rural character of the surrounding area.

Furthermore, in reflection of the scenic character of this area, Pioma Road (to the immediate south of the subject site) has been recognized as a scenic highway under past Commission actions. In addition, due to the significant visual resources in this area, the Commission has also recognized particularly scenic viewpoints along these roads as unique "public viewing areas." Three such recognized, significant public viewing areas are located within one mile of the subject site along Pioma Road. In particular, Pioma Road, from which the subject site and proposed development is highly visible, is a scenic road within the Santa Monica Mountains and provides numerous dramatic sweeping ocean and mountain views.

Additionally, as referenced earlier, the subject site is also within an area that was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner that will preserve and enhance its scenic, natural, and historical setting and its public health value as an air shed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public.⁸" The Santa Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo valleys. Los Angeles County is populated by well over nine million people, most of who are within an hour's drive of the Santa Monica Mountains.⁹ The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban settings and experiences.

For the above reasons, the SMMNRA constitutes a unique and special wilderness and recreational area and, as a result, is a popular visitor destination point for active and passive recreational use. Available data indicate that existing recreational facilities in the region are currently experiencing sustained demand that is often over capacity. According to the State Department of Parks and Recreation, total visitation at state-managed parks and beaches alone was estimated at 2,747,000 from 1986 to 1987.

⁸ Public Law 95-625.

⁹ Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 34.

The County of Los Angeles estimated that user activity days for hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744; and horseback riding from 6,561,103 to 7,511,873. As the population in California, and in the Los Angeles metropolitan area in particular, continues to increase, the demand on the parks within the SMMNRA can be expected to grow. The preservation of the unique rural character of the parks and communities within the SMMNRA is, thus, of the utmost importance for continued quality coastal recreational opportunities.

As stated previously, the applicants are requesting approval for the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage.

The Commission finds that the construction of the proposed lighted sports court, lighted stairway extending from the pool area to the sports court, and the above ground water tank, masonry pump enclosure and screen wall in their proposed location, and installation of decomposed granite on the eastern side of the sports court will have adverse impacts on visual resources. These structures will be highly visible from Piuma Road, a designated scenic highway, and/or from the Backbone Trail. The swimming pool with spa and pump, pool equipment storage area, chain link fence and gates around the pool and single family residence, patio area with landscaping walls near the pool, and lighted steps and pathways on both sides of the single family residence will also be visible from Piuma Road and the Backbone Trail. The proposed above ground propane storage tank with concrete pad, drainage system, and irrigation system; placement of sand fill for the play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage will not be as highly visible from Piuma Road or the Backbone Trail. The retaining wall and carport will, however, be visible from Piuma Road. In addition, the proposed above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank will need to be relocated to an area adjacent to the single family residence and outside of the area subject to the open space deed restriction. As a result, these structures may also be visible from Piuma Road or the Backbone Trail when relocated under the revised plans required pursuant to **Special Condition 2**. However, the retaining wall and carport, swimming pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for the water tank will be located adjacent to the existing 4,260 square foot single family residence and will not result in any significant additional adverse visual impacts from Piuma Road.

In addition, areas where development is proposed have been cleared of vegetation, increasing the adverse visual impact from this portion of the proposed development, as these portion of the site has been nearly denuded of vegetation. The applicant has stated, however, that minimal vegetation was cleared for the proposed development and that the clearing that has occurred was required by the Fire Department.

The Commission finds that the construction of the proposed lighted sports court, lighted stairway extending from the pool area to the sports court, and the above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank in their proposed location and installation of decomposed granite on the eastern side of the sports court would adversely impact visual resources and public views, detracting from the rugged, natural atmosphere that is a unique characteristic of this area. As a result, the Commission finds that the project would alter the valued rural, open, and scenic visual resources of this area within Malibu and the Santa Monica Mountains. Further, it would not protect the unique characteristics of the SMMNRA valued by many members of the public. In particular, the sports court is highly visible and is of particular significance due to the undisturbed nature of the area surrounding the sports court and the topography of the area from many scenic viewpoints, trails, and roads. As discussed above, the Commission also finds that the SMMNRA is a popular visitor destination point for recreational uses. As a result, the lighted sports court, lighted stairway extending from the pool area to the sports court, and the above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank in their proposed location and installation of decomposed granite on the eastern side of the sports court would adversely impact the visual resources and public views existing within the surrounding area. Therefore, for the reasons discussed above, the Commission finds that these portions of the proposed development are not consistent with Sections 30251 of the Coastal Act.

As stated previously, the project site is located within the Santa Monica Mountains National Recreation Area (SMMNRA). Furthermore, the northern portion of the subdivision abuts the southern flank of the Santa Monica Mountains and Charmlee Park. The area surrounding the project site is highly scenic due to the rural atmosphere, wide-open spaces and vistas, and extensive network of publicly owned lands. This region maintains plant communities of grassland, coastal sage scrub, southern oak woodlands, and chaparral and provides numerous trails with sweeping vistas of the Santa Monica Mountains and of the Pacific Ocean. In addition, those areas within the vicinity of the project site that are not publicly owned, are sparsely developed, which has maintained the natural beauty of the area. Past Commission action with respect to density and use policies have been largely successful in maintaining the unique rural atmosphere of this area and presence of open space. Further, this highly scenic atmosphere provides the public with exceptional outdoor recreational opportunities and an escape from the urban environment.

The Commission finds that the proposal to amend the permit that authorized construction of a large single family residence that is highly visible from public parkland, a scenic highway, and public trails, to authorize construction of the accessory structures identified above, would be inconsistent with the Coastal Act policy that requires the

minimization of adverse impact on public views in scenic coastal areas. The Commission finds that the construction of the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with the scenic character of the surrounding area and would not protect the unique attributes possessed by this region of the Santa Monica Mountains and the SMMNRA. These portions of the proposed development are highly visible from scenic highways, trails, and public vistas and would alter the scenic qualities that this area offers by significantly changing the natural landscape of the area, particularly the scenic hillside. Further, these portions of the proposed development are relatively large, unnatural, manmade structures. Thus, the Commission finds that this portion of the proposed development would alter the valued scenic qualities that this area possesses and would not be visually harmonious with or subordinate to the character of its setting in this area of Malibu, the Santa Monica Mountains, and the SMMNRA.

As stated previously, the swimming pool with spa and pump, pool equipment storage area, chain link fence and gates around the pool and single family residence, patio area with landscaping walls near the pool, and lighted steps and pathways on both sides of the single family residence will be visible from Piuma Road. The proposed above ground propane storage tank with concrete pad, drainage system, and irrigation system; placement of sand fill for the play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage will not be as highly visible from Piuma Road and/or the Backbone Trail. The retaining wall and carport will, however, be visible from Piuma Road. In addition, the proposed above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank will need to be relocated to an area adjacent to the single family residence and outside of the area subject to the open space deed restriction. As a result, these structures may also be visible from Piuma Road or the Backbone Trail when relocated under the revised plans required pursuant to **Special Condition 2**. However, the retaining wall and carport, swimming pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for the water tank will be located adjacent to the existing 4,260 square foot single family residence and will not result in any significant additional adverse visual impacts from Piuma Road.

However, due to the visible nature of portions of the approved development from Piuma Road and the Backbone Trail, the Commission finds it necessary to require mitigation measures to minimize visual impacts. Visual impacts associated with structures such as the carport, retaining walls, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank can be further reduced by the use of appropriate and adequate landscaping. **Special Condition 3**, the landscape and fuel modification plan, incorporates the requirement that vertical screening elements be added to the landscape plan to soften views of the proposed residence from Piuma Road and the Backbone Trail. In addition, **Special Condition 3** requires the applicant to prepare a landscape plan relying mostly on native, noninvasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. The implementation of **Special Condition 3**, therefore, will help to partially screen and soften the visual impact of the development from Piuma Road and

the Backbone Trail. In order to ensure that the final approved landscaping plans are successfully implemented, **Special Condition 3** requires the applicant to revegetate all disturbed areas in a timely manner, and includes a monitoring component, to ensure the successful establishment of all newly planted and landscaped areas over time. 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 Piuma Road and the Backbone Trail that may be caused by 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 and a fuel modification plan, as specified under **Special Condition 3**.

In addition, **Special Condition 2** requires revised project plans that delete the development that has not been approved in this permit amendment, i.e., the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court, and that show a relocation of the eastern portion of the fence adjacent to the single family residence, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, and the sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction. These requirements pursuant to **Special Condition 2** will ensure that the visual impacts of the approved development are minimized, as the development approved will be located entirely outside of the area restricted by the OTD and will be within the general development footprint of the existing single family residence, thereby clustering development.

Therefore, the Commission finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Section 30251 of the Coastal Act. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the visual resource protection policies of the Coastal Act.

The Commission also finds that the portion of the proposed project consisting of the construction of a lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court would result in significant adverse effects on the environment and are inconsistent with Section 30251 of the Coastal Act. The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern side of the sports court is a feasible alternative that would substantially lessen significant adverse visual impacts of the

project. Therefore, these portions of the proposed project are determined to be inconsistent with Section 30251 of the Coastal Act.

D. Community Character

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 . . .

Section 30253(5) of the Coastal Act states:

New development shall:

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

As stated previously, the subject site is a 2.76 acres lot, located at 25351 Piuma Road, in the Calabasas area of Los Angeles County. The property is situated on a steep northerly trending descending ridge, with drainages located to the east and west of the single family residence. Descending natural slopes are present on both sides of the ridge at gradients up to 1 ½ to 1 (horizontal to vertical). The subject site is also located within the upper portions of the Cold Creek Resource Management Area. In addition, the site is located adjacent to a blueline stream, which is a tributary to Cold Creek, and is an environmentally sensitive habitat area (ESHA). Further, the property is located in the vicinity of an area that is an ESHA and that has been recognized in previous Commission actions as Dark Canyon ESHA. The subject site maintains chaparral vegetation and is part of an larger, contiguous, fairly undeveloped area maintaining mature and significant chaparral habitat. In addition, the subject site is highly visible from Piuma Road, the Backbone Trail, and public lands (including State Park lands) located adjacent to the site and in the vicinity of the site. The subject site is located in an area characterized by rugged open spaces, jagged rock outcroppings, hillsides, and wilderness areas.

As stated previously, the subject site is also within an area that was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner which will preserve and enhance its scenic, natural, and historical setting and its public health value as an air shed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public."¹⁰ The Santa

¹⁰ Public Law 95-625.

Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo Valleys. Los Angeles County is populated by well over nine million people, most of who are within an hour's drive of the Santa Monica Mountains.¹¹ The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban settings and experiences. It is the unique beauty, wilderness, and rural character of this area that continues to draw so many visitors and residents to it.

For the above reasons, the SMMNRA constitutes a unique and special wilderness and recreational area and, as a result, is a popular visitor destination point for active and passive recreational use. Available data indicate that existing recreational facilities in the region are currently experiencing sustained demand that is often over capacity. According to the State Department of Parks and Recreation, total visitation at state-managed parks and beaches alone was estimated at 2,747,000 from 1986 to 1987. The County of Los Angeles estimated that user activity days for hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744; and horseback riding from 6,561,103 to 7,511,873. As the population in California, and in the Los Angeles metropolitan area in particular, continues to increase, the demand on the parks within the SMMNRA can be expected to grow. The preservation of the unique rural character of the parks and communities within the SMMNRA is, thus, of the utmost importance for continued quality coastal recreational opportunities.

The applicant is requesting approval for the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage.

The Commission finds that the construction of the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. In particular, the sports court is highly visible and located in an area characterized by natural vegetation and open space and would detract from the surrounding community character and negatively impact the character of this rural area. Further, the lighted stairway extending from the swimming pool to the sports court and the decomposed granite proposed adjacent to the sports court also detract from the character of the

¹¹Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 34.

surrounding area, as they are not located within the development footprint of the single family residence and fragment development. Adverse impacts on the character of the area from the construction of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, and sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage may be minimized through **Special Conditions 2, 3, and 4**, discussed in previous sections of this report.

Therefore, the Commission finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Sections 30251 and 30253(5) of the Coastal Act. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the visual resource protection policies of the Coastal Act.

The Commission also finds that the portion of the proposed project consisting of the construction of a lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court would result in significant adverse effects on the character of the surrounding area and are inconsistent with Section 30251 of the Coastal Act. The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern side of the sports court is a feasible alternative that would substantially lessen significant adverse impacts to the community character of the surrounding area of the project. Therefore, these portions of the proposed project are determined to be inconsistent with Sections 30251 and 30253(5) of the Coastal Act.

E. Violations

Various development has been carried out on the subject site without the required Coastal Development Permit(s) or amendment(s). The applicants request after the fact approval of the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and

1 to develop a fuel modification plan that is as sensitive to
2 the natural environment as possible.

3 Again, looking at -- and unfortunately, you can't
4 see it -- the slide on the screen, Slide No. 6, you can see
5 that the applicant has done fairly extensive removal of
6 native vegetation. The staff's hope would be that the fuel
7 modification plan could accommodate some additional native
8 vegetation, and not be quite as extensive as shown in this
9 slide.

10 COMMISSIONER DETTLOFF: One last question, one of
11 the speakers suggested that Fish and Game was taking an
12 entirely different position, could you respond to that?

13 SENIOR DEPUTY DIRECTOR DAMM: Consulting with Mr.
14 Doherty, he indicated that what the California Department of
15 Fish and Game indicated was that no stream bed alteration
16 agreement was required, which is true, it wouldn't have been
17 required --

18 COMMISSIONER DETTLOFF: That was the extent of
19 their --

20 SENIOR DEPUTY DIRECTOR DAMM: Correct.

21 COMMISSIONER DETTLOFF: -- communication?

22 Thank you.

23 CHAIR WAN: Commissioner Reilly.

24 COMMISSIONER REILLY: Thank you, Madam Chair.

25 It seems to me, in this case, that the applicant

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EXHIBIT 6

5-88-056-A1-R (Rubinroit)

Page 40, Transcript of June 10,
2002 Hearing on 5-88-056-A1



CALIFORNIA COASTAL COMMISSION
 STATE OF CALIFORNIA - THE RESOURCES AGENCY
 VIOLATION INVESTIGATION REPORT - TELEPHONE LOG

STAFF Abe Doherty	DATE 4/18/01	TIME 5:00	VIOLATION FILE NO. V-4-97-31
CONVERSATION WITH Cady Wood	MAILING ADDRESS DFG		PHONE NUMBER
SUBJECT OF DISCUSSION SIR visit results			

DETAILS OF DISCUSSION

1 She went onto the site today. She said that
 2 she told Terry + Howard Rubinroit that she
 3 had authorization to ~~enter~~ enter site + Howard
 4 Rubinroit stayed on the phone w/ her during
 5 the ~~investigation~~ site investigation.
 6
 7 She said that the development is not within
 8 DF & jurisdiction. She wouldn't call
 9 it significant alteration of stream bed/bank.)
 10
 11 She asked me to send her the info @ the
 12 neighbors so that she can send them a
 13 pre-active letter regarding the culvert next
 14 to the stream.
 15
 16
 17
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 20
 21
 22
 23
 24

STAFF (Signature and Date)

Abe Doherty 4/18/01

APPROVED BY (Signature and Date)

EXHIBIT 7
5-88-056-A1-R (Rubinroit)
Commission Staff's Notes of Conversation with DFG

In addition, there is a history of past Commission action on the subject site. On March 24, 1988, the Commission approved Coastal Development Permit (CDP) 5-88-056 for construction of a four level 4,260 square foot, 28-foot high single family residence with a water well and a septic system on the subject site (Exhibit 7). At that time, the property was owned by Jack and Annie Moses and Ron and Marco Landry. The single family residence was approved to be located on one of two preexisting graded pads. As a result, that permit minimized landform alteration, as the single family residence and all proposed development was proposed and approved on one existing, graded pad adjacent to and immediately north of Piuma Road with only minor grading required to construct the driveway under CDP 5-88-056. Furthermore, in addition to the concentration of the development footprint on one existing graded pad adjacent to Piuma Road, the development approved under CDP 5-88-056 was also located on the upper portion of the slope and was set back from the blueline stream to the north, steep slopes on the site, and ESHA. In addition, the development footprint and fuel modification and landscape plan submitted pursuant to CDP 5-88-056 also minimized the disturbance of native vegetation, consisting mainly of undisturbed, mature chaparral. In approving CDP 5-88-056, the Commission also imposed special conditions in order to mitigate potential adverse impacts of the residential development on sensitive environmental and visual resources.

Special Condition 2 of CDP 5-88-056 required fuel modification and landscape plans to be submitted to the Commission staff for review and approval. The approved fuel modification and landscape plans that were submitted and approved prior to issuance of CDP 5-88-056 included the following statement:

It is the intent of the fuel modification plan to avoid vegetation clearance in any designated "OPEN SPACE" area as shown on the attached site plan including the drainage courses to the west and east of the building pad.

The fuel modification and landscaping plans submitted pursuant to CDP 5-88-056 limited the clearance of vegetation to a distance of 30 feet from any structure and the cutting of flammable vegetation to a height of 18 inches for another 70 feet, unless additional clearance was authorized or required by the Los Angeles County Fire Marshall.

In addition, Special Condition 4 of 5-88-056 required the previous applicants to execute and record an irrevocable offer to dedicate (OTD) an open space and conservation easement on the subject site prior to issuance of the CDP. This condition required that the open space easement encompass all the area on the property outside the boundary of the single graded pad on which the single family residence was proposed to be located (Exhibits 8 and 9). This OTD was required pursuant to the approval of CDP 5-88-056 to protect the remaining, undisturbed watershed cover and chaparral on the property and to limit adverse impacts on critical resources within the nearby blueline stream and ESHA that might arise from future development on the subject property. The findings for CDP 5-88-056 also state that the OTD would also aid in assuring that any future development would be located directly adjacent to the single family

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residence, ensuring that future development would be less disruptive to habitat values. In past Commission actions, including CDP 5-88-056, open space or conservation easements have been required in order to protect undisturbed watershed cover and environmental resources located on parcels on which development is proposed. In addition, in past Commission actions, including CDP 5-88-056, where new development is proposed adjacent to blueline streams, riparian areas, and ESHA, open space or conservation easements have been required in order to protect those significant resources.

On August 8, 1988, pursuant to Special Condition 4 of CDP 5-88-056, the Moseses and the Landrys recorded the OTD an open-space easement, as Instrument No. 88-1246285, at the Los Angeles County Recorder's Office. The OTD prohibits "development as defined in Public Resources Code section 30106 . . . including but not limited to removal of trees and other major or native vegetation, grading, paving, installation of structures such as signs, buildings, etc." The language of the OTD indicates that its purpose is to "restrict development on and use of the Property so as to preserve the open-space and scenic values present on the property and so as to prevent the adverse direct and cumulative effects on coastal resources . . ." The OTD restricts the use of the open space easement to "natural open space for habitat protection, private recreation, and resource conservation uses," and prohibits development except as approved by the Coastal Commission in a subsequent permit.

Further, Special Condition 5 of CDP 5-88-056 required the prior applicants to record a document stating that any future development of the property (as defined in Public Resources Code section 30106) would require either an amendment to CDP 5-88-056 or an additional coastal development permit. The Commission imposed this condition so that future development that would otherwise be exempt, such as certain improvements to the residence, would be subject to permit requirements. The purpose of this condition is to enable the Commission to ensure that future development does not damage the recognized adjacent blueline stream, and ESHA or habitat values on the subject site, such as the mature, extensive, and rich chaparral habitat. On August 8, 1988, the Moseses and the Landrys recorded the deed restriction, as Instrument No. 88-1246284 at the Los Angeles County Recorder's Office.

After meeting all special conditions, including those listed above, CDP 5-88-056 was issued to the Moseses and the Landrys on December 5, 1988. Based on the final dates listed in the Los Angeles County permits for the single family residence, it appears that construction of the residence was completed by February 2, 1990. Subsequently, on February 14, 1990, title to the property was transferred to Howard and Terry Rubinroit, the current applicants and owners of the subject site.

On June 10, 1997, Commission staff received a report of a possible violation of the Coastal Act on the subject site, including the construction of a sports court. On June 19, 1997, Commission staff confirmed the presence of a sports court in the area of the OTD open space easement. On this same date, Commission staff sent the Rubinroits the first of five letters requesting that they apply for an after-the-fact CDP for all unpermitted development on the subject property. The June 19, 1997 letter specifically

identified the alleged violation as the sports court and excessive vegetation removal. While investigating the violation during the fall of 1998, Commission staff subsequently discovered additional unpermitted development, including the swimming pool and retaining wall.

After the Rubinroits failed to comply with enforcement deadlines, on October 9, 1998, Commission staff sent the Rubinroits a notice of intent (NOI) to schedule a public hearing on the issuance of a cease and desist order by the Commission. This NOI described the violation as the unpermitted construction of the sports court, swimming pool and retaining wall. During a conversation with Commission staff on November 12, 1998, Mr. Rubinroit indicated that he would file a complete CDP application. In reliance on this commitment by Mr. Rubinroit, the Commission enforcement staff removed the cease and desist order from the Commission's agenda. On November 13, 1998, Commission staff sent Mr. Rubinroit a letter memorializing the November 12, 1998 conversation and establishing a deadline of December 11, 1998 for submittal of the applications.

On December 9, 1998, during a conversation with Commission staff, Mr. Rubinroit agreed to file two CDP applications, one for the sports court and the other for the swimming pool and retaining wall. Commission staff determined that they would likely recommend approval of the swimming pool and retaining wall, and denial of the sports court. As the Rubinroits suggested that they would contest a denial of the sports court, staff stated that the Rubinroits could file two separate permit applications—one for the sports court and development within the OTD open space easement area and the another for the development adjacent to the permitted single family residence and outside of the OTD open space easement area. Commission staff indicated that staff would likely recommend denial of that portion of the development within the area covered by the OTD open space deed restriction as a courtesy to save the Rubinroits potential time and money that could be expended in an attempt to retain the sports court and other development located within the OTD open space easement area. Commission staff also advised the applicants that they had the right to apply for and request approval of the sports court, despite the likely Commission staff recommendation. Commission staff indicated to the Rubinroits that filing two applications would enable the Rubinroits to expeditiously resolve the swimming pool and retaining wall violations, while contesting the likely denial of the sports court.

On January 29, 1999, the Rubinroits submitted two CDP applications to the Commission. They submitted CDP 4-99-023 for the construction of decking and fencing (of the sports court), and CDP 4-99-024 for the construction of a swimming pool, decking, fencing, carport and retaining wall. In a cover letter accompanying the applications, Mr. Rubinroit challenged the need for the CDPs and requested that the Commission waive the permit requirements for the retaining wall and swimming pool. Commission staff determined that a waiver was not appropriate due to the issues discussed in this report, including potential impacts on visual and sensitive resources. In addition, after receiving the CDP applications, Commission staff became aware of the presence of the carport, for which the main structural component is the associated retaining wall.

On December 1, 2000, Mr. Rubinroit informed Commission staff that he had no intention of submitting the information required to complete either CDP application. As a result, on January 2, 2001, Commission staff sent the Rubinroits a second NOI to commence cease and desist order proceedings. The unpermitted development was described in this NOI as the construction of a sports court (decking and fencing), swimming pool, and retaining wall with a footnote referencing the carport. In order to review all of the unpermitted development at the same cease and desist order hearing, Commission staff issued an amended NOI to commence cease and desist order hearings on March 20, 2001 to include the unpermitted carport and other unpermitted development. Following a public hearing, on May 8, 2001, the Commission issued Cease and Desist Order CCC-01-CD-01. The Rubinroits asserted numerous defenses seeking to prevent issuance of the Cease and Desist Order; however, the Commission found that these defenses were legally and/or factually deficient. The Rubinroits' defenses included assertions that some of the unpermitted development had not occurred at all and that other unpermitted development was exempt from permit requirements. These defenses were rejected. The Rubinroits raise some of these defenses again in the context of this permit amendment application. However, the Commission has already addressed these issues raised by the Rubinroits in the Cease and Desist Order findings. The findings of the Cease and Desist Order have become final and are binding on the Rubinroits. Therefore, the Commission need not address these defenses again in these findings on the permit amendment application. The Cease and Desist Order required, in part, that the Rubinroits submit a complete application to address all of the items of unpermitted development. The applicant subsequently combined the applications for CDP 4-99-023 and CDP 4-99-024 into an incomplete permit application that was submitted on July 31, 2001 and filed on April 10, 2002.

The following paragraphs describe the proposed development in greater detail and indicate where the proposed development is located in relation to the area defined by the OTD. These descriptions are based upon a review of plans for the property, aerial photographs, photographs of the development and observations of Commission staff.

The following proposed development appears to be located entirely within the area defined by the OTD open space easement:

1. A lighted sports court is located in the northeastern portion of the site, adjacent to a drainage and approximately sixty feet from a blueline stream. The sports court is approximately 1,250 square feet in area and consists of a chain link fence, a section of solid wall, and gates with a concrete pad, light post, basketball net, tennis net, and small storage shed. A portion of the sports court and development associated with the sports court is located on the adjacent, vacant parcel. As part of this application, the applicants have submitted an easement from the owner of that parcel for this portion of the development.
2. An above ground water storage tank is located in the southeastern corner of the property adjacent to Piuma Road. Plans submitted by the applicants indicate that

this tank has a capacity of 8,000 gallons. The applicants are also proposing to construct a screen wall and masonry pump enclosure for the water tank.

3. Approximately 25 square feet of concrete apparently poured on a portion of the eastern drainage, adjacent to the sports court.
4. On the northeastern side of the sports court is an area of unvegetated nonnative sand fill that is adjacent to the blueline stream corridor. This fill is in addition to any grading that was done to create the pad for the sports court.
5. Capping an exposed grey water outlet (an approximately two inch pipe) to the west of the residence is proposed. This outlet is located outside of the area approved for the septic system and also represents a change in the design of the system by discharging grey water directly to the ground surface.

The following proposed development is located partially within the area defined by the OTD:

1. Sprinkler heads for an irrigation system are shown on plans submitted as part of this application as being both on the graded pad for the existing single family residence and extending into the area defined by the OTD , to the east of the residence and along Piuma Road.
2. Project plans submitted by the applicant illustrate the proposed drainage system, including portions of the drainage system within the area defined by the OTD. Partially buried PVC pipe that is part of this drainage system is located to the northeast of the pool area, on the southwestern side of the sports court and within the shrubs to the northwest of the sports court.
3. An area of sand fill, which appears to be used as a children's play area, is located to the east of the residence, and is located both within and outside of the area defined by the OTD.
4. A lighted stairway extends from the pool area to the sports court. The majority of this stairway is located within the area defined by the OTD. This stairway, which is illuminated with light posts, is constructed with wooden steps and a railing made of wooden posts with connecting ropes.
5. A chain link fence around the pool and house that extend off of the eastern side of the graded pad for the single family residence into the adjacent area defined by the OTD open space easement.

The following proposed development appears to be located completely within the boundaries of the graded pad for the existing single family residence and is outside of the area defined by the OTD:

1. An in-ground swimming pool (approximately 10 feet by 40 feet) with an attached spa and an adjacent pool equipment and pump storage area are located on the northern portion of the graded pad for the single family residence.
2. A nine foot high, 20 foot long retaining wall and an attached carport (pipes attached to the retaining wall and pavement supporting a cloth covering) with spaces for two cars are located to the southeast of the residence, adjacent to Piuma Road.
3. Lighted steps and pathways are located in close proximity to the eastern and western sides of the house. On the eastern side of the house, these steps are constructed primarily of wood and have railings. On the western side of the house, the steps closer to Piuma Road are constructed with wood with concrete pads, while the lower steps are constructed with wood steps without concrete.
4. An above ground storage tank for propane with a concrete pad is located on the northern side of the retaining wall, adjacent to the carport.
5. A tiled patio area with landscape walls is located in the vicinity of the pool to the north of the house.

With the exception of the removal of concrete from the eastern drainage, capping of the grey water outlet and connection to the existing septic system, and construction of a masonry pump enclosure for the water tank, and screen wall for the water tank, all of the development included in the project description has been undertaken without the benefit of a CDP or amendment. However, the Commission reviews the application for a permit to authorize the existing development as if the development was proposed and did not exist and on that basis, the Commission must determine whether authorizing the development is consistent with the Coastal Act.

Under the current amendment application, the applicants are proposing the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage. The proposed development raises issues under Sections 30230 and 30231 regarding water quality, 30240 regarding sensitive resources and ESHA, 30253 regarding hazards, and 30251 regarding scenic and visual resources.

B. Geologic Hazard and Stability

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

In sum, the environmental significance, increasing rarity, and susceptibility to disturbance from human activities, as detailed above, render chaparral and riparian plant communities environmentally sensitive habitat areas, as defined by Section 30107.5 of the Coastal Act. The chaparral habitat on the subject site and riparian habitat adjacent to the subject site are particularly significant, as the blueline stream to the north of the site drains into Cold Creek. In addition, there are two drainages on the subject site that filter into this blueline stream. Further, as stated previously, Dark Canyon to the north of the subject site has been recognized as ESHA under past Commission actions. Additionally, the project site is within the Cold Creek Management Area, as also recognized in past Commission actions.

The applicants have asserted that no harm has been suffered to the environment in the area of their property. The applicant have also argued that the area in which the existing single family residence is located is not sensitive habitat. Further, the applicants have also claimed that a blueline stream no longer traverses the property in the area of the sports court. However, the subject property is located directly adjacent to a stream that is an unnamed blueline stream that is a tributary to Cold Creek and does constitute ESHA. The stream is shown on the USGS Malibu Beach Quadrangle as a blueline stream and was observed by Commission staff as flowing within approximately fifty feet from the non-native sand or decomposed granite located adjacent to the sports court. This stream is located approximately sixty feet from the eastern portion of the sports court.

Furthermore, when the underlying project (construction of a four level, 4,260 square foot single family residence with a well and a septic system) was permitted, the Commission was concerned about the cumulative impacts on the Cold Creek Resource Management Area and ESHA, particularly impacts from runoff, as well as erosion from construction activities. To address this concern, the Commission conditioned the permit to require the landowner to obtain an amendment to CDP 5-88-056 or a new CDP before constructing any additional development on the property, including improvements that might otherwise be exempt from permit requirements, to record an OTD open space easement on the portion of the property outside of the development footprint for the single family residence and the graded pad upon which it was approved, and develop fuel modification and landscaping plans to minimize vegetation clearance in the open space area.

Those portions of the development that are proposed within the area covered by the OTD an open space deed restriction, in particular, have the potential to negatively impact the blueline stream, water quality, and ESHA that the Commission intended to protect through the standard and special conditions of the underlying CDP. The sports court proposed by the applicants is constructed down slope from the single family residence, adjacent to the drainages and blueline stream, and is within the area covered by the OTD an open space deed restriction. The Commission's files indicate that the pad for the sports court did not exist at the time the application for CDP 5-88-056 was reviewed. In fact, approximately 40 square feet of the sports court was constructed on the adjacent parcel not owned by the applicants. As a result, the applicants purchased an easement for this portion of the development on November 28, 2001.

court are also located below the swimming pool, in an area which the applicants' consultant states could be subject to surficial slope failure. Further, Commission staff noted during a visit to the subject site that there was visible evidence of surficial slumping below the swimming pool, in the area where the lighted stairway from the pool area to the sports court is proposed.

In addition to these potential direct impacts to the ESHA, the development within the area defined by the OTD may deter acceptance of the OTD. To date, the OTD has not been accepted. Acceptance of the OTD open space easement ensures that it will be maintained and that the integrity of the environmental resources on site will be preserved.

As a result, the Commission finds that the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court is likely to have adverse impacts on significant environmental resources and water quality. Due to these considerations, the Commission finds that those portions of the proposed development located within the area restricted by the OTD open space deed restriction, including the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with Sections 30230, 30231, 30240 of the Coastal Act.

As conditioned, however, that portion of the proposed development including the construction of the swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; placement of sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage are consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

Special Condition 2 requires revised project plans that delete the development that has not been approved in this permit amendment, i.e., the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court and that show a relocation of the eastern portion of the fence adjacent to the single family residence, certain portions of the irrigation system, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, and sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction. As conditioned, this development will be relocated within the development footprint approved pursuant to the underlying permit, CDP 5-88-056 and outside of the area subject to the open space deed restriction. In addition, **Special Condition 2** will also ensure that the adverse impacts to sensitive resources and water quality from the approved development will be minimized, as the development approved will be located entirely outside of the area restricted by the OTD and will be within the general

location, **Special Condition 4** requires the applicant to dispose of this material outside of the Coastal Zone or obtain a new CDP or amendment to dispose of it within the Coastal Zone. Furthermore, **Special Condition 8**, which requires the applicant, within 60 days of issuance of this permit amendment, to cap the grey water outlet and properly connect it to the existing septic system, submit to the Commission written confirmation from the Los Angeles County Department of Health Services that this has been completed, and remove the concrete placed in the eastern drainage will also ensure that the potential adverse impacts from this unpermitted development that the applicant is proposing to resolve will be resolved in a timely manner.

In addition, the applicant is proposing to cap the existing grey water system that discharges on the slopes of the subject site and connect it to the existing septic system. The Environmental Health Department of the County of Los Angeles has given in concept approval for the septic system that is existing on the subject site and has also required the applicant to cap the grey water system and connect it to the existing septic system. This conceptual approval by the County of Los Angeles indicates that the sewage disposal system to which the grey water outlet will be connected to complies with all minimum requirements of the Uniform Plumbing Code. The final approval and verification that this capping has been performed, as required by **Special Condition 8**, will ensure that this has been completed.

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 portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Sections 30230, 30231, and 30240 of the Coastal Act. The Commission also finds that relocating the eastern portion of the fence adjacent to the single family residence, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, and sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction are a feasible alternatives that would substantially lessen significant adverse environmental impacts of the project. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the resource protection policies of the Coastal Act.

The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern

side of the sports court from the area covered by the OTD open space deed restriction is a feasible alternative that would substantially lessen significant adverse environmental impacts of the project.

C. Visual Resources

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 subordinated to the character of its setting.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, public parkland, and public trails. Further, the Commission has also required structures to be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, retaining walls, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline or public vistas as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

As stated previously, the subject site is a 2.76 acres lot, located at 25351 Piuma Road, in the Calabasas area of Los Angeles County. The property is situated on a steep northerly trending descending ridge, with drainages located to the east and west of the single family residence. Descending natural slopes are present on both sides of the ridge at gradients up to 1 ½ to 1 (horizontal to vertical). The subject site is also located within the upper portions of the Cold Creek Resource Management Area. In addition, the site is located adjacent to a blueline stream, which is a tributary to Cold Creek, and is an environmentally sensitive habitat area (ESHA). Further, the property is located in the vicinity of an area that has been recognized as an ESHA in previous Commission actions and which has specifically been referred to as Dark Canyon ESHA. The subject site maintains mature chaparral vegetation and is part of an overall area that is

the Backbone Trail. In order to ensure that the final approved landscaping plans are successfully implemented, **Special Condition 3** requires the applicant to revegetate all disturbed areas in a timely manner, and includes a monitoring component, to ensure the successful establishment of all newly planted and landscaped areas over time. 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 Piuma Road and the Backbone Trail that may be caused by 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 and a fuel modification plan, as specified under **Special Condition 3**.

In addition, **Special Condition 2** requires revised project plans that delete the development that has not been approved in this permit amendment, i.e., the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court, and that show a relocation of the eastern portion of the fence adjacent to the single family residence, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, and the sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction. These requirements pursuant to **Special Condition 2** will ensure that the visual impacts of the approved development are minimized, as the development approved will be located entirely outside of the area restricted by the OTD and will be within the general development footprint of the existing single family residence, thereby clustering development.

Therefore, the Commission finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Section 30251 of the Coastal Act. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the visual resource protection policies of the Coastal Act.

The Commission also finds that the portion of the proposed project consisting of the construction of a lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court would result in significant adverse effects on the environment and are inconsistent with Section 30251 of the Coastal Act. The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern side of the sports court is a feasible alternative that would substantially lessen significant adverse visual impacts of the

single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool. In addition, the applicants are proposing to cap the unpermitted grey water outlet that currently exists on the site and connect it to the existing septic system. The applicants are also proposing to remove unpermitted concrete that was placed in the eastern drainage. The applicants are not proposing to authorize or restore the major vegetation that was removed within the area subject to the OTD, beyond that authorized by the fuel modification plan.

The Commission staff currently lacks confirmation that the after-the-fact development was performed in compliance with the geotechnical consultant's recommendations. Therefore, to ensure that the recommendations regarding the after-the-fact development are implemented in a timely manner, **Special Condition 1** requires that, within 60 days of the permit issuance, the applicant submit written confirmation from a geotechnical consultant that these recommendations were properly implemented. The recommendations regarding installation of riprap or other erosion control measures adjacent to the sports court should not be implemented since the Commission has denied authorization of the sports court and decomposed granite area. In order to confirm that the grey water outlet has been capped and connected to the existing septic system, **Special Condition 8** requires that the applicants submit documentation from the Los Angeles County Department of Health Services confirming this change in development, as authorized by this amendment.

In order to ensure that the unpermitted development is resolved in a timely manner, **Special Condition 7** requires that the applicants satisfy all conditions of this permit amendment, which are prerequisite to the issuance of this permit amendment, within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. In addition, to insure timely removal of the concrete in the eastern drainage, as proposed by the applicants, **Special Condition 8** requires completion of this within 60 days of the issuance of this permit amendment.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit amendment does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

F. 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*

Cease and Desist Order CCC-01-CD-01 File

CEQA STATUS:

Exempt (CEQA Guidelines (CG) §§ 15061
(b)(1) and (3)) and Categorically Exempt (CG
§§ 15061(b)(2), 15307, 15308 and 15321)

I. SUMMARY

The subject property is located within the Malibu/Cold Creek Resource Management Area, adjacent to a blue line stream Environmentally Sensitive Habitat Area (ESHA) that is a tributary to Cold Creek.

The subject violation consists of construction of the following development:

1. lighted sports court,
2. swimming pool with spa and pump,
3. retaining wall and associated carport,
4. lighted stairway extending from the pool area to the sports court,
5. lighted steps and pathways on both sides of the house,
6. chain link fence and gates around pool and house,
7. propane above-ground storage tank (AST) with concrete pad,
8. water AST,
9. concrete in eastern watercourse,
10. patio area with low walls near pool,
11. nonnative sand fill adjacent to unnamed blue line stream,
12. nonnative sand fill to the east of the pool (used as children's play area),
13. partially buried PVC piping that appears to be part of a drainage system,
14. septic system extending out of permitted area,
15. irrigation system,
16. transformers and
17. removal of major vegetation beyond the authorized limits.

This development was performed without a coastal development permit (CDP) or CDP amendment and in violation of conditions of a previously issued CDP. The prior CDP authorized construction of a single family residence (with a septic system and well), which was built between 1988 and February, 1990. The unpermitted development is inconsistent with four conditions of that CDP: Standard Condition 3 requiring changes to the approved plans to be approved by the Commission and three special conditions. These special conditions required recordation of an irrevocable offer to dedicate (OTD) an open-space easement (**Exhibit 4**), a deed restriction that prohibits future development of the property without a CDP or CDP amendment (**Exhibit 5**), and compliance with an approved Fuel Modification and Landscaping Plan (**Exhibit 6**).

On June 6, 1997 Coastal Commission staff first became aware of a possible violation of the Coastal Act at the subject site. On June 19, 1997, Commission staff sent the Rubinroits the first

EXHIBIT 9

5-88-056-A1-R (Rubinroit)

**Portions of CDO Staff Report,
CCC-01-CD-01. May 8, 2001**

of five letters (**Exhibit 7**) requesting that they apply for an after-the-fact (ATF) CDP for all unpermitted development on the subject property and establishing deadlines for submittal of a CDP application(s)¹. Collectively, these letters identified the violation as the sports court, swimming pool, retaining walls and excessive vegetation removal. After the Rubinroits failed to comply with all of these deadlines, on October 9, 1998, Commission staff sent the Rubinroits a notice of intent (NOI) to schedule a public hearing on the issuance of a cease and desist order by the Commission (**Exhibit 8**).

During a conversation with Commission staff on November 12, 1998, Howard Rubinroit indicated that he would file a complete CDP application (**Exhibit 9**). In reliance on this commitment by Mr. Rubinroit, the enforcement staff removed the cease and desist order from the Commission's agenda. On January 29, 1999, the Rubinroits submitted two CDP applications: CDP 4-99-023 for construction of decking and fencing (sports court) within the area defined by the OTD open space easement and CDP 4-99-024 for a swimming pool, decking, fencing, carport and retaining wall.

On February 26, 1999, Commission staff sent the Rubinroits two incomplete filing letters (one for each application) identifying nine pieces of information that were needed to make each application complete and requesting that the additional information be submitted by March 24, 1999. Howard Rubinroit responded in a letter dated March 15, 1999 requesting additional time to submit the information needed to complete the application. After not receiving any of the requested information, the Commission staff sent the Rubinroits a set of two letters on September 7, 2000 reiterating the information needed to create a complete application. Howard Rubinroit told Commission staff on December 1, 2000 that he did not intend to complete the applications and has not submitted a complete application as of the date of this staff report.

As a result of the Rubinroits' failure to obtain a permit or permit amendment for all unpermitted development on the subject property, Commission staff recommends that, pursuant to Coastal Act section 30810, the Commission issue a cease and desist order to resolve the subject violation. Since receipt of the notice of intent to issue the cease and desist order, Mr. Rubinroit has indicated to Commission staff that he will submit complete permit applications. However, in light of the history of this case, staff recommends that the Commission proceed with issuance of the cease and desist order at this time.

The cease and desist order requires the Rubinroits to refrain from:

- 1) performing any further development activity at the site without first obtaining a Coastal Development Permit or Amendment to the existing permit, and
- 2) maintaining any existing unpermitted development on the property by applying for a Coastal Development Permit or Amendment to either remove the development or authorize it after-the-fact.

¹ The Commission sent letters on June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998 and August 13 1998.

Special Condition 4 requires the applicant to execute and record an irrevocable offer to dedicate (OTD) an open space and conservation easement. This condition requires that the open space easement encompass all the area on the property outside the boundary of graded pad number one on which the residence was located (**Exhibit 10**). The findings for CDP 5-88-056 state that this OTD was required to "protect the remaining, undisturbed watershed cover on the property," and to limit adverse impacts on critical resources within the nearby ESHA that might arise from future development on the subject property. In support of the requirement for an open space and conservation easement, the findings also cite Policy 72 of the Malibu/Santa Monica Mountains Land Use Plan, which states:

Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.

On August 8, 1988, the Moseses and the Landrys recorded the offer to dedicate (OTD) an open-space easement, as Instrument No. 88-1246285, at the Los Angeles County Recorder's Office. The OTD restricts the use of the open space easement to "natural open space for habitat protection, private recreation, and resource conservation uses," and prohibits development except as approved by the Coastal Commission in a subsequent permit. The OTD prohibits "development as defined in Public Resources Code section 30106. . . including but not limited to removal of trees and other major or native vegetation, grading, paving, installation of structures such as signs, buildings, etc." The language of the OTD indicates that its purpose is to "restrict development on and use of the Property so as to preserve the open-space and scenic values present on the property and so as to prevent the adverse direct and cumulative effects on coastal resources..."

Special Condition 5 required the applicant to record a document stating that any future development of the property (as defined in Public Resources Code section 30106) would require either an amendment to CDP 5-88-056 or an additional CDP permit. The Commission imposed this condition so that future development that would otherwise be exempt, such as certain improvements to the residence, would be subject to permit requirements. The purpose of this condition is to enable the Commission to ensure that future development does not damage the ESHA. On August 8, 1988, the Moseses and the Landrys recorded the deed restriction, as Instrument No. 88-1246284 at the Los Angeles County Recorder's Office.

CDP 5-88-056 was issued to the Moseses and the Landrys on December 5, 1988. Based on the final dates listed in the county permits for the house, it appears that the construction of the house was completed by February 2, 1990. On February 14, 1990, title to the property was transferred to Howard and Terry Rubinroit.

2. Discovery of Violations and Contact with Landowners

On June 10, 1997, Coastal Commission staff received a report of a possible violation of the Coastal Act from the construction of a sports court at the subject property. On June 19, 1997, Commission staff confirmed the presence of a sports court in the area of the OTD open space easement. On this same date, Commission staff sent the Rubinroits the first of five letters requesting that they apply for an after-the-fact CDP for all unpermitted development on the subject property³. The June 19, 1997 letter specifically identified the alleged violation as the sports court and excessive vegetation removal. While investigating the violation during the fall of 1998, Commission staff discovered additional unpermitted development consisting of the swimming pool and retaining walls.

Commission staff contacted the Los Angeles County Building and Safety Department on August 11, 1998 and was informed that on April 22, 1996, they issued to the Rubinroits a permit for a 10 ft. by 50 ft. retaining wall with a retaining height of 10 feet (**Exhibit 11**). Although Commission staff initially believed that this retaining wall was associated with the carport, Commission staff now believes that this permit was issued for a retaining wall to support the pool and patio area in the northern portion of graded pad number one. This retaining wall is addressed in the violation description as part of the phrase "patio area with low walls near pool." Commission staff was also informed by this agency that they had issued to the Rubinroits a permit on February 29, 1996 for construction of a pool/spa (**Exhibit 12**).

Through letters to the Rubinroits, Commission enforcement staff established four initial deadlines for submittal of applications for a CDP⁴. These letters indicated that lack of compliance with the deadlines could result in enforcement actions, including penalties and the initiation of cease and desist order proceedings.

After the Rubinroits failed to comply with all of these deadlines, on October 9, 1998, Commission staff sent the Rubinroits a notice of intent (NOI) to schedule a public hearing on the issuance of a cease and desist order by the Commission. This NOI described the violation as the unpermitted construction of the sports court, swimming pool and retaining wall.

On November 5, 1998, Mr. Rubinroit submitted a lengthy Statement of Defense in response to the NOI to commence cease and desist order proceedings. On November 10, 1998, Mr. Rubinroit called Commission staff member Mary Travis to express his desire for an "amicable resolution." During a conversation with Commission staff on November 12, 1998, Howard Rubinroit indicated that he would file a complete CDP application. In reliance on this commitment by Mr. Rubinroit, the enforcement staff removed the cease and desist order from the Commission's agenda. On November 13, 1998, Commission staff sent Mr. Rubinroit a letter memorializing the November 12, 1998 conversation and establishing a deadline of December 11, 1998 for submittal of the applications.

³ The Commission sent letters on June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998 and August 13, 1998.

⁴ The Commission staff had established CDP application submittal deadlines of July 24, 1997, October 1, 1997, November 15, 1997 and September 14, 1998.

On December 9, 1998, during a conversation with Commission staff, Rubinroit agreed to file two CDP applications, one for the sports court and the other for the swimming pool and retaining wall. Commission staff determined that they would likely recommend approval of the swimming pool and retaining wall, and denial of the sports court. Since the Rubinroits suggested that they would contest a denial of the sports court, staff encouraged the Rubinroits to file two separate permit applications, one for the sports court and the other for the development on graded pad number one, outside of the area defined by the OTD. Staff indicated to the Rubinroits that filing two applications would enable the Rubinroits to expeditiously resolve the swimming pool and retaining wall violations while contesting a likely denial of the sports court.

This conversation was memorialized in a letter sent to the Rubinroits on December 21, 1998 wherein the Commission granted the Rubinroits a time extension until January 15, 1999 to file both CDP applications (**Exhibit 13**).

On January 7, 1999, the Rubinroits were granted a two-week extension until January 29, 1999 for submittal of the CDP applications.

On January 29, 1999, the Rubinroits submitted two CDP applications to the Coastal Commission: 1) CDP 4-99-023 for the construction of decking and fencing (of the sports court), and 2) CDP 4-99-024 for the construction of a swimming pool, decking, fencing, carport and retaining wall. In a cover letter accompanying the applications, Mr. Rubinroit challenged the need for a CDP and requested that the Commission waive the permit requirements for the retaining wall and swimming pool.

After this point, the Commission became aware of the presence of the carport. Since the carport is structurally composed mainly of the retaining wall, many of the future references to this development focused on the retaining wall portion of the structure.

On February 26, 1999, Commission staff sent the Rubinroits two "incomplete filing" letters (one for each application) notifying them that their applications could not be filed because they lacked certain required materials and information. Each of the letters identified nine additional items (consisting primarily of information and the proper application fee) that were needed to make the applications complete such that they could be filed. Each of these letters established a deadline of March 24, 1999 for submittal of the additional information. Commission staff also stated in the letter addressing the application for the development on graded pad number one (CDP 4-99-024) that the development does not qualify for a permit waiver.

In a letter dated March 15, 1999, Mr. Rubinroit requested clarification regarding the items that needed to be submitted to complete his applications and requested additional time to complete his application. Around this time, the Commission district staff member who had been reviewing the applications left the Commission and the case was not immediately reassigned due to lack of sufficient staff. On September 7, 2000, Commission staff sent the Rubinroits two additional letters (one for each application) notifying them that their applications were incomplete and that they still needed to submit nine more pieces of information for each application before the applications could be deemed complete. Each of these letters established a

As of the date of this report, the Rubinroits have failed to submit to the Commission a complete CDP or CDP amendment application(s) for all unpermitted development on the property. Based upon the revised description of the unpermitted development at the subject property, the Commission's South Central Coast District Office has revised the list of items needed to complete the CDP or CDP amendment application(s). The list of the items needed to complete the applications that is contained in Table 1 is now replaced with the following list:

**Table 2. Revised List of Items Necessary to Complete
CDP Applications 4-99-023 & 4-99-024**

1. A complete filing fee based on Section 13055 of the Commission's regulations. (The Rubinroits had submitted a check for \$200 with the incomplete applications that were submitted on January 29, 1999. If the Rubinroits decide to complete the two CDP applications, an additional \$2,200 must be submitted.)
2. A complete list of property owners and occupants within 100 feet of the subject property and stamped envelopes addressed to each person on this list.
3. Two sets of project and resource plans that show all development, vegetation removal, riparian canopy, drainageways, oak trees, OTD easement boundary, property boundaries, topography and all elevations. Drawings must be to scale with dimensions shown and be based upon a mapped survey of the property performed by a licensed surveyor. The resource area delineations must be made by a qualified ecologist. The drawings must be approved by the local planning department and stamped "Approval in Concept."
4. Two sets of detailed grading and drainage plans with cross sections and quantitative breakdown of grading amounts (cubic yards of cut and fill). Plans must be to scale with dimensions shown and prepared by a registered engineer.
5. A set of legible drawings reduced to 8 ½ by 11 inch in size. The reduced set shall include the project and resource plans and the grading and drainage plans.
6. Two copies of comprehensive, current (not more than one year old), site-specific geological and soils reports (including maps) prepared in accordance with the Guidelines for Engineering Geologic Reports, prepared by the State Board of Registration for Geologists and Geophysicists (11/93). (Copies of the guidelines are available from the District office.) The "Limited Geotechnical Investigation" report dated December 6, 1995 can be submitted with an update report. This update report should include discussion of the current soils and geology at the site, the potential impacts of all unpermitted development, the volume and rate of pumping for storage in the water tank, methods of construction (especially for pool and retaining walls), erosion control and measures to support geologic stability.
7. A current LA County "approved" geologic review sheet for all development.
8. The "Approval in Concept" form completed by the local planning department or other responsible local agency.
9. County Health Department review of septic system and approval for repairs or removal of exposed greywater outlet.
10. Fire department and any other local agency approval for the propane tank.

In addition, all of the development that is located within the area of the OTD is inconsistent with Special Condition 4 of CDP 5-88-056 which prohibits development within the area defined by the OTD open space easement, except as approved by the Coastal Commission in a subsequent permit.

Finally, some of the unpermitted development is inconsistent with Special Condition 2 and Standard Condition 3, which require conformance with the approved Fuel Modification and Landscaping Plans. These plans limit the clearance of vegetation to a distance of 30 feet from any structure and cutting of flammable vegetation to a height of 18 inches for another 70 feet unless authorized by the Fire Marshall. If greater clearances were required by the fire department, these conditions require the Rubinroits to obtain an amendment to CDP 5-88-056.

The following paragraphs describe the unpermitted development in greater detail and indicate where the development is located in relation to the area defined by the OTD. These descriptions are based upon a review of plans for the property, aerial photographs, photographs of the development and observations of Commission staff.

The following development appears to be located entirely within the area defined by the OTD open space easement:

1. A lighted sports court on an unpermitted graded pad (graded pad number three) is located in the northeastern portion of the site, within approximately five feet of the unnamed blue line stream. This sports court is approximately 50 feet by 25 feet and consists of a chain link fence (with a section of solid wall) and gates with a concrete pad, light post, basketball net, tennis net and small storage shed.
2. A water above-ground storage tank (AST) is located in the southeastern corner of the property adjacent to Piuma Road. Plans submitted by Mr. Rubinroit in his Statement of Defense indicate that this tank has a capacity of 8,000 gallons.
3. Approximately 25 square feet of concrete has been poured on a portion of the eastern watercourse, adjacent to the sports court. (Staff guesses that wet concrete left over from the construction of the concrete pad of the sports court may have been thrown on the banks of the watercourse.)
4. On the northeastern side of the sports court is an area of unvegetated nonnative sand fill that directly abuts the unnamed blue line stream corridor.
5. Signs of active cutting of shrubs located over 100 feet to the north of the residence were observed during the March 15, 2001 site investigation. The area around the sports court also appears to have been cleared of vegetation during the construction of the sports court and the grading of the pad. This removal of major vegetation was performed in violation of Special Condition 2 and Standard Condition 3 of CDP 5-88-056 which required compliance with the approved Fuel Modification and Landscaping Plans. These plans limit the clearance of vegetation to a distance of 30 feet from any structure and cutting of flammable vegetation to a height of 18 inches for another 70 feet unless authorized by the Fire Marshall.

The following development is either located partially within the area defined by the OTD, or is located too close to the boundaries of graded pad number one to be able to definitively determine whether it is located within the area defined by the OTD:

1. A lighted stairway was observed extending from the pool area to the sports court. The majority of this stairway appears to be located within the area defined by the OTD. This stairway, which is illuminated with light posts, is constructed with wooden steps and a railing made of wooden posts with connecting ropes.
2. Portions of the chain-link fence around the pool and house appear to extend off of graded pad number one (especially to the east of the house) into the adjacent area defined by the Open space easement OTD.
3. An area of sand fill which appears to be used as a children's play area was observed to the east of the residence, apparently within the area defined by the OTD open space easement.
4. Partially buried PVC pipe was observed a) to the northeast of the pool area, b) on the southwestern side of the sports court and c) within the shrubs to the northwest of the sports court. These pipes appear to be part of an unpermitted drainage system.
5. To the west of the residence, an exposed greywater outlet (approximately two inch pipe) with a film of dried effluent was observed during the March 15, 2001 site investigation. Not only is this outlet located outside of the area approved for the septic system, but it also represents a change in the design of the system by discharging greywater directly to the ground surface. The approved plan for the septic system that was authorized by CDP 5-88-056 shows the septic tank as being located north of the residence, apparently in the area currently developed as the patio area between the house and the pool. (**Exhibit 18**) The seepage pits are shown on this plan as being located on the northern portion of graded pad number one, outside of the area defined by the OTD. In contrast, the exposed outlet was observed to the west of the residence, downslope of graded pad number one, potentially within the area defined by the OTD.
6. Sprinkler heads for an irrigation system were observed both within the area defined by the Open space easement OTD and on graded pad number one.
7. A plan of the subject property dated November 1994 that was approved by the LA County Fire Department shows six transformers (300 VA, 12 V) as being located primarily on graded pad number one, but also on the stairway leading down to the sports court. Commission staff has a photograph from the March 15, 2001 site investigation of one of these transformers on the western side of the house.

The following development appears to be located completely within the boundaries of graded pad number one and thus is outside of the area defined by the OTD:

1. An in-ground swimming pool (approximately 10 feet by 40 feet) with an attached spa and pump are located on the northern portion of graded pad number one.
2. A retaining wall and an attached carport (pipes attached to the retaining wall and pavement supporting a cloth covering) with spaces for two cars are located to the southeast of the residence, adjacent to Piuma Road.
3. Lighted steps and pathways are located in close proximity to the eastern and western sides of the house. On the eastern side of the house, these steps are constructed primarily of wood and have railings. On the western side of the house, the steps closer to Piuma Road are

B. Resource Impacts

All of the unpermitted development included in the violation description has been undertaken without a CDP or CDP amendment and without benefit of the Coastal Commission's review of potential impacts that the cited development might have on coastal resources. The unpermitted developments raise issues under Coastal Act sections 30240 (environmentally sensitive habitat areas or ESHA), 30251 (Hazards), and 30253 (Scenic and Visual Qualities).

Section 30240: Environmentally Sensitive Habitat Areas (ESHAs)

Some of the unpermitted development is potentially inconsistent with Section 30240 which provides for the protection of ESHAs. The subject property is located in the upper portions of the Malibu/Cold Creek Resource Management Area which is shown on the Sensitive Environmental Resources Map (Figure 6 of the Malibu Land Use Plan) (**Exhibit 20**). Policy 57 of the Malibu Land Use Plan states that the areas shown on this map shall be designated as Environmentally Sensitive Habitat Resource Areas (ESHAs). Based on the above information, the subject property may be ESHA; however, the determination regarding this issue will be made during staff review of the CDP or CDP amendment application(s). The subject property is also located directly adjacent to a blue line stream that is an unnamed tributary to Cold Creek and is ESHA. The property is also located near the Dark Canyon Creek ESHA.

Section 30240 of the Coastal Act 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.*

When the underlying project (construction of a four level, 4,260 square foot single family residence with a well and a septic system) was permitted, the Commission was concerned about the cumulative impacts on the Malibu/Cold Creek Resource Management Area, particularly impacts from runoff, as well as erosion from construction activities. To address this concern, the Commission conditioned the permit to:

- 1) require the landowner to obtain an amendment to CDP 5-88-056 or a new CDP before constructing any additional development on the property, including improvements that might otherwise be exempt from permit requirements,
- 2) require the applicant to record an OTD open space easement on the portion of the property outside of grading pad number one and
- 3) develop Fuel Modification and Landscaping Plans to minimize vegetation clearance in the open space area.

Since the development was performed without a CDP or CDP amendment, the Commission has been unable to conduct a thorough review of its consistency with the Chapter 3 Policies of the Coastal Act. Therefore, the development has the potential to negatively impact the ESHA that the Commission had intended to protect through the standard and special conditions of the previously issued CDP.

Although the Commission is unable to do a thorough review of the potential impacts to the ESHA from the development without a complete CDP or CDP amendment application, it is apparent that the unpermitted development is likely to have several adverse impacts on the ESHA. The potential direct impacts from the development include the following:

- 1) By increasing the amount of impervious surface area through the construction of the sports court and the patio area, the Rubinroits have likely reduced the amount of stormwater infiltration in the area, thus potentially increasing the volume and velocity of sheet flow down the hillside, into the ESHA stream that is a tributary to Cold Creek. This increased surface transport of stormwater could result in increased erosion, change in stream morphology and impaired water quality.
- 2) The removal of major vegetation in this area, performed in violation of the Fuel Modification and Landscaping Plans, also likely harmed the ESHA by reducing the amount of available habitat and increasing the potential for erosion.
- 3) The Rubinroits have not submitted plans which indicate how the pool water is discharged. If this water (presumably treated with pool chemicals) is discharged to the ground surface or directly into the stream, it could adversely impact the water quality of the ESHA stream.

In addition to these potential direct impacts to the ESHA, the development within the area defined by the OTD may deter acceptance of the OTD. To date, the OTD has not been accepted.

Section 30251: Scenic and Visual Qualities

The unpermitted development at the subject property is potentially inconsistent with Section 30251 of the Coastal Act which requires that the scenic quality of the coastal zone be protected as an important public resource and that permitted development be sited to protect the visual qualities of the areas. Section 30251 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.

The subject site and violation are located in the Malibu/Cold Creek Resource Management Area and the site is adjacent to and visible from Piuma Road and State Park Lands. The findings for CDP 5-88-056 state that "only as conditioned will the proposed development not adversely impact visual resources along Piuma road and from State park lands to the east in the upper Dark Canyon drainage." The development listed in the violation description violated the conditions of

reconstruction, demolition, or alteration of the size of any structure; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations. . . As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

All of the unpermitted development on the subject property meets the above definition of development. Generally, the unpermitted development constitutes the following:

- a) placement of solid materials and/or structures (concrete in eastern watercourse, nonnative sand fill adjacent to unnamed blue line stream and nonnative sand fill to the east of the pool, lighted sports court, swimming pool with spa and pump, retaining wall and associated carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the house, chain link fence and gates around pool and house, propane tank with concrete pad, water tank, patio area with low walls, PVC piping that appears to be part of a drainage system, septic system extending out of permitted area, irrigation system and transformers),
- b) grading: creation of graded pad number three and any other grading performed in association with the development listed above, and
- c) the removal of major vegetation beyond the authorized limits.

Consequently, the subject activities satisfy the definition of development contained in section 30106 of the Coastal Act. This definition of development based on section 30106 was recorded with the LA County Recorder's Office as Exhibit C of the deed restriction and Exhibit D of the OTD open space easement.

Refer to the Commission's response to the third point of the Rubinroit's defense (below) for additional discussion of why the items listed in the violation description constitute development that is not exempt from CDP permit requirements even if they are considered improvements to a single family residence.

The Rubinroits' Defense:

3. **"The purported 'developments'. . . did not require a Coastal Development Permit ("CDP") and/or constitute work performed pursuant to a vested right."**

(The following presents the different arguments the Rubinroits use to support this contention with the Commission's response to each.)

3a. Mr. Rubinroit contends that:

the foregoing purported improvements are exempt from the requirement of a CDP pursuant, among other things, to Public Resource Code Section 30610(a). . . We believe that that regulation [presumably Section 13250(b)(1)] is contrary to the Coastal Act itself (and unenforceable since it would largely if not totally emasculate and vitiate the exemption provided under 30610(a).)

Commission's Response:

As stated in the August 13, 1998 letter from Commission staff to Mr. Rubinroit, the requirement for obtaining a CDP or CDP amendment prior to conducting development on the subject property is provided for in the following :

- a) section 13250(b)(6) of the Coastal Commission regulations,
- b) Special Condition 5 of CDP 5-88-056, which required recordation of a deed restriction prohibiting future development on the property without a CDP or CDP amendment, and
- c) Special Condition 4 of CDP 5-88-056, which required the recordation of an OTD of an open space easement.

Pursuant to section 30610(a) of the Coastal Act, improvements to a single family residence are exempt from permit requirements except under circumstances identified in Section 13250 of the Coastal Commission regulations. Section 13250(a) indicates that the term "improvements" refers to structures directly attached to a residence or normally associated with a residence, such as garages, swimming pools, fences and storage sheds. Section 13250(b)(6) states that the following improvements require a CDP:

Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

Special Condition 5 of CDP 5-88-056 required the recordation of a deed restriction prohibiting future development without a CDP or CDP amendment. Special Condition 5 contains one exception, which is that removal of vegetation for fire protection, as required by the County Fire Marshall, does not require a CDP. However, the removal of vegetation for fuel modification was specifically addressed in the Fuel Modification and Landscaping Plans which limit the clearance of vegetation within the area defined by the open space easement OTD. Thus, under Section 13250(b)(6), any improvements to the residence or other development on the property require a CDP. The adopted findings for CDP 5-88-056 indicate that the deed restriction limiting future development was necessary to prevent cumulative adverse impacts to the ESHA and to make the development of the house consistent with Section 30240 (b) of the Coastal Act. Therefore, to the extent that any of the unpermitted development qualifies as improvements to the residence, in light of the deed restriction required by Special Condition 5, they are not exempt from permit requirements pursuant to section 13250(b)(6).

In addition, the requirement of Special Condition 4 of CDP 5-88-056 for recordation of the Open space easement OTD prohibits development within the area to which the OTD pertains in the absence of a permit for such development issued by the Commission. As in the case of the deed restriction, the adopted findings for CDP 5-88-056 state that the open space easement OTD was required to prevent cumulative adverse impacts to the ESHA and to make the development of the house consistent with Section 30240(b) of the Coastal Act.

were approved by the Commission do not show any of the development listed above except for the septic system, which does not show the greywater outlet located to the west of the house.

3c) Mr. Rubinroit also claims that “even if the easement was and is valid, it does not prohibit the title owner from installing such pipes or lines in the easement area. See, e.g. *Colegrove Water Co. v. City of Hollywood*, 151 Cal.425 (1907).”

Commission’s Response:

The installation of pipes or lines in the easement area constitutes development under Section 30106 of the Coastal Act (see Commission’s response to defense number two above). The deed restriction prohibiting development on the subject property without a CDP or CDP amendment was required as a condition of CDP 5-88-056 in order to prevent future impacts to the ESHA. Once a complete CDP or CDP amendment application(s) is filed, the Commission staff will evaluate the development, including the installation of the septic system (outside of the permitted area), irrigation system and drainage system based upon the Policies of Chapter 3 of the Coastal Act. The primary goal of the Commission’s enforcement activities, including the issuance of this cease and desist order, is to have the Rubinroits submit a complete CDP or CDP amendment application(s) so that the staff can determine whether the development is consistent with the Chapter 3 policies of the Coastal Act.

Contrary to the Rubinroits’ argument, the provisions of the open space easement OTD are fully consistent with the *Colegrove Water Co.* case. In that case the Supreme Court held that a municipal easement holder could not preclude the owner of the fee interest that the easement encumbered from installing underground water piping. However, the court also held that any such undertaking would be “subject to reasonable regulation [by the municipality] in the interest of the comfort and convenience of the community as a whole.” Similarly, section 1(c) of the open space easement OTD expressly allows in the area that is the subject of the OTD “the installation or repair of underground utility lines,” subject, however, “to applicable governmental regulatory requirements.” Thus, there is no conflict between the requirement for a permit for pipes in the OTD area and the *Colegrove Water Co.* case.

3d) The Rubinroits claim they have a “vested right” to enjoy the benefits of their development activity without applying for and obtaining a permit under the Coastal Act.

Commission’s Response:

The availability of an exemption from the permit requirements of the Coastal Act based on a “vested rights” theory is governed by section 30608 of the Act and by sections 13200-13208 of the Commission’s administrative regulations. The cited regulations establish an administrative procedure by which claims of vested rights can be made and adjudicated. The Rubinroits have not filed a claim of vested right under these procedures. See also the Commission’s response to contention numbers 6 and 14.

The Rubinroits' Defense:

- 4. Even if a CDP is required, only one is necessary, not two. The Rubinroits have been advised by Commission staff that it is likely that a CDP for the sports court would be denied.**

"I allege that I advised Commission staff that the demand that I submit two separate applications, pay two separate, additional and increased fees, and submit each and all of the 'additional' information was unreasonable and unnecessary, and stated that I could not (and therefore would not) make such further applications, pay further fees, or supply all of the additional information demanded."

Commission's Response:

The Commission staff did not *require* separate CDP applications for the unpermitted development. The Commission staff determined that it would most likely recommend denial of an application for approval of the sports court since it was constructed within the area affected by the OTD open space easement. The Commission staff warned the Rubinroits of the probable denial as a courtesy to save the Rubinroits time and money which may be wasted in an attempt to retain the sports court in the OTD open space easement area. However, the Commission staff also advised Mr. Rubinroit that he had the right for approval of the sports court in the OTD open space easement. Commission staff also determined that it would likely recommend approval of the swimming pool and retaining wall on graded pad number one. Therefore, to facilitate expeditious resolution of the swimming pool and retaining wall violations, Commission staff suggested that the Rubinroits submit two permit applications to distinguish between the development located in the OTD open space easement area and the development located on the house pad. In a phone conversation with Commission staff on December 9, 1998, Mr. Rubinroit agreed to submit two CDP applications.

The Rubinroits' Defense:

- 5. The applications for two CDPs submitted on January 29, 1999 were complete.**

Mr. Rubinroit alleges that there "was and is no basis for staff's finding our applications incomplete. . . further allege that the 'additional information' requested was either previously supplied and/or unreasonable, and deny that any additional information should be required."

Commission's Response:

Commission staff reviewed the applications that Mr. Rubinroit submitted on January 29, 1999 and found that they were incomplete based upon the absence of the items that are described in Table 1 of this staff report. Section 13056 of the Commission's regulations grant the Executive Director (who has delegated this task to Commission staff) the authority to file applications only after they have been reviewed and found to be complete. The determination of incompleteness was made pursuant to the provisions set forth in CCR sections 13052, 13053.5, 13054 and

13055. Commission staff informed the Rubinroits that the aforementioned items were necessary to file the applications in letters dated February 26, 1999 and September 7, 2000.

The regulations provide that if an applicant disagrees with a determination that an application is incomplete, he or she can appeal the determination to the Commission. The Rubinroits failed to avail themselves of this administrative appeal procedure for determinations of incompleteness (14 CCR § 13056(d)). In addition, the Rubinroits did not explain in their SOD why they disagree with each of the items required to complete the applications.

The Rubinroits' Defense:

- 6. Los Angeles County staff advised the Rubinroits that a CDP was not required. "In reliance on such advice we have expended a total of approximately \$200,000 on such improvements." Mr. Rubinroit later contends that they have "expended in an excess of \$100,000 on those purported improvements, such that we believe we acquired a vested right to construct such improvements."**

Mr. Rubinroit contends that since the LA County Building and Safety department did not check off the Coastal Commission permit in its checklist of other approvals required when it issued its building permit, the County, in effect, advised him that a CDP was not required for the development.

Commission's Response:

The Commission disputes Mr. Rubinroit's claim that they had a right to rely on LA County's advice regarding other required permits and the money that they spent in reliance on that advice to the exclusion of any other applicable regulatory requirements. Section 30600(a) of the Coastal Act states that, "in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person. . . wishing to perform or undertake any development in the coastal zone. . . shall obtain a coastal development permit." Under California law, one public agency cannot impair the legal jurisdiction of another public agency by giving erroneous advice. (*California Tahoe Regional Planning Agency v. Day and Night Electric, Inc.* (1985) 163 Cal.App.3d 898.) Thus, regardless of whether the County failed to inform the Rubinroits of the CDP requirements or informed the Rubinroits that no CDP is required, the Rubinroits are responsible for complying with the Coastal Act requirements. In addition, the recorded deed restriction limiting future development without a CDP or CDP amendment and the OTD served to put the Rubinroits on notice of the requirements to obtain authorization from the Commission for development on the subject property. For further discussion of the vested rights argument, refer to the Commission's response to contention 3d.

The Rubinroits' Defense:

- 7. None of the Rubinroits' consultants informed them of the need to obtain a CDP.**

"Until we received a copy of staff's letter of June 17, 1997, no one had ever suggested to us that a Coastal Commission permit was required or that there was any restriction or prohibition on the

improvements which we made. This is noteworthy, since both the landscape architect and contractor have a great deal of experience in the Coastal Zone.

Commission's Response:

Since Mr. Rubinroit does not provide a detailed description of the role of his consultants, it is not clear whether he employed them to obtain all necessary permits for the development and if they had knowledge of the OTD or the deed restriction requiring a CDP or CDP amendment for future development on the property. If the Rubinroit's consultants knew about the OTD and the deed restriction and had enough knowledge of the CDP requirements to know that a CDP or CDP amendment was required for any future development on the subject property, then the Rubinroits are expected to know that information regardless of whether the consultant passed that information on to the Rubinroits. The theory of imputed knowledge states that "an agent is under a duty to inform his principal of matters in connection with the agency that the principal would desire to know about. Even if he fails to do so, *the principal will in most cases be charged with such notice.*" (2 Witkin, *Summary of California Law* 9th, "Agency and Employment," § 99; emphasis added.) In *Columbia Pictures Corp. v. DeToth* (1948) 87 Cal.App.2d 620, the Court of Appeal explained the doctrine of imputed knowledge as follows:

The fact that the knowledge acquired by the agent was not actually communicated to the principal . . . does not prevent operation of the rule. . . The agent may have been guilty of a breach of duty to his principal, yet the knowledge has the same effect as to third persons as though his duty had been faithfully performed. The agent acting within the scope of his authority, is, as to the matters existing herein during the course of the agency, the principal himself.

In addition, Civil Code § 2332 states the following:

NOTICE TO AGENT, WHEN NOTICE TO PRINCIPAL. As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

Thus, even if, as Mr. Rubinroit claims, the Rubinroits' consultants did not inform them of the need to obtain a CDP, under the doctrine of imputed knowledge, the Rubinroits are still responsible for complying with the provisions of the Coastal Act. If the Rubinroits' consultants did not know about the CDP requirements or about the existence of the OTD and the deed restriction, that does not excuse the Rubinroits from compliance with legal requirements.

The Rubinroits' Defense:

- 8. The unpermitted grading of graded pad number three (location of sports court), the lighted steps on both sides of the house, the propane tank, the water tank, the drainage system, the septic system, the irrigation system and the excessive vegetation removal were all performed, constructed and/or installed by the previous owner.**

In his Statement of Defense dated February 5, 2001, Rubinroit states that at the time of the closing on the property in February 1990, the property was developed with three pads, including

graded pad number three in the open space easement. He alleges that the grading for graded pad number three occurred in or about 1988 by the original developer. In his amendment to his Statement of Defense dated April 10, 2001, Mr. Rubinroit listed certain development that he claims was "constructed and/or installed at the time that our house was originally constructed by Mr. Moses pursuant to the 1988 Administrative Permit."

Commission's Response:

Regardless of who performed the development, the persistence of the unpermitted development remains a continuing violation of the Coastal Act and a continuing public nuisance that the current owners are liable for correcting. The Coastal Act represents a legislative declaration that acts injurious to the state's natural resources constitute a public nuisance. (*Leslie Salt Co. v. San Francisco Bay Conservation etc. Com.* (1984) 153 Cal. App.3d 605, 618; *CREED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 318.) The Coastal Act is a "sensitizing of and refinement of nuisance law." (*CREED*, at 319.)

The Rubinroits are liable for actions of previous owners who may have created some of the public nuisances on the subject property based on Civil Code 3483 which states:

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

In addition, in *Leslie Salt* (p. 622), the court held that:

"whether the context be civil or criminal, liability and the duty to take affirmative action [to correct a condition of noncompliance with applicable legal requirements] flow not from the landowner's active responsibility for [that] condition of his land...or his knowledge of or intent to cause such [a condition] but rather, and quite simply, from his very possession and control of the land in question."

Thus, even if certain unpermitted development was constructed by the prior owner, the Rubinroits' maintenance of that development without a permit constitutes a continuing violation of the Coastal Act and CDP 5-88-056.

The Rubinroits' Defense:

9. **"The demand for and acceptance of the easement appear to constitute a per se taking which was and is unlawful and unconstitutional, and which we as subsequent owners may and do challenge."**

"The actions and/or proposed actions by the Commission constitute a taking, were done or are threatened to be done without due process, and deny us our rights to equal protection under the law." Mr. Rubinroit cites the *Nollan v. California Coastal Commission* case to support his contention that the requirement for filing an OTD for an open space easement is a taking and that he has a right to challenge it as a subsequent owner.

Commission's Response:

The original permittees, the Moses and Landrys, had the ability and opportunity to file a legal challenge contesting Special Condition 4 of CDP 5-88-056 (requiring an offer to dedicate an open space easement) at the time it was imposed by the Commission. Any such legal challenge would have had to have been made pursuant to the terms and within the timeframe specified by Section 30801 of the Coastal Act. That section states:

Any aggrieved person shall have a right to judicial review of any decision or action of the Commission by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure, within 60 days after the decision or action has become final (emphasis added).

However, the Moseses and Landrys did not file such a legal challenge. They accepted the permit as granted by the Commission and met all necessary conditions of approval including the recordation of the irrevocable OTD in compliance with Special Condition 4. Permittees who, like the Moseses and Landrys, fail to challenge a permit condition within the appropriate limitations period lose the ability to challenge it later. (*California Coastal Commission v. Superior Court* (1989) 212 Cal.App.3d 1488.) A permittee's successors in interest, like the Rubinroits, are subject to this legal incapacity to the same extent as the permittee. (*Ojavan Investors, Inc. v. California Coastal Commission* (1994) 26 Cal.App. 4th 516.)

Furthermore, under California land use law, once a permittee has acquiesced in and accepted the benefits of a permit approval, he or she is deemed to have waived his or her right to challenge any requirement associated with that approval. (*County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-11.) Thus, once a permittee acquiesces in a permit and accepts its benefits, the burdens of the permit run with the land and bind both the permittees and all successors in interest. In this case, the original permittees accepted the benefits of the permit by constructing the residence authorized by the permit. As successors in interest to the original permittees, the Rubinroits are bound by Special Condition 4 of CDP 5-88-056.

Finally, in section 13166 of its administrative regulations, the Commission has provided a procedure by which permittees may submit applications to seek amendments to previously approved permits. The Rubinroits have not availed themselves of this procedure.

The above-cited authorities conclusively refute Mr. Rubinroit's suggestion that the *Nollan* decision gave rise to a new legal justification for acting in disregard of the recorded OTD. *Nollan* did not establish a new limitations period within which all coastal development permittees who had previously acquiesced in and accepted the benefits of their permits could now challenge the terms or conditions of those permits. Nor did it establish an opportunity for permittees or their successors in interest to revoke either their or their predecessors' acquiescence in and acceptance of the benefits of the respective permit. For these reasons, Mr. Rubinroit's reliance on the *Nollan* decision is completely misplaced.

The Rubinroits' Defense:

10. The Rubinroits had not seen a copy of the Irrevocable Offer to Dedicate Open-Space Easement until Commission staff sent them a copy in October 1997. "My wife and I had no knowledge of any restrictions or conditions on our ability to improve the already graded pads..."

Commission's Response:

Mr. Rubinroit admits in his statement of defense that:

"At or about the time that we acquired our home, I was advised that a portion of the property had been offered for dedication, and an easement recorded, for open space and private recreational use. However, I also was advised specifically by Mr. Moses (former owner) that the area offered for dedication lay outside of the area of the three graded pads, which, again, were represented to me to be freely developable."

Thus, at the time the Rubinroits acquired the property, the Rubinroits were on notice that a portion of the property was subject to an OTD an easement. Upon purchase of the property, the Rubinroits should have obtained a copy of the OTD to determine the limits of the area subject to the OTD and any use restrictions specified in the OTD.

Because the OTD was properly recorded against title to the property, the Rubinroits are presumed to have constructive knowledge of the OTD. In *Ojavan Investors, Inc. v. Cal. Coastal Commission* (1997) 54 Cal.App.4th 373, 389, the Court of Appeal held that:

Because the restrictions were properly recorded prior to appellants' purchase of the lots, appellants (who are admittedly engaged in the land auction business and therefore are sophisticated in land transfer transactions) are deemed to have constructive notice of the deed restrictions.

As a practicing attorney who has tried several real estate disputes, Mr. Rubinroit is presumed to be sophisticated enough in land transfers to have obtained a title report, which would have listed the deed restriction and the open space easement OTD.

The issue of constructive notice is also addressed in section 1213 of the Civil Code which states the following:

Every conveyance of real property or an estate for years therein acknowledged or proved and certified and recorded as prescribed by law from the time it is filed with the recorder for record is constructive notice of the contents thereof to subsequent purchasers and mortgagees. . .

Civil Code § 1215 provides that, "as used in section 1213, the term 'conveyance' embraces every instrument in writing...by which the title to any real property may be affected...." Thus, for purposes of section 1213, the OTD is a "conveyance of real property", the recordation of which provides constructive notice of the contents of the OTD to all future owners of the property including the Rubinroits.

In further support of the Rubinroits' constructive knowledge of the deed restrictions and OTD, the treatise, 5 Miller and Starr, *California Real Estate 3d*, "Recording and Priorities," § 11:59 states the following:

When such an instrument is duly recorded, ... all persons who thereafter deal with the property described in the instrument are conclusively presumed to have constructive notice of the contents of the recorded document

Since the deed restriction limiting future development and the OTD were both recorded with the LA County Recorder's Office on August 8, 1988, the Rubinroits, as subsequent owners, are conclusively presumed to be aware of their existence.

The Rubinroits' Defense:

11. "The Irrevocable Offer indicates that the land as dedicated could be used for "private recreation" purposes. That is precisely the use to which the lower pad, even assuming it lies within the dedicated area, is being put."

Commission's Response:

The adopted findings of CDP 5-88-056 state that Special Condition 4 requires the OTD to prevent future impacts to the ESHA. Therefore, the intent of the open space easement OTD was to protect the adjacent ESHA. In fact, Special Condition 4 of CDP 5-88-056 specifically refers to "an open space and conservation easement for Environmentally Sensitive Habitat Area resource protection."

The OTD stated that "the use of the Protected Land shall be limited to natural open space for habitat protection, private recreation, and resource conservation uses." Therefore, private recreation is one of the authorized uses of the OTD open space easement. Any development in the OTD open space easement requires a CDP regardless of the purpose of the development. The limitation on uses in the OTD easement is not an authorization to undertake development; rather, it indicates that certain uses may be compatible with the intent of the easement. This description of the uses does not obviate the need for a CDP for development in support of such a use, it simply allows for the possibility for such development to be approved in a CDP. In fact, the OTD explicitly states that no development in the easement area shall occur without a CDP. Specifically, it states:

No development as defined in Public Resources Code Section 30106, attached hereto as Exhibit D and incorporated herein by reference, including but not limited to removal of trees and other major or native vegetation, grading, paving, installation of structures such as signs, building, etc., or except as approved by the Coastal Commission or its' successor agency on a subsequent Coastal Permit shall occur...

Thus, any development in the OTD area requires a CDP regardless of the purpose of such development.

authorized limits. They allege that these developments were on the property at the time they purchased the property.

D. Violators' Defense and Commission Response

The Statement of Defense (SOD) submitted by Howard Rubinroit that was received by the Commission staff on February 6, 2001 is included as Exhibit 15. The amendment to the SOD that was received by Commission staff on April 11, 2001 is included as Exhibit 17. The following describes the Rubinroits' defenses in more detail and sets forth the Commission's response to each contention.

The Rubinroits' Defense:

1. **The Commission has no jurisdiction over the subject property since it is "in excess of five miles from the mean high-tide line and separated from the sea by at least one ridge line."**

Commission's Response:

In 1976, the California State Legislature specifically mapped the inland boundary of the Coastal Zone. These maps are on file with the Coastal Commission and the Secretary of State. In 1977, the Coastal Commission adopted conformed copies of these maps pursuant to Section 30103 of the Coastal Act of 1976. The inland boundary of the coastal zone is now depicted on a set of 161 maps that are on file with the Coastal Commission and the County Clerk of the respective coastal counties. These maps include Coastal Zone Map 135, which depicts the Malibu area. Real property that is located within the coastal zone, as shown on these maps, is subject to the statutory authority of the Coastal Act of 1976.

The subject property at 25351 Piuma Road (which can also be described as a portion of the northeast quarter of the north half of Section 20, T1S, R17W, San Bernardino Base and Meridian) is located within the coastal zone as depicted on Coastal Zone Map 135 (Malibu Beach Quadrangle). Coastal Zone Map 135 indicates that the subject property is located approximately 2.5 miles inland of the mean high tide line and approximately 2.5 miles seaward on the inland coastal zone boundary. Since the property is shown on this map as being within the coastal zone, the Commission has jurisdiction over development on the subject property.

The Rubinroits' Defense:

2. **The items listed in the violation description do not constitute development.**

Commission's Response:

Section 30106 of the Coastal Act defines development as:

on land, in or under water, the placement or erection of any solid material or structure;... grading, removing, dredging, mining, or extraction of any materials;...construction,

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reconstruction, demolition, or alteration of the size of any structure; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations. . . As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

All of the unpermitted development on the subject property meets the above definition of development. Generally, the unpermitted development constitutes the following:

- a) placement of solid materials and/or structures (concrete in eastern watercourse, nonnative sand fill adjacent to unnamed blue line stream and nonnative sand fill to the east of the pool, lighted sports court, swimming pool with spa and pump, retaining wall and associated carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the house, chain link fence and gates around pool and house, propane tank with concrete pad, water tank, patio area with low walls, PVC piping that appears to be part of a drainage system, septic system extending out of permitted area, irrigation system and transformers),
- b) grading: creation of graded pad number three and any other grading performed in association with the development listed above, and
- c) the removal of major vegetation beyond the authorized limits.

Consequently, the subject activities satisfy the definition of development contained in section 30106 of the Coastal Act. This definition of development based on section 30106 was recorded with the LA County Recorder's Office as Exhibit C of the deed restriction and Exhibit D of the OTD open space easement.

Refer to the Commission's response to the third point of the Rubinroit's defense (below) for additional discussion of why the items listed in the violation description constitute development that is not exempt from CDP permit requirements even if they are considered improvements to a single family residence.

The Rubinroits' Defense:

3. **"The purported 'developments'. . . did not require a Coastal Development Permit ("CDP") and/or constitute work performed pursuant to a vested right."**

(The following presents the different arguments the Rubinroits use to support this contention with the Commission's response to each.)

3a. Mr. Rubinroit contends that:

the foregoing purported improvements are exempt from the requirement of a CDP pursuant, among other things, to Public Resource Code Section 30610(a). . . We believe that that regulation [presumably Section 13250(b)(1)] is contrary to the Coastal Act itself (and unenforceable since it would largely if not totally emasculate and vitiate the exemption provided under 30610(a).)

Commission's Response:

As stated in the August 13, 1998 letter from Commission staff to Mr. Rubinroit, the requirement for obtaining a CDP or CDP amendment prior to conducting development on the subject property is provided for in the following :

- a) section 13250(b)(6) of the Coastal Commission regulations,
- b) Special Condition 5 of CDP 5-88-056, which required recordation of a deed restriction prohibiting future development on the property without a CDP or CDP amendment, and
- c) Special Condition 4 of CDP 5-88-056, which required the recordation of an OTD of an open space easement.

Pursuant to section 30610(a) of the Coastal Act, improvements to a single family residence are exempt from permit requirements except under circumstances identified in Section 13250 of the Coastal Commission regulations. Section 13250(a) indicates that the term "improvements" refers to structures directly attached to a residence or normally associated with a residence, such as garages, swimming pools, fences and storage sheds. Section 13250(b)(6) states that the following improvements require a CDP:

Any improvement to a single-family residence where the development permit issued for the original structure by the commission, regional commission, or local government indicated that any future improvements would require a development permit.

Special Condition 5 of CDP 5-88-056 required the recordation of a deed restriction prohibiting future development without a CDP or CDP amendment. Special Condition 5 contains one exception, which is that removal of vegetation for fire protection, as required by the County Fire Marshall, does not require a CDP. However, the removal of vegetation for fuel modification was specifically addressed in the Fuel Modification and Landscaping Plans which limit the clearance of vegetation within the area defined by the open space easement OTD. Thus, under Section 13250(b)(6), any improvements to the residence or other development on the property require a CDP. The adopted findings for CDP 5-88-056 indicate that the deed restriction limiting future development was necessary to prevent cumulative adverse impacts to the ESHA and to make the development of the house consistent with Section 30240 (b) of the Coastal Act. Therefore, to the extent that any of the unpermitted development qualifies as improvements to the residence, in light of the deed restriction required by Special Condition 5, they are not exempt from permit requirements pursuant to section 13250(b)(6).

In addition, the requirement of Special Condition 4 of CDP 5-88-056 for recordation of the Open space easement OTD prohibits development within the area to which the OTD pertains in the absence of a permit for such development issued by the Commission. As in the case of the deed restriction, the adopted findings for CDP 5-88-056 state that the open space easement OTD was required to prevent cumulative adverse impacts to the ESHA and to make the development of the house consistent with Section 30240(b) of the Coastal Act.

Steve Nelson, the biological consultant hired by the Rubinroits, concluded that the nearest blueline stream was approximately 100 feet to the northeast of the sports court. With respect to the riparian canopy for the blueline stream, he concluded that the "canopy of this vegetation does not extend beyond 10 to 20 feet on either side of the flow line and does not come close to the affected area." However, the plans submitted by the Rubinroits show the stream as being located approximately sixty feet to the east of the sports court and fifty feet from the area of decomposed granite adjacent to the sports court. In addition, Steve Nelson based his analysis of the impacts of the removal of vegetation for the construction of the sports court on the conditions that existed after the area had already been graded and the native vegetation had already been removed. Therefore, his conclusion that "no impacts of consequence" resulted from the proposed development does not reflect the impacts that occurred pursuant to the grading and removal of vegetation in this area. The grading and removal of native vegetation associated with the construction of the sports court and placement of fill on the eastern side of the sports court will eliminate ESHA and result in adverse impacts to habitat, water quality, and alteration of floodwaters.

By increasing the amount of impervious surface area through the construction of the lighted sports court and lighted stairway extending from the pool area to the sports court, the amount of stormwater infiltration in the area is reduced, thereby potentially increasing the volume and velocity of sheet flow down the hillside, into the blueline stream that is a tributary to Cold Creek and ESHA. This increased surface transport of stormwater could result in increased erosion, changes in stream morphology, and impaired water quality. In addition, the removal of vegetation in this area to construct the sports court also harms the ESHA by reducing the amount and quality of available habitat and increasing the potential for erosion. The applicants assert that only minimal or no grading occurred for the construction of the sports court and decomposed granite area adjacent to the sports court, although they refused to provide staff with an engineer or geologist's analysis of the amount of grading to document this claim. In issuing the Cease and Desist Order, however, the Commission already determined that grading had occurred in these areas, and that finding is final and binding. Although the Commission does not know the exact amount of grading that occurred, because the applicants refused to provide this information, the exact amount is not necessary to evaluate the applicants' proposal because no amount of grading would be consistent with the Coastal Act policy protecting ESHA. Even if only minimal (or even no) grading was performed, construction of the sports court and decomposed granite area still resulted in removal of native chaparral habitat in close proximity to a stream, which is inconsistent with the policy of the Coastal Act requiring the protection of ESHA and which states that only resource dependent uses (which the current proposal is not) may be allowed within ESHA. The night lighting also has a negative impact on the riparian area and ESHA, as it has the potential to cause negative impacts to wildlife. In addition, the drainage system, grey water outlet, and irrigation system could also cause erosion and contribute to degradation of resources and water quality on the subject site.

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The Rubinroits' Defense:

12. Graded pad three and the sports court are "essentially invisible to the public".

Commission's Response:

The Commission staff would examine the visual impacts of the development after a complete application for a CDP or a CDP amendment was submitted. However, based upon examining photographs taken in June, 1997, January, 2001, and March, 2001, the following unpermitted development is visible from Piuma Road, a public viewing area:

1. the sports court,
2. swimming pool and spa,
3. retaining wall and associated carport,
4. steps and pathways on both sides of the house,
5. chain link fence and gates around pool and house,
6. water tank,
7. patio area with low walls near pool,
8. nonnative sand adjacent to the unnamed blue line stream, and
9. removal of major vegetation beyond the authorized limits.

The visual impacts could be potentially worsened if the lights for the sports court, steps and pathways and other areas were used. Based upon the topography of the vicinity of the subject property, portions of the site also appear to be visible from the adjacent State Park lands (possibly including views from the Backbone trail).

The Rubinroits' Defense:

13. No harm has been suffered to either the environment in the area of our property or the spirit or purpose of the Coastal Act.

Commission's Response:

The Commission does not have to establish that there has been a harm to the environment for it to enforce violations of the Coastal Act. In the second Ojavan case (*Ojavan Investors* (1997) *supra*, at 398), the Court of Appeal ruled that, even though there was "very little or no physical damage to the properties involved," a judgment for injunctive relief and civil fines should be upheld,

in light of the public interest goals of the TDC (transfer development credits) program, the need for uniform compliance with the program so as to further the Coastal Act's objectives to protect the coast, and appellants' blatant disregard of the deed restrictions.

The Rubinroits have violated the Coastal Act by failing to obtain a CDP or CDP amendment for development on the subject property and by violating conditions of a previously issued CDP (CDP 5-88-056). An analysis of the compliance of the development with the Coastal Act is performed after a complete application for a CDP or CDP amendment is filed. Without this

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information, the Commission staff cannot make a full assessment of the impacts of the development on coastal resources. However, it is likely that the development has resulted in a decline in the area and quality of available habitat, increased erosion, geological hazards, decreased water quality in the adjacent blue line ESHA stream and adverse impacts to visual resources. Refer to the Resource Impact section of the findings, on pages XXX of this staff report.

The Rubinroits' Defense:

14. The development serves as a firebreak and as a source of water in case of fire.

Commission's Response:

The benefits of the development would be assessed by Commission staff after it has filed a complete CDP or CDP amendment application for the proposed development.

The Rubinroits' Defense:

15. The Rubinroits would be "irreparably harmed if required to remove any of the improvements."

Commission's Response:

At this time, the Commission staff is recommending that the Commission order the Rubinroits to comply with the permit process. The recommended cease and desist order does not require the removal of any development. If a CDP or CDP amendment is denied after the Rubinroits submit a complete CDP or CDP amendment application, the Commission would consider ordering the removal of the development. At that time, the Rubinroits could provide any reasons why the removal would cause irreparable harm and the Commission would investigate and assess such reasons. The issue of whether the development should be removed is separate and distinct from the issue of whether the development requires a CDP or a CDP amendment.

The Rubinroits' Defense:

16. "We believe that the Commission can no longer support a claim (if it ever could) that the area in which our house is located is a sensitive habitat or that the impact of development on our property must be considered and mitigated if the Commission in fact permitted those activities on those other properties."

In his amendment to the SOD, Mr. Rubinroit states that "we also deny that. . . a 'blue-line stream' any longer traverses the property in the area of the so-called sports court or otherwise. . . As a result, the entire premise respecting the supposed 'sensitivity' of this area is unsupported and unsupportable."

sports court, and installation of decomposed granite on the eastern side of the sports court from the project plans.

The Commission finds that, as conditioned to provide evidence of the geotechnical consultant's review and approval of the final plans, evidence of removal of the concrete debris from the eastern drainage area to an appropriate disposal location, revised plans, landscape, and fuel modification, the portions of the proposed development approved are consistent with Section 30253 of the Coastal Act.

B. Environmentally Sensitive Resources and Water Quality

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means 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 developments.

Section 30230 of the Coastal Act states:

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

Section 30231 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.

In addition, Section 30240 of the Coastal Act states:

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

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

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat area ("ESHA") 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 developments." Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

Furthermore, in past Commission actions, the Commission has emphasized the importance placed by the Coastal Act on protection of sensitive environmental resources. Specifically, the Commission has required that new structures shall be located at least 100 feet from the outer limit of area designated as ESHA. In addition, in past actions, the Commission has required grading to be minimized to ensure that the potential negative effects of runoff and erosion on watershed and streams are lessened. In addition, the Commission has also denied permits for the placement of fill and structures within blueline streams and drainages.

As stated earlier, a blueline stream and chaparral and riparian ESHA are located adjacent to and/or on the subject site and the portion of the adjacent parcel for which an easement was granted to authorize the development related to the sports court. In addition, the Dark Canyon area in the vicinity of the subject site is ESHA and has been recognized as ESHA under past Commission actions. Further, as stated previously, the Coastal Act defines an environmentally sensitive area 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 developments." Chaparral, which occupies the surrounding area and portions of the subject site which have not been cleared of native vegetation, and the blueline stream and riparian habitat adjacent to the subject site are unique habitat areas that provide water, shelter, and migration corridors for wildlife. In addition, the chaparral on the subject site is part of an overall, large, contiguous, undeveloped area comprised of mature, rich chaparral habitat. Chaparral and riparian plant species are often used for wildlife habitat rehabilitation and restoration, in addition to watershed improvement. Due to this biological significance, areas of chaparral and riparian habitat, such as that on and adjacent to the subject site, have been considered ESHA pursuant to previous Commission actions. In addition, there are several oak trees located adjacent to the subject site, which are also an unique and significant resource.

Further, the subject site and the surrounding area is also within the Cold Creek Resource Management Area that has been recognized as an significant area by the Commission under past permit actions. In past Commission actions, the Commission has recognized that this designation this portion of the Santa Monica Mountains as the Cold Creek Resource Area reflects the unique resources that must be protected in the Cold Creek region, of which the subject site is a valuable part.

The benefits of chaparral and riparian areas are manifold, rendering these resources significant in many respects. For example, direct benefits of chaparral plant communities include increased water percolation to recharge groundwater, decreased storm runoff, healthy soil chemistry and structural integrity, and increased biological diversity resulting in decreased pest pressure for agriculture and landscaping. The direct benefits of riparian habitat include providing shade cover to moderate water temperature, stabilizing the stream banks to reduce erosion, providing food and shelter for wildlife migrating along the riparian corridor, and providing perching sites for birds that depend on streams for prey and water. Chaparral and riparian habitat also provide nesting and refuge sites for insectivorous birds. When these upland habitats are lost, insect balances in adjacent areas are altered. These imbalances can often result in chronic outbreaks of pests in agricultural areas and other vectors (such as mosquitoes) in urban areas. These plant communities are also important to species such as birds, mountain lions, deer, frogs, and tiger salamanders. Chaparral and riparian plant communities, including oak trees, provide shade and lower water temperatures in streams, thereby protecting fish and other aquatic life.³

As stated above, chaparral and riparian habitat communities have intrinsic aesthetic, environmental, and ecological values. In addition to providing shade, these resources help to stabilize soil on steep slopes, minimize noise, deflect wind, and filter dust and pollutants from the air⁴. In addition, these areas also provide habitat for a wide range of wildlife species and corridors to maintain genetic diversity between wildlife populations⁵. Chaparral and riparian habitat areas are becoming increasingly rare, however, due to increased direct and indirect impacts from development and other factors⁶. Over the past 200 years, human activities have dramatically changed the complexion of chaparral and riparian habitat areas, as vast acreages have been removed for intensive agriculture, forage production, and urban and residential development⁷. Chaparral and riparian and oak woodlands are not only rare and especially valuable due to their role in ecosystems, but they are also sensitive and may be easily disturbed or degraded by human activities and development.

³The California Oak Foundation, September 5, 2000.

⁴ *A Planner's Guide for Oak Woodlands*, University of California, Integrated Hardwood Range Management Program, 1993, page 5.

⁵ *Id.* at 6.

⁶ *Tracking a Mysterious Killer, The Relentless Spread of Sudden Oak Death*, California Coast & Ocean, Winter 2001-02, Elizabeth F. Cole, page 3.

⁷ *A Planner's Guide for Oak Woodlands*, University of California, Integrated Hardwood Range Management Program, 1993, page 2.

In sum, the environmental significance, increasing rarity, and susceptibility to disturbance from human activities, as detailed above, render chaparral and riparian plant communities environmentally sensitive habitat areas, as defined by Section 30107.5 of the Coastal Act. The chaparral habitat on the subject site and riparian habitat adjacent to the subject site are particularly significant, as the blueline stream to the north of the site drains into Cold Creek. In addition, there are two drainages on the subject site that filter into this blueline stream. Further, as stated previously, Dark Canyon to the north of the subject site has been recognized as ESHA under past Commission actions. Additionally, the project site is within the Cold Creek Management Area, as also recognized in past Commission actions.

The applicants have asserted that no harm has been suffered to the environment in the area of their property. The applicant have also argued that the area in which the existing single family residence is located is not sensitive habitat. Further, the applicants have also claimed that a blueline stream no longer traverses the property in the area of the sports court. However, the subject property is located directly adjacent to a stream that is an unnamed blueline stream that is a tributary to Cold Creek and does constitute ESHA. The stream is shown on the USGS Malibu Beach Quadrangle as a blueline stream and was observed by Commission staff as flowing within approximately fifty feet from the non-native sand or decomposed granite located adjacent to the sports court. This stream is located approximately sixty feet from the eastern portion of the sports court.

Furthermore, when the underlying project (construction of a four level, 4,260 square foot single family residence with a well and a septic system) was permitted, the Commission was concerned about the cumulative impacts on the Cold Creek Resource Management Area and ESHA, particularly impacts from runoff, as well as erosion from construction activities. To address this concern, the Commission conditioned the permit to require the landowner to obtain an amendment to CDP 5-88-056 or a new CDP before constructing any additional development on the property, including improvements that might otherwise be exempt from permit requirements, to record an OTD open space easement on the portion of the property outside of the development footprint for the single family residence and the graded pad upon which it was approved, and develop fuel modification and landscaping plans to minimize vegetation clearance in the open space area.

Those portions of the development that are proposed within the area covered by the OTD an open space deed restriction, in particular, have the potential to negatively impact the blueline stream, water quality, and ESHA that the Commission intended to protect through the standard and special conditions of the underlying CDP. The sports court proposed by the applicants is constructed down slope from the single family residence, adjacent to the drainages and blueline stream, and is within the area covered by the OTD an open space deed restriction. The Commission's files indicate that the pad for the sports court did not exist at the time the application for CDP 5-88-056 was reviewed. In fact, approximately 40 square feet of the sports court was constructed on the adjacent parcel not owned by the applicants. As a result, the applicants purchased an easement for this portion of the development on November 28, 2001.

Steve Nelson, the biological consultant hired by the Rubinroits, concluded that the nearest blueline stream was approximately 100 feet to the northeast of the sports court. With respect to the riparian canopy for the blueline stream, he concluded that the "canopy of this vegetation does not extend beyond 10 to 20 feet on either side of the flow line and does not come close to the affected area." However, the plans submitted by the Rubinroits show the stream as being located approximately sixty feet to the east of the sports court and fifty feet from the area of decomposed granite adjacent to the sports court. In addition, Steve Nelson based his analysis of the impacts of the removal of vegetation for the construction of the sports court on the conditions that existed after the area had already been graded and the native vegetation had already been removed. Therefore, his conclusion that "no impacts of consequence" resulted from the proposed development does not reflect the impacts that occurred pursuant to the grading and removal of vegetation in this area. The grading and removal of native vegetation associated with the construction of the sports court and placement of fill on the eastern side of the sports court will eliminate ESHA and result in adverse impacts to habitat, water quality, and alteration of floodwaters.

By increasing the amount of impervious surface area through the construction of the lighted sports court and lighted stairway extending from the pool area to the sports court, the amount of stormwater infiltration in the area is reduced, thereby potentially increasing the volume and velocity of sheet flow down the hillside, into the blueline stream that is a tributary to Cold Creek and ESHA. This increased surface transport of stormwater could result in increased erosion, changes in stream morphology, and impaired water quality. In addition, the removal of vegetation in this area to construct the sports court also harms the ESHA by reducing the amount and quality of available habitat and increasing the potential for erosion. The applicants assert that only minimal or no grading occurred for the construction of the sports court and decomposed granite area adjacent to the sports court, although they refused to provide staff with an engineer or geologist's analysis of the amount of grading to document this claim. In issuing the Cease and Desist Order, however, the Commission already determined that grading had occurred in these areas, and that finding is final and binding. Although the Commission does not know the exact amount of grading that occurred, because the applicants refused to provide this information, the exact amount is not necessary to evaluate the applicants' proposal because no amount of grading would be consistent with the Coastal Act policy protecting ESHA. Even if only minimal (or even no) grading was performed, construction of the sports court and decomposed granite area still resulted in removal of native chaparral habitat in close proximity to a stream, which is inconsistent with the policy of the Coastal Act requiring the protection of ESHA and which states that only resource dependent uses (which the current proposal is not) may be allowed within ESHA. The night lighting also has a negative impact on the riparian area and ESHA, as it has the potential to cause negative impacts to wildlife. In addition, the drainage system, grey water outlet, and irrigation system could also cause erosion and contribute to degradation of resources and water quality on the subject site.

In fact, as stated in the previous section, the applicants have submitted a report entitled, "Update Geological and Geotechnical Engineering Investigation," dated September 11, 2001, GeoSoils Consultants, Inc., which states:

Shallow surficial soils are subject to slope creep on the steeper descending slopes about the property. . . .

The sports court was constructed on the cut portion of the ridge with the removed material being placed as fill in the shallow swale to the west of the sports court. Minor erosion has occurred in the surficial soils at single locations on the east and west sides of the paving for the sports court. . . .

As described previously in this report, two areas of soil adjacent to the paved surface have experienced erosion, which is believed to have been present prior to installation of the sports court. Riprap or other erosion protection should be placed at these locations to mitigate further erosion.

This report raises concerns regarding the stability and erosion of portions of the subject site, particularly the steep slopes. In addition, this report states that there are currently problems regarding erosion adjacent to the paved surface of the sports court. Further, this report recommends the installation of riprap or other erosion protection devices adjacent to the sports court to "mitigate further erosion". Although the applicants are not currently proposing the installation of any riprap or other erosion protection devices adjacent to the sports court, the findings of the report referenced above indicate that this development would likely be required in the future. Therefore, further development would possibly be required in the future to stabilize the proposed sports court. As a result, the sports court could have adverse impacts on water quality and sensitive resources by increasing erosion. Further, the installation of decomposed granite on the eastern side of the sports court may also exacerbate erosion in this area and discourages the growth of native vegetation that would decrease scouring and erosion of the site. Further, both the proposed sports court and the decomposed granite adjacent to the sports court occupy an area that is not adjacent to the existing single family residence or graded pad upon which the existing single family residence is located. As a result, these structures create a fragmentation of the chaparral habitat on site and of the contiguous, open, undisturbed chaparral in the overall area that is devoid of such development. Therefore, the Commission finds that the proposal to amend the permit that authorized a single family residence on the subject site, but required an open space condition to protect ESHA, to allow accessory structures in the open space area would be inconsistent with the Coastal Act policy that requires protection of ESHA.

In addition to stating that "soils are subject to slope creep on the steeper descending slopes about the property," the report dated September 11, 2001, by GeoSoils Consultants, Inc., also states that the "area of shallow uncompacted fill on the slope below the swimming pool could be subject to surficial slope failure in the event of extended periods of heavy rainfall, or heavy landscape watering." The lighted stairway extending from the pool area to the sports court proposed by the applicants is located on the steep slopes of the site, which the applicants' consultant have stated are subject to creep. In addition, the lighted stairway extending from the pool area to the sports

court are also located below the swimming pool, in an area which the applicants' consultant states could be subject to surficial slope failure. Further, Commission staff noted during a visit to the subject site that there was visible evidence of surficial slumping below the swimming pool, in the area where the lighted stairway from the pool area to the sports court is proposed.

In addition to these potential direct impacts to the ESHA, the development within the area defined by the OTD may deter acceptance of the OTD. To date, the OTD has not been accepted. Acceptance of the OTD open space easement ensures that it will be maintained and that the integrity of the environmental resources on site will be preserved.

As a result, the Commission finds that the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court is likely to have adverse impacts on significant environmental resources and water quality. Due to these considerations, the Commission finds that those portions of the proposed development located within the area restricted by the OTD open space deed restriction, including the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with Sections 30230, 30231, 30240 of the Coastal Act.

As conditioned, however, that portion of the proposed development including the construction of the swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; placement of sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage are consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

Special Condition 2 requires revised project plans that delete the development that has not been approved in this permit amendment, i.e., the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court and that show a relocation of the eastern portion of the fence adjacent to the single family residence, certain portions of the irrigation system, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, and sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction. As conditioned, this development will be relocated within the development footprint approved pursuant to the underlying permit, CDP 5-88-056 and outside of the area subject to the open space deed restriction. In addition, **Special Condition 2** will also ensure that the adverse impacts to sensitive resources and water quality from the approved development will be minimized, as the development approved will be located entirely outside of the area restricted by the OTD and will be within the general

development footprint of the existing single family residence, thereby clustering development.

In addition, 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.

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.

The portion of the proposed development approved under this amendment 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 portion of the proposed development approved under this amendment 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 5**, and finds this will ensure the approved 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.

As stated previously, the proposed project includes a swimming pool and spa. There is the potential for swimming pools and spas to have deleterious effects on aquatic habitat if not properly maintained and drained. In addition, chlorine and other chemicals are commonly added to pools and spas to maintain water clarity, quality, and pH levels. Further, both leakage and periodic maintenance of the proposed pool and spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and may result in the transport of chemicals, such as chlorine, into coastal waters, adversely impacting intertidal and marine habitats. In order to minimize potential adverse impacts from the proposed swimming pool and spa, the Commission requires the applicant to submit a pool drainage and maintenance plan, as detailed in **Special Condition 6**. The plan shall include a separate water meter for the pool and spa, which will serve to monitor water levels of the pool and spa and identify leakage. The plan shall also include a description of the materials to be utilized to prevent leakage of the pool and spa shell and shall identify methods to control infiltration and run-off from periodic pool and spa drainage and regular maintenance activities. The Commission finds that, as conditioned to minimize potential impacts of the proposed pool and spa, this portion of the project is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

Furthermore, 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. In addition, the landscape and fuel modification plan required under **Special Condition 3**, as discussed previously, will also mitigate adverse impacts to native vegetation, surrounding resources, and water quality. Therefore, the Commission finds that **Special Condition 3** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

The removal of concrete from the eastern drainage will also improve water quality. In order to ensure that the applicants dispose of this removed concrete in an appropriate

location, **Special Condition 4** requires the applicant to dispose of this material outside of the Coastal Zone or obtain a new CDP or amendment to dispose of it within the Coastal Zone. Furthermore, **Special Condition 8**, which requires the applicant, within 60 days of issuance of this permit amendment, to cap the grey water outlet and properly connect it to the existing septic system, submit to the Commission written confirmation from the Los Angeles County Department of Health Services that this has been completed, and remove the concrete placed in the eastern drainage will also ensure that the potential adverse impacts from this unpermitted development that the applicant is proposing to resolve will be resolved in a timely manner.

In addition, the applicant is proposing to cap the existing grey water system that discharges on the slopes of the subject site and connect it to the existing septic system. The Environmental Health Department of the County of Los Angeles has given in concept approval for the septic system that is existing on the subject site and has also required the applicant to cap the grey water system and connect it to the existing septic system. This conceptual approval by the County of Los Angeles indicates that the sewage disposal system to which the grey water outlet will be connected to complies with all minimum requirements of the Uniform Plumbing Code. The final approval and verification that this capping has been performed, as required by **Special Condition 8**, will ensure that this has been completed.

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 portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Sections 30230, 30231, and 30240 of the Coastal Act. The Commission also finds that relocating the eastern portion of the fence adjacent to the single family residence, above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, and sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction are a feasible alternatives that would substantially lessen significant adverse environmental impacts of the project. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the resource protection policies of the Coastal Act.

The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern

side of the sports court from the area covered by the OTD open space deed restriction is a feasible alternative that would substantially lessen significant adverse environmental impacts of the project.

C. Visual Resources

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 subordinated to the character of its setting.

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, public parkland, and public trails. Further, the Commission has also required structures to be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, retaining walls, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline or public vistas as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

As stated previously, the subject site is a 2.76 acres lot, located at 25351 Piuma Road, in the Calabasas area of Los Angeles County. The property is situated on a steep northerly trending descending ridge, with drainages located to the east and west of the single family residence. Descending natural slopes are present on both sides of the ridge at gradients up to 1 ½ to 1 (horizontal to vertical). The subject site is also located within the upper portions of the Cold Creek Resource Management Area. In addition, the site is located adjacent to a blueline stream, which is a tributary to Cold Creek, and is an environmentally sensitive habitat area (ESHA). Further, the property is located in the vicinity of an area that has been recognized as an ESHA in previous Commission actions and which has specifically been referred to as Dark Canyon ESHA. The subject site maintains mature chaparral vegetation and is part of an overall area that is

fairly undeveloped and which comprises a large, significant, and contiguous area of chaparral habitat. In addition, the subject site is highly visible from Piuma Road, the Backbone Trail, and public lands (including State Park lands) located adjacent to the site and in the vicinity of the site. The subject site is located in an area characterized by rugged open spaces, jagged rock outcroppings, hillsides, and wilderness areas.

In addition, the area surrounding the project site is rural in character, with wide-open spaces and vistas. A large network of publicly owned lands and trails in the region adds to this area's scenic nature and quality. For example, Malibu Creek State Park is located to the west of the subject site and State Park and National Park Service is also located nearby the site. In addition, the Backbone Trail passes to the north of the subject site. Those areas within the vicinity of the project site that are not publicly owned land are developed with single family residences in a manner that has preserved the rural character of the surrounding area.

Furthermore, in reflection of the scenic character of this area, Piuma Road (to the immediate south of the subject site) has been recognized as a scenic highway under past Commission actions. In addition, due to the significant visual resources in this area, the Commission has also recognized particularly scenic viewpoints along these roads as unique "public viewing areas." Three such recognized, significant public viewing areas are located within one mile of the subject site along Piuma Road. In particular, Piuma Road, from which the subject site and proposed development is highly visible, is a scenic road within the Santa Monica Mountains and provides numerous dramatic sweeping ocean and mountain views.

Additionally, as referenced earlier, the subject site is also within an area that was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner that will preserve and enhance its scenic, natural, and historical setting and its public health value as an air shed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public."⁸ The Santa Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo valleys. Los Angeles County is populated by well over nine million people, most of who are within an hour's drive of the Santa Monica Mountains.⁹ The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban settings and experiences.

For the above reasons, the SMMNRA constitutes a unique and special wilderness and recreational area and, as a result, is a popular visitor destination point for active and passive recreational use. Available data indicate that existing recreational facilities in the region are currently experiencing sustained demand that is often over capacity. According to the State Department of Parks and Recreation, total visitation at state-managed parks and beaches alone was estimated at 2,747,000 from 1986 to 1987.

⁸ Public Law 95-625.

⁹ Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 34.

The County of Los Angeles estimated that user activity days for hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744; and horseback riding from 6,561,103 to 7,511,873. As the population in California, and in the Los Angeles metropolitan area in particular, continues to increase, the demand on the parks within the SMMNRA can be expected to grow. The preservation of the unique rural character of the parks and communities within the SMMNRA is, thus, of the utmost importance for continued quality coastal recreational opportunities.

As stated previously, the applicants are requesting approval for the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage.

The Commission finds that the construction of the proposed lighted sports court, lighted stairway extending from the pool area to the sports court, and the above ground water tank, masonry pump enclosure and screen wall in their proposed location, and installation of decomposed granite on the eastern side of the sports court will have adverse impacts on visual resources. These structures will be highly visible from Piuma Road, a designated scenic highway, and/or from the Backbone Trail. The swimming pool with spa and pump, pool equipment storage area, chain link fence and gates around the pool and single family residence, patio area with landscaping walls near the pool, and lighted steps and pathways on both sides of the single family residence will also be visible from Piuma Road and the Backbone Trail. The proposed above ground propane storage tank with concrete pad, drainage system, and irrigation system; placement of sand fill for the play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage will not be as highly visible from Piuma Road or the Backbone Trail. The retaining wall and carport will, however, be visible from Piuma Road. In addition, the proposed above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank will need to be relocated to an area adjacent to the single family residence and outside of the area subject to the open space deed restriction. As a result, these structures may also be visible from Piuma Road or the Backbone Trail when relocated under the revised plans required pursuant to **Special Condition 2**. However, the retaining wall and carport, swimming pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for the water tank will be located adjacent to the existing 4,260 square foot single family residence and will not result in any significant additional adverse visual impacts from Piuma Road.

In addition, areas where development is proposed have been cleared of vegetation, increasing the adverse visual impact from this portion of the proposed development, as these portion of the site has been nearly denuded of vegetation. The applicant has stated, however, that minimal vegetation was cleared for the proposed development and that the clearing that has occurred was required by the Fire Department.

The Commission finds that the construction of the proposed lighted sports court, lighted stairway extending from the pool area to the sports court, and the above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank in their proposed location and installation of decomposed granite on the eastern side of the sports court would adversely impact visual resources and public views, detracting from the rugged, natural atmosphere that is a unique characteristic of this area. As a result, the Commission finds that the project would alter the valued rural, open, and scenic visual resources of this area within Malibu and the Santa Monica Mountains. Further, it would not protect the unique characteristics of the SMMNRA valued by many members of the public. In particular, the sports court is highly visible and is of particular significance due to the undisturbed nature of the area surrounding the sports court and the topography of the area from many scenic viewpoints, trails, and roads. As discussed above, the Commission also finds that the SMMNRA is a popular visitor destination point for recreational uses. As a result, the lighted sports court, lighted stairway extending from the pool area to the sports court, and the above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank in their proposed location and installation of decomposed granite on the eastern side of the sports court would adversely impact the visual resources and public views existing within the surrounding area. Therefore, for the reasons discussed above, the Commission finds that these portions of the proposed development are not consistent with Sections 30251 of the Coastal Act.

As stated previously, the project site is located within the Santa Monica Mountains National Recreation Area (SMMNRA). Furthermore, the northern portion of the subdivision abuts the southern flank of the Santa Monica Mountains and Charmlee Park. The area surrounding the project site is highly scenic due to the rural atmosphere, wide-open spaces and vistas, and extensive network of publicly owned lands. This region maintains plant communities of grassland, coastal sage scrub, southern oak woodlands, and chaparral and provides numerous trails with sweeping vistas of the Santa Monica Mountains and of the Pacific Ocean. In addition, those areas within the vicinity of the project site that are not publicly owned, are sparsely developed, which has maintained the natural beauty of the area. Past Commission action with respect to density and use policies have been largely successful in maintaining the unique rural atmosphere of this area and presence of open space. Further, this highly scenic atmosphere provides the public with exceptional outdoor recreational opportunities and an escape from the urban environment.

The Commission finds that the proposal to amend the permit that authorized construction of a large single family residence that is highly visible from public parkland, a scenic highway, and public trails, to authorize construction of the accessory structures identified above, would be inconsistent with the Coastal Act policy that requires the

minimization of adverse impact on public views in scenic coastal areas. The Commission finds that the construction of the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with the scenic character of the surrounding area and would not protect the unique attributes possessed by this region of the Santa Monica Mountains and the SMMNRA. These portions of the proposed development are highly visible from scenic highways, trails, and public vistas and would alter the scenic qualities that this area offers by significantly changing the natural landscape of the area, particularly the scenic hillside. Further, these portions of the proposed development are relatively large, unnatural, manmade structures. Thus, the Commission finds that this portion of the proposed development would alter the valued scenic qualities that this area possesses and would not be visually harmonious with or subordinate to the character of its setting in this area of Malibu, the Santa Monica Mountains, and the SMMNRA.

As stated previously, the swimming pool with spa and pump, pool equipment storage area, chain link fence and gates around the pool and single family residence, patio area with landscaping walls near the pool, and lighted steps and pathways on both sides of the single family residence will be visible from Pioma Road. The proposed above ground propane storage tank with concrete pad, drainage system, and irrigation system; placement of sand fill for the play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage will not be as highly visible from Pioma Road and/or the Backbone Trail. The retaining wall and carport will, however, be visible from Pioma Road. In addition, the proposed above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank will need to be relocated to an area adjacent to the single family residence and outside of the area subject to the open space deed restriction. As a result, these structures may also be visible from Pioma Road or the Backbone Trail when relocated under the revised plans required pursuant to **Special Condition 2**. However, the retaining wall and carport, swimming pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for the water tank will be located adjacent to the existing 4,260 square foot single family residence and will not result in any significant additional adverse visual impacts from Pioma Road.

However, due to the visible nature of portions of the approved development from Pioma Road and the Backbone Trail, the Commission finds it necessary to require mitigation measures to minimize visual impacts. Visual impacts associated with structures such as the carport, retaining walls, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank can be further reduced by the use of appropriate and adequate landscaping. **Special Condition 3**, the landscape and fuel modification plan, incorporates the requirement that vertical screening elements be added to the landscape plan to soften views of the proposed residence from Pioma Road and the Backbone Trail. In addition, **Special Condition 3** requires the applicant to prepare a landscape plan relying mostly on native, noninvasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. The implementation of **Special Condition 3**, therefore, will help to partially screen and soften the visual impact of the development from Pioma Road and

the Backbone Trail. In order to ensure that the final approved landscaping plans are successfully implemented, **Special Condition 3** requires the applicant to revegetate all disturbed areas in a timely manner, and includes a monitoring component, to ensure the successful establishment of all newly planted and landscaped areas over time. 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 Piuma Road and the Backbone Trail that may be caused by 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 and a fuel modification plan, as specified under **Special Condition 3**.

In addition, **Special Condition 2** requires revised project plans that delete the development that has not been approved in this permit amendment, i.e., the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court, and that show a relocation of the eastern portion of the fence adjacent to the single family residence, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, and the sand fill play area closer to the single family residence and outside of the area covered by the OTD open space deed restriction. These requirements pursuant to **Special Condition 2** will ensure that the visual impacts of the approved development are minimized, as the development approved will be located entirely outside of the area restricted by the OTD and will be within the general development footprint of the existing single family residence, thereby clustering development.

Therefore, the Commission finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Section 30251 of the Coastal Act. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the visual resource protection policies of the Coastal Act.

The Commission also finds that the portion of the proposed project consisting of the construction of a lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court would result in significant adverse effects on the environment and are inconsistent with Section 30251 of the Coastal Act. The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern side of the sports court is a feasible alternative that would substantially lessen significant adverse visual impacts of the

project. Therefore, these portions of the proposed project are determined to be inconsistent with Section 30251 of the Coastal Act.

D. Community Character

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 . . .

Section 30253(5) of the Coastal Act states:

New development shall:

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

As stated previously, the subject site is a 2.76 acres lot, located at 25351 Piuma Road, in the Calabasas area of Los Angeles County. The property is situated on a steep northerly trending descending ridge, with drainages located to the east and west of the single family residence. Descending natural slopes are present on both sides of the ridge at gradients up to 1 ½ to 1 (horizontal to vertical). The subject site is also located within the upper portions of the Cold Creek Resource Management Area. In addition, the site is located adjacent to a blueline stream, which is a tributary to Cold Creek, and is an environmentally sensitive habitat area (ESHA). Further, the property is located in the vicinity of an area that is an ESHA and that has been recognized in previous Commission actions as Dark Canyon ESHA. The subject site maintains chaparral vegetation and is part of an larger, contiguous, fairly undeveloped area maintaining mature and significant chaparral habitat. In addition, the subject site is highly visible from Piuma Road, the Backbone Trail, and public lands (including State Park lands) located adjacent to the site and in the vicinity of the site. The subject site is located in an area characterized by rugged open spaces, jagged rock outcroppings, hillsides, and wilderness areas.

As stated previously, the subject site is also within an area that was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner which will preserve and enhance its scenic, natural, and historical setting and its public health value as an air shed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public."¹⁰ The Santa

¹⁰ Public Law 95-625.

Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo Valleys. Los Angeles County is populated by well over nine million people, most of who are within an hour's drive of the Santa Monica Mountains.¹¹ The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban settings and experiences. It is the unique beauty, wilderness, and rural character of this area that continues to draw so many visitors and residents to it.

For the above reasons, the SMMNRA constitutes a unique and special wilderness and recreational area and, as a result, is a popular visitor destination point for active and passive recreational use. Available data indicate that existing recreational facilities in the region are currently experiencing sustained demand that is often over capacity. According to the State Department of Parks and Recreation, total visitation at state-managed parks and beaches alone was estimated at 2,747,000 from 1986 to 1987. The County of Los Angeles estimated that user activity days for hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744; and horseback riding from 6,561,103 to 7,511,873. As the population in California, and in the Los Angeles metropolitan area in particular, continues to increase, the demand on the parks within the SMMNRA can be expected to grow. The preservation of the unique rural character of the parks and communities within the SMMNRA is, thus, of the utmost importance for continued quality coastal recreational opportunities.

The applicant is requesting approval for the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, masonry pump enclosure for water tank, screen wall for water tank, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool; capping of grey water outlet and connection to the existing septic system; and removal of concrete from eastern drainage.

The Commission finds that the construction of the lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. In particular, the sports court is highly visible and located in an area characterized by natural vegetation and open space and would detract from the surrounding community character and negatively impact the character of this rural area. Further, the lighted stairway extending from the swimming pool to the sports court and the decomposed granite proposed adjacent to the sports court also detract from the character of the

¹¹Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 34.

surrounding area, as they are not located within the development footprint of the single family residence and fragment development. Adverse impacts on the character of the area from the construction of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, and sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage may be minimized through **Special Conditions 2, 3, and 4**, discussed in previous sections of this report.

Therefore, the Commission finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, are consistent with Sections 30251 and 30253(5) of the Coastal Act. As a result, these portions of the proposed project, as conditioned, have been adequately mitigated and are determined to be consistent with the visual resource protection policies of the Coastal Act.

The Commission also finds that the portion of the proposed project consisting of the construction of a lighted sports court, lighted stairway extending from the pool area to the sports court, and installation of decomposed granite on the eastern side of the sports court would result in significant adverse effects on the character of the surrounding area and are inconsistent with Section 30251 of the Coastal Act. The Commission finds that deleting the lighted sports court, lighted stairway extending from the pool area to the sports court, and decomposed granite area on the eastern side of the sports court is a feasible alternative that would substantially lessen significant adverse impacts to the community character of the surrounding area of the project. Therefore, these portions of the proposed project are determined to be inconsistent with Sections 30251 and 30253(5) of the Coastal Act.

E. Violations

Various development has been carried out on the subject site without the required Coastal Development Permit(s) or amendment(s). The applicants request after the fact approval of the construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and

single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, patio area with landscaping walls near the pool, drainage system, and irrigation system; installation of decomposed granite on the eastern side of the sports court and sand fill for play area east of the pool. In addition, the applicants are proposing to cap the unpermitted grey water outlet that currently exists on the site and connect it to the existing septic system. The applicants are also proposing to remove unpermitted concrete that was placed in the eastern drainage. The applicants are not proposing to authorize or restore the major vegetation that was removed within the area subject to the OTD, beyond that authorized by the fuel modification plan.

The Commission staff currently lacks confirmation that the after-the-fact development was performed in compliance with the geotechnical consultant's recommendations. Therefore, to ensure that the recommendations regarding the after-the-fact development are implemented in a timely manner, **Special Condition 1** requires that, within 60 days of the permit issuance, the applicant submit written confirmation from a geotechnical consultant that these recommendations were properly implemented. The recommendations regarding installation of riprap or other erosion control measures adjacent to the sports court should not be implemented since the Commission has denied authorization of the sports court and decomposed granite area. In order to confirm that the grey water outlet has been capped and connected to the existing septic system, **Special Condition 8** requires that the applicants submit documentation from the Los Angeles County Department of Health Services confirming this change in development, as authorized by this amendment.

In order to ensure that the unpermitted development is resolved in a timely manner, **Special Condition 7** requires that the applicants satisfy all conditions of this permit amendment, which are prerequisite to the issuance of this permit amendment, within 60 days of Commission action, or within such additional time as the Executive Director may grant for good cause. In addition, to insure timely removal of the concrete in the eastern drainage, as proposed by the applicants, **Special Condition 8** requires completion of this within 60 days of the issuance of this permit amendment.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit amendment does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

F. 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 permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project would not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed development would result in adverse impacts and is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the portion of the proposed project consisting of the lighted sports court, lighted stairway extending from the pool area to the sports court, installation of decomposed granite on the eastern side of the sports court, and water tank in its proposed location would prejudice Los Angeles County's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

The Commission also finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, would not prejudice Los Angeles County's ability to prepare a Local Coastal Program and is consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

G. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit or amendment 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) of 1970. 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 approved project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates

around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of grey water outlet and connection to the existing septic system, and removal of concrete from eastern drainage, as conditioned, will not have significant adverse effects on the environment, within the meaning of CEQA. The Commission finds that there are no additional feasible alternatives or mitigation measures that would substantially lessen any significant adverse environmental impact of the project. Therefore, environmental impacts of the project, as conditioned, have been adequately mitigated and are determined to be consistent with CEQA and the policies of the Coastal Act.

Commission's Response:

The subject property is located in the upper portions of the Malibu/Cold Creek Resource Management Area which is shown on the Sensitive Environmental Resources Map (Figure 6 of the Malibu Land Use Plan) (**Exhibit 20**). Policy 57 of the Malibu Land Use Plan states that the areas shown on this map shall be designated as Environmentally Sensitive Habitat Resource Areas (ESHAs). Based on the above information, the subject property may be ESHA; however, the determination regarding this issue will be made during staff review of the CDP or CDP amendment application(s).

The subject property is located directly adjacent to a stream that is an unnamed tributary to Cold Creek and appears to be ESHA. The stream is shown on the USGS Malibu Beach Quadrangle as a blue line stream and was observed by Commission staff during the March 15, 2001 site investigation as flowing within approximately five feet of the northern portion of the sports court. In his discussion of ESHA in the amendment to his SOD, Mr. Rubinroit appears to have mistaken one of the watercourses on the eastern or western sides of his house for this blue line stream that is adjacent to the northern portion of the property.

The Rubinroits' Defense:

17. The Commission has committed selective enforcement.

Commission's Response:

The Rubinroits are the subject of the enforcement actions due to their failure to apply for a CDP or CDP amendment for their development, in violation of the conditions of a previously issued CDP. The Commission staff is investigating Mr. Rubinroit's assertions that there are violations of the Coastal Act on properties in the vicinity of the subject property. Regardless of the results of this investigation, the Commission has the statutory right to enforce the Coastal Act with its cease and desist order powers, pursuant to Section 30810 of the Coastal Act.

The Rubinroits' Defense:

18. "We believe that any action by the Commission either by reference to the Attorney General or by way of a Cease and Desist Order proceeding is barred by the doctrine of Laches and by applicable statutes of limitation"

"In effect, the Commission, on behalf of the People of the State of California, is proposing to take action based on a "right (the permit) or title" (the easement) which accrued more than ten (10) years ago. Accordingly, any such action is barred under Code of Civil Procedures Section 315. Additionally, insofar as the Commission is claiming that we have any liability under the Coastal Act, any such claims are barred by the three year statute of limitations contained in Code of Civil Procedures Section 338. Finally, and among other things, insofar as the Commission believes that we may be liable for civil fines or penalties, any such claim would be barred either pursuant to the one-year statute of limitations contained in Code of Civil Procedure Section 340, or by the three-year statute of limitations contained in the Coastal Act itself (Section 30820)."

"We deny that (the March 15, 2001) site inspection 'enabled [Staff] to have a clearer understanding of the unpermitted development described in our NOI,' and allege that , in fact, on at least one occasion and perhaps more, Commission Staff (by Ms. Susan Booker) conducted a site investigation of our property, and that the conditions on the site were identical at the time of her inspection as they were when Mr. Doherty made his site inspection on March 15, 2001. That is, there were no physical changes made to our house, other structures, or our property between the time of those two site inspections." The "improvements" conducted in 1996 have been "open and notorious" since the time they were installed.

"I further allege that the Commission has been guilty of laches, and waived, released, and/or is estopped to assert that the so-called 'carport' is either improper or a different supposed violation."

Commission's Response:

The doctrine of laches does not apply in this case. It is well settled that the equitable defense of laches "will not ordinarily be invoked to defeat policy adopted for the public protection" (*City of San Francisco v. Pacello* (1978) 85 Cal.App.3d 637, 646.⁶) In this case, the cease and desist order proceedings were initiated to bring the subject violations into compliance with the Coastal Act, which was adopted to protect coastal resources.

Even if the doctrine were applicable to this proceeding, it is well-established that "laches is an equitable defense that requires *both* unreasonable delay *and* prejudice resulting from the delay. The party asserting and seeking to benefit from the laches bar bears the burden of proof on these factors." (*Mt. San Antonio Comm. Coll. Dist. v. Pub. Emp. Rel. Bd.* (1989) 210 Cal.App.3d 178.) In his Statement of Defense, Mr. Rubinroit fails to explain either 1) why he believes the Commission's enforcement actions against him involved delay that should be considered to be "unreasonable," or 2) how any such delays have operated to his prejudice.

Mr. Rubinroit's statute of limitations defense is equally unavailing. The limitations periods the Rubinroits cite, Code of Civil Procedure §§ 315 and 338, are applicable, if at all, only to judicial enforcement proceedings. They have no applicability to administrative enforcement proceedings such as a cease and desist order proceeding brought by the Commission. In *Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, the Court of Appeal ruled that statutes of limitations are products of legislative authority and control. At p. 816, the court noted that the law which governed the administrative enforcement proceeding at issue in that case:

noticeably lacks a statute of limitations. The legislature is presumably aware that there are statutes limiting the right to bring action in other, arguably analogous situations. Yet the legislature chose not to impose any limitation on the Board in this precise situation.

⁶ Accord: *Morrison v. California Horse Racing Board* (1988) 205 Cal.App.3d 211, 219 ("Where there is no showing of manifest injustice to the party asserting laches, and where application of the doctrine would nullify a policy adopted for the public protection, laches may not be raised against a governmental agency.")

Similarly, the Coastal Act's limitation provision in Section 30805.5 does not on its face apply to the issuance of the CDO. Rather, it applies only to actions to recover civil fines and penalties. The Commission is issuing this cease and desist order to remedy a series of violations of the permit requirements of the Coastal Act, not to collect fines and penalties.

Furthermore, the Rubinroits' actions contributed to staff's delay in enforcing the violations. After issuing the Rubinroits a notice of intent to commence cease and desist proceedings on October 9, 1998, Mr. Rubinroit called Commission staff member Mary Travis to express his desire for an "amicable resolution." On November 12, 1998, Commission staff members Mary Travis and Nancy Cave called Mr. Rubinroit to discuss resolution. Mr. Rubinroit subsequently agreed to file two complete CDP applications. In reliance on this commitment by Mr. Rubinroit, the enforcement staff removed the cease and desist order hearing from the Commission's agenda. The discussions between staff and Mr. Rubinroit constituted settlement agreements that should not be used to argue delay by the Commission. In the case of *Transwestern Pipeline Company v. Monsanto Company* (1996) 46 Cal.App.4th 502, the Court of Appeal ruled that settlement negotiations weaken, if not completely refute an argument of unreasonable delay in bringing enforcement actions.

Finally, Civil Code § 3490, which states that "no lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right" contravenes Mr. Rubinroit's laches and statutes of limitation defenses.

Mr. Rubinroit's use of an estoppel argument to defend his contention that he does not need a CDP for the development on the subject property is similarly weak. In the case of *South Central Coast Regional Commission v. Charles A. Pratt Construction Co.* (1982) 128 Cal.App.3d 830, 847-8, the Court of Appeal held that:

the estoppel argument fails because the overriding public interest in environmental regulation evidenced by the Coastal Act far outweighs any injustice which the developers would suffer by being required to obtain a permit from the Commission. [Emphasis added.]

Accord: *State Air Resources Board v. Wilmshurst* (1999) 68 Cal.App.4th 1332, 1347, in which the Court of Appeal ruled that:

As for their claim of estoppel, 'We previously have recognized that this doctrine ordinarily will not apply against a governmental body except in unusual instances when necessary to avoid grave injustice and when the result will not defeat a strong public policy. [Citation omitted; emphasis supplied by Court of Appeal].

The Rubinroits' Defense:

19. "We believe that the Commission lacks jurisdiction to commence, prosecute, or enforce a Cease and Desist Order proceeding, and is and/or will be acting in an ultra vires manner if it proceeds with this notices of intention to institute a Cease and Desist Order proceeding.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 S. CALIFORNIA ST., SUITE 200
VENTNUR, CA 93001
(805) 585-1800



Page 1 of 7

Date: July 22, 2002

Permit Application No. 5-88-056-A1

NOTICE OF INTENT TO ISSUE PERMIT
(Upon satisfaction of special conditions)

THIS IS NOT A COASTAL DEVELOPMENT PERMIT

THE SOLE PURPOSE OF THIS NOTICE IS TO INFORM THE APPLICANT OF THE STEPS NECESSARY TO OBTAIN A VALID AND EFFECTIVE COASTAL DEVELOPMENT PERMIT ("CDP"). A Coastal Development Permit for the development described below has been approved but is not yet effective. Development on the site cannot commence until the CDP is effective. In order for the CDP to be effective, Commission staff must issue the CDP to the applicant, and the applicant must sign and return the CDP. Commission staff cannot issue the CDP until the applicant has fulfilled each of the "prior to issuance" Special Conditions. A list of all of the Special Conditions for this permit is attached.

The Commission's approval of the CDP is valid for two years from the date of approval. To prevent expiration of the CDP, you must fulfill the "prior to issuance" Special Conditions, obtain and sign the CDP, and commence development within two years of the approval date specified on the next page. You may apply for an extension of the permit pursuant to the Commission's regulations at Cal Code Regs. title 14, section 13169.

EXHIBIT 16

5-88-056-A1-R (Rubinroit)

Notice of Intent to Issue Permit, 5-
88-056-A1, July 22, 2002

NOTICE OF INTENT TO ISSUE AMENDMENT CDP 5-88-086-A1

July 22, 2002

TO COASTAL DEVELOPMENT

On June 10, 2002, the California Coastal Commission granted to Howard & Terry Rubinroit, an amendment to Permit No. 5-88-056, subject to the conditions attached, for changes to the development or conditions imposed on the existing permit. The development originally approved by the permit consisted of: Construction of a 4,260 square foot high, four level single family residence with water well and septic system.

at: 25351 Piuma Road, Calabasas (Los Angeles County). The amendment application CDP 5-88-056-A1 proposed development on the parcel owned by the applicant, APN 4456-037-007 and on a portion of the adjacent parcel, APN 4456-037-010, for which the applicant has an easement.

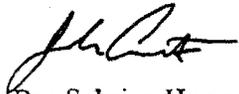
Changes approved by this amendment consist of: Construction of a swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain-link fence and gates around the pool and single family residence, above ground propane storage tank with concrete pad, above ground water storage tank, ~~patio area with~~ landscaping walls near the pool, drainage system, and irrigation system; masonry pump enclosure for the water tank, sand fill for play area east of the pool, capping of a grey water outlet and connection to the existing septic system and removal of concrete from the eastern drainage on the site. This approved project is more specifically described in the staff report filed in the Commission offices.

Unless changed by the amendment, all conditions attached to the existing permit remain in effect.

The amendment is being held in the Commission office until fulfillment of the prior-to-issuance components of Special Condition 1-8, imposed by the Commission. Once these components of the special conditions have been fulfilled, the amendment will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Commission by,

PETER M. DOUGLAS
Executive Director



By: Sabrina Haswell
Coastal Planner

Please sign and return a copy of this form to the Commission office.

ACKNOWLEDGMENT

I have read and understood the above Notice of Intent and agree to be bound by its conditions and the remaining conditions of Permit No: CDP 5-88-056-A1

Date: _____

Signature: _____

NOTICE OF INTENT TO ISSUE AMENDMENT CDP 5-88-086-A1

TO COASTAL DEVELOPMENT

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.

Special Conditions

1. Plans Conforming to Geotechnical Engineer's Recommendations

All recommendations contained in the reports prepared by GeoSoils Consultants, Inc., dated September 11, 2001 and Miller Geosciences, Inc., dated December 6, 1995 that apply to the development approved in this permit amendment shall be incorporated into all final design and construction, including recommendations concerning construction, foundation, slope stabilization, and drainage. Prior to issuance of the Coastal Development Permit amendment, the applicants shall submit evidence to the Executive Director of the geotechnical consultants' review and approval of all final design and construction plans.

To ensure that the geotechnical recommendations regarding the after-the-fact development are implemented in a timely manner, within 60 days of the issuance of the permit amendment, or within such additional time as the Executive Director may grant for good cause, the applicants shall submit written confirmation from a geotechnical consultant that these recommendations were properly implemented. The recommendations regarding installation of riprap or other erosion control measures adjacent to the sports court shall not be implemented, since the Commission is denying construction of the sports court development.

The final plans approved by the geotechnical consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundation, and drainage. Any substantial changes in the proposed development approved by the Commission, which may be required by the consultants, shall require a new Coastal Development Permit or an amendment.

NOTICE OF INTENT TO ISSUE AMENDMENT CDP 5-88-086-A1

TO COASTAL DEVELOPMENT

2. Revised Project Plans

Prior to issuance of the Coastal Development Permit amendment, the applicants shall submit, for the review and approval of the Executive Director, revised project plans that delete the development that has not been approved in this permit amendment, i.e., the sports court, lighted stairway extending from the pool area to the sports court, installation of decomposed granite on the eastern side of the sports court and screen wall for water tank (pursuant to the applicant's amendment of the proposed project to delete this wall). These revised plans must also remove the portions of the irrigation system that may be located in the area subject to the offer to dedicate the open space deed restriction and show a relocation of the above ground water storage tank, masonry pump enclosure for water tank, eastern portion of the fence adjacent to the single family residence, and sand fill play area closer to the single family residence and outside of the area covered by the offer to dedicate an open space deed restriction, as described in and shown on Exhibit 8. The applicant will not be required to show a revised location of the water tank on the revised plans if the applicant submits sufficient evidence that demonstrates that the fire department requires (1) that the water tank remain in its current location and (2) that the water tank not be located on the house pad outside of the area subject to the offer to dedicate an open space easement, even if pumps or other technology were used to meet the necessary requirements of the fire department. If Commission staff determines that the applicant has submitted such evidence to demonstrate that the water tank cannot be moved outside of the area subject to the offer to dedicate the open space easement, the applicant will be required to landscape the area around the water tank with native plants to provide a vertical screen to reduce visual impacts. This landscaping shall be shown on the landscaping plans described in Special Condition 3.

3. Landscaping and Erosion Control Plans

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

A. Plan Requirements

- 1) All areas on the subject site that are graded or disturbed as a result of development authorized by this permit amendment shall be planted and maintained for erosion control purposes. 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 specify the erosion control measures to be implemented and the materials necessary to accomplish short-term stabilization, as needed on the site. All graded or disturbed areas shall be stabilized with planting of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two years, and this requirement shall apply to all disturbed soil areas on site.

NOTICE OF INTENT TO ISSUE AMENDMENT CDP 5-88-086-A1

TO COASTAL DEVELOPMENT

- 2) 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.
- 3) The Permittees 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 amendment, unless the Executive Director determines that no amendment is required.
- 4) If additional fuel modification is required under Fire Department of Los Angeles County Fuel Modification and/or brush clearance requirements, vegetation within 50 feet of the proposed carport, propane tank, and/or water tank may be removed to mineral earth and vegetation within a 200 foot radius of these structures may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with a revised, approved long-term fuel modification plan submitted pursuant to this special condition. The revised 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. The revised fuel modification plan must illustrate the location of the proposed irrigation system which may only be located within the area that is required to be irrigated by the Fire Department of Los Angeles County.
- 5) Vertical landscape elements shall be included in the landscape plan that are designed, upon attaining maturity, to screen the approved carport, propane tank, and water tank from the public views from Piuma Road and the Backbone Trail.

B. Monitoring

Five years from the issuance of this permit amendment, or within such additional time as the Executive Director may grant for good cause, the applicants 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, certifying that the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit amendment, the applicants, 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.

NOTICE OF INTENT TO ISSUE AMENDMENT CDP 5-88-086-A1
TO COASTAL DEVELOPMENT

4. Removal of Concrete from the Eastern Drainage

This permit amendment only approves the removal of concrete in the eastern drainage. Native, natural components of the drainage (including sediment, rocks, and live or dead vegetation) shall not be removed. All concrete removed from the drainage shall be exported to an appropriate location outside of the coastal zone or, should the dumpsite be located in the coastal zone, an amendment to this Coastal Development Permit or a new Coastal Development Permit shall be required.

5. Drainage and Polluted Runoff Control Plan

Prior to issuance of the Coastal Development Permit amendment, the applicants 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 the engineering 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, one 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 applicants 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 applicants 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. Pool and Spa Drainage and Maintenance

Prior to issuance of the Coastal Development Permit amendment, the applicants shall submit, for review and approval of the Executive Director, a written pool and spa maintenance agreement to install and use a non-chemical water purification system and a program to maintain proper pH, calcium and alkalinity balance in a manner that any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat area. In addition, the plan shall, at a

NOTICE OF INTENT TO ISSUE AMENDMENT CDP 5-88-086-A1

TO COASTAL DEVELOPMENT

minimum: 1) provide a separate water meter for the pool and spa to allow monitoring of water levels for the pool and spa, 2) identify the materials, such as plastic linings or specially treated concrete to be used to waterproof the underside of the pool and spa to prevent leakage, and information regarding past success rates of these materials, 3) identify methods to control pool and spa drainage and to control infiltration and runoff resulting from pool and spa drainage and maintenance activities, and 4) identify methods for periodic disposal of pool and spa water for maintenance purposes to an appropriate location and in no case shall the water be disposed of on the subject site. The Permittees shall undertake development and maintenance in compliance with this pool and spa maintenance agreement and program approved by the Executive Director. No changes shall be made to the agreement or plan unless they are approved by the Executive Director.

7. Condition Compliance

Within 60 days of Commission action on this Coastal Development Permit amendment application, or within such additional time as the Executive Director may grant for good cause, the 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 with respect to the development approved in this Permit under the provisions of Chapter 9 of the Coastal Act.

8. Implementation Condition

Within 60 days of issuance of this permit amendment, the applicant shall (a) cap the grey water outlet and properly connect it to the existing septic system; (b) submit to the Commission written confirmation from the Los Angeles County Department of Health Services that (a) has been completed; and (c) remove the concrete placed in the eastern drainage. The Executive Director may grant additional time for good cause.

88 1246285

Recording Requested by and
When Recorded, Mail To:
California Coastal Commission
631 Howard Street, 4th Floor
San Francisco, California 94105
Attention: Legal Department

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
MIN.
PAST 11 A.M. AUG 8 1988

IRREVOCABLE OFFER TO DEDICATE OPEN-SPACE EASEMENT

AND

FEE \$ 57 F

DECLARATION OF RESTRICTIONS

THIS IRREVOCABLE OFFER TO DEDICATE OPEN-SPACE EASEMENT AND

DECLARATION OF RESTRICTIONS (hereinafter "offer") is made this 16th day
of July, 19 88, by Jack Moses and Ann-Marie Moses
Ron Landry and Margo Landry

(hereinafter referred to as "Grantor").

I. WHEREAS, Grantor is the legal owner of a fee interest of certain real property located in the County of Los Angeles; State of California, and described in the attached Exhibit A (hereinafter referred to as the "Property"); and

II. WHEREAS, all of the Property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (which code is hereinafter referred to as the "Public Resources Code"); and

III. WHEREAS, the California Coastal Act of 1976, (hereinafter referred to as the "Act") creates the California Coastal Commission, (hereinafter referred to as the "Commission") and requires that any coastal development permit approved by the Commission must be consistent with the policies of the Act set forth in Chapter 3 of Division 20 of the Public Resources Code; and

IV. WHEREAS, pursuant to the Act, Grantor applied to the California Coastal Commission for a permit to undertake development as defined in the Act within the Coastal zone of Los Angeles County (hereinafter the "Permit"); and

V. WHEREAS, a coastal development permit (Permit No. 5-88-056)

EXHIBIT 17
5-88-056-A1-R (Rubinroit)
Irrevocable OTD Open Space &
Declaration of Restrictions, 1988

1 was granted on March 24, 1988, by the Commission in
2 accordance with the provision of the Staff Recommendation and Findings,
3 attached hereto as Exhibit B and hereby incorporated by reference, subject to
4 the following condition:

5 Conservation and Open Space: Prior to authorization to proceed with development
6 the applicant shall execute and record a document in a form and content
7 acceptable to the Executive Director, irrevocably offering to dedicate to a
8 public agency or private association approved by the Executive Director, an
9 open space and conservation easement for Environmentally Sensitive Habitat Area
10 resource protection. Such easement shall be located at 25351 Piuma Road,
11 Malibu, as shown in Exhibit 4. The applicant shall also submit as a part of
12 said document a "meets and bounds" survey description of the easement. The
13 document shall run with the land in favor of the people of the State of
14 California, binding all successors and assignees, and shall be irrevocable for a
15 period of 21 years, such period running from the date of recording.

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VI. WHEREAS, the Commission, acting on behalf of the People of the State of
California and pursuant to the Act, granted the permit to the Grantor upon
condition (Hereinafter the "Condition") requiring inter alia that the Grantor
record a deed restriction and irrevocable offer to dedicate an open-space
easement over the Property and agrees to restrict development on and use of the
Property so as to preserve the open-space and scenic values present on the
property and so as to prevent the adverse direct and cumulative effects on
coastal resources and public access to the coast which could occur if the
Property were not restricted in accordance with this Offer; and

88-1246285

1 VII. WHEREAS, the Commission has placed the Condition on the permit because
2 a finding must be made under Public Resources Code Section 30604(a) that the
3 proposed development is in conformity with the provisions of Chapter 3 of the
4 Act and that in the absence of the protections provided by the Condition said
5 finding could not be made; and

6 VIII. WHEREAS, Grantor has elected to comply with the Condition and execute
7 this Offer so as to enable Grantor to undertake the development authorized by
8 the Permit; and

9 IX. WHEREAS, it is intended that this Offer is irrevocable and shall
10 constitute enforceable restrictions within the meaning of Article XIII, Section
11 8 of the California Constitution and that said Offer when accepted shall
12 thereby qualify as an enforceable restriction under the provision of the
13 California Revenue and Taxation Code, Section 402.1;

14 NOW THEREFORE, in consideration of the above and the mutual benefit
15 and conditions set forth herein, the substantial public benefits for the
16 protection of coastal resources to be derived, the preservation of the Property
17 in open-space uses and the granting of the Permit by the Commission, Grantor
18 hereby irrevocably offers to dedicate to the State of California, a political
19 subdivision or a private association acceptable to the Executive Director of
20 the Commission (hereinafter the "Grantee"), an open-space easement in gross and
21 in perpetuity for light, air, view, and for the preservation of scenic
22 qualities over that certain portion of the Property specifically described in
23 Exhibit C (hereinafter the Protected Land); and

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1 This Offer and Declaration of Restrictions subjects the Property to the
2 following terms, conditions, and restrictions which shall be effective from the
3 time of recordation of this instrument.

4 1. USE OF PROPERTY. The use of the Protected Land shall be limited to
5 natural open space for habitat protection, private recreation, and resource
6 conservation uses. No development as defined in Public Resources Code Section
7 30106, attached hereto as Exhibit D and incorporated herein by reference,
8 including but not limited to removal of trees and other major or native
9 vegetation, grading, paving, installation of structures such as signs,
10 buildings, etc, or except as approved by the Coastal Commission or its'
11 successor agency on a subsequent Coastal Permit, shall occur or
12 be allowed on the Protected Land with the exception of the following subject to
13 applicable governmental regulatory requirements:

14 (a) the removal of hazardous substances or conditions or diseased plants
15 or trees;

16 (b) the removal of any vegetation which constitutes or contributes to a
17 fire hazard to residential use of neighboring properties, and which vegetation
18 lies within 100 feet of existing or permitted residential development;

19 (c) the installation or repair of underground utility lines and septic
20 systems,

21 (d) development approved by the Coastal Commission or its' successor
22 agency on a subsequent Coastal Permit.

23
24 2. RIGHT OF ENTRY. The Grantee or its agent may enter onto the Property
25 to ascertain whether the use restrictions set forth above are being observed at
26 times reasonably acceptable to the Grantor.

27 88-1246285

1 9. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions,
2 exceptions, obligations, and reservations contained in this Offer shall be
3 binding upon and inure to the benefit of the successors and assigns of both
4 the Grantor and the Grantee, whether voluntary or involuntary.

5 10. TERM. This irrevocable offer of dedication shall be binding upon the
6 owner and the heirs, assigns, or successors in interest to the Property
7 described above for a period of 21 years. Upon recordation of an acceptance
8 of this offer by the grantee in the form attached hereto as Exhibit E, this
9 offer and terms, conditions, and restrictions shall have the effect of a grant
10 of open-space and scenic easement in gross and perpetuity for light, air, view
11 and the preservation of scenic qualities over the open-space area that shall
12 run with the land and be binding on the parties, heirs, assigns, and
13 successors.

14 Acceptance of the Offer is subject to a covenant which runs with the
15 land, providing that any offeree to accept the easement may not abandon it but
16 must instead offer the easement to other public agencies or private
17 associations acceptable to the Executive Director of the Commission for the
18 duration of the term of the original Offer to Dedicate.

19 Executed on this 16th day of July, 1988
20 at CANDY PARK, CA.

21 [Signature]
22
23
24 Jack Moses

21 [Signature]
22
23
24 Ron Landry

25 [Signature]
26

25 [Signature]
26

27 Ann-Marie Moses
TYPE OR PRINT NAME ABOVE

27 -7- Margo Landry
TYPE OR PRINT NAME ABOVE

1 NOTE TO NOTARY PUBLIC: If you are notarizing the signature of anyone
2 signing on behalf of a trust, corporation, partnership, etc., please use
3 the correct notary jurat (acknowledgment) as explained in your Notary Law
4 Book.

5 STATE OF CALIFORNIA
6 COUNTY OF LOS ANGELES } SS

7 On this 16th day of JULY, in the year 1988,
8 before me Joy Lees, a Notary Public, personally
9 appeared JACK MOSES ANN-MARIE MOSES RONALD L ANDRY +,
10 MARGO L ANDRY
11 personally known to me (or proved to me on the basis of satisfactory
12 evidence) to be the person whose name is subscribed to this instrument, and
13 acknowledged that he/she executed it.



Joy Lees
NOTARY PUBLIC IN AND FOR SAID COUNTY
STATE

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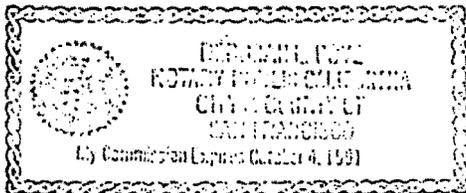
1 This is to certify that the Offer to Dedicate set forth above is
2 hereby acknowledged by the undersigned officer on behalf of the California
3 Coastal Commission pursuant to the action of the Commission when it granted
4 Coastal Development Permit No. 5-88-056 on March 24, 1988
5 and the California Coastal Commission consents to recordation thereof by its
6 duly authorized officer.

7 Dated: July 29, 1988

8 John Bowers
9 John Bowers, Staff Counsel
10 California Coastal Commission

11 STATE OF California)
12 COUNTY OF San Francisco)

13 On July 29, 1988, before me DEBORAH L. BOVE,
14 a Notary Public, personally appeared JOHN BOWERS, personally known to
15 me to be (or proved to me on the basis of satisfactory evidence)
16 to be the person who executed this instrument as the STAFF COUNSEL
17 and authorized representative of the California Coastal Commission and
18 acknowledged to me that the California Coastal Commission executed it.



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Deborah L. Bove
NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

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EXHIBIT A
Property

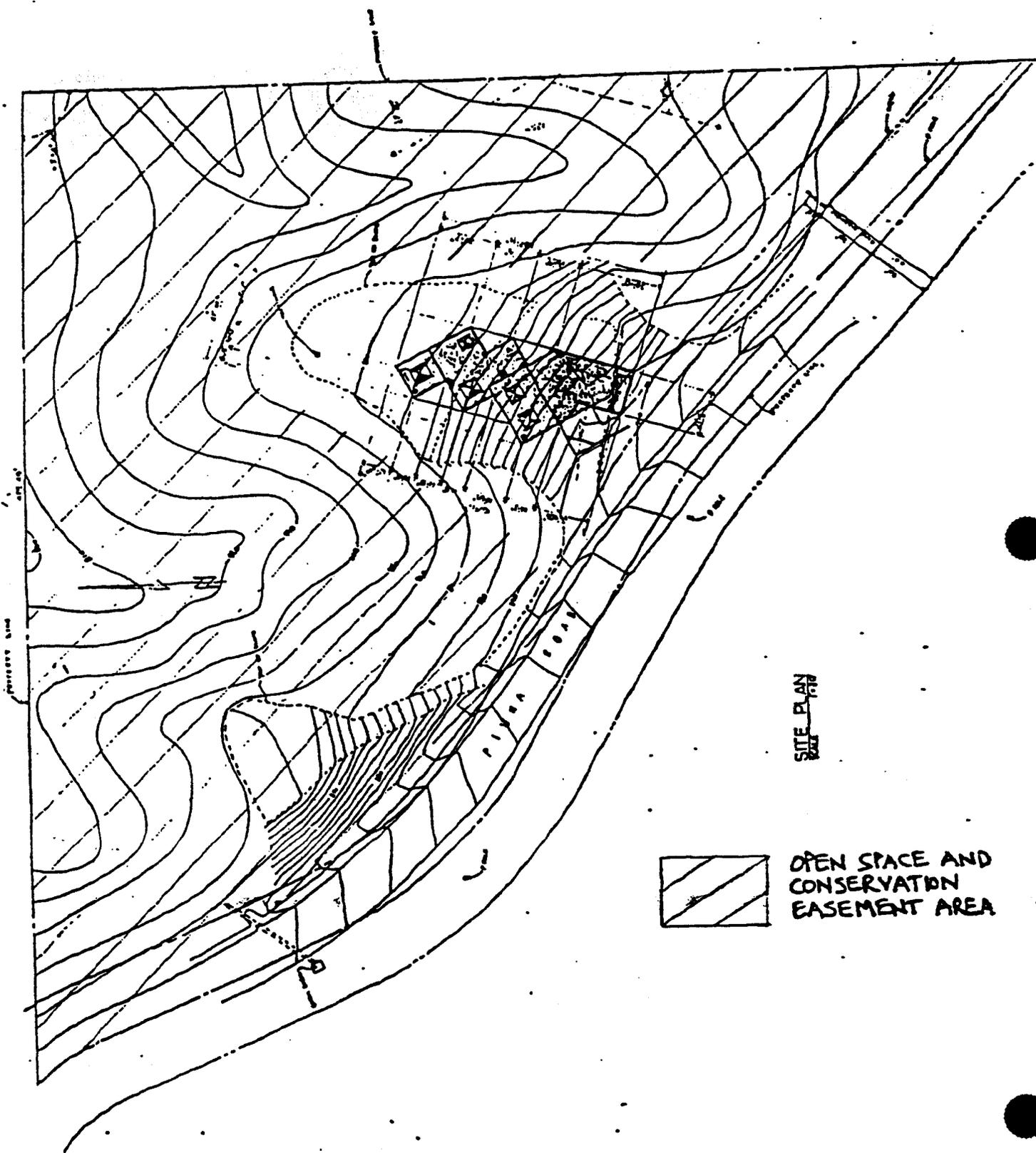
The land referred to in this policy is situated in the County of Los Angeles, State of California, and is described as follows:

That portion of the Northeast quarter of the Northwest quarter of Section 20, Township 1, South, Range 17 West, San Bernardino Meridian, according to the official plat said land approved by the Surveyor General June 20, 1896, described as follows:

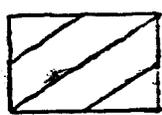
Beginning at the Northeast corner of said Northeast quarter of the Northwest quarter; thence along the Northerly line of said Northeast quarter of the Northwest quarter; North $89^{\circ} 54' 40''$ West 475.49 feet to the center line of Pioma Road (formerly Caol Canyon Road) 60 feet wide, as described in parcel 1 in the deed to the county of Los Angeles, recorded on November 30, 1931, as Instrument No. 954, in Book 11285 Page 87, Official Records of said county; thence Southeasterly along said center line, being a curve concave Southwesterly, (a radial line to said intersection of the Northerly line of the Northeast quarter of the Northwest quarter with said center line bears North $46^{\circ} 51' 40''$ East) an arc distance of 34.68 feet; thence South $23^{\circ} 16' 05''$ East, 114.04 feet, tangent to said curve, to the beginning of a tangent curve concave Northeasterly, having a radius of 200 feet; thence Southeasterly along said last mentioned curve, an arc distance of 130.74 feet; thence tangent to said last mentioned curve, South $60^{\circ} 43' 20''$ East, 134.48 feet to the beginning of a tangent curve concave Southwesterly, having a radius of 200 feet; thence Southeasterly along said last mentioned curve, an arc distance of 36.98 feet; thence tangent to said last mentioned curve, South $50^{\circ} 07' 45''$ East to the Easterly line of said Northeast quarter of the Northwest quarter; thence Northerly along said Easterly line to the point of beginning.

THE MCGEE ARCHIVE
1001 PLEASANT
FRANKLIN, CALIFORNIA
MCGEE ARCHIVE
2001 PLEASANT
FRANKLIN, CALIFORNIA
MCGEE ARCHIVE
2001 PLEASANT
FRANKLIN, CALIFORNIA

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SITE PLAN



OPEN SPACE AND
CONSERVATION
EASEMENT AREA

24

LEGAL DESCRIPTION OF OPEN SPACE

The land referred to in this policy is situated in the County of Los Angeles, State of California, and is described as follows:

That portion of the Northeast quarter of the Northwest quarter of Section 20, Township 1, South, Range 17 West, San Bernardino Meridian, according to the official plat said land approved by the Surveyor General June 20, 1896, described as follows:

Beginning at the Northeast corner of said Northeast quarter of the Northwest quarter; thence along the Northerly line of said Northeast quarter of the Northwest quarter; North $89^{\circ}54'40''$ West 475.49 feet to the centerline of Piuma Road (formerly Caol Canyon Road) 60 feet wide, as described in parcel 1 in the deed to the County of Los Angeles, recorded on November 30, 1931, as Instrument No. 954, in Book 11285 Page 87, Official Records of said County; thence Southeasterly along said centerline, being a curve concave Southwesterly, (a radial line to said intersection of the Northerly line of the Northeast quarter of the Northwest quarter with said centerline bears North $46^{\circ}51'40''$ East) an arc distance of 34.68 feet; thence South $23^{\circ}16'05''$ East, 114.04 feet, tangent to said curve, to the beginning of a tangent curve concave Northeasterly, having a radius of 200 feet; thence Southeasterly along said last mentioned curve, an arc distance of 130.74 feet; thence tangent to said last mentioned curve, South $60^{\circ}43'20''$ East, 134.48 feet to the beginning of a tangent curve concave Southwesterly, having a radius of 200 feet; thence Southeasterly along said last mentioned curve, an arc distance of 36.98 feet, thence tangent to said last mentioned curve, South $50^{\circ}07'45''$ East to the Easterly line of said Northeast quarter of the Northwest quarter; thence Northerly along said Easterly line to the point of beginning.

Excepting the following:

Beginning at a point in the centerline of Piuma Road at the Southeasterly terminus of that certain curve of radius 200.00 feet and a arc distance of 130.74 feet as described above. Thence along said centerline tangent to said curve South $60^{\circ}43'20''$ East, 96.00 feet to the true point of beginning. Thence, North $28^{\circ}16'37''$ East, 120.00 feet to a point; thence, North $36^{\circ}46'37''$ East, 40.00 feet to a point; thence; North $22^{\circ}46'37''$ East, 36.00 feet to a point; thence, North $81^{\circ}06'37''$ East, 22.00 feet to a point; thence, South $52^{\circ}53'23''$ East, 34.00 feet to a point; thence, South $22^{\circ}13'23''$ East, 56.00 feet to a point; thence, South $18^{\circ}43'23''$ East, 36.00 feet to a point; thence, South $07^{\circ}23'23''$ East, 27.00 to a point; thence South $30^{\circ}06'37''$ West, 138.31 feet (more or less) to the centerline of said Piuma Road; thence along said centerline North $50^{\circ}07'45''$ West, 60.50 feet (more or less) to the beginning of a tangent curve concave Southwesterly having a radius of 200.00 feet; thence northwesterly along said curve, an arc distance of 36.98 feet; thence tangent to said last mentioned curve, North $60^{\circ}43'20''$ West, 38.48 feet to the true point of beginning.

EXHIBIT D

27

Public Resources Code Section 30106

[30106. Development

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal of harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

88-1246285

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FILE COPY

CALIFORNIA COASTAL COMMISSION

COAST AREA
WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

Page 1 of 8

Permit Application No. 5-88-056/1s

Date 29 February 1988



ADMINISTRATIVE PERMIT

APPLICANT: Jack and Annie Moses, and Ron and Margo Landry

PROJECT DESCRIPTION: Construct a 4260 square-foot, 28-foot high, four-level single family residence with water well and septic system.

PROJECT LOCATION: 25351 Piuma Road, Malibu.

EXECUTIVE DIRECTOR'S DETERMINATION: The findings for this determination, and for any special conditions, are discussed on subsequent pages.

Pursuant to Public Resources Code Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:
Thursday, 9:00 A. M. March 24, 1988. (415) 873-3200

Grosvenor Airport Inn, 380 South Airport Blvd., San Francisco.

IMPORTANT - Before you may proceed with development, the following must occur:

For this permit to become effective you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development. BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE PERMIT AUTHORIZATION FROM THIS OFFICE.

PETER DOUGLAS
Executive Director

LARRY SAMMON

EXHIBIT 18

5-88-056-A1-R (Rubinroit)

CDP 5-88-056 with Conditions,
February 29, 1988

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

(See Page 3)

SPECIAL CONDITIONS:

(See Page 7)

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.


Applicant's Signature


Date of Signing

EXECUTIVE DIRECTOR'S DETERMINATION (Continued):

A. PROJECT DESCRIPTION.

The applicant proposes to construct a 4260 square-foot, 28-foot high (above existing grade), four-level single family residence with water well and septic system on a 2.76-acre parcel of land along Piuma Road in the Santa Monica Mountains (Exhibits 1 and 2). The site is a north descending hillside characterized by a series of minor ridges and drainage courses. Slopes range from nearly level on the two previously-graded building pads to no greater than 2:1 below the pads. The proposed residence will be sited on the larger pad in the southeast corner of the property. Vegetation is absent on the pads but consists of moderate chapparal cover on the balance of the property. Minor grading of less than 50 cubic yards will be required for a short driveway access. The seepage pits for the proposed septic system will be located north of the residence at the nose of the building pad. A favorable percolation test was performed at this site and the consulting geologist has stated in his report that the site of the proposed septic system is acceptable and that "percolation of effluent from the proposed residence is not expected to raise groundwater levels in the area, adversely affect site stability, or pose a hazard to the site or adjacent properties."

The parcel is located within the Malibu/Cold Creek Resource Management Area and runoff from the parcel drains into Dark Canyon (Exhibit 3). The Malibu/Santa Monica Mountains Land Use Plan (LUP) designates the parcel as Rural Land II (1 DU/5 acres), and allows development of non-conforming parcels if LUP resource protection policies are met. The proposed development is therefore consistent with the allowable LUP density. The subject parcel was included in the Malibu/Santa Monica Mountains build-out survey conducted in 1978 using the Los Angeles County Engineer Maps. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit.

B. HAZARDS.

The proposed project is located in an area which is subject to an unusually high amount of natural hazards, including landslides and fire. Section 30253 of the Coastal Act states in part that new development shall:

- (1) minimize the risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

In addition, the Malibu/Santa Monica Mountains LUP contains numerous policies addressing the geologic (P147-150) and fire (P156-160) hazards present in the Santa Monica Mountains. The applicant's geology report states that the basaltic bedrock which is exposed over much of the proposed building site is "very competent...and is expected to provide excellent support for the proposed residence." The geology consultant found no evidence of ancient or

recent landslides on the property; only minor soil sloughing adjacent to on-site drainage courses was observed and will present no hazard to the proposed development. The consultant concludes that "the site is considered to be suitable from a soils and engineering geologic standpoint for construction of a single family residence" provided that the geologic report recommendations are followed.

Vegetation surrounding the building site is native chaparral, a highly combustible plant community. Fuel load modification pursuant to Los Angeles County Fire Marshall requirements will be necessary in order to reduce the risks of wildfire on the site. In addition, Landscaping plans that utilize native plants suitable for fuel modification criteria and soil erosion control, and that incorporate drainage devices to control runoff and erosion, will serve to lessen the possibility of fire and erosion hazards, and to assure the continued protection of resources within this portion of the Malibu/Cold Creek Resource Management Area.

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

The Commission finds that due to the unforeseen possibility of slope failure following wildfires and their resultant effect on slope stability due to loss of protective vegetative cover, the applicant shall assume these risks as a condition of approval, as well as prepare fuel modification and landscape plans and follow all the recommendations contained in the geology report prepared for this project and site. Because the risk of harm cannot be completely eliminated, The Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, 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. Only as conditioned can the Commission find the project consistent with Section 30253 of the Coastal Act and the geology and natural hazard policies of the LUP.

C. VISUAL RESOURCES.

Section 30251 of the Coastal Act requires that the scenic quality of coastal areas be protected as an important public resource and that permitted development be sited to protect the visual quality of coastal areas. In addition, the Malibu/Santa Monica Mountains LUP contains several policies (P72, 125, 129, and 130) regarding viewshed protection which are applicable to the proposed development. Due to presence of a previously-graded building pad, only minor grading (less than 50 cubic yards) is proposed for a short driveway. The proposed residence is designed to step down from the garage which is located just below the elevation of Piuma Road. From this point, the

structure descends in three steps down the existing pad to the lowest level, 30 feet below the elevation Pioma Road. As a result, the structure extends only 11 feet above the centerline of Pioma Road and at no point extends more than 28 feet above the existing graded pad.

However, because the project is adjacent to and visible from Pioma Road and State Park lands immediately to the east, and in order to mitigate any adverse visual impacts which could occur as a result of construction of the residence, the Commission finds that it is necessary to require the applicant to submit landscaping plans designed to screen or soften the visual impact of the proposed development. Only as conditioned will the proposed development not adversely impact visual resources along Pioma Road and from State Park lands to the east in the upper Dark Canyon drainage. As conditioned, the project conforms to Section 30251 of the Coastal Act and the visual resource protection policies of the LUP.

D. LAND RESOURCES.

Section 30240(b) of the Coastal Act states that:

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

The proposed development site is located in the upper portion of the Malibu/Cold Creek Resource Management Area, and runoff from the site drains into the Dark Canyon Environmentally Sensitive Habitat Area (ESHA). The Malibu/Santa Monica Mountains LUP policies addressing protection of ESHAs are among the strictest and most comprehensive concerning new development, and are designed to protect significant resources from individual and cumulative impacts of development. Among them is Policy 72, which states that:

Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.

In addition, Table 1 of the LUP contains a discussion of permitted land uses and development standards in Resource Management Areas:

Residential land use: for parcels less than 20 acres, buildout at existing parcel cuts (build-out of parcels of record) at 1 unit/parcel in accordance with specified standards and policies and subject to review by the Environmental Review Board.

Development standards: Allowable structures shall be located in proximity to existing roadways, services and other development to minimize impacts on the

habitat, and clustering and open space easements to protect resources shall be required in order to minimize impacts on the habitat.

Grading and vegetation removed shall be limited to that necessary to accommodate the residential unit, garage, one other structure, one access road, and brush clearance required by the Los Angeles County Fire Department.

Stream protection standards shall be followed.

On both sides of the existing building pad proposed for development are undisturbed drainage courses which collect runoff from and above the property and carry it downslope to the Dark Canyon ESHA. The applicants propose only minimal grading on this pad and no development is proposed in the drainage courses. In addition, no development is proposed at this time on the smaller, existing building pad in the northwest corner of the parcel. Nevertheless, the Commission still has concerns about the cumulative impacts in the Malibu/Cold Creek Resource Management Area, particularly impacts of urbanization such as runoff, erosion from construction and grading activities, and pollutants from septic systems, pesticides, and herbicides.

Staff is recommending two special conditions to prevent future impacts to the Dark Canyon ESHA. One condition will require the landowner to secure an amendment to this coastal permit or apply for a new coastal permit for any future additions or development on the property. The Commission finds that as conditioned, the proposed development is consistent with Section 30240(b) of the Coastal Act.

A second condition will require the landowner to offer to dedicate an open space and conservation easement for resource protection on that portion of the subject property outside the building site (Exhibit 4). This easement will serve to protect the remaining, undisturbed watershed cover on the property, and limit adverse impacts on critical resources within the nearby Dark Canyon ESHA that might arise from future development on the subject property. Of concern to the staff is the potential future use of the second building pad, located in the northwest corner of the property. Utilization of this site for the second structure allowed by the LUP "Table 1 Standards" would require improvement of the existing accessway off Piuma Road. This accessway would constitute a second driveway on the property, separate from the driveway included as a part of the currently proposed development and, therefore, not allowed by the LUP. Development of this second pad, at some distance from the proposed residence, would also conflict with "Table 1 Standards" that require clustering of allowable structures to minimize impacts on habitat. In addition, vegetation removal required by the Los Angeles County Fire Department for a structure on this second pad, and the vegetation clearance necessary for the improvement of the accessway would constitute a significant impact on watershed cover. Siting any future development adjacent to the proposed residence would be much less disruptive to habitat values and more in keeping with the "Table 1 Standards" of the LUP. Therefore, the Executive Director finds that it is necessary to require the applicant to offer to

dedicate an open space and conservation easement for FSHA and Resource Management Area protection on that portion of the subject property outside the building site (Exhibit 4). As conditioned, the proposed development is consistent with Section 30240(b) of the Coastal Act and the land resource protection policies of the LUP.

SPECIAL CONDITIONS.

1. Geologic Recommendations.

The applicant must comply with the recommendations contained in the "Soils and Engineering Geologic Investigation Report for Proposed Single-Family Residence, 25351 Pioma Road, Malibu, California, 1-19-88," prepared by California Geosystems, Inc.

2. Fuel Modification and Landscape Plans.

Prior to authorization to proceed with development, the applicant shall submit for review and approval by the Executive Director, plans that show the provision for the Los Angeles County Fire Marshall fuel modification requirements. The plans shall indicate that no vegetation clearing will occur in the drainage courses to the west and east of the building pad. The plans shall incorporate the use of primarily native plants which are suitable for fuel modification criteria, controlling erosion, screening or softening the visual impact of the development, and are suitable to be used as a part of the ornamental planting scheme. The plans shall include non-erosive, energy-dissipating drainage devices which collect all concentrated runoff generated from the residence area and discharge it into the two watercourses that flank the building pad.

3. Assumption of Risk.

Prior to authorization to proceed with development, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide (a) that the applicant understands that the site may be subject to extraordinary hazard from landslide, slope failure, and fire, and (b) that the applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, 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 interest being conveyed.

4. Conservation and Open Space.

Prior to authorization to proceed with development, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an open space and conservation easement for Environmentally Sensitive Habitat Area resource protection. Such easement shall be located at 25351 Pioma Road, Malibu,

as shown in Exhibit 4. The applicant shall also submit as a part of said document a "meets and bounds" survey description of the easement. The document shall run with the land in favor of the people of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

5. Future Development.

Prior to authorization to proceed with development, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the coastal development permit No. 5-88-056; and that any future additions or development as defined in Public Resources Code section 30106 will require an amendment to Permit 5-88-056, or will require an additional coastal development permit from the California Coastal Commission or its successor agency. Clearing of vegetation for fire protection, outside of on-site drainage courses, as required by the Los Angeles County Fire Marshall is allowed and shall not require a new permit. The document shall be recorded as a covenant running with the land binding all successors and assigns in interest to the subject property.

After you have signed and returned the duplicate copy of this Administrative Permit, you will be receiving the legal forms to complete (with instructions) from the San Francisco office. When you receive the documents if you have any questions, please call the Legal Department at (415) 543-8555.

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