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Item F6b

Staff:	AGD-SF
Staff Report:	July 26, 2002
Hearing Date:	August 9, 2002

STAFF RECOMMENDATIONS AND FINDINGS FOR RESTORATION ORDER

RESTORATION ORDER: CCC-02-RO-01

RELATED VIOLATION FILE: V-4-97-031

PROPERTY LOCATION: 25351 Piuma Road in Calabasas, Los Angeles County, APN 4456-037-007 (see page 42 of **Exhibit 4)** and the northeast portion of APN 4456-037-010, as described in the Grant of Easement recorded in the Los Angeles County Registrar-Recorder Office on December 4, 2001, as Instrument No. 012312351 **(Exhibit 1)**

DESCRIPTION OF PROPERTY The subject property is a 2.76 acre lot (APN 4456-037-007) and a small portion of an adjacent parcel (APN 4456-037-010) on Piuma Road in the Santa Monica Mountains

PROPERTY OWNERS: Howard and Terry Rubinroit

VIOLATION DESCRIPTION: Construction or installation (including associated grading and removal of native vegetation) of the following development (see photographs in **Exhibit 2,** Site Plan on page 46 of **Exhibit 5**):

a) lighted sports court,
b) lighted stairway extending from the pool area to the sports court,
c) decomposed granite on the eastern side of the sports court,
d) portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
e) portion of the irrigation system located within the area subject to the offer to dedicate an open space easement,

f) portion of the chain link fence located within the area subject to the offer to dedicate an open space easement, and
g) the water tank (pending determination by permit staff).

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-88-056 File,

Coastal Development Permit Amendment 5-88-056-A1 File,

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

Restoration Order CCC-02-RO-01 File

Draft ESHA Findings for the City of Malibu LCP **(Exhibit 3)**

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

I. SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission approve the Restoration Order set forth below, to require the restoration, to the maximum extent possible consistent with the policies of Chapter Three of the Coastal Act, of the subject property to the condition it was in prior to the occurrence of the unpermitted development. Under Section 30811 of the Coastal Act, to order restoration, the Commission must find that development has occurred without a coastal development permit, is inconsistent with the Coastal Act and is causing continuous resource damage. The Commission has already determined that the development was performed without a coastal development permit. The Commission issued a Cease and Desist Order based on this finding, on May 8, 2001. The Commission has also denied an application to authorize this development after-the-fact, finding, in its action on CDP 5-88-056-A1 on June 10, 2002, that the development is inconsistent with the policies of Chapter Three of the Coastal Act. The findings for this Restoration Order set forth the basis for the conclusion that the denied development is causing continuing resource damage and restoration is required.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Restoration Order are described in section 13195, incorporating by reference sections 13185 and 13186 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, and Subchapter 9. The Restoration Order hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and Local Coastal Program matters.

For a Restoration Order hearing, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13195, incorporating by reference sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Restoration Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. MOTION/STAFF RECOMMENDATION OF APPROVAL/RESOLUTION

A. Motion

Staff recommends adoption of the following motion:

> ***I move that the Commission issue Restoration Order No. CCC-02-RO-01 pursuant to the staff recommendation.***

B. Staff Recommendation of Approval

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

C. Resolution to Issue Restoration Order

The Commission hereby issues Restoration Order number CCC-02-RO-01, set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

IV. RECOMMENDED FINDINGS FOR RESTORATION ORDER CCC-02-RO-01

Staff recommends the Commission adopt the following findings of fact in support of its action.

A. Background

The following paragraphs summarize previous actions by the Commission regarding the subject site.

Coastal Development Permit (CDP) 5-88-056

On March 24, 1988, the California Coastal Commission approved CDP 5-88-056 (pages 48-59 of **Exhibit 4**) for construction of a four level 4,260 square foot, 28-foot high single family residence with a water well and a septic system, at 25351 Piuma Road, in Calabasas, Los Angeles County. At that time, the property was owned by Jack and Ann-Marie Moses and Ron and Marco Landry. The findings for this permit describe the property as only having two preexisting graded pads, both located adjacent to Piuma Road. The single family residence was approved to be located on one of the two preexisting graded pads on the property.

To mitigate the adverse impacts of the residential development on the Environmentally Sensitive Habitat Area (ESHA), the Commission imposed standard and special conditions on CDP 5-88-056. These conditions included requirements for recordation of an irrevocable offer to dedicate (OTD) an open space and conservation easement (pages 60-72 of **Exhibit 4**) and a deed restriction limiting future development without obtaining a coastal development permit or amendment (pages 73-80 of **Exhibit 4**). Both of these documents were recorded as required by the conditions.

On December 5, 1988, after they satisfied the prior-to-issuance conditions, the Commission's Executive Director issued CDP 5-88-056 to the Moseses and the Landrys. Construction of the house was completed on or about February 2, 1990. On February 14, 1990, the permittees transferred title to the property to Howard and Terry Rubinroit.

Cease and Desist Order CCC-01-CD-01

On May 8, 2001, the Commission unanimously issued Cease and Desist Order CCC-01-CD-01 **(Exhibit 4)**. The findings for CCC-01-CD-01 included the following descriptions of the discovery of the violations and contact with the Rubinroits.

> *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 property[1] *...*

Through letters to the Rubinroits, Commission enforcement staff established four initial deadlines for submittal of applications for a CDP[2]*. 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...

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 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...

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...

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...

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.

On December 1, 2000, during a phone conversation with Commission staff, Mr. Rubinroit stated that he had no intention of completing either CDP application.

In issuing the Cease and Desist Order, the Commission found that the construction or installation of development, including all of the development that is the subject of this Restoration Order, occurred on the subject property without a coastal development permit or permit amendment, in

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

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

violation of CDP 5-88-056 and the Coastal Act. The findings for the Cease and Desist Order describe in detail the administrative resolution attempts, discovery of violations, contact with the Rubinroits, and the Rubinroit's description of the chronology of events related to the unpermitted development. One of the purposes of the Cease and Desist Order was to establish a schedule for the completion of a coastal development permit (CDP) amendment application for each item of unpermitted development so that the Commission could determine whether the unpermitted development was consistent with the Coastal Act.

Amendment CDP 5-88-056-A1

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 development that was the subject of the Cease and Desist Order **(Exhibit 5)**. 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:

a) sand fill play area east of the pool,
b) irrigation system,
c) chain link fence, and the
d) 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 findings for the Commission's action on amendment application CDP 5-88-056-A1, which are attached hereto as **Exhibit 5**, included a determination that all of the development that is the subject of this Restoration Order is inconsistent with some or all of the following resource protection policies of the Coastal Act:

a) Section 30253 (geologic stability, protection against erosion),
b) Sections 30230 and 30231 (coastal waters),
c) Section 30240 (environmentally sensitive habitat areas or ESHA), and
d) Sections 30251 and 30253(5) (visual resources, community character, minimization of natural landform alteration).

The findings for CDP5-88-056-A1 also conclude that the chaparral and riparian vegetation on and in the vicinity of the subject site constitute environmentally sensitive habitat areas or ESHA for purposes of section 30240 of the Coastal Act.

B. <u>Description of Unpermitted Development</u>

The development that is the subject of this Restoration Order is the construction or installation (including associated grading and removal of native vegetation) of the following denied

development (see photographs in **Exhibit 2** and Site Plan and Irrigation Plan on pages 46 and 47 of **Exhibit 5**):

a) the lighted sports court,
b) the lighted stairway extending from the pool area to the sports court,
c) decomposed granite on the eastern side of the sports court,
d) portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
e) portion of the irrigation system located within the area subject to the offer to dedicate an open space easement,
f) portion of the chain link fence located within the area subject to the offer to dedicate an open space easement, and
g) the water tank (pending determination discussed in the following paragraph).

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. If the South Central District Office determines that the water tank can remain in its current location, the water tank will be considered deleted from the Restoration Order.

This list of development is that which remains unpermitted (hereinafter referred to as "denied development") after the Commission's decision on June 10, 2002 to partially approve and partially deny the application for an amendment to CDP 5-88-056.

C. Basis for Issuance of Restoration Order

The statutory authority for issuance of this Restoration Order is provided for in §30811 of the Coastal, which states:

> *In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port governing body that is implementing a certified port master plan may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission, local government, or port governing body, the development is inconsistent with this division, and the development is causing continuing resource damage.*

The Commission has the authority to order restoration of the site if it determines that the development a) has occurred without a coastal development permit, b) is inconsistent with the Coastal Act and c) is causing continuing resource damage. As discussed in greater detail below, the Commission has already made the first two determinations; that development has occurred without a permit and is inconsistent with the Coastal Act. Therefore, the primary focus of this section is whether the development is causing continuing resource damage. The following paragraphs set forth the basis for the issuance of the Restoration Order by providing substantial evidence that the development meets all three of these criteria necessary for the Commission to issue a Restoration Order.

Development Has Occurred without a Coastal Development Permit

On May 8, 2001, the Commission issued Cease and Desist Order CCC-01-CD-01 **(Exhibit 4)**. The Commission found that the development that is the subject of this Restoration Order meets the definition of development contained in Section 30106 of the Coastal Act, requires a CDP or an amendment to CDP 5-88-056 and occurred without such permit or permit amendment. The Commission's action and supporting findings are final and binding on the Rubinroits under the legal doctrine of *res judicata*.

Unpermitted Development is Inconsistent with the Coastal Act

On June 10, 2002, the Commission denied amendment application CDP 5-88-056-A1 to authorize the development that is the subject of this Restoration Order **(Exhibit 5)**. In doing so, the Commission determined that the denied development that is the subject of this Restoration Order is inconsistent with some or all of the following resource protection policies of the Coastal Act:

a) Section 30253 (geologic stability, protection against erosion),
b) Sections 30230 and 30231 (coastal waters),
c) Section 30240 (environmentally sensitive habitat areas or ESHA), and
d) Sections 30251 and 30253(5) (visual resources, community character, minimization of natural landform alteration).

The Commission's denial of the development that is the subject of this Restoration Order and the findings in support thereof are now final and binding on the Commission.

Unpermitted Development Causing Continuing Resource Damage

Maintenance of the denied development is causing continuing resource damage, as defined by §13190 of the Commission's regulations.

Definition of Continuing Resource Damage

The term "continuing" is defined by Section 13190(c) of the Commission's regulations as follows:

> *'Continuing', when used to describe 'resource damage', means such damage which continues to occur as of the date of issuance of the Restoration Order.*

Since the denied development continues to exist at the subject property, and, as described below, is causing impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding, damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission's regulations defines the term "resource" as it is used in Section 30811 of the Coastal Act as follows:

'Resource' means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas.

As previously discussed, the Commission denied the development that is subject to this Restoration Order because it determined that this development is inconsistent with resource protection policies of the Malibu/Santa Monica Mountains LUP and is inconsistent with some or all of the following resource protection policies of the Coastal Act:

a) Section 30253 (geologic stability, protection against erosion),
b) Sections 30230 and 30231 (coastal waters),
c) Section 30240 (environmentally sensitive habitat areas or ESHA), and
d) Sections 30251 and 30253(5) (visual resources, community character, minimization of natural landform alteration).

The term "damage", in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

'Damage' means ***any*** ***degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource*** *as compared to the condition the resource was in before it was disturbed by unpermitted development." (Emphasis added.)*

The damage caused by the denied development which is described in the following paragraphs clearly satisfies this regulatory definition.

Description of Continuing Resource Damage

In its findings for CDP 5-88-056-A1 **(Exhibit 5)**, the Commission determined that the denied development is causing negative impacts to resources protected by the Coastal Act and is inconsistent with the policies of Chapter Three of the Coastal Act. The following paragraphs present a summary of the negative impacts that were discussed in the findings for CDP 5-88-056-A1.

Environmentally Sensitive Habitat Areas and Water Quality

In the findings for CDP 5-88-056-A1, the Commission determined that the chaparral on the subject property and the chaparral and riparian vegetation in adjacent areas are Environmentally Sensitive Habitat Areas (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 Offer to Dedicate (OTD) an open space and conservation easement for the protection of the Dark Canyon ESHA. Refer to **Exhibit 3** for a general discussion of ESHA, including chaparral and riparian ESHA, within the Santa Monica Mountains.

The following denied development is causing direct displacement, fragmentation and discouragement of the growth of watershed cover, including native chaparral which is ESHA,

resulting in a reduction in the amount and quality of the habitat and watershed cover in the Cold Creek Resource Management Area:

1. lighted sports court,
2. the lighted stairway extending from the pool area to the sports court,
3. the decomposed granite on the eastern side of the sports court,
4. portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
5. and the water tank.

A "blue line stream" is located to the east of the sports court, on the adjacent property, as shown on the U. S. Geological Survey Map (Malibu Beach, Quad 135) attached as **Exhibit 6**. The lighted sports court, the grading in the area of the sports court and the decomposed granite (or "nonnative sand fill") on the eastern side of the sports court are reducing the biological productivity and quality of the blue line stream, protected in Section 30231 of the Coastal Act, as a result of removing natural vegetation buffer areas that protect and enhance the value of riparian habitats. The decomposed granite fill is located approximately 50 feet to the west of the blue line stream and is entirely within the 100-foot riparian buffer. The sports court is located approximately 60 feet to the west of the blue line stream and the majority of the sports court is located within the 100-foot riparian buffer (see Topographic Map on page 45 of **Exhibit 5**).

By increasing the amount of impervious surface area, the sports court, stairway and water tank are also reducing the amount of storm water infiltration, thereby increasing the volume and velocity of storm water sheet flow down the hillside and into the blue line stream, causing a cumulative degradation of water quality.

All of items of the denied development are also causing impacts to ESHA since they are not clustered, but are spread across the property and are located outside of the area that the Commission previously designated as being less disruptive to habitat. The findings for CDP 5-88-056 state that the OTD was required for the areas outside of the house pad since "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." For the Cold Creek Resource Management Area, the Table 1 Standards of the LUP state the following:

> *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 habitat.*

The denied development is also causing continuing resource damage to ESHA since the presence of this denied development in the area subject to the OTD is lessening or potentially eliminating the mitigation that was required as a condition of approval of CDP 5-88-056 to protect ESHA. The purpose of the OTD was to establish a "natural open space" area in order to protect the watershed cover and ESHA (pages 52-55, 60-72 of **Exhibit 4**). The OTD prohibits development in the area subject to the OTD, unless a CDP or an amendment to CDP 5-88-056-A1 is obtained to authorize such development. The Commission denied the Rubinroits' request for authorization of the after-the-fact development that is the subject of this restoration order because it determined that such development was inconsistent with Chapter Three of the Coastal

Act. The continued existence of such denied development in the open space area is contrary to the intent of the OTD to protect the natural open space in this area.

The denied development is also causing continuing resource damage to ESHA since the presence of such denied development may be a deterrent to the acceptance of the OTD by a qualified entity. In the experience of the Commission staff, unpermitted development in an area subject to an OTD an easement can cause potential accepting entities to refuse to accept the OTD. If the offer to dedicate the open space easement is not accepted by 2009, it will expire and will no longer provide the mitigation required by CDP 5-88-056 to protect ESHA.

Visual Resources, Minimization of Natural Landform Alteration and Community Character

The subject property is located within the Santa Monica Mountains National Recreation Area, which is a popular visitor destination point for recreation. The property is also in close proximity to State Park lands and is in a highly scenic area due to the rural atmosphere, open spaces and vistas, large continuous areas of native vegetation and extensive network of publicly owned lands. The Backbone Trail on State Park lands is located approximately 650 feet from the subject property.

The following denied development is also degrading scenic resources and the community character of the surrounding rural area by altering natural landforms, spreading the development over different areas of the property instead of clustering the development, and being visible from Piuma Road, a scenic highway, the Backbone Trail, a public trail, and/or nearby State Park lands:

1. the lighted sports court
2. the lighted stairway extending from the pool area to the sports court,
3. decomposed granite on the eastern side of the sports court, and
4. the water tank.

The presence of this denied development is inconsistent with the purpose of the OTD "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..."

Geologic Stability

The following denied development (including the grading and removal of vegetation) is also degrading geologic stability as a result of the removal of native vegetation and, in the case of the sports court, stairway and water tank, from effects caused by impervious surfaces:

1. the lighted sports court,
2. the lighted stairway extending from the pool area to the sports court,
3. decomposed granite on the eastern side of the sports court,
4. portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
5. the water tank.

The sports court in particular is disturbing the geologic stability of the adjacent area and has not been constructed to minimize risks to life and property in areas of high geologic, flood and fire hazard and to assure stability and structural integrity, as required by § 30253 of the Coastal Act. The Rubinroits' consultant has identified areas of erosion adjacent to the sports court and has recommended that additional development be performed adjacent to the sports court to "mitigate further erosion". Since further development would be required to stabilize the sports court area, the sports court is inconsistent with Section 30252 of the Coastal Act, which requires that new development assure stability and structural integrity and neither create nor contribute significantly to erosion or geologic instability.

The irrigation system in the area subject to the OTD is also increasing the risk of geologic instability and hazards by contributing towards slope instability from saturation of soils.

D. Consistency of Restoration Order with the Coastal Act

The Commission finds that the denied development can be removed and the subject property can be restored to the conditions that existed prior to the development, consistent with the policies of Chapter 3 of the Coastal Act, with one exception, described below.

Section 13196(e) of the Commission's regulations states:

> *Any term or condition* [of a Restoration Order] *that the commission may impose which requires removal of any development or material shall be for the purpose of restoring property affected by the violation to the condition it was in before the violation occurred.*

Full compliance with this regulation is not possible. The Commission finds that the topography in the area of the sports court has been altered so significantly that it cannot be fully restored to the contours that existed prior to the unpermitted development without causing instability and inconsistency with the Chapter Three policies of the Coastal Act.

Prior to the grading of the pad on which the sports court is located, the area consisted of a ridge. The top of the ridge was cut and the material placed as fill to the west. The Commission staff's geologist has determined that the restoration of that former ridge would result in unstable soils that would require extensive retaining walls or other artificial structures to minimize erosion of the soils into the riparian corridor. In other words, the ridge cannot be re-created without extensive retaining walls or other artificial structures to hold it in place. The placement of such structures within the riparian buffer would also be incompatible with the predevelopment condition of this site.

The Commission finds that, although the topography of the area of the sports court cannot be fully restored, the topography can be partially restored and the impacted area can be revegetated. A small portion of the soils that were removed from the former ridge on which the sports court is now located can be replaced on the area currently covered with the sports court, in order to provide sufficient substrate for the revegetation project. Based on the descriptions by the geological consultants of the grading of the pad on which the sports court is located, there is little or no overburden or soil beneath the sports court; soils and bedrock were removed from this area

and placed as fill to the west of the sports court (see Geologic Map, **Exhibit 8**). Therefore, revegetation of this area will require replacement of some soil and proper treatment of this soil to make it suitable for supporting the growth of chaparral vegetation, in accordance with the specifications of the Restoration Order. The establishment of chaparral vegetation in the area of the sports court will have beneficial impacts by restoring native vegetation watershed cover and habitat in an ESHA area, providing geologic stability for the graded area, preventing erosion and protecting water quality of the adjacent blue line stream.

Restoration of the areas impacted by the rest of the denied development has been determined to be consistent with Chapter Three of the Coastal Act.

The Restoration Order sets forth requirements for the Restoration, Revegetation and Monitoring Plan ("Restoration Plan") that are necessary for the restoration and revegetation project to be consistent with Chapter Three of the Coastal Act. One requirement is that the Restoration Plan be developed by a qualified restoration ecologist, geologist and possibly soils scientist. The Restoration Order also requires that the Restoration Plan describe the goals and performance standards of the restoration and revegetation project and describe the monitoring program that will be implemented to determine whether these goals and standards are being met. The Restoration Order also sets forth requirements for the restoration and revegetation methodology, in order to make these activities consistent with Chapter Three of the Coastal Act.

This Restoration Order is requiring restoration to the predevelopment conditions to the maximum extent possible given the current condition of the subject property. The Commission finds that the removal of the denied development and restoration of the subject property to the maximum extent possible, as required by this Restoration Order, is consistent with the Coastal Act.

The Commission also finds that the removal of the denied development and restoration of the impacted areas will not prejudice Los Angeles County's ability to prepare a Local Coastal Program that is in conformity with Chapter 3 of the Coastal Act.

E. CEQA

The Commission finds that removal of the unpermitted development and restoration of the property to the conditions that existed prior to the unpermitted development, as required by this Restoration Order, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Restoration Order is exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

F. Allegations

Set forth below is a list of allegations that the Rubinroits admit or do not contest.

1. Howard and Terry Rubinroit are the owners of the property located at 25351 Piuma Road in Calabasas, Los Angeles County APN 4456-37-007. **(Admitted)**

2. A small portion of the unpermitted development extends onto an adjacent lot, APN 4456-037-010. The owner of this lot granted to the Rubinroits an easement over the northeast corner thereof for the eastern portion of the sports court, as described in the Grant of Easement recorded in the Los Angeles County Registrar-Recorders Office on December 4, 2001 as Instrument No. 012312351. **(Admitted)**

3. On May 8, 2001, the Commission unanimously voted to issue Cease and Desist Order CCC-01-CD-01. **(Admitted)**

4. In issuing Cease and Desist Order CCC-01-CD-01, the Commission made findings that the construction or installation of development, including the development that is the subject of this Restoration Order, occurred on the subject property without a coastal development permit or permit amendment having been obtained thereto and thus constituted a violation of the terms of CDP 5-88-056 and of the Coastal Act. **(Not contested)**

5. On June 10, 2002, the Commission voted to deny a request (CDP 5-88-056-A1) for after-the-fact authorization of the following development:

   a) the lighted sports court,
   b) the lighted stairway extending from the pool area to the sports court,
   c) decomposed granite on the eastern side of the sports court,
   d) portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
   e) portion of the irrigation system located within the area subject to the offer to dedicate an open space easement and
   f) portion of the chain link fence located within the area subject to the offer to dedicate an open space easement.
   g) the water tank (pending determination discussed in the following paragraph).

   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 Commission decided to allow this water tank to remain in its current location, if such a determination is made. **(Admitted)**

6. The findings for CDP 5-88-056-A1 state that the denied development was inconsistent with the resource protection policies of the Coastal Act and the conditions of CDP 5-88-056. **(Not contested)**

The Rubinroits expressly deny the following allegations:

1. The Executive Director has the right or power to commence restoration proceedings.

2. The Commission has the right or power to take any action respecting Restoration Order proceedings concerning any portion of the subject property.

3. The NOI is effective to initiate and/or implement Restoration Order proceedings.

4. The denied development is causing continuing resource damage.

5. The Coastal Act authorizes the Commission to seek monetary daily penalties for violation of the Restoration Order.

6. The denied development activities included unpermitted grading and removal of native vegetation.

7. The doctrine of administrative *res judicata* applies at all to the Commission's prior actions on CCC-01-CD-01 and CDP 5-88-056-A1.

8. In the findings for CDP 5-88-056-A1, the Commission determined that the denied development is inconsistent with some or all of the following resource protection policies of the Coastal Act:

    a) Section 30253 (geologic stability, protection against erosion),
    b) Sections 30230 and 30231 (coastal waters),
    c) Section 30240 (environmentally sensitive habitat areas or ESHA), and
    d) Sections 30251 and 30253(5) (visual resources, community character, minimization of natural landform alteration).

G. Violators' Defenses and Commission's Response

The Statement of Defense (SOD) submitted by Howard Rubinroit, which was received by the Commission staff on July 10, 2002, is included as **Exhibit 7**. In his SOD, Mr. Rubinroit incorporates the defenses he previously submitted prior to issuance of the Cease and Desist Order (pages 102-138 and 141-184 of **Exhibit 4**). Those defenses, which the Commission rejected in its decision to issue Cease and Desist Order CCC-01-CD-01 are not addressed in the findings for this Restoration Order. Section 30801 of the Coastal Act 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.*

This 60-day period subsequent to the Commission's action on the Cease and Desist Order ended on July 7, 2001 and no such petition was filed. Therefore, that action can no longer be appealed,

and the findings for CCC-01-CD-01 are final and binding on the Rubinroits under the legal doctrine of administrative *res judicata*.

Responses to those defenses that were rejected by the Commission in the findings for the Cease and Desist Order are not included in these Restoration Order findings. Such responses are presented in Section D of the findings for the Cease and Desist Order (pages 23-40 of **Exhibit 4**).

The following is a summary of the arguments made by the Rubinroits that the Commission rejected in the findings for CCC-01-CD-01. For some arguments, a brief synopsis of the Commission's response is shown here in italics and parentheses.

All of the following arguments were rejected by the Commission in CCC-01-CD-01:

1. There was no grading. *(The findings describe areas of unpermitted grading, including the grading of the sports court pad, nonnative sand fill on the eastern side of the sports court and fill for the sand play area.)*

2. Graded pad three and the sports court are "essentially invisible to the public". *(The findings state that the following development is visible from Piuma Road:*
   a) sports court,
   b) swimming pool and spa,
   c) retaining wall and carport,
   d) steps and pathways on both sides of the house,
   e) chain link fence and gates around pool and house,
   f) water tank,
   g) patio area with low walls,
   h) nonnative sand adjacent to the unnamed blue line stream, and
   i) removal of native vegetation beyond the authorized limits.)

3. "We also deny that a 'blue line stream' any longer traverses the property in the area of the so-called sports court."

4. The development did not require a CDP since it was exempt under Section 30610(a) as improvements to a SFR.

5. The items listed in the violation description of the CDO do not constitute development.

6. "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." (*The findings state that any development in the OTD requires a CDP, regardless of the purpose of such development.)*

7. The previous owner performed some of the development, including the grading of the sports court pad.

8. The development was already authorized by CDP 5-89-056, even if it was not explicitly identified as being authorized by the permit; the Commission staff understood that at least part of the development would take place.

9. The Rubinroits had not seen a copy of the OTD the Open Space Easement until Commission staff sent them a copy after notifying them of the violation.

10. No permit is needed since the development was performed pursuant to a vested right.

11. Since the LA County Department of Building and Safety staff did not check off the Coastal Commission permit in its checklist of other approvals required when the building permit was issued, the County, in effect, advised the Rubinroits that a CDP was not required.

12. The Commission lacks 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."

13. "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."

14. "Even if the easement was and is valid, it does not prohibit the title owner from installing pipes or lines in the easement area."

15. The applications submitted on January 29, 1999 were complete.

16. The Rubinroits' consultants did not inform them of the need to obtain a CDP (prior to notification of the violation by enforcement staff).

17. The Commission has committed selective enforcement.

The following paragraphs describe those defenses that have not already been rejected as part of the findings of CCC-01-CD-01 and set forth the Commission's response to each contention.

The Rubinroits' Defense:

1. "The Commission and its Staff, including the Executive Director, presently are acting, and at all times material hereto have been acting, in an *ultra vires* manner and in violation of the United States and California Constitutions (including, but not limited to, the provisions thereof respecting separation of powers, substantive and procedural due process. . .)"

"The Commission could not consistently with due process and fairness have ordered that an application be filed if it were its position that the CDO itself would trump and defeat the application (CDP 5-88-056-A1)."

"(We deny that) the Executive Director has the right or power to commence, and/or that the Commission has to (sic) the right or power to take any action respecting Restoration Order proceedings concerning any portion of the subject property, and/or that the NOI is effective to initiate and/or implement any such action."

Commission's Response:

Actions in Accordance with Authority Granted to Commission and Staff

The Commission's authority to take action on Restoration Orders is provided for in Section 30811 of the Coastal Act, which states the following:

> *In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

The procedures for the issuance of Restoration Orders are described in the Commissions regulations in Sections 13190 through 13197 of the California Code of Regulations, Title 14. Section 13196(e) of the Commission's regulations states the following:

> *Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly the purpose of this Restoration Order is to order restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described below.

The authority of the Executive Director to commence Restoration Order proceedings is provided for in Section 13191 of the Commission's regulations. Section 13191 specifically authorizes the Executive Director to commence Restoration Order proceedings by providing a notice of intent to the person(s) subject to the order. The notice of intent dated June 20, 2002 that was sent by the Executive Director to the Rubinroits (pages 2-5 of **Exhibit 7**) met the requirements set forth in Section 13191 for commencing Restoration Order proceedings before the Commission.

Therefore, the Commission and its staff is not acting in an *ultra vires* manner for actions related to Restoration Order proceedings. The Commission's previous actions on CDP 5-88-056, CCC-01-CD-01 and CDP 5-88-056-A1 were likewise conducted in accordance with the authority granted by the Coastal Act and the Commission's regulations to the Commission and its staff, including the Executive Director.

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.

Due Process

The Commission finds that the Rubinroits' claim of being deprived due process is without merit for the reasons set forth below.

The Rubinroits claim that they were denied due process because some of the arguments that the Rubinroits raised during the application process for CDP 5-88-056-A1 were not addressed in the findings or the hearing for the Commission's action on this amendment application. The Commission did not respond to those arguments that were already rejected in the Commission's findings for the Cease and Desist Order. The findings for the Cease and Desist Order are final and binding since the Rubinroits 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. This failure to file a petition for a writ of mandate renders the decision made by the Commission in CCC-01-CD-01 immune from attack in a collateral proceeding such as CDP 5-88-056-A1 or this Restoration Order proceeding.

The Rubinroits also claim that they were denied due process as a result of the Commission staff's refusal to recommend that the Commission postpone the hearing for amendment application CDP 5-88-056-A1 in order for the Rubinroits to file an application to amend or rescind the Cease and Desist Order. The Commission staff denied the Rubinroits' request for a hearing to rescind or modify the Cease and Desist Order because the Rubinroits did not meet the threshold test provided for in Section 13188 of the Commission's 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.*** (emphasis added)

The Rubinroits argue that they were advised by Sabrina Haswell, the permit analyst for CDP 5-88-056-A1, that the Cease and Desist Order 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 Cease and Desist Order. In a letter dated June 4, 2002, Commission headquarters enforcement officer Abe Doherty responded to this claim (**Exhibit 7**). In summary, the Rubinroits were free to propose to modify or rescind the Cease and Desist Order at any time. In fact, they did so and their request was rejected. Ms. Haswell's statement that the Cease and Desist Order would not affect the amendment application was accurate. 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 resource protection policies of the Coastal Act and the previously issued CDP, CDP 5-88-056. The issues resolved in the Cease and Desist Order 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 complies with the Chapter Three policies of the Coastal Act.

The Rubinroits' Defense:

2. The Rubinroits "do not understand and question how the Commission had in 1988 the authority to question or limit the County's permit determinations in 1988, or, indeed in 1996 or now in connection with the 1996 Improvements to the Property. As we understand it, the revised Malibu/Santa Monica Mountains Land Use Plan was certified by the Commission in December 1987, and local determinations based on that LUP rather than Commission ad-hoc determinations made without study or expertise, should control."

Commission's Response:

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 Commission is in the process of certifying a LCP for the City of Malibu.) 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.

The Rubinroits' Defense:

3. The Commission is guilty of laches and any action is barred by applicable statues of limitations.

Commission's Response:

The findings for Cease and Desist Order CCC-01-CD-01, which are final and binding, respond to the Rubinroits' argument that any action by the Commission to enforce the Coastal Act is barred by the doctrine of Laches and by applicable statutes of limitation (refer to defense number 18 on pages 37-39 of the adopted findings of CCC-01-CD-01, **Exhibit 4**). The same response to this defense applies here in the Restoration Order proceeding. Moreover, it should be noted that, subsequent to the issuance of the Cease and Desist Order, the Rubinroits further contributed to the delay in removal of the unpermitted development on the subject property by failing to comply with the deadlines established in the Cease and Desist Order for completion of their application and for requesting a postponement for the hearing on CDP 5-88-056-A1. The Commission is acting in a timely manner by issuing this Restoration Order at the earliest possible Commission meeting following the Commission's denial of the development that is the subject of this Restoration Order.

However, even if the Commission had not previously rejected the defense that it is guilty of laches and is barred by applicable statues of limitation from issuing an enforcement order, 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.[3]) 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.*

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, as discussed above, 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

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[3] 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.")

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 statues of limitation defenses.

The Rubinroits' Defense:

4. The findings for CCC-01-CD-01 and CDP 5-88-056-A1 are not final and binding and the principle of administrative res judicata does not apply to this Restoration Order proceeding or at all.

"(We deny that) the supposed findings of the Commission (for CCC-01-CD-01) . . . are supported or supportable by competent evidence presented in connection with the proceedings as to which the supposed findings were purportedly made."

Commission's Response:

The Commission's actions on CCC-01-CD-01 and CDP 5-88-056-A1 became final on the day the Commission voted on these matters (May 8, 2001 and June 10, 2002, respectively). Section 30801 of the Coastal Act addresses the procedure for challenging the Commission's actions as follows:

> *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.*

Since the Rubinroits did not avail themselves of this procedure for challenging the Commission's action during the designated time period, the findings for CCC-01-CD-01 are binding. Failure to seek review of an administrative action by way of petition for writ of administrative mandamus renders that action immune from collateral attack. (See *Rossco Holdings, Inc.* v. *State of California* (1982) 212 Cal.App.3d 642, 660; *Ojavan Investors Inc. v. California Coastal Commission* (1994) 26 Cal.App.4th 516.)

The 60-day period for filing a petition for a writ of mandate of the Commission's decision on amendment application CDP 5-88-056-A1 will end on August 9, 2002. Although the right to file for a judicial review of this administrative decision has not expired, the Executive Director commenced Restoration Order proceedings to occur at the earliest possible Commission hearing in order to have the site restored as soon as possible to stop the continuing resource damage from the unpermitted development.

In its action on CDP 5-88-056-A1, the Commission found the development that is the subject of this Restoration Order to be inconsistent with the Coastal Act. That decision is a final action of

the Commission. The appropriate method to challenge that determination is to file a petition for a writ of mandate. If no such petition is filed, that decision will not be subject to appeal.

The Rubinroits' Defense:

5. CDP 5-88-056 did not provide a total prohibition of development in the OTD area, only a restriction that required the owner to apply for a permit for future development. The OTD allowed for development for private recreation. Private recreational development on the subject property is a necessity given the location of the property. The Commission staff recommended that no development be allowed in the area that was the subject of the OTD and therefore, is guilty of a further and full taking of the property subject to the OTD. The Commission has not considered the nexus of the taking of the property subject to the OTD, nor has it offered any compensation for the taking.

Commission's Response:

The Rubinroits presented their 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 that is the subject of this restoration order. The Commission considered these arguments and still denied the development. If the Rubinroits contest this decision, they have the right to file a petition for judicial review of the Commission's action on CDP 5-88-056-A1. The appropriate time to present these arguments was prior to the Commission's decision on the amendment application. The issues of appropriate uses of the OTD area and whether the Commission's denial of this development constitutes a taking is not under consideration in this Restoration Order proceeding. Notwithstanding the foregoing, in the following paragraphs the Commission presents a response to the contentions regarding restrictions on development in the area subject to the OTD, and the claim that the Commission has committed a taking of the property subject to the OTD.

Restrictions on Development in OTD Area/Recreational Use of Development

The OTD restricts the use of the open space easement to "**natural open space** for habitat protection, private recreation, and resource conservation uses." (Emphasis added.). 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..." (page 61 of **Exhibit 4**)

The Rubinroits argue that the denied development is 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. The Rubinroits performed development that is the subject of this Restoration Order without obtaining such a permit. The

Commission subsequently denied the Rubinroits' request to authorize this development, since it determined that the development is inconsistent with the Coastal Act. Therefore, the denied development must be removed and the areas impacted by the development must be restored.

The Rubinroits argue that they should not have to remove the denied development because they need to have facilities to support private recreation on their property since such facilities do not otherwise exist in the area of their property. The Commission has already approved development related to private recreation on the house building pad, outside of the area subject to the open space easement. Such development includes a pool, spa and a children's sand play area. The Rubinroits may apply for approval of other development for private recreation. However, the development that is the subject of this Restoration Order specifically has been determined to be inconsistent with the Coastal Act and therefore, this development must be removed and the areas impacted by the development restored.

Taking of Property Resulting from Denial of Development in OTD Area

The Rubinroits also argue that the Commission has committed a further and full taking of the area subject to the OTD by denying the development in the area subject to the OTD. In the findings for the Cease and Desist Order (pages 31-32 of **Exhibit 4**), the Commission already rejected the Rubinroits' challenge of the requirement for the OTD as being a taking of this area. 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 Rubinroits 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 Rubinroits 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 coastal development permit for the residence that required the recordation of the OTD and a deed restriction prohibiting future development without a coastal development permit or amendment to CDP 5-88-056. In the findings for CCC-01-CD-01, the Commission determined that the Rubinroits were on notice of the existence of the OTD and the deed restriction at the time they purchased the property. In addition, when the Rubinroits purchased the property in 1988, the Coastal Act had been in effect for approximately eleven years. Therefore, the OTD and deed restriction recorded in the chain of title for the subject property, the coastal development permit, as well as the Coastal Act itself were all in effect at the time the Rubinroits acquired the property and should have been considered by the Rubinroits 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 Rubinroits only have the right to undertake development on the subject property if they first obtain a coastal development permit or amendment. The Rubinroits did not have the right to undertake the development that is the subject of this Restoration Order without obtaining a permit and the Commission has determined that this development is inconsistent with the Coastal Act. This Restoration Order requires the removal of the development which the Rubinroits did not have the right to perform without a permit and which has been denied by the Commission.

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 Cease and Desist Order (pages 30-31 of **Exhibit 4**), the Commission already made the determination 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 Restoration Order is inconsistent with the Coastal Act. Therefore, this development is a public nuisance since it remains unpermitted and is inconsistent with the resource protection policies of the Coastal Act.

The Rubinroits' Defense:

6. The denied development is consistent with the Coastal Act, the Commission has not "properly, lawfully, and/or effectively determined or determined at all that any 'development' on the Subject Property, including the Denied Development, constituted a violation of . . . the resource protection policies of the Coastal Act," and the findings for CDP 5-88-056-A1 and/or the CDO do not support any determination that the Denied Development is inconsistent with any 'Chapter Three Policies'. . . and/or that any such purported findings were or are supported by evidence or the record in connection with the proceedings in which they were supposedly rendered. . ."

Commission's Response:

The determination that the denied development was inconsistent with the Coastal Act is discussed on pages 7-8 of this report. 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. As stated previously, the Commission's action on CDP 5-88-056-A1 is a final Commission action. If the Rubinroits disagree with the Commission's action on amendment application CDP 5-88-056-A1, they can file ~~a petition for a~~ writ of mandate, as provided for in Section 30801 of the Coastal Act. If no such petition is filed, that decision will not be subject to appeal through judicial review.

The Rubinroits' Defense:

7. The denied development is consistent with CEQA. Effects on biological resources should and must be assessed using impact significance criteria that implement the policy statement contained in CEQA under Section 21001c of the Public Resources Code and CEQA Guidelines, Appendix G.

Commission's Response:

Application of California Environmental Quality Act (CEQA) policies only applies to the **approval** of development, not denial. Since the Commission denied the development that is the subject of this Restoration Order, the impact significance criteria do not apply. Section 21080(a) of the Public Resources Code states the following:

> *Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or **approved** by public agencies...* (emphasis added)

Section 21080(b)(5) of the PRC further states that "**this division does not apply to...projects which a public agency rejects or disapproves.**" (Emphasis added). The CEQA policies do not apply to the Commission's decision to deny the development that is the subject of this Restoration Order since the aforementioned policies of CEQA specifically state that CEQA does not apply to development denied by a public agency such as the Commission.

The Rubinroits' Defense:

8. The denied development is not causing continuing resource damage and any damages to resources protected by the Coastal Act is not continuing.

Commission's Response:

Based on the definition of continuing resource damage contained in Section 13190 of the Commission's regulations, the Commission finds that the unpermitted development is causing continuing resource damage and that a Restoration Order should be issued to remove the unpermitted development and restore the property to the conditions that existed prior to the unpermitted development, to the maximum extent possible, as described in the Restoration Order. Refer to pages 8-10 of this report for a more thorough discussion of this determination regarding continuing resource damage.

The Rubinroits' Defense:

9. "(We deny that) there was any grading or any unpermitted removal of vegetation performed in connection with any of the Denied Development."

"The only vegetation disturbed was some seasonal, sparse weeds that had sprung up after the rainy season) and which normally dried out and "disappeared" starting in the Spring,

and which were insignificant in comparison to the weed removal that the fire department requires us to perform each Spring)."

Commission's Response

The findings for Cease and Desist Order state that the description of the unpermitted development includes the grading, vegetation removal and other activities associated with the construction of the development. The Cease and Desist Order findings also state that removal of major vegetation beyond the authorized limits took place at the subject property. Therefore, the findings for CCC-01-CD-01 included the grading and removal of vegetation as part of the development that was determined to be a violation of the Coastal Act and CDP 5-88-056 since it was performed without a CDP or amendment. The Rubinroits did not file for judicial review of the Cease and Desist Order so the Commission's determination is final, binding and cannot be appealed. Therefore, they cannot challenge this determination now.

The unpermitted grading which this Restoration Order is requiring to be restored to the maximum extent possible is that which was performed at or adjacent to the locations of the denied development which resulted in a change in topography from that shown on the approved plans for CDP 5-88-056 (page 57, **Exhibit 4**). The removal of vegetation is that vegetation that was removed in conjunction with the grading of the area of the denied development, and/or the construction or placement of the development and the removal of major vegetation beyond the authorized limits.

The primary area of unpermitted grading and removal of vegetation that this Restoration Order is ordering to be restored to the maximum extent possible is that associated with the sports court. In the Statement of Defense dated February 5, 2001, submitted prior to the issuance of CCC-01-CD-01, Howard Rubinroit states the following:

> *We did not even know of the property until 1989, when grading had been completed and construction had already commenced. That grading by the original owners included the cleaning (and denuding) and grading of the areas on which the so-called 'sports court' and swimming pool were later built in 1996.*

For a discussion of grading for the sports court area, refer to the Commission's response to defense number 10. With regard to removal of vegetation in the area of the sports court, the findings for CDP 5-88-056 established limits for the removal of vegetation for fuel modification. The sports court and the grading of the pad on which the sports court is located are beyond the limits established for removal of vegetation for fuel modification and thus resulted in the removal of native chaparral, such as exists in adjacent undisturbed areas.

The Rubinroits' Defense:

10. "The grading of the Property occurred at or about the time and as a result of Piuma Road being constructed in the area of the Property (apparently before the Coastal Act was enacted)."

Commission's Response:

In the findings for the Cease and Desist Order, the Commission already determined that the unpermitted grading associated with the sports court is a violation of the Coastal Act and the conditions of CDP 5-88-056. The Rubinroits did not file for judicial review of the Cease and Desist Order so the Commission's determination is final, binding and cannot be appealed. Therefore, they cannot challenge this determination now.

In addition, a claim of vested right may not be asserted as a defense to an enforcement action unless the property owner has first exhausted administrative remedies and sought an exemption determination from the Commission (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791). The process of applying for a vested rights determination was explained to the Rubinroits and a vested rights application was mailed to them on May 21, 2001. The Rubinroits 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 the sports court development to be a violation of the Coastal Act.

Although the Rubinroits have not submitted an application for a vested rights determination, they did submit information with their Statement of Defense that they contend supports their belief that the grading for the sports court occurred prior to the Coastal Act. As discussed below, the Commission has reviewed this evidence and concluded that it does not provide sufficient documentation that the grading occurred prior to the Coastal Act and that there is sufficient evidence to support the finding that the grading for the sports court pad occurred after the Coastal Act. The Commission previously determined, in the findings for CDP 5-88-056-A1, that the pad for the sports court did not exist at the time the application for CDP 5-88-056 was reviewed by Commission staff.

Documents that the Rubinroits submitted as part of their application for CDP 5-88-056-A1 contradict the Rubinroits' claim that the grading for the sports court occurred when Piuma Road was constructed, prior to the Coastal Act. The figure entitled "Geologic Map", dated August 2001 and prepared by VTN West, Inc., in collaboration with GeoSoils Consultants, Inc **(Exhibit 8)** shows delineated areas of fill that are labeled as "recent artificial fill" or "artificial fill placed during the construction of Piuma Road". The Geologic Map includes a note which states, "**property was graded in or around 1988**", presumably defining the time period for the term "recent artificial fill". The Geologic Map shows the area to the west of the sports court as being subject to **recent artificial fill, not artificial fill placed during the construction of Piuma Road** (see **Exhibit 8**).

The report prepared by GeoSoils Consultants on September 11, 2001 makes a reference to the "grading that occurred in the 1980's" and states that "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." A report prepared by Miller Geosciences, Inc., dated December 6, 1995, states that the "lower building pad area was apparently created by a cut and fill grading operation. The fill material is a mixture of native soils and the underlying bedrock." These descriptions of the grading in the area of the sports court collectively represent the consultants' professional opinions that the soil and bedrock in the area of the sports court was removed or

"cut", that the fill was placed to the west of the sports court and that this work was performed at a time more recent than the construction of Piuma Road, in or around 1988.

There is additional documentation that supports the finding that the grading for the sports court is unpermitted development that occurred since the enactment of the Coastal Act. The findings for CDP 5-88-056 state that there were only two graded pads on the subject property at the time of the writing of the permit findings in 1988 (pages 48-59 of **Exhibit 4**). The findings for CDP 5-88-056 describe these two graded pads as being located adjacent to Piuma Road. The findings for CDP 5-88-056 describe one of the graded pads as being the authorized location for the house and the other as being located in the northwest portion of the property. These two graded pads described in the findings for CDP 5-88-056 are shown on the approved plans for CDP 5-88-056 which do not show a graded pad in the location of the sports court in the northeast corner of the property. At the time of issuance of CDP 5-88-056, all information indicated that there were only two graded pads on the property and that these two pads were located near Piuma Road. This description of the property is different than the current condition of the property with three graded pads, including the sports court pad in the corner of the property located furthest from Piuma Road. The findings for CDP 5-88-056 support the Commission's subsequent finding that the third graded pad was created after the issuance of CDP 5-88-056.

The documents submitted by the Rubinroits as part of their Statement of Defense include a declaration of Jack Moses, one of the original permitees for CDP 5-88-056. In his declaration, Mr. Moses states that, at the time he acquired the property in or about 1986, it had already been graded with three pads, including one in an area "approximately 50 feet below the house pad, adjacent to a drainage channel which ran from Piuma Road ('the lower pad')". Mr. Moses does not describe this "lower pad" in any more detail, nor does he state that the grading which he recalls as occurring prior to 1986 resulted in a level pad at the location of the sports court and with the dimensions that exist currently for the sports court pad. Mr. Moses states that he was advised by California Geo/Systems that grading had occurred on the property as a result of Piuma Road being constructed. He does not specify that such grading included grading to construct the sports court pad, which is located in the corner of the property furthest away from Piuma Road (see Site Plan on page46 of **Exhibit 5**).

Mr. Rubinroit also submitted a copy of the January 19, 1988 report from California Geo/Systems. This report makes reference to two graded pads in close proximity to Piuma Road, but does not state that the area where the sports court is currently located was graded at the time. In fact, it appears to support a conclusion to the contrary. The report describes the location of the fill from construction of the roadway as comprising "much of the slope east of the proposed residence and on the upper portion of the slope west of the proposed residence." In an addendum report dated April 13, 1988 by California Geo/Systems, the "old roadway fill resulting from the construction of Piuma Road" is described by stating that "much of (the old roadway fill) is directly supporting Piuma Road." In contrast, the sports court pad is located in the corner of the property located furthest away from Piuma Road. Therefore, the April 13, 1988 report by California Geo/Systems does not support the assertion that the graded pad for the sports court existed at the time of the writing of the report.

The Rubinroits have made statements regarding when the sports court pad was graded that conflict with the claim that the sports court pad was created prior to the Coastal Act. In the Statement of Defense dated February 5, 2001, submitted prior to the issuance of CCC-01-CD-01, Howard Rubinroit states that the grading associated with the sports court occurred in or about 1988 by the original developer. In the Statement of Defense dated April 10, 2001, also submitted prior to the issuance of CCC-01-CD-01, Mr. Rubinroit references photographs which he describes as showing "the extent of removal of vegetation at the time of the earlier construction, and, the grading, in 1989 or 1990, of the pad on which the so-called sports court was placed in 1996."

Since the Rubinroits have not availed themselves of the administrative procedure of proving vested rights, and since there is substantial evidence that support the finding that the grading for the sports court occurred after the enactment of the Coastal Act and without a permit, the Commission intends to proceed with issuance of the Restoration Order to require that the topography of the sports court area be restored to the maximum extent possible to the contours shown on the approved plans for CDP 5-88-056.

The Rubinroits' Defense:

11. The knoll on which the sports court is located is a natural feature.

Don Schmitz, the Rubinroits' representative, in his letter to the Commissioners dated June 9, 2002, states the following: "the knoll the sports court is located on is a natural igneous outcropping, and was not a graded man made element."

Commission's Response:

Refer to the Commission's response to defense number 10 for a discussion of some of the evidence that grading for the sports court occurred in or around 1988. The eastern portion of the pad on which the sports court is located does consist of a bedrock outcropping (see photograph 4 in **Exhibit 2**). This fact does not conflict with the evidence that the pad on which the sports court is located was graded to create the current flat topography.

The Rubinroits' Defense:

12. The Commission does not currently have the authority to designate areas as environmentally sensitive habitat areas (ESHA), partially as a result of its failure to designate sensitive areas. The County does not view the subject property as being ESHA. The original permit CDP 5-88-056 does not determine that the property is ESHA. Commission staff's description of chaparral and the significance attributed to it in a regional context, including the Cold Creek Resource Management Area, is an overstatement of this biotic community that remains relatively common in the Santa Monica Mountains. ESHA is not being eliminated by the presence of the development.

Commission's Response:

The Rubinroits applied for a CDP amendment (CDP 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 CDP 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 also determined that some of the development was resulting in an elimination of ESHA since the development had resulted in the removal of the chaparral vegetation which is ESHA on the subject property and areas adjacent to the denied development. If the Rubinroits disagree with this finding, their remedy is to file for judicial review of the Commission's action. Even if this issue was relevant to this proceeding, the Commission disagrees with these arguments, including for the reasons set forth in the following paragraphs.

As discussed in the Commission's response to defense number two, 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. Therefore, the Commission currently has the authority to act on CDP applications for development within this area and to apply the policies of the Coastal Act, including Section 30240, the policy that protects ESHA. Refer to **Exhibit 3** for a general discussion of the Commission's designation of ESHA, including chaparral and riparian ESHA, within the Santa Monica Mountains

The Rubinroits also claim that the Commission does not have the authority to designate ESHA, since it did not designate sensitive coastal resource areas according to the deadlines provided for in the Coastal Act. The term "sensitive coastal resource areas" is defined in Section 30116 of the Coastal Act and is separate and distinct from the term "environmentally sensitive area" or ESHA which is defined in Section 30107.5 of the Coastal Act. The Commission's decision to not designate sensitive coastal resource areas does not lessen the Commission's authority to designate areas as being ESHA.

The Rubinroits' Defense:

13. The stairs leading to the sports court are not impervious and are not causing erosion.

Commission's Response:

This issue is not relevant to the current proceeding since this issue was already determined by the Commission in their findings for CDP 5-88-056-A1. The Commission denied the Rubinroits' request to authorize the stairs based on the stairs being inconsistent with several Chapter Three policies of the Coastal Act.

The Rubinroits' Defense:

14. The sports court and associated pad ("lower pad") are "hardly visible to public view...they can scarcely be seen from Piuma Road...There are significant buffers between the Lower Pad and the State preserve behind the Property..."

Commission's Response:

In the findings for the Cease and Desist Order, the Commission found that the following development that is the subject of this Restoration Order was visible from Piuma Road, a public viewing area:

1. the sports court,
2. chain link fence and gates around pool and house,
3. water tank,
4. nonnative sand adjacent to the unnamed blue line stream, and
5. removal of major vegetation beyond the authorized limits.

In the findings for CDP 5-88-056-A1, the Commission found that the following items of denied development are inconsistent with the visual resource and community character policies of the Coastal Act, based on visibility from the Backbone Trail and, for some of the denied development, Piuma Road:

1. lighted sports court,
2. lighted stairway extending from the pool to the sports court, and
3. installation of decomposed granite on the eastern side of the sports court.

In the findings for CDP 5-88-056-A1, the Commission also determined that the property is located approximately 650 feet from the Backbone Trail. Observations and photographs taken by Commission staff on May 8, 2002 of views from the Backbone Trail on State Parks lands to the north of the subject property show that the development that is the subject of this Restoration Order, with the exception of the irrigation system, is visible from the Backbone Trail and State Park lands. Refer to photograph 3 in **Exhibit 2** for a view of the property and denied development from the Backbone Trail.

The Rubinroits' Defense:

15. The development (sports court) serves as a firebreak.

Commission's Response:

The Commission recognizes the fire hazard of the surrounding area and has conditioned CDP 5-88-056, including amendment CDP 5-88-056-A1 to permit 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.

The Rubinroits' Defense:

16. We would be irreparably harmed if required to remove any of the development.

Commission's Response:

The Rubinroits do not explain how they would be irreparably harmed if they were required to remove the unpermitted development. In the findings for the Cease and Desist Order, the Commission determined that the Rubinroits were on notice that they were required to obtain a coastal development permit or amendment when they purchased the property. In the findings for the Cease and Desist Order, the Commission also determined that the Rubinroits subsequently violated the conditions of CDP 5-88-056 and the Coastal Act by performing or maintaining development without obtaining a coastal development permit or amendment. The items of development which the Commission denied in it's action on CDP 5-88-056-A1 must now be removed and the property restored to the conditions which existed prior to the unpermitted development. To do otherwise would allow the Rubinroits to benefit from their violation of CDP 5-88-056 and the Coastal Act by allowing them to maintain development, which has been determined by the Commission to have been built without a CDP and to be inconsistent with the Coastal Act and CDP 5-88-056. The Rubinroits have not submitted any evidence to demonstrate that removal of the development would be infeasible.

The Rubinroits' Defense:

17. The boundaries of the area subject to the offer to dedicate the open space easement are unclear and the water tank is not located in the area subject to the offer to dedicate.

Commission's Response:

The findings for CDP 5-88-056 require the original permittees, the Moses and the Landrys, to "offer to dedicate an open space and conservation easement for resource protection on that portion of the subject property outside the building site." Attached to the permit as Exhibit 4 is a map of the subject property showing the area subject to the offer to dedicate as being covered with a diagonal hatched line (see page 59 of **Exhibit 4**). On August 8, 1988, the Moses and the Landrys, the original permitees, recorded the Irrevocable Offer to Dedicate Open-space Easement and Declaration of Restrictions document as instrument number 88 1246285 with the Los Angeles County Recorder's Office (pages 60-72 of **Exhibit 4**). This recorded document includes a meets and bounds survey description of the open space area and the figure from the permit, which describes the area subject to the offer to dedicate the open space easement. This figure shows the diagonal lines representing the area subject to the offer to dedicate as extending across all of the locations of the denied development that is the subject of this Restoration Order.

CDP 5-88-056 required that a CDP or amendment to CDP 5-88-56 be obtained for all future development on the subject property. Therefore, even if the Rubinroits were unclear as to the exact boundary of the open space area, they were required to obtain a CDP or amendment to

CDP 5-88-056. Therefore, this argument cannot be used as a defense against the issuance of this Restoration Order.

The Rubinroits' Defense:

18. We deny that "the denied development described in subparagraphs a), b) and/or d) [the lighted sports court, lighted stairway extending from the pool area to the sports court and the portion of the sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement] can or should, consistent with the Coastal Act and/or other applicable law, and pursuant to sound geotechnical, geologic, and/or botanical practice, be restored to its pre-denied development condition."

Commission's Response:

The Commission finds that the removal of the denied development and restoration of the subject property to the maximum extent possible, as required by this Restoration Order, is consistent with the policies of Chapter 3 of the Coastal Act.

Section 13196(e) of the Commission's regulations states the following:

> *Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring property affected by the violation to the condition it was in before the violation occurred.*

Full compliance with this regulation is not possible since the Commission's geologist has determined that the topography in the area of the sports court cannot be fully restored to the contours that existed prior to the unpermitted development without causing instability and inconsistency with the Chapter Three policies of the Coastal Act. Therefore, this Restoration Order is requiring restoration to the predevelopment conditions to the maximum extent possible, as described in paragraph A of the Restoration Order.

The Commission also finds that a Restoration Order should be issued because the denied development is unpermitted, inconsistent with the Coastal Act and is causing continuing resource damage.

The Rubinroits' Defense:

19. "(We deny that) the Coastal Act and/or other applicable law, and/or the principles of due process, permit the Commission to 'seek monetary daily penalties' respecting any of the denied development, and certainly not prior to the time, if any, that the Commission's determination in respect of the partial denial of the Application and/or as to the CDP and/or as to any Restoration Order hereafter made become final."

Commission's Response:

Section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the Restoration Order for each day in which the violation persists. Accordingly, Section 30821.6(a) specifically states the following:

> *Any person or governmental agency who intentionally or negligently violates . . . any Restoration Order issued, reissued, or amended by the commission. . . may be liable civilly in a sum of not to exceed six thousand dollars ($6,000) for each day in which that violation persists. Any actual penalty imposed shall be reasonably proportionate to the damage suffered as a consequence of the violation.*

If, as the Rubinroits contend, penalties were only to accrue after a permit decision is made by the Commission, the deterrence effect of Section 30820 would be ineffective; an applicant could delay the accrual of penalties by failing to apply for a permit or by failing to complete such an application, or by refusing to comply with the determination of the Commission in a permit action, forcing the Commission to issue an enforcement order. The penalties provisions of Article Two of the Coastal Act were intended to provide precisely the opposite incentive-to comply with the provisions of the Coastal Act.

Regardless, through the issuance of this Restoration Order, the Commission is not seeking civil fines and penalties; it is ordering the removal of the denied development and the restoration of impacted areas to the maximum extent possible.

The Rubinroits' Defense:

20. The Department of Fish and Game says there is no effect on the environment, or the stream.

Commission's Response:

A representative from the Department of Fish and Game (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. 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 has already determined, in its denial of a permit amendment for the development that is the subject of this Restoration Order, that the denied development is

inconsistent with the policies of Chapter Three of the Coastal Act. In the findings for this Restoration Order, the Commission has also determined that the denied development is causing continuing resource damage.

Staff recommends that the Commission issue the following Restoration Order:

V. RESTORATION ORDER

Pursuant to its authority under Public Resource Code §30811, the California Coastal Commission has found that development on the subject property has occurred without a coastal development permit from the Commission, the development is inconsistent with the Coastal Act and the development is causing continuing resource damage. The Commission orders Howard and Terry Rubinroit, their agents, contractors and employees, and any person acting in concert with any of the foregoing to restore the subject property to the extent provided below to the condition it was in prior to the undertaking of the development activity that is the subject of this order. Accordingly, the persons subject to this order shall fully comply with the following conditions:

A. Within 45 days of the issuance of this order, or within such additional time as the Executive Director may grant for good cause, submit to the Executive Director for review and approval the following documents that provide the level of detail and address the requirements set forth below:

1. **Identification of Disposal Site.** The location for all debris/excavated material to be removed from the site as a result of the removal of the unpermitted development and restoration of the impacted areas shall be identified. If the dump site is located in the Coastal Zone and is not an existing sanitary landfill, a Coastal Development Permit shall be required.

2. **Restoration, Revegetation and Monitoring Plan.** The Restoration, Revegetation and Monitoring Plan (hereinafter referred to as the "Restoration Plan") shall be prepared by a qualified restoration ecologist and a qualified geologist, and possibly a qualified soils scientist, as described in section (d), below and shall include the following:

   a) Goals and Performance Standards. Section A of the Restoration Plan shall present the following goals of the Restoration and Revegetation Project.

      1. Removal of all of the denied development that is the subject of this Restoration Order.

      2. Restoration of the topography in the areas impacted by the denied development to the condition that existed prior to the unpermitted development, with the exception that the topography in the area of the sports court shall be restored to the maximum extent possible while ensuring the stability of this area without reliance upon the construction or installation of retaining walls, grout, geogrid or similar or other permanent structures or materials.

      3. Revegetation of the sports court and water tank areas that were impacted by the denied development and removal of major vegetation beyond the

authorized limits, as shown on **Exhibit 9**, so that these areas have a similar plant density, total cover and species composition as that typical of undisturbed chaparral vegetation in the surrounding area within 5 years from the initiation of revegetation activities.

4. Revegetation of the sand play area and any other areas within the approved fuel modification zones that will be temporarily disturbed by the restoration activities, so that these areas are vegetated with native plants consistent with the approved fuel modification plan and, within 5 years from the initiation of revegetation activities, the plant density and total cover are similar to nearby natural areas which have similar species composition.

5. Eradication of non-native vegetation in the areas shown on **Exhibit 9** as being the areas subject to revegetation and those areas which are identified as being subject to disturbance as a result of the restoration and revegetation activities.

6. Minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation of the impacted areas. The Restoration and Revegetation Project will not be successful until the revegetated areas meet the performance standards for at least three years without maintenance or remedial activities other than nonnative species removal.

7. Stabilization of soils so that soil is not exported off the subject property or into the chaparral or riparian ESHA and so that slumping, gullying, or other surficial instability does not occur.

Section A of the Restoration Plan shall also include specific ecological and erosion control performance standards that relate logically to the restoration and revegetation goals. Where there is sufficient information to provide a strong scientific rationale, the performance standards shall be absolute (*e.g.*, specified average height within a specified time for a plant species).

Where absolute performance standards cannot reasonably be formulated, clear relative performance standards will be specified. Relative standards are those that require a comparison of the restoration site with reference sites. The performance standards for the plant density, total cover and species composition for the sports court and water tank area shall be relative. In the case of relative performance standards, the rationale for the selection of reference sites, the comparison procedure, and the basis for judging differences to be significant will be specified. Reference sites for the sports court and water tank area shall be located on adjacent areas vegetated with chaparral undisturbed by development or vegetation removal, within 2000 feet of the subject property with similar slope, aspect and soil moisture. If the comparison between the revegetation area and the reference sites requires a statistical test, the test will be described, including the desired magnitude of

difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling program shall be described in sufficient detail to enable an independent scientist to duplicate it. Frequency of monitoring and sampling shall be specified for each parameter to be monitored. Sample sizes shall be specified and their rationale explained. Using the desired statistical power and an estimate of the appropriate sampling variability, the necessary sample size will be estimated for various alpha levels, including 0.05 and 0.10.

b) Restoration and Revegetation Methodology. Section B of the Restoration Plan shall describe the methods to be used to remove the denied development, stabilize the soils and revegetate the impacted areas. Section B shall be prepared in accordance with the following directions:

1. Prepare a plan with a polygon(s) representing the geographic limits of the areas to be disturbed by the removal of the unpermitted development, including any temporary staging and stockpile areas. Excluding those areas that are shown on **Exhibit 9** as being subject to revegetation, the plan shall be designed to minimize the size of the area and the intensity of the impacts from disturbances caused by the removal of the denied development and restoration of the impacted areas. Other than those areas shown in **Exhibit 9** as being subject to revegetation activities, the areas of the site and surrounding areas currently vegetated with chaparral and the riparian vegetation shall not be disturbed by activities related to this restoration project. Prior to initiation of any activities resulting in physical alteration of the subject property, the disturbance boundary shall be physically delineated in the field using temporary measures such as stakes or colored tape.

2. Specify that the removal of all of the development that is the subject of this Restoration Order, with the exception of the water tank, shall be performed using hand tools, unless it can be demonstrated to the satisfaction of the Executive Director that heavy equipment will not contribute significantly to impacts to resources protected by the Coastal Act, including, but not limited to geological instability, minimization of landform alteration, erosion and impacts to native vegetation and the stream.

3. Specify that the topography of the areas impacted by the denied development shall be restored to the condition shown on the approved plans for CDP 5-88-056, included as page 57 of **Exhibit 4**, with the following exception. The exception is that the topography in the area of the sports court shall only be restored to the maximum extent feasible, as described in the following

sentences. Remove a portion of the soils that were placed as fill to the west of the sports court, as shown in **Exhibit 8**, and place this soil on the graded pad on which the sports court is currently located, in order to provide sufficient substrate for the revegetation project. Only remove that portion of the fill which the qualified geologist and qualified restoration ecologist or soils scientist determine can be placed on the sports court pad and stabilized, including through revegetation, in a manner which creates suitable substrate for chaparral vegetation.

4. The qualified geologist and restoration ecologist or soil scientist shall specify the methods to be used after the denied development has been removed to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the initial grading operations and maintained until the areas impacted by the denied development have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas. The soil treatments shall include the use of mycorrhizal inoculations of the soil, unless it can be demonstrated to the satisfaction of the Executive Director that such treatment will not likely increase the survival of the plants to be used for revegetation.

5. Describe the methods for revegetation of the a) the areas shown in **Exhibit 9** as being subject to revegetation and b) the areas within the disturbance boundary, including all areas in which the vegetation was disturbed as a result of the placement or removal of all denied development. Container plants shall be used for the sports court area, including all areas within the polygon shown around the sports court area in **Exhibit 9** in order to stabilize the disturbed soil and restore the watershed cover in the most timely manner. For the sports court and water tank areas, all plantings shall be the same species, or sub-species, if relevant, as those documented as being located in the reference sites. The planting density shall be at least 10% greater than that documented in the reference sites, in order to account for plant mortality. All plantings shall be performed using native plants that were propagated from plants as close as possible to the subject property, in order to preserve the genetic integrity of the flora in and adjacent to the revegetation area.

6. Describe the methods for detection and eradication of nonnative plant species in the areas shown in Exhibit 9 as being subject to revegetation. Herbicides shall only be used if physical and biological control methods are documented

in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area, specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.

7. Describe the use of artificial inputs, such as watering or fertilization that shall be used to support the plantings becoming established. Specify that only the minimal amount of inputs shall be used.

8. Specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.

c) Monitoring and Maintenance. Section C of the Restoration Plan shall describe the monitoring and maintenance methodology and shall include the following provisions:

1. The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by a qualified restoration ecologist and qualified geologist, evaluating compliance with the performance standards. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the goals and performance standards specified in the Restoration Plan. These reports shall also include photographs taken from pre-designated locations (annotated to a copy of the site plans) indicating the progress of recovery in the area of each item of denied development.

2. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the project site. If any such inputs are required beyond the first two years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first two years, so that the success and sustainability of the project site are ensured.

3. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that

the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for those portions of the original program that were not successful. The revised or supplemental restoration plan shall be processed as an amendment to CDP 5-88-056.

d) Appendix A shall include a description of the education, training and experience of the qualified geologist, restoration ecologist and soil scientist, if relevant, who shall prepare the Restoration Plan. A qualified restoration ecologist for this project shall be considered as an ecologist or botanist who has experience successfully completing restoration or revegetation of chaparral habitats. If this qualified restoration ecologist does not have experience in creating the soil conditions necessary for successful revegetation of chaparral vegetation, a qualified soil scientist shall be consulted to assist in the development of the conditions related to soils in the Revegetation and Monitoring Plan. A qualified soil scientist for this project shall be considered as a soil scientist who has experience in assessing, designing and implementing measures necessary to create soil conditions to support revegetation and prevent instability or erosion. A qualified geologist for this project shall be considered as a geologist who has experience evaluating and designing soil stabilization projects in the Santa Monica Mountains area.

B. Within 60 days of the approval by the Executive Director of the documents submitted under paragraph A, or within such additional time as the Executive Director may grant for good cause, perform the following actions, in compliance with the plans approved under paragraph A:

1. Remove all of the unpermitted development described below in the section entitled "description of unpermitted development" and restore the topography to the maximum extent possible, as described in paragraph A.

2. Submit to the Executive Director a report documenting the removal of all items of unpermitted development. This report shall include photographs that show the removal of each item of unpermitted development. This report shall include a topographic plan that is prepared by a licensed surveyor, shows two-foot contours, and represents the topographic contours after removal of the development and grading to achieve restoration of the topography to the maximum extent possible, as described in paragraph A.

C. Within 60 days of completion of the work described in paragraph B above, or within such additional time as the Executive Director may grant for good cause, revegetate the areas impacted from the installation and removal of the unpermitted development with native plants, following the specifications of the Restoration Plan approved by the Executive Director, pursuant to paragraph A above.

D. In accordance with the schedule set forth in the Restoration Plan, approved by the Executive Director pursuant to paragraph A above, submit to the Executive Director monitoring reports.

E. After approval of the monitoring reports by the Executive Director, implement within such timeframe as the Executive Director may specify all measures specified by the Executive Director to ensure the health and stability of the restored areas, as required by the Restoration Plan.

F. It is the intention of the Commission to bind all future owners and possessors of the subject property to the terms and conditions of this Restoration Order. The terms and conditions of CDP 5-88-056 run with the land and it is the intention of the Commission to secure compliance with CDP 5-88-056 and the Coastal Act by eliminating continuing resource damage caused by the persistence of the denied development.

G. For the duration of the restoration project, including the monitoring period, all persons subject to this order shall allow the Executive Director of the Commission, and/or his/her designees to inspect the subject property to assess compliance with the Restoration Order, subject to twenty-four hours advance notice.

Persons Subject to the Order

Howard and Terry Rubinroit, their agents, contractors and employees, and any persons acting in concert with any of the foregoing.

Identification of the Property

The property that is subject to this Restoration Order is described as follows:

> 25351 Piuma Road in Calabasas, Los Angeles County APN 4456-37-007 and a portion of lot APN 4456-037-010, as described in the Grant of Easement recorded in the Los Angeles County Registrar-Recorder Office on December 4, 2001, as Instrument No. 012312351

Description of Unpermitted Development

The unpermitted development that was denied by the Commission and is the subject of this Restoration Order proceeding is the construction or installation (including associated grading and removal of native vegetation) of the following development:

a) the lighted sports court,
b) the lighted stairway extending from the pool area to the sports court,
c) decomposed granite on the eastern side of the sports court,
d) portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
e) portion of the irrigation system located within the area subject to the offer to dedicate an open space easement,

f) portion of the chain link fence located within the area subject to the offer to dedicate an open space easement, and
g) the water tank (pending determination discussed in the following paragraph).

The inclusion of the water tank in this list of unpermitted development is subject to the determination by the South Central District Office regarding whether the Rubinroits provide documentation that the fire department has concluded that the water tank absolutely must remain in its current location in order to be in compliance with local regulations, including those regarding fire safety. The Commission decided to allow this water tank to remain in its current location, if such a determination is made. If the South Central District Office determines that the water tank can remain in its current location, this Restoration Order will no longer apply to the water tank.

Effective Date and Terms of the Order

The effective date of this order is August 9, 2002. This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

Findings

This order is issued on the basis of the findings adopted by the Commission on August 9, 2002, as set forth in the attached document entitled "Recommended Findings for Restoration Order CCC 02-RO-01".

Compliance Obligation

Strict compliance with this order by all parities subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS ($6,000) per day for each day in which such compliance failure persists, in addition to any other penalties authorized under Section 30820. The Executive Director may extend deadlines for good cause.

Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Exhibits

1. Grant of Easement
2. Photographs of Denied Development
3. Draft Proposed ESHA Findings for the City of Malibu LCP
4. Cease and Desist Order CCC-01-CD-01, including CDP 5-88-056 as Exhibit 3 of CCC-01-CD-01
5. CDP 5-88-056-A1
6. U. S. Geologicial Survey topographic map for vicinity of subject property
7. Statement of Defense, dated July 9, 2002
8. Geologic Map, dated August 2001 and prepared by VTN West, Inc., in collaboration with GeoSoils Consultants, Inc
9. Plan Showing Areas to be Revegetated

DEC 4 -2001

COPY of Document Recorded
.....01 2312351.....
Has not been compared with original.
Original will be returned when
processing has been completed.
LOS ANGELES COUNTY REGISTRAR-RECORDER

Recording Requested By
and When Recorded Return to:

Howard & Terry Rubinroit
25351 Piuma Road
Calabasas, CA 91302

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT OF EASEMENT

Documentary Transfer Tax: none

No documentary transfer tax payable:
consideration for transfer is less than $100.
(Revenue & Taxation Code § 11911)

WHEREAS Victor H. Knipe and Susan Randall Knipe, husband and wife, as joint tenants (collectively "Grantor") are the owners in fee of real property in the County of Los Angeles, being Parcel No. 4456-037-010, situated in the County of Los Angeles, State of California, and more particularly described on Schedule 1 hereto ("Grantor Lot"); and

WHEREAS Howard Rubinroit and Terry Rubinroit, husband and wife, as community property (collectively "Grantee") are the owners in fee of real property in the County of Los Angeles commonly known as 25351 Piuma Road, Calabasas, California and more particularly described on Schedule 2 hereto ("Grantee Lot"); and

WHEREAS Grantor has agreed to grant to Grantee certain easements on, over and across the portion of the Grantor Lot identified as the easement area by crosshatching on Exhibit A hereto (the "Easement Area");

FOR AND IN CONSIDERATION of the sum of $10.00, the receipt and sufficiency of which are acknowledged, Grantor grants, subject to any and all liens, encumbrances, covenants, restrictions and other matters now of record, to Grantee for the benefit of the Grantee Lot an easement on, over and across the portion of the Grantor Lot identified on Exhibit A as the Easement Area for purposes of the previously constructed sports court, and its, maintenance, use and enjoyment, in the general location depicted on Exhibit A, and all other purposes reasonably related thereto (the "Easement"). The Easement granted herein is appurtenant to Grantee Lot, burdens Grantor Lot, and shall run with the land.

Grantee agrees to keep the sports court and Easement Area properly maintained and to refrain from installing or using lights of any kind on the sports court, with the exception of the existing pole-mounted floodlamp in the location depicted on Exhibit A, which will be used solely for ingress, egress, safety and security purposes, and not for sports activities (the "Permitted Lighting"). This Easement may be withdrawn and terminated at the option of Grantor if lighting other than the Permitted Lighting is installed on the sports court or Easement Area, if the Permitted Lighting is used other than for ingress, egress, safety or security purposes,

or if the sports court or Easement Area ceases to be properly maintained, in which event Grantee will remove all sports court improvements located on Grantor's Lot and will restore the Easement Area to its condition prior to the construction of the sports court. Upon the removal of the sports court improvements from any portion of Grantor's Lot and restoration of the Easement Area, the parties will have no further obligations to the other hereunder. Grantee shall indemnify and hold harmless Grantor from any and all claims, losses, liabilities and expenses, including attorneys fees, if any, arising out of or resulting from this grant and from the use of the sports court or Easement Area by Grantee, their guests, licensees and invitees. The foregoing covenants shall be binding on Grantor, Grantee and their respective successors in interest.

Grantors:

Dated as of November 26, 2001

Victor H. Knipe

Susan Randall Knipe

Grantees:

Howard Rubinroit

Terry Rubinroit

or if the sports court or Easement Area ceases to be properly maintained, in which event Grantee will remove all sports court improvements located on Grantor's Lot and will restore the Easement Area to its condition prior to the construction of the sports court. Upon the removal of the sports court improvements from any portion of Grantor's Lot and restoration of the Easement Area, the parties will have no further obligations to the other hereunder. Grantee shall indemnify and hold harmless Grantor from any and all claims, losses, liabilities and expenses, including attorneys fees, if any, arising out of or resulting from this grant and from the use of the sports court or Easement Area by Grantee, their guests, licensees and invitees. The foregoing covenants shall be binding on Grantor, Grantee and their respective successors in interest.

Grantors:

Dated as of November 28, 2001

Victor H. Knipe

Susan Randall Knipe

Grantees:

Howard Rubinroit

Perry Rubinroit

or if the sports court or Easement Area ceases to be properly maintained, in which event Grantee will remove all sports court improvements located on Grantor's Lot and will restore the Easement Area to its condition prior to the construction of the sports court. Upon the removal of the sports court improvements from any portion of Grantor's Lot and restoration of the Easement Area, the parties will have no further obligations to the other hereunder. Grantee shall indemnify and hold harmless Grantor from any and all claims, losses, liabilities and expenses, including attorneys fees, if any, arising out of or resulting from this grant and from the use of the sports court or Easement Area by Grantee, their guests, licensees and invitees. The foregoing covenants shall be binding on Grantor, Grantee and their respective successors in interest.

Grantors:

Dated as of November 16, 2001

Victor H. Knipe

Susan Randall Knipe

Grantees:

Howard Rubinroit

Terry Rubinroit

T. RUFFONI
Commission # 1325457
Notary Public - California
Los Angeles County
My Comm. Expires Oct 15, 2005

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November 28 2001, before me, T. Ruffoni, notary public, personally appeared Victor H. Knipe and Susan Randall Knipe, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

T. Ruffoni

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November __, 2001, before me, _____, notary public, personally appeared Howard Rubinroit, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November __, 2001, before me, _____, notary public, personally appeared Terry Rubinroit, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

LA1 387048v1

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November __, 2001, before me, _____, notary public, personally appeared Victor H. Knipe and Susan Randall Knipe, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November 28 2001, before me, F. Hartzell, notary public, personally appeared Howard Rubinroit, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

F. HARTZELL
Commission # 1186870
Notary Public - California
Los Angeles County
My Comm. Expires Jul 31, 2002

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November __, 2001, before me, _____, notary public, personally appeared Terry Rubinroit, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

CCC-02-RO-01

EXHIBIT 1

Page 6

LAI 187018v1

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November __, 2001, before me, _____, notary public, personally appeared Victor H. Knipe and Susan Randall Knipe, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November __, 2001, before me, _____, notary public, personally appeared Howard Rubinroit, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On November 28th 2001, before me, Ravindar K. Arjan, notary public, personally appeared Terry Rubinroit, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by ~~his/her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

RAVINDAR K. ARJAN
Commission # 1330227
Notary Public - California
Los Angeles County
My Comm. Expires Nov 13, 2005

LAI 3870889v1

_____

CCC-02-RO-01

EXHIBIT 1

SCHEDULE 1

(Legal Description of Grantor Lot)

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20, TOWNSHIP 1 SOUTH, RANGE 17 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WESTERLY LINE OF SAID NORTHWEST QUARTER WITH THAT CERTAIN CURVE IN THE CENTER LINE OF PIUMA ROAD, DESCRIBED AS HAVING A RADIUS OF 100.00 FEET AND ARC LENGTH OF 173.04 FEET IN THE DEED TO THE COUNTY OF LOS ANGELES, RECORDED IN BOOK 7499 PAGE 223, OF OFFICIAL RECORDS; THENCE IN A GENERAL NORTHEASTERLY DIRECTION, ALONG THE SAID CENTER LINE, TO A LINE THAT IS PARALLEL WITH THE NORTHERLY LINE OF SAID NORTHWEST QUARTER AND DISTANT 480.00 FEET SOUTHERLY THEREFROM, MEASURED ALONG THE EAST LINE OF THE WEST HALF OF SAID NORTHWEST QUARTER; THENCE EASTERLY, ALONG SAID PARALLEL LINE, TO SAID EAST LINE; THENCE NORTHERLY, WESTERLY, AND SOUTHERLY, ALONG THE EASTERLY, NORTHERLY AND WESTERLY LINES OF SAID WEST HALF, TO THE POINT OF BEGINNING.

SCHEDULE 2

(Legal Description of Grantee Lot)

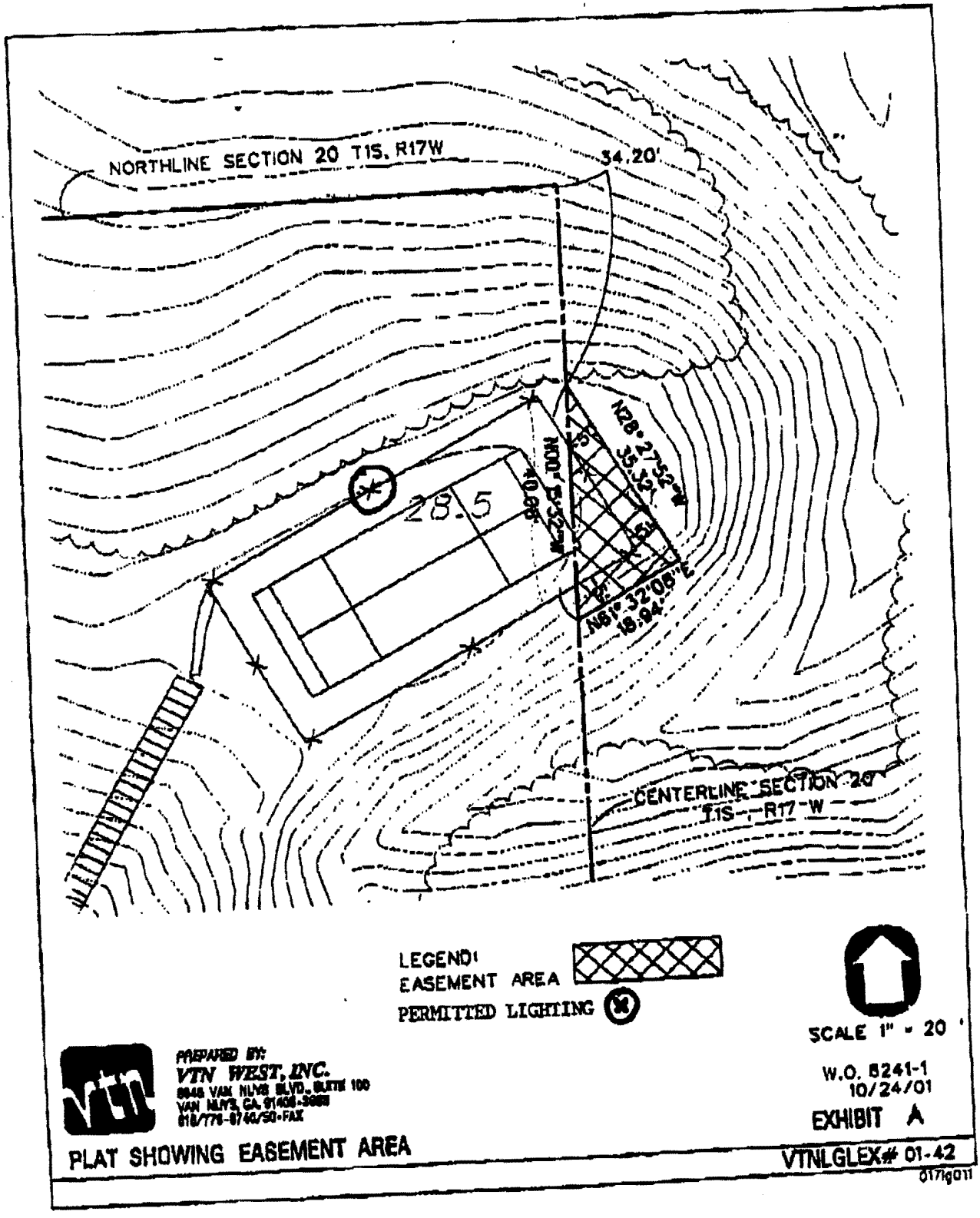
THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1, SOUTH, RANGE 17 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT SAID LAND APPROVED BY THE SURVEYOR GENERAL JUNE 20, 1896, DESCRIBED AS FOLLOWS:

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 DEGREES 54 MINUTES 40 SECONDS WEST 475.49 FEET TO THE CENTER LINE OF PIUMA ROAD (FORMERLY COAL 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 DEGREES 51 MINUTES 40 SECONDS EAST) AN ARC DISTANCE OF 34.68 FEET; THENCE SOUTH 23 DEGREES 16 MINUTES 05 SECONDS 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 DEGREES 43 MINUTES 20 SECONDS 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 DEGREES 07 MINUTES 45 SECONDS EAST TO THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTHERLY ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING.

EXHIBIT A

(LTN West Plat)

LAI 1170888v1


NORTHLINE SECTION 20 T1S, R17W
34.20'
N28° 27'52"W
35.32'
N00° 57'22"W
40.68'
28.5
N61° 32'08"E
18.94'
CENTERLINE SECTION 20
T1S - R17 W
LEGEND:
EASEMENT AREA
PERMITTED LIGHTING
SCALE 1" = 20'
PREPARED BY:
VTN WEST, INC.
W.O. 8241-1
10/24/01
EXHIBIT A
PLAT SHOWING EASEMENT AREA
VTNLGLEX# 01-42
017lg011

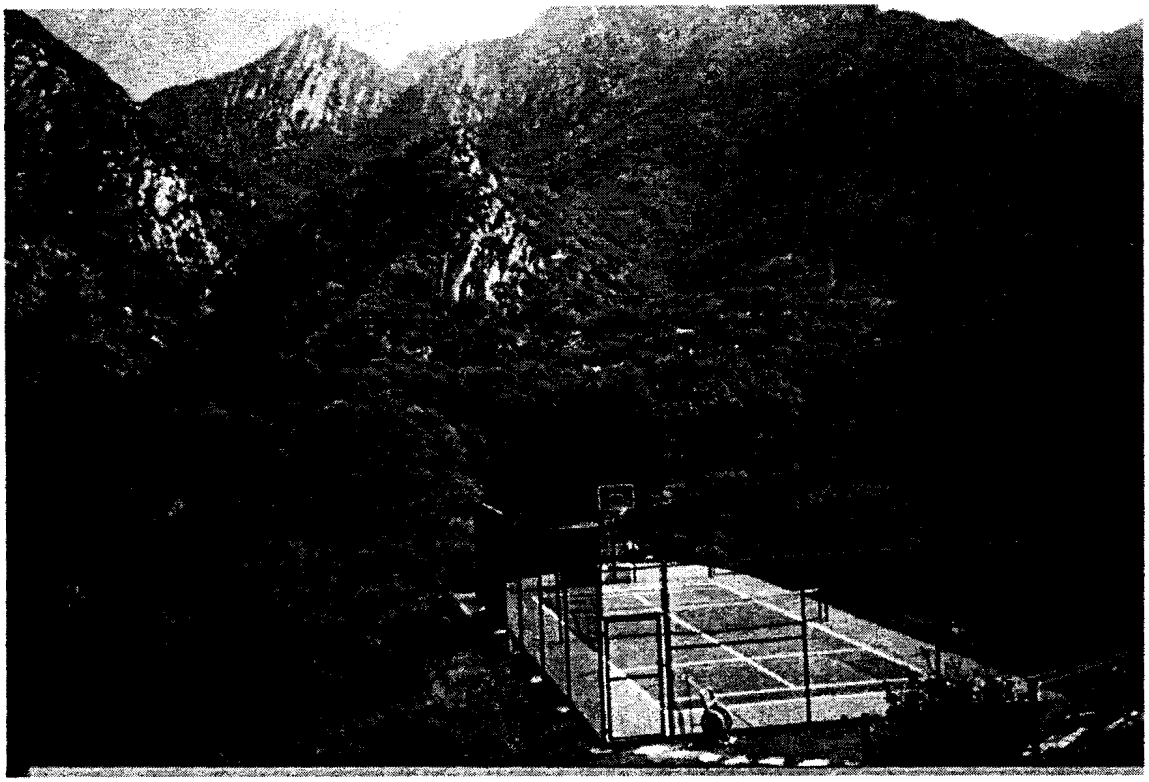


PHOTO 1 Looking northeast (from area below pool) at sports court on graded pad on 3/15/01

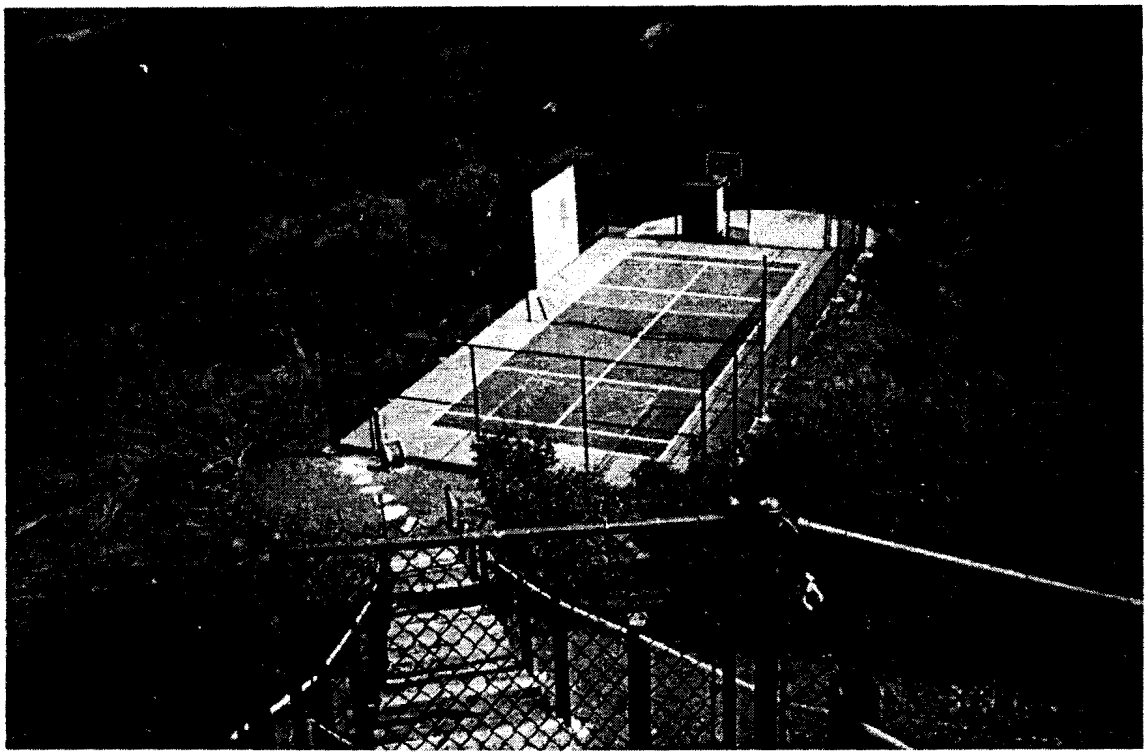


PHOTO 2 Looking northeast (from stairs below pool) at 1) stairs leading to sports court, 2) sports court and 3) nonnative sand fill behind basketball net, near blue line stream on 3/15/01

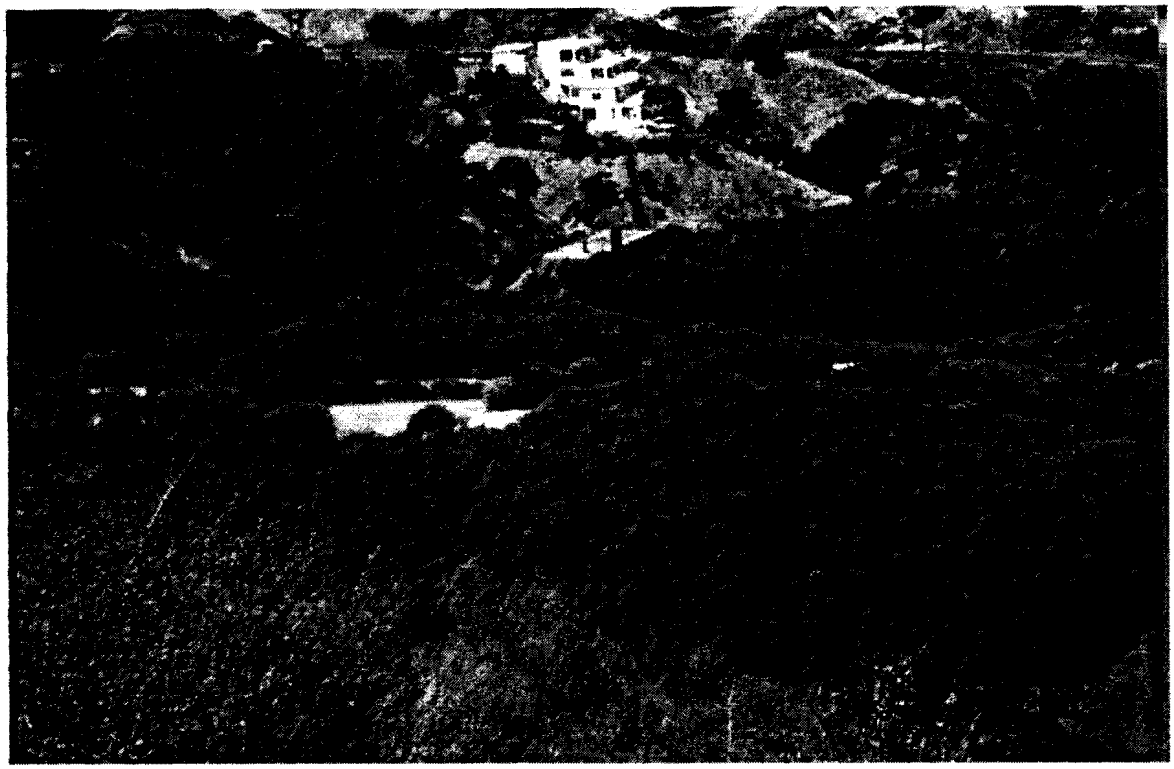


PHOTO 3 **Looking south from the Backbone Trail on State Park land, at the subject property and denied development, with Piuma Road behind the house on 5/8/02**

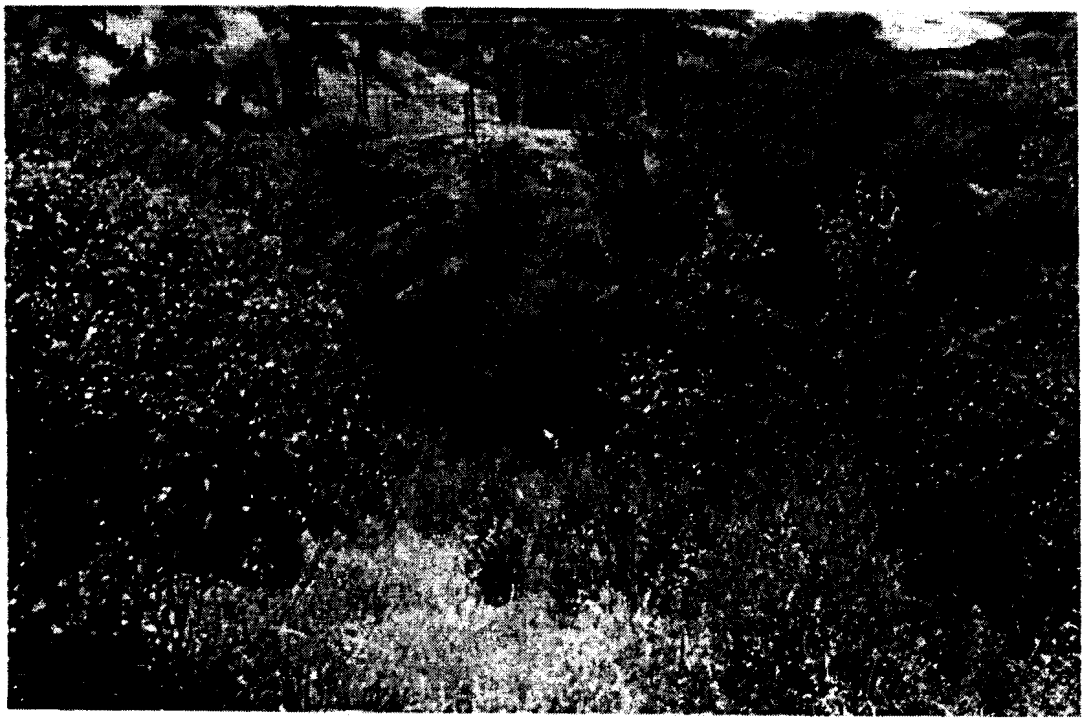


PHOTO 4 **Looking west from adjacent lot, at stream in foreground and sports court in background on 5/9/02**



PHOTO 5 **Looking northwest from Piuma Road at the water tank on 5/9/02**



PHOTO 6 **Looking east at sand fill play area and portion of fence located in the area subject to the Offer to Dedicate an Open Space Easement on 5/9/02**

ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)

I. ESHA under the Coastal Act

Section 30240 of the Coastal Act requires that:

(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.

Section 30107.5 of the Coastal Act defines ESHA as follows:

"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.

There are three important elements to the definition of ESHA. First, a geographic area can be designated ESHA either because of the presence of individual species of plants or animals or because of the presence of a particular habitat. Second, in order for an area to be designated as ESHA, the species or habitat must be either rare or it must be especially valuable. Finally, the area must be easily disturbed or degraded by human activities.

The first test of ESHA is whether a habitat or species is rare. Rarity can take several forms, each of which is important. Within the City of Malibu, rare species and habitats generally fall within one of two common categories. Most rare species or habitats within the City are globally rare, but locally abundant. They have suffered severe historical declines in overall abundance and currently are reduced to a small fraction of their original range, but where present may occur in relatively large numbers or cover large local areas. This is probably the most common form of rarity for both species and habitats in California and is characteristic of coastal sage scrub, for example. Some other habitats are geographically widespread, but occur everywhere in low abundance. California's native perennial grasslands fall within this category.

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, some areas within the City of Malibu may meet this test because they provide habitat for endangered species, protect water quality, provide essential corridors linking one sensitive habitat to another, or provide critical ecological

linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable." Within the City of Malibu, this test is met for those areas that are integral parts of the Santa Monica Mountains Mediterranean ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem as detailed below. Other areas within the City of Malibu may meet this test for other reasons, for example for especially valuable roles in marine systems.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the City of Malibu, as in most of urban southern California, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes. These factors are also discussed in greater detail below.

II. Geography of the City of Malibu

The City of Malibu averages only one mile of inland extent but 27 miles along the coast, forming a long and significant connecting link between the coast and the large, undisturbed habitat areas of the rest of the Santa Monica Mountains. The city itself contains substantial areas of undeveloped native habitat. Most development has occurred within the general vicinity of Point Dume and in those areas closest to the ocean, including several canyon bottoms (e.g., Las Flores Canyon, Malibu Creek, Ramirez Canyon and Trancas Canyon). In general, native habitats are more intact as one moves away from the shore.

The most widespread vegetation type within the City of Malibu is coastal sage scrub. However, as one moves inland, there is a rapid increase in elevation and a concomitant transition from coastal sage scrub to chaparral as the primary vegetation type. Ecological transition areas such as this are known for their high biodiversity and abundance of opportunistic species that move between habitats.

An extraordinary feature of this section of coast is the large number of watersheds (Figures 6, 7 and 8). Over 30 streams discharge into the ocean within the city limits. The riparian corridors along many of these streams connect the habitats within the city to the large inland watersheds, which is of particular significance to endangered steelhead trout. Although there has been substantial degradation of many of the coastal reaches of these streams, the quality of the habitat improves rapidly as one moves inland and soon approaches a relatively undisturbed environment consisting of steep canyons containing riparian oak-sycamore bottoms, with coastal sage scrub and chaparral ascending the canyon walls. These streams are somewhat unique along the California coast because of their topographic setting. The Santa Monica Mountains are a "transverse" range that is oriented in an east-west direction. As a result, the south-facing riparian habitats have more variable sun exposure than the east-west riparian corridors of other sections of the coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region.

III. Ecosystem Context of the Habitats of the City of Malibu

The Santa Monica Mountains, including the City of Malibu, comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California. California's coastal sage scrub, chaparral, oak woodlands, and associated riparian areas have analogues in just a few areas of the world with similar climate. Mediterranean ecosystems with their wet winters and warm dry summers are only found in five localities (the Mediterranean

coast, California, Chile, South Africa, and south and southwest Australia). Throughout the world, this ecosystem with its specially adapted vegetation and wildlife has suffered severe loss and degradation from human development. Worldwide, only 18 percent of the Mediterranean community type remains undisturbed[1]. However, within the Santa Monica Mountains, this ecosystem is remarkably intact despite the fact that it is closely surrounded by some 17 million people. For example, the 150,000 acres of the Santa Monica Mountains National Recreation Area, which encompasses most of the Santa Monica Mountains including the City of Malibu, was estimated to be 90 percent free of development in 2000[2]. Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology[3]. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists[4].

In addition to being a large single expanse of land, the Santa Monica Mountains ecosystem is still connected, albeit somewhat tenuously, to adjacent inland ecosystems[5]. Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency[6] identified wildlife corridors and habitat connectivity as the top conservation priority. Sixty leading environmental scientists have endorsed the conclusions of that report[7]. The chief of natural resources at the California Department of Parks and Recreation has identified the Santa Monica Mountains as an area where maintaining connectivity is particularly important[8].

The species most directly affected by large scale connectivity are those that require large areas or a variety of habitats, e.g., gray fox, cougar, bobcat, badger, steelhead trout, and mule deer[9]. Large terrestrial predators are particularly good indicators of habitat connectivity and of the

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[1] National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.

[2] Ibid.

3 Harris, L. D. 1988. Edge effects and conservation of biotic diversity. Conserv. Biol. 330-332. Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92. Yahner, R. H. 1988. Changes in wildlife communities near edges. Conserv. Biol. 2:333-339. Murphy, D. D. 1989. Conservation and confusion: Wrong species, wrong scale, wrong conclusions. Conservation Biol. 3:82-84.

[4] Crooks, K. 2000. Mammalian carnivores as target species for conservation in Southern California. p. 105-112 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62. Beier, P. and R. F. Noss. 1998. Do habitat corridors provide connectivity? Conserv. Biol. 12:1241-1252. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. *In*: Metapopulations and Wildlife Conservation, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

[5] The SMM area is linked to larger natural inland areas to the north through two narrow corridors: 1) the Canejo Grade connection at the west end of the Mountains and 2) the Simi Hills connection in the central region of the SMM (from Malibu Creek State Park to the Santa Susanna Mountains).

[6] California Resources Agency. 2001. Missing Linkages: Restoring Connectivity to the California Landscape. California Wilderness Coalition, Calif. Dept of Parks & Recreation, USGS, San Diego Zoo and The Nature Conservancy. Available at: http://www.calwild.org/pubs/reports/linkages/index.htm

[7] Letter In Appendix.

[8] Schoch, D. 2001. Survey lists 300 pathways as vital to state wildlife. Los Angeles Times. August 7, 2001.

[9] Martin, G. 2001. Linking habitat areas called vital for survival of state's wildlife Scientists map main migration corridors. San Francisco Chronicle, August 7, 2001.

general health the ecosystem[10]. Recent studies show that the mountain lion, or cougar, is the most sensitive indicator species of habitat fragmentation, followed by the spotted skunk and the bobcat[11]. Sightings of cougars in the City of Malibu and surrounding areas[12] demonstrate their continued presence. Like the "canary in the mineshaft," an indicator species like this is good evidence that habitat connectivity and large scale ecological function remains in the Santa Monica Mountains ecosystem.

The habitat integrity and connectivity that is still evident within the Santa Monica Mountains and the City of Malibu is extremely important to maintain, because both theory and experiments over 75 years in ecology confirm that large spatially connected habitats tend to be more stable and have less frequent extinctions than habitats without extended spatial structure[13]. Beyond simply destabilizing the ecosystem, fragmentation and disturbance can even cause unexpected and irreversible changes to new and completely different kinds of ecosystems (habitat conversion)[14].

As a result of the pristine nature of large areas of the Santa Monica Mountains and the existence of large, unfragmented and interconnected blocks of habitat, this ecosystem continues to support an extremely diverse flora and fauna. The observed diversity is probably a function of the diversity of physical habitats. The Santa Monica Mountains have the greatest geological diversity of all major mountain ranges within the transverse range province. According to the National Park Service, the Santa Monica Mountains contain 40 separate watersheds and over 170 major streams with 49 coastal outlets[15]. The south-facing riparian habitats have a variable sun exposure that creates an unusually diverse moisture environment. The many different physical habitats support at least 17 native vegetation types including the following habitats considered sensitive by the California Department of Fish and Game: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals

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10 Noss, R. F., H. B. Quigley, M. G. Hornocker, T. Merrill and P. C. Paquet. 1996. Conservation biology and carnivore conservation in the Rocky Mountains. Conerv. Biol. 10: 949-963. Noss, R. F. 1995. Maintaining ecological integrity in representative reserve networks. World Wildlife Fund Canada.

11 Sauvajot, R. M., E. C. York, T. K. Fuller, H. Sharon Kim, D. A. Kamradt and R. K. Wayne. 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: Preliminary results from radio telemetry and remote camera surveys. p 113-123 in: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S: Geological Survey Open-File Report 00-62. Beier, P. 1996. Metapopulation models, tenacious tracking and cougar conservation. In: Metapopulations and Wildlife Conservation, ed. D. R. McCullough. Island Press, Covelo, California, 429p.

12 Recent sightings of mountain lions in the Malibu area: Temescal Canyon (pers. com., Peter Brown, Facilities Manager, Calvary Church), Topanga Canyon (pers. com., Marti Witter, NPS), Encinal and Trancas Canyons (pers. com., Pat Healy), Stump Ranch Research Center (pers. com., Dr. Robert Wayne, Dept. of Biology, UCLA). In May of 2002, the NPS *photographed* a mountain lion at a trip camera on the Back Bone Trail near Castro Crest – Seth Riley, Eric York and Dr. Ray Sauvajot, National Park Service, SMMNRA.

13 Gause, G. F. 1934. The struggle for existence. Balitmore, William and Wlikins 163 p. (also reprinted by Hafner, N.Y. 1964). Gause, G. F., N. P. Smaragdova and A. A. Witt. 1936. Further studies of interaction between predators and their prey. J. Anim. Ecol. 5:1-18. Huffaker, C. B. 1958. Experimental studies on predation: dispersion factors and predator-prey oscillations. Hilgardia 27:343-383. Luckinbill, L. S. 1973. Coexistence in laboratory populations of *Paramecium aurelia* and its predator *Didinium nasutum*. Ecology 54:1320-1327. Allen, J. C., C. C. Brewster and D. H. Slone. 2001. Spatially explicit ecological models: A spatial convolution approach. Chaos, Solitons and Fractals. 12:333-347.

14 Scheffer, M., S. Carpenter, J. A. Foley, C. Folke and B. Walker. 2001. Catastrophic shifts in ecosystems. Nature 413:591-596.

15 NPS. 2000. op.cit.

(listed, proposed for listing, or species of concern) are known to occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem.

The Santa Monica Mountains are also important in a larger regional context. Several recent studies have concluded that the area of southern California that includes the Santa Monica Mountains is among the most sensitive in the world in terms of the number of rare endemic species, endangered species and habitat loss. These studies have designated the area to be a local hot-spot of endangerment in need of special protection[16].

Therefore, staff recommends that the Commission find that the Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine, physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California. Staff recommends that the Commission further find that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of functionally intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act.

IV. Habitats within the City of Malibu

The most recent vegetation map that is available for the Santa Monica Mountains, including the City of Malibu, is the map that was produced for the National Park Service in the mid-1990s using 1993 satellite imagery supplemented with color and color infrared aerial imagery from 1984, 1988, and 1994 and field review[17]. The minimum mapping unit was 5 acres. For that map, the vegetation was mapped in very broad categories, generally following a vegetation classification scheme developed by Holland[18]. Because of the mapping methods used the degree of plant community complexity in the landscape is not represented. For example, the various types of "ceanothus chaparral" that have been documented were lumped under one vegetation type referred to as "northern mixed chaparral." Out of necessity, staff has used the designations of vegetation types in the National Park Service maps, recognizing that some vegetation types were mapped at a generic level. Staff also notes that the more recent system of classification developed by the California Native Plant Society[19] would identify additional plant communities. The National Park Service map was used to characterize broadly the types of plant communities present, but were not used to construct the maps of Environmentally Sensitive Habitat Areas. That process is described below. The main generic plant communities present in the City of Malibu[20] are: coastal sage scrub, chaparral, riparian woodland, coast live oak woodland, grasslands, and coastal strand coastal dunes.

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[16] Myers, N. 1990. The biodiversity challenge: Expanded hot-spots analysis. Environmentalist 10:243-256. Myers, N., R. A. Mittermeier, C. G. Mittermeier, G. A. B. da Fonseca and J. A. Kent. 2000. Biodiversity hot-spots for conservation priorities. Nature 403:853-858. Dobson, A. P., J. P. Rodriguez, W. M. Roberts and D. S. Wilcove. 1997. Geographic distribution of endangered species in the United States. Science 275:550-553.

[17] Franklin, J. 1997. Forest Service Southern California Mapping Project, Santa Monica Mountains National Recreation Area, Task 11 Description and Results, Final Report. June 13, 1997, Dept. of Geography, San Diego State University, USFS Contract No. 53-91S8-3-TM45.

[18] Holland R. F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Dept. of Fish and Game, Natural Heritage Division, Sacramento, CA. 95814.

[19] Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, Sacramento, CA

[20] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11 in this document.)

Although all of these habitats are present in the City of Malibu, coast live oak woodland only occurs in a small area at the west end of the city, according to the NPS vegetation maps[21]. Of the remaining terrestrial upland habitats, coastal sage scrub is the largest with about 34% of the land area. The area classified as "northern mixed chaparral" comprises about 10% of the land area.

Riparian Woodland [TO BE COMPLETED]

Within the City of Malibu, over 30 "blueline" streams connect inland areas with the coast, and there are many smaller drainages as well. Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest species diversity of all the plant communities in the area[22]. Four types of riparian communities are discernable in the Malibu area: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area (Figure 4). In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Malibu area. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles[23]. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

Riparian habitats and their associated streams form a central connecting link between all the habitats in the Malibu area. These habitats connect all of the biological communities from the highest elevation chaparral to the sea with a unidirectional flowing water system, one function of which is to carry nutrients through the ecosystem to the benefit of many different species along the way.

The streams themselves provide refuge for three sensitive species within the City of Malibu: the southwestern pond turtle, the tidewater goby and the steelhead trout. The southwestern pond turtle is proposed for both state and federal listing and both the tidewater goby and steelhead trout are federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-

[21] Id.
[22] National Park Service. 2000. Draft general management plan & environmental impact statement. Santa Monica Mountains National Recreation Area – California.
[23] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

97% of riparian habitat in southern California was already lost[24]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that riparian habitat in southern California is endangered."*[25] In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, the most threatened in California.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains including the City of Malibu and because of the historical losses and current rarity of these habitats in southern California, Staff recommends that the Commission find that riparian woodlands in the City of Malibu are ESHA under the Coastal Act.

Coastal Sage Scrub and Chaparral

Coastal sage scrub and chaparral are often lumped together as "shrublands" because of their roughly similar appearance and occurrence in similar and often adjacent physical habitats. In earlier literature, these vegetation associations were often called soft chaparral and hard chaparral, respectively. "Soft" and "hard" refers to differences in their foliage[26] associated with different adaptations to summer drought. Coastal sage scrub is dominated by soft-leaved, generally low-growing aromatic shrubs that die back and drop their leaves in response to drought. Chaparral is dominated by taller, deeper-rooted evergreen shrubs with hard, waxy leaves that minimize water loss during drought[27].

The two vegetation types are often found interspersed with each other. Under some circumstances, coastal sage scrub may even be successional to chaparral, meaning that after disturbance, a site may first be covered by coastal sage scrub, which is then replaced with chaparral over long periods of time.[28] Within the City of Malibu, coastal sage scrub is the predominant vegetation type (Figures 4, 5 and 6). Only about 10% of the area within the city limits is chaparral. However, this habitat within the city is an integral part of the very large blocks of chaparral of various types in the Santa Monica Mountains to the north of the city boundary.

Thus, the portion of the Santa Monica Mountains that encompasses the City of Malibu is a transition zone between habitat types along a steep elevation gradient. In this zone, the existing mosaic of coastal sage scrub and chaparral is the result of a dynamic process that is a function of fire history, recent climatic conditions, soil differences, slope, aspect and moisture regime, and the two habitats should not be thought of as completely separate and unrelated entities but as different phases of the same process[29]. The spatial pattern of these vegetation stands at any given time thus depends on both local site conditions and on history (e.g., fire), and is influenced by both natural and human factors.

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[24] Faber, P.A., E, Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.
[25] Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 *in* Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.
[26] Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.
[27] Sclerophyllous refers to leathery leaves, while malacophyllous refers to soft leaves.
[28] Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.
[29] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. (See attached comment document in Appendix).

In low elevation areas with high fire frequency like Malibu, chaparral and coastal sage scrub may be in a state of flux, leading one researcher to describe the mix as a "coastal sage-chaparral subclimax."[30] Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire history.[31] In the transitional setting in Malibu the occasional patches of chaparral intermingled with coastal sage scrub add significantly to the biodiversity of this large-scale ecotone enriching the seasonal plant resource base and providing additional habitat variability and seasonality for the many species that inhabit the area. This increased biodiversity is typical of ecotones, and in this setting the patches of chaparral intermingled with coastal sage scrub significantly contribute to the value of the coastal sage scrub habitat and to the enrichment of local biodiversity.

Relationships Among Coastal Sage Scrub, Chaparral and Riparian Communities

Although the constituent communities of the Santa Monica Mountains Mediterranean ecosystem can be defined and distinguished based on species composition, growth habits, and the physical habitats they characteristically occupy, they are not independent entities ecologically. Many species of plants, such as black sage, and laurel sumac, occur in more than one plant community and many animals rely on the predictable mix of communities found in undisturbed Mediterranean ecosystems to sustain them through the seasons and during different portions of their life histories.

Strong evidence for the interconnectedness between chaparral, coastal scrub and other habitats is provided by "opportunistic foragers" (animals that follow the growth and flowering cycles across these habitats). Coastal scrub and chaparral flowering and growth cycles differ in a complimentary and sequential way that many animals have evolved to exploit as a required part of their life cycles. Whereas coastal sage scrub is shallow-rooted and responds quickly to seasonal rains, chaparral plants are typically deep-rooted having most of their flowering and growth later in the rainy season after the deeper soil layers have been saturated[32]. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer[33]. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November[34]. In contrast, chamise chaparral and bigpod ceanothus flower from April to June, buck brush ceanothus flowers from February to April, and hoaryleaf ceanothus flowers from March to April[35].

Many groups of animals exploit these seasonal differences in growth and blooming period. The opportunistic foraging insect community (e.g., honeybees, butterflies and moths) tends to follow these cycles of flowering and new growth, moving from coastal sage scrub in the early rainy

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[30] Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. Ecological Monographs 41:27-52.
[31] Gray, K.L. 1983. Competition for light and dynamic boundary between chaparral and coastal sage scrub. Madrono 30(1):43-49. Zedler, P.H., C.R. Gautier and G.S. McMaster. 1983. Vegetation change in response to extreme events: The effect of a short interval between fires in California chaparral and coastal sage scrub. Ecology 64(4): 809-818.
[32] DeSimone, S. 2000. California's coastal sage scrub. Fremontia 23(4):3-8. Mooney, H.A. 1988. Southern coastal scrub. Chap. 13 *in* Barbour, M.G. and J. Majors; Eds. 1988. Terrestrial vegetation of California, 2nd Edition. Calif. Native Plant Soc. Spec. Publ. #9.
[33] Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.
[34] Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.

season to chaparral in the spring[35]. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher[36], bushtit, cactus wren, Bewick's wren and California towhee. At night bats take over the role of daytime insectivores. At least 12 species of bats (all of which are considered sensitive) occur in the Santa Monica Mountains[37]. Five species of hummingbirds also follow the flowering cycle[38].

Many species of 'opportunistic foragers' which utilize several different community types, perform important ecological roles during their seasonal movements. The scrub jay is a good example of such a species. The scrub jay is an omnivore and forages in coastal sage scrub, chaparral, and oak woodlands for insects, berries and notably acorns. Its foraging behavior includes the habit of burying acorns, usually at sites away from the parent tree canopy. Buried acorns have a much better chance of successful germination (about two-fold) than exposed acorns because they are protected from desiccation and predators. One scrub jay will bury approximately 5000 acorns in a year. The scrub jay therefore performs the function of greatly increasing recruitment and regeneration of oak woodland, a valuable and sensitive habitat type[39].

Like the scrub jay, most of the species of birds that inhabit the Mediterranean ecosystem in the City of Malibu require more than one community type in order to flourish. Many species include several community types in their daily activities. Other species tend to move from one community to another seasonally. The importance of maintaining the integrity of the multi-community ecosystem is clear in the following observations of Dr. Hartmut Walter:

> *"Bird diversity is directly related to the habitat mosaic and topographic diversity of the Santa Monicas. Most bird species in this bio-landscape require more than one habitat for survival and reproduction." "A significant proportion of the avifauna breeds in the wooded canyons of the Santa Monicas. Most of the canyon breeders forage every day in the brush- and grass-covered slopes, ridges and mesas. They would not breed in the canyons in the absence of the surrounding shrublands. Hawks, owls, falcons, orioles, flycatchers, woodpeckers, warblers, hummingbirds, etc. belong to this group. Conversely, some of the characteristic chaparral birds such as thrashers, quails, and wrentits need the canyons for access to shelter, protection from fire, and water. The regular and massive movement of birds between riparian corridors and adjacent shrublands has been demonstrated by qualitative and quantitative observations by several UCLA students[40]."*

Thus, the Mediterranean ecosystem of the City of Malibu and the greater Santa Monica Mountains is a mosaic of vegetation types linked together ecologically. The high biodiversity of the area results from both the diversity and the interconnected nature of this mosaic. Most raptor species, for example, require large areas and will often require different habitats for

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[35] Ballmer, G. R. 1995. What's bugging coastal sage scrub. Fremontia 23(4):17-26.
[36] Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. Ecol. Monog.37:317-350.
[37] Letter from Dr. Marti Witter, NPS, dated in Appendix.
[38] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701
[39] Borchert, M. I., F. W. Davis, J. Michaelsen and L. D. Oyler. 1989. Interactions of factors affecting seedling recruitment of blue oak (*Quercus douglasii*) in California. Ecology 70:389-404. Bossema, I. 1979. Jays and oaks: An eco-ethological study of a symbiosis. Behavior 70:1-118. Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.
[40] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

perching, nesting and foraging. Fourteen species of raptors (13 of which are considered sensitive) are reported from the Santa Monica Mountains. These species utilize a variety of habitats including rock outcrops, oak woodlands, riparian areas, grasslands, chaparral, coastal sage scrub, estuaries and freshwater lakes[41].

When the community mosaic is disrupted and fragmented by development, many chaparral-associated native bird species are impacted. In a study of landscape-level fragmentation in the Santa Monica Mountains, Stralberg[42] found that the ash-throated flycatcher, Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, and California towhee all decreased in numbers as a result of urbanization. Soule[43] observed similar effects of fragmentation on chaparral and coastal sage scrub birds in the San Diego area.

In summary, all of the vegetation types in this ecosystem are strongly linked by animal movement and foraging. Whereas classification and mapping of vegetation types may suggest a snapshot view of the system, the seasonal movements and foraging of animals across these habitats illustrates the dynamic nature and vital connections that are crucial to the survival of this ecosystem.

Coastal Sage Scrub

"Coastal sage scrub" is a generic vegetation type that is inclusive of several subtypes[44]. In the City of Malibu, coastal sage scrub includes Venturan coastal sage scrub and coastal bluff scrub. In general, coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall. Under the moist conditions of winter and spring, they grow quickly, flower, and produce light, wind-dispersed seeds, making them good colonizers following disturbance. These species cope with summer drought by dying back, dropping their leaves or producing a smaller summer leaf in order to reduce water loss. Stands of coastal sage scrub are much more open than chaparral and contain a greater admixture of herbaceous species. Coastal sage scrub is generally restricted to drier sites, such as low foothills, south-facing slopes, and shallow soils at higher elevations.

The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect and elevation. Drier sites are dominated by more drought-resistant species (e.g., California sagebrush, coast buckwheat, and *Opuntia* cactus). Where more moisture is available (e.g., north-facing slopes), larger evergreen species such as toyon, laurel sumac, lemonadeberry, and sugar bush are common. As a result, there is more cover for wildlife, and movement of large animals from chaparral into coastal sage scrub is facilitated in these areas. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens,

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[41] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701.
[42] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: A Santa Monica Mountains case study. p 125-136 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.
[43] Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92.
[44] Kirkpatrick, J.B. and C.F. Hutchinson. 1977. The community composition of Californian coastal sage scrub. Vegetatio 35:21-33; Holland, 1986. op.cit.; Sawyer and Keeler-Wolf, 1995, op.cit.

coyotes, and coast horned lizards[45], but most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

Of the many important ecosystem roles performed by the coastal sage scrub community, five are particularly important in the City of Malibu. Coastal sage scrub provides critical linkages between riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for local endemics, supports rare species that are in danger of extinction, and reduces erosion, thereby protecting the water quality of coastal streams.

Riparian woodlands are primary contributors to the high biodiversity of the Santa Monica Mountains. The ecological integrity of those riparian habitats not only requires wildlife dispersal along the streams, but also depends on the ability of animals to move from one riparian area to another. Such movement requires that the riparian corridors be connected by suitable habitat. In the City of Malibu, coastal sage scrub provides that function. Significant development in coastal sage scrub would reduce the riparian corridors to linear islands of habitat with severe edge effects[46], reduced diversity, and lower productivity .

Most wildlife species and many species of plants utilize several types of habitat. Many species of animals endemic to Mediterranean habitats move among several plant communities during their daily activities and many are reliant on different communities either seasonally or during different stages of the their life cycle. Without an intact mosaic of coastal sage scrub, chaparral, and riparian community types, many species will not thrive. Specific examples of the importance of an interconnected communities, or habitats, were provided in the discussion above. This is an essential ecosystem role of coastal sage scrub in the City of Malibu.

A characteristic of the coastal sage scrub vegetation type is a high degree of endemism. This is consonant with Westman's observation that 44 percent of the species he sampled in coastal sage scrub occurred at only one of his 67 sites, which were distributed from the San Francisco Bay area to Mexico[47]. Species with restricted distributions are by nature more susceptible to loss or degradation of their habitat. Westman said of this unique and local aspect of coastal sage scrub species in California:

"While there are about 50 widespread sage scrub species, more than half of the 375 species encountered in the present study of the sage scrub flora are rare in occurrence within the habitat range. In view of the reduction of the area of coastal sage scrub in California to 10-15% of its former extent and the limited extent of preserves, measures to conserve the diversity of the flora are needed."[48]

Coastal sage scrub in southern California provides habitat for about 100 rare species[49], many of which are also endemic to limited geographic regions[50]. In the Santa Monica Mountains, rare

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[45] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.
[46] Environmental impacts are particularly severe at the interface between development and natural habitats. The greater the amount of this "edge" relative to the area of natural habitat, the worse the impact.
[47] Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology 62:170-184.
[48] Ibid.
[49] Atwood, J. L. 1993. California gnatcatchers and coastal sage scrub: The biological basis for endangered species listing. pp.149-166 *In*: Interface Between Ecology and Land Development in California. Ed. J. E. Keeley, So. Calif.

animals that inhabit coastal sage scrub[51] include the Santa Monica sheildback katydid, silvery legless lizard, coastal cactus wren, Bell's sparrow, San Diego desert woodrat, southern California rufous-crowned sparrow, coastal western whiptail, and California horned lizard. Some of these species are also found in chaparral[52]. Rare plants found in coastal sage scrub in the Santa Monica Mountains include Santa Susana tarplant, Coulter's saltbush, Blockman's dudleya, Braunton's milkvetch, Parry's spineflower, and Plummer's mariposa lily[53]. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.[54]

One of the most important ecological functions of coastal sage scrub in the City of Malibu is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define coastal sage scrub have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas. The native shrubs of this community are resistant not only to drought, as discussed above, but well adapted to fire. Most of the semi-woody shrubs have some ability to crown sprout after fire and the plants in the City of Malibu and adjacent areas demonstrate this characteristic more strongly than do individuals of the same species growing at inland sites in Riverside County.[55] These shrub species also tend to recolonize rapidly from seed following fire. As a result they provide persistent cover that reduces erosion.

In addition to performing extremely important roles in the Mediterranean ecosystem, the coastal sage scrub community type has been drastically reduced in area by habitat loss to development. In the early 1980's it was estimated that 85 to 90 percent of the original extent of coastal sage scrub in California had already been destroyed.[56] Losses since that time have been significant and particularly severe in the coastal zone. It has been estimated that there has been an [XX percent] loss of coastal sage scrub in the City of Malibu and adjacent areas in about the last 20 years[57].

Therefore, because of its increasing rarity, its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development because of its adjacency to the coast, staff recommends that the Commission find that functionally intact coastal sage scrub within the City of Malibu is ESHA under the Coastal Act.

Chaparral

Another shrub community in the Santa Monica Mountain Mediterranean ecosystem is chaparral. Like "coastal sage scrub," this is a generic vegetation type category. Chaparral

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Acad. of Sci., Los Angeles. California Department of Fish and Game (CDFG). 1993. The Southern California Coastal Sage Scrub (CSS) Natural Communities Conservation Plan (NCCP). CDFG and Calif. Resources Agency, 1416 9th St., Sacramneto, CA 95814.

[50] Id. to 45.

[51] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

[52] O'Leary J.F., S.A. DeSimone, D.D. Murphy, P.F. Brussard, M.S. Gilpin, and R.F. Noss. 1994. Bibliographies on coastal sage scrub and related malacophyllous shrublands of other Mediterranean-type climates. *California Wildlife Conservation Bulletin* 10:1–51.

[53] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.

[54]

[55] REF

[56] Westman GET CORRECT REF

[57] REF

species have deep roots (10s of ft) and hard waxy leaves, adaptations to drought that increase water supply and decrease water loss at the leaf surface. Some chaparral species cope more effectively with drought conditions than do desert plants[58]. Chaparral plants vary from about one to four meters tall and form dense, intertwining stands with nearly 100 percent ground cover. As a result, there are few herbaceous species present in mature stands. Chaparral is well adapted to fire. Many species regenerate mainly by crown sprouting; others rely on seeds which are stimulated to germinate by the heat and ash from fires. Over 100 evergreen shrubs may be found in chaparral[59]. On average, chaparral is found in wetter habitats than coastal sage scrub, being more common at higher elevations and on north facing slopes. At very roughly 1000 ft. elevation in and adjacent to the City of Malibu, the vegetation shifts from mostly coastal sage scrub to a predominance of chaparral. Coincidentally, this occurs near the City boundary so that little chaparral exists within the city itself (Figure 6). On the National Park Service map, northern mixed chaparral occurs in a few small patches within the Malibu City boundary constituting about 10% of the area[60].

Northern mixed chaparral can be dominated by chamise, scrub oak or one of several species of manzanita or by ceanothus. In addition, it commonly contains woody vines and large shrubs such as mountain mahogany, toyon, hollyleaf redberry, and sugarbush.[61]. The rare red shank chaparral plant community occurs in the Santa Monica Mountains, but based on current information, it is not known to occur in the City of Malibu. Although included within the category "northern mixed chaparral" in the vegetation map, several types of ceanothus chaparral are reported in the Santa Monica Mountains. Ceanothus chaparral occurs on stable slopes and ridges, and may be dominated by bigpod ceanothus, buck brush ceanothus, hoaryleaf ceanothus, or greenbark ceanothus. In addition to ceanothus, other species that are usually present in varying amounts are chamise, black sage, holly-leaf redberry, sugarbush, and coast golden bush[62].

Several sensitive plant species that occur in the chaparral of the Santa Monica Mountains area are: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom[63]. Several occurring or potentially occurring sensitive animal species in chaparral from the area are: Santa Monica shieldback katydid, western spadefoot toad, slivery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.[64]

Coastal sage scrub and chaparral are the predominant generic community types of the Santa Monica Mountains and provide the living matrix within which rarer habitats like riparian woodlands exist. These two shrub communities share many important ecosystem roles. Within the City of Malibu, the most important ecological functions of chaparral are to provide essential

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[58] Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.
[59] Keely, J.E. and S.C. Keeley. Chaparral. Pages 166-207 in M.G. Barbour and W.D. Billings, eds. North American Terrestrial Vegetation. New York, Cambridge University Press.
[60] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11
[61] Id. to 45.
[62] Id. to 41.
[63] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[64] Ibid.

habitat for species that require several habitat types during the course of their life histories and to stabilize steep slopes and reduce erosion, thereby protecting the water quality of coastal streams.

Many species of animals in Mediterranean habitats characteristically move among several plant communities during their daily activities, and many are reliant on different communities either seasonally or during different stages of their life cycle. The importance of an intact mosaic of coastal sage scrub, chaparral, and riparian community types is perhaps most critical for birds. However, the same principles apply to other taxonomic groups. For example, whereas coastal sage scrub supports a higher diversity of native ant species than chaparral, chaparral is necessary the coastal horned lizard, an ant specialist[65] Additional examples of the importance of an interconnected communities, or habitats, were provided in the discussion above. This is an extremely important ecosystem role of chaparral in the City of Malibu.

Chaparral is also remarkably adapted to control erosion, especially on steep slopes. The root systems of chaparral plants are very deep, extending far below the surface and penetrating the bedrock below[66], so chaparral literally holds the hillsides together and prevents slippage.[67] In addition, the direct soil erosion from precipitation is also greatly reduced by 1) water interception on the leaves and above ground foliage and plant structures, and 2) slowing the runoff of water across the soil surface and providing greater soil infiltration. Chaparral plants are extremely resistant to drought, which enables them to persist on steep slopes even during long periods of adverse conditions. Many other species die under such conditions, leaving the slopes unprotected when rains return. Since chaparral plants recover rapidly from fire, they quickly re-exert their ground stabilizing influence following burns. The effectiveness of chaparral for erosion control after fire increases rapidly with time[68] . Thus, the erosion from a 2 inch rain-day event drops from 5 yd^3/acre of soil one year after a fire to 1 yd^3/acre after 4 years.[69] The following table illustrates the strong protective effect of chaparral in preventing erosion.

Soil erosion as a function of 24-hour precipitation and chaparral age.

Years Since Fire	Erosion (yd^3/acre) at Maximum 24-hr Precipitation of:		
	2 inches	5 inches	11 inches
1	5	20	180
4	1	12	140
17	0	1	28
50+	0	0	3

[65] A.V. Suarez. Ants and lizards in coastal sage scrub and chaparral. A presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.
[66] Helmers, H., J.S. Horton, G. Juhren and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. Ecology 36(4):667-678. Kummerow, J. and W. Jow. 1977. Root systems of chaparral shrubs. Oecologia 29:163-177.
[67] Radtke, K. 1983. *Living more safely in the chaparral-urban interface.* General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.
[68] Kittredge, J. 1973. Forest influences — the effects of woody vegetation on climate, water, and soil. Dover Publications, New York. 394 pp. Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. (Table 1). The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.
[69] Id.

Therefore, because its of important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, staff recommends that the Commission find that functionally intact chaparral within the City of Malibu is ESHA under the Coastal Act.

Coastal Live Oak Woodland [TO BE COMPLETED]

Coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeberry, and poison oak. Coast live oak woodland is more tolerant of salt-laden fog than other oaks and is generally found nearer the coast[70]. According to the existing vegetation maps of the City of Malibu[71], coast live oak woodland only occurs in a small upland area at the extreme western extent. However, coast live oak also occurs as a riparian corridor species within the City of Malibu.

The important ecosystem functions of oak woodlands are widely recognized[72]. Oak woodlands support a high diversity of birds[73], and provide refuge for many species of sensitive bats[74]. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats.

Grasslands [TO BE COMPLETED]

Grasslands consist of low herbaceous vegetation that is dominated by grass species but may also harbor native or non-native forbs and bulbs.

California Perennial Grasslands

Native grassland within the Santa Monica Mountains consists of perennial native needlegrasses: purple needlegrass, (Nassella pulchra), foothills needlegrass, (Nassella lepida) and nodding needlegrass (Nassella cernua). These grasses may occur in the same general area but they do not typically mix, tending to segregate based on slope and substrate factors[75] Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland[76]. Native perennial grasslands are now exceedingly rare[77]. In California, native grasslands once covered nearly 20 percent of the land

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[70] Id. to 41.
[71] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701.
[72] Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California*. Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.
[73] Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas*. US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania.
[74] Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.
[75] Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, 1722 J St., Suite 17, Sacramento, CA 95814.
[76] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[77] Noss, R.F., E.T. LaRoe III and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degredation. Biological Report 28. National Biological Service, U.S. Dept. of Interior.

area, but today are reduced to less than 0.1 percent[78] The California Natural Diversity Database (CNDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDB considers grasslands with 10 percent or more cover by purple needlegrass to be significant, and recommends that these be protected as remnants of original California prairie. Patches of this sensitive habitat occur throughout the Santa Monica Mountains, and in the City of Malibu where they are intermingled with coastal sage scrub, chaparral and oak woodlands.

Many of the raptors that inhabit the Santa Monica Mountains make use of grasslands for foraging because they provide essential habitat for small mammals and other prey. Grasslands adjacent to woodlands are particularly attractive to these birds of prey since they simultaneously offer perching and foraging habitat. Particularly noteworthy in this regard are the white-tailed kite, northern harrier, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, golden eagle, American kestrel, merlin, and prairie falcon[79] .

Therefore, because of their extreme rarity and their important ecosystem functions, staff recommends that the Commission find that California native perennial grasslands within the City of Malibu are ESHA under the Coastal Act.

California Annual Grassland

The term "California annual grassland" has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin. These dominant species in this community include common wild oats (Avena fatua), slender oat (Avena barbata), red brome (Bromus madritensis ssp. Rubens), ripgut brome, (Bromus diandrus), and herbs such as black mustard (Brassica nigra), wild radish (Raphanus sativus) and sweet fennel (Foeniculum vulgare). Annual grasslands are located in patches throughout the the Santa Monica Mountains in previously disturbed areas, cattle pastures, valley bottoms and along roadsides. While many of these patches are dominated by invasive non-native species, it would be premature to say that they are never sensitive or do not harbor valuable annual native species. A large number of native forbs may be present in these habitats[80], and many native wildflowers occur primarily in annual grasslands. In addition, annual grasslands are primary foraging areas for many sensitive raptor species in the area.

Staff recommends that the Commission find that on-site inspection of California annual grasslands should be done prior to any impacts to determine if any rare native species are present or any rare wildlife that rely on the habitat and to determine if the site meets the Coastal Act ESHA criteria.

[78] Id. to 41.
[79] Id to 41.
[80] Holstein, G. 2001. Pre-agricultural grassland in Central California. Madrono 48(4):253-264. Stromberg, M.R., P. Kephart and V. Yadon. 2001. Composition, invisibility and diversity of coastal California grasslands. Madrono 48(4):236-252.

Coastal Strand / Coastal Dunes [TO BE COMPLETED]

Malibu includes twenty-seven miles of coastline, much of which is coastal dune habitat that is home to many sensitive species of plants and animals. Typical native species of plants are sand verbena, silver beachweed, saltbush (including the rare Atriplex coulteri and A. parishii), beach morning glory. This harsh habitat is characterized by salt spray, slow nutrient cycling and desiccating winds that contribute to a desert-like environment. Relatively few plant species are adapted to such an environment and most tend to grow slowly. The slow growth rates and shifting substrate make this habitat slow to recover from disturbance. Because of their unique nature, dune habitats are known to harbor many endemic and rare insect species that have adapted to this environment[81].

V. Effects of Human Activities and Development on Habitats within the City of Malibu [TO BE COMPLETED]

The natural habitats of the Santa Monica Mountains and the City of Malibu are highly threatened by current development pressure, fragmentation and impacts from the surrounding megalopolis (Figures 1, 2 and 3). The developed part of Malibu represents the coastal extension of this urbanization. About 54% of the undeveloped Santa Monica Mountains are in private ownership[82], and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation[83]. This is particularly true where development is concentrated on the coast, much of which is already badly fragmented (e.g. Point Dume and the eastern end of Malibu). Development and associated human activities have many well-documented deleterious effects on natural communities. These environmental impacts may be both direct and indirect and include the effects of increased fire frequency, of fire clearance, of introduction of exotic species, and of night lighting.

Increased Fire Frequency

Since 1925, all the major fires in the Santa Monica Mountains have been caused by human activities[84]. Increased fire frequency in the City of Malibu and the rest of the Santa Monica Mountains alters plant communities by creating conditions that select for some species over others. Strong resprouting plant species such as laurel sumac, are favored while non-sprouters like bigpod ceanothus, are at a disadvantage. Frequent fire recurrence before the non-sprouters can develop and reestablish a seed bank is detrimental, so that with each fire their chances for propagation are further reduced. Respouters can be sending up new shoots quickly, and so they are favored in an increased fire frequency regime. Also favored are weedy and invasive species. Dr. Steven Davis in his abstract for the Coastal Commission Workshop stated[85] *"We have evidence that recent increases in fire frequency has eliminated drought-hardy non-sprouters from chaparral communities near Malibu, facilitating the invasion of exotic*

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[81] Powell, J.A. 1981. Endangered habitats for insects: California coastal sand dunes. Atala 6(1-2):41-55.
[82] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.
[83] Swenson, J. J., and J. Franklin. 2000. The effects of future urban development on habitat fragmentation in the Santa Monica Mountains. Landscape Ecol. 15:713-730.
[84] NPS, 2000, op. cit.
[85] Davis, Steven. Effects of fire and other factors on patterns of chaparral in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

grasses and forbes that further exacerbate fire frequency." Thus simply increasing fire frequency from about once every 22 years (the historical frequency REF?) to about once every 12 years (the current frequency) can completely change the vegetation community. This has cascading effects throughout the ecosystem.

Fire Clearance

The removal of vegetation for fire protection in the Malibu area is required by law in "Very High Fire Hazard Severity Zones"[86]. Fuels removal is reinforced by insurance carriers[87]. Generally, the Santa Monica Mountains are considered to be a high fire hazard severity zone . In such high fire hazard areas, homeowners must often resort to the California FAIR Plan to obtain insurance. Because of the high risk, all homes in "brush areas" are assessed an insurance surcharge if they have less than the recommended 200-foot fuel modification zone[88] around the home. The combination of insurance incentives and regulation assures that the 200-foot clearance zone will be applied universally[89]. While it is not required that all of this zone be cleared of vegetation, the common practice is simply to disk this zone, essentially removing or highly modifying all native vegetation. For a new structure not adjacent to existing structures, this results in the removal or modification of a minimum of three acres of vegetation[90]. While the directly impacted area is large, the effects of fuel modification extend beyond the 200-foot clearance area.

Effects of Fire Clearance on Bird Communities

The impacts of fire clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)[91]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fire-clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[92].

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[86] 1996 Los Angeles County Fire Code Section 1117.2.1

[87] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.

[88] Fuel Modification Plan Guidelines. Co. of Los Angeles Fire Department, Fuel Modification Unit, Prevention Bureau, Forestry Division, Brush Clearance Section, January 1998.

[89] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.

[90] Id.

[91] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 *in* Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

[92] Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. Conserv. Biol. 11:406-421.

Effects of Fire Clearance on Arthropod Communities

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area[93]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[94]. These native ants are the primary food resource for the native coastal horned lizard, a State "Species- of- Special-Concern" . As a result of Argentine ant invasion, the coastal horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments[95]. In addition to specific effects on the coastal horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms[96]. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats[97].

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.[98] In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear . So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds[99].

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[93] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056.

[94] Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. Conservation Biology 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. Oecologia 105:405-412.

[95] Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. Conservation Biology 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. Ecological Applications 10(3):711-725.

[96] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. Ecology 65(4):1031-1037.

[97] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

[98] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.

[99] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.

Artificial Night Lighting (T0 BE COMPLETED)

One of the more recently recognized human impacts on ecosystem function is that of artificial night lighting as it effects the behavior and function of many different types of organisms[100]. For literally billions of years the only nighttime sources of light were the moon and stars, and living things have adapted to this immutable standard and often depend upon it for their survival. A review of lighting impacts suggests that whereas some species are unaffected by artificial night lighting, many others are severely impacted. Overall, most impacts are negative ones or ones whose outcome is unknown. Research to date has found negative impacts to plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals, and a detailed literature review can be found in the report by Longcore and Rich[101].

VI. Summary of Findings [TO BE COMPLETED]

ESHA Maps

Analysis of Aerial Photographs

Mapping ESHA within the Malibu City Limits was conducted by analyzing aerial photographs and conducting field surveys. The mapping was an iterative process entailing identification of habitats on photographs and verifying identification with follow-up site visits. Aerial photographs from 1997 were enlarged to a scale of approximately 1 inch to 480 feet. At this scale individual shrubs in coastal sage scrub were clearly visible and vegetated and cleared areas could be easily identified. The original photographs were USGS digital orthophoto quarter quadrangles. Six large aerial map print outs of Malibu were produced, and these were used to draw boundaries indicating where undeveloped habitat was located with disked and graded areas, being excluded. Most riparian areas were mapped as ESHA unless the streambed was known to be channelized and to have low habitat value. Heavily degraded habitats dominated by non-native grassland and invasive plants were generally not mapped as ESHA. There were some exceptions to the latter rule in riparian corridors that were considered sensitive because of their important role in ecological processes and the connectivity that they provide.

From the aerial photograph and field data, outlines of ESHA were drawn on large scale maps. Most of the ESHA areas included coastal sage scrub and unaltered riparian corridors. A staff ecologist and a botanical consultant with extensive experience in the Santa Monica Mountains conducted this work and were assisted by two coastal analysts with over ten years experience in Malibu. One of these analysts has a Masters Degree in geography with considerable experience in aerial photo interpretation. The mapping was confined to the City of Malibu boundary. Particular problem sites and questions were noted on the first review of the maps. These areas were subsequently visited to answer questions and make final determinations. In these return field visits all four of the project participants were present, and the resulting final determinations were then included in the mapping product. After the maps designating ESHA areas were completed, they were sent to the CCC GIS/Mapping section to be digitized. Following this, the mapped ESHA areas on similar sized printouts were checked for obvious errors and returned again to the mapping section for final revision and completion of the ESHA map.

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[100] . Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the City of Malibu. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.
[101] Id. to 105, Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.

After the preliminary maps were drawn (those presented at the January CCC Hearing) 2001 aerial photography for Malibu became available. The earlier maps were then revised, using the recent photography. This resulted in the removal of a number of small habitat fragments that had been developed in the interim, and of some very isolated small fragments surrounded by development that were not connected to any other significant habitat.

As a double check on the ESHA determination, the ESHA map was compared to the 1993 National Park Service (NPS) Vegetation Map. Areas excluded from ESHA designation match closely with their developed areas. With allowance for additional development since the NPS maps were drawn in 1993, this provides an independent check on the map accuracy.

These maps are intended to depict the approximate location of ESHA for planning purposes. They are not intended to definitively assign the ESHA designation to individual parcels. These maps are always subject to revision, refinement and small-scale adjustments, and site-specific ESHA determinations may be required in particular cases.

Field Surveys

Within the City of Malibu, most of the recommended ESHA areas are coastal sage scrub and riparian woodland interspersed with small patches of ceanothus and chamise chaparral at higher elevations. These small chaparral patches are rare in Malibu however constituting only about 10% of the area. Staff also concluded that existing development, graded or disked areas, isolated areas that have been converted to non-native vegetation, and those portions of riparian corridors that have been channelized and so altered as to lose most habitat value are not ESHA. The field surveys were intended to identify ESHA directly or to verify ESHA determinations made from aerial photographs.

The field surveys were done mostly on a canyon-by-canyon basis since both the riparian areas and the roads follow the canyons. The canyons were surveyed from east to west along the coast starting at Tuna Canyon Road on the east end of Malibu on June 12, 2001 and finishing at San Nicholas Canyon on the west on June 15, 2001. Including other visits to the area from May through August of 2001, 7 days were spent in the field by four commission staff and a consultant, and 59 spatially referenced sites were examined plus some others that were not georeferenced.

In the canyon surveys, digital photographs were taken at the canyon mouth and a GPS reading was obtained at each location. After taking digital photographs and GPS readings at the canyon entrance from Pacific Coast Highway, analysts proceeded inland up the canyon from the coast stopping at about ¼ to ½ mile points of interest to take more GPS readings and photographs looking up and down the canyon and at the canyon walls on both sides. Four photographs were taken at most of the GPS locations along the canyons.

Maps

The general map of ESHA areas with and without open space and slopes greater than 40% in Malibu is shown in Figure 8. Because of their dynamic nature, these areas are always subject to revision by ground-based observation and must be verified by site-specific biological surveys in any particular case. It should be noted that while about half (49.2%) of the land area in

Malibu is sensitive habitat, most of this is already in protected status as public open space (federal, state, county and city parkland, designated open space, conservation areas and beaches), or it is not developable because of slopes >40%. Once protected land and steep slope areas have been removed only about 14.9% of the remaining developable land would be considered ESHA as indicated in the Table below and in Figure 8. The reason that most of the designated ESHA resides in protected land or on steep slopes is because these are precisely the areas that have not been developed, and so the habitat values there have been preserved. In general, undeveloped and relatively undisturbed coastal sage scrub and chaparral have been designated ESHA for the reasons given above. Of the area in Malibu, a relatively small amount of coastal sage scrub (12.0%) and chaparral (2.7%) is on land that could potentially be developed. Riparian areas and wetlands have, in most cases, been designated as ESHA.

Areas in acres and percent within Malibu in various categories of habitats and their designations. Figures are based on a total area in Malibu of 12,679 acres. A relatively small amount of coastal sage scrub (12.0%) and chaparral (2.7%) is on land that could potentially be developed. The total ESHA area (49.2%) includes all types of ESHA such as riparian corridors and wetlands as well as CSS and chaparral.

	Public Open Space or Slopes >40%	NOT Public Open Space or Slopes >40%	TOTAL
ESHA	4342 34.2%	1895 14.9%	6237 49.1%
Coastal Sage Scrub	2808 22.2%	1525 12.0%	4333 34.2%
Chaparral	919 7.2%	340 2.7%	1259 9.9%

STATE OF CALIFORNIA—THE RESOURCES AGENC
GRAY DAVIS, GOVERNOR

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CEASE AND DESIST ORDER No. CCC-01-CD-01

Pursuant to its authority under Public Resource Code section 30810, the California Coastal Commission hereby orders Howard and Terry Rubinroit and any person acting in concert with any of the foregoing to cease and desist 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 Accordingly, all persons subject to this order shall fully comply with paragraphs A, B, C and D:

A. Refrain from engaging in any future development activity at the subject property without a coastal development permit (CDP) or CDP amendment.

B. Within 60 days of the date of this order, or within such additional time as the Executive Director may grant for good cause, submit to the Coastal Commission's South Central District Office a complete coastal development permit or amendment to the CDP 5-88-056 application requesting one of the following options:
   1) to authorize the unpermitted development after-the-fact,
   2) to remove said development and restore the property to its pre-violation condition, or
   3) some combination of the above that, for each of the items listed in the violation description, proposes to either
      a) authorize the unpermitted development after-the-fact, or
      b) remove the unpermitted development and restore the property.

   Requests for approval of the development may be submitted as CDP or CDP amendment applications and will be processed as a CDP amendment regardless of how it is submitted. For purposes of this requirement, an application under option no. 1 shall be considered to be complete if it includes all of the following information:

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."

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

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.
11. County Environmental Review Board Approval.
12. Copies of all required public agency approvals for all of the development. Include minutes of any public hearing, if applicable.
13. Revised description of development that includes all of the unpermitted development at the subject property.
14. Any additional information that the Commission staff determines to be necessary to complete the application.

C. In a manner which complies fully with the terms and conditions of any coastal development permit that the Commission may grant under option 2 or 3 of the preceding paragraph, carry out the removal of any unpermitted development and restore the site to pre-violation status within 180 days of the issuance of the permit amendment, or within such additional time as the Executive Director may grant for good cause.

D. With respect to any permit that the Commission may grant under paragraph B, 1) comply with all conditions of approval that the Commission may impose, and 2) within 60 days of the Commission's decision, or within such additional time as the Executive Director may grant for good cause, comply with all such conditions that by their terms must be satisfied as a prerequisite to issuance of the permit.

Persons Subject to the Order

Howard and Terry Rubinroit

Identification of the Property

The property that is subject to this cease and desist order is described as follows:

25351 Piuma Road in Calabasas, Los Angeles County APN 4456-37-007

Description of Unpermitted Development

The unpermitted development consists of the construction of a 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 above-ground storage tank (AST) with concrete pad, water AST, concrete in eastern watercourse, patio area with low walls near pool, nonnative sand fill adjacent to unnamed blue line stream, nonnative sand fill to the east of the pool (used as children's play area), partially buried PVC piping that appears to be part of a drainage system, septic system extending out of permitted area, irrigation system, transformers and removal of major vegetation beyond the authorized limits.

Effective Date and Terms of the Order

The effective date of this order is May 8, 2001. This order shall remain in effect permanently unless and until modified or rescinded by the Commission.

Findings

This order is issued on the basis of the findings adopted by the Commission on May 8, 2001, as set forth in the attached document entitled **"Adopted Findings for Cease and Desist Order No. CCC 01-CD-01.**

Compliance Obligation

Strict compliance with this order by all parties subject thereto is required. Failure to comply strictly with any term or condition of this order including any deadline contained in this order or in the above required coastal development permit(s) as approved by the Commission will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS ($6,000) per day for each day in which such compliance failure persists. The Executive Director may extend deadlines for good cause.

Deadlines

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

Appeal

Pursuant to Public Resource Code §30803(b), any person or entity against whom this order is issued may file a petition with the Superior Court for a stay of this order.

Executed in San Francisco on May 9, 2001, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

By: _____
Susan M. Hansch
Chief Deputy Director

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Staff:	AGD-SF
Staff Report:	April 19, 2001
Hearing Date:	May 8, 2001
CCC Action:	**Approved 9-0**

ADOPTED FINDINGS FOR CEASE AND DESIST ORDER

CEASE AND DESIST ORDER: CCC-01-CD-01

RELATED VIOLATION FILE: V-4-97-031

PROPERTY LOCATION: 25351 Piuma Road in Calabasas, Los Angeles County, APN 4456-37-007 **(Exhibit 1)**

DESCRIPTION OF PROPERTY The property is a 2.76 acre parcel of land along Piuma Road in the Santa Monica Mountains

PROPERTY OWNERS: Howard and Terry Rubinroit

VIOLATION DESCRIPTION: Construction of a 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 above-ground storage tank (AST) with concrete pad, water AST, concrete in eastern watercourse, patio area with low walls near pool, nonnative sand fill adjacent to unnamed blue line stream, nonnative sand fill to the east of the pool (used as children's play area), partially buried PVC piping that appears to be part of a drainage system, septic system extending out of permitted area, irrigation system, transformers and removal of major vegetation beyond the authorized limits **(Exhibit 2)**

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 5-88-056 File **(Exhibit 3),**

Coastal Development Permit Application Nos. 4-99-023 and 4-99-024 (incomplete) Files,

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

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.

II. HEARING PROCEDURES

The procedures for a hearing on a proposed Cease and Desist Order are outlined in section 13185 of the California Code of Regulations (CCR), Title 14, Division 5.5, Chapter 5, and Subchapter 8. The Cease and Desist hearing procedure is similar in most respects to the procedures that the Commission utilizes for permit and LCP matters.

For a Cease and Desist Order hearing, the Chair shall announce the matter and request that all parties or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any other speaker. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission should receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13186, incorporating by reference section 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist Order, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the order.

III. RESOLUTION OF ISSUANCE

On May 8, 2001, the Commission voted to issue Cease and Desist Order No. CCC-01-CD-01 and adopt the following resolution:

The Commission hereby issues Cease and Desist Order number CCC-01-CD-01 and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and inconsistent with a coastal development permit.

IV. ADOPTED FINDINGS

A. Background and Administrative Resolution Attempts

1. Coastal Development Permit 5-88-056

On March 24, 1988, the California Coastal Commission approved 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, at 25351 Piuma Road, in Calabasas, Los Angeles County. At that time, the property was owned by Jack and Ann-Marie Moses and Ron and Marco Landry. The single family residence was approved to be located on one of two preexisting graded pads on the property[2].

The subject property is a 2.76-acre lot located on a northern facing slope and has drainageways on the eastern and western sides of the house. The portion of the vegetation on the property that has not been cut or cleared is dominated by drought resistant shrubs characteristic of coastal sage scrub or lower chaparral communities. The site is located in the upper portions of the Malibu/Cold Creek Resource Management Area. The northern portion of the property is adjacent to a blue line stream Environmentally Sensitive Habitat Area (ESHA) which is an unnamed tributary to Cold Creek. The property is also located near the Dark Canyon Creek ESHA.

To mitigate the adverse impacts of the residential development on the Environmentally Sensitive Habitat Area (ESHA), the Commission imposed standard and special conditions on CDP 5-88-056 as described in the following paragraphs.

Special Condition 2 requires Fuel Modification and Landscape Plans to be submitted to the Commission staff for review and approval. The approved Fuel Modification and Landscape Plans include 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 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.

Standard Condition 3 of CDP 5-88-056 states that "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." Thus, this condition requires, among other things, that all development occur consistent with the approved Fuel Modification and Landscape Plans required by Special Condition 2.

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[2]The house was proposed and approved as being located on graded pad number one. The second graded pad, graded pad number two was located just slightly northwest of the house and adjacent to Piuma Road.

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 property[3]. 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 CDP[4]. 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.

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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

deadline of December 6, 2000 for submittal of the additional information. Table 1 summarizes the missing information needed to complete CDP applications 4-99-023 & 4-99-024 based upon the items listed in the February 26, 1999 and March 15, 1999 letters.

Table 1. Initial List of Items Necessary to Complete CDP Applications 4-99-023 & 4-99-024

1.	A filing fee of $2,400. [The filing fee for each application is $1200 (the regular filing fee is $600, but ATF permits are subject to a double filing fee). The Rubinroits had submitted a check for $200 with the incomplete applications; a balance of $2200 remains unpaid.]
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.	2-sets of project drawings including site plans, floor plans, and all elevations. 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 (prepared by a registered engineer).
5.	Two copies of comprehensive, current (not more than one year old), site-specific geological and soils reports.
6.	A current LA Co. "approved" geologic review sheet.
7.	The "Approval in Concept" form completed by the local planning department or other responsible local agency.
8.	A reduced set of 8 ½ by 11 inch drawings of the project.
9.	A mapped survey of the property performed by a licensed surveyor, which indicates the location of the development and the location of the irrevocable offer to dedicated and open space easement.

On December 1, 2000, during a phone conversation with Commission staff, Mr. Rubinroit stated that he had no intention of completing either CDP application.

On January 2, 2001, Commission staff sent the Rubinroits a notice of intent (NOI) to commence cease and desist order proceedings **(Exhibit 14).** 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. Howard Rubinroit requested and Commission staff granted a five day extension from January 31, 2001 until February 5, 2001 for submittal of the Statement of Defense (SOD). Commission staff received the SOD from Mr. Rubinroit on February 6, 2001 **(Exhibit 15).**

In the process of preparing the staff report for the cease and desist order hearing, Commission staff determined that additional unpermitted development was present at the subject property which should be addressed in the cease and desist order so that all unpermitted development on the site is addressed by the Commission at one time. Commission staff requested and received authorization from Mr. Rubinroit to conduct a site inspection (a letter from Mr. Rubinroit granting authorization was received by the Commission staff on March 13, 2001.) On March 15, 2001, Commission staff member Abe Doherty conducted a site investigation and documented the

presence of additional unpermitted development other than the previously mentioned sports court, swimming pool and retaining wall.

In order to address all of the unpermitted development at the same cease and desist order hearing, the Commission staff issued an amended notice of intent to commence cease and desist order hearings on March 20, 2001 **(Exhibit 16)**. This amendment to the NOI replaced the description of the unpermitted development that was included in the NOI dated January 2, 2001 with the following description:

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. excessive vegetation removal.

In this amendment to the NOI, the description of the alleged violations was also amended to explicitly include the grading, vegetation removal and other activities associated with the construction of the unpermitted development listed above.

On March 20, 2001, Commission staff member Abe Doherty sent Mr. Rubinroit a letter memorializing the conversations from the site visit and explaining the need for the amendment to the NOI to contribute to the achievement of a comprehensive resolution of the violations of the Coastal Act on the subject property. In this letter, Mr. Doherty also informed the Rubinroits that they needed to submit proof of a permit from the Los Angeles County Building and Safety Department for repairs to the septic system as an additional filing requirement for the CDP application(s).

On April 6, 2001, Mr. Rubinroit requested and Commission staff granted a two-day extension from April 9, 2001 until April 11, 2001 for submittal of the amendment to the Statement of Defense (SOD). Commission staff received the amendment to the SOD from Mr. Rubinroit on April 11, 2001 **(Exhibit 17)**.

On April 26, 2001, the Rubinroits, through their legal counsel, submitted a request for a continuance of the cease and desist order hearing.

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.

11. County Environmental Review Board Approval.
12. Copies of all required public agency approvals for all of the development. Include minutes of any public hearing, if applicable.
13. Revised description of development that includes all of the unpermitted development at the subject property.
14. Any additional information that the Commission staff determines to be necessary to complete the application.

The Rubinroits, through their counsel, Mark Haddad, submitted a letter on April 26, 2001 to request a continuance of the cease and desist order hearing "to allow Mr. Rubinroit a reasonable opportunity to submit a complete CDP application" (Exhibit 21). The Rubinroits assert that they have yet to receive a "clear, specific and definitive list" of what is required to complete the application(s).

The Commission staff sent a letter to the Rubinroits on May 4, 2001 responding to this request and stating that the staff recommends that the hearing not be continued due to the history of the case (Exhibit 22). The Commission staff already removed a cease and desist order hearing regarding the subject property from the Commission's agenda in 1998 after the Rubinroits stated that they would submit application(s) for the unpermitted development. In letters dated February 26, 1999 and September 7, 2000, the Commission staff described the outstanding items necessary to complete the applications. After Mr. Rubinroit stated, on December 1, 2000, that he would not pursue completing the permit applications, the Commission staff reinitiated the cease and desist order proceedings. The Rubinroits have been on notice that the Commission was proceeding with the cease and desist order hearing since their receipt of the January 2, 2001 notice of intent. The Rubinroits have not demonstrated a good faith effort to submit the outstanding items; in fact, they have not submitted any of the items necessary to complete the application(s), including the majority of the filing fee and list of property owners and occupants within 100 feet of their property. The cease and desist order establishes a schedule for submittal of a complete application(s). If the Rubinroits follow through on their stated intent to complete the applications, they should not have a problem complying with paragraph B of the cease and desist order which sets forth the schedule for completion of the application(s).

3. Violations

All of the unpermitted development on the subject property violates the Coastal Act since it was undertaken without a CDP or CDP amendment. Some of the unpermitted development consists of improvements to the residence within the meaning of section 30610(a) of the Coastal Act. That section provides that improvements to single family residences are exempt from permit requirements unless they are identified in the Commission's regulations at California Code of Regulations title 14, Division 5.5. Section 13250 of these regulations state that improvements to a single family residence are not exempt if the CDP for the original structure indicates that future improvements require a permit. In this case, CDP 5-88-056 contains a condition (Special Condition 5) requiring the recordation of a document stating that all future development requires a CDP or CDP amendment. Thus, to the extent that any of the unpermitted development constitutes an improvement to the residence, it requires a CDP.

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

constructed with wood with concrete pads whereas the lower steps are constructed with wood steps without concrete.

4. A propane tank with a concrete pad is located on the northern side of the retaining wall, adjacent to the carport.
5. A tiled patio area with low walls is located in the vicinity of the pool to the north of the house. These walls likely include the 10 by 50 feet retaining wall that was approved by the County in 1996.

4. Rubinroits' Chronology

In response to the NOI to commence cease and desist order proceedings sent on January 2, 2001 and the amendment to the NOI sent on March 20, 2001, the Rubinroits submitted Statements of Defenses (SODs) dated February 5, 2001 and April 10, 2001. Their defenses and the Commission's responses are set forth in Section D of the findings. The following is a brief description of the chronology of events relating to the construction and/or performance of the unpermitted development as described by the Rubinroits in their SODs.

In his SODs, Mr. Rubinroit presents the following description of the chronology of the development at the site:

- The following development was constructed and/or installed at the time that the house was originally constructed by Mr. Moses:
    1. grading of graded pad number three (location of sports court),
    2. lighted steps on both sides of the house,
    3. propane tank,
    4. water tank,
    5. drainage system,
    6. septic system,
    7. irrigation system and
    8. some of the vegetation removal outside of the permitted limits of clearance.

- "We acquired the property after the house has been substantially completed, and a Certificate of Occupancy had issued in February 1990."

- "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 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."

- In his SOD received by the Commission on April 11, 2001, Mr. Rubinroit submitted photographs with automatic digital dates in July and October of 1990. These photographs show stairs and steps on the eastern side of the house, a propane tank, a water tank and the retaining wall located in the area of the carport.

- "The catalyst to our decision in 1995 finally to construct a pool, the so-called 'sports court', and attendant improvements, was the recommendation of our local fire station that our house, which is serviced only by a well, have a large, readily available water source."
- "We engaged a highly regarded landscape architect. . ."
- "The plans were provided to the Fire Department for their initial review."
- "On or about November 7, 1995, the plans were submitted for plan check to the Department of Building and Safety **(Exhibit 19)**. . . the only agencies that were checked as requiring a permit for our construction were the Drainage Section of the Department of Building and Safety, the Fire Prevention Bureau, the Geology/Soils Section of the Department of Building and Safety, and the Health Services Department."
- The following improvements were installed or constructed in 1996:
    1. 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 pathways alongside the house,
    6. chain link fence and gates around the pool and house,
    7. patio area with low walls near the pool,
    8. sand fill adjacent to the unnamed blue line stream,
    9. sand fill to the east of the pool,
    10. transformers and
    11. some vegetation removal (see below).
- "We deny that there was any "grading" or native "vegetation removal" in connection with the improvements installed in 1996." "The only work necessary to put down the pad for the so-called 'sports court' was to do slight leveling of the already graded pad, which was done essentially by hand. The only vegetation disturbed was some very sporadic and sparse weeds that had sprung up after the rainy season (and which normally dry out and 'disappear' starting in the Spring, and which were insignificant in comparison to the weed removal that the fire department requires us to perform each Spring.)"
- "We deny that there was any changes made to the systems (water, drainage, septic, irrigation, or otherwise) installed during the original construction of the house and improvements, other than in connection with the swimming pool. . ."

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

the previously issued permit which were required to minimize visual impacts from development at the subject property.

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:

a) the sports court,
b) swimming pool and spa,
c) retaining wall and associated carport,
d) steps and pathways on both sides of the house,
e) chain link fence and gates around pool and house,
f) water tank,
g) patio area with low walls near pool,
h) nonnative sand adjacent to the unnamed blue line stream, and
i) removal of major vegetation beyond the authorized limits.

The adverse visual impacts would be potentially worsened if the lights for the sports court, steps and pathways and other areas were used.

Section 30253: Geologic, Flood and Fire Hazards

Section 30253 states that new development shall "minimize risks to life and property in areas of high geologic, flood, and fire hazard." The findings for CDP 5-88-056 state that the property is located in an area subject to an unusually high amount of natural hazards, including landslides, slope failure and fire. The findings also state that the applicant shall assume these risks as a condition of approval. Special Condition 3 required the recordation of a deed restriction in which the applicant waived any future claims of liability for damage from such hazards. This deed restriction was recorded on August 8, 1988.

Section 30253 also states that new development shall:

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

Although the Commission cannot make a complete assessment of the consistency of the development with this Section of the Coastal Act without having a complete application(s), there is evidence that the unpermitted development may be causing erosion and geologic instability of the subject property and downgradient areas. The construction of the sports court and the patio area has the potential to accelerate the rate of erosion on the ridge by replacing a vegetated area with an impervious surface. By reducing infiltration, the development may cause an increase in the volume and velocity of discharge of stormwater from the property, thus causing erosion of downgradient areas, including the adjacent unnamed stream ESHA. The removal of major vegetation beyond the authorized limits may also lead to an increase in erosion.

The unpermitted development on the subject property may also be adversely affecting the stability of the ridge in which the unpermitted development is sited. The report entitled *Limited Geotechnical Investigation for Proposed Swimming Pool and Carport,* prepared for submittal to local authorities for approval of the development conducted in 1996, includes several statements that indicate that the unpermitted development may cause erosion and geological stability. This report states that:

> *The property did reveal the presence of past surficial slope failures on the slope below the proposed pool area. . . the slump is 15 to 20 feet downslope of the proposed pool area and headward encroachment towards the pool may continue to occur. . .Calculation(s) indicate that the existing fill slopes below the pool will continue to slump. . . The loose fill and soil in the pool and carport area are subject to downhill creep.*

This slope failure downgradient of the pool area was observed by Abe Doherty during the March 15, 2001 site investigation. The chain link fence surrounding the pool area and house is falling downhill in the area of this slump. Since the Rubinroits have not submitted information documenting the construction methods and provisions for stability of the unpermitted development, the Commission staff does not know whether the geotechnical recommendations were followed and whether the site will continue to be geologically unstable.

C. Allegations

Set forth below is a list of allegations that the Rubinroits admit or do not contest.

1. Howard and Terry Rubinroit are the owners of the property located at 25351 Piuma Road in Calabasas, Los Angeles County APN 4456-37-007. **(Admitted)**

2. The Rubinroits constructed a lighted sports court, swimming pool with spa and pump, retaining wall, carport, lighted stairway to the sports court, lighted pathway adjacent to the house, chain link fence and gates around the house and pool, patio area with low walls near the pool, nonnative sand fill adjacent to the unnamed blue line stream, nonnative sand fill to the east of the pool and transformers without obtaining a CDP or CDP amendment. **(Admitted)**

3. The subject property also contains the following: graded pad number three (location of sports court), lighted steps on both sides of the house, propane tank, water tank, drainage system, septic system and irrigation system. **(Admitted)**

4. In letters dated June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998 and August 13, 1998 and in numerous telephone conversations, Commission staff informed the Rubinroits that they should submit an application for a CDP for the removal of all unpermitted development and restoration of the site or apply for an after-the-fact (ATF) permit to retain the development. **(Admitted)**

5. Because the Rubinroits failed to submit a CDP application, Commission staff sent the Rubinroits a notice of intent to commence cease and desist proceedings letter on October 9, 1998. **(Admitted)**

6. On November 12, 1998, Mr. Rubinroit agreed to submit two CDP applications. In reliance on this commitment by Mr. Rubinroit, Commission staff removed the cease and desist order hearing from the Commission's agenda. **(Admitted)**

7. On December 9, 1998, Mr. Rubinroit informed Commission staff of his intent to file two CDP applications, one for retention of the sports court and the other for retention of the swimming pool and retaining wall. This conversation was memorialized in a letter to Mr. Rubinroit dated December 21, 1998 wherein Commission staff agreed to grant a time extension until January 15, 1999 to file both CDP applications. **(Admitted)**

8. On January 7, 1999, Commission staff granted the Rubinroits an extension until January 29, 1999 to submit the CDP applications. **(Uncontested)**

9. On January 29, 1999 the Rubinroits submitted two CDP applications; CDP 4-99-023 for approval of the sports court and CDP 4-99-024 for approval of the swimming pool and retaining wall. **(Admitted)**

10. On February 26, 1999, Commission staff sent the Rubinroits two "incomplete filing" letters (one for each application) notifying them of nine additional materials and pieces of information that they needed to submit to complete the filing of the applications. **(Admitted)**

11. As of September 2000, the Rubinroits had not submitted the required items. On September 7, 2000, Commission staff sent the Rubinroits two additional letters reiterating the earlier nonfiling letters and again identifying the nine items that are required in order for the applications to be deemed complete. Each of these letters gave the Rubinroits until December 6, 2000 to submit the additional items. **(Admitted)**

12. In a phone conversation with Commission staff on December 1, 2000, Mr. Rubinroit stated that he had no intention of completing either CDP application. **(Admitted)**

13. On January 2, 2001 the Commission sent the Rubinroits another notice of intent to commence Cease and Desist proceedings. **(Admitted)**

14. On March 15, 2001, the Rubinroits provided Commission staff with the opportunity to inspect the subject property. **(Admitted)**

15. On March 20, 2001, Commission staff sent the Rubinroits an amendment to the notice of intent dated January 2, 2001. **(Admitted)**

The Rubinroits expressly deny the following allegations:

1. The items listed in the description of the violation constitute development, require a permit from the Commission and are violations of the Coastal Act.

2. The two CDP applications that were submitted by the Rubinroits were incomplete.

3. The March 15, 2001 site inspection enabled the Commission staff to have a clearer understanding of the unpermitted development described in the NOI issued on January 2, 2001.

4. The subject property is located within or is adjacent to an Environmentally Sensitive Habitat Area (ESHA).

5. There was any grading or native vegetation removal in connection with the improvements installed in 1996.

6. There is concrete in the eastern watercourse or partially buried PVC piping that appears to be part of a drainage system on the subject property.

7. The Rubinroits deny that they performed, constructed and/or installed the following: 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 part of the removal of major vegetation beyond the

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,*

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.

3b) Mr. Rubinroit also argues that the Commission staff understood that the following development would take place as part of the project authorized by CDP 5-88-056, even though the permit did not explicitly authorize this development:

a) the lighted steps on both sides of the house,
b) the propane tank,
c) the water tank,
d) the drainage system,
e) the septic system extending out of the permitted area,
f) the irrigation system and
g) the excessive vegetation removal.

Mr. Rubinroit also refers to a plan dated February 8, 1988 (Exhibit 1 of the Amendment to the SOD) which he claims shows the "water tank, propane tank, and the location of the septic pits."[5]

Commission's Response:

The application for CDP 5-88-056 (Section II, question 2) 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, with the exception of the septic system, all of the development listed above (items a through d, f and g) were not included in the description of the proposed development. 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." In order to have been authorized by CDP 5-88-056, all of the items listed above (items a through d, f and g) should have been explicitly described as being part of the proposed development.

Although a septic system was approved as part of the development authorized by CDP 5-88-056, an exposed greywater outlet discharging directly to the ground surface was observed outside of the approved location for the septic system. This change in the location and design of the septic system was not approved by the Commission.

The plan dated February 8, 1988 that Mr. Rubinroit includes as Exhibit 1 in his amendment to the SOD was not the one that was submitted and approved by Commission staff. The file for CDP 5-88-056 contains a set of four sheets of figures which are dated November 9, 1987, with stamps indicating 1) approval in concept by the Department of Regional Planning on December 30, 1987 and 2) approval by the South Coast District Office of the Commission with an effective date of December 5, 1988. The file also contains a figure that was received by the Commission on January 29, 1988 which displays the approved location of the septic system. These plans that

[5] Mr. Rubinroit claims that the plan dated February 8, 1988 shows the water tank, propane tank and the location of the septic pits. This plan does show the water tank and septic system, but does not appear to show the propane tank.

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 Rubinroint'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 Commision 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.

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

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."

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 statues 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.

"We do not believe that either the Commission or the Executive Director has jurisdiction to commence a Cease and Desist Order proceeding, and/or to issue a Cease and Desist Order in connection with our property, and/or to take administrative action at all respecting the matters in connection with our property, and/or to take administrative action at all respecting the matters referred to in the NOIs and (NOI) Amendment. The NOIs and (NOI) Amendment allege purported violations of the 1988 permit and/or of provisions of that Permit, and violations of the provisions of the California Coastal Act of 1976. Such claims are addressable only by reference to the Attorney General for appropriate action under either Section 13172 or Section 13173 of the Commission's Regulations. A Cease and Desist Order proceeding before the Commission (or Cease and Desist Orders by the Executive Director) is appropriate, if at all, only in situations where someone is presently engaging in some activity."

Commission's response:

The commission's authority for issuing cease and desist orders is provided in Section 30810(a) of the Coastal Act that states:

> *If the commission, after public hearing, determines that any person or governmental agency* **has undertaken**, *or is threatening to undertake, any activity that (1) requires a permit from the commission without securing a permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person or governmental agency to cease and desist.* [Emphasis added.]

The phrase "has undertaken" conclusively refutes the Rubinroits' argument that the Commission's authority to issue and cease and desist order is limited to situations in which "someone is presently engaging in some activity."

Since the Rubinroits have undertaken multiple activities that (1) require a CDP or CDP amendment from the Commission and (2) are inconsistent with the previously issued permit (CDP 5-88-056), Section 30810(a) of the Coastal Act provides the Commission with the statutory authority to issue a cease and desist order. Section 30810(b) states that the cease and desist order may be subject to:

> *such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material* ***or the setting of a schedule within which steps shall be taken to obtain a permit pursuant to this division*** (emphasis added).

In this cease and desist order, the Commission is, among other actions, setting a schedule for the filing of a complete CDP or CDP amendment application to address the unpermitted development. The cease and desist order proceedings undertaken to date are in compliance with the Coastal Commission regulations on the procedures for the issuance of commission cease and desist orders set forth in Chapter 5, Subchapter 8.

Exhibits

1. Locus map for the subject property.
2. Photographs of the violation.
3. Coastal Development Permit 5-88-056.
4. Irrevocable Offer to Dedicate Open-Space Easement and Declaration of Restrictions (without exhibit B which is CDP 5-88-056).
5. Deed restriction against future development and for assumption of risk (without exhibit B which is CDP 5-88-056).
6. Page 1 of the Fuel Modification and Landscape Plans.
7. Notice of violation letter dated June 19, 1997.
8. Notice of intent to commence cease and desist order proceedings letter dated October 9, 1998.
9. Letter sent to the Rubinroits on November 13, 1998.
10. Map showing open space easement area (Exhibit 4 of CDP 5-86-056).
11. Permit for a retaining wall, issued on 4/22/96 by the Building and Safety/Land Development Division of the LA County Department of Public Works.
12. Permit for a pool/spa, issued on 2/29/96 by the Building and Safety/Land Development Division of the LA County Department of Public Works.
13. Letter granting time extension to file applications, sent to the Rubinroits on December 21, 1998.
14. Notice of Intent to commence cease and desist order proceedings letter dated January 2, 2001.
15. Statement of Defense from Howard Rubinroit, received by the Commission staff on February 6, 2001.
16. Amendment to the Notice of Intent to commence cease and desist order proceedings dated March 20, 2001.
17. Amendment to the Statement of Defense from Howard Rubinroit, received by the Commission.
18. Plan showing approved location of the septic system, received by the Commission on January 29, 1988.
19. Plan Check Document dated November 7, 1995 from the Building and Safety/Land Development Division of the LA County Department of Public Works.
20. Figure 6 of the Malibu Land Use Plan, entitled "Sensitive Environmental Resources".

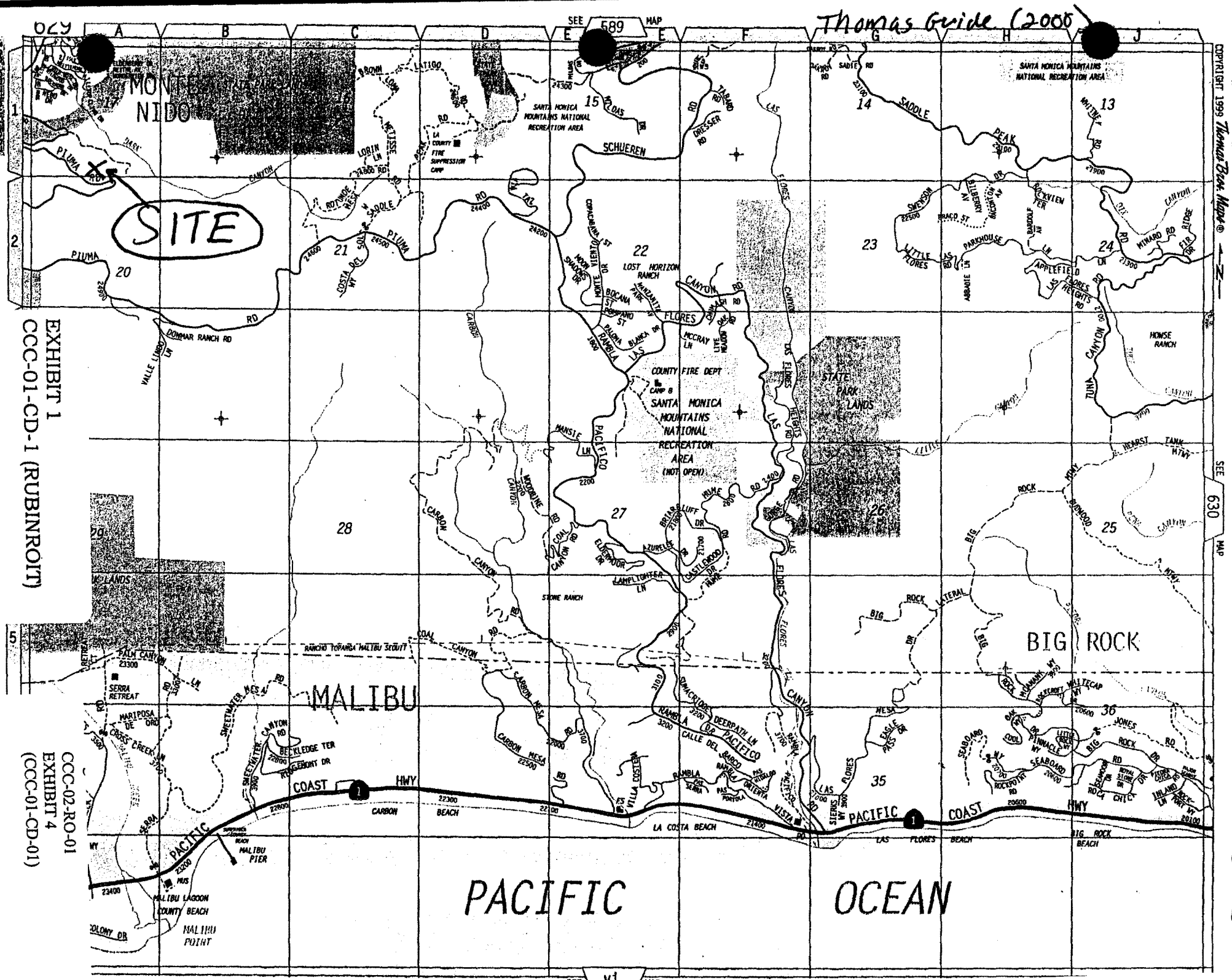


EXHIBIT 1
CCC-01-CD-1 (RUBINROIT)

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

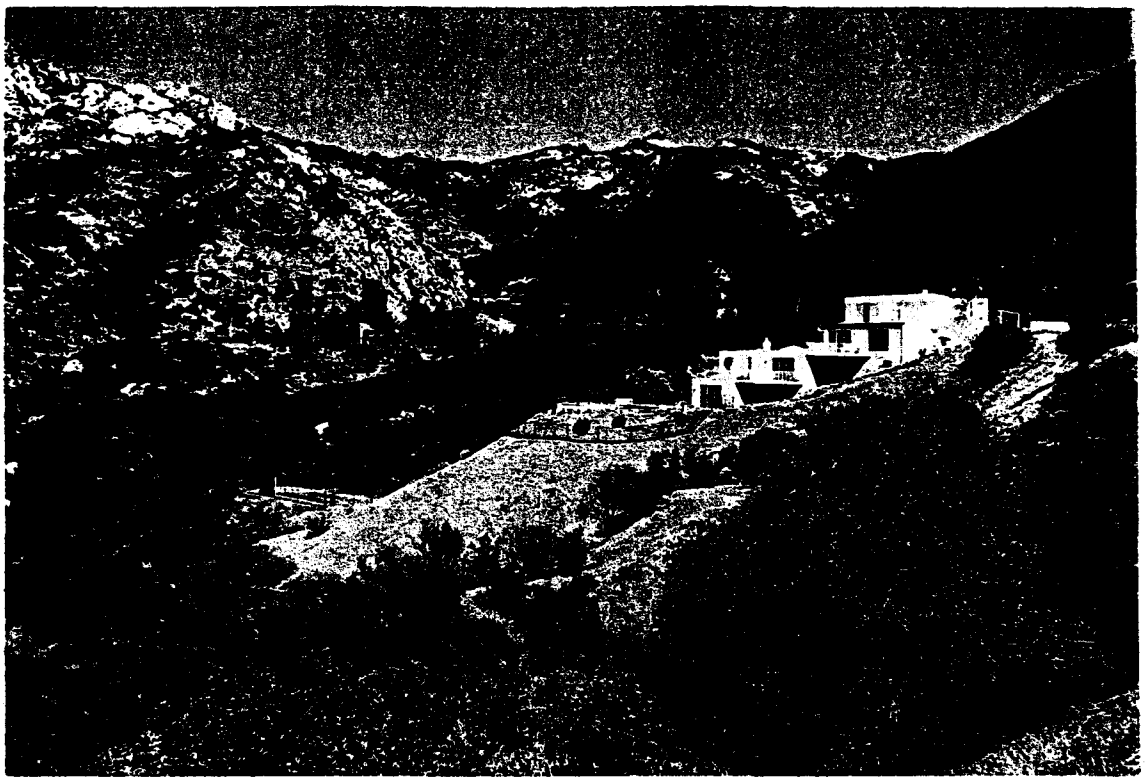


PHOTO 1 Looking east from Piuma Road at sports court, major vegetation removal outside of approved area, pool/patio area, chain link fence and residence on June 9, 1997

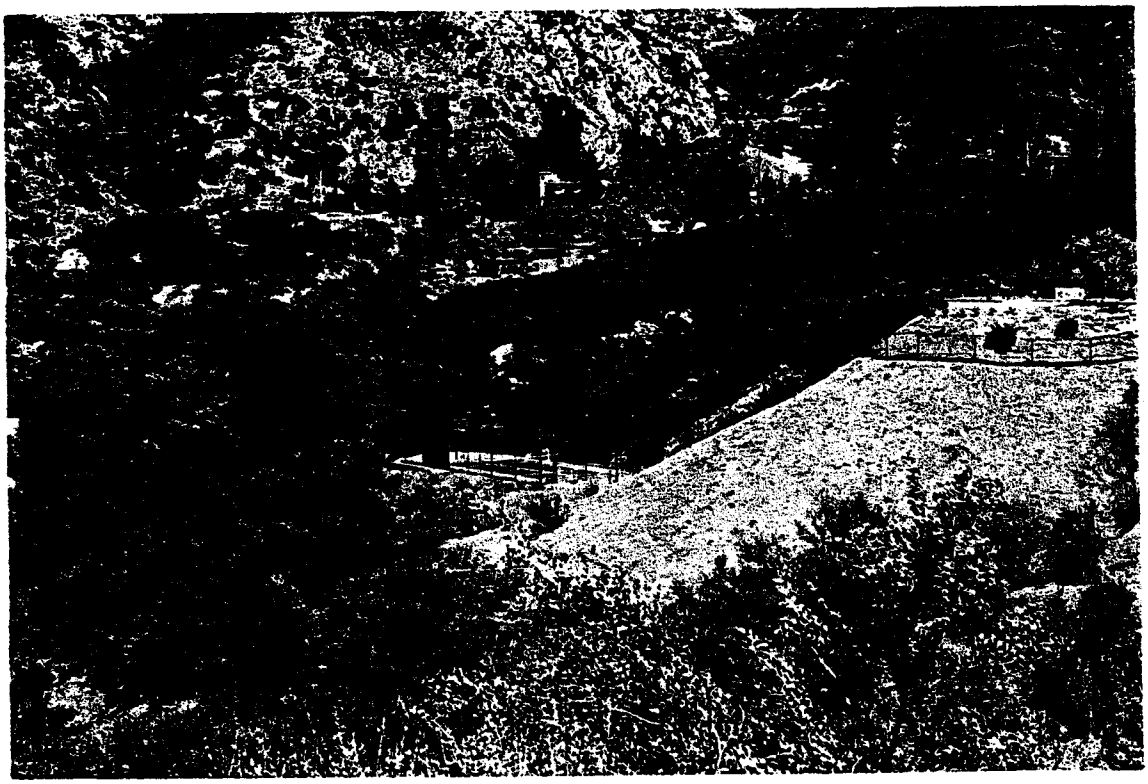


PHOTO 2 Looking east from Piuma Road at sports court, major vegetation removal outside of approved area, chain link fence and pool/patio area on June 9, 1997

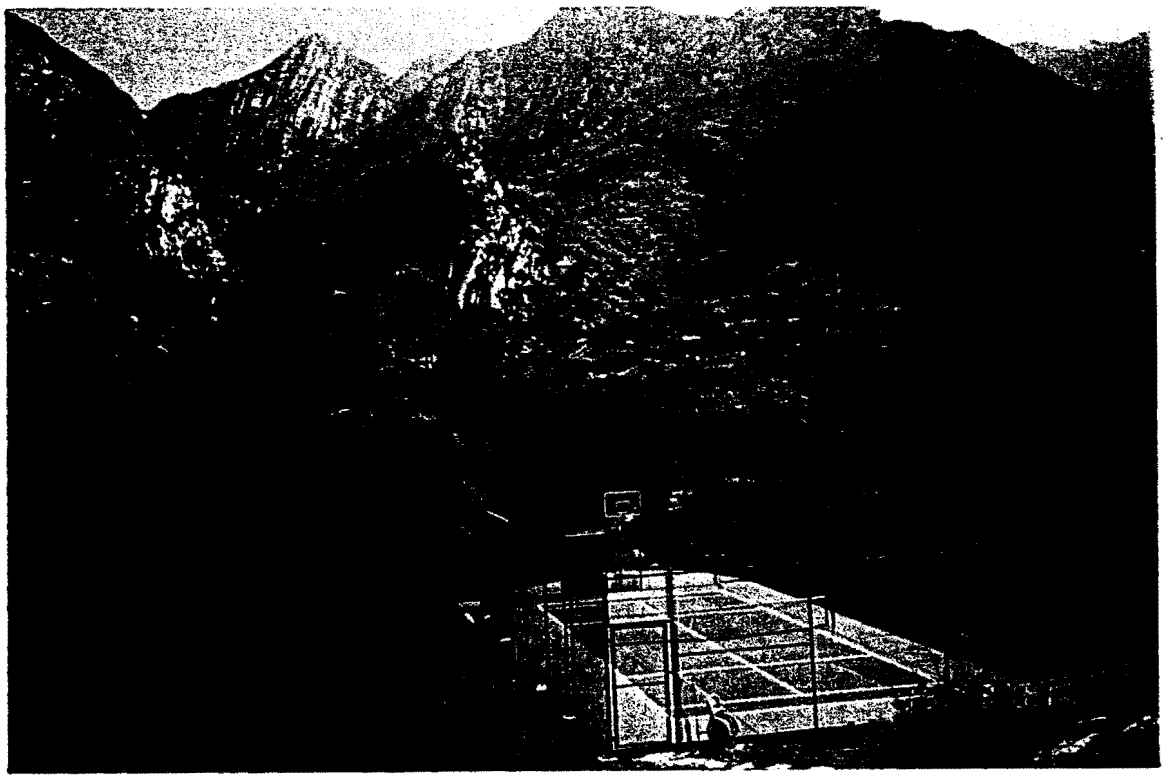


PHOTO 3 Looking north (from area south of pool) at sports court on building pad number three on March 15, 2001.

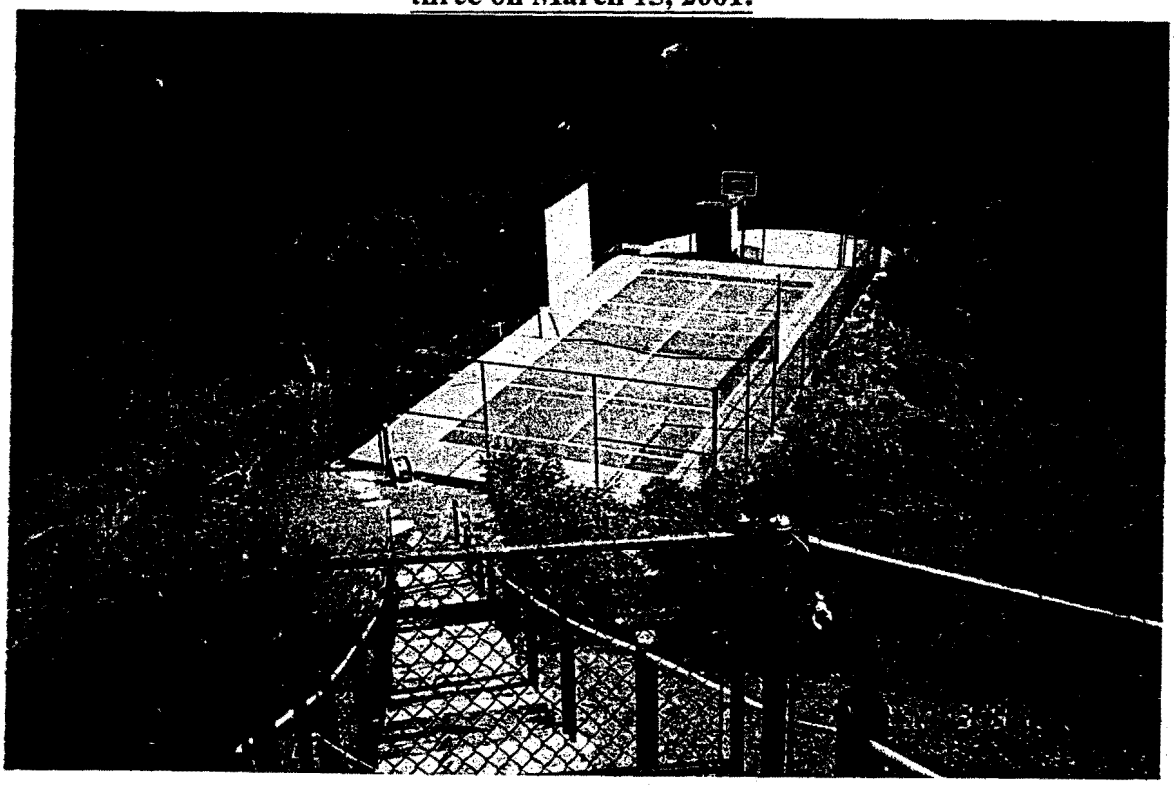


PHOTO 4 Looking north (from stairs below pool) at 1) stairs leading from pool area to sports court, 2) sports court and 3) nonnative sand fill behind basketball net, adjacent to blue line stream on March 15, 2001.

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 2
CCC-01-CD-1 (RUBINROIT)
Page 2 of 5

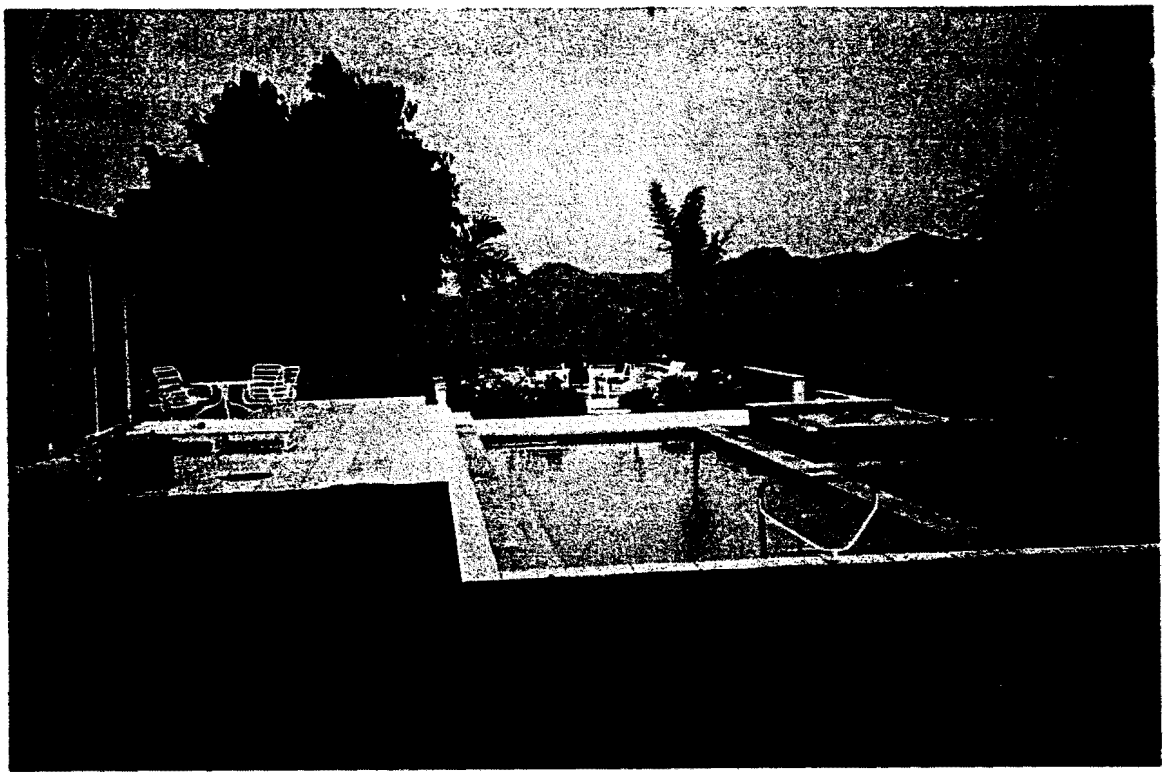


PHOTO 5 Looking west at pool, spa and patio area with low walls on March 15, 2001

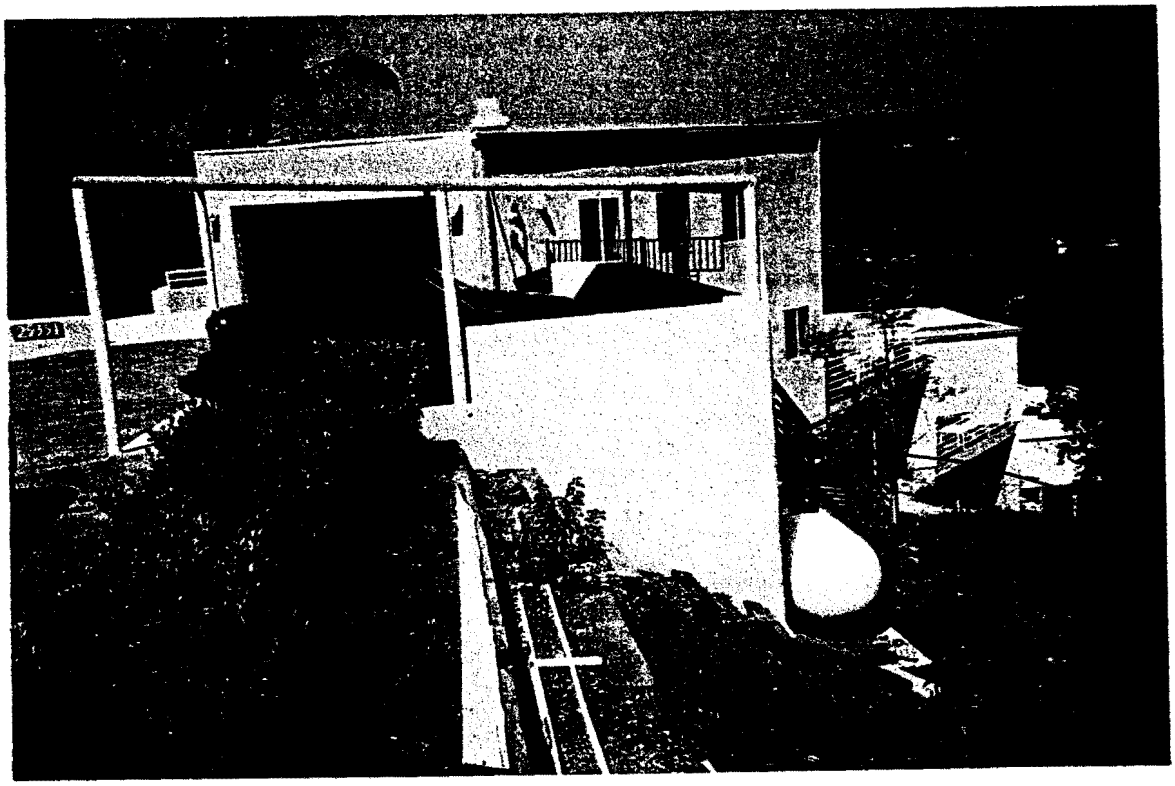


PHOTO 6 Looking west at retaining wall, carport, propane tank with concrete pad, irrigation system, chain link fence and house on March 15, 2001.

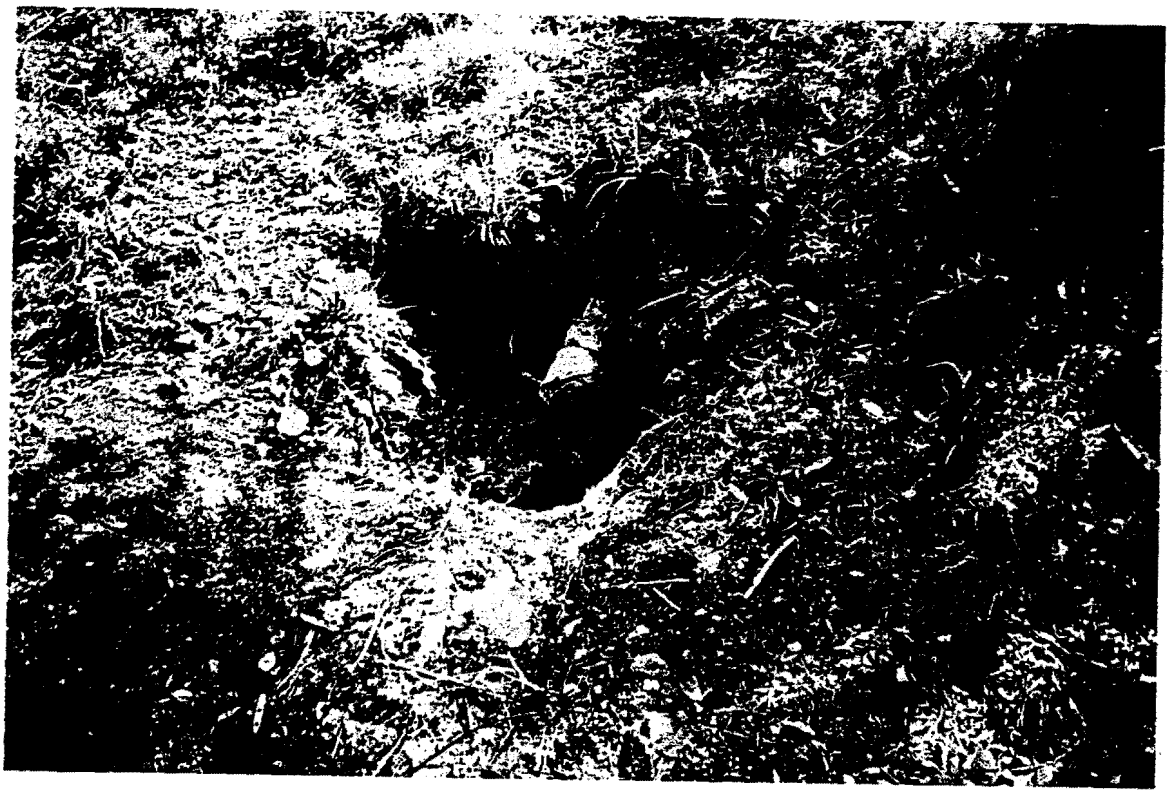


PHOTO 7 View of exposed septic/grey water outlet located on slope to the west of house on March 15, 2001



PHOTO 8 Looking south from sports court at eastern watercourse, slump area with falling chain link fence, stairs on eastern side of house, house on March 15, 2001

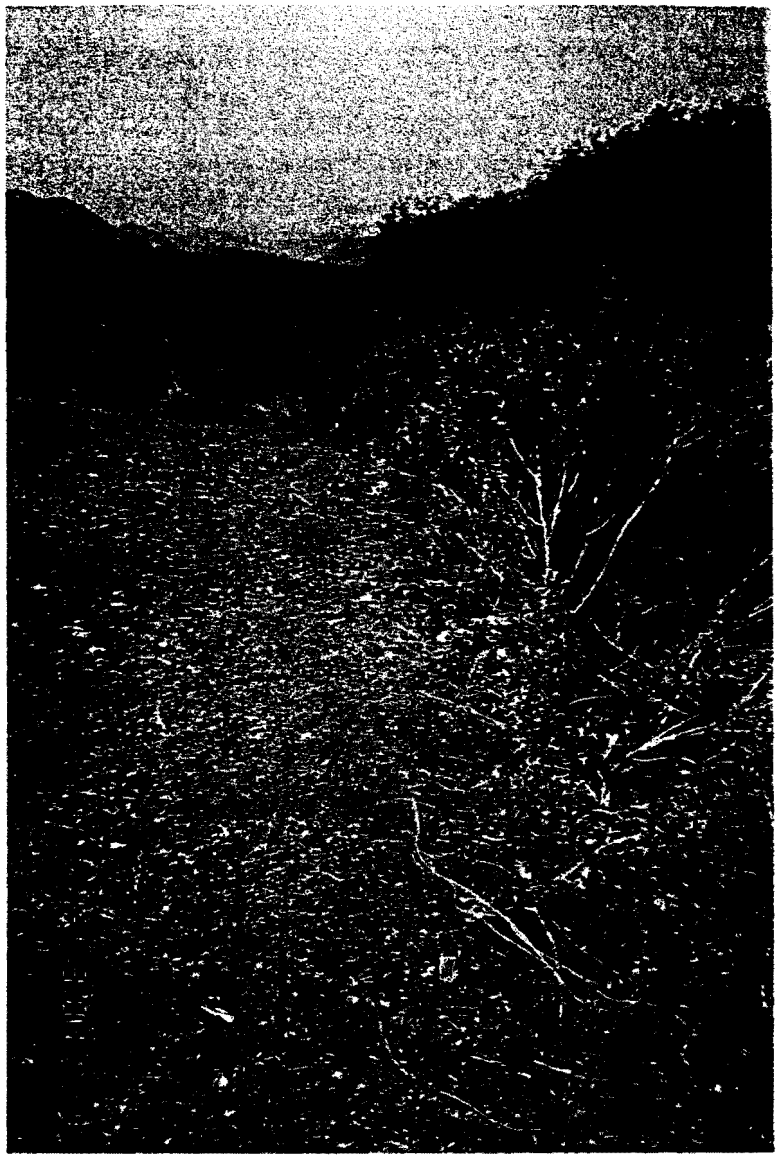


PHOTO 9 Looking west at freshly cut shrubs to the west of the sports court on March 15, 2001

CALIFORNIA COASTAL COMMISSION
SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

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
by: LARRY GAILIN

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

11/29/88
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." Th 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 chapparal, 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 unforseen 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 Piuma Road. As a result, the structure extends only 11 feet above the centerline of Piuma 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 Piuma 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 Piuma 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 accomodate 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 to require the applicant to offer to

dedicate an open space and conservation easement for ESHA 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 Piuma 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 Piuma Road, Malibu,

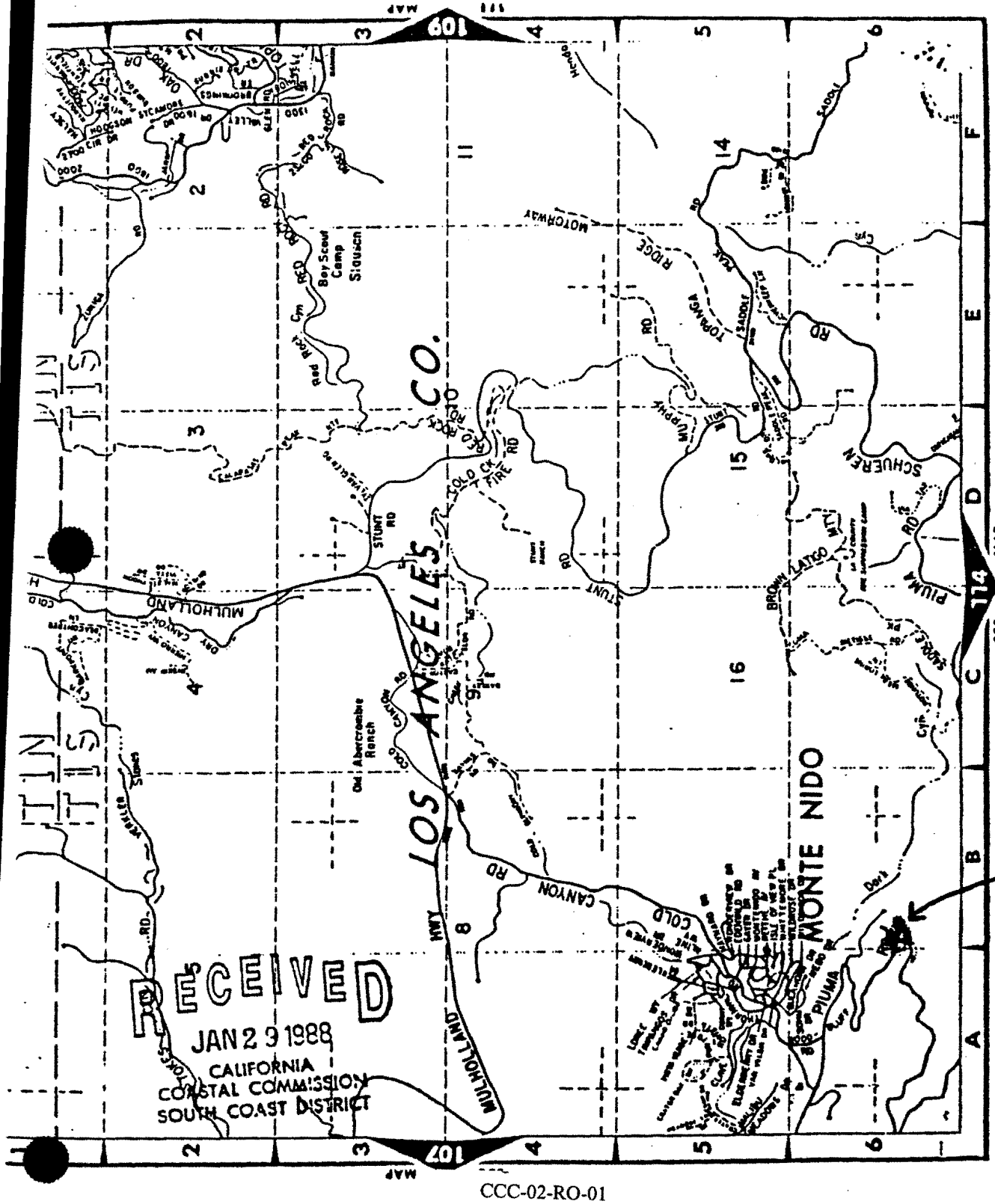
as shown in Exhibit 4. The applicant shall also submit as a part of said document a "meets and bounds" survey description of the easement. The document shall run with the land in favor of the people of the State of California, binding all successors and assignees, and shall be irrevocable for a period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

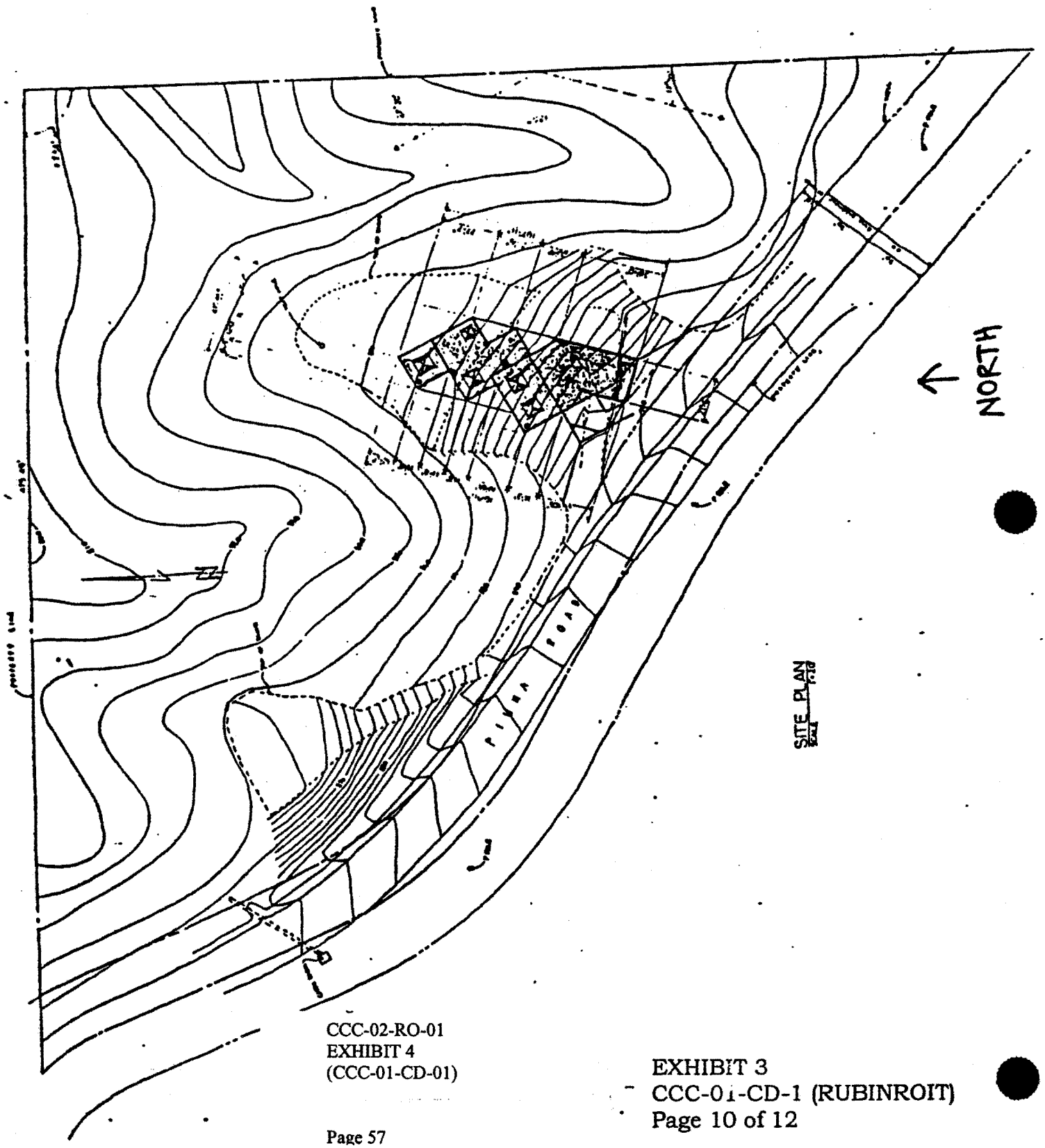
After you have signed and returned the duplicate copy of this Administrative Permit, you will be receiving the legal forms to complete (with instructions) from the San Francisco office. When you receive the documents if you have any questions, please call the Legal Department at (415) 543-8555.

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CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 3
CCC-01-CD-1 (RUBINROIT)
Page 9 of 12

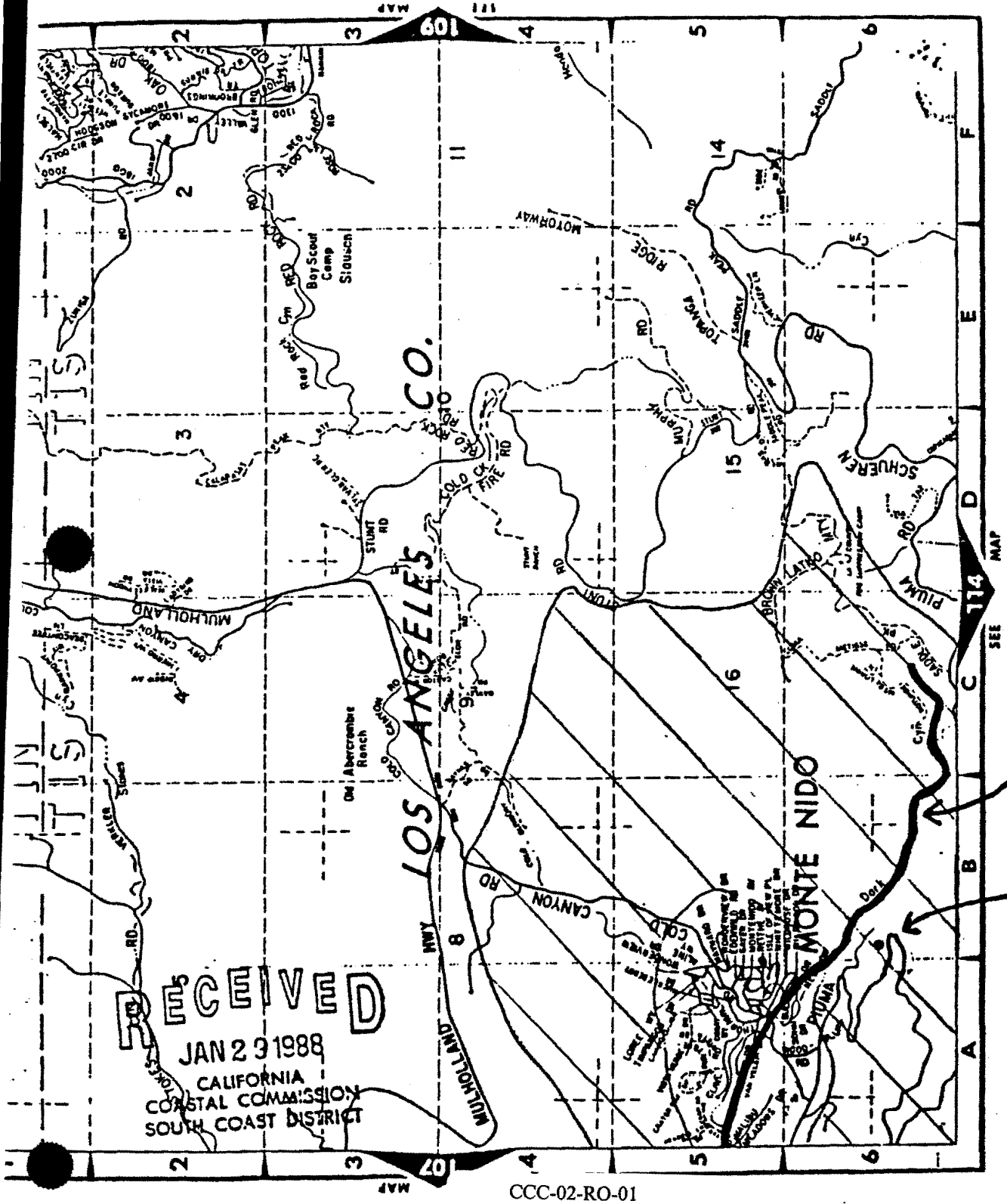


SITE PLAN

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 3
CCC-01-CD-1 (RUBINROIT)
Page 10 of 12

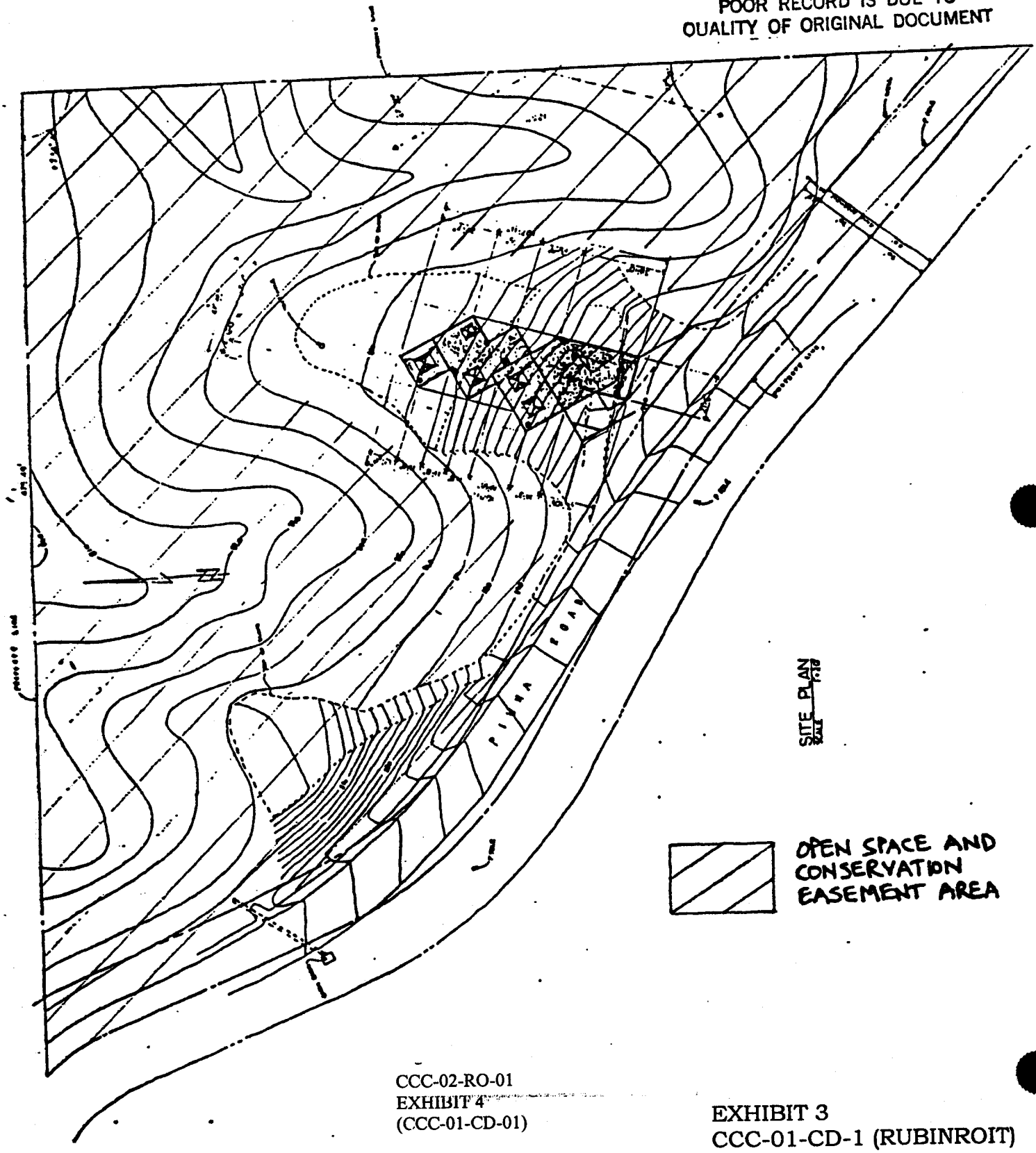
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CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 3
CCC-01-CD-1 (RUBINROIT)
Page 11 of 12

RECORDER'S MEMO:
POOR RECORD IS DUE TO
QUALITY OF ORIGINAL DOCUMENT



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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 16, 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)

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 4
CCC-01-CD-1 (RUBINROIT)
Page 1 of 13

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 8-72)
OSP

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

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 Piuma 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.

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 acordance with this Offer; and

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

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

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

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

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STATE OF CALIFORNIA
STD 113 (REV. 8-72)
OSP

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

1. USE OF PROPERTY. The use of the Protected Land shall be limited to natural open space for habitat protection, private recreation, and resource conservation uses. 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, buildings, etc, or except as approved by the Coastal Commission or its' successor agency on a subsequent Coastal Permit, shall occur or be allowed on the Protected Land with the exception of the following subject to applicable governmental regulatory requirements:

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

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

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

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

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

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D. 113 (REV. 8-72)

3. BENEFIT AND BURDEN. This offer shall run with and burden the Property, and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

5. ENFORCEMENT. Any act or any conveyance, contract, or authorization whether written or oral by the Grantor which uses or would cause to be used or would permit use of the Protected Land contrary to the terms of this Offer will be deemed a breach hereof. The Grantee may bring any action in court necessary to enforce this Offer, including but not limited to injunction to terminate a breaching activity, or an action to enforce the terms and provisions hereof by specific performance. It is understood and agreed that the Grantee may pursue any appropriate legal and equitable remedies. The Grantee shall have sole discretion to determine under what circumstances an action to enforce the terms and conditions of this Offer shall be brought in law or in equity. Any forbearance on the part of the Grantee to enforce the terms and provisions hereof in the event of a breach shall not be deemed a waiver of Grantee's rights regarding any subsequent breach.

6. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid all real property taxes and assessments levied or assessed against the Property.

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STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

7. MAINTENANCE. The Grantee shall not be obligated to maintain, improve, or otherwise expend any funds in connection with the Property or any interest or easement created by this Offer. All costs and expenses for such maintenance, improvement use, or possession, except for costs incurred by grantee for monitoring compliance with the terms of this easement, shall be borne by the Grantor.

8. LIABILITY AND INDEMNIFICATION. This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees are to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or property of any kind whatsoever and to whomsoever belonging, including Grantor, from any cause or causes whatsoever, except matters arising out of the sole negligence of the Grantee, while in, upon, or in any way connected with the Property, Grantor hereby covenanting and agreeing to indemnify and hold harmless the Grantee, its agencies, departments, officers, agents, and employees from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses however occurring. The Grantee shall have no right of control over, nor duties and responsibilities with respect to the Property which would subject the Grantee to any liability occurring on the land by virtue of the fact that the right of the Grantee to enter the land is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the land for the purposes of correcting any dangerous condition as defined by California Government Code Section 830.

88-1246285

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

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

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

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

Executed on this 16th day of July, 1988

at Canoga Park, CA.

Jack Moses
TYPE OR PRINT NAME ABOVE

Ron Landry
TYPE OR PRINT NAME ABOVE

Ann-Marie Moses
TYPE OR PRINT NAME ABOVE

Margo Landry
TYPE OR PRINT NAME

EXHIBIT 4
CCC-01-CD-1 (RUBINROIT)
Page 7 of 13

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

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O. 113 (REV. 8-72)
OSP

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

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

On this 16th day of JULY, in the year 1985,
before me JOY LEES, a Notary Public, personnally
appeared JACK MOSES, ANN-MARIE MOSES, RONALD LANDRY + MARGO LANDRY,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it.

OFFICIAL SEAL
JOY LEES
Notary Public-California
LOS ANGELES COUNTY
My Comm. Exp. Feb. 7, 1990

Joy Lees
NOTARY PUBLIC IN AND FOR SAID COUNTY
STATE

JURT PAPER
ATE OF CALIFORNIA
D. 113 (REV. 8-72)

EXHIBIT 4
CCC-01-CD-1 (RUBINROIT)
Page 8 of 13

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

-1246285

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

Dated: July 29, 1988

John Bowers

John Bowers, Staff Counsel
California Coastal Commission

STATE OF California)
COUNTY OF San Francisco)

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

DEBORAH L. BOVÉ
NOTARY PUBLIC - CALIFORNIA
CITY & COUNTY OF
SAN FRANCISCO
My Commission Expires October 4, 1991

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

OR 405C285

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STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

EXHIBIT 4
CCC-01-CD-1 (RUBINROIT)
Page 9 of 13

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

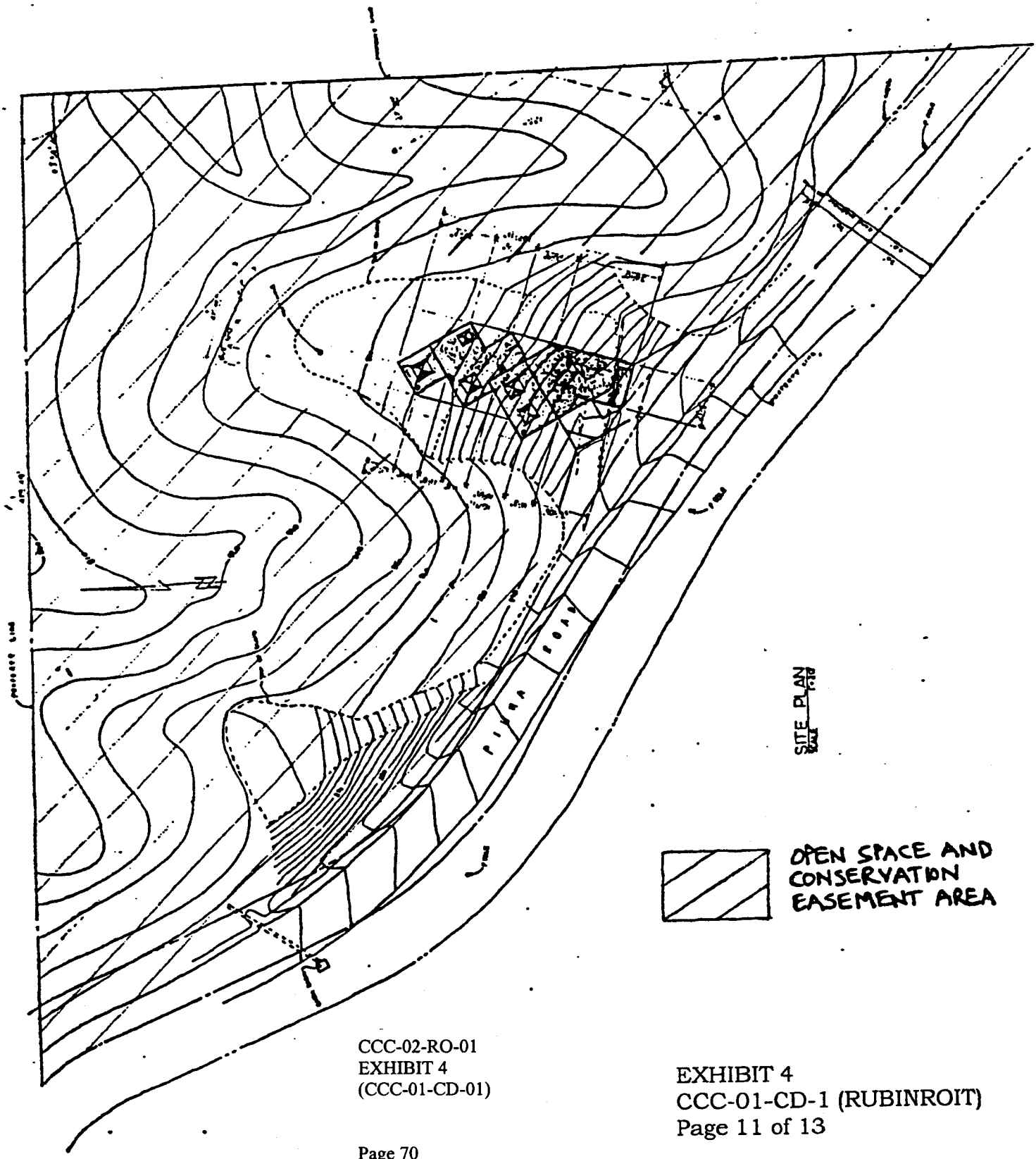
EXHIBIT A
Property

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° 54' 40" West 475.49 feet to the center line 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 center line, being a curve concave Southwesterly, (a radial line to said intersection of the Northerly line of the Northeast quarter of te Northwest quarter with said center line bears North 46° 51' 40" East) an arc distance of 34.68 feet; thence South 23° 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° 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° 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.

88-1246285



CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 4
CCC-01-CD-1 (RUBINROIT)
Page 11 of 13

88-1246285

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°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°51'40" East) an arc distance of 34.68 feet; thence South 23° 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°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°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°43'20" East, 96.00 feet to the true point of beginning. Thence, North 28°16'37" East, 120.00 feet to a point; thence, North 36°46'37" East, 40.00 feet to a point; thence, North 22°46'37" East, 36.00 feet to a point; thence, North 81°06'37" East, 22.00 feet to a point; thence, South 52°53'23" East, 34.00 feet to a point; thence, South 22°13'23" East, 56.00 feet to a point; thence, South 18°43'23" East, 36.00 feet to a point; thence, South 07°23'23" East, 27.00 to a point; thence South 30°06'37" West, 138.31 feet (more or less) to the centerline of said Piuma Road; thence along said centerline North 50°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°43'20" West, 38.48 feet to the true point of beginning.

EXHIBIT D

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

Recording Requested by and Return to
State of Cali nia
California Coastal Commission
631 Howard Street, Fourth Floor
San Francisco, California 94105

88 1246284

FEE $ 11.3 F

DEED RESTRICTION

I. WHEREAS, Jack Moses, Ann-Marie Moses, Ron Landry & Margo Landry _____, hereinafter referred to as Owner(s), is the record owner(s) of the real property located in the County of Los Angeles _____, described in attached Exhibit A, hereby incorporated by reference, and hereinafter referred to as the subject property; and

II. WHEREAS, the California Coastal Commission is acting on behalf of the people of the State of California; and

III. WHEREAS, the subject property is located within the coastal zone as defined in Section 30103 of the California Public Resources Code (hereinafter referred to as the California Coastal Act); and

IV. WHEREAS, pursuant to the California Coastal Act of 1976, the Owner applied to the California Coastal Commission for a coastal development permit for the development on the subject property; and

V. WHEREAS, a coastal development permit No. 5-88-056 was granted on March 24, 1988 by the California Coastal Commission based on the findings adopted by the California Coastal Commission attached in Exhibit B and hereby incorporated by reference; and

VI. WHEREAS, coastal development permit No. 5-88-056 was subject to terms and conditions including but not limited to the following

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// GO TO NEXT PAGE

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

IRT PAPER
E OF CALIFORNIA
113 (REV. 8-72)
OSP

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 5
CCC-01-CD-1 (RUBINROIT)
Page 1 of 8

condition:

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.

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.

VII. WHEREAS, the Commission found that but for the imposition of the above condition the proposed development could not be found consistent with the provisions of the California Coastal Act of 1976 and that a permit could therefore not have been granted; and

VIII. WHEREAS, it is intended that this Deed Restriction is irrevocable and shall constitute enforceable restrictions; and

IX. WHEREAS, Owner has elected to comply with the condition imposed by Permit No. 5-88-056 so as to enable Owner to undertake the development authorized by the permit;

//

RT PAPER
OF CALIFORNIA
113 (REV 8-72)
OEP

NOW, THEREFORE, in consideration of the granting of Permit No. 5-88-056 to the Owner by the California Coastal Commission, the Owner hereby irrevocably covenants with the California Coastal Commission that there be and hereby is created the following restrictions on the use and enjoyment of said subject property, to be attached to and become a part of the deed to the property. The undersigned Owner, for himself/herself and for his/her heirs, assigns, and successors in interest, covenants and agrees that:

1. (a) 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;

2. The subject permit is only for the development described in the coastal development permit No. 5-88-056; and that future additions or development as defined in Public Resources Code Section 30106, hereto attached as exhibit "C" and herein incorporated by reference, will require an amendment to permit 5-88-056, or will require an additional coastal development permit from the 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.

If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

Said deed restriction shall remain in full force and effect during the period that said permit, or any modification or amendment thereof, remains effective, and during the period that the development authorized by said permit or any modification of said development, remains in existence in or upon any part of, and thereby confers benefit upon, the subject property described herein, and to that extent, said deed restriction is hereby deemed and agreed by Owner to be a covenant running with the land, and shall bind Owner and all his/her assigns or successors in interest.

Owner agrees to record this Deed Restriction in the Recorder's office for the County of Los Angeles as soon as possible after the date of execution.

DATED: July 16, 19 88

SIGNED: Ann-Marie Moses

Jack Moses

Jack Moses & Ann-Marie Moses

PRINT OR TYPE NAME OF ABOVE

SIGNED: Ronald Landry Ron Landry

Margo Landry

Ron Landry & Margo Landry

PRINT OR TYPE NAME OF ABOVE

(NOTARY ACKNOWLEDGMENT ON NEXT PAGE)

EXHIBIT 5
CCC-01-CD-1 (RUBINROIT)
Page 4 of 8

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

COURT PAPER
STATE OF CALIFORNIA
STD. 113 (REV. 8-72)
OSP

NOTE TO NOTARY PUBLIC: If any party signing the attached subordination agreement is signing on behalf of a corporation, public agency, trust, partnership, etc., please use the proper notary acknowledgement (jurat).

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On this 16th day of JULY, in the year 1988, before me JOY. LEES, a Notary Public, personally appeared RONALD LANDRY & MARGO LANDRY,

personally known to me / proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to this instrument, and acknowledged that he/~~she~~/they executed it.

OFFICIAL SEAL
JOY LEES
Notary Public-California
LOS ANGELES COUNTY
My Comm. Exp. Feb. 7, 1990

Joy Lees
NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On this 16th day of JULY, in the year 1988, before me JOY LEES, a Notary Public, personally appeared JACK MOSES AND ANN-MARIE MOSES,

personally known to me / proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to this instrument, and acknowledged that he/~~she~~/they executed it.

OFFICIAL SEAL
JOY LEES
Notary Public-California
LOS ANGELES COUNTY
My Comm. Exp. Feb. 7, 1990

Joy Lees
NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

COURT F
STATE OF
STD. 113

EXHIBIT 5
CCC-01-CD-1 (RUBINROIT)
Page 5 of 8

88-1246284

This is to certify that the deed restriction set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it granted Coastal Development Permit No. 5-88-056 on March 24, 1988 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: July 29, 1988

John Bowers

John Bowers, Staff Counsel

California Coastal Commission

STATE OF California)

) ss

COUNTY OF San Francisco

On July 29, 1988, before me DEBORAH L. BOVÉ, a Notary Public, personally appeared JOHN BOWERS, personally known to me to be to be the person who executed this instrument as the STAFF COUNSEL and authorized representative of the California

TITLE

Coastal Commission and acknowledged to me that the California Coastal Commission executed it.

DEBORAH L. BOVE
NOTARY PUBLIC-CALIFORNIA
CITY & COUNTY OF
SAN FRANCISCO
My Commission Expires October 4, 1991

Deborah L. Bové

Notary Public in and for said

County and State

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 5
CCC-01-CD-1 (RUBINROIT)
Page 6 of 8

88-1246284

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° 54' 40" West 475.49 feet to the center line 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 center line, being a curve concave Southwesterly, (a radial line to said intersection of the Northerly line of the Northeast quarter of te Northwest quarter with said center line bears North 46° 51' 40" East) an arc distance of 34.68 feet; thence South 23° 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° 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° 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.

88-1246284

EXHIBIT C

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.

88-1246284

88-056

FUEL MODIFICATION AND LANDSCAPE PLANS

Fire Hazard Reduction Requirements:

1. CLEAR all hazardous flammable vegetation to mineral soil for a distance of 30 feet from any structure. Cut flammable vegetation to a height of 18 inches for another 70 feet.

Exception: This does not apply to single specimens of trees, ornamental shrubbery or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground cover, provided that they do not form a means or readily transmitting fire from native growth to any structure. Greater clearances may be required by the administrative authority.

2. 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.

Grading, Drainage and Landscape Plans:

1. All construction slopes are to be protected from erosion by the planting of ground cover, shrubs and trees as noted in the attached "Standard Specifications For Hillside Planting" which is designed to implement the requirements of the Los Angeles County Building Code.

2. Existing drainage courses located east and west of the project site shall remain unaffected by this construction. Surface waters around the building site shall be collected and diffused as necessary into energy-dissipating drainage devices as shown on the attached diagram.

3. Landscaping of the project site shall include the planting of shrubs and/or trees in the locations shown on the site plan in the manner specified from the attached "Standard Specifications For Hillside Planting". The intent of this landscaping is to screen and/or soften the visual impact of the development.

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
641-0142

CERTIFIED MAIL

June 19, 1997

Howard and Terry Rubinroit
25351 Piuma Road
Calabasas, CA 91302

Violation File Number: V-4-MAL-97-31

Property Location: 25351 Piuma Road

Re: Non-compliance with Coastal Development Permit 5-88-056

Dear Mr. Rubinroit:

Our office has confirmed that development undertaken on your property does not fully comply with the terms and conditions of previously issued coastal development permit 5-88-056. The unauthorized development includes construction of a tennis court in an area designated as "open space" land and excess removal of vegetation.

The Coastal Commission issued coastal development permit 5-88-056 on March 24, 1988 for a single family residence at 25351 Piuma Road in Los Angeles County. Standard Condition 3 attached to your permit states:

> ***All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.***

In addition, Special Condition 2 of your permit requires that landscape plans are approved prior to any development. Within the approved landscape plans, removal of vegetation to mineral soil is allowed to a maximum of 30 feet from any structure and construction slopes are to be protected from erosion by the planting of ground cover. However, the removal of vegetation on your property exceeds the amount allowed on the permit. According to Special Condition 4 of your Coastal Development Permit an irrevocable offering of open space is required for Environmentally Sensitive Habitat Area resource. The Declaration of Restrictions of an open space easement states:

> ***No development including but not limited to removal of trees and other major native vegetation, grading, paving, installation of structures such as signs, buildings, etc. shall be allowed on the Protected Land.***

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 7
CCC-01-CD-1 (RUBINROIT)
Page 1 of 2

Your tennis court appears to lie within the area dedicated for open space which is a violation of your permit.

Please be advised that non-compliance with the terms and conditions of an approved permit constitutes a violation of the Coastal Act. Coastal Act sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a) of the Coastal Act provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed $30,000. Further, Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of not less than $1000 nor more than $15,000 for each day in which the violation persists.

Although you are entitled to submit a permit application for this project, this development or activity does not appear to be consistent with the terms and special conditions of your Coastal Development Permit. Section 13166 of the California Code of Regulations states:

> ***An application for an amendment shall be rejected if, in the opinion of the executive director, the proposed amendment would lessen or avoid the intended effect of a partially approved or conditioned permit...***

As such our staff could reject an amendment to retain development. Therefore, in order to avoid a delay in resolution of this violation we are requesting that you please submit a completed Coastal Permit Application for the removal of the tennis court and the restoration of the site of the unpermitted development to this office by July 24, 1997. If we do not receive a coastal development permit application by July 24, 1997, we will be forced to proceed with enforcement action which could include a referral of this matter to our Statewide Enforcement Unit in San Francisco for further legal action.

Thank you for your anticipated cooperation.

Sincerely,

John Ainsworth
Enforcement Supervisor

Sue Brooker
Enforcement Assistant

encl: CDP Application, waiver

File: rubinroit.doc/

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 7
CCC-01-CD-1 (RUBINROIT)
Page 2 of 2

STATE OF CALIFORNIA – THE RESOURCES AGENC
PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
AND TDD (415) 904-5200

REGULAR AND CERTIFIED MAIL (Article No. P 121 002 771)

October 9, 1998

Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

SUBJECT: Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File No. V-4-MAL-97-31

Dear Mr. Rubinroit:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a consequence of unpermitted development activities on your property (APN 4456-37-007) at 25351 Piuma Road in Calabasas, Los Angeles County.

The above-referenced violation file concerns development (as that term is defined in section 30106 of the Coastal Act) that is inconsistent with the permitting requirements contained in section 30600 of the California Coastal Act. This development consists of construction of a "sports court," a swimming pool, and a retaining wall. These developments were not authorized by previously issued Coastal Development Permit (CDP) No. 5-88-056 or by any subsequent CDP or permit amendment.

We have previously indicated to you that the sports court requires a CDP, and that your failure to apply for and obtain after-the-fact permit approval for this unauthorized development activity constitutes a violation of the Coastal Act. By letters to you dated June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998, and August 13, 1998, and telephone conversations with you on July 8, 1997, and October 6, 1997, Commission staff recommended that you resolve this matter administratively by submitting an application for a coastal development permit for the removal of the unpermitted sports court and the restoration of the site. As of the date of this notice, you have failed to submit a coastal development permit application to either remove or retain the unpermitted sports court.

Recently we discovered that you also have constructed a swimming pool and a retaining wall on your property. As is the case with the sports court, these activities must be permitted by the Commission. Your failure to obtain a CDP for these activities as well causes us to include the swimming pool and the retaining wall within the scope of the Cease and Desist Order in which the proceedings initiated by this letter may result.

Our last letter to you, dated August 13, 1998 (enclosed), informed you that if you failed to submit a CDP application for removal of the sports court and restoration of the site, Commission staff would initiate Cease and Desist Order proceedings. Therefore, by this letter, Commission staff is notifying you of its intent to commence a proceeding to recommend that the Commission issue a Cease and Desist Order pursuant to Public Resources Code section 30810. The order would require that you cease and desist from 1) engaging in any further development activity at the property without first obtaining a coastal development permit or permit amendment that authorizes such activity, and 2) continuing to maintain any development on the property that violates the Coastal Act.

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 8
CCC-01-CD-1 (RUBINROIT)
Page 1 of 2

In accordance with the Commission's regulations, you have the opportunity to respond to the staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. California Code of Regulations, Title 14, Section 13181(a) requires the return of a completed Notice of Defense form. **The completed Statement of Defense form must be received by this office no later than November 6, 1998.** Should you have any questions, please contact Mary Travis at (415) 904-5294.

Sincerely,

James W. Burns
Chief Deputy Director

Enclosures

STATE OF CALIFORNIA – THE RESOURCES AGENC. PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
E AND TDD (415) 904-5200

November 13, 1998

Howard J. Rubinroit
555 West Fifth Street
Los Angeles, CA 90013

Violation File Number:	V-4-MAL-97-31
Property Location:	25351 Piuma Road, Calabasas; Los Angeles County APN 4456-37-007
Violation Description:	Unpermitted construction of a "sports court," a swimming pool, and retaining walls

Dear Mr. Rubinroit:

Thank you for talking with Nancy Cave and me yesterday about reaching an amicable resolution to the above-referenced violation case. This letter will confirm the outcome of our telephone conversation. You agreed that you would proceed with filing a coastal development permit application for "after the fact" approval of the unpermitted developments that are the subject of the violation investigation ("fencing and decking," a.k.a. "sports court" or "children's play court," swimming pool, and retaining walls). We agreed that we would postpone our cease and desist proceeding to allow you time to file a complete application. You agreed to a filing deadline of four weeks; in other words, you will submit a CDP application to the South Central Coast Area Office by **December 11, 1998.**

We have made this agreement with the understanding that we will be willing to grant you an extension if you demonstrate a good-faith effort to file on time, but that if you fail to meet the deadline or to demonstrate a good-faith effort to do so, we will proceed with a cease and desist order hearing at the January 1999 Commission meeting. We have explained to you that we cannot guarantee approval of your developments, or of every aspect of your developments. Staff cannot guarantee any applicant in advance of receiving a filed application that we will recommend approval of a CDP application, nor can staff presume to speak for the Commission, which may accept or reject staff recommendations on a specific CDP application.

In response to points you raised in your Statement of Defense, we attempted to explain the after-the-fact permit process and clarify statements we had made in past communications with you. When we advised you that "staff most likely would recommend denial of a request to retain" the sports court, we were trying to give you advance notice that we thought your proposed project appeared inconsistent with Chapter 3 of the Coastal Act, and that you risked expending your time, energy, and money in vain. We did not intend to suggest that you do not have the right to file an application to retain; you have the right to file for any proposed development. Nor did we intend to suggest that such an application would automatically be denied because the development had been done in violation of the Coastal Act. While we cannot guarantee approval, we can guarantee a fair process. Staff will base its review of any application you submit solely on the proposed project's consistency with the Chapter 3 policies of the Coastal Act. The fact that these developments already were built and are the subject of a violation investigation will be included in the staff report to the Commission, but will not prejudice either staff review or the Commission's decision. Finally, by filing an application, you do not waive your right to claim that a CDP is not required. I would suggest that you make that argument in a cover letter that you include with your completed application at the time of filing. You also have the right to protest any term or condition attached to your permit.

You requested that I send you a permit application. Unfortunately, our office seems to be out of applications for the South Central Coast Area. I have already asked Sue Brooker of our Ventura office to send you an application. I do enclose a copy of the recorded offer to dedicate, which has among its attachments the adopted findings for CDP No. 5-88-056. I also enclose a copy of the deed restriction recorded pursuant to that CDP.

In your Statement of Defense you argue that the work you have done on your property comprises "improvements" that are exempt from permit requirements. I refer you to the language regarding "future development" in the deed restriction, which specifies that "any future additions *or development* as defined in Public Resources Code Section 30106 ...will require an amendment...or...an additional coastal development " (emphasis added). Similarly, the offer to dedicate states that "no development as defined in (P.R.C. Section) 30106" shall occur on the open space easement "except as approved by the Coastal Commission." Please note that "improvements" still constitute "development" under section 30106. When approving a permit in an area where there is concern about a resource issue, the Commission frequently attaches "future development" conditions specifically to ensure that it will be able to review any future development at a given property, even development that would otherwise be exempt.

Upon receiving this letter, you should contact either Jack Ainsworth or Sue Brooker at the Coastal Commission's South Central Coast Area Office (805/641-0142) to schedule a pre-application filing meeting. They will discuss with you the specific materials you need to include with your application and give you any guidance you need on how to proceed.

If you have any questions about or comments on the contents of this letter, please feel free to call me at (415) 904-5294. Thank you again for your cooperation in resolving this matter.

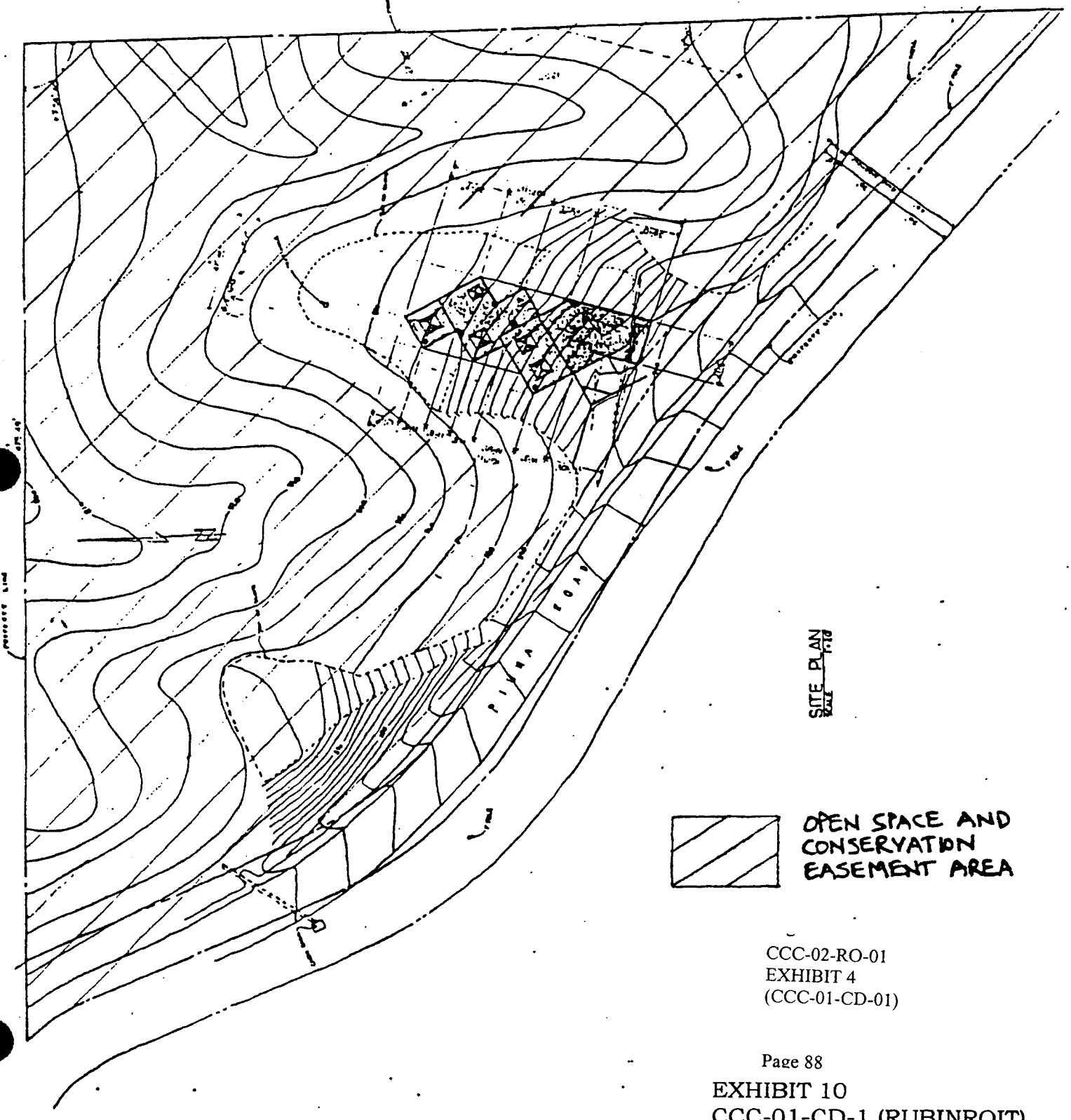
Sincerely,

Mary Travis
Statewide Enforcement Analyst

Enclosures

cc: Nancy L. Cave, Supervisor, Statewide Enforcement Program
John Ainsworth, Enforcement Supervisor, South Central Coast Area Office
Sue Brooker, Enforcement Officer, South Central Coast Area Office

RECORDER'S MEMO:
POOR RECORD IS DUE TO
OUALITY OF ORIGINAL DOCUMENT



OPEN SPACE AND
CONSERVATION
EASEMENT AREA

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 10
CCC-01-CD-1 (RUBINROIT)

88-1246284

PAGE 10/13
MAR-7 '' 4:14PM;
1111111111;
:NT BY: CALABASAS OFFICE;

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY / LAND DEVELOPMENT

CALABASAS/MALIBU # 0910
4111 LAS VIRGENES
CALABASAS CA
PHONE: (818) 880-4150 EXT:

BUILDING PERMIT
RETAINING WALL
BL 0910 9604220007

LEGAL TO:
ON FILE

ASSESSOR INFORMATION NUMBER:
4456-037-007

TENANT:

OWNER: TEL. NO:
RUBINROIT, HOWARD (818) 991-1646-
25351
CALABASAS CA91302

APPLICANT: TEL. NO:
CONTEMPO (310) 476-3675-
654 SEPULVEDA BLVD.
LOS ANGELES CA 90019

CONTRACTOR: TEL. NO:
CONTEMPO (310) 476-3675-
654 N. SEPULVEDA BLVD LIC. NO
LOS ANGELES CA 90019 518132 B *

ARCHITECT OR ENGINEER: TEL. NO:
GOODMAN, HERMAN (818) 718-1957-
14401 SYLVAN ST LIC. NO:
VAN NUYS CA 7155

MAP NO: SEWER MAP BOOK: PAGE: FIRE ZONE: CMP:
138-077 00

NO. OF FAMILIES: DWELLING UNITS: APT/COND: STAT CLASS:
NO 20

AIR QUALITY: SCHOOL WITHIN 1000 FEET: HAZARDOUS MATERIALS:
NO NO

TOTAL HEIGHT: 10 FT
RETAINING HEIGHT: 10 FT
WALL LENGTH: 50 FT

EXIST BLDG USE:
EXIST OCC GRP:

BLDGS. NOW ON LOT: VALUATION:
10,000

FEES PAID

FEE DESCRIPTION:	QUANTITY:	UOM:	AMOUNT:
AA BLDG PERMIT ISSUANCE			18.20
AE STRONG MOTION OTHER	10000.00	VAL	2.10
D1 PLANCHECK W/O EN-NC	10000.00	VAL	121.29
D2 PERMIT W/O EN-NC	10000.00	VAL	142.70
	TOTAL FEES		284.29

* ADDITIONAL DATA ON FILE

REPORT ID: DPR261 ROUTE TO: 850910

BUILDING ADDRESS:
25351 PIUMA RD W
CLBS CA 91302
NEAREST CROSS STREET: COLD CYN
THOMAS PAGE: 628 GRID: H1 LOCALITY: CALABASAS

ISSUED ON: PROCESSED BY: EXPIRES ON:
04/22/96 SN 04/22/97

FINAL DATE FINAL BY: CODE:
4-23-96

DESCRIPTION OF WORK
10FT. X 50FT RETAINING WALL

SPECIAL CONDITIONS:
IN CONJUNCTION WITH GEO & SOIL APPROVAL 2/22/96

APPROVALS	DATE	INSPECTOR SIGNATURE
LOCATION AND SETBACKS		
SOILS ENGINEER APPROVAL		
FOUND/TRENCH FORMS	9-22-96	
FORMS/GROUT LIFT	4-23-96	
2ND GROUT LIFT		
3RD GROUT LIFT		
WALL DRAIN		
BACKFILL COMPACTION		
SURFACE DRAINAGE		

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

Page 89
EXHIBIT 11
CCC-01-CD-1 (RUBINROIT)

☐ I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and agree that if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

Date 2-27-96 Applicant ContempoPools

WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS ($100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.

CONSTRUCTION LENDING AGENCY

I hereby affirm under penalty of perjury that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ.C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state under the penalty of perjury that the above information is correct. I agree to comply with all city and county ordinances and state laws relating to building construction, and hereby authorize representatives of this county to enter upon the above-mentioned property for inspection purposes.

Marty Esterline 2-27-96

Signature of Applicant or Agent *Date*

Complete this section for permits in unincorporated Los Angeles County only.

LOBBYIST ORDINANCE CERTIFICATION

This is to certify that I, as permit applicant, am familiar with the requirements of Los Angeles County Code Chapter 2.160 et seq., (relating to the Los Angeles County Lobbyist Ordinance) and that all persons acting on behalf of myself complied and will continue to comply therewith throughout the application process.

Martha Esterline Marty Esterline

Applicant (Print Name) *Applicant Signature*

Kerry Perrault 2-29-96

Company Name (if employed by an entity/agency) *Date*

COMBINATION SWIMMING POOL

CP 0910 9511070001

CALABASAS/MALI[illegible]
4111 LAS VIRGENE[illegible]
CALABASAS CA
Phone: (818) 880-4150 Ext:

BUILDING ADDRESS:
25351 PIUMA RD U
CLBS CA 91302

LOCALITY:
CALABASAS

NEAREST CROSS STREET:
COLD CYN

ALIAS:

LEGAL ID:
ON FILE

ASSR INFO NBR:
4456-037-007

OWNER: TEL. NO:
RUBINROIT, HOWARD
25351
PIUMA RD
CALABASAS CA91302

CONTRACTOR: TEL. NO:
CONTEMPO (310) 476-3675
654 N. SEPULVEDA BLVD LIC. NO:
LOS ANGELES CA 90049 518132

APPLICANT: TEL. NO:
TERRY RUBINROIT (818) 222-4431
25351 PIUMA RD
CALABASAS CA 91302

ARCHITECT OR ENGINEER: TEL. NO:
GOODMAN, HERMAN (818) 786-3387
14401 SYLVAN ST LIC. NO:
VAN NUYS CA PE 1155

LOT SIZE:	SQ. FT. SIZE:	MAP NO:	POOL TYPE:
	432	138-077	RESIDENTIAL/SPA

USE ZONE:	STATISTICAL CLASS:	CONSTR. TYPE:
A-1	31	V

SPECIAL CONDITIONS:
GEO/SOIL APPROVED 2-22-96/FD 11-16-95/FC 1-25-96

DESCRIPTION OF WORK:
INSTALL NEW SWIMMING POOL

REQUIRED SET BACK	YARD:	HWY:	TOTAL SETBACK FROM PROP LINE:	EXIST WIDTH:
FRONT PL-	20	10	30	60
SIDE PL-				

ISSUED ON: 02/29/96 PROCESSED BY: SH

FINAL DATE: 5-29-96 FINAL BY:

VALUATION: 30,000

FEES PAID-

FEE DESCRIPTION:	QUANTITY:	UOM:
14 COMB POOL PLANCHECK	30000.00	VALUATN
02 PERMIT ISSUANCE FEE		
06 COMB POOL PERMIT	30000.00	VALUAT
08 STRONG MOTION RESID	30000.00	VALUAT
	TOTAL FEES	

EXHIBIT 12
CCC-01-CD-1 (RUBINROIT)
Page 1 of 2

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)
Page 90

NT BY: CALABASAS OFFICE; 11111111; MAR-7 4:15PM; PAGE 12/13

Date

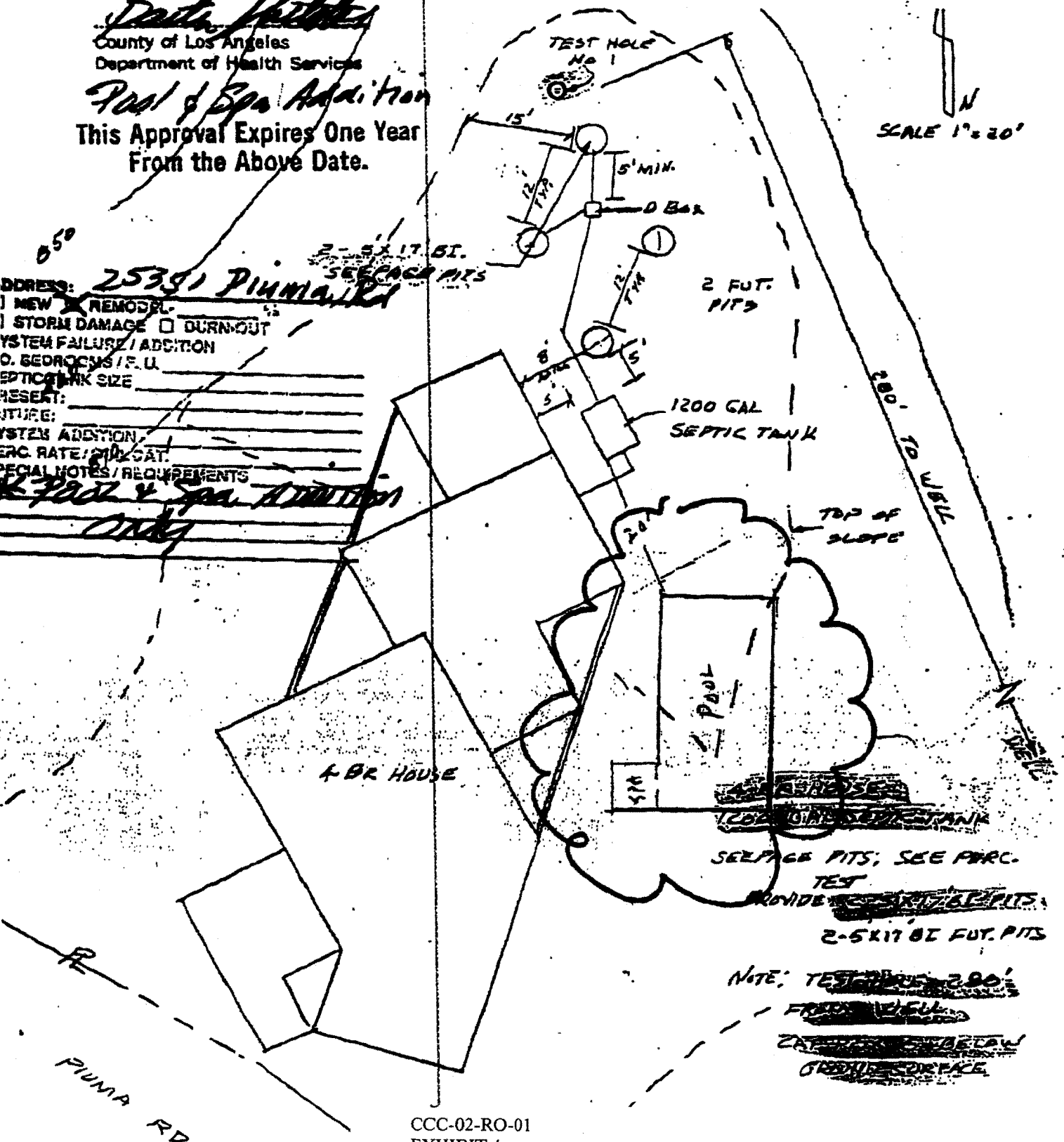
Method of Sewage Disposal approved. This approval relates only to the minimum requirements of the Plumbing Code and does not include an evaluation of geological problems.

County of Los Angeles
Department of Health Services

Pool & Spa Addition

This Approval Expires One Year From the Above Date.

ADDRESS: 25351 Piuma Rd
[ ] NEW [X] REMODEL
[ ] STORM DAMAGE [ ] BURN-OUT
SYSTEM FAILURE / ADDITION
NO. BEDROOMS / F. U.
SEPTIC TANK SIZE
PRESENT:
NATURE:
SYSTEM ADDITION
PERC. RATE / SOIL CAT.
SPECIAL NOTES / REQUIREMENTS
Pool & Spa Addition Only



CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
[redacted]OUTH CALIFORNIA ST., SUITE 200
[redacted]URA, CA 93001
(805) 641-0142

December 21, 1998

Howard Rubinroit
555 West Fifth Street
Los Angeles, CA 90013

Violation File Number: V-4-MAL-97-031
Property Location: 25351 Piuma Road, Calabasas; Los Angeles County
APN 4456-037-007
Violation Description: Unpermitted construction of a "sports court," swimming pool, and retaining walls

Dear Mr. Rubinroit

This letter is in regards to our telephone conversation on December 9, 1998 regarding the above-referred alleged violation. After speaking with John Bowers and Mary Travis from our legal department, you have agreed to submit two separate coastal development permit applications. One application will be for the after-the-fact approval for the construction of a retaining wall and swimming pool. The second application is for the after-the-fact approval for the "sports court" area.

During our conversation you asked if the first application for the swimming pool and retaining walls could be processed as a permit waiver. As I have explained, once our office receives all of the information for the proposed development including site plans, a current geology report, and proof of local approval, Commission staff can determine if the proposed project will qualify as a waiver under 14 California Code of Regulations.

In response to your request for an extension from your December 11, 1998 deadline, we have extended your deadline for submittal of an application until January 15, 1998. However, I would like to remind you that failure to meet the deadline or to demonstrate a good-faith in going so, will result in proceeding with the Commission's cease and desist order hearing.

If you have any questions regarding the coastal development permit application please contact our office at (805) 641-0142.

Sincerely,

Sue Brooker

Sue Brooker
Coastal Program Analyst

File: smb/ltr/ Rubinroit 12-21-98.doc

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 13
CCC-01-CD-1 (RUBINROIT)

STATE OF CALIFORNIA – THE RESOURCES AGENCY
GRAY DAVIS *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

REGULAR AND CERTIFIED MAIL (Article No. Z 210 986 709)

January 2, 2001

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

SUBJECT: Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File No. V-4-97-31

Dear Mr. Rubinroit:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a consequence of unpermitted development activities on your property (APN 4456-37-007) at 25351 Piuma Road in Calabasas, Los Angeles County.

History of the Violation Investigation

The above-referenced violation file concerns development (as that term is defined in section 30106 of the Coastal Act) that is inconsistent with the permit requirements of section 30600 of the California Coastal Act. This development consists of construction of a "sports court" (decking and fencing), swimming pool, and retaining wall. The development occurred in 1996 and was not authorized by previously issued Coastal Development Permit (CDP) No. 5-88-056 or by any subsequent CDP or permit amendment.

As we have previously indicated to you, construction of the "sports court," swimming pool, and retaining wall required a CDP, and your failure to obtain a CDP prior to construction constitutes a violation of the Coastal Act. By letters to you dated June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998, August 13, 1998, and on October 9, 1998, and in numerous telephone conversations since June 1997, Commission staff informed you that you could resolve this matter without further enforcement actions by submitting an application for a CDP for the removal of all unpermitted development on the site and the restoration of the site and by implementing an approved permit for such removal and restoration. Staff also informed you that you had the option of applying for an after-the-fact (ATF) permit to retain the development. You failed to submit a CDP application for either removal or retention of the subject unpermitted development.

As a consequence of this failure, on October 9, 1998,Commission staff sent you a letter notifying you of our intent to schedule a hearing for the purpose of issuing a cease and desist order against you. On November 12, 1998, you requested a postponement of the impending hearing to enable

you to submit to the Commission by December 11, 1998, a complete CDP application for retention of all unpermitted development.

On December 9, 1998, you informed Commission staff of your intent to file two CDP applications, one for retention of the "sports court" and the other for retention of the swimming pool and retaining wall. This conversation was memorialized in a letter to you dated December 21, 1998, wherein Commission staff granted you a time extension until January 15, 1999 to file both CDP applications.

On January 29, 1999 you submitted to the Commission two incomplete permit applications: CDP 4-99-023 for retention of the sports court, and CDP 4-99-024 for retention of the swimming pool, and retaining wall[1]. On February 25, 1999 Commission staff sent you two "incomplete filing" letters (one for each application) notifying you of nine additional materials and pieces of information that you needed to submit to complete the filing of your applications[2]. Each of these letters gave you until March 24, 1999 to submit the additional items. You did not submit the required items.

As of September 2000, you still had not submitted the required items. Therefore, on September 7, 2000, Commission staff sent you two additional letters reiterating the earlier nonfiling letters and again identifying the nine materials and pieces of information that are required in order for each application to be deemed complete. Each of these letters gave you until December 6, 2000 to submit the additional items.

In a phone conversation with Commission staff on December 1, 2000, you stated that you had no intention of completing either CDP application.

As a result of your violations of the permit requirement of the Coastal Act, and your subsequent failure to submit complete ATF, CDP applications for all the cited unpermitted development on your property, Commission staff is moving forward with proceedings for the Commission to issue pursuant to Coastal Act section 30810 a Cease and Desist Order to resolve the subject violation.

Steps in the Cease and Desist Order Process

Pursuant to Coastal Act section 30810, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after a public hearing, determines that such person has engaged in "any activity that requires a permit from the commission without securing one." Additionally, pursuant to section 30810(b), the cease and desist order may be

[1] Between February 25, 1999 and September 20, 2000 Commission staff discovered an unpermitted carport on the subject property.

[2] CDP applications 4-99-023 & 4-99-024 each need the following pieces of information before the applications can be deemed complete: 1) filing fee of $1,200; 2) a complete list of property owners within 100 feet of your property; 3) two sets of site plan drawings; 4) two sets of detailed grading plans; 5) two copies of comprehensive, current geological and soils reports; 6) a current LA Co. "approved" geologic review sheet; 7) the "Approval in Concept" form completed by the local planning department; 8) a set of 8 ½ by 11 inch copies of the blueprint size, drawings of the project; and 9) a mapped survey of the property preformed by a licensed surveyor which indicates the location of the development and the location of the property that is subject to the irrevocable offer to dedicate an open space easement.

subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

An order issued pursuant to section 30810 would require that you: 1) refrain from engaging in any further development activities on your property without a CDP; and 2) submit a complete CDP application to the Coastal Commission's South Central District Office requesting a permit either to retain the existing unpermitted development, or to remove existing development and restore the site to its pre-violation condition within a specified period of time.

Please be advised that if the Commission issues a cease and desist order, section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists.

The Commission intends to hold a hearing on the issuance of a cease and desist order in this matter no later than the Commission meeting that is scheduled for March 13-16, 2001.

In accordance with the California Code of Regulations, Title 14, section 13181(a), you have the opportunity to respond to the Commission staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. **The completed Notice of Defense form must be returned to this office no later than January 31, 2001.**

Options for Resolving this Violation

You can prevent this hearing from taking place by submitting the materials and information required by the staff's nonfiling letters to our Ventura Office prior to the scheduled date of the cease and desist order hearing. Alternatively, you can file a complete application to remove the unpermitted development and restore the site to its pre-violation condition. A CDP is required if you propose to remove cited unpermitted development because removal constitutes "development" as defined in section 30106 of the Coastal Act. The Commission must review any proposed removal project to ensure that it is consistent with the resource protection policies contained in the Coastal Act. For CDP filing requirements or questions about the additional materials and information required to complete your submitted applications, please contact John Ainsworth in our Ventura Office at (805) 641-0142.

Sincerely,

PETER DOUGLAS
Executive Director

cc: Amy Roach, Chief of Enforcement
Jan E. Perez, Statewide Enforcement Analyst
John Ainsworth, South Central Enforcement Program Supervisor
Tom Sinclair, South Central Enforcement Analyst
Sabrina Tilles, South Central Coastal Program Analyst

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 14
CCC-01-CD-1 (RUBINROIT)
Page 3 of 8

STATE OF CALIFORNIA -- THE RESOURCES AGENCY
GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than January 31, 2001** to the Commission's enforcement staff at the following address:

Jan E. Perez, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact **Jan E. Perez** at **(415) 396-9708.**

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

2. **Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):**

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

5. **Any other information, statement, etc. that you want to offer or make:**

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
NEW YORK
SEATTLE
WASHINGTON, D.C.

555 WEST FIFTH STREET
LOS ANGELES, CALIFORNIA 90013-1010
TELEPHONE 213 896 6000
FACSIMILE 213 896 6600

FOUNDED 1866

HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(213) 896-6602

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

February 5, 2001

RECEIVED
FEB 06 2001
CA COASTAL COMMISSION
LEGAL DIVISION

By Federal Express

Mr. Abe Doherty
Statewide Enforcement Analyst
California Coastal Commission
45 Fremont Suite 2000
San Francisco, California 94105-2219

Re: Violation File Number: V-4-97-031
Property Location: 24351 Piuma Road, Calabasas, Los Angeles County
Violation Description: Unpermitted construction of a "sports court"

Dear Mr. Doherty:

Responding to staff's January 31, 2001 letter to me, I am enclosing herewith a Statement of Defense form prepared and executed by me, along with the designated exhibits. My wife and I have been and remain perfectly interested in resolving this matter amicably. I look forward to further hearing from you.

Very truly yours,

Howard J. Rubinroit

HJR:wg
Encl.

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

REGULAR AND CERTIFIED MAIL (Article No. Z 210 986 709)

January 2, 2001

RECEIVED
FEB 0 6 2001
CA COASTAL COMMISSION
LEGAL DIVISION

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

SUBJECT: Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File No. V-4-97-31

Dear Mr. Rubinroit:

This letter is to notify you of the intent of the California Coastal Commission to commence Cease and Desist Order proceedings as a consequence of unpermitted development activities on your property (APN 4456-37-007) at 25351 Piuma Road in Calabasas, Los Angeles County.

History of the Violation Investigation

The above-referenced violation file concerns development (as that term is defined in section 30106 of the Coastal Act) that is inconsistent with the permit requirements of section 30600 of the California Coastal Act. This development consists of construction of a "sports court" (decking and fencing), swimming pool, and retaining wall. The development occurred in 1996 and was not authorized by previously issued Coastal Development Permit (CDP) No. 5-88-056 or by any subsequent CDP or permit amendment.

As we have previously indicated to you, construction of the "sports court," swimming pool, and retaining wall required a CDP, and your failure to obtain a CDP prior to construction constitutes a violation of the Coastal Act. By letters to you dated June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998, August 13, 1998, and on October 9, 1998, and in numerous telephone conversations since June 1997, Commission staff informed you that you could resolve this matter without further enforcement actions by submitting an application for a CDP for the removal of all unpermitted development on the site and the restoration of the site and by implementing an approved permit for such removal and restoration. Staff also informed you that you had the option of applying for an after-the-fact (ATF) permit to retain the development. You failed to submit a CDP application for either removal or retention of the subject unpermitted development.

As a consequence of this failure, on October 9, 1998,Commission staff sent you a letter notifying you of our intent to schedule a hearing for the purpose of issuing a cease and desist order against you. On November 12, 1998, you requested a postponement of the impending hearing to enable

you to submit to the Commission by December 11, 1998, a complete CDP application for retention of all unpermitted development.

On December 9, 1998, you informed Commission staff of your intent to file two CDP applications, one for retention of the "sports court" and the other for retention of the swimming pool and retaining wall. This conversation was memorialized in a letter to you dated December 21, 1998, wherein Commission staff granted you a time extension until January 15, 1999 to file both CDP applications.

On January 29, 1999 you submitted to the Commission two incomplete permit applications: CDP 4-99-023 for retention of the sports court, and CDP 4-99-024 for retention of the swimming pool, and retaining wall[1]. On February 25, 1999 Commission staff sent you two "incomplete filing" letters (one for each application) notifying you of nine additional materials and pieces of information that you needed to submit to complete the filing of your applications[2]. Each of these letters gave you until March 24, 1999 to submit the additional items. You did not submit the required items.

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In a phone conversation with Commission staff on December 1, 2000, you stated that you had no intention of completing either CDP application.

As a result of your violations of the permit requirement of the Coastal Act, and your subsequent failure to submit complete ATF, CDP applications for all the cited unpermitted development on your property, Commission staff is moving forward with proceedings for the Commission to issue pursuant to Coastal Act section 30810 a Cease and Desist Order to resolve the subject violation.

Steps in the Cease and Desist Order Process

Pursuant to Coastal Act section 30810, the Commission has the authority to issue an order directing any person to cease and desist if the Commission, after a public hearing, determines that such person has engaged in "any activity that requires a permit from the commission without securing one." Additionally, pursuant to section 30810(b), the cease and desist order may be

[1] Between February 25, 1999 and September 20, 2000 Commission staff discovered an unpermitted carport on the subject property.

[2] CDP applications 4-99-023 & 4-99-024 each need the following pieces of information before the applications can be deemed complete: 1) filing fee of $1,200; 2) a complete list of property owners within 100 feet of your property; 3) two sets of site plan drawings; 4) two sets of detailed grading plans; 5) two copies of comprehensive, current geological and soils reports; 6) a current LA Co. "approved" geologic review sheet; 7) the "Approval in Concept" form completed by the local planning department; 8) a set of 8 ½ by 11 inch copies of the blueprint size, drawings of the project; and 9) a mapped survey of the property preformed by a licensed surveyor which indicates the location of the development and the location of the property that is subject to the irrevocable offer to dedicate an open space easement.

subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including immediate removal of any development or material.

An order issued pursuant to section 30810 would require that you: 1) refrain from engaging in any further development activities on your property without a CDP; and 2) submit a complete CDP application to the Coastal Commission's South Central District Office requesting a permit either to retain the existing unpermitted development, or to remove existing development and restore the site to its pre-violation condition within a specified period of time.

Please be advised that if the Commission issues a cease and desist order, section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists.

The Commission intends to hold a hearing on the issuance of a cease and desist order in this matter no later than the Commission meeting that is scheduled for March 13-16, 2001.

In accordance with the California Code of Regulations, Title 14, section 13181(a), you have the opportunity to respond to the Commission staff's allegations as set forth in this notice by completing the enclosed Statement of Defense form. **The completed Notice of Defense form must be returned to this office no later than January 31, 2001.**

Options for Resolving this Violation

You can prevent this hearing from taking place by submitting the materials and information required by the staff's nonfiling letters to our Ventura Office prior to the scheduled date of the cease and desist order hearing. Alternatively, you can file a complete application to remove the unpermitted development and restore the site to its pre-violation condition. A CDP is required if you propose to remove cited unpermitted development because removal constitutes "development" as defined in section 30106 of the Coastal Act. The Commission must review any proposed removal project to ensure that it is consistent with the resource protection policies contained in the Coastal Act. For CDP filing requirements or questions about the additional materials and information required to complete your submitted applications, please contact John Ainsworth in our Ventura Office at (805) 641-0142.

Sincerely,

PETER DOUGLAS
Executive Director

cc: Amy Roach, Chief of Enforcement
Jan E. Perez, Statewide Enforcement Analyst
John Ainsworth, South Central Enforcement Program Supervisor
Tom Sinclair, South Central Enforcement Analyst
Sabrina Tilles, South Central Coastal Program Analyst

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 4 of 38

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

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You should complete the form (please use additional pages if necessary) and return it **no later than January 31, 2001** to the Commission's enforcement staff at the following address:

Jan E. Perez, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact **Jan E. Perez** at **(415) 396-9708.**

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

Unnumbered paragraph 2: I admit that your "Violation File" concerns the construction of a swimming pool, retaining wall, fencing and decking (the "so-called 'sports court'") on our property as to which construction we did not seek a Coastal Development Permit ("CDP") or permit amendment prior to 1998, but further allege that the grading for the "development" occurred in or about 1988 by the original developer purportedly pursuant to CDP No. 5-88-056..

Unnumbered paragraph 3: I admit that Commission staff has previously indicated that a so-called "sports court" required a CDP, but further allege that staff has been unable to articulate why a "sports court" requires a CDP, while fencing and decking, which are the only components of the so-called "sports court" do not require a permit under CCR Section 13250(a). I also admit Commission staff has previously indicated that a CDP was required for the swimming pool and retaining wall, but deny that a CDP was required, and further deny that separate CDP's were required for the fencing and decking, on the one hand, and the swimming pool and retaining wall, on the other. I admit that I was sent letters dated June 19, 1997, September 15, 1997, October 8, 1997, January 29, 1998, August 13, 1998, and October 9, 1998, and further allege that they are the best evidence of their contents and in all respects speak for themselves. I admit that, in telephone conversations, Commission staff has suggested that I submit an application for a CDP as to the so-called "sports court" which is already constructed, but further allege that I have also been advised that it is "likely" that such a CDP permitting the so-called "sports court" would be denied. I further allege that on or about January 29, 1999, I submitted an application: 1) seeking a waiver and/or after-the-fact approval of the construction of the retaining wall and swimming pool, and 2) seeking after-the-fact approval for the construction of the fencing and

decking, both of which were agreed to be without waiver of or prejudice to my position and claim that a CDP or ATF is not required for either.

Unnumbered paragraph 4. I admit that on October 9, 19998, Commission staff sent me a letter of that date, and further allege that it is the best evidence of its contents and in all respects speaks for itself. I admit that I spoke with Commission staff on November 12, 1998, and indicated a willingness to file the aforesaid applications; deny that I requested a postponement of any hearing; and allege that Commission staff itself offered and agreed to an extension of staff's unilaterally imposed deadlines.

Unnumbered paragraph 5. I admit speaking to Commission staff on or about December 9, 1998; also admit that Commission staff wrote to me on December 21, 1998, respecting that conversation; and allege that the December 21, 1998 letter is the best evidence of its contents and in all respects speaks for itself.

Unnumbered paragraph 6. I admit that, on or about January 29, 1999, I submitted the two applications referred to above, and deny that the applications were incomplete. I have no knowledge of when Commission staff "discovered an unpermitted carport" (as noted in footnote 1), but allege that the so-called "carport" is part of the retaining wall that was, as I understand it, one of the subjects of the Commission staff's previous actions. I further allege that the Commission has been guilty of laches, and has waived, released, and/or is estopped to assert that the so-called "carport" is either improper or a different supposed violation. I admit that the Commission staff sent me two letters, dated February 26 (not 25), 1999, each enclosing a letter dated February 25, 1999, all of which letters are the best evidence of their contents, and speak for themselves. I admit that I did not make any further application or submission; allege that there was and is no basis for staff's finding our applications incomplete or for requiring separate

applications requiring the payment of separate (and increased) fees; further allege that the "additional information" requested was either previously supplied and/or unreasonable, and deny that any additional information should be required.

Unnumbered paragraph 7. I admit that on or about September 7, 2000, Commission staff sent me two additional letters, and allege that they are the best evidence of their contents, and speak for themselves.

Unnumbered paragraph 8. 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.

Unnumbered paragraph 9, et seq. I acknowledge that the January 2, 2001 letter purports to be notice of Commission staff's intention to commence a proceeding for a section 30810(b) Cease and Desist Order; further acknowledge staff's advice as to the supposed consequences thereof; and allege that such action is barred, and is or would be improper, ultra vires, unlawful, and unconstitutional under the circumstances here.

2. Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):

See above. I deny that the aforesaid construction of "improvements" constitutes "development", and/or which is inconsistent with the permitting requirements contained in Section 30600 of the California Coastal Act, and/or is "development" as to which a CDP or permit amendment was or is required. I further deny that the grading portion of the "improvements" was done in 1996, and/or that the 'improvements" were and are not authorized

under CDP No. 5-88-056, and/or that the swimming pool, retaining wall, or so-called "sports court" must be permitted by the Commission, and/or that the Commission may seek to enforce and/or claim any rights with respect to the easement demanded of the and accepted from original developer.

3. **Facts or allegations contained in the Cease and Desist Order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

See above.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

My wife and I were not the developers or original owners of the subject property. We acquired the property after the house has been substantially completed, and a Certificate of Occupancy had issued in February 1990. Accordingly, we were not the applicants as to any of the permits involved in the original development of our home or property, including but not limited to CDP No. 5-88-056, which, as of the end of 1988, I had never even seen. I assume from the number of that CDP that it was issued in 1988. We did not even know of the property until 1989, when grading had been completed and construction had already commenced. That grading by the original owners included the cleaning (and denuding) and grading of the areas on which the so-called "sports-court" and swimming pool were later built in 1996.

Shortly before closing on the purchase of the home in February 1990, I requested of the developer — Jack Moses — that he provide us with all of the permits for the construction of our home. Attached hereto as Exhibit A is a copy of a letter from Mr. Moses' attorney, enclosing a certification from the Department of Public Works that the house is located in unincorporated Malibu for Regional Planning and Building Department purposes. Attached hereto as Exhibit B is a letter, also from Mr. Moses' attorney, enclosing various permits for the home. For whatever reason, the permits sent to me by Mr. Moses' attorney did not include CDP No. 5-88-056. As stated above, I did not see that permit until after the swimming pool, retaining wall, and so-called "sports court" were constructed by us. The other permits which I did obtain, evidence that Mr. Moses was the owner of the property and the applicant for those permits.

We acquired the property in February 1990. Attached hereto as Exhibit C is a copy of our deed. As of the time of closing, the property was developed with three buildable pads: 1) the pad upon which the house was constructed, and upon which the swimming pool and retaining wall were constructed in 1996 (the "house pad"); 2) a pad adjacent to Piuma Road, which is presently vacant and which was graded by Mr. Moses (he said) in anticipation of construction of a future guest house (the "guest house pad"); and 3) a pad downhill from the house pad, on which the so-called "sports court" was constructed in 1996 (the "lower pad"). (I am confident that the Commission has available to it historic aerial photographs which encompass the area of our property, and I know that those historic aerial photographs will show the pads had been graded as of February 1990.) At the time we acquired the property, the house pad was in the process of being landscaped by Mr. Moses, and the guest house pad and lower pad were denuded of vegetation, a they remain until 1996. Accordingly, if there are issues as to the grading of any

of the pads, including the lower pad, and/or of the "excess removal of vegetation", those issues arose prior to 1990, and did not involve actions by me or my wife.

Prior to acquiring our home, my wife and I had discussions with Mr. Moses concerning potential future development of the property. Mr. Moses advised us that, as graded, the guest house pad would accommodate and allow a small guest house, and the lower pad would accommodate and could be used either to construct stables, a tennis court, or a pool. Mr. Moses did not at any time advise that future development of the graded pads was conditioned or restricted in any way. Accordingly, my wife and I have always been under the impression that all three pads were freely developable, and that the original grading thereof complied with all applicable permits, (which would include the Coastal Development Permit obtained by Mr. Moses).

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 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. Indeed, at the time, I discussed with Mr. Moses his designing and constructing for us a pool on the lower pad, and he provided us with certain concepts therefor. However, we decided not to go forward with the project at that time.

By letter dated October 8, 1997, Sue Brooker , then of the Commission's staff, sent to me a copy of the Irrevocable Offer to Dedicate Open-Easement, etc. (the "Irrevocable Offer") and a purported map of the property. That was the first time that I saw or reviewed such Irrevocable Offer and/or the purported map. Accordingly, our construction of the so-called "sports court" was performed without knowledge thereof, or of any supposed prohibitions, restrictions, or

conditions as to constructing the so-called "sports court" on the lower pad. Indeed, as of this date, I have not surveyed the area claimed to be subject to the easement, and therefore do not know whether, in fact, the so-called "sports court" is located on any portion of such dedicated land.

I have never been advised by Commission staff whether either 1) the original developer was compensated for the "taking" of the property purportedly subject to the easement, or 2) the Commission even performed an analysis of whether there was a "nexus" between the demanded easement and issues presented by Mr. Moses' development which purportedly served as a justification therefor, (as required by Nollan v. California Coastal Commission, 483 U.S. 825 (1987)). As I understand the facts, I believe that the demand for and acceptance of the easement constituted a per se taking which I, as a subsequent owner, may, and do, challenge. See, Nollan, 483 U.S. at 834, n. 2.

Moreover, it should be noted that the Irrevocable Offer, if it impacts our 1996 construction at all, at most affects the lower pad on which the so-called "sports court" only was built. The pool and walls were constructed on the house pad which is not subject to any dedication restriction.[1] Moreover, 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 that it lies within the dedicated area, is being put. We have young children (ages 8 and 10). There are no parks in the vicinity of our home with play areas, nor has the Commission apparently seen fit to provide for or require the same. Thus, given the treacherous

[1] Indeed, the construction of the pool and retaining wall, which took place at the same time as the construction of the so-called "sports court" was not raised as an issue until I indicated the I was not prepared simply to acquiesce to staff's demand to rip up the "sports court."

nature of traffic on Piuma Road and the isolation of our property, there is no other place where our children can play safely.

The Commission should also know that the lower pad and the so-called "sports court" are essentially invisible to the public — it is located in a "valley" well downhill from the home pad and surrounded by native vegetation; it can scarcely be seen from Piuma Road (especially given the existing vegetation adjacent to the road); and there is no development whatsoever, other than the residence on our property, from which the lower pad and so-called "sports court" can be viewed. Finally, there are significant buffers between the lower pad and the State preserve behind our property, including abundant native vegetation on our property and the adjacent property, and a road servicing the adjacent property.

The catalyst to our decision in 1995 finally to construct a pool, the so-called "sports court", and attendant improvements, was the recommendation of our local fire station that our house, which is serviced only by a well, have a large, readily available water source. (We have had to vacate our house on two occasions because of wildfires that reached Piuma Road and threatened our property, including the fire that traveled half-way down the mountain (in the area of the Backbone Trail) which, if the wind had not shifted, would have consumed the areas on which the "sports court" and so-called pool were later constructed by us). Having made the decision to go forward, we proceeded very responsibly. We engaged a highly regarded landscape architect to develop plans which were as aesthetic as possible given our budget. The pool and walls were planned to and were built on the house pad, in areas which had been previously landscaped. The so-called "sports court" was scaled so that it fit entirely within the already graded area of the lower pad, which, as discussed above, Mr. Moses had graded prior to 1990 for use as a tennis court, swimming pool, or stables. All the planned landscaping was

intended to be, and has been, limited to the previously landscaped areas on the house pad, and were, with the exception of the lawn (which replaced the previous lawn) largely restricted to plantings native to the area. See Exhibit D, a copy of our plans as submitted for plan check, submitted with our earlier letter of November 5, 1998.

More significantly to staff's concern that we failed to obtain a CDP, we proceeded scrupulously to determine what permits were required, and were specifically advised that a CDP was not required. As Exhibit D indicates, the plans were provided to the Fire Department for their initial review. On or about November 7, 1995, the plans were submitted for plan check to the Department of Building and Safety, Land Development Division ("Building & Safety"). The form which we received in return from Building & Safety purported to provide notice of the "AGENCIES [WHICH] IN ADDITION TO BUILDING OR GRADING PLAN CHECK APPROVAL, [APPROVAL] MUST BE OBTAINED PRIOR TO [BUILDING] PERMIT ISSUANCE." A copy of that form is attached hereto as Exhibit E. You will note that the only agencies that were checked as requiring a permit for our construction were the Drainage Section of the Department of Building and Safety, the Fire Prevention Bureau, the Geology/Soils Section of the Department of Building and Safety, and the Health Services Department.

Although the form contains a space (towards the very top) for indicating whether a Coastal Commission permit is required, you will note that space was not checked. Accordingly, when we proceeded to construct the swimming pool, so-called "sports court", and walls, we did so under the clear advice from Building & Safety that those improvements did not require a Coastal Commission permit. In reliance on such advice we have expended a total of approximately $200,000 on such improvements, which are now all in place. (Attached hereto as Exhibit F is a copy of the inspection records in our possession as to such work.)

Indeed, 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.

The advice of the Department of Building and Safety that no Coastal Commission permit was required appears to be perfectly consistent with the provisions (and intent) of both the Coastal Act itself and the regulations concerning the same. Thus, PRC Section CCR 13250(b)(6) provides, in pertinent part that:

> "Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: (a) improvements to existing single-family residences. . . ."

Title 13, Subchapter 6, Section 13250 of the Regulations in turn provides:

> "Section 13250. Additions to Existing Single-Family Residences.
>
> (a) For purposes of the Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:
>
> (1) All fixtures and other structures directly attached to a residence;
>
> (2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences and storage sheds; but not including guest houses or self-contained residential units; and

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

(3) Landscaping on the lot." (Emphasis supplied).

Pursuant to the foregoing, the swimming pool and retaining wall appear to be expressly excluded from the requirement for a permit. Moreover, since the swimming pool and retaining wall were unquestionably not constructed on land which had previously been dedicated pursuant to the Commission's demand, there were no and could not be any restrictions on their development.

As for the so-called "sports court", it consists merely of fencing (which is also specifically excluded under PRC 30610) and hardscaping (also excluded), and thus does not require a permit. Indeed, the fact that the regulations specifically clarify that a guest house or self-contained residential unit do require a permit, but make no mention of a tennis court or "sports court" (which in many Coastal areas and certainly in the Malibu Coastal area are "normally associated with a single-family house"), would lead the most careful reader to conclude that their construction does not require a CDP. This, of course, must also be the interpretation of the Department of Building and Safety, which, when presented with plans for the so-called "sports court" as well as the swimming pool and attendant walls, advised that a Coastal permit was not required.

Finally, and with all due respect, staff's previous suggestion to us that CCR 13250(b)(6) applies is, at best, unsupportable. It cannot be seriously suggested that an exterior swimming pool, retaining wall, and/or so-called "sports court" is an "addition" to a single-family residence. An "addition" by any normal definition applied to a single-family residence is the increase in the number or size of the residence itself, typically by way of a remodel. Indeed, the language CCR 13250(a) makes it clear that swimming pools, fencing, etc. are "structures ... associated with a single-family residence," and do not constitute a part of the residence itself.

Moreover, the fact that our property is being targeted for attention (and possible enforcement activity) appears anomalous, if not a denial of equal protection. Both before and since our 1996 work, there has been what I can only characterize as a significant decimation of the natural conditions on the Quaker-Ross properties below us on Piuma, the so-called "Triangle" lots at the corner of Cold Canyon and Piuma, and other near-by properties, which "improvements" must negatively impact (unlike our 1996 work) the Malibu Creek eco-system. No fair observer driving on Piuma Road between Malibu Canyon Road and our property could possibly understand why, in the face of such ostensibly permitted (by the Commission) wholesale decimation of the area, our improvements are or could be or should be of concern.

The Commission staff has previously suggested that, in connection with our 1996 work, we performed grading or were guilty of "excess removal of vegetation" on the supposedly dedicated area. That is absolutely not the case. The pad upon which the so-called "sports court" was constructed had, as I already indicated above, been graded prior to February 1990. At such time it was denuded of vegetation. Accordingly, the only work necessary to put down the pad for the so-called "sports court" was to do slight leveling of the already graded pad, which was done essentially by hand. The only vegetation disturbed was some very sporadic and sparse weeds that had sprung up after the rainy season (and which normally dry out and "disappear" starting in the Spring, and which were insignificant in comparison to the weed removal that the fire department requires us to perform each Spring).

Accordingly, it is submitted that the true situation here is as follows:

1) Absent some type of restriction or condition which supposedly arose from the offer and acceptance of dedication of the easement, there would be no question

that no CDP or amendment to the original CDP would have been required in connection with the construction of the so-called "sports court";

2) The swimming pool and walls are unquestionably not located on the dedicated area, and are specifically exempted by the regulations from the requirements for a permit;

3) Insofar as work was done on land compelled by the Commission to be dedicated, that work was and is consistent with the purposes of the easement;

4) In any event, 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;

5) There was no grading or landscaping done by us (and none done since prior to 1990 by the previous developer) which in any way falls within any proscriptions of the Act or its regulations;

6) My wife and I had no knowledge of any restrictions or conditions on our ability to improve the already graded pads, and proceeded in good faith and entirely responsibly and appropriately by drawing plans, going through a plan check, and following the advice of the plan checker (with the concurrent of both our experienced landscape architect and contractor) that no Coastal permit was required;

7) The advice which we received was and is consistent with any fair reading of the Act and its regulations;

8) If there was a violation here of the Act, it was and is merely a technical violation which was committed unknowingly and inadvertently by us, since we

had never seen CDP No. 5-88-056, and did not see the Offer of Dedication until it was sent to us by Commission staff in October, 1997;

9) No harm has been suffered to either the environment in the area of our property or the spirit or purpose of the Coastal Act by reason of what has been constructed; indeed, the work done serves as both a firebreak and (as suggested by the Fire Department) and a source of water in case of prevalent brush fires in the area;

10) My wife and I proceeded in reliance on the advice of a competent governmental agency; did the work according to permits which had vested, pursued in good faith our vested rights as we understood them; and would be irreparably harmed if required to remove any of the improvements;

11) Targeting our property in light of the decimation of neighboring properties ostensibly under permits from the Commission would be unfair, improper and a denial of equal protection; and

12) In any event, the Commission has been guilty of laches, and any action is barred by applicable statues of limitations.

Under the circumstances, we believe that it is both appropriate and required for the Commission itself to desist from taking any action in connection with these improvements, including by issuing a Cease and Desist Order. At the most, the Commission should grant us a waiver, or require us to apply for a permit under the understanding that the permit will be granted.

5. Any other information, statement, etc. that you want to offer or make:

In closing, I would like to interject a personal observation. I voted for the adoption of the Coastal Act. In doing so, I never conceived that it would be applied to subject homeowners like me to the positions and attitudes adopted here by the Commission's staff. Strikingly, and as discussed above, my house is the developed property most closely adjacent to two recent developments — 1) the Quaker/Ross grading and construction of finished lots on Piuma Road, and 2) the construction of finished lots on the so-called Triangle at the corner of Piuma Road and Cold Creek. The fact that the Commission could approve those developments with the massive grading, disturbance of natural vegetation, and obliteration of scenic views which were inevitable and have occurred there, while at the same time complaining about our work and advising that a CDP, if applied for, would not "likely be issued", is terribly disturbing. If the Commission's staff or the Commission itself has reached a point where it accommodates major developers and the significant, deleterious results of their developments, while at the same time pursuing homeowners (like me) who have proceeded innocently, in good faith, and with sensitivity to the surroundings, it is staff and the Commission which are perverting the Act and its purposes.

If the Commission and its staff disregard the real priorities which the Act was meant to address, it will alienate not only people like me who fully support those goals and appropriate priorities, but will also lose future generations who will be turned off by the Commission's apparent hypocrisy or excesses. In that regard, the Commission should consider how I can should respond to my eight year old's inquiries as to why the Coastal Commission is trying to "take away my play area", while allowing numerous surrounding lots to be destroyed.

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in**

chronological order by date, author, and title, and enclose a copy with this completed form):

As you can see, I have utilized the form provided by Commission staff. I am fully prepared to execute a declaration concerning each and all of the facts which are stated in this Response if it is either necessary or helpful. Please advise.

Exhibit C - February 14, 1990 Deed to our property.

Exhibit A - December 20, 1990 letter from Jeffrey M. Lee, Esq., enclosing certification from the Department of Public Works.

Exhibit B - December 26, 1990 letter from Jeffrey M. Lee, Esq., enclosing permits obtained in the construction of our home.

Exhibit D - November, 1995 Plan for the subject improvements (submitted previously with letter of November, 1588).

Exhibit E - November 7, 1995 plan check form from County of Los Angeles Department of Public Works/Building and Safety/Land Development Division, indicating that no Coastal permit required for subject improvements.

Exhibit F - 1996 Building and Safety Inspection Records concerning subject improvements.

Dated: February 5, 2001

Respectfully submitted,

Howard J. Rubinroit

LAW OFFICES
WINOGRADE, LEE & HORN
1875 CENTURY PARK EAST, SUITE 1400
LOS ANGELES, CALIFORNIA 90067-2515

STEVEN J. HORN
JEFFREY M. LEE
ROBERTA WINOGRADE LEE

AREA CODE 213
TELEPHONE 277-9 40
FAX (213) 277-55

December 20, 1990

Howard Rubinroit, Esq.
Sidley & Austin
2049 Century Park East
Suite 3500
Los Angeles, CA 90067

Re: Jack Moses
25351 Piuma Road, Malibu

Dear Howard,

It was a pleasure talking to you this date. As I indicated to you I would attempt to get you some preliminary information prior to our speaking the first week of January, 1991. In accordance with our conversation, I am enclosing for your immediate review an Application for Building Permit reflecting that the location of the property is being within the Malibu limits. In the meantime, Jack will obtain copies of the various permits and Building Permit itself from the Building Department's files.

Further, you will also find enclosed a copy of the list of contractors, suppliers and engineers who participated in the construction of the property.

Very truly yours,

WINOGRADE, LEE & HORN

Jeffrey M Lee

JEFFREY M. LEE

JML:skw
Enclosures

cc: Mr. Jack Moses

wp50\work\landry.ltr

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (818) 458-5100

THOMAS A. TIDEMANSON, Director

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE.

June 21, 1991

This letter is to verify that the house located at 25351 Piuma Road is in Los Angeles County, unincorporated Malibu for Regional Planning and the Building Department.

Grant M Lawseth

MALIBU OFFICE
BUILDING AND SAFETY DIVISION
23533 W. CIVIC CENTER WAY
MALIBU, CALIFORNIA 90265
Telephone (213) 317-1353

Los Angeles County
Department of Public Works

GRANT M. LAWSETH
Dist. Engineering Associate/Office Mgr.
Building and Safety Division

23533 West Civic Center Way
Malibu, California 90265

Office Hours
8 a.m.-12 p.m. Daily
(213) 317-1353

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT A

STEVEN J. HORN
JEFFREY M. LEE
ROBERTA WINOGRADE LEE

LAW OFFICES
WINOGRADE, LEE & HORN
1875 CENTURY PARK EAST, SUITE 1400
LOS ANGELES, CALIFORNIA 90067-2515

RECEIVED
JAN 4 1991
SIDLEY & AUSTIN
FAX (213) 277-[illegible]55

December 26, 1990

Howard Rubinroit, Esq.
Sidley & Austin
2049 Century Park East
Suite 3500
Los Angeles, CA 90067

Re: Jack Moses
25351 Piuma Road, Malibu

Dear Mr. Rubinroit:

Pursuant to our discussions, enclosed please find the following permits obtained in the construction of your home.

Very truly yours,

WINOGRADE, LEE & HORN

JEFFREY M. LEE

JML:skw
Enclosures

cc: Mr. Jack Moses

wp50\work\landry.ltr

APPLICATION FOR BUILDING PERMIT

COUNTY OF LOS ANGELES — **BUILDING AND SAFETY**

EXHIBIT B

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a copy thereof (Sec. 3800, Lab. C.)

Policy No. _____ Company _____

☐ Certified copy is hereby furnished.

☐ Certified copy is filed with the county building inspection department.

Date _____ Applicant _____

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Date _____ Applicant _____

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number _____ Lic. Class _____

Contractor _____ Date _____

☐ I am exempt under Sec. _____

B.&P.C. for this reason _____

_____ Date: _____

Signature _____

OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

☒ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws relating to building construction, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

12-6-88

FOR APPLICANT TO FILL IN

BUILDING ADDRESS	25351 PIUMA ROAD
CITY	MALIBU ZIP 90265
SIZE OF LOT	2.75 ACRES NO. OF BLDGS NOW ON LOT 0
TRACT / BLOCK / LOT NO.	— / — / —
OWNER	JACK & ANNIE MOSES TEL NO. (818) 992-1831
ADDRESS	22333 VICTORY BLVD., #125
CITY	CANOGA PARK ZIP 91303
ARCHITECT OR ENGINEER	MOSES ASSOCIATES TEL NO. (818) 992-1831
ADDRESS	22333 VICTORY BLVD., #125
CONTRACTOR	TEL. NO.
ADDRESS	LIC. NO.
CITY	LIC. CLASS
SQ. FT. SIZE	NO. OF STORIES 2 NO. OF FAMILIES 1
DESCRIPTION OF WORK	3978 CONSTRUCTION OF A NEW SINGLE FAMILY RESIDENCE —
USE OF EXISTING BLDG.	
APPLICANT (PRINT)	JACK MOSES TEL NO. (818) 992-1831
ADDRESS	22333 VICTORY BLVD., CANOGA PK.
PRESENT BUILDING ADDRESS	
LOCALITY	
MOVING CONTRACTOR	TEL. NO.
ADDRESS	

CHECK ONE: NEW ☒ ADD ☐ ALTER ☐ REPAIR ☐ DEMOL ☐

REQUIRED SET BACK	YARD	HWY	TOTAL SETBACK FROM PROP. LINE	EXIST. WIDTH
FRONT P.L.	10'	30'	40'	
SIDE P.L.				

P.C. Fee $	835.13	Permit Fee	1432.50
ADD P.C.	382.50	Issuance Fee	10.50
Investigation	177.63	Total Fee	1,443.00

LDMA 75% 2500

SEE REVERSE FOR EXPLANATORY LANGUAGE

BUILDING ADDRESS	25351 Piuma Rd
LOCALITY	Malibu
NEAREST CROSS ST	Cold Cyn
ASSESSOR MAP BOOK / PAGE / PARCEL	
USE ZONE	AH
MAP NO.	138 - 77
SPECIAL CONDITIONS	PD 36577 SCHOOL NO. 12500-12-5-88 COASTAL 5-88-56
DISTRICT	9.2
GROUP	
TYPE CONST.	
FIRE ZONE	IV
PROCESSED BY	SAV pf
STATISTICAL CLASSIFICATION	CLASS NO. 01 DWELL. UNITS 1
APT.	
CONDO	
SEWER MAP BK. / PG.	
VALUATION $	
$	
FINAL DATE	2-2-90
FINAL By	

FOUNDATION ONLY PERMIT FOR FIRE DEPT. PURPOSES.

VALIDATION

3

LDMA Ref. # 8068

LDMA P/C #

LDMA Perm. #

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

Page 125

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 25 of 38

DEC. 21 '90 10:50 0000 MD ASSOC. ARCHITECTS TEL 213-45? P. 1

APPLICATION FOR BUILDING PERMIT

COUNTY OF LOS ANGELES — BUILDING AND SAFETY

EXHIBIT 15

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. MZPB0338655 Company FIREMANS FUND

☐ Certified copy is hereby furnished EXP 12-20-89

☑ Certified copy is filed with the county building inspection department.

Date 11-2-89 Applicant [signature]

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Date _____ Applicant _____

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number 442825 Lic. Class C-16

Contractor VALLEY FIRE PROT Date 11-2-89

☐ I am exempt under Sec. _____

B.&P.C. for this reason _____

Date: _____

Signature _____

OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code.)

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions Code.)

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws relating to building construction, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

[signature] 11-2-89

Signature of Applicant or Agent — Date

FOR APPLICANT TO FILL IN

BUILDING ADDRESS: 25351 PIUMA RD.

CITY: MALIBU ZIP: NO. OF BLDGS. NOW ON LOT:

SIZE OF LOT:

TRACT: BLOCK: LOT NO.:

OWNER: JACK MOSES TEL. NO.:

ADDRESS: 28925 PCH

CITY: MALIBU ZIP: 90265

ARCHITECT OR ENGINEER: TEL NO.:

ADDRESS:

CONTRACTOR: VALLEY FIRE PROT. TEL NO: 583-1777

ADDRESS: 2370 SHASTA WAY LIC. NO.: 442825

CITY: SIMI VALLEY LIC. CLASS: C-16

SQ. FT. SIZE: 7,000 NO. OF STORIES: 2 NO. OF FAMILIES: 3

CHECK ONE: NEW ☑ ADD ☐ ALTER ☐ REPAIR ☐ DEMOL ☐

DESCRIPTION OF WORK: FIRE SPRINKLERS

USE OF EXISTING BLDG.: RESIDENCE

APPLICANT (PRINT): MICHAEL HEISLER TEL. NO.: 583-1777

ADDRESS: 2370 SHASTA WAY

PRESENT BUILDING ADDRESS:

LOCALITY:

MOVING CONTRACTOR: TEL NO.:

ADDRESS:

REQUIRED SET BACK	YARD	HWY	TOTAL SETBACK FROM PROP. LINE	EXIST. WIDTH
FRONT P.L.	10	30	40	
SIDE P.L.				

P.C. Fee $ 71.161 Permit Fee 85.45

Issuance Fee 13.00

Investigation Fee Total Fee 98.45

SEE REVERSE FOR EXPLANATORY LANGUAGE

BUILDING ADDRESS: 25351 PIUMA RD.

LOCALITY: MALIBU

NEAREST CROSS ST.: Cold Cyn

ASSESSOR MAP BOOK: PAGE: PARCEL:

USE ZONE: A11 MAP NO.: 138-77

SPECIAL CONDITIONS:

DISTRICT	GROUP	TYPE CONST.	FIRE ZONE	PROCESSED BY
9.2	R3	5 Fire Sprinklers	IV	SH

STATISTICAL CLASSIFICATION: CLASS NO. _____ DWELL. UNITS _____ APT. CONDO

SEWER MAP BK. PG.

VALUATION $ 7,000

$ 8000 00

FINAL DATE

FINAL By

VALIDATION

LDMA Ref #

LDMA P/C #

LDMA Permit #

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 26 of 27

Page 126

Dec. 21 '90 10:51 0000 MOSE ASSOC. ARCHITECTS TEL 457 7[illegible]

76 4588A 20 0010 DPW 7/86

APPLICATION FOR PERMIT
SEWER-SEWAGE DISPOSAL

76A642D
CE 800 (2-80)

COUNTY OF LOS ANGELES — BUILDING AND SAFETY

EXHIBIT 17

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. WP8709854 Company Fremont

☐ Certified copy is hereby furnished.

☐ Certified copy is filed with the county building inspection department.

Date 11-22-88 Applicant Roy Bros

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the work involved by the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Date _____ Applicant _____

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number 529521 Lic. Class A

Contractor Roy Bros Date 11-22-88

☐ I am exempt from the licensing requirements as I am a licensed architect or a registered professional engineer acting in my professional capacity (Section 7051, Business and Professions Code).

Lic. or Reg. No. _____ Date _____

HOME OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws regulating Plumbing and Sewers, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

11-22-88

FOR APPLICANT TO FILL IN

BUILDING ADDRESS 25351 PIUMA

LOCALITY MALIBU

NEAREST CROSS ST. CAN CYN

OWNER JACK MOSES

MAIL ADDRESS

CITY _____ TEL. NO. _____

LEGAL DESCRIPTION LOT NO. _____

BLOCK _____ TRACT _____

SIZE OF LOT _____ NO. OF BLDGS. NOW ON LOT _____

USE OF BUILDINGS DWLL

CONTRACTOR ROY BROS

ADDRESS 28128 PCH

CITY MALIBU TEL. NO. 457-5047

STATE LICENSE NO. 529521 LIC. CLASS A

NO.	DESCRIPTION OF WORK	FEE	
	HOUSE SEWER CONNECTING TO PUBLIC SEWER		
1	SEPTIC TANK, SEEPAGE PIT OR PITS AND/OR	35	00
	HOUSE SEWER CONNECTING TO PRIVATE DISPOSAL SYSTEM	1 1 3	00
	CONNECT ADDITIONAL BLDG. OR WORK TO HOUSE SEWER		
	OVERFLOW SEEPAGE PIT, DRAINFIELD EXTN., CESSPOOL, DRYWELL, MANHOLE		
	ALTER, REPAIR OR ABANDON HOUSE SEWER OR DISPOSAL SYSTEM		
	Permit Issue	10	50
	TOTAL FEE	56	50

OWNER'S AUTHORIZATION

I HAVE AT THIS DATE A CONTRACT WITH THE HEREIN NAMED CONTRACTOR TO CONNECT THE ABOVE DESCRIBED EXISTING DWELLING TO THE PUBLIC SEWER.

SIGNED THIS 22 DAY OF 11 19 88

OWNER OR OWNER'S AGENT _____

ADDRESS _____

CONNECTION DATA

STATION _____ DEPTH _____

MANHOLE REFERENCE _____ UPPER _____ LOWER _____

TYPE OF CONNECTION _____ LENGTH FROM _____ CURB _____ P.L. _____ M.L. TO P.L. _____

CO. IMP. NO. _____ P.C. NO. _____ JOB NO. _____

TRUNK PERMIT NO. _____ ROAD PERMIT NO. _____

AFFIDAVIT	WAIVER	EASEMENT	RECORD	INSTR. NO.	DATE

HWY. OR ST. WIDENING _____

STATE ENCROACHMENT PERMIT NO. _____

CHARGES

CONNECTION CHARGE FEE _____

REIMBURSEMENT FEE _____

DISTRICT NO.	GROUP	MAP BK	PROCESSED BY

FINAL DATE 12-2-90

FINAL BY Young

INSPECTOR COPY

FOR TEST PURPOSES ONLY
IF PIT OR PITS ARE UNACCEPTABLE THEY WILL BE BACKFILLED AT ONCE PER L.A. CO. PLU. ORD. SEC. 7119.
DATE 12-3-90
PERMITTEE

SEE REVERSE FOR EXPLANATORY LANGUAGE

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)
Page 127

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 27 of 38

Dec. 21 '90 10:54 0000 P. , ASSOC. ARCHITECTS TEL 213-45 699

EXHIBIT 1

APPLICATION FOR PLUMBING PERMIT

20-0026 DPW 6/87
76A667A

COUNTY OF LOS ANGELES — DEPT. OF PUBLIC WORKS

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. _____ Company _____

☐ Certified copy is hereby furnished

☐ Certified copy is filed with the county building inspection department.

Date _____ Applicant _____

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the work involved by the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation laws.

Date 4/13/89 Applicant Tracy Shipp

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number 552455 Lic. Class C-36

Contractor Shipp's Plumb Date 4/13/89

☐ I am exempt under Sec. _____

B.&P.C. for this reason _____

Date _____

Signature Tracy Shipp

SINGLE FAMILY HOME OWNER BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason: (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws regulating Plumbing, and hereby authorize representatives of this County to enter upon the above-mentioned premises for inspection purposes.

Tracy Shipp 4/13/89

FOR APPLICANT TO FILL IN (PRINT OR TYPE)				
NUMBER	FIXTURE OR ITEM	@	FEE	
6	WATER CLOSET		36	00
3	BATH TUB		18	00
2	SHOWER		12	00
6	LAVATORY		36	00
4	SINK		24	00
1	DISHWASHER		6	00
2	CLOTHES WASHER		12	00
	SWIMMING POOL RECEPTOR			
	LAWN SPRINKLER SYSTEM			
2	WATER HEATER		12	00
1	GAS SYSTEM 8 OUTLETS		6	00
	OUTLETS OVER 5 PER SYSTEM		4	50
Plan check fee			166	50
PLUMBING PERMIT ISSUING FEE $			10	50
	TOTAL FEE		177	00

Plan check applicant

Name

Address

City Tel. No.

BUILDING ADDRESS 25361 Pluma Rd

LOCALITY MALIBU

NEAREST CROSS ST. Malibu Cyn

OWNER MOSES

MAIL ADDRESS

CITY TEL. NO.

CONTRACTOR Shipp's Plumbing/Master Plbg. Etc.

ADDRESS 329 Alpine Ave

CITY VTA TEL. NO. 93004

STATE LICENSE NO. 552455 LIC. CLASS C-36

DISTRICT NO. 9.2

PROCESSED BY OF

FINAL DATE 2-2-90

VALIDATION

FINAL BY

SEE REVERSE FOR EXPLANATORY LANGUAGE

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

Page 128

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 28 of 38

APPLICATION FOR PERMIT

HEATING - VENTILATING - AIR CONDITIONING

EXHIBIT 1

7aA364C
20-0046 DPW 9/88

COUNTY OF LOS ANGELES — **BUILDING AND SAFETY**

WORKERS' COMPENSATION DECLARATION

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. _____ Company _____

☐ Certified copy is hereby furnished.

☐ Certified copy is filed with the county building inspection department.

Date _____ Applicant _____

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the work involved by the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Date SEPT 5-1989 Applicant Lamar Matheny

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number 403858 Lic. Class C-20

Contractor Heating & A/C Date SEPT 5-1989

☐ I am exempt under Sec. _____

B.&P.C. for this reason _____

Date: _____

Signature _____

OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, or my employees with wages as their sole compensation, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

☐ I, as owner of the property, am exclusively contracting with licensed contractors to construct the project (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.)

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws relating to building construction, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

Lamar Matheny SEPT 5-1989
Signature of Applicant or Agent — Date

FOR APPLICANT TO FILL IN
(PRINT OR TYPE ONLY)

NO.	TYPE OF APPLIANCE OR EQUIPMENT	FEE	
	ABSORPTION UNIT, BTU _____		
	AIR HANDLING UNIT, CFM _____		
	BOILER, BTU _____		
1	COMPRESSOR, BTU 36 TON 36 TON	24	00
	VENTILATION SYSTEM		
	EVAPORATIVE COOLER		
2	FURNACE: FAU ✓ GRAVITY _____ FLOOR _____ BTU 100 MBH	24	00
	HEATER: SUSPENDED _____ UNIT _____ WALL		
2	VENTS	12	00
18	INLETS & OUTLETS	36	00
Plan check fee			
	PERMIT ISSUING FEE $	43	00
	TOTAL FEE	109	00

PLAN CHECK APPLICANT

NAME

ADDRESS

CITY TEL. NO.

OWNER BRYANT & SNIDER CONST

MAIL ADDRESS 28925 Pac Coast Hi'Way

CITY MALIBU 90265 TEL. NO. 457-4411

CONTRACTOR MALIBU HEATING & AIR COND

ADDRESS 1245 APPLETON WAY

CITY VENICE CA 90291 TEL. NO. 392-2303

STATE LICENSE NO. 403858 UC CLASS C-20

BUILDING ADDRESS 25351 PIUMA RD

LOCALITY MALIBU

NEAREST CROSS ST.

DISTRICT NO 9.7 — PROCESSED BY OF

APPROVALS	DATE	INSPECTOR'S SIGNATURE
ROUGH	11-7-89	
FINAL	2-2-90	

VALIDATION

±9994A
#••••••8
1•10900
••105003
1002-89

INSPECTOR COPY

SEE REVERSE FOR EXPLANATORY LANGUAGE

I hereby affirm that I have a certificate of Consent to self-insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. WC 236430 Company Pacific National Ins. Co.

☐ Certified copy is hereby furnished.

☒ Certified copy is filed with the county building inspection department.

Date Sept 15 89 Applicant Palisades Electric Co.

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the work involved by the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Date _____ Applicant _____

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number 468437 Lic. Class C-10

Contractor Palisades Electric Co. Date Sept 15-89

☐ I am exempt under Sec. _____ B&P.C. for this reason _____

Date: _____

Signature _____

☐ Exemption for Reg. Maint. Elect.

SINGLE FAMILY HOME OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws regulating Electrical wiring, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

Signature of Permittee _____ Date Sept 15-89

FOR APPLICANT, TO FILL IN	EACH	NO.	FEE
New Residential Bldgs. & Pools			
1 & 2-Family, Sq. Ft. 5400	$.05	—	$ 200.00
Multi-family Sq. Ft.			
Residential Swimming Pools			
Outlets: Rec 66 Light 148 Sw. 65			
Total No. 279 First 20			
Additional			
Lighting Fixtures First 20			
Total No. Additional			
Fixed Appliances Not Over 1 HP			
Range 2 Heater 2 D.W. 2			
Oven 2 Dryer 2 W.M. 2			
Top FAU 2 W.H. 2			
Hood 2 Fan 4 Other			
Disp. 2 Room Air Cond.			
Power Apparatus & Large Appliances			
Size & Type HP, KW, KVA, or KVAR			
Up to 1 Incl.			
2 Over 1 to 10 Incl.			
Over 10 to 50 Incl.			
Over 50 to 100 Inc.			
Over 100			
Services; Switch-, MCC-, Panelboards			
0 - 200 Amp. Under 600 V		3	
201 - 1000 Amp. Under 600 V		1	
Over 1000 Amp. or Over 600 V			
Temp. Power Pole & Appurtenances			
Sign with One Branch Circuit			
Additional Sign Branch Circuits			
Misc. Conduits & Conductors			
Other (See Complete Fee Schedule)			
PERMIT FEE (Sub-Total)			
PLAN CHECKING FEE			
PERMIT ISSUING FEE			13
TOTAL FEE			213.00

JOB ADDRESS 25351 Rivera Rd

LOCALITY Malibu Canyon

NEAREST CROSS ST. Cold Canyon

OWNER OR FIRM NAME Moses

MAIL ADDRESS

CITY Malibu Tel. No.

PLAN CHECK APPLICANT

ADDRESS

CITY Tel. No.

PERMIT APPLICANT Palisades Electric Co.

ADDRESS 865 S. Wanamaker Ave

CITY Pacific Palisades Tel. No. (213) 454-6971

LICENSE OR REG. NUMBER 468437 Class C-10

DISTRICT NO. 9-2

PROCESSED BY G. Rubin

FINAL DATE 2-2-90

VALIDATION

FINAL BY Young

29570A

5

1-21300

213008

0915-80

200 Amp Meter

INSPECTOR COPY

SEE REVERSE FOR EXPLANATORY LANGUAGE

EXHIBIT 3

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

Dec. 21 '90 10:57 0000 MOSES ASSOC. ARCHITECTS TEL 213-457-3699 P. 01

I hereby affirm that I have a certificate of consent to self insure, or a certificate of Workers' Compensation Insurance, or a certified copy thereof (Sec. 3800, Lab. C.)

Policy No. _____ Company _____

☐ Certified copy is hereby furnished.

☐ Certified copy is filed with the county building inspection department.

Date _____ Applicant _____

CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE

(This section need not be completed if the work involved by the permit is for one hundred dollars ($100) or less.)

I certify that in the performance of the work for which this permit is issued, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws.

Date _____ Applicant _____

NOTICE TO APPLICANT: If, after making this Certificate of Exemption, you should become subject to the Workers' Compensation provisions of the Labor Code, you must forthwith comply with such provisions or this permit shall be deemed revoked.

LICENSED CONTRACTORS DECLARATION

I hereby affirm that I am licensed under provisions of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, and my license is in full force and effect.

License Number _____ Lic. Class _____

Contractor _____ Date _____

☐ I am exempt under Sec. _____

B.&P.C. for this reason _____

_____ Date: _____

Signature _____

Exemption for Reg. Maint. Elect.

SINGLE FAMILY HOME OWNER-BUILDER DECLARATION

I hereby affirm that I am exempt from the Contractor's License Law for the following reason (Section 7031.5, Business and Professions Code):

☐ I, as owner of the property, will do the work and the structure is not intended or offered for sale (Section 7044, Business and Professions Code).

CONSTRUCTION LENDING AGENCY

I hereby affirm that there is a construction lending agency for the performance of the work for which this permit is issued (Sec. 3097, Civ. C.).

Lender's Name _____

Lender's Address _____

I certify that I have read this application and state that the above information is correct. I agree to comply with all County ordinances and State laws regulating Electrical wiring, and hereby authorize representatives of this County to enter upon the above-mentioned property for inspection purposes.

12-8-88

Signature of Permittee — Date

7BA463
CL 8006

APPLICATION FOR ELECTRICAL PERMIT

COUNTY OF LOS ANGELES — **DEPT. OF PUBLIC WORKS**

EXHIBIT 15

FOR APPLICANT TO FILL IN	EACH	NO.	FEE
New Residential Bldgs. & Pools	$	—	$
1 & 2-Family, Sq. Ft.		—	
Multi-family Sq. Ft.			
Residential Swimming Pools			
Outlets: Rec. ___ Light ___ Sw. ___			
Total No. ___ First 20 / Additional			
Lighting Fixtures First 20 / Additional			
Total No. ___			
Fixed Appliances Not Over 1 HP			
Range ___ Heater ___ D.W. ___			
Oven ___ Dryer ___ W.M. ___			
Top ___ FAU ___ W.H. ___			
Hood ___ Fan ___ Other ___			
Disp. ___ Room Air Cond. ___			
Power Apparatus & Large Appliances			
Size & Type HP, KW, KVA, or KVAR			
___ Up to 1 Incl.			
___ Over 1 to 10 Incl.			
___ Over 10 to 50 Incl.			
___ Over 50 to 100 Inc.			
___ Over 100			
Services, Swbd., MCC & Panelboards			
0 - 200 Amp. Under 600 V			
201 - 1000 Amp. Under 600 V			
Over 1000 Amp. or Over 600 V			
Temp. Power Pole & Appurtenances			15 00
Sign with One Branch Circuit			
Additional Sign Branch Circuits			
Misc. Conduits & Conductors			
Other (See Complete Fee Schedule)			
PERMIT FEE (Sub-Total)			15 00
PLAN CHECKING FEE			
PERMIT ISSUING FEE			10 50
TOTAL FEE			25 50

JOB ADDRESS	25351 PIUMA RD. MALI
LOCALITY	OFF MALIBU CANYON RD
NEAREST CROSS ST.	CULD CANYON RD.
OWNER OR FIRM NAME	JACK MOSES
MAIL ADDRESS	22333 VICTORY BLVD. #12
CITY	CANOGA PK. Tel. N (818)992-1
PLAN CHECK APPLICANT	JACK MOSES
ADDRESS	ABOVE
CITY	Tel. No.
PERMIT APPLICATION	
ADDRESS	
CITY	Tel. No.
LICENSE OR REG. NUMBER	Class
DISTRICT NO. 9.2	PROCESSED BY OF
FINAL DATE	VALIDATION
FINAL BY	

SEE REVERSE FOR EXPLANATORY LANGUAGE

The temporary p
is for the C SINGLE
purpose only. FAMILY RES.
Any unauthorized use will
cause immediate disconnection
of power.

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

Page 131

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 31 of 38

RECORDING REQUESTED BY

Pacific Title

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO

NAME: Mr. & Mrs. Howard Rubinroit
STREET ADDRESS: C/O SIDLEY & AUSTIN
CITY, STATE ZIP: 2049 CENTURY PARK EAST 35TH FL, LA, CA. 90067

90 250325

RECORDED IN OFFICIAL RECORDS OF LOS ANGELES COUNTY, CA

FEB 14 1990 AT 8 A.M.

Recorder's Office

FEE $7 N

2

SURVEY MONUMENT FEE $10. CODE 99

SPACE ABOVE THIS LINE FOR RECORDER'S USE

				ALL
				PTN

Title Order No. 8936332-12
Escrow or Loan No. 24103

GRANT DEED

80

THE UNDERSIGNED GRANTOR(s) DECLARE(s)
DOCUMENTARY TRANSFER TAX is $ 1,210.00 CITY TAX $ _____
☒ computed on full value of property conveyed, or
☐ computed on full value less value of liens or encumbrances remaining at time of sale,
☐ Unincorporated area: ☐ City of _____, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, JACK MOSES AND ANN-MARIE MOSES, husband and wife, as Joint Tenants, as to an undivided one-half interest, and RON LANDRY AND MARGO LANDRY, husband and wife, as Joint Tenants, as to an undivided one-half interest, as Tenants in Common hereby GRANT(S) to

HOWARD RUBINROIT AND TERRY RUBINROIT, husband and wife, as Community Property

the following described real property in the

County of Los Angeles State of California:

PER LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A"

Dated January 15, 1990

JACK MOSES

ANN-MARIE MOSES

RON LANDRY

MARGO LANDRY

STATE OF CALIFORNIA
COUNTY OF Los Angeles } ss

On January 15, 1990 before me, the undersigned a Notary Public in and for said State, personally appeared Jack Moses and Ann-Marie Moses and Ron Landry and Margo Landry

_____ personally known to me to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same

Witness my hand and official seal

Signature _____

OFFICIAL SEAL
FELICITAS J. PERRY
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Comm. Expires

EXH

(This area

TT-100 (Rev. 10/87)

MAIL TAX STATEMENTS AS DIRECTED ABOVE.

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT "A"

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 1, SOUTH, RANGE 17 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, 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 DEGREES 54 MINUTES 40 SECONDS WEST 475.49 FEET TO THE CENTER LINE OF PIUMA ROAD (FORMERLY COAL 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 DEGREES 51 MINUTES 40 SECONDS EAST) AN ARC DISTANCE OF 34.68 FEET; THENCE SOUTH 23 DEGREES 16 MINUTES 05 SECONDS 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 DEGREES 43 MINUTES 20 SECONDS 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 DEGREES 07 MINUTES 45 SECONDS EAST TO THE EASTERLY LINE OF SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTHERLY ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING.

90 250325

Exhibit D

previously submitted with letter of
November 5, 1998

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY/
LAND DEVELOPMENT DIVISION

CALABASAS - MALIBU DISTRICT OFFICE
4111 N. Las Virgenes Road, Calabasas, CA 91302-1929
Telephone: (818) 880-4150, FAX: (818) 880-6279
Office Hours: 8:00 a.m. - 4:30 p.m.
Plan Checker's Hours: 8:00 a.m. - 11:30 a.m. Appointments are recommended.

Plans for a structure at 25351 Pluma Rd (Address) Cala (Locality)

Plan Check No. 95110700001 was submitted on 11-7-95 for Building (or Grading) Plan Check.

MINIMUM PLAN CHECK SUBMITTAL REQUIREMENTS:

(_) Building & Drainage Plan Check requires 2 complete sets of working drawings including 2 sets of structural & energy calculations. Also provide a soils & geology report (if any), & Hydrology Report (if any). If Energy Calculations are computer methods(MICROPAS Etc.), an additional set of plans is required and is checked by the Mechanical Section at the Alhambra Hdqts.

THIS NOTICE IS TO INFORM YOU THAT APPROVAL FROM THE AGENCIES MARKED BELOW, IN ADDITION TO BUILDING OR GRADING PLAN CHECK APPROVAL, MUST BE OBTAINED PRIOR TO PERMIT ISSUANCE. You may need to submit the pertinent plans, plan check number, calculations, reports, etc., directly to these agencies. To assist you, we have listed below the information which you will need to contact these agencies. *Follow-up is your responsibility.* Please be aware that some items resulting from these agency plan reviews may affect your building plan check. These should be communicated to your Building Plan Check Engineer as soon as possible to prevent unnecessary delays. *Additional agency clearances may be requested by your Building Plan Check Engineer.*

____ **CALTRANS** - Permits are required for excavation, encroachment (including driveway aprons) and improvements (including grading or structures that affect drainage) on State Highways (Pacific Coast Hwy., Topanga Cyn. Bl., Decker Rd. & Westlake Bl.).

1 Spring St. Room 112
Los Angeles, CA 90012-3606
(213) 897-3631

____ **COASTAL COMMISSION** - A permit is required from the Coastal Commission. Prior to submitting an application to the Coastal Commission, an "Approval in Concept" must be obtained from the Regional Planning Department.

89 So. California St.
Ventura, CA 93001-2801
(805) 641-0142

____ **CONSTRUCTION DIVISION** - Permits are required for road excavations and encroachments.

5530 W. 83rd Street
Westchester, CA 90045-3309
(310) 649-6300

X **DRAINAGE SECTION (BUILDING AND SAFETY / LAND DEVELOPMENT DIV.)** - Plan approval is required for drainage and flood hazard. *Initial plan submittal will be forwarded by Building & Safety.*

Mr. Mark Pestrella
Calabasas Office:
Tuesdays & Thursdays 8:00-11:00 a.m.
(818) 880-4150

Headquarters:
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
Closed Fridays

____ **FIRE DEPARTMENT (LOS ANGELES COUNTY)**

(_) **FIRE STATION DEVELOPER FEE** must be paid to the Fire Dept. prior to issuance of a Building Permit. Obtain "DETERMINATION" form from Building & Safety. This fee does not apply to City of Westlake Village or to the Chatsworth area.

Fiscal Services Division
1320 No. Eastern Ave., Room 225
Los Angeles, CA 90063-3294
(213) 881-2404, Ext. 2442

(_) "HAZMAT" form must be submitted to and approved by the Fire Dept. for non-residential occupancies if hazardous materials are being handled. Obtain "HAZMAT" form from Building and Safety.

Fire Prevention Bureau, Hazardous Materials Section
5823 Rickenbacher Rd.
Commerce, CA 90040-3027
(213) 890-4000

(_) COMMERCIAL BUILDINGS OVER 2,500 SQ.FT. and MULTIPLE RESIDENTIAL BUILDINGS require plan approval from the Fire Dept.

Fire Prevention Bureau
5823 Rickenbacher Rd.
Commerce, CA 90040-3027
(213) 890-4125, FAX (213) 890-4129

(_) ALL NEW DWELLINGS, DWELLING ADDITIONS OVER 2,000 SQ.FT., COMMERCIAL BUILDINGS UNDER 2,500 SQ.FT. and any structures in Deer Lake Highlands require approval from the Fire Department. Provide Fire Department with a WATER CERTIFICATE completed by the local water company. A water information form is required before a rough plumbing inspection. (X) Swimming pools in the VHFHS zone require plan check by Fire Dept.

(_) Las Virgenes Municipal Water Dist.
4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

(_) Waterworks District #29
23533 W. Civic Center Wy.
Malibu, CA 90265-4804
(310) 317-1388, Hours 8:00-10:00 a.m.

AND
Fire Prevention Bureau

(X) Capt. Jim Jordan
23533 W. Civic Center Way
Malibu, CA 90265-4804
(310) 317-1351 Jackie

(_) For Chatsworth area only:
Ms. Nina Giannone
23757 Valencia Blvd.
Santa Clarita, CA 91355-2192
(805) 253-7266

X **GEOLOGY / SOILS SECTIONS (MATERIALS ENGINEERING DIVISION)** - Plan approval is required for geologic hazards. Initial submittal consisting of two copies of geotechnical reports together with consultant signed plans will be forwarded by Building & Safety. Subsequent submittals are your responsibility and must also contain copies of the latest geology/soils review sheet. The plans must incorporate the consultant's recommendations with their approval. If required, plans must be approved by manual signature by the consultants prior to resubmittal. This section may impose additional fees for resubmittals.

Messrs. Mike Montgomery / Scott Ezell
Calabasas Office;
First & Third Tuesday 8:00 - 10:00 a.m.
(818) 880-4150

Headquarters - Closed Fridays
900 S. Fremont Ave., 4th Floor
Alhambra, CA 91803-1331
(818) 458-4925 M & W 9:00 - 11:00 a.m.

____ **GRADING SECTION (BUILDING AND SAFETY/LAND DEVELOPMENT DIV.)** - Grading/Landscaping permit and approval are required. Grading/Landscaping plan check is done primarily at the Central Office. Submit 4 sets of Grading plans and 3 sets of Geology & Soils Reports.
(_) Rough Grading approval is required before a building permit can be issued.

900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-4921 Closed Fridays

EXHIBIT 4
CCC-01-CD-1 (RUBINROIT)
Page 35 of 38

EXHIBIT 4
CCC-02-RO-01
(CCC-01-CD-01)

X

[illegible]TH SERVICES DEPARTMENT (MOUNTAIN AND RURAL) - Approval is required fo[illegible] private sewage disposal systems for new construction, for modification or repair to existing systems and for increase in use for an addition or remodel (increase in number of bedrooms for residential.) Contact the Sanitarian that handles your area. Five copies of the plot plan showing the sewage disposal are required.

Mr. Anthony Lawrence R.E.H.S.
Calabasas Office
Monday - Friday 8:00-9:00 a.m.
(818) 880-4121

Headquarters Environmental Mgmt.:
2525 Corporate Pl.
Monterey Park, CA 91754-7641
(213) 881-4157

Mr. Bob Saleh
Mr. Arnie Fielding
Mr. Bart Slutske
Malibu Office:
23525 W. Civic Center Wy.
Malibu, CA 90265-4804
Monday - Friday 8:00-9:00 a.m.
(310) 317-1317

___ **HEALTH SERVICES DEPARTMENT (ENVIRONMENTAL SANITATION DIV.)** - Approval is required for all food establishments.

12502 Van Nuys Blvd., Room 204
Pacoima, CA 91331
8:00 - 10:00 a.m.
(818) 834-3370

2509 W. Pico Blvd. Room 329
Santa Monica, CA 90405-1899
8:00 - 10:00 a.m.
(310) 315-4581

___ **HIGHWAY DESIGN SECTION (DESIGN DIVISION)** - Plan approval for street improvements and/or dedication is required for commercial and multiple residential bldgs. "Bridge & Major Thoroughfare (B&T) Fee" is also required for commercial, multiple residential buildings and designated tracts in the Lost Hills and Parkway Calabasas B & T Districts. Form "48-0040-DPW" (RD 490) should be filled out when submitting plans to Building and Safety.

Mr. Dugan Andrus
900 S. Fremont Ave. 6th Floor
Alhambra, CA 91803-1331
(818) 458-7984 Closed Fridays

___ **LAS VIRGENES MUNICIPAL WATER DISTRICT** - A letter is required stating financial arrangements have been made for sewer connections. *In commercial buildings, an approval is required for installation of additional plumbing fixtures.*

4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

___ **MECHANICAL AND ELECTRICAL ENERGY PLAN CHECK** - Required for all commercial and industrial buildings with comfort heating and which are over 1000 sq.ft. in area or have an occupant load over 50. When submitting plans for building plan review, submit two extra complete sets along with the required energy conservation forms and calculations.

Mechanical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3182 Closed Fridays

Electrical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3180 Closed Fridays

___ **DIVISION OF OCCUPATIONAL SAFETY & HEALTH (STATE DEPT. OF INDUSTRIAL RELATIONS)** - Permit is required for excavation of trenches which are 5 ft. or more deep into which a person is required to descend or for the construction or demolition of any structure 4 or more stories. *Brick lined seepage pits may require permit.*

6150 Van Nuys Blvd. Suite 405
Van Nuys, CA 91401-3379
(818) 901-5403

___ **DIVISION OF OIL AND GAS (STATE DEPARTMENT OF CONSERVATION)** - Obtain clearance for the requirements of abandonment of oil wells.

245 West Broadway, Suite 475
Long Beach, CA 90802-4455
(310) 590-5311

1000 S. Hill Rd. Suite 116
Ventura, CA 93003-4455
(805) 654-4761

___ **PARKS AND RECREATION DEPARTMENT** - Plan approval is required for [illegible]tion adjacent to a "General Plan Designated Trail."

433 S. Vermont Avenue
Los Angeles, CA 90020-1975
(213) 738-2973

___ **REGIONAL PLANNING DEPARTMENT** - Approval is required for:

( ) Compliance to General Plan
( ) Land use/approval in concept
( ) Legal lot
( ) Parking and landscaping
( ) Setbacks
( ) Building Height
( ) Topanga Cyn. Comm. Stds. Dist.
( ) Chatsworth Twin Lake Comm. Stds. Dist.
( ) Malibu Lake Urgency Ordinance
( ) Sensitive Environmental Zone
( ) Oak Tree Permits
( ) _____

320 W. Temple St., 13th Floor (Rm. 1360), Los Angeles, CA 90012-3282
Public Counter : 1:00 p.m. to 6:00 p.m. Monday thru Thursday only
Telephone Hours : 7:00 a.m. to 12:00 p.m. (213) 974-6411 Monday thru Thursday only

___ **SCHOOL DISTRICT** - Development fee must be paid to the District for residential and commercial construction. A "Certificate of Payment of Developer Fee" must be submitted to Building and Safety prior to obtaining a building permit.

( ) Las Virgenes Unified School Dist.
4111 Las Virgenes Road
Calabasas, CA 91302-1929
(818) 880-4000
Obtain "Certification Form" from Las Virgenes School District.

( ) L.A. Unified School Dist.
600 East Pico Boulevard
Los Angeles, CA 90015-3116
(213) 743-3670
Obtain "Certification Form" from Calabasas B & S Office.

( ) Santa Monica - Malibu Unified School District
1651 16th Street, Santa Monica, CA 90404-3891
(310) 450-8338
Obtain "Certification Form" from Calabasas B & S Office.

___ **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)** - Applicat[illegible] residential buildings must fill out "Air Quality Permit Checklist" furnished by Building & "Yes" is marked, a written release will be required before occupancy is allowed. Notifica[illegible] required for demolition and alteration permits where ASBESTOS is involved.

21865 E. Copley Dr.
Diamond Bar, CA 91765-4182
(909) 396-2000, (800) 388 - 2121

___ **TRAFFIC AND LIGHTING DIVISION** - Clearance is required for traffic requirements

Traffic and Lighting Division, Traffics Studies Unit
900 S. Fremont Ave.
Alhambra, CA 91083-1331
(818) 458 - 5909 Closed Fridays

___ **WASTE MANAGEMENT DIVISION** - Plan approval is required for most commercial and industrial buildings for: ( ) Industrial Waste, ( ) Underground Tanks, ( ) Floor Drains.

Mr. Jerry Wong
125 S. Baldwin Ave.
Arcadia, CA 91007-2652
8:00-9:00 a.m. Monday -Friday.
(818) 574-0957

Waste Management Division
900 S. Fremont Ave.
Alhambra, CA 91803-1331
(818) 458-3517
Closed Fridays

___ **WESTLAKE VILLAGE (CITY OF)** - Zoning/Engineering approval is required prior to submitting for Building Plan Check.

( ) Zoning Dept.
Mr. Robert Theobold
4373 N. Park Terrace Dr.
Westlake Village, CA 91361-4631
(818) 706-1613

( ) Enginering Dept.
City Engineer & Road approval
374 Poli St., Suite 102
Ventura, CA 93001-2605
(805) 653 - 6597

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 36 of 38

NOTICE TO OWNER

POOL MUST BE COMPLETELY FENCED
BEFORE FILLING

BUILDING AND SAFETY DIVISION
4111 [redacted] North Las Virgenes Road
Calabasas, California 91302
Telephone: 880-4150

SWIMMING POOL INSPECTION RECORD

POST THIS CARD AT JOBSITE

9511070001 — BLDG. PERMIT NO.
2-29-96 — DATE
25351 Rima Rd — ADDRESS
Rubinroit — OWNER

INSPECTION	DATE	INSPECTOR
LOCATION		
STEEL & FORMS	3-5-96	
LIGHT CONDUIT		

DO NOT GUNITE OR POUR UNTIL ABOVE SIGNED

CONDUIT UNDER DECK		
GAS LINE UNDER DECK	3-1-96	
WATER LINE UNDER DECK		
SEWER UNDER DECK		

DO NOT POUR DECK UNTIL ABOVE SIGNED

WATER SUPPLY		
ELECTRIC WIRES		
FENCE (HEIGHT)		
GATES (SELF-CLOSING) (SELF-LATCHING)		

DO NOT FILL POOL UNTIL ABOVE SIGNED

ROUGH WIRING		
FINAL ELECTRIC		

DO NOT ENERGIZE UNTIL ABOVE SIGNED

HEATER (LOCATION & VENT)		
GAS LINE TEST	5-24-96	
POOL DRAINAGE		
FINAL APPPOVAL		

20-0004 DPW 3/86

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

Page 137

EXHIBIT F

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 37of [illegible]

POST THIS CARD AT JOB SITE

DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY DIVISION
4111 NORTH LAS VIRGENES ROAD
CALABASAS, CALIFORNIA 91302
TELEPHONE: (818) [illegible] 4150

INSPECTION RECORD

PERMITS WILL BE VOIDED IF WORK IS STOPPED FOR 180 CONSECUTIVE DAYS

0007 — BLDG. PERMIT NO.
4/22/96 — DATE
R-3 — GROUP
25351 Piuma Rd — ADDRESS
Rubinroit — OWNER

NOTE: *Do Not Cover Walls Until Frame, Insulation, Electrical, Mechanical and Plumbing Have Been Signed.*

BUILDING	DATE	INSPECTOR'S SIGNATURE
FOUNDATION: LOCATION FORMS, SETBACK	1-22-96	
SLAB Grout	4-23-96	
Pour No Concrete Until Above Has Been Signed		
FRAME: FIRE STOPS, BRACING, BOLTS		
INSULATION		
LATH, INT. ☐ DRYWALL ☐		
LATH, EXT.		

ELECTRICAL	DATE	INSPECTOR'S SIGNATURE
UNDER SLAB WORK		
ROUGH CONDUIT		
ROUGH WIRING		
TEMP. POWER		

MECHANICAL	DATE	INSPECTOR'S SIGNATURE
FAU A.C. REF BOILER OTHER		
COMBUST. & CIRCULAT. AIR, DUCTS, VENTS, ETC.		
LOCATION, CLEARANCE, ACCESS		

PLUMBING	DATE	INSPECTOR'S SIGNATURE
UNDER SLAB WORK		
ROUGH PLUMBING		
ROUGH GAS PIPING		
HOUSE SEWER		
SEPTIC TANK, SEEP PIT(S) AND/OR DRAINFIELD		

FINAL APPROVALS	DATE	INSPECTOR'S SIGNATURE
ELECTRICAL		
GAS PIPING		
MECHANICAL		
PLUMBING FIXTURES		
BUILDING		

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT F

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS *Governor*

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

REGULAR AND CERTIFIED MAIL (Article No. Z 210 987 333)

March 20, 2001

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

SUBJECT: Amendment to the Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File No. V-4-97-31

Dear Mr. Rubinroit:

This letter amends the Notice of Intent (NOI) to commence Cease and Desist Order (CDO) proceedings that was sent to you on January 2, 2001 to clarify our description of the unpermitted development and to include additional unpermitted development on your property (APN 4456-37-007) at 25351 Puma Road in Calabasas, Los Angeles County.

On March 15, 2001, you provided Coastal Commission staff with the opportunity to inspect your property. This site inspection enabled us to have a clearer understanding of the unpermitted development described in our NOI. As a result, we are amending the NOI by replacing the description of the unpermitted development in the NOI with the following language:

1. lighted sports court,
2. swimming pool with spa and pump and
3. retaining wall and associated carport.

In addition, staff observed other unpermitted development on the site. For purposes of clarity and to address your site comprehensively, we are amending the NOI to include the following additional unpermitted development:

4. lighted stairway extending from the pool area to the sportscourt,
5. lighted steps and pathways on both sides of the house,
6. chain link fence and gates around pool and house,
7. above-ground storage tank (AST) containing gas heating fuel (propane) with concrete pad,
8. water AST (approximately 3,000 gallon capacity),
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),

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 16
CCC-01-CD-1 (RUBINROIT
Page 1 of 2

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. excessive vegetation removal

To further clarify our NOI, we are amending the description of the alleged violations to explicitly include the grading, vegetation removal and other activities associated with the construction of the unpermitted development listed above.

In accordance with the California Code of Regulations, Title 14, Section 13181(a), you have the opportunity to respond to the Commission staff's allegations as set forth in this amendment to the NOI by completing the enclosed Statement of Defense (SOD) form as a supplement to your SOD dated February 5, 2001. You are not required to repeat the defenses set forth in your February 5, 2001 SOD; you simply have the opportunity to augment it to address the revision of the description of the alleged violations contained in this amendment to the NOI. The supplemental SOD must be returned to this office not later than April 9, 2001.

You can prevent this hearing from taking place by submitting to our Ventura Office the materials and information required by the staff's nonfiling letters dated February 26, 1999 and September 7, 2000 and by the letter from Abe Doherty dated March 20, 2001, prior to the scheduled date of the CDO hearing and by amending your CDP applications to include all of the unpermitted development. Alternatively, before the CDO hearing date, you can file a complete CDP application to remove the unpermitted development and restore the site to its pre-violation condition. A CDP is required if you propose to remove cited unpermitted development because removal constitutes "development" as defined in section 30106 of the Coastal Act. The Commission must review any proposed removal project to ensure that it is consistent with the resource protection policies contained in the Coastal Act. For CDP filing requirements or questions about the additional materials and information required to complete your submitted applications, please contact John Ainsworth in our Ventura Office at (805) 641-0142.

Sincerely,

PETER DOUGLAS
Executive Director

cc: Abe Doherty, Headquarters Enforcement Officer
Amy Roach, Chief of Enforcement
John Bowers, Staff Counsel
John Ainsworth, South Central Enforcement Program Supervisor
Tom Sinclair, South Central Enforcement Analyst
Sabrina Tilles, South Central Coastal Program Analyst

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
NEW YORK
SEATTLE
WASHINGTON, D.C.

555 WEST FIFTH STREET
LOS ANGELES, CALIFORNIA 90013-1010
TELEPHONE 213 896 6000
FACSIMILE 213 896 6600

FOUNDED 1866

HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(213) 896-6602

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

April 10, 2001

RECEIVED
APR 11 2001
CA COASTAL COMMISSION
LEGAL DIVISION

By Federal Express

Mr. Abe Doherty
Headquarters Enforcement Officer
California Coastal Commission
45 Fremont
Suite 2000
San Francisco CA 94105-2219

Re: Amendment to Notice of Intent/Amended Statement of Defense

Dear Abe:

Responding to the Staff's March 20, 2001 letter to my wife and me, we are enclosing herewith a Statement of Defense form prepared and executed by me, along with the designated exhibits.

Pursuant to your letter of March 20, 2001, we would propose to file, without prejudice to our arguments, an application for a CDP prior to any hearing on the NOI. We are most interested in resolving this matter amicably, but are prepared to contest the Commission's NOI (or any other enforcement action) if necessary.

Thank yor for your personal courtesies and efforts.

Very truly yours,

Howard J. Rubinroit

HJR/sk

Enclosures

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

STATE OF CALIFORNIA – THE RESOURCES AGENCY
GRAY DAVIS Governor
CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

REGULAR AND CERTIFIED MAIL (Article No. Z 210 987 333)

March 20, 2001

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

Dear Mr. Rubinroit:

This letter memorializes the conversation I had on March 15, 2001 with you and your wife and discusses issues related to the Cease and Desist Order (CDO) hearing. I appreciate your cooperation in allowing me to conduct a site investigation at your property at 25351 Piuma Road in Calabasas on March 15, 2001. During the site visit, I observed additional development that was performed in violation of the original Coastal Development Permit (CDP 5-88-056), but that had not been described in the original Notice of Intent to commence CDO proceedings (NOI). I am obligated to report this additional unpermitted development. As a result, the Executive Director is by separate letter issuing to you an amendment to the NOI to include within the scope of the NOI the additional unpermitted development. Addressing all of the unpermitted development at the same CDO hearing will contribute to the achievement of a comprehensive resolution of all alleged violations of the permit requirements of the Coastal Act on your property.

During my site investigation, I observed an exposed septic outlet and septic effluent on the slope to the west of your house. To address this issue, we are requiring that you submit proof of a permit from the Los Angeles County Building and Safety Department (after first obtaining approval from the County Health Department) for repairs to the septic system as a filing requirement for your CDP applications.

In our conversation during the site investigation, you questioned why you had been asked to submit two CDP applications. I explained my understanding, based upon review of phone logs and discussion with current and former Commission staff, that the idea of two applications was suggested so that development on the building pad number one (house pad) would be considered separate from the sports court. The Commission district staff has indicated that they would be likely to recommend approval of the development associated with the pool on the house pad located outside of the area that is the subject of the Offer to Dedicate (OTD) an open space easement. Therefore, submitting an application addressing this development on the house pad would facilitate the partial resolution of the alleged violation by legitimizing this development. However, I advised you that if you did not want to pay the fee to submit two CDP applications, you are at liberty to include all unpermitted development in one CDP application. You indicated that you were interested in submitting two applications to speed up the process of achieving at

(CCC-01-CD-01)
CCC-01-CD-1 (RUBINROIT)
Page 2 of 44

least a partial resolution of this proceeding by obtaining after-the-fact (ATF) approval of the development on the house pad.

We discussed some of the items needed for completion of your CDP applications. I indicated that you may be able to submit the geotechnical report prepared for the design of the pool and carport with an addendum evaluating current soil and geologic conditions to meet the requirements that you submit a current soil and geologic report. This addendum should include a description of the footings used to support the pool and/or carport and an evaluation of the stability of the soils and bedrock at the site. The exact requirements for the contents of this report will be determined by the Commission's South Central District staff.

You asked if we would be willing to stop the CDO proceedings if you agreed to submit the items that are needed to complete the CDP applications. I told you that we would consider this offer, but that we were concerned about repeating what happened in 1998 after Commission staff issued a NOI to commence CDO proceedings. A November 13, 1998 letter from Commission staff to you memorializing a conversation with you on the previous day states:

> *You agreed that you would proceed with filing a CDP application for ATF (after-the-fact) approval of the unpermitted developments. . . We agreed that we would postpone our cease and desist proceedings to allow you time to file a complete application.*

Since you submitted incomplete applications and later indicated on December 1, 2000 that you would not pursue obtaining the permits, the Commission staff is concerned about postponing the CDO hearing again. Nevertheless, the NOI and the amendment to the NOI indicate that if you submit complete applications prior to the scheduled hearing, we will postpone or cancel the hearing. I am optimistic that your indication of willingness to submit the items needed to complete the applications means that we are closer to a resolution of this case.

We are planning on scheduling the CDO hearing for the Commission's May meeting (May 7-11). You indicated in our conversation on March 15, 2001 that you may have a trial during that time that might make it difficult for you to attend the hearing. The Commission does not typically postpone CDO hearings. However, if you submit a written request documenting a conflict that would prohibit you from attending a hearing during the Commission's meeting in May, we will consider the request.

In conclusion, I am hopeful that our discussions last Thursday helped to set the groundwork for resolution of this matter. Please call me at (415) 904-5297 if you have any questions.

Sincerely,

Abe L. Doherty

Abe G. Doherty
Headquarters Enforcement Officer

cc: Amy Roach, Chief of Enforcement
John Bowers, Staff Counsel
John Ainsworth, South Central Enforcement Program Supervisc

STATE OF CALIFORNIA – THE RESOURCES AGENCY

GRAY DAVIS Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

REGULAR AND CERTIFIED MAIL (Article No. Z 210 987 333)

March 20, 2001

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

SUBJECT: Amendment to the Notice of Intent to commence Cease and Desist Order proceedings; Coastal Act Violation File No. V-4-97-31

Dear Mr. Rubinroit:

This letter amends the Notice of Intent (NOI) to commence Cease and Desist Order (CDO) proceedings that was sent to you on January 2, 2001 to clarify our description of the unpermitted development and to include additional unpermitted development on your property (APN 4456-37-007) at 25351 Puma Road in Calabasas, Los Angeles County.

On March 15, 2001, you provided Coastal Commission staff with the opportunity to inspect your property. This site inspection enabled us to have a clearer understanding of the unpermitted development described in our NOI. As a result, we are amending the NOI by replacing the description of the unpermitted development in the NOI with the following language:

1. lighted sports court,
2. swimming pool with spa and pump and
3. retaining wall and associated carport.

In addition, staff observed other unpermitted development on the site. For purposes of clarity and to address your site comprehensively, we are amending the NOI to include the following additional unpermitted development:

4. lighted stairway extending from the pool area to the sportscourt,
5. lighted steps and pathways on both sides of the house,
6. chain link fence and gates around pool and house,
7. above-ground storage tank (AST) containing gas heating fuel (propane) with concrete pad,
8. water AST (approximately 3,000 gallon capacity),
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. excessive vegetation removal

To further clarify our NOI, we are amending the description of the alleged violations to explicitly include the grading, vegetation removal and other activities associated with the construction of the unpermitted development listed above.

In accordance with the California Code of Regulations, Title 14, Section 13181(a), you have the opportunity to respond to the Commission staff's allegations as set forth in this amendment to the NOI by completing the enclosed Statement of Defense (SOD) form as a supplement to your SOD dated February 5, 2001. You are not required to repeat the defenses set forth in your February 5, 2001 SOD; you simply have the opportunity to augment it to address the revision of the description of the alleged violations contained in this amendment to the NOI. The supplemental SOD must be returned to this office not later than April 9, 2001.

You can prevent this hearing from taking place by submitting to our Ventura Office the materials and information required by the staff's nonfiling letters dated February 26, 1999 and September 7, 2000 and by the letter from Abe Doherty dated March 20, 2001, prior to the scheduled date of the CDO hearing and by amending your CDP applications to include all of the unpermitted development. Alternatively, before the CDO hearing date, you can file a complete CDP application to remove the unpermitted development and restore the site to its pre-violation condition. A CDP is required if you propose to remove cited unpermitted development because removal constitutes "development" as defined in section 30106 of the Coastal Act. The Commission must review any proposed removal project to ensure that it is consistent with the resource protection policies contained in the Coastal Act. For CDP filing requirements or questions about the additional materials and information required to complete your submitted applications, please contact John Ainsworth in our Ventura Office at (805) 641-0142.

Sincerely,

PETER DOUGLAS
Executive Director

cc: Abe Doherty, Headquarters Enforcement Officer
Amy Roach, Chief of Enforcement
John Bowers, Staff Counsel
John Ainsworth, South Central Enforcement Program Supervisor
Tom Sinclair, South Central Enforcement Analyst
Sabrina Tilles, South Central Coastal Program Analyst

Re: Coastal Act Violation File No. V-4-97-31

This Statement of Defense Form ("Statement") is both in specific response to the Amendment to Notice of Intent ("Amendment"), dated March 20, 2001, from Peter Douglas respecting the above captioned matter, and further intended to amend and supplement our earlier responses to previous Notices of Intent ("NOI") and other Commission inquiries, including our Statement of February 5, 2001. Accordingly, each and all of our earlier Statements and responses are incorporated herein, and this Statement is specifically incorporated in each and all of those earlier Statements and responses.

This Statement and our earlier Statements and responses are and were made without prejudice to (and specifically preserving) our positions, among other things, that: 1) the Commission and/or Executive Director are without power to bring, purport to determine, or seek to enforce a Cease and Desist Order ("CDO") proceeding in this matter, in that, inter alia, the original jurisdiction respecting the alleged violations referred to in the NOIs lies in the Superior Court and not with the Commission or Executive Director (as more fully discussed below); 2) the purported "developments" which were the subject of the Commission's earlier Notices of Intent (and which appear to be re-stated in the Amendment as items 1-6, 10-12, and 16-17) do not and did not require a Coastal Development Permit ("CDP") and/or constitute work performed pursuant to a vested right; 3) any action by the Commission and/or Executive Director pursuant to any of the Notices of Intent and/or Amendment and/or otherwise is barred by applicable statutes of limitations and the doctrine of Laches; and 4) 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.

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

Unnumbered paragraph 2: We admit that, on or about March 15, 2001, my wife and I provided Coastal Commission Staff (Mr. Abe Doherty) with the opportunity to inspect our property, and allege that on that date Mr. Doherty in fact conducted a lengthy site investigation of our property as well as a survey of surrounding property and the surrounding area. We deny that that 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.[1]

2. **Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):**

Unnumbered paragraphs 1, 2 and 3: We deny the claim that the purported "additional unpermitted development" described in the Amendment constitutes unpermitted development; and/or that the site inspection of March 15,2001 "enabled" staff "to have a clearer understanding of the unpermitted development described in our NOI," and/or that "staff observed other unpermitted development on the site."

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[1] We would request that prior to any hearing, we be afforded access to the file respecting our property and this matter to seek to determine what Staff knew or should have known, and when, respecting the various items of "development" which are the subject of the NOIs and the Amendment.

In fact, and as stated above, on at least one prior occasion, my wife and I agreed that staff could make a site visit, and, in response to that offer, Ms. Susan Booker in fact made a site visit. At that time, the condition of our house, other structures, and property were identical to those which existed at the time Abe Doherty made his site visit on March 15, 2001 (other than we had added some additional native vegetation in the form of 15 trees on our slopes, and some of the other vegetation had matured further between Ms. Booker's and Mr. Doherty's site visits). Moreover, on at least one occasion that we know of, staff came unannounced to our property and had an opportunity on that occasion to view our house, other structures, and the entirety of the property (at least from the street, assuming our property was not entered onto without our permission). Moreover, pursuant to the so-called Offer of Dedication and so-called Administrative Permit (both of which were issued in 1988), the Commission reserved the power (which we challenge) to inspect our property upon 24-hours notice. Accordingly, at all times since the initial development of the property until the present, the Commission had the power (if not the right) to demand and make a site visit of our property.[2]

Additionally, we deny that the items listed as 1, 2 and 3 in the Amendment constitute either "unpermitted development" or "additional unpermitted development." The so-called "lighted sports court" listed as item 1 is the same purported improvement as that described as "construction of a tennis court" in the Commission's letter of June 19, 1997, and which has been

[2] In connection with the Laches and statute of limitations defenses which we have raised in this matter, in the interest of "fundamental fairness," and to provide us due process, demand is hereby made that the Commission make available to us any and all records evidencing visits by the Commission or its staff to our property or to the area of our property from and after January 1, 1990, and/or evidence of any other surveillance of our property or the area of our property, such as arial photographs by the Commission or any sister agency of the State.

referred to as a "tennis court" or "sports court" in subsequent communications (including previous NOIs) from and to the Commission. Likewise, the so-called "swimming pool with spa and pump" and so-called "retaining wall and associated carport," listed as items 2 and 3, respectively, are the same purported improvements as have been the subject of various communications between the Commission Staff and us, including our applications for permits which the Staff deemed incomplete.

As more fully discussed in our previous Statements of Defense and in our rejected applications, all of the foregoing purported improvements were fully permitted by the Department of Building and Safety of the County of Los Angeles (pursuant to a process where they advised us that no Coastal Development Permit was required), and, given our good faith reliance on the County permits and advice, we expended in an excess of $100,000.00 on those purported improvements, such that we believe we acquired a vested right to construct such improvements.[3] Additionally, and as more fully discussed in our previous Statements of Defense, insofar as the Commission has any jurisdiction respecting our property (which we question)[4], it is our position that the foregoing purported improvements are exempt from the requirement of a CDP pursuant, among other things, to Public Resources Code § 30610(a). Moreover, insofar as the Commission's regulations purport (in §13250(b)(1) or otherwise) to require a CDP for improvements to single family structures located, among other things, in a "sensitive habitat area" or other broadly enumerated areas, we believe that that regulation is

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[3] Insofar as any application or other paperwork is required in order to establish and/or satisfy the Commission respecting our claim of vested rights pursuant to the Commission's Regulations (§ 13200) or otherwise, request is hereby made that we be furnished with advice respecting (and if necessary copies of) such application or other paperwork.

[4] We would request that we be provided prior to the hearing with evidence that supports that our property, which we believe to be in excess of 5 miles from the mean high-tide line and separated from the sea by at least one ridge line, is subject to the jurisdiction of the Commission.

contrary to the Coastal Act itself (and unenforceable, since it would largely if not totally emasculate and vitiate the exemption provided under § 30610(a)).[5]

The same is true with respect to the so-called "lighted stairway" referred to in item 4, the "lighted pathway" referred to in item 5, the "chain linked fence and gates" referred to in item 6, the "patio area" referred to in item 10, the "supposedly non-native sand fills" referred to in items 11 and 12, the "transformers" referred to in item 16, and the "excessive vegetation removal" referred to in item 17, all of which were part of the so-called improvements (permitted by the County) performed in 1996 and all of which have been "open and notorious" since the time they were installed. We deny that those purported improvements constitute "additional unpermitted development;" believe and contend that we had a vested right to install the same; and do not believe that a CDP was required therefor.

We also deny that the so-called lighted steps referred to as part of item 5, the propane tank described in item 7, the so-called water AST referred to in item 8, the drainage system referred to in item 13, the septic system referred to in item 14, and/or irrigation system referred to in item 15 constitute "unpermitted" development. All of those improvements were constructed and/or installed at the time that our house was originally constructed by Mr. Moses pursuant to the 1988 Administrative Permit. Enclosed herewith as Exhibit 1 is a site plan prepared by Mr. Moses, dated February 8, 1988, which shows, among other things, the water tank, propane tank, and the location of septic pits. Attached here collectively as Exhibit 2 or various (self-dated) photographs which show the lighted steps (item 5), propane tank (item 7),

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[5] Insofar as the Commission contends that improvements to any or all other single family residences in the area of our home require a Coastal Development Permit, demand is hereby made that the Commission make available to us the files and records reflecting the Commission's enforcement of that requirement respecting improvements to any other single family residences in the area of our property. If the Commission does not contend that it applies to other homes in our area, we would request an explanation as to why our property and we are treated differently.

water tank (item 8), the extent to which existing vegetation was denuded in connection with the original development, and the original non-native grass which was, in part, replaced in 1996 with the supposedly non-native sand (and what we actually understand to be native crushed granite) referred to in items 11 and 12.

We assume that Commission Staff at the time that the 1988 permit was issued understood that our property, which is not connected to any municipal or other water source, and which is not connected to any existing gas service, would require both water and gas service. We further assume that that they knew that there were no sewers in the area, and that a septic system was being installed. We also assume that Commission Staff understood that the foregoing, as well as irrigation of permitted vegetation, would require pipes and other transmission lines.[6] We further assume that Commission Staff at the time reviewed the plans for the work under the 1988 Administrative Permit, and, even if they did not, understood that a stairway would be required to traverse a property containing a house on four levels. We further assume that Commission Staff knew of the grading that was required for constructing the permitted structure on this difficult site, and that native vegetation would be removed in the process. If Commission Staff did not know all of the foregoing, than we believe they should have known the same, and that the claim that these items were "unpermitted" is at best specious.[7]

We also deny that, as indicated in 11, a "blue-line stream" any longer traverses the property in the area of the so-called sports court or otherwise. During the March 15, 2001 site

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[6] We have no knowledge respecting what pipes and lines are referred to in the Amendment, but know that the only additional pipes and lines installed since the original development were in connection with the permitted pool. Insofar as any pipes or other lines may extend underground into the so-called easement area, they were we believe all installed as part of the work which was the subject of the 1988 Administrative permit. Moreover, 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)

[7] Insofar as the Commission has any witnesses who will testify to the contrary respecting the foregoing, we would request that they be made available at the time of the hearing so that they may be examined in connection with any "facts" supplied to and/or relied on by the Commission.

visit, Abe Doherty himself observed and pointed out to me that the run off from above the property no longer (if it every did) goes under Piuma Road and into the so-called blue-line stream. Rather, and apparently as a result of work done by the County's streets and maintenance people, the run off from above the property now flows out onto and down Piuma Road before it reaches our property. As a result, the entire premise respecting the supposed "sensitivity" of this area is unsupported and unsupportable.

We also do not understand what is meant by "concrete in eastern water course" referred to in item 9, or "partially buried PVC pipe that appears to be part of a drainage system" referred to in item 13, and accordingly deny the same. Insofar as there exist any PVC pipe, other drainage devices pipes, or transmission lines on or under our property, we deny that there has been any changes made to the systems (water, drainage, septic, irrigation, or otherwise) installed during the original construction of the house and improvements, other than in connection with the swimming pool which was fully permitted by the Department of Building and Safety, and is the subject of our earlier comments.

Finally, we deny that there was any "grading" or native "vegetation removal" in connection with the improvements installed in 1996. The only grading of the property of which we are aware, was the grading in connection with the original construction, which is, indeed, referred to in the 1988 Administrative Permit. The so-called sport court, as discussed in our earlier Statements of Defense, did not require any grading, other than some fine hand grading. While there was excavation for purposes of installing the swimming pool, that was fully permitted by the Department of Building and Safety, and as discussed above we believe exempt from any requirement for a permit. The vegetation removed was a portion of the existing, non-native lawn. Attached hereto collectively as Exhibit 3 area pictures which show the extent of

removal of vegetation at the time of the earlier construction, and, indeed, shows the grading of the pad on which the so-called sports court was placed.

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

See above.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

We believe that our visit to the surrounding area with Mr. Doherty on March 15, 2001 demonstrated to him what we have earlier advised the Commission Staff respecting the massive grading, vegetation removal, and other destructive activity which has occurred on the so-called Quaker-Ross lots on Piuma and on the so-called Triangle lots on the corner of Piuma Road and Cold Creek. We believe that the Commission can no longer support a claim (if it ever could) that the area in which or 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. Similarly, and among other things, we showed Mr. Doherty two properties which are being developed on Cold Creek, which directly abutt on a tributary to Malibu Creek, where the pipes and grading directly and irreparably threaten the creek. Copies of photos of the foregoing conditions are attached hereto collectively in Exhibit 4.

We also advised Mr. Doherty that in all the time that we have owned our property, we have never once received any notice of intended development for any surrounding property. However, the surrounding properties have all been "improved," sometimes in dramatic fashion, nevertheless, as Mr. Doherty observed. In order that we may establish our due process, equal protection, and fundamental fairness defenses, as well as demonstrate that the effect of our de minimis improvements are and could only be considered negligible in terms of their impact, if any, given what is occurring and what has occurred in our neighborhood,[8] we would request that the Commission make available to us any and all files respecting the Quaker-Ross lots, the Triangle lots, the two properties on Cold Canyon, and the properties adjacent to ours as to which we should have received notice of any development.

5. Any other information, statement, etc. that you want to offer or make:

We do not believe that either the Commission or the Executive Director has jurisdiction to commence a Cease and Desist Order proceeding, and/or to issue a Cease and Desist Order in connection with our property, and/or to take administrative action at all respecting the matters referred to in the NOIs and Amendment. The NOIs and Amendment allege purported violations of the 1988 Permit and/or of provisions of that Permit, and violations of the provisions of the California Coastal Act of 1976. Such claims are addressable only by reference to the Attorney General for appropriate action under either Section 13172 or Section 13173 of the Commission' Regulations. A Cease and Desist Order proceeding before the Commission (or Cease and Desi Orders by the Executive Director) is appropriate, if at all, only in situations where someone is

[8] We believe that Mr. Doherty observed, and we are attached collectively as Exhibit 5 pictures to demonstrate, that there has been no degradation of our property by the improvements which are the subject of the NOIs and Amendment, no less the type of significant degradation contemplated and required by § 30240.

CCC-02-RO-01
EXHIBIT 4
(CCC-01-CD-01)

EXHIBIT 17
CCC-01-CD-1 (RUBINROTT)
Page 14 of 44

Page 154

presently engaging in some activity. Accordingly, 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 its notices of intention to institute a Cease and Desist Order proceeding.

Moreover, we also 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 limitations. 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 Procedure § 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 Procedure § 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 § 340, or by the three-year statute of limitations contained in the Coastal Act itself (§ 30820).

CCC-02-RO-01
EXHIBIT 4
Page 155

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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NEW YORK
SEATTLE
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WRITER'S DIRECT NUMBER
(213) 896-6602

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

April 10, 2001

RECEIVED
APR 11 2001
CA COASTAL COMMISSION
LEGAL DIVISION

By Federal Express

Mr. Abe Doherty
Headquarters Enforcement Officer
California Coastal Commission
45 Fremont
Suite 2000
San Francisco CA 94105-2219

Re: Amendment to Notice of Intent/Amended Statement of Defense

Dear Abe:

Responding to the Staff's March 20, 2001 letter to my wife and me, we are enclosing herewith a Statement of Defense form prepared and executed by me, along with the designated exhibits.

Pursuant to your letter of March 20, 2001, we would propose to file, without prejudice to our arguments, an application for a CDP prior to any hearing on the NOI. We are most interested in resolving this matter amicably, but are prepared to contest the Commission's NOI (or any other enforcement action) if necessary.

Thank yor for your personal courtesies and efforts.

Very truly yours,

Howard J. Rubinroit

HJR/sk

Enclosures

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by either a cease and desist order issued by the executive director or a notice of intent to initiate cease and desist order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later th: April 9, 2001** to the Commission's enforcement staff at the following address:

Abe Doherty, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact **Abe Doherty** at **(415) 904-5297.**

CCC-02-RO-01
EXHIBIT 4
Page 157

1. **Facts or allegations contained in the cease and desist order or the notice of intent that you admit (with specific reference to the paragraph number in such document):**

2. **Facts or allegations contained in the cease and desist order or notice of intent that you deny (with specific reference to paragraph number in such document):**

3. **Facts or allegations contained in the cease and desist order or notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

5. **Any other information, statement, etc. that you want to offer or make:**

6. **Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

CCC-02-RO-01

EXHIBIT 4

Page 161

6. **Documents, exhibits, declarations under penalty or perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):**

1. Exhibit 1 -- Site plan, dated February 8, 1988;

2. Exhibit 2 – Six (self-dated) photographs which show the lighted steps (item 5), propane tank (item 7), water tank (item 8), the extent to which existing vegetation was denuded in connection with the original development, and the original non-native grass which was, in part, replaced in 1996 with the supposedly non-native sand (what we actually understand to be native crushed granite) referred to in items 11 and 12;

3. Exhibit 3 -- Photographs which show the extent of removal of vegetation at the time of the earlier construction, and, the grading, in 1989 or 1990, of the pad on which the so-called sports court was placed in 1996; and

4. Exhibit 4 – Twenty-seven photographs of the Quaker-Ross lots, Triangle lots, and Cold Creek developments.

Dated: April 10, 2001

Respectfully submitted,

Howard J. Rubinroit

CCC-02-RO-01
EXHIBIT 4
Page 162

CCC-02-RO-01

EXHIBIT 4

Page 163

Exhibit 2

EXHIBIT 17
CCC-01-CD-1 (RUBINROIT)
Page 23 of 44



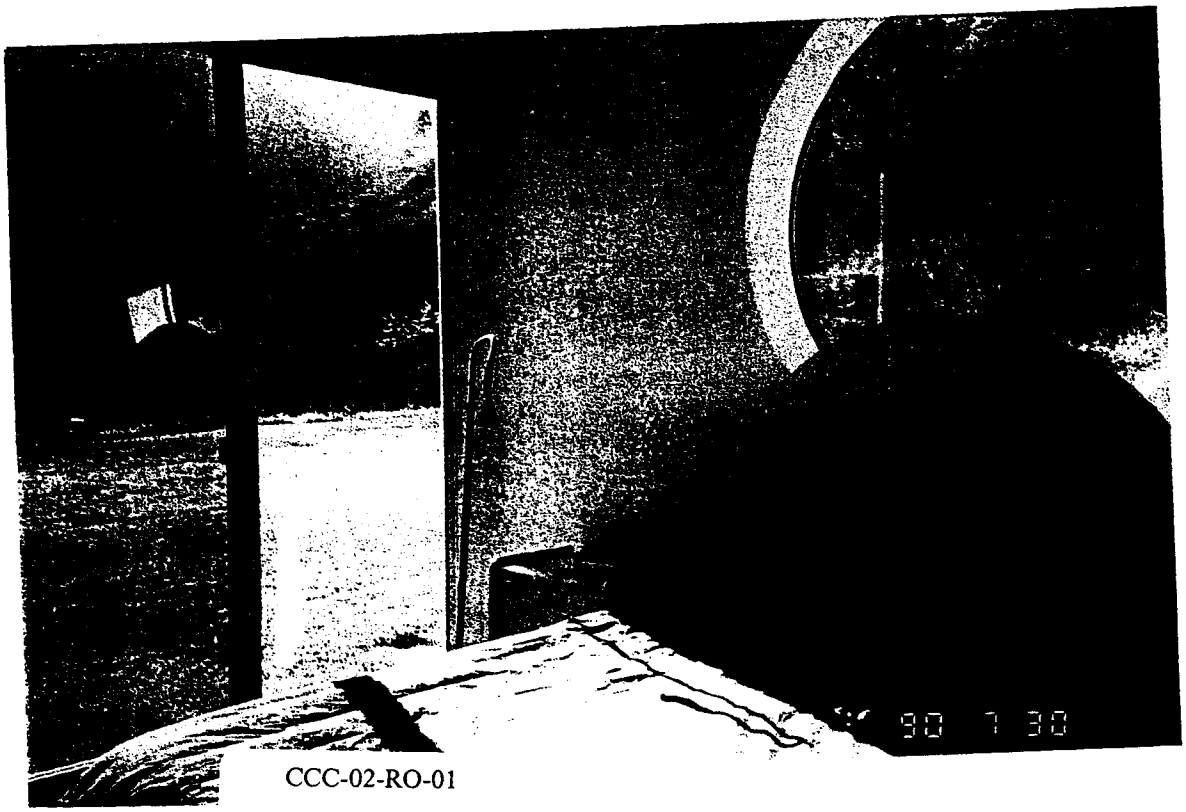
CCC-02-RO-01

EXHIBIT 4

Page 164

EXHIBIT 17
CCC-01-CD-1 (RUBINROIT)
Page 24 of 44



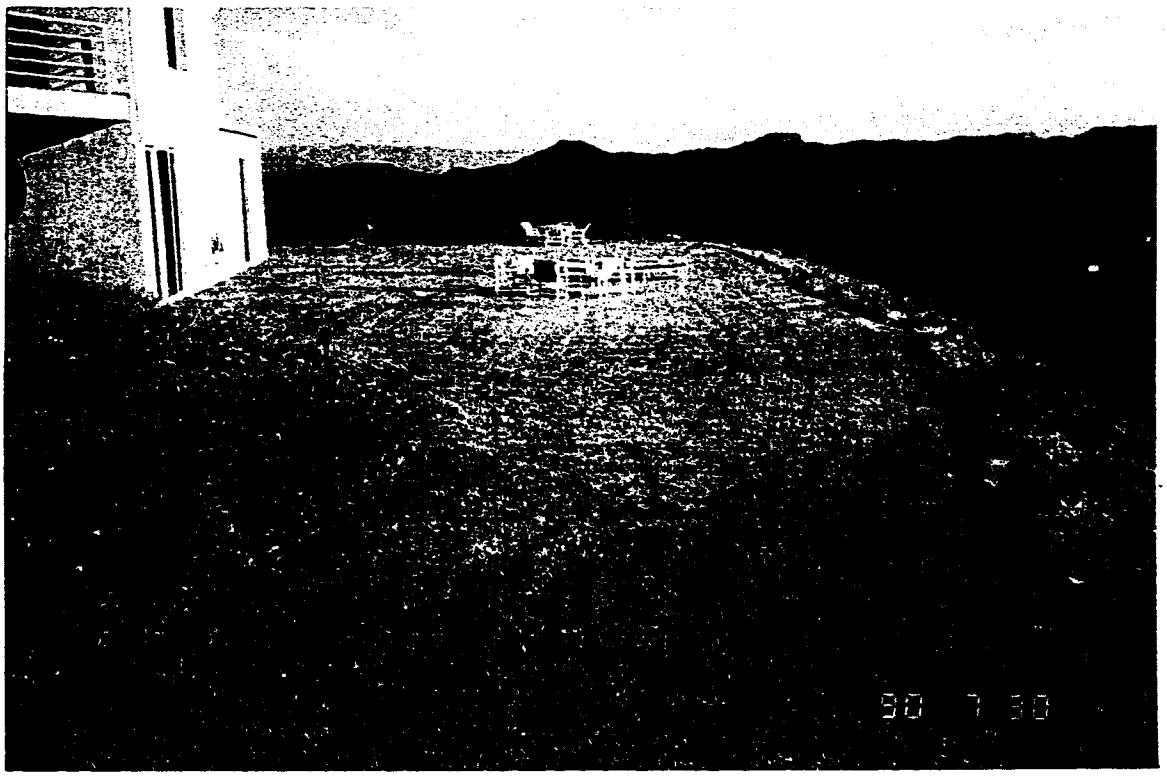


CCC-02-RO-01

EXHIBIT 4

Page 165

EXHIBIT 17
CCC-01-CD-1 (RUBINROIT)
Page 25 of 44

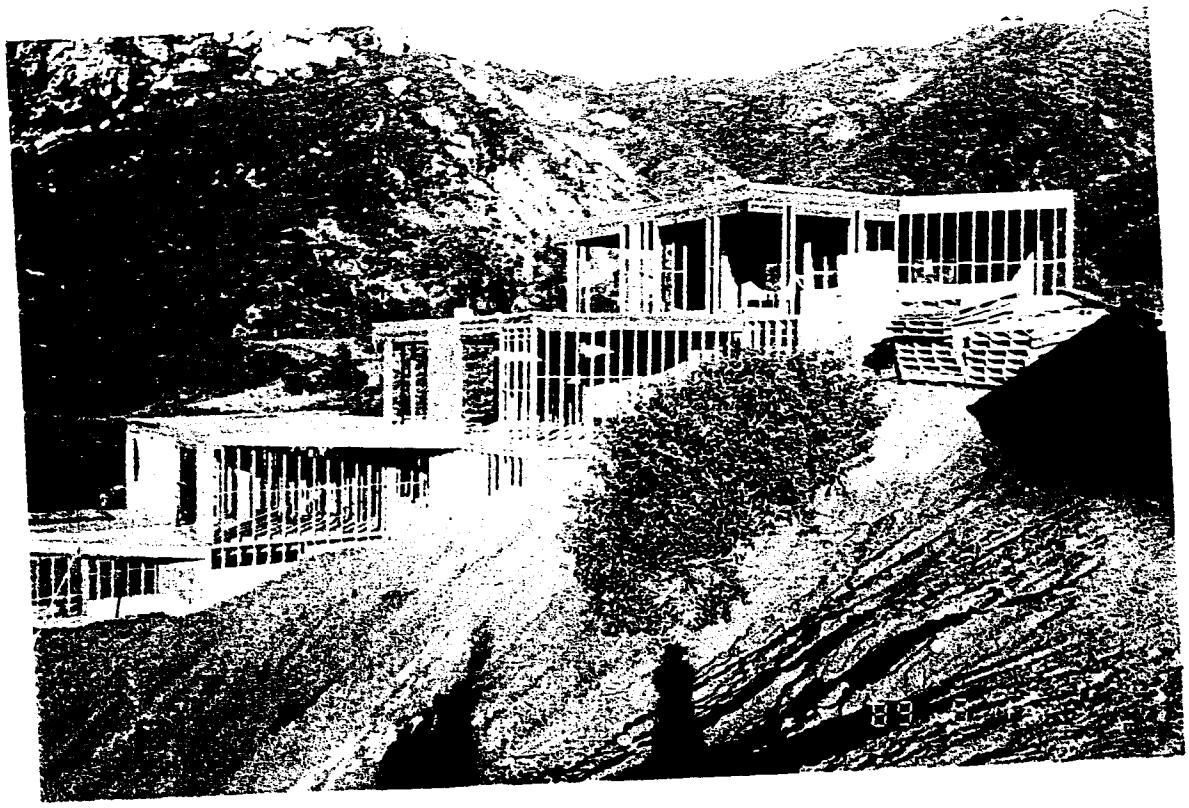




CCC-02-RO-01

EXHIBIT 4

Page 166





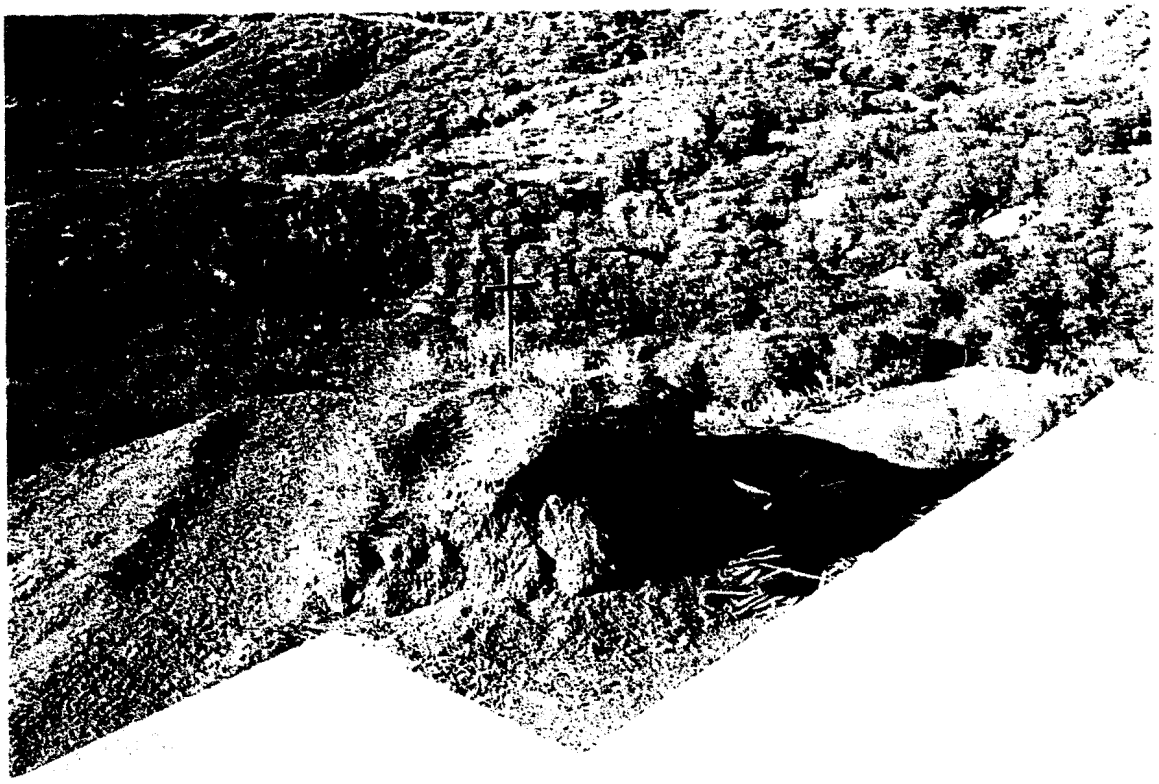
CCC-02-RO-01

EXHIBIT 4

Page 168

Exhibit 3

EXHIBIT 17
CCC-01-CD-1 (RUBINROIT)
Page 28 of 44



CCC-02-RO-01

EXHIBIT 4

Page 169

CCC-02-RO-01

EXHIBIT 4

Page 170

Exhibit 4

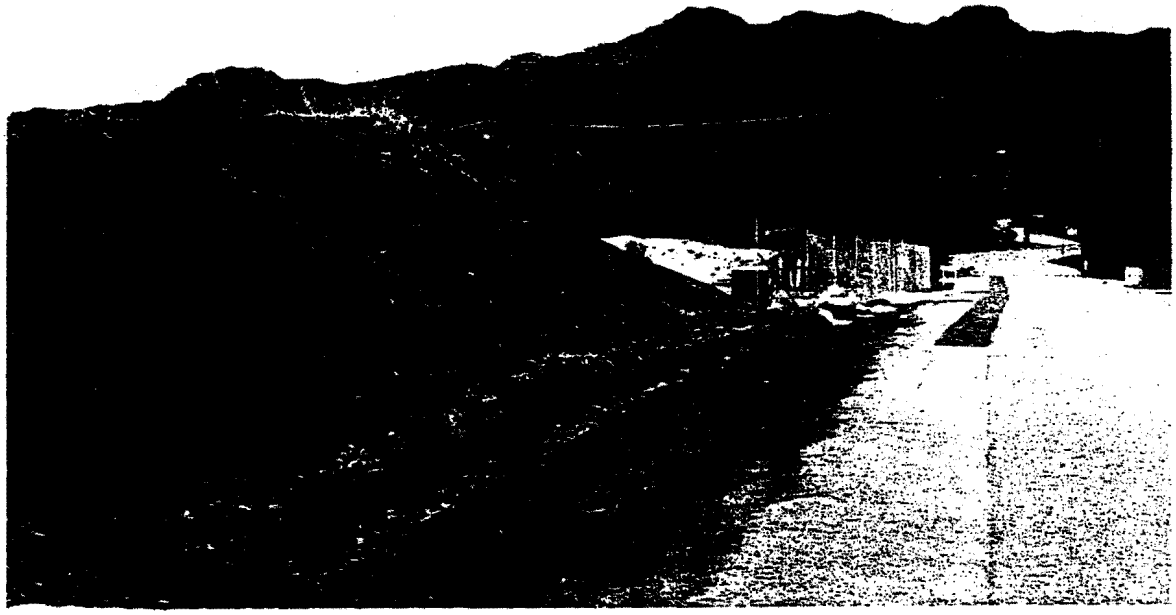
EXHIBIT 17
CCC-01-CD-1 (RUBINROIT)
Page 30 of 44



CCC-02-RO-01

EXHIBIT 4

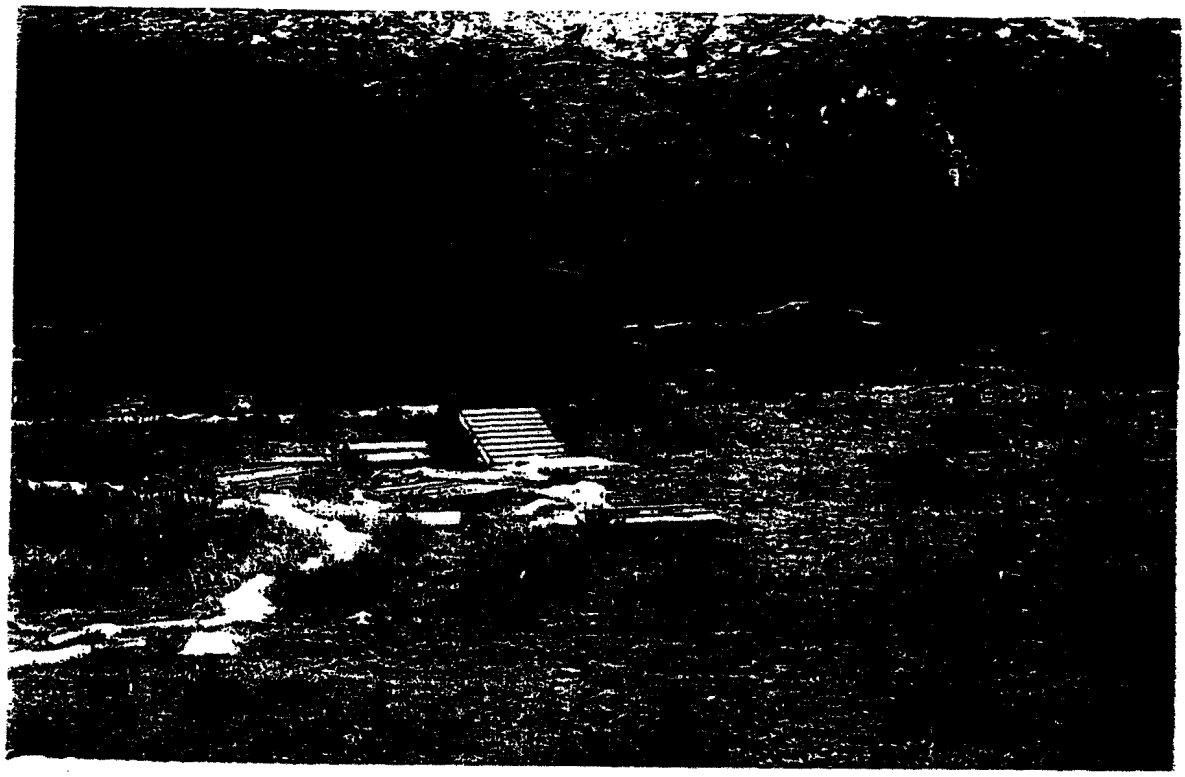
Page 171







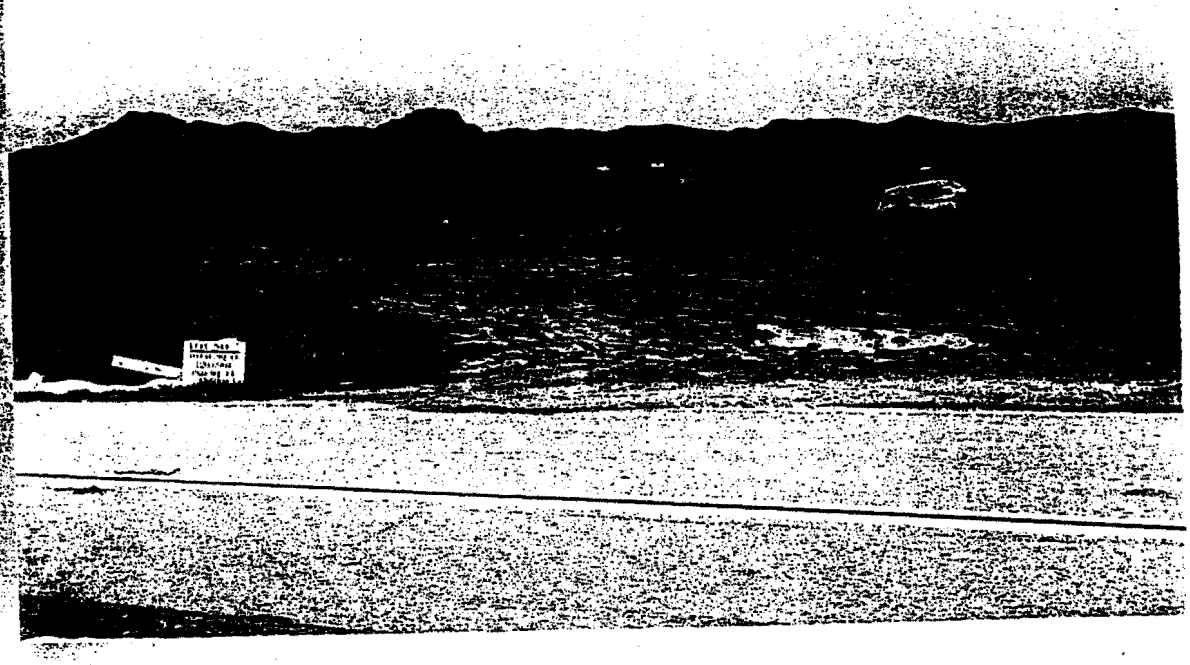




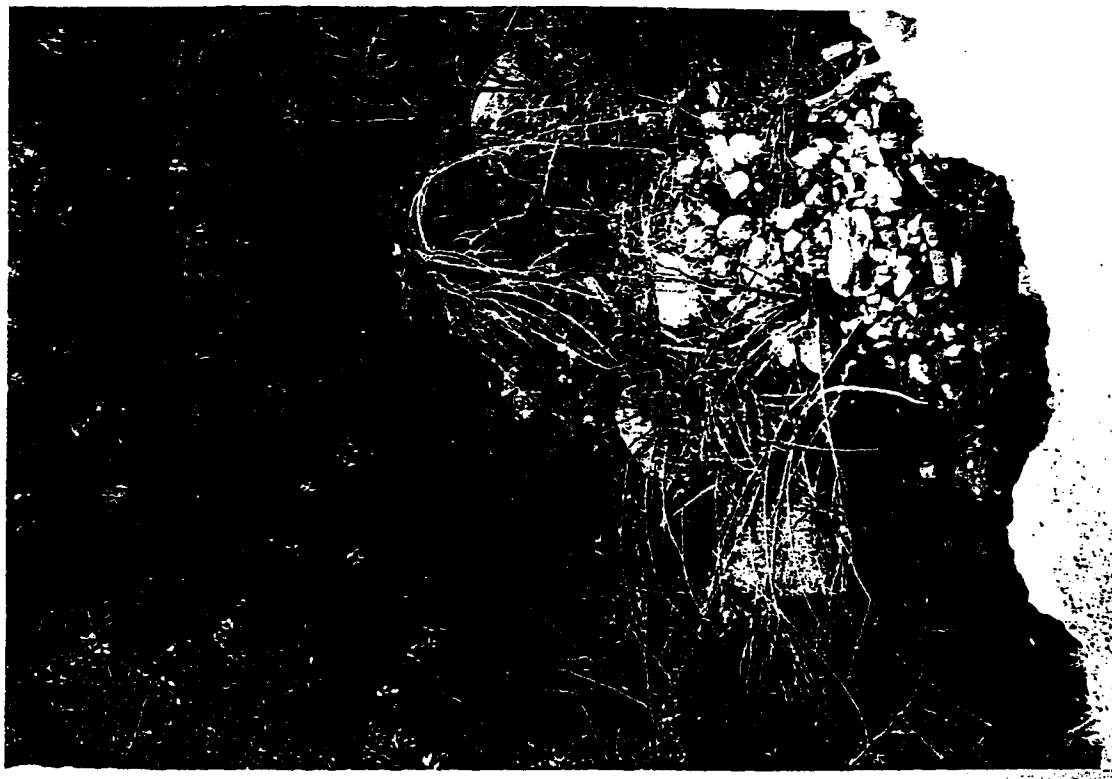




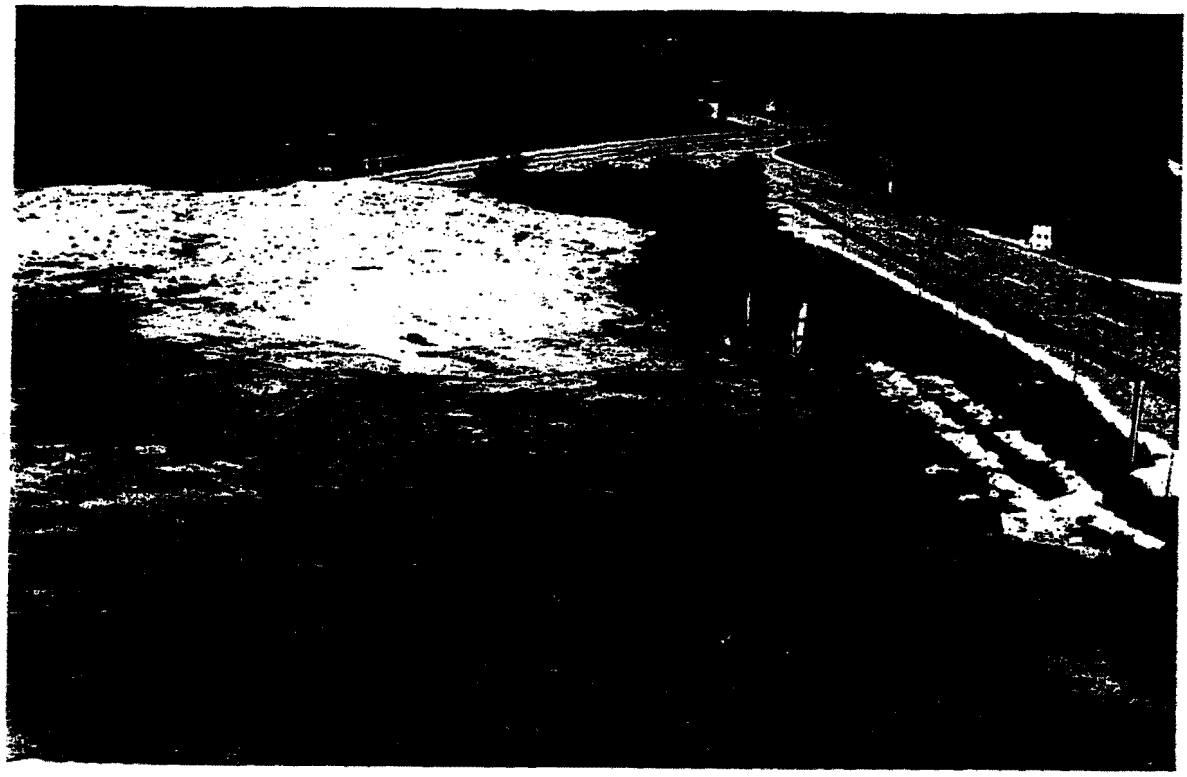

LOT NO.
LOT
FOR SALE
By Owner
1 ACRE READY TO BUILD
310-459-2050







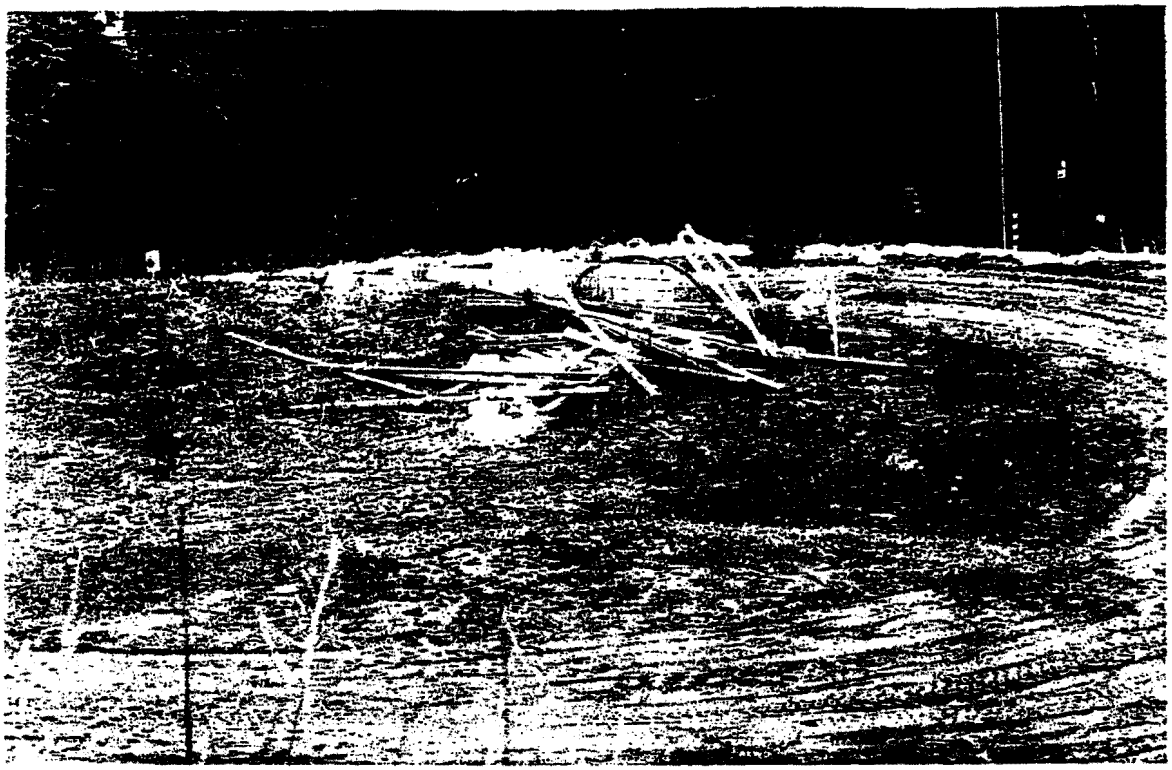

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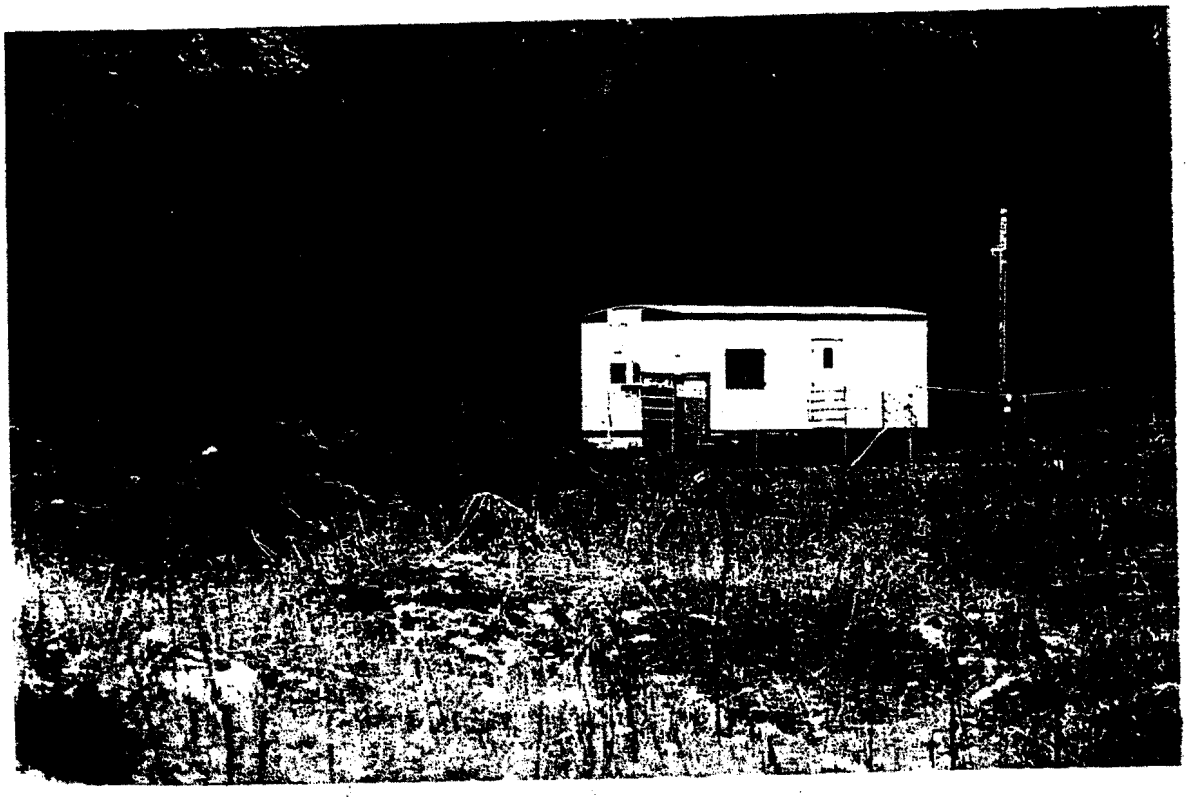




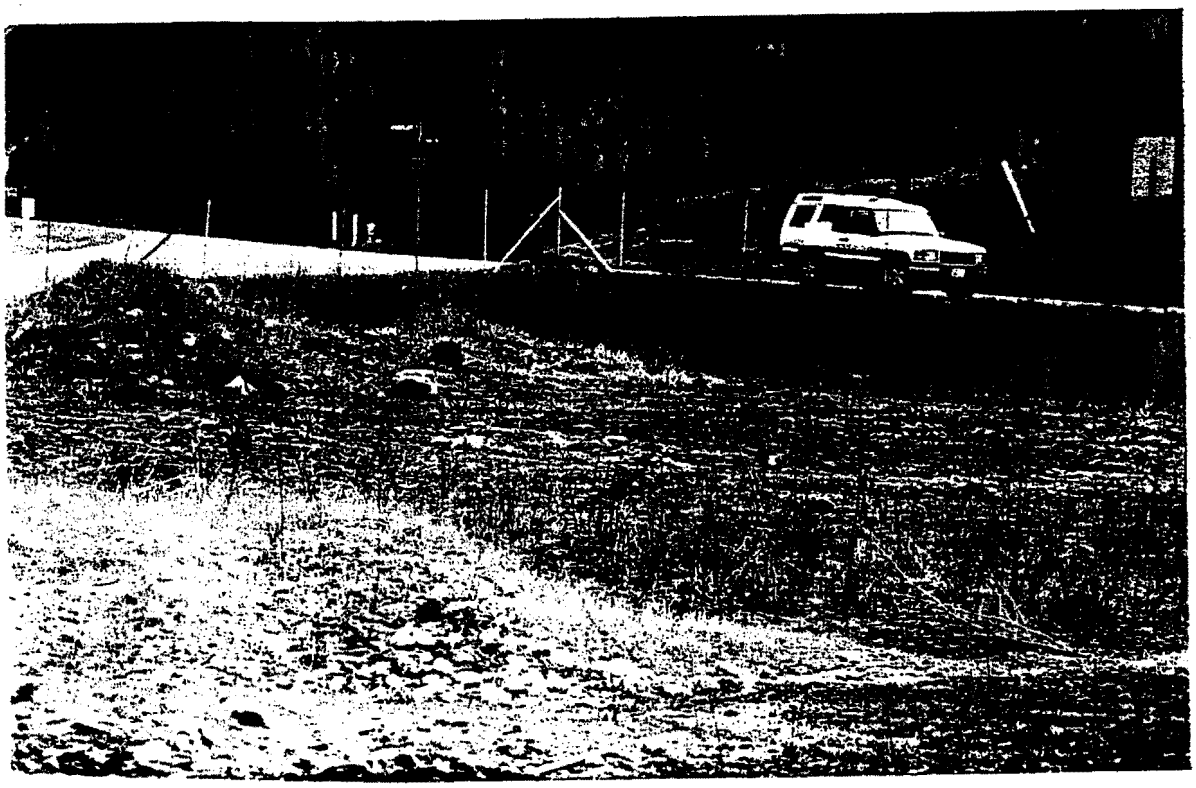


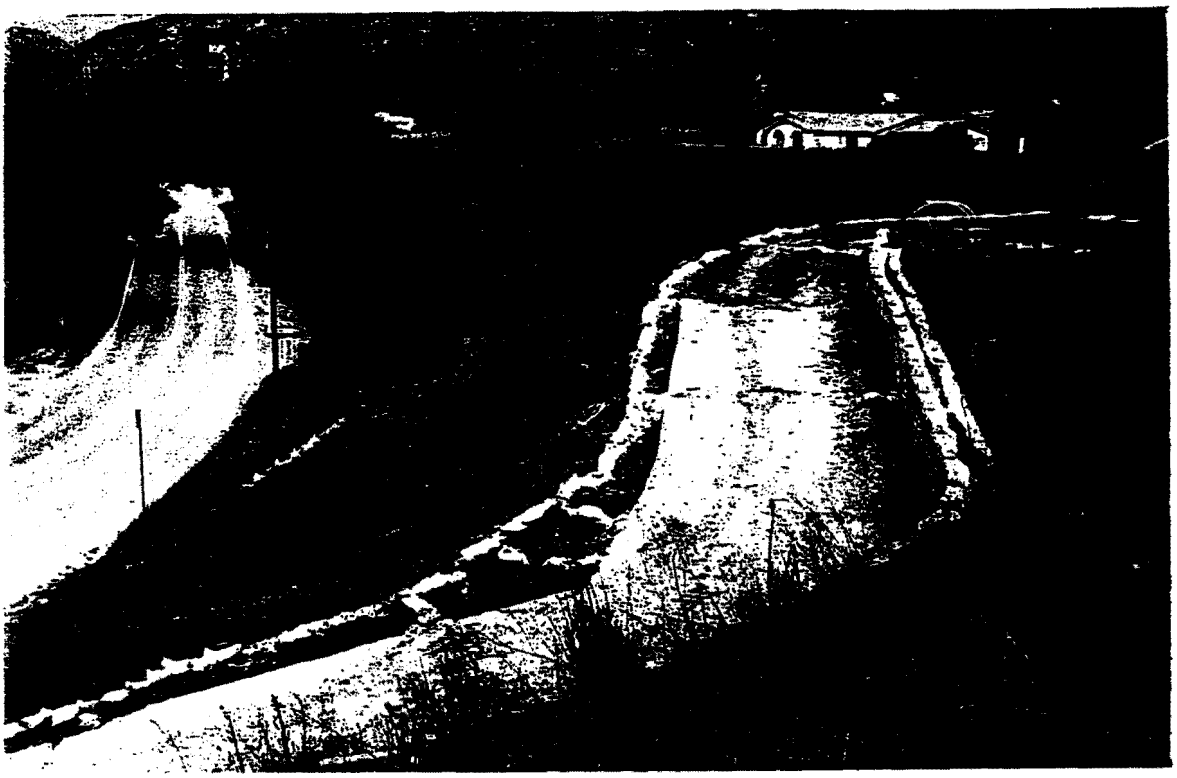


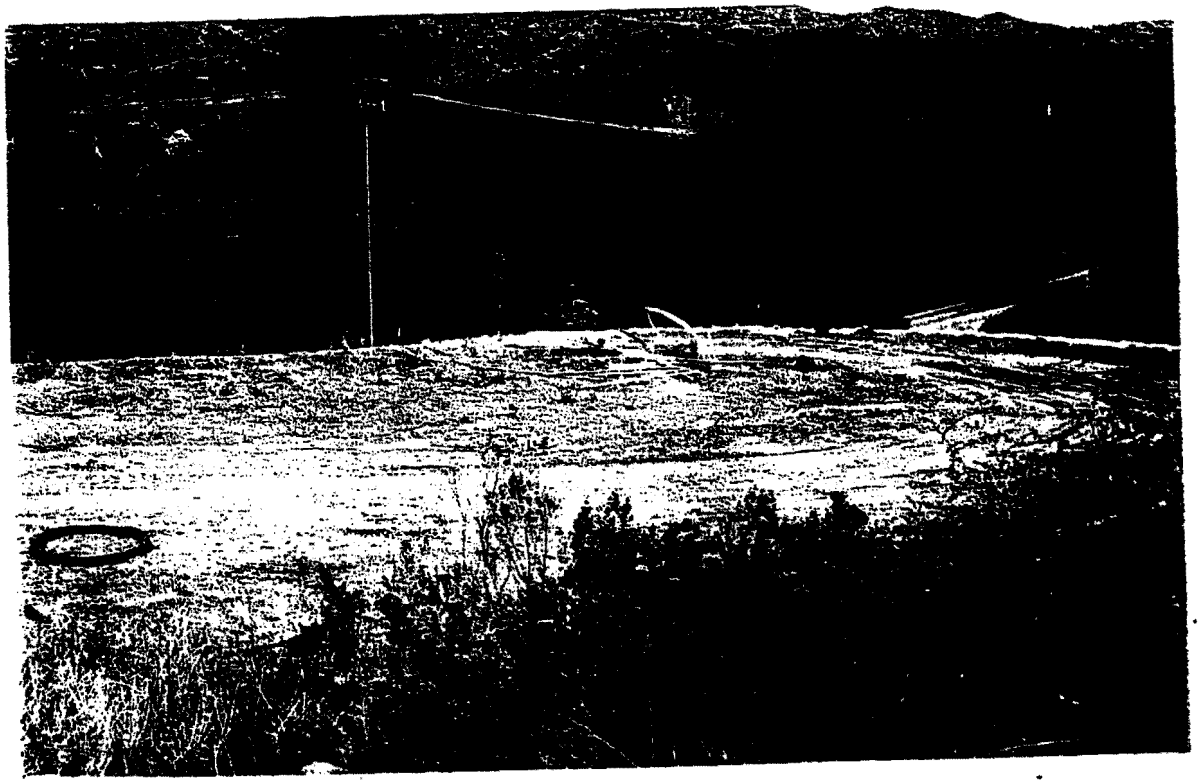








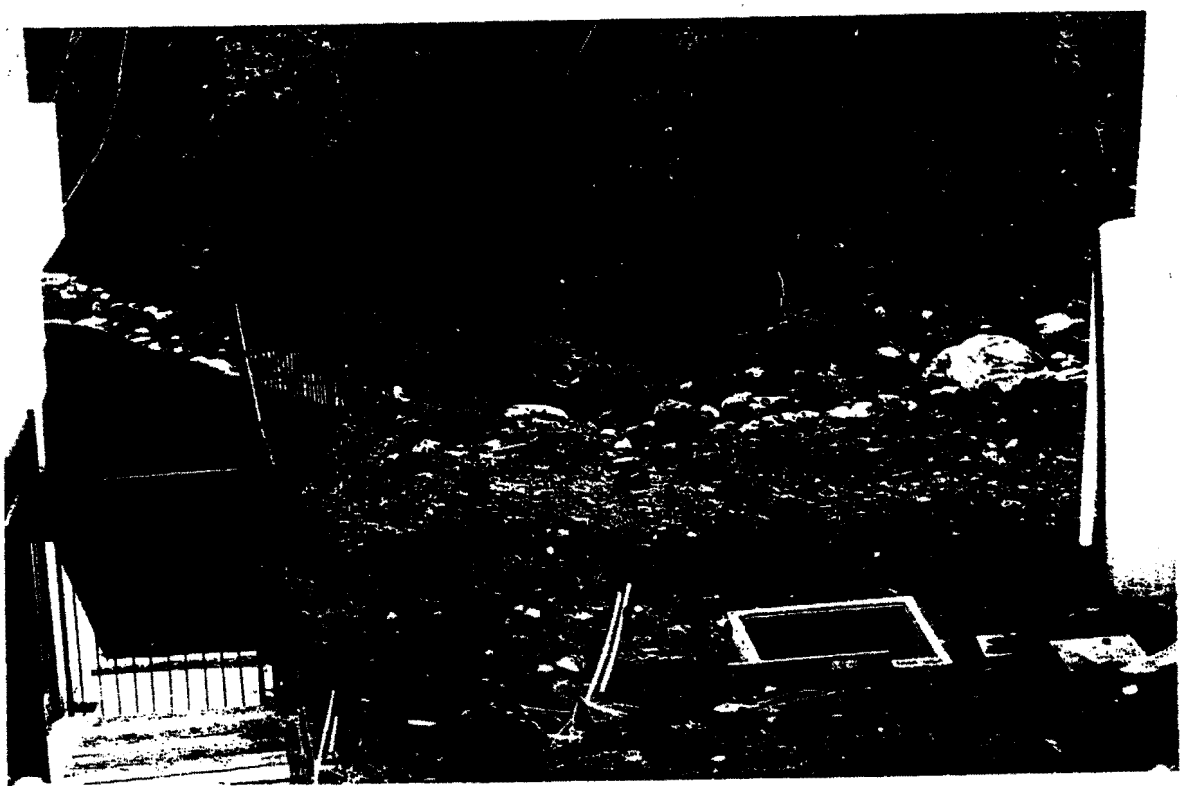










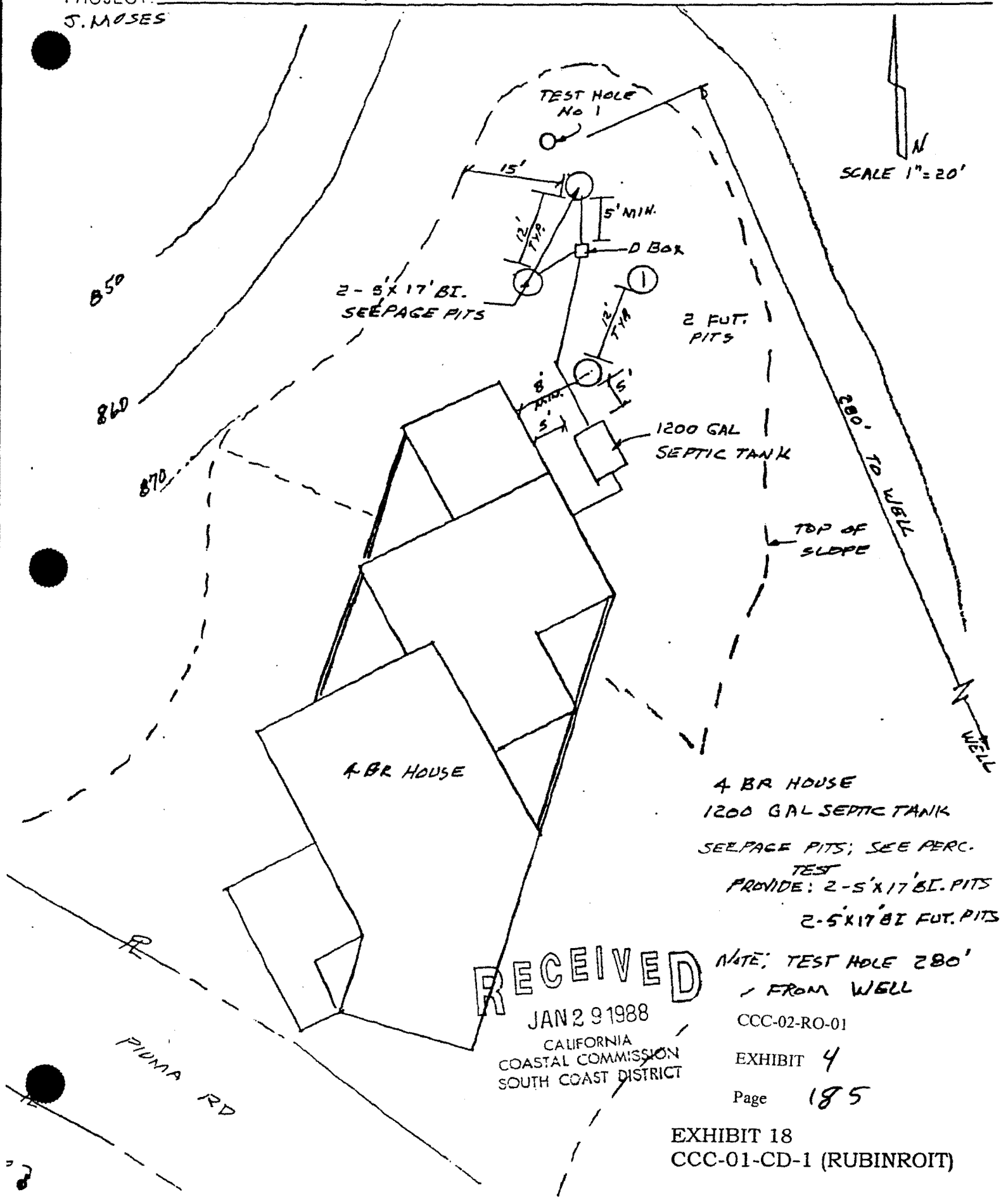


28832 Grayfox St., Malibu, CA 90
(213) 457-2054

DATE 12-18-87 PAGE 1 OF 3

PROJECT: 25351 PIUMA RD, MALIBU

J. MOSES



4 BR HOUSE
1200 GAL SEPTIC TANK
SEEPAGE PITS; SEE PERC. TEST
PROVIDE: 2-5'X17'BI. PITS
2-5'X17'BI FUT. PITS

NOTE: TEST HOLE 280' FROM WELL

RECEIVED
JAN 29 1988
CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT

CCC-02-RO-01
EXHIBIT 4
Page 185

EXHIBIT 18
CCC-01-CD-1 (RUBINROIT)

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY/
LAND DEVELOPMENT DIVISION

CALABASAS - MALIBU DISTRICT OFFICE
4111 N. Las Virgenes Road, Calabasas, CA. 91302-1929
Telephone: (818) 880-4150, FAX: (818) 880-6279
Office Hours: 8:00 a.m. - 4:30 p.m.
Plan Checker's Hours: 8:00 a.m. - 11:30 a.m. Appointments are recommended.

Plans for a structure at 25351 Pluma Rd (Address) Cala (Locality)

Plan Check No. 95110700001 was submitted on 11-7-95 for
Building (or Grad ...n Check.

MINIMUM PLAN CHE... SUBMITTAL REQUIREMENTS:

( ) Building & Drainage Plan Check requires 2 complete sets of working drawings including 2 sets of structural & energy calculations. Also provide a soils & geology report (if any), & Hydrology Report (if any). If Energy Calculations are computer methods(MICROPAS Etc.), an additional set of plans is required and is checked by the Mechanical Section at the Alhambra Hdqts.

THIS NOTICE IS TO INFORM YOU THAT APPROVAL FROM THE AGENCIES MARKED BELOW, IN ADDITION TO BUILDING OR GRADING PLAN CHECK APPROVAL, MUST BE OBTAINED PRIOR TO PERMIT ISSUANCE. You may need to submit the pertinent plans, plan check number, calculations, reports, etc., directly to these agencies. To assist you, we have listed below the information which you will need to contact these agencies. *Follow-up is your responsibility.* Please be aware that some items resulting from these agency plan reviews may affect your building plan check. These should be communicated to your Building Plan Check Engineer as soon as possible to prevent unnecessary delays. *Additional agency clearances may be requested by your Building Plan Check Engineer.*

___ **CALTRANS** - Permits are required for excavation, encroachment (including driveway aprons) and improvements (including grading or structures that affect drainage) on State Highways (Pacific Coast Hwy., Topanga Cyn. Bl., Decker Rd. & Westlake Bl.).

1 ...pring St. Room 112
Los Angeles, CA 90012-3606
(213) 897-3631

___ **COASTAL COMMISSION** - A permit is required from the Coastal Commission. Prior to submitting an application to the Coastal Commission, an "Approval in Concept" must be obtained from the Regional Planning Department.

89 So. California St.
Ventura, CA. 93001-2801
(805) 641-0142

___ **CONSTRUCTION DIVISION** - Permits are required for road excavations and encroachments.

5530 W. 83rd Street
Westchester, CA 90045-3309
(310) 649-6300

X **DRAINAGE SECTION (BUILDING AND SAFETY / LAND DEVELOPMENT DIV.)** - Plan approval is required for drainage and flood hazard. *Initial plan submittal will be forwarded by Building & Safety.*

Mr. Mark Pestrella
Calabasas Office:
Tuesdays & Thursdays 8:00-11:00 a.m.
(818) 880-4150

Headquarters:
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-133...
Closed Fridays

___ **FIRE DEPARTMENT (LOS ANGELES COUNTY)**

( ) **FIRE STATION DEVELOPER FEE** must be paid to the Fire Dept. prior to issuance of a Building Permit. Obtain "DETERMINATION" form from Building & Safety. This fee does not apply to City of Westlake Village or to the Chatsworth area.

Fiscal Services Division
1320 No. Eastern Ave., Room 225
Los Angeles, CA 90063-3294
(213) 881-2404, Ext. 2442

( ) "HAZMAT" form must be submitted to and approved by the Fire Dept. for non-residential occupancies if hazardous materials are being handled. Obtain "HAZMAT" form from Building and Safety.

Fire Prevention Bureau, Hazardous Materials Section
5823 Rickenbacher Rd.
Commerce, CA 90040-3027
(213) 890-4000

( ) **COMMERCIAL BUILDINGS OVER 2,500 SQ.FT. and MULTIPLE RESIDENTIAL BUILDINGS** require plan approval from the Fire Dept.

Fire Prevention Bureau
5823 Rickenbacher Rd.
Commerce, CA 90040-3027
(213) 890-4125, FAX (213) 890-4129

( ) **ALL NEW DWELLINGS, DWELLING ADDITIONS OVER 2,000 SQ.FT., COMMERCIAL BUILDINGS UNDER 2,500 SQ.FT. and any structures in Deer Lake Highlands** require approval from the Fire Department. Provide Fire Department with a WATER CERTIFICATE completed by the local water company. A water information form is required before a rough plumbing inspection. (X) Swimming pools in the VHFHS zone require plan check by Fire Dept.

( ) Las Virgenes Municipal Water Dist.
4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

( ) Waterworks District #29
23533 W. Civic Center Wy.
Malibu, CA 90265-4804
(310) 317-1388, Hours 8:00-10:00 a.m.

AND
Fire Prevention Bureau

(X) Capt. Jim Jordan
23533 W. Civic Center Way
Malibu, CA 90265-4804
(310) 317-1351 Jackie

( ) For Chatsworth area only:
Ms. Nina Giannone
23757 Valencia Blvd.
Santa Clarita, CA 91355-2192
(805) 253-7266

X ***GEOLOGY / SOILS SECTIONS (MATERIALS ENGINEERING DIVISION)*** - Plan approv... is required for geologic hazards. Initial submittal consisting of two copies of geotechnical reports together with consultant signed plans will be forwarded by Building & Safety. Subsequent submittals are your responsibility and must also contain copies of the latest geology/soils review sheet. The plans must incorporate the consultant's recommendations with their approval. If required, plans must be approved by manual signature by the consultants prior to resubmittal. This section may impose additional fees for resubmittals.

Messrs. Mike Montgomery / Scott Ezell
Calabasas Office:
First & Third Tuesday 8:00 - 10:00 a.m.
(818) 880-4150

Headquarters - Closed Fridays
900 S. Fremont Ave., 4th Floor
Alhambra, CA 91803-1331
(818) 458-4925 M & W 9:00 - 11:00 a.m.

___ **GRADING SECTION (BUILDING AND SAFETY/LAND DEVELOPMENT DIV.)** - Grading/Landscaping permit and approval are required. Grading/Landscaping plan check is done primarily at the Central Office. Submit 4 sets of Grading plans and 3 sets of Geology & Soils Reports.
( ) Rough Grading approval is required before a building permit can be issued.

...remont Ave., 3rd Floor
...a, CA 91803-1331
...8-4921 Closed Fridays

CCC-02-RO-01
EXHIBIT 4
Page 186

EXHIBIT 19
CCC-01-CD-1 (RUBINROIT)
Page 1 of 2

X ___ ALTH SERVICES DEPARTMENT (MOUNTAIN AND RURAL) - Approval is required [redacted] vate sewage disposal systems for new construction, for modification or repair to existing systems for increase in use for an addition or remodel (increase in number of bedrooms for residential.) Contact the Sanitarian that handles your area. Five copies of the plot plan showing the sewage disposal are required.

Mr. Anthony Lawrence R.E.H.S.
Calabasas Office
Monday - Friday 8:00-9:00 a.m.
(818) 880-4121

Headquarters Environmental Mgmt.:
2525 Corporate Pl.
Monterey Park, CA 91754-7641
(213) 881-4157

Mr. Bob Saleh
Mr. Arnie Fielding
Mr. Bart Slutske
Malibu Office:
23525 W. Civic Center Wy.
Malibu, CA 90265-4804
Monday - Friday 8:00-9:00 a.m.
(310) 317-1317

___ HEALTH SERVICES DEPARTMENT (ENVIRONMENTAL SANITATION DIV.) - Approval is required for all food establishments.

12502 Van Nuys Blvd., Room 204
Pacoima, CA 91331
8:00 - 10:00 a.m.
(818) 834-3370

2509 W. Pico Blvd. Room 329
Santa Monica, CA 90405-1899
8:00 - 10:00 a.m.
(310) 315-4581

___ HIGHWAY DESIGN SECTION (DESIGN DIVISION) - Plan approval for street improvements and/or dedication is required for commercial and multiple residential bldgs. "Bridge & Major Thoroughfare (B&T) Fee" is also required for commercial, multiple residential buildings and designated tracts in the Lost Hills and Parkway Calabasas B & T Districts. Form "48-0040-DPW" (RD 490) should be filled out when submitting plans to Building and Safety.

Mr. Dugan Andrus
900 S. Fremont Ave. 6th Floor
Alhambra, CA 91803-1331
(818) 458-7984 Closed Fridays

___ LAS VIRGENES MUNICIPAL WATER DISTRICT - A letter is required stating financial arrangements have been made for sewer connections. *In commercial buildings, an approval is required for installation of additional plumbing fixtures.*

4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

MECHANICAL AND ELECTRICAL ENERGY PLAN CHECK - Required for all commercial and industrial buildings with comfort heating and which are over 1000 sq.ft. in area or have an occupant load over 50. When submitting plans for building plan review, submit two extra complete sets along with the required energy conservation forms and calculations.

Mechanical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3182 Closed Fridays

Electrical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3180 Closed Fridays

DIVISION OF OCCUPATIONAL SAFETY & HEALTH (STATE DEPT. OF INDUSTRIAL RELATIONS) - Permit is required for excavation of trenches which are 5 ft. or more deep into which a person is required to descend or for the construction or demolition of any structure 4 or more stories. *Brick lined seepage pits may require permit.*

6150 Van Nuys Blvd. Suite 405
Van Nuys, CA 91401-3379
(818) 901-5403

DIVISION OF OIL AND GAS (STATE DEPARTMENT OF CONSERVATION) - Obtain clearance for the requirements of abandonment of oil wells.

245 West Broadway, Suite 475
Long Beach, CA 90802-4455
(310) 590-5311

1000 S. Hill Rd. Suite 116
Ventura, CA 93003-4455
(805) 654-4761

___ PARKS AND RECREATION DEPARTMENT - Plan approval is required [redacted] truction adjacent to a "General Plan Designated Trail."

433 S. Vermont Avenue
Los Angeles, CA 90020-1975
(213) 738-2973

___ REGIONAL PLANNING DEPARTMENT - Approval is required for:

( ) Compliance to General Plan
( ) Land use/approval in concept
( ) Legal lot
( ) Parking and landscaping
( ) Setbacks
( ) Building Height
( ) Topanga Cyn. Comm. Stds. Dist.
( ) Chatsworth Twin Lake Comm. Stds. Dist.
( ) Malibu Lake Urgency Ordinance
( ) Sensitive Environmental Zone
( ) Oak Tree Permits
( ) _____

320 W. Temple St., 13th Floor (Rm. 1360), Los Angeles, CA 90012-3282
Public Counter : 1:00 p.m. to 6:00 p.m. Monday thru Thursday only
Telephone Hours : 7:00 a.m. to 12:00 p.m. (213) 974-6411 Monday thru Thursday only

___ SCHOOL DISTRICT - Development fee must be paid to the District for residential and commercial construction. A "Certificate of Payment of Developer Fee" must be submitted to Building and Safety prior to obtaining a building permit.

( ) Las Virgenes Unified School Dist.
4111 Las Virgenes Road
Calabasas, CA 91302-1929
(818) 880-4000
Obtain "Certification Form" from Las Virgenes School District.

( ) L.A. Unified School Dist.
600 East Pico Boulevard
Los Angeles, CA 90015-3116
(213) 743-3670
Obtain "Certification Form" from Calabasas B & S Office.

( ) Santa Monica - Malibu Unified School District
1651 16th Street, Santa Monica, CA 90404-3891
(310) 450-8338
Obtain "Certification Form" from Calabasas B & S Office.

___ SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD) - Applicants for non-residential buildings must fill out "Air Quality Permit Checklist" furnished by Building & Safety. If "Yes" is marked, a written release will be required before occupancy is allowed. Notification form required for demolition and alteration permits where ASBESTOS is involved.

21865 E. Copley Dr.
Diamond Bar, CA 91765-4182
(909) 396-2000, (800) 388 - 2121

___ TRAFFIC AND LIGHTING DIVISION - Clearance is required for traffic requirements.

Traffic and Lighting Division, Traffics Studies Unit
900 S. Fremont Ave.
Alhambra, CA 91083-1331
(818) 458 - 5909 Closed Fridays

___ WASTE MANAGEMENT DIVISION - Plan approval is required for most commercial and industrial buildings for: ( ) Industrial Waste, ( ) Underground Tanks, ( ) Floor Drains.

Mr. Jerry Wong
125 S. Baldwin Ave.
Arcadia, CA 91007-2652
8:00-9:00 a.m. Monday -Friday.
(818) 574-0957

Waste Management Division
900 S. Fremont Ave.
Alhambra, CA 91803-1331
(818) 458-3517
Closed Fridays

___ WESTLAKE VILLAGE (CITY OF) - Zoning/Engineering approval is required prior to submitting for Building Plan Check.

( ) Zoning Dept.
Mr. Robert Theobold
4373 N. Park Terrace Dr.
Westlake Village, CA 91361-4631
(818) 706-1613

( ) Engineering Dept.
City Engineer & Road approval
374 Poli St., Suite 102
Ventura, CA 93001-2605
(805) 653 - 6597

CCC-02-RO-01

EXHIBIT 4

Page 187

EXHIBIT 19
CCC-01-CD-1 (RUBINROIT)
Page 2of 2

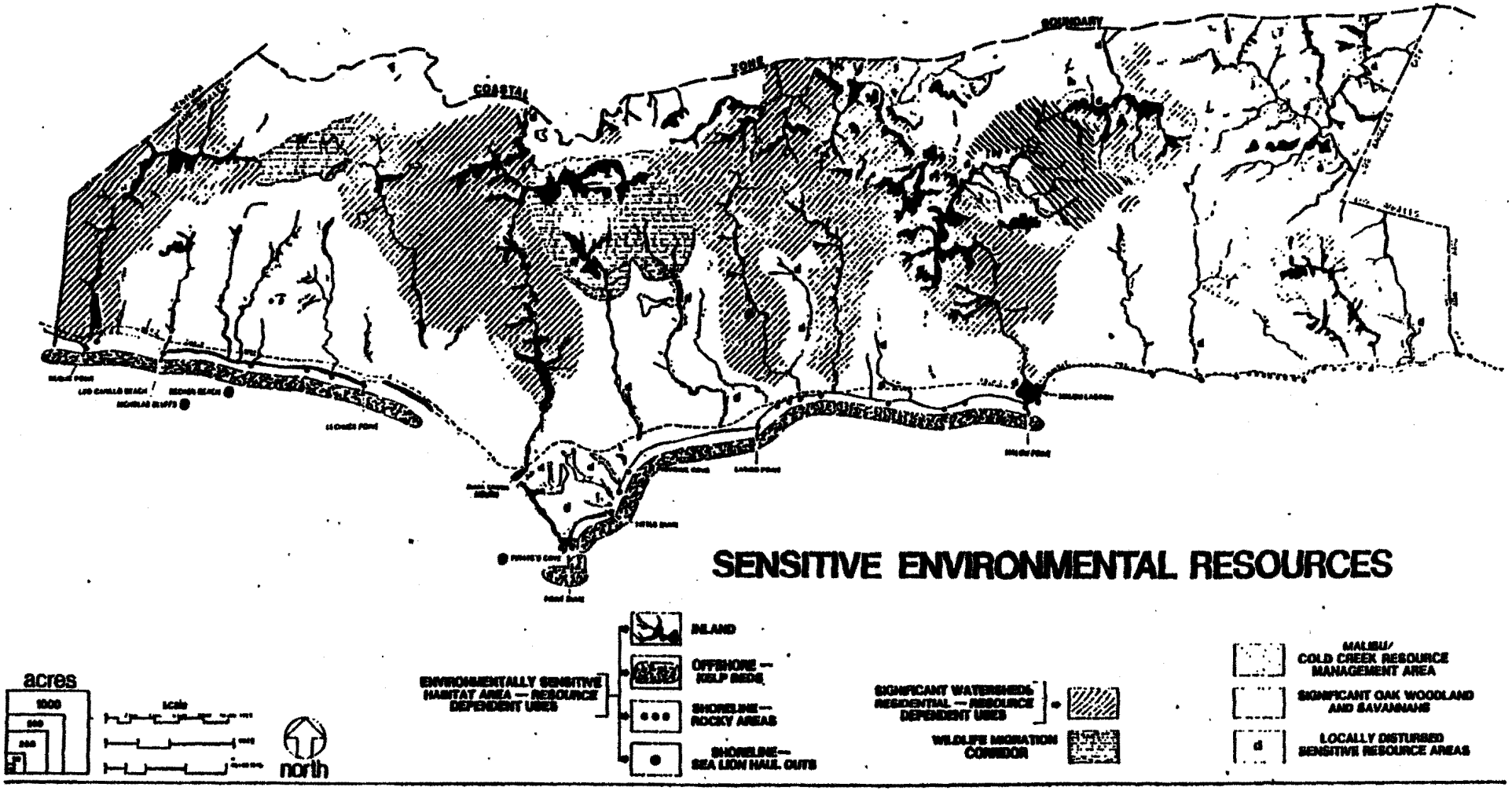


Figure 6

CCC-02-RO-01

EXHIBIT 4

Page 188

EXHIBIT 20
CCC-01-CD-1 (RUBINROIT)

SIDLEY & AUSTIN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
NEW YORK
SEATTLE
WASHINGTON, D.C.

555 WEST FIFTH STREET
LOS ANGELES, CALIFORNIA 90013-1010
TELEPHONE 213 896 6000
FACSIMILE 213 896 6600

FOUNDED 1866

WRITER'S DIRECT NUMBER
(213) 896-6604

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

EXHIBIT NO. 21
APPLICATION NO.
page 1/3
CCC-01-CD-01
California Coastal Commission

APR 2001
Received
California
Coastal Commission

April 26, 2001

Mr. Abe Doherty
Headquarters Enforcement Officer
California Coastal Commission
45 Fremont
Suite 2000
San Francisco, CA 94105-2219

Re: Rubinroit Request for Continuation of CDO Hearing

Dear Mr. Doherty:

As I explained during our phone conversation yesterday, this firm represents Howard Rubinroit in connection with the Coastal Commission inquiry regarding his property at 25351 Piuma Road in Calabasas. It is our understanding that a CDO hearing on the Rubinroit property has been scheduled for May 8, 2001 in Monterey, and that the purpose of the proposed order is to compel Mr. Rubinroit to submit a completed CDP application for the existing development. This letter sets forth the reasons why we believe that entry of cease and desist order at this time is inappropriate, and why we respectfully request that Commission action on this matter be continued to allow Mr. Rubinroit a reasonable opportunity to submit a complete CDP application.

In several letters over the past two years, Mr. Rubinroit was informed that he could avoid cease and desist order proceedings if he submitted complete applications prior to any hearing date. This was repeated most recently in letters from you and Mr. Douglas dated March 20, 2001. As Mr. Rubinroit has repeatedly stated, he is eager to submit a completed application and obviate the need for any hearing, and to that end has repeatedly requested a complete list of the application components.

He has yet to receive, however, a clear, specific, and definitive list of what is required to complete his application, which has made full compliance impossible. We acknowledge that the Commission has claimed for some time that Mr. Rubinroit's previously submitted applications were incomplete. But the Commission has never definitively stated what materials are needed to complete them. The letter of November 13, 1998, for example, apologized for the unavailability of application forms and directed Mr. Rubinroit to meet with Commission staff who could review the specific requirements. The letter of December 21, 1998

EXHIBIT NO. 21
APPLICATION NO.
page 2/3
CCC-01-CD-01
California Coastal Commission

merely references "site plans, a current geology report, and proof of local approval" – uncertain terms that nevertheless appear to encompass far less than what the Commission is now demanding. In 1999, Commission staff indicated, in brief, that nine additional items were necessary to complete the applications, but as you have acknowledged in your letter of March 20, only "some" of the items were discussed in greater detail during the site visit. Additional required submissions were added by your letter of March 20, 2001. At one point, you suggested that an "update" to the geological survey done in 1995 might suffice to meet the soil and geological report requirements, however you stated that "[t]he exact requirements for the contents of this report will be determined by the Commission's South Central District Staff."

Since receiving your letter, and Mr. Douglas's letter, each dated March 20, 2001, Mr. Rubinroit has repeatedly asked to have a telephone conference arranged with Mr. John Ainsworth of the District Staff, the person whom you have indicated would be in the position to advise Mr. Rubinroit on what, precisely, is needed at this point to create a complete application. But for various scheduling reasons, you have indicated that Mr. Ainsworth has not been available to speak with Mr. Rubinroit.

In light of this delay, I suggested to you that the May 8th hearing be postponed to give Mr. Rubinroit an opportunity to speak with Mr. Ainsworth, obtain a definitive list of required items to complete the application, and submit the required items. You responded that it was now too late to delay the hearing, and that a cease and desist order Report that had been sent to Mr. Rubinroit contains in writing the definitive list of required items.

We have now reviewed that report, which Mr. Rubinroit received yesterday afternoon. The Report shows that, at the eleventh hour, the Recommended Findings prepared by Commission staff have moved the target once again. The "Revised List" of application components has grown exponentially, now requiring, *inter alia*, health department reviews, resource delineations by an ecologist, county environmental review board approval, and "[a]ny additional information that the Commission staff determines to be necessary to complete the application." With this last catchall provision in place, Mr. Rubinroit cannot be assured that even if he jumps through all of the new hoops there will be finality on the other end.

We have been placed in an untenable position. We would like to fully comply so that a cease and desist proceeding is unnecessary, but we have been unable to secure a definitive list of CDP requirements. Staff has been unavailable for conferences on the matter and now, at the eleventh hour, Mr. Rubinroit has received an expanded list of alleged violations and new CDP details. It is simply impossible for Mr. Rubinroit to comply with this new list of requirements before May 8th. Thus, the Commission is preparing to take enforcement action against Mr. Rubinroit for failing to comply with requirements that have only recently been identified, while not providing him an opportunity to follow up and submit the requested information. This is unfair. The only sensible and fair approach given the circumstances is to continue any Commission activity on this matter until Mr. Rubinroit is given a good faith opportunity to fulfill a clear and definitive list of permitting obligations.

EXHIBIT NO. 21
APPLICATION NO.
page 2/3
CCC-01-CD-01
California Coastal Commission

The May 8th hearing date is inappropriate for a second reason. As you know, there are number of documents that are relevant to Mr. Rubinroit's defense. Your letter of April 20 makes clear that the staff will be unable to provide the requested documents in time for Mr. Rubinroit to thoroughly prepare a statement before the Commission's submission deadline of May 4, 2001. You indicated, in particular, that you will need additional time (and perhaps further information in the form of addresses and/or parcel numbers which Mr. Rubinroit is seeking to obtain) to make the Quaker-Ross, Triangle, and Cold Canyon property files available because they must be ordered from the archives.

We welcome your interest in a positive and timely resolution of this matter. I particularly appreciate your candor yesterday regarding the Commission's agenda and other scheduling matters. Let me reiterate that it is Mr. Rubinroit's desire to work constructively with the Commission to resolve this matter. However, in light of the new information contained in the staff report - dated April 19, 2001, but received by Mr. Rubinroit only yesterday afternoon - we respectfully request that any deliberation on, vote on, or entry of any cease and desist order be postponed until a subsequent meeting of the Commission. We also ask that the documents requested in Mr. Rubinroit's April 10 letter be fully made available at the Ventura office for review and copying in time for Mr. Rubinroit to prepare a thoughtful reply before the Commission renders a decision on the matter.

Finally, we would ask that you forward our Request for a Continuation on to Commission members for their review. I am confident that we can reach a mutually agreeable timetable and look forward to talking with you next week.

Sincerely,

Mark E. Haddad /lmg

Mark E. Haddad

MEH:lmg

cc: Howard J. Rubinroit

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

VIA FAX TO 213 896 6600 AND REGULAR MAIL

EXHIBIT NO. 22
APPLICATION NO.
page 1/2
CCC-01-CD-01
California Coastal Commission

May 4, 2001

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

Re: **Response to Request for Continuance of Cease and Desist Order Hearing**

Dear Mr. Rubinroit:

This letter serves to provide a written response to your request for a continuance of the cease and desist order hearing. I have previously informed you of staff's recommendation that the hearing not be continued, including in a telephone conversation with your counsel, Mark Haddad, on April 25, 2001. On April 26, 2001, I received a letter from Mr. Haddad requesting a continuance of the cease and desist order hearing to allow you "a reasonable opportunity to submit a complete CDP application". In this letter, Mr. Haddad asserts that you have yet to receive a "clear, specific and definitive list" of what is required to complete the application(s).

In letters dated February 26, 1999 and September 7, 2000, the Commission staff described the outstanding items necessary to complete the applications (Table 1 of the staff report for CCC-01-CD-01). After documenting the presence of additional unpermitted development on the property, the items necessary to complete the applications were revised to address this development (Table 2 of the staff report for CCC-01-CD-01). Due to a lack a sufficient amount of staff, the Commission permit staff is unable to meet with all applicants to provide them with additional guidance regarding the items needed to complete permit applications. Typically, the permit staff reviews submittals and then communicates with applicants if any further information is required. Since you have requested additional guidance from the permit staff regarding the items necessary to complete your application(s), I helped to facilitate a meeting with Melanie Hale, permit supervisor for the South Central office, which occurred yesterday.

Commission staff recommends that the hearing not be continued for several reasons. The Commission staff already removed a cease and desist order hearing regarding your property from the Commission's agenda in 1998 after you stated that you would submit application(s) addressing the unpermitted development. Since you stated, on December 1, 2000, that you would not pursue completing the permit applications, the Commission staff reinitiated the cease and desist order proceedings. You have been on notice that the Commission was proceeding with the cease and desist order hearing since your receipt of the January 2, 2001 notice of intent to commence cease and desist order proceedings. You have not demonstrated a good faith effort

to submit the outstanding items; in fact, you have not submitted any of the items necessary to complete the application(s), including the majority of the filing fee and list of property owners and occupants within 100 feet of their property.

The main purpose of the cease and desist order is to establish a schedule for the completion of your application(s). If you follow through on your stated intent to complete the applications, you should not have a problem with complying with paragraph B of the cease and desist order which sets forth the schedule for completing the applications.

Please call me at (415) 904-5297 if you have any questions.

Sincerely,

Abe F. Doherty

Abe G. Doherty
Headquarters Enforcement Officer

cc: Amy Roach, Chief of Enforcement
John Bowers, Staff Counsel
Melanie Hale, South Central Permit Supervisor
Steve Hudson, South Central Enforcement Supervisor
Tom Sinclair, South Central Enforcement Analyst
Sabrina Tilles, South Central Coastal Program Analyst

EXHIBIT NO. 22
~~APPLICATION NO.~~
Page 2 | 2
CCC-01-CD-01
California Coastal Commission

CCC-02-RO-01
EXHIBIT 4
Page 193

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

Mon. 6a

STATE OF CALIFORNIA – THE RESOURCES AGENCY

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

Filed:	04/10/02
49th Day:	05/29/02
180th Day:	10/07/02
Staff:	S. Haswell
Staff Report:	05/20/02
Hearing Date:	06/10/02
Commission Action:	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-88-056-A1

APPLICANTS: Howard and Terry Rubinroit

PROJECT LOCATION: 25351 Piuma Road, Calabasas (Los Angeles County). The application proposes 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.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 4,260 square foot, 28 foot high, four level single family residence with water well and septic system.

DESCRIPTION OF AMENDMENT: The applicant is requesting 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.

Lot Area:	2.76 acres (+/-120,225 square feet)
Building Coverage:	4,370 square feet
Impermeable Coverage:	7,405 square feet
Height Above Finished Grade:	Maximum of 10 feet

LOCAL APPROVALS RECEIVED: Los Angeles County, Health Department, March 14, 2002; Los Angeles County, Regional Planning, Approval in Concept, March 1, 2002;

Los Angeles County Fire Department, Approval, June 25, 2001; and Los Angeles County, Geologic Review, Approval in Concept, February 28, 1998.

SUBSTANTIVE FILE DOCUMENTS: "Grant of Easement," Document 01 2312351, dated November 28, 2001; "Biological Assessment", Steven G. Nelson, Consulting Biologist, October 1, 2001; "Update Geological and Geotechnical Engineering Investigation," GeoSoils Consultants, Inc., September 11, 2001; "Limited Geotechnical Investigation for Proposed Swimming Pool and Carport," Miller Geosciences, Inc., December 6, 1995; Cease and Desist Order CCC-01-CD-01; and Coastal Development Permits 5-88-056 (Moses/Landry), 5-90-661 (Allen), 5-91-328 (Contis), and 4-98-264 (Diva Partners)..

SUMMARY OF STAFF RECOMMENDATION: Staff recommends that the Commission take one vote adopting the following two-part resolution for the proposed project:

Part One: To **approve** the request for a permit for the 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, 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 with eight special conditions regarding geologic and engineering recommendations, revised plans, landscape and erosion control, removal of concrete, drainage and polluted runoff, pool and spa drainage and maintenance, condition compliance, and implementation.

Part Two: To **deny** the request for a permit for 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.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission deny 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 and approve 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 proposed in the amendment to Coastal Development Permit 5-88-056, pursuant to the staff recommendation.

A. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the development proposed, as conditioned, except for 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, which are denied, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

B. TWO PART RESOLUTION FOR APPROVAL IN PART AND DENIAL IN PART:

Part 1: Approval with Conditions of a Portion of the Development:

The Commission hereby approves a Coastal Development Permit amendment for the portion of the proposed project consisting of the following development: (1) swimming pool with spa, pump, and pool equipment storage area, (2) retaining wall and carport, (3) lighted steps and pathways on both sides of the single family residence, (4) chain link fence and gates around the pool and single family residence, (5) above ground propane storage tank with concrete pad, (6) patio area with landscaping walls near the pool, (7) above ground water storage tank, (8) masonry pump enclosure for water tank, (9) screen wall for water tank, (10) drainage system, (11) irrigation system, (12) sand fill for play area east of the pool, (13) capping of grey water outlet and connection to the existing septic system, and (14) removal of concrete from eastern drainage on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

Part 2: Denial of the Remainder of the Development:

The Commission hereby **denies** a Coastal Development Permit amendment for the portion of the proposed development consisting of the following development: (1) lighted sports court, (2) lighted stairway extending from the pool area to the sports court, and (3) installation of decomposed granite on the eastern side of the sports court, on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is not in conformance with the Chapter 3 policies of the Coastal Act, would prejudice the ability of the local governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Plans Conforming to Geotechnical 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.

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 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. 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, screen wall 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.

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.

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.

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 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.

I. 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 (Exhibit 1). 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 (Exhibit 6). 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.

The area surrounding the project site is rural in character, with wide-open spaces and vistas, and some scattered residential development. A large network of publicly owned lands and trails in the region adds to this area's character. For example, Malibu Creek State Park is located to the west of the subject site and State Park and National Park Service land are also located nearby. Furthermore, the Backbone Trail passes approximately 650 feet to the north of the subject site (Exhibit 11). 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. In addition, in reflection of the scenic character of this area, Malibu Canyon Road (to the west of the subject site) and Piuma Road (directly to the south of the subject site) have both been recognized in past Commission actions as scenic highways (Exhibit 12). Additionally, there are numerous public vista points along those roads and significant scenic elements within this area.

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.[1]" The SMMNRA is unique in that it is checkered with large tracts of parkland, including numerous National Park Service Land, State Parks and Beaches, Los Angeles County Parks and Beaches, City of Malibu Parks, and various other preserves. 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.[2] Within the SMMNRA, the Santa Monica Mountains create rugged open spaces, jagged rock outcroppings, and primitive wilderness areas, in addition to homes, ranches, and communities. The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban settings and experiences.

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[1] Public Law 95-625.

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

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

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 6,000 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:

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

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

In the report entitled, "Limited Geotechnical Investigation for Proposed Swimming Pool and Carport," dated December 6, 1995, Miller Geosciences, Inc., states:

> ***It is the finding of this firm that the proposed swimming pool, spa and carport will be safe and that the proposed improvements will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property . . . provided our recommendations are followed.***

That report, dated December 6, 1995, also states:

> ***Based on the findings of our investigation, the site is considered to be suitable from a soils and engineering geologic standpoint for construction of a swimming pool, carport and related facilities provided the recommendations included herein are followed and integrated into the building plans. No grading is anticipated at this time except for the excavation for the swimming pool and adjoining hot tub.***

In addition, that report entitled, "Limited Geotechnical Investigation for Proposed Swimming Pool and Carport," dated December 6, 1995, Miller Geosciences, Inc., also states:

> ***In order to minimize sloughing on slope faces, it is recommended that a slope maintenance program be implemented as soon as possible. Slope maintenance includes proper drainage control, planting, irrigation, and rodent control. Slopes shall be planted with a light weight, drought resistant, deep-rooted groundcover or bushes.***

That report goes on to state:

> ***All drainage from the lot should be collected and transferred to the canyon bottom in non-erosive drainage devices. Drainage should not be allowed to pond on the pad or against any foundation or retaining wall.***

The applicants have also submitted a report entitled, "Update Geological and Geotechnical Engineering Investigation," dated September 11, 2001, GeoSoils Consultants, Inc., which states:

> ***The house foundations were founded in bedrock. Both the house and associated exterior sidewalks and stairways appear to have performed satisfactorily. A fill has been placed on the slope on the east side of the pad. . . .***

The swimming pool, spa and adjacent decking were founded, for the most part, in fill. The pool was designed and constructed as "free-standing", the swimming pool design concept that provides the maximum strength to the pool shell. The pool, spa, and adjacent concrete/stone decking all appear to have performed and continue to perform satisfactorily.

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. Otherwise, the court and surrounding fencing appear to be performing satisfactorily.

A water well and tank have been constructed on a small cut pad adjacent to Piuma Road in the most southerly corner of the property. An erosion gully has developed in the road fill slope to the northwest of the water tank. This is the result of surface water runoff from a portion of Piuma Road, which we understand was caused by grading changes in Piuma Road by the County Road Department.

This report also states:

It is important to note that heavy landscape watering and extended periods of heavy rainfall can contribute to slope instability. Consequently, we recommend that care be taken to avoid heavy landscape watering and to carefully maintain existing site drainage facilities. Care should be taken to watch for signs of leaks in any plumbing including landscape-watering systems.

That report concludes:

General overall site stability is in accordance with current code standards at this time. Shallow surficial soils are subject to slope creep on the steeper descending slopes about the property. Further, 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. As recommended above, care should be taken to avoid excessive landscape watering and to be observant of plumbing leaks. We further recommend deep-rooted drought tolerant plants be utilized on the man-made slopes in particular to aid in surface stabilization of the slopes. . . .

We understand that the house foundations were constructed in competent bedrock. Further, a cursory inspection of the exterior of the house, carport, and associated retaining walls indicate that they have performed satisfactorily since construction.

The swimming pool, spa, and adjacent decking have performed satisfactorily since construction in 1996, and we see no reason that they should not continue to do so for the anticipated normal life for these improvements.

The sports court has performed satisfactorily since construction. 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.

The house and hardscape development performed on the subject site protects to some extent, the immediate area from rainwater infiltration. Significant rainfall or landscape water infiltration could cause reduced stability of the adjacent descending slopes.

As set forth in Section 30253 of the Coastal Act, new development shall assure structural integrity and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding area. With respect to the proposed development consisting 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 storage tank for propane 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; and placement of sand fill for play area east of the pool; none of this development, as conditioned, will involve construction outside of the immediate development footprint and existing graded pad on which the single family residence is located. Accordingly, this portion of the proposed development will not significantly decrease the stability of the subject site or the existing residential development. Further, these portions of the proposed development are not located on the undeveloped steep slopes of the site or adjacent to the canyon below the site. In addition, the proposed capping of the grey water outlet and connection to the existing septic system and removal of concrete from eastern drainage will also enhance the long term stability of the site.

In addition, **Special Condition 3** requires the implementation of landscaping that will reduce potential erosion that might otherwise occur pursuant to the approved development. The areas of the subject site adjacent to the stairs on the sides of the single family residence and the swimming pool, spa, and patio area may have been disturbed pursuant to construction activities. In addition, the applicants' geotechnical consultant identified soil instability adjacent to the swimming pool area, specifically. Erosion in this area and other areas of the subject site that were disturbed through the approved development may be controlled through planting. As such, landscaping of the disturbed and graded areas on the subject property, required by **Special Condition 3**, will serve to enhance the geological stability of the site and reduce erosion. The minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to revegetate all disturbed and graded areas of the site with native plants, compatible with the surrounding chaparral environment. In addition, **Special Condition 3** also requires the applicants to submit a revised fuel modification plan, if additional fuel modification or brush clearance is required under the Fire Department of Los Angles County requirements for the approved structures, such as the carport, propane tank, and/or water tank. A revised fuel modification plan will also ensure that only vegetation required to be removed pursuant to the Fire Department's requirements is cleared, thereby increasing stability by ensuring that there will not be indiscriminate brush clearance.

The landscape plan required pursuant to **Special Condition 3** requires the use of primarily native plant species. Invasive and non-native plant species are generally

characterized as having a shallow root structure in comparison with their high surface/foliage weight. Non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native, invasive species and therefore aid in preventing erosion. The revised fuel modification plan required under **Special Condition 3** must also illustrate the location of the proposed irrigation system and the irrigation system must be limited to the area that is required to be irrigated by the Forestry Department of Los Angeles County, in order to increase site stability and reduce erosion.

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

Therefore, the Commission finds that in order to ensure site stability, the disturbed or graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition 3.**

Further, additional landform alteration would result if the concrete removed from the eastern drainage were to be retained on site. In order to ensure that this removed material will not be stockpiled on site and that landform alteration is minimized, **Special Condition 4** requires the applicants to remove the concrete debris from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Should the dump site be located in the Coastal Zone, a Coastal Development Permit or amendment shall be required.

In addition, there are alternative locations within the immediate development footprint of the existing single family residence and pad upon which the single family residence is located on which the above ground water storage tank, masonry pump enclosure for water tank, screen wall for water tank, eastern portion of the fence adjacent to the single family residence, irrigation system, and sand fill play area to the east of the residence may be relocated. These structures may be located closer to the single family residence and outside of the area covered by the offer to dedicate an open space easement. The clustering of the structures associated with the residential development on the site adjacent to the existing single family residence and existing graded pad upon which the residence is built will reduce disturbance of the site and erosion. As a result, the clustering of development adjacent to the existing single family residence will also serve to increase the stability of the site by decreasing disturbance and erosion. Therefore, **Special Condition 2** is necessary to require the applicants to submit revised project plans that show a relocation of the above ground water storage tank, masonry pump enclosure for water tank, screen wall 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.

The Commission finds that the development consisting 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 storage tank for propane 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; and placement of sand fill for play area east of the pool; capping of the grey water outlet and connection to the existing septic system; and removal of concrete from the eastern drainage are consistent with Section 30253 of the Coastal Act, provided that the geotechnical consultant's and the structural engineering consultant's recommendations are incorporated into project plans. Therefore, **Special Condition 1** requires the applicants to submit final project plans and designs that have been certified in writing by the geologic and geotechnical engineering consultants as conforming to their recommendations. To ensure that the recommendations regarding geologic hazards and stability are implemented, **Special Condition 1** also requires the applicant to submit written confirmation that all recommendations that apply to development approved by this permit were implemented.

As stated above, Section 30253 of the Coastal Act requires new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard and to assure stability and structural integrity.

The proposed 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 are located away from the development footprint approved under CDP 5-88-056 and existing single family residence and graded pad upon which the residence is located. In addition, portions of these proposed developments are located on steep slopes with two drainages. In addition, the sports court is located adjacent to a blueline stream and is resulting in erosion.

As stated previously, 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 indicates concerns regarding the stability 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 or 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 will not minimize risks to life and property in areas of high geologic, flood, and fire hazard and to assure stability and structural integrity, as required by Section 30253 of the Coastal Act. Further, the installation of decomposed granite on the eastern side of the sports court may also exacerbate instability in this area, as it discourages the growth of native vegetation that would decrease scouring and erosion of the site.

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:

> ***Further, 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. Commission staff also noted erosion directly adjacent to and beneath the stairs leading from the pool area to the sports court.

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 be subject to instability and therefore denies this portion of the proposed development since it is not consistent with Section 30253 of the Coastal Act. Therefore, the Commission denies this portion of the proposed development, since it is not consistent with Section 30253 of the Coastal Act. Consequently, **Special Condition 2** requires the applicants to submit revised plans deleting 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 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.***

(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 air[4]. In addition, these areas also provide habitat for a wide range of wildlife species and corridors to maintain genetic diversity between wildlife populations[5]. Chaparral and riparian habitat areas are becoming increasingly rare, however, due to increased direct and indirect impacts from development and other factors[6]. 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 development[7]. 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.

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[3] The 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 steam 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 visited 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.

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[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

[11]Santa 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).

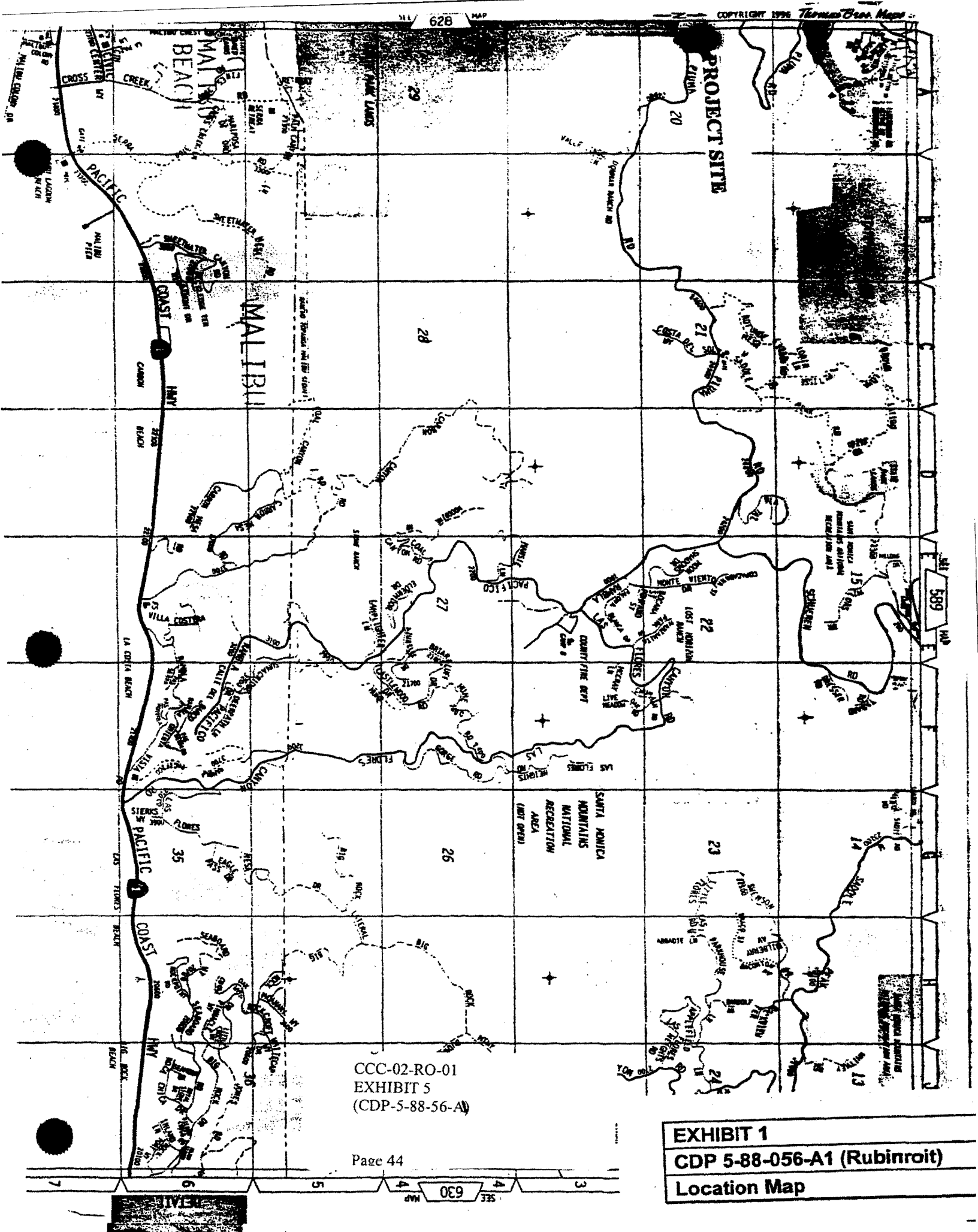
The Commission also finds that the portion of the proposed project consisting of the swimming pool with spa, pump, and pool equipment storage area, retaining wall and carport, lighted steps and pathways on both sides of the single family residence, chain link fence and gates around the pool and single 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

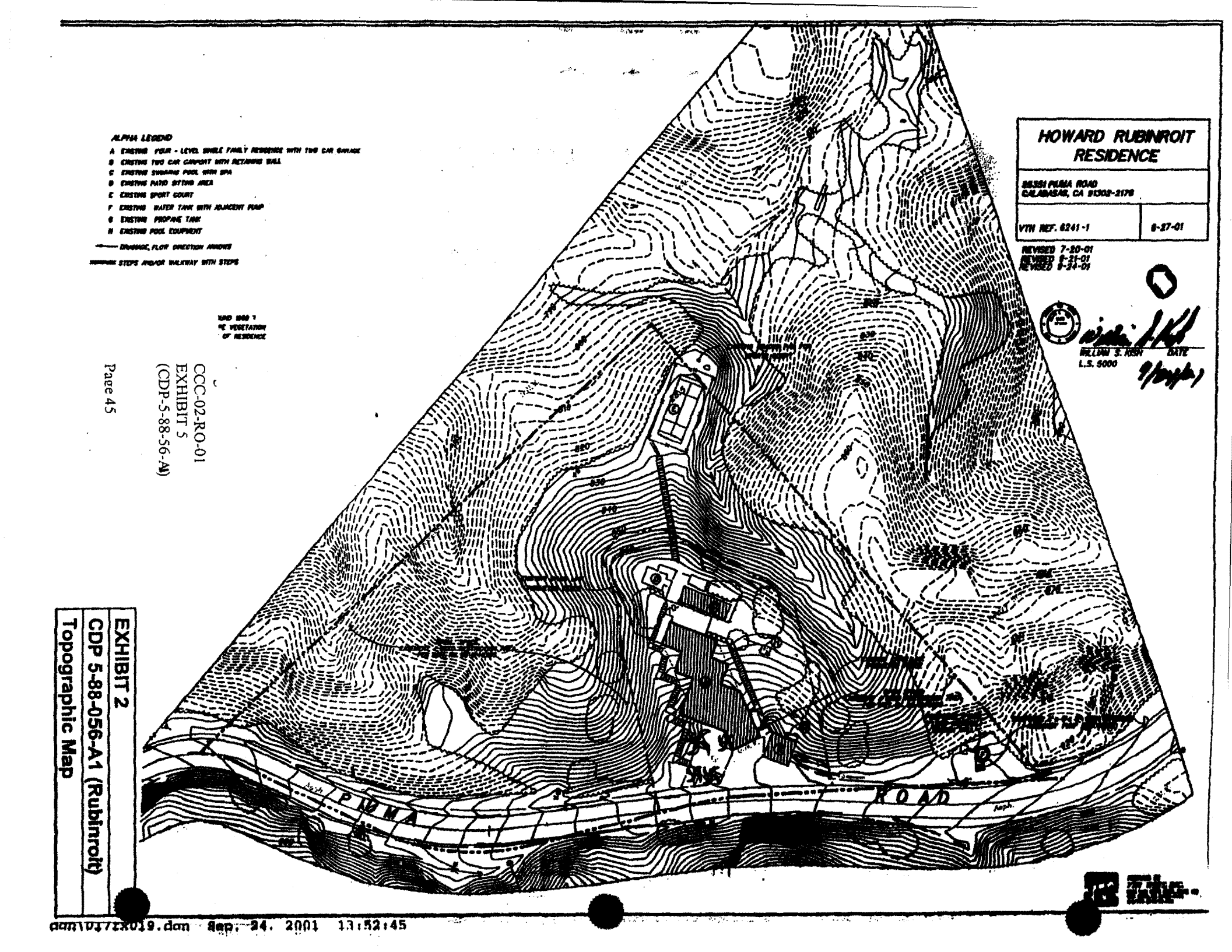
around the pool and single family residence, above ground propane storage tank with concrete pad, patio area with landscaping walls near the pool, relocated above ground water storage tank, masonry pump enclosure for water tank, and screen wall for water tank, drainage system, irrigation system, sand 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.



CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

Page 44

EXHIBIT 1
CDP 5-88-056-A1 (Rubinroit)
Location Map

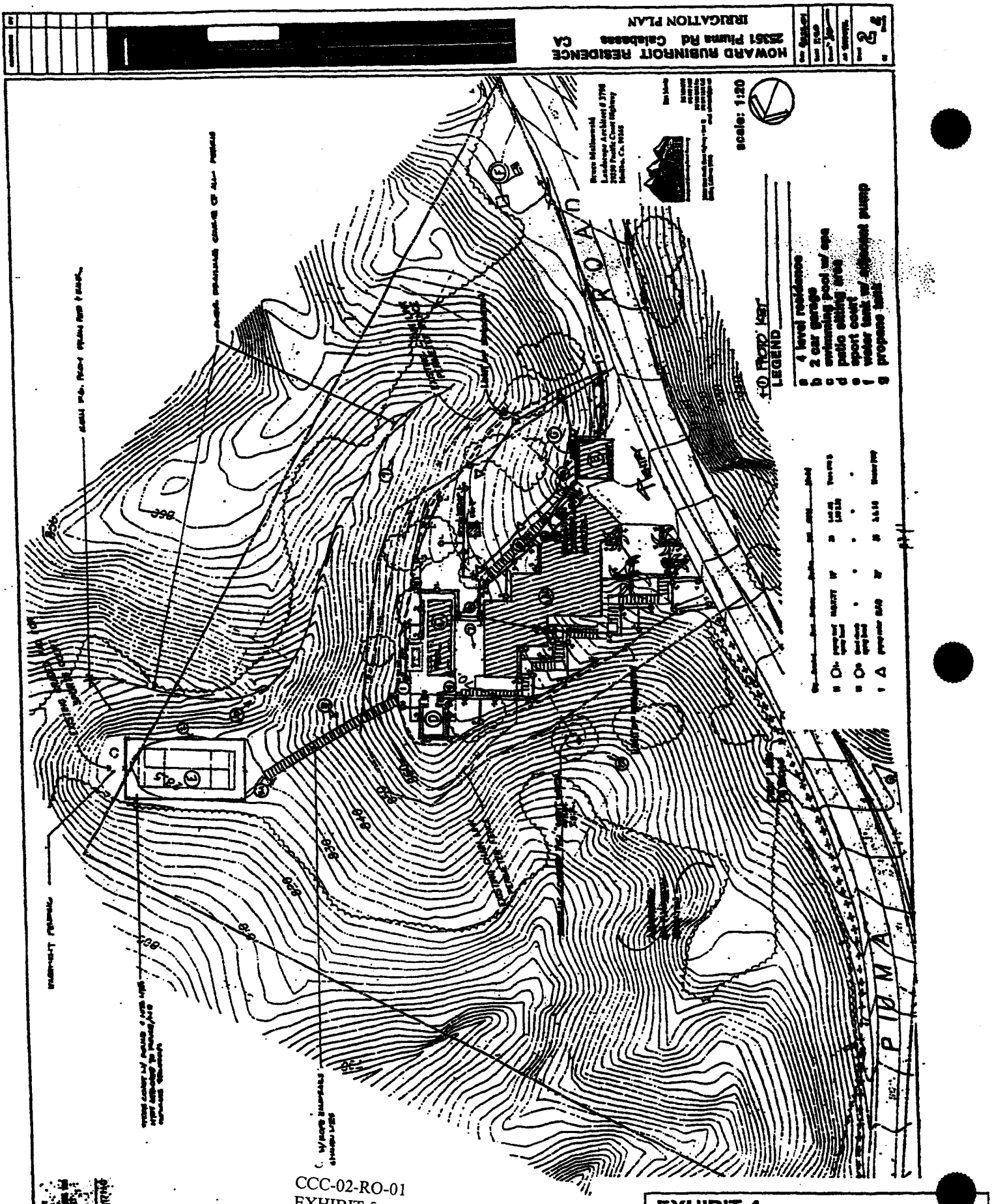


CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

Page 45

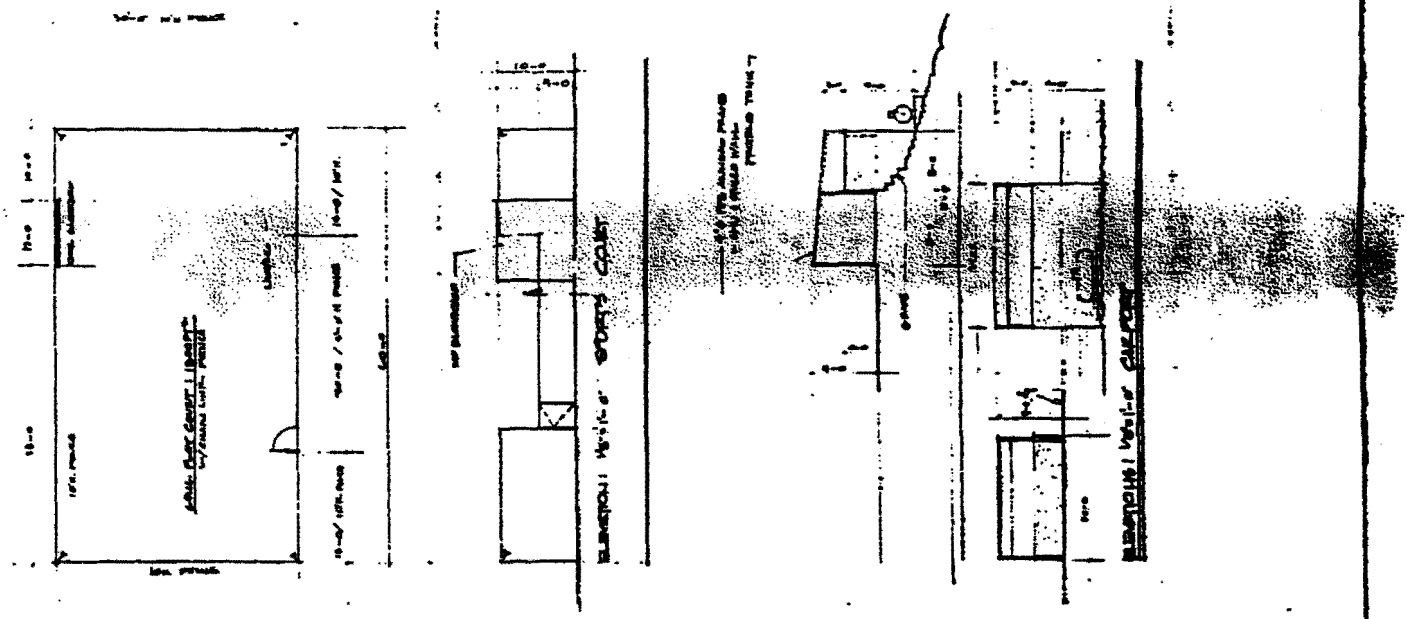
CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

EXHIBIT 3
CDP 5-88-056-A1 (Rubinroit)
Site Plan



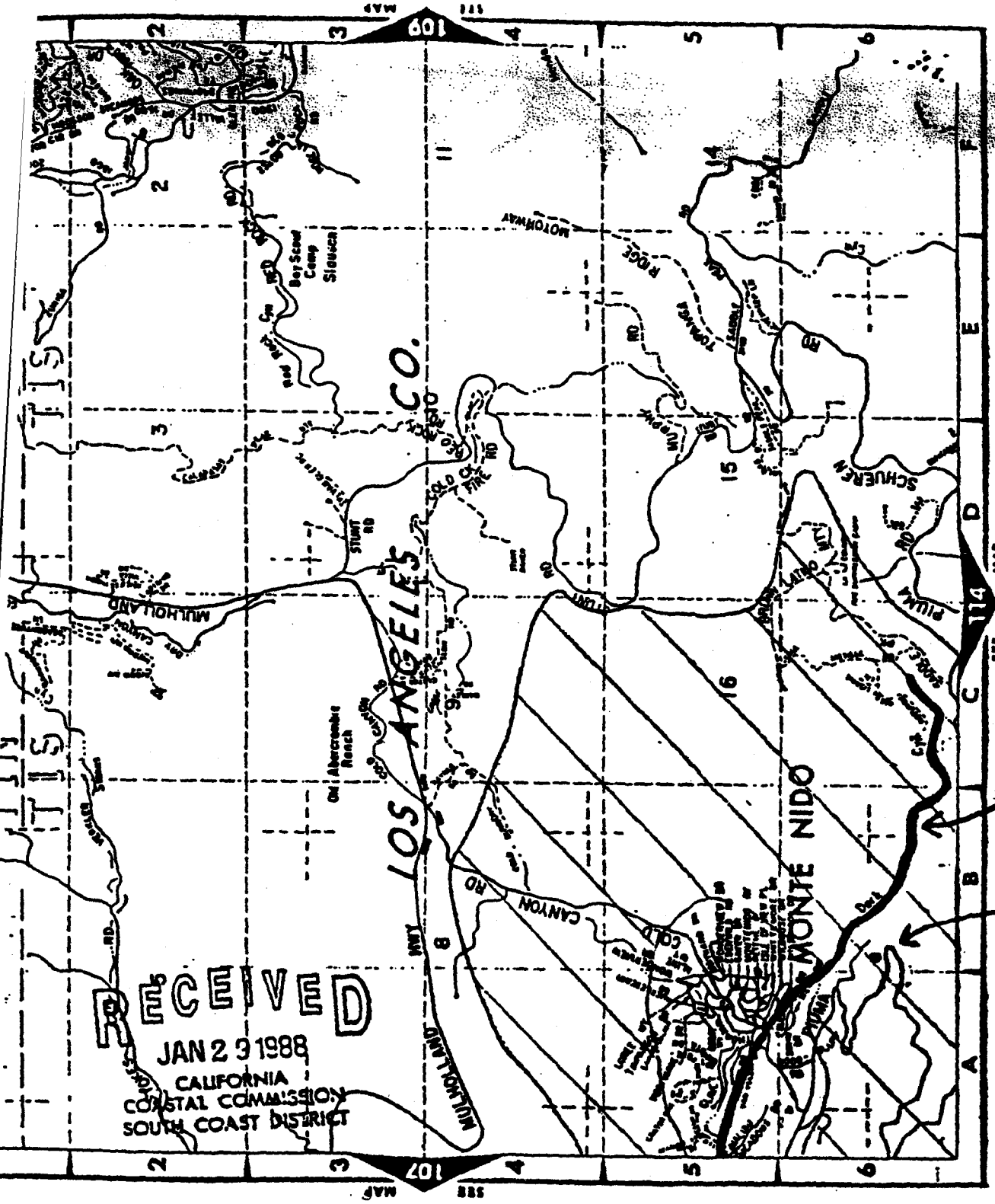
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EXHIBIT 5
(CDP-5-88-56-A1)

EXHIBIT 4
CDP 5-88-056-A1 (Rubinroit)
Irrigation Plan



CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

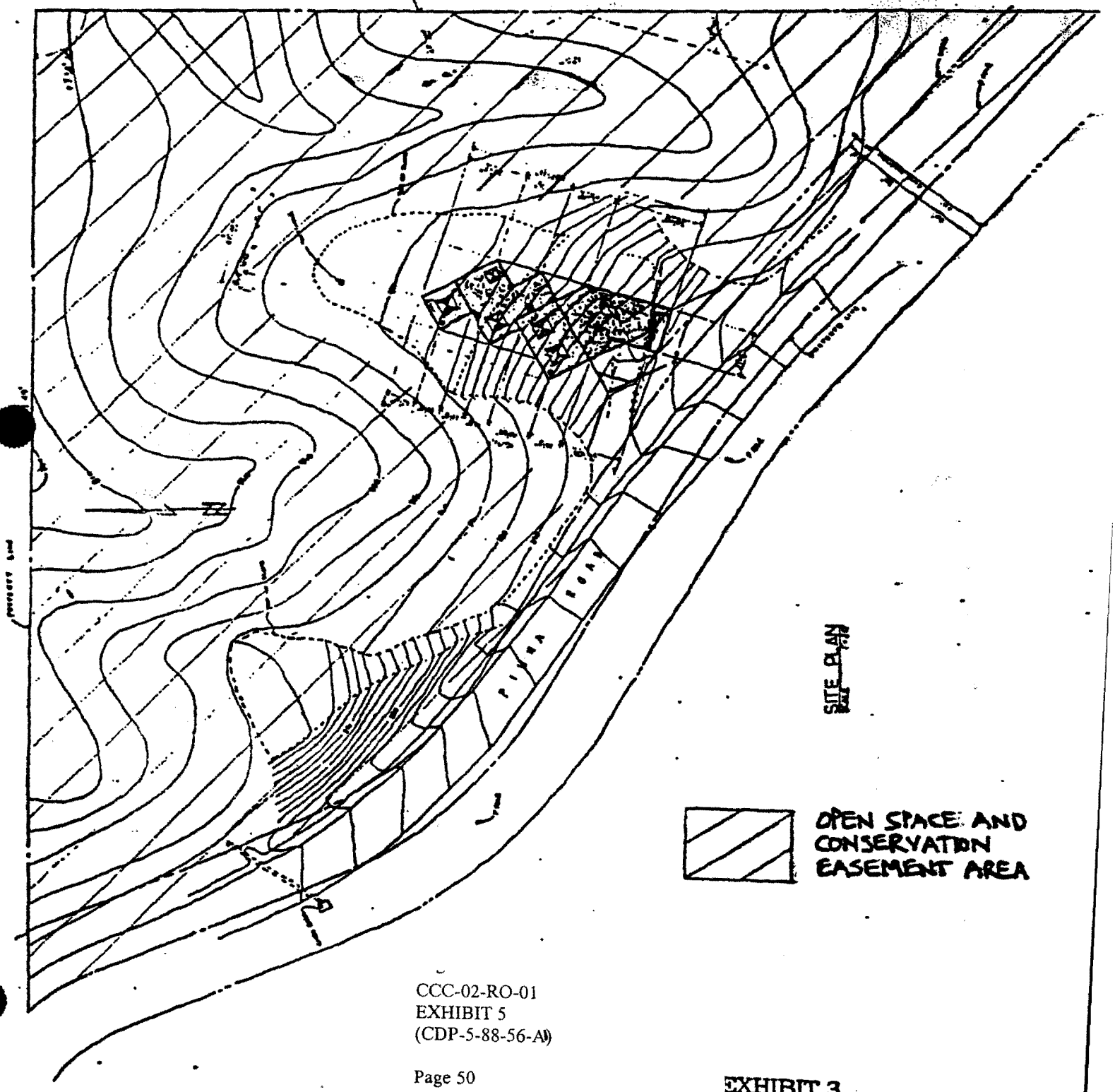
EXHIBIT 5
CDP 5-88-056-A1 (Rubinroit)
Elevations



CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

EXHIBIT 6
CDP 5-88-056-A1 (Rubinroit)
Resource Map

RECORDER'S MEMO:
POOR RECORD IS DUE TO
QUALITY OF ORIGINAL DOCUMENT



FILE COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY GEORGE DEUKMEJIAN, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

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

By: LARRY GARRIDO

EXHIBIT 7
CDP 5-88-056-A1 (Rubinroit)
CDP 5-88-056 (8 pages)

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

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

11/27/88
Date of Signing

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

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 chapparal, 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 unforseen 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 Piuma Road. As a result, the structure extends only 11 feet above the centerline of Piuma 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 Piuma 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 Piuma 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

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

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 accomodate 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 to require the applicant to offer to

dedicate an open space and conservation easement for ESHA 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 Piuma 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 Piuma Road, Malibu,

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

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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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
1 MIN. PAST 11 A.M. AUG 8 1988

IRREVOCABLE OFFER TO DEDICATE OPEN-SPACE EASEMENT

AND

FEE $ 71 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 16, 1988, 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)

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

EXHIBIT 8
CDP 5-88-056-A1 (Rubinroit)
Open Space Deed Restriction (13 pages)

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STD. 113 (REV. 8-72)

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

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 Piuma 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.

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 acordance with this Offer; and

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

88-1246285

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STATE OF CALIFORNIA
STD 113 (REV. 8-72)

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

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

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

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

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

1. USE OF PROPERTY. The use of the Protected Land shall be limited to natural open space for habitat protection, private recreation, and resource conservation uses. 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, buildings, etc, or except as approved by the Coastal Commission or its' successor agency on a subsequent Coastal Permit, shall occur or be allowed on the Protected Land with the exception of the following subject to applicable governmental regulatory requirements:

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

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

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

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

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

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STD. 113 (REV. 8-72)

3. BENEFIT AND BURDEN. This offer shall run with and burden the Property, and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the Property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This Offer shall benefit the State of California.

4. CONSTRUCTION OF VALIDITY. If any provision of these restrictions is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby affected or impaired.

5. ENFORCEMENT. Any act or any conveyance, contract, or authorization whether written or oral by the Grantor which uses or would cause to be used or would permit use of the Protected Land contrary to the terms of this Offer will be deemed a breach hereof. The Grantee may bring any action in court necessary to enforce this Offer, including but not limited to injunction to terminate a breaching activity, or an action to enforce the terms and provisions hereof by specific performance. It is understood and agreed that the Grantee may pursue any appropriate legal and equitable remedies. The Grantee shall have sole discretion to determine under what circumstances an action to enforce the terms and conditions of this Offer shall be brought in law or in equity. Any forbearance on the part of the Grantee to enforce the terms and provisions hereof in the event of a breach shall not be deemed a waiver of Grantee's rights regarding any subsequent breach.

6. TAXES AND ASSESSMENTS. Grantor agrees to pay or cause to be paid all real property taxes and assessments levied or assessed against the Property.

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

88-1246285

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FORM 113 (REV. 8-72)

7. MAINTENANCE. The Grantee shall not be obligated to maintain, improve, or otherwise expend any funds in connection with the Property or any interest or easement created by this Offer. All costs and expenses for such maintenance, improvement use, or possession, except for costs incurred by grantee for monitoring compliance with the terms of this easement, shall be borne by the Grantor.

8. LIABILITY AND INDEMNIFICATION. This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees are to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or property of any kind whatsoever and to whomsoever belonging, including Grantor, from any cause or causes whatsoever, except matters arising out of the sole negligence of the Grantee, while in, upon, or in any way connected with the Property, Grantor hereby covenanting and agreeing to indemnify and hold harmless the Grantee, its agencies, departments, officers, agents, and employees from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses however occurring. The Grantee shall have no right of control over, nor duties and responsibilities with respect to the Property which would subject the Grantee to any liability occurring on the land by virtue of the fact that the right of the Grantee to enter the land is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the land for the purposes of correcting any dangerous condition as defined by California Government Code Section 830.

88-1246285

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

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

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

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

Executed on this 16th day of July, 1988

at Canoga Park CA.

Jack Moses
TYPE OR PRINT NAME ABOVE

Ron Landry
TYPE OR PRINT NAME ABOVE

Ann-Marie Moses
TYPE

-7- Margo Landry
YPE OR PRINT NAME ABOVE

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

88-1246285

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

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On this 16th day of JULY, in the year 1988, before me JOY LEES, a Notary Public, personnally appeared JACK MOSES, ANN-MARIE MOSES, RONALD LANDRY & MARGO LANDRY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he/she executed it.

OFFICIAL SEAL
JOY LEES
Notary Public-California
LOS ANGELES COUNTY
My Comm. Exp. Feb. 7, 1990

Joy Lees
NOTARY PUBLIC IN AND FOR SAID COUNTY STATE

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

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

Dated: July 29, 1988

John Bowers

John Bowers, Staff Counsel
California Coastal Commission

STATE OF California)
COUNTY OF San Francisco)

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

DEBORAH L. BOVÉ
NOTARY PUBLIC — CALIFORNIA
CITY & COUNTY OF
SAN FRANCISCO
My Commission Expires October 4, 1991

Deborah L. Bové

NOTARY PUBLIC IN AND FOR
SAID STATE AND COUNTY

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

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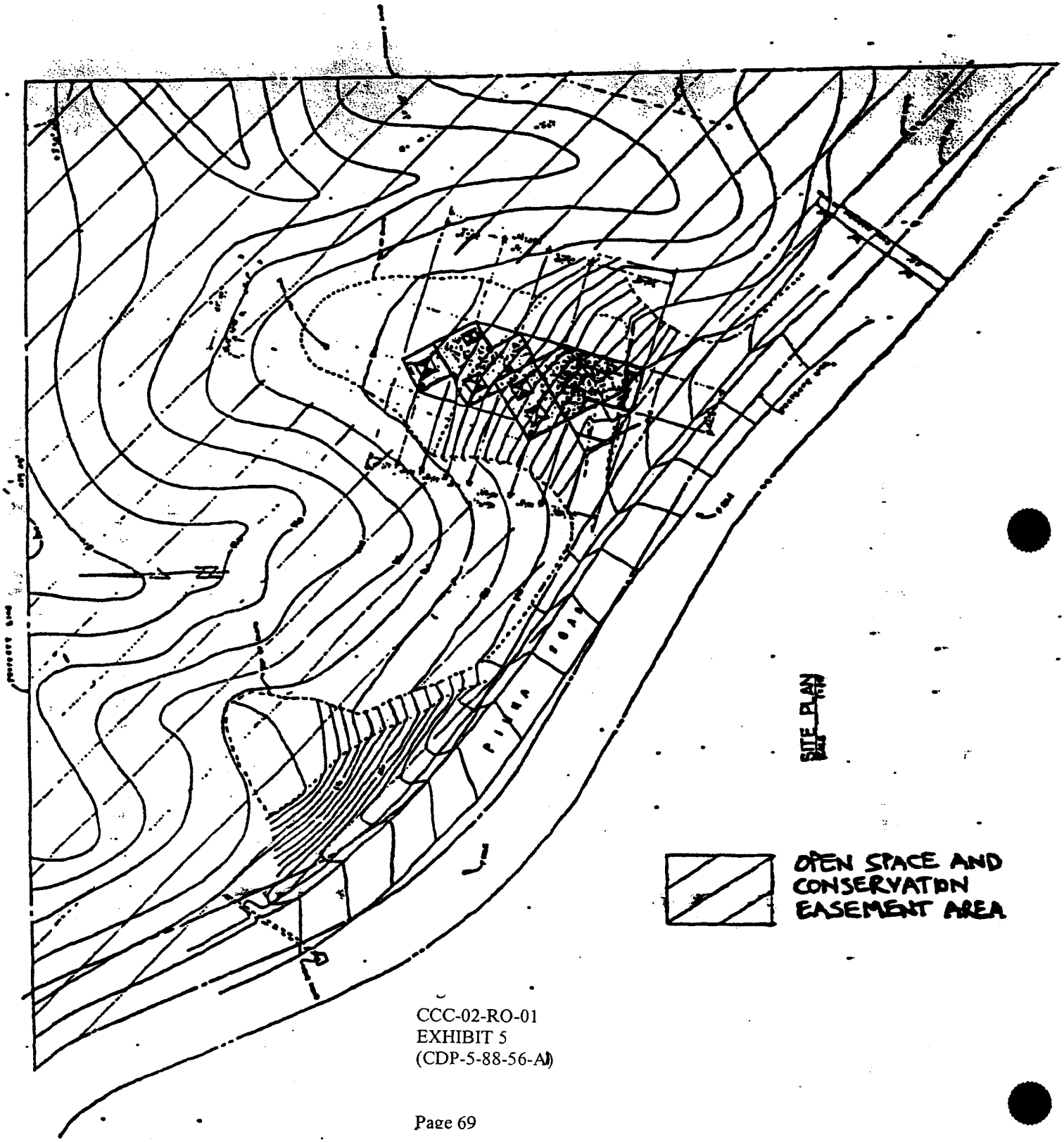
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STATE OF CALIFORNIA
STD. 113 (REV. 8-72)

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° 54' 40" West 475.49 feet to the center line 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 center line, being a curve concave Southwesterly, (a radial line to said intersection of the Northerly line of the Northeast quarter of te Northwest quarter with said center line bears North 46° 51' 40" East) an arc distance of 34.68 feet; thence South 23° 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° 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° 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.



CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

88-1246285

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°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°51'40" East) an arc distance of 34.68 feet; thence South 23° 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°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°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°43'20" East, 96.00 feet to the true point of beginning. Thence, North 28°16'37" East, 120.00 feet to a point; thence, North 36°46'37" East, 40.00 feet to a point; thence, North 22°46'37" East, 36.00 feet to a point; thence, North 81°06'37" East, 22.00 feet to a point; thence, South 52°53'23" East, 34.00 feet to a point; thence, South 22°13'23" East, 56.00 feet to a point; thence, South 18°43'23" East, 36.00 feet to a point; thence, South 07°23'23" East, 27.00 to a point; thence South 30°06'37" West, 138.31 feet (more or less) to the centerline of said Piuma Road; thence along said centerline North 50°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°43'20" West 38.48 feet to the true point of beginning.

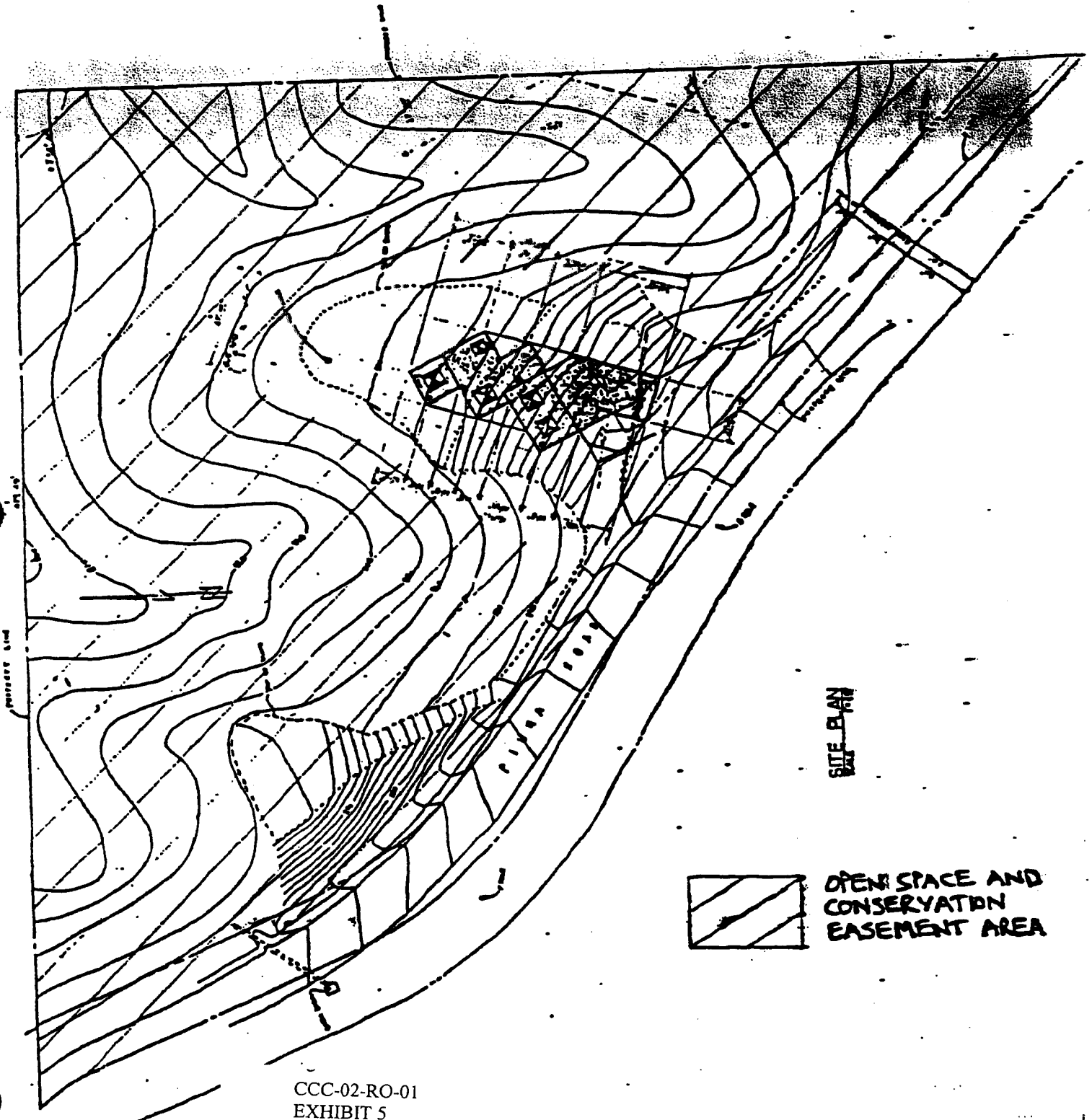
EXHIBIT D

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.



CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

EXHIBIT 9
CDP 5-88-056-A1 (Rubinroit)
Map of Open Space OTD

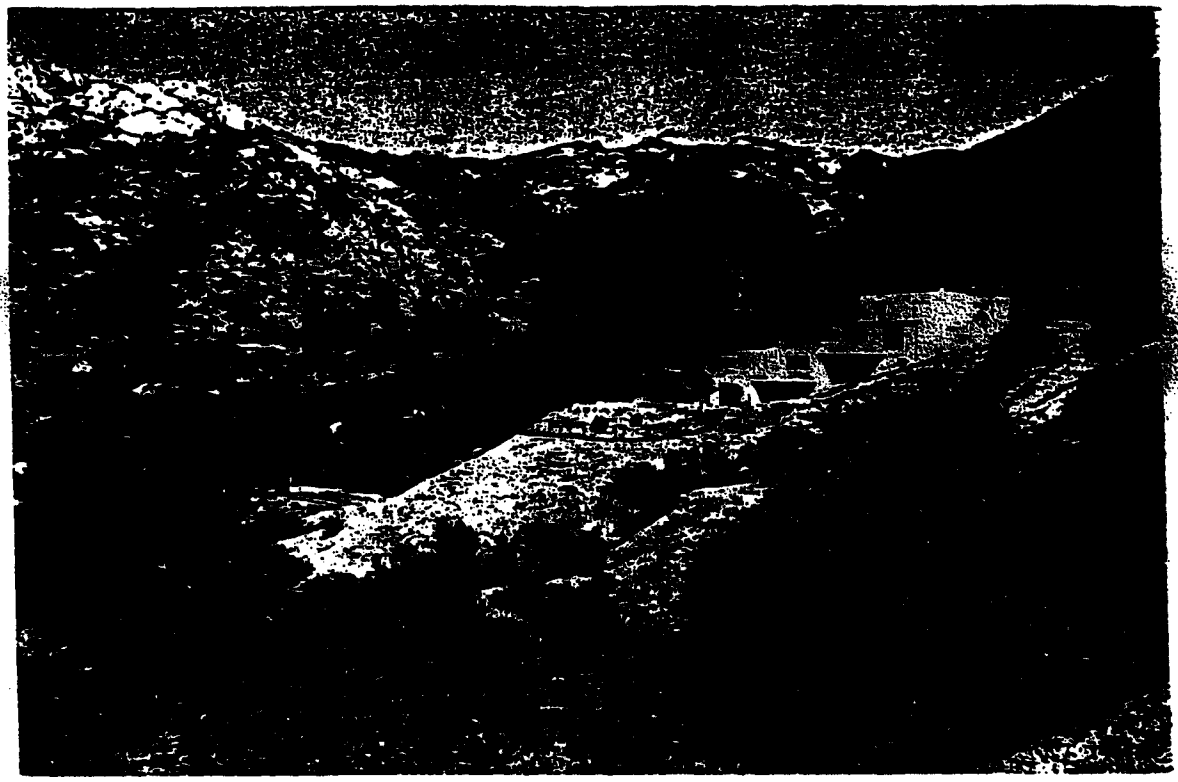


PHOTO 1 Looking east from Piuma Road at sports court, major vegetation removal outside of approved area, pool/patio area, chain link fence and residence on June 9, 1997



PHOTO 2 Looking east from Piuma Road at sports court, major vegetation removal outside of approved area, chain link fence and pool/patio area on June 9, 1997

EXHIBIT 10
CDP 5-88-056-A1 (Rubinroit)
Photos of Subject Site (4 pages)

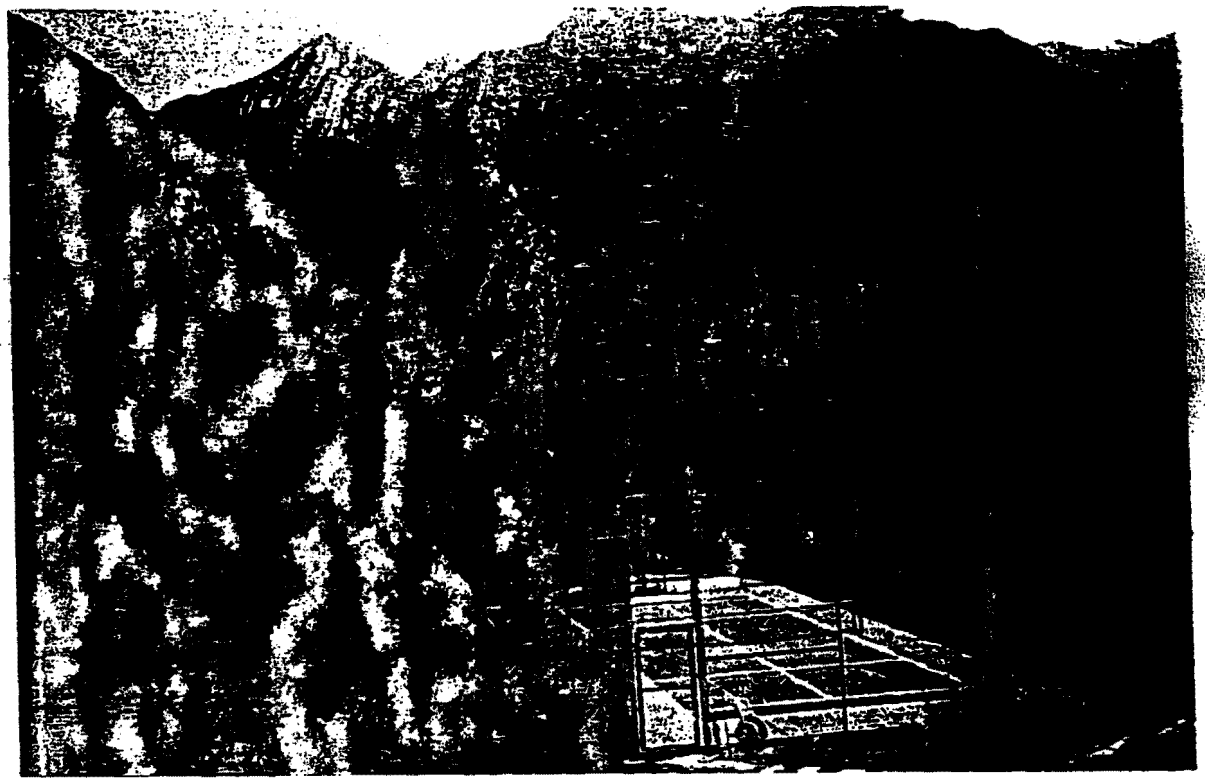


PHOTO 3 Looking north (from area south of pool) at sports court on building pad number three on March 15, 2001.

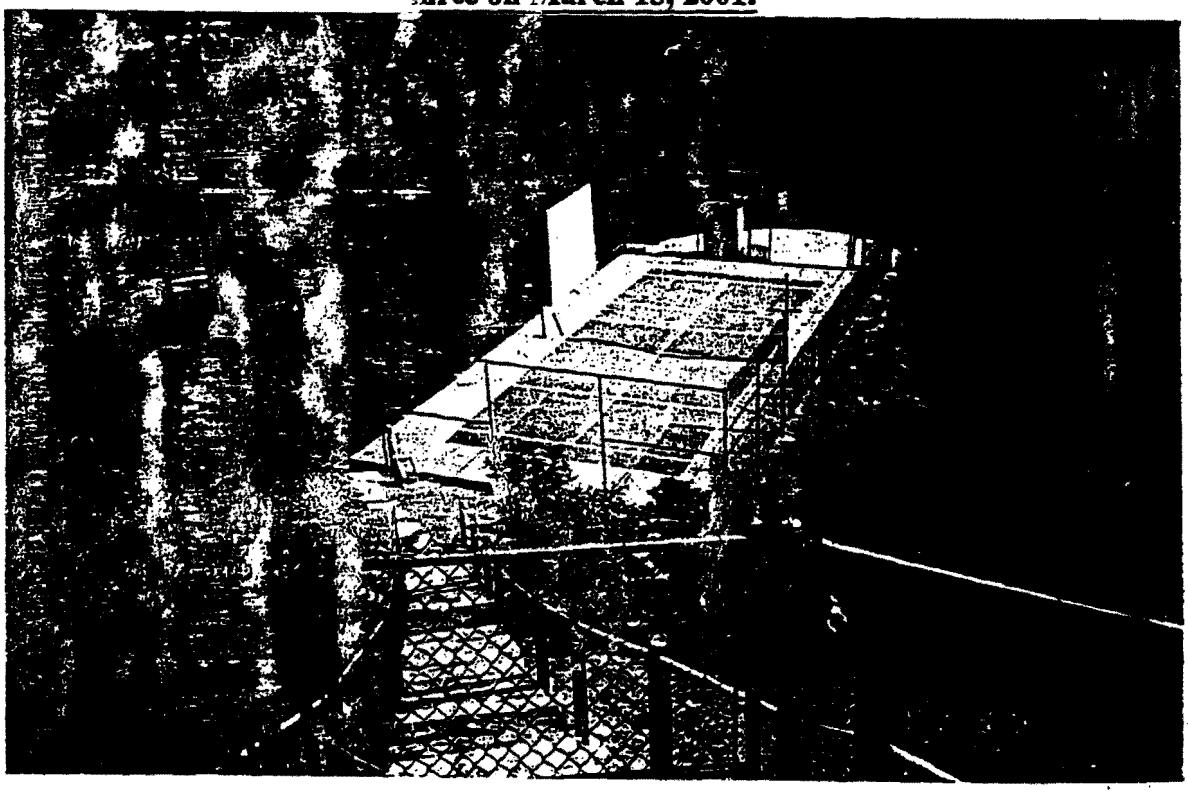


PHOTO 4 Looking north (from stairs below pool) at 1) stairs leading from pool area to sports court, 2) sports court and 3) nonnative sand fill behind basketball net, adjacent to blue line stream on March 15, 2001.

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A1)

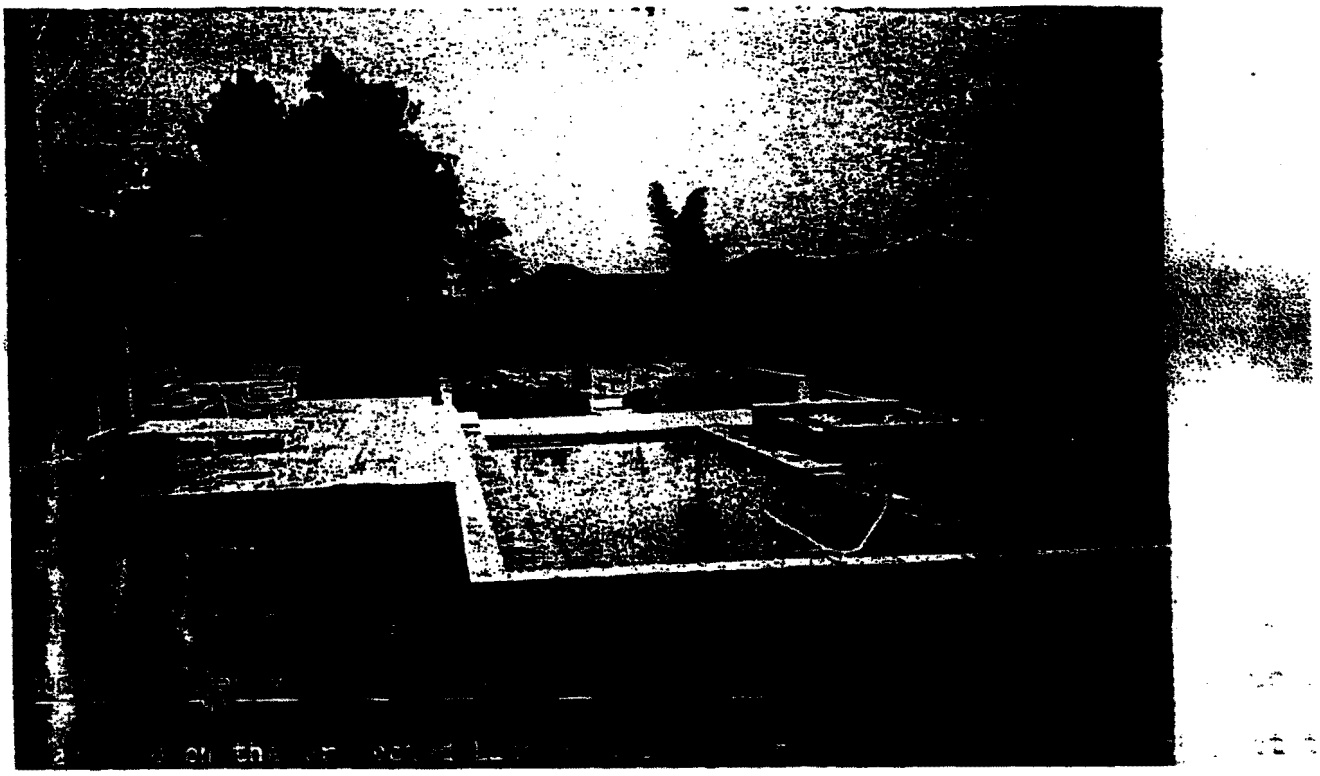


PHOTO 5 Looking west at pool, spa and patio area with low walls on March 15, 2001



PHOTO 6 Looking west at retaining wall, carport, propane tank with concrete pad, irrigation system. chain link fence and house on March 15. 2001.

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)

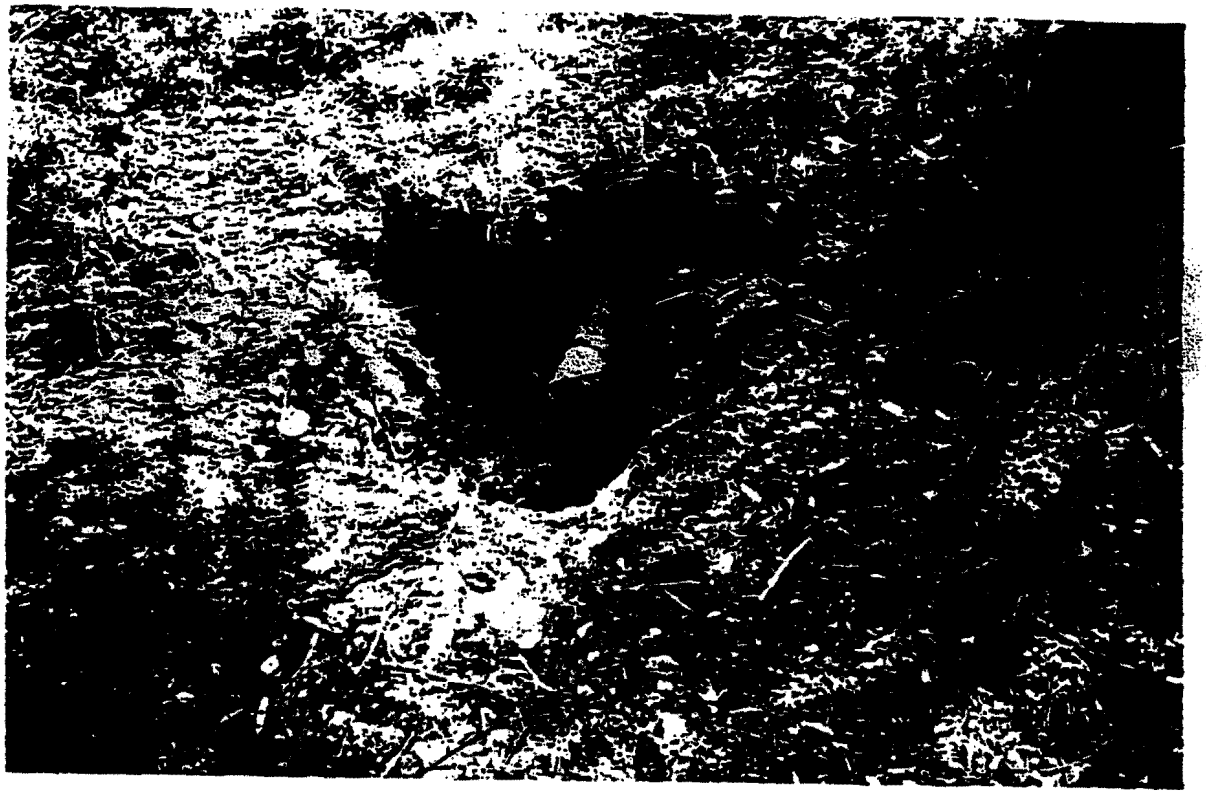


PHOTO 7 View of exposed septic/grey water outlet located on slope to the west of house on March 15, 2001



PHOTO 8 Looking south from sports court at eastern watercourse, slump area with falling chain link fence, stairs on eastern side of house. house on March 15 2001

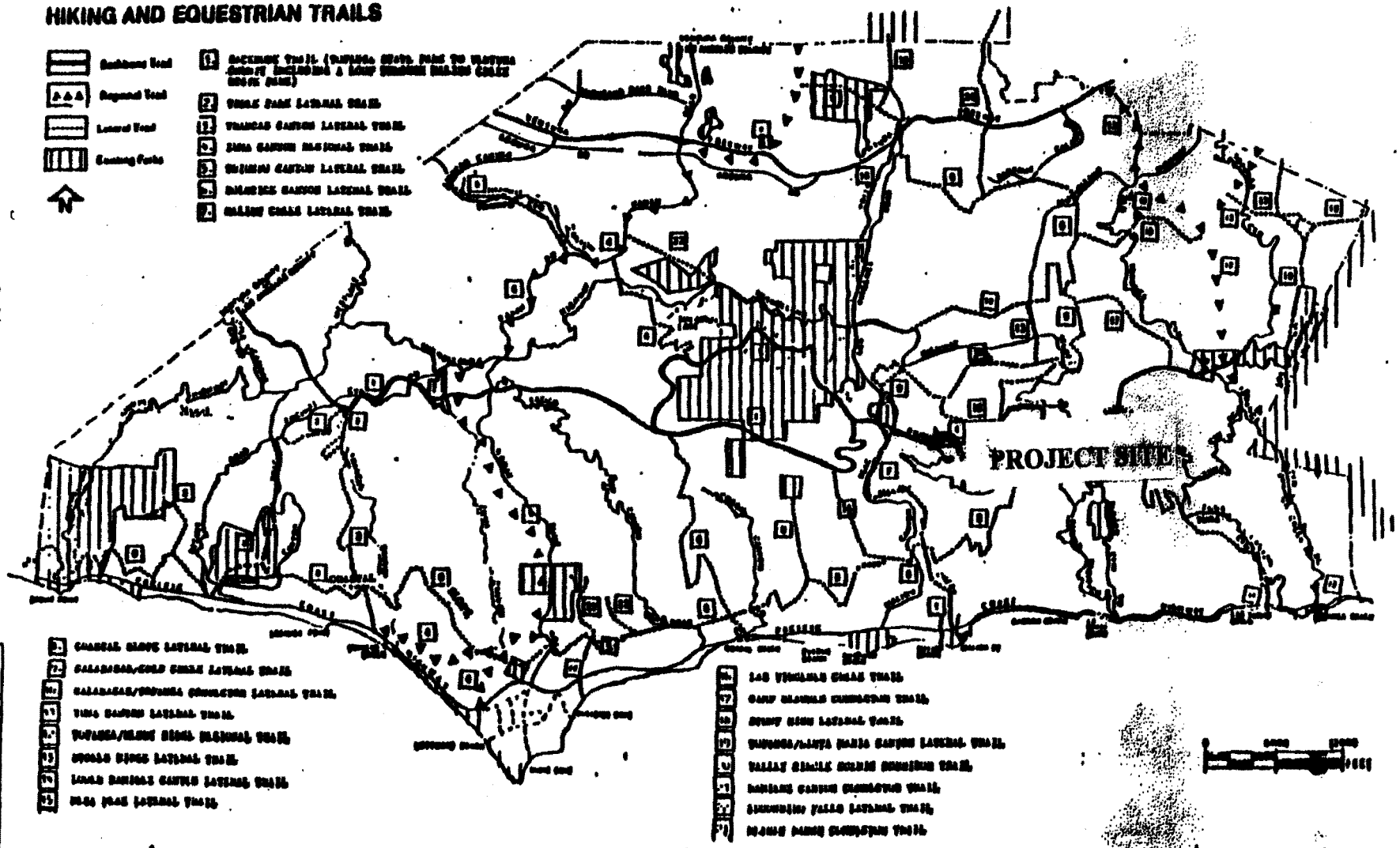
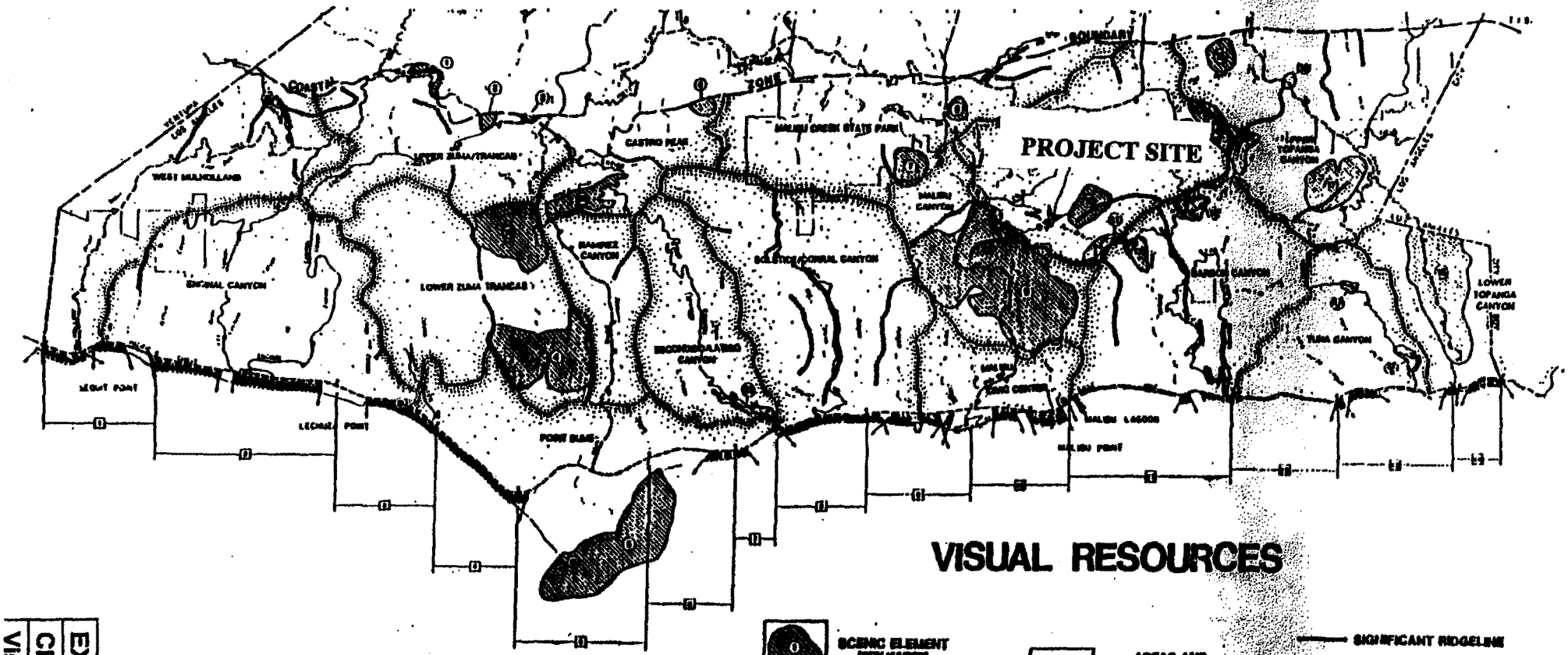


FIGURE 3

EXHIBIT 11
CDP 5-88-056-A1 (Rubinroit)
Trail Map

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)



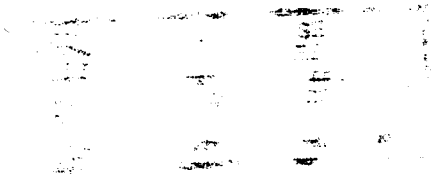
VISUAL RESOURCES

S DEPARTMENT OF REGIONAL PLANNING/ENVICOM CORPORATION

FIGURE 8

EXHIBIT 12
CDP 5-88-056-A1 (Rubinroit)
Visual Resource Map

CCC-02-RO-01
EXHIBIT 5
(CDP-5-88-56-A)





Malibu Beach, CA
USGS Quad 135
1950, photorevised 197
minor revision 1994

CCC-02-RO-01

EXHIBIT 6

Page 1/1

SIDLEY AUSTIN BROWN & WOOD LLP

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NEW YORK
SAN FRANCISCO
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TELEPHONE 213 896 6000
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BEIJING
GENEVA
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(213) 896-6602

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

July 9, 2002

RECEIVED
JUL 10 2002
CA COASTAL COMMISSION
LEGAL DIVISION

By Federal Express

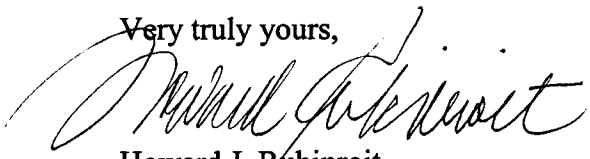
Mr. Abe G. Doherty
Headquarters Enforcement Officer
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, California 94105-2219

Re: Application No. 5-88-056-A1; Notice of Intent to Commence Restoration Order Proceedings; Property: 25351 Piuma Road, Calabasas; Applicants: Howard and Terry Rubinroit

Dear Mr. Doherty:

Applicants are enclosing herewith their Statement of Defense in respect of the Executive Director's Notice of Intent to Commence Restoration Order Proceedings in the above-captioned matter.

Very truly yours,



Howard J. Rubinroit

HJR:sk

cc: Mr. Peter Douglas (w/o encl.)
Mr. Don Schmitz (w/ encl.)

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

EXHIBIT A

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

(VIA FAX TO 213 896-6600
and REGULAR and CERTIFIED MAIL ARTICLE NO. 7001 2510 0009 2080 8445)

June 20, 2002

Howard & Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

SUBJECT: Notice of Intent to Commence Restoration Order Proceedings; Violation No. V-4-97-031, 25351 Piuma Road, Calabasas,

Dear Mr. Rubinroit:

This purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission") to commence proceedings for the issuance of a restoration order to compel the removal of certain items of development on your property (APN 4456-037-007) at 25351 Piuma Road in Calabasas, Los Angeles County[1] ("subject property"). The development that will be the subject of the restoration order is that which remains unpermitted (hereinafter, "the denied development") after the Commission's decision on June 10, 2002, to approve in part and deny in part your application (CDP 5-88-056-A1) for approval of primarily after-the-fact development at the subject property. The Commission intends to hold a hearing on the issuance of a restoration order in this matter during the Commission meeting that is scheduled for August 6-9, 2002.

Restoration Order Proceedings

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site in the following terms:

> *In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

[1] A small portion of the unpermitted development extends onto an adjacent lot, APN 4456-037-010. This portion is included within the scope of this notice. The owner of this lot granted you an easement over the northeast corner thereof for the eastern portion of the sports court, as described in the Grant of Easement recorded in the Los Angeles County Registrar-Recorder Office on December 4, 2001, as Instrument No. 012312351.

EXHIBIT 7
(State of Defense)

In subsequent paragraphs in this letter I 1) describe the denied development that is the subject of this restoration order proceeding and 2) set forth the basis for my determination that the specified activity meets the criteria of Section 30811 of the Coastal Act.

The procedures for the issuance of restoration orders are described in Sections 13190 through 13197 of the Commission's regulations. Section 13196(e) of the Commission's regulations states the following:

> *Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, any restoration order that the Commission may issue will have as its purpose the restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described below.

If the Commission issues a restoration order, Section 30821.6(a) of the Coastal Act authorizes the Commission to seek monetary daily penalties for any intentional or negligent violation of the order for each day in which the violation persists.

Description of the Denied Development

The denied development that is the subject of this restoration order proceeding is the construction or installation (including associated grading and removal of native vegetation) of the following development:

a) the lighted sports court,
b) the lighted stairway extending from the pool area to the sports court,
c) decomposed granite on the eastern side of the sports court,
d) portion of sand fill play area east of the pool located within the area subject to the offer to dedicate an open space easement,
e) portion of the irrigation system located within the area subject to the offer to dedicate an open space easement,
f) portion of the chain link fence located within the area subject to the offer to dedicate an open space easement,[2] and
g) the water tank (pending determination discussed in the following paragraph).

The inclusion of the water tank in this list of unpermitted development is subject to the determination by the South Central District Office regarding whether you provide documentation that the fire department has concluded that the water tank absolutely must remain in its current

[2] After the Commission hearing, we discussed 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. However, I have discussed this issue with my legal staff and have concluded that the fence cannot remain in its current location given the recent action by the Commission denying your application to approve the fence in its current location. In fact, the Commission approved the fence with the condition that you submit revised plans that show a relocation of the eastern portion of the fence so that it is outside of the area subject to the offer to dedicate the open space easement. The findings for CDP 5-88-056-A1 conclude that this portion of the fence is inconsistent with the Chapter Three policies of the Coastal Act.

location in order to be in compliance with local regulations, including those regarding fire safety. As you know, the Commission decided to allow this water tank to remain in its current location, if such a determination is made.

Basis for Determination that the Specified Activity Meets the Criteria of Section 30811 of the Coastal Act

I have determined that it is appropriate for a restoration order proceeding to be commenced to address the denied development, based on the following:

1) On May 8, 2001, the Commission unanimously voted to issue Cease and Desist Order CCC-01-CD-01. In issuing the Cease and Desist Order, the Commission made findings that the construction or installation of development, including the above-described denied development, occurred on the subject property without a coastal development permit or permit amendment having been obtained prior thereto and thus constituted a violation of the terms of CDP 5-88-056 and of the Coastal Act.

2) On June 10, 2002, the Commission unanimously voted to deny a request for after-the-fact authorization of the denied development and in doing so it determined that this development was inconsistent with the resource protection policies of the Coastal Act and the conditions of CDP 5-88-056.

3) Maintenance of the denied development is causing continuing resource damage, as defined by Section 13190 of the Commission's regulations. Since this denied development continues to exist at the subject property, the damage to resources protected by the Coastal Act is continuing. The findings for CDP 5-88-056-A1 determined that this denied development is inconsistent with the following Chapter Three policies of the Coastal Act regarding protection of resources:

    a) Section 30253 (geologic stability, protection against erosion),
    b) Sections 30230 and 30231 (coastal waters),
    c) Section 30240 (environmentally sensitive habitat areas or ESHA), and
    d) Sections 30251 and 30253(5) (visual resources, community character, minimization of natural landform alteration).

    The Commission denied the request to authorize the denied development since this development is causing impacts to the resources identified above. Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development."

4) Proceedings for issuance of a restoration order are being commenced against you as the current owners of the subject property, and since you have performed and/or maintained the denied development.

For the reasons stated above, I have decided to commence a restoration order proceeding before the Commission in order to promptly restore the subject property to the condition it was in before the denied development occurred.

Statement of Defense

In accordance with Section 13181(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this letter by completing the enclosed statement of defense form. **The completed statement of defense form must be returned to the attention of Abe Doherty no later than July 10, 2002.** Pursuant to Section 13191(b) of the Commission's regulations, I may extend the time limit for submittal of the statement of defense form if you submit a written request for an extension and a written demonstration of good cause prior to July 10, 2002. Please be advised that the Commission does not waive the doctrine of administrative *res judicata* to the extent that it applies as a result of the Commission's prior actions on CCC-01-CD-01 and CDP 5-88-056-A1.

If you have any questions about this matter, please call Lisa Haage, Assistant Chief of Enforcement at (415) 904-5234.

Sincerely,

PETER DOUGLAS
Executive Director

Cc: Don Schmitz, Schmitz and Associates (via fax to 310 589 0353 and CERTIFIED MAIL Article No. 7001 2510 0009 2080 8452)
Abe Doherty, Headquarters Enforcement Officer
Amy Roach, Chief of Enforcement
Lisa Haage, Assistant Chief of Enforcement
John Bowers, Staff Counsel
Sandy Goldberg, Staff Counsel
Steve Hudson, Enforcement Supervisor, Southern Districts
Tom Sinclair, Enforcement Officer, South Central District Officer
John Ainsworth, Permit Supervisor, South Central District Office

Enc.: Statement of Defense Form

STATE OF CALIFORNIA -- THE RESOURCES AGENCY GRAY DAVIS, *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

STATEMENT OF DEFENSE FORM

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, (FURTHER) ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU. IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE COMMISSION ENFORCEMENT STAFF.

This form is accompanied by a notice of intent to initiate restoration order proceedings before the commission. This document indicates that you are or may be responsible for or in some way involved in either a violation of the commission's laws or a commission permit. The document summarizes what the (possible) violation involves, who is or may be responsible for it, where and when it (may have) occurred, and other pertinent information concerning the (possible) violation.

This form requires you to respond to the (alleged) facts contained in the document, to raise any affirmative defenses that you believe apply, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the (possible) violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps, drawings, etc. and written declarations under penalty of perjury that you want the commission to consider as part of this enforcement hearing.

You should complete the form (please use additional pages if necessary) and return it **no later than July 10, 2002** to the Commission's enforcement staff at the following address:

Abe Doherty, Legal Division,
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

If you have any questions, please contact **Lisa Haage** at **(415) 904-5234.**

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

1. **Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):**

See attached.

2. **Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):**

See attached.

3. **Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):**

See attached.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

See attached.

5. Any other information, statement, etc. that you want to offer or make:

See Declaration of Howard J. Rubinroit, Exhibit A hereto.

6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this form to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, and title, and enclose a copy with this completed form):

See item 4 of the attachment hereto.

1. Facts or allegations contained in the notice of intent that you admit (with specific reference to the paragraph number in such document):

Applicants with respect to Application No. 5-88-056 A1 (the "Application"), Howard J. Rubinroit and Terry Rubinroit ("Applicants"), contend that the Commission and its Staff, including the Executive Director, presently are acting, and at all times material hereto have been acting, in an ultra vires manner and in violation of the United States and California Constitutions (including, but not limited to, the provisions thereof respecting separation of powers, substantive and procedural due process, and equal protection) as to Applicants, the Application, and Applicants' property at 25351 Piuma Road, Los Angeles County (the "Subject Property"); that any "development" performed by Applicants on the Subject Property did not and does not require, and/or is and was exempt from any requirement for, a permit from the Commission; that certain other matters questioned by Staff and made a part of the Application were previously included among the "development" permitted by CDP 5-88-056 (the "Original Permit"); and that the Commission is otherwise acting and at all times has otherwise acted improperly and unlawfully with regard to Applicants, the Application, and the Subject Property, for, among others, the reasons stated in the Declaration of Howard J. Rubinroit, dated June 9, 2002, attached hereto as Exhibit A, and incorporated herein by this reference. Subject to the foregoing, and without waiving the same, Applicants admit (a) that the Executive Director purports to have the intent to commence the proceedings described in the Notice of Intent ("NOI"); (b) that the Commission acted on June 10, 2002 to approve in part and deny in part the Application; (c) the truth of the first and third sentences of footnote 1, on page 1, of the NOI; (d) that the "development" which the Commission voted to deny is described in subparagraphs a) through f) on page 2 of the NOI (the "Denied Development"); (e) that Applicant Howard Rubinroit and

Executive Director Peter Douglas discussed the possibility of leaving the portion of the fence referred to in subparagraph f) on page 2 in its present location; (f) that the Commission voted to approve the "development" of the fence other than the portion referred to in subparagraph f) on page 2; (g) that the Commission determined to approve the Application as to the "development" of the water tank described in subparagraph g) on page 2 and to allow the water tank to remain in its current location; (h) that, on or about May 8, 2001, the Commission purported to take certain action in respect of the Cease and Desist Order CCC-01-CD-01 (the "CDO"); and (i) that the Coastal Act, the "Commission's regulations," the CDO, and the Commission's determinations and purported findings respecting the Application and in connection with CDP 5-88-056-A1 (the "CDP") are each a document in writing which in all respects speaks for itself as to its contents.

2. Facts or allegations contained in the notice of intent that you deny (with specific reference to paragraph number in such document):

Subject to the matters as stated in paragraphs 1 and 3 hereof, Applicants deny each and all of the matters contained in the NOI, and specifically deny (a) that the Executive Director has the right or power to commence, and/or that the Commission has to the right or power to take any action respecting, restoration proceedings concerning any portion of the Subject Property, and/or that the NOI is effective to initiate and/or implement any such action; (b) that any of the Denied Development required a Coastal Permit and/or was not permitted, and/or is or was inconsistent with any purportedly applicable "division," provision, or requirement of the Coastal Act; (c) that the items referred to in paragraphs e) and g) on page 2 of the NOI were not in fact fully permitted by reason of the Original Permit; (d) that any "development" on the Subject Property, including any of the Denied Development, has been or is "causing resource damage"; (e) that the Denied Development described in subparagraphs a), b) and/or d) can or should, consistent with the

Coastal Act and/or other applicable law, and pursuant to sound geotechnical, geologic, and/or botanical practice, be restored to its pre-Denied Development condition; (f) that the Coastal Act and/or other applicable law, and/or the principles of due process, permit the Commission to "seek monetary daily penalties" respecting any of the Denied Development, and certainly not prior to the time, if any, that the Commission's determination in respect of the partial denial of the Application and/or as to the CDP and/or as to any restoration order hereafter made become final; (g) that there was any grading or any unpermitted removal of native vegetation performed in connection with any of the Denied Development; (h) that any further documentation respecting the conclusions of the fire department as to the location of the water tank is or should be required; (i) that the supposed findings of the Commission referred to in paragraph 1) on page 3 were or are supported or supportable by competent evidence presented in connection with the proceedings as to which the supposed findings were purportedly made, and/or were or are final, effective as to, and/or binding against Applicants, including in respect of any restoration proceedings commenced by the Commission or the Executive Director concerning Applicants and/or the Subject Property; (j) that at any time, including on June 10, 2002, the Commission properly, lawfully, and/or effectively determined or determined at all that any "development" on the Subject Property, including the Denied Development, constituted a violation of the conditions of CDP 5-88-056 and/or of the resource protection policies of the Coastal Act, as stated in numbered paragraph 2) on page 3; (k) that maintenance of the Denied Development is causing or has caused any "resource damage," and/or that any "damages to resources protected by the Coastal Act is continuing," as stated in numbered paragraph 3) on page 3; (l) that the purported findings supposedly rendered as to CDP 5-88-056-A1 and/or the CDO do or can support any determination that the Denied Development is inconsistent with any "Chapter Three

Policies," including those listed in subparagraph a), b), c) or d) of paragraph 3) on page 3, and/or that any such purported findings were or are supported by evidence or the record in connection with the proceedings in which they were supposedly rendered, or are or were or can be effective, final, and/or binding as to Applicants; and/or (m) that the so-called "doctrine of administrative res judicata" exists here or at all, has any application to the proceedings here, including any restoration proceeding initiated by the Commission or the Executive Director, and/or attaches or applies as a result of the Commission's prior actions on the CDO or CDP 5-88-056 A1, or at all, as stated on page 4. See also, June 6, 2002 letter to Commission from Schmitz & Associates, including exhibits, a copy of which is attached hereto as Exhibit B, and the various Statements of Defense previously filed by Applicants with the Commission, including in respect of Cease and Desist Order CCC-01-CD-01, all of which are incorporated into this Statement of Defense by this reference as if fully set forth hereat.

3. Facts or allegations contained in the notice of intent of which you have no personal knowledge (with specific reference to paragraph number in such document):

Applicants have no knowledge respecting the truth of the intentions of or determinations by the Commission and/or the Executive Director as referred to in several places in the NOI; or concerning the assertion by the Executive Director as to his discussions with legal staff concerning the possibility of leaving the fence in its present location, as described in footnote 2, page 2; or as to the true reasons why restoration proceedings are being instituted against Applicants, as referred to in paragraph 4) on page 3.

4. **Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any document(s), photograph(s), map(s), letter(s), or other evidence that you believe is/are relevant, please identify it/them by name, date, type, and any other identifying information and provide the original(s) or (a) copy(ies) if you can:**

See Declaration of Howard J. Rubinroit, including exhibits, attached hereto as Exhibit A; June 6, 2002 letter to Commission from Schmitz & Associates, including exhibits thereto attached hereto as Exhibit B; transcript of Hearing of June 10, 2002, attached hereto as Exhibit C; letter, dated April 17, 2002, from Schmitz & Associates, to Sabrina Haswell, South Central Coastal Program Analyst, attached hereto as Exhibit D; letter dated May 29, 2002, from Applicant Howard Rubinroit to John Ainsworth, Permit Supervisor, attached hereto as Exhibit E; letter, dated May 31, 2002, from Schmitz & Associates to Mr. Ainsworth, attached hereto as Exhibit F; letter, dated June 6, 2002, from Schmitz & Associates to Abe G. Doherty, Headquarters Enforcement Officer, attached hereto as Exhibit G; letter, dated June 9, 2002, from Schmitz & Associates to the Commission, filed with the Commission on June 10, 2002, attached hereto as Exhibit H; and letter, dated June 24, 2002, from Dr. Daryl Koutnik to Schmitz & Associates, attached hereto as Exhibit I, the contents of all of which are incorporated herein by this reference as if set forth in full.

DECLARATION OF HOWARD J. RUBINROIT
IN RESPONSE TO STAFF REPORT:
PERMIT AMENDMENT

APPLICATION NO. 5-88-056-A1
PROPERTY: 25351 PIUMA ROAD,
LOS ANGELES COUNTY
APPLICANTS: HOWARD AND TERRY RUBINROIT

HEARING DATE: JUNE 10, 2002

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Declaration of Howard J. Rubinroit

I, Howard J. Rubinroit, the undersigned declare:

1. My wife Terry and I (collectively "Applicants") are the current owners of the property located at 25351 Piuma Road, County Malibu (the "Property"), and the Applicants as to Application No. 5-88-056 A/1 ("Application") for a Coastal Development Permit ("CDP") as to certain improvements constructed by us on the Property in 1996. I know all of the following of my own personal knowledge, and, if called and sworn as a witness, could and would competently testify thereto.

2. My wife and I were not the developers or original owners of the Property. We acquired the Property from the architect/developer, Jack Moses, after the house has been substantially completed, and a Certificate of Occupancy had issued in February 1990. Accordingly, we were not the applicants as to any of the permits involved in the original development of our home or property, including, but not limited to, CDP No. 5-88-056.

3. At the time we first saw the Property, the Property was developed with three finished pads: 1) the pad upon which the house was constructed, and upon which the swimming pool and retaining wall were subsequently constructed by us in 1996 (the "House Pad"); 2) a smaller pad adjacent to Piuma Road (the "Piuma Pad"); and 3) a pad downhill in a valley from the lowest level of the House Pad, on which the so-called "sports court" was constructed in 1996 (the "Lower Pad"). (The improvements constructed in 1996 are hereinafter referred to as the "1996 Improvements").

4. In connection with the present dispute with Staff respecting the 1996 Improvements, Applicants have reviewed the soils reports prepared by California Geo/Systems ("Geo/Systems") in connection with the construction of the house and attendant improvements in

the 1988-90 timeframe. Those reports document the fact that the grading of the Property occurred at or about the time and as a result of Piuma Road being constructed in the area of the Property (apparently before the Coastal Act was enacted); that the fill existing on the Property was composed principally of "roadway fill" deposited by County workers at that time; that stability analysis of the roadway fill "indicate[d] a safety factor exceeding the required 1.5 and 1.1 static and seismic minimums;" and that "[n]o grading [was] proposed" or was necessary in connection with constructing the house in 1988-90. See Geo/Systems Reports attached as Exhibit C to Declaration of Jack Moses ("Moses Declaration") filed in connection with the instant Permit Hearing.

5. The Application filed with the Commission concerning CDP No. 5-88-056 advised that no grading was required or would be performed in connection with the development of the Property or construction of the Residence. See, Exhibit A to Moses Declaration. The Geo/System Reports (Exhibit C to Moses Declaration) were provided to the Commission in connection with the Application.

6. The CDP issued by the Commission cited to the Geo/System Report's findings and conclusions, and acknowledged the fact that grading had already occurred on the Property, and that the only grading which would be performed was "minor grading of less than 50 cubic yards" for driveway access. See, Exhibit B to Moses Declaration.

7. We acquired the Property in February 1990. At or about that time, the House Pad was landscaped by Mr. Moses. The Piuma Pad and Lower Pad, which were denuded of vegetation when we first saw the Property, were not planted and have remained essentially free of vegetation since that time, except for a short time frame after the winter rains.

8. Prior to acquiring the Residence, Applicants had discussions with Mr. Moses concerning potential future development of the Property. Among other things, Mr. Moses advised Applicants that the Lower Pad would accommodate and could be used either for stables, a tennis court, or a pool. Mr. Moses did not at any time advise that future development of the Lower Pad was conditioned or restricted in any way. Accordingly, Applicants at all times prior to 1997 were under the impression that the areas encompassed by the 3 pads were freely developable.

9. It is true that, at or about the time that we acquired the Property, and in connection with review of the Preliminary Title Policy to be issued at close of escrow, Applicants learned that a portion of the Property had been offered for dedication as an easement for open space and private recreational use (the "OTD"). However, Applicants were advised specifically by Mr. Moses and believed that the areas offered for dedication lay outside of the area of the three long-before graded pads. Indeed, at the time, Applicants discussed with Mr. Moses his designing and constructing for us a pool on the Lower Pad. However, we decided not to go forward with the project at that time.

10. By letter dated October 8, 1997, Sue Brooker, then of the Commission's Staff, sent to Applicants a copy of the OTD and a map of the Property purporting to show the limits of the area offered for dedication. That was the first time to the best of our recollection that Applicants saw or reviewed such OTD and/or the purported map. Accordingly, our construction of the so-called "sports court" was performed without knowledge thereof, or of any supposed prohibitions, restrictions, or conditions as to constructing the 1996 Improvements, including the so-called "sports court" on the Lower Pad. Moreover, even after review of the map furnished by Ms. Brooker, which attempts to overlay hatch marks onto a topographic map itself

containing horizontal lines (see Exhibit B to CDP), Applicants were still unclear as to precise boundaries of the "restricted" area.

11. Applicants have received and reviewed the Commission's file respecting the Property as of May, 2001. The file contains no evidence either 1) that the original developer, Mr. Moses, was compensated for the "taking" of the Property purportedly subject to the OTD, or 2) that the Commission even performed an analysis of whether there was a "nexus" between the demanded OTD and the issues presented by Mr. Moses' development which purportedly served as a justification therefor (as required by Nollan v. California Coastal Commission, 483 U.S. 825 (1987)). Accordingly, it appears that the demand for and acceptance of the OTD constituted a per se taking in violation of the U.S. Constitution. See, Nollan, 483 U.S. at 834, n. 2.

12. Applicants negotiations with Mr. Moses respecting the purchase price for the Property as developed with the home and attendant improvements he was constructing occurred in the context of Applicants' believing that the House Pad, Piuma Pad, and Lower Pad were freely developable. Therefore, insofar as development of those pads was and/or is in fact subject to restriction, the fact of that restriction and its effect on the market value of the Property played no part in the parties' agreement as to the amount of the purchase price. Likewise, at the time that the purchase price was negotiated and agreed to, Applicants believed that all necessary approvals and permits had been obtained and complied with, and that, among other things, the 8,000 gallon water storage tank then existing in its present location, and the Property's propane tank, irrigation system, drainage system, and existing and planned landscaping were fully in compliance with all the applicable laws and regulations, including the Coastal Act and regulations.

13. It should be noted that the OTD, insofar as it may affect the 1996 Improvements, at most impacts the 1996 Improvements constructed on the Lower Pad — the so-called "sports court" and approximately 75% of the stairs leading from the pool were built. The pool, patio area with landscaping walls, retaining wall and carport, and virtually all of the fencing and gates were constructed on the House Pad which is not subject to the OTD.[1] While Staff has also required Applicants also to seek a permit respecting the lighted pathways on both sides of the house, the above ground propane tank with concrete pad, the Property's drainage system, and the Property's irrigation system, all of the foregoing (with the apparent exception of a limited number of irrigation fixtures which were non-operational and the terminal points of certain drainage pipes) are located on the House Pad and (with the exception of drainage improvements implemented in connection with the pool) have been since at least the time the house was completed in or about February 1990. While Staff claims that the above ground water storage tank is located on the area subject to the OTD, it does not appear from the map sent to us by Ms. Brooker (as discussed in paragraph 10) that such is the case, and, in any event, the tank was constructed on or about 1988 at the time the original CDP was issued.

14. The OTD states that the land subject to the offer could be used for "open space/or habitat protection, private recreation and resource conservation" purposes. "Private Recreation" is precisely the use to which the Lower Pad is being put. Applicants have conducted a Nexus/Lexus search as to the meaning of "Private Recreation." It is not defined in the Coastal Act or regulations as far as Applicants have been able to determine. It is submitted that either

[1] Indeed, the construction of the pool and retaining wall, which took place at the same time as the construction of the so-called "sports court," was not raised as an issue by Staff until Applicants indicated they were not prepared simply to acquiesce to Staff's demand to remove the "sports court."

the 1996 Improvements must be found to constitute a permissible "private recreation" use by application of the plain meaning of that term, or the OTD is void by reason of its vagueness.

15. Private recreational development on the Property is a necessity given the location of the Property. Applicants have young children (ages 6 and 4 at the time the 1996 Improvements were constructed. There were and are no parks in the vicinity of our home with play or sports recreation facilities, nor has the Commission apparently seen fit to provide for or require the same. Thus, given the treacherous nature of traffic on Piuma Road and the isolation of our Property, there is no public place nearby where our children can safely engage in sports, swimming, and other play activities.

16. Indeed, Applicants are unclear as to where the Commission derived, and question whether the Commission had, authority in 1988 to require the OTD based on the "fact" that the Property is in the vicinity of a supposedly sensitive environmental area. The Coastal Act originally enabled the Commission to designate sensitive areas and to extend its authority beyond the appeal area allowed by the Act. Section 30502 and 30502.5. However, to Applicants' understanding, Staff determined that it did not have the resources or expertise to do so, and that the task should and could be left to local government regulation. Therefore, the deadline for such action was allowed to expire. See Memo, dated August 7, 1978, from Executive Director to Commission; Memo dated July 31, 1978, from Acting Executive Director to Executive Director; and Memo, dated July 12, 1978, from Michael Fischer to Commission; collectively attached here as Exhibit A.

17. Applicants further do not understand and question how the Commission had in 1988 the authority to question or limit the County's permit determinations in 1988, or, indeed, in 1996 or now in connection with the 1996 Improvements to the Property. As we

understand it, the revised Malibu/Santa Monica Mountains Land Use Plan was certified by the Commission in December 1987, and local determinations based on that LUP rather than Commission ad-hoc determinations made without study or expertise, should control. See, January 23, 1987 memo from Peter Douglas to the Commission (and specifically the footnote on p. 42), the relevant pages of which are attached hereto as Exhibit B.

18. In that regard, the County has strenuously disagreed with Staff pronouncements and Staff (and Commission) determinations as to what constitutes an environmentally sensitive habitat area ("ESHA"), and what areas in the Santa Monica Mountains constitute ESHA's. The City of Malibu has likewise challenged and strongly criticized the lack of science and study underlying the Commission's ESHA determinations in the City of Malibu. Attached hereto collectively as Exhibit C are an April 10, 2002 letter from the Los Angeles County Department of Regional Planning ("Regional Planning") to Chairwoman Sara Wan of the Commission; an April 8, 2002 Memo from Daryl Koutnik, Senior Biologist, of Regional Planning to Dave Cowardin, Coastal Planning Section; and a January 8, 2002 Memo, entitled "Response to the California Coastal Commission 'Summary of Ecological Findings for Malibu'" prepared by City Biologist, Dave Crawford, all of which express those questions, concerns, and criticisms.

19. Dr. Koutnik has been provided the Staff Report as to the Application, and to my understanding, disagrees strongly therewith, including as to the so-called "ESHA" discussion and findings. Supervisor Yaroslavsky's office has authorized Dr. Koutnik to prepare a report to the Commission (see June 7, 2002 letter to Laura Shell, Supervisor's Deputy, attached hereto as Exhibit D), but Applicants are concerned as to whether such Report can be prepared and delivered in time for it to be considered by the Commission at the June 10, 2002 hearing.

Accordingly, Applicants request that the record as to the Application be left open, and that no final determination on the Application be made, pending receipt of Dr. Koutnik's report, or that the Hearing be continued for that purpose.

20. It must be stressed that Staff's ESHA and other "findings" are totally unsupported. To Applicants' knowledge, no biologist, geologist or geotechnical engineer, or other expert on behalf of the Commission, has visited the site during the entire period since February 1990 that we have lived there (or, at least, no such person sought or obtained permission from us to enter, study or test the Property). Moreover, not only do those findings conflict with the conclusions of our experts after review, study and testing of the Property, as well as those of other experts from County departments and even the State Department of Fish & Game who have visited the site, but also they conflict in significant respects with the "findings" made by the Commission in CDP 5-88-056 back in 1988. Among other things, CDP 5-88-056 did not find or declare that the Property was within an ESHA, but merely that run-off from the Property might flow "downslope to the Park Canyon ESHA"; and that the chaparral on the Property, rather than supporting an ESHA designation as suggested in the current Staff Report, was, in fact, "a highly combustible plant community" which had to be controlled.

21. In terms of public view, the Lower Pad and the so-called "sports court" are hardly visible to public view — they are located in a "valley" well downhill from the Home Pad and surrounded by native vegetation; they can scarcely be seen from Piuma Road (especially given the existing vegetation adjacent to the road); and there is no development whatsoever, other than our Property, from which the Lower Pad and so-called "sports court" can be viewed. Finally, there are significant buffers between the Lower Pad and the State preserve behind the

Property, including abundant native vegetation on the Property and the adjacent property, and a road servicing the adjacent property.

22. A catalyst of Applicants' decision in 1996 finally to construct a pool, the so-called "sports court", and attendant improvements, was the recommendation of our local fire station that our house, which is serviced only by a well and storage tank dependent on electrical service, have a large, readily available water source.

23. We have had to vacate our house on two different occasions because of wildfires that reached Piuma Road and threatened our Property. One of the fires traveled half-way down the mountain (in the area of the Backbone Trail) behind our Property, feeding on the dry, abundant, and highly combustible chaparral in the area. If the wind had not shifted, the fire would have traveled to and consumed the areas on which the "sports court" and pool were later constructed by us in 1996, as well as our house itself. As it was, the fire burned the electricity poles uphill on Piuma Road, leaving us without electricity to operate the well and storage tank pumps. Accordingly, we viewed it as prudent (and the local fire personnel agreed) to have another water source to supplement (or perhaps replace) the well and storage tank supply which could be reduced, without electricity, to simply gravity flow availability.

24. Having made the decision to go forward with the 1996 Improvements, Applicants proceeded responsibly. Applicants engaged a highly regarded landscape architect to develop plans which were as aesthetic as possible given our budget. The pool, patio and walls were planned for and were built on the House Pad, in areas which had been previously landscaped. The so-called "sports court" was scaled so that it fit entirely within the already graded area of the Lower Pad, which, as discussed above, reportedly had been graded at the time Piuma Road was constructed in the area of the Property. All the planned landscaping was

intended to be, and has been, limited to the previously landscaped areas on the House Pad. All colors and materials were and are compatible with the existing surroundings.

25. More significantly to Staff's concern that we failed to obtain a CDP, we proceeded scrupulously to determine what permits were required, and were specifically advised by the Los Angeles County Department of Building and Safety that a CDP was not required. The plans for the 1996 Improvements were provided to the Fire Department for their initial review. On or about November 7, 1995, the plans were submitted for plan check to the Department of Building and Safety, Land Development Division ("Building & Safety"). The form which we received in return from Building & Safety purported to provide notice of the "AGENCIES [WHICH] IN ADDITION TO BUILDING OR GRADING PLAN CHECK APPROVAL, [APPROVAL] MUST BE OBTAINED PRIOR TO [BUILDING] PERMIT ISSUANCE." A copy of that form is attached hereto as Exhibit E. It should be noted that the only agencies that were indicated as requiring a permit for our construction were the Drainage Section of the Department of Building and Safety, the Fire Prevention Bureau, the Geology/Soils Section of the Department of Building and Safety, and the Health Services Department. All such approvals were sought and obtained by Applicants.

26. Although the form contains a space (towards the very top) for indicating whether a Coastal Commission permit is required, that space was not checked. Accordingly, when Applicants proceeded to construct the 1996 Improvements, we did so under the clear advice from Building & Safety that those improvements did not require a Coastal Commission permit. In reliance on such advice we expended a total of approximately $200,000 on such improvements, which are now all in place. (Attached hereto as Exhibit F is a copy of various inspection records in our possession as to such work.).

27. Indeed, until Applicants received a copy of Staff's letter of June 17, 1997, well after the 1996 Improvements were installed, no one had ever suggested to Applicants that a Coastal Commission permit was required or that there was any restriction or prohibition as to the 1996 Improvements we planned and installed. This is noteworthy, since both the landscape architect and contractor have and had a great deal of experience in the Coastal Zone.

28. The advice of the Department of Building and Safety that no Coastal Commission permit was required appears to be perfectly consistent with the provisions (and intent) of both the Coastal Act itself and the regulations concerning the same. Thus, PRC Section CCR 13250(b)(6) provides, in pertinent part that:

> "Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development and in the following areas: (a) improvements to existing single-family residences. . . ."

Title 13, Subchapter 6, Section 13250 of the Regulations in turn provides:

> "Section 13250. Additions to Existing Single-Family Residences.
>
> (a) For purposes of the Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:
>
> (1) All fixtures and other structures directly attached to a residence;
>
> (2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences

and storage sheds; but not including guest houses or self-contained residential units; and

(3) Landscaping on the lot." (Emphasis supplied).

29. Pursuant to the foregoing, the swimming pool, patio and walls, and retaining wall appear to be expressly excluded from the requirement for a permit. Moreover, since the swimming pool and retaining wall were unquestionably not constructed on the land which is the subject of the OTD, there were no and could not be any restrictions on their development except for the (what we believe to be invalid) requirement imposed by CDP No. 5-88-056 that "landowner . . . secure an amendment to this coastal permit or apply for a new coastal permit for any future additions or development of the property." Applicants were unaware of this requirement when we planned and implemented the 1996 Improvements.

30. As for the so-called "sports court," it consists merely of fencing (which is also specifically excluded under PRC 30610) and landscaping (also excluded), and thus does not, other than supposedly by reason of the above-quoted provision in CDP No. 5-88-056, require a permit. Indeed, the fact that the regulations specifically clarify that a guest house or self-contained residential unit do require a permit, but make no mention of a tennis court or "sports court" (which in many Coastal areas and certainly in the Malibu Coastal area are "normally associated with a single-family house"), would lead the most careful reader to conclude that their construction of a "sports court" does not require a CDP. This, of course, must also be the interpretation of the Department of Building and Safety, which, when presented with plans for

the so-called "sports court" as well as the swimming pool and attendant walls, advised Applicants that a Coastal permit was not required.[2]

31. Moreover, insofar as the Commission's regulations purport (in 13250(b)(1) or otherwise) to require a CDP for improvements to single family structures located, among other things, in a "sensitive habitat area" or other broadly enumerated areas, Applicants believe that such regulation is contrary to the Coastal Act itself (i.e. ultra vires given the Commission's failure to itself designate "sensitive" areas, and, instead, to leave those issues to local control (see paragraph 16 above), void for vagueness, a denial of due process and equal protection, and therefore void and unenforceable.) Indeed, giving effort to that regulation would largely if not totally emasculate and vitiate the exemption provided under § 30610(a)).

32. Applicants would expect that between the time it issued CDP No. 5-88-056 in the fall of 1988 and the time we purchased the Property in February 1990, Commission Staff visited the Property to assure Mr. Moses' compliance with the CDP, and noted at that time the existence of the well, pumps, and water tank, propane tank, drainage devices, irrigation lines, lighted steps on both sides of the house, and other improvements constructed by Mr. Moses. If Commission Staff did, they could have and Applicants submit they should have, and therefore the claim that these items were "unpermitted" is not only wrong but barred by the doctrine of estoppel, among other things.

33. On or about March 15, 2001, Abe Doherty of the Commission Staff visited the site and observed and pointed out to me that the run off from property above the

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[2] As to the supposed application of CCR 13250(b)(6), it cannot be seriously suggested that an exterior swimming pool, retaining wall, and/or so-called "sports court" is an "addition" to a single-family residence. An "addition" by any normal definition applied to a single-family residence is the increase in the number or size of the residence itself, typically by way of a remodel. Indeed, the language CCR (continued...)

Property no longer (if it ever did) traveled across or under Piuma Road and into the drainage course adjacent to the area of the pool and so-called "sports court." Rather, the run off from above the Property flows out onto and down Piuma Road and away from the Property.

34. As to the complained of "concrete in eastern water course," I personally removed all of the same by hand and with a wheel barrow after about an hour and a half of work. The concrete was shallow and occasional, and likely the result of drippings from the time the foundation for the Property as laid in or about 1989.

35. The fact that the Commission required in CDP No. 5-88-056 that any future development on the Property must be permitted by the Commission was and is arbitrary and capricious, and a denial of equal protection. Indeed, Applicants have owned and lived continuously on the Property since February 1990. We have never once received notice of any permits which were being sought for any improvements in our neighborhood, even though substantial development, including the so-called "Triangle" and Quaker Ross lots, which "improvements" where all existing vegetation was removed and massive grading took place.

36. The Commission Staff has stated without support that, in connection with our 1996 Improvements, we performed grading and/or were guilty of "excess removal of vegetation" on land subject to the OTD. That is absolutely not the case. The Lower Pad upon which the so-called "sports court" was constructed had, as indicated above, been graded prior to 1988, apparently at the time Piuma Road was constructed by the County. The Geo/Systems soils reports submitted to and approved by the Commission in 1988 provided that the slopes in question be cleared of vegetation prior to construction of the residence. Accordingly, the only

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13250(a) makes it clear that swimming pools, fencing, etc. are "structures ... associated with a single-family residence," and do not constitute a part of the residence itself.

preparation necessary and performed of the Lower Pad for the so-called "sports court" was to do slight scraping of the already graded pad, which was done essentially by hand. The only vegetation disturbed was some seasonal, sparse weeds that had sprung up after the rainy season (and which normally dried out and "disappeared" starting in the Spring, and which were insignificant in comparison to the weed removal that the fire department requires us to perform each Spring).

37. Finally, the only conclusion one can reach from the Staff's insistence that the Application respecting the sports court and steps from the pool be denied, that the portion of the fence and the children's play area in the area affected by the OTD be moved, and that the water tank level at the time of the original permit be relocated from a supposed "OTD area" is that the Staff has concluded and is recommending Commission action that no development whatsoever be allowed in the area which was the subject of the OTD. There is absolutely no other basis or support for such a recommendation. Accordingly, if the Commission were to adopt that recommendation, it would, among other things, be guilty of a further and full taking of the Property subject to the OTD. That is, CDP 5-188-056 did not provide a total prohibition of development in the "OTD area," only a "restriction" which required the owner to apply for a permit for future development. Applicants are unaware of any action by the Commission considering the "nexus" of such a full and final taking to the public purpose to be achieved thereby, nor have Applicants been offered any compensation if such a taking were to occur as a result of the Commission following the Staff's recommendations.

38. In connection with the Cease and Desist Order Proceedings ("CDO") brought by the Commission, and as the Commission file reflects, the relief sought was to require Applicants to file a permit application for the supposedly unpermitted development. Applicants

were fully prepared to do so, without prejudice to our position that no permit should be required and that the Commission was and is acting unconstitutionally and otherwise wrongfully respecting our Property. Accordingly, we requested that the CDO Hearing be taken off calendar or continued. The Staff refused our request, the Hearing was held, and an Order requiring us to file a permit was entered. Since we did not oppose that requirement, we did not seek to challenge the Order in Court, which we otherwise would have done if the Order required us to take an action we were not prepared to take. Applicants believe that any such challenge would have been successful, since the purported findings in the CDO respecting the nature and extent of our development and of the nature of our Property were unsupported, and, indeed, contrary to the evidence in the record.

39. Applicants' representative, Don Schmitz, subsequently had a concern respecting the Staff's possibly seeking to use the CDO against us in connection with our Application. Accordingly, he spoke with John Bowers, one of the Commission's attorneys, who suggested that if the CDO was materially incorrect, a proceeding could be brought under Section 13188 of Title 14, Division 5.5, Chapter 5, Sub-Chapter 8 of the California Code of Regulations ("Section 13188") to expunge or correct the errors in the CDO. Applicants authorized Mr. Schmitz to proceed to prepare the papers therefor. However, Mr. Schmitz subsequently was advised by Sabrina Haswell, a Staff person in the Ventura office, that the CDO would not have any effect on our Application, that our Application was complete, and that the Application would be reviewed and determined on its own merits. The Staff Report, however, takes the position that Applicants' evidence and arguments concerning the Application can be ignored, because the CDO findings are supposedly final and binding on us. As a result, Applicants made a demand that the Hearing on the Application be continued and that either the references to the CDO be

expunged or Applicants be given an opportunity to bring and support a request under Section 13188. That demand has been denied, clearly in violation of the Commission's rules and regulations and in an attempt to deny Applicants a full and fair hearing on the merits respecting the Application. Copies of correspondence reflecting these matters is attached hereto collectively as Exhibit G.

40. Applicants believe that Staff has acted as it has in respect of Applicants, the Application, and the Request under Section 13188 because of its desire to punish Applicants for asserting and attempting to vindicate their rights, and because Staff knows that its "findings" respecting the CDO and in the Staff Report are unsupported and unsupportable. If the Commission were to condone and permit such conduct, it would give substantial credence to the claim by many that the Commission acts arbitrarily and capriciously, essentially supplies a blank check to its Staff to do as it pleases, and that the Commission considers itself unaccountable to the Executive branch or anyone else, thus violating the Constitutional provisions respecting separation of powers and due process.

41. The unfairness and lack of logic of the Staff's contention that the supposed findings of the CDO apply here and permit the Commission to ignore Applicants' evidence and arguments is the fact that the mandate of the CDO was that Applicants file an Application (which Applicants have done). The Commission could not consistently with due process and fairness have ordered that an Application be filed if it were its position that the CDO itself would trump and defeat the Application.

42. Accordingly, it is respectfully submitted that the Staff Report is in error and the denial of a Permit as to the development is unsupportable because:

a) Absent some type of restriction or condition which supposedly arose from the OTD, there would be no question that no CDP or amendment to the original CDP would have been or was required in connection with the construction of the 1996 Improvements;

b) The swimming pool, patio and walls are unquestionably not located on the "OTD area," and are specifically exempted by the Commission's regulations from the requirement for a permit;

c) Insofar as work was done on land compelled by the Commission to be offered for dedication, that work was and is consistent with the purposes of and uses allowed by the OTD and with the Coastal Act and CEQA;

d) In any event, the demand for and acceptance of the OTD appears to have constituted a per se taking which was and is unlawful and unconstitutional, and which Applicants may and do challenge;

e) There was no grading or landscaping done by us (and none done since prior to enactment of the Coastal Act) which in any way falls within any proscriptions of the Act or its regulations and/or which supports Staff's findings;

f) My wife and I had no knowledge of any restrictions or conditions on our ability to improve the already graded pads, and proceeded in good faith and entirely responsibly and appropriately by drawing plans, going

through plan check, and relying on the advice of the County of Los Angeles that no Coastal permit was required;

g) The advice which we received was and is consistent with any fair reading of the Act and its regulations and the permits from the County appear to control over any ability of the Commission to designate or regulate sensitive habitat in respect of our Property;

h) If there was a violation here of the Act, it was and is merely a technical violation which was committed unknowingly and inadvertently by us, since we had never seen CDP No. 5-88-056, and did not see the Offer of Dedication until it was sent to us by Commission staff in October, 1997;

i) No harm has been suffered or will be suffered to either the environment in the area of our Property or the spirit or purpose of the Coastal Act by reason of what has been constructed; indeed, the work done serves as both a firebreak and (as suggested by the Fire Department) and a source of water in case of prevalent brush fires in the area, and is, if anything, beneficial to existing conditions;

j) My wife and I proceeded in reliance on the advice of a competent governmental agency; did the work according to permits which had vested, pursued in good faith our vested rights as we understood them; and would be irreparably harmed if required to remove any of the improvements;

k) Targeting our property in light of the failure to act respecting properties in our area would be unfair, improper and a denial of equal protection;

l) In any event, the Commission has been guilty of laches, and any action is barred by applicable statues of limitations;

m) the proposed findings in the Staff Report are unsupportable and unsupported, and do not support denial of any of the improvements which are the subject of the Application; and

n) the Staff has acted wronfully and in an attempt to deny Applicants due process, obviously evidencing its belief that it can convince and cause the Commission to act in a manner which reflects that it believes itself to be unaccountable to the Executive branch (or apparently anyone else), in violation of the California and U.S. Constitutions, including the provisions respecting as to separation of powers.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration is being executed under penalty of perjury pursuant to the laws of the State of California this 9th day of June, 2002, at Los Angeles, California.

Howard Rubinroit

CALIFORNIA COASTAL COMMISSION

631 Howard Street, San Francisco 94105 — (415) 543-8555

August 7, 1978

This certifies that the material contained herein is a true and correct copy of material on file with the California Coastal Commission and in custody of said Commission.

By Jeff Staben
Staff Sr. Legal Typist
Date 3/7/96

TO: ... STATE COMMISSION

FROM: MICHAEL L. FISCHER, EXECUTIVE DIRECTOR

SUBJECT: SENSITIVE COASTAL RESOURCE AREAS

Staff Recommendation

In view of the substantial effort that would be required to designate Sensitive Coastal Resource Areas and the absence of benefits to be derived from the effort, staff recommends that no such designations be made.

Background

As previously reported to you by memorandum of July 12, 1978:

1. The Coastal Act in Sections 30502 and 30502.5 enabled the Commission to designate sensitive areas of the coast as "Sensitive Coastal Resource Areas" wherein the Commission could require review of all manner of implementing ordinances in addition to the basic one of zoning to which the Commission is limited in other areas. In addition, the Commission's appeal authority would be extended throughout the Sensitive Coastal Resource Area, which would be beyond the appeal area otherwise allowed by the Act after an LCP has been certified.

2. Staff finds that the designation of such areas is unnecessary, since the provisions of the Coastal Act and other Government Code provisions spelling out the planning obligations of local governments already combine to give the Commission the authority to review and certify all pertinent implementing procedures without the necessity of the special Sensitive Coastal Resource Area designation.

3. Staff also finds that much of the additional appeal authority that ostensibly would be extended by the SCRA-spelled out designation is also covered by other provisions of the Coastal Act, most notably the provisions concerning appeals from development in or near wetlands and those restricting Counties (where most open lands are located) from making any changes from principal use designations permitted by the Commission in an LCP without formal hearing and action by the Commission. (Section 30603).

4. The procedures established by the Legislature for designating Sensitive Coastal Resource areas require a level of precision equivalent to the preparation of an LCP. It's not likely that

DEFENSE EXHIBIT 23B

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

any of us will be able to invest that kind of time in anything other than the LCP process. Nor is it practical to undertake selective designations because similar designation would be demanded for all like areas. To undertake a designation project, LCPs would have to be almost completely deferred. Finally, the designations would have no effect unless each one was specifically ratified by the State Legislature, a time-consuming process with an uncertain result.

5. The Coastal Act required the Commission to designate Sensitive Coastal Resource Areas no later than September 1, 1977. Under authority provided by Section 30518, the Commission extended that deadline to September 1, 1978.

MIF/sak

NORTH CENTRAL COAST REGIONAL COMMISSION
1095 NORTHGATE DRIVE, SUITE 130
SAN RAFAEL, CALIFORNIA 94903 – (415) 472-4321

July 31, 1978

RECEIVED
AUG 2 1978
CALIFORNIA
COASTAL COMMISSION

MEMORANDUM

To: Michael L. Fischer, AIP
Executive Director
California Coastal Commission

From: Laurel Reiterman
Acting Executive Director

Subject: Sensitive Coastal Resource Areas —
Regional Commission Recommendation

At the Regional Commission meeting of July 20, 1978, the Commission discussed the desirability of extending the September 1978 deadline for designation of Sensitive Coastal Resource Areas. The Commission reluctantly concluded that the statutory deadline should be allowed to expire without formal designation of such areas.

In general, the Commission concurred with your memo of July 12 that the designation process is not necessary to protect these sensitive areas because existing regulatory power would allow local government to adopt innovative "environmental ordinances" through the LCP process. In spite of this regulatory power, some Commissioners expressed concern that local interpretation of environmental ordinances could be weak or inconsistent, and they noted that post Jarvis-Gann budgets may not provide adequately for enforcement of these ordinances.

In the final analysis, the Commission recognized, however, that we unfortunately are unable to divert sufficient staff resources to a task of this magnitude.

/lab

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

July 12, 1978

This certifies that the material contained herein is a true and correct copy of material on file with the California Coastal Commission and in custody of the Commission.

By: [redacted]

Title: Sr. Legal Typist

Date: 2/7/96

TO: STATE COMMISSION

FROM: MICHAEL L. FISCHER

SUBJECT: SENSITIVE COASTAL RESOURCE AREAS

Pursuant to its authority under the Coastal Act of 1976, the commission has previously determined that the deadline for designating "sensitive coastal resource areas" under Sections 30502 and 30502.5 of the Act should be extended until September 1978. Staff recommends that the commission solicit public comment on whether the statutory deadline for designating "sensitive coastal resource areas" should be further extended or should instead be allowed to expire. For the reasons set forth below, staff's preliminary recommendation is that the statutory deadline should be allowed to expire without the designation of sensitive coastal resource areas.

STATUTORY BACKGROUND:

The relevant provisions of the California Coastal Act dealing with "sensitive coastal resource areas" are as follows:

§ 30502. Designation of sensitive coastal resource areas.

(a) The commission, in consultation with affected local governments and the appropriate regional commissions, shall, not later than September 1, 1977, after public hearing, designate sensitive coastal resource areas within the coastal zone where the protection of coastal resources and public access requires, in addition to the review and approval of zoning ordinances, * * * the review and approval by the regional commissions and commission of other implementing actions.

(b) The designation of each sensitive coastal resource area shall be based upon a separate report prepared and adopted by the commission which shall contain all of the following:

(1) A description of the coastal resources to be protected and the reasons why the area has been designated as a sensitive coastal resource area.

(2) A specific determination that the designated area is of regional or statewide significance.

(3) A specific list of significant adverse impacts that could result from development where zoning regulations alone may not adequately protect coastal resources or access.

(4) A map of the area indicating its size and location.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

(c) In sensitive coastal resource areas designated pursuant to this section, a local coastal program shall include the implementing actions adequate to protect the coastal resources enumerated in the findings of the sensitive coastal resource area report in conformity with the policies of this division.

§ 30502.5 Recommendation by commission to legislature; disposition.

The commission shall recommend to the Legislature for designation by statute * * * those sensitive coastal resource areas designated by the commission pursuant to Section 30502. Recommendation by the commission to the Legislature shall place the described area in the sensitive coastal resource area category for no more than two years, or a shorter period if the Legislature specifically rejects the recommendation. If two years pass and a recommended area has not been designated by statute, it shall no longer be designated as a sensitive coastal resource area. * * * A bill proposing such a statute may not be held in committee, but shall be reported from committee to the floor of each respective house with its recommendation within 60 days of referral to committee.

STAFF ANALYSIS:

Staff believes that the purpose of Sections 30502 and 30502.5 could be better understood by focussing on the language set forth in Section 30502(a). This section provides that sensitive coastal resource areas are to be designated where protecting resources and access "requires, in addition to the review and approval of zoning ordinances, the review and approval by the regional commissions and commission of other implementing actions." (emphasis added) Contrary to much of the public discourse over this section, the designation of sensitive coastal resource areas has nothing to do with the "sensitivity" of a resource area but rather is based solely on the question of whether or not an "implementing action" other than zoning is required to protect the area. Unfortunately the use of the term "sensitive coastal resource area" has drawn attention away from the intent of this section which is directed solely toward implementation measures. Some of the confusion may stem from the fact that other states such as Florida use a sensitive areas designation system for the much broader purpose of defining areas subject to state regulation rather than the more limited purpose of the California Act and these major distinctions may not have been perceived.

Staff has reviewed the scope of zoning under California law and has concluded that virtually any conceivable protective measure can be embraced within the scope of zoning. In the discussion below, we will focus on the following aspects of the zoning issue: (1) the scope of concerns that may be addressed under the general plan and zoning laws as defined in the Government Code; (2) the major provisions of a zoning ordinance and their relationship to the land use plan; (3) the range of resource concerns that can be addressed in a comprehensive zoning ordinance as evidenced by the San Mateo County Resource Management Zone; and (4) specific sections of the Coastal Act that can be used to address resource protection and access concerns.

1. Government Code Provisions.

Exhibit A contains several sections of the Government Code dealing with general plans and zoning. Sections of the general plan law of particular interest are highlighted by margin marks and underlining. It should be noted that an open-space element must include an open space plan and action program as defined in Government

Sections 65563 and 65564. Zoning measures may include such matters as: "the use of buildings, structures and land as between industry, business, residence, open space, including agriculture, recreation, enjoyment of scenic beauty and use of natural resources," and the regulation of the "location, height, bulk, number of stories and size of buildings and structures, the size and use of lots . . . and other open spaces, the percentage of a lot which may be occupied by a building or structure; the intensity of land use" (Government Code Section 65850(a) and (c). Open-space zoning may address any of the resource protection concerns set forth in Government Code Section 65560 including: "the preservation of natural resources," the "managed production of resources," "outdoor recreation," and "special management" of hazardous areas. A careful reading of Government Code Section 65560 indicates the broad scope of its authority.

2. Basic Zoning Provisions and Their Relationship to Land Use Plans.

Exhibit B contains a memo prepared in January by the Commission's legal staff dealing with the relationship between the land use plan and zoning. The discussion set forth on pp. 3-5 of that memo reviews the basic provisions of a zoning ordinance, with particular emphasis on their relationship to the land use plan. If the land use plan properly addresses the policy concerns established in Chapter 3 of the Coastal Act, the zoning ordinance must translate the policy provisions of the land use plan into land use regulations. If the land use plan is complete, the zoning ordinance will take the land use plan policies and convert them to: (1) a clear statement of intent; (2) precisely defined principal permitted use(s); (3) conditional uses that are allowed only upon satisfying defined standards for environmental protection or other concerns; (4) district wide regulations that establish standards for judging developments occurring throughout a zoning district (e.g. public access provisions); and (5) special regulations that apply only to specific types of uses or to uses in specific areas (e.g. tourist commercial regulations, developments near streams, grading on steep slopes). It is staff's view that a well drafted zoning ordinance addressing the breadth of concerns allowed by the Government Code and required by the approved land use plan can protect sensitive coastal areas and public access; in particular, specific resource protection concerns can and should be addressed in the provisions dealing with the intensity and location of development, conditional uses, district wide regulations and special regulations.

Staff cannot visualize any resource protection or access concerns that require "other implementing measures" than those which can be included within a zoning ordinance While many local governments deal with matters such as grading in separate ordinances, it is staff's view that the statutory definition of zoning embraces regulatory concerns such as grading, view protection and land division (e.g. minimum lot sizes) that are often called separate ordinances. An example of a county zoning ordinance that addresses each of these concerns within one zoning ordinance is the San Mateo County RM zone that is summarized below.

3. San Mateo Resource Management District Zone.

The San Mateo Resource Management zoning ordinance was developed as the implementation measure for the open space and conservation elements of the San Mateo County general plan. The RM zone specifically addresses the following concerns: intensity; location; permitted uses; land division; development bonuses; lot size; environmental quality criteria; site design criteria; water resources criteria; cultural resources criteria; hazards area criteria; scenic resources criteria; fish and wildlife habitat criteria; agricultural areas criteria; ocean/shoreline areas criteria; tsunami criteria; slope stability criteria; preliminary concept review for large parcels; and development review procedures.

While the San Mateo County LCP work program is designed to attend to specific substantive concerns identified by the county and the commission, the basic zoning ordinance does address a fairly complete range of resource protection concerns entirely within the scope of one zoning ordinance. The San Mateo zoning ordinance has previously been distributed to the commission and is available to interested parties on request.

4. Use of Specific Coastal Act Policies.

Section 30240 of the Coastal Act provides as follows:

§ 30240. Environmentally sensitive habitat areas; adjacent developments.

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

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

If the land use plan of a local coastal program properly addresses the above policy requirements along with the provisions of other Chapter 3 policies such as Sections 30212, 30213, 30230, 30231, 30233, 30235, 30236, 30254, and 30254, the land use plan will contain the use designations "and the applicable resource protection and development policies" (emphasis added, Section 30108.5 of the Act) that will provide the basi for drafting a complete zoning ordinance. "Environmentally sensitive" areas can be identified through the Issue Identification and LCP planning process and can then be protected through a combination of land use plan provisions and zoning provisions.

CONCLUSION:

In light of the above analysis, staff concludes that the scope of resource protectior and access concerns that can be addressed under the zoning laws is such that there is no need to define "sensitive coastal resource areas" requiring protection through "other implementing actions". When placed in the context of the substantial legislative effort required to obtain formal adoption of such areas by the Legislature required by Section 30502.5, it appears that the benefits, if any, of designation could be outweighed the investment of staff and commission time. Moreover, the effort to define areas under Section 30502 could distract attention from our primary focus on utilizing the general plan and zoning laws to their fullest potential. Staff recommends that the deadline for designating sensitive coastal resource areas pursuant to Sections 30502 and 30502.5 of the Act not be further extended, and that no such designation be made.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, 4TH FLOOR
SAN FRANCISCO, CA 94105
(415) 543-8555

January 23, 1987

TO: Coastal Commissioners and Interested Persons

FROM: Peter Douglas, Executive Director
Tom Crandall, South Coast District Director
Steve Scholl, Asst. Dep. Director for Land Use/Local Assistance

SUBJECT: MALIBU LAND USE PLAN POLICIES AND FINDINGS
Los Angeles County Local Coastal Program
(As certified by the Coastal Commission on December 11, 1986
with findings adopted by the Commission on January 15, 1987)

NOTE: The revised Malibu/Santa Monica Mountains Land Use Plan (LUP) was submitted to the Coastal Commission in October, 1986. After a public hearing on December 11, 1987, the Commission certified the LUP as submitted by the County. On January 15, 1987, the Commission adopted findings in support of its certification of the LUP.

This document contains the Commission's findings for certification of the LUP and the text of the certified Land Use Plan policies. Not included here are certain Land Use Plan background materials and issue discussions which were included in the County's original submittal of December, 1982. Also not included are certain maps and exhibits which constitute a part of the Land Use Plan; these maps and exhibits are available at the Department of Regional Planning, Los Angeles County.

Pursuant to Section 30603 of the Coastal Act, only certain kinds of developments can be appealed to the California Coastal Commission after a local government's LCP has been certified. These include:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) above located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) above that are located in a sensitive coastal resource area.*

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 of the Coastal Act (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

The California Coastal Commission is also required to review periodically the progress of local governments in carrying out the Coastal Act and certified LCPs. This review is to occur at least once every five years.

1.2.2 PUBLIC PARTICIPATION AND THE LOCAL COASTAL PLANNING PROCESS

The process of preparing a local coastal program (LCP) generally occurs in three phases. The first phase of the LCP process involves issue identification. In accordance with the Coastal Commission's LCP Regulations, the purpose of Phase I (issue identification) is to:

> "(1) determine the policies of the Coastal Act that apply in each jurisdiction; (2) determine the extent to which existing local plans are adequate to meet Coastal Act requirements; and (3) delineate any potential conflicts between existing plans and development proposals and the policies of the Coastal Act."

*Section 30502 of the Coastal Act requires the Coastal Commission to designate "sensitive coastal resource areas" within the coastal zone. However, in August 1978, the Coastal Commission voted not to designate any "sensitive coastal resource areas" within the entire state. Therefore, no areas exist within the Malibu Coastal Zone in which appeals of local coastal development permit decisions can be made pursuant to #3 above.

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

April 10. 2002

Sara Wan, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

SUBJECT: Coastal Development Permit Application No.: 4-00-119
20668 Skyhawk Lane, Topanga (AGENDA ITEM NO. Th18b)

Dear Chair Wan:

The purpose of this letter is to express the Department of Regional Planning's strong objection to several aspects of the Staff Report for the coastal development permit being considered in the unincorporated area of the County of Los Angeles. The Staff Report not only incorrectly designates the site as an Environmentally Sensitive Habitat Area (ESHA), but also violates the Coastal Act by allowing the so-called ESHA to be developed with a use that is not dependent on the resource and that will cause significant disruption of the habitat values. These serious flaws in the Staff Report are in direct contradiction of the Coastal Act and, if the permit is approved in its present form, will prejudice the ability of the County of Los Angeles to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

The Department of Regional Planning does not object to the proposed development of the site with the conditions recommended in the Staff Report if the ESHA designation is removed. The Department believes that if the Staff Report is revised to remove the ESHA and takings discussions on page 2 and pages 17 – 22, the approval of the coastal development permit will be consistent with the Coastal Act.

ESHA Designation

The site in question should not be considered an ESHA because there is no factual, scientific basis given in the Staff Report that shows that the property meets the definition contained in Section 30107.5, including "... 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 ...." The Staff Report contains unsupported conclusions and conclusory statements that are not supported by an analysis that shows that this area meets the ESHA definition. The Staff Report contains statements about sensitive plant and animal species, but does not identify that any of these are found on the subject property. Also, the location of the site does not seem to contribute to compliance with Coastal Act provisions in Section 30231 that require maintenance of high quality coastal waters through, among other things, control of runoff. Since any such potential as a result of the development of this site is mitigated by conditions of the permit, there will not be any impacts on coastal waters, streams, etc. It appears that incursion in a true ESHA, such as a stream course,

320 West Temple Street • Los Angeles, CA 90012 • 213 974-6411 Fax: 213 626-0434 • TDD: 213 617-2292

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

wetland, estuary, etc, will have immediate and recognizable impacts on coastal water resources, in contrast to alterations of upland areas where there is no potential for adverse impacts on true ESHAs or coastal water resources.

For a thorough analysis of the issue of ESHA designation, please refer to the attached Memorandum dated April 8, 2002 prepared by Dr. Daryl Koutnik, Senior Biologist for the Department of Regional Planning. Dr. Koutnik's analysis refutes the designation of the site as an ESHA by citing factual, scientific evidence. He supports the decision by the Coastal Commission in 1986 when it certified the Malibu Land Use Plan (LUP) that did not show the subject property as an ESHA. The Commission made the same determination in the early 1990's when it approved Coastal Development Permit No. 5-90-190 and specifically found that the site was not in an ESHA. Considering that the definition in Section 30107.5 has not changed between 1986 and the present, it is impossible to justify the Staff Report's conclusion that the site is now an ESHA. Either the Commission was terribly mistaken in its earlier actions or now it has a dramatically different way of interpreting Section 30107.5. In any event, there is no substantial evidence in the Staff Report on which the Commission can make findings that the subject property can be properly designated as an ESHA.

Further, the Coastal Commission's approval of this policy of designating vast areas as ESHA without supporting evidence will have unintended consequences that will eliminate the ability of property owners to develop important visitor-serving uses that are encouraged by the Coastal Act and that compliment the Santa Monica Mountains National Recreation Area. Such uses as equestrian facilities or bed and breakfast establishments would not be able to meet the severe development restrictions contemplated by the Coastal Commission in ESHAs. It would be equally difficult to site necessary public benefit facilities such as fire stations, schools and water tanks if all undeveloped areas are designated ESHA.

The Department of Regional Planning would like to emphasize that the County understands and supports the special significance of natural biological resources in the Santa Monica Mountains coastal zone. For this reason, the County proposed and the Coastal Commission certified the 1986 LUP that contains the Sensitive Environmental Resources map that identifies not only ESHAs, but also Significant Watersheds, Oak Woodlands, the Cold Creek Resource Management Area and Wildlife Corridors all of which receive site-specific review by the Environmental Review Board and which are subject to special development standards and density controls. In addition, the County provides additional resource protection techniques to protect coastal resources including the Oak Tree Permit and hillside management conditional use permit, both of which are presently in the County zoning ordinance and have been implemented for over 10 years. A new study by our consultants has recommended that the entire undeveloped area in the Santa Monica Mountains, including virtually the entire coastal zone, be designated as Significant Ecological Area (SEA). The SEA designation does not prohibit development, but requires most development projects to be subject to a conditional use permit which

includes review by the Significant Ecological Area Technical Advisory Committee and requires the Regional Planning Commission to make special findings that the proposed use does not adversely affect the significant resources.

Based on the above, the Department of Regional Planning strongly objects to the conclusion of the Staff Report that the approval of the permit is consistent with all applicable policies of the Coastal Act, specifically Section 30107.5 and Section 30240. The Department recommends that the Commission follow the Land Use Plan that was certified in 1986 that showed that the site was not an ESHA.

Takings Concerns

The Staff Report's erroneous ESHA designation is compounded by its equally faulty recommendation to allow non-resource dependent uses that would significantly disrupt habitat values. This is in direct contradiction of Section 30240 as stated by the Staff Report on page 19:

> "As single family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because **the project would result in significant disruption of habitat values** and is not a use dependent on those sensitive habitat resources." (emphasis added)

The Staff Report justifies allowing development in violation of Section 30240 through the questionable concept of "balancing" Sections 30240 and 30010 as stated on page 22:

> "Therefore, in this situation, **the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat**, to the extent that this can be done without taking the property." (emphasis added)

However, the project fails to avoid the impacts that would disrupt and/or degrade the environmentally sensitive habitat as documented in the following places in Staff Report:

> "...**the project would result in significant disruption of habitat values** and is not a use dependent on those sensitive habitat resources." (page 19, emphasis added)

> "**These fuel modification requirements will cause significant disruption of habitat values in the ESHA.** The fuel modification area required for the proposed residence will encompass the entire 2.46 acre parcel and also extend offsite." (page 22, emphasis added)

> "Therefore, the Commission finds that it is not necessary to reduce the size of the proposed structures because this **would not significantly reduce the extent of significant disruption of habitat values in EHSA.**" (page 22, emphasis added)

The Staff Report further justifies the violation of Section 30240 by referring to Section 30010 and the 1992 U.S. Supreme Court's decision in the *Lucas* case. In this way, it appears that the Staff Report is trying to avoid a regulatory taking by the Commission that could result from the extensive ESHA designation resulting from its new and scientifically unproven approach to coastal resource protection. It is interesting to note that the Staff Report's reference to Section 30010 does not include an important phrase, which is highlighted below and which states in part:

> "The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, **without the payment of just compensation**..." (emphasis added)

On page 20 of the Staff Report it states:

> "In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner."

Thus, the Staff Report missed the point that the Coastal Act does not prohibit a regulatory taking, it merely says that a public agency may not regulate in a manner which effects a taking or damages private property for public use without incurring liability for compensation to the property owner. This principle is firmly rooted in the United States Constitution and many Supreme Court decisions. The Commission can avoid unconstitutional acts by compensating the property owner if there is a taking.

The Staff Report also neglects to mention Section 30007.5, a special section of the Coastal Act that deals with apparent conflicts between policies of the Act. However, the Department contends that there is no conflict between Sections 30240 and 30010. Section 30007.5 discusses how to resolve conflicts in the Coastal Act where it states in part:

> "The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the **most protective of significant coastal resources.**" (emphasis added)

It is evident that Section 30240 is clearly more protective of coastal resources than Section 30010, which provides no resource protection. If the Coastal Commission's policy of allowing development in ESHAs as proposed in this permit is overturned in a legal challenge, the County and all other jurisdictions, including the Coastal Commission, that have designated vast areas as ESHA could be subject to future liability relating to regulatory takings and inverse condemnation lawsuits.

The Department of Regional Planning recommends that the Commission follow the provisions of Section 30007.5 by implementing Section 30240 and protecting habitat values. The Department

believes this is consistent with the both the Legislative intent of the Coastal Act and the mandate of the Court in the *Pygmy Forest* case.

Prejudices the Ability of Los Angeles County to Prepare a Local Coastal Program
Using the "rationale" contained on page 2 and pages 17 – 19 (C. Environmentally Sensitive Resources) of the Staff Report to justify the ESHA designation of this property, fosters a flawed approach to coastal resource protection that, if carried out to its illogical ends, would result in the designation of virtually all of the undeveloped area of the Santa Monica Mountains coastal zone as an ESHA with no differentiation between the various sensitive resource values in the coastal zone. An example of how this approach has been improperly applied can be seen in the ESHA designation in the City of Malibu approved by the Commission recently.

The piecemeal designation of ESHA recommended in the Staff Report will not result in resource protection and is contrary to the Coastal Act. If an area is truly an ESHA, the procedure recommended in the Staff Report will allow the degradation of the protected resources and will prejudice the County's ability to prepare a Local Coastal Program that will protect land that is truly an ESHA.

The Coastal Commission's action to allow development in an ESHA could result in the destruction of extremely valuable areas such as wetlands, riparian habitats and oak forests that were identified as ESHAs in the certified 1986 LUP. The type of disruption of habitat values of ESHA that are recommended in the Staff Report is contrary to the Coastal Act and, therefore, the County will not allow areas designated as ESHAs to be degraded in such a fashion. The precedent that is being set with this coastal development permit is contrary to Sections 30107.5 and 30240 of the Coastal Act and will prejudice the County of Los Angeles' ability to prepare a local coastal program because the County will not designate areas as ESHA that do not meet the factual, scientific grounds for such designation.

In Section G. (Local Coastal Program) on page 30, the Staff Report cites Section 30604 and makes the following statement:

> "As conditioned, the proposed development **will not create adverse impacts** and is found to be consistent with the applicable policies contained in Chapter 3." (emphasis added)

However, the statements from pages 19 and 22 of the Staff Report listed above that identify the significant disruption of habitat values directly contradict the statement on page 30 which means that the Commission's action will prejudice the ability of the County of Los Angeles to prepare a local coastal program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

The Department of Regional Planning requests that this letter be made a part of the official record for this application and that the Commission give serious consideration to the points that are described above. The Department's concerns regarding the Staff Report for this coastal development permit are consistent with the issues described in our letters to Mr. Gary Timm dated October 25, 2001 and December 31, 2001 relating to the Commission's proposed draft Land Use Plan for the City of Malibu. If you have any questions regarding this letter, please contact me or Dave Cowardin at (213) 974-6422. Our office is open Monday through Thursday from 7:00 am to 6:00 pm; the office is closed on Friday.

Very truly yours,

DEPARTMENT OF REGIONAL PLANNING
James E. Hartl, AICP
Director of Planning

Ronald D. Hoffman
Acting Administrator, Advance Planning Division

RDH:rh

Attachment

Cc: Sheila Kuehl, Senator, Senate District 23
Fran Pavley, Assemblywoman, 41st Assembly District
Katie E. Lichtig, Acting City Manager, City of Malibu

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

DATE: April 8, 2002

TO: Dave Cowardin, Coastal Planning Section

FROM: Daryl Koutnik, Senior Biologist

RE: Coastal Commission Staff Report, Application No. 4-00-119 (March 21, 2002)

I have reviewed the California Coastal Commission Staff Report (Report) of March 21, 2002 for Application No. 4-00-119 and find there to be little substantial evidence and no "scientific" analysis provided to justify the claims made in C. Environmentally Sensitive Resources concerning the presence of an environmentally sensitive habitat area (ESHA) on the subject property. The Report provides the Coastal Act definition of "Environmentally Sensitive Area", including formulating the definition to three questions, yet there is essentially no evidence presented to support the claims that the project location and habitat present satisfy the definition of ESHA. Instead the Report immediately introduces an undefined term "scale" and uses circular reasoning that a coastal habitat may qualify as an ESHA depending on the quantity of the resource present in comparison to some unmeasured surrounding resources in some hypothetical setting. It is assumed that the intent of the "scale" discussion is to provide some basis of how a resource might be considered rare or valuable but the effort fails to supply any parameters upon which to conduct a scientific analysis. In the opinion of this reviewer, the "scale" analysis is backward since the logic that a small degraded habitat may become important when compared to an increasing habitat area ("landscape scale") misapplies the principles of island biogeography where an isolated and degraded habitat will likely quickly be colonized by the surrounding habitat. It is only when the natural ecological processes of the small habitat are intact and surrounded by an area whose natural processes have been disrupted that the smaller habitat "patch" will maintain its importance. Similarly, the argument that the Santa Monica Mountains is a hot spot on a world wide "scale" is neither relevant since the Coastal Act applies only to California, nor true since both western Australia and southern Africa, two of the five planet's Mediterranean climate zones, greatly exceed California in endemism by at least a factor of five as well as in both endangerment and extinction rates.

The Report's argument that the Santa Monica Mountains importance as a connecting corridor to the Simi Hills and eventually to the Santa Susana and San Gabriel Mountains (it is not apparent to what mountain range the Report refers to as "Sierra Madre") is correct but not relevant to the resources of the project application. The project site is so small and peripherally located that it maintains no vital corridor for any of the large ranging species typically referenced in wildlife movement analyses. Indeed, wildlife corridors extremely important but few within the coastal boundary of the Santa Monica Mountains qualify as being distinguished as ESHA.

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CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

The Report claims that this project site is proximate to riparian corridors connecting inland areas to the coast, which appears to be an exaggeration. Blue line drainages as depicted on the Topanga USGS topographical map are approximately 500 feet or more away although the actual riparian resources supported by these drainages are at least twice that distance away. However, these drainages do not provide any direct connection to the coast nor do they provide a logical linkage because of the steepness of the terrain, being much greater than 100% slopes. The direct corridor of inland areas to the coast in this region is Topanga Canyon Creek, about one mile away from the project site and 1000 feet or more lower in elevation.

The Report correctly identifies chaparral as the primary habitat on the project site although there is no specific identification of which subtype is actually present. There is a word processing ("cut and paste") error on page 18 but it is assumed that the Report identifies the chaparral types as described in Holland (1986) as basically conforming to the chaparral association types at the project site. The Report describes both northern mixed chaparral and Ceanothus chaparral and it is inferred that these vegetation associations are those represented on the project site although only a single plant species *Adenostoma fasciculatum* (chamise) is clearly stated to occur on-site (and this species often typifies a different chamise chaparral subtype which Holland states as the "predominant chaparral type in Ventura and Los Angeles ... counties"). Oddly, the Report later makes a statement implying that coastal sage scrub is present on the site but there is no evidence that this is factually correct. The Report alludes that "reasons" are provided to explain why chaparral should be considered an ESHA but none are provided anywhere in the Report and the three questions posed at the beginning of the "Environmentally Sensitive Resources" discussion are never directly attempted to be answered. The Report asserts that chaparral vegetation of the project site constitutes an ESHA is somewhere explained but this reader could not find anywhere in the Report an explanation that provides any scientific support or even a minimum of substantial evidence to support the allegation. In other words, the claim of chaparral qualifying as an ESHA is naked without a shred of substance. The two chaparral types identified in the Report are either described in Holland (1986) as "very common", "abundant", "dominant" or listed with a distribution of up to 700 miles or more (Klamath Mountains to southern California) and not restricted to coastal habitats. For example, the distribution of northern mixed chaparral states "generally becoming more abundant from north to south". Common sense would compel an objective observer that "very common" and "abundant" qualifiers are in direct contrast to "rare". The Report claims that the majority of the project site is considered an ESHA based solely on the presence of chaparral plant species, of which only chamise (*Adenostoma fasciculatum*) is clearly identified as on-site and which is probably the most common chaparral species in California. In fact, there are rather few chaparral species within the Santa Monica Mountains that are rare and none of these are found on the project site or in the vicinity of the site. It is also not obvious how the vegetation may be easily disturbed when the Report states it is recovering after a human induced fire and that many human activities in the Topanga Canyon area have been in operation for at least the last seventy years.

The Report is internally inconsistent, in one place claiming "the entire parcel constitutes an ESHA" and elsewhere stating the previously graded portion of the site "does not constitute ESHA". The Report is also not consistent in the discussion of the on-site "ESHA" and states under the water quality discussion that the project impacts to water quality will affect the nearby ESHAs (tributaries to Topanga Canyon Creek) but no mention is made of the Commission ecologist designated on-site ESHA. Likewise, previous Commission findings for approval of a residence on the same parcel stated "the site is not within an ESHA" yet nowhere in the Report is an explanation of how this finding is no longer valid.

The Report acknowledges the project's direct removal of almost 10,000 square feet of the vegetation and disruption of essentially the entire remaining vegetation for fuel modification requirements. There appears to be no logical process whereby the Commission ecologist identified ESHA can be "protected against any significant disruption of habitat values" (Section 30240) when the Report states that the entire parcel will be impacted by the fuel modification requirements. Therefore, one must conclude that the Staff Report is in violation of the Coastal Act. If the resources on-site are indeed an ESHA then the proposed project is inconsistent with the Coastal Act and the California Coastal Commission should be purchasing the parcel since the project does not comply with Coastal Act policies (if one accepts the newly Commission designated on-site ESHA) and the parcel is nearly adjacent to the recently purchased extension of the Topanga Canyon State Park.

City of Malibu

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Response to the California Coastal Commission "Summary of Ecological Findings for Malibu

As part of the City of Malibu Draft Land Use Plan (LUP), the California Coastal Commission (Commission) has developed a map illustrating what they have recently determined to be Environmentally Sensitive Habitat Areas (ESHA) and Sensitive Marine Resources. The newly drafted map effectively designates all currently undeveloped areas within the City of Malibu (City) as ESHA. As justification for this determination, the Commission cites a number of factors including 1) the City's "geographic location and role in the ecosystem at the landscape scale" (November 2001 staff report), 2) the uniqueness of nearly all of the habitats in the area, and 3) the importance of connectivity of the coastline with the inland habitats of the Santa Monica Mountains, and the susceptibility of these habitats to human disturbance. It is the contention of the City that the proposed ESHA boundaries include considerable area that does not meet the criteria established for ESHA designation. It is further contended that methodologies employed by the Commission in determining the proposed ESHA boundaries were not entirely scientifically based and did not include the level of field research necessary to reach their conclusions.

The Commission's statement that the City is unique due to its "geographic location and role in the ecosystem at the landscape scale" is ambiguous. The Commission appears to be taking the position that because of where the City is situated on the coast, it is unique and, therefore, qualifies as ESHA. Though the juxtaposition of the City's coastline is atypical from much of the rest of the California coast as it trends east-west rather than north-south, there are not any ecological conditions that result in species or habitats endemic only to Malibu with the exception of Malibu Lagoon. All of the natural open space areas within the City are important and contribute to the overall function of the local ecosystem. These sensitive resources require protection and are afforded such with the current system of City biological review.

Under the existing Planning Department system, any proposed plan that involves new construction, grading, or an increase to an existing building footprint, requires review by the City Biologist. Based on the scope and location of the project, the City Biologist may personally

conduct an on-site visit to evaluate existing resources, require an independent biological assessment on the site, or both. In all cases where projects are proposed on parcels supporting natural vegetation, the City Biologist works with the applicant and/or architect to ensure all biological impacts are minimized. Additionally, projects involving new construction or additions that will result in an increase to the existing footprint of a structure by 50% or greater require the preparation and review of detailed landscape and fuel modification plans. As part of this review, the City Biologist ensures that invasive plant species are not included that may spread into natural areas and recommendations and/or requirements for the inclusion of native plant species are provided. When impacts to natural resources cannot be minimized the review requirements of the California Environmental Quality Act (CEQA) are applied.

The Commission also describes nearly all of the habitats in Malibu as unique and rare. The City supports several habitats that are considered rare and/or declining by state resource agencies, though none would be accurately described as unique, again with the exception of Malibu Lagoon. Among these are coastal sage scrub, willow riparian, coastal bluff scrub, and coastal dunes. Each of these habitats is important and declining in California. It should be clear that substantial portions of these and other habitat types present in the City have historically been exposed to various degrees of human disturbance. Through the City's project review process, several areas have been identified that are relatively intact. Though not yet specifically mapped, these relatively undisturbed natural areas are of the highest priority to protect. Other areas have been exposed to some disturbance, but continue to support the basic assemblage of species characteristic of their associated community. These areas may have the potential to be restored to nearly natural conditions and ultimately designated as ESHA. Still others have either been degraded beyond the point of restoration or occur as small islands surrounded by existing development. Successful restoration of these areas may not be feasible or may not ultimately provide useful resources to local wildlife due to a site's separation from other open space areas. The City recognizes the importance and sensitivity of all natural habitat types present and provides for their protection under the current system of biological review, utilizing the existing Sensitive Resources map as a guide.

The need for connectivity of the coast with the inland areas of the Santa Monica Mountains is one of the Commission's primary justifications for designating much of the City as ESHA. From an ecological perspective, connectivity is a critically important element in the planning of communities between large open space areas. This is a valid and widely accepted argument for connectivity between otherwise disconnected large open space areas, such as between the Santa Monica Mountains and the Simi Hills and San Gabriel Mountains. It should be noted though that the entire City of Malibu is outside the areas emphasized in the "Missing Linkages" study the Commission cites as justification for its connectivity requirements. The Commission contends that connectivity is required between the coast and the inland areas

of the mountains for wildlife movement and genetic flow. When open space areas become disconnected, significant problems of dispersal areas for young and genetic flow arise. When considering connectivity with regard to the City of Malibu, the Commission is suggesting a necessity for connectivity between the coastal shores and inland mountain habitats. However, the Commission provides no data to suggest that any wildlife species known to occur in the area require access to both ocean shores and inland mountain habitats to complete their life histories.

The steelhead rainbow trout (*Oncorhynchus mykiss*) is the most important species occurring in the area requiring the connectivity of the coast and the inland habitats. This is recognized by the City of Malibu, State, and Federal resources agencies. Consequently, Malibu Creek and Lagoon are already correctly designated as ESHA under the existing system. Data regarding any other wildlife species should be provided to ascertain what size buffers areas and/or corridors would be needed or required, if any, other than those already designated. As such, the issue of connectivity between the coastal shore and inland Santa Monica Mountains is not a valid justification for designating all undeveloped space in the City as ESHA.

The other primary argument from the Commission is that the City represents the southern segment of existing development that essentially surrounds the Santa Monica Mountains. This argument suggests that any further development in the City will reduce the remaining amount of open space area left in the Santa Monica Mountains. Certainly, any development in any space that is not already developed will reduce open space. The City concurs that it is very important to consider the location and extent of any further development. However, this statement does not satisfy the criteria for designating all undeveloped space as ESHA. In addition to the high quality natural open spaces present in the City, there are also numerous properties that have been highly degraded and do not support sensitive resources or otherwise provide unique or rare resources to local or transient wildlife. Consequently, the Commission's proposed ESHA map lacks empirical evidence to support the proposed ESHA boundaries.

The representative species the Commission utilizes for their connectivity discussion is the mountain lion (*Felis concolor*). Mountain lions make ideal candidates for assessing the viability of a system as they occur in low densities and require large areas for their home range (Beier 1993). Mountain lions are known to occur in the Santa Monica Mountains and likely include some remote and rugged areas in the northern-most portions of the City. The Commission suggests that the preservation of all open space habitats in the City is important to maintain connectivity for this large predator. Mountain lions are generally considered a secretive animal that avoids open areas. They are typically associated with high country chaparral and woodland habitats. It should also be noted that the vast majority of the City exists at elevations below 500 feet above mean sea level (msl). Additionally, the Commission contends the vast majority of the City is vegetated with coastal sage scrub. Mountain lions are not commonly associated with low

elevation coastal sage scrub. In the Beier and Loe paper (1992), they discuss the importance of utilizing habitat likely to attract the species of interest when evaluating an area for suitability as a connective link between important habitat areas. Open, low elevation coastal sage scrub is not likely to attract this typically secretive cat. The City does not suggest that mountain lions cannot occur in other than typical habitats, or that movement corridors for this and other large wildlife species are not critical to their survival. However, because only a very small percentage of the currently undeveloped area in the City supports habitat likely to be important to mountain lions, and because the City does not geographically separate any two mountain lion populations, the Commission's data does not provide a germane argument for designating all undeveloped space in the City as ESHA.

The Commission also discusses the "Landscape Level Ecosystem Function as the Basis for Determining ESHA" in part of their November 2001 Staff Report. In the following discussion, each issue under this heading is addressed.

1. *"A rare and valuable feature of natural habitats in the Malibu/SMM area is that they are still large and sufficiently connected to form a functional ecosystem that supports a great diversity of species, including keystone predators such as the mountain lion. The presence of this indicator species with its large area requirements verifies that this habitat is still functional on a large spatial scale. From the tenuous connecting corridors within it and to other areas, however, this large-scale function of the habitat appears seriously threatened. The occurrence of this habitat in the middle of the huge developed region surrounding it makes it at once extremely valuable and extremely vulnerable. Its current condition might well be categorized as precarious."*

As discussed, the City recognizes the presence and importance of natural habitats within its boundaries. The Commission's statement here accurately describes the conditions within the inland portions of the Santa Monica Mountains. Much of the City is certainly an important part of the mountains, but it supports dramatically different habitats than those existing within the range interior. Nearly all of the occurrences of mountain lions in the City area cited by the Commission are in riparian corridors. Riparian corridors are well documented as primary movement pathways for both local and regional movement of both predators and prey. As such, the Commission more accurately suggests that canyon and riparian corridors qualify as ESHA. Under the City's current system of biological review, all major (and some minor) drainages are considered ESHA and are afforded protection under this designation.

2. *"An important function of the ecosystem in Malibu and the Santa Monica Mountains is to provide refuge for many sensitive and threatened species including large predators. The large predators in this system have an important role in controlling the abundance of many species lower in the food chain, thus stabilizing the system. Losing them from this ecosystem would invite outbreaks of herbivores (e.g. mule deer) and lower level mesopredators (e.g. feral cats, raccoons, opossums, etc.) that would then impact native prey species lower in the food chain."*

This is an accurate concept, however, there is no data provided to suggest that not designating all undeveloped space in the City as ESHA would result in an outbreak of herbivores or that such a designation would prevent such an event. Coyote (*Canis latrans*) also function as controlling predators of mesopredators and would be the more predominant predator occurring within the City limits.

3. *"There is little doubt that the Malibu/SMM area is easily disturbed by human activities and developments. It has already been significantly fragmented. It cannot suffer substantial additional fragmentation and still remain ecologically functional on a large landscape scale. Its ecological health both regionally and local is precarious and threatened by the huge urban matrix of development surrounding it. Further fragmentation will reduce the Malibu/SMM ecosystem to a series of pathetic remnants of the original habitat whose landscape function will have been lost."*

All natural areas are easily disturbed by human activities and development, not just within the City of Malibu. And, there has been fragmentation of open space within the City and within the Santa Monica Mountains. The Commission previously made the argument that all open space in Malibu should be designated as ESHA because the presence of mountain lions proved the existing open space was high quality and contiguous. This statement suggests that by not preserving all of the remaining open space in the City will reduce the entire Malibu/SMM ecosystem to "pathetic remnants" of its former self. There are still high quality habitats remaining in the City of Malibu and they should be afforded a level of protection that will prevent their elimination from the local and regional ecosystem. The City contends that the existing ESHA and additional sensitive habitat designations, combined with pre-project review, provide this protection.

The discussion in the staff report that immediately follows the third statement quoted above states, "[t]herefore, because of their significance within the Santa Monica Mountains ecosystem, all natural habitats in Malibu will be presumed to be ESHA until site-specific analyses demonstrate otherwise." However, the draft ESHA map developed by the Commission does not distinguish between natural habitats and highly disturbed vacant lots.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 59

In addition to the discussion of connectivity as justification for ESHA, the Commission also presents professional opinion regarding the sensitivity of coastal sage scrub habitat, and meeting the criteria for ESHA. The City has long recognized the importance and sensitivity of coastal sage scrub and is aware of the California Department of Fish and Game's status of sensitivity. What is not discussed in the National Park Service's opinion or illustrated in the mapping is the wide variety of sage scrub plant associations that occur in the area and the range of disturbance all of these areas have been exposed to. As previously discussed, the City recognizes the importance of high quality coastal sage scrub and provides protection for these areas under its current planning review protocol.

Additional information provided by the Commission includes discussions of protected plant and wildlife species. The City fully recognizes the sensitive nature and need for protection of many plant and wildlife species present in the area. However, the City feels it is appropriate that the Commission accurately describe the sensitivity status of these sensitive taxon. It should be made clear that the term "listed" refers to those plant and wildlife species that are included on either or both of the federal and State Endangered Species lists as endangered, threatened, or candidates for listing. The state designations of Species of Special Concern, Fully Protected Species, Protected Species, and Special Animal are not included on state or federal endangered species lists and are not accurately referred to as "listed" species. Further, the term federal Species of Concern is not an actual designation at all, but is rather a 'term-of-art' used by some individuals when referring to species formerly included on a watch list under a federal designation system which was revised in 1996. These species are not considered rare or endangered by the U.S. Fish and Wildlife Service or other federal agencies and are not afforded any protection under the law. The use of the term "listed species" in the LUP when referring to sensitive plant and wildlife is inaccurate and misleading.

On December 24, 2001, the Commission released a paper titled "Ecological Findings for the Malibu Area" that provided some different and additional justifications for the designation of all undeveloped land in Malibu as ESHA. This paper provides some conflicting information regarding ESHA designation. The second paragraph under the heading Description of Malibu Habitats on Page 2 of the report states the following:

> *"Wetlands, such as coastal salt marsh, and streams and their associated riparian corridors are clearly ESHA under the Coastal Act and are also given specific protection under Sections 30231, 30233, and 30236 of the Coastal Act. Development is never allowed within these habitats except for a small number of specified activities. The other habitats present in the Santa Monica Mountains and Malibu are potentially ESHA and should generally be evaluated on a site-specific basis."*

The City fully concurs with this statement as it has been the foundation of its position on the ESHA issue since the release of the Draft LUP. However, this statement directly conflicts with the previously described position of the Commission and the proposed ESHA map does not differentiate between those areas that are "clearly ESHA" and those that are "potentially ESHA."

The City of Malibu has historically been and continues to be aware of the tremendous natural resources present within its boundaries and endeavors to protect these resources by all feasible and reasonable means. As the Commission points out in its reports, private land cannot be taken without just compensation. This is true even when the goal is preservation of natural habitats. In that light, the City makes every effort to work with private landowners to ensure that projects are designed in a manner that respects the surrounding natural environment and minimizes impacts. The ultimate goals of the Commission and the City are synonymous. Both realize the importance of protecting the natural resources remaining in the Malibu area. As such, the City believes that designating much of the City as ESHA will result in procedural obstacles that will result in an undue burden to the City and to the landowners. History has provided numerous examples that excessive regulation breeds contempt. By requiring every landowner to provide biological assessments, subsequent variances, panel reviews, and LCP amendments, there is a significant potential for landowners to resist working with the City and designing projects that limit impacts.

The City believes it is in the best interest of the resources, the City and its citizens, and ultimately the Commission to work with the ESHA map that has already been approved by the Commission in 1986 as a base. Each project will continue to be scrutinized by the planning staff and the City biologist and any project suspected to result in substantial impacts to natural resources will require biological analysis. Any proposed projects in areas currently designated as ESHA, Significant Watershed, Significant Oak Woodland and Savannahs, and all other sensitive habitat areas will automatically require a biological analysis. The City now has GIS capabilities and will begin mapping all sensitive resources through on-site field evaluations on a project by project basis for privately owned lands and by thorough on-site evaluations on public lands.

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June 7, 2002

By Facsimile

Laura Shell, Supervisor's Deputy
Zev Yaroslavsky, Board of Supervisors
District 3 – Room 821
Kenneth Hahn Hall of Administration
500 West Temple Street
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Re: California Coastal Commission

Dear Ms. Shell:

Both Laurie Newman of Senator Kuehl's office and Coastal Commissioner Cynthia McLain-Hill suggested I contact you. I thank you for your call this afternoon. My wife, two children and I live on Piuma Road, County Malibu. We are constituents of the Supervisor, and I have long been a Zev Yaroslavsky supporter.

In 1990, we purchased our house and property at the point when it was essentially fully constructed. The house and attendant improvements were developed pursuant to and in conformance with a 1988 Coastal Development Permit ("CDP") and all applicable County requirements. In 1995, we determined to build a pool and sports court, because our young children were then 3 and 5, and there were no sports or recreational facilities in the area.[1] We hired a well-known landscape designer who conceived a well thought out and sensitive plan for a pool, sports court, retaining walls, decking, etc. (the "1996 Improvements") fully in keeping with the area in which our house is located.

[1] Attached is a e-mail which we sent to our neighbors recently which we believe gives an accurate account of our situation in somewhat more detail.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

In 1996, my wife went to the Department of Building and Safety to find out what approvals would be required for the development. She was given a check list which specified a number of agencies and departments whose approvals would be required. The Coastal Commission was listed on that sheet (a copy of which is attached hereto), but along with other departments and agencies, was not indicated as a required approval. We obtained all required approvals, and installed what we believe any fair observer would concede are attractive and unobtrusive improvements.

In 1997, we were advised by Coastal Commission Staff that the improvements completed the previous year had required a Coastal Development Permit, that we could apply for an after-the-fact permit, but that it would likely be disapproved. Since that time we have been involved in attempting to convince Commission Staff that our 1996 Improvements were appropriate, consistent with the Coastal Act, and should, if necessary, be permitted.

Every single other governmental agency we have gone to has commended our development and opined that it was and is appropriate and/or does and did not significantly impact the surrounding area. Among others, we or the original Architect/owner received 1) approval in concept from the Los Angeles County Department Regional Planning; 2) Los Angeles Fire Department approval; 3) Los Angeles Environmental Health Department approval for as-built location of pool and spa; 4) Los Angeles County Department of Public Works Geology Approval respecting pool, sports court and car port; 5) drainage approval from the Department of Public Works respecting building plans for pool, sports court and car port; 6) certification from the County of Los Angeles Fire Department that brush clearance has been performed in compliance with Los Angeles Fire Code; etc. We have also spent tens of thousands of dollars on technical investigations by and detailed reports from geological and geotechnical experts, engineers, biologists, etc. to address the unsupported "findings" of Commission Staff that certain of the 1996 Improvements are not consistent with the Coastal Act.

A central issue is Staff's claim that our property is in an Environmentally Sensitive Habitat Area ("ESHA"). Doctor Daryl Koutnik, the county biologist, has been shown the Staff Report and, I am told, strongly disagrees with that conclusion. He has expressed a willingness to attend the hearing on our Permit Application, set for this Monday, June 10, 2002, at the Queen Mary in Long Beach.

I do very much appreciate your advice this afternoon that you would contact Dr. Koutnik to instruct him to prepare a report to the Commission providing his views respecting the Staff's ESHA "findings," and asking him to attend our hearing if his schedule permits. For your and Dr. Koutnik's information, I am enclosing the Notice of the Hearing. My wife and I, along with other members of the Monte Nido community, are thankful for the Supervisor's assistance to correct the record on the ESHA issue. I hope Dr. Koutnik can be reached in time.

Again, thank you very much for your attention to this matter.

Very truly yours,

Howard J. Rubinroit

HJR:sk

cc: Commissioner Cynthia McLain-Hill
Laurie Newman, Senior Field Representative

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

bcc: John Ainsworth, Permit Supervisor
Abe G. Doherty, Headquarters Enforcement Officer
Don Schmitz

Kim, Staci

From: Rubinroit@aol.com
Sent: Wednesday, June 05, 2002 12:17 PM
To: Stephanie@Abronson.com; gb@DBBarchitechts.com; Jpldes@aol.com; LisaALehman@aol.com; suzerandall@charter.net; Suze@suze.net; geteup@hotmail.com; robertr@hi-torque.com; donwwallace@worldnet.att.net; diburgess3@aol.com; jevans@retailhomecare.com
Subject: Rubinroit Coastal Hearing

We have lived in Monte Nido for 12 years and we love living here. The open space, combined with the closeness of the community, is ideal. When our children passed the toddler stage, however, we realized that there were no ball fields or sports facilities near us where they could play. So we decided to build our pool and sports court.

I (Terry), personally, went to the Department of Building and Safety and asked what I had to do to get the plans built. They gave me a check sheet with different agencies. Coastal Commission was on the sheet, but it was not one of the agencies checked off. I still have this sheet.

The plans were built, and signed off on by all the agencies that I was told were necessary.

Coastal Commission sent us a letter and said that someone reported a possible violation at our property. They said that we needed permits for all the work we'd done on the pool plans, and that they were also requiring us to get new permits for things that had been done and signed off on back when the house was built in 1990.

They said that the propane tank suddenly needed permit, that we illegally graded the area for the sport court (we have dated photos showing the pad's existence) and they ordered us to do all kinds of new engineering reports, grading reports, drainage reports, ecological reports, soil reports, survey reports, etc. even though all those types of reports were prepared and approved at the time of construction.

The Department of Regional Planning gave an approval in concept to all the improvements we made, even after Coastal's complaints.

Nevertheless, Coastal wants us to rip out the existing sports court, and that's just for starters.

They're requiring a permit for removing what they call "25 square feet of concrete...adjacent to the sports court". There were some small chunks of concrete down the hillside. We manually picked them up and threw them away.

They talk about a stairway "illuminated with light posts" extending from the pool area to the sports court. In fact, there are railroad tie steps with low voltage lighting.

They claim that this "lighted stairway" of RR ties and decomposed granite is an "impervious surface" that will reduce the stormwater infiltration and significantly increase "the velocity of sheetflow down the hillside".

They talk about commission staff seeing erosion on the steps to the court. There is no geologic erosion, just some gopher holes.

They are requiring us to remove the "sand fill" children's play area. Odd that they consider my home in the coastal zone, yet they disapprove of sand.

They are requiring us to do a new fuel mod plan, even though the Forestry Department has written a letter saying that it is not required, and therefor they will not take the time to review one for this property.

Coastal sent Fish and Game to my house to inspect the property. The inspector confirmed that there were no Fish and Game violations on the property.

September 12th my doorbell rings with yet another unscheduled visitor that Coastal sent from the building department who reviewed my property and

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

said there was no violation.

Coastal is requiring us to move our water tank closer to the house. The tank has been there since the house was built, and there is nowhere closer to place it that the existing topography will accommodate, or that would conform with fire department regulation. The fire department has stated in writing that " the water tank and outlet are properly located on the site".

The report requires me to install a system on the pool that reduces or eliminates the use of chlorine. Nevertheless, they are also requiring that any time the pool needs to be drained, the water is carried off site. If we remove all the chemicals, this makes no sense.

They claim to be concerned about the pool overflowing. However, the pool is 2 feet below the grade of the land in most places and has never come close to overflowing...even during El Nino winters. They want us to put a liner "underside of the pool". Know any strong men that could lift it up?

They want a meter put on the water line into the pool. This will not account for rain or differing evaporation amounts on hot days. It is a punitive measure that the pool contractor says he has never heard of in over 30 years of building pools in the area.

The Coastal staff report complains about "sprinkler heads ...along Piuma Road". It's a drip line to the Oleander bushes.

They talk about "several oak trees located adjacent to the subject site". They do not give any specific information on how far away this is. There are no oak trees on our property, and a qualified biologist has so certified.

They want us to move part of our pool fencing closer to the house. There is no logical reason why relocating the fence would result in a significant difference in coastal resources or visual impact. In fact, it would make the fence more visible.

And Coastal Staff requires " Any additional information that the Commission staff determines to be necessary to to complete the application". This has led to a never-ending list of things they suddenly decide we should do after we have satisfied earlier requests.

The report refers to "increasing urbanization" in the Santa Monica Mountains. Somehow, my pool, sport court, and permitted single-family home are a problem; yet the land cleared by Quaker-Ross for large homes on small lots at the bottom of Piuma Road is not.

The sad and unwitting result of Coastal's zealotry is the effects it's had on the children of Malibu. Rather than young, idealistic, environmentalists, they are suspicious and resentful of environmental agencies. They see their parks and ball fields in jeopardy. Recently, my son's 5th grade teacher told me she was trying to teach the children to debate in class using an example of a man with a pond on his property that was found to have an endangered species of fish it. The teacher could not get a single student to volunteer to defend the environmentalist point of view.

The hearing on our permit application is scheduled for this Monday, June 10 at 10:00 a.m. The Queen Mary, 1126 Queens Highway, Long Beach (562) 435-3511. We would appreciate the presence of any of you who could attend the hearing and support our application.

Thank you,
Terry & Howard Rubinroit

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY/
LAND DEVELOPMENT DIVISION

CALABASAS - MALIBU DISTRICT OFFICE
4111 N. Las Virgenes Road, Calabasas, CA 91302-1929
Telephone: (818) 880-4150, FAX: (818) 880-6279
Office Hours: 8:00 a.m. - 4:30 p.m.
Plan Checker's Hours: 8:00 a.m. - 11:30 a.m. Appointments are recommended.

Plans for a structure at 25351 Pluma Rd (Address) Cala (Locality)

Plan Check No. 95110700001 was submitted on 11-7-95 for Building (or Grading) Plan Check.

MINIMUM PLAN CHECK SUBMITTAL REQUIREMENTS:

( ) **Building & Drainage Plan Check** requires 2 complete sets of working drawings including 2 sets of structural & energy calculations. Also provide a soils & geology report (if any), & Hydrology Report (if any). If Energy Calculations are computer methods(MICROPAS Etc.), an additional set of plans is required and is checked by the Mechanical Section at the Alhambra Hdqts.

THIS NOTICE IS TO INFORM YOU THAT APPROVAL FROM THE AGENCIES MARKED BELOW, IN ADDITION TO BUILDING OR GRADING PLAN CHECK APPROVAL, MUST BE OBTAINED PRIOR TO PERMIT ISSUANCE. You may need to submit the pertinent plans, plan check number, calculations, reports, etc., directly to these agencies. To assist you, we have listed below the information which you will need to contact these agencies. *Follow-up is your responsibility.* Please be aware that some items resulting from these agency plan reviews may affect your building plan check. These should be communicated to your Building Plan Check Engineer as soon as possible to prevent unnecessary delays. *Additional agency clearances may be requested by your Building Plan Check Engineer.*

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[illegible]ring St. Room 112
Los Angeles, CA 90012-3606
(213) 897-3631

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89 So. California St.
Ventura, CA 93001-2801
(805) 641-0142

___ **CONSTRUCTION DIVISION** - Permits are required for road excavations and encroachments.

5330 W. 83rd Street
Westchester, CA 90045-3309
(310) 649-6300

X **DRAINAGE SECTION (BUILDING AND SAFETY / LAND DEVELOPMENT DIV.)** - Plan approval is required for drainage and flood hazard. *Initial plan submittal will be forwarded by Building & Safety.*

Mr. Mark Pestrella
Calabasas Office:
Tuesdays & Thursdays 8:00-11:00 a.m.
(818) 880-4150

Headquarters:
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
Closed Fridays

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 69

RE DEPARTMENT (LOS ANGELES COUNTY)

( ) **FIRE STATION DEVELOPER FEE** must be paid to the Fire Dept. prior to issuance of a Building Permit. Obtain "DETERMINATION" form from Building & Safety. This fee does not apply to City of Westlake Village or to the Chatsworth area.

Fiscal Services Division
1320 No. Eastern Ave., Room 225
Los Angeles, CA 90063-3294
(213) 881-2404, Ext. 2442

( ) **"HAZMAT"** form must be submitted to and approved by the Fire Dept. for non-residential occupancies if hazardous materials are being handled. Obtain "HAZMAT" form from Building and Safety.

Fire Prevention Bureau, Hazardous Materials Section
5823 Rickenbacker Rd.
Commerce, CA 90040-3027
(213) 890-4000

COMMERCIAL BUILDINGS OVER 2,500 SQ.FT. and MULTIPLE RESIDENTIAL BUILDINGS require plan approval from the Fire Dept.

Fire Prevention Bureau
5823 Rickenbacker Rd.
Commerce, CA 90040-3027
(213) 890-4125; FAX (213) 890-4129

( ) **ALL NEW DWELLINGS, DWELLING ADDITIONS OVER 2,000 SQ.FT., COMMERCIAL BUILDINGS UNDER 2,500 SQ.FT. and any structures in Deer Lake Highlands** require approval from the Fire Department. Provide Fire Department with a **WATER CERTIFICATE** completed by the local water company. A water information form is required before a rough plumbing inspection. (X) Swimming pools in the VHFHS zone require plan check by Fire Dept.

( ) Las Virgenes Municipal Water Dist.
4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

( ) Waterworks District #29
23533 W. Civic Center Wy.
Malibu, CA 90265-4804
(310) 317-1388, Hours 8:00-10:00 a.m.

AND
Fire Prevention Bureau

(X) Capt. Jim Jordan
23533 W. Civic Center Way
Malibu, CA 90265-4804
(310) 317-1351 Sadie

( ) For Chatsworth area only:
Ms. Nina Giannone
23757 Valencia Blvd.
Santa Clarita, CA 91355-2192
(805) 253-7266

X **GEOLOGY / SOILS SECTIONS (MATERIALS ENGINEERING DIVISION)** - Plan approval is required for geologic hazards. Initial submittal consisting of two copies of geotechnical reports together with consultant signed plans will be forwarded by Building & Safety. Subsequent submittals are your responsibility and must also contain copies of the latest geology/soils review sheet. The plans must incorporate the consultant's recommendations with their approval. If required, plans must be approved by manual signature by the consultants prior to resubmittal. This section may impose additional fees for resubmittals.

Messrs. Mike Montgomery / Scott Ezell
Calabasas Office:
First & Third Tuesday 8:00 - 10:00 a.m.
(818) 880-4150

Headquarters - Closed Fridays
900 S. Fremont Ave., 4th Floor
Alhambra, CA 91803-1331
(818) 458-4925 M & W 9:00 - 11:00 a.m.

___ **GRADING SECTION (BUILDING AND SAFETY/LAND DEVELOPMENT DIV.)** - Grading/Landscaping permit and approval are required. Grading/Landscaping plan check is done primarily at the Central Office. Submit 4 sets of Grading plans and 3 sets of Geology & Soils Reports.
( ) Rough Grading approval is required before a building permit can be issued.

900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-4921 Closed Fridays

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 35 of 38

X

HEALTH SERVICES DEPARTMENT (MOUNTAIN AND RURAL) - Approval is required for private sewage disposal systems for new construction, for modification or repair to existing systems and for increase in use for an addition or remodel (increase in number of bedrooms for residential). Contact the Sanitarian that handles your area. Five copies of the plot plan showing the sewage disposal are required.

Mr. Anthony Lawrence R.E.H.S.
Calabasas Office
Monday - Friday 8:00-9:00 a.m.
(818) 880-4121

Headquarters Environmental Mgmt.:
2525 Corporate Pl.
Monterey Park, CA 91754-7641
(213) 881-4157

Mr. Bob Saleh
Mr. Arnie Fielding
Mr. Bart Slutske
Malibu Office:
23525 W. Civic Center Wy.
Malibu, CA 90265-4804
Monday - Friday 8:00-9:00 a.m.
(310) 317-1317

___ **HEALTH SERVICES DEPARTMENT (ENVIRONMENTAL SANITATION DIV.)** - Approval is required for all food establishments.

12502 Van Nuys Blvd., Room 204
Pacoima, CA 91331
8:00 - 10:00 a.m.
(818) 834-3370

2509 W. Pico Blvd. Room 329
Santa Monica, CA 90405-1899
8:00 - 10:00 a.m.
(310) 3[illegible]

___ **HIGHWAY DESIGN SECTION (DESIGN DIVISION)** - Plan approval for street improvements and/or dedication is required for commercial and multiple residential bldgs. "Bridge & Major Thoroughfare (B&T) Fee" is also required for commercial, multiple residential buildings and designated tracts in the Lost Hills and Parkway Calabasas B & T Districts. Form "48-0040-DPW" (RD 490) should be filled out when submitting plans to Building and Safety.

Mr. Dugan Andrus
900 S. Fremont Ave. 6th Floor
Alhambra, CA 91803-1331
(818) 458-7984 Closed Fridays

___ **LAS VIRGENES MUNICIPAL WATER DISTRICT** - A letter is required stating financial arrangements have been made for sewer connections. *In commercial buildings, an approval is required for installation of additional plumbing fixtures.*

4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

___ **MECHANICAL AND ELECTRICAL ENERGY PLAN CHECK** - Required for all commercial and industrial buildings with comfort heating and which are over 1000 sq.ft. in area or have an occupant load over 50. When submitting plans for building plan review, submit two extra complete sets along with the required energy conservation forms and calculations.

Mechanical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3182 Closed Fridays

Electrical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3180 Closed Fridays

___ **DIVISION OF OCCUPATIONAL SAFETY & HEALTH (STATE DEPT. OF INDUSTRIAL RELATIONS)** - Permit is required for excavation of trenches which are 5 ft. or more deep into which a person is required to descend or for the construction or demolition of any structure 4 or more stories. *Brick lined seepage pits may require permit.*

6150 Van Nuys Blvd. Suite 405
Van Nuys, CA 91401-3379
(818) 901-5403

___ **DIVISION OF OIL AND GAS (STATE DEPARTMENT OF CONSERVATION)** - Obtain clearance for the requirements of abandonment of oil wells.

245 West Broadway, Suite 475
Long Beach, CA 90802-4455
([illegible]) 590-5311

1000 S. Hill Rd. Suite 116
Ventura, CA 93003-4455
(805) 654-4761

___ **PARKS AND RECREATION DEPARTMENT** - Plan approval is required for construction adjacent to a "General Plan Designated Trail."

433 S. Vermont Avenue
Los Angeles, CA 90020-1975
(213) 738-2973

___ **REGIONAL PLANNING DEPARTMENT** - Approval is required for:

(__) Compliance to General Plan
(__) Land use/approval in concept
(__) Legal lot
(__) Parking and landscaping
(__) Setbacks
(__) Building Height
(__) Topanga Cyn. Comm. Stds. Dist.
(__) Chatsworth Twin Lake Comm. Stds. Dist.
(__) Malibu Lake Urgency Ordinance
(__) Sensitive Environmental Zone
(__) Oak Tree Permits
(__) _____

320 W. Temple St., 13th Floor (Rm. 1360), Los Angeles, CA 90012-3282
Public Counter : 1:00 p.m. to 6:00 p.m. Monday thru Thursday only
Telephone Hours : 7:00 a.m. to 12:00 p.m. (213) 974-6411 Monday thru Thursday only

___ **SCHOOL DISTRICT** - Development fee must be paid to the District for residential and commercial construction. A "Certificate of Payment of Developer Fee" must be submitted to Building and Safety prior to obtaining a building permit.

(__) Las Virgenes Unified School Dist.
4111 Las Virgenes Road
Calabasas, CA 91302-1929
(818) 880-4000
Obtain "Certification Form" from Las Virgenes School District.

(__) L.A. Unified School Dist.
600 East Pico Boulevard
Los Angeles, CA 90015-3116
(213) 743-3670
Obtain "Certification Form" from Calabasas B & S Office.

(__) Santa Monica - Malibu Unified School District
1651 16th Street, Santa Monica, CA 90404-3891
(310) 450-8338
Obtain "Certification Form" from Calabasas B & S Office.

___ **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)** - Applican residential buildings must fill out "Air Quality Permit Checklist" furnished by Building & "Yes" is marked, a written release will be required before occupancy is allowed. Notifica required for demolition and alteration permits where ASBESTOS is involved.

21865 E. Copley Dr.
Diamond Bar, CA 91765-4182
(909) 396-2000, (800) 388 - 2121

___ **TRAFFIC AND LIGHTING DIVISION** - Clearance is required for traffic requirements

Traffic and Lighting Division, Traffics Studies Unit
900 S. Fremont Ave.
Alhambra, CA 91083-1331
(818) 458 - 5909 Closed Fridays

___ **WASTE MANAGEMENT DIVISION** - Plan approval is required for most commercial and i buildings for: (__) Industrial Waste, (__) Underground Tanks, (__) Floor Drains.

Mr. Jerry Wong
125 S. Baldwin Ave.
Arcadia, CA 91007-2652
8:00-9:00 a.m. Monday -Friday.
(818) 574-0957

Waste Management Division
900 S. Fremont Ave.
Alhambra, CA 91803-1331
(818) 458-3517
Closed Fridays

___ **WESTLAKE VILLAGE (CITY OF)** - Zoning/Engineering approval is required prior to s for Building Plan Check.

(__) Zoning Dept.
Mr. Robert Theobold
4373 N. Park Terrace Dr.
Westlake Village, CA 91361-4631
(818) 706-1613

(__) Enginering Dept
City Engineer & Road appro
374 Poli St., Suite 102
Ventura, CA 93001-2605
(805) 653 - 6597

EXHIBIT E

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 36 of 38

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 70

CALIFORNIA COASTAL COMMISSION
XUTH CENTRAL COAST AREA
SOUTH CALIFORNIA STREET, SUITE 200
ENTURA, CA 93001
05) 585-1800

Date: May 24, 2002

IMPORTANT PUBLIC HEARING NOTICE

PERMIT AMENDMENT

PERMIT NUMBER: **5-88-056-A1**

APPLICANT(S): **Howard & Terry Rubinroit**

PROJECT DESCRIPTION:

The applicant is requesting after-the-fact construction of a lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and 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 throught 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.

PROJECT LOCATION:

25351 Piuma Road (The Applicantion Proposes Development On The Parcel Owned By The Applicant, A P N 4456-037-007 And On A Portion Of The Adjacent Parcel, A P N 4456-037-010, For Which The Applicant Has An Easement, Calabasas (Los Angeles County) (APN(s) 4456-037-007)

HEARING DATE AND LOCATION:

DATE:	**Monday, June 10, 2002**	
TIME:	**Meeting begins at 10:00 AM**	ITEM NO: **M6a**
PLACE:	The Queen Mary 1126 Queens Highway, Long Beach, CA	
PHONE:	(562) 435-3511	

HEARING PROCEDURES:

This item has been scheduled for a public hearing and vote. People wishing to testify on this matter may appear at the hearing or may present their concerns by letter to the Commission on or before the hearing date.

SUBMISSION OF WRITTEN MATERIALS:

If you wish to submit written materials for review by the Commission, please observe the following suggestions:

- We request that you submit your materials to the Commission staff no later than three working days before the hearing (staff will then distribute your materials to the Commission).

IMPORTANT PUBLIC HEARING NOTICE

PERMIT AMENDMENT

- Mark the agenda number of your item, the application number, your name and your position in favor or opposition to the project on the upper right hand corner of the first page of your submission. If you do not know the agenda number, contact the Commission staff person listed on page 2.

- If you wish, you may obtain a current list of Commissioners' names and addresses from any of the Commission's offices and mail the materials directly to the Commissioners. If you wish to submit materials directly to Commissioners, we request that you mail the materials so that the Commissioners receive the materials no later than Thursday of the week before the Commission meeting. Please mail the same materials to all Commissioners, alternates for Commissioners, and the four non-voting members on the Commission with a copy to the Commission staff person listed on page 2.

- You are requested to summarize the reasons for your position in no more than two or three pages, if possible. You may attach as many exhibits as you feel are necessary.

Please note: While you are not prohibited from doing so, you are discouraged from submitting written materials to the Commission on the day of the hearing, unless they are visual aids, as it is more difficult for the Commission to carefully consider late materials. The Commission requests that if you submit written copies of comments to the Commission on the day of the hearing, that you provide 20 copies.

ALLOTTED TIME FOR TESTIMONY:

Oral testimony may be limited to 5 minutes or less for each speaker depending on the number of persons wishing to be heard.

ADDITIONAL PROCEDURES:

The above item may be moved to the Consent Calendar for this Area by the Executive Director when, prior to Commission consideration of the Consent Calendar, staff and the applicant are in agreement on the staff recommendation. If this item is moved to the Consent Calendar, the Commission will either approve it with the recommended actions in the staff report or remove the item from the Consent Calendar by a vote of three or more Commissioners. If the item is removed, the public hearing described above will still be held at the point in the meeting originally indicated on the agenda.

No one can predict how quickly the Commission will complete agenda items or how many will be postponed to a later date. The Commission begins each session at the time listed and considers each item in order, except in extraordinary circumstances. Staff at the appropriate Commission office can give you more information prior to the hearing date.

Questions regarding the report or the hearing should be directed to Sabrina Haswell, Coastal Program Analyst, at the South Central Coast Area office.

CCC-02-RO-01
EXHIBIT 7
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COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY/
LAND DEVELOPMENT DIVISION

CALABASAS - MALIBU DISTRICT OFFICE
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Los Angeles, CA 90012-3606
(213) 897-3631

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Westchester, CA 90045-3309
(310) 649-6300

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Mr. Mark Pestrella
Calabasas Office:
Tuesdays & Thursdays 8:00-11:00 a.m.
(818) 880-4150

Headquarters:
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
Closed Fridays

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 73

___ **FIRE DEPARTMENT (LOS ANGELES COUNTY)**

( ) **FIRE STATION DEVELOPER FEE must be paid to the Fire Dept. prior to issuance of a Building Permit. Obtain "DETERMINATION" form from Building & Safety. This fee does not apply to City of Westlake Village or to the Chatsworth area.**

Fiscal Services Division
1320 No. Eastern Ave., Room 225
Los Angeles, CA 90063-3294
(213) 881-2404, Ext. 2442

"HAZMAT" form must be submitted to and approved by the Fire Dept. for non-residential occupancies if hazardous materials are being handled. Obtain "HAZMAT" form from Building and Safety.

Fire Prevention Bureau, Hazardous Materials Section
5823 Rickenbacher Rd.
Commerce, CA 90040-3027
(213) 890-4000

COMMERCIAL BUILDINGS OVER 2,500 SQ.FT. and MULTIPLE RESIDENTIAL BUILDINGS require plan approval from the Fire Dept.

Fire Prevention Bureau
5823 Rickenbacher Rd.
Commerce, CA 90040-3027
(213) 890-4125, FAX (213) 890-4129

ALL NEW DWELLINGS, DWELLING ADDITIONS OVER 2,000 SQ.FT., COMMERCIAL BUILDINGS UNDER 2,500 SQ.FT. and any structures in Deer Lake Highlands require approval from the Fire Department. Provide Fire Department with a WATER CERTIFICATE completed by the local water company. A water information form is required before a rough plumbing inspection. ( ) Swimming pools in the VHFHS zone require plan check by Fire Dept.

( ) **Las Virgenes Municipal Water Dist.**
4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

( ) **Waterworks District #29**
23533 W. Civic Center Wy.
Malibu, CA 90265-4804
(310) 317-1388, Hours 8:00-10:00 a.m.

AND
Fire Prevention Bureau

(X) **Capt. Jim Jordan**
23533 W. Civic Center Way
Malibu, CA 90265-4804
(310) 317-1351 Sadie

( ) **For Chatsworth area only:**
Ms. Nina Gianmone
23757 Valencia Blvd.
Santa Clarita, CA 91355-2192
(805) 253-7266

GEOLOGY / SOILS SECTIONS (MATERIALS ENGINEERING DIVISION) - Plan approv is required for geologic hazards. Initial submittal consisting of two copies of geotechnical reports together with consultant signed plans will be forwarded by Building & Safety. Subsequent submittals are your responsibility and must also contain copies of the latest geology/soils review sheet. The plans must incorporate the consultant's recommendations with their approval. If required, plans must be approved by manual signature by the consultants prior to resubmittal. This section may impose additional fees for resubmittals.

Messrs. Mike Montgomery / Scott Ezell
Calabasas Office:
First & Third Tuesday 8:00 - 10:00 a.m.
(818) 880-4150

Headquarters - Closed Fridays
900 S. Fremont Ave., 4th Floor
Alhambra, CA 91803-1331
(818) 458-4925 M & W 9:00 - 11:00 a.m.

___ **GRADING SECTION (BUILDING AND SAFETY/LAND DEVELOPMENT DIV.) - Grading/Landscaping permit and approval are required. Grading/Landscaping plan check is done primarily at the Central Office. Submit 4 sets of Grading plans and 3 sets of Geology & Soils Reports.**
( ) **Rough Grading approval is required before a building permit can be issued.**

900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-4921 Closed Fridays

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 35 of 38

X

HEALTH SERVICES DEPARTMENT (MOUNTAIN AND RURAL) - Approval is required for private sewage disposal systems for new construction, for modification or repair to existing systems and for increase in use for an addition or remodel (increase in number of bedrooms for residential). Contact the Sanitarian that handles your area. Five copies of the plot plan showing the sewage disposal are required.

Mr. Anthony Lawrence R.E.H.S.
Calabasas Office
Monday - Friday 8:00-9:00 a.m.
(818) 880-4121

Headquarters Environmental Mgmt.:
2525 Corporate Pl.
Monterey Park, CA 91754-7641
(213) 881-4157

Mr. Bob Saleh
Mr. Arnie Fielding
Mr. Bart Slutske
Malibu Office:
23525 W. Civic Center Wy.
Malibu, CA 90265-4804
Monday - Friday 8:00-9.00 a.m.
(310) 317-1317

___ **HEALTH SERVICES DEPARTMENT (ENVIRONMENTAL SANITATION DIV.)** - Approval is required for all food establishments.

12502 Van Nuys Blvd., Room 204
Pacoima, CA 91331
8:00 - 10:00 a.m.
(818) 834-3370

2509 W. Pico Blvd. Room 329
Santa Monica, CA 90405-1899
8:00 - 10:00 a.m.
(310) 315-4581

___ **HIGHWAY DESIGN SECTION (DESIGN DIVISION)** - Plan approval for street improvements and/or dedication is required for commercial and multiple residential bldgs. "Bridge & Major Thoroughfare (B&T) Fee" is also required for commercial, multiple residential buildings and designated tracts in the Lost Hills and Parkway Calabasas B & T Districts. Form "48-0040-DPW" (RD 490) should be filled out when submitting plans to Building and Safety.

Mr. Dugan Andrus
900 S. Fremont Ave. 6th Floor
Alhambra, CA 91803-1331
(818) 458-7984 Closed Fridays

___ **LAS VIRGENES MUNICIPAL WATER DISTRICT** - A letter is required stating financial arrangements have been made for sewer connections. *In commercial buildings, an approval is required for installation of additional plumbing fixtures.*

4232 Las Virgenes Road
Calabasas, CA 91302-1994
(818) 880-4110

___ **MECHANICAL AND ELECTRICAL ENERGY PLAN CHECK** - Required for all commercial and industrial buildings with comfort heating and which are over 1000 sq ft. in area or have an occupant load over 50. When submitting plans for building plan review, submit two extra complete sets along with the required energy conservation forms and calculations.

Mechanical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3182 Closed Fridays

Electrical Section
Building & Safety/Land Development Div.
900 S. Fremont Ave., 3rd Floor
Alhambra, CA 91803-1331
(818) 458-3180 Closed Fridays

___ **DIVISION OF OCCUPATIONAL SAFETY & HEALTH (STATE DEPT. OF INDUSTRIAL RELATIONS)** - Permit is required for excavation of trenches which are 5 ft. or more deep into which a person is required to descend or for the construction or demolition of any structure 4 or more stories. *Brick lined seepage pits may require permit.*

6150 Van Nuys Blvd. Suite 405
Van Nuys, CA 91401-3379
(818) 901-5403

___ **DIVISION OF OIL AND GAS (STATE DEPARTMENT OF CONSERVATION)** - Obtain clearance for the requirements of abandonment of oil wells.

245 West Broadway, Suite 475
Long Beach, CA 90802-4455
(310) 590-5311

1000 S. Hill Rd. Suite 116
Ventura, CA 93003-4455
(805) 654-4761

___ **PARKS AND RECREATION DEPARTMENT** - Plan approval is required for construction adjacent to a "General Plan Designated Trail."

433 S. Vermont Avenue
Los Angeles, CA 90020-1975
(213) 738-2973

___ **REGIONAL PLANNING DEPARTMENT** - Approval is required for:

( ) Compliance to General Plan
( ) Land use/approval in concept
( ) Legal lot
( ) Parking and landscaping
( ) Setbacks
( ) Building Height
( ) Topanga Cyn. Comm. Stds. Dist.
( ) Chatsworth Twin Lake Comm. Stds. Dist
( ) Malibu Lake Urgency Ordinance
( ) Sensitive Environmental Zone
( ) Oak Tree Permits
( ) _____

320 W. Temple St., 13th Floor (Rm. 1360), Los Angeles, CA 90012-3282
Public Counter : 1:00 p.m. to 6:00 p.m. Monday thru Thursday only
Telephone Hours : 7:00 a.m. to 12:00 p.m. (213) 974-6411 Monday thru Thursday only

___ **SCHOOL DISTRICT** - Development fee must be paid to the District for residential and commercial construction. A "Certificate of Payment of Developer Fee" must be submitted to Building and Safety prior to obtaining a building permit.

( ) Las Virgenes Unified School Dist.
4111 Las Virgenes Road
Calabasas, CA 91302-1929
(818) 880-4000
Obtain "Certification Form" from Las Virgenes School District.

( ) L.A. Unified School Dist.
600 East Pico Boulevard
Los Angeles, CA 90015-3116
(213) 743-3670
Obtain "Certification Form" from Calabasas B & S Office.

( ) Santa Monica - Malibu Unified School District
1651 16th Street, Santa Monica, CA 90404-3891
(310) 450-8338
Obtain "Certification Form" from Calabasas B & S Office.

___ **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)** - Applicant residential buildings must fill out "Air Quality Permit Checklist" furnished by Building & "Yes" is marked, a written release will be required before occupancy is allowed. Notifica required for demolition and alteration permits where ASBESTOS is involved.

21865 E. Copley Dr.
Diamond Bar, CA 91765-4182
(909) 396-2000, (800) 388 - 2121

___ **TRAFFIC AND LIGHTING DIVISION** - Clearance is required for traffic requirements.

Traffic and Lighting Division, Traffics Studies Unit
900 S. Fremont Ave.
Alhambra, CA 91083-1331
(818) 458 - 5909 Closed Fridays

___ **WASTE MANAGEMENT DIVISION** - Plan approval is required for most commercial and buildings for: ( ) Industrial Waste, ( ) Underground Tanks, ( ) Floor Drains.

Mr. Jerry Wong
123 S. Baldwin Ave.
Arcadia, CA 91007-2652
8:00-9:00 a.m. Monday -Friday.
(818) 574-0957

Waste Management Division
900 S. Fremont Ave
Alhambra, CA 91803-1331
(818) 458-3517
Closed Fridays

___ **WESTLAKE VILLAGE (CITY OF)** - Zoning/Engineering approval is required prior to s for Building Plan Check.

( ) Zoning Dept
Mr. Robert Theobold
4373 N. Park Terrace Dr.
Westlake Village, CA 91361-4631
(818) 706-1613

( ) Enginering Dept
City Engineer & Road approv
374 Poli St., Suite 102
Ventura, CA 93001-2605
(805) 653 - 6397

EXHIBIT 15
CCC-01-CD-1 (RUBINROIT)
Page 36 of 38

EXHIBIT E

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 74

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY / LAND DEVELOPMENT

CALABASAS/MALIBU # 0910
4111 LAS VIRGENES
CALABASAS CA
PHONE: (818) 880-4150 EXT:

BUILDING PERMIT
RETAINING WALL
BL 0910 9604220007

LEGAL ID:
ON FILE

ASSESSOR INFORMATION NUMBER:
4456-032-007

TENANT:

OWNER: TEL. NO:
RUBINROIT, HOWARD (818) 991-1646-
25351
CALABASAS CA91302

APPLICANT: TEL. NO:
CONTEMPO (310) 476-3675-
654 SEPULVEDA BLVD.
LOS ANGELES CA 90019

CONTRACTOR: TEL. NO:
CONTEMPO (310) 476-3675-
654 N. SEPULVEDA BLVD LIC. NO
LOS ANGELES CA 90019 518132 B *

ARCHITECT OR ENGINEER: TEL. NO:
GOODMAN, HERMAN (818) 718-1957-
14401 SYLVAN ST LIC. NO:
VAN NUYS CA 1155

MAP NO: SEWER MAP BOOK: PAGE: FIRE ZONE: CNP:
138-077 00

NO. OF FAMILIES: DWELLING UNITS: APT/COND: STAT CLASS:
NO 20

AIR QUALITY:	SCHOOL WITHIN 1000 FEET	HAZARDOUS MATERIALS
NO	NO	NO

TOTAL HEIGHT: 10 FT
RETAINING HEIGHT: 10 FT
WALL LENGTH: 50 FT

EXIST BLDG USE:
EXIST OCC GRP:

BLDGS. NOW ON LOT: VALUATION:
10,000

FEES PAID

FEE DESCRIPTION:	QUANTITY:	UOM:	AMOUNT:
AA BLDG PERMIT ISSUANCE			18.20
AE STRONG MOTION OTHER	10000.00	VAL	2.10
01 PLANCHECK W/O EN-NC	10000.00	VAL	121.29
02 PERMIT W/O EN-NC	10000.00	VAL	142.70
	TOTAL FEES		284.29

* ADDITIONAL DATA ON FILE

REPORT ID: DPR261 ROUTE TO: BS0910

BUILDING ADDRESS:
25351 PIUMA RD W
CLBS CA 91302
NEAREST CROSS STREET: COLD CYN
THOMAS PAGE: 628 GRID: H1 LOCALITY: CALABASAS

ISSUED ON:	PROCESSED BY:	EXPIRES ON:
04/22/96	SH	04/22/97

FINAL DATE: 4-24-96 FINAL BY: [signature] CODE:

DESCRIPTION OF WORK:
10FT. X 50FT RETAINING WALL

SPECIAL CONDITIONS:
IN CONJUNCTION WITH GEO & SOIL APPROVAL 2/22/96

APPROVALS	DATE	INSPECTOR SIGNATURE
LOCATION AND SETBACKS		
SOILS ENGINEER APPROVAL		
FOUND/TRENCH FORMS	4-22-96	
FORMS/REINF STEEL	4-23-96	
2ND GROUT LIFT		
3RD GROUT LIFT		
WALL DRAIN		
BACKFILL COMPACTION		
SURFACE DRAINAGE		

EXHIBIT 11
CCC-01-CD-1 (RUBINROIT)
Page 26

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

POST THIS CARD AT JOB SITE

DEPARTMENT OF PUBLIC WORKS
BUILDING AND SAFETY DIVISION
4111 NORTH LAS VIRGENES ROAD
CALABASAS, CALIFORNIA 91302
TELEPHONE: (818) 880-4100

INSPECTION RECORD

PERMITS WILL BE VOIDED IF WORK IS STOPPED FOR 180 CONSECUTIVE DAYS

0007 — BLDG. PERMIT NO.
4/22/96 — DATE
R-3 — GROUP
25351 Piuma Rd — ADDRESS
Rubinroit — OWNER

NOTE: *Do Not Cover Walls Until Frame, Insulation, Electrical, Mechanical and Plumbing Have Been Signed.*

BUILDING	DATE	INSPECTOR'S SIGNATURE
FOUNDATION: LOCATION FORMS, SETBACK	1-22-96	
SLAB Grant	4-23-96	
Pour No Concrete Until Above Has Been Signed		
FRAME: FIRE STOPS, BRACING, BOLTS		
INSULATION		
LATH: INT. ☐ DRYWALL ☐		
LATH: EXT.		

ELECTRICAL	DATE	INSPECTOR'S SIGNATURE
UNDER SLAB WORK		
ROUGH CONDUIT		
ROUGH WIRING		
TEMP. POWER		

MECHANICAL	DATE	INSPECTOR'S SIGNATURE
FAU A.C. REF BOILER OTHER		
COMBUST. & CIRCULAT. AIR, DUCTS, VENTS, ETC.		
LOCATION, CLEARANCE, ACCESS		

PLUMBING	DATE	INSPECTOR'S SIGNATURE
UNDER SLAB WORK		
ROUGH PLUMBING		
ROUGH GAS PIPING		
HOUSE SEWER		
SEPTIC TANK, SEEP PIT(S) AND/OR DRAINFIELD		

FINAL APPROVALS	DATE	INSPECTOR'S SIGNATURE
ELECTRICAL		
GAS PIPING		
MECHANICAL		
PLUMBING FIXTURES		
BUILDING		

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

NOTICE TO OWNER

POOL MUST BE COMPLETELY FENCED BEFORE FILLING

BUILDING AND SAFETY DIVISION
4111 [redacted] North Las Virgenes Road
Calabasas, California 91302
Telephone: 880-4150

SWIMMING POOL INSPECTION RECORD

POST THIS CARD AT JOBSITE

951107000 1 — BLDG. PERMIT NO.
2-29-96 — DATE
25351 Rima Rd — ADDRESS
Rubanoit — OWNER

INSPECTION	DATE	INSPECTOR
LOCATION		
STEEL & FORMS	3-5-96	
LIGHT CONDUIT		

DO NOT GUNITE OR POUR UNTIL ABOVE SIGNED

CONDUIT UNDER DECK		
GAS LINE UNDER DECK	3-1-96	
WATER LINE UNDER DECK		
SEWER UNDER DECK		

DO NOT POUR DECK UNTIL ABOVE SIGNED

WATER SUPPLY		
ELECTRIC WIRES		
FENCE (HEIGHT)		
GATES (SELF-CLOSING) (SELF-LATCHING)		

DO NOT FILL POOL UNTIL ABOVE SIGNED

ROUGH WIRING		
FINAL ELECTRIC		

DO NOT ENERGIZE UNTIL ABOVE SIGNED

HEATER (LOCATION & VENT)		
GAS LINE TEST	5-29-96	
POOL DRAINAGE		
FINAL APPROVAL		

26-0004 DPW 3/86

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

SIDLEY AUSTIN BROWN & WOOD LLP

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 E-MAIL ADDRESS
hrubinroit@sidley.com

May 29, 2002

By Facsimile (805) 641-1732
and Via Certified Mail

John Ainsworth, Permit Supervisor
California Coastal Commission
South Central Coast Area
89 South California Street, Second Floor
Ventura, California 93001

Re: Application 5-88-056 A/1 (the "Application")
Cease and Desist Order No. CCC-01-CD-01 (the "Cease and Desist Order"); 25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Ainsworth:

Reference is made that certain Staff Report: Permit Amendment, dated May 20, 2002, prepared by Commission Staff (the "Staff") in connection with the above Application, which was received by us late last week. In the Staff Report, and among other things, the author[1] states as follows:

> 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

[1] The Staff Report appears to indicate that the Staff person responsible is Sabrina Haswell. We understand, however, that Ms. Haswell is and has been out on extended medical leave. Therefore, we question whether Ms. Haswell in fact authored the Staff Report. Indeed, we would be surprised if the language quoted herein was authored by her, in light of her representation and agreement, discussed below, that the Cease and Desist Order would have no effect on the above Application.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

> application. However, the Commission has already addressed these issues raised by the Rubinroits in the Cease and Desist Order findings. The findings of the Case 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.

Staff Report, at p.13 (emphasis supplied). A similar statement respecting the supposedly binding nature of the Commission's supposed findings in connection with the Cease and Desist Order is also made on page 26 of the Staff Report.

Many, if not most, of the supposed findings made by the Commission in connection with the Cease and Desist Order were, inter alia, absolutely unsupported by any evidence contained in the Commission's files,[2] and, in many cases, contrary to the evidence in fact found in the Commission's files we were provided. For example, the Staff's presentation concerning and the Commission's supposed findings made in the Cease and Desist Order state that grading occurred in connection with the 1996 "development" which was the subject of the Cease and Desist Order and is the subject of the Application. The Staff's presentation in that regard and the Commission's supposed findings in reliance thereon were and are completely unsupported; in fact, they are contrary to various documents in the Commission's files, including, but not limited to, matters set forth in and/or supplied with our Statement of Defense in connection with the Cease and Desist Order, the original Permit issued for the development of the Residence, and photographs taken at or about the time (1990) that the Residence was constructed (as well as documents and other evidence supplied and to be supplied by us in connection with the Application).

Given the many unsupported statements and supposed findings concerning the Cease and Desist Order, our representative, Don Schmitz, advised Sabrina Haswell that it was our intention to seek rescission or modification of the Cease and Desist Order pursuant to Section 13188 of Title 14, Division 5.5, Chapter 5, Sub-Chapter 8 of the California Code of Regulations ("Section 13188"). In response, Ms. Haswell represented to Mr. Schmitz that the Cease and Desist Order would have no effect on the Application, and that the hearing on the Application would, instead, proceed "with the information and documentation" provided and to be provided by us. A copy of Mr. Schmitz' letter to Ms. Haswell (on which you were copied), confirming Ms. Haswell's representations in that regard, is attached hereto. In reliance on Ms Haswell's representations and assurances, which neither Ms. Haswell nor anyone else has ever questioned or denied, we determined not to further pursue the request for rescission or modification of the Cease and Desist Order that Mr. Schmitz advised Ms. Haswell we had intended to make.

---

[2] Pursuant to a request made in April, 2001, we arranged to copy the entirety of the Commission's file in May, 2001. I personally have reviewed and am thoroughly familiar with its contents.

The above quoted and cited references to, and the statements that reliance can be placed on, the supposed findings of the Commission in connection with the Cease and Desist Order which are contained in the Staff Report, and especially the assertion therein that the Commission "need not address [the Rubinroits'] defenses again in these findings on the Permit Amendment Application," is a direct breach of Ms. Haswell's representations to the contrary, and a patent and cynical attempt to deny us a full and fair hearing and/or due process. The situation is made even more outrageous by the fact that the previous Staff Report, which was prepared and submitted to us in connection with the previously scheduled and continued May 7, 2002 hearing, conspicuously discussed our position, assertions, and defenses (in, among other places, 5 pages which were completely omitted from the present Staff Report), and made no such assertion that the supposed findings in connection with the Cease and Desist Order were now to be considered and/or were binding upon us. Indeed, had we not prepared a redline of the present Staff Report against the previous Staff Report yesterday, the Staff's breach of Ms. Haswell's previous representations, assurances, and agreement upon which we relied, and Staff's attempt to deny us a full, fair hearing and due process, might have escaped our notice until it was too late.

Accordingly, demand is hereby made upon the Commission, in the alternative, as follows:

A. That Staff delete and expunge entirely from the Staff Report any reference to, and desist from otherwise advocating the position and/or advising the Commission or any members thereof that, the supposed findings in connection with the Cease and Desist Order and/or that the Cease and Desist Order or such findings should have any effect whatsoever on the Commission's present consideration of the Application, including, but not limited, to a binding effect; that, insofar as that position or advice has previously been communicated to the Commission or any members thereof, they be advised that the Cease and Desist Order and the supposed findings therein may and should not have any effect on their consideration of the Application, and that they must consider and weigh fully our arguments, positions, and evidence submitted in connection with the Application and in response to the Staff Report; and that the hearing, presently scheduled for June 10, 2002, be continued until such time as a revised Staff Report is prepared consistent with the foregoing and timely supplied to us to enable a full response by us prior to a re-scheduled hearing on the Application; or

B. That this letter be considered a request pursuant to Section 13188 for rescission and/or modification of the Cease and Desist Order; that a hearing on this request be scheduled as soon as practicable after 1) notice is given to all persons who may have an interest in this request, including us, and 2) an opportunity is afforded for us fully to prepare a showing supporting such request; and that the hearing on the Application, presently

scheduled for June 10, 2002, be continued until such time as a Staff Report can be prepared in accordance with the determination at such hearing respecting rescission or modification of the Cease and Desist Order and is timely supplied to us to enable a full response by us prior to any re-scheduled hearing on the Application.

Please advise us promptly as to which alternative the Commission intends to elect, and/or how the Commission intends to proceed in light of the foregoing.

Thank you for your anticipated favorable response to this letter and its demands. Of course, nothing contained herein should be deemed to be nor is the waiver of any right, claim, remedy, or defense which my wife and I may have in respect of the Cease and Desist Order, the Application, or the matters discussed herein; all such things are expressly reserved.

Very truly yours,

Howard J. Rubinfeit

HJR:sk

cc: Abe G. Doherty, Headquarters Enforcement Officer, CCC
Sabrina Haswell, South Central Coastal Program Analyst, CCC
Peter Douglas, Executive Director, CCC
Steve Hudson, Enforcement Supervisor for Southern California District, CCC
Melanie Hale, South Central Permit Supervisor, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Amy Roach, Chief of Enforcement, CCC
Don Schmitz, Schmitz and Associates

SCHMITZ & ASSOCIATES

April 17, 2002

Sabrina Haswell
South Central Coastal Program Analyst, CCC
CALIFORNIA COASTAL COMMISSION
South Central Coast Area
89 South California Street, 2nd Floor
Ventura, CA 93001

Via Federal Express

RE: **APPLICATION 5-88-056 A1**
Cease and Desist Order No. CCC-01-CD-01; 25351 Pluma Road, Los Angeles County (Rubinroit)

Dear Ms. Haswell:

Prior to this matter being scheduled for hearing, our office was in the process of preparing a request to modify the cease and desist order pursuant to Section 13188 of Title 14, Division 5.5, Chapter 5, Subchapter 8 of the California Code of Regulations. Based on your representation that the applicant is no longer in violation of the cease and desist order, that the applicant's file is complete, and that the California Coastal Commission hearing can proceed with the information and documentation provided to date, we are no longer advancing our modification request.

Please advise us as soon as possible if this is not your understanding, should we need to proceed with our request to modify the cease and desist order. Your assistance in this matter is appreciated. Feel free to contact me at (310) 589-0773 should you have any further questions or comments.

Sincerely,
SCHMITZ & ASSOCIATES

Donald W. Schmitz II

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 82

XC Howard and Terry Rubinroit
Abe G. Doherty, Headquarters Enforcement Officer, CCC (enclosure)

29350 West Pacific Coast Highway • Unit 12 • Malibu, California 90265 • email: schmitzd@gte.net • 310.589.0773 • 818.889.2460 • 310.589.0353 Fax

May 29 02 10:36a SCHMITZ & ASSOCIATES 310 589 0353 p.2

Peter Douglas, Executive Director, CCC
Steve Hudson, Enforcement Supervisor for Southern California District, CCC
Melanie Hale, South Central Permit Supervisor, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Amy Roach, Chief of Enforcement, CCC
John Ainsworth, Permit Supervisor, CCC

May 29 02 10:37a SCHMITZ & ASSOCIATES 310 589 0353 p.3

May 31, 2002

JACK AINSWORTH, Permit Supervisor
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 South California Street, Suite 200
Ventura, Ca 93001
via Fed Ex

RE: **5-88-056-A1**
25351 PIUMA ROAD, CALABASAS, LOS ANGELES COUNTY
(APN 4456-37-007).

DEVELOPMENT OF A LIGHTED SPORTS COURT, SWIMMING POOL WITH SPA, APPURTENANT PUMP AND POOL EQUIPMENT, REVISED 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 THE POOL AND HOUSE, PROPANE ABOVE-GROUND STORAGE TANK (AST) WITH CONCRETE PAD, WATER AST, PATIO AREA WITH LANDSCAPING WALLS NEAR THE POOL, DECOMPOSED GRANITE ON EASTERN SIDE OF SPORTS COURT, SAND FILL FOR PLAY AREA EAST OF POOL, REMOVAL OF CONCRETE FROM EASTERN DRAINAGE-WAY, CAPPING OF GREY WATER OUTLET TO CONNECT TO SEPTIC, MASONRY PUMP ENCLOSURE FOR WATER TANK, SCREEN WALL FOR WATER TANK, RE-BURY PARTIALLY BURIED PVC PIPE AND IRRIGATION.

ENCLOSURES
Staff Report: Permit Amendment/Application No. 5-88-056-A1/June 10, 2002 Hearing
Redline comparison of Staff Report: Permit Amendment/Application No. 5-88-056-A1/June 10, 2002 Hearing versus Staff Report: Permit Amendment/Application No. 5-88-056-A1/May 07, 2002 Hearing

Dear Jack:

As discussed in our meeting today, you are considering preparing a new Staff Report to replace the one prepared for the June 10, 2002 hearing based on the inappropriate references to the Cease and Desist Order (CDO) given the representation by Sabrina Haswell, the assigned coastal staff analyst, that the CDO

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CCC-02-RO-01
EXHIBIT 7
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would have no effect on the subject application. The applicant's position has been expressly provided for in their letter addressed to you and dated May 29, 2002.

We are not amenable to merely an addendum to the subject staff report given that the Staff Report for the June hearing refers the reader to the CDO, relies on findings and defenses in the CDO, and makes statements on the alleged binding nature of the findings in the CDO. That Staff Report has already been circulated to the Commissioners. The "bell has already rung" and cannot be "unrung". Accordingly, unless a fully revised report is issued expunging those matters, and the Commissioners are clearly made aware that the CDO & its findings DO NOT and CANNOT apply, the applicants' ability for a full and fair hearing is unacceptably compromised because the CDO, and findings in connection with the CDO, should have no effect on the Commission member's consideration of the application.

A redline of the present staff report against the previous staff report has been prepared that demonstrates the extent of the variation between the two staff reports. Enclosed please find a copy of redlined current Staff Report and the current Staff Report with the references to the Cease and Desist Order highlighted for your convenience.

Your attention to this matter is appreciated and we formally request that inappropriate references and reliance on the CDO be deleted and expunged entirely and that a new report be written with respect to above-captioned application. Alternatively, we reiterate our rescission and/or modification of the CDO and the scheduling of a hearing on that request pursuant to Code Section 13188. Additionally, we request that the hearing presently scheduled for June 10, 2002 be continued until such time as the revised Staff Report is prepared consistent with the foregoing request and timely provided to the applicant for a full response.

Sincerely,
SCHMITZ & ASSOCIATES, INC.

Tracy Taylor for Donald Schmitz

Donald W. Schmitz II
President

XC Howard and Terry Rubinroit
Abe G. Doherty, Headquarters Enforcement Officer, CCC
Peter Douglas, Executive Director, CCC
Amy Roach, Chief of Enforcement, CCC
Lisa Haage, Assistant Chief of Enforcement, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Steve Hudson, Enforcement Supervisor, South Central District Office, CCC
Tom Sinclair, Enforcement Officer, South Central District Office, CCC
Melanie Hale, Permit Supervisor, South Central District Office, CCC

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WRITER'S DIRECT NUMBER
(213) 896-6602

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

June 4, 2002

VIA FACSIMILE and U.S. MAIL
Robin Jones
Law Clerk
McLain Hill & Associates
523 West Sixth Street
Suite 1128
Los Angeles, California 90014

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Robin:

As I mentioned in our telephone conversation today, we have received a response from Coastal Commission Staff to the letter which we sent to John Ainsworth on May 29, 2002, and forwarded to Commissioner McLain-Hill by copy of my letter to Laurie Newman of May 30, 2002. A copy of Staff's reply, dated June 4, 2002, is enclosed, as is (for Commissioner McLain-Hill's convenience) another copy of my letter of May 29, 2002.

Because I want to bring Staff's reply to Commissioner McLain-Hill's attention as promptly as possible, I have not had a chance to study the reply or formulate a full response (if appropriate). I would simply note that Staff mischaracterizes my May 29, 2002 letter as constituting an attempt to commence a proceeding under Section 13188, and then glibly suggests that the attempt was unsupported and therefore can be denied. Any fair reading of my letter reveals that it was notice of alternative demands, the second of which involved our intention to commence a proceeding under Section 13188 after notice was given and "an opportunity [was] afforded for us to fully prepare a showing supporting such request . . . ." The Staff's handling of that request, in addition to being wrong on the law as we will demonstrate, is as clear evidence of Staff's disregard of (and apparent disdain for) due process and its own regulations as one could possibly provide.[1]

[1] Likewise, Staff's attempt to imply that the letter to Sabrina Haswell was not sent by our representative, Don Schmitz, since Mr. Doherty supposedly did not receive a copy, is also at best

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

I appreciate your bringing my earlier letter and this letter to the attention of Commissioner McLain-Hill.

Very truly yours,

Howard J. Rubinroit

HJR:sk

cc: Laurie Newman, Senior Field Representative
Laura Shell, Supervisor's Deputy
John Ainsworth, Permit Supervisor
Abe Doherty, Headquarters Enforcement Officer
Don Schmitz

---

misleading. Enclosed is a copy of the confirmation of the delivery to Ms. Haswell of the April 17, 2002 letter from Mr. Schmitz.

STATE OF CALIFORNIA—THE RESOURCES AGENCY GRAY DAVIS, Governor
CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

(VIA FAX TO 213 896-6600
and REGULAR and CERTIFIED MAIL ARTICLE NO. 7001 2510 0009 2080 8506)

June 4, 2002

Howard and Terry Rubinroit
c/o Howard J. Rubinroit
Sidley & Austin
555 West Fifth Street
Los Angeles, CA 90013

Subject: **Application CDP 5-88-056-A1; Cease and Desist Order CCC-01-CD-01; 25351 Piuma Road, Los Angeles County**

Dear Mr. Rubinroit:

The purpose of this letter is to respond to your letter dated May 29, 2002 to John Ainsworth. In this letter, you request to commence a proceeding to rescind or modify Cease and Desist Order CCC-01-CD-01. Alternatively, you request that the staff modify the staff report for CDP 5-88-056-A1 by deleting any references to the binding nature of the findings for the Cease and Desist Order and including responses to various arguments that you raised during the application process that were already addressed in the Cease and Desist Order. You also request a continuance of the June 10, 2002 hearing for application CDP 5-88-056-A1 regarding the after-the-fact development that is the subject of the Cease and Desist Order. As discussed in the following paragraphs, the Executive Director has denied the requests for (a) rescission or modification of the Cease and Desist Order and (b) modification of the staff report for CDP 5-88-056-A1. As discussed on page three of this letter, postponement of the hearing for CDP 5-88-056-A1 is subject to the Commission's discretion.

Request for Rescission or Modification of the Cease and Desist Order

In your letter dated May 29, 2002 you request that "this letter be considered a request pursuant to Section 13188 for rescission and/or modification of the Cease and Desist Order; that a hearing on this request be scheduled as soon as practicable. . ." Section 13188 of the Commission's regulations states: "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**" (emphasis added).

To support your request for rescission or modification of the Cease and Desist Order, you make the following broad statement: "many, if not most, of the supposed findings made by the Commission in connection with the Cease and Desist Order were, inter alia, absolutely

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

unsupported by any evidence contained in the Commission's files". This statement fails to meet the requirement for commencing a proceeding to rescind or modify a Cease and Desist Order because you have not identified any material change in the facts upon which the order was issued. Rather, you identify why you believe the Commission's decision, based on the evidence before it, was wrong.

You also make one specific argument regarding the need to modify or rescind the Cease and Desist Order. You argue that the Cease and Desist Order findings state that grading occurred in connection with the 1996 development and that there is evidence that this grading occurred prior to 1996. The Commission had already considered this argument and still decided to issue the Cease and Desist Order. The adopted findings for the Cease and Desist Order include the following statement: "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" (page 31). Therefore, your argument does not identify a material change in the facts upon which the order was issued. As a result, the Executive Director has rejected your request to commence proceedings to rescind or modify the Cease and Desist Order.

In your May 29, 2002 letter, you refer to an attached letter dated April 17, 2002 that was sent by Don Schmitz to Sabrina Haswell. Although I am listed as a recipient of the April 17, 2002 letter, I have no record of having received a copy of this letter until May 29, 2002 when you faxed it to me. In the April 17th letter, Mr. Schmitz wrote to Ms. Haswell: "Based on your representation that the applicant is no longer in violation of the cease and desist order, that the applicant's file is complete, and that the California Coastal Commission hearing can proceed with the information and documentation provided to date, we are no longer advancing our modification request." Mr. Schmitz is referring to the fact that Ms. Haswell had stated that the Commission staff agreed to file the Rubinroit's permit application as complete and schedule it for a hearing before the Coastal Commission, even though the Rubinroits were unwilling to provide certain items that the Cease and Desist Order listed as required parts of their permit application. In a letter to Don Schmitz on January 29, 2002, I stated that the failure to submit the items identified in the Cease and Desist Order as being necessary to complete the amendment application is a continuing violation of the Cease and Desist Order. I also stated the following: "If the development had not yet occurred, staff would not file the application until we had received these items. However, the development has already taken place and staff is interested in moving towards resolution of the violation. Therefore, rather than initiate litigation to enforce the Cease and Desist Order at this time, Commission staff has decided to process the application and schedule it for a hearing without the information." These statements in my letter represent the Commission staff's position on your lack of compliance with the Cease and Desist Order.

In your May 29th letter, you state that you did not previously submit a request to modify or rescind the Cease and Desist Order in reliance upon your assertion that Ms. Haswell represented to your agent Don Schmitz that the Cease and Desist Order would have no effect on the amendment application. This asserted representation reflects the fact that the Commission's staff recommendation regarding the proposed development is based solely upon an analysis of the Chapter Three policies of the Coastal Act. The Commission's responses to your arguments were

removed from the staff report for CDP 5-88-056-A1 since they had already been addressed in the findings for the Cease and Desist Order which are now final and binding. The issues resolved in the Cease and Desist Order findings include whether development that requires a coastal development permit occurred on your property. The staff report on your pending permit amendment application addresses the issues of whether the development you propose in the amendment complies with the Chapter Three policies of the Coastal Act.

Request for Modification of CDP 5-88-056-A1 Staff Report

In your May 29, 2002 letter, you request that:

> *Staff delete and expunge entirely from the Staff Report any reference to, and desist from otherwise advocating the position and/or advising the Commission or any members thereof that, the supposed findings in connection with the Cease and Desist Order and/or that the Cease and Desist Order or such findings should have any effect whatsoever on the Commission's present consideration of the Application, including, but not limited, to a binding effect. . . that they must consider and weigh fully our arguments, positions, and evidence submitted in connection with the* (CDP 5-88-056-A1) *Application and in response to the Staff Report . . .*

The findings for the Cease and Desist Order include responses to nineteen arguments that you raised in your Statements of Defense that you submitted prior to the hearing for the Cease and Desist Order. Subsequent to the issuance of the Cease and Desist Order, you did not apply for a writ of mandate or stay of the Cease and Desist Order pursuant to Section 30801 or 30803(b) of the Coastal Act. Therefore, the Cease and Desist Order findings are final and binding and the staff report for CDP 5-88-056-A1 does not address those arguments which were rejected by the Commission in the Cease and Desist Order findings. During the hearing for CDP 5-88-056-A1, the Commission's staff will advise the Commissioners to not consider the arguments which they already rejected in the adopted findings for the Cease and Desist Order.

Request for Continuance of Hearing for Application CDP 5-88-056-A1

As you know, your permit amendment application was previously scheduled for a hearing in May 2002 and you requested a postponement, which was granted. Pursuant to Section 13073(a) of the Commission's regulations, the Commission staff already granted you your one right to postpone the hearing for CDP 5-88-056-A1. The Coastal Commission staff cannot agree to another postponement, however; whether the hearing will be postponed again is, pursuant to Section 13073(b), subject to the Commission's discretion. Therefore, your request for a postponement will be presented to the Commission when it considers application CDP 5-88-056-A1 on June 10, 2002. Your request for postponement of the hearing was based upon your requests for commencement of a proceeding to rescind or modify the Cease and Desist Order or to modify the staff report for CDP 5-88-056-A1. Since the Executive Director has determined that there is no sound justification for these actions, both of these requests have been rejected and the Commission staff will recommend that the Commission not postpone the hearing.

If you have any questions, feel free to call me at (415) 904-5297.

Sincerely,

Abe G. Doherty

Abe G. Doherty
Headquarters Enforcement Officer

Cc: Don Schmitz, Schmitz and Associates (via fax to 310 589 0353 and CERTIFIED MAIL Article No. 7001 2510 0009 2080 8490)
John Ainsworth, Permit Supervisor, South Central District Office
Amy Roach, Chief of Enforcement
Lisa Haage, Assistant Chief of Enforcement
John Bowers, Staff Counsel
Sandy Goldberg, Staff Counsel
Steve Hudson, Enforcement Supervisor, Southern Districts
Tom Sinclair, Enforcement Officer, South Central District Office
Laurie Newman, Office of the Honorable Sheila J. Kuehl
Laura Shell, Deputy for Supervisor Zev Yaroslavsky

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STATE OF CALIFORNIA - THE RESOURCES AGENCY GRAY DAVIS, Governor
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

By Telecopy and Mail

June 5, 2002

Donald W. Schmitz II
Schmitz & Associates
29350 West Pacific Coast Highway
Unit J2
Malibu, CA 90265

Re: Permit Amendment Application 5-88-056-A1 (Rubinroit)

Dear Mr. Schmitz:

I am writing in response to your letter dated May 31, 2002, which I received on June 4, 2002. The requests in your letter were already addressed in a letter to Mr. Rubinroit from Abe Doherty, Coastal Commission Enforcement Officer, dated June 4, 2002. As stated in Mr. Doherty's letter, the Commission staff does not believe that the revisions you requested to the Staff Report dated May 20, 2002 on the above-referenced permit amendment application are required or appropriate. The Commission staff also does not agree to postpone the hearing on the amendment application again. However, the applicants may ask the Coastal Commission to postpone the matter at the hearing on June 10th. Mr. Doherty's June 4th letter to Mr. Rubinroit addresses these issues in more detail.

Sincerely,

John Ainsworth
Supervisor, Regulation and Planning

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

6 June 2002

Abe G. Doherty, Headquarters Enforcement Officer
CALIFORNIA COASTAL COMMISSION
45 Fremont Street Suite 2000
San Francisco, Ca 94105-2219

SENT VIA FASCIMILE AND FEDERAL EXPRESS

RE: **APPLICATION 5-88-056 A1**
Cease and Desist Order No. CCC-01-CD-01; 25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Doherty:

We are in receipt of your letter dated 4 June 2002, and I am deeply disturbed by the letter's inaccuracies as to both the record and this offices' actions, and the cavalier disregard of the Executive Director's responsibility vested in staff under 13188 (b) (3) of the Coastal Commission's (CCC) administrative regulations.

You assert in your letter that the applicants have failed to demonstrate to the executive director's satisfaction that there has been a material change in the facts upon which the order was issued. In so doing, you completely ignore that the request for the continuance of the 10 June 2002 hearing was necessitated by staff's last minute elimination of large segments of the previous month's staff report, as staff asserted for the first time that the supposed findings made in context of the cease and desist order are binding in the context of the present application. You also disregard the clear demand in the applicant's continuation request that they be provided the opportunity to make the showing, which you claim they have failed to make.

You have effectively maneuvered the applicant's into an impossible situation; staff recommends that the CCC deny parts of their project predicated upon findings in the Cease and Desist Order (CDO), which your offices dissuaded them from modifying months ago when there was ample time to do so.

I would remind you that you erroneously asserted to the CCC in both the CDO report, and in your presentation to the CCC at the public hearing, that the Rubinroits had **graded** the landform upon which the sports court is located to within five (5) ft. of the blue line stream located to the North of the subject property.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 26

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Subsequent to the adoption of the CDO the Rubinroits hired this firm, and we supplied you with surveys, civil engineering plans, geology and soils reports, and biota reports, all from licensed and well-credentialed experts respected in their fields. Despite the fact that you, and the CCC, were relying on nothing more than your less than expert opinion, you continued to stubbornly insist, both in writing and orally, that there was significant grading that took place to create the topographic feature upon which the sports court is located. Worse, you constantly warned the applicants that they were "in violation of the CDO" for not providing the CCC with the grading you insisted took place.

When we walked the site together on May 9th, and the obvious fact was in front of you and irrefutable, you finally admitted what had been so thoroughly documented at great expense to the Rubinroits:

1. The sports court sits upon a massive igneous rock outcrop, not a graded and created hill,

2. The "graded slope" five (5) ft. from the stream you incorrectly identified to the CCC is in fact a natural rock face of that outcrop,

3. The stream bed is adjacent to that natural rock outcrop, and is <u>not</u> located on the property,

4. The sports court is constructed over 65 ft from the stream, not five (5) ft. as you reported.

In fact you informed me in the field that your previous erroneous opinion was based upon some sand that you saw on the side of the outcropping, which served to confuse you into thinking that the entire hillside had been graded.

We are all human Abe, and make mistakes. However, your stubborn insistence for months that all the experts were wrong, and you were correct, has cost the Rubinroits many thousands of dollars. More importantly, I am amazed that you can suggest that there is not "material change in the facts upon which the order was issued".

"Graded slopes" that are in fact natural slopes? Development within five (5) ft. of a blue line stream that is in fact at least 65 ft.? These are not material changes?

Of course they are.

It is incontrovertible that the CDO report was glaringly wrong about the location of the creek, the location of the "ESHA", the location of the development, the fact that there was no grading or development within five ft. of the creek, and even wrong about the location of the property line!

To assert that this isn't a "material change in the facts" is beyond intellectually dishonest; it is an abuse of the trust and authority vested in the staff by the legislature, the CCC itself, and the public.

CONTINUANCE

The request for the continuance by the applicants is necessary because staff seeks to use the CDO as a basis for denial of portions of their project. I nearly fell out of my chair when I read your "analysis" on page two of your letter as it pertains to our decision previously NOT to amend the CDO.

The letter from my office to Sabrina Haswell dated 17 April 2002 was sent to your offices in San Francisco by U.S. mail, and the law presumes it was delivered in the ordinary course. Further, our letter was received return receipt by Sabrina herself in the Ventura office. If you are failing to coordinate matters within your agency that should not be the basis for punishing the applicants.

Most amazing was your statement that "Mr. Schmitz is referring to the fact that Ms. Haswell had stated that the Commission staff agreed to file the Rubinroit's permit application as complete and scheduled it for a hearing before the Commission, even though the Rubinroits were unwilling to provide certain items that the Cease and Desist Order listed as required parts of their permit application".

Really! How did you conclude all that Abe, including what I was referring too? You didn't ever speak to me about it. Are you clairvoyant? Clearly you are not, because I was in no way referring to staff's decision to proceed to the hearing without local approval in concept in my letter of April 17th. I was referring to the fact Ms. Haswell told me the modification to the CDO would not be necessary.

How do you know exactly what Ms. Haswell said to me? Did you discuss this with her previously (as she is now out of the office on extended medical leave)? If you discussed this matter with Ms. Haswell before, your obvious attempt to discredit our previous correspondence on the 17th as "not being received" is disingenuous, because if you spoke to her before, you were "in the loop". And if you have not spoken to her, I must conclude you read Ms. Haswell's mind as well.

What exacerbates this entire issue is that you are completely wrong in repeating your unsupported and unsupportable conclusions.

Allow me to outline for you the actual sequence of events as they pertain to the modification request for the CDO.

In our frustration in dealing with your repeated assertions that we "were refusing to submit grading plans" (for grading that never occurred), which was based upon your mistakes in drafting the CDO report, I approached Mr. John Bowers at the

CCC hearing in Monterey on 6 March 2002. Mr. Bowers graciously and politely provided direction to this office, and indicated that if the CDO was "materially incorrect" then we should rectify the situation by filing a modification application for the CDO. This office began immediately compiling the submittal packet for amending the CDO, and in fact informed you of our intention to do so on 20 March 2002 in a telephone conversation.

Some time subsequent to our conversation, you discussed the matter with Ms Haswell and she informed me of the same. She also informed me that our seeking the amendment of the CDO would no longer be necessary, due to the fact that we had submitted the supporting documentation in our CDP application, to which we followed up with a confirmation letter on 17 April 2002 (copy enclosed for reference).

Had Ms, Haswell, you, or anyone else questioned or corrected our statement in the April 17th letter that Ms. Haswell said we need not proceed with amending the CDO, we would have reinstated and fully supported our request for modification or expungement of the incorrect CDO findings. Instead, you "discover" the 17 April letter the week before the hearing when the applicant has no right to continue the matter, and refuse to recommend to the CCC to continue the hearing.

To state your position is to demonstrate its absurdity. How would the Rubinroit's come into compliance with the CDO? Should they look for licensed professionals willing to fabricate grading plans consistent with the documented erroneous positions you put into the CDO report?

It is entirely appropriate that we can professionally disagree on what is the correct level of development on the applicant's property consistent with the Chapter 3 policies of the coastal act. What is entirely inappropriate, and, indeed, a denial of due process as well as a lack of fairness, is for staff to achieve its insufficient and unsupportable position on this important matter by sponsoring findings that staff knows for a fact to be incorrect. Denying the applicant use of their property based upon the findings of a factually incorrect CDO is unconscionable.

Of course, the previously incorrect and unsupported "findings" in connection with the CDO can have no effect here, and cannot be used to support the findings the Commission is required to make as to the permit application based on the showing in connection with the application.

In any event, however, should the CCC continue this matter at the hearing on the 10th of June, we will submit our application packet to modify the findings of the CDO within one week. The CCC should be able to schedule a hearing on the modification request by the July or August hearing at the latest. As the 180th day for this application is not until 7 October 2002, there should be ample time to hear

both the amendment to the CDO, and the subject permit application within all statutory limitations.

I urge you and your superiors to reconsider the stated position in your 4 June 2002 letter. If ever there was a written record that needed "house cleaning", this is it.

We look forward to your written reply as soon as practical.

Sincerely,
SCHMITZ & ASSOCIATES

Donald W. Schmitz II

XC Howard and Terry Rubinroit
Peter Douglas, Executive Director, CCC
Steve Hudson, Enforcement Supervisor for Southern California District, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Sandy Goldberg, Staff Counsel
Amy Roach, Chief of Enforcement, CCC
Lisa Haage, Assistant Chief of Enforcement
John Ainsworth, Permit Supervisor, CCC
Tom Sinclair, Enforcement Officer, South Central District Office
Sabrina Haswell, South Central Coastal Program Analyst, CCC
Laurie Newman, Office of the Honorable Sheila J. Kuehl
Laura Shell, Deputy for Supervisor Zev Yaroslavsky

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WRITER'S DIRECT NUMBER
(213) 896-6602

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

June 5, 2002

By Federal Express
The Honorable William A. Burke
Coastal Commissioner
11110 West Ohio Avenue, Suite 100
Los Angeles, California 90025

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Burke:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the hearing on the Application, scheduled for this Monday, June 10, 2002, you will favorably consider our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

LAI 433578v1

SIDLEY AUSTIN BROWN & WOOD LLP

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WRITER'S DIRECT NUMBER
(213) 896-6602

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

June 5, 2002

By Federal Express
Ms. Joan Dean
Assistant Deputy Secretary
California Trade & Commerce Agency
750 B Street, Suite 1830
San Diego, California 92101

Re: Coastal Commission Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. Dean:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
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Don Schmitz

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LAI 433578v2

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

June 5, 2002

By Federal Express
The Honorable Christina L. Desser
Coastal Commissioner
2151 Pacific Street
San Francisco, California 94115

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. Desser:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

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LA1 433578v1

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hrubinroit@sidley.com

June 5, 2002

By Federal Express
The Honorable Shirley S. Dettloff
Coastal Commissioner
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. Dettloff:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

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hrubinroit@sidley.com

June 5, 2002

By Federal Express
The Honorable Gregg A. Hart
Coastal Commissioner
City of Santa Barbara, City Hall
P.O. Box 1990
Santa Barbara, California 93102

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Hart:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
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June 5, 2002

By Federal Express
The Honorable Patrick Kruer
Coastal Commissioner
The Monarch Group
7727 Herschel Avenue
La Jolla, California 92037

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Kruer:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the hearing on the Application, scheduled for this Monday, June 10, 2002, you will favorably consider our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

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June 5, 2002

By Federal Express
The Honorable Patricia McCoy
Coastal Commissioner
City of Imperial Beach
132 Citrus Avenue
Imperial Beach, California 91932

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. McCoy:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
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June 5, 2002

By Federal Express
The Honorable Pedro Nava
Coastal Commissioner
Huskinson, Brown & Nava
1231 State Street, Suite 200
Santa Barbara, California 93101

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Nava:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the hearing on the Application, scheduled for this Monday, June 10, 2002, you will favorably consider our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

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hrubinroit@sidley.com

June 5, 2002

By Federal Express
Pat Neal
Deputy Secretary
Business, Transportation & Housing Agency
980 9th Street, Suite 2450
Sacramento, California 95814-2719

Re: Coastal Commission Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. Neal:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the Commission hearing on the Application, scheduled for this Monday, June 10, 2002, you will encourage the Commission to grant our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

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SIDLEY AUSTIN BROWN & WOOD LLP

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WRITER'S DIRECT NUMBER
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May 30, 2002

By Facsimile and U.S. Mail
Laurie Newman
Senior Field Representative
Office of the Honorable Sheila J. Kuehl
10951 West Pico Boulevard
Los Angeles, California 90064

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Laurie:

Thank you for hearing me out concerning what I believe to be the terribly unfair treatment my wife and I have been receiving from the Coastal Commission Staff. I am enclosing a letter which I wrote yesterday to John Ainsworth, Permit Supervisor, concerning the latest example of our inability to receive a fair and unbiased consideration on the merits (and not incidentally due process) as to our request for a Coastal Development Permit Amendment.

I understand that the time is short before the presently scheduled June 10 hearing on our Application. I believe that under the circumstances described in the letter, a continuance of the hearing is required and should be granted. But my past experience does not cause me to have high expectations in that regard. I will take your suggestion and attempt to speak with Commissioner Cynthia McClain-Hill and Laura Shell of Zev Yaroslavsky's office. We would be appreciative if there is anything you and the Senator can do to help assure that we have a chance of being treated fairly and reasonably concerning our situation.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosure
cc: Cynthia McClain-Hill, Commissioner
Laura Shell, Supervisor's Deputy
John Ainsworth, Permit Supervisor (w/o enclosures)

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

SIDLEY AUSTIN BROWN & WOOD LLP

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June 5, 2002

By Federal Express
Mary D. Nichols, Secretary
Michael Sweeney, Undersecretary
Resources Agency
1416 Ninth Street, Room 1311
Sacramento, California 95814-5570

Re: Coastal Commission Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. Nichols and Mr. Sweeney:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
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(213) 896-6602

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

June 5, 2002

By Federal Express
The Honorable Dave Potter
Coastal Commissioner
County of Monterey, District 5
1200 Aguajito Road, Suite 001
Monterey, California 93940

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Potter:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
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hrubinroit@sidley.com

June 5, 2002

By Federal Express
The Honorable Mike Reilly
Coastal Commissioner
County of Sonoma
575 Administration Drive, Room 100
Santa Rosa, California 95403-2887

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Reilly:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the hearing on the Application, scheduled for this Monday, June 10, 2002, you will favorably consider our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
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June 5, 2002

By Federal Express
Paul Thayer, Executive Officer
Dwight Sanders, Chief EPM
State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, California 95825-8202

Re: Coastal Commission Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Messrs. Thayer and Sanders:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the Commission hearing on the Application, scheduled for this Monday, June 10, 2002, you will encourage the Commission to grant our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
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June 5, 2002

By Federal Express
Sara J. Wan, Chairperson
California Coastal Commission
22350 Carbon Mesa Road
Malibu, California 90265

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Ms. Wan:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

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Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
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LAI 433578v1

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June 5, 2002

By Federal Express
The Honorable John Woolley
Coastal Commissioner
Board of Supervisors
825 5th Street
Eureka, California 95501-1153

Re: Application 5-88-056 A/1;
25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Woolley:

I and my wife are the Applicants as to the above Application. We have serious concerns about what we believe to be the Staff's attempts to deprive us of due process and a fair hearing. In that regard, we are enclosing copies of recent correspondence between us, our representative, Don Schmitz, Staff, Senator Kuehl's office, and Commissioner McLain-Hill's office, all of which we believe is self explanatory and demonstrates the bases of our concerns.

Accordingly, we hope and expect that if you are involved in the hearing on the Application, scheduled for this Monday, June 10, 2002, you will favorably consider our request for a continuance so that the due process issues respecting the Application may be appropriately addressed.

Very truly yours,

Howard J. Rubinroit

HJR:sk
Enclosures
cc: Cynthia McClain-Hill, Commissioner (w/o enclosures)
Laurie Newman, Senior Field Representative (w/o enclosures)
Laura Shell, Supervisor's Deputy (w/o enclosures)
Abe Doherty, Headquarters Enforcement Officer
John Ainsworth, Permit Supervisor
Don Schmitz

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

LAI 433578v1

EXHIBIT B

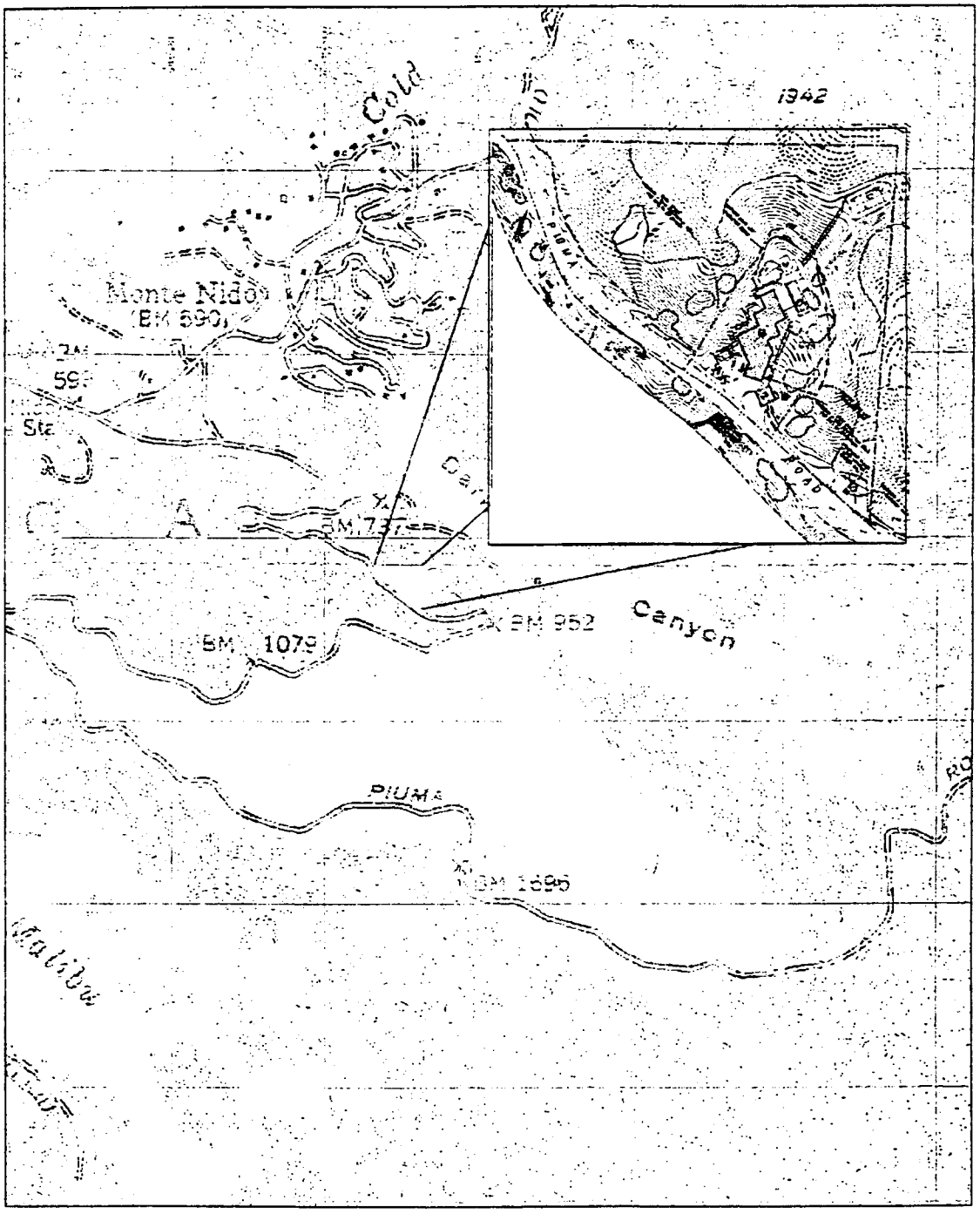
REGARDING: APPLICATION NO. 5-88-056-A1

ITEM NO.: 6A

PROJECT LOCATION: 25351 PIUMA ROAD, CALABASAS (Los Angeles County)

APPLICANT: HOWARD AND TERRY RUBINROIT

REPRESENTATIVE: SCHMITZ & ASSOCIATES



CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

June 6, 2002

California Coastal Commission
South Central Coast Area
89 South California Street, 2nd Floor
Ventura, CA 93001

ATTENTION: California Coastal Commissioners

REGARDING: APPLICATION NO. 5-88-056-A1

ITEM NO.: 6A

PROJECT LOCATION: 25351 PIUMA ROAD, CALABASAS (Los Angeles County)

APPLICANT: HOWARD AND TERRY RUBINROIT

REPRESENTATIVE: SCHMITZ & ASSOCIATES

Dear Commissioners,

We are responding to the California Coastal Commission South Central Coast Area Staff Report and recommendations dated 5/20/02 (hereinafter "Staff Report") for the hearing scheduled on 6/10/02. We respectfully submit the following, among other items we have and are submitting to staff and/or for the record, to address the Staff Report and the environmental and visual concerns raised therein.

We herewith request that you overrule Staff's recommendation to partially deny the applicant's proposal and, fully approve the project as proposed (or subject to the reasonable conditions proposed herein) specifically: ALLOW RETENTION OF THE SPORTS COURT, STAIRWAY TO THE SPORTS COURT, DECOMPOSED GRANITE ON THE EASTERN SIDE OF THE SPORTS COURT; AND ELIMINATION OF THE CONDITIONS RELATING TO LANDSCAPING AND FUEL MODIFICATION PLANS, EROSION CONTROL PLAN, RELOCATION OF THE WATER STORAGE TANK, AND INSTALLATION OF A SEPARATE WATER METER FOR THE POOL AND SPA.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

29350 West Pacific Coast Highway • Unit 12 • Malibu, California 90265 • email: schmitzd@gte.net • 310.589.0773 • 818.889.2460 • 310.589.0353 Fax

THE PROJECT AS PROPOSED, OR SUBJECT TO REASONABLE CONDITIONS DISCUSSED HEREIN, IS CONSISTENT WITH THE COASTAL ACT - SPECIFICALLY SECTIONS 30253, 30107.5, 30230, 30231, 30240, 30251 AND 30604.

➢ **THE APPLICANTS' RELIED ON THE AUTHORITY OF THE COUNTY OF LOS ANGELES IN DEVELOPING THEIR PROJECT**

- The applicants' were advised by the County of Los Angeles Building Department and themselves believed that no Coastal Development permit was required.

- The proposed development was fully permitted by the County of Los Angeles Building Department, Los Angeles County Department of Regional Planning, Los Angeles County Department of Building and Safety, Los Angeles County Environmental Health Department, and the Los Angeles County Fire Department. (Exhibit 1) Therefore, the proposed development is consistent with Section 30253 of the Coastal Act.

- **A grading plan was not required by the County, because no grading was required or performed** for the swimming pool, carport, or sports court except for excavation of the swimming pool. (See Exhibits 2 and 3). Therefore, the proposed development is consistent with Section 30253 of the Coastal Act.

➢ **A BLUELINE STREAM *IS NOT* WITHIN 5-FEET OF THE NORTHERN PORTION OF THE SPORTS COURT**

- Coastal staff visited the site on May 9, 2002 and observed that a blueline stream ***is not*** within 5-feet of the northern portion of the sports court as had been previously reported to the CCC in the cease and desist order and previous staff report. Therefore, the proposed development is consistent with Section 30107.5, 30230, 30231, 30240 of the Coastal Act.

- The blueline stream is located **65-feet or greater** to the northeast of the sports court. This statement is supported in the form of a biota report prepared by the project biologist and engineer. (See Exhibits 4, 5 and 6) Therefore, the proposed development is consistent with Section 30107.5, 30230, 30231, 30240 of the Coastal Act.

➢ **THE PROPERTY IS NOT WITHIN OR ADJACENT TO AN ESHA.**

- The property is <u>not</u> located within, or in the vicinity of an area that is an ESHA, mapped or otherwise. The ***Dark Canyon*** ESHA recognized by the Commission is in actuality located approximately 500-feet north of the sports court. (See Exhibit 5 and 6).

- There are no habitat values on or adjacent to the property to support a classification of ESHA, and there are no oak trees on the property as evidenced by the survey and biologist's report. (See Exhibits 4, 5, 6) Thus, the proposed development is consistent with Section 30107.5, 30230, 30231, 30240 of the Coastal Act.

- The applicant has provided expert analysis from a biologist, civil engineer and geologist that the proposed development will not harm any ESHA, while staff has failed to provide any evidence to support their assertion that development would. (See Exhibits 4, 5 and 7)

➢ **NO FILTRATION ISSUES**

- There is no filtration issue with respect to the steps given that there is no negative impact on rainwater infiltration, and indeed positive impact. (See Exhibit 4, 5 and 7) The proposed development is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

LOCAL APPROVALS RECEIVED: The subject property has received all of the necessary local approvals for the proposed and existing development:

1) L.P. Gas Storage and Dispensing permit issued by the County of Los Angeles Fire Department for the "propane above-ground storage tank (AST) with concrete pad, which has been on-site since the house was completed in 1990;

2) County Health Services permit for the well and accompanying storage tank constructed in current location in 1988;

3) Certification from the County of Los Angeles Fire Department that brush clearance has been performed in compliance with county fire codes;

4) Approval from Los Angeles County Building and Safety Department of Public Works for building plans with the pool, sports court and carport (retaining wall);

5) Approval from Department of Public Works for Los Angeles County drainage approval dated 1/25/96 for building plans with the pool, sports court and carport (retaining wall);

6) Los Angeles County Department of Public Works Geology approval of geotechnical report entitled "Limited Geotechnical Investigation for Proposed Swimming Pool and Carport" and building plans with the pool, sports court and carport (retaining wall);

7) Los Angeles County Environmental Health approval for the pool and spa addition;

8) Los Angeles County Environmental Health approval for as-built location of pool and spa;

9) Building permit for retaining wall issued by County of Los Angeles Department of Public Works;

10) Los Angeles County Fire Department approval of building plans with the pool, sports court and carport (retaining wall);

11) Los Angeles County, Regional Planning, Approval in Concept for the proposed project.

12) Los Angeles County Fire Department Approval

13) Los Angeles County, Geologic Review, Approval in Concept

14) Coastal Development Permit 5-88-056.

PAD WERE ORTS COURT IS NOW

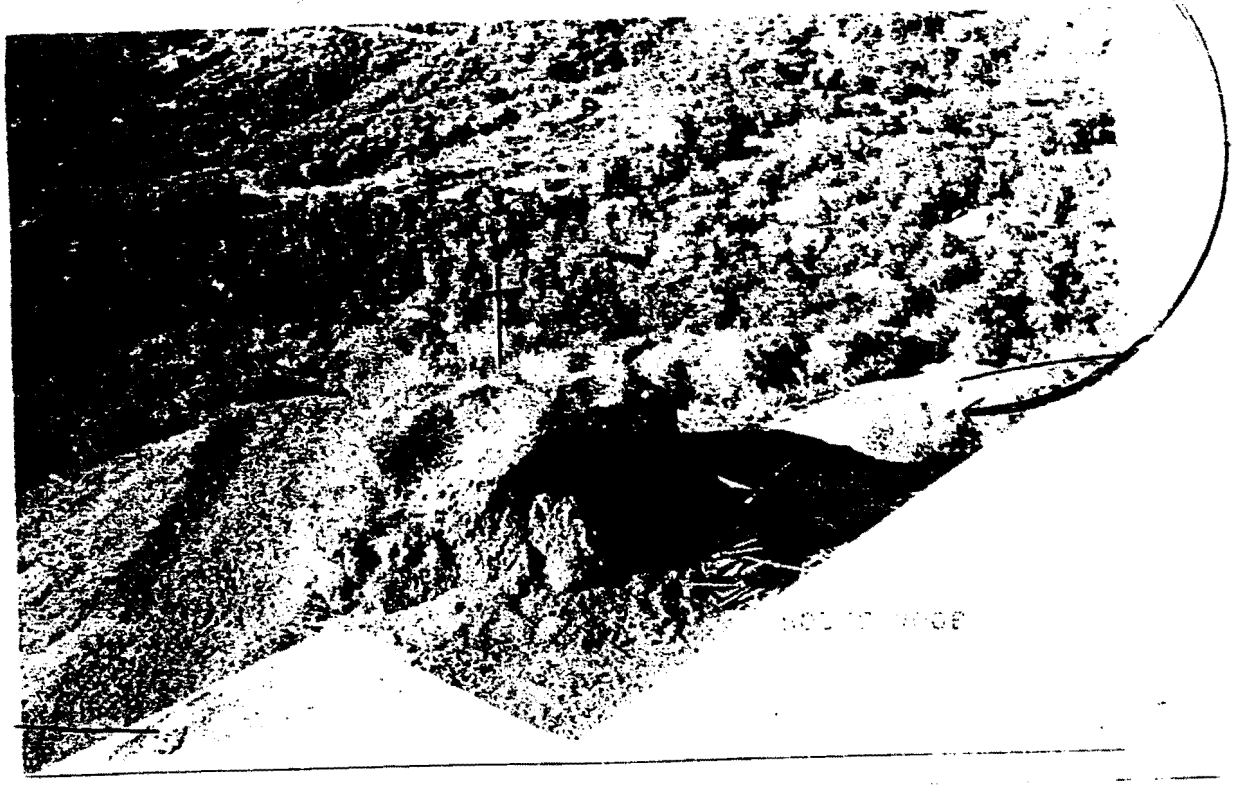


Photo taken in 1989 during construction pursuant to CDP 5-88-056

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Declaration of Jack Moses

I Jack Moses, the undersigned, declare:

1. I am, and since 1980 have been, a licensed architect who has designed and built numerous types of structures, including most especially single-family homes, in both the State of Illinois and the greater Los Angeles, California area. Among other things, I designed and oversaw the construction of a residence at 25351 Piuma Road, County Malibu, commencing in the late 1980's and concluding in February, 1990, when it was purchased by Howard and Terry Rubinroit (the "Rubinroits"). I know all of the following of my own personal knowledge, and, if called and sworn as a witness, could and would competently testify thereto.

2. In or about 1986, I, along with my wife Annie, and Ron and Margo Landry (the "Landrys"), acquired the property located at 25351 Piuma Road, County Malibu (the "Property"). I prepared all of the design and architectural drawings, including specifications, for a single-family home and attendant improvements to be built on the Property (the "Residence"). I also was principally responsible for obtaining or arranging to obtain necessary entitlements and approvals. Among other things, I interfaced with and obtained approvals from the Los Angeles County Department of Building and Safety and various of its constituent divisions (including the geology division), the Los Angeles Fire Department, and the County of Los Angeles Department of Health Services. Each and every approval which was required for preparing the Property for development and building the Residence and attendant improvements were applied for and granted to us.

3. Among other things, my wife and I, along with the Landrys, applied for and received a Coastal Development Permit ("CDP") from the California Coastal Commission (the "Commission") to develop the Property and the Residence. In that connection, we engaged

the Land and Water Company (Lynn J. Heacox) to act as our authorized agent. Attached hereto as Exhibit A, and incorporated herein by this reference, is a true and correct copy of the Application for a CDP ("Application") we submitted concerning development of the Property and Residence (without exhibits). Attached hereto as Exhibit B is a true and correct copy of the CDP (without exhibits) issued for development of the Property and Residence by the Commission in or about Fall of 1988.

4. At the time we acquired the Property in or about 1986, it had already been graded, so that there existed a large pad adjacent to Piuma Road which could accommodate a house to be constructed downslope from Piuma Road (the "House Pad"); a second pad westerly of the house pad and also adjacent to Piuma Road (the "Piuma Pad"); and a third pad in an area approximately 50 feet below the house pad, adjacent to a drainage channel which ran from Piuma Road (the "Lower Pad").

5. Extensive geological and geotechnical investigation and testing was performed by California Geo/Systems in late 1987 and early 1988 in preparation for developing the Property. I was advised by them, among other things, that grading of the Property had already occurred at or about the time and as a result of Piuma Road being constructed in the area of the Property, and that the fill existing on the Property was composed principally of "roadway fill" deposited by County workers at that time; that stability analysis of the roadway fill "indicate[d] a safety factor exceeding the required 1.5 and 1.1 static and seismic minimums;" and that "[n]o grading [was] proposed" or was necessary in connection with constructing the Residence. Attached hereto collectively as Exhibit C are true and correct copies of the two California Geo/System's Reports (without exhibits), dated January 19 and April 19, 1988, respectively, providing such advice.

6. As a result of Geo/Systems' investigation and conclusions, the Application advised that no grading was required or would be performed in connection with the development of the Property or construction of the Residence. See, Exhibit A, p. 4. The Geo/System Reports (Exhibit C) were provided to the Commission in connection with the Application. The CDP issued by the Commission cited to the Geo/System Report's findings and conclusions, and acknowledged the fact that grading had already occurred on the Property, and that the only grading which would be performed was "minor grading of less than 50 cubic yards" for driveway access. See, Exhibit B, p. 3. And, in fact, the only grading performed in connection with development of the Property and construction of the Residence was minor grading in connection with the driveway access.

7. The Property was and is not within an area served by any public water source. The closest connections in 1988 were to water lines constructed and serviced by the Calabasas Water District which terminated at or about Cold Creek, approximately a mile down Piuma Road from the Property. The cost of extending the water lines to the Property, assuming the Water District would agree to do so, would have been prohibitive, at least until further development occurred adjacent to Piuma Road between Cold Creek and the Property which could share the costs of an extension. Accordingly, in order to provide water for the Property and the Residence to be constructed, it was necessary to drill and construct a well and attendant improvements on the Property, and to construct a storage tank sufficient in size to store water to service the Property and the Residence when built. Indeed, we had to drill and construct the well, storage tank, and attendant improvements prior to commencing construction of the Residence in order to provide "construction water" required in the development process.

8. The water needed to service the Property and the Residence to be constructed was substantial, and included all domestic water service for the Residence, water to service the sprinkler system that we were required to install in the Residence (which is located in a high fire-danger area), water to service the hydrant which we were required to install for use by the Fire Department, and water for irrigation purposes.

9. The location of the well was dictated by then applicable regulations of the County Health Department and the County Fire Department. As to the former, the well had to be located no closer than 150 feet from the proposed septic pits and the designated future pits. Attached hereto as Exhibit D is a true and correct copy of the 1987 Application and Permit from the Department of Health specifying and approving the location of the well. At the time, a separate permit was not required for the storage tank which always accompanied a well.

10. The location of the hydrant, which under then applicable regulations was required to be installed adjacent to Piuma Road at a prescribed distance from all structures, as well as the location of the well and storage tank, was dictated by a representative of the Fire Department. Among other things, the well and storage tank had to be located up hill from the hydrant at a distance sufficient to allow water from the storage tank to flow by gravity feed to the hydrant and then to the Residence. The size of the storage tank was also prescribed by the Fire Department, which further required us to install sensors and an alarm which would sound when water in the storage tank was below a certain level.

11. The placement of the water tank was also compelled by the topography of the Property adjacent to Piuma Road uphill from the Residence, which falls off steeply in all locations up to approximately the point where the well and storage tank were constructed. Thus, the water tank's location was finally determined at a meeting and consultation I attended on site

Modification and Landscape Plans" (the "Fuel Mod") submitted to Staff in compliance with that condition.

15. The Fuel Mod specified, among other things, that: 1) "single specimens of trees, ornamental shrubbery or cultivated ground cover such as green grass, ivy, succulents, or similar plants" could be used as ground cover (Id. at 1); 2) "greater clearances [than those specified in the Fuel Mod] may be required by the administrative authority" (i.e., the Fire Department) (Id.); 3) "[a]ll construction slopes are to be protected from the planting of ground cover, shrubs, and trees" (Id.); and 4) where hydroseeding was employed, it was necessary to "[i]rrigate seeded area immediately after planting at low rate of water application and maintain seeded slope in moist condition" (Id. at 2).

16. In compliance with the Fuel Mod, and at or about the time of the sale of the Property and Residence to the Rubinroits, I arranged for hydroseeding of all slopes surrounding the Residence, installed sprinklers for irrigation on the slopes, and also planted certain trees, a grass lawn, and selected ground cover at the Property.

17. While I knew and understood that the CDP restricted future development of the Property, I believed that future development for "private recreation" was and would be a permitted use. Indeed, in discussions with the Rubinroits respecting their purchase of the Property which occurred in 1989 and early 1990, we discussed my possibly designing and constructing a pool on the Lower Pad at that time . Subsequently, and sometime in the mid-1990's, the Rubinroits and I discussed again my possibly being engaged by them to design the pool and other improvements they were considering adding to the Property. However, the Rubinroits ultimately advised me that they instead determined to retain a landscape architect who had designed a number of pools in the Malibu area.

State of California, Georg ukmejian, Governor
California Coastal Commission
South Coast District
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

Type of application:

___ **Standard Permit**

XXX **Administrative Permit:** (May be applicable if development is one of the following: (a) improvement to any existing structure; (b) any new development costing less than $100,000; (c) single family dwelling; (d) four dwelling units or less, within any incorporated area, that does not require demolition or subdivision of land; or (e) development authorized as a principal permitted use and proposed in an area for which the Land Use Plan has been certified.

RECEIVED
JAN 29 1988
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

SECTION I. APPLICANT

1. Name, mailing address and telephone number of all applicants.

Jack & Annie Moses

22333 Victory Blvd., Suite 125

Canoga Park, Ca 91303 213-592-4340
(Area code/daytime phone number)

2. Name, mailing address and telephone number of applicant's representative, if any.

The Land & Water Company / Lynn J. Heacox

8281 Dancy Circle

Huntington Beach, Ca 92646 213-592-4340
(area code/daytime phone number)

For office use only

Application Number 5-88-056 (1) Project cost ____

Received 1-29-88 Filed ____ Jurisdiction code ____ (3)

Fee 25.00 Date paid 1-29-88 LCP segment ____ (4)

Tentative hearing date ____ Geo Ref Code ____ (5)

X ____ (6) Y ____ (7)

Coast 1: 1/83

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

3. Conflict of Interest. All applicants for the development must complete Appendix A, the declaration of campaign contributions.

SECTION II. PROPOSED DEVELOPMENT

Please answer ALL questions. Where questions do not apply to your project (for instance, project height for a land division), indicate "Not Applicable" or "N.A."

1. Project Location. Include street address, city, and/or county. If there is no street address, include other description such as nearest cross streets.

25351 Piuma Road
number (8) street (9)

Malibu, Los Angeles
city (10) county (11)

Assessor's Parcel Number 4456-37-7

2. Describe the proposed development. Include secondary improvements such as septic tanks, water wells, roads, etc.

Construct single family residenc, water well, septic system.

a) If residential, state:

1) Number of units 1 (28)

2) Number of bedrooms per unit 4 (28)

3) Type of ownership proposed:
- ☐ rental
- ☐ condominium
- ☐ stock cooperative
- ☐ time share
- ☒ other Fee

b) Number of boat slips, if applicable _____ (29)

c) If land division, number of lots to be created and size _____

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 130

3. Present use of property.

a) Are there existing structures on the property? ☐ Yes ☐ No
If yes, describe (including number of residential units, occupancy status, monthly rental/lease rates for each unit) and schedule of rents for past year.

b) Will any existing structures be demolished? ☐ Yes ☒ No
Will any existing structures be removed? ☐ Yes ☒ No
If yes to either question, describe the type of development to be demolished or removed, including the relocation site, if applicable.

(31)

4. Estimated cost of development (not including cost of land) $ 200,000 (32)

5. Has any application for a development on this site been submitted previously to the California Coastal Zone Conservation Commission or the Coastal Commission? ☐ Yes ☒ No

If yes, state previous application number _____

6. Project height: Maximum height of structure 28' ft
Maximum height of structure as measured from centerline of frontage road 11' ft

7. Total number of floors in structure, including subterranean floors, lofts, and mezzanines 2 stories, 4 levels,

8. Gross floor area including covered parking and accessory buildings 4260 sq ft

Gross floor area excluding parking 3800 sq ft

9. Lot area (within property lines) 2.76 ~~x sq x ft x or~~ acres

Lot coverages:	Existing	New proposed	Total
Building coverage	0 sq ft	2,840 sq ft	2,840 sq ft
Paved area	0 sq ft	1,200 sq ft	1,200 sq ft
Landscaped area	0 sq ft	5,000 sq ft	5,000 sq ft
Unimproved area	119,790 sq ft	110,750 sq ft	110,750 sq ft

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

10. Parking: number of spaces existing 0

number of new spaces proposed 4

Total 4

no. of covered spaces 2 no. of uncovered spaces 2

no. of standard spaces 4 size 10 x 20

no. of compact spaces _____ size _____

Is tandem parking existing and/or proposed? ☐ Yes ☒ No

If yes, how many tandem sets? _____ size _____

11. Are utility extensions for the following needed to serve the project?

a) water ☐ Yes ☒ No d) sewer ☐ Yes ☒ No

b) gas ☐ Yes ☒ No e) telephone ☐ Yes ☒ No

c) electric ☐ Yes ☒ No

I yes to any of the above, would extensions be above ground? ☐ Yes ☐ No

12. Is the project site adjacent to a public maintained road? ☒ Yes ☐ No
If yes, how far is the nearest public road. adjacent

SECTION III. ADDITIONAL INFORMATION

The relationship of the development to the applicable items below must be explained fully. Attach additional sheets if necessary.

1. If the development is between the first public road and the sea, is public access to the shoreline and along the coast currently available near the site? ☐ Yes ☒ No If yes, indicate the location of the nearby access, including the distance from the project site.

_____

_____

2. Is any grading proposed? ☐ Yes ☒ No If yes, complete the following.

a) amount of cut _____ cu yds

b) amount of fill _____ cu yds

c) maximum height of fill slope _____ ft

d) maximum height of cut slope _____ ft

e) amount of import or export _____ cu yds

f) location of borrow or disposal site _____

Grading and drainage plans must be included with this application. In certain areas, an engineering geology report must also be included. See Section V, paragraph 11 for the specifics of these requirements.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 132

3. Does the development involve diking, filling, dredging or placing structures in open coastal waters, wetlands, estuaries, or lakes?

N/A a) diking ☐Yes ☐No c) dredging ☐Yes ☐No

b) filling ☐Yes ☐No d) placement of structures ☐Yes ☐No

Amount of material to be dredged or filled _____ cu yds.

Location of dredged material disposal site _____

_____

Has a U.S. Army Corps of Engineers permit been applied for? ☐Yes ☐No

4. Will the development extend onto or adjoin any beach, tidelands, submerged lands or public trust lands? ☐Yes ☒No

For projects on State-owned lands, additional information may be required as set forth in Section V, paragraph 10.

5. Will the development protect existing lower-cost visitor and recreational facilities? ☒Yes ☐No

Will the development provide public or private recreational opportunities? ☐Yes ☒No If yes, explain.

_____

_____

6. Will the proposed development convert land currently or previously used for agriculture to another use? ☐Yes ☒No

If yes, how many acres will be converted? _____ acres.

7. Is the proposed development in or near:

a) sensitive habitat areas ☐Yes ☒No (biological survey may be required)

b) 100-year floodplain ☐Yes ☒No (hydrologic mapping may be required)

c) park or recreation area ☐Yes ☒No

8. Is the proposed development visible from:

a) US Highway 1 or other scenic route ☒Yes ☐No

b) park, beach, or recreation area ☐Yes ☒No

c) harbor area ☐Yes ☒No

9. Does the site contain any:

a) historic resources ☐Yes ☒No

b) archaeological resources ☐Yes ☒No

c) paleontological resources ☐Yes ☒No

If yes to any of the above, please explain on an attached sheet.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 133

10. Where a stream, spring is to be diverted, provide the following information:

Estimated streamflow or spring yield _____ gpm

If well is being used, existing yield _____ gpm

If water source is on adjacent property, attach Division of Water Rights approval and property owner's approval.

SECTION IV. OTHER GOVERNMENTAL REQUIREMENTS

The Local Agency Review Form, Appendix E, must be completed and signed by the local government in whose jurisdiction the project site is located. The completed and signed form must be submitted with this application for the application to be considered complete.

SECTION V. ADDITIONAL ATTACHMENTS

The following items must be submitted with this form as part of the application.

1. Proof of the applicant's legal interest in the property. (A copy of any of the following will be acceptable: current tax bill, recorded deed, signed Offer to Purchase along with a receipt of deposit, signed final escrow document, or current policy of title insurance. Preliminary title reports will not be accepted.)

2. Assessor's parcel map(s) showing the applicant's property and all other properties within 100 feet (excluding roads) of the property lines of the project site. (Available, along with owner's names/addresses, from assessor's office.)

3. Copies of required local approvals for the proposed project, including zoning variances, use permits, etc., as noted on Local Agency Review Form, Appendix B.

4. Stamped envelopes addressed to each property owner and occupant of property situated within 100 feet of the property lines of the project site (excluding roads), along with a list containing the names, addresses and assessor's parcel numbers of same. If the application qualifies for an administrative permit, envelopes are not required unless specifically requested. However, a mailing list is required on all applications. The envelopes must be plain (i.e., no return address), and regular business size (9½" x 4 1/8"). Include first class postage on each. Metered stamped envelopes cannot be accepted. The words "Important Public Hearing Notice" must be on the front of each envelope. (An appropriate stamp is available in the District Office. Use Appendix C, attached, for the listing of names and addresses. (Alternate notice provisions may be employed at the discretion of the District Director under extraordinary circumstances).

5. Stamped, addressed envelopes and a list of names and addresses of all other parties known to the applicant to have an interest in the proposed development (such as persons expressing interest at a local government hearing, etc.).

6. Development location and vicinity maps. Maps should show precisely where the development is proposed and present land and water uses in the project vicinity. U. S. Geological Survey 7½ minute series quadrange map, Thomas Brothers map, road map or area maps prepared by local governments may provide a suitable base map.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 134

7. Two copies of [illegible] ects, except for projects [illegible] in the City of Los Angeles where [illegible]e sets are required, stamped and [illegible]igned "Approved in Concept" by the local building department, drawn to scale, including site plans, floor plans, elevations, grading and drainage plans, landscape plans, and septic system plans. A reduced site plan, 8½" x 11" must also be submitted. Reduced copies of complete project plans will be required for large projects. Trees to be removed must be marked on the site plan. For demolitions, include a site plan showing the placement and dimensions of existing development on subject lot. Photographs may be submitted to show elevations and demolitions.

8. Where septic systems are proposed, evidence of County approval or Regional or Regional Water Quality Control Board approval. Where water wells are proposed, evidence of County review and approval.

9. A copy of any Final Negative Declaration, Final Environmental Impact Report (FEIR) or Final Environmental Impact Statement (FEIS) prepared for the project. Comments of all reviewing agencies and responses to comments must be included.

10. Verification of all other permits, permissions or approvals applied for or granted by public agencies (e.g., Dept. of Fish and Game, State Lands Commission, U.S. Army Corps of Engineers, U.S. Coast Guard).

11. For development on a bluff face, bluff top, or in any area of high geologic risk, a comprehenisive, site-specific geology and soils report (including maps) prepared in accordance with the Coastal Commission's Interpretive Guidelines. Copies of the guidelines are available from the District Office.

SECTION VI. NOTICE TO APPLICANTS

Under certain circumstances additional material may be required prior to issuance of a coastal development permit. For example, where offers of access or open space dedication, preliminary title reports, land surveys, legal descriptions, subordination agreements, and other outside agreements will be required prior to issuance of the permit.

The Commission may adopt or amend regulations affecting the issuance of coastal development permits. If you would like notice of such proposals during the pendency of this application of such proposals that are reasonably related to this application indicate that desire.

☐ Yes ☒ No

SECTION VII. AUTHORIZATION OF AGENT

I hereby authorize The Land & Water Company / Lynn J. Heacox to act as my representative and to bind me in all matters concerning this application.

Signature of Applicant(s)
Jack Moses

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

SECTION VIII. CERTIFICATION

1. I hereby certify that I, or my authorized representative, will complete and post the Notice of Pending Permit card in a conspicuous place on the property within 3 days of receipt of the card and notification of filing of this application.

2. I hereby certify that I understand the Commission may impose reasonable conditions that must be satisfied by persons that are not a party to this application and that prior to issuance of the permit, I must submit evidence that the conditions will be satisfied by the appropriate parties.

3. I hereby certify that I have read this completed application and that, to the best of my knowledge, the information in this application and all attached appendices and exhibits is complete and correct. I understand that any misstatements or omission of the requested information or of any information subsequently requested shall be grounds for denying the permit, for suspending or revoking a permit issued on the basis of these or subsequent representations, or for seeking of such further relief as may seem proper to the Commission.

4. I hereby authorize representatives of the California Coastal Commission to conduct site inspections on my property. Unless arranged otherwise, these site inspections shall take place between the hours of 8:00 a.m. and 5:00 p.m.

SECTION XIV. COMMUNICATION WITH COMMISSIONERS

Decisions of the Coastal Commission must be made on the basis of information available to all commissioners and the public. Therefore permit applicants and interested parties and their representatives are advised not to discuss with commissioners any matters relating to a permit outside the public hearing. Such contacts may jeopardize the fairness of the hearing and result in invalidation of the Commission's decision by court. Any written material sent to a commissioner should also be sent to the commission office for inclusion in the public record and distribution to other Commissioners.

Signature of Authorized Agent or Applicant(s)

Lynn J. Heacox

APPLICATION FOR COASTAL DEVELOPMENT PERMIT

APPENDIX A

DECLARATION OF CAMPAIGN CONTRIBUTIONS

Government Code Section 84308 prohibits any Commissioner voting on a project if he or she has received campaign contributions in excess of $250 within the past year from project proponents or opponents, their agents, employees or family, or any person with a financial interest in the project.

In the event of such contributions, a Commissioner must disqualify him or herself from voting on the project; failure to do so may lead to revocation of the permit.

Each applicant must declare below whether any such contributions have been made to any of the Commissioners or Alternates listed on the reverse.

CHECK ONE

XX The applicants, their agents, employees, family and any person with a financial interest in the project HAVE NOT CONTRIBUTED over $250 to any Commissioner(s) or Alternates within the past year.

____ The applicants, their agents, employees, and/or family, and/or any person having a financial interest in the project HAVE CONTRIBUTED OVER $250 to the Commissioner(s) or Alternates listed below within the past year.
the past year.

Commissioner _____

Commissioner _____

Commissioner _____

Signature of Applicant or Authorized Agent

January 27, 1988
Date

Please print your name Lynn J. Heacox

APPENDIX B

In the South Coast District area (Los Angeles and Orange Counties) the following additional specific attachments are required, where applicable.

Please include 2 copies of your project plans (Section V-7 above) except in the City of Los Angeles, where 3 copies are required. These plans must be stamped "Approval in Concept" by the City or County.

LOS ANGELES COUNTY

1. Malibu/Santa Monica Mountains area of unincorporated Los Angeles County, for further information see Malibu/Santa Monica Mountains Interpretive Guidelines.

   a. All projects -

   ☐ 1. must have a current (not more than 1 year old) Geologic Review Sheet and two geologic and/or soils reports if required by the County.

   ☐ 2. except single-family dwellings and additions to existing structures - preliminary approval from the Regional Water Quality Control Board.

   ☐ 3. except single-family dwellings not on a beach - must have County Health Department approval for any development utilizing septic systems.

   b. On a beach -

   ☐ 1. All projects - Health Department approval.

   ☐ 2. All projects except additions to existing structures which do not require septic system alterations - County Coastal Engineering approval.

   ☐ 3. State Lands Commission review of plans. (State Lands Commission, 1807 13th Street, Sacramento, CA 95814)

   ☐ 4. A stringline map showing adjacent structures.

   c. Outside of existing developed areas (as defined by guidelines) -

   ☐ 1. Approval in Concept by the Fire Department for road and water minimum standards.

   ☐ 2. A surveyed topographical map of the site.

   d. Land divisions -

   ☐ 1. Copy of the subdivision report and conditions of tentative tract map approval.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 138

APPLICA[illegible] FOR COASTAL DEVELOPMENT PER[illegible]

List property owners and occupants wi[illegible] 100 feet and if applicant is not the fee owner of the property, all other persons owning an interest in the property proposed for development.

Please use one box per name and address. Additional copies will be mailed upon request.	See Attached List.	

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

APPENDIX D

FEE SCHEDULE

Summary of Coastal Permit Filing Fees

RESIDENTIAL

Single-family dwellings	$ 25.00
2-4 unit multiple dwelling	75.00
Multiple residential, 6-16 units	250.00
Multiple residential, 17-166 units	15.00 per unit
Multiple residential, 167 units or more	2500.00

COMMERCIAL, CONVENTION, INDUSTRIAL

Less than 10,000 sq. ft. (gross)	$ 250.00
Less than 25,000 sq. ft.	500.00
Less than 50,000 sq. ft.	1000.00
Less than 100,000 sq. ft.	1500.00
More than 100,000 sq. ft.	2500.00

LAND DIVISIONS ONLY

Minor land division (resulting in 4 lots or less) = $75.00
Subdivision (5 lots or more) each lot = 1 unit or multiple residential (see above).

Divisions of land that include applications for no more than one house on each lot require no additional fees for construction of the residences.

OTHER DEVELOPMENTS

—Any new development less than $100,000 in cost, if it qualifies for an administrative permit	$ 25.00
—Additions to existing structures less than $100,000 in cost, if qualified for an administrative permit	25.00
—Any development <u>not</u> covered above, if	
cost under $100,000	75.00
cost $100,000 to $500,000	250.00
cost $500,000 to $1,250,000	500.00
cost $1,250,000 to $2,500,000	1000.00
cost $2,500,000 to $5,000,000	1500.00
cost more than $5,000,000	2500.00
—Amendments to Coastal Permits	25.00
—Extensions of Coastal Permits for SFDs	25.00
—Extensions for Other Developments	50.00
—Assignment of Coastal Permit to Another Party	25.00

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 140

SCHEDULE OF FEES FOR FILING AND PROCESSING PERMIT APPLICATIONS:

Fees. (A) Permit filing and processing fees, to be paid by check or money order at the time of the filing of the permit application, shall be as follows:

1. Twenty-five dollars ($25) for any development qualifying for an administrative or emergency permit.

2. Fifty dollars ($50) for single-family homes or for any development of a type or in a location such that it would ordinarily be scheduled for the consent calendar.

3. Seventy-five dollars ($75) for divisions of land where there are single-family homes already built and only one new lot is created by the division and for multi-family units up to 4 units, or for any other development not otherwise covered herein with a development cost of less than $100,000.

4. Two-hundred and fifty dollars ($250) or fifteen dollars ($15) per unit, whichever is greater, but not to exceed two-thousand five-hundred dollars ($2,500) for multi-unit development greater than 4 units, or for any other development not otherwise covered herein with a development cost of more than $100,000 but less than $500,000. Two-hundred and fifty dollars ($250) for office, commercial, convention or industrial development of less than 10,000 gross square feet.

5. Five hundred dollars ($500) for office, commercial, convention or industrial development of more than 10,000 but less than 25,000 gross square feet, or for any other development not otherwise covered herein with a development cost of more than $500,000 but less than $1,250,000.

6. One thousand dollars ($1,000) for office, commercial, convention or industrial development of more than 25,000 but less than 50,000 gross square feet or for any other development not otherwise covered herein with a development cost of more than $1,250,000 but less than $2,500,000.

7. One thousand five hundred dollars ($1,500) for office, commercial, convention or industrial development of more than 50,000 but less than 100,000 gross square feet or for any other development not covered otherwise herein with a development cost of more than $2,500,000 but less than $5,000,000.

8. Two thousand five hundred dollars ($2,500) for office, commercial, convention or industrial development of more than 100,000 gross square feet or for any other development cost of more than $5,000,000 and for any major energy production and fuel processing facilities, including but not limited to, the construction of major modification of offshore petroleum production facilities, tanker terminals and mooring facilities, generating plants, petroleum refineries, LNG gassification facilities and the like.

(B) Where a development consists of land division, each lot shall be considered as one residential unit for the purpose of calculating the application fee. Such residential unit shall include a single-family house, if proposed together with the land division. Conversion to condominiums shall be considered a division of land.

(C) The application fee shall be determined from the type and size of the proposed development, except that where there is conflict over the applicable fee, the Executive Director may use the project cost to determine the fee.

(D) In addition to the above fees, the Regional Commission or the Commission may require the applicant to reimburse it for any additional reasonable expenses incurred in its consideration of the permit application, including the costs of providing public notice.

(E) The Executive Director may waive the application fee in full or in part where the application concerns the same site and a project substantially the same as an application previously processed by the Regional Commission and no substantial staff work is required.

(F) The Executive Director shall waive the application fee where requested by resolution of the Commission.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 141

California Coastal Commission
South Coast District Office
P.O. Box 1450
Long Beach, CA 90801
(213) 590-5071
(714) 846-0648

APPENDIX E

APPROVAL IN CONCEPT

RECEIVED
JAN 2 9 1988
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

APPROVAL IN CONCEPT BY THE CITY/COUNTY OF L.A. COUNTY. MALIBU

as required for permit application to the California Coastal Commission, South Coast Region pursuant to California Administrative Code, Section 13052.

COMPLETE Description of Proposed Development: SINGLE FAMILY RESIDENCE W/ WELL & SEPTIC SYSTEM.

Property Address: TEMP. 25351 1/2 PIUMA RD., MALIBU, CA.

Legal Description: APN 4454-37-17

Zone: A-1-1

Applicant(s): JACK MOSES

Applicant's Mailing Address: 22333 VICTORY BLVD., APT. #125
CANOGA PARK, CALIFORNIA 91303

Applicant's Telephone Number: (818) 992-1831

I have reviewed the plans for the foregoing development including:

1. The general site plan, including any roads and public access to the shoreline,
2. The grading plan, if any,
3. The general uses and intensity of use proposed for each part of the area covered in the application,

and find,

They comply with the current adopted Los Angeles City or County General Plan, Zoning Ordinance, Subdivision Ordinance, and any applicable specific or precise plans, or

That a variance or exception has been approved and is final.

A copy of any variance, exception, conditional use permit, or other issued permit is attached together with all conditions of approval and all approved plans including approved tentative tract maps. On the basis of this finding, these plans are approved in concept and said approval has been written upon said plans, signed, and dated.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 142

Should this City or County adopt an ordinance deleting, amending, or adding to the Zoning Ordinance or other regulations in any manner that would affect the use of the property or the design of a project location thereon, this approval in concept shall become null and void as of the effective date of this said ordinance.

In accordance with the California Environmental Quality Act of 1970, and State and local guidelines adopted thereunder, this development:

XX Has been determined to be ministerial or categorically exempt.

_____ Has received a final Exemption Declaration for final Negative Declaration (copy attached).

_____ Has received a final Environmental Impact Report (copy attached).

This concept approval in no way excuses the applicant from complying with all applicable policies, ordinances, codes, and regulations of this City or County.

THE APPROVAL IN CONCEPT STAMP MUST BE AFFIXED ON ALL SUBMITTED PLANS, THIS REQUIREMENT WILL BE IN addition TO THE APPROVAL IN CONCEPT FORM THAT IS NOW REQUIRED.

I hereby certify that all information contained in this approval in concept is correct and that all discretionary approvals legally required of this City or County prior to issuance of a building permit have been given and are final. The development is not subject to rejection in principal by this City or County unless a substantial change in it is proposed.

DEPARTMENT OF REGIONAL PLANNING
NORMAN MURDOCK, PLANNING DIRECTOR

Planning Director

By: Jack T. Garretson

JACK T. GARRETSON
JACK T. GARRETSON PRPA

Printed Name and Title of Individual Signing

Date: DEC 30 1987

Attachments:

1.
2.
3.
4.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Attachment X

To: Permit Applicants

From: California Coastal Commission, South Coast District

Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. 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 in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the 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.

Mila Mahatadse
1946 N. Western Avenue
Hollywood, 27, Ca 90028

4456-37-10

5-88-056

Jack & Audrey Walker
25250 Piuma Road
Calabasas, Ca 91302

4456-37-6

RECEIVED
JAN 29 1988
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Lynn Rakestraw
25575 Piuma Road
Calabasas, Ca 91302

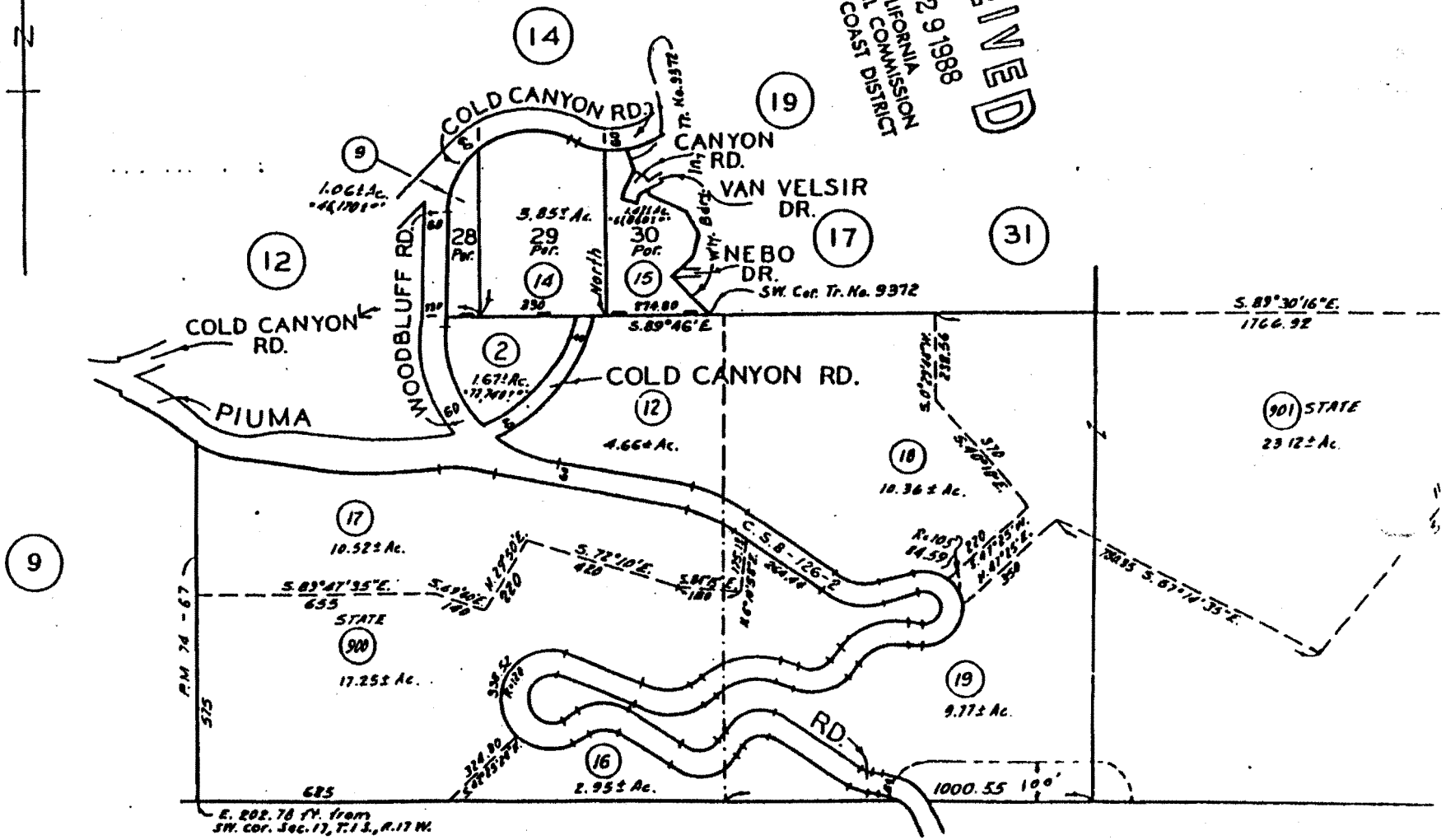
4456-37-9

Quaker Corp.
1900 Ave. of the Stars, No 1600
Los Angeles, Ca 90067

4456-13-19, 20

1456 | 13

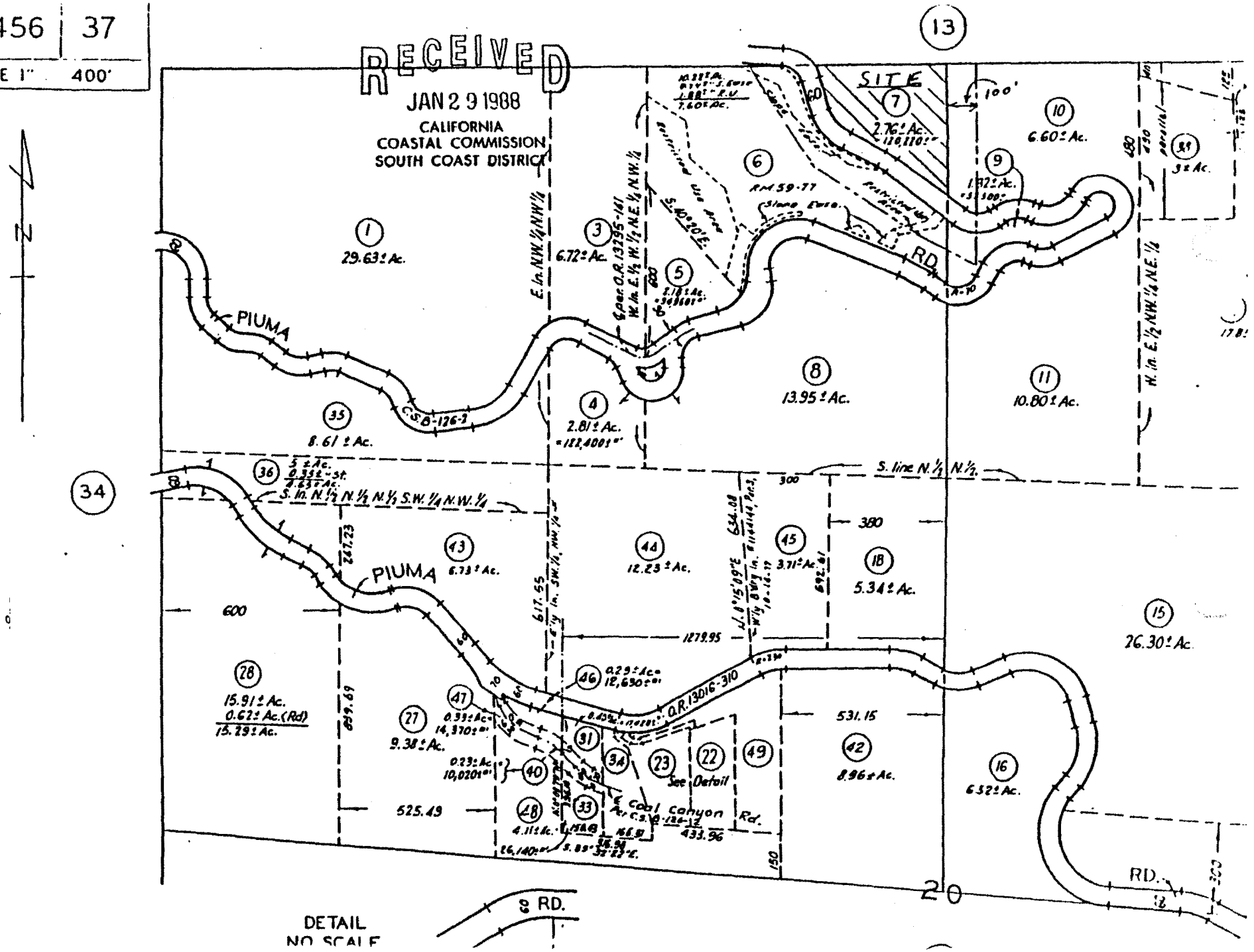
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CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

456 | 37

ALE 1" 400'



CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them).

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To MALIBU MORTGAGE CORPORATION, Trustee: Dated_____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

MAIL RECONVEYANCE TO:

_____

_____

_____

_____

_____

_____

_____

_____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

DEED OF TRUST

WITH POWER OF SALE

(SHORT FORM)

ASSIGNMENT OF RENTS AND REQUEST FOR SPECIAL NOTICE

Malibu Mortgage Corporation

AS TRUSTEE

MMC

RECEIVED
JAN 29 1986
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Malibu Mortgage Corporation

P. O. BOX 488
MALIBU, CALIF. 90265
(213) 456-2058

COMPLETE STATEWIDE TITLE SERVICE
WITH ONE LOCAL CALL

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Mr. and Mrs. John Festa
P. O. Box 1028
Pacific Palisades, Ca. 90272

RECEIVED
JAN 29 1988
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TO 499—1 C SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS AND REQUEST FOR SPECIAL NOTICE

RECORDER: Please index as Deed of Trust, Assignment of Rents and Request for Special Notice.

This Deed of Trust, made this 19th day of May, 1987, between JACK MOSES AND ANN-MARIE MOSES, husband and wife as to an undivided one-half interest and RON LANDRY AND MARGO LANDRY, husband and wife as to an undivided one-half interest, herein called TRUSTOR, whose address is 22333 Victory Blvd., #125, Canoga Park, Ca. 91303 (number and street) (city) (zone) (state), and JOHN FESTA AND CAROL FESTA, husband and wife as joint tenants, herein called BENEFICIARY, whose address is P.O. Box 1028, Pacific Palisades, Ca. 90272 (number and street) (city) (zone) (state), and MALIBU MORTGAGE CORPORATION, a California corporation, herein called TRUSTEE.

COPY

Witnesseth:

That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in Los Angeles County, California, described as:

As per legal description attached hereto and made a part hereof:

This is a purchase money deed of trust given to secure a portion of the purchase price and is second and subject to a deed of trust of record.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits. For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of $ 38,000.00 executed by Trustor in favor of Beneficiary or order.

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	435	684	Kings	792	833	Placer	895	301	Sierra	29	335
Alpine	1	250	Lake	362	39	Plumas	151	5	Siskiyou	468	181
Amador	104	348	Lassen	171	471	Riverside	3005	523	Solano	1105	182
Butte	1145	1	Los Angeles	T2055	899	Sacramento	4221	62	Sonoma	1851	689
Calaveras	145	152	Madera	810	170	San Benito	271	383	Stanislaus	1715	456
Colusa	296	617	Marin	1508	339	San Bernardino	5567	61	Sutter	572	297
Contra Costa	3978	47	Mariposa	77	292	San Francisco	A332	905	Tehama	401	289
Del Norte	78	414	Mendocino	579	330	San Joaquin	2470	311	Trinity	93	366
El Dorado	568	456	Merced	1547	538	San Luis Obispo	1151	12	Tulare	2294	275
Fresno	4626	572	Modoc	184	851	San Mateo	4078	420	Tuolumne	135	47
Glenn	422	184	Mono	52	429	Santa Barbara	1878	860	Ventura	2062	386
Humboldt	657	527	Monterey	2194	538	Santa Clara	5336	341	Yolo	653	245
Imperial	1091	501	Napa	639	86	Santa Cruz	1431	494	Yuba	334	486
Inyo	147	598	Nevada	305	320	Shasta	684	528			
Kern	3427	60	Orange	5889	611	San Diego	Series 2 Book 1961, Page 183887				

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

In accordance with Section 2924b, Civil Code, request is hereby made by the undersigned TRUSTOR that a copy of any Notice of Default and a copy of any Notice of Sale under Deed of Trust recorded June 10, 1986 Instrument No. 86-722825 In Book ____, Page ____, Official Records of Los Angeles County, California, as affecting above described property, executed by John Festa and Carol Festa as Trustor in which Emanuel Hersch and Sandra Kramer is named as Beneficiary, and Malibu Mortgage Corporation as Trustee, be mailed to John and Carol Festa whose address is P. O. Box 1028, Pacific Palisades, Ca. 90272 (Number and Street) (City) (Zone) (State)

Signature of Trustor

Jack Moses

Ann-Marie Moses

Signature of Trustor

Ron Landry

Margo Landry

STATE OF CALIFORNIA, COUNTY OF _____ } ss.

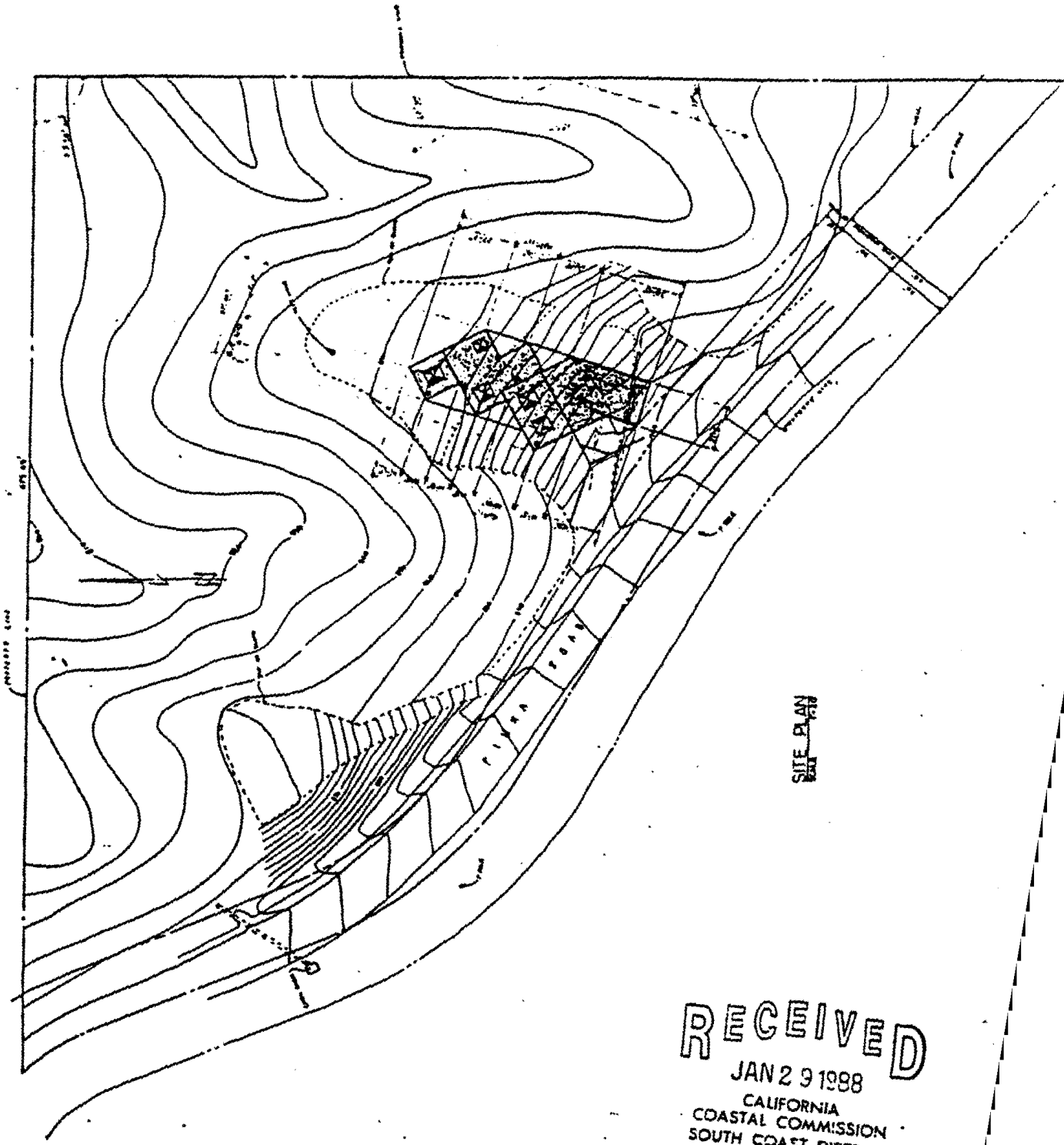
On _____ before me, the undersigned, a Notary Public in and for said State, personally

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

DESCRIPTION: COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

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° 54' 40" West 475.49 feet to the center line 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 center line, being a curve concave Southwesterly, (a radial line to said intersection of the Northerly line of the Northeast quarter of te Northwest quarter with said center line bears North 46° 51' 40" East) an arc distance of 34.68 feet; thence South 23° 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° 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° 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.



SITE PLAN

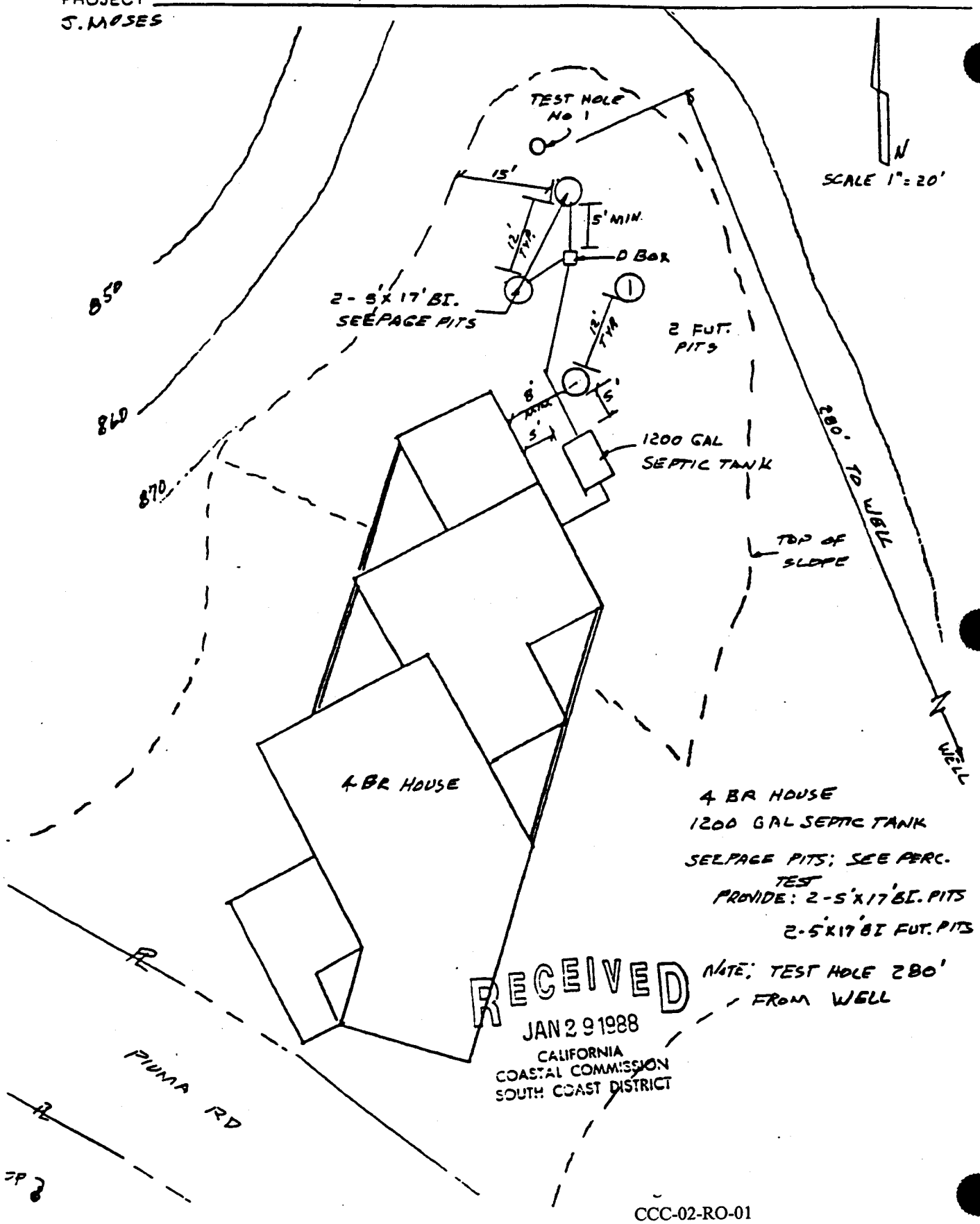
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SOUTH COAST DISTRICT

28832 Graylox St., Malibu, CA 90:
(213) 457-2054

DATE 12-16-87 PAGE 1 OF 3

PROJECT 25351 PIUMA RD, MALIBU

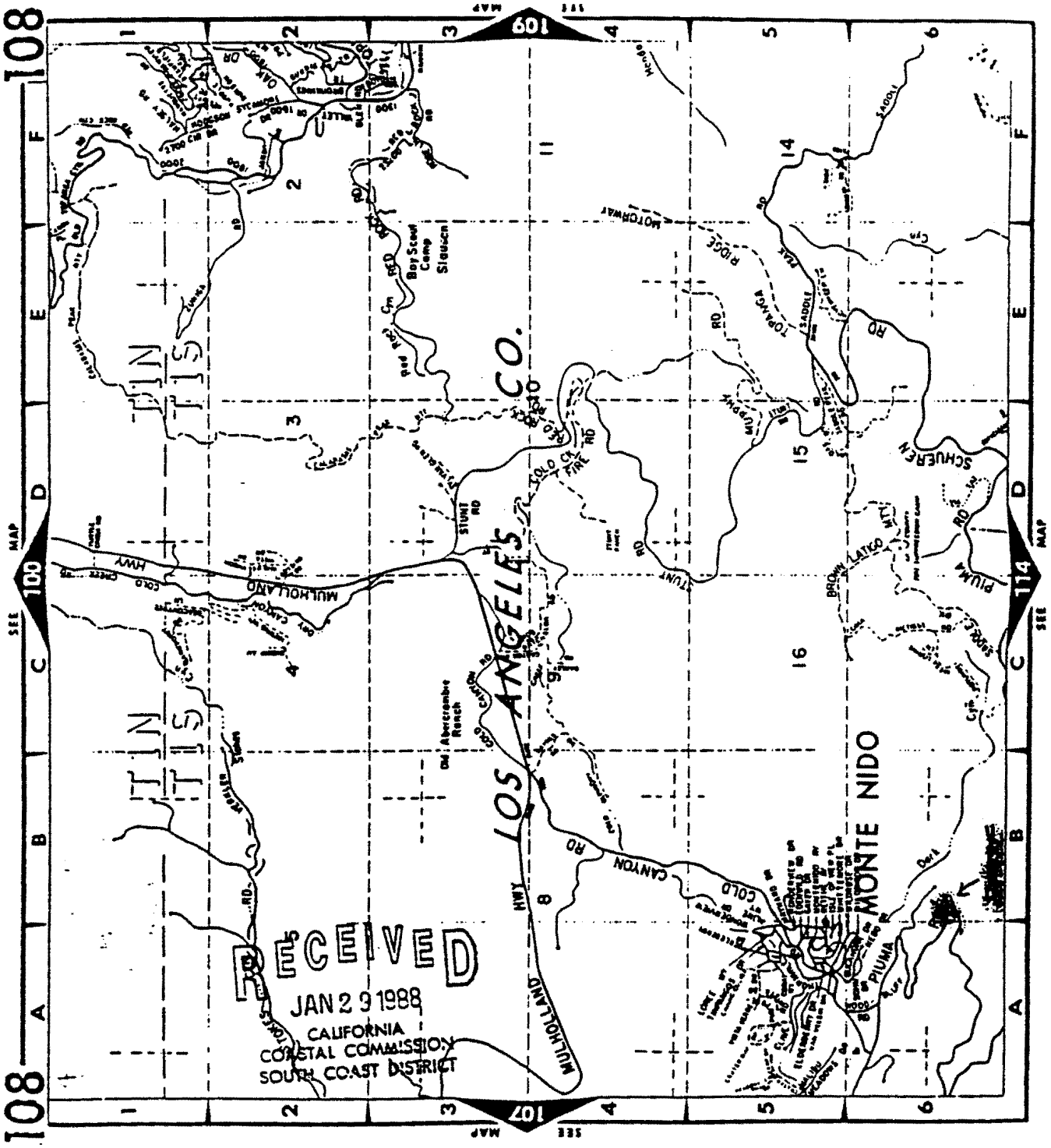
J. MOSES



4 BR HOUSE
1200 GAL SEPTIC TANK
SEEPAGE PITS: SEE PERC. TEST
PROVIDE: 2-5'x17'BI. PITS
2-5'x17'BI FUT. PITS

NOTE: TEST HOLE 280' FROM WELL

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SOUTH COAST DISTRICT



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(Statement of Defense)

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.

5095A

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

11/27/88
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 chapparal, 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 unforseen 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 Piuma Road. As a result, the structure extends only 11 feet above the centerline of Piuma 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 Piuma 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 Piuma 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 accomodate 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 to require the applicant to offer to

dedicate an open space and conservation easement for ESHA 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 Piuma 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 Piuma 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.

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5095A

California GEO/SYSTEMS, INC.

GEOTECHNICAL CONSULTANTS

SOILS AND ENGINEERING GEOLOGIC INVESTIGATION REPORT FOR PROPOSED SINGLE-FAMILY RESIDENCE 25351 PIUMA ROAD MALIBU, CALIFORNIA

1-19-88 GS87-1143

FOR

JACK MOSES
22333 VICTORY BL. #125
CANOGA PARK, CA 91303

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

312 WESTERN AVENUE • GLENDALE, CALIFORNIA 91201-2838 • (818) 500-9533

SOILS AND ENGINEERING GEOLOGIC INVESTIGATION REPORT FOR PROPOSED SINGLE-FAMILY RESIDENCE 25351 PIUMA ROAD MALIBU, CALIFORNIA

INTRODUCTION

This report presents the results of our soils and engineering geologic investigation performed at the site located in the Malibu area of Los Angeles County. The report includes a description and an evaluation of the soil and geologic materials, defines the geologic structural conditions, and provides geologic and soils engineering recommendations for development of a single-family residence as shown on the enclosed Geotechnical Map.

This report is intended for submittal to the appropriate governmental authorities that control the issuance of necessary permits and provides recommendations for site preparation, foundation design, surface drainage control, floor slabs, and a private sewage disposal system.

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Objective

The primary objective of this investigation was to identify the geotechnical factors that pertain to the gross stability of the site, and to evaluate the safety of the building site.

Location

The property is located on the north side of Piuma Road, approximately 0.9 miles east of Cold Canyon Road.

SCOPE

The scope of our investigation involved the completion of the following:

1. Review of available general geologic data including Geologic Map of the East-Central Santa Monica Mountains, Los Angeles County, California, by Yerkes and Campbell, 1980.
2. Review of previous reports prepared for nearby properties.
3. Review of preliminary topographic maps and site development plans.
4. Geologic mapping of on-site earth materials.
5. Excavation and detailed logging of five trenches.
6. Sampling of representative earth materials.
7. Laboratory testing.
8. Geotechnical analysis of field and laboratory data.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 164

9. Preparation of a geotechnical map, one geologic section, and various graphs.
10. Presentation of our procedures, findings and recommendations.

PROPOSED DEVELOPMENT

The findings and recommendations contained in this report are based on plans provided by the client. It is proposed to construct a multi-level, single-family residence essentially on existing topography. No grading is proposed. An existing, smaller pad is also present west of the area of the proposed residence, however, no plans for its use have been provided.

SITE CONDITIONS

The property is topographically situated on the north flank of the east-central Santa Monica Mountains. The site is located n a north-facing, 2:1 or flatter slope which descends to a northwest-trending drainage. Adjacent to but not on the site is a 60±-foot high roadcut which exposes basaltic bedrock. This cut appears to be grossly stable. Recent brushing of the site has resulted in significant amounts of artificial fill being cast over the slope northwest and east of the proposed residence.

CCC-02-[illegible]-01
EXHIBIT [illegible]
(Statement of Defense)
Page 165

Vegetation on-site consists of chaparral typical to the Malibu area.

Drainage is by uncontrolled sheet flow runoff downslope to existing drainages and off site.

FIELD INVESTIGATION

The site was explored on December 3, 1987 by excavation of 5 backhoe trenches ranging in depth from 3 to 12 feet.

Soil and bedrock samples were obtained for laboratory testing. The earth materials were logged in detail and are presented in the Log of Trenches.

On-site and nearby bedrock exposures were carefully examined. The approximate distribution of the earth materials on the site and vicinity and the trench locations are shown on Plate 1.

EARTH MATERIALS

The earth materials at the site are artificial fill, soil, and bedrock. Bedrock is exposed in nearby roadcuts and over much of the site.

Artificial Fill (Af, and Af_r)

Two types of artificial fill were encountered during our exploration, roadway fill and fill resulting from recent brushing. The roadway fill is extensive and comprises much

CCC-02-KO-01
EXHIBIT 7
(Statement of Defense)
Page 166

of the slope east of the proposed residence and on the upper portion of the slope west of the proposed residence. All fill resulting from recent brushing should be removed from any slopes which exceed 2:1.

Native Soil

Natural soils mantle much of the site but are generally very thin (6± inches). Minor sloughing of these soils was observed on locally steep slopes immediately adjacent to on-site and adjacent drainages.

Bedrock (Tcop)

Bedrock on-site consists of basaltic pillow breccia of the Conejo Volcanics. These basalts are very dense, very hard and very competent. The basaltic bedrock is exposed in roadcuts adjacent to the site, in the on-site drainages, and over much of the proposed building area. This rock is expected to provide excellent support for the proposed residence.

ENGINEERING GEOLOGY

The engineering geologic factors evaluated include joints and fractures, excavation characteristics, landslides and groundwater.

Joints and Fractures

Several joint sets were observed during our exploration, the most prominent striking roughly northwest

CCC-02-RC-01
EXHIBIT
(Statement of Defense)

and dipping near vertical. This orientation is considered to be favorable with respect to the proposed development, as is that of all other observed continuous jointing.

Excavation Characteristics

Excavation of bedrock will be required for the foundation system. Bedrock is dense, locally very hard, and excavations may require special consideration due to this hardness.

Landslides

Ancient or recent landslides were not observed on the property. Minor sloughing of the natural soils adjacent to the on-site drainages was observed. This sloughing is minor, with soils typically not exceeding 6 inches in thickness. Due to the very local nature of the sloughing and the very thin nature of the soil, no hazard as a result of this sloughing is anticipated.

Groundwater

No groundwater seepage was observed on the site or in our exploratory excavations. The groundwater level is substantially below the level of the proposed development.

FAULTING AND SEISMICITY

No known faults underlie the site. The closest major fault is located approximately 1/4 northeast of the site.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

This fault is considered to be inactive. The closest major fault is the Malibu Coast fault, approximately 2 miles south of the site. This fault is considered to be potentially active.

No major problems are anticipated as a result of differential settlement, liquefaction, fault displacement, rockfall or ground lurching resulting from earthquakes provided the foundation system is constructed as herein recommended.

SLOPE STABILITY

Gross

Gross stability of the site was analyzed along three hypothetical failure planes. Shear strength parameters for the bedrock of phi = 30 degrees and cohesion = 250 psf were obtained from a remolded bedrock sample and are considered to be very conservative for the very hard and competent basaltic bedrock. Results of this analysis indicate a lowest factor of safety of 1.86 and 1.23 in both the static and seismic cases.

Based on this analysis and our field observations, the site is considered to be grossly stable.

Surficial

The artificial fill resulting from recent brushing of the site (Af_r) is loose, highly susceptible to erosion, and considered to be surficially unstable on slopes exceeding

CCC-02-RO-01
EXHIBIT
(Statement of Defense)
Page 169

2:1. This material should be removed and wasted from the site or placed as a properly compacted fill.

Minor sloughing of the natural soils adjacent to the drainages on-site was observed. However, due to the very localized nature of the sloughing and the very thin soils (6-inches), no hazard resulting from this sloughing is anticipated.

LABORATORY TESTING

Laboratory tests were conducted on representative samples to determine certain physical properties of the earth materials. Field moisture content, in-situ density, and shear strength characteristics were determined from these tests.

Direct Shear

Direct shear tests were conducted on representative samples to determine their shear strength characteristics. The samples were saturated under normal load before testing. Shear loads were applied at a rate of 0.05 inches per minute in accordance with the undrained shear test procedure. Ultimate shear strength values for the 90 percent remolded samples tested are shown on Table I.

TABLE I

Sample Number	Depth (ft)	Soil Type	Unit Weight (pcf)	Cohesion (psf)	Friction Angle (degrees)
T3-1	2	bedrock	115	250	30

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 170

RECOMMENDATIONS

Based on the findings of our investigation, the site is considered to be suitable from a soils and engineering geologic standpoint for construction of a single-family residence, provided the recommendations included herein are followed and integrated into the building plans.

Site Preparation

Site preparation will consist of removing all vegetation from the proposed building site. Removal of all loose recently-placed fill (Af_r) from slopes exceeding 2:1 may also be conducted at this time.

Foundations

Conventional continuous footings are adequate for foundation support and may be supported on basaltic bedrock. Continuous footings may be designed using a bearing pressure of 3000 psf and should extend a minimum of 18 inches into bedrock.

Independent footings may be designed using a bearing pressure of 3500 psf. The dimensions of independent footings should be a minimum of 2 feet square and founded at least 2 feet into bedrock. A 20 percent increase is allowable for each additional foot of excavation depth up to a maximum value of 4000 psf.

Where the depth of footing exceeds 5 feet, the use of friction piles or caissons recommended for structural support.

CCC-02-P-0001
EXHIBIT
(Statement of Defense)
Page 17

Footings should be located below a line measured at a 45 degree angle from the bottom of any utility trench, unless reviewed and approved by the Soils Engineer.

Friction Piles

Friction piles may be used to support the structure. Piles should be a minimum of 24 inches in diameter and a minimum of 7 feet into bedrock. Piles may be assumed fixed at 1 foot into bedrock. The piles may be designed for a skin friction of 900 psf for that portion of pile in contact with the bedrock. All piles should be tied in two horizontal directions with grade beams.

Caissons

A caisson and grade beam foundation system may be used to support the structure. Caissons should be a minimum of 5 feet into bedrock and 24 inches in diameter to facilitate cleanout. Caissons may be designed for a bearing pressure of 4000 psf. The base and entire bell of all caisson excavations should be cleaned of all loose material. All caissons should be tied in two horizontal directions with grade beams.

General

The bearing pressure given is for the total of dead and frequently applied live loads and may be increased by

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 172

one-third for short duration loading which includes the effects of wind or seismic forces.

Lateral Design

On slopes exceeding 2:1, the loose fill and soil on the site are subject to downhill creep. Pile shafts are subject to lateral loads due to the creep forces. Pile shafts should be designed for a lateral load of 1000 pounds per linear foot for each foot of shaft exposed to fill, soil, and weathered bedrock.

Resistance to lateral loading may be provided by friction acting at the base of foundations and by passive earth pressure within the bedrock. An allowable coefficient of friction of 0.45 may be used with the dead load forces.

Passive earth pressure may be computed as an equivalent fluid having a density of 500 pcf with a maximum earth pressure of 2500 psf. When combining passive and friction for lateral resistance, the passive component should be reduced by one-third.

Fill

Fill material was encountered in the trenches excavated drilled on the site. The maximum fill encountered was 10 feet. This material should be treated as recommended in the Site Preparation section.

CCC-02-RC-01
EXHIBIT (Statement of Defense)
Page 113

Expansion Index

Expansion Index Tests in accordance with the requirements of the Uniform Building Code Standard No. 29-C were performed on typical specimens of the on-site soils. This test measures the expansion index of the soils from 50 percent saturation to total saturation under a total load of 12.63 pounds, after a 24 hour saturation period, or until the rate of expansion becomes constant. Results of these tests indicate that the bedrock is non expansive.

Foundation Settlement

Settlement of the foundation system is expected to occur on initial load application. The maximum settlement is expected to be 1/2 inch. Differential settlement is not expected to exceed 1/4 inch.

Floor Slabs

Floor slabs may be supported on bedrock and should be reinforced with a minimum of 6x6- 10x10 (6x6-W1.4xW1.4) welded wire fabric. Slabs to be covered with flooring should be protected by an acceptable plastic vapor barrier. To prevent punctures and aid in the concrete cure, the barrier should be covered with a 1-inch layer of sand.

Foundation and Building Setback

Setbacks from the top or toe of slope should comply with the minimum requirements of the controlling

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 174

governmental agency. Refer to minimum setback criteria in the Appendix.

Drainage Protection

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

Private Sewage Disposal System

The proposed residence will be serviced by a septic tank and seepage pit sewage disposal system. The proposed seepage pits may be located in the area shown on the geotechnical map. These pits should be capped at a depth corresponding to a minimum distance of 15 horizontal feet from descending soil-bedrock contacts and at least 5 vertical feet below the ground surface. This system should also be constructed per the requirements of the County of Los Angeles, Department of Health Services.

Sewage effluent is expected to percolate into the bedrock along existing, favorably orientated joint and fracture planes. Provided the sewage disposal system is constructed per our recommendations, percolation of effluent from the proposed residence is not expected to raise

CCC-02-RO-01
EXHIBIT
(Statement of Defense)
Page 175

groundwater levels in the area, adversely affect site stability, or pose a hazard to the site or adjacent properties.

Section 309

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

Approval

A set of building plans should be submitted to this office for review and approval prior to initiation of construction.

Inspection

It is recommended that all foundation excavations be approved by this firm prior to placing concrete or steel. Any fill which is placed should be tested and certified if used for engineering purposes. Cut-slopes and temporary wall excavations should be examined by a representative of this firm. Should the examination reveal any unforseen hazard, appropriate treatment will be recommended. Please advise this office at least 24 hours prior to any required inspection.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Remarks

The conclusions and recommendations contained herein are based on the findings and observations made at the trench locations. While no great variations in soil/bedrock conditions are anticipated, if conditions are encountered during construction which appear to differ from those disclosed, CALIFORNIA GEO/SYSTEMS, INC. should be notified, so as to consider the need for modifications.

This report has been compiled for the exclusive use of Jack Moses and his authorized representatives. It shall not be transferred to or used by a third party, to another project, or applied to any other project on this site, other than as described herein, without consent and/or thorough review by this facility.

Should the project be delayed beyond the period of one year after the date of this report, the site should be examined and the report reviewed to consider possible changed conditions.

This report is issued with the understanding that it is the responsibility of the owner, or his representative, to assure that the information and recommendations contained herein are called to the attention of the designers and builders for the project.

CCC-02-01
EXHIBIT
(Statement of Defense)
Page 177

The limits of our liability for data contained in this report and our warranty is presented on the following page.

CALIFORNIA GEO/SYSTEMS, INC.

David B. Ebersold
Project Geologist

O.P. Malhotra
GE 557



Richard M. Ramirez, Pres.
CEG 490

DBE:OPM:RMR/nkr

WARRANTY

This report is based on the development plans provided to our office. In the event that any significant changes in the design or location of the structure(s); as outlined in this report are planned, the conclusions and recommendations contained in this report may not be considered valid unless the changes are reviewed and the conclusions of this report are modified or approved by the soil engineer and geologist.

The subsurface conditions, excavations, characteristics, and geologic structure described herein and shown on the enclosed cross section(s) have been projected from individual borings or test pits placed on the subject property. The subsurface conditions, excavation characteristics, and geologic structure shown should in no way be construed to reflect any variations which may occur between these borings or test pits.

It should be noted that fluctuations in the level of the groundwater may occur due to variations in rainfall, temperature, and other factors not evident at the time measurements were made and reported herein. California Geo/Systems, Inc. assumes no responsibility for variations which may occur across the site.

If conditions encountered during construction appear to differ from those disclosed, this office shall be notified so as to consider the need for modifications. No responsibility for construction compliance with the design concepts, specifications or recommendations is assumed unless on-site construction review is performed during the course of construction which pertains to the specific recommendations contained herein.

This report has been prepared in accordance with generally accepted practice. No warranties, either expressed or implied, are made as to the professional advice provided under the terms of the agreement and included in this report.

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EXHIBIT [illegible]
(Statement of Defense)

California GEO/SYSTEMS, INC.

GEOTECHNICAL CONSULTANTS

April 19, 1988
GS87-1143-1

Jack Moses
22333 Victory Bl. #125
Canoga Park, CA 91303

SUBJECT: Addendum to Soils and Engineering Geologic Investigation Report for Proposed Single-Family Residence, 25351 Piuma Road, Malibu, CA

REFERENCE: 1) Soils and Engineering Geologic Investigation Report for Proposed Single-Family Residence, 25351 Piuma Road, Malibu, CA; California Geo/Systems, Inc., GS87-1143, dated January 19, 1988

INTRODUCTION

The addendum has been prepare to address the referenced Geologic and Geotechnical Engineering Review Sheets prepared by the County of Los Angeles. The Geologic Review Sheet will be addressed first with all items discussed in order of their presentation on the referenced review sheets.

Geologic Review Sheet

Item 1 - "Submit geologic cross-sections at same scale as plan. Depict proposed seepage pit on cross-sections. Provide for total depth and capping depth. Depict these depths on section."

Response: The geologic cross-sections included in our referenced report were prepared at a scale of 1"=50' with no horizontal or vertical exaggeration. This

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 1/0

scale is considered to be the most useful as the topographic profile is a compilation of data from both the site plan (Plate 1) and Regional Geologic Map (Plate 2). The cross-section has been checked for accuracy and is considered representative of the actual topography along the section line. The proposed seepage pit and minimum capping depth have been added to the cross-section A-A'. Total seepage pit depth is determined by percolation testing and is outside the scope of this investigation. The seepage pit will be geologically observed after drilling and a report of actual requirements issued at that time.

Geotechnical Engineering Review Sheet

Item 1 - "Large areas of artificial fill exist on the site. If this material is not to be removed and recompacted, provide analyses that show this material is stable and will not adversely affect off-site properties."

Response: As discussed in our referenced report, artificial fill on the site is of two types: 1) recent artificial fill resulting from site brushing, 2) old roadway fill resulting from the construction of Piuma Road, much of which is directly supporting Piuma Road.

Cross-Section B-B' extends from the residence to the drainage below a depicts the artificial fill beneath and downslope of the residence.

A gross stability analysis of the artificial fill has been provided along section B-B' and indicates a safety factor exceeding the required 1.5 and 1.1 static and seismic minimums. This material is, however, considered to be potentially surficially unstable. This surficial instability will not pose a hazard to the proposed residence as the residence will be located upslope of the fill and will be supported on basalt bedrock per our recommendations. The surficially unstable material will not pose a hazard to offsite property as any potential failure will be directed to the existing drainage course which has a gradient of 3½:1 to 4:1 below the fill. All potentially unstable material is also located a minimum of 90 feet from the closest property line (via the drainage course) and over 1000 feet from the closest structure. In addition, the proposed residence will improve the existing surface drainage on the fill slope and furthermore, it has been recommended that the slope be planted with a lightweight, deep-rooted, fire resistant vegetation to provide additional erosion control.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 182

It should also be recognized that 1) the fill can not be removed safely because of road, 2) cannot be recompacted as the required slope ratio is 2:1, 3) cannot be retained, 4) the site is within a large acreage parcel with no neighbors, 5) there is no access for equipment, 6) existing coastal chaparral would be destroyed and 7) there is no logical reason for removal of the Piuma Road prism fill placed by the county.

Item 2 - "Any footings subject to creep must be designed for theses forces."

Response: The reviewer is referred to page 11 of our referenced report. Further, no footings are proposed on slopes exceeding 2:1. Please review reports by reading all pages of the text.

Item 3 - "It appears that retaining walls will be used. Please address the use and design of these walls. Also, comment on the footings to be placed in compacted fill material."

Response: Proposed retaining walls will be up to 10 feet in height and will have level backfills. All walls will be supported on bedrock and will support bedrock and/or existing artificial fill. Retaining walls supporting existing artificial fill should be designed for an equivalent fluid pressure of 35 pcf.

CCC-0[illegible]0-01
EXHIB[illegible]
(Statement of Defense)
Page 185

A calculation is included with this addendum. Retaining walls supporting bedrock or properly compacted level backfills may be designed for an equivalent fluid pressure of 30 pcf. Backwall drainage will be provided and the onsite backfill material is very granular basalt.

Footing details indicating structural support on compacted fill material are not in conformance with our recommendations. All foundations must be supported on bedrock per our previous recommendsions to avoid the potential for differential settlement.

Item 4 - "The Geotechnical Engineer must sign, stamp and indicate the date of registration expiration on the soils report."

Response: Item #4 is acknowledged

Item 5 - "The building plans must be signed and stamped by the Geotechnical Engineer in verification of his recommendations and the recommendations of the approved geotechnical report."

Response: Item #5 is acknowledged and has been completed.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 184

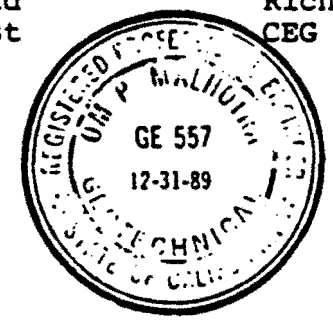
If you have any further questions, please call.

CALIFORNIA GEO/SYSTEMS, INC.

David B. Ebersold
Project Geologist

Richard M. Ramirez, President
CEG 490

O.P. Malhotra
GE 557



DBE:RMR:OPM/nkr

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 185

'LICATION FOR WELL PERMIT
'IRONMENTAL MANAGEMENT - 313 N. FIGUEROA STREET, L.A. 90012, Room 208
INTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES

DATE 3/30/87

APPLICANT

TYPE OF PERMIT (CHECK)
- [X] NEW WELL CONSTRUCTION
- [ ] RECONSTRUCTION OR RENOVATION
- [ ] DESTRUCTION

TYPE OF WELL
- [X] PRIVATE DOMESTIC
- [ ] PUBLIC DOMESTIC
- [ ] IRRIGATION
- [ ] CATHODIC
- [ ] INDUSTRIAL
- [ ] GRAVEL PACK

TYPE OF CASING: STEEL

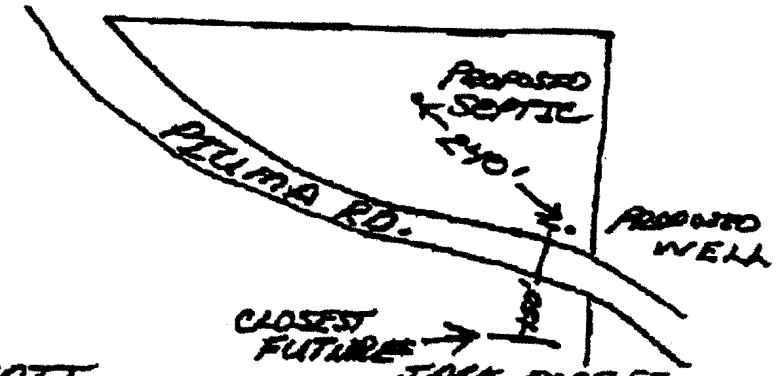
METHOD OF SEALING OF CASING: 25' CEMENT GROUT

METHOD OF DESTRUCTION:

LOCATION

ADDRESS (NUMBER, STREET AND NEAREST INTERSECTING): 25351 Pumice Cyn.
CITY: MALIBU

DIAGRAM (SHOW PROPERTY LINES, STREET, ADDRESS, WELL SITE, SEWERS, AND PRIVATE SEWAGE DISPOSAL SYSTEMS ALONG WITH LABELS AND DIMENSIONS)



DALE LIPPINCOTT
NAME OF WELL DRILLER (PRINT)
DALES ORTLEIBS
TRADE NAME
10351 PACIFIC VIEW RD. MALIBU
BUSINESS ADDRESS CITY

JACK MOSES
NAME OF WELL OWNER (PRINT)
22333 VICTORY BLVD #12
MAILING ADDRESS
CANOGA PARK, CA
CITY
9/303

I hereby agree to comply in every respect with all regulations of the County Preventive/Public Health Services and with all ordinances and laws of the County of Los Angeles and of the State of California pertaining to well construction, reconstruction and destruction. Upon completion of well and within ten days thereafter, I will furnish the County Preventive/Public Health Services with a complete log of the well, giving data drilled, depth of well, all perforations in casing, and any other data deemed necessary by such County Preventive/Public Health Services.

Applicant's Signature

DISPOSITION OF APPLICATION: (For Sanitarians Use Only)
- [X] APPROVED
- [ ] DENIED
- [ ] APPROVED WITH CONDITIONS

If denied or approved with conditions, report reason or conditions here:

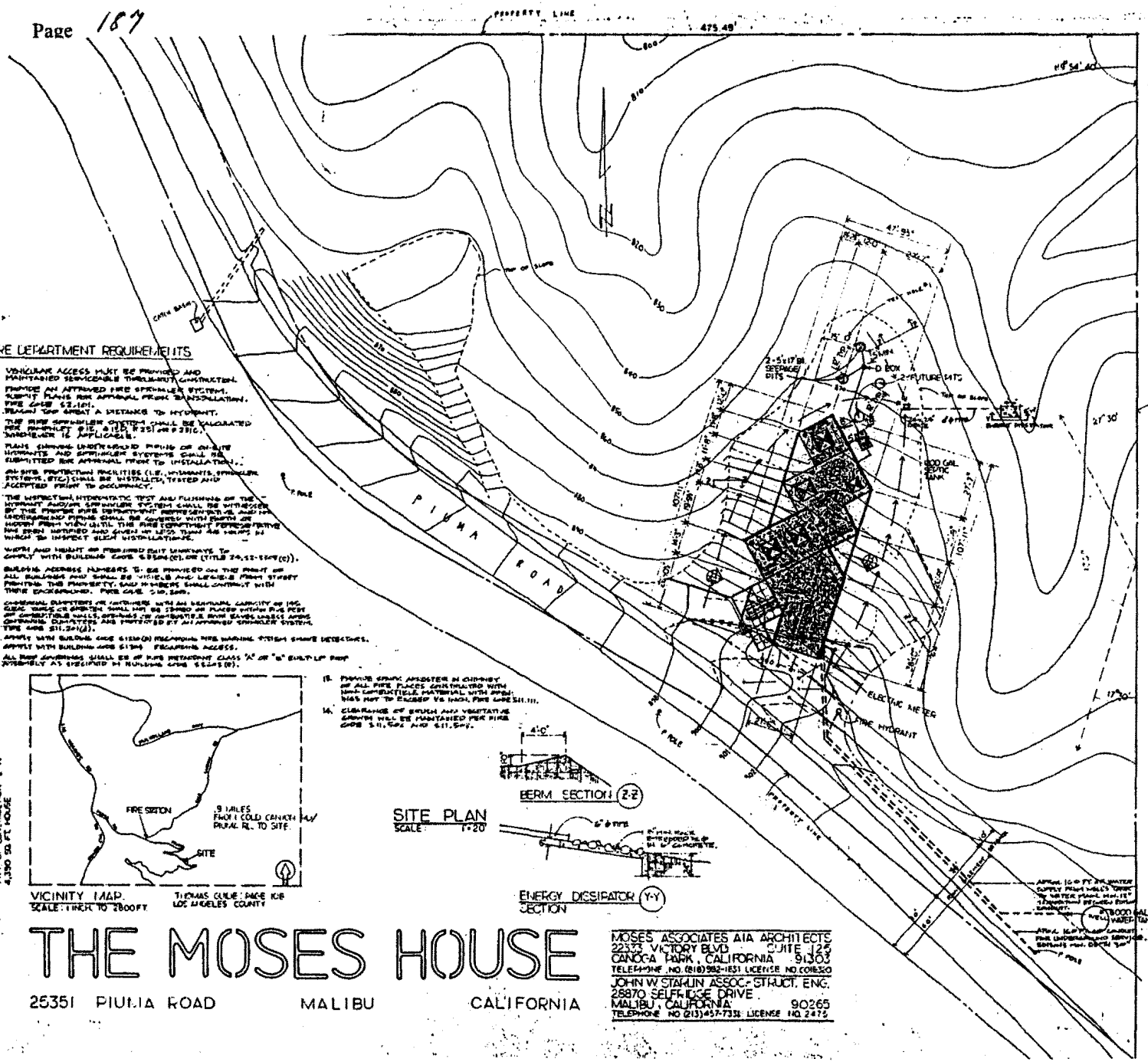
w/ concrete pad test 16' 6" x 6' 6"
monuments poor.

DATE 3/30/87
SANITARIAN
DATE
SECTION CHIEF

When signed by Section Chief, this application is a permit.

[illegible] (REV. 12-78) (APPLICANT)

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)



FIRE DEPARTMENT REQUIREMENTS

1. VEHICULAR ACCESS MUST BE PROVIDED AND MAINTAINED SERVICEABLE THROUGHOUT CONSTRUCTION.
2. PROVIDE AN APPROVED FIRE SPRINKLER SYSTEM. SUBMIT PLANS FOR APPROVAL PRIOR TO INSTALLATION. FIRE CODE 903.2(H). MEASURED DISTANCE TO HYDRANT.
3. THE FIRE SPRINKLER SYSTEM SHALL BE CALCULATED PER PAMPHLET #13, NFPA #231 OR #231C. SPRINKLER IS APPLICABLE.
4. PLANS SHOWING UNDERGROUND PIPING OF ON-SITE HYDRANTS AND SPRINKLER SYSTEMS SHALL BE SUBMITTED FOR APPROVAL PRIOR TO INSTALLATION.
5. ON-SITE PROTECTION FACILITIES (I.E., HYDRANTS, SPRINKLER SYSTEMS, ETC.) SHALL BE INSTALLED, TESTED AND ACCEPTED PRIOR TO OCCUPANCY.
6. THE HYDROSTATIC HYDRAULIC TEST AND FLUSHING OF THE HYDRANT AND/OR SPRINKLER SYSTEMS SHALL BE WITNESSED BY THE PROPER FIRE DEPARTMENT REPRESENTATIVE, AND ALL UNDERGROUND PIPING SHALL BE COVERED WITH EARTH OR CONCRETE FROM VIEW UNTIL THE FIRE DEPARTMENT REPRESENTATIVE HAS BEEN NOTIFIED AND GIVEN AT LEAST TWO WORKING DAYS IN WHICH TO INSPECT SUCH INSTALLATIONS.
7. WIDTH AND HEIGHT OF PROPOSED GATE WAY(S) TO COMPLY WITH BUILDING CODE 5.956(c), 5.96(c) OR (TITLE 24, 5.2-5.96(c)).
8. BUILDING ADDRESS NUMBERS TO BE PROVIDED ON THE FRONT OF ALL BUILDINGS AND SHALL BE VISIBLE AND LEGIBLE FROM STREET FRONTING THE PROPERTY, AND WHERE SHALL CONTRAST WITH THEIR BACKGROUND. FIRE CODE 9.10.2(H).
9. CHEMICAL DISPENSERS OR CONTAINERS WITH AN INDIVIDUAL CAPACITY OF 100 GALS. OR MORE OR DRUMS SHALL NOT BE STORED OR PLACED WITHIN FIVE FEET OF COMBUSTIBLE WALLS, PARTITIONS OR COMBUSTIBLE ROOF EAVES, UNLESS ADEQUATE CONTAINMENT AND PROTECTED BY AN APPROVED SPRINKLER SYSTEM. FIRE CODE 511.2(d).
10. COMPLY WITH BUILDING CODE 6.1510(a) REGARDING FIRE WARNING SYSTEM SMOKE DETECTORS.
11. COMPLY WITH BUILDING CODE 5.1704 REGARDING ACCESS.
12. ALL ROOF COVERINGS SHALL BE OF FIRE DEPARTMENT CLASS 'A' OR 'B' BUILT-UP ROOF ASSEMBLY AS LISTED IN BUILDING CODE 5.5.2-1507.
13. PROVIDE SPARK ARRESTER IN CHIMNEY OF ALL FIRE PLACES CONSTRUCTED WITH NON-COMBUSTIBLE MATERIAL WITH OPENINGS NOT TO EXCEED ½ INCH. FIRE CODE 511.111.
14. CLEARANCE OF BRUSH AND VEGETATIVE GROWTH WILL BE MAINTAINED PER FIRE CODE 5.11.5(a) AND 5.11.5(e).

OCCUPANCY R-3
TYPE OF CONSTRUCTION V-N
4,350 SQ FT HOUSE

VICINITY MAP
SCALE: 1 INCH TO 2800 FT

THOMAS GUIDE: PAGE 618
LOS ANGELES COUNTY

SITE PLAN
SCALE: 1"=20'

THE MOSES HOUSE

25351 PIUMA ROAD MALIBU CALIFORNIA

MOSES ASSOCIATES AIA ARCHITECTS
22333 VICTORY BLVD. SUITE 129
CANOGA PARK, CALIFORNIA 91303
TELEPHONE NO. (818) 992-1631 LICENSE NO. C018320

JOHN W STAHLIN ASSOC. STRUCT. ENG.
26870 SELFRIDGE DRIVE
MALIBU, CALIFORNIA 90265
TELEPHONE NO (213) 457-7331 LICENSE NO. 2475

GENERAL NOTES

1. All workmanship and details shall be developed to full compliance with applicable local codes and requirements.
2. The General Contractor (GC) and subcontractors shall visit and examine the site and it's improvements, check and verify all existing dimensions and conditions, acknowledge and be responsible for all work as existing.
3. GC shall obtain representatives of city utilities, including gas, water, power, sewer, telephone and T.V. regarding locations and availability of utilities prior to commencing work or connecting and disconnecting utilities, and shall be responsible for any damage to existing lines. Locations and elevations of all mains and meters shall be confirmed to the Architect at the earliest possible date.
4. Written dimensions prevail over scaled dimensions on drawings.
5. GC shall provide and install an underground water supply lines and verify that line size is adequate to provide acceptable pressures and volume.
6. GC shall provide ventilation, clearances and fire protection for all new fireplaces, hot water heaters, furnaces, vents and flues as required by code and manufacturer's specs.
7. All new water supply lines shall be copper and all new hot water lines shall be insulated as required.
8. All flashings, gutters, scuppers, downspouts and catch basin connections shall be properly joined and sealed so that they are water-tight. All flashings shall be installed per local code requirements. GC shall notify Architect of all points where water may penetrate for additional water-protective measures.
9. All plaster and drywall material and installation unless otherwise specified shall be according to the current U.S. Gypsum Handbook specifications and local code requirements.
10. GC shall include within the scope of his work preparation prime and finish painting and staining of entire exterior and interior walls and ceilings, including doors, sash, trim, work and exposed beams and ceilings. Confirm paint and stain selections and specifications with Architect.
11. All cabinetry and millwork unless otherwise specified shall be according to current Woodworkers Institute of California Handbook standards, premium grade.
12. All chemical work shall be according to UBC/IAS Manual standard specifications.
13. Exterior doors and windows shall conform to the security requirements of the L.A. County Building Code.
14. All entrance doors (swinging, sliding) shall be equipped with a deadbolt and wood locking latch; both key operated from the outside. Door jamb shall have a hardened insert 1" min. throw and 5/8" min. embedment into jamb.
15. Insulation:
   a) Walls: R13 batts (all exterior walls).
   b) Roofs: R30 batts.
16. All metal parts exposed to weather shall be galvanized.
17. All wood posts on foundation walls shall be press re-treated lumber.
18. Fire-block all wood-stud walls (including furred walls) at the ceiling and mid-height.
19. Provide smoke-detectors at locations shown on plan approved by State Fire Marshall.
20. All openings and penetrations of the building envelope shall be adequately sealed to prevent the passage of moisture or air.
21. Operable Doors and Windows: All exterior doors and windows in energy-insulated walls shall be fully weather stripped, gasketed or otherwise treated to limit air infiltration.
22. Door hinge pins accessible from the outside shall be non-removable.
23. Sliding glass doors of wood frame or in-swing doors shall be solid piece construction or joined by rabbets.
24. Sliding glass doors and windows shall be capable of withstanding the test forces in sections 6708 and 6709 of the L.A. County Building Code and shall bear forced-entry-resistant labels.
25. Insulation certificate shall be posted at completion located in visible dwelling.
26. PROTECTION OF ADJACENT WALL SURFACES SHALL BE PROVIDED AND APPROVED BY THE CONSULTING STRUCTURAL ENGINEER PRIOR TO THE PLACING OF CONCRETE.

SCHEDULE OF DRAWINGS

A-1 SITE PLAN / GENERAL NOTES / SCHEDULE OF DRAWINGS
A-2 FOUNDATION PLAN
A-3 FLOOR PLANS: LEVELS A-B-C-D
A-4 BUILDING ELEVATIONS: FRONT AND REAR
A-5 BUILDING ELEVATIONS: LEFT AND RIGHT
A-6 BUILDING SECTIONS
A-7 BUILDING SECTIONS
A-8 INTERIOR ELEVATIONS / DETAILS / SCHEDULES

T-1 SPECIFICATIONS
T-2 SPECIFICATIONS

S-1 FOUNDATION DETAILS
S-2 FRAMING PLANS
S-3 FRAMING DETAILS
S-4 NOTES / SCHEDULES

M-E-P MECHANICAL, ELECTRICAL, PLANS

JOB NO. 8705
DATE: FEBRUARY 8, 1988

(A-1)

55-054

FUEL MODIFICATION AND LANDSCAPE PLANS

Fire Hazard Reduction Requirements:

1. CLEAR all hazardous flammable vegetation to mineral soil for a distance of 30 feet from any structure. Cut flammable vegetation to a height of 18 inches for another 70 feet.

Exception: This does not apply to single specimens of trees, ornamental shrubbery or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground cover, provided that they do not form a means or readily transmitting fire from native growth to any structure. Greater clearances may be required by the administrative authority.

2. 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.

Grading, Drainage and Landscape Plans:

1. All construction slopes are to be protected from erosion by the planting of ground cover, shrubs and trees as noted in the attached "Standard Specifications For Hillside Planting" which is designed to implement the requirements of the Los Angeles County Building Code.

2. Existing drainage courses located east and west of the project site shall remain unaffected by this construction. Surface waters around the building site shall be collected and diffused as necessary into energy-dissipating drainage devices as shown on the attached diagram.

3. Landscaping of the project site shall include the planting of shrubs and/or trees in the locations shown on the site plan in the manner specified from the attached "Standard Specifications For Hillside Planting". The intent of this landscaping is to screen and/or soften the visual impact of the development.

GENERAL STATEMENT

The intent of these specifications is to assist in compliance with the requirements of Section 7013 of the Los Angeles County Building Code applying to the planting of graded slopes.

A. Hillside Seeding:

1. Seeding rate:

a. Annual grass and legume mixture-

Annual Ryegrass		16 lbs./acre
Vetch		15 lbs./acre
Rose Clover		4 lbs./acre
	TOTAL	35 lbs./acre

b. Perennial grass and legume mixture-

Alto or Meadow Fescue		10 lbs./acre
Kentucky Bluegrass		5 lbs./acre
Birdsfoot Trefoil*		4 lbs./acre
	TOTAL	19 lbs./acre

c. Various grasses and legume mixtures-

Blande Brome		8 lbs./acre
Tall Wheatgrass		8 lbs./acre
Harding Grass		2 lbs./acre
Rose Clover or Subterranean Clover**		4 lbs./acre
	TOTAL	22 lbs./acre

d. Alyssum and legume mixture-

Birdsfoot Trefoil*		25 lbs./acre
Alyssum		5 lbs./acre
	TOTAL	30 lbs./acre

*Requires warm weather to germinate
**Withstands drought

e. Other seeds as recommended by a registered landscape architect, subject to the approval of the Department. Color may be provided by utilizing flower seeds with recommended mixes.

2. Fertilizer applied at the rate of 32 pounds nitrogen and 40 pounds of phosphorus per acre. Drill or cultivate fertilizer into soil.
3. Apply seed by drilling or raking seed into soil using an organic material or soil mulch of ¼" thickness. On large scale projects it is recommended that mulch, seed and fertilizer be applied by hydro-mulching organic material in a water slurry that is applied by spraying on slope.
4. Irrigate seeded area immediately after planting at low rate of water application and maintain seeded slope in a moist condition.

B. GROUND COVERS:

1. Recommended varieties (See page 8.)
2. Planting:
   a. Rooted cuttings to be planted in ground that has been moistened and plant pits to be 6" x 6".
   b. Container grown plants to be planted in plant pits three (3) times wider than plant pit and depth double the height of plant ball. Backfill plant pit with 1/3 organic material mixed with soil from the site and amendments as needed to insure healthy growth. Plant crown to be at its natural growing height after settlement.
   c. Mulch planting area with organic material to aid in providing cool moist surface for plants. Rate of application to depend on the steepness of slope.
   d. Fertilize as necessary to assure healthy growth.
   e. Irrigate immediately after planting and as required using low rate of water application to insure healthy growth of plant without excessive water runoff from slope.

C. SHRUBS AND TREES:

1. Varieties (See Page 8.)
2. Planting (refer to paragraph on container grown plants for ground covers. Paragraph B–2(b).
   a. Trees to be staked utilizing at least one (1) redwood stake 2" x 2" x 8' driven into soil adjacent to plant ball at least 6" in solid ground. Tie tree to stake with a material that will not damage tree trunk.
3. Mulch plant with at least 1" of organic material.
4. Fertilize as necessary to assure healthy growth after plant begins new growth.
5. Irrigate immediately after planting, soaking the soil around the plant ball so that there will be no air pockets.

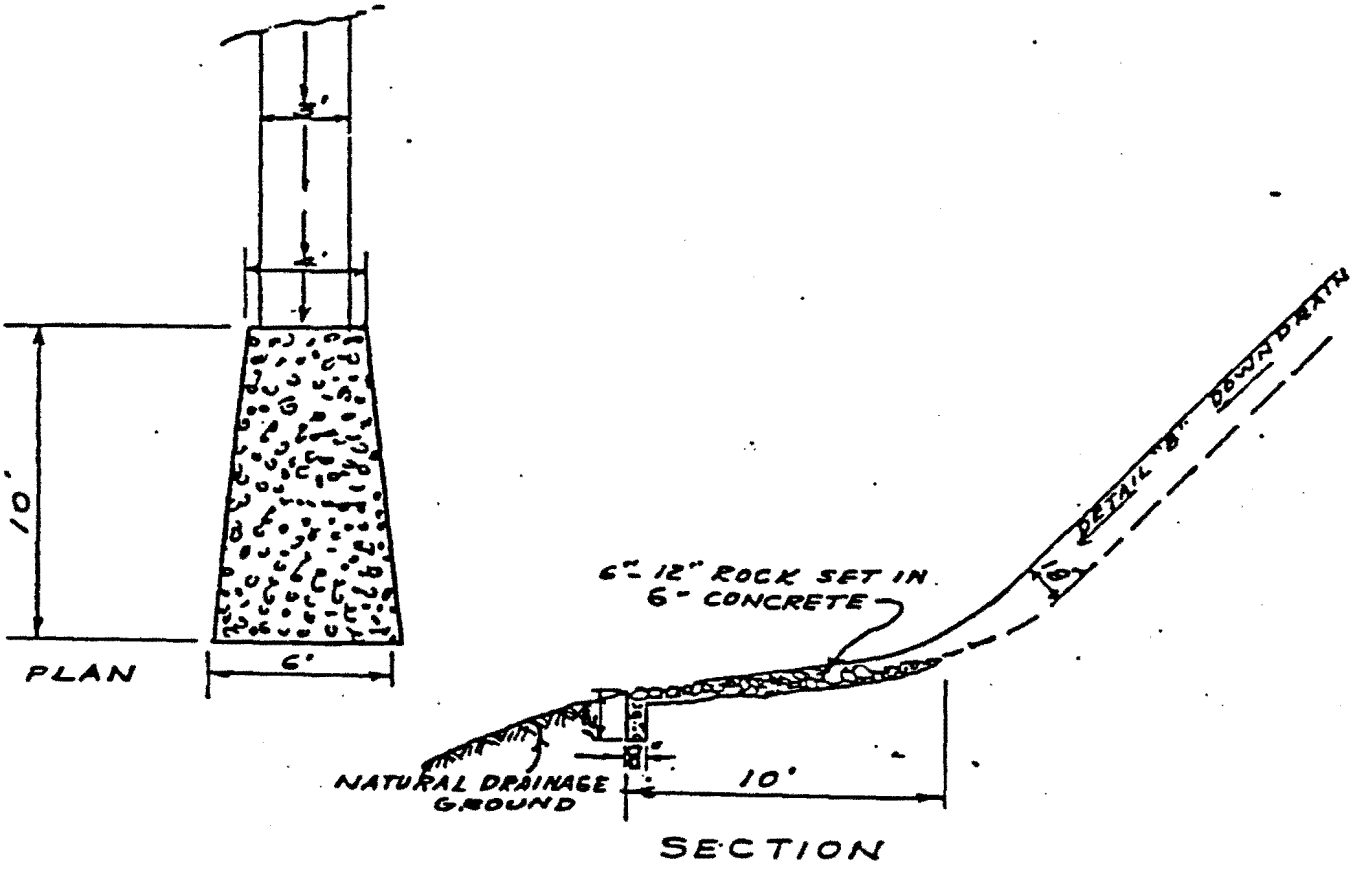
This table indicates the suggested planting for SLOPE EROSION CONTROL. Other suitable plants, as recommended by a landscape architect, may be approved.

BOTANICAL NAME	COMMON NAME	Type: Sand, Loam or Granite	Type: Clays	Type: Shales	Climatic Condition: Sea Shore	Climatic Condition: Coastal Humid Belt	Climatic Condition: Inland Frost Free	Climatic Condition: Inland Frost Belt	Fire Retardant	Spacing: Rooted Cuttings	Spacing: Gallon Size
Ground Cover											
Achillea Tomentosa	Wooly Yarrow	X	X		X	X	X	X	X	12"	
Bougainvillea Spectabilis	Brazil bougainvillea	X	X		X	X	X				5'
Gazania Uniflora leucolaena	Trailing gazania	X	X		X	X	X			24"	
Hedera varieties	Ivy	X	X	X	X	X	X			18"	1'
Hypericum calycinum	Aarons beard	X	X	X	X	X	X	X		18"	
Lantana varieties	Lantana	X	X	X	X	X	X			2'	4'
Lippia canescens repens	Creeping Lippia	X	X		X	X	X			15"	
Lonicera species	Honeysuckle	X	X	X	X	X	X	X		24"	4'
Mesembryanthemum small leaf varieties	Iceplant	X	X		X	X	X			*	
Osteospermum fruticosus	Trailing African Daisy	X	X	X	X	X	X			12"	
Plumbago capensis	Cape plumbago (Leadwort)	X	X	X	X	X	X				4'
Rosmarinus prostrate type	Creeping Rosemary	X	X	X	X	X	X	X	X	2'	4'
Vinca varieties	Periwinkle	X	X	X	X	X	X	X	X	24"	
Shrubs											
Acacia longifolia	Sallow wattle	X	X			X	X				
Acacia verticillata	Star acacia	X	X		X	X	X				
Cistus hybridus	Rose of Sharon	X	X	X		X	X	X			
Atriplex canescens	Four winged salt bush	X	X		X	X	X		X		
Atriplex Lentiformis	Salt bush	X			X			X	X		
Baccharis pilularis	Dwarf coyote bush	X			X	X	X		X		
Callistemon species	Bottle brush	X	X	X	X	X	X				
Ceanothus gloriosus	Point reyes ceanothus	X			X	X	X	X			
Ceanothus griseus horizontalis	Carmel creeper	X	X		X	X	X				
Cistus species	Rockrose	X	X		X	X	X	X	X		
Echium fastuosum	Pride of Madiera	X	X	X	X	X	X	X			
Elaeagnus pungens	Silverberry	X			X	X	X	X			
Eriogonum fasciculatum	Flat top eriogonum	X			X	X	X	X			
Grevillea banksi	Crimson coneflower	X	X			X	X				
Juniperus sab. Tamariscifolia	Sayn juniper	X	X		X	X	X				
Myoporum species	Myoporum	X	X	X	X	X	X		X		
Nerium oleander	Oleander	X	X	X	X	X	X				
Photinia erbutifolia	Toyon or Christmasberry	X	X	X		X	X				
Rhus Laurina	Laurel sumac	X	X	X	X	X	X				
Santolina virens	Green lavendercotton	X	X	X	X	X	X	X	X		
Spartium junceum	Yellow Spanish broom	X	X	X	X	X	X	X	X		
Trees											
Albizzia julibrissin	Silk tree	X	X	X	X	X	X	X			
Castanea castanea	Cape chestnut	X	X	X	X	X	X				
Erythrina species	Coral tree	X	X	X	X	X	X				
Eucalyptus grossa	Phillips' River Eucalyptus	X	X	X		X	X				
Ginkgo biloba	Maidenhair tree	X	X			X	X	X	X		
Gleditsia triacanthus	Honeylocust	X	X	X		X	X	X	X		
Liquidamber orientalis	Oriental sweet gum	X	X			X	X	X	X		
Parkinsonia aculeata	Jerusalem thorn	X	X	X	X	X	X	X			
Pinus species	Pine	X			X	X	X	X			
Prunus integrifolia	Catalina Cherry	X	X	X	X	X	X	X			
Schinus molle	California Pepper	X	X	X	X	X	X	X			
Schinus terebenthifolius	Brazilian Pepper	X	X	X	X	X	X	X	X		

* Unrooted cuttings 6" long 18" apart

NOTE: All references contained in this Grading Guideline referring to Code, Chapter, or Section are to be found in the Los Angeles County Building Laws, 1975 Edition.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)



VELOCITY REDUCER

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

June 3, 2002

Mr. Don Schmitz
Schmitz & Associates
29350 West Pacific Coast Highway, Unit 12
Malibu, CA 90265

Re: Comments on Coastal Commission Staff Report (Application No. 5-88-056-A1) - 25351 Piuma Road, Calabasas, Los Angeles County (APN 4456-37-007)

Dear Mr. Schmitz:

At the request of the Applicants, Howard and Terry Rubinroit, I have reviewed the subject staff report and have several comments and clarifications that may be helpful to the Commission for their deliberation. Previously, in my October 1, 2001 letter report to you, I summarized my qualifications to complete a biological assessment for the property and the development features at issue. You may recall that letter presented the results of a field investigation and biological assessment conducted for certain site improvements constructed on the subject property. Specifically, that assessment addressed the biological impacts of claimed unpermitted construction that was the subject of California Coastal Commission Cease and Desist Order CCC-01-CD-01. Pursuant to correspondence between Coastal Commission Staff and the Applicants, focus was placed on the construction of a lighted sports court on site and its impact on: (1) riparian vegetation/habitat; (2) blueline streamcourses; and (3) oak trees.

In order to complete my assessment I reviewed several sources as listed in my October 1, 2001 letter. For purposes of my comments and clarifications contained herein I have added the following sources:

- Site Plan/Topographic Map, VTN West, Inc., June 27, 2001.
- U.S. Geological Survey Malibu Beach 7.5 Minute Quadrangle, 1950 (Photorevised 1981).
- California Coastal Commission Staff Report, Application No. 5-88-056-A1.
- PCR Services Corporation. 2001. Los Angeles County Significant Ecological Area Update Study 2000. Los Angeles County, Department of Regional Planning. Los Angeles, CA.
- U.S. Department of the Interior, National Park Service. 1998. Santa Monica Mountains National Recreation Area Land Protection Plan. Santa Monica Mountains National Recreation Area, CA.

For ease of review, my comments and clarifications follow the staff report organization, specifically as that report addresses the supposed biological effects of: the swimming pool; the above ground water storage tank; the lighted sports court; the lighted stairway extending from the pool area to the sports court; and, the installation of decomposed granite on the eastern side of the sports court -- the last three of which were are recommended for denial by Commission Staff on the grounds that they supposedly would result in significant adverse impacts.

Denial of the Remainder of the Development (page 3, bottom paragraph)

As grounds for denial of portions of the development the Commission Staff claims that the project *"would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act."* However, staff does not state what its thresholds of significance criteria are. Based on my experience, effects on biological resources should and must be assessed using impact significance criteria that implement the policy statement contained in CEQA under Section 21001(c) of the Public Resources Code and CEQA Guidelines, Appendix G. According to these criteria, effects would be considered

significant if one or more of the following conditions would result from implementation of the proposed project:

- A substantial effect on a rare or endangered species or the habitat of that species;
- A substantial diminishment in the habitat for fish, wildlife or plants;
- A substantial effect on a critical, yet limited, resource utilized by State or Federal listed Threatened or Endangered species;
- A substantial effect on the movement of any resident or migratory fish or wildlife; or,
- A net loss of wetlands.

Logically and empirically, developments as minor as those at issue on the subject property do not and could not meet any of the above criteria given the site conditions, present and past. Certainly, the Staff report does not support its opposite conclusion in any way. In order to offer a credible conclusion within the meaning of CEQA, Commission Staff needs to base its findings on tangible threshold criteria and substantiate its findings with facts. It fails to do so.

Project Description and Background (page 9, partial paragraph at top)

The Staff's statement that *"the site is located adjacent to a blueline stream..."* may be misconstrued by the reader to mean the site essentially encompasses a blueline stream unless more detail is provided. As clarification, the site is in the vicinity of a blueline stream; however, no portion of the stream traverses the property itself.

Environmentally Sensitive Resources and Water Quality (page 22 and subsequent pages)

The Commission Staff's application of ESHA status to blueline streams is congruent with most resource management programs and plans in Southern California. For example, the State Fish and Game Code under Section 1603, draft Los Angeles County Significant Ecological Area Update Study 2000 and others all have provisions and guidelines to protect and conserve streamcourses and riparian habitat. In their implementation, however, these programs do not require rigid, inflexible setbacks; instead, they call for site specific study whereby the effects of development can be assessed on a case by case basis. In my opinion, the reliance of Commission Staff on past Commission actions where a 100 foot setback of new structures from blueline streams/ESHA was required does not represent thoughtful planning. On the one hand, other development proposals could be of such a magnitude that 100 feet is not enough to protect resources from the associated edge effects. On the other hand, as in the case of the subject property, development could be relatively minor and have little if any effect on either rare or especially valuable resources, let alone entire ecosystems.

In its characterization of resources the Staff report may again be misconstrued to mean that the blueline stream is encompassed by the property. As stated above, this is not the case. The same comment applies to the Staff report's statement that several oak tree are located adjacent to the subject site. As I stated in my October 1, 2001 letter, whereas small individual trees could have gone undetected within the dense mixed chaparral away from the site improvements, no oak trees were observed on site. Therefore, I question why oak trees are raised as an issue at all. Furthermore, the Staff report's description of chaparral and the significance attributed to it in a regional context, including the Cold Creek Resource Management Area, is an overstatement of this biotic community that remains relatively common in the Santa Monica Mountains.

As stated in the staff report:

> *" 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 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."*

I could understand if this summary statement were made in the context of identifying potential concerns to be addressed by the subject development in the form of a site specific analysis. However, in the context of an analysis of the site itself, it is an overstatement of the significance of chaparral as it exists on site. It would appear that Staff is using an overly dramatic characterization in order to justify broad brush ESHA designations (not to mention the OTD which is based on straight lines that do not necessarily conform to topography and vegetation). Again, I agree with the need to address concerns for downstream resources, but not the inflexible, straight-line approach taken by Staff without regard to the true nature of the particular site in question. Indeed, the Applicants have made me aware of Staff's expressed concerns as to the chaparral on site in the original permit issued in 1988, wherein it is noted that *" 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."* I agree that the chaparral on site warrants that concern.

Environmentally Sensitive Resources and Water Quality (page 26, top paragraph)

The Staff report points out statements I made in my October 1, 2001 letter, such as my description of the nearest blueline stream as being approximately 100 feet to the northeast of the sports court. Staff contrasts this to plans submitted by the Applicants wherein the stream is shown to be located approximately 60 feet east of the sports court and approximately 50 feet east of the area of decomposed granite adjacent to the sports court. However, I stand by my original description. As I described in my October 1, 2001 letter, the drainage running along the eastern portion of the property is not a blueline stream according to USGS topography. I also want to reiterate my original findings that this particular drainage was once fed by a culvert that carried flows under Piuma Road where it was released onto the property to continue down this drainage, eventually flowing into the blueline stream located off site to the north and northeast. At some point in the past, however, the runoff from upstream watershed areas was diverted at the road to flow down the southern edge of the road away from the property. Under these conditions it is highly unlikely that the drainage along the eastern portion of the property could have or will ever again support riparian vegetation growth.

The blueline stream that is indicated on USGS topography is located entirely off site to the northeast of the sports court. During my field investigation on September 22, 2001 I estimated it to be approximately 100 feet from the sports court at the nearest point. Upon examination of the VTN Site Plan/Topographic Map, dated June 27, 2001, which includes topography for the area surrounding the site, I have scaled the distance to be 65 feet. This correction to my original letter assessment should be noted.

I do not concur with the Staff report's statement that *"the grading and removal of native vegetation associated with 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 alterations of floodwaters"* (emphasis

added). Based on my calculations using the VTN June 27,2001 Site Plan, the sports court is only 1800 square feet in size. Decomposed granite is pervious and does not factor in. The stairway, which is composed of railroad ties and is lit with low voltage, "Malibu" lights, adds only 400 square feet for a total of 2200 square feet (0.05 acre) of impervious surface area. The Staff report's finding that this development will harm, let alone eliminate ESHA, is unfounded and goes against my professional experience. Quite frankly, and not to be interpreted as an attack on the author of the report, I find the Commission Staff's use of this issue as a reason to deny these development features extreme and unsupportable. Of particular interest is the fact that, apparently at the request of the Staff, and as described in a memeo prepared by Staff, a representative from the California Department of Fish and Game (DFG) visited the site, determined the blueline stream did not merit jurisdiction by DFG, and noted that the impact of development on the stream was not significant.

I have the same reaction to the Staff's findings about other aspects of the site's development as well. In particular, the relocation of the above ground water storage tank, pump and screen wall will gain nothing in terms of biological resources. In fact, access for construction equipment to remove the tank and associated structures will likely do greater damage to existing vegetation around the tank than was done to construct the tank in the first place. It is one thing for Staff to seek consistency from a policy standpoint; what I can not comprehend or believe to be scientifically valid is Staff's insistence upon consistency at the cost of resources they hope to protect and preserve, particularly when the tank's current effect on resources is moot. Similarly, the Staff's insistence that the fence (and children's play area) which, as built, follows the natural contours of the property and is therefore unobtrusive, be removed in the small area where the fence traverses the OTD area lacks reason in terms of any resource protection rationale.

Finally, I feel Staff's expressed concerns about the ecological risks associated with the swimming pool overflowing are unreasonable. As stated in their letter to the Applicants, dated May 28, 2002, Contempo Swim Pool Construction Co. states " *The Rubinroit pool was designed and constructed, among other things, to avoid run-off and infiltration. The pool is sunken at virtually its entire expanse, so that it is more than 2 feet below the grade of the adjoining lawn and decking. Where it is not below grade, it abuts planted areas which range from 4 - 10 feet deep that will accommodate any possible run-off that might occur. Additionally, the pool is designed to be filled only to within 6 inches of the top, leaving more than adequate capacity to accommodate rain from even the most severe winter storms.*" The pools sunken design and its inherent ability to control run-off is readily apparent based upon visual inspection, as is the non-existent risk of overflow run-off. As for the potential risk associated with infiltration, I would rely on the pool construction company to be the experts, and I would suggest Staff do the same.

In conclusion, based on my field inspection, research and analysis, I do not believe any significant adverse impacts are associated with the subject site development features in terms of past, present and future effects.

If you have any questions or you would like to discuss my findings further, please do not hesitate to contact me.

Respectfully,

Steven G. Nelson

Steven G. Nelson
Consulting Biologist
24230 Delta Drive
Diamond Bar, CA 91765
Tel. & Fax: (909)396-8478

VTN West, Inc.
PLANNERS ENGINEERS SURVEYORS

Lloyd A. Poindexter, P.E.
William D. Egerdahl, P.E.
William S. Kish, L.S.

June 6, 2002

Mr. Don Schmitz
Schmitz & Associates
29350 West Pacific Coast Highway, Unit 12
Malibu, CA 90265

Regarding: Rubinroit Coastal Permit
VTN Ref. No. 6241-001

Dear Mr. Schmitz:

The following are my qualifications, if needed, and my observations of the issues we discussed by phone last week.

QUALIFICATIONS

- Registered Professional Engineer in California, Arizona, Nevada, and New Mexico
- California Registration No. PE 25274 (1974)
- 28-years professional experience; 7-years Los Angeles County Flood Control; 21- years private sector engineering

OBSERVATIONS

Water Tank (Current location as installed in 1987-see attached well permit).

- Structurally stable with no retaining walls required.
- Sufficiently distant from structures to not be jeopardized by structure fire.
- Not visible from west bound traffic until within approximately 90 feet of tank; hidden by hillside on south of Piuma Road.
- At point of maximum elevation on applicant's property thereby providing maximum gravitational pressure to domestic and fire flow in event of pump failure if caused by electrical outage during fire.

6946 Van Nuys Boulevard, Suite 100, Van Nuys, California 91405-3963
tel 818.779.8740 fax 818.779.8750 e-mail vtn@vtnwest.com

Proposed tank relocation within area not covered by 1988 OTD

- If relocated immediately north of carport, would require minimum 16 foot high retaining wall to be constructed on natural slope with approximately 1:1 (horizontal to vertical) steepness.
- Approximately 150 cy of earth fill material would be required to create pad to support tank; assuming 5 cy average load per small dump truck would require approximately 30 truck loads of dirt imported with 30 truck trips up and down Piuma Road.
- Tank would be in jeopardy of being damaged by structure fire.
- Tank would need to be elevated approximately 6 feet above adjacent driveway grade to be equal in elevation to existing tank which would make it significantly more visible than the existing tank is today.

Water course discharge adjacent to sports court

- The sports court is flanked to the southeast by a local drainage area of approximately less than an acre. Using a unit discharge of approximately 4 cfs/acre would yield an estimated 50-year frequency storm discharge of less than 4 cfs. The storm flow resulting from this discharge would be minimal and would have less than erosive velocities.
- A larger natural watercourse is located approximately 60-65 feet northeasterly of the sports court. While this drainage is noted as a "blue line" watercourse on the Malibu USGS quadrangle, it serves a calculated drainage area of less than 167 acres. Using a conservatively estimated unit discharge of 3 cfs/acre yields an estimated 50-year storm discharge of 501 cfs. Taking a cross section of this drainage course and calculating the flow condition using Manning's hydraulic equation results in an estimated depth of flow of approximately 3.5 feet with an estimated velocity of 12 fps. While this velocity is erosive against the natural soils, the geotechnical report indicates that the overlying loose soils are underlain by bedrock at depths of less than three to four feet. Therefore the erosive potential of this water-course does not pose a structural threat to the sport court. Additionally, the 1988 permit and the geotechnical report indicates that potential sloughing of the hillside exists irrespective of the sports court, i.e., the sloughing potential existed prior to construction of the sports court.
- The sports court does not lie within the Dark Canyon ESHA as shown on Exhibit 6 to the staff report. In fact, the sports court is located a minimum of approximately 500 feet southerly of a ridge line which is the southern boundary of the Dark Canyon drainage area in the vicinity of the sports court.

Steps to Sports Court

- This writer visited the subject site on Monday, June 3, 2002, and saw no visible evidence of any erosion caused by the installation of the steps. There was some evidence of rodent burrowing which may have been mistaken for erosion. In fact, if the steps have any impact on erosion, it would be to reduce it due to the installation of the nearly horizontal step treads which have the impact of stabilizing that portion of the hillside.

Decomposed Granite Area

- This area of staff concern is located north-easterly of the sports court and comprises a total area of less than 200 square feet. Even if compared to the smallest of the local drainage areas, i.e., the less than one acre area to the southeast of the court, the decomposed granite area comprises less than one half of a percent of that small drainage area. Also, the decomposed granite area is mostly level or at least very flat, therefore, the actual runoff contributing flow to the watercourse would be minimal.

Vista Points (the staff report, page 33, refers to "three...recognized significant viewing areas located within one mile of subject site along Piuma Road", but the report does not identify those sites. This writer personally attempted to identify as possibilities the following:)

- This writer visited the Vista Point located approximately 1.3 miles "up" Piuma Road beyond the Rubinroit residence. This Vista is at approximate elevation 1,280 feet as compared to an approximate elevation of 830 feet at the sports court (450 feet vertical). Not only is the sports court not visible from this Vista Point, but in fact neither the house nor any of the developed features on the Rubinroit property are visible.

- The following three points of staff concern were analyzed via Line-of-Sight exhibits to determine the sports court visibility. Point "A" is the Vista Point referenced in the preceding paragraph. Point "B" is a Vista Point located approximately 1.6 miles "up" Piuma Road from the Rubinroit residence at approximate elevation 1,335. And, Point "C" is a point on the Backbone Trail near its intersection with Piuma Road at approximate elevation 800. The reference sources for these exhibits consisted of the Malibu USGS quadrangle, the State's Park Trail Map and aerial topo of the subject property. All three Line-of-Sight exhibits indicate that the sports court is not visible from any of these locations.

Backbone Trail

- The Backbone Trail at the closest point is located more than 600 feet from the sports court. At this point, to the northeast of the court, the trail is located northerly of an intervening ridge line and therefore, the court would not be visible from this closest point.

- This writer personally tried to view the sports court from the location on Piuma Road where the Backbone Trail crosses Piuma Road (in the vicinity of the Dark Canyon Ranch driveway entrance). While the Rubinroit residence was visible from this location, the sports court was not visible.

Sports Court Drainage

- Staff has expressed concern over detrimental water quality aspects associated with pollutants being discharged from the sports court to the Dark Canyon ESHA and within the Malibu-Cold Creek Resource Management Area. The sports court, including all of the flat earth area around its perimeter, comprises only approximately 2,625 square feet. It does not contribute any concentrated drainage to the adjacent drainage courses. Rather, it contributes flow in a sheet flow pattern over the descending natural slopes. The drainage nearest the court is the small course to the southeast of the court. There is a minimum horizontal distance of approximately 20 feet from the court to this drainage course. It is this writer's opinion that the discharge from the sports court would be sufficiently naturally filtered in the action of sheet flowing down the hillside. Also, there is sufficient level earth area surrounding the perimeter of the court to allow for infiltration of court runoff before it even sheet flows down the hillside. Additionally, the 2,625 square feet of the entire pad the sports court is located on comprises less than four one-hundredths of one percent (0.0004) of the 167 acre blueline water course.

This concludes this writer's observations on the referenced subject.

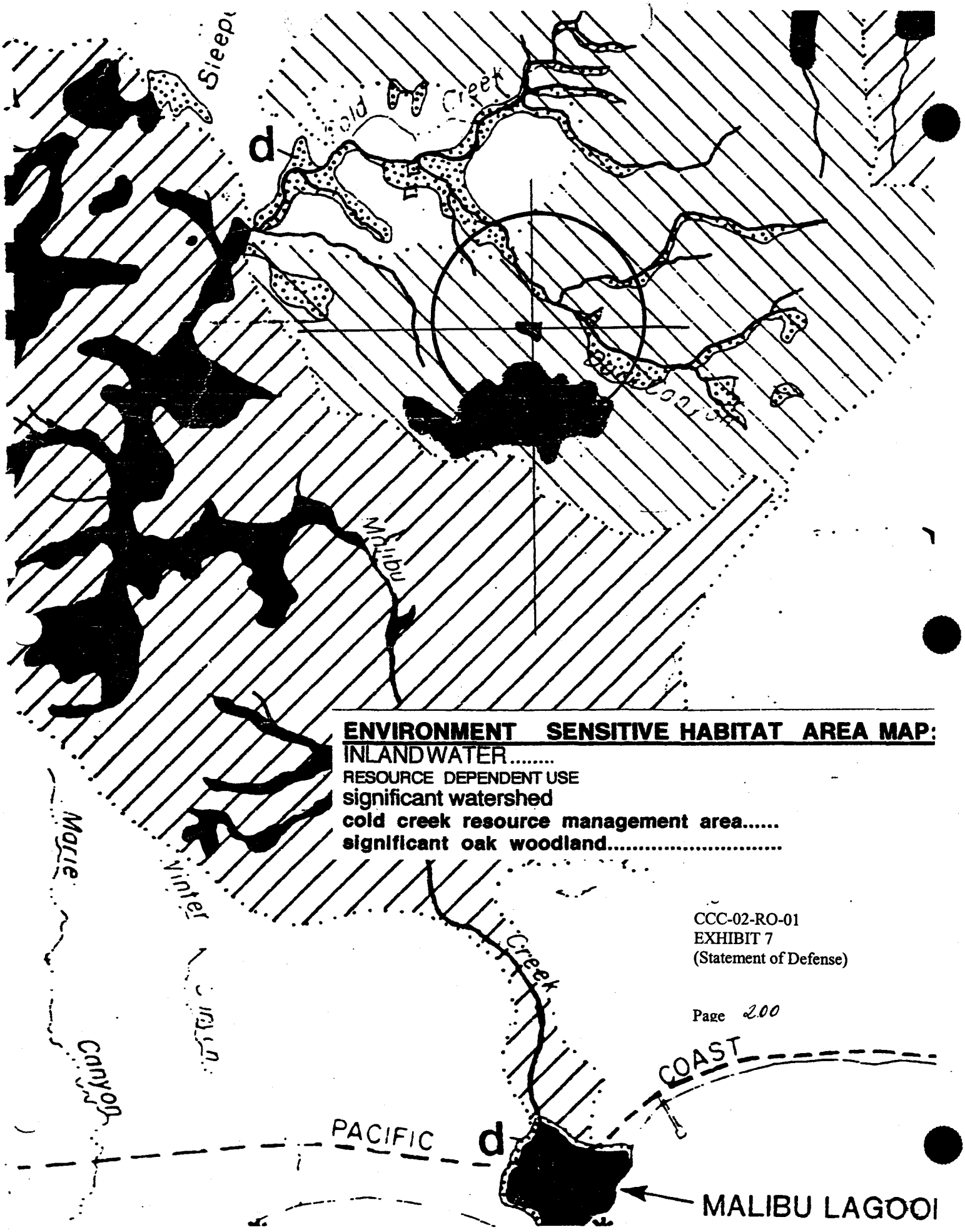
Very truly yours,

VTN WEST, INC.

Lloyd A. Poindexter
President

LAP:sjb

By separate transmittal - Line-of-Sight Exhibits



ENVIRONMENT SENSITIVE HABITAT AREA MAP:

INLAND WATER.....

RESOURCE DEPENDENT USE

significant watershed

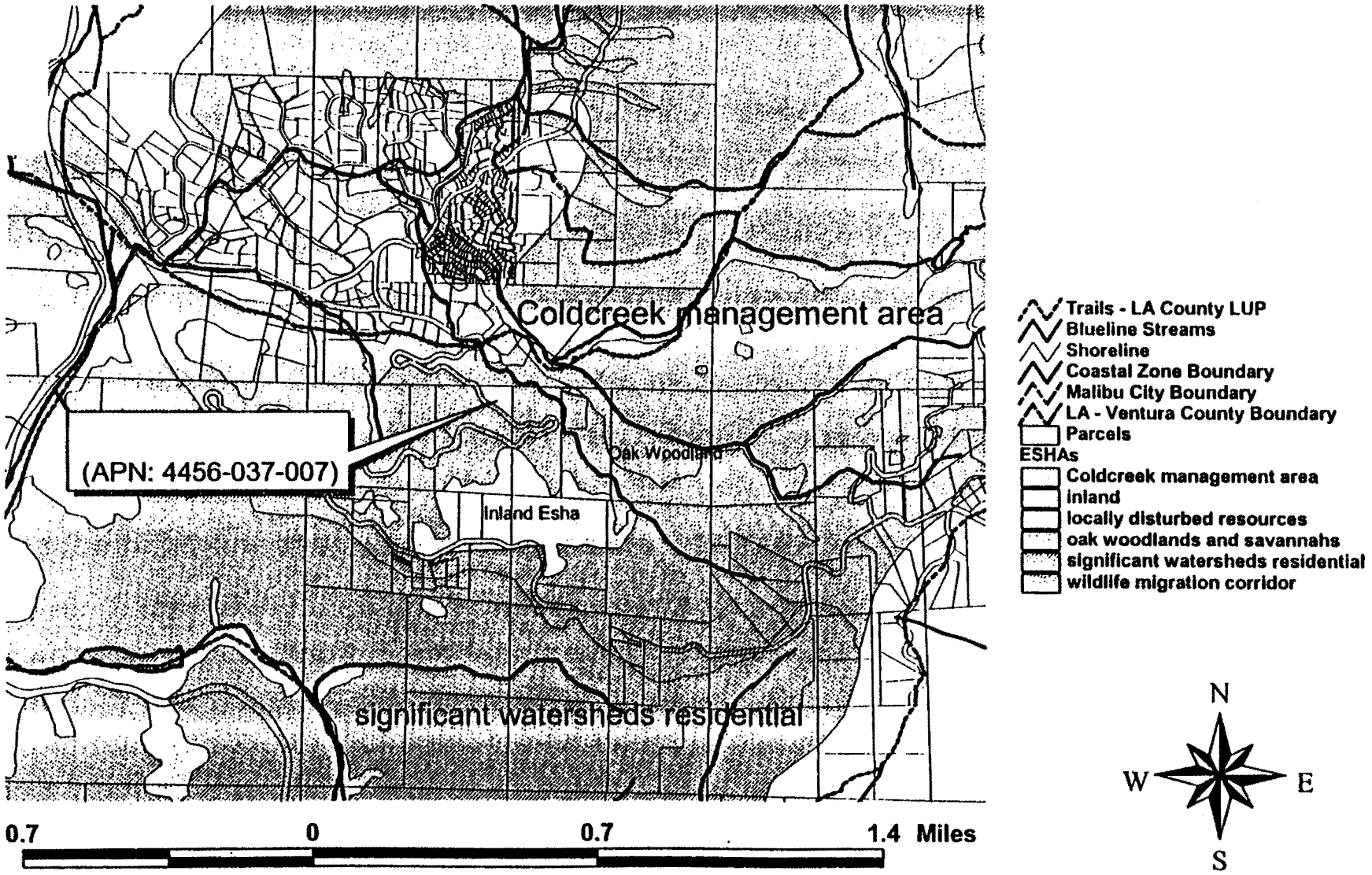
cold creek resource management area.....

significant oak woodland.....

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 200

Environmentally Sensitive Habitat Areas



From the Certified Malibu/Santa Monica Mountains Land Use Plan

GSC GeoSoils Consultants Inc.
GEOTECHNICAL · GEOLOGIC · ENVIRONMENTAL

June 6, 2002
W.O. 5178

HOWARD AND TERRY RUBINROIT
25351 Piuma Road
Calabasas, California 91302-2178

Subject: **Geotechnical and Geologic Engineering Response to Coastal Commission Staff Report for Application CDP 5-88-056-01 dated May 20, 2002 regarding 25351 Piuma Road, Calabasas, California**

Per your request, the undersigned have reviewed the above referenced Staff Report by the Coastal Commission Staff and have the following responses to comments that relate to geologic and geotechnical engineering issues. Prior to preparation of this response letter, Mr. Yoakum, one of the undersigned, visited the site and specifically reviewed areas referred to in the Staff comments as they relate to our areas of expertise. He also reviewed stereo-pairs of vertical air photos by I.K. Curtis over consecutive years from 1987 through December 1993, as will be described below.

Beginning on Page 16 and at several later points of the Staff Report, reference is made to statements in GeoSoils Consultants, Inc. report of September 11, 2001 to the effect that "shallow surficial soils are subject to slope creep on the steeper descending slopes about the property". This statement would be equally applicable to all natural slopes in the Santa Monica Mountains. The 1988 permit itself noted as follows, "The geology consultant found . . .only minor soil sloughing adjacent to on-site drainage course. . . and will present no hazard to the proposed development". It is our opinion that the proposed development will not increase the likelihood of slope creep, slope instability, or erosion on any of the adjacent slopes. Further, it is our opinion that the development on the site will improve stability of the overall site including adjacent unimproved portions of the site.

Referring to Page 21 of the Staff Report, our opinion of the location of the steps to the sports court is that they are located on the old, small ridgeline which has a higher stability than any of the adjacent descending natural slopes.

MDN 4029

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Further comments were made regarding surficial slumping in the area of the steps to the sports court. Upon inspection, we were unable to locate such condition. We would appreciate identification of same on a topographic map of the site or on a photograph of this condition so that we could investigate same in the field to develop appropriate correction recommendations. Mention was also made of "erosion directly adjacent to and beneath the stairs leading from the pool area to the sports court." During our site visit, we could locate only gopher holes, and no more significant signs of erosion; consequently, it is our opinion that no significant erosion has occurred in this area.

Vertical air photos reviewed with a magnifying stereoscope disclosed that grading, which was observed in 1987, is not noticeably different from that in 1993 or that of this year.

With regard to the water tank site, we have reviewed the general stability condition of the site, and it is our opinion that the driving load of the tank and the water therein is less than that of the bedrock that was graded off the site.

In the GeoSoils Consultants, Inc. report of September 11, 2001, it was recommended that riprap be placed in small areas of erosion on the east and west sides of the Sport Court. After careful review of the situation, it is now our opinion that the supporting beams in the area of the sports court will provide effective and better erosion protection than riprap previously recommended in our report.

If you have any questions, please do not hesitate to call.

Very truly yours,

GEOSOILS CONSULTANTS, INC.

DELMAR D. YOAKUM
GE 918

DDY.N:WP/G&G Eng

cc: (3) Addressee

REGISTERED PROFESSIONAL ENGINEER
DELMAR D. YOAKUM
No GE 918
Exp. 6/01
GEOTECHNICAL
STATE OF CALIFORNIA

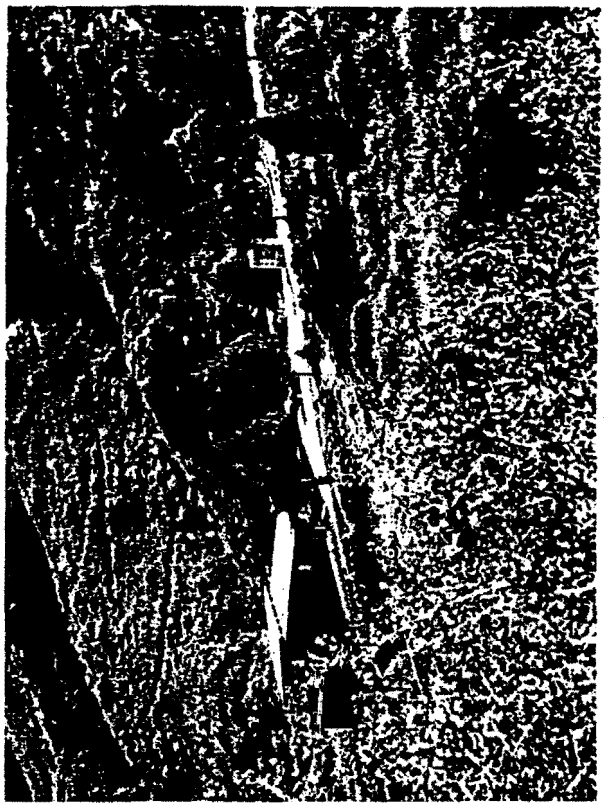
GEORGE F. LARSON
CEG 161

CERTIFIED ENGINEERING GEOLOGIST
GEORGE R. LARSON
No. 161
STATE OF CALIFORNIA

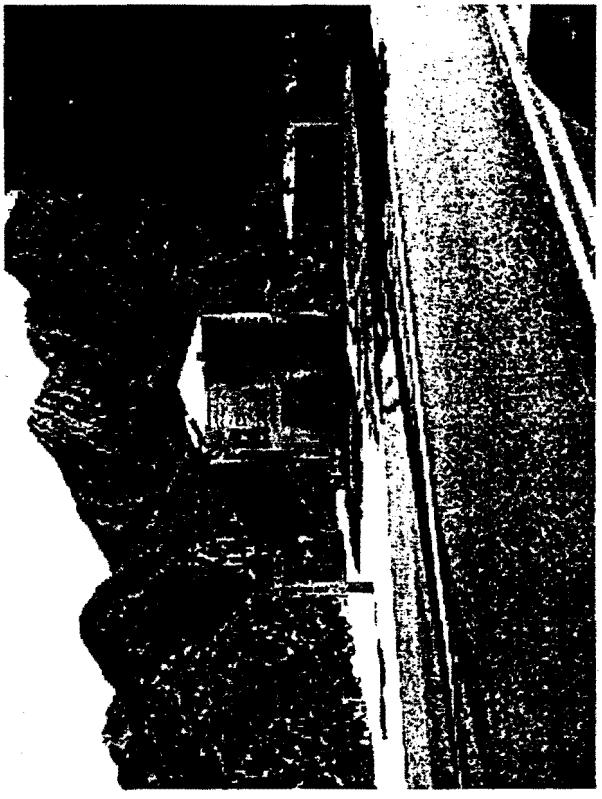
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CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)









CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

COUNTY OF LOS ANGELES

FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294

May 13, 2002

P. MICHAEL FREEMAN
FIRE CHIEF
FORESTER & FIRE WARDEN

Mrs. Terry Rubinroit
25351 Piuma Road
Calabasas, CA 91302

SUBJECT: FIRE DEPARTMENT APPROVAL FOR WATER TANK/OUTLET

Dear Mrs. Rubinroit:

An inspection of your property was made on May 8, 2002. Piuma Road doesn't have a water main or public fire hydrant adjacent to your property. As such you were required to install a water tank, outlet and interior fire sprinklers. These were a condition of your plan approval for a building permit when the house was built. The water tank and outlet had to be approved by the Fire Department prior to you obtaining a building permit. The outlet and water tank are properly located on the site. The water from the tank gravity flows from the outlet, and the outlet is located correctly. I hope this answers your questions regarding the water tank and approval procedure. Please feel free to contact my office if you have any questions.

Sincerely,

James O. Jordan
Fire Captain
Fire Prevention Division

my docs/appeal letters

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 205

Midwest Water Well Cont. Inc
954 Bower Way
Thousand Oaks, CA 91360
Phone (805) 495-6953

May 30, 2002

To Whom It May Concern:

I am presently the owner of Midwest Waterwells, which is in the business of drilling, equipping, and installing water wells, storage tanks, and related equipment serving homes and other properties in rural areas of Los Angeles/Ventura Counties, including in the Santa Monica mountains.

In 1987 I was affiliated with Dales' Drilling, a well drilling company owned by Dale Lippincott. I was personally involved in drilling, equipping, constructing, and installing a water well for Jack Moses, located on the site for a single-family house he was constructing at 25351 Piuma Road, in County Malibu. That property did not have access to a public water system, and the well was required to supply water for all purposes concerning the property and house to be built, including all domestic water service, water to service the sprinklers which were required to be provided in the interior of the house, and water for irrigation purposes. Accordingly, the drilling and the construction of a well also required the construction of a large capacity storage tank.

The location of the well and the accompanying tank had to be approved by the County of Los Angeles Department of Health Services, Environmental Management, and could be located no closer than 150 feet from proposed septic system and designated future septic locations. Enclosed is a copy of the permit for the well and other improvements at the Moses property, indicating the well's location and distance from the proposed septic and proposed future septic pits. The location of the well and storage tank, as well as the capacity of the storage tank, also had to be acceptable to the Fire Department and meet existing Fire Department regulations. Among other things, there had to be a hydrant or standpipe which could be located no closer than a certain distance from the structure, and the well and storage tank had to be uphill from the standpipe or hydrant so as to allow water to flow to the hydrant and to the residence by gravity feed. The well and storage tank were therefor located where the Fire Department required. Because of the location that the Fire Department required for the hydrant, which could be no closer than 50 feet to any structure, and the fact that the land uphill from the hydrant drops off steeply in all locations up to the point where the well and storage tank were actually constructed, there was and is no location where the well and storage tank could physically be located which would comply both with the Health Department requirements and the Fire Department requirements other than where it was placed in 1987.

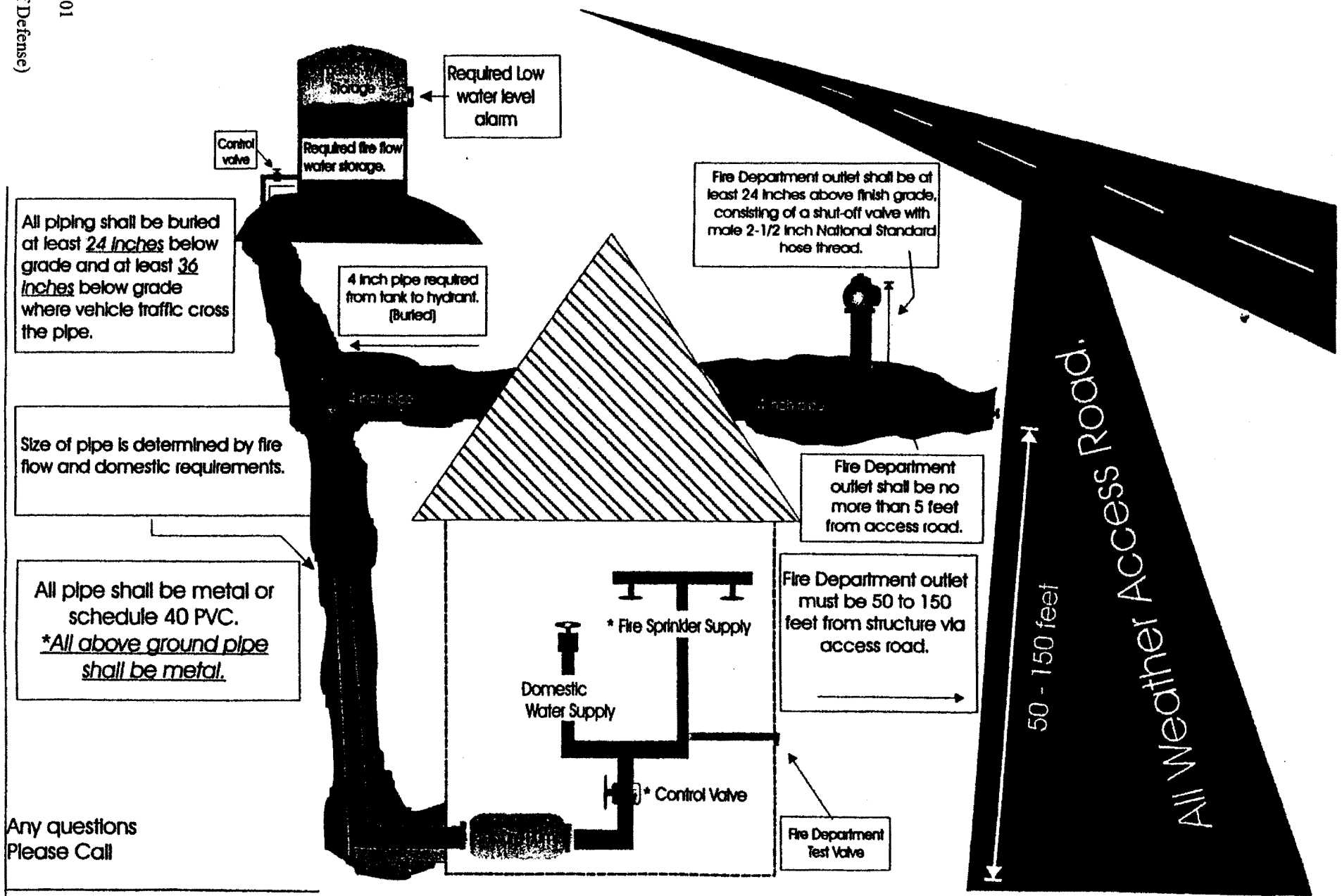
Very truly yours,

Wayne Erickson

5-30-02

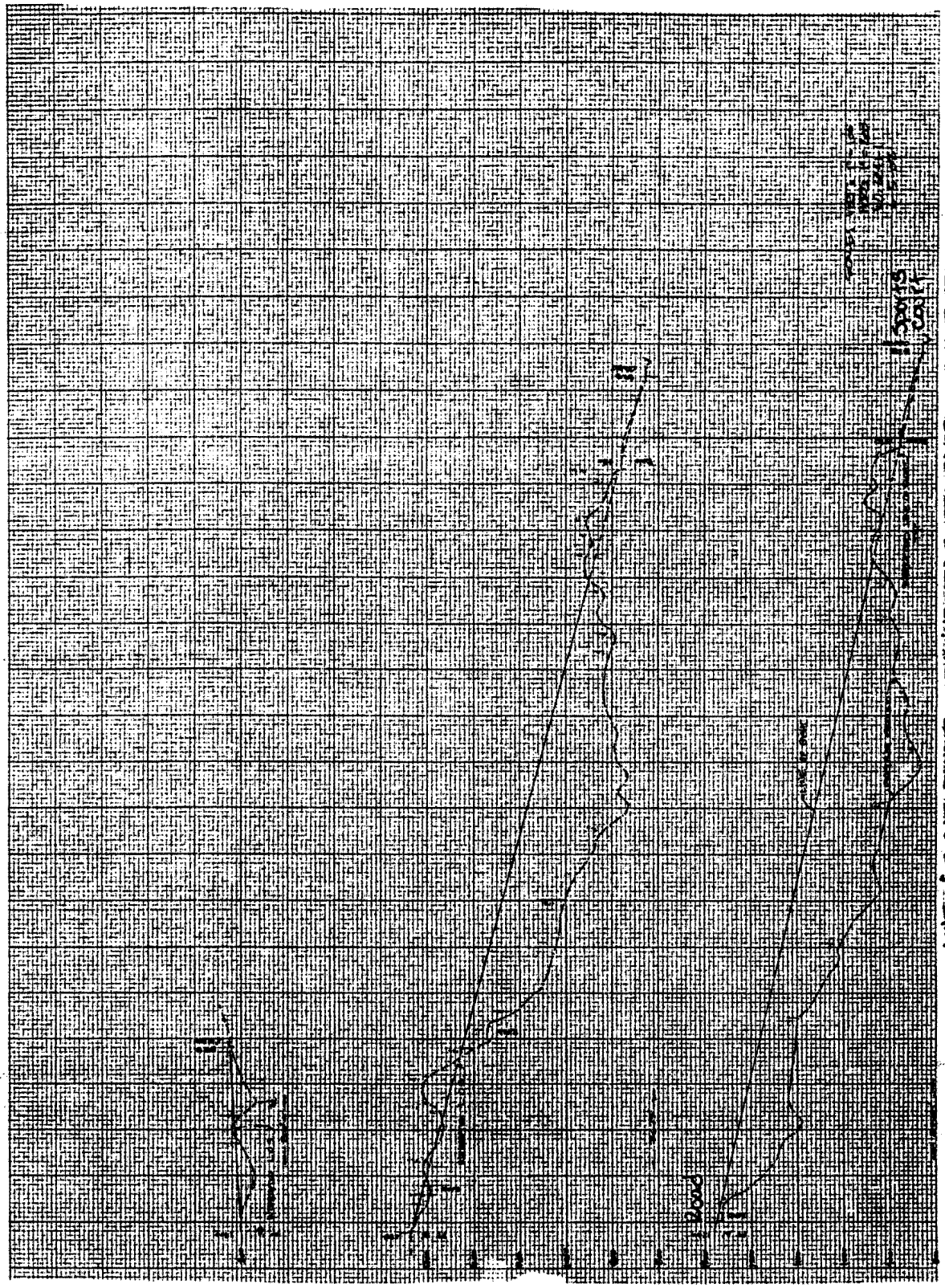
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Acceptable Water Tank Installation Standard

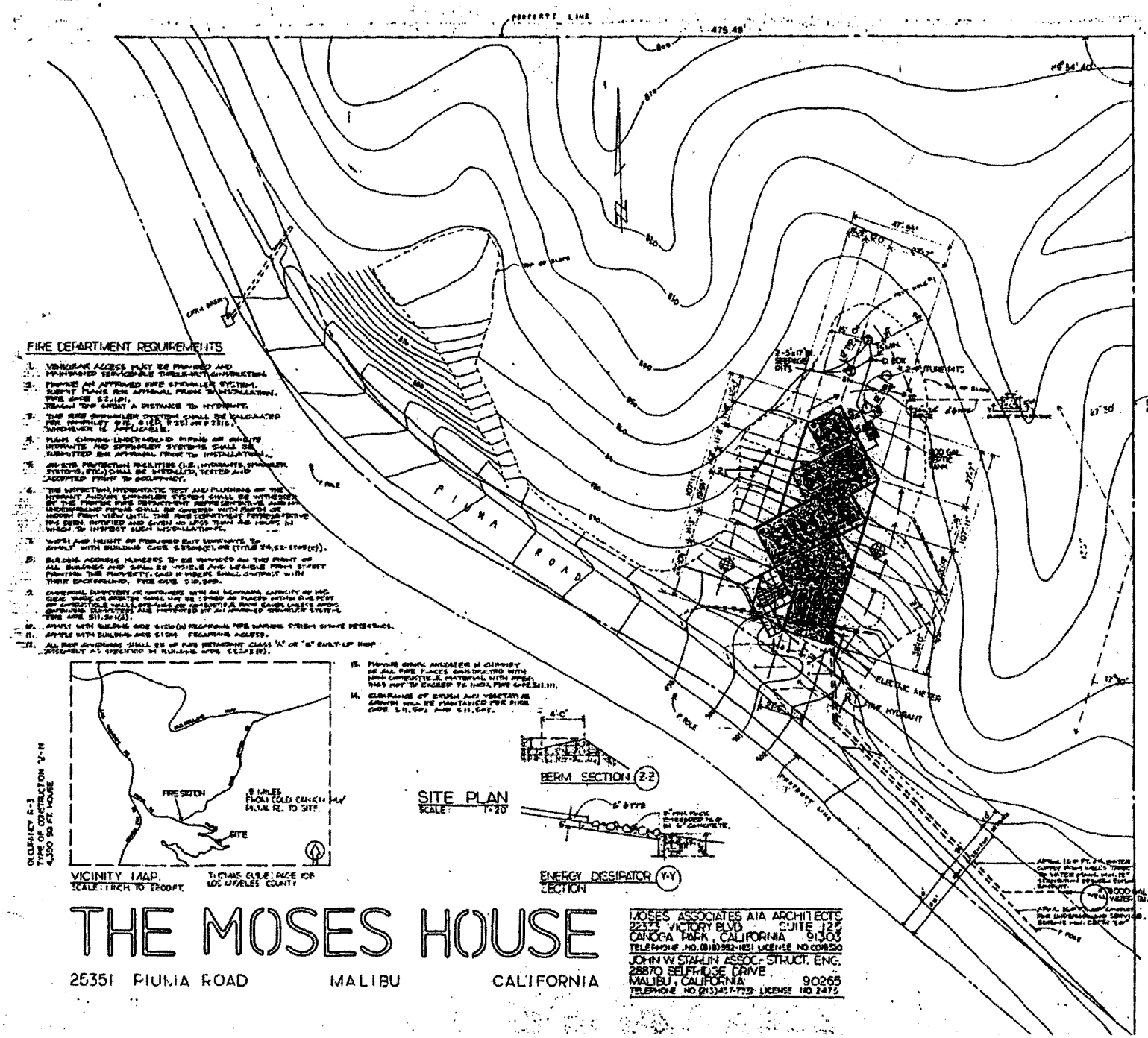


Last Updated 2-99

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FIRE DEPARTMENT REQUIREMENTS

1. VEHICULAR ACCESS MUST BE PROVIDED AND MAINTAINED SERVICEABLE THROUGHOUT CONSTRUCTION.
2. PROVIDE AN APPROVED FIRE SPRINKLER SYSTEM. SUBMIT PLANS FOR APPROVAL PRIOR TO INSTALLATION. FIRE FLOW 5.2 L/P.S. REMAIN ONE HYDRANT A DISTANCE TO HYDRANT.
3. THE FIRE SPRINKLER SYSTEM SHALL BE CALCULATED FOR MINIMUM 2.5 GPM/SQ. FT. OVER A 2500 SQ. FT. AREA INCREASE IS NOT ALLOWED.
4. PLANS SHOWING UNDERGROUND PIPING OF ON-SITE HYDRANTS AND SPRINKLER SYSTEMS SHALL BE SUBMITTED FOR APPROVAL PRIOR TO INSTALLATION.
5. ON SITE PROTECTION FACILITIES (I.E., HYDRANTS, SPRINKLER SYSTEMS, ETC.) SHALL BE INSTALLED, TESTED AND ACCEPTED PRIOR TO OCCUPANCY.
6. THE INSPECTION, HYDROSTATIC TEST AND FLUSHING OF THE HYDRANT AND/OR SPRINKLER SYSTEMS SHALL BE WITNESSED BY THE FIRE DEPARTMENT REPRESENTATIVE. ALL UNDERGROUND PIPING SHALL BE COVERED WITH EARTH OR CONCRETE FROM VIEW UNTIL THE FIRE DEPARTMENT REPRESENTATIVE HAS BEEN NOTIFIED AND GIVEN 48 HOURS' NOTICE AND HOURS IN WHICH TO INSPECT SUCH INSTALLATIONS.
7. WIDTH AND HEIGHT OF PROPOSED GATE TO COMPLY WITH BUILDING CODE 5.2304(C), OR (TITLE 24, 5.2-1704(C)).
8. BUILDING ADDRESS NUMBERS TO BE PROVIDED ON THE FRONT OF ALL BUILDINGS AND SHALL BE VISIBLE AND LEGIBLE FROM STREET FRONTING THE PROPERTY, AND IF VERIFY SHALL CONTRAST WITH THEIR BACKGROUND. FIRE CODE 5.10.208.
9. CHEMICAL DISPENSERS (IF CONTAINED) WITH AN MAXIMUM CAPACITY OF 100 GALS. WHERE OR ABOVE THE SHALL NOT BE LOCATED WITHIN PLACES PER OR SIMILAR WALLS WITH NO OPENINGS OR PENETRATIONS BELOW GRADE UNLESS APPROVED SPRINKLER SYSTEM. TYPE 5.11.3(4)(1).
10. COMPLY WITH BUILDING AND VEGETATION CLEARANCE FIRE MARSHAL STANDARD STANDARD REQUIREMENTS.
11. COMPLY WITH BUILDING AND SITING REQUIRING FIRE DEPARTMENT ACCESS.
12. ALL ROOF COVERINGS SHALL BE OF FIRE RETARDANT CLASS "A" OR "B" BUILT-UP ROOF ASSEMBLY AS SPECIFIED IN BUILDING CODE 5.2.3(B).
13. PROVIDE SPARK ARRESTER AT CHIMNEY OF ALL FIRE PLACES INSTALLED WITH NON-COMBUSTIBLE MATERIAL WITH OPEN MESH NOT TO EXCEED 1/2 INCH. FIRE CODE 5.11.111.
14. CLEARANCE OF BRUSH AND VEGETATION GROWTH WILL BE MAINTAINED PER FIRE CODE 5.11.304 AND 5.11.305.

THE MOSES HOUSE

25351 PIUMA ROAD MALIBU CALIFORNIA

MOSES ASSOCIATES AIA ARCHITECTS
22372 VICTORY BLVD SUITE 122
CANOGA PARK, CALIFORNIA 91303
TELEPHONE NO. (818) 992-1851 LICENSE NO. C08250
JOHN W STAHLIN ASSOC.- STRUCT. ENG.
28870 SELFRIDGE DRIVE
MALIBU, CALIFORNIA 90265
TELEPHONE NO (213) 457-7252 LICENSE NO. 2475

GENERAL NOTES

1. All construction and details shall be designed to full compliance with applicable local codes and requirements.
2. The general contractor (GC) and subcontractors shall visit and examine the site and it's improvements, shall and verify all existing dimensions and conditions, acknowledge and be responsible for all work on jobsite.
3. GC shall coordinate representatives of city utilities, including gas company, power, sewer, telephone and T.V. regarding locations and availability of utilities prior to commencing work or removing and disconnecting utilities, and shall be responsible for any damage to existing lines. Locations and elevations of all main and laterals shall be confirmed to the Architect at the earliest possible date.
4. Written dimensions prevail over scaled dimensions on drawings.
5. GC shall provide and install new underground water supply lines and verify that line size is adequate to provide acceptable pressure and volume.
6. GC shall provide ventilation, temperature and fire protection for all new disciplines, hot water heaters, furnaces, vents and flues as required by code and manufacturer's specs.
7. All new water supply lines shall be copper, and all new hot water lines shall be insulated as required.
8. All flashings, gutters, scuppers, downspouts and watch basin connections shall be properly joined and sealed so that they are water-tight. All flashings shall be installed per local code requirements. GC shall notify Architect of all points where water may penetrate for additional water-proofing measures.
9. All plaster and drywall material and installation unless otherwise specified shall be according to the current U.B.C. Minimum specifications and local code requirements.
10. GC shall include within the scope of his work preparation, priming and finish painting and staining of entire exterior and interior walls and ceilings, including doors, jambs and trim work, wood, metal beams and ceilings. Confirm paint and stain requirements and specifications with Architect.
11. All cabinetry and mill work unless otherwise specified shall be according to current manufacturers Institute of California Hand Standard, premium grade.
12. All sheet-metal work shall be according to uniform mechanical code specifications.
13. Exterior doors and windows shall conform to the security requirements of L.A. County Building Code.
14. All exterior doors (swinging, sliding) shall be equipped with deadbolt and dead locking latch. Each key operable from the outside. Bolt shall have a hardened insert 1" min. throw on 1/8" min. embedment into jamb.
15. Insulation:
    a) Walls: R11 Batts (All exterior walls).
    b) Roof: R30 Batts
16. All wood parts exposed to weather shall be galvanized.
17. All wood shakes or composition walls shall be proper re-treated lumber.
18. Fireplaces: All wood-burning units (including forced air) to be ceiling and mid-height.
19. Provide weep-holes/screens at locations shown on plan approved by Uniform Plumbing Code.
20. All [illegible] and preservations of the building envelope shall be adequately sealed to prevent the passage of moisture or air.
21. Operable doors and windows: All exterior doors and windows in living [illegible] shall be fully weather stripped, gasket or otherwise treated to limit air infiltration.
22. Door bell and house numbers from the outside shall be easily [illegible].
23. Interior wood stops of wood jambs or in-swing doors shall be [illegible] or joined by cutout.
24. Sliding glass doors and windows shall be capable of [illegible] the requirements of Uniform Building Code and shall have tempered-safety-glass.
25. Insulated emplacade cord shall be passed at complete visible dwelling.
26. [illegible]

SCHEDULE OF DRAWINGS

A-1	SITE PLAN / GENERAL NOTES / SCHEDULE OF DRAWINGS
A-2	FOUNDATION PLAN
A-3	FLOOR PLANS: LEVEL-A & C-D
A-4	BUILDING ELEVATIONS: FRONT AND REAR
A-5	BUILDING ELEVATIONS: SIDE AND REAR
A-6	BUILDING SECTIONS
A-7	BUILDING SECTIONS
A-8	INTERIOR ELEVATIONS / DETAILS / SCHEDULES
T-1	SPECIFICATIONS
T-2	SPECIFICATIONS
S-1	FOUNDATION DETAILS
S-2	FRAMING PLANS
S-3	FRAMING DETAILS
S-4	NOTES / SCHEDULES
ME-1	MECHANICAL AND ELECTRICAL PLANS

JOB NO. 8705
DATE: FEBRUARY 8, 1988

(A-1)

Contempo Swim Pool Construction Co.

654 N.Sepulveda BL Suite 12
Los Angeles, Ca. 90048
310 476-3675 Fax 310 476-8705

May 28, 2002

To Whom It May Concern,

Contempo Swim Pool Construction Co. was involved in the final design of, and constructed, the pool and surrounding decking and walls at the Rubinroit residence in the Spring of 1996. Contempo has been in the pool business and maintenance business for over thirty years.

Given the site, there was extensive geologic testing of the area in which the pool would be constructed, and it was engineered and designed to rest of pilings constructed into bedrock. As a result the pool is completely anchored and meant to be free-standing. The engineering calculations and design were fully reviewed and approved by all relevant county departments, and the pool as constructed was inspected and fully signed off on.

Contempo utilized the same construction methods and materials that it has employed in its more than 30 year history when it built the Rubinroit pool. The materials we use are Riverside white cement and Patio white pool sand which creates a pool plaster which is completely waterproof. We have never experienced any leakage with any pool that we have constructed.

The Rubinroit pool was designed and constructed, among other things, to avoid run-off and infiltration. The pool is sunken at virtually its entire expanse, so that it is more than 2 feet below the grade of the adjoining lawn and decking. Where it is not below grade, it abuts planted areas which range from 4-10 feet deep that will accommodate any possible run-off that might occur. Additionally, the pool is designed to be filled only yo within 6 inches of the top, leaving more than adequate capacity to accommodate rain from even the most severe winter storms.

The spa was likewise designed and constructed, among other things to avoid any run-off and infiltration. It is surrounded on all 4 sides by 15" deep over-flow channels to catch, retain, and recalculate any run-off from the spa.

Because the pool is designed for lap swimming and water volleyball activities, it averages only four feet in depth. If the pool had to be drained, Contempo has both the equipment and the expertise to pump the water up to Piuma Road, and transport it off-site.

The placing of a meter to monitor water pumped into a pool is something which I have never seen required in my experience, including any of the many pools that I have constructed in the coastal zone. Such a meter would only register the total amount of water over time, and, of course, would not take into account the effect of natural conditions such as rainfall or evaporation. Therefore I simply do not understand what purpose it would serve.

Very Truly Yours,

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

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

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

DETAILS OF DISCUSSION

She went onto the site today. She said that she told Jerry + Howard Rubinsit that she had authorization to ~~[illegible]~~ enter site + Howard Rubinsit stated on the phone w/ her during the ~~[illegible]~~ site investigation.

She said that the development is not w/in DF & jurisdiction. She wouldn't call it significant alteration of streambed/bank.

She asked me to send her the info @ the neighbors so that she can send them a pre-active letter regarding the culvert near to the stream.

STAFF (Signature and Date)
Abe Doherty 4/18/01

APPROVED BY (Signature and Date)

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

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

PAGE

STAFF	DATE	TIME	VIOLATION FILE NO.
Abe Doherty	4/18/01	3:35	V-4-97-31
CONVERSATION WITH	**MAILING ADDRESS**		**PHONE NUMBER**
Francis Pierce	LA County Dept Health Services		323 881 4147
SUBJECT OF DISCUSSION			
Permits/Approvals necessary.			

DETAILS OF DISCUSSION

I called to follow up with Bob Saleh regarding the greywater outlet and to ask about approvals and timeframes for the health dept.

Bob Saleh was not available so I spoke w/ Francis Pierce. He said that the local staff member who had jurisdiction over the property is Wynsor Kawamoto at 818 880 4121. He said that they do not regulate discharges from pools, or pumping for individual water systems (only for new wells or for water systems w/ 5 or more connections). He recommended contacting the Regional Water Quality Control Board at 213 576 6600 to ask them if they regulate discharge of pool water.

Follow up: left message for Wynsor Kawamoto explaining situation and asking for a return call.

(spoke w/ Mia Shur – Asst. Supervisor – knowledgeable of area)

STAFF (Signature and Date)
Abe Doherty 4/17/01

APPROVED BY (Signature and Date)

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

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

STAFF	DATE	TIME	VIOLATION FILE NO.
Abe Doherty	4/18/01	3:50	V-4-97-31
CONVERSATION WITH	**MAILING ADDRESS**		**PHONE NUMBER**
Gary Schultz	Regional Water Quality Control Board		213 576 6600
SUBJECT OF DISCUSSION			
Jurisdiction/need for approvals for development			

DETAILS OF DISCUSSION

I asked him if his office has jurisdiction over the discharge of pool water to a stream or the greywater outlet.

He said that, under his agency's jurisdiction, there is no prohibition against a private pool discharging to a stream. He recomended that the Rubmaits contact the LA County Public Works Dept. to get guidance regarding measures to reduce impacts to the stream from the discharge. He thinks that LA county Public Works Dept. wouldn't prohibit the discharge unless there was a documented impact based on a degradation of water quality from the discharge.

STAFF (Signature and Date)
Abe Doherty 4/18/01

APPROVED BY (Signature and Date)

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EXHIBIT 7
(Statement of Defense)

February 5, 2002

Abe G. Doherty, Headquarters Enforcement Officer
CALIFORNIA COASTAL COMMISSION
45 Fremont Suite 2000
San Francisco, Ca 94105-2219

RE: **APPLICATION 5-88-056 A1**

DEVELOPMENT OF A LIGHTED SPORTS COURT, SWIMMING POOL WITH SPA, APPURTENANT PUMP AND POOL EQUIPMENT, REVISED 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 THE POOL AND HOUSE, PROPANE ABOVE-GROUND STORAGE TANK (AST) WITH CONCRETE PAD, WATER AST, PATIO AREA WITH LANDSCAPING WALLS NEAR THE POOL, DECOMPOSED GRANITE ON EASTERN SIDE OF SPORTS COURT, SAND FILL FOR PLAY AREA EAST OF POOL, REMOVAL OF CONCRETE FROM EASTERN DRAINAGE-WAY, CAPPING OF GREY WATER OUTLET TO CONNECT TO SEPTIC, ROAD BERM, MASONRY PUMP ENCLOSURE FOR WATER TANK, SCREEN WALL FOR WATER TANK, AND REQUISITE FUEL MOD AS REQUIRED BY THE FIRE DEPT. FORESTRY DIVISION.

Dear Mr Doherty,

As an Assistant for the Fire Prevention Engineering Section, the division of the fire department which determines whether or not a fuel modification plan is required, I have reviewed the project and determined that a fuel modification is not required.

Please feel free to contact me if I may be of any further assistance.

Sincerely,
Fire Prevention Engineering Section

Steve Guerrero

XC Howard and Terry Rubinroit

Abe G. Doherty, Headquarters Enforcement Officer, CCC
Steve Hudson, Enforcement Supervisor, CCC
Melanie Hale, Regulatory Supervisor, South Coast District Office, CCC
Sabrina Haswell, South Central Coastal Program Analyst, CCC

Amy Roach, Chief of Enforcement, CCC
John Ainsworth, Permit Supervisor, CCC
Susan M. Hansch, Chief Deputy Director, CCC
Tom Sinclair, Enforcement Officer, South Central District Office
Dr, Darryl Koutnik, Los Angeles County Department of Regional Planning
Rudy Silvas, Los Angeles County Department of Regional Planning

Subj: FUEL MODIFICATION REQUIREMENTS
Date: Monday, May 13, 2002 12:48:15 PM
From: RDurbin@lacofd.org
To: rubinroit@aol.com

Mrs. Rubinroit,

Regarding your project, fuel modification is not required unless the project is new combustible construction or an addition of 50% or more of the existing square footage. Since your project is a pool and non-combustible sports court, fuel modification is not required; although, you will still be required to maintain the current brush clearance standards for your home as determined by your local fire station. Brush clearance deadlines are May 1st or June 1st, depending on your location and you will only be notified of clearance requirements if your property is found to non-compliant at the time of inspection.

Please call Scott Gardner with any questions regarding Brush Clearance. 626-969-2375

Thank you,

Ron
Fuel Modification Unit
626-969-5205

---------- Headers ----------
Return-Path: <RDurbin@lacofd.org>
Received: from rly-xf04.mx.aol.com (rly-xf04.mail.aol.com [172.20.105.228]) by air-xf03.mail.aol.com (v84.16) with ESMTP id MAILINXF33-0513164815; Mon, 13 May 2002 16:48:15 -0400
Received: from fire_gwia.lacofd.org (pc2848.co.la.ca.us [159.83.131.54]) by rly-xf04.mx.aol.com (v84.10) with ESMTP id MAILRELAYINXF42-0513164756; Mon, 13 May 2002 16:47:56 -0400
Received: from FDGWDOM2-Message_Server by fire_gwia.lacofd.org
with Novell_GroupWise; Mon, 13 May 2002 13:47:28 -0700
Message-Id: <scdfc3f0.047@fire_gwia.lacofd.org>
X-Mailer: Novell GroupWise 5.5.5
Date: Mon, 13 May 2002 13:47:17 -0700
From: "Ron Durbin" <RDurbin@lacofd.org>
To: <rubinroit@aol.com>
Subject: FUEL MODIFICATION REQUIREMENTS
Mime-Version: 1.0
Content-Type: multipart/mixed; boundary="=_E2BF3370.22432831"

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

EXHIBIT C

STATE OF CALIFORNIA

COASTAL COMMISSION

CERTIFIED COPY

HOWARD & TERRY RUBINROIT COMMUNITY OF CALABASAS COUNTY OF LOS ANGELES	Permit No. 5-88-56-A

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Monday
June 10, 2002
Agenda Item No. 6.a.

The Queen Mary
1126 Queens Highway
Long Beach, California

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

39672 WHISPERING WAY
OAKHURST, CA 93644

PRISCILLA PIKE
Court Reporting Services
mtnpris@sierratel.com

TELEPHONE
(559) 683-8230

A P P E A R A N C E S

COMMISSIONERS

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Christina L. Desser
Shirley Dettloff
Maria Elena Durazo, Alternate
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Patricia McCoy
Mike Reilly
Deborah Ruddock, Alternate

Pat Neal, Business, Transportation & Housing Agency

STAFF

Peter Douglas, Executive Director
Ralph Faust Chief Counsel
Dan Olivas, Deputy Attorney General
Chuck Damm, Senior Deputy Director

-o0o-

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INDEX TO SPEAKERS

STAFF — Page Nos.

Senior Deputy Director Damm, Staff Report.....4,32,44

PUBLIC HEARING

Don Schmitz, Applicant.....12,17
Howard Rubinroit, Applicant..... 13
George Deukmejian, Applicant..... 16
Leonard Hecht, Local Resident..... 28
Georgianna McBurney, Local Resident..... 29

COMMISSIONERS

Burke..... 36
Dettloff..... 38
McCoy..... 43
Reilly..... 40

ACTION

Motion by Desser..... 41
Vote..... 45

CONCLUSION..... 45

-o0o-

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 2/9

California Coastal Commission

June 10, 2002

Howard and Terry Rubinroit -- Permit No. 5-88-56-A

* * * * *

10:36 a.m.

SENIOR DEPUTY DIRECTOR DAMM: Thank you, Madam Chair.

The next matter on the Commission's agenda is Item No. 6.a. This is Application No. 5-88-056-A1, and this involves a request by the applicant to amend a Coastal Development Permit which the Commission previously approved for the construction of a 4260-square foot 28-foot high single family residence, with water well and septic system. The project is located at 25351 Piuma Road in the Calabasas area of the Santa Monica Mountains.

The amendment request pending before the Commission today involves the applicant's request for 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 pathway from both sides of the single family residence, and then a number of additional ancillary type uses associated with the single family home.

The staff is recommending that the Commission, in

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 220

a single motion, approve the portion of the amendment referred to as Part 1, on page 2 of the staff report, and deny the portion referred to as Part 2.

The applicant clearly does not agree with the staff's recommendation for Part 2, which is what the staff will concentrate upon now.

Part 2 is a recommendation to deny the construction of the lighted sports court, the stairway leading from the pool area to the sports court, and the installation of decomposed granite on the eastern side of the sports court. All other portions of the amendment request are recommended for approval, in Part 1, with special conditions.

The applicant's representatives have prepared a response that you have in your addendum material, in which they request recision or modification of the Cease and Desist Order the Commission previously adopted, and/or to delete any references to the binding nature of the findings for the Cease and Desist Order, as referenced in the staff report on the amendment request, even though the applicant raised those as part of their amendment request.

Staff believes no changes should be made to the findings before you today, as they are responsive to the applicant's statements; nor, is it appropriate to revisit the previous action on the Cease and Desist. And, if the Commission has any questions in that regard, the represent-

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ative from the Deputy Attorney General's Office is here, and can respond to that.

The only issue before the Commission today is whether or not the proposed amendment is consistent with Chapter 3 policies of the *Coastal Act*. This needs to be emphasized because the staff recommendation for denial of the sports court, the stairway leading to the sports court, and the decomposed granite located on the east side of the sports court, is solely based on what we believe are inconsistencies with the resource protection and visual quality policies of Chapter 3 of the *Coastal Act*.

From a legal standpoint, the staff, and ultimately the Commission, must make a determination on the amendment request as if the construction has not occurred, and only on whether the amendment is consistent with Chapter 3 policies.

At this point, I do want to proceed with a slide presentation.

On Slide No. 1, is simply identifying the project before the Commission.

Slide No. 2, shows the subject property located in the Santa Monica Mountains, and it also shows a portion of Figure 6, entitled "Sensitive Environmental Resources" from the Malibu Land Use Plan. The applicant, the Rubinroit's property, is shown on this figure as the yellow triangle.

As you can see in Slide 2, the Rubinroit's

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property is located within the Cold Creek Resource Management Area, and the northern portion of the property is adjacent to a blue line stream that is a tributary to Cold Creek, and is in close proximity to Dark Canyon Creek, which is shown in this figure as environmentally sensitive habitat area.

Slide No. 3 is a slide that indicates a bit of the history associated with this project. In 1988, the Commission approved Coastal Development Permit 5-88-056 to the previous owners of the property. Those owners were the Moses and Landrys. This permit authorized the development as identified in that slide: a single family residence, with a septic system and a well. To protect the environmentally sensitive habitat area, special conditions were added to the permit.

Slide No. 4 is a slide that indicates that Special Condition No. 5 of that permit required the recordation of a document stating that the permit is only for the development described in the permit, and requiring an amendment to the permit, or a new Coastal Development Permit for any future development.

The deed restriction was recorded on August 8 of 1988. After fulfilling the conditions, the permit was issued on December 5 of 1988 to those previous owners. The original permittees accepted the benefits of the permit by constructing the house, the well, and the septic system.

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Slide No. 5 is a slide that indicates Special Condition No. 4, which required the recordation of an irrevocable offer to dedicate open space and conservation easement for the protection of the environmentally sensitive habitat area.

Again, this document was recorded at the Los Angeles County Recorders Office on August 8, 1988. The area subject to the offer to dedicate open space was defined as the area that is outside of the existing graded pad on which the house and septic system were authorized to be built, and that existing graded pad is located adjacent to Piuma Road, was previously disturbed, and the Commission found that that was the area appropriate for the residential development, which was approved back in 1988.

Slide No. 6 is a view from the Backbone Trail on public park lands, looking southwest at the Rubinroit's house, and the sports court. And, you can see the large home in the slide. That is the Rubinroit's home.

Then, located down slope, towards the creek, is the location of the sports court. And, I don't have a pointer, but I think you can make that large sports court out on that photo.

In front, or immediately downstream of that sports court, is the unnamed stream, which is the concern with regards to erosion, and potential sediments that can get in

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that stream, as a result of the grading that occurred with the sports court.

Slide No. 7 shows the sports court within the area defined as the offer to dedicate an open space and conservation easement. This slide is, in the opinion of staff, shows very clearly that this is largely an undeveloped area, and in the opinion of staff, the sports court as a ancillary use, that is located down slope from the pad where the main residence was approved and built, is a use that is not appropriate in this area, due to the impacts that it has to environmentally sensitive habitats, both the drainage located immediately down slope from the sports court, as well as the water shed vegetation that you see dominating the photo.

Slide No. 8 shows the stairs leading down the slope from the residence to the sports court and the sand fill placed behind the sports court near the stream.

The pad on which the sports court was constructed was graded after Coastal Development Permit 5-88-056 was approved. As a note, the applicant's geological consultant concluded that, and I quote:

> "The sports court was constructed on the cut portion of the ridge, with the removal material being placed as fill in the shallow swale to the west of the sports court."

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I mention that because there has been some discussion on the part of the applicant with regards to whether any grading was required in order to construct the sports court. The staff, certainly, while we cannot quantify the amount of grading, that was not provided to us, certainly feels that both the slides and the statement from the applicant's geological consultant makes clear that grading did occur.

Slide No. 9 shows the stream in the foreground, and the sports court in the background of this photo. And, again, the concern with the sports court is its encroachment into the natural areas, and its proximity to the stream, and removal of native watershed vegetation.

Slide No. 10 shows the pool area constructed on the house pad outside of the area subject to the offer to dedicate the open space easement. Again, staff is recommending approval of this portion of the amendment request, with special conditions, including conditions that the Commission has typically imposed associated with swimming pool projects, such as requirements for dealing with the drainage of the pool, and also with regards to revegetating a slope area -- that you will see in a subsequent slide in just a moment -- that is contributing to erosion.

Slide No. 11 shows the following after-the-fact development on the eastern side of the house. This is the

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carport, the retaining wall, the propane tank and concrete pad, the steps adjacent to the house, and the chain link fence. And, again, subject to special conditions, the staff is recommending approval.

Slide No. 12, is a view from the sports court looking south at the house showing an area of surficial soil instability beneath the pool area. You can see the chain link in this area of downward creep, falling down hill. Staff is recommending special conditions to address this soil instability, including the recommendations contained in the geotechnical engineer's report be complied with, a landscape and erosion control plan requirement, drainage imcluding runoff control plan requirements, and pool and spa drainage maintenance requirements.

The last slide, Slide No. 13 shows the water tank on the southeastern corner of the property, adjacent to Piuma Road. Staff is recommending a special condition requiring submittal of revised project plans that show a relocation of the water tank, and other development that is currently in the area, subject to the offer to dedicate the open space easement, so that this development is moved onto the house pad, as was the original intent when the Commission approved this project.

Staff also recommends that the revised project plans delete the following development that staff recommends

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you deny, and again that is the sports court, the stairs leading to the sports court, and the sand fill adjacent to the sports court.

In conclusion, the staff, in reviewing this amendment request in relation to Chapter 3 policies of the *Coastal Act* feels that clearly the development that has occurred down slope, off of the main pad adjacent to Piuma Road, is development that is not consistent with the habitat protection policies or the visual resource protection policies of the *Coastal Act*, and for that reason we are recommending in Part 2 of the recommendation, that those components of the amendment be denied. The remaining components of the amendment, with the special conditions that I have mentioned, staff is recommending approval.

That would conclude the staff presentation.

CHAIR WAN: Any ex parte communications?

[No Response]

Seeing none, I will call the applicant's agent, Don Schmitz. You have a whole bunch of speaker slips in, how long do you need?

MR. SCHMITZ: Don Schmitz, representing the applicant. I understand that there are a number of people here from the community in support of my clients. I did not solicit their input, I welcome it, but we do have a professional presentation, a Power Point presentation, with

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three speakers, and we do need 15 minutes for that.

CHAIR WAN: You want 15 minutes, but then we have one, two, three, four -- which are your three speaker slips? can you tell me?

MR. SCHMITZ: That would be the applicant, Mr. Howard Rubinroit, the honorable Governor Deukmejian, and myself.

CHAIR WAN: I don't even -- we have Rubinroit? I don't have a speaker slip for the applicant, so he can get one in afterwards.

MS. SCHMITZ: Yes, Ma'am.

CHAIR WAN: You know, with one, two, three, four, and then there is five, in addition, at two minutes is another 10 minutes, so I am going to ask you to confine it, because it is 15 minutes per side. I am going to ask you to confine it to 10 minutes, plus the 10 minutes, and it is still a 20 minute presentation, which is more -- unless you want to ask some of these folks not to get up and speak.

MR. SCHMITZ: We will just do the best we can with the time that we have.

CHAIR WAN: Okay, 10 minutes.

MR. SCHMITZ: Thank you.

I would like to introduce Mr. Howard Rubinroit, the applicant.

MR. RUBINROIT: Madam Chair, members of the

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Commission, I am here to speak to an issue which is different than the permit application, which we have made, and which was averted to by Mr. Damm, which is the staff's position that the findings on the Cease and Desist Order are binding, and can have application to this proceeding.

There was a Cease and Desist Order proceeding, even though we had indicated we were prepared to submit a permit application. The purpose of the CDO was to require us to submit a permit application. So, we thought it was unnecessary, and we were prepared, even after the order issued, to do exactly what it required.

Out of a concern that the findings in the CDO might have some affect here, Mr. Schmitz contacted first Mr. Bowers, and then staff, to assure that that wouldn't happen, and said if it would happen, we were prepared, under the Commission's rules, to seek to expunge or modify those findings. We were told that was unnecessary.

Nothing further happened until this latest staff report, and there was a staff report last month, that didn't mention this. In this staff report, for the first time, it was stated that the findings were binding, that they would have application on our permit application, and therefore, we made a request for the opportunity to get a full and fair hearing under the Commission's rules, because we were, frankly, misled.

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And, why were we misled? because as Mr. Schmitz will indicate, there is no support in the record, and I've been through the record. I have made continuous -- for your request. There is no support in the record to controvert what everyone in connection with our submission has said. Everyone, including Fish and Game, which says there is no affect on the environment, or this stream.

The Regional Planning Board, which says this is perfectly consistent -- all of the agencies of the county, and all of our experts. It is a catch-22, or it is CAFCA.

If we are required by a Cease and Desist Order, to submit a permit, for the Commission to take the position that our submission shouldn't be considered on the merits, because of the CDO, that is a catch-22 and an impossible situation.

So, if the Commission is going to consider in any respect that recommendation, and those findings, then we request that this hearing be continued, and allow us to have process to follow the Commission rules, to have fairness, and a hearing.

And, I've written to all of you because we are more than prepared to have this thing heard on the merits. The unsupported evidence -- all of the supported evidence, I am sorry, is in our favor. What we do, and are concerned about, is the lack of process.

And, I frankly believe that because this is a

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different method, and a different subject, that this shouldn't come off of our time.

Thank you.

CHAIR WAN: Your next speaker, Mr. Schmitz.

MR. DEUKMEJIAN: Good morning, my name is George Deukmejian, and I am here this morning to tell you that both Howard and Terry Rubinroit have been friends of mine for some 12 years.

I formerly was a law partner with Howard Rubinroit. I know that he has had a long and highly successful career as a trial attorney. I know their children. I know their family. And, I know that they would not take any steps that would be deliberately in contradiction of the laws, that when they proceeded with the changes that were made at their residence, they did so after having gone to see the county, and getting all of the information as to which agencies they were supposed to contact, and to get the necessary approvals. So, I can only tell you that they are very honest and decent, and trustworthy individuals.

I also can tell you from my past experience, that I know that those of you who are on this Commission, are individuals who should be commended for accepting the position to be on this Commission. I can tell you, from my past experience, it is not easy to find good people who are willing to serve on the Coastal Commission.

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Having undertaken that trust, having undertaken that responsibility, I know that you find it very difficult at times, to have to listen to the applicant's position, when you have before you extensive comments from members from the staff. And, you are oftentimes put in very difficult positions.

But, in keeping with the acceptance of the position, and the trust, I think you also have undertaken to carry out the responsibilities of your office by using common sense, recognizing that, yes, the laws do need to be complied with, but they also need to be complied with in a common sense manner, so that there is not an undue burden placed upon a person who just owns a residential piece of property, and who has made efforts to be in compliance in changes made to that property.

So, I commend you for your willingness to serve. I know it is not an easy task, but I did want you to know that in dealing with this particular applicant, that you are dealing with a husband and wife, and a family, that are indeed very honorable and very trustworthy, and individuals who are really of great benefit, in terms of residents of our state and of our community.

Thank you, very much, appreciate it.

MR. SCHMITZ: Again, Don Schmitz, representing the applicant.

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Commissioners, do you all have the handout? does anybody not have their copy? It was sent to you, and we have additional copies.

Again, my name is Don Schmitz, I represent the applicants, the Rubinroits.

And, I listened with great interest to Mr. Damm's presentation, because I, frankly, vehemently disagree on a factual basis, which is rare. I do concur that the Chapter 3 policies are the basis for review; however, the positions that staff takes in their staff report, and presentation, is unsubstantiated by any science.

Yes, the project was approved by the Coastal Commission in the late '80s. However, the pad where the sports court is situated, existed well before the construction of the home. In fact, what Mr. Damm did not read to you, from our geotechnical and soils analysis, was that that pad, where the sports court presently is located, existed and was created about the same time as the construction of Piuma Road. That predates the Coastal Commission. That predates the *Coastal Act*.

There was no grading plan submitted to staff, because our clients did no grading for the construction of the sports court. They provided geotechnical and geosoils report to that affect, and they have provided a declaration from the developer of the property, Jack Moses, which

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 234

specifies that the pad was there when he purchased the property.

Our clients went, in mid-1990s, to building and safety, and they, with their contractors, applied for proper permits, which were obtained, which we will point for you, the building and safety incorrectly told the applicants the Coastal Commission review and approval was not necessary, as this was an improvement to an existing single family home.

Now, the sports court did not require any grading, and here you can see a picture of it. And, this sports court is not a large feature. It is not a tennis court. It is just shy of 2000-square foot, whereas a standard court is 7200-square foot. And, you can see the overlay here, of the tennis court, as compared to the sports court. A tennis court would be inappropriate, put size aside, but the sports court fits nicely on the existing pad. It is a little court where the kids can play badminton, and shoot some hoops.

There is a standard tennis court.

The shed location, that the staff report is concerned about, is this Rubbermaid feature, right here. The staff report specifies that this Rubbermaid shed has unacceptable visual impacts to the Backbone Trail. We don't concur with that analysis.

The staff report specifies that this, quote, non-native decomposed granite fill, which was some sand

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brought in by the applicant about three or four inches deep for weed control, will have an unacceptable impact to the stream. The stream, which the staff originally told you our clients had graded this feature within five feet of, and which now they have acquiesced, and in fact, this sand area is 65 feet from the stream.

The blue line stream does not cross the property. It is to the northeast of the property. And, the property is not located within an environmentally sensitive habitat area, staff has asserted. In fact, it is some 500-foot from the designated inland ESHA, as shown on the maps that staff had given you.

With regard to the visual impacts, we did an actual line-of-sight analysis by BTN, the civil engineer, from the identified view shed concern areas, and substantiated that, in fact, you can't see the property at all, let alone the sports court, from most of the identified areas of concern that the staff had, which is illustrated in this exhibit.

And, on the next exhibit, you will see that the visibility of the property, as seen from Piuma Road, and the Backbone Trail -- located right there -- this is the location of the house, and you see there in a telephoto shot of it -- the first shots were of the naked eye.

And, then the location of the sports court. Well,

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you can't see it. You can't see it at all. And, that is the closest location of Piuma Road and the Backbone Trail.

Next slide, please.

From the Backbone Trail, again, you can see the subject house is located right here. This is the closest location, and the only location where you can see the property at all, from the miles of the Backbone Trail through the Santa Monica Mountains.

And, based upon our analysis, by the civil engineer, and by taking the shots of the area, you cannot see the sports court. I don't know where staff took the photograph that they showed you, but from our hiking the Backbone Trail, and taking our pictures, you can't see it.

Next slide.

In regards to community character, please note the full size tennis courts, within a mile radius of the subject application, there are at least three that we found just on doing a basic window survey.

Now, the sports court stairs, the staff report says that these stairs here have an unacceptable visual impact. They also go on to say that the stairs will decrease permeability, and that that --

CHAIR WAN: You are going to have to wind up, okay, because it is 10 minutes. Make an effort to wind up as quickly as possible.

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MR. SCHMITZ: Madam Chair, may I --

EXECUTIVE DIRECTOR DOUGLAS: It has actually been 13 minutes.

MR. SCHMITZ: -- beg your indulgence for a little bit more time, here, as I have a lot of ground to cover, and I promise that there will be no redundancies. Another five, seven minutes?

CHAIR WAN: The problem I have is that at this point --

And, if you will stop the time right not. -- is that, with your presentation, and with the other presentations, we are already looking at 20 minutes, and we don't generally have 20 minutes for major presentations.

So, as I said, if some of these other folks want to give up some of their time to you, that is fine, but take another two minutes and wind up.

MR. SCHMITZ: Okay.

The staff report specified that they believe that these railroad ties stairs decrease the permeability of the site; however, we have provided a civil engineering and geology report that says that that is not, in fact, the case.

And, we are eliminating the low voltage lights from the stairs, from the sports court from the project description.

This is the location of the pool. This is a

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picture taken in 1990.

Keep going, please.

There was no grading necessary for the pool. Please note the water tank there. The pool poses no danger to the surrounding habitat.

The special condition that staff has placed upon it for meters, and waters, and concerns is unfounded. It is sunken down into the area, and a Noah's flood rainstorm is not going to cause this pool to overflow. We would accept the condition that if the water ever needs to be removed for maintenance we would take it off site.

The children's play area that staff recommends that we remove from the project is this little sandy area here, at the edge of the pad. I think it is ridiculous to require that this be removed. There are no Chapter 3 policies that will be impacted by the sand play area.

The concrete and the drainage -- we'll move very quickly passed this -- constituted about a wheelbarrow full of concrete that was debris from the construction at the site.

The propane tank is being allowed by the coastal staff.

Please continue.

Now, the water tanks are standard. For the community character, everybody has them.

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Next slide, please.

But, the staff is placing us in a completely untenable situation, with this condition. We have communicated to them that it must be gravity fed, pursuant to the fire department's standards. They are telling us to move the tank closer to the house; whereas, the fire department has told us they will not allow us to do that. It is inconsistent with their standards for it to be gravity fed, and for it to be set back from the structure. They are putting us in a completely untenable situation.

Additionally -- here this illustrates that it is a gravity-fed situation.

But, the staff, in their recommendation is, in fact, creating a worse situation for what they are trying to address. They are saying they wish to reduce visual impacts, but the location of the tank is next to a small knoll, which you can see here, screens the view of the tank from west-bound traffic on Piuma Road. If we were to move the tank closer to the house --

CHAIR WAN: I have been told that several people are ceding their time to you. Mr. Wallace, I don't have the names of the other two, but take another two minutes while I find out, so you probably have another six minutes.

MR. SCHMITZ: Okay, terrific.

CHAIR WAN: Okay.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 240

MR. SCHMITZ: The tank is presently in a superior location to be consistent with public viewshed protection 30251 of the *Coastal Act*, and we cannot move the tank, consistent with fire department standards.

When I asked Mr. Doherty how we solve this conundrum, on our site visit, he said he did not know. That was a technical question, but he would not alter the condition.

Next slide, please.

We are proposing a new condition that we leave the tank in its present location, with no additional site disturbance, and we will plant native vegetation to screen it from the public viewshed.

The fuel modification, the staff conditions the project for the applicant to incur the expense of a new fuel modification plan. We have submitted several letters, from the Forestry Division, and the fire department, that specifies that no fuel modification will be required for this project.

The engineer's findings were that the tank was located in the best location, that the sports court does not contribute to any concentrated drainage, that the decomposed granite poses no threat to the drainage areas, and the line-of-sight exhibits illustrates that there is no significant impact.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 24/

The geologist found that the proposed development will not increase the likeliness of geologic instability, that the development on the subject site improves the stability of the site, that the steps of the sports court improve the stability of that area of the property.

Most importantly, biologist's findings. Mr. Steve Nelson, probably one of the most esteem biologists in Southern California, did a site visit, inspected the property, provided your staff a report, and he found that the proposed development does not substantially affect rare and endangered species; does not diminish habitat, fish, wildlife, or plants; does not affect any critical or limited resources; does not affect the movement of any resident or migratory fish or wildlife, and does not create a net loss of wetlands.

Staff has no science. Your biologist has not been on this site. The Department of Fish and Game went out to the site, pursuant to staff's urging, and said not only is there no impact, there is not even the slightest modicum of a nexus for them to require a Fish and Game permit for the construction of that sports court.

The biologist determined -- lastly -- that logically and empirically, developments as minor as those at issue on the subject property do not, and could not meet, any of the above criteria, given the conditions proper, and past.

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In conclusion, based on his field inspection, research and analysis, he does not believe any significant adverse impacts are associated with the subject site development and features, in terms of past, present, and future affects.

The bottom line, on our application is the Chapter 3 policies, Commissioners, and we have the scientists, the geologists, the civil engineers that have gone out to the site and provided your staff with a site-specific analysis, that that sports court, as constructed, will not impact that riparian at all, that the water tank will not impact environmental resources at all, and that the steps to the sports court will not destabilize the site, reduce infiltration, or cause erosion at all.

So, in conclusion, we are proposing some modified conditions. Of course, we are urging this Commission to eliminate the conditions for the revised plans. It is unwarranted. The staff has provided nothing in regards to expert evidence to support their position.

We are asking for elimination of the fuel modification plan, because the fire department says there is no fuel modification required for the development that is before you today. There is no nexus.

We are asking for modification of the pool condition, pursuant to the expert analysis by the pool

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contractor, and the civil engineer.

We are going to eliminate the lights from the sports court and the stairs, so that there can be no perceived impact from night lighting to any species that may use the riparian area, or the surrounding hillsides.

And, we are proposing creation of a drainage filtration plan for the proposed development, including the sports court, which will completely obviate any concerns for erosion or siltation of the creek, and will filter any runoff that may come from the sports court, or the steps, so there is no chance of any pollutants entering into the riparian corridor.

And, lastly, the screening for the water tank, to completely eliminate any potential for unacceptable visual impacts along Piuma Road.

With that, I would just close, again, by reiterating we have submitted the information, there is nothing, there is nothing in the staff report to contravene the expert analysis that we have provided the State of California, and accordingly we would request you modify the conditions.

Thank you.

CHAIR WAN: Leonard Hecht, you have two minutes.

MR. HECHT: Good morning, Madam Chair, and other Commissioners, and thank you for allowing me to come up here

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and speak for a few minutes.

I want you to know that I have been climbing in those hills for over a decade. I have known Howard Rubinroit for over 25 years, and Terry Rubinroit for over 15 years. Our kids grew up together. Our kids currently grow up together. I have twin seven-year olds, asides from twin 32-year olds, who play in this sand box, swim in this pool.

And, that I can tell you that when I have hiked in those mountains, I can't even see any of the sports court, or this play area. And, when my wife and I have gone and visited the property, my wife said to me, "Where is the sports court?" She couldn't even see it from the property next to the pool.

So, I beg you to allow the Rubinroits to go through with their plan, and complete it. It would be unfair to do anything else.

Thank you, very much.

CHAIR WAN: Georgianna McBurney, you have two minutes.

MS. MC BURNEY: I am here on behalf of --

CHAIR WAN: May I suggest --

MS. MC BURNEY: -- Californians Committed to --

CHAIR WAN: -- that you --

MS. MC BURNEY: Am I too loud for you, dear?

CHAIR WAN: No. What I want you to do --

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actually, you need to bend the neck of the microphone stand, so that it is in front of you, so we can hear you.

MS. MC BURNEY: All right, don't time this.

CHAIR WAN: No, your time has started.

MS. MC BURNEY: I am also a friend of the Rubinroits.

All right?

CHAIR WAN: You need to state your name for the record, again, okay.

MR. MC BURNEY: I am Georgianna McBurney. I am here on behalf of Californians Committed to Coastal Justice. I am also a friend of the Rubinroits.

You have heard the old saying: I'd rather be attacked by a lion, than nibbled to death by ducks? Well, let me tell you what it is like, this duck business.

First nibble, someone reported that there might be a possible violation on your property. Coastal says new permits for all of the work done on the pool, the house, the sports court, and the sand box. And, by the way, that sports pad you did was illegally graded. Even though the pictures show it was there, and there is an exact duplicate to it, to the left of the sports court pad.

Second round of nibbles, what do we do? All you have to do is get engineering reports, grading reports, drainage reports, ecological reports, soils reports, and

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survey reports. Let's see. Add it up, $10,000, $20,000, $30,000, $40,000, no it is $60,000 and rising for expert fees and twice done reports. Ready to give up yet, Rubinroits?

Third round, knock on the door: we are Fish and Game, sent by the Coastal Commission to inspect your property. Hey, the goldfish passed, and so did the property.

Knock on the door: it is another agency, one that has already gone through this whole process and approved it. Had enough? ready to move?

If this were a Neil Simon play, we'd all be rolling helpless with laughter in the aisles.

The Coastal Commission stated in one report, fear over the increasing urbanization in the Santa Monica Mountains. All of the people talking to you this morning are environmentalists, fought for years to keep this area the jewel it is. Our belief has been that people and environment can coexist in harmony.

There are those amongst us --

CHAIR WAN: You are going to have to wind up, because your two minutes are up.

MS. MC BURNEY: Pardon?

CHAIR WAN: You are going to have to wind up. One more sentence, please. Just conclude.

MS. MC BURNEY: Okay.

We do not want to pit environment against people.

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We want a harmonious relationship. It is not just ESHA here, ESHA there, ESHA everywhere, and if you don't think you are an ESHA, can you prove it? Guilty until proven innocent. And, we were trying to comply, but whatever happened to ex post facto?

I wind up with Lord Acton, who warned us all, in 1857, when he understated his understanding of the human condition: power tends to corrupt, and absolute power tends to corrupt absolutely.

CHAIR WAN: With that, I will close the public hearing, and return to staff.

SENIOR DEPUTY DIRECTOR DAMM: Thank you, Madam Chair. Staff has a number of comments to make.

First of all, we and the applicant's representative are certainly in agreement that the basis for your decision today is whether or not this amendment, and all components of the amendment, conform with Chapter 3 policies of the *Coastal Act*.

Where we clearly disagree is the facts, and the staff believes that the facts in this instance clearly indicate that the sports court, and the stairway leading down to the sports court, even if the stairway is not lighted, and even if the sports court is not lighted, that those are not consistent with the visual resource and habitat protection policies of the *Coastal Act*.

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I asked that Slide No. 6, that we showed earlier, be put back on the screen because this slide is a slide taken of the applicant's property from the Backbone Trail, and there are a number of points on the Backbone Trail where there are switch-backs where the applicants' home, and this sports court are visible. This is just one of those. So, to argue that it is not visible from the recreational areas in the Santa Monica Mountains, such as the Backbone Trail, which is a major trail in the Santa Monica Mountains, in staff's opinion is not true.

In addition, in the background you can see Piuma Road, and there are several vista points along, or viewpoints along Piuma Road, where this is also visible. Piuma Road is a designated scenic roadway in the county's Santa Monica Mountains Land Use Plan, and we, as I said earlier, do not believe that ancillary uses, such as the sports court, located off of the main building pad, down in the canyon, closer to the blue line stream is consistent with the visual protection, and visual quality policies of the *Coastal Act* and specifically Section 30251.

In addition, when you look at that sports court in this slide, and you look at the vegetation, watershed vegetation in the slide, and the slope leading down from the sports court to the drainage, it is clear in staff's opinion that in order to get a level sports court, while we do not

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know the quantity of grading that occurred, some grading had to occur. You just don't get a level sports court in a rugged mountainous area of this type without at least some grading.

But, the main basis for the staff recommendation is the encroachment of the sports court into the natural habitat, and the effects it has with regards to the visual qualities of that area, both from the Backbone Trail, and Piuma Road, as well as the fact that when the Commission originally approved the home, there was great concern with regards to protection of the open space quality of this area, and that that sports court -- in fact, everything that is off of the main building pad, is within the area that has an irrevocable offer to dedicate an open space and conservation easement.

There can be discussion over the distance of the sports court from the drainage area, and in the staff report, we acknowledge that the distance of the sports court from the drainage area is some 60 feet, and that the grading is approximately 50 feet from that stream. But, the point is that that sports court, and the decomposed granite area, is much closer to the stream, and does present issues with regards to concern over drainage and water quality.

With regards to the issue dealing with the water tank, again, the reason the staff was recommending relocation

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of the water tank is that that water tank is located in the area also subject to the offer to dedicate.

Now, if the applicant can show that the fire department absolutely requires the water tank to be located at that location, rather than down on the building pad, the staff is willing to modify the condition, special condition, to allow for that, but we would require that there be evidence from the fire department indicating that the water tank must be located in its proposed location, that it cannot be located down on the building pad, and pumps, or other means used to deal with the issue of providing adequate water for the residence and protection of the residence.

We are willing to make that change, but it would require, if that has to be done, that the offer to dedicate also be modified to allow that. And, I've got to tell the Commission that may, or may not, have an effect on an agency accepting the offer to dedicate.

So, the staff would only make that change if it is absolutely clear that there is no alternative for the relocation of that water tank from the standpoint of the fire department.

With regards to the applicant's geologist, we believe that the evidence in the record does support that there is concern that has been expressed by the geologist, with regards to the slope adjacent to the swimming pool, and

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that the measures recommended in the special conditions by staff are necessary.

And, in addition, the applicant's geologist did indicate -- now, it may have been the previous owner who did the work -- but did indicate that some grading did occur for the accommodation of the sports court.

With regards to the fuel modification plan, again that was an issue in the original approval of the proposed single family residence, and for that reason, the staff did recommend that there be the fuel modification plan condition. The intent, when the Commission originally approved the home, was to minimize the amount of disturbance that would be required for fuel modification, and that is still the intent on the part of staff in our recommendation.

At that point, unless the Commission has any questions, that would conclude the staff's comments.

CHAIR WAN: Commissioners?

Commissioner Burke.

COMMISSIONER BURKE: If we don't know how much grading was done, how do we know when the grading was done?

SENIOR DEPUTY DIRECTOR DAMM: Commissioner, the basis for the staff recommendation is that we have a series of aerial photographs that we have in our office. One of those aerial photographs shows that somewhere in the area of 1988 that is when the grading, in the vicinity of the sports

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court, occurred. Prior to that, it is not shown.

COMMISSIONER BURKE: The only thing that bothers me about this, when I first reviewed this, it was a no-brainer, but everyone who testifies for these people -- one, the guy's a lawyer; two, everybody says he is honest, including one of the most honest guys I know in the State of California.

I can't conceptualize him breaking a law which is so obvious, you know, which I mean, that is like stealing money in the bank at mid-day, and handing out your picture. You know, just -- it just didn't seem like these people would do that.

Now, I can't understand -- was there any explanation why they didn't get a permit?

SENIOR DEPUTY DIRECTOR DAMM: In response, Commissioner, this is an issue that comes up from time to time.

The staff does not try to assess whether or not an applicant is absolutely telling the truth, or not. We just don't have the ability to do that.

COMMISSIONER BURKE: Right.

SENIOR DEPUTY DIRECTOR DAMM: What we can do is review the project based on whether or not, in the staff's professional judgment, it conforms with Chapter 3 policies, and that is what we've done in this staff report.

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With regards to the applicants, and whether or not they were aware of concerns related to this project site, certainly there was the previously recorded restriction regarding the offer to dedicate open space and conservation easement. So, in staff's opinion, we believe the applicant should have been aware of that.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, one of the questions I had was going to be on the above-ground water storage tank, but I think the suggestions you have made are reasonable, that if it is proven that this is the only location, that staff would go along with that.

Would you also be, then, recommending as the applicant has suggested, that there would be landscaping around that area, so that we would have some native plants that would protect it as much as possible from view.

SENIOR DEPUTY DIRECTOR DAMM: Yes, Commissioner, and I meant to say that if the water tank is going to remain in its current location, the applicants' representative has indicated a willingness to take actions, such as landscaping, or a combination of landscaping and screening with a wall to help soften the visual impact, and we would make that part of our recommendation.

COMMISSIONER DETTLOFF: And, then the sand filled play area, you've suggested as one of your recommendations,

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 254

that be moved closer to the family residence. Its location now, what are the detrimental affects of having it in its current location, as compared to moving it closer to the home? It seemed like a minor point, but obviously you had reasons for suggesting that.

SENIOR DEPUTY DIRECTOR DAMM: The basis, Commissioner, is that the sand lot is located in the open space area, and the reasoning behind the staff recommendation is that that is the area that should be revegetated with native type plant materials, and certainly the applicant has the ability to recapture that elsewhere on the graded pad area.

COMMISSIONER DETTLOFF: Okay, that answers that.

Then, on the fuel modification plan, obviously there are requirements that the fire department in Malibu already has, regarding these properties, what extra information do you think is necessary to protect the environmental concerns that would not already be a part of any application, or any requirement of a homeowner in that area? what additional information will we be looking for?

SENIOR DEPUTY DIRECTOR DAMM: Again, Commissioner, I think from the staff's perspective, when the home was originally approved the fuel modification requirements were different at that time than they are now, and the intent of the special condition, and the amendment before you today, is

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

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

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

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

COMMISSIONER DETTLOFF: That was the extent of their --

SENIOR DEPUTY DIRECTOR DAMM: Correct.

COMMISSIONER DETTLOFF: -- communication?

Thank you.

CHAIR WAN: Commissioner Reilly.

COMMISSIONER REILLY: Thank you, Madam Chair.

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

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can reasonably argue habitat impacts, grading, even visual impacts, but the thing that is a clincher for me is that you've got an open space easement, irrevocable offer to dedicate, and a requirement that the owner who got the original permit, and subsequent owners, keep that property in open space for the period of time that the open space easement would run, relative to a public agency, or a non-profit accepting the offer to dedicate.

And, that is the part that I don't think the applicant can get around. The sports court is clearly in an area. It is development. It is an area that is dedicated open space by a legal covenant, and for me, I guess that is the open and the shut of it, because I don't see how you can allow that when those requirements haven't been met.

Thank you.

CHAIR WAN: Commissioner Desser.

[**MOTION**]

COMMISSIONER DESSER: I want to make a motion, per staff.

We need to do, I guess, right? So the first one is on --

SENIOR DEPUTY DIRECTOR DAMM: Madam Chair.

CHAIR WAN: Yes.

SENIOR DEPUTY DIRECTOR DAMM: The staff recommendation is for the adoption of a single motion, which would

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approve all of those components identified --

COMMISSIONER DESSER: Okay.

SENIOR DEPUTY DIRECTOR DAMM: -- under part 1 --

COMMISSIONER DESSER: Should I read it? it is a rather lengthy motion, shall I read this whole motion here?

CHAIR WAN: Yes.

COMMISSIONER DESSER: Okay.

SENIOR DEPUTY DIRECTOR DAMM: And, then --

CHAIR WAN: Mr. Damm, you wanted to say something?

SENIOR DEPUTY DIRECTOR DAMM: -- legal counsel is indicating that the motion could be to approve the project per staff, and that would result in part 2 of the recommendation being to delete the sports court, the lighted stairway, and the decomposed granite on the east side of the sports court.

COMMISSIONER DESSER: With the exception of the fire, right -- I mean the water?

SENIOR DEPUTY DIRECTOR DAMM: And, the --

COMMISSIONER DESSER: The water tank, if the fire --

SENIOR DEPUTY DIRECTOR DAMM: And, the staff has modified our recommendation with regards --

COMMISSIONER DESSER: Right.

SENIOR DEPUTY DIRECTOR DAMM: -- to the condition dealing with the water tank.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 258

COMMISSIONER DESSER: Okay, I move that the Commission deny 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, and approve the construction and installation 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, 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, screened wall for water tank, drainage system, irrigation system, sand fill for play area east of the pool, capping of gray water outlet, and connection to the existing septic system, and removal of concrete from eastern drainage proposed in amendment to Coastal Development Permit 5-88-056, and recommend a "Yes" vote pursuant to the staff.

COMMISSIONER MC COY: Second.

CHAIR WAN: Moved by Commissioner Desser, seconded by Commission McCoy.

Do you have any additional comments to make, Commissioner Desser?

COMMISSIONER DESSER: I think that --

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SENIOR DEPUTY DIRECTOR DAMM: And, Madam Chair --

COMMISSIONER DESSER: -- Commissioner Reilly made the sort of dispositive statement, as far as I am concerned.

SENIOR DEPUTY DIRECTOR DAMM: And, Madam Chair, just once again, for the record, to indicate that that motion would also include the revisions staff made with regards to the water tank.

CHAIR WAN: Correct, that is how we understand it.

Any other comments?

[No Response]

I also would like to comment that Commissioner Reilly, basically, said what is a major issue here. There is an open space deed restriction that is part of the deed. It is hard for me to understand how anyone could have that on their deed, and not understand that they can't put development where the Commission originally required none.

And, so that is something that is extremely important to me, and why I will be supporting the motion.

Any other questions?

COMMISSIONER MC COY: Yes.

CHAIR WAN: Commissioner McCoy.

COMMISSIONER MC COY: Mainly, just to comment that I concur with what Commissioner Reilly had to say.

But, I also would like to say to those of you who consider yourself as protecting nature, in this particular

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instance you can't be apart from it. We are a part of it. We are no different from any of the insects that fly, and the birds that are nesting there, et cetera, and we have to try to fit in as best we can, because this is the very thing that supports us in our life system.

So, that is really important to me. So, I appreciate any efforts that can be made to protect this particular environment.

Thank you.

CHAIR WAN: Any other comments?

[No Response]

Any objection to a unanimous roll call?

[No Response]

Seeing none, the item is approved as per staff, with Part 1 approval, and Part 2 denial.

*

*

[Whereupon the hearing concluded at 11:38 a.m.]

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 261

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R E P O R T E R' S C E R T I F I C A T E

STATE OF CALIFORNIA)
) ss.
COUNTY OF MADERA)

I, PRISCILLA PIKE, Hearing Reporter for the State of California, do hereby certify that the foregoing 169 pages represent a full, true, and correct transcription of the proceedings as reported by me on June 10, 2002.

Dated: June 27, 2002

PRISCILLA PIKE

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CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

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EXHIBIT D

SCHMITZ & ASSOCIATES

April 17, 2002

Sabrina Haswell
South Central Coastal Program Analyst, CCC
CALIFORNIA COASTAL COMMISSION
South Central Coast Area
89 South California Street, 2nd Floor
Ventura, CA 93001

Via Federal Express

RE: **APPLICATION 5-88-056 A1**
Cease and Desist Order No. CCC-01-CD-01; 25351 Pluma Road, Los Angeles County (Rubinroit)

Dear Ms. Haswell:

Prior to this matter being scheduled for hearing, our office was in the process of preparing a request to modify the cease and desist order pursuant to Section 13188 of Title 14, Division 5.5, Chapter 5, Subchapter 8 of the California Code of Regulations. Based on your representation that the applicant is no longer in violation of the cease and desist order, that the applicant's file is complete, and that the California Coastal Commission hearing can proceed with the information and documentation provided to date, we are no longer advancing our modification request.

Please advise us as soon as possible if this is not your understanding, should we need to proceed with our request to modify the cease and desist order. Your assistance in this matter is appreciated. Feel free to contact me at (310) 589-0773 should you have any further questions or comments.

Sincerely,
SCHMITZ & ASSOCIATES

Donald W. Schmitz II

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 263

XC Howard and Terry Rubinroit
Abe G. Doherty, Headquarters Enforcement Officer, CCC (enclosure)

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May 29 02 10:36a SCHMITZ & ASSOCIATES 310 589 0353 p.2

Peter Douglas, Executive Director, CCC
Steve Hudson, Enforcement Supervisor for Southern California District, CCC
Melanie Hale, South Central Permit Supervisor, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Amy Roach, Chief of Enforcement, CCC
John Ainsworth, Permit Supervisor, CCC

May 29 02 10:37a SCHMITZ & ASSOCIATES 310 589 0353 P.3

EXHIBIT E

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May 29, 2002

By Facsimile (805) 641-1732
and Via Certified Mail

John Ainsworth, Permit Supervisor
California Coastal Commission
South Central Coast Area
89 South California Street, Second Floor
Ventura, California 93001

Re: Application 5-88-056 A/1 (the "Application")
Cease and Desist Order No. CCC-01-CD-01 (the "Cease and Desist Order"); 25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Ainsworth:

Reference is made that certain Staff Report: Permit Amendment, dated May 20, 2002, prepared by Commission Staff (the "Staff") in connection with the above Application, which was received by us late last week. In the Staff Report, and among other things, the author[1] states as follows:

> 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

[1] The Staff Report appears to indicate that the Staff person responsible is Sabrina Haswell. We understand, however, that Ms. Haswell is and has been out on extended medical leave. Therefore, we question whether Ms. Haswell in fact authored the Staff Report. Indeed, we would be surprised if the language quoted herein was authored by her, in light of her representation and agreement, discussed below, that the Cease and Desist Order would have no effect on the above Application.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

> application. However, the Commission has already addressed these issues raised by the Rubinroits in the Cease and Desist Order findings. The findings of the Case 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.

Staff Report, at p.13 (emphasis supplied). A similar statement respecting the supposedly binding nature of the Commission's supposed findings in connection with the Cease and Desist Order is also made on page 26 of the Staff Report.

Many, if not most, of the supposed findings made by the Commission in connection with the Cease and Desist Order were, inter alia, absolutely unsupported by any evidence contained in the Commission's files,[2] and, in many cases, contrary to the evidence in fact found in the Commission's files we were provided. For example, the Staff's presentation concerning and the Commission's supposed findings made in the Cease and Desist Order state that grading occurred in connection with the 1996 "development" which was the subject of the Cease and Desist Order and is the subject of the Application. The Staff's presentation in that regard and the Commission's supposed findings in reliance thereon were and are completely unsupported; in fact, they are contrary to various documents in the Commission's files, including, but not limited to, matters set forth in and/or supplied with our Statement of Defense in connection with the Cease and Desist Order, the original Permit issued for the development of the Residence, and photographs taken at or about the time (1990) that the Residence was constructed (as well as documents and other evidence supplied and to be supplied by us in connection with the Application).

Given the many unsupported statements and supposed findings concerning the Cease and Desist Order, our representative, Don Schmitz, advised Sabrina Haswell that it was our intention to seek rescission or modification of the Cease and Desist Order pursuant to Section 13188 of Title 14, Division 5.5, Chapter 5, Sub-Chapter 8 of the California Code of Regulations ("Section 13188"). In response, Ms. Haswell represented to Mr. Schmitz that the Cease and Desist Order would have no effect on the Application, and that the hearing on the Application would, instead, proceed "with the information and documentation" provided and to be provided by us. A copy of Mr. Schmitz' letter to Ms. Haswell (on which you were copied), confirming Ms. Haswell's representations in that regard, is attached hereto. In reliance on Ms Haswell's representations and assurances, which neither Ms. Haswell nor anyone else has ever questioned or denied, we determined not to further pursue the request for rescission or modification of the Cease and Desist Order that Mr. Schmitz advised Ms. Haswell we had intended to make.

---

[2] Pursuant to a request made in April, 2001, we arranged to copy the entirety of the Commission's file in May, 2001. I personally have reviewed and am thoroughly familiar with its contents.

The above quoted and cited references to, and the statements that reliance can be placed on, the supposed findings of the Commission in connection with the Cease and Desist Order which are contained in the Staff Report, and especially the assertion therein that the Commission "need not address [the Rubinroits'] defenses again in these findings on the Permit Amendment Application," is a direct breach of Ms. Haswell's representations to the contrary, and a patent and cynical attempt to deny us a full and fair hearing and/or due process. The situation is made even more outrageous by the fact that the previous Staff Report, which was prepared and submitted to us in connection with the previously scheduled and continued May 7, 2002 hearing, conspicuously discussed our position, assertions, and defenses (in, among other places, 5 pages which were completely omitted from the present Staff Report), and made no such assertion that the supposed findings in connection with the Cease and Desist Order were now to be considered and/or were binding upon us. Indeed, had we not prepared a redline of the present Staff Report against the previous Staff Report yesterday, the Staff's breach of Ms. Haswell's previous representations, assurances, and agreement upon which we relied, and Staff's attempt to deny us a full, fair hearing and due process, might have escaped our notice until it was too late.

Accordingly, demand is hereby made upon the Commission, in the alternative, as follows:

A. That Staff delete and expunge entirely from the Staff Report any reference to, and desist from otherwise advocating the position and/or advising the Commission or any members thereof that, the supposed findings in connection with the Cease and Desist Order and/or that the Cease and Desist Order or such findings should have any effect whatsoever on the Commission's present consideration of the Application, including, but not limited, to a binding effect; that, insofar as that position or advice has previously been communicated to the Commission or any members thereof, they be advised that the Cease and Desist Order and the supposed findings therein may and should not have any effect on their consideration of the Application, and that they must consider and weigh fully our arguments, positions, and evidence submitted in connection with the Application and in response to the Staff Report; and that the hearing, presently scheduled for June 10, 2002, be continued until such time as a revised Staff Report is prepared consistent with the foregoing and timely supplied to us to enable a full response by us prior to a re-scheduled hearing on the Application; or

B. That this letter be considered a request pursuant to Section 13188 for rescission and/or modification of the Cease and Desist Order; that a hearing on this request be scheduled as soon as practicable after 1) notice is given to all persons who may have an interest in this request, including us, and 2) an opportunity is afforded for us fully to prepare a showing supporting such request: and that the hearing on the Application, presently

scheduled for June 10, 2002, be continued until such time as a Staff Report can be prepared in accordance with the determination at such hearing respecting rescission or modification of the Cease and Desist Order and is timely supplied to us to enable a full response by us prior to any re-scheduled hearing on the Application.

Please advise us promptly as to which alternative the Commission intends to elect, and/or how the Commission intends to proceed in light of the foregoing.

Thank you for your anticipated favorable response to this letter and its demands. Of course, nothing contained herein should be deemed to be nor is the waiver of any right, claim, remedy, or defense which my wife and I may have in respect of the Cease and Desist Order, the Application, or the matters discussed herein; all such things are expressly reserved.

Very truly yours,

Howard J. Rubinroit

HJR:sk

cc: Abe G. Doherty, Headquarters Enforcement Officer, CCC
Sabrina Haswell, South Central Coastal Program Analyst, CCC
Peter Douglas, Executive Director, CCC
Steve Hudson, Enforcement Supervisor for Southern California District, CCC
Melanie Hale, South Central Permit Supervisor, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Amy Roach, Chief of Enforcement, CCC
Don Schmitz, Schmitz and Associates

EXHIBIT F

May 31, 2002

JACK AINSWORTH, Permit Supervisor
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 South California Street, Suite 200
Ventura, Ca 93001
via Fed Ex

RE: **5-88-056-A1**
25351 PIUMA ROAD, CALABASAS, LOS ANGELES COUNTY
(APN 4456-37-007).

DEVELOPMENT OF A LIGHTED SPORTS COURT, SWIMMING POOL WITH SPA, APPURTENANT PUMP AND POOL EQUIPMENT, REVISED 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 THE POOL AND HOUSE, PROPANE ABOVE-GROUND STORAGE TANK (AST) WITH CONCRETE PAD, WATER AST, PATIO AREA WITH LANDSCAPING WALLS NEAR THE POOL, DECOMPOSED GRANITE ON EASTERN SIDE OF SPORTS COURT, SAND FILL FOR PLAY AREA EAST OF POOL, REMOVAL OF CONCRETE FROM EASTERN DRAINAGE-WAY, CAPPING OF GREY WATER OUTLET TO CONNECT TO SEPTIC, MASONRY PUMP ENCLOSURE FOR WATER TANK, SCREEN WALL FOR WATER TANK, RE-BURY PARTIALLY BURIED PVC PIPE AND IRRIGATION.

ENCLOSURES
Staff Report: Permit Amendment/Application No. 5-88-056-A1/June 10, 2002 Hearing
Redline comparison of Staff Report: Permit Amendment/Application No. 5-88-056-A1/June 10, 2002 Hearing versus Staff Report: Permit Amendment/Application No. 5-88-056-A1/May 07, 2002 Hearing

Dear Jack:

As discussed in our meeting today, you are considering preparing a new Staff Report to replace the one prepared for the June 10, 2002 hearing based on the inappropriate references to the Cease and Desist Order (CDO) given the representation by Sabrina Haswell, the assigned coastal staff analyst, that the CDO

29350 West Pacific Coast Highway • Unit 12 • Malibu, California 90265 • email: schmitzd@gte.net • 310.589.0773 • 818.889.2460 • 310.589.0353 Fax

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

would have no effect on the subject application. The applicant's position has been expressly provided for in their letter addressed to you and dated May 29, 2002.

We are not amenable to merely an addendum to the subject staff report given that the Staff Report for the June hearing refers the reader to the CDO, relies on findings and defenses in the CDO, and makes statements on the alleged binding nature of the findings in the CDO. That Staff Report has already been circulated to the Commissioners. The "bell has already rung" and cannot be "unrung". Accordingly, unless a fully revised report is issued expunging those matters, and the Commissioners are clearly made aware that the CDO & its findings DO NOT and CANNOT apply, the applicants' ability for a full and fair hearing is unacceptably compromised because the CDO, and findings in connection with the CDO, should have no effect on the Commission member's consideration of the application.

A redline of the present staff report against the previous staff report has been prepared that demonstrates the extent of the variation between the two staff reports. Enclosed please find a copy of redlined current Staff Report and the current Staff Report with the references to the Cease and Desist Order highlighted for your convenience.

Your attention to this matter is appreciated and we formally request that inappropriate references and reliance on the CDO be deleted and expunged entirely and that a new report be written with respect to above-captioned application. Alternatively, we reiterate our rescission and/or modification of the CDO and the scheduling of a hearing on that request pursuant to Code Section 13188. Additionally, we request that the hearing presently scheduled for June 10, 2002 be continued until such time as the revised Staff Report is prepared consistent with the foregoing request and timely provided to the applicant for a full response.

Sincerely,
SCHMITZ & ASSOCIATES, INC.

Tracy Taylor for Donald Schmitz

Donald W. Schmitz II
President

XC Howard and Terry Rubinroit
Abe G. Doherty, Headquarters Enforcement Officer, CCC
Peter Douglas, Executive Director, CCC
Amy Roach, Chief of Enforcement, CCC
Lisa Haage, Assistant Chief of Enforcement, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Steve Hudson, Enforcement Supervisor, South Central District Office, CCC
Tom Sinclair, Enforcement Officer, South Central District Office, CCC
Melanie Hale, Permit Supervisor, South Central District Office, CCC

EXHIBIT G

6 June 2002

Abe G. Doherty, Headquarters Enforcement Officer
CALIFORNIA COASTAL COMMISSION
45 Fremont Street Suite 2000
San Francisco, Ca 94105-2219

SENT VIA FASCIMILE AND FEDERAL EXPRESS

RE: **APPLICATION 5-88-056 A1**
Cease and Desist Order No. CCC-01-CD-01; 25351 Piuma Road, Los Angeles County (Rubinroit)

Dear Mr. Doherty:

We are in receipt of your letter dated 4 June 2002, and I am deeply disturbed by the letter's inaccuracies as to both the record and this offices' actions, and the cavalier disregard of the Executive Director's responsibility vested in staff under 13188 (b) (3) of the Coastal Commission's (CCC) administrative regulations.

You assert in your letter that the applicants have failed to demonstrate to the executive director's satisfaction that there has been a material change in the facts upon which the order was issued. In so doing, you completely ignore that the request for the continuance of the 10 June 2002 hearing was necessitated by staff's last minute elimination of large segments of the previous month's staff report, as staff asserted for the first time that the supposed findings made in context of the cease and desist order are binding in the context of the present application. You also disregard the clear demand in the applicant's continuation request that they be provided the opportunity to make the showing, which you claim they have failed to make.

You have effectively maneuvered the applicant's into an impossible situation; staff recommends that the CCC deny parts of their project predicated upon findings in the Cease and Desist Order (CDO), which your offices dissuaded them from modifying months ago when there was ample time to do so.

I would remind you that you erroneously asserted to the CCC in both the CDO report, and in your presentation to the CCC at the public hearing, that the Rubinroits had **graded** the landform upon which the sports court is located to within five (5) ft. of the blue line stream located to the North of the subject property.

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)
Page 27

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Subsequent to the adoption of the CDO the Rubinroits hired this firm, and we supplied you with surveys, civil engineering plans, geology and soils reports, and biota reports, all from licensed and well-credentialed experts respected in their fields. Despite the fact that you, and the CCC, were relying on nothing more than your less than expert opinion, you continued to stubbornly insist, both in writing and orally, that there was significant grading that took place to create the topographic feature upon which the sports court is located. Worse, you constantly warned the applicants that they were "in violation of the CDO" for not providing the CCC with the grading you insisted took place.

When we walked the site together on May 9th, and the obvious fact was in front of you and irrefutable, you finally admitted what had been so thoroughly documented at great expense to the Rubinroits:

1. The sports court sits upon a massive igneous rock outcrop, not a graded and created hill,

2. The "graded slope" five (5) ft. from the stream you incorrectly identified to the CCC is in fact a natural rock face of that outcrop,

3. The stream bed is adjacent to that natural rock outcrop, and is <u>not</u> located on the property,

4. The sports court is constructed over 65 ft from the stream, not five (5) ft. as you reported.

In fact you informed me in the field that your previous erroneous opinion was based upon some sand that you saw on the side of the outcropping, which served to confuse you into thinking that the entire hillside had been graded.

We are all human Abe, and make mistakes. However, your stubborn insistence for months that all the experts were wrong, and you were correct, has cost the Rubinroits many thousands of dollars. More importantly, I am amazed that you can suggest that there is not "material change in the facts upon which the order was issued".

"Graded slopes" that are in fact natural slopes? Development within five (5) ft. of a blue line stream that is in fact at least 65 ft.? These are not material changes?

Of course they are.

It is incontrovertible that the CDO report was glaringly wrong about the location of the creek, the location of the "ESHA", the location of the development, the fact that there was no grading or development within five ft. of the creek, and even wrong about the location of the property line!

To assert that this isn't a "material change in the facts" is beyond intellectually dishonest; it is an abuse of the trust and authority vested in the staff by the legislature, the CCC itself, and the public.

CONTINUANCE

The request for the continuance by the applicants is necessary because staff seeks to use the CDO as a basis for denial of portions of their project. I nearly fell out of my chair when I read your "analysis" on page two of your letter as it pertains to our decision previously NOT to amend the CDO.

The letter from my office to Sabrina Haswell dated 17 April 2002 was sent to your offices in San Francisco by U.S. mail, and the law presumes it was delivered in the ordinary course. Further, our letter was received return receipt by Sabrina herself in the Ventura office. If you are failing to coordinate matters within your agency that should not be the basis for punishing the applicants.

Most amazing was your statement that "Mr. Schmitz is referring to the fact that Ms. Haswell had stated that the Commission staff agreed to file the Rubinroit's permit application as complete and scheduled it for a hearing before the Commission, even though the Rubinroits were unwilling to provide certain items that the Cease and Desist Order listed as required parts of their permit application".

Really! How did you conclude all that Abe, including what I was referring too? You didn't ever speak to me about it. Are you clairvoyant? Clearly you are not, because I was in no way referring to staff's decision to proceed to the hearing without local approval in concept in my letter of April 17th. I was referring to the fact Ms. Haswell told me the modification to the CDO would not be necessary.

How do you know exactly what Ms. Haswell said to me? Did you discuss this with her previously (as she is now out of the office on extended medical leave)? If you discussed this matter with Ms. Haswell before, your obvious attempt to discredit our previous correspondence on the 17th as "not being received" is disingenuous, because if you spoke to her before, you were "in the loop". And if you have not spoken to her, I must conclude you read Ms. Haswell's mind as well.

What exacerbates this entire issue is that you are completely wrong in repeating your unsupported and unsupportable conclusions.

Allow me to outline for you the actual sequence of events as they pertain to the modification request for the CDO.

In our frustration in dealing with your repeated assertions that we "were refusing to submit grading plans" (for grading that never occurred), which was based upon your mistakes in drafting the CDO report, I approached Mr. John Bowers at the

CCC hearing in Monterey on 6 March 2002. Mr. Bowers graciously and politely provided direction to this office, and indicated that if the CDO was "materially incorrect" then we should rectify the situation by filing a modification application for the CDO. This office began immediately compiling the submittal packet for amending the CDO, and in fact informed you of our intention to do so on 20 March 2002 in a telephone conversation.

Some time subsequent to our conversation, you discussed the matter with Ms Haswell and she informed me of the same. She also informed me that our seeking the amendment of the CDO would no longer be necessary, due to the fact that we had submitted the supporting documentation in our CDP application, to which we followed up with a confirmation letter on 17 April 2002 (copy enclosed for reference).

Had Ms, Haswell, you, or anyone else questioned or corrected our statement in the April 17th letter that Ms. Haswell said we need not proceed with amending the CDO, we would have reinstated and fully supported our request for modification or expungement of the incorrect CDO findings. Instead, you "discover" the 17 April letter the week before the hearing when the applicant has no right to continue the matter, and refuse to recommend to the CCC to continue the hearing.

To state your position is to demonstrate its absurdity. How would the Rubinroit's come into compliance with the CDO? Should they look for licensed professionals willing to fabricate grading plans consistent with the documented erroneous positions you put into the CDO report?

It is entirely appropriate that we can professionally disagree on what is the correct level of development on the applicant's property consistent with the Chapter 3 policies of the coastal act. What is entirely inappropriate, and, indeed, a denial of due process as well as a lack of fairness, is for staff to achieve its insufficient and unsupportable position on this important matter by sponsoring findings that staff knows for a fact to be incorrect. Denying the applicant use of their property based upon the findings of a factually incorrect CDO is unconscionable.

Of course, the previously incorrect and unsupported "findings" in connection with the CDO can have no effect here, and cannot be used to support the findings the Commission is required to make as to the permit application based on the showing in connection with the application.

In any event, however, should the CCC continue this matter at the hearing on the 10th of June, we will submit our application packet to modify the findings of the CDO within one week. The CCC should be able to schedule a hearing on the modification request by the July or August hearing at the latest. As the 180th day for this application is not until 7 October 2002, there should be ample time to hear

both the amendment to the CDO, and the subject permit application within all statutory limitations.

I urge you and your superiors to reconsider the stated position in your 4 June 2002 letter. If ever there was a written record that needed "house cleaning", this is it.

We look forward to your written reply as soon as practical.

Sincerely,
SCHMITZ & ASSOCIATES

Donald W. Schmitz II

XC Howard and Terry Rubinroit
Peter Douglas, Executive Director, CCC
Steve Hudson, Enforcement Supervisor for Southern California District, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Sandy Goldberg, Staff Counsel
Amy Roach, Chief of Enforcement, CCC
Lisa Haage, Assistant Chief of Enforcement
John Ainsworth, Permit Supervisor, CCC
Tom Sinclair, Enforcement Officer, South Central District Office
Sabrina Haswell, South Central Coastal Program Analyst, CCC
Laurie Newman, Office of the Honorable Sheila J. Kuehl
Laura Shell, Deputy for Supervisor Zev Yaroslavsky

EXHIBIT H

June 9, 2002

California Coastal Commission
South Central Coast Area
89 South California Street, 2nd Floor
Ventura, CA 93001

ATTENTION: California Coastal Commissioners

REGARDING: APPLICATION NO. 5-88-056-A1

PROJECT LOCATION: 25351 PIUMA ROAD, CALABASAS (Los Angeles County)

PROJECT DESCRIPTION: 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; after-the-fact capping of greywater outlet and connection to the existing septic system and removal of concrete from the eastern drainage on the site; masonry pump enclosure for the water tank and a screen wall for the water tank.

APPLICANT: HOWARD AND TERRY RUBINROIT

REPRESENTATIVE: SCHMITZ & ASSOCIATES

Dear Commissioners,

We are responding to the California Coastal Commission South Central Coast Area Staff Report and recommendations dated 5/20/02 (hereinafter "Staff Report") for the hearing scheduled on 6/10/02. We respectfully submit the following rebuttal to the aforementioned Staff Report.

DESCRIPTION OF AMENDMENT: Please be advised that project description has been revised and that the staff report should be modified accordingly-

- The sports court, and the steps leading to the sports court, will not be lighted.
- A masonry wall will not be placed around the water tank.

LOCAL APPROVALS RECEIVED: There are various local approvals for this property that have been omitted although staff has been provided copies of those approvals as enclosures to various correspondence to the CCC dated 6/29/01, 7/31/01, 9/24/01, 9/25/01, 9/27/01, 3/14/02. The staff report should be revised to reflect the various additional local approvals issued for this property as follows:

1) L.P. Gas Storage and Dispensing permit issued by the County of Los Angeles Fire Department for the "propane above-ground storage tank (AST) with concrete pad;
2) Certification from the County of Los Angeles Fire Department that brush clearance has been performed in compliance with county fire codes;
3) Approval from Los Angeles County Building and Safety dated 2/10/94 for the swimming pool;
4) Approval from Department of Public Works for Los Angeles County dated 1/25/96 for drainage;
5) Los Angeles County Department of Public Works Geology approval of geotechnical report entitled "Limited Geotechnical Investigation for Proposed Swimming Pool and Carport";
6) Los Angeles County Environmental Health approval dated 3/5/96 for the construction of the pool;
7) Los Angeles County Environmental Health approval dated 3/14/02 for as-built location of pool and spa;
8) Building permit for retaining wall issued by County of Los Angeles Department of Public Works;

FINDINGS AND DECLARATIONS: The staff has made several assertions in its report for the subject application that are erroneous and recommended special conditions that are unwarranted.

Reliance on County Agencies and Officials: Although the CCC did not permit development of the swimming pool, carport, and sports court, as the evidence previously submitted demonstrates, that was a result of the Rubinroits being advised and themselves believing that no permit was required. The development was, however, fully permitted by the County of Los Angeles Building Department. As part of that process, the Rubinroits were required to evaluate the prevailing soils and site conditions, and submit a geology report. A grading plan was not required by the County, because no grading was required for the swimming pool, carport, or sports court except for excavation of the swimming pool (Please refer to the "Limited Geotechnical Investigation for Proposed Swimming Pool and Carport," prepared by Miller Geosciences, and dated 12-6-95). Simply put, there was no grading, the 1988 permit recognizes and supports this fact.

BLUELINE STREAM/DARK CREEK ESHA:
The proposed development is not located adjacent to the blueline stream, nor has a blueline stream traversed the property at any time; in actuality the existing blueline stream is located 60-feet or greater to the northeast of the sports court. There has been no evidence produced by staff to justify their contention that the sports court is adjacent to a blue line stream. However, evidence has been submitted by the applicant to refute this contention in the form of a biota report prepared by the project biologist, Mr. Steve Nelson, dated 1 October 2001. Coastal staff also visited the site on May 9, 2002 and observed that a blueline stream ***is not*** within 5-feet of the northern portion of the sports court as had been previously reported to the CCC in the cease and desist order and previous staff report.

With respect to the reference that the property is located in, or in the vicinity of an area that is an ESHA and which has been recognized by the Commission as the ***Dark Canyon*** ESHA, this area in actuality is located approximately 500-feet north of the sports court.

Furthermore, there are no habitat values on or adjacent to the property to support a classification of ESHA, and there are no oak trees on the property as evidenced by the survey and biologist's report. The Staff Report references several oak trees adjacent to the subject site, however we have no information nor are we aware of any study that establishes this to be the case.

Mr. Nelson's Biological Assessment dated 1 October 2001 previously submitted to the CCC offices provides as follows: "**No** evidence of riparian vegetation either within or at the edge of the sports court could be found during either the review of the historical photographs or the on-site inspection." (Emphasis added). The report further provides that the small drainage course, which passes 20-30 feet to the east of the court, does not support riparian growth; i.e., "... **[I]t is highly unlikely that this drainage could have or will again in the future be capable of supporting riparian growth.**" (Emphasis added). **The report also advises that the nearest mapped blue line is 100 feet to the northeast of the sports court**; supports limited riparian vegetation, with a canopy limited to 10- to 20-feet on either side of the flow line; **"and does not come close to the effected area."** (Emphasis added).

Furthermore, as stated in the report provided to the CCC prepared by the biologist, no vegetation of **"value in either regional or local biological systems in terms of either its floral makeup or as wildlife habitat"** was impacted by the subject improvements. The report also states that "the entire site was inspected for the presence of oak trees . . . no oak trees were observed on site."

Given the fact that the sports court is not in, adjacent to, or in close proximity to the blue line stream, riparian vegetation or the Dark Canyon ESHA, we request that any and all references to an adjacent blue line stream and/or ESHA be modified accordingly.

Nonnative Sand Fill Adjacent to Blueline Stream Corridor on Northeastern Side Of Sports Court: As discussed above, there is no adjacent blue line stream corridor. Furthermore, the "nonnative sand fill" is not *fill*, and there was no grading to create the pad for the sports court. The sports court was located on an existing flat

portion of the property to reduce site disturbance. The sand observed in the area was a minor amount of material for landscaping purposes. The staff report fails to provide any expert analysis to support a contention that the sand could have any environmental impact of any significance, while the applicant has provided an expert analysis to the contrary.

Stairway in OTD/Filtration: There is no filtration issue with respect to the steps given that there is no impact, either positive or negative, on rainwater infiltration. As documented in the attached letter from the project civil engineer, VTN, the railroad tie stairs have no discernable impact as it pertains to infiltration of rainwater into the aquifer. Certainly, the stairs will not reduce the permeability of the site by 50% as asserted by staff. To state the staff position is to demonstrate its absurdity, and to follow their logic one would conclude that when a branch falls off an oak tree this "reduces" the infiltration of ground water.

Staff provides no expert analysis to substantiate their position that the steps reduce the permeability of the site, a position that is completely refuted by the licensed civil engineers at VTN.

Concrete Debris in Eastern Drainage Course: The concrete debris has been removed from the eastern drainage course and the debris material has been disposed of outside of the Coastal Zone. Therefore Special Condition 4 is unnecessary. The figure of 25 sq. ft. of concrete debris is entirely inaccurate and was easily removed by the applicant by hand with a bucket. It is estimated that the total amount of concrete debris would have filled one or two trashcans at most. Said removal was initiated and completed only after receiving oral authorization from the coastal staff in the Ventura office of the CCC.

Relocation of the Above Ground Water Storage Tank, Masonry Pump Enclosure for Water Tank: There is no evidence or expert opinion provided in the staff report to support the assertion that the existing ground water storage tank constructed on a small cut pad adjacent to Piuma Road has a detrimental effect on the stability of the site due to disturbance and erosion. To the contrary, the project civil engineer and consulting geologist have concluded that the water tank does not in any way destabilize the site or contribute to erosion.

The water tank is located in an already impacted area along a major paved right of way, Piuma Road. Relocating the above ground water storage tank will have an effect contrary to minimizing impacts on the environment by precipitating new development.

Furthermore, the CCC staff completely ignores the overwhelming precedent established by the numerous homes constructed in the area with the water tanks adjacent to the frontage road. The tank located adjacent to Piuma Road is consistent with a number of precedent establishing permit actions by the CCC whereupon the CCC approved residential development with the water tanks in essentially identical locations.

It should be noted that the water tank is already located in the superior position relevant to visual impacts and protection of public views consistent with Section 30251of the coastal act. The tank is placed adjacent to a small hillock which completely screens the same from any West bound traffic on Piuma Road. Relocating the water tank next to the house, a practical impossibility as described below, would make the tank visible to both East and West bound traffic, inconsistent with the germane policies of the coastal act and the LUP.

Most importantly, the CCC continues to ignore the fact that relocating the water tank as proposed is an impractical proposition due to engineering and fire code constraints.

As stated by Wayne Erickson, owner of Midwest Water Well Cont. Inc., in the attached correspondence who installed the water well at the subject property, "the location of the well and the accompanying tank had to be approved by the County of Los Angeles Department of Health Services, Environmental Management" and was located pursuant to regulations relating the proximity to the septic system and hydrant or standpipe. "The well and storage tank where therefore located where the fire department required." "There was and is no location where the well and storage tank could physically be located which would comply both with the Health Department requirements and the Fire Department requirements other than where it was placed in 1987."

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 28/

Please note that the fire department requires the outlet hydrant to be located 50 to 150 ft. from the residence, and that the water tank must be located at a higher elevation to facilitate gravity feed of water to the outlet. As Piuma Road slopes down in elevation from East to West, relocating the water tank adjacent to the house would place the tank ***below*** the outlet, which the fire department must hook into. This is inconsistent with the fire code, placing the applicants in an impossible situation whereupon they cannot obtain approvals from the local jurisdiction, and creating an unsafe situation for both life and property.

When approached on the relocation proposed by the CCC staff, Captain Jordan of the Fire Prevention Division concluded that such relocation would be "asinine". On 13 May 2002 Captain Jordan wrote to the applicants and stated, in part, "The water tank and outlet had to be approved by the Fire Department prior to you obtaining a building permit when the house was built. The outlet and water tank are properly located on the site. The water from the tank gravity flows from the outlet, and the outlet is located correctly.".

When confronted during a site visit with the practical impossibility of relocating the tank as proposed in the staff report, staff analyst Doherty admitted he did not know of any solution. Staff provides no expert engineering opinion on the identified constraints, while the applicant has provided expert opinions from licensed civil engineer, licensed geologist, and credential biologist, not to mention the local fire captain. Accordingly, the special condition and accompanying findings requiring relocation of the water tank should be expunged from the staff report as unsupportable and unjustified.

Pool and Spa Drainage and Maintenance: The swimming pool and spa do ***not*** have the potential of a deleterious effect on aquatic habitat, and no water meter is required given that there will be no run-off or drainage from the pool or spa. As stated by Contempo Swim Pool Construction Co. in the attached correspondence "The Rubinroit pool was designed and constructed, among other things, to avoid run-off and infiltration. The pool is sunken at virtually its entire expanse, so that it is more than 2 feet below the grade of the adjoining lawn and decking. Where it is not below grade, it abuts planted areas which range from 4-10 feet deep that will

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 282

accommodate any possible run- off that might occur. Additionally, the pool is designed to be filled only to within 6 inches of the top, leaving more than adequate capacity to accommodate rain from even the most severe winter storms. The spa was likewise designed and constructed, among other things, to avoid any run-off and infiltration. It is surrounded on all 4 sides by 15" deep over-flow channels to catch, retain, and recirculate any run-off from the spa." The pool was also constructed with waterproof materials which the contractor has been using for 30-years with success. "If the pool had to be drained, Contempo has both the equipment and the expertise to pump the water up to Piuma Road, and transport it off site."

It should be noted that the CCC provides no expert analysis, nor references any scientific studies, to support the conclusion that pool water is damaging to the environment. In fact, as substantiated by their notes to the file, the CCC staff made inquiries to the Department of Fish and Game, Regional Water Quality Control Board, and Los Angeles County Health Department regarding this issue. None of these agencies asserted jurisdiction over this matter, nor indicated that there was a concern over impacts to the environment.

Accordingly, due to the unique design of the pool which is sunken below grade precluding overflowing, due to the expert testimony of the consulting biologist and pool contractor, and due to the dearth of the slightest modicum of supporting expert analysis on the part of the CCC staff, we respectfully request that special condition #6 and related findings be expunged from the staff report.

Capping of Greywater Outlet: The county of Los Angeles Health Services (Health Services) issued an "Official Notice of Violation" addressing the greywater issue and exposed pipe, and directed the applicant to connect the greywater outlet directly into the septic tank. The greywater outlet has been capped and properly connected to the existing septic system pursuant to the Los Angeles County Department of Health Services. Therefore, Special Condition 8 is unnecessary.

Landscape/Fuel Modification Plan: The proposed development does <u>not</u> require a fuel modification plan or landscaping plan from the Los Angeles County Fire Department. Pursuant to the applicants' discussion with Mr. Steve Guerrero, Fire Prevention Engineering Assistant for the Fire Prevention Engineering Section of the

Fire Prevention Division, and subsequent letter from Mr. Guerrero to the CCC dated 2/5/02; no fuel modification plan is required for the proposed development. Abe Doherty's violation investigation report telephone log also provides that in his telephone conversation with Captain Jordan of Los Angeles County Fire Department that 200 feet of clearance from structures is required, that Captain Jordan advised Mr. Doherty that fuel modification is only for combustible structures, and that the Rubinroits would not likely need fuel modification plans. The Deed Restriction recorded by the applicant for Coastal Development permit No. 5-88-056 granted on March 24, 1998 for the subject property also provided that while future additions or development would require an amendment to permit 5-88-056, the clearing of vegetation for fire protection as required by the Los Angeles County Fire Marshall was specifically exempted from this requirement. Thus, it is allowed and does not require a new permit.

Therefore, Special Condition 3 is unnecessary, and along with the appurtenant findings, should be expunged from the staff report.

Sports Court Grading: There was no grading for the sports court conducted within the jurisdictional time frame of the CCC, which has been documented and communicated repeatedly to the CCC staff. After repeated requests to the CCC, including several official freedom of information act demands, the applicants have yet to receive any evidence, documentation or support for the allegation that grading did take place. The CCC staff has indicated orally that the assertion the sports court was graded within the CCC jurisdictional time frame is based upon aerial photographs, and old topography maps. To date, the CCC staff has refused to provide any topography maps to support their position, citing attorney client privilege. One copy of an aerial photograph was provided to the applicant by the CCC staff, which is of such a diminutive scale (approximately 1:2000) that it is impossible to determine if any grading of the site took place.

It is important to note that the CCC staff has asserted repeatedly that the sports court was graded by the applicants; in correspondence, in repeated telephone conferences with the applicants and/or their representatives, in the cease and desist staff report, and in both the May and June staff reports. In fact, staff was asserting that the applicants had graded the area of the sports court to "within five feet of the

adjacent blue line stream ESHA". The basis for this determination by the CCC staff was, again, their interpretation of the aerial photographs, and the topography maps that they have refused to provide to the applicants or their representatives.

However, on 9 May 2002, Abe Doherty of the CCC staff conducted a site visit with the applicant's representative and inspected the area of the sports court. During the site visit Mr. Doherty acquiesced the obvious; that the knoll the sports court is located on is a natural igneous outcropping, and was not a graded man made element.

This fact is clearly reflected in the Updated Geological and Geotechnical Engineering Investigation by GeoSoils Consultants Inc. dated 11 September 2001, which was received by the CCC on 25 September 2001. Said report clearly states that "The site has been graded primarily during the construction of Piuma Road, and Prior to the construction of the house in 1988". Additionally, the geologic maps attached to the referenced report, along with cross sections, clearly show that the knoll the sports court was constructed on is an outcropping of Conejo Volcanic material; a natural feature.

Additionally, the original developer of the subject property, Mr. Jack Moses, has signed a declaration stating that the pad on which the sports court is located existed prior to his purchasing and developing the property in the 1980's.

Despite the overwhelming technical opinion to the contrary, the CCC staff continued to stubbornly assert that the knoll upon which the sports court was constructed is a graded feature, based upon the incomprehensible aerial photograph and topography map they refuse to release. Not until being confronted in the field with the plainly obvious natural feature have they relented on the fact that the feature is natural.

Unfortunately, staff continues to assert that the applicants graded the top of the knoll underneath the sports court. The staff report asserts that the applicants have "refused" to provide a grading plan, when in fact the applicants have informed staff repeatedly, orally and in writing, that no grading plan can be provided BECAUSE NO GRADING TOOK PLACE TO CREATE THE SPORTS COURT.

Staff also asserts in the report that the sports court will:

1) have unacceptable impacts to the ESHA to the North and downslope
2) decrease the permeability of the site to the detriment of groundwater discharge

As documented in the biology report by Steve Nelson, the sports court will not have direct or indirect impacts to the ESHA to the north. In fact, the biology report calls into question the underlying validity of the drainage as having special and unique vegetation suitable for ESHA designation at all.

Furthermore, the Department of Fish and Game also concluded, after a site visit conducted at the urging of the CCC staff, that the sports court would have NO impacts on the riparian area and was outside their jurisdiction.

Additionally, in the attached letter by VTN, the applicants have documented that the sports court will in fact not significantly affect infiltration of rainwater into the aquifer, due to the fact that the site is underlain with massive and impermeable volcanic rock.

The staff has failed to provide any evidence to support their assertion that the sports court would have any impacts on the environment in general, or the "ESHA" in particular. In contrast, the applicant has provided expert analysis and documentation that the sports court will not harm the ESHA.

However, the applicant is willing to take additional substantive steps to assuage the concerns of the CCC. The applicant is withdrawing the lighting of the sports court, and the related stairs to the same, as a component of the project description. Furthermore, the applicant is willing to incorporate a drainage filtration system to capture and treat run off from the paved surface of the sports court, in the unlikely event that said run off would contain any pollutants which could harm the riparian area. These steps would completely obviate the potential for any adverse off site impacts to the riparian area from the sports court.

Said modifications should be codified into the findings and special conditions of a revised staff report. Due to the complete lack of expert documentation by the CCC of

any impacts, directly or indirectly, to the riparian area, special condition number two, and any related findings, should be expunged from the staff report.

Relocation of the Fence and Children's Play Area: The relocation of the fence and sand box has no effect, pro or con, on the OTD. The fencing and play area is located along the natural edge of the pad area approved by the CCC under the original permit, within the zone A of the fuel modification zone. To arbitrarily require the relocation of the fence with no identifiable resource issue based upon an un-surveyed OTD boundary is punitive and unwarranted. Accordingly, Special Condition #2 and related findings should be eliminated from the report.

Irrigation in OTD Area: The irrigation lines within the OTD were required for hydro seed in the original fuel modification plan for the development of the single-family residence, and was reviewed and approved by the CCC. Regardless, the applicant will agree to remove the irrigation lines from the OTD area.

CALIFORNIA ENVIRONMENTAL QUALITY ACT Determination: CEQA

CEQA is a multi-step process. First, the public agency must determine if the activity is a project subject to CEQA. Certain classes of projects are determined by the Secretary for Resources to be exempt from CEQA review because they generally will not have a significant effect on the environment. Pub. Res. Code §§ 21080(b)(9), 21084. If the project is exempt, no further action under CEQA is required. Section 20184 of the Public Resources Code requires a listing of classes of projects determined not to have a significant effect on the environment, and thus exempt from CEQA. The following provides the relevant classes of project that the Secretary for Resources has determined do not have a significant effect on the environment, and declared to be categorically exempt.

Section 15301 Class 1 Exemptions

Section 15301 provides a Class 1 categorical exemption for existing facilities consisting of the operation, repair, maintenance, or minor alteration of existing . . .

private structures . . . or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. . "The key consideration [as to whether or not a project is of the type which might fall within Class 1] is whether the project involves negligible or no expansion of an existing use. The following are relevant examples, and are not intended by §15301 to be all-inclusive:

> (f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities . . . .;
>
> .....
>
> (h) (h) Maintenance of existing landscaping, native growth and water supply reservoirs;

The lighted stairway extending from the pool area to the sports court, lighted steps and pathways on both sides of the single family residence, above ground water storage tank, masonry pump enclosure for the water tank and irrigation system all qualify as Class 1 exemptions to CEQA review, thus are exempt from CEQA review and are not properly the subject of conditions of approval to be consistent with CEQA.

- The lighting of stairways and pathways are clearly an addition of safety or health protection devices in conjunction with existing structures.
  While the applicants' have offered to remove the lighting of the stairway to the sports court, the lighting of stairways and pathways are classified as Class 1 exemptions and are not subject to CEQA review or mitigation measures as conditions of approval.

- The above ground water storage tank and masonry pump enclosure for the water tank are clearly an addition of safety or health protection devices in conjunction with existing structures, as well as qualify as "maintenance of existing landscaping, native growth and water supply reservoirs".

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 288

The location of the tank was approved by the County of Los Angeles Department of Health Services, Environmental Management and was located pursuant to health and safety regulations relating the proximity to the septic system. The water tank was located where Los Angeles County Fire Department required, relating to the proximity to the hydrant or standpipe. As stated by the installer, "there was and is no location where the well and storage tank could physically be located which would comply both with the Health Department requirements and the Fire Department requirements other than where it was placed in 1988. Captain Jordan of the Los Angeles County Fire Department has stated that the outlet and water tank are properly located on the site.

The masonry pump enclosure prevents the water tank from sustaining damage. If damaged, the loss of water for habitable use, including consumption and irrigation, and fire prevention are clearly health and safety risks.

The water tank and masonry pump enclosure qualify as the maintenance of water supply reservoirs, which in turn maintain existing landscaping and native growth.

The water tank and masonry pump enclosure are classified as Class 1 exemptions and are not subject to CEQA review or mitigation measures as conditions of approval. Accordingly, the special condition and accompanying findings requiring relocation of the water tank should be eliminated.

- The irrigation system qualifies both as a safety and health protection device in conjunction with existing structures, as well as maintenance of existing landscaping, native growth and water supply reservoirs. The Los Angeles County Fire Department requires the implementation of irrigation systems with residential construction for fire prevention that spread into areas of native growth. Furthermore, the irrigation lines within the OTD were required for hydro seed pursuant to the original fuel modification plan presented to the CCC with CDP 5-88-056. Thus, the irrigation system is maintaining existing landscaping to the extent

approved by the CCC, and native growth as required by the Fire Department.
While the applicants' have offered to remove the irrigation lines from the OTD area, the irrigation lines and maintenance of the existing landscaping are classified as Class 1 exemptions and are not subject to CEQA review or mitigation measures as conditions of approval. Accordingly, the special condition and accompanying findings requiring a landscape and fuel modification plan should be eliminated.

Section 15303 Class 3 Exemptions

Section 15303 provides a Class 3 categorical exemption for new construction or conversion of small structures. "Examples of this exemption include, but are not limited to:

(d) (d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements of reasonable length to serve such construction.

(e) (e) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

The lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from 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 and walls near the pool, and sand fill for play area east of the pool all qualify as Class 3 exemptions to CEQA review, thus are exempt from CEQA review and are not properly the subject of conditions of approval to be consistent with CEQA.

- The above ground propane storage tank with concrete pad, above ground water storage tank, and masonry pump enclosure are utility extensions serving construction. In the Santa Monica Mountains gas utilities are provided by propane storage tanks, and a water well and water tanks provide water. As standard

utility extensions necessary for development they are exempt from CEQA and are not properly the subject of conditions of approval to be consistent with CEQA.

- The lighted sports court, swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, lighted stairway extending from 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 and walls near the pool, and sand fill for play area east of the pool are accessory (appurtenant) structures as provided for by statute, specifically or by reference.

- Class 3 exemptions specifically exempt by example the swimming pool with spa and pump, pool equipment storage area, retaining wall and carport, chain link fence and gates around the pool and single family, and residence patio area with landscaping and walls near the pool. Thus, they are not subject to CEQA review or mitigation measures as conditions of approval. Accordingly, the special condition and accompanying findings requiring pool and spa drainage maintenance, and relocation of the eastern portion of the fence adjacent to the single family residence should be eliminated.

- Class 3 examples are not all-inclusive. They provide a framework for the types of development exempt from CEQA review. The accessory structures exemption includes, necessary, convenient, recreational and safety improvement usually associated with a residential development. The lighted sports court, lighted stairway extending from pool area to the sports court, lighted steps and pathways on both sides of the single family residence, sand fill for play area east of the pool are accessory (appurtenant) improvements. The lighted sports court

and sand fill play area provide recreational opportunities akin to a swimming pool. The lighted stairways are necessary, convenient and a safety improvement. The residence is built on a hillside that requires the use of steps to access the perimeter of the structure and the property, including the lower portion of the property on which the sport court is located. The lighting is a safety feature for access.

Thus, they are not subject to CEQA review or mitigation measures as conditions of approval. Accordingly, the special condition and accompanying findings requiring removal of the lighted sports court, lighted stairway from pool area to sports court and relocation of the sand fill for play area east of the pool should be eliminated

The development as proposed is exempt from CEQA. The provision that a proposed development cannot be approved if there are feasible alternative or feasible mitigation measures is inapplicable, because CEQA does not apply to any element of the proposed development. Accordingly, the special conditions and accompanying findings established to substantially lessen any significant adverse effect on the environment within the meaning of CEQA should be eliminated. CEQA does not require that environmental impacts of the proposed project be mitigated. The Secretary for Resources has already determined the relevant classes of project that do not have a significant effect on the environment, and which have been declared to be categorically exempt. Every element of the proposed development is encompassed in the relevant classes of exempt development.

Transfer Development Credit: The applicants have represented that they are willing to buy a transfer development credit, which would more than mitigate the development of the sports court. Based on the foregoing premises the transfer of development credit will carry out the objectives of the Coastal Act. The applicant can acquire property better suited to maintain the natural and scenic resources of the Santa Monica Mountains. The CCC and public has the resulting benefit of obtaining

open space and environmental protection of lands that are more accessible and desirable to the public and offers preservation of land by removing the parcel from all development. The area of the sports court located on the applicant's property is subject to an OTD, but is not accessible for public use and barely visible from Piuma Road.

The record clearly demonstrates that the sports court and related development do not have a significant impact on public resources as defined in the Chapter 3 policies of the coastal act, and therefore, the CCC would not be able to appropriately require the purchase of a TDC as a condition of approval. Regardless, in a gesture of good faith, the applicants will offer to retire a building site within the Santa Monica Mountains to demonstrate again their commitment to environmental protection in the community that they cherish.

Thank you for your time and consideration regarding this matter.

Sincerely,
SCHMITZ & ASSOCIATES, INC.

Donald W. Schmitz II President
xc Howard and Terry Rubinroit
Abe G. Doherty, Headquarters Enforcement Officer, CCC
Peter Douglas, Executive Director, CCC
Amy Roach, Chief of Enforcement, CCC
Lisa Haage, Assistant Chief of Enforcement, CCC
John Bowers, Esq., Commission Staff Counsel, CCC
Steve Hudson, Enforcement Supervisor, South Central District Office, CCC
Tom Sinclair, Enforcement Officer, South Central District Office, CCC
Melanie Hale, Permit Supervisor, South Central District Office, CCC
John Ainsworth, Permit Supervisor, South Central District Office, CCC

EXHIBIT I

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

June 24, 2002

Don Schmitz
Schmitz And Associates
29150 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 ESHAs 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 ESHA.

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

Daryl Koutnik, Senior Biologist
Impact Analysis

CCC-02-RO-01
EXHIBIT 7
(Statement of Defense)

Page 294

320 West Temple Street • Los Angeles, CA 90012 • 213 974-6411 Fax: 213 626-0434 • TDD: 213 617-2292

EXPLANATION

afr	RECENT ARTIFICIAL FILL
af	ARTIFICIAL FILL PLACED DURING THE CONSTRUCTION OF PIUMA ROAD
Tv	CONEJO VOLCANICS
82	JOINT ATTITUDE
	GEOLOGIC CONTACT
	CREEP AFFECTED SURFICIAL SOILS
A A'	GEOLOGIC CROSS SECTION
TP-1	GEOSOILS INC. EXPLORATORY TEST PIT
TP-5-88	GEOSYSTEMS, INC. EXPLORATORY TEST PIT
TP-5-95	MILLER GEOSCIENCES TEST PIT



CCC-02-RO-01

EXHIBIT 8 Geologic Map

Page 1/4

RED BY:
WEST, INC.
AN NUYS BLVD., SUITE 100
YS, CA. 91405-3963
9-8740/50-FAX

GSC GeoSoils Consultants Inc.
GEOTECHNICAL • GEOLOGIC • ENVIRONMENTAL

6634 Valjean Avenue
Van Nuys, CA 91406

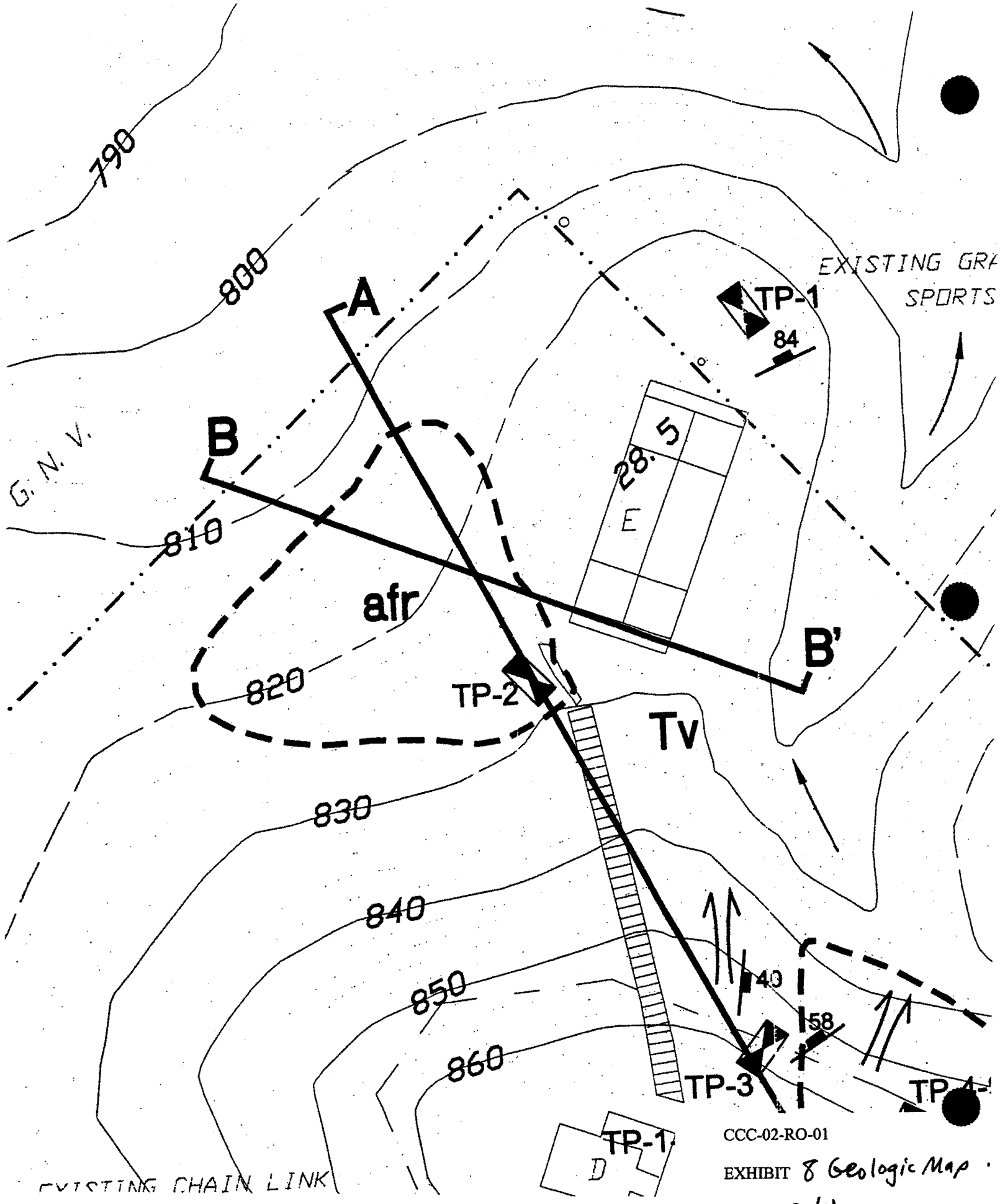
GEOLOGIC MAP
25351 PIUMA ROAD
CALABASAS, CA 91302
HOWARD RUBINROIT RESIDENCE

WORK ORDER	DATE	SCALE
5178-VN	8/01	1"=20'

REVISED

PLATE 1

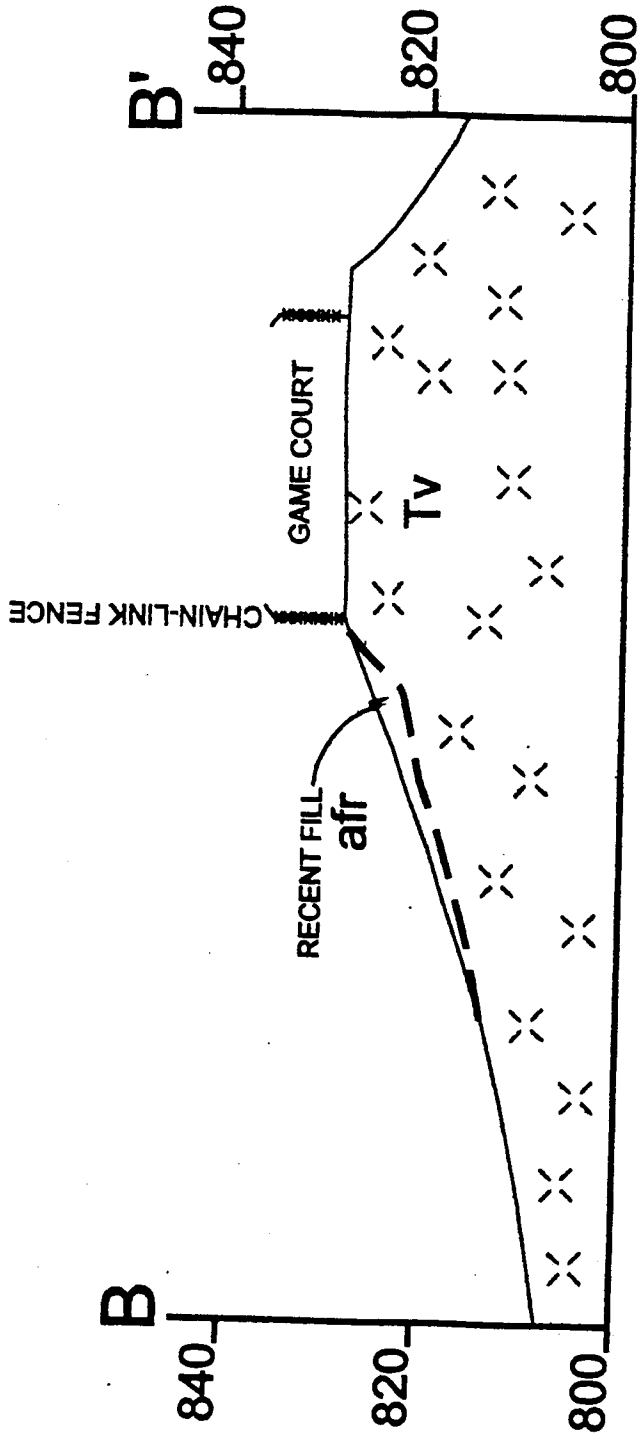
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CCC-02-RO-01

EXHIBIT 8 Geologic Map

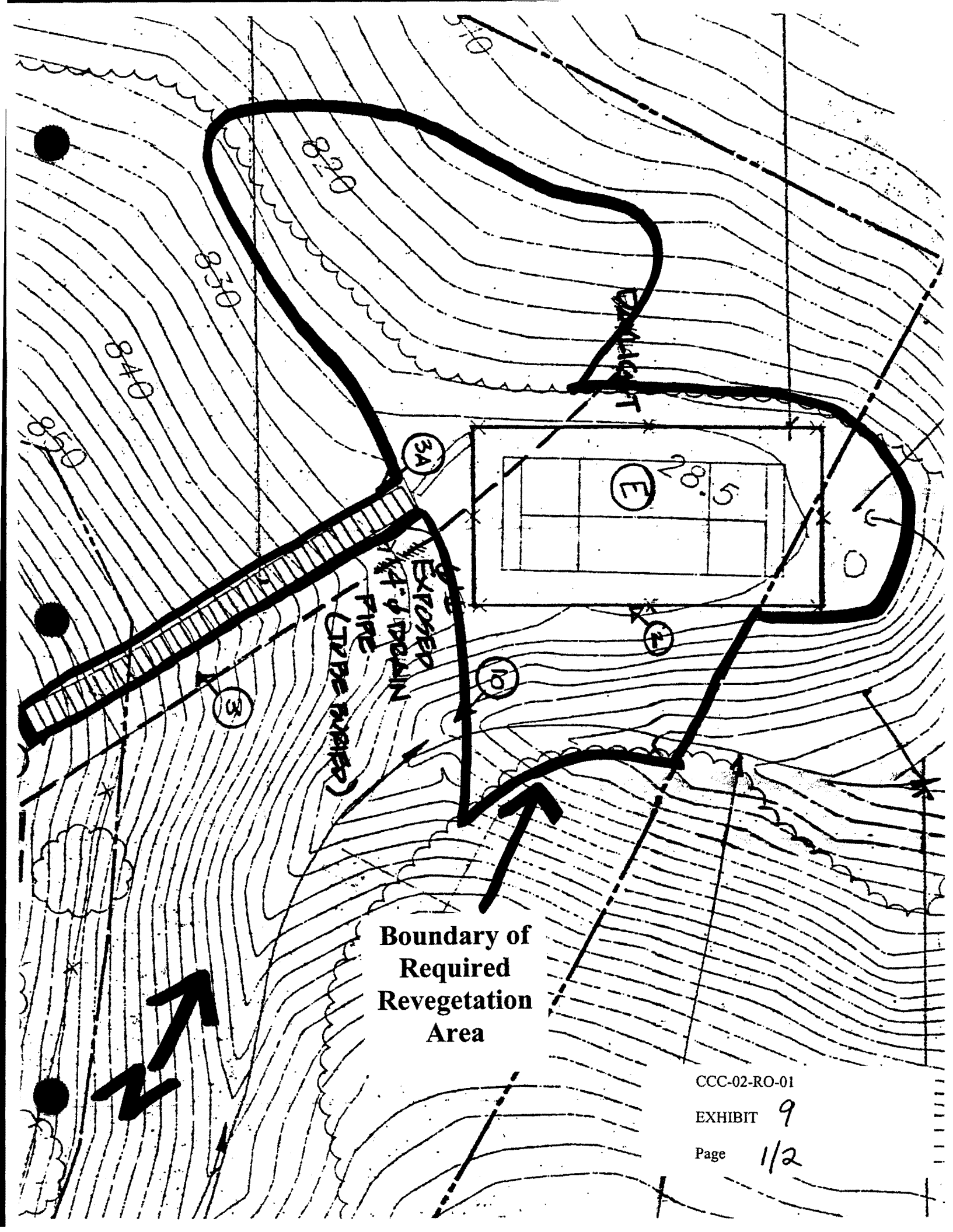
Page 2/4


B'
840
820
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GAME COURT
Tv
CHAIN-LINK FENCE
RECENT FILL
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840
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CCC-02-RO-01

EXHIBIT 8 Geologic M

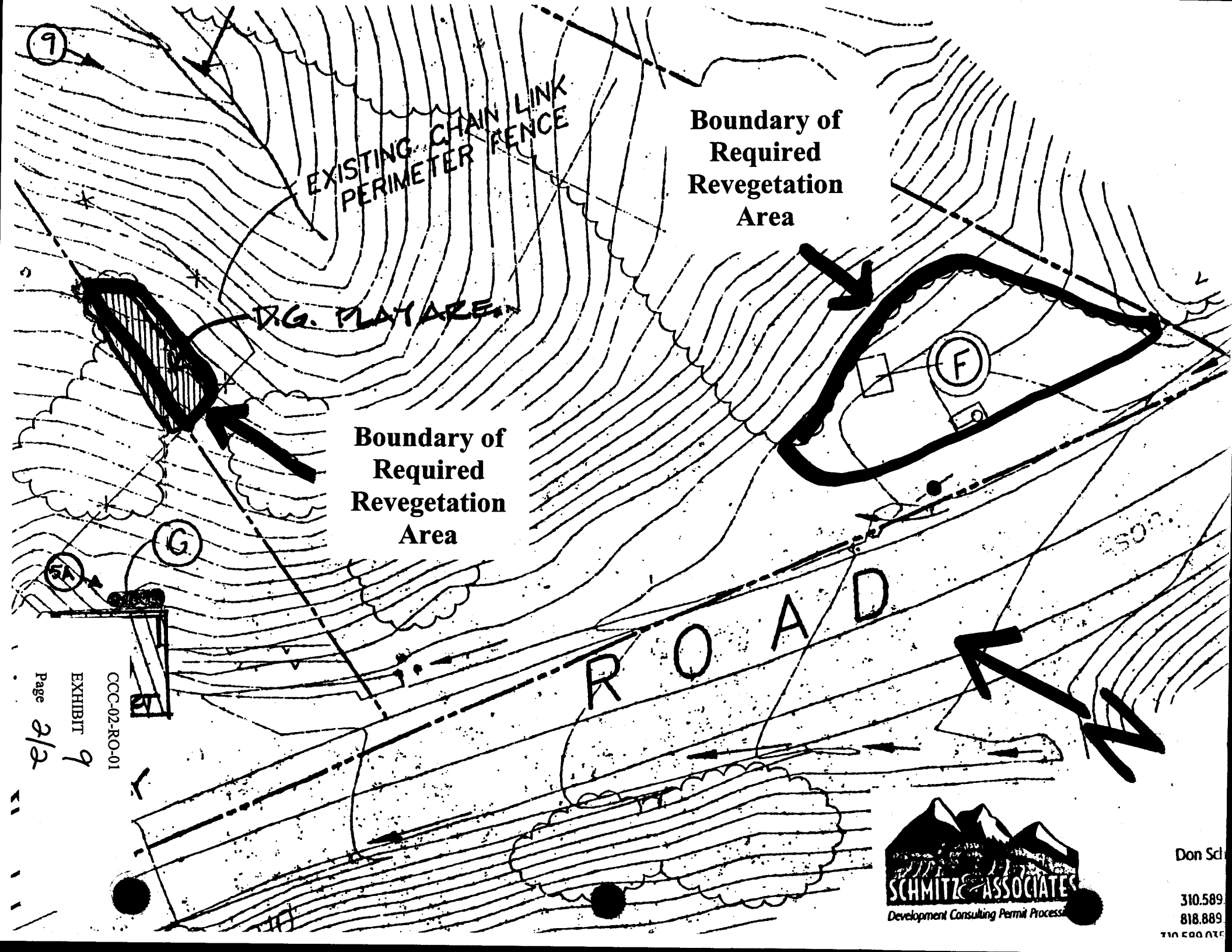
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CCC-02-RO-01

EXHIBIT 9

Page 1/2



CCC-02-RO-01
EXHIBIT 9
Page 2/2

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