

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-96-002-A1

APPLICANT: JoAnn and Arthur Hale

PROJECT LOCATION: 6087 Cavalleri Road, City of Malibu (Los Angeles County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a tennis court, pool, decking, landscaping, fencing, horse corrals, and a riding ring on a lot with an existing single family residence. The project also includes the restoration of a portion of the development on adjacent National Park Service property. 6,716 cubic yards of grading is required (3,363 cu. yds. cut, 3,353 cu. yds. fill).

DESCRIPTION OF AMENDMENT: Request for after-the-fact approval of construction of five approximately 300 sq. ft. planters, with railroad tie retaining walls, stairs, and placement of approximately 20 cu. yds. of fill on a lot with an existing single family residence. The applicants also propose to plant citrus trees and install an irrigation system in the planters.

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Malibu Planning Department, dated June 24, 2002.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 4-96-002; Restoration Plan prepared by Klaus Radtke, PhD., dated July 8, 1996; "Annual Restoration Monitoring Report #1 to Satisfy Requirement 2 (Monitoring Program) of Coastal Development Permit No. 4-96-002" by Klaus Radtke, dated May 5, 1997; "Annual Restoration Monitoring Report #2 for project site 6087 Cavalleri Road, Malibu CA 90265, to satisfy Requirement 2 of Coastal Development Permit No. 4-96-002," by Deborah Low, Project Supervisor, Resource Conservation District of the Santa Monica Mountains, July 7, 1998; "Final Restoration Monitoring Report for project site 6087 Cavalleri Road, Malibu CA 90265, to satisfy Requirement 2 of Coastal Development Permit No. 4-96-002," by Deborah Low, Project Supervisor, Resource Conservation District of the Santa Monica Mountains, May 26, 1999; "Amendment to Final Report of May 26, 1999," by Deborah Low, Project Supervisor, Resource Conservation District of the Santa Monica Mountains, June 15, 1999.

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material (14 Cal. Code of Regulations Section 13166). In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect previously imposed special conditions required for the purpose of protecting coastal resources.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **denial** of the applicants' proposal. The applicants request after-the-fact approval of construction of five approximately 300 sq. ft. planters, with railroad tie retaining walls, stairs, and approximately 20 cu. yds. of fill on a lot with an existing single family residence. The applicant also proposes to plant citrus trees and install an irrigation system in the planters.

The project site is located in a sparsely developed rural residential area in the Zuma Creek watershed, adjacent to the Zuma/Trancas Canyons unit of the Santa Monica Mountains National Recreation Area. The terraced planters are located on a 2:1 slope immediately above a natural drainage course. The slope and drainage course are mapped as an environmentally sensitive habitat area (ESHA) in the Malibu LCP and were the subject of a restoration effort required as a special condition of Coastal Development Permit 4-96-002. Construction of the planters involved removal of restoration plantings and erosion cloth, and grading of the restored natural slope.

As detailed below, the proposed project is inconsistent with Malibu LCP policies for the protection of visual resources, ESHA, and water quality. Furthermore, feasible alternatives exist that would be consistent with the resource protection policies of the Malibu LCP. Therefore, staff recommends denial of the proposed project.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit Amendment No. 4-96-002-A1 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the City of Malibu Local Coastal Program (LCP). Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicants seek approval for after-the-fact construction of five approximately 300 sq. ft. planters, with railroad tie retaining walls, stairs, and approximately 20 cu. yds. of fill on a lot with an existing single family residence. The applicants also propose to plant citrus trees and install an irrigation system in the planters. (**Exhibits 4-6**).

The applicant has stated that construction of all five planters required no more than approximately 20 cu. yds. of total fill grading. However, staff notes that more grading appears to have actually occurred for their construction. Each of the planters consist of railroad tie retaining walls filled with an estimated 20 cu. yds. of soil. However, as shown on the proposed plans, the square footage of each of the planters is approximately 300 sq. ft., and the height of the retaining walls is three feet. Thus each planter would contain an approximately 450 cu. ft., or 20 cu. yd. wedge of fill. Therefore, the likely amount of fill that has occurred is at least 100 cu. yds., or approximately 20 cu. yds. for each individual planter. In addition, photos taken by Deborah Low of the Resource Conservation District of the Santa Monica Mountains in June 1999, during construction of the planter areas, and by Commission staff in February 2001, indicate

that construction of the planters also involved significant excavation (**Exhibit 11**). Project plans, however, show the planters constructed on the face of the slope, with no excavation.

The project site is an approximately 3.5-acre hillside parcel located on Cavalleri Road, west of Kanan Dume Road and north of Pacific Coast Highway in the City of Malibu (**Exhibit 1**). The site borders the Zuma/Trancas Canyons unit of the Santa Monica Mountains National Recreation Area to the west and northwest. To the south and east, the surrounding area is sparsely developed with single family residences. The subject parcel contains an existing single family residence, swimming pool, tennis court, and landscaping. The residence was constructed in 1977 under a Coastal Development Permit (CDP) P-10-3-77-2006 (Moretti) and the associated amenities were approved under CDP 4-96-002 (PNC Mortgage) as discussed further below.

A natural drainage course crosses the southeastern portion of the property. The slopes surrounding the drainage course contain native coastal sage scrub habitat and were the subject of a restoration plan required as a special condition of Coastal Development Permit No. 4-96-002, as discussed below. The drainage course and adjacent slopes are mapped as an environmentally sensitive habitat area (ESHA) in the Malibu LCP. The stream is a tributary to Zuma Creek, a United States Geological Survey (USGS) designated blue line stream also mapped as ESHA in the Malibu LCP. The proposed planters are located on an east-facing slope just above the drainage course. The proposed development is visible from adjacent National Park Service (NPS) land, and from public trails both on NPS parkland and Cavalleri Road (**Exhibits 2 and 3**).

The Commission has acted previously to minimize grading and landform alteration on the project site in order to protect coastal resources. In 1994, Commission Enforcement staff discovered that unpermitted development had occurred on the property. At the direction of Enforcement staff, the previous property owner submitted a coastal permit application to address the development. In August 1996, the Commission approved Coastal Development Permit (CDP) 4-96-002 (PNC Mortgage) for after-the-fact construction of a tennis court, pool, decking, landscaping, fencing, and horse corrals on the lot; removal and restoration of unpermitted development on adjacent National Park Service property; and restoration of an unpermitted access road and riding ring and removal of non-native vegetation and replacement with native vegetation on fill slopes below the swimming pool and tennis court. The access road, riding ring, and fill slopes were located in the streambed and on the adjacent slopes, including in the vicinity of the proposed planters (**Exhibit 8**).

As a special condition of approval for CDP 4-96-002, the Commission required the applicants to submit a restoration plan for the slopes adjacent to the stream, including restorative grading, removal of invasive plants, and revegetation with native coastal sage scrub species. The Commission also required monitoring of the restoration effort to determine its success. The restoration plan was implemented and shown to be successful as of the second annual monitoring report ("Annual Restoration Monitoring Report #2 for project site 6087 Cavalleri Road, Malibu CA 90265, to satisfy

Requirement 2 of Coastal Development Permit No. 4-96-002," by Deborah Low, Project Supervisor, Resource Conservation District of the Santa Monica Mountains, July 7, 1998, included as **Exhibit 9**), which states:

The graded portion of the project looks outstanding. There was only one stand of Castor Bean visible and I pointed this out to the owner as a prime target for removal. The cover has become such that it is very difficult to see the erosion cloth at all on either slope. Grasses and shrubs are filling in uniformly. The irrigation system was explained to the owner for use if needed. The access road has filled in almost completely and it is difficult to determine if a pathway existed or not.

In the final monitoring report ("Final Restoration Monitoring Report for project site 6087 Cavalleri Raod, Malibu CA 90265, to satisfy Requirement 2 of Coastal Development Permit No. 4-96-002," by Deborah Low, Project Supervisor, Resource Conservation District of the Santa Monica Mountains, May 26, 1999) Ms. Low noted that the restoration work on the NPS land had been removed and replaced with sod by the current property owner. In an addendum to the final monitoring report, ("Amendment to Final Report of May 26, 1999," by Deborah Low, Project Supervisor, Resource Conservation District of the Santa Monica Mountains, June 15, 1999, included as **Exhibit 10**), Ms. Low states:

The east facing slope of the project is not in the condition I saw it a year ago when I last was able to monitor and inspect the project. At that time the chaparral natives were beginning to reestablish themselves on the slope and fill in with a good coverage. The RCDSMM crew had removed a large number of castor bean in October of 1997 and the shrub growth was progressing well, considering an east facing slope. The west facing slope has continued to reestablish itself and can be used for comparison, with orientational differences considered.

The east facing slope, however, is presently being terraced, or excavated into several pads, with railroad tie retaining walls and a rock wall, above the restoration area, in an area that was not disturbed previously and that contained medium -sized shrubs well established. These pads are located at the top and middle of the slope above the irrigation system installed by Klaus Radtke and his crew in November/December 1996. Access stairs are located below the chain link fence near the house, and the entire operation has necessitated removal of restoration plantings, erosion cloth and a regrading of the restored natural slope. In addition, there appears to be a separate excavation further below, directly adjacent the streambed, with a straight-sided, rectangular cut into the restored slope, approximately 12 x 15' in size. Soil has been pushed into the streambed area and several large tree or shrub roots, recently removed, are laying about. In summary, both NPS property and the restored slope that had been of Coastal Commission concern in 1994 have been re-encroached upon and re-graded, respectively.

Special Condition Two (2) of CDP 4-96-002 requires that if the final monitoring report indicates that the restoration project has been in part, or in whole, unsuccessful, the applicants must submit a revised or supplemental program to compensate for those portions of the original program which were not successful, to be submitted as an amendment to CDP 4-96-002. The current applicants, who purchased the property in 1997, after the issuance of CDP 4-96-002, have not submitted a revised restoration program. The current application was submitted on July 8, 2002, in part, in response to

direction and several letters from the Commission's Enforcement staff to submit an application to restore the habitat restoration project in compliance with Special Condition Two (2) of CDP 4-96-002. The current amendment application requesting after-the-fact approval for the construction of retaining walls / planters does not address the unpermitted destruction of the habitat restoration which is located on a separate portion of the property than the retaining wall/planters.

B. Visual Resources and Landform Alteration

The Malibu LCP provides for the protection of scenic and visual resources, including views of the beach and ocean, views of mountains and canyons, and views of natural habitat areas. The LCP identifies Scenic Areas, which are those places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features, and that are not largely built out. The LCP policies require that new development not be visible from scenic roads or public viewing areas. Where this is not feasible, new development must minimize impacts through siting and design measures.

Section 30251 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character 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.

In addition, the following LCP policies are applicable in this case:

6.1 The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.

6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.

6.4 Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline, mountains, canyons and other unique natural features are considered Scenic

Areas. Scenic Areas do not include inland areas that are largely developed or built out such as residential subdivisions along the coastal terrace, residential development inland of Birdview Avenue and Cliffside Drive on Point Dume, or existing commercial development within the Civic Center and along Pacific Coast Highway east of Malibu Canyon Road.

6.5 New development shall be sited and designed to minimize adverse impacts on scenic areas visible from scenic roads or public viewing areas to the maximum feasible extent. If there is no feasible building site location on the proposed project site where development would not be visible, then the development shall be sited and designed to minimize impacts on scenic areas visible from scenic highways or public viewing areas, through measures including, but not limited to, siting development in the least visible portion of the site, breaking up the mass of new structures, designing structures to blend into the natural hillside setting, restricting the building maximum size, reducing maximum height standards, clustering development, minimizing grading, incorporating landscape elements, and where appropriate, berming.

6.6 Avoidance of impacts to visual resources through site selection and design alternatives is the preferred method over landscape screening. Landscape screening, as mitigation of visual impacts shall not substitute for project alternatives including resiting, or reducing the height or bulk of structures.

6.9 All new development shall be sited and designed to minimize alteration of natural landforms by:

- **Conforming to the natural topography.**
- **Preventing substantial grading or reconfiguration of the project site.**
- **Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.**
- **Requiring that man-made contours mimic the natural contours.**
- **Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.**
- **Minimizing grading permitted outside of the building footprint.**
- **Clustering structures to minimize site disturbance and to minimize development area.**
- **Minimizing height and length of cut and fill slopes.**
- **Minimizing the height and length of retaining walls.**
- **Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.**

6.10 New development, including a building pad, if provided, shall be sited on the flattest area of the project site, except where there is an alternative location that would be more protective of visual resources or ESHA.

6.12 All new structures shall be sited and designed to minimize impacts to visual resources by:

- **Ensuring visual compatibility with the character of surrounding areas.**
- **Avoiding large cantilevers or understories.**

- ***Setting back higher elements of the structure toward the center or uphill portion of the building.***

6.13 ***New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the surrounding landscape. The use of highly reflective materials shall be prohibited.***

6.14 ***The height of permitted retaining walls shall not exceed six feet. Stepped or terraced retaining walls up to twelve feet in height, with planting in between, may be permitted. Where feasible, long continuous walls shall be broken into sections or shall include undulations to provide visual relief. Where feasible, retaining walls supporting a structure should be incorporated into the foundation system in a stepped or split level design. Retaining walls visible from scenic highways, trails, parks, and beaches should incorporate veneers, texturing and/or colors that blend with the surrounding earth materials or landscape.***

The applicants seek after-the-fact approval for construction of five approximately 300 sq. ft. planters, railroad tie retaining walls, stairs, and associated grading, as well as for the proposed planting of citrus trees and installation of an irrigation system. The proposed project is located on a 2:1 slope below the existing developed area of the site, which contains a single family residence, swimming pool, tennis court, and landscaping. The slope forms the northern wall of a secondary canyon that contains a natural drainage course, and is mapped as an ESHA in the Malibu LCP.

The project site is located in a rural residential area (Land Use Designation RR5) that is sparsely developed with single family residences. The site is adjacent to the Zuma/Trancas Canyons unit of the Santa Monica Mountains National Recreation Area, which is shown on the Malibu LUP Park Map, and is visible from public trails within the recreation area. It is also visible from a public trail on Cavalleri Drive east of the site. These trails offer scenic vistas that include the site, and are public viewing areas under LCP Policy 6.2. The site conforms to the definition, under Malibu LCP Policy 6.4, of a Scenic Area, in that it is visible from scenic roads, trails and/or parkland that afford scenic vistas of the mountains. Therefore, this site is governed by LCP Policy 6.5, which requires that development minimize adverse impacts on scenic areas that are visible from scenic roads or public viewing areas.

The Malibu LCP requires new development to be sited and designed to minimize adverse impacts on scenic areas, through measures such as siting development in the least visible portion of the site, clustering development, minimizing grading, and blending structures into natural hillside settings. The Malibu LCP also requires new development to be sited and designed to minimize landform alteration, through measures such as conforming to natural topography, mimicking natural contours, ensuring that graded slopes blend with existing terrain, and minimizing grading outside of the building footprint.

The proposed terraced planters are visible from public trails along Cavalleri Drive and the Zuma/Trancas Canyons unit of the Santa Monica Mountains National Recreation

Area. The planters consist of railroad tie retaining walls filled with an estimated 20-100 cu. yds. of soil. The planters do not mimic or conform to natural topography, but rather consist of a series of flat pad areas that, accented by the horizontal lines of the retaining walls, jut out at an angular contrast to the contours of the slope. The planters are located outside of the developed portions of the site and involved significant grading, including an unquantified amount of excavation in addition to the fill noted above. In summary, the project is inconsistent with the Malibu LCP's siting and design standards for protection of visual resources.

Feasible siting and design alternatives exist that would minimize landform alteration and other visual impacts of the project. Planting citrus trees on the gently sloping lawn area adjacent to the residence would entail no further grading or landform alteration, would cluster development, conform to natural contours, and present a less visually intrusive appearance, consistent with the Malibu LCP. Minor terracing of this gently sloping area, if necessary, while involving some landform alteration, would also represent a less visually intrusive alternative than the proposed project. Moreover, the additional plantings are not essential to the applicants' reasonable economic use of the property.

Implementation of either of the above alternatives would significantly reduce the visual impacts of the proposed project. Therefore, for the reasons discussed above, the Commission finds that the proposed development has not been sited or designed in a manner that would minimize landform alteration and adverse impacts to public views and is, therefore, not consistent with the Malibu LCP.

C. Environmentally Sensitive Habitat Areas (ESHA)

The Malibu LCP provides for the protection of environmentally sensitive habitat areas (ESHA). ESHA within the City includes those areas designated on ESHA maps included in the LCP, as well as any area that meets the definition of ESHA provided in Policy 3.1. The Malibu LCP allows only uses dependent on ESHA (such as nature trails) to be located within ESHA. It also requires new development in and adjacent to ESHA to be sited and designed to minimize impacts to ESHA. Where this is not possible, the LCP requires mitigation for impacts to ESHA.

Section 30240 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, 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.

In addition, the following LCP policies for the protection of ESHA are applicable in this case:

- 3.1 ***Areas 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 are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.***
- 3.5 ***The LUP ESHA Map shall be reviewed every five years in co-operation with the Environmental Review Board and the resources agencies within the Santa Monica Mountains and updated to reflect current information, including information on rare, threatened, or endangered species. Areas subject to habitat restoration projects shall also be considered for designation as ESHA. Revisions to the map depicting ESHA shall be treated as LCP amendments and shall be subject to the approval of the Coastal Commission.***
- 3.6 ***Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated.***
- 3.7 ***If a site-specific biological study, prepared pursuant to Policy 3.37 contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.6, the City Biologist and the Environmental Review Board shall review all available site-specific information to determine if the area in question should no longer be considered ESHA and not subject to the ESHA protection policies of the LUP. If the area is determined to be adjacent to ESHA, Policies 3.23 to 3.31 shall apply. The ERB shall provide recommendations to the applicable decision-making body (Planning Director, Planning Commission, or City Council) as to the ESHA status of the area in question. If the decision-making body finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the LUP ESHA Map, as part of a map update, consistent with Policy 3.5. If an area is not ESHA or ESHA buffer, LCP policies and standards for protection of ESHA and ESHA buffer shall not apply and development may be allowed (consistent with other LCP requirements) even if the ESHA map has not been amended.***
- 3.8 ***Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
- 3.10 ***If the application of the policies and standards contained in this LCP regarding use of property designated as Environmentally Sensitive Habitat Area, including the restriction of ESHA to only resource-dependent use, would likely constitute a taking of private property, then a use that is not consistent with the Environmentally Sensitive Habitat Area provisions of the LCP shall be allowed on the property, provided such use is consistent with all other applicable policies and is the minimum amount of development necessary to avoid a taking.***

- 3.11** *Applications for development of a non-resource dependent use within ESHA or for development that is not consistent with all ESHA policies and standards of the LCP shall demonstrate the extent of ESHA on the property.*
- 3.12** *No development shall be allowed in wetlands unless it is authorized under Policy 3.89. For all ESHA other than wetlands, the allowable development area (including the building pad and all graded slopes, if any, as well any permitted structures) on parcels where all feasible building sites are ESHA or ESHA buffer shall be 10,000 square feet or 25 percent of the parcel size, whichever is less. If it is demonstrated that it is not feasible from an engineering standpoint to include all graded slopes within the approved development area, then graded slope areas may be excluded from the approved development area. For parcels over 40 acres in size, the maximum development area may be increased by 500 sq. ft. for each additional acre in parcel size to a maximum of 43,560-sq. ft. (1-acre) in size. The development must be sited to avoid destruction of riparian habitat to the maximum extent feasible. These development areas shall be reduced, or no development shall be allowed, if necessary to avoid a nuisance, as defined in California Civil Code Section 3479. Mitigation of adverse impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be required.*
- 3.14** *New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.*
- 3.23** *Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.*
- 3.24** *New development adjacent to parklands, where the purpose of the park is to protect the natural environment and ESHA, shall be sited and designed to minimize impacts to habitat and recreational opportunities, to the maximum extent feasible. Natural vegetation buffer areas shall be provided around parklands. Buffers shall be of a sufficient size to prevent impacts to parkland resources, but in no case shall they be less than 100 feet in width.*
- 3.25** *New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required ESHA or park buffer areas, except for that case addressed in Policy 3.27. Habitat restoration and invasive plant eradication may be permitted within required buffer areas if designed to protect and enhance habitat values.*
- 3.27** *Buffers shall be provided from coastal sage scrub and chaparral ESHA that are of sufficient width to ensure that no required fuel modification (Zones A, B, or C, if required) will extend into the ESHA and that no structures will be within 100 feet of the outer edge of the plants that comprise the habitat.*

- 3.28** *Variances or modifications to buffers or other ESHA protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development pursuant to Policies 3.10-3.13.*
- 3.30** *Protection of ESHA and public access shall take priority over other development standards and where there is any conflict between general development standards and ESHA and/or public access protection, the standards that are most protective of ESHA and public access shall have precedence.*
- 3.42** *New development shall be sited and designed to minimize impacts to ESHA by:*
- *Minimizing grading and landform alteration, consistent with Policy 6.8*
 - *Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.*
 - *Limiting the maximum number of structures to one main residence, one second residential structure, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.*
 - *Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.*
 - *Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Planning Commission, upon recommendation of the Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions.*
 - *Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.*
 - *Minimizing impacts to water quality, consistent with Policies 3.94-3.155*
- 3.45** *All new development shall be sited and designed so as to minimize grading, alteration of physical features, and vegetation clearance in order to prevent soil erosion, stream siltation, reduced water percolation, increased runoff, and adverse impacts on plant and animal life and prevent net increases in baseline flows for any receiving waterbody.*
- 3.46** *Grading or earthmoving exceeding 50 cubic yards shall require a grading permit. Grading plans shall meet the requirements of the local implementation plan with respect to maximum quantities, maximum cuts and fills, remedial grading, grading for safety purposes, and maximum heights of cut or fill. Grading proposed in or adjacent to an ESHA shall be minimized to the maximum extent feasible.*
- 3.50** *Cut and fill slopes and other areas disturbed by construction activities (including areas disturbed by fuel modification or brush clearance) shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:*
- *Plantings shall be native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.*
 - *Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.*
 - *Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.*

- **Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.**
 - **Any landscaping, or revegetation shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.**
- 3.51 Disturbed areas ESHAs shall not be further degraded, and if feasible, restored. If new development removes or adversely impacts native vegetation, measures to restore any disturbed or degraded habitat on the property shall be included as mitigation.**
- 3.67 The conversion of vacant land in ESHA, ESHA buffer, or on slopes over 3:1 to new crop, orchard, vineyard, or other agricultural use shall not be permitted, except as provided in Policies 3.68 and 3.69. Existing, legally established agricultural uses shall be allowed to continue.**
- 3.68 New agricultural uses shall be prohibited within or adjacent to ESHA, except that development permitted pursuant to Policy 3.10 within coastal sage scrub or chaparral ESHA may include limited crop, orchard or vineyard use within the irrigated fuel modification area (Zones A and/or B if required) for the approved structure(s) only if such use is not located on slopes greater than 3:1, does not result in any expansion to the required fuel modification area, and does not increase the possibility of in-stream siltation or pollution from pesticides and herbicides.**
- 3.69 Crop, orchard, or vineyard uses may be permitted in areas that are not ESHA, ESHA buffer, or on slopes greater than 3:1.**

The applicants seek after-the-fact approval for construction of five approximately 300 sq. ft. planters, railroad tie retaining walls, stairs, and associated grading, as well as for the proposed planting of citrus trees and installation of an irrigation system.

The project site is located adjacent to the Zuma/Trancas Canyons unit of the Santa Monica Mountains National Recreation Area in an area sparsely developed with single family residences. The site consists of an approximately 28,000 sq. ft. building pad, constructed prior to the effectiveness date of the Coastal Act, containing a single family residence and landscaping, and two lower pads, containing a tennis court and swimming pool, totaling approximately 4,500 sq. feet. A gently sloping lawn area ascends from the building pad to the northeast. A secondary canyon containing a natural drainage course crosses the southeastern portion of the property, below the building pad.

The slopes surrounding the drainage course on the site contain native coastal sage scrub habitat and were the subject of a restoration plan required as a special condition of Coastal Development Permit No. 4-96-002, as discussed below. The drainage course and adjacent slopes are mapped as an environmentally sensitive habitat area (ESHA) in the Malibu LCP. The stream is a tributary to Zuma Creek, a United States

Geological Survey (USGS) designated blue line stream also mapped as ESHA in the Malibu LCP.

Coastal sage scrub habitat in the City of Malibu has been determined to be ESHA due to its increasing rarity, its extreme vulnerability to development, and its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem. One of the most important ecological functions of coastal sage scrub in the City 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. Coastal sage scrub habitat also provides suitable connective habitat that facilitates the movement of animals between riparian areas.

The proposed stairs and planters are located within the mapped Coastal Sage Scrub ESHA, on a south-facing slope just above the drainage course. This slope is located within the 200 foot brush clearance radius surrounding the existing single family residence, but historically has not been cleared. The slope was covered primarily with Laurel Sumac (*Malosma laurina*) at the time of slope restoration, prior to the construction of the planters and stairs (**Exhibit 7**). Photos taken in February 2001 show wild grasses and scattered native and non-native shrubs, including Laurel Sumac, California Buckwheat (*Eriogonum fasciculatum*) and Castor Bean (*Ricinus communis*) in the vicinity of the pads. More recent photos indicate additional clearance has occurred (**Exhibit 11**).

The Malibu LCP allows only uses dependent on ESHA (such as nature trails) to be located within ESHA. In addition, it requires new development to be sited and designed to minimize adverse impacts to ESHA by minimizing grading and landform alteration, consistent with Policy 6.8 (see Section B. above), minimizing the removal of natural vegetation, and minimizing impacts to water quality. The Malibu LCP provides for a minimum 100 foot native vegetation buffer around ESHAs, to serve as transitional habitat and to reduce human intrusion. The Malibu LCP prohibits vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation in ESHA buffer areas, with the possible exception of habitat restoration efforts, and requires grading proposed in or adjacent to ESHA be minimized to the maximum extent feasible. Finally, the Malibu LCP requires that disturbed ESHA not be further degraded, and if feasible, restored. The LCP allows agricultural uses, such as the proposed citrus orchard, in ESHA only on slopes less than 3:1 and only within the irrigated fuel modification zones.

The proposed project is inconsistent with Malibu LCP policies for the protection of ESHA. Planters for agricultural and/or residential landscaping purposes are not a use dependent on ESHA. Furthermore, construction of the planters and stairs involved disruption of ESHA habitat, including the removal of native plants and erosion control cloth used for the restoration of coastal sage scrub habitat, and the regrading of a restored natural slope. The project also involved removal of native and other plant species located above the restoration area. The project is inconsistent with Malibu LCP

siting and design standards that require new development to minimize grading and landform alteration, removal of natural vegetation, and impacts to water quality.

Feasible siting and design alternatives exist that would minimize impacts to ESHA. Planting citrus trees on the gently sloping lawn area adjacent to the residence would entail no further impacts to ESHA. Minor terracing of this gently sloping area, if necessary, while involving some landform alteration, would also cause minimal impacts to the canyon ESHA. Moreover, the additional plantings are not essential to the applicants' reasonable economic use of the property.

Implementation of either of the above alternatives would significantly reduce the proposed project's impacts on ESHA. Therefore, for the reasons discussed above, the Commission finds that the proposed development, as proposed, has not been sited or designed in a manner that would minimize impacts to ESHA and is, therefore, not consistent with the Malibu LCP.

D. Water Quality

The Malibu LCP provides for the protection of water quality. The policies require new development to protect, and where feasible, enhance and restore wetlands, streams, and groundwater recharge areas. The policies promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation, including site planning, environmental review and mitigation, and project and permit conditions of approval. Additionally, the policies require the implementation of Best Management Practices to limit water quality impacts from existing development, including septic system maintenance and City services.

Section 30251 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

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

In addition, the following water quality LCP policies are applicable in this case:

3.95 *New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:*

- *Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.*

- *Limiting increases of impervious surfaces.*
 - *Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.*
 - *Limiting disturbance of natural drainage features and vegetation.*
- 3.96** *New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.*
- 3.97** *Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern¹ that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.*
- 3.100** *New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.*
- 3.118** *New development shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.*
- 3.122** *Natural vegetation buffer areas that protect riparian habitats shall be maintained. Buffers shall function as transitional habitat and provide a separation from developed areas to minimize adverse impacts. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the riparian habitat, but in no case shall the buffer be less than 100 feet, except for development permitted pursuant to Policy 3.10.*

The applicants seek after-the-fact approval for construction of five approximately 300 sq. ft. planters, railroad tie retaining walls, stairs, and associated grading, as well as for the proposed planting of citrus trees and installation of an irrigation system.

The project site is located adjacent to the Zuma/Trancas Canyons unit of the Santa Monica Mountains National Recreation Area in an area sparsely developed with single family residences. The site consists of an approximately 28,000 sq. ft. building pad, constructed prior to the effectiveness date of the Coastal Act, containing a single family

¹ Pollutants of concern are defined in the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County as consisting " of any pollutants that exhibit one or more of the following characteristics: current loadings or historic deposits of the pollutant are impacting the beneficial uses of a receiving water , elevated levels of the pollutant are found in sediments of a receiving water and/or have the potential to bioaccumulate in organisms therein, or the detectable inputs of the pollutant are at a concentrations or loads considered potentially toxic to humans and/or flora or fauna".

residence and landscaping, and two lower pads, containing a tennis court and swimming pool, totaling approximately 4,500 sq. feet. A gently sloping lawn area ascends from the building pad to the northeast. A secondary canyon containing a natural drainage course crosses the southeastern portion of the property, below the building pad.

The slopes surrounding the drainage course contain native coastal sage scrub habitat and were the subject of a restoration plan required as a special condition of Coastal Development Permit No. 4-96-002, as discussed below. The drainage course and adjacent slopes are mapped as an environmentally sensitive habitat area (ESHA) in the Malibu LCP. The stream is a tributary to Zuma Creek, a United States Geological Survey (USGS) designated blue line stream also mapped as ESHA in the Malibu LCP. The proposed planters are located on a south-facing slope just above the drainage course.

The Malibu LCP requires new development to be sited and designed to protect water quality and minimize impacts to coastal waters, through measures such as limiting vegetation clearance and grading to reduce erosion and sedimentation of streams, and limiting disturbance of natural drainage features and vegetation. The Malibu LCP also requires the maintenance of natural vegetation buffers for a minimum distance of 100 feet from riparian habitat, in order to minimize impacts and provide transitional habitat.

Removal of vegetation can result in increased erosion. Removal of vegetation exposes soils to erosion by wind, water, and human disturbance, and removes the root network that holds surface sediments in place. This is particularly true for areas containing native plant species, which are typically characterized by well-developed and extensive root structures in comparison to their surface/foliage weight. As noted above, 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.

Erosion adjacent to streams can result in increased sedimentation, thereby reducing the biological productivity and quality of coastal waters. Surface soil erosion has been established by the United States Department of Agriculture, Natural Resources Conservation Service, as a principal cause of downstream sedimentation known to adversely affect riparian and marine habitats. Suspended sediments have been shown to absorb nutrients and metals, in addition to other contaminants, and transport them from their source throughout a watershed and ultimately into the Pacific Ocean. The construction of single family residences in sensitive watershed areas has been established as a primary cause of erosion and resultant sediment pollution in coastal streams.

The planters consist of railroad tie retaining walls filled with an estimated 20 cu. yds. of soil. However, analysis of project plans, as discussed in Section A. above, shows that

the likely amount of fill is 100 cu. yds., or 20 cu. yds. for each planter. Although project plans show the planters constructed on the face of the slope, with no excavation, photos taken in June 1999, during construction of the planter areas, and in February 2001 indicate that construction of the planters did involve significant excavation.

Construction of the planters also involved the removal of native plants and erosion control cloth used for the restoration of coastal sage scrub habitat adjacent to the stream, and the regrading of the restored natural slope. In addition, native and non-native plant species located above the restoration area were removed. Furthermore, the Amendment to Final Monitoring Report prepared by Deborah Low of the Resource Conservation District of the Santa Monica Mountains and dated June 15, 1999 noted that soil had been pushed into the streambed area along with several large tree or shrub roots that had been recently removed. Thus the proposed project entailed both grading and vegetation clearance adjacent to the stream, deposition of debris in the streambed, as well as the removal of erosion control materials, inconsistent with the water quality protection policies of the Malibu LCP.

The location of the unvegetated areas of artificial fill on the steep slopes above the drainage course increases the potential for erosion and transport of sediments into the stream. The installation of irrigation would further increase the potential for water transport of sediments into the drainage course. In addition, use of pesticides and fertilizers to maintain the proposed citrus trees would increase the likelihood of introducing chemical and biological pollutants into the stream and into Zuma Creek, approximately 1000 feet downstream.

Feasible siting and design alternatives exist that would minimize impacts to water quality. Planting citrus trees on the gently sloping lawn area adjacent to the residence would entail no further impacts to the drainage course. Minor terracing of this gently sloping area, if necessary, while involving some landform alteration, would also cause minimal impacts to the drainage course. Moreover, the additional plantings are not essential to the applicants' reasonable economic use of the property.

Implementation of either of the above alternatives would significantly reduce the proposed project's impacts on water quality. Therefore, for the reasons discussed above, the Commission finds that the proposed development, as proposed, has not been sited or designed in a manner that would minimize impacts to ESHA and is, therefore, not consistent with the Malibu LCP

E. Violations

Development has occurred on the subject site without the required coastal development permits, including the construction of five approximately 300 sq. ft. planters, with railroad tie retaining walls, stairs, and approximately 20-100 cu. yds. of grading. In addition, unpermitted removal of coastal sage scrub vegetation within a required habitat restoration project area has occurred on site. The habitat restoration project was required by Special Condition Two (2) of CDP 4-96-002 which granted after-the-fact

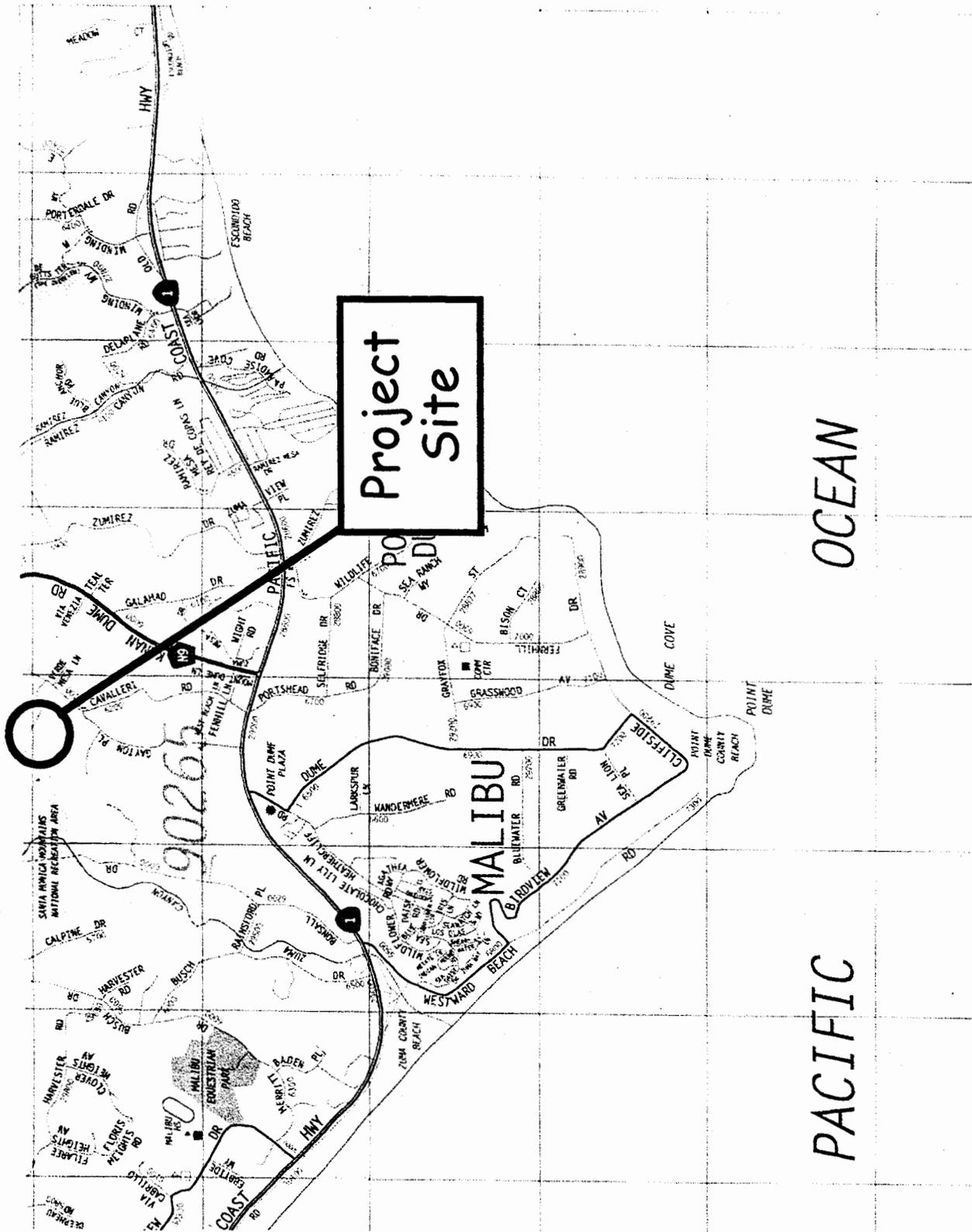
approval for some of the existing development on site which had been previously constructed without the required permit and also required removal of some of the development and restoration of portions of the site. Initial restoration and revegetation efforts were initiated as required by CDP 4-96-002; however, the property owner has since removed portions of the habitat restoration area. The current applicants, who purchased the property in 1997, after the issuance of CDP 4-96-002, have not submitted a revised restoration program to restore the unpermitted damage to the habitat restoration project as requested by Commission Enforcement Staff. The current application was submitted on July 8, 2002, in response to direction and several letters from the Commission's Enforcement staff to submit an application to restore the habitat restoration project in compliance with Special Condition Two (2) of CDP 4-96-002. The current amendment application requesting after-the-fact approval for the construction of retaining walls/planters does not address the unpermitted destruction of the habitat restoration project area that is located on a separate portion of the property than the retaining wall/planters. The applicant has proposed to retain the above-mentioned development as part of this permit application. As discussed previously, the proposed project is inconsistent with the visual resource, ESHA, and water quality policies of the Malibu LCP. Therefore staff recommends denial of the applicant's after-the-fact proposal.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to 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. CEQA

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

The Commission finds that the proposed project would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act. As noted previously, feasible alternatives exist which would not result in the significant, avoidable adverse impacts to coastal resources and public coastal views of this portion of the applicant's proposed project.

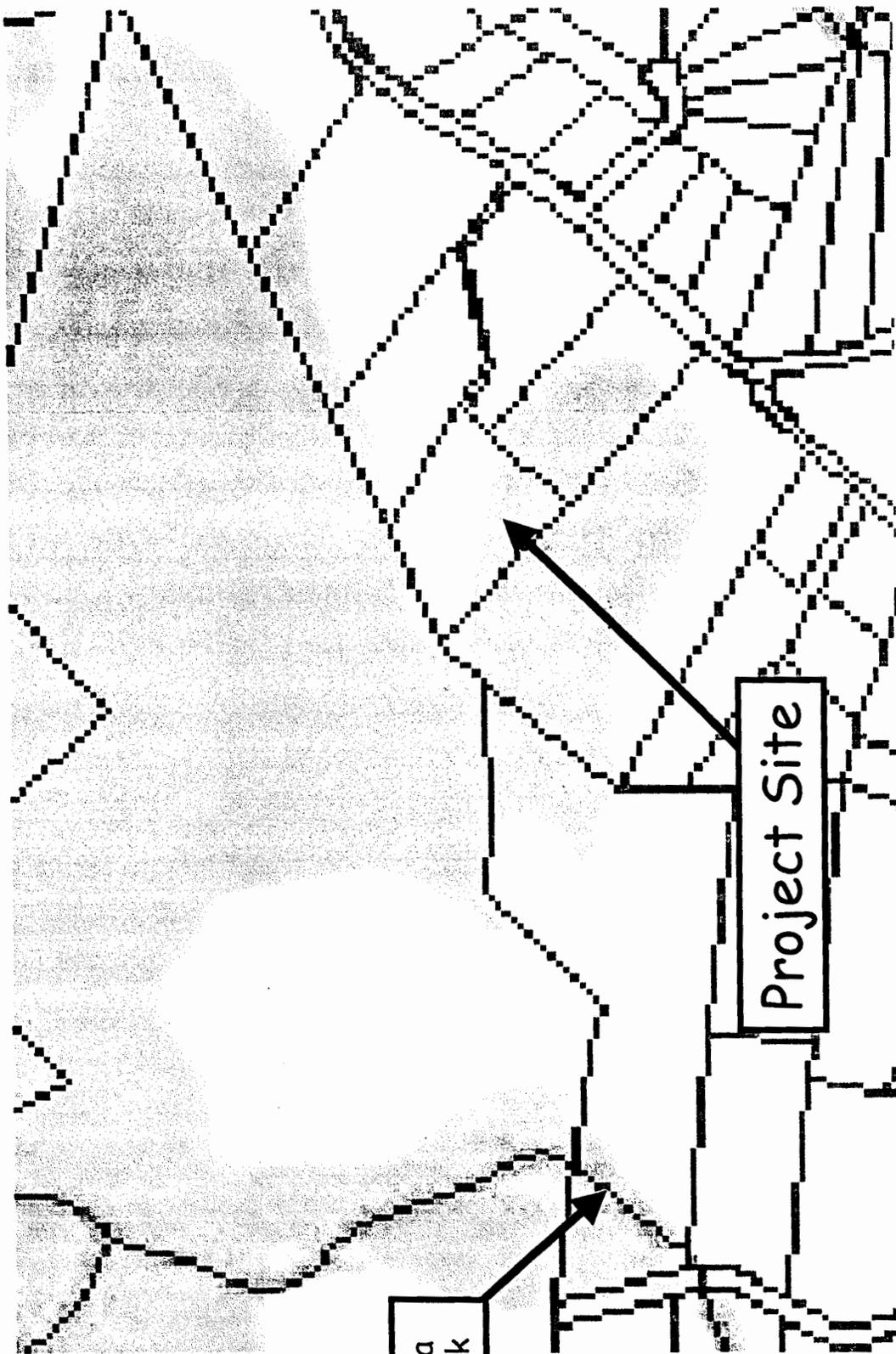


Project Site

PACIFIC OCEAN

PACIFIC OCEAN

EXHIBIT NO. 1
APPLICATION NO.
4-96-002-A1
VICINITY MAP

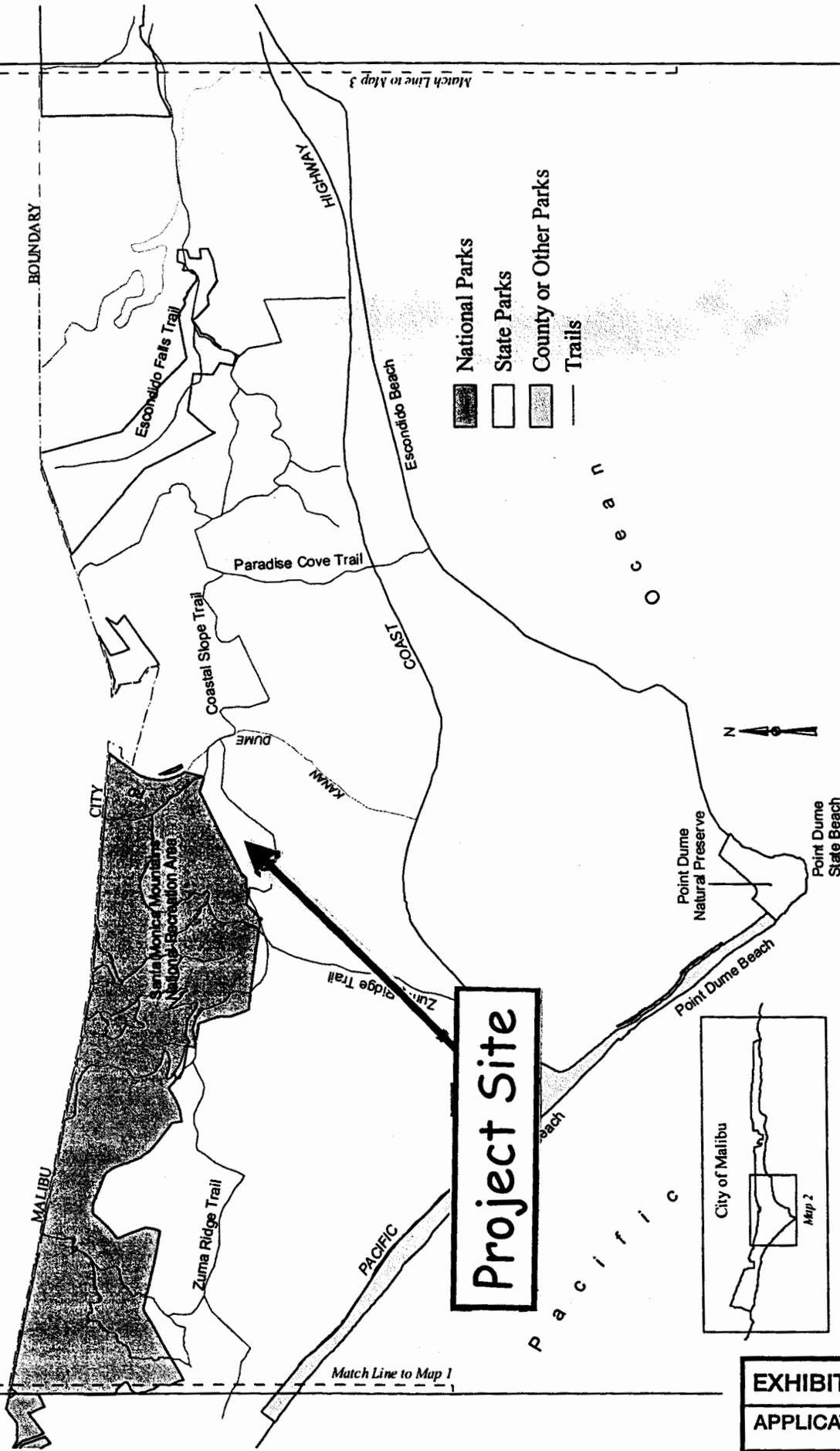


Excerpt from ESHA and Marine Resources Map 2, certified Malibu LCP.

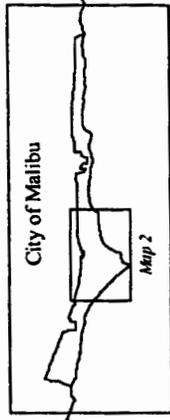
Note: Shaded areas indicate ESHA

EXHIBIT NO. 2
APPLICATION NO.
4-96-002-A1
ESHA

Local Coastal Program - City of Malibu
Park Lands Map 2:
Zuma Beach to Escondido Beach



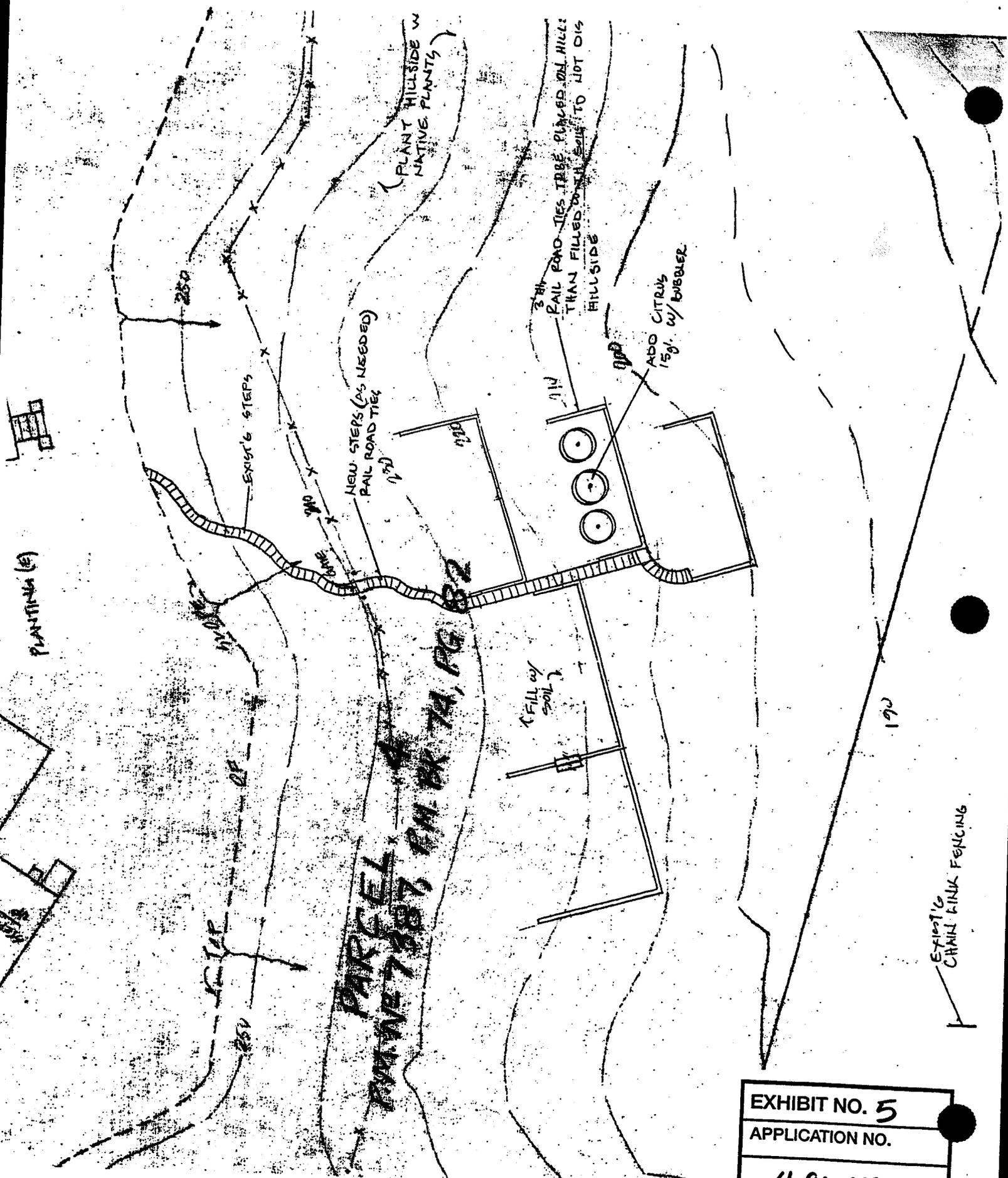
- National Parks
- State Parks
- County or Other Parks
- Trails



California Coastal Commission
 Technical Services Division

Sources: Malibu/Santa Monica Mountains Area
 Plan, LA County Parks and Recreation, 1983.
 DSM, Revised 12/01

EXHIBIT NO. 3
APPLICATION NO.
4-96-002-A1
PARKS / TRAILS



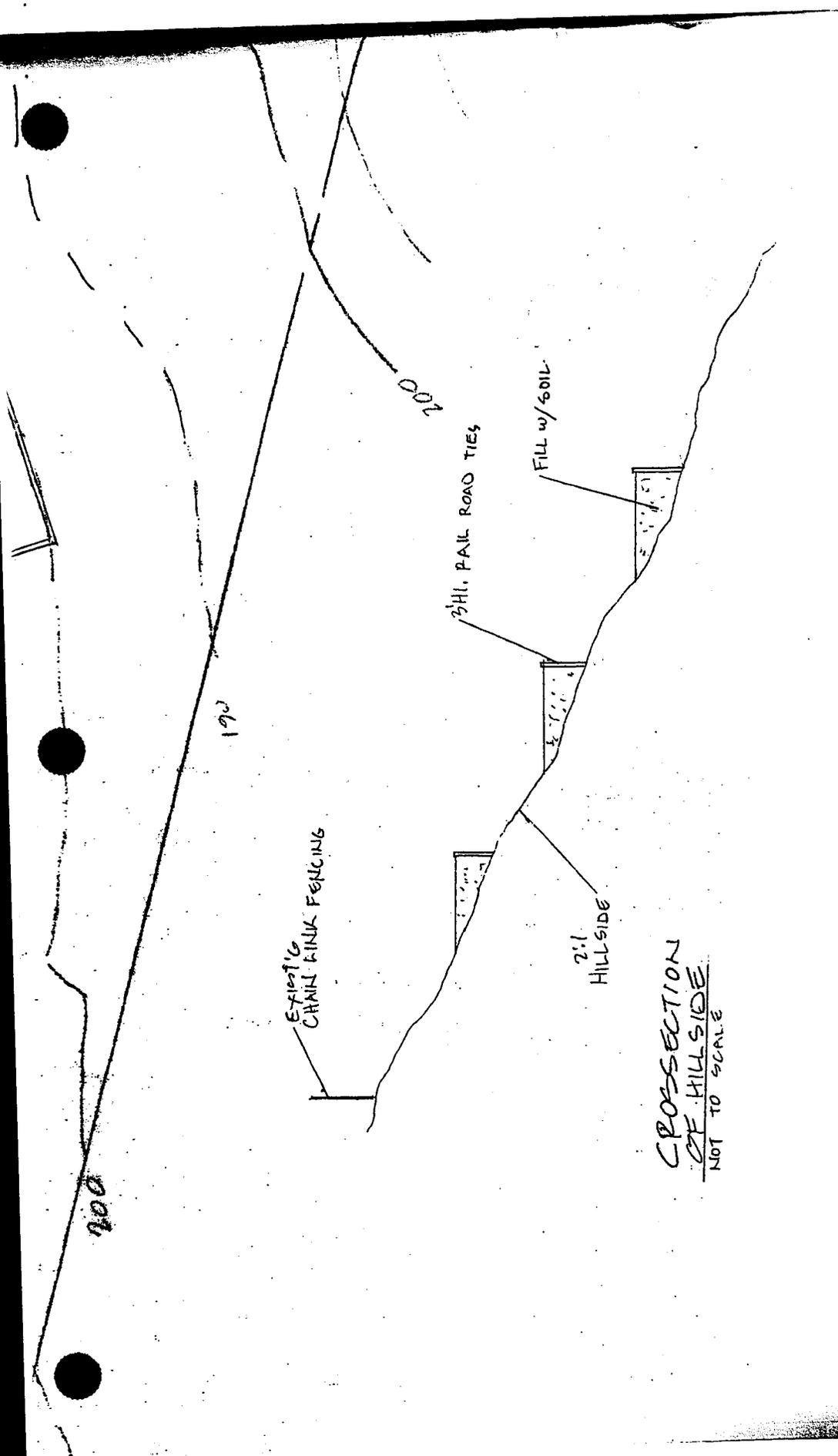
PLANTING (E)

PARCEL, PALMDALE, CA, PG 7A, PG 82
 PALMVIEW 71587, PALMVIEW 7A, PG 82

EXHIBIT NO. 5
 APPLICATION NO.
 4-96-002-A1
 SITE PLAN DETAIL

EXIST'G CHAIN LINK FENCING

192



CROSS SECTION
OF HILLSIDE
NOT TO SCALE

S I T E P L A N

EXHIBIT NO. 6
APPLICATION NO.
4-96-002-A1
CROSS SECTION

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 SOUTH CALIFORNIA ST., SUITE 200
 TURANA, CA 93001
 (805) 641-0142

Filed: 2-20-96
 49th Day: 4-9-96
 180th Day: 8-18-96
 Staff: SPF-VNT *gjt*
 Staff Report: 7-23-96
 Hearing Date: August 13-16, 1996
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-96-002

APPLICANT: PNC Mortgage

AGENT: Sherman Stacey

PROJECT LOCATION: 6087 Cavalleri Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Construction of a tennis court, pool, decking, landscaping, fencing, and horse corrals on a lot with an existing single family residence; the removal and restoration of a portion of the development on adjacent National Park Service property; restoration of the access road and riding ring on subject property and removal of non-native vegetation and replacement with native vegetation on fill slopes below swimming pool and tennis court. A total of 6,716 cubic yards of grading is required (3,363 cu. yds. cut, 3,353 cu. yds. fill); this grading includes the restorative grading.

Lot area:	3.5 acres
Building coverage:	0 new
Pavement coverage:	5,200 new sq. ft.
Parking spaces:	0 new
Plan designation:	Rural Land III (1du/2 ac.)
Project density:	1 du/3.5 ac.
Ht abv fin grade:	12 feet for tennis court

LOCAL APPROVALS RECEIVED: Permits from L.A. Co. Dept. of Building and Safety.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Applications P-10-3-77-2006 (Moretti), 5-90-078 (Neale), 5-90-661 (Allen), 5-91-328 (Contis), 5-91-836 (Allen), 4-92-201 (Fryzer), 4-92-206 (Tahmasebi); restoration order 4-92-206RO (Tahmasebi); an Engineering Geologic Reconnaissance Report by Mountain Geology dated June 5, 1995 prepared for Steve Powers; and an Engineering Geologic Reconnaissance Report by Solus Engineering dated January 20, 1996 prepared for PNC Mortgage; an engineering geologic update and plan approval by Mountain Geology dated July 15, 1996; and a Restoration Plan prepared by Geo Safety, Inc. and dated July 8, 1996..

SUMMARY OF STAFF RECOMMENDATION:

This is an after-the-fact permit application for improvements to a lot developed with an existing residence. The tennis court, swimming pool, decking, horse corrals, access road, riding ring and landscaping

EXHIBIT NO. 8

APPLICATION NO.

4-96-002-A1**STAFF REPORT, 4-96-002**

constructed; none of the proposed restorative work has occurred. The restoration of the areas noted above will enhance the area and have positive environmental impacts by restoring a habitat area. The restorative landscaping will mitigate any adverse resource impact resulting from the proposed development. Staff recommends that the Commission approve the project with special conditions requiring the removal of non-native vegetation and the planting of native vegetation on the developed slopes, revised restoration plans for the NPS property, a monitoring program, an assumption of risk deed restriction, condition compliance and timing of completion of work.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit for the proposed development subject to the conditions below, 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 impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

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

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Revised Restoration and Planting Plan

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, two sets of a revised planting plan for the NPS property which includes the fill slopes below the tennis court and swimming pool. The plan shall specify the following:

a) This plan shall indicate that all non-native, invasive species shall be removed from the site and shall identify the types, sizes and locations of all plant material to be planted. The applicant shall use native chaparral species, consistent with the neighboring area, and shall not limit the plan to one type of chaparral species or to annual plants only. The applicant may use a mix of annuals, for erosion control, and chaparral species, for long-term restoration.

b) This plan shall include the removal of the tennis court, pool deck and chain link fence which encroach onto National Park Service land. These areas shall be incorporated into the planting plan. The plan must be reviewed and approved by the National Park Service.

c) A landscaping plan for the slopes adjacent to the tennis court and pool. These plans shall detail the existing vegetation, shall show the removal of all non-native exotic species, and shall show the planting of native vegetation, endemic to the area, in the patches where non-native vegetation has been removed.

2. Monitoring Program

Prior to the issuance of a coastal development permit the applicant shall submit, for the review and approval of the Executive Director, an outline for a five year (5) Monitoring Program which monitors site restoration efforts to ensure that revegetation efforts at the project site are successful. Successful site restoration shall be determined if the revegetation of the site is adequate to provide 90% coverage by the end of the five year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation. The applicant shall submit, for the review and approval of the Executive Director, written annual reports, beginning after the first year following implementation of the restoration program, indicating the success or failure of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a five year period, a final detailed report shall be submitted for 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 above referenced performance standards, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this Coastal Development Permit.

3. Assumption of Risk Deed Restriction

Prior to issuance of the Coastal Development Permit, the applicant as landowner 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 landsliding and from erosion and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

4. Condition Compliance

The requirements specified in the foregoing conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 90 days of Commission action. Failure to comply will terminate this permit approval; however, the Executive Director may grant additional time for good cause.

5. Implementation and Completion of the Restoration Plan

The applicant agrees to implement and complete the restoration plans for the NPS property, the riding ring, the access road and the landscaped slopes, within 120 days of the issuance of this permit. The applicant may request a one-time sixty day extension for the commencement of the planting plan to allow for the planting at the beginning of the 1996/1997 rainy season. In any event, whether or not an extension is granted, all work must be completed no later than November 1, 1996.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and Background

This is an after-the-fact permit application for the construction of rear yard improvements which include the placement of a tennis court, pool, hardscaping, landscaping, fencing, horse corrals, and the removal and restoration of a riding ring, access road and also development encroachments on adjacent National Park Service property. The applicant is also proposing to remove non-native vegetation on the landscaped slopes and replant the slopes with native vegetation. Total grading for this development is 6,716 cubic yards (3,353 cu. yds. cut, 3,363 cu. yds. fill). Grading for the tennis court, pool and associated landscaping is 5,716 cubic yards; grading for the restoration of the riding ring and access road will be approximately 1,000 cubic yards. No grading was done for the horse corrals, and no grading is proposed or necessary for the restoration on NPS property.

Landscaping, as well as a portion of the tennis court and pool deck, encroaches onto neighboring National Park Service property. The landscaping, totaling .15 acres, will be restored to a native habitat per a restoration

plan prepared by the Topanga-Las Virgenes Resource Conservation District (See Exhibit 8). The applicant is also required, through an agreement with the National Park Service, to remove the pool deck and tennis court which encroach onto NPS property. The encroachment and proposed restoration plan can be seen in Exhibit 7 and 8.

The restoration of the riding ring and access road, and the landscaping of the hillside with native vegetation has been proposed by the applicant. Previously, the applicant was applying to retain the riding ring and the access road which required a total of 1,000 cubic yards of grading and resulted in the filling of a drainage course and the introduction of exotic invasive plant species. In response to staff's concerns regarding adverse environmental impacts associated with this portion of the development, the applicant agreed to restore the riding ring and access road. The applicant also agreed to remove the invasive vegetation on the slopes below the tennis court and replant the area with native vegetation.

The site is located on the crest of a westerly trending secondary ridge. There are drainage courses on both the north and south side of this ridge; the southern drainage course is on the applicant's property. Relief across the property is 70 feet. Grading on the site has transformed the sloping ridge into three terraces. The upper terrace contains the residence and the horse corrals; the middle terrace the tennis court; and the lower terrace the swimming pool. The manufactured slope between the residence and the tennis court is approximately fourteen feet high; at the bottom of this slope there are small, 18 inch high retaining walls. The slope between the tennis court and the pool is three feet and there are no retaining walls. The riding ring is not located on these terraces but rather in the canyon south of the slope. There are no retaining walls for the access road or the riding ring.

The resources of the immediate area include the National Park Service Land to the immediate north of the property, the drainage course on site and the Zuma Creek Watershed to the west of the property. On site there is a drainage course which continues offsite downstream and is heavily vegetated with native vegetation. The site, including the drainage course on the southern side of the lot, drains into Zuma Creek. Moreover, the southern drainage course is a tributary to Zuma Creek. Zuma Creek is a U.S.G.S designated blue line stream and is recognized as an inland ESHA by the Commission. Moreover, Zuma Creek above the intersection of the subject tributary stream is within the Zuma Canyon Significant Watershed; below the intersection of the subject tributary Zuma Creek is within a designated oak woodland. The grading in the tributary is approximately 1,000 feet from Zuma Creek. Exhibit 4 shows the subject streams on the U.S.G.S topography map; Exhibit 5 shows the ESHAs related to Zuma Creek.

The single family residence on this lot was approved under coastal development permit P-77-2006 (Moretti) which allowed for the construction of a two-story, 30 foot high, 4,500 square foot single family residence with an attached three-car garage and a maids quarters. The permit (Exhibit 12) was approved with three special conditions which required the submittal of revised plans indicating the use of pervious material on the access road, a deed restriction which limits the use of the structure to a single family residence and plans for the proposed drainage system to dispose of roof and surface runoff into gravel filled wells or other retention methods that maintain a rate of discharge at the level that existed prior to the development. The deed restriction, which was recorded, was required because the maid's quarters has

an exterior access, and the Commission wanted to ensure that the residence was not converted into a duplex. According to a previous owner, the grading for the access road from Cavalleri Road and the residential pad was completed in the 1920s. Staff has not confirmed this date. The graded access road from Cavalleri Road and the building pad do exist on the 1977 aerial photographs, and thus the grading was done prior to the effective date of the Coastal Act. Even a written drawing of the site from the previous permit stated that the pad was relatively flat (See Exhibit 13). No grading was proposed with the application for the single family residence. Subsequent grading was done in 1984, 1986, 1988, and 1990. The tennis court was constructed in 1986; the riding ring in 1988 and the swimming pool in 1990.

The applicant originally applied for these developments under coastal development permit 4-94-170. That application was originally scheduled for the June 1995 hearing, but was postponed at the applicant's request. Rescheduling of this application for a future Commission hearing was deferred to provide an adequate amount of time for the applicant to respond to staff's recommendations. Staff informed the applicant of the partial approval and partial denial recommendation in May of 1995 and requested that the applicant supply any relevant information such as a geologic analysis of the site to determine the stability of the site and/or the feasibility of removing portions of the grading and the developments. This request was made to allow for a thorough analysis of the project against the Chapter Three policies of the Coastal Act. Staff also recommended that the applicant consider revisions to the project which could bring the project, or portions of it, into compliance with the Coastal Act. In December of 1995, the applicant retained another consultant, Sherman Stacey; he submitted a letter refuting some of the findings drafted by staff. Subsequent to that letter, the application was withdrawn.

A new application for the same development was submitted with additional information at staff's request. This additional information included a biological assessment of the site and a geologic reconnaissance report. The material submitted for the original application, such as the plans, reports and additional information, are incorporated herein by reference to this application. On April 9, 1996, after a meeting between staff and the applicant's representative, the applicant's representative submitted a letter stating that the project description should be revised to include restoration of the access road and riding ring. A letter dated April 10, 1996 from staff to the applicant's representative also stated that, according to the meeting of April 1, 1996, revegetation of the fill slopes would also be included in the revised project description. A subsequent telephone conversation between the applicant's representative and staff confirmed that the removal of non-native invasive plant species and the revegetation of those areas with native plants would also be part of the project description.

Subsequent to the revised project description, the hearing for this item was postponed to allow adequate time for the applicant to submit a restoration plan and geology report addressing the restoration of the access road and riding ring. These items were submitted on July 8, 1996 and July 16, 1996, respectively.

B. Development

Development is defined in Section 30106 of the Coastal Act to read, in part, as follows:

"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;... construction, reconstruction, demolition, or alteration of the size of any structure..."

The proposed project involves the construction of several structures (a tennis court, swimming pool, decking, and horse corrals) and grading. These constitute development pursuant to Section 30106 of the Coastal Act. 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.

Section 30610(a) of the Coastal Act, on the other hand, exempts certain additions to single family residences, provided that the Commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require a coastal development permit. Section 13250 of the California Code of Regulations identifies those classes of development which would require a coastal development permit. Subsection 2 of 13250(b) requires that any significant alteration of landforms requires a coastal development permit. The amount of grading associated with the improvements of the property resulted in significant landform alteration and is considered development under 30106 of the Coastal Act. Thus, the grading that occurred requires a permit. Finally, tennis courts, recreation courts, horse barns, horse corrals and other horse facilities are also not "structures" normally associated with a single family residence, involve significant landform alteration, and require a coastal development permit prior to the commencement of development.

The applicant's agent previously stated that he believes the developments which occurred on site were exempt under 30610(a) of the Coastal Act. The agent claimed that the riding ring, access road, tennis court and fencing are structures normally associated with a single family residence. The agent is correct that fencing and swimming pools are structures normally associated with a single family residence, as stated in Section 13250 of the Administrative Code of Regulations pursuant to Section 30610(a); however although tennis courts, riding rings and access roads may be common in the Los Angeles area and the Santa Monica Mountains, they are developments which involve significant landform alteration and are not structures normally associated with single family residences. As such they are not exempt under 30610(a). Moreover, restoration involves grading and revegetation; these activities are not exempt under 30610(a) of the Coastal Act. Finally, the fence is not exempt as it is located on National Park Service property and not on a parcel with a single family residence, and the swimming pool is not exempt because it is located on a graded fill area.

Thus, none of the proposed work is exempt under Section 30610(a) of the Coastal Act. All development which has occurred, namely the grading, the tennis court, and the horse corral, and the proposed restoration of the riding

ring, the access road and NPS property require a coastal development permit.

C. Grading, Landform Alteration, and their Environmental and Visual Impacts

This project involves the restoration of a riding ring, an access road and a portion of NPS property, as well as grading for the tennis court and swimming pool. The Coastal Act sections regarding marine and land resources, grading, and landform alteration which are applicable in this case are as follows:

Section 30231

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

Section 30240

(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 30250(a)

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

Section 30251

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

Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Part of this project calls for the restoration of a .15 acre portion of land adjacent to the subject property which is owned by the National Park Service (NPS). Currently, the site has been landscaped with an irrigated lawn and native and non-native vegetation. The edge of the tennis court and pool decking extend onto this NPS property. Under an agreement with the National Park Service, the applicant has agreed to remove these encroachments. The removal of the tennis court and fence is shown on the submitted site plan. However, the removal of the portion of the tennis court and pool decking is not shown on the submitted plans, nor is the removal of any of these encroachments stated on the restoration plan. Staff has contacted the National Park Service, and NPS confirmed that the agreement clearly stated that the applicant would remove the tennis court, fencing, and pool deck. The agreement between NPS and the applicant included the prepared restoration plan and the removal of the pool deck and tennis court which encroach onto NPS lands. A copy of the letter of agreement is shown in Exhibit 9.

Section 32040 of the Coastal Act mandates that environmentally sensitive habitat areas be protected against significant disturbances, and further states that development in areas adjacent to park areas prevent impacts on recreation areas. Without the removal of the tennis court, swimming pool decking and fence encroachments and a restoration of the lawn area to a native vegetated area, the site will not be consistent with Section 30240 of the Coastal Act. As it currently exists it has removed an area of native vegetation lessening the habitat value and impacting the wildlife and biological processes of the Santa Monica Mountains. Restoration of this encroachment area will restore and enhance the area bringing this portion of the project into compliance with Section 30240 of the Coastal Act.

NPS has agreed to the restoration of the NPS land and approved a restoration report prepared for the applicant by the Topanga-Las Virgenes Resource Conservation District. This restoration report (See Exhibit 8) requires the removal of non-native vegetation and the placement of native vegetation. It requires one year of monitoring of the site for the removal of any additional non-native, invasive vegetation. It does not, however, call for further monitoring to ensure a long term survivability of the planted vegetation. Moreover, this report does not include a detailed site plan for restoration but rather states several species of plants which may be used. Finally, it does not state that the tennis court and pool decking on NPS property will be removed. Therefore, the Commission finds it necessary for the applicant to submit two sets of a detailed restoration plan which identifies the types, sizes and locations of plants and/or seeding to be done on site, and shows the removal of the tennis court and pool decking which is on NPS property, as noted in special condition 1. The areas where these developments were located shall be a part of the restoration plan. This plan shall be consistent with the submitted report, and reviewed and approved by NPS. Moreover, the applicant shall be required to implement this project within 120 days of the issuance of the permit and shall monitor the site for a period of three years following the initial restoration

Next, the applicant is proposing to restore the drainage area on site by removing the unpermitted riding ring and access road which required a total of 1,000 cubic yards of grading. The applicant has submitted both a detailed restoration report prepared by Geo Safety and detailed plans which outline the

removal of the fill in the drainage area, the restoration of the topography for both the access road and riding ring, and the replanting of the area with native vegetation (See Exhibits 10 and 11).

The original filling of the riding ring and the cutting of the access road resulted in uncompacted slopes which were subject to creep and surficial failure. When fill is imported onto a site and not compacted correctly or left without landscaping as in the case of the riding ring, the result is an increase in siltation from the fill slope into adjacent coastal streams and waters. The fill in the drainage area causes run-off into the downstream portions of this drainage. This drainage course flows into Zuma Creek, a U.S.G.S blue line stream and recognized EHSA. The increased flow of sediments into the drainage can be expected to also occur in the stream. The increased sediments in the water course can adversely impact riparian streams and water quality. These impacts can include:

1. Eroded soil contains nitrogen, phosphorus, and other nutrients. When carried into water bodies, these nutrients trigger algal blooms that reduce water clarity and deplete oxygen which lead to fish kills, and create odors.
2. Erosion of streambanks and adjacent areas destroys streamside vegetation that provides aquatic and wildlife habitats.
3. Excessive deposition of sediments in streams blankets the bottom fauna, "paves" stream bottoms, and destroys fish spawning areas.
4. Turbidity from sediment reduces in-stream photosynthesis, which leads to reduced food supply and habitat.
5. Suspended sediment abrades and coats aquatic organisms.
6. Erosion removes the smaller and less dense constituents of topsoil. These constituents, clay and fine silt particles and organic material, hold nutrients that plants require. The remaining subsoil is often hard, rocky, infertile, and droughty. Thus, reestablishment of vegetation is difficult and the eroded soil produces less growth.

Section 32040 of the Coastal Act mandates that environmentally sensitive habitat areas be protected against significant disturbances, and further states that development in areas adjacent to park areas prevent impacts on recreation areas. The proposed restoration will reverse the impacts noted above and restore the area to its native habitat. The resulting restoration, when successful, will result in an enhancement of the area, consistent with the mandates of 32040 of the Coastal Act. To ensure that the restoration is successful, the Commission finds it necessary to require the applicant to provide a monitoring program, as noted in special condition 3, for a period of three years. As with the restoration of the NPS property, special conditions 4 and 5 are required to ensure timely action of the restoration.

Another part of the proposed project calls for the placement of horse corrals near the residence on the existing building pad. No additional grading was done to place these horse corrals on site. Moreover, these horse corrals are located within 200 feet of the residence and are therefore within the fuel

modification zone. Thus, the area where the horse corrals are is an area which must be thinned of vegetation for fire protection purposes. Vegetation clearance, for fire protection purposes, done for the residence, will also protect the horse corrals. Significant erosion from the horse corrals has not occurred. No drainage control devices are necessary as the horse corrals are not located on a steep slope and the area is landscaped above and below the horse corrals. Next, although the residence is visible from NPS property and the trails in the area, the horse corrals are not highly visible. The residence screens the horse corrals from the trails on NPS property. The horse corrals can be seen from Cavalleri Road, however, because they are clustered adjacent to the residence, they blend in with the residence and do not create an additional adverse visual impact. The horse corrals are located over 100 feet from the drainage course on site and there is no evidence that they have caused any adverse impacts to the drainage course in their present state. The Commission therefore find that this portion of the project, as proposed, is consistent with Sections 30231, 30240, 30250 and 30251 of the Coastal Act.

The remainder of the proposed development calls for approximately 5,716 cubic yards of grading for the tennis court and pool (2,613 cu. yds. cut, and 3,103 cu. yds. fill). In previous staff reports for this project, staff noted that grading for the site was excessive and that the project resulted in adverse impacts to the nearby ESHAs. The applicant has reduced these impacts by agreeing to restore the riding ring and access road and revegetate the fill slopes with native vegetation.

The restorative grading, reduces the amount of grading on site and increases the areas left for habitat and view protection on site. The Commission notes that although adjacent to NPS property and upstream from an ESHA area, the developed site is still in a developed part of lower Santa Monica Mountains. Tennis courts and swimming pools have been approved in this area when grading was minimized, drainage was controlled, and landscaping occurred to retard erosion and minimize any adverse environmental, geologic or visual impacts. In this case, the Commission finds that the applicant has revised the proposed project by agreeing to restore the riding ring and access road, and revegetate disturbed areas.

The revegetation of the fill slopes was noted by the applicant's consulting biologist as aiding in the restoration of the site. The applicant has agreed to revegetate the slopes with native vegetation, removing the non-native vegetation, as noted in the report, but has not yet submitted plans for this development. Therefore, the Commission finds it necessary to require the applicant to submit two sets of a revegetation plan consistent with the recommendations of the consulting biologist, as outlined in special condition 3. The portion of the consulting biologist's report regarding revegetation is contained in Exhibit 12.

Currently, almost 60% of the slopes are covered with non-native, exotic vegetation. For example, there is an abundance of Castor Bean, and mustard plant. These invasive plants will outcompete the natives for soil coverage and sunlight, thus changing the ecological makeup of the area. The removal of these invasive species as proposed by the applicant, will enhance the area and mitigate the disturbance which occurred with the construction of the tennis court and swimming pool.

Finally, pursuant to Section 30251 of the Coastal Act, visual qualities of the area are required to be protected. The applicant has reduced the visual impacts of the area by agreeing to restore the riding ring, access road, and NPS property, and revegetate the area with native vegetation. Visual impacts of the tennis court and swimming pool are reduced through landscaping the fill slopes and restoring the adjacent National Park Service property. This activity increases the areas left for view protection by reducing the size of the disturbed area. Finally, the tennis court and swimming pool are clustered adjacent to the single family residence; as such, they do not significantly increase the visual impacts from the subject site.

The Commission finds that the project, as conditioned to ensure revegetation and restoration of the area excluding the tennis court, swimming pool and horse corrals, is consistent with Sections 30231, 30240, 30250 and 30251 of the Coastal Act and as such will not create adverse impacts on coastal resources.

C. Geologic Hazards

Section 30253 of the Coastal Act states in part:

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.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Staff notes that no geologic reports appeared to have been done prior to the grading for the ancillary structures. However, both the applicant and the previous lessee have provided staff with geologic reconnaissance reports of the site. The applicant has submitted a geologic reconnaissance report dated January 20, 1996 by Solus Geotechnical Corporation; the previous lessee of the property submitted a geologic report dated June 5, 1995 and prepared by Mountain Geology, Inc. on behalf of himself. In addition, the applicant has submitted a geologic report which addresses the restoration of the access road and riding ring. This report is by Mountain Geology and dated July 15, 1996.

In the report dated July 15, 1996, the consulting geologist notes that the restoration project is free from geologic hazard and will have no adverse impacts either on or off site with regards to stability. Thus this portion of the project is consistent with Section 30253 of the Coastal Act.

In the report regarding the fill slope for the tennis court and the swimming pool, the consulting geologist concluded that although the fill was apparently placed on site without the supervision of a soils engineer and thus is considered potentially unstable, there is no evidence that the structures suffer from adverse settlement or creep. As such, the consultant finds that the fill could be considered suitable for non-habitable structures such as a tennis court or swimming pool. However, as the site can not be found completely free from hazard, the Commission finds it necessary to require the applicant to record an assumption of risk deed restriction. The Commission finds that due to the unforeseen possibility of erosion, slippage or surficial failure, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission must require 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 hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development. The Commission finds that the project, as conditioned, is consistent with Section 30253 of the Coastal Act.

D. Violation

The development of the tennis court, swimming pool, decking, landscaping, riding ring, access road and 6,716 cubic yards of grading all occurred prior to the submittal of this application. Discovery of this violation, by staff occurred in June of 1994. Some of the unpermitted grading on site occurred in 1984, and the tennis court was constructed prior to May of 1986. The swimming pool was constructed in 1990; the riding ring was constructed circa 1988.

The Commission notes that although development has taken place prior to the submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter Three policies of the Coastal Act. review of this permit does not constitute a waiver of any legal action with regard to an violation of the Coastal Act that may have occurred.

E. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed

development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City of Malibu's ability to prepare a Local Coastal Program for this area of Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The negative impacts associated with this development, namely the development on NPS property and the disturbance of the drainage course have been eliminated by restoring these areas. Thus, there are no negative impacts caused by the proposed development, as conditioned, which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

2058M



RESOURCE CONSERVATION DISTRICT
OF THE
SANTA MONICA MOUNTAINS

(formerly Topanga-Las Virgenes Resource Conservation District)

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KATHLEEN BULLARD
Executive Officer

July 7, 1998

California Coastal Commission
Executive Director
89 So. California Street, Suite #200
Ventura, CA 93001

COPY

RE:

Annual Restoration Monitoring Report #2
for project site 6087 Cavalleri Road, Malibu, CA 90265,
to satisfy Requirement 2 of Coastal Development Permit No. 4-96-002

To whom it may concern:

The restoration has proceeded on the above mentioned property very well. Monitoring and watering were completed through the summer of 1997, July – September, and planted stock and native seed mix responded well. Minor weeding was done at the time of watering, approximately once a week.

In October 1997, the Resource Conservation District crew and I spent two days removing the substantial regrowth of castor bean trees on the regraded section. Removal included bagging the seedpods for removal, cutting the stalks and painting the stalks with a herbicide. During this time, the National Park Service property was weeded also, in addition to making repairs to the irrigation system. Routine water continued throughout October and November.

With the winter rains of 1997/98, it was not necessary to water either section. Therefore, no monitoring was done during this time; in addition the property became occupied by new owners and was under major remodeling.

In April 1998 I contacted the new property owners to attempt to set up an appointment to view the projects. With their occupancy and the security systems, in addition to the extensive remodeling on-site, I wanted to proceed with their permission. We were unable to find a mutually convenient time in the spring. I attempted again in May and was still unable to meet as owners were traveling.

On July 2, I met with the owner and inspected both project areas. The NPS lawn section has filled in completely, with a mixture of planted native stock and weeds. At the owner's

EXHIBIT NO. 9
APPLICATION NO.
4-96-002-A1
MONITORING REPORT #2

request, I pointed out what could and should be removed. As the property line is the existing fence for the pool, I indicated they might want to maintain the small dirt path that has been created directly next to the fence. Black mustard was pointed out for removal and the irrigation system discussed. The shrubs look in good condition, 4-5 feet in height and the *Artemisia californica* has filled in as the predominant species in this section. There are two *Baccharis salicifolia* stands, *Mimulus longiflorus*, and *Eriogonum fasciculatum* growing. *Romneya coulteri* and *Encelia californica* had been present earlier but I could not see them through the growth. Due to the gravel base for this section of the road/lawn the poor soil quality is apparent directly behind the tennis courts and cover here is not as dense. However, in general the vegetation is growing well and filling in.

The graded portion of the project looks outstanding. There was only one stand of Castor Bean visible and I pointed this out to the owner as a prime target for removal. The cover has become such that it is very difficult to see the erosion cloth at all on either slope. Grasses and shrubs are filling in uniformly. The irrigation system was explained to the owner for use if needed. The access road has filled in almost completely and it is difficult to determine if a pathway existed or not.

The owner was concerned about knowing where and what vegetation could be removed to comply with fire brush clearance. I believe we reached a satisfactory definition. Clearing has been done around the pool toward the graded section, up to the old access road and to the planted slope. I indicated black mustard and other weeds could be removed if desired.

The Resource Conservation District will continue to be in touch with the current owners, to answer questions they may have and to advise on additional management strategies.

Sincerely,



Deborah Low

Project Supervisor

Resource Conservation District of the Santa Monica Mountains

cc: S. Manion, RCD
R. Sauvajot, NPS



MARGO MURMAN
Executive Officer

RESOURCE CONSERVATION DISTRICT
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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

June 15, 1999

California Coastal Commission
Executive Director
89 So. California Street, Suite #200
Ventura, CA 93002

RE: Final Restoration Monitoring Report for project site 6087 Cavalleri Road, Malibu, CA 90265, to satisfy Requirement 2 of Coastal Development Permit No. 4-96-002

AMENDMENT TO FINAL REPORT OF MAY 26, 1999

To Whom it May Concern:

This represents an amended Final Restoration Monitoring Report for the above referenced project. On June 14, 1999, I was able to access the property in the company of NPS Ranger Bonnie Clarfield, who was investigating encroachment onto NPS property.

NPS Property Section of Project - see attached photos

The on-site visit yesterday confirmed the removal of the fencing that delineated the property line and removal of the native plant restoration completed by RCDSMM for NPS. On my last visit in July 1997, there was a substantial stand of *Artemisia californica* at the southwest corner of the old lawn, many were 4-5 feet in height. This section included buckwheat stands (*Eriogonum cinereum*), Coyote Brush (*Baccharis pilularis*), annual flowers such as California Poppy (*Eschscholzia californica*), and new growth of California sagebrush (*Artemisia californica*). The NPS property slopes contained several Laurel Sumac (*Rhus larina*) with canopies of 20'. The erosion cloth that had been installed on the west facing slope, with native seeds, was holding well and native plants were becoming well established.

In July 1997, I clearly indicated to the property owner that the metal fence had been installed to represent the property boundary, and that no plants on NPS property could be removed except the invasive and non-native black mustard and thistle. I indicated that the irrigation system on the western side was the discarded one found on the property that RCD had put back into working order for the purposes of the project and could be removed at any time unless the owner desired to water; I indicated, however, that it watering was no long necessary for the continued growth of the native plants. I communicated the content of this visit in writing to the owner, in a letter dated July 2, 1998 and enclosed a copy of the survey map, NPS Tract No. 116-90 that clearly showed the property line, the restoration site, the location of the pool and the tennis courts.

Yesterday's visit revealed the removal of native plants on NPS property, removal of the fence, and installation of a lawn, with possible grading and reconfiguration of the drainage closest to

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the NPS boundary sign, on the western edge of the property. In addition, the erosion cloth has been removed from the slope sections, established stands of Laurel Sumac (*Rhus larina*) removed and restored plantings on the slopes removed, replaced with landscaping of orange flower ice plant and *Portulaca grandiflora*, both non-natives. The *Rhus larina* is crown sprouting in both places that had stands with canopy coverage of 15-20'. There is evidence of vegetation dumping over the edge of the slope of grass clippings, plant trimmings and possibly the remains of the native plants that were removed.

Coastal Commission Section of Property - see attached photos

My original report on the condition of the Coastal Commission section of this restoration project was based on a view from across Zuma Canyon, with the east facing slope of the project hidden from view. I based my report on the observations of the west facing slope of the ravine only.

The east facing slope of the project is not in the condition I saw it a year ago when I last was able to monitor and inspect the project. At that time the chaparral natives were beginning to reestablish themselves on the slope and fill in with a good coverage. The RCDSMM crew had removed a large number of castor bean in October of 1997 and the shrub growth was progressing well, considering an east facing slope. The west facing slope has continued to reestablish itself and can be used for comparison, with orientational differences considered.

The east facing slope, however, is presently being terraced, or excavated into several pads, with railroad tie retaining walls and a rock wall, above the restoration area, in an area that was not disturbed previously and that contained medium-sized shrubs well established. These pads are located at the top and middle of the slope above the irrigation system installed by Klaus Radtke and his crew in November/December 1996. Access stairs are located below the chain link fence near the house, and the entire operation has necessitated removal of restoration plantings, erosion cloth and a regrading of the restored natural slope. In addition, there appears to be a separate excavation further below, directly adjacent the streambed, with a straight-sided, rectangular cut into the restored slope, approximately 12 x 15' in size. Soil has been pushed into the streambed area and several large tree or shrub roots, recently removed, are laying about.

In summary, both NPS property and the restored slope that had been of Coastal Commission concern in 1994 have been re-encroached upon and re-graded, respectively.

Sincerely,



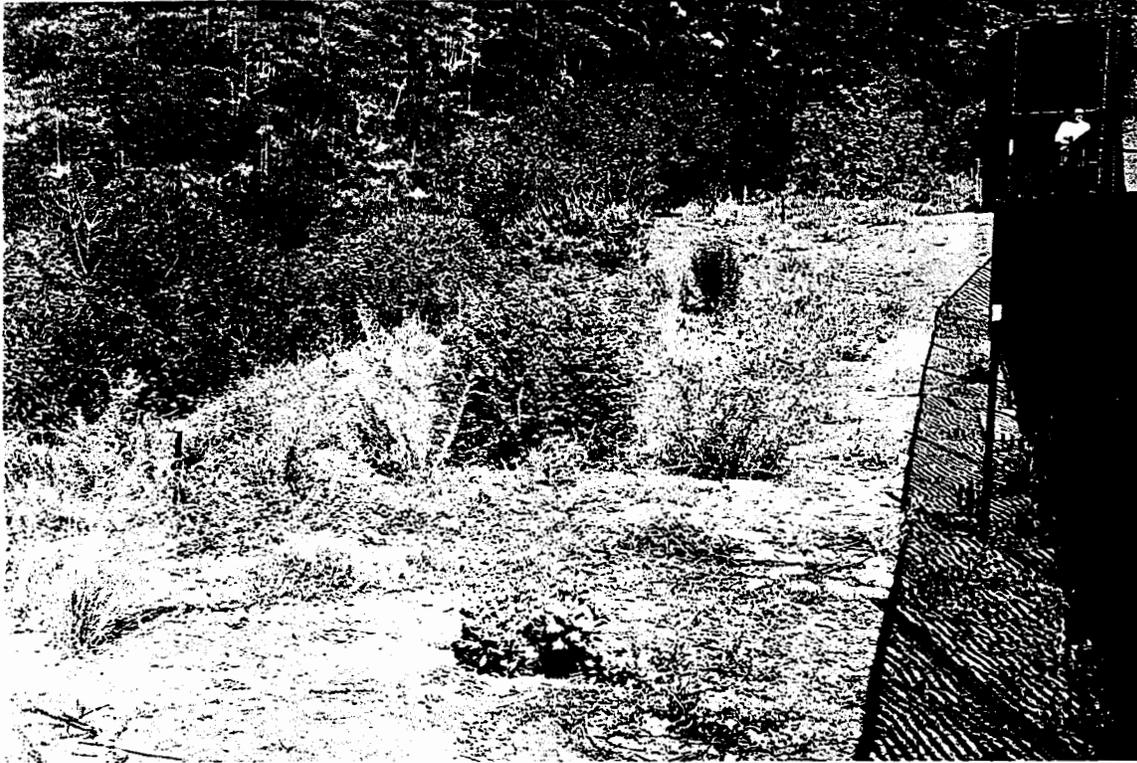
Deborah Low

Project Supervisor/Education Coordinator

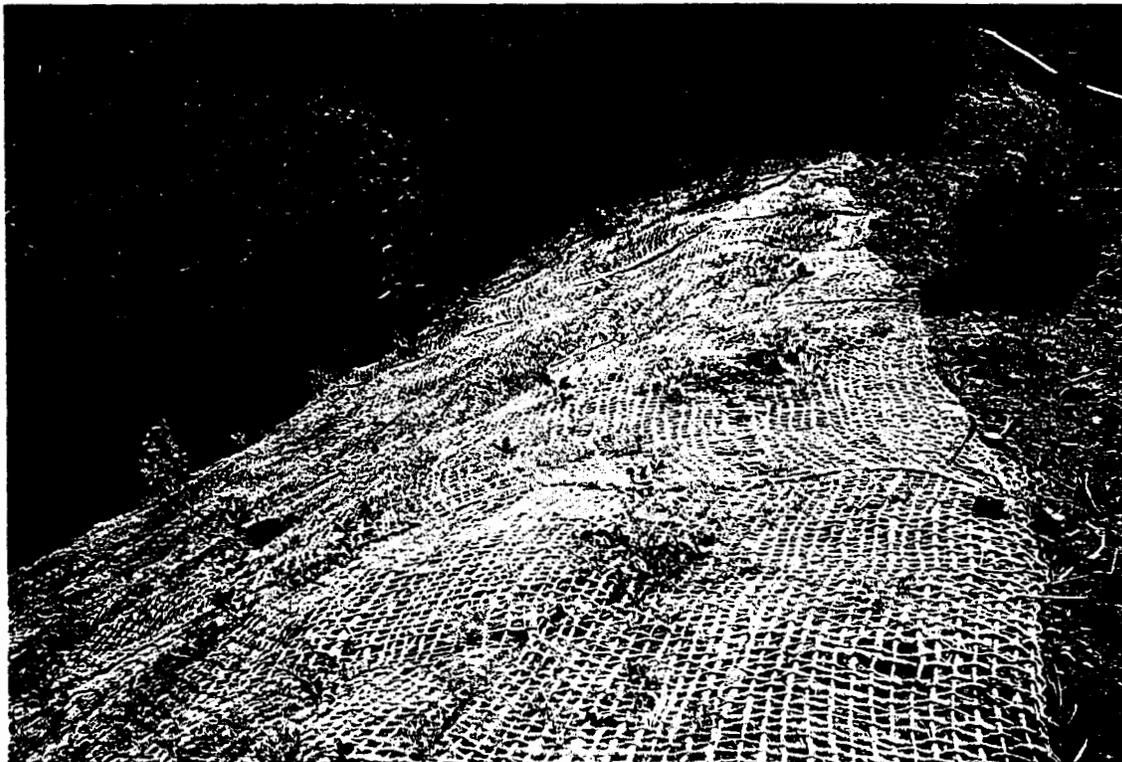
cc: S. Manion, RCD
M. Beck, NPS
B. Clarfield, NPS
Tom Dawson, Coldwell-Banker
Audrey Boyle, Coldwell-Banker
Carolyn Fank, Attorney (no photos included)

Photographs

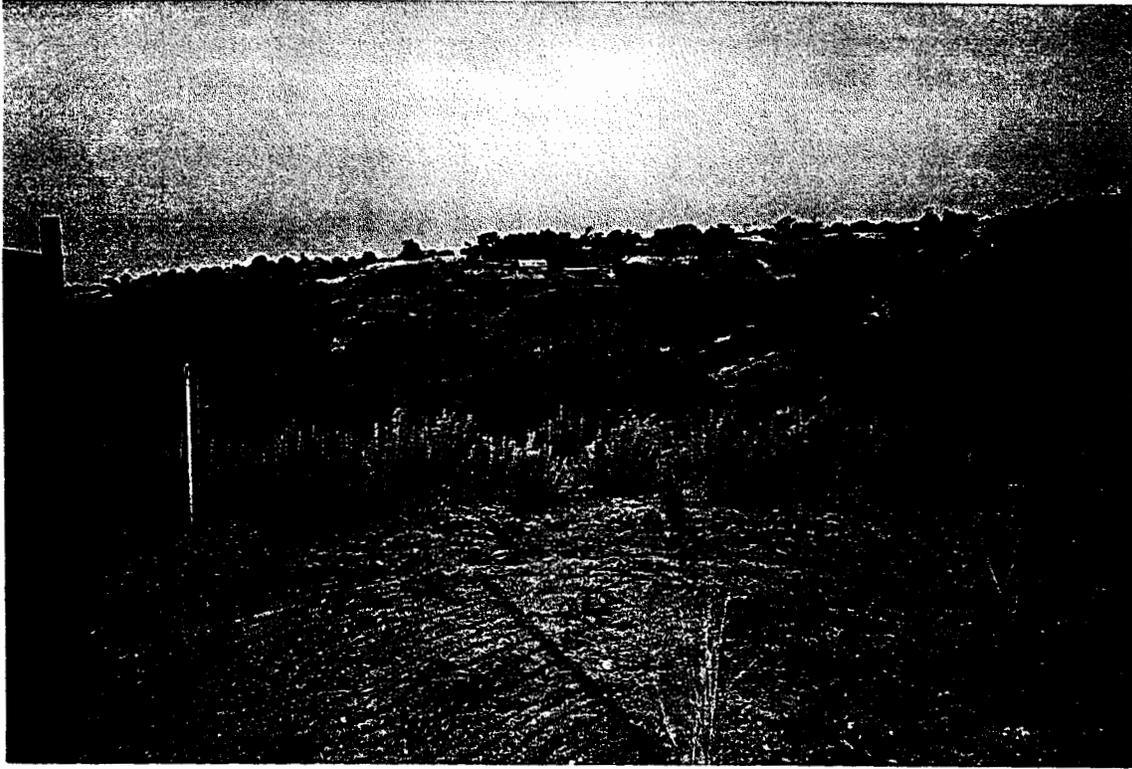
1. Taken March 10, 1997, looking north toward tennis court, with pool at immediate right. Shows the emerging shrubs and seeds on the NPS section west of adjacent tennis court. Fencing along right of photo indicates property line.



2. Taken March 10, 1997. Shows installation of erosion cloth along west facing slope of NPS property and emerging vegetation from seed mix.



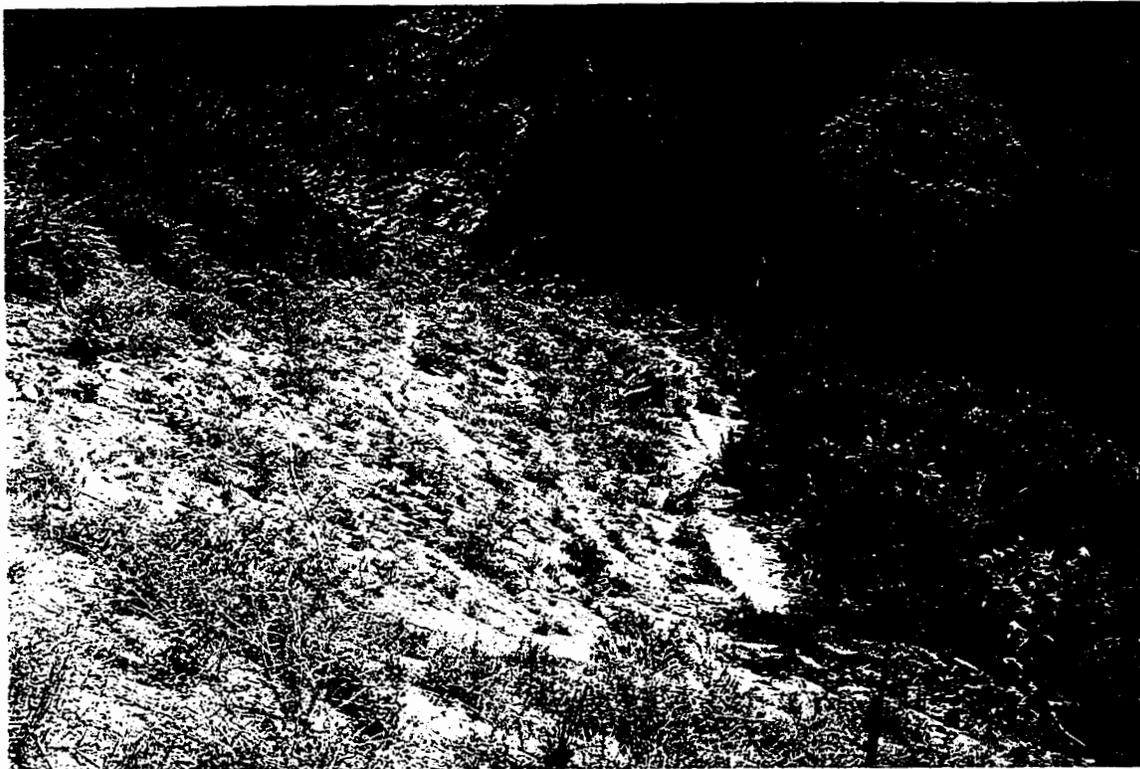
3. Taken March 10, 1997. Looking south from NPS property (fence line on left) showing the *Artemisia californica* that were saved from original lawn section. Also, flagged stakes indicate corner point of property.



4. Taken October 7, 1997. Shows Coastal Commission section with growth of invasive castor bean before removal. Looking northeast toward head of ravine, house to the left above slope.



5. Taken October 7, 1997. Shows Coastal Commission section after removal of castor bean. Both restored slopes are visible, with growth of shrubs and seed mixture. Irrigation system is visible along mid-slope.



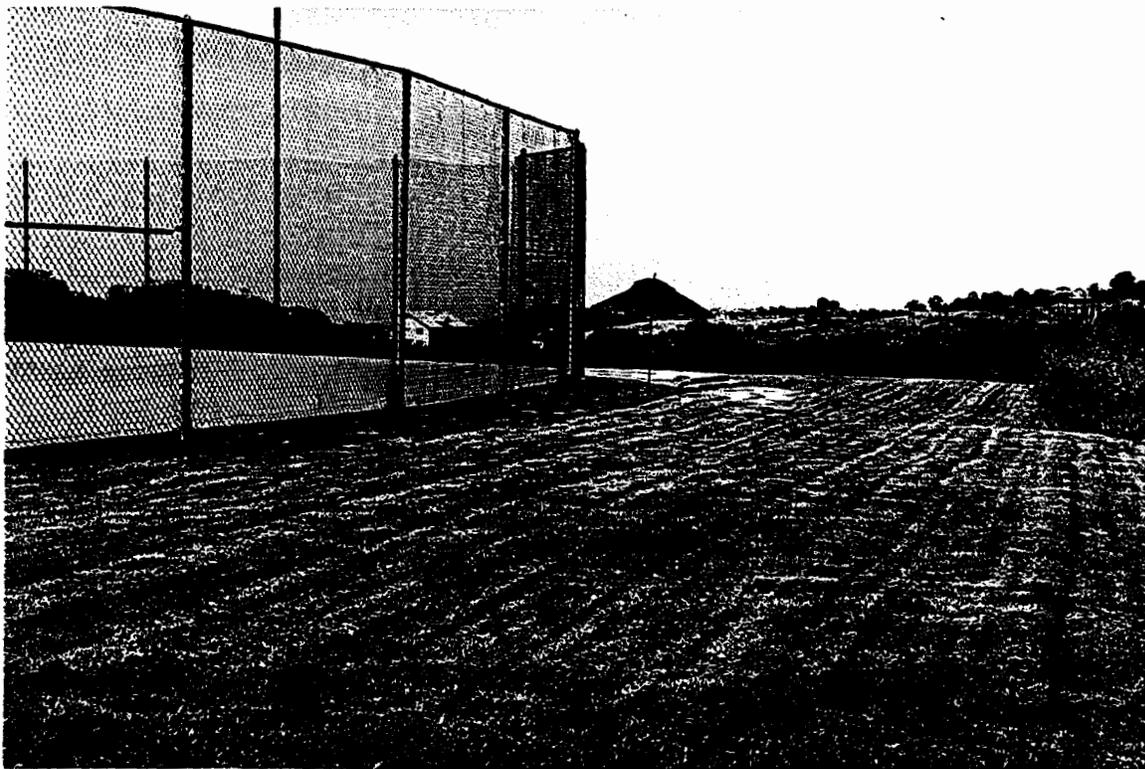
6. Taken October 8, 1997. Shows NPS section of property, looking north toward tennis courts. Fence on right represents property boundary. Note that the growth of vegetation has progressed well since the photos taken in March.



7. Taken June 14, 1999. Looking southwest, with tennis court on left. Note NPS property marker clearly visible in lower right and installation of lawn in restored section of NPS property. All evidence of native plantings is gone. Compare to earlier photos taken in March and October of 1997.



8. Taken June 14, 1999. Looking south on western property, shows NPS property directly adjacent to tennis court and pool, and the removal of the fence marking boundary and the extent of lawn installation.



9. Taken June 14, 1999, looking north, towards house.



10. Taken June 14, 1999, looking south at SW corner of NPS property, shows the removal of erosion cloth, native plantings, Laurel sumac (*Rhus larina*) on the slopes, and the installation of lawn, and non-native species. Pool is to the left.



11. Taken June 14, 1999. Ranger indicating the NPS/private boundary line, facing west, at southern edge of properties.



12. Taken June 14, 1999. *Rhus larina* crown sprouting in sections where removed on the west facing slopes of NPS property.



13. Taken June 14, 1999. On Coastal Commission section, looking northeast toward head of ravine, shows the terracing work on east facing restored slope and disturbance at base of slope along streambed. West facing slope of project can be detected as triangular section below taller shrubs mid-photo. Compare to photo taken in October 1997.



14. Taken June 14, 1999. Closer view of terracing work on Coastal Commission section of property. Note: removed fence from NPS property line and around the pool is stacked behind the chain link fence in upper half of photo, middle.



15. Taken June 14, 1999. Closer view of excavation at base of east facing slope, directly adjacent to stream bed. Terracing railroad ties visible in upper left.



16. Taken June 14, 1999. Same area as #15, looking southwest, with excavation on right. Shows soil disturbance pushed into stream bed area and large root structure removed (unable to determine from where).





MARGO MURMAN
Executive Officer

RESOURCE CONSERVATION DISTRICT
OF THE
SANTA MONICA MOUNTAINS

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June 29, 1999

California Coastal Commission
Executive Director
89 S. California Street, Suite #200
Ventura, CA 93002

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JUL 01 1999

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RE: Final Restoration Report for project site 6087 Cavalleri Road, Malibu, CA 90265 to satisfy Requirement 2 of Coastal Development Permit No. 4-96-002.

To Whom it May Concern:

Please note the two dates on page 1 of Amended Final Report, dated June 15, 1998 as shown on attached. In paragraph two, line three, the date should read "July 1998". In paragraph three, line one, date should also read "July 1998".

Thank you.

Sincerely,

Deborah Low
Deborah Low

Project Supervisor/Education Coordinator

Photo 1: Project site, February 1995. View is to the northwest.



Photo 2: Project site, April 2002. View is to the northwest.



EXHIBIT NO. 11

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PHOTOS (3pp.)



Photo 3: Terraced planters on slope. View is to the northwest.

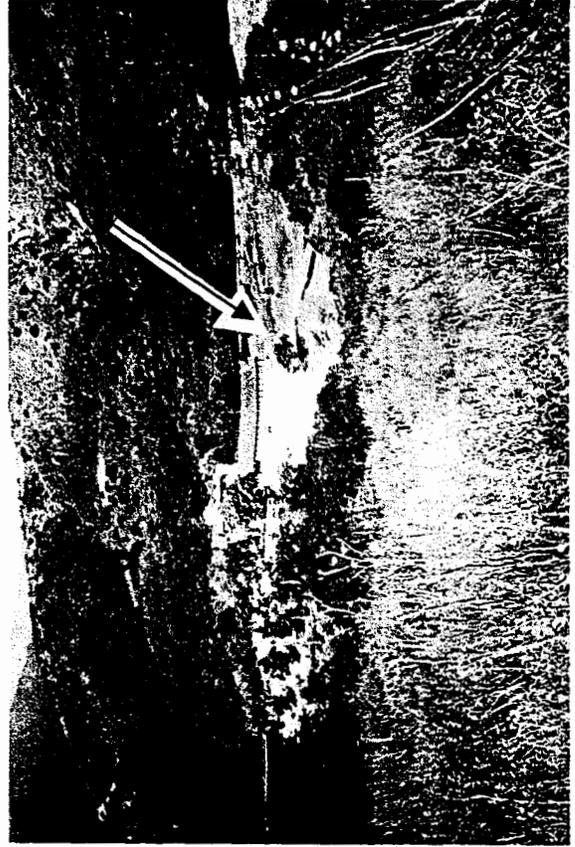


Photo 4: Gently sloping area adjacent to residence, middle right. View is to the northwest.

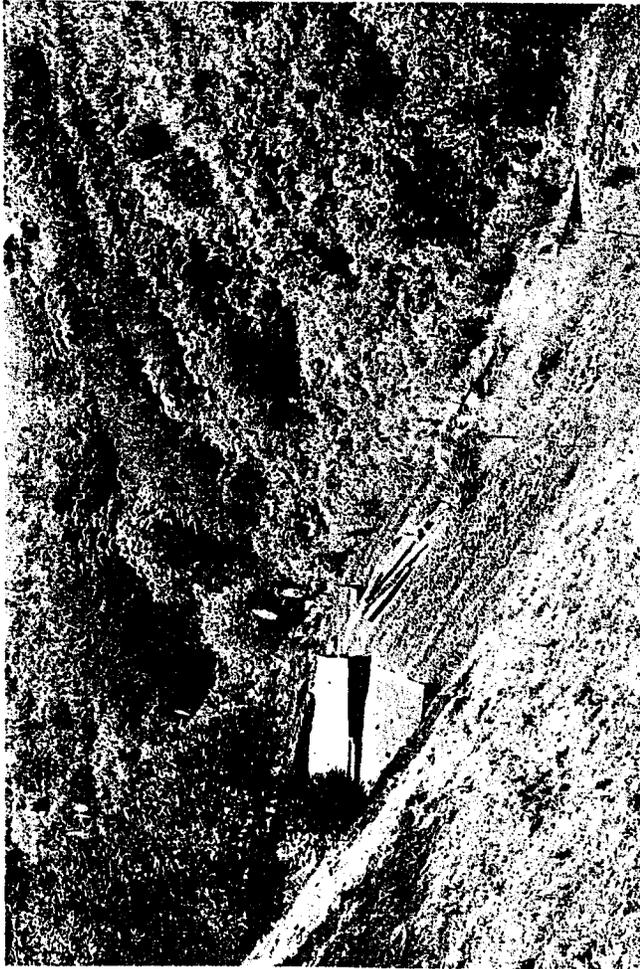


Photo 5: Construction of pad,
June 1999. Note debris in stream
bed below. View is to the
southeast.

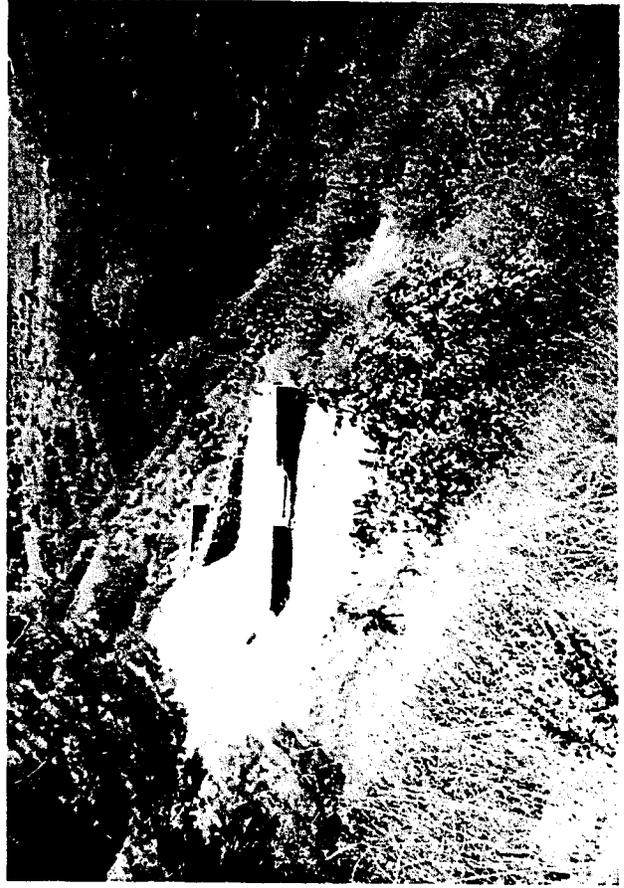


Photo 6: Pad on slope, February
2001. Note excavated hillside to
rear of pad. View is to the
southeast.