

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
1000 NORTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 585-1800

Filed: 9/6/02  
49th Day: 10/25/02  
180th Day: 3/5/03  
Staff: T. Duffey  
Staff Report: 1/16/03  
Hearing Date: 2/4-7/03  
Commission Action:



## RECORD PACKET COPY

### STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-02-162  
**APPLICANT:** Richard and Mary Jacobson  
**AGENT:** Schmitz & Associates  
**PROJECT LOCATION:** 5965 Ramirez Canyon, Malibu, Los Angeles County  
**APN NO.:** 4467-009-005

**PROJECT DESCRIPTION:** Construction of a new 502 square foot pre-manufactured barn, retaining walls, 48 cubic yards cut/fill, an irrigation water well and a 5,000-gallon water tank.

**Lot area:** 83,200 sq. ft.  
**Building coverage:** 6834 sq. ft.  
**Pavement coverage:** 18,124 sq. ft.  
**Landscape coverage:** 58,242 sq. ft.  
**Height above finished grade:** 16.5 ft.

**LOCAL APPROVALS RECEIVED:** City of Malibu Planning Department, Approval in Concept, June 12, 2002; City of Malibu Public Works Review, Approval in Concept, August 23, 2001; City of Malibu Environmental Health, Approval in Concept, January 16, 2001; County of Los Angeles Fire Department, Final Fuel Modification Plan Approval, August 22, 2001; County of Los Angeles Environmental Health, Water Well Approval, February 8, 2002.

**SUBSTANTIVE FILE DOCUMENTS:** Certified Malibu Local Coastal Program; Geologic and Geotechnical Engineering Evaluation by Gold Coast Geoservices, Inc., July 21, 2001; Oak Tree Inspection by Bruce Malinowski, November 19, 2002; Coastal Permit No. 4-01-037, Bob Trust.

## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission take one (1) vote adopting the following two-part resolution for the proposed project:

**Part 1** to approve the request for the development of an irrigation water well and a 5,000-gallon water tank with standard conditions.

**Part 2** to deny the request for the development of a 502 sq. ft. pre-manufactured barn, retaining walls and 48 cubic yards cut/fill.

The project site is located in a partially developed area in the City of Malibu north of Pacific Coast Highway and the Point Dume area. This highly developed 1.91 acre parcel is located along the west side of Ramirez Canyon Road north of the intersection with PCH. Vegetation on the subject parcel consists of mostly landscaped native and ornamental vegetation. A single large Coast Live Oak (*Quercus agrifolia*) exists on the site in the southwest portion of the parcel where a portion of the proposed development including the 502 square foot pre-manufactured barn, retaining walls and 48 cubic yards of cut/fill is located. The footprint of this proposed development encroaches 13<sup>1</sup> feet into the dripline of the subject oak tree, which may result in significant impacts to the Coast Live Oak.

Staff has determined, based on the analysis of a 1986 aerial photograph, that the proposed development of the retaining walls, 48 cubic yards of cut/fill and the 5,000 gallon water tank was constructed between 1986 and the present without the required coastal development permit. The subject permit application was filed prior to the adoption of the Malibu Local Coastal Program (LCP) of 2002 and therefore remains under the jurisdiction of the Coastal Commission.

The proposed 5,000-gallon water tank is not visible from any public viewing area and does not disrupt or degrade any ESHA. Therefore, the proposed 5,000-gallon water tank will not have adverse impacts on visual resources or ESHA. The irrigation water well is located away from streams, riparian vegetation and other ESHA and will not adversely impact these coastal resources. In addition, the individual and cumulative impacts on groundwater, streams and ESHA will be minimal. Therefore, Staff recommends **approval** of this portion of the proposed development, as it has been sited and designed in a manner that will avoid significant adverse impacts to visual resources, ESHA and groundwater, and is consistent with the Malibu LCP.

Under the Malibu LCP, native oak tree resources must be protected and preserved. A portion of the proposed development including the 502 square foot pre-manufactured barn, retaining walls and 48 cubic yards of cut/fill, as sited and designed, may have significant impacts on a native oak tree on the subject site. Therefore, Staff recommends **denial** of this portion of the proposed development, as the proposed project location and design is inconsistent with the protection of native oak tree resources as required by the Malibu LCP.

---

<sup>1</sup> The encroachment of the barn, retaining walls and grading shown on the site plan is 8 feet into the dripline of the subject oak tree. However, the site plan only shows a 30' canopy around the tree, whereas the Oak Tree Inspection describes the tree as having a 40' canopy. Therefore, to determine the correct encroachment, the 40' canopy was used, and the encroachment was determined to be 13 feet.

There are feasible alternatives to the proposed 502 square foot pre-manufactured barn, retaining walls and 48 cubic yards of cut/fill that would serve to avoid significant impacts to the native oak tree resources on the subject site consistent with the requirements of the Malibu LCP. These alternatives include relocating the proposed barn elsewhere on the site, redesigning the proposed barn and the no project alternative. The implementation of one of these site and design alternatives would still allow for construction of a barn on the site. Even without a barn, there is already extensive residential development that provides a reasonable use of the subject parcel. Therefore, as proposed, the project would not minimize significant impacts to native oak tree resources, and is therefore, not consistent with the Malibu LCP.

**I. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART**

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

**A. MOTION:**

"I move that the Commission adopt the staff recommendation, by adopting the two-part resolution set forth in the staff report."

**B. RESOLUTION:**

**Part 1: Approval with Conditions of a Portion of the Development**

The Commission hereby approves a coastal development permit for the portion of the proposed development consisting of the construction of an irrigation water well and a 5,000-gallon water tank and adopts the findings set forth below on the grounds that the development will be in conformity with the Malibu Local Coastal Program. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

**Part 2: Denial of the Remainder of the Development**

The Commission hereby denies a coastal development permit for the portion of the proposed development consisting of a 502 sq. ft. pre-manufactured barn, retaining walls and 48 cubic yards cut/fill on the grounds that the development will not conform with the Malibu Local Coastal Program. 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. 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. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

#### **A. Project Description and Background**

##### **1. Project Description**

The applicant is proposing to develop a 502 sq. ft. pre-manufactured barn, retaining walls, 48 cubic yards of cut/fill, an irrigation water well and a 5,000-gallon water tank. The applicant is seeking approval of the development of the retaining walls, 48 cubic yards of cut/fill, and the 5,000 gallon water tank "after the fact", meaning that this development has been constructed or installed without the required coastal development permit. This will be discussed in more detail below.

The project site is located in a partially developed area in the City of Malibu north of Pacific Coast Highway and the Point Dume area. This highly developed 1.91 acre parcel is located along the west side of Ramirez Canyon Road north of the intersection with PCH. The topography of this parcel is characterized by relatively steep slopes, increasing in steepness toward the northwest end of the parcel. The site has an existing 6,220 sq. ft. single-family residence and two guest units, one that is 464 sq. ft. and one that is 864 sq. ft. The site also has an existing 36 sq. ft. playhouse, 348 sq. ft. studio, pool, patio, terraced walls, walkways, landscaping and fencing.

Vegetation on the subject parcel consists of mostly landscaped native and ornamental vegetation. A section of Ramirez Canyon Creek passes through the northeast portion of the parcel. A single Coast Live Oak (*Quercus agrifolia*) exists on the site in the southwest portion of the parcel where a portion of the proposed development (barn, retaining walls and cut/fill) is located (Exhibit 10). This proposed development is located on the opposite end of the property at a distance of approximately 360 feet from the creek, thus minimizing potential impacts to the creek and associated riparian vegetation. The footprint of this proposed development encroaches 13 feet into the dripline of the Coast Live Oak, which may result in significant impacts to the oak tree. The applicant has been asked to submit revised plans showing the relocation of the proposed development outside of the dripline of the oak tree. The applicant has indicated that they believe there are no alternative locations on the subject site to relocate the proposed development.

## 2. Background

A portion of the proposed development has already been developed on the site. "After the fact" approval is being sought for the proposed retaining walls, 48 cubic yards of cut/fill, and the 5,000 gallon water tank, meaning that this development was previously developed without the required coastal development permit. Analysis of aerial photography indicates that the proposed retaining walls, 48 cubic yards of cut/fill and the 5,000 gallon water tank were developed between 1986 and the present. The proposed 5,000-gallon water tank is not visible from any public viewing area and does not disrupt or degrade any ESHA. Therefore, the proposed 5,000-gallon water tank will not have adverse impacts on visual resources or ESHA.

On September 13, 2002, the Commission adopted the Malibu Local Coastal Program (LCP). The subject permit application was filed prior to the date the LCP was adopted and therefore remains under the jurisdiction of the Commission. Prior to the adoption of the LCP the standard of review for permit applications in Malibu were the Chapter Three policies of the Coastal Act. After the adoption of the LCP the standard of review for permit applications is the LCP.

### **B. Development of 5,000 gallon Water Tank and Irrigation Water Well**

Sections 30230, 30231 and 30250 of the Coastal Act, which are incorporated as part of the Malibu LCP, state:

#### Section 30230:

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

#### Section 30231:

***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.*

Section 30250 (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.*

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

**5.47** *New water wells shall minimize individual and cumulative impacts on groundwater, streams, springs, or seeps and their associated riparian habitats.*

**5.53** *The construction of a new water well may only be permitted where it will not have significant adverse individual or cumulative impacts on groundwater, streams, or ESHA.*

The applicant proposes to construct a 5,000-gallon water tank and an irrigation water well. The proposed 5,000-gallon water tank is not visible from any public viewing area and does not disrupt or degrade any ESHA. Therefore, the proposed 5,000-gallon water tank will not have adverse impacts on visual resources or ESHA.

The irrigation water well is located away from streams, riparian vegetation and other ESHA and will not adversely impact these coastal resources. The irrigation water well, located at the northwest portion of the site, is approximately 380 feet away from Ramirez Canyon Creek at the northeast end of the site. There are few wells of this type in the surrounding area, thus there will be minimal potential for depletion of groundwater supplies. Therefore, the individual and cumulative impacts on groundwater, streams and ESHA will be minimal.

Therefore, for the reasons discussed above, the Commission finds that the proposed 5,000 gallon water tank and irrigation water well have been sited and designed in a manner that will avoid significant adverse impacts to visual resources, ESHA and groundwater, and are consistent with the Malibu LCP.

### **C. Native Oak Tree Protection**

Sections 30231 and 30240 of the Coastal Act, which are incorporated as part of the Malibu LCP, state:

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, 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.*

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

**3.63** *New development shall be sited and designed to preserve oak, walnut, sycamore, alder, toyon, or other native trees that are not otherwise protected as ESHA. Removal of native trees shall be prohibited except where no other feasible alternative exists. Structures, including roads or driveways, shall be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone of individual native trees in order to allow for future growth.*

In addition, the following sections of the Malibu Local Implementation Plan (LIP) are applicable in this case:

**5.2. DESCRIPTION OF AREA SUBJECT TO ORDINANCE**

*The provisions of this ordinance shall apply to those areas containing one or more native oak (Quercus species), California Walnut (Juglans californica), Western Sycamore (Platanus racemosa), Alder (Alnus rhombifolia), or Toyon (Heteromeles arbutifolia) tree, that has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, measured at four and one-half feet above natural grade.*

**5.4. DEVELOPMENT STANDARDS**

**A.** *New development shall be sited and designed to preserve oak, walnut, sycamore, alder, and toyon, as identified by Section 5.2 of the Malibu LIP above, to the maximum extent feasible.*

**C.** *Structures, including roads or driveways, shall be sited to prevent any encroachment into the protected zone and to provide an adequate buffer outside of the protected zone of individual native trees in order to allow for future growth, except where no other feasible alternative exists. Coastal development permits for development subject to this chapter shall include provisions or be conditioned to require that if approved encroachments result in the death or worsened health or vigor of the affected tree as a result of the proposed development, mitigation as described in Section 5.5 of the Malibu LIP below shall be required.*

**5.5. MITIGATION**

*New development shall be sited and designed to avoid impacts to native trees to the maximum extent feasible. If there is no feasible alternative that can prevent tree*

***removal or encroachment, then the alternative that would result in the fewest or least significant impacts shall be selected. Adverse impacts to native trees shall be fully mitigated, with priority given to on-site mitigation. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to sensitive resources. The permit shall include the mitigation requirements as conditions of approval.***

The applicant proposes to develop a 502 square foot pre-manufactured barn, retaining walls and 48 cubic yards of cut/fill (referred to as proposed development for this section). The subject parcel includes landscaped native and ornamental vegetation over a majority of the site. In addition, one large oak tree exists in the southwest portion of the parcel where the proposed development is located. The footprint of this proposed development encroaches 13 feet into the dripline of the subject oak tree (Exhibit 10).

According to the applicant's Oak Tree Inspection by Bruce Malinowski dated November 19, 2002 (Exhibit 7), the oak tree on site is a Coast Live Oak (*Quercus agrifolia*). The inspection letter states:

*This Coast Live Oak (Quercus Agrifolia) is a single trunk habit with uniform upward branching commencing at seven to eight feet above grade. The tree measures approximately 27" caliper at 52" above grade with a circumference of about 85". The spread is approximately 40' with a very symmetrical crown. The tree is located on a slope of approximately 25% steepness. There are no exposed roots, which indicated deep soils within the root zone.*

Oak trees, including Coast Live Oaks, are a part of the California native plant community that need special attention to maintain and protect their health. Oak trees in residentially landscaped areas often suffer decline and early death due to conditions that are preventable. Damage can often take years to become evident and by the time the tree shows obvious signs of disease it is usually too late to restore the health of the tree. Oak trees provide important habitat and shading for other animal species, such as deer and bees. Oak trees are very long lived, some up to 250 years old, relatively slow growing becoming large trees between 30 to 70 feet high, and are sensitive to surrounding land uses, grading or excavation at or near the roots and irrigation of the root area particularly during the summer dormancy. Improper watering, especially during the hot summer months when the tree is dormant and disturbance to root areas are the most common causes of tree loss.

The article entitled "Oak Trees: Care and Maintenance" prepared by the Forestry Department of the County of Los Angeles states:

*Oaks are easily damaged and very sensitive to disturbances that occur to the tree or in the surrounding environment. The root system is extensive but surprisingly shallow, radiating out as much as 50 feet beyond the spread of the tree leaves, or canopy. The ground area at the outside edge of the canopy, referred to as the dripline, is especially important: the tree obtains most of its surface water and nutrients here, as well as conducts an important exchange of air and other gases.*

This publication goes on to state:

*Any change in the level of soil around an oak tree can have a negative impact. The most critical area lies within 6' to 10' of the trunk: no soil should be added or scraped away. . . . Construction activities outside the protected zone can have damaging impacts on existing*

trees. . . . Digging  
severely damage  
should be covered.  
roots depend on a  
protected zone.  
exchange and  
material must  
joints, or ground

to be avoided. Roots may be cut or  
any roots exposed during this work  
until the soil can be replaced. The  
and air through the soil within the  
as the soil in this area blocks this  
effects on the trees. If paving  
include brick paving with sand

The Malibu LIP code is cited above and under California Native Code section. In addition diameter, or a combined diameter, measured as provided under this Oak (*Quercus agrifolia*) applicant's Oak Tree Ordinance under the Native Tree Ordinance. Therefore subject oak tree.

Section 5.2 of this ordinance is trees that are subject to protection. the types of trees that are listed in this trunk measuring six inches or more in diameter a total of eight inches or more in diameter above grade are subject to the protection of the applicant's property is a Coast Live Oak 70" above grade, as indicated in the list of the species listed for protection. The size of the subject oak tree greatly exceeds the minimum size under the Native Tree Protection Ordinance and its provisions apply to the

The applicant does not maintain protection under the Ordinance. The applicant maintains the position of naturally occurring oak tree. The applicant's arborist's Oak Tree Ordinance (Exhibit 8).

that the subject oak tree is afforded protection of the Malibu LCP. The applicant ornamental (planted) oak tree and not a subject to the Native Tree Protection Ordinance. The subject oak tree is an ornamental tree is based on the analysis of aerial photography (Exhibit

The Oak Tree Inspector states:

dated October 17, 2002 by Bruce Malinowski. It

*The tree appears to be a native oak. The tree does not have the shape or habit of a native oak. The tree has received abundant watering from an irrigation system. The tree is well maintained and has received abundant watering from an irrigation system. The tree is well maintained and has received abundant watering from an irrigation system.*

*ornamental and has received abundant watering from an irrigation system. The tree does not have the shape or habit of a native oak. The tree has received abundant watering from an irrigation system. The tree is well maintained and has received abundant watering from an irrigation system.*

A 1986 aerial photograph shows that trees existed in the relative location of the subject oak tree in that area. The 1986 aerial shows one large tree and one small tree. Upon preliminary analysis, Staff identified the large tree as the subject oak tree. The applicant's arborist's analysis of the 1986 aerial photograph suggests that the small tree is an ornamental tree. A letter of description describing their analysis states:

(1) shows that trees existed in the relative location of the subject oak tree in that area. The 1986 aerial shows one large tree and one small tree. Upon preliminary analysis, Staff identified the large tree as the subject oak tree. The applicant's arborist's analysis of the 1986 aerial photograph suggests that the small tree is an ornamental tree. A letter of description describing their analysis states:

*We have had the opportunity to analyze the 1986 aerial photograph of the subject property, ... After careful analysis, it appears that the dense image/foliage identified in the 1986 aerial by the Coastal Commission staff as the subject oak tree is, in fact, not the subject oak tree.*

*The subject oak tree is the much smaller image located about 20 feet to the east of the alleged oak tree. The attached exhibit A clearly illustrates the subject oak tree in relation to the proposed barn.*

*As you can see, in 1986 (about 16 years ago), the oak tree was significantly smaller than its current size, evidence that it was planted as ornamental landscaping after the property was originally developed in 1955. According to Mr. Bruce Malinowski, Forester and Landscape Architect, the significant increase in canopy size over this period of time is not possible for a native oak tree. ...*

*In conclusion, the oak tree is clearly not a "native" specimen and is therefore not subject to the Native Tree Protection Ordinance as set forth in Chapter 5 of the 2002 Malibu LCP Local Implementation Plan.*

Exhibit C of this correspondence is Bruce Malinowski's expert evaluation. It states:

*I was shown two photos of the Jacobson site depicting present conditions and conditions from 1986. The tree in the 1986 photo has a canopy diameter of approximately 8'. The tree presently has a canopy diameter of 40' as mentioned above. The only possible way this tree could have grown to this size in 16 years would be with regular irrigation and fertilization. This growth rate is indicative of an oak tree raised in a nursery. I can **therefore state that this tree is not a native oak.***

Staff does not agree with the applicant's interpretation that the ordinance does not apply to ornamental trees. The ordinance makes no distinction between ornamental and naturally occurring trees, but specifically describes the species and size of tree that are provided protection under the ordinance (the subject oak tree meets both criteria). Nowhere in the ordinance is an exception made for ornamental, planted or landscaped trees. Having said that, Staff still finds inaccuracies with the applicant's determination that the subject oak is an ornamental (planted) tree and that the subject oak can be identified as the smaller tree on the 1986 aerial.

Staff believes that the applicant's analysis is inconclusive and that it can't be determined whether the tree is an ornamental (planted) or naturally occurring tree. Although the Oak Tree Inspection states that the tree "appears to have been planted as an ornamental", there is no conclusive evidence supporting this assumption. The appearance of the trunk and branches and associated growth rate may be a result of the intensive watering that has occurred since the site has been landscaped, or it may be a natural condition. The report also states that the masonry wall has had no impact on the tree. This subject wall is one of the retaining walls that is part of the proposed development and has already been constructed without the required permit. The wall appears to have been recently constructed. Because damage can take several years to become evident, it is premature to assume that the wall has not caused impacts to the subject oak tree.

In addition, the applicant indicates that in 1986 the subject oak tree was significantly smaller than its current size, evidence that it was planted as ornamental landscaping after the property was originally developed in 1955. The applicant's arborist attests that the significant increase in

canopy size over this period of time is not possible for a native oak tree and the only possible way this tree could have grown to this size in 16 years would be with regular irrigation and fertilization. He goes on to state that this growth rate is indicative of an oak tree raised in a nursery and it, therefore, cannot be a native oak. The significant increase in size of the subject oak tree in the past 16 years, according to the applicant's analysis that identifies the subject oak tree as the smaller tree on the 1986 aerial, doesn't verify that it was a planted tree. It is entirely possible that the tree was naturally occurring on the subject property and showed tremendous growth as a result of excessive watering and fertilization, conditions similar to that in a nursery, over the past 16 years. The entire area surrounding the subject oak tree was void of landscaping as shown in the 1986 aerial, so it is possible that the tree was naturally occurring in that location rather than planted as an ornamental. Without conclusive evidence that the subject oak tree was planted as a part of the landscaping, it cannot be determined if this is an ornamental or naturally occurring oak tree.

The applicant's analysis of the 1986 aerial photograph identifies the smaller tree on the 1986 aerial as the subject oak tree. Staff believes that the applicant's analysis of the 1986 aerial photography is inaccurate and inconclusive as to which tree on the 1986 aerial is the subject oak tree. On the site plan, the center of the subject oak tree is shown at a distance of 98 feet from the guest unit to the east. On the 1986 aerial, the smaller oak tree measures a distance of 98 feet from the guest unit to the east, based on the scale that the applicant has provided. However, on the 2001 aerial, the subject oak tree measures a distance of 128' from the guest unit to the east, based on the scale that the applicant has provided. Likewise, the distance from the larger tree to the guest unit on the 1986 aerial is 128'. It appears that the smaller tree on the 1986 aerial matches the distance from the subject oak tree to the guest unit on the site plan, while the larger tree on the 1986 aerial is the same distance to the guest unit as that of the subject oak tree on the 2001 aerial. Clearly, this evidence is inconclusive as to which tree on the 1986 aerial represents the subject oak tree. The applicant has not provided any calculations or methodology for how they determined the scale of the aerial photographs, or shown that they have taken into account distortion. Additionally, the barn area that is shown on both the 1986 and 2001 aerials by the applicant measures a different size for each aerial, although the scale is the same. This is an indication that one or both of the scales shown on the 1986 and 2001 aerials are inaccurate and, therefore, the location and size of the subject oak tree on the 1986 aerial cannot be determined.

This inconclusiveness further supports Staff's determination that it can't be determined whether the subject oak tree is an ornamental (planted) or naturally occurring tree. If the larger tree on the 1986 aerial is the subject oak tree, then it is highly likely that this is a naturally occurring tree given the size of the tree in 1986. The applicant is relying on the fact that the subject oak tree was remarkably smaller in 1986, and, therefore, that the only possible way it could have shown tremendous growth over the past 16 years is if it were a planted tree. This tremendous growth rate is based on an assumption that the smaller tree on the 1986 aerial is the subject oak tree. However, it is inconclusive as to which tree on the 1986 aerial is the subject oak tree, and, therefore, it remains inconclusive as to whether the subject oak tree is an ornamental or naturally occurring tree.

Therefore, for reasons stated above, Staff is not in agreement with the applicant's determination that the subject oak tree is an ornamental (planted) tree and that the subject oak tree can be identified as the smaller tree on the 1986 aerial, but finds that these determinations are inconclusive. Regardless of these issues, the Coast Live Oak on the project site is still

subject to the provisions of the Native Tree Protection Ordinance, as it meets the species and size criteria for protection under this ordinance.

Section 3.63 of the Malibu LCP and section 5.4.C. of the Native Tree Protection Ordinance of the Malibu LIP (cited above) require that new development be sited and designed to preserve oak trees and that structures be sited to prevent any encroachment into the dripline and to provide an adequate buffer outside of the dripline of individual native trees in order to allow for future growth, except where no other feasible alternative exists. The applicant has indicated in a letter of correspondence (Exhibit 9) that "relocating the barn would be unfeasible." However, Staff recognizes that there are other feasible alternatives for this proposed development, including relocating the development elsewhere on the site, redesigning the proposed development and the no project alternative. These are discussed in detail below. Section 5.5 of the Native Tree Protection Ordinance of the Malibu LIP (cited above) states that adverse impacts shall be fully mitigated; however, **mitigation shall not substitute for implementation of the project alternative that would avoid impacts to sensitive resources.** The proposed 502 square foot pre-manufactured barn, retaining walls, and 48 cubic yards cut/fill have not been sited and designed to prevent encroachment into the dripline of the subject oak tree and to avoid impacts to this tree, and alternatives to this proposed development exist. Therefore, for the reasons set forth above, the Commission finds that the proposed project location and design will significantly impact oak tree resources and is inconsistent with the Native Tree Protection policies and ordinance in the Malibu LCP. As discussed below, there are feasible alternatives available for this proposed development on the subject parcel that would not result in encroachment into the dripline of the subject oak tree and that would avoid adverse impacts to the subject oak tree.

#### **1. Project Alternatives**

Discussions with the applicant's agent include a request for the applicant to identify alternative locations for the proposed 502 square foot pre-manufactured barn, retaining walls and 48 cubic yards of cut/fill that would not result in encroachment into the dripline of the subject oak tree. The applicant has indicated that they believe there are no alternative locations on the subject site to relocate the proposed development and has, therefore, declined to revise the proposed project and has not submitted revised project plans that include any changes to bring the project into conformance with the Malibu LCP.

In this case, there are at least four alternatives to the proposed development that would not result in encroachment into the dripline of the subject oak tree, consistent with the Malibu LCP. Such alternatives include: (a) alternative site 18 feet further southwest from proposed location, which would require setback modifications, (b) other alternative site on property, including the removal of existing accessory structure and replacement with proposed development, (c) reduction in size/alternative design of the proposed development, and (d) no project alternative. The Commission notes that implementation of one of these site and design alternatives to the proposed development would still allow for a reasonable residential use of the subject parcel to occur.

##### **a. Alternative Site 18 Feet Further Southwest from Proposed Location**

As proposed, the development encroaches 13 feet into the dripline of the subject oak tree. Section 5.4.C of the Malibu LIP (and the definition of "protected zone" in Section 2.1) requires at least a five-foot setback beyond the dripline of oak trees for ensured protection. Therefore,

the proposed development could be relocated 18 feet further southwest and be sited outside of the protected zone of the subject oak tree. The applicant noted that the proposed development has already received a 20% reduction of the side yard setback from the City of Malibu, resulting in a 38-foot setback from the southwestern property line. This setback may be further reduced through a modification or variance granted by the City. Section 3.6.F.5. of the Malibu LIP regarding Residential Development Standards states "Modifications to required yards/setbacks standards shall be permitted where necessary to avoid or minimize impacts to sensitive resources." In this case, a further reduction of the setback by 18 feet would avoid impacts to the subject oak tree, a sensitive and protected resource.

**b. Other Alternative Site on Parcel - Removal of Existing Landscaping and/or Accessory Structure and Replacement With Proposed Development**

The subject property is heavily developed and includes a single-family residence, two guest units, studio, playhouse, pool, patio, terraced walls, walkways, landscaping and fencing. There are no suitable open spaces to locate the proposed development on this site as it has been built out to maximum capacity. However, there are areas where existing terraced walls and landscaping may be removed to provide a suitable location for the site. For example, the proposed development may be relocated just northwest of the current proposed location, beyond the protected zone of the subject oak tree, with minimal removal of existing walls and landscaping. Other feasible locations that would require minimal removal of existing landscaped structures are also available on the property. Additionally, the applicant could choose to remove one of the existing accessory structures, which include two guest units, a studio, and a playhouse, to accommodate the development of a barn. In particular, the location of the guest unit approximately 65 feet southwest of the main residence would be ideal, as it is a relatively flat or gently sloping area, is approximately 250 feet from the stream located in the northeast corner of the property, and meets the minimum Environmental Health Department setback from habitable structures.

**c. Reduction in Size/Alternative Design of the Proposed Development**

The proposed development could be redesigned or reconfigured to avoid impacts to the subject oak tree. The size of the development could be reduced, the structure could be reoriented, or the footprint could be reconfigured to locate the proposed development outside of the protected zone of the subject oak tree. The location of the current proposal results in an 18-foot encroachment into the protected zone. It is feasible to redesign the proposed development to avoid this encroachment.

**d. No Project Alternative**

Another feasible alternative is the no project alternative. There is no entitlement to develop a barn on this site if it does not comply with the Malibu LCP. The site already contains a 6,220 sq. ft. residence, two guest units, a studio, playhouse, pool, patio, walkways and landscaping, which provide a reasonable use of the applicant's property. Under the Malibu LCP, residential development that results in adverse impacts to coastal resources is allowable under certain circumstances where protection of the resources would deprive the applicant's property of all reasonable economic use, but is limited to a 10,000 sq. ft. development area. However, the denial of another accessory structure on this site that is already developed with 6,843 sq. ft. of building coverage and 18,124 sq. ft. of pavement coverage does not deprive the property of all reasonable economic use and is, therefore, not a taking. Therefore, where the development of

an accessory structure results in significant impacts to sensitive resources, and does not comply with the LCP, as in this case, the project must be denied.

Therefore, for the reasons discussed above, the Commission finds that the proposed development has not been sited or designed in a manner that would avoid significant adverse impacts to native oak tree resources, and is, therefore, not consistent with the Malibu LCP.

**D. Violation**

Unpermitted development has taken place prior to submission of this permit application including development of retaining walls, 48 cubic yards of cut/fill, and the installation of a 5,000-gallon water tank. The applicant requests "after the fact" approval for the unpermitted development described, and approval to construct a new 502 square foot pre-manufactured barn and an irrigation water well. The subject permit application addresses the unpermitted development, as well as the new development proposed in the subject application.

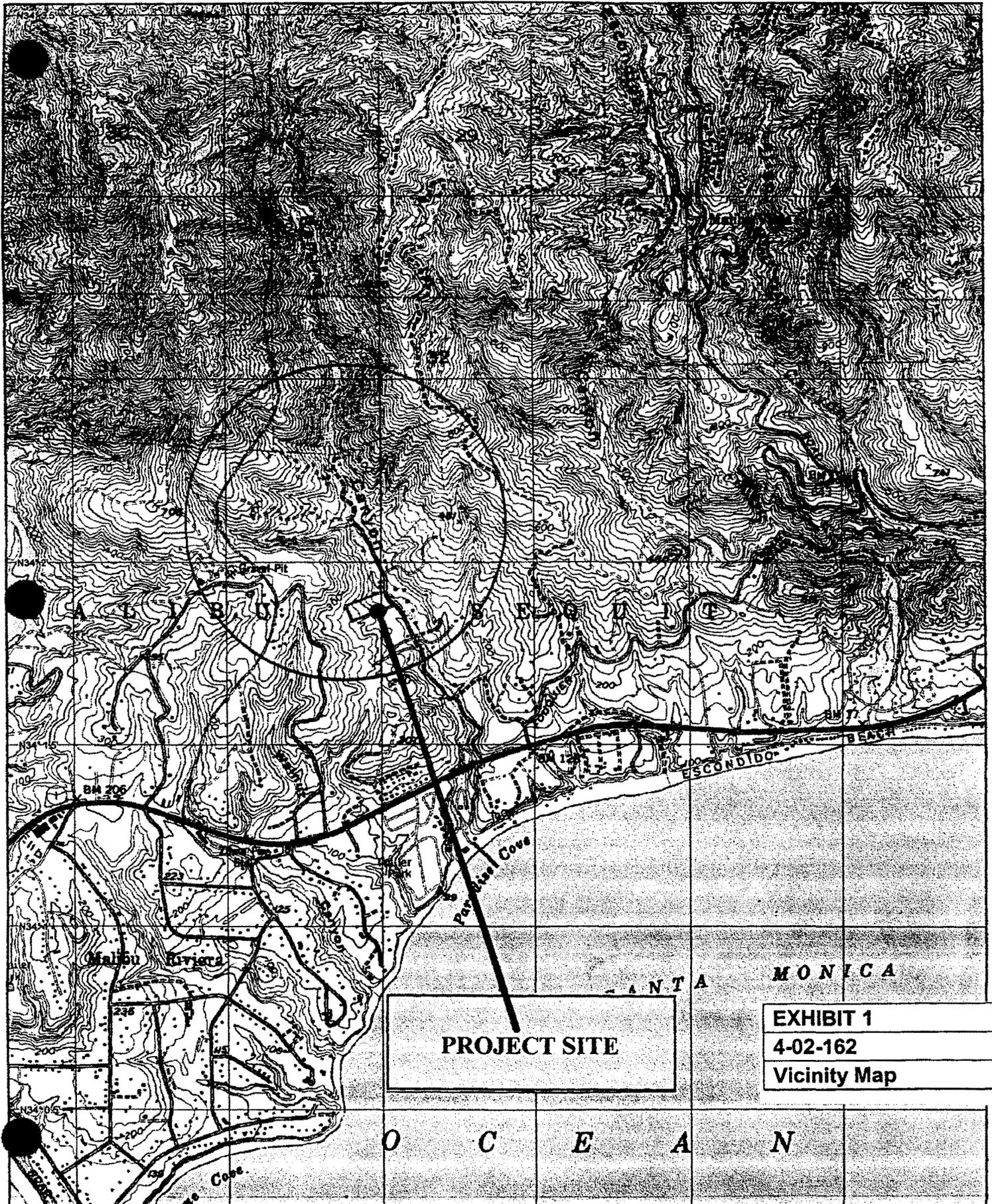
Consideration of this application by the Commission has been based solely upon the Malibu LCP. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject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

**E. California Environmental Quality Act**

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 to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

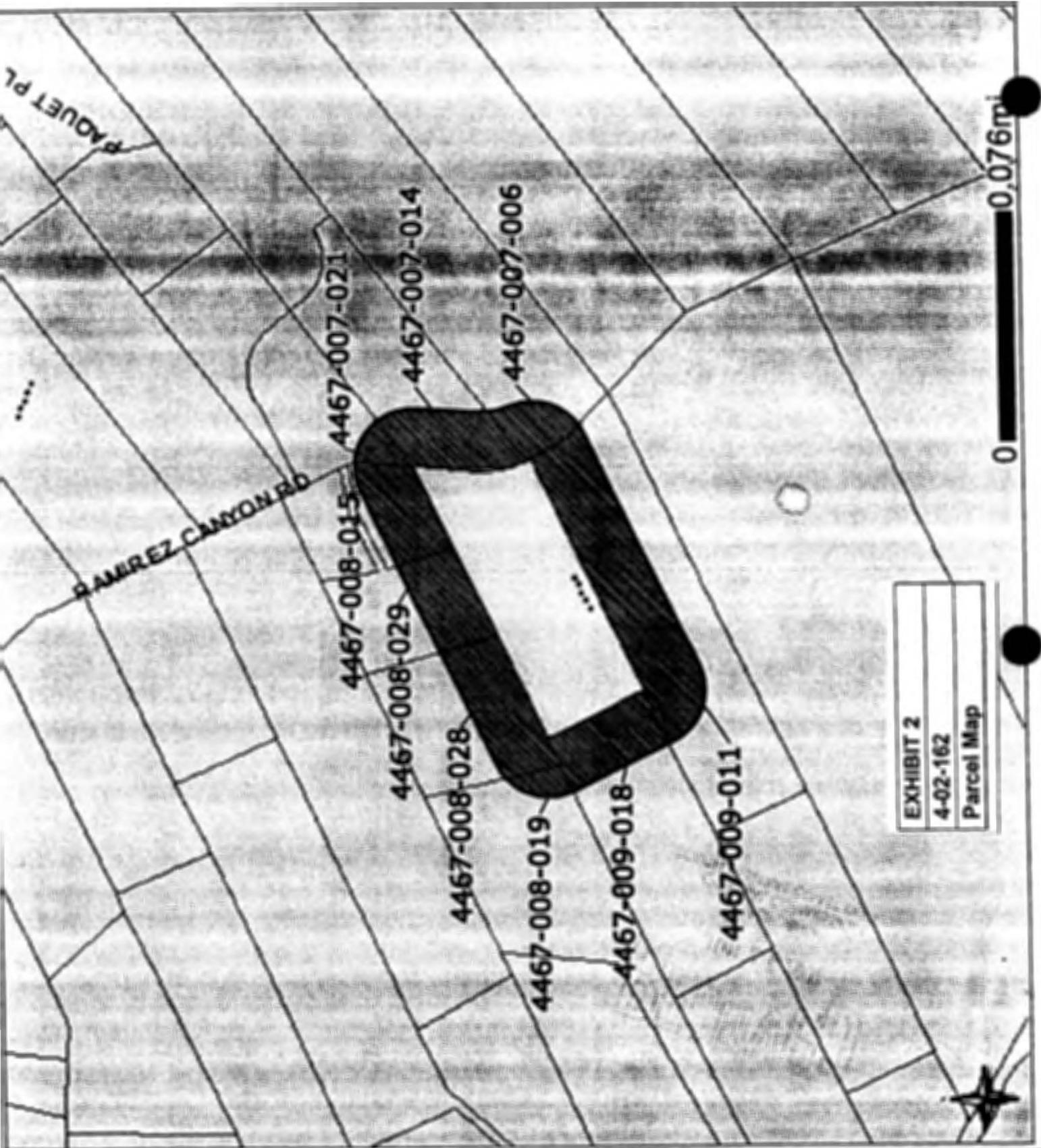
The Commission finds that the portion of the proposed project consisting of development of a 502 square foot pre-manufactured barn, retaining walls and 48 yards of cut/fill would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970 and that there are feasible alternatives that would not have significant impacts on native oak tree resources. Therefore, the portion of the proposed project that includes the development of a 502 square foot pre-manufactured barn, retaining walls and 48 yards of cut/fill is determined to be inconsistent with CEQA and the Malibu LCP.

In addition, the Commission also finds that the portion of the proposed project including the development of an irrigation water well and a 5,000 gallon water tank will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the development of an irrigation water well and a 5,000 gallon water tank has been adequately mitigated and is determined to be consistent with CEQA and the Malibu LCP.



**PROJECT SITE**

**EXHIBIT 1**  
**4-02-162**  
**Vicinity Map**



PAQUET PL

RAUREZ CANYON RD

4467-007-021

4467-007-014

4467-007-006

4467-008-015

4467-008-029

4467-008-028

4467-008-019

4467-009-018

4467-009-011

EXHIBIT 2
4-02-162
Parcel Map

0 0.076mi

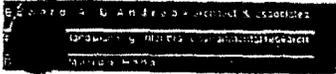




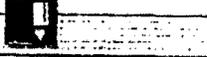








Bruce Malinowski Landscape Architect



**SCHMITZ & ASSOCIATES**

A joint development services group representing:

Schmitz & Associates  
Edward A D'Andrea/ Architect AIA

Bruce Malinowski/ L. Arch.  
Brandon Lewis/ Archeologist

29350 West Pacific Coast Highway, unit 12, Malibu CA 90265 310 589 0773  
please make all checks payable to Schmitz & Associates

November 19, 2002

California Coastal Commission  
South Central Coast Area  
89 South California St. Suite 200  
Ventura, Ca 93001

Attn: Tracy Duffey, Coastal Program Analyst  
Jack Ainsworth, Supervisor of Planning and Regulation

Re: **CDP 4-02-162**  
**5965 Ramirez Canyon, Malibu (Jacobson)**  
**Oak Tree Inspection**

RECEIVED

NOV 25 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Dear Ms. Duffey / Mr. Ainsworth:

This letter is in response to your request for a field inspection of an oak tree on a property located at 5965 Ramirez Canyon, Malibu, CA 90265.

This Coast Live Oak (*Quercus Agrifolia*) is a single trunk habit with uniform upward branching commencing at seven to eight feet above grade. The tree measures approximately 27" caliper at 52" above grade with a circumference of about 85". The spread is approximately 40' with a very symmetrical crown. The tree is located on a slope of approximately 25% steepness. There are no exposed roots, which indicate deep soils within the root zone.

The tree appears to have been planted as an ornamental and has received abundant watering from an existing irrigation system. The tree does not have the shape or habit of a native oak. The muscled appearance of the trunk and the fast growth rate of branches are indicative of a tree that has been "forced" by water and fertilizer. The foliage is almost perfect with no sign of leaf scorch or other commonly occurring natural conditions. The proximity of a 4' high masonry unit wall has had no apparent negative

EXHIBIT 7  
4-02-162  
Applicant's Oak Tree  
Inspection

effect on the tree and there is no reason to assume that it will affect the tree in the future if current drainage patterns are maintained.

The site has been historically terraced with stone walls and graded for paved walking paths and ornamental landscaping.

Please feel free to contact me at the address and number above if you need further information regarding this matter.

Sincerely,



Bruce Malinowski  
Landscape Architect / Forester





*Via Hand Delivery*

January 7, 2003

California Coastal Commission  
South Central Coast Area  
89 South California St., Suite 200  
Ventura, Ca 93001

RECEIVED

JAN 07 2003

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Attn: Tracy Duffey, Coastal Program Analyst

Re: **CDP 4-02-162**  
**5965 Ramirez Canyon, Malibu (Jacobson)**

**Development of a 502 sq ft Barn with Retaining Wall, 48 cy Cut and Fill, Irrigation Water Well and 5,000 Gallon Water Tank**

Dear Ms. Duffey:

We have had the opportunity to analyze the 1986 aerial photograph of the subject property, which the Coastal Commission staff is relying on as evidence that the oak tree of interest is a "native" oak and, thus, grounds for denying the above-referenced proposed project. After careful analysis, it appears that the dense image/foliage identified in the 1986 aerial by the Coastal Commission staff as the subject oak tree is, in fact, not the subject oak tree.

The subject oak tree is the much smaller image located about 20 feet to the east of the alleged oak tree. The attached exhibit A clearly illustrates the subject oak tree in relation to the proposed barn.

As you can see, in 1986 (about 16 years ago), the oak tree was significantly smaller than its current size, evidence that it was planted as ornamental landscaping after the property was originally developed in 1955. According to Mr. Bruce Malinowski, Forester and Landscape Architect, the significant increase in canopy size over this period of time is not possible for a native oak tree. Please see attached exhibit B (aerial photo, 2001, obtained from the Coastal Commission) and exhibit C (expert evaluation of Bruce Malinowski).

In conclusion, the oak tree is clearly not a "native" specimen and is therefore not subject to the Native Tree Protection Ordinance as set forth in Chapter 5 of the 2002 Malibu LCP Local Implementation Plan. Accordingly, we respectfully request that Coastal staff reconsider its position and recommend approval of the project as proposed.

EXHIBIT 8

4-02-162

Applicant's Aerial  
Photography  
Analysis

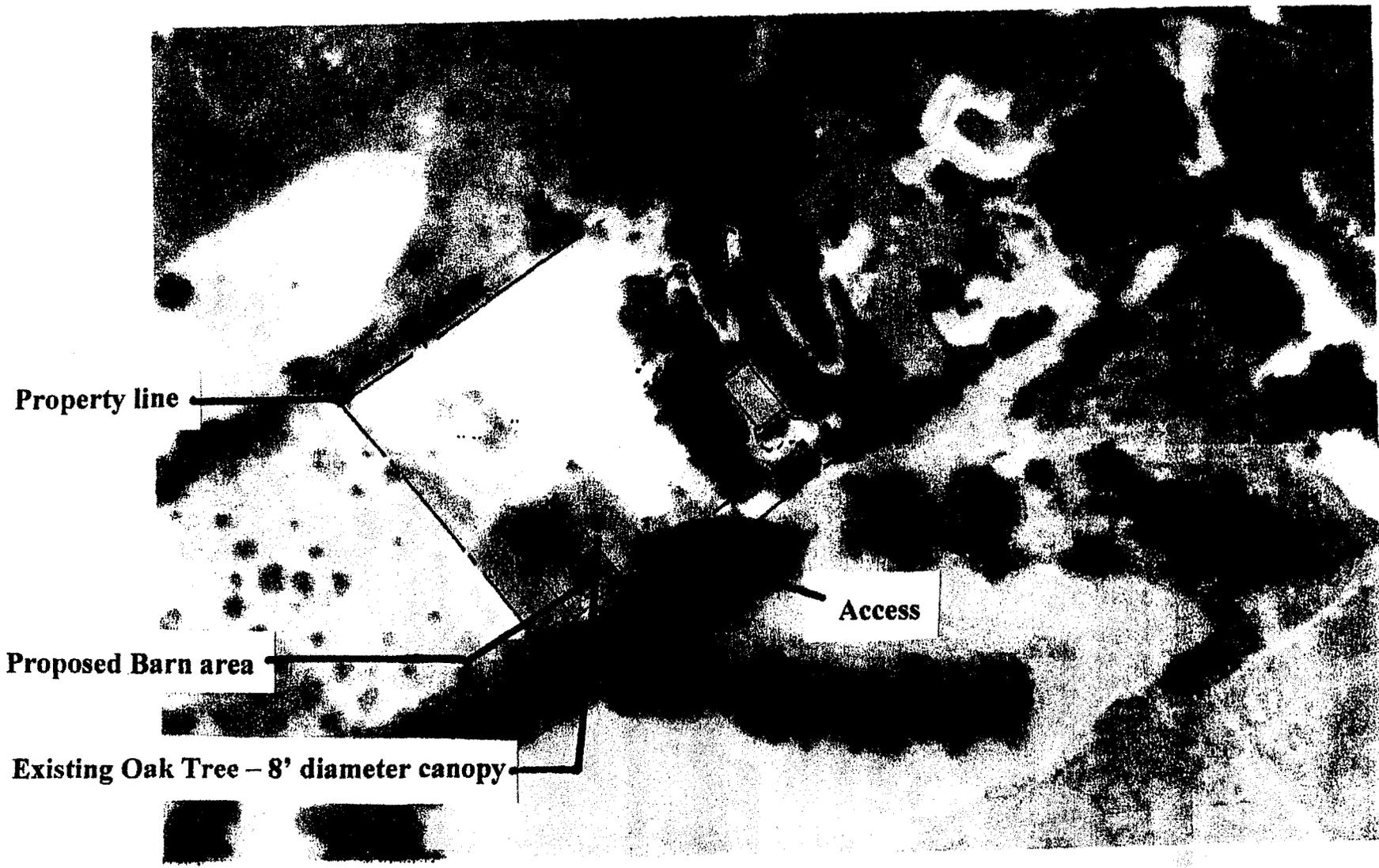
Thank you for your time and attention to this matter. Please feel free to call me with any questions or comments you may have.

Very truly yours,

SCHMITZ & ASSOCIATES, Inc.

By:   
Thomas F. Rainey  
Senior Planner

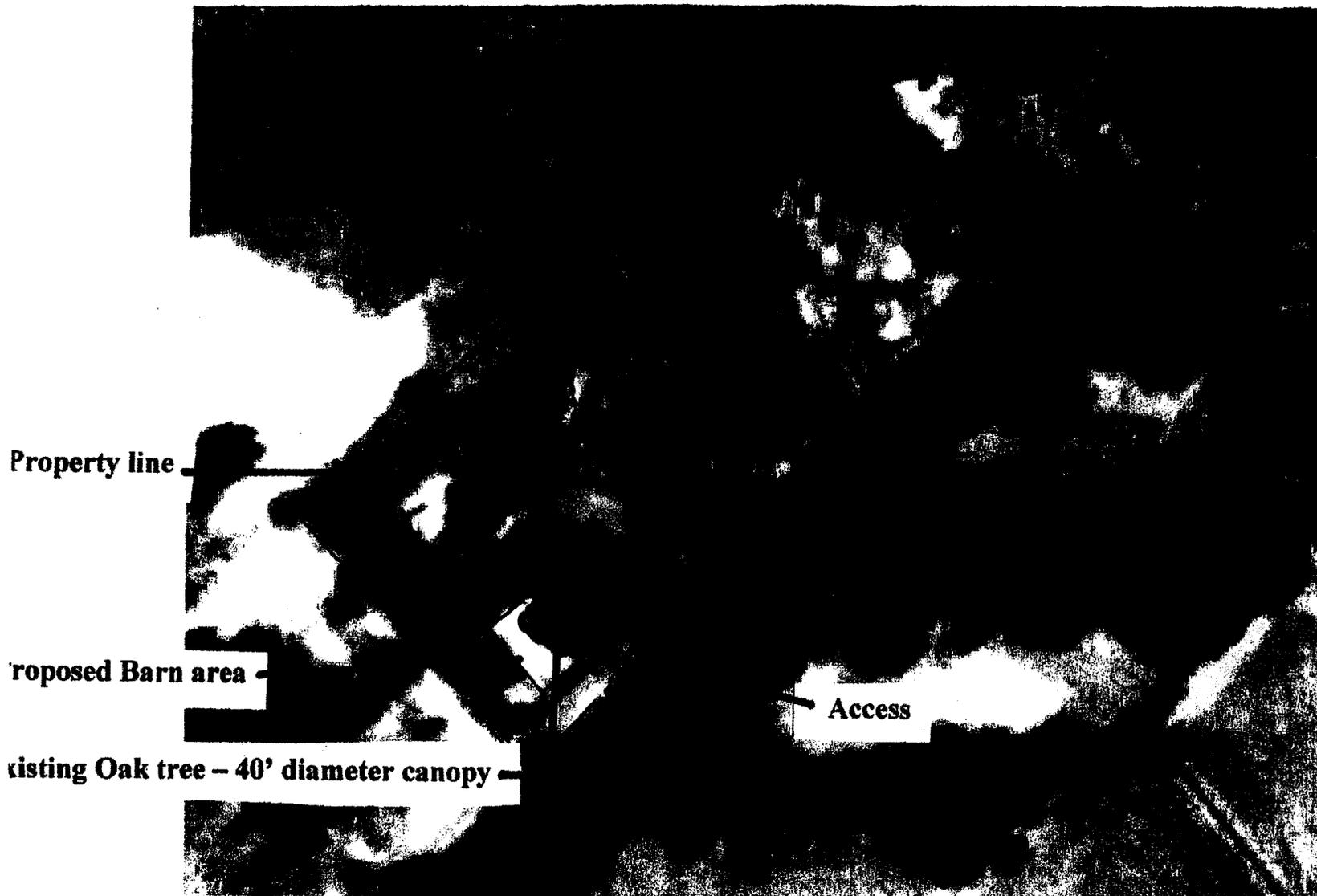
cc: Jack Ainsworth, Supervisor of Planning and Regulation  
Richard and Mary Jacobson



**JACOBSON PROPERTY**  
5965 Ramirez Canyon  
Malibu, Ca. 90265

Scale: 1"=80'

**EXHIBIT "A" - 1986 PHOTO**



**JACOBSON PROPERTY**  
5965 Ramierez Canyon  
Malibu, Ca. 90265

Scale 1"=80'

**EXHIBIT "B" - 2001 PHOTO**

**Bruce Malinowski Landscape Architect**



29350 West Pacific Coast Highway Suite #12 ♦ Malibu, California 90265  
Phone (310) 589-0773 cell (310) 924-6109 ♦ Fax (310) 589-0353

This letter is in response to your request for a field inspection and evaluation of an oak tree on the Jacobson property located at 5965 Ramirez Canyon, Malibu, Ca. 90265.

This field trip was conducted on 11-17-02 by myself. At that time I measured the tree and evaluated as to its growth habit and probable origin.

This Coast Live Oak (*Quercus agrifolia*) is a single trunk habit with uniform upward branching commencing at seven to eight feet above grade. The tree measures approximately 27" caliper at 52" above grade with a circumference of about 85". The spread is approximately 40' with a very symmetrical crown. The tree is located on a slope of approximately 25 % steepness. There are no exposed roots which indicate deep soils within the root zone.

This tree appears to have been planted as an ornamental and has received abundant watering from existing irrigation system. The tree does not have the shape or habit of a native oak. The muscled appearance of the trunk and the fast growth rate of branches are indicative of a tree that has been "forced" by water and fertilizer. The foliage is almost perfect with no sign of leaf scorch or other commonly occurring natural conditions.

I was shown two photos of the Jacobson site depicting present conditions and conditions from 1986. The tree in the 1986 photo has a canopy diameter of approximately 8'. The tree presently has a canopy diameter of 40' as mentioned above. The only possible way this tree could have grown to this size in 16 years would be with regular irrigation and fertilization. This growth rate is indicative of an oak tree raised in a nursery. **I can therefore state that this tree is not a native oak.**

Please call me if you have any questions.

Sincerely;

Bruce Malinowski  
Arborist # 635456



*Via Facsimile and FedEx*

November 22, 2002

RECEIVED

NOV 25 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission  
South Central Coast Area  
89 South California St., Suite 200  
Ventura, Ca 93001

Attn: Tracy Duffey, Coastal Program Analyst

Re: **CDP 4-02-162**  
**5965 Ramirez Canyon, Malibu (Jacobson)**

**Development of a 502 sq ft Pre-manufactured Barn and Irrigation Water Well on a 1.91-Acre Legal Lot with an Existing 6,220 sq ft Single-Family Residence, Existing 464 sq ft Guest House, Existing 864 sq ft Guest House, Existing 36 sq ft Play House, Existing 348 sq ft Studio, Existing Pool, Patio, Terraced Walls, Walkways, Landscaping and Fencing.**

Dear Ms. Duffey:

This letter memorializes the discussion between Jack Ainsworth and Don Schmitz on November 18, 2002 with respect to the above-captioned project and further documents why a staff recommendation of approval is warranted. Therefore, we will not be submitting revised plans for this project.

It is important to note that the property was terraced and heavily landscaped, as you have seen, prior to the Coastal Act when the existing residence was built in 1955. Likewise, the subject oak tree of concern has existed (thrived) in its current location amongst the disturbed/improved grounds for many years. In fact, according to Forester/Licensed Landscape Architect Bruce Malinowski, the tree "appears to have been planted as an ornamental" and is in perfect health regardless of the proximity of the adjacent garden wall (See attached letter from Bruce Malinowski). The garden wall associated with the proposed development is essentially an "addition" to the terraced property.

Furthermore, pursuant to Chapter 8--Grading Ordinance, Section 8.3 Development Standards of the LIP, "Development shall be planned to fit the topography, soils, geology, hydrology, and other conditions existing on the site so that grading is kept to an absolute minimum." Relocating the barn would require creating an area with slopes greater than 3:1, which is precluded by the LIP,

EXHIBIT 9

4-02-162

Correspondence  
Letter

and, thus, not in compliance with the Chapter 8 policies and other germane policies of the LCP. The current location of the proposed development, on the other hand, requires a mere 45 cubic yards of grading (much less than that required to create a suitable area for the barn elsewhere on the property), and, as noted in the July 3, 2001 Geologic and Geotechnical Engineering Evaluation prepared by Gold Coast GeoServices, Inc. (see case file), "Slopes in the area of the planned barn site are gentle to very gentle, about from 4 to 6 (horizontal) to one (vertical) slope ratio." As proposed, grading is kept to an absolute minimum, the building site is the most appropriate location on the property, and relocating the barn would be unfeasible.

Lastly, it has been substantiated by the City of Malibu (pursuant to the City's approval in concept dated June 19, 2002) that there is no other feasible location on the property to develop the barn. The barn, as proposed, is sited as far as possible from the stream that traverses the northeast corner of the property, and, pursuant to the Environmental Health Department's minimum setback requirements, at an appropriate distance from all habitable structures, including the guest house located in the middle of the property.

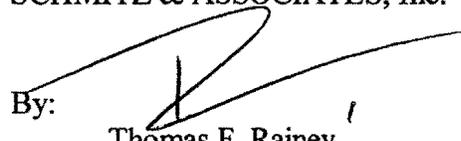
Based on the forgoing discussion and information provided herein, we are hopeful that the issues of concern have now been clarified, and, as such, staff will recommend approval of the project as proposed.

Thank you for your time and attention to this matter. Please feel free to call me with any questions or comments you may have.

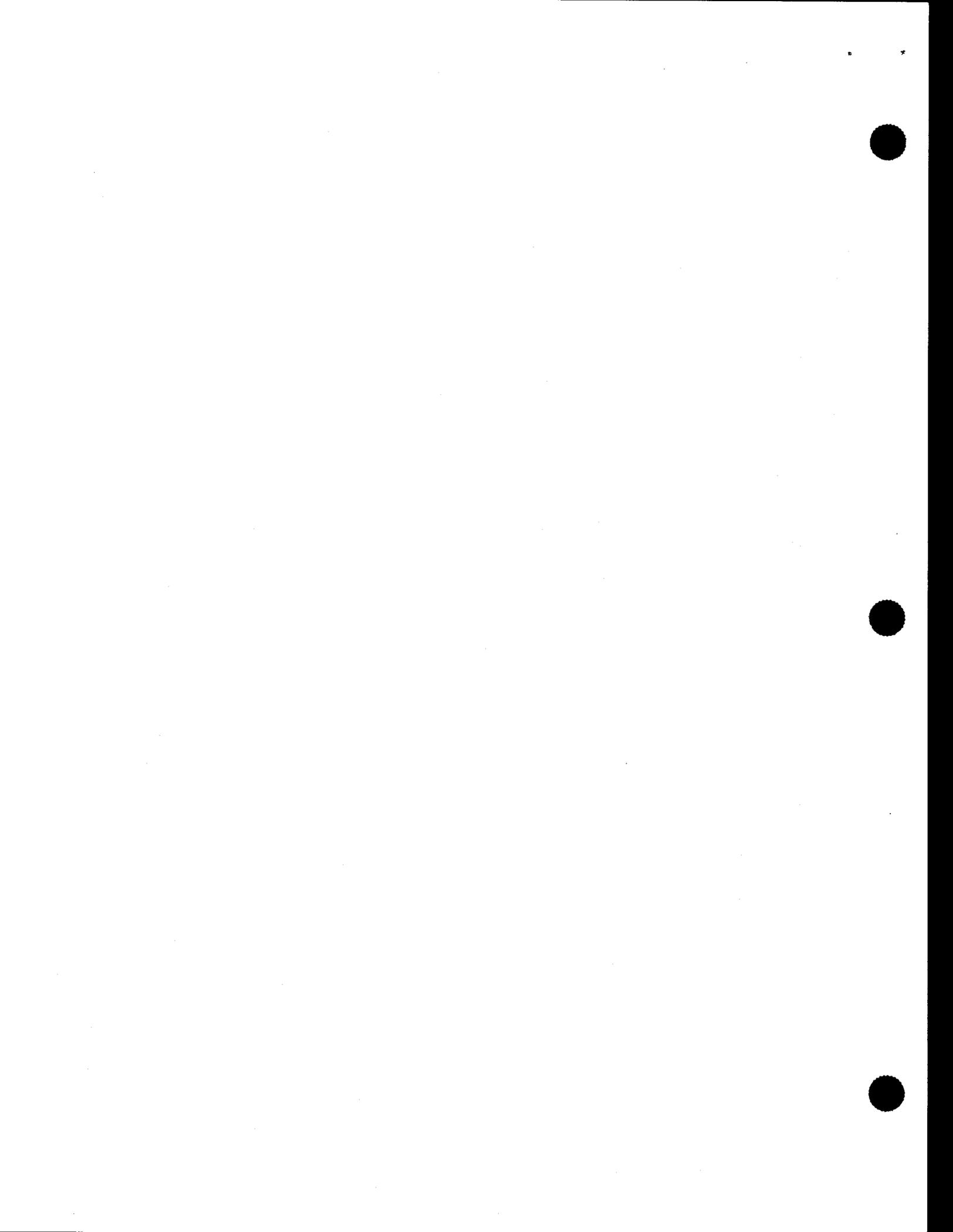
Very truly yours,

SCHMITZ & ASSOCIATES, Inc.

By:

  
Thomas F. Rainey  
Senior Planner

cc: Jack Ainsworth, Supervisor of Planning and Regulation  
Richard and Mary Jacobson





**EXHIBIT 10**  
**4-02-162**  
**Oak Tree Photographs**

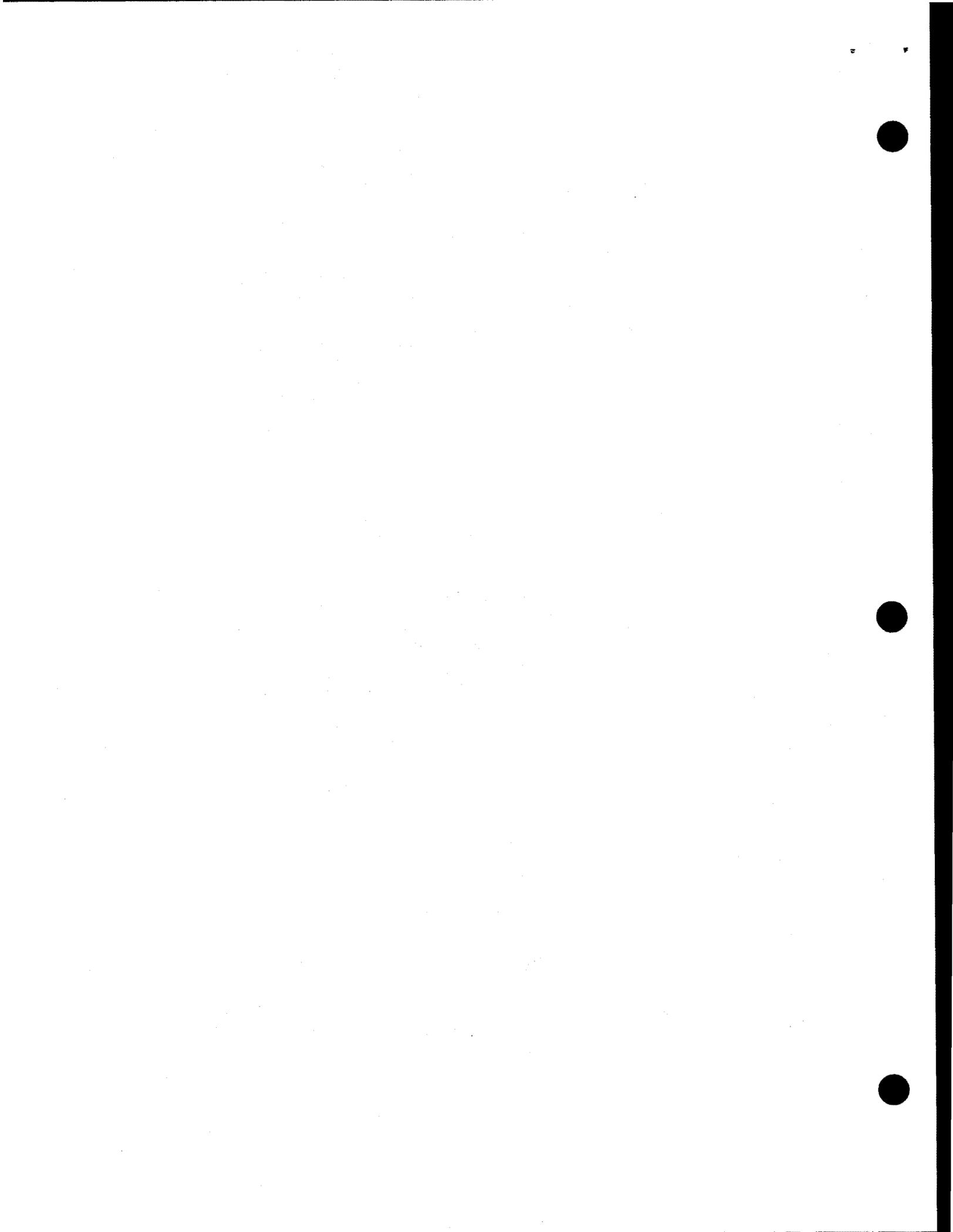


EXHIBIT 11  
4-02-162  
1986 Aerial Photograph



Project  
Location



