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STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION No.: 4-02-148

APPLICANT: Sheila J. Rosenthal

PROJECT LOCATION: 549 Live Oak Circle Drive, Calabasas, Los Angeles County

PROJECT DESCRIPTION: Request for after-the-fact approval for the construction of a 260-foot long 3-foot wide pathway supported by a 2-3 foot high concrete block retaining wall with four benches integrated into the wall, an at grade timber stairway, an 30 foot long concrete and rock retaining wall with integrated bench, irrigation system, 98 cubic yards of grading (49 cu. yds. cut, 49 cu. yds. fill). Remove 80 feet of as-built concrete block retaining wall and pathway and reduce height of wall approximately 8-inches, remove three as-built concrete and rock retaining walls and bench in and adjacent to Cold Creek, remove concrete grouting on as-built stairway, remove as-built 4-foot high 2-foot wide concrete and rock property monument in Cold Creek, and restore natural grade and revegetate areas disturbed by demolition of as-built development, and plant ten oak trees to mitigate the encroachment of a retaining wall into the protected zone of five oak tree. The applicant further proposes to color the proposed 260-foot long retaining wall a color that is compatible with the surrounding environment.

Lot Area: 3.14 acres
Maximum Height Above Finished Grade: Three feet

LOCAL APPROVALS RECEIVED: County of Los Angeles, Environmental Review Board, September 17, 2001; County of Los Angeles, Department of Public Works, October 16, 2000; and County of Los Angeles, Department of Regional Planning, October 5, 2000.

SUBSTANTIVE FILE DOCUMENTS "Supplemental Geotechnical Engineering Letter," West Coast Geotechnical, October 29, 2001; letter from County of Los Angeles, Fire Department, September 17, 2001; "Property at 549 Live Oak Circle," Cy Carlberg, Consulting Arborist, September 15, 2001; letter from County of Los Angeles Fire Department, July 13, 2000; "Supplemental Geotechnical Engineering Letter," West Coast Geotechnical, April 10, 2001; letter from Alan Robert Block, Esq., April 6, 2001; "Structural Engineering Comments," L. Liston & Associates, Inc., December 27, 2000; "Addendum Geotechnical Engineering Report," West Coast Geotechnical, August 21, 2000; revised CDP Application, 4-99-267, submitted June 29, 2000; "Footpath," L. Liston & Associates, Inc., June 26, 2000; "Limited Geotechnical Engineering Report," West Coast Geotechnical, June 12, 2000; Notice of Violation, County of Los Angeles, Department of Public Works, Building and Safety Division, November 17, 1999; "Geologic and Soils Engineering Investigation," Kovacs-Byer and Associates, Inc., July 21,

1978; "Oak Trees: Care and Maintenance," County of Los Angeles, Department of Forestry; Coastal Development Permits 5-90-661 (Allen), 5-91-328 (Contis), 4-99-192 (Mariposa Land Company Ltd.), 4-00-004 (Daly), 4-00-114 (Newlon), 4-00-190 (Trey Trust); 4-00-191 (Trey Trust), and 4-00-192 (Trey Trust); and the certified Malibu/Santa Monica Mountains Land Use Plan.

Staff Note

Due to Permit Streamlining Act Requirements the Commission must act on this permit application at the March 2003 Commission meeting.

Summary of Staff Recommendation

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

Part 1 - to approve the request for an as-built 260-foot long 3-foot wide pathway supported by a 2-3 foot high concrete block retaining wall with four benches integrated into the wall, an as-built at grade timber stairway; irrigation system; 98 cubic yards of grading (49 cu. yds. cut, 49 cu. yds. fill); remove 80 feet of as-built concrete retaining wall and pathway from hillside and reduce height of the wall, remove three as-built concrete and rock retaining walls in and adjacent to Cold Creek, remove concrete grouting on as-built stairway, remove as-built 4 foot high 2-foot wide concrete and rock property monument in Cold Creek; and restore natural grade and revegetate areas disturbed by demolition of as-built development and demolition activities.

Part 2 - to deny the request for an as-built 30 foot long 2-4 foot high concrete and rock retaining wall with integrated bench.

Staff is recommending approval of the proposed development as described in Part 1 above. These portions of the proposed development, as conditioned below, are in conformance with the development policies of the Chapter three policies of the Coastal Act. Staff is recommending the following special conditions to bring the project into conformance with the Chapter Three Policies of the Coastal Act: (1) Revised Revegetation Plan, (2) Oak Tree Monitoring Plan, (3) Removal Of Concrete Debris and (4) Color Restriction, (5) Deed Restriction (6) Condition Compliance and (7) Revised Site Plan.

Staff recommends denial of the proposed 30-foot long 2-4 foot high retaining wall with integrated bench because the development does not conform with environmentally sensitive habitat and water quality policies of the Coastal Act. The Commission previously denied an application to authorize this wall and bench on April 11, 2002. The proposed retaining wall and bench are located within an environmentally sensitive oak woodland habitat (ESHA) and encroaches into the dripline of five oak trees. The proposed retaining wall and bench are not a resource dependent use and therefore is not an allowable use within an ESHA pursuant to Section 30240 of the Coastal Act. In addition, construction of a retaining wall that requires excavation into the root zone or within the canopy of oak trees will adversely impact the health and vigor of the trees which will degrade the ESHA. Furthermore, the loss of oak trees on a hillside could result in increased erosion of the hillside and sedimentation of a nearby stream adversely impacting water quality. The proposed retaining wall and bench are not consistent with resource protection and water quality policies of the Coastal Act. Therefore, staff is recommending denial of the proposed retaining wall and bench.

I. STAFF RECOMMENDATION OF APPROVAL 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:

Staff recommends 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 an as-built 260-foot long 3-foot wide pathway supported by a 2-3 foot high concrete block retaining wall with four benches integrated into the wall, reduce height of the retaining wall, as-built at grade timber stairway; irrigation system and 98 cubic yards of grading (49 cu. yds. cut, 49 cu. yds. fill); remove 80 feet of as-built concrete block retaining wall and pathway from hillside, remove three as-built concrete and rock retaining walls in and adjacent to Cold Creek, remove concrete grouting on as-built stairway, remove as-built 4-foot high 2-foot wide concrete and rock property monument in Cold Creek; and restore natural grade and revegetate areas disturbed by demolition of as-built development; and adopts the findings set forth below on the grounds that the development, as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 an as-built 30 foot long 2-4 foot high concrete and rock retaining wall with integrated bench, on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit 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. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. **Revised Revegetation Plan**

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised revegetation plan that includes the following:

- a. Detailed statement of goals and performance standards for revegetation including standards such as: expected percent plant cover, plant density and plant height within a five year time frame; eradication of non-native vegetation within areas subject to revegetation; minimization of the amount of artificial inputs such as watering or fertilizers that shall be used to support the revegetation area; soil stabilization measures should erosion occur within the revegetation area: etc.
- b. Monitoring and maintenance program that includes at a minimum the following provisions. The property owner shall submit, on an annual basis for a period of five years a written report, prepared by a qualified resource specialist evaluating the compliance with the performance standards. The annual reports shall include recommendation and requirements, if necessary, for additional revegetation in order to meet the performance standards. The reports shall include photographs taken from pre-designated locations indicating the progress of recovery at the site. At the end of the five year period, a final detailed report

shall be submitted for the review and approval of the Executive Director, If this report indicates that the restoration has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental plan to compensate for these portions of the original program that were not successful. The Executive Director shall determine if a revised or supplemental revegetation plan must be processed as an amendment to the permit.

2. Oak Tree Monitoring

On an annual basis for a period of ten years the applicant shall submit, for the review and approval of the Executive Director, an annual monitoring report on the health of oak trees identified as T7 and T4, in the arborist's report, prepared by Cy Carlsberg, dated 9/15/2001. Should the trees be lost or suffer worsened health or vigor as a result of the proposed development, replacement seedlings, less than one year old, grown from acorns shall be planted at a ratio of 10:1 on the subject property. If replacement trees are required, the applicants shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a monitoring program to ensure that the replacement planting program is successful. A replacement oak tree planting and monitoring program shall be processed as an amendment to this permit

3. Removal of Concrete Debris

Concrete debris generated from demolition activities shall be transported off-site to appropriate dumpsite. Prior to the issuance of the coastal development permit the applicant shall submit to the Executive Director the location of the dumpsite.

4. Color Restriction

In order to implement the applicant's offer to color the 260 foot long retaining wall a color that that is compatible with the surrounding environment, prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of the 260 foot long as-built retaining wall authorized by the approval of coastal development permit 4-02-148. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

5. Deed Restriction

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject

property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

6. Condition Compliance

- a) Within 120 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- b) Within 120 days of issuance of this permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall remove upper 80 feet of retaining wall and pathway form hillside; reduce the height of the wall and benches; remove a 30-foot long 2-3 foot high stone and mortar retaining wall located within Cold Creek; remove a 10-foot long 2-3 foot high stone and mortar wall at the base of stairway on bank of Cold Creek; remove an approximate 8-foot long 5-foot high stone and mortar retaining wall/bench on bank of Cold Creek; remove a 35-foot long 2-foot high stone and mortar wall located 40 feet upslope from Cold Creek; remove a 4 foot high 2-foot wide stone and mortar property corner monument located within Cold Creek; and remove the bottom two stairs and landing on bank of Cold Creek and remove concrete mortar on stairway, as shown on Restoration Plan dated 6/17/02 (Exhibit 6). In addition, Within 120 days of issuance of this permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall complete implementation of the proposed Revegetation Plan, prepared by Jack Farrell, dated June 7, 2002, and as required to be revised above pursuant to Special Condition 1 above. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

7. Revised Site Plans

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised site plan that deletes the 30-foot long 2-4 foot high rock and concrete retaining wall with integrated bench located within the dripline of five oak trees.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant requests after-the-fact approval of the construction of a 260-foot long 3-foot wide pathway supported by a 2-3 foot high concrete and rock retaining wall with four benches integrated into the wall ascending a hillside; an as-built at grade timber stairway to the top of the bank of Cold Creek; an as-built 30-foot long 2-4 foot high concrete block retaining wall with integrated bench; irrigation system; and 98 cubic yards of grading (49 cu. yds. cut, 49 cu. yds. fill). In addition, the applicant is proposing to remove 80 feet of as-built concrete retaining wall and pathway from the hillside; remove four as-built concrete block and rock retaining walls in and adjacent to Cold Creek; remove concrete grouting on as-built stairway and bottom two steps; remove an 4-foot high 2-foot wide concrete and rock property corner marker monument in Cold Creek, and restore natural grade and revegetate areas disturbed by demolition of as-built development and demolition activities; and plant ten oak trees to mitigate the encroachment of a retaining wall and bench within the canopy and protected zone protected zone of 5 oak trees. The applicant further proposes to color the proposed retaining walls a color compatible with the surrounding environment.

The Commission previously denied a coastal development permit application on this property for a more extensive as-built project than what is now proposed. On April 11, 2002, the Commission denied permit application 4-99-267 for the after-the-fact construction of a 350-foot long, approximately three foot high concrete block retaining wall and approximately three to five foot wide dirt path that zigzagged to the top of a hill, timber and concrete stairway from the top of the bank of Cold Creek to the stream bed below, 4-foot high 2-foot wide property monument in Cold Creek, 5 concrete and rock retaining walls along the stream bed of Cold Creek and within the canopies of several oak trees, installation of an irrigation system, and approximately 97.8 cubic yards of grading (48.9 cubic yards cut/excavation and 48.9 cubic yards fill). The Commission denied the permit application on the basis it would adversely impact an environmentally sensitive riparian habitat in and along Cold Creek; degrade portions of the surround environmentally sensitive oak woodland habitat; and create adverse visual impacts from a scenic highway and public viewing areas. In addition, the Commission found there were feasible alternatives to the proposed project that would adversely impact coastal resources and were not consistent with the Chapter Three policies of the Coastal Act.

The applicant submitted a new permit application (4-02-148) on June 13, 2002 for the revised development proposal. The applicant requested the Commission waive the permit application fees because she believed the fee was excessive, punitive and contrary to the spirit and intent of the Commission expressed during the hearing on the permit that was previously denied. On September 9, 2002 the Commission denied the applicant's request to waive the permit application fee.

The applicant has worked with Commission staff to revise the project description to remove the development in and adjacent to the Cold Creek and restore the areas

disturbed by this development. In addition, the applicant revised the design of the pathway and retaining walls supporting the pathway that traverse a hillside on the property to minimize the visual impacts of this development. However, the applicant is requesting to retain a 2-4 foot high 30-foot long as-built concrete and rock retaining wall with integrated bench that is within the canopy and protective zones of five oak trees. This retaining wall is located adjacent to an existing trail that traverses the site approximately 70 feet upslope from Cold Creek. This retaining wall and bench structure is located within the area designated as an oak woodland ESHA and encroaches into the driplines and protected zones of five Coast Live Oak trees ("T-24," "T-25," "T-26," "T-27," and "T-28.") Three of these oak trees are 25 feet in height and two are 15 feet in height. They range in spread from 15 to eight feet and in diameter from 12 to 4.5 inches. The retaining wall and bench structure is located approximately 12 feet upslope from three of the oak trees, 16 feet downslope from one oak tree, and immediately adjacent to the trunk of one oak tree, which caused root pruning, according to the consulting arborist's report. The applicant is also proposing to move the retaining wall one foot further from the trunk of the nearest oak tree.

The subject site is approximately 3.14 acres and is located at 549 Live Oak Circle Drive, just north of Pioma Road and east of Las Virgenes Road and Malibu Canyon Road, in the Calabasas area of Los Angeles County (Exhibits 1, 2, and 3). The lot is situated at the terminus of Live Oak Circle Drive on the eastern side of Cold Creek on the southwest flank of a northwest trending, secondary ridge. Slope gradients range from 8:1 to as steep as 1:1 (horizontal to vertical). Vegetation consists of a riparian oak woodland area, scrub oaks, shrubs, and grasses. Drainage from the site is by sheet flow runoff toward Cold Creek. The proposed development is after-the-fact in nature and has already been constructed without the benefit of a Coastal Development Permit ("CDP"). With the exception of the proposed after-the-fact development, the subject site is undeveloped and does not maintain any residential or other structures. There are residential structures located on the adjacent properties to the south and east.

A portion of the subject site was specifically designated by the Commission in the 1986 certified Malibu Santa Monica Mountains Land Use Plan ("LUP") as "oak woodland environmentally sensitive habitat area" ("ESHA"). The oak tree habitat is rich on the subject site, in part, due to the fact that Cold Creek traverses the site and provides for riparian habitat. Cold Creek enters the subject site at the northwestern end and exits the site at the southwestern end (Exhibits 4). Further, Cold Creek, including the channel and riparian vegetation on site, is designated as an ESHA by the certified LUP and as a perennial blue-line stream by the United States Geologic Service. Additionally, the project site is also located approximately one quarter of a mile south of the Cold Creek Management Area, which was also established under the certified LUP.

The area surrounding the project site is rural in character, with wide-open spaces and vistas, and some scattered residential development. A large network of publicly owned lands and trails in the region adds to this area's character. For example, Malibu Creek State Park is located to the west of the subject site and National Park Service land is located to the southeast. The Backbone Trail passes to the south of the subject site and the Malibu Creek Trail also passes to the west of the subject site, for example. Those areas within the vicinity of the project site that are not publicly owned land are

developed with single family residences in a manner that has preserved the rural character of the surrounding area. Further, in reflection of the scenic character of this area, Malibu Canyon Road (to the west of the subject site) and Piuma Road (to the south and southeast of the subject site) are both designated as Scenic Highways under by the LUP (Exhibit 3). Additionally, there are numerous public vista points along those roads and scenic elements within this area.

The subject site is also within an area that was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner which will preserve and enhance its scenic, natural, and historical setting and its public health value as an air shed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public.¹" The SMMNRA is unique in that it is checkered with large tracts of parkland, including numerous National Park Service Land, State Parks and Beaches, Los Angeles County Parks and Beaches, City of Malibu Parks, and various other preserves. The Santa Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo Valleys. Los Angeles County is populated by well over nine million people, most of who are within an hour's drive of the Santa Monica Mountains.² Within the SMMNRA, the Santa Monica Mountains create rugged open spaces, jagged rock outcroppings, and primitive wilderness areas, in addition to homes, ranches, and communities. The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban settings and experiences.

In addition, the applicant has stated that she intends to propose the construction of a single-family residence in an area that was previously approved for residence under coastal development permit P-8-16-78-3892. The permit was for the construction of a two-story, four-bedroom single-family residence with an attached two-car garage located 25 feet and four inches above the centerline of Live Oak Circle on September 25, 1978. Although the address for that CDP was listed as 547 (rather than 549) Live Oak Circle, the subject site was the parcel on which that CDP was approved. Although that CDP was issued on April 12, 1979, the CDP expired, as the work authorized on that permit did not commence within two years from the date of the Commission's vote upon the application.

The special conditions to CDP P-8-16-78-3892 included: 1) revised plans which indicate that no development shall be located within 50 feet from the bank of the riparian area of Cold Creek; 2) recordation of a deed restriction to include geology and soils reports as a part of the chain of title for the property; 3) recordation of a deed restriction prohibiting any development or riparian vegetation removal within 50 feet from the bank of Cold Creek to protect habitat value; 4) plans for a drainage system to dispose of roof and surface runoff into gravel filled wells or retention devices that maintain a rate of discharge at the level that existed prior to development-the use of overland storm channels is not permitted; 5) revised plans to minimize landform alteration; 6)

¹ Public Law 95-625.

² Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 34.

recording of a deed restriction dedicating a 10 foot wide strip on the east side bank of Cold Creek along the entire length of property, from north to south, on which a present trail exists, to any public agency; and 7) recording of a deed restriction noting that land divisions on the subject site are not permitted until the LCP permits a higher intensity use.

B. Environmentally Sensitive Resources and Water Quality

Section 30107.5 of the Coastal Act states:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233(a) of the Coastal Act states, in part:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal dependent industrial facilities . . .*
- (2) Maintaining existing . . . navigational channels . . .*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities . . .*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities . . . that provide for public access and recreational opportunities.*

- (5) *Incidental public service purposes . . .*
- (6) *Mineral extraction . . . except in environmentally sensitive areas.*
- (7) *Restoration purposes.*
- (8) *Nature study, aquaculture, or similar resource dependent activities.*

Section 30236 of the Coastal Act states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

In addition, Section 30240 of the Coastal Act states:

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

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

Section 30107.5 of the Coastal Act defines environmentally sensitive habitat area ("ESHA") as any "area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

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

As stated earlier, a portion of the subject site is located within an ESHA and was specifically designated by the Commission-certified Malibu Santa Monica Mountains Land Use Plan ("LUP") as oak woodland ESHA. In addition, as stated previously, the Coastal Act defines an environmentally sensitive area as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." An oak woodland is a unique habitat area that provides food and shelter for wildlife. Acorns from oak trees, for example, are used as a food source by deer, rodents, and various upland birds. In addition, roots of oak trees may often be eaten by pocket gophers. In addition, the overlapping oak tree canopies that are present on the subject site enable various animal species to travel from tree to tree, rather than forcing them to travel on the ground, affording them increased protection from predation. Furthermore, oak trees are often used for wildlife habitat rehabilitation and restoration, in addition to watershed improvement. Due to this biological significance, areas of oak woodlands have been considered ESHA and oak woodland areas, such as that on the subject site, were designated as ESHA under the certified LUP.

The benefits that oak trees and oak woodlands provide are manifold, rendering this resource significant in many respects. For example, in its publication dated September 5, 2000, the California Oak Foundation also lists the many benefits that oak trees and oak woodlands provide, stating:

Direct benefits of oak woodlands and forests include increased water percolation to recharge groundwater; decreased storm runoff from forested lands; healthy soil chemistry and structural integrity; increased biological diversity resulting in decreased pest pressure for agriculture and landscaping. Oak habitats provide nesting and refuge sites for insectivorous birds. When these upland habitats are lost, insect balances in adjacent areas are altered. These imbalances can often result in chronic outbreaks of pests in agricultural areas and other vectors (such as mosquitoes) in urban areas. Oaks are important to owls and stellar jays, to mountain lions and deer, to frogs and tiger salamanders. Oaks throughout the state shade riparian areas and lower water temperatures in streams, thus protecting fish and other aquatic life.

As stated above, oak trees, oak woodlands, and associated habitat areas have an intrinsic aesthetic, environmental, and ecological values. Oak trees provide shade, help to stabilize soil on steep slopes, minimize noise, deflect wind, and filter dust and pollutants from the air³. Oak woodlands also provide habitat for a wide range of wildlife species and corridors to maintain genetic diversity between wildlife populations⁴. Over 300 species of vertebrates and numerous species of birds, amphibians, reptiles, and mammals utilize oak woodlands⁵. Species such as the western bluebird and violet-green swallow, for example, depend on tree cavities to build their nests⁶. Oak woodlands harbor more wildlife species than any other major habitat type in California⁷.

³ *A Planner's Guide for Oak Woodlands*, University of California, Integrated Hardwood Range Management Program, 1993, page 5.

⁴ *Id.* at 6.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 2.

Oak trees and oak woodlands are becoming increasingly rare, however, due to increased direct and indirect impacts from development and other factors, such as "Sudden Oak Death," a pathogen that threatens the lives of oak trees and that has become epidemic in California⁸. Over the past 200 years, human activities have dramatically changed the complexion of oak woodlands and vast acreages have been removed for intensive agriculture, forage production, fuel wood, and urban and residential development⁹. The publication, "A Planner's Guide for Oak Woodlands," states:

It is clearly recognized that the future viability of California's oak woodland resources is dependent to a large extent on the maintenance of large scale land holdings or on smaller multiple holdings that are not divided into fragmented, non-functioning biological units. . . . Today, research suggests that residential development from California's growing human population is the single largest threat to the state's oak woodlands.

This publication goes on to state:

Residential and urban development generally results in a much more fragmented landscape. Once fragmented, the ecological values of these lands may be greatly reduced, negatively impacting wildlife habitats, open space viewsapes and recreational opportunities.

An additional publication prepared by California State Polytechnic University for Los Angeles County, entitled, "Oak Revegetation Strategy," states:

Only a few scattered stands of oak woodland remain intact today, and the surviving patches rarely include the range of plant and animal species that were once common. The steady disappearance of oaks has corresponded with the rapid growth of human settlement that began with establishment of the Pueblo of Los Angeles in 1781. Until then, the relatively small numbers of Native Americans, living in scattered villages in the valleys and foothills, appear to have had little effect on the oak woodlands.

Oak trees and oak woodlands are not only rare and especially valuable due to their role in ecosystems, but they are also sensitive and may be easily disturbed or degraded by human activities and development. This sensitivity is reflected in the publication, "Oak Trees: Care and Maintenance," by the Los Angeles County Department of Forester and Fire Warden in 1989, which states:

Oak trees in the residential landscape often suffer decline and early death due to conditions that are easily 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 help. Improper watering...and disturbance to root areas are most often the causes.

That publication goes on to state:

⁸ *Tracking a Mysterious Killer, The Relentless Spread of Sudden Oak Death*, California Coast & Ocean, Winter 2001-02, Elizabeth F. Cole, page 3.

⁹ *A Planner's Guide for Oak Woodlands*, University of California, Integrated Hardwood Range Management Program, 1993, page 2.

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.

In addition, this publication also addresses the sensitive nature of oak trees to human disturbance, stating:

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 of trenches in the root zone should be avoided. Roots may be cut or severely damaged, and the tree can be killed. . . . Any roots exposed during this work should be covered with wet burlap and kept moist until the soil can be replaced. The roots depend on an important exchange of both water and air through the soil within the protected zone. Any kind of activity which compacts the soil in this area blocks this exchange and can have serious long term negative effects on the trees. . . .

In addition, in recognition of the sensitive nature of oak trees to human disturbance and to increase protection of these sensitive resources, the Los Angeles County Oak Tree Ordinance defines the "protected zone" around an oak tree as follows:

The Protected Zone shall mean that area within the dripline of an oak tree and extending therefrom to a point at least 5 feet outside the dripline or 15 feet from the trunk, whichever distance is greater.

Further, in past permit actions, the Commission has also found that development within the oak tree "protected zone" results in potential adverse impacts to these sensitive resources.

In sum, the environmental significance, increasing rarity, and susceptibility to disturbance from human activities, as detailed above, renders oak woodlands environmentally sensitive habitat area, as defined by Section 30107.5 of the Coastal Act. The oak tree habitat on the subject site is particularly significant, in part, due to the fact that Cold Creek traverses the site and provides for a rich riparian habitat. Cold Creek enters the subject site at the northwestern end and exits the site at the southwestern end. . . Further, as stated previously, Cold Creek, including the channel and riparian vegetation on site, is designated as an ESHA by the certified LUP and as a perennial blue-line stream by the United States Geologic Service. Additionally, the project site is also located approximately one quarter of a mile south of the Cold Creek Management Area, established under the certified LUP.

The applicant submitted a site plan mapping 28 Coast Live Oak trees on the subject site that are adjacent to portions of the as-built development and are within the area designated as oak woodland ESHA on the site within or in close proximity to the riparian canopy adjacent to Cold Creek (Exhibit 4). The applicant has not mapped all of the oak trees that exist on the subject site, but rather only those that are adjacent to the as-built development within the riparian oak woodland ESHA.

As described below, the applicant is proposing to remove the following structures that are within or adjacent to Cold Creek (Exhibits 4 & 5):

- A 30-foot long 2-3 foot high stone and mortar retaining wall located within Cold Creek
- A 10-foot long 2-3 foot high stone and mortar wall on bank of Cold Creek
- A 8-foot long 5-foot high stone and mortar retaining wall/bench on bank of Cold Creek
- A 35-foot long 2-foot high stone and mortar wall located at 40 feet upslope from Cold Creek
- A Stone and mortar property corner monument located within Cold Creek
- Bottom two stairs and landing on bank of Cold Creek and remove concrete mortar on stairway.

The applicant is proposing to remove an unpermitted 30-foot long 2-3 foot high stone and mortar retaining wall that is within Cold Creek. An application to authorize this development was denied by the Commission on April 11, 2002. The wall was constructed around the base of a mature Coast Live Oak tree ("T-9") that is approximately 50 feet in height with a 50 foot wide spread and 27.5 inch diameter, located within the area designated as an oak woodland ESHA and within the stream bed or bank of Cold Creek. This retaining wall is located approximately four to ten feet from the tree's trunk. The applicant has stated orally and in writing that soil was eroding around this tree and that she constructed the retaining wall on the upslope and downslope sides of the tree in an effort to prevent further erosion from the stream, protect the stability of tree, stabilize the roots, and prevent the tree from falling. Fill dirt was also placed within the streambed adjacent to this oak tree and was used as backfill for the retaining wall. The applicant has also stated orally and in writing that another oak tree had previously fallen over due to erosion from the stream and that she wanted to prevent the same occurring to this oak tree. A portion of the stones used to construct the retaining wall came from the creek bed itself. The applicant is proposing to remove the as-built mortar and stone retaining wall and restore and revegetate the creek bank with native riparian plant species. The applicant will also remove the mortar from the native stones and will use the stones in the restoration of the creek bank.

The applicant is also proposing to remove an unpermitted 10-foot long 2-3 foot high stone and mortar wall and an 8-foot long 5-foot high stone and mortar retaining wall/bench that are on the bank of Cold Creek within the canopies or protective zones of two oak trees (T7 & T9). An application to authorize this development was denied by the Commission on April 11, 2002. The creek bank will be put back to grade and the native stones will be placed on the stream bank. The remaining concrete will be removed from the site. The area disturbed by demolition and stream bank restoration activities will be revegetate with native riparian plant species.

A small stone and mortar property corner monument is proposed to be removed from the creek bed and native stones returned to the creek bed. The concrete will be removed from the creek bed. Given the area of disturbance is so small the native

riparian species will quickly revegetate the disturbed area. Therefore, no revegetation of this area is required.

Furthermore, the applicant is proposing to remove an unpermitted 35-foot long 2-foot high stone and mortar wall located at 40 feet upslope from Cold Creek in an oak woodland area. An application to authorize this development was denied by the Commission on April 11, 2002. This wall is not a retaining wall and is best described as "garden" wall design. The oak tree report submitted by the applicant's consultant states that this structure is located within the dripline of two Coast Live Oak trees ("T-18" and "T-21"). This retaining wall is located approximately 10 feet upslope from the trunk of Coast Live Oak "T-21," which is 40 feet high, with a spread of 20 feet and a diameter of 14 inches on one trunk and 19 inches on a second trunk. This retaining wall is also located approximately 16.5 feet downslope from the trunk of Coast Live Oak "T-18," which is 40 feet high, with a spread of 30 feet and a diameter of 21 inches. In addition, it also appears that this retaining wall may encroach within the driplines of additional oak trees on the subject site that were not addressed in the oak tree report submitted by the applicant, including but not limited to Coast Live Oaks "T-17" and "T-22." The applicant is proposing to demolish the wall and distribute the native stones on the slope above Cold Creek and remove the concrete waste from the site. This area will be revegetated with plant species appropriate for an oak woodland understory.

In addition, the applicant is also requesting after-the-fact approval for the construction of a five-foot wide at grade timber stairway approximately five feet south of the trunk of an additional Coast Live Oak tree ("T-7") that is approximately 55 feet high with a spread of 20 feet and diameter of 26 inches (Exhibit 12). An application to authorize this development was denied by the Commission on April 11, 2002, however, in the application before the Commission at this time, the applicant has proposed to modify the stairway to reduce impacts to resources protected by the Coastal Act. This staircase is also located within the area identified as oak woodland ESHA and is partially on the bank of Cold Creek. In addition, the staircase also encroaches within the dripline of at least one additional Coast Live Oak tree ("T-4") on the site, although this was not identified in the oak tree report submitted by the applicant. The stairway is at grade and only required minor excavation to place the timber risers. Therefore, it is not likely any oak tree roots were directly impacted by construction of the stairway. Concrete mortar was used in between the risers on the stairway. The applicant is proposing to remove the concrete mortar to allow for a permeable surface. The applicant is also proposing to remove a landing area and the bottom two steps of the stairway that encroaches onto the bank of the Cold Creek. This area is proposed to be revegetated with native riparian plant species.

The proposed stairway is sited on the more gently sloping portion of the slope that descends to Cold Creek. This area has been used in the past by the applicant and others to access the Creek. In addition, a single-family residence is located within approximately 30-feet of the stairway on the adjacent property to the south. The applicant has to access this area to carry out fuel modification for the neighboring residence, as required by Los Angeles County Fire Department. In this case, a permeable stairway is preferred over a path down the slope to minimize the potential for erosion of the slope. A path down this slope would focus runoff down the path and

would result in erosion of the slope. Erosion of the slope directly above Cold Creek would result in sedimentation of the creek which would adversely impact the aquatic creek habitat. Given this area must be accessed the proposed permeable stairway will provide a stable accessway that minimizes the potential for erosion of the slope. Furthermore, there are no alternative routes for a path or stairway on this property to access this area that does not encroach within an oak tree canopy or dripline.

As mentioned above, given the timber risers of the stairway required only minor excavation into the soil the root zone of the surrounding oak trees (T7 & T4) was not significantly disturbed. However, the Commission notes that because the stairway is within the dripline of these two oaks there could be long term detrimental impacts on the health of these trees. The root systems of oak trees are shallow and can radiate out as much as 50 feet beyond the oak canopy driplines. These root systems are sensitive to disturbance and can be easily damaged. In addition, damage to the root systems may take many years before signs of stress or failing health of the tree becomes apparent. Therefore, Commission finds that to ensure that any long-term adverse impacts to oak trees T7 and T4 are adequately mitigated, **Special Condition 2** requires that if the oak trees are lost or suffer worsened health or vigor as a result of the proposed development within a 10-year period, the applicants shall plant replacement oak trees at a ratio of 10:1. Moreover, pursuant to **Special Condition 2**, if replacement plantings are required, the applicants are required to submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a monitoring program to ensure that the replacement planting program is successful.

The applicant is also requesting the after the fact approval of a 260 foot long 2-3 foot long concrete block retaining wall with four benches integrated into the wall and three foot wide pathway. An application to authorize this development was denied by the Commission on April 11, 2002, however, in the application before the Commission at this time, the applicant has proposed modification in the design of the structure to minimize impacts to resources protected by the Coastal Act. The four benches that are integrated into the wall vary in height from 3 to 3 ½ feet in height. The applicant is proposing to remove the upper 80 feet of the retaining wall and pathway and restore the grade and revegetate the disturbed area with native plants. The pathway zigzags up a hillside on the eastern portion of the lot. The pathway is within a brush clearance zone of a single-family residence located on the adjacent lot to the east. Given this area is cleared on an annual basis this area is not considered ESHA. The pathway will facilitate access to this area to carry out brush clearance for the adjacent residence. The retaining wall and pathway are located approximately 160 feet from Cold Creek. The applicant has agreed to remove the upper 80 feet of the pathway that is located on a more steeply sloping portion of the hillside and at the margin of the fuel modification zone for the adjacent residence. The removal of the retaining wall and pathway from this more steeply sloping portion of the hillside and restoration of the slope and revegetation with native plants will minimize the potential for erosion of this slope and minimize the potential for sedimentation of Cold Creek. In addition, removal of the upper portion of the retaining wall and pathway will minimize the visual impact of the

project from Malibu Canyon Road and nearby public view points (discussed in Section C below).

Section 30240 of the Coastal Act allows for new development within identified ESHA only when such development is dependent upon the resources within such areas. In addition, Section 30240 of the Coastal Act allows for new development adjacent to environmentally sensitive habitat areas only when such development is sited and designed to minimize impacts. Without proper design, siting, construction, and buffers, new development can result in adverse effects from contaminated and increased runoff, increased erosion, displacement of habitat, and disturbance to wildlife dependent upon such resources. The removal of the as-built development within the riparian and oak woodland areas listed above and the proposed restoration and revegetation of the disturbed areas is considered a restoration project. In past permit actions the Commission has considered restoration projects to be an allowable activity within an ESHA. In addition, as discussed above, the proposed at grade timber stairway is necessary to minimize erosion of the slope above Cold Creek and to minimize the sedimentation of the Cold Creek. The stairway is necessary to provide access for brush clearance for the adjacent residence to the south. Therefore, the Commission finds that the proposed stairway is necessary to minimize erosion within the oak woodland ESHA and is consistent with the ESHA and water quality policies of the Coastal Act.

The applicants consulting biologist prepared a revegetation plan for the areas disturbed by as-built development and for the areas that will be disturbed by the removal of the as-built development. The revegetation plan includes a detailed native plant palette for the revegetation of the riparian, oak wood and chaparral habitats and the technical specifications regarding planting. However, the revegetation plan does not include performance standards to measure the success or failure of the revegetation plan over time. In addition, the plan does not include a detailed maintenance and monitoring plan to ensure the success of the revegetation plan. Therefore, the Commission finds that it is necessary to require the applicant to submit a revised revegetation plan, prepared by a qualified resource specialist, that includes detailed performance standards and a five year maintenance and monitoring plan to ensure the success of the revegetation plan, as specified in **Special Condition 1**. In addition, to ensure the concrete debris generated from the demolition of the as-built development is removed from the site to an appropriate dumpsite, the Commission finds **Special Condition 3** is necessary. Special Condition 3 requires the applicant to identify a dumpsite to dispose of any concrete waste.

The Commission finds that, as conditioned, the proposed modified as-built 260 foot long pathway and retaining wall with four integrated benches; modified as-built stairway; removal of 80 feet of as-built pathway and concrete block retaining walls; removal of four concrete and stone retaining walls; removal of stone and concrete property corner marker; removal of bottom two stairs and landing at the base of an as-built stairway and restoration and revegetation areas disturbed by as-built development and demolition activities are consistent with Sections 30240, 30230 and 30231 of the Coastal Act.

The applicant is requesting after-the-fact approval for the construction of a 2-4 foot high 30-foot long retaining wall with integrated bench located along a trail at the top of a

slope above Cold Creek (Exhibit 11). An application to authorize this development was denied by the Commission on April 11, 2002. In the application before the Commission at this time, the applicant is proposing to move the retaining wall one foot further from the trunk of the nearest oak tree. This retaining wall and bench structure is also located within the area designated as an oak woodland ESHA and encroaches into the driplines and protected zones of five Coast Live Oak trees ("T-24," "T-25," "T-26," "T-27," and "T-28."). This area is not affected by fuel modification from nearby development. Three of these oak trees are 25 feet in height and two are 15 feet in height. They range in spread from 15 to eight feet and in diameter from 12 to 4.5 inches. The retaining wall and bench structure is located approximately 12 feet upslope from three of the oak trees, 16 feet downslope from one oak tree, and immediately adjacent to the trunk of one oak tree, which caused root pruning, according to the arborist's report (Exhibit 9). This retaining wall is located approximately 70 feet from Cold Creek.

The applicant claims that the retaining wall is necessary to prevent erosion of the existing trail. The applicant asserts that although the retaining wall encroaches into the canopy or protected zones of five oak trees the trees will not be adversely impacted by the wall. The applicant's consulting arborist indicates in his report that "the trees in the area of the wall and bench have not been impacted from wall construction (Exhibit ?)". The applicant further notes that the County Forester found that:

"The bench seating area along the walking trail shows no damage from construction. Several of the trees are below grade and are not affected by construction. The trees which are next to the bench are doing fine and do not show any type of decline (Exhibit 7)."

The applicant further argues that the County Environmental Review Board found that the as-built retaining wall and bench would not adversely impact the adjacent oak trees (Exhibit 8). The applicant is also proposing to plant 10 oak trees to mitigate any potential long-term adverse impacts to the oak trees that may result from the construction of this wall.

The construction of the as-built retaining wall/bench required excavation into the slope and encroaches into the dripline or protected zones of five oaks. Excavation within the dripline or protected zones of oak trees can result in long-term adverse impacts to the health of the oaks. As the Commission has found in past actions it often takes many years for oak trees to display signs of damage and may be difficult to determine the precise cause of death or worsened health. The root systems of oak trees are extensive but shallow, radiating out as much as 50 feet beyond the spread of the canopies, the ground area at the outside edge of the dripline is especially important since the trees obtain most of their surface water and nutrients there, as well as exchanging of air and other gases. As a result, development, including the retaining walls that require excavation, within an area maintaining these root systems of oak trees, can eliminate this exchange of water, nutrients, air, and other gases, thereby harming or killing the oak trees. Further, development of the subject site, particularly within the sensitive areas or on steep slopes could potentially increase erosion on the site, which could adversely impact the surrounding oak tree resources and ESHA by interfering with the interchange of air and water to the root zones of the oak trees.

Although the applicant has submitted the above referenced report stating that no significant disruption to the oak trees has resulted from the proposed development, it may take up to ten years or more for such damage to be displayed. In this case, roots were cut on the tree closest to the retaining wall to construct the wall. As a result, due to the location of the proposed development, the proposed retaining wall will likely negatively impact the surrounding oak tree resources and ESHA.

The applicant claims that one of the reasons this retaining wall/bench was constructed in this location was to prevent erosion of the trail. In this case, there are environmentally preferred alternatives to prevent erosion of the trail. Periodic repairs and maintenance of the trail with hand tools are a feasible option to maintain a trail. This trail repair technique is used on State and National Park trails throughout the Santa Monica Mountains. Erosion control mats of textiles could be employed in combination with revegetation of eroded areas is also a feasible environmentally preferred alternative to stabilize a trail.

Section 30240 of the Coastal Act allows for new development within identified ESHA only when such development is dependent upon the resources within such areas. In this case, the Commission notes that proposed wall/bench is not a resource dependent use and therefore is in conflict with Section 30240 of the Coastal Act. In addition, the proposed retaining wall is not the environmentally preferred alternative to prevent erosion of the existing trail. Thus, the Commission finds that the as-built 30 foot long 2-4 foot high retaining wall/bench is not consistent with Sections 30240, 30230 and 30231 of the Coastal Act. To ensure this unauthorized retaining wall is removed from the proposed site plan, the Commission finds it is necessary to require the applicant to submit revised site plans that delete the 30 foot-long 2-4 foot high retaining wall from the site plan, as specified in **Special Condition 7**.

C. Visual Impacts

Section 30251 of the Coastal Act states:

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

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, public parkland, and public trails. Further, the Commission has also required structures to be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development

(including buildings, fences, paved areas, signs, retaining walls, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline or public vistas as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

As stated previously, the subject site is comprised of approximately 3.14 acres and is located at 549 Live Oak Circle Drive, just north of Piuma Road and east of Las Virgenes Road and Malibu Canyon Road, in the Calabasas area of Los Angeles County. The lot is situated at the terminus of Live Oak Circle Drive on the eastern side of Cold Creek on the southwest flank of a northwest trending, secondary ridge. Slope gradients range from 8:1 to as steep as 1:1 (horizontal to vertical). Vegetation consists of a riparian oak woodland area, scrub oaks, shrubs, and grasses. Drainage from the site is by sheet flow runoff toward Cold Creek. The subject site is located on the eastern side of Cold Creek on the southwest flank of a northwest trending, secondary ridge. The subject site is located in an area characterized by rugged open spaces, jagged rock outcroppings, hillsides, and wilderness areas.

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

Furthermore, in reflection of the scenic character of this area, Malibu Canyon Road (to the west of the subject site) and Piuma Road (to the south and southeast of the subject site) are both designated as Scenic Highways under by the LUP. In addition, due to the significant visual resources in this area, the certified LUP designated Malibu Canyon Road and Piuma Road as scenic highways and designated particularly scenic viewpoints along these roads as "public viewing areas." Five such public viewing areas are located within two miles of the subject site along Malibu Canyon Road and three more public viewing areas are located within a mile of the subject site along Piuma Road. In particular, Malibu Canyon Road is a scenic road within Malibu and the Santa Monica Mountains, providing numerous dramatic sweeping ocean and mountain views.

The applicant previously was proposing to construct a 350-foot long pathway supported by a 3-4 foot high concrete block retaining wall with four integrated benches. As previously mentioned above, this retaining wall system, pathway and benches are located within the fuel modification zone of the neighboring residence located on the adjacent property to the east. Therefore, the proposed pathway will facilitate access to this area for brush clearance and thinning. However, this structure is highly visible from

Malibu Canyon Road, particularly the upper portion of the retaining wall on the more steeply sloping portion of the slope.

In response to staffs concerns regarding the visibility of the upper portion of the retaining wall the applicant has revised the design for the proposed retaining wall and four benches. The applicant is now proposing to remove the upper 80 feet of the retaining wall and reduce the height of the wall and the four benches (Exhibits 10). The proposed modified retaining wall, bench, and pathway design will minimize landform alteration and will minimize the visibility of the retaining wall system from Malibu Canyon Road. In order to further reduce the visibility of the walls from public view areas the applicant is proposing to color the wall a natural earth tone to blend in with the natural landscape and revegetate the cleared and disturbed areas and with native plants. The native plants will also effectively screen the wall from public views. In order to carry out the applicant's offer to color the wall and benches a natural earth tone, the Commission finds that it is necessary to require **Special Condition 4**.

In addition, the applicant's consulting resource specialist has prepared a revegetation plan for this area. The revegetation plan includes a detailed native plant palette for the revegetation of the hillside and the technical specifications regarding planting. However, the revegetation plan does not include performance standards to measure the success or failure of the revegetation plan over time. In addition, the plan does not include a detailed maintenance and monitoring plan to ensure the success of the revegetation plan. Therefore, the Commission finds that is necessary to require the applicant to submit a revised revegetation plan, prepared by a qualified resource specialist, that includes detailed performance standards and a five year maintenance and monitoring plan to ensure the success of the revegetation plan, as specified in **Special Condition 1**.

Finally, **Special Condition 5** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Therefore, the Commission finds that the proposed retaining wall with four integrated benches and pathway, as conditioned, will not result in a significant adverse impact to the public views. Thus, the Commission finds that the proposed project, as conditioned, is consistent with §30251 of the Coastal Act.

D. GEOLOGY

The proposed development is located in the Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area 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.

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

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.**
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, 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.**

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The proposed 250 foot long retaining wall with four integrated benches and pathway was reviewed and approved by an engineering geologist and civil engineer. The applicant has submitted a Limited Geotechnical Engineering Report, prepared by West Coast Geotechnical, dated June 12, 2000; and addendums to this report dated August 21, 2000; December 27, 2000; and April 10, 2001. These reports evaluate the geologic stability of the subject site in relation to the proposed development. Based on their evaluation of the site's geology and the proposed development the consultants have found that the project site is suitable for the proposed project. The project's consulting geotechnical engineer states in the Limited Geologic and Soils Engineering Investigation dated June 12, 2000 by West Cost Geotechnical, Inc.:

It is the opinion of West Coast Geotechnical that the proposed foot path and associated retaining walls will be safe against hazard from landslide, settlement or slippage, and that the propose foot path and associated retaining walls will not have an adverse effect on the stability of the subject site or immediate vicinity, provided our recommendations are made part of the plans and are implemented during construction.

The geotechnical engineering consultant concludes that the proposed development is feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. He applicant has submitted plans that have been stamped and signed indicating compliance with the recommendations of geotechnical consultants.

The Commission finds that landscaping of disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. As previously mentioned, the applicant has submitted a revegetation plan for the disturbed areas of the site. However, the revegetation plan does not include performance standards to measure the success or failure of the revegetation plan over time. In addition, the plan does not include a detailed maintenance and monitoring plan to ensure the success of the revegetation plan. Therefore, the Commission finds that is necessary to require the applicant to submit a revised revegetation plan, prepared by a qualified resource specialist, that includes

detailed performance standards and a five year maintenance and monitoring plan to ensure the success of the revegetation plan, as specified in **Special Condition 1**.

The Commission finds that the proposed 260 foot long retaining wall with integrated benches and pathway, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties. Thus the proposed retaining wall is consistent with Section 30253 of the Coastal Act.

E. Violation

Unpermitted development has taken place prior to submission of this permit application including the construction of an approximately 350-foot long, three foot high concrete and rock retaining wall and approximately three to five foot wide pathway to the top of a hill, stairway to the top of the bank of Cold Creek, installation of a 4-foot high 2-foot wide concrete and rock property monument in Cold Creek, five retaining walls along the stream bed of Cold Creek, installation of an irrigation system, approximately 97.8 cubic yards of grading (48.9 cubic yards cut/excavation and 48.9 cubic yards fill), removal of rock from the stream bed of Cold Creek, and placement of bricks along the base of young oak trees.

Commission enforcement and permit staff have been in communication with the applicant since December of 1999 regarding resolution of the unpermitted development at the subject property. Enforcement staff originally directed the applicant to submit an application to remove all unpermitted development. In response, the applicant submitted an incomplete application in December of 1999 for authorization of the unpermitted development. Commission staff subsequently sent eight letters describing the items necessary to complete the application and establishing deadlines for the completion of the application. On April 11, 2002, the Commission voted to deny application CDP 4-99-267, which proposed to authorize the after-the-fact construction of a 350-foot long, approximately three foot high concrete and rock retaining wall along a pathway to the top of a hill, nine rock and concrete benches, stairway from the top of the bank of Cold Creek to the stream bed below, retaining walls along the stream bed of Cold Creek and an oak tree that are approximately two feet high, installation of an irrigation system, and approximately 98.8 cubic yards of grading. After the Commission's denial, the enforcement and permit staff worked with the applicant to identify ways that some of the development could be modified to be consistent with the resource protection policies of the Coastal Act. The applicant also agreed to propose removal of most of the development in or near Cold Creek that the Commission had denied and to propose to remove the unpermitted concrete and rock marker monument, which had not been addressed in the previous application, CDP 4-99-267.

The subject permit application addresses the unpermitted development in the subject application. In order to ensure that those portions of the unpermitted development approved pursuant to this permit are resolved in a timely manner, **Special Condition 6** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action, or within such additional time as the Executive Director may grant for good cause. In addition, to ensure the unpermitted development proposed to be removed is removed in a timely

manner, **Special Condition 6** requires that the unpermitted development authorized to be removed and the revegetation of areas disturbed by as-built development and demolition activities, specified above, shall be implemented with 120 days of issuance of the coastal development permit, or within such additional time as the Executive Director may grant for good cause.

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. Local Coastal Program

Section 30604 of the Coastal Act states:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that proposed as-built 30-foot long 2-4 foot high retaining wall and bench that encroaches with the dripline or protected zones of five oak would not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed retaining wall and bench would result in adverse impacts and is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the portion of the proposed project consisting of an as-built 30-foot long 2-4 foot high concrete and stone retaining wall with an integrated bench would prejudice Los Angeles County's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

The Commission also finds that the portion of the proposed project consisting of 260-foot long 3-foot wide pathway supported by a 2-3 foot high concrete and rock retaining wall with four benches integrated into the wall ascending a hillside; an as-built at grade timber stairway to the top of the bank of Cold Creek; irrigation system; 98 cubic yards of grading (49 cu. yds. cut, 49 cu. yds. fill); remove 80 feet of as-built concrete retaining wall and pathway from the hillside; remove four as-built concrete block and rock retaining walls and bench in and adjacent to Cold Creek; remove concrete grouting on as-built stairway and bottom two steps; remove an 4-foot high 2-foot wide concrete and rock property corner marker monument in Cold Creek, and restore natural grade and

revegetate areas disturbed by demolition of as-built development, as conditioned, would not prejudice Los Angeles County's ability to prepare a Local Coastal Program and is consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

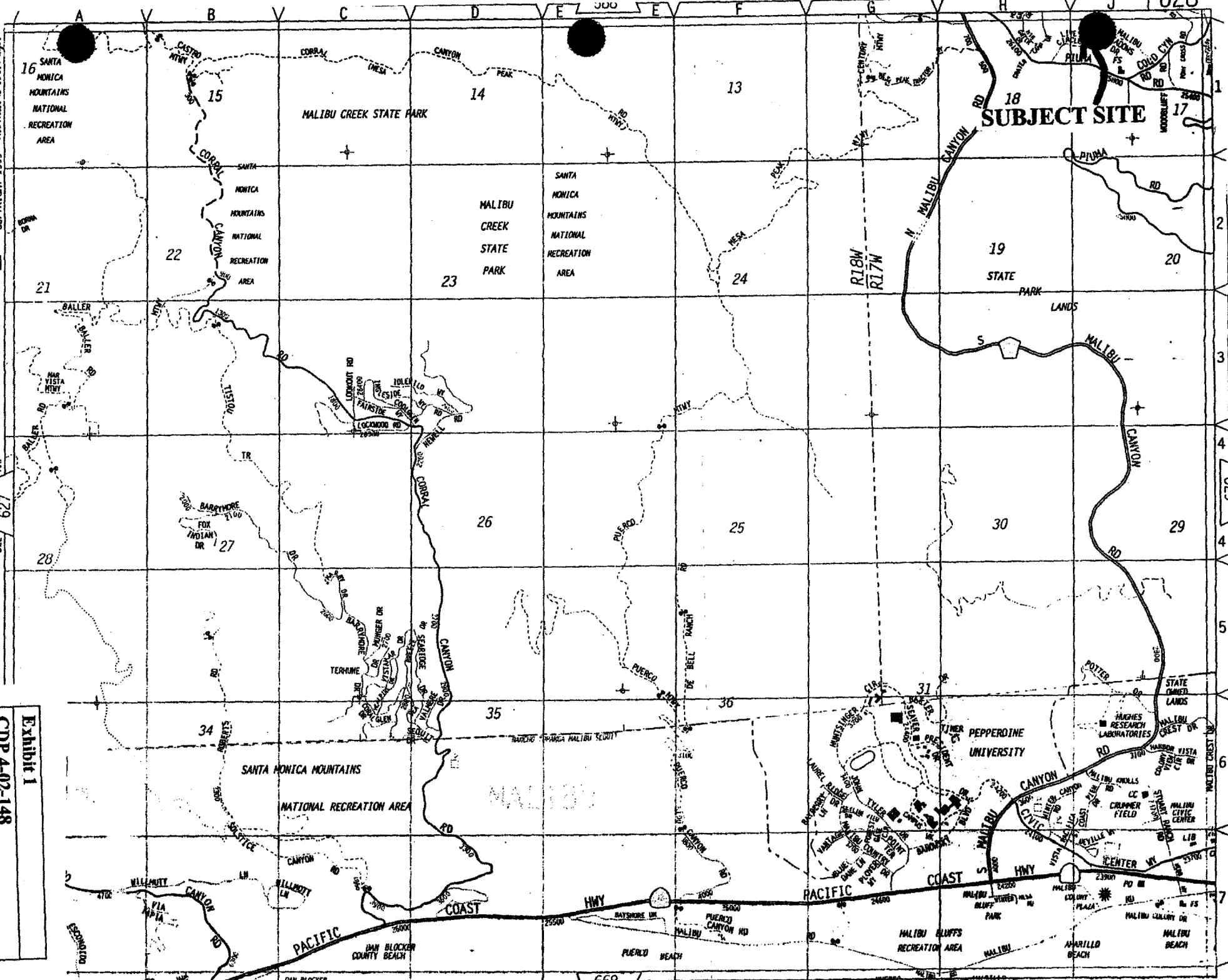
G. California Environmental Quality Act

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 Environmentally 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 project consisting of an as-built 30-foot long 2-4 foot high concrete and stone retaining wall with an integrated bench 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 the environment. Therefore, the portion of the proposed project that includes the as-built 30-foot long 2-4 foot high concrete and stone retaining wall with an integrated bench is determined to be inconsistent with CEQA and the Chapter Three policies of the Coastal Act.

In addition, the Commission finds also finds, that the portion of the proposed project including the 260-foot long 3-foot wide pathway supported by a 2-3 foot high concrete and rock retaining wall with four benches integrated into the wall ascending a hillside; an as-built at grade timber stairway to the top of the bank of Cold Creek; irrigation system; 98 cubic yards of grading (49 cu. yds. cut, 49 cu. yds. fill); remove 80 feet of as-built concrete retaining wall and pathway from the hillside; remove four as-built concrete block and rock retaining walls and bench in and adjacent to Cold Creek; remove concrete grouting on as-built stairway and bottom two steps; remove an 4-foot high 2-foot wide concrete and rock property corner marker monument in Cold Creek, and restore natural grade and revegetate areas disturbed by demolition of as-built development will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, above described development, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

Exhibit 1
CDP 4-02-148
Location Map



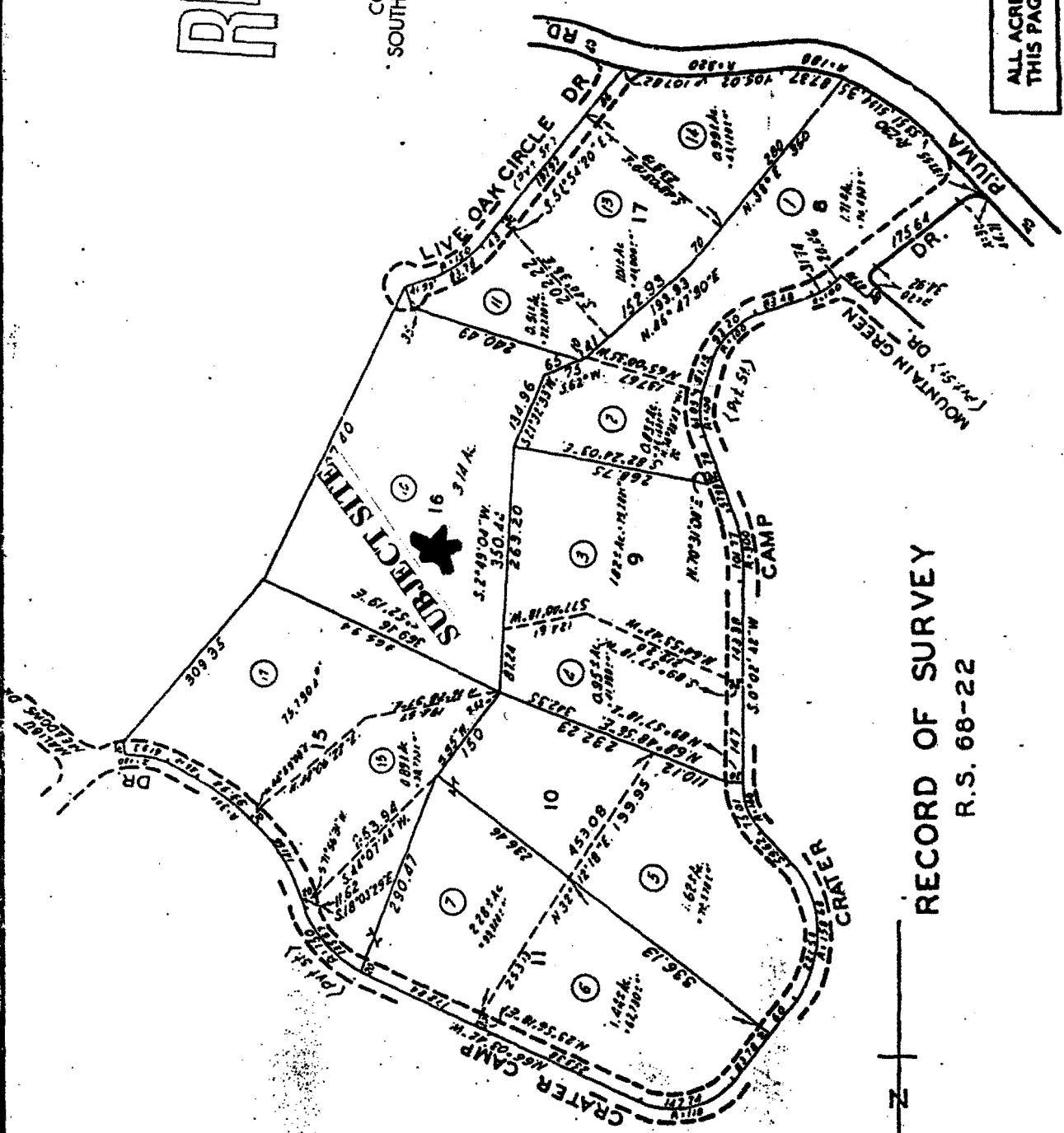
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OCT 11 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

ALL ACREAGES ON
THIS PAGE ARE NET.

ASSESSOR
COUNTY OF LOS ANGELES



RECORD OF SURVEY
R.S. 68-22

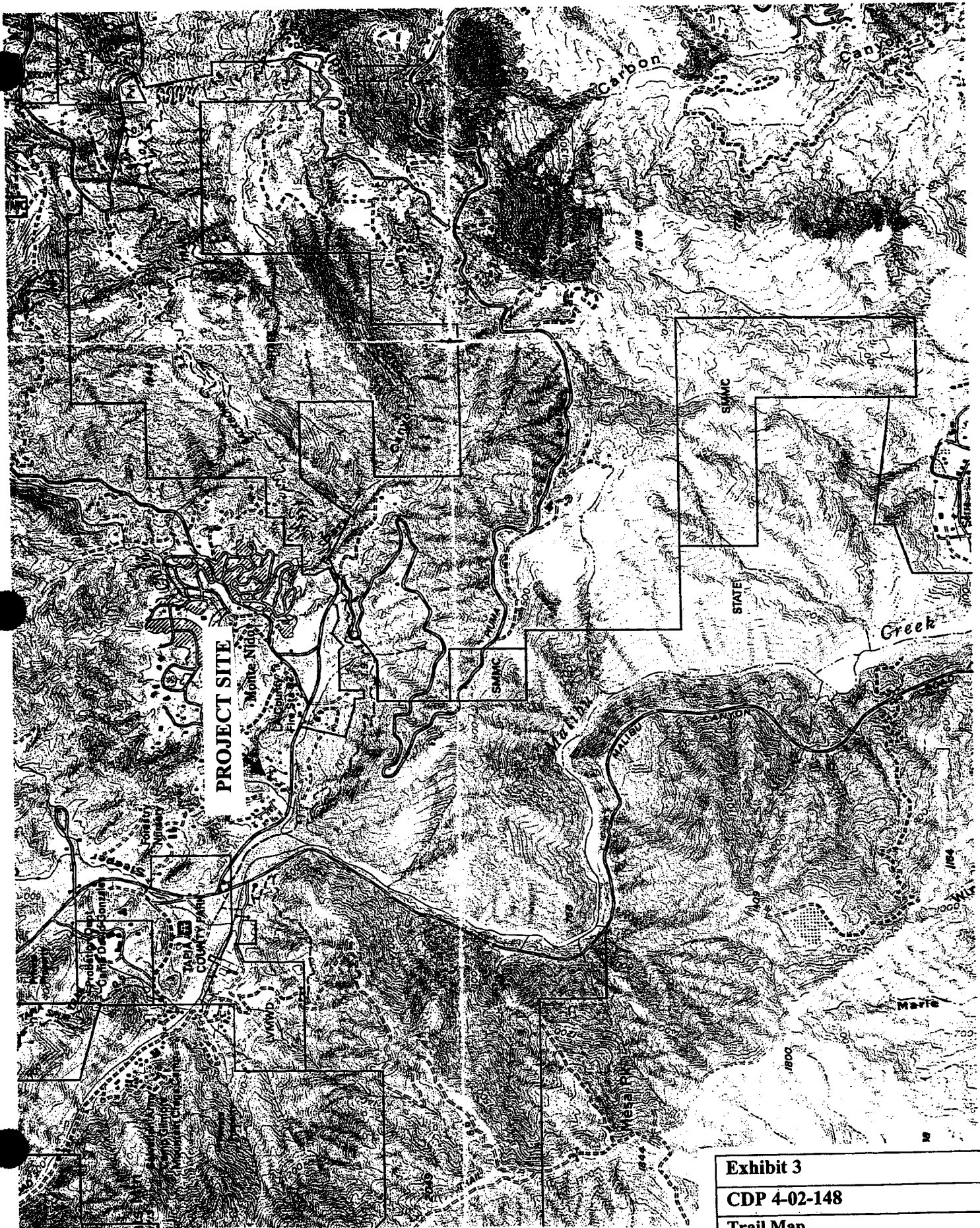


CODE
1971

PREV. ASSMT. SEE: 4456-5

4456-5
SCALE 1" = 150'

Exhibit 2
CDP 4-02-148
Assessor Parcel Map



PROJECT SITE

Exhibit 3
CDP 4-02-148
Trail Map

Retaining Wall and Bench
the Applicant Proposes to Retain

SEE ENLARGE SCALE TO RIGHT HERE

3 SHALL
INDICATION
OR

SET 2" I.P. & TAG

Remove Retaining Wall.

FOUND 2" I.P.
PER R.S. 68-22

Remove Lower Two Stairs

Remove Retaining Walls

EXISTING RAIL ROAD
TIES AND NATIVE ROCK
STAIRS - ON GRADE
SHOWN FOR LOCATION
ONLY.

LIVE OAK
CIRCLE
DRIVE



REGISTERED PROFESSIONAL ENGINEER

L. Liston & Associates, Inc.

LEONARD LISTON

31902

RCE

DATE

DESIGNED

DRAWN

KJ

CHECKED

PRDL. ENG.

RECOMMENDED

REG. NO.

DATE

APPROVED

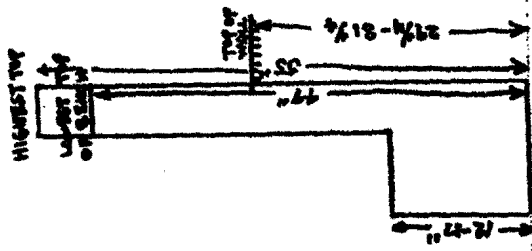
Exhibit 5

CDP 4-02-148

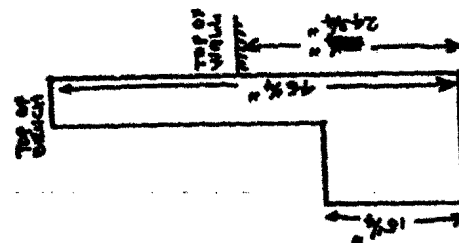
Enlarged Site/Restoration Plan

PROFILES OF BENCHES & ADJACENT WALLS

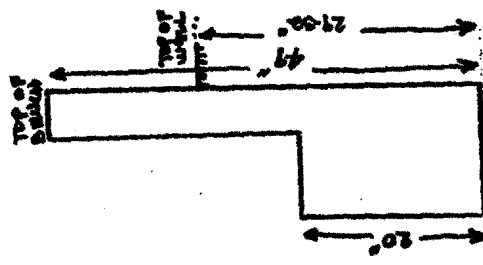
(D)



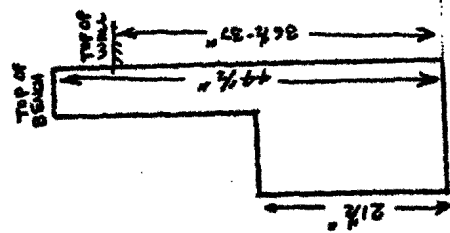
(C)



(B)



(A)



Vertical Scale: 1 inch = 10 inches of height

COUNTY OF LOS ANGELES

FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE
LOS ANGELES, CALIFORNIA 90063-3294

(323) 890-4330

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JUN 19 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

P. MICHAEL FREEMAN
FIRE CHIEF
FORESTER & FIRE WARDEN

September 17, 2001

Sabrina Tillis
California Coastal Commission
South Central Coast Office
89 S. California Street, Suite 200
Ventura, CA 93001

**SUBJECT: SHEILA ROSENTHAL PROPERTY AT 549 LIVE OAK CIRCLE
MONTE NIDO, (ASSESSORS PARCEL NUMBER #4456 005 010)**

On Monday September 10, 2001 Deputy Forester Jon Baker evaluated impacts to the Oak resource at the above address. Specifically, there was concern over effects of a retaining wall to mitigate soil being undermined on an Oak located proximal to the streambed. There was also a set of steps from the top of the property going down to the stream bed area as well as a rock bench area along a natural trail within the protective zone of several trees.

The steps are made out of a natural material and blends in quite well to the natural landscape. There appears that the steps have not presented any damage to the trees within its drip line and there are no signs of any root damage present.

The bench seating area along the walking trail shows no damage from construction. Several of the trees are below grade and are not effected by the construction. The trees which are next to the bench are doing fine and do not show any type of decline.

In light of the fact that the trees on the property have not suffered as a result of the above work and that it is beneficial to its structural integrity from the construction of the retaining wall, it is Forestry's opinion that an Oak Tree Permit from the County of Los Angeles should not be required. However, any further planned improvements affecting the Oak resource should proceed with the benefit of necessary approved permits.

It is also the foresters recommendation that the trees on the subject property have the dead wood removed and have yearly maintenance completed to improve the health and vigor of the Oak stand.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS
ARTESIA
AZUSA
BALDWIN PARK
BELL
BELL GARDENS
BELLFLOWER

BRADBURY
CALABASAS
CARSON
CERRITOS
CLAREMONT
COMMERCE
COVINA

CUDAHY
DIAMOND BAR
DUARTE
EL MONTE
GARDENA
GLENDDORA
HAWAIIAN GARDENS

HAWTHORNE
HIDDEN HILLS
HUNTINGTON PARK
INDUSTRY
INGLEWOOD
IRVINDALE
LA CANADA-FLINTRIDGE

LA MIRADA
LA PUENTE
LAKEWOOD
LANCASTER
LAWDALE
LONITA
LYNWOOD

MALIBU
MAYWOOD
NORWALK
PALMDALE
PALOS VERDES ESTATES
PARAMOUNT
PICO RIVERA

Exhibit 7

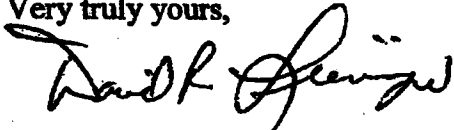
CDP 4-02-148

LA County Forester's Letter
Addressing Impact of Retaining
Wall on Oak Trees

Sabrina Tillis
September 17, 2001
Page 2

If you have any additional questions, please contact Deputy Forester Jon Baker at (818) 890-5719 or this office at (323) 890-4330.

Very truly yours,



**DAVID R. LEININGER, ACTING CHIEF, FORESTRY DIVISION
PREVENTION BUREAU**

DRL:sc

c: **Mark Pastrella, Los Angeles County Dept. of Public Works**
Daryl Koutnik, Department of Regional Planning
Sheila A. Rosenthal

ENVIRONMENTAL REVIEW BOARD

Case No. Plot Plan 20785

Location 549 Live Oak Circle Drive, Calabasas

Applicant Jay and Sheila Rosenthal

Request 350-ft. long retaining wall, wall around oak tree and other existing structures

Resource Category Cold Creek ESHA

ERB Meeting Date: September 17, 2001

ERB Evaluation: Consistent Consistent after Modifications Inconsistent

Recommendations:

- Plant indigenous natives along the wall.
- Contact Resource Conservation District of the Santa Monica Mountains for stream bank stabilization recommendations.
- Use natural earth-tone colors for the wall.

Staff Recommendation: Consistent Consistent after Modifications Inconsistent

Suggested Modifications:

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JUN 19 2002

COAS
SOUTH CEI

Exhibit 8
CDP 4-02-148
LA County Environmental Review Board Review of Project.

CY CARLBERG

CONSULTING
ARBORIST

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NOV 05 2001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

September 15, 2001

Jay and Sheila Rosenthal
5528 Fairview Place
Agoura Hills, CA 91301SUBJECT: Property at 549 Live Oak Circle, Calabasas, LA County
CDP Application No 4-99-267, Assessor's Parcel Number 4456-005-010

Dear Mr. and Mrs. Rosenthal,

The following report is submitted in response to your request for arboricultural services.

BACKGROUND AND ASSIGNMENT

On Friday, September 14, you asked me to visit your property at the above-named address for the purpose of evaluating several coast live oak trees. In 1998-1999 you did some minor construction (stairs, seat and retaining walls) in the vicinity of the trees. The California Coastal Commission has requested that you submit oak tree reports that address impacts of the development with respect to the on-site oak trees. I met you on the property on September 15, and you explained the work that has been completed thus far, and I examined the trees to evaluate any possible detrimental effects of the construction.

I evaluated each tree that was encroached upon within its protected zone - the protected zone is that area within the dripline of the tree and extending to a point at least five feet outside the dripline. There were a total of nine oak trees of varying sizes and conditions that fell into this category. They are identified in detail below, using your numbering system (T1 - T9) to reference the trees in the field as well as on the topographic survey. I flagged the following trees with yellow tape supporting an aluminum-numbered tag. This report is based on information provided by you, the survey prepared by Leonard Liston & Associates and Chris Nelson and Associates (dated March 2001), and on my on site visit this morning.

In summary, there has been virtually no impact to the subject trees. It was encouraging to note that after three years, if the trees had been negatively impacted, they would undoubtedly be showing signs of decline or construction-induced stress.

626.355.0271
387 N. BALDWIN AVE.
SIEKRA MADRE, CA 91024ISA CERTIFIED ARBORIST #575
MEMBER, AMERICAN SOC
OF CONSULTING ARBORExhibit 9
CDP 4-02-148
Arborist Report

OBSERVATIONS AND DISCUSSION

Tree 'T-9'

Quercus agrifolia

Coast Live Oak

Approximate Location: Southwest portion of property adjacent to streambed

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 50'

Approximate Spread: 50' - canopy is identified on topographic survey

Diameter (measured at 4.5' above existing grade): 27.5"

Physiological Condition (Health): Good, the tree displays good vigor, leaf color and decent shoot elongation. No pests or diseases were noted. It has not been pruned in many years, if ever. There is a moderate, though normal, amount of deadwood present.

Structural Integrity: Good, no defects were noted.

Discussion: This tree exists in the streambed, and according to you, adjacent soil was eroded to the extent that structural and stabilizing roots were undermined. In an attempt to curtail further erosion and protect the tree from falling, you built retaining walls on both the upslope and downslope sides of the tree. The new grade is at the elevation of the trunk flare, with some roots still exposed. The soil line now is at a level that would be considered natural grade. The semicircular wall closest to the stream is 3' in height and approximately five feet from the tree's trunk. It extends away from the stream approximately seven feet to another 3' wall. Both walls are constructed of native stone with concrete mortar. In no instance does the wall encroach closer than five feet from the tree's trunk.

This is a "mature" specimen - it has reached its "peak" and although still vital, it is no longer the vigorous tree it once was. Nevertheless, I was encouraged to note that there was healthy bark scanning with obvious new tissue. The tree has, in my opinion, not suffered from the adjacent construction, and may in fact benefit structurally and physiologically from the addition of soil. The soil level is at the trunk flare and consequently is neither too high nor too low. I explained how you might do minimal grading - by hand - to assure positive drainage away from the trunk. Presently there is an approximate 3" depression at the base of the trunk - at no time should there be standing water at the base of the tree.

Tree 'T-7'

Quercus agrifolia

Coast Live Oak

Approximate Location: North of stairs

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 55'

Approximate Spread: 20' - canopy is identified on topographic survey

Diameter (measured at 4.5'): 26"

Physiological Condition (Health): Poor, there is a moderate amount of dead wood, and was either excessively pruned many years ago or has suffered in a fire. No pests or diseases were noted.

Structural Integrity: Good, no defects were noted.

Discussion: This is a "mature" to "overmature" specimen in poor health. There is a five-foot wide staircase built of native stone with wood risers approximately nine feet south of the trunk. These stairs respect the existing grade of the slope and have not contributed nor caused the current decline of the tree. I suggest that we monitor the tree in years to come - it may recover from its current state of health.

Tree 'T-18'

Quercus agrifolia

Coast Live Oak

Approximate Location: Middle of property, southeast side

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 40'

Approximate Spread: 30' - canopy is identified on topographic survey

Diameter (measured at 4.5'): 21"

Physiological Condition (Health): Good; the tree displays good vigor, leaf color and decent shoot elongation. No pests or diseases were noted. It has not been pruned in many years, if ever.

Structural Integrity: Good; no defects were noted.

Discussion: An approximate 2' tall, 18" wide and 31' long native stone wall was constructed downslope 16.5' from the west edge of the tree's trunk. Although the tree leans in the direction of the wall, it has not been negatively impacted from the wall construction.

Tree 'T-21'

Quercus agrifolia

Coast Live Oak

Approximate Location: Southwest portion of property

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 40'

Approximate Spread: 20' - canopy is identified on topographic survey

Diameter (measured at 3'): Two trunks: 14" and 19"

Physiological Condition (Health): Good; the tree displays good vigor, leaf color and decent shoot elongation. No pests or diseases were noted. It has not been pruned in many years, if ever.

Structural Integrity: Good; no defects were noted.

Discussion: An approximate 2' tall, 18" wide and 31' long native stone wall was constructed upslope 10' from the east edge of the tree's trunk. The wall encroaches under the dripline by approximately 3'. The tree has not been negatively impacted from the wall construction.

Trees 'T-24', 'T-25', 'T-26' (group of three)

Quercus agrifolia

Coast Live Oak

Approximate Location: Middle of property, southeast side

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 25' (all)

Approximate Spread: 8' ('T-24'), 15' ('T-25' and 'T-26') - canopies are identified on topographic survey

Diameter (measured at 4.5'): 12" ('T-24'), 11" ('T-25'), 10" ('T-26')

Physiological Condition (Health): Good to excellent; the trees display good vigor, leaf color and shoot elongation. No pests or diseases were noted. They have not been pruned.

Structural Integrity: Good; no defects were noted.

Discussion: An approximate 4' tall and 1.5' wide bench wall was constructed on the east side of the existing trail and is 12' upslope from the bases of this grouping of three oaks. The trees have not been impacted from wall construction.

Tree 'T-27'

Quercus agrifolia

Coast Live Oak

Approximate Location: Middle of property, southeast side

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 15'

Approximate Spread: 8' -- canopy is identified on topographic survey

Diameter (measured at 4.5'): 4" and 5"

Physiological Condition (Health): Fair; the tree displays only fair vigor, leaf color and shoot elongation. No pests or diseases were noted. It has not been pruned. Because the tree abuts the existing trail, it will undoubtedly remain more of a shrub than a tree.

Structural Integrity: Good; no defects were noted.

Discussion: An approximate 4' tall and 1.5' wide bench wall was constructed immediately adjacent to the tree. If it had been a more significant specimen, its health may have suffered by inevitable root pruning. Because it is an immature tree/shrub, I did not consider it adversely impacted from the wall construction.

Tree 'T-28'

Quercus agrifolia

Coast Live Oak

Approximate Location: Middle of property, southeast side

Site Context: Unirrigated native setting, oak leaf mulch

Approximate Height: 15'

Approximate Spread: 8' -- canopy is identified on topographic survey

Diameter (measured at 4.5'): 4.5"


Physiological Condition (Health): Fair; the tree displays only fair vigor, leaf color and shoot elongation. No pests or diseases were noted. It has not been pruned.

Structural Integrity: Good; no defects were noted.

Discussion: An approximate 4' tall and 1.5' wide bench wall was constructed approximately 16' downslope from the tree. The tree has not been negatively impacted by wall construction.

I have enjoyed preparing this study for you, and can offer you a level of comfort that there was only minimal disruption from the 1998 construction activities, and that your oak tree resource is intact and performing well. As always, I am available should you have any questions or concerns.

Sincerely,



Cy Carlberg

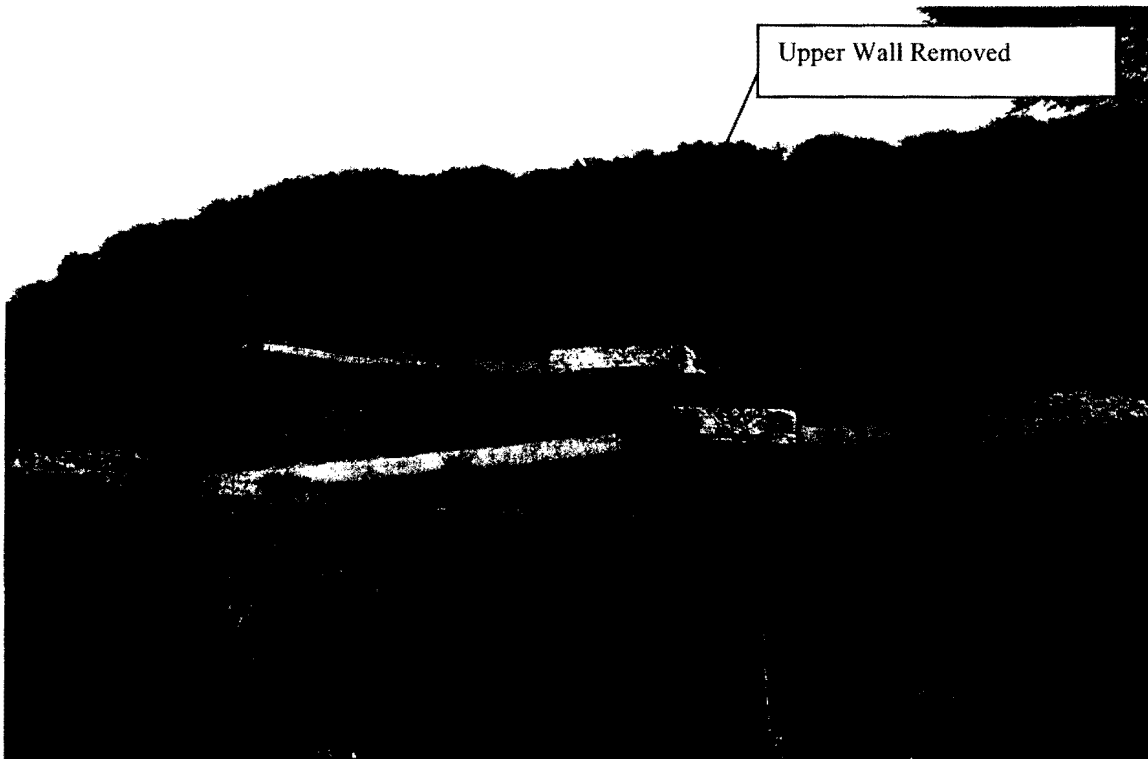
Consulting Arborist

International Society of Arboriculture Certified Arborist # WC575





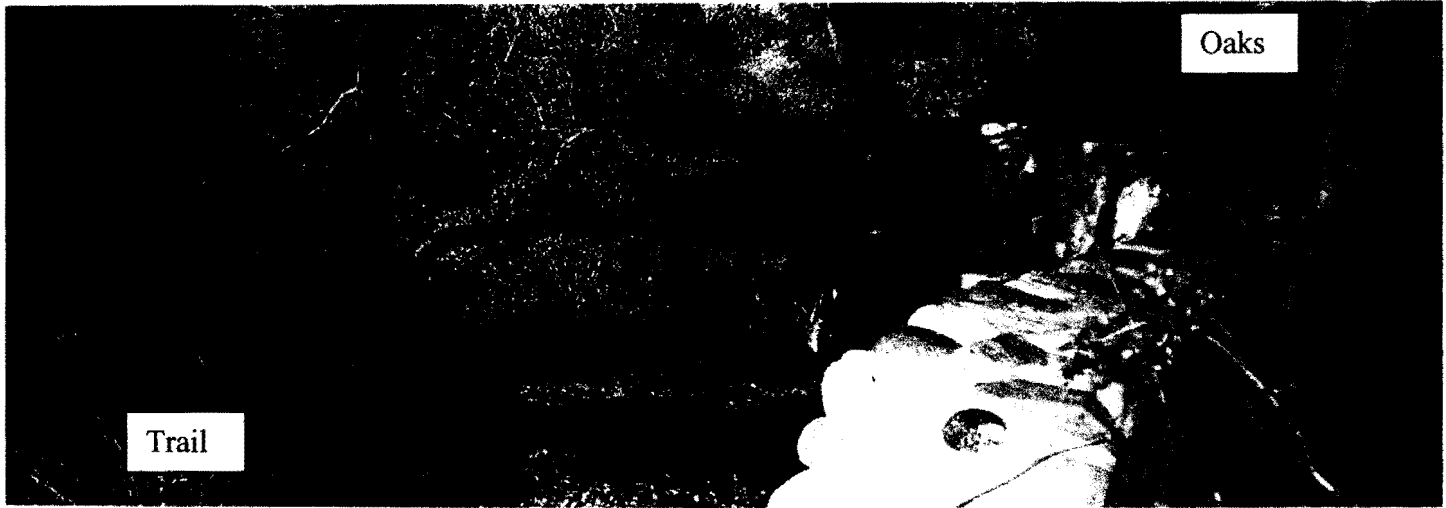
View of As-Built Retaining Wall, Benches and Pathway on Hillside



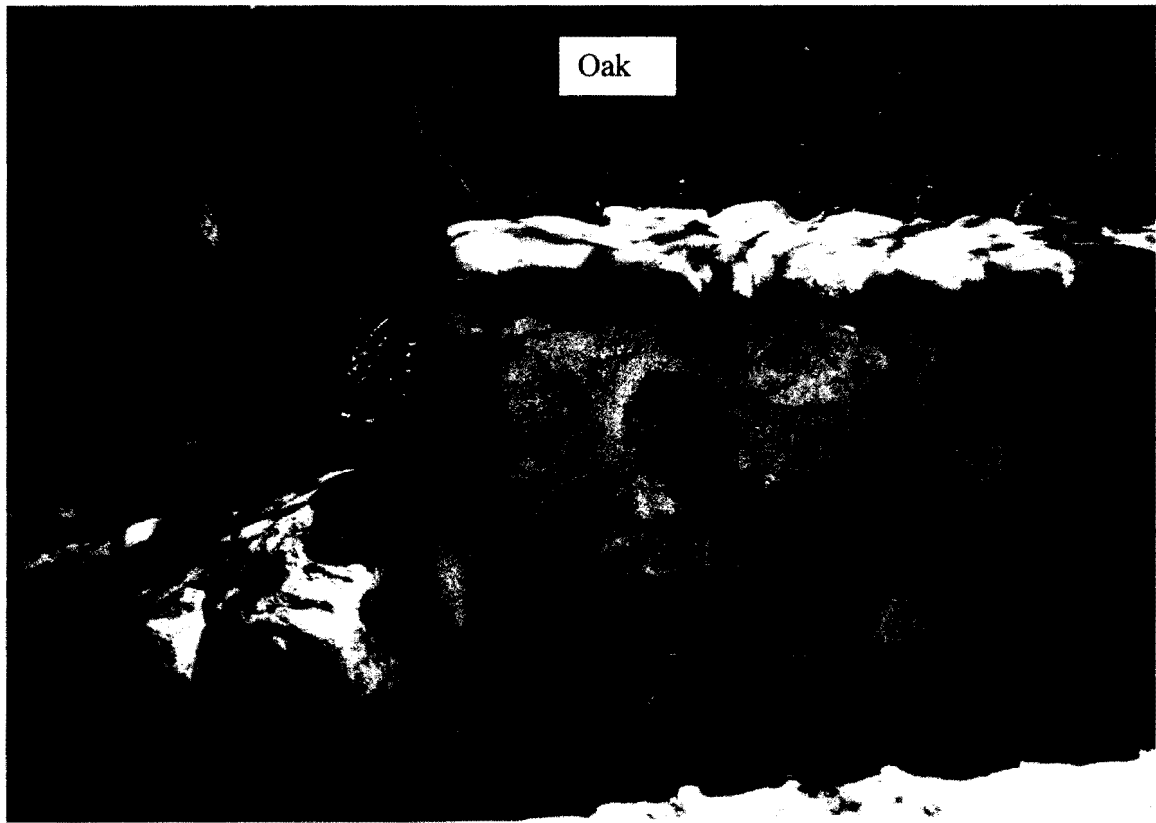
Rendering of Upper Wall Removed & Reduced Wall Height

**Exhibit 10
4-02-148
Hillside Retaining Wall,
Benches and Pathway**



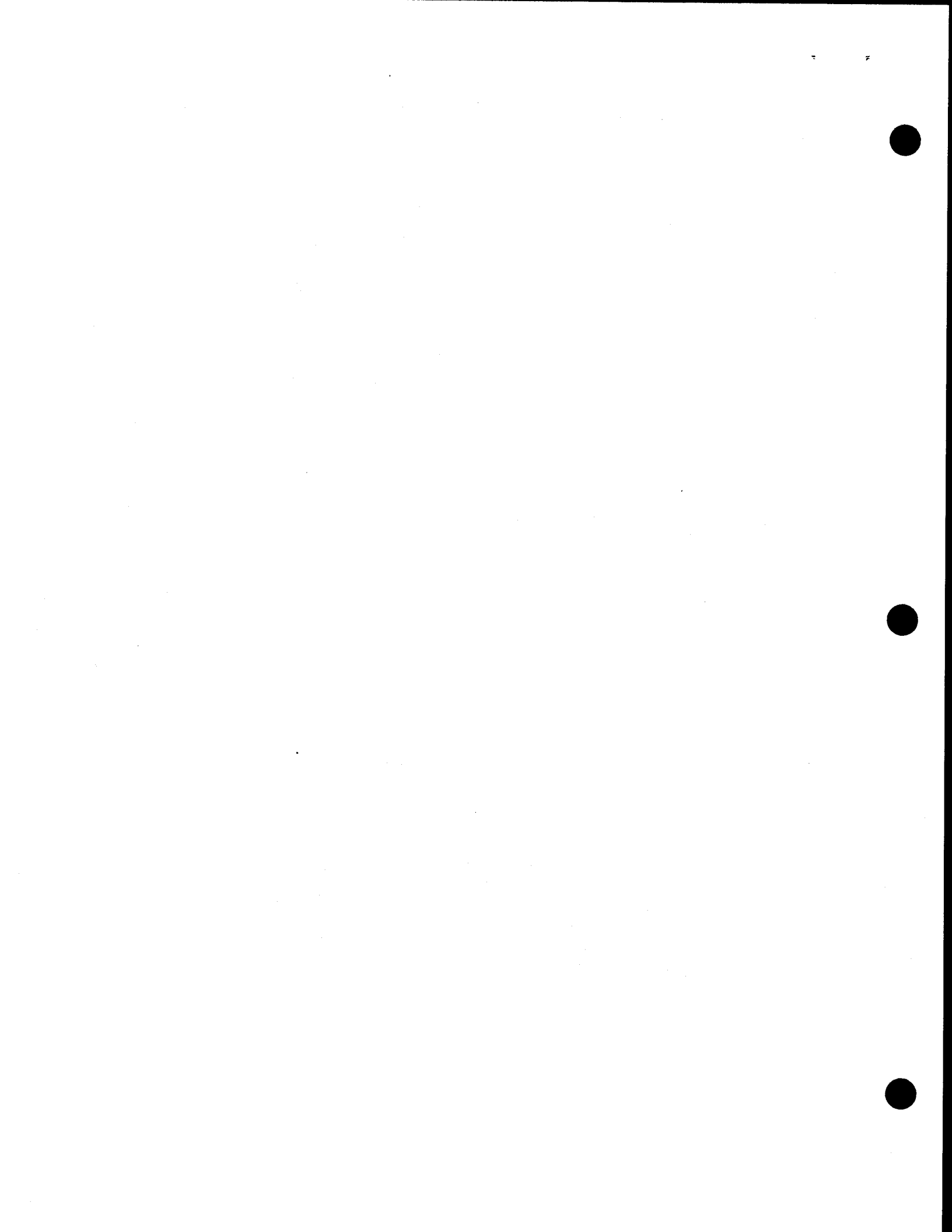


Retaining Wall/Bench Under Oaks



Retaining Wall at Base of Oak Tree

**Exhibit 11
4-02-148
Retaining Wall Under
Oaks**





Neighboring
Residence

At Grade Stairway Above Cold Creek

Exhibit 12
4-02-148
Stairway on Slope Above
Cold Creek

