

**CALIFORNIA COASTAL COMMISSION**

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

Filed: 5/12/03  
49th Day: 6/30/03  
180th Day: 11/08/03  
Staff: LKF-y  
Staff Report: 6/19/03  
Hearing Date: 7/10/03  
Commission Action:



RECORD PACKET COPY

## STAFF REPORT: PERMIT AMENDMENT

**APPLICATION NO.:** 5-82-192-A1

**APPLICANTS:** A. Jerrold Perenchio

**PROJECT LOCATION:** 23554 Pacific Coast Highway, City of Malibu (Los Angeles County)

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Construction of an approximately ten acre private park, eight foot high rock wall around ten acre parcel, landscaping including construction of three ponds, installation of jogging track, irrigation system, lighting system, dish radio receiver, and three gazebos and approximately 11,500 cu. yds. of grading.

**DESCRIPTION OF AMENDMENT:** Request for after-the-fact approval for conversion of approximately ten acre private park to ten acre private golf course, 985 sq. ft. storage building, driveway, and approximately 9,000 cu. yds. of additional grading for a total of 20,482 cu. yds. of grading on site (2,092 cu. yds. cut, 18,390 cu. yds. fill). The project also includes construction of a recirculating drainage system and a ten foot wide, approximately 620 foot long native vegetation buffer area, and abandonment of an unpermitted septic system.

**LOCAL APPROVALS RECEIVED:** City of Malibu Planning Department, Approval in Concept, February 18, 2003; City of Malibu Geology Review, Approval in Concept, January 14, 2003; City of Malibu Environmental Health, Septic Abandonment Permit No. 02-2065, December 23, 2002.

**SUBSTANTIVE FILE DOCUMENTS:** Certified Malibu Local Coastal Program; Coastal Development Permit No. 5-82-192; "Limited Engineering Geologic and Soils Report, 23554 Pacific Coast Highway, Malibu, California," SubSurface Designs, Inc., December 26, 2002; "Supplemental Geologic Report, Section 111 Statement for Existing Shed, 23554 Pacific Coast Highway, Malibu, California," SubSurface Designs, Inc., June 18, 2003; "Comparison of Potential Biological Impacts on Malibu Lagoon Between 1982 Approved Plan for Perenchio Park and Current Park Configuration," Glenn Lukos Associates, December 19, 2002; "Re: Initial Preliminary Draft Water Quality Analysis, Perenchio Park, Malibu, CA," GeoSyntec Consultants, December 19, 2002; "Perenchio Park Drainage System Improvements Preliminary Design Report," GeoSyntec Consultants, April 21, 2003; "Re: Chemical Usage Analysis, Perenchio Park, Malibu, CA," GeoSyntec Consultants, April 21, 2003; Correspondence from Bridget

Fahey, U.S. Fish and Wildlife Service, re: Perenchio Park Vegetation Project, February 27, 2003; Correspondence from Scott P. Harris, California Department of Fish and Game, January 3, 2003; Correspondence from Suzanne Goode, California Department of Parks and Recreation, re: Perenchio Park, 23554 Pacific Coast Highway, Malibu, California, February 20, 2003; Correspondence from Suzanne Goode, California Department of Parks and Recreation, re: Perenchio Park, 23554 Pacific Coast Highway, Malibu, California, June 12, 2003.

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

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

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

#### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the applicants' proposal with eight (8) additional special conditions regarding conformance with geologic recommendations, implementation of drainage system improvements and septic system abandonment, buffer landscaping plan, turf management plan, lighting restriction, future development restriction, deed restriction, and condition compliance.

### **I. STAFF RECOMMENDATION**

**MOTION:** *I move that the Commission approve Coastal Development Permit Amendment No. 5-82-192-A1 for the development proposed by the applicants.*

#### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

## **RESOLUTION TO APPROVE A PERMIT AMENDMENT:**

The Commission hereby approves a coastal development permit amendment for the proposed development on the ground that the development will not conform with the policies of the City of Malibu Local Coastal Program (LCP). Approval of the permit amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## **II. STANDARD AND SPECIAL CONDITIONS**

*Note: Unless specifically altered by the amendment, all standard and special conditions previously applied to Coastal Development Permit (CDP) 5-82-192 continue to apply. The approved coastal development permit includes two (2) special conditions. In addition, the following additional special conditions (numbered 3, 4, 5, 6, 7, 8, 9, and 10) are hereby imposed as a condition upon the proposed project as amended pursuant to CDP 5-82-192-A1.*

### **SPECIAL CONDITIONS**

#### **3. Plans Conforming to Geologic Recommendations**

All final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to foundations, construction, grading, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require an amendment to the permit or a new Coastal Development Permit.

#### **4. Implementation of Proposed Drainage System Improvements and Septic System Abandonment**

The applicant shall implement and complete the proposed septic system abandonment and the proposed drainage system improvements described in "Perenchio Park Drainage System Improvements Preliminary Design Report," by GeoSyntec Consultants, April 21, 2003 and generally shown in **Exhibit 7**, within 120 days of the issuance of this permit. The Executive Director may grant additional time for good cause. The proposed drainage system improvements shall also include a schedule for the monitoring and maintenance of all surface

and sub-surface drainage and sump and pump system components to ensure that they continue to function properly.

#### 5. Buffer Landscaping Plan

Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval by the Executive Director, two sets of landscaping plans for the ten foot wide strip of land located east of the existing stone wall and adjacent to Malibu Lagoon State Park. The plan shall be prepared by a licensed landscape architect or a qualified resource specialist, and shall incorporate the following criteria:

- a) Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural vegetation and natural habitats on the site. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.
- b) Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.
- c) Landscaping shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration.
- d) Landscaping shall be monitored for a period of at least five years following the completion of planting. Performance criteria shall be designed to measure the success of the plantings. Mid-course corrections shall be implemented if necessary. If performance standards are not met by the end of five years, the monitoring period shall be extended until the standards are met.

#### 6. Turf Management Plan

Prior to issuance of the coastal development permit, the applicant shall submit a turf management plan, prepared by a qualified resource specialist. The plan shall incorporate the best management practices specified in "Chemical Usage Analysis, Perenchio Park, Malibu, CA," by GeoSyntec Consultants, dated April 21, 2003, and in "Perenchio Park Drainage System Improvements Preliminary Design Report," GeoSyntec Consultants, April 21, 2003, and shall be in substantial conformance with the following requirements:

- a) The plan shall minimize the use of pesticides, herbicides, fungicides, fertilizers, and other chemicals.
- b) Chemicals utilized on site shall be restricted to those with the lowest toxicity to aquatic life.

- c) The plan shall employ a soil moisture monitoring system to minimize water input, and shall provide for recycling of irrigation water and runoff to the maximum extent feasible.
- d) The plan shall designate chemical storage area(s) and include measures to prevent unintended transport of chemicals outside the storage area.

**7. Lighting Restriction**

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

- (1) The minimum necessary to light walkways used for entry and exit to the structures on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
- (2) Security lighting attached to the storage building shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- (3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

**8. Future Development Restriction**

This permit is only for the development described in coastal development permit 5-82-192-A1. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(b) shall not apply to the development governed by coastal development permit 5-82-192-A1. Accordingly, any future improvements to the development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit 5-82-192-A1 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**9. Deed Restriction**

PRIOR TO 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 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 (hereinafter referred to as the

"Special Conditions"); and (2) imposing 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 applicant's entire parcel or parcels. 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.

#### **10. Condition Compliance**

If the applicant has not complied with all the conditions that must be satisfied prior to issuance of this permit within 120 days of Commission action on this CDP application, the Commission or the Executive Director may institute enforcement action under Chapter 9 of the Coastal Act regarding the existing development that was conditionally approved by the Commission's action on CDP No. 5-82-192-A1. This condition does not limit or delay any enforcement action by the Commission or the Executive Director regarding existing development that has not been approved or conditionally approved by the Commission.

### **III. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

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

The applicants request after-the-fact approval for conversion of the previously approved approximately 10 acre private park to an approximately ten acre private golf course with a 985 sq. ft. storage building, driveway, and approximately 9,000 additional cu. yds. of grading for a total of 20,482 cu. yds. of grading on site (2,092 cu. yds. cut, 18,390 cu. yds. fill). The project also includes construction of a recirculating drainage system and a ten foot wide, approximately 620 foot long native vegetation buffer area, and abandonment of an unpermitted septic system. (**Exhibits 5 through 10**).

The project site is located south of Pacific Coast Highway in the Civic Center area of the City of Malibu (**Exhibit 1**). The property consists of three approximately 3.3 acre lots that have been joined by lot tie. The property is designated Residential – Single Family Medium (4 du/ac) in the certified Malibu Local Coastal Program (LCP).

The site is located immediately west of Malibu Lagoon State Park, which is mapped as an environmentally sensitive habitat area (ESHA) in the Malibu LCP (**Exhibits 2 and 3**). Site runoff currently flows into a drainage pipe that outlets in the park. With the exception of several tree-tops, the site is not visible from Pacific Coast Highway or Malibu Lagoon State Park due to the presence of an eight foot high perimeter wall approved under the original permit [Coastal Development Permit (CDP) No. 5-82-192 (Perenchio)] (**Exhibits 11 and 12**).

The original permit was issued in 1982 for construction of a 10-acre private recreational park on the site. The approved park included an eight foot high perimeter wall, manmade ponds, three

gazebos, a jogging track, irrigation system, lighting system, dish radio receiver, and primarily non-native landscaping (including several large non-native trees). The approval also included 11,500 cu. yds. of grading (3,000 cu. yds. cut, 8,500 cu. yds. fill). Special Condition One (1) of the permit required the applicant to submit a specific landscaping plan, utilizing species consistent with those in Malibu Lagoon State Park, for a 10 foot wide setback adjacent to the park.

Following issuance of the permit, and prior to construction, the applicant modified the design of the park to create a private golf course. The new plans eliminated the jogging track, gazebos, and ponds, altered the grading, drainage, irrigation, and landscaping, and added a 985 sq. ft. storage building with septic system. The landscaping plan for the 10-foot wide strip of land adjacent to Malibu Lagoon State Park was not implemented.

In early 2002, Commission Enforcement staff was informed that unpermitted development had occurred on the property. At the direction of Enforcement staff, the applicant submitted this coastal permit amendment application to address the unpermitted development.

## **B. Hazards, Geologic Stability, and Landform Alteration**

The proposed development is located in Malibu, an area generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to Malibu 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.

In addition, Malibu contains many highly scenic areas offering mountain, canyon, and ocean views. Substantial landform alteration can degrade scenic and visual resources.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and landform alteration that are applicable to the proposed development:

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

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

Section 30253 of the Coastal Act, which also is incorporated as part of the Malibu LCP, 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.**

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

- 4.2. All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.**
- 4.5. Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.**
- 4.10. New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.**
- 4.45 New development shall minimize risks to life and property from fire hazard through:**
- **Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;**
  - **Siting and designing development to avoid hazardous locations;**
  - **Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive habitat to the maximum feasible extent;**
  - **Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;**
  - **Use of fire-retardant, native plant species in landscaping.**
- 6.2 Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.**
- 6.9 All new development shall be sited and designed to minimize alteration of natural landforms by:**
- **Conforming to the natural topography.**
  - **Preventing substantial grading or reconfiguration of the project site.**
  - **Eliminating flat building pads on slopes. Building pads on sloping sites shall utilize split level or stepped-pad designs.**
  - **Requiring that man-made contours mimic the natural contours.**
  - **Ensuring that graded slopes blend with the existing terrain of the site and surrounding area.**

- **Minimizing grading permitted outside of the building footprint.**
- **Clustering structures to minimize site disturbance and to minimize development area.**
- **Minimizing height and length of cut and fill slopes.**
- **Minimizing the height and length of retaining walls.**
- **Cut and fill operations may be balanced on-site, where the grading does not substantially alter the existing topography and blends with the surrounding area. Export of cut material may be required to preserve the natural topography.**

The Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. The LCP also requires that landform alteration be minimized in order to protect scenic views.

The applicant has submitted two geologic reports that discuss geologic hazards and site stability ("Limited Engineering Geologic and Soils Report, 23554 Pacific Coast Highway, Malibu, California," SubSurface Designs, Inc., December 26, 2002; "Supplemental Geologic Report, Section 111 Statement for Existing Shed, 23554 Pacific Coast Highway, Malibu, California," SubSurface Designs, Inc., June 18, 2003).

The SubSurface Designs, Inc., report dated June 18, 2003 concludes:

***It is the finding of this firm that the existing shed will not be affected by settlement, landsliding, or slippage. Further, the presence of the shed will not have an adverse effect on off site property.***

As such, the proposed project will serve to ensure general geologic and structural integrity on site at the present time. However, to ensure that final plans are reviewed and approved by the geologic consultants, **Special Condition One (1)** requires the applicant to submit project plans certified by the consulting geologist and geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional recommendations by the geologic consultants to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, sewage disposal and drainage. Any substantial changes to the proposed development approved by the Commission that may be recommended by the consultants shall require an amendment to the permit or a new coastal development permit.

Modification of the previously approved private park to create the as-built golf course involved approximately 9,000 cu. yds. of additional grading for a total of 20,482 cu. yds. of grading on site (2,092 cu. yds. cut, 18,390 cu. yds. fill). Although the amount of additional grading is substantial, it occurred over the entire 10 acre site and therefore did not result in substantial landform alteration. As shown in **Exhibit 9**, the cut reduced the ground level less than one foot, and the fill raised the ground level an average of approximately two feet, with additional fill placed to create up to two foot high berms. The additional grading consists mainly of additional fill, which was placed within the same footprint as the previously approved 11,500 cu. yds. of grading. The additional fill resulted in a slightly more undulating landscape but did not result in a

substantial alteration of the previously approved topography. Furthermore, due to the location of the eight foot high wall along the site's perimeter, the site is not visible from Pacific Coast Highway, a designated Scenic Road, or from any public viewpoints.

Therefore, for the reasons discussed above, the Commission finds that the project, as conditioned, is consistent with the applicable policies and standards of the Malibu LCP.

### **C. Environmentally Sensitive Habitat Areas (ESHA) / Water Quality**

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

The Malibu LCP also provides for the protection of water quality. The policies require new development to protect, and where feasible, enhance and restore wetlands, streams, and groundwater recharge areas. The policies promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation, including site planning, environmental review and mitigation, and project and permit conditions of approval.

Section 30231 of the Coastal Act, which is incorporated as a policy of the Malibu LCP, states that:

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

Section 30240 of the Coastal Act, which is also incorporated as a policy of the Malibu LCP, states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.***
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.***

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

- 3.1 **Areas in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments are Environmentally Sensitive Habitat Areas (ESHAs) and are generally shown on the LUP ESHA Map. The ESHAs in the City of Malibu are riparian areas, streams, native woodlands, native grasslands/savannas, chaparral, coastal sage scrub, dunes, bluffs, and wetlands, unless there is site-specific evidence that establishes that a habitat area is not especially valuable because of its special nature or role in the ecosystem. Regardless of whether streams and wetlands are designated as ESHA, the policies and standards in the LCP applicable to streams and wetlands shall apply. Existing, legally established agricultural uses, confined animal facilities, and fuel modification areas required by the Los Angeles County Fire Department for existing, legal structures do not meet the definition of ESHA.**
- 3.6 **Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated.**
- 3.8 **Environmentally Sensitive Habitat Areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.**
- 3.14 **New development shall be sited and designed to avoid impacts to ESHA. If there is no feasible alternative that can eliminate all impacts, then the alternative that would result in the fewest or least significant impacts shall be selected. Impacts to ESHA that cannot be avoided through the implementation of siting and design alternatives shall be fully mitigated, with priority given to on-site mitigation. Off-site mitigation measures shall only be approved when it is not feasible to fully mitigate impacts on-site or where off-site mitigation is more protective in the context of a Natural Community Conservation Plan that is certified by the Commission as an amendment to the LCP. Mitigation shall not substitute for implementation of the project alternative that would avoid impacts to ESHA.**
- 3.18 **The use of insecticides, herbicides, or any toxic chemical substance which has the potential to significantly degrade Environmentally Sensitive Habitat Areas, shall be prohibited within and adjacent to ESHAs, where application of such substances would impact the ESHA, except where necessary to protect or enhance the habitat itself, such as eradication of invasive plant species, or habitat restoration. Application of such chemical substances shall not take place during the winter season or when rain is predicted within a week of application.**
- 3.23 **Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.**
- 3.24 **New development adjacent to parklands, where the purpose of the park is to protect the natural environment and ESHA, shall be sited and designed to minimize impacts to habitat and recreational opportunities, to the maximum extent feasible. Natural vegetation buffer areas shall be provided around parklands. Buffers shall be of a**

sufficient size to prevent impacts to parkland resources, but in no case shall they be less than 100 feet in width.

- 3.42 **New development shall be sited and designed to minimize impacts to ESHA by:**
- **Minimizing grading and landform alteration, consistent with Policy 6.8**
  - **Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.**
  - **Limiting the maximum number of structures to one main residence, one second residential structure, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.**
  - **Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.**
  - **Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Planning Commission, upon recommendation of the Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions.**
  - **Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.**
  - **Minimizing impacts to water quality, consistent with Policies 3.94-3.155**
- 3.45 **All new development shall be sited and designed so as to minimize grading, alteration of physical features, and vegetation clearance in order to prevent soil erosion, stream siltation, reduced water percolation, increased runoff, and adverse impacts on plant and animal life and prevent net increases in baseline flows for any receiving waterbody.**
- 3.56 **Exterior night lighting shall be minimized, restricted to low intensity fixtures, shielded, and directed away from ESHA in order to minimize impacts on wildlife. High intensity perimeter lighting and lighting for sports courts or other private recreational facilities in ESHA, ESHA buffer, or where night lighting would increase illumination in ESHA is prohibited.**
- 3.83 **Lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens shall be designated as wetland. Identified wetlands include Malibu and Zuma Lagoons. Any unmapped areas that meet these criteria are wetlands and shall be accorded all of the protections provided for wetlands in the LCP.**
- 3.84 **Any wetland area mapped as ESHA or otherwise determined to have previously been wetlands shall not be deprived of protection, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, filled, degraded, or that species of concern have been illegally eliminated.**
- 3.87 **The biological productivity and the quality of wetlands shall be protected and, where feasible, restored.**

- 3.88 **Buffer areas shall be provided around wetlands to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the wetland they are designed to protect, but in no case shall they be less than 100 feet in width.**
- 3.95 **New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:**
- **Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.**
  - **Limiting increases of impervious surfaces.**
  - **Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.**
  - **Limiting disturbance of natural drainage features and vegetation.**
- 3.96 **New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.**
- 3.98 **Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern<sup>1</sup> that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.**
- 3.99 **Post-development peak stormwater runoff discharge rates shall not exceed the estimated pre-development rate. Dry weather runoff from new development must not exceed the pre-development baseline flow rate to receiving waterbodies.**
- 3.100 **New development shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development shall meet the requirements of the Los Angeles Regional Water Quality Control Board (RWQCB) in its the Standard Urban Storm Water Mitigation Plan For Los Angeles County And Cities In Los Angeles County (March 2000) (LA SUSMP) or subsequent versions of this plan.**
- 3.102 **Post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate, or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs and/or the 85<sup>th</sup> percentile, 1-hour storm event (with an appropriate safety factor, i.e. 2 or greater) for flow-based BMPs. This standard shall be consistent with the most recent Los Angeles Regional Water Quality Control Board municipal stormwater permit for the Malibu region or the most recent California Coastal Commission Plan for Controlling Polluted Runoff, whichever is more stringent.**

---

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

- 3.110 New development shall include construction phase erosion control and polluted runoff control plans. These plans shall specify BMPs that will be implemented to minimize erosion and sedimentation, provide adequate sanitary and waste disposal facilities and prevent contamination of runoff by construction chemicals and materials.**
- 3.111 New development shall include post-development phase drainage and polluted runoff control plans. These plans shall specify site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff, and shall include the monitoring and maintenance plans for these BMPs.**
- 3.113 Outdoor material storage areas shall be designed using BMPs to prevent stormwater contamination from stored materials.**
- 3.115 Permits for new development shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPs. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility.**
- 3.116 The City, property owners, or homeowners associations, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.**
- 3.120 New development shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.**

The project site is located immediately west of Malibu Lagoon State Park, in the Civic Center area of the City of Malibu. Malibu Lagoon State Park is mapped as an environmentally sensitive habitat area (ESHA) in the Malibu LCP. The Malibu Lagoon has been determined to be ESHA due to its unique nature, its extreme vulnerability to development, and its important role in providing habitat for endangered species. Malibu Lagoon is one of the last large wetlands in Los Angeles County. Federally endangered tidewater gobies (*Eucyclogobius newberryi*) and southern steelhead trout (*Oncorhynchus mykiss irideus*) use the lagoon and federally endangered brown pelicans (*Pelecanus occidentalis californicus*) can be seen in and around the lagoon. Malibu Lagoon and Malibu Creek support one of the few remaining steelhead trout runs in Southern California.

Runoff from the proposed project site currently flows into a drainage pipe that outlets to the lagoon. Because the as-built development drains directly into the lagoon, water quality impacts in this case are synonymous with impacts to ESHA. Therefore, consistency of the proposed project with the water quality and ESHA policies of the Malibu LUP is addressed jointly in this section.

The proposed project includes after-the-fact approval for modification of a previously approved private park to create a private golf course. Specific changes include elimination of an approximately ½ mile decomposed granite jogging track, three gazebos, and three ponds; alteration of site grading, drainage, irrigation, and landscaping, and addition of a 985 sq. ft. storage building with septic system. The proposal also includes abandonment of the unpermitted septic system, construction of a recirculating drainage system and the planting of habitat-appropriate native vegetation in a ten foot wide, approximately 620 foot long native vegetation buffer area adjacent to Malibu Lagoon State Park.

Because the applicant is seeking to modify a previously approved project, in order to determine the proposed project's consistency with the ESHA policies of the Malibu LUP, the Commission must consider the impact of the proposed modifications on the adjacent Malibu Lagoon. Possible impacts include: 1) increased disturbance of adjacent ESHA, including introduction of non-native invasive plant species, decreased setbacks, and light pollution; and 2) increased impacts on water quality, including increased transport of polluted runoff into the lagoon, and increased freshwater inputs that, via groundwater migration or surface runoff, decrease the salinity of lagoon waters. These potential impacts are discussed in turn below.

#### Increased disturbance of adjacent ESHA

The proposed project site consists of an approximately 10 acre property developed as a private golf course. An eight-foot high stone perimeter wall separates the majority of the project site from the adjacent Malibu Lagoon State Park, with the exception of a ten-foot wide strip of land that lies east of the wall and is contiguous with State Park land. Landscaping within the walled area consists of turf and primarily non-native trees, as well as some California sycamores (*Platanus racemosa*). Special Condition One (1) of the original permit required submittal of a landscaping plan, utilizing plants consistent with those on the State Park, for the area east of the wall. The landscaping plan, however, was not implemented, and the area is currently sparsely vegetated with non-native grasses.

The applicant proposes to landscape this area with native plant species consistent with the surrounding habitat. The habitat adjacent to this area consists of mixed scrub, dominated by quail bush, mule fat, coyote brush, and lemonadeberry, as well as some non-native pine trees. The mixed scrub habitat extends approximately 50 to 165 feet east of the applicant's property line, where it transitions into wetland habitat. Thus the distance between the developed portion of the project site and the wetland is approximately 60 to 175 feet. Policy 3.88 of the Malibu LCP requires a minimum 100 foot setback from wetlands, and Policy 3.24 of the Malibu LCP requires a minimum 100 foot setback from park lands. However, the development parameters, including the location of the eight foot high wall that marks the developed portion of the project, were lawfully established under CDP No. 5-82-192, and therefore constitute a non-conforming use under Section 13.5 of the Malibu LIP. The proposed project does not reduce the setback distance or expand the development parameters of the project and therefore does not intensify the project's non-conformance with Policies 3.24 and 3.88.

The applicant has submitted a report comparing the impacts of the previously approved private park and the as-built golf course ("Comparison of Potential Biological Impacts on Malibu Lagoon Between 1982 Approved Plan for Perenchio Park and Current Park Configuration," Glenn Lukos Associates, December 19, 2002). The report notes that the plant palettes for the approved and as-built parks are very similar, containing primarily non-native trees (as well as

some California sycamores) and turf. The approved landscaping plan also contains two invasive non-native trees, Peruvian pepper (*Schinus molle*) and Eucalyptus (*Eucalyptus globulus*), and several planter areas containing ornamental species planted on a seasonal basis. The report concludes that habitat values for the approved and existing parks would not be measurably different, and would primarily provide habitat for urban bird species. The report also concludes that the approved park exhibits a greater potential for invasion of non-native invasive plant species into the lagoon because of the two species of invasive trees included in the approved landscaping plan. These trees are eliminated in the proposed amendment.

Therefore, the proposed modifications to the approved park will not increase the potential for introduction of non-native invasive plant species into the lagoon. As noted above, the proposed project also includes a native landscaping plan for the ten foot wide strip of land adjacent to the lagoon, as required by Special Condition One (1) of the original permit. In order to ensure that the proposed plan is implemented, **Special Condition Five (5)** requires the applicant to submit a buffer landscaping plan, utilizing a native plant palette consistent with the surrounding habitat, prior to issuance of the permit amendment. In order to ensure that the proposed restoration is successful, **Special Condition Five (5)** also requires the applicants to submit annual performance reports during a five-year monitoring period.

As noted above, the Malibu Lagoon provides vital habitat for a variety of wildlife, including several endangered species. The Commission has found, in past permit actions, that night lighting may alter or disrupt feeding, nesting, and roosting activities of both terrestrial and aquatic organisms. Policy 3.56 of the Malibu LCP requires that night lighting be minimized where it would increase illumination in ESHA. Although the applicant has not proposed any lighting for the golf course at this time, in order to mitigate any potential future impacts, **Special Condition Seven (7)** limits the amount of lighting allowed on the site to the minimum necessary for security purposes. In addition, in order to ensure that any future site development is reviewed for its potential impacts on ESHA, **Special Condition Eight (8)** addresses future development by ensuring that all future development proposals for the site, which might otherwise be exempt from review, would require prior review so that potential impacts to the adjacent ESHA may adequately be considered. Finally, **Special Condition Nine (9)** requires the applicant to record a deed restriction that imposes the terms and condition 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.

#### Water Quality

As noted above, the project site is located immediately west of Malibu Lagoon State Park, a designated environmentally sensitive habitat area (ESHA) in the Malibu LCP. Malibu Lagoon is one of the last large wetlands in Los Angeles County, and provides habitat for federally endangered species including tidewater gobies (*Eucyclogobius newberryi*), southern steelhead trout (*Oncorhynchus mykiss irideus*), and brown pelicans (*Pelecanus occidentalis californicus*).

Runoff from the proposed project site currently flows into a drainage pipe that outlets to the lagoon. Because the as-built development drains directly into the lagoon, the Commission must consider the potential impacts of the proposed modifications on the water quality of the lagoon. These impacts include increased transport of pollutants into the lagoon, and decreased salinity of lagoon waters due to increased freshwater inputs.

The discharge of pollutants such as fertilizers, herbicides, and pesticides can cause cumulative impacts such as eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size; algae blooms that reduce the penetration of sunlight needed by aquatic vegetation, which provides food and cover for aquatic species; disruptions to the reproductive cycles of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. Excessive freshwater inputs can contribute to lowered salinity levels in saltwater environments, thus altering the chemical balance upon which saltwater organisms depend.

The applicant has submitted a report comparing the impacts of the previously approved private park and the as-built golf course ("Comparison of Potential Biological Impacts on Malibu Lagoon Between 1982 Approved Plan for Perenchio Park and Current Park Configuration," Glenn Lukos Associates, December 19, 2002). The report states that while potential impacts on the lagoon from either the park or golf course are minimal, the approved plan exhibits the potential for at least minimal export of fine sediments and nutrients into the lagoon, given that the approved plan includes unvegetated areas such as the jogging track and the ornamental planter areas during seasonal transitions. The report notes also that fertilizers and amendments would be added during seasonal planting of new ornamental species, and that these nutrients could be transported into the lagoon.

The report further states that the as-built plan includes no unvegetated areas; however, this statement overlooks the presence of several sand traps on the site. The report also does not acknowledge the more intensive use of chemicals needed to maintain the unpermitted putting green, relative to that required to maintain all-purpose turf.

The applicant has submitted a report addressing the use of chemicals on the site ("Re: Chemical Usage Analysis, Perenchio Park, Malibu, CA," GeoSyntec Consultants, April 21, 2003). The report includes pesticide application records for 2002, which show that approximately 838 lbs. of eleven different insecticides, fungicides, herbicides were applied to the site, mostly to the 22,000 sq. ft. putting green. A second report ("Re: Initial Preliminary Draft Water Quality Analysis, Perenchio Park, Malibu, CA," GeoSyntec Consultants, December 19, 2002) notes that approximately 151 lbs. of fertilizer were applied to the golf course over the last 2½ years, with the putting green receiving the majority of fertilizer inputs. The chemical usage analysis notes that amounts and types of chemicals "consistent with standard lawn care practice" were used on the lawn areas, with the exception of the putting green. It further notes that several fungicides and insecticides used on the property are highly toxic to aquatic organisms. The report recommends replacement of these chemicals with low toxicity or reduced-risk substitutes. The report also provides best management practices (BMPs) for controlling and reducing the amounts of chemicals used on the site. In addition, the report recommends that irrigation be controlled to minimize excess watering, and to ensure that water be applied to the soil at rates that do not exceed the infiltration rates of the soil. As described below, the applicant has incorporated these recommendations in their proposal, including measures to prevent transport of chemicals into the lagoon.

The previously approved drainage plan for the site allowed for surface runoff to flow across the site and into a drainage swale that discharges into the Malibu Lagoon State Park. The as-built drainage system also allows the majority of surface runoff to flow across the site, thus allowing some filtration and infiltration of the runoff prior to its entry into two large storm drain inlets. The drain inlets tie into a drain pipe that discharges into the lagoon. However, the as-built plan also

includes a sub-drain system under the putting green that directs excess water directly into the drain pipe that leads to the lagoon. The water draining from the putting green contains the highest concentrations of chemicals, including those that are highly toxic to aquatic life. By directing the most polluted water directly into the drain pipe, the as-built system intensifies the input of pollutants into the lagoon. By conducting the water into the storm drain without opportunity for soil absorption, the as-built system also increases the volume of fresh water entering the lagoon.

The applicant proposes to upgrade the as-built drainage system by disconnecting all subdrain connections to the drainpipe, and by installing a sump system that would direct all water from the subdrains to a storage tank near the northern property line. This drainage system will greatly reduce the amount of polluted runoff directly discharged to the storm drain system, such as that draining from the putting green. Water from the storage tank would then be redistributed to the northern portion of the site, approximately 500 feet from the storm drain inlets. The redistributed water would thus have the opportunity to infiltrate into the soil, and deposit pollutant loads, prior to reaching the storm drain inlets. According to the report describing the proposed upgrade ("Perenchio Park Drainage System Improvements Preliminary Design Report," GeoSyntec Consultants, April 21, 2003), the proposed system would prevent surface runoff from entering the storm drain for flows up to and including a 1-inch 24-hour rainfall event.

The system as described in the April 21, 2003 GeoSyntec report, in conjunction with the best management practices (BMPs) described in a second report "Re: Chemical Usage Analysis, Perenchio Park, Malibu, CA," GeoSyntec Consultants, April 21, 2003," meets the Water Quality Management Plan requirements prescribed in the Malibu LIP. Therefore, in order to ensure that adequate measures to minimize water quality impacts are implemented, **Special Condition Four (4)** requires the applicant to implement the drainage system improvements described in the GeoSyntec Consultants drainage system report and generally shown in **Exhibit 7**. To further minimize the water quality impacts from chemical pollutants, **Special Condition Six (6)** requires the applicant to incorporate the BMPs provided in "Re: Chemical Usage Analysis, Perenchio Park, Malibu, CA," GeoSyntec Consultants, April 21, 2003." **Special Condition Six (6)** also requires the applicant to employ a soil moisture monitoring system to minimize water inputs, and provide for the recycling of irrigation water and runoff to the maximum extent feasible, thus reducing freshwater inputs via groundwater migration or surface runoff to the lagoon. With these measures, the proposed amendment will result in reduced impacts on water quality and ESHA.

In addition, the applicant proposes to abandon an unpermitted septic system on the site. The applicant has stated that although the septic system met County of Los Angeles requirements at the time it was installed, it does not meet current City of Malibu standards. Therefore, in order to prevent any water quality impacts that may result from continued operation of the sub-standard septic system, **Special Condition Four (4)** requires that the applicant abandon the septic system within 120 days of issuance of the coastal development permit.

Finally, in order to ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition Ten (10)** requires the applicants to comply with all conditions of the permit within 120 days of Commission action on the permit application.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the ESHA and water quality protection policies of the Malibu LCP.

#### D. Violations

Development has occurred on the subject site without the required coastal development permits, including the construction of an approximately ten acre private golf course in non-compliance with the previously approved plans for a ten acre private park. The unauthorized changes specifically included the construction of a 985 sq. ft. storage building, septic system, driveway, changes to the landscaping, irrigation and drainage plans, and approximately 9,000 cu. yds. of additional grading. The originally approved project allowed for approximately 11,500 cu. yds. of grading on site, the as-built project includes 20,482 cu. yds. of grading (2,092 cu. yds. cut, 18,390 cu. yds. fill). The applicant requests after-the-fact approval for the development described above with the exception of the unpermitted septic tank. The applicant also requests approval to construct a recirculating drainage system and a ten foot wide, approximately 620 foot long native vegetation buffer area, and to abandon the unpermitted septic system in place.

The subject permit application addresses the unpermitted development, as well as the new development proposed in the subject application. In order to ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition Ten (10)** requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 60 days of Commission action, 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 policies of the Malibu LCP. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

#### E. CEQA

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

The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.



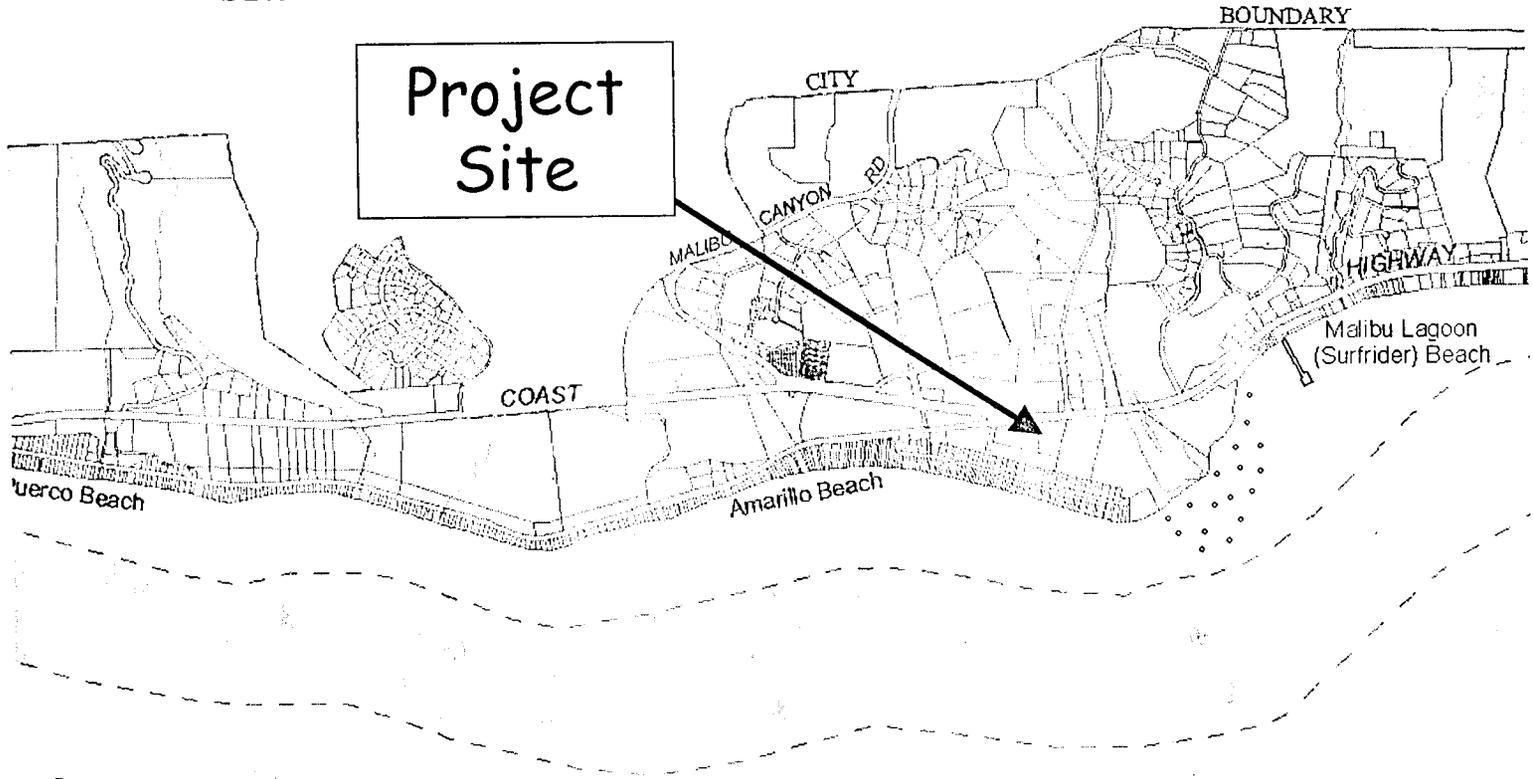
Local Coastal Program - City of Malibu

# ESHA and Marine Resources Map 3: Dan Blocker to Malibu Pier

## Environmentally Sensitive Habitat Areas

Includes areas identified as coastal sage scrub and/or chapparal, riparian areas and wetlands.\*

-  Kelp Beds
-  Near Shore Shallow-water Fish Habitat
-  Streams
-  Clam Habitat



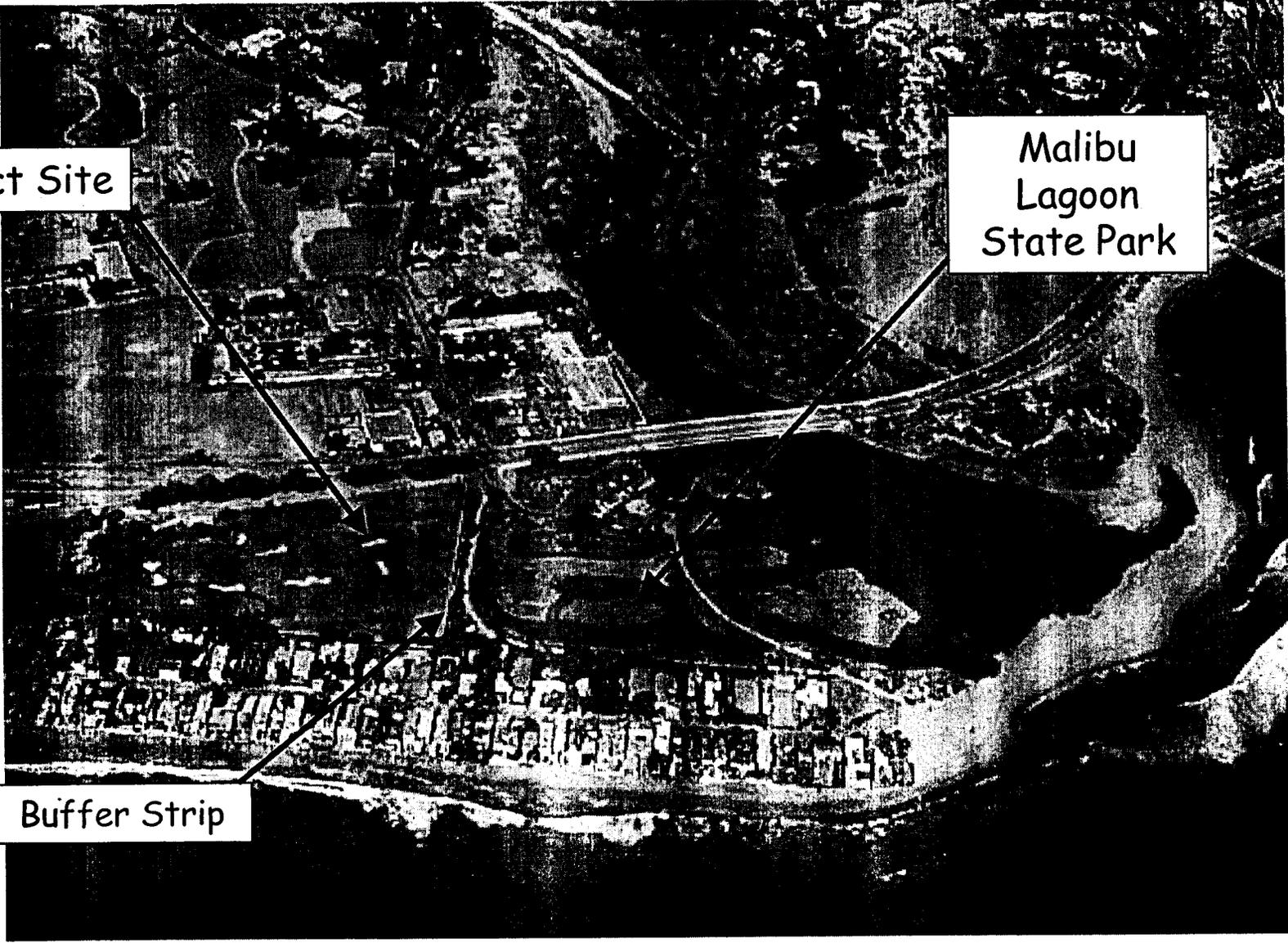
Match Line to Map 4

EXHIBIT NO. 2
APPLICATION NO.
5-82-192-A1
ESHA MAP

Project Site

Malibu  
Lagoon  
State Park

Buffer Strip



Copyright (C) 2002 Kenneth Adelman, California Coastal Records Project, [www.californiacoastline.org](http://www.californiacoastline.org)

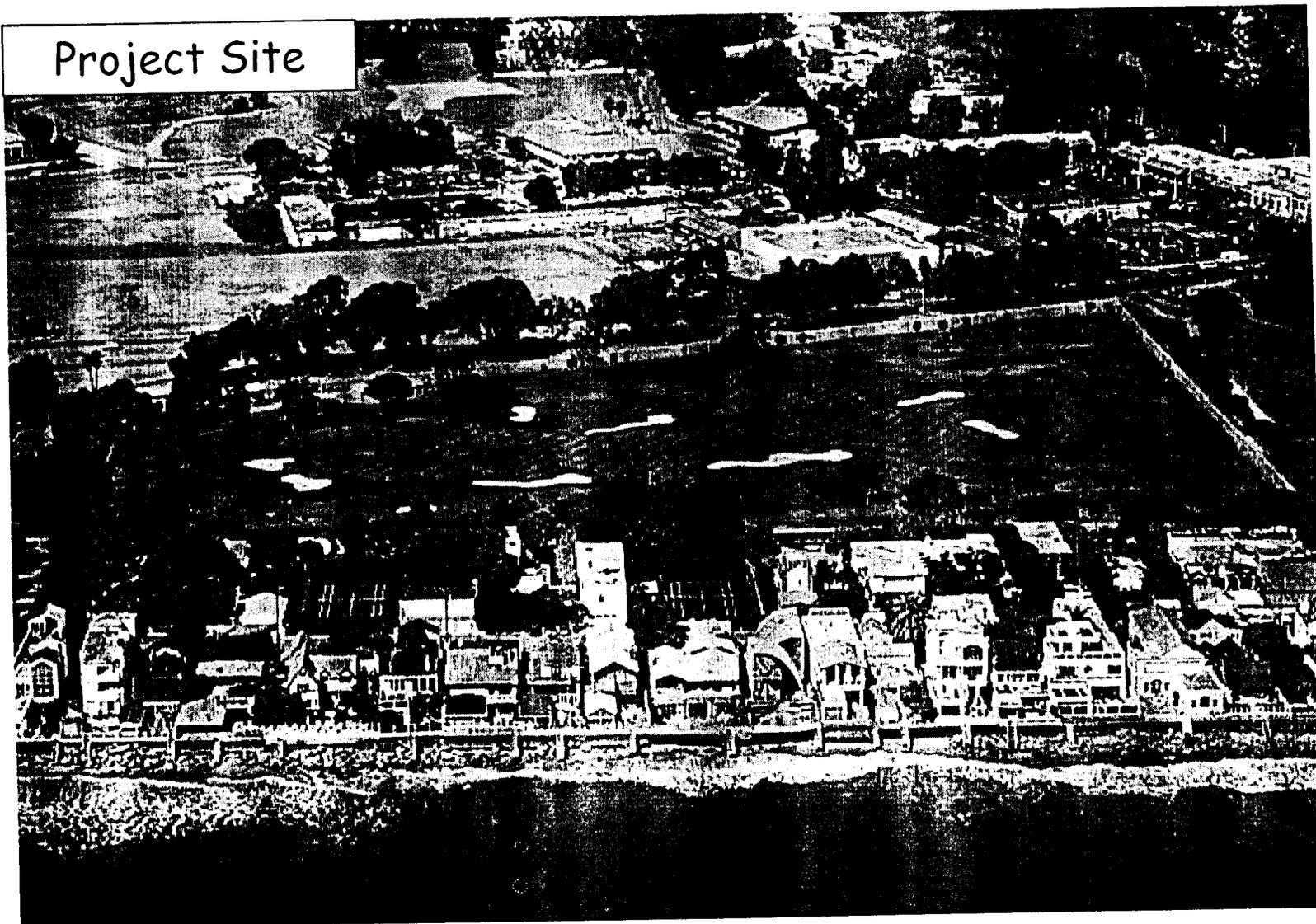
EXHIBIT NO. 3

APPLICATION NO.

5-82-192-A1

AERIAL VIEW

Project Site



Copyright (C) 2002 Kenneth Adelman, California Coastal Records Project, [www.californiacoastline.org](http://www.californiacoastline.org)

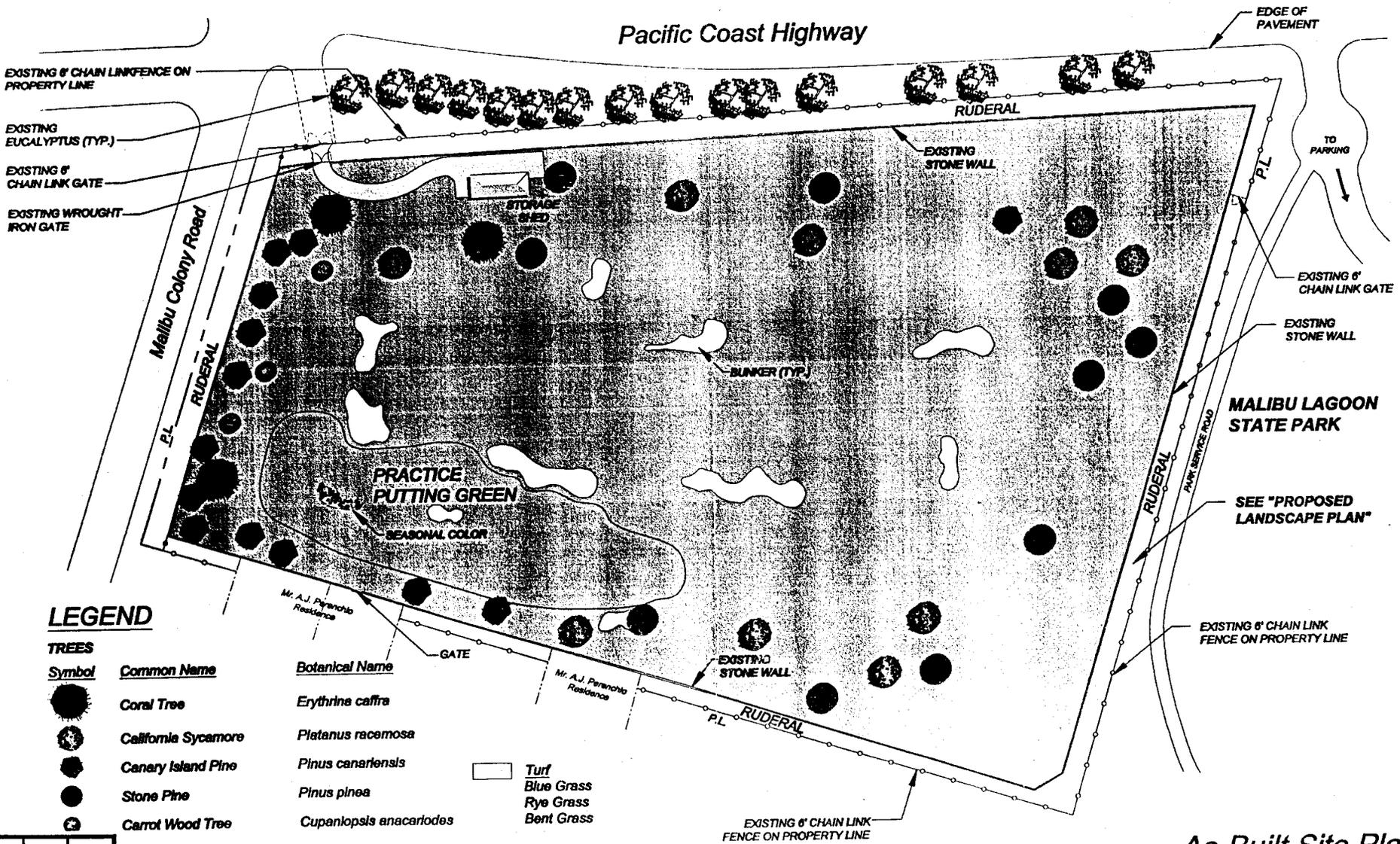
EXHIBIT NO. 4

APPLICATION NO.

5-82-192-A1

AERIAL CASE-UP

Pacific Coast Highway



**LEGEND**

**TREES**

Symbol	Common Name	Botanical Name
●	Coral Tree	<i>Erythrina caffra</i>
●	California Sycamore	<i>Platanus racemosa</i>
●	Canary Island Pine	<i>Pinus canariensis</i>
●	Stone Pine	<i>Pinus pinea</i>
●	Carrot Wood Tree	<i>Cupanopsis anacardodes</i>

Turf  
 Blue Grass  
 Rye Grass  
 Bent Grass

**As-Built Site Plan**



hlo

EXHIBIT NO. 5  
 APPLICATION NO.  
 5-82-192-A1  
 SITE PLAN

*Mr. Arnold Biondo Paper*  
*Project of Urban Landscape*



PLANT KEY
1. CUCURBITA PEPPER
2. EUCALYPTUS
3. PALM TREE
4. CANTALOUPE
5. CUCURBITA PEPPER
6. CUCURBITA PEPPER
7. CUCURBITA PEPPER
8. CUCURBITA PEPPER
9. CUCURBITA PEPPER
10. CUCURBITA PEPPER
11. CUCURBITA PEPPER
12. CUCURBITA PEPPER
13. CUCURBITA PEPPER
14. CUCURBITA PEPPER
15. CUCURBITA PEPPER
16. CUCURBITA PEPPER
17. CUCURBITA PEPPER
18. CUCURBITA PEPPER
19. CUCURBITA PEPPER
20. CUCURBITA PEPPER
21. CUCURBITA PEPPER
22. CUCURBITA PEPPER
23. CUCURBITA PEPPER
24. CUCURBITA PEPPER
25. CUCURBITA PEPPER
26. CUCURBITA PEPPER
27. CUCURBITA PEPPER
28. CUCURBITA PEPPER
29. CUCURBITA PEPPER
30. CUCURBITA PEPPER
31. CUCURBITA PEPPER
32. CUCURBITA PEPPER
33. CUCURBITA PEPPER
34. CUCURBITA PEPPER
35. CUCURBITA PEPPER
36. CUCURBITA PEPPER
37. CUCURBITA PEPPER
38. CUCURBITA PEPPER
39. CUCURBITA PEPPER
40. CUCURBITA PEPPER
41. CUCURBITA PEPPER
42. CUCURBITA PEPPER
43. CUCURBITA PEPPER
44. CUCURBITA PEPPER
45. CUCURBITA PEPPER
46. CUCURBITA PEPPER
47. CUCURBITA PEPPER
48. CUCURBITA PEPPER
49. CUCURBITA PEPPER
50. CUCURBITA PEPPER
51. CUCURBITA PEPPER
52. CUCURBITA PEPPER
53. CUCURBITA PEPPER
54. CUCURBITA PEPPER
55. CUCURBITA PEPPER
56. CUCURBITA PEPPER
57. CUCURBITA PEPPER
58. CUCURBITA PEPPER
59. CUCURBITA PEPPER
60. CUCURBITA PEPPER
61. CUCURBITA PEPPER
62. CUCURBITA PEPPER
63. CUCURBITA PEPPER
64. CUCURBITA PEPPER
65. CUCURBITA PEPPER
66. CUCURBITA PEPPER
67. CUCURBITA PEPPER
68. CUCURBITA PEPPER
69. CUCURBITA PEPPER
70. CUCURBITA PEPPER
71. CUCURBITA PEPPER
72. CUCURBITA PEPPER
73. CUCURBITA PEPPER
74. CUCURBITA PEPPER
75. CUCURBITA PEPPER
76. CUCURBITA PEPPER
77. CUCURBITA PEPPER
78. CUCURBITA PEPPER
79. CUCURBITA PEPPER
80. CUCURBITA PEPPER
81. CUCURBITA PEPPER
82. CUCURBITA PEPPER
83. CUCURBITA PEPPER
84. CUCURBITA PEPPER
85. CUCURBITA PEPPER
86. CUCURBITA PEPPER
87. CUCURBITA PEPPER
88. CUCURBITA PEPPER
89. CUCURBITA PEPPER
90. CUCURBITA PEPPER
91. CUCURBITA PEPPER
92. CUCURBITA PEPPER
93. CUCURBITA PEPPER
94. CUCURBITA PEPPER
95. CUCURBITA PEPPER
96. CUCURBITA PEPPER
97. CUCURBITA PEPPER
98. CUCURBITA PEPPER
99. CUCURBITA PEPPER
100. CUCURBITA PEPPER

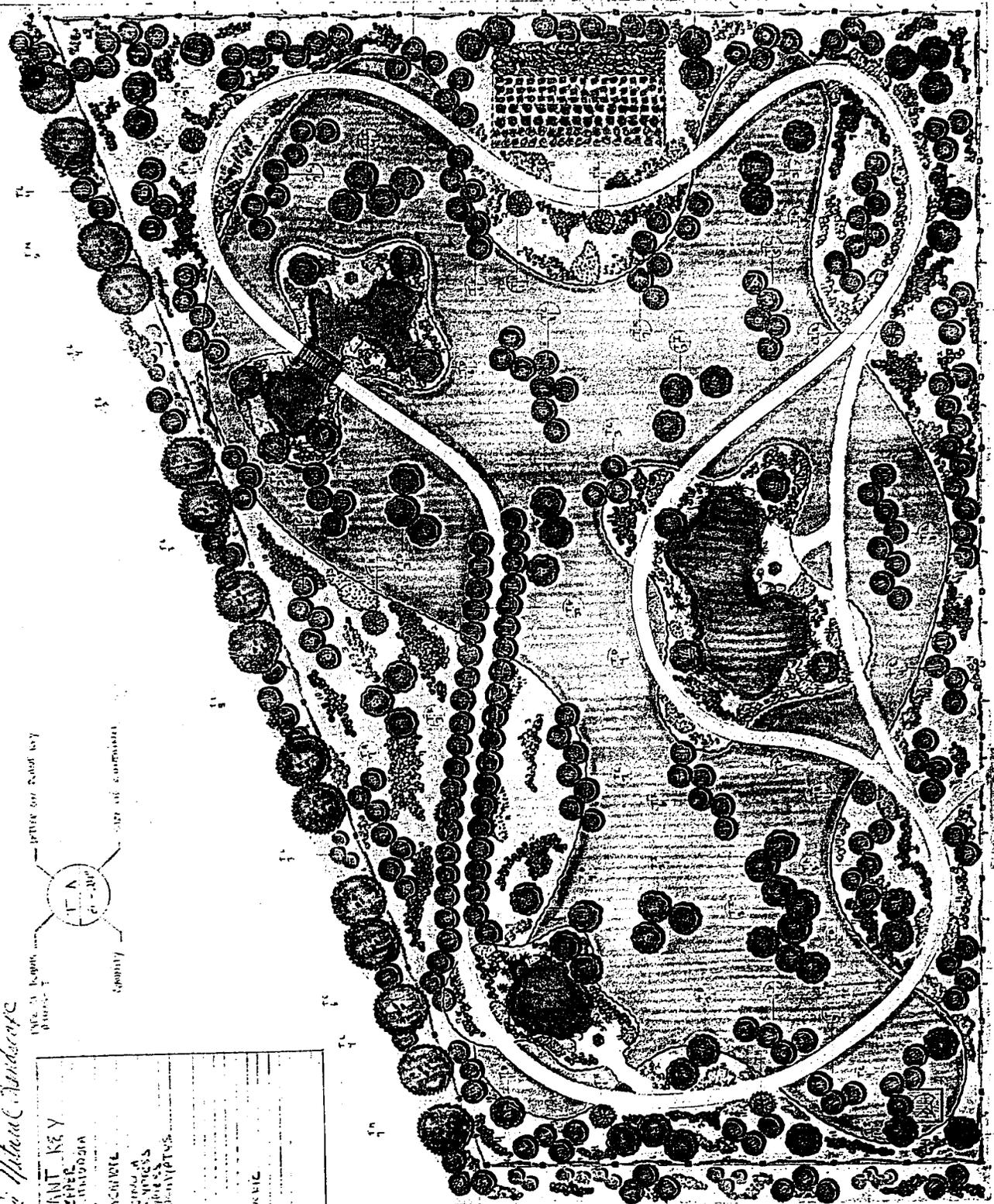
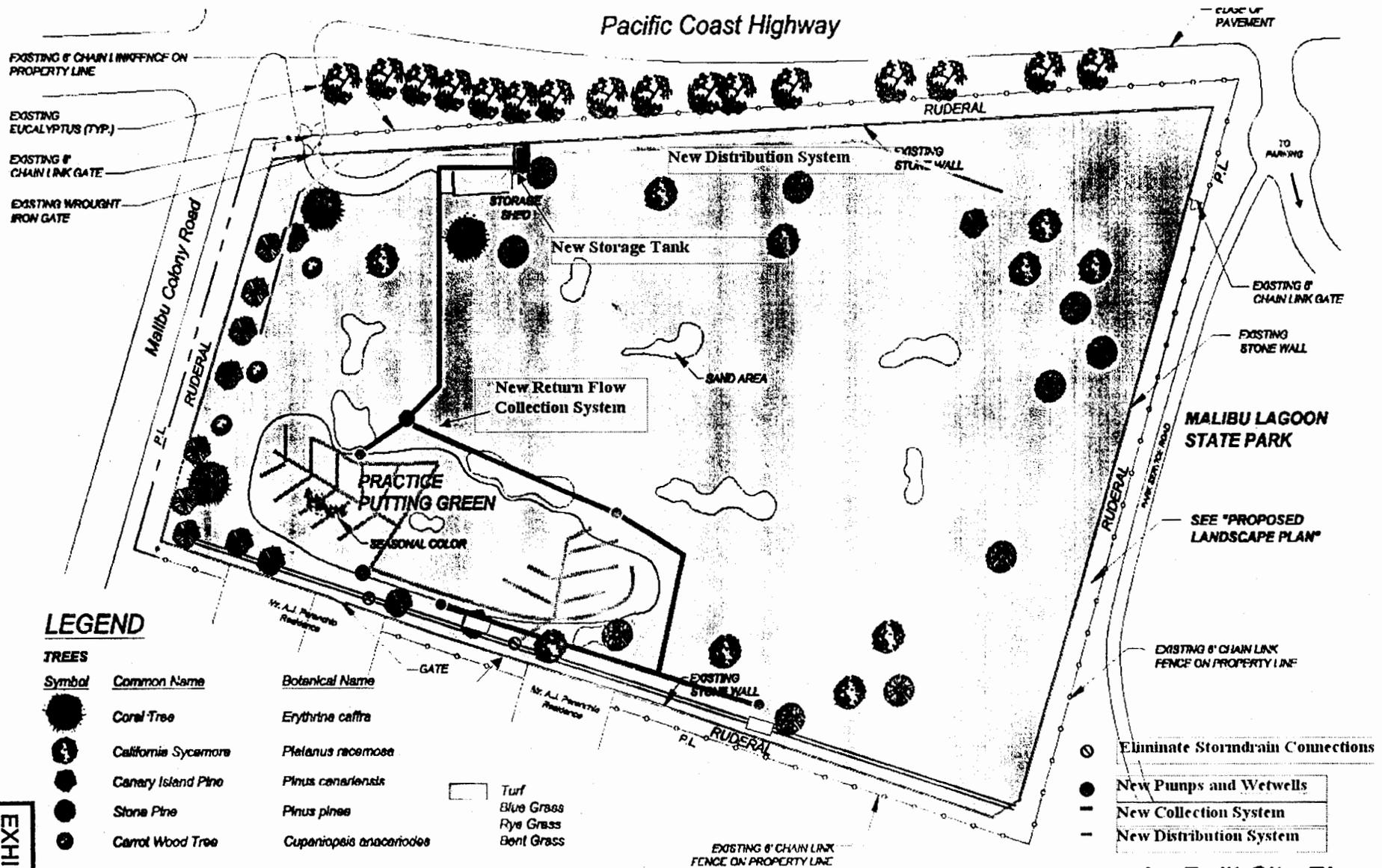


EXHIBIT NO. 6  
 APPLICATION NO.  
 5-82-192-A1  
 APPROVED SITE PLAN

REVISED 0/6/60

EXHIBIT NO. 7  
 APPLICATION NO.  
 5-82-192-A1  
 DRAINAGE PLAN



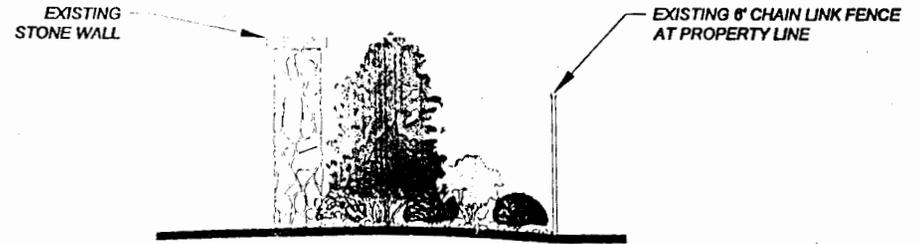
4: Proposed Collection and Distribution System

**As-Built Site Plan**



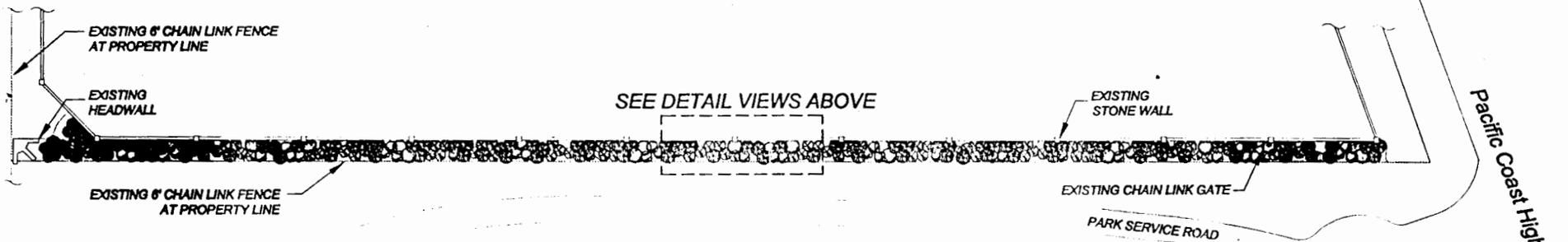
TYPICAL PLAN VIEW

1"=10'



TYPICAL SECTION VIEW

1"=5'



SEE DETAIL VIEWS ABOVE

**LEGEND**

**SHRUBS**

Symbol	Common Name	Botanical Name
●	Elderberry	<i>Sambucus mexicana</i>
●	Coastal Quail Brush	<i>Atriplex lentiformis breweri</i>
●	Lemonade Berry	<i>Rhus integrifolia</i>
○	Bush Monkeyflower	<i>Mimulus aurantiacus</i>
●	Bush Sunflower	<i>Encelia californica</i>

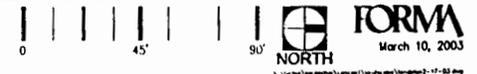
**GROUND COVERS**

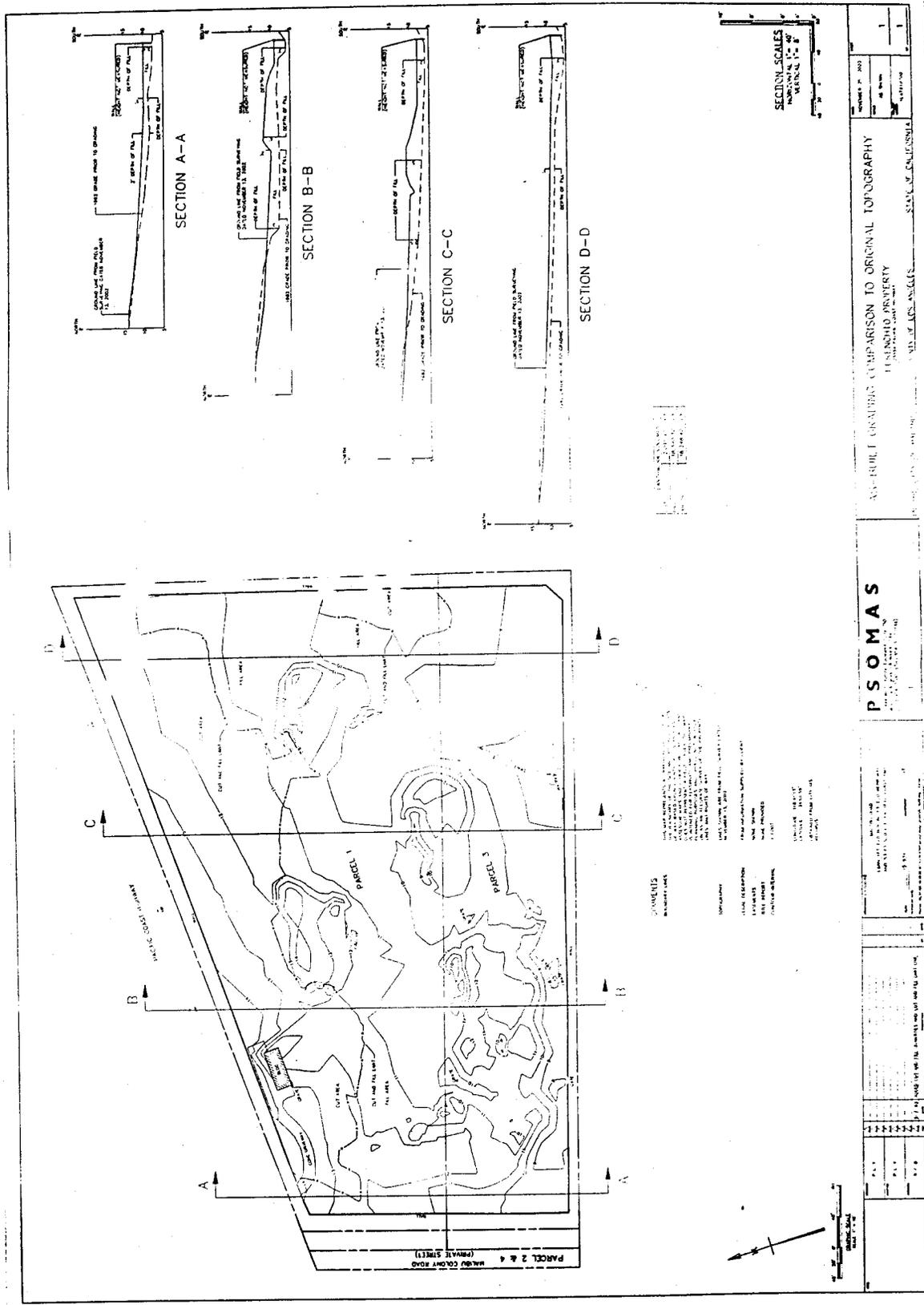
Symbol	Common Name	Botanical Name
□	Beach Evening Primrose	<i>Camissonia chelranthifolia</i>
□	Coast Range Malic	<i>Malica imperfecta</i>
□	California Fuschia	<i>Epilobium californicum</i>
□	Coastal Buckwheat	<i>Eriogonum parvifolium</i>
□	NCN	<i>Isocoma menziesii var. menziesii</i>

**MALIBU LAGOON STATE PARK**

**Proposed Landscape Plan**

EXHIBIT NO. 8  
APPLICATION NO.  
5-82-192-A1  
BUFFER LANDSCAPE PLAN





**EXHIBIT NO. 9**

**APPLICATION NO.**

**5-82-192-A1**

**AS-BUILT GRADING PLAN**



California Coastal Commission  
SOUTH COAST DISTRICT  
666 E. Ocean Blvd., Suite 3107  
Long Beach, CA 90801  
(213) 590-5071

COASTAL DEVELOPMENT PERMIT NO. 5-82-192

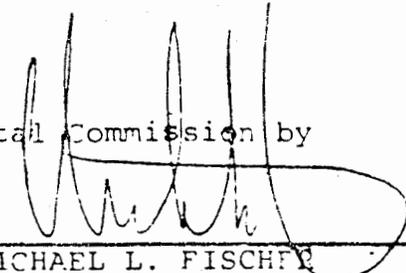
Page 1 of 2

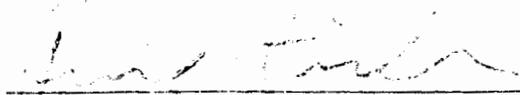
On July 27, 1982, The California Coastal Commission granted to A. Jerrold Perenchio, c/o 1901 Avenue of the Stars, Los Angeles, CA 90067 this permit for the development described below, subject to the attached Standard and Special conditions.

Construction of 8 foot high rock wall around ten acre parcel, landscaping including construction of 3 ponds, installation of jogging track, irrigation system, lighting system, dish radio receiver, and 3 gazebos.

SITE: 23554 Pacific Coast Highway  
Malibu, CA

Issued on behalf of the California Coastal Commission by

  
MICHAEL L. FISCHER  
Executive Director  
and

  
\_\_\_\_\_

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS  
AND WITHIN THE  
SIGNED AS BEEN RE-  
TURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions.

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of

EXHIBIT NO. 11
APPLICATION NO.
5-82-192-A1
CDP 5-82-192 (3PP)



STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

This permit is subject to the following special conditions:

1. Landscaping Plan. Prior to issuance of the permit, the applicant shall submit a specific landscaping plan for the setback area adjacent to Malibu Lagoon State Park. This plan shall indicate specific plant species and shall utilize species consistent with the landscaping contained in the Malibu Lagoon Restoration Plan. This plan shall be subject to the review and approval of the Executive Director. In reviewing this plan the Executive Director shall consult with the Department Division of the Department of Parks and Recreation to ensure consistency with the Lagoon Restoration Plan. All landscaping called for in this plan, as well as all irrigation improvements required by this plan shall be completed within three (3) months of completion of the eastern portion of the rock wall.
2. Interim Use. By accepting this permit, the applicant acknowledges that the proposed improvements (perimeter wall and landscaping) constitute a temporary and interim use of the parcel and that the eventual appropriate use will be as designated in the Commission certified Malibu Local Coastal Program. The applicant further acknowledges that this approval in no way constitutes a commitment to private intensification of residential use of the applicant's ownership.

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

This permit is subject to the following special conditions:

1. Landscaping Plan. Prior to issuance of the permit, the applicant shall submit a specific landscaping plan for the setback area adjacent to Malibu Lagoon State Park. This plan shall indicate specific plant species and shall utilize species consistent with the landscaping contained in the Malibu Lagoon Restoration Plan. This plan shall be subject to the review and approval of the Executive Director. In reviewing this plan the Executive Director shall consult with the Department Division of the Department of Parks and Recreation to ensure consistency with the Lagoon Restoration Plan. All landscaping called for in this plan, as well as all irrigation improvements required by this plan shall be completed within three (3) months of completion of the eastern portion of the rock wall.

2. Interim Use. By accepting this permit, the applicant acknowledges that the proposed improvements (perimeter wall and landscaping) constitute a temporary and interim use of the parcel and that the eventual appropriate use will be as designated in the Commission certified Malibu Local Coastal Program. The applicant further acknowledges that this approval in no way constitutes a commitment to private intensification of residential use of the applicant's ownership.

*Condition incorporated orally  
in staff rec, approved by Comm  
7-27-82  
mal*

California Coastal Commission  
SOUTH COAST DISTRICT  
666 E. Ocean Blvd., Suite 3107  
P.O. Box 1450  
Long Beach, CA 90801  
(213) 590-5071

Date Filed: 4-14-82  
49th Day: waived  
180th Day: 10-7-82  
Staff Analyst: RF  
Staff Report  
Hearing Date: 7-27/30-82

*Approved per staff  
7/27-30*

REGULAR CALENDAR

STAFF REPORT AND RECOMMENDATION

Application No. 5-82-192

Applicant: A. Jerrold Perenchio

Agent: Lynne Boutross  
Christine Brophy

Description: Construction of 8 foot high rock wall around ten acre parcel, landscaping including construction of 3 ponds, installation of jogging track, irrigation system, lighting system, dish radio receiver, and three gazebos (Exhibit 2)

Site: 23554 Pacific Coast Highway, Malibu, Los Angeles County (Exhibit 1)

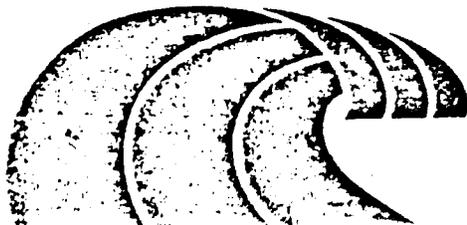
SUMMARY

Staff recommends approval of the proposed development as the project does not represent a permanent commitment of this parcel to private use, and will not adversely impact coastal resources.

7-27/30-82

EXHIBIT NO. 12
APPLICATION NO.
5-82-192-A1
STAFF REPORT 5-82-192

(13 pp.)



SUBSTANTIVE FILE DOCUMENTS

1. Malibu/Santa Monica Mountains Interpretive Guidelines.
2. Recreation Technical and Information Papers No. 1, A Study of Visitor Use in Selected Units of the California Park System, Summer, 1968, prepared by Ralph McCormick for Department of Parks & Recreation, May, 1972.
3. Commission testimony before Senate Committee on Natural Resources and Wildlife, November 27, 1978.
4. Commission staff comments on County Santa Monica Mountains Area Plan, December 22, 1980.
5. Santa Monica Mountains Comprehensive Plan, Santa Monica Mountains Comprehensive Planning Commission, August, 1979.
6. Preliminary Area Plan, Malibu/Santa Monica Mountains Area Planning Program, Los Angeles County, Department of Regional Planning, August, 1980.
7. Santa Monica Mountains and Seashore Plan, California Department of Parks and Recreation, 1975.
8. Appeals Nos. 171-77 (Jacobs), 215-79 (Schulte), 101-79 (Hollister), 381-78 (Headlands Properties, Inc.), 509-77 (Bel Mar), 1978-77 (Mooney), 45-77 (Issaac & Martin), 302-79 (Bergin), 174-77 (Sorensen).
9. Division 14 of the California Public Resources Code.
10. Title 7.75 of the Natural Resources Code.
11. Public Law 95-626, enacted by Congress November 10, 1978, creating NPA.

STAFF RECOMMENDATION

The staff recommends the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

## II. Standard Conditions

1. Notice of Receipt and Acknowledgement. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

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

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

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

## III. Special Conditions

The permit is subject to the following special condition:

1. Landscaping Plan. Prior to the issuance of the permit, the applicant shall submit a specific landscaping plan for the set-back area adjacent to Malibu Lagoon State Park. This plan shall indicate specific plant species, and shall utilize species consistent with the landscaping contained in the Malibu Lagoon Restoration Plan. This plan shall be subject to the review and approval of the Executive Director. In reviewing this plan the Executive Director shall consult with the Development Division of the Department of Parks and Recreation to ensure consistency with the Lagoon Restoration Plan. All landscaping called for in this plan, as well as all irrigation improvements required by this plan shall be completed within three (3) months of completion of the eastern portion of the rock wall.

## IV. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

1. Project Description. The applicant proposes construction of a private park for his personal use on a ten acre parcel bounded by Malibu Colony, Pacific Coast

Highway and Malibu Lagoon State Park (Exhibit 1). The parcel is currently vacant. The park would be enclosed by an eight foot high natural rock wall (Exhibit 3). This wall would be set-back 22 feet from the Pacific Coast Highway right-of-way, and seven feet from Malibu Lagoon State Park. Within the enclosed area the applicant proposes grading to create three ponds, a half-mile jogging trail of decomposed granite, and landscaped areas (Exhibit 2). The applicant further proposes installation of a water line from Pacific Coast Highway, an irrigation system, a lighting system, and a drainage swale at the southern edge of the property draining to Malibu Lagoon State Park, to replace an existing drainage channel which is subject to stagnation. Other improvements include three gazebos and a dish radio receiver. The subject parcel is located within Malibu Civic Center.

2. Recreation Land in the Malibu/Santa Monica Mountains Coastal Zone

Section 30001.5 of the Coastal Act states that one of the basic goals of the Coastal Act is to maximize public recreational opportunities in the coastal zone consistent with the protection of public rights, private property rights, and preservation of natural resources. As one means of realizing this goal, Section 30222 and 30223 provide that:

Section 30222

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

In testimony presented to a joint Senate-Assembly committee on proposed legislation intended to limit the Commission's jurisdiction within the Mountains in 1978, the Commission declared the mountains an upland recreational support area capable of providing needed recreational opportunities for residents of and visitors to the greater Los Angeles metropolitan area. Assessing the value of the mountains as a recreational entity, the Commission stated:

The Santa Monica Mountains are located in the midst of a population center of 10 million people in Los Angeles and Ventura Counties. In spite of some outstanding parks, metropolitan Los Angeles is relatively deficient in parks. According to the Southern California Association of Governments (Conservation and Open Space Plan, 1977), the region needs to acquire 75,000 acres in Los Angeles County along by 1997 to reach commonly accepted standards.

The demand for recreation in California is increasing at a rate faster than the growth of population. The annual demand for outdoor recreational activities in the Santa

Monica Mountains and seashore area will jump from 43% of the total recreational demand of Ventura and Los Angeles Counties combined in 1970 to 65% of the total in 1990...outdoor recreational participation days for the Santa Monica Mountains are expected to increase 160% between 1970 and 1990 in comparison to a 70% increase for the overall Ventura-Los Angeles region...

The natural and largely unspoiled setting of the mountains and shoreline combine with its proximity to a large metropolitan region to make this area a most logical and desirable location for parks and open spaces offering a wide array of recreational opportunities. A KEY COMPONENT OF THE COASTAL ACT IS TO ENSURE THAT THESE OPPORTUNITIES, AND ACCESS TO THEM, ARE PRESERVED ON AND ALONG THE COAST. THE PROVISION OF ISLAND AREAS IS ALSO RECOGNIZED AS A NECESSITY IN SUPPORTING COASTAL RECREATIONAL USES. (P.R.C. 10210, 10210-4)

The excellent sun-bathing and swimming opportunities provided at Santa Monica Mountain beaches generate visitor attendance in excess of twelve million annually. Inland parks, including Pt. Mugu State Park, Leo Carrillo State Park, Malibu Creek State Park, Topanga State Park, Will Rogers State Historical Park and Tapia County Park serve the needs of picnicking, hiking, camping and horseback riding.

Of course, scenic sightseeing can and does occur throughout the area. The dramatic contrasts of rugged ridgetops and pastoral valley floors, meandering streams in lush riparian corridors and dry chaparral covered slopes, sandy beaches and rolling hills combine to distinguish the scenic splendor of the regions. In addition to experiencing these qualities at beaches and parks, tens of thousands of people enjoy the visible natural beauty as they travel for business or pleasure on the mountainous and coastal roadways. THE COASTAL ACT RECOGNIZES THE NEED TO PROTECT SCENIC AND VISUAL QUALITIES WITHIN THE COASTAL ZONE IN THE SITING AND DESIGNING OF DEVELOPMENT AND DEGREE OF ALTERATION OF NATURAL LAND FORMS. (P.R.C. 10251) The concept of "viewshed protection is applied to ensure that scenic views from public parks and roadways are protected.

The Commission's recognition of the recreational potential of the mountains is paralleled by a continuing state and federal interest in protection of the mountains as a unique coastal recreational resource. This interest was first expressed by the Legislature in its creation of the Santa Monica Mountains Comprehensive Planning Commission in 1976:

The Legislature hereby finds and declares that the Santa Monica Mountains Zone... is a unique and valuable economic, environmental, agricultural, scientific, educational and recreational resource which should be held in trust for present and future generations; that, as the last large undeveloped area contiguous to the shoreline within the Los Angeles region it provides essential relief from the urban environment; that it exists as a single ecosystem in which changes in one part may also affect other parts; and that the preservation and protection of this resource is in the public interest (Section 67450 of Title 7.75 of the Natural Resources Code)

Through adoption of the Coastal Act in 1976 the Legislature acknowledged the significance of the Santa Monica Mountains as a coastal recreational resource by expanding the regulatory authority of the Commission to the five mile limit allowed under the Coastal Act. Two years later the Legislature reaffirmed its commitment to protection of the valuable land, aquatic, current and potential recreational resources of the Mountains in its rejection of two bills which proposed limiting the Coastal Zone Boundary to 1,000 yards in land from the MHT line or the first major ridgeline paralleling the sea, respectively (AB 2301, Papan; SB 770, Cusanovich). In 1979 the Legislature formed the Santa Monica Mountains Conservancy to implement the proposals formulated by its predecessor agency, the Comprehensive Planning Commission.

The federal government expressed its interest in preservation of the mountains as a recreational resource of natural significance through the creation of the Santa Monica Mountains National Recreational Area in 1978.

Although the preparation of the local coastal program for this area is at a virtual standstill, plans prepared by the National Park Service (1980), the Santa Monica Mountains Comprehensive Planning Commission (1978), the County Regional Planning Commission (1980) and the Department of Parks and Recreation (1975) are fairly united in their proposals for the development of the Mountains as a recreational resource. These plans envision a network of parklands, beaches, private recreational facilities, and trails linking significant scenic, cultural, and natural features of the mountains.

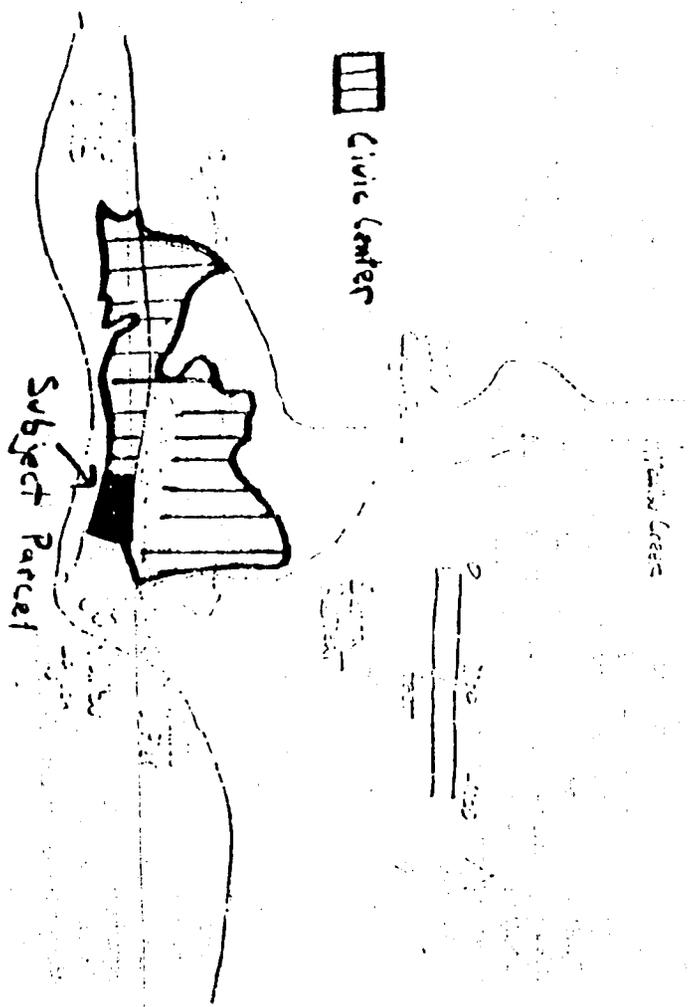
### 3. Malibu Civic Center

The subject parcel is part of what is considered the Malibu Civic Center, a flat coastal lowland marking the delta of Malibu Creek. The Malibu Civic Center, as it is located in the center of Malibu and at the intersection of the two major traffic arteries in the Malibu coastal zone (Malibu Canyon Road and Pacific Coast Highway) has historically developed as the service center of Malibu. While most of the Civic center remains undeveloped, existing development already includes the county of Los Angeles administration building and sheriff's station, several professional buildings, and a wide variety of retail and shopping stores serving local needs. The Civic Center area presently does not contain a wide variety of visitor-serving facilities, e.g. hotels.

Because of the Civic Center area's general location and large amount of developable land, proximity to existing state parks and beaches, the strong mandate of the Coastal Act to provide visitor serving uses, and the wide recognition Malibu has had a regional recreational area, the Commission has adopted policies for reserving vacant land in the Civic Center for visitor-related uses. Until such time as the extent of these needs can be determined, as through the Local Coastal Program, the Commission's Guidelines stress that new development for the Civic Center should not be approved prior to certification of a Local Coastal Program unless that development provides such uses. The Guidelines state:

New development in the Malibu Civic Center should not be permitted until the Local Coastal Program (LCP) for the area is certified. Prior to the certification of the LCP, applicants should demonstrate that the project is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and that the permitted development will not prejudice the ability of the local government to prepare a local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976.

The subject parcel represents 10 acres of approximately 160 acres currently vacant in the Civic Center. The subject parcel also represents the parcel of land in the Civic Center with the strongest relationship to the shoreline, as the parcel is seaward of Pacific Coast Highway and adjacent to Malibu Lagoon State Park (see below).



The applicant through this application proposes development of this parcel into private open space for use in conjunction with his adjacent home in Malibu Colony. Such use of a parcel highly suited for a visitor-serving use is clearly inconsistent with Sections 30222 and 30233 of the Coastal Act, as well as the Commission Malibu/Santa Monica Mountains Interpretive Guidelines. As such, were the use of this property confined to private open space, the Commission would be required to deny the application so as to retain this land's potential for visitor-serving uses.

The Commission notes, however, that realistically the development of this parcel for a visitor-serving use, e.g. a hotel, is not a short-term possibility. Like most of the Civic Center, the subject parcel is alluvial deposits of Malibu Creek, and as such has a high-water table. This is especially true of the subject parcel as it borders Malibu Lagoon. Thus, major development of the Civic Center, especially the subject parcel, is predicated on development of some form of sewage treatment facility, either through individual systems which Los Angeles County has discouraged or a regional system. Either way, development of a visitor-serving use on this parcel would not be likely in the short-term.

In essence, the applicant is therefore faced with the choice of letting the land remain vacant, as has been the case in the past, or enclosing the property, landscaping as proposed in the application, thereby enabling the applicant to, while waiting for infrastructure to develop in the Civic Center, enjoy an interim use of the property. More importantly, all the development proposed in this application would not preclude eventual use of the property as a visitor-serving use. The proposed development would in fact enhance the suitability of the property for a visitor-serving use by doing major landscaping now thereby permitting the landscaping to mature when a visitor-serving use is possible on the property.

Thus, while the applicant now proposes a private use of the property, the Commission finds that this use of the property will not preclude eventual use as a visitor-serving site, and will in fact enhance this eventual use. Further, the Commission acknowledges that short-term use of this property for visitor serving uses is infeasible due to the present lack of infrastructure. The Commission therefore concludes that the proposed use of this parcel is merely a holding use for future development. As nothing in this application will preclude such future development, the Commission finds the subject application will not result in a loss of land suited for recreational use, and the application is therefore consistent with Sections 30222 and 30223 of the Coastal Act.

#### 4. Scenic and Visual Qualities

Section 30251 of the Coastal Act provides:

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 an along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas,

and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The applicant proposes construction of an 8 foot wall adjacent to Pacific Coast Highway and Malibu Lagoon State Park. The applicant contends, however, the wall will be setback 22 feet from Pacific Coast Highway's right of way, and approximately 30 feet from the edge of the pavement. The applicant further contends that Pacific Coast Highway is two feet above the grade of the parcel, reducing the apparent height of the wall to six feet. The wall will not block any views of the ocean. The applicant finally notes that the setback area will be landscaped and that the wall materials will be natural rock materials which will enhance the appearance of the area. Without comment on the materials used in the wall, the Commission concurs with the applicant that the setbacks proposed, the difference in grade between the highway and the wall, as well as the landscaping will mitigate any adverse impacts construction of such a wall might have. The Commission does have concerns on the wall's impact on Malibu Lagoon State Park.

The proposed wall will be set back seven feet from the park boundary, and will actually be located several feet above the grade of the park. To address these concerns, Commission staff contacted the Department of Parks and Recreation. The Department of Parks and Recreation responded that the wall will in fact be an asset to the park, as it will block views of the highway and existing commercial development from the natural areas of the Lagoon, as well as significantly reduce noise from Pacific Coast Highway. Parks and Recreation also believes that the choice of materials in the wall will be consistent with the character of Malibu Lagoon State Park.

Based on this information, the Commission finds that the proposed wall will not degrade coastal views from Malibu Lagoon State Park. The Commission does note that it is important for the landscaping used by the applicant in this setback area be consistent with that in the State Park, both to protect the ecological integrity of the park as well as for visual consistency. To ensure such protection, the applicant must submit a landscaping plan for this area to be reviewed by the Department of Parks and Recreation which will utilize species consistent with the plan for the Lagoon. As conditioned, the project's consistency with the State Park will be ensured, therefore the project will be consistent with Sections 30240(a) and 30251 of the Coastal Act.

### 5. Public Trust Lands

There is historical evidence that Malibu Lagoon used to include portions of the subject parcel, and as such were at one time subject to the public trust. This area has been filled for some time. While the issue of public trust lands on Rancho lands was recently settled by the California Supreme Court, this ruling did not address filled wetlands.

Commission staff has contacted both the State Lands Commission and the Attorney General's office regarding this application. It is the opinion of both these agencies that the applicant's proposed project would not adversely affect the eventual legal outcome of filled wetlands as no division of land is proposed nor any structures proposed.

6. Local Coastal Program

Section 30604(a) of the Coastal Act provides:

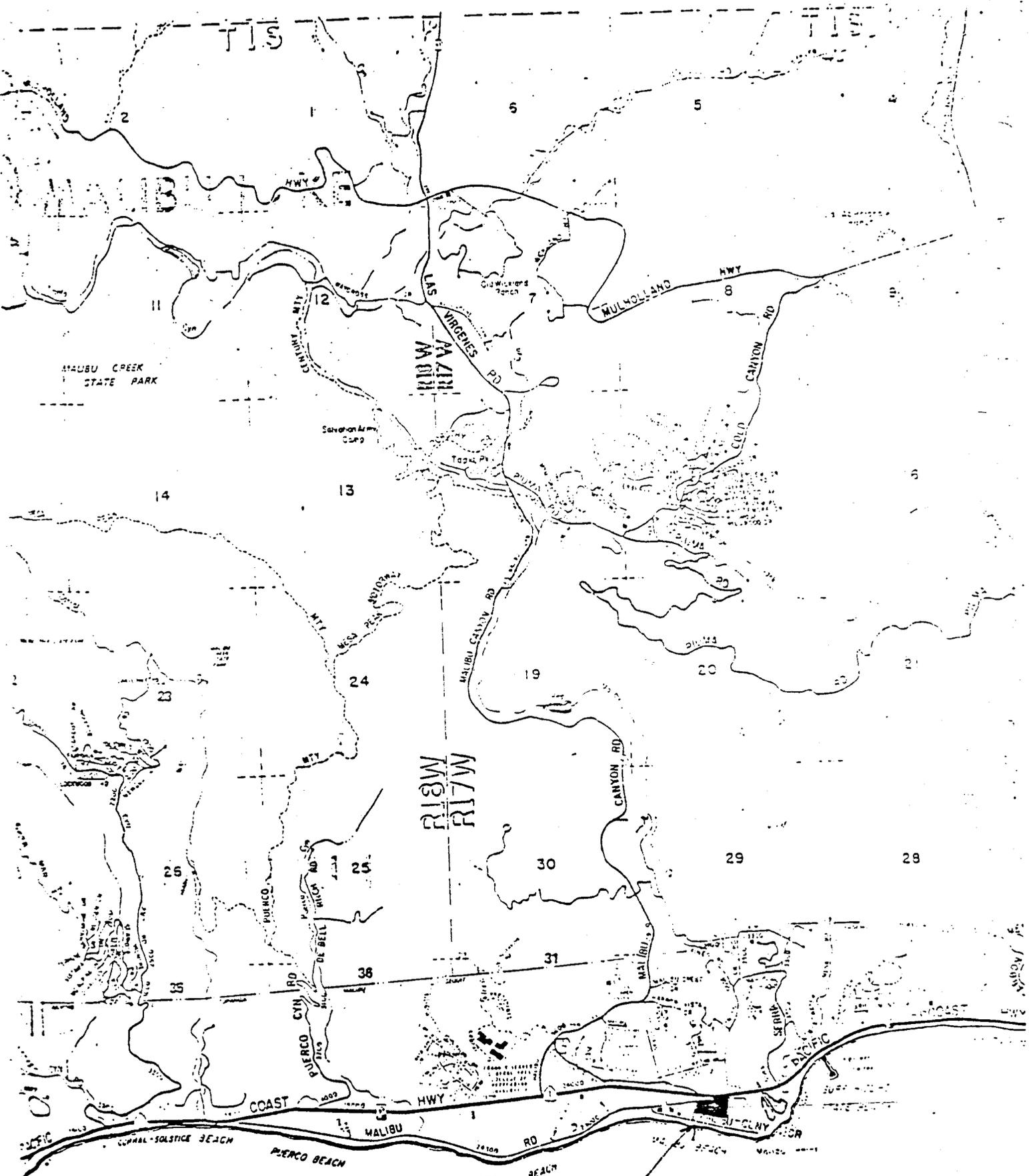
Prior to certification of the local coastal program a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

While Los Angeles County has not submitted a Local Coastal Program, the County has completed an Area Plan for the Malibu/Santa Monica Mountains which the Commission has considered in past permit actions. This plan designates the subject parcel as part of the Malibu Civic Center, a designation which is defined in the plan as:

...a multipurposes area encompassing a variety of uses including retail commercial, office, service business and compatible industrial uses, visitor serving commercial, governmental, residential--not in excess of the standards applicable to category 9B (10-15 dwelling units per acre), and agricultural. Each use requires a discretionary review procedure to insure that adequate design standards are applied including significant landscaped areas. Note: The plan calls for a "specific plan" development program to be prepared for the Civic Center area.

Thus, while Los Angeles County has not prepared a Local Coastal Program, its other planning work has already signaled out the Civic Center area as needing special protection and planning to protect the qualities of this area and ensure a mix of uses.

As discussed previously, the Commission finds that the development proposed in this application will not preempt future use of this site for civic center development, and will in fact provide significant landscaping and open areas. The Commission therefore finds that approval of this project will not prejudice the ability of Los Angeles County to prepare a Local Coastal Program consistent with Chapter 3 of the Coastal Act, and is therefore consistent with Section 30604 of the Coastal Act.



PROJECT SITE

PACIFIC O.

Exhibit 1

5-82-191

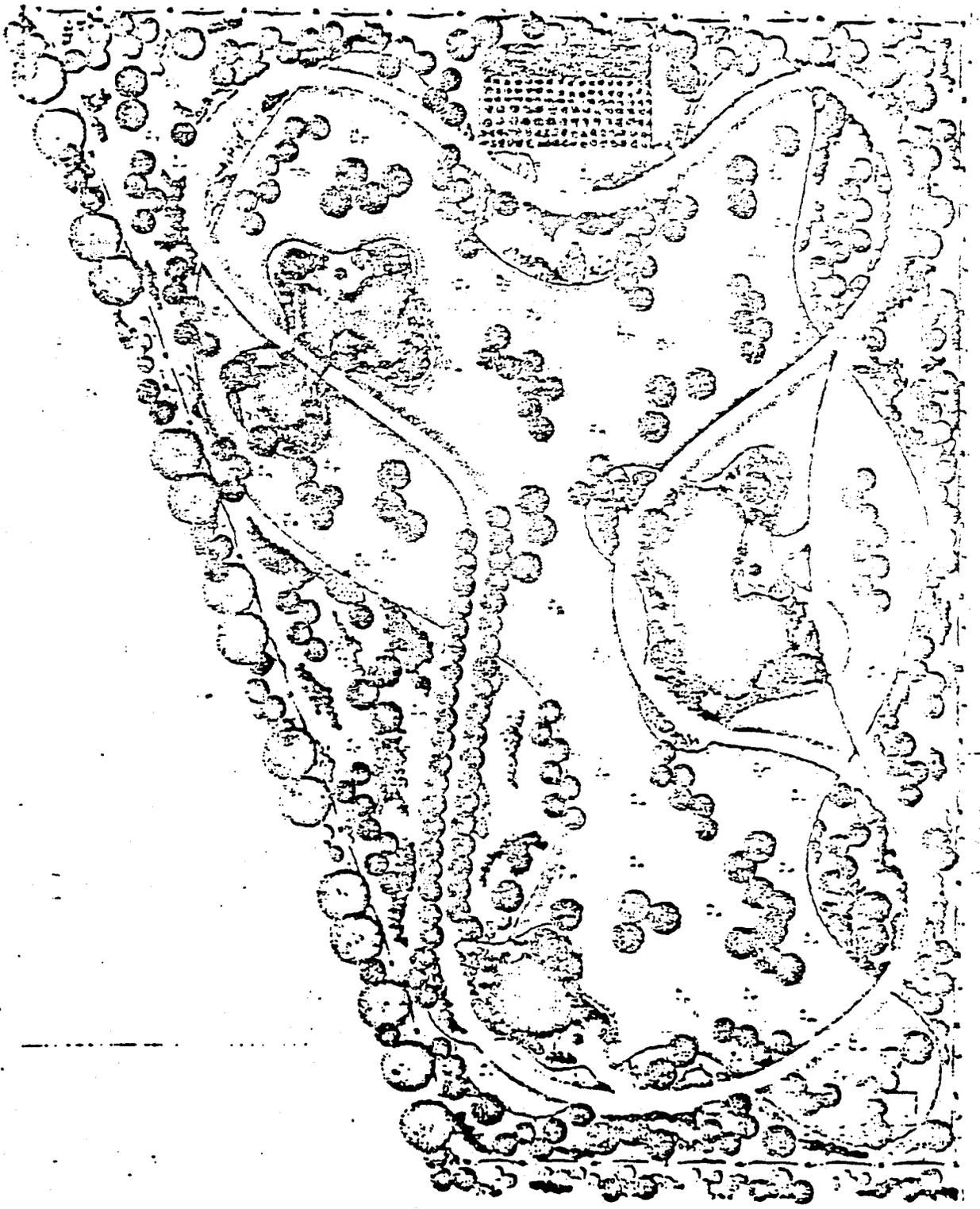
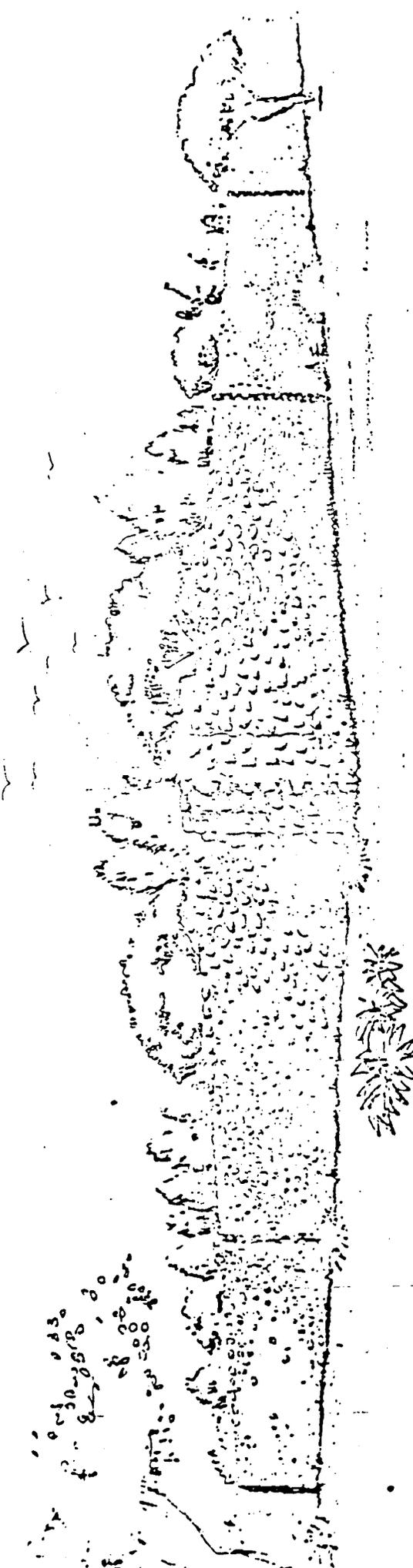


Exhibit 2



Designed for the ...  
Designed by ...

15111



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ventura Fish and Wildlife Office  
2493 Portola Road, Suite B  
Ventura, California 93003

In Reply, refer to: 120.126.170

RECEIVED  
February 27, 2003

Mr. Rick Zbur  
Latham & Watkins  
633 West 5<sup>th</sup> Street  
Los Angeles, California 90071-2007

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST

Subject: Perenchio Park Vegetation Project, Los Angeles County, California

Dear Mr. Zbur:

We are responding to a request from Tony Bomkamp of Glenn Lukos Associates, received in our office by facsimile on January 28, 2003, for our evaluation of a proposal to vegetate a 10-foot-wide buffer at Perenchio Park, Los Angeles County, California. Mr. Perenchio has also submitted an application to the California Coastal Commission for an amendment to the property's 1982 coastal development permit (No. 5-82-192) to clarify that existing development on the property is covered by the permit. The applicant proposed to revegetate a 10-foot-wide buffer, which is currently covered with non-native annual grasses and forbs, with native scrub that is compatible with the existing habitat in the adjacent Malibu Lagoon State Beach.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act prohibits the take of listed species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harassment is defined by the Service as intentional or negligent action that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultations for projects with federal involvement pursuant to section 7 of the Act or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

EXHIBIT NO. 13

APPLICATION NO.

5-82-192-A1

AGENCY COMMENTS (bfp)

Mr. Rick Zbur

Three federally listed species may be found in areas surrounding Perenchio Park. Federally threatened western snowy plovers (*Charadrius alexandrinus nivosus*) can be found wintering on the coast near the Perenchio property, endangered tidewater gobies (*Eucyclogobius newberryi*) inhabit Malibu Lagoon, and the endangered plant, Braunton's milk-vetch (*Astragalus brauntonii*) has been found on nearby hillsides. However, we do not expect these species, or any other federally endangered or threatened species, to occur on the Perenchio property. The 10-foot-wide buffer that would be revegetated is over 1000 feet from suitable western snowy plover habitat on the coast and over 1 mile from the nearest known occurrence of Braunton's milk-vetch. Portions of Malibu Lagoon, where tidewater gobies are found, occur closer to Perenchio Park, but a dirt road and strips of native scrub vegetation lie between Perenchio Park and waters of the Lagoon. We do not expect any federally endangered or threatened species to be taken by the revegetation project or to be measurably affected by the small amount of sediment that may result from project activities. Therefore, the project has no regulatory requirements pursuant to the Act.

Please be aware that this letter does not authorize the take, in any manner, of any threatened or endangered species. If any listed species is observed on the site prior to or during project activities, all actions that could result in take should cease and the Service should be contacted.

If you have any questions regarding this matter, please contact Creed Clayton of my staff at (805) 644-1766.

Sincerely,

A handwritten signature in black ink that reads "Bridget Fahey". The signature is written in a cursive, flowing style.

Bridget Fahey  
Division Chief  
Santa Barbara/Ventura/Los Angeles

cc: Tony Bomkamp



**DEPARTMENT OF FISH AND GAME**

Scott Harris  
Habitat Conservation and Planning Division  
P.O. Box 950310  
Mission Hills, CA 91395  
(818) 360-8140



January 3, 2003

Mr. Rick Zbur  
Latham & Watkins  
633 West Fifth Street  
Suite 4000  
Los Angeles, CA 90071

Dear Mr. Zbur:

This is in response to the site visit conducted by the Department of Fish and Game (Department) on 12/6/02 per your request for Department review of park use activities and revegetation plans within Perenchio Park in the City of Malibu. The project consists of the planting of native vegetation along the east edge of Perenchio park adjacent to the Malibu lagoon estuary, and park use activities consisting of an existing gulf course.

Based on the Department's review of the information you submitted, the Department concurs with the list of native species to be used in the revegetation project and furthermore that a Lake or Streambed Alteration Agreement is not required for your project or activity because the project or activity you described in your notification package will not:

- 1.) substantially divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake; or
- 2.) substantially adversely affect existing fish or wildlife resources.

As a result, you may begin your project or activity if you have obtained all other necessary permits. If the project changes from that stated in the information specified above, a notification for lake or streambed alteration shall be submitted to the Department of Fish and Game.

Nothing in this letter authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. This letter does not constitute the Department's endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

Sincerely,

Scott P. Harris  
Associate Wildlife Biologist



Angeles District  
1925 Las Virgenes Road  
Calabasas, CA 91302  
818/880-0360

RECEIVED

FEB 21 2003

February 20, 2003

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Tony Bomkamp  
Senior Biologist  
Glenn Lukos Associates  
29 Orchard  
Lake Forest, California 92630-8300

Re: Perenchio Park, 23554 Pacific Coast Highway, Malibu, California

Dear Mr. Bomkamp:

This letter responds to your request for State Parks concurrence on the suitability of the proposed landscaping plan for the 10-foot wide strip of land west of Malibu Lagoon State Beach and the adequacy of the existing improvements at the property located at 23554 Pacific Coast Highway in the City of Malibu (the "Property").

We have reviewed the proposed landscaping plan prepared by John McKenna of Forma for the 10-foot wide strip of land adjacent to the Malibu Lagoon. The plan includes native vegetation that would be beneficial and compatible with the ongoing and future restoration planned for the Malibu Lagoon. We have also reviewed the biological report prepared by Tony Bomkamp of Glenn Lukos Associates, dated December 19, 2002, and concur with the report's conclusion that the minor differences between the approved plan and the existing improvements will not have an adverse effect on the biological resources in the Malibu Lagoon State Park. We are pleased that the invasive pepper and eucalyptus trees originally approved have not been planted on the Property. It has been our experience that the eight-foot-high rock wall that frames the Property has been adequate to prevent golf balls used on the Property from entering Malibu Lagoon State Beach.

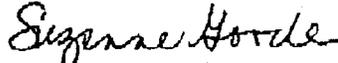
We have been concerned for a number of years, however, about the impacts to the lagoon and to public health from the storm water runoff that enters the lagoon from a storm drain that drains the Property and other lands to the west of the lagoon. This runoff has been known to have poor water quality with regard to nutrients and bacteria, and may also contribute to high pH levels and low levels of dissolved oxygen that have occurred in the lagoon channel into which the drain empties. It should be noted that this

Mr. Bomkamp  
February 20, 2003  
Page two

drain did not appear on any official maps of the Los Angeles County Department of Public Works at the time of the City of Malibu's incorporation.

We are also concerned that the irrigation of the Property may contribute to high water levels in the lagoon during the dry season when the berm that separates the lagoon from the ocean is closed. High water levels cover mudflat habitat that is important to a number of shorebirds that forage at the lagoon. Additionally, excessive freshwater has contributed to lowered salinity levels in the lagoon.

Sincerely,



Suzanne Goode  
Senior Resource Ecologist

cc: Lillian Ford, California Coastal Commission



Angeles District  
1925 Las Virgenes Road  
Calabasas, CA 91302  
818/880-0350

June 12, 2003

Tony Bomkamp  
Senior Biologist  
Glenn Lukos Associates  
29 Orchard  
Lake Forest, California 92630-8300

Re: Perenchio Park, 23554 Pacific Coast Highway, Malibu, California

Dear Mr. Bomkamp:

The California Department of Parks and Recreation, Angeles District, has had the opportunity to review the Chemical Usage Analysis and Drainage System Improvements proposed for Perenchio Park. We feel that the proposed changes in chemical usage and drainage improvements will address the concerns we expressed previously concerning water quantity and water quality impacts from Perenchio Park to Malibu Lagoon.

We continue to be concerned about other connections to the storm drain that carry polluted runoff into the lagoon, but recognize that these concerns are beyond the scope of the project under consideration. We look forward to the implementation of the proposed improvements and others contemplated by the City of Malibu in addressing the negative impacts to Malibu Lagoon from storm water runoff.

Sincerely,

Suzanne Goode  
Senior Resource Ecologist

cc: Lillian Ford, California Coastal Commission

