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CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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RECORD PACKET COPY

Filed:	not filed
49th Day:	n/a
180th Day:	n/a
Staff:	K. Kemmler
Staff Report:	1/29/04
Hearing Date:	2/18-20/04
Comm. Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-03-069, 4-03-070, 4-03-071, 4-03-072

APPLICANT: Panorama Ranch, LLC, Communications Relay Corp., Deer Valley Ranch, LLC

PROJECT LOCATION: Northeast of Latigo Canyon Road, and north of and adjacent to Castro Peak Motorway, unincorporated Malibu (Los Angeles Co.)

APN NO.: 4464-019-008, 4464-022-010, 4464-022-001, 4464-019-010

PROJECT DESCRIPTION: These applications are for development on four separate, contiguous parcels owned by the applicant(s).

CDP Application #4-03-069 (Panorama Ranch, LLC), 4464-019-008:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of an existing agricultural road including 773 cu. yds. of grading and installation of two 38" high access road gates and proposing new revegetation of approx. 33,000 sq. ft. of graded slopes along an access road.

CDP Application #4-03-070 (Panorama Ranch, LLC) 4464-022-010:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads and installation of two access road gates.

CDP Application #4-03-071 (Communications Relay Corp.) 4464-022-001:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance for existing agricultural roads, and repair and maintenance of a pre-existing culvert and railroad ties.

CDP Application #4-03-072 (Deer Valley Ranch, LLC) 4464-019-010:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads including approx. 2,200 cu. yds. of grading and proposing new revegetation of approx. 63,000 sq. ft. of graded slopes along access roads.

	4464-019-008	4464-022-010	4464-022-001	4464-019-010
Lot area	40 acres	44.5 acres	25 acres	80 acres

LOCAL APPROVALS RECEIVED: None.

SUBSTANTIVE FILE DOCUMENTS: Biological Assessment (re: 4464-019-008, 4464-022-010, 4464-022-001, and 4464-019-010), Steven G. Nelson, June 11, 2003; Biological Evaluation Report (re: 4464-019-008, 4464-022-010, 4464-022-001, and 4464-019-010), Greg Ainsworth, ENSR International, Inc., November 6, 2003; Engineering Geologic Investigation Report (4464-019-008), October 24, 2003, Gold Coast Geoservices, Inc.; Engineering Geologic Investigation Report (4464-022-010), October 24, 2003, Gold Coast Geoservices, Inc.; Engineering Geologic Investigation Report (4464-019-010), October 24, 2003, Gold Coast Geoservices, Inc.; 1986 Los Angeles County Malibu Land Use Plan; City of Malibu LCP Revised Findings: Staff Report and Findings for Restoration Order and Cease and Desist Order CCC-03-RO-009 and CCC-03-CD-015 dated November 25, 2003 (with exhibits); Addendum for Staff Report and Restoration Order CCC-03-RO-009 and Cease and Desist Order CCC-03-CD-015 (with exhibits); Commission Staff Powerpoint Presentation on Restoration Order CCC-03-RO-009 and Cease and Desist Order CCC-03-CD-015 at December 12, 2003 Commission Meeting; Letter to Coastal Commissioners from Gaines & Stacey, dated December 9, 2003 re: Cease and Desist Order #CCC-03-CD-015 and Restoration Order #CCC-03-RO-009 Support for Denial of Proposed Orders (with exhibits); Statement of Defense – Violation File No. V-03-018 (Kay), Tentative Commission hearing Date: August 6-8, 2003, dated July 17, 2003 (with exhibits); Statements of Defense – Violation File No. V-4-03-018, Notice of Intent to Commence Cease and Desist Order Proceedings, dated November 12, 2003 (with exhibits); Aerial Photograph from 1953; Aerial Photograph from 1976; Staff Report CDP 4-96-084.

STAFF NOTE: *DUE TO A COURT ISSUED WRIT, WHICH ORDERS THAT "THE COASTAL COMMISSION HOLD A PUBLIC HEARING AND TAKE ACTION ON THE CURRENTLY-PENDING COASTAL DEVELOPMENT PERMIT APPLICATIONS OF PETITIONERS PANORAMA RANCH, LLC (APN NOS. 4464-022-010 AND 4464-019-008), DEER VALLEY RANCH, LLC (APN NO. 4464-019-010), AND COMMUNICATIONS RELAY CORPORATION (APN NO. 4464-022-001) NO LATER THAN THE REGULARLY-SCHEDULED FEBRUARY 2004 COASTAL COMMISSION MEETING," THE COMMISSION MUST ACT ON THESE PERMIT APPLICATIONS AT THE FEBRUARY 18-20 COMMISSION MEETING.*

Summary of Staff Recommendation

Staff recommends **denial** of the applications, as the proposed development is inconsistent with the geology and hazard, environmentally sensitive habitat area (ESHA), water quality, visual resource, community character and recreation policies of Chapter Three of the Coastal Act. The development as proposed will have significant adverse impacts on water quality and ESHA. The proposed road cut and fill slopes are oversteepened, fill slopes are not compacted contain loose sidecast material and the road design does not include a drainage network to control runoff. The highly erodible slopes in combination with uncontrolled runoff from the roads will result in erosion and potential destabilization of hillsides and landslides in the project area. Therefore, the proposed road design is not consistent with the geologic/hazards policy of the Coastal Act. The removal of sensitive chaparral and oak woodland vegetation from the natural hillsides and removal of vegetation in stream corridors has resulted in the degradation of environmentally sensitive habitats. The removal of vegetation from the undisturbed streams and hillsides will increase erosion and sedimentation of the sensitive stream corridors in the

area will which degrade water quality and will adversely impact the sensitive riparian habitats downstream which is not consistent with the water quality and ESHA policies of the Coastal Act.

The proposed as-built gates on Castro Motorway and Newton Canyon Motorway are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the Santa Monica Mountains National Recreational Area, which surrounds the subject properties. Evidence exists of public use of Castro Motorway and Newton Canyon Motorway for hiking and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. The road existed since as early as 1950, was created and has been maintained by a public agency continually since that time. The segment of Newton Motorway, along with Castro Peak Motorway and the Backbone Trail comprise a trail loop, the majority of which crosses public parkland. The proposed as-built gates and no trespassing signs on this portion of Castro Motorway and Newton Canyon Motorway physically block the public's continued use of this fire road for hiking, equestrian, mountain biking, or any other recreational purpose.

I. STAFF RECOMMENDATION.

The Commission must make a separate motion for each of the four permit applications

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-03-069 for the development proposed by the applicant.***

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-069 and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-03-070 for the development proposed by the applicant.***

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-070 and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-03-071 for the development proposed by the applicant.***

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-071 and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-03-072 for the development proposed by the applicant.***

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of Coastal Development Permit Application 4-03-072 and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal

Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

PROJECT AND SITE DESCRIPTIONS

The subject applications are for development on four separate, contiguous parcels owned by the applicant(s) located northeast of Latigo Canyon Road and north of and adjacent to Castro Peak Motorway in the unincorporated Malibu area of Los Angeles County (Exhibit 1 & 2). These subject properties consist of 40 acres, 44.5 acres, 25 acres, 80 acres, respectively (Exhibit 2). James A. Kay, Jr., is the representative, owner, and manager of the four subject properties, as a member and officer of the Limited Liability Companies and as President and Managing Officer of Communications Relay Corporation. Both the Biological Assessment prepared by Steven G. Nelson and the Biological Evaluation Report prepared by Greg Ainsworth of ENSR International, Inc. submitted for the applications address all four properties in a single report. Further, Due to the related nature of these four applications, the proposed development on all four parcels will be addressed in one staff report. To clearly address what is proposed on each parcel by each permit application, however, the project descriptions are listed below for each separate application.

CDP Application #4-03-069 (Panorama Ranch, LLC), 4464-019-008:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of an existing agricultural road including 773 cu. yds. of grading and installation of two 38" high access road gates and proposing new revegetation of approx. 33,000 sq. ft. of graded slopes along an access road (Exhibits 4a-d).

CDP Application #4-03-070 (Panorama Ranch, LLC) 4464-022-010:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads and installation of two access road gates (Exhibits 5a-c).

CDP Application #4-03-071 (Communications Relay Corp.) 4464-022-001:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance for existing agricultural roads, and repair and maintenance of a pre-existing culvert and railroad ties (Exhibit 6).

CDP Application #4-03-072 (Deer Valley Ranch, LLC) 4464-019-010:
The applicant is requesting after-the-fact approval for brush clearance, repair and maintenance of existing agricultural roads including approx. 2,200 cu. yds. of grading and proposing new revegetation of approx. 63,000 sq. ft. of graded slopes along access roads (Exhibits 7a-d).

The four subject parcels are described as follows: Los Angeles County APN 4464-022-001, a 25-acre parcel owned by Communications Relay Corp, which includes a portion of legally existing Castro Motorway and a "pre-Coastal" driveway entering the site from Castro Motorway; APN 4464-022-010, a 44.5-acre parcel owned by Panorama Ranch, LLC, located adjacent to and east of APN 4464-022-001, which also includes a portion of legally existing Castro Motorway; APN 4464-019-010, an 80-acre parcel owned by Deer Valley Ranch, LLC, located adjacent to and to the north of APNs 4464-022-001 and 010; and APN 4464-019-008, a 40-acre parcel owned by Panorama Ranch, LLC, located to the west of APN 4464-019-010, which has a 500 foot long legally existing dirt road crossing the northwest corner of the property.

The entire four parcels consist of mixed chaparral plant communities determined to be environmentally sensitive habitat area (ESHA) by the Commission's staff biologist based on a site visit on July 22, 2003 (see Exhibit 9). Three of the subject parcels contain blueline streams. The property is located in an area of high biological importance due to its rural character, the presence of a well established chaparral community contiguous among several vacant parcels and associated sensitive wildlife species.

The project sites are highly visible from various public scenic viewing areas, including Latigo Canyon Road; the Backbone Trail and Newton Canyon loop trail, parts of the LA County hiking and equestrian trails system, located to the south of the sites; and National Parks Service and Santa Monica Mountains Conservancy owned parklands, which are part of the Santa Monica National Recreation Area located nearby (see Exhibit 1). The area surrounding the subject properties is rural in nature characterized by vast open space consisting of sensitive chaparral habitat which hosts many wildlife species. The nearby public recreation areas provide pristine scenic vistas in this area.

VESTED RIGHTS

Staff would note that in each application, the applicants are proposing the as-built repair and maintenance to "existing agricultural roads." The following analysis explains Staff's determination that the roads and trails on the property that have sustained work do not have status as legally existing roads and trails either by permit action or creation prior to the Coastal Act, thus, the "repair and maintenance" work, which includes grading and major vegetation removal including sensitive chaparral and riparian habitat, that is part of these applications must be reviewed as new development rather than repair and maintenance to existing development.

1. Legal Authority and Standard of Review

The development proposed In Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072 is described as brush clearance and repair and maintenance of roads that were legally constructed prior to the Coastal Act and therefore, under the vested rights doctrine, do not require a CDP. (Applications 4-03-069 and 4-03-070 also propose construction of new gates, but do not assert that there is a vested right to construct or repair any gates at the proposed locations). The applicants have not filed a claim of vested rights in accordance with the regulations at 14 Cal. Code of Regulations, section 13200-13208, seeking a determination by the Commission of whether such vested rights exist. Nevertheless, to make a decision on the applications to conduct brush clearance and repair and maintenance of the roads, the Commission must first determine whether vested rights exist for the roads and therefore the roads themselves do not require a CDP.

Section 30608 of the Coastal Act, in relevant part, provides that:

> ***"No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commenting with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division."***

In this location, the effective date of the division, i.e., the Coastal Act, is January 1, 1977. Pursuant to Section 30608, if a person obtained a vested right in a development prior to the effective date of the Coastal Act, no CDP is required for that development. However, no substantial change in the development may be made until obtaining either approval in a CDP, or approval pursuant to another provision of the Coastal Act. Any repair to the development must be conducted in compliance with Coastal Act section 30610(d) and the regulations at Title 14 California Code of Regulations, section 13252.

The Coastal Act defines "development" as:

> "the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to, subdivision pursuant to the Subdivision Map Act ... change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, ...
>
> As used in this section, "structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Coastal Act Section 30106).

If the Commission finds that the claimant has a vested right for a specific development, then the claimant is exempt from coastal development permit requirements for that specific development only.

The Commission must apply certain legal criteria to determine whether a claimant has a vested right for a specific development. These criteria are based on the terms of the Coastal Act and case law interpreting the Coastal Act's vested right provision, as well as common law vested rights claims. The general standards for determining the validity of a claim of vested rights are summarized as follows:

1. The claimed development must have received all applicable governmental approvals needed to complete the development prior to January 1, 1977. Typically this would be a building permit, grading permit, Final Map, Health Department approval for a well or septic system, etc. or evidence that no permit was required for the claimed development. (*Billings v. California Coastal Commission* (1988) 103 Cal.App.3d 729, 735).

2. If work was not completed by January 1, 1977, the claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental authorization received prior to January 1, 1977. (*Tosh v. California Coastal Commission* (1979) 99 Cal.App. 3d 388, 393; *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785).

The burden of proof is on the claimant to substantiate the claim of vested right. (Title 14, California Code of Regulation, Section 13200). If there are any doubts regarding the meaning or extent of the vested rights exemption, they should be resolved against the person seeking the exemption. *(Urban Renewal Agency v. California Coastal Zone Conservation Commission* (1975) 15 Cal.3d 577, 588).

A narrow, as opposed to expansive, view of vested rights should be adopted to avoid seriously impairing the government's right to control land use policy. *(Charles A. Pratt Construction Co. v. California Coastal Commission* (1982) 128 Cal.App.3d 830, 844, *citing, Avco v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 797). In evaluating a claimed vested right to maintain a nonconforming use (i.e., a use that fails to conform to current government standards), courts "follow a strict policy against extension or expansion of those uses." (*Hansen Bros. Enterprises v. Board of Supervisors* (1996)12 Cal.4th 533, 568; *County of San Diego v. McClurken* (1957) 37 Cal.2d 683, 687).

The following analysis is based on information submitted by the applicants and supplemental Commission staff research or official Commission records.

2. Background Regarding Property

APN 4464-019-008 (CDP Application No. 4-03-069) is owned by Panorama Ranch LLC, which acquired this parcel in 2002. Panorama Ranch proposes brush clearance and repair and maintenance of an estimated 1,300 linear feet of roadway that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-069. Panorama Ranch asserts that there is a vested right for the alleged 1,100 foot road on this parcel to exist without complying with the Coastal Act. According to the application, on the east, the road on this parcel connects to a road on APN 4464-019-010 that is the subject of Application 4-03-072. The Application shows the road on APN 4464-019-008 dead ending in the southeast portion of the parcel. During inspections conducted in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material; removal of soil and rocks; and grading and construction of a boulder and cobble Arizona crossing through a stream channel. Roadcuts were observed that are in some places six feet high. There is a Los Angeles County map from 1970 of fire roads in this area. (See Exhibit 10 – the location of the subject parcels is shown on the third page of the Exhibit). The only fire road shown on APN 4464-019-008 is a pre-Coastal Act road that crosses the northwest corner of this parcel (and which is also visible in aerial photographs that predate the Coastal Act). The CDP Application does not propose any development on that road.

APN 4464-022-010 (CDP Application No. 4-03-070) is also owned by Panorama Ranch LLC, which acquired this parcel in 2002. Panorama Ranch proposes brush clearance and repair and maintenance of an estimated 3,500 linear feet of roads that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-070. Panorama Ranch asserts that there is a vested right for the alleged 3,500 feet of roads on this parcel to exist without complying with the Coastal Act. According to the application, the development proposed on this parcel consists of repair and maintenance of two roads, parallel to each other, crossing the northern part of the parcel from east to west. Both of these roads connect on the west to two roads that are alleged to exist on APN 4464-022-001 that are the subject of Application 4-03-071. On the east, the most northerly road proposed on APN 4464-

022-010 connects to a road proposed on the parcel to the north (APN 4464-019-010) that makes a loop and then dead ends. The road proposed further south on APN 4464-022-010 does not connect to any other road or parcel to the east, rather it dead ends at the border of the property to the east owned by the National Park Service. During inspections conducted in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material and removal of soil and rock. The Los Angeles County 1970 map of fire roads (Exhibit 10) shows Castro Motorway crossing the southern part of APN 4464-022-010. It shows no other fire roads on this parcel.

APN 4464-022-001 (CDP Application No. 4-03-071) is owned by Communications Relay Corporation. Communications Relay has stated that it acquired this parcel in 2001. Communications Relay proposes brush clearance and repair and maintenance of an estimated 2,400 linear feet of roadway that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-071. Panorama Ranch asserts that there is a vested right for the alleged 2,400 feet of roads on this parcel to exist without complying with the Coastal Act. According to the application, the road on this parcel goes from Castro Motorway north across the parcel, then splits into three separate roads – two that enter the parcel to the east, APN 4464-022-010, and one that enters the parcel to the north, APN 4464-019-010. During inspections in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material; removal of soil and rocks; placement of railroad ties and a metal culvert at a stream. Roadcuts over three feet high were observed. The Los Angeles County 1970 map of fire roads (Exhibit 10) shows Castro Motorway crossing the southern part of APN 4464-022-001. It shows no other fire roads on this parcel.

APN 4464-019-010 (CDP Application No. 4-03-072) is owned by Deer Valley Ranch LLC. Deer Valley Ranch acquired this parcel in 2002. Deer Valley Ranch proposes brush clearance and repair and maintenance of an estimated 4,500 linear feet of roadway that it claims existed on this parcel prior to the Coastal Act in the location where the work is proposed in Application 4-03-072. Deer Valley Ranch asserts that there is a vested right for the alleged 4,500 feet of roads on this parcel to exist without complying with the Coastal Act. The application shows roads on this parcel connecting to roads on the two parcels to the south (APN 4464-022-001 and 4464-022-010) and the property to the west (APN 4464-019-008). During inspections in 2003, Commission staff observed that the proposed work (which was already done) involved removal of surface and subsurface chaparral plant material and removal of soil and rocks. Roadcuts were observed that in some places are ten feet high. The L.A. County 1970 map of fire roads shows no fire roads on APN 4464-019-010.

3. Analysis of Claim of Vested Rights

A. Applicants Have Not Provided Evidence That Roads Existed Prior to the Coastal Act in the Locations of the Proposed Development

a. Aerial Photographs Do Not Provide Evidence of Roads at the Location of the Proposed Development Prior to the Coastal Act

The applicants propose to do brush clearance and repair and maintenance of agricultural roads and/or fire roads on the subject parcels that they allege existed prior to the Coastal Act. The applicants conducted the work in approximately January to May 2003, prior to applying for a CDP. Therefore, it was not possible for Commission staff to observe the alleged roads before

the work proposed in these applications was conducted, or to confirm whether they were present by direct onsite observation. However, the Commission does have the benefit of aerial photographs of the properties. The Commission staff has examined an aerial photograph of the parcels from 1953 that was provided by the applicants (this photograph will be shown to Commissioners, but is not reproduced as an exhibit due to copyright). Additional aerial photographs from 1977 and 2001 were examined. These are attached as Exhibits 11, 12 and 13. The aerial photographs show vegetation cover and no roads in the locations of the development proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072, with the exception of the 970 foot segment of road on APN 4464-022-001 (Application 4-03-071). That segment of road is visible going north onto the parcel from Castro Motorway in the photographs, and it was recognized by the Commission as a road that legally existed prior to the Coastal Act in CDP 4-96-084 (Van Hagan). The location of Castro Motorway and the "Van Hagan" road on APN 4464-022-001 is shown in red on Exhibit 14.

The applicants have asserted that roads were present when the above-referenced aerial photographs were taken, but are not visible through the vegetation canopy. However, in the aerial photographs, Castro Motorway and the 970 foot segment of road referred to above are clearly visible, while in other areas where the applicants allege that roads existed at the time, no road is visible. A road that cuts across the corner of APN 4464-019-008 (that is not part of the applicant's proposed development) and that was constructed prior to the Coastal Act is also visible in the aerial photographs. The roads that applicants maintain existed prior to the Coastal Act are generally located on exposed, open terrain and would be visible in aerial photographs if they existed (as are other known roads). The L.A. County 1970 map of fire roads in this area also does not show any of the roads that the applicants maintain existed on the parcels prior to the Coastal Act. (See Exhibit 10).

Thus, the aerial photographs do not prove that there were roads in the location of the proposed development prior to January 1, 1977.

The applicants also have not presented any evidence showing the specific location of roads that they allege existed on the parcels prior to the Coastal Act. If a vested right is found for a road that existed in a specific location on a parcel prior to the Coastal Act, there is no vested right for construction of a road at a different location on the parcel. The Coastal Act specifies that when a vested right to a development is established "no substantial change may be made in any such development without prior approval having been obtained under this division." (Section 30608). Construction of roads in a different location or along a different route constitutes a "substantial change" in the vested development present at the site. Pursuant to Section 30806, this "substantial change" requires compliance with the permit requirements of the Coastal Act. Thus, even if there was evidence that some dirt roads existed on the subject properties prior to the Coastal Act, there is no evidence that any of such roads were in the same location as any of the development proposed in these applications.

b. Declarations and Letters Provided to the Commission Do Not Prove the Existence of Vested Rights For Roads at the Location of the Proposed Development

The applicants' biologist Steve Nelson, has submitted letters (Letters to Donna Shen dated June 11, 2003 and July 14, 2003) in which he states that in the areas where the development proposed in these applications occurred, there are roads that "appear to have been originally graded many years ago." Mr. Nelson did not say that he observed the parcels at any time

before the proposed brush clearance and repair and maintenance of the allegedly existing roads was performed (which occurred from approximately January to May 2003). He apparently did not observe the parcels on or before January 1, 1977. Mr. Nelson has not asserted that he knows the year or even the decade when the original grading of roads occurred. Accordingly, his statements do not provide evidence that roads existed in 1977 (26 years earlier) in the locations where he observed them in 2003.

The applicants also provided several declarations to the Commission, including declarations from Roland Genick, Eva Sweeney, and Brian Sweeney. Genick and Eva Sweeney were employees of a planning consulting firm, who state that they visited parcels APN 4464-019-008, 4464-022-010 and 4464-019-010 in 2001. Since they did not visit the parcels until 2001, these individuals have no knowledge that roads existed on the parcels in January 1977. Nor could they have any knowledge that roads existed on the parcels in January 1977 that were in the same location as any roads they observed in 2001. In addition, Genick and Eva Sweeney claim that in 2001, they observed dirt access roads to APN 4464-019-005 (not the subject of these applications), APN 4464-019-008 and APN 4464-022-010. It is not disputed that there is a pre-Coastal Act dirt road accessing APN 4464-019-008 (the road that crosses the northwest corner of the parcel) and a pre-Coastal Act dirt road accessing APN 4464-022-010 (Castro Motorway). These dirt roads are visible in pre-Coastal Act aerial photos and shown on the Los Angeles County 1970 map of fire roads. These roads are not the subject of the pending applications. Therefore, Genick and Eva Sweeney may be referring to these access roads, rather than any roads in the location of the development proposed in these applications. Furthermore, although both Genick and Eva Sweeney state that they visited APN 4464-019-010 in 2001, they do not say that they observed any dirt roads on that parcel.

Brian Sweeney states he visited APN 4464-022-010, 4464-019-008 and 4464-019-010 about five times when they were owned by Malibu Ocean Ranches, LLC and/or Creekside Ranch, LLC, of which he is an officer. Mr. Sweeney does not give the date of his visits, except that they were before these entities sold the parcels in April 2002. Accordingly, he does not provide any evidence that roads existed on the parcels in January 1977, or that any roads that existed in January 1977 were in the same location as roads that he observed during his visits.

Genick and Eva Sweeney also refer to brochures entitled "Property Assessment and Potential Use" that their firm prepared and that the current property owners have provided to the Commission. The Genick and Eva Sweeney declarations indicate that their firm prepared these brochures some time in 2001 or 2002. Thus, the brochures do not provide any evidence of the condition of the parcels, or what roads existed on the parcels, in January 1977 (about 25 years earlier). In addition, contrary to the applicants' assertion, these documents do not provide evidence that the roads for which vested rights are claimed in Applications 4-03-069, 4-03-070 and 4-03-072 existed on the parcels when the current owners purchased them in 2002. (No brochure was provided for APN 4464-022-001, the parcel addressed in Application 4-03-071).

The Property Assessment and Potential Use brochure for APN 4464-019-008 (CDP Application No. 4-03-069) says there is "an existing dirt road access from Mulholland Highway that provides the property with a direct link, via Kanan Road, to Highway 101 located approximately 4 miles to the North." As noted previously, there is a pre-Coastal Act dirt road that cuts across the northwestern corner of APN 4464-019-008. This road is visible in this location in the 1953, 1977 and 2001 aerial photographs of the parcels. (In Application No. 4-03-069, the current owner does not seek authorization for brush clearance and repair and maintenance of this road). A reasonable interpretation of the brochure is that it is referring to this access road.

Therefore, the brochure does not provide evidence of any road on the property in the location where the development is proposed in Application 4-03-069.

The Property Assessment and Potential Use brochure for APN 4464-022-010 (CDP Application No. 4-03-070) states: "The property has an existing dirt road access that provides the property with a direct link, via Kanan Road, to Highway 101 located approximately 4 miles to the North." Access to this parcel is provided by Castro Motorway, a pre-Coastal Act dirt road that crosses the southern portion of APN 4464-022-010. Castro Motorway is visible in this location in the aerial photographs of the parcels from 1953, 1977 and 2001. A reasonable interpretation of the brochure is that it is referring to Castro Motorway as the existing access road. Therefore, the brochure does not provide any evidence that a road existed on the property in the location where the development is proposed in Application 4-03-070.

The Property Assessment and Potential Use brochure provided for APN 4464-019-010 (CDP Application No. 4-03-072) does not describe an existing access road leading to Kanan Road and Highway 101. Instead it contains two photographs with the vague caption: "Access road towards property." In fact, neither Castro Motorway, nor any other pre-Coastal Act road crosses onto or directly adjacent to this parcel. The brochure does not refer to any road that actually enters onto or crosses APN 4464-019-010. Therefore, the brochure does not provide evidence that a road existed on the property in the location where the development is proposed in Application 4-03-072. To the contrary, the brochure provides evidence of the lack of any roads on or across APN 4464-019-010 when the brochure was prepared.

The applicants provided a declaration from Dale Jaureguy, an employee of James A. Kay, Jr., one of the officers of Deer Valley Ranch, Panorama Ranch and Communications Relay Corporation. Mr. Jaureguy is employed as the field supervisor and he monitored and supervised laborers who did the work that is the subject of Applications No. 4-03-069, 4-03-070, 4-03-071 and 4-03-072. He states:

> "Although none of the Properties are developed, some have long-existing trails, fire and agricultural roads."

The work that Mr. Jaureguy supervised was conducted from approximately January to May 2003. Mr. Jaureguy does not state that he observed the properties prior to this date. Mr. Jaureguy therefore does not provide any evidence that roads existed on the parcels in January 1977, or that any such roads that existed in January 1977 were in the same location as roads that he observed in 2003. Furthermore, even if he had made observations in 1977, Mr. Jaureguy's statement is too vague to establish a vested right to any particular development. He says that "some" of the Properties have long-existing trails, fire and agricultural roads. He does not say that long-existing trails, fire and agricultural roads were present on all of the parcels, nor does he specify on which parcels trails, rather than roads, were present. He does not provide any specificity regarding the location of long-existing roads or trails on any of the four parcels. This information is too general to constitute evidence of a vested right to a particular road.

The final declaration provided to the Commission is from John Burroughs. Mr. Burroughs is employed by LT-WR, LLC, an entity of which James A. Kay, Jr. is an officer. Mr. Burroughs states he has served as a caretaker at 1953 Latigo Canyon Road since 1972 and is familiar with, and made periodic visits to, the parcels that are the subject of these applications -- APNs 4464-022-001, 4464-019-008, 4464-019-010 and 4464-022-010 (as well as another parcel, APN 4464-022-014). Mr. Burroughs states in his declaration:

"6. During my periodic visits, I accessed the subject parcels by hiking and horseback on a network of unimproved roads and trails.

7. The width and appearance of these particular unimproved roads and trails has varied throughout the years due to fire, erosion, and growth of vegetation.

8. Nevertheless, a network of unimproved roads and trails accessing the parcels listed in paragraph 4 has been in continuous existence since at least 1972."

Mr. Burroughs does not state the particular location on the parcels of any trails or roads. He does not state that *roads*, as opposed to trails, existed on all of the parcels. There is no vested right to expand and enlarge a trail to make it a road, without complying with the Coastal Act. Nor does Mr. Burroughs indicate whether the roads he used to access the parcels were the pre-Coastal Act dirt roads that cross APN 4464-022-001, 4464-022-010 (Castro Motorway) and APN 4464-019-008 (the pre-Coastal Act road crossing the northwest corner of the parcel). He does not specify that he observed or used a road prior to the Coastal Act in any of the specific locations of the development proposed in these applications. Therefore, this information is too vague and general to establish a vested right to a particular road.

c. A Prior Owner of APN 4464-022-001 States That Roads Were Not Present Prior to the Coastal Act at the Location of the Development Proposed in These Applications

Commission staff has contacted Philip J. McKenna who, with his wife Mable, owned APN 4464-022-001 from the 1950s until about 1990. In addition, Commission staff contacted their son, Philip McKenna, who said he knows the property well. They both indicated that, aside from Castro Motorway, the only road on the parcel was the access road that extended onto the parcel from Castro Motorway (which was recognized as a road that existed prior to the Coastal Act in CDP No. 4-96-084 (Van Hagan) and which is visible in aerial photographs prior to the Coastal Act. Philip McKenna (Jr.) recalls that this road was no more than ¼ mile long from Castro Motorway. This is consistent with the 1997 finding of the Commission on CDP 4-96-084 that there was an access road of about 970 linear feet onto the parcel, but that it had been extended further onto the site without a permit in the late 1980s or 1990s. Both McKennas indicate that during their family's ownership of APN 4464-022-001, there were no roads extending from that parcel onto the parcel to the north (APN 4464-019-010) or onto the parcel to the east (APN 4464-022-010). In addition, the McKennas both state that there was no ranch or other agricultural operation either on their parcel (APN 4464-022-001) or the directly adjacent parcels. They also stated that they did not observe any roads on APN 4464-019-010 or 4464-022-010 (other than Castro Motorway). If roads existed on their property (APN 4464-022-001) that crossed over onto and continued on the adjacent parcels (APN 4464-022-010 and APN 4464-019-010) as asserted by the applicants, the McKennas would have observed these roads. The statements of Mr. McKenna, who owned APN 4464-022-001 at the relevant time (January 1977), indicate that the network of roads for which the applicants assert vested rights did not exist at that time.

B. There is No Vested Right To Reconstruct Roads that Existed Prior to the Coastal Act After They Have Become Overgrown and Impassable

The applicants assert that before the work proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072 was conducted from approximately January to May 2003, the alleged roads were overgrown with vegetation and impassable. They indicate in a letter to the Commission dated December 9, 2003: "Over time many of these roads and trails became impassable and even difficult to locate." Based on observations by Commission staff during and soon after the work, the proposed development included removal of mature chaparral shrubs that had been growing for a period of many years. If any roads existed prior to the Coastal Act, the prior owners failed to maintain them and abandoned them many years before applicants bought the parcels. Aerial photographs from 1997 (Exhibit 15) and 2001 (Exhibits 12 and 13) demonstrate that the parcels were vegetated with no roads visible in the location of the development proposed in these applications (except for the access road from Castro Motorway onto APN 4464-022-001 that is in part a pre-Coastal Act road and in part was illegally extended in the late 1980s or 1990s). In this situation, any vested rights for the roads that may have once existed have been abandoned and there is no vested right to replace or reconstruct the roads, without full compliance with the Coastal Act's requirements.

The Coastal Act recognizes vested rights "in a development." (Section 30608). Vested rights cannot be established for new development that is constructed after the effective date of the Coastal Act. "Development" under the Coastal Act includes "construction, reconstruction, demolition, or alteration of the size of any structure, ..." (Section 30106). "Structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power ...." (Coastal Act Section 30106).

Under the Coastal Act, a road is considered a structure. A vested right for a nonconforming structure, such as the roads at issue, is limited to the particular structure that existed before enactment of the new law or ordinance in question. Thus, even assuming that the applicants could establish a vested right for roads that existed on January 1977, there is no vested right to replace that vested structure with a new structure, without complying with the permit requirements of the Coastal Act. This simply means that when the useful life of the vested structure has ended, a permit under the Coastal Act is required before it can legally be replaced with a new structure. Here, no maintenance was performed to maintain passable roads at the locations at issue. Rather, prior owners allowed the condition of the roads to deteriorate naturally until they were so overgrown that they were impassable and ceased to be useable as roads. Accordingly, any roads that existed prior to the Coastal Act had reached the end of their useful life. To reconstruct those roads many years or even decades later constitutes new development that is not exempt from the Coastal Act.

This conclusion is consistent with the rule that any doubts about availability of the vested rights exemption should be resolved against the person making the claim. *(Urban Renewal Agency v. California Coastal Commission* (1975) 15 Cal.3d 577). It is also consistent with the principles of equitable estoppel upon which the vested rights doctrine is based, i.e., that it is unfair for the government to impose a new restriction when a property owner has expended substantial funds for construction, in detrimental reliance on a prior government approval. (*Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 977; *J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844). However, the law also favors the eventual elimination of "nonconforming" vested structures. When such a structure becomes damaged or destroyed and has reached the end of its useful life, there is no longer any "detrimental reliance" – the owner has received the full benefit of its investment. Thus, it is not unfair to impose current regulatory requirements to a proposed replacement structure. (*O'Mara v. Council of Newark* (1965) 238 Cal.App.2d 836 (where non-

conforming building is in large measure destroyed by an accident, the investment in the improvement has been taken away, and it is not unreasonable to require compliance with current regulatory requirements)).

An ordinance granting a vested right to maintain a nonconforming use is not open ended: "The object of such provision is the gradual elimination of the nonconforming use by obsolescence or destruction by fire or the elements, and it has been frequently upheld by the courts." (*Sabek, Inc. v. County of Sonoma* (1987) 190 Cal.App.3d 163, 166, *citing*, *Rehfeld v. San Francisco* (1933) 218 Cal.83, 84-85). "It is the general purpose to eventually end all nonconforming uses and to permit no improvements or rebuilding which would *extend the normal life* of nonconforming structures." (*Sabek, Inc.,* 190 Cal.App.3d at 168). With respect to nonconforming uses, "courts should follow a strict policy against extension or enlargement of those uses." *(Hansen Brothers Enterprises v. Board of Supervisors* (1996) 12 Cal.4th 533, 568*; County of San Diego v. McClurken* (1951) 37 Cal.2d 683, 687; *Sabek , Inc.,* 190 Cal.App.3d at 166. Accordingly, in this case, where prior owners have allowed the nonconforming use (the unpermitted roads) to deteriorate from natural processes to the point where they are not usable, they must be considered to have reached the end of their useful life, and there is no vested right to reconstruct them.

The Commission's regulations that apply to repair and maintenance of existing structures also support this conclusion. The development proposed here is not repair and maintenance, but rather, a "replacement structure requiring a coastal development permit." Section 30610(d) of the Coastal Act provides a permit exemption for: "Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; ..." The Commission's regulation implementing this section distinguishes exempt repair and maintenance from replacement with new development, which is not allowed without a permit. Title 14, California Code of Regulations, section 13252(b) states:

> ***"Unless destroyed by a natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit."***

This provision applies to all existing structures, including those authorized by the Commission in a permit as well as those for which a vested right was obtained prior to the Coastal Act. Accordingly, even if the applicants had a vested right for roads that existed in January 1977, replacement of 50 percent or more of those roads is not allowed without a coastal development permit. The development proposed in the pending applications occurred on roads described as overgrown, difficult to locate and impassable until mature shrubs growing in the roads were removed. This development constitutes replacement of 50 percent or more of the roads. Therefore, the development proposed is a replacement structure (i.e., replacement of the roads) and is subject to the coastal development permit requirements of the Coastal Act.

Moreover, there is no vested right to reconstruct a structure after it has been abandoned. In this case, if there were any roads in the location of the development proposed in the applications, they were abandoned by prior owners of the property. They were not maintained and were not in passable condition even before the applicants purchased the parcels. The Los Angeles County Code (Section 22.56.1540) provides that discontinuance of use of a

nonconforming building or structure for a period of time shall terminate the right to use such nonconforming building or structure. In this situation, the policy that favors elimination of nonconforming development applies. At some time, prior owners abandoned any dirt roads that may have existed, and allowed them to deteriorate and become revegetated (see aerial photographs from 1997 and 2001, Exhibits 15, 12 and 13D). In such a case, the vested right to maintain and use the vested structure (i.e., the roads) was abandoned and lost due to the actions of the prior owners. The current owners have not made any substantial investment in reliance on governmental approval or the lack of any requirement for governmental approval for such roads. There is no unfairness in applying the requirements of the Coastal Act to proposed reconstruction of the abandoned roads on the property.

In summary, the Coastal Commission finds that the applicants do not have a vested right for reconstruction of the alleged roads. The Commission finds that reconstruction of the overgrown, impassable roads is new development occurring after the effective date of the Coastal Act. Even if it was for the purpose of replacing a vested structure, the new development is not exempt from the permit requirements of the Coastal Act. In addition, the Commission finds that if any alleged roads existed they were abandoned by prior owners, and there is no vested right to reconstruct them, without compliance with the Coastal Act.

C. The Applicants Have Not Proven That They Obtained Local Authorization to Construct the Subject Roads

To establish a vested right, the applicants must show that all necessary government authorization for the alleged roads on APN 4464-019-008, 4464-019-010, 4464-022-001 and 4464-022-010 was obtained before they were built. (*J.D. Patterson v. Central Coast Regional Coastal Zone Conservation Commission* (1976) 58 Cal.App.3d 833, 844, *citing*, *People v. County of Kern* (1974) 39 Cal.App.3d 830, 838) (unless owner possesses *all* necessary permits, the mere expenditure of funds or commencement of construction does not vest any rights in the development).

The applicants assert that no governmental authorization was necessary for construction of roads on these parcels prior to the Coastal Act. However, since at least 1962, a Los Angeles County ordinance has required a permit for grading. Section 7003 of the Los Angeles County Building Code (attached as Exhibit G) is the form of this ordinance that was in effect from at least 1968 and continuing through 1977. The applicants have not demonstrated compliance with Section 7003, which states: "A person shall not perform any grading without first obtaining a grading permit to do so from the Building Official. A separate permit shall be obtained for each site." In this case, there is no evidence of grading permits issued prior to January 1, 1977 for any roads in the locations of the development proposed in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072. Nor have the applicants provided evidence that the road construction qualified for an exemption from the grading permit requirement.

Since there is no evidence that the roads were constructed in compliance with County Ordinance Section 7003, the Commission finds that the applicants have not shown that any roads that may have existed on the parcels prior to the Coastal Act received all necessary governmental authorization. Therefore, the Commission finds that the requirements to establish vested rights for the alleged roads have not been met.

Conclusion

For all the reasons set forth above, the Commission finds that the applicants have not established that vested rights exist on APN 4464-019-008 (CDP Application 4-03-069); APN 4464-022-010 (CDP Application 4-03-070); APN 4464-022-001 (CDP Application No. 4-03-071) and APN 4464-019-010 (CDP Application No. 4-03-072) in the location of the proposed development. Therefore, the Commission must evaluate the development proposed in the applications as requests for approval to construct new roads. The Commission must determine if the request to construct new roads at the proposed locations is consistent with the policies of the Coastal Act.

EXISTING DEVELOPMENT

There is existing unpermitted development on all four subject parcels, which consists of: removal of major vegetation and disturbance of environmentally sensitive habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, and metal and wood gate posts with chain barriers set with concrete bases. The applicants are including brush clearance, repair and maintenance of existing roads, revegetation of some graded slopes along those roads and the installation of access gates in four locations. Therefore, there remains a substantial portion of existing development that is not addressed in the subject applications.

Based on inspections of the site by Commission Staff, and review of aerial photographs and maps, Staff estimates that approximately 10,000 linear feet of six to twenty-foot wide roads and trails have been constructed without permits on the subject properties. Two graded and cleared pads have been constructed on parcel 4464-019-010. A third graded "pad" area, which the applicants' agent Schmitz characterizes as the "beginning of a new road," is located on parcel 4464-022-010. Schmitz has advised Staff that the new road was graded and cleared "by mistake."[1] Two additional level areas have been cleared of vegetation on parcel 4464-022-010 with little or no grading.

Staff estimates that approximately five acres of native vegetation, primarily native chaparral, has been cleared from the four subject properties. Brush clearance that is legally authorized and required by the L.A. County Fire Department extends to areas within 200 feet of legal, habitable structures. There are no such structures near the roads and graded pads that warrant clearance of these areas. In addition, the applicants claim that the roads are pre-existing "fire roads" that predate the Coastal Act. According to the Los Angeles County Fire Department, there are no fire roads located on the subject properties other than Castro Motorway and a dirt road that bisects parcel 4464-019-008 near the northwest section of the parcel. Both of these roads predate the Coastal Act. A map from the Los Angeles County Forester and Fire Warden, dated 1970, indicates that no other roads exist on the subject site.

The applicants have also altered drainages on at least two of the properties, including placement of creosote-treated railroad ties and a metal culvert in a natural drainage on parcel

[1] During an on-site meeting on November 10, 2003, staff questioned Schmitz regarding a section of hillside, which had been cleared of vegetation for approximately 150 feet in length and 10 to 20 feet in width across a steep slope, and down into a blue line stream. Schmitz stated that the road was cleared "by mistake," and indicated that the respondents believed it was a road, but stopped once they determined no road existed.

4464-022-001, and grading, vegetation removal, and manipulation of channel substrate to construct an Arizona crossing in a blue line stream on parcel 4464-019-008. The applicants have installed wood and metal posts with chains across Castro Motorway and Newton Motorway, blocking an important fire roads and an important hiking and equestrian loop trail (Castro Crest Loop Trail). Two chain gates have also been constructed on a private "precoastal" access road through the northwest corner of Parcel 4462-019-008.

The graded roads and areas where vegetation was removed are clearly visible in photographs of the site. Much of the new roadways are located on steeply sloping portions of the site and are visible from both Latigo Canyon road and National Park lands.

The subject properties consist of four privately owned parcels, totaling approximately 189.5 acres of native chaparral and oak woodland in the Santa Monica Mountains of Los Angeles County adjacent to Federally owned property, which is administered by the National Park Service as part of the Santa Monica Mountains National Recreation Area.

To clearly address what is proposed on each parcel by each permit application (refer to project descriptions listed above) in relation to the development that currently exists on each parcel, the existing unpermitted development is broken down below for each separate parcel:

Parcel 4464-019-008:

Major vegetation removal in ESHA and damage to native oak trees; 2,800 ft. of road construction, including significant cut and fill grading on steep slopes; 500 ft. of cleared trails; and streambed alteration, including grading and construction of an Arizona crossing.

Parcel 4464-022-010:

Major vegetation removal in ESHA, including damage to native oak trees and removal of vegetation form a blueline stream corridor; 3,550 ft. of road construction, including significant cut and fill grading on steep slopes; 1,700 ft. of cleared trails; and metal gateposts with chain barriers blocking access to a major fire road.

Parcel 4464-022-001:

Major vegetation removal in ESHA, including 0.71 acre of vegetation clearing; 1,400 ft. of road construction; 200 ft. of cleared trails; and streambed alteration, including placement of a metal culvert and creosote-treated railroad ties in a stream channel.

Parcel 4464-019-010:

Major vegetation removal in ESHA and damage to native oak trees; 4,500 ft. of road construction, including significant cut and fill grading on steep slopes; 1,300 ft. of cleared trails; and two cleared and graded pad areas.

RELATED PERMIT ACTION

There has been prior Commission action on one of the four subject parcels. On December 12, 1996, the Commission approved Coastal Development Permit No. CDP 4-96-084 for

construction of a 250-square-foot modular home, three amateur radio antennae, chain link fencing surrounding the three antennae, a new 4,700-gallon water tank, and an entry gate, and approximately 40 cubic yards of grading, all on existing graded pads on parcel 4464-022-001. The proposed small modular home and radio antennae were intended for periodic personal use for up to four radio contests per year. CDP 4-96-084 also addressed prior violations on the property, and required removal of an unpermitted, pre-existing, two-story geodesic dome structure, an unpermitted residential trailer and various refuse dumped on site, as well as restoration and revegetation of approximately 850 feet of unpermitted extensions to the existing access road from Castro Motorway, which were created between 1989 and 1991. In this action, the Commission recognized approximately 970 linear feet of roadway on parcel 4464-022-001 entering the parcel from Castro Motorway.

In addition, between 1989 and 1991, approximately 1.5 acres of vegetation was cleared without permits on parcel 4464-022-001. This violation was not addressed by CDP 4-96-084; however, the site was substantially revegetated by June of 2001. However, several thousand square feet of the re-established vegetation have since been cleared and new roads have been graded throughout the site.

On August 25, 1997, Coastal Development Permit No. 4-96-084 was issued to Mr. Peter Von Hagen. The unpermitted geodesic dome, trailer, and debris were subsequently removed pursuant to the permit; the residence and antennae were never constructed. However, restoration of the unpermitted roads was implemented in September of 1997. Since that time, the restoration efforts implemented by the previous property owner have been destroyed.

BACKGROUND

On July 17, 2003, the applicants submitted four separate applications as described above. On August 15, 2003, Staff reviewed the application files, and found that were substantially incomplete. On the same date, Staff notified the applicants' representative in writing that the application was incomplete, noting between 19 to 21 additional items per application that were required for staff's review of the applications. The applicants submitted additional materials on September 26, November 12 and 13, 2003. Staff responded in writing on December 12, 2003 regarding the additional information and the remaining items that had not yet been provided and were necessary. Staff learned shortly thereafter of the Court issued writ, which ordered that "the Coastal Commission hold a public hearing and take action on the currently-pending coastal development permit applications of petitioners Panorama Ranch, LLC (APN Nos. 4464-022-010 and 4464-019-008), Deer Valley Ranch, LLC (APN No. 4464-019-010), and Communications Relay Corporation (APN No. 4464-022-001) no later than the regularly-scheduled February 2004 Coastal Commission meeting." Additional materials were received in the Commission office on December 24, 2003 and January 23, 2004, however, a substantial amount of requested information required for Staff's analysis of the proposed and existing development has not been provided. Additionally, the project description for application 4-03-071 was amended on January 16, 2004 to include "repair and maintenance of a pre-existing culvert and railroad ties" via a letter from the applicant's agent, however, no information was provided along with the letter regarding this new aspect of development and Staff did not have adequate opportunity to request information for assistance in its review of this aspect of the project. As such, Staff would note that the application files are not complete.

Following is a list of the information still outstanding as of January 28, 2004 for each application, except where indicated:

1. Filing Fee: a minimal filing fee was submitted for each application, Staff subsequently notified the applicant/agent that the required fee for the application would be dependent on a cost valuation, also a requested item, and doubled for the after-the-fact consideration. A cost valuation of the work was never received and the applicant submitted an additional check doubling the fee originally submitted.
2. Cost valuation for the development.
3. Local approvals: Staff requested that the applicant provide evidence of "Approval-in-Concept" from the Regional Planning Dept. or evidence that no such approval is necessary.
4. An oak tree permit for parcel 4464-019-010 (application 4-03-072).
5. Accurate site plan/survey prepared by a licensed surveyor
6. Project plans/site plan to scale with dimensions shown, illustrating oak tree and/or riparian vegetation canopies, streams and drainages that clearly show the location of proposed elements of the project, including vegetation removal.
7. Grading and drainage plans prepared by a registered engineer with legible cross-sections clearly showing cut and fill slopes, quantification of grading amounts, identification of which portions of the access roads are new (proposed) and existing, illustration of how drainage shall be conveyed with details of any culverts or other drainage structures.
8. Legible reduced copies (8 ½" x 11") of site, grading and drainage plans.
9. County Environmental Review Board approval or evidence that no approval is required.
10. Contact info for applicant as required as part I #1 on page 1 of the permit application.
11. As the applicant is characterizing the roads as existing, evidence of construction prior to 1977.
12. As the applicant is characterizing the proposed development as repair and maintenance of agricultural roads, evidence of historic agricultural use and when roads were constructed.

B. GEOLOGIC STABILITY AND HAZARDS

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

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

> ***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
>
> ***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas

of high geologic, flood, and fire hazard. The Commission notes that the development, which is the subject of the four permit applications is not designed to minimize the need for grading and excessive vegetation removal on the slopes of the property, as well as avoid direct development on sloped terrain, and therefore, does not reduce the potential for erosion and geologic instability.

The applicants submitted an Engineering Geologic Investigation Report dated October 24, 2003 prepared by Gold Coast Geoservices, Inc. (Gold Coast) for three of the subject parcels (4464-019-008, 4464-022-010 and 4464-019-010), which evaluate the geologic stability of the subject site in relation to the existing access roads and proposed revegetation. The applicant did not submit a geologic report for application no. 4-03-071 (4464-022-001), thus the access roads, culvert and railroad ties on this property were not addressed by a geologist. It should be noted that the geologic reports prepared by Gold Coast are preliminary reports, whose conclusions and recommendations are based on existing maps and data. Gold Coast did not perform any subsurface testing prior to the preparation of these reports. Staff also notes that the three reports incorrectly state that "the site does not contain any 'blueline' streams or significant drainages courses, and none occur near this property," while there is in fact one blueline stream that traverses each of the three properties addressed in the reports.

Based on their evaluation of the sites' geology and the existing and proposed development the consultants have found that the project sites are each respectively suitable for the proposed project. The projects' consulting engineering geologist states in each of the Engineering Geologic Investigation Reports dated October 24, 2003 prepared by Gold Coast:

> ***It is the opinion of the undersigned that the proposed access road will be safe against hazard from landslide, settlement, or slippage, and has no adverse geologic effect on offsite properties. Assumptions critical to our opinion are that the property and adjacent properties will be properly maintained to prevent excessive irrigation, blocked drainage devices, or other adverse conditions. (underline added).***

The project's consulting engineering geologist concludes that the proposed development is feasible and will be free from geologic hazard provided the properties are "properly maintained." It should be noted that the reports address the access roads as "existing" throughout the report except for the Section 111 safety statement, in which the roads are referred to as "proposed." The geologist analyzes the development as existing, which assumes that proper drainage improvements were undertaken along with the construction of these roads, and in fact, the access roads are new development and require appropriate erosion control measures. There is no discussion regarding the adequacy of the existing drainage structures or lack thereof. Without proper runoff and erosion control measures, the grading and vegetation removal involved in the proposed projects will adversely affect the stability of the sloping hillside.

The project's consulting engineering geologist notes that "'Cut' and 'fill' embankments, no more than about 10 feet in maximum slope relief, were made during the road clearing work..." and the access roads through Panorama Ranch, LLC properties (4464-019-008 and 4464-019-010) traverse the head area of the mapped ancient landslide. The geologist goes on to state "the mapped landslide area does not exhibit any indications of adverse geologic conditions or adverse drainage conditions, so that renewed landslide movement is not expected." It is noted that site drainage is by sheetflow runoff. Clearly, a new road that is cut into ancient landslide deposits without conveying runoff in a non-erosive manner could adversely affect the stability of the landslide area.

Although no geologic report was submitted for parcel 4464-022-001, Staff reviewed the geologic map enclosed with the other three reports and notes that mapped landslide deposits exist within the boundaries of this property as well. The Commission notes that there remains some inherent risk in commencing development on sites within or adjacent to active and/or historic landslides, such as at three of the subject sites. The type of activity included in the subject applications, specifically, grading, installation of drainage devices, and significant vegetation removal, without appropriate engineering and environmental analysis do not minimize erosion and geologic hazards. Particularly in areas where hazards exist, such as landslides. The applicant maintains that these are existing roads and they reviewed as such by the consulting geologic engineer, however, these are in fact, as determined by the Commission, new roads in undeveloped areas which cut into steep hillsides and thus, create potential for erosion destabilization of the hillsides, which is particularly a problem in areas adjacent to or within ancient and/or historic landslide areas and could potentially activate these landslides. Further, uncontrolled drainage off of these roads contribute to significant erosion and destabilization of slopes. The runoff and erosion from the hillsides create stream sedimentation and degradation of riparian habitats. Many examples throughout the Santa Monica Mountains where roads have been cut into hillsides have resulted in major landsliding, slippage and settlement, adversely affecting the immediate area and surrounding properties.

The proposed grading of roads and removal of vegetation will leave substantial areas of bare soils exposed on steep slopes. Such areas will contribute significantly to erosion at the site.

Roads are proposed on steep hillsides exceeding 60 percent slopes in some sections, which requires dislodging bedrock and soil material and creating unstable, oversteepened fill slopes that are unengineered, unstable, and prone to erosion. On May 8, 2003, August 15, 2003, and November 10, 2003, Staff observed boulders in excess of 24 inches in diameter lying unsecured along the fill slopes of the roads, which were easily dislodged by hand and rolled down slope. On November 10, 2003 Staff inspected the cut and fill slopes along the roads and pads. Rock, soil, and vegetative material, which has been loosely piled down slope of the roads and pads, is easily dislodged and pushed down slope. Superficial excavation of sidecast fill slopes at several locations along the roads and pads revealed that pieces of the cleared vegetation, including limbs and trunks, have been buried beneath the fill material, providing inadequate support for the sidecast fill material. In some areas, rock and soil is piled up against and supported by live vegetation, including chaparral vegetation and the trunks of oak trees.

The Los Angeles County building code requires that cut and fill slopes be at and angle no greater than 2:1 or 50% and include drainage elements to convey drainage off the cut slopes. On the subject properties there are many portions of the road that have cut and fill slopes that exceed 50 percent; the slopes are not properly compacted and have loose material on the face of the slopes; and the road does not have a drainage system to convey runoff from the road and off the manufactured slopes in a non-erosive manner. Unstable cut and fill slopes that are not properly engineered and a road without an adequate drainage system in this steep hillside terrain with erodible soils will result in significant erosion and destabilization of the proposed roads, the supporting cut and fill, and the surrounding natural slopes and drainages. In addition, as mentioned above on two of the subject properties the road traverses the head of two landslide areas. The lack of an adequate drainage system on the road and road cuts and fills in close proximity to the head of a landslide could result in activation of the landslide area. As proposed, the road design is clearly not consistent with Section 30253 which requires that

new development "assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area."

The Commission has repeatedly found through past permit action, in cases where the required grading for the proposed project results in excess excavated material, that the excavated material shall be removed from the site and disposed of at an appropriate disposal site in order to ensure that it does not contribute to unnecessary landform alteration and increased erosion and sedimentation from stockpiled excavated soil. Throughout the length of the subject roads there is side cast material and uncompacted loose soil and rock material that is highly susceptible to erosion. These conditions contribute to erosion and degradation of riparian habitat.

The proposed revegetation would occur on graded slopes and involves only seeding of the slopes. The proposed revegetation alone would not be sufficient to effectively stabilize these unstable cut and fill slopes. Therefore, the proposed revegetation plan would not be adequate to bring the development into conformance with Section 30253 of the Coastal Act.

There are alternative routes for potential roads to access the subject sites that could have minimized the road lengths and avoided steep unstable slopes, drainages, landslide areas and sensitive resource areas. In addition, alternative road designs that include properly engineered slopes and adequate drainage systems would assure stability and structural integrity of the road system. An alternative road system that would access potential building pads on the subject parcels that were clustered in a way to minimize impacts to coastal sensitive resources would have been an environmentally preferred alternative design.

As described above the proposed roads on the subject parcels do not assure stability and do not ensure the proposed development will not create or contribute to erosion, instability or destruction of the surrounding area as required by Section 30253 of the Coastal Act. Thus the Commission finds that the proposed development and proposed revegetation do not serve to minimize potential geologic hazards on the project site and adjacent properties, therefore, the development, which is the subject of the four applications, is not consistent with §30253 of the Coastal Act.

C. ENVIRONMENTALLY SENSITIVE HABITAT AND WATER QUALITY

Section **30230** of the Coastal Act states that:

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

Section **30231** states:

> ***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and***

substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section **30236** states:

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

Section **30240** states:

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

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

Section **30107.5** of the Coastal Act, defines an environmentally sensitive area as:

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

Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

1) Is a habitat or species rare?
2) Is the habitat or species especially valuable because of its special nature or role in the ecosystem?
3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the

provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in Exhibit 8, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP[2].

For any specific property within the Santa Monica Mountains, it is necessary to meet three tests in order to assign the ESHA designation. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? Second, is the habitat undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

The entirety of the sites (with the obvious exception of the disturbed areas described in this staff report) are well vegetated with chaparral vegetation. In addition, parcels APN 4464-019-008, 4464-019-010 and 4464-022-010 contain blueline streams and sensitive stream habitat. The subject parcels are part of a larger block of pristine habitat. Commission staff visited the subject property on July 22, 2003 and confirmed that the project sites outside of the disturbed area consists of sensitive chaparral vegetation (see Exhibit 9 for further discussion of onsite habitat). Exhibit 13 is an aerial showing the project area with parcel boundaries, which was taken in 2001 so you can see that some of the currently disturbed area was covered with chaparral vegetation not long ago.

Therefore, due to the important ecosystem roles of chaparral in the Santa Monica Mountains (detailed in Exhibit 8), and the fact that the subject sites are relatively undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral on and surrounding the project site meets the definition of ESHA (Section 30107.5) under the Coastal Act. As discussed above, there are legally existing portions of roads on three of the properties, which have been maintained clear of vegetation, and thus, these legally existing road segments are not considered ESHA.

Section 30240 requires that "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." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource.

The LUP policies addressing protection of Significant Watersheds and ESHAs are among the strictest and most comprehensive set forth in the LUP. The Commission, in certifying the LUP, emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources. The LUP includes several policies designed to protect ESHAs and address stream protection and erosion control, from both the individual and cumulative impacts of development. These policies include:

> ***P68 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. Residential use shall not be considered a resources dependent use.***

[2] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

P84 In disturbed areas, landscaping plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.

P88 In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require site design to minimize grading activities and reduce vegetation removal based on the following guidelines:

- ***Structures should be clustered.***
- ***Grading for access roads and driveways should be minimized; the standard new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, which ever is less. Longer roads may be allowed on approval of the County Engineer and Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use.***
- ***Designate building and access envelopes on the basis of site inspection to avoid particularly erodible areas.***
- ***Require all sidecast material to be recompacted to engineering standards, re-seeded, and mulched and/or burlapped.***

P90 Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrologic, water percolation and runoff) to the maximum extent feasible.

P96 Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.

Obviously, native vegetation that is cleared or substantially removed will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where there is partial clearance of vegetation, the natural habitat can be significantly impacted, and ultimately lost, particularly if such areas are subjected to supplemental water through irrigation. In coastal sage scrub habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that can over time out-compete native species.

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow, Western scrub-jay, Northern mockingbird)[3]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[4].

The as-built roads were constructed with an undetermined amount of grading and the removal of approximately five acres of native vegetation. The area is dominated by chaparral habitat, interspersed with individual oak trees, stream channels and mature oak woodlands. Several natural drainages and ravines are located on site including three designated blueline streams. The unpermitted grading and vegetation clearance caused the direct removal and discouragement of the growth of watershed cover, including native chaparral, which is Environmentally Sensitive Habitat Area ("ESHA"), resulting in a reduction in the amount and quality of the habitat and watershed cover in the area.

The 1986 Malibu Land Use Plan environmentally sensitive habitat maps show oak woodland areas on the subject sites and the site drains into a significant watershed area. At least two of the blue line streams identified by the U.S. Geological Survey are impacted by unpermitted development, including a graded road and Arizona crossing through a blue line stream on parcel 4464-019-008, and vegetation clearance through a blue line stream on parcel 4464-022-010. Commission Biologist Dr. John Dixon has viewed the site and confirmed that the area is substantially native chaparral ESHA (Exhibit 9).

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

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

The existing roads and vegetation clearance on the subject properties are inconsistent with the policies of the Coastal Act, and far exceed the standards of development allowed pursuant to the LUP. Development on the site is not clustered and does not minimize landform alteration or disturbance to natural drainages, native vegetation, or impacts to public parklands. In fact, the roads are proposed through steeply sloping terrain and significant chaparral habitat, stream channels, and oak woodlands. The proposed road pattern was not designed to minimize the disturbance of ESHA. There does not appear to have been an attempt to construct access roads in a manner which would have clustered future development sites on the subject parcels or minimize the length of the roads. In other words, there appears to have been no design plan for the roads to minimize the impacts to the ESHA. It is not known if the proposed roads will provide access to any future structures that might be proposed for the site, where the appropriate location for future structures may be, or if additional access roads will be sought to access proposed structures. The cumulative impacts of the numerous access roads, which result in fragmentation of the sensitive habitat area, would significantly degrade ESHA. The overall length of the proposed road to access the parcels and the amount of vegetation clearance and grading required to construct these roads is excessive.

The excessive grading and vegetation removal on the subject parcels has removed surface vegetation, ground cover, subsurface rootstock, and left substantial areas of bare soil throughout the property, including areas with road cuts of one to ten feet high on oversteepened hillsides exceeding 60 percent slopes. These areas are highly susceptible to erosion and may contribute directly to the degradation of water quality in the surrounding coastal waters and streams through increased sediment input. The lack of a drainage system on the roads to control the volume and velocity of runoff also results in erosion and sedimentation of stream courses both on and off site. The sedimentation of the stream courses results in the degradation of downstream riparian areas. Sedimentation increases turbidity in streams which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms

The direct disturbance to the stream channel to construct the "Arizona" stream crossing on parcel 4464-019-008 included the removal of native vegetation along the stream corridor and modifications to the stream channel. The removal of the native vegetation in the stream and modification of the stream channel modifies the hydrology of the stream which destabilizes the stream channel making it susceptible to erosion of the banks and channel. In addition, driving vehicles through the stream creates erosion of the channel and introduces pollutants from vehicles into the stream degrading the water quality of the stream. The applicant is also seeking approval for an as-built metal culvert in a stream channel with creosote-treated railroad ties utilized as the head walls for the culvert on parcel 4464-022-001. The creosote soaked railroad ties used to construct the drainage crossing will introduce known toxic chemicals from the creosote into the drainage. These chemicals could adversely impact the water quality of the stream and downstream riparian areas.

In addition section 30236 of the Coastal Act requires that substantial alterations of streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where to other method for protection existing structures is

feasible, (3) developments where the primary function is the improvement of fish and wildlife habitat. Vehicles crossings are not an allowable use to substantially alter streams under the Coastal Act. Through past permit actions the Commission has consistently required that stream crossings be accomplished through bridging to avoid alteration of streams and to minimize and avoid adverse impacts to the stream habitat and water quality. Therefore, the two at-grade stream crossings of parcels the 4464-019-008 and 4464-022-001 will result in a substantial alteration of the stream and result in adverse impacts to water quality and stream habitat which are not consistent with section 30231, 30236 and 30240 of the Coastal Act.

As previously mention, on Parcel 4464-022-001 the Commission in it's approval of CDP 4-96-084 (Von Hagen) recognized 970 linear feet of road from Castro Motorway and approved a small modular home, 4,700 gallon water tank, entry gate and 40 cu. yds. of grading. This CDP also required the removal of unpermitted development consisting of a two story geodesic dome, unpermitted residential trailer, and various refuse dumped on the site. The permit also required restoration and revegetation of approximately 850 feet of unpermitted road extensions to the access road. The restoration of the unpermitted roads was implemented in September of 1997. However, portions of this restoration area have been destroyed by the recent unpermitted road construction. CDP application 4-03-071 includes road repair and clearance of portion of the permitted road the parcel as an existing road. However, the improvements to the existing permitted road are combined with the unpermitted road construction in areas previously required to be restored through CDP 4-96-084. The applicant has not clearly defined in the permit application where the existing permitted road ends and the unpermitted road through the restoration area begins. Although the road improvement to the existing permitted road appears to be minor the Commission cannot at this time approve the improvements to the existing road without knowing exactly where the existing road improvements end new road construction begins. The applicant could submit a CDP application for clearing and repair of the previously existing permitted road with plans that clearly illustrates the extent of the proposed improvements to the existing road. The Commission is likely to approve minor repairs and clearing of the existing road.

Finally, there are environmentally preferred road designs and road patterns which could have afforded access to the parcels for geologic testing or other purposes which could have avoided sensitive environmental resources, streams, and minimized vegetation clearance and grading. Any alternative road design would also have to include locations for potential future residential development to ensure additional roads would not be required and ensure the access road lengths are minimized.

These significant adverse impacts, resulting from construction of the proposed roads and stream crossings, to ESHA and water quality of the area are not consistent with Sections 30230, 30231, 30236 and 30240 of the Coastal Act, or with the guidance policies of the Malibu/Santa Monica Mountains Land Use Plan. As such, the Commission finds that the proposed developments must be denied.

D. VISUAL RESOURCES

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, and public parkland. Further, the Commission has also required structures to be

designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

Section 30251 of the Coastal Act states:

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

In addition, the Commission has used the policies of the LUP as guidance regarding the consistency of development projects with the provisions of the Coastal Act. Following are the specific LUP policies that pertain to the protection of visual resources:

> ***P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e. geological, solids, hydrological, water percolation, and runoff) to the maximum extent feasible.***
>
> ***P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.***
>
> ***P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs and landscaping) shall:***
>
> ***Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.***
> ***Minimize the alteration of natural landforms.***
> ***Be landscaped to conceal raw-cut slopes.***
> ***Be visually compatible with and subordinate to the character of its setting.***
> ***Be sited so as not to significantly intrude in the skyline as seen from public viewing places***
>
> ***P131 Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.***
>
> ***P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.***
>
> ***P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.***

The project sites are surrounded by public parklands and very low-density residential development. Owing to this land use pattern, the rural atmosphere, open spaces, vistas, and large contiguous areas of natural landforms and native vegetation, the area is highly scenic. The project area is visible from a very large area, including parklands and trails. The site is visible, in particular, from Latigo Canyon Road, National Parks Services lands, Santa Monica Mountains Conservancy lands, and Castro Crest Loop Trail.

The subject properties are surrounded by the Santa Monica Mountains National Recreation Area, which is a popular visitor destination point for recreation, and includes several trails. Several hundreds of acres of public parklands and public trails lie adjacent to the subject properties, and represent a substantial public investment in adjacent open space and recreational lands.

The properties are also in a highly scenic area due to the rural atmosphere, open spaces and vistas, large continuous areas of native vegetation and extensive network of publicly owned lands. The proposed development would contribute significantly to the degradation of scenic resources and the community character of the surrounding rural area through the alteration of the natural landform on the site's steep hillsides and ridge tops.

The proposed roads on the subject properties are located in a sparsely developed area of the Santa Monica Mountains, and will be easily visible from public parklands, portions of the Castro Crest loop trail, and from Latigo Canyon Road. The proposed roads, road cuts and clearance of vegetation on the subject properties degrades scenic views as seen from these public view points and areas. As previously mentioned, there are alternative environmentally preferred road designs that would minimize road lengths and avoid steeply slope areas which would in turn reduce the scale and visbility of access roads to the subject parcels. Therefore, the Commission finds, the proposed project will not minimize grading and landform alteration in a highly scenic area, and will adversely affect public views, therefore the proposed and existing development is not consistent with the requirements of Section 30251 of the Coastal Act or the visual resource policies of the Malibu/Santa Monica Mountains Land Use Plan.

E. COMMUNITY CHARACTER AND RECREATION

The Coastal Act has policies that provide protection for community character, requiring that new development be visually compatible with the character of surrounding areas and protect views. Further, the Coastal Act provides for the protection of special communities that are popular visitor destinations for recreational uses. Finally, one of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas and to reserve lands suitable for coastal recreation for that purpose.

Section 30210 of the Coastal Act states:

> ***In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.***

Section 30212(a) of the Coastal Act states:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided In new development projects . . .

Section 30252(3) of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (3) providing non-automobile circulation within the development . . .

Section 30251 of the Coastal Act states:

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

Section 30253(5) of the Coastal Act states:

New development shall:

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

As stated previously, the four subject sites are located northeast of Latigo Canyon Road and north of and adjacent to Castro Peak Motorway in the unincorporated Malibu area of Los Angeles County and adjacent to or in close proximity to National Parks Services lands, Santa Monica Mountains Conservancy lands, and riding and hiking trails, including the "Castro Crest" loop trail and the Backbone Trail. The area surrounding the project site is very rural in character, with wide-open spaces and vistas. A large network of publicly owned lands in the region adds to this area's character. Those areas within the vicinity of the project site that are not publicly owned land are only sparsely developed, further preserving the rural character of the surrounding area.

The sites are also located within an area which was designated as the Santa Monica Mountains National Recreation Area (SMMNRA) in 1978 by the United States Congress. The SMMNRA was established to "manage the recreation area in a manner which will preserve and enhance its scenic, natural, and historical setting and its public health value as an airshed for the Southern California metropolitan area while providing for the recreational and educational need of the visiting public.[5]" The Santa Monica Mountains and the SMMNRA form the western backdrop for the metropolitan area of Los Angeles and the heavily urbanized San Fernando and Conejo valleys. Los Angeles County is populated by well over nine million people, most of whom are within an hour's drive of the Santa Monica Mountains.[6] Within the SMMNRA, the Santa Monica Mountains offer rugged open spaces, jagged rock outcroppings, and primitive wilderness areas, in addition to homes, ranches, and communities. The SMMNRA provides the public and local residents with outdoor recreational opportunities and an escape from urban

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[5] Public Law 95-625.

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

settings and experiences. It is the unique beauty, wilderness, and rural character of this area that continues to draw so many visitors and residents to it.

For the above reasons, the SMMNRA constitutes a unique and special wilderness and recreational area and, as a result, is a popular visitor destination point for active and passive recreational use. Available data indicate that existing recreational facilities in the region are currently experiencing sustained demand that is often over capacity. According to the State Department of Parks and Recreation, total visitation at state-managed parks and beaches alone was estimated at 2,747,000 from 1986 to 1987. The County of Los Angeles estimated that user activity days for hiking and backpacking will rise from 12,786,471 in 1980 to 16,106,428 in 2000; camping from 8,906,122 to 10,622,744; and horseback riding from 6,561,103 to 7,511,873. As the population in California, and in the Los Angeles metropolitan area in particular, continues to increase, the demand on the parks within the SMMNRA can be expected to grow. The preservation of the unique rural character of the parks and communities within the SMMNRA is, thus, of the utmost importance for continued quality coastal recreational opportunities. In addition to their location within the SMMRA, the project sites are located adjacent to public parklands owned by the National Park Service.

In order to aid in preserving the rural, open character of this area, the parcels on the northside of Castro Peak, including the subject sites, are for the most part designated by the Malibu/Santa Monica Mountains LUP as "Mountain Land (one dwelling unit per 20 acres). Several smaller areas on less steep slopes are designated under the LUP as Rural Land I (one dwelling unit per ten acres). Under the certified LUP, Mountain Land is described as: "Generally very rugged terrain and/or remote land characterized by very low-intensity residential development", while Rural Land is characterized as "[g]enerally low-intensity rural areas characterized by rolling to steep terrain usually outside established rural communities". These density and use policies under the certified LUP have been largely successful in maintaining the unique rural character of this area and presence of open spaces and vistas.

Two of the permit applications (4-03-069 and 4-03-070) include a request for after-the-fact approval for the construction of gates across existing roadways. In the case of application 4-03-069, the applicant is proposing two "chain" type gates on an existing "pre-coastal" road on parcel 4464-019-008. This road traverses the northwest corner of the parcel and appears to provide access to a parcel located to the north (Exhibit 4d). The property deed indicates that there are road easements over this property. It is logical to assume the road easement is for the neighboring property to the north, which is accessed by the existing road. The applicant has not provided any evidence he has the legal ability to construct a gate on the existing access road within the road easement which would effectively block access to a neighboring property. Staff is not aware of any evidence to indicate this road serves as a public trail route for hikers or equestrians. In addition, the gates are not visible from any public viewing area. Provided the applicant could submit evidence to the Commission that he has the legal right to construct gates on the road, it is possible that this development could be found consistent with the Coastal Act. However, given that the applicant has not provided evidence he has the legal ability to construct the proposed gates, the Commission finds that the gates cannot be permitted at this time. The applicant can submit a coastal development permit application in the future for gates on this road with the appropriate evidence he has the legal right to do so pursuant to the road easement.

With regard to Permit Application 4-03-070, the applicant is requesting after-the-fact approval for the construction of two gates, each comprised of two metal posts with a chain spanning the

roadway and several no trespassing signs. These gates and signs are located across Newton Canyon Motorway and Castro Motorway where the two roads intersect on Parcel 4464-022-010. As noted above, the gates/fences were recently placed on the project site without a coastal development permit. As described above, the subject parcels are accessed from Latigo Canyon Road, across Castro Motorway. Castro Motorway is part of a network of unpaved roads constructed by Los Angeles County to provide access for the Fire Department in remote areas for fire-fighting purposes. Castro Motorway appears in the earliest photos staff has viewed of the area (1944). Newton Canyon Motorway, which intersects Castro Motorway on parcel 4464-022-010 is shown as a fire road on the Department of County Forester and Fire Warden, Divisional Map No. 1, Battalion 5, 1950 edition. This road is also visible in an aerial photograph from 1958.

According to the Los Angeles County Fire Department, these fire roads are maintained by the Fire Department for dry-weather access. The fire roads are not paved. The County does not hold easements over most of these roads, but rather uses and maintains them by agreement with the underlying property owners. Should a property owner not agree to the Fire department's maintenance or use of a fire road, then the Fire Department would not be able to use the road to access an area for fire-fighting.

In addition to their use for fire-fighting purposes, many fire roads are used extensively by the public in the Santa Monica Mountains for recreational purposes. Wide, graded roads are attractive to hikers, equestrians, and more recently, mountain bikers as routes to traverse, and in many cases, to reach public recreation areas. Newton Canyon Motorway and portions of Castro Motorway, are part of a loop trail referred to as "Castro Crest". The loop comprises the Backbone Trail, which in this area is located in Solstice Canyon, Castro Motorway, and Newton Canyon Motorway. This loop trail can be reached either along the Backbone from Latigo Canyon Road to the west or from the east at the trail head at the northern end of Corral Canyon Road. Loop trails are very popular with hikers and other users for an obvious reason, namely that it is possible on a loop to traverse different topography, different habitats, and gain different views while still returning to the starting point. The applicants are proposing two gates on Newton Canyon Motorway and Castro Motorway on parcel 4464-022-010 (CDP Application 4-03-070) which will block access over the Castro Crest loop trail (Exhibits 3 & 5c). Staff found numerous references to this trail, both individually, and as part of the larger trail network that extends to Kanan Dume on the west and into Malibu Creek State Park on the east on websites designed to exchange trail information for mountain bikers, hikers, and trail runners.

Staff has received several letters in relation to another coastal development permit application nearby (CDP app. #4-02-175), regarding public use of Newton Canyon Motorway as a hiking and riding trail. Because the gates proposed in Permit application 4-03-070 would be located on another portion of the same "Castro Crest" loop trail considered in Permit Application 4-02-175, the Commission considers the evidence provided by the public regarding 4-02-175 to be pertinent to the consideration of Permit Application 4-03-070 as well.

One letter, from Alicia Roberts (letter dated August 20, 2003 was addressed to the National Park Service and provided to Los Angeles County as well) states that the recreation use of Newton Canyon Motorway and Castro Peak Motorway has been extensive. The author's family owned a ranch in Solstice Canyon and the author states that she personally rode her horse on both roads since the 1960's. The letter further states that:

> Several equestrian groups including the Santa Monica Mounted Police, ETI Corral 23, and Trancas Riders and Ropers all rode on these fire trails in the 60's, 70's, and 80's. During these years, these groups had large memberships. I was a member of Corral 23 and TRR. I rode on Castro and Newton roads with both groups. When the Santa Monica Mounted Police camped at our ranch, I would accompany them on their posse patrols up Solstice to Castro Peak/Newton Canyon Motorway and then over to Latigo or Ramirez Canyon

Additionally, a letter dated October 3, 2003 was received from the Santa Monica Mountains Trail Council. This letter states that:

> Three gates have been erected below Castro Peak on the Newton Canyon fire road. The gates are imposing and intimidating and were apparently built to impede the access of hikers and horseback riders along the fire road that the public has used as a trail for over 30 years. The Santa Monica Mountains Trails Council requests that these gates be removed to avoid blocking the trail access and so that the public may continue to easily use the trail.

This Trails Council letter includes a map showing the approximate location of the three referenced gates. The three gates include the two gates on Newton Motorway addressed by the Commission in Permit Application 4-02-175 as well as one of the two gates included in the subject Permit Application 4-03-070.

Further, Klaus Radtke, a Santa Monica Mountains Trail Council Board Member, submitted two letters. His letter dated November 3, 2003 details three gates that had been placed on the loop trail a short time before his letter. The three gates include the two gates on Newton Motorway addressed by the Commission in Permit Application 4-02-175 as well as one of the two gates included in the subject Permit Application 4-03-070. Mr. Radtke also submitted a letter dated December 12, 2003 detailing his use of Newton Canyon Motorway, both as a hiker in 1959, as well as a Fire Department forester in the 60's and 70's. The letter states that:

> ...I hiked many times to the lookout tower in the summer of 1959, using the Castro Peak Motorway and connecting motorways and trails. Castro Peak Motorway offered stunning views of mountains, rock formations, and the ocean and soon I was hiking all the way to the beach, often using Newton Motorway as a shortcut from Castro Peak Motorway. I regularly met hikers and equestrians during my hiking excursions.

Mr. Radtke also relates the experience of three other Trails Council board members (Karynne Zontelli, Milt McAuley, and Jo Kitz) using Newton and Castro Peak Motorways in the 70's and 80's. Jo Kitz submitted a letter, dated January 2, 2004 detailing her use of the Castro Crest loop trail for organized hikes by members of the Sierra Club. Karynne Zontelli submitted a letter (received January 8, 2004) detailing her use of the trail. This letter states that:

> As a member of the community, president of ETI Corral 63, president of the EHRA: I request that the above referenced gates be removed. It is my understanding that these gates were installed without a coastal permit and block and severely inhibit the use of a very popular and much used trail in the SMMRA. I have personally been the sponsor of equestrian events annually since 1972 using this trail. In addition, since 1981 I have co sponsored run and hiking events through this area continuously. My neighbors and friends have accompanied me using this trail weekly since 1971.

Lillian Trevisan has submitted a letter dated January 5, 2004, stating that she is a Sierra Club hike leader and that she has led hikes on this loop trail for many years. The Conejo Group of the Sierra Club has submitted a letter, dated January 3, 2004 that states:

> The Newton Motorway in the area of Castro peak is part of a loop route that had until recently been heavily used by hikers, bicyclists, and horsemen traveling in this area. The motorway was developed and has been maintained using public money. Installation of these gates has prevented public use this loop trail route. We realize this segment of trail crosses a parcel of privately held land, but this segment of the Newton Motorway has been in general use as a recreational trail for more than forty years.

Further, the County of Los Angeles Department of Parks and Recreation submitted a letter, dated January 13, 2004 that states the following:

> The Los Angeles County Department of Parks and Recreation would like to express our concern with reference to the proposed gates located on the Newton Motorway and the development of a public access road to the property between the gates. The proposed gates would block a section of the Newton Motorway, which is part of a six mile loop connector trail. This loop trail has connections to the popular Backbone Trail system. The proposed gates would fragment one of a limited number of prime recreational loop trail opportunities in the Santa Monica Mountains National Recreation Area, and make it virtually unusable to hundreds of trail users in the Santa Monica Mountains. Newton Motorway has become a popular recreational trail route and deserves to be kept open to the public.

Finally, 19 other letters and 2 e-mail messages (sent to the Commission's Public Education Program) have been submitted from members of the public detailing their personal use of the Castro Crest loop trail.

Evidence exists then of public use of the Newton Canyon Motorway and Castro Motorway for hiking and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. The road existed since as early as 1950, was created and has been maintained by a public agency continually since that time. The segment of Newton Motorway, along with Castro Motorway and the Backbone Trail comprise a trail loop, the majority of which crosses public parkland. Based on the letters submitted describing historic use, the Commission finds that potential exists to establish prescriptive rights for public use of this road.

The applicant is requesting after-the-fact approval for the construction of two gates each comprised of two metal posts with a chain spanning the roadway and several no trespassing signs. These gates and signs are located across Newton Canyon Motorway and Castro Motorway where the two roads intersect on Parcel 4464-022-010 (CDP Application 4-03-070). As noted above, the gates/fences were recently placed on the project site without a coastal development permit. As designed (and as constructed), the gates preclude access on the road for vehicular, equestrian, or pedestrian travel. The applicant has not given any reason that the gates/fences are necessary, except to state a concern regarding liability. As to the concern of liability, California law provides private landowners with immunity from liability for injuries sustained by persons using the property for recreation use. California Civil Code Section 846 states that:

> An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of

structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose" as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received by others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the owner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

As such, immunity exists from liability for injury to persons who have used or will use Newton Canyon Motorway or Castro Motorway for recreational purposes.

The relatively recent phenomenon of gated communities has become increasingly present in inner city and suburban areas since the late 1980s, often in response to security concerns. The spread of gated communities helps to create a "fortress mentality.[7]" As Edward J. Blakely, Dean and of the School of Urban and Regional Planning at the University of Southern California, and Mary Gail Snyder, Professor in the Department of City and Regional Planning at the University of California at Berkeley, describe the phenomenon of gated communities:

> ***Millions of Americans have chosen to live in walled and fenced communal residential space that was previously integrated with the larger shared civic space. . . . In this era of dramatic demographic, economic and social change, there is a growing fear about the future in America. Many feel vulnerable, unsure of their place and the stability of their neighborhoods in the face of rapid change. This is reflected in an increasing fear of crime that is unrelated to actual crime trends or locations, and in the growing number of methods used to control the physical environment for physical and economic security. The phenomenon of walled cities and gated communities is a dramatic manifestation of a new fortress mentality growing in America. Gates, fences, and private security guards, like***

[7] Fortress America, Gated Communities in the United States, Edward J. Blakely and Mary Gail Snyder, the Brookings Institution, 1997.

> ***exclusionary land use policies, development regulations, and an assortment of other planning tools, are means of control, used to restrict or limit access to residential, commercial, and public spaces. Americans are electing to live behind walls with active security mechanisms to prevent intrusion into their private domains. Americans of all classes are forting up, attempting to secure the value of their houses, reduce or escape from the impact of crime, and find neighbors who share their sense of the good life.*** [8]

Furthermore, it is estimated that at least three to four million and potentially many more Americans have already sought out this new form of refuge from the problems of urbanization.[9] One study estimates that one million Californians are seeking a gated refuge.[10] In fact, a 1991 poll of the Los Angeles metropolitan area found 16 percent of respondents living in some form of "secured-access" environment.[11]

The area surrounding the subject site, however is rural in nature, as opposed to suburban or urban, and is open rather than closed, walled, and private. The proposed gate will convey to visitors the message: keep out, visitors are not welcome. This impact is inconsistent with the fact that the site is located with the SMMNRA, an area devoted to providing visitors with recreational opportunities and protecting natural habitats. In fact, one paper discussing security design options states that territorial reinforcement, such as a security gate, defines public and private spaces, and "serves as a warning and deters entry by an offender" while at the same time "legitimate users experience a sense of arrival or welcome and know they belong.[12]"

To deal with the increasing trend to gate communities, the City Council of La Habra Heights, located in Los Angeles County, California, adopted an ordinance in 1990 which made it expressly illegal to install a security gate across a private or public road in order to preserve the rural character of the community (Exhibit 42).[13] Like the area of the subject site, La Habra Heights is also located within the near vicinity of the Los Angeles metropolitan area, increasing the inherent value of such open, rural, sparsely developed areas. As City Council members stated, at stake "is more than just an electronic security barrier, but the rural, independent, neighborly ambience that attracted residents to settle here . . . [14]" As with the area of the subject site, La Habra Heights also lacks city sewer lines, has narrow streets without curbs or gutters, and lacks street lights, in part to preserve the valued rural atmosphere.[15] As a result, to prevent the urbanization of La Habra Heights (a particular threat due to an encroaching Los Angeles metropolis) and to protect the rural, neighborly ambience of the community, the municipality expressly banned all security gates. Likewise, a security gate at the proposed location would also conflict with the character of the surrounding rural atmosphere, characterized by open vistas and spaces.

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[8] Id. at 1 and 2.
[9] Id. at 2 and 3.
[10] "Am I My Brother's Gatekeeper? The Fortressing of Private Communities Contributes to the Increasing Fragmentation of American Society," Edward J. Blakely, The Daily News of Los Angeles, March 1, 1998, page V1.
[11] Id.
[12] "Safe Place Design," Diane Zahm, Ph.D.; Sherry Carter, AICP; Al Zelinka, AICP; Contrasts & Transitions, Conference Proceedings, APA, San Diego, 1997.
[13] "La Habra Heights Shuts the Gates; Privacy: Council Majority Calls Action to Bar Gated Communities a Stand Against Elitism; Real Estate Industry Leader Express Dismay," Howard Blume, The Los Angeles Times, September 20, 1990, Page 7, Column 1.
[14] Id.
[15] Id.

The Commission finds that the construction of the proposed gates/fences are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. A gate/fence, one of the more dramatic forms of residential boundaries, would render the community character of this area more urban, developed, private, walled off, and closed in nature, as opposed to the rural, open community character it currently maintains and which attracts so many visitors seeking to experience the beauty of the rugged and scenic Santa Monica Mountains.

This concern is addressed in the Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, (SMMART), which was prepared through the cooperative effort of the Santa Monica Mountains Area Recreation Trails Coordination Project, facilitated by the Rivers, Trails and Conservation Assistance program of the National Park Service, and with input from interested local agencies, organizations, individuals. That report states:

> ***Although over 450 miles of recreational trails exist within the park lands of the Santa Monica Mountains National Recreation Area, needs for trails exist in the areas outside of the established park system. For example, trails provide linkages between parks and from residential areas into parks. Trail linkages enhance the park experience for visitors and help to bring visitors into the parks. Some of these trails are located on privately owned land and their future use may be restricted due to development or fencing of property.*** [16]

One article reports on Alamo, a city in the San Francisco Bay Area, where many people living next to wildlands are increasingly impeding access to trails and parks, due to fears that hikers will vandalize, litter, loiter, and become a nuisance[17]. Steve Fiala, a trails specialist for the East Bay Regional Park District, states that as the number of hikers has grown and homeowners become more fearful of strangers, the two groups are eyeing each other with distrust and suspicion.[18]

In past Commission actions, the Commission has found that gates may deter the public from using trails that exist across particular sites. Although the Commission has approved security gates in past actions, the Commission has also denied similar proposals in the past on the basis that a security gate would deter or inhibit public access. In the appeal 4-VNT-98-225 (Breakers Way Property Owners Association), the Commission denied a permit for a security gate, that also provided for a pedestrian gate, at the entrance to the Mussel Shoals Community in Ventura County, due to a determination that public access would be discouraged. In that appeal, the Commission was concerned the security gate would impede public access. Similarly, in appeal A-3-SCO-95-001 (Santa Cruz County Service Area #2), the Commission denied a permit for a gate on a bluff top stairway to restrict access during evening hours to a public beach on the basis that there were less restrictive alternatives that could be implemented to address the neighborhood security concerns. The Commission more recently denied a permit application on the parcel adjacent to parcel 4464-022-010 for two gates located on Newton Canyon Motorway under permit application 4-02-175 (LT-WR, LLC). In its action on this permit application, the Commission found that evidence existed of public use of the Newton Canyon Motorway and Castro Motorway for hiking and equestrian use, including potential

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[16] Santa Monica Mountains Area Recreational Trails Coordination Project, Final Report, September 1997, page 25.

[17] "Access Battles, Homeowners Near Park Entrances Wary of Noisy Hikers, Parking Woes," San Francisco Chronicle, Patricia Jacobus, April 16, 1998, page A1.

[18] Id.

prescriptive rights, which would be affected by the installation of gates across Newton Canyon Motorway.

In addition, research indicates that a major deterrent to public use of recreational trails and similar public recreation areas and facilities is a perception by the public that an area is private property. Gates create physical barriers to access and privatize community space, not merely individual space.[19]
As Blakely and Snyder write:

> ***Gated communities physically restrict access so that normally public spaces are privatized. They differ from apartment buildings with guards or doormen, which exclude public access to the private space of lobbies and hallways. Instead, gated communities exclude people from traditionally public areas like sidewalks and streets.***[20]

Further, in Fortress America, Gated Communities in the United States, Blakely and Snyder state the intent of controlled entrances: "to prevent penetration by nonresidents.[21]" Blakely and Snyder also list one potential consequence of gates, which is a critical consideration in an area such as the subject site, located adjacent to Charmlee Park and within the vast tract of the SMMNRA which is checkered with invaluable parkland. They state:

> ***Gates can make access to shorelines, beaches, and parks so difficult that those public resources become essentially private preserves.***[22]

In addition, one element of the theory supporting street closures, "crime prevention through environmental design" (CPTED) which uses psychological inducements and deterrents, recommends natural access controls (such as the proposed gate) for the physical guidance of people coming and going from a space.[23] Another principle of CPTED includes the use of territorial reinforcement (such as the proposed security gate), so that defensible space or clear physical boundaries are created.

In the case of the current permit application (4-03-070), the proposed as-built gates would clearly delineate a boundary between public and private property and foster a sense of privatization. The gates deter entry by members of the public who wish to access National Park Service parklands through this route that has traditionally been used. As a result, the gates not only decrease the public's perception that they may pass along Newton Canyon Motorway or Castro Motorway as part of a trail loop, but physically block their passage, and this trail will likely experience diminished use.

The Commission finds that the proposed as-built gates on parcel 4464-022-010 (CDP application 4-03-070) are not consistent with the community character of the surrounding area and would detract from the rugged, natural atmosphere that is a unique characteristic of the SMMNRA, of which the subject site is a part. The project would alter the valued rural, open,

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[19] "Am I My Brother's Gatekeeper? The Fortressing of Private Communities Contributes to the Increasing Fragmentation of American Society," Edward J. Blakely, The Daily News of Los Angeles, March 1, 1998, page V1.
[20] "Putting Up the Gates," Edward J. Blakely and Mary Gail Snyder, National Housing Institute, May/June 1997.
[21] Fortress America, Gated Communities in the United States, Edward J. Blakely and Mary Gail Snyder, the Brookings Institution, 1997, page 2.
[22] Id. at 154.
[23] Id. at 122.

and scenic community character of this area within Malibu and the Santa Monica Mountains and would not protect the unique characteristics of the SMMNRA. As discussed above, the Commission finds that the SMMNRA is a popular visitor destination point for recreational uses. The proposed project site (4464-022-010) given its location and proximity to large, open areas of public parkland is part of this special community. The proposed fences/gates will not protect this popular visitor destination point.

The proposed as-built gates are unnatural, manmade structures. This development alters the valued scenic qualities that this area possesses and is not visually harmonious with or subordinate to the character of its setting in this area of Malibu, the Santa Monica Mountains, and the SMMNRA. Although the gates are not highly visible from a great distance, they are visible from the public lands that are directly adjacent both east and west of the project site. In addition, the proposed project does not create a harmonious relationship with the surrounding environment, does not protect scenic views, and does not conform to the natural topography of the area.

As described above, letters have been provided that relate past use of Newton Canyon Motorway and Castro Motorway for recreational purposes. Evidence exists of public use of the Newton Canyon Motorway and Castro Motorway for hiking and equestrian use, including potential prescriptive rights, which would be affected by the proposed development. The road existed since as early as 1950, was created and has been maintained by a public agency continually since that time. The segment of Newton Motorway, along with Castro Peak Motorway and the Backbone Trail comprise a trail loop, the majority of which crosses public parkland. Based on this information, the Commission finds that potential exists to establish prescriptive rights for public use of this road. The proposed as-built gates/fences physically block the public's continued use of this fire road for hiking, equestrian, mountain biking, or any other recreational purpose.

In conclusion, based on these facts, the Commission finds that the construction of gates on parcel 4464-022-010 that are proposed as part of Permit Application 4-03-070, for the reasons stated above, would not comply with Sections 30210, 30212(c), 30251, 30252(3), and 30253(5) of the Coastal Act, which mandate that maximum public access and recreational opportunities be provided, that new development be visually compatible with the character of the surrounding area, and that special communities that are popular visitor destination points be protected. As such, the Commission finds that the proposed gates on parcel 4464-022-010 must be denied.

Further, as detailed above, the Commission finds that the construction of the gates proposed as part of Permit Application 4-03-069 is not consistent with the applicable policies of the Coastal Act. In this case, staff is not aware of any evidence to indicate the road on Parcel 4464-019-008 serves as a public trail route for hikers or equestrians. As such, it does not appear that the construction of the two gates on this property would adversely impact public access or recreation. In addition, the gates are not visible from any public viewing area. However, the applicant has not provided any evidence he has the legal ability to construct a gate on the existing access road within the road easement which would effectively block access to a neighboring property. Provided the applicant could submit evidence to the Commission that he has the legal right to construct gates on the road, it is possible that this development could be found consistent with the Coastal Act. However, given that the applicant has not provided evidence he has the legal ability to construct the proposed gates, the Commission finds that the gates cannot be permitted at this time.

F. UNPERMITTED DEVELOPMENT

Unpermitted development occurred on the subject parcels prior to submission of these permit applications including unpermitted removal of major vegetation and disturbance of Environmentally Sensitive Habitat, including but not limited to removal of native chaparral and damage to native oak trees; grading and clearing of new roads and pads; unpermitted streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blueline stream; and construction of unpermitted structures including but not limited to metal gates, metal and wood gate posts with chain barriers set with concrete bases. The applicants are requesting after-the-fact approval for after-the-fact brush clearance, repair and maintenance of existing agricultural roads, installation of access road gates and new revegetation of graded slopes along an access road. There is a substantial amount of unpermitted development on the subject sites that the applicants have not proposed to include as part of the subject coastal development permit applications. The Commission's enforcement division has engaged in actions to address these matters.

On December 12, 2003, pursuant to its authority under Public Resource Code §30810, the Coastal Commission found that unpermitted development has occurred on the subject sites in violation of the Coastal Act, and thereby ordered and authorized James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing to cease and desist from: 1) removal of major vegetation, including but not limited to removal of native chaparral, riparian habitat, and damage to native oak trees; grading and clearing of new roads and pads; streambed alteration, including but not limited to grading, filling, and manipulation of channel substrate, installation of metal culverts and creosote-treated railroad ties, and construction of an Arizona crossing in a blue line stream; and construction of unpermitted structures including but not limited to metal gates, metal and wood gate posts with chain barriers set with concrete bases, and from conducting any other unpermitted development at the site which would require a CDP, and 2) maintaining on said property any of the above referenced unpermitted development.

On December 12, 2003, pursuant to its authority under Public Resource Code §30811, the Coastal Commission found that "the development is 1) unpermitted, 2) inconsistent with the Coastal Act, and 3) causing continuing resource damage, and thereby ordered and authorizes James A. Kay, Jr., his agents, contractors and employees, Deer Valley Ranch, LLC, Panorama Ranch, LLC, Communications Relay Corporation, and any person(s) acting in concert with any of the foregoing to restore the subject properties to the extent provided below to the condition it was in prior to the undertaking of the development activity that is the subject of this order.

Although development has taken place prior to submission of these permit applications, consideration of these applications by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of these permit applications does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal permit(s).

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act states:

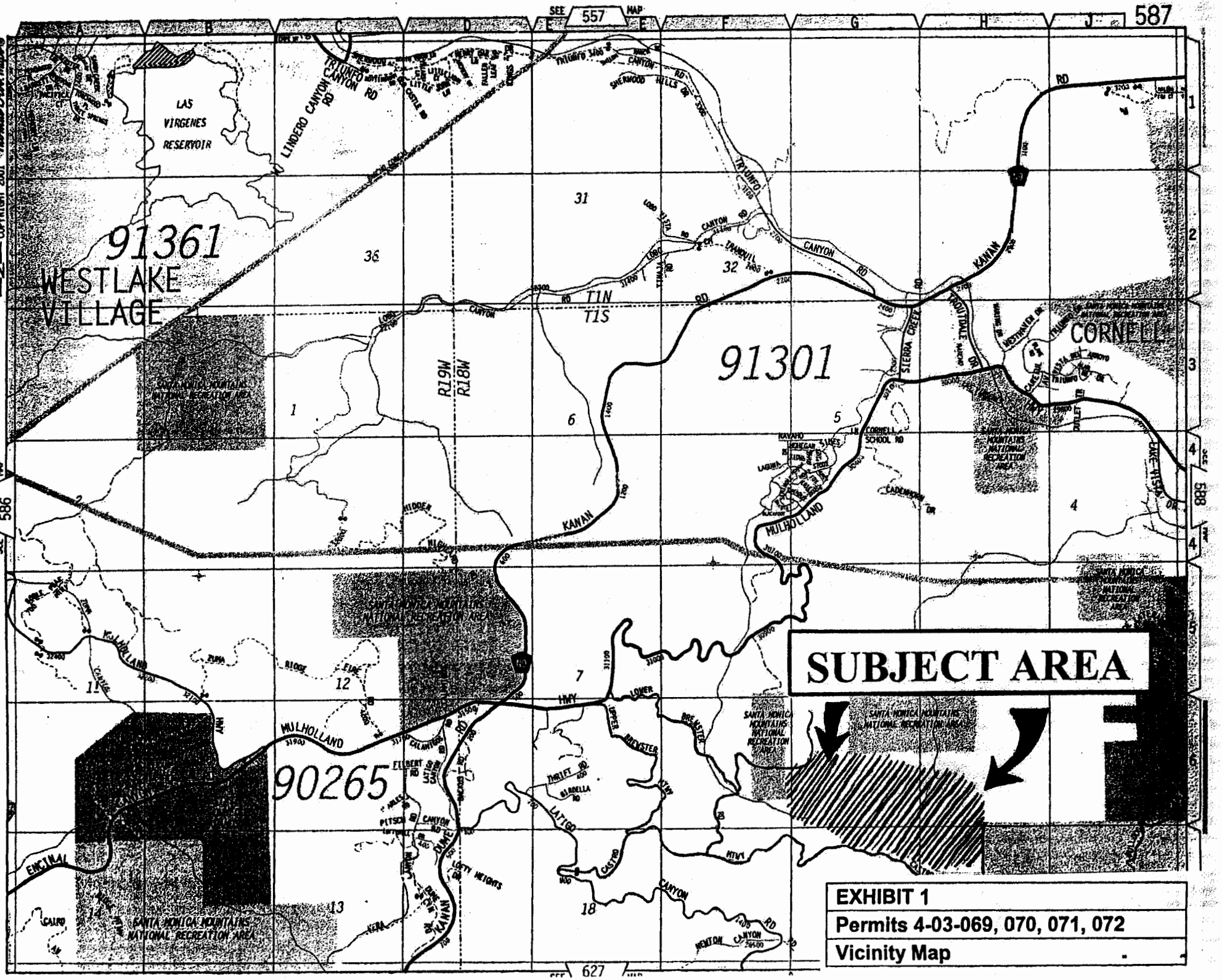
Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter 3 as proposed by the applicant. Therefore, the Commission finds that approval of the proposed development, as conditioned, will prejudice the County's ability to prepare a Local Coastal Program for the Santa Monica Mountains area which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The Commission finds that the proposed project will have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.


SEE MAP 557
587
A
B
C
D
E
F
G
H
J
1
2
3
4
COPYRIGHT 2001 Thomas Bros. Maps
LAS VIRGENES RESERVOIR
LINDERO CANYON RD
TRIUNFO CANYON RD
91361
WESTLAKE VILLAGE
31
36
32
T1N
T1S
R19W
R18W
91301
CORNELL
SIERRA CREEK
TROUTDALE
KANAN RD
MULHOLLAND
CANYON RD
SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA
1
6
5
4
2
11
12
7
13
14
18
90265
SEE MAP 586
SEE MAP 588
SEE 627
SUBJECT AREA
EXHIBIT 1
Permits 4-03-069, 070, 071, 072
Vicinity Map

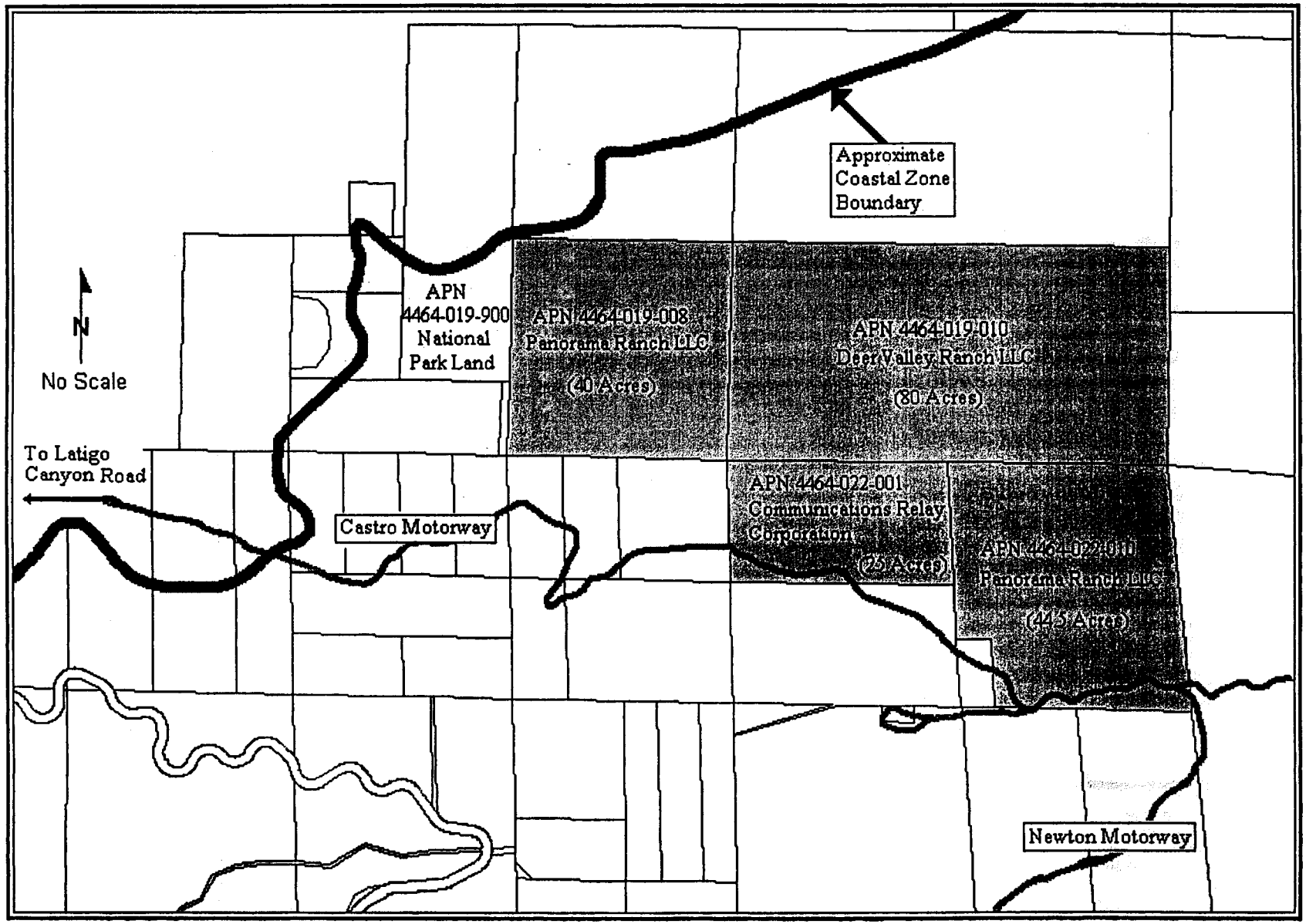
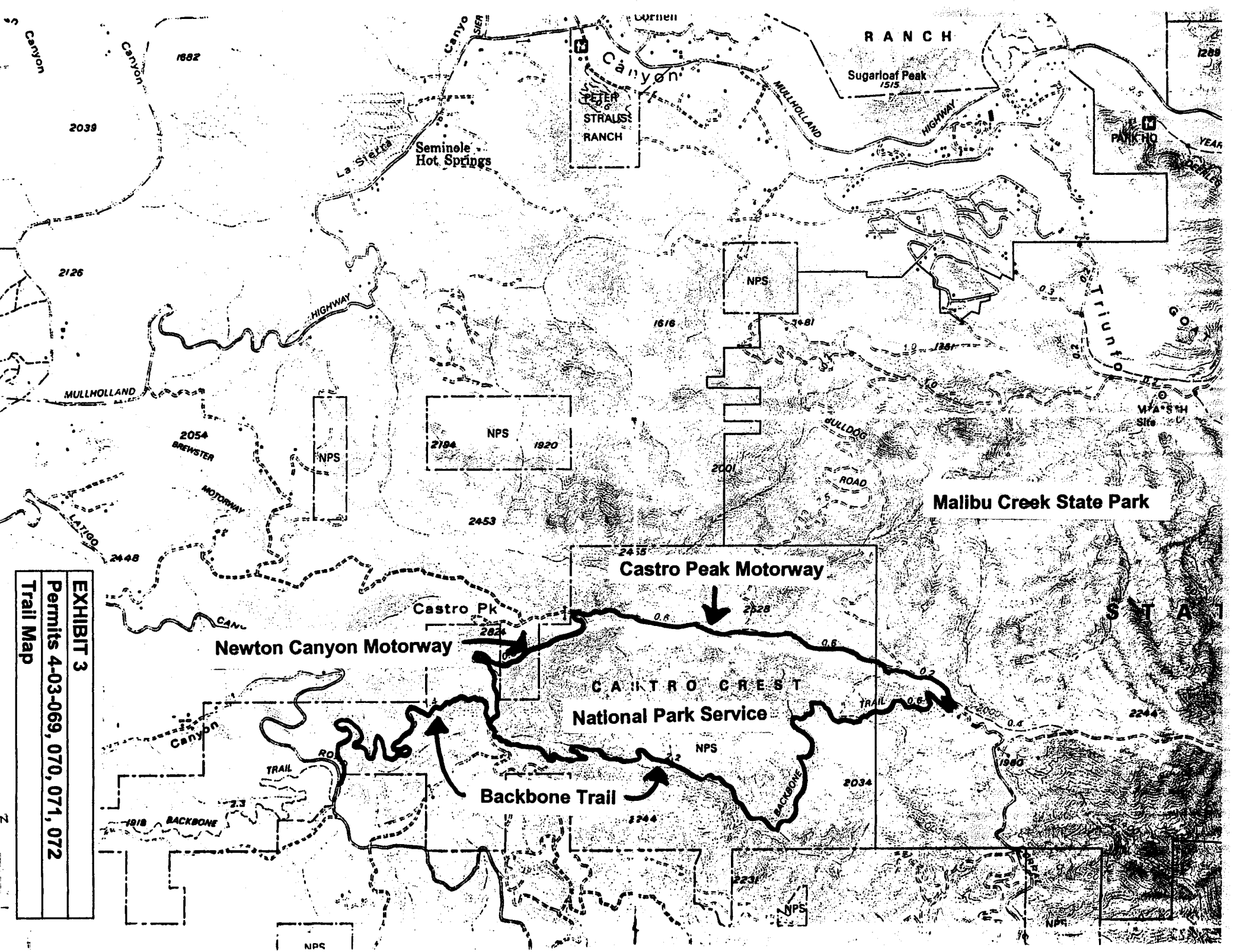


EXHIBIT 2

Permits 4-03-069, 070, 071, 072

Parcel Map


Malibu Creek State Park
Castro Peak Motorway
Newton Canyon Motorway
Backbone Trail
CASTRO CREST
National Park Service
Seminole Hot Springs
Sugarloaf Peak
1515
PETER STRAUSS RANCH
RANCH
MULLHOLLAND HIGHWAY
LA SIERRA
CANYON
BREWSTER MOTORWAY
LATIGO CANYON
DULLDOG ROAD
TRAIL
BACKBONE
NPS
Castro Pk
2824
2828
2244
2034
1960
2231
2244
1918
2054
2126
2039
1682
1616
2001
2453
2448
2415
2184
1920
1481
1281
PARK HQ
M*A*S*H Site
EXHIBIT 3
Permits 4-03-069, 070, 071, 072
Trail Map

Plan View of 11' wide agricultural roadway

VICINITY MAP N.T.S.

Total grading sheets #1 and #2
773.31 cubic yards

Bruce Maliszewski - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90265
(310) 924-6109

Agricultural Roads
Repair and Maintenance
Profiles, Cross sections
Plan view

APN# 4464-019-008
Panorama Ranch LLC

EXHIBIT 4a
Permit 4-03-069 (APN 4464-019-008)
Grading Plan Overview

Bruce Mallinrowald - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90265
(310) 924-6109

Agricultural Roads
Repair and Maintenance
Profile and Cross Sections Plan View

APN# 4464-019-008
PANORAMA VALLEY RANCH, LLC

Plan View of 11' wide agricultural roadway

NORTH
Scale: 1"=20'

Sheet #1 total grading = 404.44 cubic yards

EXHIBIT 4b
Permit 4-03-069 (APN 4464-019-008)
Road Detail 1

EXHIBIT 4c

Permit 4-03-069 (APN 4464-019-008)

Road Detail 2

2170

2170

2180

2190

2200

2210

2220

APN# 4464-019-008

2:1 fill slope

2:5:1 cut slope

VICINITY MAP N.T.S.

SITE

KEY MAP

Sheet #2 total grading = 368.67 cubic yards

Plan View of 11' wide agricultural roadway

NORTH

Scale: 1"=20'

APN# 4464-019-008
PANORAMA VALLEY RANCH, LLC

Agricultural Roads
Repair and Maintenance
Profile and Cross Sections Plan View

Bruce Malinowski - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90265
(310) 924-6109

Gate Locations

APN 4464-019-008

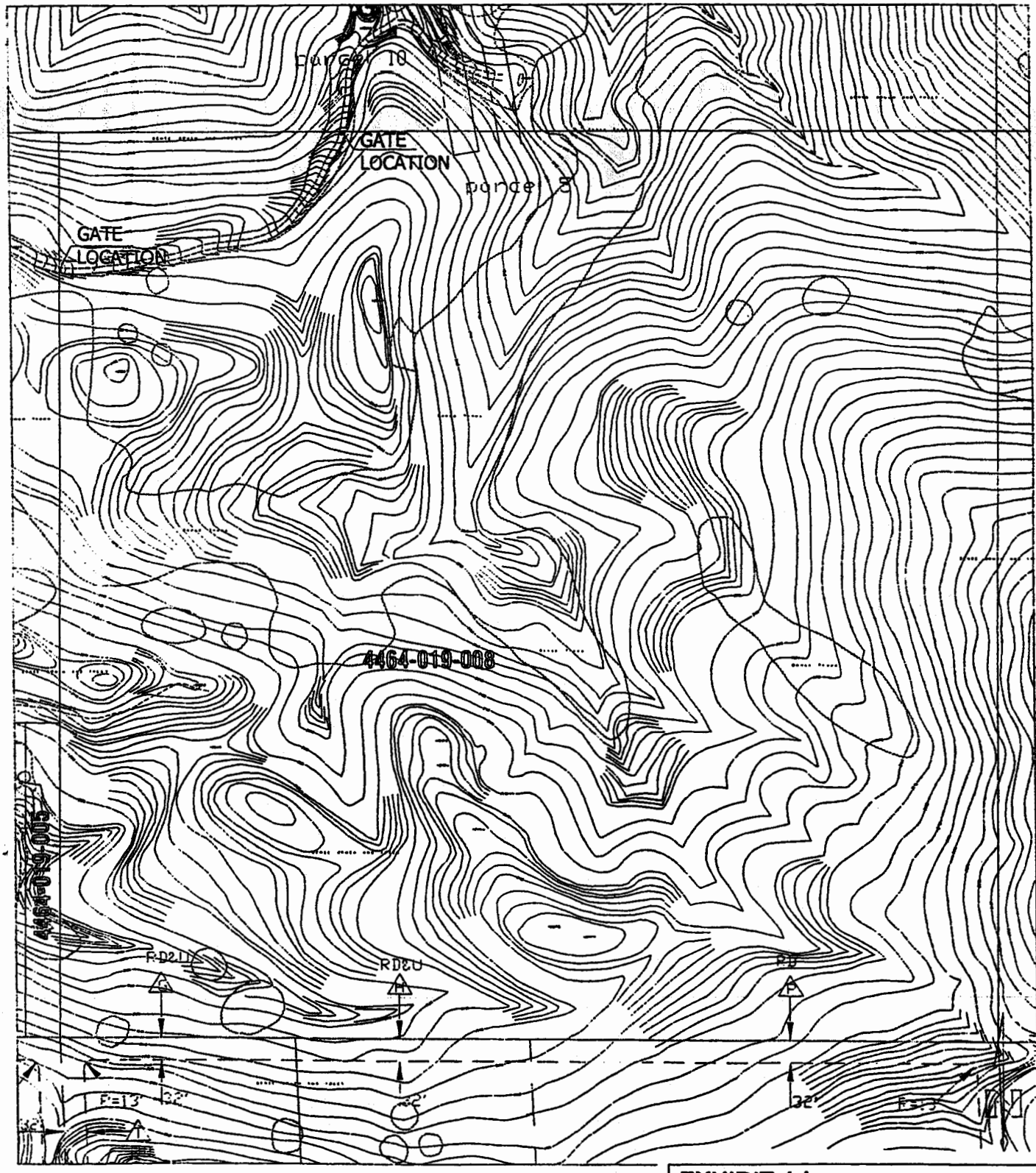
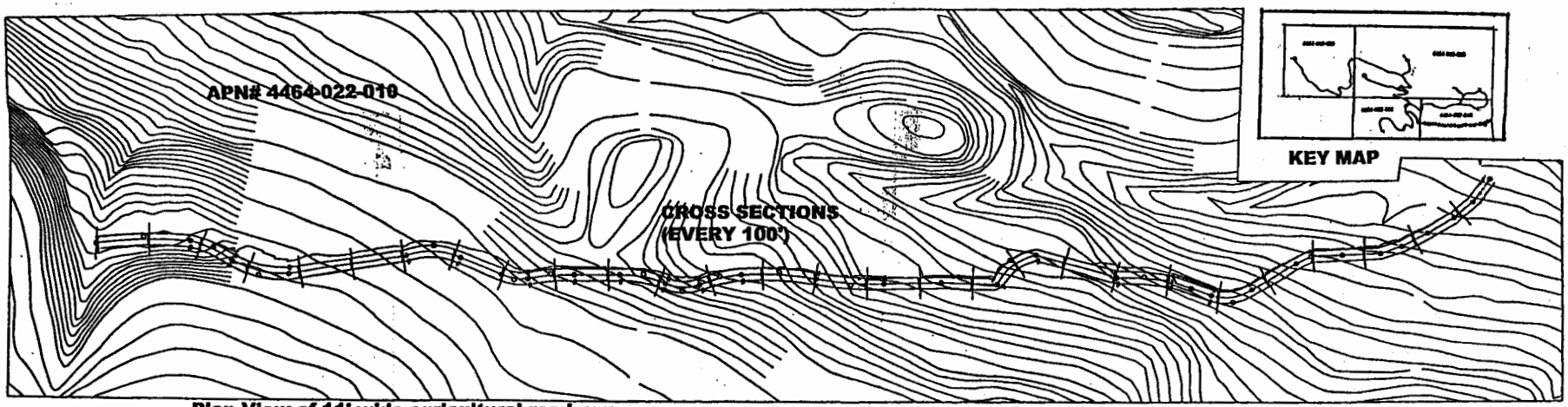


EXHIBIT 4d
Permit 4-03-069 (APN 4464-019-008)
Gate Locations

20' 400'

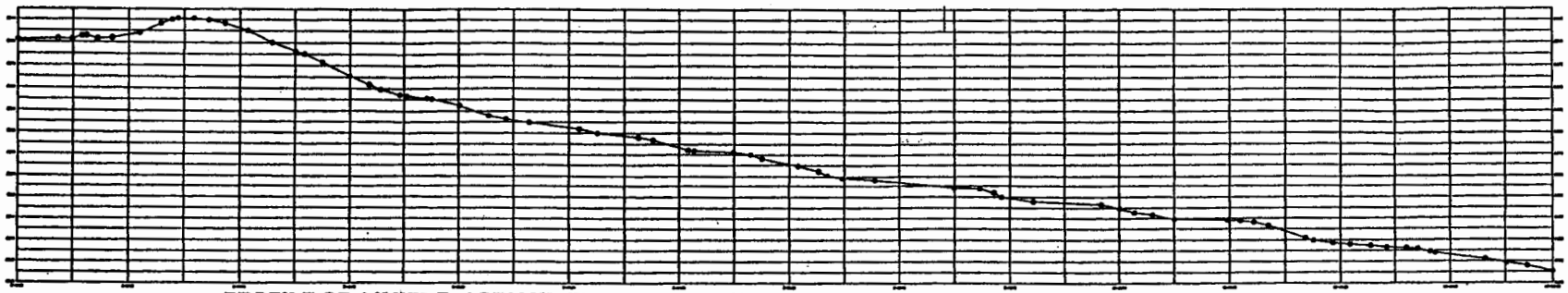
0 100'

SCALE: 1"=200'

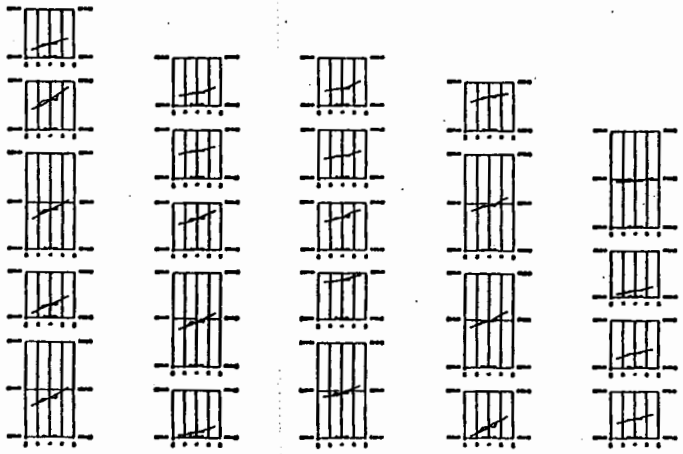


Plan View of 11' wide agricultural roadway

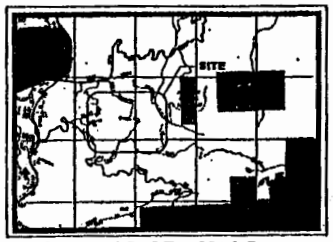
KEY MAP



PROFILE OF 11' WIDE AGRICULTURAL ROADWAY



CROSS SECTIONS (EVERY 100')



VICINITY MAP N.T.S.

NORTH

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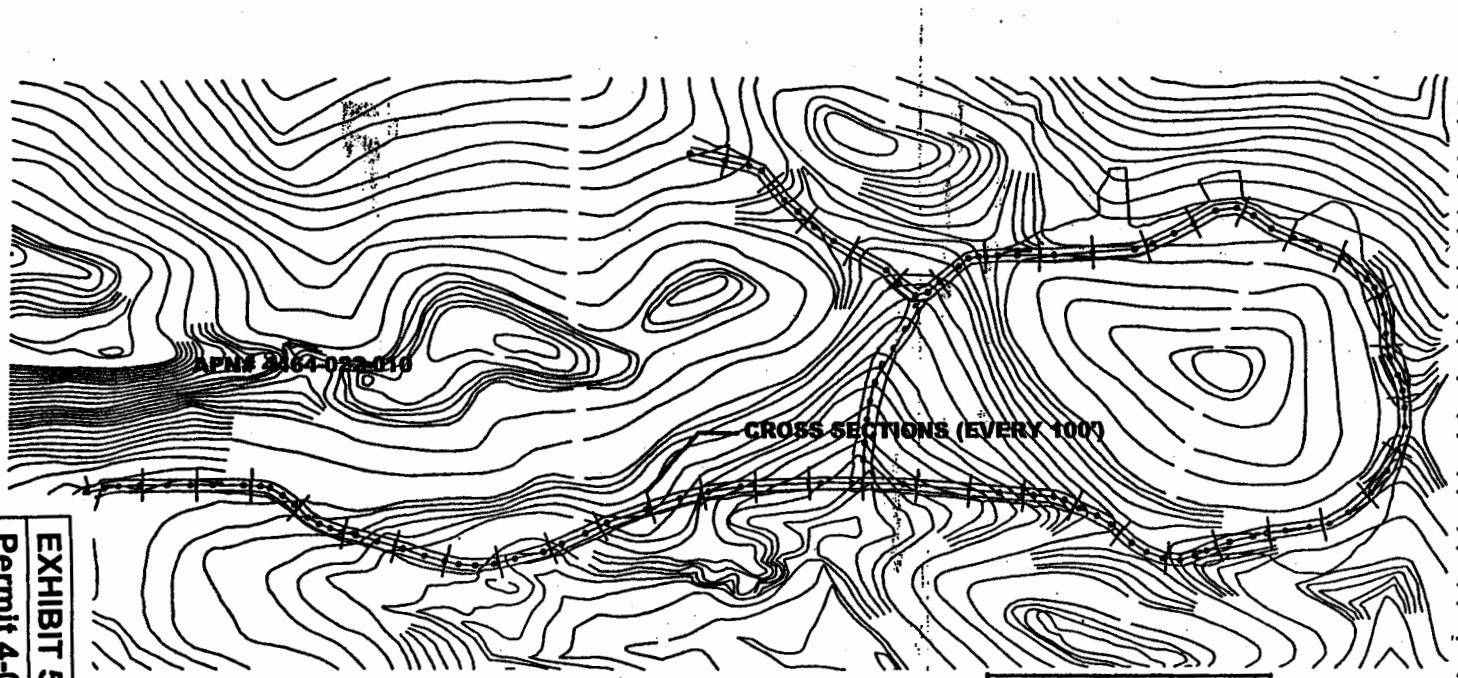
JUL 17 2003
CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

Bruce Malinowski - Landscape Architect #4774
29350 PCH #33
Malibu Ca. 90265
(310) 924-6109

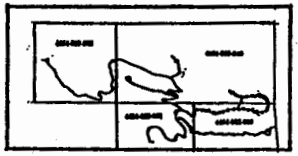
Agricultural Roads
Repair and Maintenance
Profile and Cross Sections
Plan View

APN# 4464-022-010
PANORAMA RANCH, LLC

EXHIBIT 5a
Permit 4-03-070 (APN 4464-022-010)
Road Grading Detail 1

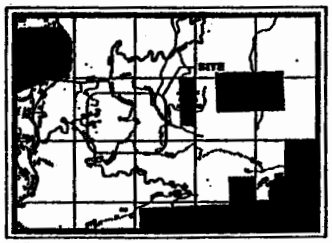


Plan View of 11' wide agricultural roadway

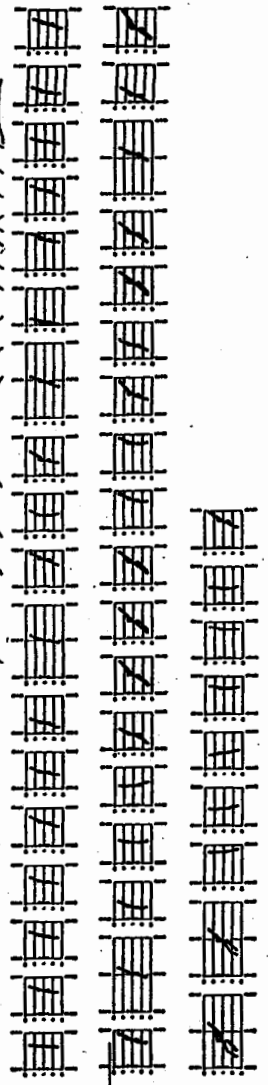


KEY MAP

NORTH



VICINITY MAP N.T.S.



CROSS SECTIONS (EVERY 100')

PROFILE OF 11' WIDE AGRICULTURAL ROADWAY

EXHIBIT 5b
Permit 4-03-070 (APN 4464-022-010)
Road Grading Detail 2

Bruce Maliszewski - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90265
(310) 924-6109

Agricultural Roads
Repair and Maintenance
Profile and Cross Sections Plan View

APN# 4464-022-010
PANORAMA RANCH, LLC

Gate Locations

APN 4464-022-010

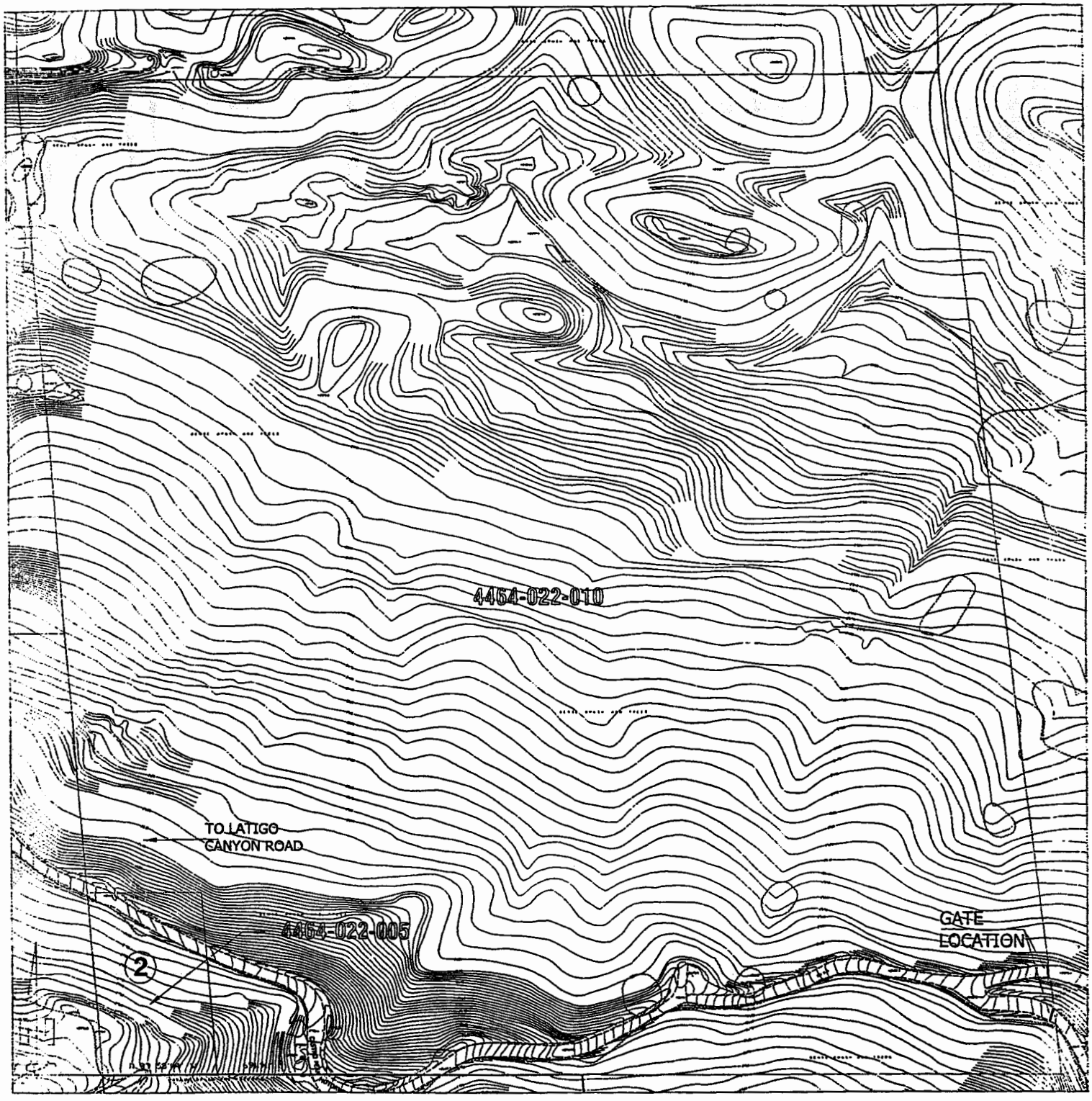
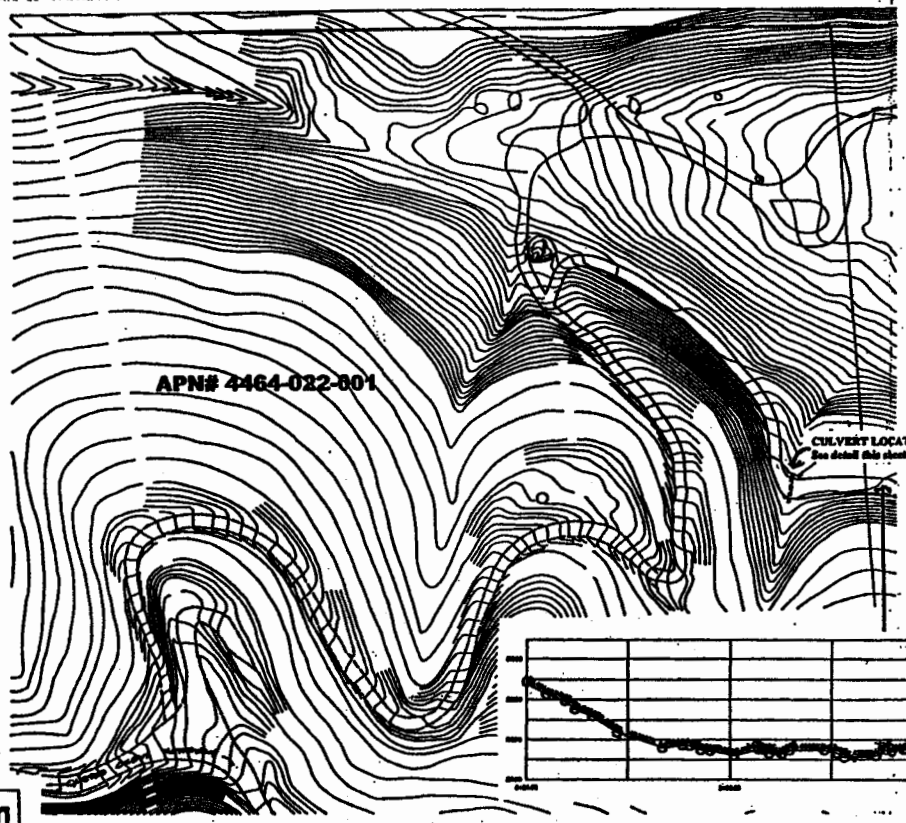


EXHIBIT 5c
Permit 4-03-070 (APN 4464-022-010)
Gate Locations

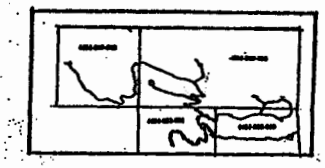
20' 400'

0 100'

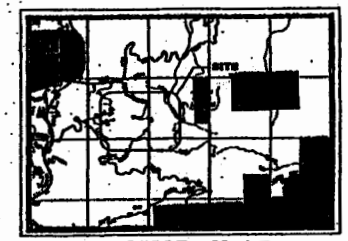
SCALE: 1"=200'



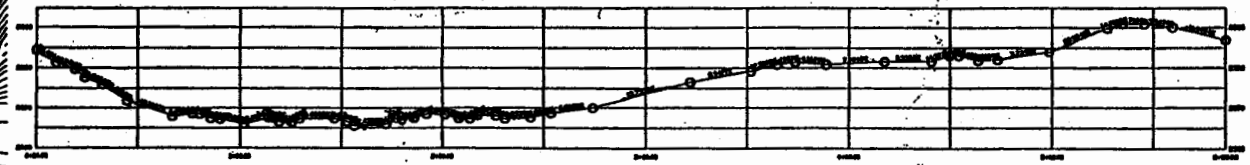
Plan View of agricultural roadway



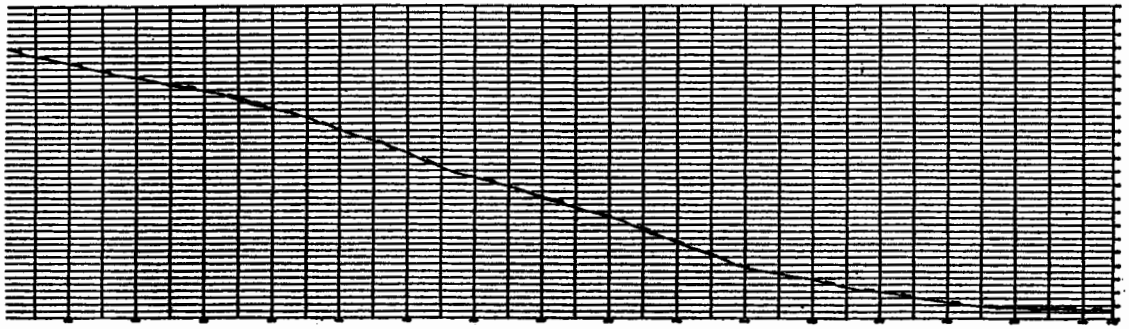
KEY MAP



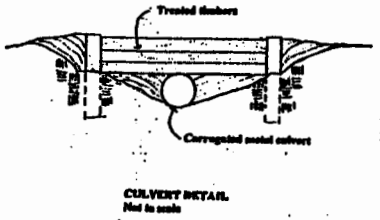
VICINITY MAP N.T.S.



PROFILE OF AGRICULTURAL ROADWAY



PROFILE OF AGRICULTURAL ROADWAY



CULVERT DETAIL
Not to scale

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SOUTH CENTRAL COAST DISTRICT

Bruce Malinowski - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90263
(310) 924-6109

Agricultural Roads
Repair and Maintenance
Profile

APN# 4464-022-001
COMMUNICATIONS RELAY CORP.

EXHIBIT 6
Permit 4-03-071 (APN 4464-022-001)
Road Grading/Culvert Detail

KEY MAP

VICINITY MAP N.T.S.

Sheets 1,2,3
total cut = 913.10 cubic yards
total fill = 913.10 cubic yards

PROFILE OF 11' WIDE AGRICULTURAL ROADWAY

CROSS SECTIONS (EVERY 100')

Bruce Malinowski - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90265
(310) 924-6109

Agricultural Roads
Repair and Maintenance
Profile and Cross Sections Plan View

APN# 4464-019-010
PANORAMA VALLEY RANCH, LLC

EXHIBIT 7a
Permit 4-03-072 (APN 4464-019-010)
Grading Plan Overview

APN# 4464-019-010
PANORAMA VALLEY RANCH, LLC

Agricultural Roads
Repair and Maintenance
Profile and Cross Sections Plan View

Bruce Mallinowski - Landscape Architect #4774
29350 PCH #5B
Malibu Ca. 90265
(310) 924-6109

KEY MAP

VICINITY MAP N.T.S.

SHEET #1 station 0+00 to 10+40
Total cut = 194.55 cubic yards
Total fill = 194.55 cubic yards

NORTH
Scale: 1"=20'

Plan View of 14' wide agricultural roadway

2:1 fill slope
25:1 cut slope
2380
2390
2400
2410
2420
APN# 4464-019-010
2430
2420
2410
2400
2390
25:1 cut slope
2:1 fill slope
2380

EXHIBIT 7b
Permit 4-03-072 (APN 4464-019-010)
Road Detail 1

EXHIBIT 7c
Permit 4-03-072 (APN 4464-019-010)
Road Detail 2

EXHIBIT 7d
Permit 4-03-072 (APN 4464-019-010)
Road Detail 3

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, GOVERNOR

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Ventura Staff

SUBJECT: Designation of ESHA in the Santa Monica Mountains

DATE: March 25, 2003

In the context of the Malibu LCP, the Commission found that the Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, areas of undeveloped native habitat in the Santa Monica Mountains that are large and relatively unfragmented may meet the definition of ESHA by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state. This is the only place in the coastal zone where the Commission has recognized chaparral as meeting the definition of ESHA. The scientific background presented herein for ESHA analysis in the Santa Monica Mountains is adapted from the Revised Findings for the Malibu LCP that the Commission adopted on February 6, 2003.

For habitats in the Santa Monica Mountains, particularly coastal sage scrub and chaparral, there are three site-specific tests to determine whether an area is ESHA because of its especially valuable role in the ecosystem. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? The requisite information for this test generally should be provided by a site-specific biological assessment. Second, is the habitat largely undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation? This should be documented with an aerial photograph from our mapping unit (with the site delineated) and should be attached as an exhibit to the staff report. For those habitats that are absolutely rare or that support individual rare species, it is not necessary to find that they are relatively pristine, and are neither isolated nor fragmented.

Designation of Environmentally Sensitive Habitat in the Santa Monica Mountains

The Coastal Act provides a definition of "environmentally sensitive area" as: "Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Section 30107.5).

EXHIBIT 8
Permits 4-03-069, 070, 071, 072
Dr. Dixon Memo on ESHA (3/25/03)

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

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

A second test for ESHA is whether a habitat or species is especially valuable. Areas may be valuable because of their "special nature," such as being an unusually pristine example of a habitat type, containing an unusual mix of species, supporting species at the edge of their range, or containing species with extreme variation. For example, reproducing populations of valley oaks are not only increasingly rare, but their southernmost occurrence is in the Santa Monica Mountains. Generally, however, habitats or species are considered valuable because of their special "role in the ecosystem." For example, many areas within the Santa Monica Mountains may meet this test because they provide habitat for endangered species, protect water quality, provide essential corridors linking one sensitive habitat to another, or provide critical ecological linkages such as the provision of pollinators or crucial trophic connections. Of course, all species play a role in their ecosystem that is arguably "special." However, the Coastal Act requires that this role be "especially valuable." This test is met for relatively pristine areas that are integral parts of the Santa Monica Mountains Mediterranean ecosystem because of the demonstrably rare and extraordinarily special nature of that ecosystem as detailed below.

Finally, ESHAs are those areas that could be easily disturbed or degraded by human activities and developments. Within the Santa Monica Mountains, as in most areas of southern California affected by urbanization, all natural habitats are in grave danger of direct loss or significant degradation as a result of many factors related to anthropogenic changes.

Ecosystem Context of the Habitats of the Santa Monica Mountains

The Santa Monica Mountains comprise the largest, most pristine, and ecologically complex example of a Mediterranean ecosystem in coastal southern California.

California's coastal sage scrub, chaparral, oak woodlands, and associated riparian areas have analogues in just a few areas of the world with similar climate. Mediterranean ecosystems with their wet winters and warm dry summers are only found in five localities (the Mediterranean coast, California, Chile, South Africa, and south and southwest Australia). Throughout the world, this ecosystem with its specially adapted vegetation and wildlife has suffered severe loss and degradation from human development. Worldwide, only 18 percent of the Mediterranean community type remains undisturbed[1]. However, within the Santa Monica Mountains, this ecosystem is remarkably intact despite the fact that it is closely surrounded by some 17 million people. For example, the 150,000 acres of the Santa Monica Mountains National Recreation Area, which encompasses most of the Santa Monica Mountains, was estimated to be 90 percent free of development in 2000[2]. Therefore, this relatively pristine area is both large and mostly unfragmented, which fulfills a fundamental tenet of conservation biology[3]. The need for large contiguous areas of natural habitat in order to maintain critical ecological processes has been emphasized by many conservation biologists[4].

In addition to being a large single expanse of land, the Santa Monica Mountains ecosystem is still connected, albeit somewhat tenuously, to adjacent, more inland ecosystems[5]. Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency[6] identified wildlife corridors and habitat connectivity as the top conservation priority. In a letter to governor Gray Davis, sixty leading environmental scientists have endorsed the

---

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

[2] Ibid.

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

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

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

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

conclusions of that report[7]. The chief of natural resources at the California Department of Parks and Recreation has identified the Santa Monica Mountains as an area where maintaining connectivity is particularly important[8].

The species most directly affected by large scale connectivity are those that require large areas or a variety of habitats, e.g., gray fox, cougar, bobcat, badger, steelhead trout, and mule deer[9]. Large terrestrial predators are particularly good indicators of habitat connectivity and of the general health of the ecosystem[10]. Recent studies show that the mountain lion, or cougar, is the most sensitive indicator species of habitat fragmentation, followed by the spotted skunk and the bobcat[11]. Sightings of cougars in both inland and coastal areas of the Santa Monica Mountains[12] demonstrate their continued presence. Like the "canary in the mineshaft," an indicator species like this is good evidence that habitat connectivity and large scale ecological function remains in the Santa Monica Mountains ecosystem.

The habitat integrity and connectivity that is still evident within the Santa Monica Mountains is extremely important to maintain, because both theory and experiments over 75 years in ecology confirm that large spatially connected habitats tend to be more stable and have less frequent extinctions than habitats without extended spatial structure[13]. Beyond simply destabilizing the ecosystem, fragmentation and disturbance

---

[7] Letters received and included in the September 2002 staff report for the Malibu LCP.

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

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

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

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

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

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

can even cause unexpected and irreversible changes to new and completely different kinds of ecosystems (habitat conversion)[14].

As a result of the pristine nature of large areas of the Santa Monica Mountains and the existence of large, unfragmented and interconnected blocks of habitat, this ecosystem continues to support an extremely diverse flora and fauna. The observed diversity is probably a function of the diversity of physical habitats. The Santa Monica Mountains have the greatest geological diversity of all major mountain ranges within the transverse range province. According to the National Park Service, the Santa Monica Mountains contain 40 separate watersheds and over 170 major streams with 49 coastal outlets[15]. These streams are somewhat unique along the California coast because of their topographic setting. As a "transverse" range, the Santa Monica Mountains are oriented in an east-west direction. As a result, the south-facing riparian habitats have more variable sun exposure than the east-west riparian corridors of other sections of the coast. This creates a more diverse moisture environment and contributes to the higher biodiversity of the region. The many different physical habitats of the Santa Monica Mountains support at least 17 native vegetation types[16] including the following habitats considered sensitive by the California Department of Fish and Game: native perennial grassland, coastal sage scrub, red-shank chaparral, valley oak woodland, walnut woodland, southern willow scrub, southern cottonwood-willow riparian forest, sycamore-alder woodland, oak riparian forest, coastal salt marsh, and freshwater marsh. Over 400 species of birds, 35 species of reptiles and amphibians, and more than 40 species of mammals have been documented in this diverse ecosystem. More than 80 sensitive species of plants and animals (listed, proposed for listing, or species of concern) are known to occur or have the potential to occur within the Santa Monica Mountains Mediterranean ecosystem.

The Santa Monica Mountains are also important in a larger regional context. Several recent studies have concluded that the area of southern California that includes the Santa Monica Mountains is among the most sensitive in the world in terms of the number of rare endemic species, endangered species and habitat loss. These studies have designated the area to be a local hot-spot of endangerment in need of special protection[17].

Therefore, the Commission finds that the Santa Monica Mountains ecosystem is itself rare and especially valuable because of its special nature as the largest, most pristine,

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

[15] NPS. 2000. op.cit.

[16] From the NPS report (2000 op. cit.) that is based on the older Holland system of subjective classification. The data-driven system of Sawyer and Keeler-Wolf results in a much larger number of distinct "alliances" or vegetation types.

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

physically complex, and biologically diverse example of a Mediterranean ecosystem in coastal southern California. The Commission further finds that because of the rare and special nature of the Santa Monica Mountains ecosystem, the ecosystem roles of substantially intact areas of the constituent plant communities discussed below are "especially valuable" under the Coastal Act.

Major Habitats within the Santa Monica Mountains

The most recent vegetation map that is available for the Santa Monica Mountains is the map that was produced for the National Park Service in the mid-1990s using 1993 satellite imagery supplemented with color and color infrared aerial imagery from 1984, 1988, and 1994 and field review[18]. The minimum mapping unit was 5 acres. For that map, the vegetation was mapped in very broad categories, generally following a vegetation classification scheme developed by Holland[19]. Because of the mapping methods used the degree of plant community complexity in the landscape is not represented. For example, the various types of "ceanothus chaparral" that have been documented were lumped under one vegetation type referred to as "northern mixed chaparral." Dr. Todd Keeler-Wolf of the California Department of Fish and Game is currently conducting a more detailed, quantitative vegetation survey of the Santa Monica Mountains.

The National Park Service map can be used to characterize broadly the types of plant communities present. The main generic plant communities present in the Santa Monica Mountains[20] are: coastal sage scrub, chaparral, riparian woodland, coast live oak woodland, and grasslands.

Riparian Woodland

Some 49 streams connect inland areas with the coast, and there are many smaller drainages as well, many of which are "blue line." Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of all the plant communities in the area[21]. At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the

[18] Franklin, J. 1997. Forest Service Southern California Mapping Project, Santa Monica Mountains National Recreation Area, Task 11 Description and Results, Final Report. June 13, 1997, Dept. of Geography, San Diego State University, USFS Contract No. 53-91S8-3-TM45.
[19] Holland R. F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Dept. of Fish and Game, Natural Heritage Division, Sacramento, CA. 95814.
[20] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000. (Fig. 11 in this document.)
[21] Ibid.

sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles[22]. During the long dry summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

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

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing[23], and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work[24] has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage

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[22] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

[23] USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

[24] Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. Southwestern Naturalist. (*in Press*).

scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat[25]. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed[26]. They return to the stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost[27]. Writing at the same time as Faber, Bowler asserted that, *"[t]here is no question that riparian habitat in southern California is endangered."*[28] In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances[29]. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.[30] In addition impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish[31]. These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

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[25] Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

[26] Dr, Lee Kats, Pepperdine University, personal communication to Dr J. Allen, CCC.

[27] Faber, P.A., E, Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.

[28] Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 *in* Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.

[29] Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. Conservation Biology 11(3):793-796.

[30] Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. Ecology 79(2):740-745.

[31] Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. Conservation Biology 10(4):1155-1162.

Therefore, because of the essential role that riparian plant communities play in maintaining the biodiversity of the Santa Monica Mountains, because of the historical losses and current rarity of these habitats in southern California, and because of their extreme sensitivity to disturbance, the native riparian habitats in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

Coastal Sage Scrub and Chaparral

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

The two vegetation types are often found interspersed with each other. Under some circumstances, coastal sage scrub may even be successional to chaparral, meaning that after disturbance, a site may first be covered by coastal sage scrub, which is then replaced with chaparral over long periods of time.[32] The existing mosaic of coastal sage scrub and chaparral is the result of a dynamic process that is a function of fire history, recent climatic conditions, soil differences, slope, aspect and moisture regime, and the two habitats should not be thought of as completely separate and unrelated entities but as different phases of the same process[33]. The spatial pattern of these vegetation stands at any given time thus depends on both local site conditions and on history (e.g., fire), and is influenced by both natural and human factors.

In lower elevation areas with high fire frequency, chaparral and coastal sage scrub may be in a state of flux, leading one researcher to describe the mix as a "coastal sage-chaparral subclimax."[34] Several other researchers have noted the replacement of chaparral by coastal sage scrub, or coastal sage scrub by chaparral depending on fire history.[35] In transitional and other settings, the mosaic of chaparral and coastal sage

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[32] Cooper, W.S. 1922. The broad-sclerophyll vegetation of California. Carnegie Institution of Washington Publication 319. 124 pp.

[33] Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. (See attached comment document in Appendix).

[34] Hanes, T.L. 1965. Ecological studies on two closely related chaparral shrubs in southern California. Ecological Monographs 41:27-52.

[35] Gray, K.L. 1983. Competition for light and dynamic boundary between chaparral and coastal sage scrub. Madrono 30(1):43-49. Zedler, P.H., C.R. Gautier and G.S. McMaster. 1983. Vegetation change in response to extreme events: The effect of a short interval between fires in California chaparral and coastal sage scrub. Ecology 64(4): 809-818.

scrub enriches the seasonal plant resource base and provides additional habitat variability and seasonality for the many species that inhabit the area.

Relationships Among Coastal Sage Scrub, Chaparral and Riparian Communities

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

Strong evidence for the interconnectedness between chaparral, coastal scrub and other habitats is provided by "opportunistic foragers" (animals that follow the growth and flowering cycles across these habitats). Coastal scrub and chaparral flowering and growth cycles differ in a complimentary and sequential way that many animals have evolved to exploit. Whereas coastal sage scrub is shallow-rooted and responds quickly to seasonal rains, chaparral plants are typically deep-rooted having most of their flowering and growth later in the rainy season after the deeper soil layers have been saturated[36]. New growth of chaparral evergreen shrubs takes place about four months later than coastal sage scrub plants and it continues later into the summer[37]. For example, in coastal sage scrub, California sagebrush flowers and grows from August to February and coyote bush flowers from August to November[38]. In contrast, chamise chaparral and bigpod ceanothus flower from April to June, buck brush ceanothus flowers from February to April, and hoaryleaf ceanothus flowers from March to April.

Many groups of animals exploit these seasonal differences in growth and blooming period. The opportunistic foraging insect community (e.g., honeybees, butterflies and moths) tends to follow these cycles of flowering and new growth, moving from coastal sage scrub in the early rainy season to chaparral in the spring[39]. The insects in turn are followed by insectivorous birds such as the blue-gray gnatcatcher[40], bushtit, cactus wren, Bewick's wren and California towhee. At night bats take over the role of daytime insectivores. At least 12 species of bats (all of which are considered sensitive) occur in

[36] DeSimone, S. 2000. California's coastal sage scrub. Fremontia 23(4):3-8. Mooney, H.A. 1988. Southern coastal scrub. Chap. 13 *in* Barbour, M.G. and J. Majors; Eds. 1988. Terrestrial vegetation of California, 2nd Edition. Calif. Native Plant Soc. Spec. Publ. #9.

[37] Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

[38] Dale, N. 2000. Flowering plants of the Santa Monica Mountains. California Native Plant Society, 1722 J Street, Suite 17, Sacramento, CA 95814.

[39] Ballmer, G. R. 1995. What's bugging coastal sage scrub. Fremontia 23(4):17-26.

[40] Root, R. B. 1967. The niche exploitation pattern of the blue-gray gnatcatcher. Ecol. Monog.37:317-350.

the Santa Monica Mountains[41]. Five species of hummingbirds also follow the flowering cycle[42].

Many species of 'opportunistic foragers', which utilize several different community types, perform important ecological roles during their seasonal movements. The scrub jay is a good example of such a species. The scrub jay is an omnivore and forages in coastal sage scrub, chaparral, and oak woodlands for insects, berries and notably acorns. Its foraging behavior includes the habit of burying acorns, usually at sites away from the parent tree canopy. Buried acorns have a much better chance of successful germination (about two-fold) than exposed acorns because they are protected from desiccation and predators. One scrub jay will bury approximately 5000 acorns in a year. The scrub jay therefore performs the function of greatly increasing recruitment and regeneration of oak woodland, a valuable and sensitive habitat type[43].

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

> "Bird diversity is directly related to the habitat mosaic and topographic diversity of the Santa Monicas. Most bird species in this bio-landscape require more than one habitat for survival and reproduction." "A significant proportion of the avifauna breeds in the wooded canyons of the Santa Monicas. Most of the canyon breeders forage every day in the brush- and grass-covered slopes, ridges and mesas. They would not breed in the canyons in the absence of the surrounding shrublands. Hawks, owls, falcons, orioles, flycatchers, woodpeckers, warblers, hummingbirds, etc. belong to this group. Conversely, some of the characteristic chaparral birds such as thrashers, quails, and wrentits need the canyons for access to shelter, protection from fire, and water. The regular and massive movement of birds between riparian corridors and adjacent shrublands has been demonstrated by qualitative and quantitative observations by several UCLA students[44]."

Thus, the Mediterranean ecosystem of the Santa Monica Mountains is a mosaic of vegetation types linked together ecologically. The high biodiversity of the area results

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[41] Letter from Dr. Marti Witter, NPS, dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

[42] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

[43] Borchert, M. I., F. W. Davis, J. Michaelsen and L. D. Oyler. 1989. Interactions of factors affecting seedling recruitment of blue oak (*Quercus douglasii*) in California. Ecology 70:389-404. Bossema, I. 1979. Jays and oaks: An eco-ethological study of a symbiosis. Behavior 70:1-118. Schoenherr, A. A. 1992. A natural history of California. University of California Press, Berkeley. 772p.

[44] Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

from both the diversity and the interconnected nature of this mosaic. Most raptor species, for example, require large areas and will often require different habitats for perching, nesting and foraging. Fourteen species of raptors (13 of which are considered sensitive) are reported from the Santa Monica Mountains. These species utilize a variety of habitats including rock outcrops, oak woodlands, riparian areas, grasslands, chaparral, coastal sage scrub, estuaries and freshwater lakes[45].

When the community mosaic is disrupted and fragmented by development, many chaparral-associated native bird species are impacted. In a study of landscape-level fragmentation in the Santa Monica Mountains, Stralberg[46] found that the ash-throated flycatcher, Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, and California towhee all decreased in numbers as a result of urbanization. Soule[47] observed similar effects of fragmentation on chaparral and coastal sage scrub birds in the San Diego area.

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

Coastal Sage Scrub

"Coastal sage scrub" is a generic vegetation type that is inclusive of several subtypes[48]. In the Santa Monica Mountains, coastal sage scrub is mostly of the type termed "Venturan Coastal Sage Scrub." In general, coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall. Under the moist conditions of winter and spring, they grow quickly, flower, and produce light, wind-dispersed seeds, making them good colonizers following disturbance. These species cope with summer drought by dying back, dropping their leaves or producing a smaller summer leaf in order to reduce water loss. Stands of coastal sage scrub are much more open than chaparral and contain a greater admixture of herbaceous species. Coastal sage scrub is generally restricted to drier sites, such as low foothills, south-facing slopes, and shallow soils at higher elevations.

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[45] National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701. *and* Letter from Dr. Marti Witter, NPS, Dated Sept. 13, 2001, in letters received and included in the September 2002 staff report for the Malibu LCP.

[46] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: A Santa Monica Mountains case study. p 125-136 *in*: Keeley, J. E., M. Baer-Keeley and C. J. Fotheringham (eds), 2nd Interface Between Ecology and Land Development in California, U.S. Geological Survey Open-File Report 00-62.

[47] Soule, M. E, D. T. Bolger, A. C. Alberts, J. Wright, M. Sorice and S. Hill. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. Conserv. Biol. 2: 75-92.

[48] Kirkpatrick, J.B. and C.F. Hutchinson. 1977. The community composition of Californian coastal sage scrub. Vegetatio 35:21-33; Holland, 1986. op.cit.; Sawyer and Keeler-Wolf, 1995, op.cit.

The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Drier sites are dominated by more drought-resistant species (e.g., California sagebrush, coast buckwheat, and *Opuntia* cactus). Where more moisture is available (e.g., north-facing slopes), larger evergreen species such as toyon, laurel sumac, lemonade berry, and sugar bush are common. As a result, there is more cover for wildlife, and movement of large animals from chaparral into coastal sage scrub is facilitated in these areas. Characteristic wildlife in this community includes Anna's hummingbirds, rufous-sided towhees, California quail, greater roadrunners, Bewick's wrens, coyotes, and coast horned lizards[49], but most of these species move between coastal sage scrub and chaparral during their daily activities or on a seasonal basis.

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

Riparian woodlands are primary contributors to the high biodiversity of the Santa Monica Mountains. The ecological integrity of those riparian habitats not only requires wildlife dispersal along the streams, but also depends on the ability of animals to move from one riparian area to another. Such movement requires that the riparian corridors be connected by suitable habitat. In the Santa Monica Mountains, coastal sage scrub and chaparral provide that function. Significant development in coastal sage scrub would reduce the riparian corridors to linear islands of habitat with severe edge effects[50], reduced diversity, and lower productivity.

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

A characteristic of the coastal sage scrub vegetation type is a high degree of endemism. This is consonant with Westman's observation that 44 percent of the species he sampled in coastal sage scrub occurred at only one of his 67 sites, which were

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[49] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

[50] Environmental impacts are particularly severe at the interface between development and natural habitats. The greater the amount of this "edge" relative to the area of natural habitat, the worse the impact.

distributed from the San Francisco Bay area to Mexico[51]. Species with restricted distributions are by nature more susceptible to loss or degradation of their habitat. Westman said of this unique and local aspect of coastal sage scrub species in California:

> "While there are about 50 widespread sage scrub species, more than half of the 375 species encountered in the present study of the sage scrub flora are rare in occurrence within the habitat range. In view of the reduction of the area of coastal sage scrub in California to 10-15% of its former extent and the limited extent of preserves, measures to conserve the diversity of the flora are needed."[52]

Coastal sage scrub in southern California provides habitat for about 100 rare species[53], many of which are also endemic to limited geographic regions[54]. In the Santa Monica Mountains, rare animals that inhabit coastal sage scrub[55] include the Santa Monica shieldback katydid, silvery legless lizard, coastal cactus wren, Bell's sparrow, San Diego desert woodrat, southern California rufous-crowned sparrow, coastal western whiptail, and San Diego horned lizard. Some of these species are also found in chaparral[56]. Rare plants found in coastal sage scrub in the Santa Monica Mountains include Santa Susana tarplant, Coulter's saltbush, Blockman's dudleya, Braunton's milkvetch, Parry's spineflower, and Plummer's mariposa lily[57]. A total of 32 sensitive species of reptiles, birds and mammals have been identified in this community by the National Park Service.[58]

One of the most important ecological functions of coastal sage scrub in the Santa Monica Mountains is to protect water quality in coastal streams by reducing erosion in the watershed. Although shallow rooted, the shrubs that define coastal sage scrub have dense root masses that hold the surface soils much more effectively than the exotic annual grasses and forbs that tend to dominate in disturbed areas. The native shrubs of this community are resistant not only to drought, as discussed above, but well adapted to fire. Most of the semi-woody shrubs have some ability to crown sprout after

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[51] Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology 62:170-184.

[52] Ibid.

[53] Atwood, J. L. 1993. California gnatcatchers and coastal sage scrub: The biological basis for endangered species listing. pp.149-166 *In*: Interface Between Ecology and Land Development in California. Ed. J. E. Keeley, So. Calif. Acad. of Sci., Los Angeles. California Department of Fish and Game (CDFG). 1993. The Southern California Coastal Sage Scrub (CSS) Natural Communities Conservation Plan (NCCP). CDFG and Calif. Resources Agency, 1416 9th St., Sacramento, CA 95814.

[54] Westman, W.E. 1981. op. cit.

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

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

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

[58] NPS, 2000, op cit.

fire. Several CSS species (e.g., *Eriogonum cinereum*) in the Santa Monica Mountains and adjacent areas resprout vigorously and other species growing near the coast demonstrate this characteristic more strongly than do individuals of the same species growing at inland sites in Riverside County.[59] These shrub species also tend to recolonize rapidly from seed following fire. As a result they provide persistent cover that reduces erosion.

In addition to performing extremely important roles in the Mediterranean ecosystem, the coastal sage scrub community type has been drastically reduced in area by habitat loss to development. In the early 1980's it was estimated that 85 to 90 percent of the original extent of coastal sage scrub in California had already been destroyed.[60] Losses since that time have been significant and particularly severe in the coastal zone.

Therefore, because of its increasing rarity, its important role in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, coastal sage scrub within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

Chaparral

Another shrub community in the Santa Monica Mountain Mediterranean ecosystem is chaparral. Like "coastal sage scrub," this is a generic category of vegetation. Chaparral species have deep roots (10s of ft) and hard waxy leaves, adaptations to drought that increase water supply and decrease water loss at the leaf surface. Some chaparral species cope more effectively with drought conditions than do desert plants[61]. Chaparral plants vary from about one to four meters tall and form dense, intertwining stands with nearly 100 percent ground cover. As a result, there are few herbaceous species present in mature stands. Chaparral is well adapted to fire. Many species regenerate mainly by crown sprouting; others rely on seeds which are stimulated to germinate by the heat and ash from fires. Over 100 evergreen shrubs may be found in chaparral[62]. On average, chaparral is found in wetter habitats than coastal sage scrub, being more common at higher elevations and on north facing slopes.

The broad category "northern mixed chaparral" is the major type of chaparral shown in the National Park Service map of the Santa Monica Mountains. However, northern mixed chaparral can be variously dominated by chamise, scrub oak or one of several species of manzanita or by ceanothus. In addition, it commonly contains woody vines and large shrubs such as mountain mahogany, toyon, hollyleaf redberry, and sugarbush[63]. The rare red shank chaparral plant community also occurs in the Santa Monica Mountains. Although included within the category "northern mixed chaparral" in

[59] Dr. John O'Leary, SDSU, personal communication to Dr. John Dixon, CCC, July 2, 2002
[60] Westman, W.E. 1981. op. cit.
[61] Dr. Stephen Davis, Pepperdine University. Presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.
[62] Keely, J.E. and S.C. Keeley. Chaparral. Pages 166-207 in M.G. Barbour and W.D. Billings, eds. North American Terrestrial Vegetation. New York, Cambridge University Press.
[63] Ibid.

the vegetation map, several types of ceanothus chaparral are reported in the Santa Monica Mountains. Ceanothus chaparral occurs on stable slopes and ridges, and may be dominated by bigpod ceanothus, buck brush ceanothus, hoaryleaf ceanothus, or greenbark ceanothus. In addition to ceanothus, other species that are usually present in varying amounts are chamise, black sage, holly-leaf redberry, sugarbush, and coast golden bush[64].

Several sensitive plant species that occur in the chaparral of the Santa Monica Mountains area are: Santa Susana tarplant, Lyon's pentachaeta, marcescent dudleya, Santa Monica Mountains dudleya, Braunton's milk vetch and salt spring checkerbloom[65]. Several occurring or potentially occurring sensitive animal species in chaparral from the area are: Santa Monica shieldback katydid, western spadefoot toad, silvery legless lizard, San Bernardino ring-neck snake, San Diego mountain kingsnake, coast patch-nosed snake, sharp-shinned hawk, southern California rufous-crowned sparrow, Bell's sparrow, yellow warbler, pallid bat, long-legged myotis bat, western mastiff bat, and San Diego desert woodrat.[66]

Coastal sage scrub and chaparral are the predominant generic community types of the Santa Monica Mountains and provide the living matrix within which rarer habitats like riparian woodlands exist. These two shrub communities share many important ecosystem roles. Like coastal sage scrub, chaparral within the Santa Monica Mountains provides critical linkages among riparian corridors, provides essential habitat for species that require several habitat types during the course of their life histories, provides essential habitat for sensitive species, and stabilizes steep slopes and reduces erosion, thereby protecting the water quality of coastal streams.

Many species of animals in Mediterranean habitats characteristically move among several plant communities during their daily activities, and many are reliant on different communities either seasonally or during different stages of their life cycle. The importance of an intact mosaic of coastal sage scrub, chaparral, and riparian community types is perhaps most critical for birds. However, the same principles apply to other taxonomic groups. For example, whereas coastal sage scrub supports a higher diversity of native ant species than chaparral, chaparral habitat is necessary for the coast horned lizard, an ant specialist[67]. Additional examples of the importance of an interconnected communities, or habitats, were provided in the discussion of coastal sage scrub above. This is an extremely important ecosystem role of chaparral in the Santa Monica Mountains.

Chaparral is also remarkably adapted to control erosion, especially on steep slopes. The root systems of chaparral plants are very deep, extending far below the surface and

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[64] Ibid.

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

[66] Ibid.

[67] A.V. Suarez. Ants and lizards in coastal sage scrub and chaparral. A presentation at the CCC workshop on the significance of native habitats in the Santa Monica Mountains. June 13, 2002.

penetrating the bedrock below[68], so chaparral literally holds the hillsides together and prevents slippage.[69] In addition, the direct soil erosion from precipitation is also greatly reduced by 1) water interception on the leaves and above ground foliage and plant structures, and 2) slowing the runoff of water across the soil surface and providing greater soil infiltration. Chaparral plants are extremely resistant to drought, which enables them to persist on steep slopes even during long periods of adverse conditions. Many other species die under such conditions, leaving the slopes unprotected when rains return. Since chaparral plants recover rapidly from fire, they quickly re-exert their ground stabilizing influence following burns. The effectiveness of chaparral for erosion control after fire increases rapidly with time[70]. Thus, the erosion from a 2-inch rain-day event drops from 5 yd^3/acre of soil one year after a fire to 1 yd^3/acre after 4 years.[71] The following table illustrates the strong protective effect of chaparral in preventing erosion.

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

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

Therefore, because of its important roles in the functioning of the Santa Monica Mountains Mediterranean ecosystem, and its extreme vulnerability to development, chaparral within the Santa Monica Mountains meets the definition of ESHA under the Coastal Act.

Oak Woodland and Savanna

Coast live oak woodland occurs mostly on north slopes, shaded ravines and canyon bottoms. Besides the coast live oak, this plant community includes hollyleaf cherry, California bay laurel, coffeeberry, and poison oak. Coast live oak woodland is more

[68] Helmers, H., J.S. Horton, G. Juhren and J. O'Keefe. 1955. Root systems of some chaparral plants in southern California. Ecology 36(4):667-678. Kummerow, J. and W. Jow. 1977. Root systems of chaparral shrubs. Oecologia 29:163-177.

[69] Radtke, K. 1983. *Living more safely in the chaparral-urban interface*. General Technical Report PSW-67. U.S. Department of Agriculture, Forest Service, Pacific Southwest Research Station, Berkeley, California. 51 pp.

[70] Kittredge, J. 1973. Forest influences — the effects of woody vegetation on climate, water, and soil. Dover Publications, New York. 394 pp. Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. (Table 1). The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024. Vicars, M. (ed.) 1999. FireSmart: protecting your community from wildfire. Partners in Protection, Edmonton, Alberta.

[71] Ibid.

tolerant of salt-laden fog than other oaks and is generally found nearer the coast[72]. Coast live oak also occurs as a riparian corridor species within the Santa Monica Mountains.

Valley oaks are endemic to California and reach their southern most extent in the Santa Monica Mountains. Valley oaks were once widely distributed throughout California's perennial grasslands in central and coastal valleys. Individuals of this species may survive 400-600 years. Over the past 150 years, valley oak savanna habitat has been drastically reduced and altered due to agricultural and residential development. The understory is now dominated by annual grasses and recruitment of seedlings is generally poor. This is a very threatened habitat.

The important ecosystem functions of oak woodlands and savanna are widely recognized[73]. These habitats support a high diversity of birds[74], and provide refuge for many species of sensitive bats[75]. Typical wildlife in this habitat includes acorn woodpeckers, scrub jays, plain titmice, northern flickers, cooper's hawks, western screech owls, mule deer, gray foxes, ground squirrels, jackrabbits and several species of sensitive bats.

Therefore, because of their important ecosystem functions and vulnerability to development, oak woodlands and savanna within the Santa Monica Mountains met the definition of ESHA under the Coastal Act.

Grasslands

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

California Perennial Grassland

Native grassland within the Santa Monica Mountains consists of perennial native needlegrasses: purple needlegrass, (Nassella pulchra), foothills needlegrass, (Nassella lepida) and nodding needlegrass (Nassella cernua). These grasses may occur in the same general area but they do not typically mix, tending to segregate based on slope

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[72] NPS 2000. op. cit.

[73] Block, W.M., M.L. Morrison, and J. Verner. 1990. Wildlife and oak-woodland interdependency. *Fremontia* 18(3):72–76. Pavlik, B.M., P.C. Muick, S. Johnson, and M. Popper. 1991. *Oaks of California.* Cachuma Press and California Oak Foundation, Los Olivos, California. 184 pp.

[74] Cody, M.L. 1977. Birds. Pp. 223–231 *in* Thrower, N.J.W., and D.E. Bradbury (eds.). *Chile-California Mediterranean scrub atlas.* US/IBP Synthesis Series 2. Dowden, Hutchinson & Ross, Stroudsburg, Pennsylvania. National Park Service. 1993. A checklist of the birds of the Santa Monica Mountains National Recreation Area. Southwest Parks and Monuments Assoc., 221 N. Court, Tucson, AZ. 85701

[75] Miner, K.L., and D.C. Stokes. 2000. Status, conservation issues, and research needs for bats in the south coast bioregion. Paper presented at *Planning for biodiversity: bringing research and management together*, February 29, California State University, Pomona, California.

and substrate factors[76]. Mixed with these native needlegrasses are many non-native annual species that are characteristic of California annual grassland[77]. Native perennial grasslands are now exceedingly rare[78]. In California, native grasslands once covered nearly 20 percent of the land area, but today are reduced to less than 0.1 percent[79]. The California Natural Diversity Database (CNDDB) lists purple needlegrass habitat as a community needing priority monitoring and restoration. The CNDDB considers grasslands with 10 percent or more cover by purple needlegrass to be significant, and recommends that these be protected as remnants of original California prairie. Patches of this sensitive habitat occur throughout the Santa Monica Mountains where they are intermingled with coastal sage scrub, chaparral and oak woodlands.

Many of the raptors that inhabit the Santa Monica Mountains make use of grasslands for foraging because they provide essential habitat for small mammals and other prey. Grasslands adjacent to woodlands are particularly attractive to these birds of prey since they simultaneously offer perching and foraging habitat. Particularly noteworthy in this regard are the white-tailed kite, northern harrier, sharp-shinned hawk, Cooper's hawk, red-shouldered hawk, red-tailed hawk, golden eagle, American kestrel, merlin, and prairie falcon[80].

Therefore, because of their extreme rarity, important ecosystem functions, and vulnerability to development, California native perennial grasslands within the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

California Annual Grassland

The term "California annual grassland" has been proposed to recognize the fact that non-native annual grasses should now be considered naturalized and a permanent feature of the California landscape and should be acknowledged as providing important ecological functions. These habitats support large populations of small mammals and provide essential foraging habitat for many species of birds of prey. California annual grassland generally consists of dominant invasive annual grasses that are primarily of Mediterranean origin. The dominant species in this community include common wild oats (Avena fatua), slender oat (Avena barbata), red brome (Bromus madritensis ssp. Rubens), ripgut brome, (Bromus diandrus), and herbs such as black mustard (Brassica nigra), wild radish (Raphanus sativus) and sweet fennel (Foeniculum vulgare). Annual grasslands are located in patches throughout the Santa Monica Mountains in previously disturbed areas, cattle pastures, valley bottoms and along roadsides. While many of

[76] Sawyer, J. O. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society, 1722 J St., Suite 17, Sacramento, CA 95814.
[77] Biological Resources Assessment of the Proposed Santa Monica Mountains Significant Ecological Area. Nov. 2000. Los Angeles Co., Dept. of Regional Planning, 320 West Temple St., Rm. 1383, Los Angeles, CA 90012.
[78] Noss, R.F., E.T. LaRoe III and J.M. Scott. 1995. Endangered ecosystems of the United States: a preliminary assessment of loss and degradation. Biological Report 28. National Biological Service, U.S. Dept. of Interior.
[79] NPS 2000. op. cit.
[80] NPS 2000. op. cit.

these patches are dominated by invasive non-native species, it would be premature to say that they are never sensitive or do not harbor valuable annual native species. A large number of native forbs also may be present in these habitats[81], and many native wildflowers occur primarily in annual grasslands. In addition, annual grasslands are primary foraging areas for many sensitive raptor species in the area.

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

Effects of Human Activities and Development on Habitats within the Santa Monica Mountains

The natural habitats of the Santa Monica Mountains are highly threatened by current development pressure, fragmentation and impacts from the surrounding megalopolis. The developed portions of the Santa Monica Mountains represents the extension of this urbanization into natural areas. About 54% of the undeveloped Santa Monica Mountains are in private ownership[82], and computer simulation studies of the development patterns over the next 25 years predict a serious increase in habitat fragmentation[83]. Development and associated human activities have many well-documented deleterious effects on natural communities. These environmental impacts may be both direct and indirect and include the effects of increased fire frequency, of fire clearance, of introduction of exotic species, and of night lighting.

Increased Fire Frequency

Since 1925, all the major fires in the Santa Monica Mountains have been caused by human activities[84]. Increased fire frequency alters plant communities by creating conditions that select for some species over others. Strong resprouting plant species such as laurel sumac, are favored while non-sprouters like bigpod ceanothus, are at a disadvantage. Frequent fire recurrence before the non-sprouters can develop and reestablish a seed bank is detrimental, so that with each fire their chances for propagation are further reduced. Resprouters can be sending up new shoots quickly, and so they are favored in an increased fire frequency regime. Also favored are weedy and invasive species. Dr. Steven Davis in his abstract for a Coastal Commission

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

[82] National Park Service. 2000. Draft: General Management Plan & Environmental Impact Statement, Santa Monica Mountains National Recreation Area, US Dept. of Interior, National Park Service, December 2000.

[83] Swenson, J. J., and J. Franklin. 2000. The effects of future urban development on habitat fragmentation in the Santa Monica Mountains. Landscape Ecol. 15:713-730.

[84] NPS, 2000, op. cit.

Workshop stated[85] "*We have evidence that recent increases in fire frequency has eliminated drought-hardy non-sprouters from chaparral communities near Malibu, facilitating the invasion of exotic grasses and forbs that further exacerbate fire frequency.*" Thus, simply increasing fire frequency from about once every 22 years (the historical frequency) to about once every 12 years (the current frequency) can completely change the vegetation community. This has cascading effects throughout the ecosystem.

Fuel Clearance

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

Effects of Fuel Clearance on Bird Communities

The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species

[85] Davis, Steven. Effects of fire and other factors on patterns of chaparral in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

[86] 1996 Los Angeles County Fire Code Section 1117.2.1

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

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

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

[90] Ibid.

(mourning dove, American crow, Western scrub-jay, Northern mockingbird)[91]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[92].

Effects of Fuel Clearance on Arthropod Communities

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

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

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

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

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

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

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

predator species are seen and more exotic arthropod species are present than in undisturbed habitats[97].

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

Artificial Night Lighting

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

Summary

In a past action, the Coastal Commission found[102] that the Santa Monica Mountains Mediterranean Ecosystem, which includes the undeveloped native habitats of the Santa Monica Mountains, is rare and especially valuable because of its relatively pristine

[97] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.
[98] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.
[99] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.
[100] . Longcore, T and C. Rich. 2002. Protection of environmentally sensitive habitat areas in proposed local coastal plan for the Santa Monica Mountains. The Urban Wildlands Group, Inc., P.O. Box 24020 Los Angeles, CA 90024.
[101] Ibid, and Ecological Consequences of Artificial Night Lighting, Conference, February 23-24, 2002, UCLA Los Angeles, California.
[102] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

character, physical complexity, and resultant biological diversity. The undeveloped native habitats within the Santa Monica Mountains that are discussed above are ESHA because of their valuable roles in that ecosystem, including providing a critical mosaic of habitats required by many species of birds, mammals and other groups of wildlife, providing the opportunity for unrestricted wildlife movement among habitats, supporting populations of rare species, and preventing the erosion of steep slopes and thereby protecting riparian corridors, streams and, ultimately, shallow marine waters.

The importance the native habitats in the Santa Monica Mountains was emphasized nearly 20 years ago by the California Department of Fish and Game[103]. Commenting on a Draft Land Use Plan for the City of Malibu, the Regional Manager wrote that, "It is essential that large areas of land be reclassified to reflect their true status as ESHAs. One of the major needs of the Malibu LUP is that it should provide protection for entire drainages and not just stream bottoms." These conclusions were supported by the following observations:

> "It is a fact that many of the wildlife species of the Santa Monica Mountains, such as mountain lion, deer, and raccoon, have established access routes through the mountains. They often travel to and from riparian zones and development such as high density residential may adversely affect a wildlife corridor.
>
> Most animal species that exist in riparian areas will, as part of their life histories, also be found in other habitat types, including chapparal (sic) or grassland. For example, hawks nest and roost in riparian areas, but are dependent on large open areas for foraging. For the survival of many species, particularly those high on the food chain, survival will depend upon the presence of such areas. Such areas in the Santa Monica Mountains include grassland and coastal sage scrub communities, which have been documented in the SEA studies as supporting a wide diversity of plant and animal life."

This analysis by the Department of Fish and Game is consonant with the findings of the Commission in the case of the Malibu LCP, and with the conclusion that large contiguous areas of relatively pristine native habitat in the Santa Monica Mountains meet the definition of ESHA under the Coastal Act.

[103] Letter from F. A. Worthley, Jr. (CDFG) to N. Lucast (CCC) re Land Use Plan for Malibu dated March 22, 1983.

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, GOVERNOR

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MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist / Wetland Coordinator

TO: Lisa Haage

SUBJECT: Cease & Desist Order CCC-03-CD-015

DATE: December 10, 2003

Documents reviewed:

S.G. Nelson (consulting biologist). Letter to D. Shen (Schmitz & Assoc.) dated June 11, 2003 re: "California Coastal Commission Violation No. V-4-03-01 – Biological Assessment."

S.G. Nelson (consulting biologist). Letter to D. Shen (Schmitz & Assoc.) dated July 14, 2003 re: "Response to Notice of Intent to Commence Restoration Order Proceeding, Coastal Act Violation File No. V-4-03-018 (Kay)."

G.C. Ainsworth (ENSR International). Letter to Schmitz and Associates dated November 6, 2003 re: "Determine if brush clearance activity had impacts on biological resources and access roads on four parcels off Castro Peak Motorway, Malibu, CA,' with attached untitled and undated biological report based on field work conducted on October 24, 2003.

As documented in the CCC staff report for the December Hearing, in Spring 2003 there was unpermitted development on the properties of Mr. James Kay that consisted, among other things, of the construction of some 10,000 linear feet of roadway by an unspecified amount of grading and the removal of an estimated 5 acres of native vegetation. Staff became aware of this activity in mid-April and confirmed it during site visits on May 1 and May 8, 2003. In the hastily issued May 8, 2003 Notice of Intent ("NOI") to issue an Executive Director Cease & Desist Order ("EDCDO"), the subject heading included the following incorrect violation description: "Unpermitted removal of native coastal sage scrub vegetation, grading and construction of new roads." In fact, the disturbed vegetation was chaparral. The error was in the heading only and was corrected in all later correspondence. In fact, the body of the letter refers only to "native vegetation" or "major vegetation." All subsequent documents[1] correctly identify the

[1] For example: Notice of Intent to Commence Restoration Order Proceedings, June 27, 200; Notice of Intent to Commence Restoration Order Proceedings, July 1, 2003; Notice of Intent to Commence Cease and Desist Order Proceedings, October 23, 2003; ED Cease and Desist Order ED-03-CD-146, July 2, 2003; ED Cease and Desist Order ED-03-CD-147, October 24, 2003.

EXHIBIT 9
Permits 4-03-069, 070, 071, 072
Dr. Dixon Memo (12/10/03)

primary vegetation on site as "native chaparral vegetation," and also reference damage to native oak trees and oak woodlands, where the latter damage was discovered later in the investigation.

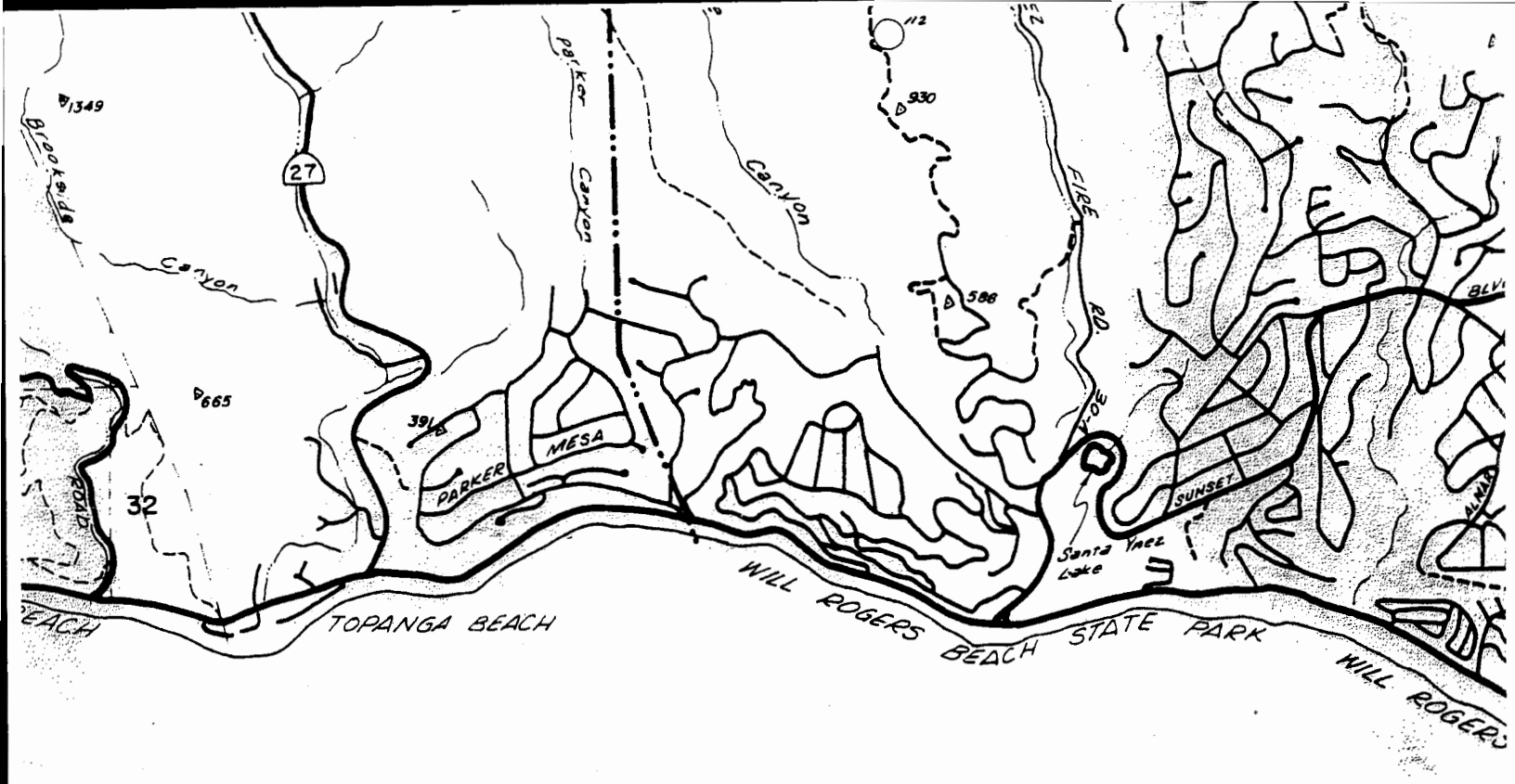
I visited the site on July 22, 2003. Since we did not have permission to enter the Kay property, I made my observations from a legal access road. The vegetation through which the unpermitted road had been constructed was mixed chaparral. Along the side of the access road, some of the primary shrubs were chamise, manzanita, scrub oak and monkey flower. In his biological report, Greg Ainsworth noted those species and also toyon and coast live oak. The large tract of chaparral of which the Kay properties are a part, is largely undisturbed – a conclusion also reached by Mr. Ainsworth.

In my March 25, 2003 memorandum to Ventura District Office staff, I pointed out that, in the context of the Malibu LCP, the Commission found that the Mediterranean Ecosystem in the Santa Mountains is rare, and especially valuable because of its relatively pristine character, physical complexity, and resultant biological diversity; and therefore, areas of undeveloped native habitat in the Santa Monica Mountains that are large and relatively unfragmented may meet the definition of Environmentally Sensitive Habitat Area (ESHA) by virtue of their valuable roles in that ecosystem, regardless of their relative rarity throughout the state. The findings for that conclusion are summarized in that memorandum, which is included as Exhibit 6 in the staff report. Given the Commission's findings in the Malibu LCP, within the Santa Monica Mountains there are then three site-specific tests to determine whether an area is ESHA. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? Second, is the habitat native and largely undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation? The Kay properties pass these three tests and are, in my opinion, properly characterized as ESHA, not because mixed chaparral is rare in California (which it is not), but rather because of the important ecosystem functions of this habitat type within the Santa Monica Mountains ecosystem. This is the only landscape context in which the Commission has found that chaparral is ESHA.

Steve Nelson's comments are based on the presumption that the unpermitted road work consisted merely of "... trimming of overgrown shrubs and removal of fallen rocks and boulders from the road bed itself." If these roads were already present and substantially in their current condition, the major environmental insult would have been in the past and the "trimming" of bushes along the edge of the road would be a relatively small additional impact. However, since staff's analysis indicates that Mr. Nelson's presumption is grossly in error, his estimates of minor impacts are similarly in error. In his biological evaluation, Mr. Ainsworth states that:: "It is ENSR's understanding that these access roads were previously existing for fire and agricultural access throughout the subject properties." Unfortunately, as a result of this misinformation, Mr. Ainsworth's analysis of the impacts of the "maintenance" activities was misdirected and generally not germane. He concluded that "continuing use" of the roads would not impact the surrounding habitat and the "brush clearance" did not significantly degrade the quality of the environment. Had he been told that about 5 acres of undisturbed vegetation had

been removed to construct 10,000 linear feet of new roadway, he may have reached different conclusions.

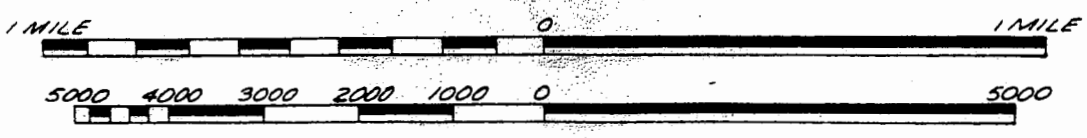
In fact, the removal of such a large amount of undisturbed native vegetation is a serious environmental impact and inconsistent with Section 30240(a) of the California Coastal Act. In addition, the disturbance will have continuing environmental impacts. A widely acknowledged ecosystem function of chaparral is erosion prevention due to its usually dense, closed canopy and deep roots. The areas cleared for the road will certainly be subject to increased erosion in the coming years. That erosion will ultimately impact streams down slope, increasing turbidity and decreasing habitat value. At least one area already appeared to be risk to Mr. Ainsworth who noted that "...slopes near where the road crosses over this tributary appear to be unstable due to the removal of previously existing chaparral." Removing the chaparral canopy will also increase the risk of invasion by exotic weeds, another well-documented effect of roads and trails. With regard to these impacts, observations of Mr. Nelson are very revealing. He found that, "the off-site unimproved roads ... were all observed to have erosional features.... The same was observed to be true for the introduction of non-native, invasive plant species. Along all of the off site road margins, there was an abundance of non-native, 'weedy' species." Mr. Nelson goes on to say that these negative impacts were not observed along the unpermitted roads on the Kay properties because the chaparral had been chipped and spread as a mulch. Although the mulch can be expected to have short-term benefits, the lack of observed erosion and weed invasion is much more likely the result of the fact that the roads were brand new and constructed after the rainy season. The other roads he observed are excellent predictors of the future effects of the unpermitted road work: increased erosion and weed invasion. Mr. Nelson also suggests that large mammals will use the roads for movement corridors. I agree, however this is not a beneficial effect for the ecosystem. By facilitating the movements of mammalian predators, the roads are likely to alter local predator-prey relationships. In short, there is a substantial literature on the deleterious effects of roads on natural resources and no conservation biologist would advocate constructing roads to benefit the Santa Monica Mountains ecosystem.



DEPARTMENT OF COUNTY FORESTER AND FIRE WARDEN

BATTALION 5
SANTA MONICA MOUNTAINS.
COUNTY OF LOS ANGELES, CALIFORNIA.

SCALE - 1" = 2000'.

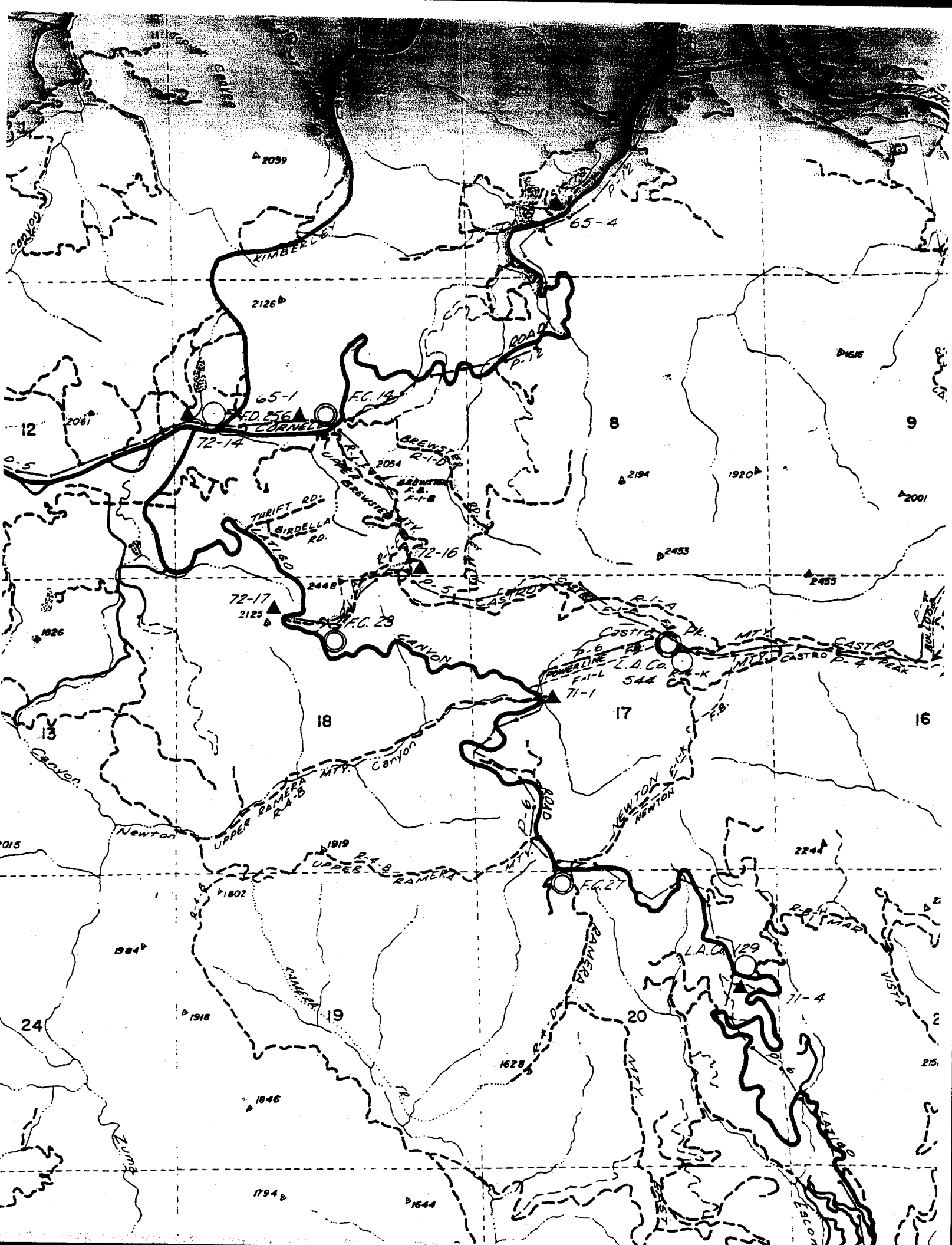


Computed and compiled on a rectilinear grid basis originating from U.S. Coast and Geodetic Survey Control.

Delineation by E. Mitchell, Jr.

1970 EDITION

EXHIBIT 10
(Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072)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ROAD
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F.D. 256
CORNELL
72-14
12
2061
8
9
2194
1920
2001
BREWSTER
2054
THRIFT RD.
CASTRO
BIRDELLA
RD.
72-16
2448
2455
72-17
2125
F.C. 28
1826
CANYON
CASTRO
71-1
17
18
13
16
Canyon
Newton
UPPER RAMERA
1919
1802
1984
1918
CAMERA
19
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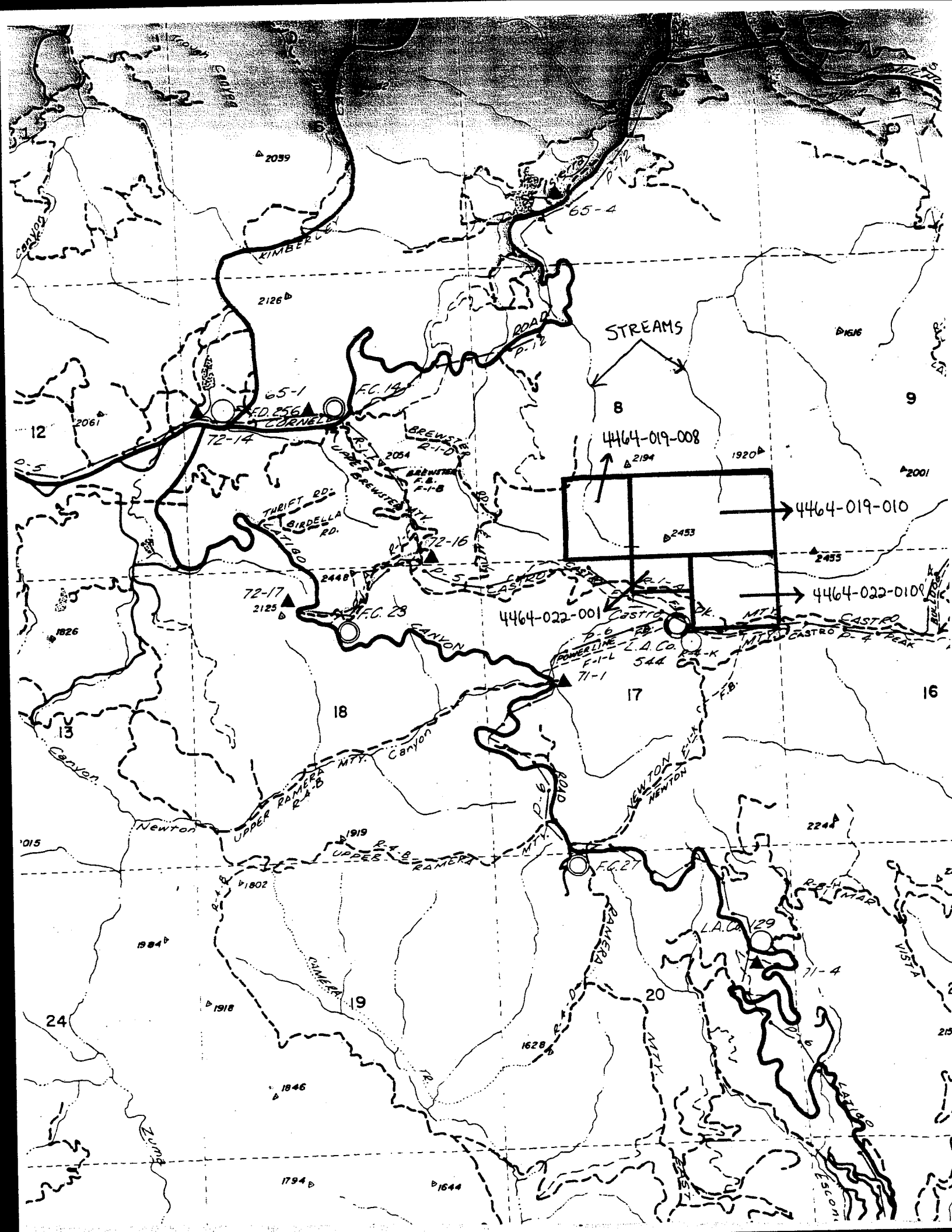
L.A. Co. 29
VISTA
Zuma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F.C. 14
F.C. 28
F.C. 27
F.C. 29
F.D. 256
CORNELL
BREWSTER
UPPER BREWSTER
THRIFT RD.
BIRDELLA RD.
CATTLE RD.
CASTRO CANYON
CASTRO PEAK
MTN.
POWER LINE
L.A. Co. 544
NEWTON CANYON
UPPER RAMERA
RAMERA
ROAD
TRAIL
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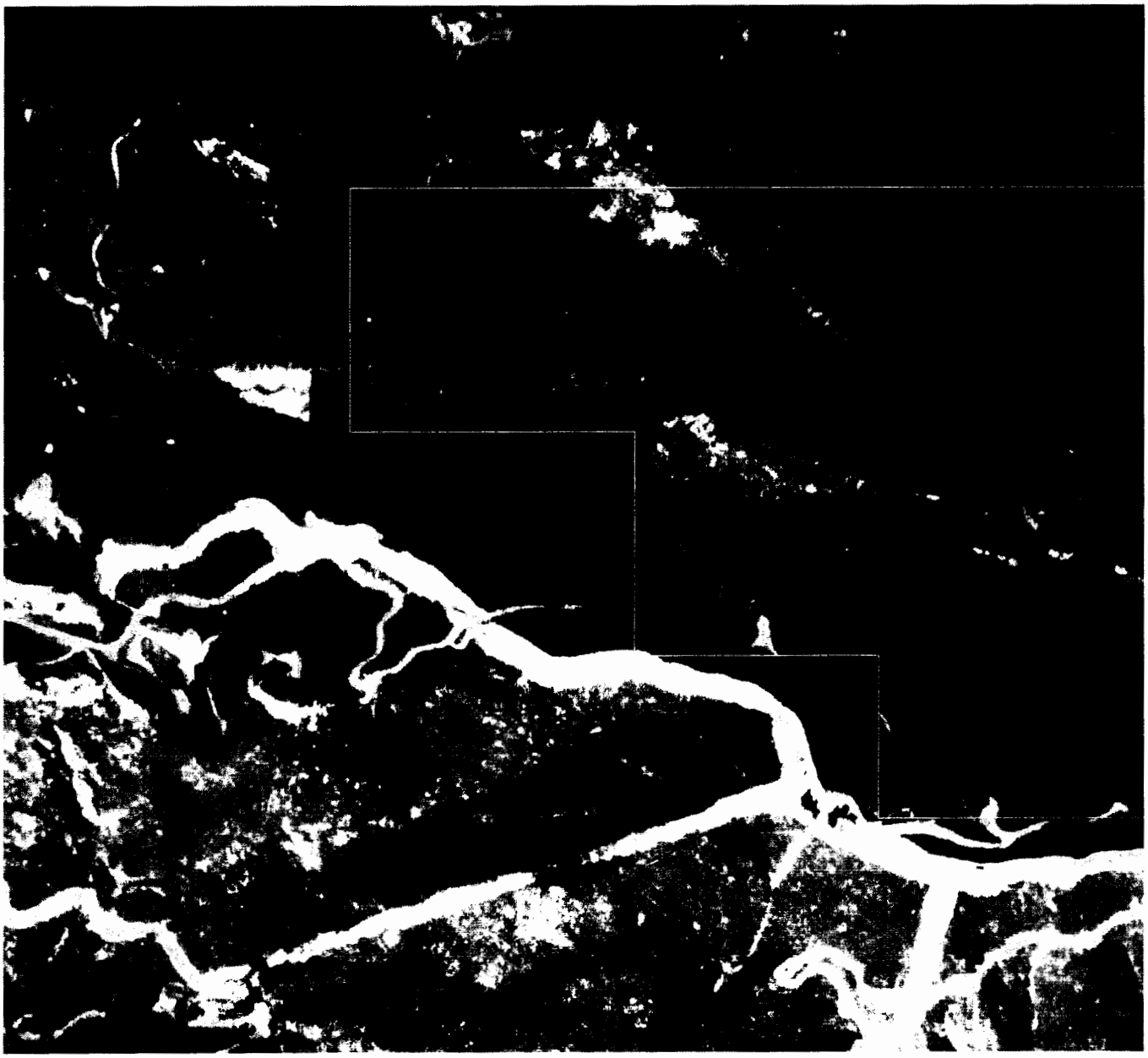
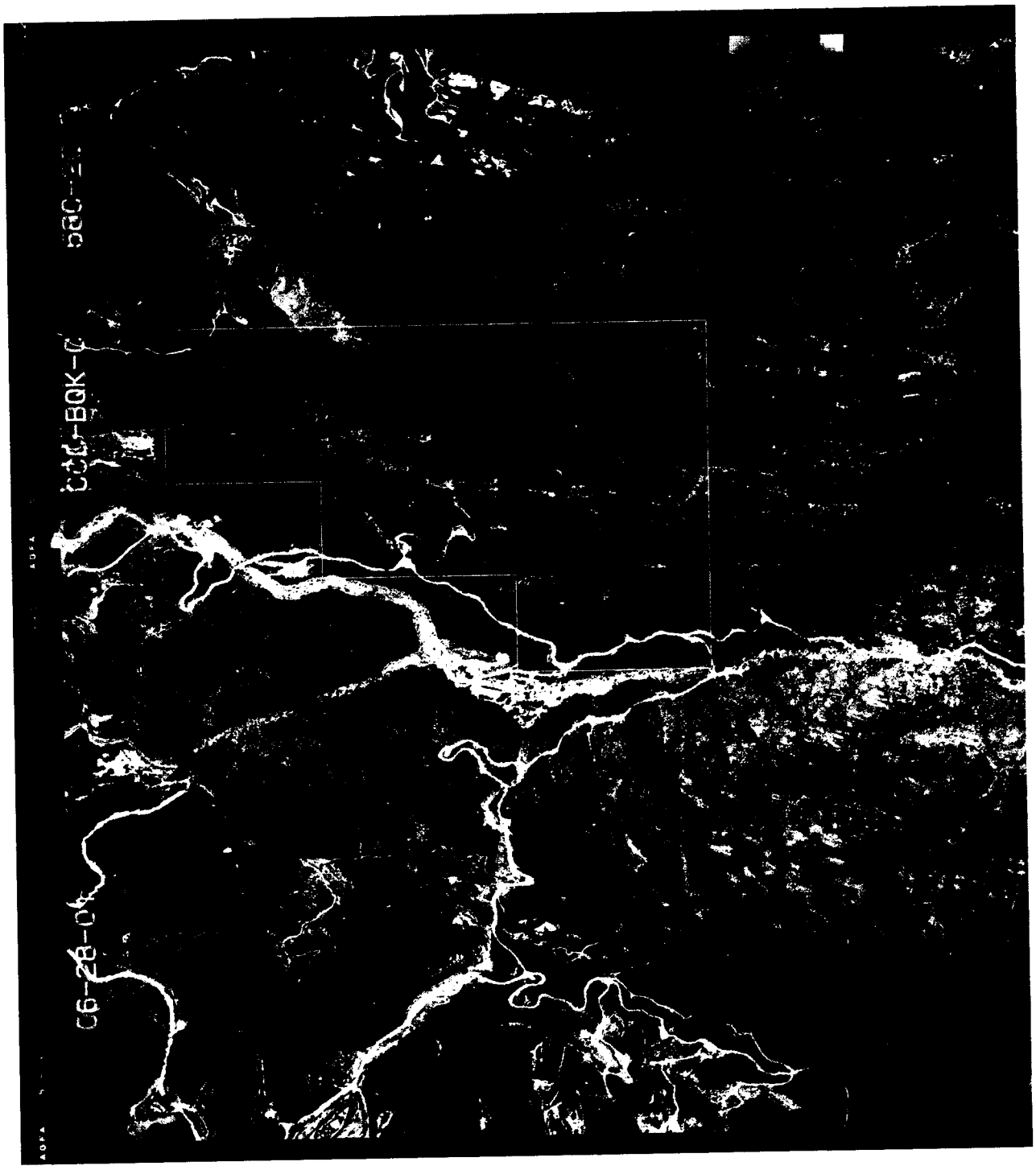


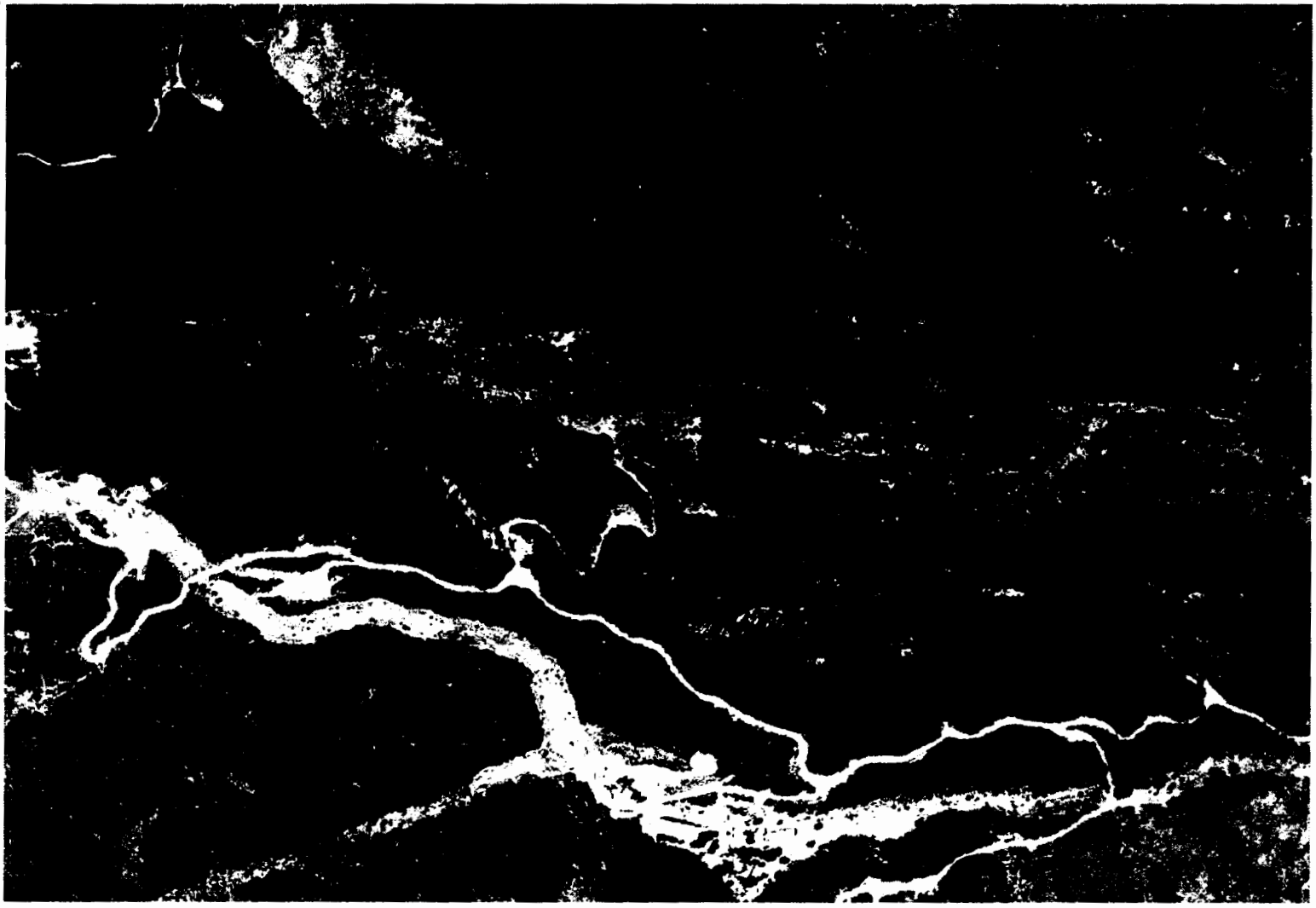
1977 Photo -- Approximate Location of Parcels in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072

EXHIBIT 11
(Applications 4-03-069, 4-03-070, 4-03-071, and 4-03-072

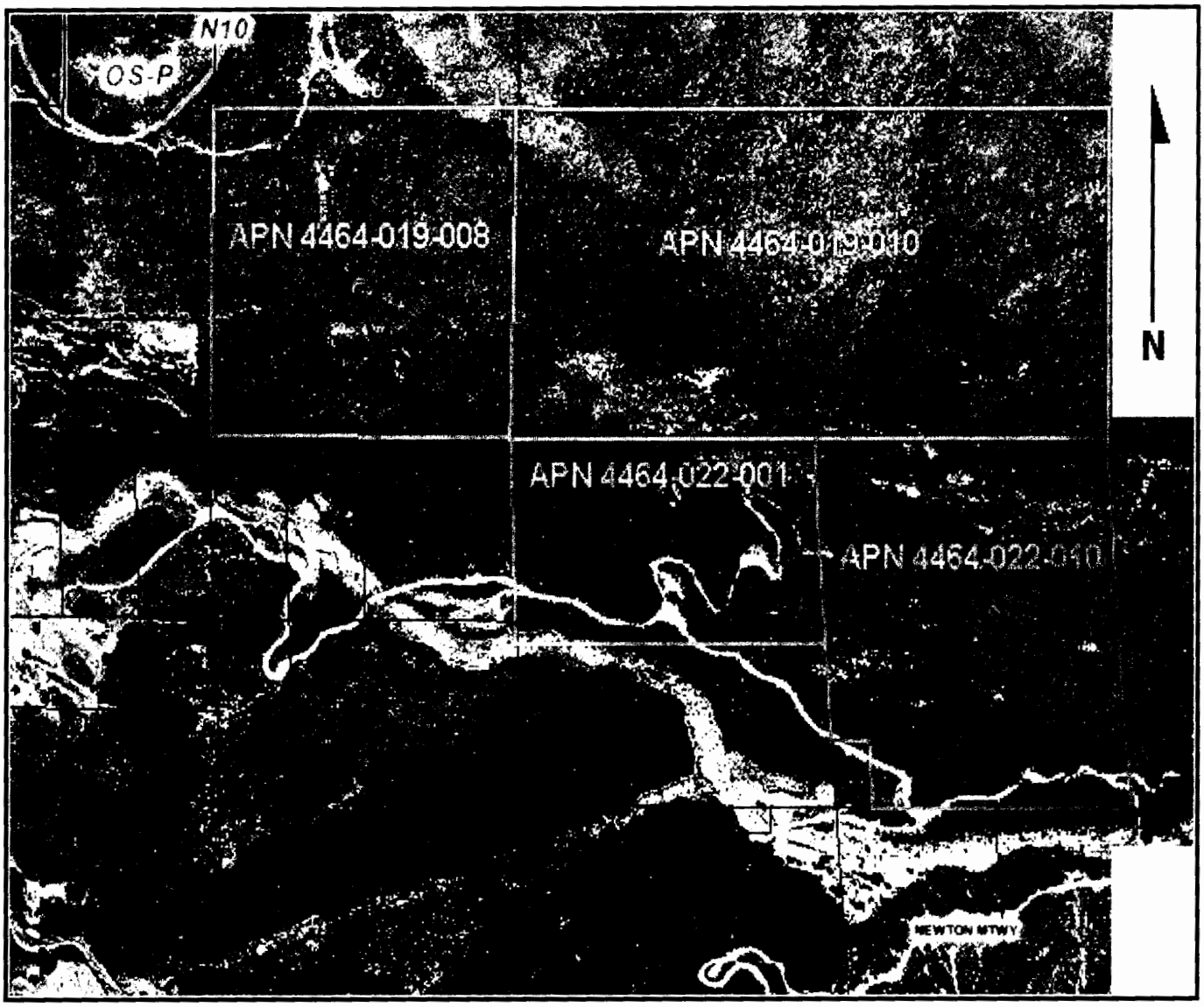


2001 Photo – Department of Water Resources --Approximate Location of Parcels in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072.

EXHIBIT 12 – page 1
(Applications 4-03-069, 4-03-070
4-03-071 and 4-03-072)



2001 Department of Water Resources – Closeup of Parcels in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072



2001 LA County Photo of Parcels in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072.

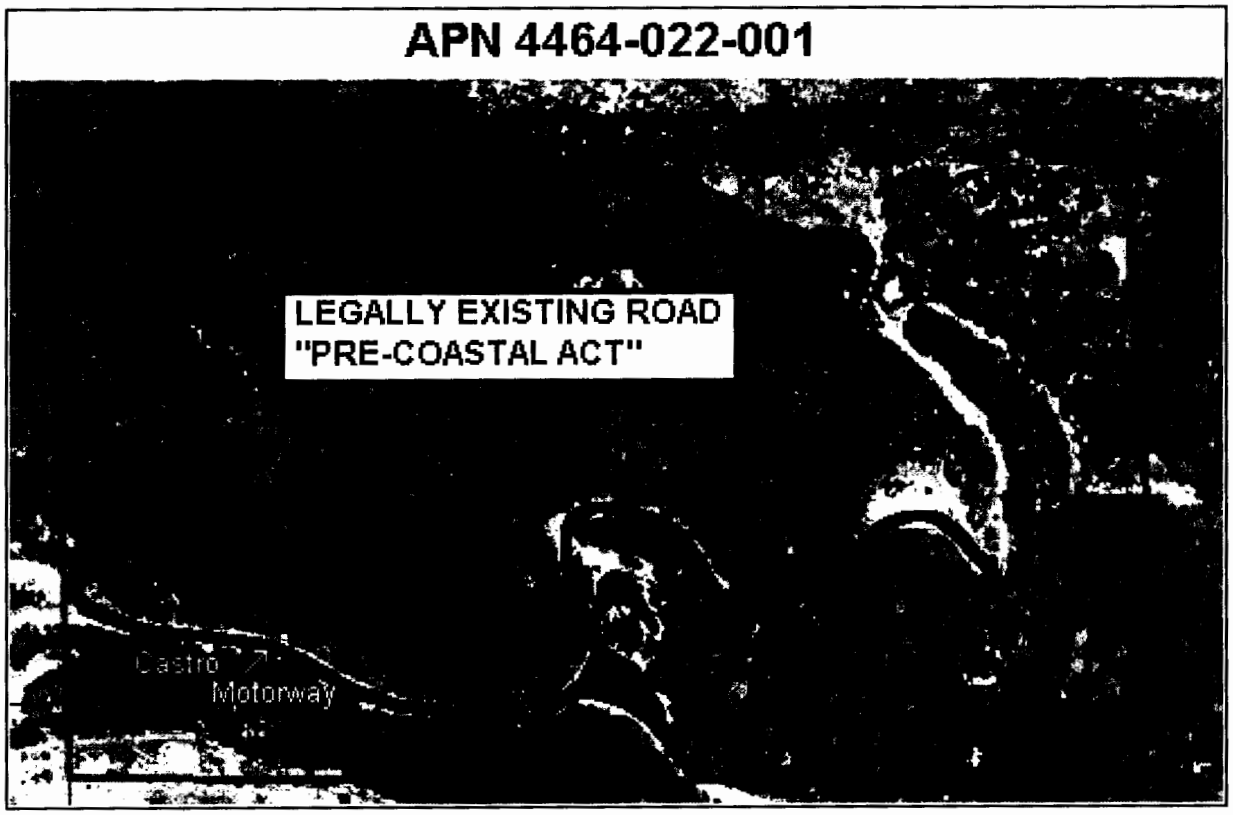
EXHIBIT 13 – page 1
(Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072)

APN 4464-019-008, PANORAMA RANCH LLC

APN 4464-019-010, DEER VALLEY RANCH LLC

APN 4464-022-001, COMMUNICATIONS RELAY CORP.

APN 4464-022-010, PANORAMA RANCH LLC

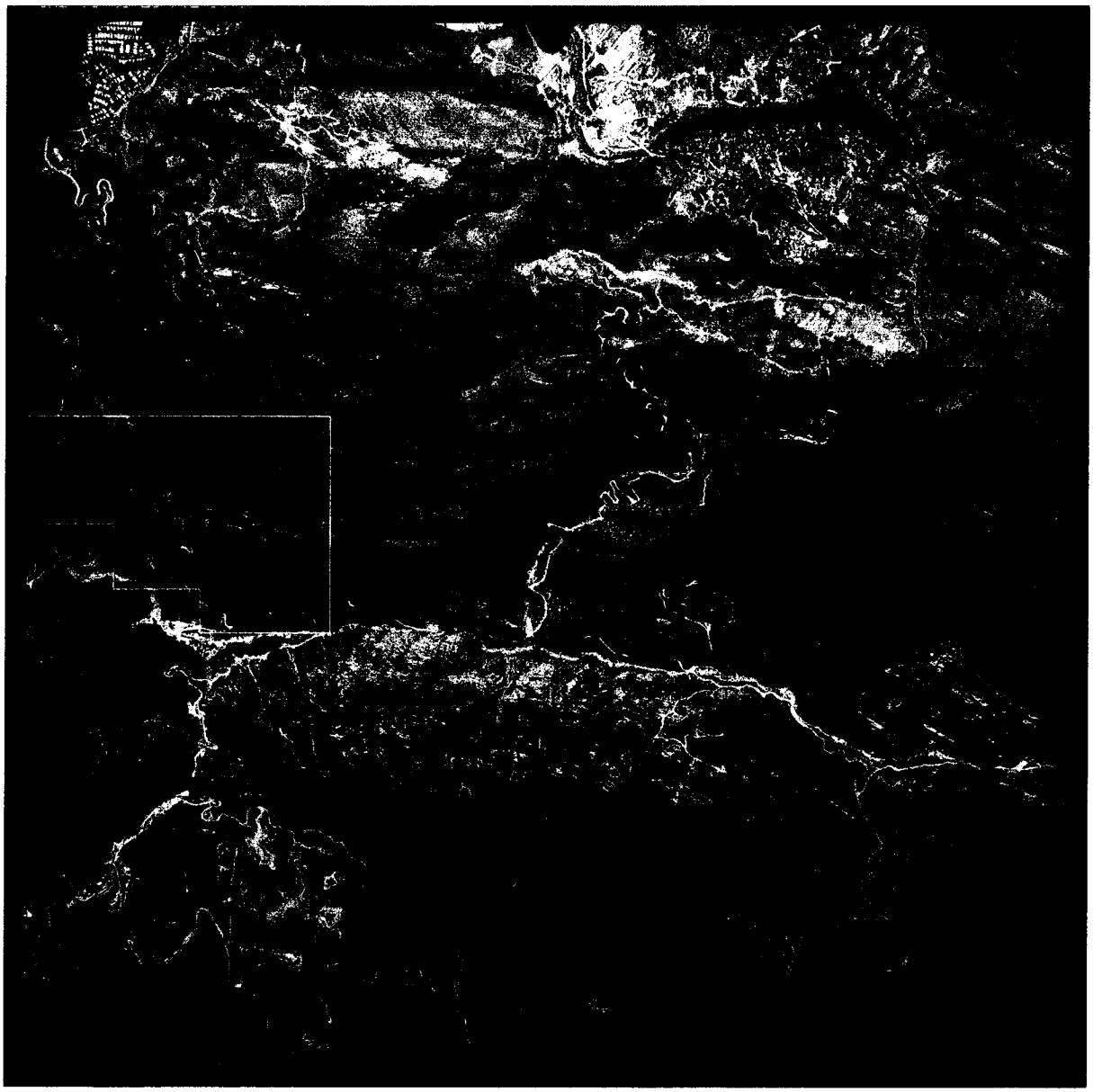


Communications Relay Corporation Parcel No. 4464-022-001, showing Castro Motorway and legal access road.

EXHIBIT 14
(Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072)

1997 Photo -- Closeup of Parcels in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072

EXHIBIT 15 – page 1
(Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072)



1997 Photo -- Approximate Location of Parcels in Applications 4-03-069, 4-03-070, 4-03-071 and 4-03-072

CHAPTER 70—EXCAVATION AND GRADING

SEC. 7001 — SCOPE

This chapter sets forth regulations for the control of excavation, grading, and earthwork construction, including fills or embankments.

These regulations establish minimum standards and are not intended to prevent the use of alternate materials, methods, or means of conforming to such standards, provided such alternate has been approved.

The Building Official shall approve such alternate provided he finds that the alternate is for the purpose intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, durability and safety.

The Building Official shall require that sufficient evidence or proof be submitted to substantiate any claims regarding the alternate.

SEC. 7002 — DEFINITIONS

For the purpose of this Chapter, certain terms are defined as follows:

APPROVED SOIL TESTING AGENCY is an agency regularly engaged in the testing of soils under the direction of a civil engineer experienced in soil mechanics (a soils engineer) when such agency has been approved by the Building Official.

BEDROCK is the relatively solid, undisturbed rock in place either at the ground surface or beneath surficial deposits of gravel, sand, or soil.

CIVIL ENGINEER shall mean a professional engineer in the branch of civil engineering holding a valid certificate of registration issued by the State of California.

GEOLOGIST shall mean a person holding a valid certificate of registration as a geologist in the specialty of engineering geology issued by the State of California under provisions of the Geologist Act of the Business and Professions Code.

FILL shall mean deposits of soil, rock, or other similar irreducible materials placed by man.

GRADING shall mean any excavation or fill or combination thereof.

NATURAL GRADE is the vertical location of the ground surface prior to any excavation or fill.

ROUGH GRADE is the elevation of the ground surface established by grading that approximates the final elevation shown on the approved design.

SITE is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is proposed or performed.

SOILS ENGINEER is a civil engineer experienced in soil mechanics who investigates and reports on the stability of existing or proposed slopes, controls the installation and compaction of fills, recommends soil bearing values and provides design criteria and calculations for special earth structures such as buttress fills.

SUPERVISING GRADING ENGINEER shall mean the civil engineer responsible for the supervision of the grading in accordance with the requirements of Section 7014.

SEC. 7003 — PERMITS REQUIRED

A person shall not perform any grading without first obtaining a grading permit to do so from the Building Official. A separate permit shall be obtained for each site.

EXCEPTIONS: A grading permit shall not be required for:

1. An excavation which is less than three feet in depth below the existing ground surface.

2. A fill not intended to support structures and which does not obstruct a drainage course if such fill is placed on natural grade that has a slope not steeper than three horizontal to one vertical and, (a) is less than three feet in depth at its deepest point, measured vertically upward from natural grade to the surface of the fill, or (b) does not exceed 20 cubic yards on any one lot.

3. An excavation below finished grade for basements and footings of structures authorized by a valid building permit or trench excavations for the purpose of installing underground utilities.

4. Grading within property dedicated or used for cemetery purposes where such grading is more than 100 feet from the property line and is not intended to support structures. No permit shall be required for the excavation or filling of graves at any location within such property.

5. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate, or clay, where established and provided for by law, provided that such operations do not affect the lateral support or increase the stresses in, or pressure upon, any adjacent or contiguous property.

6. Grading in an isolated, self-contained area if the Building Official finds that no danger to private or public property can now or hereafter result from the grading operations.

7. The depositing of rubbish or other material at any refuse disposal facility operated under a permit granted according to the terms of Ordinance No. 6130, entitled "Sanitary Sewer and Industrial Waste Ordinance," adopted December 23, 1952.

8. An excavation or fill in connection with the making of an earth fill dam, reservoir or levee when the quality of such work is regulated by other laws, statutes or ordinances.

9. An excavation, fill, structure and/or measures approved by the Soil Conservation District or cooperative agency of the Department of Agriculture.

→ 10. An excavation or fill by the Road Department in connection with and necessary to the support, construction, or maintenance of a public road when such is located within an easement granted to the County for road or slope purposes. ←

SEC. 7004 — APPLICATION TO EXISTING GRADING

(a) Hazardous Conditions. Whenever the Building Official determines that any existing excavation, embankment or fill has become a hazard to life and limb, or endangers structures, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation, embankment, or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the Building Official shall within the period specified therein repair, reconstruct or remove such excavation, embankment, or fill so as to eliminate the hazard.

→ (b) Maintenance of Protective Devices and Rodent Control. The owner of any property on which grading has been performed