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STATE OF CALIFORNIA – THE RESOURCES AGENCY

Arnold Schwarzenegger, *Governor*

CALIFORNIA COASTAL COMMISSION
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Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-99-169-A2

APPLICANT: Alfredo and Robin Trento

PROJECT LOCATION: 25126 Pacific Coast Highway, City of Malibu (Los Angeles County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 6,706 sq. ft., 28 ft. high, two-story single family residence; a 749 sq. ft., 18 ft. high guest house; a 975 sq. ft., 18 ft. high detached garage; a 525 sq. ft., 14 ft. high detached garage; a pool; a driveway; a septic system; and a concrete v-ditch drainage swale system. The project also includes the construction of a 420 ft. long 3-6 ft. high retaining wall, a 120 ft. long 2-3 ft. high retaining wall, and approximately 3,802 cu. yds. of grading (1,302 cu. yds. of cut, 630 cu. yds. of fill, and 1,870 cu. yds. of removal and recompaction). The applicants propose to remove the excavated material to an appropriate disposal site outside the coastal zone.

DESCRIPTION OF AMENDMENT: Construction of a 7,200 sq. ft. unlit tennis court; approximately 240 foot long 1 - 6 foot high retaining wall; 180 foot long 1 - 4 foot high chain link fence surrounding three sides of the tennis court; 940 cu. yds. of excavation to be exported outside of the coastal zone, and 800 cu. yds. of remedial grading (removal and recompaction).

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Malibu Planning Department, December 12, 2002; Approval in Concept, City of Malibu Geology Review, August 29, 2002; Approval in Concept, City of Malibu Biological Review, September 23, 2002.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 4-99-169; Letter "Re: Proposed tennis court development at the Dr. Trento Residence at 25126 Pacific Coast Highway, in the City of Malibu, CA 90265," by E. Gary Stickel, Ph.D., Consulting Archaeologist, Environmental Research Archaeologists – A Scientific Consortium, February 21, 2003; "Preliminary Geologic and Soils Engineering Investigation, Proposed Tennis Court, 25134 Pacific Coast Highway,

Malibu, California," by GeoConcepts, Inc., October 22, 2002; Phase 2 (Test Phase) of Archaeological Site CA-LAN 803 Report by E. Gary Stickel, Ph.D., Consulting Archaeologist, Environmental Research Archaeologists – A Scientific Consortium, March 1999; Phase 3 (Mitigation) Program for Archaeological Site CA-LAN 803 Report by E. Gary Stickel, Ph.D., Consulting Archaeologist, Environmental Research Archaeologists – A Scientific Consortium, October 1999; Letter "Re: of Further Mitigation of Archaeological Site CA-LAN-803 located at 25126 Pacific Coast Highway, City of Malibu, dated September 11, 2003, by Robert Wlodarski, Principal Investigator, M.A./RPA Certified; Letter "Re: Review of Archaeological Documents, Application No. 4-99-169-A1, dated September 15, 2003, by David Whitley, PhD, W and S Consultants; Memorandum from Dr. Gary Stickle to Mike Anderson, dated May 15, 2001, "Regarding the Final Report on the Cultural Resources Monitoring of the grading/construction work on he parcel owned by Dr. and Mrs. Trento, Located at 25126 Pacific Coast Highway"; .

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

1. The Executive Director determines that the proposed amendment is a material change,

2. Objection is made to the Executive Director's determination of immateriality, or

3. The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

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

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the amendment request, with revisions to the Archaeological Resource special condition to ensure the tennis court site is monitored during construction and four new special conditions related to tennis court lighting prohibition, restriction on tennis court fencing, geologic recommendations, and deed restriction. As conditioned, the proposed amendment, is consistent with the provisions of the City of Malibu Local Coastal Program

I. STAFF RECOMMENDATION

MOTION

I move that the Commission approve with special conditions Coastal Development Permit Amendment 4-99-169-A2 per the staff recommendation as set forth below.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

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

II. SPECIAL CONDITIONS.

NOTE: All standard and special conditions attached to the previously approved permit (4-99-169) remain in effect, with the exception of Special Condition No. 4 (Revised Archaeological Resources). Revised Special Condition No. 4 of this permit amendment is substituted. Finally, Special Condition No. 11 (Tennis Court Light Prohibition), 12 (Tennis Court Fencing), 13 (Geologic Recommendations for Tennis Court), and 14 (Deed Restriction) are added.

4. Revised Archaeological Resources.

By acceptance of this permit, the applicant agrees to have a qualified archaeologist(s) and Native American monitor(s) present onsite during all grading, excavation, and site preparation that involve earth moving operations. The number of monitors shall be adequate to observe the earth moving activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological and/or cultural materials. All artifacts discovered in connection with the monitoring program shall be recorded in a manner required by the State of California. All site records, field notes, maps, photographs, notes by Native American monitor, and reports by the

consulting archaeologist shall be cataloged in accordance with the United States Department of Interior Guidelines. Any reports generated as part of the site investigations or monitoring shall be filed with the Regional Historical Information Center, at the Institute of Archaeology, University of California, Los Angeles. Any artifacts recovered during monitoring shall be properly curated at The Santa Barbara Natural History museum or other appropriate museum. In the event that any significant archaeological resources and/or cultural resources, including human remains, are discovered during earth moving operations, grading and/or excavation in this area shall be halted and an appropriate data recovery strategy and/or strategy to address burial sites shall be developed, by the applicant's archaeologist, in consultation with the City of Malibu Native American Cultural Resources Advisory Committee, City Native American Cultural Resource Manager, and the Most Likely Descendent consistent with CEQA guidelines and subject to review and approval of the Executive Director.

All recommendations contained in the letter report entitled "Review of Further Mitigation of Archaeological Site CA-LAN-803 Located at 25126 Pacific Coast Highway, City of Malibu, California" prepared by Robert J. Wlodarski, dated September 11, 2003; letter report entitled " Review of Archaeological Documents, Application 4-99-169-A1, prepared by Dr. David Whitley; and the Phase III study prepared by Environmental Research Archaeologists (E. Gary Stickel, archaeologist), dated October 1999, as well as any additional recommendations developed by the archaeologist(s) or native American monitor during project monitoring, shall be incorporated into all final design and construction. If the consulting archaeologists' recommendations, based on discovery of significant archaeological and/or cultural remains, require a substantial modification or redesign of the proposed project plans, an amendment to this permit is required.

11. Tennis Court Lighting Prohibition

In order to implement the applicants' proposal, the applicants agree, on behalf of themselves and all successors and assigns, that the tennis court shall not be lighted either on a temporary or permanent basis.

12. Tennis Court Fencing Restriction

By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that any new tennis court fencing or additions to the permitted tennis court fencing, as shown Exhibit 5, are prohibited. Repair and maintenance of the tennis court fencing approved pursuant to this permit is permitted provided the fencing is of the same type and design.

13. Geologic Recommendations for Tennis Court

All recommendations contained in the Geologic and Soils Engineering Investigation Proposed Tennis Court, prepared by GeoConcepts, Inc. dated 10/22/02 shall be

incorporated into all final design and construction including all grading, excavations, retaining walls, drainage improvements and slabs on grade. All plans must be reviewed and approved by the geologic and the geotechnical engineering consultants as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

14. Deed Restriction

Prior to issuance of the coastal development permit amendment, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit amendment a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit amendment, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit amendment as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit amendment. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit amendment or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicants seek approval for construction of a 7,200 sq. ft. unlit tennis court; 240 foot long 1-6 foot high retaining wall; 180 foot long 1 - 4 foot high chain link fence surrounding the tennis court on three sides; 940 cu. yds. of excavation to be exported outside of the coastal zone, and 800 cu. yds. of remedial grading (removal and recompaction). (Exhibits 2 - 5).

The project site is a 4.78-acre bluff top lot located west of Pepperdine University in the City of Malibu (Exhibit 1). The site is located south of Pacific Coast Highway and north of Malibu Road. The gently sloping bluff top portion of the site is developed with a single family residence, two garages, guesthouse, pool, driveway, turnaround, retaining walls, and landscaping, approved by the Commission under Coastal Development Permit No. 4-99-169 (Exhibit 11). The remainder of the property consists of the bluff face, which contains no development with the exception of a concrete v-ditch drainage system. The proposed tennis court is located between the existing development and the northern property line, adjacent to Pacific Coast Highway.

The proposed tennis court will be excavated into a gently sloping hillside and will be surrounded on three sides by a retaining wall 1 – 6 feet in height. The northern edge of the tennis court is located 35 feet from the right of way of Pacific Coast Highway and about 50 feet to the edge of the asphalt.

Pacific Coast Highway is designated a scenic highway in the Malibu LCP (Exhibits 1 – 3, 12 - 14). The site provides public views of the ocean between the guesthouse area and main residence, and on either side of the developed area of the site. In order to protect visual resources, Special Condition One (1) of the underlying permit prohibited all development from exceeding the 177 ft. elevation line in height, and required all fencing to be visually permeable (wrought iron or glass) and no more than six feet in height. The proposed tennis court extends from the western end of the guest house to the western end of the main residence, and thus is located within the view corridor between the two areas of development.

Special Condition One (1) of the original permit also required deletion of a proposed 42 inch high masonry wall along the northern property line adjacent to Pacific Coast Highway, but allowed visually permeable fencing to be constructed in its place. Approved plans for the underlying permit indicated that a maximum six foot high, wrought iron fence, with ½ inch pickets spaced 6 inches apart, would be constructed along the northern property line. However, black chain link fencing currently extends along the length of the property, diminishing public views of the ocean across the site. The Commission's enforcement division will evaluate further actions to address this matter.

In addition, archaeological resources are present on the subject site (listed in the State of California Archive as Archaeological Site CA-LAN-803). Artifacts have been found in the proposed area of development.

On December 20, 2002 the applicant submitted an amendment request (4-99-169-A1) for the construction of a 7,200 sq. ft. tennis court in the same location as the proposed tennis court. The permit amendment application was filed on January 19, 2003. The permit application was scheduled as a material amendment for the August 2003 Commission meeting. Commission staff prepared a staff report recommending denial of this proposal because the tennis court as designed would

adversely impact bluewater views of the ocean as seen from Pacific Coast Highway. In addition, based on the information submitted with the amendment application the proposed project did not appear to be consistent with the cultural resource policies of the adopted Malibu LCP. The applicant withdrew this permit amendment application prior to the hearing and submitted the subject amendment request which included a tennis court design with a lower finished pad elevation and lower height of the tennis court fencing. The subject amendment application also included additional information regarding cultural resources on the site.

B. Visual Resources

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

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

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

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

> ***6.1*** ***The Santa Monica Mountains, including the City, contain scenic areas of regional and national importance. The scenic and visual qualities of these areas shall be protected and, where feasible, enhanced.***
>
> ***6.2*** ***Places on and along public roads, trails, parklands, and beaches that offer scenic vistas are considered public viewing areas. Existing public roads where there are views of the ocean and other scenic areas are considered Scenic Roads. Public parklands and riding and hiking trails which contain public viewing areas are shown on the LUP Park Map. The LUP Public Access Map shows public beach parks and other beach areas accessible to the public that serve as public viewing areas.***
>
> ***6.4*** ***Places on, along, within, or visible from scenic roads, trails, beaches, parklands and state waters that offer scenic vistas of the beach and ocean, coastline,***

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

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

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

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

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

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

- *Ensuring visual compatibility with the character of surrounding areas.*
- *Avoiding large cantilevers or understories.*
- *Setting back higher elements of the structure toward the center or uphill portion of the building.*

6.13 New development in areas visible from scenic roads or public viewing areas, shall incorporate colors and exterior materials that are compatible with the

surrounding landscape. The use of highly reflective materials shall be prohibited.

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

6.15 ***Fences, walls, and landscaping shall not block views of scenic areas from scenic roads, parks, beaches, and other public viewing areas.***

6.17 ***Where parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive descend from the roadway, new development shall be sited and designed to preserve bluewater ocean views by:***

- ***Allowing structures to extend no higher than the road grade adjacent to the project site, where feasible.***
- ***Limiting structures to one story in height, if necessary, to ensure bluewater views are maintained over the entire site.***
- ***Setting fences away from the road edge and limiting the height of fences or walls to no higher than adjacent road grade, with the exception of fences that are composed of visually permeable design and materials.***
- ***Using native vegetation types with a maximum growth height and located such that landscaping will not extend above road grade.***

6.18 ***For parcels on the ocean side of and fronting Pacific Coast Highway, Malibu Road, Broad Beach Road, Birdview Avenue, or Cliffside Drive where it is not feasible to design a structure located below road grade, new development shall provide a view corridor on the project site, that meets the following criteria:***

- ***Buildings shall not occupy more than 80 percent maximum of the lineal frontage of the site.***
- ***The remaining 20 percent of lineal frontage shall be maintained as one contiguous view corridor.***
- ***No portion of any structure shall extend into the view corridor.***
- ***Any fencing across the view corridor shall be visually permeable and any landscaping in this area shall include only low-growing species that will not obscure or block bluewater views.***
- ***In the case of development that is proposed to include two or more parcels, a structure may occupy up to 100 percent of the lineal frontage of any parcel(s) provided that the development does not occupy more than 70 percent maximum of the total lineal frontage of the overall project site and that the remaining 30 percent is maintained as one contiguous view corridor.***

The applicants seek approval for construction of a 7,200 sq. ft. unlit tennis court; 240 foot long 1 - 6 foot high retaining wall; 180 foot long 1 - 4 foot high chain link fence surrounding east, west and south perimeter of the tennis court; 640 cu. yds. of

excavation to be exported outside of the coastal zone, and 800 cu. yds. of remedial grading (removal and recompaction).

The project site is located immediately south of Pacific Coast Highway, in the vicinity of Pepperdine University. The subject property is visible from Pacific Coast Highway, a designated Scenic Road. The site conforms to the definition, under Malibu LCP Policy 6.4, of a Scenic Area, in that it is visible from a scenic road that affords scenic vistas of the ocean. Therefore, this site is governed by LCP Policy 6.5, which requires that development minimize adverse impacts on scenic areas that are visible from scenic roads or public viewing areas.

The Malibu LCP requires new development to be sited and designed to minimize adverse impacts on scenic areas, through measures such as siting development in the least visible portion of the site, clustering development, minimizing grading, providing view corridors, and blending structures into their natural settings. The Malibu LCP specifically requires fencing to be sited and designed to minimize visual impacts, through measures such as employing visually permeable design, limiting fence height to no higher than the adjacent road grade, and siting fences away from scenic roads.

Under the underlying coastal development permit the Commission approved a 6,706 sq. ft. 26 foot high main residence, a detached 749 sq. ft. guest unit, a detached 975 sq. ft. 18 foot high garage, swimming pool, septic system and driveway. The subject parcel has 432 feet of lineal frontage along Pacific Coast Highway. The large width of the parcel afforded a large 105 foot view corridor between the main residence and the guest unit/ garage (Exhibit 4). In addition, a 180 foot view corridor was preserved along the western boundary of the site and a 32 foot corridor was retained along the eastern boundary of the parcel. The Commission restricted the height of the residence and guest unit to the 177 foot elevation line which is roughly at the horizon line. To ensure the view corridors were preserved and maintained over the site the Commission required restrictions on landscaping, fencing and prohibited any future subdivision of the property. In addition, the Commission required that all future improvements to the structures or property require an amendment or new coastal development permit to ensure the ocean views across the site would be preserved.

The proposed tennis court is sited between a detached garage, guest unit and the main residence approximately 50 feet south of Pacific Coast Highway (Exhibit 2). The proposed tennis court is within the 105 foot central view corridor on the site. The tennis court will be excavated into the gently descending slope between the existing developed area of the site and Pacific Coast Highway. The court is to be supported on three sides by a retaining wall ranging in height from 1 to 6 feet and a small shallow cut slope just above the wall. The finished pad elevation is at 169 foot elevation which is below the grade of Pacific Coast Highway which is at elevation 175. The road shoulder fronting the property ascends up a small berm to an elevation of 177 and then descends downslope at a relatively gentle slope where the

tennis court is proposed. Excavating the tennis court into the slope at the proposed elevation brings the pad down to an elevation where the court will not interrupt views through the central view corridor (Exhibit 3). A four foot high chain link fence is proposed at the southern edge of the court and a 1 - 4 foot fence is proposed along the eastern and western ends of the court. The fence on the eastern and western ends of the court will extend from the southern edge of the court to a point where the wall tapers to 4 feet in height (Exhibit 5). This point is approximately the halfway point on the eastern and western retaining wall. The proposed fence will not extend into or disrupt bluewater views as seen from Pacific Coast Highway.

The applicant's originally applied under 5-99-169-A1 for a tennis court at elevation 171 with a six to twelve foot high fence around the court. Staff prepared a staff report recommending denial of the tennis court on the basis the court would obscure and adversely impact bluewater views of the ocean as seen from Pacific Coast Highway. The applicant withdrew that amendment application and resubmitted the subject amendment for a redesigned project which eliminates the adverse view impacts. The applicant has revised the tennis court plan several times in response to staff concerns regarding the visibility of the tennis court from Pacific Coast Highway. The applicant has lower the finished pad elevation from elevation 171 to 169 and has eliminated the high fencing around the court. The six foot high retaining walls on the northern and eastern side of the court and small four foot high chain link fence on the southern side of the court will serve to contain tennis balls. Staff required the applicant to stake the site to demonstrate the court would not obscure any bluewater views as seen from Pacific Coast Highway. Directly in front of the property the tennis court will not be visible at all from Pacific Coast Highway. The court will be visible looking across the property at an angle from the east and west property but will not intrude into the bluewater view.

The proposed 940 cubic yards of excavation into the gently sloping hillside and the proposed 1 – 6 foot high retaining walls will not result in a significant amount of landform alteration. In addition, because the excavated area and retaining walls are well below the grade of Pacific Coast Highway the change to the topography will not be apparent to persons passing by in a vehicle.

The proposed tennis court is sited and designed to not obscure bluewater views as seen from Pacific Coast Highway and is consistent with the visual resource policies of the Malibu LCP. To ensure night lighting of the court will not adversely impact the rural character of the area or adversely impact sensitive nocturnal animal species the applicant has proposed not to light the court. In order to implement the applicant's offer not to light the tennis court the Commission finds **Special Condition 11** is necessary. Special condition 11 prohibits both temporary and permanent lighting of the tennis court. In addition, to ensure no new fencing is added to the retaining wall on the northern edge of the tennis court and ensure the permitted fencing height is not increase on the eastern, western and southern ends of the tennis court over what is permitted pursuant to this permit amendment, as shown on Exhibit 5, the Commission finds **Special Condition 12** is necessary.

Special Condition 12 prohibits any new or increased fencing over what is permitted under this permit amendment to ensure blue water views over the site are not adversely impacted by new or fencing surrounding the tennis court. Future repairs and maintenance of the permitted fencing is permitted.

Finally, **Special Condition No. 14** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit amendment as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Based on the above findings and as condition above, the Commission finds that the proposed to be amendment, is consistent with the visual resource policies and development standards of the City of Malibu LCP.

C. Archaeological Resources

The Malibu LCP provides for the protection of archaeological, historical, and paleontological resources. The Malibu LCP requires new development to avoid and minimize impacts to these resources, and requires mitigation measures be implemented when such impacts cannot be avoided.

Section 30244 of the Coastal Act, which is incorporated as part of the Malibu LCP, states:

> ***Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.***

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

> ***5.60 New development shall protect and preserve archaeological, historical and paleontological resources from destruction, and shall avoid and minimize impacts to such resources.***
>
> ***5.61 Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.***
>
> ***5.63 Coastal Development Permits for new development within archaeologically sensitive areas shall be conditioned upon the implementation of the appropriate mitigation measures.***
>
> ***5.64 New development on sites identified as archaeologically sensitive shall include on-site monitoring of all grading, excavation and site preparation that involve earth moving operations by a qualified archaeologist(s) and appropriate Native American consultant(s).***

The City of Malibu Local Implementation Plan Policy 2.4. defines Important Cultural Resource as :

1. **Has a special quality such as oldest, best example, largest, or last surviving example of its kind; or**

2. **Is at least 100 years old; or**

3. **Significant to Chumash prehistory or history;**

4. **Contains burial or other significant artifacts;**

5. **Is an archeologically undisturbed site;**

6. **Has important archeological significance;**

7. **Relates to significant events or persons;**

8. **Listed on Cultural Resources Sensitivity Map;**

9. **Of specific local importance;**

10. **Contains traditional sacred ground (including traditional ceremonial material gathering site);**

11. **Contains burials;**

12. **Contains sacred and/or significant artifacts**

The Malibu LIP requires that where important cultural resources may be adversely impacted a Phase III mitigation program shall be required.

11.3(G) Phase II Mitigation Programs

1. **Applicability. Where, as a result of the Phase II Evaluation the Planning Director determines that the project may adversely affect important cultural resources, a Phase III Mitigation Program shall be required. All Phase III Mitigation Programs shall be conducted by a qualified archaeologist and, where the Phase II Evaluation indicates the presence of important prehistoric cultural resources or ethnohistoric Chumash cultural resources, the evaluation shall also be conducted in consultation with a qualified Chumash cultural resource monitor.**

2. **Purpose. Phase III Mitigation Programs are intended to mitigate adverse impacts upon important cultural resources. These programs shall be designed on a project-specific basis to meet the particular needs of each project and shall be guided by a research design/work plan that clearly articulates the scope of mitigation based on the recommendations developed in the prior Phase II Evaluation of the affected site.**

3. **Cultural Resource Impact Mitigation. Measures to mitigate potential impacts may include, but shall not be limited to, the following:**

    a. **In-situ preservation of the important cultural resource site (This is the preferred mitigation measure where feasible).**

    b. **Avoiding damage to the important cultural resource site through the following approaches:**

i. Planning construction to miss important cultural resource sites.

ii. Planning parks or other open space to incorporate important cultural resource sites.

iii. "Capping" or covering important cultural resource sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be utilized if all the following conditions are satisfied:

(a) The soils to be covered will not suffer serious compaction;

(b) The covering materials are not chemically active;

(c) The site is one in which the natural processes of deterioration have been effectively arrested; and

(d) The site has been recorded.

iv. Deeding important cultural resource sites into permanent conservation easements.

v. Scientific data recovery of an appropriate sample of the important cultural resource(s) via surface collection and archaeological excavation as provided for under this Section, where in-situ preservation is not feasible.

The applicants seek approval for construction of a 7,200 sq. ft. unlit tennis court; maximum six foot high, approximately 240 foot long 1-6 foot high retaining wall; 120 foot long 1 - 4 foot high chain link fence along the southern, eastern and western edges of the court, 940 cu. yds. of excavation to be exported outside of the coastal zone, and 800 cu. yds. of remedial grading (removal and recompaction).

The project site is located immediately south of Pacific Coast Highway in central Malibu, in a region of the Santa Monica Mountains that contains one of the most significant concentrations of archaeological sites in southern California. A portion of Archaeological Site CA-LAN-803, as listed in the State of California Archives, is located on the subject site. The recorded map of CA-LAN-803 indicates that the archaeological site extends over almost the entire subject site, including the proposed location for the tennis court.

The Coastal Act requires that where new development would adversely archeological resources reasonable mitigation measures shall be required. The Malibu LCP requires that new development shall protect and preserve archaeological resources from destruction and shall avoid and minimize impacts to such resources. The LCP also requires that where new development is proposed within archaeologically sensitive areas appropriate mitigation measures shall be required. Finally, the LCP requires that sites identified as archeologically sensitive shall include on-site monitoring of all grading, excavation, and site preparation by a qualified archeologist.

As mentioned above, the subject site is a recognized as an archeological site listed at the State Of California Archive as site CA-LAN-803. The City of Malibu

determined that based on Phase I and Phase II archaeological studies conducted on the site determined the site could contain important archaeological resources that could be adversely impacted by construction the residential project. The Phase I study involved the review of relevant documents and a field survey of the project site to verify the presence and condition of the previously recorded cultural resources and to identify previously unrecorded resources. Based on the initial Phase I study the City of Malibu required the applicant to perform a Phase II study.

The applicant's consulting archeologist, Dr Gary Stickel, conducted a Phase II archeological study on the subject site. A Phase II study consists of a field investigation to 1) define he scope of the cultural resources in question (e.g. site depth and variation of artifacts, 2) determine the significance of the cultural resources according to CEQA guidelines and 3) make appropriate recommendations for a Phase III mitigation program for the cultural resources identified on the site. The Phase II study included 31 shovel test pits across the site, and four shovel test pits, two of which were located on the tennis court site and two shovel test pits were dug within 35 feet of the tennis court. The Phase II study resulted in only a few formal tools recovered with the vast majority of the data was limited to waste flaked material (debitage).

The City of Malibu determined that a Phase III mitigation program was necessary in this case. The Phase III mitigation program involved the excavation of two 1x1 meter units in the garage area and the complete surface collection of formal tools and cores from the site surface. Based on the data collected from the Phase II and III studies Dr. Stickle concluded, that CA-LAN-803 is not highly significant (i.e. it lacks major habitation indicators, lacks burials and/or cemeteries, lacks religious site date, and lacks other unique data that would make it a highly significant site). The subject site has been historically disked over the years which has scattered surface and some subsurface artifacts across the site. The artifacts that were recovered on the site include manos, core/cobble complex tools, small number of flaked stone tools and lithic waste or debetage. These artifacts in combination with the lack of organic midden, no recognizable intact features, no significant quantities of fire affected rocks, no shell beads or ornaments which are common at many other village sites in the Malibu area would suggest this site was not a habitation site. Based on the Phase II and III studies conducted on the site Dr. Stickle concluded the site is a most likely a lithic workshop and plant processing area and not a human settlement site.

The Phase III mitigation program was completed for the previously approved project which consisted of the residence, detached guest unit, detached garage, driveway and septic system. The applicant is now proposing a 7,200 square foot tennis court on the subject site. The question in this case is whether the addition of the tennis court on this site would adversely impact any historically significant cultural resources which would be inconsistent with the cultural resource policies of the Malibu LUP.

The applicants have submitted a letter from Dr. Stickel, dated February 21, 2003, regarding the proposed tennis court site. Dr. Stickel states:

> ***The proposed tennis court area is between the existing guest house, garage and Pacific Coast Highway. That area was extensively sampled by our authoritative program. It was found to be the least sensitive of any area within the parcel regarding cultural resources. I have reviewed the proposed development (the tennis court and its associated grading and construction work) and I have concluded that it will not impact significant cultural resources.***

In addition, the applicant has submitted a memorandum from Dr. Stickle to the applicant's project manager, dated May 15, 2001, (Exhibit 10) regarding "The Final Report on the Cultural Resources Monitoring of the grading/construction work on the parcel owned Dr. and Mrs. Trento located at 25126 Pacific Coast Highway, City of Malibu". This memorandum relates to the monitoring of grading and construction work permitted under coastal development permit 4-99-169. This memorandum states in part that:

> ***All areas of the construction were monitored including the main house pad the main house pad garage, the swimming pool area, the long driveway and car turnaround area, the guest house pad and the guest house garage area. Although waste flakes and some artifact tool fragments were observed during that monitoring, none were unique nor were any features (e.g. a fire pit) or human burial remains observed that would have caused a work stoppage until those cultural resources could have been properly addressed. Indeed, the data that were observed were completely consistent with the sample of data that was obtained via the extensive Phase 2 and 3 excavations on the site.***

There has been some debate as to the archeological significance of the CA-LAN-803. Dr. Chester King, Topanga Anthropological Consultants, submitted a letter dated July 29, 2003 in response to the staff report prepared for the previous amendment submittal (4-99-169-A1) for the construction of a tennis court (Exhibit 6). He contends in this letter that the archeological data recovered on the site demonstrates that this site could have been a human settlement site that may contain a cemetery.

Given there is some debate as to the archeological significance of this site, Commission staff suggested the applicant have a qualified third party review of Dr. Stickle's studies and Dr. King's letter concerning the archeological site. The applicant retained two archeologists, Robert Wlodarski and Dr. David Wheatly, to review Dr. Stickles archeological studies and conclusions regarding the significance of this site and in particular the area where the tennis court is proposed. In addition, the Dr. Wheatly specifically responded to Dr. Kings contention that site could be a settlement site with possible burial sites.

In a letter report dated September 11, 2003 Robert Wlodarski concurs with Dr Stickles conclusion regarding the significance of the archeological site in question and appropriate mitigation measures (Exhibit 8). Mr. Wlodarski states:

> ***The nature and extent of prior work by Dr. Stickel at the archeological site within the area of the proposed tennis court, appears sufficient to warrant monitoring as a suitable means of mitigating additional development performed on the Trento property. The question of site significance was adequately addressed by Stickel during his Phase II and Phase II studies of the subject property, pertaining to prior development on the lot. The fact the that the research design and mitigation strategy leading to this point were developed by Stickle and the City of Malibu, and approved by all parties, suggests that all appropriate steps were taken to ensure that assessment of the research potential of CA-LAN-803 was sufficient under CEQA. Also, comments by the Native American Heritage Commission (NAHC) and the Sate Office of Historic Preservation (OPH) concurred with Stickel's findings and mitigation approach which focused on monitoring. Furthermore, a final mitigation measure advanced by Stickle and approved by the City of Malibu for the remaining development of the Trento property, that is monitoring by a qualified archaeologist and Native American, seems adequate and is generally the norm under similar circumstances.***
>
> ***Given the nature and extent of prior testing (Phase I and Phase III) in the area of the proposed tennis court, the bulk of the encountered artifacts were surface in nature and mitigation including shovel test pits and surface collection of the archaeological materials. A majority of the artifacts encountered in the area of the proposed tennis court were core tools and groundstone. Subsurface testing yielded only minor amounts of debitage, suggesting that the archaeological site within the area of the proposed tennis court, was minimal in nature when compared to the surrounding area. Therefore, in opinion of this author, the construction of the proposed tennis court on the Trento property should be permitted, provided that a qualified archaeologist and Native American be on site during grading.***

Dr David Wheatly submitted a report dated September 15, 2003 which reviews Dr Stickles previous studies and Dr. King's contention that the site may have been a habitation site and contain burial sites (Exhibit 7). Dr. Wheatly states:

> ***That the positive and negative evidence strongly supports the conclusion that CA-LAN-803 did not function as a habitation site, which is to say a village or camp. Were such to have been the case, midden soils, significant quantities of fire affected rock, shell beads and ornaments, and dietary remains would be present, potentially along with intact features such as hearths, burials and housefloors. The site instead appears to have served as an area used for casual and sporadic stone tool manufacture and maintenance, accompanied by plant processing activities.***
>
> ***I therefore concur with Stickel concerning the function of the site; i.e., as a lithic workshop and plant processing area. Furthermore, there is no plausible***

empirical evidence supporting King's contention that this site is a habitation area and, for this reason, that it might contain burials.

....

This Phase II data recovery was completed by Dr. Stickel in 1999. It is my professional opinion that his work on the site resulted in adequate and complete mitigation of adverse impacts to site CA-LAN-803. I therefore see no regulatory nor archeological justification for denying construction of the tennis court, nor any need for additional archaeological work on the property. Following accepted archaeological practice, however, I recommend that an archaeological monitor be present during topsoil grading.

The applicant's consulting Native American monitor, Carol Pulido, has also submitted a letter indicating she has inspected the site of the proposed tennis court and believes that the site has been satisfactorily investigated (Exhibit 9). She states " I therefore have no objection to their proceeding with this project, and I plan to carry out my duties as a Native American monitor on this project with the same professionalism as before".

Although artifacts have been found on the site, the nature and type of artifacts found on the site, indicate the site was most likely used for casual and sporadic stone tool manufacture and maintenance, accompanied by plant processing activities and not for habitation. Based on the Dr. Stickles Phase II, Phase III studies, and the post monitoring memorandum, as well as the two third party review reports of Dr. Stickles studies, the Commission finds that based on this evidence, the proposed tennis court site is not a unique or highly significant archaeological site that would warrant denial of the proposed project. Nonetheless, Dr. Stickle indicates this archaeological site has yielded good data that has indicated the type of site and site activities represented. In addition, both of the third party consultants recommend monitoring of the tennis court site during grading operations to ensure potentially significant archaeological resources that could be discovered are not destroyed and that any artifacts found are properly collected and curated.

The underlying permit required a monitoring of all excavation and grading operations by a qualified archaeologist and Native American monitor. This condition required that the site be monitored by the archaeologist with the purpose of locating, recording and collecting any archaeological materials. However, the condition did not specifically address the discovery of burial sites or require that any artifacts found during monitoring be curated at a museum or other appropriate archive. Therefore, the Commission finds that a revised archaeological condition (Special Condition 4) is necessary in this case which requires the archaeologist and Native American monitor to archive or curate any artifacts found during monitoring. The condition also requires that if any significant archaeological resources are discover, such as discovery of burial sites, habitation indicators, religious sites or other unique archaeological resources, work in the this area must halt and an appropriate data recovery strategy be developed by the archeologist. This data recovery strategy or

strategy to address burial sites must be developed in consultation with the City of Malibu Native American Cultural Resources Advisory Committee, City Native American Cultural Resource Manager and the Most Likely Descendent and subject to the review and approval of the Executive Director.

A significant portion of the subject property will remain undeveloped and the remaining portions of the archaeological site undisturbed. Approximately 80 percent of the property will remain undeveloped. The Commission recently approved a revised residential development plan (4-98-143-A1) on a parcel located at 24920 Pacific Coast Highway which is several lots east of the subject parcel. This property is located on archaeological site CA-LAN-19. In the approval of this coastal development permit amendment 4-98-143-A1 the Commission permitted a revised development plan that occupied approximately 58 percent of the site. The remaining 42 percent of the site was preserved. In the case of the subject permit amendment approximately 80 percent of the site will remain undeveloped and remaining archaeological site undisturbed.

Finally, **Special Condition No. 14** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit amendment as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Based on the findings cites above, and subject to the special conditioned outlined above the Commission concludes that the proposed amendment will not adversely impact cultural resources and is consistent with the provisions of the City of Malibu Local Coastal Program.

D. Geology

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

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

Section 30253 of the Coastal Act, which is incorporated as part of the Malibu LCP, states in pertinent part that new development shall:

> ***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

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

3.119 New development that requires a grading permit or Local SWPPP shall include landscaping and re-vegetation of graded or disturbed areas, consistent with Policy 3.50. Any landscaping that is required to control erosion shall use native or drought-tolerant non-invasive plants to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.

4.2 All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.

4.5 Applications for new development, where applicable, shall include a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. Such reports shall be signed by a licensed Certified Engineering Geologist (CEG) or Geotechnical Engineer (GE) and subject to review and approval by the City Geologist.

4.10 New development shall provide adequate drainage and erosion control facilities that convey site drainage in a non-erosive manner in order to minimize hazards resulting from increased runoff, erosion and other hydrologic impacts to streams.

4.45 New development shall minimize risks to life and property from fire hazard through:

- *Assessing site-specific characteristics such as topography, slope, vegetation type, wind patterns etc.;*
- *Siting and designing development to avoid hazardous locations;*
- *Incorporation of fuel modification and brush clearance techniques in accordance with applicable fire safety requirements and carried out in a manner which reduces impacts to environmentally sensitive habitat to the maximum feasible extent;*
- *Use of appropriate building materials and design features to insure the minimum amount of required fuel modification;*
- *Use of fire-retardant, native plant species in landscaping.*

4.49 Applications for new development, which require fuel modification, shall include a fuel modification plan for the project, prepared by a landscape architect or resource specialist that incorporates measures to minimize removal of native vegetation and to minimize impacts to ESHA, while providing for fire safety, consistent with the requirements of the applicable fire safety regulations. Such plans shall be reviewed and approved by the Forestry Division.

6.29 ***Cut and fill slopes and other areas disturbed by construction activities shall be landscaped or revegetated at the completion of grading. Landscape plans shall provide that:***

- ***Plantings shall be of native, drought-tolerant plant species, and blend with the existing natural vegetation and natural habitats on the site, except as noted below.***
- ***Invasive plant species that tend to supplant native species and natural habitats shall be prohibited.***
- ***Non-invasive ornamental plants and lawn may be permitted in combination with native, drought-tolerant species within the irrigated zone(s) required for fuel modification nearest approved residential structures.***
- ***Lawn shall not be located on any geologically sensitive area such as coastal blufftop.***
- ***Landscaping or revegetation shall provide 90 percent coverage within five years. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.***

The proposed tennis court site is located on a gently slope hillside descending from Pacific Coast Highway. The Malibu LCP requires that new development be sited and designed to minimize risks to life and property from geologic, flood, and fire hazard. In addition, the LCP requires a geologic/soils/geotechnical study that identifies any geologic hazards affecting the proposed project site, any necessary mitigation measures, and contains a statement that the project site is suitable for the proposed development and that the development will be safe from geologic hazard. The Geologic Report and Engineering Investigation, dated October 22, 2002, prepared by GeoConcepts, Inc., states:

> ***Based upon the results of this investigation and a through review of the proposed development, as discussed, the project is suitable for the intended use providing the following recommendations are incorporated into the design and subsequent construction of the project. Also, the development must be performed in an acceptable manner conforming to building code requirements of the controlling governing agency.***

As such, the Commission notes that the proposed project will serve to ensure general geologic and structural integrity on site. However, the Commission also notes that the Geologic and Soils Engineering Investigation includes a number of recommendations to ensure the geologic stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into all new development, **Special Condition No. 13** requires the applicant to submit project plans certified by the consulting geologist and geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional recommendations by the consulting geologist and geotechnical engineer to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, sewage disposal and drainage. Any substantial changes to

the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

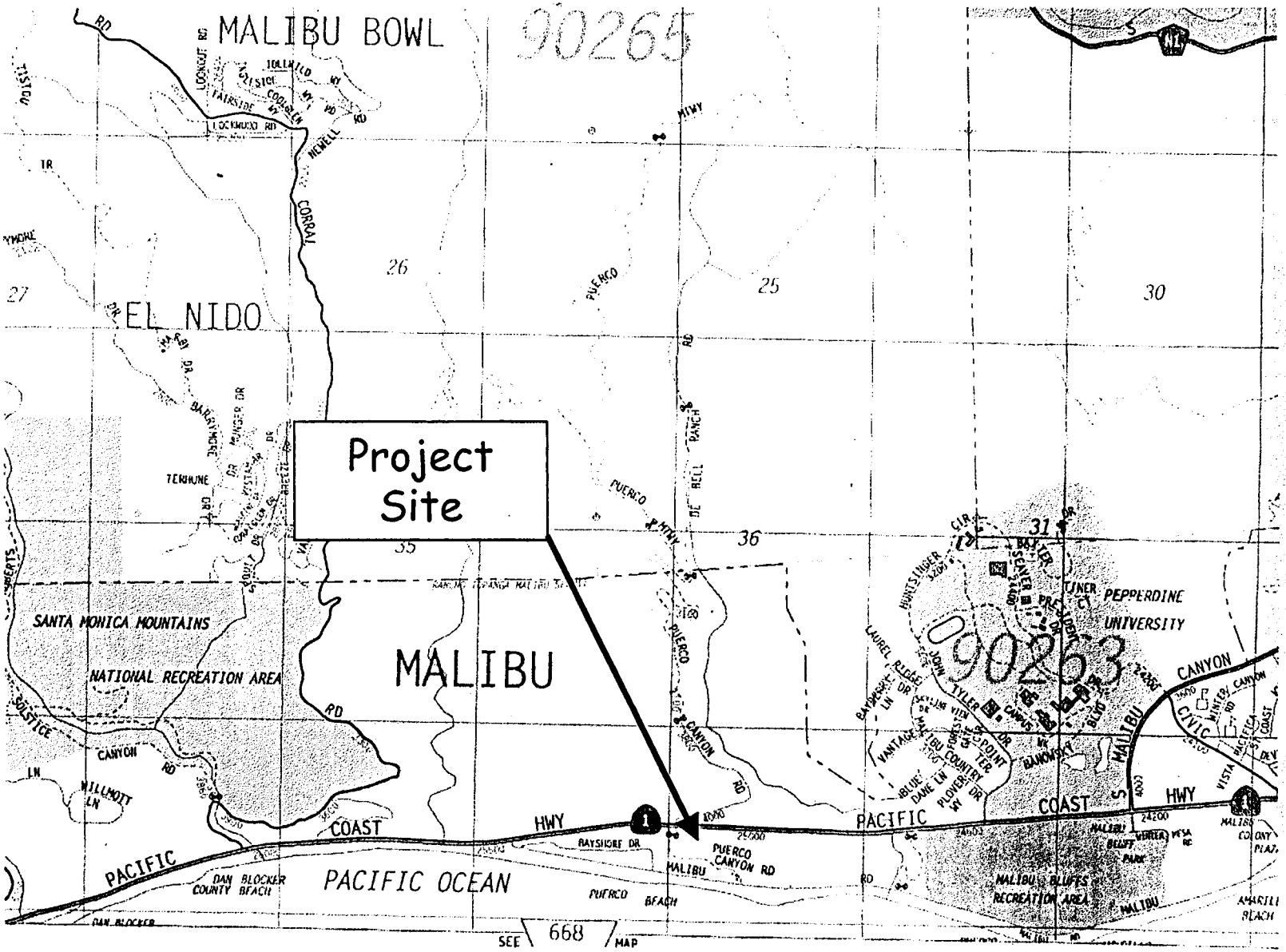
Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with the applicable policies of the Malibu LCP.

D. California Environmental Quality Act

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

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

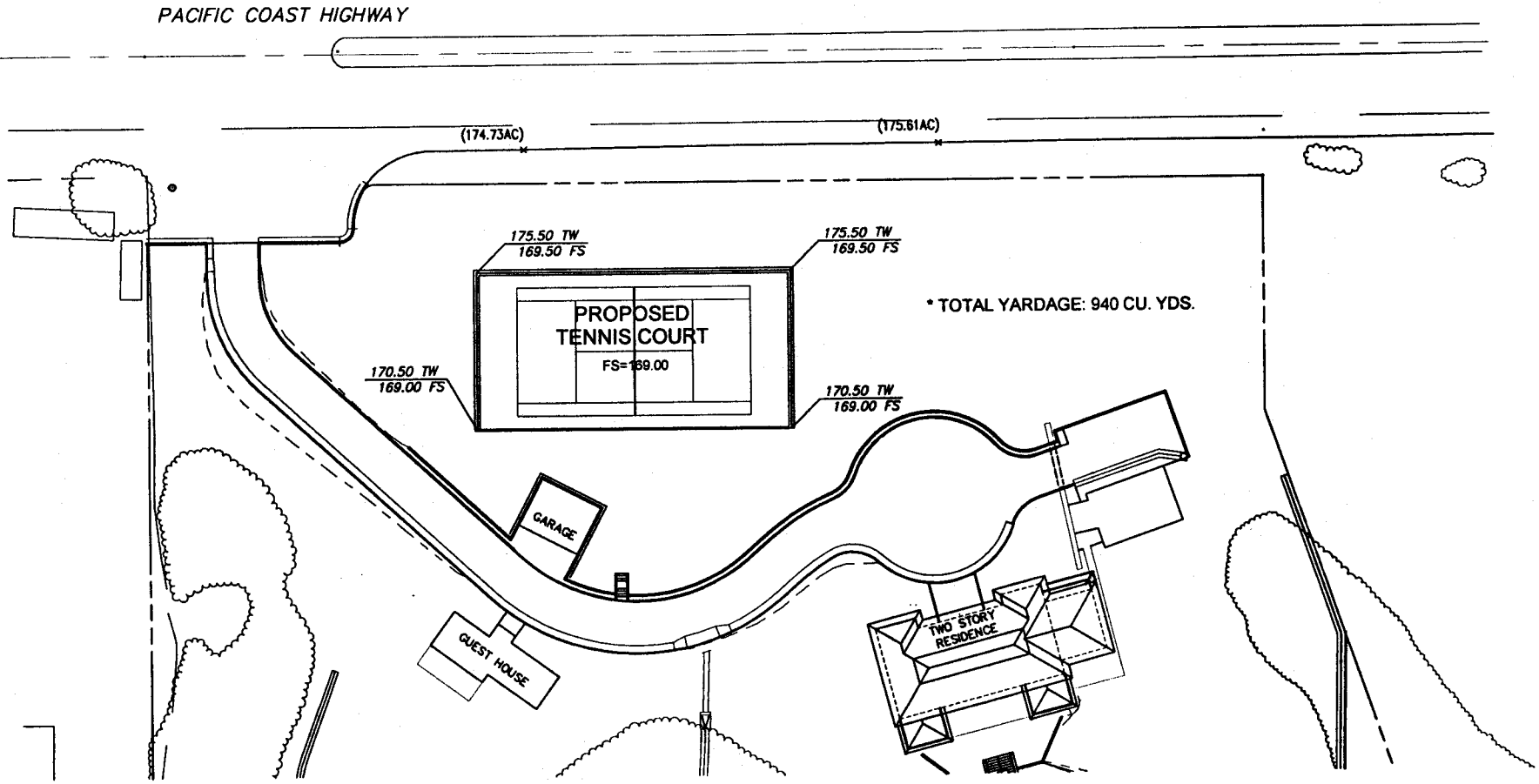
Exhibit 1
CDP 4-99-169-A2
Location Map



Trento Proposed Tennis Court

Malibu, California

Exhibit 2
CDP 4-99-169-A2
Site Plan



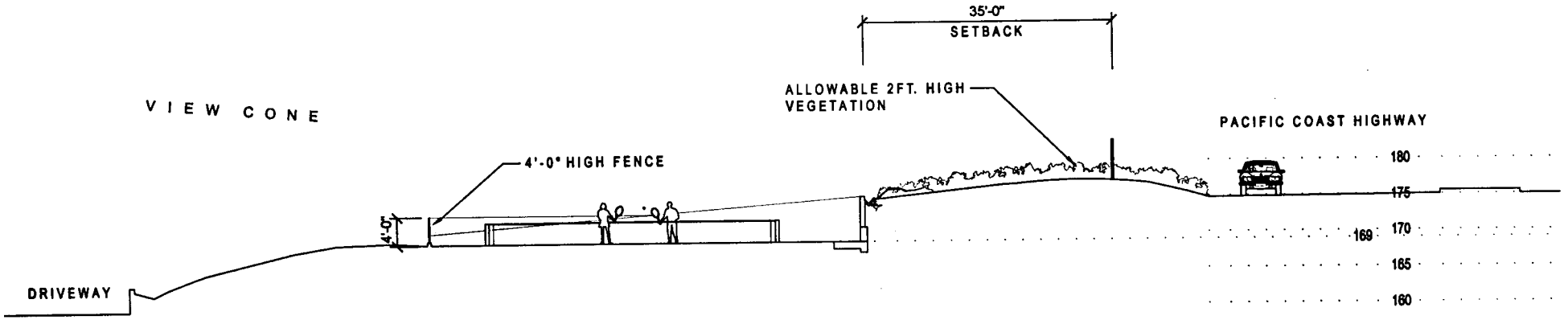
Site Plan

Scale = 1:60

Exhibit 3
CDP 4-99-169-A2
Cross Section

Trento Proposed Tennis Court

Malibu, California

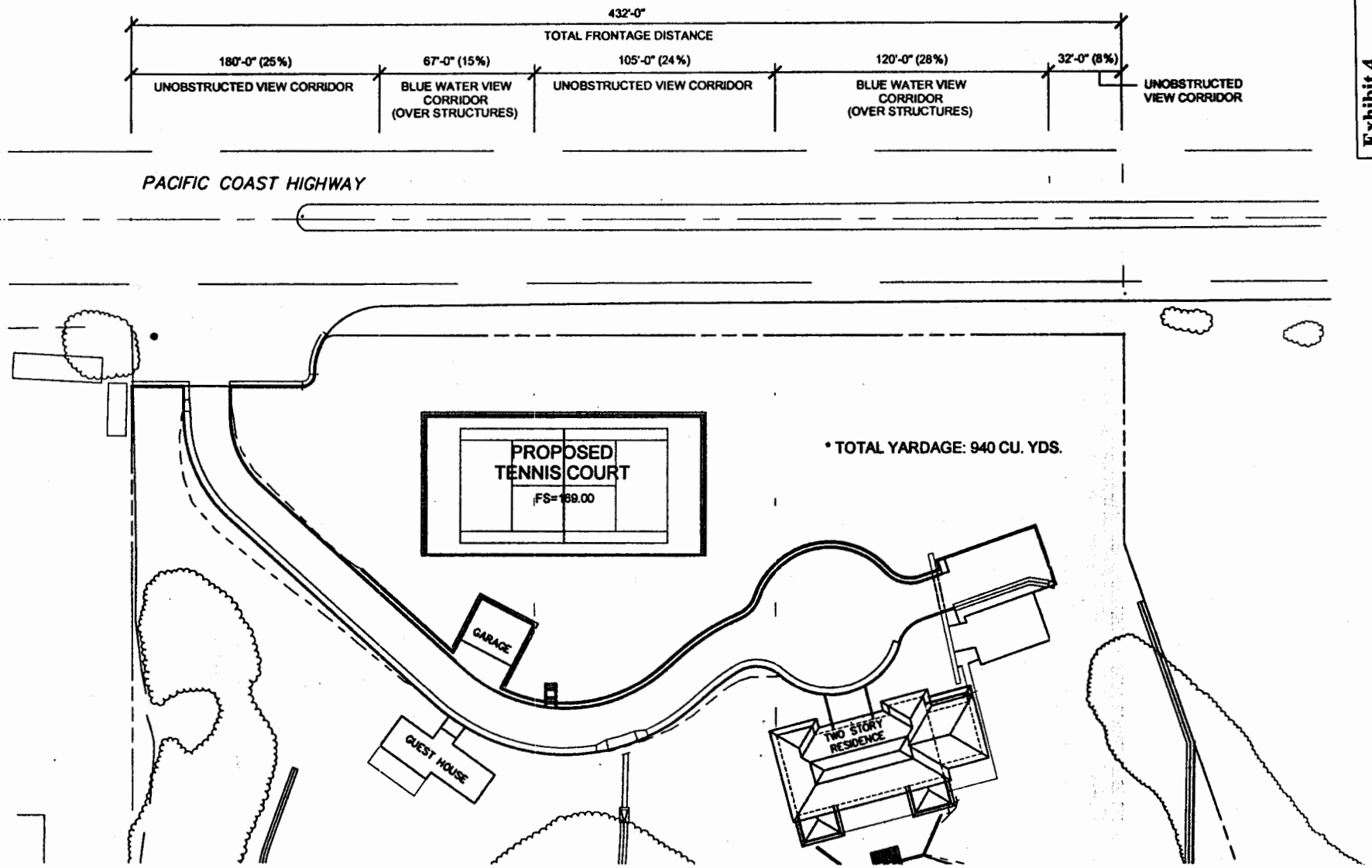


View Corridor Study

Exhibit 4
CDP 4-99-169-A2
View Corridors On Site

Trento Proposed Tennis Court

Malibu, California

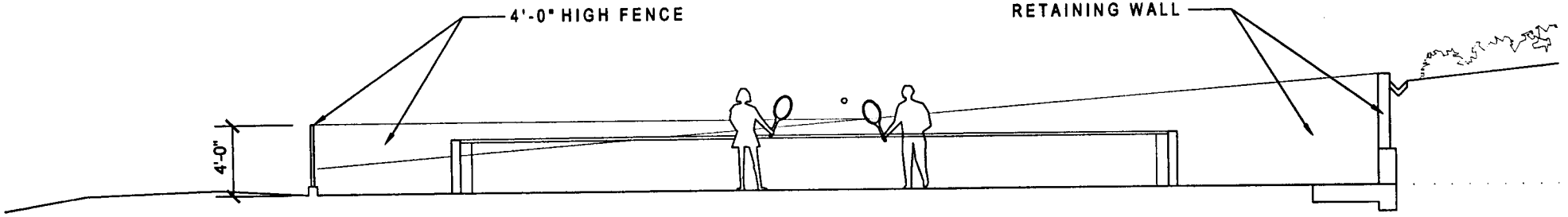


View Corridor Study

Exhibit 5
CDP 4-99-169-A2
Fencing Cross Section

Trento Proposed Tennis Court

Malibu, California



Fence Study

Scale : 1/8"=1'-0"

Topanga Anthropological Consultants
P.O. Box 826
Topanga, California 90290
(310) 455-2981

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

July 29, 2003

Comments Concerning Cultural Resources at 25126 Pacific Coast Highway, Application No.: 4-99-169-A1.

by Chester King, Topanga Anthropological Consultants

I am a professional archaeologist, and I specialize in the study of the prehistory of California. I have served as President and Vice-president of the Society of California Archaeology. I have written two chapters in the Handbook of North American Indians volume on California produced by the Smithsonian Institution. My dissertation was selected for publication in a series of 31 outstanding dissertations concerning the archaeology of North American Indians. My writings are frequently referenced and I am recognized as a leading specialist in the field of California Archaeology and Ethnohistory. I have continually studied California Indian sites since 1960. I have conducted a great deal of archaeological research in the Santa Monica Mountains (King 2000). I have concentrated on obtaining knowledge of the distribution of settlements and relationships between them from historic documents. I have reviewed the previous project at the project site as City Archaeologist for Malibu and later as a concerned citizen. I submitted letters and documents concerning the site, LAN-803 to the Coastal Commission when the previous project was reviewed.

While working as Malibu City Archaeologist, I mapped the surface distribution of over 700 artifacts at archaeological site LAN-803 in the project area. While mapping the site I observed that different types of artifacts were concentrated in different areas of the site. Michael Merrill took on the task of mathematically analyzing the distribution of artifacts at the site. He discovered that there were significant differences in grouping of artifacts at the site. Our studies of the LAN-803 site demonstrated that mapped surface artifacts could be studied to discover the organization of Early period archaeological sites. In 2002, Michael Merrill continued his study of the LAN-803 site and conducted an analysis to document the organization of Early Period sites for a review of the Ahmanson Ranch project in southeastern Ventura County. A copy of his study is attached. Mathematical methods were used to study the distribution of mapped surface artifacts. They were applied as exploratory tools to discover non random intrasite spatial patterning and to infer sets of tools used collectively as "kits" in areas of organized human activity within the sites. The analysis concluded that the organization of the Laskey Mesa sites is similar to the organization of LAN-803. The analysis indicates the sites are the remains of early settlements. The applicant's archaeologists have not presented analysis of the information that they gathered that indicates the sites are not the remains of settlements (King and Merrill 2002).

At similar settlements, cemetery areas have been discovered above and behind houses. Tennis court construction would destroy a cemetery area if it is present. An adequate testing program should be conducted prior to approval of tennis court construction. The testing program should determine the activities conducted in the area. The determination should be based on analysis of data and not based on affirmation. The program should be adequate to determine if a cemetery is present. The program should follow the Local Coastal Plan. The plan states:

> In each phase of the Cultural Resource Review required under Sections 11.3 (A), (B), (C), (D), (E), (F), (G), and (H), the Planning Director shall consult verbally and in writing with the Native American Heritage Commission (NAHC), State Historic Preservation Officer (SHPO), the City Native American Cultural Resources Advisory Committee (NACRAC), the City Native American Cultural Resource Manager (NACRM), and the Most Likely Descendent (MLD). In addition: (a) in each phase that requires the selection of an archaeologist, the archaeologist shall be selected

Exhibit 6
CDP 4-99-169-A2
Letter From Dr. King Opposing the Development

from a list acceptable to the NAHC, NACRAC, NACRM, and MLD; (b) in each phase that requires the selection of a monitor, the selection of that monitor shall be made in written and verbal consultation with the NACRAC, NACRM, MLD, and NAHC. Comments received shall be considered in the review of coastal development permits for new development.

I recommend denial of the project, If the project is approved the area should be studied to recover most significant historic information that will be destroyed. The study should be adequate to assure the Coastal Commission that cemeteries will not be destroyed. Input from all archaeologists that conduct research in the area should be considered when designing the research program .

References

Gamble, Lynn H. and Chester King

1997 Chapter 5: Middle Holocene Adaptations in the Santa Monica Mountains. In *Archaeology of the California Coast During the Middle Holocene*. Edited by Jon Erlandson and Michael Glassow. Perspectives in California Archaeology, Volume 4, Institute of Archaeology, University of California, Los Angeles.

King, Chester

1990 *Evolution of Chumash Society: A Comparative Study of Artifacts Used in Social System Maintenance in the Santa Barbara Channel Region Before A.D. 1804.* Revised Ph.D. dissertation, with a new preface and updated bibliography. In The Evolution of North American Indians, a 31-Volume series of outstanding dissertations edited by David Hurst Thomas and published by Garland Publishing, New York.

2000 *Native American Indian Cultural Sites in the Santa Monica Mountains* prepared for the SMMNRA.

2001 Early Southern California. In, *Encyclopedia of Prehistory Volume 6: North America* edited by Peter Peregrine and Melvin Ember pp. 144- 157. Published in conjunction with the Human Area Relation Files at Yale University. Kluer Academic/ Plenum Press.

Merrill, Michael

2002 A Spatial Analysis of Mapped Surface Artifacts in Several Early Period Sites in Los Angeles and Ventura Counties. Prepared for City of Calabasas, April 28, 2002

Sincerely,

Chester King Ph.D..

EXHIBIT 6 CONT.

W and S CONSULTANTS / cultural resources management studies

15 September 2003

Dr. Alfredo Trento
25126 Pacific Coast Highway
Malibu, CA 90265

RE: Review of archaeological documents, Application No. 4-99-169-A1

Dear Dr. Trento:

At your request I have reviewed documents and materials related to archaeological concerns with respect to Application No. 4-99-169-A1 involving the proposed construction of a tennis court at 25126 Pacific Coast Highway, Malibu. These materials specifically are "A Phase III (Mitigation) Program for Archaeological Site CA-LAN-803 at 25126 Pacific Coast Highway, Malibu, California," authored by Dr. E. Gary Stickel and dated October 1999; and the California Coastal Commission "Staff Report: Permit Amendment, Application No. 4-99-169-A1," dated 19 January 2003. Included in both documents are summaries of statements and assertions made by Dr. Chester King concerning this archaeological site.

I have appended my personal curriculum vitae and statement of qualifications to this letter, but let me note at the outset that I received a Ph.D. with a specialty in California prehistory from UCLA in 1982 and was formerly Chief Archaeologist for the UCLA Institute of Archaeology. I currently am owner of W&S Consultants. I also serve as Adjunct Professor at Arizona State University; am Director for the International Council of Monuments and Sites (ICOMOS) Rock Art Committee; and serve on the International Research Advisory Committee for the French Ministry of Culture's Chauvet Cave project. I have published 12 books and monographs and written over 70 journal articles and book chapters. I was elected a Fellow of the American Anthropological Association in 1993 and was awarded the Thomas F. King Award for Excellence in Cultural Resource Management by the Society for California Archaeology in 2001. Furthermore, my firm has received Special Appreciation Awards from the Candelaria Tribal Council, California Indian Council - Chumash (twice) and the Simi Valley Historical Society. And I have conducted archaeological work in Malibu since 1975, including Phase II test excavations and Phase III data recoveries (salvage excavations) at site CA-LAN-19 on the Malibu Jewish Center and the Campbell property (24734 Pacific Coast Highway). This site and these properties are adjacent to your home at 25126 Pacific Coast Highway, thereby providing me with direct and detailed knowledge of the archaeological resources in this specific portion of Malibu.

2242 stinson street • simi valley, california 93065 • 805-581-3577

Exhibit 7
CDP 4-99-169-A2
Archaeological Review Report from Dr. Wheatly

The following comments are based on my review of the relevant documents combined with my past experience in this immediate area.

Function of site CA-LAN-803

Artifactual evidence was obtained from the surface mapping of the site conducted by Dr. King, and the test and salvage excavations and surface collection completed by Dr. Stickel. These studies reveal a site assemblage comprised almost entirely by manos, core/cobble complex tools (e.g., choppers), a small number of flaked stone tools (e.g., projectile points), and lithic waste or debitage. With the exception of a small surface concentration of Pismo clam shell fragments, which may be modern, the site essentially lacks faunal or other shellfish remains. Furthermore, no organic midden is evident at the site, nor are recognizable intact features present, nor are significant quantities of fire affected rocks, which would be produced by campfires and the stone-boiling cooking technique used prehistorically in this region. Nor, noticeably, are shell beads or ornaments present, despite the fact that these are common at many village sites in the Malibu area.

The positive and negative evidence strongly supports the conclusion that CA-LAN-803 did not function as a habitation site, which is to say a village or camp. Were such to have been the case, midden soils, significant quantities of fire affected rock, shell beads and ornaments, and dietary remains would be present, potentially along with intact features such as hearths, burials and housefloors. The site instead appears to have served as an area used for casual and sporadic stone tool manufacture and maintenance, accompanied by plant processing activities.

I therefore concur with Stickel concerning the function of this site; i.e., as a lithic workshop and plant processing area. Furthermore, there is no plausible empirical evidence supporting King's contention that this site is a habitation area and, for this reason, that it might contain burials.

Age of site CA-LAN-803

King has asserted, on intuitive grounds, that the site dates to the Early Horizon and therefore is greater than 3000 years old. Stickel has deferred final judgment on the age of the site, lacking chronometric results from radiocarbon dating, but he also noted the presence of two diagnostic spear points which he assigns to the terminal Early Horizon or early Middle Horizon. This would place these artifacts in a range from roughly 4000 to 2000 years before present.

EXHIBIT 7
CONT

Three facts support the conclusion that CA-LAN-803 dates between 4000 and 2000 years ago: (1) the two recovered projectile points consist of types that, in the Chumash region, only occur within this age range; (2) the site lacks a well-developed paleosol (i.e., ancient soil) that is commonly present in earlier-aged archaeological deposits; and (3) in fact, the soils at the site are consistent with the Middle Horizon soils at adjacent site CA-LAN-19, portions of which I excavated previously. All of the existing evidence, furthermore, suggests that the site dates primarily if not exclusively to the early Middle Horizon, and thus between 3000 and 1500 years ago.

Regardless of whether the site includes terminal Early Horizon and Middle Horizon use, or solely dates to the Middle Horizon (i.e., whether first use occurred at about 4000 or instead after 3000 years ago), no empirical evidence supports King's claim that the site is predominantly Early Horizon in age.

Nature of the archaeological deposit

As noted above, CA-LAN-803 lacks an organic midden deposit (indicative of habitation), evidence of a paleosol (as a sign of antiquity) and intact surface or subsurface features (additional evidence of habitation). The surface artifact assemblage, as tabulated by King, consists of only 626 specimens. Based on King's and Stickel's maps, these were found in an area measuring roughly 15,000 square yards in size. Surface artifact density across the site can then be calculated at approximately 0.04 archaeological specimens per square yard --- that is, about one archaeological specimen per every 25 yards square. This is, at best, a very low surface artifact density.

Note, in this regard, that the surface artifact distribution maps produced by King are visually misleading, due to the size of the graphic symbols employed. In real world dimensions (i.e., at map scale), the symbols used by King in his mano distribution map, for example, each cover an area that is approximately 7 feet across -- almost 50 square feet, or 5.5 square yards. The result is that the distribution maps give a very false impression of high artifact density on the site. Exactly the opposite, in fact, is the case, as is apparent when the data are examined carefully. Indeed, as the above tabulations make clear, artifact density would have to be two orders of magnitude greater for the site to qualify as even of moderate surface artifact density ($\geq$ 1 specimen per meter square).

Moreover, it is obvious that the site area was disked, and on numerous occasions in the past. If this were not the case the site area necessarily would have been covered by coastal sage-scrub rather than introduced European grasses when investigated by Stickel. Although King argues for the

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significance of surface artifact clusters and patterns on the sites, the history of surface disking renders his argument clearly implausible: the so-called artifact "clusters" on his maps are due to the use of map symbols of grossly inappropriate size; and any putative archaeological concentrations, regardless, are themselves an artifact of decades of disking on the site surface.

That is, there is no debate that disking on sites destroys the integrity of surface distributional patterns of the kind cited by King. This is because disking spreads artifacts across the groundsurface, contributes to a slow but systematic downslope movement of them, and mixes surface and subsurface materials -- repetitively covering and uncovering individual artifacts. Given the standard size of American disking equipment, soils are invariably turned -- and artifacts buried and unburied -- to a depth of about 20 cm, or 8 inches.

Based on this fact, the top 20 cm (the "plow zone") on any archeological site are considered highly disturbed, and even what originally was a true groundsurface scatter of artifacts is expected to be distributed through the top two excavation levels of previously disked soil. This disturbance is confirmed in two fashions by the excavations at CA-LAN-803. First, tilled soil to a depth of about 18 cm was observed in the excavation units. Second, glass fragments were found in at least two of the units demonstrating the downward movement of modern materials into the soils.

Further complicating the subsurface archaeological record is the activity of burrowing animals, principally pocket gophers and ground squirrels. In the Chumash area specifically, the burrows or krotovinas of these animals have been calculated to disturb, through the process of "bioturbation," about 5% of an archaeological deposit per century (e.g., see J. Erlandson, 1984, A case study in faunalturbation, *American Antiquity* 49:785-790). This means that, in 2000 years, an entire archaeological deposit will have been (in essence) turned over and mixed.

The twin factors of surface disking and subsurface disturbance by animal burrows are critical to any understanding of the nature of an archaeological site. This is particularly true with respect to the question of whether or not an intact subsurface deposit exists or instead whether surface archaeological specimens have been introduced, though disking and animal disturbance, into underlying soils. As is also clear, this bears on the larger issues of integrity and site significance, and thus site management and disposition.

My tabulation and analysis of the data from 32 shovel-test pits (STPs) excavated and reported by Stickel indicate the following:

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CONT.

- 4 (13%) of the STPs contained no archaeological specimens;
- 13 (41%) had no specimens below 20 cm, with all specimens then restricted to the plow zone; and
- 15 (47%) yielded specimens below 20 cm in depth.

Of the total of 172 archaeological specimens recovered from the STPs, 70% were found within the disturbed plow zone.

Six hand excavation units were also completed on the site by Stickel. These are more useful than STPs for assessing subsurface conditions: STPs provide only presence or absence kinds of data and do not allow examination, for example, of the potential presence of subsurface disturbance in the form of bioturbation. The reported results from the six units are therefore critical to any interpretation of the nature of the deposit at the site.

The unit results are as follows:

- 1 excavation unit had no archaeological specimens below the plow zone;
- 4 units had small quantities of specimens to about 40-50 cm, with a significant reduction in numbers of specimens below the plow zone in all cases; and
- 1 unit (Unit #1) contained a significant number of specimens (197 total), almost two-thirds of which were obtained below the plow zone. Notably, Stickel reports gopher burrows below 25.0 cm, or immediately below the disked levels, in this unit.

The total number of specimens recovered from the six units is 481; 55% of these were recovered above 20 cm, in the plow zone, with the remainder below. However, the somewhat anomalous results from Unit #1 (representing 41% of the specimens from excavation units) skew the calculations significantly. If the Unit #1 results are eliminated from the tabulations, a total of 284 hand excavated specimens results; 190 or 67% of these were recovered in the plow zone, whereas 94 or 33% were found below 20 cm depth.

The results for the hand excavated units are, when viewed in this fashion, in very close agreement with the results from the STPs. Both indicate that over two-thirds of the archaeological specimens were recovered in the disturbed disked zone. Unit #1, in contrast, appears to represent an anomalous circumstance most plausibly resulting from an unusual amount of bioturbation at its specific location.

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Given the nature of the archaeological data recovered from the site, the level of reporting on the excavations, and the known processes that effect site preservation, I can conclude the following about site CA-LAN-803:

- First, the site deposit is primarily, and possibly entirely, a surface scatter of archaeological specimens, a significant number of which have been introduced into the subsurface by disking and bioturbation.

- Second, absent more detailed soils-stratigraphic profiles, it is impossible to determine the full extent of movements of the archaeological materials into the subsurface.

- Third, given this last circumstance, it can be stated that, at very best, CA-LAN-803 consists of a shallow, very low density subsurface deposit.

- Fourth, if in fact such a subsurface deposit has developed in a natural fashion rather than through disking and bioturbation, the nature of the described soils indicate that artifacts were buried over time through natural colluviation, not due to human inhabitation and the development of a true anthrosol (or midden deposit).

One final point needs be made concerning the nature of the deposit at the site. King has suggested that a depression on the site surface may have represented the remains of a sweat lodge. Two facts render this suggestion implausible. First, King also argues that the site is 3000 or more years in age. The preservation of a surface feature such as a pit for 3000 years would be unprecedented: minor natural processes such as rainfall and the soil movement this causes would fill-in a surface depression in a few hundred years time (let alone in thousands of years), especially when the depression is located on the downhill portion of even a slight slope (as in this case). Second, disking would also have filled-in and leveled any such ancient surface feature.

CA-LAN-803, then, is best interpreted as predominantly a surface scatter of archaeological specimens which may or may not have once included a thin and low density deposit of subsurface materials.

Relationship of CA-LAN-803 to surrounding sites

One subject is important to any understanding of site CA-LAN-803 and a determination of its significance, and therefore its final management disposition. This concerns its relationship to immediately surrounding archaeological sites; specifically, the large Middle Horizon village of CA-LAN-

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19. Insofar as I can tell, this issue has not been raised by either King or Stickel, but I consider it central to any evaluation of CA-LAN-803.

It is then important to note that CA-LAN-803 and CA-LAN-19 are separated by the Pacific Coast Highway and a series of pre-existing houses; that is, by modern construction, not by features or circumstances that have any meaning whatsoever in terms of the prehistoric use of this immediate area. This fact is emphasized by the chronological evidence recovered by Stickel at CA-LAN-803: the Middle Horizon projectile points place the use of this site at the same time as CA-LAN-19, as established by my excavations on the nearby Malibu Jewish Center property. That is -- and this the key point -- the distinction between CA-LAN-803 and CA-LAN-19 is a clerical convenience that reflects the recent history of development in this area, not its prehistoric use.

CA-LAN-803 then can only be understood as an ancillary activity area forming a peripheral part of the larger village site recorded as CA-LAN-19, the central portions of which are located east and across Pacific Coast Highway. CA-LAN-803 is simply the edge of a much larger site and, because of this fact, cannot be considered unique nor, in its own right, significant.

Review of the California Coastal Commission Staff Report recommendation

The California Coastal Commission "Staff Report: Permit Amendment, Application No. 4-99-169-A1," contends that:

(1) there is agreement among archaeologists that artifacts are present in the proposed construction area;

(2) due to this undisputed fact, any additional development of the property would result in adverse impacts to these artifacts; and

(3) for this reason, staff recommends that the application for the tennis court construction be denied.

This argument confuses and misrepresents the key facts and regulatory issues. First, California law, regulation and policy do not protect individual *artifacts*; they protect *archaeological sites*, defined as historical resources. Second, the issue to be considered is not the presence or absence of individual artifacts in the proposed construction area. It is, third:

(a) the nature, significance and uniqueness of site CA-LAN-803; and

(b) whether or not potential adverse impacts to this site have or have not already been mitigated.

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That is, the presence of artifacts in the tennis court area alone has no bearing on whether the proposed project will result in significant adverse impacts to the environment, as defined by California law. Staffs' argument that such is the case instead represents a misunderstanding of CEQA's requirements with respect to cultural resources. Furthermore, as discussed below, such a recommendation is inconsistent with the previous Coastal Commission decisions concerning development on this property.

Recommendations for CA-LAN-803

My recommendations with respect to site CA-LAN-803 follow the guidelines for the treatment of cultural resources as specified in Section 15064.5 of CEQA. These define significant effects to archaeological resources as only occurring when such a resource is established to be "unique." Although preservation in open space is the preferred option for the mitigation of adverse effects to unique archaeological resources, CEQA also allows for the mitigation of adverse effects to unique sites or resources through Phase III data recovery (salvage excavation).

Whether or not site CA-LAN-803 qualifies as a unique archaeological resource was, in my mind, never adequately established in the previous work at this location. The clear fact that it is just a peripheral edge of the large village of CA-LAN-19 suggests that it is probably not significant, let alone unique.

The question of the determination of significance and uniqueness is now, however, a moot point. The applicant accepted a determination of significance and the Coastal Commission acted upon that concession, allowing for development of the property with the condition of Phase III data recovery.

This Phase III data recovery was completed by Dr. Stickel in 1999. It is my professional opinion that his work on the site resulted in adequate and complete mitigation of adverse impacts to site CA-LAN-803. I therefore see no regulatory nor archaeological justification for denying construction of the tennis court, nor any need for additional archaeological work on the property. Following accepted archaeological practice, however, I recommend that an archaeological monitor be present during topsoil grading.

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Please feel free to call if you have any questions.

Sincerely,

David S. Whitley

David S. Whitley, Ph.D.
Principal

xc: CV & SOQ

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C.V. of DAVID S. WHITLEY, Ph.D., RPA
W&S Consultants
447 Third Street, Fillmore, CA 93015; 805-524-3620; <huitli@impulse.net>

Principal, W & S Consultants, 1982 - present.
Adjunct Professor, Geography Department, Arizona State University, 2003-.

Education: Ph.D. Anthropology (1982); M.A. Geography (1979); A.B. Anthropology & Geography (1976) - UCLA.

Awards & Honors - Include listing in Who's Who in America and Who's Who among Hispanic Americans, Thomas F. King Award for CRM excellence, Society for California Archaeology (2001); Special Appreciation Awards, California Indian Council (1993, 1999), Candelaria Indian Tribal Council (1989), Simi Valley Historical Society (1991); FELLOW, American Anthropological Association (1993).

Research Specializations - Hunter-gatherer prehistory & ethnography; western North America; rock art; sacred sites.

Professional Research Publications - 12 books and monographs (recent examples are *The Handbook Of Rock Art Research*, AltaMira 2001; & *The Art Of The Shaman: Rock Art Of California*, University of Utah 2000);
- 25 articles in refereed journals (including *Science, Nature, American Antiquity, American Anthropologist, World Archaeology*, etc.);
- 45 chapters in books and monographs; &
- 40+ book reviews, comments & miscellaneous publications.
- Specific articles & books have been translated and printed in 5 languages beyond English (Spanish, French, German, Danish & Slovakian).

Section 106 & Related Experience - Responsible for the nomination and listing of 449 archaeological sites on the NRHP; served as Prehistoric Archaeologist on the California State Historical Resources Commission; serve as Anthropological and Archaeological Advisor to the Ventura County Cultural Heritage Board.

Recent Relevant CRM Projects - Archaeological survey of the Carrizo Plain National Monument (2003); Section 106 consultation related to the Topock Maze sacred site, Needles (2003); archaeological survey of portions of the 260k acres Tejon Ranch (1999-2003); ethnohistoric overview for the Hoover Dam Bypass project (including TCP nomination, 2000); Timbisha Shoshone Homelands project (2000).

Other Relevant Experience - International Council of Monuments and Sites (ICOMOS), Director, International Rock Art Committee; French Ministry of Culture, Research Advisory Committee for Chauvet Cave; Research Associate, University of the Witwatersrand (Johannesburg, South Africa), Rock Art Research Institute; Chairman of the Board, Foundation for Archaeology and Rock Art.

References available upon request

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STATEMENT OF QUALIFICATIONS
And Summary of Professional Experience

W & S Consultants was formed as a general partnership in 1982 by David S. Whitley, Ph.D., RPA, and Joseph M. Simon to provide solution-oriented cultural resource management (CRM) consulting services. The firm specializes in assisting land developers, mining and energy companies, environmental impact analysis firms and governmental agencies with advance planning, development permitting and environmental regulatory compliance.

CRM Projects and Clients

Some of our ongoing major CRM projects and clients include:

- *Tejon Ranch*, Los Angeles and Kern Counties, for the Tejon Ranch Company;
- *Newhall Ranch*, Los Angeles County, for the Newhall Land and Farming Company;
- *Ahmanson Ranch*, Ventura County, for Washington Mutual;
- *Boron Facility expansion*, Kern County, for U.S. Borax, Inc.; and
- *Santa Susana Field Lab*, for the Boeing Corporation, Rocketdyne Division

In addition, we have successfully completed major projects for clients as diverse as the David Murdock Development Corporation (*Lake Sherwood Ranch*); Golden Queen Mining Company (*Soledad Mountain project*); Standard Pacific-Ventura (*Thousand Oaks Tract 2808*); Potomac Investment Association (*Jordan Ranch*); and the Messenger Investment Corporation (*Hidden Creek Ranch*); as well as numerous other projects of all sizes. Our recent projects include prehistoric archaeological studies; historical archaeological test and salvage excavations; and National Register of Historic Places nominations.

Awards and Honors

- Dr. Whitley received the THOMAS F. KING AWARD FOR EXCELLANCE IN CULTURAL RESOURCES MANAGEMENT by the *Society for California Archaeology*, March, 2001.

- W & S Consultants has received SPECIAL APPRECIATION AWARDS from the *Candelaria American Indian Tribal Council* (1988), the *Simi Valley Historical Society* (1991), and the *California Indian Council Foundation* (1993 and 1998).

- Whitley has received POST-DOCTORAL RESEARCH FELLOWSHIPS from the *Association for Field Archaeology* (1983) and the *University of the Witwatersrand* (1987-9).

- Whitley was made a FELLOW of the *American Anthropological Association* in 1993, and has been listed in WHO'S WHO IN AMERICA.

- Whitley's archaeological documentary films have received the *CINE* GOLDEN EAGLE AWARD and the New York Film and Television Festival SILVER MEDAL (1983).

- Whitley's most recent book, *The Art of the Shaman* (University of Utah Press, 2000) spent one month on the AMAZON.COM Los Angeles Regional Market BEST-SELLER LIST,

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and the French edition of the book *(L'Art des Chamanes de Californie*, Edition du Seuil, Paris, 2000) was selected by the U.S. DEPARTMENT OF STATE, African Embassies Section, as a PRESENTATION VOLUME in May, 2000.

Professional Appointments

- Dr. Whitley was appointed PREHISTORIC ARCHAEOLOGIST by Governor George Deukmejian to the State of California *Historical Resources Commission* (1986-1987).

- Whitley and Mr. Simon serve as the ARCHAEOLOGICAL and ANTHROPOLOGICAL ADVISORS to the *Ventura County Cultural Heritage Board.*

- Whitley was appointed US REPRESENTATIVE to the International Committee on Monuments and Sites (*ICOMOS*), *Comité D'Art Rupestre* (CAR), in 1992, and was elected to the COUNCIL OF DIRECTORS in 1997.

- In 1995, Whitley was appointed to the INTERNATIONAL RESEARCH ADVISORY COMMITTEE for the recently discovered CHAUVET CAVE, France, by the Conservator General of the *French Ministry of Education and Culture.*

- Whitley is editor for the Routledge Press (London), *Readers in Archaeological Theory* series, and for the AltaMira Press (Walnut Creek, CA), *Readers in the Archaeology of Religion* series.

- Whitley and Simon serve on the BOARD OF DIRECTORS for the *Foundation for Archaeology and Rock Art.*

- As a member of the REPUBLICAN CONGRESSIONAL LEADERSHIP COMMITTEE, Simon participated in Cabinet level briefings in Washington, D.C., attending five meetings at the White House with Presidents Ronald Reagan and George Bush, advising them and the Secretary of the Interior on environmental issues.

Additional Professional Experience

- Dr. Whitley served as CHIEF ARCHAEOLOGIST for the *UCLA Archaeological Survey and Information Center* (1983 - 1987), supervising the review of the cultural resource sections of all environmental documents for Los Angeles, Orange and Ventura Counties. He has served as an EXPERT LEGAL WITNESS for archaeological concerns before the *State of Washington, Shorelines Hearings Board*, the *California Energy Commission* and the *U.S. District Court, Central District of California.*

- W & S Consultants has been responsible for the listing of over 450 prehistoric archaeological sites on the NATIONAL REGISTER OF HISTORIC PLACES.

- The professional publications of the W & S Consultants staff includes 15 books and over 65 articles.

- W & S Consultants hold a current *ARPA permit* for archaeological work on federal lands and *MSHA certifications* for work on mining properties.

- Dr. Whitley is a *Registered Professional Archaeologist* (RPA).

Complete list of previous projects and references available upon request.

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September 11, 2003

Dr. Alfredo Trento, MD
Cedars-Sinai
8700 Beverly Boulevard
Room 6215 North Tower
Los Angeles, California 90048-1804

RE: Review of Further Mitigation of Archaeological Site CA-LAN-803 Located at 25126 Pacific Coast Highway, City of Malibu, California.

To whom it may concern,

At the request of Dr. Alfredo Trento, the author was asked to review all pertinent background information pertaining to CA-LAN-803, located at 25126 Pacific Coast Highway, City of Malibu, California. The intent of this review was to determine the appropriate mitigation measures for a proposed tennis court, based on extant archaeological data for the project. The current project will involve the construction of a 7,200 sq. ft. unit tennis court; a maximum six foot high, approximately 240 foot long retaining wall; a six to twelve-foot high, approximately 360 foot long chain link fence surrounding the tennis court; 640 cu. yds. of excavation to be exported outside of the coastal zone, and 800 cu. yds. of remedial grading (removal and recompaction). The development concept received the approval of the City of Malibu Planning Department, on December 12, 2002; the approval of the City of Malibu Geologist on August 29, 2002; and, the approval of the City of Malibu Biologist on September 23, 2002.

To date, the property contains a 6,706 sq. ft., 28 ft. high, two-story single family residence; a 749 sq. ft., 18 ft. high guest house; a 975 sq. ft., 18 ft. high detached garage; a 525 sq. ft., 14 ft. high detached garage; a pool; a driveway; a septic system; and a concrete v-ditch drainage swale system; the construction of a 420 ft. long 3-6 ft. high retaining wall; a 120 ft. long 2-3 ft. high retaining wall, roughly 3,802 cu. yds. of grading (1,302 cu. yds. of cut, 630 cu. yds. of fill with 1,870 cu. yds. of removal and recompaction; and, the construction of a swimming pool..

The documents consulted as part of this review process included: Coastal Development Permit No. 4-99-169; Letter "Re: Proposed tennis court development at the Dr. Trento Residence at 25126 Pacific Coast Highway, in the City of Malibu, CA 90265," by E. Gary Stickel, Ph.D., Consulting Archaeologist, Environmental Research Archaeologists - A Scientific Consortium, February 21, 2003; "Preliminary Geologic and Soils Engineering Investigation, Proposed Tennis Court, 25134 Pacific Coast Highway, Malibu, California," by GeoConcepts, Inc., October 22, 2002; Phase 2 (Test Phase) of Archaeological Site CA-LAN 803 Report by E. Gary Stickel, Ph.D., Consulting Archaeologist, Environmental Research Archaeologists - A Scientific Consortium, March 1999; and, Phase 3 (Mitigation) Program for Archaeological Site CA-LAN 803 Report by E. Gary Stickel, Ph.D., Consulting Archaeologist, Environmental Research Archaeologists - A Scientific Consortium, October 1999.

In consort with the City of Malibu staff archaeologist, Dr. Chester King, Dr. Gary Stickel designed a mitigation plan for CA-LAN-803, culminating in a Phase III report prepared during October, 1999. Stickel concluded, "Given the lack of variability of the data recovered from the 35 units that were excavated for the Test Phase (Phase 2) (including 31 STPs and 4 Test Pits), with only a few formal tools recovered and with the vast majority of the data limited to waste flaked material (debitage), a mitigation program, or a Phase III, was devised that would adequately address the variability of the cultural resources on the parcel. The Phase III work involved the excavation of two more lxl meter units in the planned garage area and the complete surface collection of the formal tools and cores from the site's surface. Given the analysis of the recovered data, described above in this report, it would appear that enough excavation has taken place to monitor the subsurface variability and the surface variability at the main subject site (especially for the areas of the planned construction for the new house development). In light of the discussion of the data variability and the hypotheses review in Section 4.0 above, and comparing those results to the CEQA criteria for site significance (cf. Appendix 1), it would appear that site CA-LAN-803 is not a highly significant site (i.e. it

Exhibit 8
CDP 4-99-169-A2
Archaeological Review Report from Robert Wlodarski, M.A./RPA Certified

lacks major habitation indicators, lacks burials and/or cemeteries, lacks religious site data, and it lacks other unique data that would make it a highly significant site. Nonetheless, the site has yielded good data that has indicated the type of site and site activities."

The nature and extent of prior work by Dr. Stickel at the archaeological site within the area of the proposed tennis court, appears sufficient to warrant monitoring as a suitable means of mitigating additional development performed on the Trento property. The question of site significance was adequately addressed by Stickel during his Phase II and Phase III studies of the subject property, pertaining to prior development on the lot. The fact that the research design and mitigation strategy leading to this point were developed by Stickel and the City of Malibu, and approved by all parties, suggests that all appropriate steps were taken to ensure that assessment of the research potential of CA-LAN-803 was sufficient under CEQA. Also, comments by the Native American Heritage Commission (NAHC) and the State Office of Historic Preservation (OHP), concurred with Stickel's findings and mitigation approach which focused on monitoring. Furthermore, a final mitigation measure advanced by Stickel and approved by the City of Malibu for the remaining development on the Trento property, that is, monitoring by a qualified archaeologist and Native American, seems adequate and is generally the norm under similar circumstances.

Given the nature and extent of prior testing (Phase II and Phase II) in the area of the proposed tennis court, the bulk of the encountered artifacts were surface in nature and mitigation included shovel test pits and surface collection of the archaeological materials. A majority of the artifacts encountered in the area of the proposed tennis court were core tools and groundstone. Subsurface testing yielded only minor amounts of debitage, suggesting that the archaeological site within the area of the proposed tennis court, was minimal in nature when compared to the surrounding site area. Therefore, in the opinion of this author, the construction of the proposed tennis court on the Trento property should by permitted, provided that a qualified archaeologist and Native American be on site during grading. The following definitions should apply during the construction of the tennis court, or any additional construction on the subject property:

Monitoring is a condition placed on a project area or portion thereof, requiring the services of an archaeologist, or archaeologist and Native American representative to ensure that potentially significant buried cultural resource remains including features and burials, etc. are not inadvertently destroyed during construction. In all cases, there is an authoritative presentation and basis for implementing a monitoring condition. Usually, the presence of cultural resources within proximity to the project property, or the suspected presence of associated features related to a partially mitigated resource, are sufficient to condition a monitoring clause. If features are encountered, the excavation shall cease until the remains are adequately mitigated through additional testing pursuant to a monitoring agreement agreed upon prior to construction.

Human Remains: If human remains are discovered, then the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. These procedures require notification of the County Coroner. If the County Coroner determines that the discovered remains are those of Native American ancestry, then the Native American Heritage Commission must be notified by phone within 24 hours. Sections 5097.94 and 5097.98 of the Public Resources Code, describe the procedures to be followed after the notification of the Native American Heritage Commission.

Sincerely,

Robert J. Wlodarski
Principal Investigator, M.A./RPA Certified
H.E.A.R.T.
8701 Lava Place
West Hills, California 91304-2126
Phone/Fax: 818-340-6676

EXHIBIT 8 cont

California Coastal Commission
89 S. California St., Suite 200
Ventura, CA 93001

January 5, 2004

Re: #4-99-169-A1

To the Coastal Commission:

I wish to verify that I have acted as the Native American monitor for the Trento single family residence project at 25126 PCH in Malibu for the duration of all three archaeological phases as dictated by California law, and that all exploration and mitigation has been performed correctly and to my satisfaction.

Additionally, I have offered my services as Native American monitor to the Trento's for their next phase of construction at 25126 PCH, the addition of a tennis court to their existing single family residence. I have inspected the site of the proposed tennis court and I believe that site has already been satisfactorily investigated. I therefore have no objection to their proceeding with this project, and I plan to carry out my duties as Native American monitor on this project with the same professionalism as before. Should any cultural resources or human remains be encountered, a qualified archaeologist will be retained and all appropriate agencies will be notified.

Please do not hesitate to contact me for any information regarding this project. I can be reached at: 805-649-5441 or 661-245-3081.

Sincerely,

Carol A. Pulido C.A.M.

Carol Pulido

Exhibit 9
CDP 4-99-169-A2
Letter from Applicant's Native American Monitor

MEMORANDUM

Regarding the Final Report on the Cultural Resources Monitoring of the grading/construction work on the parcel owned by Dr. and Mrs. Trento located at 25126 Pacific Coast Highway, City of Malibu.

Date: 15 May 2001

To: Mr. Mike Anderson
Project Manager
Eric T. Fishburn, Architect
11264 La Grange Avenue
Los Angeles, CA 90025

From: E. Gary Stickel, Ph.D.
Project Archaeologist/Archaeological Monitor
P.O. Box 480074
Los Angeles, CA 90048

Re: Regarding the Final Report on the Cultural Resources Monitoring of the grading/ construction work on the parcel owned by Dr. and Mrs. Trento, located at 25126 Pacific Coast Highway, City of Malibu.

As per the standard operating procedures of the City of Malibu when a known archaeological site is involved, the City required the presence of the project Native American Monitor, Mrs. Carol Pulido and the project archaeologist, Dr. Gary Stickel, to monitor the grading/sub-surface disturbance work relative to the construction of the planned single-family dwelling on the subject parcel (location referenced above). The subject archaeological site is formally listed with the State of California with the designation of CA-LAN-803. Both a Phase 2 (test phase) excavation and report and a Phase 3 (mitigation) excavation and report were conducted and completed (Dr. Stickel authored both reports). Those reports satisfied all requirements by the City of Malibu and by the California Coastal Commission regarding the development project, except for those pertaining to the monitoring during the construction phase of the project which has been recently underway.

Monitoring for cultural resources has taken place on the following dates: February 20, 21, March 14, 15, April 16, 17, 18, 19, 23, 24, and May 3 & 4. All areas of the construction were monitored including the main house pad, the main house pad garage, the swimming pool area, the long drive way and car turnaround area, the guest house pad and the guest house garage area. Although waste flakes and some artifact tool fragments were observed during that monitoring, none were unique nor were any features (e.g. a fire pit) or human burial remains observed that would have caused a work stoppage until those cultural resources could have been properly addressed. Indeed, the data that were observed were completely consistent with the sample of data that was obtained via the extensive Phase 2 and Phase 3 excavations on the site. Therefore, the construction activity proceeded as scheduled.

The Native American Monitor, Mrs. Carol Pulido and the Archaeological Monitor were present during all the days of the monitoring. The cultural resources monitoring of the project's construction work has attested to the fact that this development project has been in complete compliance with the City of Malibu's requirements.

Exhibit 10
CDP 4-99-169-A2
Memorandum from Dr. Stickle Regarding Monitoring Results

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STATE OF CALIFORNIA – THE RESOURCES AGENCY — GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

Filed:	12/14/99
49th Day:	N/A
180th Day:	N/A
Staff:	S. Hudson
Staff Report:	5/25/00
Hearing Date:	6/13/00
Commission Action:	

STAFF REPORT: REGULAR CALENDAR
Revised Findings

APPLICATION NO.: 4-99-169

APPLICANT: Alfredo and Robin Trento

AGENTS: Jaime Harnish
Michael Andersson
Susan McCabe

PROJECT LOCATION: 25126 Pacific Coast Highway, Malibu; Los Angeles County

COMMISISON DECISION: Approved with Ten (10) Special Conditions

DATE OF COMMISSION ACTION: April 12, 2000 in Long Beach

COMMISSIONERS ON PREVAILING SIDE: Commissioners Daniels, Desser, Dettloff, Estolano, Hart, Kruer, McClain-Hill, Potter, Reilly, Wooley, and Wan.

PROJECT DESCRIPTION: Construction of a 6,706 sq. ft., 28 ft. high, two-story single family residence; a 749 sq. ft., 18 ft. high guest house; a 975 sq. ft., 18 ft. high detached garage; a 525 sq. ft., 14 ft. high detached garage; a pool; a driveway; a septic system; and a concrete v-ditch drainage swale system. The project also includes the construction of a 420 ft. long 3-6 ft. high retaining wall, a 120 ft. long 2-3 ft. high retaining wall, and approximately 3,802 cu. yds. of grading (1,302 cu. yds. of cut, 630 cu. yds. of fill, and 1,870 cu. yds. of removal and recompaction).

LOCAL APPROVALS RECEIVED: Approval in Concept City of Malibu Planning Department, Approval in Concept for City of Malibu Engineering and Geotechnical Review, Approval in Concept City of Malibu Environmental Health Department (Septic).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission **adopt** the following revised findings in support of the Commission's decision on April 12, 2000, to **approve** the proposed project subject to ten (10) special conditions as indicated on pages 4-9 of the staff report. The Commission found that the proposed project is consistent with the applicable Chapter Three policies of the Coastal Act.

Because Special Condition One was modified and Special Condition Ten was added during the public hearing, revised findings are necessary to reflect the action taken by the Commission. Staff recommends, therefore, that the Commission adopt the following resolution and revised findings in support of its action to approve this permit with conditions. Comments from the public concerning the findings will be limited to discussion of whether the findings reflect the action of the Commission.

Exhibit 11
CDP 4-99-169-A2
Staff Report for CDP 4-99-169

3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

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

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

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

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

III. Special Conditions

1. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show that:

(a) No development shall exceed the 177 ft. elevation line in height. Any substantial changes to the footprint of the proposed structures will require an amendment to this permit.

(b) The proposed driveway, including all associated grading and fill slopes, is located no less than 25 ft. from the seaward most top edge of the bluff.

(c) The proposed 42 inch high masonry wall adjacent to Pacific Coast Highway is deleted. Fencing consisting of visually permeable designs and materials (e.g. wrought iron or non-tinted glass material) and low-lying vegetation consistent with Special Condition Two (2) shall be allowed. Fencing on site shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.

(d) The proposed swimming pool is designed as a free-standing structure (walls do not rely upon the lateral support of the soil) set below grade.

2. Landscape and Erosion Control Plans

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Prior to issuance of a coastal development permit, the applicant shall submit a landscaping and erosion control plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping plan shall identify all necessary irrigation improvements. The landscaping and erosion control plan shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A) Landscaping Plan

1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plan species which tend to supplant native species shall not be used.

2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;

4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

5) Permanent irrigation improvements shall be designed to minimize groundwater infiltration and shall be primarily limited to drip irrigation systems. No permanent irrigation shall be allowed within 25 ft. of the landward edge of the top of the bluff or on the bluff slope itself.

6) Vegetation on the subject site shall be limited to low-lying species that will not block or adversely impact public views of the ocean from the highway. Vegetation within Zone A, as shown on Exhibit 4, shall be limited to no more than 2 ft. in height. Vegetation within Zone B, as shown on Exhibit 4b, shall be limited to no more than 14 ft. in height. In no case shall vegetation on the subject site exceed the 175 ft. elevation line in height (approximate elevation of Pacific Coast Highway). The use of any vegetation of greater height than otherwise provided for above may be allowed only if the Executive Director determines that such landscaping is consistent with the intent of this condition and will serve to minimize adverse effects to public views.

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7) Vegetation within 50 feet of the proposed house may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

B) Interim Erosion Control Plan

1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring.

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan

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approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit

4. Archaeological Resources

By acceptance of this permit, the applicant agrees to have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation, site preparation, installation of irrigation systems or landscaping features that involve any earth moving operations. The number of monitors shall be adequate to observe the earth moving activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological materials. In the event that any significant archaeological resources are discovered during operations, grading work in this area shall be halted and an appropriate data recovery strategy be developed, subject to review and approval of the Executive Director, by the applicant's archaeologist, the City of Malibu archaeologist and the native American consultant consistent with CEQA guidelines.

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5. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 3/10/00; Drainage System Response Letter by Land Design Consultants dated 2/1/00; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 1/31/00; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 10/25/99; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 9/17/99; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 9/1/99; Supplemental Geologic and Soils Engineering Report by GeoConcepts, Inc. dated 3/19/99; Supplemental Geologic and Soils Engineering Report by GeoConcepts, Inc. dated 7/10/98; Supplemental Geologic and Soils Engineering Report by GeoConcepts, Inc. dated 3/23/98; and the Limited Geologic and Soils Engineering Investigation Report by GeoConcepts, Inc. dated 10/23/97. shall be incorporated into all final design and construction including all grading, septic, and drainage improvements. All plans must be reviewed and approved by the geologic and the geotechnical engineering consultants as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

6. Drainage and Polluted Runoff Control Plan and Maintenance Responsibility

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a drainage and polluted runoff control plan designed by a licensed engineer which minimizes the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with the geologists' recommendations. The plan shall include but not be limited to the following criteria:

(a) The proposed concrete v-ditch drainage system to be constructed on the bluff face shall be of an earthtone color similar to the soil of the surrounding bluff slope. White tones shall not be acceptable.

(b) Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.

(c) Runoff from all roofs, parking areas, driveways and other impervious surfaces shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to

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convey and discharge runoff in excess of this standard from the building site in non-erosive manner.

(d) The plan shall include provisions for maintaining the drainage and filtration systems so that they are functional throughout the life of the approved development. Such maintenance shall include the following: (1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

7. Removal of Excavated Material

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excavated material from the site. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required.

8. Future Development Deed Restriction

A. This permit is only for the development described in coastal development permit No. 4-99-169. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the proposed residence or the entire subject parcel. Accordingly, any new development on the subject parcel or future improvements to the permitted single family residence, guesthouse, or garages, including but not limited to landscaping or repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit 4-99-169 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development in the deed restriction and shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

9. Assumption of Risk, Waiver of Liability and Indemnity

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A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide, erosion, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

10. **No Future Subdivision Deed Restriction**

A. In order to implement the applicant's proposal, the applicant agrees, on behalf of himself and all successors and assigns, that 1) the subject site may not be subdivided at any future point in time and 2) prior to issuance of the coastal development permit, a deed restriction will be recorded imposing this restriction.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restriction regarding no future subdivision of the subject site and shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

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IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the construction of a 6,706 sq. ft., 28 ft. high, two-story single family residence; a 749 sq. ft., 18 ft. high guest house; a 975 sq. ft., 18 ft. high detached garage; a 525 sq. ft., 14 ft. high detached garage; a pool; a driveway; a septic system; and a concrete v-ditch drainage swale system. The project also includes the construction of a 420 ft. long 3-6 ft. high retaining wall, a 120 ft. long 2-3 ft. high retaining wall, and approximately 3,802 cu. yds. of grading (1,302 cu. yds. of cut, 630 cu. yds. of fill, and 1,870 cu. yds. of removal and recompaction).

The subject site is a 4.78 acre vacant bluff top lot located on the south (seaward) side of Pacific Coast Highway and north of Malibu Road (Exhibit 1). Slopes on site gently descend to the south approximately 20-40 ft. in elevation from Pacific Coast Highway to the top seawardmost edge of the bluff. Slopes descend more steeply from the top of the bluff to Malibu Road at an approximate gradient of 2:1 (26°) to 1:1 (45°). All proposed development, with the exception of the new concrete bluff slope v-ditch drainage system, will be located on the relatively gently sloping bluff top portion of the site (Exhibit 5). A segment of Puerco Road, an existing private road constructed in the mid-1920's, is located on the south facing bluff slope on the subject site immediately north of Malibu Road. However, Puerco Road does not extend to the bluff top portion of the subject site where development is proposed and access to the project site is from Pacific Coast Highway only.

Pacific Coast Highway is designated as a scenic highway for coastal views in the previously certified County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan (LUP). In addition, the subject site is designated as a "Priority One" (highest scenic value) viewshed for Pacific Coast Highway by the LUP. All vegetation on the bluff top portion of the subject site has been previously removed and views of the ocean from Pacific Coast Highway are available across the entire site. In addition, archaeological resources are present on the subject site (listed in the State of California Archive as Archaeological Site CA-LAN-803).

In past permit actions regarding beachfront development along Pacific Coast Highway, the Commission has required the construction of sidewalk improvements to eliminate adverse effects to public access from such development. Although, the subject site is located adjacent to Pacific Coast Highway, the proposed development is separated from the beach by Malibu Road and numerous residences and located along a semi-rural stretch of Pacific Coast Highway where there is adequate open area for pedestrian use of the road shoulder. As such, the proposed development will not result in any adverse effects to public access and a condition requiring the construction of sidewalk improvements is not necessary.

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B. Hazards

Section **30253** of the Coastal Act states in 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, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

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

Further, Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property. To assist in the determination of whether a project is consistent with section 30253 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. Due to the geologic instability of bluffs and their continuing role in the ecosystem, the certified LUP contains specific policies regarding development on or near bluffs. For instance, Policy 164, in concert with the Coastal Act, provides that new development shall be set back a minimum of 25 ft. from the top edge of the bluff or a stringline drawn between the nearest corners of the adjacent structures, *whichever distance is greater*, but in no case less than would allow for a 75-year useful life for the structure.

The proposed project includes the construction of a single family residence, a guest house, two detached garages, a pool, a concrete "v-ditch" drainage swale system, retaining walls, and approximately 3,802 cu. yds. of grading (1,302 cu. yds. of cut, 630 cu. yds. of fill, and 1,870 cu. yds. of removal and recompaction). The subject site is located in an area of Malibu prone to landslide activity. The Limited Geologic and Soils Engineering Investigation Report by GeoConcepts, Inc. dated 10/23/97 indicates that portions of three separate landslides are located on the bluff slope in the south eastern portion of the subject site. However, the applicant's geologic and geotechnical consultants have indicated that the bluff top area of the subject site, where the proposed development will be located, is relatively stable and suitable for residential development. The Limited Geologic and Soils Engineering Investigation Report by GeoConcepts, Inc. dated 10/23/97 asserts that a stability analysis was performed the site and that their analysis indicates that the subject site is grossly stable. Further, the Geologic and Soils Engineering

Investigation Addendum by GeoConcepts, Inc. dated 9/17/99 indicates that the proposed project will be free from geologic hazards. The addendum states:

> ***It is the finding of this corporation, based upon the subsurface data, that the proposed project will be safe from landslide, settlement or slippage and will not adversely affect adjacent property, provided this corporation's recommendations and those of the Los Angeles County Code are followed and maintained.***

The Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 3/10/00; Drainage System Response Letter by Land Design Consultants dated 2/1/00; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 1/31/00; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 10/25/99; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 9/17/99; Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 9/1/99; Supplemental Geologic and Soils Engineering Report by GeoConcepts, Inc. dated 3/19/99; Supplemental Geologic and Soils Engineering Report by GeoConcepts, Inc. dated 7/10/98; Supplemental Geologic and Soils Engineering Report by GeoConcepts, Inc. dated 3/23/98; and the Limited Geologic and Soils Engineering Investigation Report by GeoConcepts, Inc. dated 10/23/97 include a number of geotechnical recommendations to ensure the stability and geotechnical safety of the site. Therefore, to ensure that the recommendations of the geotechnical and geologic engineering consultants have been incorporated into all proposed development, Special Condition Five (5) requires the applicant to submit project plans certified by the consulting geotechnical and geologic engineer as conforming to all recommendations regarding structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

However, the Commission notes that, although the subject site is considered grossly stable from a geologic standpoint, the steep slopes on the subject site are still subject to potential erosion and soil slippage. The Commission finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants compatible with the surrounding environment. Further, the Limited Geologic and Soils Engineering Investigation Report by GeoConcepts, Inc. dated 10/23/97 states:

> ***All slopes should be maintained with a dense growth of plants, ground covering vegetation, shrubs and trees which possess dense, deep root structures and require a minimum of watering. It is recommended that a landscape architect be consulted regarding planting adjacent to improvements***

In past permit actions, the Commission has found that invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foliage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission notes that non-native and

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invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize steep slopes, such as the slopes on the subject site, and that such vegetation results in potential adverse effects to the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foliage weight but also by their low irrigation and maintenance requirements. Therefore, in order to ensure the stability and geotechnical safety of the site, Special Condition Two (2) requires that all proposed disturbed and graded areas on subject site are stabilized with native vegetation. However, the Commission also notes that landscaping improvements which require intensive watering requirements, such as many lawn and turf species, will result in potential adverse effects to the stability of the bluff slope due to increased groundwater infiltration on the subject site. Therefore, in order to ensure stability of the bluff slope, Special Condition Two (2) also requires that permanent irrigation improvements, included as part of the landscaping plan for the subject site, shall be designed to minimize groundwater infiltration and shall be primarily limited to drip irrigation systems. No permanent irrigation shall be allowed within 25 ft. of the landward edge of the top of the bluff or on the bluff slope itself. In addition, Special Condition Three (3) has been required in order to ensure that no vegetation may be removed on the subject site for the purpose of fuel modification until after the local government has issued a building or grading permit. A septic system injects water directly into the subsurface and therefore has the potential to increase slope instability. This can be minimized by locating the septic system as far from the slope as feasible. In this case, the proposed septic system is located as far from landward on the site, and away from the bluffslope, as feasible.

As discussed above, portions of three identified landslides are located in the south east corner of the subject site (adjacent to or overlying each other). The Commission notes that although portions of the three landslides are located on the project site, the three identified landslides also extend offsite across three other separate parcels. The Commission received letters from neighboring property owners suggesting that the applicant (Trento) should be required, as part of this project, to remediate these landslides (Exhibits 11c-g). Assertions have been made that the landslides were "reactivated" by recent increased rains. In addition, neighbors have asserted that surface drainage and infiltration to groundwater will increase as a result of the development and will increase the risk of landslides. The applicant's geotechnical consultant has indicated that, in order to adequately remediate the identified landslides, it would be necessary to conduct remedial grading on the other affected properties and that; therefore, it is not possible to remediate the identified landslides by grading on the project site only. The Geologic and Soils Engineering Investigation Addendum by GeoConcepts, Inc. dated 1/31/00 states:

> ***The active landslide appears to be on four properties, with the smallest portion on the subject site. The City recognized this and, therefore, has not required a remedial repair of the active slide on the subject site. A remedial repair has not been required because the active portion on the subject site can not be effectively repaired without the Weber's correcting their larger portion of the slide. Currently, the Weber's have trimmed their slope and redeposited the earth material on the active landslide, which only exacerbates the instability of the slide by adding additional weight.***

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As such, the Commission notes that remediation of the identified landslides on the subject site would require cooperation by the adjacent property owners (as well as remedial grading on those neighboring properties). It is the Commission's understanding, based on information submitted by both the applicant and by the concerned neighboring property owners, that a meeting was held by the City of Malibu with the intent of reaching an agreement between the four affected property owners to remediate the slides; however, no final agreement between the concerned property owners was reached. As such, the Commission notes that it is not possible for the applicant to stabilize the bluff slope only on the subject site by remedial grading unless all property owners affected by the slide mass were to also conduct such grading on their own properties.

Although it is not possible to directly remediate the portions of the identified landslides on the subject site through grading, the applicant's geotechnical consultants have indicated that the proposed concrete v-ditch drainage system will serve to direct all drainage away from those portions of the subject site prone to landslide and, therefore, increase the geologic stability of the subject site. Drainage from the project site will be directed to two existing 18 inch and 24 inch drainage pipes which inlet from the southwest and southeast corners of the abandoned Puerco Road on the subject site and which outlet to Malibu Road at the base of the slope. A neighbor has asserted that the existing drainage pipes are not adequate to handle the drainage from the site, although they the neighbor has not submitted any calculations to support this assertion (Exhibits 11c-g). The applicant's hydrologic consultants have indicated that their calculations show that the existing drainage pipes are adequate to handle the flow from the proposed drainage improvements. The Drainage System Response Letter by Land Design Consultants dated 2/1/00 states:

> ***As a remedial grading plan, an integral part is controlling surface drainage from the northerly portion of the property from draining over the steeper natural slope below the bluff which are more subject to erosion and debris flows. This will be accomplished by the construction of the proposed driveway system, surface drainage devices located at the top of the bluff and located at the southerly boundary along with a series of catch basins, pipes, and inlet structure directing flows towards the two (2) existing drainage systems located at the westerly and easterly portions of the site.***
>
> ***...***
>
> ***The amount of debris flows will be reduced by the development of the parcel and the design of the on-site drainage system has been designed to carry these flows to two new inlet structures. The proposed drainage system comprises of two drainage areas and systems. One drainage system directing approximately 3.8 acres (Q=25 cfs) to the westerly portion of the site to a 24" CMP pipe and second system directing approximately 3.3 acres of (Q-22cfs) to the easterly portion of the site.***
>
> ***...***
>
> ***As part of the westerly system the existing inlet structure located near the southwestern property corner will be replaced with a new metal flared end section, CMP pipe, berms and minor grading modifications...[to] allow the required flows to enter the pipe as required. The total flow rate after development will be 25 cfs, which is much less than the design capacity of the existing 24" CMP. As part of the improved eastern system located near the southeastern property corner the existing modified inlet structure will be replaced with a new concrete inlet structure and CMP pipe designed to carry the debris***

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flows generated on site...The total flow rate after development will be 22 cfs, which is much less than the design capacity of the existing 18" and 24" CMP pipe.

To ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Six (6), to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. Further, to ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Six (6) also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

Further, the Commission notes that the proposed swimming pool, located on top of the bluff upslope from the identified landslides on site, may result in potential adverse effects to slope stability if the pool leaks due to structural distress. The Commission further notes that potential structural distress to the proposed pool could result from such potential hazards as slope movements, slide activity, or catastrophic failure during an earthquake. The introduction of water directly into the slope from such a structural failure of the pool could result in potential slope failure. This is of particular concern in view of the geometry of the terrace/Monterey Formation contact (dipping down-slope) and the very low factor of safety (1.011) calculated by the applicant's geotechnical consultants for Cross Section E-E under earthquake loading conditions. Therefore, in order to ensure that the proposed pool is designed in a manner that minimizes the potential for structural failure and to ensure slope stability on site, Special Condition One (1), in part, requires the applicant to submit revised plans which show that the proposed pool is designed as a free-standing structure (walls of the pool do not rely on the lateral support of the soil) set below grade.

For the reasons explained above, the Commission finds that surface drainage from the site of the proposed development, as conditioned, will not increase the risk of landslides. The Commission also finds that the location of the proposed septic system away from the landslide and the conditions regarding irrigation and pool design will insure that infiltration to groundwater is minimized.

As discussed above, the subject site is located on a coastal bluff top. As stated above, due to the inherent geologic instability of bluffs, Policy 164 of the LUP, in concert with the Coastal Act, provides that new development shall be set back a minimum of 25 ft. from the top edge of the bluff or a stringline drawn between the nearest corners of the adjacent structures, whichever distance is greater, in order to ensure geologic and structural stability. In the case of this project, the 25 ft. setback is the greater and proper setback distance, not the stringline measurement. Although the proposed buildings (main residence, guesthouse, two garages) and the pool will be setback 25 ft. or more from the top edge of the bluff, the Commission notes that portions of the proposed driveway will be located less than 25 ft. from the delineated top edge of the bluff. Specifically, the fill slope for approximately 75 linear ft. of the proposed driveway on the west side of the property will be located only 11 ft. from top edge of the bluff (the

paved portion of the driveway will be located only 15 from the top edge of the bluff). In addition, the fill slope for approximately 60 linear ft. of the driveway on the central portion of the site (between the main residence and the guest house) will be setback only 19 ft. from the bluff edge. Therefore, in order to ensure geologic and structural stability, Special Condition One (1) requires the applicant, prior to the issuance of the coastal permit, to submit, for the review and approval of the Executive Director, revised project plans which show that the proposed driveway (including all associated grading and fill slopes) will be located no less than 25 ft. from the seaward most top edge of the bluff as delineated on Exhibit 3. Therefore, the Commission notes that, only as conditioned, will all development (with the exception of landscaping and drainage improvements which serve to increase the geologic stability of the site) be setback at least 25 ft. or more from the bluff edge as consistent with past Commission action and Policy 164 of the LUP.

Further, the Commission also notes that the amount of new cut grading proposed by the applicant is larger than the amount of fill to be placed and will result in approximately 672 cu. yds. of excess excavated material. Excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, Special Condition Seven (7) requires the applicant to remove all excavated material, including concrete debris resulting from the removal of the existing pool, from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required.

As discussed above, the Commission notes that the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the Commission also notes that the Limited Geologic and Soils Engineering Investigation Report by GeoConcepts, Inc. dated 10/23/97 indicates that three separate landslides are located on the bluff slope in the south eastern portion of the subject site. The Commission further notes that because there remains some inherent risk in building on sites underlain or located adjacent to a landslide, such as the subject site, and due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by Special Condition Nine (9). This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

It should be noted that an assumption of risk deed restriction for hazardous geologic conditions and danger from wildfire is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there

exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. The Commission has required such deed restrictions for other development throughout the Malibu/Santa Monica Mountains region.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30253 of the Coastal Act.

C. Visual Resources

Section **30251** of the Coastal Act states that:

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

Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored. In addition, to assist in the determination of whether a project is consistent with Section 30251 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Section 30251 of the Coastal Act, Policy 125 of the LUP provides that new development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline. Policy 125 further provides that, where feasible, new development on sloped terrain should be set below road grade. Policy 130 of the LUP provides that in highly scenic areas and along scenic highways, new development and landscaping shall be sited so as to not significantly intrude into the skyline. Policy 138 of the LUP provides that new development on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site. In addition, Policy 141 of the LUP provides that "fencing or walls to be erected on the property shall be designed and constructed to allow for view retention from scenic roadways." Further, Policy 142 of the LUP provides that new development along scenic roadways, such as Pacific Coast Highway, shall be set below the road grade on the down hill side wherever feasible to protect designated ocean views.

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The project site is a vacant bluff top lot on the seaward side of Pacific Coast Highway in a partially built-out area of Malibu primarily consisting of residential development. Pacific Coast Highway is designated as a scenic highway for coastal views by the LUP. In addition, the subject site is designated as a Priority One (highest scenic value) viewshed for Pacific Coast Highway by the LUP. All vegetation has been previously removed from the bluff top portion of the site. Views of the ocean from Pacific Coast Highway are available across the entire 430 ft. wide lot. Further, the Commission notes that Pacific Coast Highway is also a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. The Commission notes that the construction of individual beachfront or bluff top residences, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In past permit actions, consistent with Coastal Act Section 30251, the Commission has required that new development located on the seaward side of Pacific Coast Highway be sited and designed to protect public bluewater views of the ocean and, where feasible, to restore and enhance visual quality in visually degraded areas. Specifically, in regard to new development located on beachfront lots, where it is not possible to limit the height of new structures to an elevation lower than the highway, the Commission has required that new development occupy no more than 80% of the lineal frontage of Pacific Coast Highway in order to maintain a public view corridor over the lot for ocean views [Saban (4-99-146), Broad (4-99-185), 4-99-154 (Montanaro)]. However, in past permit actions regarding development on bluff top sites where slopes descend seaward from the highway, such as the proposed project site, the Commission has further limited the height of new structures and landscaping to an elevation adequate to ensure that public views of the ocean are retained over the entire project site [CDPs 4-98-142, 143, & 163 (Duggan & Levinson), CDP 4-97-031 (Anvil), CDP 5-90-020 (Young)]. Coastal Development Permits 4-98-142, 143 and 163 were approved by the Commission in 1998 for the construction of three new single family residences on the three separate neighboring vacant lots immediately east of the subject site. The Commission notes that the approved single family residences on the neighboring lots to the east were limited to a single story of no more than 18 ft. in height in order to ensure that ocean views were retained above the rooflines of the residences.

In the case of the proposed project, the Commission notes that the proposed 28 ft. high main residence, although located downslope from Pacific Coast Highway, will extend approximately 5 or more ft. higher in elevation than the highway and will significantly reduce or completely block public views of the ocean over a portion of the subject site. In addition, although the proposed accessory structures (guest house and garages) will

be less than 18 ft. in height from existing grade, due to the closer location of these structures in relation to the highway and slope elevation, portions of these structures will also exceed the elevation of Pacific Coast Highway by approximately 2-3 ft and result in adverse effects to public views of the ocean from the highway. Staff has confirmed during a site visit that the proposed structures would significantly block public views of the ocean from Pacific Coast Highway. At Staff's request, prior to the site visit, the project site was staked with poles adequate to indicate the footprint and height of the proposed buildings. Staff notes, based on visual analysis of the staked project site, that the rooflines of all proposed structures would extend near or above the horizon line significantly blocking public bluewater views of the ocean from the highway. Therefore, in order to ensure that adverse effects to public views are minimized, Special Condition One (1) requires the applicant to submit revised project plans which show that no proposed development shall exceed the 177 ft. elevation line in height (approximate elevation of public views from Pacific Coast Highway). Any substantial changes to the footprint of the proposed structures will require an amendment to this permit. The Commission notes that Special Condition One (1) will still allow the applicant to construct a large multi-level residence (including the proposed 1,500 sq. ft. "basement" level located below the first floor of the residence shown on Exhibit 6) and that it is clearly feasible to redesign this project consistent with Section 30251 of the Coastal Act and the guidance provided by Policy 142 of the LUP which mandates that views to the ocean be protected. In addition, the Commission notes that any future development on the subject site (such as a new structure, a second-story addition, changes to the roofline, or landscaping) would result in potential adverse effects to visual resources on the subject site. Therefore, Special Condition Eight (8) requires the applicant to record a future improvements deed restriction to ensure that any future structures, additions, or landscaping that would otherwise be exempt from coastal permit requirements are reviewed by the Commission. In addition, in order to minimize potential future adverse effects to public views which might result on site due to new development if the subject site was subdivided, the applicant has offered to record a deed restriction prohibiting any future subdivision of the subject site. Therefore, in order to implement the applicant's proposed offer to record a deed restriction prohibiting any future subdivision of the subject site, Special Condition Ten (10) requires the applicant to execute and record a deed restriction, in a form and content acceptable to the Executive Director, which states that the subject site may not be subdivided at any future point in time.

In addition, the Commission also notes that public views of the ocean from Pacific Coast Highway have been significantly reduced or completely blocked by landscaping associated with residential development. Currently, the ocean is visible from Pacific Coast Highway over the entire parcel since all vegetation has been previously removed from the bluff top area of the site. However, the Commission notes that new landscaping on the subject site will result in a potential reduction in the public's ability to view the ocean from the highway. Therefore, Special Condition Two (2) has been required to ensure that vegetation on the subject site shall be limited to low-lying species that will not block or adversely impact public views of the ocean from the highway. Vegetation within Zone A (generally located upslope and near the highway), as shown on Exhibit 4b, shall be limited to no more than 2 ft. in height. Vegetation within Zone B (general located downslope and farther from the highway), as shown on

Exhibit 4b, shall be limited to no more than 14 ft. in height. In no case shall any vegetation on the subject site exceed the 175 ft. elevation line in height (approximate elevation of Pacific Coast Highway). The use of any vegetation of greater height than otherwise provided for above may be allowed only if the Executive Director determines that such landscaping is consistent with the intent of this condition and will serve to minimize adverse effects to public views.

The proposed project also includes a large amount of grading that will result in landform alteration of the subject site (approximately 1,302 cu. yds. of cut and 630 cu. yds. of fill). However, in the case of the this project, the Commission notes that the majority of the proposed grading is for excavation that will allow the proposed structures and driveway to be "set" lower into the hillside, thereby reducing the amount of structural surface visible from upslope public viewing areas such as Pacific Coast Highway. As such, the Commission notes that the proposed grading plan will serve to minimize adverse effects to public views on the subject site.

Further, the proposed project includes the construction and installation of a new concrete v-ditch drainage system on the bluff slope. The Commission notes that the proposed drainage system will minimize erosion and increase the geologic stability of the subject site. The Commission also notes that the minimization of erosion on the subject site will also serve to protect public views of the bluff slope on the subject site from Malibu Road. However, the Commission further notes that the proposed concrete v-ditch drainage system itself will result in adverse effects to the visual quality of the subject site if constructed using white or non-earthtone colors. Therefore, Special Condition Six (6) requires that the proposed concrete v-ditch drainage system on the bluff face be earthtone in color and designed to blend with the surrounding bluff slope in order to minimize adverse effects to visual resources.

The Commission notes that the proposed project includes the construction of a 42 inch high solid masonry wall with a wrought iron fence on top located adjacent to Pacific Coast Highway. The Commission further notes that even a relatively short, 42 inch high, solid privacy wall and gate in the proposed location, immediately adjacent to Pacific Coast Highway, would diminish the public's ability to view the ocean from the highway and would not be consistent with either the above referenced policies of the LUP or with past Commission action regarding the protection of public views along the coast. The Commission further notes that a feasible alternative to the construction of the proposed solid wall and gate structure would include the construction of a less visually intrusive fence and gate. Therefore Special Condition One (1) requires the applicant to submit, for the review and approval of the Executive Director, revised project plans which show that the 42 inch high solid masonry wall/gate is deleted in order to ensure that adverse effects to public views of the ocean from the highway are minimized. The Commission notes that Special Condition One (1) will still allow the applicant to submit revised plans, for the review and approval of the Executive Director, which would allow for the construction of a fence/gate along Pacific Coast Highway, provided that such a fence is of a design that is (1) of a visually permeable design and material (e.g. wrought iron or non-tinted glass material); (2) no more than 6 ft. in height; and (3) all bars, beams, or other non-visually permeable materials used in the

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construction of the proposed fence are no more than 1 inch in thickness/width and placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.

Therefore, for the reasons discussed above, the Commission finds that the proposed development, as proposed, will not result in any adverse effects to public views and is consistent with Section 30251 of the Coastal Act.

D. Archaeological Resources

PRC Section 30244 of the Coastal Act states that:

> ***Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.***

Archaeological resources are significant to an understanding of cultural, environmental, biological, and geological history. The proposed development is located in a region of the Santa Monica Mountains which contains one of the most significant concentrations of archaeological sites in southern California. The Coastal Act requires the protection of such resources to reduce the potential adverse impacts through the use of reasonable mitigation measures.

Degradation of archaeological resources can occur if a project is not properly monitored and managed during earth moving activities and construction. Site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be permanently lost. In the past, numerous archaeological sites have been destroyed or damaged as a result of development. As a result, the remaining sites, even though often less rich in materials, have become increasingly valuable as a resource. Further, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites which remain intact.

A portion of Archaeological Site CA-LAN-803 is located on the subject site. The recorded map of CA-LAN-803 indicates that the archaeological site extends over almost the entire subject site, including the proposed locations for the residence, guesthouse, pool, and two detached garages. A Phase II archaeological study of the subject site consisting of the archaeological excavation of 31 shovel test pits and four 1 x 1 meter excavation pits located on different areas of the subject site has been previously conducted. The study concluded that although some artifacts have been discovered on the subject site, CA-LAN-803 is not highly significant from an archaeological perspective. The Phase 2 (Test Phase) of Archaeological Site CA-LAN 803 Report by E. Gary Stickel, Ph.D. dated March 1999, states:

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> ***Given the lack of variability of the data recovered from the 35 units [test pits] that were excavated for the Test Phase (Phase 2)...with only a few formal tools recovered and with the vast majority of the data limited to waste flaked material (debitage)...it would appear that site CA-LAN-803 is not a highly significant site (i.e. it lacks major habitation indicators, lacks burials and/or cemeteries, lacks religious site data, and it lacks other unique data that would make it a highly significant site. Nonetheless, if the site does, in fact date to the Early Period, it does provide data important to our understanding of that period (albeit on a limited data set basis).***

The Phase II Report concludes that further archeological excavation on the site is not necessary and the City has adopted this recommendation. The applicant's consultant has conducted further investigation of the archeological resources at the site, as part of a Phase III (Data Collection/Artifact Recovery) Program, which included collection of all artifacts on the site.

Although the above mentioned archaeological study found that the subject site is not highly significant from an archaeological perspective, the Commission notes that archaeological artifacts have been found on the subject site and that the proposed project may result in potential adverse effects to archaeological resources from grading and construction activity. In addition, several letters of concern, including several comments and reports by Dr. Chester King, archaeologist, have been received by staff which assert the subject site should be considered significant in regards to archaeological resources (Exhibit 13). However, regardless of the different assertions by all concerned parties regarding the actual significance of the site, the Commission notes that the presence of archaeological artifacts on the subject site is undisputed. As such, the Commission also notes that potential adverse effects may occur to those resources as a result of the proposed development and that; therefore, reasonable mitigation measures should be required pursuant to Section 30244 of the Coastal Act.

In addition, staff has received letters from both the State Office of Historic Preservation (OHP) and the State Native American Heritage Commission (NAHC) regarding the proposed project (Exhibits 13a & 13b). The NAHC expressed concern regarding whether consultation with the appropriate Chumash groups had occurred in regards to the proposed project. The letter from the NAHC dated 2/23/00 states:

> ***The concerns of the Native American Heritage Commission (NAHC) regarding the Trento project deal with whether or not there was meaningful consultation with the appropriate Chumash Native American groups and individuals. I was contacted by Susan McCabe acting on behalf of Mr. and Mrs. Trento and provided her with a list of the appropriate Native Americans who should have been contacted regarding any concerns they have about cultural resources...From conversations that I have conducted with a random group of the people on the list, I have determined that (1) they were aware of the project (through the grapevine) however, (2) there was no formal written contact by Dr. Stickle for input regarding any concerns they might have...No one expressed to me any concerns about the monitoring on the project...I would recommend that all of the groups and individuals on the list provided to be Ms. McCabe be invited to view and comment on the site before construction begins.***

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The Commission notes that although the "list" referred to in the above letter was not provided to Commission staff, the NAHC did indicate that they had found that the appropriate Native American Groups and individuals "were aware of the project." In addition, the applicant has since indicated to staff that the individuals included on the NAHC's list have been formally notified of the project by letter. However, regardless, of the noticing requirements of the NAHC, the Commission notes that no assertions have been made by any of the concerned parties that the proposed project has not been properly noticed pursuant to the requirements of the Coastal Act.

In addition, as mentioned above, the State Office of Historic Preservation (OHP) has reviewed the archaeological studies conducted by both Dr. King and Dr. Stickle on the subject site. The OHP has indicated that they are in agreement with the recommendations of the previously completed Phase II Study which recommends that further excavation of the subject site is not necessary, although additional surface collection of artifacts should be implemented prior to construction. The letter from the OHP dated 3/20/00 states:

> ***Stickel (1999) recommends that no further excavation in the main site area be conducted as mitigation. He advocates that "there should be a complete surface collection of all formal artifact tools at the main site." The results of this effort should be analyzed and formally reported. The OHP agrees with this but also recommends that additional mitigation should include avoidance of archaeological materials or features with sterile soils if avoidance is not possible, the recovery and reporting of archaeological material discovered during construction should also be considered a function of successful mitigation.***

As recommended by the OHP, a complete surface collection of artifacts on the subject site has already been completed as part of the Phase III (Data Collection/Artifact Recovery) Program to mitigate adverse effects from the proposed project. The OHP also recommends that the proposed project be sited in a manner that avoids archaeological materials. In this case, the Commission notes, based on information submitted by both Dr. King and Dr. Stickle, that archaeological resources are located over the majority of the site and that; therefore, there are no feasible alternative locations for the proposed development that would eliminate potential adverse effects to archaeological resources. The Commission further notes that, with the exception of the proposed guest house garage, the proposed development will be generally sited in a manner to avoid those areas of the site where the greatest concentration of artifacts have been identified. Although the proposed guest house garage will be located within an area mapped by Dr. King as an area of higher artifact concentration, the Commission notes that Dr. Stickle has previously conducted two 1 x 1 meter excavation pits in the location of the guest house garage as part of the Phase III (Data Collection/Artifact Recovery) program in order to mitigate potential adverse effects to those resources.

In past permit actions regarding development on sites containing significant archaeological resources, the Commission has typically required that the applicant conduct a Phase II (Test Phase) Archaeological Study of the site to develop a better understanding of the archaeological resources which may be disturbed by a proposed

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project and, if warranted, a Phase III (Data Collection/Artifact Recovery). In this case, it is not necessary to require such testing since a Phase II Study and a Phase III (Data Collection/Artifact Recovery) Program has been previously completed on the subject site by the applicant's archaeological Consultant. As previously discussed, the Phase II portion of the program included the study of 31 shovel test pits and four 1 x 1 meter excavation pits located on different areas of the subject site where development is proposed. The Phase III Program included the surface collection of artifacts, two 1 x 1 meter excavation pits in the location of the proposed guest house garage, and a shovel test pit in the area of an identified shell midden.

In addition, in past permit actions regarding development on sites containing archaeological resources the Commission has also required that a qualified archaeologist and appropriate Native American consultant be present on-site during all grading, excavation, and site preparation that involve earth moving operations. Therefore, to ensure that adverse effects to archaeological resources are minimized during the construction of the proposed development (and as recommended in the letter from OHP dated 3/20/00) Special Condition Four (4) requires that the applicant have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation and site preparation in order to monitor all earth moving operations. In addition, if any significant archaeological resources are discovered during construction, work shall be stopped and an appropriate data recovery strategy shall be developed by the City of Malibu's archaeologist, the applicant's archaeologist, and the Native American consultant consistent with California Environmental Quality Act (CEQA) guidelines. Further, staff notes that Archaeological Site CA-LAN-803 extends over almost the entire subject parcel. To ensure that any future potential adverse effects to the archaeological resources on site are minimized, Special Condition Eight (8) provides that any future development of the site will be reviewed by the Commission which might otherwise be exempt from permit requirements. In addition, in order to minimize potential future adverse effects to archaeological resources which might result on site due to new development if the subject site was subdivided, the applicant has offered to record a deed restriction prohibiting any future subdivision of the subject site. Therefore, in order to implement the applicant's proposed offer to record a deed restriction prohibiting any future subdivision of the subject site, Special Condition Ten (10) requires the applicant to execute and record a deed restriction, in a form and content acceptable to the Executive Director, which states that the subject site may not be subdivided at any future point in time.

Therefore, the Commission finds that the proposed development, as conditioned, is consistent with Section 30244 of the Coastal Act.

E. Cumulative Impacts

Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new developments. Section **30250 (a)** of the Coastal Act states:

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

Section **30252** of the Coastal Act states:

The location and amount of new development should maintain and enhance public access to the coast by (l) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

New development raises coastal issues related to cumulative impacts on coastal resources. The construction of a second unit on a site where a primary residence exists intensifies the use of a parcel increasing impacts on public services, such as water, sewage, electricity and roads. New development also raises issues as to whether the location and amount of new development maintains and enhances public access to the coast.

Based on these policies, the Commission has limited the development of second dwelling units (including guest houses) on residential parcels in the Malibu and Santa Monica Mountain areas. The issue of second units on lots with primary residences has been the subject of past Commission action in the certification of the Santa Monica Mountains/Malibu Land Use Plan (LUP). In its review and action on the Malibu LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft.) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that the small size of units (750 sq. ft.) and the fact that they are likely to be occupied by one or at most two people would cause such units to have less impact on the limited capacity of Pacific Coast Highway and other roads (including infrastructure constraints such as water, sewage, electricity) than an ordinary single family residence. (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29 and P.C.H. (ACR), 12/83 page V-1 - VI-1).

The second unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different forms which in large part consist of: 1) a second unit with kitchen

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facilities including a granny unit, caretaker's unit, or farm labor unit; and 2) a guesthouse, with or without separate kitchen facilities. Past Commission action has consistently found that both second units and guest houses inherently have the potential to cumulatively impact coastal resources. Thus, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act in this area (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29).

As proposed, the 749 sq. ft. second residential unit (guesthouse) conforms to the Commission's past actions allowing a maximum of 750 sq. ft. for a second dwelling unit in the Malibu area. However, the Commission notes that any future improvements or additions to the structure would increase the size of the guest unit beyond the maximum of 750 sq. ft. and constitute a violation of this coastal development permit. Therefore, Special Condition Ten (10) has been required to ensure that any additions or improvements to the guesthouse structure will be reviewed by the Commission.

Therefore, the Commission finds that, as conditioned, the proposed development is consistent with Sections 30250 and 30252 of the Coastal Act.

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F. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states that:

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

As described above, the proposed project includes the construction of a single family residence, garage, guest house, guest house garage, driveway, concrete v-ditch drainage system, septic system, and approximately 3,802 cu. yds. of grading (1,302 cu. yds. of cut, 630 cu. yds. of fill, and 1,870 cu. yds. of removal and recompaction). The conversion of the project site from its natural state will result in an increase in the amount of impervious surface and reduction in the naturally vegetated area. Further, use of the site for residential purposes will introduce potential sources of pollutants such as petroleum, household cleaners and pesticides, as well as other accumulated pollutants from rooftops and other impervious surfaces.

The removal of natural vegetation and placement of impervious surfaces allows for less infiltration of rainwater into the soil, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Additionally, the infiltration of precipitation into the soil allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces, pollutants in runoff are quickly conveyed to coastal streams and to the ocean. Thus, new development can cause cumulative impacts to the hydrologic cycle of an area by increasing and concentrating runoff, leading to stream channel destabilization, increased flood potential, increased concentration of pollutants, and reduced groundwater levels.

Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground. Methods such as vegetated filter strips, gravel filters, and other media filter devices allow for infiltration. Because much of the runoff from the site would be allowed to return to the soil, overall runoff volume is reduced and more water is available to replenish groundwater and maintain stream flow. The slow flow of runoff allows sediment and other pollutants to settle into the soil where they can be

EXHIBIT 11
cont

filtered. The reduced volume of runoff takes longer to reach streams and its pollutant load will be greatly reduced.

As described above, the project is conditioned to implement and maintain a drainage plan designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. This drainage plan is required in order to ensure that risks from geologic hazard are minimized and that erosion and sedimentation is minimized. In order to further ensure that adverse impacts to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the applicant to incorporate filter elements that intercept and infiltrate or treat the runoff from the site as required by Special Condition Six (6). Such a plan will allow for the infiltration and filtering of runoff from the developed areas of the site, most importantly capturing the initial, "first flush" flows that occur as a result of the first storms of the season. This flow carries with it the highest concentration of pollutants that have been deposited on impervious surfaces during the dry season. Additionally, the applicant must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

Finally, the proposed development includes the installation of an on-site septic system to serve the residence. The applicants' geologic consultants performed percolation tests and evaluated the proposed septic system. The report concludes that the site is suitable for the septic system and there would be no adverse impact to the site or surrounding areas from the use of a septic system. Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

G. Local Coastal Program

Section **30604** of the Coastal Act states that:

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

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CONT

will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. CEQA

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

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

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EXHIBIT 11
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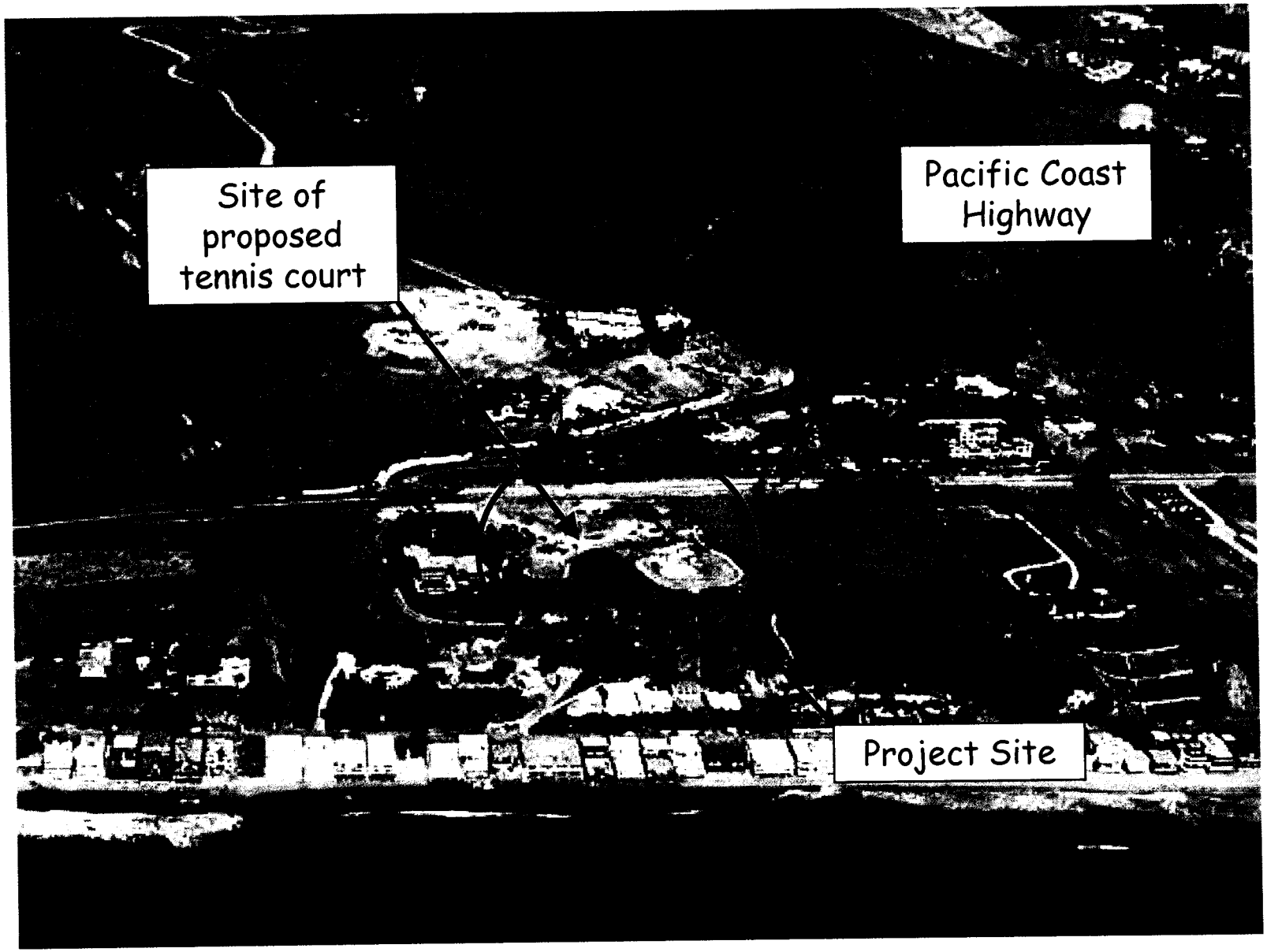

Exhibit 12

Aerial Photograph of Site

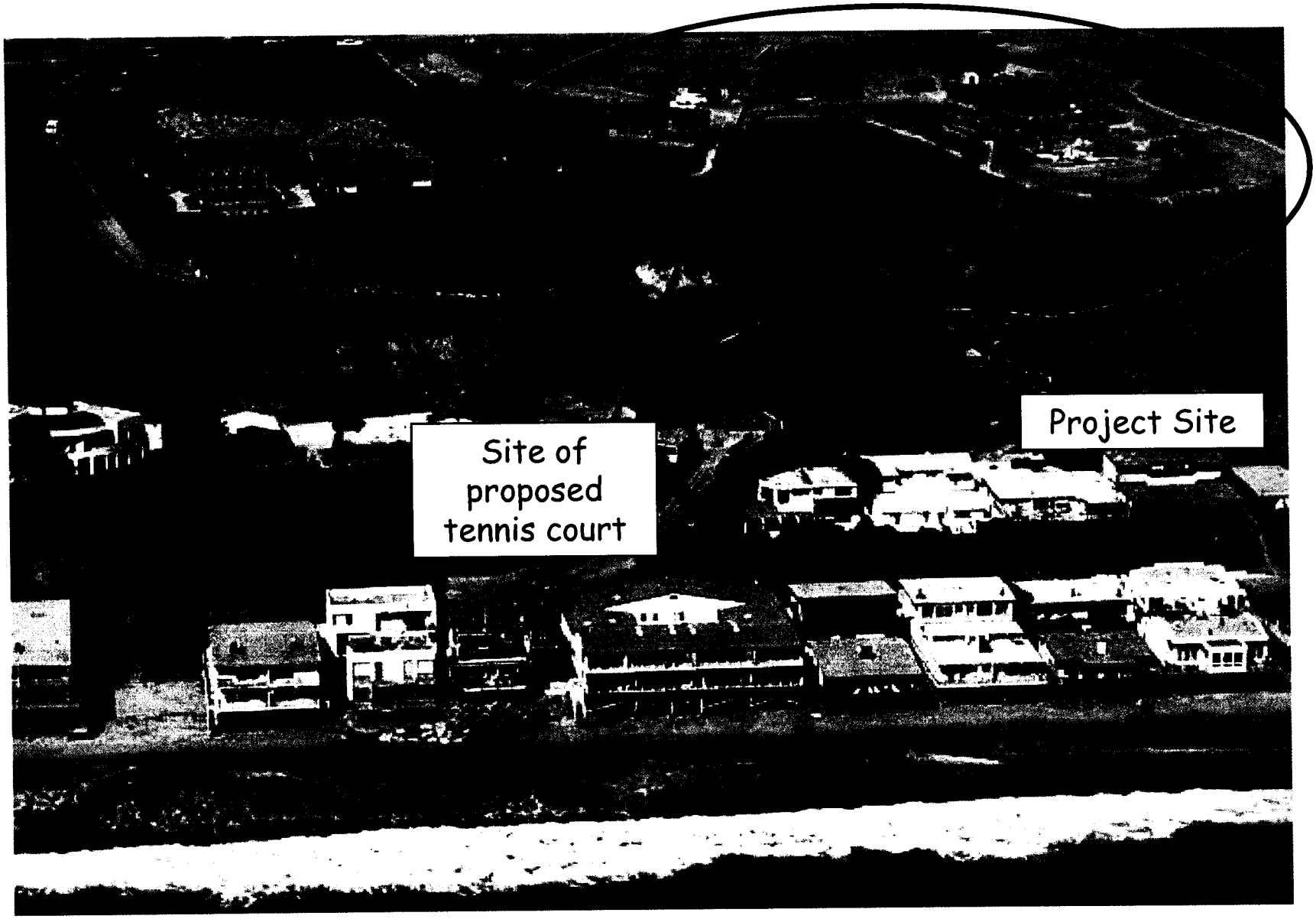

Exhibit 13

Detailed Aerial Photograph of Site

Exhibit 14

Photograph of Tennis Court Site