Item W 21b

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA COASTAL COMMISSION
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Hearing Date:	6/9/04

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-03-086

APPLICANT: Stoney Heights LLC (Brian A. Sweeney and Elizabeth Tyler, Managers) and Meadowlands Ranch LLC (David R. Sweeney and Brian Sweeney, Managers)

AGENT: Schmitz & Associates

PROJECT LOCATION: Adjacent to west side of Corral Canyon Road, adjacent to the north side of the El Nido small lot subdivision, Santa Monica Mountains, Los Angeles County

PROJECT DESCRIPTION: Redivision of two vacant lots that are 34.5-acres and 7,202 sq. ft. to create two new wholly reconfigured lots that are 14.8-acres and 19.8-acres.

LOCAL APPROVALS RECEIVED: Los Angeles County Approval in Concept

SUBSTANTIVE FILE DOCUMENTS: 1986 Los Angeles County Malibu Land Use Plan; City of Malibu LCP Revised Findings.

STAFF NOTE

This application was filed on January 6, 2004. Under the provisions of the Permit Streamlining Act, the latest possible date for Commission action is July 4, 2004. As such, the Commission must act on Application 4-03-086 at the June 9-11, 2004 Hearing.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends denial of the application, as the proposed development will create two wholly reconfigured parcels within ESHA and would not minimize impacts to ESHA or water quality as required by Sections 30231 and 30240 of the Coastal Act. Further, the proposed redivision will result in the cumulative impact of two residences instead of one on the ridge above Corral Canyon, which would not minimize impacts to visual resources, as required by Section 30251 of the Coastal Act.

STAFF RECOMMENDATION:

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-03-086 for the development proposed by the applicant.***

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

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

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description.

The applicants propose to redivide two existing adjacent parcels that are into two completely reconfigured lots. Following is a chart that details the existing and proposed size of the subject parcels:

Parcel	Existing Size	Proposed Size
Parcel 1--APN 4457-013-020 (2)	34.5 Acres	14.8 Acres
Parcel 2—APN 4457-019-010	7,202 square feet	19.8 Acres

The project site is located on the west side of Corral Canyon Road, adjacent to the El Nido small-lot subdivision. Corral Canyon Road runs along the ridge between Corral Canyon and Dry Canyon in this area. The larger parcel (34.5-acres) that is part of the project site descends steeply from the west side of Corral Canyon Road into Dry Canyon Creek, a designated blue-line stream, and extends up the canyon slopes on the other side. The parcel is well vegetated, and with the exception of a small area

along the road, the vegetation is undisturbed. The smaller parcel (7,202 sq. ft.) is located within Dry Canyon and is one of the lots that make up the El Nido small lot subdivision. This parcel does not extend up the slope to Corral Canyon Road, and so does not take access from this road. Rather, this parcel is accessed from Searidge Drive, one of several roads that extend through the El Nido small lot subdivision.

The applicants' representative has submitted several items in support of the application. One is a letter signed by Captain Dennis Cusino of Fire Station 71 of the Los Angeles County Fire Department (although the letter is not on fire department letterhead) which states his support of the lot line adjustment. The letter states that:

> Existing Lot 2, however, is located in the crowded and overburdened El Nido small lot subdivision, at the end of Searidge Drive and more than 1,500 feet from the El Nido entrance off of Corral Canyon Road...Alternatively Corral Canyon Road is currently 40 feet wide and, as it does for Lot 1, promotes safe and direct emergency access for proposed Lot 2. After the lot line adjustment, the Lot 2 building site will therefore be significantly improved with respect to emergency access and fire safety.

Staff would acknowledge that Corral Canyon is wider and would provide easier access than Searidge Drive for fire equipment. However, as discussed in more detail below, there are three vacant, unretired parcels adjacent to the 7,202 sq. ft. parcel that can still be developed with one or more residences. This development along with the other existing residences in this area of Searidge Drive will still require emergency services.

The applicant agents have also submitted a letter regarding a large horse corral that is existing adjacent to and within the stream corridor of Dry Canyon at the southern end of the project site. The letter is from an adjacent property owner who apparently uses the corral for her livestock. It is unclear from the letter whether she constructed the corral or if the present or previous owners carried out the construction. The letter states that the author began grazing a goat in the area beginning in 1975 to thin vegetation. Some time later, fencing was placed to confine the goat and a pony. Staff would note that aerial photographs of the area taken in 1977 reveal that there was a small cleared area near the stream, and the remainder of the southern area of the site was well vegetated. The area where the horse corral is now located was covered with vegetation consistent in appearance with the rest of the native vegetation across the rest of the project site. As such, staff would conclude that the horse corral area was cleared and fencing placed after the effective date of the Coastal Act. There is no record of any coastal development permit approved for this development.

At staff's request, the applicants submitted a calculation using the Slope Intensity Formula (County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan) that determined the maximum allowable Gross Structural Area for the 7,202 sq. ft. parcel that is part of this application. Given the steepness and size of this parcel, the maximum allowable GSA was determined to be 500 sq. ft. The applicants also submitted a letter from its lawyer stating that: "...this information is not relevant to the requested lot line adjustment and may not legally be considered by the Commission in determining whether or not to approve the requested lot line adjustment". The letter

asserts that information regarding the existing condition of the parcels is irrelevant to the Commission's consideration of the application. The letter also states that:

> Government Code section 66412(d) restricts an agency's review and approval of lot line adjustments "to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances." (emphasis added).

(Government Code section 66412(d) is part of the Subdivision Map Act) Staff would note that the proposed project is considered a division of land that constitutes "development" pursuant to Section 30106 of the Coastal Act. As such, the proposed project is subject to review by the Commission for conformance with all of the Chapter 3 Policies of the Coastal Act.

At staff's request, the applicants' agents have submitted a comparison of the areal extent of vegetation removal that would be required for development of a residence on the existing parcel configuration and the proposed reconfiguration. The revised fuel modification area figures, dated May 14, 2003, indicate that development of a house on the 7,202 sq. ft. parcel would require 3.5-acres of vegetation removal for development and fuel modification, even deducting areas within the 200-foot fuel modification radius that have already been cleared for other existing development. The applicants' agents also determined that 1.7-acres of vegetation removal would be required for the development of a residence on the second of the two proposed parcels, as reconfigured by the subject redivision. Exhibit 4 is an exhibit the agents prepared to show this comparison. Staff attempted to verify the applicant's vegetation removal figures using the site plan for the project which has a known scale of 1 inch equals 80 feet. Staff notes that the applicants' agent's figures greatly overestimated the amount of vegetation removal that would result. Staff's measurements indicate that a maximum of approximately 2-acres of vegetation would need to be removed for development of a residence (approximately 1,000 sq. ft.) on the existing 7,202 sq. ft. parcel, and that approximately 3.2-acres of vegetation removal would be required for development of two residences (as measured from the approved fuel modification plans submitted as part of Permit Applications 4-04-027 and 4-04-028 described below) which would be adjacent on the reconfigured parcels. Approximately 2.2-acres of fuel modification would be required on the northernmost of the two proposed parcels (14.8-acres) and approximately 1-acre of the total fuel modification would be on the southernmost parcel (19.8-acres).

B. Related Permit Actions

The Executive Director previously waived the requirement for a permit (Waiver No. 4-02-245-W) and the Commission concurred for development on one of the two parcels that make up the project site. The development was a lot line adjustment redividing two existing parcels into two completely reconfigured lots. The 34.5-acre parcel that is the subject of this permit was the southernmost of the two reconfigured lots. The pre-existing lot configuration was such that one lot had road access to Corral Canyon and the other lot had no road access. The redivision resulted in both parcels having road

access directly to Corral Canyon Road, which would allow grading and landform alteration associated with the eventual development of the parcels to be reduced. As part of the application for 4-02-245-W, the applicant submitted exempt certificate of compliances for each parcel, demonstrating that at the time the lots were created, they were exempt from the Subdivision Map Act and County Subdivision Ordinance.

More recently, the Commission approved Permit 4-03-086 (Malibu Ocean Ranches LLC) for the construction of a 3,944 sq. ft, 35 ft. high from existing grade single family residence with 2-car garage, pool, 108 cu. yds. of grading (84 cu. yds. cut and 24 cu. yds. fill), and septic system, on an 8,160 sq. ft. development area, with 2.56-acres of vegetation removal. In approving this permit, the Commission found that the project site, with the exception of a disturbed area along the roadway, contains habitat area that is ESHA. The Commission also found that the proposed structure immediately adjacent to Corral Canyon would be highly visible from parkland and trail across the canyon. While impacts to visual resources could be reduced by siting the proposed structure down the slope further away from the ridge, the Commission found that such siting would have greater adverse impacts on ESHA. This permit was approved with 11 special conditions of approval including geologic review, landscaping and erosion control plans, wildfire waiver of liability, drainage and polluted runoff control plan, lighting restriction, structural appearance, future development, deed restriction, habitat impact mitigation, and pool/spa drainage. The project site is directly north of the subject site and was the northernmost of the two lots previously created through redivision, as approved in Permit Waiver 4-02-245-W described above.

The applicants have each submitted an application for the development of a single family residence on each of the redivided parcels proposed in the subject application. Meadowlands Ranch LLC proposes Coastal Development Permit 4-04-027 for the construction of a 3,558 sq. ft. single family residence with a detached 827 sq. ft. detached garage with a 735 sq. ft. guest suite above, pool, spa, septic system and 917 cu. yds. of grading (867 cu. yds. cut and 50 cu. yds. fill) on the proposed 19.8 parcel (Parcel 2 of the redivision).

Application 4-04-028 (Stoney Heights LLC) is for the construction of a 4,049 sq. ft. single family residence, a detached 741 sq. ft. garage with a 750 sq. ft. guest house above, pool, septic system, and 515 cu. yds. of grading (365 cu. yds. cut and 150 cu. yds. fill) on the proposed 14.8-acre lot (Parcel 1 of the redivision).

C. Background

Throughout the Malibu/Santa Monica Mountains coastal zone there are a number of areas, which were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "small lot subdivisions" are comprised of parcels of less than one acre but more typically range in size from 4,000 to 5,000 square feet. The total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources. Cumulative development constraints common to small lot subdivisions were documented by the Coastal Commission and the Santa

Monica Mountains Comprehensive Planning Commission in the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development In the Santa Monica Mountains Coastal Zone". Analysis of the potential cumulative impacts led the Commission, through many permit decisions, to restrict development within small lot subdivisions through the use of a maximum gross structural area, and to ensure that the number of lots would not be increased by requiring that the creation of new lots mitigate for impacts by retiring lots through the TDC program. Additionally, the Coastal Conservancy completed several lot retirement programs within small lot subdivisions.

TDC Program

Because of the large number of existing lots and the potential demands on coastal roads, services, recreational facilities, and beaches which would result from development of these lots, the 1978 report recommended that land divisions should not be approved if they increased the total number of lots in the Santa Monica Mountains coastal zone. In other words, the study recommended that a means should be found to combine existing lots or otherwise retire existing lots so that new land divisions would not result in a net increase in the amount of development which could occur.

At the same time, the Coastal Commission was faced with applications for land divisions which raised at least one, and sometimes a second, major issue. The major issue raised by all proposed land divisions was the large number of undeveloped lots mentioned above. The second issue, raised by some land divisions, was the technical requirement of Section 30250(a) of the Coastal Act regarding new land divisions outside existing developed areas. That section requires that such land divisions shall be permitted only where 50 percent of the usable parcels in the area have been developed and where other criteria are met. The Commission found that "existing developed area" applied only to the urbanized strip, or coastal terrace, along Pacific Coast Highway and did not apply to the interior of the Santa Monica Mountains. The Commission further found that the area addressed by the 50% criterion was the market area, amounting to the entire Malibu/Santa Monica Mountains coastal zone. Within that area, a majority of existing parcels were not yet developed, thus causing all proposed land divisions outside the coastal terrace to fail the required test of Section 30250(a).

Based on these concerns, the Commission found no alternative to denial of a number of land divisions requested in the area. Faced with continuing applications, the Commission instituted the TDC program through a series of permit decisions. The program was designed to address both the cumulative impact problem represented by the large number of existing lots and the technical criteria of Section 30250(a) regarding proposed land divisions outside the coastal terrace.

The TDC program acts in such a way as to ensure that no net increase in development occurs, even if land divisions are approved. The developability of existing parcels is extinguished at the same time new parcels are created, in order to accomplish this end. Because under this program land divisions do not add to the stock of parcels eligible for future potential development and, in fact, "transfer" development (parcels) to more

appropriate areas, the potential cumulative impacts are mitigated. Similarly, because land divisions coupled with lot retirement do not increase the number of potentially usable parcels, the technical criterion of 30250(a) concerning 50% of the usable parcels in the area is, in effect, met.

GSA

The study acknowledged that the existing small lot subdivisions can only accommodate a limited amount of additional new development due to major constraints to buildout of these areas that include: Geologic, road access, water quality, disruption of rural community character, creation of unreasonable fire hazards and others. Following an intensive one year planning effort regarding impacts on coastal resources by Coastal Commission staff, including five months of public review and input, new development standards relating to residential development on small lots in hillsides, including the Slope-Intensity/Gross Structural Area Formula (GSA) were incorporated into the Malibu District Interpretive Guidelines in June 1979. A nearly identical Slope Intensity Formula was incorporated into the 1986 certified Malibu/Santa Monica Mountains Land Use Plan under policy 271(b)(2) to reduce the potential effects of buildout as discussed below.

The Commission has found that minimizing the cumulative impacts of new development is especially critical in the Malibu/Santa Monica Mountains area because of the large number of lots which already exist, many in remote, rugged mountain and canyon areas. From a comprehensive planning perspective, the potential development of thousands of existing undeveloped and poorly sited parcels in these mountains creates cumulative impacts on coastal resources and public access over time. Because of this, the demands on road capacity, public services, recreational facilities, and beaches could be expected to grow tremendously.

Policy 271(b)(2) of the Malibu/Santa Monica Mountains LUP, which has been used as guidance by the Coastal Commission, requires that new development in small lot subdivisions comply with the Slope Intensity Formula for calculating the allowable Gross Structural Area (GSA) of a residential unit. Past Commission action certifying the LUP indicates that the Commission considers the use of the Slope Intensity Formula appropriate for determining the maximum level of development which may be permitted in small lot subdivision areas consistent with the policies of the Coastal Act. The basic concept of the formula assumes the suitability of development of small hillside lots should be determined by the physical characteristics of the building site, recognizing that development on steep slopes has a high potential for adverse impacts on resources. Following is the formula and description of each factor used in its calculation:

Slope Intensity Formula:

GSA = (A/5) × ((50-S)/35) + 500

GSA = the allowable gross structural area of the permitted development in square feet. The GSA includes all substantially enclosed residential and storage areas, but does not include garages or carports designed for storage of autos.

A = the area of the building site in square feet. The building site is defined by the applicant and may consist of all or a designated portion of the one or more lots comprising the project location. All permitted structures must be located within the designated building site.

S = the average slope of the building site in percent as calculated by the formula:

S = I × L/A × 100

I = contour interval in feet, at not greater than 25-foot intervals, resulting in at least 5 contour lines
L = total accumulated length of all contours of interval "I" in feet
A = the area being considered in square feet

At the request of staff, the applicant has submitted a GSA calculation in conformance to Policy 271(b)(2) of the Malibu/Santa Monica Mountains LUP. Using the formula for slope, the applicant determined that the average slope of the 7,202 sq. ft. parcel is fifty percent. Given this slope, the calculation arrived at a maximum GSA of 500 sq. ft. of habitable space. Staff has confirmed that the applicant's calculations conform to the formula used by the Commission in past permit decisions.

Conservancy Restoration Projects

In addition to the TDC Program, the Commission has reviewed and approved four plans for lot retirement, called "restoration projects" proposed and implemented by the State Coastal Conservancy. All four of the restoration programs were located in small lot subdivisions in the Santa Monica Mountains. Under these projects, the Coastal Conservancy purchased large numbers of small lot subdivision parcels and sold the TDC credits generated by retirement of the lots to recoup a portion of their initial investments. The El Nido Restoration Project (approved in 1980), generated 67.8 TDCs which resulted in the retirement of 173 lots. Exhibit 6 shows the lots that have been retired within the El Nido small lot subdivision, the majority of which are located in the northwest half of the subdivision. Most of these retired lots were part of the Conservancy restoration project.

D. Environmentally Sensitive Habitat and Water Quality

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

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

Section **30231** states:

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

Section **30240** states:

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

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

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

Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against disruption of habitat values. Therefore, when

considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

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

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in Exhibit 6a, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP[1].

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

The subject site is located on the west side of Corral Canyon Road, adjacent to the El Nido small-lot subdivision. Corral Canyon Road runs along the ridge between Corral Canyon and Dry Canyon in this area. The larger of the two lots that comprise the project site descends steeply from the west side of Corral Canyon Road into Dry Canyon Creek, a designated blue-line stream, and extends up the canyon slopes on the other side. The site is well vegetated. A small area along the road has been cleared of vegetation, presumably for fuel modification purposes. There is also a disturbed area along the southern property line, within the stream corridor of Dry Canyon Creek. The stream is contained within a culvert under Searidge Road, just south of the property. In the area just upstream of the culvert, all vegetation has been removed from the stream course and there is some growth of weedy species. On the west side of the stream corridor, all vegetation has been cleared and a horse corral has been constructed.

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

The smaller of the two parcels that comprise the project site extends from Searidge Road up the lower slope of Dry Canyon. There is a small draw extending down the slope and across the site. The lowest area of the parcel directly adjacent to the road has been cleared of vegetation as have all of the parcels along this road. The remainder of the site is well vegetated.

Although the applicants did not provide a biological survey of the project site for the subject application, two reports have been submitted for the lots as proposed to be reconfigured (as described above, the applicants have submitted an application for development on each of the proposed parcels). The Biological Assessments, both dated November 7, 2003, were prepared by Pacific Southwest Biological Services, Inc. The reports address the habitats present on the project site. The reports identify four vegetation/habitat communities on the properties. The report for the proposed 14.8-acre parcel (northernmost of the reconfigured lots) approximates the acreages and describes these habitats thus:

Disturbed Habitat (0.23 acres)
A disced area approximately 30 feet wide paralleling Coral Canyon Road exists on-site. The vegetation within this area is dominated by exotic Castor Bean (*Ricinus comminus*) with non-native grasses (*Bromus sp.*) also occurring in very limited numbers.

Venturan Coastal Sage Scrub (11.83 acres)
This is the most abundant vegetation type found on site. The dominant plants in this vegetation type are Ashyleaf Buckwheat (*Eriogonum cinereum*), California Sagebrush (*Atemesia californica*), Purple Sage (Salvia leucophylla) and in some areas, Laurel-leaf Sumac (*Malosma Laurina*). These species are found in extremely thick densities, having 100% cover at most locations. As a consequence, the understory is either poorly developed, or non-existent in many areas.

Montane Ceanothus Chaparral (2.56 acres)
This vegetation type is dominated by Greenbark Ceanothus (*Ceanothus spinosus*). A wide linear patch of this vegetation parallels the on-site jurisdictional drainage. This vegetation type is also found on the east-facing slope located at the northwestern portion of the site.

Coast Live Oak Woodland (0.38 acres)
Coast Live Oaks (*Quercus agrifolia*) occur along the jurisdictional drainage and on the east facing slopes on-site. The oaks located on the slope are the southwestern portion of the Coast Live Oak Woodland, which is mainly found in APN# 4457-013-020(1). The oak trees in the jurisdictional drainage are mixed with Western Sycamore (*Platanus racemosa*). At the southern end of this grouping, a stand of approximately six Western Sycamores exist. Although these trees appear separate from the oak woodland, they are part of this vegetation type.

With regard to the proposed 19.8-acre parcel (southernmost of the two reconfigured lots), the report states the following regarding the habitats present:

> **Disturbed Habitat (0.32 acres)**
> A disced area approximately 30 feet wide paralleling Coral Canyon Road exists on-site. The vegetation within this area is dominated by exotic Castor Bean (*Ricinus comminus*) with non-native grasses (*Bromus sp.*) also occurring in very limited numbers.
>
> **Urban/Developed (0.19 acres)**
> Barrymore Drive passes through the southwestern corner of the property.
>
> **Venturan Coastal Sage Scrub (15.57 acres)**
> This is the most abundant vegetation type found on site. The dominant plants in this vegetation type are Ashyleaf Buckwheat (*Eriogonum cinereum*), California Sagebrush (*Atemesia californica*), Purple Sage (Salvia leucophylla) and in some areas, Laurel-leaf Sumac (*Malosma Laurina*). These species are found in extremely thick densities, having 100% cover at most locations. As a consequence, the understory is either poorly developed, or non-existent in many areas.
>
> **Montane Ceanothus Chaparral (1.63 acres)**
> This vegetation type is dominated by Greenbark Ceanothus (*Ceanothus spinosus*). A wide linear patch of this vegetation parallels the on-site jurisdictional drainage.
>
> **Coast Live Oak Woodland (2.44 acres)**
> Coast Live Oaks (*Quercus agrifolia*) occur in three distinct areas along the east-facing slopes on-site. A small group of oaks are located on the northwestern corner of the site boundary, with larger areas of oaks lining the non-jurisdictional tributaries to the south.

Neither biological assessment report addresses the areas of disturbed habitat along Searidge Drive, within the stream corridor just north of the road, or the area occupied by the horse corral. A map of the habitats on the site was also prepared by the biological consultant as part of each report. Commission staff visited the subject property in April 2004 and confirmed that the project site is comprised of coastal sage scrub, chaparral and oak woodland habitat areas. Exhibit 8 contains two photographs of the site showing the vegetation on the property.

With the exception of the disturbed areas described above (immediately along Corral Canyon Road, along Searidge Drive, within the Dry Canyon stream corridor, and within the horse corral), the project site is undisturbed. While there is scattered residential development in the area and more intense residential development in the small lot subdivision south of the project site, there is undisturbed, contiguous coastal sage scrub, chaparral habitat, and oak woodland habitat to the north and west of the site. Additionally, there is a large contiguous area of undisturbed habitat east of the project site, across the road in Corral Canyon. Exhibit 7 is a 2001 aerial photograph of the immediate area around the project site.

Therefore, due to the important ecosystem roles of coastal sage scrub and chaparral in the Santa Monica Mountains (detailed in Exhibit 6a) and the fact that the subject site is

predominately undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral, coastal sage scrub, and coast live oak woodland on and surrounding the project site (excluding the disturbed areas) meets the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area (excluding the disturbed areas) constitutes an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. While no development of structures is proposed as part of the subject application, the proposed parcels would presumably be developed with residential uses. As described above, the applicants have submitted applications for the development of a single family residence on each proposed parcel. The applicants have identified a potential development area for each proposed parcel adjacent to Corral Canyon Road. While there are some disturbed areas along Corral Canyon Road for the construction of residences in that location will still require the removal of ESHA (primarily coastal sage scrub habitat) for the development area and also as a result of fuel modification for fire protection purposes. As single-family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the development, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission also have to consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council.* In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of all economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all

reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the proposed lot line adjustment would redivide one large parcel (34.5-acres) and one small parcel (7,202 sq. ft.) into two wholly reconfigured lots (14.8 and 19.8-acres in size) that each contain ESHA. The Commission concludes that if the reconfigured lots were approved through this application, residential development would eventually be approved, with conditions to restrict development siting and design as well as to provide adequate mitigation of impacts, on each new lot within ESHA in order to avoid a taking. In order to evaluate the potential impacts of the proposed lot line adjustment, it is necessary to look at the impacts that are likely to result from the ultimate development of the proposed parcels.

Given the location of ESHA on the project sites, there are likely to be significant impacts to ESHA resulting from the removal of vegetation for the development areas as well as any required fuel modification area around structures. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP[2].

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

> Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.
>
> Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.
>
> Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the

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

exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the chaparral community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost, particularly if such areas are subjected to supplemental water through irrigation. In coastal sage scrub habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that can over time out-compete native species.

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

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

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area[5]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[6]. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments[7]. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on

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

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

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

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

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

long-evolved native ant-plant mutualisms[8]. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats[9].

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.[10] In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds[11].

While these impacts resulting from fuel modification can be reduced through siting and designing alternatives for new development, they cannot be completely avoided, given the high fire risk and the location of ESHA on and around the project sites.

The applicants' agent has stated that the proposed reconfiguration will reduce impacts from removal of vegetation for a development area and fuel modification from what would be required to develop one residence on the existing 34.5-acre parcel and one on the 7,202 sq. ft. parcel. The agent's letter, dated December 4, 2003, states that:

> As illustrated on the enclosed exhibit, a significant portion of the extra 2.91 acres of fuel modification required for the existing parcel would directly impact the N/S trending blue line stream and associated riparian habitat. Fuel modification on the proposed lot, however, would not only have less impact on surrounding vegetation, but would be more than 100 feet away from the stream and riparian habitat.

As described above, the applicants' agents have submitted a comparison of the extent of vegetation removal that would be required for development of a residence on the existing parcel configuration and the proposed reconfiguration. The agent revised their calculations to take into account areas that are already cleared. The revised fuel modification area figures, dated May 14, 2003, indicate that development of a house on

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

[9] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

[10] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.

[11] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.

the 7,202 sq. ft. parcel would require 3.5-acres of vegetation removal for development and fuel modification, even deducting areas within the 200-foot fuel modification radius that have already been cleared for other existing development. The applicants' agents also determined that 1.7-acres of vegetation removal would be required for the development of a residence on the second of the two proposed parcels, as reconfigured by the subject redivision.

Staff has also measured the area of vegetation that would be removed, using the site plan for the project which has a known scale of 1 inch equals 80 feet, for the development area and fuel modification for a residence on the small lot. Staff would note that no fuel modification plan was provided for this parcel. Rather, staff assumed a maximum fuel modification radius of 200 feet, not including areas within that radius that have already been cleared, for fuel modification for existing development in the area, for the unpermitted horse corral on the 34.5-acre parcel, and other vegetation clearing for undetermined purposes. Additionally, staff has measured the area that would be impacted by the development areas and required fuel modification zones for the proposed residences on the reconfigured parcels, using the proposed site plan and the approved (Los Angeles County Fire Department) fuel modification plan for each lot. Staff prepared Exhibit 5 to show the various fuel modification radii for the existing and proposed parcels.

Staff notes that the applicants' agent's figures greatly overestimated the amount of vegetation removal that would result. Staff's measurements indicate that a maximum of approximately 2-acres of vegetation would need to be removed or thinned for development of a residence (using a footprint of approximately 1,000 sq. ft. for a point of comparison) on the existing 7,202 sq. ft. parcel. Approximately 3.2-acres of vegetation removal would be required for development of two residences which would be adjacent on the reconfigured parcels. Approximately 2.2-acres of fuel modification would be required on the northernmost of the two proposed parcels (14.8-acres) and approximately 1-acre of the total fuel modification would be on the southernmost parcel (19.8-acres).

It is true that the area identified for potential fuel modification around a home on the 7,202 sq. ft. parcel is more than would be required for the reconfigured parcels given the overlap of fuel modification zones that would result from creating two development areas adjacent to each other. However, this comparison does not tell the whole story. There are three lots adjacent to the 7,202 sq. ft. lot to the south on Searidge Road. As shown on Exhibit 6 these lots are vacant and are not retired. All three lots are held in the same ownership. It is reasonable to assume that at least one residence will be proposed on these lots in the future (lots could be combined for the construction of one larger home under the GSA provisions). In that case, there would be a substantial overlap of fuel modification areas, significantly reducing the amount of vegetation removal necessary for a residence on the 7,202 sq. ft. parcel. Furthermore, given the fact that the three adjacent vacant lots could be developed with one or more residences, the reduction in impacts to ESHA that the applicant asserts will result from the proposed redivision will not be realized because the fuel modification resulting from

the development of one or more of the adjacent lots would be much the same as that required for development of the 7,202 sq. ft. lot that is part of the subject application.

The applicants' agent's also asserts that development on the existing 7,202 sq. ft. parcel would have greater impacts on ESHA than the new lots created through the proposed redivision because fuel modification would directly impact Dry Canyon Creek and its associated riparian vegetation. While the development area proposed for the reconfigured parcels would be further away from the stream, staff does not agree that this would lessen any impacts in this particular case for several reasons. For one, the Fire Department does not ordinarily require the removal of riparian vegetation for fuel modification. Additionally, the development area on the existing 7,202 sq. ft. parcel would be at least 100 feet away from the creek and would not drain into the open channel portion of the creek on the 34.5-acre parcel. The creek has been channelized downstream of the site and enters a culvert at Searidge Road on the southern edge of the 34.5-acre parcel. Further, all riparian or other native vegetation has already been removed from within the Dry Canyon stream corridor and this area is occupied by weeds. Therefore, while in most cases siting development further away from a stream minimizes impacts, in this particular case with this set of facts, the proposed reconfiguration will not result in ay reduction of impacts to the stream.

Further, the new reconfigured parcels would have greater potential for impacts to water quality given a larger development area and more impervious surfaces. As described above, the 7,202 sq. ft. parcel has a maximum Gross Structural Area of 500 sq. ft. (based on the slope and size of the lot). Staff would note that additional small lots either adjacent or within El Nido could be retired to increase the maximum GSA. In any case, any residential development approved on this parcel would be much smaller and have a smaller development area than the 3,558 sq. ft. residence with detached garage and guesthouse that the applicants have proposed for the reconfigured parcel.

An increase in impervious surface at the subject site decreases the infiltrative function and capacity of existing permeable land on site. Reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams,

wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

In conclusion, the proposed redivision will result in the creation of two new reconfigured parcels within ESHA. The proposed configuration will allow for the development of a much larger residence on the proposed 19.8-acre parcel than on the existing 7,202 sq. ft. parcel in its present configuration. While the overlap of fuel modification zones for two residences on the proposed parcels would result in less vegetation removal, a similar overlap and significant reduction in vegetation removal would be expected to occur between residences on the existing 7,202 sq. ft. parcel and the adjacent vacant parcels. Additionally, given the fact that the adjacent vacant lots could be developed with one or more residences, the reduction in impacts to ESHA that the applicant asserts will result from the proposed redivision will not be realized because the fuel modification required for development on one or more of the adjacent lots would be much the same as that required for development of the 7,202 sq. ft. lot. As such, the Commission finds that the proposed redivision will not minimize impacts to ESHA or water quality, as required by Sections 30231 and 30240 of the Coastal Act.

There are alternatives to the proposed redivision. Obviously, the lot can be maintained in their existing configuration. Additionally, the potential impacts of developing the two lots in their existing configuration could be further reduced. As provided by the Commission in past permit decisions, the smaller lot (7,202 sq. ft.) could be combined with one or more adjacent vacant lots in order to increase the maximum GSA and construct one larger residence rather than several small homes. In this way, development would be clustered, vegetation removal reduced and the number of cars and traffic trips to the area kept to the minimum. Alternatively, the small lot could be retired in exchange for a larger development on a lot or multiple lots elsewhere in the small lot subdivision (the Commission has also approved retirement of lots for extra square footage in another small lot subdivision within the same watershed). Therefore, the Commission finds that there are feasible alternatives to the proposed project that would not result in significant adverse effects on the environment and would be consistent with the Chapter 3 policies of the Coastal Act.

E. Cumulative Impacts

Section 30250(a) of the Coastal Act states:

> ***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 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 the surrounding parcels.***

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

> ***the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.***

The Commission has repeatedly emphasized, in past permit decisions, the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains coastal zone. The Commission has reviewed land division applications to ensure that newly created or reconfigured parcels are of sufficient size, have access to roads and other utilities, are geologically stable and contain an appropriate potential building pad area where future structures can be developed consistent with the resource protection policies of the Coastal Act. In particular, the Commission has ensured that future development on new or reconfigured lots can minimize landform alteration and other visual impacts, and impacts to environmentally sensitive habitat areas. Finally, the Commission has required that all new or reconfigured lots have adequate public services.

The Commission has considered several projects which the applicants and the County treated as "lot line adjustments" which actually resulted in major reconfiguration of lot lines amongst several lots [4-96-28 (Harberger, et. al.) 4-96-150 (Rein, et. al.), 4-96-189 (Flinkman), 4-96-187 (Sohal), 4-00-110 (Gurvitz)]. In these cases, the Commission has considered the proposed projects to actually be "redivisions" whereby existing property boundary lines are significantly modified to redivide the project site into the same number or fewer wholly reconfigured lots. The Commission has analyzed these proposals just as it analyzes a new subdivision of lots. The Commission has only permitted such redivisions where adequate fire access and other public services are available and where the resultant lots could be developed minimizing impacts to coastal resources.

As noted in the project description, the proposed project involves a redivision of two existing lots into two reconfigured lots. Therefore, the project does not increase the number of lots so there is no increase in density. Each existing parcel has road access and the area has adequate public services. However, as described above, the proposed redivision will create two new reconfigured parcels within ESHA, will not minimize impacts to ESHA, and will allow for a much larger amount of development than the existing configuration. Further, the proposed redivision would allow for the construction of an additional home on a ridge that will be visible from parkland and trails, having a cumulative adverse impact on visual resources. As such, the Commission finds that the proposed redivision will not minimize cumulative impacts to coastal resources and is therefore inconsistent with Section 30250(a) of the Coastal Act.

There are alternatives to the proposed redivision. Obviously, the lot can be maintained in their existing configuration. Additionally, the potential impacts of developing the two lots in their existing configuration could be further reduced. As provided by the

Commission in past permit decisions, the smaller lot (7,202 sq. ft.) could be combined with one or more adjacent vacant lots in order to increase the maximum GSA and construct one larger residence rather than several small homes. In this way, development would be clustered, vegetation removal reduced and the number of cars and traffic trips to the area kept to the minimum. Alternatively, the small lot could be retired in exchange for a larger development on a lot or multiple lots elsewhere in the small lot subdivision (the Commission has also approved retirement of lots for extra square footage in another small lot subdivision within the same watershed). Therefore, the Commission finds that there are feasible alternatives to the proposed project that would not result in significant adverse effects on the environment and would be consistent with the Chapter 3 policies of the Coastal Act.

F. Visual Resources

Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected and that, where feasible, degraded areas shall be enhanced and restored. In addition, in past Commission actions, the Commission has required new development to be sited and designed to protect public views from scenic highways, scenic coastal areas, and public parkland. Further, the Commission has also required structures to be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. As a result, in highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) has been required to be sited and designed to protect views to and along the ocean and other scenic features, to minimize landform alteration, to be visually compatible with and subordinate to the character of the project setting, and to be sited so as not to significantly intrude into the skyline as seen from public viewing places. Additionally, in past actions, the Commission has also required new development to be sited to conform to the natural topography.

Section 30251 of the Coastal Act states:

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

The subject site is located on the west side of Corral Canyon Road, just north of the El Nido small-lot subdivision. Corral Canyon Road runs along the ridge between Corral Canyon and Dry Canyon in this area. The project site descends steeply from the west

side of the road into Dry Canyon Creek and extends up the canyon slopes on the other side. The proposed development will be visible from parkland owned by the Santa Monica Mountains Conservancy to the southeast of the site. There is a public trail within this parkland that extends along the west facing slope of Corral Canyon. The proposed structure, given its location on the ridge, will be visible from this trail. Additionally, there is a road extending north from Puerco Canyon Road from which the proposed development will be visible. While this is road is not a dedicated trail, it is used extensively by the public for riding and hiking, particularly for mountain biking.

While no development of structures is proposed as part of the subject application, the proposed parcels would presumably be developed with residential uses. As described above, the applicants have submitted applications for the development of a single family residence on each proposed parcel. The applicants have identified a potential development area for each proposed parcel adjacent to Corral Canyon Road. The Commission concludes that if the reconfigured lots were approved through this application, residential development would eventually be approved, with conditions to restrict development siting and design as well as to provide adequate mitigation of impacts, on each new lot. In order to evaluate the potential impacts of the proposed lot line adjustment, it is necessary to look at the impacts that are likely to result from the ultimate development of the proposed parcels.

The structures proposed in Permit Applications 4-04-027 and 4-04-028 would be two-story in height. Such structures would be visible across the Corral Canyon to the east, from parklands and trails. The effect of the proposed redivision would be allow for two residences rather than one to be sited on the ridge of Corral Canyon adjacent to the road. Development of two residences on the existing parcels would allow for one structure on the ridge and one in the canyon on the 7,202 sq. ft. lot. A second structure on this small lot would be much smaller in size and would not be visible from any public viewing area. The cumulative impact of two residences instead of one would not minimize impacts to visual resources. As such, the Commission finds that the proposed redivision will not minimize impacts to visual resources, as required by Section 30251 of the Coastal Act.

There are alternatives to the proposed redivision. Obviously, the lots can be maintained in their existing configuration. Only one residence would then be visible from parklands or trails. A home built on the existing 7,202 sq. ft. parcel would be located in the canyon and would not be visible from any public area. Additionally, the potential impacts of developing the two lots in their existing configuration could be further reduced. As provided by the Commission in past permit decisions, the smaller lot (7,202 sq. ft.) could be combined with one or more adjacent vacant lots in order to increase the maximum GSA and construct one larger residence rather than several small homes. In this way, development would be clustered, vegetation removal reduced and the number of cars and traffic trips to the area kept to the minimum. Alternatively, the small lot could be retired in exchange for a larger development on a lot or multiple lots elsewhere in the small lot subdivision (the Commission has also approved retirement of lots for extra square footage in another small lot subdivision within the same watershed). Therefore,

the Commission finds that there are feasible alternatives to the proposed project that would not result in significant adverse effects on the environment and would be consistent with the Chapter 3 policies of the Coastal Act.

G. Unpermitted Development

Unpermitted development occurred on the subject parcel prior to submission of this permit amendment application including removal of vegetation and construction of a horse corral. The applicant has not proposed this development as part of this application. This development is not directly related to the proposed project. The Commission's enforcement division will evaluate further actions to address this matter.

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

H. Local Coastal Program

Section 30604(a) of the Coastal Act states:

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

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

I. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent

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

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

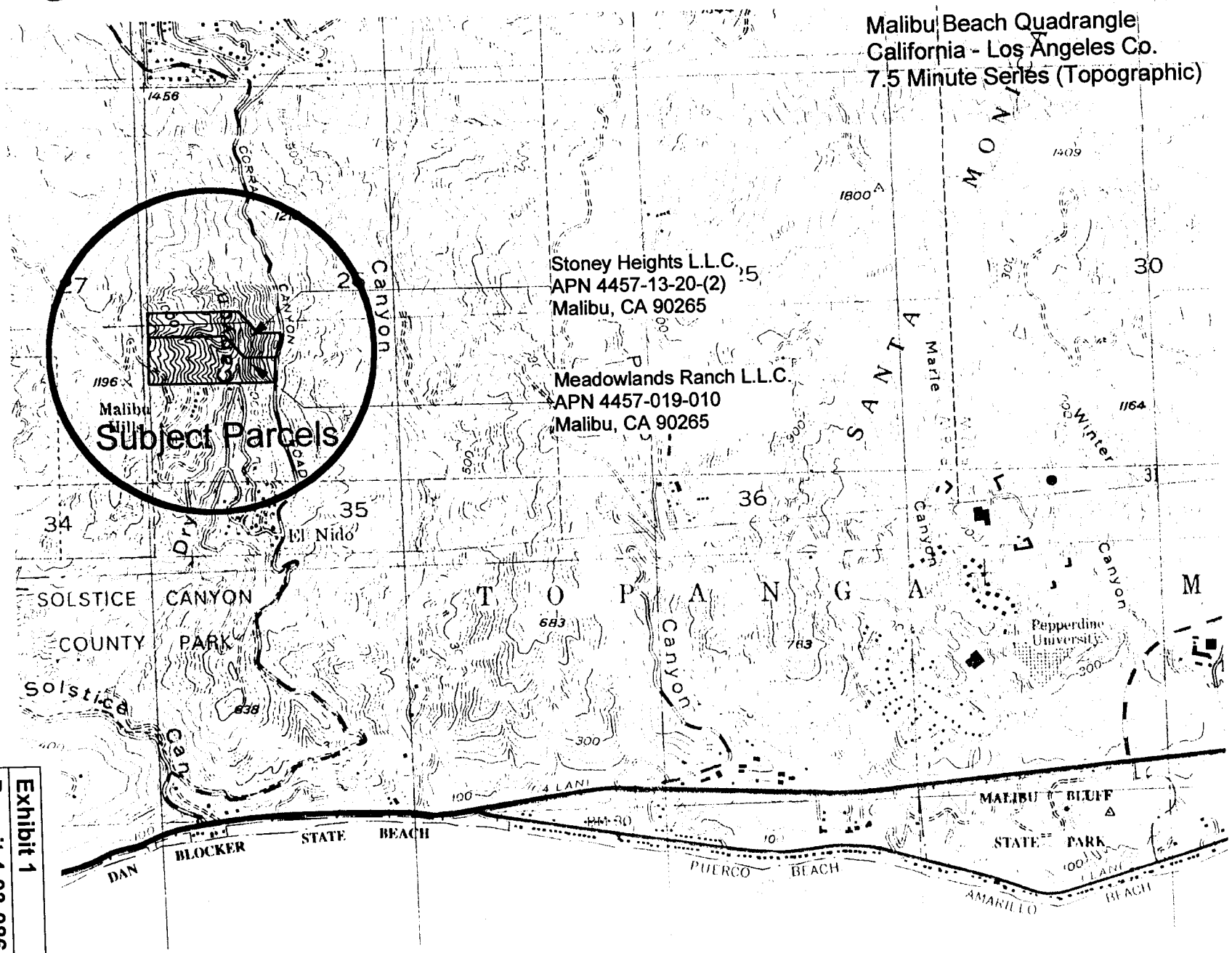
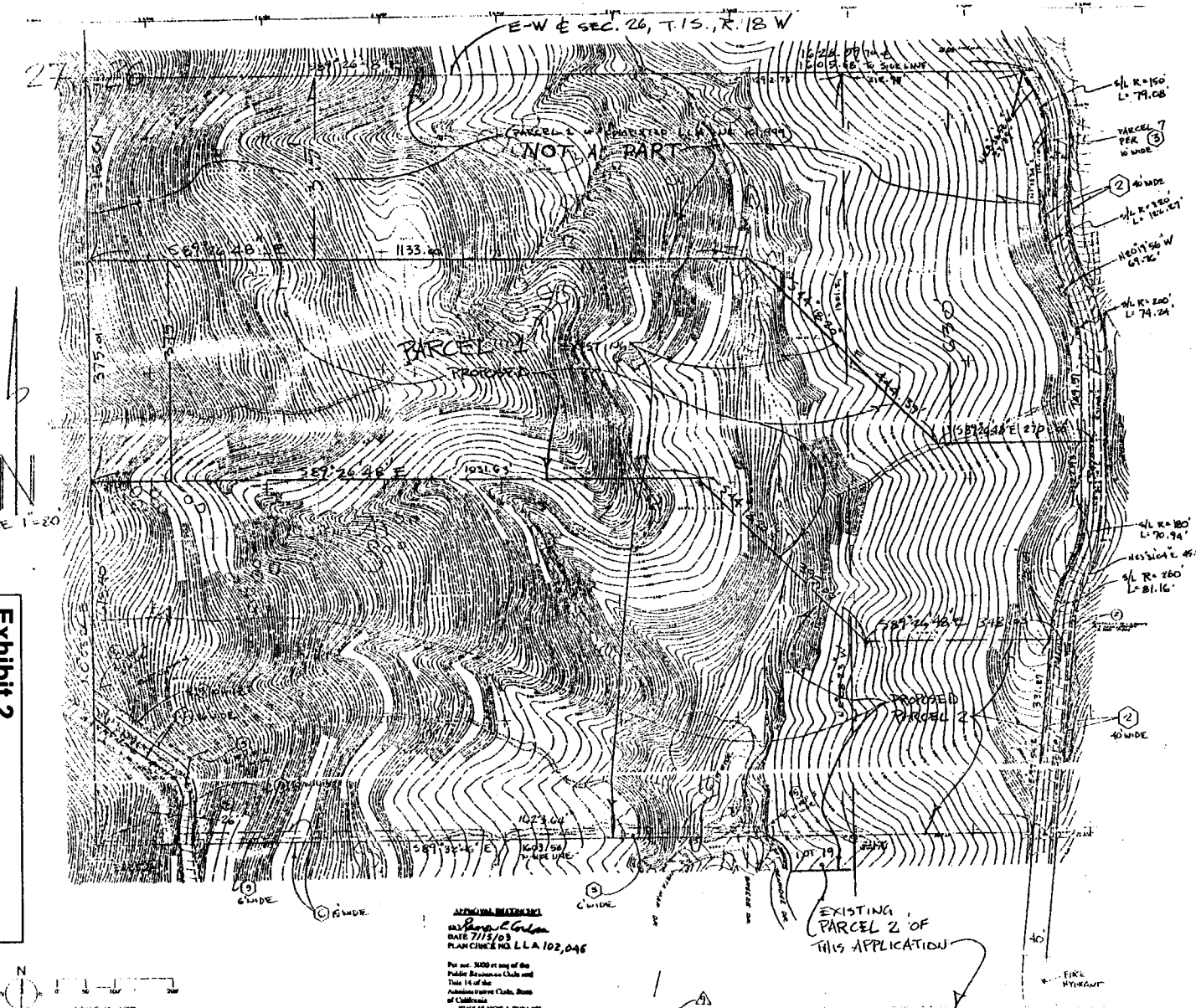


Exhibit 1
Permit 4-03-086
Vicinity

CORRAL CANYON LOT LINE ADJUSTMENT Vicinity Map

Exhibit 2
Permit 4-03-086
Site Plan



EASEMENT ITEMS PER FIRST AMERICAN TITLE CO. OF L.A. PRELIM. TITLE REPORT NO. 2005722-31 DATED 8/04/03:

(2) EASEMENT OF THE COUNTY OF LOS ANGELES FOR PUBLIC ROAD AND HIGHWAY PURPOSES, 40' WIDE, AFFECTING THE EASTERLY 26' OF SUBJECT PARCEL, PER O.R. 3821-264; SHOWN HEREON.

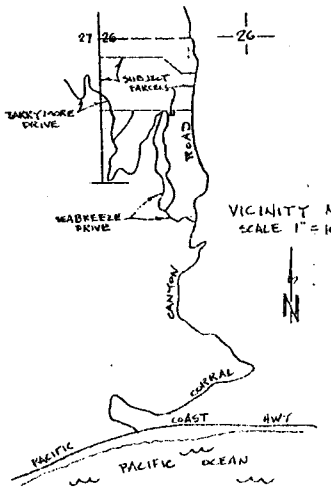
(3) EASEMENT OF THE COUNTY OF LOS ANGELES FOR DRAINAGE, 10' WIDE, PER O.R. 6195-83; SHOWN HEREON.

(4) EASEMENT FOR PRIVATE ROAD/RIGHT OF WAY, 26' WIDE, PER O.R. 10222-174; SHOWN HEREON (NOW KNOWN AS HAVENHURST DR.).

(5) EASEMENT OF GENERAL TELEPHONE COMPANY FOR PUBLIC, UTILITY, COMMUNITY, ETC., OVER VARIOUS STRIPS AS SHOWN HEREON, PER DOCUMENT RECORDED MARCH 21, 1956 AS NO. 2695, IN O.R. 850-397.

(6) EASEMENT OF LAS VIRGENES MUNICIPAL WATER DISTRICT, OVER 15' WIDE STRIP, PER DOC. REC'RD JULY 10, 1964 AS NO. 6421 IN O.R. 03565-906; SHOWN HEREON.

ZONING A-2-5



VICINITY MAP
SCALE 1" = 1000'

ZONING
PARCEL 1: A-2-5
PARCEL 2: R-1-7500

TENTATIVE LOT LINE ADJUSTMENT MAP NO. _____
BEING A PORTION OF THE NORTH 1/2, OF THE SOUTHWEST 1/4, OF SECTION 26, T. 1 S., R. 18 W., S.B.B.M.
MALIBU, UNINCORP. LOS ANGELES COUNTY, CA

PREPARED IN OCT 2002

BY: DUTRUS SURVEYING
22249 PCH MALIBU CA 90265 310 456-8022

NOTES:
TOPOGRAPHY SHOWN IS FROM SURVEYS OUTSIDE THIS OFFICE. WHILE ADEQUATE FOR THE PURPOSE OF THIS APPLICATION, NO FIELD CHECK OF THIS DATA WAS MADE BY DUTRUS SURVEYING. FUTURE USERS ARE CAUTIONED THAT SAID ITEM MAY NOT BE SUITABLE FOR THE PURPOSES OF ARCHITECTURAL OR ENGINEERING DESIGN.

BEARINGS SHOWN HEREON ARE BASED ON CA STATE PLANE COORD SYSTEM, ZONE 7.

APPROVAL RECOMMENDED
BY: Planning Division
DATE 7/13/03
PLAN CHECK NO. LLA 102,046

Per sec. 30200 et seq of the Public Resources Code and Title 14 of the Administrative Code, State of California
THIS IS NOT A PERMIT
and
is subject to any conditions listed below

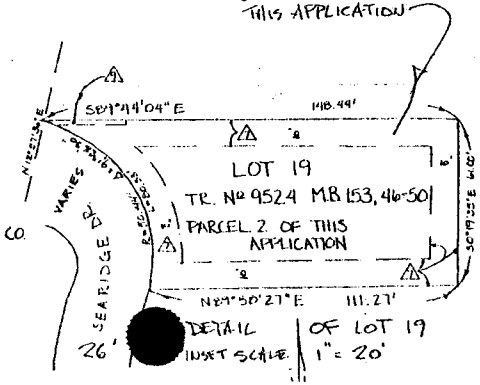
N
SCALE 1" = 100'

PARCEL AREAS ± (Ac.)

	PARCEL 1		PARCEL 2	
	GROSS	NET	GROSS	NET
EXISTING	35.03	34.53	0.165	0.165
PROPOSED	15.02	14.86	20.18	19.84

⚠ 10' WIDE UT'L E'SMT PER O.R. 9745-252

⚠ 2'x30' E'SMT OF GEN. TEL. CO. PER O.R. DOC. REC'RD 3/21/58 AS № 2691



ISSUE: OCT. [redacted] 2002
MAP 1 OF 2 SHEETS

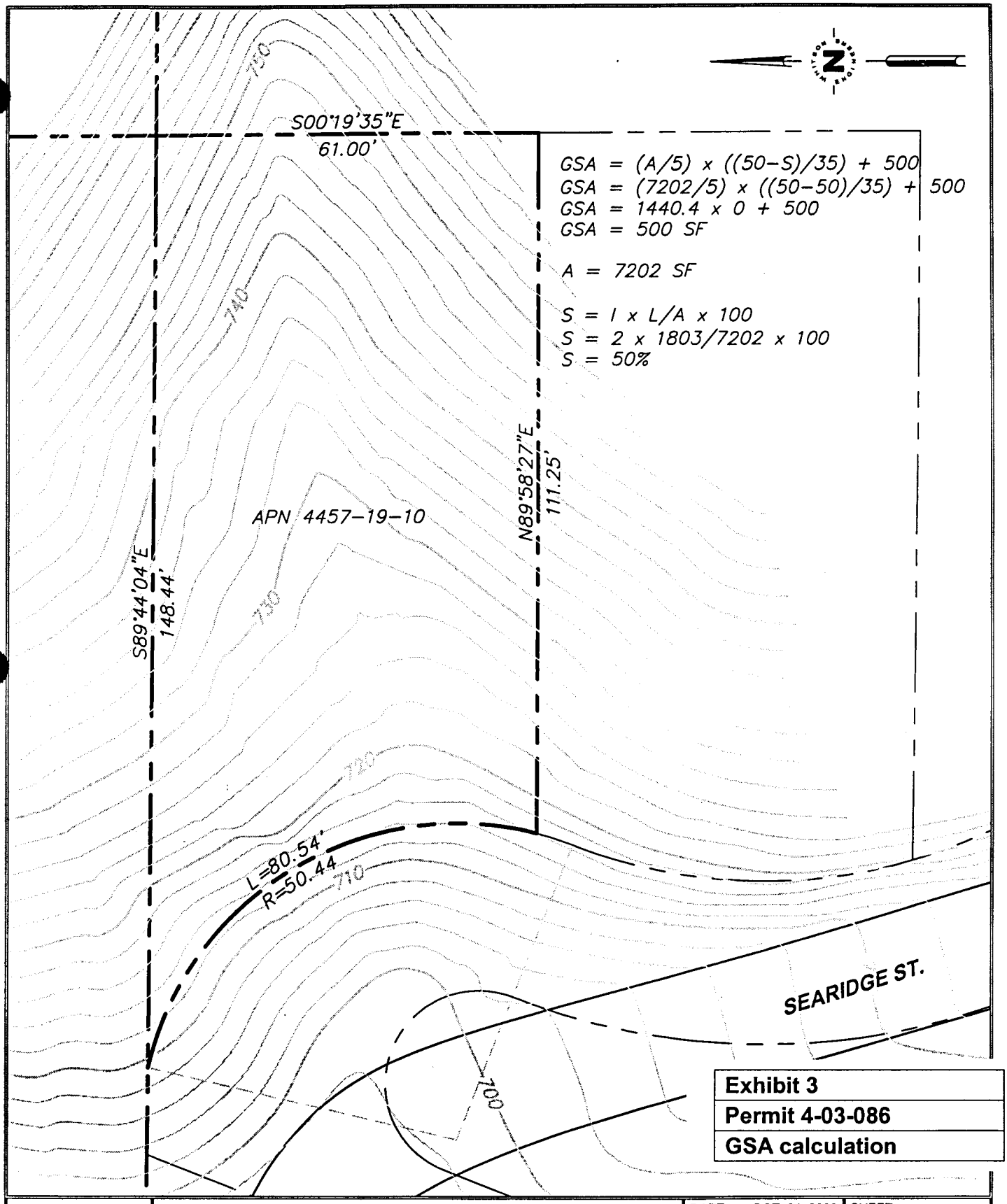


Exhibit 3
Permit 4-03-086
GSA calculation

CORRAL CANYON WEST

MONTEREY CALIFORNIA

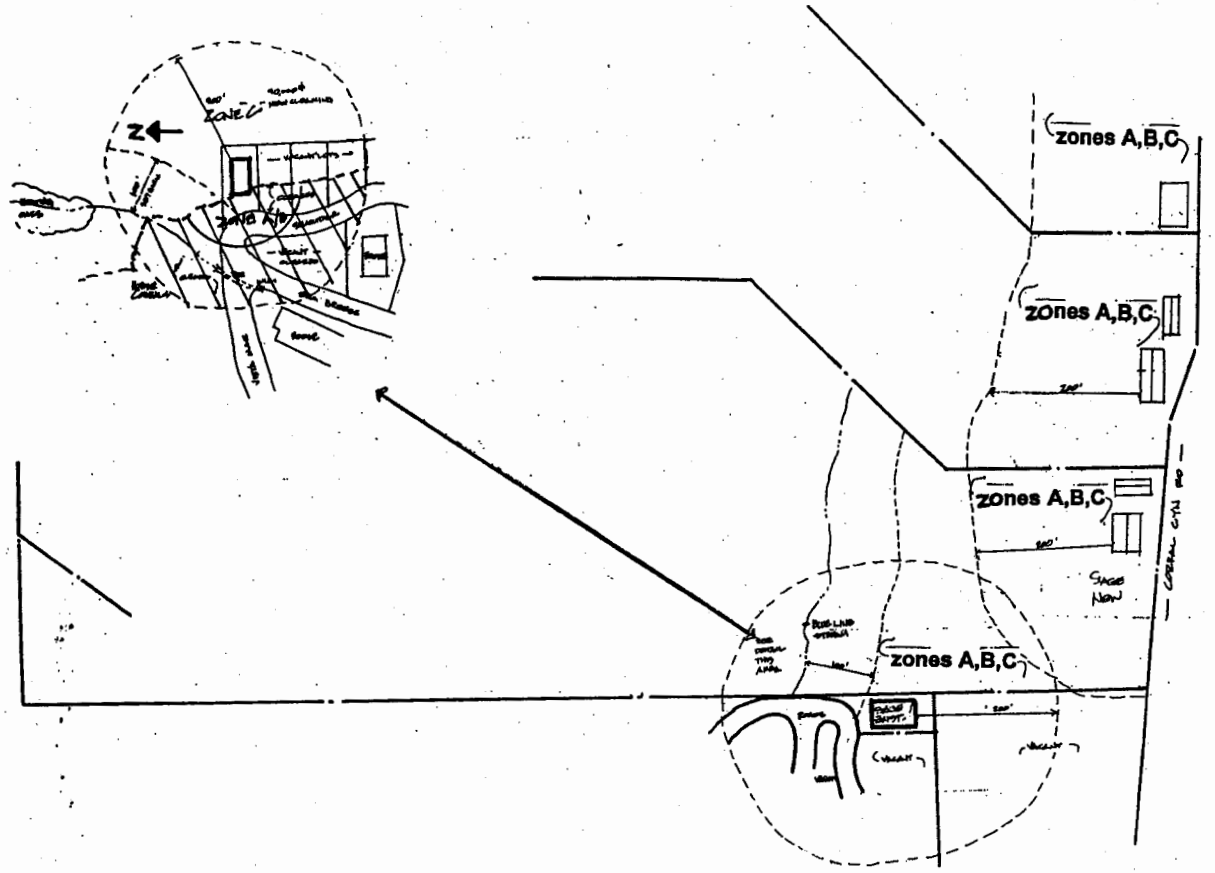
GSA CALCULATIONS

DRAWING PATH: T:\DWG\1039\Corral Canyon\Corral West\CCC-calculations.dwg

DATE:	OCT. 24, 2003
SCALE:	1" = 20'
DRAWN:	RPW
CHECKED:	KMW
PROJECT No.:	1039.00

SHEET 1 OF 1

WHITSON ENGINEERS - 9699 BLUE LARKSPUR LANE, SUITE 105 - MONTEREY, CALIFORNIA 93940 - TEL (831) 649-5225 - FAX (831)373-5065 - WWW.WHITSONENGINEERS.COM



	Existing Lot 2 ("Sage Exist.") (0.16 acres)	Proposed Lot 2 ("Sage New") (20.18 acres)
Zone A + B	1.29 acres (56,000 sq. ft.) *(reduced by 0.18 acres)*	0.8 acres (35,200 sq. ft.)
Zone C	2.23 acres (97,000 sq. ft.) *(reduced by 0.93 acres)*	0.92 acres (40,000 sq. ft.)
Total	**3.52 acres** (153,331 sq. ft.) *(reduced by 1.11 acres)*	**1.72 acres** (75,200 sq. ft.)
Difference	**Existing Lot 2** **1.79 acres MORE fuel mod** *(reduced by 1.12 acres)*	**Proposed Lot 2** **1.79 acres LESS fuel mod**

*** Revised (reduced) figures include existing cleared areas for other development and roads.**

*** See exhibit – *Fuel Modification Zone Quantitative Comparison*: existing cleared area shaded / highlighted.**

SCHMITZ & ASSOCIATES
29350 West Pacific Coast Highway
Unit 12
Malibu, CA 90265

REVISIONS

Schmitz and Associates, Inc.
29350 PCH #12

Fuel Modification Zone
Quantitative Comparison

CDP NO. 4-03-086
STONEY HEIGHTS, LLC

5.14

Exhibit 4
Permit 4-03-086
Applicants' Fuel
Modification Comparison

Comparison of 200' Fuel Modification Zones

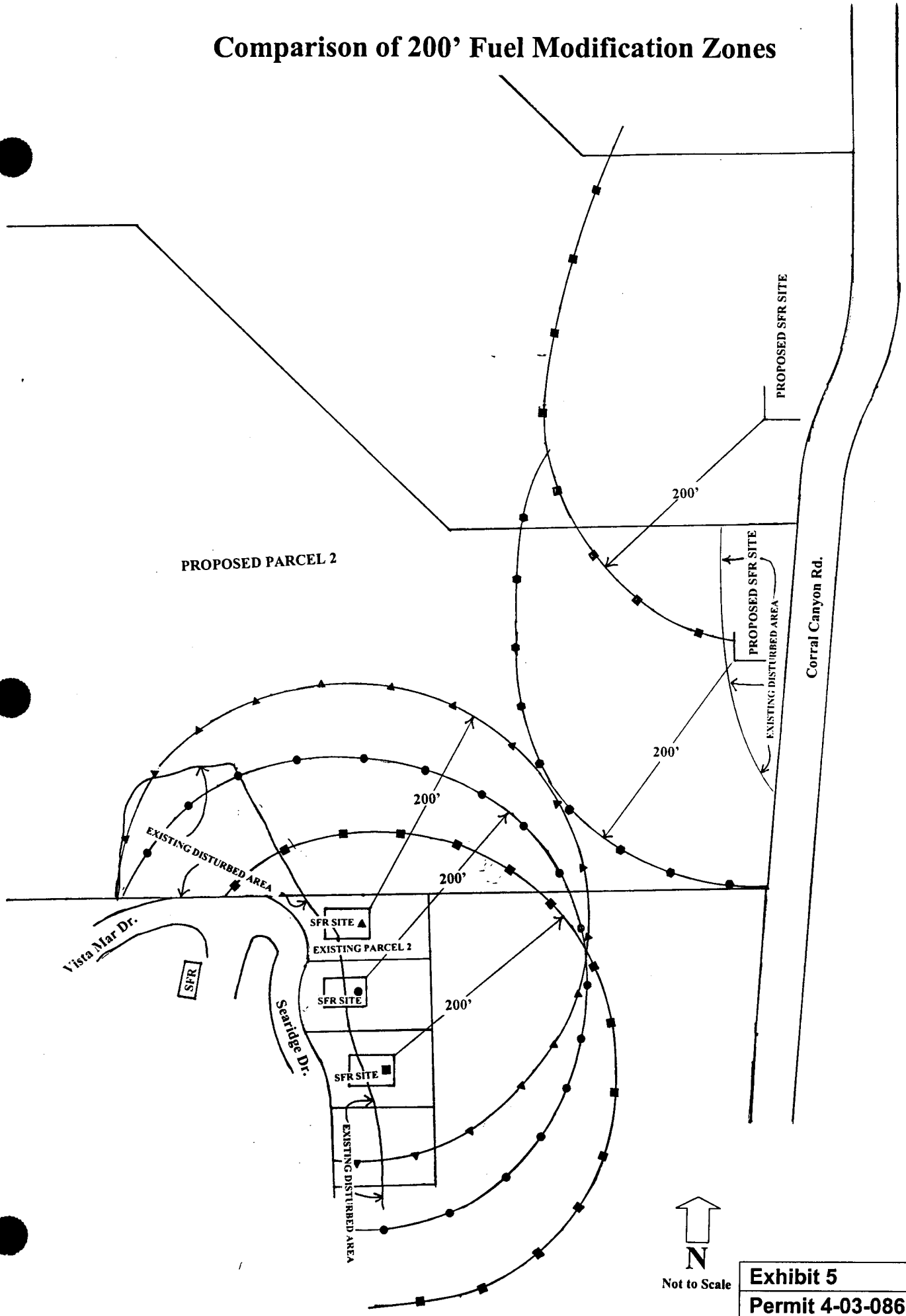
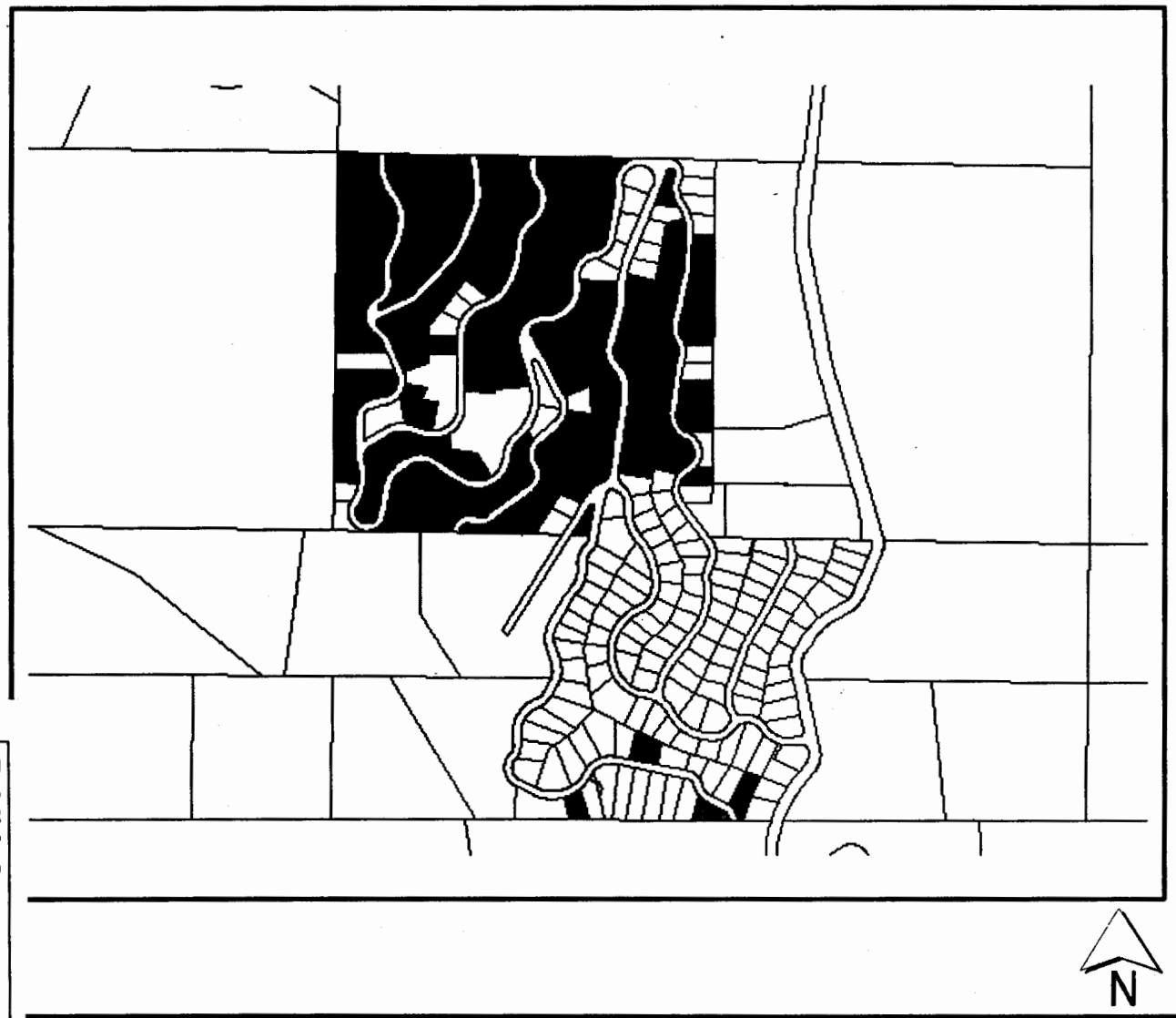


Exhibit 5
Permit 4-03-086
Staff's Fuel Modification Comparison

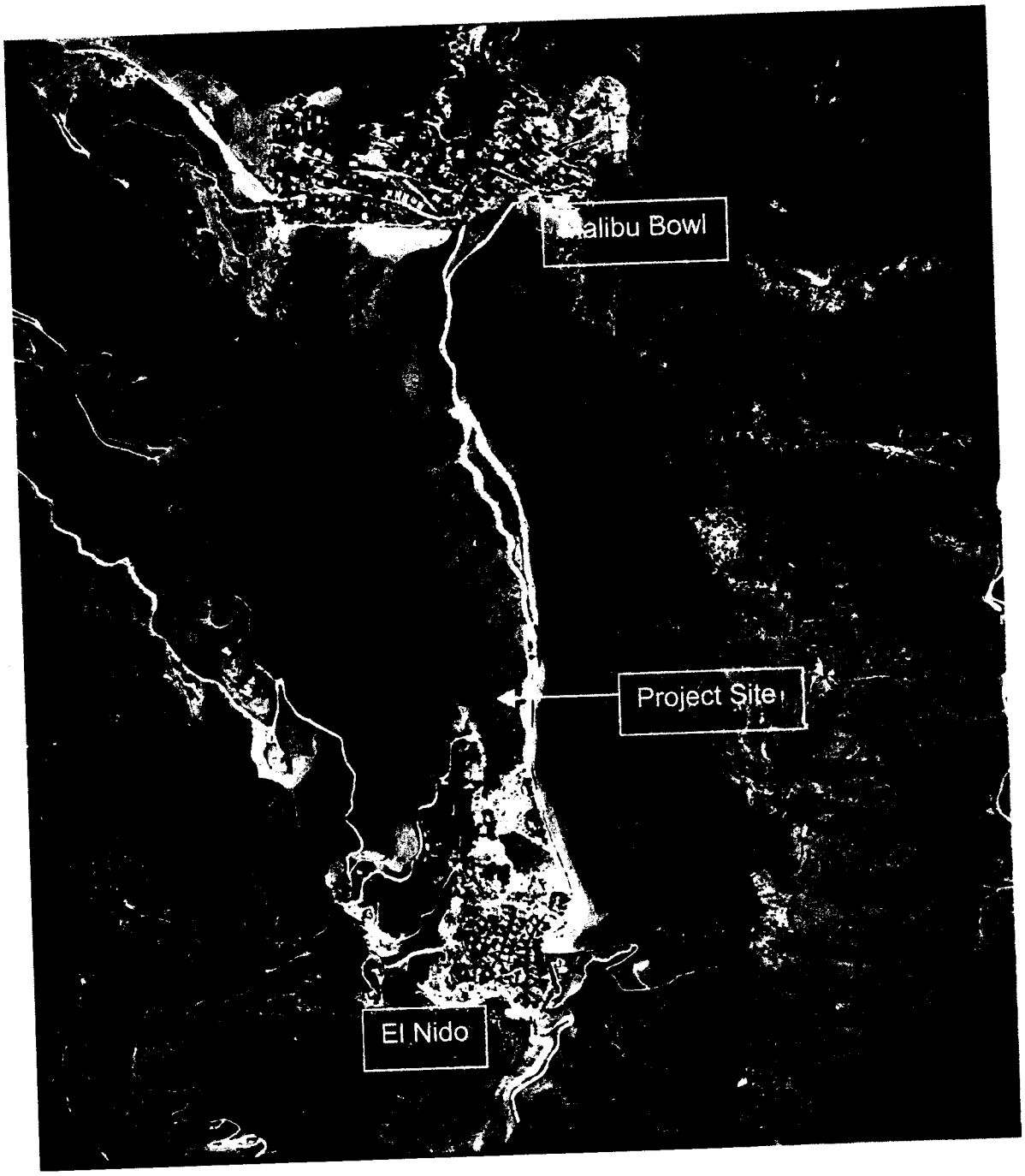
ESRI ArcExplorer 2.0

El Nido Small Lot Subdivision



Tuesday, May 18 2004

Exhibit 6
Permit 4-03-086
Retired Lots



Source: Dept. of Water Resources June 2001

EXHIBIT 7
Permit 4-03-086
Aerial Photo

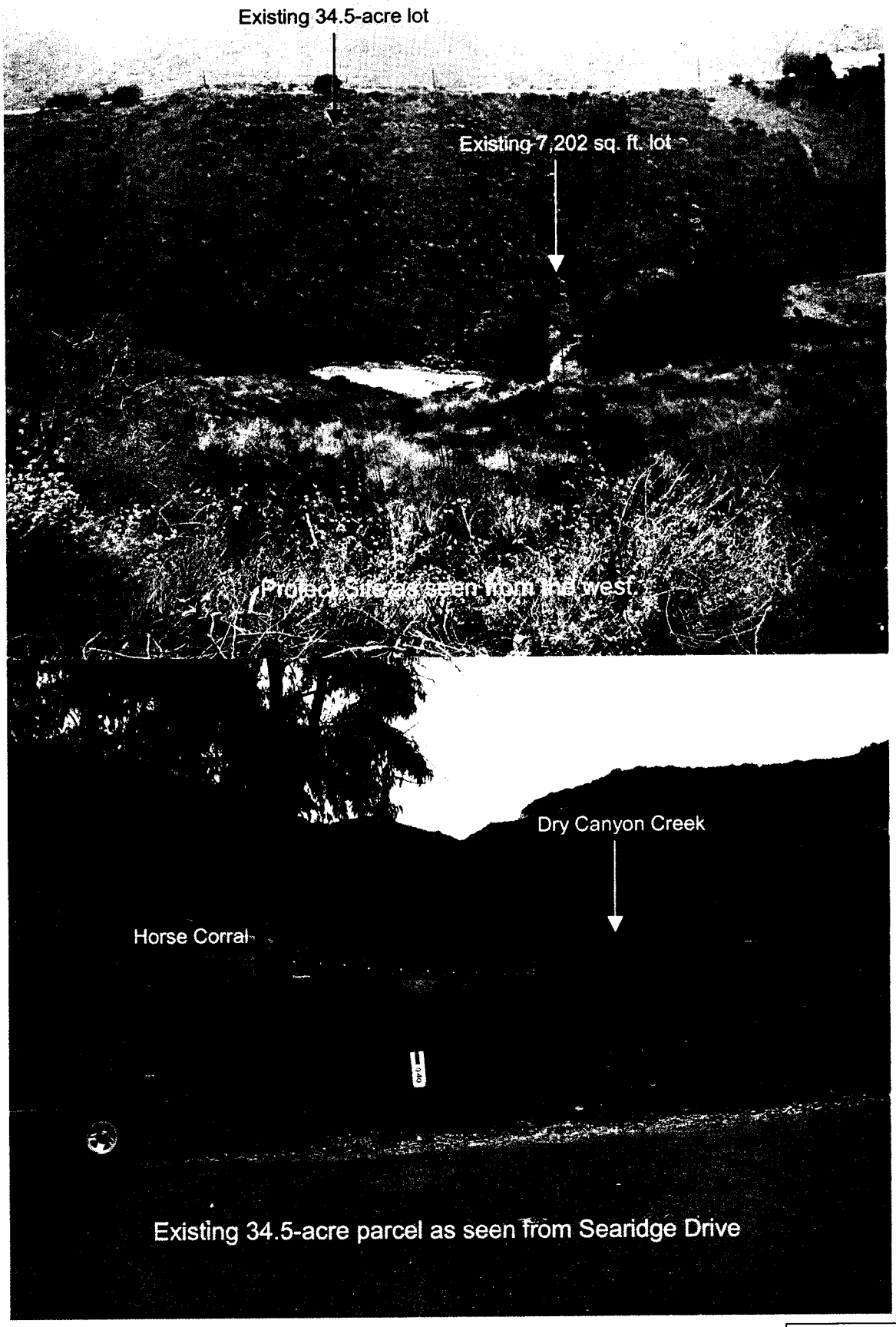


Exhibit 8
Permit 4-03-086