

Item W 16a

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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STAFF REPORT: AMENDMENT

APPLICATION NO: 5-87-983-A2

APPLICANT: Daniel and Luciana Forge **AGENT:** Barsocchini & Associates.

PROJECT LOCATION: 26025 Pacific Coast Highway, City of Malibu, Los Angeles County

DESCRIPTION OF PROJECT ORIGINALLY APPROVED (5-87-983): Removal of two trailers and retail store and addition and remodel to existing restaurant, relocate existing bar area and bathrooms, enlarge waiting area and add office. Construction of a two-story shopping center with 18,000 sq. ft. of leaseable floor area, and construction of a two story parking structure for 117 cars. The project proposes 9,143 cubic yards of grading (4,440 cut, 4,703 fill).

DESCRIPTION OF FIRST AMENDMENT (5-87-983-A1): Conversion of the top floor of the shopping center from office/retail to eight (8) bed and breakfast units; the project also proposes an additional 12,800 cu. yds. of grading.

DESCRIPTION OF CURRENT AMENDMENT (5-87-983-A2): Elimination of retail use, reduction of total square footage to 16,240 sq. ft. of bed and breakfast use comprising 27-units and a kitchen in seven separate structures that are all at least 100 feet from ESHA, demolition of existing duplex structure, construction of a 1,400 sq. ft., two-story rental office, elimination of parking structure, reduction of parking spaces to 94 open spaces, relocation of recorded trail easement offer to dedicate, removal of 7 trees (5 walnut trees and 2 coast live oak trees); reduction of grading to 11,900 cu. yds. (10,400 cu. yds. cut and 1,500 cu. yds. fill). The proposal includes the construction of retaining walls along the northeastern edge of the access driveway that range in height from 10 to 22 feet in height. Additionally, a retaining wall ranging in height from 2 feet to 6 feet in height is proposed along the western edge of the pool and pool deck area. The applicants propose to remove a storage structure, vehicles, debris and unpermitted trailers as part of the amended project. The applicant is also proposing to carry out a stream enhancement program and ESHA buffer restoration program.

PERMIT STREAMLINING ACT PROVISIONS

This permit amendment request was filed on November 21, 2004. The applicants agreed to extend the 180-day time limit within which the Commission must act on the request, pursuant to the Permit Streamlining Act. The time limit has been extended up to an additional 90 days, to August 18, 2005. The Commission must act on this coastal development permit amendment at the August 2005 hearing.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the amendment request, with special conditions relating to, revised trail easement, trail plan, riparian habitat enhancement, ESHA buffer restoration, landscaping, temporary erosion control, rainy season grading prohibition, temporary construction fencing, revised plans, cultural resource monitoring, lighting restriction, structural appearance, deed restriction, drainage and polluted runoff control, pool and spa drainage, geologic recommendations, wildfire waiver, commercial visitor serving land use, lower cost overnight accommodations, walnut tree replacement, oak tree replacement, condition compliance, timing of removal of unpermitted development. As conditioned, the project, as proposed to be amended, is consistent with the provisions of the City of Malibu Local Coastal Program. This project is an amendment to a permit approved by the Commission prior to adoption of the Malibu LCP. The amendment request includes a change to a term or condition of the original permit that must be considered by the Commission. Therefore, the Commission has permit jurisdiction over the amendment request, and the standard of review is the adopted City of Malibu Local Coastal Program.

STAFF NOTE:

Permit Amendment 5-87-983-A2 was originally scheduled for hearing at the June 2005 meeting. At that hearing, the Commission took public testimony. Several Commissioners requested that the applicants provide additional information. This information related to the ESHA delineation on the project site, unpermitted development, archeological resources, including the results of a Phase II archaeological study of the development area, and grading and drainage. The Commission postponed the hearing from the June 2005 meeting to the August 2005 meeting.

At the June 2005 hearing, the Commission requested that staff review the proposed ESHA delineation on the project site and provide more detailed information, particularly with respect to unpermitted development and habitat disturbance on the site. As discussed in detail below, staff has reviewed available maps, aerial photos, and project plans to identify when roads, pads, and other development on the site occurred and whether existing development on the site was permitted. There is evidence that the area in question has been subject to disturbance for some time prior to the effective date of the Coastal Act. The applicants' activities on the site have perpetuated the disturbance and certainly have not improved conditions. However, the fact remains that legally authorized development caused significant disturbance to this site prior to the ESHA mapping for the 1986 Malibu/Santa Monica Mountains LUP and the 2002 City of Malibu LCP. As such, staff cannot conclude that this area should be considered ESHA on the basis that habitat has been illegally removed or degraded. Rather, this project represents a case where a site-specific study and a more detailed on-the-ground site visit would appropriately be used to refine the ESHA delineation. In this case, the applicants' biological consultants prepared a site-specific study. Commission staff, including the Commission's biologist, Dr. John Dixon, reviewed this information and conducted several site visits to review the habitat areas on the whole site. Staff

requested that Dr. Dixon in particular observe the "bowl area" and the disturbed oak/walnut areas on the north of the site in order to make a determination on whether these areas should be considered ESHA. As described in greater detail below, Dr. Dixon's conclusion was that these areas should not be considered ESHA.

Issue was raised during the hearing regarding the potential presence of cultural resources on the project site and whether adequate archaeological studies had been conducted. The applicants' consulting archaeologist had carried out a survey or Phase I study of the project site, as well as a limited Phase II study of two areas where the archaeologist anticipated undisturbed cultural resources could be present. Given the disturbances, including grading, that had gone on at the site dating back at least to the construction of Pacific Coast Highway, the archaeologist did not anticipate the presence of cultural resources within the area proposed to be developed with the bed and breakfast structures or the road/parking areas. In order to respond to the cultural resource issues raised at the June 2005 hearing and at the request of the Commission, the applicant's archaeologist carried out additional Phase II testing on the proposed development area. As discussed below, the archaeologist excavated trenches within the proposed development area. The archaeologist submitted a letter report that summarizes the results of the additional testing (The final report has not yet been submitted). This letter states that:

Per your request, we returned to the project location and excavated deep trenches at seven proposed building locations, that is, where structures A, B, C, D, E, F, and G would be constructed (see attached Site Plan). Since no impacts are projected in the low area near the stream channel, Area A where intact prehistoric deposits are suspected, we did no testing there. What we found at the eight tested locations was fill soil—unconsolidated brown rocky colluvium, unconsolidated darker brown silty alluvium, and compacted brown rocky colluvium.

Based on the Phase II test results, the archaeologist concludes that the proposed project will not have significant adverse impacts on cultural resources.

Finally, issue was raised at the hearing over the fact that revised grading, runoff control/drainage, septic, and other plans had not been provided for the revised project that is now proposed by the applicants (Exhibit 15). All of these plans were provided with regard to the project that was proposed at the time the application was submitted and subsequently determined to constitute a complete file. As described below, at the request of staff, the applicants' architect has considered several alternative project designs that could provide a larger buffer from ESHA, before arriving at the current proposal. Although a site plan had been provided for this revised design, detailed revised grading, runoff/drainage, and septic plans had not yet been prepared at the time of the June hearing. Staff would note that it is not unusual for a project to be modified through the course of staff review, either by the applicant changing the proposal or by conditions of approval. Nonetheless, the Commission requested and the applicants submitted updated grading, runoff/drainage, and septic plans that reflect the currently proposed design. These are included as Exhibits 16-17.

SUBSTANTIVE FILE DOCUMENTS:

Permit Files

Permit 5-87-983
Permit Amendment 5-87-983-A1
Permit Application 5-85-819
Permit P-80-6737
Permit Amendment 5-81-182-A1

Biological Resource Reports

Final Biological Assessment for the Forge Lodge Development Proposal, prepared November 1999, updated July 17, 2002, prepared by Teracor Resource Management Restoration Project at 26025 Pacific Coast Highway-Mitigation and Monitoring Plan, dated April 13, 2004, prepared by Teracor Resource Management

Cultural Resource Reports

Supplemental testing at site CA-LAN-210 in the City of Malibu, Los Angeles County, dated July 21, 2005, prepared by C.A. Singer & Associates, Inc.
Cultural Resources at the Mouth of Solstice Canyon, A Survey of the Forge Property and Adjacent Portions of Archaeological Site CA-LAN-210, dated June 26, 1987, prepared by C.A. Singer & Associates, Inc.
Archaeological Reconnaissance at 26025 Pacific Coast Highway, dated February 19, 1998, prepared by Chester King, Malibu City Archaeologist.
Recommendations for additional Phase II archaeological testing and results of the first stage of Phase II testing at the proposed Forge Lodge, dated August 13, 1998, prepared by W and S Consultants.
Results of limited Stage I/Phase II archaeological testing within the southern portion of a proposed seismic trench at the Forge Lodge project, dated October 21, 1998, prepared by W and S Consultants
Archaeology at 26025 Pacific Coast Highway, evaluation of deposits and impacts to site CA-LAN-210, dated August 23, 2004, prepared by C.A. Singer & Associates, Inc.
Phase II archaeological investigations at 26035 Pacific Coast Highway, dated November 19, 2004, prepared by C.A. Singer & Associates, Inc.

Geologic Reports

Preliminary Flood Hazard Limits Feasibility Study, dated June 27, 2002, prepared by RJR Engineering Group
Addendum Letter No. 4 Response to Review Comments, dated November 14, 2002, prepared by RJR Engineering Group
Addendum Letter No. 3 Response to Review Comments, dated October 28, 2002, prepared by RJR Engineering Group

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Addendum Letter No. 2 Response to Review Comments, dated August 21, 2000, prepared by RJR Engineering Group
Addendum Geologic and Geotechnical Engineering Report, dated August 29, 1999, prepared by RJR Engineering Group
Updated Geotechnical Engineering Report, dated July 16, 1997, prepared by RJR Engineering Group
Response to County Review Sheets, dated May 24, 1990, prepared by California GeoSystems, Inc.
Response to Geotechnical Review, dated November 17, 1988, prepared by California GeoSystems, Inc.
Soils and Engineering Geologic Investigation, dated March 11, 1988, prepared by California GeoSystems, Inc.

Other Reports

Traffic and Circulation Study for the forge Lodge Project, dated June 1999, prepared by Kaku Associates

UST Removal Report, dated January 21, 2004, prepared by hydrologue, Inc.

Forge Lodge Market and Financial Feasibility Update, dated November 6, 2002, prepared by Project Economics

I. STAFF RECOMMENDATION:

MOTION

I move that the Commission approve with special conditions Coastal Development Permit Amendment 5-87-983-A2 pursuant to 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 Amendment:

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.

Please Note: Special Conditions 2 (Conservation and Open Space Easement Dedication) and 3 (Future Improvements) of Permit 5-87-983-A2 shall remain in full force and effect. All other special conditions of Permit 5-87-983 and Permit Amendment 5-87-983-A1 are superceded by the special conditions listed below.

1. Offer to Dedicate Public Trail Easement

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall execute and record document(s) in a form and content acceptable to the Executive Director, irrevocably granting or offering to dedicate to a public agency or private association approved by the Executive Director a 20 foot wide easement for public hiking, biking and equestrian access over the trail as generally shown on Exhibit 17 of this staff report. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The recorded document(s) shall include legal descriptions and graphic depictions of the permittee's entire parcel(s) and the easement area, prepared by a licensed surveyor. The grant or offer shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the interest being conveyed. The grant or offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

No development, as defined in Section 30106 of the Coastal Act, shall occur within the above-identified trail easement, which will prohibit, restrict or otherwise interfere with public access along the identified public trail. An approved coastal development permit is necessary for any temporary disruptions such as: construction, reconstruction, or maintenance of the trail.

2. Trail Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, a trail construction plan, developed in consultation with the National Park Service and the Santa Monica Mountains Conservancy, that shows the alignment and width of the trail, as well as the location of directional and/or interpretive signage and the language to be used on such signs. The signs shall describe the sensitive resources within Solstice Creek and discourage public use within the creek. A low, wildlife permeable, split-rail type fence shall be provided on the stream side of the trail and shall be shown on the plan. No portion of the trail, fence, or signs shall be placed closer than five feet from the top of the bank on the east side of Solstice Creek. Prior to the occupancy of the bed and

breakfast, the applicant shall construct the public trail and any improvements necessary to access and use the trail in accordance with the approved plan.

3. Disposal of Excavated Material

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

4. Riparian Enhancement Plan.

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a riparian habitat enhancement plan subject to the following provisions. Said plan shall be prepared by qualified biologists, ecologists, or resource specialists who are experienced in the field of restoration ecology, and who have a background knowledge of the various habitats associated with the Santa Monica Mountains and the project site. The plan shall be prepared in consultation with the Santa Monica Mountains Conservancy, California Department of Fish and Game, National Marine Fisheries Service, National Park Service, and Heal the Bay. The plan shall include, at a minimum, the following:

- A. A detailed site plan showing the location, extent, depth, and volume of barriers, fill, structures, roads, and debris that is to be removed from the creek bed, banks, or riparian corridor. The plan shall detail methods that will be utilized for such removal. Hand methods shall be utilized to the maximum extent feasible. The plan shall specify the preferable time of year, if applicable, to carry out the removal of each barrier, fill area, structure, and debris area.
- B. The plan shall specify the methods, if any, to be used after removal to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The plan shall specify the erosion control measures that shall be installed on the project site prior to or concurrent with the removal operations and maintained until the impacted areas have been revegetated to minimize erosion and transport of sediment outside of the disturbed areas.
- C. A description of the methods for detection and eradication of nonnative plant species on the site. Herbicides shall only be used if physical and biological control methods are documented in peer-reviewed literature as not being effective at controlling the specific nonnative species that become established in the revegetation area. If herbicides are to be used in the revegetation area,

specify the precautions that shall be taken to protect native plants and workers, consistent with all applicable laws and regulations.

- D. The plan shall also detail specific performance standards to judge the success of the riparian enhancement. The performance standards shall incorporate ground and canopy coverage and survival rates typical to riparian communities in the Santa Monica Mountains.
- E. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements or other artificial inputs such as fertilization that will be necessary to support the plantings becoming established. The plan shall specify that only the minimal necessary amount of such inputs will be used.
- F. The plan must specify the measures that will be taken to identify and avoid impacts to sensitive species. Sensitive species are defined as: (a) species which are listed by state or federal agencies as threatened or endangered or which are designated as candidates for such listing; (b) California species of special concern; (c) fully protected or "special animal" species in California; and (d) plants considered rare, endangered, or of limited distribution by the California Native Plant Society.
- G. A site plan showing the location, species, and size of each plant to be utilized in the enhancement. Said plan shall also denote the location of exotic vegetation to be removed and the location, species and size of each plant to be utilized to revegetate the removal areas.
- H. A five-year monitoring program shall be implemented to monitor the project for compliance with the goals and performance standards outlined in the Riparian Enhancement Plan. The applicant shall submit, on an annual basis, a written report, prepared by an environmental resource specialist acceptable to the Executive Director, indicating the success or failure of the enhancement project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the goals and performance standards specified in the plan.

During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the riparian enhancement on the project site. If any such inputs are required beyond the first three years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first three years, so that the success and sustainability of the riparian enhancement are ensured.

At the end of a five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the

restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to implement revised provisions for those portions of the original program which were not successful.

The riparian enhancement plan shall be implemented by qualified biologists, ecologists, or resource specialists who are experienced in the field of restoration ecology. The plan may be implemented prior to or concurrently with the construction of the project, taking into account the optimal timing for the various components. In any case, the implementation of the riparian enhancement plan shall be completed prior to the occupancy of the bed and breakfast facility. The monitoring plan shall be implemented immediately following the completion of the riparian enhancement.

5. ESHA Buffer Restoration/Revegetation Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, a ESHA Buffer Restoration and Revegetation, prepared in consultation with the Santa Monica Mountains Conservancy, and the National Park Service showing the location, species, and size of each plant to be utilized in restoring the ESHA buffer area. The plan shall also show the location, extent, depth, and volume of fill, structures, roads, and debris that will be removed from the ESHA buffer. The plan shall detail methods that will be utilized for such removal. Hand methods shall be utilized to the maximum extent feasible. The plan shall specify the preferable time of year, if applicable, to carry out the removal. Said plan shall also denote the location of exotic vegetation to be removed and the location, species and size of each plant to be utilized to revegetate the removal areas. The plan shall incorporate the goals and specifications of the Restoration Project at 26025 Pacific Coast Highway-Mitigation and Monitoring Plan, dated April 13, 2004, prepared by Teracor Resource Management.

The plan may be implemented prior to or concurrently with the construction of the project, taking into account the optimal timing for the various components. In any case, the implementation of the ESHA buffer restoration plan shall be completed prior to the occupancy of the bed and breakfast facility.

A five-year monitoring program shall be implemented immediately following the completion of the restoration to monitor the project for compliance with the goals and performance standards outlined in this restoration plan. The applicant shall submit, on an annual basis, a written report, prepared by an environmental resource specialist acceptable to the Executive Director, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements, if needed, for additional restoration activities in order for the project to meet the goals and performance standards specified in the plan.

During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term

survival of the restoration of the ESHA buffer. If any such inputs are required beyond the first three years, then the monitoring program shall be extended by an amount of time equal to that time during which inputs were required after the first three years, so that the success and sustainability of the ESHA buffer restoration are ensured.

At the end of a five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to implement revised provisions for those portions of the original program which were not successful.

6. Landscaping and Erosion Control Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site outside of ESHA and 100-foot ESHA buffers shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the project. 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. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- 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) The applicant shall submit evidence of a final long-term fuel modification plan for the approved development that has been reviewed and approved by the Forestry Department of Los Angeles County. No removal or thinning of riparian species shall be permitted within ESHA. No removal or thinning of riparian species shall be permitted within ESHA buffer except for removal of dead branches and dead individual plants. For the slope areas outside of ESHA and ESHA buffer, 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. No irrigation if any vegetation shall be provided within ESHA or ESHA buffer. Irrigated ground cover planted within the twenty-foot radius of the proposed structures, outside of ESHA buffer shall be selected from the most drought tolerant native species or subspecies that are acceptable to the Forestry Department.
- 6) The use of Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 7) Fencing of the entire property is prohibited. Fencing shall extend no further than the building pad areas. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition No. 11 below.
- 8) The ESHA shall be protected on the project site by clearly delineating a habitat protection zone with temporary construction fencing that is placed along the length of the site at least 80 feet from the outer edge of the riparian canopy. The exact placement of the fencing shall avoid the removal or damage to sensitive vegetation and shall not be placed within the protected zone of native trees to the maximum extent feasible. This fencing shall be installed prior to the commencement of site preparation, grading, or construction and maintained during all construction of the structures, road, pool, parking and other development. No construction activities may take place within the habitat protection zone, including the storage of construction equipment, building materials, or any other material.

B) Construction Phase 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, stockpile areas, construction fencing. No staging or stockpile areas can be located within ESHA or ESHA buffer.
- 2) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. 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, and shall 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 control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout 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 of the coastal zone or within the coastal zone to a site 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 structures, 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 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.

7. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification, in accordance with the approved permit amendment, shall not commence until the local government has issued a building or grading permit(s) for the development approved pursuant to these Coastal Development Permits.

8. Cultural Resources

By acceptance of this permit amendment, 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 Native American consultant and the Native American Heritage Commission consistent with CEQA guidelines and subject to review and approval of the Executive Director.

All recommendations contained in the following reports: Supplemental testing at site CA-LAN-210 in the City of Malibu, Los Angeles County, dated July 21, 2005, prepared by C.A. Singer & Associates, Inc.; Cultural Resources at the Mouth of Solstice Canyon, A Survey of the Forge Property and Adjacent Portions of Archaeological Site CA-LAN-210, dated June 26, 1987, prepared by C.A. Singer & Associates, Inc.; Archaeology at 26025 Pacific Coast Highway, evaluation of deposits and impacts to site CA-LAN-210, dated August 23, 2004, prepared by C.A. Singer & Associates, Inc.; Phase II archaeological investigations at 26035 Pacific Coast Highway, dated November 19, 2004, prepared by C.A. Singer & Associates, Inc., 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 resources and/or human remains, require a substantial modification or redesign of the proposed project plans, an amendment to this permit is required.

9. Lighting Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, an outdoor lighting plan for the project. The lighting plan shall comply with the following criteria:

A. Outdoor night lighting is limited to the following:

(1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director. Lighting shall be shielded and directed away from the ESHA and ESHA buffer areas.

(2) Security lighting attached to the structures shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60-watt incandescent bulb.

(3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.

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

10. Structural Appearance

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit amendment 5-87-983-A2. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by coastal development permit amendment 5-87-983-A2 if such changes are specifically authorized by the Executive Director as complying with this special condition.

11. 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 a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to these permits, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and Special Conditions of these permits as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the applicant's entire parcel or parcels. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

12. Drainage and Polluted Runoff Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control 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 geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved

development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary 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 or other BMPs 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 or BMPs and restoration of the eroded area.

- (e) 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. Any repair or restoration work within the ESHA or ESHA buffer shall require a new coastal development permit.
- (f) Should repairs of the subsurface infiltration system be required, no significant ESHA buffer vegetation, such as protected tree species or their root systems, shall be removed or damaged, to repair or replace the infiltration system. In addition, an alternative above ground passive infiltration system design shall be considered should significant repairs or replacement of the subsurface infiltration system is required due to maintenance issues. Any repairs to or replacement of the infiltration system shall require a new coastal development permit.

13. Pool and Spa Drainage and Maintenance

By acceptance of this permit, the applicant agrees to install a no chlorine purification system and agrees to maintain proper pool water pH, calcium and alkalinity balance to ensure any runoff or drainage from the pool or spa will not include excessive amounts of chemicals that may adversely affect water quality or environmentally sensitive habitat areas. In addition, the applicant agrees not to discharge chlorinated or non-chlorinated pool water into a street, storm drain, creek, canyon drainage channel, or other location where it could enter receiving waters.

14. Plans Conforming to Geologic Recommendations

All recommendations contained in the submitted geologic reports, as listed on Page 3 of this report, as well as in all reports referenced therein shall be incorporated into all final design and construction including foundations, construction, grading, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to issuance of a coastal development permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

15. Wildfire Waiver of Liability

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

16. Commercial Visitor Serving Land Use

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, evidence of a final court determination in *Sierra Club v. City of Malibu, et al.*, Court of Appeal Case No. B178062, on the issue of the proposed land use within the CV-1 zone district of the Malibu LCP. If the final court decision is that the development constitutes a bed and breakfast use that is permitted in the CV-1 zone district, then the permit amendment may be issued (after compliance with all conditions of approval). If the suit is settled in a manner that allows the proposed use on the site, then the permit amendment may be issued (after compliance with all conditions of approval). If the final court decision is that the proposed use is not permitted in the CV-1 zone, the permit amendment may not be issued unless and until the Malibu LCP has been amended in a manner that makes the proposed use an allowable use, as determined by the Executive Director.

17. Lower Cost Overnight Accommodations

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, evidence that four units of lower cost visitor accommodations have been provided as part of the project. The applicant shall choose one of the following options.

- A. The units of lower cost overnight accommodations have been provided on the project site as part of the project. The applicants shall provide evidence of which four of the approved units have been restricted to be lower cost accommodations.
- B. The units of lower cost overnight accommodations (such as a campground, RV park, hostel, or lower cost hotel or motel rooms) have been provided on another site within the City of Malibu. The applicants shall provide the location of such accommodations and evidence that the provision of no less than four new units has been financed or subsidized by them.
- C. An in-lieu fee has been provided to the City of Malibu for deposit into a fund to subsidize the construction of lower cost overnight facilities in the Malibu-Santa

Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The amount of the in-lieu fee shall be \$10,419 per required unit of lower cost overnight accommodations, plus an additional amount for inflation from January 2000 to the date of approval of the coastal development permit. The applicant shall provide evidence of the total fee required (based on the number of units and the fee adjusted for inflation) and evidence that the fee has been paid to the City of Malibu.

18. Walnut Tree Mitigation.

Prior to issuance of the permit amendment, the applicant shall submit, for the review and approval of the Executive Director, a walnut tree replacement planting program, prepared by a qualified biologist, arborist, or other resource specialist, which specifies replacement tree locations, tree or seedling size planting specifications, and a ten-year monitoring program to ensure that the replacement planting program is successful. At least fifty replacement seedlings, less than one year old, shall be planted on the project site, as mitigation for development impacts to Walnut Trees Number 86, 87, 88, 89, and 169, as identified in the Tree Inventory prepared by Teracor Resource Management, 2002. The replacement walnut trees may be provided within the ESHA buffer areas of the site. The walnut tree replacement planting program shall be implemented prior to occupancy of the bed and breakfast facility. An annual monitoring report on the walnut tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. If replacement plantings are required, the applicants shall submit, for the review and approval of the Executive Director, an walnut replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree locations, planting specifications, and a monitoring program to ensure that the replacement planting program is successful.

19. Oak Tree Mitigation.

Prior to issuance of the permit amendment, the applicant shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other resource specialist, which specifies replacement tree locations, tree or seedling size planting specifications, and a ten-year monitoring program to ensure that the replacement planting program is successful. At least twenty replacement seedlings, less than one year old, grown from acorns collected in the area, shall be planted on the project site, as mitigation for development impacts to Oak Trees Numbers 80 and 92 as identified in the Tree Inventory prepared by Teracor Resource Management, 2002. The oak tree replacement planting program shall be implemented prior to occupancy of the bed and breakfast facility. An annual monitoring report on the oak tree replacement area shall be submitted for the review and approval of the Executive Director for each of the 10 years. If replacement plantings are required, the applicants shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other qualified resource specialist, which specifies replacement tree

locations, planting specifications, and a monitoring program to ensure that the replacement planting program is successful.

20. Condition Compliance

Within 180 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all the requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

21. Removal of Unpermitted Development

The applicant shall remove the existing trailers, campers, and vehicles within 60 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

22. Removal of Storage Structure.

The applicant's proposal to remove, as part of this project, the existing storage structure shall be implemented within 60 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

III. FINDINGS.

A. Amendment Description

The applicants propose to modify the project previously approved by the Commission in Permit 5-87-983 and Amendment 5-87-983-A1 including the: elimination of retail use, reduction of total square footage to 16,240 sq. ft. of bed and breakfast use comprising 27-units and a kitchen in seven separate structures, demolition of existing duplex structure, construction of a 1,400 sq. ft. two-story rental office, elimination of parking structure, reduction of parking spaces to 94 open spaces, relocation of recorded trail easement offer to dedicate outside of the stream, addition of the construction of 5 foot wide trail, removal of 7 trees (5 walnut trees and 2 coast live oak trees), reduction of grading to 11,900 cu. yds. (10, 400 cu. yds. cut and 1,500 cu. yds. fill). The proposal includes the construction of retaining walls along the northeastern edge of the access driveway that range in height from 10 to 22 feet in height. Additionally, a retaining wall ranging in height from 2 feet to 6 feet in height is proposed along the western edge of the pool and pool deck area. Exhibit 15 shows the proposed site plan. The applicants are also proposing to carry out a stream enhancement program that includes the removal of fish passage barriers, fill and debris. Further, the applicant proposes to carry out a ESHA buffer revegetation/restoration program that includes the removal of structures, trailers, pavement, and debris from the ESHA buffer and planting with native vegetation.

The applicants submitted the subject permit amendment request on May 20, 2003. The amendment request file was filed complete on November 21, 2004. Thus, the application was not deemed "filed" prior to the adoption of the City of Malibu Local Coastal Program on September 13, 2002. Nonetheless, staff determined that the Commission had jurisdiction over the amendment request pursuant to Section 13.10.2(B) of the Malibu LIP, which states that:

The Commission retains authority over coastal development permits issued by the Commission including condition compliance. Where either new development, or a modification to existing development, is proposed on a site where development was authorized in a Commission-issued coastal development permit either prior to certification of the LCP or through a de novo action on an appeal of a city-approved coastal development permit and the permit has not expired or been forfeited, the applicant shall apply to the City for the coastal development permit except for:

- 1) Requests for extension, reconsideration and revocation of the Commission-issued permits;
- 2) Development that would lessen or negate the purpose of any specific permit condition, any mitigation required by recorded documents, any recorded offer to dedicate or grant of easement or any restriction/limitation or other mitigation incorporated through the project description by the permittee, of a Commission-issued coastal permit.

In any of these circumstances, the applicant must seek to file an application with the Coastal Commission for an amendment to the Commission-issued coastal development permit and authorization for the proposed new development or modification to existing development. The Coastal Commission will determine whether the application for amendment shall be accepted for filing pursuant to the provisions of Title 14 California Code of Regulations, Section 13166.

In this case, the proposed amendment request includes a modification of the riding and hiking trail offer to dedicate an easement required in the original permit as Special Condition No. 1. The applicants are proposing to relocate this trail out of the stream/riparian corridor to a location that is higher on the slope. A new offer to dedicate a trail easement will be recorded to reflect this change. Therefore, the amendment request includes a change to a term or condition of the original permit that must be considered by the Commission.

Issue was raised with regard to the applicant's proposal to modify the trail easement condition and the recorded exhibit and legal description. The June 6, 2005 letter from the Malibu Coalition for Slow Growth asserts that Special Condition 1 of Permit 5-87-983 required the trail to be located on the beside the stream's eastern bank, that therefore no amendment is necessary to relocate the trail, and that the applicants violated the original condition by locating the trail easement as it is depicted in the recorded document (Exhibit 5). Staff disagrees with this assertion. During the hearing for approval of Permit 5-87-983, staff recommended a change Special Condition 1 that deleted the reference to the "eastern bank", modifying the required location of the trail to be "beside the stream". This change was made to give more latitude for determining the precise alignment of the trail. As such, staff concludes that the recorded trail easement offer to dedicate does not violate Special Condition 1 of Permit 5-87-983. The applicants

are proposing to modify this condition so the trail is located outside of the riparian corridor and not beside the stream.

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

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

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material (§13166 of the California Code of Regulations). In this case, the Executive Director determined that the proposed amendment is a material change to the approved project and will therefore be considered in a public hearing.

B. Background

The proposed project site has been developed with various uses for many years. There was once a gas station on the site next to Pacific Coast Highway. Although that use was removed, the underground gas tanks were still on the site, beneath the parking lot. As described below, the applicants recently had the tanks removed and the area tested for contamination. A restaurant has been operated on the site since at least 1964. There is evidence that the disturbances in this area date back to well before the effective date of the Coastal Act. A 1964 map (State of California Division of Highways Aerial Survey, dated 6/10/64) of the area shows two separate structures where the restaurant is located on the site, a structure where the duplex structure is located, a structure within the "bowl area" of the site, and several small structures towards the north end of the site. Several roads are shown to cross the site, including a road that crosses Solstice Creek from Corral Canyon Road. Aerial photos of the area show that the front area of the site, nearest Pacific Coast Highway, was developed with the restaurant structure, the duplex structure, and several other small structures. A 1975 color infrared aerial photo of the site clearly shows the dirt road paralleling Solstice Creek. This road extends from the parking lot at Pacific Coast Highway up the northern end of the site, paralleling the stream corridor and ending in a graded pad where the storage structure is now located. As shown in project plans for Permit P-80-8737, this road provided vehicular access to an existing house and garage located in the "bowl area" of the site. Further, a small pond is visible at the far northern edge of the site.

Past Permit Actions on the Project Site

Several permit applications have been considered for the proposed project site. P-80-6737 (Forge) was approved for the:

Addition of 2,095 sq. ft. to existing restaurant on a 4.8 acre C-3 zone parcel. Parcel contains existing restaurant, two retail shops, one duplex apartment, one storage barn, and two single-family dwellings. One 320 sq. ft. retail shop is to be removed; 53 parking spaces will be provided.

This permit was approved with no special conditions. On the project plans for this file, the following existing development is shown: restaurant, bait shop, duplex, and shop in the front area of the site along Pacific Coast Highway. There is also an existing dirt driveway extending from the parking lot, paralleling the stream, into the "bowl area" of the site where an existing residence and garage were located. Further to the north, an existing shack is shown. Although the project description of this permit states that a storage barn was existing on the site, the approved site plan actually shows the storage barn as proposed where the existing shack would be removed. Staff would note that this "storage barn" is the same size and in the same location as the "storage structure" that is still existing on the site and that has been identified as "unpermitted". Permit P-80-6737 was approved on May 19, 1980 and issued on June 10, 1980.

Permit P-80-6737 was later amended (the amendment was numbered 5-81-182-A1) to reduce the size of the restaurant addition to 600 sq. ft.

The Commission later considered Permit Application 5-85-819 (Forge) for the: "Construction of restaurant addition, office building, new parking lot, and septic system expansion". The restaurant addition was to increase the seating area from 1,831 sq. ft. to 3,780 sq. ft. The total office space proposed was 1,857 sq. ft. The project included the removal of a commercial shop and the creation of 88 parking spaces. This permit application was scheduled for hearing, postponed by the applicant, and no additional hearings were scheduled. The project may have been withdrawn, although there is no written withdrawal request in the file.

This project included a driveway and parking within a few feet of the streambank of Solstice Creek. A staff report was prepared that recommended denial of the permit application, based on inconsistencies with the policies of the Malibu/Santa Monica Mountains LUP that was approved with suggested modifications in 1985. The suggested modifications were not accepted by the County of Los Angeles. That plan was a precursor to the LUP that was later certified by the Commission in December 1986. The staff report states that Solstice Canyon was designated as "Significant Watershed" under the 1985 LUP. The staff report does not state that the Solstice Creek corridor or any other habitat on the site was designated ESHA in the 1985 LUP. It cites the requirements of Policy 79, which stated, in part, that: "To maintain natural riparian vegetation buffer areas that protect sensitive riparian habitats all development other than walkways for public recreational purposes should be set back at least 100 feet

from the outer limit of riparian vegetation canopy. Such canopy shall not be considered to include scattered trees or shrubs not located in a riparian (streamside) location..." Staff recommended denial of the application in part because no buffer would have been provided. As described above, no Commission action was taken on this application.

Subsequently, the applicants applied for a revised project in Permit Application 5-87-983 (Forge). This permit was approved (the approved site plan is shown in Exhibit 2) on August 9, 1989 for the:

Removal of two trailers and retail store and addition and remodel to existing restaurant, relocate existing bar area and bathrooms, enlarge waiting area and add office. Construction of a two-story shopping center with 18,000 sq. ft. of leaseable floor area, and construction of a two story parking structure for 117 cars. The project proposes 9,143 cubic yards of grading (4,440 cut, 4,703 fill).

This permit was approved with special conditions relating to an offer to dedicate a trail easement, an offer to dedicate an open space easement, a future improvements deed restriction, archaeological monitoring during construction, revised plans providing at least a 50 foot setback from the outer extent of riparian vegetation, implementation of drainage plans, conformance with the consulting geologist's recommendations, implementation of a parking agreement that provides 17 parking spaces within the parking structure for the use of the Santa Monica Mountains Conservancy at Solstice Canyon Park.

Permit Amendment 5-87-983-A1 was approved (the approved site plan is shown in Exhibit 3) in 1990 for the: "Conversion of the top floor of the shopping center from office/retail to eight (8) bed and breakfast units; the project also proposes an additional 12,800 cu. yds. of grading". The revised project included relocation of the driveway that was originally approved between the commercial structure and the stream (within the 50 foot setback area). The County's final approvals required this driveway to be relocated outside the flood hazard area to the other side of the structure, nearer the steep slope. This change, as well as increasing the width of the driveway, providing a hammerhead turnaround, and raising the elevation of the parking garage, required the additional 12,800 cu. yds. of grading. In approving the amendment, the Commission found that the bed and breakfast use would be of even higher priority to the previously approved retail use because it would provide accommodations for visitors to the area.

Permit Activation

The conditions of approval on Coastal Development Permit 5-87-983 were met and the permit was issued on July 20, 1990. Among these conditions was the recordation of an offer to dedicate an open space easement across the stream corridor (an area of approximately 2.6-acres that is shown in Exhibit 4) and an offer to dedicate a riding and hiking trail easement (Exhibit 5). The open space easement was accepted by the Santa Monica Mountains Conservancy in January 2003. To date, the trail easement has not been accepted.

The applicant has submitted evidence that the permit has been activated. This evidence includes building permits from the local government (County of Los Angeles). The applicant's agent submitted the Notice of Commencement of Construction indicating that development approved under Permit 5-87-983 was commenced on August 22, 1990. The approved modifications and additions to the restaurant were completed. The applicant's agent has stated that grading and installation of several soldier piles for the construction of retaining walls were carried out to begin the construction of the driveway to the retail building.

Permit Amendment 5-87-983-A was approved in December 1990. The conditions were met and the amendment was issued on April 10, 1991.

On March 31, 1991, the City of Malibu was incorporated. The City established a building moratorium, with the exception of projects that met certain criteria. This project did not meet that criteria and was thus subject to the moratorium. The applicant later applied to the City of Malibu for approval of a revised project.

Issue has been raised with respect to the activation of the permit as approved in 5-87-983-A1. Staff would note that the permit was approved for the development as a whole, including the additions to the restaurant as well as the construction of the retail/bed and breakfast structure, and the parking structure. The restaurant improvement component of the project was carried out which activated the permit. Additionally, grading and installation of several soldier piles for the construction of retaining walls were carried out to begin the construction of the driveway to the retail building. As such, the permit was activated. Additionally, a large area of the project site was dedicated for open space use, which was required as mitigation for the potential impacts of the project as a whole.

Permit Action by the City of Malibu

The City considered and approved the project for a 27-unit bed and breakfast lodge. The permits approved by the Planning Commission include:

- Commercial Plot Plan Review for conformance with design and development standards
- Site Plan Review for height increase in excess of 18-foot limit, but not to exceed 28 feet
- Minor Modification to reduce the ESHA setback from 100 to 50 feet
- Variance to allow non-exempt grading in excess of 1,000 cu. yds.
- Variance for construction on slopes in excess of 2 ½ to 1
- Variance for wall height in excess of six feet
- Conditional Use Permit for the bed and breakfast use
- Certification of Final Environmental Impact Report

The City's review of these permits was underway before adoption of the City of Malibu LCP. However, the final approval and EIR certification was in December 2002, after the LCP adoption date (September 2002). The City did not apply the policies of the LCP to its approval of the project. The Planning Commission's actions were appealed by David Brown of the Sierra Club to the City Council. The Council upheld the decision in April

2003. The Sierra Club brought suit against the City for its decision in approving the proposed project on several grounds, including that the proposed overnight accommodations developed on the site with the existing restaurant will constitute a "hotel", which is not permitted within the CV-1 zone district, and several issues regarding the EIR. The Superior Court found for the City, upholding its decision on the proposed project. The Sierra Club has since appealed that decision, and the appeal is pending before the Court of Appeal.

C. Environmentally Sensitive Habitat Areas

The following policies of Chapter Three of the Coastal Act are incorporated as part of the City of Malibu LUP:

Section 30230.

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.

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.

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

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

In addition, the following LUP policies pertain to the protection of ESHA:

- 3.9 Public accessways and trails are considered resource dependent uses. Accessways and trails located within or adjacent to ESHA shall be sited to minimize impacts to ESHA to the maximum extent feasible. Measures, including but not limited to, signage, placement of boardwalks, and limited fencing shall be implemented as necessary to protect ESHA.**

- 3.23 Development adjacent to ESHAs shall minimize impacts to habitat values or sensitive species to the maximum extent feasible. Native vegetation buffer areas shall be provided around ESHAs to serve as transitional habitat and provide distance and physical barriers to human intrusion. Buffers shall be of a sufficient size to ensure the biological integrity and preservation of the ESHA they are designed to protect. All buffers shall be a minimum of 100 feet in width, except for the case addressed in Policy 3.27.**
- 3.24 New development adjacent to parklands, where the purpose of the park is to protect the natural environment and ESHA, shall be sited and designed to minimize impacts to habitat and recreational opportunities, to the maximum extent feasible. Natural vegetation buffer areas shall be provided around parklands. Buffers shall be of a sufficient size to prevent impacts to parkland resources, but in no case shall they be less than 100 feet in width.**
- 3.25 New development, including, but not limited to, vegetation removal, vegetation thinning, or planting of non-native or invasive vegetation shall not be permitted in required ESHA or park buffer areas, except for that case addressed in Policy 3.27. Habitat restoration and invasive plant eradication may be permitted within required buffer areas if designed to protect and enhance habitat values.**
- 3.26 Required buffer areas shall extend from the following points:**
- **The outer edge of the canopy of riparian vegetation for riparian ESHA.**
 - **The outer edge of the tree canopy for oak or other native woodland ESHA.**
 - **The top of bluff for coastal bluff ESHA**
- 3.28 Variances or modifications to buffers or other ESHA protection standards shall not be granted, except where there is no other feasible alternative for siting the development and it does not exceed the limits on allowable development pursuant to Policies 3.10-3.13.**
- 3.29 Modifications to required development standards that are not related to ESHA protection (street setbacks, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA**

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 Monica 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, riparian woodlands along with coastal sage scrub and chaparral areas within a watershed 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 reasons, the Commission finds that riparian corridors as well as 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 LCP¹.

The proposed project site includes a portion of the Solstice Canyon stream and riparian corridor. Solstice Creek is one of many riparian corridors in the Santa Monica Mountains that the Commission has considered to meet the definition of ESHA. As stated in the ESHA findings adopted by the Commission for the City of Malibu LCP, some 49 streams connect inland areas with the coast, and there are many smaller drainages as well, many of which are "blue line." Riparian woodlands occur along both perennial and intermittent streams in nutrient-rich soils. Partly because of its multi-layered vegetation, the riparian community contains the greatest overall biodiversity of all the plant communities in the area². At least four types of riparian communities are discernable in the Santa Monica Mountains: walnut riparian areas, mulefat-dominated riparian areas, willow riparian areas and sycamore riparian woodlands. Of these, the sycamore riparian woodland is the most diverse riparian community in the area. In these habitats, the dominant plant species include arroyo willow, California black walnut, sycamore, coast live oak, Mexican elderberry, California bay laurel, and mule fat. Wildlife species that have been observed in this community include least Bell's vireo (a State and federally listed species), American goldfinches, black phoebes, warbling vireos, bank swallows (State listed threatened species), song sparrows, belted kingfishers, raccoons, and California and Pacific tree frogs.

Riparian communities are the most species-rich to be found in the Santa Monica Mountains. Because of their multi-layered vegetation, available water supply, vegetative cover and adjacency to shrubland habitats, they are attractive to many native wildlife species, and provide essential functions in their lifecycles³. During the long dry

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

² Ibid.

³ Walter, Hartmut. Bird use of Mediterranean habitats in the Santa Monica Mountains, Coastal Commission Workshop on the Significance of Native Habitats in the Santa Monica Mountains. CCC Hearing, June 13, 2002, Queen Mary Hotel.

summers in this Mediterranean climate, these communities are an essential refuge and oasis for much of the areas' wildlife.

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

The streams themselves provide refuge for sensitive species including: the coast range newt, the Pacific pond turtle, and the steelhead trout. The coast range newt and the Pacific pond turtle are California Species of Special Concern and are proposed for federal listing⁴, and the steelhead trout is federally endangered. The health of the streams is dependent on the ecological functions provided by the associated riparian woodlands. These functions include the provision of large woody debris for habitat, shading that controls water temperature, and input of leaves that provide the foundation of the stream-based trophic structure.

The importance of the connectivity between riparian areas and adjacent habitats is illustrated by the Pacific pond turtle and the coast range newt, both of which are sensitive and both of which require this connectivity for their survival. The life history of the Pacific pond turtle demonstrates the importance of riparian areas and their associated watersheds for this species. These turtles require the stream habitat during the wet season. However, recent radio tracking work⁵ has found that although the Pacific pond turtle spends the wet season in streams, it also requires upland habitat for refuge during the dry season. Thus, in coastal southern California, the Pacific pond turtle requires both streams and intact adjacent upland habitats such as coastal sage scrub, woodlands or chaparral as part of their normal life cycle. The turtles spend about four months of the year in upland refuge sites located an average distance of 50 m (but up to 280 m) from the edge of the creek bed. Similarly, nesting sites where the females lay eggs are also located in upland habitats an average of 30 m (but up to 170 m) from the creek. Occasionally, these turtles move up to 2 miles across upland habitat⁶. Like many species, the pond turtle requires both stream habitats and the upland habitats of the watershed to complete its normal annual cycle of behavior. Similarly, the coast range newt has been observed to travel hundreds of meters into upland habitat and spend about ten months of the year far from the riparian streambed⁷. They return to the

⁴ USFWS. 1989. Endangered and threatened wildlife and plants; animal notice of review. Fed. Reg. 54:554-579. USFWS. 1993. Endangered and threatened wildlife and plants; notice of 1-year petition finding on the western pond turtle. Fed. Reg. 58:42717-42718.

⁵ Rathbun, G.B., N.J. Scott and T.G. Murphy. 2002. Terrestrial habitat use by Pacific pond turtle in a Mediterranean climate. *Southwestern Naturalist*. (in Press).

⁶ Testimony by R. Dagit, Resource Conservation District of the Santa Monica Mountains at the CCC Habitat Workshop on June 13, 2002.

⁷ Dr. Lee Kats, Pepperdine University, personal communication to Dr. J. Allen, CCC.

stream to breed in the wet season, and they are therefore another species that requires both riparian habitat and adjacent uplands for their survival.

Riparian habitats in California have suffered serious losses and such habitats in southern California are currently very rare and seriously threatened. In 1989, Faber estimated that 95-97% of riparian habitat in southern California was already lost⁸. Writing at the same time as Faber, Bowler asserted that, "[t]here is no question that riparian habitat in southern California is endangered."⁹ In the intervening 13 years, there have been continuing losses of the small amount of riparian woodlands that remain. Today these habitats are, along with native grasslands and wetlands, among the most threatened in California.

In addition to direct habitat loss, streams and riparian areas have been degraded by the effects of development. For example, the coast range newt, a California Species of Special Concern has suffered a variety of impacts from human-related disturbances¹⁰. Human-caused increased fire frequency has resulted in increased sedimentation rates, which exacerbates the cannibalistic predation of adult newts on the larval stages.¹¹ In addition impacts from non-native species of crayfish and mosquito fish have also been documented. When these non-native predators are introduced, native prey organisms are exposed to new mortality pressures for which they are not adapted. Coast range newts that breed in the Santa Monica Mountain streams do not appear to have adaptations that permit co-occurrence with introduced mosquito fish and crayfish¹². These introduced predators have eliminated the newts from streams where they previously occurred by both direct predation and suppression of breeding.

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

The proposed site includes the lowest reach of Solstice Creek. At the southern edge of the site, the creek passes through a culvert under Pacific Coast Highway and discharges to the ocean at Dan Blocker County Beach. The Malibu LCP Map

⁸ Faber, P.A., E. Keller, A. Sands and B.M. Massey. 1989. The ecology of riparian habitats of the southern California coastal region: a community profile. U.S. Fish and Wildlife Service Biological Report 85(7.27) 152pp.

⁹ Bowler, P.A. 1989. Riparian woodland: An endangered habitat in southern California. Pp 80-97 in Schoenherr, A.A. (ed.) Endangered plant communities of southern California. Botanists Special Publication No. 3.

¹⁰ Gamradt, S.C., L.B. Kats and C.B. Anzalone. 1997. Aggression by non-native crayfish deters breeding in California newts. *Conservation Biology* 11(3):793-796.

¹¹ Kerby, L.J., and L.B. Kats. 1998. Modified interactions between salamander life stages caused by wildfire-induced sedimentation. *Ecology* 79(2):740-745.

¹² Gamradt, S.C. and L.B. Kats. 1996. Effect of introduced crayfish and mosquitofish on California newts. *Conservation Biology* 10(4):1155-1162.

designates the riparian corridor along Solstice Creek on the proposed project site as environmentally sensitive habitat area (ESHA). No other ESHA is designated on this site.

The Malibu/Santa Monica Mountains Land Use Plan (Los Angeles County, 1982) provides the following background information regarding Solstice Canyon:

Most of the Solstice Canyon watershed is relatively undisturbed and encompasses a highly varied, well-developed riparian woodland dominated by alder, oak, sycamore and bay. There are a few scattered homes and a narrow road in the canyon bottom but the woodland is intact throughout the canyon. Due both to the lack of disturbance and the well-developed vegetation, large native wildlife populations are present. Unlike many coastal canyons in the Malibu area, alders occur even in the lowermost reaches of Solstice Canyon, attesting to the perennial nature of the water supply. The uppermost reaches of the canyon are completely undeveloped. Like Zuma Canyon, Solstice Canyon historically provided nesting habitat for the peregrine falcon. The riparian woodland extends downstream to Pacific Coast Highway but there is no natural stream habitat south of the highway.

The applicants have provided the Final Biological Assessment for the Forge Lodge Development Proposal, prepared November 1999, updated July 17, 2002, prepared by Teracor Resource Management, which addresses the biological resources present on the proposed project site. The project biologists identified the Solstice Creek riparian area as containing several habitat types, including Southern Sycamore Alder Riparian Woodland, Walnut Woodland, and Mixed Oak Riparian Forest/Walnut Woodland. Other habitats identified on the site include Venturan Coastal Sage Scrub, and Mixed Chaparral/Ornamental.

With regard to Southern Sycamore Alder Riparian Woodland habitat, the biological report states that:

This is the most well represented community on-site. Holland defines it as a tall, open, broad-leaved stream-side woodland, comprised primarily of western sycamore (*Platanus racemosa*) and white alder (*Alnus rhombifolia*). It is present along the length of the property throughout Solstice Creek, and extends from the west bank of the stream from Corral Canyon Road through the stream, up the east bank, and throughout portions of the previously-developed area. Species considered characteristic of the community which are present on-site include Coast live oak (*Quercus agrifolia*), mugwort (*Artemisia douglasiana*), California blackberry (*Rubus ursinus*) and California Bay (*Umbellularia californica*)... White alder is generally found at the water's edge. Sycamore is dispersed throughout the system and some of the individual trees appear to be of a substantial age. Some sycamores were apparently partly buried by debris from Corral Canyon Road construction some time ago. Oaks, mostly juvenile, are also found throughout this community, especially on the upper banks away from saturated soils and within more developed portions of the site. Historic photographic evidence analyzed by site investigators suggested that the oak forest is

regenerating from disturbances which occurred prior to 1951. California bay is found throughout the riparian system as well. Numerous non-native pine, cedar, and fan palm trees are located within the community. It would be more desirable from an ecological standpoint if these trees were not present.

In addition, there are several areas of walnut woodland that are described in this way:

The walnut woodland community on-site is located above the riparian system and below Corral Canyon Road on both sides of the stream. Approximately twenty to twenty-five trees are present on the site, which is not extensive. However, due to its rare status the community was carefully recorded and mapped on-site.

In addition to the areas of walnut woodland, the biologists also mapped several areas of mixed oak and walnut woodland. These areas are near the riparian corridor at the north of the project site. Finally, there are areas of coastal sage scrub, both on the slope between the creek and Corral Canyon Road, as well as the steep slopes on the northeast portion of the site.

Notwithstanding the functional importance of Solstice Creek as a stream and riparian system and its good health, there are existing disturbances within the creek corridor and on the rest of the project site. The site was significantly disturbed in the past through grading for the construction of both Pacific Coast Highway and Corral Canyon Road. Corral Canyon Road exists directly adjacent to the west edge of the riparian corridor of the creek and it crosses the creek at the northern edge of the project site. The biology report describes a steep slope between the road and stream in this area and that: "This slope is very loosely compacted at its surface, presumably due to earth material falling down onto Corral Canyon Road and being pushed over the bank by road clearance crews". At the north edge of the project site, there is a small culvert that takes the stream flow under this road. With regard to the east bank, the biology report states that:

The east bank of Solstice Creek is artificial... This fill resulted in the isolation of riparian trees in the southerly pocket of vegetation adjacent to what is now the parking lot for existing commercial operations on-site. Fill material constricted the natural mouth of the stream at this location, reducing its width substantially. These activities occurred prior to 1951, well before current regulations were in place. The configuration of the creek and adjacent ruderal areas does not appear to have changed appreciably since 1951. Oak and walnut woodland is, however, now present east of Solstice Creek where fill material was in 1951.

At the south edge of the property, there is a large culvert that conveys the stream flow beneath Pacific Coast Highway. This culvert has a concrete channel and wing walls that extend further upstream. Aerial photos of the area from 1972 show that the front area of the site, nearest Pacific Coast Highway, was developed with the restaurant structure, parking lot, the duplex structure, and several other small structures. As such, much of the development on the site has been in existence since before the effective date of the Coastal Act (and the earlier California Coastal Zone Protection Act effective as of 1973). In addition to these structures, visible from the photos are dirt roads and graded, bare areas on the slopes just above the riparian corridor on the site. It is clear that fill has

also been placed in the past on the eastern bank of the stream. There is concrete chunks and other debris within the riparian and stream corridor. Finally, there is invasive, non-native vegetation, like ivy and vinca within the riparian canopy.

Notwithstanding the disturbances, the riparian corridor of Solstice Creek still retains significant habitat value and is an increasing rare habitat type. The creek across the proposed project site is an important link between the ocean and the extensive watershed upstream, the majority of which is within the National Park Service's Solstice Canyon Park. Solstice Creek historically supported steelhead (*Oncorhynchus mykiss*). The National Marine Fisheries Service evaluated the potential for Solstice Creek to support steelhead and determined that the stream habitat appears suitable from the ocean to a waterfall within the park, about 1.8 miles upstream. However, there are several barriers to fish passage along this route. The National Park Service has undertaken several projects to remove barriers like check dams and Arizona crossings within the park. Caltrans will be carrying out a project to create a fish ladder through the culvert that extends from the proposed project site under Pacific Coast Highway to the beach on the other side. This fish ladder would allow steelhead to pass from the ocean up Solstice Creek, which is currently impeded by the culvert. Further, the City of Malibu has obtained a grant to replace the culvert that forms the bridge over Solstice Creek where Corral Canyon Road crosses the creek directly upstream of the project site. With the removal of these two fish passage barriers, as well as removals carried out by the National Park Service higher in the watershed, it is believed that steelhead trout can be restored to Solstice Creek. Not only are healthy riparian habitats becoming increasingly rare across the state, streams in Southern California that support steelhead trout are exceedingly rare and very valuable in preserving this species. As such, it is clear that the Solstice Creek riparian corridor on the project site qualifies as ESHA.

Delineation of Environmental Sensitive Habitat Areas

At the June 2005 hearing, the Commission requested that staff review the proposed ESHA delineation on the project site and provide more detailed information, particularly with respect to unpermitted development and habitat disturbance on the site.

The applicant's biologists have proposed a delineation of habitat on the site that meets the definition of ESHA pursuant to the Coastal Act and the Malibu LCP. Commission staff, including the Commission's biologist, Dr. John Dixon, have considered this information and visited the site several times. Dr. Dixon visited the project site to observe the various habitats in July 2003. Staff requested that Dr. Dixon in particular observe the "bowl area" and the disturbed oak/walnut areas on the north of the site in order to make a determination on whether these areas should be considered ESHA. Dr. Dixon confirmed that the applicant's biological report conforms to the conditions on the site and that the ESHA delineation is accurate.

Toward the north end of the site, there are several small areas containing oak and walnut trees that are interspersed with non-native trees including cedar and pine. These areas are adjacent to the south and northeast of the existing storage structure. These

areas are significantly disturbed. Dr. Dixon's conclusion from his site visit is that these oak/walnut areas do not meet the definition of ESHA and should not be designated as ESHA.

Within the "bowl area" of the site, there are four large sycamore trees (identified as Trees No. 160, 162, 163, and 164 in the biological study of the site). While sycamores are a riparian tree species, these four trees were not considered to be part of the riparian ESHA by the consulting biologists. The consulting biologists, TeraCor, provided a letter (dated July 11, 2005) describing their rationale for not considering this area to meet the definition of ESHA. The letter discusses several reasons for the determination including the following: physical isolation of Trees 163 and 164 from the riparian canopy. The letter states that: "Though tree No. 163 was likely part of the dynamic mouth of Solstice Creek many decades ago, it has been isolated from the system for over 50 years".

Another reason cited is hydrological dis-connectivity in that the trees have been isolated from the flow of water by fill, concrete slabs, and the wing walls of the PCH culvert. The letter states that: "In addition to likely water stress over time, fresh sediment and associated nutrients cannot be naturally replenished within the root zones of the trees". Further reasons discussed are the lack of a native shrub understory and a native herbaceous ground cover. Finally, the biologist's recommendation to not designate the area containing these trees as ESHA was also based on the presence of fill that was placed decades ago and compacted over the years by human activities, including the use of the roads for walking and vehicular access.

Staff has considered the ESHA delineation for the "bowl area" and agrees that while it is important to protect the individual sycamore trees from removal or encroachments within their driplines, this area should not be considered ESHA, but rather should be considered "ESHA buffer". While the canopies of Trees No. 160 and 162 are contiguous with other trees that are within the area designated as ESHA, it is Dr. Dixon's opinion that the level of disturbance at the base of the trees and the lack of a native understory is such that these trees should not be included in the area considered to meet the Coastal Act definition of ESHA. This area has been significantly disturbed in the past, through the re-directing of the stream mouth to the west side of the property, installation of a large culvert, placement of fill for the construction of Pacific Coast Highway, placement of fill and grading of a road paralleling the stream, construction of a residence and garage, and the construction of the parking lot.

There is evidence that the disturbances in this area date back to well before the effective date of the Coastal Act. A 1964 map (State of California Division of Highways Aerial Survey, dated 6/10/64) of the area shows two separate structures where the restaurant is located on the site, a structure where the duplex structure is located, a structure within the "bowl area" of the site, and several small structures towards the north end of the site. Several roads are shown to cross the site, including a road crosses Solstice Creek from Corral Canyon Road. Aerial photos of the area show that the front area of the site, nearest Pacific Coast Highway, was developed with the

restaurant structure, the duplex structure, and several other small structures. A 1975 color infrared aerial photo of the site clearly shows the dirt road paralleling Solstice Creek. This road extends from the parking lot at Pacific Coast Highway up the northern end of the site, paralleling the stream corridor and ending in a graded pad where the storage structure is now located. As shown in project plans for Permit P-80-8737, this road provided vehicular access to an existing house and garage located in the "bowl area" of the site. Further, a small pond is visible at the far northern edge of the site.

Issue has been raised by the Sierra Club (Frank Angel letter dated June 10, 2005) with regard to staff's recommended delineation of ESHA on the project site. This letter states that:

We note with dismay that the Solstice Creek ESHA boundaries described by staff eliminate portions from the ESHA as mapped in the 2002 MLCP, in the former 1986 Commission-certified LUP for the Malibu coastal zone and by the applicant's own EIR consultant prior to the release of the draft EIR (see attached Exhibit 2); and as mapped in staff's own delineation in 1989 for the predecessor project approved by the Commission (no. 5-87-983), and in 1985, when yet another, earlier project was proposed on the site (no. 5-85-819). The eliminated ESHA portions include (1) a Southern Sycamore Alder (SSA) Riparian Woodland area located west of the Beau Rivage restaurant parking lot and extending toward the most southerly buildings in the project, and (2) a Mixed Oak Riparian (MOR) Forest/Walnut Woodland area north and south of the unpermitted on-site storage building.

Staff disagrees with the Sierra Club's assertions for several reasons. Beginning with Permit Application 5-85-819, as described above, the applicants applied for an addition to the restaurant, an office building, and 88 parking spaces on the project site. This project included the construction of a driveway and parking lot within a few feet of the creek bank. Staff recommended denial of the application, but no action was taken by the Commission on 5-85-819. The staff report identified Solstice Canyon as a "Significant Watershed" (based on an earlier version of the Malibu/Santa Monica Mountains LUP), but did not state that the creek or any other area on the project site met the definition of ESHA. As such, no ESHA delineation was mapped or described on the project site in conjunction with Permit Application 5-85-819. No site-specific biological study of the project site was included in the file.

With regard to the 1986 certified LUP (Los Angeles County Malibu/Santa Monica Mountains LUP), ESHA was mapped across the site, clearly following the Solstice Creek corridor (Exhibit 18). Exhibit 18 is a composite of a digital aerial photograph of the site and the LUP ESHA Map, prepared in a geographic information system program. Additionally, Solstice Canyon was designated as a "Significant Watershed", beginning at a point within what is now the National Park Service property, north of the project site. It is apparent from the ESHA map from the Malibu/Santa Monica Mountains LUP that the designated ESHA closely follows the riparian canopy along Solstice Creek. The mapped ESHA does not include the canopy of any trees within the "bowl area" at the southern end of the creek. It is not as clear whether the map includes any of the oak/walnut areas, but it appears that these areas are not mapped as ESHA.

As described above, the Commission approved Permit 5-87-983 (Forge) for additions to the restaurant and the construction of a two-story shopping center with 18,000 sq. ft. of leaseable floor area, and construction of a two story parking structure for 117 cars, with 9,143 cubic yards of grading (4,440 cut, 4,703 fill).

In approving this permit, the Commission did not actually find that the Solstice Creek riparian corridor was ESHA. The findings do not discuss the location of ESHA on the 1986 Malibu/Santa Monica Mountains LUP ESHA Map along Solstice Creek on the project site. No site-specific biological study of the project site was included in the file. There is no discussion in the findings about whether the habitat on the site met the definition of ESHA or reasons why the Commission did not consider it to meet the ESHA definition. Further, the Commission did not consider or make a delineation of ESHA on the site. The Commission did not require the project to meet the ESHA buffer standard of the Malibu/Santa Monica Mountains LUP that was in place at the time (and still in place in the unincorporated area of the Santa Monica Mountains). This ESHA buffer standard is 100 feet from the edge of the designated ESHA, as required by the Table 1 standards of the Malibu/Santa Monica Mountains LUP.

Rather, in Permit 5-87-983, the Commission applied the standards required in Policy 79, which states as follows:

P79 To maintain natural vegetation buffer areas that protect all sensitive riparian habitats as required by Section 30231 of the Coastal Act, all development other than driveways and walkways should be set back at least 50 feet from the outer limit of designated environmentally sensitive riparian vegetation.

This permit was approved with special conditions, including Special Condition No. 5 which required the submittal of revised plans providing at least a 50-foot setback from the outer extent of riparian vegetation. The revised plan that was ultimately approved (Exhibit 2) depicts the outer edge of riparian vegetation and the 50-foot setback. Only the buildings are located beyond the 50-foot setback. There is a large plaza and one of the driveways within the 50-foot riparian setback area.

Permit Amendment 5-87-983-A1 was later approved for the "Conversion of the top floor of the shopping center from office/retail to eight (8) bed and breakfast units; the project also proposes an additional 12,800 cu. yds. of grading (the approved site plan is shown in Exhibit 3). In this amendment request, the Commission did not address whether the Solstice Creek corridor across the site should be delineated as ESHA. In this amendment, the additional grading was proposed to move the approved driveway out of the flood hazard area to a location higher on the slope and behind the approved parking garage. The Commission conditioned the amendment to require revised plans showing that all development (except decomposed granite walkways), including patios and retaining walls, would be setback at least 50 feet from the outer extent of riparian vegetation.

In the 2002 City of Malibu LCP, ESHA is mapped across the project site, following the Solstice Creek corridor, as shown on Exhibit 19. This exhibit is a composite of a digital

aerial photograph of the site and the LCP ESHA Map, prepared in a geographic information system program. The oak and walnut trees located east of the dirt road (at the north property line) and those located to the south of the storage structure were not designated as ESHA on this map. There is an area at the southern end of the creek that "bows" out to the east. This line follows the line of the tree canopy in the "bowl area" of the site. As is now apparent based on the site-specific biological study and site visits, this area mapped as ESHA includes exotic vegetation (such as myoporum) as well as the four sycamore trees that are in the significantly disturbed "bowl area". The map was prepared by identifying habitat areas on aerial photos and by conducting field reconnaissance. The Commission's findings on the adoption of the City of Malibu LCP state that:

The LUP ESHA Map is a valuable source of information on the presence of sensitive resources. The map is a useful tool for identifying many of the habitat areas that meet the definition of ESHA. However, the map is not the end of the story.

The LUP ESHA Map, as described above, was developed using available information, including field visits. The map accurately depicts the location of ESHA areas according to the method used. However, it would be necessary to conduct in-depth site-specific biological surveys of the entire City in order to map ESHA down to a site by site level. Conducting such surveys would not only be time and cost prohibitive, but also an inefficient method to determine location of ESHA. Site-specific biological surveys of the entire City would still only provide an accurate depiction of ESHA at one point in time. As described below, circumstances change over time. It is more efficient to carry out a site-specific biological analysis of each site at the time that development is proposed.

In recognition of the fact that the ESHA Map was intended to serve as a planning level tool, the LUP includes the following two policies:

- 3.6 Any area mapped as ESHA shall not be deprived of protection as ESHA, as required by the policies and provisions of the LCP, on the basis that habitat has been illegally removed, degraded, or species that are rare or especially valuable because of their nature or role in an ecosystem have been eliminated.
- 3.7 If a site-specific biological study, prepared pursuant to Policy 3.37 contains substantial evidence that an area previously mapped as ESHA does not contain habitat that meets the definition of ESHA for a reason other than those set forth in Policy 3.6, the City Biologist and the Environmental Review Board shall review all available site-specific information to determine if the area in question should no longer be considered ESHA and not subject to the ESHA protection policies of the LUP. If the area is determined to be adjacent to ESHA, Policies 3.23 to 3.31 shall apply. The ERB shall provide recommendations to the applicable decision-making body (Planning Director, Planning Commission, or City Council) as to the ESHA status of the area in question. If the decision-making body finds that an area previously mapped as ESHA does not meet the definition of ESHA, a modification shall be made to the LUP ESHA Map, as part of a map update, consistent with Policy 3.5. If an area is not ESHA or ESHA buffer, LCP policies and standards for protection of ESHA and ESHA buffer shall not apply and development may be

allowed (consistent with other LCP requirements) even if the ESHA map has not been amended.

Pursuant to Policy 3.7, a delineation of ESHA must be made based on the location of habitat meeting the definition of ESHA as identified in a site specific biologic study and reviewed by staff (and in the case of the City, by the ERB). If there were an area designated as ESHA on the map that is found not to contain habitat that meets the definition of ESHA, then the ESHA policies of the LCP would not apply. If it were found instead to be within the required buffer of ESHA, then the ESHA buffer provisions would apply. As provided in LUP Policy 3.6, the exception to this would be if habitat that did meet the definition of ESHA and was mapped as such, were found to have been illegally removed or degraded, then the ESHA policies would still apply to such a habitat area.

As previously described, there is evidence that the area in question has been subject to disturbance for some time prior to the effective date of the Coastal Act. The applicants' activities on the site have perpetuated the disturbance and certainly have not improved conditions. However, the fact remains that legally authorized development caused significant disturbance to this area prior to the ESHA mapping for the 1986 Malibu/Santa Monica Mountains LUP and the 2002 City of Malibu LCP. As such, staff cannot conclude that this area should be considered ESHA on the basis that habitat has been illegally removed or degraded. Rather, this project represents a case where the site-specific study and a more detailed on-the-ground site visit would appropriately be used to refine the ESHA delineation. In this case, the applicants' biological consultants prepared a site-specific study. Commission staff, including the Commission's biologist, Dr. John Dixon, reviewed this information and conducted several site visits to review the habitat areas on the whole site. Staff requested that Dr. Dixon in particular observe the "bowl area" and the disturbed oak/walnut areas on the north of the site in order to make a determination on whether these areas should be considered ESHA. As described above, Dr. Dixon's conclusion was that these areas should not be considered ESHA.

Thus, as explained above, the riparian corridor of Solstice Creek on the project site constitutes an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Exhibit 20 shows the area that staff recommends be designated as ESHA. The policies and standards of the Malibu LCP provide for the protection of ESHA. Section 30240, which is incorporated into the LCP, requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The LCP establishes uses that can be considered resource dependent within ESHA, and the buffers that must be provided between uses and ESHA.

The Malibu LCP requires a buffer of 100 feet to be provided between development and the outer edge of the riparian canopy for riparian ESHA. The Commission has consistently required a buffer of at least 100 feet where such a buffer is feasible and an economically viable use can be provided on the site. Siting and designing new

development such that an adequate buffer is provided between the outer edge of the ESHA and development will minimize adverse impacts to these habitats. Providing a significant distance between new development and ESHA will ensure that removal or thinning of native vegetation for fuel modification will not be required to provide fire protection. Additionally, the transitional "ecotones" between different habitat types are particularly valuable areas with a higher diversity of plants and animals. The provision of adequate buffers around ESHA protects ecotones. Natural vegetation buffers also protect riparian habitats by providing area for infiltration of runoff, minimizing erosion and sedimentation. Finally, natural vegetation buffers minimize the spread of invasive exotic vegetation that tends to supplant native species, from developed areas into sensitive resource areas. The permitted uses within ESHA buffers, according to the Malibu LCP are limited to: public accessways and trails; interpretive signage; restoration projects where the primary purpose is restoration of the habitat; and invasive plant eradication projects. Variances or modifications to buffer, or other sensitive resource protection standards may not be granted for new development, except where there is no other feasible alternative for siting the development and an economically viable use must be provided.

Granted, in this case, the buffer area of 100 feet from the riparian corridor of Solstice Creek is significantly disturbed. These areas of the site have been subjected to vegetation removal, grading, and fill placement. The applicants have proposed to restore these areas by planting native vegetation. Nonetheless, it is critical that the proposed development provide the required 100 foot buffer in order to ensure that all structures are sited and designed to prevent impacts which would significantly degrade the ESHA and that it is compatible with the continuance of the Solstice Creek ESHA. In this case, the applicants already have an economic use of their project site. So, the proposed amendment can only be approved if all of the new development is located at least 100 feet from ESHA.

The applicants are proposing to amend the project approved in Permit 5-87-983 and Permit Amendment 5-87-983-A1 to eliminate the approved retail use, reduce the total square footage to 16,240 sq. ft. of bed and breakfast use comprising 27-units and a kitchen in seven separate structures that are all at least 100 feet from ESHA, demolish an existing duplex structure, construct a 1,400 sq. ft., two-story rental office, eliminate the approved parking structure, reduce the number of parking spaces to 94 open spaces, relocate the recorded trail easement offer to dedicate out of the stream into the ESHA buffer, remove 7 protected trees (5 walnut trees and 2 coast live oak trees), and to reduce the total amount of grading to 11,900 cu. yds. (10, 400 cu. yds. cut and 1,500 cu. yds. fill). The proposal includes the construction of retaining walls along the northeastern edge of the access driveway that range in height from 10 to 22 feet in height. Additionally, a retaining wall ranging in height from 2 feet to 6 feet in height is proposed along the western edge of the pool and pool deck area. The proposed project is shown in Exhibit 15.

The project includes the construction of a 24-foot wide driveway, and fire department "hammerhead" turnaround. Additionally, provision of emergency vehicle access with a

break-away gate will be provided along an existing roadway of approximately 8-10 feet in width that was approved in Permit 5-87-983 and Permit Amendment 5-87-983-A1. This road extends from the turnaround to Corral Canyon Road at the north end of the site. Although this road extends through an area containing oak trees, the road was previously approved, no grading or other improvements are required, it will not be located within the protected zone of any oak tree, and it will be surfaced with gravel to minimize impervious surface. The applicant is also proposing to carry out a stream enhancement program and ESHA buffer restoration program.

Staff would note that the applicants were originally proposing a different design, as part of Permit Amendment 5-87-983-A2. That project shown in Exhibit 6 also included the construction of 27 bed and breakfast units with a kitchen unit. Not all of the structures provided the full 100-foot buffer, although a larger buffer was provided compared to the project previously approved by the Commission 5-87-983-A1 (That approved project was required to provide a 50-foot buffer from the outer extent of riparian vegetation). The ESHA buffer provided varied among the seven structures, including the following:

Building	Buffer from ESHA
B	59 feet, 7 inches
C	53 feet, 7 inches
D	61 feet, 8 inches
E	77 feet, 9 inches
F	102 feet, 6 inches
G	101 feet, 10 inches
H	96 feet, 8 inches

So, although two of the structures provided the required ESHA buffer, five structures did not. Additionally, the proposed swimming pool would have been less than 60 feet from the ESHA. Staff has worked with the applicant's architect to explore alternative project designs that could provide the required 100-foot buffer from the riparian canopy of Solstice Creek. The applicant's architect prepared sketches for four different alternative projects. These alternatives are shown in Exhibits 10 through 13. All three alternatives consist of 27 bed and breakfast units (and kitchen) in seven separate buildings.

The applicant's agent submitted alternative project designs 1 through 3 to the City of Malibu for their comments. The City responded that Alternative No. 1 is not consistent with the required front yard setback of 65 feet (from Pacific Coast Highway) and would require the approval of a minor modification to reduce the setback to 40 feet. This would require a new public hearing to amend the City's approval for the project. The City staff stated that height increase from 28 to 35 feet included in Alternative No. 2 could not be approved. The City's letter (Exhibit 14) states that any increase in height over 28 feet or two stories would not be consistent with the general plan or the municipal code and that no variance has ever been given for a structure over 28 feet. Finally, with regard to Alternative No. 3, the City staff has stated that this design is in substantial conformance with the approved project and would not require any additional discretionary review.

The design that the applicants are now proposing was the fifth alternative (Exhibit 15) that the applicant's architect designed, in consultation with staff. As part of this design, the existing duplex structure would be demolished. In the area where this building will be demolished, the proposed project would include about 12 parking spaces and a smaller, 1,400 sq. ft., two-story rental office for the bed and breakfast. By providing parking spaces in this area, other parking spaces were moved, allowing the bed and breakfast structures to be shifted further away from the Solstice Creek ESHA, while still providing the access driveway required by the fire department. Further, two of the four-unit structures were redesigned such that the footprints are long and narrow instead of square, thereby allowing for a 100-foot ESHA buffer. The proposed swimming pool has been redesigned such that it is located 100 feet from the riparian ESHA. The applicants have modified their project description to propose the construction of this alternative project.

The applicant is also proposing to carry out a stream enhancement program and ESHA buffer restoration program as part of the proposed amendment, to restore disturbed areas of the slopes that make up the ESHA buffers on the site and to include riparian habitat enhancement in Solstice Creek within the project site. On the buffer slopes, invasive vegetation will be removed and all disturbed areas will be revegetated with native vegetation. The upper slopes nearest the development will be revegetated with native plants that are acceptable to the fire department as being lower in fuel, as shown on the approved fuel modification plan.

There are several more targeted areas on the lower slopes of the buffer, closest to the riparian canopy that the applicants propose to restore with a wider range of native plant species. The applicants submitted Restoration Project at 26025 Pacific Coast Highway-Mitigation and Monitoring Plan, dated April 13, 2004, prepared by Teracor Resource Management. This report sets out the parameters of the proposed restoration including goals, planting details, concept plans, and monitoring. The report recommends that a final landscape plan be prepared with all relevant materials and specifications included. **Special Condition No. 5** requires the submittal of a site plan showing the size, location, and species of the plants to be used in restoring the ESHA buffer.

The applicants also propose to remove barriers, fill, and invasive vegetation and to plant native riparian vegetation within Solstice Creek and riparian corridor. Staff would characterize this work as riparian enhancement because this area currently contains viable habitat that can be enhanced by removal of disturbances. The proposed riparian enhancement would include the removal of approximately 100 cu. yds. of fill material that is existing on the eastern bank of the creek in the southern portion of the site. The applicant's representative estimates that this fill extends to a depth of approximately 5 feet. Additionally, the enhancement would include the removal of concrete rubble walls and other debris in the stream corridor that may act as barriers to fish passage. Finally, exotic vegetation would be removed and native riparian plant species planted. In order to implement the applicants' proposal to provide riparian habitat enhancement on the project site, **Special Condition No. 4** requires the applicants to provide a final riparian enhancement plan. The riparian enhancement is required to be implemented prior to

occupancy of the bed and breakfast facility. The proposed restoration with native riparian species will create a more natural stream course and will provide habitat area, provided the enhancement/restoration plan is prepared by a specialist trained to design such projects, the site is monitored after implementation to ensure the success of plantings and to make mid course corrections, if necessary. To ensure that the enhancement project is successful, the Commission finds it necessary to require the applicant to submit and implement a final restoration plan, including provisions for monitoring for a period of at least 5 years. A report of the results of the monitoring shall be submitted annually for review.

The Commission finds that fuel modification required to reduce the risk of fire for new development can have significant adverse impacts on ESHA in excess of those directly related to the development area. The impacts result from the removal, thinning, and/or irrigation of native vegetation in order to reduce fuel load. In this case, the applicants have submitted a fuel modification plan for the revised project that will minimize impacts to ESHA. The fuel modification plan (Exhibit 9) has been given preliminary approval by the Los Angeles County Fire Department. The plan shows two fuel modification zones, including Zone A which is all areas within twenty feet of each existing and proposed structure; and Zone C, which extends up to 180 feet from all structures. Zone A is an irrigated zone, except that the plan shows that all Zone A areas within the ESHA buffer is to be non-irrigated. Zone C is a thinning zone. The plan specifies that within the ESHA buffer restoration area, thinning will be restricted to the removal of dead branches and dead individual plants, if present. Within the ESHA, dead vegetation is not required to be removed from riparian plant species. As proposed, the fuel modification plan will minimize significant adverse impacts to ESHA. Special Condition No. 6 (Subpart A5) requires the applicants to only remove vegetation in accordance with this plan and also to submit the final approved fuel modification plan. As conditioned, the project will minimize impacts to ESHA from fuel modification.

The project includes the construction of a 24-foot wide driveway, and fire department "hammerhead" turnaround. Of the total of seven native trees that are proposed to be removed, one walnut tree (Tree No. 169) will be removed for the construction of the parking area at the southeast edge of the property. One oak tree (Tree No. 92) would be removed for the construction of the access road. Finally, the construction of the Fire Department turnaround will result in the removal of five protected native trees, four walnut trees (Trees No. 86, 87, 88, and 89) and one oak tree (Tree No. 80). It is unclear how many trees were to be removed as part of the project approved under Permit 5-87-983 and 5-87-983-A1 since it was detailed as part of the project description or addressed in the findings. It appears that it would have resulted in the removal of several trees in the area of the parking structure. The design that the applicants originally submitted as part of this amendment request included the removal of 17 native trees. The applicants' agent had stated that no protected native trees would be removed for the construction of the revised project. However, further review demonstrated that the seven trees discussed above would be removed as part of the project. Policy 3.63 of the Malibu LUP requires that:

- 3.63 New development shall be sited and designed to preserve oak, walnut, sycamore, alder, toyon, or other native trees that are not otherwise protected as ESHA. Removal of native trees shall be prohibited except where no other feasible alternative exists. Structures, including roads or driveways, shall be sited to prevent any encroachment into the root zone and to provide an adequate buffer outside of the root zone of individual native trees in order to allow for future growth.

In this case, the removal of seven native trees is proposed in order to accommodate the construction the access driveway, hammerhead turnaround area, and to connect the roadway and turnaround with an existing road for a second egress from the site to be used for emergency use only. Staff attempted to identify feasible alternatives to the proposed road improvement designs that could avoid the removal of native trees. Alternatives considered include moving the turnaround closer to the front of the site, in the area where the pool is proposed, deleting the pool to allow for this relocation. The difficulty in relocating the turnaround is that the portion that is perpendicular to the driveway is required to be 60 feet long, which would be difficult to fit in the pool area, or anywhere else along the road closer to the front of the site. Additionally, there would still need to be a secondary egress for emergency purposes. This roadway would still impact at least three trees even if the turnaround could be resited. Even if the number of bed and breakfast units were reduced, a turnaround and second egress would still be necessary. As such, staff had to conclude that there was not a feasible alternative that would allow for the protection of these native trees. Where there is no feasible alternative available, the LCP requires that mitigation be provided that includes, at a minimum, the planting of replacement trees at a ration of 10:1 on the site. **Special Condition No. 18** requires the preparation and implementation of a walnut tree replacement planting program to include the planting of 50 walnut trees in appropriate areas on the project site as mitigation for the loss of five walnut trees. Further, **Special Condition No. 19** requires the preparation and implementation of an oak tree replacement planting program for 20 oaks. Each of these conditions requires the replacement trees to be monitored for a period of no less than ten years.

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition No. 6** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used

The Commission notes that streams and drainages, such as Solstice Creek provide important habitat for wetland and riparian plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat. The Commission finds that potential adverse effects of the proposed development on riparian habitat of these streams may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition No. 12**, the Drainage and Polluted Run-Off Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, and building pad area is conveyed off-site in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition No. 9**, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the natural topography in concert with the lighting restrictions will attenuate the impacts of unnatural light sources and will not impact sensitive wildlife species. Furthermore, permanent fencing of the property would adversely impact the movement of wildlife through the ESHA on this parcel. Therefore, the Commission finds it is necessary to limit fencing to the perimeter of the development area (building pad), turnaround, and driveway. This is required to be shown on the landscaping plan, required in **Special Condition No. 6**. In order to protect the ESHA during construction however, it is appropriate for the applicants to provide temporary construction fencing. Special Condition No. 6 (landscaping) also includes a requirement for clearly delineating a habitat protection zone with temporary construction fencing that is placed along the length of the site at least 80 feet from the outer edge of the riparian canopy. This fencing must be maintained on site during all grading and construction of the road, parking, and structures.

Conclusion

As described in detail above, the proposed project site contains habitat within the riparian canopy of Solstice Creek that constitutes ESHA, consistent with the definition provided in the Coastal Act and the Malibu LCP. The project, as proposed to be amended, would have provided a greater buffer from the ESHA than the project previously approved by the Commission. Nonetheless, the amended project would not have provided the full 100-foot buffer that is required by the Malibu LCP to provide protection for ESHA resources. In consultation with staff, the applicants considered several alternatives to the proposed project that could provide the required buffer. Alternative 5 redesigns the project such that a 100-foot buffer is provided between all of the proposed structures, including the pool, road and parking areas and the ESHA. As sited and designed, the project, as proposed to be amended, will be consistent with the applicable policies of the Malibu LCP if certain conditions are met. As discussed above, the Commission finds it necessary to require the applicant to submit revised project plans, develop and implement a riparian enhancement plan, ESHA buffer restoration plan, and landscaping plan for the site, to prepare and implement a walnut and oak mitigation planting program, to provide temporary construction fencing, to provide temporary erosion control, to carry out grading during the dry season, to restrict lighting, to develop and implement a polluted runoff and drainage plan, and to use only on-chlorine methods in the proposed pool, in order to minimize impacts to ESHA. The Commission finds that the project, as proposed to be amended, and as conditioned, is consistent with the ESHA policies and standards of the City of Malibu LCP.

D. Hazards

The proposed development is located in the Malibu/Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wildfires 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 following Chapter 3 policy of the Coastal Act is incorporated into the City of Malibu LCP:

Section 30253

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.***

- (3) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.**
- (4) Minimize energy consumption and vehicle miles traveled.**
- (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.**

In addition, the following LUP policies pertain to hazards:

- 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.**

Geology

The project site is located on the inland side of Pacific Coast Highway at Corral Canyon Road. The project site is located on a slope that extends up from the floodplain of Solstice Canyon across the proposed building areas and rising steeply above the site to the north.

The applicants have submitted the following reports regarding the proposed project and site:

- Addendum Letter No. 4 Response to Review Comments, dated November 14, 2002, prepared by RJR Engineering Group
- Addendum Letter No. 3 Response to Review Comments, dated October 28, 2002, prepared by RJR Engineering Group
- Addendum Letter No. 2 Response to Review Comments, dated August 21, 2000, prepared by RJR Engineering Group
- Addendum Geologic and Geotechnical Engineering Report, dated August 29, 1999, prepared by RJR Engineering Group
- Updated Geotechnical Engineering Report, dated July 16, 1997, prepared by RJR Engineering Group
- Response to County Review Sheets, dated May 24, 1990, prepared by California GeoSystems, Inc.
- Response to Geotechnical Review, dated November 17, 1988, prepared by California GeoSystems, Inc.
- Soils and Engineering Geologic Investigation, dated March 11, 1988, prepared by California GeoSystems, Inc.

The reports identify the geologic material on the project site as including artificial fill, alluvium, stream terrace deposits, fan deposits, and bedrock. Two landslides are

identified in proximity, but not within the project site. The larger of the two landslides is located approximately 200 feet to the east of the site. The May 11, 1988 GeoSystems report states that:

The eastern slide system is a large deep-seated slide, which apparently "toes out" offshore. This slide is believed to be in excess of 90 to 100 feet thick. Its lateral extent has been mapped some 1500 feet in width along Pacific Coast Highway, extending 1000 to 1100 feet north of Pacific Coast Highway.

The geotechnical consultants concluded that this slide was restricted to a geologic formation that does not extend onto the project site, and was separated in part by the Solstice Canyon Fault. As such, they concluded that this slide did not threaten the project site.

The second slide is considered a surficial slide and is located to the north of the project site. The sliding trends toward west into Solstice Canyon. The geology report concludes that this slide will not significantly affect the project site.

The geologic consultants have found the geology of the proposed project site to be suitable for the construction of the proposed project. They have identified no landslides or other geologic hazards on the site. They conclude that the slopes are stable, and have a factor of safety in excess of 1.5. After a series of geologic/geotechnical review sheets and response reports, the project was granted an approved geologic/geotechnical review sheet by the City of Malibu. The geologic and geotechnical engineering consultants conclude (in the Updated Geotechnical Engineering Report, dated July 16, 1997, prepared by RJR Engineering Group) that:

Based upon our review of the site and the available data, and based upon Section 111 of the Los Angeles County Building Code the proposed improvements are feasible from a geologic and geotechnical standpoint, and should be free of landslides, slumping and excess settlement as described in this report, assuming the final design recommendations are implemented during the design and construction of the project. In addition, the stability of the site and surrounding areas will not be adversely affected by the proposed development, based upon our analysis and proposed design.

The geotechnical consultants conclude that the proposed developments are feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The Geotechnical Report contains several recommendations to be incorporated into project grading, construction, drainage, foundations and sewage disposal to ensure the stability and geologic safety of the proposed project site and adjacent property. To ensure that the recommendations of the consultant have been incorporated into all proposed development, and that the geotechnical consultants consider the modified project approved herein (Alternative 5), the Commission, as specified in **Special Condition No. 14**, requires the applicant to incorporate the recommendations cited in the Geology Report into all final design and construction plans and to provide evidence of the geotechnical consultants' review and approval of the revised plans. Final plans approved by the consultant shall be in

substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed developments, as approved by the Commission, which may be recommended by the consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will minimize erosion and add to the geologic stability of the project sites. To ensure that adequate drainage and erosion control are included in the proposed developments, the Commission requires the applicant to submit drainage and interim erosion control plans, as specified in **Special Conditions 6 and 12**. Special Condition 13 requires the applicants to maintain a functional drainage system at the subject site to insure that run-off from the project site is diverted in a non-erosive manner to minimize erosion at the site for the life of the proposed development. Should the drainage system of the project site fail at any time, the applicant will be responsible for any repairs or restoration of eroded areas as consistent with the terms of Special Condition 13.

The Commission also finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition 6** requires the applicant to submit and implement landscaping plans. Special Condition 6 also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project sites.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion.

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition No. 7**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by Special Condition No. 7 avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

The Commission finds that the proposed project, as conditioned, will minimize potential geologic hazards of the project site and adjacent properties.

Wild Fire

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

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 these associated risks. Through **Special Condition 15**, the wildfire waiver of liability, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of Special Condition 4, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

The Commission finds that as conditioned to incorporate all recommendations of the geotechnical and geologic consultants, to landscape the site to prevent erosion, to incorporate erosion control measures during construction, to implement and maintain a drainage system on the site, and to assume the risk of wildfire, the project, as proposed to be amended, is consistent with the policies and provisions of the City of Malibu LCP.

E. Public Access/Visitor Serving Commercial

One of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities within coastal areas and to reserve lands suitable for coastal recreation for that purpose. The Coastal Act has several policies which address the issues of public access and recreation within coastal areas. The following Chapter 3 policy of the Coastal Act is incorporated into the City of Malibu LCP:

Section 30210

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

Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222

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

Section 30223

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

Section 30250:

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.

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

- 2.1** ***The shoreline, parklands, beaches, and trails located within the City provide a large range of recreational opportunities in natural settings which include hiking, equestrian activities, bicycling, camping, educational study, picnicking, and coastal access. These recreational opportunities shall be protected and, where feasible, expanded or enhanced as a resource of regional, state, and national importance.***
- 2.2** ***New development shall minimize impacts to public access to and along the shoreline and inland trails....***
- 2.5** ***New development shall be sited and designed to minimize impacts to public access and recreation to the shoreline and trails. If there is no feasible alternative that can eliminate or avoid all access impacts, then the alternative that would result in the least significant adverse impact shall be required. Impacts may be mitigated through the dedication of an access or trail easement where the project site encompasses an LCP mapped access or trail alignment, where the City, County, State, or other public agency has identified a trail used by the public, or where there is substantial evidence that prescriptive rights exist. Mitigation measures required for impacts to public access and recreational opportunities***

shall be implemented prior to or concurrent with construction of the approved development.

- 2.6** *Mitigation shall not substitute for implementation of a feasible project alternative that would avoid impacts to public access.*
- 2.11** *Public land, including rights-of-way, easements, and dedications, shall be utilized for public recreation or access purposes, where appropriate and consistent with public safety and protection of environmentally sensitive habitat areas.*
- 2.35** *New development shall provide off-street parking sufficient to serve the approved use in order to minimize impacts to public street parking available for coastal access and recreation.*
- 2.33** *Priority shall be given to the development of visitor-serving and commercial recreational facilities designed to enhance public opportunities for coastal recreation. On land designated for visitor-serving commercial and/or recreational facilities, priority shall be given to such use over private residential or general commercial development. New visitor-serving uses shall not displace existing low-cost visitor-serving uses unless an equivalent replacement is provided.*
- 2.35** *New development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations (e.g. campground, RV park, hostel, or lower cost hotel/motel). The lower-cost visitor accommodations may be provided on-site, off-site, or through payment of an in-lieu fee into a fund to subsidize the construction of lower-cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved.*

Further, the provisions of Chapter 12 of the City of Malibu LIP pertain to public access and visitor serving commercial recreation.

The beaches of Malibu are world-famous tourist destinations for visitors from nearby areas, other areas within California, the nation and many foreign countries. Overall, a wide variety of recreational opportunities exist within the City and the Santa Monica Mountains such as swimming, surfing, diving, boating, hiking and equestrian use. The proposed project site is located on the inland side of Pacific Coast Highway, across from Dan Blocker County Beach, a public beach area. The project site is also located adjacent to Corral Canyon Road, a public road that extends from Pacific Coast Highway northward, ending at Malibu Creek State Park. Along the way, Corral Canyon Road provides access to Solstice Canyon Park, as well as to residences further up the canyon.

Visitor Serving Commercial Recreation Use

The proposed amendment will result in the approved project being modified to consist entirely of a bed and breakfast with 27 units and a kitchen (Exhibit 13), rather than a mixed retail project with 8 bed and breakfast units. The project as amended, will be exclusively a visitor-serving commercial use, which is a priority use under the policies of

the Coastal Act and the Malibu LCP (see Land Use Plan Policy 5.11), particularly in this location adjacent to a public park and a public beach.

Staff would note that there are few existing facilities providing overnight accommodations within the City of Malibu. Staff is aware of only 5 such facilities (not including campgrounds or recreational vehicle parks). Additionally, only 69 parcels within the City are designated for such uses (23 parcels within the Civic Center area and 46 parcels throughout the rest of the City). So, while the provision of visitor serving commercial recreation use available to the public is a very high priority provided for by the policies of the Coastal Act, few of these uses are provided in the City, or will be provided in the future. Given the limited availability of visitor serving uses in the area, particularly overnight accommodations, and the many public beach and park areas that attract visitors, the Commission finds that the proposed bed and breakfast use conforms to the priorities established by the Chapter Three policies of the Coastal Act and the Malibu LCP.

The proposed project site is designated as "Commercial Visitor Serving (CV)" by the City of Malibu LCP Land Use Plan. The LUP describes the CV designation thus:

The CV designation provides for visitor serving uses such as hotels and restaurants that are designed to be consistent with the rural character and natural environmental setting, as well as public open space and recreation uses. Uses allowed in the other commercial categories (Commercial Neighborhood, Community Commercial, and Commercial General) may be permitted as part of projects approved on parcels designated Commercial Visitor Serving, so long as at least 50 percent of the overall floor area of any individual project is devoted to visitor serving uses. The maximum Floor to Area Ratio (FAR) is 0.15. The FAR may be increased to a maximum of 0.25 where public benefits and amenities are provided as part of the project. CV designations are divided into two levels of density. Hotels are only permitted in CV-2 designations, the highest density designation. Motels and bed and breakfast inns are allowed in the CV-1 designation.

Additionally, the proposed project site is zoned "Commercial Visitor Serving (CV-1)" by the City of Malibu Local Implementation Plan. Permitted uses in the CV-1 zone include a range of visitor serving uses, including restaurants, motels, bed and breakfast inns, as well as public parks, beaches, and trails. Other retail commercial uses that may serve visitors while not specifically geared for them like book stores, food markets, and liquor stores are also permitted in this zone. Finally, other services and office uses are permitted in the CV-1 zone only if at least 50% of the total floor area of the project is otherwise devoted to visitor-serving uses. The permitted uses within the higher density Commercial Visitor Serving Zone (CV-2) include those uses permitted in the CV-1 with the addition of hotels. Of the total 69 parcels that are zoned for commercial visitor serving use, only 8 parcels (that really only comprise two project sites because several parcels make up each project site) are designated CV-2. One of these parcels contains an existing hotel (Malibu Beach Inn) on Pacific Coast Highway. The other is a large parcel on Malibu Canyon Road and Pacific Coast Highway where the Commission has previously approved a 330-unit hotel [5-85-418 (Adamson Hotel)] that has not yet been built.

The City of Malibu approved the proposed project, considering it a "bed and breakfast inn", which is a use allowed within the "Coastal Visitor Serving (CV-1)" zone district. Following are the definitions of these uses:

BED AND BREAKFAST INN - a facility offering transient lodging accommodations to the public and providing kitchen facilities adequate to provide meals to the guests of the facility only and not otherwise open to the public.

HOTEL - a facility offering transient lodging accommodations to the general public and providing additional services, such as restaurants and meeting rooms.

MOTEL - A facility offering transient lodging accommodations to the public in a group of attached or detached buildings containing guest rooms, some or all of which have a separate entrance leading directly from the outside of the building to automobile parking space conveniently located on the lot or parcel of land, does not provide accessory uses such as restaurants or meeting rooms, and not otherwise open to the public.

The City determined that the proposed project met the definition of "bed and breakfast inn" from the Malibu Municipal Code (staff would note that the definition of "bed and breakfast inn" is the same in the Malibu Municipal Code and the LCP) in that it included a dedicated kitchen facility for the use of the lodgers only and not available for use by the general public. The City further found that the hours of the existing restaurant would not be expanded from existing hours to order to provide any new service (like breakfast service) for lodgers. During the City Council hearing on the Sierra Club's appeal, the City Attorney stated that:

The fact is that it's a legislative determination, these definitions. And when you were originally writing the General Plan and the zoning ordinance, we were thinking in broad strokes. In this situation we have a property on which there's more than one use. And that's perfectly permissible under the Municipal Code and the General Plan, as long as each use meets all of the requirements of the zone and the property overall is developed in a way that's consistent with the zone.

Issue has been raised with regard to the characterization of the proposed development as a "bed and breakfast inn". The Sierra Club states that the use is instead a "hotel" under the definitions of the City Municipal Code and the City of Malibu Local Coastal Program. They argue that because the overnight accommodations would be located on the same parcel as the existing restaurant, the two uses together meet the definition of "hotel". If the assumption that adding an overnight accommodation use on the project site with the existing restaurant would in any case constitute a "hotel" is accepted, then such a use could never be approved on this site, no matter its size, siting, or design. They have also pointed to the applicants' economic study (Forge Lodge Market and Financial Feasibility Update, dated November 6, 2002, prepared by Project Economics) as evidence that the applicants intend to operate the overnight accommodations in concert with services provided by the restaurant, such as banquet rooms, to provide for

conferences and special events that are more associated with a hotel use. This report does state the following:

The restaurant has two strategic benefits for the B&B units: 1) a first class food & beverage facility which can be used for serving a full breakfast for B&B guests; and 2) there is a 20 person meeting room on the lower level and the upper level can be converted into meeting space for approximately 100 people. The meeting space capabilities are a strong plus for the business B&B market, which includes the Hughes Research Labs and Pepperdine University in the Malibu area.

The applicant's architect has stated that this report was prepared prior to the redesign of the project during the City process and the inclusion of a kitchen unit to serve the bed and breakfast only. He states that the applicants do not intend to expand the restaurant hours to serve the bed and breakfast, nor do they propose to use the restaurant facilities to sponsor conferences.

Staff would note that although the existing restaurant and the proposed overnight accommodations would be located in close proximity on the same 4-acre parcel, they would not be physically connected. Additionally, the restaurant's advertised hours of operation are limited (Monday through Saturday, 5 p.m. to 11 p.m., and Sunday 11 a.m. to 11 p.m.). In a hotel use, a restaurant meant to serve hotel guests would be unlikely to have such restricted hours of operation. The size, scale, and design of the proposed overnight accommodations are more akin to a motel or bed and breakfast than a hotel. The project, as proposed to be amended, has a Floor Area Ratio (FAR) of 0.12 which is lower than the maximum FAR of 0.15. This lower FAR is not suggestive of a higher density use as contemplated by the CV-2 designation. Staff knows of at least one instance within the City where a development (Malibu Country Inn on Westward Beach Road) containing both a motel and a restaurant exists on one parcel that was zoned CV-1 by the City in its Municipal Code. The Coastal Commission also designated the project site CV-1 in the adopted Malibu LCP. At the time that the LCP was adopted, the Commission had previously approved Permit Amendment 5-87-983-A1 authorizing bed and breakfast units on the property where the Beau Rivage restaurant already existed.

The Sierra Club brought suit against the City for its decision in approving the proposed project on several grounds, including the ground that the proposed overnight accommodations developed on the site with the existing restaurant will constitute a "hotel", which is not permitted within the CV-1 zone district. The Superior Court found for the City, upholding its decision on the proposed project. The Sierra Club has since appealed that decision, and the appeal is pending before the Court of Appeal.

As such, the issue of whether the development best meets the definition of "bed and breakfast inn" or "hotel" is already in litigation. The Commission finds that it is appropriate to accept the final decision of the courts on this issue. So, the permit amendment is conditioned to require the applicant to provide evidence, prior to the issuance of the amendment, of a final court determination. If the final court decision is that the development constitutes a bed and breakfast use that is permitted in the CV-1 zone district, then the permit amendment may be issued (after compliance with all

conditions of approval). If the suit is settled in a manner that allows the proposed use on the site, then the permit amendment may be issued. In either of these two cases, the Commission shall be deemed to have allowed the proposed use based on the reasoning set forth above. If the final court decision is that the proposed use is not permitted in the CV-1 zone, the permit amendment may not be issued unless and until the Malibu LCP has been amended in a manner that makes the proposed use an allowable use, as determined by the Executive Director. **Special Condition No. 16** sets forth these requirements. As conditioned, the Commission finds that the project, as amended, will ensure compliance with the permitted uses of the CV-1 zone district of the Malibu LIP.

Public Access

Additionally, the approved project included the recordation of an offer to dedicate a riding and hiking trail easement to a public agency (Exhibit 5). This easement has not yet been accepted by a public agency. As part of the amendment, the applicants are proposing to modify the location of the trail easement. As recorded, the trail easement area extends along Solstice Creek, through the riparian corridor. The trail was intended to extend through the culvert under Pacific Coast Highway so that trail users could hike under the highway down to the beach. However, Caltrans has raised issues with this design, both with regard to the safety of trail users and with regard to fish passage. As previously described, Caltrans will be carrying out a project to create a fish ladder through the culvert. This fish ladder would allow steelhead to pass from the ocean up Solstice Creek, which is currently impeded by the culvert. The design of the fish ladder will prevent the use of the culvert to provide access to the beach from the project site.

Further, the recorded location of the trail would potentially impact the ESHA on the site, both through the construction of the trail through the stream and riparian corridor, as well as the introduction of ongoing disturbances by trail users. While the LUP does allow for accessways and trails to be developed within or adjacent to ESHA, impacts would be minimized by setting back the trail further from Solstice Creek. (Policy 3.9 of the Malibu LUP states that: "Public accessways and trails are considered resource dependent uses. Accessways and trails located within or adjacent to ESHA shall be sited to minimize impacts to ESHA to the maximum extent feasible. Measures, including but not limited to, signage, placement of boardwalks, and limited fencing shall be implemented as necessary to protect ESHA".)

The applicants are proposing to relocate the trail easement location outside of the stream bank. Additionally, the applicants are proposing to create a five-foot wide trail that generally follows along an existing pathway. The trail in this location will not require grading. The applicants propose to place decomposed granite as surfacing on the trail alignment. This location (Exhibit 13) will better protect the ESHA from impacts from construction and disturbance from trail users, while still providing access to the general public across the site. This trail segment will connect to trails within Solstice Canyon Park to the north, and to the beach. As amended, the trail will extend onto Pacific Coast Highway where, with the future installation of a traffic signal, the public as well as visitors to the bed and breakfast will be able to safely cross to the public beach. In order

to implement the applicant's proposal to relocate the recorded trail easement, **Special Condition No. 1** provides for an updated grant or offer to dedicate a trail easement to be recorded across the site in the new location. Further, **Special Condition No. 2** requires the applicant to prepare a final plan that shows the trail alignment, prepared in consultation with the Santa Monica Mountains Conservancy and the National Park Service, as well as the location and wording of directional and/or interpretive signage. A wildlife permeable, split rail type fence shall be provided along the stream side of the trail in order to direct trail users and discourage their intrusion into the stream.

Lower Cost Overnight Accommodations

The Malibu LCP provides that new development of luxury overnight visitor-serving accommodations shall be designed to provide for a component of lower cost overnight visitor accommodations (e.g. campground, RV park, hostel, or lower cost hotel/motel). The lower-cost visitor accommodations may be provided on-site, off-site, or through payment of an in-lieu fee into a fund to subsidize the construction of lower-cost overnight facilities in the Malibu-Santa Monica Mountains Coastal Zone area of Los Angeles County or Ventura County. The applicant shall be required to provide lower-cost overnight accommodations consisting of 15 percent of the number of luxury overnight accommodations that are approved. Luxury overnight accommodations shall be defined as the point at which the cost of an overnight room exceeds 120 percent of the median cost of an overnight room for all overnight accommodations in the City of Malibu.

The applicants have submitted the Forge Lodge Luxury Accommodations In-lieu Fee Analysis, dated May 20, 2005, prepared by Project Economics. This report addresses the median cost of overnight accommodations existing in the City of Malibu. This report concludes that the median cost of all overnight accommodations at the five existing facilities is \$235. As such, luxury overnight accommodations would be defined as those with a cost exceeding \$282., or 120 percent of the median. The report projects that the average room rate for the Forge Lodge project will be \$373. per day.

Therefore, the proposed project is considered to include luxury overnight accommodations. As required by the LCP, the project must be required to provide lower-cost overnight accommodations either on the project site, at an off-site location or as a fee provided in-lieu of the actual provision of overnight units. Consistent with the LCP requirement, 15 percent of the total number of luxury units in the approved project, or 4 units of lower cost visitor units need to be provided. The applicants have not included in this application any proposal to provide lower cost overnight accommodations, either onsite or offsite. As an alternative to providing lower cost visitor accommodations as part of the project, the Malibu LCP allows for the payment of an in-lieu fee. Section 12.11 (B) of the Malibu LIP states that "If the applicant chooses the in-lieu fee option, the project approval shall be conditioned to require that, prior to issuance of the coastal development permit, the applicant shall pay the required in-lieu fee to the City. The amount of the in-lieu fee shall be \$10,419 per required unit of lower cost overnight accommodations, plus an additional amount for inflation from January

2000 to the date of approval of the coastal development permit. **Special Condition No. 17** requires the applicants to provide 4 units of lower cost visitor accommodations as part of the project, either on-site or off-site, or to provide evidence that an in-lieu fee has been paid to the City of Malibu towards the construction of new lower cost visitor accommodations in the area. As conditioned, the project, as proposed to be amended, will ensure that lower cost visitor serving uses will be protected.

Traffic and Parking

Thus, the proposed project will provide public access, both through the visitor serving use of the site and through the provision of a public trail across the site. Nonetheless, the proposed project could impact public access if traffic resulting from the project would adversely impact the public's ability to access the beach on public roads. If adequate off-street parking is not provided in commercial or institutional developments, users of such development will utilize on-street areas that would otherwise be available for beachgoers or visitors to other recreational areas like parks. In this way, new development with inadequate off-street parking can adversely impact the ability of the public to gain access to the beach and other recreational amenities. The Commission has required through permit actions and approved local coastal programs, that new developments provide adequate off-site parking and do not adversely impact traffic circulation on roads providing access to the coast. Provision of adequate parking and traffic improvements ensure that the potential impacts of new development on coastal access routes are minimized.

The applicants have submitted Traffic and Circulation Study for the Forge Lodge Project, dated June 1999, prepared by Kaku Associates for the site which addresses the potential impacts to traffic from the project, as amended. This report analyzes an earlier iteration of the proposed project, that was substantially the same as the current proposal, but included 32 bed and breakfast units.

The traffic study estimates (using Institute of Transportation Engineers Trip Generation Rates) that the project will generate approximately 285 daily trips (21 morning peak hour trips and 23 afternoon peak hour trips) during the week. The project is estimated to generate 335 daily trips (28 mid-day peak hour trips) on the weekend. The consulting traffic engineers concluded that the proposed project would not have a significant impact on the existing traffic at the intersection of Pacific Coast Highway and Corral Canyon Road. Granted, the report acknowledges that this intersection, as controlled by a stop sign only, already operates at a Level of Service (LOS) F (the worst score on a scale of A through F indicating that there are significant delays). While the proposed project would not significantly impact the LOS, the intersection would still operate at this poor condition. As a condition of approval, the City required the applicant to pay its fair share of the cost to install a signal at this intersection, if such a signal is ever installed. Subsequently, the City has determined that a signal will be installed. The traffic engineers estimate that the intersection, with a signal would operate at a LOS B during the weekday morning peak hour, and at LOS C during the weekday afternoon peak hour and the weekend peak hour. The report further finds that the traffic at the

intersection of Pacific Coast Highway and Corral Canyon Road, with the addition of a traffic signal, will not be significantly impacted by the traffic associated with the proposed project. The City required the applicants to pay the project's fair share (\$50,000.) towards the installation of a traffic signal at this intersection. Staff would note that after the approval of the project, the City has since approved the installation of a signal at Pacific Coast Highway and Corral Canyon Road that will be funded by Caltrans and the City. Based on the conclusions of the traffic study, the Commission finds that the project, as proposed to be amended, will not have significant adverse impacts on traffic or on public access.

The applicants propose to provide 94 parking spaces total on site. There are currently 48 spaces provided for the existing restaurant. These spaces will be retained for the use of the restaurant. 46 new parking spaces will be provided for the proposed bed and breakfast use, as required by the LCP. The LIP requires parking in the amount of one space per unit, plus one space for the average, per shift number of employees. The applicants estimate that the average number of employees per shift is nine. Therefore, the total parking that would be required is 36. The project will provide 46 spaces, which is consistent with the provisions of the Malibu LIP. Based on the provision of adequate off-street parking, the proposed project will minimize impacts to public access.

Parking Agreement

As part of the approval of Permit 5-87-983, the applicants and the Santa Monica Mountains Conservancy (This agency owned and operated Solstice Canyon Park at that time. The park was later transferred to the National Park Service) entered into an agreement for 17 parking spaces to be provided for the use of visitors to the park in the approved parking structure on the Forge site. The approved parking structure in conjunction with the existing restaurant parking lot was determined to provide 25 parking spaces more than were required according to the parking standards. The staff report states that:

The Santa Monica Mountains Conservancy must provide 25 parking spaces from a previous Commission action (5-87-562). They have provided 8 on-site. The Conservancy and the applicant have agreed that the remaining 17 spaces can be provided in the applicant's proposed parking structure, ostensibly free of charge.

Given the applicant's proposal to provide 17 of their surplus parking spaces for the use of the public, and the limited parking available at the park at that time, the Commission included a condition on Permit 5-87-983 requiring evidence that the agreement had been formalized in writing. The provision of the 17 parking spaces was not required as mitigation of any impact to public access.

Staff would note that the National Park Service has since undertaken improvements to the park, including the provision of additional parking spaces.

The proposed design of the project that the applicants originally submitted for Permit Amendment 5-87-983-A2 included 17 parking spaces for the use of the public at

Solstice Canyon Park. It became apparent to staff, in considering alternatives to the proposed project, that alternative designs that did not include the 17 parking spaces could allow for the provision of a larger ESHA buffer. The final alternative design that the applicants that is the proposed project, provides a 100-foot buffer from the on-site ESHA (as described in greater detail above), and does not provide the 17 parking spaces. The Commission finds that in order to minimize impacts to ESHA by providing the required buffer, it is appropriate to delete Special Condition 8 of Permit 5-87-983 that required the applicant to enter into an agreement with the Santa Monica Mountains Conservancy to provide 17 parking spaces.

Conclusion

In conclusion, the Commission finds that the overnight accommodation use proposed is a visitor serving commercial recreational use that well complements its location near public parklands and beaches. This use is a high priority provided for by the Coastal Act and the Malibu LCP. As conditioned to provide evidence of a final court decision regarding the development's conformance with the CV-1 zone district of the LCP, record a revised riding and hiking trail easement, and to provide for lower cost overnight accommodations, the project, as proposed to be amended, will be consistent with the City of Malibu Local Coastal Program.

F. Cultural Resources

The following Chapter 3 policy of the Coastal Act is incorporated into the City of Malibu LCP:

Section 30244

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 City of Malibu LUP policies pertain to cultural resources:

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.***

5.62 ***The City should coordinate with appropriate agencies, such as the UCLA Archaeological Center, to identify archaeologically sensitive areas. Such information should be kept confidential to protect archaeological resources.***

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).

Further, the provisions of Chapter 11 of the City of Malibu LIP pertain to the protection of cultural resources.

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.

The applicants have provided several reports addressing cultural resources on the project site. The Cultural Resources at the Mouth of Solstice Canyon, A Survey of the Forge Property and Adjacent Portions of Archaeological Site CA-LAN-210, dated June 26, 1987, prepared by C.A. Singer & Associates, Inc. is the report that addressed the original project approved in Permit 5-87-983.

In approving Permit 5-87-983, the Commission recognized that portions of a recorded archaeological site identified as CA-LAN-210 is located on the project site. Although the project site had been extensively disturbed, the archaeologist identified two areas where intact midden deposits could exist. These areas were beneath the existing restaurant parking lot (Area B) and near a concrete slab located toward the north end of the parcel (Area A). In order to ensure that any cultural resources located on the site would be protected during the construction, the Commission required the applicants to retain an archaeologist and Native American representative to monitor grading. The applicants submitted evidence in 1989 that they had contracted with Clay Singer as their archaeologist and with Dr. Kote Lotah of Owl Clan Consultants as their Native American Monitor to monitor all grading.

The proposed development will have a smaller footprint that the project considered in Permit 5-87-983, but will be generally located on the same area of the site. As such, the potential impact to cultural resources can be expected to be the same or reduced from the approved project. Further, the site has been significantly disturbed in the past by the construction of Pacific Coast Highway and Corral Canyon Road as well as the grading of roads across the site. Aerial photos of the area from 1972 show that the front area of the site, nearest Pacific Coast Highway, was developed with the restaurant structure, parking lot, the duplex structure, and several other small structures. In addition to these structures, visible from the photos are dirt roads and graded, bare areas on the slopes just above the riparian corridor on the site. As such, much of the development on the site has been in existence since before the effective date of the Coastal Act.

The applicants also submitted a report titled: "The Archaeological Reconnaissance at 26025 Pacific Coast Highway", dated February 19, 1998, prepared by Chester King, Malibu City Archaeologist. This report was prepared for the City for its review of the proposed project. This report states that the mouth of Solstice Canyon is likely the location of a historic village known from mission registers as "Loxostoxni" or "Lojostogni". King carried out limited subsurface investigation of the proposed project site, excavating two auger holes as well as observing several trenches and borings previously excavated for geologic testing. This investigation revealed the presence of midden soil containing artifacts, shells, bones, and carbon. The report concludes that construction of the project will affect prehistoric site deposits. King recommends that a Phase 2 study be carried out on the site to: "...determine significance of archaeological sites and design mitigation programs to recover or preserve significant information and cultural values".

Further, the applicants have provided Recommendations for additional Phase II archaeological testing and results of the first stage of Phase II testing at the proposed Forge Lodge, dated August 13, 1998, prepared by W and S Consultants and Results of limited Stage I/Phase II archaeological testing within the southern portion of a proposed seismic trench at the Forge Lodge project, dated October 21, 1998, prepared by W and S Consultants. W and S carried out two stages of subsurface investigation on the site. These consultants attempted to re-excavate and inspect the geotechnical test trenches that had previously been excavated for the geologist's subsurface exploration and had been observed by Chester King. The excavations carried out by W and S were generally located in the area of the site where the proposed structures will be built. While W and S was not able to relocate the geotechnical trenches, but its exploration did reveal shell midden deposits in several of the excavations. The W and S reports concluded that a further stage of Phase II study should be undertaken in this area of the site.

Finally, the applicants have submitted a letter titled: "Archaeology at 26025 Pacific Coast Highway, evaluation of deposits and impacts to site CA-LAN-210", dated August 23, 2004, prepared by C.A. Singer & Associates, Inc., and the report titled: "Phase II archaeological investigations at 26035 Pacific Coast Highway", dated November 19, 2004, prepared by C.A. Singer & Associates, Inc. These reports are based on work carried out on the site since the City's approval to further address cultural resources on the site.

The August 23, 2004 letter describes excavation work carried out in 1998 to locate Area B, the midden area located beneath the existing parking lot. The letter states that:

After examining both site areas... we concluded that nothing archaeological needed to be done in Area B. Since no buildings or construction work is planned in Area B, impacts are not expected and there's no need to test the deposits. In Area A, however, the deposits are exposed at the surface, stabilized and protected by the concrete slab supporting the storage containers and buttressed by a arched wall made of pieces of concrete. To manage these resources in the future, the deposits in Area A need to be

measured and characterized, that way we will know exactly what is there and its real dimensions.

Staff would note that the applicants propose to remove the existing storage trailer, although the concrete slab would be retained in order to avoid impacts to deposits located in or near Area A.

Subsequently, the consulting archaeologist carried out a Phase II study of Area A. The report states that:

Excavations quickly revealed the disturbed character and limited extent of the archaeological deposits... Thus, all three trenches had wall profiles that exhibited the same stratigraphic sequence, namely, one or more layers of compacted artificial fill (AF) deposited on a scalpic (scraped) surface underlain by Quaternary alluvial deposits (Qc).

The consultants carried out soil sampling from this area and identified a small number chipped stone flakes, as well as pieces of small fish, mammal and bird bone, shell pieces, and one shell bead. Shell samples recovered from two levels of the deposit were sufficiently large to be radiocarbon tested. Based on this testing, the archaeological consultant concluded that: "... the sampled midden deposits were created by people processing and eating terrestrial animals, ocean fish, and shellfish between 1000 and 2000 years ago..." The report concludes that:

Systematic testing successfully delineated, dated, and evaluated the archaeological deposits located in Area A. The deposits located in Area B are not exposed or visible and were not examined or tested. Phase II testing provided empirical evidence that the midden deposits in Area A are secondary. High resolution soil processing showed that the midden had been excavated and redeposited, and the contents are not unique or unusual. These features disqualify the Area A midden deposits as a CEQA significant archaeological resources. Since the current Forge Lodge Project plan implies that no impacts will occur in either Area A or Area B, and the Phase II test has clearly demonstrated that the archaeological resources in Area A are not significant, future impacts to the resources are not expected and no archaeological mitigation is necessary.

Based on the conclusions of the archaeologist's report on the Phase II study, there are archaeological resources on the site located in Area A that are not likely to be disturbed by the project, as proposed to be amended. As such, a Phase III study has not been required. Nonetheless, given the presence of cultural resources on the site, particularly those found to exist in the area of the site where the structures are proposed by W and S Consultants, there is still the potential for additional resources to be revealed on the site during grading and/or construction.

Issue was raised regarding the potential presence of cultural resources within the proposed development area. A letter from Chester King raised issue with the lack of archaeological testing in the proposed development area. He also referenced resources that were removed from the project site in the past.

As described above, the applicants' archaeologist had carried out a survey or Phase I study of the project site, as well as a limited Phase II study of two areas where the archaeologist anticipated undisturbed cultural resources could be present. Given the disturbances, including grading, that had gone on at the site dating back at least to the construction of Pacific Coast Highway, the archaeologist did not anticipate the presence of cultural resources within the area proposed to be developed with the bed and breakfast structures or the road/parking areas. In order to respond to the cultural resource issues raised at the June 2005 hearing and at the request of the Commission, the applicant's archaeologist carried out additional Phase II testing on the proposed development area. A letter report, "Supplemental testing at site CA-LAN-210", prepared by C.A. Singer & Associates, Inc. dated July 21, 2005 details the results of this testing. This letter states that:

Per your request, we returned to the project location and excavated deep trenches at seven proposed building locations, that is, where structures A, B, C, D, E, F, and G would be constructed (see attached Site Plan). Since no impacts are projected in the low area near the stream channel, Area A where intact prehistoric deposits are suspected, we did no testing there. What we found at the eight tested locations was fill soil—unconsolidated brown rocky colluvium, unconsolidated darker brown silty alluvium, and compacted brown rocky colluvium.

The letter states that Chumash cultural consultants (Mrs. A-lul'koy Lotah and Ms. Leyla Whitebear) advised and participated in each stage of Phase II testing and analysis of the development area. Based on the Phase II testing within the proposed development area, as well as the information provided by Chester King regarding past removals of cultural resources from the site, Singer concludes that the project, as proposed to be amended, will not have significant adverse impacts on archaeological resources. The letter states that:

These data are clear and overwhelming and permit me to conclude that the proposed Forge Lodge project will have no impact on the archaeological resources of CA-LAN-210. Furthermore, they allow me to conclude that all damage done to site CA-LAN-210 occurred before the property was purchased by Mr. Forge. The current development plan will not affect the remaining deeply buried deposits.

Based on the consulting archaeologist's Phase II testing of the development area proposed in the amended project and the conclusion that the area is underlain with fill material, it seems unlikely that the grading and construction of the buildings, road, and parking will have significant adverse impacts on cultural resources. However, any such testing is by design, limited to the test pit areas. Even with the low probability that intact resources remain within the proposed development area, given that the site has been identified as archaeologically sensitive, the site should be monitored during construction in case any resources are found. Policy 11.64 of the Malibu LUP requires that:

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).

In order to ensure that this requirement is met, the Commission finds it necessary to require the applicants to have a qualified archaeologist and Native American consultant monitor the site during site preparation, grading, or other construction activities to disturb the ground surfaces. Should archaeological resources, or human remains be found during construction, the monitors shall prepare a plan for recovery. **Special Condition No. 8** sets forth these requirements. The Commission finds that, as conditioned, the project, as proposed to be amended, will minimize impacts to cultural resources, and that reasonable mitigation measures have been required, consistent with Section 30244 of the Coastal Act and all applicable provisions of the Malibu LCP.

G. Visual Resources

The City of Malibu Local Coastal Program protects visual resources within the City. Section 30251 of the Coastal Act, incorporated as part of the City of Malibu LUP, 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 reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Additionally, the following policies of the Malibu LUP apply:

6.1 *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.*

6.9 *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.*

Section 30251 of the Coastal Act and the other policies and provisions of the Malibu LCP requires scenic and visual qualities to be considered and preserved. The project site is located on the inland side of Pacific Coast Highway at Corral Canyon Road. The project site is located on a slope that extends up from Solstice Canyon across the proposed building areas and rising steeply above the site to the north. Given the topography of the area, there will be limited visibility of the proposed development from parklands to the north. The structures will be visible from Pacific Coast Highway, although significant screening will be provided by the riparian vegetation, as well as existing development and landscaping on the site. The proposed modifications to the project approved in Permit Amendment 5-87-983-A1 will significantly reduce impacts to visual resources in that the approved parking garage will be deleted, and the approved structure will be divided into seven smaller structures that will conform more to the slope. In addition, the applicants have reduced the amount of the proposed grading for the project. The grading proposed is primarily to allow for the access driveway required by the Fire Department and the parking spaces. The proposal includes the construction of retaining walls along the northeastern edge of the access driveway that range in height from 10 to 22 feet in height. Although these walls are quite high, in this case, they would be dug into the slope at the rear of the property. The walls will be screened from view from Pacific Coast Highway by the proposed structures as well as existing vegetation. The walls will not block views to the coast from Corral Canyon Road above the site because the top of the walls will be located downslope of the road grade. Additionally, a retaining wall ranging in height from 2 feet to 6 feet in height is proposed along the western edge of the pool and pool deck area. The structures themselves will be constructed on caissons and will be notched into the slope. Therefore, the Commission finds, in consideration of the character of the area, that the proposed development is sited and designed to fit in with the character and scale of the surrounding area.

The Commission finds that it is necessary to require mitigation measures to minimize visual impacts associated with development of the project site that include finishing the

structure in a color consistent with the surrounding natural landscape and, by incorporating windows of a non-reflective glass type to minimize impacts on public views. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed by **Special Condition No. 10**.

Visual impacts associated with proposed grading, and the structures themselves, can be further reduced by the use of appropriate and adequate landscaping. As such, **Special Condition No. 6** requires the applicant to prepare a landscape plan relying mostly on native, noninvasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of Special Condition No. 6 will partially screen the proposed structures and soften the visual impact of the development from public views. To ensure that the final approved landscaping plans are successfully implemented, Special Condition No. 6 also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. There is environmentally sensitive habitat downslope of the project site. Additionally, as described above, the project site is located adjacent to Pacific Coast Highway and just upslope of the natural Solstice Creek ESHA. Therefore, **Special Condition No. 9**, the Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Finally, regarding future developments or improvements, certain types of development to the property, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed for compliance with visual policies of the LCP. Permit 5-87-983 included the recordation of a future improvements deed restriction which will require any future development to obtain a coastal development permit. Finally, **Special Condition No. 11** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

The proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or character of the surrounding area. Therefore the Commission finds that, as conditioned, the proposed development is consistent with section 30251 of the Coastal Act.

H. Water Quality

The City of Malibu Local Coastal Program 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, and 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, incorporated as part of the City of Malibu LUP, states that:

Section 30231 of the Coastal Act states:

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

In addition, the following LUP policies pertain to the protection of water quality:

- 3.95** *New development shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:*
- *Protecting areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.*
 - *Limiting increases of impervious surfaces.*
 - *Limiting land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.*
 - *Limiting disturbance of natural drainage features and vegetation.*
- 3.96** *New development shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, consistent with the requirements of the Los Angeles Regional Quality Control Board's municipal stormwater permit and the California Ocean Plan.*
- 3.97** *Development must be designed to minimize, to the maximum extent feasible, the introduction of pollutants of concern that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize "pollutants of concern," new*

development shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the maximum extent feasible.

As described in detail in the previous sections, the applicants propose to modify a previously approved project to allow the construction of a 16,240 sq. ft. bed and breakfast use comprising 27-units and a kitchen in seven separate structures, a 1,400 sq. ft., two-story rental office, 94 parking spaces, relocation of dedicated trail easement, 7,660 cu. yds. (6,760 cu. yds. cut and 900 cu. yds. fill) of grading, and stream restoration

One issue raised by public comments during the City's approval process was the potential presence of underground gasoline storage tanks. A gas station was operated on the project site in the area of the existing parking lot decades ago. In response to this issue being raised, the applicants retained a firm to carry out a subsurface exploration and remove tanks, if any. The applicants have submitted the "UST Removal Report", dated January 21, 2004, prepared by hydrologue, Inc. that addresses this process. Three underground storage tanks (two 6,000-gallon, and one 2,000 gallon in size) were identified, excavated, and removed. The tanks were found to be in poor condition with holes and cracks. Water was removed from the tanks (approximately 5,600 gallons), the tanks were removed and properly disposed of. The soil beneath the tanks was sampled and analyzed for contamination.

Development of this size and scale will result in an increase in impervious surface at the subject site, which in turn 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. Increased stormwater volume and velocity lead to increased erosion from the site and sedimentation downstream. Further, the cumulative impact of increasing impervious surfaces on properties throughout a watershed leads to higher peak flows within the stream and peak flows hit the stream much more quickly. Not only does this increase the risk of flooding, but the flow regime of the stream will be altered and the morphology of the stream bed and banks affected.

The project, as proposed to be amended, will include the use of permeable interlocking pavement for the new access driveway areas and grasscrete for all new parking areas. The existing parking lot will remain paved as it is. The use of permeable paving and grasscrete will allow for infiltration of stormwater, minimizing impacts to stormwater volume and velocity.

In addition to impacts to volume and velocity, development such as the proposed project can contribute pollutants including petroleum hydrocarbons like 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.

Therefore, in order to find the proposed project consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed sites. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs to accommodate (infiltrate, filter or treat) the runoff from the more frequent storms, rather than for the largest infrequent storms, results in improved BMP performance at lower cost.

For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The American Society of Civil Engineers (ASCE) and the Water Environment Federation (WEF) have recommended a numerical BMP design standard for storm water that is derived from a mathematical equation to maximize treatment of runoff volume for water quality based on rainfall/runoff statistics and which is economically sound.¹³ The maximized treatment volume is cut-off at the point of diminishing returns for rainfall/runoff frequency. On the basis of this formula and rainfall/runoff statistics, the point of diminishing returns for treatment control is the 85th percentile storm event. The Commission has consistently required that the selected post-construction structural BMPs be sized based on this design criteria, which is also specified in the Malibu LCP.

The applicants have submitted an updated preliminary drainage and polluted runoff control plan for the revised project (Exhibit 16). Runoff will be minimized by minimizing the addition of impermeable surfaces on the site. All driveways will be paved with permeable pavers and all parking areas will be comprised of grasscrete blocks. In addition to the use of permeable paving and grasscrete, the plan includes catch basins

¹³ *Urban Runoff Quality Management, WEF Manual of Practice No. 23, ASCE manual and Report on Engineering Practice No. 87.* WEF, Alexandria, VA; ASCE, Reston, VA. 259 pp (1998); Urbonas, Guo, and Tucker, "Optimization of Stormwater Quality Capture Volume," in *Urban Stormwater Quality Enhancement - Source Control, Retrofitting, and Combined Sewer Technology, Proceedings of an Engineering Foundation Conference*, Harry C. Torno, ed. October 1989. New York: ASCE, pp. 94-110.

that will intercept any surface runoff from these areas and filter out pollutants, sediment, and other debris (like trash, leaves, etc.). The water that has been filtered is proposed to be directed to several subsurface perforated pipes within gravel-filled trenches where it will be infiltrated into the ground. In this way, the runoff can be further filtered through the ground as it moves downslope to the stream. The plan includes the placement of the infiltration trenches downslope of the proposed structures in the "bowl area" of the site, within the 100-foot ESHA buffer. Issue was raised by Heal the Bay with regard to this siting of the infiltration area. A letter dated August 18, 2004 from Heal the Bay states that: "Nothing should be placed within the buffer zone. This should include stormwater best management practices, supplemental irrigation after plants are established, and paths".

As noted above, the permitted uses within ESHA buffers, according to the Malibu LCP (Section 4.5.4 of the LIP) are: public accessways and trails; interpretive signage; restoration projects where the primary purpose is restoration of the habitat; and invasive plant eradication projects. Drainage improvements like runoff velocity reducers, or runoff infiltration areas are not addressed by this provision of the LCP. As a practical matter however, such features are often located within buffer areas near streams as a means to minimize the impacts of erosion while providing for the treatment and conveyance of runoff.

Although the proposed runoff infiltration system would be located within the 100-foot ESHA buffer, in this specific case, installation of the trenches would not remove native habitat or vegetation as this area is significantly disturbed. There could potentially be impacts to this area in the future if maintenance of the lines would require the removal of the vegetation that will be planted as part of the ESHA buffer restoration (described above). In this case, the applicants' consultants have stated that the runoff entering this infiltration system will already be filtered and free of sediments. As such, it is unlikely that the lines will become clogged with material and need frequent maintenance or replacement.

Staff has considered two other alternatives for controlling runoff from the site. One alternative would be to collect and filter the runoff from the development areas and to convey them in a non-erosive way directly to Solstice Creek. This would be at the lowest extreme of the watershed, right before the stream extends through the PCH culvert to the beach beyond. As such, drainage could be conveyed to the creek in this area without the additional water significantly altering the stream morphology. However, Commission water quality staff has advised that the infiltration of runoff on the project site would be preferred over conveying it to the stream. In general infiltration has the benefit of further filtering the runoff, minimizing any increase in stream flows, and making moisture available to plants.

Another alternative would be surface infiltration of runoff in the "bowl area" of the site. Surface vegetated swales or a basin could be provided in this area, planted with vegetation and the filtered runoff could be introduced in to this area and infiltrated into the ground. However, this alternative would require some minor grading to construct

bioinfiltration basins or trenches. Commission water quality staff considered the two alternatives for infiltrating runoff (subsurface infiltration system and vegetated swale or basin) and concluded that they are equivalent in terms of function. Again, given that the runoff entering such a vegetated swale or basin would be filtered and free of sediments, maintenance would be minimized.

Although it is unlikely that the subsurface infiltration system will require maintenance within the lifetime of the project, should the infiltration system require repair or replacement, **Special Condition No. 12** requires that no significant ESHA buffer vegetation, such as protected tree species or their root systems, shall be removed or damaged, to repair or replace the infiltration system. In addition, an alternative above ground passive infiltration system design shall be considered should significant repairs or replacement of the subsurface infiltration system is required due to maintenance issues. Any replacement infiltration system would require a new coastal development permit to address any potential adverse impacts to coastal resources or water quality. Furthermore, **Special Condition No. 12** requires that a final runoff control plan and a maintenance plan be submitted for the review and approval of the Executive Director. As conditioned, the proposed subsurface infiltration system will not result in any adverse impacts to the riparian ESHA or significant adverse impacts to the ESHA buffer and will ensure the proposed development will not adversely impact water quality.

Furthermore, construction phase erosion control measures implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition No. 6** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

The proposed development also includes the installation of an on-site private sewage disposal system to serve the bed and breakfast units. The applicants propose the installation of an alternative sewage disposal system that includes seepage pits below the proposed parking lot. The applicants have provided evidence that the system has received in-concept approval from the City of Malibu Environmental Health Department. The Commission has found that conformance with the provisions of the plumbing code, as demonstrated by evidence of the local government's review and approval of the septic system design is protective of coastal resources. In this case, the City of Malibu has approved the proposed septic system design for the originally proposed project considered in the subject permit amendment request. As described above, the applicants have modified the project (Alternative 5). The applicant has provided a revised septic system plan, but it has not been approved by the City of Malibu. As such, the Commission finds it necessary to require the applicants to submit evidence that the plan has received preliminary approval from the City of Malibu. This is reflected as part of **Special Condition No. 8**.

Also, the application includes the construction of a swimming pool and spa. The Commission notes that both leakage and periodic maintenance drainage of the

proposed swimming pool and spa, if not monitored and/or conducted in a controlled manner, may result in excess runoff and erosion potentially causing instability of the site and adjacent properties and potential impacts from pool and spa chemicals (i.e. chlorine, pool and spa water algacides, chemical pH balancing, and other water conditioning chemicals) on the stream habitat, particularly on water quality within Solstice Creek. Therefore, the Commission finds it necessary to require **Special Condition No. 14** which requires the applicant to use a non-chlorine water purification system to maintain proper pH, calcium and alkalinity balance in a manner that any runoff or drainage from the pool/spa will not include excessive chemicals that may adversely affect water quality or the Environmentally Sensitive Habitat Area.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, incorporate temporary erosion control measures, and to utilize a non-chlorine water purification system for the pool/spa, is consistent with the water quality provisions of the Malibu LCP, including Section 30231 of the Coastal Act.

I. Unpermitted Development

Unpermitted development has occurred on the subject parcel prior to submission of this permit amendment application including, but not limited to, the placement of trailers. There are also several campers, other vehicles, and debris existing on the site. While not permanent structures, this material contributes to the habitat disturbance on the site. More recently, it was brought to the Commission's attention at the June 2005 hearing, that the applicants had placed goats on the northern end of the project site, within a temporary enclosure. The goats were apparently brought to the site to carry out brush clearance and have since been removed. The goats did chew the bark off of the lower trunk of one tree that was located within the enclosure. This area will be restored in accordance with the ESHA buffer restoration plan, described above. The unpermitted trailers are located in the "bowl" area of the site where a residence, garage, and roadway once existed. As described above, the site has been developed with structures and subject to significant disturbance since before the effective date of the California Coastal Zone Protection Act of 1973 (and before the applicants' ownership of the property). Aerial photos of the area show that the front area of the site, nearest Pacific Coast Highway, was developed with the restaurant structure, the duplex structure, and several other small structures. A 1972 oblique aerial photo of the site (shown in Exhibit 16) shows roads and graded areas across the site. A 1975 color infrared aerial photo of the site clearly shows the dirt road paralleling Solstice Creek. This road extends from the parking lot at Pacific Coast Highway up the northern end of the site, paralleling the stream corridor and ending in a graded pad where the storage structure is now located. Given the native vegetation and landscaping on the site, it is difficult to ascertain from aerial photographs when the trailers were placed on the site.

It was noted in the staff report for Permit 5-87-983 that unpermitted trailers and storage area were on the site. At that time, the applicant proposed to remove this unpermitted development on the site. However, the trailers and storage structure were not removed. As described above, the storage structure was shown on the approved plans for Permit

P-80-8737 (Forge) as a "storage barn". As such, staff would conclude that the storage structure is actually not unpermitted.

The applicants are proposing, as part of the amended project, to remove the trailers and storage structure, as well as fill dirt, concrete chunks, and other debris from Solstice Creek and buffer areas. As described above, the removal of fill material, concrete, and other debris from the stream, riparian ESHA, and ESHA buffer areas will be carried out as part of the riparian enhancement and buffer restoration components of the project. Special Conditions 4 and 5 detail the timing requirements for the removal of these materials. In order to ensure that the unpermitted trailers in the bowl area and the storage structure are removed in a timely manner, the Commission finds it necessary to require the applicants to remove this development within 60 days of permit amendment issuance. This is required by **Special Condition No. 21**. Additionally, the applicants are required to satisfy the special conditions of this permit no later than 180 days from approval of the permit amendment. This is detailed in **Special Condition No. 20**.

Although development 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.

J. 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.

Alternatives

As described above, staff considered several alternatives to the proposed development. One alternative is the previously approved project, as reflected in 5-87-983 and 5-87-983-A1. This project would provide a 50-foot setback from the outer extent of riparian vegetation. This alternative was already found by the Commission to be consistent with the policies of the Coastal Act. This alternative would have substantially greater environmental impacts than the proposed project. Since the applicants applied to the City of Malibu for a revised project rather than pursuing local approval of the project approved in 5-87-983-A1, it is unlikely that development of this alternative would be feasible.

Another alternative considered is the design that the applicants originally submitted as part of this amendment request. That project shown in Exhibit 6 included the construction of 27 bed and breakfast units with a kitchen unit. Not all of the structures provided the full 100-foot buffer, although a larger buffer was provided compared to the project previously approved by the Commission 5-87-983-A1. Two of the structures provided the required ESHA 100 foot buffer, while five structures did not. Additionally, the proposed swimming pool would have been less than 60 feet from the ESHA. This alternative would significantly reduce environmental impacts as compared to the approved project.

Staff considered alternative project designs that could increase the buffer from the riparian canopy of Solstice Creek. At staff's request, the applicant's architect prepared sketches for three different alternative projects. All three of these alternatives consist of 27 bed and breakfast units (and kitchen) in seven separate buildings.

Alternative No. 1 (shown in Exhibit 10) would shift the seven structures closer to Pacific Coast Highway by relocating Building B to within 40 feet of the street. Building C would be relocated next to Building D, and the pool would be moved. This alternative would require the approval of a minor modification by the City of Malibu in order to reduce the setback from the required standard of 65 feet down to 40 feet. This alternative would cluster the proposed structures closer to the developed area of the site, and increase the ESHA buffer provided. In this case, the smallest buffer would be increased from 53 feet, 7 inches to approximately 60 feet. Five buildings would provide a buffer of at least 100 feet.

Alternative No 2 (Exhibit 11) would increase the height of the structures to 35 feet, allowing for three stories in each structure. In this alternative, 27 units and the kitchen could be provided in five structures, instead of seven. Buildings B and C would be eliminated. The other five buildings would be significantly clustered closer to the developed area of the site. In this case, the smallest buffer would be increased from 53 feet, 7 inches to 61 feet, 8 inches. As drawn by the applicant's architect, two buildings would provide a buffer of at least 100 feet.

Alternative No 3 involves shifting the seven structures closer to Pacific Coast Highway, but not as far as in Alternative No 1. This alternative would cluster the proposed structures closer to the developed area of the site, and increase the ESHA buffer provided. In this case, the smallest buffer would be increased from 53 feet, 7 inches to approximately 60 feet. Four buildings would provide a buffer of at least 100 feet.

The applicant's agent submitted these three alternative project designs to the City of Malibu for their comments. The City responded that Alternative No. 1 is not consistent with the required front yard setback of 65 feet (from Pacific Coast Highway) and would require the approval of a minor modification to reduce the setback to 40 feet. This would require a new public hearing to amend the City's approval for the project. The City staff stated that height increase from 28 to 35 feet included in Alternative No. 2 could not be approved. The City's letter states that any increase in height over 28 feet or two stories

would not be consistent with the general plan or the municipal code and that no variance has ever been given for a structure over 28 feet. Finally, with regard to Alternative No. 3, the City staff has stated that this design is in substantial conformance with the approved project and would not require any additional discretionary review.

While each of these three alternative designs would provide a greater ESHA buffer than the proposed project, none would completely comply with the 100 foot buffer required under the LCP.

A variation of Alternative No. 2, with five buildings that each contain three stories, seemed to staff to represent the best chance to provide the required buffer and still include the 27 bed and breakfast units of the size that the applicant is proposing. This is because five structures could be clustered in a tighter pattern and a 100 foot buffer from riparian vegetation could be provided (although the alternative design provided by the applicant's architect shown in Exhibit 11 did not provide a 100 foot buffer for all five structures, staff is confident that design changes could be made to this alternative to bring all five structures into conformance with the buffer requirement). As noted previously, the City staff has indicated that a variance could not be granted to allow the structures to be higher than 28 feet. This determination is counter to Policy 3.29 of the LCP, which states that: "Modifications to required development standards that are not related to ESHA protection (street setbacks, height limits, etc.) shall be permitted where necessary to avoid or minimize impacts to ESHA". This case seems a clear example where application of the policy would allow for a higher structure height in order to provide the required ESHA buffer. On the project site, there is a steep, high slope behind the development area that extends up to Corral Canyon Road. The slope continues up steeply above the road. Given this topography, increasing the height of the bed and breakfast structures to 35 feet would not have adverse impacts on visual impacts while providing adequate buffers to protect the Solstice Creek ESHA. This appeared to staff to be an environmentally preferable design. Nonetheless, it did not appear to be feasible for the applicant to implement this alternative given the City's statements regarding the possibility of granting a variance for the increase in height.

Staff also considered the possibility of constructing several units in the area of the site where there is an existing duplex. Based on aerial photos of the site, this structure appears to have been existing on the site since at least 1972. The applicant's amendment proposal includes converting this two-story structure to use as an office for the bed and breakfast. The applicant's agent prepared a sketch of a different alternative (Alternative 4) for this area that included the demolition of the existing structure and the construction of a new structure, incorporating a rental office and bed and breakfast units. This sketch is shown in Exhibit 13. The applicant's agent states that any new structure(s) constructed in this area of the site could not occupy the same area as the existing structure because it does not conform to the currently required slope setback. There is a very steep slope behind the structure and a new structure would be required to provide at least a 15-foot setback from this slope. As shown on Exhibit 13, two structures could potentially be constructed in this area with the required slope setback although they would intrude into the parking lot/driveway area as it is presently

designed. The applicant's agent stated that this design alternative would not be feasible or acceptable to the applicant because: it obstructs the driveway required by the Fire Department; it removes required handicapped parking spaces; it blocks views from the restaurant to the canyon; and any bed and breakfast units in these structures would look out over the parking lot. Notwithstanding the applicant's objections, it appeared to staff that it would be feasible to design one or two structures (probably of a smaller size than the currently proposed bed and breakfast structures) containing the rental office, kitchen unit and at least a few bed and breakfast units that could be provided in the area where the existing duplex building is located.

It appeared to staff that a combination of design changes, including clustering and shifting the buildings closer to Pacific Coast Highway, and relocation several units to the area of the existing duplex structure would provide a greater ESHA buffer for more of the structures than the proposed project provided. However, in order for all structures to meet the 100-foot ESHA buffer, it appeared that it might be necessary to reduce the number of bed and breakfast units, the size of the individual units, or both. The applicant's agent stated that the proposed 27 units represent the minimum amount of development that the applicant can develop and make a profit on the site. Additionally, he has stated that the size of each unit (570 sq. ft. with a bedroom, bathroom, and living room area for each unit) is the minimum area that the applicant can develop and make a profit. The applicants submitted the Forge Lodge Market and Financial Feasibility Update, dated November 6, 2002, prepared by Project Economics that addresses the economic feasibility of the project. This report addressed the income, return on capital and potential cash flow on three alternative projects, including one with 32 units, one with 28 units, and the final project with 24 units. The report concluded that: "...the projected negative cash flow in Year 1 for the 28 unit and 24 unit configurations would seriously jeopardize the ability to finance the project". While it may be more difficult for a smaller project to be profitable, staff was not persuaded that reducing the size of the project in order to provide the required 100-foot ESHA buffer was infeasible.

Staff also considered the alternative design that the applicants are now proposing for the project. This alternative includes the same 27 units (plus a kitchen unit) of the same proposed size that provide a 100-foot ESHA buffer for all of the structures. This alternative is extensively addressed in the preceding sections of this report. As described above, this alternative, as conditioned, will minimize impacts to coastal resources.

Another alternative project would involve a reduction in the number of bed and breakfast units, whereby structures C, D, E, F, and G would be reduced in width to the same 25 foot width (including decks) currently proposed for structures A and B. This would reduce the number of bed and breakfast units in each of these structures by half, from 4 units to 2 units each. The overall number of units for all seven structures would be then reduced to 17 units with one kitchen unit. It would be possible to have more than 17 units with the same footprints, if the individual unit size were reduced. Given the required access road standards and parking, this alternative would provide an ESHA buffer of the following approximate width for these five buildings:

Building	ESHA Buffer
C	115 feet at north end to 120 feet at south end
D	120 feet
E	118 feet
F	120 feet at north end and 115 feet at south end
G	115 feet

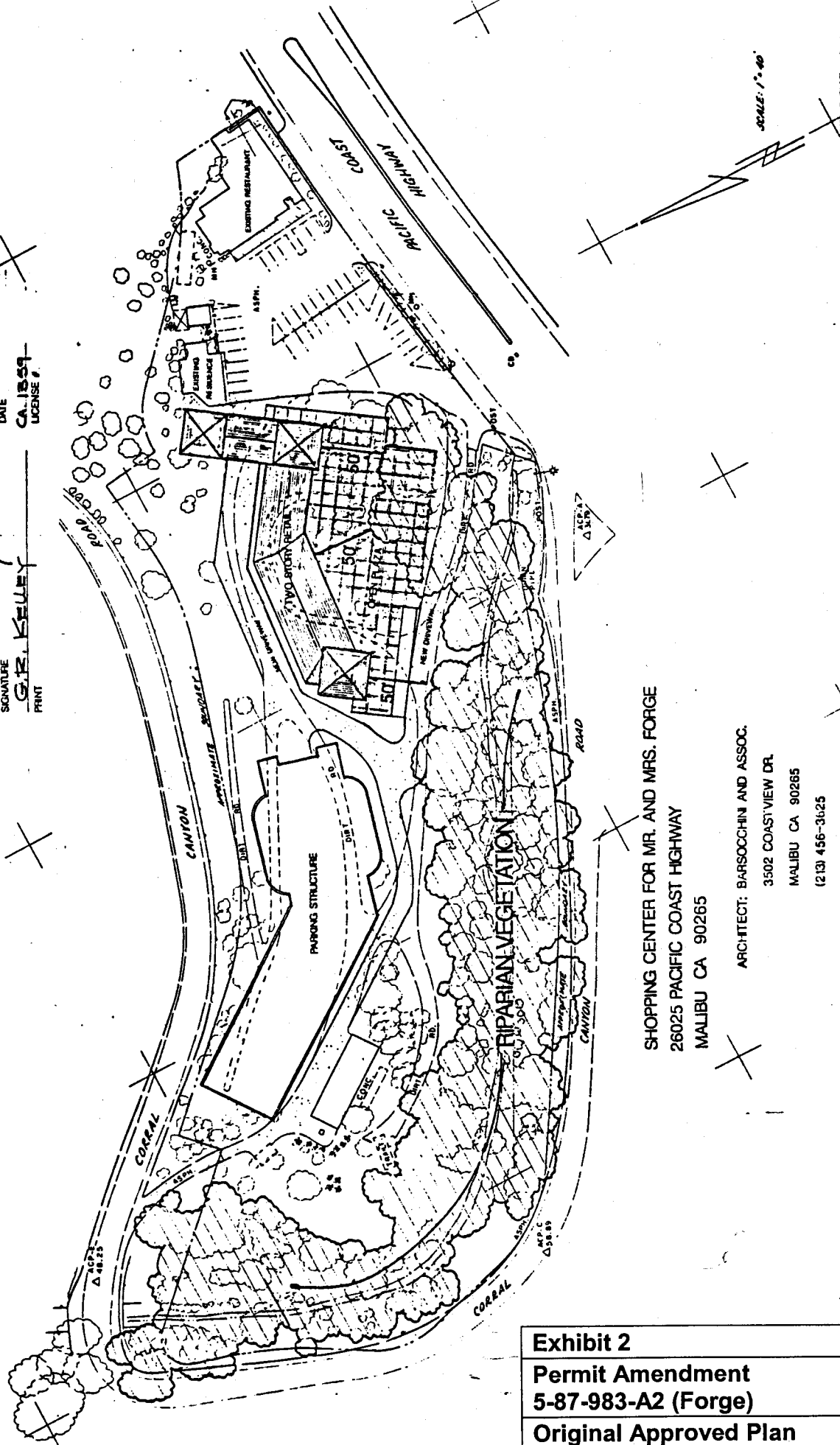
Staff did not recommend this alternative because the proposed project, as modified by the conditions of approval, provides the required 100-foot ESHA buffer that is necessary to avoid any significant adverse impacts to coastal resources. The additional 15 to 20 feet of ESHA buffer that could be provided for five of the seven structures by reducing the number of bed and breakfast units would not substantially lessen environmental impacts.

Finally, staff considered the "no project" alternative. This alternative would include the maintenance on site of all previously approved or pre-coastal development (development existing prior to the effective date of the Coastal Act), including the restaurant, parking lot, duplex, roads, storage barn, etc. In this alternative, no bed and breakfast units would be constructed. The proposed project includes enhancement or restoration of the degraded riparian ESHA and ESHA buffer, including the revegetation of disturbed soils, which will reduce erosion. The project also includes runoff filtration measures that will improve the water quality of the on-site stream. Under the no project alternative these substantial environmental benefits would not be realized and the on going habitat disturbances and degradation would remain. Therefore, the "no project" alternative would not be the environmentally preferred alternative in this case. The amended project proposed above and as conditioned above will not result in any adverse impacts on the environment within the meaning of the California Environmental Quality Act of 1970. In addition, the proposed amended project described above is consistent with the Malibu Local Coastal Program. Furthermore, staff did not recommend this alternative because, as described above, the Commission previously approved a larger project including general commercial and visitor serving commercial use on the site and the applicants have provided evidence that the permit was activated.

As described above, there is a feasible alternative and additional mitigation measures available that will lessen significant adverse effects. These are required to be implemented through the conditions of approval. The Commission finds that the project, as proposed to be amended, and 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.

I, AS A LICENSED LANDSCAPE ARCHITECT,
 HEREBY CERTIFY THAT THIS DRAWING
 INDICATES THE OUTER EDGE OF THE RIPARIAN
 VEGETATION ON THE SUBJECT PROPERTY.

31 JUL 89
 DATE
 CA 1359
 LICENSE #
 G. R. KEULEY
 PRINT



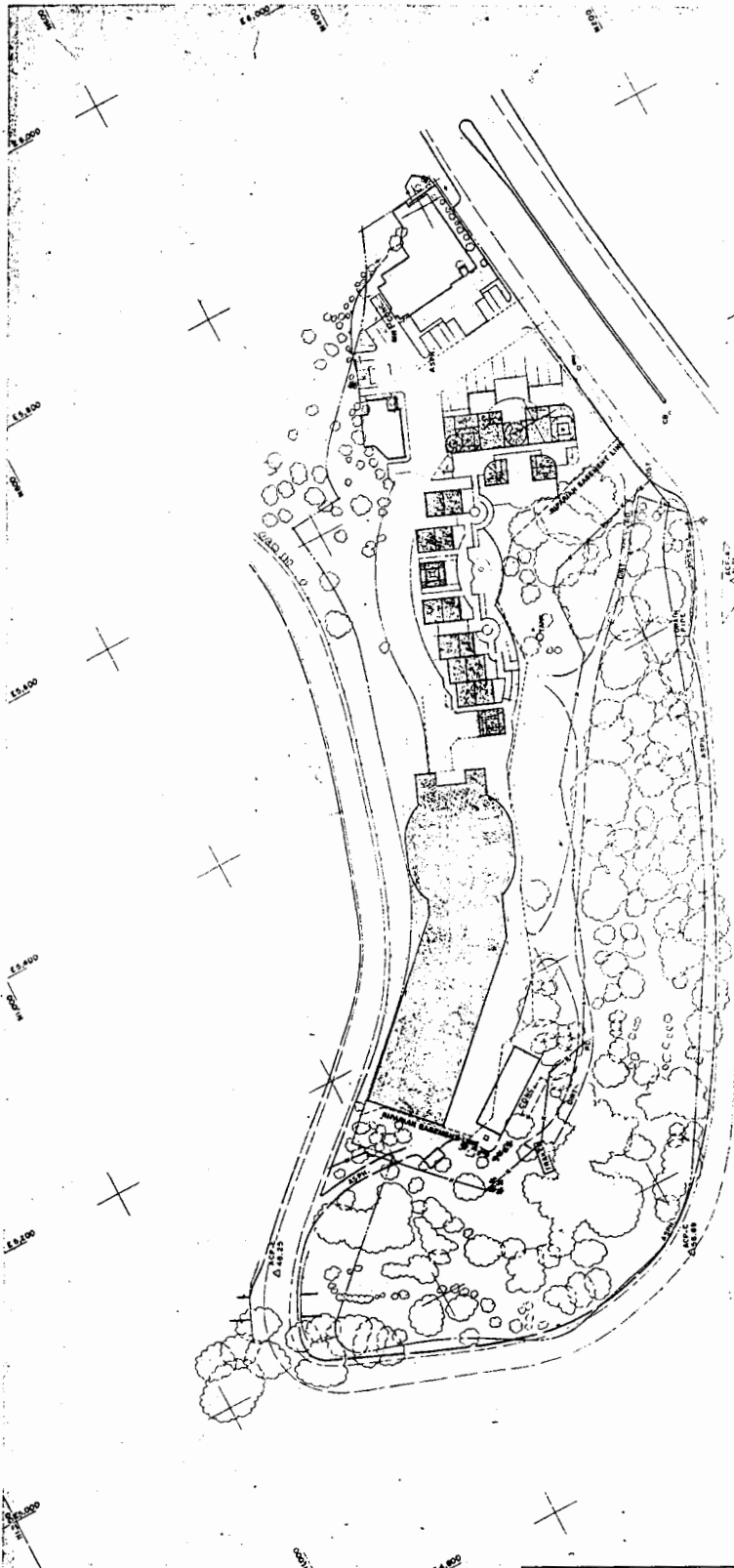
SHOPPING CENTER FOR MR. AND MRS. FORGE
 26025 PACIFIC COAST HIGHWAY
 MALIBU CA 90265

ARCHITECT: BARSOCCINI AND ASSOC.
 3502 COASTVIEW DR.
 MALIBU CA 90265
 (213) 456-3625

Exhibit 2
Permit Amendment
5-87-983-A2 (Forge)
Original Approved Plan
(5-87-983)

BARSOCCCHINI & ASSOCIATES, INC.
 ARCHITECTS
 3502 COAST VIEW DRIVE, MALIBU CA 90265
 (213) 456-3625

PROSPECTIVE
 3502 COAST VIEW DRIVE
 MALIBU, CA 90265
 (213) 456-3625



COMMERCIAL CENTER FOR MR. & MRS FORGE
 26025 Pacific Coast Highway
 Malibu Ca 90265

PARKING REQUIREMENTS		SQUARE FOOTAGE TABULATION	
REQUIRED	PROVIDED	RETAIL	BED & BREAKFAST
48	48	0	0
80	81	9,250	0
17	17	0	7,075
146	146	0	18,000
TOTAL	TOTAL	SUBTOTAL	SUBTOTAL
146	146	9,250	8,075
		Total Net Assignable: 17,925 SQ. FT.	

Exhibit 3
Permit Amendment
5-87-983-A2 (Forge)
Amended Plan
(5-87-983-A1)

Exhibit 6
 Permit Amendment
 5-87-983-A2 (Forge)
 Proposed Plans Original
 Submittal (5-87-983-A2)

ESHA Setbacks

UNIT A DELETED PER PLANNING COMMISSION HEARING APPROVAL

DISTANCE FROM UNIT B TO ESHA:	89' 7"
DISTANCE FROM UNIT C TO ESHA:	83' 7"
DISTANCE FROM UNIT D TO ESHA:	61' 8"
DISTANCE FROM UNIT E TO ESHA:	77' 9"
DISTANCE FROM UNIT F TO ESHA:	102' 6"
DISTANCE FROM UNIT G TO ESHA:	101' 10"
DISTANCE FROM UNIT H TO ESHA:	96' 8"
AVERAGE SETBACK DISTANCE:	79' 7"

GROSS AREA:

EXISTING RESTAURANT:	3,400 S.F.
EXISTING OFFICE:	2,700 S.F.
PROPOSED LODGE (27 @ 580 S.F.):	15,660 S.F.
PROPOSED KITCHEN (Excludes For Lodge Count):	580 S.F.
TOTAL BUILDING GROSS:	22,340 S.F.

SITE AREA BREAKDOWN:

OPEN LANDSCAPE:	12,000 S.F.
BUILDING FOOTPRINTS:	12,355 S.F.
PARKING:	37,150 S.F.
HARDSCAPE:	16,000 S.F.
DEDICATED OPEN SPACE:	118,500 S.F.
ADDITIONAL UNIMPROVED AREA:	13,520 S.F.

PARKING BREAKDOWN:

REQUIRED SPACES	PROVIDED SPACES
RESTAURANT 48	REGULAR 87
LODGE and OFFICE 46	COMPACT 16
NATURE CORRIDORWAY 17	DISABLED ACCESSIBLE 6
TOTALS	111

*Number based on both LACO Regional Planning and California Coastal Commission Approvals of previously completed restaurant.

Compact Parking Spaces: 8' - 0" X 15' - 0"
 Standard and Disabled-Accessible Parking Spaces: 9' - 0" X 20' - 0"

GRADING:

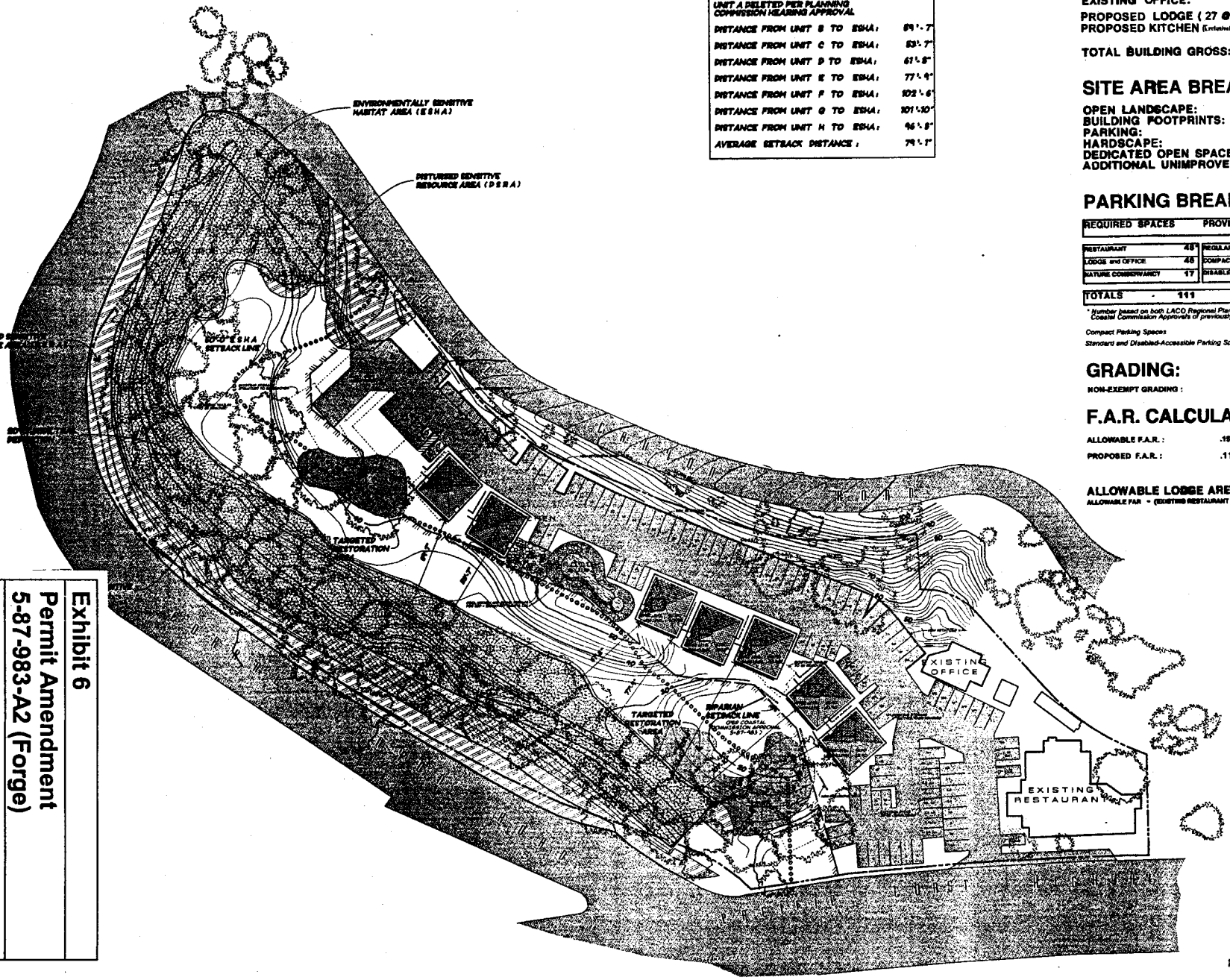
NON-EXEMPT GRADING: 6,918 CU. YDS.

F.A.R. CALCULATION:

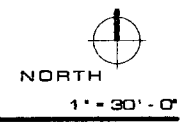
ALLOWABLE F.A.R.: .19 X 4.81 AC. = 91.845 (ALLOWABLE)
 PROPOSED F.A.R.: .11

ALLOWABLE LODGE AREA:

ALLOWABLE FAR = (EXISTING RESTAURANT & OFFICE) = ALLOWABLE LODGE AREA
 21,428 S.F. - 8,100 S.F. = 28,238 S.F.
 28,238 S.F. > 15,040 S.F. OK.



S I T E P L A N



REVISION
 05-4-02
 05-05-02
 05-08-02
 05-11-02
 05-14-02

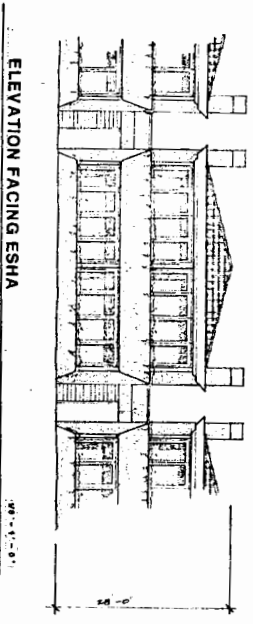
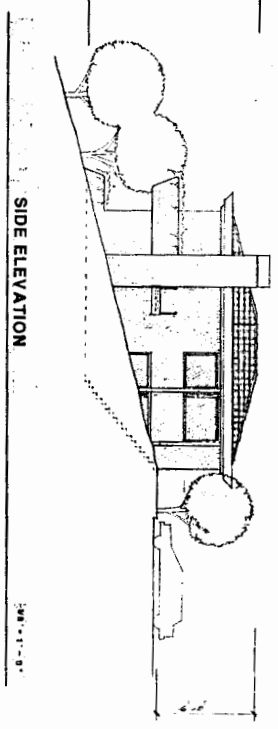
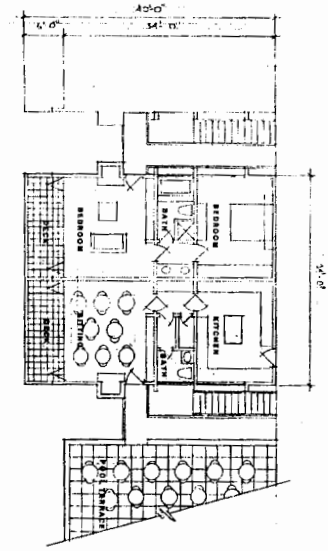
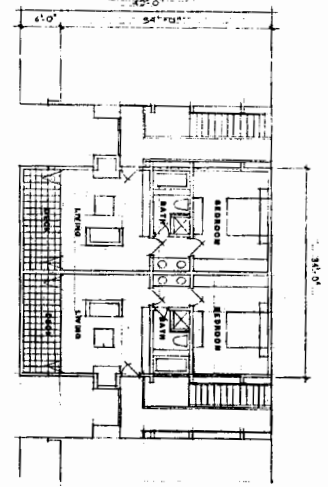
FORGE LODGE
 26025 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA 90265

BARSOCHINI & ASSOCIATES, INC.
ARCHITECTS
 MICHAEL E. BARSOCHINI, AIA, LEED AP
 3572 PACIFIC COAST DRIVE · MALIBU, CA 90265

S I T E P L A N

DATE: 2/18/02
 SCALE: 1" = 30'-0"
 DRAWN BY: SY
 CHECKED BY: SY

1



DATE	5/18/03
BY	MS
CHECKED	MS
SCALE	AS SHOWN
SHEET	2
TOTAL SHEETS	2

BARSOCCHINI & ASSOCIATES, INC.
ARCHITECTS
 MICHAEL E. BARSOCCHINI, A.I.A. · (310) 456-3625
 3502 COAST VIEW DRIVE · MALIBU, CA 90265

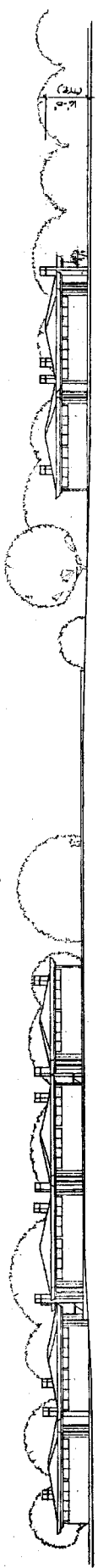
FORGE LODGE
 26025 PACIFIC COAST HWY.
 MALIBU, CALIFORNIA 90265

NO.	DESCRIPTION
1	
2	
3	
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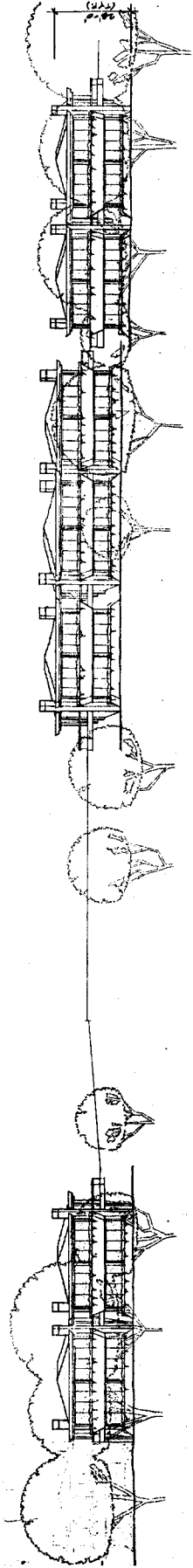
DATE	BY
SCALE	
PROJECT	
NO.	
DATE	
BY	

BARSOCCCHINI & ASSOCIATES, INC.
 ARCHITECTS
 MICHAEL E. BARSOCCCHINI, AIA (310) 456-3625
 3502 COAST VIEW DRIVE MALIBU, CA 90265

FORGE LODGE
 26025 PACIFIC COAST HWY.
 MALIBU, CALIFORNIA 90265



NORTH ELEVATION



SOUTH ELEVATION

Exhibit 8
Permit Amendment
5-87-983-A2 (Forge)
Elevations (2 of 2)

BARSOCCINI & ASSOCIATES, INC. ARCHITECTS 3202 COAST VIEW DRIVE MALIBU, CALIFORNIA 90265

FORGE LODGE 26025 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265

RANDALL LANDSCAPE DESIGN 909 EUCLID STREET, #6 SANITA MONICA, CALIF. 90403

Table with 2 columns: NO. and DESCRIPTION. Contains project identification details.

VEGETATION MANAGEMENT PLAN FUEL MODIFICATION & LANDSCAPE

- 1. EXISTING VEGETATION... 2. VEGETATION MANAGEMENT PLAN... 3. VEGETATION MANAGEMENT PLAN...

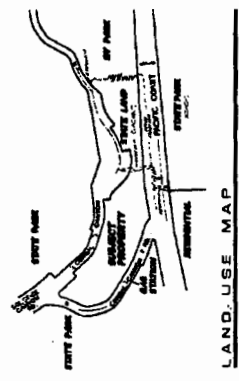
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- 7. VEGETATION MANAGEMENT PLAN... 8. VEGETATION MANAGEMENT PLAN... 9. VEGETATION MANAGEMENT PLAN...

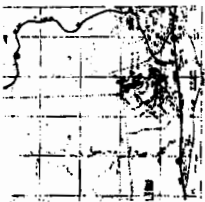
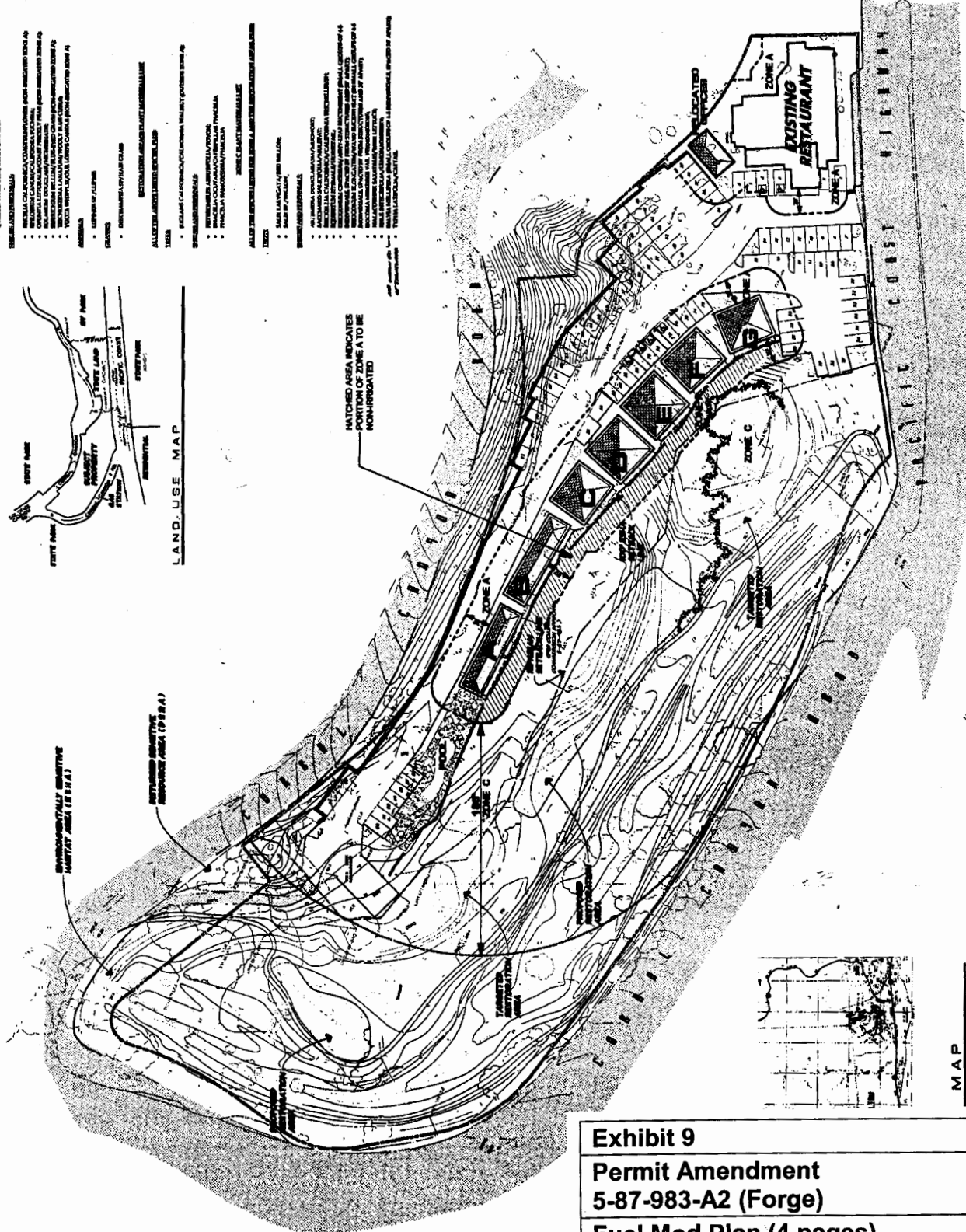
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- 13. VEGETATION MANAGEMENT PLAN... 14. VEGETATION MANAGEMENT PLAN... 15. VEGETATION MANAGEMENT PLAN...

- 16. VEGETATION MANAGEMENT PLAN... 17. VEGETATION MANAGEMENT PLAN... 18. VEGETATION MANAGEMENT PLAN...



HATCHED AREA INDICATES PROPOSED VEGETATION TO BE REMOVED AND NOT REPLANTED



MAP

Exhibit 9 Permit Amendment 5-87-983-A2 (Forge) Fuel Mod Plan (4 pages)

ZONE A PLANT MATERIALS LIST

NOTE: ALL SPECIES TO BE USED IN APPROPRIATE EXPOSURE AND HABITAT AREAS:

TREES:

- ALNUS RHOMBIFOLIA//WHITE ALDER
- PLATANUS RACEMOSA/CALIFORNIA SYCAMORE
- QUERCUS AGRIFOLIA/COAST LIVE OAK

SHRUBS AND PERENNIALS:

- ENCELIA CALIFORNICA/COAST SUNFLOWER (NON-IRRIGATED ZONE A);
- EPILOBIUM CANUM/CALIFORNIA FUCHSIA;
- OPUNTIA LITTORALIS/COAST PRICKLY PEAR (NON-IRRIGATED ZONE A);
- SOLANUM DOUGLASII/NIGHTSHADE;
- SISYRICHUM BELLUM/BLUE-EYED GRASS (NON-IRRIGATED ZONE A);
- TRICHOSTEMA LANATUM/WOOLY BLUE CURLS;
- YUCCA WHITPLEY/OUR LORD'S CANDLE (NON-IRRIGATED ZONE A)

ANNUALS:

- LUPINUS SP./LUPINE

GRASSES:

- DESCHAMPSIA SP/HAIR GRASS

RESTORATION AREA(S) PLANT MATERIALS LIST

ALL OF THE ABOVE LISTED SPECIES, PLUS:

TREES:

- JUGLANS CALIFORNICA/CALIFORNIA WALNUT (OUTSIDE ZONE A).

SHRUBS AND PERENNIALS:

- HETEROMELES ARBUTIFOLIA/TOYON;
- PHACELIA CICUTARIA/CATERPILLAR PHACELIA
- PHACELIA RAMOSISSIMA/PHACELIA

ZONE C PLANT MATERIALS LIST

ALL OF THE SPECIES LISTED FOR ZONE A AND THE RESTORATION AREAS, PLUS:

TREES:

- SALIX LAEVIGATA/RED WILLOW;
- SALIX SP./WILLOW

SHRUBS AND PERENNIALS:

- ARTEMESIA DOUGLASIANA/MUGWORT;
- BACCHARIS SALICIFOLIA/MULEFAT;
- BRICKELLIA CALIFORNICA/CALIFORNIA BRICKELLBUSH;
- EQUISETUM HYEMALE/HORSETAIL;
- ERIOGONUM CINEREUM/ASHY-LEAF BUCKWHEAT (SMALL GROUPS OF 4-5 INDIVIDUALS, SPACED 30' FROM STRUCTURES AND 30' APART);
- ERIOGONUM ELONGATUM/WAND BUCKWHEAT (IN SMALL GROUPS OF 4-5 INDIVIDUALS, SPACED 30' FROM STRUCTURES AND 30' APART);
- ISOCOMA MENZIESII VAR. VERNONIODES;
- MALACOTHRIX SAXATALIS/WIRE LETTUCE;
- RHUS INTEGRIFOLIA/LEMONADEBERRY;
- SALVIA MELLIFERA (SMALL GROUPS OF 4-5 INDIVIDUALS, SPACED 30' APART);
- TYPHA LATIFOLIA/CATTAIL

*NOT WITHIN 50'
OF STRUCTURES*

FUEL MODIFICATION NOTES:

ZONE A - SETBACK ZONE

1. EXTENDS A MINIMUM OF 20' BEYOND THE EDGE OF COMBUSTIBLE STRUCTURES, ATTACHED ACCESSORY STRUCTURES, OR APPENDAGES OR PROJECTIONS;
2. MOST VEGETATION IN THIS ZONE IS LIMITED TO GROUND COVERS, GREEN LAWNS AND A LIMITED NUMBER OF SELECTED ORNAMENTAL SPECIES (PLEASE SEE ZONE A PLANT LIST FOR THIS PROJECT);
3. IRRIGATION BY AUTOMATIC OR MANUAL SYSTEMS TO MAINTAIN HEALTHY VEGETATION WITH HIGH MOISTURE CONTENT (A PORTION OF ZONE A SOUTH OF THE PROPOSED BUILDINGS WILL NOT BE IRRIGATED, AND WILL BE PLANTED WITH THOSE SPECIES THAT WILL NOT TOLERATE WARM SEASON IRRIGATION);
4. PLANTS IN THIS ZONE SHALL TYPICALLY BE HIGHLY FIRE RESISTANT AND SELECTED FROM THE APPROVED PLANT LIST FOR THE SETBACK ZONE AND GIVEN GEOGRAPHIC AREA (SEE APPENDIX II), UNLESS OTHERWISE APPROVED AS IS THE CASE WITH THIS PROJECT. PLEASE SEE ZONE A AND RESTORATION AREA PLANT MATERIALS LISTS);
5. TARGET TREES, INCLUDING, EUCALYPTUS, JUNIPER, CYPRESS AND PINE ARE NOT ALLOWED WITHIN TEN FEET OF COMBUSTIBLE STRUCTURE. OTHER TREE SPECIES MAY BE ALLOWED PURSUANT TO THE FIRE CODE REGARDING CLEARANCE OF BRUSH AND VEGETATIVE GROWTH, BUT ARE NOT GENERALLY RECOMMENDED WITHIN 10' OF STRUCTURES;
6. EXCEPT FOR DWARF VARIETIES OR MATURE TREES SMALL IN STATURE, TREES ARE GENERALLY NOT RECOMMENDED WITHIN ZONE A FOR REASONS WHICH GO BEYOND FIRE ISSUES AND ARE THEREFORE NOT INCLUDED IN THE PLANTING GUIDE. IN THIS CASE, IT HAS BEEN DETERMINED THAT PLATANUS RACEMOSA AND QUERCUS AGRIFOLIA SHALL BE ALLOWED IN THE RESTORATION AREAS WHICH ARE IN ZONE A PORTIONS OF THE PROPERTY, AND MAY ALSO BE ALLOWED IN OTHER PORTIONS OF ZONE A;
7. NO VINES OR CLIMBING PLANTS ON COMBUSTIBLE STRUCTURES

ZONE C - THINNING ZONE

1. EXTENDS FROM OUTER EDGE OF ZONE A 180' OR TO THE PROPERTY LINE, WHICHEVER IS LESS;
2. IN THIS CASE, PORTIONS OF ZONE C WILL BE REVEGETATED WITH PLANT SPECIES LISTED IN THE PLANT LISTS FOR ZONES A AND C, AND NON-NATIVE VEGETATION WILL BE REMOVED;
3. WITHIN THE PROPOSED RESTORATION AREAS, ~~THE ZONE~~ AND THE DISTURBED SENSITIVE RESOURCE AREAS, THINNING WILL BE RESTRICTED TO THE REMOVAL OF DEAD BRANCHES AND DEAD INDIVIDUAL PLANTS, IF PRESENT. TYPICAL THINNING, AND EXISTING NATIVE PLANT SPECIES SEPARATION WILL NOT BE REQUIRED IN THESE AREAS;
4. REPLACEMENT PLANTING WILL TAKE PLACE IN THIS ZONE WITH NATIVE PLANT SPECIES LISTED IN THE ZONES A AND C PLANT MATERIALS LISTS. ARTEMESIA, ERIOGONUM, AND SALVIA SPECIES SHALL BE PLANTED SPARINGLY IN GROUPS OF 4-5 AND SPACED 30' APART;

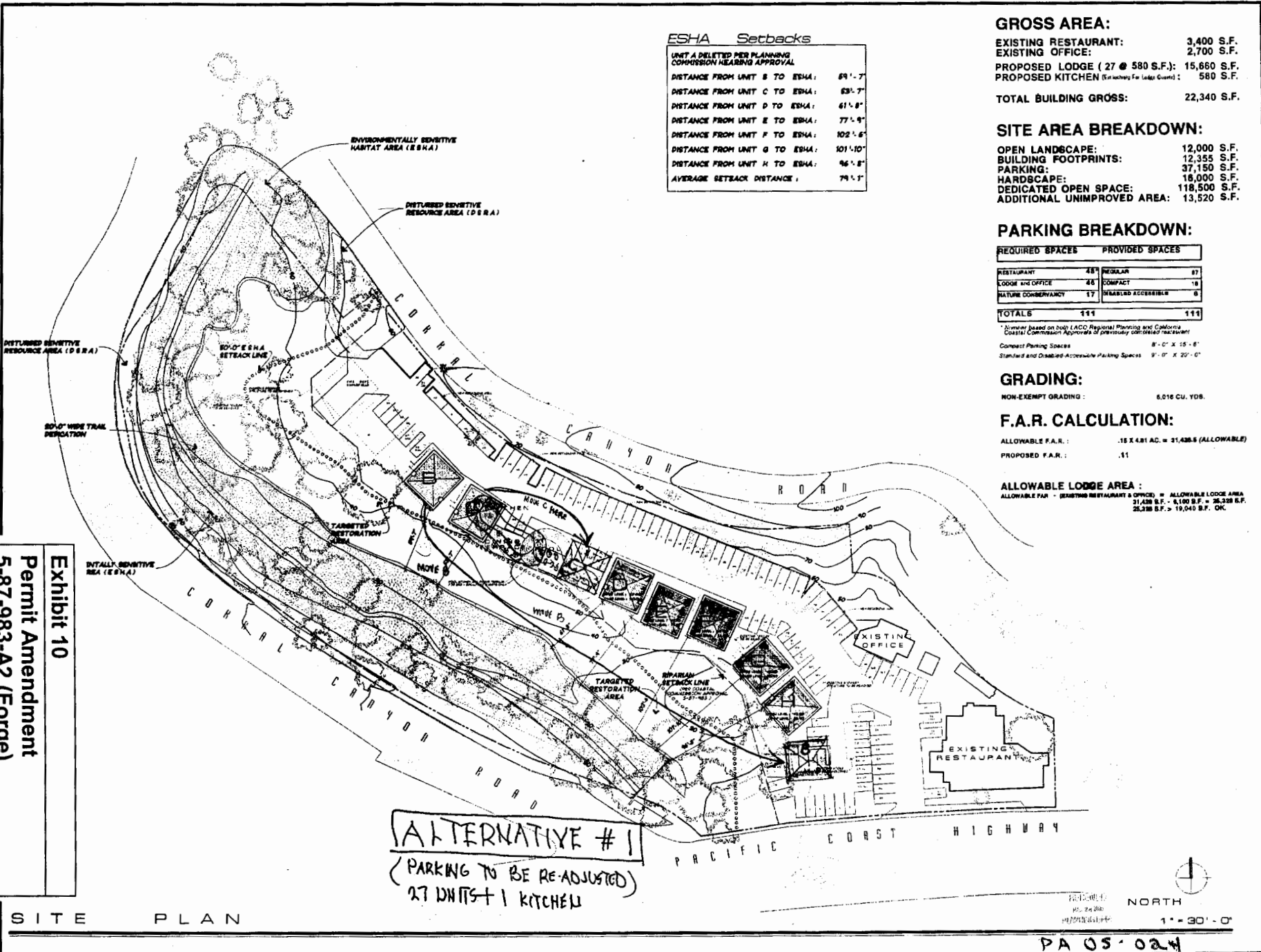
5. PLANTS SELECTED FOR PLANTING IN THIS ZONE SHALL BE TAKEN FROM THE PLANT SPECIES LISTS FOR ZONES A AND C SHOWN ON THIS PLAN;
6. PORTIONS OF THIS ZONE ON THIS PROJECT ARE DESIGNATED ESHA, ESHA SETBACK, RESTORATION AREA AND DISTURBED SENSITIVE RESOURCE AREA. WITHIN THESE AREAS, NON-NATIVE PLANT SPECIES SHALL BE REMOVED AND REPLACED WITH NATIVE PLANT SPECIES FROM THE PLANT LISTS SHOWN ON THIS PLAN.
7. DEAD VEGETATION IS NOT REQUIRED TO BE REMOVED FROM RIPARIAN PLANT SPECIES WITHIN THE ESHA.
GENERAL FUEL MODIFICATION AND VEGETATION MANAGEMENT NOTES
1. NO TARGET TREES SHALL BE PLANTED WITHIN 10' OF COMBUSTIBLE STRUCTURES;
2. ANY PLANTS SELECTED FOR PLANTING SHALL BE SELECTED FROM THE APPROVED PLANT LIST UNLESS OTHERWISE APPROVED;
3. PLANT SPACING FOR INTRODUCED PLANTS IS 30 BETWEEN CANOPIES FOR TREES AND 15 FEET OF THREE TIMES THE INDIVIDUAL CROWNS FOR LARGE SHRUBS, UNLESS OTHERWISE APPROVED FOR RESTORATION PLANTING;
4. DEBRIS AND TRIMMINGS PRODUCED BY THINNING IN ZONES A AND C, OUTSIDE OF THE RESTORATION AREAS, ~~ESHA~~ ESHA SETBACK, OR DISTURBED SENSITIVE RESOURCE AREA, SHALL BE CHIPPED AND EVENLY DISPERSED IN THE SAME AREA TO MAXIMUM DEPTH OF FIVE INCHES. OAK LEAF DUFF SHALL REMAIN IN PLACE;
5. ALL DEAD AND DYING VEGETATION SHALL BE REMOVED FROM THE SITE ON A REGULAR BASIS;
6. FINE FUELS IN ZONES A AND C, OUTSIDE THE ESHA, RESTORATION AREAS, ESHA SETBACK, AND DISTURBED SENSITIVE RESOURCE AREAS, SHALL BE MAINTAINED AT 3 INCHES IN HEIGHT;
7. GROUND COVERS IN ZONES A AND C, OUTSIDE THE ESHA, RESTORATION AREAS, ESHA SETBACK, AND DISTURBED SENSITIVE RESOURCE AREAS, SHALL BE MAINTAINED AT 3 INCHES IN HEIGHT;
8. COMPLIANCE WITH THE FIRE CODE IS A YEAR ROUND RESPONSIBILITY. ENFORCEMENT WILL OCCUR FOLLOWING INSPECTION BY THE FIRE DEPT ANNUALLY OR AS NEEDED. ANNUAL INSPECTIONS ARE GENERALLY CONDUCTED FOLLOWING NATURAL DRYING OF FINE FUELS. THIS GENERALLY OCCURS BETWEEN THE MONTHS OF APRIL AND JUNE. INSPECTIONS WILL BE BASED UPON THIS FUEL MODIFICATION PLAN.

FIRE ACCESS ROAD

1. CLEAR AND REMOVE FLAMMABLE GROWTH FOR A MINIMUM OF 10 FEET ON EACH SIDE OF ACCESS ROAD (F.C. 1117.10);
2. FIRE ACCESS ROADS, DRIVEWAYS AND TURNAROUNDS SHALL BE MAINTAINED IN ACCORDANCE WITH THE FIRE CODE. FIRE ACCESS ROADS SHALL HAVE UNOBSTRUCTED VERTICAL CLEARANCE TO THE SKY (F.C. 902.2.2.1);
3. WITHIN THE 10 FOOT CLEARANCE ZONE, PROPOSED SURFACE FUELS SHALL BE APPROPRIATELY SPACED AND MAINTAINED AT A HEIGHT NOT TO EXCEED 18";
4. PROPOSED TREES SHALL BE PLANTED OUTSIDE THE 10 FOOT CLEARANCE ZONE.

Exhibit 10
 Permit Amendment
 5-87-983-A2 (Forge)
 ALTERNATIVE 1

SITE PLAN



ESHA Setbacks

UNIT A DELETED PER PLANNING COMMISSION HEARING APPROVAL

DISTANCE FROM UNIT B TO ESHA:	69' 7"
DISTANCE FROM UNIT C TO ESHA:	63' 7"
DISTANCE FROM UNIT D TO ESHA:	61' 8"
DISTANCE FROM UNIT E TO ESHA:	77' 9"
DISTANCE FROM UNIT F TO ESHA:	102' 6"
DISTANCE FROM UNIT G TO ESHA:	101' 10"
DISTANCE FROM UNIT H TO ESHA:	96' 8"
AVERAGE SETBACK DISTANCE:	79' 1"

GROSS AREA:
 EXISTING RESTAURANT: 3,400 S.F.
 EXISTING OFFICE: 2,700 S.F.
 PROPOSED LODGE (27 @ 580 S.F.): 15,660 S.F.
 PROPOSED KITCHEN (for kitchen for Lodge Guest): 560 S.F.
TOTAL BUILDING GROSS: 22,340 S.F.

SITE AREA BREAKDOWN:
 OPEN LANDSCAPE: 12,000 S.F.
 BUILDING FOOTPRINTS: 12,355 S.F.
 PARKING: 37,150 S.F.
 HARDSCAPE: 18,000 S.F.
 DEDICATED OPEN SPACE: 118,500 S.F.
 ADDITIONAL UNIMPROVED AREA: 13,520 S.F.

PARKING BREAKDOWN:

REQUIRED SPACES	PROVIDED SPACES
RESTAURANT 48*	REGULAR 87
LODGE and OFFICE 46	COMPACT 18
NATURE CONSERVANCY 17	DISABLED ACCESSIBLE 8
TOTALS 111	TOTALS 111

* Number based on both LACD Regional Planning and California Coastal Commission Approvals of previously completed restaurant
 Compact Parking Spaces 8' - 0" X 15' - 6"
 Standard and Disabled Accessible Parking Spaces 9' - 0" X 20' - 0"

GRADING:
 NON-EXEMPT GRADING: 6,016 CU. YDS.

F.A.R. CALCULATION:
 ALLOWABLE F.A.R.: .15 X 4.81 AC. = 21,426.5 (ALLOWABLE)
 PROPOSED F.A.R.: .11

ALLOWABLE LODGE AREA:
 ALLOWABLE FAR - EXISTING RESTAURANT & OFFICE = ALLOWABLE LODGE AREA
 21,426.5 S.F. - 6,100 S.F. = 25,328 S.F.
 25,328 S.F. > 19,040 S.F. OK.

ALTERNATIVE # 1
 (PARKING TO BE RE-ADJUSTED)
 27 UNITS + 1 KITCHEN

DATE: 2/16/02
 SCALE: 1" = 30' - 0"
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 NORTH
 1" = 30' - 0"
 PA 05-024

REVISION
 10-1-02
 3-8-02
 3-8-02
 11-17-02

FORGE LODGE
 26025 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA 90265

BARSOCCHINI & ASSOCIATES INC
 ARCHITECTS
 MICHAEL E. BARSOCCHINI, AIA
 3507 COAST VIEW DRIVE
 MALIBU, CA 90265

SITE PLAN

DATE: 2/16/02
 SCALE: 1" = 30' - 0"
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 NORTH
 1" = 30' - 0"
 PA 05-024

1

ESHA Setbacks

UNIT A DELETED PER PLANNING COMMISSION HEARING APPROVAL

DISTANCE FROM UNIT B TO ESHA:	89' 7"	→ 60'
DISTANCE FROM UNIT C TO ESHA:	83' 7"	→ 65'
DISTANCE FROM UNIT D TO ESHA:	61' 8"	→ 85'
DISTANCE FROM UNIT E TO ESHA:	77' 9"	→ 105'
DISTANCE FROM UNIT F TO ESHA:	102' 6"	→ 105'
DISTANCE FROM UNIT G TO ESHA:	101' 10"	→ 105'
DISTANCE FROM UNIT H TO ESHA:	96' 8"	→ 100'
AVERAGE SETBACK DISTANCE:	79' 1"	→ 96'

GROSS AREA:

EXISTING RESTAURANT:	3,400 S.F.
EXISTING OFFICE:	2,700 S.F.
PROPOSED LODGE (27 @ 580 S.F.):	15,660 S.F.
PROPOSED KITCHEN (Est. volume for Lodge 0.2um):	580 S.F.
TOTAL BUILDING GROSS:	22,340 S.F.

SITE AREA BREAKDOWN:

OPEN LANDSCAPE:	12,000 S.F.
BUILDING FOOTPRINTS:	12,355 S.F.
PARKING:	37,150 S.F.
HARDSCAPE:	16,000 S.F.
DEDICATED OPEN SPACE:	118,500 S.F.
ADDITIONAL UNIMPROVED AREA:	13,520 S.F.

PARKING BREAKDOWN:

REQUIRED SPACES	PROVIDED SPACES
RESTAURANT 48	REGULAR 87
LODGE and OFFICE 48	COMPACT 18
RAVINE-COMMUNITY 11	DISABLED ACCESSIBLE 8
TOTALS 107	111

*Number based on both LACO Regional Planning and California Coastal Commission Approvals of previously completed restaurant

Compact Parking Spaces 8' - 0" X 15' - 6"

Standard and Disabled-Accessible Parking Spaces 9' - 0" X 20' - 0"

GRADING:

NON-EXEMPT GRADING: 8,918 CU. YDS.

F.A.R. CALCULATION:

ALLOWABLE F.A.R.: .18 X 4.81 AC. = 31,458.8 (ALLOWABLE)

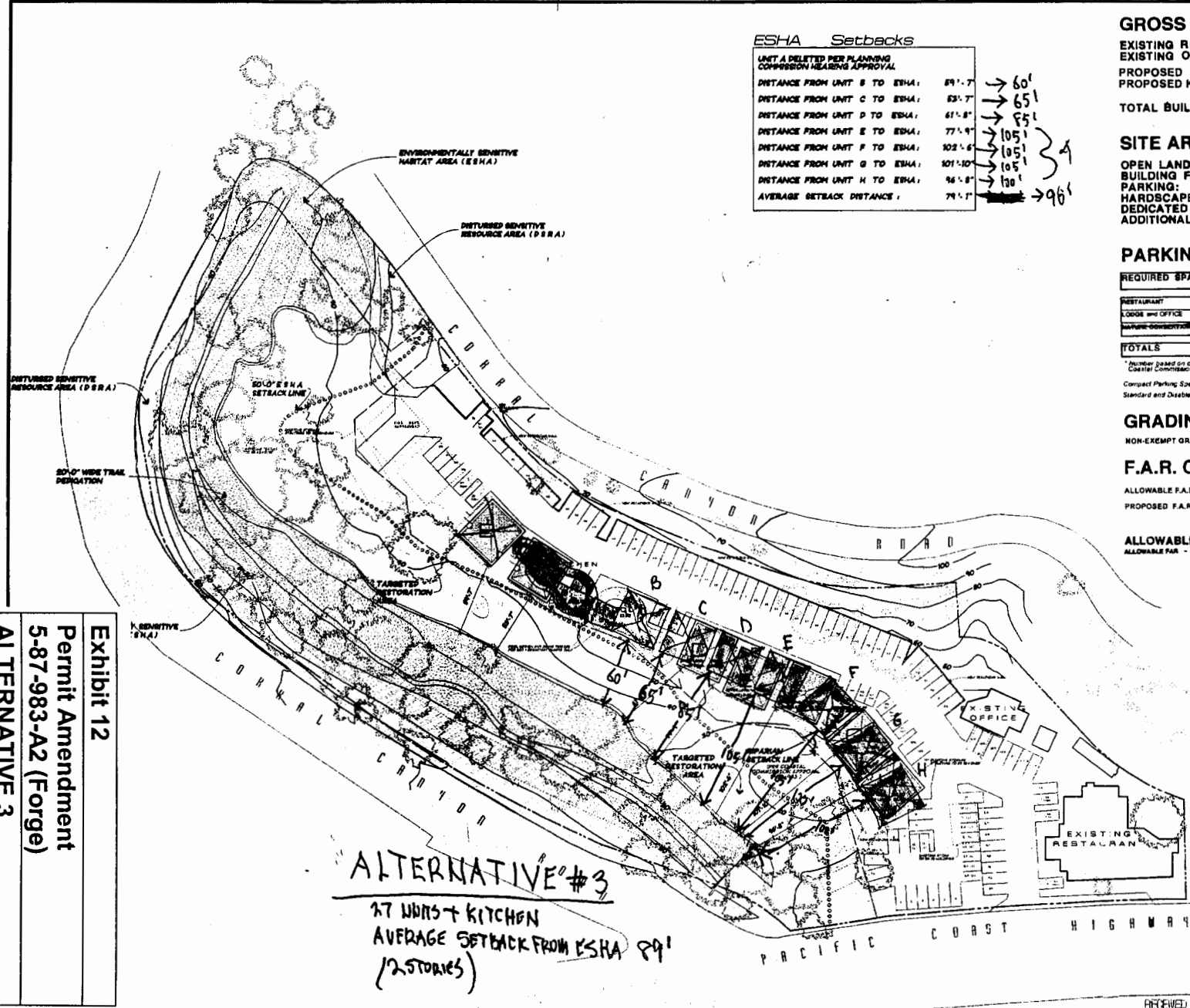
PROPOSED F.A.R.: .11

ALLOWABLE LODGE AREA:

ALLOWABLE FAR - (EXISTING RESTAURANT & OFFICE) = ALLOWABLE LODGE AREA

31,458.8 S.F. - 6,190 S.F. = 25,268.8 S.F.

25,268.8 S.F. > 19,840 S.F. OK



ALTERNATIVE #3
 27 UNITS + KITCHEN
 AVERAGE SETBACK FROM ESHA 89'
 (2 STORIES)

Exhibit 12
 Permit Amendment
 5-87-983-A2 (Forge)
 ALTERNATIVE 3

SITE PLAN

REVIEWED: NORTH
 PLANNING DEPT. 1" = 30' - 0"
 PA 05-021

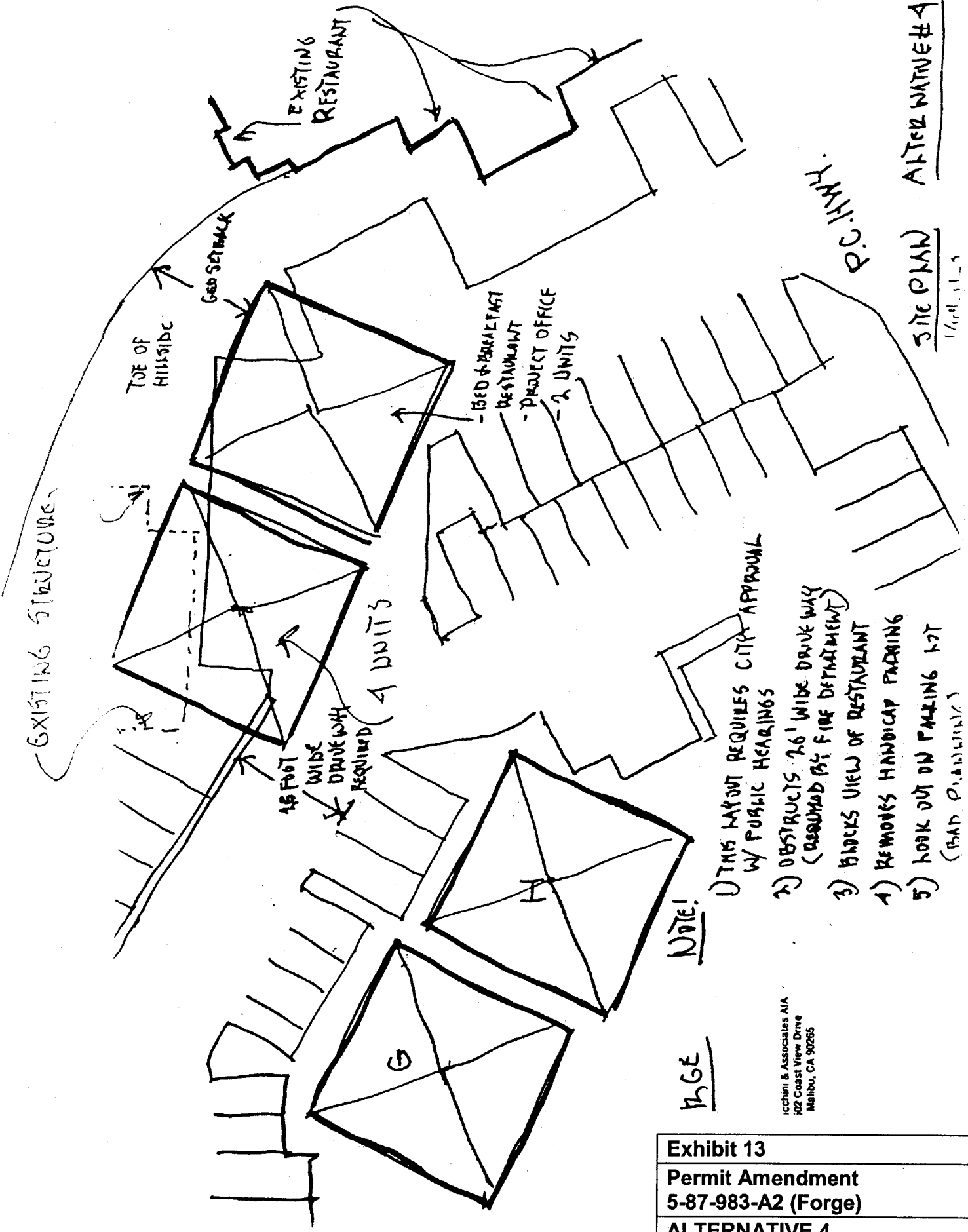
REVISION	BY
10-0-02	BT
10-10-02	BT
2-10-02	BT
1-1-02	BT
10-10-02	BT

FORGE LODGE
 26025 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA 90265

RABOCCHINI & ASSOCIATES, INC.
ARCHITECTS
 MICHAEL RABOCCHINI, A.I.A. - ENG. 456-2025
 3507 COAST VIEW DRIVE - ANAHEIM, CA 92805

SITE PLAN

DATE	2/18/02
SCALE	1" = 30' - 0"
PROJECT	BY
1	

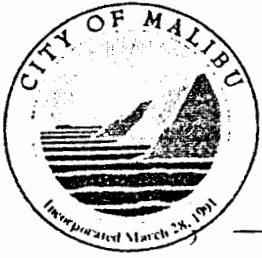


NOTE:

- 1) THIS MAP/NOT REQUIRES CITY APPROVAL W/ PUBLIC HEARINGS
- 2) OBSTRUCTS 26' WIDE DRIVEWAY (ASSUMED BY FIRE DEPARTMENT)
- 3) BLOCKS VIEW OF RESTAURANT
- 4) REMOVES HANDICAP PARKING
- 5) LOOK OUT ON PARKING LOT (BAD PLANNING)

icchi & Associates AIA
 102 Coast View Drive
 Malibu, CA 90265

Exhibit 13
Permit Amendment 5-87-983-A2 (Forge)
ALTERNATIVE 4



City of Malibu

23815 Stuart Ranch Road • Malibu, California • 90265-4861
(310) 456-2489 ext. 265 • fax (310) 456-7650

April 6, 2005

Mike Barsocchini
3502 Coast View Dr.
Malibu, CA 90265

Exhibit 14

**Permit Amendment
5-87-983-A2 (Forge)**

Malibu Letter re: Alternatives

**Reference: PA 05-021 (Forge Lodge)
Site Plan Alternative Review/Comment**

Dear Mr. Barsocchini:

On March 28, 2005, a pre-application request was submitted to the Planning Division for staff to analyze three site plan alternatives to the City Council adopted Resolution No. 03-03 (Forge Lodge Bed and Breakfast).

The California Coastal Commission retains permitting jurisdiction for the vested CDP amendment for this project. Therefore, this analysis is related to the City of Malibu General Plan and Municipal Code. Staff presented the three alternatives to the Quality Assurance Committee on March 30, 2005. Below is a summary of each alternative and the staff response.

Alternative 1 Relocate Building "B" within the front yard setback

This alternative is not in substantial conformance with the original proposal. A Minor Modification/Site Plan Review to reduce required 65' front yard setback to 40' would be required with Alternative 1. Therefore, this modification would require renoticing and a new public hearing to amend the approved Resolution.

Alternative 2 Eliminate Buildings "B" and "C" and design 3 story buildings D, E, F, G, and H

This alternative is not in substantial conformance with the original proposal. This alternative is inconsistent with the General Plan which regulates commercial structures. The General Plan limits height and bulk equivalent to the standards for residential development (Land Use Objective 4.1). In addition, Chapter 17.40.080(A)(1)(c) is clear: "In no event shall the maximum number of stories above grade be greater than two." After an amendment to the General Plan/Municipal



Code, two new variances would be required for noncompliance with the Malibu Municipal Code height and story requirements.

Staff could not make the required variance findings for either the variance from the 28' height requirement or the variance from the two-story limit under the Malibu Municipal Code Chapter 17.72.060, Variance findings. The following four findings could not be affirmatively made by staff:

B. The granting of such variance or modification will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone(s) in which the property is located. These height/story variances would be in conflict to all other one and two story developments in the area and would negatively impact public views toward the mountains.

C. The granting of the variance will not constitute a special privilege to the applicant or property owner. The variance would constitute a special privilege as no variance from the two-story limit has been granted from the City.

D. The granting of such variance or modification will not be contrary to or in conflict with the general purposes and intent of this chapter, nor to the goals, objectives and policies of the general plan. As mentioned above, these variances are in direct conflict with both the General Plan and Zoning Ordinance.

G. The variance or modification permit complies with all requirements of state and local law. The variances do not comply with the local Zoning Ordinance.

Obviously, this proposal is a complete redesign and would require new public hearings at both the Planning Commission and City Council.

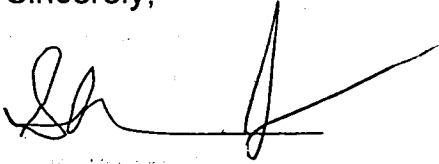
Alternative 3 Cluster buildings closer together on site plan without changing height or floor area ratio (F.A.R.)

This alternative is in substantial conformance with the approved, City Council Resolution and results in a further setback from the ESHA. No other discretionary reviews would be necessary. No other public hearings would be required.

If you intend to proceed with this alternative, please ensure your revised plans meet the minimum distance between buildings pursuant to building code. Geology will have to re-review any proposed changes as part of plan check. All previous conditions of City Council Resolution No. 03-03 remain in effect.

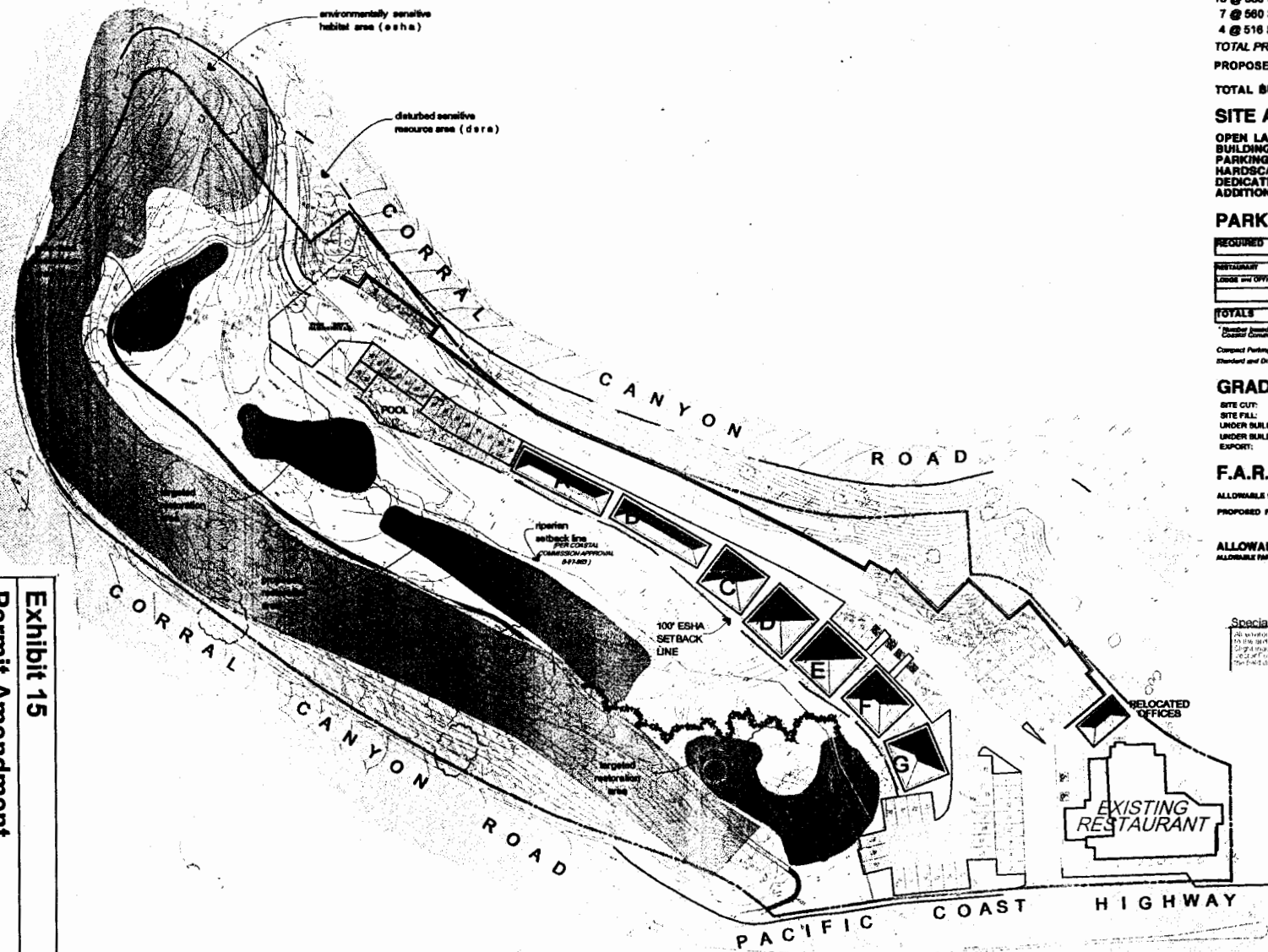
If you have any questions regarding this matter, do not hesitate to contact me at (310) 456-2489, extension 265 or at srice@ci.malibu.ca.us.

Sincerely,



Stacey Rice, Ph.D., AICP
Senior Planner

Exhibit 15
 Permit Amendment
 5-87-983-A2 (Forge)
 Revised Site Plan



GROSS AREA:
 EXISTING RESTAURANT: 3,400 S.F.
 EXISTING OFFICE: (To Be Demolished): 2,700 S.F.
 PROPOSED OFFICE: 1,400 S.F.
 PROPOSED LODGE:
 16 @ 560 S.F.: 8,280 S.F.
 7 @ 560 S.F.: 3,920 S.F.
 4 @ 516 S.F.: 2,064 S.F.
 TOTAL PROPOSED LODGE: 15,264 S.F.
 PROPOSED KITCHEN (Attached to Lodge Shell): 560 S.F.
 TOTAL BUILDING GROSS: 26,624 S.F.

SITE AREA BREAKDOWN:
 OPEN LANDSCAPE: 12,000 S.F.
 BUILDING FOOTPRINTS: 12,355 S.F.
 PARKING: 37,150 S.F.
 HARDSCAPE: 16,000 S.F.
 DEDICATED OPEN SPACE: 118,500 S.F.
 ADDITIONAL UNIMPROVED AREA: 13,520 S.F.

PARKING BREAKDOWN:

REQUIRED SPACES	PROVIDED SPACES
RESTAURANT	48
LODGE and OFFICE	26
TOTALS	74

Based on both LACD National Planning and Guidelines
 and the LACD General Ordinance of January 1990.
 Compact Parking Space: 8' - 0" X 15' - 0"
 Standard and Disabled-Accessible Parking Space: 9' - 0" X 20' - 0"

GRADING:

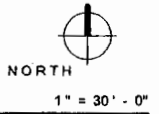
SITE CUT: 8,640 C.Y.
 SITE FILL: 1,300 C.Y.
 UNDER BUILDING CUT: 1,800 C.Y.
 UNDER BUILDING FILL: 280 C.Y.
 EXPORT: 8,880 C.Y.

F.A.R. CALCULATION:

ALLOWABLE F.A.R.: .10 X 4.97 AC = 0.497 (ALLOWABLE)
 PROPOSED F.A.R.: .10

ALLOWABLE LODGE AREA:
 ALLOWABLE FOR PROPOSED RESTAURANT & OFFICE = ALLOWABLE LODGE AREA
 31,400 S.F. - 6,900 S.F. = 24,500 S.F. OR
 31,200 S.F. - 30,634 S.F. OR

Special Note:
 All environmental conditions and setbacks have been reviewed and approved by the authority having jurisdiction. The applicant is responsible for obtaining all necessary permits and approvals from the appropriate agencies. The project is subject to the conditions of the permit and the applicant is responsible for compliance with all applicable laws and regulations.



S I T E P L A N

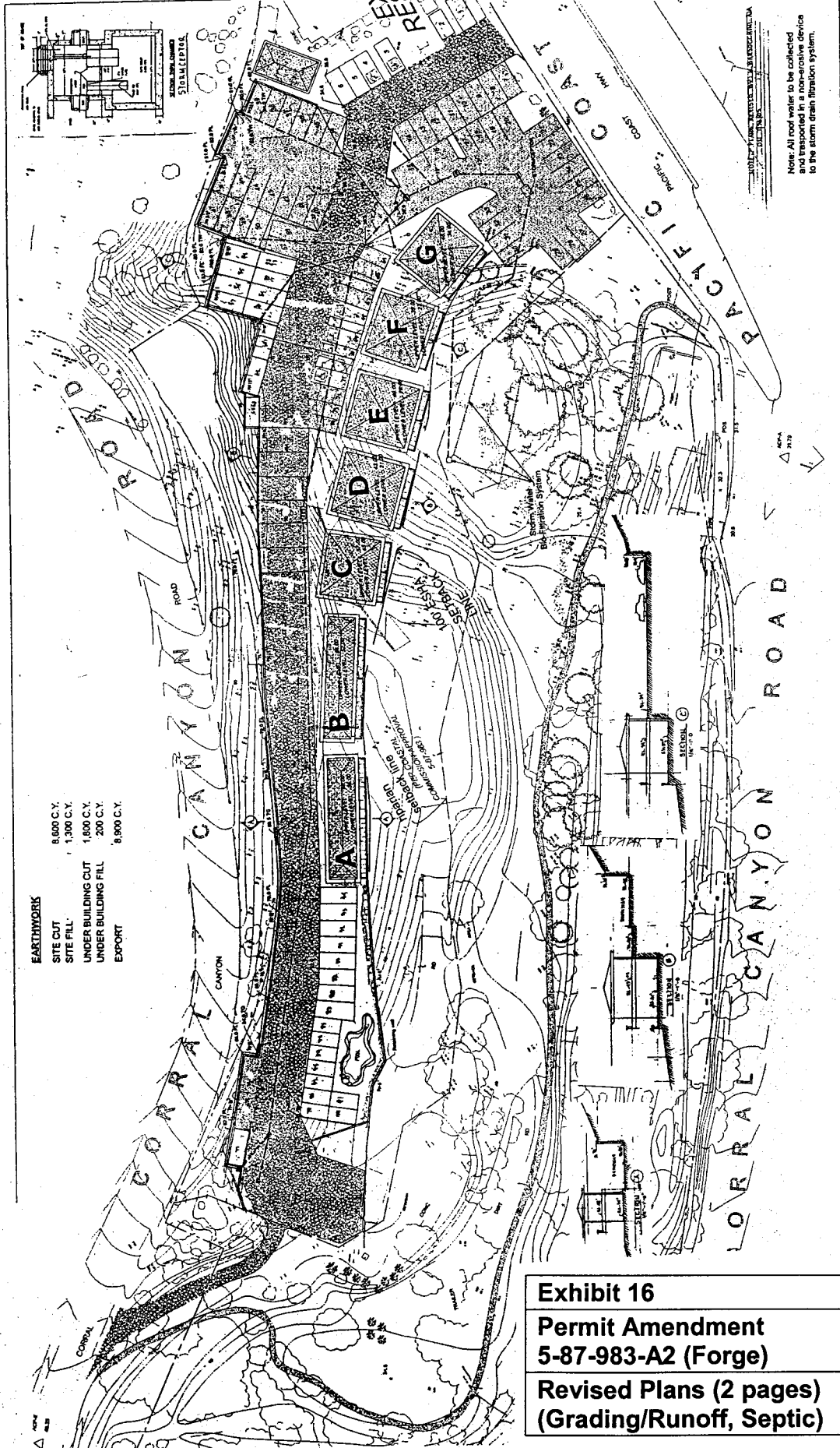
REVISION
 10-1-02
 12-18-02
 3-11-03
 5-17-03
 7-1-03
 8-24-03
 7-1-04
 7-27-04

FORGE LODGE
 26025 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA 90265

BARSOCCINI & ASSOCIATES INC.
 ARCHITECTS
 MICHAEL BARSOCCINI, AIA
 3502 COAST VIEW DRIVE MALIBU, CA 90265

S I T E P L A N

DATE: 2/18/05
 SCALE: 1" = 30'-0"
 DRAWN BY: SY
 CHECKED BY: 1



EARTHWORKS

SITE CUT	8,600 C.Y.
SITE FILL	1,300 C.Y.
UNDER BUILDING CLIT	1,800 C.Y.
UNDER BUILDING FILL	200 C.Y.
EXPORT	8,900 C.Y.

Exhibit 16
Permit Amendment
5-87-983-A2 (Forge)
Revised Plans (2 pages)
(Grading/Runoff, Septic)



- NOTES:**
1. ALL DIMENSIONS SHALL BE AS SHOWN UNLESS OTHERWISE NOTED.
 2. ALL DIMENSIONS SHALL BE TO FACE UNLESS OTHERWISE NOTED.
 3. ALL DIMENSIONS SHALL BE TO CENTER UNLESS OTHERWISE NOTED.
 4. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.
 5. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.
 6. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.
 7. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.
 8. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.
 9. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.
 10. ALL DIMENSIONS SHALL BE TO THE CENTER UNLESS OTHERWISE NOTED.

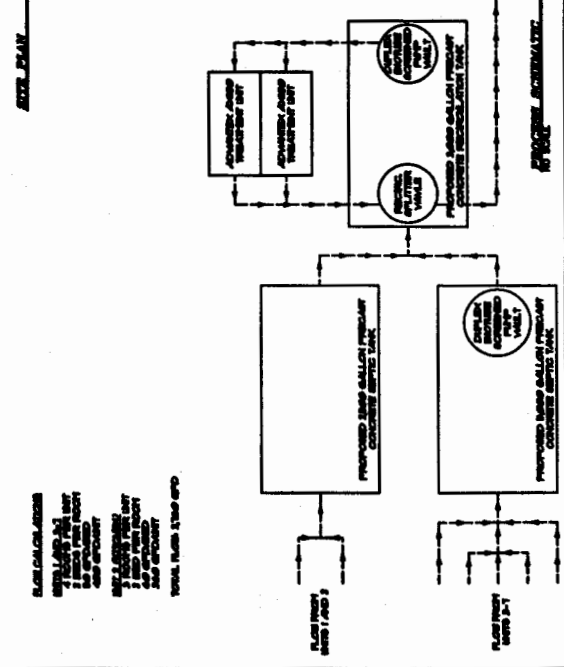
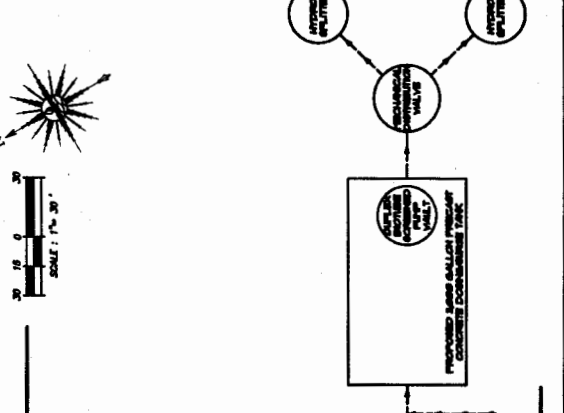
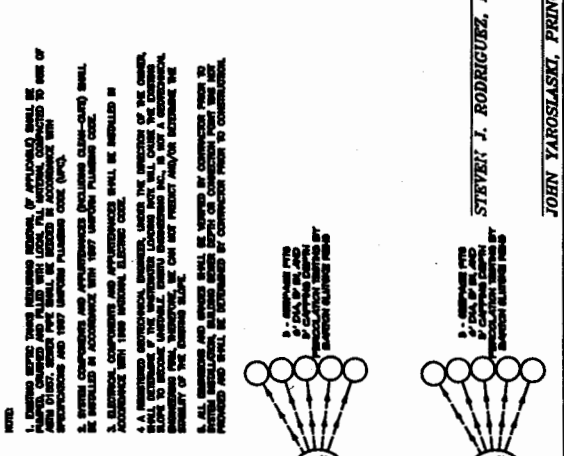
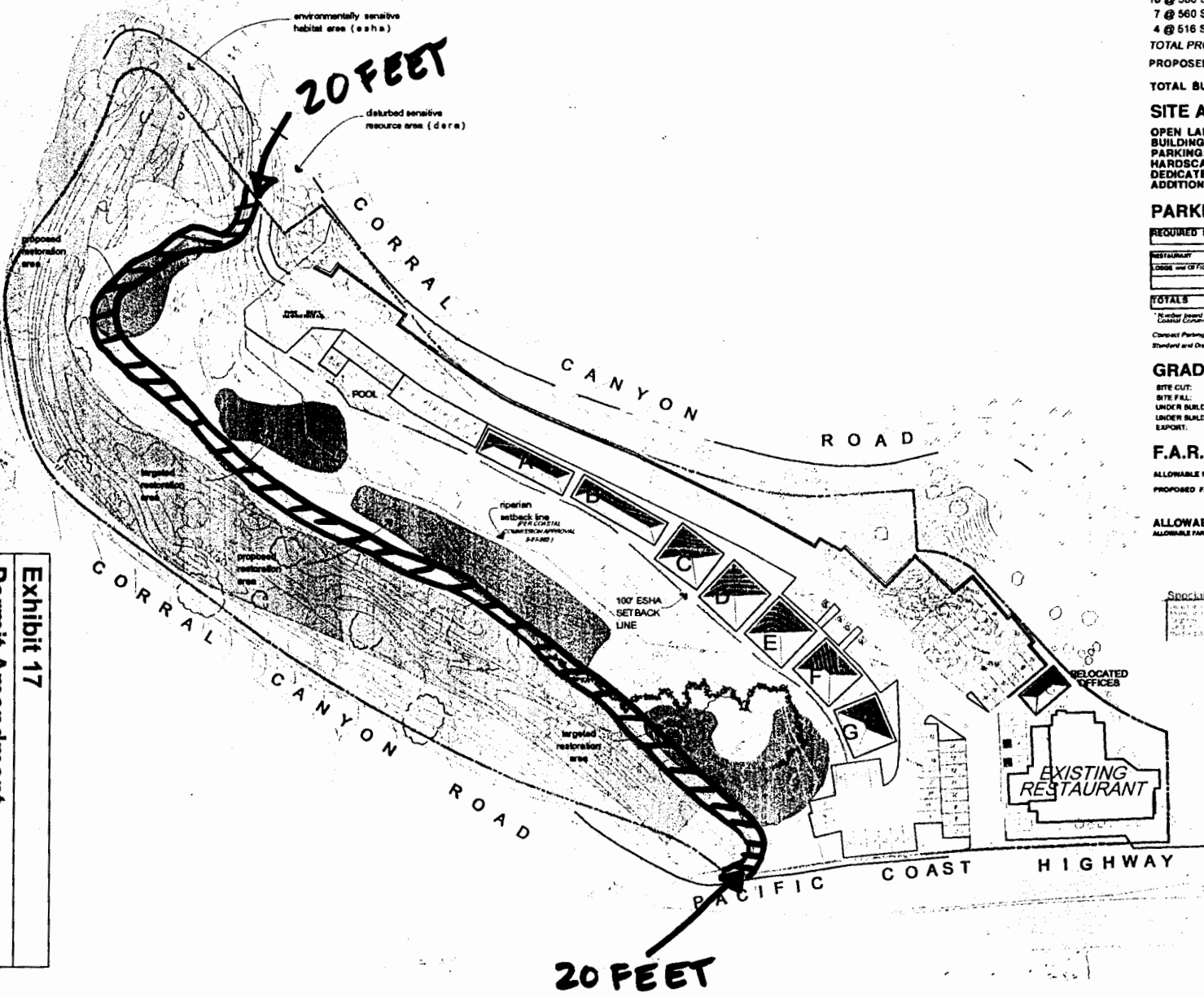


Exhibit 17
 Permit Amendment
 5-87-983-A2 (Forge)
 Trail Easement Area



GROSS AREA:
 EXISTING RESTAURANT: 3,400 S.F.
 EXISTING OFFICE: 2,700 S.F.
 PROPOSED OFFICE: 1,400 S.F.
 PROPOSED LODGE:
 16 @ 580 S.F. : 9,280 S.F.
 7 @ 560 S.F. : 3,920 S.F.
 4 @ 516 S.F. : 2,064 S.F.
 TOTAL PROPOSED LODGE: 15,264 S.F.
 PROPOSED KITCHEN (setback for Lodge Overall) : 560 S.F.
 TOTAL BUILDING GROSS: 20,624 S.F.

SITE AREA BREAKDOWN:
 OPEN LANDSCAPE: 12,000 S.F.
 BUILDING FOOTPRINTS: 12,356 S.F.
 PARKING: 37,150 S.F.
 HARDCAPE: 16,000 S.F.
 DEDICATED OPEN SPACE: 118,500 S.F.
 ADDITIONAL UNIMPROVED AREA: 13,520 S.F.

PARKING BREAKDOWN:

REQUIRED SPACES	PROVIDED SPACES
RESTAURANT 48	REGULAR 71
LODGE and OFFICE 88	COMPACT 17
	WHEELCHAIR ACCESSIBLE 6
TOTALS 94	94

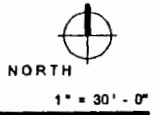
*Number based on both LACD Regional Planning and California Coastal Commission Approvals of preliminary completed restaurant.
 Compact Parking Spaces: 8' - 0" X 13' - 0"
 Standard and Disabled-Accessible Parking Spaces: 8' - 0" X 30' - 0"

GRADING:
 SITE CUT: 8,000 C.Y.
 SITE FILL: 1,300 C.Y.
 UNDER BUILDING CUT: 1,200 C.Y.
 UNDER BUILDING FILL: 200 C.Y.
 EXPORT: 8,000 C.Y.

F.A.R. CALCULATION:
 ALLOWABLE F.A.R. : 16 X .67 AC. = 10.72 (ALLOWABLE)
 PROPOSED F.A.R. : .10

ALLOWABLE LODGE AREA :
 ALLOWABLE FAR - EXISTING RESTAURANT & OFFICE = ALLOWABLE LODGE AREA
 11,400 S.F. - 5,140 S.F. = 6,260 S.F.

Special Note:
 This site plan is based on the information provided by the applicant and is not a guarantee of accuracy. The architect and engineer are not responsible for any errors or omissions in this plan. The applicant is responsible for obtaining all necessary permits and approvals from the appropriate authorities.



S I T E P L A N

REVISION
 10-9-82 BY
 12-16-82 BY
 3-11-83 BY
 1-27-83 BY
 1-7-88 BY
 3-24-88 BY
 7-1-88 BY
 7-27-88 BY

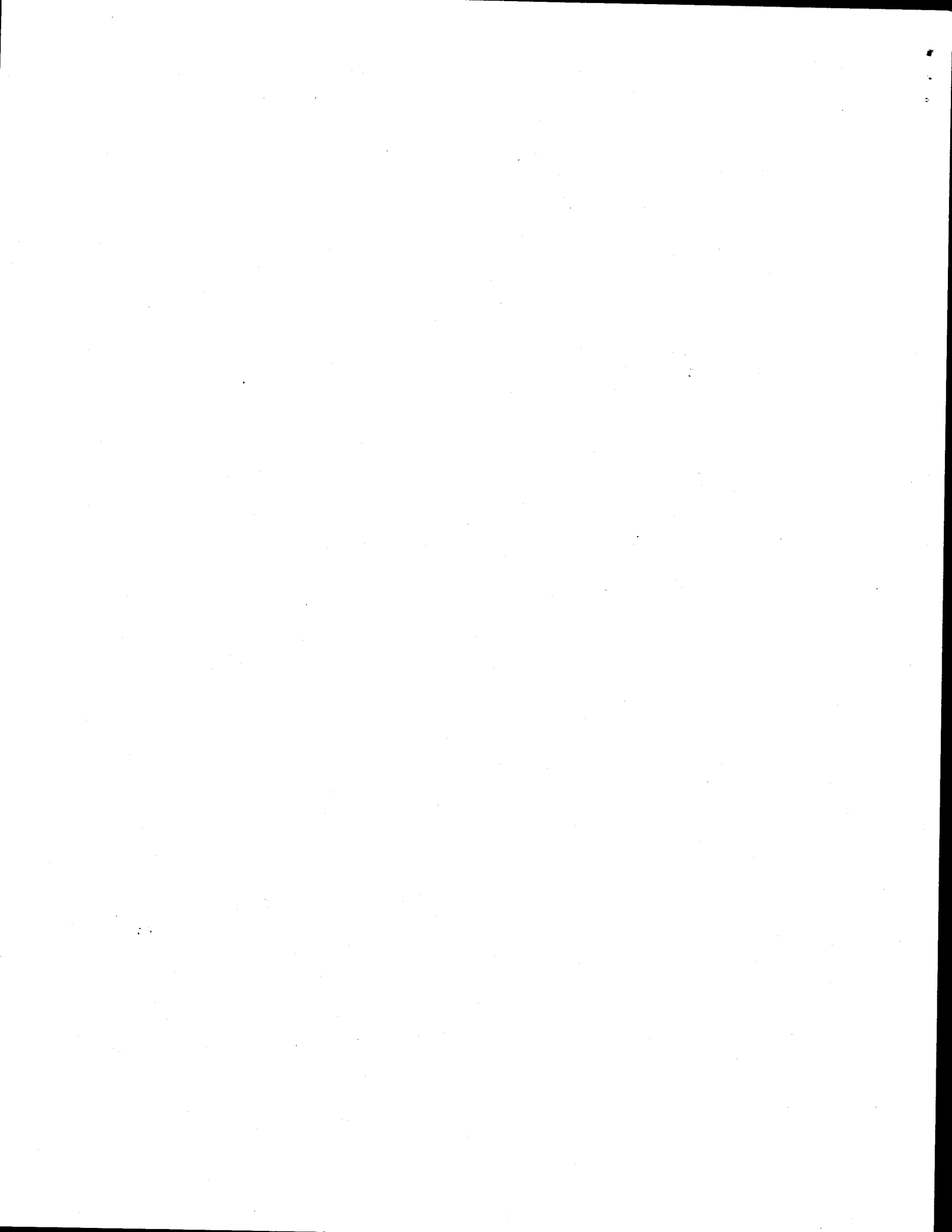
FORGE LODGE
 26025 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA 90265

BARSOCHINI & ASSOCIATES, INC.
 ARCHITECTS
 10000 E. MARSH CANYON AVE., SUITE 100
 BOULDER, COLORADO 80504

S I T E P L A N

DATE: 2/18/82
 SCALE: 1" = 30' - 0"
 DRAWN BY: SY
 CHECKED BY: SY

1



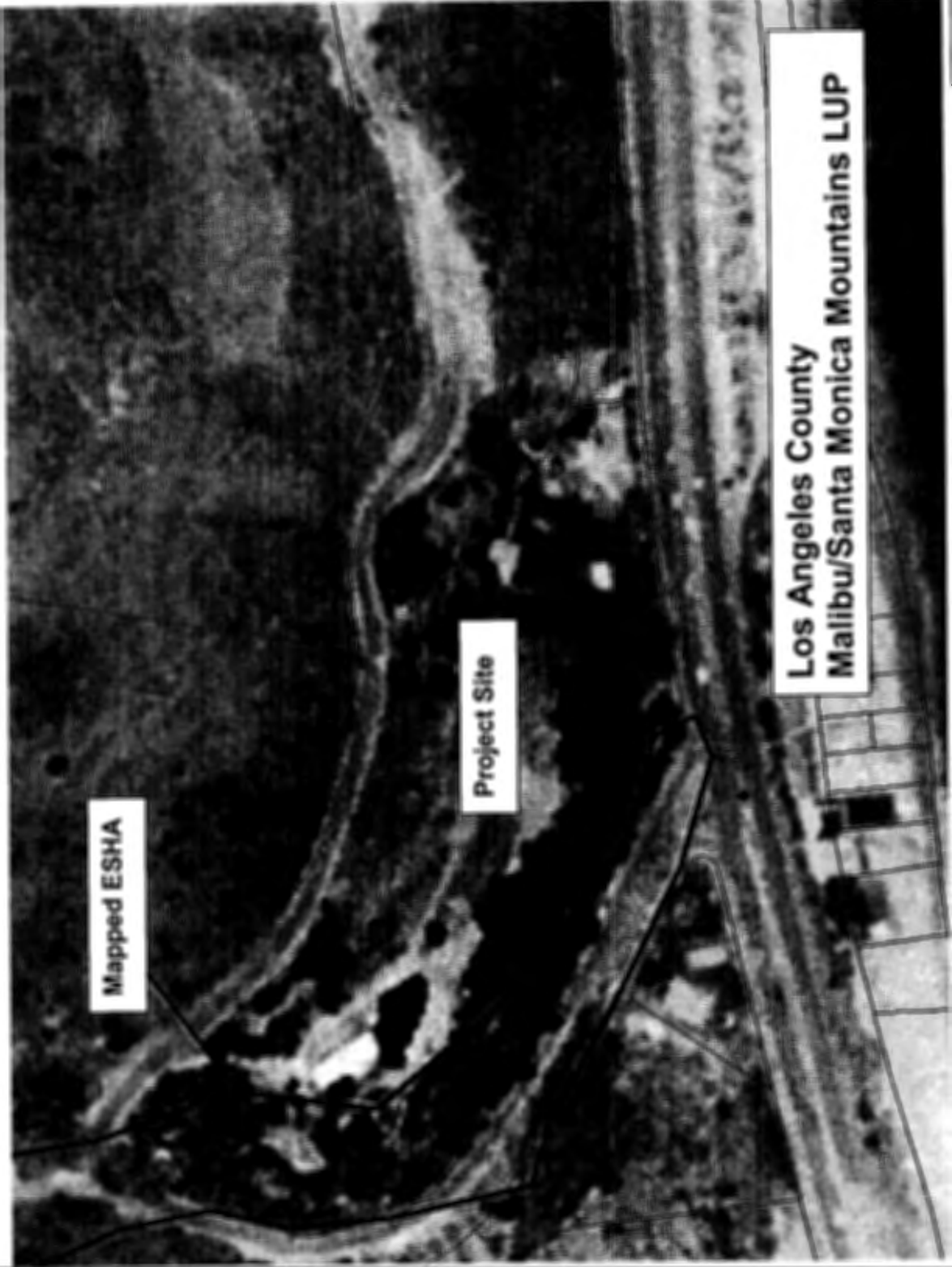


Exhibit 18

5-87-983-A2

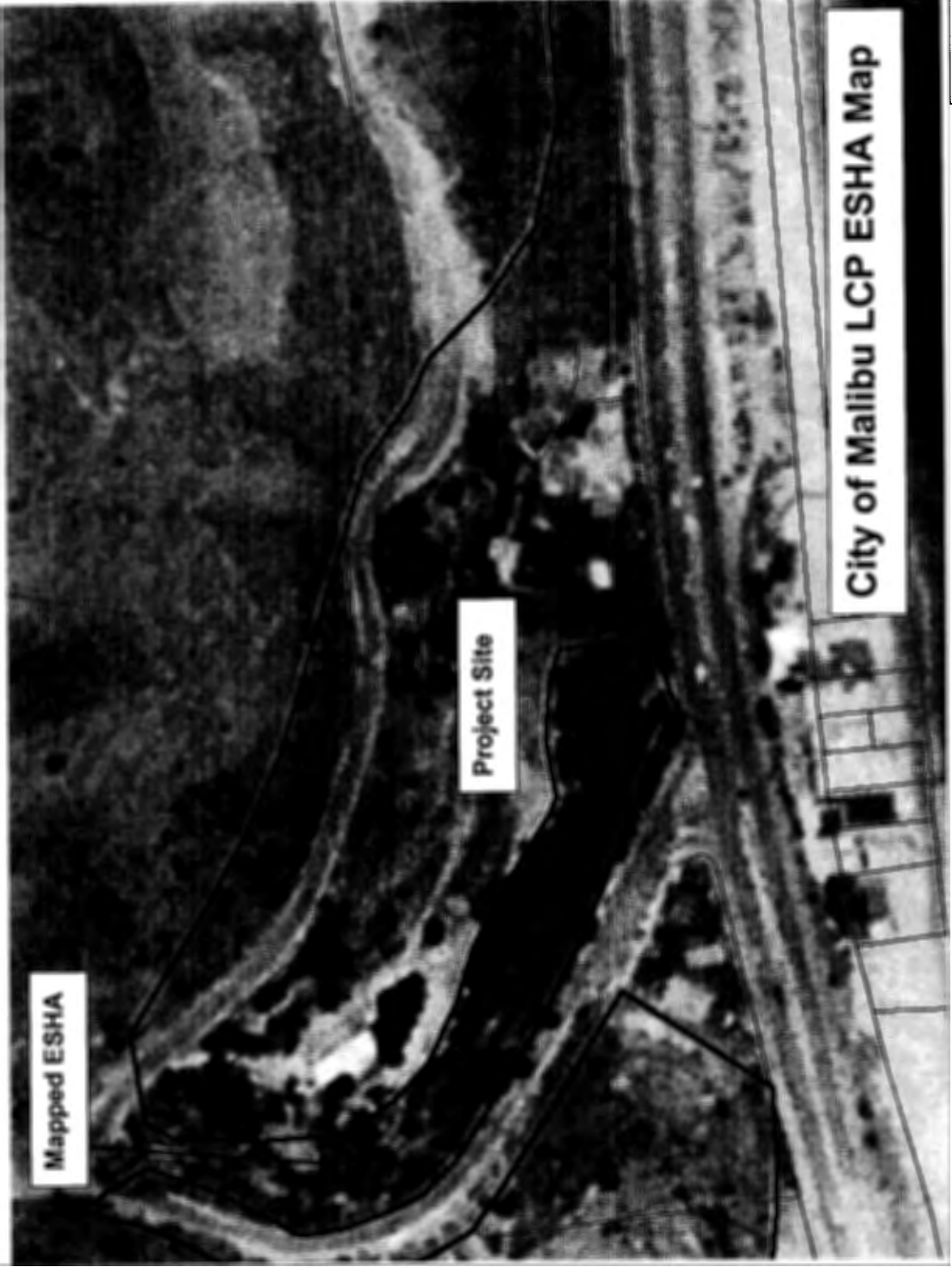
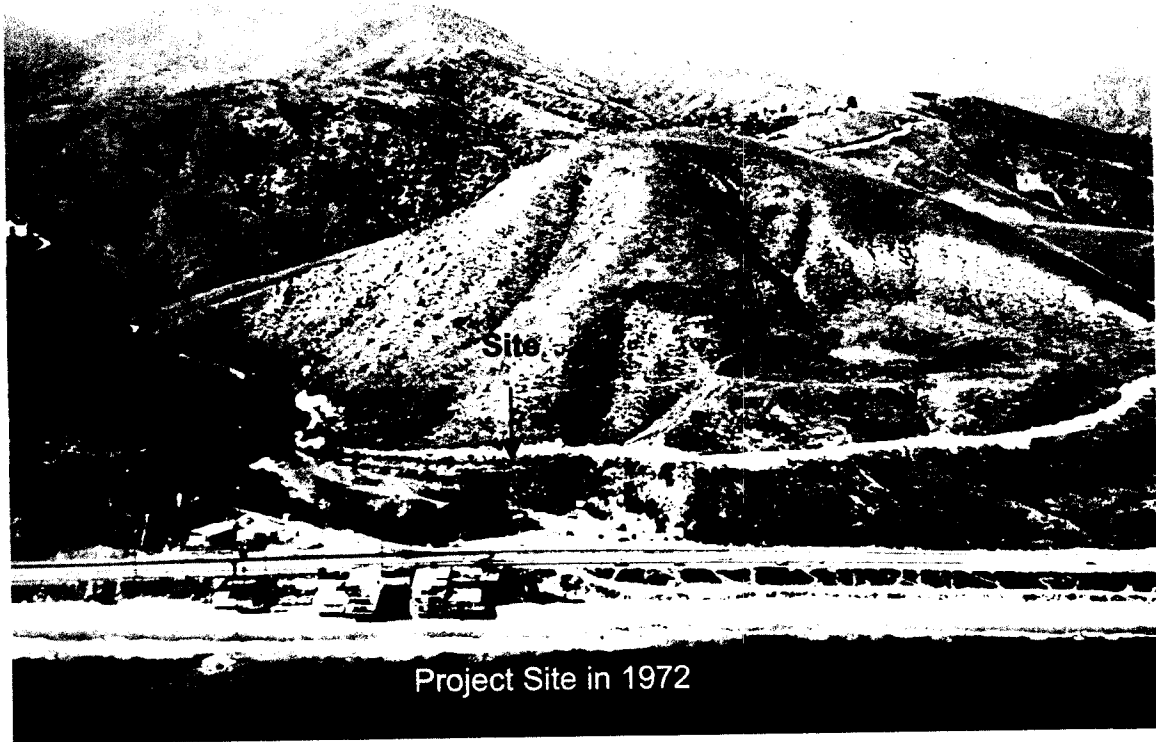
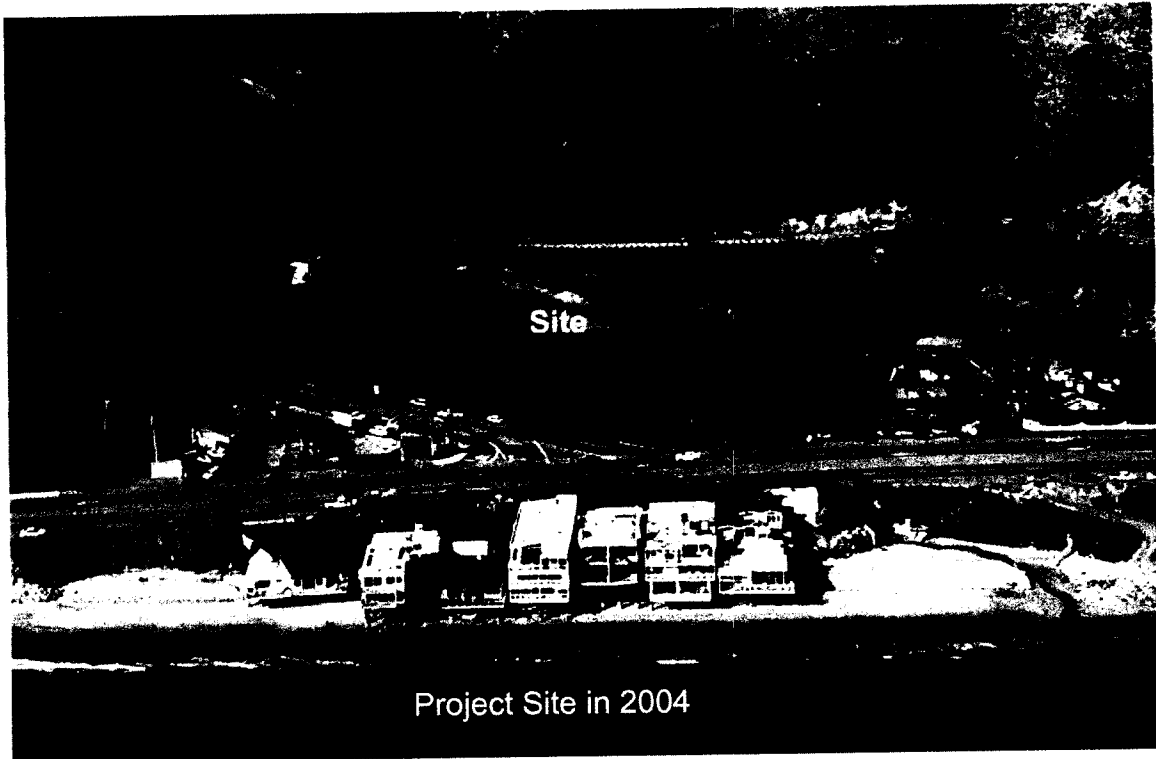


Exhibit 19

5-87-983



Project Site in 1972



Project Site in 2004

Exhibit 21
Permit Amendment 5-87-983-A2
Aerial Photos

