

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-06-034

APPLICANT: Ed Neil

AGENT: Deborah Neil

PROJECT LOCATION: 24563 Piuma Road, Malibu (Los Angeles County)

PROJECT DESCRIPTION: After-the-fact approval of the subject parcel that was created pursuant to Certificate of Compliance # 88-1119.

SUBSTANTIVE FILE DOCUMENTS: Conditional Certificate of Compliance #88-1119 recorded as document 88-1387439 on August 30, 1988 and Certificate of Compliance Clearance of Conditions CC-88-1119 recorded as document 92-2371872 on December 17, 1992, Review of the Malibu/Santa Monica Mountains Transfer of Development Credit (TDC) Program, California Coastal Commission, dated April 25, 1996, Action Plan for Implementing Recommendations of the Santa Monica Mountains/Malibu Regional Cumulative Assessment Project (ReCAP), California Coastal Commission, dated June 9, 1999

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **APPROVAL** of the proposed project with **TWO (2) SPECIAL CONDITIONS** regarding (1) cumulative impact mitigation and (2) condition compliance.

The applicant proposes after-the-fact approval of the subject 8.7-acre parcel (Assessor's Parcel Number 4453-025-003) that was approved by Los Angeles County in 1988 pursuant to Conditional Certificate of Compliance CC-88-1119.

The subject 8.7-acre lot was created in 1966 by a deed that purported to subdivide an approximately 58-acre parcel. The Commission previously approved permits for residential development on three of the 10 other parcels that resulted from the 1966 subdivision and several subsequent subdivisions in the 1960's and 70's. In addition, the subject parcel is not in common ownership with the other contiguous parcel created from the parent parcel.

The standard of review for the proposed permit application is the Chapter Three policies of the Coastal Act. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

STAFF RECOMMENDATION:

I. Approval with Conditions

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-06-034 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a 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 policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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. Standard Conditions

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

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

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

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

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

III. Special Conditions

1. Cumulative Impact Mitigation

The applicant shall mitigate the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains by ensuring that development rights for residential use have been extinguished on the equivalent of one (1) building site in the Santa Monica Mountains Coastal Zone through a Transfer of Development Credit (TDC) transaction.

A. Prior to the issuance of the Coastal Development Permit, the applicant shall complete the following steps to ensure that the development rights are extinguished on the lot(s) equivalent to one Transfer of Development Credit (TDC):

- 1) The applicant shall provide, for the review and approval of the Executive Director, evidence that the TDC lot(s) on which development rights are proposed to be extinguished satisfy the criteria for TDC donor lots established in past Commission actions.
- 2) The applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting or irrevocably offering to dedicate, an open space easement over the TDC lot(s) on which development rights will be extinguished in order to preserve the open space values and preclude residential use on the TDC lot(s). The recorded easement document shall include a formal legal description and graphic depiction, prepared by a licensed surveyor, of the entire parcel(s). The recorded document shall reflect that development in the parcel(s) is restricted as set forth in this permit condition. The grant of easement, or irrevocable offer to dedicate, shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. Such grant of easement or offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assigns, and any such offer to dedicate shall be irrevocable.

- 3) The applicant shall provide evidence, for the review and approval of the Executive Director, that the TDC lot(s) extinguished in Section 2 above have been combined with an adjacent lot(s) that is developed or developable and held in common ownership. The combined lot shall be considered and treated as a single parcel of land for all purposes with respect to the lands included therein, including but not limited to sale, conveyance, taxation, or encumbrance. The applicant shall execute and record a deed restriction, in a form acceptable to the Executive Director, reflecting the restrictions set forth above. The deed restriction shall include a legal description and graphic depiction of the parcels being combined and unified. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.
- 4) The applicant shall submit, for the review and approval of the Executive Director, a title report for the combined lot created by the TDC lot(s) and the developed or developable lot(s) that demonstrates that the open space easement grant or offer to dedicate required in Section 3 above has been recorded in the chain of title.
- 5) B. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur on the TDC lot(s) on which development rights will be extinguished except for:
 - (a) Brush clearance required by Los Angeles County for permitted structures on adjacent parcels;
 - (b) planting of native vegetation and other restoration activities, if approved by the Commission in a coastal development permit;
 - (c) construction and maintenance of public hiking trails, if approved by the Commission in a coastal development permit; and
 - (d) development of existing easements for roads, trails, and utilities if approved by the Commission in a coastal development permit.

2. Condition Compliance

Within one year 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 requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement will result in a violation of the subject permit and the commencement of enforcement proceedings, including potential judicial action and administrative orders, as well as the recordation of a notice of violation in the chain of title for the property. This condition does not limit or delay any enforcement action by the Commission or the E.D. regarding existing development that has not been approved or conditionally approved by the Commission.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes after-the-fact approval of the subject parcel (Assessor's Parcel Number 4453-025-003) that was approved by Los Angeles County pursuant to Conditional Certificate of Compliance #88-1119.

The project site is a vacant 8.7-acre parcel located on Piuma Road, approximately 5 miles east of the intersection of Piuma Road and Malibu Canyon Road in the Santa Monica Mountain area in western Los Angeles County. The site lies within upper Dark Canyon, which contributes to the greater Cold Creek watershed. Access to the site is from Piuma Road via an unimproved access road (Rotunde Mesa Road). The site is predominantly vegetated with mixed chaparral that is undisturbed with the exception of an unimproved road (Rotunde Mesa) leading to neighboring properties and a short dirt road leading to a small knob onsite. Both dirt access roads predate the effective date of the Coastal Act in 1977 and can be seen on aerial photos of the site taken in 1976. The 1986 Malibu/Santa Monica Mountains Land Use Plan designates the subject parcel as located within the Cold Canyon Resource Management Area. The LUP policies for the Cold Canyon Resource Management area allow divisions of parcels 20 acres or more, as long as all other policy requirements can be met and each parcel created is at least 20 acres in size. The guidelines also allow one residential unit per parcel for lots 20 acres or less in size.

The subject 8.7-acre parcel was created by deed in 1966 as part of a five-lot subdivision of an approximately 58-acre parcel. On May 3, 1966, James P. Feightner created four parcels (4453-025-001, 002, 003, and 4453-002-040) and a remainder lot from an approximately 58-acre parcel. On August 30, 1966 Feightner further subdivided the remainder parcel, creating four additional parcels (4453-025-006, 007, 040 and a single parcel that was later subdivided into three parcels 4453-022-031, 037, and 038). In total, the original subdivision and subsequent subdivisions created what today exists as 10 separate lots. The May and August subdivisions in 1966 were not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (CC-88-1119) to "legalize" the subject property pursuant to the Subdivision Map Act. In 1992 the County of Los Angeles issued a clearance of conditions on Certificate of Compliance CC-88-1119. Although the 1966 subdivision occurred prior to the effective date of the Coastal Act in 1977, because these lots were created in non-compliance with the requirements of the Subdivision Map Act of 1972 and Los Angeles County Planning and Zoning Codes, the subdivision was not recognized as creating new lots until the County issued the Condition Certificate of Compliance in 1988. The issuance of the 1988 Conditional Certificate of Compliance that "legalized" the subject lot pursuant to the Subdivision Map act is, in effect, a subdivision of land and, therefore, requires a coastal development permit. However, the landowner at the time failed to secure a coastal development permit for the underlying

subdivision that created the parcel. The applicant is now requesting after-the-fact approval for the creation of the subject parcel through this coastal development permit.

On October 27, 1982 the Commission denied an application (CDP Application 5-82-596) to subdivide a single 39-acre parcel that encompassed what are now considered parcels with APN 4453-025-001, 002, 003 (the subject parcel), and 4453-002-040 into three parcels of 17, 10, and 11 acres. In the 1982 findings for application 5-82-596, the Commission notes that the 39-acre parcel is located within an area then designated by Los Angeles County as a buffer zone to the Malibu Canyon Significant Ecological Area. The sensitivity of this area, coupled with the impacts of development in what was then an undeveloped highly scenic area, led the Commission to deny the proposed subdivision. Following the October 1982 hearing, though, the Commission approved single-family residences on at least three of the 10 parcels created as part of the 1966 and subsequent subdivisions, including parcels with APN 4453-025-002 (CDP 5-89-272), 4453-025-031 (P-10-31-77-2186 and 4-03-054-X), and 4453-002-040 (4-93-192). Houses were subsequently built on all three of these parcels.

B. Cumulative Impacts

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. Section 30250(a) of the Coastal Act states:

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

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

[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The applicant is requesting after-the-fact approval of an unpermitted subdivision that created the subject 8.7-acre parcel. The subject lot (Assessor's Parcel Number 4453-0025-003) was created by deed in 1966 as part of an unpermitted five-lot subdivision of an approximately 58-acre parcel (**Exhibit 2**). This subdivision resulted in the subject

8.7-acre lot and 4 remaining lots. One of the five lots was further subdivided twice in the 1960's and 70's into six separate lots. The following ten lots were a part of the original 58-acre lot that was subdivided in 1966: 4453-025-001; 4453-025-002; 4453-025-003; 4453-025-006; 4453-025-007; 4453-025-031; 4453-025-037; 4453-025-038; 4453-025-040; and 4453-002-040.

The 1966 subdivision that created the subject lot was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (CC-88-1119) on the property to legalize the parcel pursuant to the Subdivision Map Act. In 1992, the County of Los Angeles issued a clearance of conditions on the Certificate of Compliance. Certificate of Compliance CC-88-1119 for the subject site was issued after the effective date of the Coastal Act. The 1988 Certificate of Compliance that legalized this lot pursuant to the Subdivision Map Act is a land division. Although the 1966 five-lot subdivision occurred prior the effective date of the Coastal Act in 1977, these lots were created in non-compliance with the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning Codes in effect at the time of creation, and therefore, this development is not entitled to a permit exemption under the vested rights provision of the Coastal Act.

The Coastal Act includes land divisions in the definition of development. Section 30601 states that "development" includes:

"... subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use ..."

Because they constitute development, all land divisions must be authorized in a coastal development permit. (Section 30600). The Commission, through past permit actions, has considered "land division" to include: subdivisions (through parcel map, tract map, grant deed or any other method), lot line adjustments, redivisions, mergers and certificates of compliance that legalize parcels previously created without required approvals. The action of issuing such a certificate of compliance grants government authorization for a parcel that was previously created illegally, through means that did not comply with the laws in effect at the time. This type of certificate, for the first time, authorizes the land division that created a new parcel. Therefore it constitutes development under the Coastal Act, and requires a coastal development permit.

As such, the issuance of CC-88-1119 constitutes a land division creating the subject parcel that occurred after the effective date of the Coastal Act. Such a land division should have been authorized through a coastal development permit. However, the landowner at the time failed to secure a coastal development permit for the Certificate of Compliance. The applicant is now requesting after-the-fact authorization for the land division that created the subject site as part of this application.

The Commission typically reviews the creation of lots through a division of land in a comprehensive manner and not on a piecemeal basis. The Commission review typically entails an analysis of the individual and cumulative impacts of the subdivision on coastal resources. To accomplish this the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUP, surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire subdivision.

In this case, a comprehensive analysis of the multiple land divisions, which created a total of ten separate parcels (including the subject parcel), is not possible because the lots have been sold to multiple owners and the Commission has permitted development on several of the newly created parcels, including three of the parcels directly adjacent to the subject parcel. In 1977 the Commission approved CDP P-10-31-77-2186 for a single-family residence on parcel 4453-025-031. In 1989, the Commission approved Coastal Development Permit 5-89-272 on parcel 4453-025-002 for construction of a single-family residence. Additionally, in 1994 the Commission approved CDP 4-93-192 for a single-family residence on parcel 4453-002-040. Given these previous approvals, the Commission review, in this case, is limited to the subject 8.7-acre parcel.

The subject parcel and adjacent parcels that were subject to the underlying subdivision are in separate ownerships and the current landowners were not involved in the original subdivision of the original parent parcel. The Commission recently addressed this specific situation in the approval of the Malibu Local Coastal Program (LCP). Although the Malibu LCP is not the standard of review for development in Los Angeles County, the LCP provides policy guidance regarding the certificate of compliance issue in this particular case. The Commission found in the approval of the Malibu LCP that:

A land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 except the minimum parcel size, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction. (Sections 15.3 (C) and (D)). These provisions will prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have

reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.

In this case, the Commission has approved permits for residential development on several of the parcels created from the same parent parcel, the applicant purchased the property in a good faith, arm's length transaction, and the subject parcel is not in current ownership with any other contiguous parcels created from the parent parcel. Therefore, the Commission finds that given the above set of facts in this particular case, approval of the certificate of compliance is appropriate. Given the facts of this particular case, denial of the coastal development permit would result in an unreasonable hardship to the applicant who purchased this property in good faith without knowing the subject parcel was created without the benefit of a coastal development permit. The Commission has authorized residential development on three parcels adjacent to the project site that were also part of the original parent parcel. Since these parcels are now developed and each are in separate ownership (the other undeveloped parcels that are part of the illegal subdivision are also in separate ownership), it would be extremely difficult to undo the illegal land divisions to remedy the violation. Re-assembling the illegal parcels back into the original parent parcel would require undoing past land sales, and removing existing, permitted residential development.

Nonetheless, the creation of an additional parcel in the Santa Monica Mountains will result in adverse cumulative impacts to coastal resources. The creation of a new parcel will ultimately result in the development of an additional single-family residence (although no physical development is proposed at this time). Development of the site will result in landform alteration and potential impacts to visual resources. The eventual development of the site will also result in the removal of undisturbed chaparral habitat that the Commission considers to be environmentally sensitive habitat area (ESHA). Chaparral ESHA will be removed for the construction of a road and building pad, as well as for fuel modification required to provide fire safety for structures on the site. Further, development of the site will increase the amount of impervious surface on the site, increasing runoff. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. These pollutants contribute to non-point source impacts to the water quality of coastal streams and waters. [

All of these impacts to coastal resources are particularly significant when the effects of all developments within an area (for instance within one watershed, or across the entire Santa Monica Mountains Coastal Zone) are considered in a cumulative way. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions.

Cumulative effects of development are of particular concern because of the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer Development Credit (TDC) program as mitigation. Following is the background of the development of the TDC program.

TDC Program Background

In 1978, the report entitled "Cumulative Impacts of Potential Development in the Santa Monica Mountains Coastal Zone" was prepared for the Santa Monica Mountains Comprehensive Planning Commission and the Coastal Commission. The report identified some 5,200 undeveloped parcels in small-lot subdivisions and 3,400 other undeveloped parcels in the Los Angeles County portion of the Santa Monica Mountains area (the area considered in this report included the area now incorporated as the City of Malibu, as well as the unincorporated area remaining under the jurisdiction of Los Angeles County), for total of approximately 8,600 undeveloped lots. Because of the large number of existing lots, greatly increased demands on coastal roads, services, recreational facilities, and beaches would result from development of these lots. The limited road network that provides access to and from the City already experiences extremely heavy traffic, particularly on weekends, and future development of existing, vacant lots will further increase this traffic. Additionally, an example of limited services is the absence of a City-wide municipal sewer system, which requires that most new residential development must dispose of sewage onsite. Thus, the 1978 report recommended that land divisions should not be approved if they increased the total number of lots in the Santa Monica Mountains coastal zone, including Malibu. In other words, the study recommended that a means should be found to combine existing lots or otherwise retire existing lots so that new land divisions would not result in a net increase in the amount of development that could occur.

At the same time, the Coastal Commission was faced with applications for land divisions which raised at least one, and sometimes a second, major issue of conformance with the policies of the Coastal Act. The major issue raised by all proposed land divisions both inside and outside the existing developed areas in the region was the significant cumulative impacts that would result from development of the large number of existing undeveloped lots mentioned above. The second issue, raised by some land divisions, was the technical requirement of Section 30250(a) of the Coastal Act regarding new land divisions outside existing developed areas. That

section requires that such land divisions shall be permitted only where 50 percent of the usable parcels in the area have been developed and where other criteria are met. The Commission found that "existing developed area" applied only to the urbanized strip, or coastal terrace, along Pacific Coast Highway and did not apply to the interior of the Santa Monica Mountains. The Commission further found that because cumulative impacts would result from development of existing lots throughout the region as a whole, in order to assess whether new lots should be created through new land divisions, the area addressed by the 50% criterion should be the entire market area, amounting to the entire Malibu/Santa Monica Mountains coastal zone because development would impact common coastal resources and public access routes and because of comparable proximity to employment centers, recreational resources, and use of the same water supply, roads or other public services.

Based on these concerns, the Commission found no alternative to denial of a number of land divisions requested in the area (#507-77, Bel Mar Estates; #527-77, Schiff; #28-78, Brown). Faced with continuing applications, the Commission adopted conditions to implement the TDC program through a series of permit decisions (#155-78, Zal; #158-78 Eide). The program was designed to address both the cumulative impact problem represented by the large number of existing lots and the technical criteria of Section 30250(a) regarding proposed land divisions outside the coastal terrace.

The TDC program ensures that no net increase in development occurs, even if land divisions are approved. The developability of existing parcels is extinguished at the same time new parcels are created, in order to accomplish this end. Because under this program land divisions do not add to the stock of parcels eligible for future potential development and, in fact, "transfer" development (parcels) to more appropriate areas, the potential cumulative impacts are mitigated. Similarly, because land divisions coupled with lot retirement do not increase the number of potentially usable parcels, the technical criterion of 30250(a) concerning 50% of the usable parcels in the area is, in effect, met.

In addition to assuring conformance with Section 30250(a), the TDC program implements the objectives articulated in the following Coastal Act sections: Sections 30210 and 30211, which state in part, that maximum public access and recreational opportunities shall be provided to all people, consistent with private property rights and new development shall not interfere with the public's right of access to the sea; Section 30251, which requires that scenic and visual qualities of coastal areas be considered and protected as a resource of importance; Section 30231, which requires maintaining the biological productivity and quality of streams and other water bodies; Section 30240, which states in part, that environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values; Section 30253, which requires that new development minimize risks to life and property in areas of high hazard and that such development neither create nor contribute to erosion, geologic instability or destruction of the site or surrounding area; and, Section 30254 which requires that limited capacity in existing public facilities be reserved for priority uses

The program was seen, in connection with these first permit actions, as a pilot program. Later, as applications for land divisions continued to be filed, the program was extended (#346-78; Flood and #119-78, Markham). The program was later applied to construction of multi-family projects, not involving land divisions, and the sliding scale TDC requirement for multi-family projects with relatively small units was also instituted (#182-81; Malibu Deville and #196-81, Malibu Pacifica). The program was fully described in the Interpretive Guidelines for the Malibu/Santa Monica Mountains Coastal Zone which were adopted by the Commission on July 16, 1979 and later revised on June 17, 1981.

In these actions the Commission reaffirmed the appropriateness of the TDC program to mitigate cumulative impacts from creation of new developable lots throughout the Malibu/Santa Monica Mountains area. For example, in the Malibu Deville permit and Malibu Pacifica permits noted above the Commission reaffirmed the direct mitigation embodied in the TDC program and found it to be necessary throughout the Malibu coastal zone, including existing developed areas. Later Commission permit decisions also reaffirmed the use of the program (#5-83-43, Heathercliff).

In 1985, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan (LUP) with Suggested Modifications. One suggested modification the Commission made to the County was that the TDC program be added to the LUP to address the mitigation of the cumulative impacts of development. When the County submitted their revised LUP in 1986, it did not include a TDC program. However, the LUP did include (Policy P272) six alternative techniques to reduce the potential buildout of existing non-conforming lots. The LUP was certified with these six provisions and no TDC program; however, the County never adopted an implementation plan or otherwise implemented any of its proposals for reducing the potential buildout of existing lots.

In several permit actions after the LUP certification [5-86-592 (Central Diagnostic Labs), 5-86-951 (Ehrman and Coombs), 5-85-459A2 (Ohanian), and 5-86-299A2 and A3 (Young and Golling)], the Commission found that until such time as the County did have the means to implement these programs, it was necessary to continue to require permittees to participate in the TDC program as a way to mitigate the cumulative impacts of new subdivisions and multi-family project. Without this means of mitigation, the Commission found that it would have no alternative but to deny the proposed subdivisions.

The Commission reviewed the Malibu/Santa Monica Mountains TDC program at the May 1999 hearing. The report for the Commission's consideration (Review of the Malibu/Santa Monica Mountains Transfer of Development Credit (TDC) Program, California Coastal Commission, dated April 25, 1996) details the "donor areas" where parcels can qualify for TDC credit if they are retired. The criteria for retiring development rights on donor parcels is also discussed in this report.

The Commission's evaluation of the TDC program completed in June 1999 as part of the *Regional Cumulative Assessment Project, Findings and Recommendations, Santa*

Monica Mountains/Malibu Area (ReCAP), confirmed the effectiveness of the TDC program in mitigating cumulative impacts of development in the Malibu/Santa Monica Mountains area. The ReCAP report evaluated potential maximum buildout scenarios under land use plan densities current at the time and identified potential impacts from the development in the region including, in part, that¹:

- The number of residential units could increase from the buildout of existing vacant lots. The ReCAP project scenarios estimated that if existing vacant lots were to be developed, even without additional subdivisions, the number of residential units in the overall region could increase by 60%;
- The overall number of parcels could increase through potential subdivision of existing vacant lots. If not offset by TDCs this could greatly increase current levels of development in the region;
- Hundreds of additional residential units could be added through second units and legalization of previously created but unrecorded lots;
- Impacts could increase because In general, parcels available for future development have significantly greater constraints -- such as steep slopes and sensitive resources -- than do the parcels where the Commission has previously approved development.

The report concluded that the amount of potential future development coupled with the topographic, infrastructure and resource constraints of the area suggest a potential for significant cumulative impacts from new development in the Malibu/Santa Monica Mountains area. The report noted that some regulatory tools, for example denying proposals to extend infrastructure into undeveloped areas, adopting mitigating conditions on permits, and reducing hillside densities, could help mitigate the impacts. But the Commission found:

“Developing to the maximum densities designated through the various plans for the region would result in the same significant cumulative impacts documented in the late 1970s. The use of the various regulatory tools discussed above can reduce the levels of impacts. However, because of the total number of parcels that could be developed, these regulatory tools alone will not decrease the level of development enough to adequately address the impacts. While development of the existing parcels will lead to additional impacts, any further increase in the potential density of the region, created through additional subdivisions, will lead to further impacts. Therefore, an objective in addressing cumulative impacts of growth and development in the ReCAP region is to prevent a further increase in the overall number of lots that can be developed.”²

The ReCAP report went on to note that the TDC program implemented by the Commission effectively mitigated impacts of proposed new subdivisions by retiring development potential on approximately 1,051 existing residential lots covering about

¹ California Coastal Commission, *Regional Cumulative Assessment Project, Findings and Recommendations, Santa Monica Mountains/Malibu Area*, June 1999, pp. 17-20.

² California Coastal Commission, 1999, pp. 19-20.

1,673 acres of land in the Santa Monica Mountains/Malibu region while allowing subdivisions to create about 700 new lots. Most retired lots were located in the small lots subdivisions and without these lots being retired ReCAP estimated that about 1,145 new residential units could have been developed. The result of this program has been to not only reduce the overall density of development in the region, but also to direct development to more appropriate locations. For example, density in the small lots subdivisions has been reduced and lots containing significant sensitive resources have been retired.³ Nevertheless, the ReCAP report indicated that there still are approximately 1,370 vacant existing parcels in the City of Malibu. Thus, there is the potential for significant adverse cumulative impacts to coastal resources simply from future development of the existing parcels.

The Coastal Commission acted in June 1999 to adopt the ReCAP recommendations, which included modifications to the TDC program criteria, including the limiting of donor areas within small lot subdivisions, allowing for the retirement of parcels adjacent to parklands, and within significant watersheds, wildlife corridors, and environmentally sensitive habitat area.

The TDC program has resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of §30250(a). In summary, the Commission has found that the TDC program remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny land division projects, based on the provisions of §30250(a) of the Coastal Act.

The applicant is requesting approval of a subdivision to create a new 8.7-acre parcel in the Santa Monica Mountains. The Coastal Commission finds that the incremental contribution to cumulative impacts would be the creation, in this case, of one additional lot. As discussed above, the creation of an additional parcel and the future development of a residence on that parcel will result in adverse impacts, including the removal of ESHA, increase in impermeable surfaces and pollutants, as well as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation. As discussed above, if all existing lots in the Santa Monica Mountains are developed there will be significant adverse cumulative impacts on coastal resources. As a result, the Commission finds that if the subject new lot is created, it will contribute to the cumulative adverse impacts to coastal resources. However, if development rights are retired on an existing lot, the subject new lot can be created while minimizing adverse impacts to coastal resources. Therefore, the Commission finds it necessary to impose cumulative impact mitigation requirements as a condition of approval of this permit in

³ California Coastal Commission, 1999, pp. 20-28.

order to insure that the cumulative impacts of the creation of an additional buildable lot is adequately mitigated.

Therefore, **Special Condition One (1)** requires the applicant to mitigate the cumulative impacts of the development of this property, through the purchase of one (1) TDC. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

C. Violations

Unpermitted development occurred on the subject parcel prior to submission of this permit application involving creation of the subject lot from an approximately 58-acre parcel. The 1966 subdivision that created the subject lot was not properly permitted pursuant to the requirements of the Subdivision Map Act and Los Angeles County Planning and Zoning codes. In 1988, the County of Los Angeles issued a Conditional Certificate of Compliance (CC-88-1119) on the property to legalize the parcel pursuant to the Subdivision Map Act. Issuance of the 1988 Certificate of Compliance, which legalized this lot pursuant to the Subdivision Map Act, is a subdivision and, therefore, requires a coastal development permit. However, the landowners at the time failed to secure a coastal development permit for the subdivision. The applicant is now requesting after-the-fact approval to authorize the subject parcel as it was created pursuant to the 1988 Certificate of Compliance in order to address the unpermitted development.

In order to ensure that the matter of unpermitted development is resolved in timely manner, **Special Condition Two (2)** requires the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within one year of commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the 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.

D. Local Coastal Program

Section 30604 of the Coastal Act states:

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

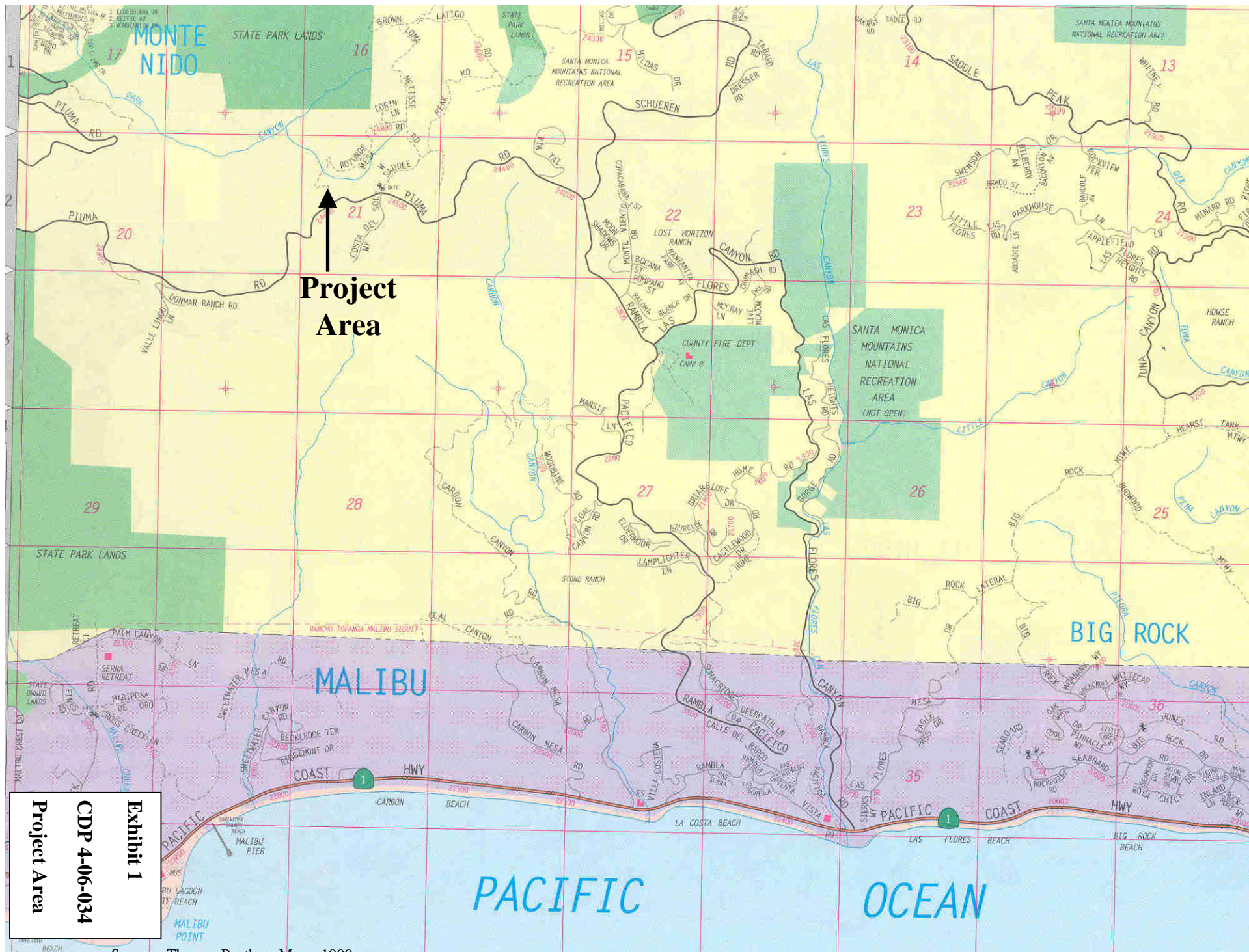
that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the projects and are accepted by the applicant. As conditioned, the proposed developments will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed developments, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

E. California Environmental Quality Act

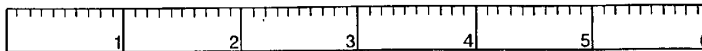
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California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

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



Source: Thomas Brothers Maps, 1999

1-800-345-7334



SCALE IN 1/10 OF AN INCH

4453 25

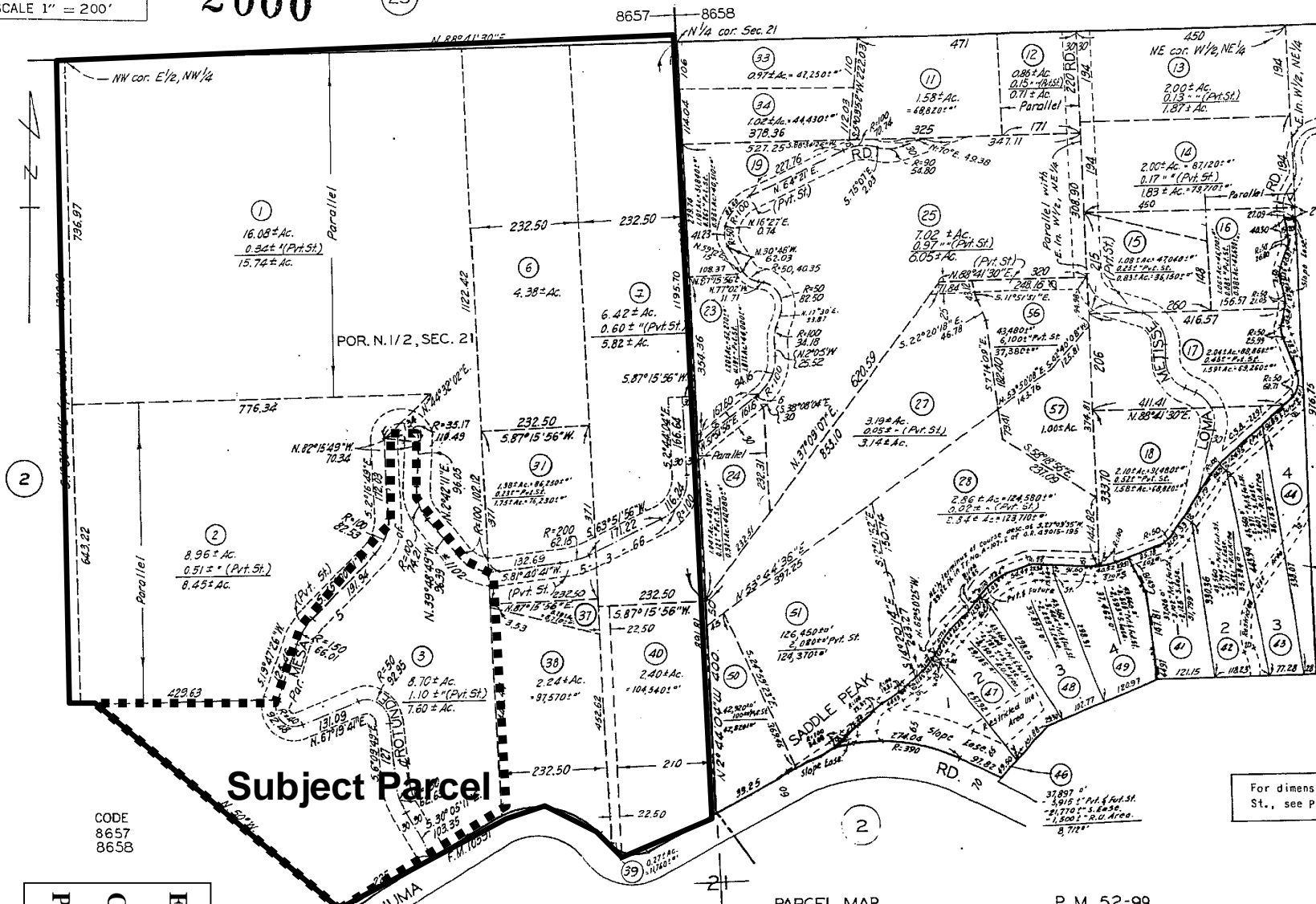
SCALE 1" = 200'

2000

(23)

(18)

670106 671127606
670118 680111
67012507 680115
670707 680119
700914201 680172
701005 720717401
711217207 721019810
73073202 731210302
750619 760628003
760716101 760301
790530
1999051008004002-07
1999051008004004-07



Subject Parcel

CODE
8657
8658

For dimensions along Pvt. & Future St., see P.M. 52-99 & P.M. 52-100.

Exhibit 2a
CDP 4-06-034
Parcel Maps

SEE:

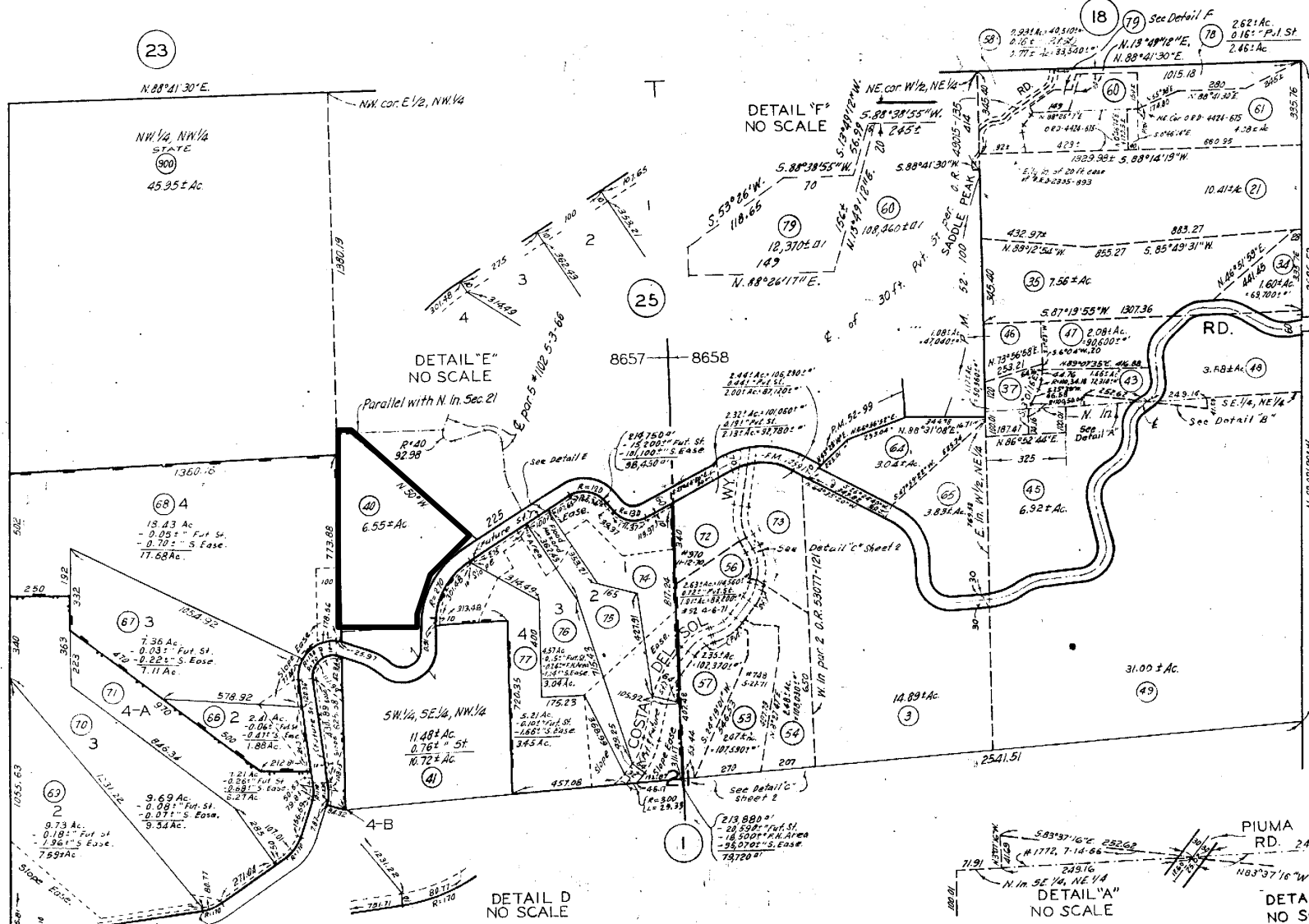
T. I S., R. 17 W.

PARCEL MAP .. P.M. 52-99
PARCEL MAP .. P.M. 52-100

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.
MAY 22 1999

— Parcels Included in Original 58-Acre Lot Pre-1966 (see also Exhibit 2b)
- - - - Subject 8.7-Acre Parcel

670825013
670831207
670827504
670830501
700327402
700327402
710104505
710319
710727506
710930
710083003
720415005
721019802
720719603
750326
750417
750612
760304422
760628003
761012102
780301
780404
800602202
83019004002001
890710400600107
900320



BK 4456

CODE 8657 8658

Parcel Maps
CDP 4-06-034
Exhibit 2b

T. 1 S., R. 17 W.
PARCEL MAP P.M. 58-28
PARCEL MAP P.M. 58-94

PARCEL MAP P.M. 59-80

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

Parcels Included in Original 58-Acre Lot Pre-1966 (see also Exhibit 2a)

SECTION LINES PER C.S. B-128-1

RECORDING REQUESTED BY

Department of Regional Planning
320 West Temple Street
Room 1195, Hall of Records
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO

Name M. E. Horton
Street 18741 Pacific Coast Hwy.,
Malibu, California 90261

City

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA

31 MIN. 8 A.M. AUG 31 1988
PAST.

88 1387439

FEE \$9 G
3

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CERTIFICATE OF COMPLIANCE

REQUEST FOR CERTIFICATE OF COMPLIANCE

[We the undersigned owner(s) of record land/or vendor(s) pursuant to a contract of sale] in the following described property within the unincorporated territory of the County of Los Angeles, hereby REQUEST the County of Los Angeles to determine if said property described below complies with the provisions of the Subdivision Map Act [Sec. 66410 et seq., Government Code, State of California] and the Los Angeles Code, Title 21 (Subdivisions). Malibu Vista Enterprises, a General Partnership.

Signature	Signature	Signature
By: William R. Rieser		
Name (typed or printed)	Name (typed or printed)	Name (typed or printed)
Date	Date	Date

LEGAL DESCRIPTION
(TYPED)

Parcel 1:

That portion of the East half of the Northwest quarter of Section 21, Township 1 South, Range 17 West, San Bernardino Meridian, according to the Official Plat thereof, described as follows:

Beginning at the intersection of the Northerly line of Section 21 with the Westerly line of the Easterly 465.00 feet, measured at right angles, of the Northwest quarter of said Section 21; thence along said Westerly line, South 2° 44' 04" East 1122.42 feet to the center line of that certain strip of land 60.00 feet wide, described in Parcel 3 of deed to Francis A. Besson, recorded on May 3, 1966 as Instrument No. 1102 in Book D3291 Page 542 Official Records of said county, and the true point of beginning; thence Northwesterly and Northerly along said center line to the Northerly terminus of that certain course; therein having a bearing and length of North 2° 42' 11" East 96.05 feet; thence North 82° 15' 49" West 70.34 feet to the Northerly terminus of that certain course in said center line having a bearing and length of South 2° 16' 49" East 172.03 feet; thence Southerly and Southwesterly along said center line to the Southerly terminus of that certain course therein having a bearing and length of South 19° 47' 26" West 125.46 feet; thence South 88° 38' 55" West, along a line which if prolonged would pass through a point on the West line of the East half of the Northwest quarter of said Section 21 distant thereon South 1° 30' 44" East 1380.19 feet from the Northerly line of said Section 21, to a line bearing North 50° 00' 00" West from a point in the Northwesterly line of Puma Road, 60.00 feet wide, that is distant Southwesterly along said Northwesterly line 225.00 feet from its intersection with said center line; thence South 50° 00' 00" East to said Northwesterly line of Puma Road; thence Northeasterly along said Puma Road to said Westerly line of the Easterly 465.00 feet of the Northwest quarter of Section 21; thence along said Westerly line, North 2° 44' 04" East to the true point of beginning.

EXCEPT from all of said land an undivided 1/8 of all oil, gas, gems, and minerals, as contained in the deed from Benjamin F. Field, recorded June 27, 1940 in Book 17622 Page 182 Official Records.

Parcel 2:

An easement for ingress, egress and utility purposes, over that portion of the Northwest quarter of Section 21, Township 1 South, Range 17 West, San Bernardino Meridian, according to the Official Plat thereof, included within a strip of land 60.00 feet wide, lying 30.00 feet on each side of the following described center line:

Continued on page two...

Exhibit 3
CDP 4-06-034
Certificate of
Compliance

APPLICANT: MALIBU VISTA ENTERPRISES

CERTIFICATE OF COMPLIANCE

CONTINUATION

Beginning at a point in the East line of said Northwest quarter, distant thereon North 2° 44' 04" West 891.81 feet from the Northerly line of Puma Road, 60.00 feet wide; thence South 87° 15' 56" West 30.00 feet; thence South 2° 44' 04" East 166.64 feet to the beginning of a tangent curve concave Northwesterly having a radius of 100 feet; thence Southwesterly along said curve, through a central angle of 66° 36' 00" an arc distance of 116.24 feet; thence tangent to said curve, South 63° 51' 56" West 171.22 feet to the beginning of a tangent curve concave Northwesterly having a radius of 200 feet; thence Southwesterly along said curve through a central angle of 17° 48' 45" an arc distance of 62.18 feet; thence tangent to said curve, South 81° 40' 41" West 132.69 feet to the beginning of a tangent curve concave Northeasterly having a radius of 100 feet; thence Westerly and Northwesterly along said curve through a central angle of 58° 30' 30" an arc distance of 102.13 feet; thence tangent to said curve, North 39° 48' 49" West 96.39 feet to the beginning of a tangent curve concave Northeasterly having a radius of 100 feet; thence Northwesterly along said curve, through a central angle of 42° 31' 00" an arc distance of 74.21 feet; thence tangent to said curve, North 2° 42' 11" East 96.05 feet to the beginning of a non-tangent curve concave Southerly having a radius of 35.17 feet; thence Northwesterly, Westerly and Southwesterly along said curve from a tangent bearing North 7° 44' 11" East, through a central angle of 180° 00' 00" an arc distance of 110.49 feet; thence South 2° 16' 49" East 172.03 feet to the beginning of a tangent curve concave Northwesterly having a radius of 100 feet; thence Southwesterly along said curve through a central angle of 47° 17' 00" an arc distance of 82.53 feet; thence tangent to said curve, South 45° 00' 11" West 191.94 feet to the beginning of a tangent curve concave southeasterly having radius of 150 feet; thence Southwesterly along said curve, through a central angle of 25° 12' 45" an arc distance of 66.01 feet; thence tangent to said curve, South 19° 47' 26" West 125.46 feet to the beginning of a tangent curve concave Northeasterly having a radius of 40 feet; thence Southerly, Southeasterly and Northeasterly along said curve, through a central angle of 132° 27' 45" an arc distance of 92.48 feet; thence tangent to said curve, North 67° 19' 41" East 131.09 feet to the beginning of a tangent curve concave Southwesterly having a radius of 100 feet; thence Easterly and Southeasterly along said curve, through a central angle of 106° 30' 30" an arc distance of 92.95 feet; thence tangent to said curve, South 6° 09' 49" East 127.00 feet to the beginning of a tangent curve concave Easterly having a radius of 150 feet; thence Southerly along said curve, through a central angle of 23° 55' 22" an arc distance of 62.63 feet; thence tangent to said curve, South 15° 05' 11" East 103.35 feet to said Northerly line of Puma Road, 60.00 feet wide.

EXCEPT therefrom that portion of said strip of land lying Easterly of the Westerly line of the Easterly 465.00 feet, measured at right angles, of said Northwest quarter of Section 21.

38-1387439

CONDITIONAL CERTIFICATE OF COMPLIANCE

CONTINUATION

CC-88-1119

DETERMINATION OF CONDITIONAL COMPLIANCE

The above described parcel was not created in compliance with State and County Subdivision regulations. Under current State law, THE PROPERTY MAY BE SOLD, LEASED, FINANCED OR OTHERWISE CONVEYED WITHOUT RESTRICTION. HOWEVER, THE CONDITIONS LISTED BELOW MUST BE FULFILLED BEFORE ISSUANCE OF A BUILDING PERMIT OR OTHER DEVELOPMENT APPROVAL. These conditions are in addition to any permit requirements which may be imposed.

CONDITION(S):

1. OFFER for Road-Right-of-Way any portion of the subject property within 40 feet of the centerline for Puma Road and within 30 feet of the centerline for Rotunde Mesa Road the intersection of said right(s)-of-way and Slope-Easements adjacent thereto, to the SATISFACTION of County Public Works Officials.
2. OFFER said Right-of-Way as Easement to other property owners in Section 21, Township 1 South, Range 17 West.
3. DEDICATE to the County the right-to-restrict-access from the subject property to Puma Road.
4. PROVIDE EVIDENCE of ALL WEATHER Vehicular Access with a minimum width of 20 feet, APPROVED by County Fire and Public Works Officials.

NOTES:

Prospective purchasers should check site conditions and applicable development codes to determine whether the property is suitable for their intended use.

Prior to authorization to build on this property, the applicant will be required to conform to the County building regulations. Such regulations include, but are not limited to, programs for appropriate sanitary sewage disposal and water supply for domestic use and fire suppression.

GEOLOGIC, soils and/or drainage conditions on the subject property may limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

Projects which may affect an endangered species, wetlands, a stream bed or any other waters of the United States, will require a permit from the Department of the Army, Corps of Engineers.

88-1387439

A.M.E. 4453-25-3

DEPARTMENT OF REGIONAL PLANNING

DEPARTMENT OF REGIONAL PLANNING
County of Los Angeles, State of CaliforniaBy: *[Signature]*

Title: Administrator, Land Use Reg. Div.

Date: *Aug 26, 1988***AUG 30 1988**

nfs

RECORDING REQUESTED BY

Department of Regional Planning
220 West Temple Street
Room 1281, Hall of Records
Los Angeles, California 90012

AND WHEN RECORDED MAIL TO:

Name: Civiltec Engineering, Inc.

Street: 855 W. Foothill Blvd.

City: Monrovia, CA 91016

92 2371872

RECORDED IN OFFICIAL RECORDS
RECORDERS OFFICE
LOS ANGELES COUNTY
CALIFORNIA

4 MIN. 8 AM DEC 17 1992

SPACE ABOVE THIS LINE FOR RECORDED COST

CERTIFICATE OF COMPLIANCE

CC-88-1119

CLEARANCE OF CONDITIONS

The owner(s) and/or holder(s) of a title interest in the real property within the jurisdictional territory of the County of Los Angeles, having satisfied the conditions as enumerated in the CONDITIONAL CERTIFICATE OF COMPLIANCE, Recorded as document No. 88-1387439 on August 31, 1988, Complies with the provisions of the Subdivision Map Act (Sec. 66410 et seq., Government Code, State of California) and the County Subdivision Ordinance (Ord. 4478, County of Los Angeles.)

OWNER(S): Douglas Behl

NOTES:

Prior to authorization to build on this property, the applicant will be required to conform to the County Building regulations. Such regulations include, but are not limited to: programs for appropriate Sanitary Sewage Disposal, Water Supply for Domestic use and Fire Suppression.

GEOLOGIC, soil and/or Drainage Conditions may exist on the subject property which could limit development or necessitate that remedial measures be taken in order to obtain a Building Permit.

DETERMINATION OF COMPLIANCE

I hereby certify that the subject parcel complies with the applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance and may be developed and/or sold, financed, leased or transferred in full compliance with all applicable provisions of the Subdivision Map Act and of the County Subdivision Ordinance.

AMB. 4453-025-003

DEPARTMENT OF REGIONAL PLANNING



DEPARTMENT OF REGIONAL PLANNING
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
James E. Hart, AICP
Planning Director

Raymond P. Rustie

Administrator, Land Use Reg. Div.

December 16, 1992