

CALIFORNIA COASTAL COMMISSION

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Commission Action:



STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-00-147-A1

APPLICANT: Tim and Kerry Parker

PROJECT LOCATION: 2240 Latigo Canyon Road, Malibu, Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construct a 3,630 sq. ft., two story, 21-foot high, single family residence with 776 sq. ft. attached garage, septic system, water well, swimming pool, jacuzzi, pave access road and driveway, temporary construction trailer, and 136 cu. yds. of grading (68 cu. yds. cut, 68 cu. yds. fill). The project further entails revegetation of an abandoned spur road on the subject parcel.

DESCRIPTION OF AMENDMENT: Construction of a 20-foot long, maximum six-foot high wrought iron electric gate across driveway.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 4-00-147 (Los Angeles County); I.K. Curtis Services, Inc. Aerial Photograph dated 1976; I.K. Curtis Services, Inc. Aerial Photograph dated 1977;

MOTION & RESOLUTION: Page 4

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **APPROVAL** of the proposed amendment to Coastal Development Permit (CDP) 4-00-147 as submitted, to construct a gate across a roadway. On June 15, 2005, the Commission approved CDP 4-00-147 contingent upon nine Special Conditions addressing: Conformance with Geologic Recommendations, Landscaping and Erosion Control, Assumption of Risk, Removal of Excess Graded Material, Drainage and Polluted Runoff Control, Removal of Natural Vegetation, Future Improvements Deed Restriction, Removal of Temporary Construction Trailer, and Night Lighting. All standard and special conditions attached to the previously approved permit remain in effect.

The subject site is located in a rural area of the Santa Monica Mountains, east of Latigo Canyon Road, approximately ½-mile south of the stretch of the Backbone Trail from Castro Peak Motorway to Newton Motorway. The certified Malibu/Santa Monica Mountains Land Use Plan (LUP) designates the subject site as a Wildlife Migration Corridor. The site is developed with a single family residence. Access is via a common road easement that extends approximately 520 feet from Latigo Canyon Road to join a road on the subject parcel which leads to the building pad site. In addition to the road that leads directly to the residence, there is a “spur road” located approximately 100 feet west of the residence. The spur road crosses through approximately 120 feet of the subject parcel, and then crosses to the north to join an unimproved road that leads to a network of dirt roadways on adjacent parcels.

The gate is proposed on the roadway in a location that would block access to the spur road. Given the proximity of an established public trail system in the general area, staff analyzed the potential of the gate to adversely impact public access and recreation. Staff found no evidence that the spur road is generally utilized by the public as an established riding or hiking trail or a public roadway, and no other mapped riding or hiking trail crosses the property. The spur road is not part of a designated trail system for Los Angeles County or the National Park Service (NPS) and is not shown as part of the trail system on the recreation guide for the area. Additionally, staff has contacted NPS and Mountains Recreation and Conservation Authority (MRCA) staff directly to determine whether there is any known use of the spur road as part of the trail system. Neither NPS or MRCA claim an easement interest, nor have they any reported activity along the spur road. The subject spur road is remote and winding, and it is not a convenient connection to the established trail system.

There have been assertions by neighbors that public and private easements exist over the spur road because the spur road has been unobstructed and in use since a private easement was granted in 1943. The applicants have submitted an aerial photograph from I.K. Curtis Services, Inc. dated 1976 which demonstrates that there were some trails or small roadways in the vicinity, including the "spur" portion of the road on the subject property. However, the common access road initiating from Latigo Canyon Road did not extend to the subject property and therefore did not provide a connection to the spur road. Based on staff's review of historic aerial photographs, the access road does not appear to have been extended to the subject site until 1977. In addition, although the neighbors provide evidence of past use, they do not provide substantial evidence of an implied dedication at the subject site. For example, the information provided by the neighbors focuses on localized use by neighbors of the subject site after a private easement was granted over the spur road and does not show the extent of general public use or whether general public use was adverse or without the permission of the property owner. Moreover, even if substantial general public use without the permission of the property owner could be established, there is no evidence such use occurred for the requisite 5 years prior to March 1, 1972. Therefore, there is no substantial evidence of an implied dedication at the subject site.

The proposed gate will be located within the footprint of an existing paved road approved under CDP 4-00-147 and will not require the removal of any native vegetation or result in the loss of any sensitive habitat on site. The neighbors assert that the spur road is a wildlife corridor and that allowing a gate would adversely affect wildlife passage. As detailed in this staff report, the gate will stand alone and will not connect to fencing on either side. No fencing is proposed, nor would it be consistent with the underlying permit. The underlying permit restricts fencing on the property to within 50 feet of the residence, and requires a coastal development permit for new fencing. The gate will restrict vehicular passage along the spur road in one location, and wildlife will retain the ability to travel and access the remainder of the undeveloped portions of the property including native chaparral habitat. Therefore, the proposed amendment will not result in any adverse impacts to wildlife or ability of wildlife to continue using the property as a wildlife corridor. Additionally, the project plans submitted for this gate do not include a lighting component. Since Special Condition 6 of the underlying permit requires that any improvements to the property receive an amendment or new coastal development permit, lighting of the gate or other changes to the project plans would require an amendment or new coastal development permit.

Additional concerns have been brought up by the neighbors involving the use of the spur road by neighboring property owners. These are private disputes and not subject to review under the Coastal Act. Tim and Kerry Parker own the property under fee title, and have the right to apply for a coastal development permit. All known owners of any potential easement interest in the subject property have been notified of the subject permit application.

The standard of review of the proposed amendment is whether or not the proposed gate is consistent with the Chapter 3 policies of the Coastal Act. The proposed amendment is consistent with all applicable policies of the Coastal Act.

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

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

In this case, the proposed amendment will affect a permit condition required for the purpose of protecting coastal resources. I4 Cal. Admin. Code 13166.

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EXHIBITS

- Exhibit 1. CDP 4-00-147 Approved Special Conditions**
- Exhibit 2. Vicinity Map**
- Exhibit 3. Gate Location**
- Exhibit 4. Gate Drawings**

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 4-00-147 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. PERMIT CONDITIONS

All standard and special conditions attached to the previously approved permit remain in effect.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. AMENDMENT DESCRIPTION

The applicant is requesting modification of Coastal Development Permit Application No 4-00-147 to construct a 20-foot long, maximum six-foot high wrought iron electric gate across the roadway to the residence. This electric gate would be located in approximately the same place as an existing unpermitted manual gate. The unpermitted gate is not a part of this application and approval of this amendment does not effectuate the removal or retention of the unpermitted gate.

The underlying permit, CDP 4-00-147, was approved by the Commission on June 15, 2001, for construction of a 3,630 sq. ft., two story, 21-foot high, single family residence, attached three-car garage, septic system, water well, swimming pool, jacuzzi, pave access road and driveway, temporary construction trailer. The residence was approved on an approximately 9,450 square foot building pad. The building pad site is located roughly at the center of the property, near the eastern property boundary of this irregularly

shaped parcel. The Commission's 2001 approval included after-the-fact approval of 136 cubic yards of grading (68 cu. yds. cut, 68 cu. yds. fill) because the ridge top in the building pad area had been lowered one to two feet in elevation to create a roughly level pad without the benefit of a permit.

The site is developed with a single family residence located approximately 700 feet off of Latigo Canyon Road. Access is via a common road easement that extends approximately 520 feet from Latigo Canyon Road to join a road on the subject parcel which leads to the building pad site. In addition to the road that leads directly to the residence, there is a "spur road" located approximately 100 feet west of the residence. The spur road crosses through approximately 120 feet of the subject parcel, then crosses to the north to adjoin an unimproved road that leads to a network of dirt roadways on adjacent parcels. As discussed in Section D below, the Commission finds no evidence that the spur road is generally utilized by the public as an established riding or hiking trail or public roadway, and no other mapped riding or hiking trail crosses the property. In addition, the Commission finds no evidence that the proposed development would interfere with public access rights in a manner inconsistent with the provisions of the Coastal Act.

The Commission approved CDP 4-00-147 contingent upon nine (9) Special Conditions addressing: Conformance with Geologic Recommendations, Landscaping and Erosion Control, Assumption of Risk, Removal of Excess Graded Material, Drainage and Polluted Runoff Control, Removal of Natural Vegetation, Future Improvements Deed Restriction, Removal of Temporary Construction Trailer, and Night Lighting.

On September 28, 2001, the prior to issuance special conditions were met and the permit was issued. The residence was built in 2002.

B. BACKGROUND

The subject site is located at 2240 Latigo Canyon Road, approximately 6½ miles northerly of the intersection of Latigo Canyon Road and Pacific Coast Highway, in Los Angeles County, near Malibu (see Exhibit 1). The 4½ -acre parcel is a hilltop property situated along the east side of Latigo Canyon Road. The site is designated as "Mountain Land" and "Rural Land" in the certified Malibu/Santa Monica Mountains Land Use Plan, characterized by very low-intensity rural development.

The site is situated on a prominent northwest to southeast-trending ridgeline. Natural slopes from the ridge line descend to the north and south at 3:1 (Horizontal:Vertical) and 1.5:1 (H:V) ratios. To the east and west the ridgeline is gently sloping. Topographic relief across the development varies from 30 feet to the north to the lower access road and 100 feet to the south toward Latigo Canyon Road. Drainage is by sheet flow runoff from the natural topography to the north or south. There are no United States Geological Survey (U.S.G.S.) designated "blueline" drainage courses on the site. However, the subject parcel drains into blueline tributaries of Escondido Creek, a USGS blueline stream. Escondido Creek courses to the Pacific Ocean approximately 5 miles downgradient of the subject parcel.

The proposed project is located within an area designated by the certified Malibu/Santa Monica Mountains Land Use Plan as a Wildlife Migration Corridor. The certified LUP establishes specific policies and development standards to protect the resources of these relatively undisturbed areas. Impacts to these resources by the proposed development are discussed further in Section D below. The proposed project will not be visible from scenic highways or from parkland or trails.

There are several reported violations on the subject property, including non-native landscaping, failure to remove excess graded (cut) material from the Coastal Zone, failure to remove a construction trailer as required, as well as placement of an unpermitted gazebo, shed, gate, and both chainlink & wooden fencing, all in a designated wildlife corridor. The Commission's enforcement division will independently evaluate further actions to address this matter.

Development has occurred on the subject site in non-compliance with the terms, conditions, and previously approved plans of the underlying Coastal Development Permit 4-00-147 including, but not limited to, the following: (1) installation of non-native landscaping in non-compliance with the previously approved landscape plans; (2) failure to remove excess graded (cut) material from the Coastal Zone as specifically required by a special condition of the underlying permit; (3) failure to remove a construction trailer as specifically required by a special condition of the underlying permit; and (4) placement of both chainlink and wooden fencing in a designated wildlife corridor specifically prohibited by a special condition of the underlying permit. Additionally, development has occurred on the subject site without the required coastal development permit including but not limited to installation/construction of an unpermitted gazebo, shed, and gate. The applicant is not proposing to address any of the above referenced unpermitted development or other violations involving non-compliance with the previously approved plans and conditions of the underlying coastal permit as part of this pending amendment application. Therefore, the Commission's enforcement division will investigate further and take appropriate action to address this matter.

C. COMMISSION ACTION PRIOR TO COASTAL DEVELOPMENT PERMIT NO. 4-00-147 ISSUED IN 2001

On April 13, 1994, the Commission approved Coastal Development Permit 4-93-200 for a 4,899 sq. ft., 28 ft. high from existing grade single family residence with 660 sq. ft. tack room, 880 sq. ft. paddle tennis court, swimming pool, patio, water well, septic system and 1,400 cu. yds. of grading (1,400 cu. yds. cut, 0 cu. yds. fill) on the subject site. The applicant did not fulfill the special conditions associated with CDP 4-93-200 or obtain an extension. The permit expired on April 13, 1996.

D. PUBLIC ACCESS/RECREATION & ENVIRONMENTALLY SENSITIVE HABITAT

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all 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 30211 of the Coastal Act further states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213 of the Coastal Act states in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Coastal Act Section 30240 affords protection of environmentally sensitive habitat areas as follows:

(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.

The provisions of the Coastal Act require the protection of coastal resources, including public access, sensitive habitat, marine resources and water quality, biological productivity, coastal-dependent uses, and visual resources. Specifically, Coastal Act Sections 30210, 30211, and 30213 mandate that maximum public access and recreational opportunities and facilities be provided and protected and that development not interfere with the public's right to access the coast. Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas (ESHA) be protected and that development be sited and designed to prevent impacts to such areas.

The applicant is requesting modification of Coastal Development Permit Application No 4-00-147 to construct a 20-foot long, maximum six-foot high wrought iron electric gate across the roadway to the residence. This electric gate would be located in approximately the same place as an existing unpermitted manual gate. The unpermitted gate is not a part of this application and approval of this amendment does not effectuate either the removal or authorization of the unpermitted gate.

1. Public Access

The subject site is located in a rural area of the Santa Monica Mountains, east of Latigo Canyon Road, approximately ½-mile south of the stretch of the Backbone Trail from Castro Peak Motorway to Newton Motorway. The subject site is situated in proximity to a large network of publicly owned lands. Specifically, the site is located less than ¼-mile from a large area of National Park Service land known as “Castro Crest” to the north and to the east of the subject property. Further to the east and coterminous with the NPS land is Malibu Creek State Park.

The site is developed with a single family residence located approximately 700 feet off of Latigo Canyon Road. Access is via a common road easement that extends approximately 520 feet from Latigo Canyon Road to join a road on the subject parcel which leads to the building pad site. In addition to the road that leads directly to the residence, there is a “spur road” located approximately 100 feet west of the residence. The spur road crosses through approximately 120 feet of the subject parcel, then crosses to the north to adjoin an unimproved road that leads to a network of dirt roads on adjacent parcels.

The spur road is not part of a designated trail system for Los Angeles County or the National Park Service (NPS) and is not shown as part of the trail system on the recreation guide for the area (Tom Harrison Trail Maps, Malibu Creek State Park Trail Map, 2005). Additionally, staff has contacted NPS and Mountains Recreation and Conservation Authority (MRCA) staff directly to determine whether there is any known use of the spur road as part of the trail system. Neither NPS or MRCA claim an easement interest, nor have they any reported activity along the spur road. The subject spur road is remote and winding, and it is not a convenient connection to the established trail system.

The spur road joins a network of dirt roads that connect Latigo Canyon Road and McReynolds Fire Road. However, there are alternative methods to reach both Latigo Canyon Road and McReynolds Fire Road and the known public trails systems located offsite that would not require use of these roadways on the subject site.

There have been assertions by neighbors that public and/or private easements exist over the spur road. The neighbors have stated that they consider the spur road to be an open public roadway for a number of reasons. The first of which is that the spur road has been unobstructed and in use since a private roadway easement was granted in 1943. Neighboring property owner Richardson asserts that he has been using the subject spur road since 1963 and that there have been no gates, no signs, or any other obstructions until the recent placement of the unpermitted chainlink gate. Additionally, Richardson asserts that the road is used by 30 different property owners because it connects McReynolds Road to Latigo Canyon Road. Further, according to Blake, the road has been used by the public, including use during the annual equestrian Malibu Endurance Ride.

a. Consistency with Section 30211 of the Coastal Act

Section 30211 of the Coastal Act states, in part, that “development shall not interfere with the public’s right of access to the sea where acquired through use or legislative

authorization.” Applicants for coastal development permits must demonstrate that their proposed developments are consistent with the Coastal Act, including the requirements of Section 30211 of the Act. In implementing these policies, the Commission, must consider whether a proposed development will interfere with or adversely affect an area over which the public has obtained public rights of access. The agency must determine whether there is substantial evidence to support the conclusion that the area has been impliedly dedicated to public use.

A right of access through use is, essentially, an easement over real property which comes into being without the explicit consent of the owner. The acquisition of such an easement by the public is referred to as an “implied dedication.” The doctrine of implied dedication was confirmed and explained by the California Supreme Court in Gion v. City of Santa Cruz (1970) 2 Cal.3d 29. The right acquired is also referred to as a public prescriptive easement, or easement by prescription. This term recognizes the fact that the use must continue for the length of the “prescriptive period,” before an easement comes into being.

The rule establishes a statute of limitations, after which the owner cannot assert formal full ownership rights to terminate an adverse use. In California, the prescriptive period is five years.

For the public to obtain an easement by way of implied dedication, it must be shown that:

- 1) The public has used the land for a period of five years or more as if it were public land;
- 2) Without asking for or receiving permission from the owners;
- 3) With the actual or presumed knowledge of the owner;
- 4) Without significant objection or bona fide attempts by the owner to prevent or halt the use; and
- 5) The use has been substantial, rather than minimal.

When evaluating the conformance of a project with 30211, the Commission or the applicable local government cannot determine whether public prescriptive rights actually do exist; rather, that determination is made by a court of law. However, the Commission or the applicable local government is required under Section 30211 to prevent development from interfering with the public's right of access where acquired through use or legislative authorization. As a result, where there is substantial evidence that such rights may exist, the Commission or the applicable local government must ensure that proposed development would not interfere with any prescriptive rights which may exist.

The courts have recognized the strong public policy favoring access to the shoreline, and have been more willing to find implied dedication for that purpose on shoreline properties than when dealing with inland properties. A further distinction between inland and coastal properties was drawn by the Legislature subsequent to the Gion decision when it enacted Civil Code Section 1009. Civil Code Section 1009 provides that if lands are located more than 1,000 yards from the Pacific Ocean its bays, and inlets, unless there has been a written, irrevocable offer of dedication or unless a government entity has improved, cleaned, maintained the lands, the five years of continual public use must have occurred prior to March 4, 1972. In this case, the subject site is *not* within 1,000 yards of the sea;

therefore the required five-year period of use must have occurred *prior* to March of 1972 in order to establish public rights in the property.

As stated above, the neighbors have stated that they consider the spur road to be an open public roadway for a number of reasons. The first of which is that the access road has been unobstructed and in use since a private easement was granted in 1943. Neighboring property owner Richardson asserts that he has been using the subject access road since 1963 and that there have been no gates, no signs, or any other obstructions until the recent placement of the unpermitted chainlink gate. Additionally, Richardson asserts that the road is used by 30 different property owners because it connects McReynolds Road to Latigo Canyon Road.

Although this information suggests a period of use in the past, the evidence does not by itself establish potential prescriptive rights of public access. The applicants have submitted an aerial photograph from I.K. Curtis Services, Inc. dated 1976 which demonstrates that there were some trails or small roadways in the vicinity, including the "spur" portion of the road on the subject property. However, the common access road initiating from Latigo Canyon Road did not extend to the subject property and therefore did not provide a connection to the spur road. Based on staff's review of historic aerial photographs, the road did not extend from Latigo Canyon Road to the subject property until 1977. In addition, the information provided by the neighbors focuses on localized use by neighbors of the subject site after a private easement was granted over the spur road and does not show the extent of general public use or whether general public use was adverse or without the permission of the property owner. Moreover, even if substantial general public use without the permission of the property owner could be established, there is no evidence such use occurred for the requisite 5 years prior to March 1, 1972. Therefore, there is no substantial evidence of an implied dedication at the subject site.

There are additional assertions that the spur road has been in use for an annual equestrian event, known as the Malibu Endurance Ride, for decades. Staff research indicates that the Malibu Endurance Ride is an annual event hosted by various "Ride Managers," resulting in the initiation, conclusion, and required stops to occur in various locations in the central part of the Santa Monica Mountains. It is possible that the Ride has crossed through the subject property, especially given that the Ride occurs along the Backbone Trail immediately north of the subject property. However, since this event did not take place for 5 years prior to March 1, 1972, such usage did not establish public rights in the property. Moreover, since the route does not follow the same trail each year and there is flexibility in the course, the proposed gate will not serve as an impediment to the continuation of the annual Malibu Endurance Ride.

For the above reasons, staff finds that the proposed gate will not interfere with public access rights in a manner inconsistent with the provisions of the Coastal Act. Therefore, the Commission finds that the proposed amendment will not adversely impact recreational opportunities or public access and the proposed amendment is consistent with Sections 30210, 30211, and 30213 of the Coastal Act.

2. Wildlife Corridor/ESHA

The proposed project is located within an area designated by the Malibu/Santa Monica Mountains Land Use Plan as a Wildlife Migration Corridor. In the approval of 4-00-147, the Commission found that fencing of the site would adversely impact the movement of wildlife and therefore fencing was limited to within 50 feet of the residence and around the pool.

Specifically, Special Condition 6 (Future Improvements Deed Restriction) requires:

... any proposed fencing of the subject property is prohibited except for fencing required for safety around the pool pursuant to the Uniform Building Code and within 50 feet of the approved residence approved with a valid coastal development permit or permit amendment from the Commission or from the applicable certified local government. The applicant agrees that fencing on site must be of a type that will not restrict wildlife movement or cause injury to wildlife; barbed wire, mesh or chain link fencing shall not be permitted, except that chain link fencing may be permitted for safety around the pool pursuant to the Uniform Building Code.

The applicant is requesting a gate across a spur road on his property. The proposed gate will be located within the footprint of an existing paved road approved under CDP 4-00-147 and will not require the removal of any native vegetation or result in the loss of any sensitive habitat on site. The gate will stand alone and will not connect to fencing on either side. No fencing is proposed, nor would it be consistent with the underlying permit. As a result, only the spur road would be blocked to wildlife travel at this one location. The remaining undeveloped portion of the property, including native chaparral habitat, cannot be fenced and therefore will remain passable to wildlife. Therefore, the proposed amendment will not result in any adverse impacts to wildlife or ability of wildlife to continue using the property as a wildlife corridor.

The Commission found that night lighting on the property had the potential to alter or disrupt feeding, nesting, and roosting activities of native wildlife species. In order to ensure that night lighting will not create adverse night time visual impacts that may adversely affect wildlife in this Wildlife Corridor, the Commission applied Special Condition 9 to the underlying permit. Special Condition 9 requires that night lighting, if any, shall be directed downward, be of low intensity, at low height and shielded; security lighting, if any, shall be controlled by motion detector to avoid creating adverse night time visual impacts. However, the project plans submitted for this gate do not include a lighting component. Since Special Condition 6 of the underlying permit requires that any improvements to the property receive an amendment or new coastal development permit, lighting of the gate or other changes to the project plans would require an amendment or new coastal development permit.

Therefore the Commission finds that the proposed amendment will not adversely impact biological resources or sensitive habitat and therefore, the amendment is consistent with Section 30240 of the Coastal Act.

E. OTHER DISPUTES & ISSUES

Neighbors have stated concerns regarding placement of the gate for multiple reasons: (1) the gate will cross a roadway, not a driveway; (2) the spur road has been used by neighboring property owners since 1943; (3) the spur road is a public roadway (4) the spur road is a wildlife corridor; and (5) there are existing violations on the subject site that should be reconciled prior to approval of a gate.

Items 1 and 2, above, involving the use of the spur road by neighboring property owners are private disputes and not subject to review under the Coastal Act. Tim and Kerry Parker own the property under fee title, and therefore have the right to apply for a coastal development permit. The standard of review of the proposed gate is whether or not the gate itself is consistent with the Chapter 3 policies of the Coastal Act.

Section 30601.5 of the Coastal Act requires that all holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as co-applicant. It appears that two neighbors, Kristin Blake and Doug Richardson, may have an easement interest in the property. Given the history of litigation amongst the parties, the neighbors were provided written notice but are not considered project proponents or co-applicants.

In addition to the private easement issues, the neighbors have stated that they consider the spur road to be an open public roadway for a number of reasons. The first of which is that the spur road has been unobstructed and in use since a private easement was granted in 1943. Neighboring property owner Richardson asserts that he has been using the subject spur road since 1963 and that there have been no gates, no signs, or any other obstructions until the recent placement of the unpermitted chainlink gate. Additionally, Richardson asserts that the road is used by 30 different property owners because it connects McReynolds Road to Latigo Canyon Road. Further, according to Blake, the spur road has been used by the public, including the annual equestrian Malibu Endurance Ride. As detailed in the public access analysis in Section D above, the Commission finds no evidence that the proposed development would interfere with public access rights in a manner inconsistent with the provisions of the Coastal Act.

The neighbors have also stated that the spur road is a wildlife corridor and that allowing a gate would adversely affect wildlife passage. As detailed in Section D above, the gate will stand alone and will not connect to fencing on either side. No fencing is proposed, nor would it be consistent with the underlying permit. The underlying permit restricts fencing on the property to within 50 feet of the residence, and requires a coastal development permit for new fencing. Although the gate will restrict passage along the spur road in one location, and wildlife will retain the ability to travel and access the remainder of the undeveloped portions of the property including native chaparral habitat.

With regard to the neighbors' final assertion, the Commission finds that development has occurred on the subject site in non-compliance with the terms, conditions, and previously approved plans of the underlying Coastal Development Permit 4-00-147 including, but not limited to, the following: (1) installation of non-native landscaping in non-compliance with the previously approved landscape plans; (2) failure to remove excess graded (cut)

material from the Coastal Zone as specifically required by a special condition of the underlying permit; (3) failure to remove a construction trailer as specifically required by a special condition of the underlying permit; (4) placement of both chainlink and wooden fencing in a designated wildlife corridor specifically prohibited by a special condition of the underlying permit. Additionally, development has occurred on the subject site without the required coastal development permit including but not limited to installation/construction of an unpermitted gazebo, shed, and gate. The applicant is not proposing to address any of the above referenced unpermitted development or other violations involving non-compliance with the previously approved plans and conditions of the underlying coastal permit as part of this pending amendment application. Therefore, the Commission's enforcement division will investigate further and take appropriate action to address this matter. Unless an alleged violation is functionally related to proposed development, it is the Commission's practice to address alleged violations separately from permit applications.

F. VIOLATIONS

Development has occurred on the subject site in non-compliance with the terms, conditions, and previously approved plans of the underlying Coastal Development Permit 4-00-147 including, but not limited to, the following: (1) installation of non-native landscaping in non-compliance with the previously approved landscape plans; (2) failure to remove excess graded (cut) material from the Coastal Zone as specifically required by a special condition of the underlying permit; (3) failure to remove a construction trailer as specifically required by a special condition of the underlying permit; (4) placement of both chainlink and wooden fencing in a designated wildlife corridor specifically prohibited by a special condition of the underlying permit. Additionally, development has occurred on the subject site without the required coastal development permit including but not limited to installation/construction of an unpermitted gazebo, shed, and gate. The applicant is not proposing to address any of the above referenced unpermitted development or other violations involving non-compliance with the previously approved plans and conditions of the underlying coastal permit as part of this pending amendment application. Therefore, the Commission's enforcement division will investigate further and take appropriate action to address this matter.

As stated previously, the proposed electric gate would be constructed in approximately the same location as an existing unpermitted manual gate. However, the unpermitted gate is not a part of this application and approval of this amendment does not effectuate either the removal or authorization of the unpermitted gate.

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.

G. 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).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 585-1800



Page 1 of 8
 Date: September 28, 2001
 Permit Application No. 4-00-147

COASTAL DEVELOPMENT PERMIT

On June 15, 2001, the California Coastal Commission granted to Tim & Kerry Parker, permit 4-00-147, subject to the attached Standard and Special Conditions, for development consisting of: Construct a 3,630 sq. ft., two story, 21-foot high, single family residence with 776 sq. ft. attached garage, septic system, water well, swimming pool, jacuzzi, pave access road and driveway, temporary construction trailer, and 136 cu. yds. of grading (68 cu. yds. cut, 68 cu. yds. fill). The project further entails revegetation of an abandoned spur road on the subject parcel and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 2240 Latigo Canyon Road, Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS
 Executive Director

By: Shana Gray
 Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

 Date

 Permittee

**Exhibit 1
 4-00-147-A1
 Standard & Special Conditions
 CDP 4-00-147**

COASTAL DEVELOPMENT PERMIT

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.

SPECIAL CONDITIONS:

1. Plans Conforming to Geologic Recommendations

- (a) All recommendations contained in the GeoSystems Updated Soils and Engineering Geologic Report for Proposed Residence at 2240 Latigo Canyon Road dated April 17, 2000 and Preliminary Soils and Engineering Geologic Investigation for Proposed Single Family Residence APN 4465-6-4418 dated October 25, 1993 reports shall be incorporated into all final design and construction including recommendations concerning foundations, lateral design, temporary excavation slopes, pool subdrain, on-grade slabs, settlement, drainage, grading, reviews, and limitations. All plans must be reviewed and approved by the geotechnical consultants. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval of the Executive Director, evidence of the consultants' review and approval two (2) sets of all final project plans. Such evidence shall include affixation of the consulting geologists' stamp and signature to the final project plans and designs.
- (b) The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal permit. The Executive Director shall determine whether required changes are "substantial."

COASTAL DEVELOPMENT PERMITPage 3 of 8
Permit Application No. 4-00-147**2. Landscape and Erosion Control Plan and Fuel Modification**

Prior to issuance of a coastal development permit, the applicant shall submit two (2) sets of 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 landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

- 1) All disturbed areas, including the abandoned spur road and location of the construction trailer, on the subject site shall be planted and maintained for erosion control purposes within sixty (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) All development approved herein shall be undertaken in accordance with the final approved plans. Any proposed changes to the approved final landscape or fuel modification plans shall be reported to the Executive Director. No changes to said plans shall occur without a Coastal-Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

COASTAL DEVELOPMENT PERMITPage 4 of 8
Permit Application No. 4-00-147

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

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion 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 the coastal zone or to a site within the coastal zone permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

COASTAL DEVELOPMENT PERMIT

C) Monitoring

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies that 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.

3. Assumption of Risk

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

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

COASTAL DEVELOPMENT PERMIT

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Permit Application No. 4-00-147

4. Removal of Excess Graded Material

The applicant shall remove all excavated material consisting of approximately 68 cubic yards of material to an appropriate disposal site located outside of the Coastal Zone.

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

5. Drainage and Polluted Runoff Control Plan

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, two (2) sets of 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 that 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 stormwater from each runoff event, 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, 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. 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.

COASTL DEVELOPMENT PERMIT

6. Future Improvements

This permit is only for the development described in Coastal Development Permit No. 4-00-147. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall apply to the entire property. Accordingly, any future improvements to the entire property including the permitted residence and garage, and clearing of vegetation or grading, other than as provided for in the approved fuel modification landscape and erosion control plan prepared pursuant to Special Condition Number Two (2), shall require an amendment to Permit No. 4-00-147 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government. In addition, any proposed fencing of the subject property is prohibited except for fencing required for safety around the pool pursuant to the Uniform Building Code and within 50 feet of the approved residence approved with a valid coastal development permit or permit amendment from the Commission or from the applicable certified local government. The applicant agrees that fencing on site must be of a type that will not restrict wildlife movement or cause injury to wildlife; barbed wire, mesh or chain link fencing shall not be permitted, except that chain link fencing may be permitted for safety around the pool pursuant to the Uniform Building Code.

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

7. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the Zone A Setback area pursuant to the applicant's Fuel Modification Plan required pursuant to Special Condition Number Two (2) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Further vegetation thinning pursuant to the Fuel Modification Plan shall not occur until commencement of construction of the structure approved pursuant to this permit.

COSTAL DEVELOPMENT PERMIT

Page 8 of 8
Permit Application No. 4-00-147

8. Removal of Construction Trailer

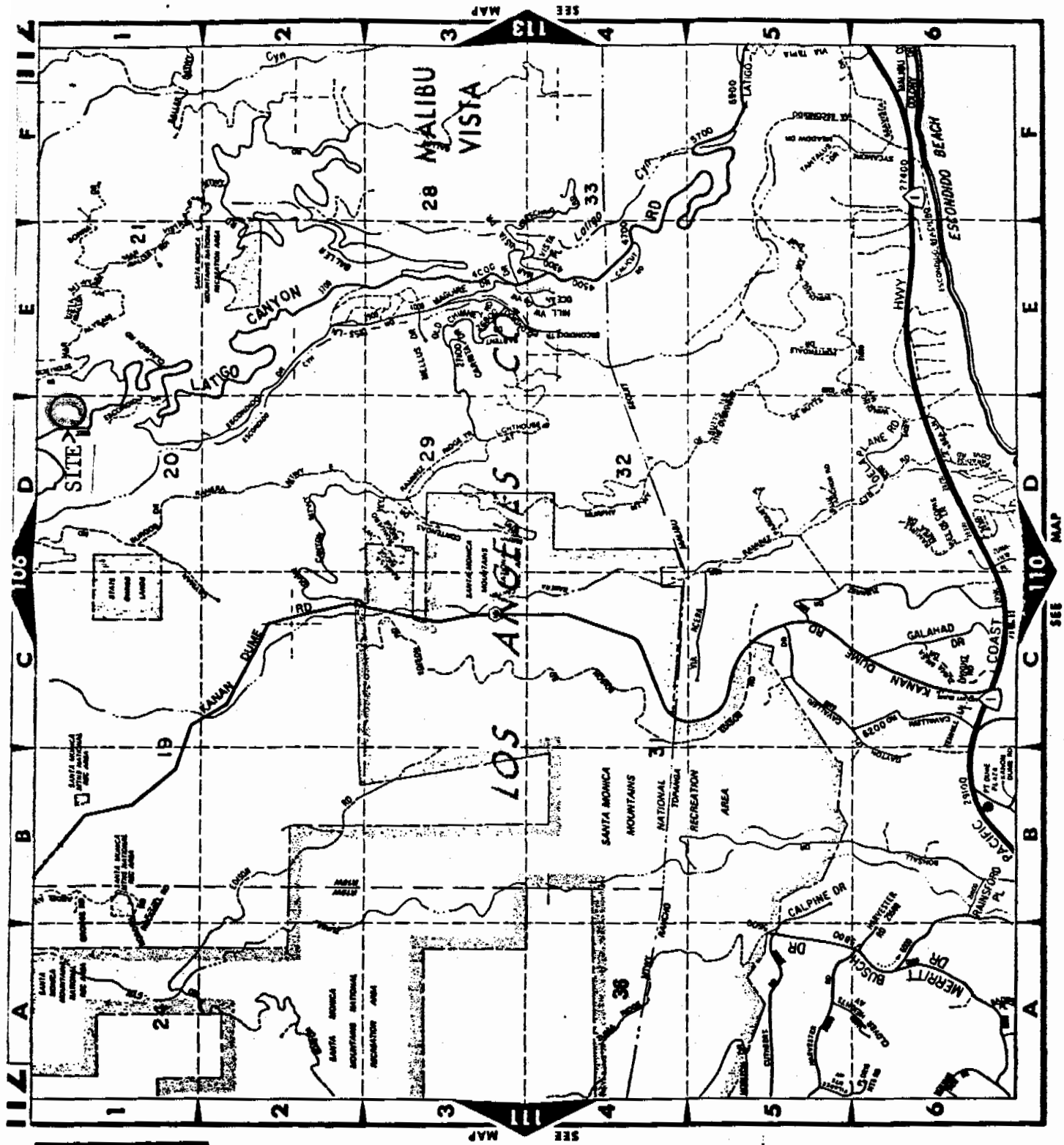
With the acceptance of this coastal permit, the applicant agrees that the temporary trailer for construction staging shall be removed from the site within two years of the issuance of this Coastal Permit or within sixty (60) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside of the Coastal Zone or a site with a valid coastal development permit for the trailer. After the trailer is removed the disturbed site shall be revegetated as required by Special Condition Number Two (2) within 60 days.

9. Night Lighting

Night lighting, if any, shall be directed downward, be of low intensity, at low height and shielded; security lighting, if any, shall be controlled by motion detector.

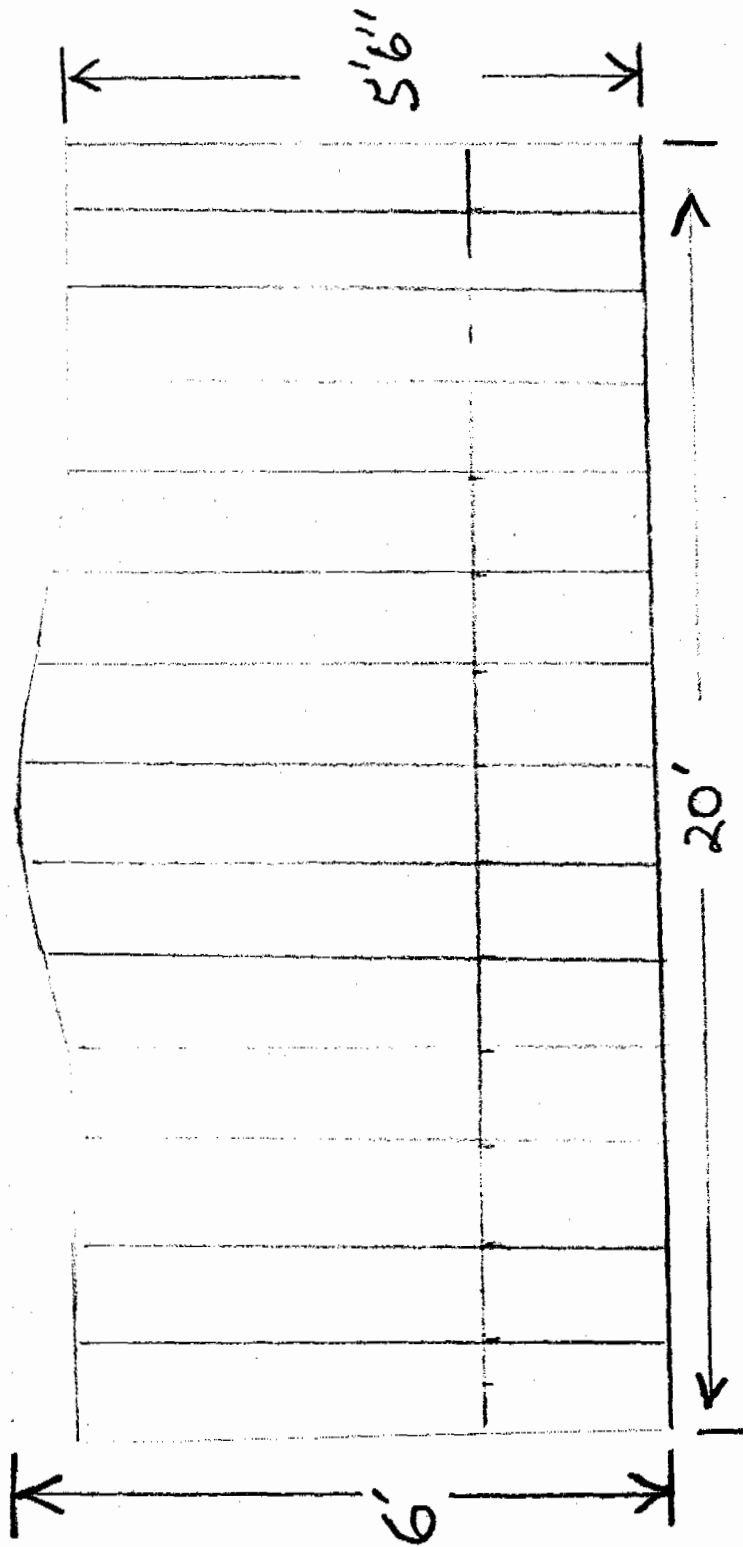
PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the restrictions stated above on the proposed development. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4-00-147 Parker



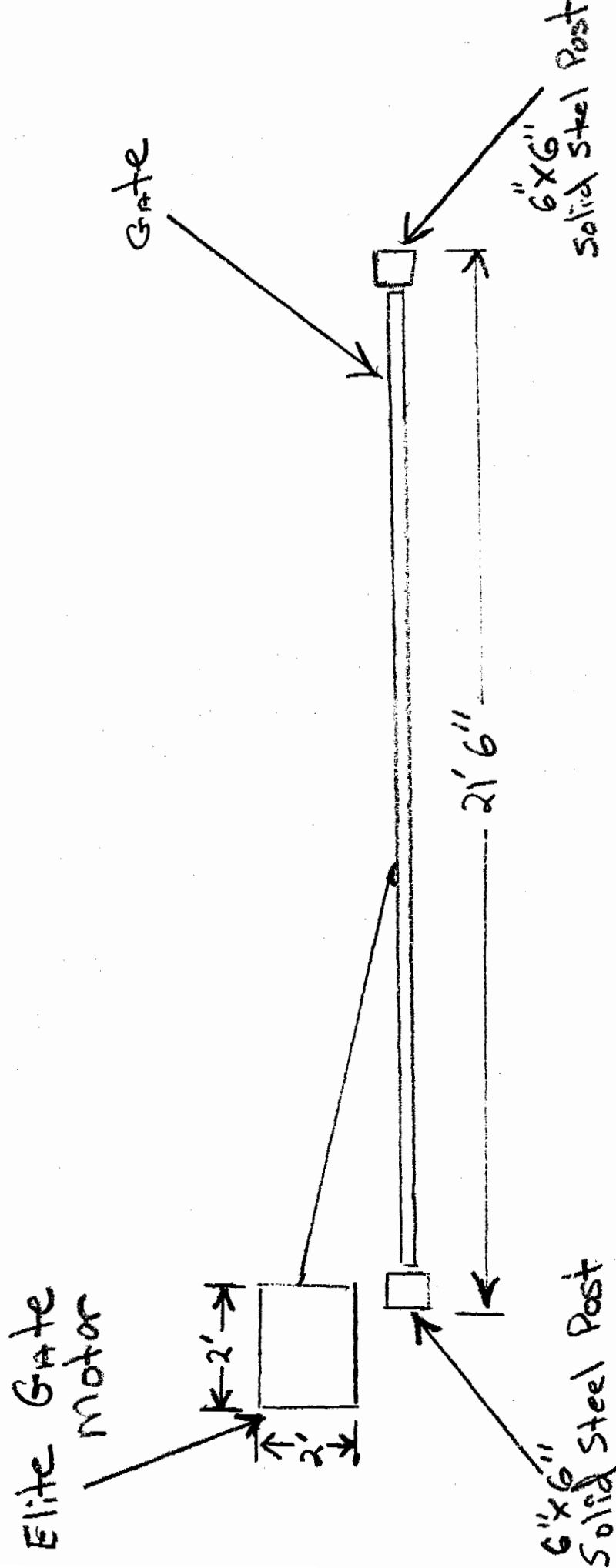
LOS ANGELES CO

EXHIBIT 2
4-00-147-A1
Vicinity Map



Wrought Iron Gate
 2240 Latigo Syn Rd
 Mililim CA 90265

EXHIBIT 4
4-00-147-A1
Gate Drawings



Wrought Iron Gate Top View
 2240 L#1go Syn Rd
 Matibu CA 910265