

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
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# W 17b

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Staff: J. Johnson  
Staff Report: 12/18/08  
Hearing Date: 1/7/09

## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO:** 4-06-018

**APPLICANT:** Dan Bonenfant

**PROJECT LOCATION:** 4111 Maguire Drive, Malibu Vista Small Lot Subdivision, Santa Monica Mountains, Los Angeles County (APN 4461-030-032)

**PROJECT DESCRIPTION:** Construction of a two-story, 35 ft. high, 2,030 sq. ft. single-family residence with attached 600 sq. ft., 3 car garage, 2,546 sq. ft. balconies/deck, driveway, retaining walls, septic system, drainage improvements, and 188 cu. yds. of cut grading.

<b>Lot area:</b>	<b>1.22 acres</b>
<b>Building coverage:</b>	<b>3,050 sq. ft.</b>
<b>Pavement coverage:</b>	<b>830 sq. ft.</b>
<b>Ht. abv. fin. grade:</b>	<b>35 ft.</b>

**LOCAL APPROVALS RECEIVED:** Los Angeles County Regional Planning Department Approval-in-Concept, dated 8/20/2007; Los Angeles County Department of Health Services approval of septic system, dated 5/14/2008; Los Angeles County Fire Department, Fire Protection Engineering approval, dated 3/29/2006; Los Angeles County Fire Department, Final Fuel Modification Plan, dated 10/16/2008; Environmental Review Board recommendation of approval with conditions, dated July 18, 2005.

**SUBSTANTIVE FILE DOCUMENTS:** Malibu/Santa Monica Mountains certified Land Use Plan; "Preliminary Geotechnical & Engineering Geologic Investigation" by Strata-Tech, Inc., dated February 10, 2006; "Biological Assessment" by Steven Nelson, Consulting Biologist, dated May 2006; CDP No. 4-07-035 (Love).

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of CDP 4-06-018 with **fourteen (14) special conditions** relating to plans conforming to geotechnical engineer's recommendations, assumption of risk, permanent drainage and polluted runoff control, landscaping, oak tree protection, lot combination, cumulative impact mitigation, structural appearance, lighting restriction, future development restriction, deed restriction, removal of excess excavated material, interim erosion control, and revised project plans.

The project site is located within a small-lot subdivision, and the proposed residence will not conform to the maximum gross structural area (GSA) allowed for the two lots where the

residence is proposed.. The applicant proposes to extinguish development rights on two additional adjacent lots to increase the GSA. The extinguishment is required as a condition of approval.

The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu–Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act.

## **I. STAFF RECOMMENDATION**

The staff recommends the Commission adopt the following resolution:

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 4-06-018 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 Coastal Development Permit No. 4-06-018 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. Plans Conforming to Geotechnical Engineer's Recommendations**

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the "Preliminary Geotechnical & Engineering Geologic Investigation" by Strata-Tech, Inc., dated February 10, 2006. These recommendations, including recommendations concerning foundations, grading, and drainage, shall be incorporated into all final design and construction plans, which must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant 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 that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

#### **2. Assumption of Risk**

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

### 3. Permanent Drainage and Polluted Runoff Control Plans

A. **Prior to issuance of the Coastal Development Permit**, the permittee shall submit to the Executive Director, two (2) copies of a final Permanent Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified water quality professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plans shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. The consulting civil engineer or water quality professional shall certify in writing that the final Permanent Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- (1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- (2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- (3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maximize site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.
- (4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands, consistent with **Special Condition 4, Landscaping and Fuel Modification Plans**. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application.
- (5) All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
- (6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary. The consulting engineer shall provide plan details and cross sections for any rock rip-rap and/or other energy dissipating devices or structures associated with the drainage system. The drainage plans shall specify, the location, dimensions, cubic yards of rock, etc. for the any velocity reducing structure with the supporting calculations showing the sizing requirements and how the device meets those sizing requirements. The engineer shall certify that the design of the device minimizes the amount of rock and/or other hardscape necessary to meet the sizing requirements.

- (7) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15<sup>th</sup> each year) and at regular intervals as necessary between October 15<sup>th</sup> and April 15<sup>th</sup> of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- (9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage planes should be approved by the project consulting geotechnical engineer.
- (10) 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.

B. The final Permanent Drainage and Runoff Control Plan shall be in conformance with the site/ development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

#### **4. Landscaping and Fuel Modification Plans**

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit two sets of landscaping and fuel modification plans, prepared by a licensed landscape architect or a qualified resource specialist. The consulting landscape architect or qualified landscape professional shall certify in writing that the final Landscape and Fuel Modification plans are in conformance with the following requirements:

##### **A) Landscaping Plan**

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within thirty (30) 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. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. 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) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- (5) No permanent irrigation is permitted within the protected zone (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of any oak trees on site. Landscaping within the oak tree protected zones shall be limited to oak tree leaf litter or native plant species consistent with oak woodland habitat.

## **B) Fuel Modification Plans**

Vegetation within 20 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 twenty 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.

**C) Conformance with Commission Approved Site/Development Plans**

The Permittee shall undertake development in accordance with the final Landscape and Fuel Modification Plans. The final Landscape and Fuel Modification Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

**D) Monitoring**

Three years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit to the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the requirements specified in this condition, the applicant, or successors in interest, shall submit, within 30 days of the date of the monitoring report, a revised or supplemental landscape plan, certified by a licensed Landscape Architect or a qualified Resource Specialist, that specifies additional or supplemental landscaping measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. This remedial landscaping plan shall be implemented within 30 days of the date of the final supplemental landscaping plan and remedial measures shall be repeated as necessary to meet the requirements of this condition.

**5. Oak Tree Monitoring**

To ensure that all oak trees located on the subject parcel (including the oak tree on Lot 147) are protected during construction activities, temporary protective barrier fencing shall be installed around the protected zones (5 feet beyond dripline or 15 feet from the trunk, whichever is greater) of all oak trees and retained during all construction operations. If required construction operations cannot feasibly be carried out in any location with the protective barrier fencing in place, then flagging shall be installed on trees to be protected. The permittee shall also follow the oak tree preservation recommendations that are enumerated in the Oak Tree Report referenced in the Substantive File Documents.

**6. Lot Combination**

A. By acceptance of this permit, the applicant agrees, on behalf of themselves and all successors and assigns with respect to the subject property, that: (1) All portions of

the subject nine lots: APN 4461-030-001 (Tract 5801, Lot # 139); APN 4461-030-002 (Tract 5801, Lot # 140); APN 4461-030-003 (Tract 5801, Lot # 141); APN 4461-030-005 (Tract 5801, Lot # 143); APN 4461-030-007 (Tract 5801, Lot # 145); APN 4461-030-008 (Tract 5801, Lot # 146); APN 4461-030-009 (Tract 5801, Lot # 147); APN 4461-030-0010 (Tract 5801, Lot # 148); APN 4461-030-0011 (Tract 5801, Lot # 149); that are now referred to as one parcel, APN 4461-030-032, shall be recombined and unified, and shall henceforth be considered and treated as a single parcel of land for all purposes, including but not limited to sale, conveyance, lease, development, taxation or encumbrance; and (2) the single parcel created thereby shall not be divided, and none of the parcels existing at the time of this permit approval shall be alienated from each other or from any portion of the combined and unified parcel hereby created.

- B. ***Prior to issuance of the coastal development permit***, 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 subject ten parcels being recombined 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.
- C. ***Prior to issuance of the Coastal Development Permit***, but after the deed restriction described in the prior paragraph is recorded, the applicant shall provide evidence to the Executive Director that the applicant has provided a copy of the recorded deed restriction to the county assessor's office and requested that the assessor's office revise its records and maps to reflect the combination of the parcels.

## 7. Cumulative Impacts Mitigation

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit, for the review and approval of the Executive Director, evidence that all potential for future development has been permanently extinguished on APN 4461-030-001 (Tract 5801, Lot # 139), APN 4461-030-002 (Tract 5801, Lot # 140), or on any lot within the Malibu Vista small lot subdivision, or elsewhere within the Escondido Creek Watershed, to comply with the requirements of the slope intensity formula in accordance with Policy 271(b)(2) of the previously certified 1986 Malibu/Santa Monica Mountains Land Use Plan provided such lot is either a) legally merged with an adjacent developed or developable parcel(s) or b) dedicated in fee title to a public agency. The maximum allowable gross structural area of 1034 sq. ft. may be increased by 300 sq. ft. upon extinguishment of the development rights of a lot that is not contiguous to the subject lot but which is within the Malibu Vista small lot subdivision or elsewhere within the Escondido Creek watershed, consistent with this special condition. Should the applicant fail to submit the evidence of lot extinguishment required by this Special Condition, the applicant must submit plans demonstrating that the maximum gross structural area for



the residence is no more than 1034 sq. ft., consistent with **Special Condition No. 14, Revised Project Plans.**

## **8. Structural Appearance**

***Prior to issuance of the coastal development permit,*** the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-06-018. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-06-018 if such changes are specifically authorized by the Executive Director as complying with this special condition.

## **9. Lighting Restriction**

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

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

## 10. Future Development Restriction

This permit is only for the development described in this Coastal Development Permit. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by this Coastal Development Permit. Accordingly, any future structures, future improvements, or change of use to the permitted structures authorized by this permit, including but not limited to, any grading, clearing or other disturbance of vegetation other than as provided for in the approved landscape plan prepared pursuant to **Special Condition 4, Landscaping and Fuel Modification Plans**, shall require an amendment to this Coastal Development Permit from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

## 11. Deed Restriction

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

## 12. Removal of Excess Excavated Material

**Prior to the issuance of the Coastal Development Permit**, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of material.

## 13. Interim Erosion Control Plans and Construction Responsibilities

A. **Prior to the issuance of the Coastal Development Permit**, the applicant shall submit to the Executive Director an Interim Erosion Control and Construction Best Management Practices plan, prepared by licensed civil engineer or qualified water

quality professional. The consulting civil engineer/water quality professional shall certify in writing that the Interim Erosion Control and Construction Best Management Practices (BMPs) plan is in conformance with the following requirements:

1. Erosion Control Plan

(a) 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 plan and on-site with fencing or survey flags.

(b) Include a narrative report describing all temporary run-off and erosion control measures to be used during construction.

(c) The plan shall identify and delineate on a site or grading plan the locations of all temporary erosion control measures.

(d) The plan shall specify that grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. The applicant shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible.

(e) The erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.

(f) 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.

#### 14. Revised Project Plans

***Prior to issuance of the Coastal Development Permit***, the applicant shall submit for the review and approval of the Executive Director, a complete set of revised project plans which shall:

- A. In the event the applicant fails to submit the evidence of lot extinguishment required by this Special Condition No. 7, the applicant must submit all project plans demonstrating that the maximum gross structural area for the residence is no more than 1034 sq. ft.
  
- B. Revise the proposed lower floor level and main floor level balconies to increase the setback (measured horizontally) to a minimum of 100 feet from the eastern edge of the oak woodland/riparian habitat canopy located to the west along Escondido Creek.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

##### **A. Project Description and Background**

The applicant proposes to construct a two-story, 35 ft. high, 2,030 sq. ft. single-family residence with attached 3 car, 600 sq. ft. garage, 2,546 sq. ft. balconies/deck, driveway, retaining walls, septic system, drainage improvements, and 188 cu. yds. of cut grading with 188 cu. yds. of export to a disposal site. The grading consists of 36 cu. yds. of cut proposed for the residence and 152 cu. yds. of excavation proposed for the caissons, with a total 188 cu. yds. of export material to a disposal site located outside the coastal zone. An existing rough cut driveway down the slope from Maguire Drive was created in the late 1980's to conduct geology and soils testing as part of Coastal Permit 5-90-230, approved by the Commission in 1990. The 2,860 sq. ft. residence approved in Coastal Permit 5-90-230 was not constructed. The project site is located at 4111 Maguire Drive, Malibu Vista Small Lot Subdivision, in the Santa Monica Mountains (**Exhibits 1-19**).

The subject property consists of nine (9) contiguous lots that were combined in 1990 to be held as one parcel, through a covenant and agreement between the owner and Los Angeles County recorded as Document No. 90-121410 (Exhibit 3). The project site is located on two adjacent lots along Maguire Drive combined with 7 additional lots as a total 9 lot property. This combined parcel is known as APN 4461-030-032 and was formerly known as nine (9) contiguous lots APN 4461-030-001, 002, 003, 005, 007, 008, 009, 010, & 011. Prior owners retired the development rights for 5 of the 9 combined lots which were used to provide transfer of development credits (TDC) program for additional development rights on two other properties. Tract 5901, Lots 143 and 149 were retired through an open space easement document # 85-475223 recorded for Coastal Permit No. 5-84-274 (Goodstein and Watson) and accepted by the Mountains Recreation and Conservation Authority through document # 05-3136876. Coastal Permit No. 5-84-274 also recorded deed restrictions recombining Lots 139, 140, 141, 143, 147, 148, 149. Tract 5901, Lots 113, 147, and 148 were retired through an open space easement document # 83-1201562 recorded for Coastal Permit No. 5-85-143

(Naegele) and accepted by the Mountains Recreation and Conservation Authority through document # 04-0987850. Coastal Permit No. 5-85-143 also recorded a deed restriction recombining Lots 139, 140, 145, and 146. Two of the four remaining developable lots are proposed for the residence and garage, while the other 2 adjoining lots are proposed to remain undeveloped. The applicant proposes to retire all development rights on these two adjoining parcels in order to provide additional Gross Structural Area (GSA) credit to increase the size of the proposed residence. The applicant has provided evidence that they own the two lots and intend to retire their development rights. This covenant and agreement to hold the subject property (consisting of 9 previously separate lots) as one parcel was completed by Los Angeles County as part of the residence approved in 1990 by Coastal Permit 5-90-230. As noted above, this residence was not constructed and the Coastal Permit was not issued.

The project site is accessed from Maguire Drive to the east by a short 24 foot long (from Maguire Drive to the garage) driveway. Site elevations on the four buildable lots range from approximately 850 to 950 feet above mean sea level, for a total site relief of about 100 feet. There is one oak tree (18 inch diameter 4 feet above grade) on the far southeast corner of the two lots proposed for development and a cluster of 7 oak trees (5 – 16 inches in diameter. The oak tree on the southeast corner of the lot is isolated and incorporated into the landscaping and driveway of the existing residence located to the south of the project site. The proposed residence will be located more than 14 ft. or more from the closest point of the dripline of a cluster of 7 oaks located along Maguire Drive. There are additional isolated oak trees located to the north on the remaining lots that will not be affected by the proposed project.

The Malibu Vista small lot subdivision is within an oak woodland that has been highly disturbed by dense residential development. Existing single family residences are situated on adjacent properties to the north, east, south, and west of the property. The project site is not visible from any public parkland or from Latigo Canyon Road. The project site is visible from Maguire Drive located along the eastern boundary of the property. Escondido Creek, a U.S.G.S. designated blue-line stream, is located on the western portion of the subject combined parcel. The proposed balcony is located only 90 feet horizontally and up slope from the eastern edge of oak riparian vegetation; the proposed residential structure is located more than 105 feet from the eastern edge of riparian vegetation. Escondido Creek is a designated riparian habitat area (ESHA) in the 1986 certified Los Angeles County Land Use Plan.

Due to the project's proximity to adjacent roads and residences, most of the subject property has been disturbed and no longer contains intact oak woodland habitat, except for the western portion of the property where Escondido Creek traverses which contains undisturbed native oak woodland/riparian vegetation that is contiguous with a larger area of similar habitat located to the southwest and northwest. All proposed development, except for required fuel modification for the proposed residence, is situated on disturbed portions of the site that had been cleared for fuel modification purposes associated with adjacent development. There are several isolated oak trees

located to the north of the project site on the former lots, however, no trees will be removed and no development is proposed within the protected zone of any tree.

## **B. Cumulative Impacts**

The proposed project involves the construction of a new single-family residence, which is defined under the Coastal Act as new development. New development raises issues with respect to cumulative impacts on coastal resources. Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new development.

Section 30250(a) of the Coastal Act states:

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

Section 30252 of the Coastal Act states:

***The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.***

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

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

Throughout the Malibu/Santa Monica Mountains coastal zone there are a number of areas which were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "small lot subdivisions" are comprised of parcels of less than one acre but more typically range in size from 4,000 to 5,000 square feet. The total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources. Cumulative development constraints common to small lot subdivisions were documented by the Coastal Commission and the Santa Monica Mountains Comprehensive Planning Commission in the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development in the Santa Monica Mountains Coastal Zone".

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

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

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

**Slope Intensity Formula**

$$\text{GSA} = (A/5) \times ((50-S)/35) + 500$$

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

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

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

$$\text{S} = I \times L/A \times 100$$

I = contour interval in feet, at not greater than 25-foot intervals, resulting in at least 5 contour lines

L = total accumulated length of all contours of interval "I" in feet

A = the area being considered in square feet

In addition, pursuant to Policy 271 of the Malibu/Santa Monica Mountains LUP, the maximum allowable gross structural area (GSA) as calculated above, may be increased as follows:

- (1) Add 500 square feet for each lot which is contiguous to the designated building site provided that such lot(s) is (are) combined with the building site and all potential for residential development on such lot(s) is permanently extinguished.
- (2) Add 300 square feet for each lot in the vicinity of (e.g. in the same small lot subdivision) but not contiguous with the designated building site provided that such lot(s) is (are) combined with other developed or developable building sites, or dedicated in fee title to a public agency, and all potential for residential development on such lot(s) is permanently extinguished.

The proposed project site is located in the Malibu Vista small lot subdivision, an area subject to the provisions of the slope intensity formula. As stated previously, the subject parcel consists of nine (9) contiguous lots that were combined in 1990 to be held as one parcel, through a covenant and agreement with Los Angeles County. However, this agreement is only between the County and the landowner and could be revoked in the future if both parties agree. As explained below, **Special Condition Six (6)**, lot



combination, will assure that these nine lots remain combined in perpetuity. The development rights for residential use have already been extinguished on five (5) of the nine lots per the Transfer of Development Credit (TDC) program as mitigation for two previous projects and Coastal Permits as detailed in Section IV A above. The development rights have not been extinguished on the remaining four lots and they are therefore “buildable”. These nine lots are contiguous and the applicant is proposing to construct a new two-story, 2,030 sq. ft. single-family residence with attached garage across two of the four buildable lots within this lot combination area. The project includes an offer to retire development rights on the other two adjacent buildable lots in order to increase the maximum allowable gross structural area for the residence.

The applicant submitted a maximum GSA calculation of 2,034 square feet, based on the area and slope of the project site utilizing all four of the “buildable” lots on site). Staff has confirmed that this GSA calculation is accurate. The total habitable 2,030 square footage for the residence will remain below the maximum allowable 2,034 square foot gross structural area with a three car 600 sq. ft. non-habitable garage. Therefore, the proposed 2,030 sq. ft. of habitable space will be consistent with the GSA requirements for the subject site provided that the nine separate subject lots are combined into a single lot as required by **Special Condition Six (6)**.

The applicant also submitted an alternative GSA calculation of only 1,034 square feet, based only on the area of the two buildable parcels where the residence will actually be located (and excluding the two adjacent vacant “buildable” parcels). Assuming the applicant provides evidence that development rights have been extinguished on these adjacent buildable lots [Tract 5801, Lots 139, 140] and that all nine separate subject lots are combined into a single lot, then the GSA may be increased by 1,000 sq. ft., for a total of 2,034. Staff has confirmed that this GSA is accurate. Therefore, the proposed 2,030 sq. ft. of habitable space will be consistent with the GSA requirements for the subject site provided that the nine separate subject lots are combined into a single lot and provided that the applicant provides evidence that development rights have been extinguished on two of the subject lots required by **Special Condition Seven (7)**. In the event the applicant fails to submit the evidence of lot extinguishment required by this Special Condition No. Seven (7), then Special Condition Eight (8) requires the applicant submit revised project plans, for the review and approval of the Executive Director, demonstrating that the maximum gross structural area for the residence will be reduced to no more than 1034 sq. ft. in habitable area.

As previously stated, the purpose of the GSA requirements is to reduce the impacts of development within small lot subdivisions and to maintain the rural character of these “rural villages”. When a lot is retired within the same small lot subdivision, there is a reduced potential buildout and thus there is a reduction in the development pressures related to water usage, septic capacity, traffic, geologic hazards, and habitat loss. In addition, some additions and improvements to residences on small steep lots within these small lot subdivisions have been found to adversely impact the area. Many of the lots in these areas are so steep or narrow that they cannot support a large residence without increasing or exacerbating the geologic hazards on and/or off site. Additional buildout of small lot subdivisions affects water usage and has the potential to impact

water quality of coastal streams in the area. Other impacts to these areas from the buildout of small lot subdivisions include increases in traffic along mountain road corridors and greater fire hazards.

For all these reasons, and as this lot is within a small lot subdivision, further structures, additions or improvements on the subject property, including the conversion of all or a portion of the garage to habitable space, could cause adverse cumulative impacts on the limited resources of the subdivision. The Commission, therefore, finds it necessary for the applicant to record a future development deed restriction on the subject property, as noted in **Special Conditions Ten (10)**, which would require that any future structures, additions or improvements to the property, beyond those approved in this permit, be reviewed by the Commission to ensure compliance with the policies of the Coastal Act regarding cumulative impacts. At that time, the Commission can ensure that the new project complies with the guidance of the GSA formula and is consistent with the policies of the Coastal Act.

Finally, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

The Commission therefore finds that the proposed project, only as conditioned, is consistent with Sections 30250(a) and 30252 of the Coastal Act.

### **C. Hazards and Geologic Stability**

Section 30253 of the Coastal Act states, in pertinent part, that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

The proposed development is located in the Malibu/Santa Monica Mountains area, an area historically subject to significant natural hazards including, but not limited to, landslides, erosion, flooding and wild fire. The submitted geology, geotechnical, and/or soils reports referenced as Substantive File Documents conclude that the project site is suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development. The reports contain recommendations to be incorporated into the project plans to ensure the stability and geologic safety of the proposed project, the project site, and the adjacent properties. To ensure stability and structural integrity and to protect the site and the surrounding sites, the Commission requires the applicant

to comply with the recommendations contained in the applicable reports, to incorporate those recommendations into all final design and construction plans, and to obtain the geotechnical consultant's approval of those plans prior to the commencement of construction.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer.

Further, the Commission finds that, for the project to ensure stability and avoid contributing significantly to erosion, all slopes and disturbed areas of the subject site must be landscaped, primarily with native plants, to stabilize disturbed soils and reduce erosion resulting from the development.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire, those risks remain substantial here. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk condition, the applicant acknowledges the nature of the fire and/or geologic hazard that exists on the site and that may affect the safety of the proposed development.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

- Special Condition 1. Plans Conforming to Geotechnical Engineer Recommendations
- Special Condition 2. Assumption of Risk, Waiver of Liability and Indemnity
- Special Condition 3. Drainage and Polluted Runoff Control Plan
- Special Condition 4. Landscaping and Fuel Modification Plans
- Special Condition 13. Interim Erosion Control Plan

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Section 30253 of the Coastal Act.

#### **D. Environmentally Sensitive Habitat**

Section 30240 of the Coastal Act protects environmentally sensitive habitat areas (ESHA) by restricting development in and adjacent to ESHA. Section 30240 states:

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

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

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

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

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of environmentally sensitive habitats. The Coastal Commission has applied the following relevant policies as guidance in the review of development proposals in the Santa Monica Mountains.

***P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.***

***P69 Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

***P74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.***

***P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.***

***P84 In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.***

## **1. Project Description and Site Specific Biological Resource Information**

The applicant proposes to construct a two-story, 35 ft. high, 2,030 sq. ft. single-family residence with attached 3 car 600 sq. ft. garage, 2,546 sq. ft. balconies/deck, driveway, retaining walls, septic system, drainage improvements, and 188 cu. yds. of cut grading with 188 cu. yds. of export to a disposal site. The grading consists of 36 cu. yds. of cut proposed for the residence and 152 cu. yds. of excavation is proposed for the caissons,

with a total 188 cu. yds. of export material to a disposal site located outside the coastal zone. An existing rough cut driveway down the slope from Maguire Drive was created in the late 1980's to conduct geology and soils testing as part of Coastal Permit 5-90-230 approved by the Commission in 1990. The 2,860 sq. ft. residence approved in Coastal Permit 5-90-230 was not constructed and this Permit was not issued. The project site is located at 4111 Maguire Drive, Malibu Vista Small Lot Subdivision, in the Santa Monica Mountains (**Exhibits 1-19**). Site elevations on the two lots proposed for development range from approximately 892 to 954 feet above mean sea level, for a total relief of 62 feet.

The project site is accessed from Maguire Drive to the east by a short 24 foot long (from Maguire Drive to the garage) driveway. Site elevations on the four buildable lots range from approximately 850 to 954 feet above mean sea level, for a total site relief of about 104 feet. There is one oak tree (18 inch diameter at 4 feet above grade) on the far southeast corner of the two lots proposed for development and a cluster of 7 oak trees (5 – 16 inches in diameter). The oak tree on the southeast corner of the lot is isolated and incorporated into the landscaping and driveway of the existing residence located to the south of the project site. The cluster of 7 oaks located along Maguire Drive is setback about 14 feet from the oak tree canopies to the proposed residence.

The Malibu Vista small lot subdivision is within an oak woodland that has been highly disturbed by dense residential development. Existing single family residences are situated on adjacent properties to the north, east, south, and west of the property. Escondido Creek, a U.S.G.S. designated blue-line stream, is located on the western portion of the subject combined parcel. The proposed balcony is located about 90 feet up slope from the eastern edge of oak riparian vegetation; the proposed residential structure is located about 105 feet from the eastern edge of riparian vegetation. Escondido Creek is a designated riparian habitat area (ESHA) in the 1986 certified Los Angeles County Land Use Plan.

Due to the project's proximity to adjacent roads and residences, most of the subject property has been disturbed and no longer contains intact oak woodland habitat, except for the western portion of the property where Escondido Creek traverses which contains undisturbed native oak woodland/riparian vegetation that is contiguous with a larger area of similar habitat located to the southwest and northwest. All proposed development, except for required fuel modification for the proposed residence, is situated in disturbed portions of the site that had been cleared for fuel modification purposes associated with adjacent development. There are several isolated oak trees located to the north of the project site on the former lots, however, no trees will be removed and no development is proposed within the protected zone of any tree.

Due to the project's proximity to adjacent roads and residences, most of the subject property has been disturbed and no longer contains intact oak woodland habitat, except for the western-most portion of the property (Lots 139, 140, 141, 143), which contains undisturbed native oak woodland/riparian vegetation that is contiguous with a larger area of similar habitat located to the southeast and northeast. All proposed development, except for required fuel modification for the proposed residence, is

situated in disturbed portions of the site that had been cleared for fuel modification purposes associated with adjacent development. Several isolated oak trees are located near the proposed development area on the subject property; however, no development is proposed within the protected zones of those trees and no fuel modification is proposed other than the removal of dead and down wood and exotics as noted on the approved fuel modification plan. The applicant has submitted a Biological Assessment, listed in the Substantive File Documents, which addresses the habitats and native trees present on the project site. The report identifies two vegetation/habitat communities on the project site. The report describes these habitats thus:

***Disturbed Non-Native Grassland***

As mentioned above, vegetation clearing presumably for fire control has occurred over most of the property. As a consequence, the predominant vegetation over the majority of the site consists of non-native grassland and ruderal vegetation that has persisted in historically disturbed surface soils. Dominant species in non-native grassland are, Mediterranean mustard (*Hirschfeldia incana*), ripgut grass (*Bromus diandrus*), foxtail chess, (*Bromus madretensis*), wild oats (*Avena* sp.), red-stemmed filaree (*Erodium cicutarium*), castor bean (*Ricinus communis*), and tocolate (*Centaurea melitensis*).

***Disturbed Chaparral***

Disturbed chaparral is found in the extreme western portion of the property where the topography falls steeply to Escondido Creek. Common and dominant species in this vegetation are laurel sumac (*Malosma laurina*), California sagebrush (*Artemisia California*), black sage (*Salvia melifera*), California buckwheat (*Eriogonum fasciculatum*), and mountain mahogany (*Cercoparpus betuloides*), along with non-native species found in non-native grassland.

***Oak Woodland Riparian Habitat***

Escondido Creek and associated oak riparian vegetation just off site to the east (staff note: actually west) has been designated as ESHA consistent with such a designation for coastal blue-line streams in general.

Based on Commission staff review of the Biological Assessment, aerial photographs of the site, and a site visit on October 7, 2008 all of the Lots include either oak trees on the slopes or oak woodland/riparian habitat along Escondido Creek. The oak trees are part of a disturbed woodland due to past and continual fuel modification for adjoining residences. However, relatively undisturbed native oak woodland/riparian vegetation that is part of a large, contiguous block of habitat extending to the southwest and northwest of the property is located along the western most portion of the property,. Therefore, the oak woodland/riparian vegetation on site is considered an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5 of the Coastal Act.

When the applicant purchased the subject parcel, the parcel was designated in the Los Angeles County Land Use Plan for residential use. The land use designation of the

property is Rural Land III, which allows residential development at a maximum density of 1 dwelling unit per 2 acres of land. The subject parcel (consisting of all 9 combined lots) is approximately 1.22 acres in size, and there are other scattered, residential developments in the same vicinity. There is currently no offer to purchase the property from any public park agency.

The project has been designed to place all development on the existing disturbed portion of the property where there is a rough cut and fill driveway which was used for geological and soils testing. Any alternative location on the site would involve more significantly more grading and the removal of native vegetation. All proposed development, except for required fuel modification for the proposed residence, is situated in disturbed portions of the site that had been cleared for fuel modification purposes associated with adjacent residential development with overlapping fuel modification. The applicant's approved Fuel Modification Plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown extending in a radius of approximately 50 feet from the proposed structure. A "C" Zone (thinning zone) is provided for a distance of 150 feet beyond the "A" and "B" zones, for a total of 200 feet. Several isolated oak trees are located near the proposed development area on the subject property and further to the north, however, no development is proposed within the protected zones of those trees and no fuel modification is proposed other than the removal of dead and down wood and exotics as noted on the approved Fuel Modification Plan dated 10/16/2008. In addition, the oak woodland/riparian habitat area located to the west of the project site is located within Zone C which includes a note that states: "Fuel Modification in Riparian Area is Limited to Removal of Dead and Down Wood and Exotics. Thus, the only ESHA on site, the oak woodland/riparian habitat will not be impacted by fuel modification requirements within the Zone C located to the west of the project site as fuel modification is not required.

## **2. ESHA Designation on the Project Site**

Pursuant to Section 30107.5, in order to determine whether an area constitutes an ESHA, and is therefore subject to the protections of Section 30240, the Commission must answer three questions:

- 1) Is there a rare species or habitat in the subject area?
- 2) Is there an especially valuable species or habitat in the area, which is determined based on:
  - a) whether any species or habitat that is present has a special nature, OR
  - b) whether any species or habitat that is present has a special role in the ecosystem;
- 3) Is any habitat or species that has met either test 1 or test 2 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

If the answers to questions one or two and question three are "yes", the area is ESHA.

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission's Ecologist, Dr. John Dixon<sup>1</sup> (hereinafter "Dr. Dixon Memorandum"), which is incorporated as if set forth in full herein.

Unfortunately, coastal sage scrub, chaparral, oak woodland and riparian habitats are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine stands of coastal sage scrub, chaparral, oak woodland, and riparian habitats are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP<sup>2</sup>.

As described above, a portion of the subject property contains mature oak woodland/riparian habitat that is part of a large, contiguous block of pristine native vegetation. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the oak woodland/riparian habitat on the project site meets the definition of ESHA in the Coastal Act.

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<sup>1</sup> The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

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



### 3. Resource Dependent Use

The Commission finds that a portion of the subject property and the surrounding area constitutes an environmentally sensitive habitat area (ESHA), with the exception of the proposed development area. However, fuel modification for fire protection around the proposed development will extend into ESHA areas. Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require removal of ESHA only from fuel modification for fire protection purposes around the proposed residence, the project would significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would therefore require denial of the project, because the project would result in significant disruption of habitat values and residential fuel modification is not a use dependent on those sensitive habitat resources.

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

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even if a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has been approved by the

Commission on sites in the immediate area. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. There is currently no offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the project site would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence on the project site would create a nuisance under California law. Other houses have been constructed in similar situations in similar habitat areas in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance.

In conclusion, the Commission finds that, notwithstanding Section 30240, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

#### **4. Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values**

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to "take" the property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for required fuel modification, will result in unavoidable loss of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and

uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the Santa Monica Mountains to avoid a taking of property. The proposed 3,830 sq. ft. development area conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within this development area. As such, the Commission concludes that the proposed siting and design of the project will eliminate impacts to ESHA to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

In addition, the proposed two balconies, on the lower floor level and the main floor level will be located as close as 90 feet (measured horizontally) from the eastern edge of the oakwoodland/riparian habitat canopy. The proposed residence is located more than 105 feet (measured horizontally) from the eastern edge of the oakwoodland/riparian habitat canopy. In past permit actions, the Commission typically requires that all new development be set back and located at least 100 feet from the canopy of an oakwoodland/riparian habitat designated as ESHA to provide an adequate buffer. In this case, the Commission finds that, although the residence itself is located in a manner that will provide for an adequate buffer from the ESHA on site, portions of the two balconies, on the lower floor level and the main floor level will be located as close as 90 feet (measured horizontally) from the eastern edge of the oakwoodland/riparian habitat canopy and would not be consistent with the provision of the typically required 100 ft. buffer. Therefore, in order to provide that all new development be set back and located at least 100 feet from the canopy of the oakwoodland/riparian habitat on site; **Special Condition No. Fourteen (14)** requires the applicant submit revised project plans, for the review and approval of the Executive Director that show that the proposed lower floor level and main floor level balconies shall be modified in order to increase the setback (measured horizontally) to a minimum of 100 feet from the eastern edge of the oak woodland/riparian habitat canopy located to the west along Escondido Creek.

Further, the Los Angeles County Environmental Review Board found on July 18, 2005 that the proposed project was consistent after modifications. The majority of these modifications addressing the planting plan, drainage plan, perimeter fencing, exterior lighting and earthen tone colors were included in the proposed project or required by special conditions in this staff report.

## 5. Additional Mitigation Measures to Address Additional ESHA Impacts

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plant species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects

from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area that are not directly and immediately affected by the proposed development, **Special Condition Four (4)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, Special Condition Thirteen (13) requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer.

In addition, the Commission has found that night lighting of ESHA areas in the Malibu/Santa Monica Mountains may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, **Special Condition Nine (9)**, Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

The Commission notes that the use of rodenticides containing anticoagulant compounds have been linked to the death of sensitive predator species, including mountain lions and raptors, in the Santa Monica Mountains. These species are a key component of chaparral and coastal sage scrub communities in the Santa Monica Mountains considered ESHA. Therefore, in order to avoid adverse impacts to sensitive predator species, **Special Condition Four (4)**, disallows the use of rodenticides containing any anticoagulant compounds on the subject property.

Further, as discussed above, there are several oak trees near the proposed development area. Through past permit actions on residential development in the Santa Monica Mountains the Commission has found that native trees are an important coastal resource. Native trees prevent the erosion of hillsides and stream banks, moderate water temperatures in streams through shading, provide food and habitat, including nesting, roosting, and burrowing to a wide variety of wildlife species, contribute nutrients to watersheds, and are important scenic elements in the landscape. The oak trees on the site do provide some habitat for a wide variety of wildlife species and are considered to be an important part of the character and scenic quality of the area. The applicant has submitted plans that map the drip line of on-site oak trees in relation to the proposed development. The proposed project has been designed to not require removal or encroachment of the oak trees. However, to ensure the oak trees are not adversely

affected by irrigation or inappropriate landscaping, **Special Condition Four (4)** includes a provision that prohibits permanent irrigation within the dripline or within the five-foot protected zone of oak trees and limits landscaping within the dripline and protected zone to native oak tree understory plant species. To ensure that the oak trees are protected during grading and construction activities, **Special Condition Five (5)** requires the applicant to install protective barrier fencing around the dripline of on-site oak trees during construction operations.

Finally, given the fact that 7 of the 9 lots have been or will be recorded with an open space easement, the requirement of a new open space easement or restriction is not appropriate in this case. The maximum size of the residence is restricted to the maximum allowable gross structural area, as discussed above. Further, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and to ensure that any future structures, additions, change in landscaping or intensity of use at the project site that may otherwise be exempt from coastal permit requirements are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Ten (10)**, the future development restriction, has been required.

Lastly, **Special Condition Eleven (11)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act.

## **E. Water Quality**

Section 30231 of the Coastal Act states that:

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

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality and aquatic resources because changes such as the removal of native vegetation, the increase in impervious surfaces, and the introduction of new residential uses cause increases in runoff, erosion, and sedimentation, reductions in groundwater recharge, and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants, as well as effluent from septic systems.

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to minimize the potential for such adverse impacts to water quality and aquatic resources resulting from runoff both during construction and in the post-development stage, the Commission requires the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site, including: 1) site design, source control and/or treatment control measures; 2) implementing erosion sediment control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping.

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or surrounding areas from the use of a septic system. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30231 of the Coastal Act:

- Special Condition 3: Permanent Drainage and Polluted Runoff Control Plan
- Special Condition 4: Landscaping and Fuel Modification Plans
- Special Condition 13. Interim Erosion Control Plans

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## F. Visual Resources

Section 30251 of the Coastal Act states:

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

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Section 30251 also requires that development be sited and designed to protect views of scenic areas, minimize alteration of landforms, and be visually compatible with the surrounding area.

The Malibu Vista small lot subdivision was formerly an oak woodland that has been highly disturbed by dense residential development. Existing single family residences are situated on adjacent properties to the north, west, south, and east of the property. The project site is not visible from any public parkland or from Latigo Canyon Road. The project site is visible from Maguire Drive located along the eastern boundary of the property. Escondido Creek, a U.S.G.S. designated blue-line stream, conveys water across the subject site's western boundary south towards the ocean.

The proposed project site consists of nine lots, approximately 1.22 acres in combined size, located within the Malibu Vista small lot subdivision in the Santa Monica Mountains. To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which the proposed development is visible, such as beaches, parks, trails, and scenic highways. The proposed 2,030 sq. ft. residence and attached 600 sq. ft. 3-car garage will be located on a hillside slope surrounded by existing residential development. The proposed development has been sited and designed to minimize visual impacts by partially cutting the lower floor into the slope to be consistent with existing development in the area. There are no public parklands in the vicinity of the property. However, the site and proposed development will be visible from Maguire Drive, a public road. The Commission has, in past decisions, required that development visible from public roads or other public areas minimize impacts to visual resources. Due to the visible nature of the proposed development from a public viewing area, the Commission finds it necessary to require mitigation measures to minimize visual impacts associated with development of the project site.

The visual impact of the proposed structure can be minimized by requiring the structure to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass.

To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Eight (8)**.

Visual impacts associated with the proposed structure can be further reduced by the use of appropriate and adequate landscaping. **Special Condition Four (4)** requires the applicant to prepare a landscape plan relying mostly on native, non-invasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. In order to ensure that the final approved landscaping plans are successfully implemented, Special Condition 4 also requires the applicant to revegetate all disturbed areas in a timely manner, and includes a monitoring component, to ensure the successful establishment of all newly planted and landscaped areas over time.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads and trails. Therefore, **Special Condition Nine (9)** limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Therefore, the Commission finds that the proposed project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alteration of natural landforms. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

## **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 projects 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 development will not create adverse impacts and is found to

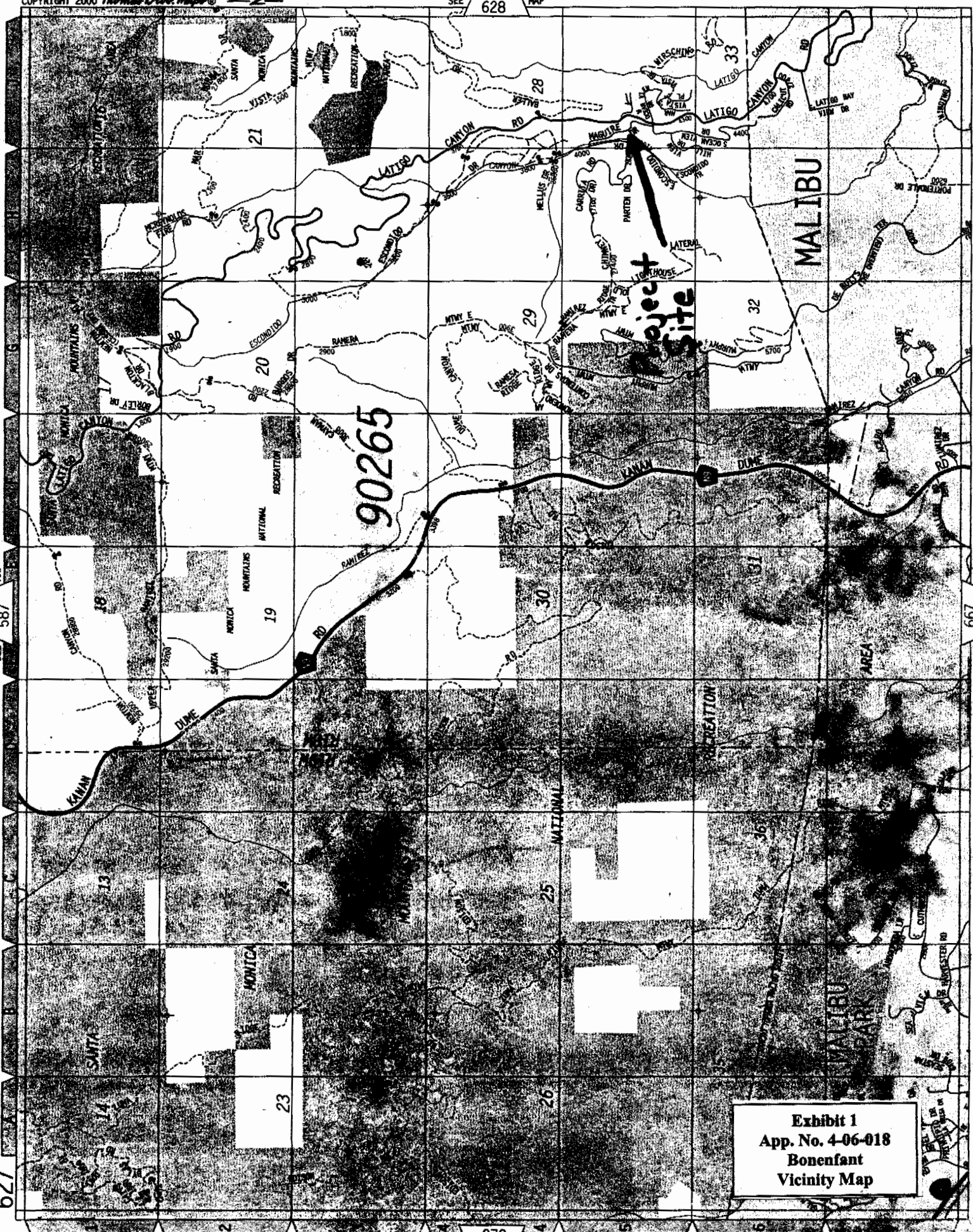


be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies 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 in detail above, project alternatives and mitigation measures have been considered and incorporated into the proposed project. An alternative to relocate a portion of the two proposed balconies has been considered and incorporated in the special conditions to increase the setback from the oakwoodland/riparian habitat ESHA to a minimum of 100 feet from the edge of the canopy. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit include the avoidance of impacts to ESHA through siting and clustering development. Mitigation measures required to minimize impacts include requiring drainage best management practices (water quality), interim erosion control (water quality and ESHA), native tree protection (ESHA), limiting lighting (ESHA), requiring future improvements to be considered through a CDP, and employing construction best management practices (water quality). 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.



90265

Project Site

Exhibit 1  
 App. No. 4-06-018  
 Bonenfant  
 Vicinity Map

SEARCH NO

REVISED  
2000112203007001-07  
2005110206004001-07

TRA  
8663

P.A.  
482-210

4461  
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SHEET

2006



MAPPING AND GIS  
SERVICES  
SCALE 1" = 60'

**Subject  
Recombined  
Parcel**

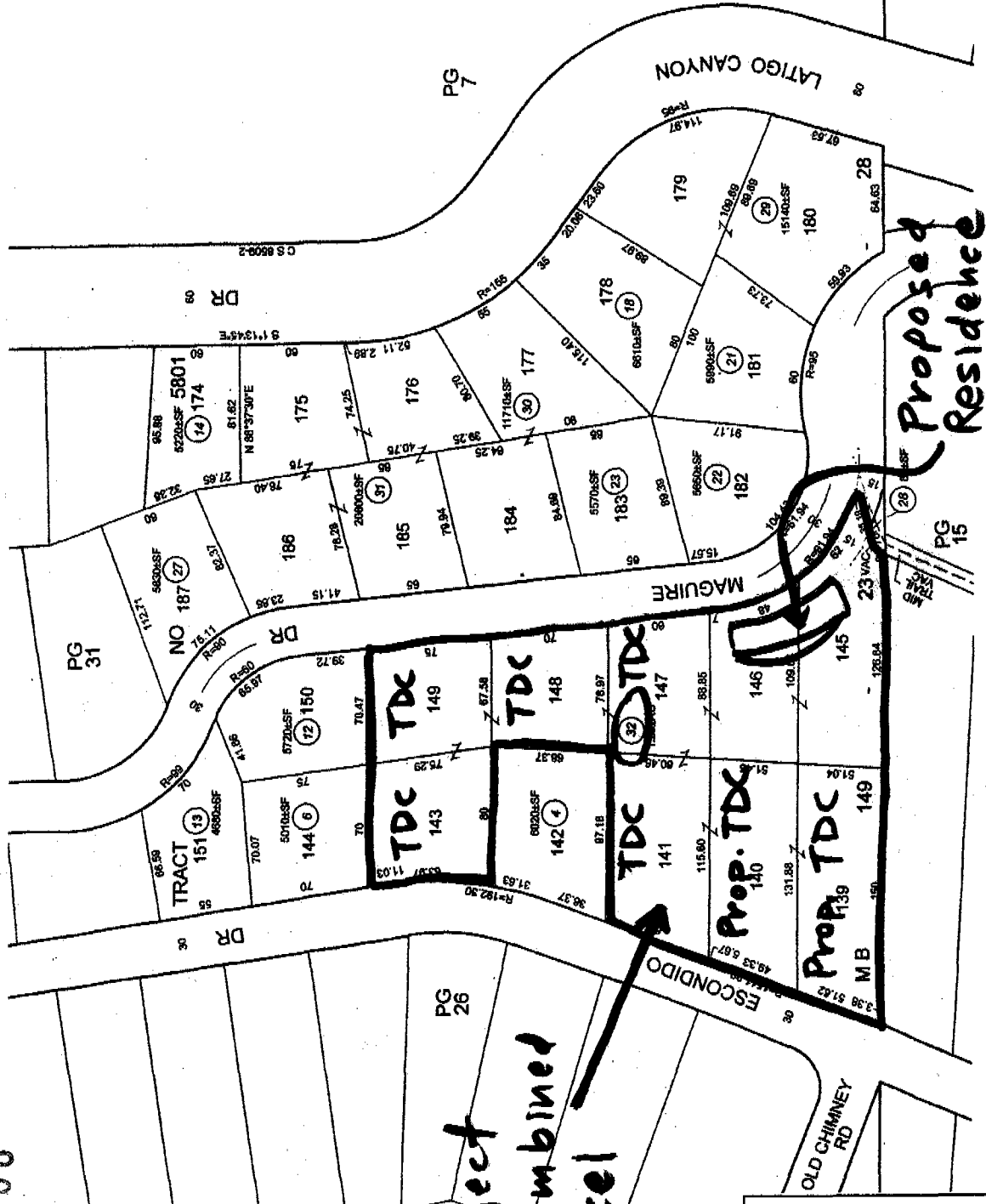


Exhibit 2  
App. No. 4-06-018  
Bonenfant  
APN Map

Recording requested by and mail to:

Name: HAK SIK SON  
1424 4TH ST. # 700  
SANTA MONICA, CA 90401  
City/State/Zip:

90-121410  
RECORDED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
31 MIN. 3 P.M. JAN 23 1990  
PAST.

FEE  
\$5  
S

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### COVENANT AND AGREEMENT TO HOLD PROPERTY AS ONE PARCEL

The undersigned hereby certify that we are the owners of real property located in the County of Los Angeles, State of California that is legally described as follows:

Lots 139, 140, 141, 143, 145, 146, 147, 148 and 149 Tract 5801.

(legal description)

as recorded in Book 149, Page 23 - 28 Records of Los Angeles County. This property is located at and is known by the following address:

4111 Maguire Drive, Malibu, CA 90265

(Street Address)

We hereby agree and covenant with the County of Los Angeles that the above legally described real property shall be held as one parcel and no portion shall be sold separately.

This covenant and agreement is executed for the purpose of

One single family residential building development

as regulated by Title 22 (Zoning Code) of the Los Angeles County Code.

This Covenant and Agreement shall run with all of the above described land and shall be binding upon ourselves, and future owners, encumbrancers, their successors, heirs or assignees and shall continue in effect until released by the authority of the Director of Planning of the County of Los Angeles upon submittal of request, applicable fees and evidence that the Covenant and Agreement is no longer required by law.

SIGNATURES  
MUST BE  
NOTARIZED

Owner's Name Elaine K. Patterson & Keith Patterson

(Please type or print)

Signature of owner

*Elaine K. Patterson*

*Keith Patterson*

(Sign)

{ Two Officer's Signatures  
Required for Corporations

(Sign)

Name of Corporation \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

#### (NOTARIZATION FOR INDIVIDUAL)

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } SS

On this 22nd day of January in the year 1990

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Mrs. Elaine K. Patterson &

Keith Patterson

personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this Instrument and acknowledged that he (she or they) executed it.

WITNESS my hand and official seal.

#### (NOTARIZATION FOR CORPORATION)

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } SS

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_

before me, the undersigned, a Notary Public in and for said County and State, personally appeared

personally known to be or proved to me on the basis of satisfactory evidence to be the person

Instrument as the \_\_\_\_\_

President and as the \_\_\_\_\_ on behalf of the Corporation herein to me that such Corporation executed pursuant to its by-laws or a resolution

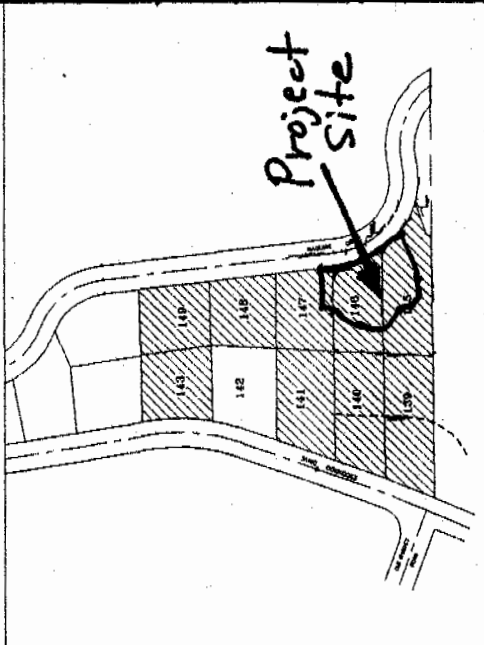
Exhibit 3  
App. No. 4-06-018  
Bonenfant  
Covenant to Hold  
Property As One  
Parcel

APN: 4461-030-032

LOT MAP

GRADING CALCULATION:

EXISTING GRADE	2.500
PROPOSED GRADE	2.500
CUT	0.000
FILL	0.000
TOTAL CUT	0.000
TOTAL FILL	0.000
TOTAL CUT & FILL	0.000
TOTAL CUT	204.1
TOTAL FILL	204.1
TOTAL CUT & FILL	408.2

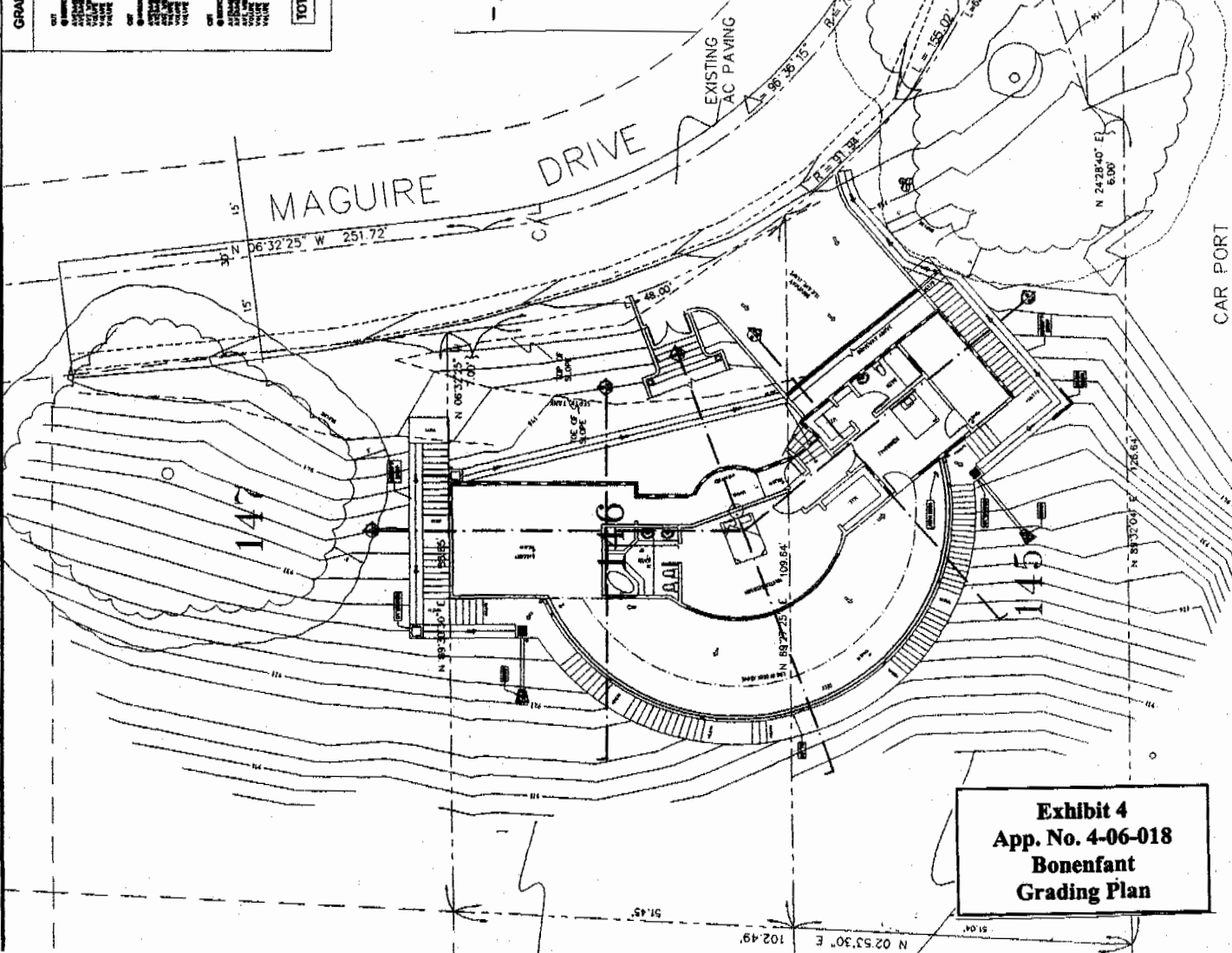


- PROPOSED SPOILS FROM APPROX. 20 CAISSONS :

DIAMETER = 2 FT.  
 DEPTH = 65 FT.  
 $V = 3.14 \times 1 \times 1 \times 65 = 204.1$  CU.FT. FOR ONE CAISSON  
 $V = 204.1 / 27 = 7.6$  CU.YD. FOR ONE CAISSON

TOTAL 20 CAISSONS X 7.6 = 152 CU.YD. CUT  
 TOTAL CAISSONS = 152

Total 188 cu.yd. cut  
 Total 188 cu.yd. export



GRADING & DRAINAGE PLAN  
 SCALE: 1" = 40'

Exhibit 4  
 App. No. 4-06-018  
 Bonenfant  
 Grading Plan

REVISIONS	BY	DATE

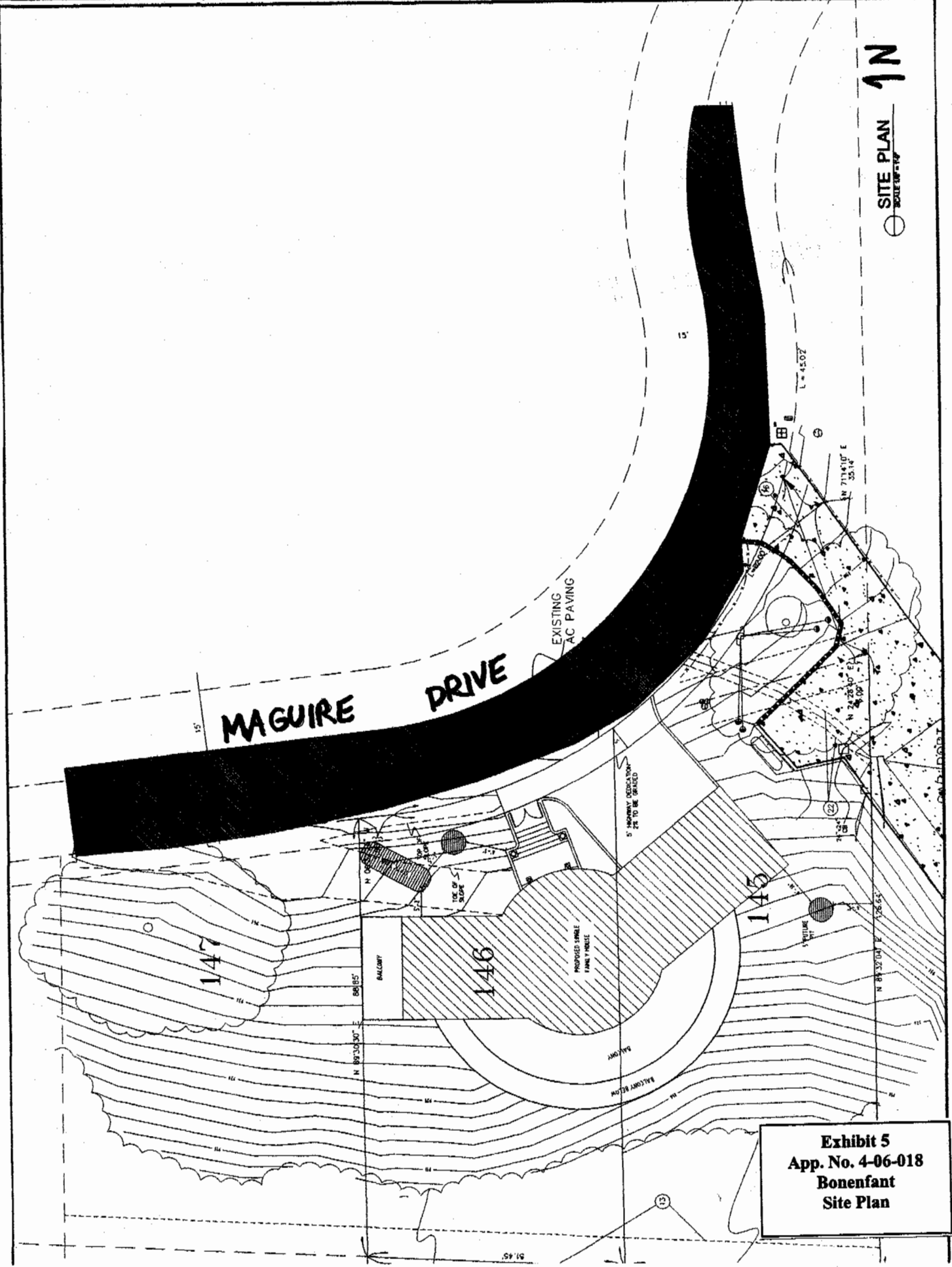


**MALIBU DESIGN ASSOCIATES**  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4988 FAX (310) 457-9924

PROJECT NO. \_\_\_\_\_  
 DATE \_\_\_\_\_  
 DRAWN BY \_\_\_\_\_  
 CHECKED BY \_\_\_\_\_  
 3000 GARDEN DRIVE  
 THOUSAND OAKS, CA 91320

**BONENFANT MALIBU HOUSE**  
 ARCHITECT  
 4100 MALIBU DRIVE  
 MALIBU, CA 90265

SHEET NO. \_\_\_\_\_  
 TOTAL SHEETS \_\_\_\_\_  
 DATE \_\_\_\_\_  
 PROJECT \_\_\_\_\_  
 DRAWING NO. \_\_\_\_\_  
 SCALE \_\_\_\_\_  
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**↑ N**  
**SITE PLAN**  
 SCALE: 1" = 40'

**Exhibit 5**  
**App. No. 4-06-018**  
**Bonenfant**  
**Site Plan**

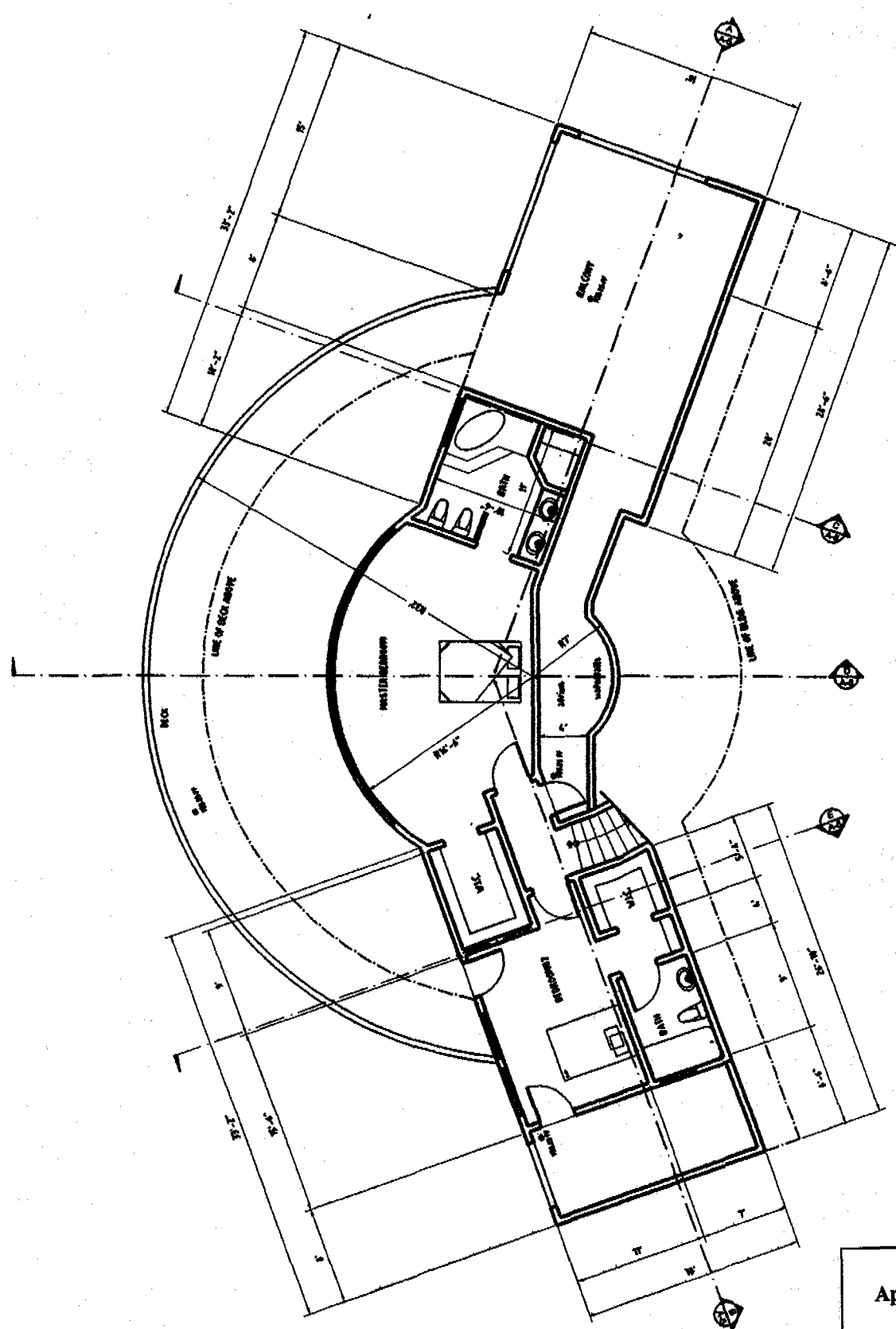
REVISION	

**MALBU DESIGN ASSOCIATES**  
 28550 PACIFIC COAST HIGHWAY, SUITE 200, MALBU, CA 90263  
 PHONE (310) 457-0908 FAX (310) 457-3023

MRS. DAN BONINFANT  
 284 OCEANVIEW DRIVE  
 THOUSAND OAKS, CA 91320

**BONINFANT MALBU HOUSE**  
 LOWER FLOOR PLAN

A-2  
 SHEET NO.  
 PROJECT NO.  
 DATE  
 DRAWN BY  
 CHECKED BY



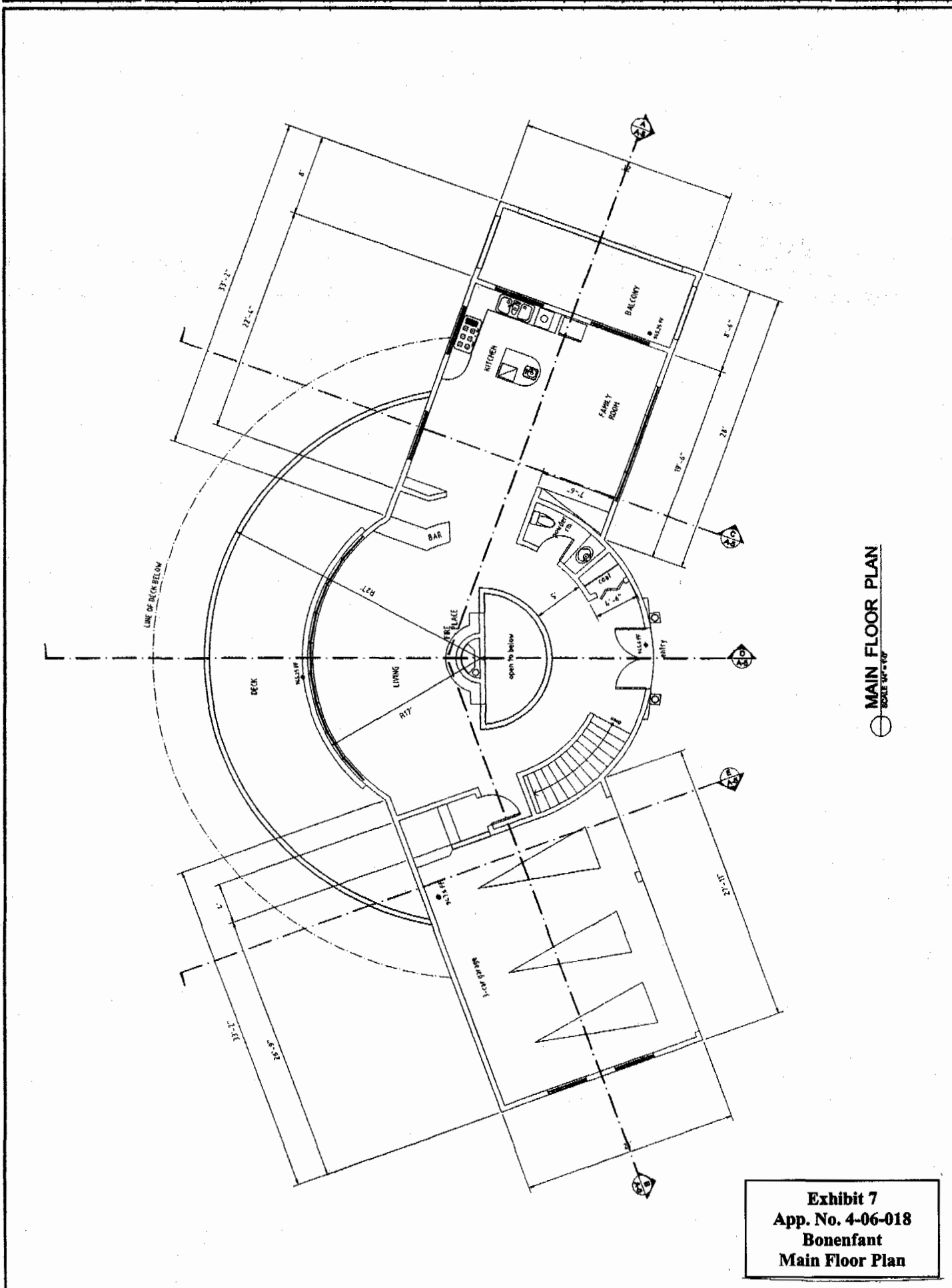
**LOWER FLOOR PLAN**

**Exhibit 6  
 App. No. 4-06-018  
 Boninfant  
 Lower Floor Plan**

**MALIBU DESIGN ASSOCIATES**  
 28965 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE: (310) 457-4988 FAX: (310) 457-3921

**BONNEFANT MALIBU HOUSE**  
 PROJECT NO. 4-06-018  
 SHEET NO. A-3

DATE	BY	CHKD BY
11/28/98	J. BONNEFANT	M. BONNEFANT
12/02/98	J. BONNEFANT	M. BONNEFANT
12/02/98	J. BONNEFANT	M. BONNEFANT



**MAIN FLOOR PLAN**  
 SCALE 1/4" = 1'-0"

**Exhibit 7**  
**App. No. 4-06-018**  
**Bonnefant**  
**Main Floor Plan**



REVISIONS:	BY:	DATE:



**MALIBU DESIGN ASSOCIATES**  
 28555 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4988 FAX (310) 457-3921

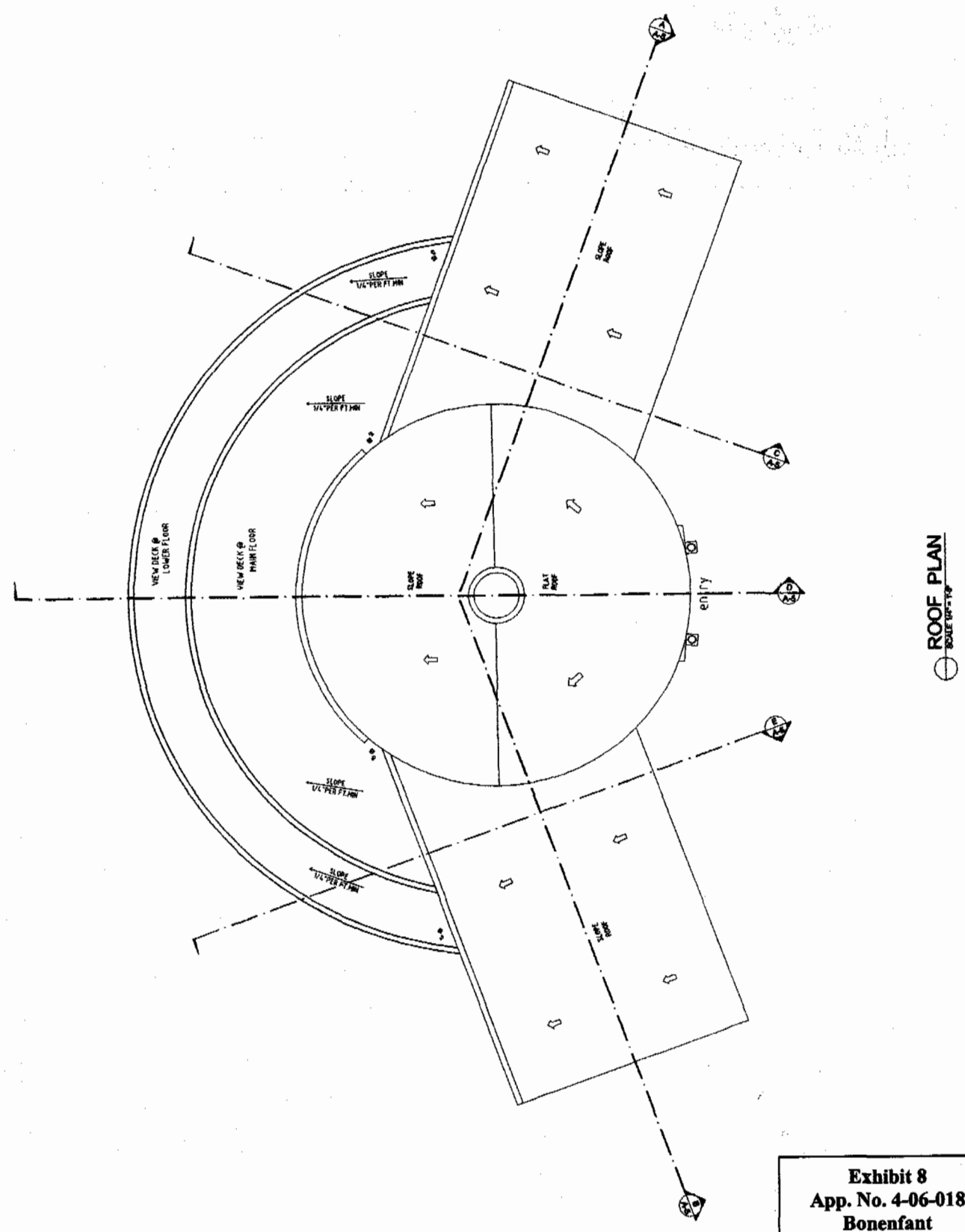
PROJECT NO. 4-06-018  
 NAME: BONENFANT MALIBU HOUSE  
 DATE: 11/11/06  
 DRAWN BY: J. B. BARNETT  
 CHECKED BY: J. B. BARNETT  
 SCALE: 1/4" = 1'-0"

DATE: 11/11/06  
 SHEET NO. 11  
 PROJECT NO. 4-06-018  
 NAME: BONENFANT MALIBU HOUSE  
 DATE: 11/11/06  
 DRAWN BY: J. B. BARNETT  
 CHECKED BY: J. B. BARNETT  
 SCALE: 1/4" = 1'-0"

DATE: 11/11/06  
 SHEET NO. 11  
 PROJECT NO. 4-06-018  
 NAME: BONENFANT MALIBU HOUSE  
 DATE: 11/11/06  
 DRAWN BY: J. B. BARNETT  
 CHECKED BY: J. B. BARNETT  
 SCALE: 1/4" = 1'-0"

A-4

11/11/06



**Exhibit 8**  
**App. No. 4-06-018**  
**Bonenfant**  
**Roof Plan**

REVISIONS

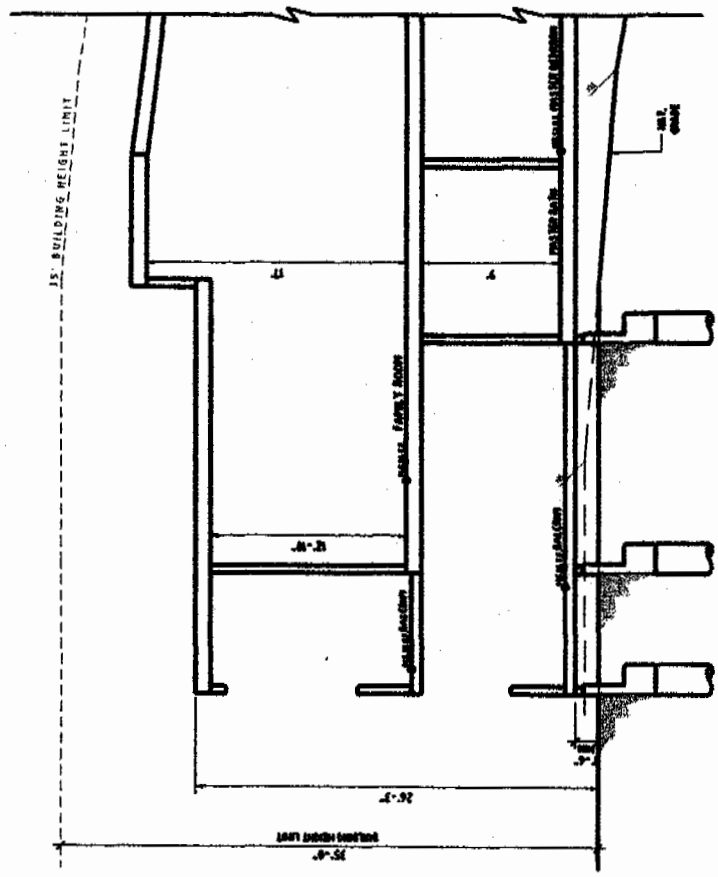


**MALIBU DESIGN ASSOCIATES**  
 28005 PINECREST COURT, SUITE 210, MALIBU, CA 90263  
 PHONE: (310) 457-4000 FAX: (310) 457-2021

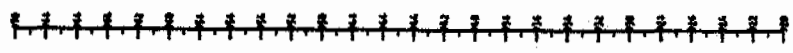
**MR. DAN BONINFANT**  
 507 GERRARD STREET EAST  
 THORNHILL, ONTARIO, CANADA M2H 3L9

**BONINFANT MALIBU HOUSE**  
 1411 PALMVIEW DRIVE  
 MALIBU, CA 90265  
 SEC. NO. 184 V

**A-5**  
 SHEET



**SECTION THRU "A"**  
 SCALE 1/4" = 1'-0"



**Exhibit 9**  
**App. No. 4-06-018**  
**Boninfant**  
**Section A**

REVISIONS	
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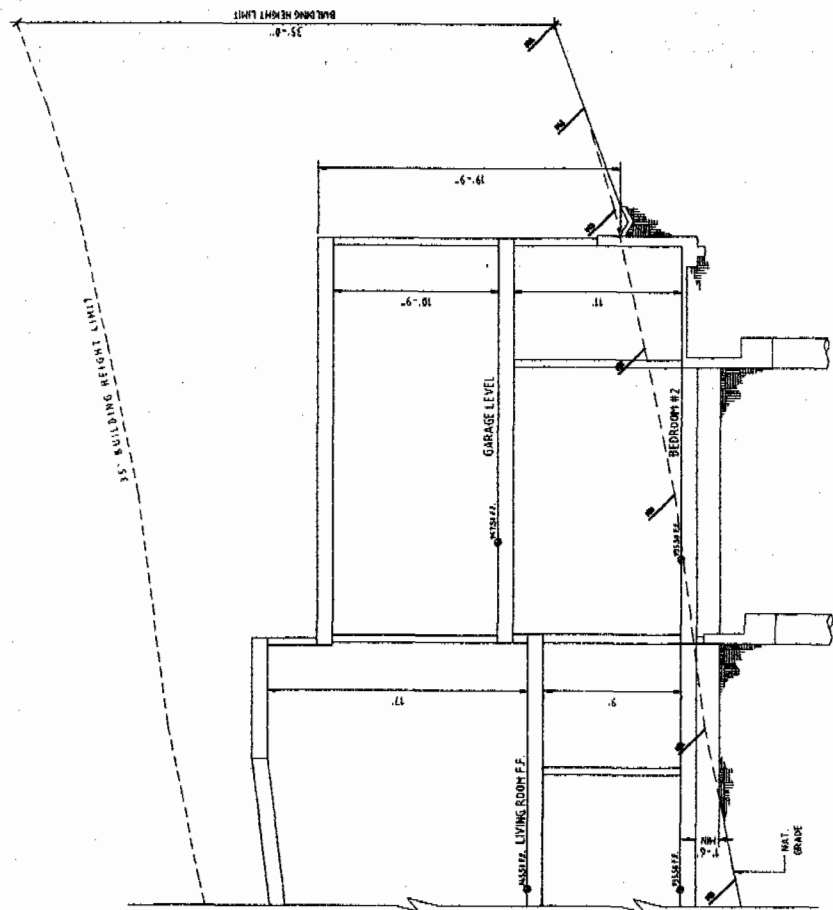
28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4998  
 FAX (310) 457-3921

**MALIBU DESIGN ASSOCIATES**

MEMBER OF  
 HOK GROUP  
 1807 GARDEN DRIVE  
 THOUSAND OAKS, CA 91320

**BONINFANT MALIBU HOUSE**

SECTION TITLE  
 PROJECT NO.  
 DATE  
 DRAWN BY  
 CHECKED BY  
 IN CHARGE  
 DATE  
 SHEET NO.  
 TOTAL SHEETS  
**A-6**



**SECTION THRU "B"**  
 SCALE 1/4"=1'-0"

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770

**Exhibit 10**  
**App. No. 4-06-018**  
**Boninfant**  
**Section B**

NO.	REVISION

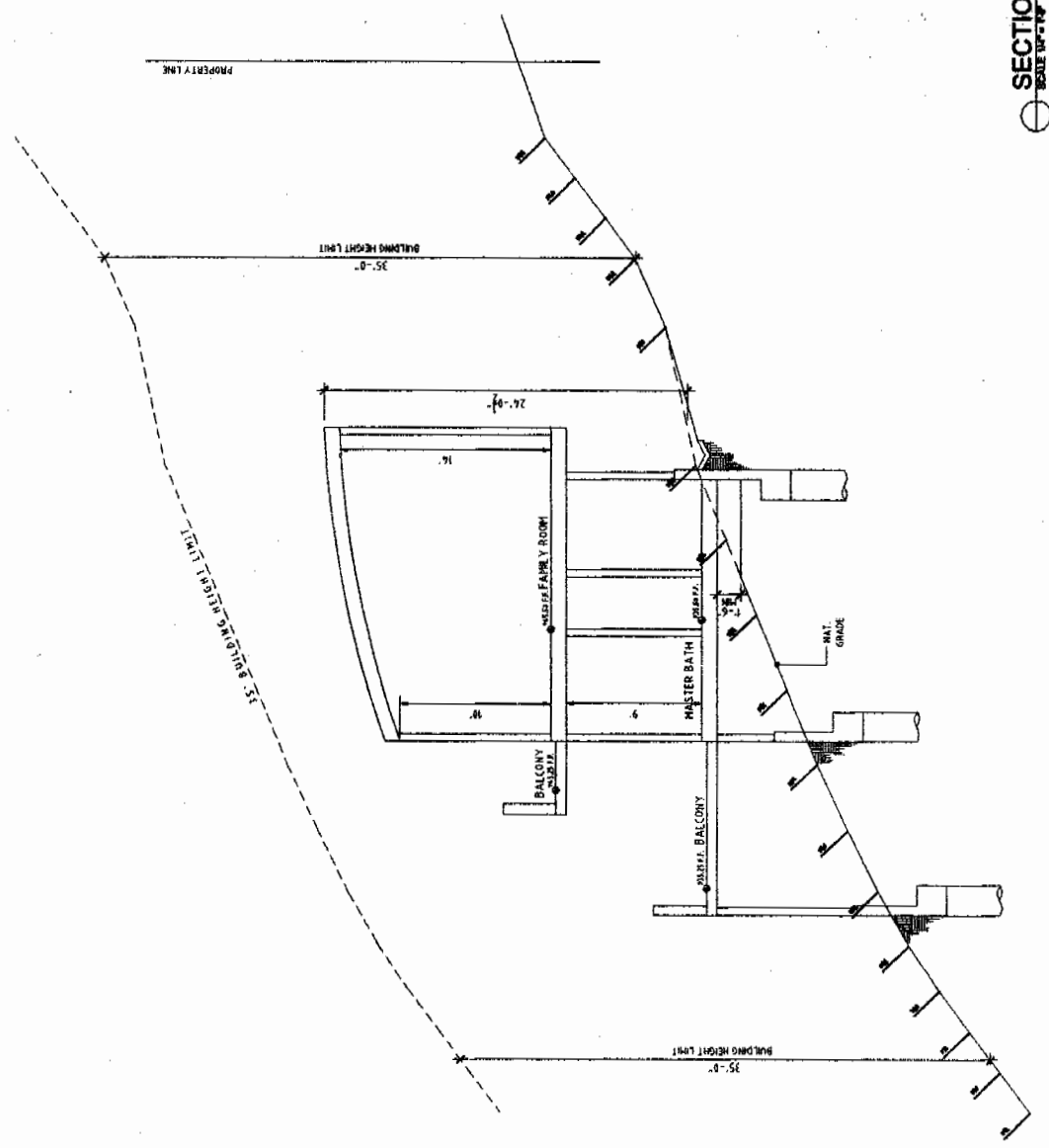


**MALIBU DESIGN ASSOCIATES**  
 28855 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4998 FAX (310) 457-3921

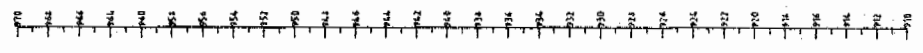
PROJECT NO.  
 407 GOSWOLD DRIVE  
 THOUSAND OAKS, CA 91320  
 OWNER  
 MRS. DAN BONINFANT  
 MEMBER OF

**BONINFANT MALIBU HOUSE**

DATE  
 1/11/97  
 DRAWN BY  
 J. W. WILSON  
 CHECKED BY  
 J. W. WILSON  
 DATE  
 1/11/97  
 SHEET  
 A-7  
 OF SHEETS



**SECTION THRU "C"**  
 SCALE 1/4" = 1'-0"



**Exhibit 11**  
**App. No. 4-06-018**  
**Boninfant**  
**Section C**

REVISIONS	DATE	BY	DESCRIPTION

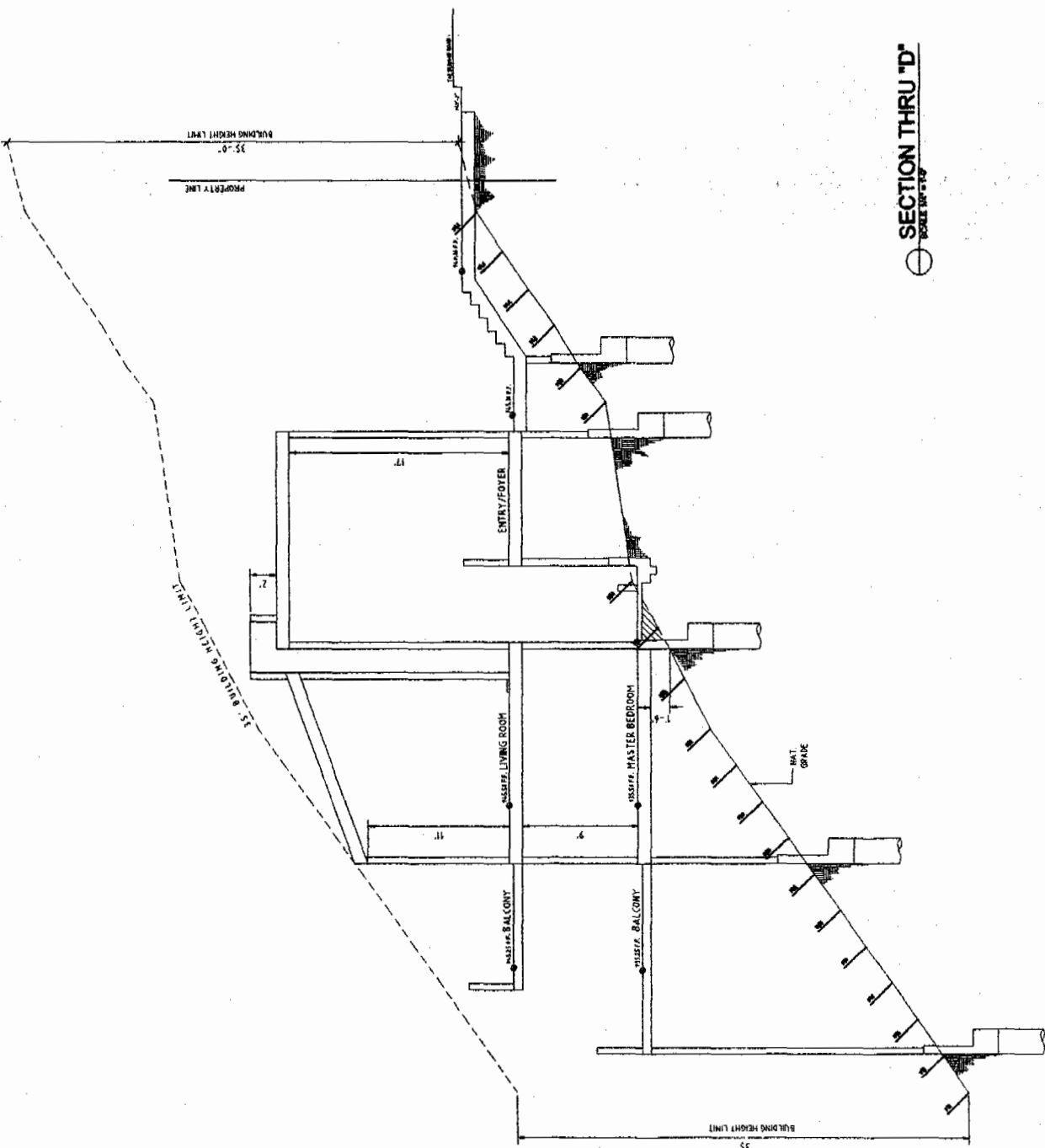


**MALIBU DESIGN ASSOCIATES**  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4998 FAX (310) 457-3921

PROJECT NO. 0300000000  
 PROJECT NAME: BONENFANT MALIBU HOUSE  
 ARCHITECT: MALIBU DESIGN ASSOCIATES  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4998 FAX (310) 457-3921

DATE: 08/11/03  
 DRAWN BY: M. BAHAMANI  
 CHECKED BY: M. BAHAMANI  
 SCALE: 1/8" = 1'-0"  
 SHEET NO.: 03  
 SHEET NAME: SECTION D

**A-8**  
 OF SHEETS



**SECTION THRU "D"**  
 0300000000

178 176 174 172 170 168 166 164 162 160 158 156 154 152 150 148 146 144 142 140 138 136 134 132 130 128 126 124 122 120 118 116 114 112 110 108 106 104 102 100 98 96 94 92 90 88 86 84 82 80 78 76 74 72 70 68 66 64 62 60 58 56 54 52 50 48 46 44 42 40 38 36 34 32 30 28 26 24 22 20 18 16 14 12 10 8 6 4 2 0

**Exhibit 12**  
**App. No. 4-06-018**  
**Bonenfant**  
**Section D**

REVISIONS

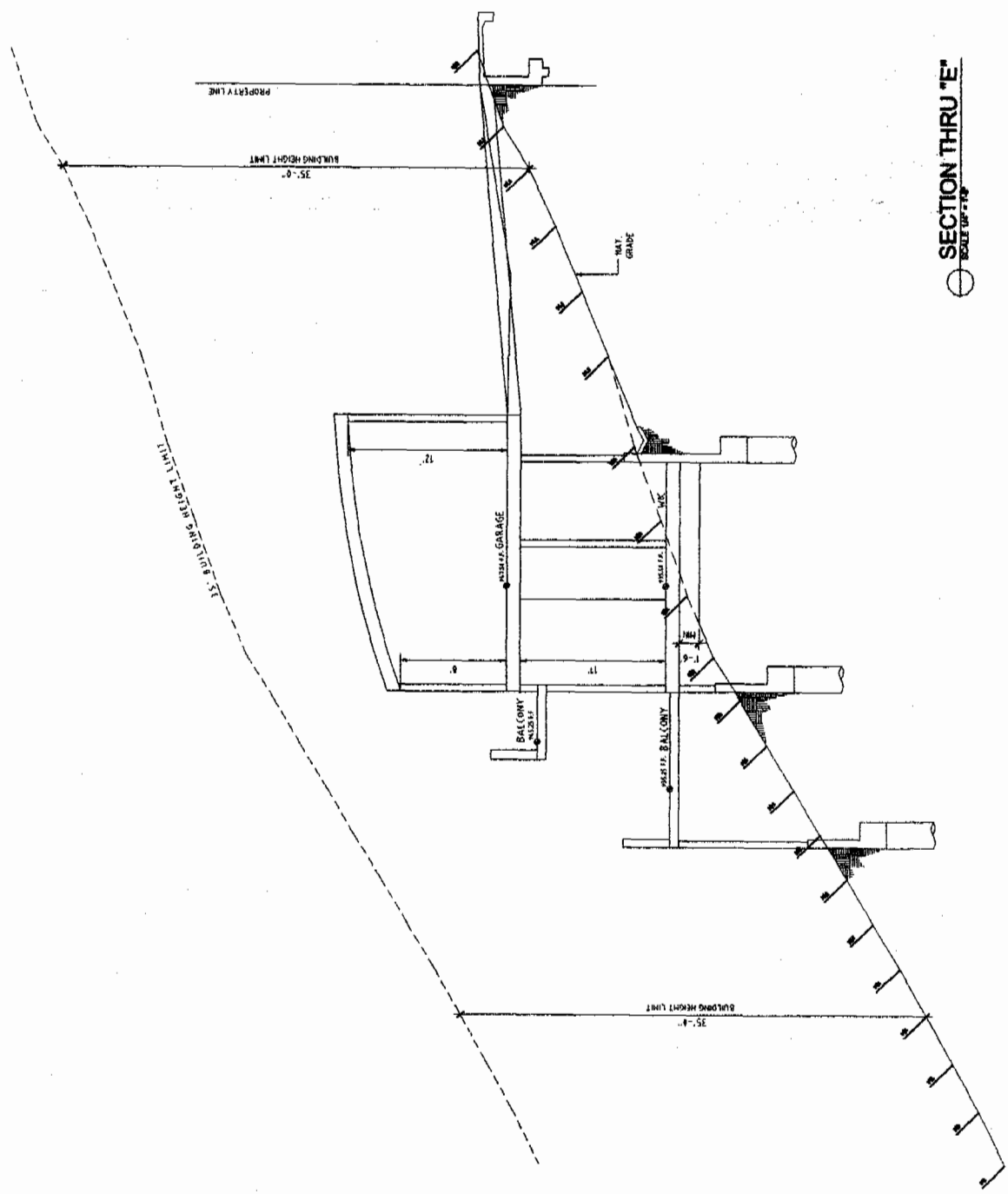


**MALIBU DESIGN ASSOCIATES**  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4998 FAX (310) 457-3921

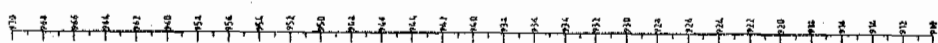
**BONENFANT MALIBU HOUSE**  
 PREPARED FOR: MR. DAN BONENFANT  
 1200 OCEANVIEW DRIVE, MALIBU, CA 90265  
 DRAWN BY: M. SAMANIP  
 DATE: 05.18.06  
 SHEET NO.: 13  
 PROJECT NO.: 4-06-018

**BONENFANT MALIBU HOUSE**  
 FULL EXHAUSTIVE DRAWING  
 SHEET NO. 13  
 PROJECT NO. 4-06-018

**A-9**  
 SECTION THRU 'E'  
 SCALE: 1/8" = 1'-0"



**SECTION THRU 'E'**  
 SCALE: 1/8" = 1'-0"



**Exhibit 13**  
**App. No. 4-06-018**  
**Bonenfant**  
**Section E**

REVISIONS	6

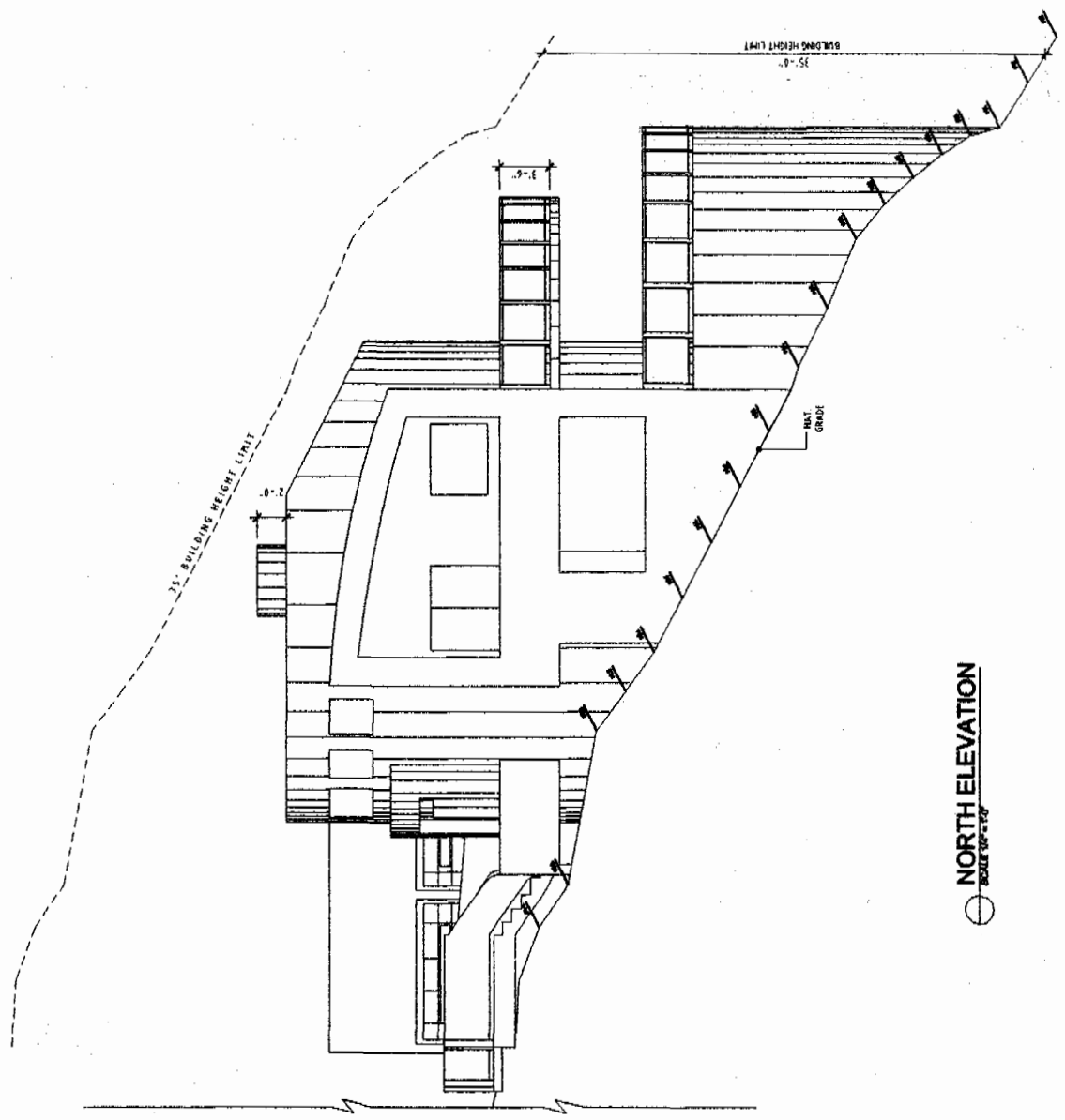


**MALIBU DESIGN ASSOCIATES**  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4998 FAX (310) 457-3921

PROJECT NO. \_\_\_\_\_  
 ARCHITECT \_\_\_\_\_  
 1000 RIVER ST.  
 MALIBU, CA 90265

**BONENFANT MALIBU HOUSE**  
 ARCHITECT  
 1000 RIVER ST.  
 MALIBU, CA 90265

DATE	03-16-00
JOB NUMBER	4-06-018
DESIGNER	
CHECKED	
DATE	
PROJECT	
SHEET	A-10
TOTAL SHEETS	12



700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800

**Exhibit 14**  
**App. No. 4-06-018**  
**Bonenfant**  
**North Elevation**

REVISIONS	BY

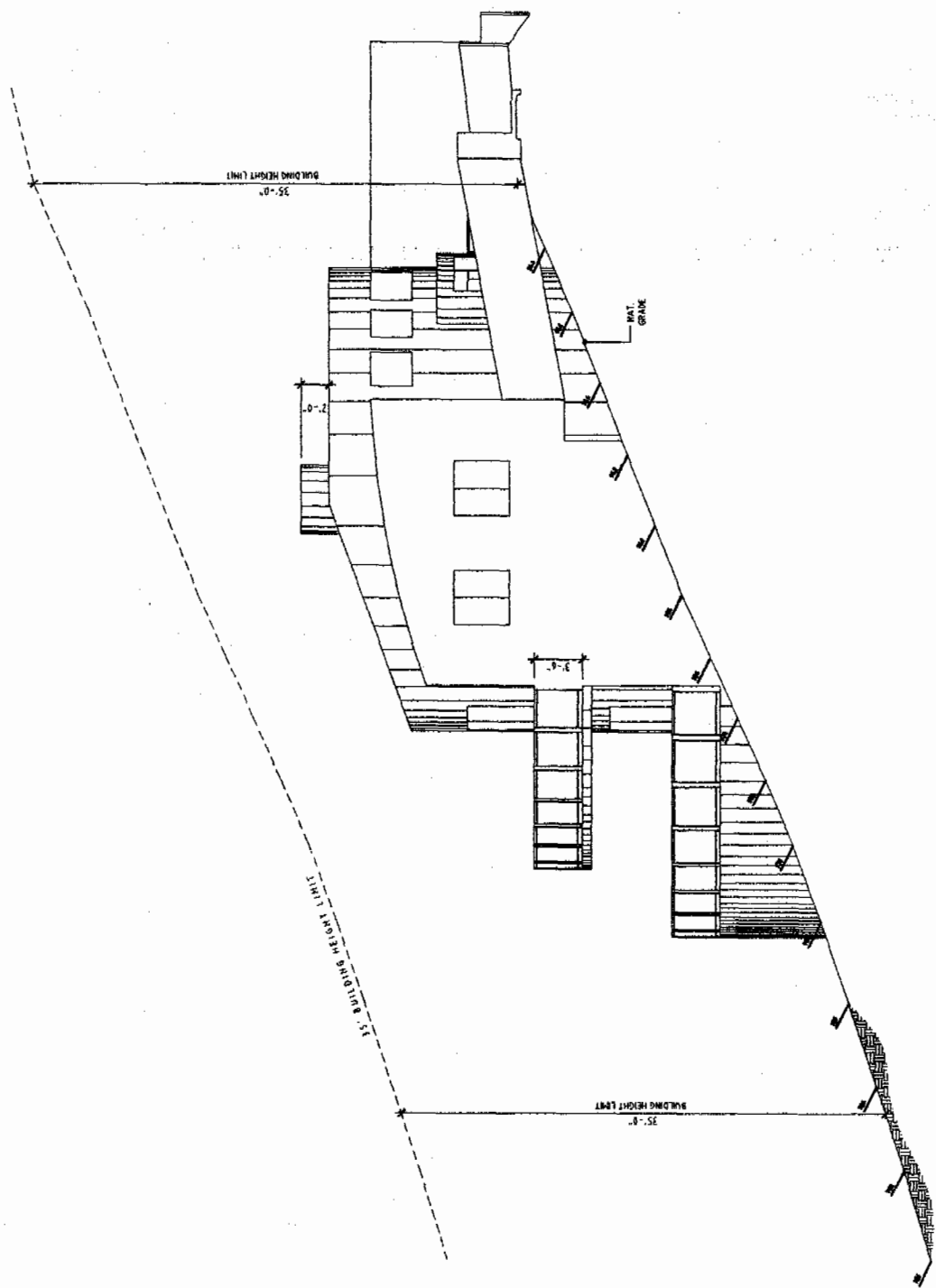


**MALIBU DESIGN ASSOCIATES**  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALIBU, CA 90265  
 PHONE (310) 457-4988 FAX (310) 457-7921

PROJECT NO. \_\_\_\_\_  
 PROJECT NAME \_\_\_\_\_  
 ARCHITECT \_\_\_\_\_  
 322 CECILIA DRIVE  
 THOUSAND OAKS, CA 91320

**BONENFANT MALIBU HOUSE**  
 SHEET NO. \_\_\_\_\_  
 DATE \_\_\_\_\_  
 DRAWN BY \_\_\_\_\_  
 CHECKED BY \_\_\_\_\_  
 PROJECT NO. \_\_\_\_\_

**A-11**  
 SOUTH EAST ELEVATION



**SOUTH EAST ELEVATION**  
 SOUTH EAST ELEVATION

81.0  
80.0  
79.0  
78.0  
77.0  
76.0  
75.0  
74.0  
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4.0  
3.0  
2.0  
1.0  
0.0

**Exhibit 15**  
**App. No. 4-06-018**  
**Bonenfant**  
**Southeast Elevation**



REVISIONS:	NO.	DATE	DESCRIPTION

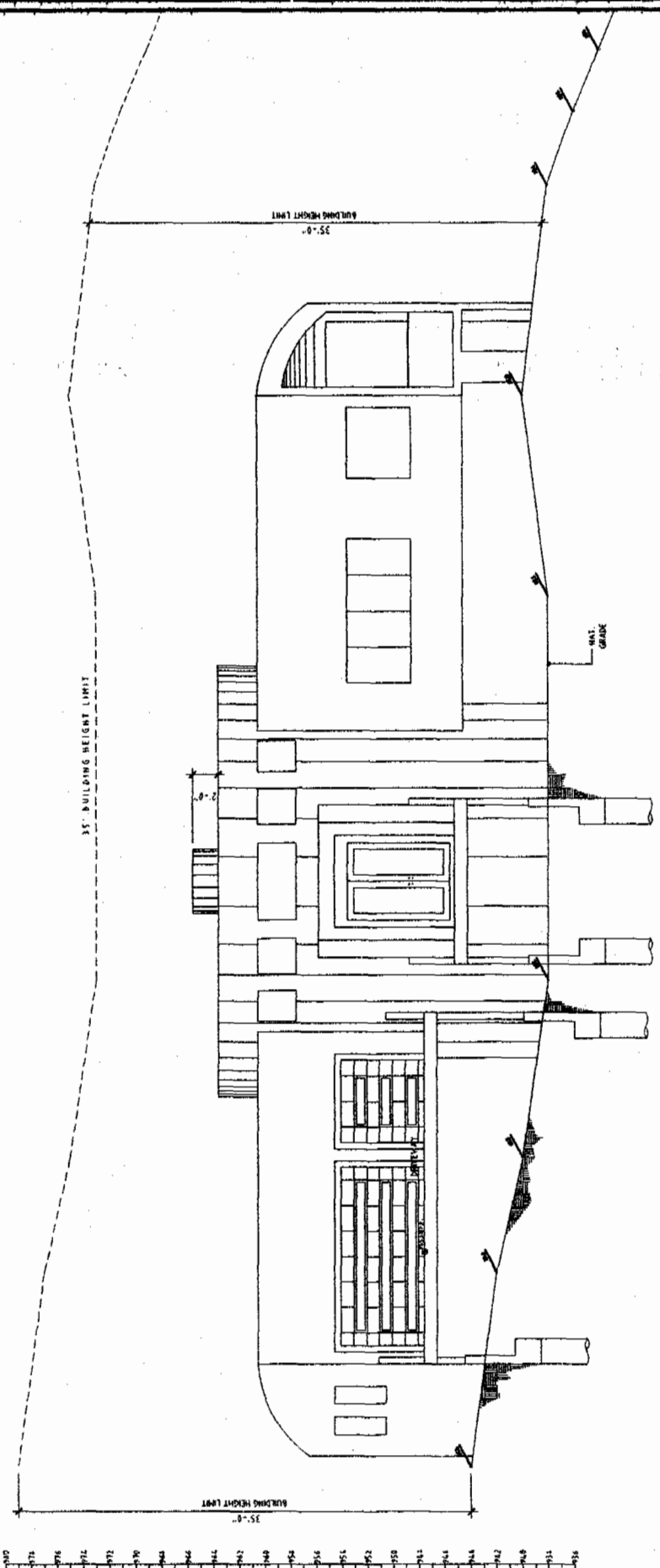
DATE PLOTTED: 11/11/03  
 PLOT SCALE: 1/8" = 1'-0"  
 PLOT AREA: 11.0000 SQ. FT.  
 PLOT PERIMETER: 100.0000 FT.  
 PLOT CENTER: 50.0000, 50.0000

**MALBU DESIGN ASSOCIATES**  
 28955 PACIFIC COAST HIGHWAY, SUITE 210, MALBU, CA 90265  
 PHONE (310) 457-4998 FAX (310) 457-3921

DESIGNER: MALBU DESIGN ASSOCIATES  
 ARCHITECT: MALBU DESIGN ASSOCIATES  
 ENGINEER: MALBU DESIGN ASSOCIATES  
 CONTRACTOR: MALBU DESIGN ASSOCIATES

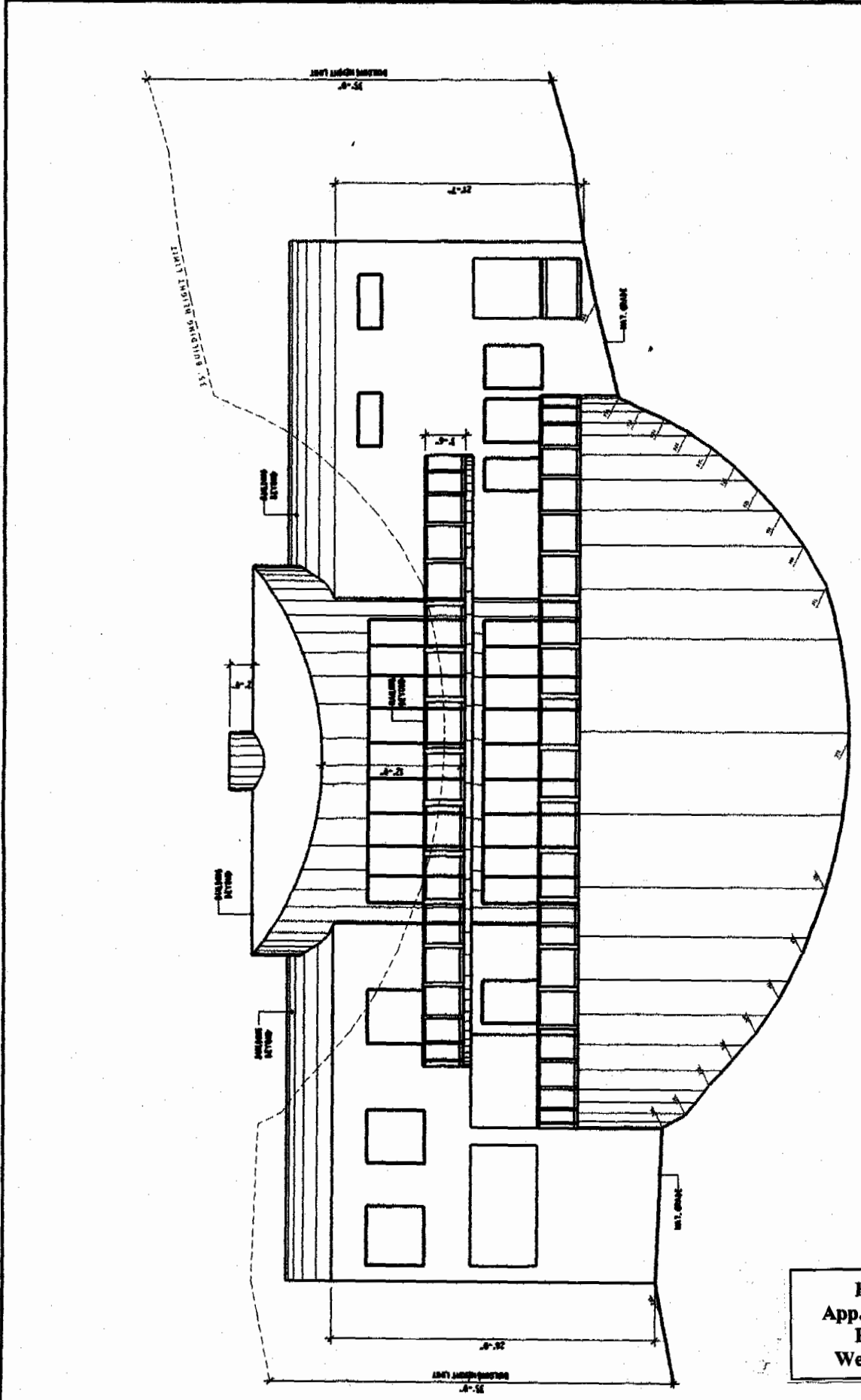
**BONINFANT MALBU HOUSE**  
 111 MALBU DRIVE  
 MALBU, CA 90265  
 PROJECT NO. 4-06-018  
 SHEET NO. A-12  
 OF 15 SHEETS

**A-12**  
 OF 15 SHEETS



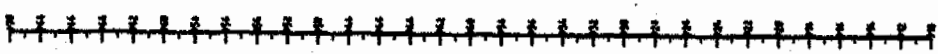
**EAST ELEVATION**  
 100% 1/8" = 1'-0"

**Exhibit 16**  
**App. No. 4-06-018**  
**Boninfant**  
**East Elevation**



**WEST ELEVATION**  
 SCALE: 1/8" = 1'-0"

**Exhibit 17**  
**App. No. 4-06-018**  
**Bonenfant**  
**West Elevation**



ASSESSMENT FOR FUEL MODIFICATION PLAN FOR FIRE PROTECTION

Zone A - Subtick Zone

- Remove 30 feet beyond the edge of any combustible structure, accessory structure, appendage or projection.
- Pruning by automatic or manual systems shall be provided to landscaping to maintain healthy vegetation with high live fuel moisture and greater fire resistance.
- Landscaping and vegetation in this zone shall consist primarily of grass lawns, ground covers, and plants with low fuel moisture content. The overall characteristics of the landscape shall provide adequate defensible space in a fire environment.
- Plants in Zone A shall be inherently highly fire resistant and spaced appropriately. Species selection should be made referencing the Fuel Modification Plan Reference. Other species may be utilized except for dwarf varieties or mature trees small in stature, trees are generally not recommended within Zone A.
- Target species will typically not be allowed within 20 or more feet of combustible structures and may require removal if existing on site.
- Vines and climbing plants shall not be allowed on any combustible structure.

Zone B - Irrigated Zone

- Excludes from the outermost edge of Zone A to 30 feet from structure.
- Landscaping and vegetation in this zone shall be irrigated to landscaping to maintain healthy vegetation with high live fuel moisture and greater fire resistance.
- Landscaping and vegetation in this zone shall typically consist primarily of grass lawns, ground covers, and adequately spaced shrubs and trees. The overall characteristics of the landscape shall provide adequate defensible space in a fire environment.
- Species selection should be made referencing the Fuel Modification Plan Reference. Other species may be utilized subject to approval.

Zone C - Native Broad-Topple Zone

- Excludes from the outermost edge of Zone B to 200 feet from structure.
- Irrigation systems are not required for this zone. (Native plants are generally not compatible with irrigation systems.)
- Landscaping and vegetation in this zone shall consist of modified existing native plants, adequately spaced shrubs and trees. There may also be requirements for landscape plants of City or County Public Works or Parks & Recreation Landscaping or Hillside ordinances. In all cases the overall characteristics of the landscape shall provide adequate defensible space in a fire environment.
- Species selection should be made referencing the Fuel Modification Plan Reference. Other species may be utilized subject to approval.
- Fuel loads shall be reduced by pruning up the lower 1/3 of remaining trees or shrubs and removing dead wood. Native plants may be thinned by reduced amounts as the distance from structure increases.
- There is Zone C shall be spaced appropriately. Species selection should be made referencing the Fuel Modification Plan Reference. Other species may be utilized subject to approval.
- General spacing for existing native shrubs or groups of shrubs is 15 feet between clumps.
- General spacing for existing native trees or groups of trees is 20 feet between canopies.

Fire Access Road Zone

- Excludes 10 feet from the edge of any public or private roadway that may be used as access for firefighting operations or emergency.
- All flammable materials shall be stored in a minimum of 10 feet on each side of Fire Access Road. (Fire Code 312.10)
- Fire access roads, driveway, and turnaround shall be maintained in accordance with fire code.
- Fire Access Roads shall have unobstructed vertical clearance. (Fire Code 503.2.1)
- Landscaping and native plants within the 10-foot Fire Access Road Zone shall be appropriately spaced and maintained to provide safe access to vehicles and fire equipment.

Maintenance

- Routine maintenance shall be regularly performed in all zones which require:
- Removal or thinning of undesirable combustible vegetation and replacement of dead or dying plants.
- Pruning lower branches of trees and overall fuel load and continuity with other fuels.
- Pruning lower branches of trees and overall fuel load and continuity with other fuels. Pruning branches to help prevent fire from spreading upward into the crown.
- Under 12 inches, appropriate to Zone A, B, and C.
- Annual grasses and weeds shall be maintained at a height not to exceed 3 inches.
- Accumulated plant litter and dead wood shall be removed. Debris and trimmings produced by pruning and planting should be removed from the site or chipped and evenly spread on the same site.
- Compliance with the Fire Code is a jurisdictional responsibility. Enforcement with other departments is the responsibility of the Fire Department.
- Following the start of any pruning or fire fuel, between the month of April and June.
- Appeal on geographic region.
- Bush Clearance Ordinance: on adjacent properties should be done.
- All fire abatement shall be in accordance with the County of Los Angeles Fire Department Fuel Modification Guidelines and approved prior to installation.
- Questions regarding landscape planning and maintenance with regard to fire safety should be directed to the Fire Department's Fuel Modification Unit at (626) 969-5283.

Local Tree Maintenance Assessment

The property owner(s) agree to be responsible for the long-term maintenance of this fuel modification plan, as well as the removal of any dead or dying plants. The property owner(s) shall be responsible for any changes to the Fuel Modification Plan that may be required. Failure to comply with the Fuel Modification Plan requirements may result in an Administrative Fine not to exceed \$1000 and possible legal action.



Maguire Drive

Episcandido Drive

Episcandido Creek

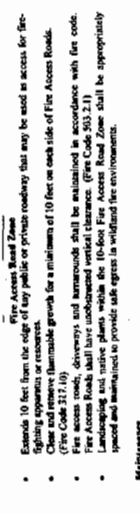
Zone A

Zone B

Zone C

Fire Access Road Zone

FUEL MODIFICATION PLAN



APPROVED

DATE: 10/18/18

NAME: [Signature]

POSITION: [Signature]

COUNTY OF LOS ANGELES  
FIRE DEPARTMENT  
FUEL MODIFICATION UNIT

Exhibit 18  
App. No. 4-06-018  
Bonenfant  
Fuel Modification  
Plan