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STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, *Governor*

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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-98-157

APPLICANTS: Bernard McDonald, Jeff Greene, and Vidi Vici, Inc.

AGENT: Klaus Radtke

PROJECT LOCATION: Six separate parcels in the vicinity of 1901 South Lookout Drive/Corral Canyon Road (APNs: 4461-004-004 & 034 and 4461-005-052, 053, 054 & 055); Malibu, Los Angeles County.

PROJECT DESCRIPTION: Revegetate and restore 6 separate parcels. Restoration will include revegetation of previously disturbed upland and riparian areas and 1,126 cu. yds. of grading (563 cu. yds. cut and 563 cu. yds. fill) to restore a filled drainage. Restoration will also include the removal of an unpermitted Arizona Crossing, a culvert, a well, a spa, multiple trailers/structures, and various debris.

LOCAL APPROVALS RECEIVED: Approval in Concept Los Angeles County Regional Planning Department, Approval by Los Angeles County Environmental Review Board.

SUBSTANTIVE FILE DOCUMENTS: Restoration Report by Klaus Radtke, PH.D. revised 10/6/98; Landform and Vegetation Restoration Report by California Environmental dated 4/98; Proposed Restoration Grading Plans Geologic and Engineering Report by California Environmental dated 6/4/97.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with six (6) special conditions regarding implementation and completion of the Revegetation/Restoration Plan, Revegetation/Restoration Monitoring Program, construction monitoring, plans conforming to geologic recommendation, removal of an existing well, and condition compliance. Portions of the subject site are designated by the Malibu/Santa Monica Mountains Land Use Plan as environmentally sensitive habitat area (ESHA) and/or as significant watershed area. In addition, several natural drainages and ravines are located on site including a designated blueline stream. Development, consisting of the construction and placement of various structures, grading, dumping of trash/debris, and removal of vegetation, has occurred on the subject site without the required coastal development permits. The applicant is not proposing to retain any of the unpermitted development. All unpermitted structures have been previously removed by the applicant (with the exception of one well which is proposed to be removed as part of the proposed project). The proposed project will serve to restore and revegetate all disturbed areas on the subject site to an approximation of their condition before the unpermitted development occurred.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

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. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

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

5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. **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.

7. **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. Implementation and Completion of the Vegetative and Grading Restoration Plans

The applicant shall implement and complete the Restoration Program prepared by Klaus Radtke, PH.D. (outlined in the Restoration Report by Klaus Radtke revised 10/6/98 and the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98) within 45 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

2. Revegetation/Restoration Monitoring Program

(a) Prior to the issuance of a coastal development permit the applicant shall submit, for the review and approval of the Executive Director, a five (5) year Revegetation Monitoring Program, prepared by a environmental resource specialist, which outlines revegetation and restoration performance standards to ensure that revegetation efforts, as required by Special Condition One (1), at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation. The monitoring program shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) showing the area of the project site to be restored prior to restoration.

(b) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the project site. If these inputs are required beyond the first four years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs.

(c) At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this Coastal Development Permit. The final report shall also confirm that the existing unpermitted well located on the "Upper" Site (APN 4461-004-004) has been removed consistent with Special Condition Five (5).

3. Construction Monitoring

The applicant shall retain the services of an environmental resource specialist with appropriate qualifications acceptable to the Executive Director. The environmental resource specialist shall be present on site during all grading activity. Protective fencing shall be used around all oak trees which may be disturbed during grading activities. The consultant shall immediately notify the Executive Director if unpermitted activities occur or if habitat is removed or impacted beyond the scope of the work allowed by Coastal Development Permit 4-98-157. This monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise. If significant adverse effects or damage occur to any oak trees on site as a result of grading activity, the applicant shall be required to submit a revised, or supplemental, restoration program to adequately mitigate such adverse effects at 10:1 oak tree replacement ratio. The revised, or supplemental, restoration program shall be processed as an amendment to this coastal development permit.

4. Plans Conforming to Geologic Recommendation

All recommendations contained in the Proposed Restoration Grading Plans Geologic and Engineering Report by California Environmental dated 6/4/97 shall be incorporated into all final design and construction including grading and drainage. All plans must be reviewed and approved by the geologic consultant. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

5. Removal of Existing Well

The applicant shall remove the existing well located on the "Upper" Site (APN:4461-004-004) shown on the grading plan prepared by John E. Vigil dated September 1998, prior to the completion of the five (5) year Revegetation/Restoration Monitoring Program required by Special Condition Two (2).

6. Condition Compliance

Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to revegetate and restore 6 separate parcels. Restoration will include revegetation of previously disturbed upland and riparian areas and 1,126 cu. yds. of grading (563 cu. yds. cut and 563 cu. yds. fill) to restore a filled drainage. Restoration will also include the removal of an unpermitted Arizona Crossing, a culvert, a well, a spa, multiple trailers/structures, and various debris.

The subject site consists of six separate parcels approximately 265 acres in combined size located in a primarily rural area of the Santa Monica Mountains immediately west of Corral Canyon Road (Exhibit 1). The proposed restoration will occur in three separate areas on the subject site (approximately 4.5 acres in combined size) where unpermitted development has previously occurred: (1) the "Upper Site" *(APN: 4461-004-004)*, (2) the "Central Site" *(APNs: 4461-005-052 & 053)*, and (3) the "Lower Site" *(APNs: 4461-004-034 and 4461-005-054 & 055)* as shown on Exhibit 2. Portions of each of the three sites are located within areas designated by the Malibu/Santa Monica Mountains Land Use Plan as environmentally sensitive habitat area (ESHA) and/or as significant watershed area. In addition, several natural drainages and ravines are located on each of the three sites and a stream, designated as a blue line stream by the United States Geologic Service, crosses a portion of the "Lower Site."

Existing Development on the subject site includes a dirt road network, constructed prior to the Coastal Act, which extends across each of the three sites. In addition, an existing well, water tank, underground water pipes, and a large pad area were also constructed on the "Lower Site" prior to the passage of the Coastal Act. An existing 880 sq. ft. barn with a one bedroom living quarters is also located on the "Lower Site" and was permitted by the Commission in 1977 subject to Coastal Development Permit A-2-28-77-257. The Commission notes that only a small portion of the existing 880 sq. ft. barn/caretaker's unit is designated for residential use and that the structure is not a single family residence. The Commission further notes that any future improvements to the existing structure (including conversion of the entire structure to residential use) would require a coastal development permit. The applicant is not proposing any improvements to the existing barn/caretaker's unit as part of this application. In addition, Coastal Development Permit 4-96-073 was also issued for a minor lot line adjustment between the four parcels located on the "Central" and "Lower" Sites (APNs: 4461-005-052, 053, 054 & 055).

Unpermitted development has also occurred on the subject site. Based on information submitted by the applicant and analysis of aerial photography and site reconnaissance by staff, the Commission notes that development (consisting of the construction and placement of various structures, grading, dumping of trash/debris, and removal of

vegetation as listed in greater detail in Table 1 below) was carried out on the subject site between 1977 and 1993 without the required coastal development permits.

TABLE 1: SUMMARY OF DEVELOPMENT AND RESTORATION

"Upper" Site *(APN: 4461-004-004)*

Previously Approved/Pre-Coastal Act Development:
- Dirt road.

Unpermitted Development:
- Grading within a natural drainage ravine (approximately 563 cu. yds. of material was excavated from the ravine slopes and placed on floor of the ravine to block drainage and create level site).
- Dumping of substantial quantities of trash and debris in drainage ravine.
- Removal of native vegetation.
- Installation of a well.

Restoration Status: All trash and debris have been previously removed from site to appropriate location outside of Coastal Zone. Restorative grading, revegetation of all disturbed areas, and removal of unpermitted well are proposed as part of this application.

"Central" Site" *(APNs: 4461-005-052 & 053)*

Previously Approved/Pre-Coastal Act Development:
- Dirt road.

Unpermitted Development:
- Placement of unpermitted structures (including a trailer, shed, and a portion of a large boat).
- Dumping of substantial quantities of trash and debris.
- Removal of native vegetation.

Restoration Status: All unpermitted development (all structures and trash/debris) have been previously removed from site to appropriate location outside of Coastal Zone. Restoration of all disturbed areas (consistent with Vegetative and Grading Restoration Plans by Klaus Radtke revised 10/6/98) has been previously completed.

"Lower" Site *(APNs: 4461-004-034 and 4461-005-054 & 055)*

Previously Approved/Pre-Coastal Act Development:
- Dirt road.
- Graded pad area.
- Well/pump/pipes/water tank.
- 880 sq. ft. barn/caretaker's unit.

Unpermitted Development:
- Construction of multiple structures (including a large workshop, Arizona Crossing in a blue line stream, a culvert in a natural drainage, a well, a spa, and the placement of multiple trailers).
- Dumping of a substantial quantity of trash and debris.
- Removal of native vegetation.
- Extension of existing dirt roads.
- Minor grading to construct terraces for an avocado orchard on hillside slopes.

Restoration Status: All unpermitted structures (including the workshop, Arizona Crossing, culvert, well, spa, all trailers) and all trash/debris have been previously removed from the project site to location outside of Coastal Zone. Orchard destroyed by wildfire in 1980's. Revegetation/restoration of all disturbed and graded areas, including all unpermitted road extensions (consistent with Vegetative and Grading Restoration Plans by Klaus Radtke revised 10/6/98) has been previously completed.

The Commission filed a lawsuit in 1992 seeking relief for the above referenced unpermitted development. The suit has been stayed, pending efforts to resolve the matter. The proposed application is for restoration of the subject site only, the applicant is not proposing to retain any of the unpermitted development on site. All unpermitted structures (with the exception of one well on the "Upper" Site) and all trash and debris have already been removed from the subject site by the applicant to an appropriate location outside the Coastal Zone. In addition, all previously disturbed areas on the "Lower" and "Central" sites where unpermitted development has occurred have already been revegetated/restored by the applicant consistent with the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98. The proposed 1,126 cu. yds. of grading for restoration and revegetation will be located on the "Upper" Site in order to restore a natural drainage to its original topography.

In addition, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit including the apparent subdivision of the "Upper" Site into four new lots, the apparent subdivision of the "Lower" Site into four new lots, and a lot line adjustment between the "Lower" Site and an adjacent site. This additional unpermitted development is not included as part of this application and will require a future follow-up coastal development permit to resolve the apparently unpermitted subdivisions and lot line adjustment.

B. Environmentally Sensitive Habitat Area

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

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

Section **30231** states:

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

Section **30236** states:

> ***Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water***

supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

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.

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values:

The Commission notes that portions of each of the three sites (the "Upper," "Lower," and "Central" Sites) are located within areas designated by the Malibu/Santa Monica Mountains Land Use Plan as either environmentally sensitive habitat area (ESHA) or as significant watershed area. In addition, several natural drainages and ravines are located on each of the three sites and a stream, designated as a blue line stream by the United States Geologic Service, crosses a portion of the "Lower Site."

To assist in the determination of whether a project is consistent with Section 30230, 30231, 30236, and 30240 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains LUP for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Sections 30230, 30231, 30236, and 30240 of the Coastal Act, Policy 76 of the LUP provides that channelizations, dams, or other substantial alterations of stream courses shown as blue line streams shall be limited to necessary water supply projects, flood control projects, or the improvement of fish and wildlife habitat. Policy 78 provides that road crossings shall be accomplished by the least environmentally damaging feasible method. Policy 79 provides that new development shall be setback at least 50 ft. from the canopy of sensitive riparian vegetation. In addition, Policy 82 provides that grading shall be minimized for all new development to ensure the potential adverse effects of runoff and erosion to coastal waters and streams are minimized.

The Commission notes, based on information submitted by the applicant and analysis of aerial photography and site reconnaissance by staff, that the subject site has been subject to various development carried out between 1977 and 1993 without the required coastal development permits. The unpermitted development (including the placement of fill within a natural drainage, construction of a culvert within a natural drainage, construction of a concrete Arizona Crossing with a designated blueline stream, dumping of trash/debris, and the removal of vegetation), as listed in greater detail in Table 1, was located within, or within close proximity to: blue line streams, natural drainages, and ESHA. The Commission further notes that such development would not be consistent with either the above referenced sections of the Coastal Act or with the above referenced policies of the Malibu/Santa Monica Mountains LUP.

However, in the case of the proposed project, the applicant is not proposing to retain any of the unpermitted development and has submitted a Revegetation/Restoration Plan to restore all disturbed areas on the subject site to an approximation of their condition prior to all unpermitted development. All unpermitted structures (with the exception of one well on the "Upper" Site) and all trash and debris have already been removed from all three sites by the applicant to an appropriate location outside the Coastal Zone. The proposed Revegetation/Restoration Plan will include the removal of all non-native/invasive plant species located within the disturbed areas on the subject site including Eucalyptus trees, Castor Bean, Myoporum, Fennel, Iceplant, Bamboo, and other invasive species. Revegetation will consist of seeding all disturbed areas with native plant species. In addition, 30 oak trees (from 15-gallon containers) will be planted. Twenty oak trees will be planted on the "Upper" Site. Ten oak trees have already been planted on the "Lower" Site. All disturbed riparian and drainage areas will be restored to their original configuration and the stream banks will be planted with native riparian plant species. The applicant's environmental specialist has indicated that the proposed Revegetation/Restoration Plan will provide 90% coverage of all previously disturbed areas on site within 3-4 years. Staff notes that the proposed Restoration/Revegetation Plan is consistent with other revegetation programs required by the Commission in past permit actions where unpermitted development has occurred and that the proposed plan will serve to adequately restore the subject site to an approximation of its pre-unpermitted development condition.

The Commission notes that the majority of the proposed restoration has been previously implemented. All previously disturbed areas on the "Lower" and "Central" sites where unpermitted development has occurred have been previously revegetated/restored by the applicant consistent with the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98. Therefore, Special Condition Two (2) requires the applicant to submit annual reports indicating the success or failure of the restoration effort for a period of five years to ensure that all revegetation and restoration which has been previously completed on the "Lower" and "Central" sites is successful. If the restoration effort is in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental restoration program. In addition,

the applicant is proposing to remove the unpermitted well located on the "Upper" site upon completion of the five year Revegetation and Restoration Monitoring Program in order to utilize the well for the proposed revegetation. Therefore, Special Condition Five (5) has been required to ensure that the applicant's proposal to remove the existing unpermitted well is implemented.

Staff notes that the unpermitted road extensions located on the "Lower" Site were created primarily at natural grade with only minor grading. Restoration of the unpermitted road extensions is limited to minor grading by hand and revegetation of disturbed areas. In addition, no restorative grading is proposed or required on the "Lower" Site to restore the area where minor terracing for the orchard occurred. Staff notes that the area where the unpermitted orchard was located in 1977 has naturally revegetated with native plant species after the wildfire in the early 1980's destroyed the orchard. Staff further notes that the minor amount of grading to create the orchard terracing is not visible and has not resulted in any significant landform alteration on the subject site. Therefore, the Commission notes that further disruption of the naturally revegetated area where the previous orchard was located to conduct minor restorative grading would result in new adverse effects to the habitat value of the site and that restoration of this area should be limited to removal of non-native/invasive plant species as recommended in the Vegetative and Grading Restoration Plans prepared by Klaus Radtke revised 10/6/98.

In addition, the proposed restoration plan includes approximately 1,126 cu. yds. of new grading to restore the drainage channel on the "Upper" Site (where unpermitted grading has occurred) to its original topography. The applicant has previously submitted a Vegetative and Grading Restoration Plan to revegetate all disturbed and graded areas on the project site (including the proposed natural drainage to be restored on the "Upper" Site). Therefore, Special Condition One (1) has been required to ensure that the Vegetative and Grading Restoration Plan submitted by the applicant is implemented and that all areas of the subject site where unpermitted development has occurred (including the natural drainage to be restored on the "Upper" Site) are restored and revegetated with native vegetation. In order to ensure that the proposed revegetation is successful, Special Condition Two (2) also requires the applicant to submit annual reports indicating the success or failure of the restoration effort for a period of five years. If the restoration effort is in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental restoration program.

The Commission also notes that the proposed restorative grading and revegetation of the natural drainage course on the "Upper" Site and the proposed removal of a culvert and Arizona Crossing with revegetation on the "Lower" Site will be located within riparian areas and that such development requires approval from the California Department of Fish and Game. In the case of the proposed project, the applicant has submitted an approved Streambed Alteration Agreement dated 11/24/98 from the California Department of Fish and Game allowing for the proposed restoration activity

subject to the condition that the grading/revegetation activity will be implemented consistent with the recommendations contained within the Restoration Report by Klaus Radtke revised 10/6/98.

Further, the Commission notes that the proposed grading for restoration on the "Upper" Site will be located in close proximity to several oak trees and that such grading may result in potential adverse effects to oak trees on the subject site. In order to ensure that any potential adverse effects to the oak trees on the project site are minimized, Special Condition Three (3) requires the applicant to retain the services of an environmental resource specialist to be present on site during all grading activity. In addition, Special Condition Three (3) also requires the use of protective fencing around all oak trees which may be disturbed by the proposed grading.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

C. Geologic Stability

Section 30253 of the Coastal Act states in 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, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Based on information submitted by the applicant, staff analysis of aerial photography, and site reconnaissance, the Commission notes that unpermitted grading and dumping of debris between 1977 and 1993 has resulted in the partial filling of the drainage channel/ravine located on the "Upper" Site. All debris and trash on the "Upper Site" have been previously removed by the applicant to an appropriate disposal site outside the Coastal Zone. The proposed restoration project includes approximately 1,126 cu. yds. of new proposed grading (563 cu. yds. cut and 563 cu. yds. fill) to restore the natural drainage channel/ravine located on the "Upper Site" to its previously existing topography. The applicant's geologic and engineering consultant has indicated that the

proposed grading for restoration will serve to improve the geologic stability of the subject site. The Proposed Restoration Grading Plans Geologic and Engineering Report by California Environmental dated 6/4/97, states:

> ***The proposed restorative grading will improve the slope stability of the existing fill slopes by removing these poorly compacted and non-engineered slopes. All proposed fill slopes are recommended to be at a gradient of 3:1 or less. Anticipated fill slopes will be less than 10 feet in height. The proposed slopes are considered to be grossly and surficially stable.***
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> ...
>
> ***Based upon the subsurface exploration, it is our findings that the proposed restorative grading is feasible. This work should be done pursuant to the advice and recommendations as indicated below.***

The Commission further notes that the geologic and engineering consultants have included a number of geotechnical recommendations which will increase the stability and geotechnical safety of the site. Therefore, to ensure that the recommendations of the geologic geotechnical consultant are incorporated into the project plans, the Commission finds that it is necessary to require the applicant, as required by Special Condition Four (4), to submit project plans certified by the consulting geologic and geotechnical engineers as conforming to their recommendations. In addition, the Commission notes that although the proposed grading to restore the drainage channel on the "Upper" Site to its previous topography will improve geologic stability on the subject site, the proposed grading activity will also result in potential erosion of the steep slopes on site. Erosion can best be minimized by requiring the applicant to revegetate all disturbed and graded areas of the site with native plants, compatible with the surrounding environment. The applicant has previously submitted a Vegetative and Grading Restoration Plan to revegetate all disturbed and graded areas on the project site. Thus, Special Condition One (1) requires that the Vegetative and Grading Restoration Plan submitted by the applicant is implemented to ensure that all proposed disturbed and graded areas are stabilized and vegetated.

Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

D. Visual Resources

Section **30251** of the Coastal Act states that:

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

Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

As previously discussed in detail, development (including grading and removal of vegetation) has occurred on the subject site without the required coastal development permit (Table 1). The Commission notes that the areas of the subject site where the unpermitted development has occurred are visible from Corral Canyon Road and that the unpermitted development has resulted in adverse effects to public views.

In the case of this project, the applicant is not proposing to retain any of the unpermitted development. The applicant has previously submitted a Vegetative and Grading Restoration Plan to revegetate all disturbed and graded areas on the project site where unpermitted development has occurred. The proposed Revegetation/Restoration Plan will serve to restore the subject site to an approximation of its condition prior to all unpermitted development. Therefore, Special Condition One (1) has been required to ensure that the Vegetative and Grading Restoration Plan submitted by the applicant is implemented and to minimize any adverse effects to public views from the unpermitted development on site. In order to ensure that the proposed revegetation is successful, Special Condition Two (2) also requires the applicant to submit annual reports indicating the success or failure of the restoration effort for a period of five years. If the restoration effort is in part, or in whole, unsuccessful, the applicant shall be required to submit a revised or supplemental restoration program.

Therefore, for the reasons discussed above, the Commission finds that the proposed development, as conditioned, is consistent with Section 30251 of the Coastal Act.

E. Violations

Development has occurred on the subject site (including construction and placement of several structures, trailers, grading, dumping of trash/debris, and removal of vegetation) without the required coastal development permits. The applicant is not proposing to retain any of the unpermitted development. All unpermitted structures (with the exception of one well on the "Upper" Site) trailers and debris have already been removed by the applicant to an appropriate location outside the Coastal Zone. The proposed project will serve to restore all disturbed areas on the subject site to an approximation of their condition prior to all unpermitted development.

To ensure that the proposed restoration is carried out in a timely manner, Special Condition Six (6) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The applicant has submitted a Vegetative and Grading Restoration Plan which will provide for restoration of all portions of the project site which have been previously disturbed by unpermitted development. Special Condition One (1) has been required to

ensure that that the Vegetative and Grading Restoration Plan will be implemented in a timely manner.

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

In addition, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit including the apparent subdivision of the "Upper" Site into four new lots, the apparent subdivision of the "Lower" Site also into four new lots and a lot line adjustment between the "Lower" Site and an adjacent site. This additional unpermitted development is not included as part of this application and will require a future follow-up application for a coastal development permit that seeks to resolve the apparently unpermitted subdivisions and lot line adjustment.

F. Local Coastal Program

Section 30604 of the Coastal Act states that:

> ***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 Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and 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 City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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 which the activity may have on the environment.

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

SMH-VNT

File SMH/permits/regular/4-98-157 mcdonald

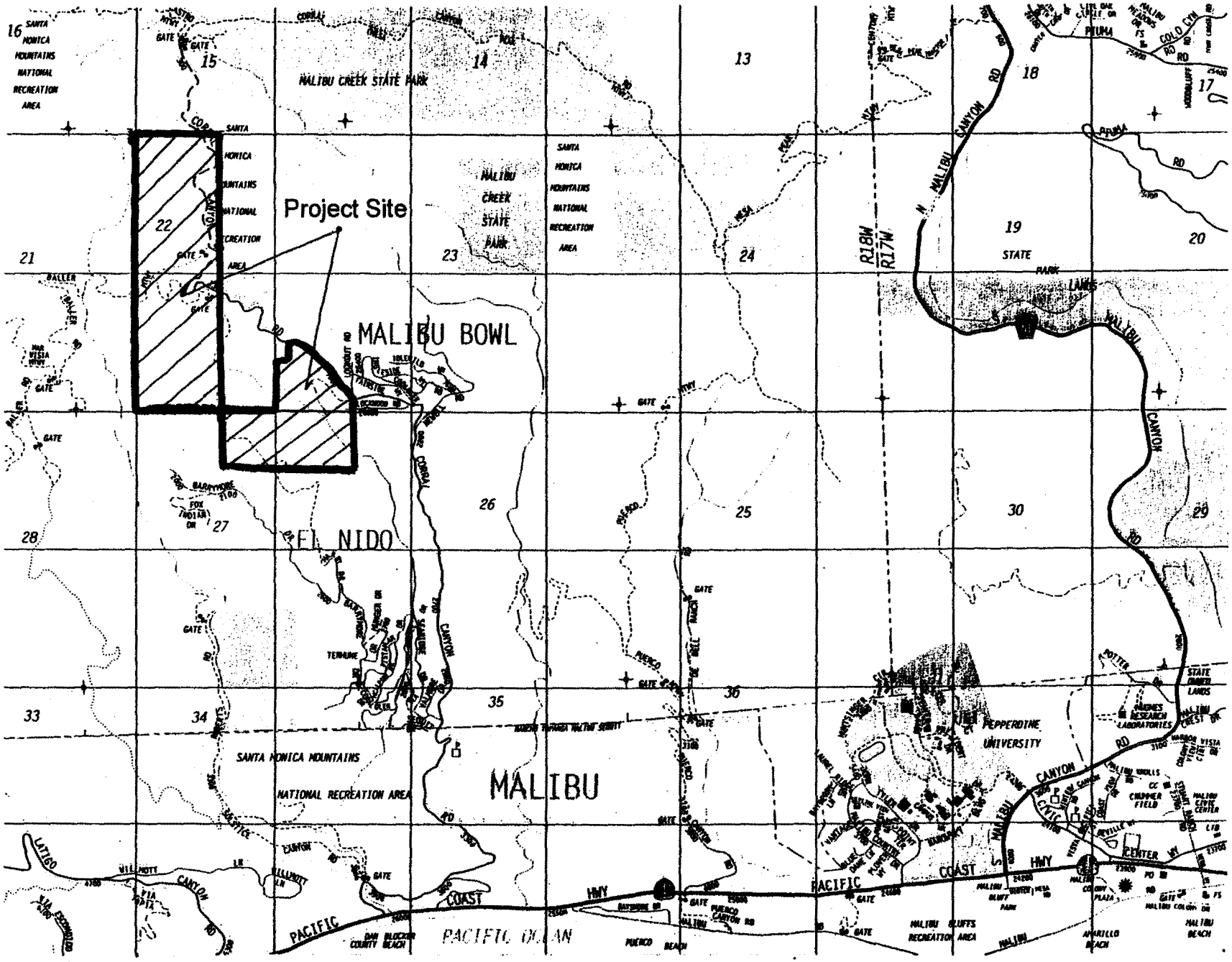

EXHIBIT 1

CDP 4-98-157 (McDonald/Greene & Vidi Vici)

Location Map

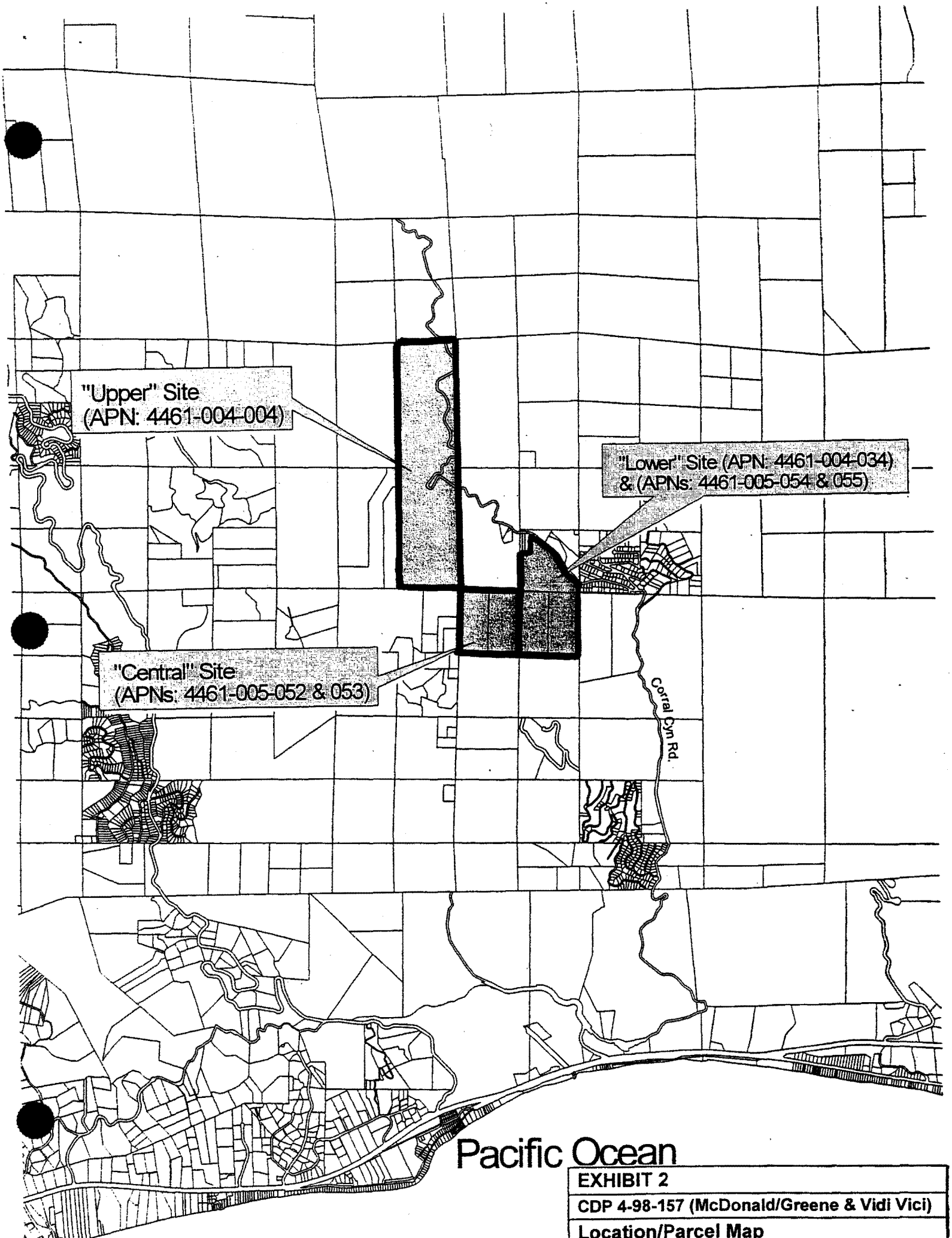

EXHIBIT 2
CDP 4-98-157 (McDonald/Greene & Vidi Vici)
Location/Parcel Map

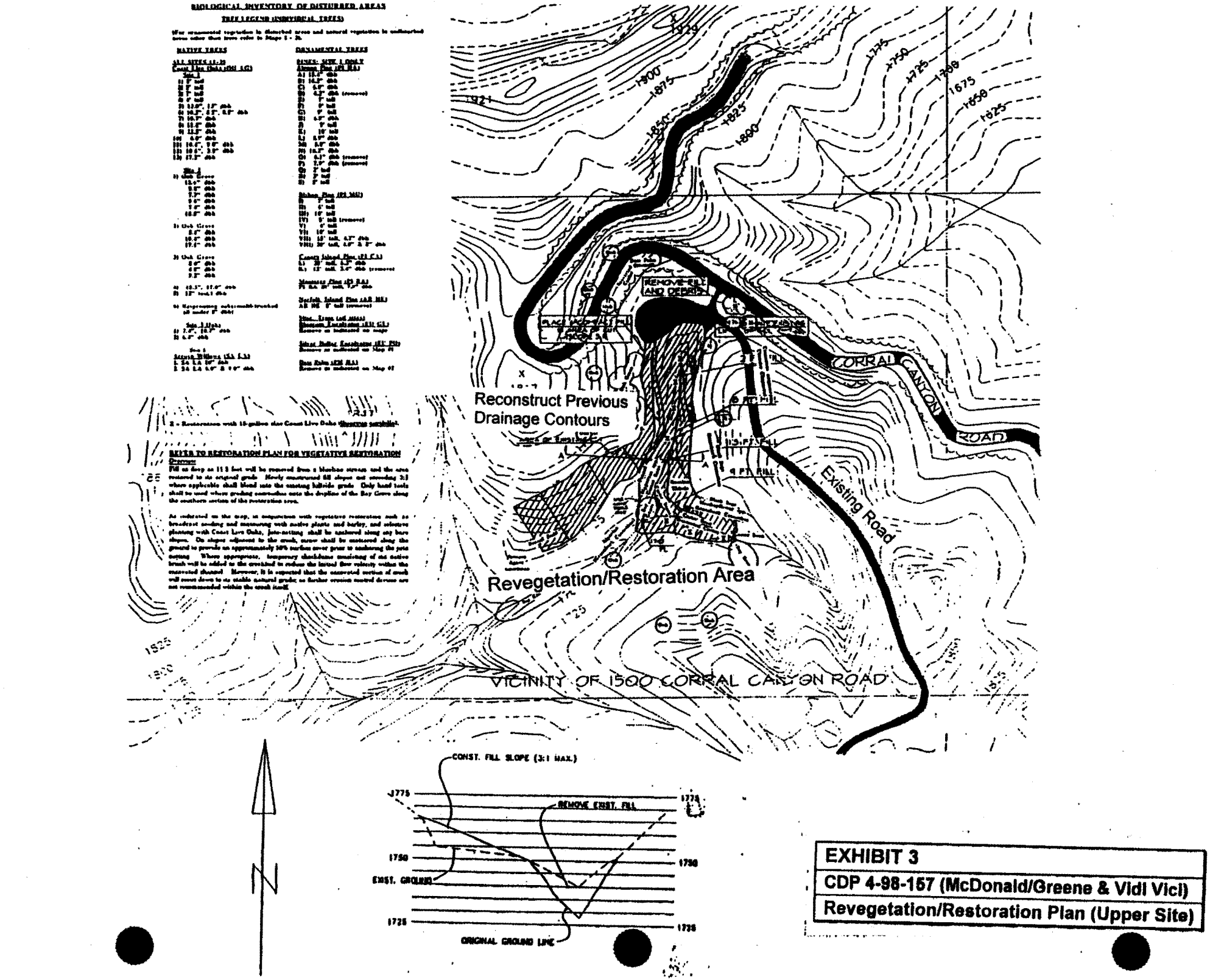

EXHIBIT 3

CDP 4-98-157 (McDonald/Greene & Vidl Vicl)

Revegetation/Restoration Plan (Upper Site)

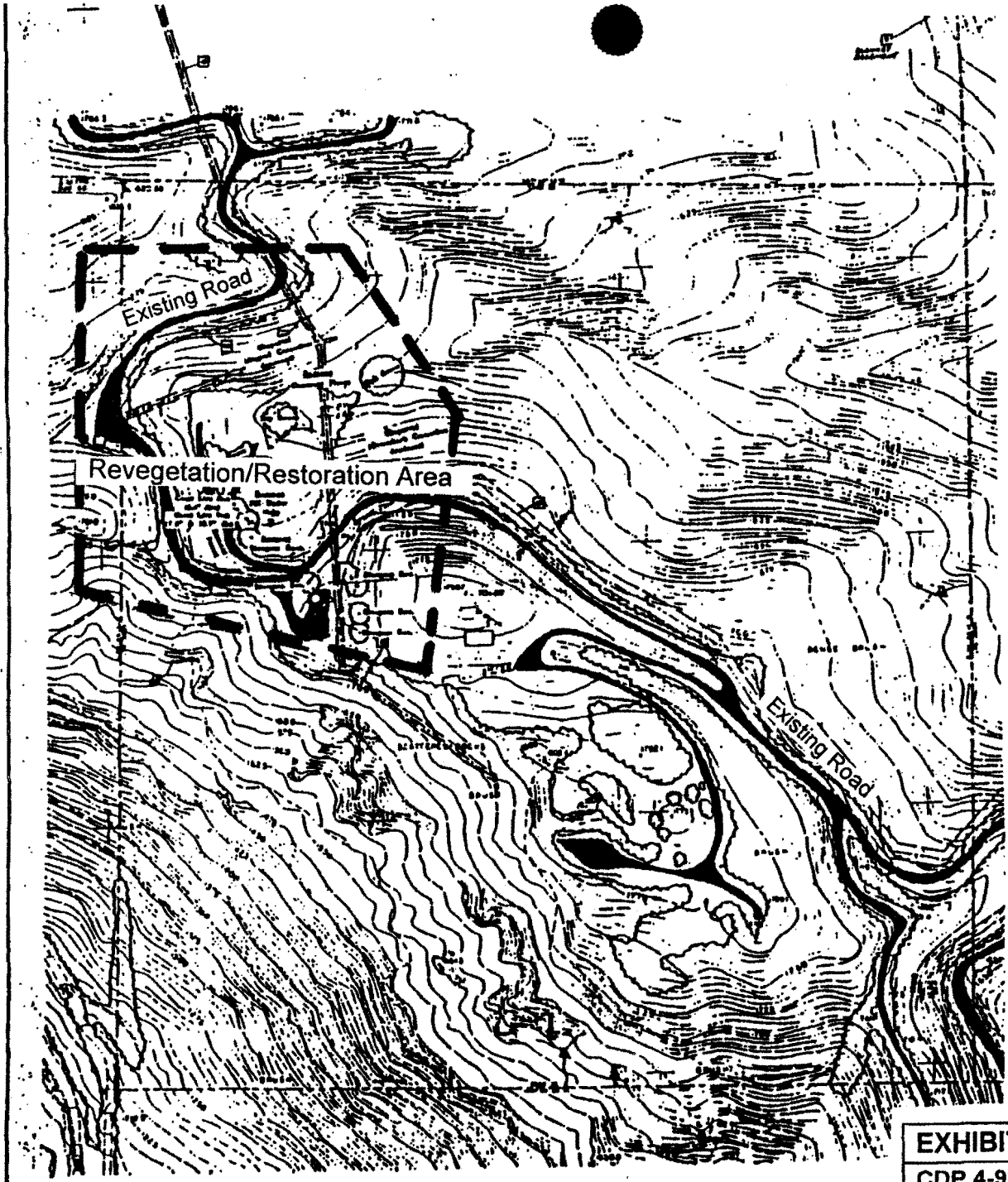

EXHIBIT 4

CDP 4-98-157 (McDonald/Greene & Vidi Vicl)

Revegetation/Restoration Plan (Central Site)

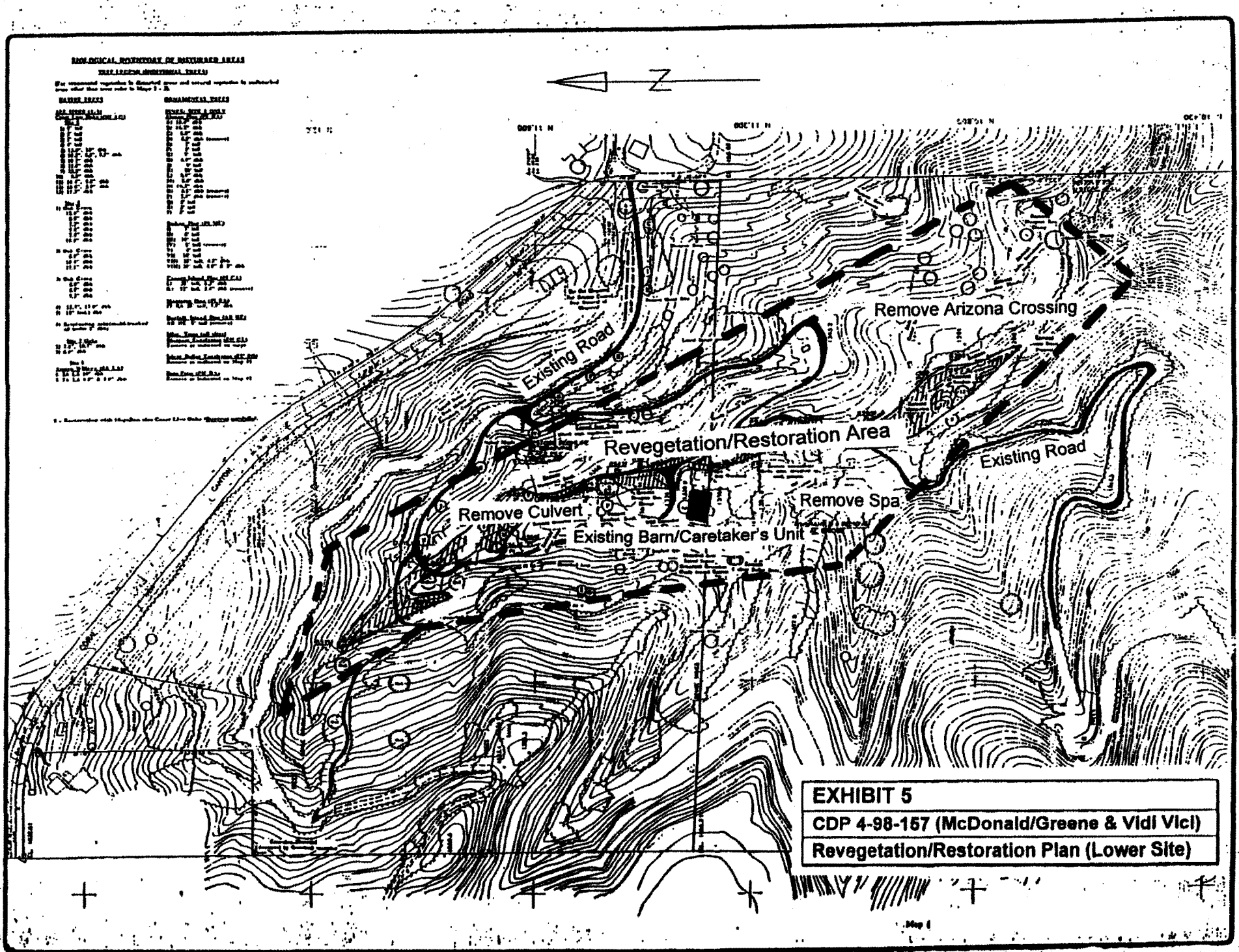

EXHIBIT 5

CDP 4-98-157 (McDonald/Greene & Vidi Vicl)

Revegetation/Restoration Plan (Lower Site)

VICINITY OF 1500 CORRAL CYN. RD. AND 1901 LOOKOUT RD.