

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

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**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 4-98-086**APPLICANT:** Joseph Opiela**PROJECT LOCATION:** 555 N. Creek Trail, Topanga; Los Angeles County

**PROJECT DESCRIPTION:** The applicant seeks after-the-fact approval for an existing 29 foot high, three level, 780 sq. ft. structure and landscaping, to convert the existing structure into a single family residence, and to construct a 565 sq. ft. addition to the existing structure (for a total of 1,345 sq. ft. single family residence). The applicant also proposes to construct a detached two-car garage, driveway, install landscaping, and install a septic disposal system. The proposed project includes 255 cu. yds. of grading (134 cu. yds. of cut and 121 cu. yds. of fill).

<b>Lot area:</b>	14,780 sq. ft.
<b>Building Coverage:</b>	1,865 sq. ft. new proposed
<b>Pavement Coverage:</b>	1,300 sq. ft. new proposed
<b>Parking Spaces:</b>	2 new proposed
<b>Ht. Above finished grade:</b>	29 ft.

**LOCAL APPROVALS RECEIVED:** Los Angeles County Regional Planning "Approval-in-Concept" PP 41989; Los Angeles County Health Department Approval – Septic.

**SUBSTANTIVE FILE DOCUMENTS:** Malibu/ Santa Monica Mountains Land Use Plan; Building and Floor Plans; Boundary and Topographic Survey of Site prepared by John Mac Neil dated January 1996; Grading and Drainage Plan; Tree Location Map; Oak Tree Report prepared by Tree Life Concern, Inc. dated December 23, 1996; Fire Department and Fuel Modification Plans; Geologic and Soils Engineering Investigation prepared by Alpine Geotechnical dated July 19, 1996; Addendum Letter to Soils and Engineering Investigation Report prepared by Alpine Geotechnical dated June 27, 1997; Hydraulic Study prepared by L. Liston & Associates, Inc. dated April 2, 1996; Quitclaim Deed dated March 24, 1992; Coastal Development Permit 4-94-102 (Opiela).

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission deny the after-the-fact application for an existing 29 foot high, three level, 780 sq. ft. structure and landscaping, conversion of the existing structure into a single family residence, the addition of 565 sq. ft. (for a total of 1,345 sq. ft. single family residence), the construction of a detached two-car garage, three retaining walls, installation of a septic system, and 255 cu. yds. of grading (134 cu. yds. of cut and 121 cu. yds. of excavation). The proposed project is located in an area of extreme wild fire risk and all weather access to the site for purposes of fire department access cannot be provided under the applicant's present proposal.

The proposed project is located on two adjacent hillside lots, Lots 161 and 162 of Tract Map 6915, within the Topanga Woods small lot subdivision in the unincorporated portion of Malibu in Los Angeles County. Topanga Creek, a designated blue line stream and environmentally sensitive habitat area, parallels the property.

The difficulties staff is having are not necessarily with the location of the house proposed here but with (1) the proposed location of the access road and driveway, and (2) the proposed location of the garage.

(1) Access: The proposed access consists of the Arizona crossing of Topanga Creek, a designated blueline stream and Environmentally Sensitive Habitat Area. The Los Angeles County Fire Department has informed staff that the access as proposed is unapprovable and would require what staff believes to be massive landform alterations in and adjacent to Topanga Creek to create the all-weather crossing the fire department requires. The applicant did not obtain fire department approval of the proposed project at the conceptual planning stage before submitting the project for Coastal Commission for consideration. Having concerns about the location of the proposed access, the Commission staff contacted the fire department captain and inquired about the applicant's proposal. In doing so, staff was informed that the applicant's nearby residence with similar access across the creek was destroyed in 1991 by a fire that could not be reached by firefighters because Topanga Creek was at flood stage at the time of the fire. In addition, the stream corridor has already been impacted by the unauthorized placement of rip rap along its banks adjacent to the proposed project.

(2) Garage: The proposed location of the garage is less than 24 feet from the banks of Topanga Creek, which represents an intrusion of over 75 percent into the 100 foot minimum buffer of Environmentally Sensitive Habitat Areas the Commission has required. The location raises issues of impacts to the stream corridor, to water quality, future fuel modification requirements, and other forms of disturbance to the sensitive riparian habitat immediately adjacent to the proposed detached garage.

Alternatives: There are alternatives to the proposed access and garage locations that were never proposed by the applicant that could have been favorably considered.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Denial.**

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would 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 of the Coastal Act; that the development would result in significant adverse effects on the environment within the meaning of the California Environmental Quality Act, and that a feasible alternative exists that would minimize or avoid the significant adverse effects that would otherwise result from the project as proposed.

**II. Findings and Declarations:****A. Project Description and Background:**

The applicant seeks after-the-fact approval to construct a 29 foot high, three story, 780 sq. ft. structure (existing) and landscaping (existing), convert the subject structure into a "single family residence", and to construct a 565 sq. ft. addition, for a finished single family residence totaling 1,345 sq. ft. The applicant also proposes to construct a detached two-car garage, 20 ft. high (existing) retaining walls along the bed of Topanga Creek, to widen and improve (gravel) the existing driveway, and install a septic disposal system (existing). The proposed project includes 255 cu. yds. of grading (134 cu. yds. of cut and 121 cu. yds. of fill) to recontour a relatively steep area of the subject site to construct the proposed garage.

The proposed project straddles two adjacent lots totaling approximately .25 acres. Both lots are owned by the applicant (Lots 161 and 162 of Tract Map 6915), and are located within the Topanga Woods small lot subdivision in the unincorporated Topanga area of Los Angeles County (Exhibit 5). The applicant's proposal relies on the combined gross structural area (GSA) credits available for the two adjacent lots to achieve the size of the proposed residence. The records from Los Angeles County indicate that since August 20, 1986, the lots have been subject to a recorded covenant holding the lots together (Exhibit 11).<sup>1</sup> The subject site is located immediately west of Topanga Canyon

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<sup>1</sup> The attached exhibits, including copies of records contained in the files of Los Angeles County regarding the subject development, appear to require that the authorized workshop approved in 1986 and constructed in 1987, be constructed upon the condition that the parcel upon which the workshop was proposed (Lot 161) be held as one with the adjoining properties, including Lot 156, which contained the applicant's single family residence. The County characterized the workshop as an accessory structure to the existing residence. Thus, the ability of the applicant to consider Lots 161 and 160 as separately developable for the purpose of constructing an

Boulevard, off North Creek Trail. The hillside lot ascends to the west at a ratio of 1.7:1 (horizontal to vertical) and drains by sheetflow runoff over the existing contours into Topanga Creek, a blue-line stream designated by the U.S. Geological Survey, and identified as an Environmentally Sensitive Habitat Area (ESHA) in the certified Malibu/Santa Monica Mountains Land Use Plan. The subject site is primarily vegetated with native oak trees and understory vegetation native to the Santa Monica Mountains; the area immediately surrounding the as-built structure has been landscaped with a mixture of non-native plant species.

Vehicle access to the proposed site is via North Creek Trail, a narrow, private road vacated by Los Angeles County) that branches off the western side of, and parallels, Topanga Canyon Blvd. (Exhibit 5). North Creek Trail crosses Topanga Creek via an Arizona crossing in the streambed. The balance of the roadway, including the portion from which the applicant's parcels take access, runs within the flood zone of Topanga Creek, which is a designated Environmentally Sensitive Habitat Area and riparian corridor identified in the certified Los Angeles County Land Use Plan.

#### Los Angeles County Permit History for Subject Site

The first record of County permits for the subject site located by Commission staff date to 1986. On September 2, 1986 Los Angeles County Department of Regional Planning approved in concept, and on March 2, 1987 the Department of Building and Safety finalized a building permit for, a one story, 360 sq. ft. workshop for Lot 161 as an accessory building to a then-existing single family residence located on Lot 156. (See Exhibit 5 for parcel map). As part of this approval, the County required the applicant to record a covenant to hold Lots 156, 160 and 161 as one parcel. This method of tying lots can be removed subject to the approval of the County Regional Planning Director should the circumstances necessitating the lot tie change. In this case, the applicant has submitted no evidence that the covenant holding Lots 156, 160 and 161 as one lot has ever been removed.

On June 16, 1992 the Department of Regional Planning approved the conversion of what was represented by the applicant as a "guest unit" (the workshop) on the subject site to a single family residence and approved the addition of a kitchen. Through an apparent oversight, the Department staff failed to note that there was no permit history or evidence of prior authorization for conversion of the original workshop authorized in 1986 and 1987 into a guest unit in the first place. The County appears to have relied on the applicant's representation that the guest unit was a properly permitted structure and failed to recognize that the structure was the workshop previously subject to specific

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additional single family residence is unclear. This ambiguity places an additional cloud on the applicant's after-the-fact request to approve additional development of the subject site within a small lot subdivision. If the applicant elects to pursue alternative development proposals for the subject site in the wake of the present permit consideration, the question of whether there in fact are two developable lots remaining (Lots 160 and 161) and the relationship of these lots to Lot 156 should be clarified and a determination made as to the correct approach to performing Gross Structural Area calculations as the result.

restrictions against human occupancy of the structure.

County permit records notwithstanding, however, on March 2, 1998 the County authorized a further conversion of an "existing structure" (previously referred to as a guest unit) into a single family residence, "including additions thereto" and the construction of a detached two car garage. The applicant represented that the 2-car garage and deck shown on the proposed plan were a rebuild of structures damaged in the Northridge earthquake. The County was unable to produce any evidence that permits were ever processed for these structures, however, prior to the Northridge earthquake.<sup>2</sup> The Commission notes that the Los Angeles County Department of Regional Planning approval-in-concept recitations note that the recommendations of the Los Angeles County Environmental Review Board (ERB) with regard to the proposal were rejected by the Department of Regional Planning as "infeasible and in conflict with the off-street parking requirements of the zoning ordinance." The rejected ERB recommendations (which were not recited in full) included the relocation of the proposed additions and the proposed garage at least 100 feet from the creek and/or deletion of the proposed garage.

#### Coastal Commission Permit History

The earliest Coastal Commission permit record for the subject site dates to 1994. On June 24, 1994 Commission staff received coastal development permit application 4-94-102 (Opiela) to rebuild an existing deck and carport damaged by the Northridge earthquake and convert an existing guest unit into a single family residence. Based on plans and information provided by the applicant Commission staff determined that rebuilding the existing deck and carport was a repair and maintenance activity exempt from coastal development permit requirements, pursuant to Section 30610 (d) of the Coastal Act. Staff also determined, in reliance on erroneous information submitted by

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<sup>2</sup> Of the former garage structure, the applicant's present Geologic and Soils Engineering Investigation, prepared by Alpine Geotechnical, dated July 19, 1996, states that: "The former garage reportedly was very old and poorly constructed. The architect reports that the '...existing garage retaining walls consisted of unreinforced rock approximately 16 feet high. They had been deteriorated (sic) over the years. Existing deck had no lateral bracing.' Based in part on anecdotal evidence, such as this, gleaned from the applicant's submittal, it appears that the quality of construction of the various structures identified on the site over the past decade do not favor of a theory that proper permit approvals were ever contemplated or issued by Los Angeles County, and certainly not by the Coastal Commission, for the underlying conversion of the original 360 sq. ft., single story workshop restricted from human occupancy by condition at the time of County approval, into a guest unit. Moreover, it is difficult, if not impossible, to imagine that the other structures in question (specifically, the 1987 workshop) were constructed to a standard of safety and structural integrity sufficient to warrant approval of the structures for human habitation. There is no evidence of previous geologic review, zoning standard compliance, or any other traditional means of screening development for compliance with basic standards of human health and safety ordinarily applicable to projects proposed for residential occupancy (for example, that electrical wiring is in compliance with state building safety codes, that foundations are adequate for seismic risk factors, etc.).

the applicant, that the conversion of the guest unit to a single family residence was exempt from permit requirements. The applicant did not disclose that the guest unit was an unpermitted conversion from a previously approved workshop subject to restrictions against human occupancy imposed by the County as a condition of permit approval. The applicant also did not disclose that the County had previously required the lot containing the unpermitted guest house to be tied to two other lots, as described above.

There is no Commission record of any previous application for the deck or carport referenced in the application.

In a letter dated January 4, 1996, Commission staff notified the applicant that in light of staff's discovery of new information concerning the true nature of the development on the subject site, the previous exemption determination was rescinded and that the applicant would be required to submit an application for a coastal development permit for the subject structures and proposed uses.

The new information obtained by Commission staff included evidence that the underlying workshop was constructed on the site in 1987 with restrictions imposed by the County against converting the structure to use for human occupancy. In addition, the workshop was subsequently converted into a guest unit without a coastal development permit or a County building permit. Moreover, the applicant's application to the County for a permit to convert the "guest unit" into a single family residence in 1992 (referenced above) was apparently not followed up with an application for a coastal development permit for the project from the Coastal Commission. As noted previously, the subject structures appear first in the Coastal Commission permit records in 1994 when the applicant sought authorization to rebuild accessory structures and convert the "guest house" into a residence.

## **B. Hazards**

**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 certified Malibu/ Santa Monica Mountains Land Use Plan also provides policy guidance concerning hazards, as follows:

- P147** Continue to evaluate all new development for impact on, and from, geologic hazard.
- P148** Continue to limit development and road grading on unstable slopes to assure that development does not contribute to slope failure.
- P149** Continue to require a geologic report, prepared by a registered geologist, to be submitted at the applicant's expense to the County Engineer for review prior to approval of any proposed development within potentially geologically unstable areas including landslide or rock-fall areas and the potentially active Malibu Coast-Santa Monica Fault Zone. The report shall include mitigation measures proposed to be used in the development.
- P150** Continue Hillside Management procedures as contained in Ordinance No. 82-0003 for proposed development on sites with an average slope greater than 25 percent (4:1). Grading and/or development-related vegetation clearance shall be prohibited where the slope exceeds 2:1, except that driveways and/or utilities may be located on such slopes where there is no less environmentally damaging feasible alternative means of providing access to homesites located on slopes of less than 50%, where no alternative homesites exist on the property, and where maximum feasible mitigation measures are taken.
- P151** Continue to evaluate all new development for its impact on, and from, flood and mudflow hazard.
- P152** Prohibit buildings within areas subject to inundation or erosion unless proper mitigation measures are provided to eliminate flood hazard.

The Commission finds that the problem with the applicant's proposal is the difficulty gaining emergency access to the site during floods and/or to suppress fire, and with the placement of the garage structure too close to the riparian corridor (as addressed in Section C of this report). Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The applicant seeks after-the-fact approval for an existing 29 foot high, three level, 780 sq. ft. structure and landscaping, to convert the existing structure into a single family residence, and to construct a 565 sq. ft. addition to the existing structure (for a total of 1,345 sq. ft. single family residence). The applicant also proposes to construct a detached two-car garage and gravel-covered driveway, and to install a septic disposal system. The proposed project includes 255 cu. yds. of grading (134 cu. yds. of cut and 121 cu. yds. of fill).

The applicant has submitted a Geologic and Soils Engineering Investigation prepared by Alpine Geotechnical dated July 19, 1996. The geologic report states:

**It is our opinion of the undersigned that the proposed development will be safe against hazards from landslide, settlement or slippage, and that the proposed grading and development will not have an adverse effect on the geologic stability of the property outside of the building site, provided our recommendations are followed during construction.**

Coastal Act Section 30253 (a) (cited above) requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard risk. While the applicant has submitted evidence that the proposed site, if developed according to the recommendations of the consulting geologic and soils engineer is safe from a geologic perspective, the applicant has also submitted a hydrologic study prepared by L.Liston and Associated, Inc., dated April 2, 1996 clearly showing that the entire North Creek Trail (the access road to the applicant's site) and portions of the applicant's site proposed for the driveway and garage, lie within the flood hazard zone. No other access for emergency personnel exists as an alternative route to the site under all-weather emergency circumstances.

The Commission finds that the access road and proposed garage are subject to severe risk from flood damage which will endanger the lives of the residents of the proposed single family structure. In addition, there is also a substantial risk to downstream structures, property and lives if the garage and access road are damaged by flood waters and debris is carried downstream. Clearly, the development as proposed does not minimize risks to life and property in areas of high flood hazard as is required under Section 30253 of the Coastal Act.

In addition, as discussed previously, the site is located in an area of extremely high fire hazard, as witnessed by the loss of life and extraordinary cost of property loss and damage experienced during the Malibu firestorms of 1992—93. The proposed project is located in the Santa Monica Mountains, a region well understood to be highly prone to damage or destruction from wild fire as a consequence of natural fire cycles. The typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation, and are sometimes accompanied by high wind conditions known as "Santa Ana's" to pose an extraordinarily high risk of wild fire damage to development.

Moreover, wild fire is not the only source of fire hazard to the area. In fact, during a Topanga Creek flood event in 1991, the applicant's residence on the neighboring lot (Lot 156, exhibit 5) was destroyed by a fire caused by a faulty furnace. The fire destroyed the residence because fire fighting personnel could not get across the floodwaters of Topanga Creek (North Creek Trail) via the Arizona crossing the applicant



proposes to use for the subject development presently before the Commission.<sup>3</sup> Since that time the residence has been rebuilt pursuant to the disaster replacement provision of the Coastal Act [Section 30610(g)(1)]. The County issued a building permit for the structure after the applicant secured an access easement across a rail car bridge that was unavailable at the time of the fire. The rail car bridge from Topanga Canyon Boulevard to Lot 156 is not wide enough for emergency vehicles to pass over it, but fire crews can access the house on Lot 156 (561 North Creek Trail) on foot. Fire hoses reach (barely) as far as the existing residence, according to Los Angeles County Fire Department Captain Jim Jordan, but firefighters cannot extend on-foot hose access as far as the new proposed development via the rail car bridge.

To ensure that new development sited in an area exposed to such severe hazards minimizes risks to life and property in accordance with Coastal Act Section 30253, the Commission finds it necessary to ensure that such development only be authorized if adequate emergency access to the property can be assured throughout the year, including during high precipitation events. Therefore, having concerns about the location of the proposed access, however, the Commission staff contacted the fire department captain and inquired about the applicant's proposal. Los Angeles County Fire Department Captain Jim Jordan responded that the applicant's proposal to access the site through North Creek Trail does not provide such all-weather access as presently designed and configured, and that substantial changes to the road and stream crossing would be required to achieve compliance with the fire department's standards.

Learning of Captain Jordan's reservations about the proposed project, staff also conferred with Los Angeles County Department of Building and Safety supervising engineer Mark Pestrella regarding the access and safety problems concerns raised by the applicant's proposal. Mr. Pestrella confirmed that so long as the fire department would not approve the current road access because it does not meet fire department width requirements or all-weather access standards in a designated flood hazard zone, his department similarly would not approve the project in its present configuration. Staff confirmed that Mr. Pestrella views the construction of an adequate bridged access to the subject site directly from Topanga Canyon Boulevard as a conceptually feasible alternative to the applicant's present proposal.

Therefore, the Commission finds that while the presently proposed project does not minimize risks to life and property in an area demonstrated to be subject to extraordinary risk from flood and fire, alternatives exist that could minimize or avoid such risks. The Commission therefore further finds that a bridged crossing of Topanga Creek accessing the applicant's site safely during all weather conditions consistent with the requirements of the Los Angeles County Fire Department, if otherwise consistent with Coastal Act requirements, could remedy the noted project deficiencies and provide a potentially approvable project alternative. Such an alternative has been implemented by other projects approved previously by the Commission, and has therefore been

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<sup>3</sup> Personal communication of Coastal Commission staff regulatory supervisor John Ainsworth with Los Angeles County Fire Department Captain Jim Jordan.

demonstrated to be technically and economically feasible<sup>4</sup>, and has the potential to lessen or avoid the significant, adverse effects posed by the project as presently proposed.

The determination on whether to apply for a project with an alternative access road is up to the applicant. The Commission could approve a permit for a house with a different type and location of access road than what is proposed here. No such permit can be approved at this time, however, because there are too many variables to be decided concerning the potential size, design and location of such access road and/or bridge. The Commission will need a new application and supporting information addressing those aspects of the project before it can be in a position to approve a permit and determine what, if any, conditions may be necessary. This also applies to the potential garage relocation discussed in this report.

In conclusion, although residential development may be approved to provide an economically viable use of the property, the entirety of the project must comply in all other aspects with the Coastal Act's policies.

### Conclusion

Therefore, for the reasons discussed above, the Commission finds that the proposed development, as presently situated and designed, is inconsistent with the requirements of Coastal Act Section 30253.

## **C. Environmentally Sensitive Resources**

Section 30230 of the Coastal Act states:

**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 of the Coastal Act states:

**The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water**

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<sup>4</sup> The Coastal Commission has approved other projects in the Topanga area of Malibu that incorporated proposals to provide a bridge crossing of Topanga Creek, a blue line stream. Thus, the feasibility of providing such crossings has been demonstrated. (Coastal Development Permit Nos. 5-89-955 (Carlson) and 5-91-497 (Hehr)).

**supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.**

Section 30240 of the Coastal Act states:

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

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

Section 30230 of the Coastal Act protects the quality of marine waters. Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, 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. Section 30240 of the Coastal Act states that development in areas adjacent to environmentally sensitive habitat areas and parks shall be sited and designed to prevent adverse affects upon coastal resources which would significantly degrade those areas.

To assist in the determination of whether a project is consistent with Section 30231 and 30240 of the Coastal Act, the Commission has, in past coastal development permit actions, looked to the certified Malibu/ Santa Monica Mountains LUP for guidance. The Malibu/ Santa Monica Mountains LUP has been found to be consistent with the Coastal Act and provides specific standards for development within the Santa Monica Mountains. The following LUP policies are designed to protect ESHAs and water supplies:

**P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table 1 and all other policies of this LCP.**

**LUP Table 1 (ESHA):**

**Streambeds in designated ESHAs shall not be altered except where consistent with Section 30236 of the Coastal Act. Road crossings shall be minimized, and, where crossings are considered necessary, should be accomplished by the installation of a bridge. Tree removal to accommodate the bridge should be minimized. (underline emphasis added)**

**A minimum setback of 100' from the outer limit of the**

**pre-existing riparian tree canopy shall be required for any structure associated with a permitted use.**

- P67 Any project or use which cannot mitigate significant adverse impacts as defines in the California Environmental Quality Act on sensitive environmental resources shall be denied.**
- P69 Development in areas adjacent to environmentally sensitive habitat areas 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.**
- P78 Stream road crossings shall be undertaken by the least environmentally damaging feasible method. Road crossings of streams should be accomplished by bridging, unless other methods are determined by the ERB to be less damaging. Bridge columns shall be located outside stream courses, if feasible. Road crossings of streams within Environmentally Sensitive Habitat Areas designated by the LCP may be allowed as a conditional use for the purpose of providing access to recreation areas open to the public or homesites located outside the ESHA where there is no feasible alternative for providing access. Wherever possible, shared bridges or other crossings shall be used for providing access to groups of lots covered by this policy.**
- P86 A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.**
- P91 All new development shall be signed to minimize impacts and alterations of physical impacts and alterations of physical features, such as ravines and hillsides and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.**
- P96 Degradation of the water quality of groundwater basins, nearby streams, or wetlands shall not result from development of the site. Pollutants, such as chemicals, fuels, lubricants, raw sewage, and other harmful waste shall not be discharged into or alongside coastal streams or wetlands.**

The subject site is located west of Topanga Canyon Boulevard on North Creek Trail. The property contains a hillside lot that ascends to the west at a ratio of 1.7:1. The subject property on which the proposed development is located drains by sheetflow runoff into the downgradient blue-line stream, Topanga Creek, shown on the U.S. Geological Survey quadrangle maps (Exhibit 4).

The certified Malibu/ Santa Monica Mountains Land Use Plan (LUP) and past Commission actions have designated Topanga Creek and the riparian corridor of the creek as an Environmentally Sensitive Habitat Area (ESHA). The adjacent oak woodland is part of a designated Disturbed Sensitive Resource (DSR) area as shown on the resource maps of the certified Malibu/Santa Monica Mountains Land Use Plan (Exhibit 3). In its certification of the LUP as well as in past permit actions, the Commission has found that DSRs are riparian woodlands, streams, oak woodlands, and other habitat areas which by virtue of their location in areas of existing development, can no longer support a significant number of species normally associated with a healthy habitat. As such, they do not meet the Coastal Act definition of ESHA, but they nonetheless contain resources deserving of protection. The proposed development is located within the disturbed oak woodland and is within 25 feet of the Topanga Creek riparian corridor ESHA.

Topanga Creek, a blue line stream, flows intermittently directly east of the subject site running parallel to North Creek Trail. As noted previously, the stream bank located adjacent to the property has been lined with a rock retaining wall to protect the property, Topanga Boulevard, and North Creek Trail from the stream's high flow velocity and potential erosion. Commission staff has been unable to locate any record of approval, either from the County or the Commission, for these streambed alterations and the placement of rip rap adjacent to the subject parcel and the applicant's adjacent residential parcel (Lot 156).

The Commission, through a long history of permitting decisions, has required that all development be located a minimum of 100 feet from the riparian corridor surrounding streams which meet the Coastal Act definition of ESHA in order to protect such areas against any significant disruption of habitat values, consistent with Section 30240 of the Coastal Act. The 100 foot setback also ensures that the natural vegetation buffer areas that protect riparian habitat and minimize the adverse effect of water runoff and control erosion are maintained as required by Section 30231 of the Coastal Act. Table 1 of the certified LUP gives policies (cited above) for development adjacent to ESHAs which the Commission has used as guidance in past decisions to ensure the protection of ESHAs. Table 1 states that streambeds in designated ESHAs shall not be altered except where consistent with Section 30236 of the Coastal Act. Road crossings shall be minimized, and, where crossings are considered necessary, should be accomplished by the installation of a bridge. Tree removal to accommodate the bridge should be minimized. Additionally, Table 1 requires that a minimum setback of 100' from the outer limit of the pre-existing riparian tree canopy be required for any structure.

The proposed project site is located north of and adjacent to North Creek Trail, an unimproved, 15-foot wide roadway previously vacated by Los Angeles County. Immediately adjacent to the road on the other side is the Topanga Creek ESHA. Given the immediate proximity of the road and other development in the creek in this area, there is limited growth of a riparian canopy on the north side of the creek. Staff has used the edge of the creek channel to approximate the location of the appropriate

setback from the ESHA.

The existing, unpermitted structure on the proposed project site is located approximately 70 feet from the edge of the creek bank at its nearest point. The proposed addition to this structure would be approximately 70 feet from the creek bank at its nearest point. The proposed garage would be located approximately 24 feet from the edge of the creek bank.

In addition, the project site plan shows the installation of a 4-inch drainpipe below grade draining runoff from the structure and garage into the North Creek Trail/Topanga Creek corridor offsite.<sup>5</sup>

The cumulative effects of daily vehicle access to and storage within the garage structure, combined with the additional disturbance of the vehicles associated with the proposed project traversing the Arizona crossing within the streambed of Topanga Creek, pose potentially significant affects on the stream corridor and associated sensitive habitat inconsistent with the requirements of Coastal Act Sections 30231 and 30240. It is widely understood, and certainly not the subject of any serious debate by authorities on non-point source pollution, that the leakage of oil, grease and other petrochemicals associated with motor vehicles, together with rainy season runoff of dust and other particulate pollution from driveways, are a significant source of pollution in coastal watersheds. The combined effects of the entrainment of these contaminants into the watershed hydrological cycle culminates in downstream contamination of ocean waters and marine habitat.<sup>6</sup>

In addition, setback areas from riparian resources are also designed to buffer the stream corridor from adverse impacts upon vegetation buffering the streamcourse. Natural vegetation provides a measure of protective buffer for coastal streams from the discharge of sediment pollution generated by upgradient erosion of disturbed soils. As noted previously, the applicant proposes to conduct approximately 255 cu. yds. of grading (134 cu. yds. of cut and 121 cu. yds. of fill) to recontour a relatively steep portion of the hillside to construct the proposed garage. Moreover, as noted above, the garage would intrude into the minimum stream corridor setbacks found necessary by the Commission in past permit decisions weighing the authorization of development near coastal riparian habitat areas.

The Commission further notes that the applicant's proposal is subject to the fuel modification requirements of the Los Angeles County Fire Department's Forestry Division. Final fuel modification plan review of a proposed project by the Fuel

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<sup>5</sup> The applicant has not submitted a drainage and erosion control plan and it is not clear exactly where the drainage outlet would be located.

<sup>6</sup> A fact that has come to light in recent months with the expanded awareness of adverse water quality testing results in popular coastal areas along the Southern California coast. Non-point source pollution has been shown to be a significant contributing factor to high pollutant concentrations that have increasingly led to temporary beach closures and the resultant loss of access and recreational opportunities for coastal visitors.

Modification Unit of the Forestry Division is not performed until after the conceptual planning stage approval of the County Department of Regional Planning (this is the stage of local government approval at which applicant's submit proposed projects to the Coastal Commission for review). The fuel modification standards applied by the fire department typically require significant alteration of native vegetation to a radius of as much as 200 feet from all applicable structures. The fire department considers garages to be sources of ignition in addition to the residential structure, and therefore requires fuel modification standards to be applied to the radius extending from the garage as well.

The applicant's proposed detached garage is located approximately 24 feet uphill from the edge of the Topanga Creek streambank. The proposed residence itself is located only approximately 70 feet from the streambank. The fuel modification requirements typically require clearance of vegetation to mineral earth or the use strictly of ground covers or green lawns in what the county terms "Zone A – Setback Zone" from sources of combustion (including, as noted, the proposed garage). Zones B and C, respectively, require successively reduced, but significant, standards of vegetation removal, thinning, trimming, or new landscaping species restrictions. All of these fuel modification measures—even those least invasive of native plant communities—have the potential to significantly impact, and possibly even decimate, the Topanga Creek ESHA and the Disturbed Sensitive Resource area oak woodland on and adjacent to the applicant's site and within the fuel modification zones applicable to the site. The Commission notes that no on-site mitigation measures are available to remedy the extent of these significant, adverse impacts to protected coastal resources. Only alternative locations or designs, primarily for the proposed access and garage locations, would lessen or avoid the otherwise significant, unavoidable adverse impacts upon the sensitive habitat areas of the stream and woodland that will otherwise result from the applicant's project as presently proposed.

The County's Environmental Review Board also objected to the intrusion of the proposed project into the stream corridor, and recommended project revisions to move the development footprint back at least 100 feet from the riparian corridor. The ERB's recommendations were ultimately rejected as infeasible by the County's Department of Regional Planning, but as noted previously, the applicant has not submitted an alternatives analysis or any other evidence to show that no alternative design for the proposed project could avoid or lessen the impacts upon coastal resources posed by the project as presently designed. In fact, alternatives to the proposed access and garage exist which to date have not been evaluated or proposed by the applicant.

The Commission also notes that as explained in Section B (Hazards), the Los Angeles County Fire Department has determined that the applicant's present access proposal via the Arizona crossing and unimproved roadway of North Creek Trail is not approvable without significant changes. The fire department will require a 20 foot wide, all-weather crossing of Topanga Creek that will allow firefighting emergency access across the creek even at flood stage, and such access must be high enough above flood stage waters to avoid trapping debris. The access must be wide enough, and

designed to an adequate standard to meet the department's requirements. Such improvements will require major landform alteration in and adjacent to the streambed, including massive amounts of grading, both excavation of the sloping streambank area and fill within the stream corridor. These impacts to the Topanga Creek ESHA have not been addressed by the applicant in the present proposal. The Commission notes that the significant, adverse impacts posed by the construction of an all-weather site access on the access route presently proposed by the applicant could be avoided by alternative access locations and designs that have not yet been evaluated or proposed by the applicant.

In addition, the Commission notes that the applicant has not provided a complete description for the proposed project because the activities required to construct an all-weather access in compliance with fire department standards can clearly be anticipated but have not been identified or disclosed in the applicant's project description or other documents submitted for Commission consideration of the proposed project. The Commission therefore finds that approval of the proposed, but inadequately defined, project with clearly anticipated but undefined additional construction necessary to achieve approvable access, and without the ability to evaluate or mitigate the associated potentially significant, adverse environmental impacts of such construction, and in the absence from the applicant's submittal of disclosure or consideration of feasible alternatives that would lessen or avoid such impacts--alternatives which the Commission believes to exist-- is inappropriate and inconsistent with the requirements of the Coastal Act.

The Commission further finds that the same deficiencies in the applicant's project description exist for the fuel modification requirements discussed previously in this section. The fire department requirement that native vegetation on site be cleared or modified in accordance with its standards can clearly be anticipated but these significant, adverse impacts upon the Topanga Creek ESHA and the oak woodland DSR have not been identified or disclosed in the applicant's project description or other documents submitted by the applicant. The Commission therefore finds that approval of the proposed, but inadequately defined, project with clearly anticipated but undefined additional vegetation clearance or modification necessary to achieve the fire department's fuel modification standards for the subject proposed development, and without the ability to evaluate or mitigate the associated potentially significant, adverse environmental impacts of such fuel modification, and in the absence from the applicant's submittal of disclosure or consideration of feasible alternatives that would lessen or avoid such impacts--alternatives which the Commission believes to exist--is inappropriate and inconsistent with the requirements of the Coastal Act.

As noted, the Commission finds that alternatives to the applicant's proposal exist that would reduce or eliminate the significant impacts posed by the present project design. If the proposed structure were found otherwise consistent with the requirements of the Coastal Act and the issues of lot tie constraints, Gross Structural Area calculations, and other concerns were resolved by the Commission in favor of a revised proposal, options may exist, for example, to resite and redesign the project to provide an alternative site



design (the applicant has not submitted an alternatives analysis) that would eliminate the intrusion of the garage into the riparian corridor buffer area. The possibility also exists that the applicant could petition Los Angeles County for administrative relief from the usual on site parking requirements, for example.<sup>7</sup> In addition, alternatives to crossing Topanga Creek via an Arizona crossing exist. Construction of a spanned bridge appears to be technically feasible and would eliminate the long-term adverse effects on stream habitat imposed by daily vehicle traffic in the streambed.

The Commission finds, therefore, for all of the reasons set forth above, that the proposed project is inconsistent with the requirements of Coastal Act Sections 30230, 30231, and 30240.

#### **D. 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 would not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed development would result in significant, adverse effects upon coastal resources, at least one feasible project alternative exists that would lessen or avoid such adverse effects, and the proposed development is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would prejudice the ability of the County of Los Angeles to prepare a fully certified Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

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<sup>7</sup> Los Angeles County Zoning Ordinance Policy 22.52.1040 states (Difficult or impossible access to parking space -- Alternate requirements):

"Where vehicular access to any parking space on the same lot or parcel of land as the residential structure to which it would be accessory is not possible from any highway or street due to topographical or other conditions, or is so difficult that to require such access is unreasonable in the opinion of the director or county engineer, such parking space is not required if:

- A. Alternate parking facilities approved by either the director or county engineer are provided; or
- B. The director or county engineer finds that alternate parking facilities are not feasible. (Ord. 83-0161 § 27, 1983; Ord. 1494 Ch. 7 Art. 3 § 703.6, 1927.)"

## **E. Violation**

Unpermitted development has taken place on the subject site without the required coastal development permits including the construction of a 360 sq. ft. workshop, addition of 420 sq. ft. to the workshop and conversion of the workshop to a guest unit, installation of septic waste disposal system, an unspecified quantity of grading on a hillside lot draining to Topanga Creek (a blue line stream and designated Environmentally Sensitive Habitat Area) less than 25 feet downgradient from the graded area, and landscaping. In addition, during the course of the staff investigation, evidence emerged that rip rap has been placed within the stream corridor of Topanga Creek adjacent to the applicant's parcels that was not included in the application presently under consideration by the Commission.

Consideration of the application by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Review of the permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

The Commission intends that all unpermitted development on the subject site shall be resolved through a coastal development permit, a coastal development permit for removal of the as-built structures and restoration of all previously disturbed areas of the site, or through an enforcement action if deemed necessary.

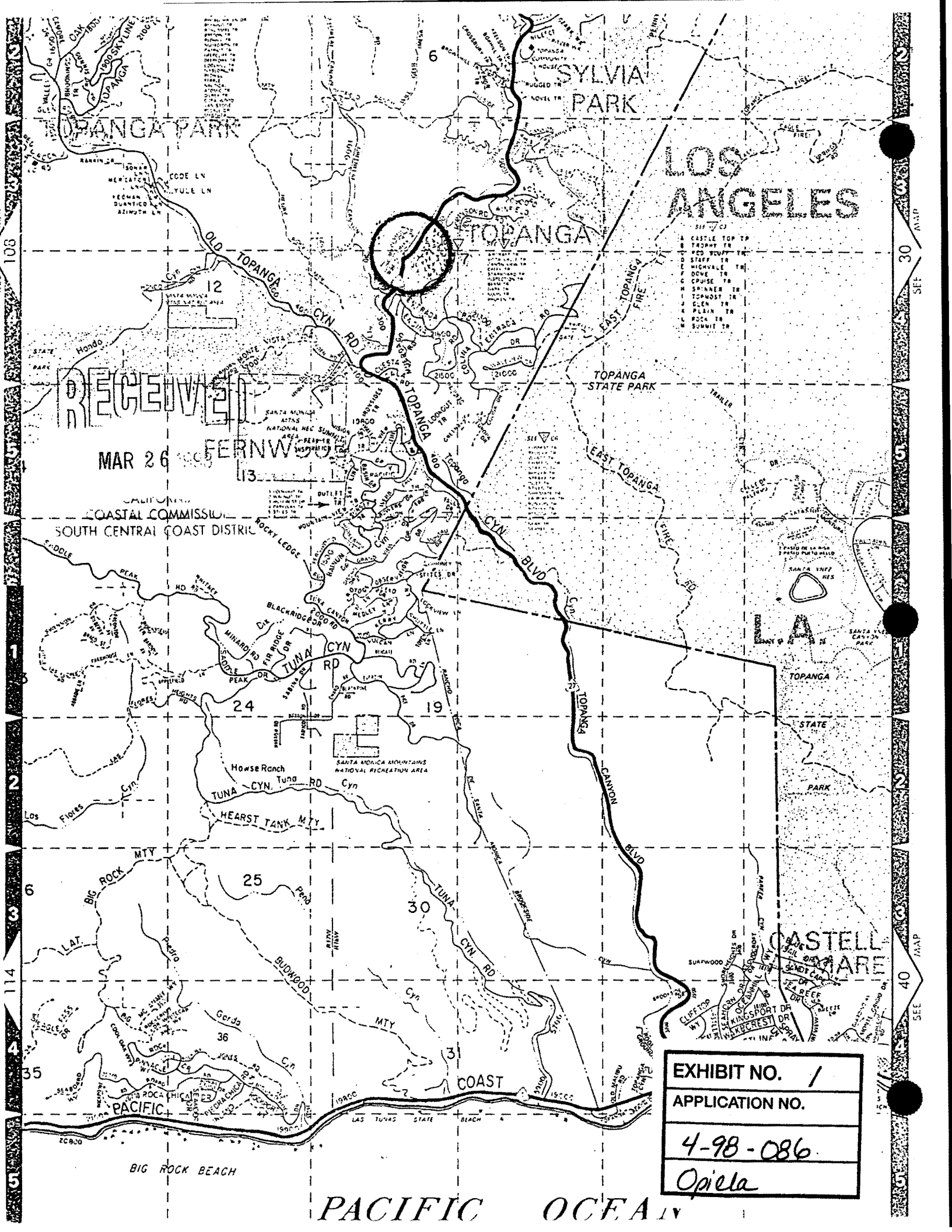
## **F. California Environmental Quality Act**

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, 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 by the Commission if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the proposed project would have on the environment.

The proposed project would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. The previous sections contain documentation of the significant adverse impacts the proposed development would have on the environment of the Topanga Creek area and ultimately upon the marine environment of the Pacific Ocean in the Malibu area. At least one feasible alternative exists to the proposed project which would lessen or avoid the adverse impacts of the proposed project on the environment. The applicant has never applied for an alternative proposal, i.e., one that would involve crossing Topanga Creek with a bridge to access the project site and/or revising the garage location to avoid interfering with the riparian area buffer of Topanga Creek. Therefore, for the reasons previously cited in the findings above, the Commission finds that the proposed project is not th

least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform with CEQA.

MH-V



RECEIVED

MAR 26 1963

FERNWOOD

LOS ANGELES

- SEE 703
- A CASTLE TOP TR
  - B TROPHY TR
  - C LOS SCOUTS TR
  - D STAFF TR
  - E HIGHVALE TR
  - F DOVE TR
  - G COUISE TR
  - H SPANNER TR
  - I TOPMOST TR
  - J GLEN TR
  - K PLAIN TR
  - L ROCK TR
  - M SUMMIT TR

CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO.	/
APPLICATION NO.	
	4-98-086
	Opiela

PACIFIC OCEAN

MAP

SEE 589 MAP

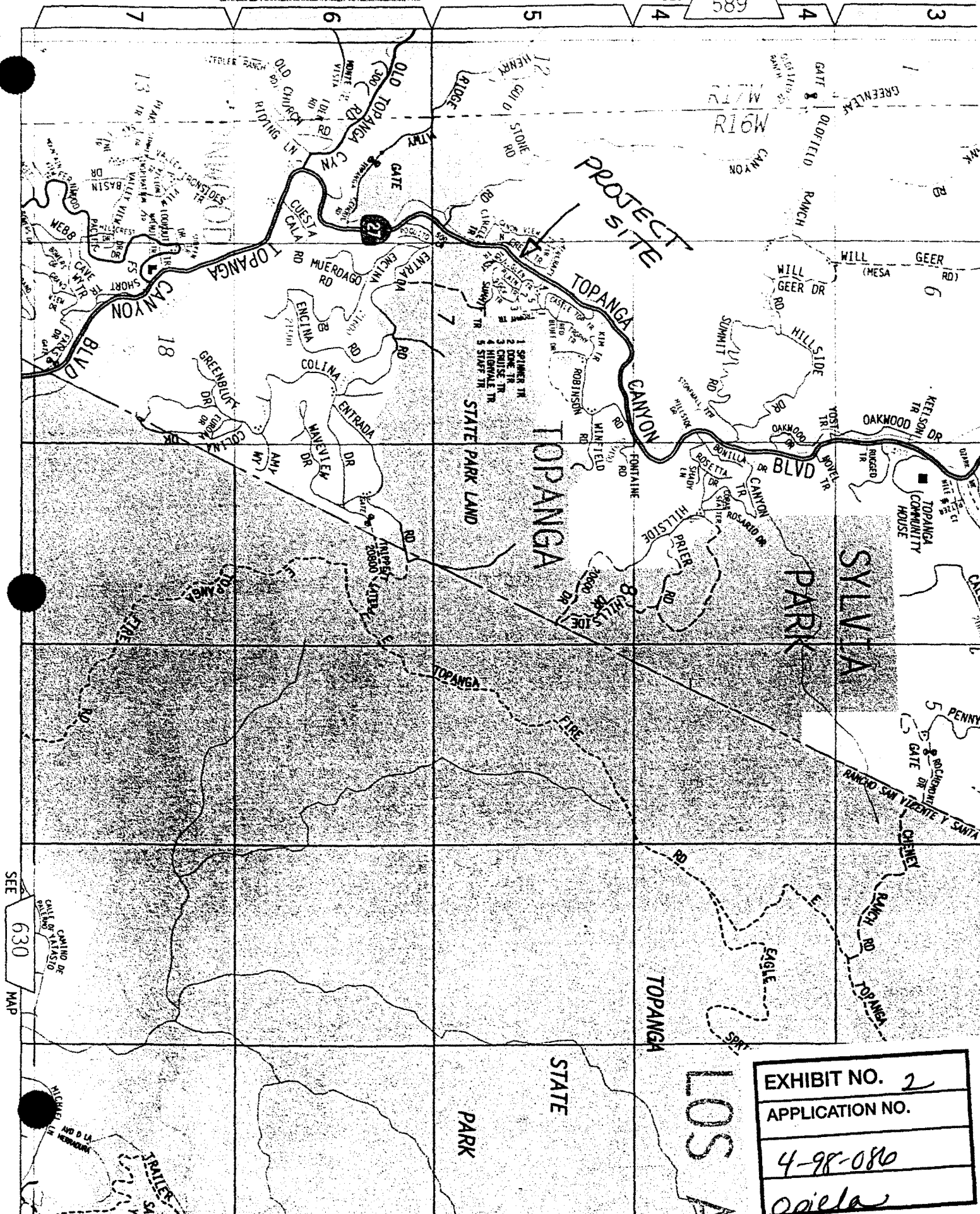



EXHIBIT NO. 2
APPLICATION NO.
4-98-080
Opieia

SEE 630 MAP



 =  
 Locally disturbed  
 Sensitive Resource  
 Area


 =  
 Certified Sensitive Resource Mc  
 Malibu/Santa Monica Mountain  
 Land Use Plan

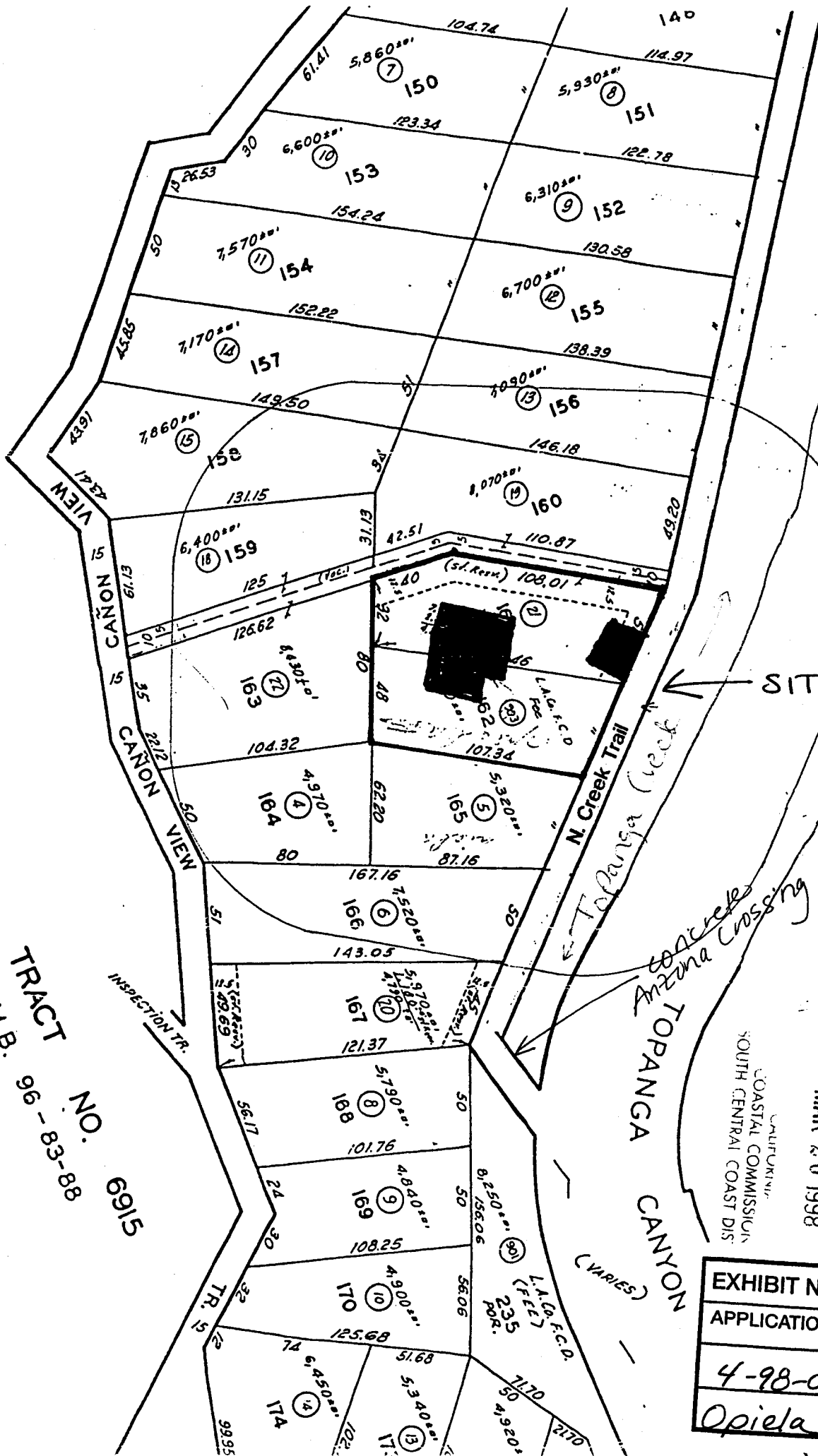
EXHIBIT NO. 3
APPLICATION NO.
4-98-086
Opela

Source: U.S. Geological Survey Quadrangle Maps

2252 II SW (MALIBU BEACH) 15 MI TO U.S. 101 MONTE NIDO 3 MI CALABASAS (U.S. 101) 6 MI TOPANGA PARK 0.5 MI 220 000 FEET (5) 3774 3773 5 3772 23 24 19



EXHIBIT NO. 4
APPLICATION NO.
4-98-086
Opiela



TRACT NO. 6915  
 M.B. 96-83-88

CALIFORNIA  
 COASTAL COMMISSION  
 SOUTH CENTRAL COAST DIST.

MAR 26 1998

RECEIVED

EXHIBIT NO. 5
APPLICATION NO.
4-98-086
Opiela





RECEIVED

555 N. CREEK TRAIL

Sewage Disposal System Approved For DESIGN PURPOSES ONLY, As Required For California Coastal Commission Review. Final Approval Required Prior To Start Of Construction Or Issuance Of Permits.

MAR 26 1998

ADDRESS: 555 N. CREEK TRAIL  
 NEW  REMODEL %  
 STORM DAMAGE  BURN-OUT  
SYSTEM FAILURE / ADDITION  
NO. BEDROOMS / F. U. 2 Bed Rooms  
SEPTIC TANK SIZE 1500 Gallons  
PRESENT: 1-5'x18' DI W/ 6" CP  
FUTURE: 100%

CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

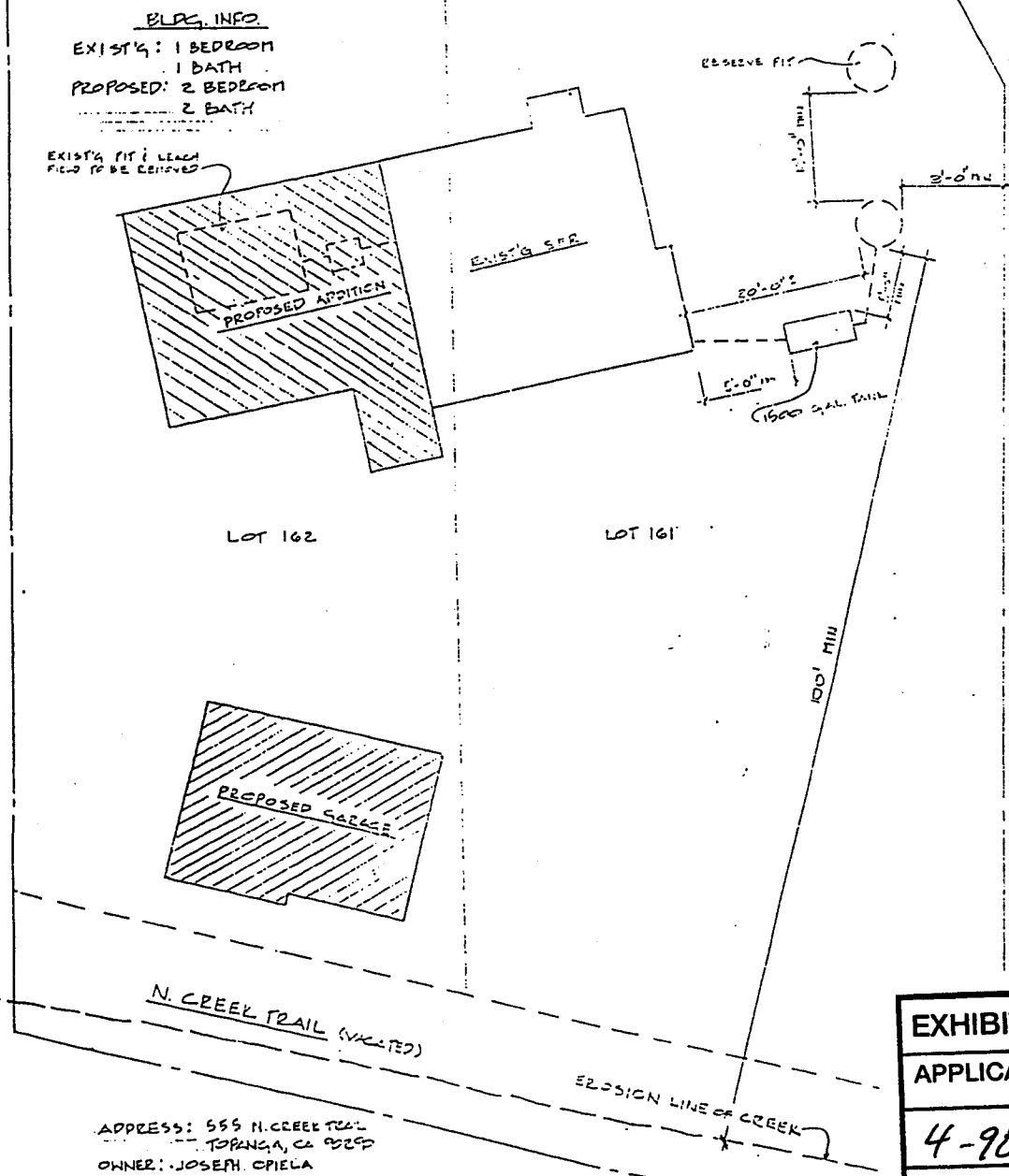
SYSTEM ADDITION  
PERC. RATE / SOIL CAT. 13485 G.P.O

SPECIAL NOTES / REQUIREMENTS  
~~NO FINAL APPROVAL WILL BE GIVEN UNTIL OWNER PROVIDES US WITH DOCUMENTATION THAT LOT 161 AND 162 HAVE BEEN LEGALLY JOINED.~~

DATE 10-10-96 HEALTH OFFICER

COUNTY OF LOS ANGELES DEPARTMENT OF HEALTH SERVICES

This Approval Expires One Year From the Above Date.



BLDG. INFO.  
EXIST'G: 1 BEDROOM  
1 BATH  
PROPOSED: 2 BEDROOM  
2 BATH

EXIST'G FIT & LEACH FIELD TO BE REMOVED

LOT 162

LOT 161

N. CREEK TRAIL (WIDENED)

EROSION LINE OF CREEK

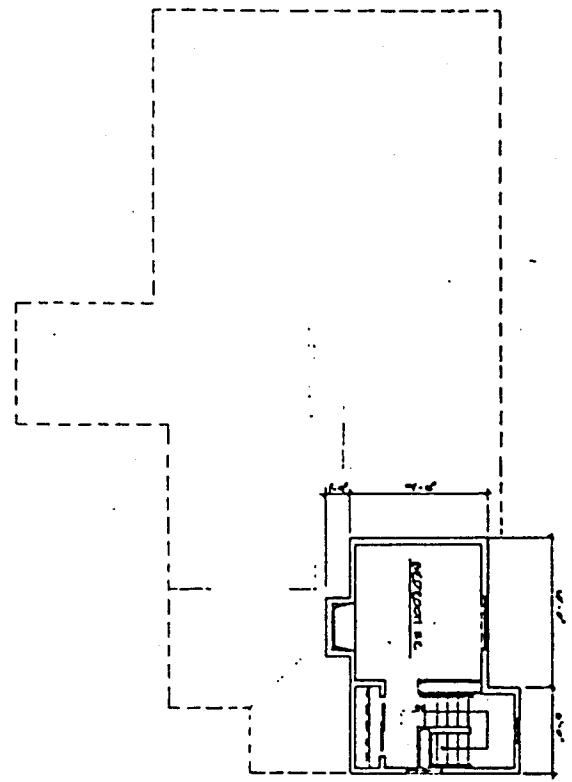
ADDRESS: 555 N. CREEK TRAIL TORRANCE, CA 90505  
OWNER: JOSEPH OPIELA

SITE PLAN

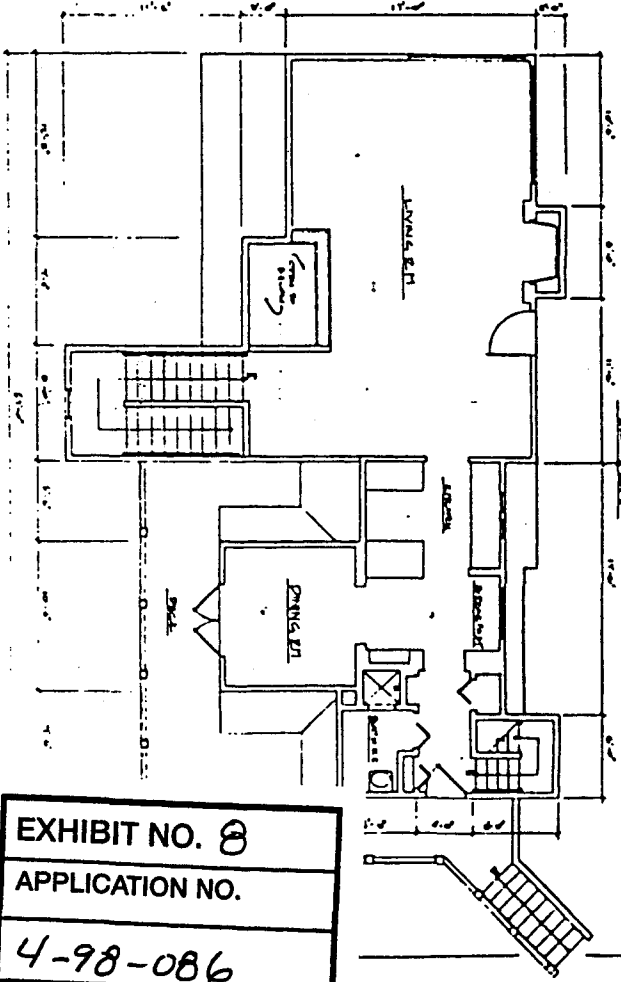
EXHIBIT NO. 60
APPLICATION NO. 4-98-086
Opiela



UPPER LEVEL FLOOR PLAN  
Scale 1/8" = 1'-0"



DOWN LEVEL FLOOR PLAN  
Scale 1/8" = 1'-0"



LOWER LEVEL FLOOR PLAN  
Scale 1/8" = 1'-0"

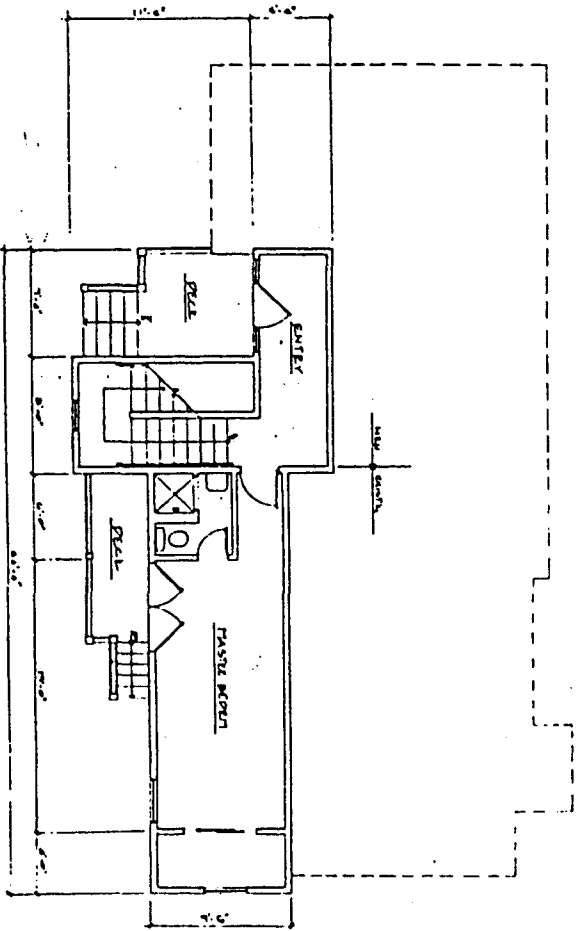
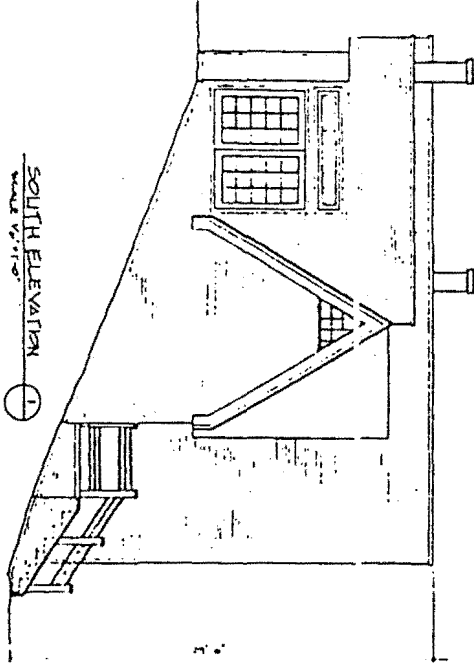
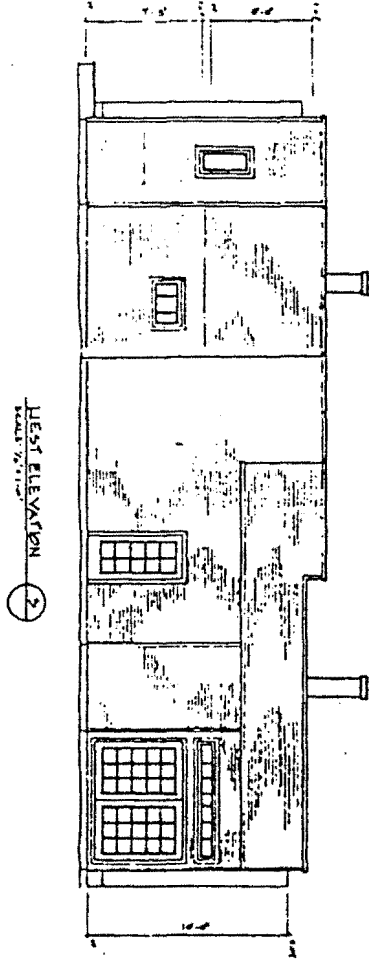


EXHIBIT NO. 8  
APPLICATION NO.  
4-98-086  
Opiela

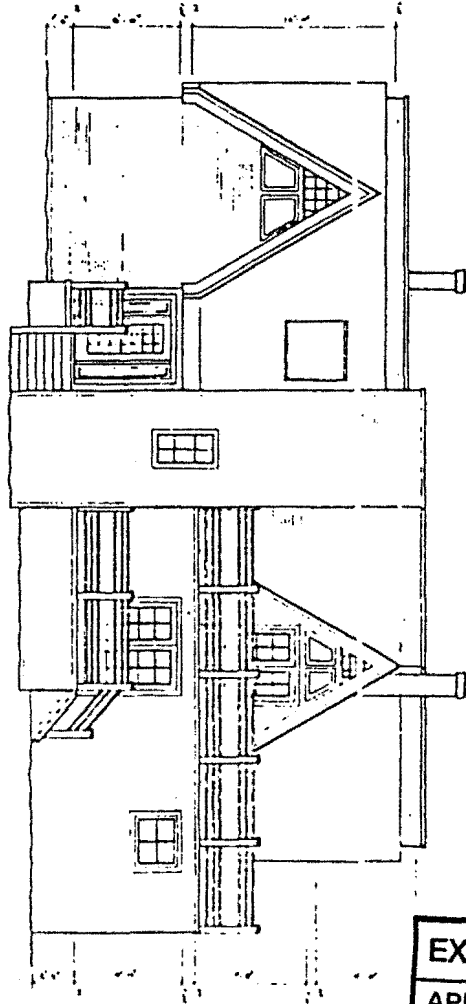
After Detached Garage & Addition  
846 N. Crane Trail  
Tempe, CA 95790



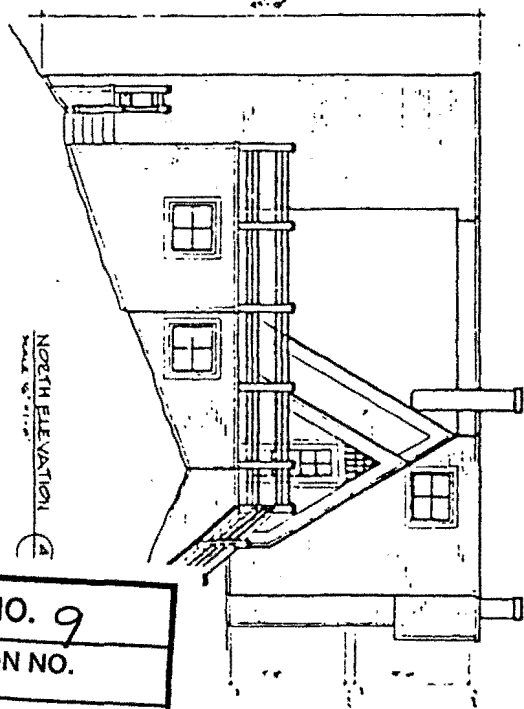
SOUTH ELEVATION ①



WEST ELEVATION ②



EAST ELEVATION ③



NORTH ELEVATION ④

EXHIBIT NO. 9  
 APPLICATION NO.  
 4-98-086  
 Dairle

How Detailed Orange & Ashford  
 188 E. Church Trail  
 Hayward, CA 94790

FD-316

3



P.P. APPROVAL

To: Division of Bldg. & Safety  
 District Office: MALIBU  
 Zoned District: \_\_\_\_\_  
 Zone Classification: R1-10000  
 Map Number: 167H105  
 Date Forwarded: 6/14/92

DEPARTMENT OF REGIONAL PLANNING  
 CASE NUMBER: PP 41989

This plot plan is APPROVED subject to the requirements of Los Angeles County Code and to the conditions noted herein. It is applicable only as specifically noted and must be used prior to any change in ordinance requirements or within two years. Such approval shall not be construed to permit the violation of any provision of any County Ordinance or State law.

Signature: [Signature]  
 Date: JUN 16 '92

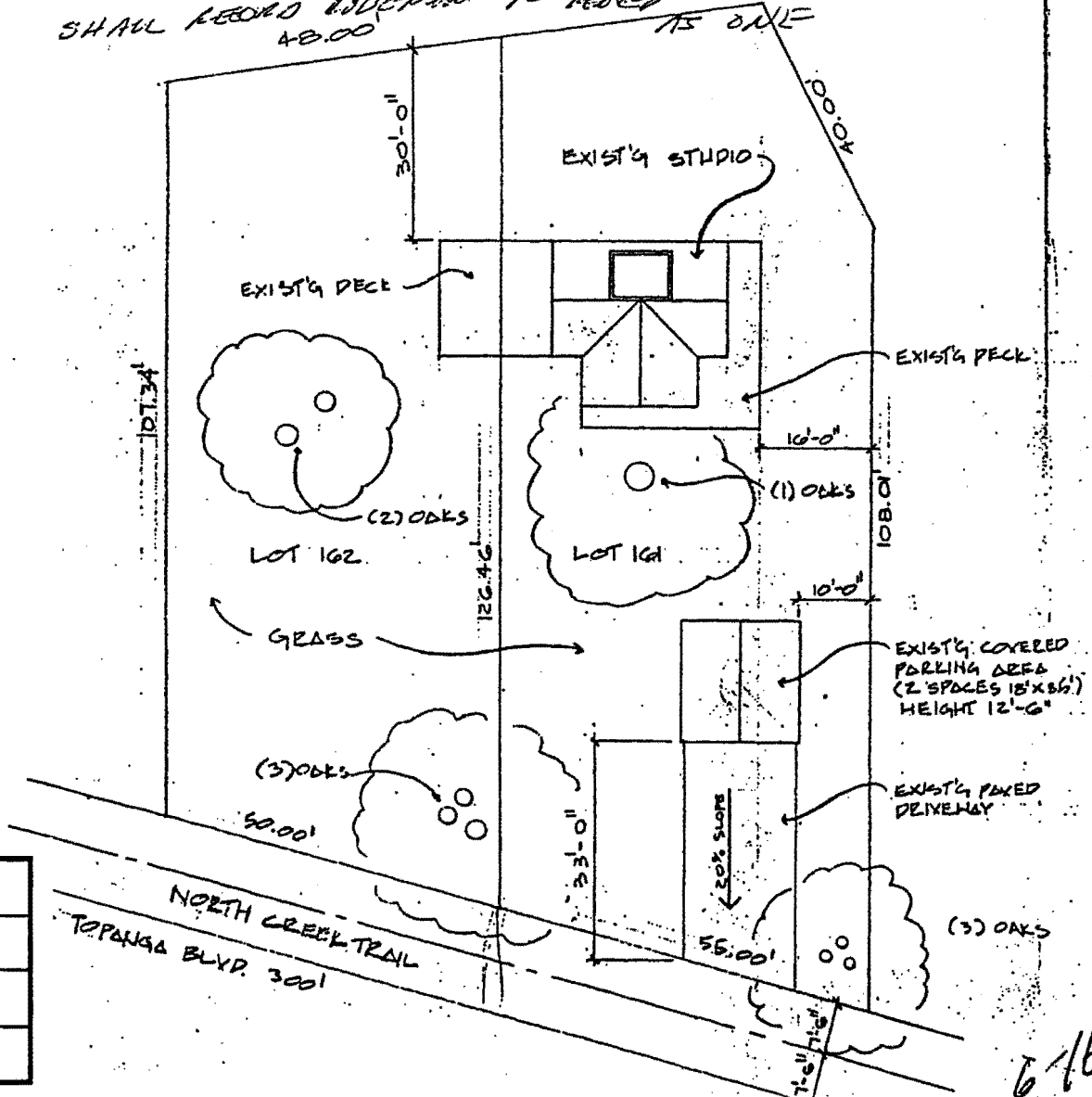
DEPT. OF REGIONAL PLANNING  
 APPROVAL IN CONCEPT

SIG. [Signature]  
 DATE: JUN 16 '92  
 PLAN CHECK NO. \_\_\_\_\_

Per sec. 27400 et seq of the Public Resources Code and Sec. 13210(a) Title 14 of the Administrative Code, State of California.

THIS IS NOT A PERMIT and is subject to any conditions listed below.

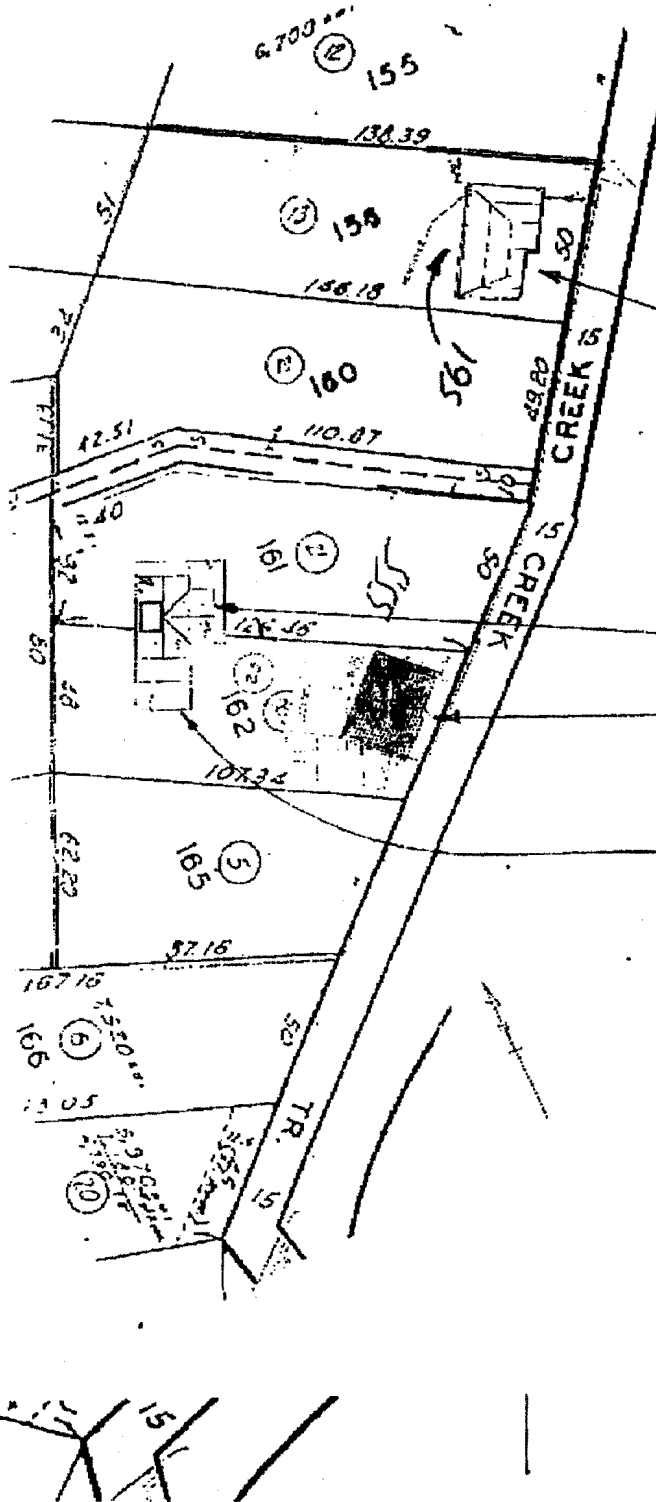
1. APPROVES CONVERSION OF FORMER GUEST HOUSE TO SFR WITH ADDITION OF KITCHEN (NO CHANGE IN FOOTPRINT)
2. EXISTING 2 CAR GARAGE ON 12
3. SHALL RECORD DOCUMENT TO RECORD 48.00 AS ONE



IBIT NO.	11
APPLICATION NO.	4-98-086
	Opiela

6-16-92

Post-It™ brand fax transmittal memo 7671	# of pages 1
To: J. ANSARI	From: M. OPIELA
Co.	Co.
Dept.	Phone #
Fax # 805 641 1732	Fax #



Joseph Opiela took title to:  
 Lots 156, 161, 162, and 165  
 on 1-17-91

Assessor's info states original  
 740 sq. ft. house built in 1927  
 House was flood damaged in 1980  
 House destroyed by fire in 1991  
 Permit for new 1850 sq. ft.  
 single family dwelling in 1992  
 Fire Dept. approval was for  
 foundation only  
 Extension fees paid through 1995

The only bldg. permit issued for  
 Lots 161 and 162 is for a  
 360 sq. ft. storage shed  
 approved in 1987

Proposed garage, no permit was  
 ever issued, no evidence of  
 existing 20' high retaining walls

Proposed deck with 10' high  
 retaining wall. Plan submitted  
 for plan check shows 28'x 23'  
 and 7'x 8' "underfloor area"

There may have been an existing  
 wood deck on grade.

The only structures that is on the  
 five lots at this time are the  
 "storage shed" structure and an  
 8'x 0' + or - Sears type storage  
 building.

EXHIBIT NO. 12
APPLICATION NO.
4 98-086
Opiela