

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



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STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-97-044-A1

APPLICANT: Armen Qhanian

PROJECT LOCATION: 6205 Ocean Breeze Drive, City of Malibu (Los Angeles County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construct 7,580 sq. ft. two story, 24 ft. high, single family residence with septic tank and pool. No grading.

DESCRIPTION OF AMENDMENT: Relocation of a previously approved (but not yet constructed) swimming pool and spa, construction of a 3-6 ft. high, approximately 105 ft. long retaining wall and approximately 158 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill.). The proposed project includes the request for after-the-fact approval of the enlargement of an existing building pad, including approximately 400 cu. yds. of after-the-fact cut and fill, a 650 sq. ft. reduction of the previously approved residence, and a 240 ft. long, 6 ft. high retaining wall on the southern property line.

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Malibu Planning Department, dated 5/11/01; Approval in Concept, City of Malibu Geology and Geotechnical Engineering, dated 5/25/01; Biological Review, City of Malibu, dated 3/21/01.

SUBSTANTIVE FILE DOCUMENTS: "Updated Soils and Engineering-Geologic Report for Additional Grading and Retaining Walls, Lot 4, Tract 45679, Ocean Breeze Drive at Sea View Drive, Malibu, California," prepared by GeoSystems dated 1/30/01; "Proposed Grading and Retaining Walls, Lot 4, Tract 45679, Ocean Breeze Drive at Sea View Drive, Malibu, California," prepared by GeoSystems dated 2/20/01; "Response to City of Malibu Geology and Geotechnical Engineering Review Sheet dated March 13, 2001, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," by GeoSystems dated 3/23/01; "Response to City of Malibu Geology and Geotechnical Engineering Review Sheet dated April 6, 2001, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," by GeoSystems dated 4/23/01; Letter re: "Southern Retaining Wall In Proposed Swimming Pool Area, Lot 4, Tract 45679, 6205

Ocean Breeze Drive, Malibu, California," by GeoSystems dated 10/30/01; Letter re: "Southern Retaining Wall, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," by GeoSystems dated 12/05/01; Letter re: "Ohanian Property – Mapping of Needlegrass" prepared by Steven G. Nelson, Consulting Biologist, dated 10/02/01.

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

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

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material (14 Cal. Code of Regulations Section 13166). In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect previously imposed special conditions required for the purpose of protecting coastal resources.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **partial approval** and **partial denial** of the applicant's proposal. The applicant requests approval for proposed and after-the-fact grading and retaining walls in order to relocate a previously approved (but not yet constructed) swimming pool and spa on a hillside lot. The proposed project includes construction of a 3-6 ft. high, approximately 105 ft. long retaining wall, approximately 558 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill, and 400 cu. yds. of after-the-fact cut and fill), and relocation of the previously approved swimming pool and spa. The applicant also seeks after-the-fact approval for a 650 sq. ft. reduction of the house size, and construction of a 240 ft. long, 6 ft. high retaining wall along the southern property line.

The proposal is a revised version of a project previously scheduled as Item Tu 12b on the February 5, 2002 Commission agenda. In its report dated January 17, 2002, staff recommended partial approval and partial denial of the project. Staff recommended denial of all development located outside of the previously approved building pad, including an approximately 5400 sq. ft. swimming pool pad and cut slope, 601 cu. yds. of grading and four retaining walls. Staff recommended approval, with conditions, of the reduction in house size and construction of the eastern 190 ft. of the retaining wall along the southern property line.

On January 30, 2002, the applicant requested postponement of the hearing in order to revise the proposal to include no additional grading. The current proposal includes 158 cu. yds. of

grading to excavate footings and backfill the proposed approximately 105 ft. long retaining wall. The proposal also includes 400 cu. yds. of after-the-fact grading to enlarge the building pad. The proposed retaining wall is located along a cut slope that was a result of this grading.

Staff recommends partial approval and partial denial of the revised proposal, as follows:

Staff recommends **approval**, with five special conditions, of the applicant's request for approval of: (1) as built reduction of the previously approved residence from 7,415 sq. ft. to 6,765 sq. ft.; and (2) construction of the portion of the retaining wall along the southern property line that extends east of the existing drainage structure for a distance of approximately 190 feet. This portion of the retaining wall has been shown to be necessary to support the building pad for the previously approved residence. The five special conditions concern revised plans, assumption of risk, updated geologic and engineering review, drainage and polluted runoff plan, and condition compliance.

Staff recommends **denial** of the request for (1) approval of construction of the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet (this portion of the retaining wall is only necessary to support the after-the-fact placement of fill); (2) approval of construction of a 2:1 fill slope and level pad area behind this portion of the retaining wall, including an estimated 400 cu. yds. of grading; (3) construction of a 3-6 ft. high, approximately 105 ft. long retaining wall, including 158 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill); and (4) relocation of a previously approved (but not yet constructed) swimming pool and spa. These portions of the applicant's proposal are designed to increase the available pad area on a hillside site, solely for the purpose of increasing accessory amenities. These amenities include an expanded pool area and yard, in excess of the pad (and grading amounts) previously authorized in the underlying subdivision and single-family residence approved by the Commission.

The subject site is a hillside lot located approximately ½ mile northeast of Pacific Coast Highway and east of Trancas Canyon in the City of Malibu. Much of the subject parcel has been restricted as an easement for open space, habitat preservation, and view protection, a condition required by the Commission upon approval of the permit that created the subject lot and three adjacent lots (CDP 5-88-938). The subject property contains coastal sage scrub habitat, and the site of the proposed grading contains remnant coastal sage scrub habitat as well as needlegrass, a native plant that is increasingly rare in the Santa Monica Mountains. The project is located adjacent to the Santa Monica Mountains National Recreation Area.

Staff has confirmed that the proposed development, with the exception of the eastern portion of the as-built retaining wall, is visible from Pacific Coast Highway (designated as a coastal scenic highway by the previously certified Malibu/Santa Monica Mountains Land Use Plan) and the Zuma Ridge Trail. In addition, the proposed project involves a significant amount of grading and landform alteration, and increases the potential for erosion, additional runoff, and sedimentation of coastal waters. Construction of the pool and spa in the location previously approved under CDP 4-97-044 would entail no further grading and produce no additional impacts to coastal resources.

Therefore, staff recommends denial of the portion of the proposed project located outside of the previously approved development footprint, and limited approval, with conditions, of the portion of the applicant's proposal that includes the after-the-fact reduction in house size and the construction of the part of the retaining wall necessary to support the pad for the residence.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission adopt the staff recommendation, by adopting the two-part resolution set forth in the staff report.*

STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART:

Staff recommends that the Commission adopt the following two-part resolution. Passage of this motion will result in (Part 1) approval of specified components of the proposed project as conditioned and (Part 2) denial of specified components of the proposed project, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **approves** a coastal development permit for the portion of the proposed project consisting of: (1) reduction of the size of the previously approved house from 7,415 sq. ft. to 6765 sq. ft., in accordance with the as-built plans shown in **Exhibit 9**; and (2) construction of the portion of the retaining wall along the southern property line that extends east of the existing drainage structure for a distance of approximately 190 feet, as shown in **Exhibit 6**, on the grounds that the development, as amended and conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

Part 2: Denial of the Remainder of the Development

The Commission hereby **denies** a coastal development permit for the portion of the proposed development consisting of (1) construction of the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet; (2) construction of a 2:1 fill slope and level pad area west of the building pad authorized in CDP 4-97-044, including an estimated 400 cu. yds. of grading; (3) construction of a 3-6 ft. high, approximately 105 ft. long retaining wall, including 158 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill); and (4) relocation of a previously approved (but not yet constructed) swimming pool and spa, on the grounds that the development would 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 governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of a permit for this portion of the

proposed development would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. STANDARD AND SPECIAL CONDITIONS

Note: Unless specifically altered by the amendment, all standard conditions and Special Conditions One (1), Two (2), and Three (3) previously applied to Coastal Development Permit 4-97-044 continue to apply. In addition, the following new special conditions are hereby imposed as a condition upon the proposed project as amended pursuant to CDP 4-97-044-A1.

III. SPECIAL CONDITIONS

4. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and approval of the Executive Director, two full sets of revised project plans, drawn to scale and prepared by a licensed civil engineer, which eliminate all development located west of the existing drainage structure along the western edge of the previously approved building pad, including: the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet; the 2:1 fill slope and pad area located behind the above-mentioned retaining wall and west of the existing drainage structure; and the proposed 3-6 ft. high, approximately 105-ft. long retaining wall, as generally shown in **Exhibit 5**.

5. Assumption of Risk

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

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

6. Updated Geologic and Engineering Review

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for review and approval of the Executive Director, evidence of the following:

- A. Review and approval, by the consulting geologists and a licensed civil engineer, of the as-built plans, prepared by Ace Civil Engineering and dated April 9, 1998, for the retaining wall located along the southern property line.
- B. Verification, by the consulting engineering geologist and a licensed civil engineer, that the engineered design for said retaining wall, presented in the as-built plans referred to in Item A, meets all applicable standards for the protection of the stability of the pad it supports.
- C. Verification, by the consulting engineering geologist and a licensed civil engineer, that the as-built retaining wall has been constructed fully in accordance with the engineered plans verified as adequate pursuant to the requirements of Item B above.
- D. Review and approval, by the consulting engineering geologist and a licensed civil engineer, of all final project plans, including verification that the retaining wall, as approved by the Commission, is adequate to support the existing building pad.

Such evidence shall include affixation of the stamp and signature of the consulting engineering geologist and licensed civil engineer to the final project plans and designs, including the drainage and polluted runoff control plan required pursuant to **Special Condition Seven (7)**.

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

determine whether required changes are "substantial." The approved project shall be constructed and maintained at all times in accordance with the approved plans.

7. Drainage and Polluted Runoff Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit for the review and approval of the Executive Director, two (2) sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to convey, in a non-erosive manner, stormwater flows impacted by the development that is the subject of this permit. The plan shall be reviewed and approved by the consulting geologist and the consulting civil engineer to ensure that the plan is in conformance with consultants' recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

8. Condition Compliance

Within 60 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit amendment. 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 seeks approval for relocation of a previously approved (but not yet constructed) swimming pool and spa, construction of a 3-6 ft. high, approximately 105 ft. long retaining wall and approximately 158 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. Fill). In addition, the proposed project also includes the request for after-the-fact approval of the enlargement of an existing building pad with approximately 400 cu. yds. of after-the-fact cut and fill, a 650 sq. ft. reduction of the previously approved residence, and a 240 ft. long, 6 ft. high retaining wall on the southern property line. (**Exhibits 4-7 and Exhibit 9**).

The proposal is a revised version of a project previously scheduled as Item Tu 12b on the February 5, 2002 Commission agenda (**Exhibit 8**). In its report dated January 17, 2002, staff recommended partial approval and partial denial of the project. Staff recommended denial of all development located outside of the previously approved building pad, including an approximately 5400 sq. ft. swimming pool pad and cut slope, 601 cu. yds. of grading and four retaining walls. Staff recommended approval, with conditions, of the after-the-fact reduction in house size and construction of the eastern 190 ft. segment of the existing retaining wall along the southern property line.

On January 30, 2002, the applicant requested postponement of the hearing in order to revise the proposal to include no additional grading. The current proposal includes 158 cu. yds. of new grading to excavate footings and backfill the proposed approximately 105 ft. long retaining wall. The proposal also includes the request for after-the-fact approval of 400 cu. yds. of grading to enlarge the building pad. The proposed retaining wall is located along a cut slope that was a result of this grading.

The project site consists of an approximately 4.5-acre parcel located approximately ½ mile northeast of Pacific Coast Highway in the City of Malibu (**Exhibit 1**). The parcel was created under a four-lot subdivision approved in 1989 and amended in 1991 (CDP 5-88-938 (Bennett) and CDP 5-88-938-A1 (Ohanian Investment Company) (**Exhibits 12 and 13**). The lot contains several drainage channels, two of which crossed the area of the house pad and are now contained in concrete swales that were previously approved under CDP 5-88-938. A culvert has replaced a portion of one of the drainage swales in the area of the retaining wall (**Exhibits 4 and 11**). The applicant has not included this component of the unpermitted development in the present application. The Commission's Enforcement Unit has been notified of the unpermitted development at the site. The culvert may also be evaluated as a component of drainage and polluted runoff plans submitted pursuant to **Special Condition Seven (7)**.

An approximately 55 foot deep ravine bisects the lot to the west of the building pad (**Exhibit 2**). In approving the subdivision, Los Angeles County required that the majority of the parcel be designated a restricted use area to allow adequate setbacks from the ravine. The subdivision applicant's geologist, in a report dated 4/22/88, noted that the 1:1 slopes within the ravine did not meet the safety factors for gross stability, and

recommended a minimum building setback of 15 feet from the restricted use area boundary. No proposed development is located in the restricted use area.

As a condition of permit approval, the Commission required the applicants to record an offer to dedicate the restricted use area as an easement for open space, habitat preservation, and view protection (CDP 5-88-938). The subject property contains native coastal sage scrub habitat, and the specific site of the proposed grading contains remnant coastal sage scrub as well as needlegrass, a native plant that is increasingly rare in the Santa Monica Mountains. This area had been cleared of native vegetation prior to March 2001; however, fuel modification plans submitted by the applicant state that native vegetation on slopes must be allowed to resprout and grow, and that future fuel modification must be restricted to selective thinning. It is reasonable to assume that the approximately 1,500 sq. ft. area where unpermitted grading has already occurred contained the same type of native vegetation cover.

The proposed development is visible from Pacific Coast Highway (designated as a coastal scenic highway by the previously certified Malibu/Santa Monica Mountains Land Use Plan) and the Zuma Ridge Trail. The project site is bordered by adjacent new single family residential development to the south and east. The project site is located at approximately 420 ft. above sea level, at a higher elevation than most residences in the viewshed. The Santa Monica Mountains National Recreation Area borders the site to the north and northwest. The proposed project would extend the frontier of development into adjacent undeveloped areas (**Exhibits 1 and 3**).

The Commission has acted twice previously to limit the pad size on the subject site. In approving the subdivision that created the lot (CDP 5-88-938), the Commission limited the pad size on the subject lot (Lot 4) to 3,000 sq. ft., in order to reduce landform alteration, visual impacts, and impacts on adjacent parkland. The Commission also required the applicant to record a deed restriction limiting the amount of grading to 21,200 cu. yds. for all four lots combined (including 4,865 cu. yds. of grading on Lot 4). CDP 5-88-938 was amended in 1991 (CDP 5-88-938-A1, Ohanian Investment Co.) to allow a 4,600 sq. ft. building pad on Lot 4 (1,600 sq. ft. larger than previously approved), and to reduce total grading for the subdivision to 15,131 cu. yds.

In 1997, the Commission approved CDP 4-97-044 (Ohanian Investment Co.) for the construction, on Lot 4, of a 7,415 sq. ft., two-story single family residence, septic system, and swimming pool, with no grading (**Exhibit 14**). The approved residence included a 4,660 sq. ft. building footprint, with 6,900 sq. ft. of pavement coverage and 2,500 sq. ft. of landscape coverage, totaling 14,060 sq. ft. of developed area. Plans approved under CDP 4-97-044 show a pad that is approximately 12,230 sq. ft. Although it included no additional grading, the development proposed and approved under CDP 4-97-044 exceeded the previously approved 4,600 sq. ft. pad size by approximately 7,500 sq. ft. This discrepancy was not noted by Commission staff in its review of CDP 4-97-044.

The Commission has located documents in permit files for the other lots in the subdivision that indicate a 10,000 sq. ft. building pad was present on the subject site in November 1991. However, it is not known if additional grading, or how much additional grading, beyond the 4865 cu. yds. approved in the subdivision permit, was conducted on the lot. Although the subdivision permit limited the size of the building pad to 4,660 sq. ft. to protect native habitat and public views, the permit approved for the residence in 1997 authorized structures and pavement covering approximately 11,560 sq. ft., a substantial increase in the area of development and impervious surface.

As stated above, CDP 4-97-044 included approval of a swimming pool located west of the residence (**Exhibits 5, 10, and 14**). Plans approved under the permit also contained a retaining wall to the north of the building pad. They did not include the retaining wall that currently is located on the southern property boundary. CDP 4-97-044 was subject to three special conditions regarding design restrictions, future improvements, and wildfire waiver of liability. In July 2001, CDP 4-97-044 was transferred from Ohanian Investment Co., to the current applicant, Armen Ohanian. (Mr. Ohanian is a general partner of Ohanian Investment Co.)

At the applicant's request, staff has met with the applicant and his representatives to discuss the proposed project, both at the site (with the Commission's staff ecologist, Dr. Jon Allen), and in a subsequent meeting at the District office. Although the applicant has made revisions to the originally submitted project plans, including reducing the total amount of grading, the revisions have not eliminated potential impacts to coastal resources (**Exhibits 4, 5, and 8**). As detailed below, the proposed project, as revised, is visible from Pacific Coast Highway, the Zuma Ridge Trail, and the Santa Monica Mountains Recreation Area, and continues to pose potential adverse impacts to coastal resources. In contrast, construction of the swimming pool in the location previously approved under CDP 4-97-044 would entail no further grading or landform alteration and produce no additional impacts to coastal resources.

B. 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 that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area 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.

1. Geology

Section 30253 of the Coastal Act requires that new development assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic stability, or destruction of the site or surrounding area. The site of the proposed project is an approximately 4.5 acre hillside parcel bisected by an approximately 55 foot deep ravine and several drainage channels.

The applicant has submitted four reports and two letters: "Updated Soils and Engineering-Geologic Report for Additional Grading and Retaining Walls, Lot 4, Tract 45679, Ocean Breeze Drive at Sea View Drive, Malibu, California," prepared by GeoSystems and dated January 30, 2001; "Proposed Grading and Retaining Walls, Lot 4, Tract 45679, Ocean Breeze Drive at Sea View Drive, Malibu, California," prepared by GeoSystems and dated 2/20/01; "Response to City of Malibu Geology and Geotechnical Engineering Review Sheet dated March 13, 2001, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," prepared by GeoSystems and dated March 23, 2001; "Response to City of Malibu Geology and Geotechnical Engineering Review Sheet dated April 6, 2001, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," prepared by GeoSystems and dated April 23, 2001; a letter re: "Southern Retaining Wall In Proposed Swimming Pool Area, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," prepared by GeoSystems and dated October 30, 2001; and a letter re: "Southern Retaining Wall, Lot 4, Tract 45679, 6205 Ocean Breeze Drive, Malibu, California," prepared by GeoSystems and dated December 5, 2001. The reports address the stability and safety of the proposed swimming pool pad and retaining walls, as originally conceived, as well as the unpermitted retaining wall and fill slope below the proposed swimming pool pad. (No additional geologic information has been submitted for the revised proposal.) The two letters discuss the necessity of the retaining wall below the approved residence and building pad, as well as the western extension of that retaining wall below the proposed swimming pool pad.

The March 23, 2001 report prepared by GeoSystems states:

Based on the findings of our investigation and on the results of our stability analysis, conditions are considered to be favorable for the long-term stability of the proposed additional grading and retaining walls, including the proposed swimming pool.

The report further concludes that:

It is the finding of this firm that the proposed building and or grading will be safe and that the site will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property in compliance with the County code, provided our recommendations are followed.

Although the GeoSystems reports do not address the geologic safety of the after-the-fact 650 sq. ft. reduction of the building footprint, the Commission notes that the revised plan is constructed substantially within the footprint of the plans previously reviewed by GeoSystems, who found, in an update letter dated February 5, 1997, that

....the proposed building and or grading will be safe and that the site will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property in compliance with the County code, provided our recommendations are followed.

GeoSystems prepared two letters addressing the southern retaining wall and its western extension below the proposed swimming pool pad. The first letter, "Southern Retaining Wall In Proposed Swimming Pool Area," dated October 30, 2001, discusses the necessity of that portion of the as-built retaining wall south of the proposed swimming pool pad area. It states:

....(T)he existing retaining wall located along the toe of the graded slope along the south side of the area of the proposed swimming pool....is necessary to support the existing compacted fill slope which supports the graded pad to the north of the retaining wall and compacted fill slope."

These reports therefore indicate that the retaining wall below the proposed swimming pool area is necessary to support the unpermitted fill slope and pad, as well as the additional pad area previously proposed, which are located west of the building pad for the previously approved residence and swimming pool. This retaining wall is different from the retaining wall that the applicant states is necessary to support the building pad for the previously approved residence. It is also different from the proposed 3-6 ft. high retaining wall located along the cut slope that resulted from construction of the unpermitted fill slope and pad. No geologic review or recommendations have been submitted on the proposed retaining wall.

A second letter, "Southern Retaining Wall," prepared by GeoSystems and dated December 5, 2001, discusses the necessity of that portion of the unpermitted retaining wall south of the previously approved building pad. It states:

....The southern retaining wall is located along the top of slope on the south side of the building pad for the existing residence. From a geotechnical standpoint, the existing southern retaining wall is necessary to support the graded building pad, which in turn supports the residence and swimming pool structures located on the pad.

Commission Senior Engineer Lesley Ewing reviewed the GeoSystems reports, as well as plans for the proposed development, and determined that the 50 ft. western extension of the existing unpermitted retaining wall was necessary only to support the unpermitted fill slope and the additional pad area previously proposed. (Exhibits 5 and 8). Ms. Ewing concluded that the westernmost 50 feet of the unpermitted existing retaining wall could be removed and the fill slope restored without endangering the stability of the approved building pad. Ms. Ewing further concluded that construction of unpermitted fill slope and the additional pad area previously proposed was unnecessary

for the stability of the approved building pad. Therefore, the Commission finds that this portion of the applicant's proposal has been constructed specifically to increase the level pad and yard area of the hillside site and to thus make available additional area for swimming pool, landscaping, and patio amenities. This portion of the applicant's proposal is therefore distinguished from the remainder of the retaining wall (the eastern portion) that is necessary to support the portion of the existing pad containing the approved, constructed single family residence (**Exhibit 5**).

In addition, this portion of the applicant's proposal will result, and has resulted, in increased grading, increased erosion potential on a hillside site, and the removal of native vegetation. The unnecessary removal of native plant species, which tend to be deeply rooted and require no artificial water inputs, has been found to exacerbate erosion and contribute to the instability of surficial sediments, particularly on steep sites. Furthermore, construction of the pool and spa in the location previously approved under CDP 4-97-044 would entail no further grading and produce no additional impacts to coastal resources. This, in addition to the conclusion of Senior Engineer Lesley Ewing, leads the Commission to find that the part of the proposed project located outside the previously approved development footprint is not consistent with Section 30253 of the Coastal Act.

Based on the GeoSystems letter of December 5, 2001, the previous GeoSystems reports cited above, and the conclusion of the senior staff engineer, the Commission finds that the portion of the unpermitted retaining wall south of the building pad is necessary to support the building pad as shown in **Exhibit 5**, and approved under CDP 4-97-044. **Special Condition Four (4)** therefore requires revised plans including this component of the applicant's proposed plans while deleting the portions that are not necessary to ensure the stability of the approved residence.

As stated above, the applicant's consulting geologist and geotechnical engineer have, in the reports cited herein, determined that the proposed project, if constructed and maintained in accordance with their recommendations, will be safe from, and will not cause, geologic hazards or erosion on or off site. The geotechnical reports submitted state that the as-built retaining wall on the southern property line is necessary, but do not state that the design of that retaining wall meets applicable engineering standards for protecting site stability, or that the plans for the retaining wall submitted by the applicant have been verified in the field. The applicant represents that the wall is constructed in accordance with grading/drainage plans prepared by Ace Civil Engineering and dated April 9, 1998. However, the applicant has not provided evidence that these plans represent the as-built retaining wall on the southern property line.

Therefore, **Special Condition Six (6)** is necessary to ensure that the part of the retaining wall that is authorized in this amendment, in accordance with the requirements of **Special Condition Four (4)**, is adequately constructed in accordance with all applicable engineering standards and geotechnical requirements. In order to ensure the adequate performance of the retaining wall, and the safety of the subject site and adjacent properties, **Special Condition Six (6)** requires the applicant to submit

evidence of the review and approval, by the consulting engineering geologists and a licensed civil engineer, of the submitted as-built plans for the retaining wall. **Special Condition Six (6)** also requires the applicants to submit evidence of the consultants' verification that the as-built retaining wall has been constructed fully in accordance with engineered plans that meet all applicable standards for the protection of the stability of the existing building pad. In addition, **Special Condition Six (6)** requires the applicant to submit the revised plans prepared in accordance with the requirements of **Special Condition Four (4)** to the geologist and geologic engineer for final review.

Therefore, as conditioned by **Special Conditions Four (4)** and **Six (6)**, in addition to other applicable conditions set forth herein, the proposed project will be consistent with the applicable requirements of Section 30253 of the Coastal Act.

However, the Commission recognizes that development, even though deemed safe by the consulting geologist and geotechnical engineer, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that the need for construction of a retaining wall to support the slope on which the house is located demonstrates a heightened concern over site stability and potential erosion. The Commission therefore finds that due to the possibility of slope failure, together with the general risk of flooding and earthquake in the Santa Monica Mountains, which may exacerbate the former risks, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission, its employees, and agents, for damage to life or property that may occur as a result of the permitted development. The applicant's assumption of risk, as required by **Special Condition Five (5)**, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards associated with development of the site, and that may adversely affect the stability or safety of the proposed development.

Therefore, for the reasons discussed above, the Commission finds that approval of the reduced building size and the portion of the unpermitted retaining wall located below the previously approved building pad, if conditioned as set forth herein, is consistent with Section 30253 of the Coastal Act. The Commission further finds that the applicant's request for a permit for the unpermitted fill slope and pad, the unpermitted westernmost 50 ft. of the retaining wall (which supports the unpermitted fill), the proposed 3-6 ft. high retaining wall along the cut slope created by construction of the unpermitted pad area, and the proposed swimming pool and spa relocation are not consistent with Section 30253 of the Coastal Act for the reasons set forth above. Therefore, the Commission denies a permit for these portions of the applicant's proposal.

2. Erosion

Section 30253 of the Coastal Act requires that new development neither create nor contribute significantly to erosion. As noted above, the proposed development is located on a hillside lot and includes approximately 558 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill, and approximately 400 cu. yds. of after-the-fact cut and fill) to construct a fill slope and pad, and to backfill and excavate footings for a proposed 3-6 ft. high, approximately 105 ft. long retaining wall. The unpermitted as-built fill slope and pad cover an area of approximately 1500 sq. ft., and are located on the nose of a small ridge descending southwesterly from the Santa Monica Mountains Recreation Area.

The proposed grading is located west of the previously approved swimming pool site and residence, and immediately north of a minor drainage course that outlets from a culvert under the subject property. The drainage course feeds into a drainage system that empties into the Pacific Ocean at the eastern end of Trancas Beach. The nearshore marine environment off Trancas Beach contains kelp beds designated as Environmentally Sensitive Habitat Areas (ESHAs) in the certified Malibu/Santa Monica Mountains LUP. The site currently drains by sheet flow runoff.

The project will result in additional impervious surface area on the site, increasing both the volume and velocity of storm water runoff. Unless surface water is controlled and conveyed off of the site in a non-erosive manner, this runoff will result in increased erosion on and off the site.

Uncontrolled erosion leads to sediment pollution of downgradient water bodies. Surface soil erosion has been established by the United States Department of Agriculture, Natural Resources Conservation Service, as a principal cause of downstream sedimentation known to adversely affect riparian and marine habitats. Suspended sediments have been shown to absorb nutrients and metals, in addition to other contaminants, and transport them from their source throughout a watershed and ultimately into the Pacific Ocean. The construction of single family residences in sensitive watershed areas has been established as a primary cause of erosion and resultant sediment pollution in coastal streams.

As noted above, the project includes 158 cu. yds. of grading (79 cu. yds. cut and 79 cu. yds. fill) to backfill and excavate footings for a proposed retaining wall, as well as after-the-fact grading (200 cu. yds. cut, 200 cu. yds. fill) of a fill slope and pad area. These developments are located north of and above a drainage course. The Commission notes that the proposed grading may increase erosion and sedimentation of the drainage channel, and may contribute to cumulative impacts on the quality of coastal waters and nearshore sensitive marine habitats. The proposed grading also requires the removal of native vegetation. The unnecessary removal of native plant species, which tend to be deeply rooted and require no artificial water inputs, has been found to exacerbate erosion and contribute to the instability of surficial sediments, particularly on steep sites. In addition, relocation of the swimming pool would increase impervious surface area on the site, and would result in additional runoff entering into the drainage channel.

Construction of the swimming pool and spa in the location previously approved under CDP 4-97-044 would entail no further grading, no additional impervious surface area other than previously approved, and produce no additional potential for erosion or sedimentation of coastal waters. Therefore, the Commission finds that approval of the fill slope, pad, and westernmost 50 feet of the retaining wall on the southern property line, the proposed relocation of the approved pool, and the proposed construction of the approximately 105 ft. long retaining wall, is inconsistent with the requirements of Section 30253 of the Coastal Act and thus denies this portion of the applicant's proposal.

As discussed in the previous section, the Commission finds that the portion of the as-built retaining wall south of the building pad is necessary to support the building pad, as shown in Exhibit 5. Furthermore the Commission finds that the reduced house plans are substantially within the footprint previously approved by the Commission and have been found to be safe from hazards by the consulting geotechnical engineers. Therefore, **Special Condition Four (4)** requires the applicant to submit revised project plans that include the revised house footprint and the eastern 190 ft. of the as-built retaining wall, and that eliminate all as-built and proposed development located west of the existing drainage structure along the western edge of the previously approved building pad, including the westernmost 50 feet of the retaining wall along the southern property line, the fill slope and pad located above that portion of the retaining wall and west of the existing drainage structure; and the proposed 3-6 ft. high, approximately 105-ft. long retaining wall located along the unpermitted cut slope, as generally shown in Exhibit 6.

The Commission further finds that support of the house by the eastern portion of the retaining wall will help minimize erosion, as long as surface runoff is controlled. In order to ensure that erosion and sedimentation from site runoff are minimized, the Commission requires the applicants to submit a drainage plan, as defined by **Special Condition Seven (7)**. **Special Condition Seven (7)** requires the implementation and maintenance of a drainage plan designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. Fully implemented, the drainage plan will reduce or eliminate the resultant adverse impacts to the water quality and biota of coastal streams. This drainage plan is fundamental to reducing on-site erosion and the potential impacts to coastal streams. Additionally, the applicants must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

In summary, for all the reasons cited above, the Commission finds that the proposed project as conditioned by **Special Conditions Four (4)** and **Seven (7)**, will be consistent with the requirements of Coastal Act Section 30253 applicable to geology and site stability.

C. Visual Resources and Landform Alteration

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.

Coastal Act Section 30251 requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

As noted above, the proposed development is located on a hillside lot and includes approximately 558 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill, and approximately 400 cu. yds. of after-the-fact cut and fill) to construct a fill slope and pad, and to backfill and excavate footings for a proposed 3-6 ft. high, approximately 105 ft. long retaining wall. The unpermitted as-built fill slope and pad cover an area of approximately 1500 sq. ft., and are located on the nose of a small ridge descending southwesterly from the Santa Monica Mountains Recreation Area.

The project site consists of an approximately 4.5 acre parcel located approximately ½ mile northeast of Pacific Coast Highway. Much of the subject parcel has been restricted as an easement for open space, habitat preservation, and view protection, a condition required by the Commission upon approval of the permit that created the subject lot and three adjacent lots (CDP 5-88-938). The restricted area contains undisturbed coastal sage scrub habitat, and the site of the proposed grading contains remnant coastal sage scrub habitat as well as needlegrass, a native plant. It is reasonable to assume that the approximately 1,500 sq.ft. area where unpermitted grading has already occurred contained the same type of native vegetation cover.

The project site is surrounded by scattered development to the south and east, by restricted areas and open space to the southwest, and by the undeveloped parkland of the Santa Monica Mountains National Recreation Area, located on adjacent parcels to the north and northwest. The project site is located at approximately 420 ft. above sea level, at a higher elevation than most residences in the viewshed. The proposed retaining wall, as well as the as-built fill slope, pad, and retaining wall, located west of the approved single family residence, extends the frontier of development into adjacent undeveloped areas. This extension would be visually apparent from Pacific Coast Highway, as well as from the adjacent parkland and the Zuma Ridge Trail. The unauthorized grading and western extension of the southern retaining wall have already manifested these impacts (**Exhibit 11**).

Pacific Coast Highway is designated as a coastal scenic highway by the Malibu/Santa Monica Mountains Land Use Plan (LUP). Pacific Coast Highway is also a major coastal access route, not only utilized by local residents, but also heavily used by visitors to several nearby public beaches that are only accessible from Pacific Coast Highway. Public views along both the landward and seaward sides of Pacific Coast Highway have been substantially impacted by the construction of residential development (including grading and landform alteration, retaining walls and privacy walls, fencing, landscaping, and other residential related development). Although the proposed project is some distance from Pacific Coast Highway, when viewed on a regional basis, such development results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

As stated previously, CDP 5-88-938 and CDP 5-88-938-A1 limited the pad size on the subject lot specifically to reduce the visual impacts of the project. This pad size was significantly exceeded when the permit for the residence (CDP 4-97-044) was approved.

The Commission previously approved a swimming pool at the subject site under CDP 4-97-044. The approved swimming pool presents a feasible alternative to the proposed project that would prevent additional landform alteration on site and minimize adverse effects to public views along the Pacific Coast Highway corridor. Therefore, the Commission finds the portion of the project located outside the previously approved development footprint inconsistent with the requirements of Section 30251 of the Coastal Act to protect public views of scenic coastal areas, and to minimize the alteration of landforms, and thus denies that portion of the proposed project.

The Commission finds that the proposed reduction in the size of the residence further minimizes the visual impacts of the previously approved project and is therefore consistent with Section 30251 of the Coastal Act. Furthermore, the easternmost 190 ft. of the unpermitted southern retaining wall, which was found necessary to support the previously approved building pad, is not visible from Pacific Coast Highway, and is minimally visible from other public viewing areas. Therefore the Commission finds that the proposed, as-built 650 sq. ft. reduction of the house size and the as-built construction of the easternmost 190 ft. of the unpermitted southern retaining wall are consistent with the requirements of Section 30251 of the Coastal Act.

Accordingly, **Special Condition Four (4)** requires the applicant to submit revised project plans that eliminate all proposed new and existing unpermitted development located west of the existing drainage structure along the western edge of the previously approved building pad, including: the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet; the 2:1 fill slope and pad area located behind the above-mentioned retaining wall and west of the existing drainage structure; and the proposed 3-6 ft. high, approximately 105-ft. long retaining wall located along the cut slope resulting from construction of the unpermitted pad, as generally shown in **Exhibit 5**.

For all of the reasons cited above, the Commission finds that the proposed project, as conditioned by **Special Condition Four (4)**, is consistent with the requirements of Section 30251 of the Coastal Act.

D. Water Quality / Sensitive Habitat

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 of the Coastal Act states that:

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

Section 30240 of the Coastal Acts 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 areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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 means such as 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

(ESHAs) and lands adjacent to ESHAs must be protected against disruption of habitat values.

As noted above, the proposed development is located on a hillside lot and includes approximately 558 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill, and approximately 400 cu. yds. of after-the-fact cut and fill) to construct a fill slope and pad, and to backfill and excavate footings for a proposed 3-6 ft. high, approximately 105 ft. long retaining wall. The after-the-fact fill slope and pad cover an area of approximately 1500 sq. ft., and are located on the nose of a small ridge descending southwesterly from the Santa Monica Mountains Recreation Area. The project site consists of an approximately 4.5 acre parcel located approximately ½ mile northeast of Pacific Coast Highway.

The development associated the proposed enlarged building pad is located west of the previously approved swimming pool site and residence, and immediately north of a minor drainage course that outlets from a culvert under the subject property. The drainage course feeds into a drainage system that empties into the Pacific Ocean at the eastern end of Trancas Beach. The nearshore marine environment off Trancas Beach contains kelp beds designated as Environmentally Sensitive Habitat Areas (ESHAs) in the certified Malibu/Santa Monica Mountains LUP.

Development of the proposed swimming pool area will result in additional impervious surface area on the site, increasing both the volume and velocity of storm water runoff. An increase in impervious surface area decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms, and have adverse impacts on human health.

The Commission further notes that seasonal streams and drainages, such as the intermittent stream located within the subject site, in conjunction with primary waterways, provide important habitat for sensitive plant and animal species. Section

30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to coastal streams and natural drainages results in potential adverse impacts to sensitive habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat.

Much of the subject parcel has been restricted as an easement for open space, habitat preservation, and view protection, a condition required by the Commission upon approval of the permit that created the subject lot and three adjacent lots (CDP 5-88-938). Commission staff ecologist Jon Allen, Ph.D., visited the site with other Commission staff on August 16, 2001. Dr. Allen noted the presence of coastal sage scrub and native needlegrass in the area of proposed grading and on the ascending slopes above the disturbed area. Dr. Allen has noted that needlegrass, as well as coastal sage scrub habitat, is increasingly rare in Southern California. The proposed project will result in additional loss of these resources. In addition, the unnecessary removal of native plant species, which tend to be deeply rooted and require no artificial water inputs, has been found to exacerbate erosion, particularly on steep sites, and thus contribute to increased sedimentation of coastal waters.

In addition, Section 30240(b) of the Coastal Act requires the Commission to consider the compatibility of new development with adjacent parkland, and to prevent impacts that would degrade those areas. The development included in this application extends the footprint of residential development west toward parkland and a connector trail to the Zuma Ridge Trail, thus increasing the extent of development visible from these areas, and decreasing the extent of adjacent habitat.

As noted above, development associated with the enlarged building pad is located immediately north of and above a drainage course. The Commission notes that the proposed grading may result in erosion and sedimentation of the drainage channel, and contribute to cumulative impacts on the quality of coastal waters and nearshore sensitive marine habitats. In addition, approval of the proposed swimming pool area would increase impervious surface area on the site, and would result in additional runoff entering into the drainage channel. Furthermore, the enlarged building pad and associated developments extend the frontier of development westward toward adjacent parkland. Therefore, the Commission finds the portion of the project located outside the previously approved development footprint inconsistent with the requirements of Sections 30231, 30232, and 30240 of the Coastal Act, and thus denies that portion of the project. The Commission notes that construction of the swimming pool in the location previously approved under CDP 4-97-044 would entail no further extension of development, no additional impervious surface area, and produce no additional potential for erosion or sedimentation of coastal waters.

The Commission finds that the proposed reduction in the size of the residence, and construction of the easternmost 190 ft. of the as-built southern retaining wall, produce no significant additional impacts on coastal water quality and adjacent parkland. Therefore the Commission finds that these components of the proposed project are consistent with the requirements of Sections 30230, 30231, and 30240 of the Coastal Act.

Therefore, **Special Condition Four (4)** requires the applicant to submit revised project plans that eliminate all proposed development located west of the existing drainage structure along the western edge of the previously approved building pad, including: the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet; the 2:1 fill slope and pad area located behind the above-mentioned retaining wall and west of the existing drainage structure; and the proposed 3-6 ft. high, approximately 105-ft. long retaining wall located along the cut slope resulting from construction of the unpermitted pad, as generally shown in **Exhibit 5**.

The Commission further finds that support of the house by the eastern portion of the retaining wall will help minimize erosion, as long as surface runoff is controlled. In order to ensure that erosion and sedimentation from site runoff are minimized, the Commission requires the applicants to submit a drainage plan, as defined by **Special Condition Seven (7)**. **Special Condition Seven (7)** requires the implementation and maintenance of a drainage plan designed to ensure that drainage affected by the retaining wall and other development approved under this permit is conveyed in a non-erosive manner. This drainage plan is fundamental to reducing on-site erosion and the potential impacts to coastal streams. Additionally, the applicants must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

For all of the reasons cited above, the Commission finds that the proposed project, as conditioned by **Special Conditions Four (4)** and **Seven (7)**, is consistent with the requirements of Sections 30230, 30231, and 30240 of the Coastal Act.

E. Violations

Various developments have been carried out on the subject site without the required coastal development permits, including the construction of a 240 ft. long retaining wall, 400 cu. yds. of grading (200 cu. yds. cut, 200 cu. yds. fill), and a 650 sq. ft. reduction of the building footprint of the house. The applicant has proposed to retain the above-mentioned development as part of this permit application. As discussed previously, staff recommends partial approval and partial denial of the applicant's after-the-fact proposal. Staff recommends approval of the 650 sq. ft. reduction of the building footprint of the house and a 190 foot portion of the 240 ft. long, 6 ft. high retaining wall along the southern property line. Staff recommends denial of the remaining 50 foot

portion of the wall along the southern property line that extends west of the existing drainage structure, as well as the estimated 400 cu. yds. of grading associated with its construction. The remaining unpermitted 50 foot portion of the existing wall and associated 400 cu. yds of grading will be resolved at a future date through follow-up enforcement action.

In order to ensure that the violation aspect of the portion of the project approved by the Commission is resolved in a timely manner, **Special Condition Eight (8)** requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 60 days of Commission action.

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

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 that conforms to 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 adverse impacts and is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the portion of the proposed project consisting of (1) construction of the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet; (2) construction of a 2:1 fill slope and level pad area behind the unpermitted retaining wall, including an estimated 400 cu. yds. of grading; (3) construction of a 3-6 ft. high, approximately 105 ft. long retaining wall, including 158 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill); and (4) relocation of a previously approved (but not yet constructed) swimming pool and spa, would prejudice the City of Malibu's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

In addition, the Commission also finds that the portion of the proposed project located west of the previously approved building pad (the reduction of the previously approved house from 7,415 sq. ft. to 6765 sq. ft., and the construction of the portion of the retaining wall along the southern property line that extends east of the existing drainage structure for a distance of approximately 190 feet), as conditioned, would not prejudice the City of Malibu's ability to prepare a Local Coastal Program and is 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 portion of the proposed project consisting of (1) construction of the portion of the retaining wall along the southern property line that extends west of the existing drainage structure for a distance of approximately 50 feet; (2) construction of a 2:1 fill slope and level pad area behind the unpermitted retaining wall, including an estimated 400 cu. yds. of grading; (3) construction of a 3-6 ft. high, approximately 105 ft. long retaining wall, including 158 cu. yds. of grading (79 cu. yds. cut, 79 cu. yds. fill); and (4) relocation of a previously approved (but not yet constructed) swimming pool and spa, would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the portion of the proposed project that includes all development located west of the previously approved development footprint, is determined to be inconsistent with CEQA and the policies of the Coastal Act. As noted previously, feasible alternatives exist which would not result in the significant, avoidable adverse impacts to coastal resources and public coastal views of this portion of the applicant's proposed project. In addition, the Commission also finds that the reduction of the previously approved house from 7,415 sq. ft. to 6765 sq. ft., and the construction of the portion of the retaining wall along the southern property line that extends east of the existing drainage structure for a distance of approximately 190 feet, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, this portion of the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

Santa Monica
Mountains National
Recreation Area
boundary

Zuma Ridge Trail and
connector trail

Approximate location of
project site

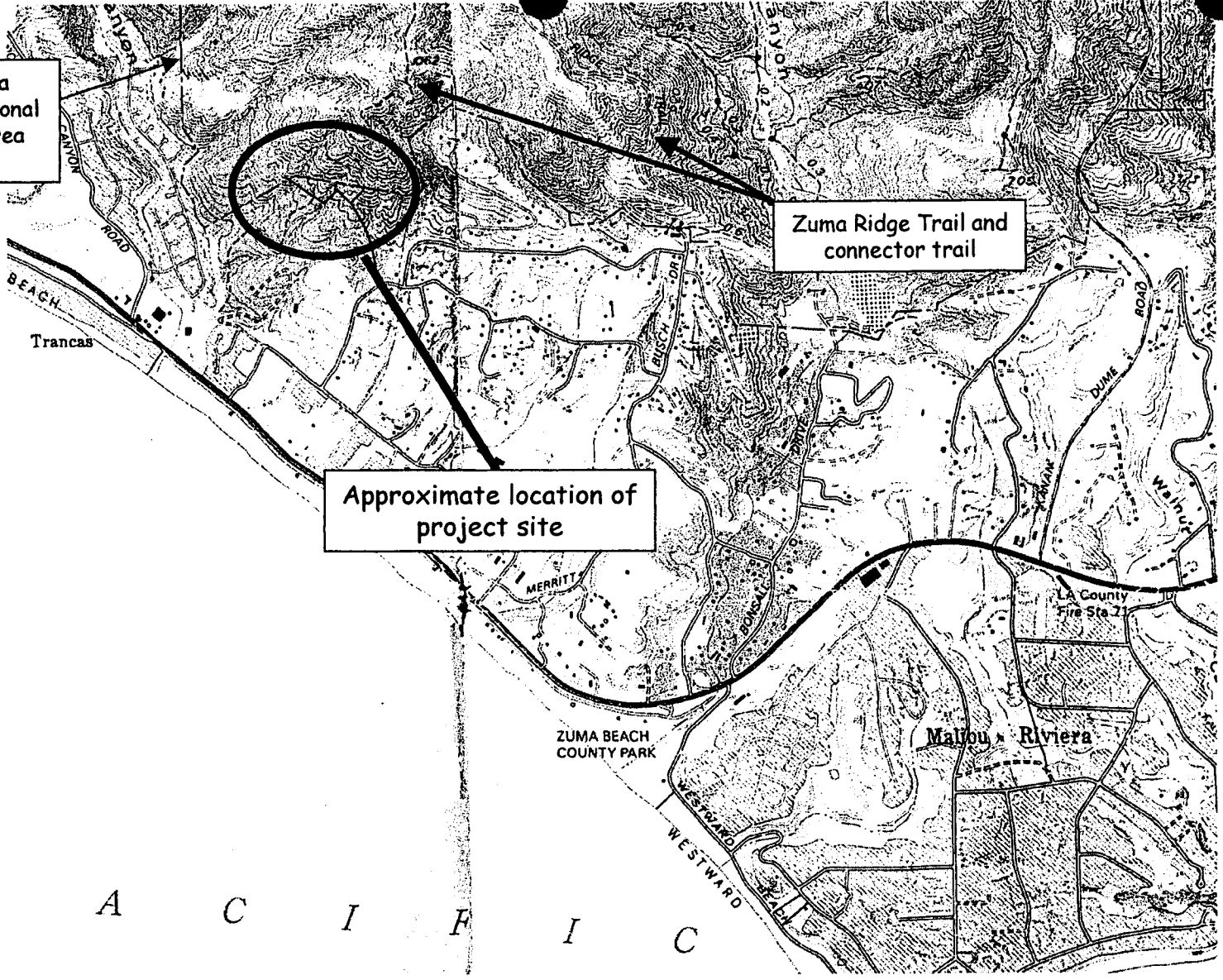
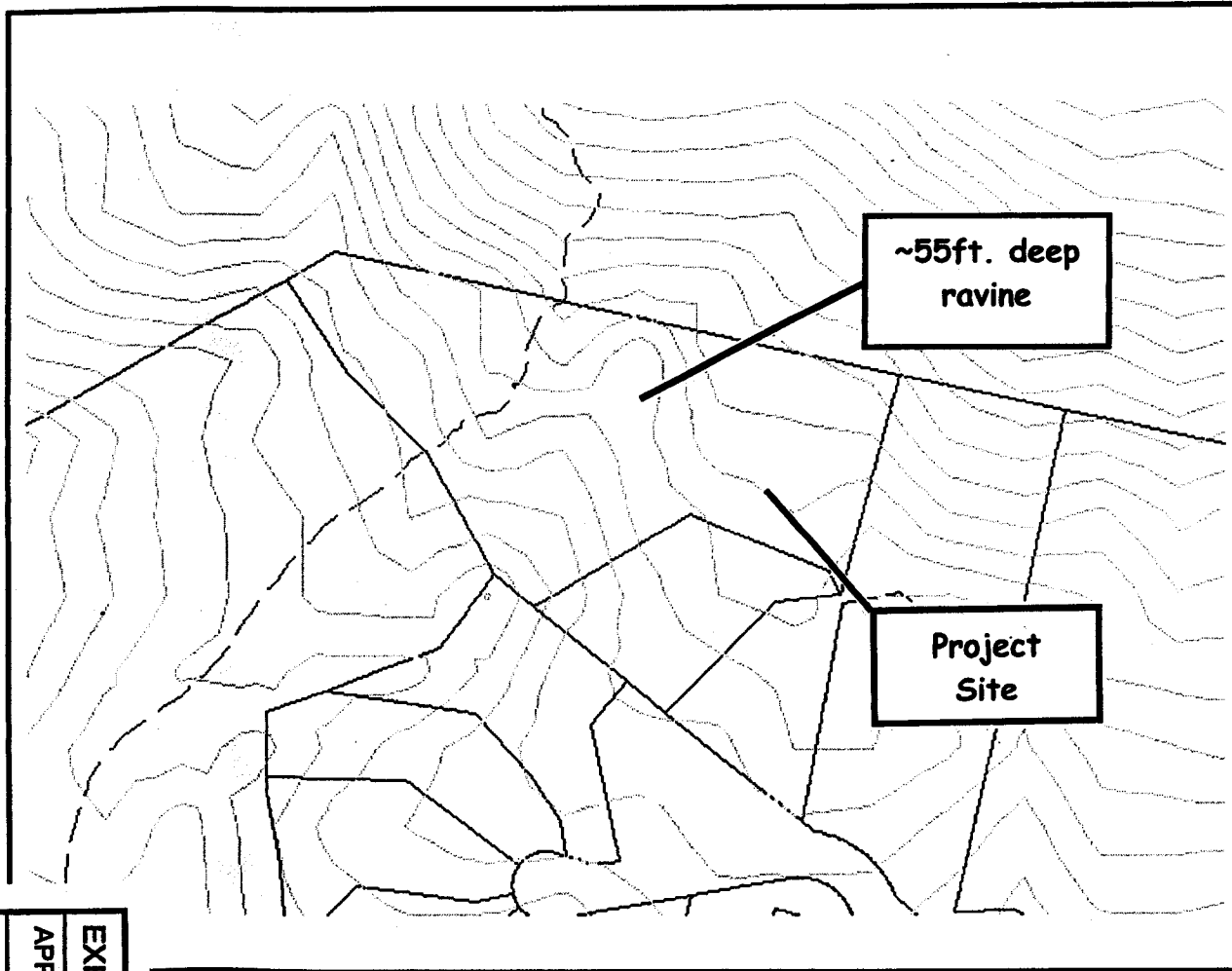


EXHIBIT NO. 1
APPLICATION NO.
4-97-044-A1
VICINITY MAP

4-97-044-A1 (Ohanian) Site contours



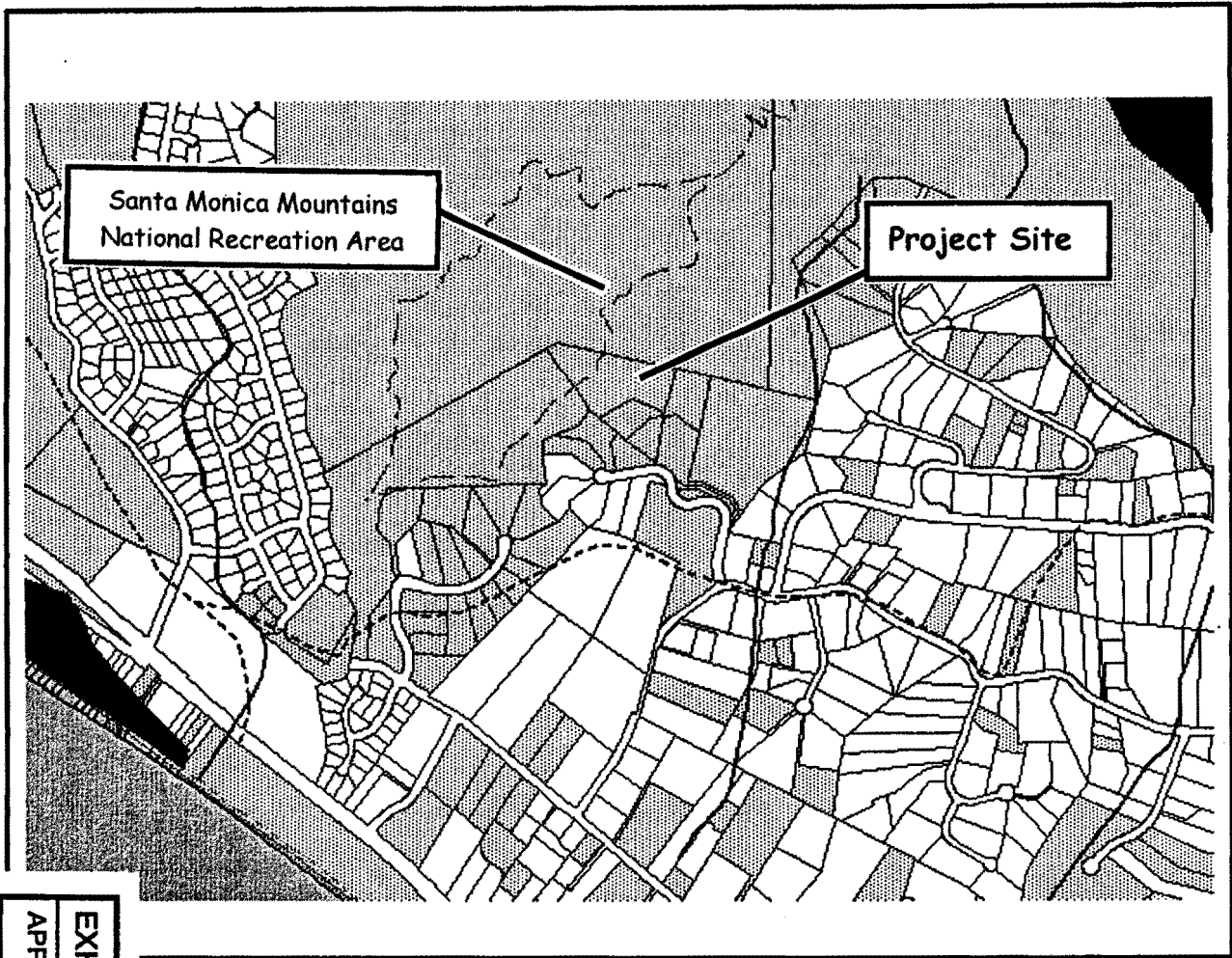
- contours @ 20ft
- Trails - NPS GPSed
- laprcis









EXHIBIT NO. 2
APPLICATION NO.
4-97-044-A1
SITE CONTOURS



ESRI ArcExplorer 1.1

4-97-044-A1 (Ohanian) Coastal Resources



-  Trails - LA County LUP
-  Trails - NPS GPSed
-  Blue Line Streams
-  shoreline
-  vacant parcels
-  laprcls
-  esha
-  Ocean



Thursday, Jan 17 2002

EXHIBIT NO. 3
APPLICATION NO.
4-97-044-A1
COASTAL RESOURCES



EXHIBIT NO. 4
APPLICATION NO.
4-97-044-A1
SITE PLAN

Restricted Use Area boundary

Proposed retaining wall

Unpermitted pad area (200 cu. yds. grading)

Limits of previously approved development (■■■■)

Unpermitted 2:1 fill slope (200 cu. yds. grading)

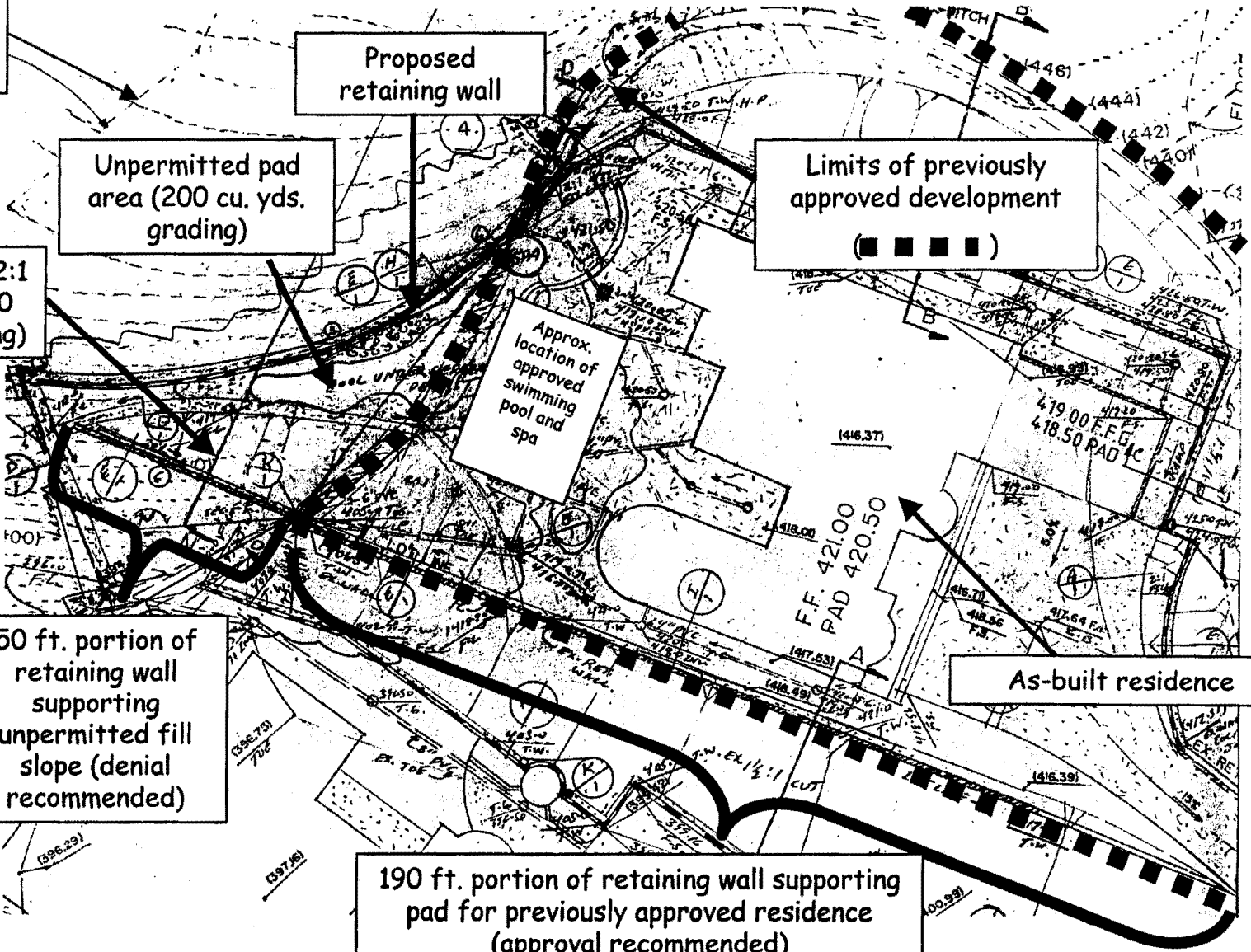
Approx. location of approved swimming pool and spa

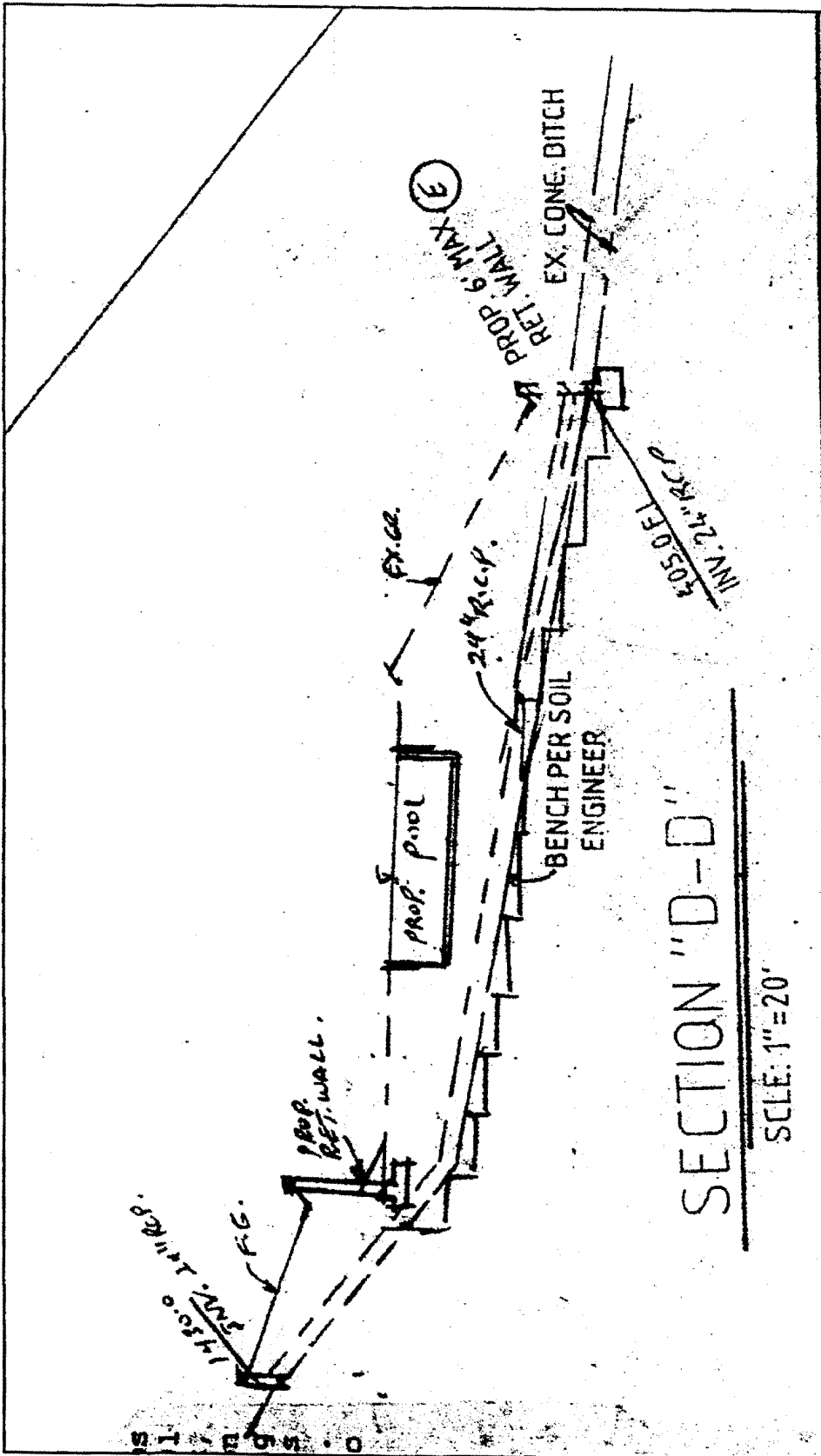
50 ft. portion of retaining wall supporting unpermitted fill slope (denial recommended)

As-built residence

190 ft. portion of retaining wall supporting pad for previously approved residence (approval recommended)

EXHIBIT NO. 5
APPLICATION NO. 4-97-044-A1
ANNOTATED SITE PLAN





SECTION "D-D"

SCALE: 1" = 20'

EXHIBIT NO. 6
APPLICATION NO.
4-97-044-A1
CROSS SECTION

POOL. REQUIR. ENCLOSURE

EX. G. RETAINING WALL

18" H. STONE SECTION

STONE DECKING - TYP.

END OF EX. G. WALL

PT. AT WHICH EX. G. PIPE GOES UNDER GROUND

STONE RETAINING WALL

18" x 18" x 18" ADA COMPL. POOL

EDGE OF RESTRICTED USE AREA

POOL

PAVED BENCH BEHIND POOL BACKSIDE OF POOL IS STONE & PINE WOODS AND WATERFALLS

EX. G. SLOPE AREA - IT IS LEFT UNDISTURBED BY PAVING

WATER

RESTRICTED USE AREA

BAR BECHIE + COUNTER

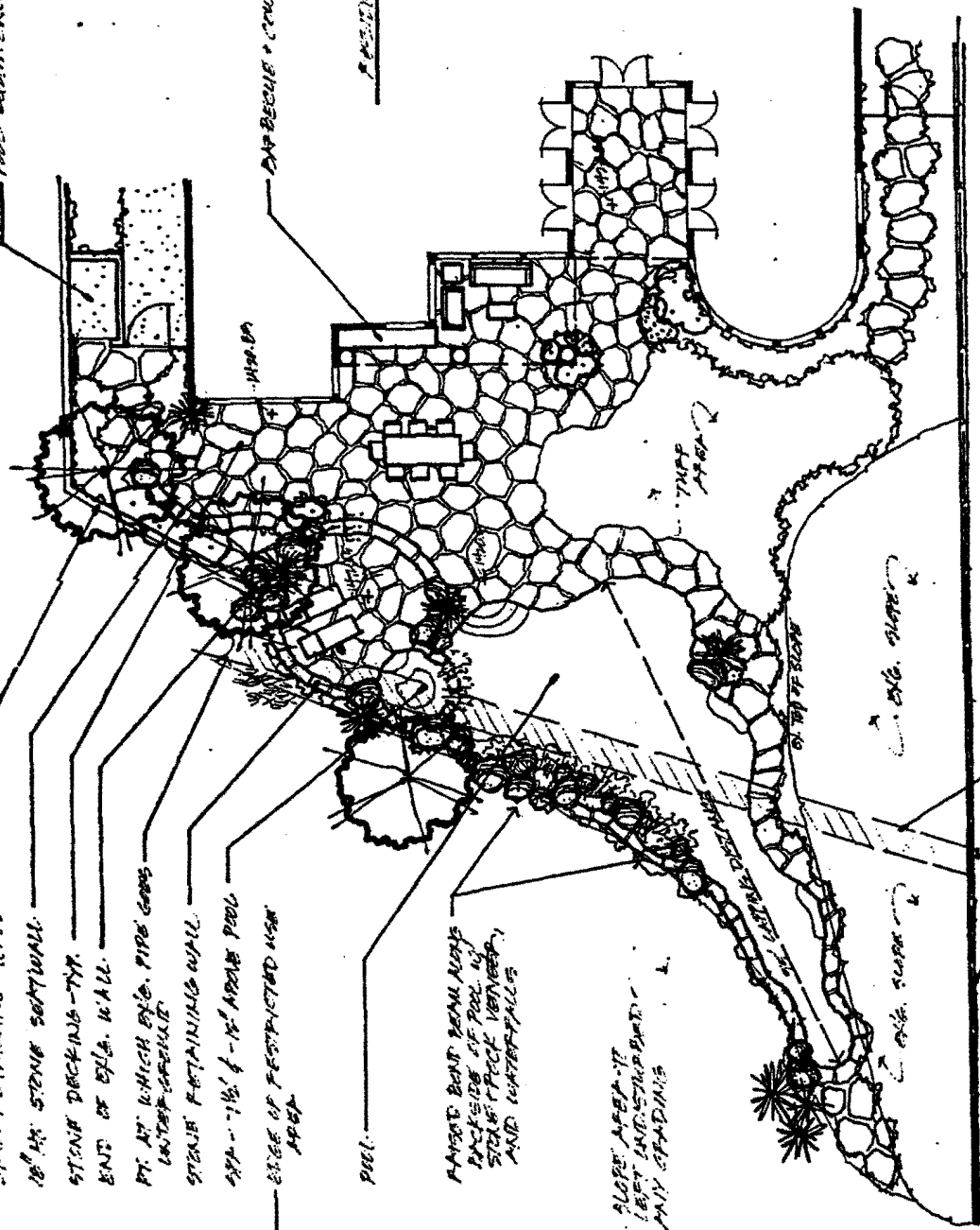


EXHIBIT NO. 7
APPLICATION NO.
4-97-044-A1
POOL AREA DETAIL

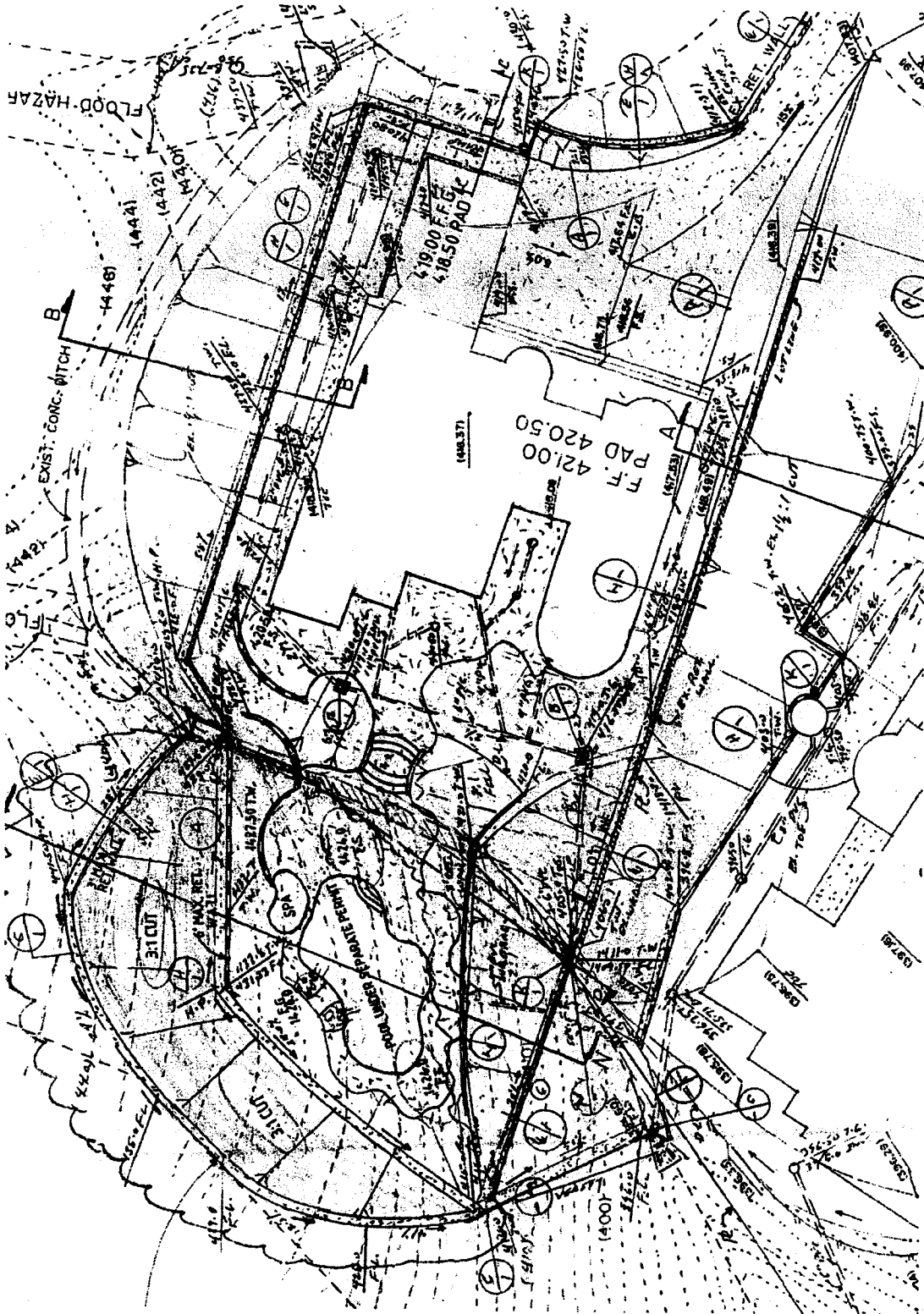


EXHIBIT NO. 8
APPLICATION NO.
4-97-044-A1
PREVIOUSLY PROPOSED SITE PLANS (2 PP.)

PROPOSED RESIDENCE FOR:
 LOT 4,
 6205 OCEAN BREEZE DRIVE
 MALIBU, CALIFORNIA 90265



ROBERT L. EARL & ASSOCIATES, INC.
 ROBERT L. EARL, AIA, ARCHITECT
 10000 WILSON BOULEVARD, SUITE 100
 MALIBU, CALIFORNIA 90265
 PHONE: (310) 316-1111
 FAX: (310) 316-1112

PROJECT NUMBER:	
DATE OF ISSUE:	
DATE OF REVISION:	
DATE OF APPROVAL:	
DATE OF EXPIRATION:	

DATE: MAY 1, 2000
 TIME: 1:47 P.M.
 DRAWN: J.M.A.
 CHECKED: J.M.A.
 SCALE: AS SHOWN
 SHEET NO. S-2.1



MODIFIED FOUNDATION PLAN
 SCALE: 1/4" = 1'-0"
 REFER TO SHEET S-1 FOR
 ALL STRUCTURAL INFORMATION
 DATE: MAY 1, 2000
 TIME: 1:47 P.M.
 DRAWN: J.M.A.
 CHECKED: J.M.A.
 SHEET NO. S-2.1

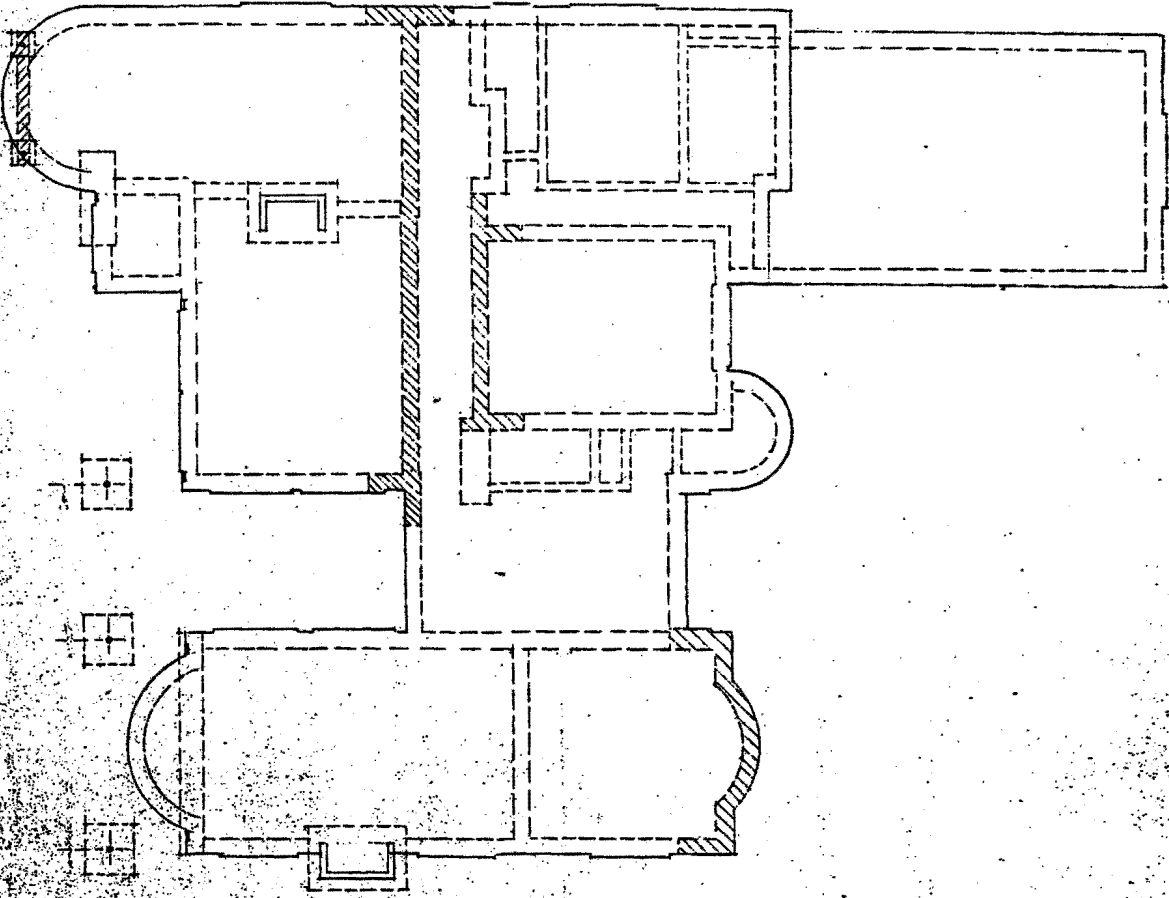


EXHIBIT NO. 9
 APPLICATION NO.
 4-97-044-A1
 REVISED
 HOUSE PLANS (3 PP.)

PROPOSED RESIDENCE FOR
 LOT 4,
 8205 OCEAN BREEZE DRIVE
 MALIBU, CALIFORNIA 90265

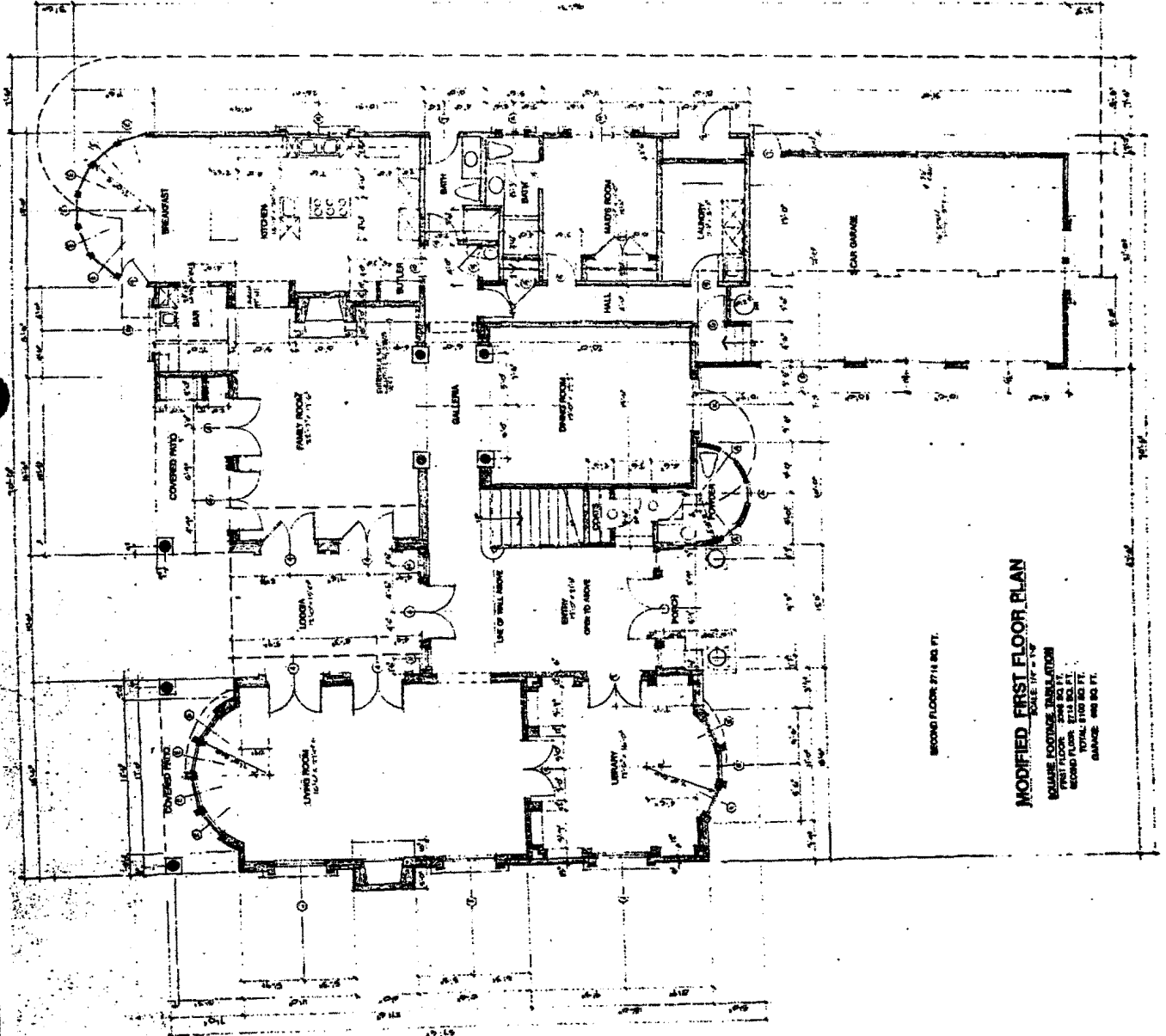


ROBERT L. EARL & ASSOCIATES, INC.
 ROBERT L. EARL, AIA, ARCHITECT

DATE: MAY 1, 2002
 SHEET: 1 OF 1
 DRAWING: JWE
 SCALE: AS SHOWN

APPROVED
 DATE: MAY 1, 2002
 SHEET: 1 OF 1
 DRAWING: JWE
 SCALE: AS SHOWN

RECEIVED
 MAY 1 2002
 CITY OF MALIBU
 PLANNING DEPARTMENT



SECOND FLOOR: 2718 SQ. FT.

MODIFIED FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"
 EXCLUDE FOOTAGE PARALLEL TO
 FIRST FLOOR: 2048 SQ. FT.
 SECOND FLOOR: 2718 SQ. FT.
 TOTAL FIRST FLOOR: 2718 SQ. FT.
 GARAGE: 186 SQ. FT.

PROPOSED HEREIN FOR:
 LOT 4,
 8205 OCEAN BREEZE DRIVE,
 MALIBU, CALIFORNIA 90265



ROBERT L. EARL & ASSOCIATES, INC.
 ROBERT L. EARL, AIA, ARCHITECT
 10000 Wilshire Blvd., Suite 200
 Los Angeles, California 90024
 Tel. (213) 709-1234

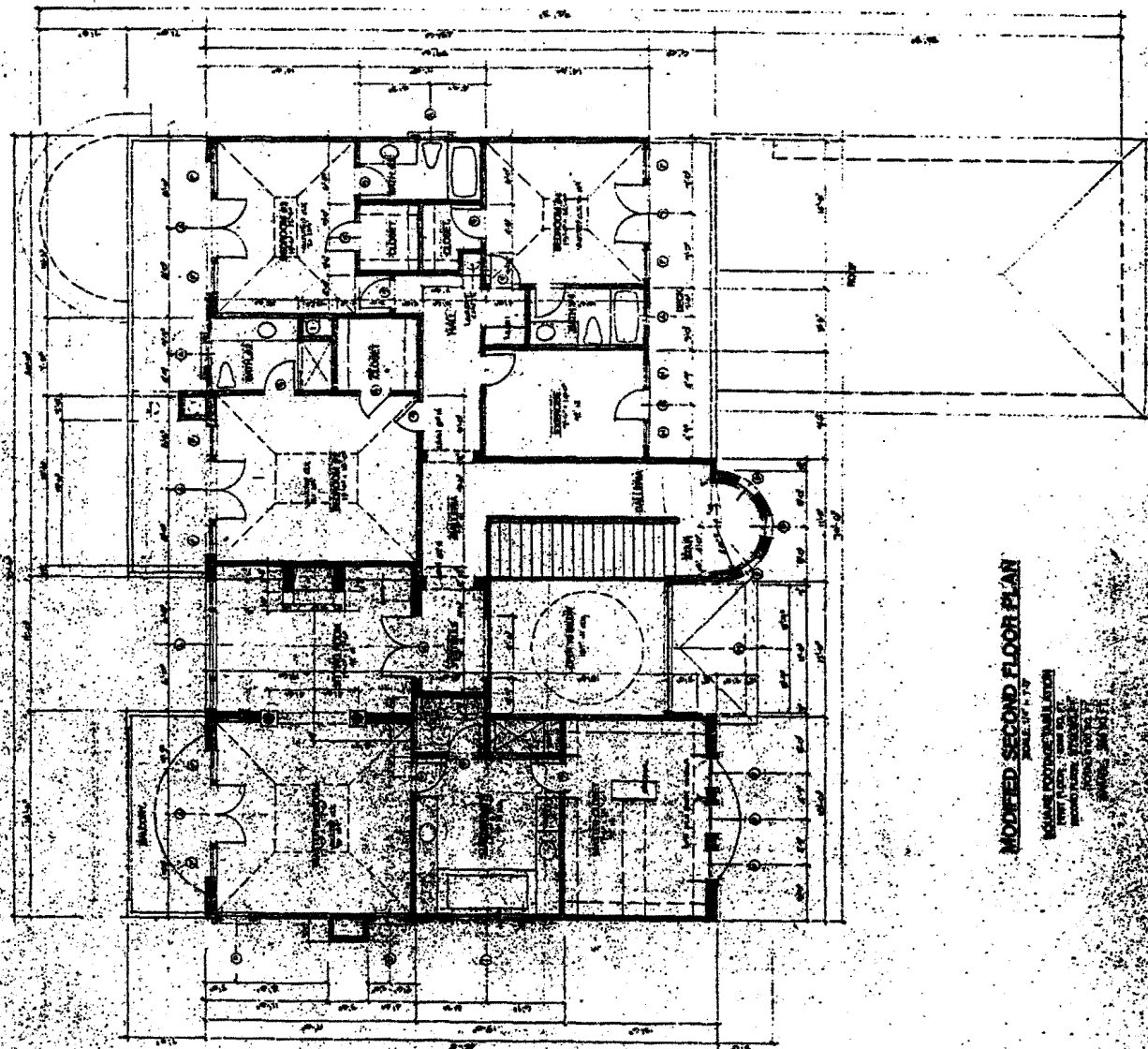
PROJECT NUMBER: _____
 DATE: _____
 SCALE: _____
 SHEET: _____

DATE: MAY 15, 1980
 SCALE: 1/4" = 1'-0"
 SHEET: A-41
 PROJECT: _____

APPROVED
 DATE: _____
 BY: _____

APPROVED
 DATE: _____
 BY: _____

RECEIVED
 DATE: _____
 BY: _____



MODIFIED SECOND FLOOR PLAN

DATE: MAY 15, 1980
 SCALE: 1/4" = 1'-0"
 SHEET: A-41

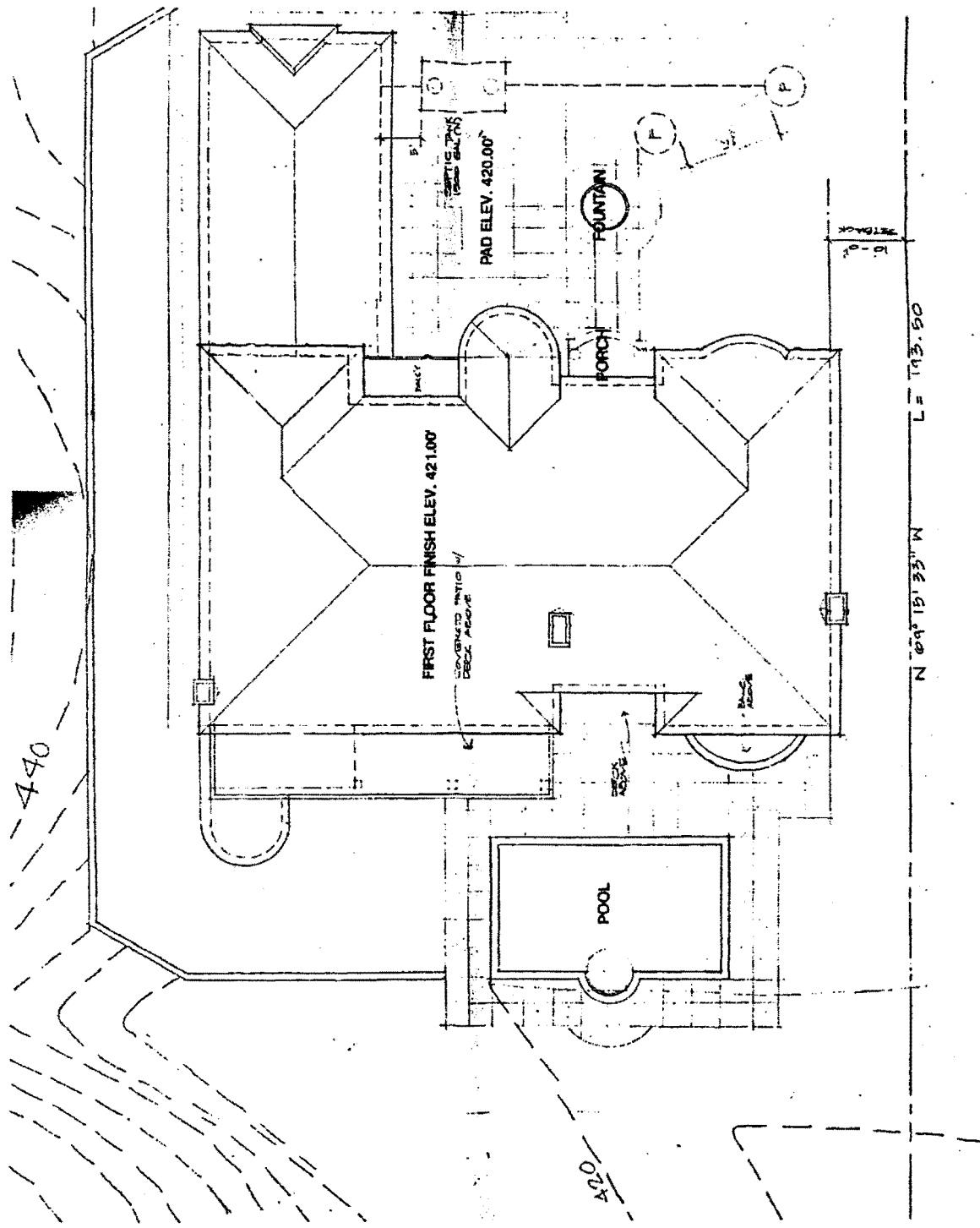


EXHIBIT NO. 10
APPLICATION NO.
4-97-044-A1
APPROVED PLAN, 4-97-044



Photo 1: Starting point of existing culvert and proposed retaining wall, looking north.



Photo 2: Needlegrass adjacent to unpermitted pad area, in area of proposed grading for retaining wall. Approved building pad and residence are in background. View is to the northwest.



Photo 3: Unpermitted fill slope and pad, with hillside beyond, looking north.

EXHIBIT NO. 11
APPLICATION NO.
4-97-044-A1
PHOTOS (2 pp.)

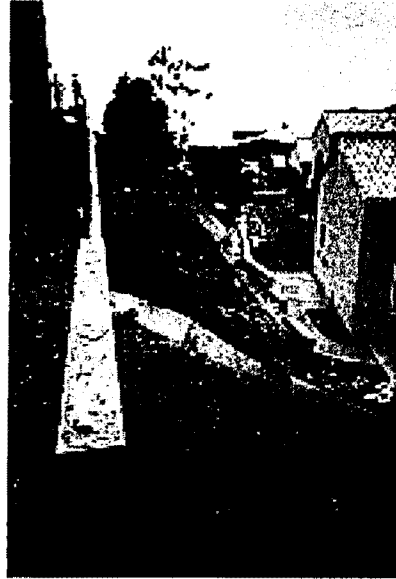


Photo 4: Retaining wall on southern property line, looking east.

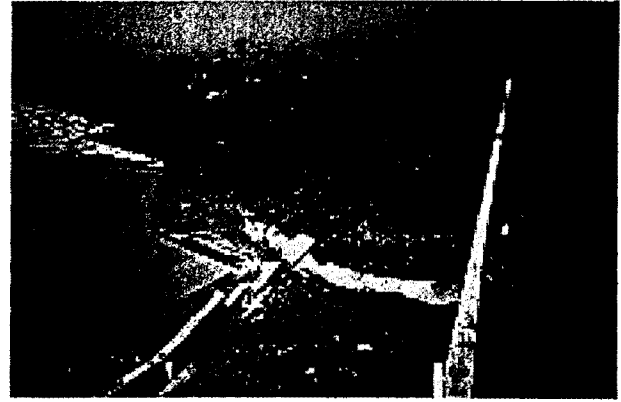


Photo 5: Retaining wall on southern property line, looking west.



Photo 6: Project site from Pacific Coast Highway at Trancas Canyon Road.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071



Filed: 12/22/89
49th Day: 2/9/89
180th Day: waived
270th Day: 8/18/89
Staff: PE -LB *A*
Staff Report: 6/28/89
Hearing Date: 7/13/89

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-88-938

APPLICANT: Harve Bennett

AGENTS: Barry Greenfield
Ara Ohanian

PROJECT LOCATION: Sea View Drive ; 500 feet north of Philip Avenue;
West of Cuthbert St., Malibu, Los Angeles County APN
4469-42-3

PROJECT DESCRIPTION: Subdivide 10 acres into four lots, construct utilities
and access road, grade pad, total grading 21,200 cubic
yards cut and fill, storm drain facilities

Lot Area	10.1 acres
Building Coverage	7,000 sq. ft. for each lot
Pad areas	Lot 1 15,800 sq. ft.
	Lot 2 17,300 sq.ft.
	Lot 3 13,700 sq.ft.
	Lot 4 12,200 sq. ft.
Proposed Grading	21,200 cubic yards cut and fill
Pad grading	12,285 cubic yards cut and fill
Zoning	R1-15,000
Plan Designation	M2 (20 /unit); Rural Land I (1 du/10 acres); Rural Land III: (1 du/2 acre); Residential I (1 du/acre)
Ht abv ext grade	10-20 feet fill, 15-25 foot cut

LOCAL APPROVALS RECEIVED:

Los Angeles County: Conditional Use Permit No. 87-471 (4)
Tentative Tract Map No. 45679 (Map date 10/5/88)
Initial study/Negative declaration March 10, 1988

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of four lots with conditions to reduce grading
consistent with the LUP policies on alteration of natural land forms.

EXHIBIT NO. 12
APPLICATION NO.
4-97-044-A1
5-88-938 (BENNETT)

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that the development 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 government 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 impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions (see attachment X)

III. Special Conditions

1. Applicant's Assumption of Risk.

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from flooding, landslides and slope failure and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards or failure of the slopes. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

2. Grading and Land Form Alteration.

Prior to transmittal of the permit the applicant shall submit final detailed grading plans to the Executive Director for his review and approval. The plans shall include: detailed design and grading calculations for the entire development; final detailed road access and grading plans approved by the County Department of Engineering; and shall be consistent with the grading shown on the revised grading plan dated 6/19/89, except as changed in conformance with the requirements below. A note on these final plans shall indicate that additional grading above that proposed will require an amendment to the coastal development permit.

a) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

b) The revised plans shall show

1) Four single family lots, in substantially the same locations shown on Exhibit 3.

2) The pad areas on those lots shall not extend farther than the following downslope contour lines:

Lot 1--400 foot line, average pad elevation 400.

Lot 2--400 foot line, average pad elevation 400

Lot 3--400 foot line, average pad elevation 400-405

Lot 4--420 foot line average pad elevation 420, export fill, limit pad size to no more than 3000 square feet.

Cuts for the roads and lots 2, and 3 may be as shown on the revised grading plan received on June 16, 1989. Cuts for lot four may be no greater than as shown on the June 16 1989 grading plan. Except where underlying slopes are 4:1 or flatter, pad areas shall be reduced to no more than 3,000 square feet,

Cut and Fill slopes shall be no higher than 10 feet at 3:1 and five feet at 2:1 with the exception of road cuts and road fills and the portions of the northerly side of lot 4 as approved on the grading plan of June 16, 1989 as further modified to accommodate a pad no greater than 3,000 sq. feet.

Pursuant to raising the pad height of lot one to 400 feet, the applicant may place retaining walls along the driveway no more than six feet in height (over finished road grade) to achieve this objective.

3. Height of final structures.

Prior to issuance of the permit the applicant shall record on the deed in a form and content acceptable to the Executive Director a current topography map surveyed by a licensed civil engineer, and a notice that the heights of all future structures shall not exceed 35 feet above a

plane above existing natural grade. The document shall run with the land and be recorded free of prior liens.

4. Landscaping plans

Prior to transmittal of the permit, the applicant shall provide landscaping plans and agree to complete landscaping prior to sale of any of the lots.

(a) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains, consistent with Los Angeles County fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils including all existing graded slopes and pads;

(b) Vegetation within 30 feet of the proposed development may be removed to mineral earth, vegetation within a 100 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. Vegetation removal within 30 to 100 feet shall not exceed the minimum standards as set forth by Los Angeles County Fire Department regulations.

(c) All landscaping shall consist primarily of native (to the Santa Monica Mountains) Coastal Sage Scrub and chaparral, drought resistant plants to minimize the need for irrigation and to screen or soften the visual impact of development. Such species are listed in the pamphlet entitled: California Native Plant Society, Santa Monica Mountains Chapter "Recommended Native plant species for landscaping wildland corridors in the Santa Monica Mountains." Nov. 23, 1988 (Exhibit 5), and the Los Angeles County Forester and Fire Warden pamphlet, "Home owners guide to fire and watershed management, 1982; by Klaus Radtke. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

4. Deed Restriction

Prior to transmittal of the Coastal Development permit the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, which shall restrict any additional grading above that approved in this Coastal Development permit. The restriction is imposed to protect views from Pacific Coast Highway, habitat and natural landforms. The restrictions shall appear on each lot created as a result of this action 5-88-938. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens, and shall run with the life of the subdivision approved in this action.

5. Cumulative Impact Mitigation.

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on one building site in the Santa Monica Mountains coastal zone for each new lot created. The method used to extinguish the development rights shall be either:

- a) one of the five lot retirement or lot purchase programs contained in the Malibu/Santa Monica Mountains Land Use Plan (Policy 272, 2-6).
- b) a TDC-type transaction, consistent with past Commission actions.
- c) participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

6. Open Space

Prior to transmittal of the permit, the applicant shall map and record an irrevocable offer to dedicate to a public agency or private association acceptable to the Executive Director an easement for open space, habitat preservation and view protection restricting further development subdivision, and grading over that portion of the property north and east of the safe building line identified in Exhibit 4. This area shall be mapped by a registered civil engineer in a form suitable for recording.

The offer shall be recorded free of prior liens except for tax liens and shall be binding on heirs, assigns and successors in interest. It shall be recorded in a form acceptable to the Executive Director, including a notation on the final parcel map. The easement shall permit walks, trails and security fencing. The offer shall run with the land in favor of the People of the State of California. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and history.

The applicant proposes to subdivide a 10.2 acre parcel of steeply sloping foot-hill land into four lots. The overall slope of the land is quite steep, but the area proposed for subdivisions is not level but slopes at 3:1 and 4:1 with portions nearly level, rising about 30 feet in 105 feet downslope of the pads, and 10 feet in 100 feet in the pad areas. In spite of the relatively gentle slope of the area proposed for development, the applicant proposes to extend the flat areas over 3:1 slopes to create pads that are about a quarter of an acre.

This project appeared before the Commission at the May 1989 meeting. At the May hearing the applicant provided the Commission with revised plans that reduced the cut and fill to 25,000 cubic yards. The Commission and the applicant referred the entire matter back to staff, and requested to hear the matter again in the July 1989 hearing, to which the applicant agreed. The applicant is now proposing 21,200 cubic yards cut and fill, about 8,915 of which is required for a road, and 12,2085 is required for pads. The pads range in size from 13,700 sq. ft. to 17,300 sq. feet. The applicant proposes to lower one pad, pad one so that it will be lower than an adjacent pad. This is a considerable reduction from that first proposed.

Staff is recommending further changes to reduce the alteration of natural land forms. While the applicant has reduced grading significantly within a self imposed constraint to create 13,000 foot square foot pads, without such a constraint it is possible to develop the lots for single family use and conform to Chapter 3 policies for preservation of natural landforms. The May recommendation would have required the applicant to reduce the number of lots to three from four and to reduce the size of the graded pads to 2,000 square feet each. The Commission finds that it is possible to create four lots within the revised configuration, with minimal extended pads to create yards. The revisions to the plans are conditioned to limit the extension of fill slopes over 3:1 slopes beyond the boundaries of what is necessary for a house, and to eliminate knocking ten feet off a knoll so that the pads, which could be on the same level, will be on different levels.

The land is located inland, north and east of Trancas Canyon Road and Pacific Coast Highway, on the inland edge of the coastal terrace. The property is seaward of the Rancho line that marks the Coastal Terrace for purposes of the land use plan, and therefore considered an existing developed area. These slopes are the backdrop of the coastal terrace, visible from Pacific Coast Highway and from Trancas Canyon road. The National Park Service Zuma Canyon unit is located immediately adjacent to the property on the north.

The property consists of two south trending knolls separated by a ravine. There is a gently sloping area at the base of the easternmost knoll: this area rises 30-35 feet in about 225 feet. The property includes both land designated Mountain land (20 acre parcels), and land designated for rural residential (one-acre lots) in the certified Malibu Santa Monica Mountains Land Use Plan. Slopes vary from 4:1 to 2:1 or steeper. 2.32 acres of the property are designated for one acre lots and have slopes less than 25 percent. 4.49 acres are designated for 20 acre lots. 2.45 acres are more than 50% slope, 5.62 acres are between 25 and 50% slope and the remaining 2.13 acres are less than 25% slope. (See exhibit 4).

The applicant proposes to grade a road along a road constructed recently to give access to a water tank on the property (5-85-459, Ohanian). The road connects to a road developed to serve an adjacent downslope subdivision (5-83-459 Ohanian). Access to this subdivision will be along the existing road from the curve in Philip Avenue up to the previously approved eight lot subdivision, then farther up the hill to a cul-de-sac serving the driveways for the proposed four lots. In order to reduce grading, the applicant has divided the road to serve the lots from the road serving the houses.

The four pads are proposed to range in size from 17,300 sq. ft. to 13,200 sq. ft. The pads are now located on portions of the site with less than 50 percent slope. Three of the pads are located on land that slopes 25% or less, but one lot located in an area of intermediate steepness, will have a 13,700 sq. foot pad in an area that is a 3:1 slope. The applicant has moved this lot closer to the level portions of the site, but still proposes a thirty foot high fill in a ravine. the ravine, according to the topography map is a minor feature above elevation 420. By elevation 400 it is twenty feet deep. Its sides have a 2:1 slopes at elevation 400 for the ravine and 420 for the hill, and maintain that steepness. 25-50 percent slope.

The County approved the project with a restricted use area that required a set back from a second, much deeper ravine. The applicant has provided plans that conform to this condition.

The project is designated for 1 to 4 lots in the Hillside Management/Malibu District plan, and 1-4 lots in the LUP. The underlying lot was created prior to the Coastal Act, and the applicant has a certificate of exception for this lot.

The applicant requested the delay until July to in order to have time to confine the staff to concur with the applicant's revised plans and to gather evidence that the revised plans conform to the commissions requirement to conform to natural landforms.

B. Development

Section 30250 regulates development permitted under the Coastal act:

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

In order to carry out this policy, the LUP certified in Malibu Santa Monica mountains includes a) maximum density designations b) resource overlays c) resource and development oriented policies that attempt to interpret the appropriate location timing and and manner of development, and to mitigate the cumulative impacts of development.

1) Plan designation.

a) Density This project is overlain by four density designations. The maximum number of units that could occur on this property, given the density designations and the modification of the hillside ordinance, which reduces densities in areas of greater than 50% slopes, is 4 units. The Land Use Plan provides for further reduction of the number of lots if all lots do not conform to the policies of the Land Use Plan.

Policy 271 outlines the procedure for evaluating development under the provisions of the land use plan. It states:

4.5 NEW DEVELOPMENT

D. NEW DEVELOPMENT POLICY

New development in the Malibu Coastal Zone will be guided by the LCP land use plan map and associated development standards and a program for the retirement of the development rights and mitigation of the effects of non-conforming parcels.

1. LAND USE PLAN MAP

P271 New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. The land use plan map is inserted in the inside back pocket. All properties are designated for a specific use. These designations reflect the mandates of the California Coastal Act, all policies contained in this Local Coastal Plan, and the

constraints and sensitivities of resources present in the coastal zone. All existing zoning categories will be modified as necessary to conform with and carry out the LCP land use plan.

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with all policies and standards contained herein. Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments. In those areas in which a resource management overlay applies, development of the underlying land use designation must adhere to the special policies, standards, and provisions of the pertinent designation.

Policy 273, that addresses subdivisions makes it very clear that subdivisions are regarded more strictly than other development. Policy 273 states, in part:

P273d In all other instances, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure consistent with the LCP. All land divisions shall be considered to be a conditional use.

The Resource overlay that applies to this particular project is the visual resources overlay. The project is located in the Pacific Coast Highway View Corridor, which is identified in the Land use plan as a visual resource of public importance.

The applicant proposes the major portion of his development in land designated for one acre lots. One lot, lot 4 is located partially within lands designated for 20 acre lots. Lot one includes the driveway located on land designated for ten acre lots and a pad partially within the area designated for 1 acre lots and partially within the area designated for ten acre lots.

The Commission finds that the number of the lots proposed by the applicant is consistent with the LUP, and that the lots generally follow the locations indicated in the LUP. However, the Commission finds that the applicant has not proposed four lots that conform to the other policies of the land use plan. There are three lots that can be brought into conformance with the LUP. The Commission notes that it is theoretically possible with further changes in lot lines and proposed grading to locate four lots that should conform to the plan, but that the applicant has not provided four lots designed and located so that they are consistent with the Coastal Act and with Land Use Plan policies developed to carry out the Coastal Act. The revised grading plans have resulted in four lots that can be brought into conformance with the landform alteration policies of the LUP.

Therefore, the Commission is approving the four lots that can be shown below, to conform to policy 272 and 273(d) of the land use plan.

C. Visual Resources.

Section 30251 protects the views to and along the Coast. It states:

Section 30251

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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

To carry out this policy the County of Los Angeles identified view corridors in the Land Use Plan, and adopted the following policies that apply to development in the Pacific Coast Highway view corridor.

P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.

P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:

be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.

minimize the alteration of natural landforms.

be landscaped to conceal raw-cut slopes.

be visually compatible with and subordinate to the character of its setting.

be sited so as not to significantly intrude into the skyline as seen from public viewing places.

- P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.
- P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.
- P136 New development in existing communities should respect the prevailing architectural and visual character of existing structures.

The LUP further identifies the qualities of the view from Pacific Coast highway. This development, extending from elevation 380 to elevation 480 is located on the face of the hills that form the backdrop of the coastal terrace. The LUP divides Pacific Coast highway in to sectors. This development will be visible from eastbound cars in sector three of Pacific Coast Highway, as they come down the hill to Trancas Canyon, from Trancas canyon road and from existing houses lower on the terrace. With respect to sector 3, the LUP states

Landward view. The coastal sage scrub covered hillsides are occasionally interrupted by residential development.

With respect to sector 4, the LUP states:

Landward view--Low bluffs line the landward side of the highway. Peaks of the coastal mountains form an impressive backdrop. Large homes have been developed along the hillsides and bluff edges. A small commercial center is located at the westernmost end of this segment.

In a recent action the Commission examined the visual effects of the grading and of the development of houses on the eight lot subdivision directly south, and 40-80 feet below this development. In that development, the Commission found that the four hundred-foot-long, twenty to forty foot high fill slope had, after construction, an excessive visual impact on the view from the Pacific Coast Highway and Trancas canyon road.

In this case, the applicants propose 21,200 cubic yards cut and fill. The common fill slope will extend 320 feet north east by southwest, a significant improvement over the previous plan, that extended 550 feet., but still a large and imposing structure.

The fill slope will vary in height. As revised lot one only includes fill on the northern side, to accommodate the road. Lot one will be lowered by ten feet to give privacy and so that the 2:1 taper up from the road cut will leave a larger lot. As revised lot two will have a ten foot high 2:1 fill slope

that will extend 120 feet northwest, toeing out at elevation 390, Lot 3 will have twenty-five foot high 2:1 fill slope to reach elevation 405, toeing out at elevation 390 and extending 180 feet northwest. The road is at elevation 410 at the turn around next to lot 4, and it is in cut. Lot 4, as revised will have a much reduced tongue of fill into its drainage, but it will still require twenty feet at its highest point, forming a twenty foot forty foot by 80 foot wedge of fill. This lot will have 20 feet of cut, which can be reduced significantly by reducing the size of the pad. The hill rises at 2:1 behind this pad, the portion of the lot that is 3:1 or flatter is nearer to 3,000 square feet. In the 2:1 slope, every two feet of additional width of pad requires one foot additional cut into the hill, even more if it is trimmed back.

In contrast to the existing development on the coastal terrace, which is located 100-230 feet above the highway, this these pads and the houses that will be built on these pads will be 355 feet above Pacific Coast Highway. The elevations of the grading will make it visible from the highway and the beach. The Commission notes that Malibu Park that lies below this development extends from a low-35-40 foot high bluff inland of the highway to the elevation at Morning view and Philip at 105 feet above sea level, at Philip and Cuthbert it is 238 feet above sea level. At this level little is visible. In contrast, the toe of the 550 foot long fill slope cut to create these pads will be 380 feet above sea level. The 550 foot long engineered slope will be a 50% slope placed on a 30-40 % slope, so it will be steeper than existing slopes. Because of its size, and the size of the potential houses on the slopes, it will be visible from considerable distances. If four 10-15,000 square foot houses are constructed on these pads, there will be four continuous, 35 foot high houses, also extending along the same 550 foot long axis.

The natural land form will be significantly altered in this proposal and the changed land form will be visible from Pacific Coast Highway. There is an alternative open to the applicant that will result in a lesser visual impact. This alternative is to reduce the grading on pads 1, 2, and 3 to that necessarily for access and are driveway, to reduce the height of the fill slope over existing grade, and to eliminate the proposed lot, lot 4, that requires 25-40 and forty foot high cut and fill slopes. The result of this reduction in grading will be a return to the natural irregularity of the landforms and eventual development that follows this land form. To the extent that cut slopes are necessary to allow access and to support driveway turn around, the cut and fill slopes shall be limited in scale, and replanted with vegetation that blends in color and with the color of the surrounding hills.

Finally, the Commission notes that policy 13b of the LUP limits the height of eventual development to 35 feet above existing natural grade, so that houses follow the natural slope of the land. Pursuant to this, the Commission imposes condition 3 in which provides that the applicant record a profile of the lot prior to grading in order to provide third and fourth generation buyers of these lots with these profiles.

As conditioned the project will be consistent with the visual quality policies of the LUP and with Section 30251 of the Coastal Act.

D. Geologic Hazards--Grading.

Section 30253 of the coastal act limits alteration to natural landforms based on the geologic hazard policies of the Coastal Act. It states:

Section 30253

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.

(5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

To carry out this policy the Land Use Plan includes the following policies:

P91 All new development shall be designed to minimize 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.

P94 Cut and fill slopes should be stabilized with planting at the completion of final grading.(in part)

This project conforms in one respect to these policies: there is a major ravine on the property. The slopes on its sides are steep; it accommodates run-off from the hills above during rainy season. The applicant's geologist established a safe building line set back from the edge of the ravine, and the County conditioned the applicant to redesign the project and redistribute the lots so that no building site would require development near this major ravine. In order to ensure compliance with this redesign, the Commission has imposed condition 6, which requires an open space easement and no future subdivision of lands north and west of this safe building line.

In another respect this development does not conform to these policies: The applicant has proposed to create large flat pads, and to cut 10 feet off the tops of relatively flat knolls, as in exhibits 3 4, 5 and 6, in order to create flat building sites. The pads are considerably larger 15,800 sq. feet, 17,300 sq. feet, 13,700 sq. ft. and 12,200 sq. ft. than that necessary in

order to get access to the pads and construct a house on the pads. The applicant contends that a smaller pad, 3,000-6,000 sq. feet, as required by the Commission will not accommodate a sufficiently large structure with pools, terraces and other yard improvements to accommodate the "market" which he perceives. A smaller pad, for example might require the pool and the house to be placed on different levels, which the applicant contends would be impractical and unattractive to buyers.

In addition, in order to create a "lowered view pad" on lot 1 the applicant proposes to cut off ten feet. To develop lot 4, which is partially in a mountain land designation, the applicant proposes a twenty foot cut and a much reduced fill, but still a twenty foot fill in a subordinate drainage. The driveway is directed up a small drainage ravine. In its lower portion it requires a cut into the side of the ravine 40 feet high to allow a proper width, in its upper portion, the applicant is proposing significant fill to bring its height up to the level of the proposed pads. The applicant has in the last two months redesigned the driveway to reduce its grading. The applicant has estimated that the driveway will require 3,400 cubic yards cut and 5,515 cubic yards fill and the pads will require, 12,285 cubic yards cut and fill combined.

For comparison the applicant on the adjacent property, in creating eight lots informed the Commission that the only proposed grading in addition to that required for the road was 1,000 cubic yards per lot. While in fact this number was 1,000 cubic yards cut and 1,000 cubic yards fill, in fact the result of this grading was a large and visible berm. In this case the applicant is proposing to grade 21,200 cubic yards cut and fill for four lots, or 5,300 yards per unit, almost three times the amount of grading per unit in the adjacent property 5-85-459 (Ohanian).

The reason the LUP and the Coastal Act require minimizing grading and the preservation of natural landforms is that grading leads to instability, siltation and removal of natural watersheds. It is extremely difficult to replace natural root structures and plant communities once removed because the deep rooted natural vegetation is sometimes defeated by compacted fills. Runoff, artificially concentrated by compacted pads and hardscape, including driveways, sweeping automobile entry courts, roofs and terraces, erodes lands below it, causing siltation and other damage. Runoff concentrated in storm drains no longer provides for habitat. Cut slopes are also hard to revegetated and real. Although the commission has required revegetation, the best preservation of natural landscape and hydrology is the least disturbance.

The amount of grading proposed in this project does not conform to plan standards to preserve natural land forms. The applicant believes that the pads are necessary in order to create the kind of house the applicant proposes to develop. While the LUP does allow single family house development in this area it does not allow excessive grading to make development of any particular kind of single family house possible.

The applicant has proposed four lots that with minor adjustment of boundaries and major reduction of pad size can be developed consistent with the plan.

Therefore the Commission approves these lots with conditions to limit the alteration of land forms. Because the height of the visible cut and fill slopes is an indication of the amount of land form alteration that has taken place, these limits are placed in the condition.

As conditioned this development is consistent with the grading and land form alteration policies of the land use plan and with the geologic safety policies of the Coastal Act.

E. Recreation

Several sections of the Coastal Act address the compatibility of development adjacent to parks with park development. The Santa Monica Mountains National Recreation area includes State, County and National Parks linked together with a trail system and a system of designated scenic roads, including Pacific Coast Highway and Mulholland Highway. This development does not lie on a trail but it is adjacent to land recently acquired by the National Park Service. It is mapped on the National Park Service land protection plan as developed land.

Section 30240(b) states :

30240(b)

(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.

With respect to compatibility with park lands, the LUP states:

P24 Design public recreation facilities to minimize the impact on neighboring communities. Similarly, design new land divisions to minimize impacts of residential use on neighboring recreational land.

P75 Development adjacent to parks shall be sited to allow ample room outside park boundaries for necessary fire-preventive brush clearance.

In the visual quality policies above, there are requirements for limitations on grading and disturbance of lands which will reduce visual impacts on the park. Another relevant section of the Coastal Act, 30240(b) which reduces disturbance of habitat adjacent to park lands applies mostly to lot four. Lot four is the only lot that is less than 200 feet from park lands, and the only lot where grading and fire clearance could have a direct effect on park habitat.

As conditioned to reduced grading this project will be consistent with section 30233 of the Coastal Act. Therefore the project as approved does not raise major questions in terms of compatibility with the adjacent park land. As conditioned this project is consistent with section 30240(b) and policy 24 of the LUP.

F. Waste Disposal.

The applicant has provided the Commission with percolation tests showing the four proposed lots are suitable for private waste disposal systems and the County health department has approved these plans in concept. Under the Land Use Plan, the Commission must find that development must have sewage disposal systems that conform to all aspects of the Uniform Plumbing Code and that will provide a waste disposal system that will last for the life of the project. This development conforms to these plan policies.

G. Cumulative Impacts of New Development.

Section 30250(a) of the Coastal Act states:

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

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

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

The Malibu/Santa Monica Mountains Land Use Plan states in Policy 273d that:

In all other instances, land divisions shall be permitted consistent with the density designated by the Land Use Plan Map only if all parcels to be created contain sufficient area to site a dwelling or other principal structure consistent with the LCP. All land divisions shall be considered to be a conditional use.

This development is located in an area that is designated an existing developed area, a receiver area in the Malibu Santa Monica Mountains Land Use Plan. Therefore the average lot size criteria does not apply. Instead the development must comply with Policy 273d of the LUP which the Commission found consistent with Section 30250(a) of the Coastal Act and with policies addressing the cumulative impacts of development..

The Coastal Act requires that new development, including subdivisions and multi-family projects, be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent was to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

The certified Malibu/Santa Monica Mountains Land Use Plan (LUP) does not contain the TDC Program as a means of mitigating the cumulative impacts of the potential build-out of existing non-conforming lots. Instead the LUP contains in Policy 272, six alternative mitigation techniques to prevent both the build-out of existing small lots and the development of lots of less than 20 acres in designated Significant Watersheds in order to insure that land divisions and multiple-unit projects are consistent with the requirements of Section 30250(a). The six basic components of Policy 272 are as follows:

1. Application of a residential building cap of 6582 new units, of which no more than 1200 units shall be in designated small lot subdivisions;
2. Acquisition, by outright public purchase, non-conforming lots and lots in designated Significant Watersheds through the continuing acquisition programs of several agencies;
3. Offering tax delinquent lots to adjoining lot owners, under attractive terms which would provide incentives for acquisition and consolidation into larger conforming parcels;
4. Offering incentives to owners of contiguous legally divided lots to voluntarily consolidate the lots into larger single holdings;

5. Empowering the County Community Redevelopment Agency to redevelop areas in order to achieve more appropriate lot and subdivision configurations and development sites;

6. Providing opportunities to owners of non-conforming lots to exchange their property for surplus governmental properties in more suitable development areas inside and outside the Coastal Zone.

The County currently does not have the mechanisms in place to implement any of these six programs. In several recent permit actions subsequent to certification of the LUP (5-86-592, Central Diagnostic Labs; 5-86-951, Ehrman and Coombs; 5-85-459A2, Ohanian; and 5-86-299A2 and A3, Young and Golling), the Commission found that until the County has the means to implement these programs, it is appropriate for the Commission to continue to require purchase of TDC's as a way to mitigate the cumulative impacts of new subdivisions and multi-residential development. In approving these permit requests, the Commission found that none of the County's six mitigation programs were "self-implementing" and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique to retire development rights on selected lots, remained a valid means of mitigating cumulative impacts in the interim period during which the County prepares its implementation program. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

The applicant proposes to subdivide ten acres of land into four residential lots. The commission is approving three lots. The applicant's parcel was included in the Malibu/Santa Monica Mountains build-out survey conducted in 1978 using the Los Angeles County Engineer Maps. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit regarding the legality of the one existing parcel but the applicant must mitigate the creation of three new building sites.

As discussed above the Commission has found that multi-unit residential projects create cumulative adverse impacts on existing services, coastal resources, and public access.

As discussed above, the LUP contains six potential techniques to mitigate cumulative impacts, none of which are easily implemented at the present time. In the interim, the Commission has approved new subdivisions, but has continued to require purchase of TDC's as one of the alternative mitigation strategies. The Commission finds that it is necessary to impose a similar requirement on the applicant, in order to insure that the cumulative impacts of the creation of one, new, legal lot are adequately mitigated. This permit has therefore been conditioned to require the applicant to mitigate the cumulative impacts of the subdivision of his one lot, either through purchase of one TDC or by participation in one of the County's alternative programs.

With regard to disturbance of habitat and cumulative impacts on views, the conditions imposed by the Commission will significantly reduce the cumulative

loss of natural hillsides by limiting the area of disturbance on the parcel to less than twenty five percent of the parcel, and by requiring permanent preservation of the natural ravine and that portion of the parcel that lies northwest of the ravine.

The Commission finds that as conditioned, the permit is consistent with Section 30250(a) of the Coastal Act, and the land division policies of the Malibu/Santa Monica Mountains Land Use Plan.

H. Local Coastal Program.

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. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. The certified LUP contains policies to guide the types, locations, and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections regarding landform alteration, visual resources, natural hazards, sewage disposal, and cumulative impacts. The proposed development is consistent with the density designation for the site contained in the LUP. As conditioned, the proposed development will not create adverse impacts and is consistent with the policies contained in the LUP. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program implementation program for Malibu and the Santa Monica Mountains which is consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

I. Habitat.

The project is located in a disturbed grassland and coastal sage scrub habitat. The most significant native habitat is found on the sides and bottom of the ravine which is to be left undisturbed. Other areas of the site may have habitat value, and clustering development, so that increased disturbance in one portion of the site is balanced by preservation of other portions of the site will preserve natural habitat, which is coastal terrace grasslands, and coastal sage scrub, habitat types which are common, but under development pressure in the Santa Monica Mountains. The project is not identified on the Sensitive Environmental Resources overlay of the LUP and further investigations have not revealed habitat on the site that is unique, rare or especially valuable on the site. As conditioned to assure the use of native plants on engineered slopes and the avoidance of plants that can escape into the more sensitive habitat in the mountains, this project does not pose issues the respect to Section 30240 of the Coastal Act and the associated LUP policies.

J. California Environmental Quality Act.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

Previous sections of these findings contain extensive documentation of the significant adverse cumulative impacts the development as proposed would have on the environment of the Santa Monica mountains.

As demonstrated above, there are feasible alternatives to the development as proposed. This alternative is the development of the lots with considerable less grading. Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that

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

The Court of Appeal has consistently upheld the Commission's use of analysis of cumulative impacts as a basis for either denying or conditionally approving proposed development projects. In upholding the Commission's reliance upon its analysis of the cumulative impact of the proposed development a court held that

careful consideration must be given to the cumulative effect of projects proposed to be undertaken...[, i.e.,] to...[a] single project in relation to the conditions then existing and to conditions that would inevitably or probably result from accelerating or setting in motion a trend productive of adverse impact upon environment and ecology. (Emphasis added.)

The Commission notes that the cumulative effect of the creation of new lots and the cumulative effect of excessive grading, will be felt in the traffic and access impacts and the impacts on habitat through direct loss and through indirect, cumulative effects due to siltation, increasing numbers of people and pets, and decreasing numbers of predators, loss of fires and other naturally occurring cycles, and major changes in hydrology.

As conditioned to reduce the direct and cumulative impacts of the development, the project may be approved consistent with the California Environmental Quality Act.

Provisions of the California Environmental Quality Act (CEQA) and its implementing regulations (CEQA Guidelines) to which the Commission is subject

also mandate consideration of the cumulative impacts of a proposed development. Section 13096(a) of the Commission's regulations requires that the Commission's action on a permit application be supported "by written conclusions about the consistency of the application with Public Resources Code, Section...21000 and following,..." i.e., with the provisions of Commission's program of reviewing permit applications under Section 21080.5 of CEQA. Although this certification exempts the Commission from the obligation to prepare an Environmental Impact Report in connection with its permit actions, the Commission remains subject to CEQA's substantive standards of environmental review. One of these standards is the duty to consider cumulative impacts. In the case of Environmental Protection Info. v. Johnson (1985) 170 Cal.App.3d 604 the Court of Appeal held that in proceeding under the authority of its Section 21080.5 certification the California Department of Forestry (CDF) remained subject to CEQA's requirement to evaluate the cumulative impacts of proposed development. The Court held that

CDF did not proceed in the manner required by law by failing to consider the impact of cumulative effects,.... The failure to consider cumulative impact was a prejudicial abuse of discretion.

The statutory basis for CEQA's requirement of cumulative impact analysis is PRC Section 21083(b). That section requires a finding of

significant effect on the environment if...the possible effects of a project are individually limited but cumulatively considerable.

The definition of "cumulative impact" contained in this provision and in Section 15355 of the CEQA Guidelines is substantially similar to that contained in Section 30105.5 of the Coastal Act. Section 15130(b)(3) of the CEQA Guidelines requires an analysis of cumulative impacts to be accompanied by an examination of

reasonable options for mitigating or avoiding any significant cumulative effects of a proposed project.

In emphasizing the importance of the evaluation of cumulative effects which CEQA requires to be performed, the Court of Appeal has said:

No one project may appear to cause a significant amount of adverse effects. However, without a mechanism for addressing the cumulative effects of individual projects, there could never be any awareness of or control over the speed and manner of...development. Without such control, piecemeal development would inevitably cause havoc in virtually every aspect of the...environment. (San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal.App.3d 61.)

In this case the cumulative effect on build-out of the Santa Monica mountains and on grading and landform alteration and on the availability of the mountains as a recreational resource have been identified and addressed in the Conditions of approval.

The Commission finds that there are feasible alternatives to the project, and there are significant cumulative impacts of permitting this project. As proposed this project has significant direct and cumulative environmental effects and as approved by the Commission the project has mitigated those effects.

8719

Attachment X

To: Permit Applicants
From: California Coastal Commission
Subject: Standard Conditions

The following standard conditions are imposed on all permits issued by the California Coastal Commission.

I. STANDARD CONDITIONS

1. Notice of Receipt and Acknowledgement. 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 in the application for permit, subject to any special conditions 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 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.

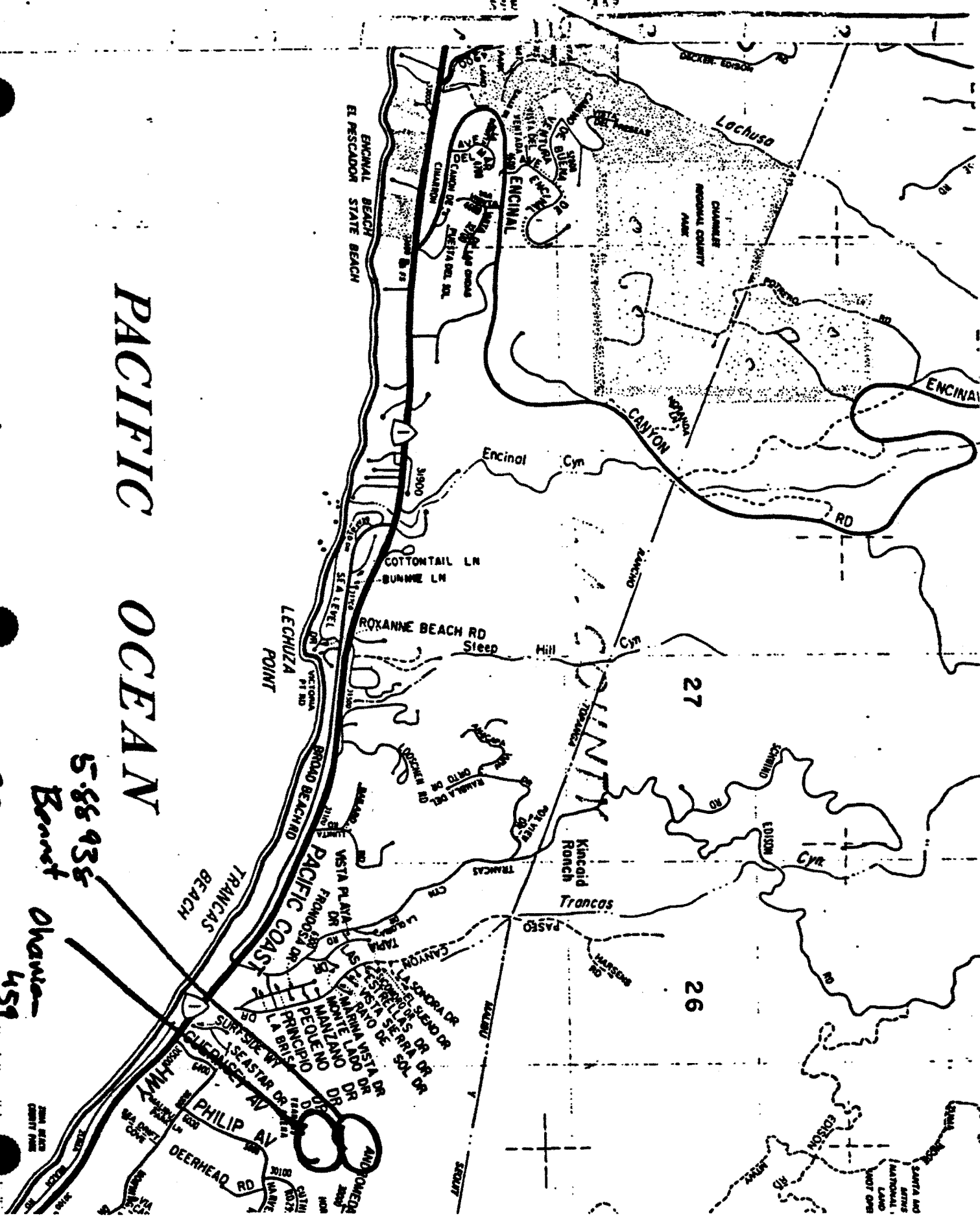
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PACIFIC OCEAN

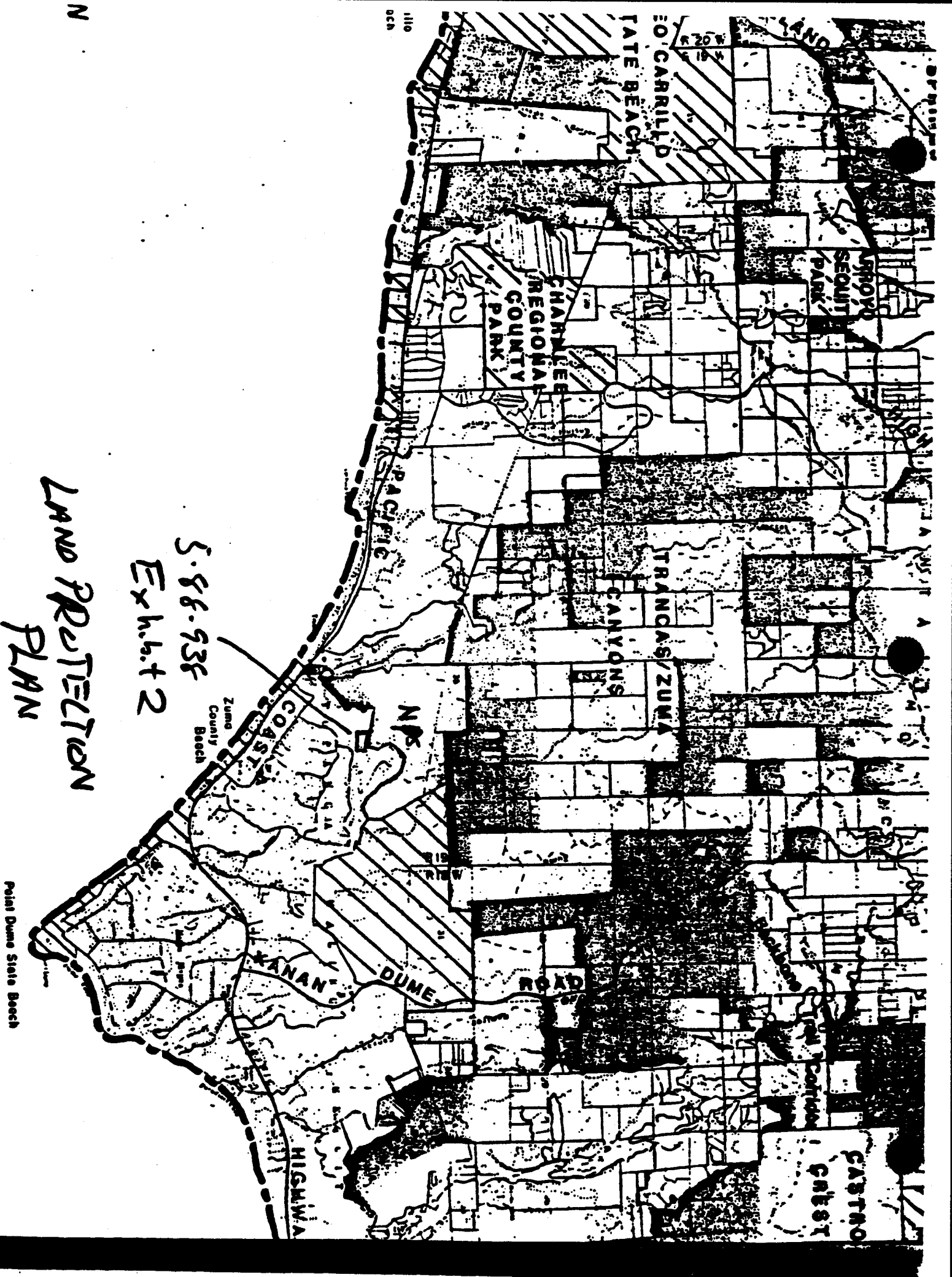
Location Exhibit 5.88 938

5.88 938
Bonnet

Ohawa
459



2000 FEET
1000 FEET
500 FEET



LAND PROTECTION
PLAN

S. 88-936
Exhibit 2

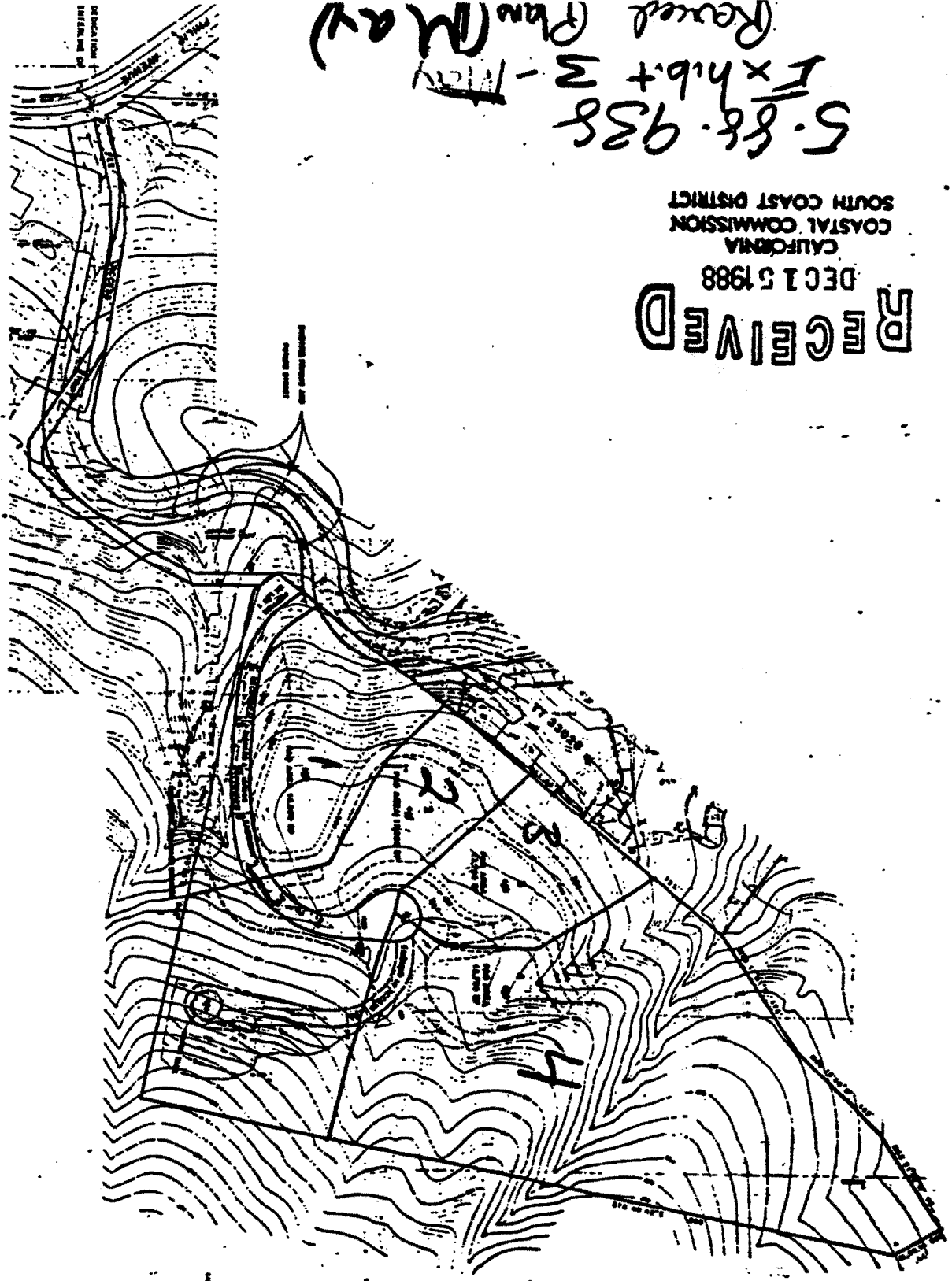
Point Dume State Beach

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068

RECEIVED
 DEC 15 1988
 CALIFORNIA
 COASTAL COMMISSION
 SOUTH COAST DISTRICT

5-88-938
 Exhibit 3 - Plan (May)
 Revised Plan (May)



VICINITY MAP

DATA SUMMARY
 DATE: 12/15/88
 DRAWN BY: [Name]
 CHECKED BY: [Name]

NOTES
 1. [Text]
 2. [Text]

A MINOR LAND DIVISION
 TENTATIVE TRACT 45679

PREPARED BY:
 BIRAND AND CLARK, ENGINEERS
 1227 Avenue of the Stars
 Suite 1100
 San Diego, CA 92108
 (619) 584-9477
 Attn: Terry Brundage



NO.	DATE	DESCRIPTION	BY	CHECKED
1	12/15/88	PREPARED	[Name]	[Name]
2	12/15/88	REVISION	[Name]	[Name]

BIRAND ENGINEERING ASSOCIATES
 CONSULTING ENGINEERS
 10200 BIRAND BLVD., VAN NUT, CALIFORNIA 91411
 (818) 787-8188

STATEMENT:
 THIS IS THE LAND MATTERING SUBJECT OF THE ABOVE TITLED
 MAP, IN THE UNINCORPORATED TOWN OF SAN ANTONIO

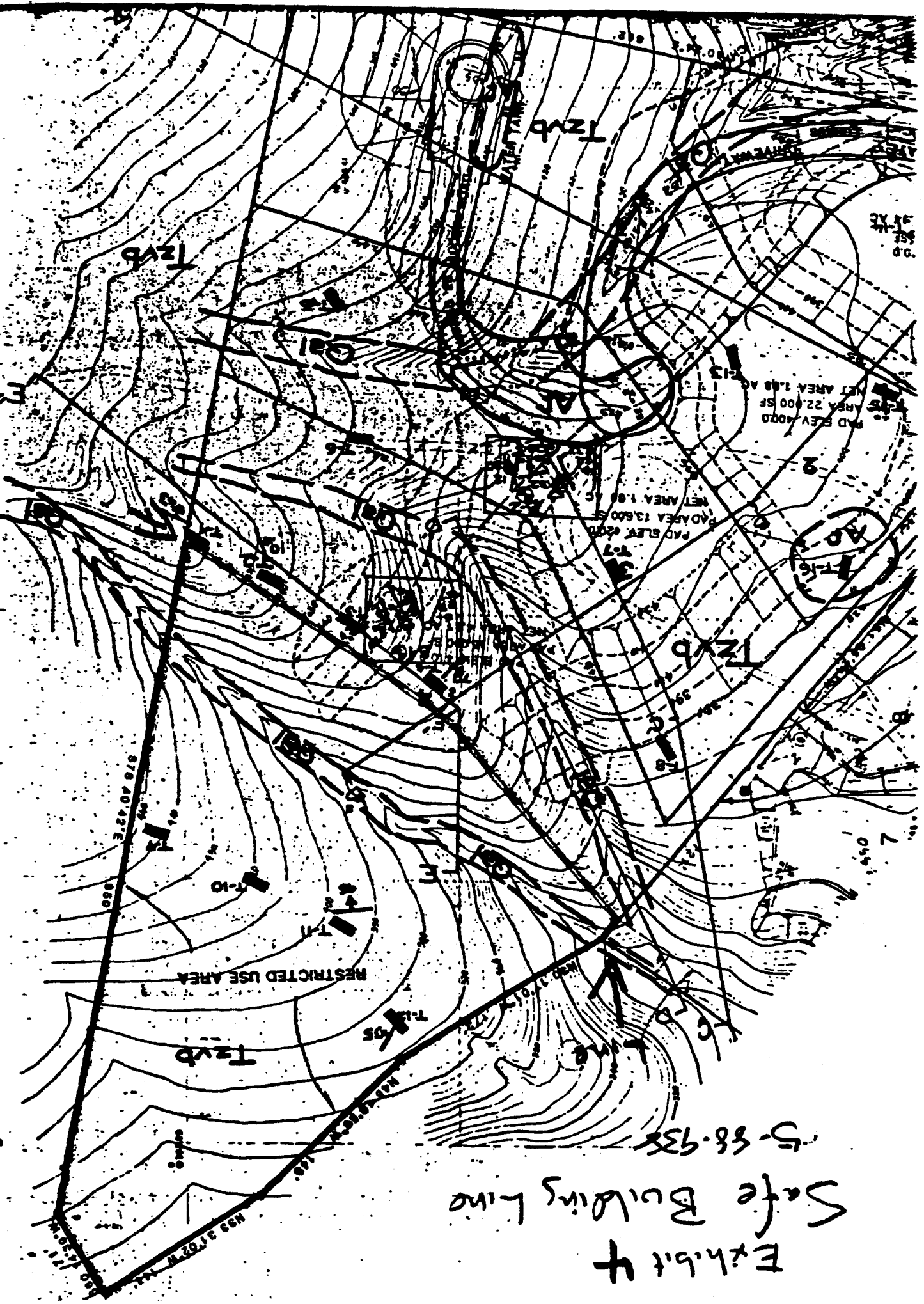
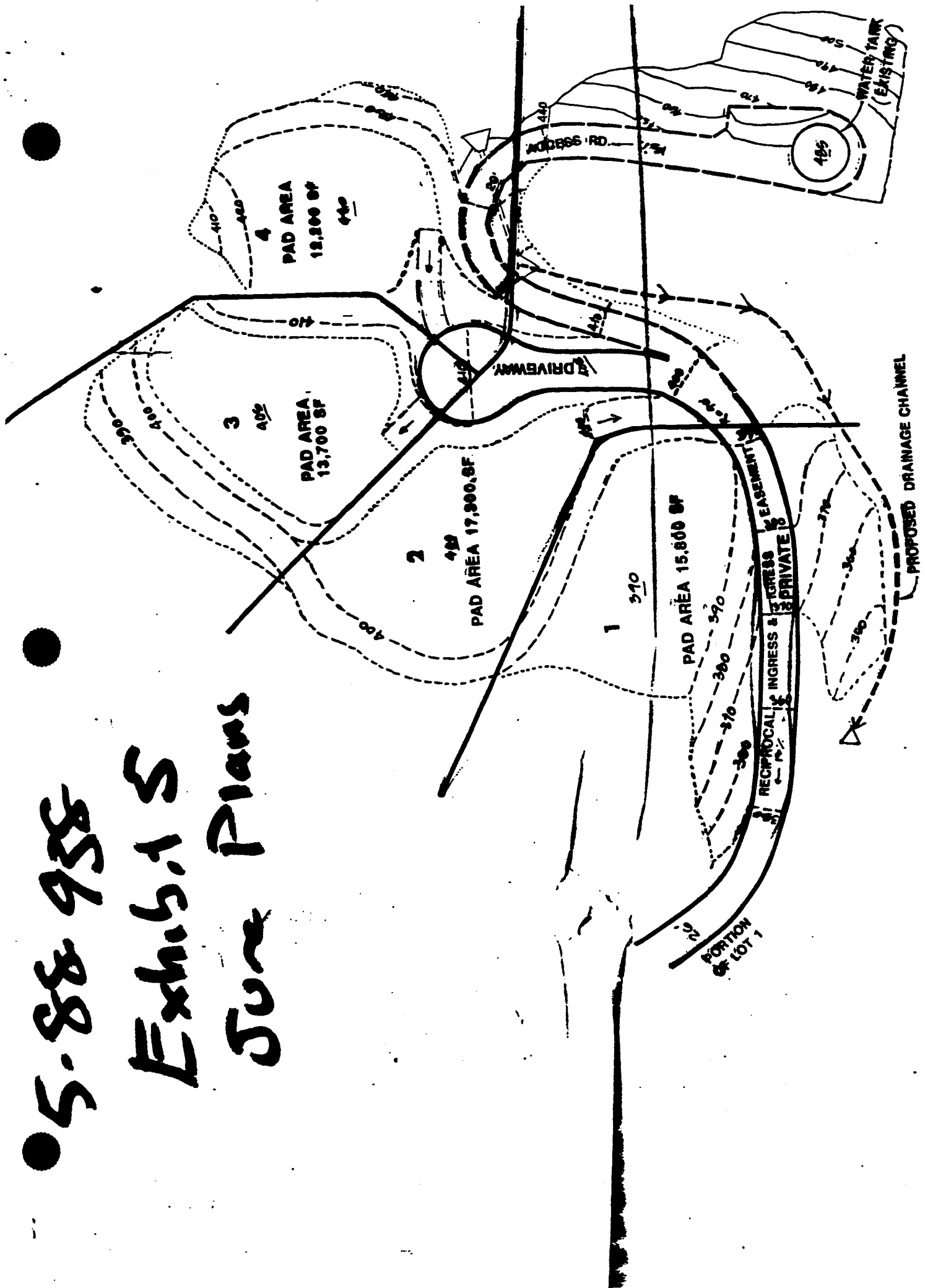


Exhibit 4
Safe Building Line
5-88-938

5-88-958

Exhibit 1 S June Plans



RECEIVED

JUN 16 1989

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

SIKAND

June 16, 1989

South Coast District
California Coastal Commission
245 W. Broadway, Suite 380
Long Beach, California 90801-1450

Engineering
Planning
Surveying

Att: Pam Emerson
Sub: Coastal Permit No. 5.88.938
Our Work Order No. 5087-33

15230 Burbank Blvd.
Van Nuys, CA 91411-3586
818-787-8550 213-873-5853
FAX: 818-901-7451

Dear Ms. Emerson:

Pursuant to our meeting of Wednesday, June 7, 1989 and in response to our discussion, Sikand Engineering is presenting the following revised analysis of the amount of grading required in Tentative Tract 45679.

LOT	TOTAL		PAD (cyds)		STREET (cyds)	
	CUT	FILL	CUT	FILL	CUT	FILL
1	4,350	7,860	2,650	910	1,700	1,950
2	2,225	3,450	1,525	1,725	700	1,725
3	1,725	1,725	1,300	1,350	425	625
4	2,300	2,565	1,725	1,100	575	1,215
Project Total	10,600	10,600	7,200	5,085	3,400	5,515

Please refer to our previous letter dated January 6, 1989, the addendum to the application concerning the amount of grading in our previous layout. The results are a significant reduction in grading from 16,100 cyds to 10,600 cyds total. This analysis includes "as built" grading of approximately 5,500 cyds already completed for the water tank access road and the realignment of the private street and water tank access road.

Very truly yours,

SIKAND ENGINEERING ASSOCIATES

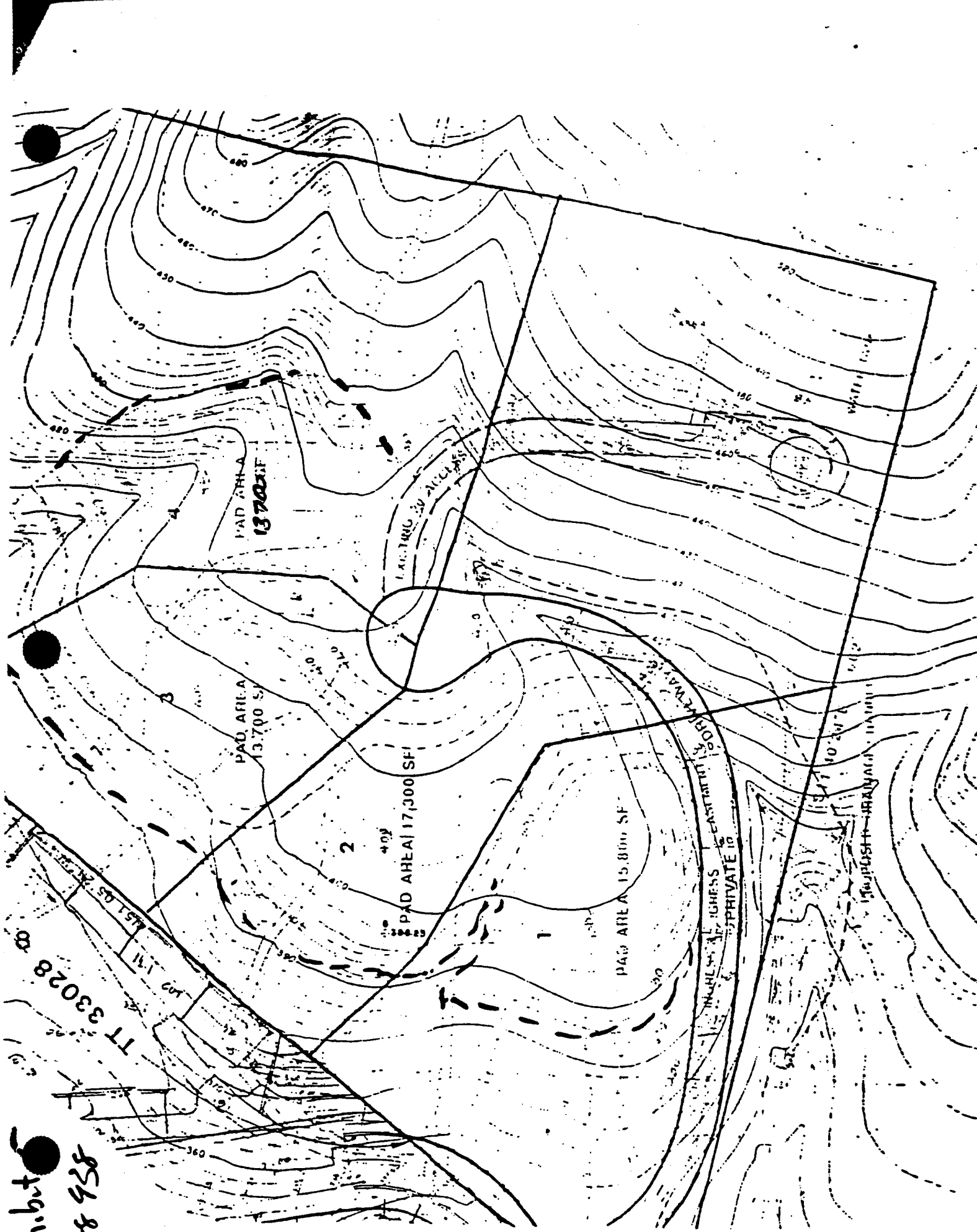
Robert Eastman

RE/da

5.88.938
Exhibit 6

Van Nuys
El Toro
Canyon Country

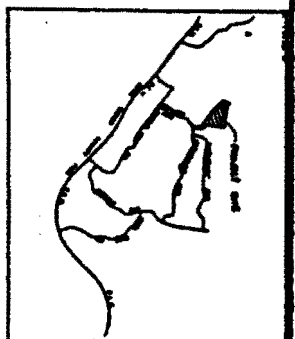
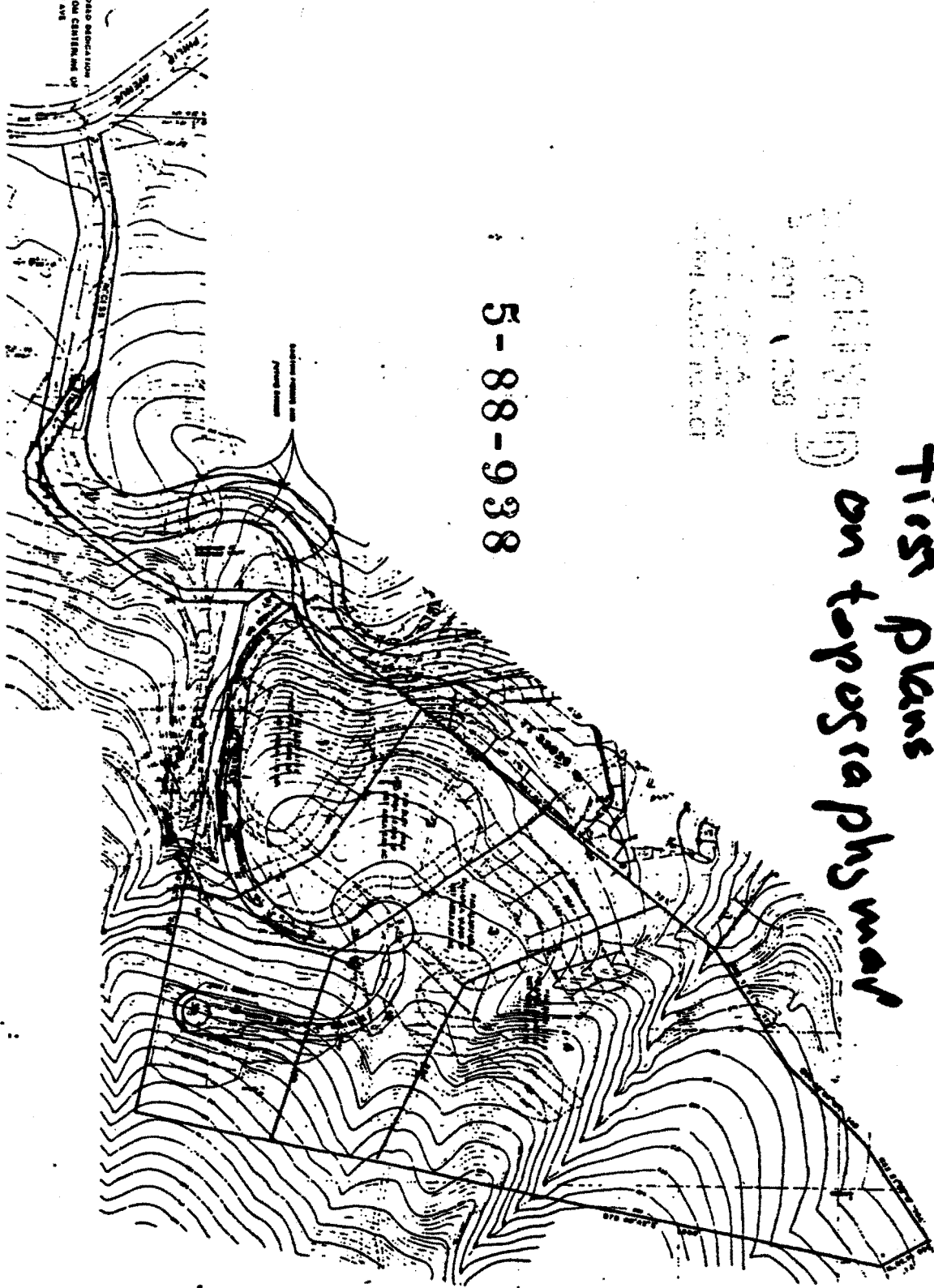
Exhibit
5-88 938



568938 Exhibit 8

first plans
on topography map

5-88-938



VICINITY MAP

DATA SUMMARY

DATE: 10/1/88

PROJECT: TENTATIVE TRACT 45679

SCALE: AS SHOWN

PROJECTED: 10/1/88

BY: G.E.A.

FOR: G.E.A.

NOTES:

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

2. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.

A MINOR LAND DIVISION
TENTATIVE TRACT 45679

LEGAL DESCRIPTION:
A PORTION OF THE LAND MATTERS RELATING TO THE RANCHO TOROPEA...
COUNTY...

PREPARED BY:
HARRIS AND CARL, INCORPORATED
470 S. BROADWAY, SUITE 2000, SAN ANTONIO, TEXAS 78202
Phone: (512) 592-1111
FAX: (512) 592-1112

DATE: 10/1/88

PROJECT: TENTATIVE TRACT 45679

SCALE: AS SHOWN

PROJECTED: 10/1/88

BY: G.E.A.

FOR: G.E.A.

NOTES:

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

2. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.

G.E.A. ENGINEERING ASSOCIATES
CONSULTING ENGINEERS
1328 BURBANK BLVD., VAN NUYS, CALIFORNIA 91411
(818) 787-8528

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
200 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071

NOTICE OF PROPOSED PERMIT AMENDMENT

TO: All Interested Parties
FROM: Peter Douglas, Executive Director
DATE: February 4, 1991
SUBJECT: Permit No. 5-88-938 granted to Bennett/ Ohanian Investment

for subdividing ten acres into four lots, construct utilities and access road, grade pads, total grading 21,200 cubic yards cut and fill, storm drain facilities.

at Sea View Drive, 500 feet north of Philip Avenue, West of Cuthbert Street.

The Executive Director of the California Coastal Commission has reviewed a proposed amendment to the above referenced permit, which would result in the following change(s):

Reduce total grading to 15,131 cubic yards cut and 1,303 cubic yards fill, remove fill from ravine, allow total pad size on lot four to be 4,600 square feet instead of 3,000 square feet. Excess fill to be transported to sites where fill has received all state and local approvals.

FINDINGS

Pursuant to 14 Cal. Admin. Code Section 13166(a)(2) this amendment is considered to be IMMATERIAL and the permit will be modified accordingly if no written objections are received within ten working days of the date of this notice. This amendment has been considered "immaterial" for the following reason(s):

1) Visibility of cut and fill slopes has been reduced. 2) Changes reduce changes to natural landforms and restore natural functioning of ravine. Cut and fill slopes will be behind structures.

If you have any questions about the proposal or wish to register an objection, please contact Pam Emerson at the Commission Area office.

82370
C2: 4/88

EXHIBIT NO. 13
APPLICATION NO.
4-97-044-A1
5-88-938-A (OHANIAN)

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

MALIBU, CA 93001

(641) 641-0142

Filed: 2/21/97
 49th Day: 2/27/97
 180th Day: 7/8/97
 Staff: Betz-V
 Staff Report: 3/21/97
 Hearing Date: 4/10/97



Th 4d, f, g, h

STAFF REPORT: CONSENT CALENDAR

APPLICATIONS NO.: 4-97-005, 4-97-042, 4-97-043, 4-97-044

APPLICANT: Ohanian Investment Company AGENT: Ara Ohanian

PROJECT LOCATIONS AND DESCRIPTIONS: Construct the following four single family residences on existing building pads in a previously approved subdivision:

1. Application No. 4-97-005 Lot 1 6210 Ocean Breeze Dr., Malibu

7,480 sq. ft., two story, 24 ft. high, single family residence with septic tank and pool. No grading.

Lot Area	63,494 sq. ft.
Building Coverage	7,480 sq. ft.
Pavement Coverage	6,800 sq. ft.
Landscape Coverage	5,540 sq. ft.
Parking Spaces	3 covered
Project Density	.7 dua
Ht abv fin grade	24 feet

2. Application No. 4-97-042 Lot 2 6206 Ocean Breeze Dr., Malibu

7,800 sq. ft. two story, 28 ft. high, single family residence with septic tank and pool. No grading.

Lot Area	73,331 sq. ft.
Building Coverage	4,900 sq. ft.
Pavement Coverage	4,000 sq. ft.
Landscape Coverage	4,000 sq. ft.
Parking Spaces	3 covered
Project Density	.6 dua
Ht abv fin grade	28 feet

3. Application No. 4-97-043 Lot 3 6201 Ocean Breeze Dr., Malibu

Construct 7,480 sq. ft. two story, 24 ft. high, single family residence with septic tank and pool. No grading.

Lot Area	46,162 sq. ft.
Building Coverage	7,480 sq. ft.
Pavement Coverage	4,200 sq. ft.
Landscape Coverage	4,200 sq. ft.
Parking Spaces	3 covered
Project Density	1 dua
Ht abv fin grade	24 feet

EXHIBIT NO. 14

APPLICATION NO.

4-97-044-A1

4-97-044 (OHANIAN)

4. Application No. 4-97-044 Lot 4 6205 Ocean Breeze Dr., Malibu

Construct 7,580 sq. ft. two story, 24 ft. high, single family residence with septic tank and pool. No grading.

Lot Area	64,468 sq. ft.
Building Coverage	4,660 sq. ft.
Pavement Coverage	6,900 sq. ft.
Landscape Coverage	2,500 sq. ft.
Parking Spaces	3 covered
Project Density	.6 du
Ht abv fin grade	28 feet

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Malibu Planning Department dated 11/20/96; City of Malibu Site Plan Review, January 23, 1995.

SUBSTANTIVE FILE DOCUMENTS: Applied Earth Sciences, Geotechnical Exploration for Percolation Rate Determination, November 12, 1996; California Geosystems, Inc.: Updated Preliminary Soils and engineering Geologic Report, September 12, 1996, Compaction Report, January 6, 1992; Final Rough Grading and Compaction Report, December 6, 1991; Seepage Pit Location, Feasibility Study, December 7, 1996; Soils and Engineering Geologic Investigation Report, April 22, 1988; Certified Malibu/Santa Monica Mountains Land Use Plan; Coastal Permits 5-88-938 and - 938A (Ohanian Investment Company) and 4-92-201 (Fryzer).

SUMMARY OF STAFF RECOMMENDATION: The project sites are located within a previously approved subdivision with existing graded building pads and street improvements and storm drains. The subdivision was approved in 1989 under coastal development permit 5-88-938 (Ohanian Investment Company) was for creation of four lots, utilities, access road, storm drains, and, as amended, grading of 16,434 cu. yds.. Staff recommends approval of the proposed project with three (3) Special Conditions addressing visual quality, future improvements, and wild fire waiver of liability.

I. STAFF RECOMMENDATION

Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development 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 government 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 impacts 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 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. Design Restrictions

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record deed restrictions for each lot, in a form and content acceptable to the Executive Director, which restrict the color of the subject structures and roofs to colors compatible with the colors of the surrounding environment. White tones shall not be acceptable. All windows and glass for the proposed structure shall be of non-glare glass. The documents shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens.

2. Future Improvements

Prior to issuance of the Coastal Development Permit, the applicant shall execute and record deed restrictions, in a form and content acceptable to the Executive Director, which shall provide that Coastal Development permits 4-97-005, - 042, - 043, - 044, are only for the proposed developments and that any future additions or improvements to properties, including clearing of vegetation and grading, will require a permit from the Coastal Commission or its successor agency. Clearing of vegetation consistent with County Fire Department requirements is permitted. The document shall run with the land binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

3. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses, of liability arising out of the acquisition, design, construction, operations, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

IV. Findings and Declarations.

A. Project Location and Description

The project sites are located in a partially developed locked-gate subdivision with graded pads, improved streets, and storm sewers, located inland and overlooking Pacific Coast Highway and public beaches. The subdivision was approved in 1988 under coastal development permit 5-88-938 (Ohanian Investment Company) for creation of four lots, utilities, access road, and storm drains subject to special conditions including assumption of risk, grading and landform alteration, height of structures, landscaping plans, a deed restriction on future grading, cumulative impact mitigation, and dedication of land for habitat protection, view protection, and open space. The permit was issued and the improvements have been completed. The permit was amended to reduce the amount of fill to 16,434 cu. yds..

The applicants propose to construct four single family residences as described above, each with a pool, attached garage, septic tank and no grading. The proposed development and density is consistent with the certified Land Use Plan for the Malibu/Santa Monica Mountains area which is used as guidance only in the City of Malibu.

B. 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 surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The existing pads range from approximately 400 to 450 ft. in elevation. The project site is highly visible from Pacific Coast Highway and nearby beaches, including Trancas Beach and Zuma Beach. The proposed residences are large, structures of two stories in appearance and range up to 28 feet high. The structures are all well below the 35 ft. structural height restriction required in the original permit 5-88-938 for the land division.

Given the highly visible location of the site protection of visual resources and minimization of landform alteration was an important consideration of the permit for the subdivision. A major issue was the large amount of grading proposed which was addressed by the subdivision permit and a permit amendment through special conditions limiting the amount of grading that could occur on the site. The proposed cut and fill slopes were limited in height, the building pads were limited in size and landscaping of the cut and fill slopes were required to minimize the visual impact of the development. Further, the Commission limited heights of any future residential structures to a maximum of 35 feet.

The proposed development constitutes the highest extent of infill of the existing developed area overlooking the Pacific Coast Highway and nearby beaches in this area. Above the subdivision is a water tank and steep, vacant hillside covered with native vegetation. The surrounding area is characterized by lower intensity residential development. Although the view impact is mitigated partially by the setbacks from the edges of the respective pads, there is still a potential impact upon public views to and along the coast. Development sited in such areas is made more visually intrusive by the use of bright colors or white tones. The use of earth tones for buildings and roofs minimizes the visual impact of structures and helps blend in with the natural setting. These concerns have been addressed in coastal permits for similar development in the project area.

Therefore, the Commission finds a deed restriction which limits the future color of the residences is necessary to avoid future adverse impacts on surrounding views from Pacific Coast Highway and the beaches in this area. In addition, the Commission finds it necessary to require a future development restriction to ensure that any additions to the residences or other development that might otherwise be exempt from Commission permit requirements is reviewed by the Commission for conformity with the visual resource policies of the the Coastal Act. The special conditions required under permit 5-88-938 remain in effect.

The Commission, therefore, finds that only as conditioned by one (1) and (2) above will the proposed project be consistent with Section 30251 of the Coastal Act.

B. Geologic and Fire Hazards

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 Malibu area which is generally considered to be subject to an unusually high number of natural hazards.

Geologic hazards common to the Malibu area 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.

The Commission reviews the proposed project's risks to life and property in areas where there are geologic, flood and fire hazards. The proposed development, and review at the local level, raise no new issues relative to major geologic or flood hazards. The findings for the underlying land division found that the project area was safe from geologic hazards and development would not have an adverse effect on adjacent properties. (California Geosystems, Inc., Soils and Engineering Geologic Investigation Report, April 22, 1988) The 1988 report found that:

... the proposed building and/or grading will be safe and that the property will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property in compliance with the county code, provided our recommendations are followed.

Updates to this report were provided as part of the application for the proposed development. The report by California Geosystems, Inc., Updated Preliminary Soils and engineering Geologic Report, September 12, 1996 indicates that:

The site was visited by a representative of this firm on September 10, 1996 to examine present conditions at the site. Based on our recent site visit it is our conclusion that the site and geotechnical conditions at the site are essentially the same as those described in the referenced preliminary and final rough grading reports.

The supplemental information provided by the geologic reports noted under Substantive File Documents (above) address compaction, slab installation, and installation of incidental utilities, and consequently do not significantly affect the findings of the 1988 geotechnical study. Based on the above findings and recommendations of the consulting geologist, the Commission finds that the development is consistent with PRC Section 30253.

The Commission also finds that minimization of site erosion has been adequately addressed by the grading, drainage, and landscape plans previously reviewed and implemented for the underlying land division. Therefore, the Commission finds that it is not necessary to require the applicant to submit further landscaping or erosion control plans.

Additionally, because the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission will only approve the project if the applicant assumes liability from the associated risks. Through the waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development, as incorporated by condition number three (3). The Commission finds that only as conditioned to incorporate wild fire waiver of liability will the proposed project be consistent with Section 30253 of the Coastal Act.

C. Septic System

Section 30231 of the Coastal Act states that:

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

The septic system includes septic tanks with seepage pits. A percolation test was performed on the subject site (Seepage Pit Location, Feasibility Study, December 7, 1996). The test indicated the site can accommodate the proposed septic system in compliance with uniform plumbing code requirements. The Commission has found in past permit actions that compliance with the uniform plumbing code will minimize the potential for waste water discharge which could adversely impact coastal streams and waters. Therefore, based on the above information, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

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 Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with 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, as conditioned, 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 of Malibu's ability to prepare a Local Coastal Program for this area of Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations

requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5 (d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impacts that the activity may have on the environment.

As discussed above, the proposed project has been mitigated to incorporate a deed restriction on future development and color and design, and a wild fire waiver of liability. As conditioned, there are no feasible alternatives or mitigation measures available, beyond those required, which would lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is consistent with the requirements of CEQA and the policies of the Coastal Act.

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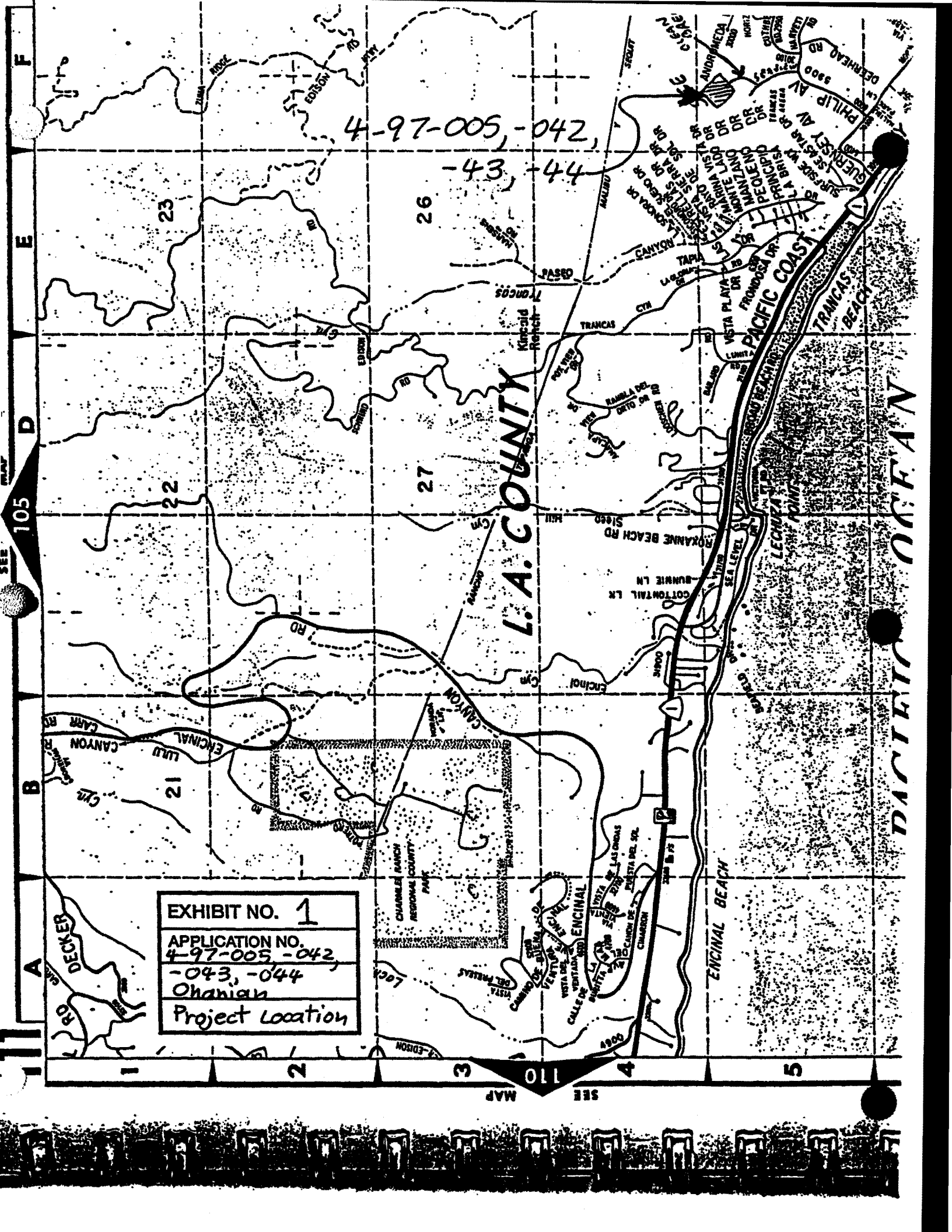


EXHIBIT NO. 1
APPLICATION NO. 4-97-005, -042, -043, -044
Ohanian Project Location

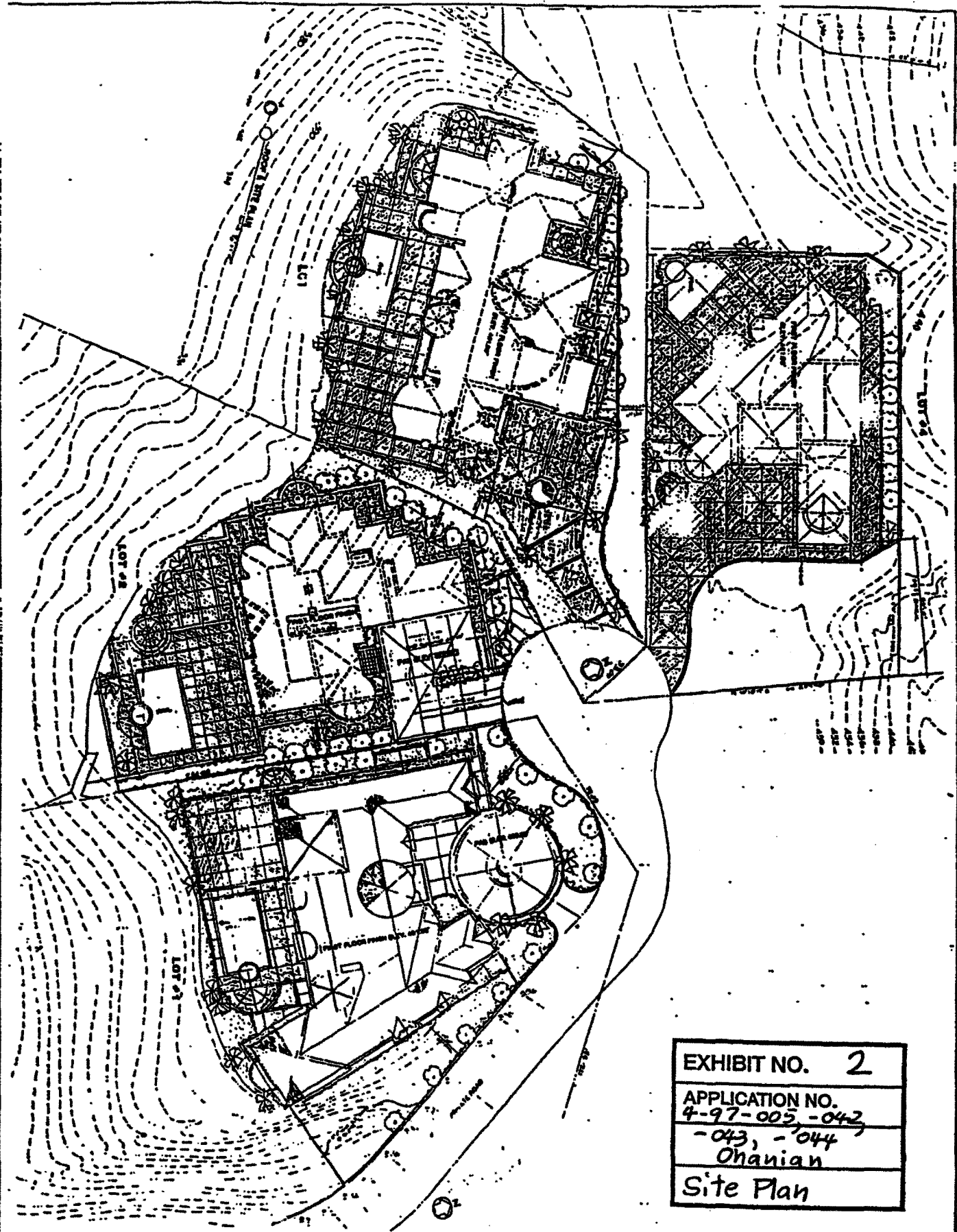


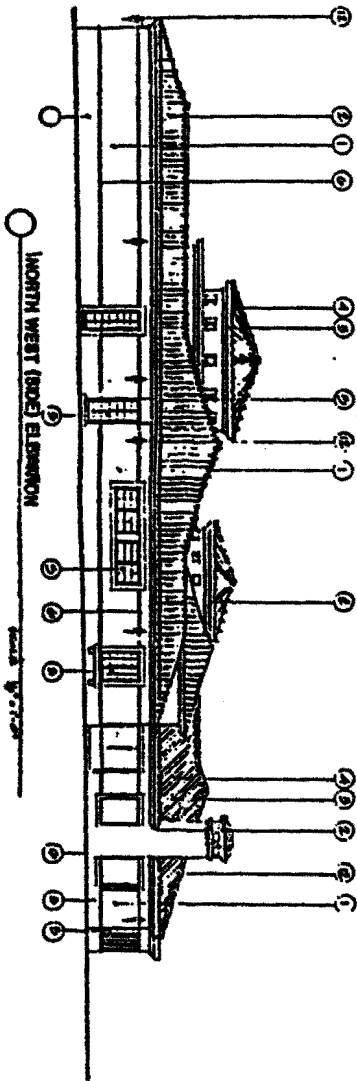
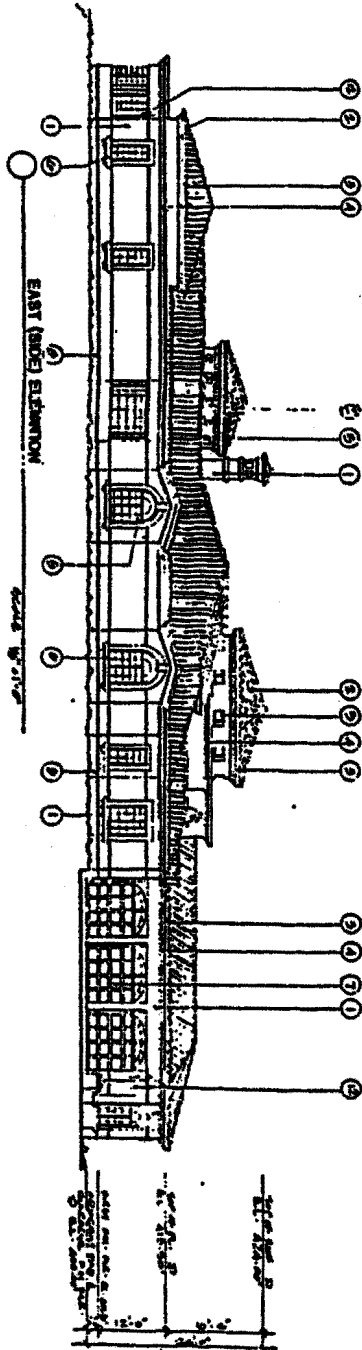
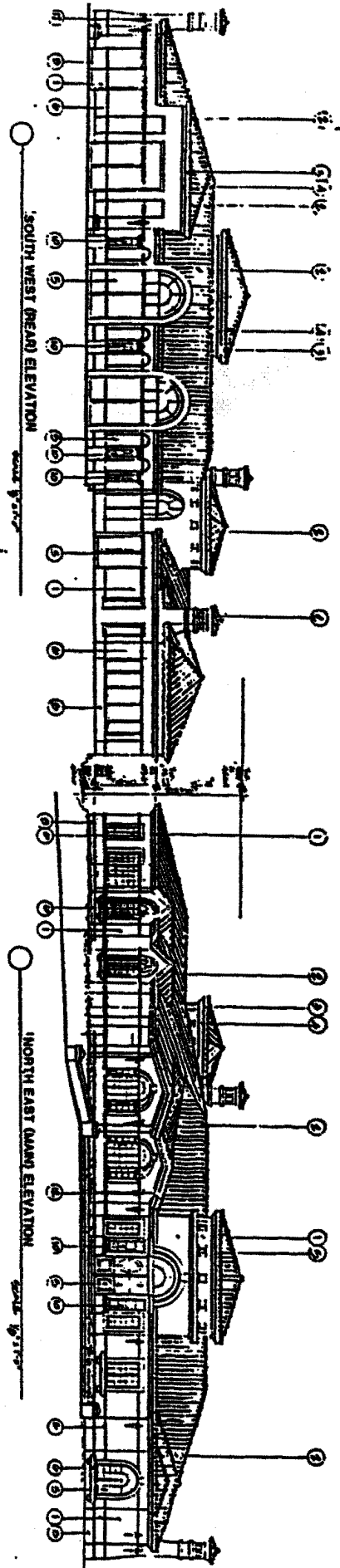
EXHIBIT NO. 2
APPLICATION NO. 4-97-005, -042, -043, -044
Ohanian
Site Plan

MASTER PLAN
 LOT #1, LOT #2, LOT #3, LOT #4
 OCEAN BREEZE DRIVE,
 MALIBU, CALIFORNIA.



Alajajan-Marcoosi
Architects
 600 W. ENDENBURY
 SUITE 200
 GARDENA
 CALIFORNIA 90247





FINISH MATERIAL

1. 2" x 4" Douglas Fir, KD, S&P, 1/2\"/>

EXHIBIT NO. 3
 APPLICATION NO. 1 of 4 p
4-97-005-042,
-043, -044 Ohawian
 Elevation lot 1

ELEVATIONS

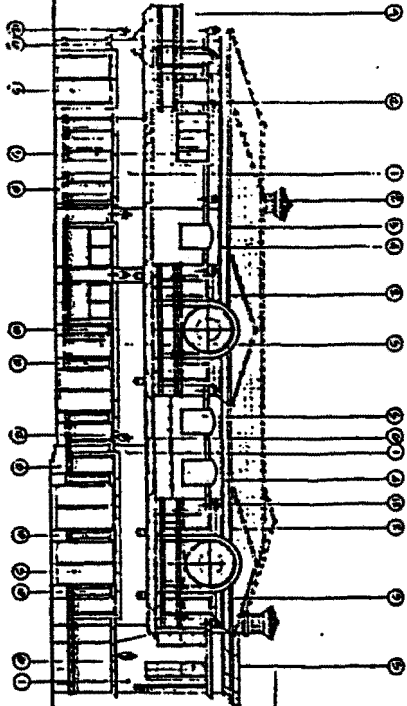
SEA VIEW DRIVE.
 LOT NO. 1



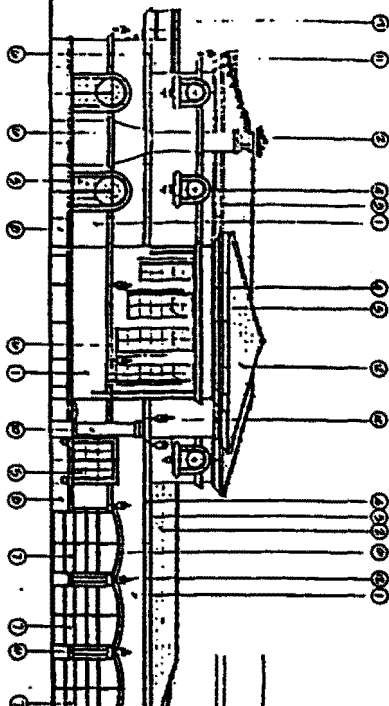
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 Glendale
 California 91204
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ALAJAJAN-MARCOOSI ARCHITECTS
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 TEL: (818) 244-5100
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 WWW: WWW.ALAJAJAN-MARCOOSI.COM
 ARCHITECTS REGISTERED IN THE STATE OF CALIFORNIA
 LICENSE NO. 12548
 1/18/04

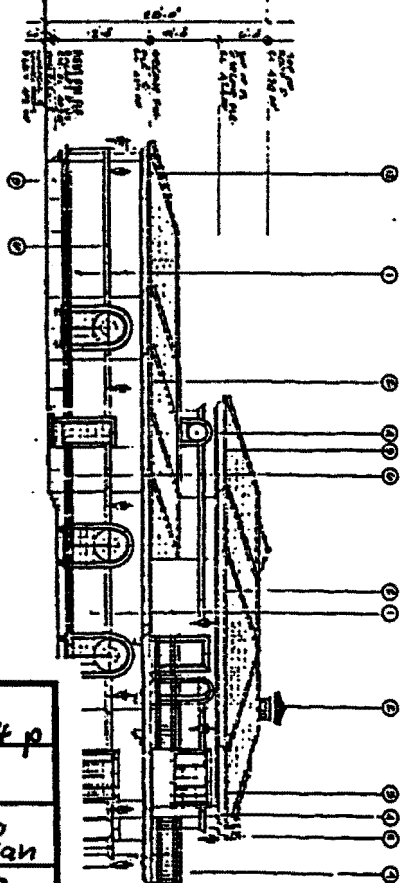
SOUTH WEST (REAR) ELEVATION



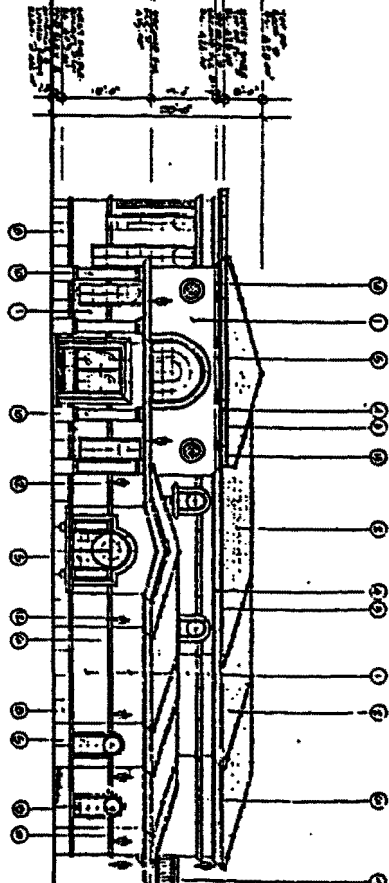
SOUTH EAST (SIDE) ELEVATION



NORTH WEST (SIDE) ELEVATION



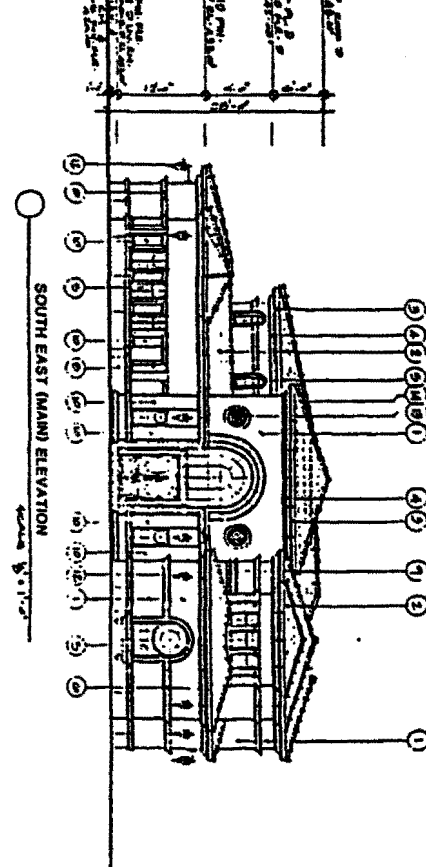
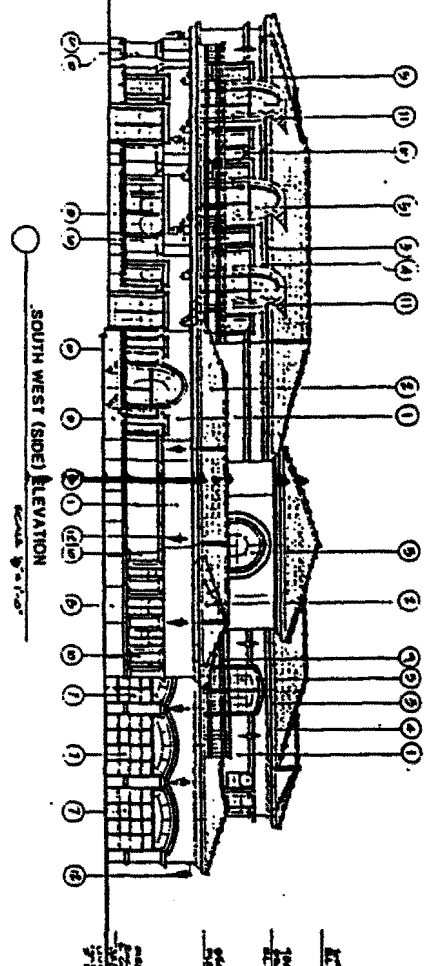
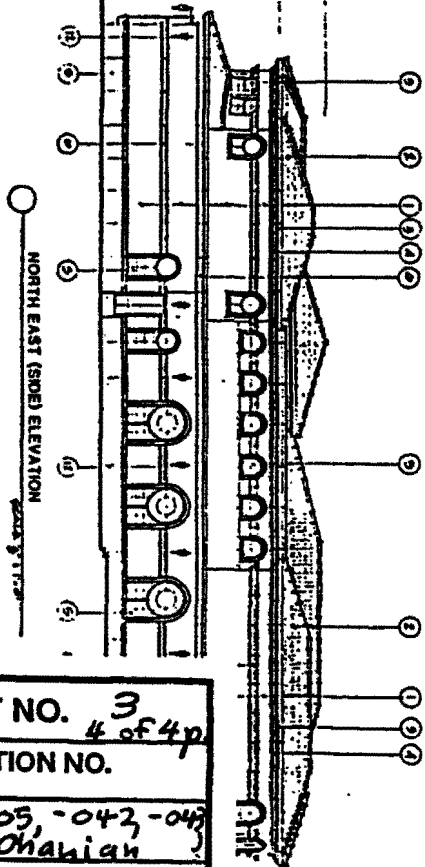
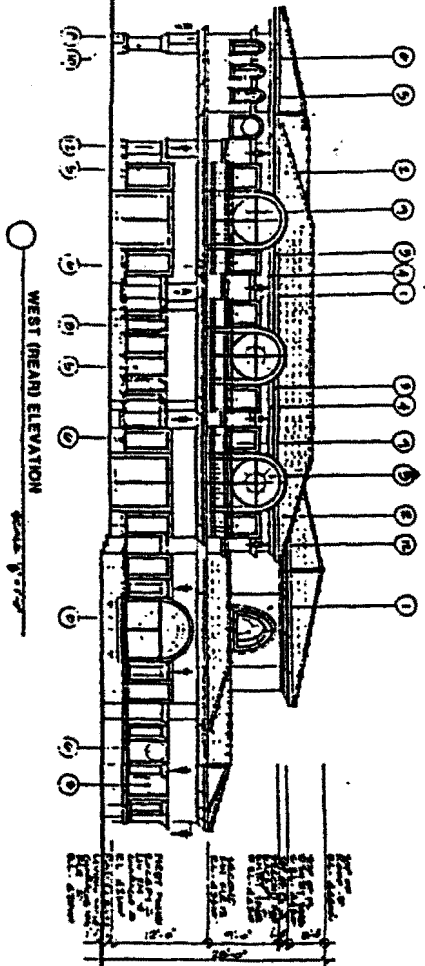
NORTH EAST (FRONT) ELEVATION



FINISH MATERIAL

- 1- 1/2" x 1/2" square glass block window units.
- 2- 1/2" x 1/2" square glass block window units.
- 3- 1/2" x 1/2" square glass block window units.
- 4- 1/2" x 1/2" square glass block window units.
- 5- 1/2" x 1/2" square glass block window units.
- 6- 1/2" x 1/2" square glass block window units.
- 7- 1/2" x 1/2" square glass block window units.
- 8- 1/2" x 1/2" square glass block window units.
- 9- 1/2" x 1/2" square glass block window units.
- 10- 1/2" x 1/2" square glass block window units.
- 11- 1/2" x 1/2" square glass block window units.
- 12- 1/2" x 1/2" square glass block window units.
- 13- 1/2" x 1/2" square glass block window units.
- 14- 1/2" x 1/2" square glass block window units.
- 15- 1/2" x 1/2" square glass block window units.

EXHIBIT NO. 2 of 4 p
 APPLICATION NO.
 4-97-005, -043,
 -043, -044 Chanian
 Elevation lot 2



- FINISH MATERIAL**
- 1-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 2-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 3-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 4-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 5-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 6-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 7-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 8-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 9-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 10-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 11-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 12-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 13-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 14-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 15-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT
 - 16-1/2" x 1/2" STAINLESS STEEL BRUSHED METAL SLAT

EXHIBIT NO. 3
 APPLICATION NO. 4 of 4p
 4-97-005, -043, -044
 Ohanian
 Elevation lot 4

SEA VIEW DRIVE
 LOT NO. 4

Alajajian . Marcoosi
Architects
 600 W. Broadway
 Suite 300
 Glendale
 California 91204
 Tel: (818) 244-9300

CONTRACT NO. 100-100-100-100
 SHEET NO. 100-100-100-100
 DATE 100-100-100-100

