

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Staff: K. Kemmler  
Staff Report: 11/20/03  
Hearing Date: 12/9-12/03  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-02-227  
**APPLICANT:** Ken Marks  
**PROJECT LOCATION:** 3002 Foose Road, unincorporated Malibu (Los Angeles Co.)  
**APN NO.:** 4472-025-049

**PROJECT DESCRIPTION:** Construction of a new two story, 2,527 sq. ft. single family residence including an attached 555 sq. ft. garage, terraces, driveway, retaining walls, septic system, as-built water well, water tank, removal of existing chain link fence, and performance of 430 cu. yds. grading (all cut). Proposal also includes request for after-the-fact approval of Certificate of Compliance #1706 to legalize the subject parcel.

<b>Lot area</b>	1.9 acres
<b>Building coverage</b>	1,830 sq. ft.
<b>Pavement coverage</b>	7,260 sq. ft.
<b>Landscape coverage</b>	3,354 sq. ft.
<b>Height Above Finished Grade</b>	22 ft.
<b>Parking spaces</b>	2

**LOCAL APPROVALS RECEIVED:** County of Los Angeles Department of Regional Planning, Approval in Concept, September 12, 2002; County of Los Angeles Environmental Health Services, Sewage Disposal System Design Approval, July 3, 2002; County of Los Angeles Fire Department, Preliminary Fuel Modification Plan Approval, August 14, 2002; County of Los Angeles Fire Department, Fire Prevention Engineering Approval, May 9, 2002; County of Los Angeles Environmental Health Division, Well Permit, August 24, 1980.

**SUBSTANTIVE FILE DOCUMENTS:** "Preliminary Engineering Geologic Investigation," Pacific Geology Consultants, Inc., May 18, 1999; "Soils Engineering Investigation," SubSurface Designs, Inc., May 20, 1999; "Update Letter," SubSurface Designs, Inc., March 3, 2003; Percolation Test Report, Lawrence Young, April 29, 2002; Certificate of Compliance #1706 (recorded as document no. 79-403551).

**STAFF NOTE: DUE TO PERMIT STREAMLINING ACT REQUIREMENTS THE COMMISSION MUST ACT ON THIS PERMIT APPLICATION AT THE DECEMBER COMMISSION MEETING.**

### **Summary of Staff Recommendation**

Staff recommends **APPROVAL** of the proposed project with **TWELVE (12) SPECIAL CONDITIONS** regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control plans, (4) wildfire waiver, (5) structural appearance, (6) future development, (7) lighting restriction, (8) deed restriction, (9) revised plans, (10) cumulative impact mitigation, (11) removal of excess excavated material and (12) condition compliance.

## **I. STAFF RECOMMENDATION**

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-02-227 pursuant to the staff recommendation.*

### **Staff Recommendation of Approval:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

### **Resolution to Approve the Permit:**

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## **II. STANDARD CONDITIONS**

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. *Plans Conforming to Geologic Recommendations*

All recommendations contained in the Preliminary Engineering Geologic Investigation dated May 18, 1999 prepared by Pacific Geology Consultants, Inc., the Soils Engineering Investigation dated May 20, 1999 and the Update Letter dated March 3, 2003 prepared by SubSurface Designs, Inc. shall be incorporated into all final design and construction including *foundations, grading, sewage disposal and drainage*. Final plans must be reviewed and approved by the project's consulting geotechnical engineer and geologist. Prior to issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, two sets of plans with evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal 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.

#### 2. *Drainage and Polluted Runoff Control Plans*

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.

- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30<sup>th</sup> 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.

### **3. Landscaping and Erosion Control Plans**

Prior to issuance of a coastal development permit, the applicants shall submit two sets of landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the geotechnical engineering and geologic consultant to ensure that the plans are in conformance with the consultant's recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

#### **A. Landscaping Plan**

- (1) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled *Recommended List of Plants for Landscaping in the Santa Monica Mountains*, dated February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Plantings should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- (3) Vertical landscape elements shall be included in the landscape plan that are designed, upon attaining maturity, to screen the residence and water tank to minimize impacts of the development on public views from Charmlee Park, southeast of the site.
- (4) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (5) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive

Director. No changes to the approved final plan shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

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

#### **B. Interim Erosion Control Plan**

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

#### **C. Monitoring**

Five (5) years from the date of completion of the proposed development, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved

pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

#### **4. *Wildfire Waiver of Liability***

Prior to the issuance of a 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, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

#### **5. *Structural Appearance***

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of coastal development permit 4-02-227. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by coastal development permit 4-02-227 if such changes are specifically authorized by the Executive Director as complying with this special condition.

#### **6. *Future Development***

This permit is only for the development described in coastal development permit No. 4-02-227. Pursuant to Title 14 California Code of Regulations §13250(b)(6), the exemptions otherwise provided in Public Resources Code §30610(a) shall not apply to the entire parcel. Accordingly, any future structures, future improvements, or change of use to the permitted structures approved under Coastal Development Permit No. 4-02-227, and any grading, clearing or other disturbance of vegetation, other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition No. Three (3), shall require an amendment to Permit No. 4-02-227 from the Commission or shall require an additional

coastal development permit from the Commission or from the applicable certified local government.

### **7. Lighting Restriction**

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

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

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

### **8. Deed Restriction**

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

### **9. 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 (1) building site in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

- (a) a Transfer of Development Credit (TDC)-type transaction, consistent with past Commission actions;
- (b) 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.

### **10. Removal of Excess Excavated Material**

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

### **11. Condition Compliance**

Within 120 days of Commission action on this coastal development permit application, or within such time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

## **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

### **A. PROJECT DESCRIPTION AND BACKGROUND**

The applicant is proposing to construct a new two story, 2,527 sq. ft. single family residence including an attached 555 sq. ft. garage, terraces, driveway, retaining walls, septic system, as-built water well, water tank, removal of existing chain link fence, and performance of 430 cu. yds. grading (all cut). Proposal also includes request for after-the-fact approval of Certificate of Compliance #1706 to legalize the subject parcel.

The project site is an irregularly shaped, vacant 1.9 acre parcel located on Foose Road just northwest of Charmlee Park in the Santa Monica Mountains area (Exhibits 1 & 2). The area surrounding the project site is characterized by natural hillside terrain and is moderately developed with custom single family residences. Development has occurred on the subject parcel without the benefit of a coastal development permit involving vegetation removal, minor grading and installation of a water well. The applicant has included the water well and grading in the proposed project in order to resolve the violation. The well pad and graded area is located within the proposed development area and zone A of the required fuel modification area for the proposed development.

The vegetation at the project site is heavily disturbed in the vicinity of the building pad and driveway area due to previous grading operations and brush clearance requirements associated

with existing adjacent development. There is no environmentally sensitive habitat onsite. Staff notes that the proposed location for the building pad is the preferred alternative in order to minimize grading and visual impacts on public views from Charmlee Park. The proposed development is located in a relatively flat area that is regularly brushed for the residence on the adjacent property. The proposed development will be partially hidden from public views by the existing residence on the adjacent property.

As part of the project proposal, the applicant is requesting after-the-fact approval of a Certificate of Compliance (COC) to legalize the subject 1.9 acre parcel, which was created by deed in 1976 as part of an unpermitted subdivision. The subdivision was not properly permitted pursuant to the requirements of the Subdivision Map Act of 1972 and Los Angeles County Planning and Zoning codes. In 1979 the County of Los Angeles issued a Conditional COC to "legalize" the lot pursuant to the Subdivision Map Act. The 1979 COC, which "legalized" this lot pursuant to the Subdivision Map Act is considered a form of subdivision and therefore requires a coastal development permit. However, the landowner at the time failed to secure a coastal development permit for the COC. The applicant is proposing to "legalize" the 1979 Conditional COC through this coastal development permit, which is discussed in detail below (see Section E. Cumulative Impacts).

## **B. GEOLOGY AND WILDFIRE HAZARD**

The proposed development is located in the Santa Monica Mountains area, 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.

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

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

### **Geology**

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The Commission notes that the proposed development is designed to minimize the need for grading and excessive vegetation removal on the slopes of the property, as well as avoid direct development on sloped terrain, and therefore will reduce the potential for erosion and geologic instability.

Furthermore, the applicant has submitted a Preliminary Engineering Geologic Investigation dated May 18, 1999 prepared by Pacific Geology Consultants, Inc., a Soils Engineering Investigation dated May 20, 1999 and an Update Letter dated March 3, 2003 prepared by

SubSurface Designs, Inc., which evaluate the geologic stability of the subject site in relation to the proposed development. Based on their evaluation of the site's geology and the proposed development the consultants have found that the project site is suitable for the proposed project. The project's consulting geotechnical engineer states in the Soils Engineering Investigation dated May 20, 1999 prepared by SubSurface Designs, Inc.:

*It is the finding of this firm, based upon the subsurface data, that the proposed building site will not be affected by settlement, landsliding, or slippage. Further, based upon the proposed location, development will not have an adverse effect on offsite property.*

The geotechnical engineering consultant concludes that the proposed development is feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The Preliminary Engineering Geologic Investigation dated May 18, 1999 prepared by Pacific Geology Consultants, Inc., Soils Engineering Investigation dated May 20, 1999 and Update Letter dated March 3, 2003 prepared by SubSurface Designs, Inc. contain several recommendations to be incorporated into project construction, design, and drainage to ensure the stability and geologic safety of the proposed project site and adjacent property. To ensure that the recommendations of the consultant have been incorporated into all proposed development the Commission, as specified in **Special Condition No. One (1)**, requires the applicant to submit project plans certified by the consulting geotechnical engineer and geologist as conforming to all structural and site stability recommendations for the proposed project. Final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development, as approved by the Commission, which may be recommended by the consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions No. Two and Three (2 & 3)**.

Furthermore, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition No. Three (3)** requires the applicant to submit landscaping plans certified by the consulting geotechnical engineer as in conformance with their recommendations for landscaping of the project site. Special Condition No. Three also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed

and graded areas of the site shall be landscaped with appropriate native plant species, as specified in Special Condition No. Three.

In addition, to ensure excess excavated material is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at a appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition No. Ten (10)**.

The Commission finds that the proposed project, as conditioned, will serve to minimize potential geologic hazards of the project site and adjacent properties.

### **Wildfire**

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition No. Four (4)**, the wildfire waiver of liability, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of Special Condition No. Four, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

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

## **C. WATER QUALITY**

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

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

***encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.***

The proposed development will result in an increase in impervious surface, which in turn 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 and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85<sup>th</sup> percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in Special Condition No. Two (2), and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that Special Condition No. Three (3) is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Finally, the proposed development includes the installation of an onsite private sewage disposal system to serve the residence. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

#### **D. VISUAL RESOURCES**

Section 30251 of the Coastal Act states:

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

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. The subject site is located within a rural area characterized by expansive, naturally vegetated mountains and hillsides.

The project site is located just northwest of Charmlee Park, and thus, will be unavoidably visible from public viewing areas. The applicant proposes to construct a new two story, 22 ft. high, 2,527 sq. ft. single family residence including an attached 555 sq. ft. garage, terraces, driveway, retaining walls, septic system, water well, water tank, removal of existing chain link fence, and performance of 430 cu. yds. grading. The applicant has minimized the proposed grading for the project, which is proposed only within the immediate area of the building pad and driveway to prepare the site for construction of the new development. The proposed residence is not excessive in height or size and is compatible with other existing residential development in the area. In addition, the proposed development serves to minimize impacts on public views as it is located in a relatively flat area that is regularly brushed for the residence on the adjacent property, which will minimize landform alteration and natural vegetation removal. Further, the proposed development is located in the eastern portion of the site, partially behind the existing residence on the adjacent property as viewed from some areas of the park to the southeast, so as to be less obtrusive and reduce visibility of a portion of the development from public scenic vistas. However, as the proposed development will be unavoidably visible from scenic viewing areas, the Commission finds it necessary to require mitigation measures to minimize visual impacts associated with development of the project site.

Requiring the residence to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows of the proposed structure be of a non-reflective glass type, can minimize impacts on public views. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed by **Special Condition No. Five (5)**.

Visual impacts associated with proposed grading, and the structure itself, can be further reduced by the use of appropriate and adequate landscaping. Thus, Special Condition No. Three requires the applicant to prepare a landscape plan relying mostly on native, noninvasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Specifically, Special Condition No. Three requires the applicant to place vertical landscaping elements in order to screen the residence and water tank from public views. Implementation of Special Condition No. Three will soften the visual impact of the development from public views. To ensure that the final approved landscaping plans are successfully implemented, Special Condition No. Three also requires the applicant to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time.

Moreover, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, the Commission limits the nighttime lighting of the property and residence to that necessary for safety as outlined in **Special Condition No. Seven (7)**, which restricts night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the night time rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area. In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural area.

Finally, regarding future developments or improvements, certain types of development to the property, normally associated with a single family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition No. Six (6)**, restricting future improvements, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Finally, **Special Condition No. Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

The proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or character of the surrounding area. Therefore the Commission finds that, as conditioned, the proposed development is consistent with section 30251 of the Coastal Act.

## **E. CUMULATIVE IMPACTS**

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area. 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 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.***

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

***[T]he incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.***

As described previously, the applicant is requesting approval of a Certificate of Compliance (COC) to legalize the subject 1.9 acre parcel, which was created by deed in 1976 as part of an unpermitted subdivision. The subdivision was not properly permitted pursuant to the requirements of the Subdivision Map Act of 1972 and Los Angeles County Planning and Zoning codes. In 1979 the County of Los Angeles issued a Conditional COC to "legalize" the lot pursuant to the Subdivision Map Act. The 1979 COC, which "legalized" this lot pursuant to the Subdivision Map Act is considered a form of subdivision and therefore requires a coastal development permit. However, the landowner at the time failed to secure a coastal development permit for the COC. The applicant is proposing to "legalize" the 1979 Conditional COC through this coastal development permit.

The Commission typically reviews the creation of lots through a subdivision of land in a comprehensive manner and not on a piecemeal basis. The Commission review typically entails an analysis of the individual and cumulative impacts of the subdivision on coastal resources. To accomplish this the Commission reviews the proposed lot sizes and lot configurations to ensure consistency with minimum lot size requirements of the LUi, surrounding lot sizes, and to ensure each lot can be developed consistent with Chapter Three Policies of the Coastal Act. To adequately analyze the environmental impacts of a subdivision and determine consistency with Chapter Three Policies of the Coastal Act the applicant is required to submit detailed grading plans, geology reports, percolation tests, biological studies, viewshed analysis and other studies that encompass the entire subdivision.

In this case, a comprehensive analysis of the land division which created the subject parcel is not possible because the parent parcel from which the subject parcel was derived is unknown. It appears that nine lots were created in the upper half of the quarter in which the subject parcel lies, three of which are still vacant, including the subject parcel, and four of which have received coastal development permits for residential development: 5-83-460, 5-86-366, 5-87-091 and 5-89-343. In addition, all of the surrounding lots have been sold to multiple owners. Therefore, the Commission review in this case is limited to the subject 1.9 acre parcel.

Although the legality of the creation of the surrounding lots is in question, the Commission's previous approval of the residential development on the surrounding parcels, effectively "legalized" those parcels. The subject parcel and surrounding parcels are in separate ownerships and the current landowners were not involved in the original subdivision of the original parent parcel. The Commission recently addressed this specific situation in the approval of the Malibu Local Coastal Program (LCP). Although the Malibu LCP is not the standard of review for development in Los Angeles County, the LCP provides policy guidance

regarding the certificate of compliance issue in this particular case. The Commission found in the approval of the Malibu LCP that:

***A land division for which a certificate of compliance is requested may be approved where the land division complies with all requirements of Section 15.2 except the minimum parcel size, in two situations: 1) where the Coastal Commission previously approved a permit for development on one of the parcels created from the same parent parcel, those parcels do not have a common owner, and the owner requesting the certificate of compliance acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction and 2) where the parcel for which the certificate is requested is not in common ownership with any other contiguous parcels created from the same parent parcel and the owner acquired the parcel prior to certification of the LCP in a good-faith, arm's length transaction. (Sections 15.3 (C) and (D)). These provisions will prevent hardship to a subsequent purchaser, who was not the one who illegally subdivided the property and did not know or have reason to know that the parcel was created without compliance with the Coastal Act, if applicable, or other state laws or local ordinances. For all certificates of compliance that require a coastal development permit, a transfer of development credit is required to mitigate the cumulative impacts on coastal resources from creating a new parcel.***

In this case, the Commission has approved permits for residential development on four of the surrounding parcels, the applicant purchased the property in a good faith, arm's length transaction, and the subject parcel is not in current ownership with any other contiguous parcels created from the parent parcel. Therefore, the Commission finds that the given the above set of facts in this particular case the approval of the COC is appropriate. Given the facts of this particular case to deny the coastal development permit would result in an unreasonable hardship to the applicant who purchased this property in good faith without knowing the subject parcel was created without the benefit of a coastal development permit. However, the creation of an additional parcel in the Santa Monica Mountains will result in potential adverse cumulative impacts to coastal resources and therefore mitigation is required as discussed below.

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 Development Credit (TDC) program as mitigation, such as has been done in past actions including CDPs P-78-155 (Zal), P-78-158 (Eide), P-81-182 (Malibu Deville), 5-83-43 (Heathercliff), 5-83-591 (Sunset-Regan), 5-85-748 (Ehrman & Coombs), 4-98-281 (Cariker), 4-00-013 (Isbell), 4-00-044 (Blank Par-E, LLC) and 4-01-046 (PCH-Tyler Associates, Inc.). The TDC program has 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 of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing

development to proceed consistent with the requirements of §30250(a). In summary, the Commission has found that the TDC program, or a similar technique to retire development rights on selected lots, remains a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but to deny such projects, based on the provisions of §30250(a) of the Coastal Act.

The applicant is requesting approval to legalize the 1.9 acre subject parcel which was created through an unpermitted division in 1976. Staff's review indicates that the incremental contribution to cumulative impacts would be the creation, in this case, of one additional lot. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality, and resource degradation are associated with the development of an additional parcel in this area. Therefore, the Commission finds it necessary to impose cumulative impact mitigation requirements as a condition of approval of this permit in order to insure that the cumulative impacts of the creation of an additional buildable lot is adequately mitigated.

Therefore, **Special Condition No. Nine (9)** requires the applicant to mitigate the cumulative impacts of the development of this property, either through purchase of one (1) TDC or participation along with a public agency or private nonprofit corporation in retiring habitat or watershed land in amounts that the Executive Director determines will retire the equivalent potential building site. The Commission finds that, as conditioned, the proposed project is consistent with §30250 of the Coastal Act.

## **F. VIOLATIONS**

Unpermitted development occurred on the subject parcel prior to submission of this permit application involving minor grading and vegetation removal and installation of a water well, which is located within the proposed development area and zone A of the required fuel modification area for the proposed development. In addition, the subject lot was created via an unpermitted subdivision in 1976, which did not conform to the subdivision laws at that time and thus, later received a Conditional Certificate of Compliance in 1979. The owner of the property at the time did not apply for a coastal permit for the creation of the new lot. The applicant has included the water well and grading in the subject permit application and has also included a request for approval of the Certificate of Compliance in order to resolve the violations. As such, the subject permit application addresses the unpermitted development as well as the new proposed development. In order to ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition No. Eleven (11)** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 120 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

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

## **G. LOCAL COASTAL PROGRAM**

Section 30604(a) of the Coastal Act states:

*Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).*

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3 of the Coastal Act. 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 for the Malibu/Santa Monica Mountains area which is consistent with the policies of Chapter 3 of the Coastal Act as required by §30604(a).

#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

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

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

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LOS ANGELES CO.

SEE 627 MAP

VINTAGE 2000

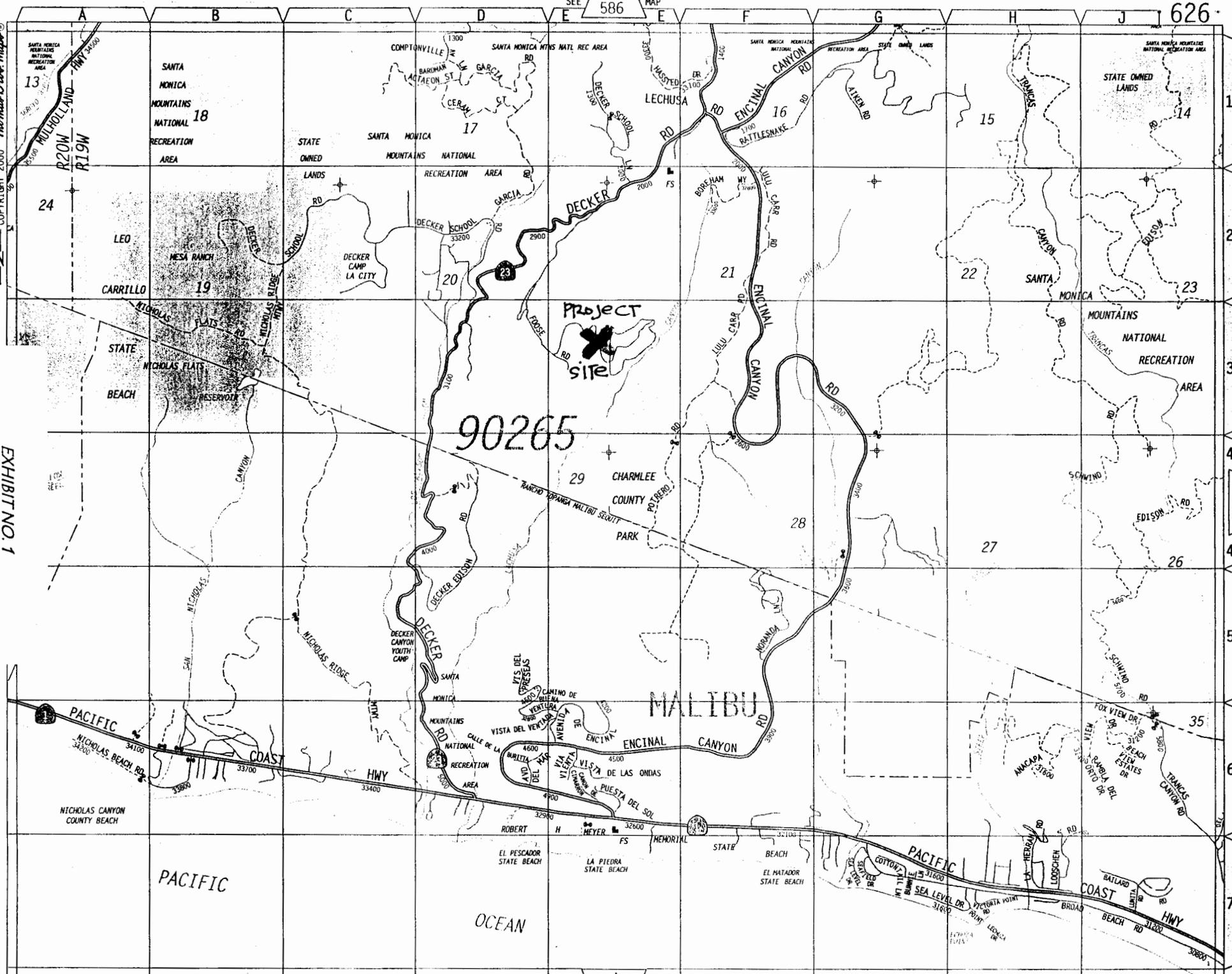


EXHIBIT NO. 1  
APP. NO. 4-02-227  
VICINITY MAP

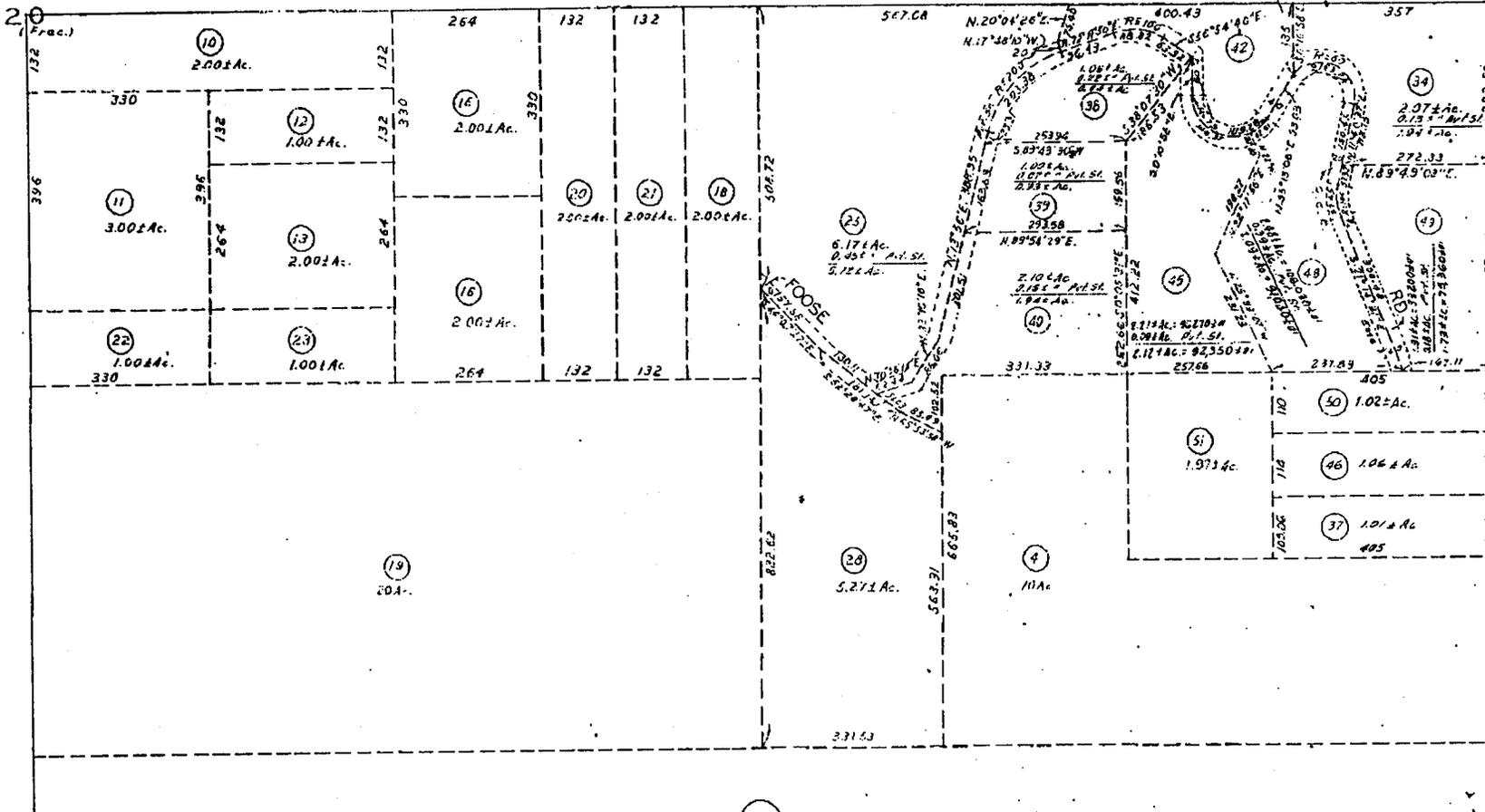
4472 25

SCALE 1" = 200'

1987

22

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subject  
parcel

27

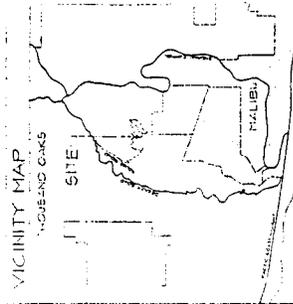
EXHIBIT NO. 2  
APP. NO. 4-02-227  
PARCEL MAP

CODE  
8632

FOR PREV. ASSM'T SEE:  
4472 - 25

T.I.S., R.19W.

ASSESSOR'S MAP  
COUNTY OF LOS ANGELES, CALIF.



**PROJECT DATA**

OWNER / ADDRESS  
 GENERAL CONTRACTOR  
 PROJECT NUMBER  
 JPN  
 LEGAL DESCRIPTION  
 ACRES / BLK.

**ENGINEER'S DATA**

DATE OF PLAN  
 PROJECT NUMBER  
 SHEET NUMBER  
 TOTAL SHEETS  
 SCALE  
 PROJECT LOCATION  
 PROJECT NUMBER  
 JPN  
 LEGAL DESCRIPTION  
 ACRES / BLK.

**SHEET INDEX**

THE UNREGISTERED STATE APPROVED PLANS ARE PART OF THIS SUBMITTAL REDUCED FOR REFERENCE ONLY.

1-1	PLAT PLAN
1-2	PROJECT DATA
1-3	SEWER GRADE LEVEL PLAN
1-4	BUILDING ELEVATIONS
1-5	BUILDING SECTIONS
1-6	WIRE DEPARTMENT PLAN NOTES
1-7	FIELD MODIFICATION PLAN NOTES

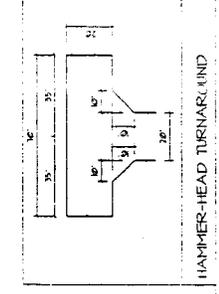
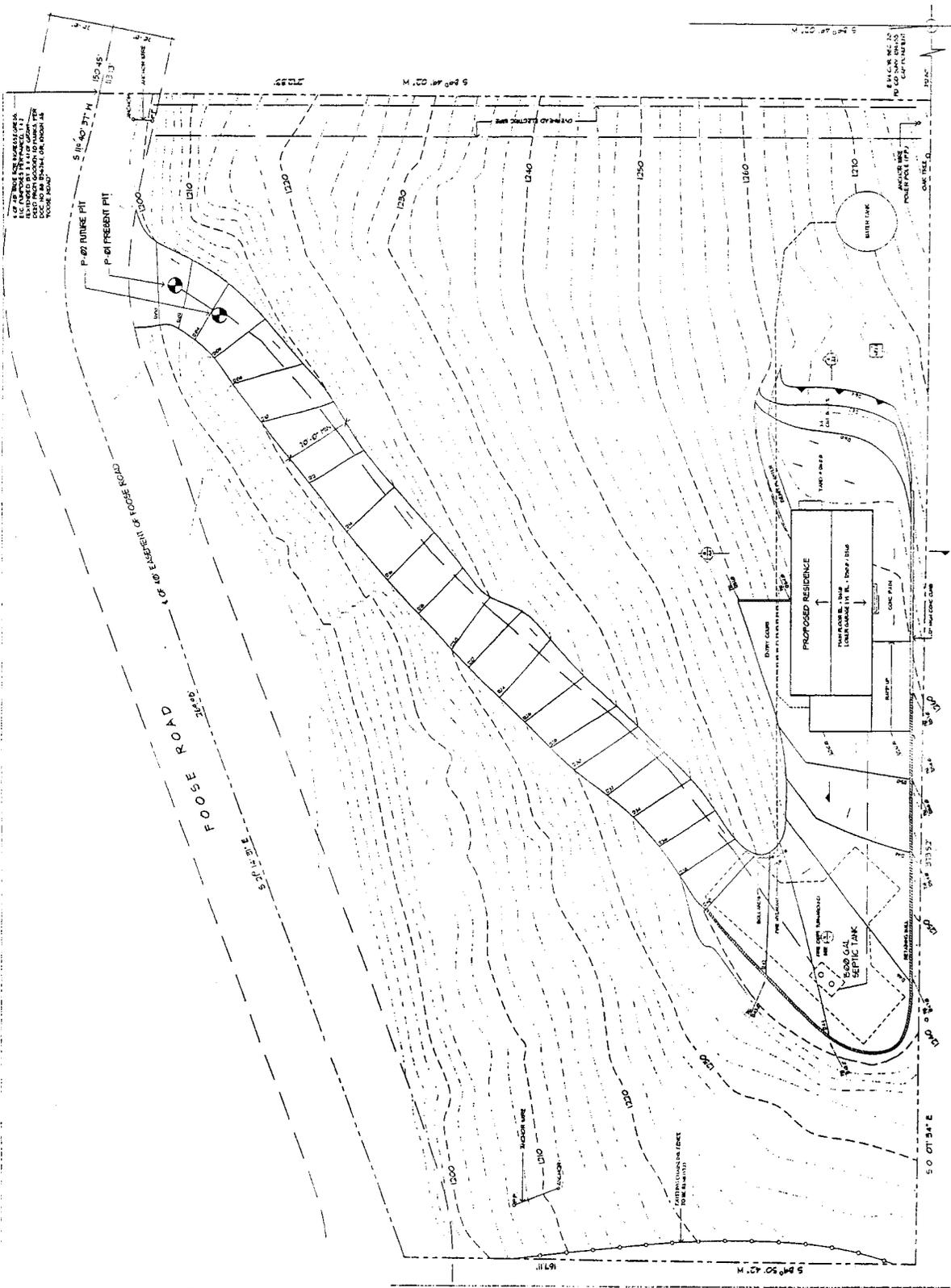


EXHIBIT NO. 3  
 APP. NO. 4-02-227  
 SITE PLAN



Cary W. Cooper & Associates  
 2225 Industrial Way  
 Durham, N.C.  
 (919) 286-3700 FAX (919) 286-3701

Sheet T1

LOWER-GA  
 LEVEL F

Job Name

MARK  
 RESIDER  
 8000 ROOSE  
 HALLWAY C

Copyright

Date-Rev  
 9-01-02

Sheet

A.2  
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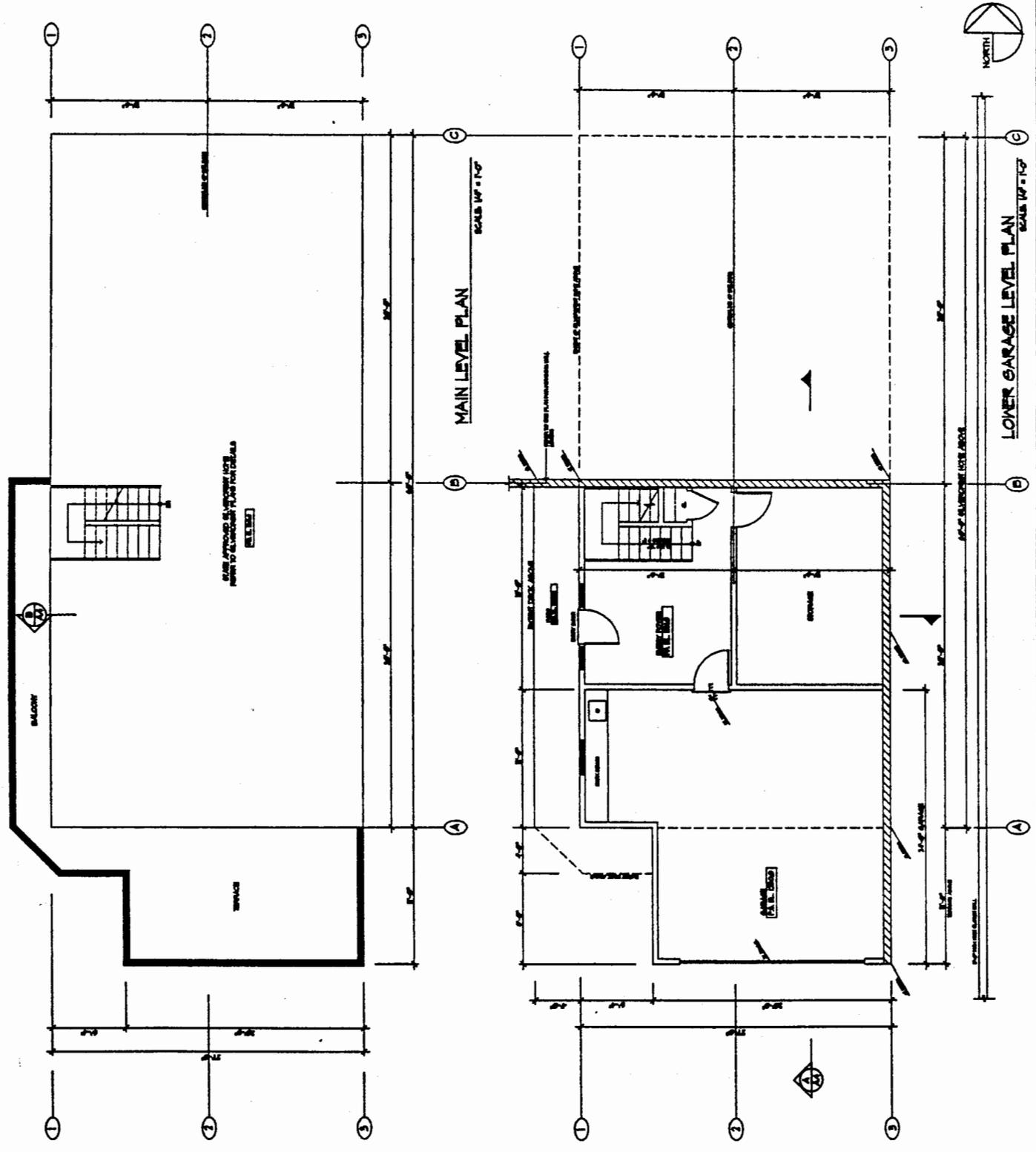
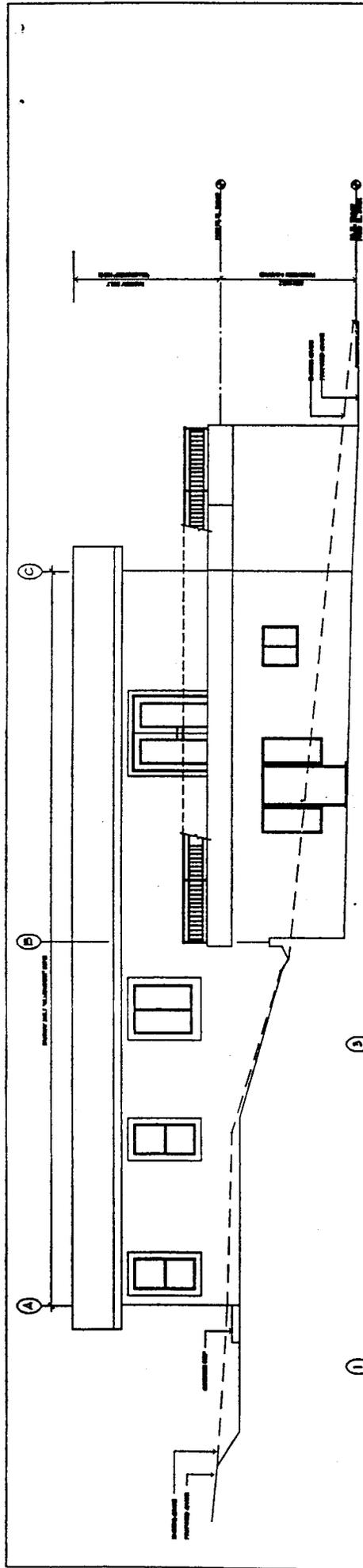
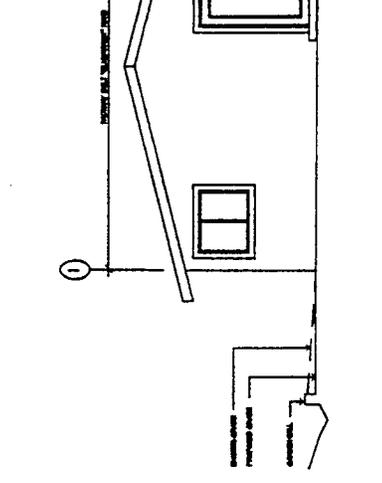


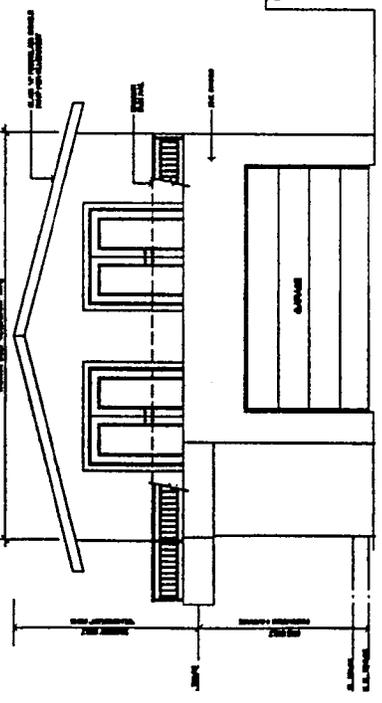
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 APP. NO. 4-02-227  
 FLOOR PLANS



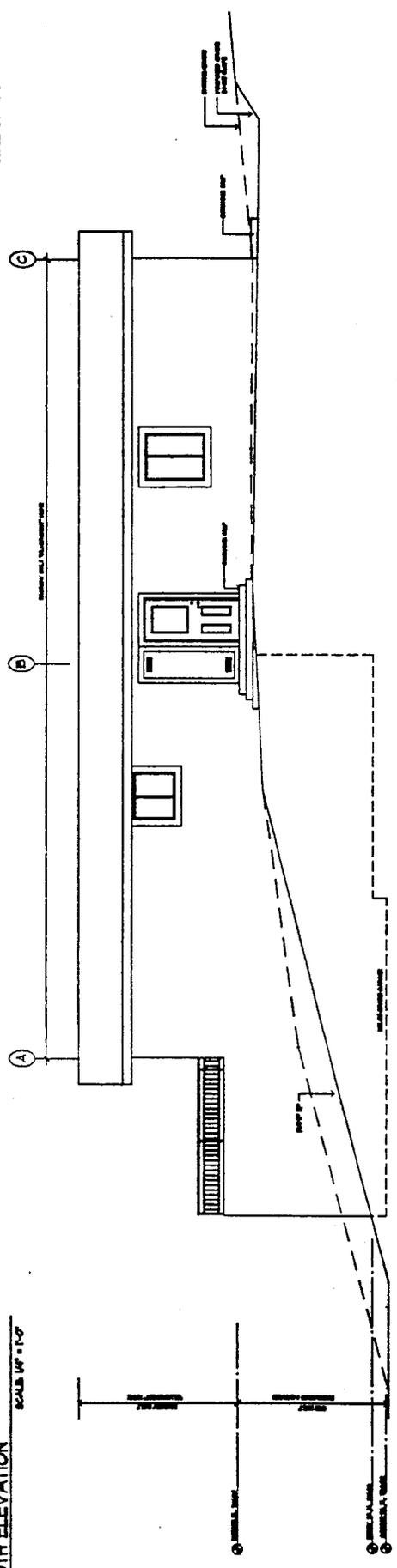
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NORTH ELEVATION  
SCALE 1/4" = 1'-0"



SOUTH ELEVATION  
SCALE 1/4" = 1'-0"



EAST ELEVATION  
SCALE 1/4" = 1'-0"

EXHIBIT NO. 5  
APP. NO. 4-02-227  
ELEVATIONS

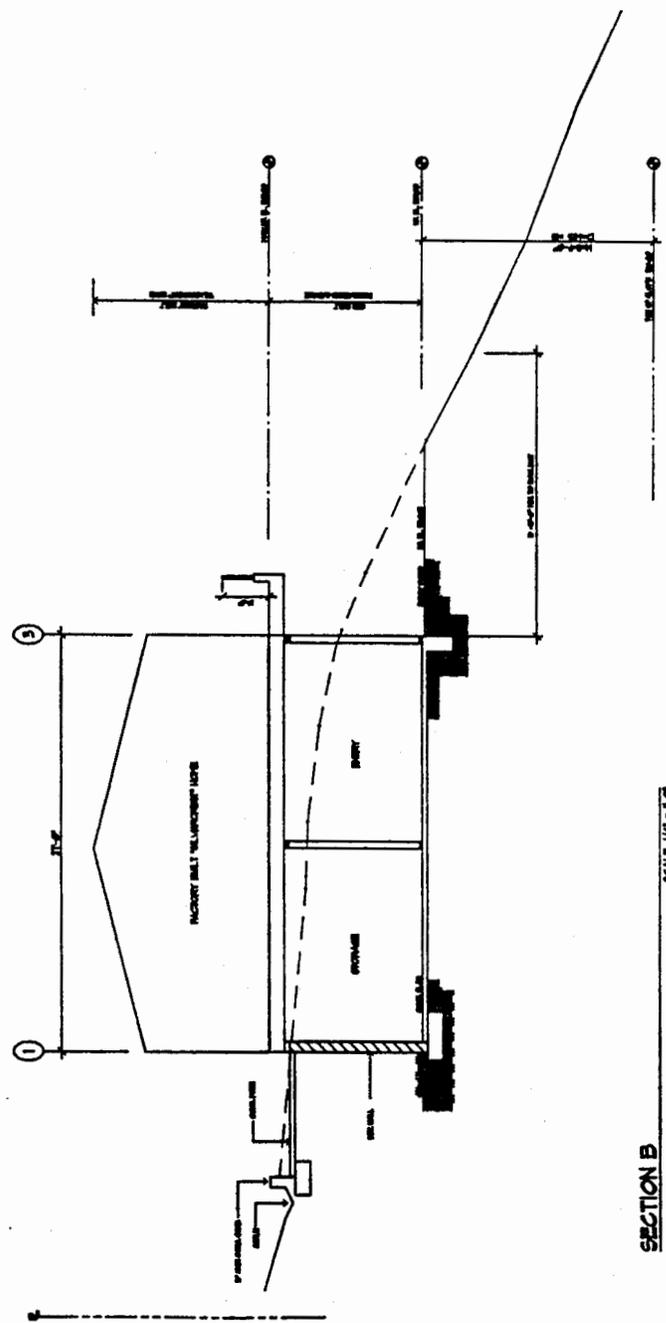
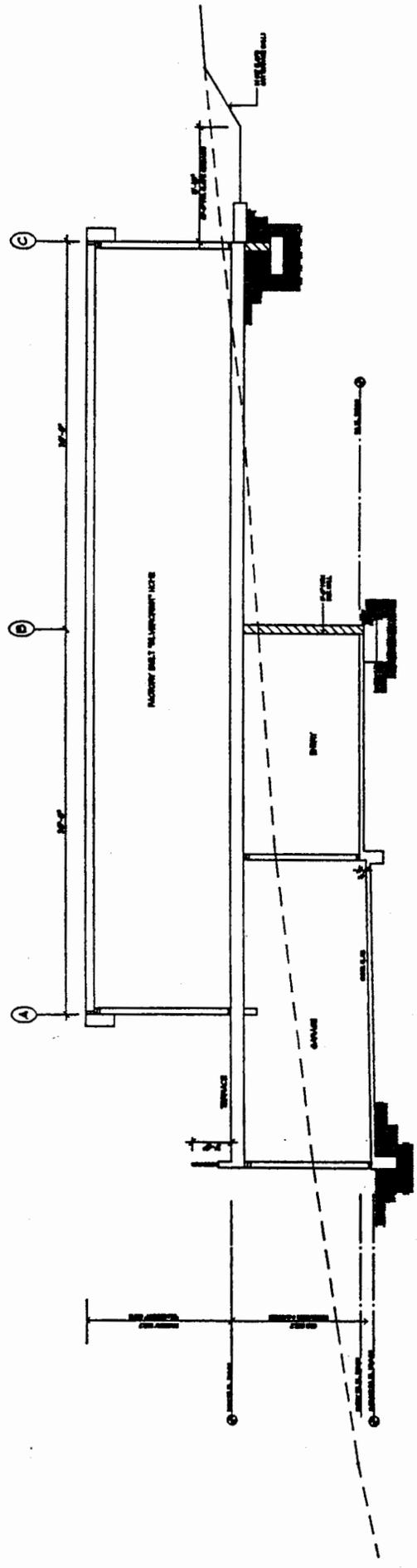


EXHIBIT NO. 6  
 APP. NO. 4-02-227  
 SECTIONS