

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA
100 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

Filed: 07/09/02
49th Day: 08/27/02
180th Day: 01/05/03
240th Day: 03/06/03
Staff: L. Ford *mf*
Staff Report: 01/16/03
Hearing Date: 02/06/03
Commission Action:



RECORD PACKET COPY

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-01-183

APPLICANT: Alfred Kemper

PROJECT LOCATION: 1231 Old Topanga Canyon Road, Topanga, Los Angeles County

PROJECT DESCRIPTION: Construction of a three story, 35 foot high, 1,320 sq. ft. single family residence with attached two-car garage, septic system, driveway, retaining walls, stairs, walkway, six foot high wooden fence, and approximately 488 cu. yds. of grading. The project also includes demolition and removal of footings, stairs, and stone retaining walls from a previous residence destroyed by fire; removal of unpermitted development, including ten wooden retaining walls, structural supports for a previously proposed stairway, and a utility shed; and after-the-fact approval for removal of an oak tree and partial construction of the wooden fence.

Lot area:	29,000 square feet
Building coverage:	436 square feet
Pavement coverage:	1,150 square feet
Landscape coverage:	800 square feet
Unimproved:	26,600 square feet

LOCAL APPROVALS RECEIVED: County of Los Angeles Planning Department, Approval in Concept, October 10, 2001; County of Los Angeles Environmental Review Board Approval in Concept, April 16, 2001; County of Los Angeles Fire Department Oak Tree Permit #01-087, July 5, 2001; County of Los Angeles Geologic Review, Approval in Concept, June 3, 2002; County of Los Angeles Soils Engineering Review, Approval in Concept, May 28, 2002; County of Los Angeles, Fire Department (Access), Approval in Concept, February 7, 2002; County of Los Angeles, Environmental Health, Approval in Concept, December 21, 2001.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan (1986); "Oak Tree Report, 1231 Old Topanga Canyon Rd., Topanga (Los

Angeles County) Project No. 317-1-01," RDI & Associates, Inc., DBA Trees, etc., March 27, 2001; "Negative Archaeological Survey Report: Results of a Phase I Archaeological Survey at 1231 Old Topanga Canyon Road," Compass Rose Archaeological, Inc., November 19, 2001; Percolation Test and Site Evaluation Report, Barton Slutske, Registered Environmental Health Specialist, November 21, 2001; "Preliminary Geotechnical Investigation, 1231 Old Topanga Canyon Road, Topanga, California," P.A. & Associates, Inc., December 15, 2000; "Addendum Engineering Geology and Soils Engineering Report and Response to Soils Engineering and Geologic Review Sheets, 1231 Old Topanga Canyon Road, Topanga, California," P.A. & Associates, Inc., May 9, 2002.

STAFF NOTE / SUMMARY OF STAFF RECOMMENDATION

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **approval** of the proposed project with fifteen (15) special conditions regarding conformance with geologic recommendations, landscape and erosion control plans, drainage and polluted runoff control plan, oak tree restoration and monitoring plan, assumption of risk, removal of natural vegetation, removal of excess graded material, future development restriction, lighting restrictions, deed restriction, revised plans, structural appearance, removal of unpermitted development, inspections, and condition compliance.

STAFF NOTE:

The subject application was previously heard at the November 5, 2002 Commission meeting. At that meeting, the Commission expressed several concerns as to the proposed design of the project, the location of the project on the parcel, and the need to ensure that the Special Conditions of the permit were enforced, particularly in relation to drainage, erosion control, and removal of unpermitted structures on the property. The hearing on the application was continued until the January Commission meeting. At the January meeting, the applicant's agent was granted a postponement of the hearing in order to allow time to respond to several letters from project opponents that had been delivered that morning. These letters are included as Exhibit 20 of this report. Staff responses to several issues raised in the letters are included in Section F of this report.

Following the November hearing, the applicant submitted revised plans that eliminate all previously proposed development on the hillside behind the proposed residence, including a 175-foot long stairway, solar panel platform, and ten retaining walls. The applicant has also submitted a demolition plan for removal of the ten retaining walls and stairway footings, which had already been constructed. The applicant submitted photographs that show that a temporary fence erected along the western property line has been removed, and replaced with sandbags and an approximately 20 foot length of six foot high wooden fence. The applicant requests approval for construction of the wooden fence along the entire length of the western property line.

The revised plans modify the design of the main residence to include architectural features that moderate the flat roofline. The applicant has also submitted evidence of the eclectic character of the Topanga Park neighborhood, which demonstrates the project's visual compatibility with the surrounding area (**Exhibits 11-13 and 16**).

The revised plans include some additional elements, such as an expanded driveway, additional stairs and walkway, and the six foot high wooden fence along the western property line that increase the project's encroachment into the driplines of oak trees. **Special Condition Eleven (11)** requires the applicant to submit revised plans that eliminate these new encroachments. The proposed residence also encroaches within the driplines of three oak trees (Oak Trees #14, #15, and #16) located on an adjacent property. Therefore, **Special Condition Eleven (11)** also requires revised plans that relocate the residence four feet west of the proposed location, and specify that the staircase located east of the residence will be constructed above grade on raised supports.

In addition, **Special Conditions Two (2), Three (3), Four (4), and Seven (7)** require the applicant to revegetate all disturbed areas, including those areas disturbed by removal of unpermitted development, employ adequate erosion control and oak tree protection measures during construction of the proposed project, remove all excess graded material, and install a drainage system to accommodate increased runoff from the proposed development. Monitoring provisions are included in **Special Conditions Two (2)** (Landscaping Plan) and **Four (4)** (Oak Tree Restoration and Monitoring Plan). **Special Condition Thirteen (13)** requires the applicant to remove unpermitted development, including the ten retaining walls, utility shed, and stairway footings within 90 days of the issuance of the permit, and **Special Condition Fourteen (14)** requires Commission staff to be allowed to inspect the site during construction with 24 hours notice. Lastly, **Special Condition Fifteen (15)** requires the applicant to satisfy all conditions of the permit within sixty days.

The permit application was filed on July 9, 2002. The 180-day time limit established by Government Code Section 65952 expired on January 5, 2003. However, the applicant has agreed to extend the time limit by 60 days. Therefore, a decision on this application must be made by March 6, 2003.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-01-183 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 permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittees 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 reports prepared by P.A. & Associates, Inc. ("Preliminary Geotechnical Investigation, 1231 Old Topanga Canyon Road, Topanga, California," dated December 15, 2000; "Addendum Engineering Geology and Soils Engineering Report and Response to Soils Engineering and Geologic Review Sheets,

1231 Old Topanga Canyon Road, Topanga, California," dated May 9, 2002) shall be incorporated into all final design and construction including soil preparation, grading, scarification, fill, slabs-on-grade, settlement, retaining walls, cement, temporary shoring/bracing, and drainage. Final plans must be reviewed and approved by the project's consulting geotechnical engineer. Prior to the issuance of the Coastal Development Permit, the applicants shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

2. Landscaping and Erosion Control Plans

Prior to issuance of the Coastal Development Permit, the applicants shall submit landscaping, erosion control, and fuel modification plans prepared by a licensed landscape architect or qualified resource specialist for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the engineering geologist to ensure that the plans are in conformance with the consultant's recommendations. The plans 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 sixty (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 that 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. Planting 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 ninety (90) percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.
- 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 Permittees 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. In addition, prior to issuance of the Coastal Development Permit, the applicants shall submit evidence that the final 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 50 foot radius of the proposed structures 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 applicants shall install or construct temporary sediment basins (including debris basins, desilting basins, or silt traps), temporary drains and swales, sand bag barriers, silt fencing, and shall stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes, and close and stabilize open trenches as soon as possible. These erosion control measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site, unless removed to an appropriate, approved dumping location either outside of the coastal zone or within the coastal zone to a site permitted to receive fill.
- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than thirty (30) days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils, and cut and fill slopes with geotextiles, mats, sand bag barriers, and/or silt fencing; and temporary drains, 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 years from the date of the receipt of the certificate of occupancy for the residence, the applicants 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 certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised 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.

3. Drainage and Polluted Runoff Control Plan

Prior to issuance of the Coastal Development Permit, the applicants shall submit, for the review and approval of the Executive Director, 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 engineering geologist's recommendations. In addition to the above specifications, 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 stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, one (1) hour runoff event, with an appropriate safety factor, 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 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 applicants, landowner, or successor-in-interest shall be responsible for any necessary repairs to the drainage, filtration system, and BMPs and restoration of any eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants 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.

4. Oak Tree Restoration and Monitoring Plan

The applicant shall retain the services of an independent biological consultant or arborist with appropriate qualifications acceptable to the Executive Director. The biological consultant or arborist shall be present on site during any improvements and/or restoration efforts of the oak trees located along the access road that may be recommended by the consultant. Protective fencing shall be used around the protected zones of the oak trees adjacent to the construction area that may be disturbed during construction or grading activities. The consultant shall immediately notify the Executive Director if unpermitted activities occur or if an oak tree(s) is removed, damaged or impacted beyond the scope of the work allowed by Coastal Development Permit 4-01-183. This monitor shall have the authority to require the applicant to cease work should any breach in permit compliance occur, or if any unforeseen sensitive habitat issues arise.

For the oak tree that was removed, replacement seedlings, less than one year old, grown from acorns collected in the area, shall be planted at a ratio of at least 10:1 on the applicant's parcel (Assessor's Parcel No. 4438-006-015) or a nearby location acceptable to the Executive Director. For the seven (7) oak trees (#1, 2, 5, 7, 14, 15, 16) whose protected zones are encroached upon by the proposed development, as shown in **Exhibit 15**, that may be lost or suffer worsened health or vigor, replacement seedlings, less than one year old, grown from acorns collected in the area shall be planted at a ratio of at least 3:1 on the applicant's parcel (Assessor's Parcel No. 4438-006-015) or a nearby location acceptable to the Executive Director. Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other resource specialist, which specifies replacement tree locations, tree or seedling size planting specifications, and a monitoring program to ensure that the replacement planting program is successful. An annual monitoring report on the oak tree restoration and preservation shall be submitted for the review and approval of the Executive Director for each of the 10 years.

5. Assumption of Risk, Waiver of Liability and Indemnity

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

6. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit. Removal of natural vegetation for the purpose of landslide repair shall not occur until commencement of that project.

7. Removal of Excess Graded Material

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

8. Future Development Restriction

This permit is only for the development described in coastal development permit 4-01-183. Pursuant to Title 14 California Code of Regulations section 13250(b)(6), the exemptions otherwise provided in Public Resources Code section 30610(a) shall not apply to the development governed by coastal development permit 4-01-183. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit 4-01-183 from the

Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. Lighting Restrictions

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

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

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

10. Deed Restriction

Prior to the 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 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 (hereinafter referred to as the "Standard and Special Conditions"); and (2) imposing all Standard and 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 applicant's entire parcel or parcels. 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.

11. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, revised project plans that eliminate the southernmost of two proposed retaining walls located immediately south of the driveway; the proposed "fire access stairs" and walkway leading from those stairs to the residence; the proposed patio with second-story bathroom on the west side of the residence; and the proposed six foot high wooden fence located along the western property line, including the existing unpermitted 20-foot long section already in place. The revised plans shall also relocate the proposed residence and rear patio four (4) feet west of their existing location, and specify that the staircase located east of the residence will be constructed above grade on raised supports.

12. Structural Appearance

The color of the structure and roof permitted hereby shall be restricted to a color compatible with the surrounding environment (white tones shall not be acceptable). All windows shall be comprised of non-glare glass.

13. Removal of Unpermitted Development

The applicant shall remove the existing ten retaining walls, stairway construction, and utility shed, as shown on **Exhibit 14**, within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

14. Inspections

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

15. Condition Compliance

Within sixty (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. 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 proposes to construct a three story, 35 foot high, 1,320 sq. ft. single family residence with attached two-car garage, septic system, driveway, retaining walls, stairs, walkway, six foot high wooden fence, and approximately 488 cu. yds. of grading. The project also includes demolition and removal of footings, stairs, and stone retaining walls from a previous residence destroyed by fire; removal of unpermitted development, including ten wooden retaining walls, structural supports for a previously proposed stairway, and a utility shed; and after-the-fact approval for removal of an oak tree and partial construction of the wooden fence (**Exhibits 4-14**).

The approximately 0.66 acre project site is located in the Topanga Park area of unincorporated Los Angeles County (**Exhibit 1**). The surrounding lots fronting onto Old Topanga Canyon Boulevard are generally developed with single family residences. The hillside south of the project site is largely undeveloped, and contains large tracts of land owned by land trusts and public agencies.

The project site contains the remnants of a residence that was destroyed by fire. Remaining development includes footings, stone retaining walls, and stairs. In addition, a utility shed, ten wooden retaining walls, and partial construction of an approximately 175 foot long stairway ascending the hillside have been placed and/or constructed on the property without the benefit of a coastal development permit.

Site topography is characterized by a southerly ascending slope with gradients ranging from 2:1 to 1:1. The slope levels to approximately 3:1 in the northeast corner of the property, adjacent to the road. In addition, several small near-level pad areas in the northern half of the property remain from the destroyed residence. The applicant proposes to cut approximately 480 cu. yds. of material south of the 3:1 area in the northeast portion of the site, in order to accommodate the proposed residence and driveway.

The site is forested with oak trees and some non-native pine trees, and is mapped as an oak woodland environmentally sensitive habitat area (ESHA) in the certified 1986 Malibu/Santa Monica Mountains Land Use Plan. The site is located across Old Topanga Road and approximately 300 feet south of Topanga Creek, a U.S. Geological Survey designated blue-line stream (**Exhibit 2**).

The proposed project will be visible from Old Topanga Canyon Road, which it fronts, a designated Scenic Highway in the 1986 Malibu/Santa Monica Mountains Land Use Plan. A Phase I archaeological survey conducted on the project site found no evidence of cultural resources.

B. Hazards and Geologic Stability

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

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

The applicant has submitted two geologic reports prepared by P.A. & Associates, Inc. ("Preliminary Geotechnical Investigation, 1231 Old Topanga Canyon Road, Topanga, California," dated December 15, 2000; "Addendum Engineering Geology and Soils Engineering Report and Response to Soils Engineering and Geologic Review Sheets, 1231 Old Topanga Canyon Road, Topanga, California," dated May 9, 2002). The reports make numerous recommendations regarding grading and earthwork, foundations, retaining walls, settlement, floor slabs, cement, temporary shoring/bracing, and drainage.

The Subsurface Designs, Inc. report dated April 22, 2000 concludes:

The proposed site/grading construction on the site will not have an adverse geotechnical effect or create unsafe conditions with regard to potential hazard from landsliding, settlement, or slippage provided that our findings and recommendations are considered in the design and construction of the project.

Therefore, based on the recommendations of the applicant's engineering geologic consultants, the proposed development is consistent with the requirements of Section 30253 of the Coastal Act, so long as the engineering geologic consultant's recommendations are incorporated into the final project plans and designs. Therefore, it is necessary to require the applicant to submit final project plans that have been certified in writing by the engineering geologic consultant as conforming to all recommendations of the consultant, in accordance with **Special Condition One (1)**.

However, the Commission recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting geologists, 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 due to the possibility of erosion, landslide, earthquake, and wildfire, the applicants shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants 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 applicants' assumption of risk, as required by **Special Condition Five (5)**, when executed and recorded on the property deed, will show that the applicants are aware of and appreciate the nature of the hazards associated with development of the site, and that may adversely affect the stability or safety of the proposed development.

For these reasons, therefore, the Commission finds that as conditioned by **Special Condition One (1)** and **Special Condition Five (5)**, the proposed project is consistent with the geologic stability requirements of Coastal Act Section 30253.

Erosion

Section 30253 of the Coastal Act requires that new development neither create nor contribute significantly to erosion. As noted above, the site of the proposed project contains slopes that descend, at gradients up to 1:1, to within 300 feet of a blue line stream. Incorporating adequate drainage, erosion control, and appropriate landscaping into the proposed development will serve to minimize erosion at the site.

As noted above, the applicant's proposal includes construction of a three story, 35 foot high, 1,320 sq. ft. single family residence with attached two-car garage, septic system, driveway, retaining walls, stairs, walkway, six foot high wooden fence, and approximately 488 cu. yds. of grading. The project also includes demolition and removal of footings, stairs, and stone retaining walls from a previous residence destroyed by fire; removal of unpermitted development, including ten wooden retaining walls, structural supports for a previously proposed stairway, and a utility shed; and after-the-fact approval for removal of an oak tree and partial construction of the wooden fence.

In total, 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.

In order to ensure that erosion and sedimentation from site runoff are minimized, the Commission requires the applicant to submit a drainage plan, as defined by **Special Condition Three (3)**. **Special Condition Three (3)** 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 applicant 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 addition, the Commission finds that temporary erosion control measures implemented during construction and removal of existing footings and retaining walls on the slope will also minimize erosion and enhance site stability. **Special Condition Two (2)** therefore requires the applicant to implement interim erosion control measures should grading take place during the rainy season. Such measures include stabilizing any stockpiled fill with geofabric covers or other erosion-controlling materials, installing geotextiles or mats on all cut and fill slopes, and closing and stabilizing open trenches to minimize potential erosion from wind and runoff water.

The Commission also finds that landscaping of graded and disturbed areas on the subject site will reduce erosion and serve to enhance and maintain the geologic stability of the site, provided that minimal surface irrigation is required. Therefore, **Special Condition Two (2)** requires the applicant to submit landscaping plans, including irrigation plans, certified by the consulting geologists as in conformance with their recommendations for landscaping of the project site. **Special Condition Two (2)** 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/foliage weight. The Commission finds that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that the use of 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, invasive species and therefore aid in preventing erosion.

In addition, the use of invasive, non-indigenous plant species tends to supplant species that are native to the Malibu/Santa Monica Mountains area. Increasing urbanization in this area has caused the loss or degradation of major portions of the native habitat and loss of native plant seed banks through grading and removal of topsoil. Moreover, invasive groundcovers and fast growing trees that originate from other continents that have been used as landscaping in this area have invaded and seriously degraded native plant communities adjacent to development. Such changes have resulted in the loss of native plant species and the soil retention benefits they offer. As noted the implementation of **Special Condition Two (2)** will ensure that primarily native plant species are used in the landscape plans and that potentially invasive non-native species are avoided. Therefore, the Commission finds that in order to ensure site

stability and erosion control, the disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Two (2)**.

The applicant proposes to cut 480 cu. yds. of earth on the site, producing excess graded material. The Commission finds that stockpiling excavated material may contribute to increased erosion at the site. The Commission also notes that additional landform alteration would result if the excavated material were to be collected and retained on site. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, **Special Condition Seven (7)** requires the applicant to remove all excess graded material from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit.

Furthermore, to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Six (6)**. In the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans, loss of natural vegetative cover may result in unnecessary erosion. **Special Condition Six (6)** specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced.

Finally, in order to ensure that any future site development is reviewed for its potential to create or contribute to erosion, the Commission finds it necessary to impose **Special Condition Eight (8)**, which requires the applicants to obtain a coastal development permit for any future development on the site, including improvements that might otherwise be exempt from permit requirements. In addition, **Special Condition Ten (10)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Wild Fire

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 applicants assume the liability from these associated risks. Through **Special Condition Five (5)**, the assumption of risk, the applicants acknowledge 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 Five (5)**, the applicants also agree 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.

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

C. Sensitive Habitat

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, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act states:

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

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

Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and

entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

To assist in the determination of whether a project is consistent with Section 30231 and 30240 of the Coastal Act, the Commission has relied in past permit decisions on the certified Malibu/Santa Monica Mountains Land Use Plan (LUP), which contains numerous policies designated to protect sensitive resource areas from the individual and cumulative impacts of development. The certified LUP has been found to be consistent with the Coastal Act and provides specific standards for development in Malibu and the Santa Monica Mountains.

The certified Malibu/Santa Monica Mountains Land Use Plan (LUP) indicates that the project site is located within a significant oak woodland environmentally sensitive habitat area (ESHA). The LUP requires residential uses in significant oak woodlands to be consistent with provided development standards and policies. The standards applicable to this site include the following:

- Encroachment of structures within an oak woodland shall be limited such that at least 90% of the entire woodland is retained. Leachfields shall be located outside the dripline of existing oaks.
- Clustering of structures shall be required to minimize the impacts on natural vegetation.
- Land alteration and vegetation removal shall be minimized.
- Structures shall be located as close to the periphery of the oak woodland, as feasible, including outside the woodland, or in any other location for which it can be demonstrated the effects of development will be less environmentally damaging.
- Site grading shall be accomplished in accordance with the stream protection and erosion policies.

The subject site is a narrow hillside lot that contains sixteen mature oak trees. The trees form a continuous canopy over much of the site. All proposed development is located within the protected zones of oak trees. The Oak Tree Report, prepared by Richard Ibarra of RDI & Associates, Inc., dated March 27, 2001 and the Los Angeles County Oak Tree Permit #01-087 detail the following proposed encroachments on the property:

- a. Leach line construction within the dripline of tree #1**
- b. Wood deck & patio construction on the west side of the house within the dripline and protective zones of trees #3, 5, 6, 7**

- c. *Patio construction on the south side of the house within the driplines and protected zones of trees #5, 7, 14, 15, 16*
- d. *Construction of the east side of the house within the protective zones of trees #15 and #16*
- e. *New construction of a wood stairway system within the driplines and protective zones of trees #3, 5, 6, 7, 8, 11, 12, 13, and 14.*
- f. *Construction of a concrete swale within the driplines and protective zone of trees #14, 15, and 16.*
- g. *Clearance pruning for trees #3, 5, and 7 for the roof of the main residence.*

The applicant has since revised his plans. The revised plans will result in the following encroachments:

- a. *Construction of driveway, fire access stairs, and retaining wall within the dripline and protective zone of tree #1*
- b. *Construction of two retaining walls, walkway, and two-story patio/bathroom annex on the west side of the house within the dripline and protective zone of tree #2.*
- c. *Patio construction on the south side of the house within the driplines and protective zones of trees #5, #7, #14*
- d. *Construction of the east side of the house within the protective zones of trees #15 and #16, and construction of access stairs to the house within the driplines of trees #15 and #16*
- e. *Construction of the southwest corner and west side of the house within the dripline and protective zone of tree #5, and within the driplines of trees #2, #5, and #7*
- f. *Construction of a six foot high wooden fence within the driplines of trees #1, #4, #9, #10, #11, #12, and within the protective zones of trees #2 and #6*
- g. *Clearance pruning for trees #2, 5, and 7 for the roof of the main residence.*

Given setback requirements, no location exists for the proposed single family residence outside of the protective zones of oak trees. As shown in **Exhibit 15**, the proposed three-story main residence encroaches into the driplines and protected zones of five oak trees (#2, #5, #7, #15, and #16). In addition, a two-story porch/bathroom on the northwest side of the house, as well as adjacent retaining walls and walkway, encroaches into the dripline of Oak Tree #2. Similarly, the proposed patio area on the south side of the residence is located within the driplines of several oak trees (#5, #7, #14). The fifteen foot wide grasscrete patio has been proposed in order to meet Los

Angeles County slope setback standards. The proposed driveway encroaches into the protected zones of four oak trees (#1, #2, #15, and #16), but is largely located outside of oak tree driplines. The proposed septic system, shown in **Exhibit 4**, includes a septic tank and two septic pits located under the driveway. The septic tank is located outside of all oak tree protected zones, but within such a distance to allow potential impacts from effluence discharge to Oak Tree #1. Lastly, a proposed wooden fence along the western property line encroaches into the driplines and protected zones of eight oak trees (#1, #2, #4, #6, #9, #10, #11, #12) six of which would not otherwise be impacted.

The subject site contains the remnants of a residence that was destroyed by fire. The applicant proposes to remove remnant footings, stairs, and stone retaining walls on the property. However, oak tree roots have grown around seven of the old stone walls. The applicant's arborist has stated that removal of those walls could expose and damage oak tree roots and undermine supporting soils under the trees, and the County Forester has confirmed that statement. Therefore the applicant has not proposed the removal of the seven walls shown on **Exhibit 14**.

Construction of the proposed residence and driveway will require approximately 488 cu. yds. of grading, 480 cu. yds. of which will be cut. The grading will occur within the footprints of the residence, driveway, and patio areas and will impact the oak trees whose protected zones and driplines overlap with the proposed development as discussed above.

Lastly, the Oak Tree Report notes that a \$5,000 fine was assessed and paid by the applicant for a violation of the Los Angeles County's Oak Tree Ordinance. A letter submitted by the applicant from the County of Los Angeles Fire Department, dated March 7, 2001, describes the violation as "the illegal pruning and removal of a Coast Live Oak (*Quercus agrifolia*)." The oak tree was located within the footprint of the currently proposed residence.

In the article entitled, "Oak Trees: Care and Maintenance," prepared by the Forestry Department of the County of Los Angeles, states:

Oaks are easily damaged and very sensitive to disturbances that occur to the tree or in the surrounding environment. The root system is extensive but surprisingly shallow, radiating out as much as 50 feet beyond the spread of the tree leaves, or canopy. The ground area at the outside edge of the canopy, referred to as the dripline, is especially important: the tree obtains most of its surface water and nutrients here, as well as conducts an important exchange of air and other gases.

This publication goes on to state:

Any change in the level of soil around an oak tree can have a negative impact. The most critical area lies within 6' to 10' of the trunk: no soil should be added or scraped away. . . . Construction activities outside the protected zone can have damaging impacts on existing trees. . . . Digging of trenches in the root

zone should be avoided. Roots may be cut or severely damaged, and the tree can be killed. . . . Any roots exposed during this work should be covered with wet burlap and kept moist until the soil can be replaced. The roots depend on an important exchange of both water and air through the soil within the protected zone. Any kind of activity which compacts the soil in this area blocks this exchange and can have serious long term negative effects on the trees. If paving material must be used, some recommended surfaces include brick paving with sand joints, or ground coverings such as wood chips . . .

This publication also notes specific considerations for watering supplements underneath and near oak trees, and states:

Improper watering is often overlooked as the cause of tree death because it can take years for the damage to show. Once the tree shows obvious signs of decline, it is often too late to correct the problem. . . .Overwatering, especially during the summer months, causes a number of problems which can lead to decline and eventual death of the tree. It creates ideal conditions for attacks of Oak Root Fungus by allowing the fungus to breed all year. In addition, both evergreen and deciduous oaks grow vigorously in the spring and naturally go dormant in the summer. Extra water only encourages new tip growth which is subject to mildew. Oaks need this period of rest.

There should be no planting within a minimum 6 to 10 feet of the trunk. Avoid plants that require any supplemental water once established. Choose plants suited for "dry shade."

As described above, the proposed development involves the encroachment of structures and impervious surfaces into the protected zones and within the driplines of several oak trees. The proposed project also involves grading within the driplines and protected zones of several oak trees, and the location of a septic system in close proximity to Oak Tree #1. These proposed developments will have impacts on the oak woodland ESHA on site.

The encroachment of structures and driveway pavement will increase the amount of impervious surface and therefore decrease the infiltrative function of the soil adjacent to the oak trees, while increasing the volume and velocity of stormwater that can be expected to flow down adjacent slopes. An increase in impervious surface decreases the exchange of air and water to the root zone of the trees, as does the placement of structures. The placement of structures and the construction of driveways also result in compaction of underlying soil, which further decreases the availability of air and nutrients to the oak tree roots. The proposed grading within the oak tree protected zones will have direct impacts on the affected oak trees, including exposure and cutting of roots and dramatic changes in the level and compaction of soil surrounding the oak tree roots.

As noted above, a **septic tank** and two seepage pits are proposed in a location that is setback approximately 12 feet, 25 feet, and 42 feet respectively from the protected zone of Oak Tree #1; approximately 5 feet, 17 feet, and 30 feet respectively from the

protected zone of Oak Tree #2; and approximately 30 feet, 23 feet, and 8 feet respectively from the protected zone of Oak Trees #15 and #16. The septic system is also located within 100 feet of most oak trees on the site; however, with the exception of Oak Tree #1, all oak trees are located at elevations at least 10 feet above the proposed driveway and would not be expected to be subject to effluent discharge (**Exhibit 15**). In past Commission actions, the Commission has required a minimum 100 ft. setback of seepage pits from oak tree canopy driplines, where feasible, to minimize potential impacts of sewage effluent on the health of the oak tree. In the case of the proposed project, however, due to the location of several other oak trees on the site it is not possible to set back the proposed septic system 100 feet from the oak tree canopy driplines. Additionally, the applicant has submitted a report from the Barton Slutske, Registered Environmental Health Specialist, dated November 21, 2001, indicating that the seepage pits will exceed Uniform Plumbing Code percolation requirements.

Nevertheless, the proposed septic system could potentially result in excessive and detrimental water discharge into the root system of Oak Tree #1 given its close proximity and the uncertain nature of establishing geologic structure and water uses that may occur in the future.

The Commission therefore finds that the proposed construction activities can have detrimental impacts on the oak trees whose driplines are located both within and outside of the area to be disturbed by the project. Furthermore, the Commission finds that since the root systems may radiate out as much as 50 feet beyond the oak canopy driplines, even those oak trees adjacent to the development whose protected areas are not within the proposed development envelope may be negatively impacted through disturbance to their root systems. In summary, the proposed developments will have impacts on the oak woodland ESHA on site. Application of Section 30240 of the Coastal Act, which mandates protection of ESHA, would result in the denial of the proposed project.

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

extent to which a project denial would interfere with reasonable investment-backed expectations.

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

In the subject case, the applicant purchased the property in October 2000 for \$20,000. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use. Residential development has previously been approved by the Commission on other parcels in the near vicinity that generally contained the same type of habitat as the applicant's parcel [Coastal Development Permit 4-96-103 (MacLachlan)]. Based on these facts, along with the presence of existing and approved residential development on nearby parcels, the applicant had reason to believe that he had purchased a parcel on which he would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. The parcel is 0.66 acres, and is located amongst other residentially-zoned developed parcels. Public parkland has been acquired in the vicinity; for instance, California State Parks land in Red Rock Canyon is located approximately ½ mile northwest of the project site, and additional National Park Service land is located approximately one mile south of the project site. However, there is no indication that a public agency would consider it a priority to purchase a small parcel such as the project site. Additionally, given the fact that the parcel is non-contiguous with the parkland and there is existing residential development on parcels separating the subject site from the parkland, it is unlikely that a public agency would attempt to acquire the site for a park or preserve. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use on the property would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

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

create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

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

Commission staff has explored alternatives to the proposed development. Given the steep slopes and presence of oak trees elsewhere on the site, the proposed residence and driveway are generally sited in the location most protective of the oak woodland ESHA and other coastal resources. Furthermore, significant reduction in the size of the proposed residence, which includes only 836 sq. ft. of habitable space, would result in a non-conforming structure under Los Angeles County guidelines. However, a reduction in the overall footprint of development would reduce impacts to the oak woodland ESHA while still allowing residential use of the property. Therefore, **Special Condition Eleven (11)** requires the applicant to submit revised plans eliminating the southernmost of two proposed retaining walls located immediately south of the driveway; the proposed "fire access stairs" and walkway leading from those stairs to the residence; the proposed patio with second-story bathroom on the west side of the residence; and the proposed six foot high wooden fence located along the western property line. In addition, **Special Condition Eleven (11)** requires the applicant to shift the footprint of the proposed residence and rear patio four (4) feet west of its proposed location, and use a raised design for the stairway on the east side of the residence, in order to eliminate encroachment into the driplines of Oak Trees #14, #15 and #16, and reduce the intensity of impacts within the protected zones of Oak Trees #15 and #16.

As noted above, the Commission finds that the remainder of proposed construction activities will also have detrimental impacts on the oak trees whose driplines are located both within and outside of the area to be disturbed by the project. The Commission further notes that damage to the oak trees resulting from the proposed project may not become apparent for many years. Therefore, the Commission finds that the applicant must mitigate for the adverse impacts resulting from construction encroachment into the protected zones of oak trees #1, #3, #5, #7, #14, #15, and #16. In addition, the applicant must mitigate for the unpermitted removal of the oak tree noted in the Los Angeles County Fire Department letter dated March 7, 2001. In past permit actions the Commission has typically required a 10:1 mitigation ratio for the loss or removal of oak trees, and a 3:1 mitigation ratio in cases where the oak trees will not be removed, but will suffer incremental adverse impacts over time from the proposed improvements.

Special Condition Four (4) requires the applicant to plant 31 oak trees on the applicant's parcel or a nearby location acceptable to the Executive Director. Furthermore, pursuant to **Special Condition Four (4)**, the applicant must also submit, for the review and approval of the Executive Director, an oak tree replacement planting program, prepared by a qualified biologist, arborist, or other resource specialist, which specifies replacement tree locations, and tree or seedling size planting specifications. Finally, the applicant shall also submit an annual monitoring report on the oak tree mitigation and preservation process to ensure the long term health of existing oak trees on site and success of the oak tree mitigation plan.

In addition, to ensure that the protected zones of oak trees on site will not be inadvertently violated by the permitted development activities, **Special Condition Four (4)** also requires that protective fencing be placed around the protected zones of the oak canopies within or adjacent to the construction area that may be disturbed during construction or grading activities.

Furthermore, the Commission finds that excessive water irrigation and infiltration that may accompany inappropriate residential landscaping may adversely impact the sensitive root systems of the oaks on site and that use of primarily native, drought resistant plant species compatible with these areas will minimize the need for irrigation and water, thereby preventing additional adverse impacts on the oak woodland. Therefore, in order to minimize adverse effects to the oak trees on site as well as other indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Two (2)** requires that all landscaping consist primarily of native plant species compatible with oak woodland habitat and that invasive plant species shall not be used.

The Commission further finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, **Special Condition Two (2)** is also necessary in order to minimize adverse impacts on the indigenous plant communities of the project site and the Malibu/Santa Monica Mountains area.

The Commission notes that streams and drainages, such as the blue line stream located north of 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 riparian 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.

The Commission finds that potential adverse effects of the proposed development on riparian habitat may be minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition Three (3)**, the Drainage and Polluted Run-off Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, building pad area, and horse corral is conveyed off-site in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways. (See Section D. Water Quality for a more detailed discussion of coastal water quality).

The Commission has found that night lighting of a high intensity has the potential to reduce the habitat value of ESHA, and disrupt the behavior of wildlife that occupy or migrate through rural and relatively undisturbed areas. Therefore, **Special Condition Nine (9)** is necessary to reduce the disruptive effects of night lighting on wildlife by restricting outdoor night lighting to the minimum amount required for safety.

The Commission further finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Eight (8)**, the future development restriction, has been required. In addition, **Special Condition Ten (10)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

Lastly, the applicant proposes to remove unpermitted development, including ten retaining walls, stairway supports, and a utility shed. These structures are located under the driplines of several oak trees on site. In order to minimize impacts to the oak woodland on site, **Special Condition Thirteen (13)** and **Special Condition Fourteen (14)** are necessary to ensure implementation of the applicant's proposal. **Special Condition Thirteen (14)** requires the applicant to allow Commission staff to inspect the site during construction, with 24-hour advance notice, and **Special Condition Thirteen (13)** requires the applicant to remove the unpermitted retaining walls, stairway, and

utility shed (as shown in Exhibit 14) within 90 days of the issuance of the permit. The Executive Director may grant additional time for good cause.

As conditioned, the Commission finds that, for the reasons set forth above, the proposed project is consistent with the requirements of Sections 30231 and 30240 of the Coastal Act.

D. 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.

As described in detail in the previous sections, the applicant is proposing to develop the subject site with a new single-family residence and other appurtenant structures. The site is considered a "hillside" development, as it involves steeply to moderately sloping terrain with soils that are susceptible to erosion. The site is located approximately 300 feet from Topanga Creek, a U.S. Geological Survey designated blue line stream.

The proposed development will result in an increase in impervious surface at the subject site, which in turn decreases the infiltrative function and capacity of existing permeable land on site. 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.

For design purposes, with case-by-case considerations, post-construction structural BMPs (or suites of BMPs) should be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs. The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th 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 Three (3)**, 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 measures 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 Two (2)** 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 on-site private sewage disposal system to serve the residence. The County of Los Angeles, Department of Health Services, 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.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

E. 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. To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which the proposed development is visible, such as beaches, parks, trails, and scenic highways. The Commission also examines the building site and the size of the proposed structure(s).

The approximately 0.66 acre project site is located in the Topanga Park area of unincorporated Los Angeles County. The proposed project will be visible from Old Topanga Canyon Road, which it fronts, a designated Scenic Highway in the 1986 Malibu/Santa Monica Mountains Land Use Plan. The surrounding lots fronting onto Old Topanga Canyon Boulevard are generally developed with single family residences. The hillside south of the project site is largely undeveloped, and contains large tracts of land owned by land trusts and public agencies.

The applicant proposes to construct a three story, 35 foot high, 1,320 sq. ft. single family residence with attached two-car garage, septic system, driveway, retaining walls, stairs, walkway, six foot high wooden fence, and approximately 488 cu. yds. of grading. The project also includes demolition and removal of footings, stairs, and stone retaining walls from a previous residence destroyed by fire, and removal of unpermitted retaining walls, structural supports, and a utility shed. The proposed residence is located adjacent to Old Topanga Canyon Road on a more gently sloping portion of the site. Given the steep topography of much of the subject site, construction of a building pad in an alternate location would likely result in more significant landform alteration.

The proposed development is visually compatible with surrounding development. The applicant has submitted photographs that demonstrate the eclectic character of the Topanga Park area, which includes residences of a variety of sizes and architectural styles, including some with modern, flat roofed designs such as is proposed for the

project site (**Exhibit 16**). In addition, the applicant has modified the design of the residence, adding diagonal elements that moderate the flat roofline (**Exhibits 11-13**).

However, because the proposed project is highly visible from a Scenic Highway, the Commission finds it necessary to impose design restrictions minimizing the visual impacts of the proposed project. The use of non-glare glass and colors compatible with the natural background, as well as the minimal use of outdoor night lighting, will help to ensure that the proposed project blends with its surroundings to the maximum extent feasible. Therefore, **Special Condition Twelve (12)** restricts the use of colors to a natural background palette and requires the use of non-glare glass on site. Furthermore, **Special Condition Nine (9)** restricts the use of outdoor night lighting to the minimum necessary for safety purposes.

The Commission notes that visual impacts can be further minimized by the implementation of a landscape plan that employs a native plant palette and vertical elements. The Commission also notes that visual impacts will be further mitigated by the implementation of erosion control measures, as in **Special Conditions Two (2), Three (3), Six (6), and Seven (7)**. Implementation of the requirements of these conditions will ensure that the adverse visual effects of obtrusive non-native landscaping, denuded slopes, and uncontrolled erosion are avoided.

In addition, to ensure that future development of the site is reviewed for potentially adverse effects on coastal visual resources, the Commission finds it necessary to impose **Special Condition Eight (8)**, which requires the applicants to obtain a coastal development permit for any future development of the site, including improvements that might otherwise be exempt from coastal permit requirements. Finally, **Special Condition Ten (10)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For all of the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

F. Response to Comments Received

The Commission has received numerous letters from neighbors and other Topanga residents who are opposed to the proposed project. These letters, as well as a petition in opposition to the project, are attached as Exhibit 20. The letters raise several issues that are addressed in turn below:

Impacts to Oak Trees 14, 15, and 16

The proposed project will be located within the driplines as well as the protected zones of Oak Trees #14, #15, and #16, which are located on the neighboring property to the east. The property owners, Joan and Michael Barry, have submitted a letter opposing

any construction within the protected zones of these trees. As noted in Section C. above, although the proposed project is located within an oak woodland ESHA, the applicant is entitled to a reasonable economic use of the property. No alternative location exists for the proposed residence that would lessen impacts to the oak woodland resources on site, and no significant reduction in the size of the proposed residence is possible under Los Angeles County guidelines. However, some modifications to the proposal would result in less impact to Oak Trees #14, #15, and #16. These modifications, including relocating the residence and rear patio four feet west of its proposed location, and using a raised design for the stairway on the east side of the residence, are required by **Special Condition Eleven (11)**. While these revisions still result in encroachment into the protected zones of these trees, they eliminate encroachment under their driplines and reduce the intensity of impacts within their protected zones.

Rosi Dagit, certified arborist, also commented on the proposal's impacts on Oak Trees #14, #15, and #16. She suggests, in her letter, that the Barrys be compensated should these trees die as a result of the encroachments. **Special Condition Four (4)** requires the applicants to mitigate for incremental adverse impacts by planting three oak trees for each of the trees whose protected zones are encroached upon. These trees will be planted either on the applicant's property or in a nearby location acceptable to the Executive Director. While these trees might not be planted on the same property as the affected trees, they will be located in close proximity and will provide compensatory habitat benefits. If harm occurs to Oak Trees #14, #15, and #16, the Barrys may also have access to private legal remedies.

Finally, the letters submitted by Ms. Dagit and the Barrys, as well as an additional letter submitted by Suzanne and Philip Schneider, state that a branch was removed from Oak Tree #16. The Commission has, in past actions, required applicants to mitigate for removal of oak tree limbs by planting three replacement oak trees on the site or a nearby property. **Special Condition Four (4)** requires to the applicant to mitigate in this manner for incremental adverse impacts to Oak Tree #16.

Site Drainage

Several commenters expressed concern about drainage on the property. Suzanne and Philip Schneider, for instance, note that "water flows down the hillside like a waterfall" during heavy rains. In addition, Jerry Maybrook, who owns the property immediately west of the subject site states that the proposed fence, as well as temporary sandbags already located along the property line, "diverts heavy rain runoff on the natural slope of the hill directly into the back of my house."

As discussed in Section D., **Special Condition Three (3)** requires the applicant to submit a drainage and polluted runoff control plan, stamped by the consulting geologists. The plan must demonstrate that adequate drainage facilities to control flows up to and including the 85th percentile runoff event shall be constructed, and that all drainage is being transported off-site in a non-erosive manner. This plan will be reviewed by staff, and must be approved by the Executive Director prior to permit

issuance. This plan will also be available for public review and comment prior to its approval.

In addition, **Special Condition Eleven (11)** requires revised plans that eliminate the proposed wooden fence located along the western property line.

Compatibility with Neighborhood Character

Several commenters also objected to the design of the residence as inconsistent with the character of the neighborhood. Suzanne and Philip Schneider describe the character as "rustic/country" and note that most of the homes are one-story, that most are set back more than 60 feet from the road, and that most are shielded by vegetation and/or "rustic fences." The proposed residence is three stories (35 feet) high and utilizes a modern design.

While many of the surrounding homes are small one-story structures, several homes shown in the photos provided are large two story homes. Although only one single story home in the immediate neighborhood has a modern design such as the proposed residence, the surrounding homes represent a variety of architectural styles and include wood ramblers, stucco Spanish style houses, bungalows, and two story contemporary homes. Some of the houses have large setbacks, but some are located directly adjacent to the road.

Site constraints must also be considered when evaluating the design of the proposed residence. The site is a steep lot that contains an oak woodland ESHA. Expanding the setback of the residence would increase impacts to the oak woodland. Similarly, reducing the height of the proposed residence would result in a larger footprint, also increasing impacts to the oak woodland. The proposed residence contains 836 sq. ft. of habitable space, divided over two stories, as well as a 400 sq. ft. garage, resulting in a three story structure with a footprint of approximately 436 sq. ft. Elimination of the garage or one of the two habitable floors, without expanding the footprint of the residence, would result in a non-conforming structure under Los Angeles County guidelines. Given these constraints on the development of the site, visual impacts have been minimized to the extent possible.

Unpermitted Development, Removal of Vegetation and Related Disturbance

The letter submitted by Suzanne and Philip Schneider asserts that the applicant has illegally removed vegetation, caused erosion and damage to the hillside by allowing drill rigs to drive up the slopes, and constructed retaining walls, a stairway system, utility shed, and fencing without a permit. The applicant is proposing to remove the unpermitted development as a part of this application. **Special Condition Thirteen (13)** requires the applicant to remove the unpermitted development within 90 days of the issuance of the permit. **Special Condition Two (2)** requires the applicant to vegetate all graded and disturbed areas, including those areas disturbed by removal of unpermitted development.

G. Violation

Unpermitted development has taken place prior to submission of this permit application including placement of a utility shed, construction of ten wooden retaining walls, removal of an oak tree, partial construction of an approximately 175 foot long stairway, and construction of an approximately 20 foot length of a proposed six foot high wooden fence. The applicant requests after-the-fact approval for removal of the oak tree and construction of the fence section, and proposes to remove the ten retaining walls, stairway construction, and utility shed (as shown on **Exhibit 14**). The applicant also requests approval to construct a new three story, 35 ft. high, 1,320 sq. ft. single-family residence with attached two-car garage, septic system, retaining walls, stairs, walkway driveway, approximately 200 foot long, six foot high wooden fence, approximately 488 cu. yds. of grading, and demolition and removal of footings, stairs, and stone retaining walls from a previous residence destroyed by fire. The subject permit application addresses the unpermitted development, as well as the new development proposed in the subject application. In order to ensure that the matter of unpermitted development is resolved in a timely manner, **Special Condition Fifteen (15)** 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, or within such additional time as the Executive Director may grant for good cause. In addition, in order to ensure implementation of the applicant's proposal, **Special Condition Fourteen (14)** requires the applicant to allow Commission staff to inspect the site during construction, with 24-hour advance notice, and **Special Condition Thirteen (13)** requires the applicant to remove the unpermitted retaining walls, stairway, and utility shed (as shown in **Exhibit 14**) within 90 days of the issuance of the permit. The Executive Director may grant additional time 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.

H. Local Coastal Program

Section 30604 of the Coastal Act states:

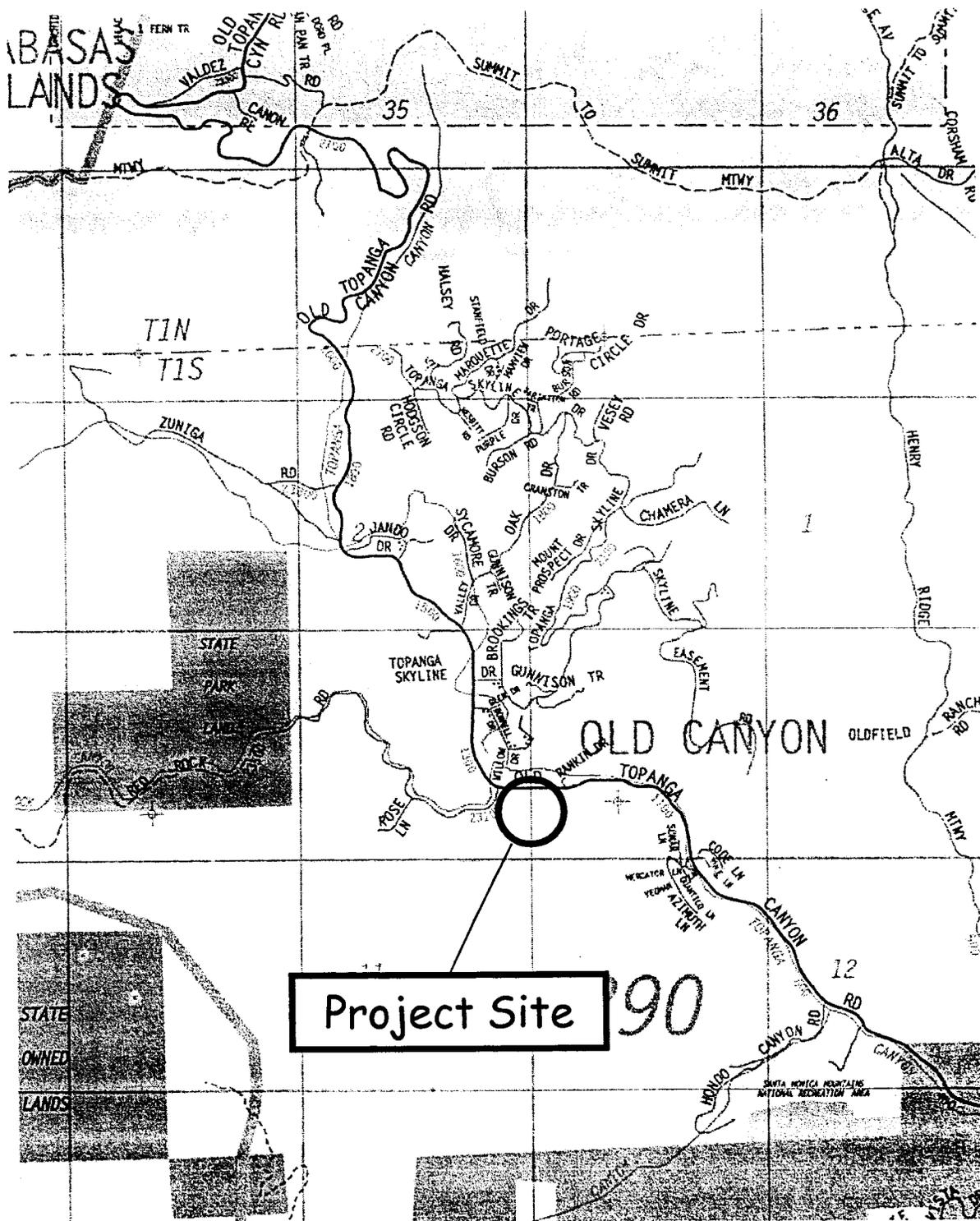
- A) *Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal 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 will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicants. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

I. California Environmental Quality Act

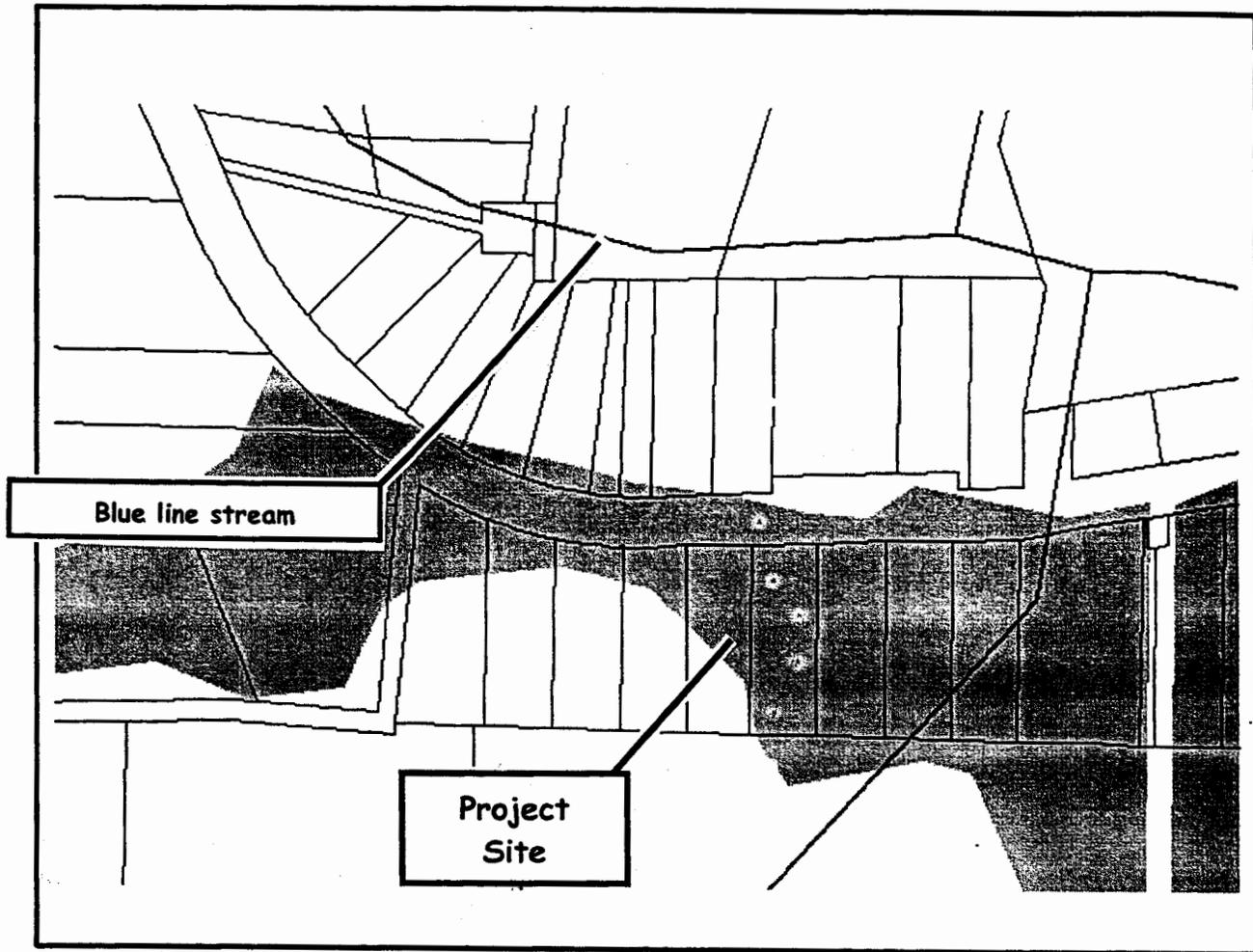
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California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

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



Project Site 90

EXHIBIT NO. 1
APPLICATION NO.
4-01-183
VICINITY MAP



-  StrmsDLG
-  trailslacoplan
-  trailotds
-  laprcis
- esha (ESHA)**
-  Coldcreek management area
-  dudleya cymosa
-  dune habitat
-  inland
-  la jolla valley preserve
-  locally disturbed resources
-  oak woodlands and savannahs
-  perigrine falcon
-  sea bluff succulent plants
-  significant watersheds residential
-  stream corridor
-  wildlife migration corridor

EXHIBIT NO. 2
APPLICATION NO.
4-01-183
COASTAL RESOURCES

AS SHOWN ON THE
PLANS AND SECTIONS
HEREIN AND THE RECORDS
OF THE COUNTY OF LOS ANGELES

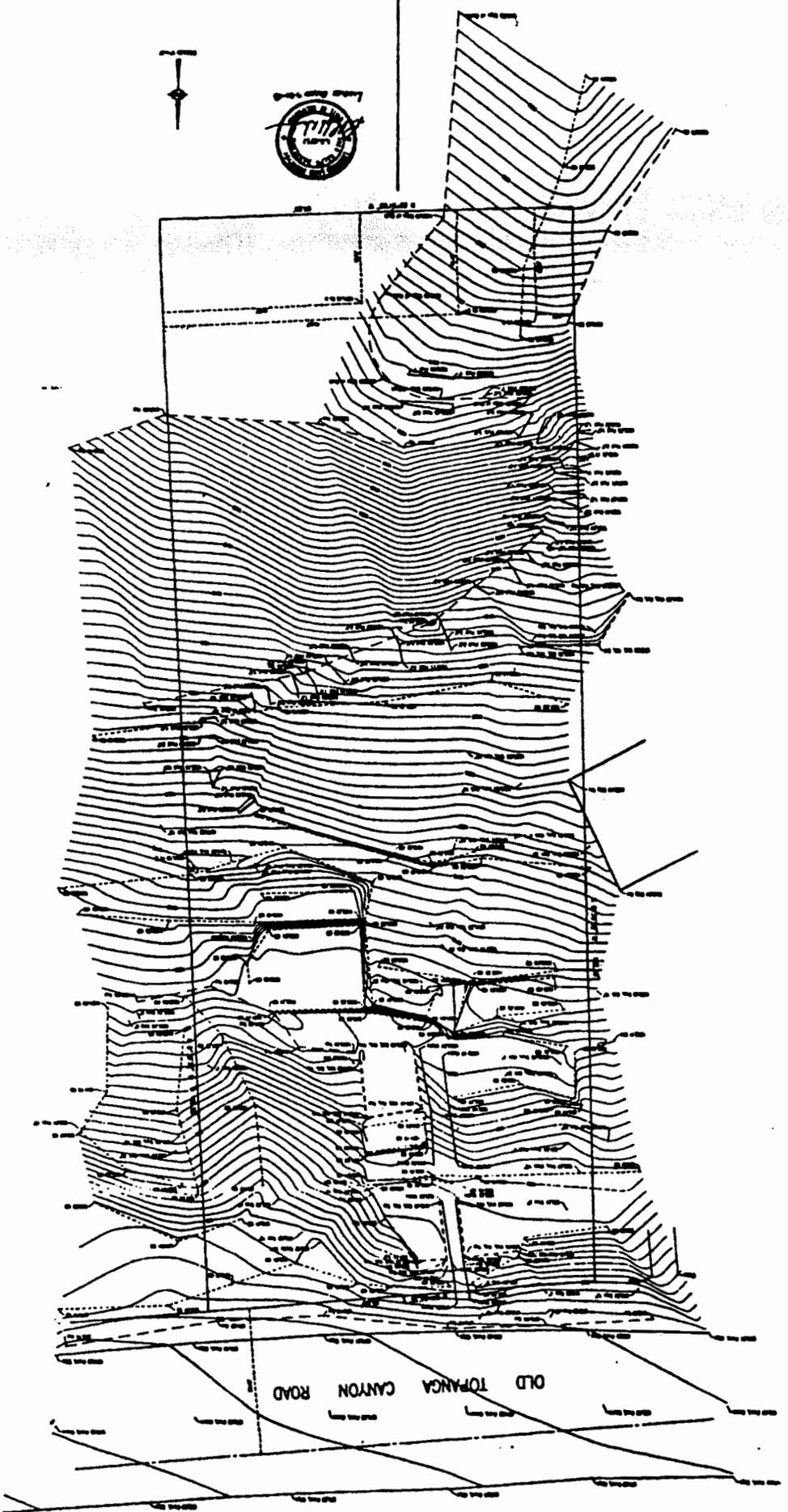
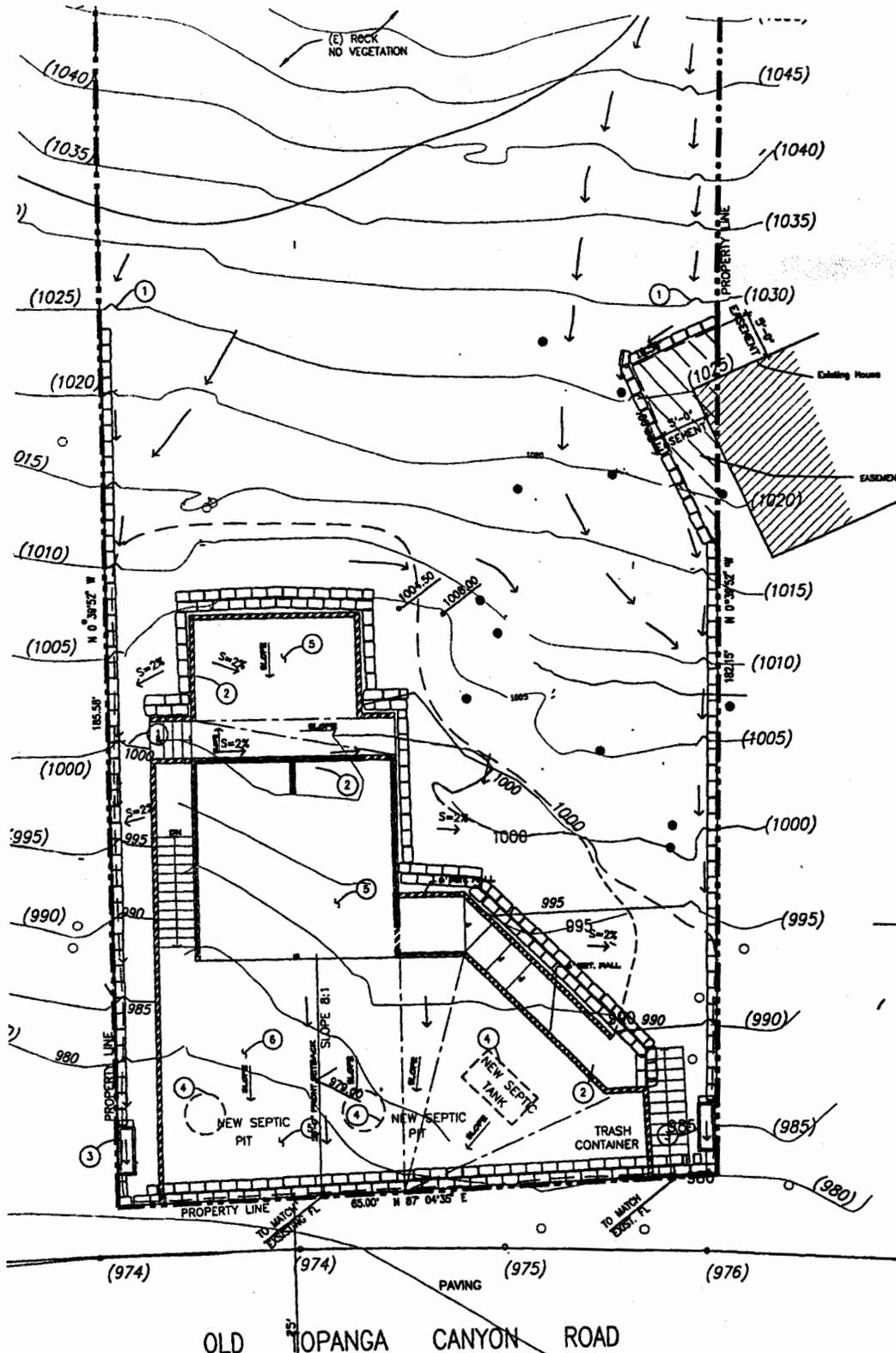


EXHIBIT NO. 3
APPLICATION NO.
4-01-183
SITE SURVEY

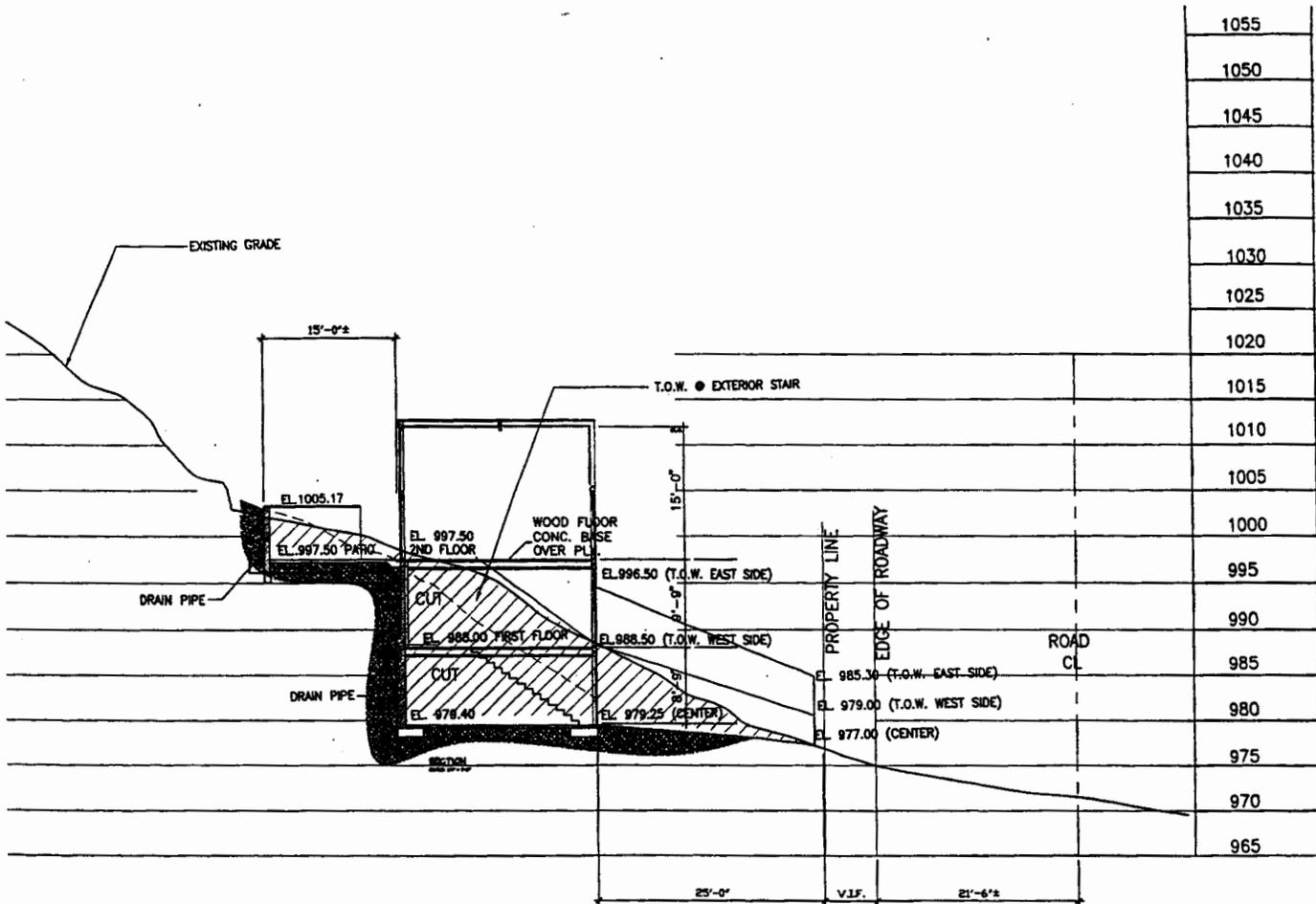


- LEGEND
- OAK TREE
 - TREE OTHER THAN OAK
 - ① SEE SHEET C-1 CONSTRUCTION NOTES
 - Ⓐ SEE SHEET C-3 FOR SECTIONS
 - LIMITS OF GRADING, CONSTRUCTION ACTIVITIES

SION CONTROL PLAN

1" = 10'-0"

EXHIBIT NO. 6
APPLICATION NO.
4-01-183
EROSION CONTROL PLAN



1 SECTION A-A
 SCALE: HOR. 1" = 10'-0"
 VER. 1" = 10'-0"

EXHIBIT NO. 7
APPLICATION NO.
4-01-183
GRADING SECTION

1. WALL COVER TO CEILING SHALL BE MC
2. THE BUILDING SHALL BE MORE THAN 1.6 GAL
3. ALL SHOWERS OR A THERM
4. WATER HEATERS TWO PLACES OF THE TANK CONTROLS.
5. ALL EXTERIOR AND SHALL BE

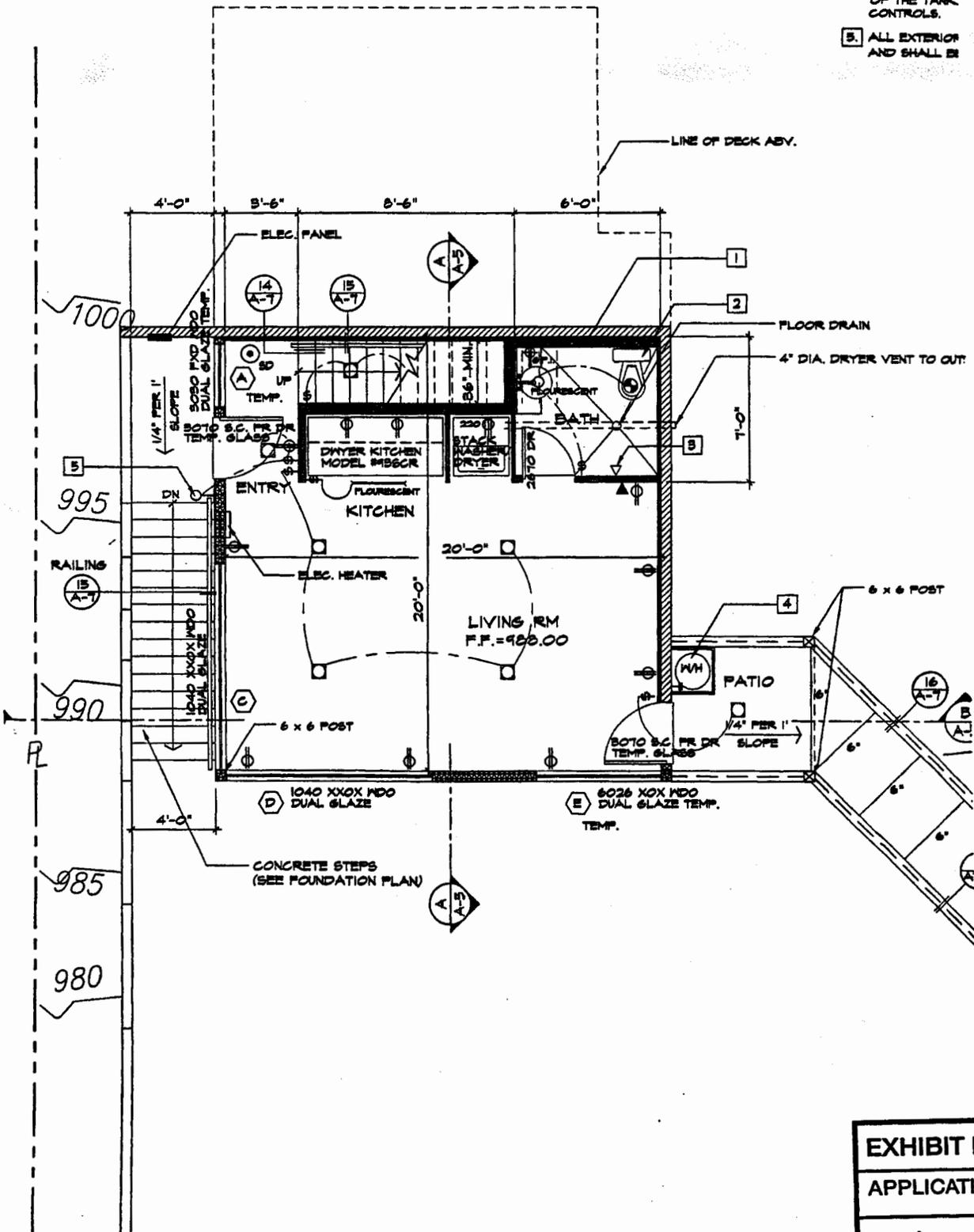


EXHIBIT NO. 8
APPLICATION NO.
4-01-183
FIRST FLOOR PLAN

- GEN
 1. MA TO BH
 2. TH TH
 3. AL OF
 4. AL LK

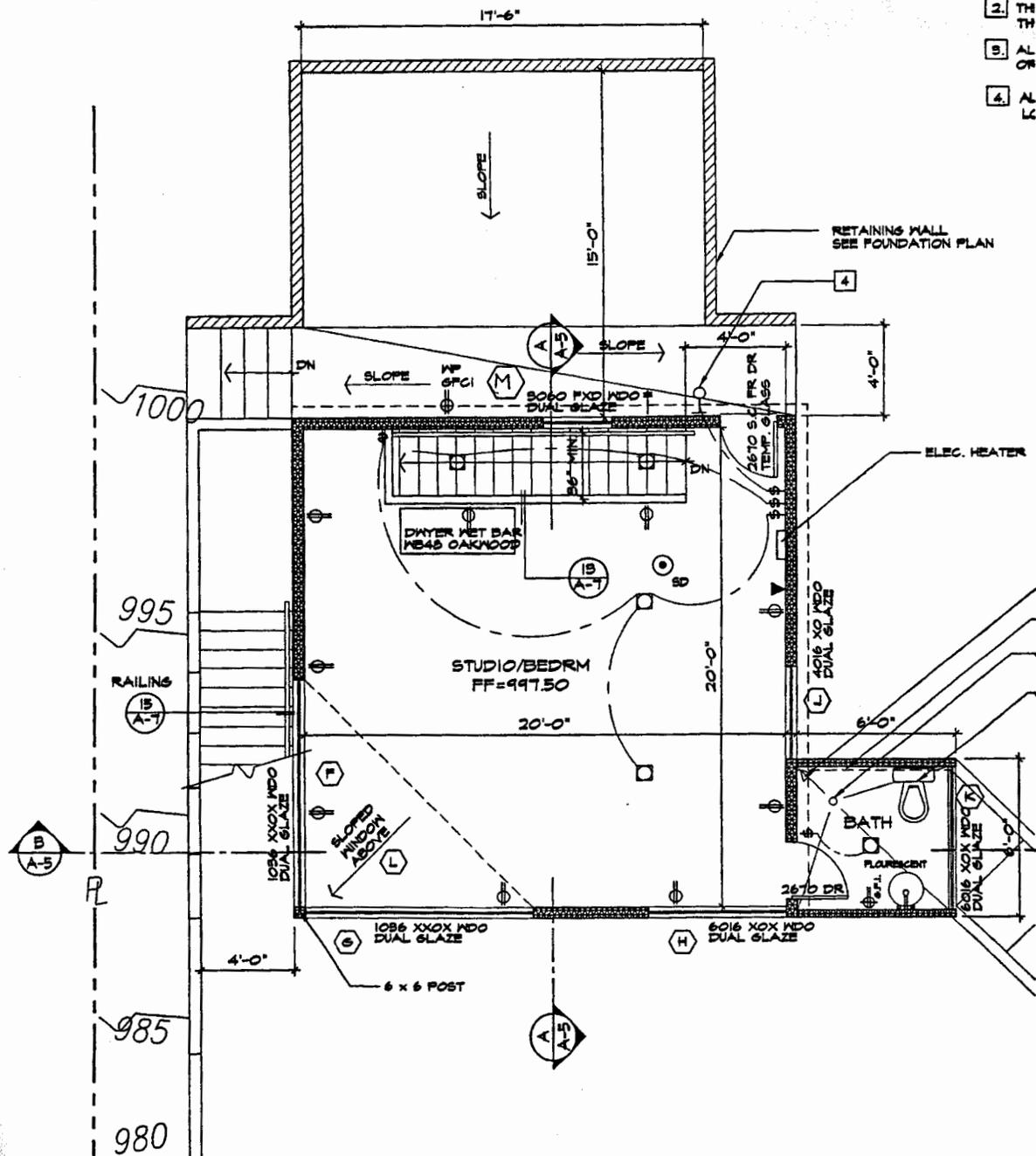


EXHIBIT NO. 9
APPLICATION NO.
4-01-183
SECOND FLOOR PLAN

1000

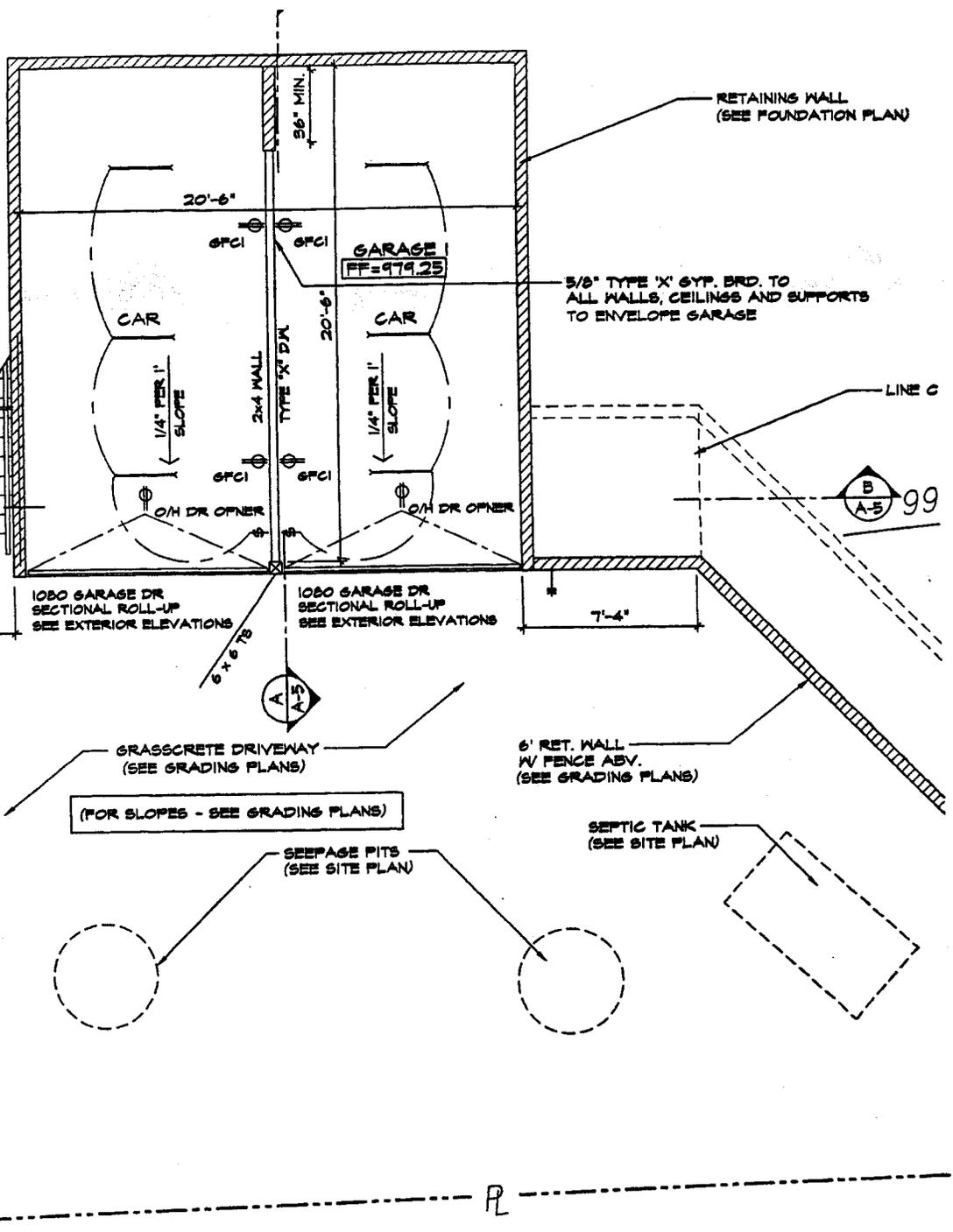
995

990

985

980

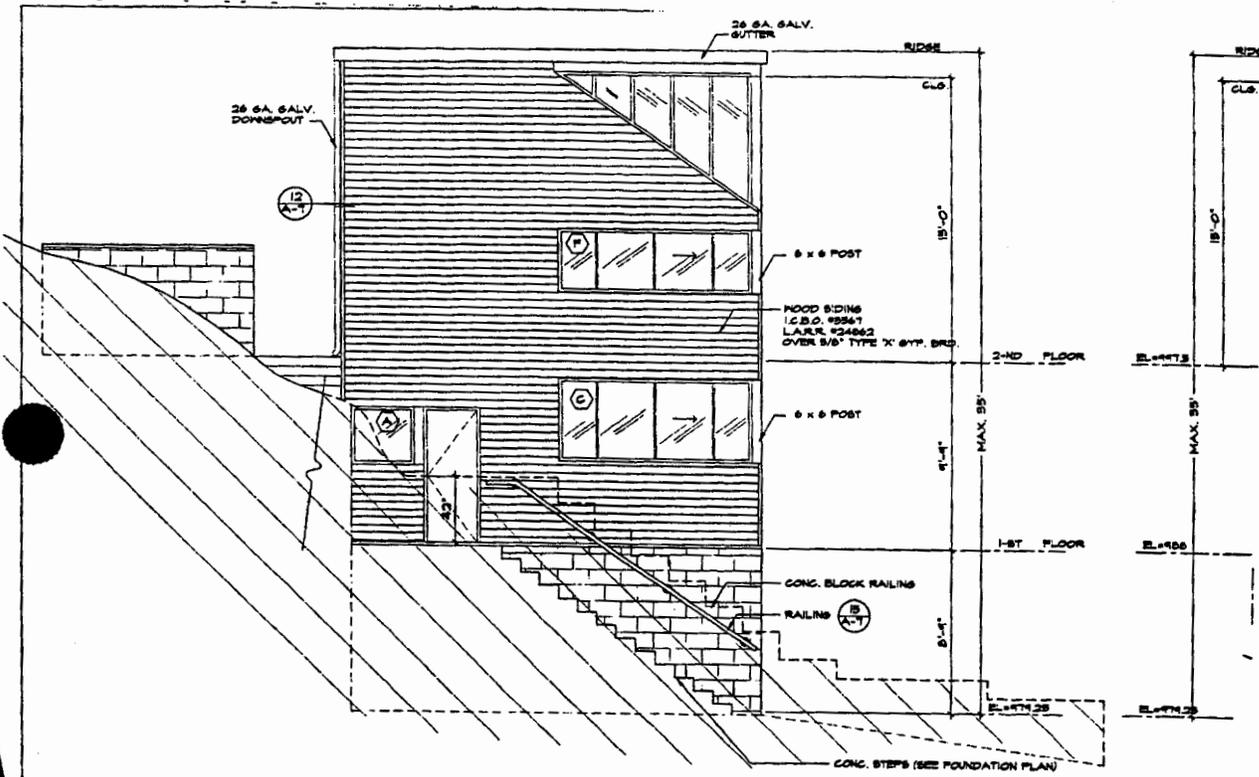
975



4)

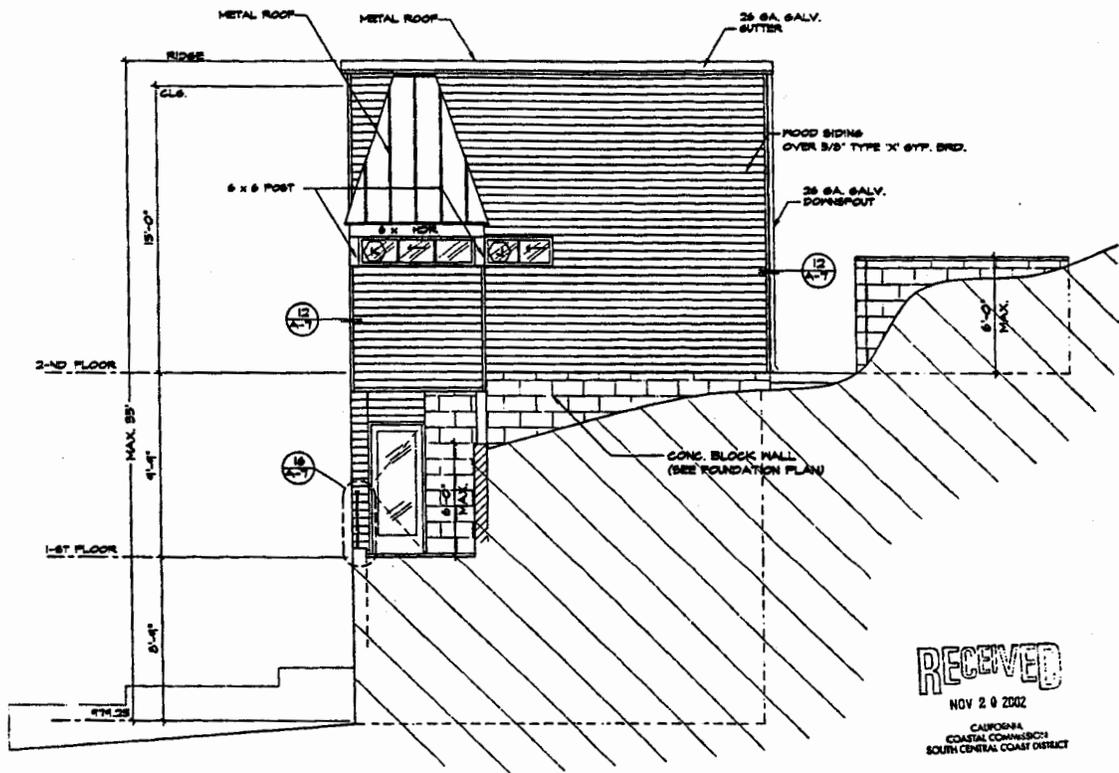
OLD TOPANGA CANYON

EXHIBIT NO. 10
APPLICATION NO.
4-01-183
GARAGE FLOOR PLAN



LEFT (EAST) ELEVATION
SCALE 1/4" = 1'-0"

EXHIBIT NO. 11
APPLICATION NO.
4-01-183
EAST ELEVATION



RIGHT (WEST) ELEVATION
SCALE 1/4" = 1'-0"

RECEIVED

NOV 20 2002

CAIROBNA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

COPYRIGHT © 2001 ALFRED H. KEMPER, ARCHITECT

PROJECT: CUSTOM RESIDENCE
SHEET TITLE: EXTERIOR
Date: _____
Scale: _____
Drawn: _____
Sheet: _____

EXHIBIT NO. 12
APPLICATION NO.
4-01-183
WEST ELEVATION

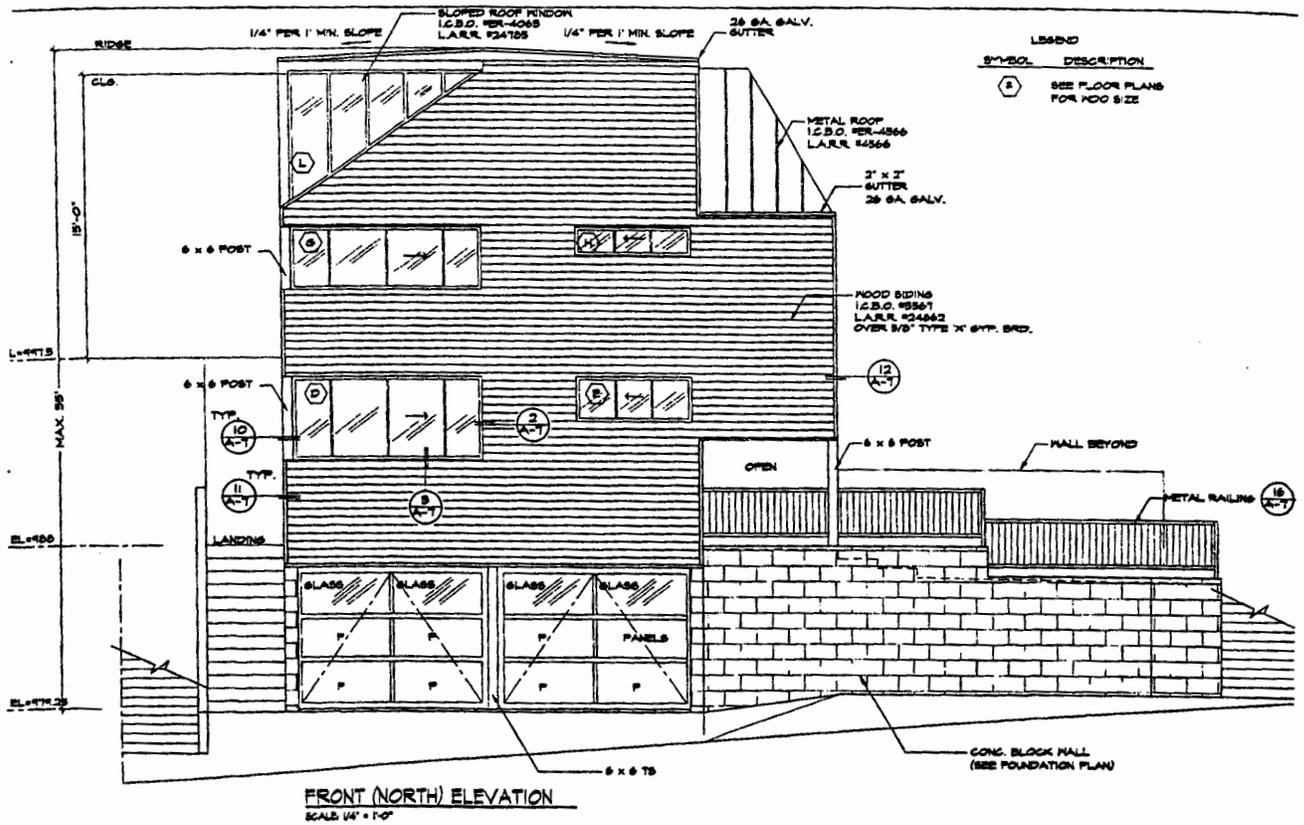
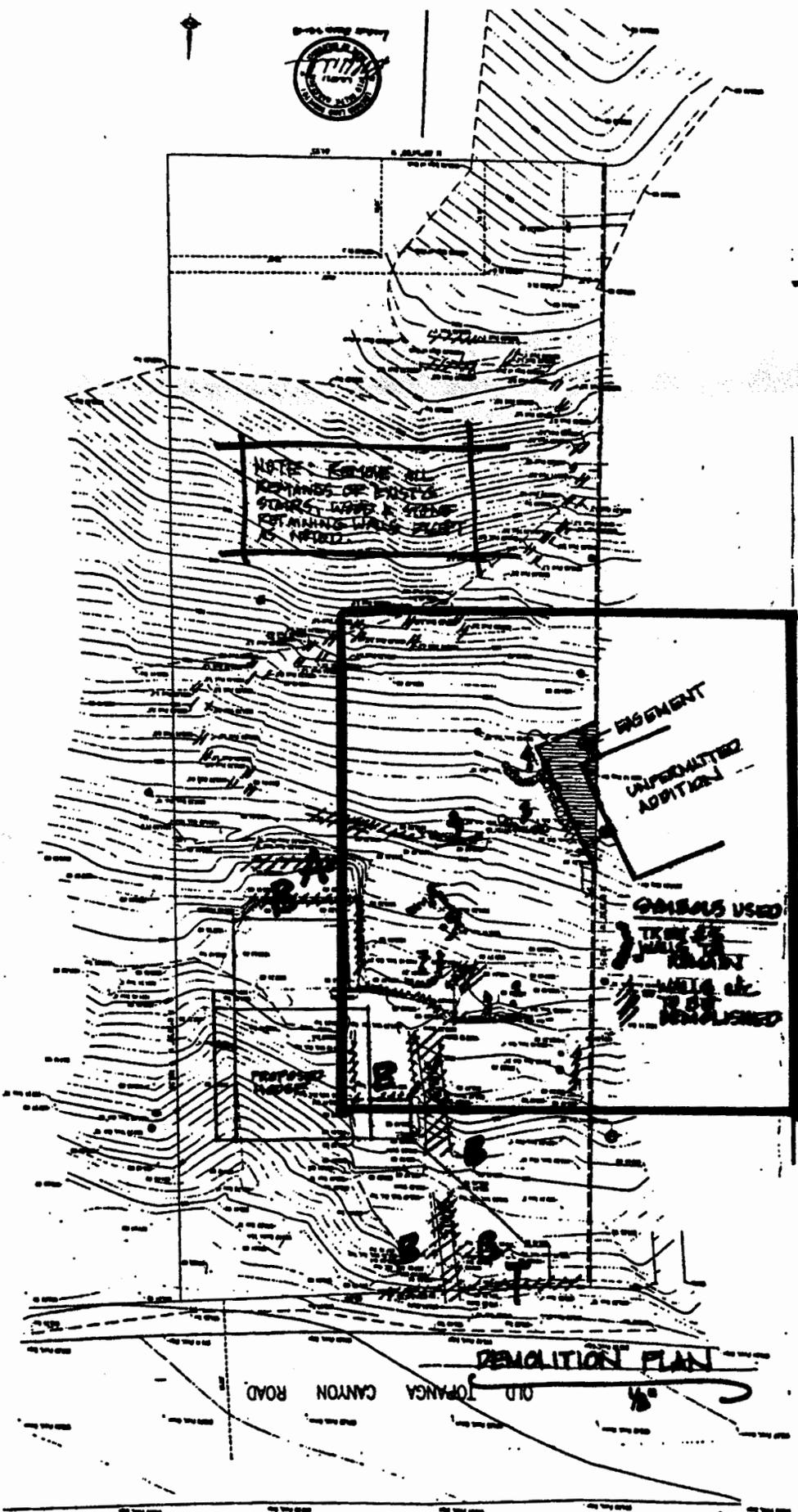


EXHIBIT NO. 13
APPLICATION NO.
4-01-183
NORTH (FRONT) ELEV.



NOTE: REMOVE ALL
REMAINS OF EXISTING
STREET LIGHTS & SIGNAGE
CONTAINING LEAD PAINT
& ASPHALT

SEGMENT
UNPERMITTED
ADDITION

CONCRETE USED
IN
CONSTRUCTION
OF
REINFORCED
CONCRETE

SEE DETAIL
ON
FOLLOWING
PAGE

RECEIVED

DEC 16 2002

CALIFORNIA
COASTAL COMMISSION
OUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 14
APPLICATION NO.
4-01-183
DEMOLITION PLAN (2 PP.)

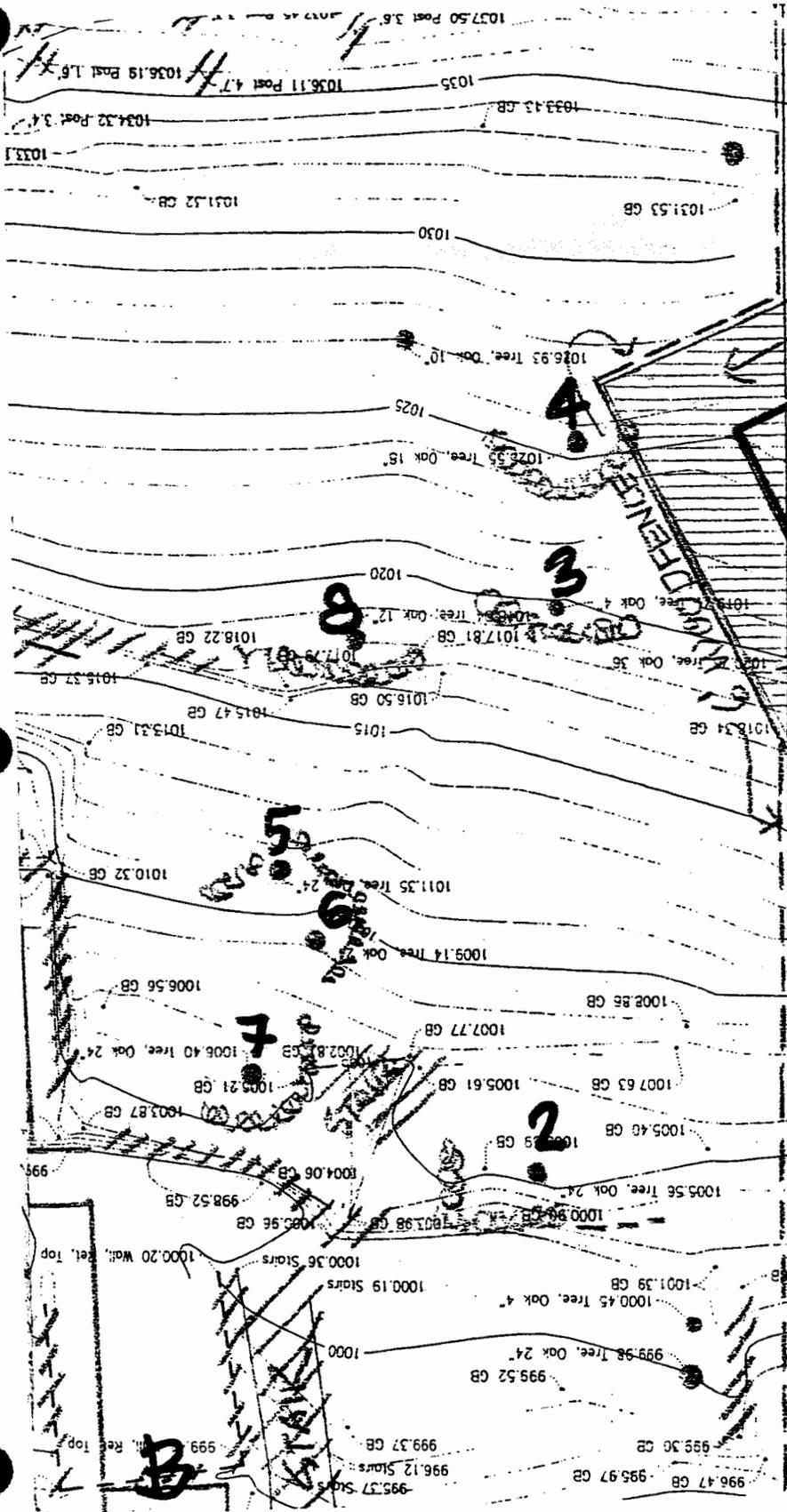
EASEMENT

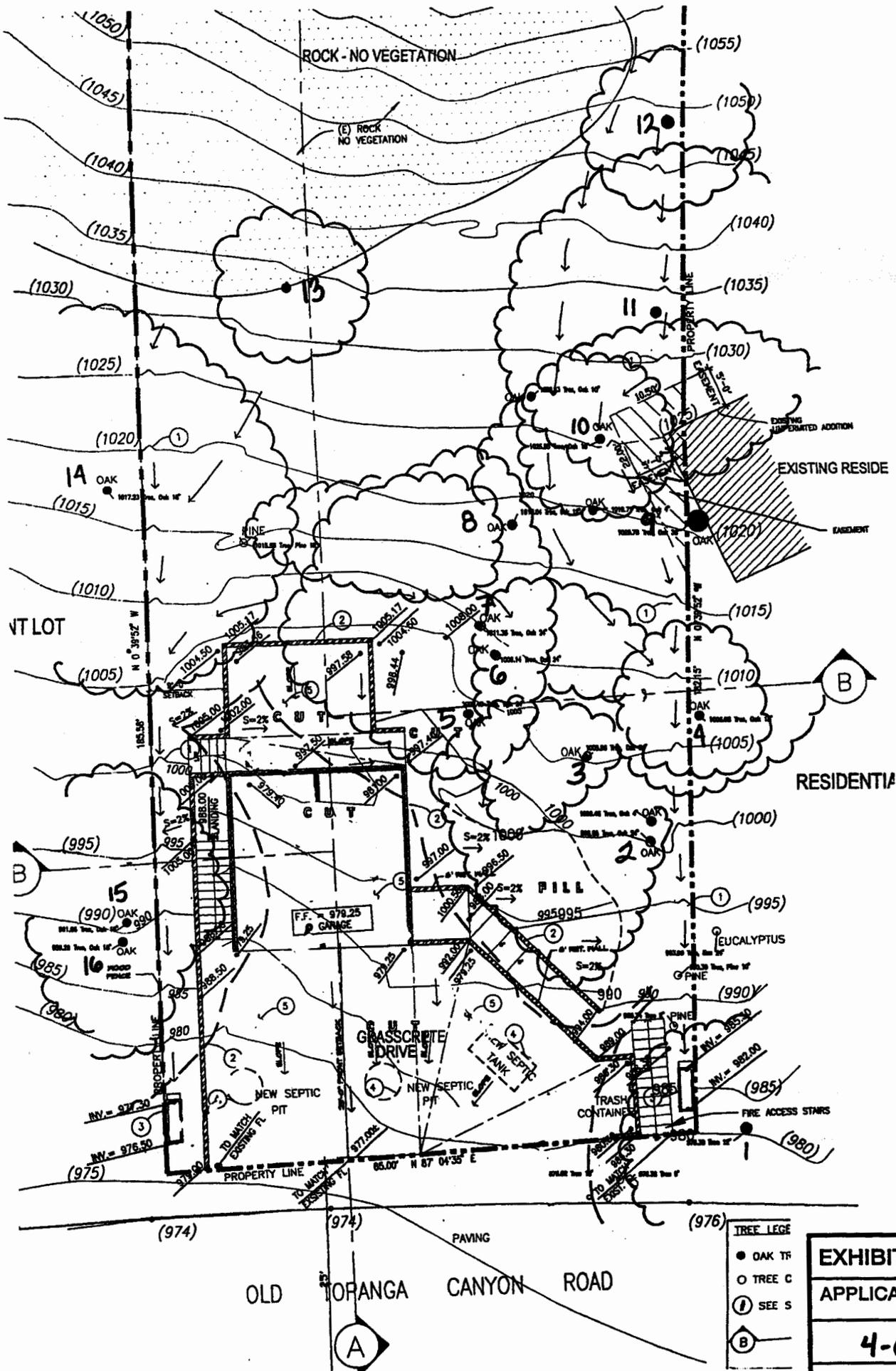
UNPERMITTED ADDITION

SYMBOLS USED

TREE #S
WALLS TO
REMAIN

WALLS etc
TO BE
DEMOLISHED





- TREE LEG**
- OAK TR
 - TREE C
 - ① SEE S
 - ⊙

EXHIBIT NO. 15

APPLICATION NO.

4-01-183

OAK TREE PLAN



RECEIVED

DEC 13 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

December 12, 2002

Via Hand Delivery and Facsimile

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

ATTN: Lillian Ford

RE: Coastal Development Permit application number 4-01-183, 1231 Old Topanga Canyon Road (Kemper)

Dear Ms. Ford:

This letter serves as our response to the questions raised by several Commissioners when the subject permit application was heard at the November 5, 2002 Coastal Commission meeting in San Diego. Although Coastal Staff had recommended approval of the proposed project, subject to special conditions, a few Coastal Commissioners raised concerns over the enforcement of the special conditions, as well as the location and design of the proposed single-family residence. We respond to each of these concerns below.

Concern #1: Enforcement of the Special Conditions

Several Commissioners raised concerns over issues, such as erosion control and drainage. Although Staff reminded the Commissioners that the Special Conditions address these issues, Commissioner Burke and Alternate Commissioner Ruddock expressed their concerns over the effectiveness of the Special Conditions as measures to ensure the project is ultimately completely in compliance with the Coastal Act. Section 30607 of the Coastal Act specifically provides for "reasonable terms and conditions" to be attached to permits to ensure that development will be in accordance with the Coastal Act. Furthermore, Chapter 9 of the Coastal Act provides for enforcement action should the conditions not be implemented.

The approval of permit applications subject to special conditions is a long-standing practice of the Coastal Commission. As Staff correctly pointed out to the Commissioners at the hearing, the Coastal Commission's enforcement division

EXHIBIT NO. 16
APPLICATION NO.
4-01-183
APPLICANT RESPONSE (15 pp.)

responsible for monitoring compliance. This is all in addition to Special Condition 12 that requires the applicants to satisfy all requirements specified in Special Conditions 1-11 within 60 days of Commission action, and that failure to comply may result in the institution of enforcement action. We contend that if the Commission has concerns over the effectiveness of the practice of imposing and enforcing Special Conditions, this is a matter to be resolved by the Coastal Commission, and perhaps the State Legislature. Commissioners should not and cannot deny approval based on an assumption that the applicant will not comply with the special conditions before he has had the *opportunity* to comply.

Concern #2: Is the proposed SFR located in the optimal location on the subject parcel?

Commissioner Kruer inquired as to whether the proposed location of the single-family residence is the best one. Given the topography of the subject parcel, as confirmed by geology and soils engineering tests by P.A. & Associates, Inc., the only feasible option for the residence is the currently proposed location. At the November 5th Commission hearing, Coastal Staff concurred, stating that in their opinion the currently proposed location "is the only location where you can have a residence" and that "no alternative location is available."

Concern #3: Is the proposed design of the SFR consistent with the community character?

Commissioner Kruer also expressed concerns over the overall design of the proposed SFR, going so far as to call the design of the architect-applicant "pathetic." We take grave issue with Commissioner Kruer's expressing his subjective opinion—based solely on his personal taste—of applicant's (a published, award-winning architect of over forty years) design for his own home. Recognizing, however, that the Coastal Act does provide a community character standard, we address the Commissioner's concern about the proposed design *as it relates* to the surrounding community of the project.

Accompanying this letter are photographs taken of neighboring SFRs to provide you with additional evidence that the proposed single-family residence complies with Section 30251 of the California Coastal Act, which provides 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. (Emphasis added.)

As the attached photographs illustrate, there is not a homogeneous, nor predominant design for the surrounding community. Houses range from small one-story structures, to

large, two- and three-story structures. The styles also range from ranch to cabin to modern styles. Roofs range from pitched to barn to flat styles. Thus, applicant's proposed design is visually compatible with the diverse character of surrounding areas.

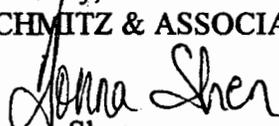
Commissioner Krueer specifically expressed a concern over the "flat roof" design the applicant is proposing. As the attached photographs illustrate, several homes¹ in the surrounding community also have flat roofs. Furthermore, as several of the attached photographs demonstrate, given the canopy of the many trees and the fact that the homes all are situated on hillsides at higher elevations than Old Topanga Canyon Road, the roofs of many homes are barely visible. The same holds true for the proposed site.

Commissioner Krueer also critiqued the boxier-style of applicant's proposed home. This more contemporary style can be seen in various homes located on Topanga Canyon Blvd (within 2 miles from the project site). Furthermore, given the topography, vegetation on site, and applicable setback standards, applicant chose the particular design to fit into and maximize space in the limited feasible developable area on his property.

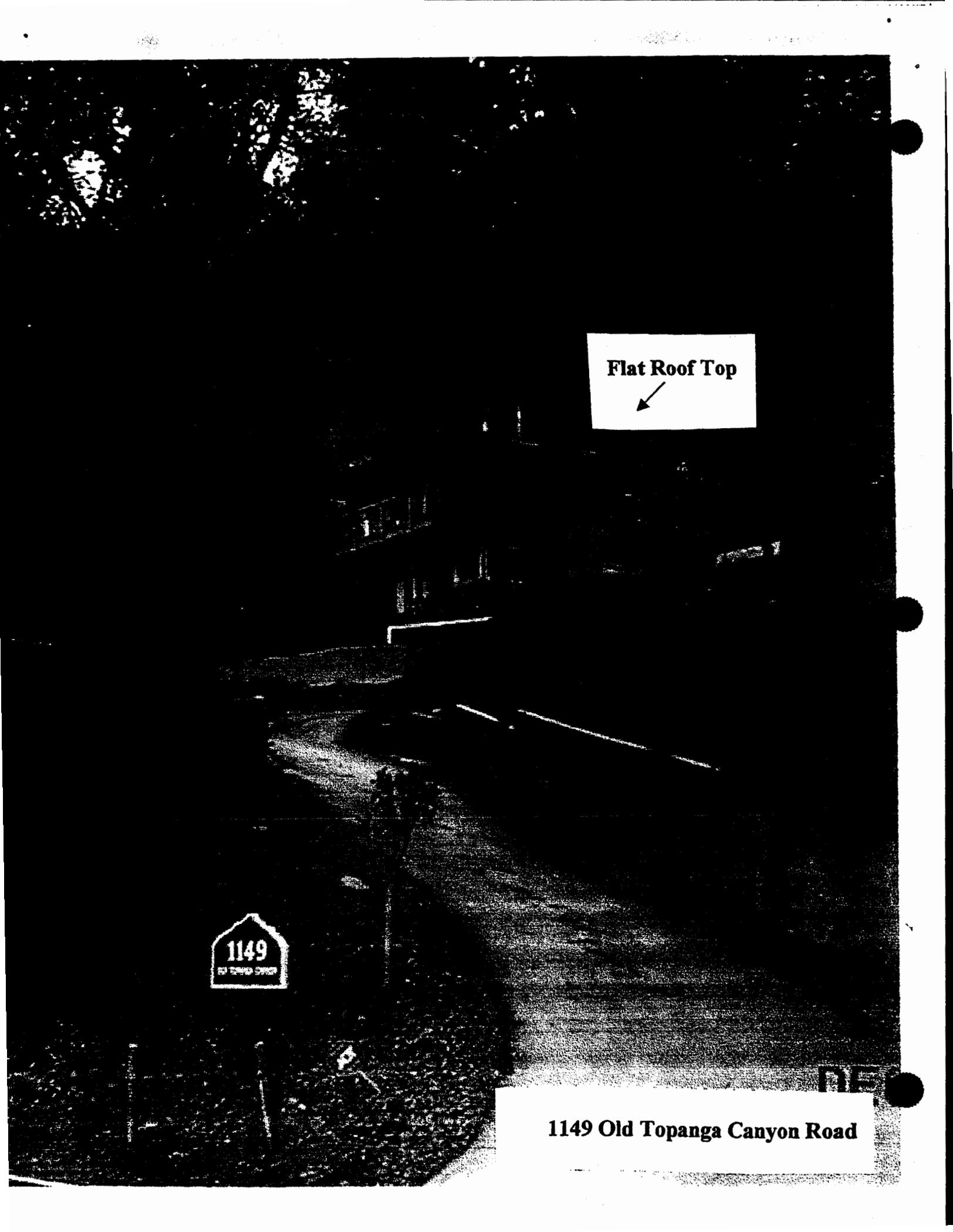
We maintain that in evaluating the design of the proposed SFR, the only legal standard available to the Coastal Commission to evaluate architectural style is the community character standard provided in the above-quoted Section 30251 of the Coastal Act. Whether the design style suits the Commission's personal tastes is irrelevant and is not a permissible consideration. The attached photographs clearly demonstrate that the proposed single-family residence design (including roof style) is visually compatible with the diverse character of the surrounding area.

Thank you for your attention and assistance in this matter. Please do not hesitate to contact us should you have any questions or comments.

Sincerely,
SCHMITZ & ASSOCIATES


Donna Shen
Senior Planner

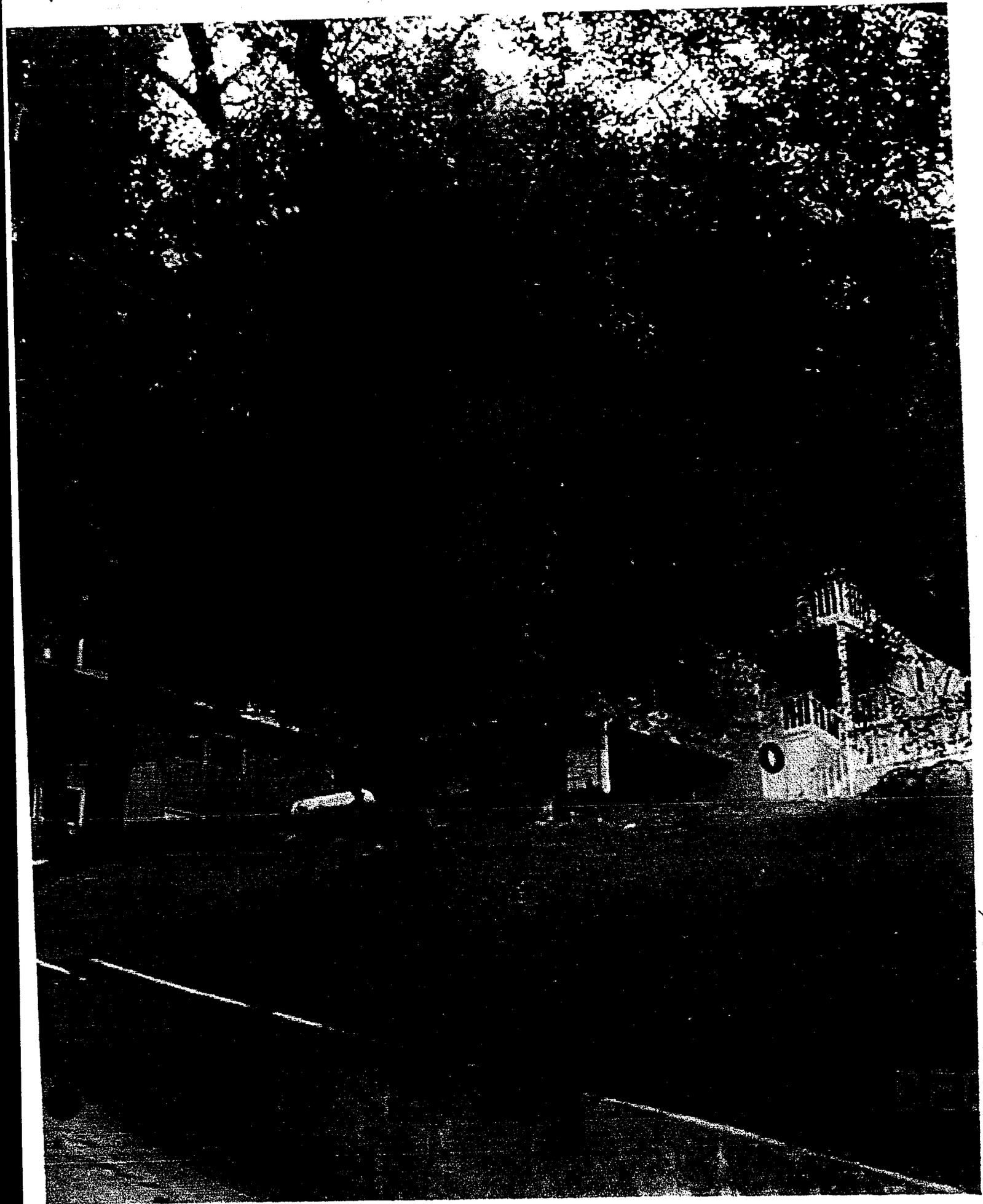
¹ The homes at 1281 and 1149 Old Topanga Canyon Road—within 500 feet—are the closest with the flat roof style.

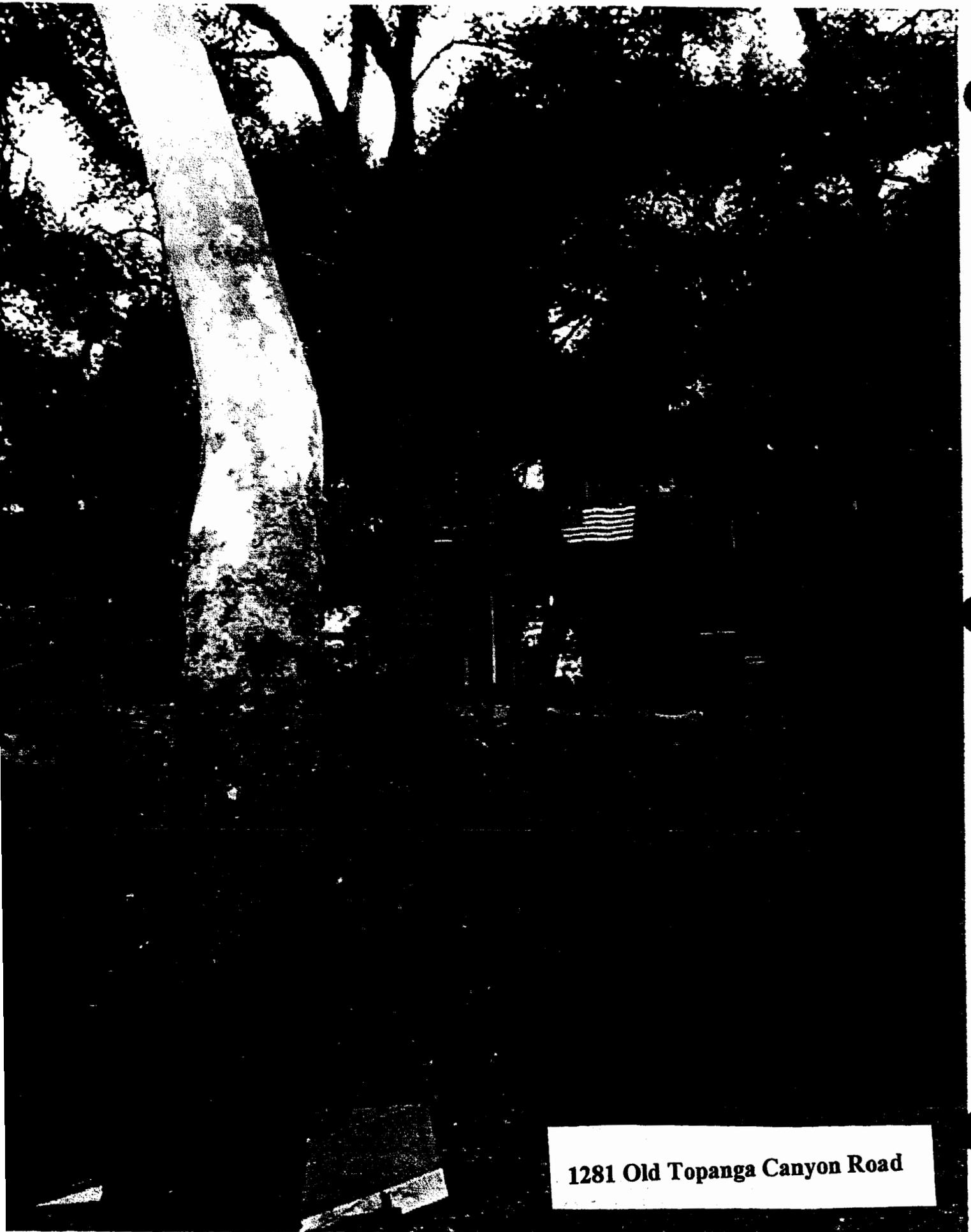


Flat Roof Top

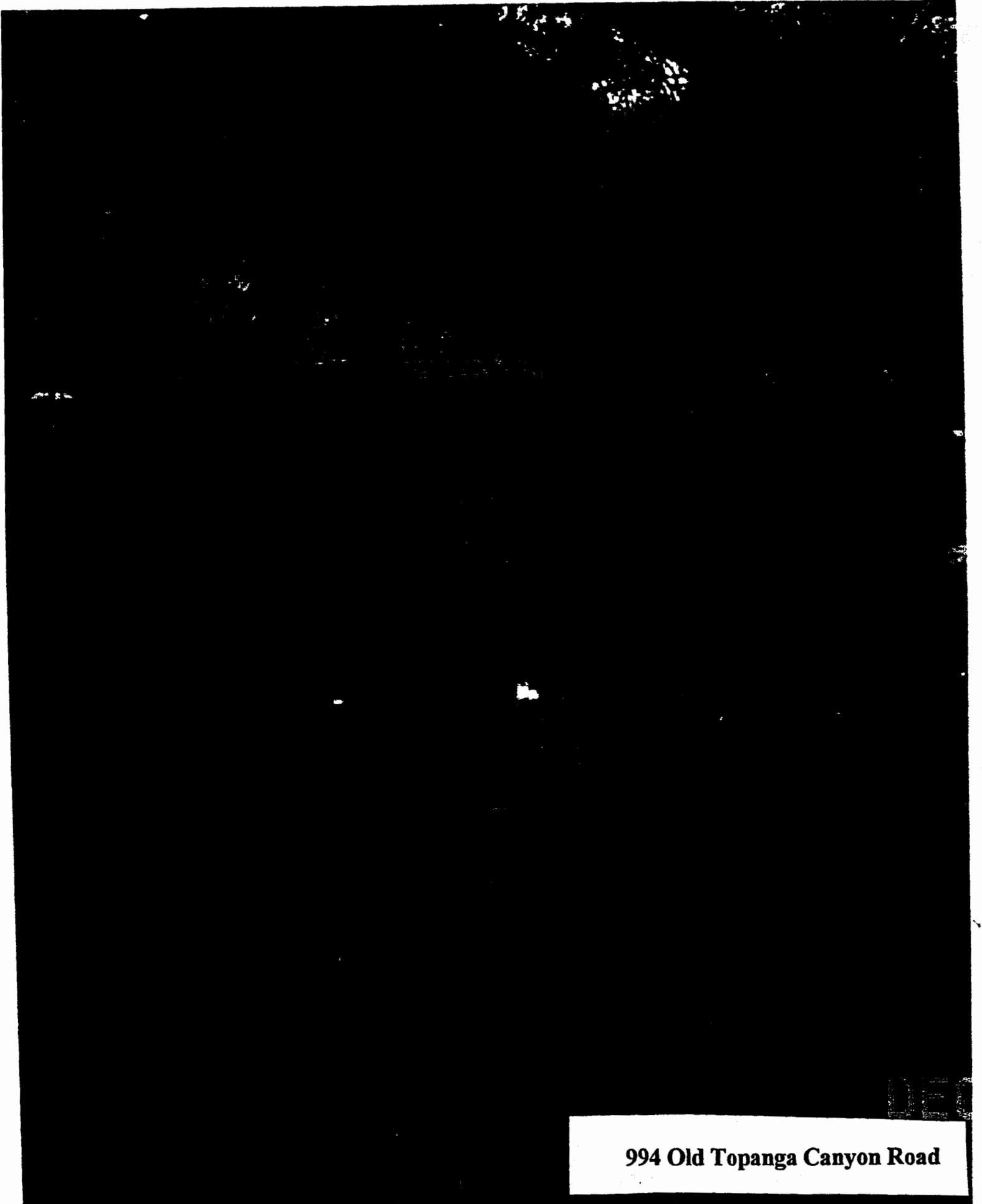
1149
OLD TOPANGA CANYON

1149 Old Topanga Canyon Road

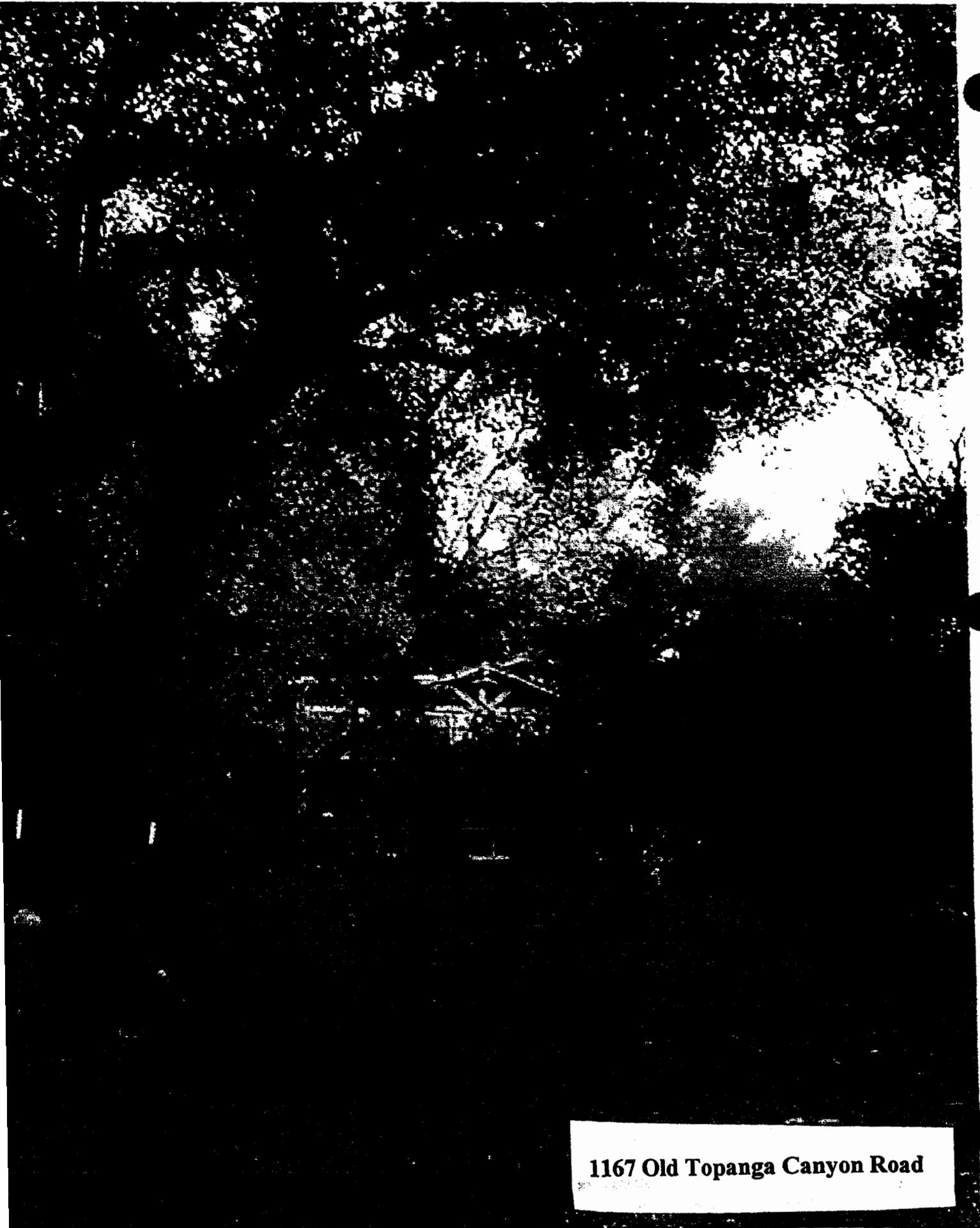




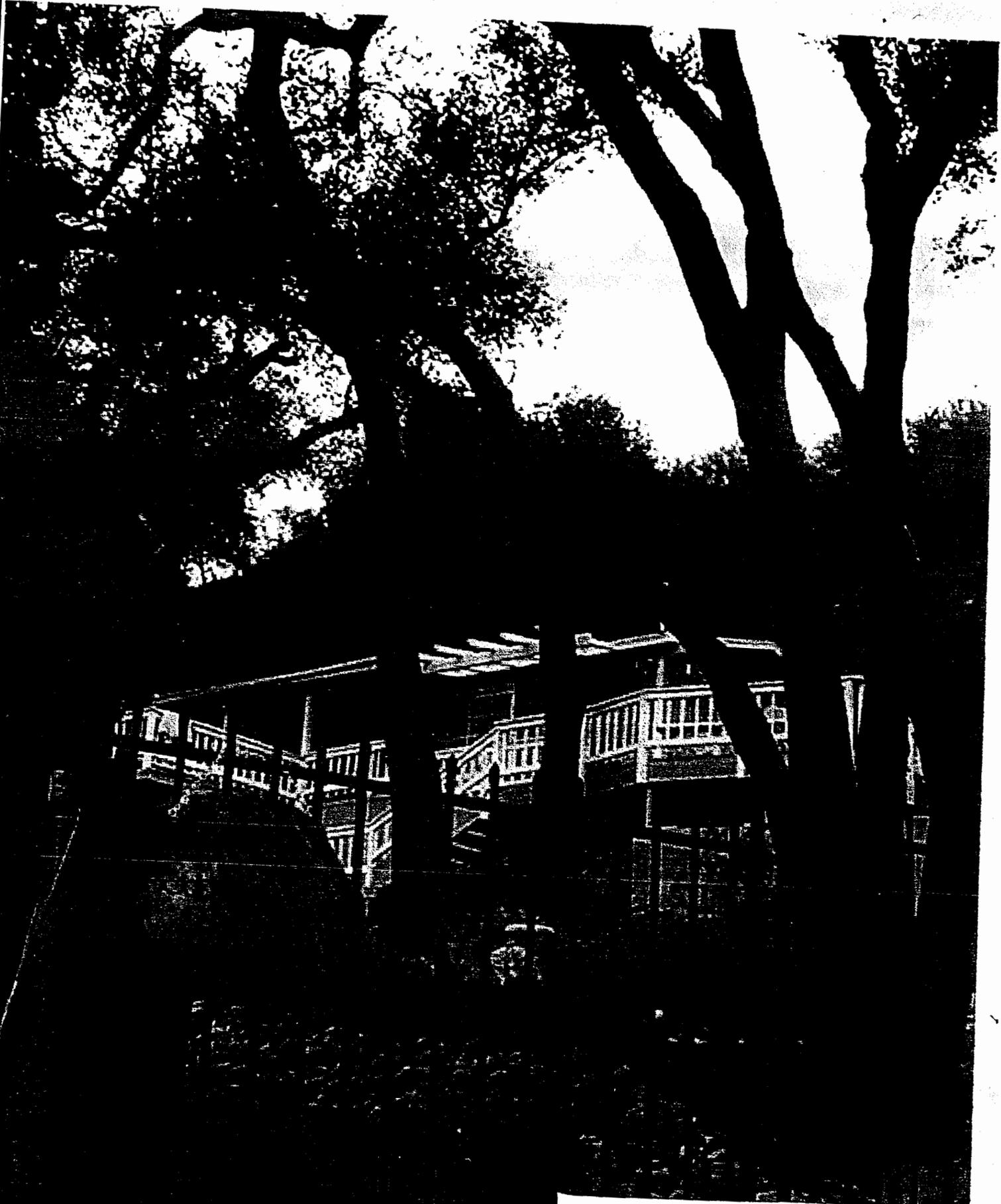
1281 Old Topanga Canyon Road



994 Old Topanga Canyon Road



1167 Old Topanga Canyon Road



1243 Old Topanga Canyon Road

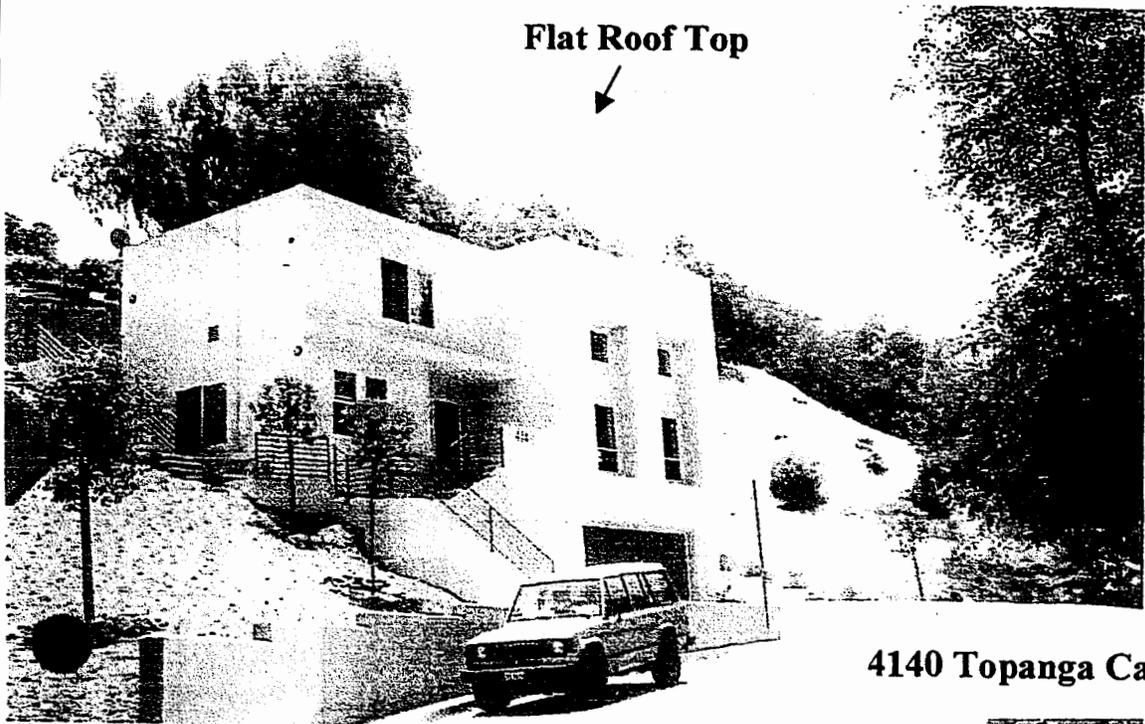
Topanga Canyon Blvd. (within 2 miles from project site)

Flat Roof Top
↓

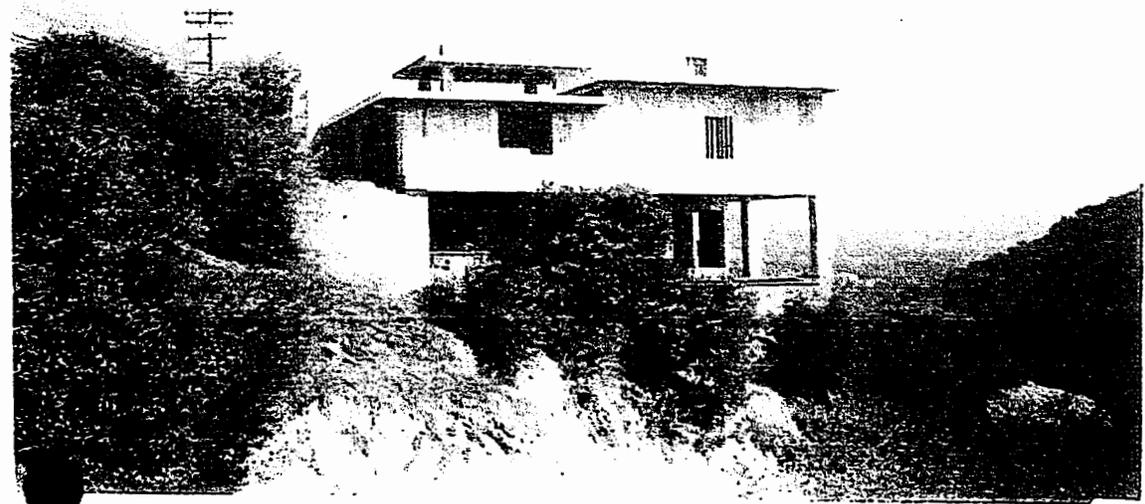


1720 Topanga Canyon Blvd.

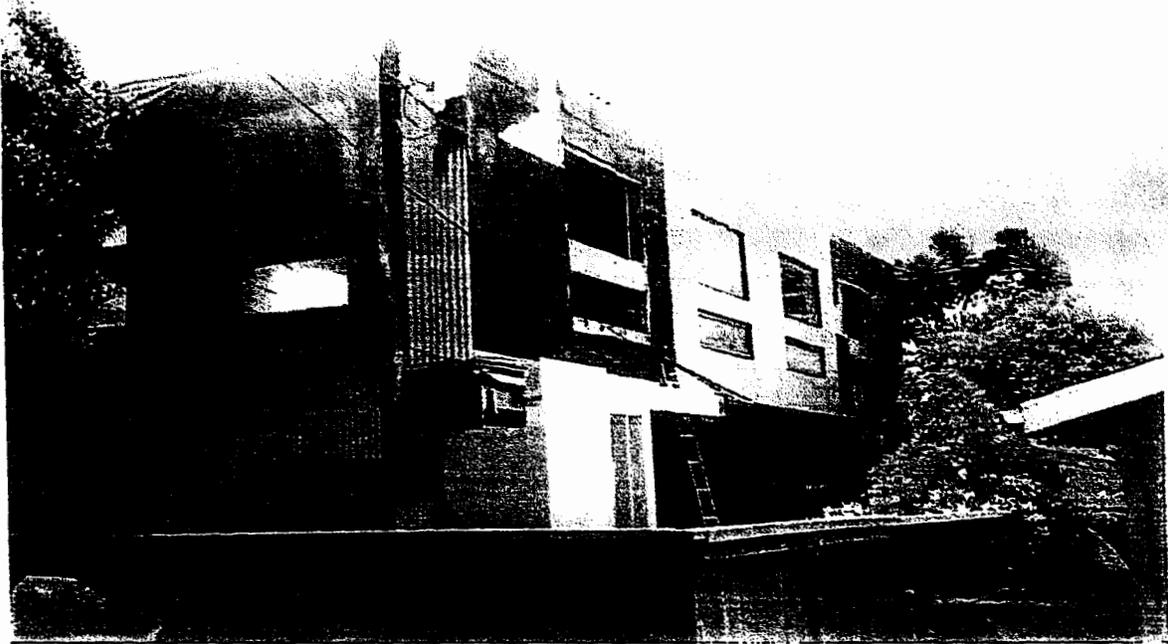
Flat Roof Top



4140 Topanga Canyon Blvd.



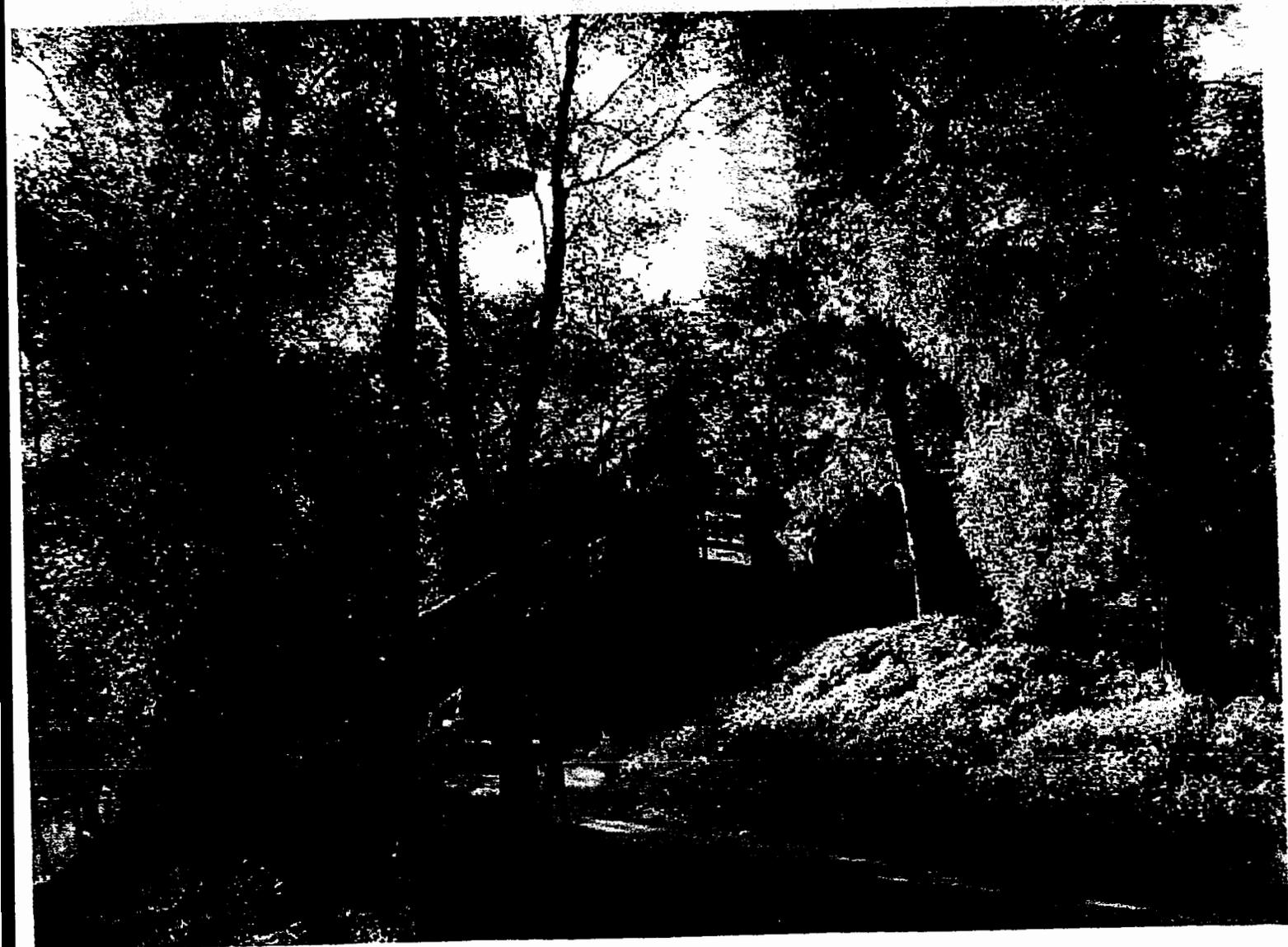
Topanga Canyon Blvd. (within 2 miles from project site)



Flat Roof Top



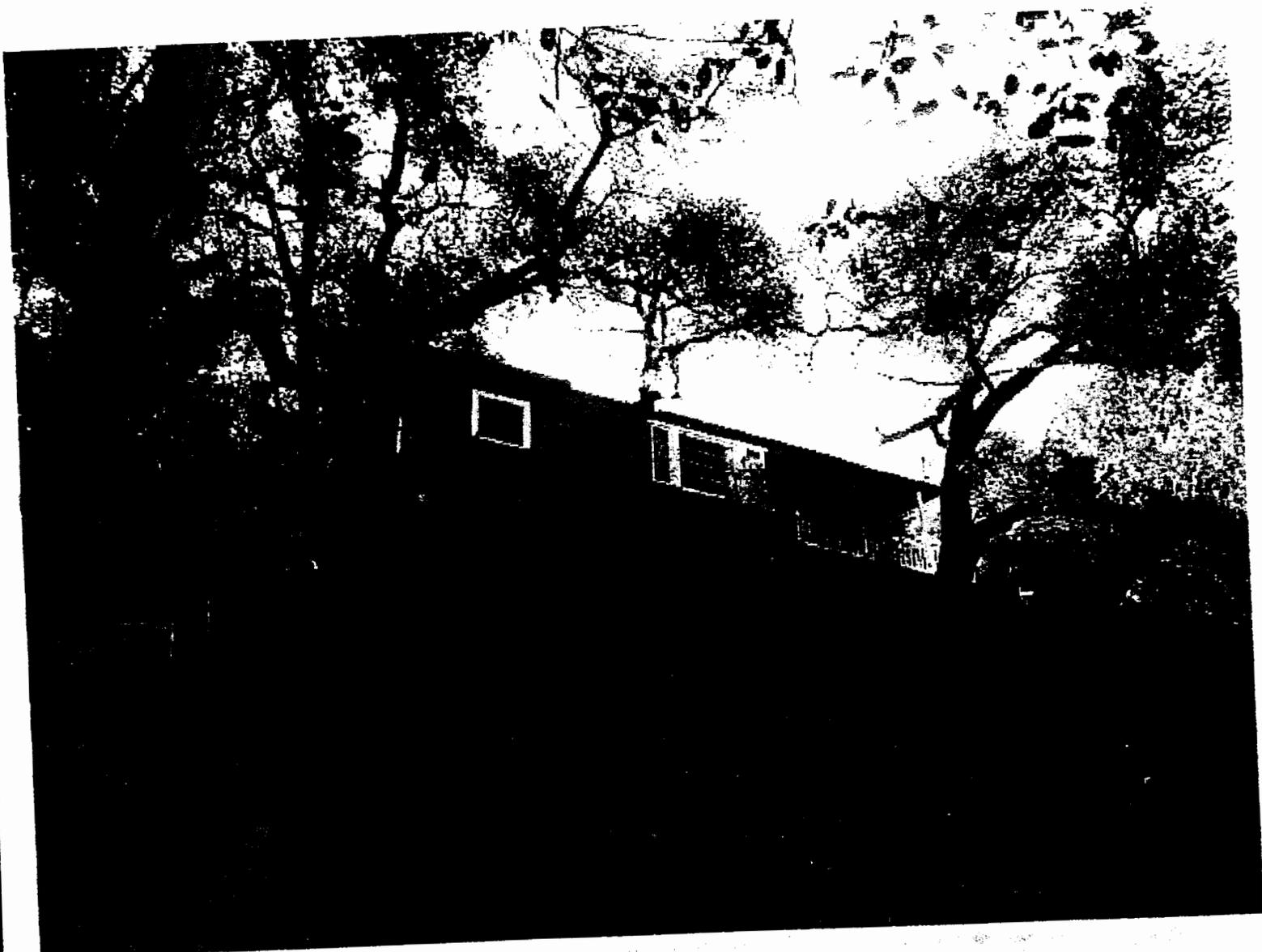
Topanga Canyon Blvd. (within 2 miles from project site)



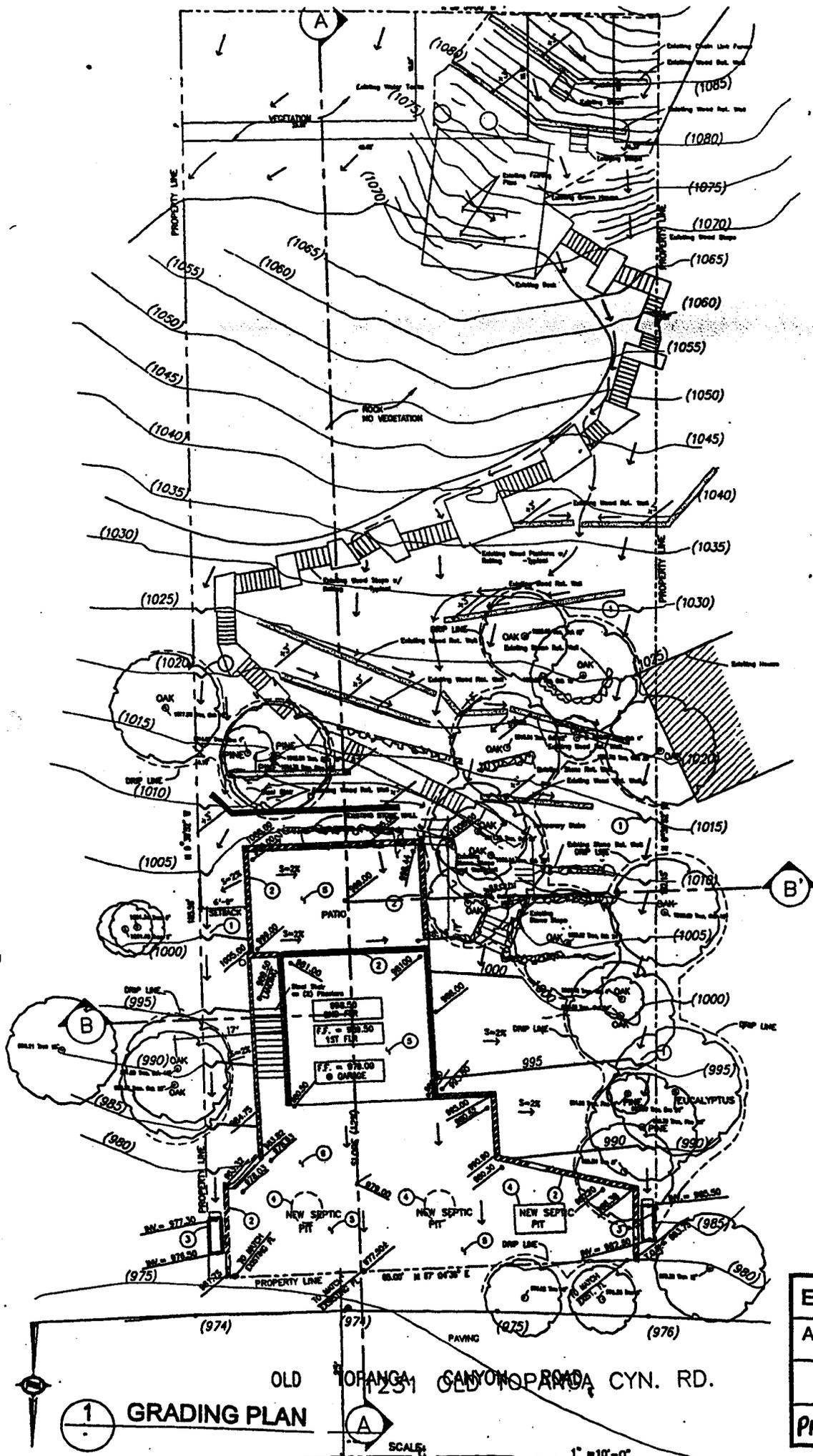
1219 Old Topanga Canyon Road



1212 Old Topanga Canyon Road



1237 Old Topanga Canyon Road



1 GRADING PLAN

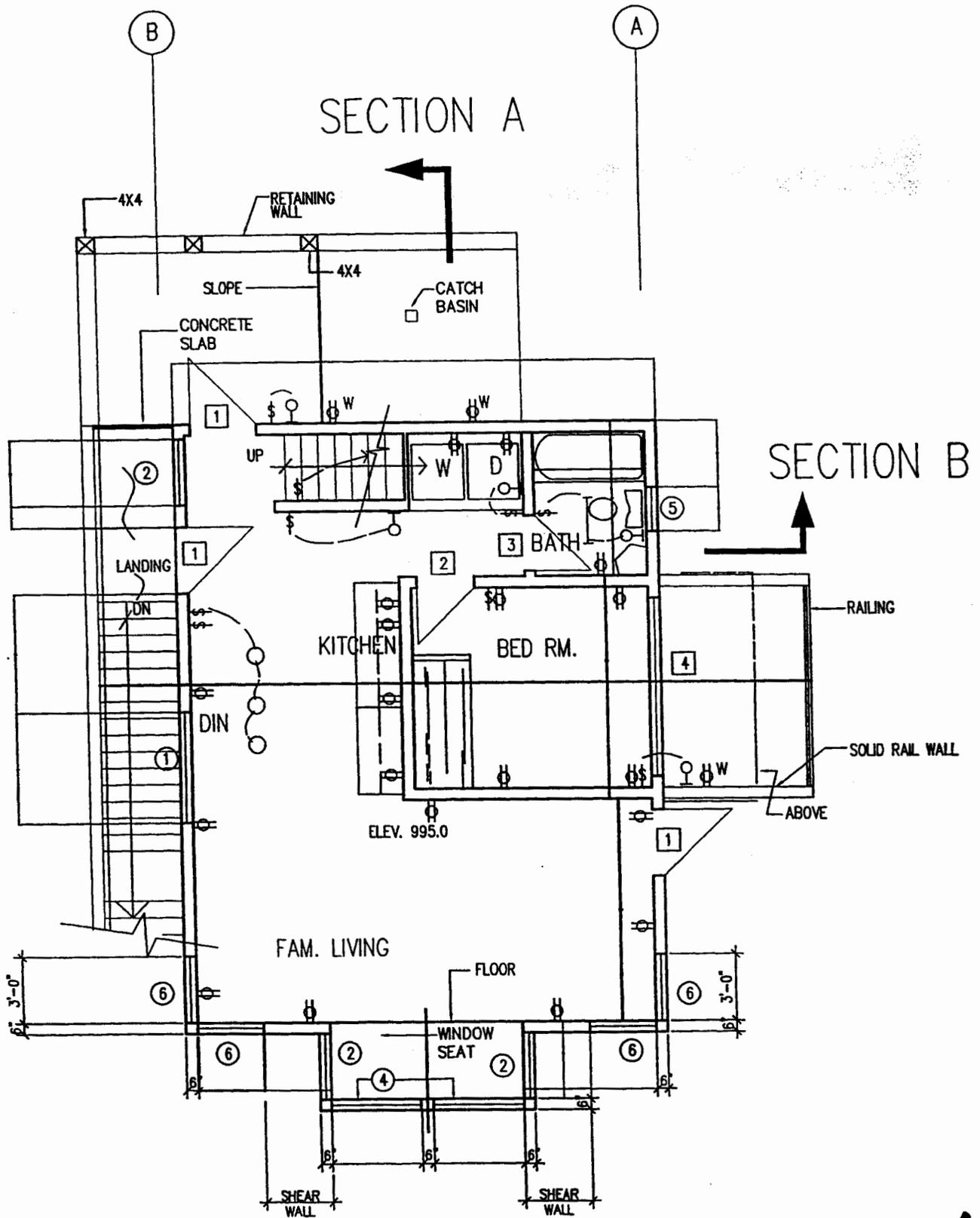
A

SCALE

1" = 10'-0"

OLD ORANCA CANYON ROAD, 231 OLD ORANCA CYN. RD.

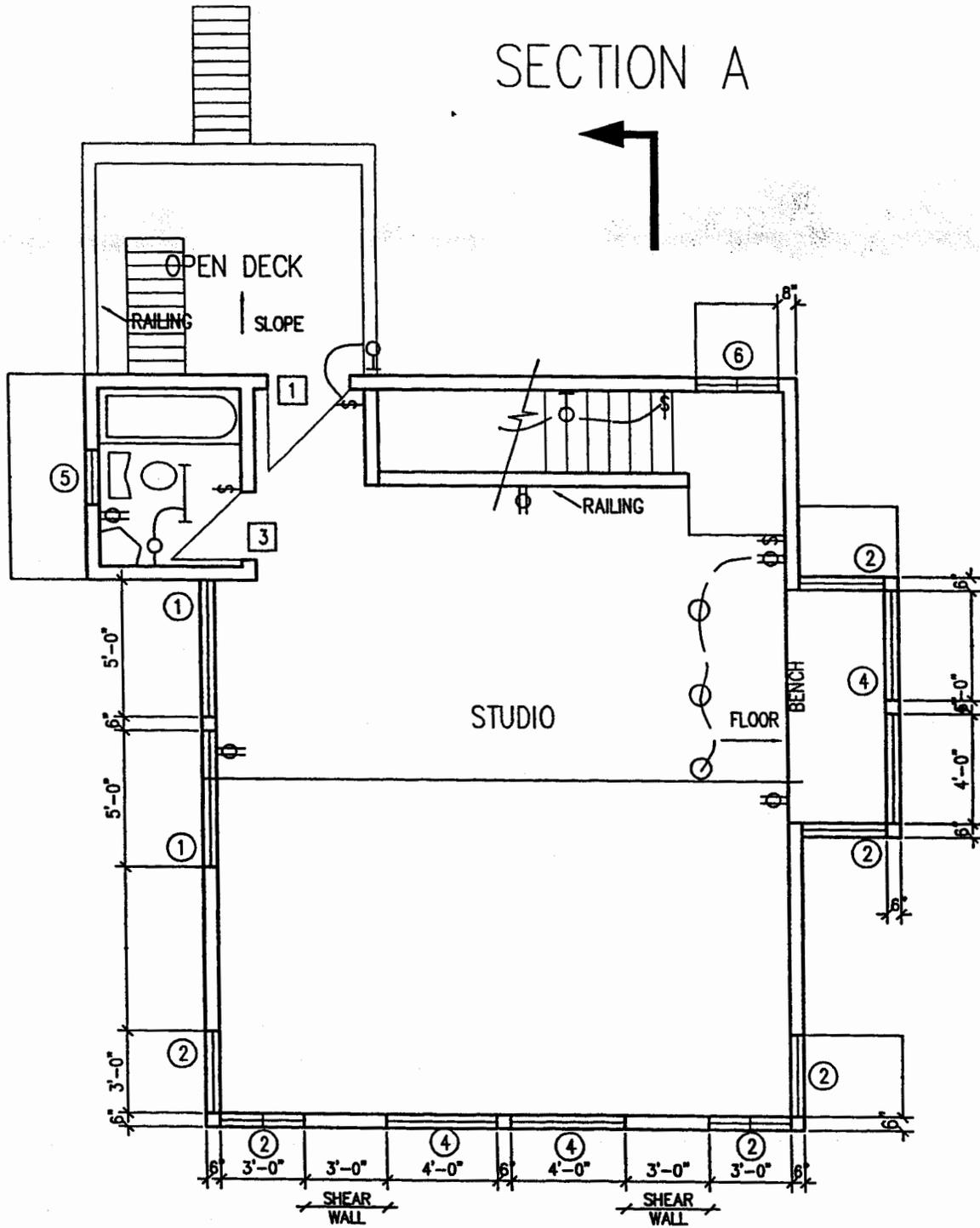
EXHIBIT NO. 17
 APPLICATION NO.
 4-01-183
 PRIOR PLANS (6PP.)



1ST FLOOR

4 of 1

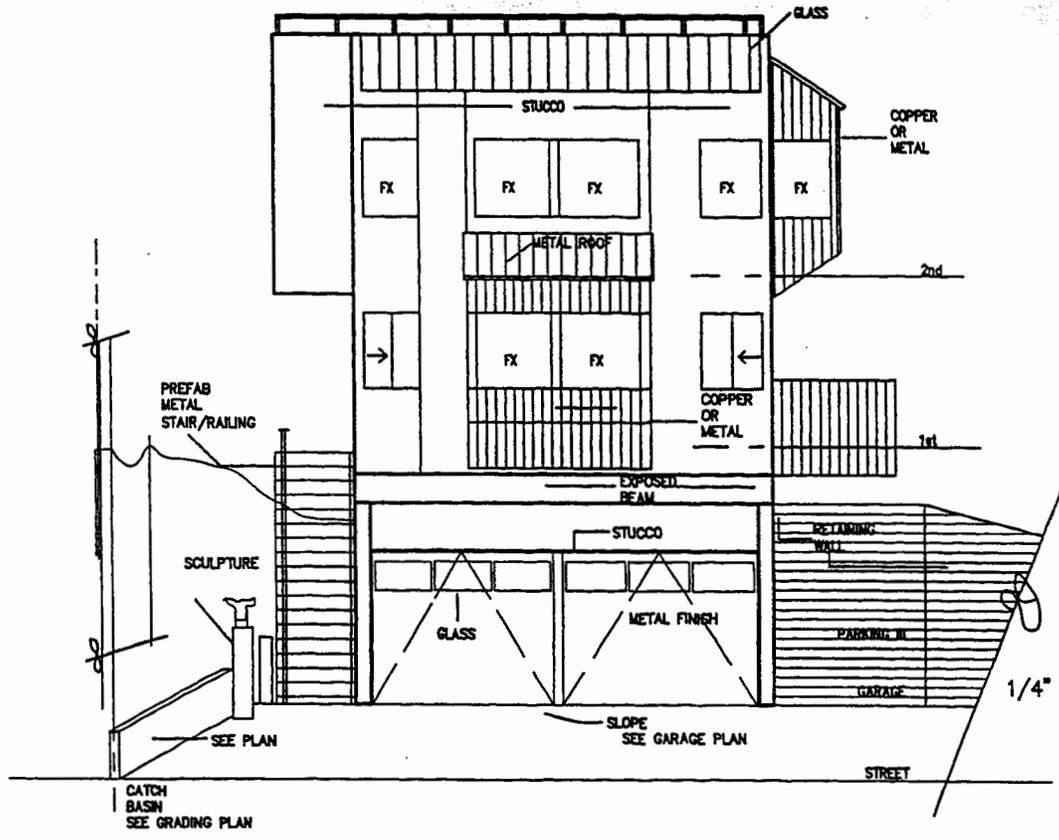
SECTION A



2ND FLOOR

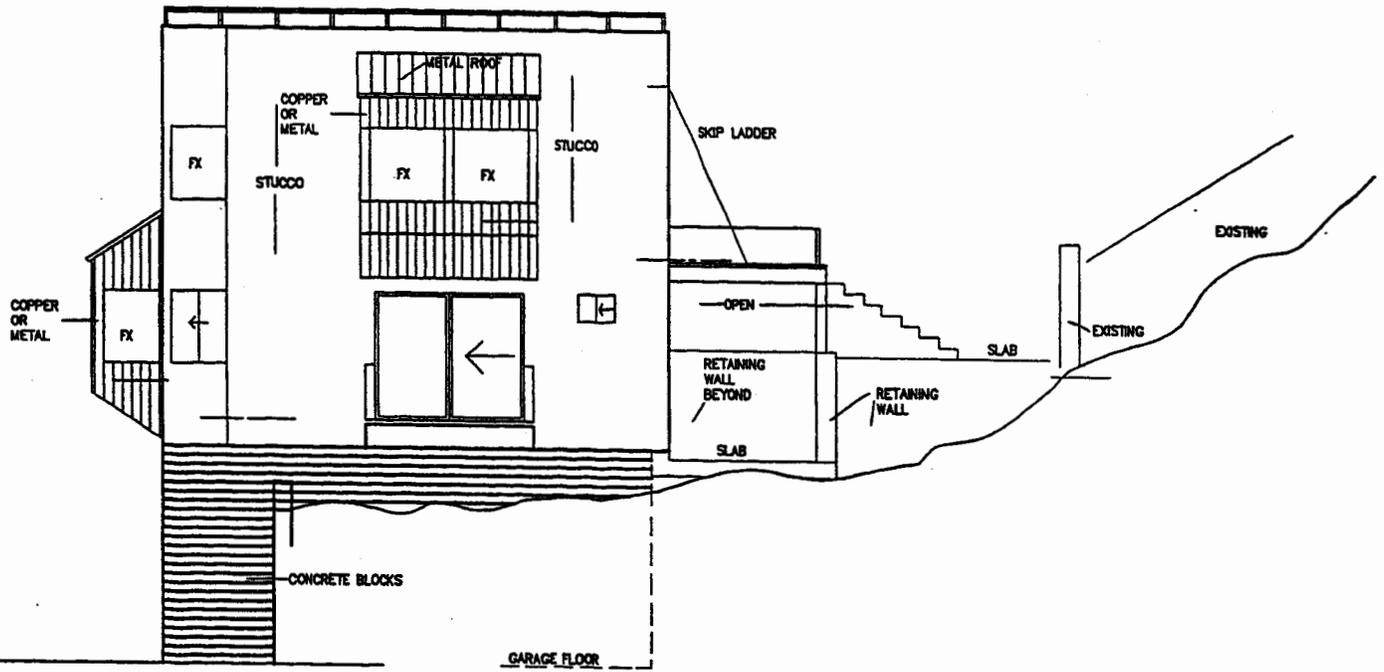
5 of 11

Alfred Kemper
1231 Old Topang, Cyn. Rd.
Topanga, CA 9025



NORTH STREET ELEV.

6 of 11



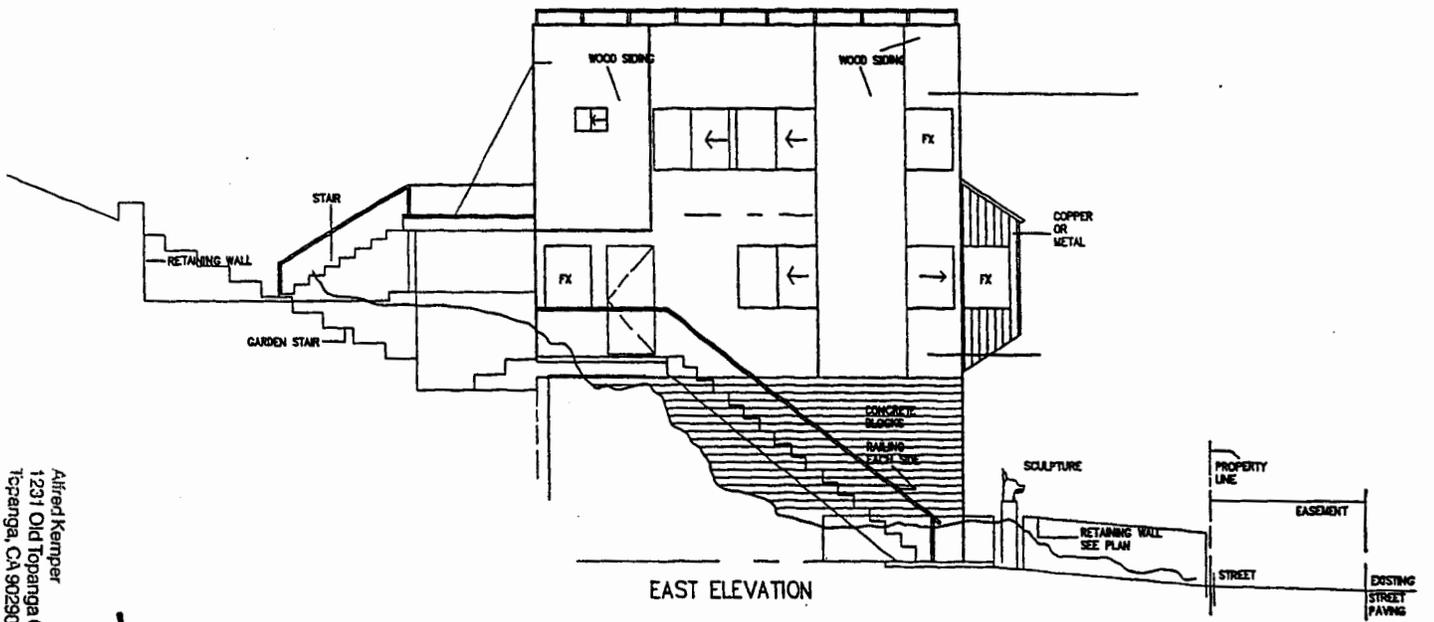
WEST ELEVATION

Alfred Kemper
 1231 Old Topanga Cyn. Rd.
 Topanga, CA 90280

8 of 11

Alfred Kemper
1231 Old Topanga Cyn. Rd.
Topanga, CA 90290

7-28-11



RECEIVED

OCT 07 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SUZANNE F. SCHNEIDER
1230 Old Topanga Canyon Road
Topanga, CA 90290
310-455-2799

RECEIVED

~~OCT 27 2002~~

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

October 2, 2002

Ms. Lillian Ford
Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Application No. 401183 by Alfred Kemper

Dear Ms. Ford:

Thank you for taking the time to talk with me about application no. 401183, property: 1231 Old Topanga Canyon Road, Topanga, CA 90290. As we discussed, Mr. Kemper cut down an Oak Tree (no permit applied for) on this property as noted in the pictures enclosed. I have confirmed that Mr. Kemper was required to pay a \$5,000 fine for not applying for a Oak Tree Removal Permit. Picture A identifies the oak tree that was cut down. Picture B shows the freshly cut stump. Picture C shows some of the tree limbs that were cut. Picture D shows a large oak tree limb that was cut because it hung over the area Mr. Kemper is planning to put his house. Picture E identifies the oak tree from which the tree limb was cut. You can put pictures A and E together and get a look at the area where Mr. Kemper wants to build his home. I submitted this information and the enclosed letter to Mr. Bill Romo at the Forestry Department. Mr. Kemper also cut down a number of other large trees on the property, ruining the once beautiful property.

We also discussed all of the paths and retaining walls that Mr. Kemper has built. None of these were on the property prior to Mr. Kemper purchasing the land. I will be getting you additional pictures of the paths and retaining walls. However, you can see in picture A that as of November of 2000 there were no retaining walls present. In addition, the building inspector (Ms. Renee Meriaux, LA County) made Mr. Kemper lower one of his retaining walls (visable from the street) because it was over 3 feet tall and he had not applied for a permit. In addition, the slope on this property was even steeper than it is now. In order to drill the holes in the upper area, Mr. Kemper's drilling team had to use a large backhoe type machine. Everytime they went up this hill it caused the slope to be significantly reduced. The slope was nearly straight up prior to his drilling.

When Mr. Kemper originally drilled in the lower area of the property, he hit water at a very close range. He then hired another driller/engineer to do further drilling. It is

EXHIBIT NO. 18
APPLICATION NO.
4-01-183
PRIOR CORRESPONDENCE SCHNEIDER - 5 pp.

Ms. Lillian Ford
Coastal Commission
Page No. 2

unlikely that this information was ever presented in any of his reports. There were many holes made on this property.

In addition, we have had very little rain fall in the last 12 months. Many of his drilling has been done during this time. We are very concerned that a "pit" septic system will be inadequate in future years when the rainfall returns to normal. Old Topanga Canyon Road has a natural water course running underneath. How can a "pit" septic be adequate?

Finally, the property that he will be building on had a house that was approximately 800 - 1000 square feet. It burned down in the 1950's. I have verified this information with a long time resident who lives in the neighborhood. As I discussed with you prior to Mr. Kemper buying this property, the area was completely covered with bushes, poison oak, trees, etc. Over 40 years of natural vegetation was cut down so that they could drill holes for their reports. We have hawks that nest in one of our tree's and that area is a common feeding ground for the family. They have been nesting in this area for the last 3 years.

In addition, there are several oak trees on the property that will be impacted by the building of a 3 story building. The trees overhang on the area where he is planning to build the proposed house. This will be another tragedy.

Thank you for taking this information into consideration in your review of Mr. Kemper's application to the Coastal Commission to build on this property.

Sincerely,



Suzanne F. Schneider

Suzanne F. Schneider

January 26, 2001

Old Topanga Canyon Road

Topanga, California 90290

(818) 455-2799

Mr. Bill Romo
Environmental Review Unit
Forestry Department
12605 Osborne Street
Pacoima, CA 91331

Dear Bill,

This letter is to inform you of an Oak Tree Violation at 1231 Old Topanga Canyon Road. The enclosed picture identified as "A" shows the tree as it was located on the property in August of 2000. On Halloween, October 31, 2000 I came home from work to note three men removing the brush from the area. As it was almost dark, they were unable to finish all of the work. The next morning I took the pictures identified as "B". I've circled the original stump. That day the men returned and removed all of the remaining wood and also removed the stump.

They also removed a large branch from the picture identified as "C". Although it is difficult to see the branch in the picture, you will see the cut mark on the tree when you are investigating the above incident. In addition, we have the branch at our residence if you wish to see it.

Also note that the brush from the tree was very healthy and green. We have a pile of the brush in our yard and 3 months later it is still rubbery and not brittle.

I would appreciate being contacted and advised of the outcome of your investigation. You may contact me during the day at 818-444-2435.

Sincerely,

Suzanne F. Schneider

12.

SUZANNE F. SCHNEIDER
1230 Old Topanga Canyon Road
Topanga, CA 90290
310-455-2799

RECEIVED

OCT 07 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

October 2, 2002

Ms. Lillian Ford
Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Application No. 401183 by Alfred Kemper

Dear Ms. Ford:

Enclosed are additional pictures of the property at 1231 Old Topanga Canyon Road, Topanga, CA. As we have discussed in previous telephone conversations, Mr. Kemper has done a tremendous amount of work on this property. The pictures show the many retaining walls and other wood structures that he has built on the property. You can see from the pictures that the wood is new.

As I indicated in my letter dated October 2, 2002, prior to Mr. Kemper purchasing this property, this area was overgrown with native plants, bushes and trees (including non-native locust trees). The slope was much steeper, but was reduced by Mr. Kemper's equipment (large backhoe) having to get up the slope to drill at the base of the original house (where the old fire place was located).

As I mentioned in my previous letter, the previous house was only 800 - 1000 square feet (very small) and one story built up on the slope. There was no garage. The house burnt down in the 1950's due to a flue fire. In addition, the property is a very narrow piece of land, most of it so steep and barely accessible. If Mr. Kemper is allowed to build a 3 story house (including the garage), he will have to severely prune back the existing old oak trees that exist on the property or even worse is going to cut them down, as he has already done to one old oak tree.

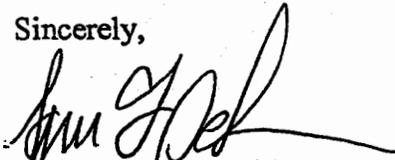
Of course we would prefer that this property not be developed due to the steep slope (Mr. Kemper will have to excavate the entire slope to meet the set back rules), the limited pit

16.

Ms. Lillian Ford
Coastal Commission
Page No. 2

septic (Old Topanga has an underground water course), and the narrow property.
However, if approval is granted, we would like some restitution for the harm that has
already been done to the native plants, bushes and trees that use to reside on the property.
Thank you for taking my information into account in your analysis.

Sincerely,



Suzanne F. Schneider

October 28, 2002

Lillian Ford
California Coastal Commission
South Central Coast Area
89 South California St. Suite 200
Ventura, CA 93001

Re: APPLICATION NO.: 4-01-183

PROJECT LOCATION: 1231 Old Topanga Canyon Road, Topanga, L.A. County

Dear Ms Ford,

I am writing to express my observations and opinions on the construction site at the above address. I own the west bordering property at 1237 Old Topanga Canyon Road – activity on the adjacent lot has great potential to impact both my house and land.

I view the attitudes and activities of the applicant, Alfred Kemper, towards his neighbors, the land and the overall environment he interacts with, as extremely contemptuous, hostile, dishonest, and overwhelmingly self-serving. Operating in a totally pre-emptive fashion – and knowing the possible negative consequences of un-doing his work – he expects acceptance of what he does. I cannot debate his numbers, geology reports or septic systems, not being the professional architect (and “brilliant” as he is quick to inform). But the hill contours these parcels share have been familiar to me since 1962. I’ve personally experienced floods and wildfires and the changing seasons on this terrain for 40 years. (I watched on New Years night of '66 -'67 as firemen extinguished the blaze that burned down the tiny 400 sq. ft. cabin the 1231 property next door)

Mr. Kemper phoned in November of 2000 to inform me about his future project. (I now live in metropolitan L.A. and rent out my house in Topanga – hoping some day to return to the canyon). Reviewing his site plan and walking the property together, it was alarming to discover the extensive construction of wood retaining walls, steps, decks, platforms, footings, extending hundreds of feet to the crest of the hillside, and enormous quantities of used building materials, branches – huge piles – everywhere. Most disturbing were several sizeable retaining walls on my property, extending into (some 12 feet) and up the hill.

Costal Commission – Re: Application No. 4-01-183 - J. Maybrook

EXHIBIT NO. 19
APPLICATION NO.
4-01-183
PRIOR CORRESPONDENCE MAYBROOK - 2 pp.

12

My house – as well as the one to west – were built (in the mid 1920's) at an angle to the property lines, aligning to the existing contour of the rock that underlies this hillside (and utilizing beautifully small cuts into the hill), so the back of my house faces Mr. Kemper's property and constructions. At our first meeting and twice thereafter, I asked for the removal of construction on my property. The manner of his response, as I woefully realized, was both vindictive and offensive (both figuratively and literally). Photos of the fence constructed by this "professional architect" are included – an example of what his neighbors might expect by challenging his expertise.

I fear this is more than just an offensive act. Water flowing down the contour of this hillside follows a path between my house and where the former house was located – both snuggling up against the property line – his fence will divert this flow directly into the back of my house – during heavy rains, the flow is quite sizable (the same situation occurs between my house and the one directly to the west – there is a natural gully between – these little old houses were thoughtfully placed and have survived 75 years of floods, two major ones which I have seen).

I cannot and do not deny Mr. Kemper the right to build his house – Topanga is a beautiful place to live – and he should have the opportunity to enjoy this great environment. I am, however, very offended by his attitude and approach to utilizing this fragile place, and his impact on the ability of his neighbors to live their lives unencumbered by his presence.

I respectfully request that **Special Condition Eleven (11)** "requiring the applicant to submit revised plans eliminating the proposed wood deck and patio on the west side of the residence, the proposed patio on the south side of the residence, and all stairs, platforms, retaining walls, and other development located on the hillside south of the residence" specifically include removal of remaining sections of unpermitted retaining walls on my property behind my house, as well as the newly constructed fence, which exposes my house to certain severe flooding. I also request that Mr. Kemper be required to mitigate any negative impact resulting from the construction and removal of the illegal retaining walls into the hillside behind my house.

Thank you for your consideration, and kindest regards,

Jerry Maybrook

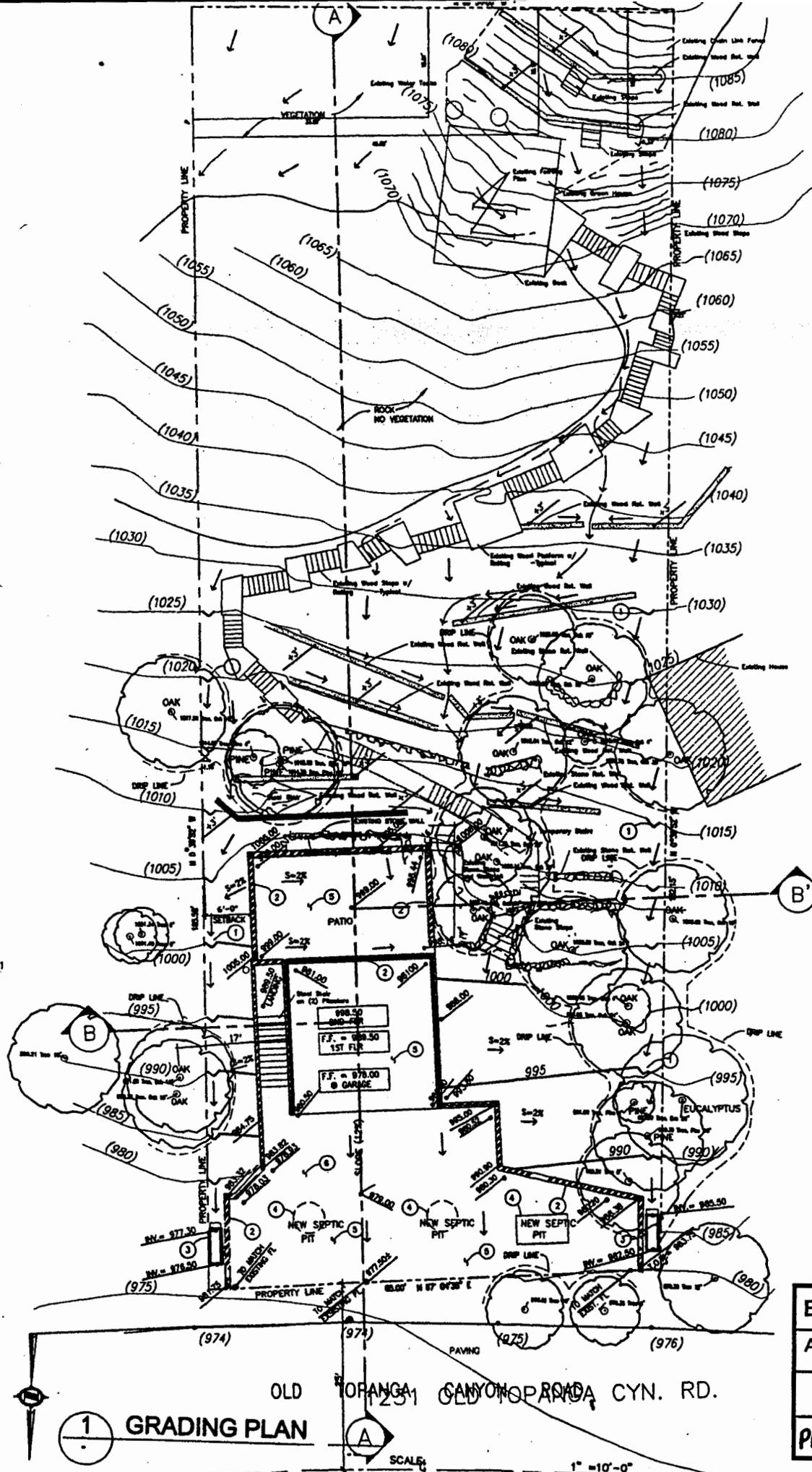
Jerry (Jerome) Maybrook

P.O.Box 38099

Los Angeles, CA 90039

(323)314-2559

My Property address: 1237 Old Topanga Canyon Road

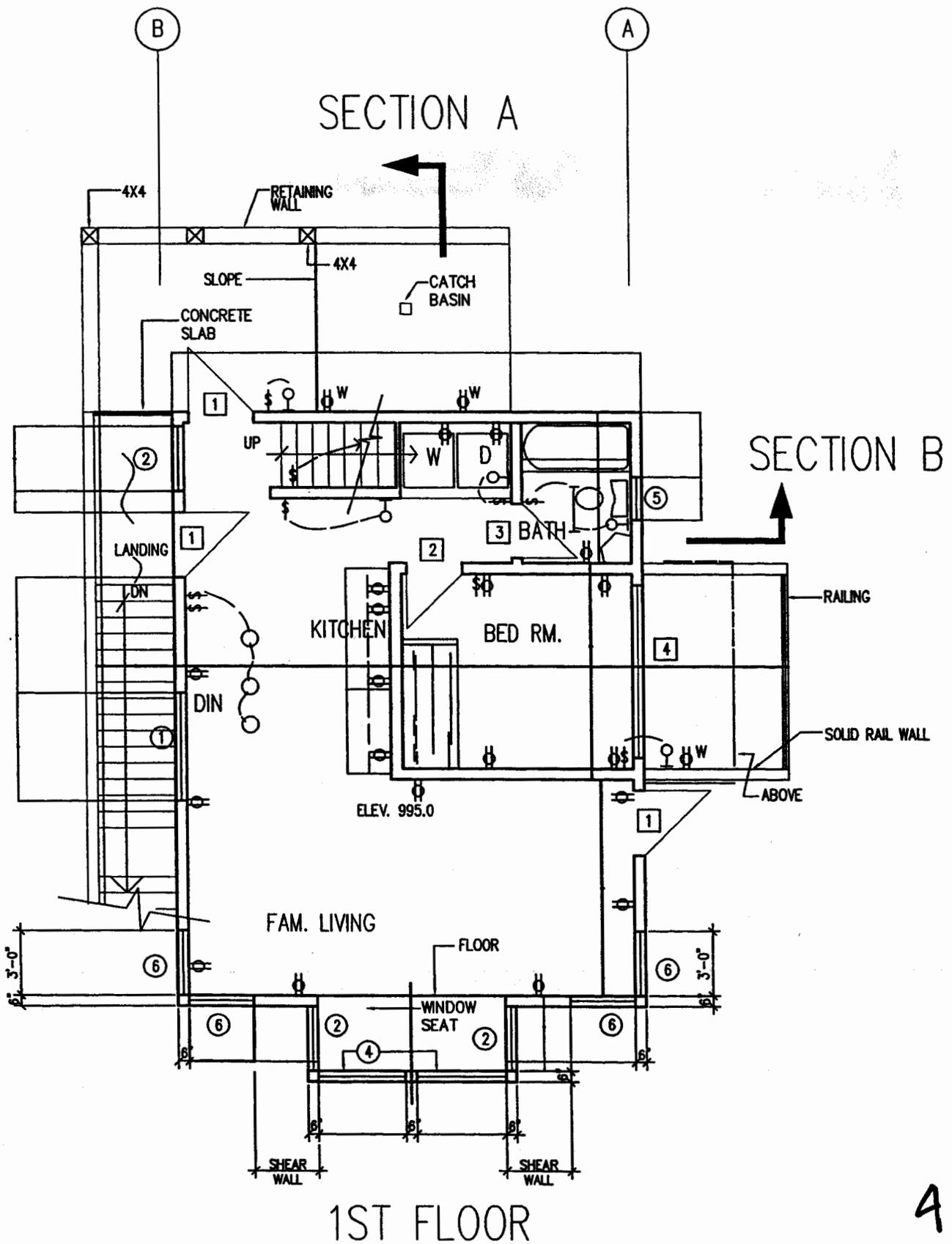


1 GRADING PLAN

OLD TOPANGA CANYON ROAD CYN. RD.
1251 OLD TOPANGA CYN. RD.

SCALE: 1" = 10'-0"

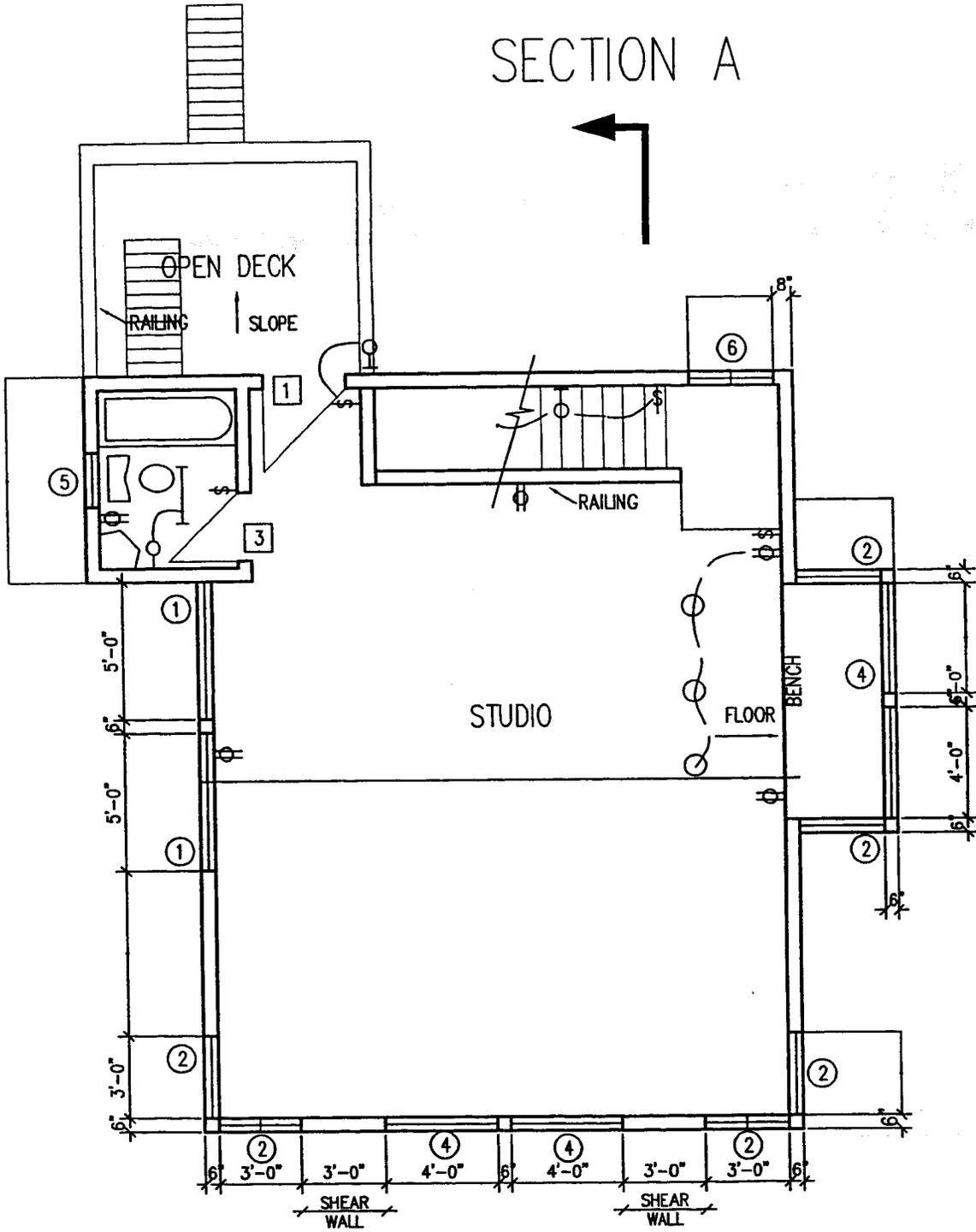
EXHIBIT NO. 17
APPLICATION NO.
4-01-183
PRIOR PLANS (6pp.)



4

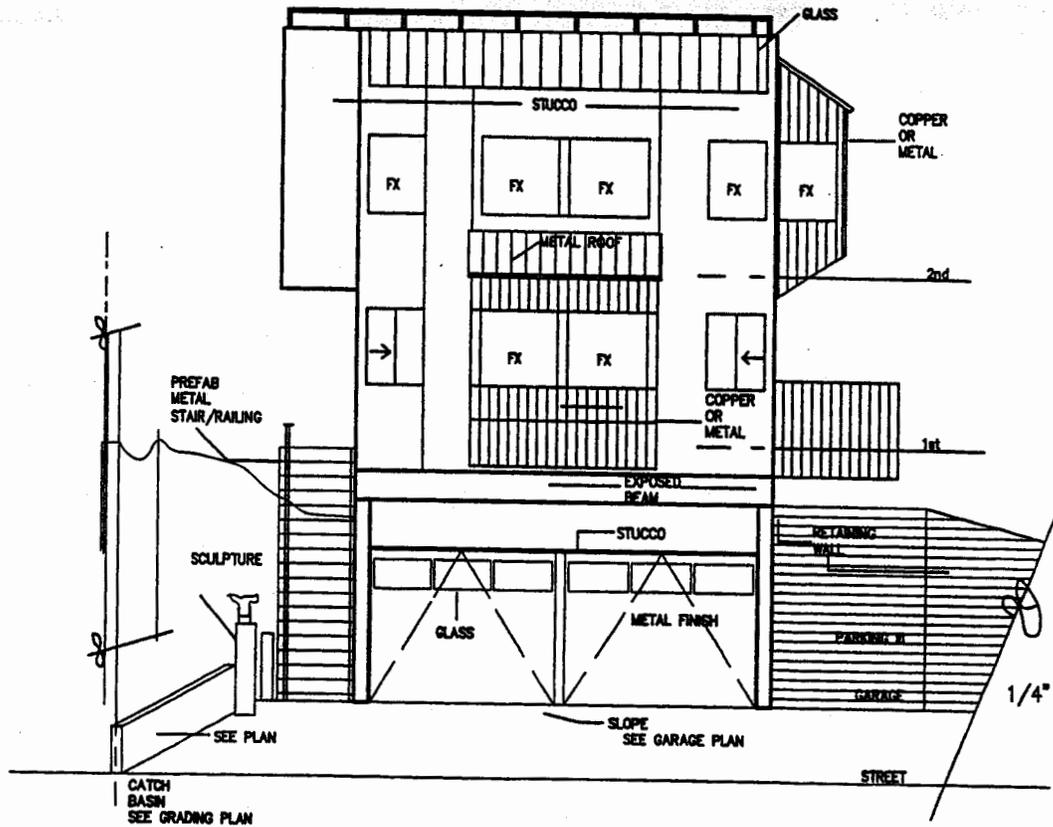
Alfred Kemper
 1231 Old Topanga Cyn. Rd.
 Topanga, CA 90290

SECTION A



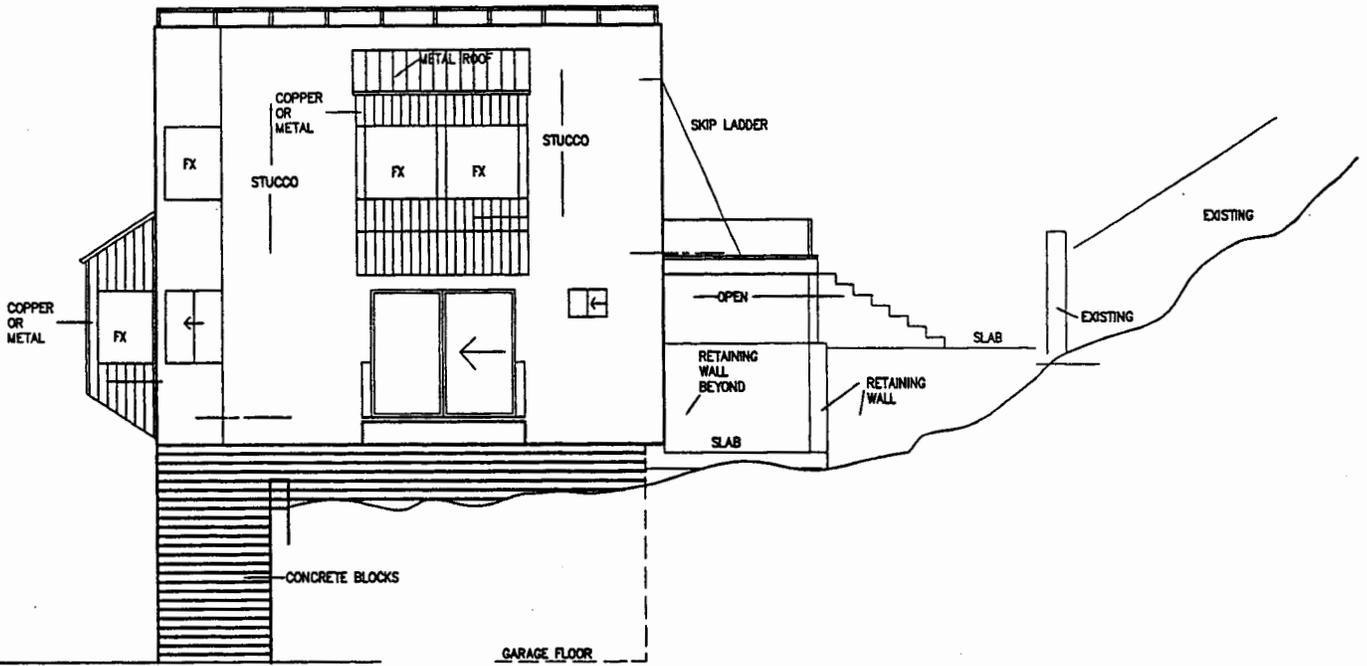
2ND FLOOR

5 of 11



NORTH STREET ELEV.

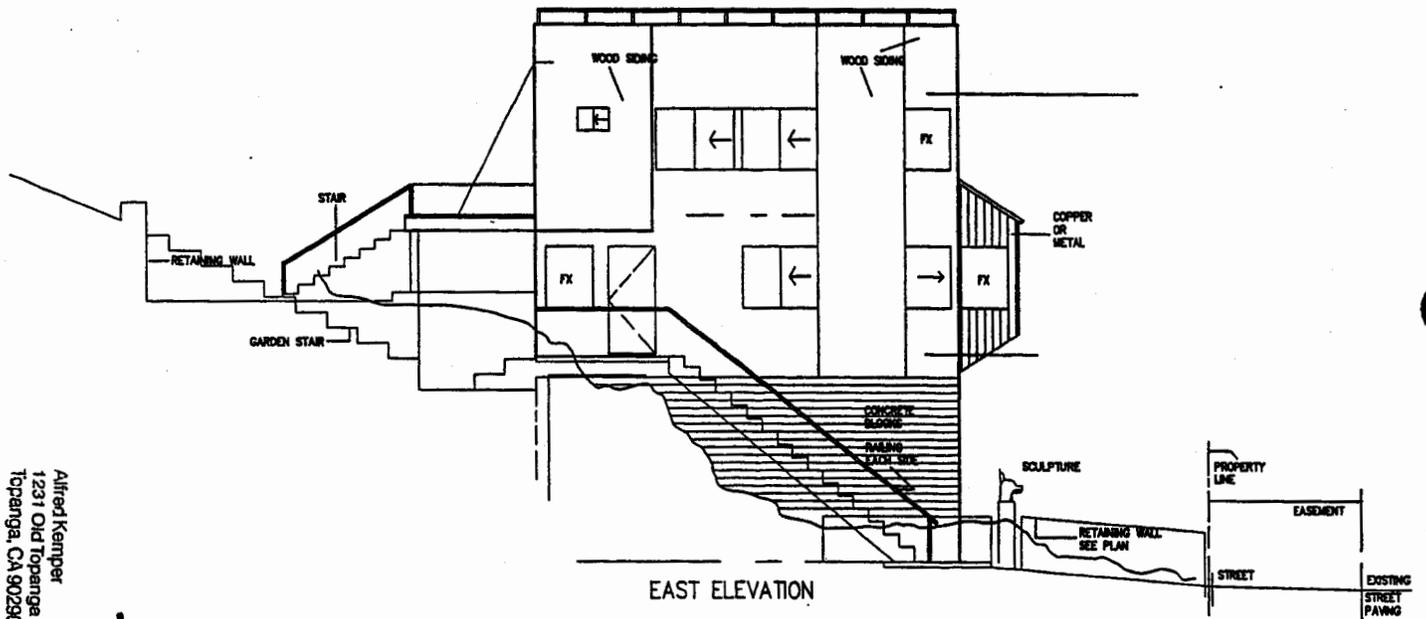
6 of 11



WEST ELEVATION

Alfred Kemper
 1231 Old Topanga Cyn. Rd.
 Canoga, CA 90280

8 of 11



Alfred Kemper
 1231 Old Topanga Cyn. Rd.
 Topanga, CA 90290

7-28-11

RECEIVED

OCT 07 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SUZANNE F. SCHNEIDER
1230 Old Topanga Canyon Road
Topanga, CA 90290
310-455-2799

RECEIVED

~~OCT 07 2002~~

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

October 2, 2002

Ms. Lillian Ford
Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Application No. 401183 by Alfred Kemper

Dear Ms. Ford:

Thank you for taking the time to talk with me about application no. 401183, property: 1231 Old Topanga Canyon Road, Topanga, CA 90290. As we discussed, Mr. Kemper cut down an Oak Tree (no permit applied for) on this property as noted in the pictures enclosed. I have confirmed that Mr. Kemper was required to pay a \$5,000 fine for not applying for a Oak Tree Removal Permit. Picture A identifies the oak tree that was cut down. Picture B shows the freshly cut stump. Picture C shows some of the tree limbs that were cut. Picture D shows a large oak tree limb that was cut because it hung over the area Mr. Kemper is planning to put his house. Picture E identifies the oak tree from which the tree limb was cut. You can put pictures A and E together and get a look at the area where Mr. Kemper wants to build his home. I submitted this information and the enclosed letter to Mr. Bill Romo at the Forestry Department. Mr. Kemper also cut down a number of other large trees on the property, ruining the once beautiful property.

We also discussed all of the paths and retaining walls that Mr. Kemper has built. None of these were on the property prior to Mr. Kemper purchasing the land. I will be getting you additional pictures of the paths and retaining walls. However, you can see in picture A that as of November of 2000 there were no retaining walls present. In addition, the building inspector (Ms. Renee Meriaux, LA County) made Mr. Kemper lower one of his retaining walls (visable from the street) because it was over 3 feet tall and he had not applied for a permit. In addition, the slope on this property was even steeper than it is now. In order to drill the holes in the upper area, Mr. Kemper's drilling team had to use a large backhoe type machine. Everytime they went up this hill it caused the slope to be significantly reduced. The slope was nearly straight up prior to his drilling.

When Mr. Kemper originally drilled in the lower area of the property, he hit water at a very close range. He then hired another driller/engineer to do further drilling. It is

EXHIBIT NO. 18
APPLICATION NO.
4-01-183
PRIOR CORRESPONDENCE SCHNEIDER - 5 pp.

Ms. Lillian Ford
Coastal Commission
Page No. 2

unlikely that this information was ever presented in any of his reports. There were many holes made on this property.

In addition, we have had very little rain fall in the last 12 months. Many of his drilling has been done during this time. We are very concerned that a "pit" septic system will be inadequate in future years when the rainfall returns to normal. Old Topanga Canyon Road has a natural water course running underneath. How can a "pit" septic be adequate?

Finally, the property that he will be building on had a house that was approximately 800 - 1000 square feet. It burned down in the 1950's. I have verified this information with a long time resident who lives in the neighborhood. As I discussed with you prior to Mr. Kemper buying this property, the area was completely covered with bushes, poison oak, trees, etc. Over 40 years of natural vegetation was cut down so that they could drill holes for their reports. We have hawks that nest in one of our trees and that area is a common feeding ground for the family. They have been nesting in this area for the last 3 years.

In addition, there are several oak trees on the property that will be impacted by the building of a 3 story building. The trees overhang on the area where he is planning to build the proposed house. This will be another tragedy.

Thank you for taking this information into consideration in your review of Mr. Kemper's application to the Coastal Commission to build on this property.

Sincerely,



Suzanne F. Schneider

Suzanne F. Schneider

January 26, 2001

1231 Old Topanga Canyon Road

Mr. Bill Romo

Environmental Review Unit

Forestry Department

12605 Osborne Street

Pacoima, CA 91331

Topanga, California 90290

(310) 455-2799

Dear Bill,

This letter is to inform you of an Oak Tree Violation at 1231 Old Topanga Canyon Road. The enclosed picture identified as "A" shows the tree as it was located on the property in August of 2000. On Halloween, October 31, 2000 I came home from work to note three men removing the brush from the area. As it was almost dark, they were unable to finish all of the work. The next morning I took the pictures identified as "B". I've circled the original stump. That day the men returned and removed all of the remaining wood and also removed the stump.

' They also removed a large branch from the picture identified as "C". Although it is difficult to see the branch in the picture, you will see the cut mark on the tree when you are investigating the above incident. In addition, we have the branch at our residence if you wish to see it.

Also note that the brush from the tree was very healthy and green. We have a pile of the brush in our yard and 3 months later it is still rubbery and not brittle.

I would appreciate being contacted and advised of the outcome of your investigation. You may contact me during the day at 818-444-2435.

Sincerely,

Suzanne F. Schneider

SUZANNE F. SCHNEIDER
1230 Old Topanga Canyon Road
Topanga, CA 90290
310-455-2799

RECEIVED

OCT 07 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

October 2, 2002

Ms. Lillian Ford
Coastal Commission
89 S. California Street, Suite 200
Ventura, CA 93001

Re: Application No. 401183 by Alfred Kemper

Dear Ms. Ford:

Enclosed are additional pictures of the property at 1231 Old Topanga Canyon Road, Topanga, CA. As we have discussed in previous telephone conversations, Mr. Kemper has done a tremendous amount of work on this property. The pictures show the many retaining walls and other wood structures that he has built on the property. You can see from the pictures that the wood is new.

As I indicated in my letter dated October 2, 2002, prior to Mr. Kemper purchasing this property, this area was overgrown with native plants, bushes and trees (including non-native locust trees). The slope was much steeper, but was reduced by Mr. Kemper's equipment (large backhoe) having to get up the slope to drill at the base of the original house (where the old fire place was located).

As I mentioned in my previous letter, the previous house was only 800 - 1000 square feet (very small) and one story built up on the slope. There was no garage. The house burnt down in the 1950's due to a flue fire. In addition, the property is a very narrow piece of land, most of it so steep and barely accessible. If Mr. Kemper is allowed to build a 3 story house (including the garage), he will have to severely prune back the existing old oak trees that exist on the property or even worse is going to cut them down, as he has already done to one old oak tree.

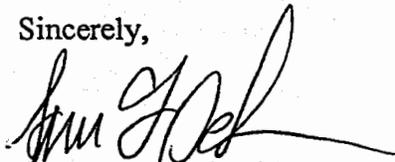
Of course we would prefer that this property not be developed due to the steep slope (Mr. Kemper will have to excavate the entire slope to meet the set back rules), the limited pit

16.

Ms. Lillian Ford
Coastal Commission
Page No. 2

septic (Old Topanga has an underground water course), and the narrow property.
However, if approval is granted, we would like some restitution for the harm that has
already been done to the native plants, bushes and trees that use to reside on the property.
Thank you for taking my information into account in your analysis.

Sincerely,



Suzanne F. Schneider

October 28, 2002

Lillian Ford
California Coastal Commission
South Central Coast Area
89 South California St. Suite 200
Ventura, CA 93001

Re: APPLICATION NO.: 4-01-183

PROJECT LOCATION: 1231 Old Topanga Canyon Road, Topanga, L.A. County

Dear Ms Ford,

I am writing to express my observations and opinions on the construction site at the above address. I own the west bordering property at 1237 Old Topanga Canyon Road – activity on the adjacent lot has great potential to impact both my house and land.

I view the attitudes and activities of the applicant, Alfred Kemper, towards his neighbors, the land and the overall environment he interacts with, as extremely contemptuous, hostile, dishonest, and overwhelmingly self-serving. Operating in a totally pre-emptive fashion – and knowing the possible negative consequences of un-doing his work – he expects acceptance of what he does. I cannot debate his numbers, geology reports or septic systems, not being the professional architect (and “brilliant” as he is quick to inform). But the hill contours these parcels share have been familiar to me since 1962. I’ve personally experienced floods and wildfires and the changing seasons on this terrain for 40 years. (I watched on New Years night of '66 -'67 as firemen extinguished the blaze that burned down the tiny 400 sq. ft. cabin the 1231 property next door)

Mr. Kemper phoned in November of 2000 to inform me about his future project. (I now live in metropolitan L.A. and rent out my house in Topanga – hoping some day to return to the canyon). Reviewing his site plan and walking the property together, it was alarming to discover the extensive construction of wood retaining walls, steps, decks, platforms, footings, extending hundreds of feet to the crest of the hillside, and enormous quantities of used building materials, branches – huge piles – everywhere. Most disturbing were several sizeable retaining walls on my property, extending into (some 12 feet) and up the hill.

Costal Commission – Re: Application No. 4-01-183 - J. Maybrook

EXHIBIT NO. 19
APPLICATION NO.
4-01-183
PRIOR CORRESPONDENCE MAYBROOK - 2 PP.

My house – as well as the one to west – were built (in the mid 1920's) at an angle to the property lines, aligning to the existing contour of the rock that underlies this hillside (and utilizing beautifully small cuts into the hill), so the back of my house faces Mr. Kemper's property and constructions. At our first meeting and twice thereafter, I asked for the removal of construction on my property. The manner of his response, as I woefully realized, was both vindictive and offensive (both figuratively and literally). Photos of the fence constructed by this "professional architect" are included – an example of what his neighbors might expect by challenging his expertise.

I fear this is more than just an offensive act. Water flowing down the contour of this hillside follows a path between my house and where the former house was located – both snuggling up against the property line – his fence will divert this flow directly into the back of my house – during heavy rains, the flow is quite sizable (the same situation occurs between my house and the one directly to the west – there is a natural gully between – these little old houses were thoughtfully placed and have survived 75 years of floods, two major ones which I have seen).

I cannot and do not deny Mr. Kemper the right to build his house – Topanga is a beautiful place to live – and he should have the opportunity to enjoy this great environment. I am, however, very offended by his attitude and approach to utilizing this fragile place, and his impact on the ability of his neighbors to live their lives unencumbered by his presence.

I respectfully request that **Special Condition Eleven (11)** "requiring the applicant to submit revised plans eliminating the proposed wood deck and patio on the west side of the residence, the proposed patio on the south side of the residence, and all stairs, platforms, retaining walls, and other development located on the hillside south of the residence" specifically include removal of remaining sections of unpermitted retaining walls on my property behind my house, as well as the newly constructed fence, which exposes my house to certain severe flooding. I also request that Mr. Kemper be required to mitigate any negative impact resulting from the construction and removal of the illegal retaining walls into the hillside behind my house.

Thank you for your consideration, and kindest regards,

Jerry Maybrook

Jerry (Jerome) Maybrook

P.O.Box 38099

Los Angeles, CA 90039

(323)314-2559

My Property address: 1237 Old Topanga Canyon Road

Date: 1/7/03

Application No. 4-01-183

Applicant: Alfred Kemper

OPPOSITION TO APPLICATION

Outline of Attached Documents in Opposition to Project

1. **Petition** with 20 signatures from surrounding Topanga Community in opposition to proposed application.
2. **Rosi Dagit, Licensed Arborist's** comments and opposition to proposed application.
3. **Topanga Association for a Scenic Community** – letter of concern and opposition to proposed application.
4. **Kevin S. Reed, Attorney** on behalf of Joan & Michael Barry –letter in opposition of application.
5. **Suzanne & Philip Schneider's** letter and pictures in opposition to this application.
6. **Joan & Michael Barry's** letter in opposition to this application.
7. **Joan & Michael Barry's** letter addressing site and continuing oak tree issues.
8. **Lyn Henley, Topanga resident and business owner,** letter in opposition to proposed application.
9. **Don Cohen, neighbor of property** – letter of opposition to proposed application.
10. **Emily & Tom Karnes, immediate neighbor to property,** letter of concern to proposed application.

EXHIBIT NO. 20
APPLICATION NO.
4-01-183
LETTERS IN OPPOSITION

Sunday, January 5, 2003

We, the undersigned residents of Topanga, oppose the approval of Application 4-01-183. The reasons for our opposition are as follows: First, there is already, and will be further, unacceptable damage to a sensitive ecosystem, particularly damage to protected Oak trees; second, the proposed location of the structure will require unacceptable landform modification on a steep hillside; third, the proposed design of the structure is radically different than the homes in the immediate vicinity, and is dramatically inconsistent the community character; fourth, the proposed structure being multistory and so close to the street will have a significant detrimental affect on the scenic nature of the community, and will likely lower property values in the area.

Name	Address
Don Loten	1407 Old Topanga Canyon Rd.
Joanna Schmidt	1230 Old Topanga Canyon Rd.
Jenny Mayhew	1237 OLD TOPANGA CYN RD
Samuel	1243 old Topanga cyn Rd.
Charles P. Loren	1454 Old Topanga Canyon Rd.
Steve Loren	1454 Old Topanga Canyon Rd.
Lady Loren	1454 Old Topanga Canyon Rd.
Jean Loren	1454 Old Topanga Cyn. Rd.
Lady M	1392 Old Topanga Cyn Rd. #8
Devi Steerman	1807 Chart Trail
Lisa Klinger	3118 Hodler Drive, Topanga
Bill	1988 Topanga Skyline Drive, Topanga
Lucy T. Hall	1988 Topanga Skyline Dr., Topanga

Rosi Dagit
Certified Arborist #1084
P.O. Box 1454
Topanga, CA 90290
310-455-7528

7 January 2003

Delivered by FAX

CA Coastal Commissioners
89 S. California Street suite 200
Ventura, CA 93001

Re: Permit 4-01-183, 1231 Old Topanga Cyn. Road, Topanga, CA

Dear Commissioners,

At the request of the neighbors, I reviewed the materials provided in the Coastal Commission Staff packet (dated 23 December 2002) with the current conditions of the property in question. It is clear that in addition to the protected coast live oaks located near the property line on the east side, several other mature oaks are located close enough to the east property line and the proposed cut to receive possible impacts. These trees are not noted on the plans provided in the staff packet, nor is there any mitigation proposed for any loss or damage to these trees. Including these trees in the mitigation requirements is critical prior to issuance of a permit.

Overall, it appears that the impacts to the oaks located on the adjacent properties, particularly to the east (Tree #14, 15 and 16) could be dramatically reduced by requiring that the project applicant remove the proposed impacts from immediately adjacent to the trunks. Since the Coastal Staff has already requested that the proposed additional impacts (as noted on page 19 a-g) be removed, it is difficult to tell precisely what the final plan includes. It would therefore seem reasonable that the final proposed plan be made available for considered review by concerned neighbors prior to taking any action on approval of the permit.

In particular, I would like to offer comments on several of the impacts noted on pg 18 of the staff report especially concerning Tree #14, 15 and 16, all of which belong to the adjacent property owner and not the project applicant.

c. Patio construction on the south side of the house within the driplines and protected zones of trees #5,7,14,15,16

The impacts of a patio could be significantly reduced by limiting its size and restricting encroachment into the protected zones. Trees 14, 15 and 16 have already been impacted by the compaction of soil related to the current construction activity.

d. Construction of the east side of the house within the protected zones of trees #15 and 16.

Again, reducing the size of the proposed structure would significantly reduce the impacts to these trees. Due to the high fire hazard situation, it is probable that significant canopy reduction would be required by the Fire Department if the structure is built as proposed. Already a large (over 8 inch) limb

has been illegally removed from Tree #16, leaving a torn section of trunk extending over 12 inches beyond the poorly made pruning cut. This is significant damage that could already be causing decline of the tree. Further impacts to the root system, or additional canopy removal is not recommended. In fact, immediate remedial efforts should be taken (such as restoring the root zone within the protected zone) to prevent further decline of the tree.

e. New construction of a wood stairway system within the driplines and protected zones of trees #3, 5, 6, 7, 8, 11, 12, 13, and 14.

Installation of wood stairs should be required to be done under the supervision of an on-site arborist who guides the placement of footings to avoid damaging roots of the tree, adjusting placement as needed. This requirement should be added to the Special Conditions in order to avoid further root damage.

f. Construction of a concrete swale within the driplines and protected zones of trees #14, 15, and 16.

Disturbance of the top 18" of soil within the dripline and protected zones of oak trees is a well documented cause of decline. In order to avoid this direct impact to the neighbors' trees, the drainage plan for the site should implement Best Management Strategies to collect any run-off and either store it on site (cisterns) or direct it's flow through use of gutters to a different area of the site. Again, reducing the overall size of the project will provide greater flexibility in dealing with this problem without impacting oaks that are on adjacent property.

Overall, the impacts to the oak trees on this site are directly related to the size of the proposed project. Reducing the size to 2 stories, and relocating ancillary patios and stairways within the footprint of the house, rather than extending them further into the protected zones of the trees will not only provide greater protection to the oaks on the site from immediate construction damage and future pruning for fire clearance, but also reduce the overall drainage and erosional impacts to the water quality of Topanga Creek.

Recommended additions to Special Condition #4:

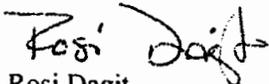
Special Condition 4 should be revised to require that the arborist/biological consultant be on-site at all times during the construction process since the entire project is within the protected zones of the oaks. Use of the EPA monitoring guidelines is also recommended to document all activities during the construction process.

In addition, it seems reasonable to request that a further requirement be added to Special Condition #4 to reimburse the adjacent property owner, as well as the LA County Oak Fund, for the full value of oaks that die as a result of this project, according to the highest possible value based on the International Society of Arboriculture Guide to Plant Appraisal and Valuation calculations.

Given the history of previous oak violations on this property, these additional requirement seem necessary to ensure that the health and well being of the oaks are protected to the maximum extent possible during and following the construction process.

Thank you for the opportunity to comment on this project.

Sincerely,



Rosi Dagit

Certified Arborist #1084

**TOPANGA ASSOCIATION FOR A SCENIC COMMUNITY
PO BOX 352 TOPANGA, CALIFORNIA 90290**

January 7, 2003
California Coastal Commission
89 South California Street
Suite 200
Ventura, California

Re: Permit 4-01-183
1231 Old Topanga Canyon Road

Dear Commissioners

Our organization has reviewed the proposed project on Old Topanga Canyon Road and are very concerned with its scope.

We concur with the analysis of Certified Arborist Rosi Dagit in her letter to this commission dated January 7th expressing her concern over the impacts this development will have on the surrounding Oak trees. We also agree with her statement that mitigation requirements are put in place before the issuance of any permit.

We agree that each individual has the right to build on their property but we must take issue with the out of character design and the impact this Box like structure will have on the community. In looking at the staff report and reviewing the pictures that were supplied, some of these homes are not anywhere near Old Topanga Canyon Road. It is stated that 1720 Topanga Canyon Blvd is only two Miles from the site. What is not mentioned is there are two mountain ranges In between. The impression the report gives is it is only two miles down the road. Why this is so important an issue is stated in Rosi's letter. "The impacts to the Oak trees on this site are directly related to the size of the project". There seems to be to many unavoidable impacts indicated in the staff report that are having to be midigated. Hence the reason for all the Special conditions. We would recommend that the project be reduced to two stories to help mitigate further damage to the environment.

We are also concerned with the drainage of water off the project during the rainy season. Most of the water will be flowing off of impervious surfaces and onto the Road. This will directly affect the driving conditions on Old Topanga Canyon Road.

We would recommend that all the final plans for the home be made available to the concerned neighbors prior to this commission taking any action on approval or denial of this project.

We would also recommend that any substantial changes to the proposed development that would require an amendment to the permit, if approved, be heard by the commission. It is not unreasonable considering the past oak tree violations that seem to be associated with this project.

Thank you for your consideration on this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'R. Pugliese', written in a cursive style.

Roger Pugliese
TASC Chair

STRUMWASSER & WOOCHEER LLP

ATTORNEYS AT LAW

100 WILSHIRE BOULEVARD, SUITE 1900
SANTA MONICA, CALIFORNIA 90401

TELEPHONE: (310) 576-1233
FACSIMILE: (310) 319-0156

ERIC D. WOOCHEER
MICHAEL J. STRUMWASSER
KEVIN S. REEDY
JOHANNA R. SHARGELT
LEA RAPPAPORT GELLER
LAMAR W. BAKER

†Also admitted to practice in New York and Massachusetts
††Also admitted to practice in New York

January 7, 2003

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Re: ITEM NO. W30b
Application: 4-01-183 (Kemper)
Comments of Michael and Joan Barry
IN OPPOSITION TO THIS PROJECT

Dear Commissioners:

I write on behalf of Michael and Joan Barry, who are residents of 1219 Old Topanga Canyon Road, next door to the proposed Kemper project. The Barrys oppose this project.

Mr. and Ms. Barry are the owners the property at 1219 Old Topanga Canyon, and as such, are owners of oak trees designated 14, 15 and 16 in the Oak Tree Plan submitted with the application. This project, if approved, will inflict severe and unmitigable damage to these trees, and the Barrys therefore request that the Commission not approve this project. The Barrys do not give permission for any encroachment into the protected zone of their trees or for any activity that will cause damage to their trees. They therefore demand that the Commission refrain from permitting development that the Commission knows or should know will cause damage, disease and potential death to the Barrys' trees.

Specifically, the staff report concerning this project concedes that the proposed development will cause, among other things, the following intrusions:

- Patio construction on the south side of the house is within the dripline or protective zone of tree 14;
- Construction of the east side of the house is within

California Coastal Commission
January 7, 2003
Page 2

the protective zones of trees 15 and 16;

- Construction of the access stairs to the house is within the driplines of trees 15 and 16;
- Construction of the driveway encroaches into the protected zones of trees 15 and 16;
- The proposed septic system (the tank and two seepage pits) encroaches to within 3 feet of the protected zones of trees 15 and 16 — far less than the 100 foot setback required usually by the Commission.

Indeed, in the staff recommendation, the Commission concedes that

"proposed construction activities will also have detrimental impacts on the oak trees whose driplines are located within and outside of the area to be disturbed by the project. The Commission further notes that damage to the oak trees resulting from the proposed project may not become apparent for many years."

Recognizing this harm, the Commission staff recommends as "mitigation" for damage to many trees, including the Barrys' trees, that Mr. Kemper plant 34 oak trees on his own property.

This "mitigation" is simply unacceptable to the Barrys. Actually, any supposed "mitigation" is unacceptable. The Barrys' trees are natural treasures, and are recognized as such by law. The Barrys are, and remain, unwilling to allow these trees to be harmed by a neighbor and do not believe the Commission can reasonably or lawfully grant that neighbor permission to do that harm.

Please be aware that the Barrys intend to take whatever legal action is available to them to protect their property from harm as a result of the Commission's action, including, but not limited to, an action to enjoin the issuance of a permit to damage their trees or an action for money damages to compensate

California Coastal Commission
January 7, 2003
Page 3

them for the full value of their trees.

Mr. and Ms. Barry further join in all the comments made in opposition to this project by all project opponents, including those made by Suzanne and Philip Schneider.

Thank you for your serious consideration of the Barrys' grave concerns regarding direct harm to their property the Commission concedes would be caused by this project. We look forward to a decision that protects the Barrys and their trees.

Sincerely,



Kevin S. Reed

ITEM No. W30b
Application: 4-01-183 (Kemper)

Philip & Suzanne Schneider
1230 Old Topanga Canyon Road
Topanga, CA 90290

**IN OPPOSITION TO THIS
PROJECT**

January 6, 2003

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Dear Commissioners,

We are the owners of 1230 Old Topanga Canyon Road, which lies directly across from the property on which Mr. Kemper proposes to build a house. We would like to register our opposition to this proposal, and request that it be denied.

Prior to Mr. Kemper's involvement with the property, that hillside was dense with vegetation – numerous mature oaks, numerous smaller oaks, various native scrub and groundcover (the poison oak was notably dense), California poppies, etc. The vegetation was so dense that one could not see the various brick retaining walls dating from decades ago.

Mr. Kemper's first act upon acquiring the property was to strip the hillside of nearly all of this lush vegetation. Following that, he removed a mature, protected oak, without benefit of a permit. It should be noted that this oak stood on a section of the property upon which Mr. Kemper's proposed structure would stand. He also caused to have removed a substantial limb (8-10 inches in diameter by 25 feet long) from a tree on the adjoining property (which he does not own), again without benefit of a permit (nor with the knowledge or consent of the property owner). This limb traversed an area that would intersect it with Mr. Kemper's proposed structure. We have eyewitness and photographic evidence of both of these illegal cuts. In addition to this, many smaller oaks with diameters up to and beyond the legal limit were removed and then dumped higher up on the slope.

In the process of geological evaluation and septic evaluation, Mr. Kemper caused substantial damage to the hillside. Various drilling rigs were run up and down the hillside, significantly displacing large amounts of earth, and eroding the hillside. What was once a slope so steep one would have difficulty climbing, is now a moderately sloped swale, bare of its once lush vegetative cover. So much earth was eroded down the hill that

Mr. Kemper had to put up a makeshift (and extremely unsightly) barricade at the street level. The result of all of this damage can be seen easily in the photographs in Exhibit A.

Mr. Kemper has engaged in substantial construction projects on the site, all without benefit of any permits. He has constructed ten retaining walls, a large platform higher up on the hill, a utility shed, a staircase ascending nearly the entire hill, and a six-foot fence. All of this construction was done within the driplines of mature oaks, significantly risking the health of these trees. Certainly, as an experienced architect, Mr. Kemper was (or certainly should have been) aware that the cutting of the oaks and the unpermitted construction were illegal.

The Topanga area is, of course, recognized as an environmentally sensitive ecosystem, particularly notable both for its fragility, and for the central role played by its mature oaks in maintaining what tenuous stability exists. Mr. Kemper's actions have already done an enormous amount of damage to the hillside. The presence of his proposed structure, and the activities involved in its construction, are certain to cause even more damage. This is indicated in the staff report. In spite of their noting what seems to us to be a substantial likelihood of further environmental damage, the staff is recommending that the proposed construction plan be approved. The rather large number of special conditions that the staff have felt compelled to recommend alarms us greatly – how can there be so many violations of the spirit and letter of the Coastal Act, and still have a project approved?

We are greatly concerned by the amount of earth Mr. Kemper has proposed to excavate. The 480 cubic yards he cites is difficult to grasp, but a little math shows us that it is equivalent to an amount of earth 23 feet wide by 23 feet high by 23 feet deep; another way of looking at this is that it would fill 48 standard 10-cubic-yard dump trucks. On page 18 of the report, we see the statement that "Land alteration and vegetation removal shall be minimized." Considering the decimation of the (formerly) existing vegetation, the illegal oak removals, the staff-noted risk to the remaining oaks, and the very substantial alteration to the hillside, we feel that a recommendation to approve the project is radically inconsistent with the Malibu/Santa Monica Mountains Land Use Plan.

We are also gravely concerned regarding the effects on waterflow on the hillside. This is quite a steep hillside, and the upper part is quite rocky. The winter rains in Topanga fall much more heavily than in the surrounding regions, owing to the rapid elevation rise from the coast, and during heavy rains, water flows down the hillside like a waterfall. Even with fairly ambitious drainage control, the diversion of the natural water flow is likely to become a risk to the slope itself, the oaks on the slope, and the stability and oaks on the adjoining properties. We understand that the staff is attempting to act with due diligence, but we respectfully suggest that their conclusions might be different if they had observed the waterflow on this hillside during a heavy, sustained rain, as we have.

We are further concerned about the geological and septic evaluation. We had numerous discussions with men working on the site, and they revealed to us that Mr. Kemper had employed a firm for geological evaluation, which gave him a negative report; according to the workmen, Mr. Kemper then sought out a second firm, which subsequently approved the site. Similarly, we were told by men working on the site that the Mr. Kemper's first septic (percolation) contractor had "found water everywhere they drilled", and that Mr. Kemper then located a different company that concluded that his pit septic

would be feasible. These differing conclusions, drawn by what we can only assume to be competent and ethical contractors, suggest at best that there is no consensus that the site is geologically stable, nor is there a consensus that it is a viable site for a septic system. In addition to this, the staff themselves have noted that the construction and presence of the structure will impact a number of the oaks, and that the proposed septic system violates distance requirements from oaks on the property as well.

We also have grave concerns regarding the effect of the proposed structure on the character and aesthetics of our immediate community. There is some variety in the homes along Old Topanga Canyon road in the vicinity of the proposed project, but they all share a manifest common characteristic – they're all rustic/country homes; that is, they are of a style one typically encounters in isolated mountain communities. Most of the homes are a single story, with a very few two-story homes, and very rare three-story homes. In most cases, the homes are set back more than 60 feet to the road, with approximately 100 feet being a common amount. Most homes are shielded by substantial vegetation and/or rustic fences; again, keeping with the rustic/country nature of the area.

Mr. Kemper's structure will be situated at the minimum legal setback from the edge of the road (25 ft), and between the building and the road he proposes to install over 1,000 square feet of paving. Note also that this box of a building is three stories tall. The combination of ugly and inappropriate style, minimal setback, lack of fence or trees shielding it from the road, and its height will make it stand out like the proverbial sore thumb. The negative impact on the aesthetics of our neighborhood would be substantial.

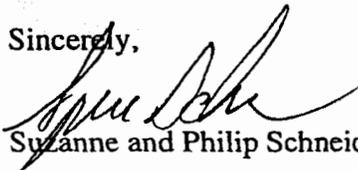
The Coastal Act contains a mandate to protect the "scenic and visual qualities of coastal areas" (page 27 of the report). At the previous Commission meeting at which Mr. Kemper's proposal was discussed, the Commissioners emphasized quite strongly that the "community character" of the immediate vicinity be a major consideration. We, too, strongly value the rustic/country character of our community, and feel that Mr. Kemper's proposed building has no place here whatsoever. We find it quite disappointing that the Commission's staff report claims that "The proposed development is visually compatible with surrounding development" – we see only a few multi-story homes and nothing built in a style even remotely resembling Mr. Kemper's design.

It appears that Mr. Kemper has employed a consulting company to provide photographs of various homes in Topanga, in an attempt to show that his proposed structure fits in with the so-called "eclectic" nature of Topanga. We take great exception to this claim, and the "evidence" used to support it. There are a sufficient number of homes in Topanga, so that one could, if one spent sufficient time, find a few houses matching almost any arbitrary criteria; this proves nothing, except that other unattractive and inappropriate structures exist here and there. However, the whole of Topanga is predominantly very rustic/country in style. More to the point, Old Topanga Canyon Road in the area of the proposed building site is populated with no dwellings that look anything like Mr. Kemper's design. We have provided, in Exhibit B, a series of photographs of all of the homes adjacent to Mr. Kemper's project – 4 or 5 homes in each direction, on both sides of the street (a much more fair exposition of the character of our community than Mr. Kemper's apparently intentionally biased sampling). It should also be stated that a number of the photographs provided by Mr. Kemper are of homes quite a distance from

the proposed site, and/or are of homes that are not necessarily easily visible from the road.

Mr. Kemper has consistently acted in a fashion that demonstrates his contempt for the law, the environment, and we the residents of this neighborhood. The damage he has already done was willful, and has been quite substantial. Construction of his proposed building will further significantly damage the environment and the character of our community. For these reasons we oppose his application, and hope that you will as well.

Sincerely,

 Philip J. Samuani
Suzanne and Philip Schneider

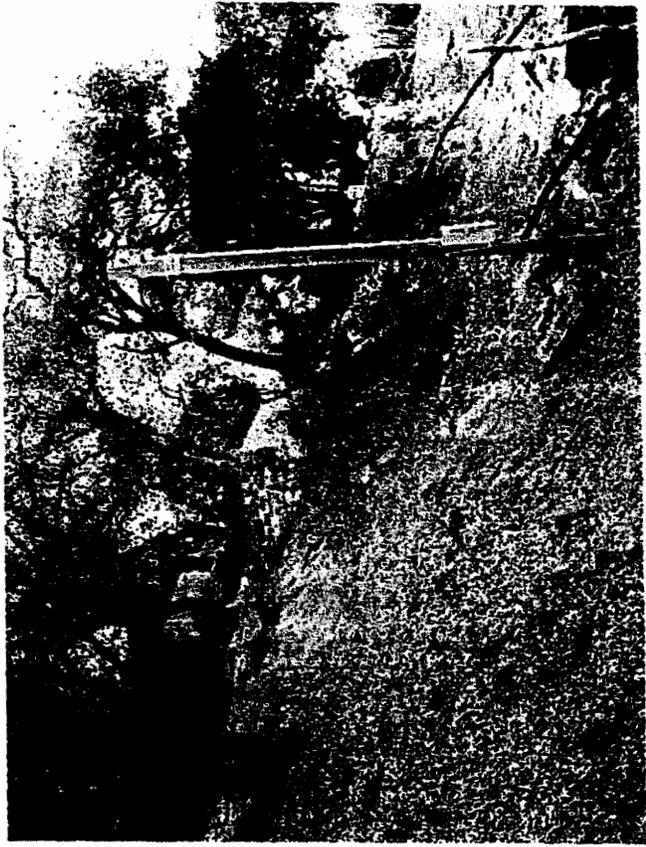
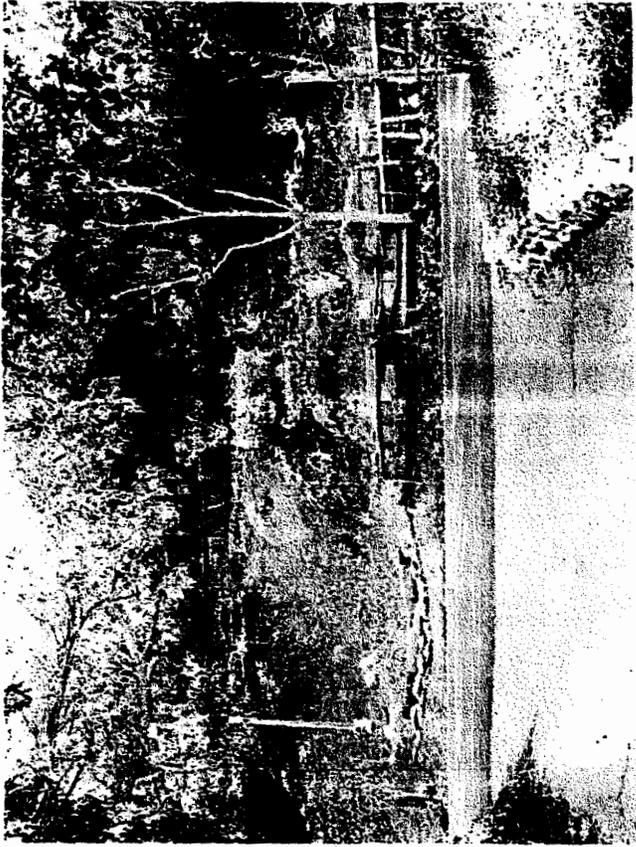
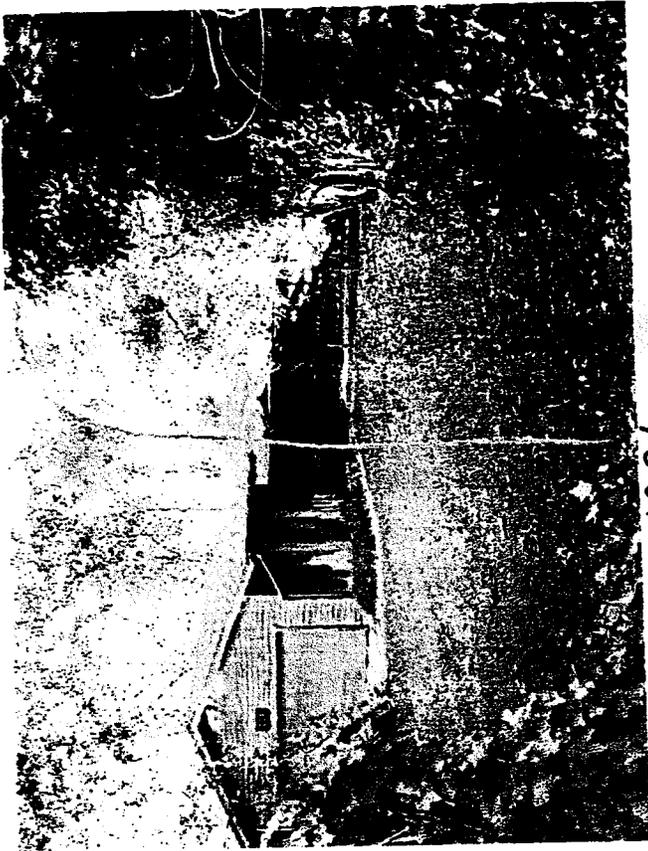


Figure 1



1226

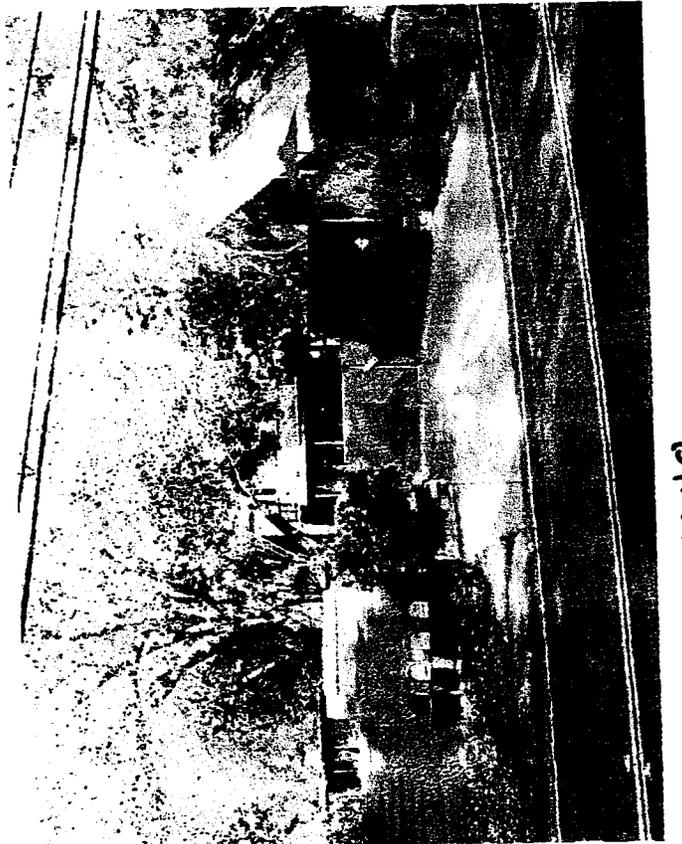


1179

1207



1230



1248

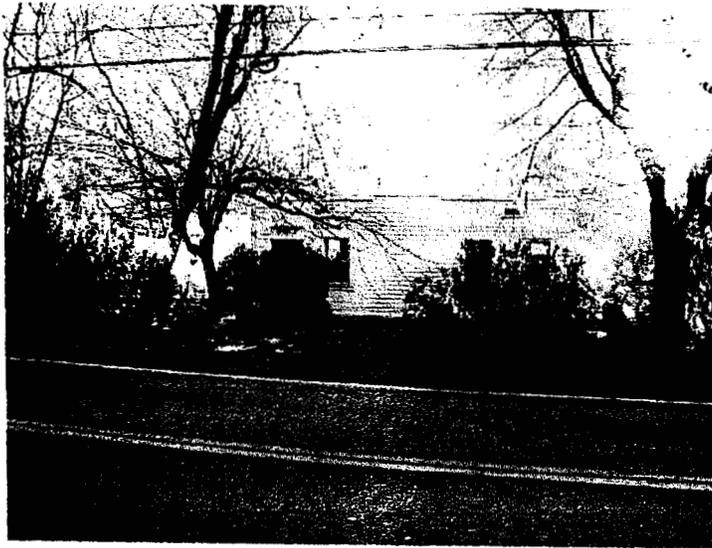
EXHIBIT B



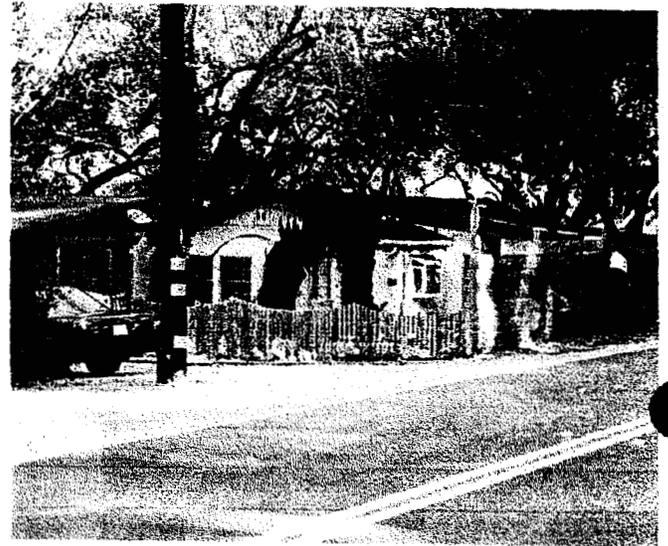
1200



1174



1152



1130

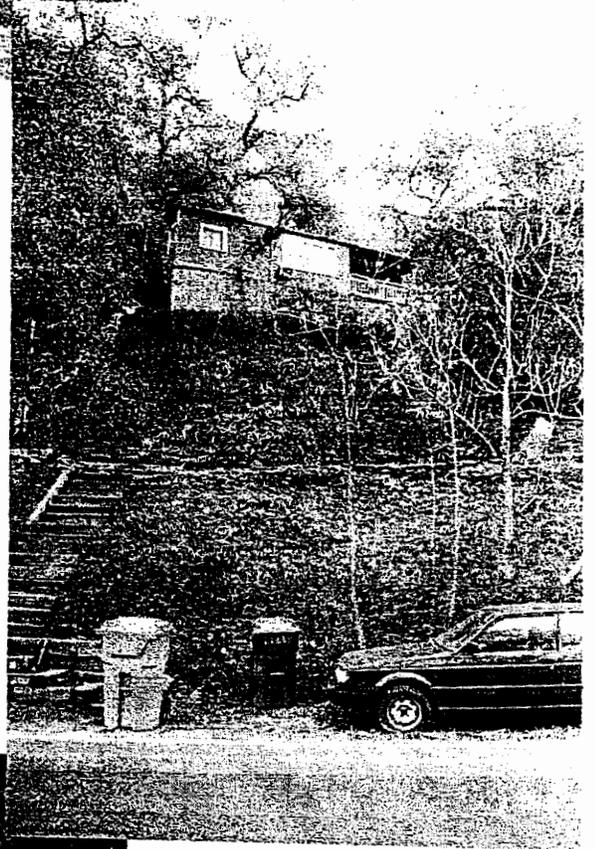


1149



1167

Old Topanga Canyon Road



1237

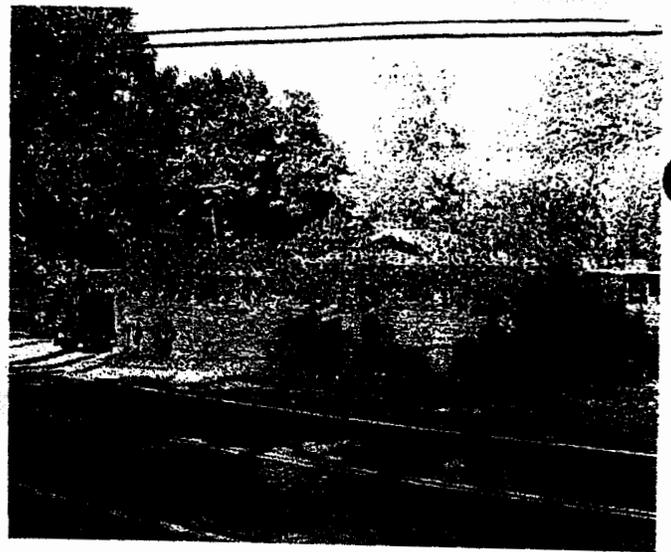


1219

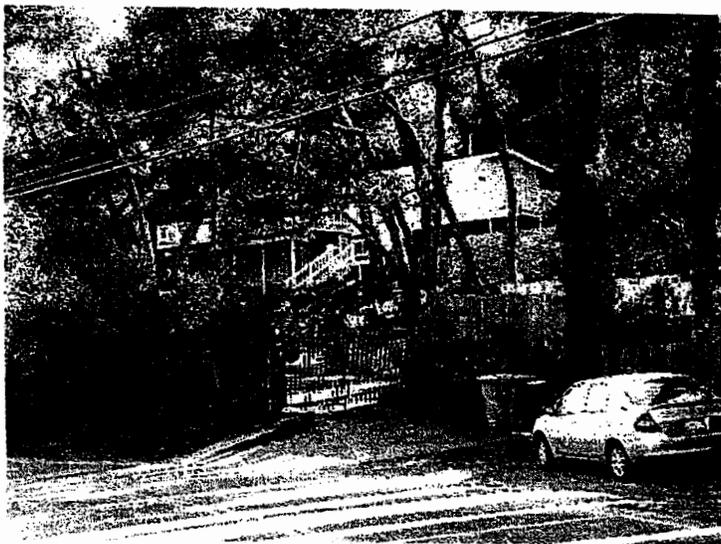
Old Topanga Canyon Road



1268



1254



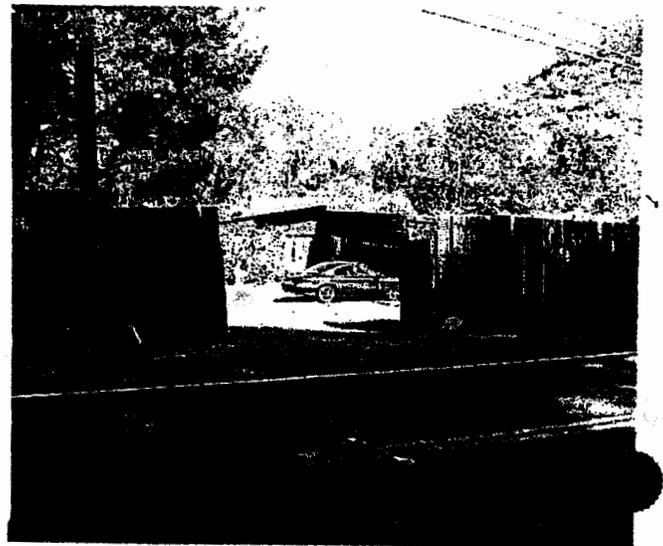
1243



1255



1212



1208

ITEM NO. W30b
Application: 4-01-183 (Kemper)

Michael & Joan Barry
1219 Old Topanga Cyn Rd
Topanga, CA. 90290

**IN OPPOSITION TO
THIS PROJECT**

The California Coastal Commission
895 S. California Street
Ste. 200
Ventura, CA. 93001

December 30, 2002

Dear Sirs,

Reference: Permit Number 4-01-183, 1231 Old Topanga Canyon Road, Topanga, CA. 90290

We are the owners of 1219 Old Topanga Canyon Road, and the parcel of land which is situated directly adjacent to the subject property on the east side, and we have resided at this address for 14 years. We recognize that, on November 5, 2002, Mr. Kemper's application for the above referenced permit was heard and that he has subsequently submitted revised plans. However, we still have serious concerns regarding the proposed development at 1231 Old Topanga Canyon Road.

Our property includes many fine old trees (some in excess of 150 ft.), including oak, pine and sycamore, and several of these trees are extremely close to Mr. Kemper's property line. In fact, we were surprised and dismayed to find out that someone working for Mr. Kemper has cut a substantial branch from an oak tree that is located on our property, but was overhanging the subject property at 1231 (designated #15 on Exhibit No. 15 from Mr. Kemper). At no time did anyone contact us to ask permission to cut the limb and we were unaware that this had been done until we inspected our property yesterday. Does Mr. Kemper intend to trim additional branches from the canopy of our trees that are on our joint property line? It would seem that he has to do this in order to build his development.

Mr. Kemper's project proposes demolishing the existing footings, stairs and walls, including approximately 488 cu.yds. of grading. We feel strongly that removing

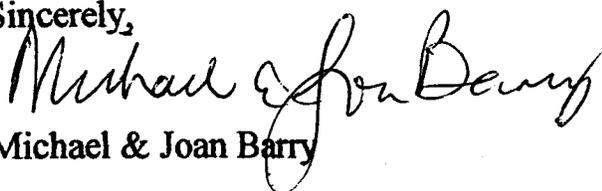
2.

such a large amount of dirt from a relatively tiny parcel of land will damage our property and the trees thereon, especially the root system of the trees bordering Mr. Kemper's property. If this grading work is carried out during the rainy season there could be the additional problem of substantial amounts of runoff, regardless of tarps, sandbags, etc., due to the extreme slope and the amount of water that would flow through the site. All indications are that we will have a wet winter.

We are also very concerned regarding the potential problems relating to the normal drainage from Mr. Kemper's development. The natural watercourse streams directly through his property from the rock formation above. For the past two years we have been in a drought period. During years of normal to heavy rainfall, when the natural aquifers fill to capacity, we have personally witnessed a small river cascading down through the subject property. In fact we have had to install a completely new drainage system under our house to cope with the runoff from the same rock formation. On Page 14 of the Staff Report dated 12/19/02 it states "In total, 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 the site in a non-erosive manner, this runoff will result in increased erosion on and off the site." We do not believe this issue has been addressed sufficiently.

We would also like to go on record regarding Section 30251 of the Coastal Act, concerning Visual Resources. The proposed development will be clearly visible from our property, as well as to anyone travelling along Old Topanga Canyon Road, which has been designated as a Scenic Highway. Of course, Mr. Kemper is entitled to build on his own property, but we must strongly object to the design as we understand it to be. Although there is a diversity of styles within our immediate neighborhood, none of them include this kind of "boxy" architecture. The photos that were submitted with Mr. Kemper's proposal are in no way representative of the homes within a two mile radius. We are situated in a unique portion of Old Topanga Canyon which has seen minimal development in the recent past, and contains many beautifully constructed homes that fit in with the character of this heavily wooded, rural area. Mr. Kemper's project does not.

Sincerely,



Michael & Joan Barry

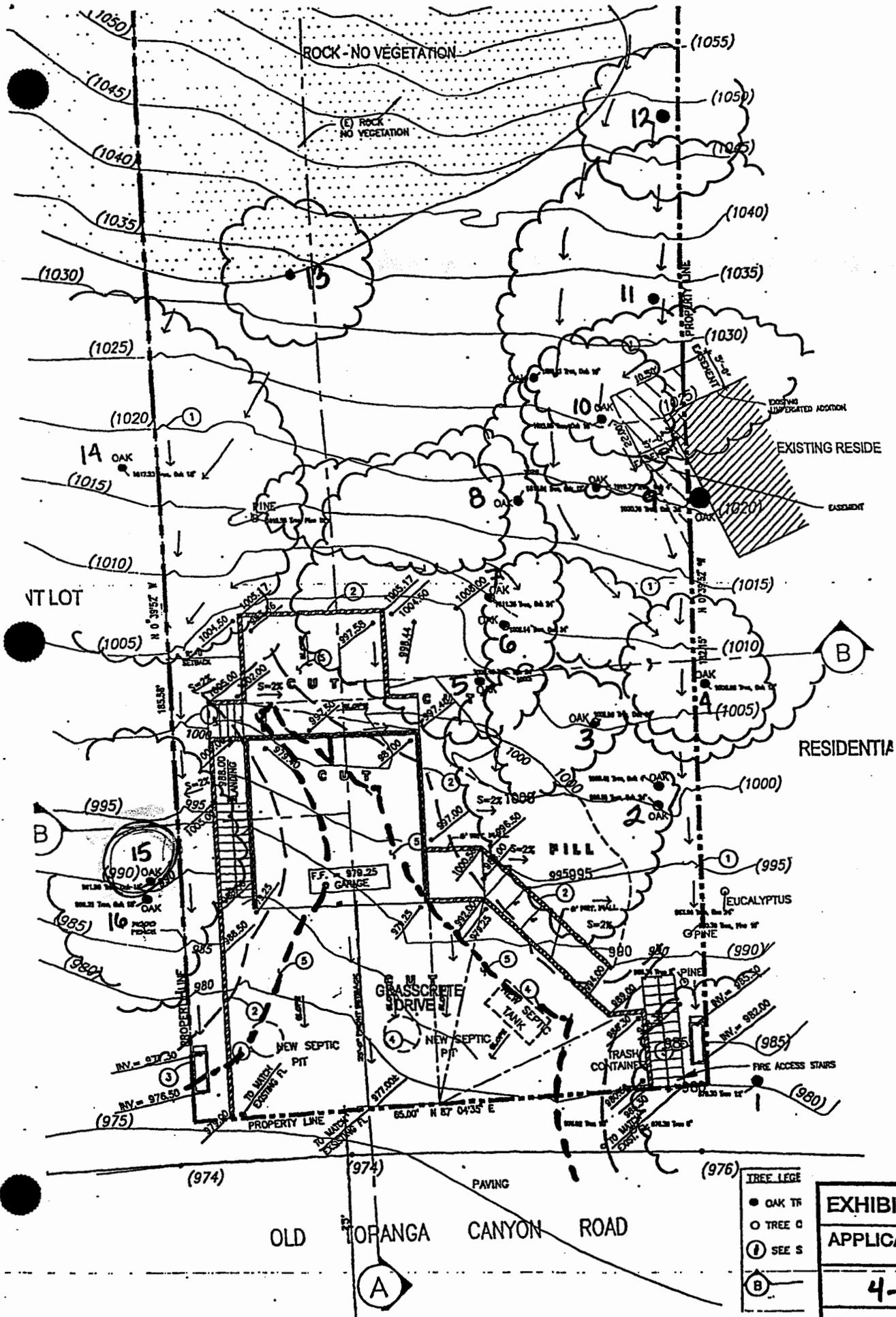


EXHIBIT NO. 15
APPLICATION NO.
4-01-183
OAK TREE PLAN



ITEM NO. W30b
Application: 4-01-183

Michael & Joan Barry
1219 Old Topanga Cyn. Rd
Topanga. Ca. 90290

**IN OPPOSITION TO
THIS PROJECT**

The California Coastal Commission
895 S. California Street
Ste. 200
Ventura, Ca. 93001

January 6, 2003

Dear Sirs:

Unfortunately, neither my wife or I are able to attend the hearing in person, due to prior commitments.

We are submitting this letter in addition to our letter dated December 30, 2003. Since writing that letter, our children (who were playing on our property), discovered a large pile of cut tree limbs. The pile of wood was placed high up on the rock formation above our house (see enclosed photo). We thought this should be brought to your attention.

Thank you for your consideration of the points raised in our letters.

Sincerely,



Michael & Joan Barry





MANAGEMENT • DESIGN • PRODUCTION

Re: 4-01-183 (Kemper)
OPPOSED

January 6, 2003

Dear Coastal Commissioners,

As a Topanga homeowner and business owner, I am appalled that this plan has been approved. A three-story structure fronting on this rural scenic highway will be an eyesore in direct violation of Section 30251 of the Coastal Act. There is nothing like it for miles in either direction along this road, which is dominated by historic homes dating back to the early 1900s.

Kemper's architectural design is more suited to the crowded condos of Venice Beach or Hollywood than our rural and rustic Topanga Canyon.

A small handful of similar homes have slipped through the Coastal Commission's protective hands in other areas of the canyon. Please don't let this be another mistake. Please reconsider your vote on this development. I believe you must have been misinformed or misled.

Thank you for your consideration of this appeal.

Sincerely,

A handwritten signature in cursive script that reads "Lyn Henley".

Lyn Henley

Item No. W306

Application: 4-01-183

In opposition to
this project

Don Cohen
1407 Old Topanga Canyon Rd.
Topanga, Ca. 90290

January 6, 2003

California Coastal Commission
So. California St.
Ventura, Ca. 93001

Ref: Permit #4-01-183

To Whom It May Concern:

I have just received notice of a public hearing on January 8 regarding proposed construction at 1231 Old Topanga Canyon Road. I have read the Staff Report on the project and have concerns about the geological and ecological impact of the proposed construction on our neighborhood. Those of us that live in Topanga Canyon take pride in the beauty and ecology of our environment. There seems little doubt that this project endangers that eco-system, most notably the oak trees. Although the staff has recommended approval of the project, it has imposed 15 conditions that must be met. These are serious conditions, and I contend that the conditions are contrary to a recommendation position. If the environment is damaged by the project, it will be impossible to turn the clock back and restore what has been damaged. You can't unring the bell.

I would like to voice my disapproval of the project as it now stands. There is too much potential for permanent damage. Additionally, the design of the structure is inconsistent with the aesthetics of our canyon. I hope you will reconsider the staff approval of the project.

Sincerely,


Don Cohen

Jan 6, 2003

TO: California Coastal Commission
FROM: Tom and Emily Karnes
RE: Proposed Bldg Site...1231 Old Topanga Canyon Road
Permit Number.....4-01-183
Applicant.....Alfred M. Kemper

Members of the Coastal Commission,

You have received many letters from our neighbors regarding the development of the property listed above, which by the way is directly across the street from our house. We feel it necessary to add our voice to that chorus.

We built our house here in 1974 and are familiar with all of the steps required to develop and build on a property in the canyon. We have always been good neighbors and welcomed new residents and new construction in a spirit of cooperation and friendliness. We are not opposed to anyone building a new home, as long as it is done properly, following all codes and restrictions and with respect for the neighborhood, the environment, and the natural beauty of the canyon. However, we believe that Mr. Kemper has disregarded all of the above from the beginning, as evidenced by the following:

- In Sept of 2000, we awoke to discover that a large oak tree was being cut down on Mr. Kemper's property. He was later fined \$5000 for the illegal tree removal.
- In the subsequent months, the property was almost denuded, wooden retaining walls and a fence were built without permits, and piles of assorted lumber and scrap materials were scattered over the property, creating an eyesore that we have lived with for 2 years. A makeshift plywood retaining wall was built to hopefully contain any earth movement in the event of heavy rains. We sent a letter to Mr. Kemper regarding our concerns about the effectiveness of the plywood wall and the potential for a mudslide that posed a dangerous threat to traffic and could have flowed onto our property.
- His proposed plan for a 35 ft high, 3-story structure with only a 25 foot setback from the road is in direct contrast to adjacent homes that are nested back from the road with ample tree cover.

We acknowledge Mr. Kemper's right to build a permitted and code compliant structure on his property. But in view of his history, our biggest concern is that he may continue to disregard codes and restrictions and hope that everything will be grandfathered in after all the work is done. I would expect more professionalism from a licensed architect. We only ask that you take note of our concerns when you consider issuing a permit. We also ask that any decision to issue a permit be accompanied by the necessary oversight to ensure compliance.

Sincerely,



Tom and Emily Karnes
1226 Old Topanga Canyon Road
Topanga, CA, 90290

W306
WITH FOOTNOTE

December 27, 2002

Lillian Ford
California Coastal Commission
South Central Coast Area
89 South California St. Suite 200
Ventura, CA 93001

Re: Application NO: 4-01-183 (Kemper, 1231 Old Topanga Canyon Rd.)

Dear Ms. Ford,

As the owner of the west bordering property, I am writing to again voice my observations and concerns on this project. I attended and spoke at the November 5th Commission hearing. Subsequently, Mr. Kemper has removed the majority of his "after the fact" constructions. He dismantled upper portions of what he refers to as a "temporary fence," leaving the bottom course and adding sandbags to it up the hill on the property line. Your report notes (page 20) that this fence "encroaches into the driplines and protected zones of 9 oak trees (#1, #2, #3, #4, #6, #9, #10, #11, #12)."

It also (especially with addition of the sandbags) diverts heavy rain runoff on the natural slope of the hill directly into the back of my house. These fences were cited in November by the L.A. County Dept of Regional Planning, for "encroachment of 3 oak trees - remove new wooden fence built on the south side of the house - It is a violation to encroach upon any oak tree 8" in diameter or larger." The "Notice Of Violation" was mistakenly posted on my door. The county investigator, Nicole Gaudette, said the fence was noted while on a site visit with the county arborist.

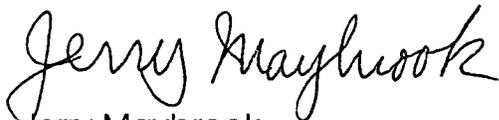
I request that this fencing and sandbag combination be removed immediately, since they oppose mitigation measures to stabilize the hill, and endanger my house by exposing it to severe water damage.

I must, for the record, briefly respond to assertions by Mr. Kemper (most recently in letters to 40 neighbors), that I've built an "illegal addition" to my house onto his property. I first rented this '20's cabin in 1962; it was a 650 foot two bedroom house then, as it was when I bought it few years latter; as it is today — the footprint has not changed in my 40 year tenure. The back corner overlaps the property line by three feet, forming a 3X6 foot triangle; totaling nine square feet – into his 29,000 square foot lot.

Mr. Kemper has continually badgered neighbors with letters extolling his legal ethic – yet at the November 5th hearing, one Commissioner said, after reviewing the staff report, "that it's one thing when a citizen comes in with after the fact permits, but when an architect does it...this gentleman has demonstrated to me that he has no respect for the law, at all." Mr. Kemper's plans were also characterized as "...very, very, very, very unattractive." The surrounding neighbors, who have been forced to endure this project, and will have to live with the results, would certainly agree strongly with the observation of the Commissioner.

Thank you for your continued consideration and worthwhile work,

Regards,



Jerry Maybrook

P.O. Box 38099

Los Angeles, CA 90038

(323) 314-2559

My property address: 1237 Old Topanga Canyon Road

Post Script and correction:

As I mentioned in my first letter, I believe Mr. Kemper has the right to build here in Topanga – it's his manner that is objectionable to me. While claiming to abide by the laws, he consistently ignores them – then demands after the fact approvals. Conversely, the "grandfathered" footprint of my house (previous typo, it's 850 sq ft) has existed for decades before I was born – decades before he purchased his property – this is a non-issue. It's being used to obscure a real issue – the altering of the natural water flow behind my house. A "temporary fence" & sandbags "to avoid water from your property to run onto my property." (letter to me dated Dec. 6, 2002). This diverts the natural water flow on the hill into the back of my house. I need your help and protection in this matter – Mr. Kemper responds to your mandates – he will ignore all others.

