

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Staff: J. Johnson
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Hearing Date: 9/10/08

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO:** 4-06-089**APPLICANT:** Harold Richardson**AGENT:** Jai Pal Khalsa, AIA**PROJECT LOCATION:** 21310 Saddle Peak Road, Topanga, Los Angeles County

PROJECT DESCRIPTION: Construct a 2-story, 24 ft. high, 3,660 sq. ft. single family residence with attached 795 sq. ft., 3-car garage, underground water tanks, septic system, solar photovoltaic panels, 450 ft. long driveway with turnaround area, temporary construction trailer and residential mobile home, two 6 ft. maximum height retaining walls along the cut slopes of the driveway to reduce grading and at the cut slope on the building pad, and approximately 3,285 cu. yds. of cut grading for the residence and 2,685 cu. yds. of cut grading for the driveway/turnaround. In addition, the project includes 2,500 cubic yards of restorative fill grading for removal/restoration of existing roads on site involving the full restoration and revegetation of 1,450 linear ft. of existing dirt roadways and partial restoration and revegetation of 420 linear ft. of two existing roadways with 10 ft. wide maintenance paths planted with native grass over "Grasspave" geogrid system.

Lot area:	12.3 acres
Building coverage:	5,600 sq. ft.
Ht. above finished grade:	24 ft.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with **fourteen (14) special conditions** relating to (1) plans conforming to geotechnical engineer's recommendations, (2) landscaping, revegetation, and erosion control, (3) assumption of risk, (4) drainage and polluted runoff control, (5) removal of natural vegetation, (6) structural appearance, (7) lighting restriction, (8) habitat impact mitigation, (9) future development restriction, (10) deed restriction, (11) open space conservation easement, (12) removal of temporary construction trailer and storage container, (13) site inspection, and (14) revised plans. The applicant proposes to construct a single family residence and garage on a descending slope below a ridge in the southeastern portion of the Santa Monica Mountains. The subject 12.3 acre parcel includes chaparral ESHA and numerous dirt roadways graded prior to the effective date of the Coastal Act. The applicant has reviewed numerous alternatives to reduce grading and landform alteration impacts on ESHA by proposing to construct the residence on a portion of an existing graded pad and constructing a new driveway directly from Saddle Peak Road. The

applicant is also proposing to restore and revegetate with native chaparral approximately 1,450 linear feet of existing dirt roadway and partially restore and revegetate approximately 420 linear feet of existing roadway while retaining a 10 foot wide maintenance path to access the septic system and water tanks in two separate locations. The path will be revegetated with native grass species utilizing a porous "Grasspave" geogrid system. The proposed project will be visible from Saddle Peak Road and a portion of public lands located to the north.

The standard of review for the project is the Chapter 3 policies of the Coastal Act. In addition, the policies of the certified Malibu–Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project will be consistent with the applicable policies of the Coastal Act and the LUP.

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Approval-in-Concept, dated 01/16/07; Los Angeles County Department of Health Services Approval-in-Concept for septic system, dated 5/2/07; Los Angeles County Fire Department Preliminary Fuel Modification Plan Approval, dated 6/20/06; Los Angeles County Fire Department Access Approval-in-concept, dated 4/11/06.

SUBSTANTIVE FILE DOCUMENTS: "Preliminary Soils and Engineering Geologic Investigation," prepared by Subsurface Designs, Inc., dated January 9, 2006; "Addendum I: Response to County of Los Angeles Review Sheets," prepared by Subsurface Designs, Inc., dated May 9, 2006; "Addendum II: Response to County of Los Angeles Review Sheets," prepared by Subsurface Designs, Inc., dated October 6, 2006; "County of Los Angeles Department of Public Works Geotechnical and Materials Engineering Division, Soils Engineering Review Sheet" prepared by Gan Lem, dated 3/9/06; "County of Los Angeles Department of Public Works Geotechnical and Materials Engineering Division, Geologic Review" prepared by Karin Vazquez, dated 3/29/06; "Limited Engineering Geologic Report" prepared by Subsurface Designs, Inc., dated May 10, 2006; "Biological Resource Evaluation," prepared by Dave Crawford, Compliance Biology, dated June 10, 2006.

I. Approval with Conditions

A. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No 4-06-089 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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

RESOLUTION TO APPROVE THE PERMIT:

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

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Plans Conforming to Geotechnical Engineer's Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the reports prepared for the site, including the "Preliminary Soils and Engineering Geologic Investigation," prepared by Subsurface Designs, Inc., dated January 9, 2006; "Addendum I: Response to County of Los Angeles Review Sheets," prepared by Subsurface Designs, Inc., dated May 9, 2006; "Addendum II: Response to

County of Los Angeles Review Sheets,” prepared by Subsurface Designs, Inc., dated October 6, 2006; and the “Limited Engineering Geologic Report” prepared by Subsurface Designs, Inc., dated May 10, 2006. These recommendations shall be incorporated into all final design and construction plans, including recommendations concerning grading and earthwork, structure setback, foundations, settlement, floor slabs, excavation erosion control, excavations, drainage and maintenance, reviews, and sewage disposal.

The final plans approved by the consultants 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 amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Landscaping, Revegetation, and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicant shall submit final landscaping, restoration, and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall incorporate the criteria set forth below. All development shall conform to the approved landscaping and erosion control plans:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, updated August 2007. All native plant species shall be of local genetic stock. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a ‘noxious weed’ by the State of California or the U.S. Federal Government shall be utilized or maintained within the property.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting shall be primarily of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. All native plant species shall be of local genetic stock. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. The landscape plan shall be designed with vertical elements to partially screen and soften the visual impact of the residence, garage and driveway with trees and shrubs as viewed

from the public lands, and Saddle Peak Road from the north, east and south. Once the temporary construction trailer and residential mobile home are removed from the site these areas will be re-graded to match the natural landform contour and revegetated with native plants within 30 days of the removal of these temporary structures.

- 3) 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.
- 4) Vegetation within 20 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 the approved final approved fuel modification plan. Irrigated lawn, turf and ground cover planted within the first twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 5) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.
- 6) Fencing of the entire property is prohibited. Fencing shall extend no further than Zone B shown on the final approved fuel modification plan except for gates at the entrance to the driveway at Saddle Peak Road. The fencing type and location shall be illustrated on the landscape plan. Fencing shall also be subject to the color requirements outlined in Special Condition Six (6) below.
- 7) The landscape plan shall also include a restoration/revegetation program, prepared by a qualified habitat restoration consultant with credentials acceptable to the Executive Director, that utilizes only native plant species that have been obtained from local Santa Monica Mountains genetic stock and are consistent with the surrounding native plant community. Road areas where re-grading and complete restoration with native plants as generally shown on **Exhibits 14 & 16** shall occur will include the 400 foot long road on the southern portion of the subject parcel leading from Applefield Lane to the existing graded pad proposed for the septic system, the approximate 1,050 foot long roadways leading to and from the small peak on the northern and northwest portions of the subject parcel. Partial restoration of a total of 420 feet of two existing driveways retaining two 10 foot wide maintenance paths planted with native grass over "Grasspave" geogrid system shall be completed along two roadways: 1) along the 200 foot long roadway leading from the residential driveway to the septic system, and the 2) 220 foot long roadway with a "Y" shaped turn located adjacent and north of the building pad providing maintenance access to the underground water tanks and solar panels. Native seeds shall be collected from areas as close to the

restoration site as possible. The plan shall specify the preferable time of year to carry out the restoration, include the use of adequate topsoil, and describe the supplemental watering requirements that will be necessary, including a detailed irrigation plan. The plan shall also specify performance standards to judge the success of the restoration effort. The revegetation plan shall identify the species, location, and extent of all plant materials and shall use a mixture of seeds and container plants to increase the potential for successful revegetation. The plan shall include a description of technical and performance standards to ensure the successful revegetation of the restored slope. A temporary irrigation system may be used until the plants are established, as determined by the habitat restoration consultant, and as approved by the consulting civil engineer, but in no case shall the irrigation system be in place longer than two (2) years. The restored area shall be planted within thirty (30) days of completion of the remedial grading operations. The restoration plan shall be implemented within ninety (90) days of the issuance of this permit. Revegetation shall provide ninety percent (90%) coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. The Executive Director may extend this time period for good cause. Plantings shall 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 the revegetation requirements.

- 8) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

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 grading shall take place only during the dry season (April 1 – October 31). This period may be extended for a limited period of time if the situation warrants such a limited extension, if approved by the Executive Director. 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 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring

- (1) 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 whether 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.
- (2) 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 a 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. 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 wildfire, landslide, and erosion; (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.

4. Drainage and Polluted Runoff Control Plan

A. *Prior to issuance of the coastal development permit*, the applicant 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 geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the 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.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 100 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 100-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit.

6. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-06-089. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roofs, trims, exterior surfaces, driveways, retaining walls, fences, and other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored and constructed with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-06-089 if such changes are specifically authorized by the Executive Director as complying with this special condition.

7. Lighting Restriction

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

3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
- B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Habitat Impact Mitigation

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat (ESHA) that will be disturbed by the proposed development, including fuel modification on the project site and brush clearance requirements on adjacent property. The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and, if the fuel modification/brush clearance zones extend onto adjacent property, adjacent parcel boundaries. The delineation map shall indicate the total acreage for all chaparral ESHA, both on and offsite that will be impacted by the proposed development, including the fuel modification/brush clearance areas. The location and acreage of on-site fuel modification shall be based on the Final Fuel Modification Plans required by Special Condition Two (2). A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation pursuant to this special condition shall be provided for impacts to the chaparral ESHA on the subject lot from the proposed development and fuel modification/brush clearance requirements by one of the three following habitat mitigation methods:

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification/brush clearance area. The habitat restoration area may either be onsite or offsite within the coastal zone either in the City of Malibu or elsewhere in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains and shall be designed to restore the area in question for habitat function, species

diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite, the applicants shall submit written evidence to the Executive Director that the property owner has irrevocably agreed to allow the restoration work, maintenance and monitoring required by this condition and not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been, in part or in whole, unsuccessful, based on the approved goals and performance standards, the applicants shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. Should supplemental restoration be required, the applicants shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating the supplemental restoration areas. At the end of the five-year period, a final report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicants shall submit an application for an amendment to the coastal development permit for an alternative mitigation program and shall implement whatever alternative mitigation program the Commission approves, as approved.

The habitat restoration work approved in the restoration plan shall be carried out prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act, shall occur in the habitat restoration area, as shown on the habitat restoration site plan required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the applicant shall submit evidence that the applicants have executed and recorded a deed restriction (if the applicants are not the owners, then the applicants shall submit evidence that the owner has executed and recorded the deed restriction), in a form and content

acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel on which the restoration area lies and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicants fail to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to the issuance of the coastal development permit, the applicants shall (or, if the applicants are not the owner of the habitat conservation site, then the owners of the habitat conservation site shall) execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over the entirety of a legal parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence, the applicants shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel(s) is/are larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral habitat ESHA. The fee shall be calculated as follows:

1. Development Area, Irrigated Fuel Modification Zones, Off-site Brush Clearance

The in-lieu fee for these areas shall be \$12,000 per acre within the development area and any required irrigated fuel modification zones. The total acreage shall be based on the map delineating these areas required by this condition.

2. Non-irrigated Fuel Modification Zones

The in-lieu fee for non-irrigated fuel modification areas shall be \$3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority's Coastal Habitat Impact Mitigation Fund for the acquisition, or permanent preservation of chaparral habitat in the Santa Monica Mountains coastal zone.

9. Future Development Restriction

This permit is only for the development described in Coastal Development Permit No. 4-06-089. 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 any future development on any portion of the parcel. Accordingly, any future improvements to any portion of the property, including but not limited to the residence, garage, septic system, landscaping, and removal of vegetation or grading other than as provided for in the approved landscape plan and the fuel modification plan prepared pursuant to Special Condition Two (2), shall require an amendment to Coastal Development Permit No. 4-06-089 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

10. Deed Restriction

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

11. Open Space Conservation Easement

A. No development, as defined in Section 30106 of the Coastal Act, grazing, or agricultural activities shall occur outside of the approved development area, within the portion of the property identified as the “open space conservation easement area”, as shown in **Exhibit 15** except for:

1. Fuel modification required by the Los Angeles County Fire Department undertaken in accordance with the final approved fuel modification plan required by Special Condition Two (2) or other fuel modification plans approved by the Commission pursuant to a different CDP(s) issued by the Commission;
2. Drainage and polluted runoff control activities and landscaping and erosion control-related activities required and approved pursuant to:
 - a. The drainage and runoff control plans approved pursuant to Special Condition Four (4) of this permit; and
 - b. The landscaping and erosion control plans approved pursuant to Special Condition Two (2);
3. If approved by the Commission as an amendment to this coastal development permit or a new coastal development permit,
 - a. construction and maintenance of public hiking and equestrian trails, and
 - b. construction and maintenance of roads, trails, and utilities consistent with existing easements.

B. Prior to issuance of the Coastal Development Permit, the applicant shall execute and record a document in a form and content acceptable to the Executive Director, granting to the Mountains Recreation and Conservation Authority ("MRCA") on behalf of the people of the State of California an open space conservation easement over the "open space conservation easement area" described above, for the purpose of habitat protection. The recorded easement document shall include a formal legal description of the entire property; and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the open space conservation easement area, as generally shown on **Exhibit 15**. The recorded easement document shall reflect that no development shall occur within the open space conservation easement area except as otherwise set forth in this permit condition. The grant of easement shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) that the Executive Director determines may affect the interest being conveyed, and shall run with the land in favor of the MRCA on behalf of the people of the State of California, binding all successors and assigns.

12. Removal of Temporary Construction Trailer and Storage Container

The applicant shall remove the temporary residential mobile home and construction trailer on the site within two years of the issuance of this coastal development permit or within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of temporary mobile home and construction trailers. The Executive Director may grant additional time for good cause.

13. Site Inspection

- A. By acceptance of this permit, the applicant irrevocably authorizes, on behalf of himself and his successors-in-interest with respect to the subject property, Coastal Commission staff and its designated agents to enter onto the property to undertake site inspections for the purpose of monitoring compliance with the permit, including the special conditions set forth herein, and to document their findings (including, but not limited to, by taking notes, photographs, or video), subject to Commission staff providing 24 hours advanced notice to the contact person indicated pursuant to paragraph B prior to entering the property, unless there is an imminent threat to coastal resources, in which case such notice is not required. If two attempts to reach the contact person by telephone are unsuccessful, the requirement to provide 24 hour notice can be satisfied by voicemail, email, or facsimile sent 24 hours in advance or by a letter mailed three business days prior to the inspection. Consistent with this authorization, the applicant and his successors: (1) shall not interfere with such inspection/monitoring activities and (2) shall provide any documents requested by

the Commission staff or its designated agents that are relevant to the determination of compliance with the terms of this permit.

- B. ***Prior to issuance of the coastal development permit***, the applicant shall submit to Commission staff the email address and fax number, if available, and the address and phone number of a contact person authorized to receive the Commission's notice of the site inspections allowed by this special condition. The applicant is responsible for updating this contact information, and the Commission is entitled to rely on the last contact information provided to it by the applicant.

14. **Revised Plans**

A. ***Prior to issuance of the coastal development permit***, the applicant shall submit, for the review and approval of the Executive Director, two sets of revised site and grading plans to carry out the applicant's proposed project revisions. The residence and attached garage shall be in the location shown on the May 15, 2008 site plans; however, the revised site and grading plans shall show a reduction in grading along the driveway with the construction of one or two 6 foot maximum height retaining walls along the cut slopes (as generally shown in **Exhibit 3**). The revised site and grading plans shall also identify that the existing roadways located to the north of the proposed residential building pad and adjoining underground water tanks shall be revegetated by re-grading the roadways, adding topsoil, and planting with native plants along the approximate 1,450 lineal feet of these roadways, and the re-grading and replanting of 420 feet of two existing roadways retaining two 10 foot wide maintenance paths planted with native grass over "Grasspave" geogrid system as generally shown on **Exhibits 14 & 16**.

B. In the event that changes to the approved grading plan are necessary which would result in the expansion of the approved development area, including any change to the 1.5:1 (H:V) cut slope located immediately north of the proposed flat building pad in order to lessen the gradient of the slope, then the applicant shall submit revised plans to reduce the size of the flat building pad and possibly the size of the residence and/or garage as necessary in order to maintain a maximum 10,000 sq. ft. building pad and cut/fill slope area.

C. The Permittee shall undertake development in accordance with the final approved site plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required

IV. **Findings and Declarations**

The Commission hereby finds and declares:

A. Project Description and Background

1. Project Description

The applicant proposes to construct a 2-story, 24 ft. high, 3,660 sq. ft. single family residence with attached 795 sq. ft., 3-car garage, underground water tanks, septic system, 1,600 sq. ft. ground mounted solar photovoltaic panels, 450 ft. long driveway with turnaround area, temporary construction trailer and residential mobile home, two 6 ft. maximum height retaining walls along the cut slopes of the driveway to reduce grading and at the base of the cut slope on the building pad, and approximately 3,285 cu. yds. of cut grading for the residence and 2,685 cu. yds. of cut grading for the driveway/turnaround. In addition, the project includes 2,500 cubic yards of restorative fill grading for removal/restoration of existing roads on site involving the full restoration and revegetation of 1,450 linear ft. of existing dirt roadways and partial restoration and revegetation of 420 linear ft. of two existing roadways with 10 ft. wide maintenance paths planted with native grass over "Grasspave" geogrid system. As proposed, all excess excavated materials (approximately 3,470 cu. yds.) will be exported to an off site disposal site located outside the coastal zone (**Exhibits 1-16**).

The project site is a vacant 12.3 acre parcel (Assessor's Parcel Number: 4448-022-005) on Saddle Peak Road in the Santa Monica Mountains. (**Exhibit 1**) The project site is situated on a descending slope below a north-south trending ridge in the southeastern portion of the Santa Monica Mountains, approximately two miles inland from the coast and about 1,000 feet northwest of the intersection of Saddle Peak Road and Tuna Canyon Road (**Exhibit 1**).

The Malibu/Santa Monica Mountains LUP designates the subject parcel as Rural Land II, allowing one dwelling unit per five acres. The proposed building site is located at an elevation of approximately 2,013 feet above sea level. The subject parcel ranges from 1,920 to 2,175 feet elevation above sea level. Slopes east of the building site descend toward Dix Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 800 feet away from the proposed building site. The proposed building pad and driveway drain east to Dix Canyon Creek. Slopes west of the building site descend toward Little Las Flores Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 1,600 feet away from the proposed building site which does not drain toward Little Las Flores Canyon Creek. A vast area of public park land, owned by the Santa Monica Mountains Conservancy, is located approximately 4,500 feet west of the subject parcel within Las Flores Canyon. A second area of public lands is located approximately 2,500 feet to the north, owned by the National Park Service. Existing residences are located to the north, east and southeast of the subject site. There are no planned or existing trails in the vicinity of the subject parcel. Applefield Lane is located along the southern boundary of the subject parcel and intersects with Saddle Peak Road. There are a number of existing roadways on the parcel created prior to 1977, the effective date of the Coastal Act.

The applicant initially submitted an application proposing to construct the proposed residence with a detached guest house and significant widening of the existing dirt roadways leading from Applefield Lane to the project site. As originally proposed, the project would have included approximately 18,540 cubic yards of cut and 20,761 cubic yards of fill grading. Staff requested that the applicant submit an alternatives analysis to identify different building sites and access driveway configurations on site to reduce grading and minimize the alteration of natural landforms. The study prepared by the applicant's engineer and architect includes analysis of several different alternatives, including the currently proposed project, to relocate the residence and roads on site in a manner that would reduce the originally proposed development area and minimize landform alteration and impacts to public views and environmentally sensitive habitat areas. As a result, the applicant has revised the originally proposed project to significantly reduce the amount of proposed grading so that approximately 3,285 cu. yds. of cut grading is now proposed for the residence and 2,685 cu. yds. of cut grading for the driveway/turnaround. More specifically, the originally proposed project has been revised to relocate the residence to an area on site that will reduce the necessary grading to the maximum extent feasible, delete the originally proposed guest house, reduce the hammerhead turnaround area and driveway by more than 650 linear feet, to a total of 450 linear feet, reduce the cut slopes above the driveway by incorporating retaining walls into the driveway design, and include restoration and revegetation of two existing roadways on site. Commission staff agrees with the applicant's engineering and architectural consultants that the currently proposed project will minimize grading and adverse impacts to coastal resources to the maximum extent feasible.

The County of Los Angeles issued a Certificate of Exception 10190 on 1/12/68. On February 9, 2006, the County of Los Angeles issued Certificate of Compliance 06-0329412 recorded on February 13, 2006 for the "Notice of Certificate of Exception Constituting a Certificate of Compliance, Certificate of Compliance NO. RCOC 2005 00120". The County's issuance of the Certificate of Exception 10190 on 1/12/68 was considered by Los Angeles County to comply with applicable provisions of the Subdivision Map Act and the County Subdivision Ordinance at the time of creation. Therefore, the subject parcel had been legally created prior to the effective date of the Coastal Act.

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 proposed development is located in the Malibu/Santa Monica Mountains area, an area historically subject to significant natural hazards including, but not limited to, landslides, erosion, flooding and wild fire. The submitted geology, geotechnical, and/or soils reports referenced as Substantive File Documents conclude that the project site is suitable for the proposed project based on the evaluation of the site's geology in relation to the proposed development. The reports contain recommendations to be incorporated into the project plans to ensure the stability and geologic safety of the proposed project, the project site, and the adjacent properties. To ensure stability and structural integrity and to protect the site and the surrounding sites, the Commission requires the applicant to comply with the recommendations contained in the applicable reports, to incorporate those recommendations into all final design and construction plans, and to obtain the geotechnical consultant's approval of those plans prior to the commencement of construction.

The subject parcel includes a large landslide feature along the southern portion of the parcel including a portion of Applefield Lane and an existing driveway leading from Applefield Lane. The applicant initially proposed to remediate this slide to improve the existing dirt roadway to the residence from Applefield Lane. The applicant has revised the proposed project to restore/revegetate this roadway and access the proposed residence directly from Saddle Peak Road using a portion of an existing roadway and extending it east to Saddle Peak Road. The revised project, including the residence, driveway and septic system, is now proposed to be located beyond this landslide and the restoration and revegetation of the existing driveway which traverses this landslide.

The revised project includes a building pad and cut slope with a 9,958 square foot area not including the hammerhead turnaround area. This pad is proposed to be cut into the slope with a maximum 22 foot high cut at a relatively steep 1 ½ :1 cut slope north of the proposed flat building pad. Staff notes that the County of Los Angeles Building and Safety Department typically requires constructed slopes not exceed a gradient of 2:1 (H:V). Therefore, since this relatively steep cut slope is required to construct this residence on a flat building pad, any revisions to lessen the slope of this cut will increase the area of the cut slope, thereby increasing the size of the current proposed 9,958 sq. ft. building pad and cut slope. In the event this cut slope is increased in size, the applicant will be required to submit revised plans per **Special Condition 14** to reduce the size of the flat building pad and possibly the size of the residence and/or garage as necessary in order to maintain a maximum 10,000 sq. ft. building pad and cut/fill slope area.

Additionally, to minimize erosion and ensure stability of the project site, the project must include adequate drainage and erosion control measures. In order to achieve these goals, the Commission requires the applicant to submit drainage and interim erosion control plans certified by the geotechnical engineer.

Further, the Commission finds that, for the project to ensure stability and avoid contributing significantly to erosion, all slopes and disturbed areas of the subject site

must be landscaped, primarily with native plants, to stabilize disturbed soils and reduce erosion resulting from the development.

Although the conditions described above render the project sufficiently stable to satisfy the requirements of Section 30253, no project is wholly without risks. The applicant's engineering consultant has designed the proposed development to ensure geologic stability to the maximum extent feasible by locating the all project components outside the landslide on the parcel, however, due to the presence of a landslide on the subject parcel, it is not possible to avoid all risk. Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from natural hazards, including wildfire, landslide and erosion, those risks remain substantial in this case. If the applicant nevertheless chooses to proceed with the project, the Commission requires the applicant to assume the liability from these associated risks. Through the assumption of risk condition, the applicant acknowledges the nature of the fire and/or geologic hazard that exists on the site and that may affect the safety of the proposed development.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30253 of the Coastal Act and as a response to the risks associated with the project:

- 1. Plans Conforming to Geotechnical Engineer's Recommendations**
- 2. Landscaping and Erosion Control Plan**
- 3. Assumption of Risk**
- 4. Drainage and Polluted Runoff Control Plan**

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

C. Environmentally Sensitive Resources

Section 30240 of the Coastal Act protects environmentally sensitive habitat areas (ESHA) by restricting development in and adjacent to ESHA. Section **30240** states:

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

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

Section **30107.5** of the Coastal Act, defines an environmentally sensitive area as:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30250(a) of the Coastal Act states:

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

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of environmentally sensitive habitats. The Coastal Commission has applied the following relevant policies as guidance in the review of development proposals in the Santa Monica Mountains.

- P57 Designate the following areas as Environmentally Sensitive Habitat Areas (ESHAs): (a) those shown on the Sensitive Environmental Resources Map (Figure 6), and (b) any undesignated areas which meet the criteria and which are identified through the biotic review process or other means, including those oak woodlands and other areas identified by the Department of Fish and Game as being appropriate for ESHA designation.***
- P63 Uses shall be permitted in ESHAs, DSRs, Significant Watersheds, and Significant Oak Woodlands, and Wildlife Corridors in accordance with Table I and all other policies of this LCP.***
- P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.***
- P69 Development in areas adjacent to environmentally sensitive habitat areas (ESHAs) shall be subject to the review of the Environmental Review Board, shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***
- P72 Open space or conservation easements or equivalent measures may be required in order to protect undisturbed watershed cover and riparian areas located on parcels proposed for development. Where***

new development is proposed adjacent to Environmentally Sensitive Habitat Areas, open space or conservation easements shall be required in order to protect resources within the ESHA.

P74 *New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.*

P82 *Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.*

P84 *In disturbed areas, landscape plans shall balance long-term stability and minimization of fuel load. For instance, a combination of taller, deep-rooted plants and low-growing ground covers to reduce heat output may be used. Within ESHAs and Significant Watersheds, native plant species shall be used, consistent with fire safety requirements.*

1. Project Description and Site Specific Biological Resource Information

The project site is a vacant 12.3 acre parcel adjacent to Saddle Peak Road located to the east and adjacent to Applefield Lane located to the south in the Santa Monica Mountains. (**Exhibit 1**) The project site is situated on a descending slope below a north-south trending ridge in the southeastern portion of the Santa Monica Mountains, approximately two miles inland from the coast and about 1,000 feet northwest of the intersection of Saddle Peak Road and Tuna Canyon Road (**Exhibit 1**).

The Malibu/Santa Monica Mountains LUP designates the subject parcel as Rural Land II, allowing one dwelling unit per five acres. The proposed building site is located at an elevation of approximately 2,013 feet above sea level. The subject parcel ranges from 1,920 to 2,175 feet elevation above sea level. Slopes east of the building site descend toward Dix Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 800 feet away from the proposed building site. The proposed building pad and driveway drain east to Dix Canyon Creek. Slopes west of the building site descend toward Little Las Flores Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 1,600 feet away from the proposed building site which does not drain toward Little Las Flores Canyon Creek. The proposed building site is a partially graded pad with a gently sloping natural slope about 160 feet below the peak of the north-south trending ridge on the subject parcel. The slopes from the proposed building pad to Saddle Peak Road to the east and Applefield Lane to the south range from 2:1 (26 degrees) to 3:1 (18 degrees).

A vast area of public park land, owned by the Santa Monica Mountains Conservancy, lies west of the subject parcel about 4,500 feet within Las Flores Canyon. A second area of public lands exists to the north about 2,500 feet, owned by the National Park

Service. Existing residences are located to the north, east and southeast of the subject site.

According to the biological assessment for the site, (listed in the Substantive File Documents) submitted by the applicant, the primary vegetation community present on the site and adjacent to the site is classified as ceanothus chaparral. There are several existing dirt roads on site which were constructed prior to the effective date of the Coastal Act which contain a mix of non-native and native plant species; however, according to the biological inventory report submitted by the applicant, the majority of the site is characterized as a native ceanothus chaparral community consisting of California buckwheat (*Eriogonum fasciculatum*), black sage (*Salvia mellifera*), sawtoothed goldenbush (*Hazardia squarrosa*), sugar bush (*Rhus ovata*), California broom (*Lotus sciparius*, and chamise (*Adenostoma fasciculatum*). There are no oak trees on the subject parcel.

According to public information, the applicant purchased the subject parcel in 2006 for \$63,000. The parcel was designated in the Los Angeles County Land Use Plan for residential use. The Malibu/Santa Monica Mountains LUP designates the subject parcel as Rural Land II, allowing one dwelling unit per five acres.

The project has been designed to cluster the proposed residence on and adjacent to an existing disturbed area containing a partially graded pad. The applicant originally proposed a development area greater than 10,000 sq. ft. but, at staff's request, subsequently revised the project plans to eliminate a previously proposed guest house. The applicant has also revised the originally proposed project to construct the access driveway directly from Saddle Peak Road rather than use a longer existing roadway from Applefield Lane that would have required substantially more grading to improve. The applicant is also proposing to fully restore a 1,450 linear feet of existing dirt roadways by adding fill material to restore the slope to an approximation of its previously existing topography and replanting with native vegetation. Two other segments of existing roadways areas (totaling approximately 420 linear feet) are also proposed to be partially restored by adding fill material to restore the slope to an approximation of its previously existing topography and replanting with native species while maintaining an approximately 10 ft. wide path for future maintenance vehicle access to the proposed septic pits and other septic system equipment every 1 to 2 years. The path will be revegetated with native grass species utilizing a porous "Grasspave" geogrid system. The proposed septic system site was found to be the only feasible site with adequate percolation outside geological hazardous areas on the subject parcel.

At the request of Staff, the applicant also has revised the originally proposed project to further reduce the proposed cut grading for the access driveway from Saddle Peak Road by utilizing a 220 foot long 6 foot maximum high retaining wall on the north side of the driveway. Construction of a retaining wall at this location would reduce the total driveway grading by more than 630 cu. yds. and will significantly reduce the area of

chaparral habitat on site that will be impacted by the project. Although the applicant has submitted conceptual revised project plans for this alternative, final engineered plans have not yet been submitted. Therefore, to ensure that the applicant's proposal to reduce grading on site in fully implemented, **Special Condition Thirteen (14)** requires the applicant to submit revised site and grading plans, for the review and approval of the Executive Director, for an approximately 220 ft. long, 6 ft. maximum height, retaining wall on the north side of the driveway and for the grading necessary for the proposed roadway restoration/revegetation noted above.

2. ESHA Designation on the Project Site.

Pursuant to Section 30107.5, in order to determine whether an area constitutes an ESHA, and is therefore subject to the protections of Section 30240, the Commission must answer three questions:

- 1) Is there a rare species or habitat in the subject area?
- 2) Is there an especially valuable species or habitat in the area, which is determined based on:
 - a) whether any species or habitat that is present has a special nature, OR
 - b) whether any species or habitat that is present has a special role in the ecosystem;
- 3) Is any habitat or species that has met either test 1 or test 2 (i.e., that is rare or especially valuable) easily disturbed or degraded by human activities and developments?

If the answers to questions one or two and question three are "yes", the area is ESHA.

The project site is located within the Mediterranean Ecosystem of the Santa Monica Mountains. The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Large, contiguous, relatively pristine areas of native habitats, such as coastal sage scrub, chaparral, oak woodland, and riparian woodland have many special roles in the Mediterranean Ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. Additional discussion of the special roles of these habitats in the Santa Monica Mountains ecosystem are discussed in the March 25, 2003 memorandum prepared by the Commission's Ecologist, Dr. John Dixon¹ (hereinafter "Dr. Dixon Memorandum"), which is incorporated as if set forth in full herein.

¹ The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

Unfortunately, coastal sage scrub, chaparral, oak woodland and riparian habitats are easily disturbed by human activities. As discussed in the Dr. Dixon Memorandum, development has many well-documented deleterious effects on natural communities of this sort. These environmental impacts may be both direct and indirect and include, but certainly are not limited to, the effects of increased fire frequency, of fuel modification, including vegetation clearance, of introduction of exotic species, and of night lighting. Increased fire frequency alters plant communities by creating conditions that select for some species over others. The removal of native vegetation for fire protection results in the direct removal or thinning of habitat area. Artificial night lighting of development affects plants, aquatic and terrestrial invertebrates, amphibians, fish, birds and mammals. Thus, large, contiguous, relatively pristine stands of coastal sage scrub, chaparral, oak woodland, and riparian habitats are especially valuable because of their special roles in the Santa Monica Mountains ecosystem and are easily disturbed by human activity. Accordingly, these habitat types meet the definition of ESHA. This is consistent with the Commission's past findings in support of its actions on many permit applications and in adopting the Malibu LCP².

As described above, the project site contains pristine chaparral and coastal sage scrub habitat that is part of a large, contiguous block of pristine native vegetation. As discussed above and in the Dr. Dixon Memorandum, this habitat is especially valuable because of its special role in the ecosystem of the Santa Monica Mountains and it is easily disturbed by human activity. Accordingly, the Commission finds that the chaparral and coastal sage scrub habitat on the project site meets the definition of ESHA in the Coastal Act.

3. Resource Dependent Use.

The Commission finds that the project site and the surrounding area constitute an environmentally sensitive habitat area (ESHA). The 1,870 linear feet of existing roadways and partially graded residential building pad and septic system pad have been previously graded and the native vegetation removed prior to the effective date of the Coastal Act, and thus, are not considered ESHA. Section 30240 of the Coastal Act restricts development within ESHA to only those uses that are dependent on the resource. The applicant proposes to construct a single family residence on the parcel. As single-family residences do not have to be located within ESHA to function, single-family residences are not a use dependent on ESHA resources. Section 30240 also requires that ESHA be protected against significant disruption of habitat values. As the construction of a residence on the site will require both the complete removal of ESHA from the home site and fuel modification for fire protection purposes around it, the proposed project would also significantly disrupt the habitat value in those locations. Application of Section 30240, by itself, would therefore require denial of the project,

² Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the United States Supreme Court's 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 subject of what sort of government action results in a "taking" was addressed by the Court in the *Lucas* case. 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. Other Supreme Court precedent establishes that 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 if 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.

As described above, the subject parcel was designated in the Los Angeles County Land Use Plan for residential use. Residential development has previously been approved by the Commission on sites in the immediate area. At the time the applicant purchased the parcel, the County's certified Land Use Plan did not designate the vegetation on the site as ESHA. Based on these facts, along with the presence of existing and approved residential development in the area, the applicant had reason to believe that it had purchased a parcel on which it would be possible 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. There is currently no offer to purchase the property from any public park agency. 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 project site 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 project site would create a nuisance under California law. Other houses have been constructed in similar situations in similar habitat areas 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, notwithstanding Section 30240, a residential project on the subject property must be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

4. Siting and Design Alternatives to Minimize Significant Disruption of Habitat Values

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to "take" the 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 assure compliance with Section 30240 by avoiding impacts that would significantly disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

Obviously, the construction of residential development, including vegetation removal for both the development area as well as required fuel modification, grading, construction of a residence and accessory structures, and the use of the development by residents will result in unavoidable loss of ESHA. The development can be sited and designed to minimize ESHA impacts by measures that include but are not limited to: limiting the size of structures, limiting the number of accessory structures and uses, clustering structures, siting development in any existing disturbed habitat areas rather than undisturbed habitat areas, locating development as close to existing roads and public services as feasible, and locating structures near other residences in order to minimize additional fuel modification.

In this case, siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the greatest extent feasible. In past permit actions, the Commission has allowed up to 10,000 sq. ft. of development area for a residence on a parcel zoned for residential development in this area of the

Santa Monica Mountains to avoid a taking of property. As detailed above, the proposed development area conforms to the maximum development area of 10,000 sq. ft. All proposed structures are located within this development area of 9,958 sq. ft. Although a smaller development area would reduce the ESHA loss somewhat, the reduction would not be significant. Nor are there other resources such as streams, riparian areas, or visual resources that would be protected by a smaller development area. As such, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible. The Commission also finds that the proposed development area provides a reasonable economic use.

5. Open Space Conservation.

This project is inconsistent with Section 30240 of the Coastal Act, and is only being allowed to avoid a taking of private property for public use. The Commission finds that for the project to be consistent with Section 30240 to the maximum extent feasible, while providing a reasonable economic use, this project must constitute the maximum amount of ESHA destruction on the site and the remaining ESHA on the property must be preserved in perpetuity.

The Commission finds that the most effective way to assure ESHA preservation on the site is the granting of an open space conservation easement to the Mountains Recreation and Conservation Authority (a joint powers authority) that prohibits development on the remainder of the site now and in the future. The Mountains Recreation and Conservation Authority (MRCA) is a public agency that represents a partnership between the Santa Monica Mountains Conservancy, the Conejo Recreation and Park District, and the Rancho Simi Recreation and Park District. The MRCA is dedicated to the preservation and management of open space, parkland, watershed lands, trails, and wildlife habitat. The MRCA manages and provides ranger services for almost 50,000 acres of public lands and parks that it owns or that are owned by the Santa Monica Mountains Conservancy. In the course of its normal duties, the MRCA park rangers and other staff are better able to monitor open space areas to ensure that the restrictions are followed than Commission staff. Further, an easement will be recorded against the title to the property and thus provide notice to future owners of the limitations that apply to the open space conservation area, reducing the risk of a future irreparable violation of the restriction. The governing board of the MRCA has agreed to accept all open space easements required by the Commission for properties within the Santa Monica Mountains National Recreation Area.

It is important that the property owner grant an easement to MRCA rather than simply record an open space deed restriction. Although a deed restriction should notify future owners of the restriction in the same manner that a recorded easement would, it would not be as effective in preserving the remaining ESHA for the following two reasons. First, a deed restriction is not as reliable because a property owner can record another document purporting to rescind the deed restriction. Although any attempt to rescind a deed restriction required by a coastal development permit ("CDP") without an

amendment to that CDP authorizing such a rescission would constitute a violation of the CDP and the Coastal Act, the County Recorder's office is likely to allow recordation of a rescission without the required Coastal Commission authorization. Indeed, the Commission has experienced the phenomenon of property owners recording documents purporting to modify deed restrictions recorded pursuant to CDP requirements. See, e.g., Commission findings for CDP Amendment F7453-A2 (Stephenson), approved March 2005, and Violation File V-6-04-010 (Del Mar Estates). On the other hand, because an easement necessarily involves more than one person, the County Recorder would not likely record a document purporting to rescind an easement unless the easement holder was also to sign the document. Thus, a condition requiring a deed restriction is much easier to violate, and therefore much less protective, than a condition requiring an easement.

Second, the Legislature has recently adopted new provisions to the Government Code specifically sanctioning the use of conservation easements for this purpose and changing procedures to ensure that they are prominent in searching title to property. In 2001, the Legislature adopted a new requirement that County Recorders keep a separate and "comprehensive index of conservation easements." See Cal. Gov't Code § 27255(a). As such, the Commission finds that the requirement of an open space and conservation easement is the most effective method of ensuring that the remaining ESHA on the project site will be conserved in the future. Finally, the Commission concludes that an open space easement that allows only the easement holder and no other entity to enter the property for inspection purposes does not interfere with the fee title owner's right to exclude the general public. It therefore does not constitute a significant invasion of the fee title owner's property interest.

In conclusion, the Commission finds that it is necessary to require the applicant to grant an open space easement to the MRCA over the open space area on the project site in order to insure that the remaining ESHA will be preserved, as detailed in **Special Condition Eleven (11)**. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

6. Habitat Impact Mitigation

While impacts resulting from development within ESHA can be reduced through siting and design alternatives for new development and by ensuring that the remaining ESHA on the site is permanently protected, they cannot be completely avoided, given the location of ESHA on and around the project site, the high fire risk in the Santa Monica Mountains, and the need to modify fuel sources to protect life and property from wildfire.

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification will vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel

modification zones applied by the Los Angeles County Fire Department, which include a setback zone immediately adjacent to the structure (Zone A) where all native vegetation must be removed, an irrigated zone adjacent to Zone A (Zone B) where most native vegetation must be removed or widely spaced, and a thinning zone (Zone C) where native vegetation may be retained if thinned or widely spaced although particular high-fuel plant species must be removed. The combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels. In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned. The Commission has found in past permit actions, that a new residential development (with a 10,000 sq. ft. development area) within ESHA with a full 200 foot fuel modification radius will result in impact (either complete removal, irrigation, or thinning) to ESHA habitat of four to five acres.

Obviously, native vegetation that is cleared and replaced with ornamental species or substantially removed and widely spaced will be lost as habitat and watershed cover. As discussed in the Dr. Dixon Memorandum³, the cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. Further, fuel modification can result in changes to the composition of native plant and wildlife communities, thereby reducing their habitat value. Although the impacts from habitat removal cannot be avoided, the Commission finds that the loss of ESHA resulting from the removal, conversion, or modification of natural habitat for new development including the building site area, and fuel modification can be mitigated in order to ensure that ESHA impacts are minimized to the extent feasible.

The Commission has identified three appropriate methods for providing mitigation for the unavoidable loss of ESHA resulting from development; namely, habitat restoration, habitat conservation, and the payment of an in-lieu fee for habitat conservation. The Commission finds that any of these measures is appropriate in this case to mitigate the loss of ESHA on the project site. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat of a similar type as that impacted equivalent to

³ The March 25, 2003 Memorandum Regarding the Designation of ESHA in the Santa Monica Mountains, prepared by John Dixon, Ph. D, is available on the California Coastal Commission website at <http://www.coastal.ca.gov/ventura/smm-asha-memo.pdf>

the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA.

The third habitat impact mitigation option is the payment of an in-lieu fee for habitat conservation. The fee is based on the habitat types in question, the cost per acre to restore or create comparable habitat types, and the acreage of habitat affected by the project. The Commission has, in past permit decisions, determined the appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, based on research carried out by the Commission's biologist. A range of cost estimates was obtained that reflected differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc.

The Commission has determined that the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). The in-lieu fee found by the Commission to be appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site, the "A" zone required for fuel modification, and off-site brush clearance areas), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification) is \$12,000 per acre. Further, the Commission has required a fee of \$3,000 per acre for areas where the vegetation will be thinned, but not irrigated ("C" zone or other non-irrigated fuel modification zone).

The acreage of ESHA that is impacted must be determined based on the size of the development area, required fuel modification (as identified on the final fuel modification plan approved by the Los Angeles County Fire Department) on the site, and required brush clearance off-site. The Commission finds that it is necessary to require the applicant to delineate the total acreage of ESHA on the site (and offsite brush clearance areas, if applicable) that will be impacted by the proposed development, and provide mitigation to compensate for this loss of habitat, through one of the three methods described above, and required by **Special Condition No. 8**. The 1,870 linear feet of existing roadways and partially graded residential building pad and septic system pad have been previously graded and the native vegetation removed prior to the effective date of the Coastal Act, and thus, are not considered ESHA. Only as conditioned will the proposed project minimize impacts to ESHA, pursuant to Section 30240 of the Coastal Act.

7. Additional Mitigation Measures to Address Additional ESHA Impacts

The Commission 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. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping, and mitigation for that effect was discussed in the previous section. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to out compete 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. This sort of impact was not addressed in the prior section. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area that are not directly and immediately affected by the proposed development, **Special Condition No. 2** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. **Special Condition No. 5** requires that removal of natural vegetation for the purpose of fuel modification within the 100 foot zone surrounding the proposed structure 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 100-200 foot fuel modification zone shall also not occur until commencement of construction of the structure(s) approved pursuant to this permit.

Further, the revised site and grading plans shall also identify that the existing roadways located to the north of the proposed residential building pad and adjoining underground water tanks be revegetated by re-grading the roadways, adding topsoil, and planting with native plants along the approximate 1,450 lineal feet of these roadways as generally shown on **Exhibits 14 & 16** as required by **Special Condition Nos. 14 and 2**.

In addition, the Commission has found that night lighting of ESHA areas in the Malibu/Santa Monica Mountains may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Therefore, **Special Condition No. 7, Lighting Restriction**, limits night lighting of the site in general; limits lighting to the developed area of the site; and requires that lighting be shielded downward. Limiting security lighting to low intensity security lighting will assist in minimizing the disruption of wildlife that is commonly found in this rural and relatively undisturbed area and that traverses the area at night.

Furthermore, fencing of the property would adversely impact the movement of wildlife through the ESHA and wildlife migration corridor on this parcel. Therefore, the Commission finds it is necessary to limit fencing to this perimeter of the development area (building pad), turnaround and driveway and a gate across the driveway at Saddle

Peak Road. This is required to be shown on the landscaping plan, required in **Special Condition 2**.

Additionally, the Commission finds that the amount and location of any new development that could be built in the future on the subject site consistent with the resource protection policies of the Coastal Act is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, the permitting exemptions that apply by default under the Coastal Act for, among other things, improvements to existing single family homes and repair and maintenance activities may be inappropriate here. In recognition of that fact, and 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 No. 9** the future development restriction, has been required.

Further, **Special Condition No. 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 thereby provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property. **Special Condition 12** requires the applicant to remove the temporary residential mobile home and construction trailer on the site within two years of the issuance of this coastal development permit or within thirty (30) days of the applicant's receipt of the Certificate of Occupancy for the proposed residence from the County of Los Angeles, whichever is less, to a site located outside the Coastal Zone or a site with a valid coastal development permit for the installation of temporary mobile home and construction trailers. **Special Condition 13** authorizes Commission staff to enter onto the property (subject to 24 hour notice to the property owner) to undertake site inspections for the purpose of monitoring compliance with the permit.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30240 of the Coastal Act.

D. Water Quality

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.

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality because changes such as the removal of native vegetation, the increase in impervious surfaces, and the introduction of new residential uses cause increases in runoff, erosion, and sedimentation and the introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutants, as well as effluent from septic systems.

The proposed development will result in an increase in impervious surfaces, which leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site and eventually be discharged to coastal waters, including streams, wetlands, and estuaries. The pollutants commonly found in runoff associated with residential use can reduce the biological productivity and the quality of such waters and thereby reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to minimize the potential for such adverse impacts to water quality resulting from drainage runoff both during construction and in the post-development stage, the Commission requires the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site, including: 1) sizing post-construction structural BMPs to accommodate (infiltrate, filter, or otherwise treat) the runoff from all storms up to and including the 85th percentile storm runoff event; 2) implementing erosion control measures during construction and post construction; and 3) revegetating all graded and disturbed areas with primarily native landscaping.

Additionally, the applicant's geologic consultants have concluded that the site is suitable for the proposed septic system and that there would be no adverse impact to the site or surrounding areas from the use of a septic system. The County of Los Angeles Environmental Health Department has given in-concept approval of the proposed septic system, indicating that it meets the plumbing code requirements. The Commission has found that conformance with the provisions of the plumbing code is protective of water resources.

The following special conditions are required, as determined in the findings above, to assure the project's consistency with Section 30231 of the Coastal Act:

- 2. Landscaping and Erosion Control Plan**
- 4. Drainage and Polluted Runoff Control Plan**

Therefore, 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.

In addition, the Malibu/Santa Monica Mountains LUP provides policy guidance regarding the protection of visual resources. The Coastal Commission, as guidance in the review of development proposals in the Santa Monica Mountains, has applied these policies.

- P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible.***
- P125 New development shall be sited and designed to protect public views from LCP-designated highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on a sloped terrain should be set below road grade.***
- P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.***
- P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:***
- Be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LUP.***
 - Minimize the alteration of natural landforms***
 - Be landscaped to conceal raw cut slopes***
 - Be visually compatible with and subordinate to the character of its setting.***
 - Be sited so as to not significantly intrude into the skyline as seen from public viewing places.***
- P131 Where feasible, prohibit placement of structures that will break the ridgeline views, as seen from public places***

P134 *Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.*

P142 *New development along scenic roadways shall be set below the road grade on the down hill side wherever feasible, to protect designated scenic canyon and ocean views.*

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. In the review of this project, Commission staff analyzed the publicly accessible locations where the proposed development is visible to assess potential visual impacts to the public. Staff examined the building site, the size of the proposed structure, and alternatives to the size, bulk and scale of the structure. The development of the residence raises the issue of whether or not views from public viewing areas will be adversely affected.

The subject site is located in a residential area west of Saddle Peak Road and north of Tuna Canyon Road in the Malibu/Santa Monica Mountains. The applicant proposes to construct a 2-story, 24 ft. high, 3,660 sq. ft. single family residence with attached 795 sq. ft., 3-car garage, underground water tanks, septic system, 450 ft. long driveway with turnaround area, septic system, solar photovoltaic panels, temporary construction trailer and residential mobile home, two 6 ft. maximum height retaining walls along the cut slopes of the driveway to reduce grading and at the base of the cut slope at the building pad, and approximately 3,285 cu. yds. of cut grading for the residence and 2,685 cu. yds. of cut grading for the driveway/turnaround. In addition, the project includes 2,500 cubic yards of restorative fill grading for removal/restoration of existing roads on site involving the full restoration and revegetation of 1,450 linear ft. of existing dirt roadways and partial restoration and revegetation of 420 linear ft. of two existing roadways with 10 ft. wide maintenance paths planted with native grass over "Grasspave" geogrid system.

The proposed building site is located at an elevation of approximately 2,013 feet above sea level. The subject parcel ranges from 1,920 to 2,175 feet elevation above sea level. Slopes east of the building site descend toward Dix Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 800 feet away from the proposed building site. The proposed building pad and driveway drain east to Dix Canyon Creek. Slopes west of the building site descend toward Little Las Flores Canyon Creek, a U.S. Geological Survey (USGS) designated blue-line stream that is approximately 1,600 feet away from the proposed building site which does not drain toward Little Las Flores Canyon Creek. A vast area of public park land, owned by the Santa Monica Mountains Conservancy, lies west of the subject parcel about 4,500 feet within Las Flores Canyon. A second area of public lands exists to the north about 2,500 feet, owned by the National Park Service. Existing residences are located to the north, east and southeast of the subject site. There are no planned or existing trails in the vicinity of the subject parcel.

The residence will be sited on an existing partially graded pad area and a portion of an existing roadway that were created prior to 1977, the effective date of the Coastal Act. This pad/development area (including cut slopes) will be enlarged to 9,958 sq. ft. in size to accommodate the proposed development. An alternative building site was reviewed, however, this site located on the southwest portion of the lot is the only site where a septic system will operate consistent with Los Angeles County Health Department requirements. The proposed residence will be built towards the east central portion of the 12.3 acre parcel as close as possible to other existing residential development located on the adjacent lot to the east. There are existing residential developments located to the north, east and southeast along Saddle Peak Road. There is a proposed residence located to the west on the adjoining parcel at 2575 Applefield Road, (Coastal Permit Application No. 4-07-101, Smith). The proposed residence and the residence located adjacent to the east across Saddle Peak Road will have overlapping fuel-modification zones. Further, the size and design of the proposed residence is compatible with other existing residences of similar character and size located on nearby properties to the north, east, and southeast of the subject site.

Additionally, the structure has been clustered on one existing pad area with a development area of less than 10,000 sq. ft. in size, and designed and conditioned to reduce landform alteration and removal of native vegetation that is considered environmentally sensitive habitat. Alternative siting locations would require more landform alteration and additional removal of environmentally sensitive habitat area, and would not reduce view impacts. As such, the proposed structures will be sited and designed to minimize impacts to visual resources to the extent feasible.

The project site will be unavoidably visible from public viewing areas, including the public park land, owned by the National Park Service located about 2,500 feet north of the subject site and from Saddle Peak Road, a Priority 2 designated scenic highway in the certified Los Angeles County Malibu Land Use Plan. The project site and driveway is not visible from public park land, owned by the Santa Monica Mountains Conservancy and located approximately 4,500 ft. west of the subject parcel within Las Flores Canyon, due to the intervening topography. Therefore, mitigation is needed to address potential visual impacts for the proposed residence from the north, east and south. The visual impact of the proposed structures, including the retaining walls and driveway can be minimized by requiring these structures to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows on the proposed residence be made of non-reflective glass. To ensure visual impacts associated with the colors of the structures and the potential glare of the window glass are minimized, the Commission requires the applicants to use colors compatible with the surrounding environment and non-glare glass, as detailed in **Special Condition Six (6)**.

Visual impacts can be further reduced by the use of appropriate and adequate landscaping, including visually screening on the north, east and south sides of the residence and along both sides of the driveway. Therefore, **Special Condition Two (2)** requires the applicants to ensure that the vegetation on site remains visually compatible

with the native flora of surrounding areas. Implementation of Special Condition 2 will soften the visual impact of the development from public view areas. To ensure that the final approved landscaping plans are successfully implemented, Special Condition 2 also requires the applicants to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time. The proposed 1,600 sq. ft. ground mounted solar photovoltaic panels are located behind the residence near the underground water tanks, within Fuel Modification Zone B, and therefore, will not be visible from public roads or lands.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby public lands and scenic roads. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Seven (7)** limits night lighting of the site in general, limits lighting to the developed area of the site, and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

Finally, regarding future developments or improvements, certain types of development on the property, normally associated with a single-family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, is reviewed by the Commission for compliance with the visual resource policies contained in Section 30251 of the Coastal Act. **Special Condition Nine (9)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Further, **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 subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the property.

Therefore, the Commission finds that the project, as conditioned, minimizes adverse effects to public views to and along the coast and minimizes the alteration of natural landforms. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

F. 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).

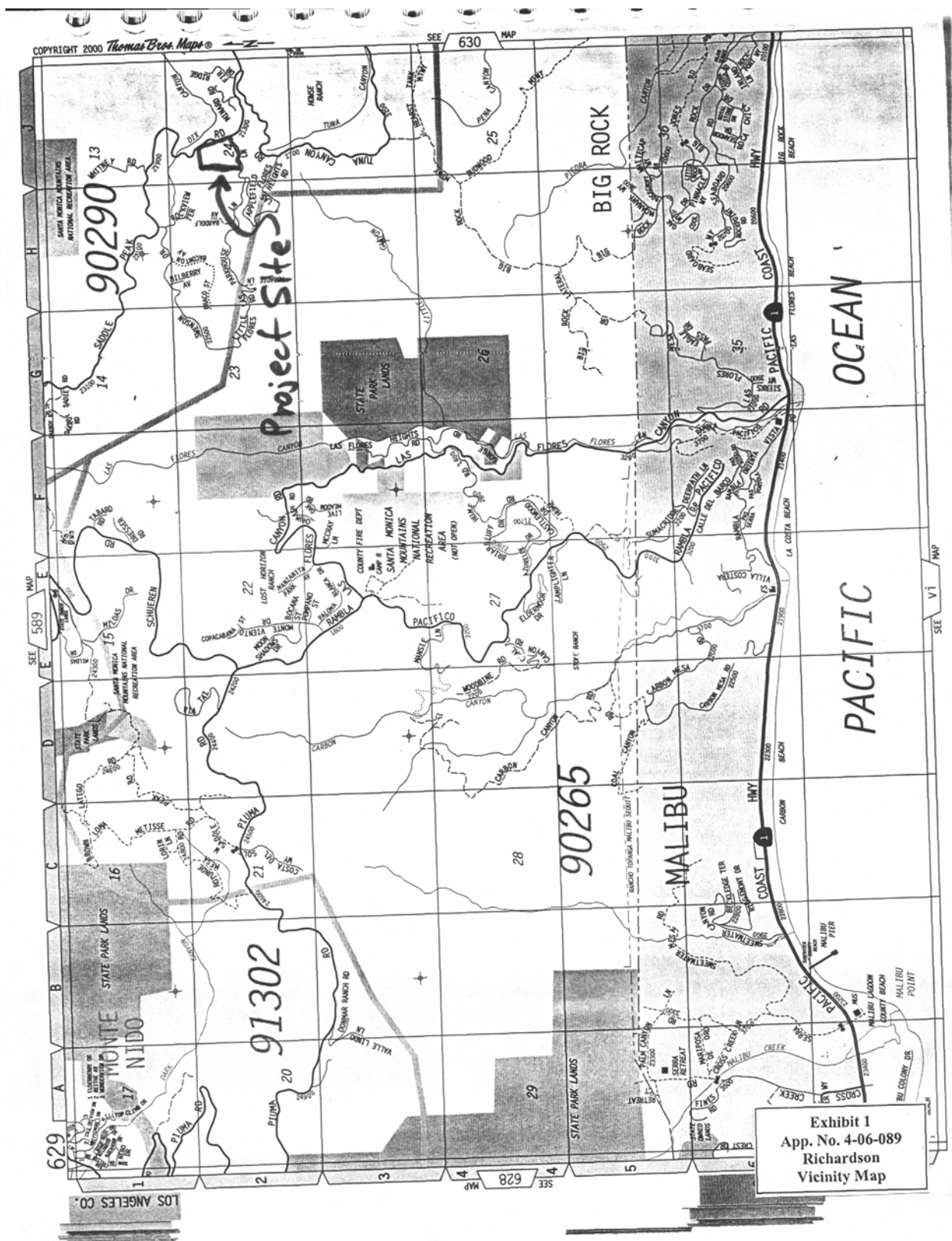
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program, which conforms to Chapter 3 policies of the Coastal Act. The preceding 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 are accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

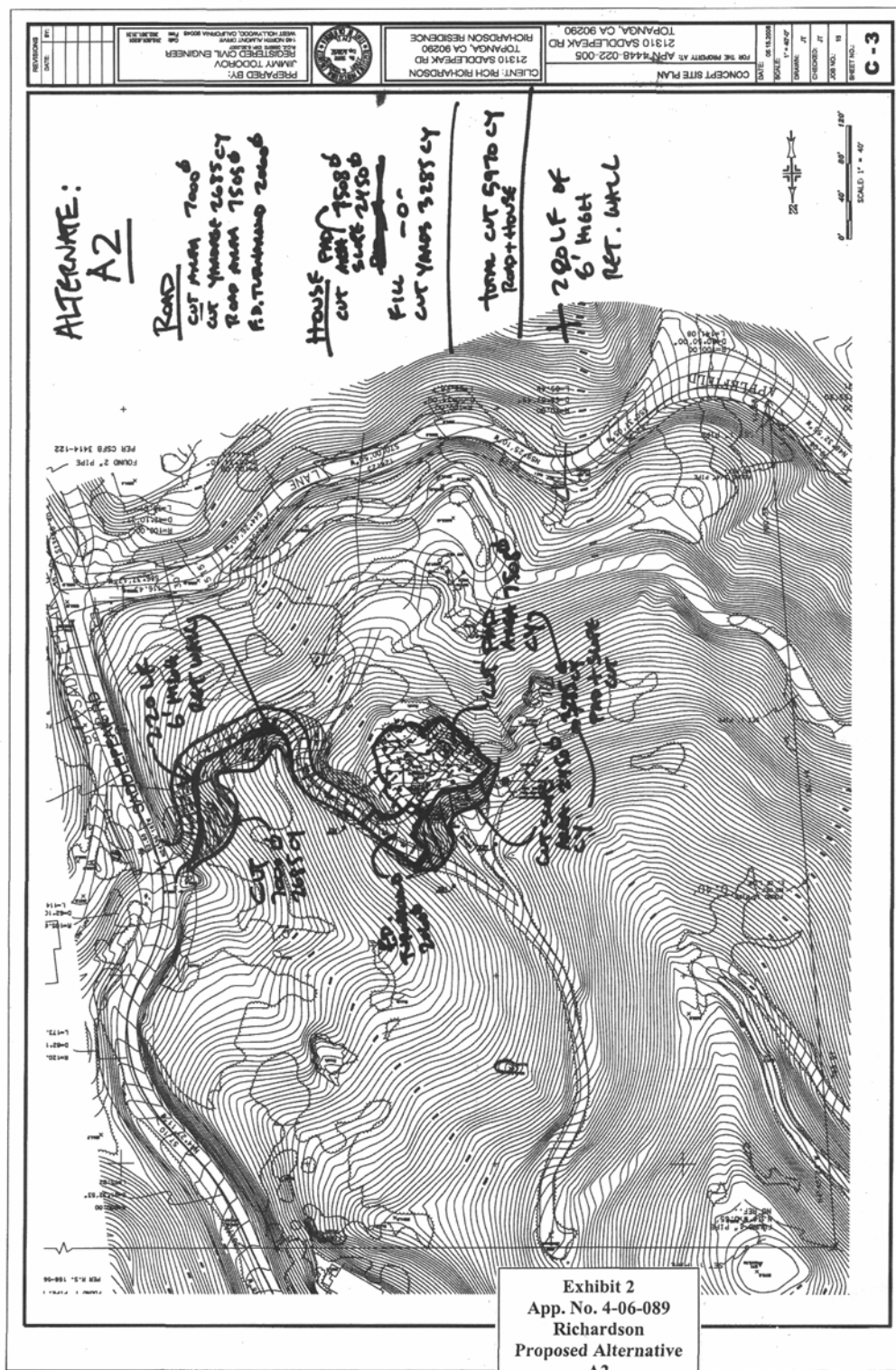
G. California Environmental Quality Act

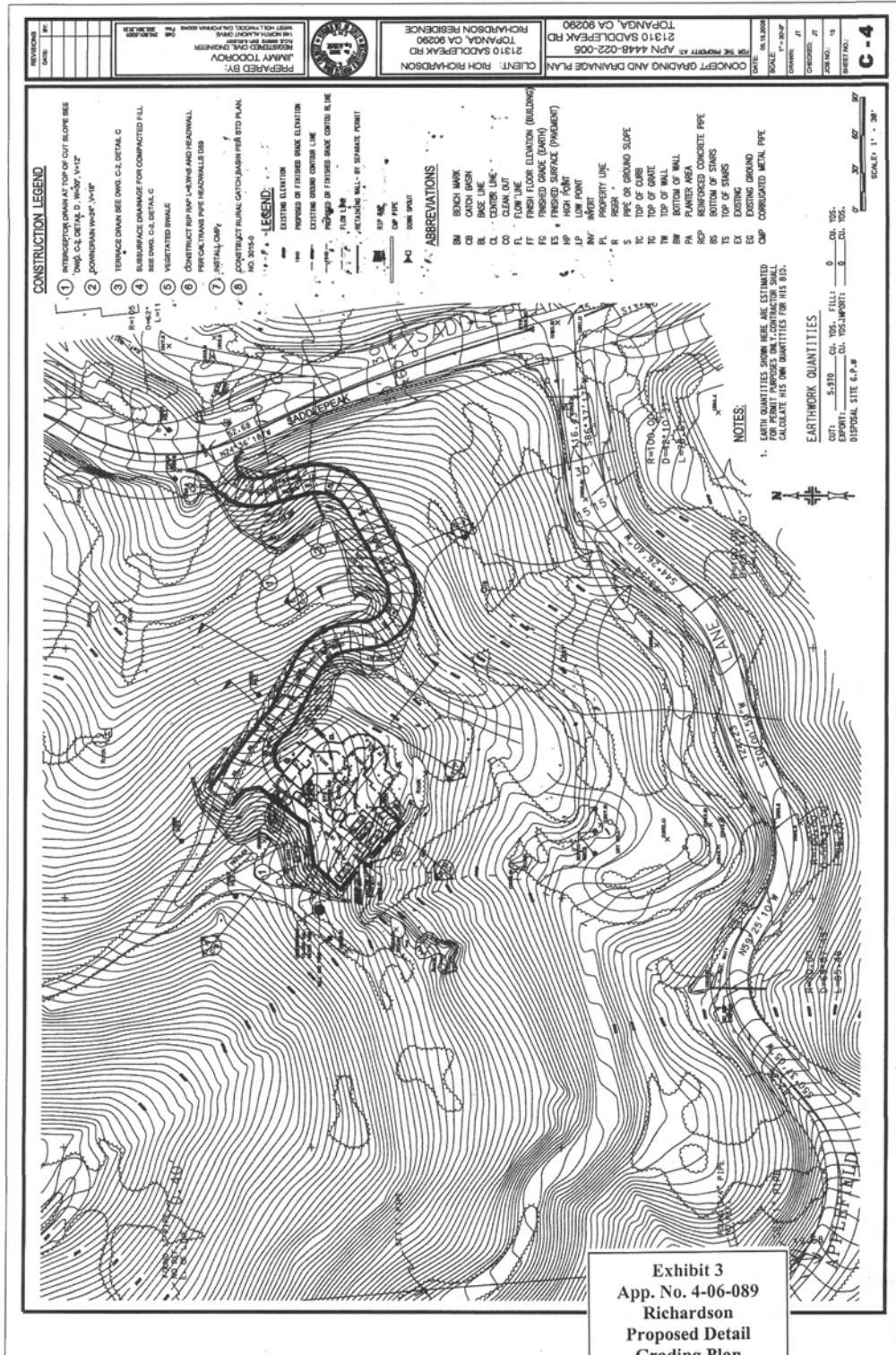
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California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

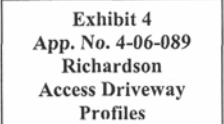
The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed in detail above, project alternatives and mitigation measures have been considered and incorporated into the project. Five types of mitigation actions include those that are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of development. Mitigation measures required as part of this coastal development permit amendment include the avoidance of impacts to ESHA through clustering structures, prohibiting development outside of the approved development area as required by the open space easement, and prohibiting the removal of native vegetation prior to commencement of construction. Mitigation measures required to minimize impacts include, drainage best management practices (water quality), interim erosion control (water quality and ESHA), limiting lighting (ESHA and visual), restricting structure color (visual resources), requiring future improvements to be considered through a CDP, and revised plans to further reduce grading and

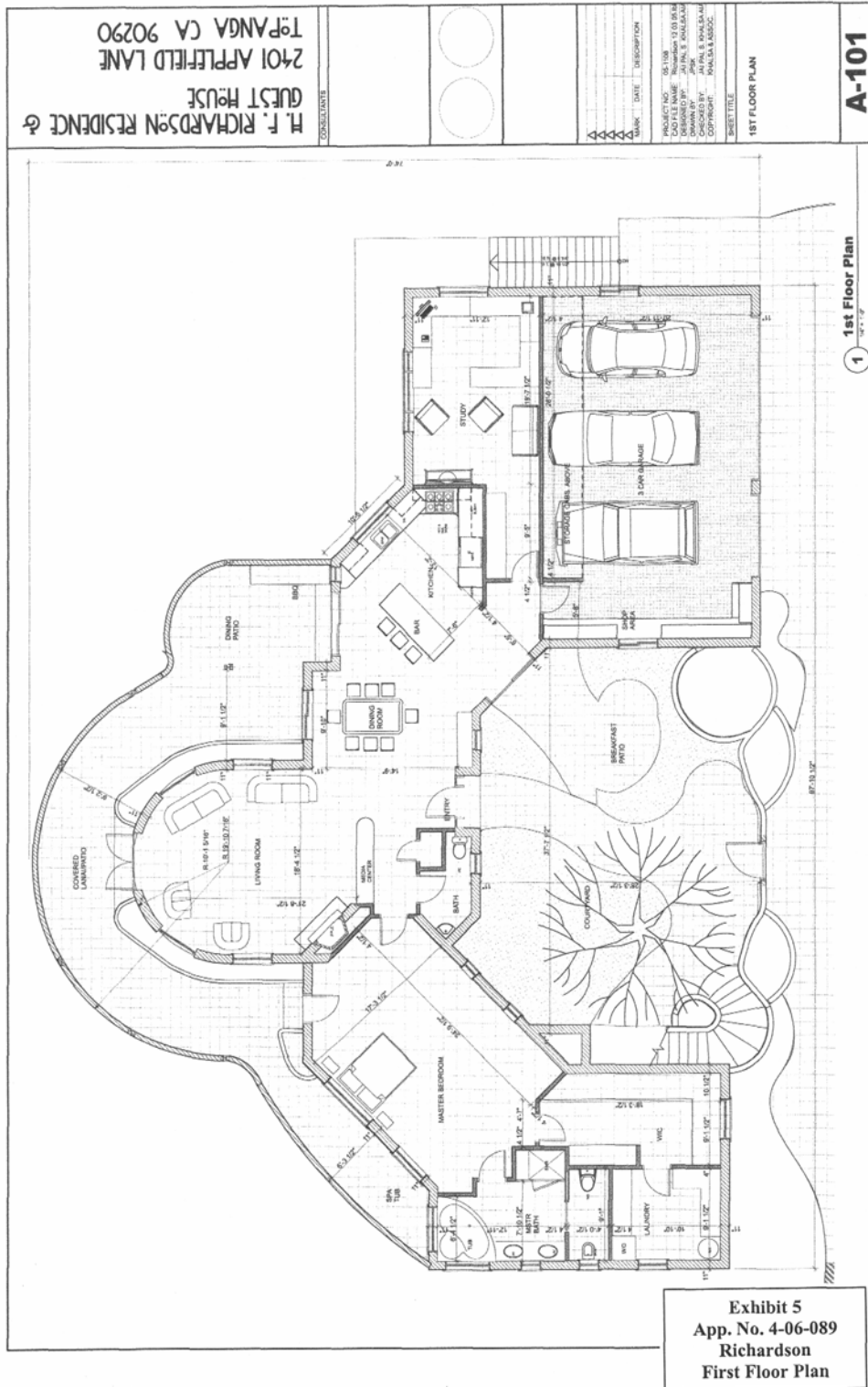
landform alteration and revegetate existing roadways. Finally, the habitat impact mitigation condition is a measure required to compensate for impacts to ESHA. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

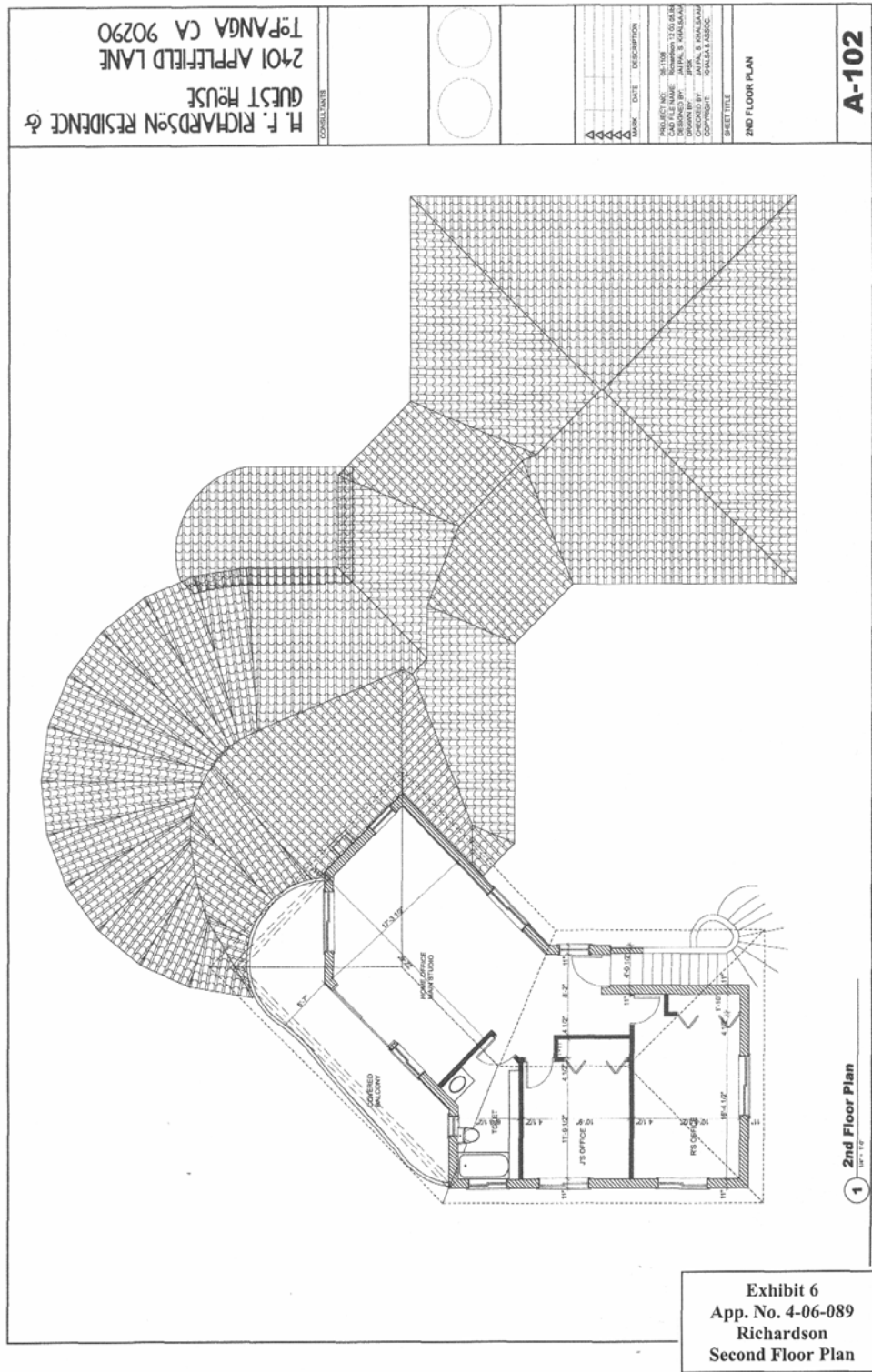


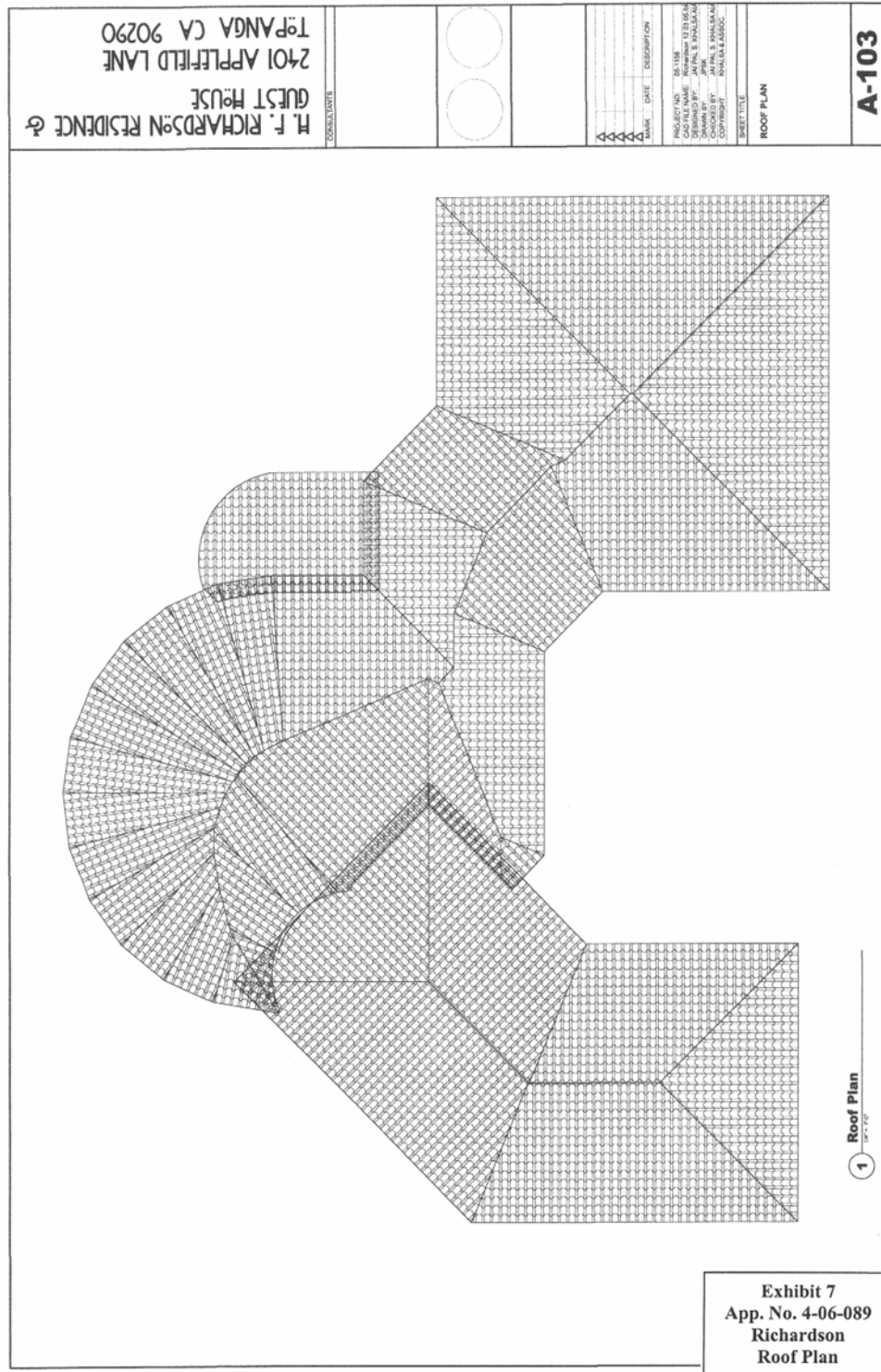












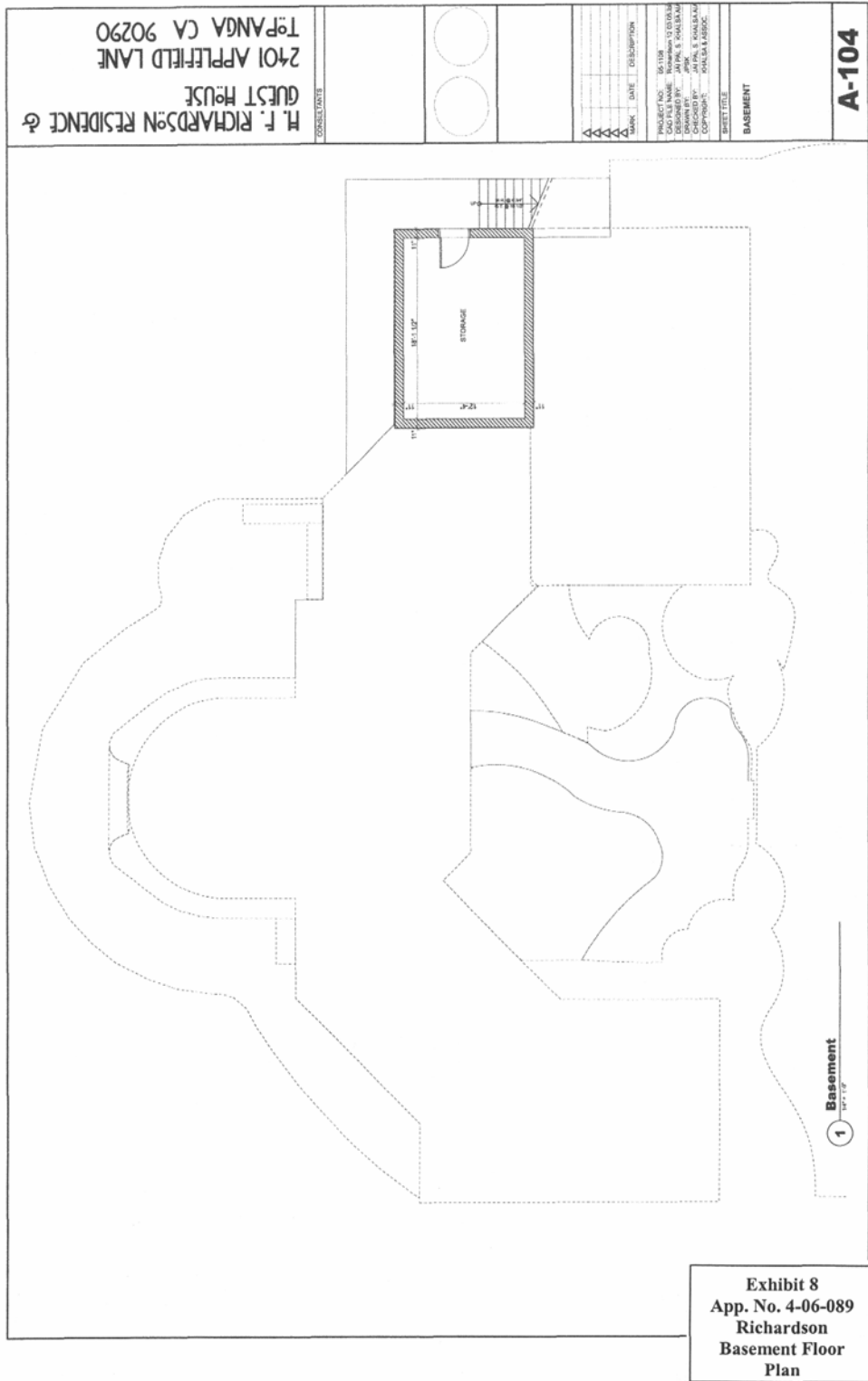
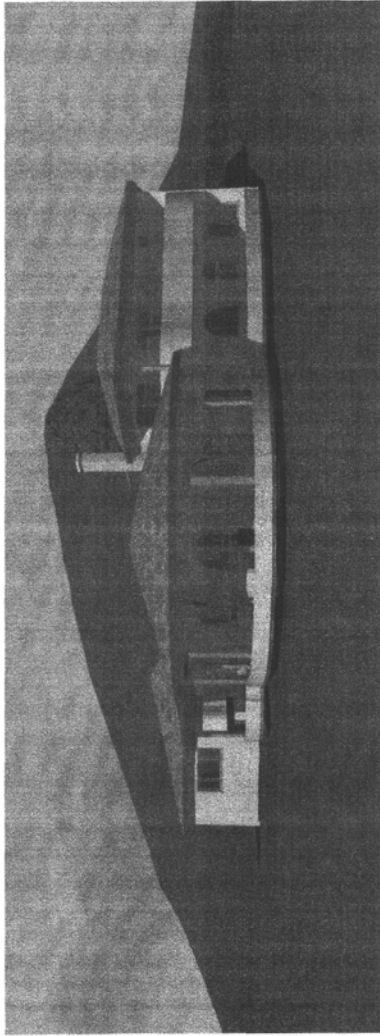
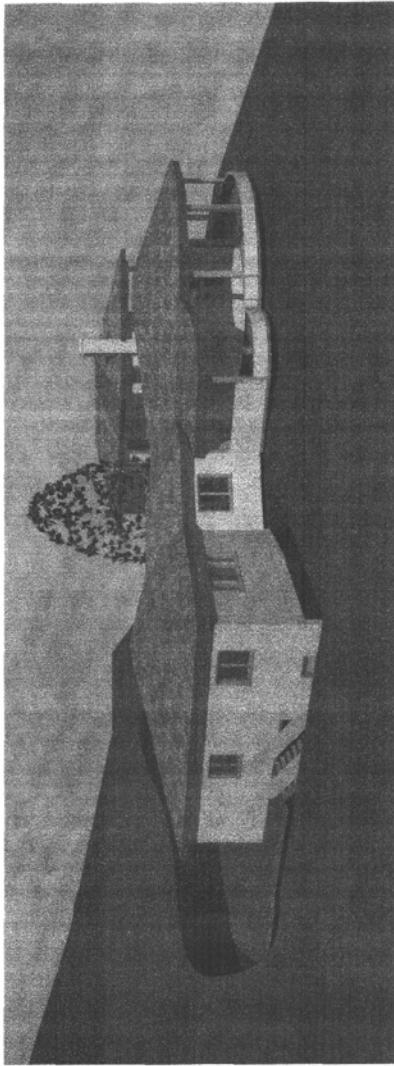


Exhibit 8
App. No. 4-06-089
Richardson
Basement Floor
Plan



2 Perspective South
1" = 10'



1 Perspective West
1" = 10'

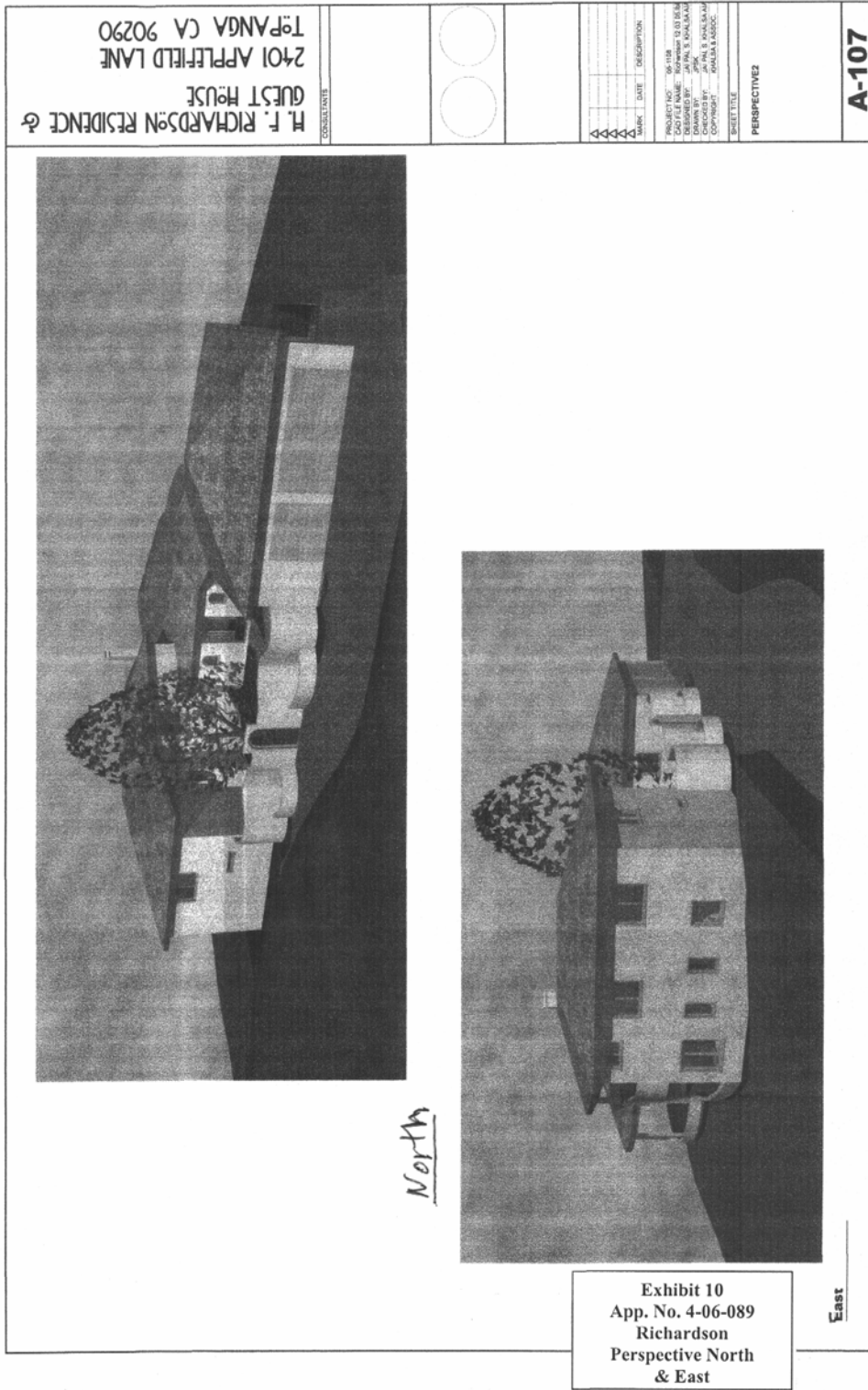
Exhibit 9
App. No. 4-06-089
Richardson
Perspective South & West

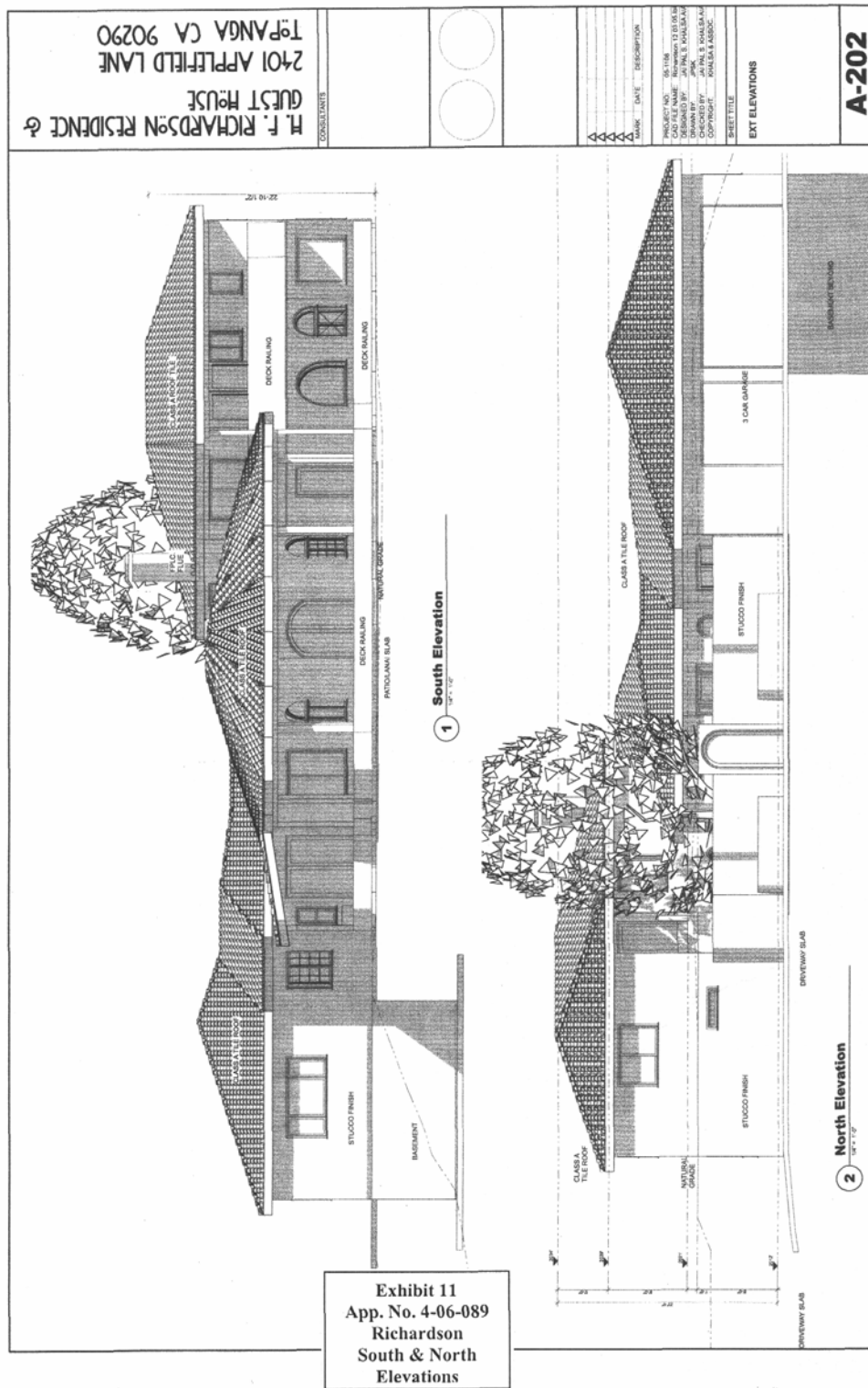
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2401 APPLEFIELD LANE
TOPANGA CA 90290

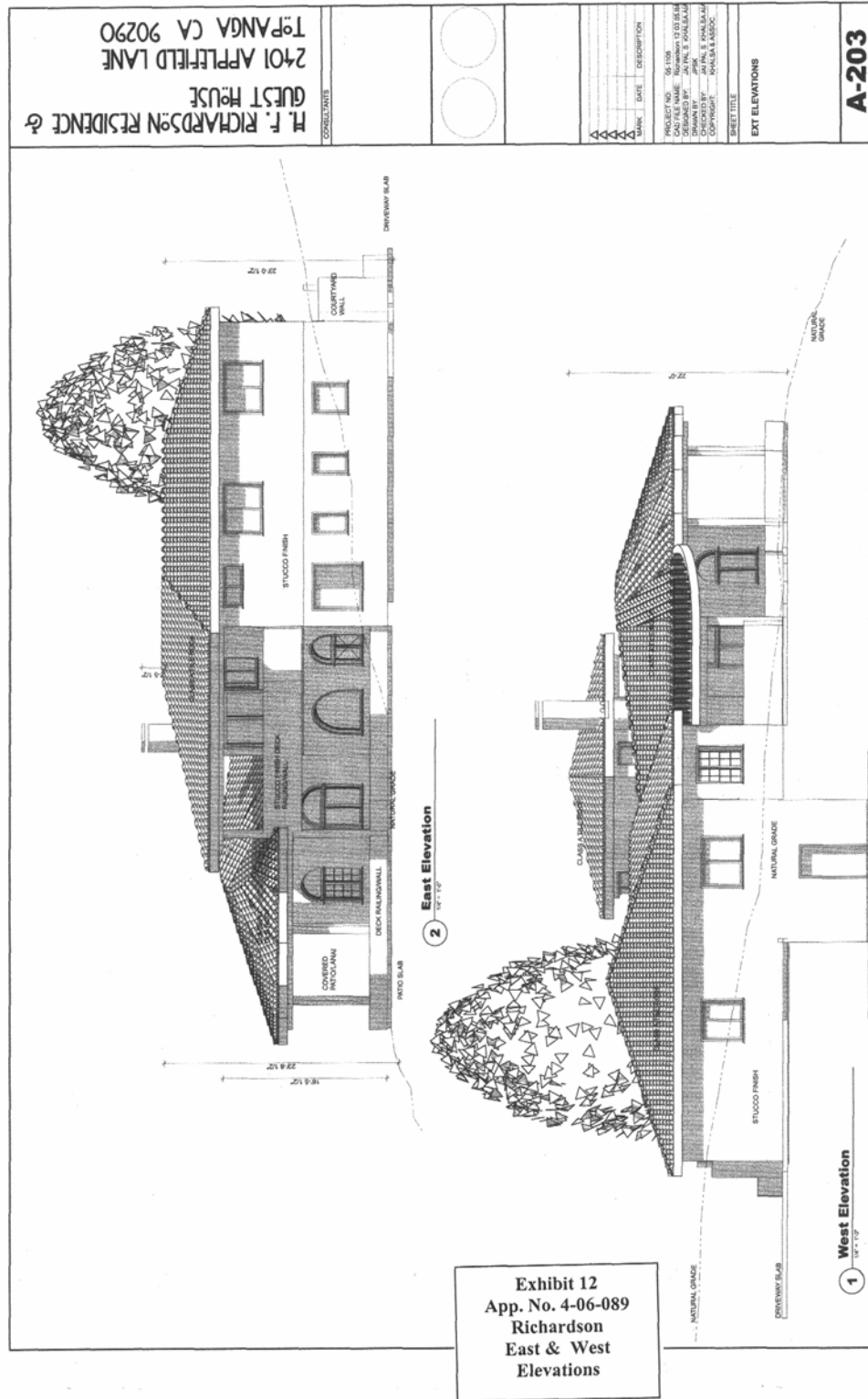
A-106

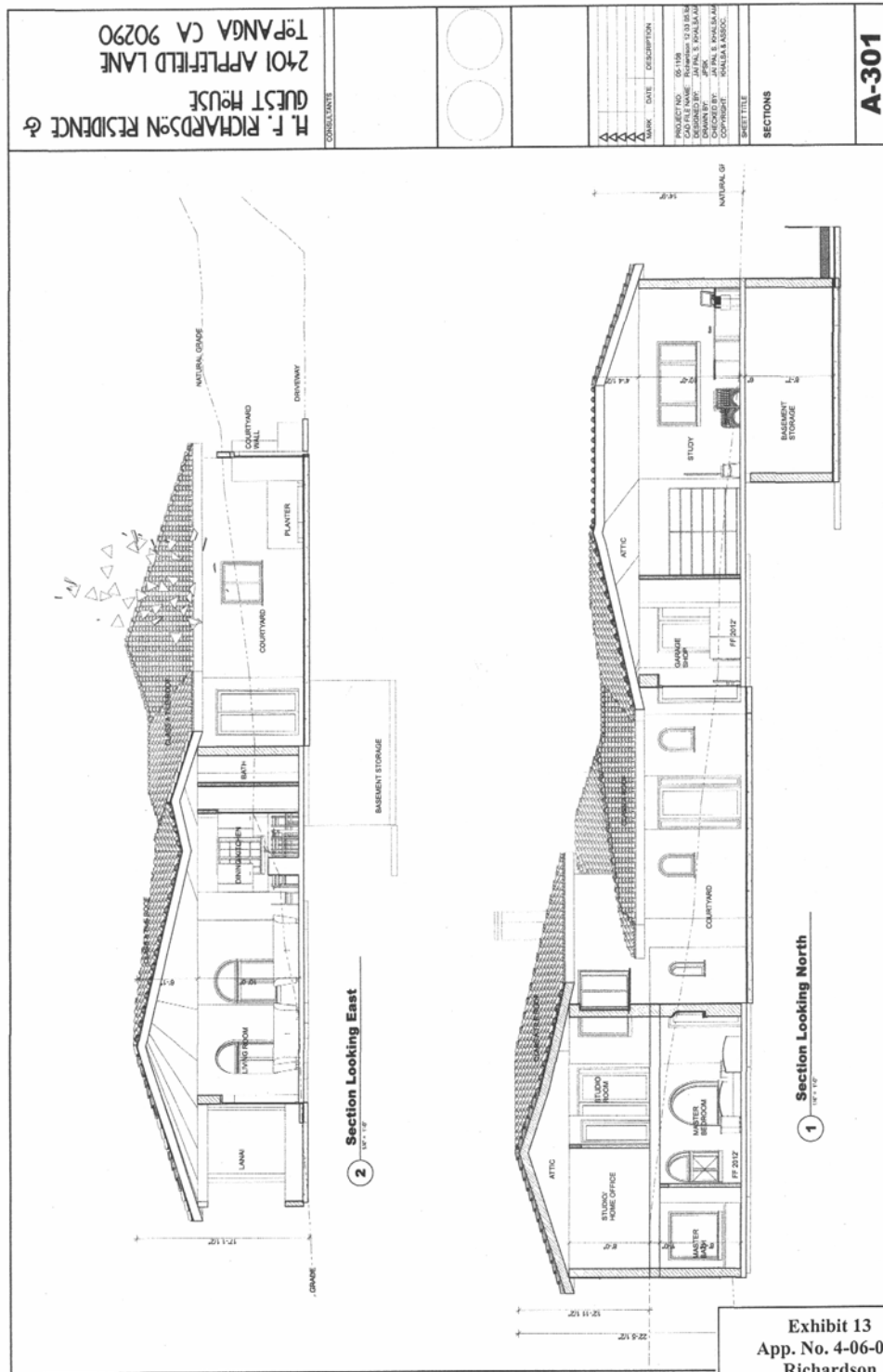
PROJECT NO. 05-108
DESIGNED BY J. F. RICHARDSON
DRAWN BY J. F. RICHARDSON
CHECKED BY J. F. RICHARDSON
DATE 10/1/05
SHEET 1 OF 1

PERSPECTIVE

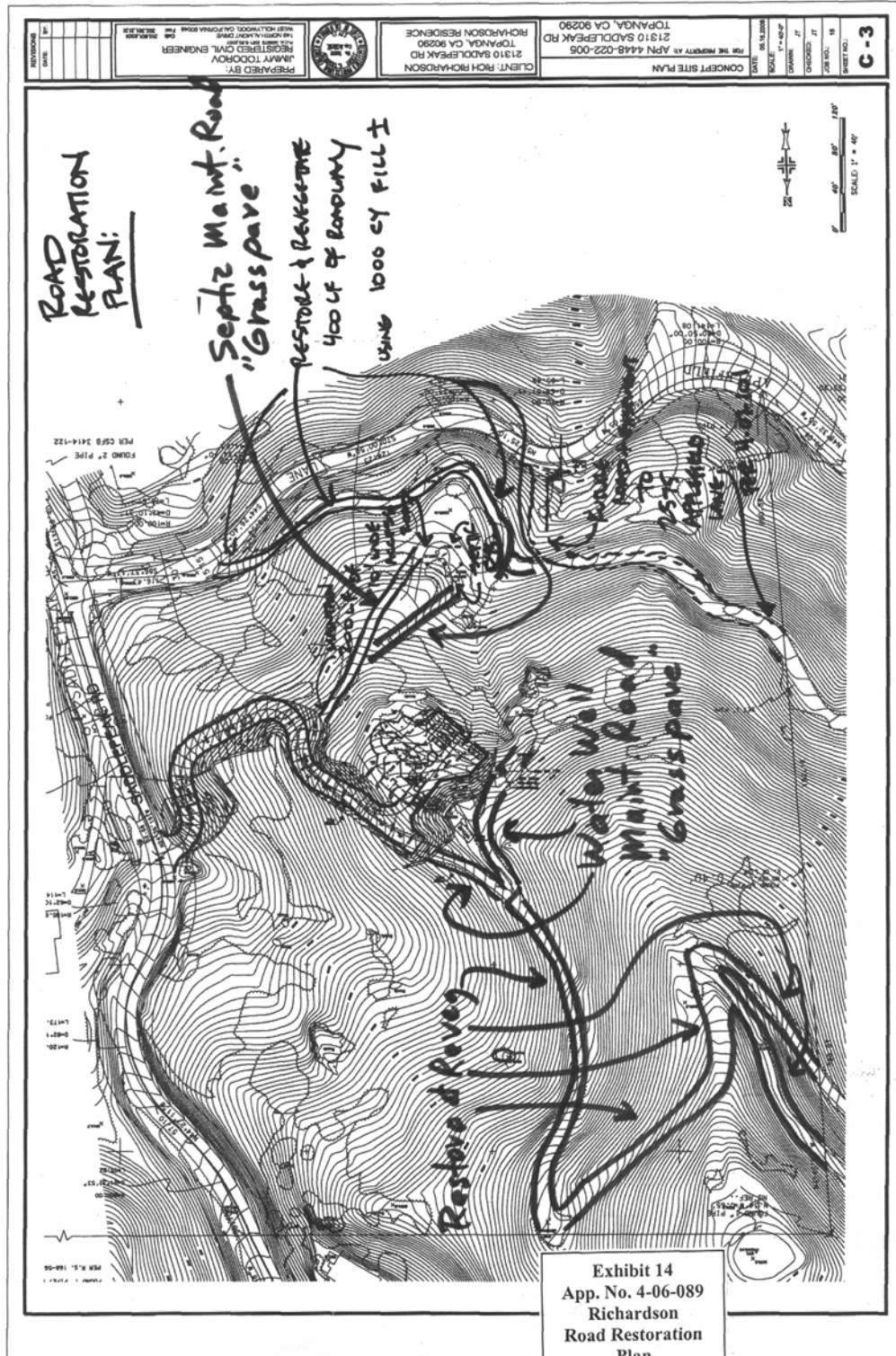








<p>A-301</p>		<p>SECTIONS</p>	
<p>CONSULTANTS</p>		<p>DESCRIPTION</p>	
<p>H. F. RICHARDSON RESIDENCE & GUEST HOUSE</p>		<p>PROJECT NO. 4-06-089</p>	
<p>2401 APPLEFIELD LANE</p>		<p>DATE: 12/10/88</p>	
<p>TIPANGA CA 90290</p>		<p>DESIGNED BY: J. F. RICHARDSON</p>	
		<p>CHECKED BY: J. F. RICHARDSON</p>	
		<p>COPYRIGHT: RICHARDSON & ASSOC.</p>	



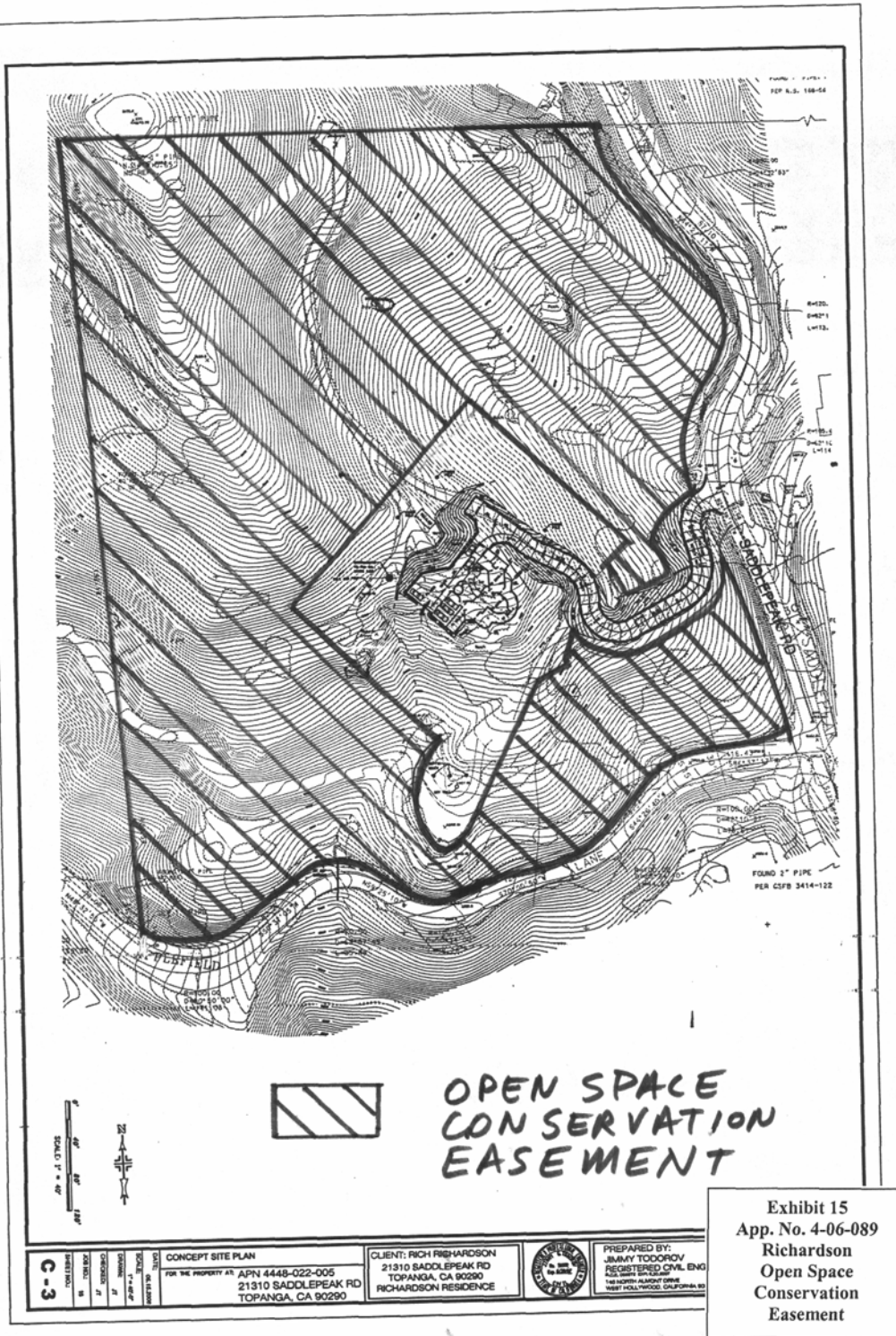
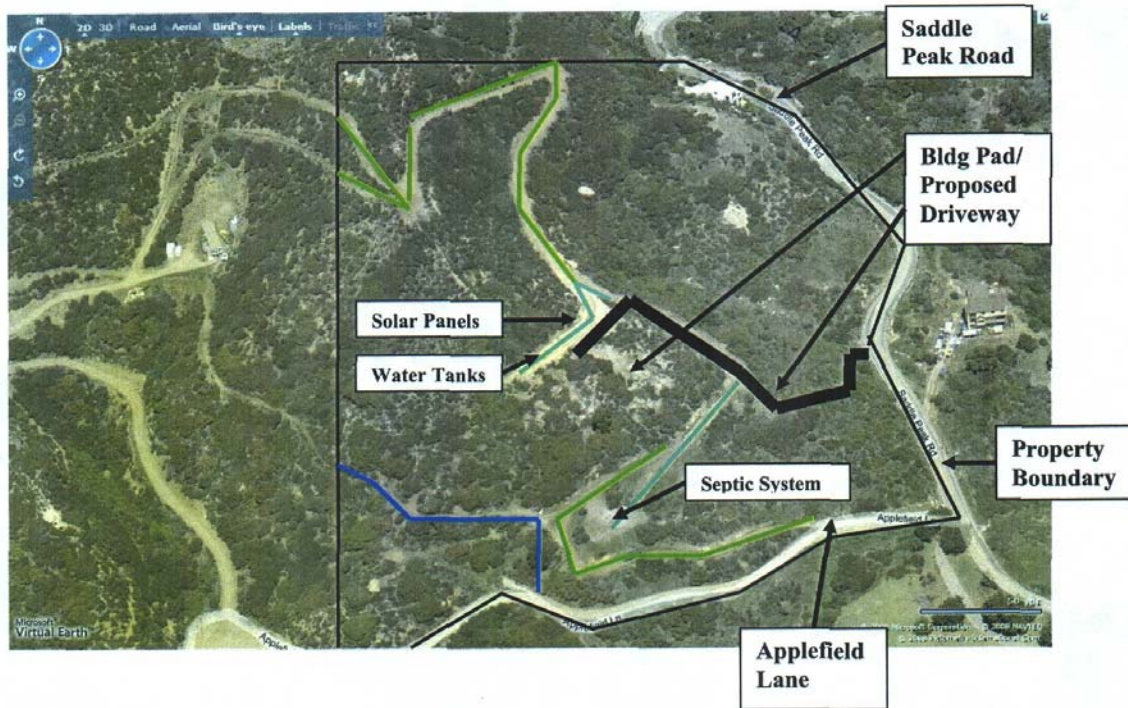


Exhibit 15
App. No. 4-06-089
Richardson
Open Space
Conservation
Easement






-  **Proposed Road Restoration/Revegetation**
 -  **Proposed Partial Road Restoration with 10 Foot Wide Maintenance Roadway Planted Native Grass over "Grasspave" geogrid system to Septic System & Water Tanks**
 -  **Proposed Future Driveway & Existing Easement to Adjoining Parcel to West (Application No. 4-07-101, Smith)**
- (Staff Note: All lines Are Approximate)

Exhibit 16
App. No. 4-06-089
Richardson
Aerial with Proposed
Project & Proposed
Road Restoration
Areas