



Staff Report to the Agricultural Policy Advisory Commission

Application Number: **09-0248**

Applicant: David & Michelle Michael

Date: 11/19/09

Owner: David & Michelle Michael

Agenda Item #: 7

APN: 045-331-03 & -04

Time: 1:30 p.m.

Project Description: Proposal to construct 2 two-story single family dwellings on 2 separate vacant parcels.

An Agricultural Buffer Setback Reduction is requested to reduce the required agricultural buffer setback from 200 feet to 90 feet (for the proposed residence on APN 045-331-03) and 170 feet (for the proposed residence on APN 045-331-04).

Location: Properties located on the south side of a private right of way (adjacent to 42 Robak Drive) approximately 100 feet east of Robak Drive.

Permits Required: Agricultural Buffer Setback Reduction

Staff Recommendation:

- Approval of Application 09-0248, based on the attached findings and conditions.

Exhibits

- | | |
|------------------|-------------------------------------|
| A. Project plans | D. Location, Zoning, General Plan & |
| B. Findings | Assessor's maps, Aerial Photo |
| C. Conditions | E. Comments & Correspondence |

Parcel Information

Parcel Size:	12,873 sq. ft. (045-331-03) 13,290 sq. ft. (045-331-04)
Existing Land Use - Parcel:	Vacant (045-331-03 & -04)
Existing Land Use - Surrounding:	Single family residential neighborhood
Project Access:	Private driveway from Robak Drive
Planning Area:	La Selva Beach
Land Use Designation:	R-UL (Urban Low Density Residential)
Zone District:	R-1-9 (Single family residential - 9,000 square feet minimum)

Supervisory District: 2nd (District Supervisor: Ellen Pirie)
Within Coastal Zone: X Inside Outside
Appealable to Calif. Coastal Comm. Yes X No

Services Information

Inside Urban/Rural Services Line: X Yes (RSL) No
Water Supply: Soquel Creek Water District
Sewage Disposal: Septic
Fire District: Aptos/La Selva Fire Protection District
Drainage District: None

Analysis and Discussion

The proposed project is to construct two separate two-story single-family dwellings (of approximately 3,000 square feet) on two vacant parcels. The properties are located on the south side of a private right of way (adjacent to 42 Robak Drive) approximately 100 feet east of Robak Drive. The building sites are within 200 feet of Commercial Agricultural land to the west. The applicant is requesting a reduction in the 200 foot agricultural buffer setback to 90 feet (for the proposed residence on APN 045-331-03) and 170 feet (for the proposed residence on APN 045-331-04).

The subject properties are accessed from the north side of the parcel (off of the private right of way) with sloping topography to the south. The vacant parcels are within a developed single family residential neighborhood inside the Rural Services Line. The parcels are designated Urban Low Density Residential (R-UL) General Plan and are within the R-1-9 (Single family residential - 9,000 square feet minimum) zone district. The boundary of Commercial Agriculture zoned land (Assessor's Parcel Number 045-031-04) is within 200 feet of the two parcels to the west. An existing developed single family residence is located on the parcel between the proposed development and the Commercial Agriculture zoned parcel. Beyond the existing developed residential parcel to the west, the topography slopes down approximately 125 feet in elevation (over a horizontal distance of approximately 350 feet) to the arable portion of the Commercial Agriculture zoned property.

A reduced agricultural buffer is recommended due to the fact that the imposition of a 200 foot agricultural buffer setback from the Commercial Agriculture zoned property would not allow any development on APN 045-331-04, or allow adequate building area for residential development on APN 045-331-03. The presence of an existing developed residential parcel, with a residence constructed between the Commercial Agriculture zoned parcel and the subject properties also supports an agricultural buffer setback reduction for the two undeveloped properties. In addition to these factors, substantial topographic difference exists between the proposed building sites and the arable portion (off of steeply sloped areas) of the Commercial Agriculture zoned parcel (approximately 125 feet below). The steeply sloped and vegetated portion of the Commercial Agriculture zoned parcel also provides a horizontal separation (of approximately 350 additional feet) from the proposed building sites. For these reasons, no physical barrier or vegetative buffer is considered as necessary to reduce the impact of agricultural activities on the proposed residential development, and to therefore protect the agricultural interests on the Commercial Agriculture zoned parcel. The applicant shall further be required to record a Statement of

Acknowledgement regarding the issuance of a county building permit in an area determined by the County of Santa Cruz to be subject to Agricultural-Residential use conflicts.

Recommendation

- Staff recommends that your Commission **APPROVE** the Agricultural Buffer Reduction from 200 feet to about 90 feet & 170 feet feet to the single-family dwelling from the adjacent CA zoned property known as APN 045-031-04, proposed under Application # 09-0248, based on the attached findings and recommended conditions.

Supplementary reports and information referred to in this report are on file and available for viewing at the Santa Cruz County Planning Department, and are hereby made a part of the administrative record for the proposed project.

The County Code and General Plan, as well as hearing agendas and additional information are available online at: www.co.santa-cruz.ca.us

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Report Reviewed By: Paia Levine
Principal Planner
Development Review

Figure 2

doi:10.1017/S002229240000264

**Required Findings for Agricultural Buffer Setback Reduction
County Code Section 16.50.095(d)**

1. Significant topographical differences exist between the agricultural and non-agricultural uses which eliminates or minimizes the need for a 200 foot agricultural buffer setback; or

This finding can be made, in that significant topographical differences exist between the subject parcels and APN 045-031-04, to allow for a reduction in the required 200 foot setback to about 90 feet (on APN 045-331-04) & 170 feet (on APN 045-331-03). The proposed building sites are approximately 125 feet above the elevation of the arable portions of the adjacent Commercial Agriculture zoned parcel, and an existing developed residential parcel is located in between. For these reasons, additional landscaping and solid fences are not necessary to prevent conflicts between the non-agricultural development and the Commercial Agriculture zoned land on APN 045-031-04.

2. Permanent substantial vegetation (such as a Riparian Corridor or Woodland protected by the County's Riparian Corridor or Sensitive Habitat Ordinances) or other physical barriers exist between the agricultural and non-agricultural uses which eliminate or minimize the need for a two hundred (200) foot agricultural buffer setback; or

This finding can be made, in that the residences are proposed to be set back 90 feet (on APN 045-331-04) & 170 feet (on APN 045-331-03) from the adjacent Commercial Agriculture zoned land. With the 350 width of steeply sloped (and partially wooded area) area on the Commercial Agricultural parcel, and the developed parcel between the agricultural parcel and the proposed building sites, the effective agricultural setback would be proposed to be 440 feet & 520 feet where 200 feet are required. No physical barrier or vegetative buffer is necessary to prevent conflicts between the non-agricultural development and the Commercial Agriculture zoned land on APN 045-031-04. This barrier, as proposed, shall not create a hazard in terms of the vehicular sight distance necessary for safe passage of traffic.

3. A lesser setback is found to be adequate to prevent conflicts between the non-agricultural development and the adjacent agricultural development and the adjacent agricultural land, based on the establishment of a physical barrier (unless it is determined that the installation of a barrier will hinder the affected agricultural use more than it would help it, or would create a serious traffic hazard on a public or private right of way) or the existence of some other factor which effectively supplants the need for a two hundred (200) foot agricultural buffer setback; or

Not applicable

4. The imposition of a two hundred (200) foot agricultural buffer setback would preclude building on a parcel of record as of the effective date of this chapter, in which case a lesser buffer setback distance may be permitted, provided that the maximum possible setback distance is required, coupled with a requirement for a physical barrier (e.g. solid fencing and/or vegetative screening) to provide the maximum buffering possible, consistent with the objective of permitting building on a parcel of record.

This finding can be made, in that the development of APN 045-331-04 would not be possible without a reduction to the 200 foot agricultural buffer setback. Additionally, the development of APN 045-331-03 would be severely constrained (removing 30 feet of width from the buildable portion of the property) if a 200 foot agricultural buffer setback is applied. Given the topographic separation from the arable portion of the Commercial Agricultural parcel (125 feet below), the horizontal separation from the arable portion of the Commercial Agricultural parcel (an additional 350 feet west of the property boundary), and the location of an existing developed residence between the proposed development and the Commercial Agricultural parcel, a reduction in the agricultural buffer setback is considered appropriate. And, for the reasons listed above, no physical barrier or vegetative buffer is necessary to prevent conflicts between the non-agricultural development and the Commercial Agriculture zoned land on APN 045-031-04.

Conditions of Approval

- I. This permit authorizes an Agricultural Buffer Setback reduction from the proposed residential use to APN (045-031-03 & -04). This approval does not confer legal status on any existing structure(s) or existing use(s) on the subject property that are not specifically authorized by this permit. Elements of the Exhibit A for this approval which do not pertain to the agricultural buffer setback reductions are not a part of this approval. Prior to exercising any rights granted by this permit, including, without limitation, any construction or site disturbance, the applicant/owner shall:
 - A. Sign, date, and return to the Planning Department one copy of the approval to indicate acceptance and agreement with the conditions thereof.
 - B. Obtain a Coastal Development Permit and associated approvals required for the proposed single family residences.
 - C. Obtain a Building Permit and Grading Permit from the Santa Cruz County Building Official.
 1. Any outstanding balance due to the Planning Department must be paid prior to making a Building Permit application. Applications for Building Permits will not be accepted or processed while there is an outstanding balance due.
- II. Prior to issuance of a Building Permit the applicant/owner shall:
 - A. Submit final architectural plans for review and approval by the Planning Department. The final plans shall be in substantial compliance with the plans marked Exhibit "A" on file with the Planning Department. Any changes from the approved Exhibit "A" for this development permit on the plans submitted for the Building Permit must be clearly called out and labeled by standard architectural methods to indicate such changes. Any changes that are not properly called out and labeled will not be authorized by any Building Permit that is issued for the proposed development. The final plans shall include the following additional information:
 1. A development setback of a minimum of 90 feet from habitable portions of the single family dwelling on APN 045-331-04 & 170 feet from habitable portions of the single family dwelling on APN 045-331-03 to the boundary of the Commercial Agriculture zoned parcel APN 045-031-04.
 - B. The owner shall record a Statement of Acknowledgement, as prepared by the Planning Department, and submit proof of recordation to the Planning Department. The statement of Acknowledgement acknowledges the adjacent agricultural land use and the agricultural buffer setbacks.
- III. All construction shall be performed according to the approved plans for the building

permit. Prior to final building inspection, the applicant/owner must meet the following conditions:

- A. The agricultural buffer setbacks shall be met as verified by the County Building Inspector.
- B. All inspections required by the building permit shall be completed to the satisfaction of the County Building Official and/or the County Senior Civil Engineer.

IV. Operational Conditions

- A. All required Agricultural Buffer Setbacks shall be maintained.
- B. In the event that future County inspections of the subject property disclose non-compliance with any Conditions of this Approval or any violation of the County Code, the owner shall pay to the County the full cost of such County inspections, up to and including permit revocation.

V. As a condition of this development approval, the holder of this development approval ("Development Approval Holder"), is required to defend, indemnify, and hold harmless the COUNTY, its officers, employees, and agents, from and against any claim (including attorneys' fees), against the COUNTY, its officers, employees, and agents to attack, set aside, void, or annul this development approval of the COUNTY or any subsequent amendment of this development approval which is requested by the Development Approval Holder.

- A. COUNTY shall promptly notify the Development Approval Holder of any claim, action, or proceeding against which the COUNTY seeks to be defended, indemnified, or held harmless. COUNTY shall cooperate fully in such defense. If COUNTY fails to notify the Development Approval Holder within sixty (60) days of any such claim, action, or proceeding, or fails to cooperate fully in the defense thereof, the Development Approval Holder shall not thereafter be responsible to defend, indemnify, or hold harmless the COUNTY if such failure to notify or cooperate was significantly prejudicial to the Development Approval Holder.
- B. Nothing contained herein shall prohibit the COUNTY from participating in the defense of any claim, action, or proceeding if both of the following occur:
 - 1. COUNTY bears its own attorney's fees and costs; and
 - 2. COUNTY defends the action in good faith.
- C. Settlement. The Development Approval Holder shall not be required to pay or perform any settlement unless such Development Approval Holder has approved the settlement. When representing the County, the Development Approval Holder shall not enter into any stipulation or settlement modifying or affecting the

interpretation or validity of any of the terms or conditions of the development approval without the prior written consent of the County.

- D. Successors Bound. "Development Approval Holder" shall include the applicant and the successor'(s) in interest, transferee(s), and assign(s) of the applicant.

Minor Variations to this permit which do not affect the overall concept or density may be approved by the Planning Director at the request of the applicant or staff in accordance with Chapter 18.10 of the County Code.

Please note: This permit expires three years from the effective date listed below or if additional discretionary permits are required for the above permitted project, this permit shall expire on the same date as any subsequent approved discretionary permit(s) unless a building permit (or permits) is obtained for the primary structure described in the development permit (does not include demolition, temporary power pole or other site preparation permits, or accessory structures unless these are the primary subject of the development permit). Failure to exercise the building permit and to complete all of the construction under the building permit, resulting in the expiration of the building permit, will void the development permit, unless there are special circumstances as determined by the Planning Director.

Approval Date: _____

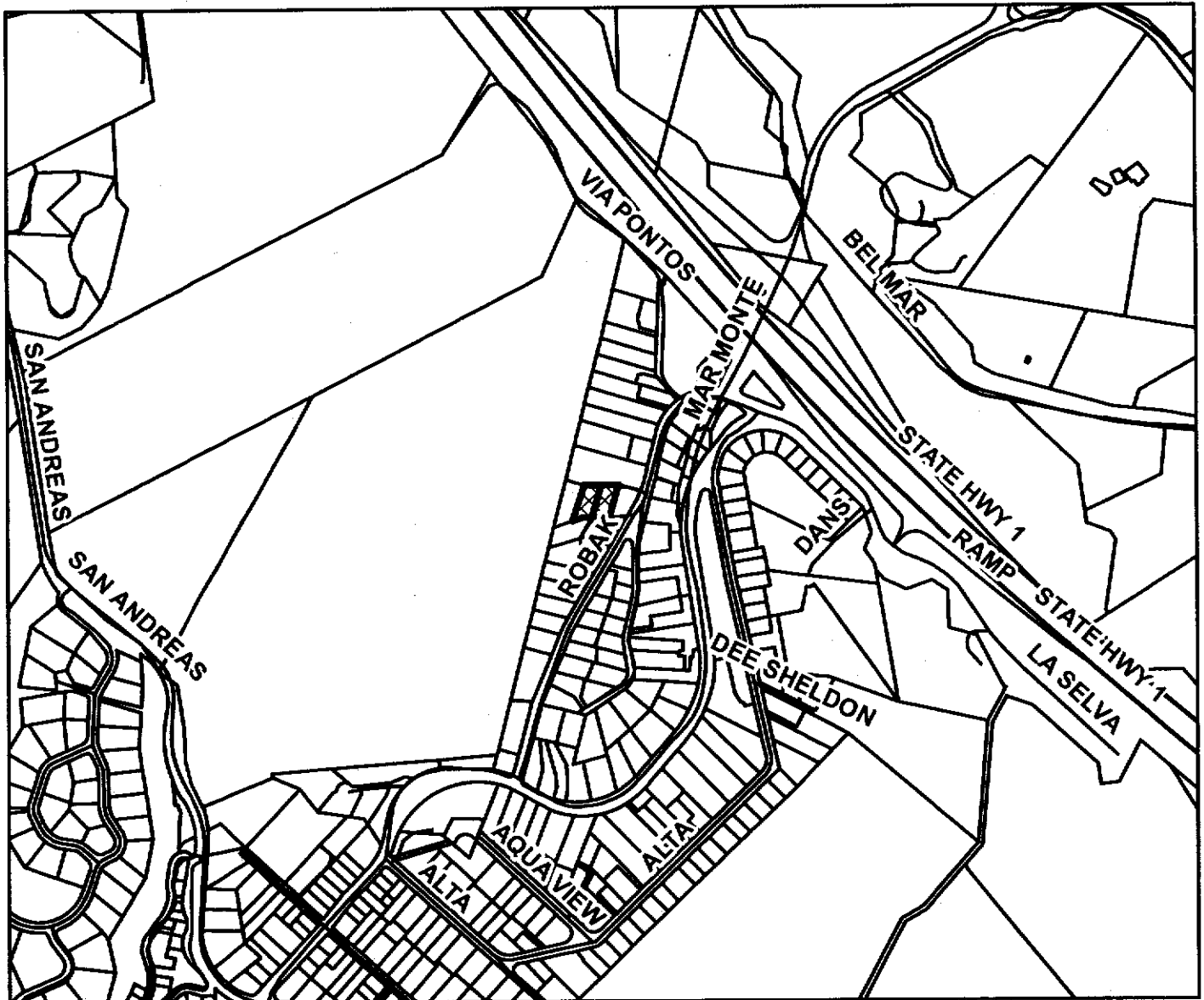
Effective Date: _____

Expiration Date: _____






Appeals: Any property owner, or other person aggrieved, or any other person whose interests are adversely affected by any act or determination of the Agricultural Policy Advisory Commission under the provisions of County Code Chapter 16.50, may appeal the act or determination to the Board of Supervisors in accordance with chapter 18.10 of the Santa Cruz County Code.

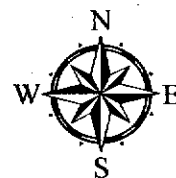


Location Map



LEGEND

-  APN: 045-331-04
-  APN: 045-331-03
-  Assessors Parcels
-  Streets
-  State Highways

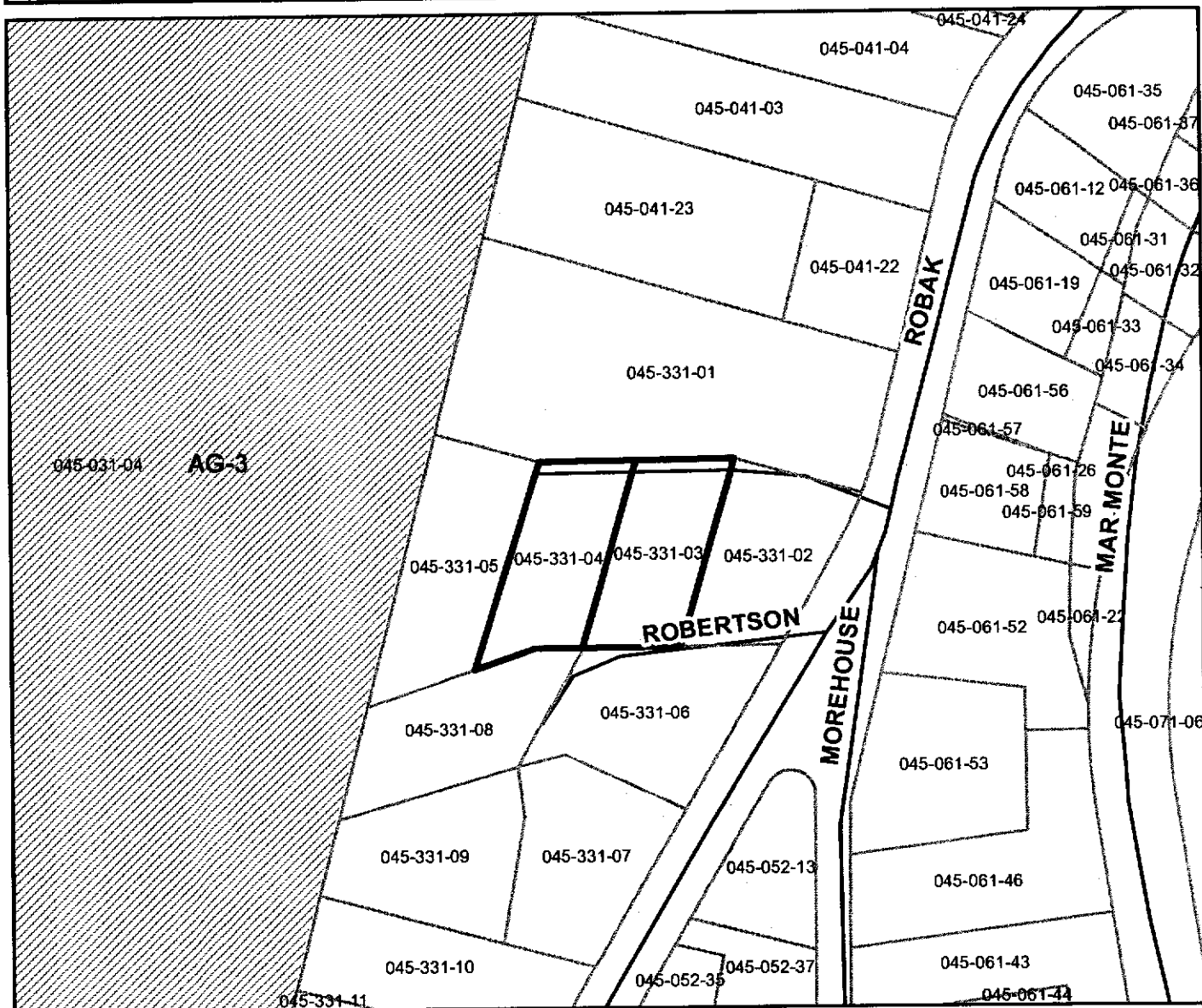


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
EXHIBIT E

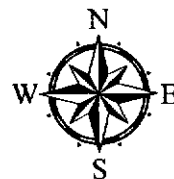


Vicinity Map



LEGEND

-  APN: 045-331-04
-  APN: 045-331-03
-  Assessors Parcels
-  Streets
-  AG-3

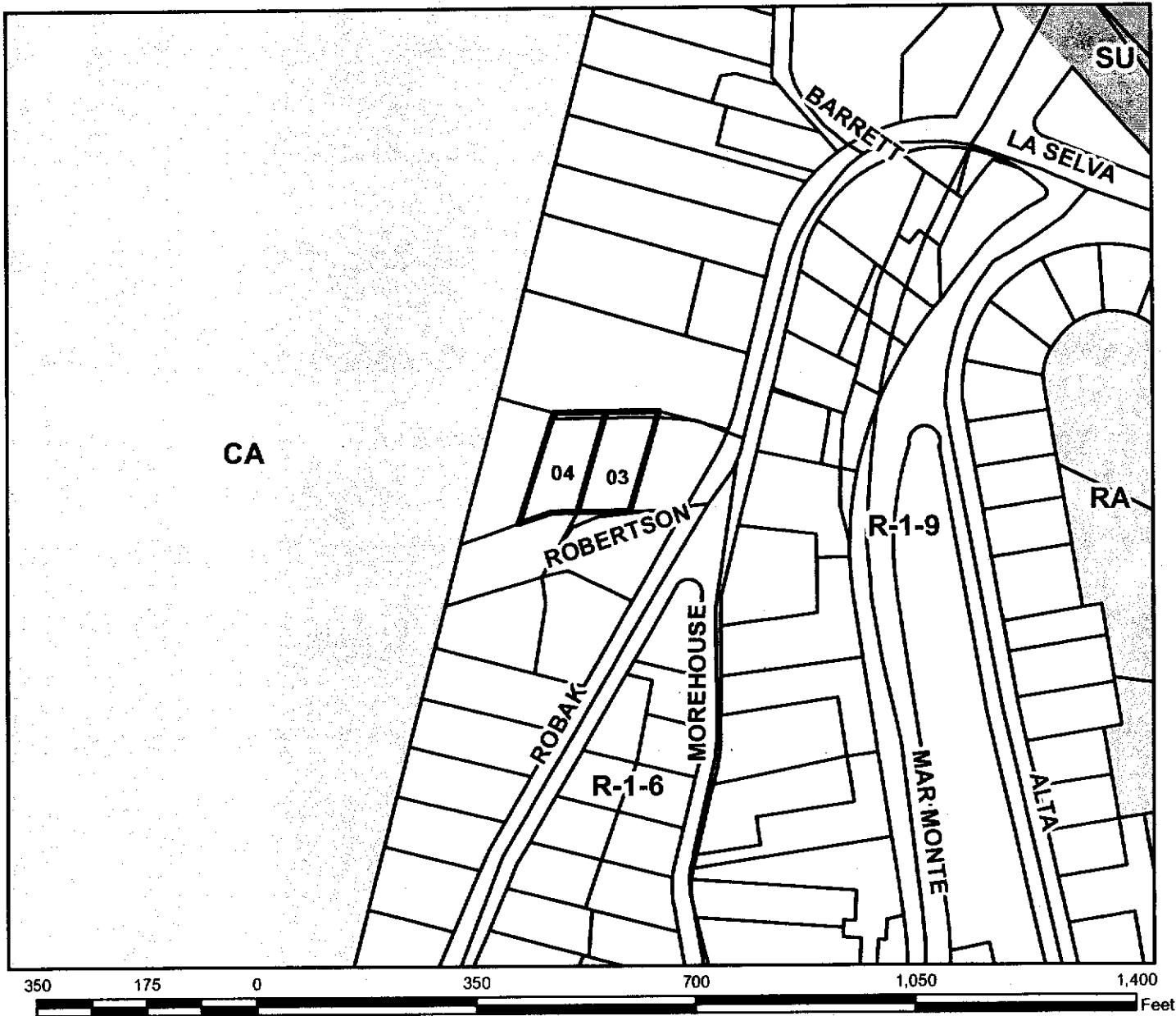


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EXHIBIT E



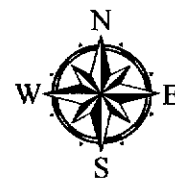
Zoning Map



LEGEND

-  APN: 045-331-04
-  APN: 045-331-03
-  Assessors Parcels
-  Streets

RESIDENTIAL-SINGLE FAMILY
AGRICULTURE COMMERCIAL
AGRICULTURE RESIDENTIAL
SPECIAL USE

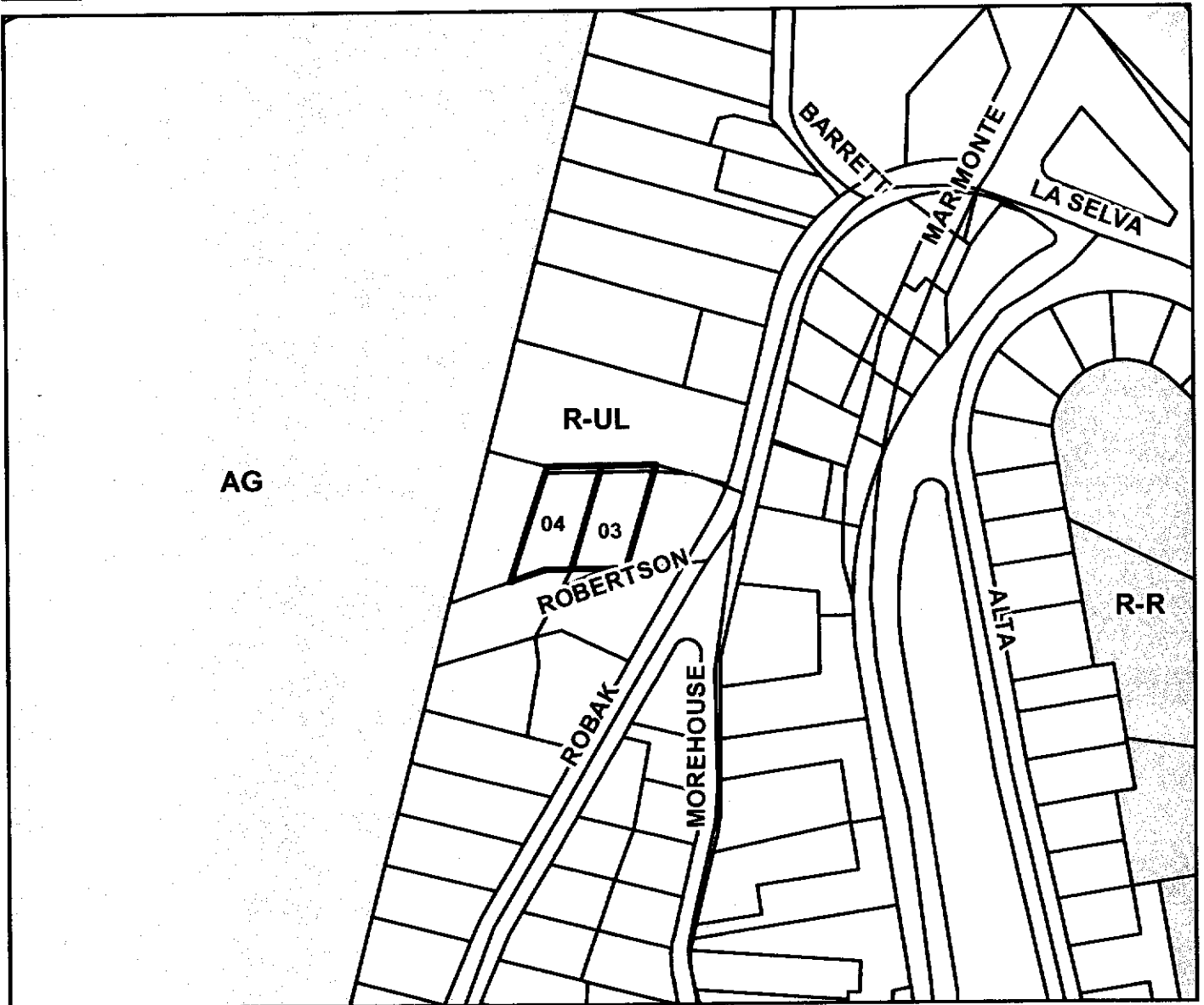


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July 2009

EXHIBIT E



General Plan Designation Map



LEGEND



APN: 045-331-04



APN: 045-331-03



Assessors Parcels

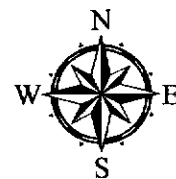


Streets

Residential - Urban Low Density

Agriculture

Residential-Rural

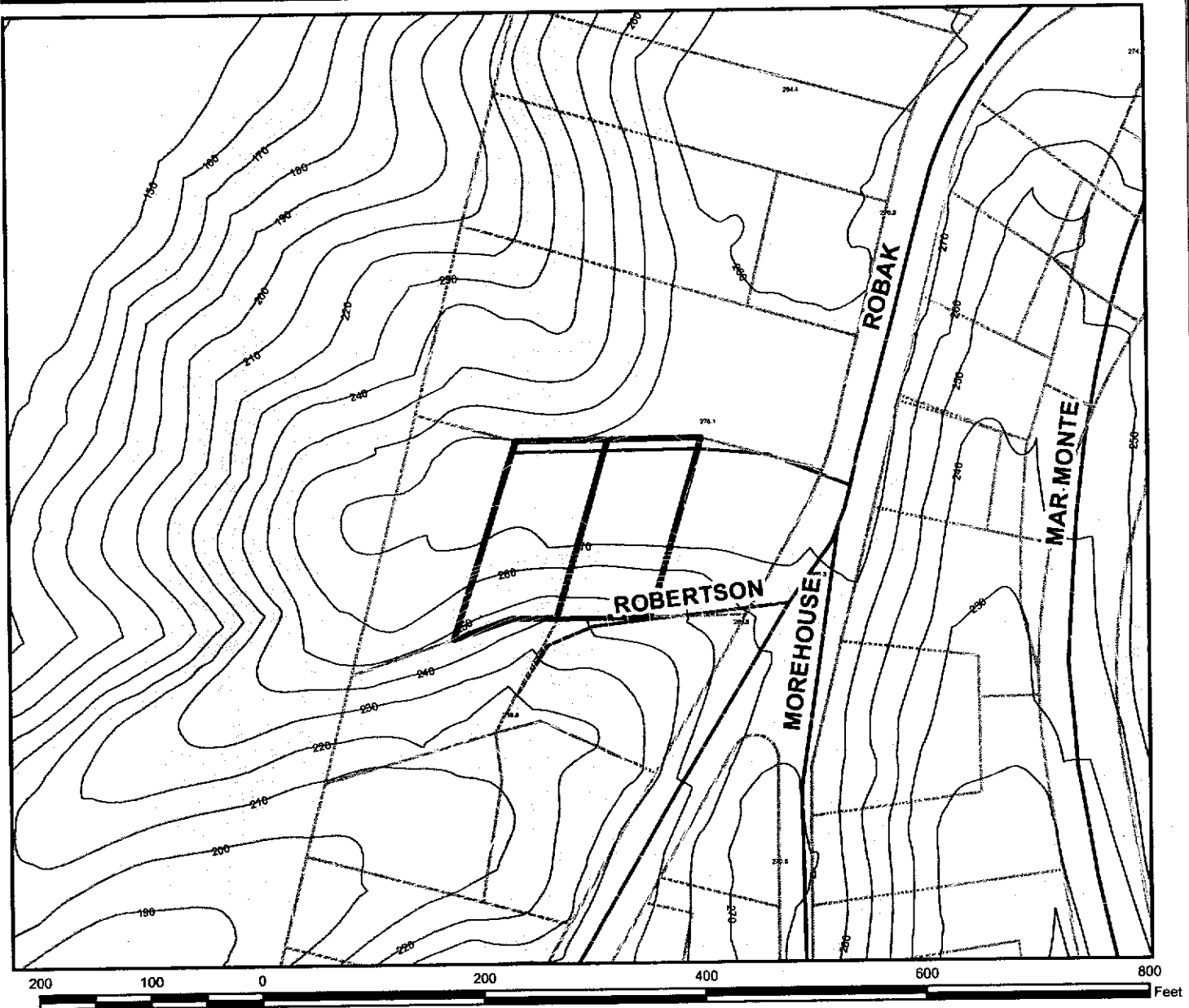


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July 2009




EXHIBIT E



Contour Map



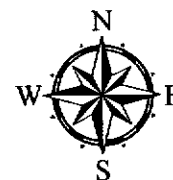
LEGEND

-  APN: 045-331-04
-  APN: 045-331-03
-  Assessors Parcels

— Streets

County Wide 2' & 10' Contours

— INDEX



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EXHIBIT E

Aerial Photo

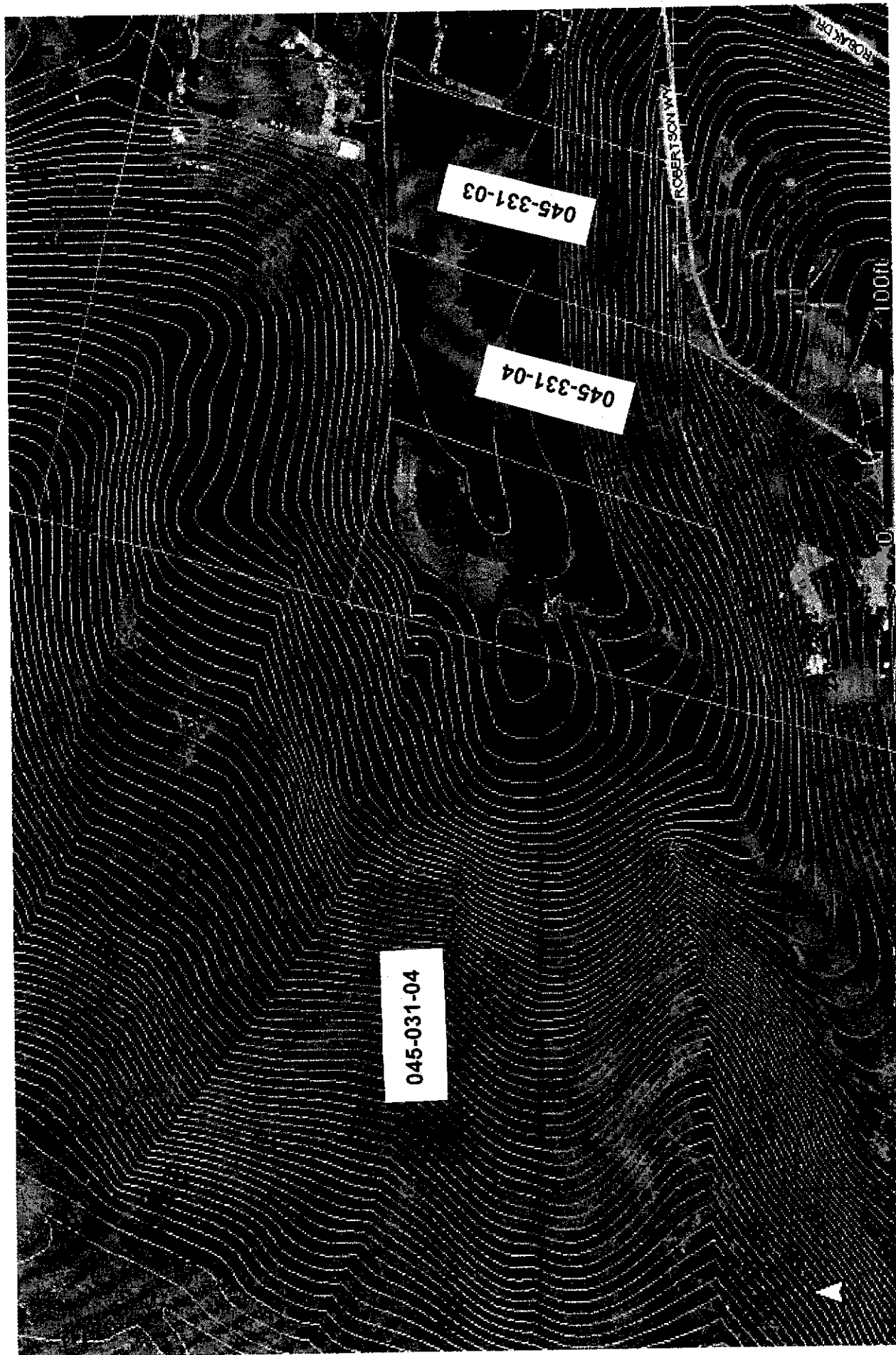


EXHIBIT E