

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: March 11-14, 1997
Commission Action:



STAFF REPORT: REGULAR CALENDAR

Th 8b

APPLICATION NO.: 4-96-167

APPLICANT: Simon T.

AGENT: Alan Block

PROJECT LOCATION: Swenson Drive, 600 Feet East of Saddlepeak Road, Los Angeles County

PROJECT DESCRIPTION: Subdivision of 17.9 acre lot into two parcels of 9.66 acres and 8.24 acres with 3,375 cubic yards of grading (2,850 cu. yds. cut, 525 cu. yds. fill) for the access road and building pads. No residences are proposed.

Lot area:	17.9 acres
Building coverage:	0 proposed
Pavement coverage:	0 proposed
Landscape coverage:	0 proposed
Parking spaces:	0 proposed
Zoning:	A-1-1
Plan designation:	Mountain Land (M2): 1 du/20 ac. Rural Land I (3): 1 du/10 ac. Rural Land II (4): 1 du/5 ac. Rural Land III (5): 1 du/2 ac.
Project density:	2 du/17.9 ac.
Ht abv fin grade:	N/A

LOCAL APPROVALS RECEIVED: Tentative Tract Map approval from Los Angeles County Department of Regional Planning; Fire Department Approval for Access Road.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan and Coastal Development Permit Application 4-92-089 (Iverson).

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the subdivision of one lot into two lots for future residences. There is an existing access road and minor grading on the lot which predates the Coastal Act. This project was previously before the Commission and denied on the basis of excessive grading and landform alteration and geologic hazards. This project differs from the original

project with a significant reduction in grading and the identification of a geologic hazard area. Staff recommends that the Commission approve the project with special conditions regarding cumulative impacts mitigation, geologic recommendations, assumption of risk deed restriction, drainage control plans, landscaping and erosion control plans, and removal of excess fill.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

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 this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Cumulative Impact Mitigation.

Prior to the issuance of the Coastal Development Permit, the applicants shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to issuance of this permit, the applicants shall provide evidence to the Executive Director that development rights for residential use have been extinguished on one (1) building site in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

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

2. Plans Conforming to Geologic Recommendations

All recommendations contained in the Geologic and Soils Engineering Exploration, dated September 26, 1990 and, prepared by Robertson Geotechnical Inc., as well as the Update Engineering Geologic Report dated November 24, 1996 and prepared by Mountain Geology, shall be incorporated into all final design and construction including grading, septic systems, and drainage, all plans must be reviewed and approved by the consultants prior to commencement of development. Prior to the issuance of the coastal development permit, the applicant shall submit evidence for the review and approval of the Executive Director of the consultant's review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to grading, geologic setback, and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

3. Assumption of Risk Deed Restriction

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

being conveyed, and free of any other encumbrances which may affect said interest.

4. Drainage and Erosion Control Plans.

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a drainage and erosion control plan, designed by a licensed engineer. The drainage and erosion control plan will not result in increases in either peak run-off volume or velocity for a 25 year / 24 hour rainfall event. Specifically, runoff volumes and velocities for a 25-year and 24-hour event must be calculated for existing and post-project conditions to demonstrate that no increase in runoff volume or velocity will occur. The drainage and erosion control plan shall include, but not be limited to, a system which collects run-off from the roads and building pads and discharges it in a non-erosive manner including, if appropriate, on-site detention/desilting basins, dry wells, etc.

Any substantial changes in the proposed development approved by the Commission which may be required by the drainage consultant shall require an amendment to the permit or a new coastal permit. Should the project's drainage structures fail or result in erosion, the applicant/landowner shall be responsible for any necessary repairs and restoration.

5. Landscaping and Erosion Control Plans

Prior to the issuance of a coastal development permit, the applicant shall submit a landscaping and erosion control plan prepared by a licensed landscape/architect or other qualified professional, for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development 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 Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) Cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native species using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two years and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils.
- (c) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

- (d) Building sites and other areas to be developed in the future shall be seeded for erosion control with a native plant seed mix.

6. Removal of Excavated Material

The applicant shall remove all excavated material from the site and shall provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Should the dump site be located in the Coastal zone, a coastal development permit shall be required.

IV. Findings and Declarations.

A. Project Description and Background

The applicant is proposing the subdivision of one 17.9 acre lot into two lots of 9.66 acres and 8.24 acres for future residences. No residences or other structures or utilities associated with residences are proposed at this time. The applicant is proposing a total of 3,375 cubic yards of grading (2,850 cu. yds. cut, 525 cu. yds. fill) for the access road and building pads. There is 2,405 cubic yards of grading (1,880 cu. yds. cut, 525 cu. yds. fill) required for improvements to the access road which include widening the road and providing Fire Department required turnarounds. The Fire Department has approved the road design in concept. The remainder of the grading is for the residential pads; 121 cubic yards of cut is proposed for lot 1, and 849 cubic yards of cut is proposed for lot 2. No fill is required for the pads.

The project site is located between Saddlepeak and Swenson Road; access to the site is by Swenson Road. Access to the site via Saddlepeak Road is not available. The lot consists of undeveloped hillside terrain with topographical relief of approximately 300 feet. The lot has been previously disturbed with the grading of roads and possible fire breaks. This grading and vegetation clearance pre-dates the January 1, 1977 effectiveness date of the Coastal Act.

The subject parcel contains multiple land use designations as shown in Exhibit 3. These land use designations range from one dwelling per 20 acres to one dwelling per two acres. The amount of acreage in each land use designation is outlined in Exhibit 4. The majority of land is located in the M2 area, allowing one dwelling per 20 acres. Only a small amount of land is located within the area designated for one dwelling per five acres; the remaining 5.4 acres of land is located in areas designated as one dwelling per two and five acres. Based on the amount of acreage in each land use designation, the applicant is entitled to 2.21 lots (See Exhibit 5). The applicant also conducted a 1/4 mile radius survey to determine the average size of parcels in the immediate area. The average size was determined to be 4.61 acres. The proposed lots are larger than the average size of the lots in the area. Exhibit 6 illustrates the lots within a 1/4 mile radius.

Previously, the Commission denied an application for a subdivision of this lot into two lots [4-92-089 (Iverson)], based on excessive landform alteration and geologic hazards. In that application, a total of 7,915 cubic yards of grading was proposed for the access road and pads. The proposal also required the construction of 2,670 linear feet of retaining walls. In order to avoid placing a lot line in the restricted use area, the lot line was adjusted by the applicant during local review. The lot configuration of the previous permit is identical to this proposal.

The proposal originally before the Commission in 4-92-089 was for 30,000 cubic yards of grading. The applicant postponed the Commission hearing to work with staff to reduce the grading. The grading was reduced to the final proposal of 7,915 cubic yards of grading. However, as noted above, the Commission found that this amount of grading and landform alteration was excessive and denied the project.

B. Cumulative Impacts of New Development

Section 30250 (a) of the Coastal Act provides that new development be located within or near existing developed areas able to accommodate it, with adequate public services, where it will not have significant adverse effects, either individually or cumulatively, on coastal resources:

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

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

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

Consistent with the noted Sections of the Coastal Act, the Malibu/Santa Monica Mountains Land Use Plan contains policies which address build-out in the Santa Monica Mountains. These policies have been used by the Commission as guidance in determining the consistency of projects with the Chapter Three Policies of the Coastal Act. The Malibu/Santa Monica Mountains Land Use Plan states in Policy 273d that:

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

The applicant proposes the subdivision of a 17.9 acre parcel into two lots of 9.66 acres and 8.24 acres in size with 3,375 cubic yards of grading (2,850 cu. yds. cut, 525 cu. yds. fill) for the access road and building pads. No structures are proposed at this time. The proposed project is located on Swenson Road, just south of Saddlepeak Road.

The proposed project site is located within the Malibu/Santa Monica Mountains Land Use Plan area of the County of Los Angeles. The project site is located within four density designations of the LUP: Mountain Land which allows for a maximum density of 1 dwelling per 20 acres; Rural Land I which allows for one dwelling in ten acres; Rural Land II which allows for one dwelling in five acres; and finally, Rural Land III which allows for one dwelling in two acres. Approximately two-thirds of the applicant's property is designated

Mountain Land; thirteen percent of the property is located in Rural Land I. Thus over 80% of the land is located in areas requiring a density of either one house in ten or twenty acres. The majority of the remaining 20% of the site is located in Rural Land III, allowing one dwelling in only two acres. Only a small percentage, less than three percent, is located in Rural Land II which allows for one dwelling in five acres. Based on the percentage of land within each land use designation, the density for the subject lot is 2.21 dwellings per acre (See Exhibit 5). In approving the proposed tentative parcel map, the County of Los Angeles found that the project density was consistent with the density range of the land use categories.

The Commission notes that the tentative tract map for the subdivision of this parcel was originally approved in 1991 and set to expire in 1994. The County extended the approval of the tentative tract map twice. The tentative tract map is still valid and not set to expire until June 3, 1997. Three renewals of this approval are still available to the applicant.

Although the certified LUP provides guidance regarding the density and intensity of development, the Commission's standard of review for subdivisions is the Coastal Act. In this situation, because the project site is located outside of the developed coastal terrace, the criteria provided in Section 30250(a) is applicable. This section provides that subdivisions shall be permitted when: a) 50 percent of the usable parcels in the area have been developed; and b) the created parcels would be no smaller than the average size of the surrounding parcels. These requirements are to ensure that development is located in close proximity to existing development, in areas that have adequate public services. In other words, this policy is to prevent the "leap-frogging" of new development into undeveloped areas, thereby preventing the potential significant adverse impacts of such development on coastal resources. As such, it is possible for a proposed subdivision to be consistent with the maximum allowable density under the Land Use Plan, yet be inconsistent with Section 30250(a) of the Coastal Act because it does not meet the 50 percent or average lot size criteria.

The first technical requirement of Section 30250(a) of the Coastal Act is regarding new land division outside existing developed areas. This Section requires that such land divisions shall be permitted only where 50 percent of the usable parcels in the area have been developed and where other criteria are met. The Commission found that "existing developed area" applied only to the urbanized strip, or coastal terrace, along Pacific Coast Highway and did not apply to the interior of the Santa Monica Mountains. The Commission further found that the area addressed by the 50% criteria was the market area, amounting to the entire Malibu/Santa Monica Mountains coastal zone. Within that area, a majority of existing parcels were not yet developed, thus causing all proposed land divisions outside the coastal terrace to fail the required test of Section 30250(a).

Based on these concerns, the Commission found no alternative then to deny a number of land divisions requested in the area (#507-77, Bel-Mar Estates; #527-77, Schiff; #28-78, Brown). Faced with continuing applications, the Commission instituted the TDC program through a series of permit decisions (#155-78-, Zal; #158-78, Eide). The program was designed to address both cumulative impact problems represented by the large number of existing lots and the technical criteria of Section 30250(a) regarding proposed land divisions outside the coastal terrace.

The TDC program acts in such a way as to ensure that no net increase in development occurs, even if land divisions are approved. The developability

of existing parcels is extinguished at the same time new parcels are created, in order to accomplish this end. Because land divisions do not increase the number of potentially usable parcels, the technical criteria of Section 30250(a) concerning 50 percent of the usable parcels in the area has, in effect, been met.

With regards to the average lot size standard, the first step in making a determination required under Section 30250(a) of the Coastal Act is to choose a "surrounding area" which is representative. Next, utilizing aerial photographs and assessor's records, the number of developed parcels within the surrounding area would be determined. Lastly, an average lot size analysis would be made on the surrounding area. To determine the appropriate surrounding area in the Santa Monica Mountains, the Commission has, in past permit decisions, considered the average and median lot size within one-quarter of a mile, taking into account major topographic features. In a court decision (Billings vs. the California Coastal Commission) the court examined the use of an arithmetic mean to determine the size of lots that was typical for a geographic area. In Billings, the court rejected the arbitrary delineation of a 1/4 radius as the sole criterion for determining the appropriate surrounding area, and instead found that it was appropriate to also take into consideration major topographic features such as ridgelines to determine the surrounding area. Also in Billings, the Court rejected the Commission's use of the arithmetic mean to determine the "average" lot size and rather found the use of a median or mode to be more appropriate. The Commission has found that the mode is a method of calculating the average that is of limited utility. Thus, the median is the best method of arriving at the average lot size.

The proposed parcels are located on Swenson Drive, south of Saddlepeak Road (see Exhibit 1). A 1/4 mile radius map was prepared by the applicant and depicted in Exhibit 6. Based on this map, the area is characterized by parcels ranging in size from less than one acre to slightly larger than 30 acres. A total of 74 parcels, encompassing 341.17 acres comprises this 1/4 mile radius; the average parcel size is 4.61 acres. Based on an average lot size analysis of the parcels within the study area the proposed subdivision can be found consistent with the average lot size criteria required under section 30250 of the Coastal Act.

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

The certified LUP recognizes the cumulative impact problem in the Malibu/Santa Monica Mountains Coastal zone:

If all existing lots in the Malibu Coastal Zone were built out a

significant portion of the proposed development capacity proposed in this local coastal program would have to be reserved for utilization in otherwise more appropriate locations. Their development would demand the allocation of urban services not now available at these locations and could adversely affect the resources which remain in such locations.

While the above statement refers to nonconforming lots, it also points out a "development capacity" contained in the LUP and the demand on road capacity, services, and recreation which would be exceeded by buildout of existing undeveloped lots. Therefore, any proposal to increase permitted density on a lot has the potential of adding to the cumulative impact burden on roads and services, etc. even if the site is located in an existing developed area.

As a means of addressing the cumulative impact problem, the Commission has, in past permit actions, required consistency with the LUP land use designations for maximum density, as well as required participation in the transfer of development credit (TDC) program as mitigation for new lot creation. As noted above, the proposed subdivision is consistent with the LUP designations.

As noted above, in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Za1; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent was, as noted above, to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed.

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

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

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

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

More recently (May 1996), the Commission held a public workshop on the history and future operation of the TDC program. The Commission reviewed the intent, criteria and operation of the TDC program, took public testimony on the efficacy of the program, and acknowledged its continued implementation.

The applicant proposes to subdivide one parcel of land into two residential lots. The proposed number of residential units and the residential unit density conform to the LUP designation on this site. The subject parcel is an existing legal parcel. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit regarding the legality of the existing parcel.

As discussed above, the LUP contains six potential techniques to mitigate cumulative impacts, none of which are easily implemented at the present time. In the interim, the Commission has approved new subdivisions, but has continued to require purchase of TDC's as one of the alternative mitigation strategies. The Commission determines that it is necessary to impose a similar requirement on the applicant, in order to insure that the cumulative impacts of the creation of one additional legal buildable lot is adequately mitigated. This permit has therefore been conditioned, as outlined in special condition 1, to require the applicant to mitigate the cumulative impacts of the subdivision of this property, either through purchase of one TDC or by participation in one of the County's alternative programs. The Commission finds that as conditioned, the permit is consistent with Section 30250(a) of the Coastal Act, and the land division policies of the Malibu/Santa Monica Mountains Land Use Plan.

C. Geologic Hazards

Section 30253 of the Coastal Act states in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. This project involves the grading of an access road and building pads for the future construction of two residences. The applicant has submitted geologic reports which address the feasibility of developing this site. The initial geology report for the site is dated September 26, 1990; additional reports by the same geologist are dated in 1991. Most recently the applicant has submitted a geologic update report which is dated 1996. The Commission requires the review of the geologic hazards on site to ensure that development will not contribute to, or become subject to any geologic hazard which would put life or property at risk.

This site has been previously graded in areas, including the access road. Fill deposits were identified in areas in and around the proposed building pads. There is an ancient landslide which was mapped in the southwestern portion of the property in the southern portion of parcel 2 and the southwestern portion of parcel 1. However, no recent activity of this slide has been observed. With the exception of a portion of the access road, there is no development proposed in the area where the landslide has been mapped. The factor of safety at the building pads is 1.7, which shows the building sites are stable. The consulting geologist has stated that development of the residences will not adversely affect the landslide. Similarly, the building pads are located sufficiently away from the landslide that the consulting geologist has concluded the their development shall be free from hazard so long as the recommendations of the consulting geologist are incorporated into the final design.

The portion of the road that is located within the restricted use area is existing. Only minor grading is proposed in the restricted use area to repair erosion which occurred from poor drainage control. The improvements to the road include paving and widening for a Fire Department turn-around area and the installation of curbs and gutters. The consulting geologist states that the restricted use area was established to prohibit habitable structures near the landslide area. No extensive grading or the placement of habitable structures will occur in the restricted use area. The consulting geologist has concluded that the improvements to the road will be safe against geologic hazards such as landslide, slippage, and active faults or settlement, and that the improvements will not adversely affect the stability of the site or adjacent properties.

In the original geology report by Robertson Geotechnical Inc., dated September 26, 1990, the consulting geologist concluded that:

Based upon our exploration and experience with similar project, the proposed subdivision and construction of the proposed residential

development in the proposed location is considered feasible from a geologic and soils engineering standpoint provided our advise and recommendations are made a part of the plans and implemented during construction.

Two addendum reports to the original report were done, and dated, March 29, 1991 and August 22, 1991. The March 29, 1991 report addresses the grading proposed under the original subdivision and provides additional slope stability analysis. This report makes no recommendations with regards to the development of the site. The second report, dated August 22, 1991 discusses the landslide and contains comments to the County's geologic review sheet. This report finds that the headward movement of the landslide, should the landslide become active, will not encroach into the building sites of the proposed developments. The report further asserts that if development occurs pursuant to the recommendations of the geologist, development of the site should not adversely affect the landslide or contribute to its movement or failure.

An updated geologic report was submitted for the proposed development, prepared by Mountain Geology and dated November 24, 1996. The consulting geologist has found that:

The proposed development and installation of the private sewage disposal systems will have no adverse effect upon the stability of the site, the prehistoric landslide remnant, or adjacent properties.

Based on the recommendations of the consulting geologist, the Commission finds that the development should be free from geologic hazards so long as all recommendations regarding the proposed development are incorporated into project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the previous and current consulting geotechnical engineers, Robertson Geology, Inc, and Mountain Geology as conforming to their recommendations (Special Condition 2).

In the previously subdivision the Commission found that the placement of fill in the landslide area would not mitigate against geologic impacts. In this proposal, the applicant is not proposing the dumping of fill within the identified geologic hazard area. All development, with the exception of a portion of the access road is outside the restricted use area. The building pad for parcel 2 is located over 240 feet from the restricted use area, and as such, no vegetation clearance or landscaping for parcel 2 should be required or necessary in the restricted use area. The closest corner of building pad 1 for parcel one is 180 feet from the northernmost portion of the restricted use area. This small section of the restricted use area may require minimal thinning by the Fire Department for fire protection of the future residence at parcel 1. Thus, the Commission concludes that the only development which is proposed to occur in the restricted use area, outlined by the consulting geologist is the access road and a small portion of the top of restricted use area. As stated above, the consulting geologist has confirmed that the improvements to the access road will not contribute to any geologic hazard and will be free from hazards so long as their recommendations are followed.

The Coastal Act recognizes that development adjacent to an ancient landslide, and improvements to the road in the restricted use area, may involve the taking of some risk. The incorporation of the recommendations of the geologist can not completely eliminate the hazards associated with development in the mountains which are subject to landslide, slippage, erosion and

failure. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The Commission finds that due to the unforeseen possibility of landslide, slippage and erosion, the applicant shall assume these risks as a condition of approval, as outlined in special condition 3. Because this risk of harm cannot be completely eliminated, the Commission must require the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of hazards which exist on the site, and which may adversely affect the stability or safety of the development.

The proposed project calls for grading of building pads and the access road but does not provide for any drainage plans, landscaping, or erosion control plans. The Commission has found in numerous past permit actions, that the grading of a site, and the denuding the construction site of vegetation leaves the area subject to accelerated erosion and runoff. The removal of the vegetative cover leaves the soil more susceptible to rainfall. The velocity of the rainfall on the barren ground combined with the increase in rainfall which does not infiltrate into the ground results in a greater velocity and volume of water leaving the site. This water will carry with it sediments from the barren areas; thus eroding the site. The bare areas subject to erosion and run-off will in turn increase the amount of sediments on downslope roads, such as Swenson, and cause siltation in downslope streams. Additional sediments on a road cause block roads and create a hazardous situation. In streams, an increase in siltation will change the water pattern, flow or direction of a stream, and pollute the water, depleting the amount of oxygen and increasing the amount of minerals and materials in the stream. These changes would be lethal for and fish, invertebrates, or other fauna living within and using the water of streams.

The Commission has routinely mitigated these negative impacts by requiring that disturbed areas be landscaped for erosion control. Landscaping is also often required to mitigate visual impacts caused by landform alteration, as noted in the next section. Therefore, the Commission finds it necessary to require the applicant to submit a landscaping and erosion control plan prepared by a landscape architect or other qualified individual which indicates the placement of native vegetation in all disturbed areas, including cut and fill slopes. The building pads shall be seeding for erosion control in the interim time between grading and the construction of a residence.

Finally, the improvements to the access road and the grading of the building pads will alter the drainage of the ridge on which the development is proposed. With the reduction of vegetation cover and the increase in impervious surfaces which results from the paving of the road there will be an increase in siltation and run-off from the site down the slopes, which will in turn affect the quality of drainages downslope of the site, as well as Swenson Road and other development near-by areas. Increased erosion and the degradation of habitat will also occur through the increased run-off from the road. The proposed paving for the driveway will result in a far greater fraction of rainfall which does not infiltrate but instead runs off the developed surface. The increased runoff will contribute to increased erosion

and sedimentation of downstream areas if not properly controlled. Therefore, to ensure that no adverse impacts on the road, downslope properties or downstream habitats occur from increased runoff, as a result of grading, the Commission finds it necessary to require the applicant to submit and implement drainage control plans, as noted in special condition 4. This drainage plan, prepared by a licensed engineer or hydrologist, shall show the direction of water from the site, and shall show curbs on the proposed roadway to direct water in a non-erosive manner off-site.

Only as conditioned above for the submittal of plans reviewed by the geologists, drainage, landscaping and erosion control plans, and the recordation of an assumption of risk deed restriction is the project consistent with Section 30253 of the Coastal Act.

D. Grading and Landform Alteration

Section 30251 of the Coastal Act states that:

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

In addition, the LUP contains numerous policies regarding landform alteration and the protection of visual resources which are consistent with Section 30251 of the Coastal Act. The Commission has regularly used these policies as guidance. The policies of the LUP suggest that grading, especially in the upland areas of the Santa Monica Mountains, be minimized for all new development to ensure the potential negative effects of runoff and erosion are minimized; that new development shall be designed to minimize impacts and alterations of physical features; that new development shall be sited and designed to protect public views from LCP-designated scenic highways and in scenic coastal areas, including public parklands; and finally ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.

The applicant proposes the subdivision of parcel into two lots with 3,375 cubic yards of grading for the construction of the access road and building pads. Originally, the applicant was proposing nearly 8,000 cubic yards of grading with a substantial linear length of retaining wall along the access road. The Commission denied this original proposal stating that the amount of grading was excessive and did not minimize landform alteration.

The current project reduces the amount of grading required for the road and eliminates the need for retaining walls along the road. The building pads have been relocated and adjusted in size to reduce the overall amount of grading. Retaining walls are still required at the building pad for lot 2, and along one portion of the access road. However, the amount of retaining walls required, and the amount of grading has been reduced significantly. The majority of the grading proposed is for the creation of the access road. Less than 1,000 cubic yards of grading is proposed for the building pads. The Commission finds that the grading is a significant reduction and minimizes the

landform alteration on site. As proposed, the project does minimize grading and landform alteration, and therefore, reduces negative visual impacts caused by excessive grading. The reduction in the grading for the building pads also reduces the landform alteration which was significant in the previous proposal. As currently proposed, residences can easily be built on the building pads with little to no additional grading necessary.

The site does require more cut than fill, In order to ensure that the excess cut material is removed from site the Commission finds it necessary to require the applicant to identify the location of the dump site, prior to the issuance of the coastal development permit. The applicant shall be restricted from dumping the excess fill on site. Should the location of the dump site be located within the coastal zone, the site must have a valid coastal development permit for the importation of the fill. The terms of the restriction are outlined in special condition 6.

The Commission finds that the grading required for the access road and building pads does minimize landform alteration as mandated by Section 30251 of the Coastal Act. Moreover, the landscaping of the disturbed areas, as required under special condition 5, will mitigate the visual impacts caused by grading and the removal of vegetation by replacing vegetation in those disturbed areas. The Commission finds that the proposed plan, with the special conditions requiring the removal of excavated material and landscaping of the site is consistent with Section 30251 of the Coastal Act.

E. Septic Systems

The Commission recognizes that the potential build-out of lots in the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

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

In addition, the Malibu/Santa Monica Mountains Land Use Plan contains the following policies concerning sewage disposal:

P217 Wastewater management operations within the Malibu Coastal Zone shall not degrade streams or adjacent coastal waters or cause or aggravate public health problems.

P218 The construction of individual septic tank systems shall be permitted only in full compliance with building and plumbing codes...

P226 The County shall not issue a coastal permit for a development unless it can be determined that sewage disposal adequate to function without creating hazards to public health or coastal resources will be available for the life of the project beginning when occupancy commences.

The applicant's geology report states that groundwater was not encountered in borings which were drilled up to 80 feet in depth. Favorable percolation tests were performed, consistent with the Uniform Plumbing Code, and the consulting geologist has concluded that the sites can support private septic systems. The Commission has found in past permit actions that compliance with the Uniform Plumbing Code requirements will minimize any potential for waste water discharge that could adversely impact coastal streams or waters. The consulting geologist has indicated that no septic system shall be placed in the geologic setback area. Provided the geologist recommendations regarding septic systems are followed, as required under special condition 2, the development of the site with septic systems for future residences will not adversely impact coastal streams or waters. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act and the applicable LUP policies.

F. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding section provides findings that the project as conditioned is in conformity with the provisions of Chapter 3. As conditioned, the 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 development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. CEQA

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

There are no negative impacts caused by the proposed development, as conditioned, which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

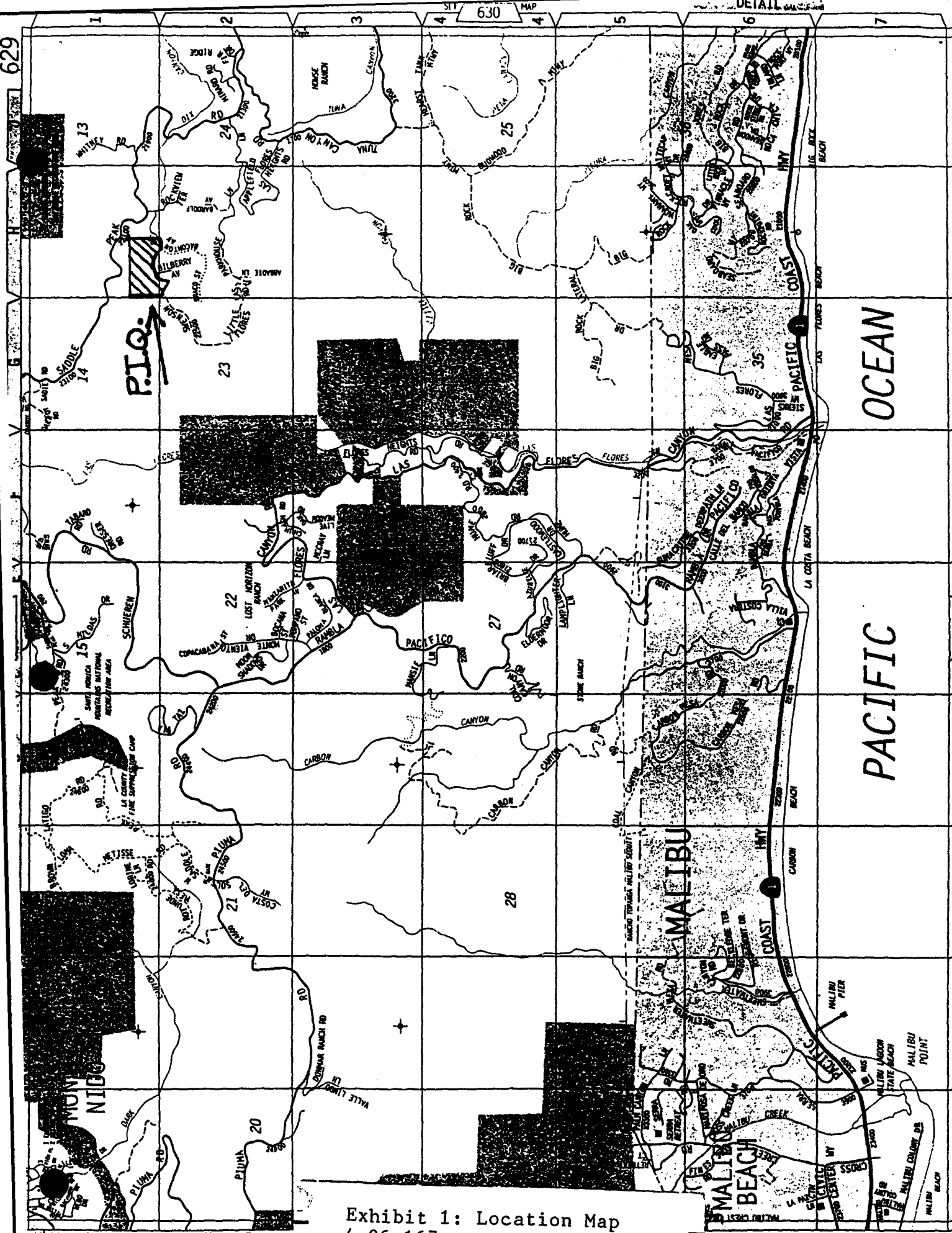


Exhibit 1: Location Map
4-96-167

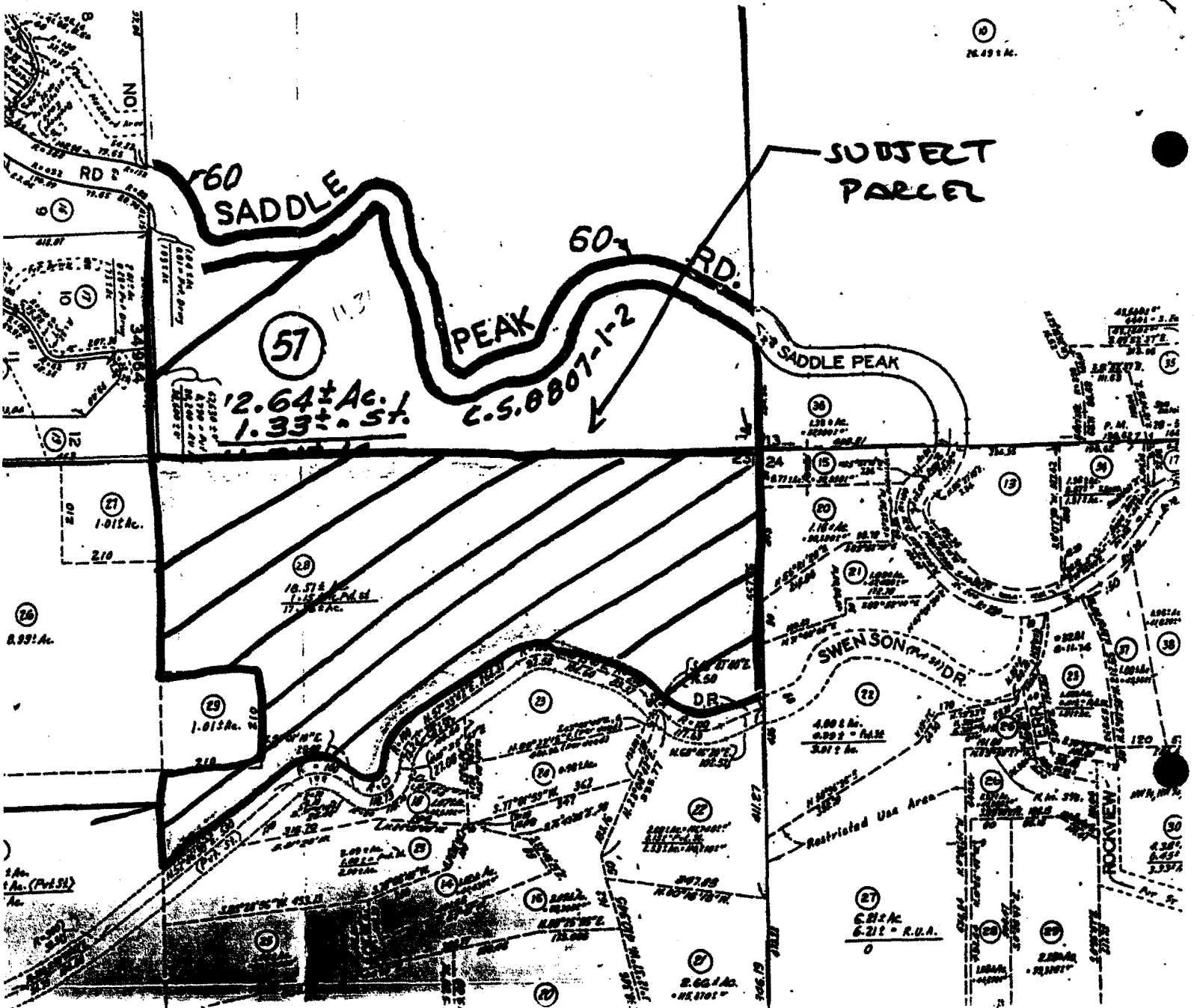
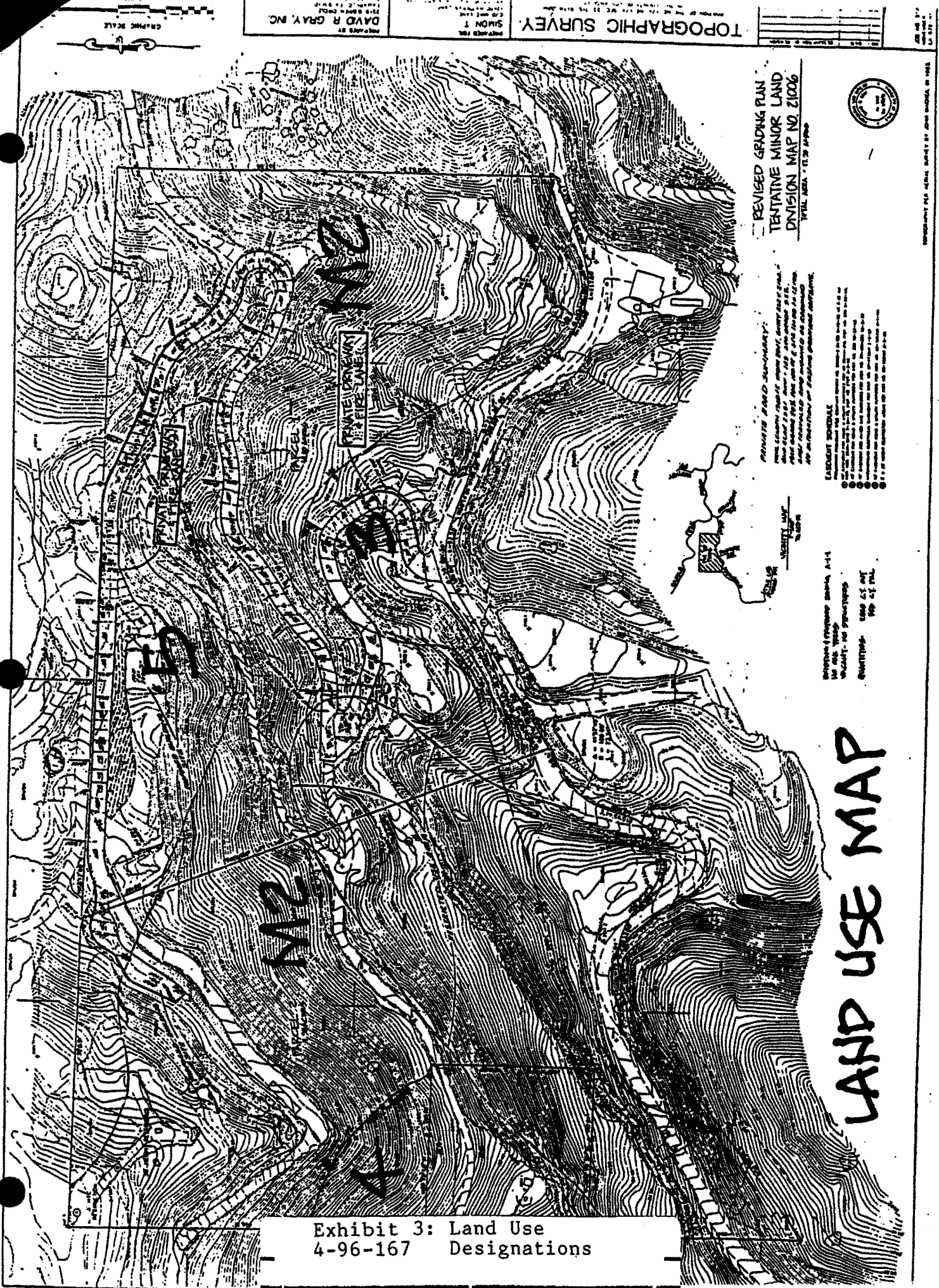


Exhibit 2: Parcel Map
4-96-167



DAVID R. GRAY & ASSOCIATES

Surveys • Subdivisions • Grading Plans

LAND USE BREAKDOWN TENTATIVE MINOR LAND DIVISION MAP NO. 21006

TOTAL AREA 17.90 ACRES

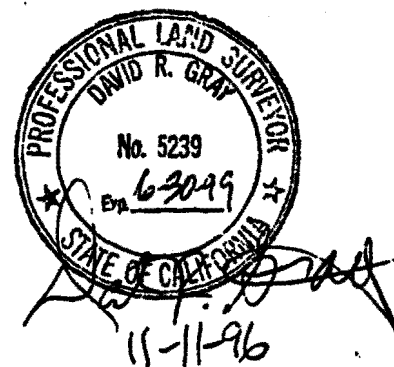
AREAS WITHIN LAND USE CATEGORY

3	2.96 ACRES
4	0.53 ACRES
5	2.39 ACRES
M2	12.02 ACRES

1/4 MILE RADIUS AVERAGE PARCEL SIZE TENTATIVE MINOR LAND DIVISION MAP NO. 21006

74 PARCELS TOTAL AREA = 341.17 ACRES

AVERAGE PARCEL SIZE = 4.61 ACRES



DENSITY DETERMINATION - SIMON T - MALIBU PROPERTY**AREA (IN ACRES)**

Slope	3	4	5	M2	Total
<25%	0.92	0.00	0.79	2.11	3.82
25-50%	0.56	0.03	0.37	3.10	4.06
>50%	1.48	0.50	1.23	6.81	10.02
Total	2.96	0.53	2.39	12.02	17.90

DENSITY PER AREA PLAN

Land Use Category	Area(ac)	Density	D.U.
3	2.96	1/10 ac	0.30
4	0.53	1/5 ac	0.11
5	2.39	1/2 ac	1.20
M2 >50% slope	12.02	1/20 ac	0.60
Total	17.90	-----	2.21

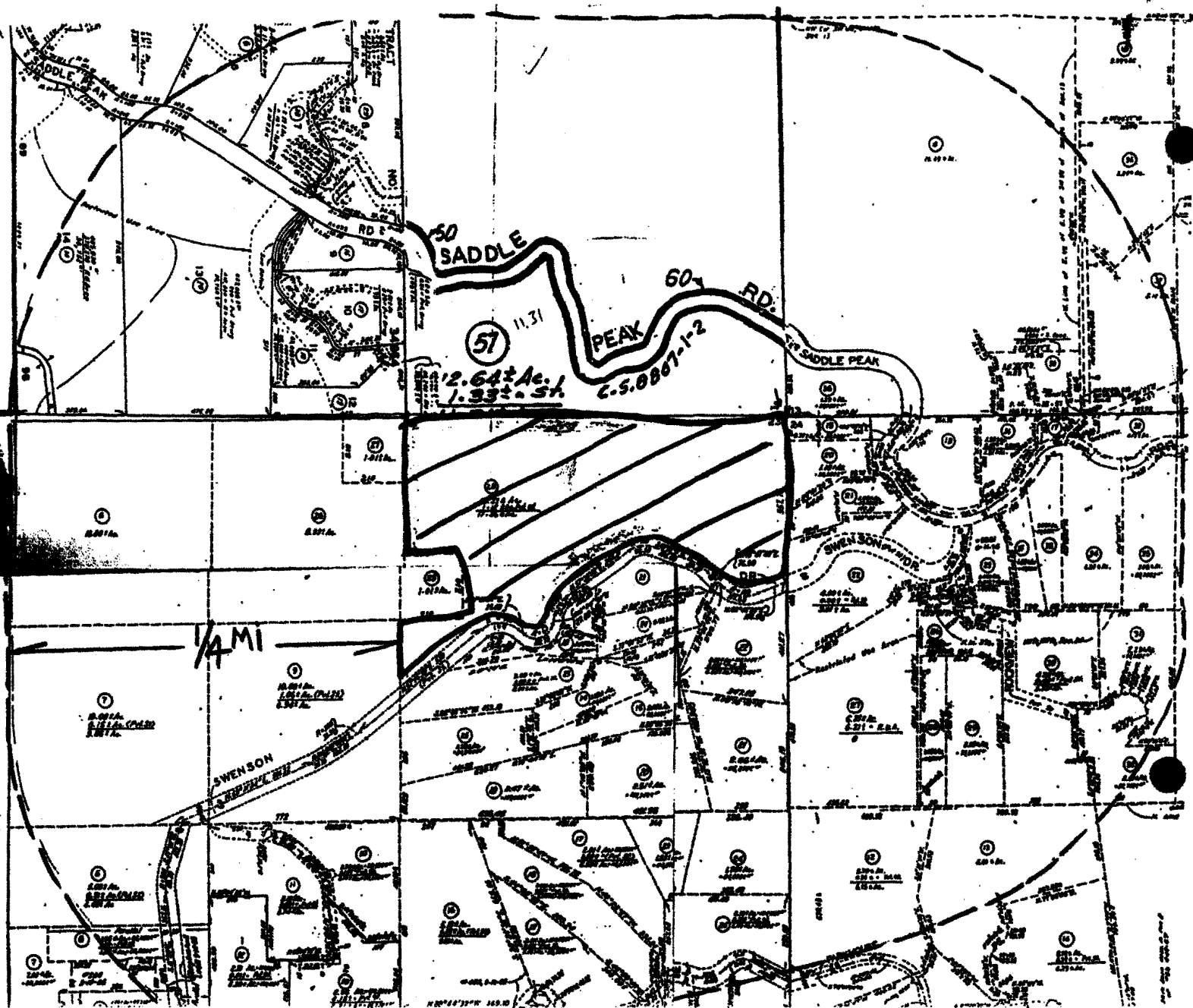


Exhibit 6: 1/4 Mile Radius
4-96-167

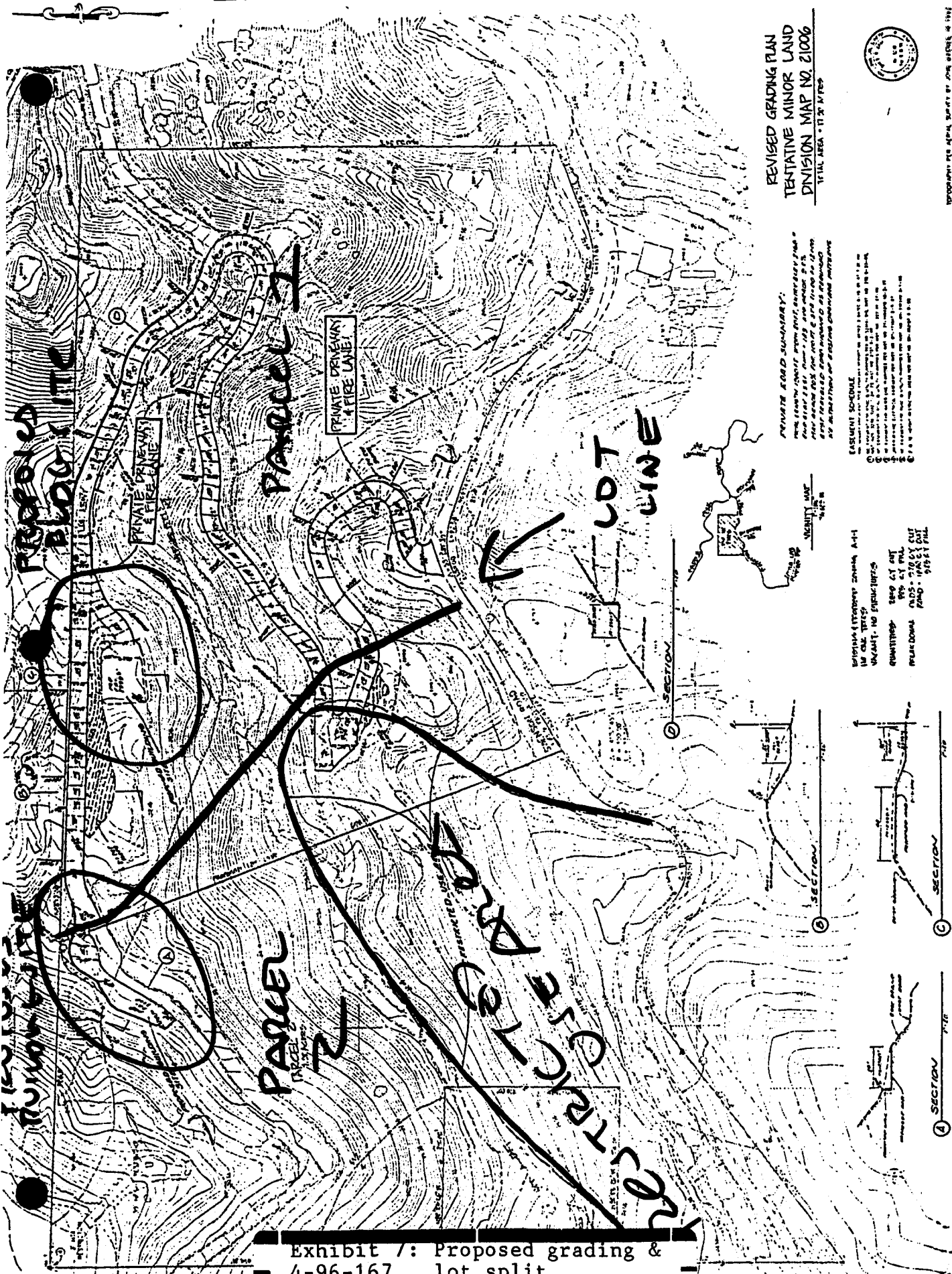


Exhibit 7: Proposed grading &
4-96-167 lot split

PREVIOUS ROAD AND
PAD GRADING

OLD BUNKER
SITE

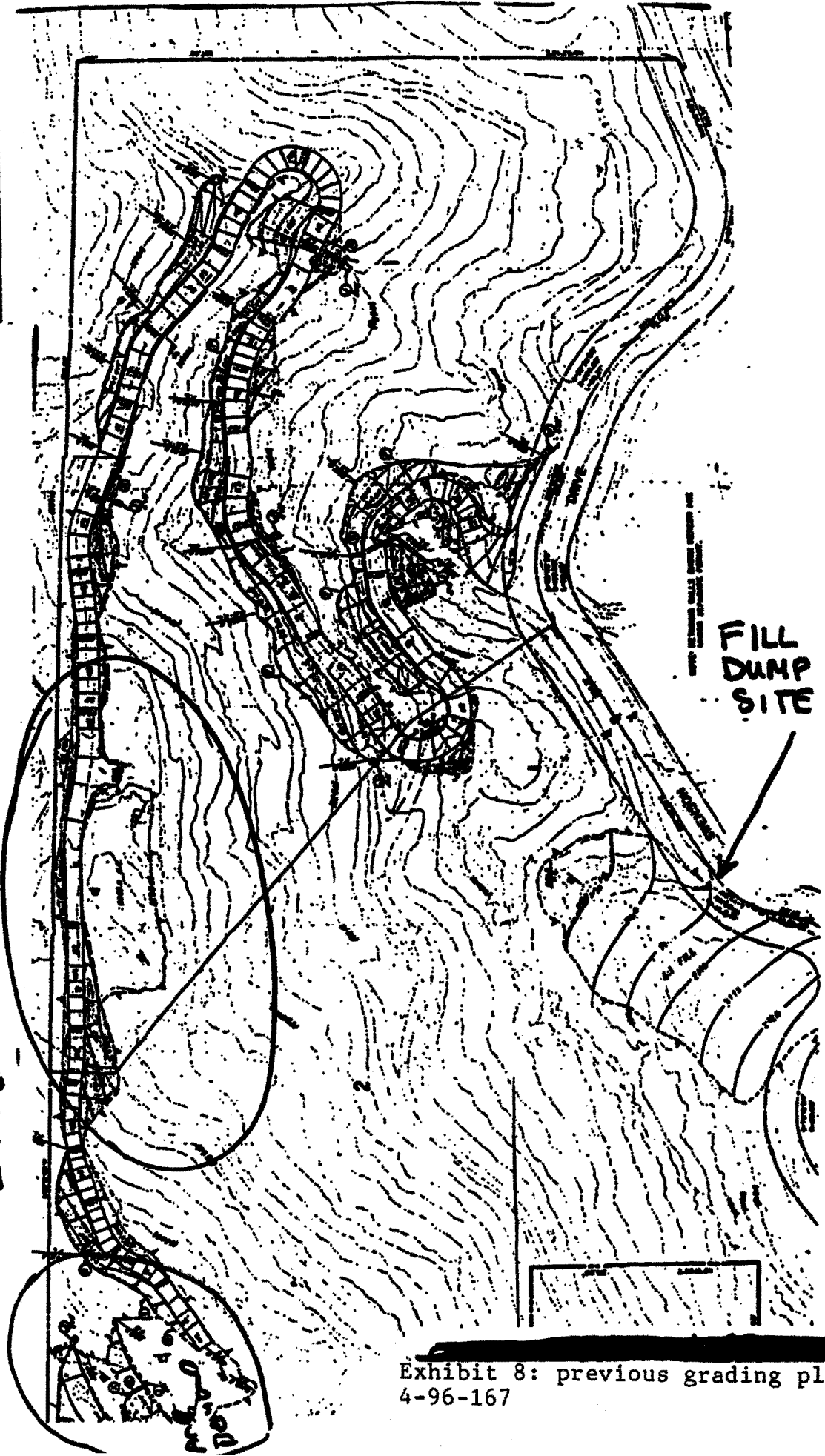


Exhibit 8: previous grading plan
4-96-167