

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 8/29/95
49th Day: 10/17/95
180th Day: 2/24/95
Staff: CAREY *[Signature]*
Staff Report: 9/12/95
Hearing Date: 11/14-17/95
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-95-136

APPLICANT: Stan Kaplan

AGENT: Michael Zakian Architects

PROJECT LOCATION: 3044 Sequit Drive, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of 2,507 sq. ft., 18 ft. high from existing grade single family residence, 816 sq. ft. garage, 3,435 sq. ft. of terrace area, pool, septic system, 1,820 cu. yds. of grading (1,700 cu. yds. cut, and 120 cu. yds. fill) and lot line adjustment in the El Nido small lot subdivision.

Lot area:	14,437 sq. ft.
Building coverage:	2,397 sq. ft.
Pavement coverage:	4,401 sq. ft.
Landscape coverage:	2,040 sq. ft.
Parking spaces:	4
Plan designation:	Residential I (1 du/ac)
Ht abv fin grade:	18 ft.

LOCAL APPROVALS RECEIVED: County of Los Angeles Approval in Concept, Preliminary Health Services Approval

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan, 5-84-163 (Embleton), 5-88-416 (Haines), 5-88-418 (Wilstein), 5-88-445 (Tobin), 5-88-591 (Goldberg), 5-88-908 (Jensen), 5-88-939 (Mellein), 5-89-082 (Crommie), 5-89-148 (Schrader), 5-89-235 (Chan), 5-89-434 (Skeisvoll), 5-89-506 (Kaplan), 5-90-233 (Crommie), 5-90-771 (Skeisvoll), 5-90-772 (Embleton), 5-91-616 (Landsman), 4-92-074 (Kaplan), 5-92-189 (Dore)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed development with Special Conditions regarding revised plans, future improvements, assumption of risk, and geology. The principal issue in this permit request is consistency with Section 30250 of the Coastal Act. The proposed project site is located within a small-lot subdivision. The total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources.

Cumulative development constraints common to small-lot subdivisions were documented by the Coastal Commission and the Santa Monica Mountains Comprehensive Planning Commission in the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development In the Santa Monica Mountains Coastal Zone". Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan (LUP) requires that new development in small lot subdivisions comply with the Slope-Intensity Formula for calculating the allowable Gross Structural Area (GSA) of a residential unit. Past Commission action certifying the LUP indicates that the Commission considers the use of the Slope Intensity Formula appropriate for determining the maximum level of development which may be permitted in small lot subdivision areas consistent with the policies of the Coastal Act. The basic concept of the formula assumes that the suitability of development of small hillside lots should be determined by the physical characteristics of the building site, recognizing that development on steep slopes has a high potential for adverse impacts on coastal resources. For this application, staff recommends that the applicant be granted a maximum allowable GSA of 1,490 sq. ft. and that he be further granted an additional 500 sq. ft for extinguishing the development rights on a nearby lot. Staff recommends that the applicant be required to submit revised plans which include no more than 1,990 sq. ft. of gross structural area and that the permit be further conditioned to require a future improvements deed restriction, geologic review by the applicant's consultant, and assumption of risk. As conditioned, the proposed project will be consistent with all applicable Coastal Act policies.

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

III. Special Conditions.

1. Revised Plans.

Prior to issuance of permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which indicate that the proposed dwelling does not exceed the maximum allowable gross structural area (GSA) of 1,990 sq. ft. as determined by the Slope Intensity Formula pursuant to Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan. This total GSA reflects an additional 500 sq. ft. granted in conjunction with the extinguishment of the development rights of Lot 91. The applicant shall submit, for the review and approval of the Executive Director, evidence that all potential for future development has been permanently extinguished for Lot 91 of 9456 on Sequit Drive in the El Nido small-lot subdivision.

Additionally, pursuant to Policy 271(b)(2), the maximum allowable GSA may be further increased by 500 sq. ft. by extinguishing development rights on lots contiguous to the building site or by 300 sq. ft. for each lot not contiguous to the building site but within the El Nido Small-Lot Subdivision. Prior to the issuance of the permit, the applicant may submit, for the review and approval of the Executive Director, evidence that the development rights have been extinguished on any combination of contiguous or non-contiguous lots which would bring the development into conformance with Policy 271(b)(2) of the Malibu/Santa Monica Mountains LUP.

2. Future Improvements

Prior to issuance of the Coastal Development Permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Commission Permit 4-95-136 is for the approved development only and that any

future improvements or additions, on the property including grading will require a permit from the Coastal Commission or its successor agency. Any future improvements shall conform to the allowable Gross Structural Area (GSA) as defined by policy 271 in the certified Malibu/Santa Monica Mountains Land Use Plan. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

3. Structure and Roof Color Restriction.

Prior to issuance of permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which restricts the color of the subject structure to natural earth tones, compatible with the surrounding earth colors (white tones will not be acceptable). The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns and shall be recorded free of prior liens.

4. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Report, dated 2/8/91, an Update Geotechnical Report and Onsite Private Sewage Disposal System Design, dated 12/6/93, and an Update Geotechnical Engineering Report, dated 5/31/95, all prepared by West Coast Geotechnical shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by the consultants. Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

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

5. Assumption of Risk.

Prior to issuance of 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 steep slopes and landsliding on site, and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicants shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description.

The applicant proposes the construction of a 2,507 sq. ft, 18 ft. high from existing grade single family residence, 816 sq. ft. garage, 3,435 sq. ft. of terrace area, pool, septic system, 1,820 cu. yds. of grading (1,700 cu. yds. cut and 120 cu. yds. fill) and lot line adjustment. The proposed project site is two parcels on Sequit Drive in the El Nido small lot subdivision.

B. Background.

1. Proposed Project Site.

The Commission has previously considered two separate applications for development on the subject site. In Permit Application 5-89-506 (Kaplan, Embleton and Kelly), the applicant proposed a lot line adjustment involving four lots and the construction of a 1,689 sq. ft. residence on Lot 94 with swimming pool, septic system and 1,200 cu. yds. of grading. In this application, the applicant proposed to adjust lot lines to enlarge the proposed project site (Lot 94) which would increase the maximum GSA. He further proposed to have his neighbor remove the deed restriction from the adjacent Lot 93 so that the applicant could then retire the development rights from that lot and receive a 500 sq. ft. bonus to his maximum GSA. This application was withdrawn before the Commission took any action because the applicant had purchased Lot 95 and wanted to resubmit an application for a house on both lots.

The Commission later considered Permit Application 4-92-074 (Kaplan) for the construction of a 2,567 sq. ft. single family residence with a 816 sq. ft. garage, terrace, pool, septic system, 700 cu yds. of grading, and a lot line adjustment. This project approved under this permit is identical to the currently proposed residence. The Commission approved a maximum allowable GSA for the project site of 1,490 sq. ft. The applicant was also granted an additional 300 sq. ft. for extinguishing the development rights on a nearby lot. The Commission later approved permit amendment 4-92-074 (Kaplan) to allow the addition of 500 sq. ft. to the GSA for the extinguishment of Lot 91 rather than 300 sq. ft. Thus, the applicant was permitted a total GSA of 1,990 sq. ft. for the proposed residence. The applicant never activated this permit and it has since expired.

2. Other Sites in the Immediate Area.

The Commission has considered many permit applications for properties in the immediate area. Following in Table 1 is a list of those actions. These noted permit applications are for development on Sequit Road within the El Nido small lot subdivision.

Application Number	Name	Proposed Sq. Ft.	Max. GSA Allowable	Lot Square Footage	Bonus Sq. Ft.	Total GSA Permitted
5-84-163	Embleton	1,026 sq. ft.	526 sq. ft. (45% Slope)	5,200 sq. ft.	500 sq. ft. (1 contiguous parcel)	1,026 sq. ft.
5-88-416	Haines	2,800 sq. ft.	3,176 sq. ft. (23% Slope)	17,921 sq. ft. (2 lots)	None	3,176 sq. ft.
5-88-939	Mellein	1,832 sq. ft.	1,323 sq. ft. (45% Slope)	9,296 sq. ft. (2 lots)	500 sq. ft. (1 contiguous lot)	1,823 sq. ft.
5-89-235	Chan	2,172 sq. ft.			900 sq. ft. (3 non-contiguous lots)	
5-90-771	Skeisvoll	500 sq. ft.	500 sq. ft. (40% Slope)	8,420 sq. ft.	None	500 sq. ft.
5-90-772	Embleton	500 sq. ft.	500 sq. ft. (40% Slope)	9,488 sq. ft.	None	500 sq. ft.
5-91-616	Landsman	1,399 sq. ft.	1,399 sq. ft. (30% Slope)	7,870 sq. ft.	None	1,399 sq. ft.

Additionally, the Commission has approved many permit applications for development which is within the El Nido small lot subdivision, on Seabreeze Drive, Searidge Drive, and Valmere Drive. Following is Table 2 which shows the permit applications approved by the Commission for single family residences on these three streets.

Application Number	Name	Proposed Sq. Ft.	Max. GSA Allowable	Lot Square Footage	Bonus Sq. Ft.	Total GSA Permitted
5-88-418	Wilstein	1,113 sq. ft.	1,782 sq. ft.		None	1,113 sq. ft.
5-88-418A	Wilstein	1,713 sq. ft. (600 sq. ft. addition)	1,782 sq. ft.		None	1,713 sq. ft.
5-88-445	Tobin	1,463 sq. ft.	1,415 sq. ft. (17% Slope)	5,515 sq. ft.	None	1,463 sq. ft. (48 sq. ft. over Max. GSA allowed)
5-88-445A	Tobin	1,230 sq. ft. (Reduction of sq. ft.)	1,415 sq. ft.	5,515 sq. ft.	None	1,230 sq. ft.
5-88-591	Goldberg	2,362 sq. ft.	2,325 sq. ft. (15% Slope)	10,073 sq. ft. (2 lots)	None	2,325 sq. ft. (Revised Plans)

5-88-908	Jensen	1,707 sq. ft.	1,592 sq. ft. (31% Slope)	9,930 sq. ft.	None	1,592 sq. ft. (Revised Plans)
5-89-082	Crommie & Hinerfeld	1,812 sq. ft.	1,765 sq. ft. (29% Slope)	9,153 sq. ft.	None	1,765 sq. ft. (Revised Plans)
5-89-148	Schrader	1,546 sq. ft.	1,450 sq. ft. (24% Slope)	6,329 sq. ft.	None	1,450 sq. ft.(Revised Plans)
5-89-434	Skeisvoll	1,376 sq. ft.	1,085 sq. ft. (34% Slope)	7,324 sq. ft.	300 sq. ft. (1 non- contiguous lot)	1,376 sq. ft.
5-90-233	Crommie	1,009 sq. ft.	1,009 sq. ft. (34% Slope)	5,730 sq. ft.	None	1,009 sq. ft.
5-90-233A	Hinerfeld	1,309 sq. ft. (300 sq. ft. addition)	1,009 sq. ft. (34% Slope)	5,730 sq. ft.	300 sq. ft. (Retired 1 non- contiguous lot)	1,309 sq. ft.
5-92-189	Dore	1,525 sq. ft.	1,025 sq. ft. (31% Slope)	4,815 sq. ft.	500 sq. ft. (1 contiguous lot)	1,525 sq. ft.

As can be noted from the table, the maximum allowable Gross Structural Area (GSA) is a function of the size and slope of the project site. Larger, less steep parcels have a larger allowable building area, while lots which are smaller or steeper are granted a smaller GSA.

C. Cumulative Impacts.

Section 30250 (a) of the Coastal Act states, in part, that:

(a) 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 a significant adverse effect, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Throughout the Malibu/Santa Monica Mountains coastal zone there are a number of areas which were subdivided in the 1920's and 30's into very small "urban" scale lots. These subdivisions, known as "small-lot subdivisions" are comprised of parcels of less than one acre but more typically range in size from 4,000 to 5,000 square feet. The total buildout of these dense subdivisions would result in a number of adverse cumulative impacts to coastal resources. Cumulative development constraints common to small-lot subdivisions were documented by the Coastal Commission and the Santa Monica Mountains Comprehensive Planning Commission in

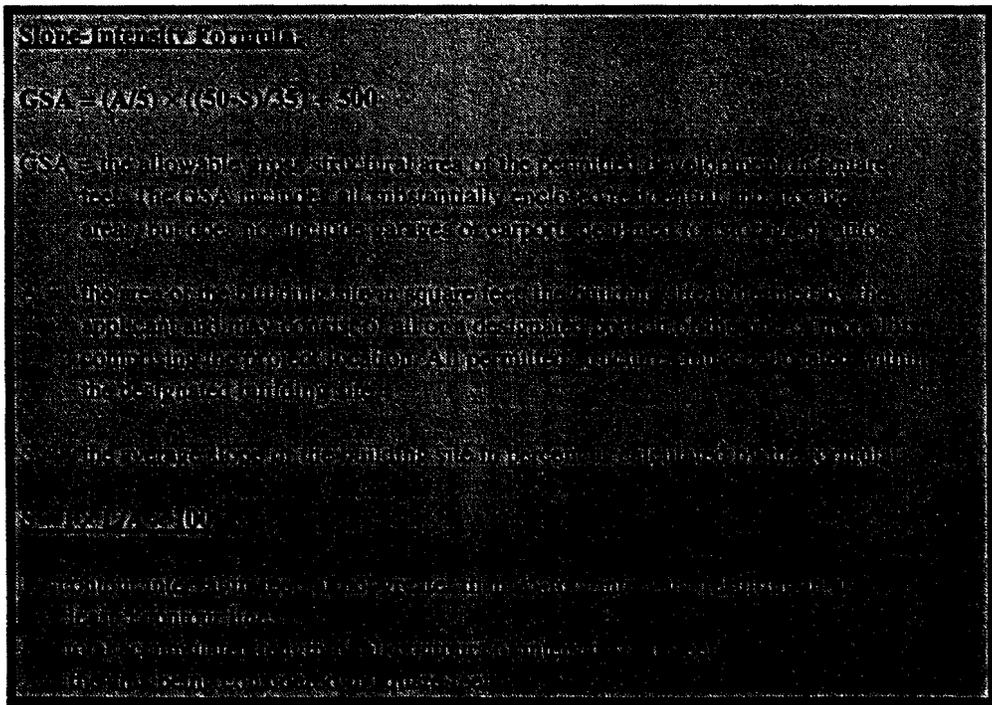
the January 1979 study entitled: "Cumulative Impacts of Small Lot Subdivision Development In the Santa Monica Mountains Coastal Zone".

The study acknowledged that the existing small-lot subdivisions can only accommodate a limited amount of additional new development due to major constraints to buildout of these areas that include:

Geologic problems, road access problems, water quality problems, disruption of rural community character, creation of unreasonable fire hazards and others.

Following an intensive one-year planning effort by Commission staff, including five months of public review and input, new development standards relating to residential development on small lots in hillsides, including the Slope-Intensity/Gross Structural Area Formula (GSA) were incorporated into the Malibu District Interpretive Guidelines in June 1979. A nearly identical Slope Intensity Formula was incorporated into the 1986 certified Malibu/Santa Monica Mountains Land Use Plan under policy 271(b)(2).

Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan (LUP) requires that new development in small lot subdivisions comply with the Slope-Intensity Formula for calculating the allowable Gross Structural Area (GSA) of a residential unit. Past Commission action certifying the LUP indicates that the Commission considers the use of the Slope Intensity Formula appropriate for determining the maximum level of development which may be permitted in small lot subdivision areas consistent with the policies of the Coastal Act. The basic concept of the formula assumes that the suitability of development of small hillside lots should be determined by the physical characteristics of the building site, recognizing that development on steep slopes has a high potential for adverse impacts on coastal resources.



1. GSA Calculation.

The applicant is proposing to construct a single family residence 2,567 sq. ft. in size. The proposed 14,437 sq. ft. project site consists of two adjacent parcels (Lots 94 and 95 of Tract 9456) as well as 20-foot wide portion of another adjacent parcel (Lot 93) to the west of the proposed project site. This 20-foot wide strip is to be added to the proposed project site by a lot line adjustment discussed below.

The applicant has submitted a GSA calculation. This calculation utilized a five-foot interval topographic map which also excluded a 1,830 sq. ft. area from the building area. Unfortunately, the map utilized for this calculation was not submitted to staff. The survey map submitted to staff has a two-foot contour interval. This map was utilized by staff to carry out an analysis of the appropriate GSA for the project site. With regard to excluding area of the proposed site from the calculation, the Commission has in past permit decisions, provided for the exclusion of area so long as the excluded area is not part of the building pad area. This exclusion is most appropriate on project sites where there is a particularly steep area of the site where no construction would take place, and the remainder of the site is less steep. However, in this case, as the site plan shows, the entire site except for required setbacks is proposed to be developed. As such, staff notes that it is not appropriate to exclude area from the GSA calculations.

The GSA calculation performed by the applicant utilized a slope of 35% and an area of 12,607 sq. ft. Based on these parameters, the applicant arrived at a maximum GSA of 1,584 sq. ft. As noted above, it is not appropriate to exclude any area of the site from the calculation. Staff's calculation utilizing the entire site arrived at a slope of 38% and a maximum GSA of 1,490. This is the maximum GSA arrived at by the applicant and accepted by the Commission in Permit Application 4-92-074 (Kaplan). As such, the Commission finds that the maximum allowable GSA for the proposed project site is 1,490 sq. ft.

2. Bonus Lot.

As part of the proposed project, the applicant proposes to extinguish the development rights on a lot down the street from the proposed project site and thus add more square footage to the maximum allowable GSA. In past permit decisions, the Commission has increased the maximum allowable GSA for projects when the development rights of additional lots were permanently extinguished.

The maximum allowable gross structural area (GSA) is calculated through the Slope Intensity Formula and may be increased as follows:

(a) An additional 400 square feet of structural area will be added to the original building site provided that such additional area is combined with the building site provided and such lot area is combined with the building site and all potential for residential development on the additional lots is permanently extinguished.

(2) Add 300 square feet for each lot in the vicinity of (e.g., in the same small lot subdivision) but not contiguous with the designated building site provided that such lot(s) is (are) combined with other developed or developable building sites and all potential for residential development on such lot(s) is permanently extinguished.

Directly adjacent to the proposed project site is Lot 93 (Exhibit 6). The development rights for Lot 93 were extinguished and it was combined with Lot 92 pursuant to Permit 5-84-163 (Embleton). A single family residence was constructed on Lot 92 and an extra 500 sq. ft. was added to the GSA for extinguishing the development rights on Lot 93. Adjacent to Lot 92, there is a vacant parcel (Lot 91) and a parcel developed with a single family residence (Lot 90). The applicant proposes to extinguish the development rights on Lot 91 and add 500 square feet to the maximum allowable GSA for the proposed project site.

While the lot which would have development rights extinguished is not immediately adjacent to the proposed project site, the applicant maintains that he should be given an extra 500 sq. ft. (rather than the 300 sq. ft. allowable for non-contiguous lots) because the owner of Lot 92 (Embleton) could remove the deed restriction from Lot 93 and instead place it on Lot 91 on the other side. The applicant could then extinguish the development rights on Lot 93 for his proposed project site. It should be noted that this removal of deed restriction and recordation of new deed restrictions would only be possible with Commission approval. In the permit amendment 4-92-074A, the Commission approved the 500 sq. ft. bonus for the extinguishment of development rights on Lot 91 even though it is not technically contiguous to the proposed project site. The Commission found this to be simpler yet have the same effect as removing the deed restriction from Lot 93 and placing it on Lot 91. Pursuant to Permit 4-92-074, the owner of Lot 91 did record a deed restriction extinguishing all development rights and combining it with his developed Lot 90. However, the applicant never activated that permit and it has since expired.

The Commission finds that it is appropriate to allow the applicant to add an extra 500 sq. ft. to the maximum allowable GSA for the extinguishment of development rights on Lot 91. However, in order to ensure that development rights are permanently extinguished, it is necessary to require the applicant to record an amendment to the deed restriction on Lot 91 acknowledging that the deed restriction is tied to the subject permit.

3. Lot Line Adjustment.

The applicant is also proposing a lot line adjustment (Exhibit 5) which would result in the following modifications:

1. The lot line between Lot 93 (Embleton) and Lot 94 (Kaplan) would be shifted 20 feet to the west, resulting in the addition of 1,458 sq. ft. to the proposed project site. This shift is proposed to allow the applicant a greater area to be used in the GSA calculation.
2. Lots 94, 95 and the 20-foot strip described in 1 above would be combined into one parcel.

3. The lot line between Lot 92 (Embleton) and Lot 91 (Kelley) would be shifted 20 feet to the west, resulting in the addition of lot area to Lot 92.
4. Lots 92, 93 and the 20-foot strip described in 3 above would be combined into one parcel.
5. Lots 90 and 91 would be combined into one parcel.

This lot line adjustment was proposed by the applicant and approved and recorded by the County of Los Angeles without a coastal development permit. The lot line adjustment was approved by the Commission in Permit 4-92-074(Kaplan). However, that permit was never activated and has since expired.

While the proposed lot line adjustment will result in adding to the area of the proposed project site and thus increasing the maximum allowable GSA, it will also result in the reduction in the total number of lots. The Commission finds that the lot line adjustment is consistent with Section 30250(a) of the Coastal Act.

4. Conclusion.

So, as discussed above, the Commission finds it appropriate to grant the applicant a maximum GSA of 1,490 sq. ft., with an additional 500 sq. ft. for the extinguishment of development rights on Lot 91. This would allow a total GSA of 1,990 sq. ft.

The applicant was previously granted a permit (4-92-074) and amendment (4-92-074A) for the construction of a residence with a maximum square footage of 1,990 sq. ft. However, the applicant was requesting a permit for the construction of a 2,507 sq. ft. structure. The Commission did not grant his request in that permit application. Rather, the permit was conditioned to submit revised plans showing a residence of no more than 1,990 sq. ft. The applicant never activated the 1992 permit. He has now reapplied for the same structure of 2,567 sq. ft. There are no changed circumstances that would now make the proposed structure consistent with Commission's GSA calculations.

The applicant has submitted a letter (Exhibit 7) stating his rationale for the size of the proposed structure. Basically, the applicant asserts that he could, if he chose, build three single family residences where he currently proposes the construction of one residence. The lots he describes are Lot 91, Lot 94, and Lot 95. He further asserts that the proposed residence would have fewer impacts than the three hypothetical "spec" homes. As such, the applicant feels that he should be entitled to a larger house than allowed under the Slope-Intensity Formula described above.

However, staff notes that:

1. Each of the three lots are quite steep, especially Lot 91. It is unlikely that anything larger than a 500 sq. ft. structure could be built on Lot 91. In fact, as noted in the background, Permit 5-84-163 (Embleton) was approved for construction of a 1,026 sq. ft. residence on Lot 92. This total GSA included a 500 sq. ft. bonus for the extinguishment of development

rights on the contiguous Lot 93. Slightly larger homes could possibly be approved on Lot 94 and Lot 95. While these lots are also quite steep, they are larger in size than Lot 91.

2. The applicant will realize a benefit from constructing one structure rather than three. Namely, an additional 500 sq. ft. will be added to the GSA in exchange for not developing Lot 91. Further, by combining Lots 94 and 95 and adding the 20-foot wide strip in the lot line adjustment, the area of the proposed building site is increased.

The Commission finds that in granting the applicant approval for a structure of 1,990 sq. ft., the applicant is already realizing maximum benefit from the addition of the square footage added in the lot line adjustment and from receiving a 500 sq. ft. bonus for a lot which is not technically contiguous to the proposed building site. In reviewing past Commission actions in the El Nido small-lot subdivision as shown in Table 1 and 2 above, it becomes apparent that the Commission has consistently applied the Slope-Intensity Formula to determine the appropriate maximum GSA. In cases where the project site was relatively small or steep, smaller residences were permitted. In two cases (5-90-771 and 5-90-772), project sites were so steep that residences of only 500 sq. ft. were approved. Where the project sites were larger in area or less steep, larger structures were approved. Further, where the applicant proposed to extinguish the development rights on either contiguous or non-contiguous parcels, the appropriate additional square footage was added to the maximum allowable GSA.

The Commission finds that there are no unique circumstances involved in the applicant's request for a larger structure than what is allowable under the Slope-Intensity Formula. The Commission further finds that it would be inequitable to grant the applicant a larger structure than other applicants in identical situations have been granted. As such, the Commission finds it necessary to require the applicant to submit revised plans which are consistent with the maximum allowable GSA of 1,990 sq. ft. Further, it is necessary to require the applicant to record a future improvements deed restriction to ensure that any future development on the project site is reviewed by the Commission. Finally, as discussed above, in order to ensure that development rights are permanently extinguished, it is necessary to require the applicant to record an amendment to the deed restriction on Lot 91 acknowledging that the deed restriction is tied to the subject permit. The Commission finds that the proposed project, only as conditioned, is consistent with Section 30250(a) of the Coastal Act.

D. Visual Resources.

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 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 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.

The proposed project is located on Sequit Drive in the El Nido small-lot subdivision. This area overlooks Soltice Canyon State Park. The park consists of one large canyon and a few secondary canyons that branch off the main canyon. One of the secondary canyons, Dry Canyon, extends up towards the El Nido subdivision. Within Dry Canyon is a trail which follows the canyon to just below the subdivision. Much of the existing development within the subdivision is visible from the trail and the park. As described in the background section above, the Commission has approved several permits for development of single family residences along Sequit Road. These structures are visible from the park below, particularly those on the downslope side of the road.

The proposed project site is located on the upslope side of Sequit Drive. While the proposed structure will be visible from the park below, it will be no more visible than the existing development in the area. Grading and landform alteration has been minimized. As conditioned (discussed in Section C. Cumulative Impacts above) to reduce the total square footage of the proposed structure to 1,990 sq. ft., the proposed residence will be compatible with the size, height, and bulk of the existing residences previously approved by the Commission in the area. As such, the proposed project will be visually compatible with the character of surrounding areas. However, since the project will still be visible from the State Park below, the Commission finds it necessary to require the applicant to utilize earth tones for the exterior building and roof materials. This will ensure that the proposed structure will minimize visual impacts to the maximum extent possible. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

E. Geologic Stability

Section 30253 of the Coastal Act states in 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 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.

The applicant has submitted a Geotechnical Engineering Report, dated 2/8/91, an Update Geotechnical Report and Onsite Private Sewage Disposal System Design, dated 12/6/93, and an Update Geotechnical Engineering Report, dated 5/31/95, all prepared by West Coast Geotechnical for the subject site. The applicants' consultants determined that the proposed project site is grossly and surficially stable and therefore suitable for the proposed development.

Earlier reports prepared for the project site [Soil Engineering Investigation, dated 3/25/87, prepared by West Coast Soils and Engineering Geologic Report, dated 10/10/90, prepared by Geoplan, Inc.] identify the presence of an eroded, ancient landslide scarp. The Geoplan report states that: "The slide remnant appears to thicken west where it will be stripped by proposed development of lot 94. It does not affect development of lot 95".

The West Coast Soils reports address a shear dip plane on the project site along the contact between the Calabasas Formation and the underlying Conejo Volcanics Formation. The report states that the proposed residence will be constructed at an elevation which will result in removal of the material located above the shear dip plane. The geologist's recommendation is that the Calabasas Formation which will remain in place, be supported by the retaining walls integrated into the residence foundation. This construction technique will result in a factor of safety in excess of 1.5, according to the geotechnical report. The geological investigation states that:

The subject property is considered a suitable site for the proposed development from a geotechnical engineering standpoint. It is the opinion of West Coast Geotechnical that the proposed development will be safe against hazards from landslide, settlement, or slippage, and the proposed grading and development will not affect the stability of the subject site or the surrounding area provided the following recommendations are made a part of the site development plans and implemented during construction.

Based on the recommendations of the consulting geologists, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the geologic consultant's geologic recommendations 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 consulting Engineering Geologist as conforming to their recommendations. Additionally, while the geotechnical engineer has asserted that the site will be safe from geologic hazards, there are intrinsic risks associated with hillside development, especially on sites as steep as the proposed project site. Further, the headscarp of an ancient landslide has been identified on the proposed project site. As such, the Commission finds that it is necessary to require the applicant to assume the risk of developing the proposed project. 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 proposed development.

Additionally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks. Through the waiver of liability the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. The Commission finds that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

F. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, 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.

The applicant proposes the construction of a septic system to provide sewage disposal for the proposed residence. The applicant has submitted an Update Geotechnical Engineering report and Onsite Private Sewage Disposal System Design, dated 12/6/93, prepared by West Coast Geotechnical. This report concludes that the proposed project site would provide adequate percolation for the proposed residence and septic system. Additionally, the applicant has submitted evidence of Preliminary Approval from the Los Angeles County Department of Health Services which indicates that the proposed septic system meets the standards of the plumbing code. The Commission has found, in past permit decisions, that compliance with the plumbing code is protective of coastal resources. As such, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

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 sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed 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 City'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).

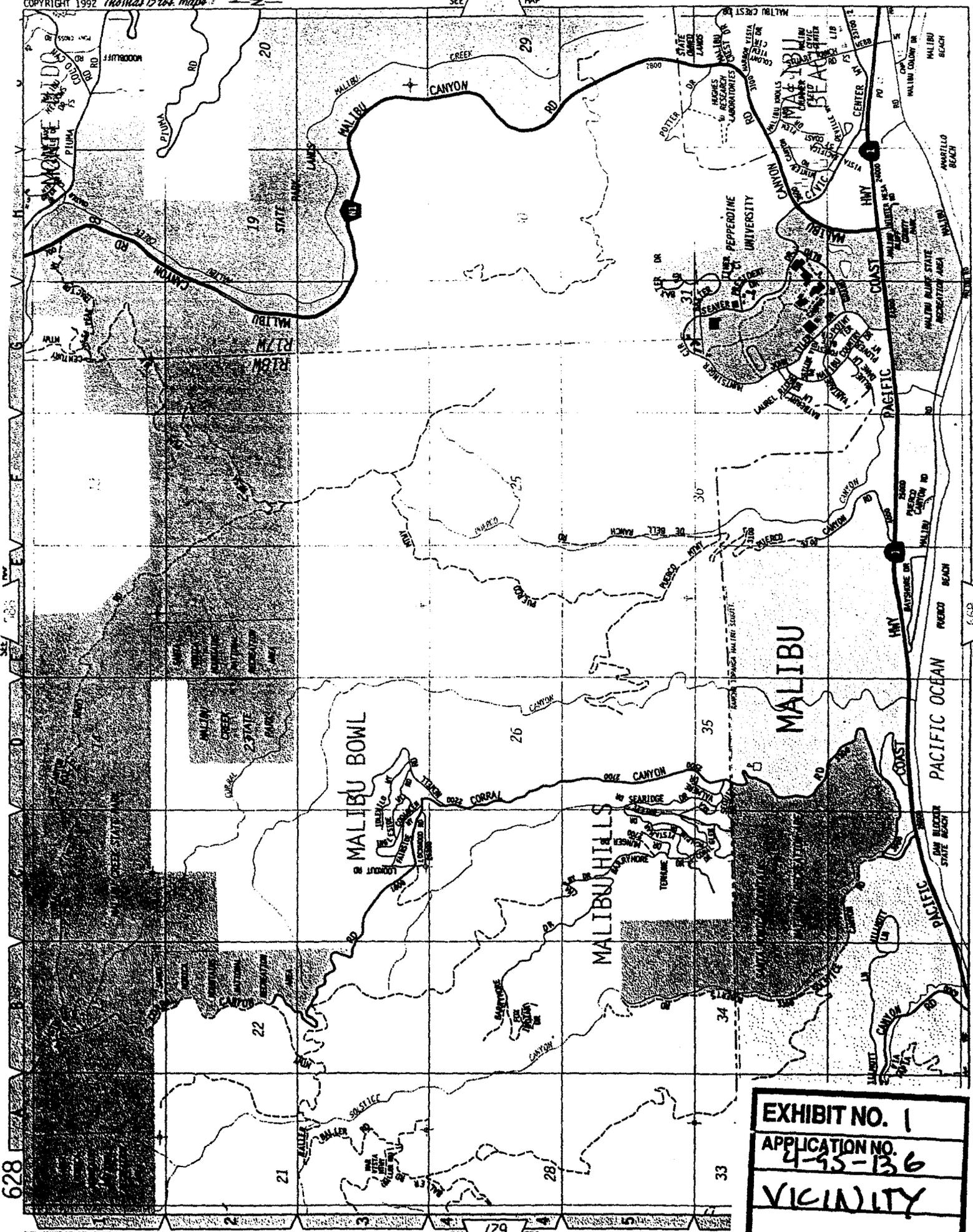
G. California Environmental Quality Act.

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, 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 would have on the environment.

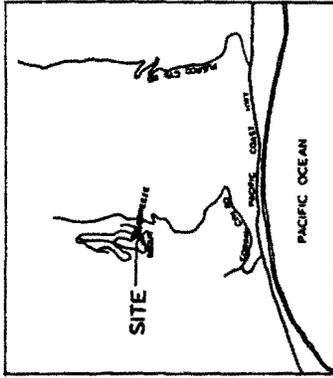
There proposed development would not cause significant, adverse environmental impacts which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

BCKAPLAN.DOC

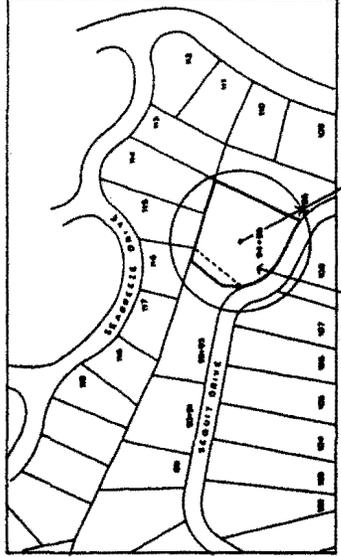


628

EXHIBIT NO. 1
APPLICATION NO. 4-95-136
VICINITY



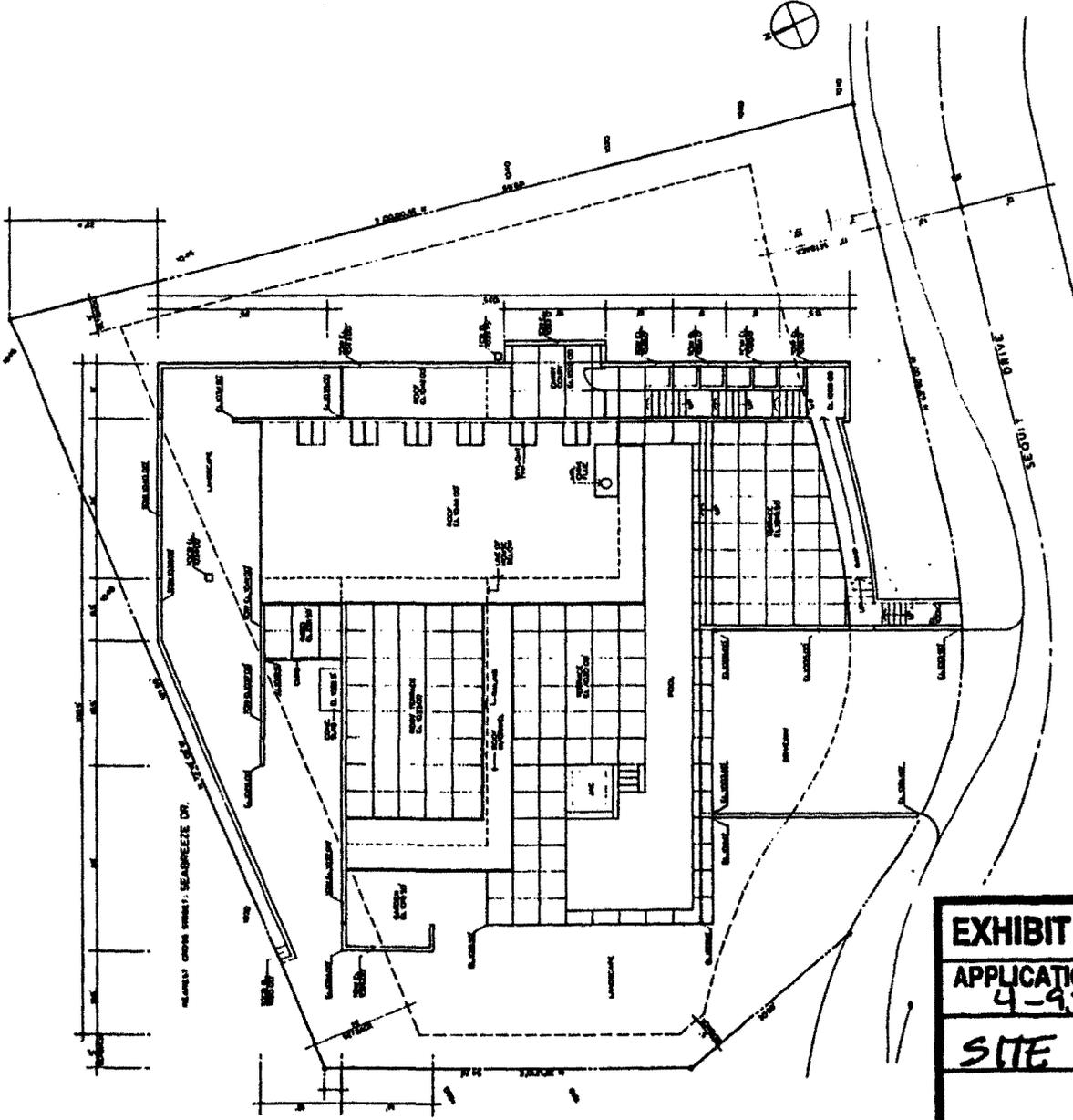
VICINITY MAP



TRACT NO. 9456
LOT 94-95 - EASTERLY 20' OF LOT 93

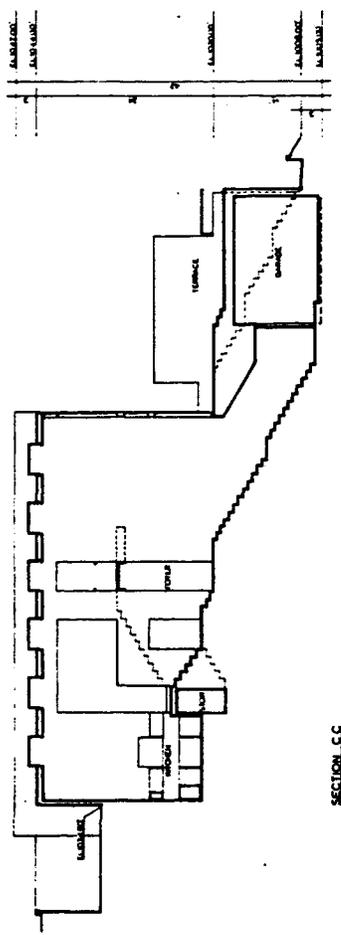
LEGAL DESCRIPTION
LOTS 94-95, EASTERLY 20' OF LOT 93
TRACT 9456, M.B. NO. 131 PG. NO. 31

BUILDING SURROUND	2187 SF
FIRST FLOOR	230 SF
SECOND FLOOR	2507 SF
TOTAL	2737 SF
GARAGE	816 SF
SITE AREA	14337 SF
TERRACE AREA	3435 SF
LANDSCAPED AREA	2000 SF
UNIMPROVED AREA	5600 SF
DRIVEWAY	965 SF

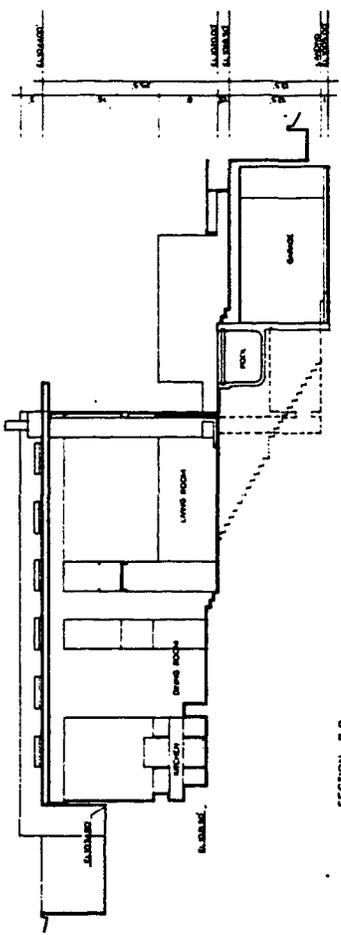


SCALE: 1/8" = 1'-0"
DATE: 12/79

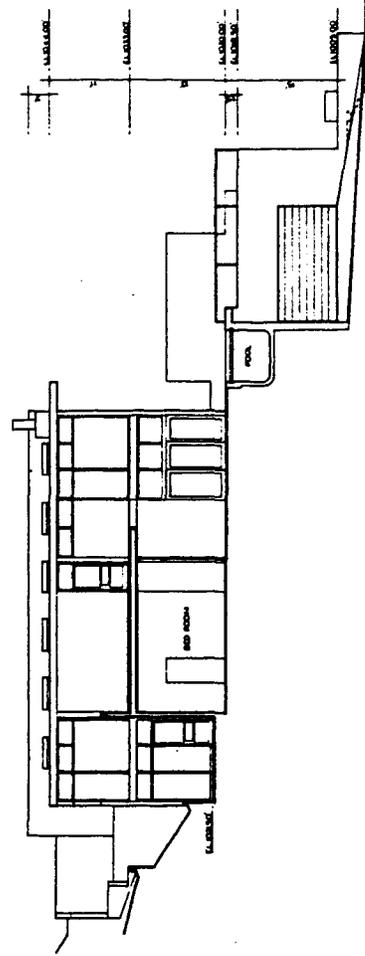
EXHIBIT NO. 2
APPLICATION NO. 4-95-136
SITE PLAN



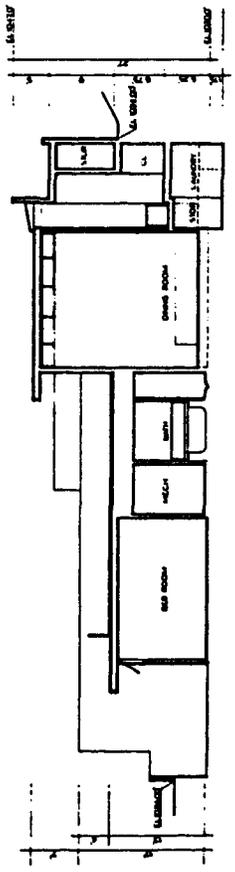
SECTION_C.C



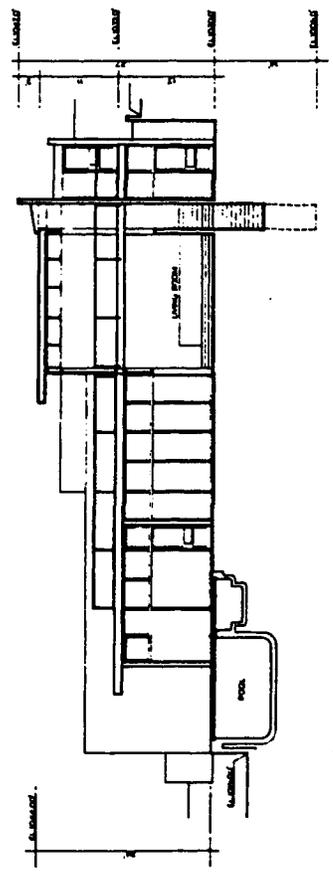
SECTION_B.B



SECTION_A.A



SECTION_E.E



SECTION_L.L

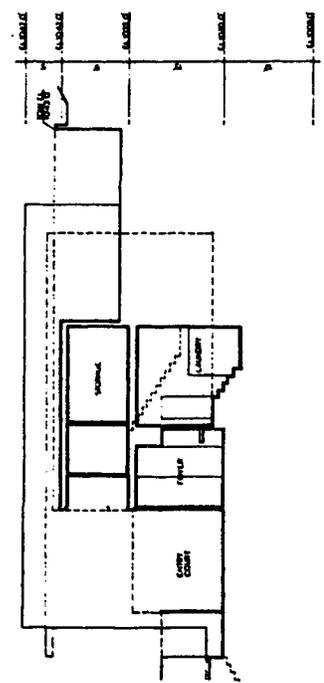


EXHIBIT NO. 3
APPLICATION NO.
4-95-136
sections

SURVEY

IN THE COUNTY OF LOS ANGELES,
 MALIBU, CALIFORNIA.
 BEING A SURVEY OF LOT 94 AND THE SE 1/4
 20 FEET OF LOT 93, TRACT 4000, RECORDED
 IN MAP BOOK 131 P. 21 RECORDS L.A. COUNTY
 Michael H. Zeman Architect's

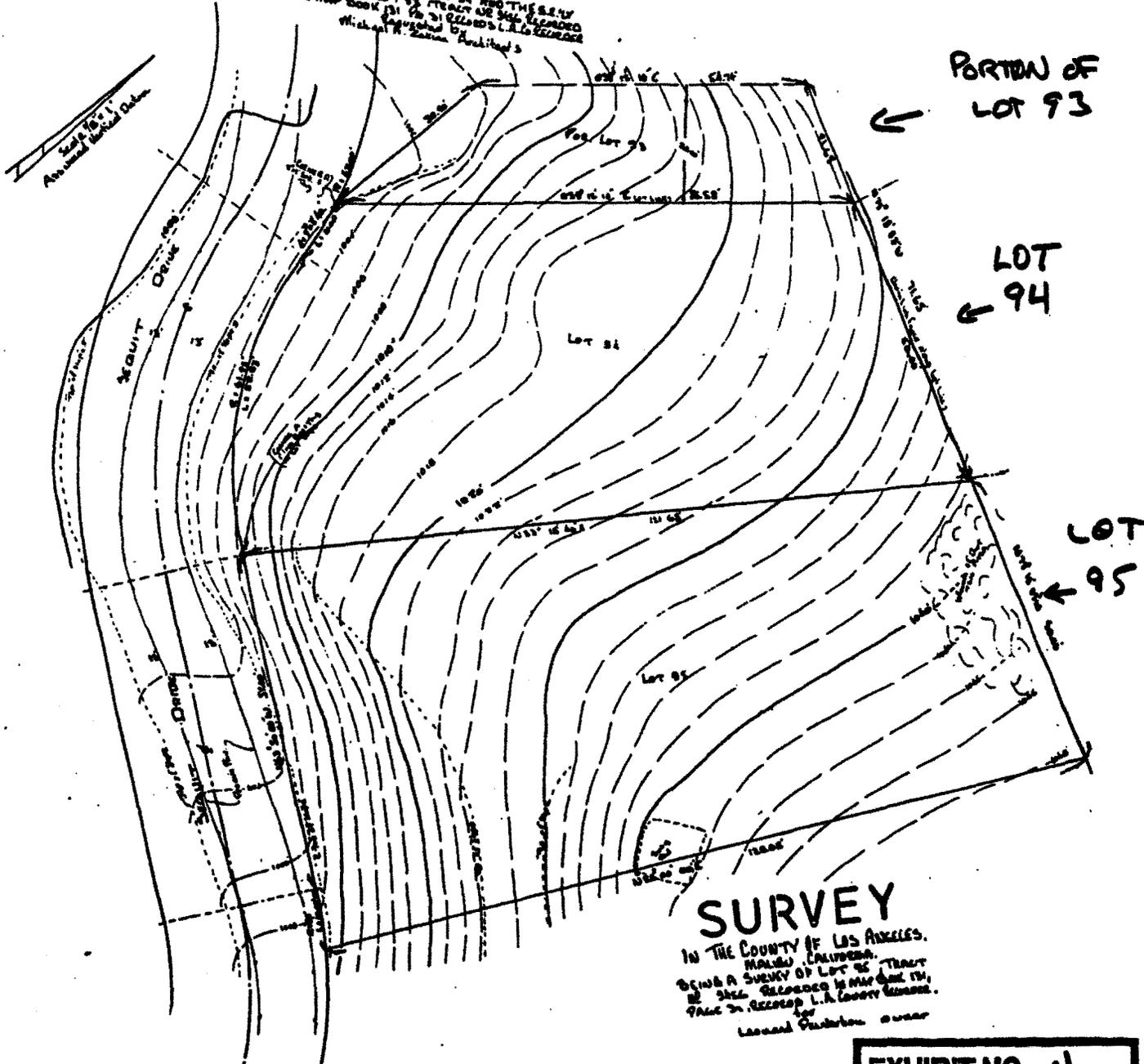


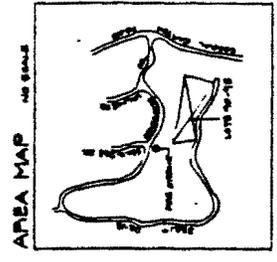
EXHIBIT NO. 4
APPLICATION NO.
 4-95-136
TOPO MAP

9
SURVEY
 SCALE: 1/4" = 10'
 DATE: 1991

KAPLAN RESIDENCE
 2044 SQUIBB DRIVE
 CORRAL CANYON, MALIBU, CA.
 LOTS 94-95, TRACT 4000
 & NDD SUBDIVISION

DESIGN:
 ARCHITECTURE & PLANNING

2025 Planning Agency
 2025 Planning Agency
 2025 Planning Agency



PRESENT ZONING: A-1, LIGHT INDUSTRIAL

ASSESSOR'S MAP BOOK IS, PAGE 11

AREA BEFORE ADJUSTMENT:

LOT 10	50 FT
LOT 11	50 FT
LOT 12	50 FT
LOT 13	50 FT
LOT 14	50 FT
LOT 15	50 FT
LOT 16	50 FT
LOT 17	50 FT
LOT 18	50 FT
LOT 19	50 FT
LOT 20	50 FT

AREA AFTER ADJUSTMENT:

NEW LOTS 10-19 (Proposed)	50 FT
Continued Lot	50 FT

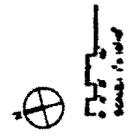
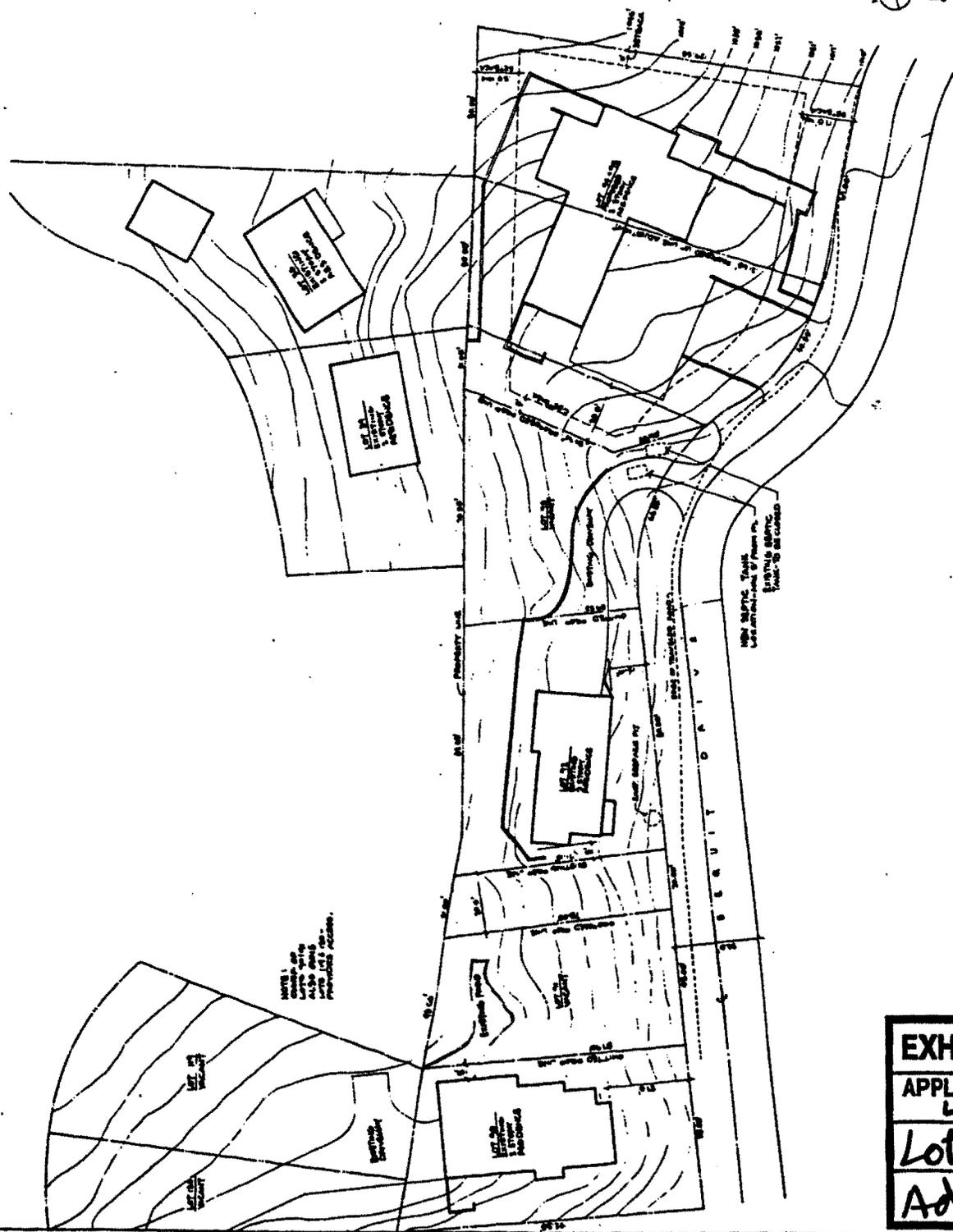


EXHIBIT NO. 5
 APPLICATION NO.
 4-95-136
 Lot Line
 Adjustment

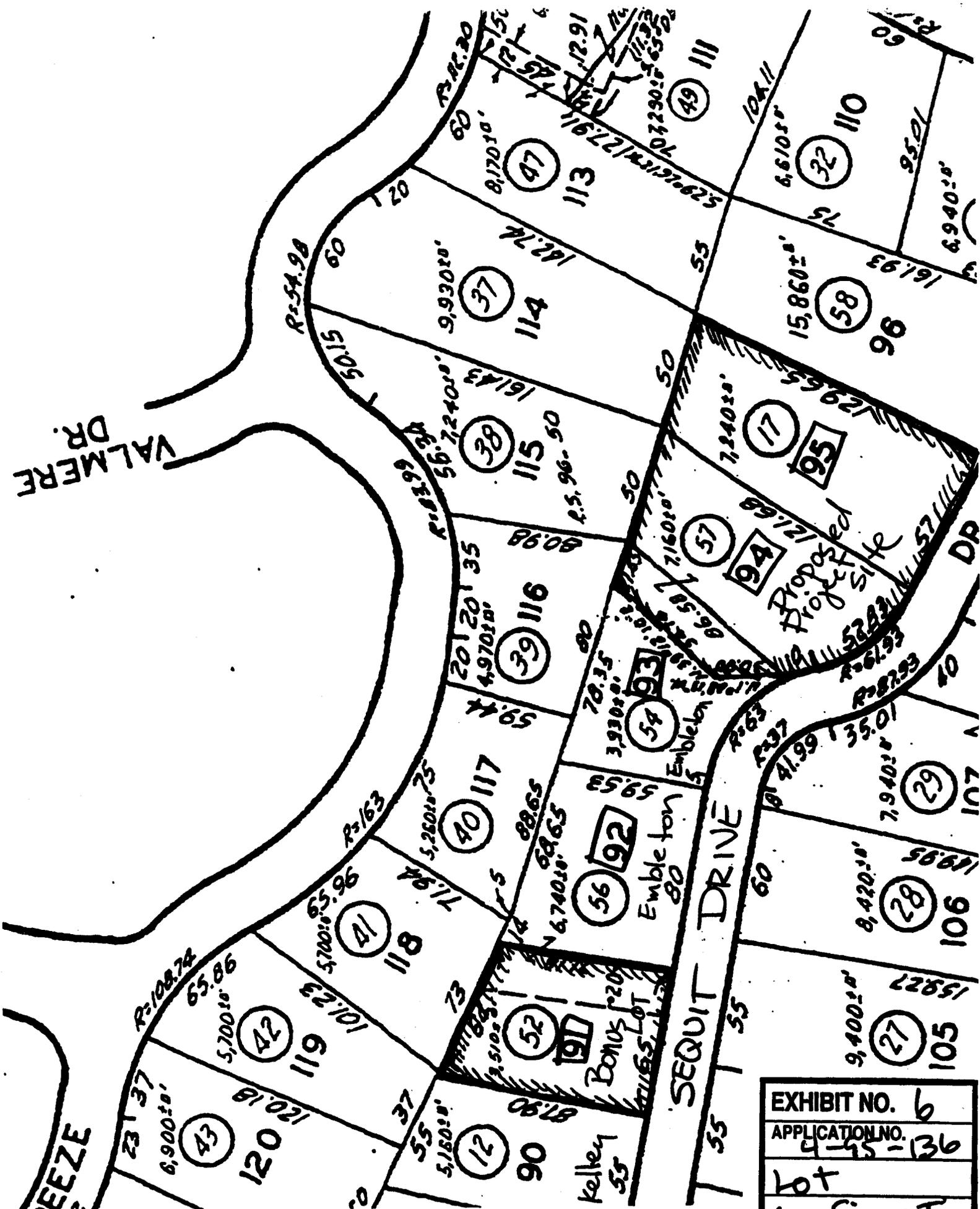


EXHIBIT NO.	6
APPLICATION NO.	4-25-136
Lot	
Configuration	

DATE: July 12, 1995
TO: Jack Ainsworth
California Coastal Commission
RE: 4-92-074 & 4-92-074A
FROM: Stan Kaplan, 830 Euclid St. #C, Santa Monica, CA 90403
RE: NEW APPLICATION AND REQUEST FOR NEW HEARING

Dear Jack,

As we discussed, enclosed is my check for \$250 to cover the cost of re-applying to the Coastal Commission regarding my case.

As you will no doubt recall, at my July, 1992 hearing, the Commission -- by a five to five tie vote -- denied my request to build a 2567 square foot home in Corral Canyon, Malibu. By subsequent amendment, the Commission -- as did your staff -- concurred in my "lot switch proposal", granting my request for a 500 square foot addition to my basic GSA of 1490. I was granted the right to build a 1990 square foot home.

There are two issues that need to be considered. First, in reviewing my GSA calculation, the 1490 number appears to be in error. The correct figure is 1584 (substantiation is enclosed).

Then, there is the larger issue.

Clearly, a substantial number of Commission members supported me in my initial request at my July, 1992 hearing. They recognized my substantial efforts in eliminating development on two neighboring lots. In effect, where three homes could have gone -- with all the attendant drain on resources -- now only one home would be built.

But for the unfortunate absence of a Commission member who had to depart right before my application was heard, I believe I would have been granted my initial request for a 2567 square foot home.

Despite my best efforts to proceed with this project, I find myself in an untenable "Catch 22" predicament.

Banks are telling me my project does not "pencil" out. The foundation costs alone of \$300,000 make it a project that they do not consider "economically viable" for such a small house.

I am being forced into a situation where I must proceed with the alternative scenario of erecting three homes on the three lots involved since the foundation

RECEIVED
JUL 26 1995
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DIST

1063

4-95-

EXHIBIT NO. 7
APPLICATION NO. 4-95-136
Applicants

(2)

costs for the house I want to build would be equivalent to the foundation costs for three "spec" homes!

I am extremely frustrated at this situation. Three separate homes of 843, 1030 and 1079 square feet (a total of 2952 square feet) could be built on the three lots. I propose only building one house. Why shouldn't I be allowed that full 2952 square feet? With my proposal, there would be substantially less drain on coastal resources as state law encourages. If three homes were built, where there would have been at most two cars, there could now be six. There would be three, not one, new septic systems dumping into the hill. There would be three times the grading. Three times more of everything the Coastal Act seeks to discourage.

What's making this whole situation even more crazy and illogical to me is the fact that several homes of 3000 square feet or more are rising right around me. A 2952 square foot home would be completely in character with the neighborhood and provide me and my family with a home of modest but acceptable size. Must the Coastal Act be so unreasonably applied that the neighborhood should have to end up with three spec homes rather than one carefully and aesthetically designed, one that would improve rather than lower the quality of life on the street? By forcing me into this position, is this not tantamount to a "taking" of my property without due process? Is this not a violation of my constitutional rights?

On the one hand, I have the Coastal Commission so strictly applying standards to my case that in effect the Coastal Act is undermined (although a five to five tie vote indicates many thought my case quite reasonable). On the other, I have banks who are refusing to lend me the money I need unless I become in effect a developer. For me, I truly feel sandwiched between a rock and a hard place. Why should I have to give up my dream home after five years of architectural fees, geology fees, planning fees, structural fees and on and on -- thousands and thousands of dollars in expenses -- to satisfy a regulation that, in this situation, totally contradicts itself? And why should a tie vote mean I'm the one who loses? Tie goes to the runner and if anyone has been run ragged these last five years, it's me and no one else!

Given the decline in real estate values in the Malibu area in which I am seeking to live, there are new economic realities I feel the Commission needs to hear about in order to fully and fairly reevaluate my situation.

I would much prefer getting a decent square footage allotment and proceeding with my project for one house. Although I feel I should be entitled to the full 2952 square feet (in one house -- not three), I would be willing to accept my original request of 2567. This would be sufficient to enable my project to proceed but I want the Commission to be fully aware of what I feel I should be entitled to.

20/3

EXHIBIT NO. 7
APPLICATION NO. 4-95-186

(3)

Therefore, I am requesting a new hearing before the full Commission at the earliest possible date so that my situation can be reevaluated in light of today's new economic realities.

Thank you for your prompt attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stan Kaplan", with a long horizontal flourish extending to the right.

Stan Kaplan

3 of 3

EXHIBIT NO. 7
APPLICATION NO. 4-15-1316

