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STATE OF CALIFORNIA—THE RESOURCES AGENCY PETE WILSON, *Governor*

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TU21c

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-94-195A2

APPLICANT: Barbara Eide AGENT: Philip Hess

PROJECT LOCATION: 1557 and 1561 Lookout Drive, Agoura, L.A. County and Assessor Parcel Numbers 4462-21-21, -22, -23.

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Combine 3 lots into 2 lots and construct two 2,741 sq. ft. homes.

DESCRIPTION OF AMENDMENT: Modify special condition #1 to allow for the construction of a 250 sq. ft. play house (with electrical), 50 cu. yds. of grading, a patio and a 5 ft. high retaining wall within 90 ft. from the northern boundary of the property line, allow for fencing along the northern boundary lines of lots identified as Assessor Parcel Numbers 4462-21-21, -22, -23. The applicant also requests an after-the-fact amendment to change the size of the two single family residences from 2,741 sq. ft. (each) to 2,081 sq. ft. and 3,805 sq. ft. Neither residence was constructed in accordance with the approved plans for the original permit.

LOCAL APPROVALS RECEIVED: None

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use PLan; Coastal Development Permit P-78-2771 (Eide); Coastal Development Permit Appeal 158-78 (Eide); Coastal Development Permit 4-94-195A (Eide); Coastal Development Permit CP-5-81 (California Coastal Conservancy)

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1) The Executive Director determines that the proposed amendment is a material change,

2) Objection is made to the Executive Director's determination of immateriality, or

3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations 13166.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval

The Commission hereby approves the amendment to the coastal development permit, on the grounds that as conditioned, 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.

NOTE: Unless specifically altered by the amendment, all conditions attached to the previous approved permit and subsequent amendments remain in effect.

II. Special Conditions

1. Deed Restriction and Scenic Easement (as modified)

Prior to issuance of the coastal development permit amendment, the applicant as landowner shall execute and record a document, in a form and content acceptable to the Executive Director, which irrevocably offers to dedicate to a public agency or private association acceptable to the Executive Director, an easement for open space, view preservation and habitat protection, over lots identified as Assessor Parcel Numbers 4462-21-46, -01, -02, -03, -04, -05, -06, -22, -23 of the subject property as depicted on Exhibit 2. The applicant shall recombine these lots with APN 4462-21-46. The easement shall restrict the landowner from grading, landscaping, vegetation removal except clearing of vegetation for fire protection consistent with Los Angeles County Fire Department standards, placement of structures and all other development as defined in Public Resources Code Section 30106, with the exception of the removal of hazardous substances or conditions and the installation or repair of underground utilities or septic systems within the easement area. Within the segment of property between the southern property line and a line measured 90 ft. north of the southern property line on lots identified as Assessor Parcel Numbers 4462-21-21, -22, -23, the following development

shall be allowed in addition to that previously stated: 1) a pool, provided that no other grading other than excavation occur; 2) a children's playhouse (with electrical) not exceeding 250 sq. ft., 12 ft. 6 in. in height in size providing that no more than 50 cu. yds. of grading is required and no septic or plumbing system is constructed; 3) a grape arbor; 4) non-white fencing; and 4) a stairway. In addition, the landowner may construct the following development within the same segment of property if permitted by the Commission or its successor agency in a coastal development permit or amendment: 5) retaining walls and associated grading. No development shall occur greater than 90 ft. north of the southern property line on lots identified as Assessor Parcel Numbers 4462-21-21, -22, -23. The above said development shall require a coastal development permit and shall not block the strip of land identified on Assessor Parcel Map 4462 page 21 dated 1994 as Yavapai Trail unless L.A. County formally vacates this trail and a coastal development permit is issued for the trail's vacated status. The offer shall be recorded free of prior liens and encumbrances except for tax liens which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for the statutory period, such period running from the date of recording.

2. Transfer of 2,100 Square Feet (total) of Gross Structural Area

The applicant may choose to pursue either section (a) or section (b) of this special condition. (The applicant may also elect to pursue neither option.)

(a) Upon submitting evidence for the review and approval of the Executive Director that Special Condition #1 has been completed, and after the applicant's receipt of such approval, the applicant must assign, subject to the review and approval of the Executive Director, 300 sq. ft. of gross structural area, to any residence approved in the following small lot subdivisions: Malibu Lakes, El Nido, Las Flores Heights and Malibu Mar Vista. The 300 sq. ft. gross structural area additions may be assigned a maximum of seven times, subject to the written review and approval of the Executive Director. The 300 sq. ft. gross structural area may not be granted in units of less than 300 sq. ft. and may not exceed a total of 900 sq. ft. assigned to any one residence. Total square feet assignable equals 2,100 sq. ft. The maximum allowable gross structural area of the homes (as built) equals 2,081 sq. ft. and 3,806 sq. ft.; or

(b) Alternatively, prior to the issuance of a Coastal Development Permit, the applicant shall submit, for the review and approval of the Executive Director evidence that all potential for future development has been permanently extinguished on two lots within Malibu Lakes small lot subdivision provided such lots are legally combined with other developed or developable building sites within the same small lot subdivision. In the event that two lots are not available within the Malibu Lakes Small Lot Subdivision, the applicant may retire the development rights in another small lot subdivision, subject to the review and approval of the Executive Director. The maximum allowable gross structural area may be increased by 195 sq. ft. (600 sq. ft. less 405 total sq. ft. addition) for two non-contiguous lots.

Should the applicant choose to exercise section (b), the total assignable square feet specified shall remain at 2,400 sq. ft. as specified in Special Condition #2 of staff report 4-94-195A (Eide). This option will not necessitate the revision of the total allowable GSA assignments and will revise the total square feet assignable to 2,400 sq. ft.

Should the applicant chose to exercise either section (a) or (b), any increase in gross structural area of either home, shall pursuant to Section 13250 (b)(6) of the Regulations, not be allowed except in accordance with a further amendment of this permit or a separate coastal development permit.

3. Future Development

Prior to the issuance of a coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, imposing the below stated prohibition against the applicants' property. 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.

Any increase in gross structural area of the two houses located at 1557 and 1561 Lookout Dr. (APN#s 4462-21-45 and -46 respectively) and any future structures on APN#s 4462-21-45 and -46, except those described in Coastal Development Permit 4-94-195A and 4-94-195A2 shall, pursuant to Section 13250 (b)(6) of the Regulations, not be allowed except in accordance with a further amendment of this permit or a separate coastal development permit issued by Coastal Commission or its successor agency.

4. Condition Compliance

The requirement specified in Special Condition #1 and #3 that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be met within 10 days of Commission action. Failure to comply with the requirements within the time period specified, or within such additional time as may be granted by the Executive Director for good cause, will result in the nullification of this permit amendment approval.

III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Amendment Description/Background

The applicants are proposing to amend Special Condition #1 of Coastal Development Permit A-158-78 (Eide) pertaining to a deed restriction and scenic easement and to amend the size of the single family homes. The house sizes proposed would change from 2741 to 2081 sq. ft. and 2741 to 3805 sq. ft. The permit has been the subject of Commission action on several occasions. The original permit was approved by the South Coast Regional Commission without any conditions. The permit was subsequently appealed to the State Commission and the proposed project was revised by the applicant. Under the revised project description, the Commission approved the combination of three lots

into two lots (9,546 sq. ft. and 9,776 sq. ft.) with the construction of two (2) 2,741 sq. ft., 29 ft. high single family residences in 1978. The Commission approved the transferring of two development credits in lieu of further development on 17 lots adjacent to and in the vicinity of the proposed building sites within the Malibu Lake Small Lot Subdivision (Exhibit 1). The approval was based on special conditions pertaining to a deed restriction and scenic easement and the submittal of a soils report.

The permit was issued on September 26, 1978. The applicant deed restricted 9 of the 17 lots and one TDC was sold. The applicant was authorized to construct the residence located on lot 1 (APN 4462-21-45). However, the remaining 8 lots were not deed restricted and authorization to commence construction was never granted. In August of 1980, the Commission approved a one year extension of time.

More recently, the site was the subject of coastal development permit 4-92-124 (Eide) for the construction of retaining walls varying in heights of three to six feet with 166 cubic yards of grading (107 cu. yds. of cut and 59 cu. yds. of fill). The retaining walls were built prior to the Commission's approval of the project. An amendment to this permit is scheduled for the Commission hearing of July 11-14, 1995. During the handling of the permit application in 1992, staff discovered that the remaining 8 lots had not been deed restricted and that the second single family residence had been built prior to the issuance of authorization to commence construction. (In addition, neither SFD was constructed in accordance with the approved plans; one was 660 sq. ft. too small and one 1064 sq. ft. too large.)

The Commission approved an amendment (4-94-194A) to the original permit (A158-78) on January 11, 1995 which involved an amendment to the deed restriction and scenic easement to allow for the transfer of 2400 sq. ft. of Gross Structural Area credit (8 lots) to four Small Lot Subdivisions in the Santa Monica Mountains and to allow for the future development of a pool, children's playhouse, fencing and grape arbor on lots identified as Assessor Parcel Numbers 4462-21-21, -22, -23. The approval was subject to special conditions that included a modified deed restriction and scenic easement, a guideline for transferring gross structural area credits, a timeline for condition compliance and a requirement of a future improvements deed recordation on the subject sites.

In processing the subject amendment (4-94-194A), staff discovered that the two homes constructed significantly deviated from the Commission's approval of two 2,741 sq. ft., 29 ft. high single family residences. This discovery was made when the applicant's agent submitted information that stated that the applicant had constructed a 2,996 sq. ft. single family home on lot 1 (APN 4462-21-45) and a 3,903 sq. ft. single family home on lot 2 (APN 4462-21-46). In order to reconcile the size of the homes with what was actually constructed, the applicant applied for the subject permit amendment (4-94-195A2) which includes a request to change the size of the homes. Contrary to the information that staff received in processing the first amendment, the applicant has submitted new information that indicates the houses were in fact built at 2081 sq. ft. and 3805 sq. ft. The size of the as-built residences resulted in a combined total square footage of 5,886 sq. ft. which equals a total of 405 sq. ft. more than the combined total square footage approved by the Commission.

The proposed amendment request, (4-94-195A2), was initally scheduled on the Commission's June 13-16, 1995 hearing agenda. The applicant requested a postponement and the item was rescheduled on the Commission's July 11-14, 1995 hearing agenda. Staff notes that some neighbors oppose the project and submitted a letter of objection dated June 7, 1995 (Exhibit 3). In order to review the information contained within this letter, staff postponed the Commission's review of the proposed project to the August 8-11, 1995 hearing. The project applicant, Barbara Eide, requested a postponement based on the fact that her agent was unable to attend the meeting. The Commission granted the postponement and directed staff to reschedule the public hearing to the next available local hearing. The Commission's next meeting was scheduled for September 12-15, 1995 and was located in Eureka. Thus, the next available local meeting was October 10-13, 1995, in San Diego. Staff notes that the preceding amendment, 4-94-195A, has been requested to be revoked. The request for revocation was also scheduled for the October 13-15, 1995 meeting. However, the applicant for revocation, David Ramey, requested a postponement of the revocation (which preceeded this amendment request on the meeting agenda) based on the fact that he had not yet reviewed the subject permit files associated with the revocation request. The Commission granted the postponement and directed staff to reschedule the public hearing to the next available local hearing, Nov. 14-17, 1995, in Los Angeles. Staff notes as background, that a Coastal Commission vote to revoke the first amendment (4-94-195A) would have caused a change to the staff recommendation of the subject second amendment (4-94-195A2) to one of denial. This was based on the following: the first amendment modified the deed restriction that was required to mitigate the development of two houses and the sale of the TDCs; and, the second amendment (subject of this staff report) is a request to increase the overall square footage of the homes and required that the deed restriction that mitigated this development be further modified from that which was required under the first amendment. Therefore, the applicant requested postponement of this amendment request to be heard at the same hearing as the revocation request (Nov. 14-17, 1995).

Topographically, the sites are steeply sloping and with the majority of the lots comprising the 1125 ft. ridge. The average lot size of the 17 undeveloped lots is approximately 6,800 sq. ft. The total project consists of approximately 4 acres. The subject lots are located within the Malibu Lake Small Lot Subdivision which was added to the coastal zone in 1977. The coastal zone bisects the 566-lot subdivision in which only 198 of the lots lie within the coastal zone. The subdivision is adjacent to Malibu Lake and Malibu Creek State Park.

Also pending is the propriety of grading associated with the construction of the retaining walls. This application and staff report does not attempt to resolve the outstanding questions pertaining to this unpermitted development (which is the subject of permit amendment 4-92-124A) or any other unpermitted development that may exist on the sites.

B. Cumulative Impacts of Development

As stated in the preceding section, the Commission originally approved the construction of two 2741 sq. ft. single family residences and the combination of three lots into two lots (A-158-78). The applicants indicated at the time

of Commission approval that they intended to construct four to six homes on the 20 lots that they owned in the Malibu Lakes small lot subdivision. However, the application before the Commission at that time was only for the two homes.

In 1978 the Los Angeles County lot size standard would allow one dwelling per 7500 square feet. The Commission sought a more restrictive minimum lot size of one acre based on constraining circumstances of the 198 lots located in the coastal zone portion of the subdivision. These constraints included steep slopes, public view impacts, water quality, habitat protection and inadequate infrastructure. Furthermore, the Commission found that under the original approval development of the 17 lots adjacent to the two building sites would not be consistent with the Chapter 3 policies of the Coastal Act for a number of reasons. At that time the lots did not have road access and water service. Secondly, the majority of the lots are located on the ridgeline and any development would be visible from Malibu Creek State Park. Third, the lots are very steep and development would create adverse impacts relative to landform alteration, geologic stability and septic capability. Lastly, the removal of watershed cover would increase erosion and siltation to the adjacent blue-line stream. Therefore, the 20 lots were assessed an economic value which translated into two SFD's and two TDC's.

The applicant has amended the permit one time prior to the subject request (4-94-195A). At the January 8-10, 1995 meeting the Commission approved a modification to the deed restriction and scenic easement special condition to allow for the transfer of 2400 sq. ft. of Gross Structural Area (GSA) credit (8 lots) to other Small Lot Subdivisions located in the Santa Monica Mountains and to allow for the future development of a pool, children's playhouse (not to exceed 350 sq. ft.), fencing and a grape arbor on lots APN 4462-21-03, -04, -23, -22, -21. In addition to modifying the deed restriction and scenic easement special condition, the approval was subject to three additional special conditions that included parameters in which the GSA allowances may be used, timing for condition compliance and recording a future improvements deed restriction on the lots.

In considering the previous permit amendment (4-94-195A), the Commission found that there were unique circumstances associated with approving the amendment, which include in part the Commission's practice of mitigating cumulative impacts. Specifically, the permit was approved prior to adoption of the TDC program by the Commission and the method of determining TDC values for lots was different than today. In addition, the permit was approved prior to certification of the Malibu LUP and use of the slope intensity/GSA formula to mitigate cumulative impacts in small lot subdivisions - this option was not available in 1978.

As set forth in the original approval (A-158-78) the Commission intended the applicant to be compensated for two building sites only (over the 17 lots) in addition to the approval of two homes and thus the TDC program was created for that purpose. The first amendment involved a proposal that substituted the approved use of the 17 vacant lots from two transfer of development credits to one transfer of development credit and 2,400 sq. ft. of gross structural area credit (8 individual lots at a credit of 300 sq. ft. each) to be applied to other single family homes in small lot subdivisions located in the surrounding vicinity. (The recent amendment ties, at the applicant's specific request,

the subject sites to the current TDC and slope/intensity/GSA programs.) The predominate scope of the project's analysis revolved around the issue of cumulative impacts of new development within small lot subdivisions. Within these small lots subdivisions the potential exists for the density of development to be inconsistent with a number of the Chapter 3 policies of the Coastal Act. Section 30250(a) of the Coastal Act states that:

> 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.

Under the original permit, as a means of controlling the build-out of the small lot subdivision and assuring consistency with Section 30250 as well as the water quality, sensitive habitat, visual and landform alteration, recreation and public access sections of the Coastal Act, the Commission established the Transfer of Development Credit (TDC) program. The TDC program was, and still is, viewed as a method of removing the development potential in designated small-lot subdivisions, parcels located within Environmentally Sensitive Habitat Areas (ESHAs) and parcels located within Significant Watersheds.

Subsequent to the development of the TDC program, in the early 1980s, the Commission designed the Slope-Intensity Formula to regulate development in all small-lot subdivisions. Additionally the Los Angeles County Land Use Plan, which was certified by the Commission on December 11, 1986, stated that new development permitted on these small lots would be limited to the existing prevailing densities. The LUP intended for a maximum density of one unit per acre in these areas. However, many of the small-lot subdivisions consist of rather small parcels that do not conform to the established 1 dwelling per acre density and were found by the Commission to be "non-conforming" lots. While build out of these small lots in theory may be feasible, development of a significant percentage of the lots would be considered difficult if not improbable given such constraints as steep slopes, geologic conditions, septic limitations, water availability and lack of road access.

The Commission incorporated the Slope-Intensity Formula as part of the LUP as set forth in policy 271(b)(2), which requires that all development in small lot subdivisions comply with the Slope-Intensity formula for calculating the allowable GSA of a residential unit. The Slope-Intensity Formula asserts that the maximum allowable gross structural area of a single family home should be based on the slope and size of the lot. In instances where the lot is either steep or small the applicant is afforded a minimum gross structural area of 500 sq. ft. Additionally, the formula provides that the gross structural area of a home may be increased as follows:

> (1) Add 500 square feet for each lot which is contiguous to the designated building site provided that such lot(s) is (are) combined with the building site and all potential for residential development on such lot(s) 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.

The review of the Commission's past actions with respect to development of these sites underscores the importance of retiring the development rights of 17 undeveloped lots as mitigation for the construction of two homes. The proposed amendment involves amending the size of the homes from 2,741 sq. ft. (each) to 2,081 sq. ft. and 3,805 sq. ft. The modified house sizes must be analyzed for consistency with Section 30250(a) of the Coastal Act. As explained above, the Commission presently requires applicants to submit a calculation of the Slope Intensity Formula determining the maximum house size. Given that the Slope Intensity Formula was not developed when the homes were approved, staff notes that the slopes of the building sites were neither calculated nor was the maximum gross structural area determined in 1978. Further, the applicant has not submitted this information as part of the review of the proposed change in house size.

The review of the original permit indicates that the Commission found that two 2,741 sq. ft. homes were allowable as consistent with the character of the area, providing adequate mitigation was provided by retiring the development rights of the undeveloped lots. Had the applicant applied for the same project today the applicant would be required to demonstrate that the proposed project met the GSA criteria. In the event that the proposed house size was larger than the GSA formula would allow, the applicant would be required to retire lots within the same small lot subdivision to achieve the balance of proposed square footage. Absent receipt of a calculation of maximum allowable GSA credit for each site, the Commission has automatically assessed [as set forth in policy 271(b)(2)] a single lot with a minimum square footage of 500 sq. ft. Based on the total number of lots (20), the maximum allowable square footage for the two lots combined could potentially be 10,000 sq. ft. (or 5,000 sq. ft. per house). Given that the Commission approved two homes and the sale of two TDCs, which is the equivalent of two SFDs the maximum allowable GSA credit should be divided by four. In dividing the total square footage (10,000 sq. ft.), the average house size would equal 2,500 sq. ft. As such, the Commission's approval of two 2,741 sq. ft. houses is roughly equivalent to the standards of today's program (Slope-Intensity/GSA).

The proposed amendment proposes to greatly exceed the size of the home (by 1,045 sq. ft.) approved on lot 2 and decrease the size of the home (by 660 sq. ft.) on lot 1. Under the current program, a 1,045 sq. ft. addition would require the retirement of either three contiguous lots (allowing 500 sq. ft. each) or the retirement of four non-contiguous lots (allowing 300 sq. ft. each). However, the Commission finds that based on the combined review of the two homes in the original permit it is appropriate to combine the total square footage of the houses when comparing the house sizes against the maximum allowable GSA. This is based in part on the fact that the intent of the original permit was to site new development contiguous with, or in close proximity to, developed areas and in part on the rationale that new moderate sized development be clustered with the retirement of constrained lots in order to minimize the total impacts of development within the small lot subdivision. The total square footage approved by the Commission under the

original permit equals 5,482 sq. ft. (2,741 sq. ft. each) and the total square footage proposed under the amendment equals 5,887 sq. ft. Therefore, the Commission finds that the application of the GSA formula over the total square footage equals an addition of 405 sq. ft. In order to find that the proposed amendment is consistent with Section 30250(a) of the Coastal Act, past Commission action and the intent of the original permit, special condition #2 has been revised to insure that the increase in size of a single structure by 1,045 sq. ft. is mitigated. As stated above, staff notes that the larger home under the current standards could require the retirement of as many as four lots if the square footages of each home were not combined. However, given that the applicant has exchanged the economic value of one TDC to eight GSA allowances (where one GSA allowance equals 300 sq. ft.) on lots that are contiguous, revising Special Condition #2 to reduce the number of GSA allowances from eight to seven would mitigate the 405 total sq. ft. that the two residences combined exceed the original size. Alternatively, the applicant could retire two non-contiguous lots within Malibu Lakes Small Lot Subdivision. Also, as conditioned under the first amendment the applicant is required to record a future improvements deed restriction to ensure that all future development receives a coastal development permit.

The Commission notes that the previous amendment allowed the substitution of one TDC credit to be used as GSA allowances to be applied to the construction or additions to other SFDs in specified small lot subdivisions subject to the slope-intensity/GSA formula. This allowance, which was granted at the applicant's specific request in effect, has connected the two SFDs to the application of the current TDC and slope-intensity/GSA programs. Under the applicant's previous amendment request she has in fact recognized the application of the GSA/slope-intensity formula to the Malibu Lakes small lot subdivision. As stated previously, the applicant has submitted an amendment request to legalize the increase in the size (where the size of the homes are added together) of the 2 SFDs by 400+ sq. ft., approximately 15 years after-the-fact. The Commission finds that it is only equitable that the applicant participate in the GSA program by mitigating the increase of square footage of the permitted SFDs. The easiest and most logical way to accomplish this is by utilizing one of the GSA lot credits granted in the prior amendment and owned by the applicant. This would in effect reduce the number of marketable GSA lot credits from eight to seven as is indicated by the revised special condition #2. In order to ensure that any future structures or increases in size of either home are consistent with the GSA allowances as stated in special condition #2, special condition #3, future development, has been modified to require the applicant to either further amend this permit or receive a separate coastal development permit in order to perform such development.

In addition, special condition #1 has also been modified at the request of the applicant to allow for development within a 90 ft. area of three of the deed restricted parcels (See Exhibit 1). As proposed by the applicant, the construction of a 250 sq. ft., 12'6" high playhouse (to include electrical but <u>not</u> plumbing or a septic system) with a 15 ft. wide patio area, 5 ft. high retaining wall and 50 cu. yds. of grading will occur within a 90 ft. area as measured from the southern property line. Staff notes that originally the applicant requested to modify the deed restriction to allow for the construction of a 350 sq. ft. playhouse without electrical. On October 27, 1995, the applicant amended the proposal to a reduced 250 sq. ft. playhouse

with electrical. In addition, the applicant is proposing the placement of a fence along the northern property lines of the three open space deed restricted lots contiguous with the houses. However, to place the fence at the higher elevation would contradict Coastal Act Section 30251 and the intent of the deed restriction and scenic easement by intruding into the visual aesthetics of the area, as discussed in detail in the first amendment (4-94-195A). Therefore, the condition has not been modified further to allow for the placement of the fence along the northern property lines of the subject lots. As modified in Special Condition #1 and depicted on Exhibit 1, the proposed revisions to the deed restricted area are consistent with the intent of the scenic easement. Any commencement of development that is not provided for under special condition #1 or development that is located north of a 90 ft. line as drawn from the southern property line will be considered a violation of this permit.

Given, both the unique circumstances of past Commission approval and the unique characteristics of the project site, the Commission finds that the proposed amendment, as conditioned, will neither have adverse effects either cumulatively or individually on coastal resources as set forth in the applicable Coastal Act sections nor will it have significant adverse effect on the environment within the meaning of the Environmental Quality Act of 1970. The Commission therefore finds that the proposed project, as amended, is consistent with the requirements of Section 30250 and other applicable policies of the Coastal Act.

C. Violation

Prior to the submittal of this application, the applicant built two homes one of which was built 1,085 sq. ft. larger than the Commission approved. One residence was also constructed prior to issuance of the permit and satisfaction of the special condition requiring recordation of an offer to dedicate an open space easement and deed restriction.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

D. 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 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 will not prejudice the County's ability to prepare a Local Coastal Program for Malibu and the Santa Monica Mountains which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. 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 by any conditions of approval, 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.

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

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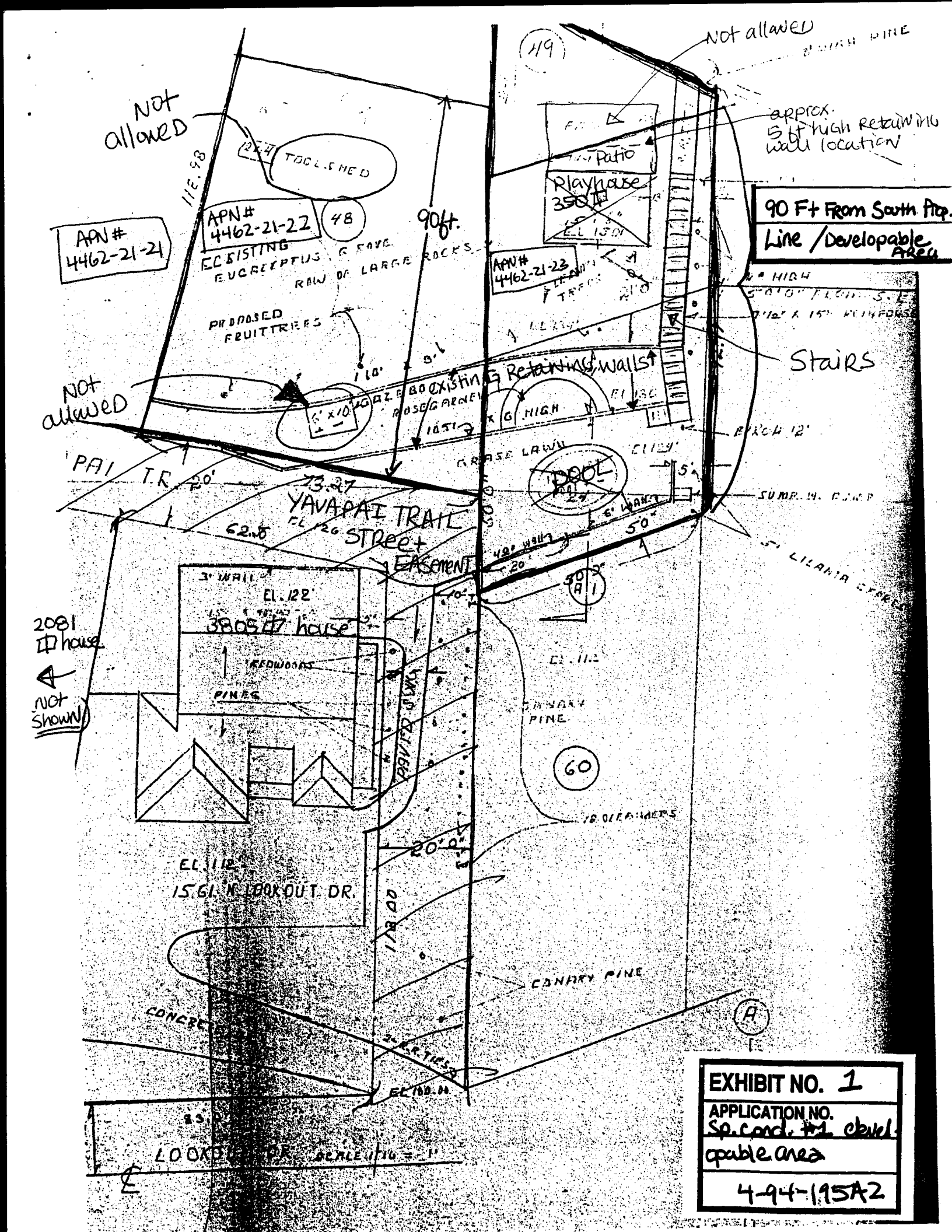
Not allowed
APN # 4462-21-21
APN # 4462-21-22
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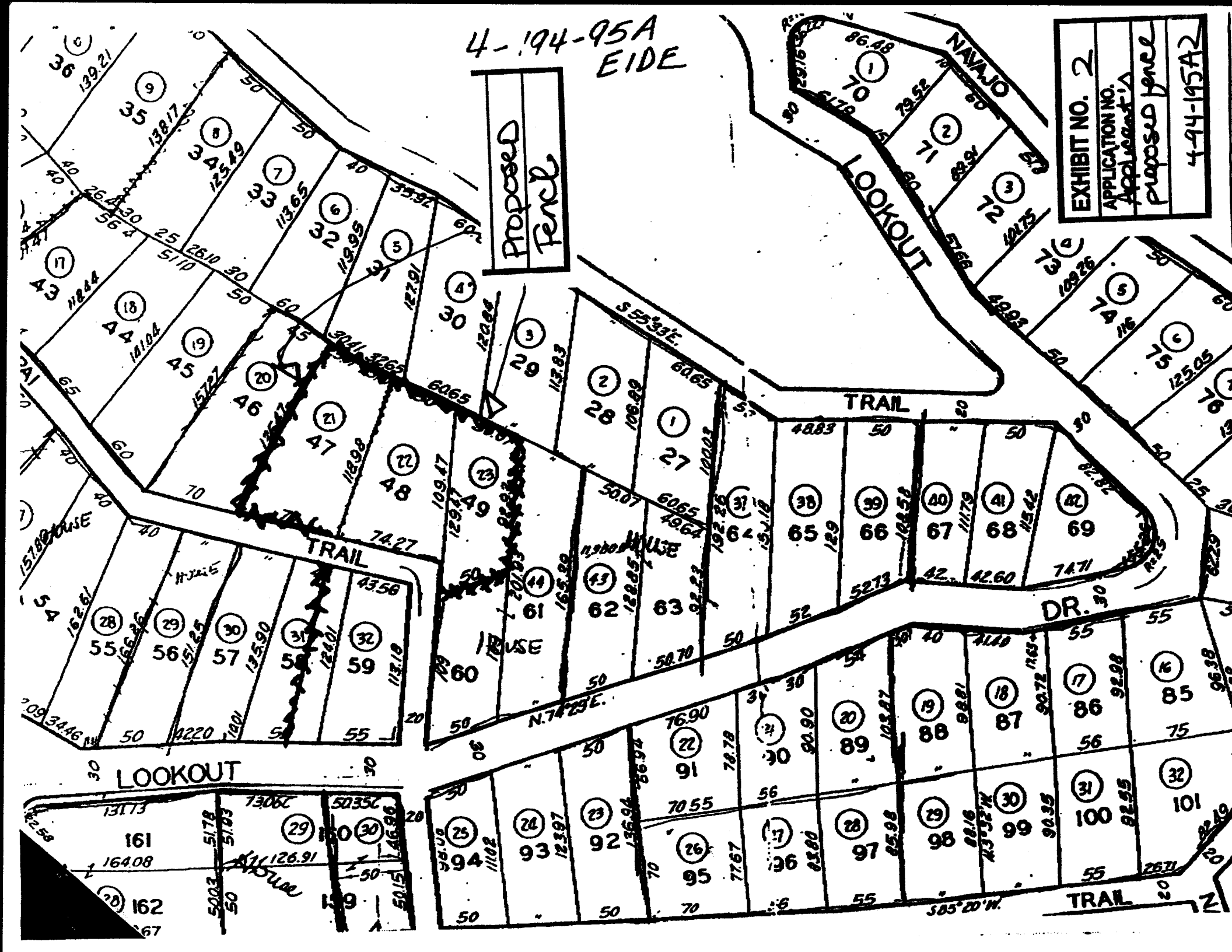
TOOL SHED
EXISTING EUCALYPTUS & OAK
PROPOSED FRUITTREES
90ft.
APN # 4462-21-23
Not allowed
Retaining walls
Patio
Playhouse 350 ☐
Stairs
90 Ft From South Prop. Line / Developable Area
approx. 5 ft high Retaining wall location
POOL
GRASS LAWN
YAVAPAI TRAIL
Street Easement
EL. 126
73.27
62.6
3805 ☐ house
2081 ☐ house
Not Shown
REDWOODS
PINES
EL. 122
EL. 112
1561 N. LOOKOUT DR.
CANARY PINE
60
18 OLEANDERS
20'-0"
CONCRETE
EL. 100.44
LOOKOUT DR.
SCALE 1/16 = 1'
EXHIBIT NO. 1
APPLICATION NO. Sp. cond. #1 developable area
4-94-195A2


4-194-95A
EIDE
EXHIBIT NO. 2
APPLICATION NO. Applicant's proposed fence 4-94-195A2
Proposed Fence
LOOKOUT
NAVAJO
TRAIL
DR.
LOOKOUT
TRAIL
S 55 1/2° E.
N. 74° 29° E.
S 85° 20' W.
HOUSE

* = small lot Subdivisions
allowed for consideration of lot retirement pursuant to Sp. Cond. # 2(b)

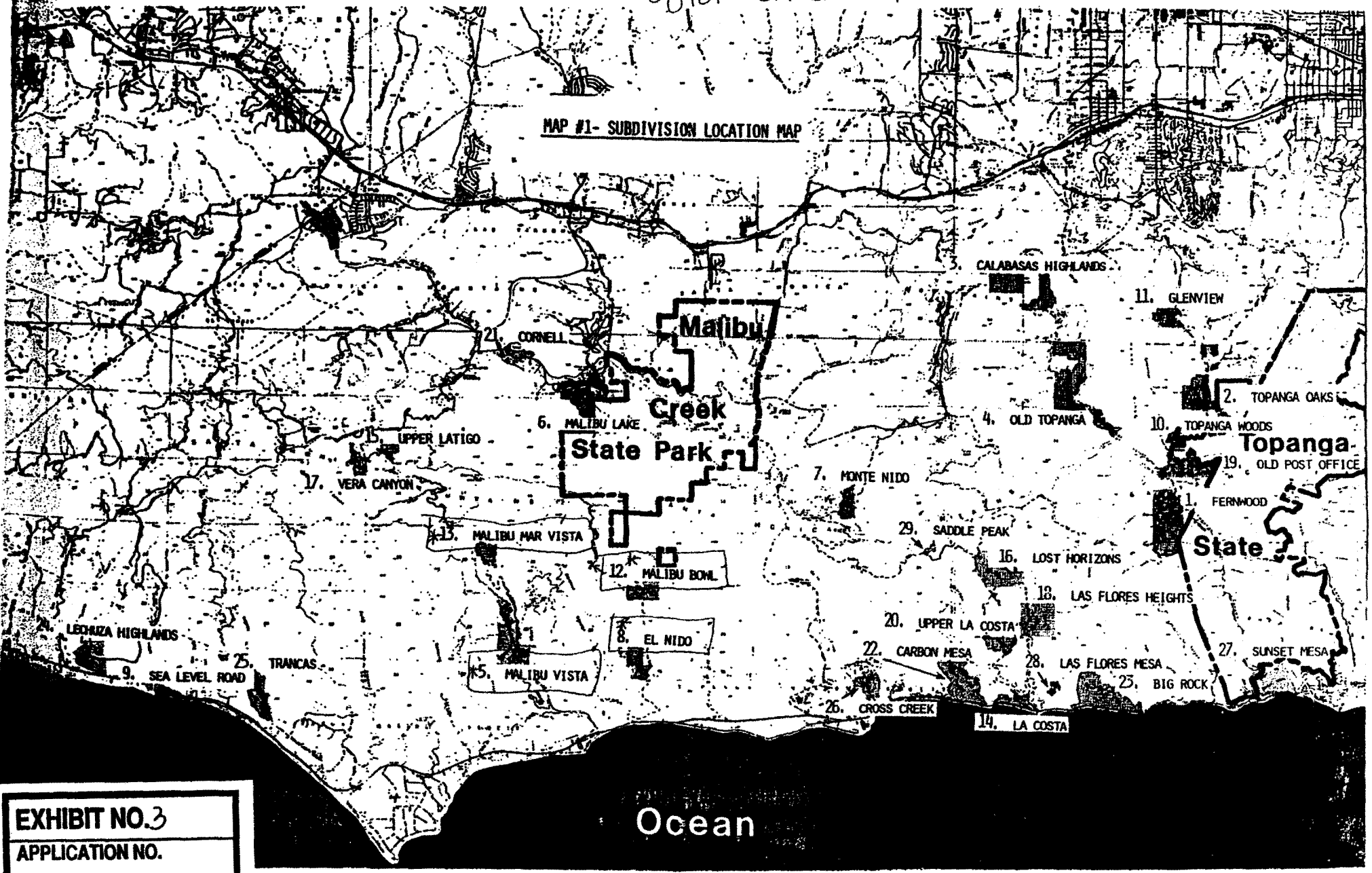


EXHIBIT NO. 3
APPLICATION NO.
4-94-195A2

June 7, 1995

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

Dear Sirs:

This letter is to demand that permit number 4-94-195A2, being considered on June 15, 1995, project location o 1561 N. Lookout Drive, Agoura Hills, California, be rejected. We, residents of Lookout Drive, Malibou Lake, California, strongly object to consideration of further development or modification of existing permits for the following reasons:

1. Section 30251 of the California Coastal Act states:

"The scenic and visual qualities of coastal area 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 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."

The proposed addition of a 350 square foot "playhouse", an additional 50 cubic yards of grading, a patio and a retaining wall within 90 feet from the northern boundary of the property:

a. Will dramatically alter the natural land form.
b. Be absolutely incompatible with the character of any of the surrounding area or structures.
c. Destroy and detract from the visual quality in an area that has already been visually savaged due to previous construction by the developer.

In addition, all of the proposed structures will be completely visible from both Malibu Creek State Park and from Lookout Drive.

2. Section 30240 of the California Coastal Act states:

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

The proposed modifications are in violation of this section because:

a. Lookout Drive is directly adjacent to Malibu Creek State Park. The proposed modifications would significantly degrade the view from the park as well as the Lookout Drive neighborhood.

b. Such proposed development is absolutely incompatible with the continuance of this sensitive, natural area.

3. Section 30253(1) of the California Coastal Act states:

"New development shall minimize risks to life and property in areas of high geologic, flood and fire hazard."

The proposed modifications are in violation of this section because:

a. The proposed construction of a 350 square foot "playhouse" would significantly increase the fire risk in an area already deemed "extremely hazardous" by adding yet another flammable structure to an already crowded area.

b. Further cuts into the hillside may adversely affect drainage and erosion in the area and cause geologic instability.

4. Section 30253(2) of the California Coastal Act states:

"New development shall 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 modifications are in violation of this section because:

a. It is a certainty that the project will create and contribute significantly to erosion, geologic instability and destruction of the site and surrounding area. An additional 50 cubic yards of grading on this steep slope could do nothing less.

b. The construction of a retaining wall is a protective device by definition. It will substantially alter the natural landform. In fact, the proposed retaining wall has already been constructed. Three retaining walls already exist, although only two are permitted. The existing retaining walls are in defiance of Coastal Commission permits, as well.

In addition, the grading modifications proposed are in absolute defiance of the Malibu/Santa Monica Mountains Land Use Plan. Specifically, 50 cubic yards of grading is excessive and violates the following sections of the Plan:

a. P82 states - "Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on theses resources are minimized."

The proposal clearly violates this section of the Land Use Plan. Fifty cubic yards of grading is hardly a minimal amount of grading.

b. P91 states - "All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to the maximum extent feasible".

The proposal clearly violates this section of the Land Use Plan. Existing grading and development already has dramatically altered the physical features of the land. The proposed modification, grading and development will further destroy the physical features of the land. The construction and grading has potentially adverse effects on all of the processes of the site.

c. P130 states - "In all highly scenic areas and along scenic highways, new development (including buildings, fences, fences, paved areas, signs, and landscaping) shall:

- be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Mailbu LCP."

The proposal clearly violates this section of the Land Use Plan. The proposed modifications and construction of a 350 square foot "playhouse" structure and patio will dramatically alter the scenic features of the area.

- "minimize the alteration of natural landforms."

The proposal clearly violates this section of the Land Use Plan. The proposed grading and construction will dramatically alter the natural landform.

- "be visually compatible with and subordinate to the character of its setting.

The proposal clearly violates this section of the Land Use Plan. The proposed grading and construction is absolutely incompatible with any development in the area. The proposed development is on a rugged, natural slope. There are no "playhouses", pools, patios retaining walls or similar graded areas anywhere in the area, with the exception of areas where the very same developer has already violated existing Coastal Permission permits.

- "be sited so as not to significantly intrude into the skyline as seen from public viewing places."

The proposal clearly violates this section of the Land Use Plan. The proposed grading and construction 90 feet from the northern boundary of the property line is in a location far above any current construction. The modification of the existing permit would allow for a swimming pool, a new 350 square foot structure and a new patio in an area that is clearly visible from Malibu Creek State in a number of areas as well as from Lookout Drive itself.

Specifically in regards to the proposed retaining wall, the Coastal Commission is hereby advised that a third retaining wall has already been constructed and has been in place for approximately one year. This third wall exists approximately 50 feet from the northern border of the property line. This wall has not been permitted by Coastal Commission and is clearly illegal. No soils, drainage or structural engineering reports have been prepared nor submitted for this illegal wall. In addition, its existence violates all of the aforementioned statutes. Granting this modification would seem to yet again give tacit approval to the illegal construction activity that has already taken place.

In addition, the Coastal Commission is hereby advised that a 65 foot stairway has already been built adjacent to the three existing retaining walls. This stairway has also not been permitted. This stairway also violates all of the previously quoted statutes.

In regards to the modification of the single family residences, the Coastal Commission is well aware that two residences are already in existence. The dimensions of the residences have been recently approximated by measuring the interior walls. The residence at 1561 Lookout Drive has been estimated at 3,806 square feet. The adjacent residence has been estimated at 2,081 square feet.

The developer is in clear violation of Coastal Commission permits. California Coastal Commission Appeal Number 158-78, voted and approved on 8/16/78 gave permission to build two structures "containing about 2,741 square feet of floor structure". The developer subsequently constructed two residences. As per your staff report of 5/17/95, "neither residence was constructed in accordance with the approved plans for the original permit". In fact, they were constructed in absolute and unequivocal violation of this permit.

The initial residence construction of 3805 square feet violated a clear coastal commission permit, 158-78, voted on 8/16/78 allowing "about 2,751 square feet of floor area." In a letter to the Coastal Commission dated May 2, 1995, the Eides assert that they "do not accept the assertion by staff that the homes developed on their property represent a violation of the 1978 permit." This is asinine. The Eide's have known for 17 years that their home was in violation of the permit. They could have easily applied to Coastal Commission for clarification or modification of the permit at any time prior to construction had they any desire to attempt to follow the law. That the Coastal Commission would even consider retroactively covering up this clear violation of Coastal permits is unconscionable.

The second residence constructed was also in violation of Coastal permits. This residence is smaller than permitted. This residence was constructed prior to the issuance of a permit and prior to the satisfaction of a special condition requiring recording of an offer to dedicate an open space easement and deed restriction. It is inconceivable that the Coastal Commission would modify its permits to give its retroactive approval to such flagrant illegal activity in violation of its own permits.

The Commission should also note than an additional 350 square feet of construction space is proposed in this permit. This fact is not addressed in staff reports. This would bring the total square footage to 755 square feet in excess of the allowable gross structural area for this site, not 405 square feet as noted in the staff report of 5/17/95. This fact must not be overlooked and is yet another reason why the Commission should deny permit modifications.

The proposed construction will have a negative impact on the land values in the area. The property in this area has largely maintained its value because of its remote and natural setting in close proximity to an urban environment. Continued construction that adversely impacts the natural setting, such as that which is proposed in this permit is an eyesore. Such construction has already decreased the value of all of the homes in this area.

As the Coastal Commission is undoubtedly aware, the developers of this mess, Harold and Barbara Eide, are currently under investigation by the enforcement arm of the California Coastal Commission for previous violations. The Eide's have done nothing but violate both the spirit and the letter of the law. It is beyond comprehension that the Coastal Commission could consider that the permit modifications would be followed, based on the history of previous non-compliance by the Eide's.

According to Rebecca Richardson in the Ventura Office of the Coastal Commission, each case that is presented before the Commission must be considered separately, without consideration of previous permits or violations. This practice must stop. It is absurd and flies in the face of common sense. Such an attitude is in clear contradistinction to any civil or criminal statute in existence in American jurisprudence. Evidence of previous behavior by an individual is clearly admissible evidence in any court of law, be the case civil or criminal. Although the Coastal Commission is not a court of law, it is a governing body that regulates and makes decisions based on administrative laws and policies. It is an extension of the law and should be governed by it. The policies of the Coastal Commission should at least be constrained by the dictates of common sense.

Finally, the Coastal Commission is advised that we feel that permit 4-94-195A was approved and issued illegally. As interested parties, we were advised that the Coastal Commission hearing help on January 11, 1995 in Los Angeles, California was to "Modify Special Condition #1 pertaining to the deed restriction and scenic easement to allow for the transfer of 2400 sq. ft. of Gross Structural Area credit (8 lots) to other Small Lot Subdivisions located in Santa Monica Mountains." A concerned representative was in attendance at this meeting.

However, on June 5, 1995 it was discovered by the interested parties that on January 9, 1995 an addendum was issued to permit 4-94-195A. This addendum added the following, "and to allow for the future development of a pool, children's playhouse (not to exceed 350 sq. feet.), fencing and a grape arbor on lots APN 4462-21-03, -04, -23, -22, -21."

Not one of the interested parties was informed of this addendum. The subject of this addendum was not addressed in the Coastal Commission staff report of 12/7/94. The addendum was not given with proper notification so as to allow any of the affected parties to respond. In fact, this addendum was not even mentioned at the Coastal Commission hearing. This addendum, containing dramatic and significant deviations from the original permit was issued and approved in clear violation of Coastal Commission policy.

The Coastal Commission is therefore advised of our intent to file for a hearing to revoke permit #4-92-195A. We encourage the Commission to postpone any action on permit #4-92-195A2 until such a revocation hearing can be held. It is clear from their past conduct that the Eide's will begin construction on the patio, pool and playhouse immediately. This construction must be properly reviewed before the Coastal Commission can permit new permits or any changes thereto. We are confident that once the facts in this matter are presented to the Commission, that the proposed construction will be disallowed.

Please be advised that the interested parties have determined to pursue legal action against the Coastal Commission for violation of its statutes should the above wrongs not be redressed.

Lastly, the Coastal Commission is undoubtedly aware that none of the above discussion would be necessary had the Eides followed the specific Coastal Commission restrictions that were issued in permit 158-78 on 8/16/78. In this permit, the Coastal Commission clearly stated, and illustrated in a map attached to the permit, that the lots referred to in the current permit application were to be deed restricted in exchange for allowing building of the two aforementioned residences. The lots were, in fact, not restricted by the Eides as mandated by the Coastal Commission. Had the Coastal Commission permit been followed, the need for any of this discussion would have been obviated. That the Coastal Commission would permit <u>any</u> construction on land that was not handled in according to its specific instructions is incredible. That the Commission would condone such flagrant violations of its own permits by allowing further construction defies any rational comprehension.

Accordingly, we, the undersigned, respectfully request, and indeed, demand, that the Coastal Commission act in a responsible manner and in accordance with the Coastal Commission Statutes and the Land Use Plan of Santa Monica and Malibu. We request that at least, the Coastal Commission postpone the hearing on June 15, 1995 until it has heard from the interested parties on our request to revoke permit #4-92-195A. The Coastal Commission has a duty to uphold its statutes and enforce the laws. It is also inconceivable that the Coastal Commission should do anything but deny the requested changes in permits requested in permit number 4-95-195A2.

David W Ramey DVM

Signed

1611 Lookout Drive Agoura Hills, CA 91301

Address

June 7, 1995

Date

Ann Marie Miller Ann Marie Miller

Signed

1605 Lookout Dr. Agoura CA 91301

Address

June 7, 1995

Date

BEATRICE TESDORPF
KIMON BELLAS

Signed

1531 LOOKOUT DR. AGOURA, CA 91301

Address

JUNE 7, 95

Date

Don & Margarit McKindley DON & MARGARIT McKINDLEY

Signed

1552 LOOKOUT DR, Agoura, CA 91301

Address

6/7/95

Date

J. C. Peeters

Signed

1541 LOOKOUT DR., AGOURA CA 91301

Address

6/7/95

Date

Vera + Mahlon Hubbard
Signed

1547 Lookout Dr. Agoura, Ca 91301
Address

6-7-95
Date

Patricia A. Henkel
RICHARD & PATRICIA HENKEL Richard R. Henkel
Signed

1755 LOOKOUT DRIVE AGOURA, CA 91301
Address

6-7-95
Date

W E Miller W E MILLER
Signed

1665 LOOKOUT DR AGOURA, CA. 91301
Address

6-7-95
Date

cc: Nancy Cave
Coastal Commission
San Francisco, CA

Eide, permit #4-92-195A2. Page 12

Edward K Khmara / EDWARD KHMARA
Signed

1636 Lookout Dr., Agoura CA 91301
Address

6/9/95
Date

Signed

Address

Date

Signed

Address

Date