

CALIFORNIA COASTAL COMMISSION
South Central Coast
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Staff Report: 10-13-96
Hearing Date: December 10-13, 1996
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-96-051

APPLICANT: Michael Tuchman

AGENT: None

PROJECT LOCATION: 5928 Rameriz Canyon Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Subdivision of one 2.3 acre lot into two lots. No grading or other development is proposed on lot 22 at this time.

Lot area:	2.3 acres
Building coverage:	2,716 sq. ft. approved on lot 21 0 proposed on lot 22
Pavement coverage:	2,500 sq. ft. approved on lot 21 0 proposed on lot 22
Landscape coverage:	35,000 sq. ft. approved on lot 21 0 proposed on lot 22
Parking spaces:	3 approved on lot 21; 0 proposed on lot 22
Plan designation:	Residential I: 1 du/ 1 ac. Rural Land II: 1 du/ 5 ac.
Project density:	1 dua
Ht abv fin grade:	29 ft. approved on lot 21 0 proposed on lot 22

LOCAL APPROVALS RECEIVED: Certificate of Compliances issued for both lots by Los Angeles County Department of Regional Planning.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan (LUP), the findings of the LUP, Research Analysis and Appendices of the LUP, Attachment 11 of the LUP (March 24, 1983), Workshop 4 (August 18, 1982) and Workshop 5 (August 30, 1982), Caltrans Pacific Coast Highway Study, dated December 1983, Santa Monica Mountains Area Planning Program, Draft Environmental Impact report (August 4, 1980), Santa Monica Mountains Planning Commission Santa Monica Mountains Comprehensive Plan (Aug. 1979), Cumulative Impacts of Potential Development in the Santa Monica Mountains Coastal Zone dated November 13, 1978, Santa Monica Mountains Planning Commission Draft Land Capability Study (Sept. 1977), Final Report to the Legislature titled Ventura-Los Angeles Mountain and Coastal Study Commission, dated March 6, 1972, Coastal Development Permit Applications 4-96-060 (SCPOA), 4-95-115 (Lauber et. al.), 4-94-185 (Tuchman), 5-88-614 (LaScola), 5-86-520 (Panunzio), 5-84-351 (Drew and Shure), 5-82-336 (Bird), 77-396 (Ivey).

SUMMARY OF STAFF RECOMMENDATION

This is an after-the-fact permit application for the subdivision of one approximately two acre lot into two one acre lots. The parcel is located in Rameriz Canyon. There is only one access road into and out of Rameriz Canyon. Approval of the proposed subdivision would promote the collective division of many more parcels in the canyon greatly increasing the total number of buildable parcels and intensifying the density of development. This intensified development would result in significant unmitigatable adverse impacts relative to hazards, water quality, environmentally sensitive habitat areas, and visual resources. As such, staff is recommending that the Commission deny the proposed project based on the project's inconsistency with sections 30250, 30253, 30240, 30231, and 30251 of the Coastal Act. If this project is denied, resolution of the after-the-fact development could occur through appropriate enforcement action.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Denial

The Commission hereby denies a permit for the proposed development on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 or the California Environmental Quality Act (CEQA), and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act.

II. Findings and Declarations.

The Commission hereby find and declares as follows:

A. Project Description

This is an after-the-fact application for the subdivision of a 2.33 acre lot into two lots of approximately one acre each. The original lot is 4467-007-011 (referred to herein as lot 11); the subdivision will create lots 4467-007-021 and 4467-007-022 (herein referred to as lots 21 and 22 respectively). No grading or other development is proposed on lot 22 at this time. On lot 21 a single family residence with associated grading and a septic system was approved by the Commission under coastal development permit 4-94-185 (Tuchman). The site has been graded but the residence has not been constructed.

The parcel is bisected by Paquet Road. The proposed lot lines for parcels 21 and 22 follow the easement of Paquet Road; thus the proposed new lots are divided by Paquet Road (See Exhibit 2). Paquet Road is a legal road which was in existence prior to the effectiveness date of the Coastal Act. Aerial photographs dating as far back as January 1, 1977 show the road. Moreover, there is a residence on a parcel north of the subject lot which is accessed

only by Paquet Road. The residence on that parcel was built in 1971, and thus the road must have existed at least as far back as 1971. Thus, the road predates the Coastal Act.

The certified Malibu/Santa Monica Mountains Land Use Plan (LUP) designation for the underlying lot (4467-007-011) is both rural land II which allows for one dwelling unit per five acres and residential I allowing for one dwelling for every one acre. The delineation of these two designations is shown in Exhibits 10 and 11. It should be noted that these designations were established by the County of Los Angeles under the Certified Land Use Plan. Although no longer legally binding in the City of Malibu, the Land Use Plan is still used as guidance in reviewing projects within the City of Malibu for their compliance with the Chapter Three policies of the Coastal Act. The City of Malibu is currently preparing a Local Coastal Plan which will designate land use densities for the area. The City of Malibu's interim land use designations under the City's General Plan for all of Rameriz Canyon is one dwelling per five acres.

The lot is located on Rameriz Canyon Road. Rameriz Creek traverses this canyon crossing Rameriz Canyon Road in several places. The creek is not located on the applicant's property; rather it is located on the opposite side of the street behind existing development. Rameriz Canyon has been developed with numerous single family residences.

B. Project Background

Staff discovered the subdivision of lot 4467-007-011 into lots 4467-007-021 and -022 in early 1993 without the benefit of a coastal development permit during litigation of a Coastal Act violation case involving parcel 11 and the applicant (California Coastal Commission V. Tuchman, et al, Los Angeles Superior Court Case No. BC051929). At that time, the applicant was asked to submit evidence which showed that the two lots (21 and 22) were legally created prior to the January 1, 1977 effectiveness date of the Coastal Act. If the lots were created prior to the January 1, 1977 date then no coastal development permit would be required for the subdivision. If the lots were created after the January 1, 1977 effectiveness date of the Coastal Act then a permit would be required to legalize the subdivision. However, extensive staff investigation has confirmed that the two lots were not created prior to the January 1, 1977 effectiveness date of the Coastal Act.

Parcel 11, the underlying parcel, is a legal parcel, created by Recorder's Filed Map R.F. 534 on August 30, 1967 and verified as such by L.A. County memorandum dated September 21, 1978. Furthermore, as late as 1987, the County of Los Angeles verified the existence of parcel 11 as one legal parcel. They noted: Parcel 11 is a legal lot per Deed of Trust dated August 14, 1987 and Grant Deed recorded on March 28, 1968 as Document number 2789 in Book D3953 pages 778 through 782 in the Official Records of the Los Angeles County Recorder's Office and per Certificate of Compliance CC1164 recorded as Document Number 78-1134041 in the Official Records of the Los Angeles County Recorder's Office on October 12, 1978. This information was provided as attachments to a document submitted by the applicant's previous agent for County approval for development of the site.

It is noteworthy to point out that in the formal request by the applicant's previous agent for an exemption for development of the site in 1989, the agent

referred to the applicant's lot as lot 11. The letter states that this lot was created in 1967. If two lots (lots 21 and 22) had existed at the time of this letter (March of 1989), the agent would have noted the existence of two lots or would have applied for development on lot 22 only. Thus, this evidence indicates that lot 11 was not split until after 1989.

Further evidence of the original lot's creation date and the creation date of the two new parcels can be found in the Los Angeles County Assessor's Parcel Book. While the separation of lots by the Assessor's office is not proof of lot legality, the representation of two lots prior to 1977 could indicate that perhaps they were created prior to the effectiveness date of the Coastal Act, if other supporting documents were provided. When a map page has a change, the Assessor's office stamps the page with the year of the change. If no change occurs that year, the last year a change occurred remains on the page or no year is stamped. For example, the 1981 Assessor's book has the subject map page stamped "1973." That means the last change that occurred was in 1973. On the 1981 map page, stamped 1973, parcel 11 is shown as one approximately two acre parcel. Even in 1992 when a change occurred through an adjacent subdivision, lot 11 is still one lot. Lot 11 is not changed into lots 21 and 22 until the 1993 Assessor's book. In the 1993 Assessor's book, the page is stamped 1993 indicating that in that year a change occurred on the map. This evidence further demonstrates that the parcels 21 and 22 were not created prior to the January 1, 1977 effectiveness date of the Coastal Act. It must be noted, however, that the assignment of separate parcel numbers by the Assessor's office for purposes of administrative convenience, does not indicate that the lots have been legally subdivided under the Subdivision Map Act [See 62 Cal.Op.Atty.Gen.147(1979)] or the Coastal Act.

The Certificates of Compliances for the two newly created lots, proposed in this application, were not recorded until 1990. The files for these two certificates of compliance can not be found by either the County or the City. In addition, there is no evidence that the County ever processed a lot split or parcel map for this property which would have required approval by Los Angeles County Departments of Regional Planning, Public Works, Fire Department and Parks and Recreation. Because the County issued C of C's for the two lots and legalized the lots at the local level, the City of Malibu is not requiring the applicant to receive a permit from the City (See Exhibit 5).

Mr. Tuchman has provided no evidence that the lots were created prior to January 1, 1977. In fact, the applicant recently informed staff in a telephone conversation that he is quite sure the two proposed lots did not pre-date the Coastal Act. Acceptable evidence would indicate a creation date and a chain of title for the two lots including grant deeds which date back to prior to the effectiveness date of the Coastal Act. A certificate of compliance for the two lots which was done prior to the effectiveness date of the Coastal Act would also suffice as proof of lot legality. No information regarding the chain of title was provided by the applicant. The oldest certificate of compliance submitted by the applicant was dated 1978 and referred to lot 11. All of the evidence submitted by the applicant and gathered by staff indicates that the lots were created after January 1, 1977, and thus, the subdivision of parcel 11 into two lots requires a coastal development permit.

In order for a lot to be considered legal under the Coastal Act it must either have been created prior to the Coastal Act or be approved under a Coastal

Development Permit. In this case, the applicant has not been able to provide evidence which shows that the lots 21 and 22 were created prior to the Coastal Act, and no coastal development permit has previously been issued for the subdivision of lot 11 into these two lots. Therefore, the applicant has submitted this application to "legalize" the subdivision of lot 11 into two one acre lots identified here as lots 21 and 22.

C. Development Requiring a Coastal Development Permit

Section 30600(a) of the Coastal Act states that in addition to obtaining any other permit required by law, any person wishing to perform or undertake any development in the coastal zone must obtain a coastal development permit. The effectiveness date of the Coastal Act is January 1, 1977; thus any development which occurs after this date must receive a coastal development permit.

Development is broadly defined by section 30106 of the Coastal Act to include any change in the density or intensity of use of land, including, but not limited to, subdivisions pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits.

The proposed development includes the subdivision of one lot into two lots. As noted above in the project background, the two proposed lots were created in 1990, after the January 1, 1977 effectiveness date of the Coastal Act. As such the subdivision of parcel 11 into two parcels does require a coastal development permit.

D. Cumulative Impacts of New Development

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

(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 significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted 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.

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

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

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past

permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches, could be expected to grow tremendously. Future build-out of many lots located in environmentally sensitive habitat areas or scenic corridors will create adverse cumulative impacts on coastal resources. Finally, the buildout of lots located on steep and/or geologically unstable slopes will exacerbate hazards and adverse impacts to coastal waters and resources resulting from increases in erosion, runoff and sedimentation.

In reviewing material for the certification of the Malibu/Santa Monica Mountains Land Use Plan, the Commission considered the potential buildout and adverse impacts associated with the buildout of Malibu, and determined potential development densities for the Malibu/Santa Monica Mountains. These proposed development densities and the impacts associated with them are documented in numerous reports which are based on the criteria set forth in the Coastal Act and CEQA.

For example, in the public administrative record files of the findings of the Malibu/Santa Monica Mountains Land Use Plan, the findings of a workshop (#4-August 18, 1982) conducted prior to the certification of the LUP, prepared by Los Angeles County Department of Regional Planning, indicate:

Full buildout of all existing lots of record, together with new development from new subdivisions, would result in a significant cumulative impact on urban services and coastal resources, unless mitigated.

The draft EIR for the LUP prepared by the Los Angeles Department of Regional Planning concludes that the buildout of areas with development densities above one dwelling per two acres will substantially increase water runoff rates in natural drainage courses. The EIR also concludes that such increases in densities greater than one dwelling per two acres will result in increases in landform alteration for access and structures and that this action will also negatively impact drainage courses through increases in sedimentation, loss of habitat and changes to the surface features.

The draft EIR concluded that the increase in buildout will have cumulative effects on the area by increasing the demands on recreation, energy, transportation passage as well as negatively affect the resources of the area through landform alteration, loss of habitat and increases in erosion and sedimentation.

Finally, in a report in the administrative record for the LUP which is titled, "Final report to the Legislature," dated March 6, 1972, the Ventura-Los Angeles Mountain and Coastal Study Commission noted that development within the mountain and coastal region has increased development pressures and that development must be consistent with the long range public values incorporating consideration for the conservation of natural resources. The Commission further concluded that land use and development practices should not contribute to pollution or harmfully affect the environment. Due to these issues, the Commission concluded that policies should be established for

orderly growth and development to assure preservation and conservation of significant areas and protection of the values of the people of the State of California.

The Malibu/Santa Monica Mountains LUP established maximum allowable buildout densities and policies to protect marine and land resources, visual resources, and recreational and access opportunities which would allow for the orderly growth and redevelopment of the area consistent with the Coastal Act and CEQA. Although the Malibu/Santa Monica Mountains Land Use Plan is no longer legally binding in the City of Malibu, the environmental and cultural constraints by which these designations were created are still present. Furthermore, permitting increased buildout densities inconsistent with the LUP would result in adverse cumulative impacts to coastal resources and prevents the orderly development of the area consistent with the Coastal Act. The discussion below outlines the particular adverse cumulative impacts this subdivision will generate.

The LUP designations, which are based on factors such as slope, for this lot are 1 dwelling per acre for the lower half of the property and one dwelling per five acres for the upper half of the property. Since half the lot is designated for one residence per acre, but the other half is designated as one residence per five acres, the average designation for this site is 1 residence per 2.5 acres. This lot, as existing, is slightly over 2 acres (2.3) acres. The proposed one acre lots are not consistent with the designations set forth in the certified LUP.

A 1978 study of cumulative impacts of potential development in the Santa Monica Mountains, prepared for the Santa Monica Mountains Comprehensive Planning Commission and the Coastal Commission, dated November 13, 1978, indicated that land divisions in the lower part of Rameriz Canyon must minimize erosion and sedimentation impacts as water quality problems and geologic hazards are prone in these areas. This report also provided the total number of lots for all of the Rameriz Canyon watershed which totaled 385. The lower canyon area comprised just over 300 of these 385 lots. Half of those lots in the lower canyon area were already developed at the time of the report. The number of lots along Rameriz Canyon Road, Via Acero and Delaplaine, the streets within the immediate vicinity and drainage area are less than 100; nearly half of these lots are already developed. Along these streets, Commission records show that since 1977, 38 residences have been approved for development and five subdivisions have been approved allowing for an additional eight lots in the immediate vicinity. Moreover, as many of these developed lots are over five acres there is a high potential for these lots, as well as many of the undeveloped lots, to pursue subdivisions.

The average lot size for Rameriz Canyon is approximately 3 acres and the median lot size is 2 acres. Lots fronting Rameriz Canyon Road and Via Acero Drive range in size from as small as .46 acres to as large as 11.6 acres. Most of the lots are on the order of 2 to 5 acres in size. If all the lots were to subdivide to one acre lots there would be an increase in the number of lots by over 50%. There is a potential for an additional 83 lots if all the lots were split into one acre lots. However, due to site constraints such as topography it would be difficult to develop some of these additional parcels. It is important to note that on the east side of Rameriz Canyon, where the subject lot is, the lots are long, on average over four acres in size and could be split at least once (See Exhibits 8 and 9). On the west side there

are a few large (over 10 acre) lots, some around 3 acres and many less than two acres in size. Thus, the approval of this subdivision would set a precedent for other lots in the area to subdivide into one acre lots instead of larger two or five acre lots. The end result would be an over development of lower Rameriz Canyon which would place too high a demand on the resources and services of the area, as noted below.

Originally the subject parcel was part of a long 5.72 acre parcel which was previously subdivided into three parcels prior to the effectiveness date of the Coastal Act (See Exhibit 6). The applicant is now requesting to subdivide the 2.3 acre parcel he owns into two lots. This would result in this original 5.72 acre parcel being split into 4 parcels. The neighboring approximate 5.00 acre parcel to the immediate southeast was permitted under coastal development permit 5-82-336 (Bird) to subdivide into three parcels. This neighboring parcel is very similar topographically and in size to the original subject parcel. The Commission found that the subdivision of the neighboring parcel into three lots would be both individually and cumulatively consistent with the Coastal Act. To the immediate northwest, the Commission approved the subdivision of two parcels totaling 8.68 acres into four lots averaging over two acres each [5-88-614 (LaScola)].

Further south along Rameriz Canyon, although there have not been many subdivisions, subdivisions could be pursued as many of the lots exceed two acres in size. If each of these lots was able to exceed the recommended density by one lot, the result would be a significant lot density increase in the Rameriz Canyon area. As explained below, the eventual build out at this higher density would result in significant adverse cumulative impacts relative to hazards, water quality, environmentally sensitive habitat areas, visual resources and coastal access.

In past permit actions, the Commission has relied on the LUP designations for guidance in the approval of projects as consistent with the Chapter Three policies of the Coastal Act and has denied or modified subdivisions which do not meet the lot designations. For example, to the north of the project site, the Commission approved a subdivision [5-88-614 (LaScola)] of two lots, totaling 8.68 acres into four lots ranging in size from 1.57 acres to 3.25 acres. The number of lots was based on the LUP guidelines for density; the maximum number of lots possible was four. In this approval the Commission required a trail dedication for the existing trail, and an open space easement area to protect the wildlife and scenic resources of the site. Likewise, in 5-86-520 (Panunzio) the Commission approved a subdivision of a 4.63 acre lot into two lots, each over two acres. The area was zoned for one dwelling per acre; the proposed density was below the allowable density.

In another instance, the Commission denied a subdivision in Rameriz Canyon based on adverse cumulative impacts associated with the small lot size. In South Coast Regional Coastal Development Permit Application 77-396 (Levy), the Commission found that subdivision of a two acre lot into two one acre lots would generally create the potential for similar subdivisions of small lots into even smaller lots. In this permit, the Commission found that the average lots size of the area was 3.9 acres and that the proposed one acre lots would not meet with the character of the area. The Commission found that:

The proposed division would promote, through implied consent, the collective division of many more parcels in the area greatly increasing the total number of buildable parcels and intensifying the density of development.

The Commission went on to find that the approval of that subdivision would promote the collective division of many more parcels, greatly increasing the density of the area. The result of that subdivision, the Commission found, would prejudice the local government's ability to prepare a local coastal program and create substantial adverse cumulative impacts on coastal resources and access. In this case, the applicant is also proposing to divide a two acre parcel into two one acre parcels which is not in conformance with past Commission permit actions in the area, not in keeping with the character of the area, and not consistent with the previously certified Malibu LUP which was found consistent with the Chapter Three policies of the Coastal Act.

Section 30250(a) of the Coastal Act provides that new development be located within or near existing developed areas able to accommodate it, with adequate public services, and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The following subsections address the specific adverse cumulative coastal resource impacts which will result from the subdivision of this two acre parcel into two one acre non-conforming parcels.

Hazards

Section 30253:

New development shall:

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

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

The draft EIR prepared by the Los Angeles Department of Regional Planning in 1980 for the LUP found that increased growth in the area will result in an increase in fire hazard. The study concludes that about 99% percent of the wildfires occurring in the area are a result of human activity. Fire risk is increased through population growth. Risk is calculated based on population, traffic volumes historical frequency of fires and recreational use of the area. The study identified many coastal inland areas subject to high or extreme fire hazard including those areas between Latigo and Escondido Canyons and lower Zuma Canyon. The subject site is located in Rameriz Canyon between Escondido and Zuma Canyon. With only one ingress/egress for all existing and future residences, some recreational use, and a high frequency of fires in the area, increases in density in the canyon will only increase the risk for fire.

As stated previously, Rameriz Canyon has only one narrow access road leading into and out of the canyon. This road currently does not meet Los Angeles County Fire Department standards which require that a road provide a minimum road width and all weather access (See Exhibit 12). The road in many areas does not meet the 20 foot wide road width standard and there are several "Arizona" style stream crossings which are not considered by the County to be an all weather emergency access. The road ends in a cul-de-sac with no access north out of the canyon.

During the dry summer months there is little to no water in the Arizona crossings. However, during periods of heavy rain, these Arizona crossings attain high water levels and become nearly impossible to cross. At times, they can not be crossed. Such an event hampers access and threatens the ability of emergency response teams to enter or exit the area. In addition to floods, devastating fires are a common occurrence in the Malibu/Santa Monica Mountains as evidenced in the last few calendar years. In the event of a severe fire event evacuation and emergency responses will be hampered by this single ingress/egress point and narrow road access.

The cumulative impact of adding up to 83 additional residences in the area would only intensify the problems associated with a narrow non all-weather access road. The subdivision proposed was not reviewed in the normal procedure by Los Angeles County Departments as no parcel map was first created. Thus, departments such as the Fire Department did not review this project, and as such there has been no discussion or recommendation for measures to mitigate for hazards such as fire or flood. Likewise, there is no approval of the project which would show that the project meets the Fire Department standards. The Fire Department informed Commission staff that if the C of C's were not issued and this project was reviewed by the Fire Department, the Fire Department would have raised concerns over the approval of the project with regards to access to the site in an emergency situation.

Los Angeles County recently required that the developer of a subdivision at the north end of the Canyon, which will have access off of Kanan Dume Road, to provide a twenty foot wide emergency access road leading out of Rameriz Canyon from the north end. This was required due to the need for a secondary emergency access road to Rameriz Canyon. This subdivision was recently approved by the Commission with the secondary access road leading from Rameriz Canyon to the subdivision access road [4-95-115 (Lauber)]. Thus, there is a recognized problem with emergency access in Rameriz Canyon. The cumulative impacts associated with the development of additional lots in the canyon would clearly negatively impact emergency ingress and egress access in Rameriz Canyon.

Therefore, the proposed project and the cumulative build out of additional residences would increase risks to life and property from fire and flood hazards which is not consistent with Sections 30250 and 30253 of the Coastal Act.

Water Quality and Environmentally Sensitive Habitats

Section 30240:

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

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

Section 30231:

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

Increasing the allowable density in this canyon on all potential parcels would result in the ultimate potential buildout of some 83 residences on the more steeply sloping portions of the canyon hillsides. The buildout of this area would create adverse impacts to both Rameriz Canyon creek and the riparian corridor and the kelp beds off the shore at Paradise Cove by increasing sediments and polluted runoff into these coastal waters.

Rameriz Creek is a recognized blue line stream on the U.S.G.S. maps. In addition, the Commission recognized its environmental significance when certifying the ESHA map for the Malibu/Santa Monica Mountains LUP. On that map, the upper reaches of Rameriz Canyon are recognized as an inland ESHA and the lower reaches where the residential area is, is recognized as a disturbed sensitive resources area (DSR). A DSR is a riparian woodland or stream area which would normally be considered an ESHA, however, the area is located within an area of existing development and no longer maintains its pristine quality. A DSR maintains some quality but normally can not support a significant amount of species normally associated with healthy habitats. As with most riparian areas, increases in sedimentation and other pollutants have detrimental effects on the function and value of the habitat as explained below.

The second designated ESHA in this area is the portion of the kelp bed off Paradise Cove. This kelp bed is one of the two major kelp beds in the Malibu area stretching from Point Dume east to Malibu Lagoon. This kelp bed is found off the shores of Paradise Cove. Paradise Cove is the outlet area of Rameriz Creek. The kelp bed contains a rich and diverse biota which is sensitive to changes in the characteristics of water. Disturbance of the kelp bed through increases in sedimentation and other pollutants into the ocean will have a significant adverse effect on this habitat as described below.

The construction of residences in Rameriz Canyon would result in the buildout of the steep upper slopes along Rameriz Canyon which will require increased amounts of grading for the construction of driveways, fire department turn-arounds, and building pads, as well as increased areas cleared of vegetation for fire protection. The cumulative effect of increasing the amount of grading and disturbed areas results in a far greater amount of sediments which typically erode off the site and pollute Rameriz creek and the ocean.

The Santa Monica Mountains Land Capability Study prepared in September 1977 by the Santa Monica Mountains Comprehensive Planning Commission concluded that slope is an essential contributing factor to many other constraints of development such as fire hazard and landslide, for example. As such, as

slopes steepen so does the potential for erosion and mudflows. Slopes between 33% and 50.5% and over 100% are common for mudflows. The upper portion of the site has slopes averaging 30%. On the lower slope, where a residence is already approved, the slope averages 12 %. Thus, the upper slope where a second residence would be proposed if the subdivision is approved, would have an increase chance for mudflows and erosion.

Composition of the soil, as well as steepness affect the erodability of soils. According to the research analysis and appendices of the Malibu Local Coastal Plan, the soils in the coastal Malibu area are generally shallow and clay. Clay soils are relatively impervious and may be eroded if unprotected by vegetation. When saturated, these soils can initiate slides on steep slopes. Disturbance of hillsides can result in the loss of slope stability as well as increased erosion. Erosion then leads to increases in sedimentation in the watershed, and specifically in Rameriz creek and the ocean. This increase of sediments has a cumulative effect. Although small amounts from one site may be insignificant, a greater percentage of these small amounts results in significant amounts of sediments.

The Santa Monica Mountains Comprehensive Plan, prepared in August of 1979 by the Santa Monica Mountains Comprehensive Planning Commission indicates that over 80 percent of the soils in the Santa Monica Mountains have high or very high erosion potential. Very high is the maximum degree of erodability determined by the U.S. Department of Agriculture Soil Conservation Service. This plan further indicates that the removal of vegetation and grading will cause an acceleration of erosion. Vegetation is considered protecting covering for soils, holding the matrix together and preventing soils loss. Accelerated erosion, according to the findings of this plan, reduce the natural resources of the Santa Monica Mountains by filling water courses with sediments. Accelerated erosion also leads to road blocks from sediments and mudslides

According to the Draft EIR prepared by the Los Angeles Department of Regional Planning in 1980 for the LUP, soil in the Santa Monica Mountains is considered highly susceptible to erosion. Erosion, according to the Draft EIR, can lead to further problems such as runoff and siltation. The draft EIR found that the potential for increase soil erosion occurs when vegetative cover is removed for fire protection of residences. The cumulative buildout of parcels with residences also increases the areas cleared for fire protection.

In addition, the increase in impervious surfaces resulting from the development of these additional building sites would result in a greater fraction of rainfall to runoff at higher velocities over soils which are easily eroded. This erosion would result in sedimentation of the Rameriz Canyon Stream and degrade the stream and riparian corridor. Sediments which are carried to the ocean would degrade coastal waters and adversely impact the kelp beds.

The buildout of Rameriz Canyon would increase the intensity of the natural processes noted above. The cumulative effect of the increase in soil erosion and reduction of impervious soils would increase sedimentation and runoff into coastal streams and waters. Increased sediment in water courses will adversely impact riparian streams and water quality in the following ways:

1. Eroded soil contains nitrogen, phosphorus, and other nutrients. When carried into water bodies, these nutrients alter the pH of the water and trigger algal blooms. The algae deplete the oxygen available in the water and reduce water clarity; these actions lead to fish kills, and create odors.
2. Erosion of streambanks and adjacent areas destroys stream side vegetation that provides aquatic and wildlife habitats.
3. Excessive deposition of sediments in streams blankets the bottom fauna, "paves" stream bottoms, and destroys fish spawning and feeding areas.
4. Turbidity from sediment reduces in-stream photosynthesis, which leads to reduced food supply and habitat.
5. Suspended sediment abrades and coats aquatic organisms.
6. Erosion removes the smaller and less dense constituents of topsoil. These constituents, clay and fine silt particles and organic material, hold nutrients that plants require. The remaining subsoil is often hard, rocky, infertile, and droughty. Thus, reestablishment of vegetation is difficult and the eroded soil produces less growth.
7. Erosion in streams also reduces the potential for recreation and increases the potential for hazards arising from flooding of streambanks.

Adverse impacts to Rameriz Creek will also occur through the increased traffic on Rameriz Canyon Road which will result from the cumulative increase in the number of residences in the area. As noted above, Rameriz Canyon Road crosses the creek with Arizona Crossings in at least four locations. Roads collect oil and other automobile fluids from traveling and parked cars. These fluids do not remain on the road but travel to water courses such as Rameriz Creek. The fact the Rameriz Creek crosses the road only increases the availability of these pollutants to enter the creek. In addition, many drainage systems from developments in the area direct the runoff to the street. The runoff flows over the streets picking up additional pollutants and then enters the creek. Rameriz Canyon continues to the ocean south of Pacific Coast Highway. There, the polluted runoff from the stream can enter the ocean. It is a known fact the polluted runoff carries with it suspended soils, bacteria, nutrients and pathogens. These items can be lethal to aquatic species and can lead to illness in humans. Thus, polluted runoff causes adverse impacts to marine and riparian life as well as posing a health hazard. The cumulative impact of 83 additional residences in the area making numerous trips back and forth through the crossings will only increase the amounts of polluted runoff and increase the detrimental effects of such pollution. Thus, there is an adverse cumulative impact on water quality associated with increased traffic traversing the Arizona crossings.

In past permits the Commission has found that vehicles crossing streams in situations, such as an Arizona crossing, does increase the pollutants in the water. For example, in approving 4-96-060 (Serra Canyon Property Owners Association) the Commission concluded that by limiting the number of vehicular trips through the crossing on Cross Creek Road, adverse impacts associated

with the introduction of oil and other pollutants was reduced. In that permit, which was for the reconstruction of an Arizona crossing across Malibu Creek, the Commission found that the introduction of oil and other pollutants from vehicles does degrade the creek water and adversely impacts plant and animal species dependant on the creek.

Sediments deposited into Rameriz Creek from increased traffic through the Arizona Crossings will also have an adverse impact on marine life. These sediments and other pollutants will be carried to the ocean through Rameriz Creek which does run to the ocean. Increases in sediments in coastal waters will negatively affect these resources as well. To begin with, increased sediments negatively affect the clarity of the water, by making the water cloudy or silty. This change affects the ability of light to pass through the water and decrease the depth to which such sunlight can pass. Decreases in the depth to which light can pass affects the growth of the kelp bed. Kelp, as with other plants, need light to grow. In addition, increases in sedimentation and other pollutants in the water also affect the temperature and turbidity of the ocean water. These changes in turn affect the pH and algae level in the water. As with streams, increases in algae and changes in the pH have a detrimental effect on aquatic life. These changes which reduce oxygen in the water, reduce sunlight, change the temperature and pH through the increase in sedimentation can be lethal to organisms, including fish, which thrive on these kelp beds. Therefore, protection of these kelp beds is warranted and necessary. The mitigation of these lethal effects is through the minimization of sedimentation, erosion, and polluted runoff.

The draft EIR prepared for the LUP suggests that mitigation for water pollution be done through the reduction in polluted runoff which means reducing the number of sources as well as reducing the output from existing sources; reductions in erosion and debris flows which calls for a reduction in the removal of vegetation and increases in pervious surfaces; and limitations on development in areas subject to such conditions. The study found that lower densities reduce the problems associated with increased erosion runoff and debris flow.

The Commission finds that the cumulative effects of permitting increased density within this canyon would, as cited above, adversely impact the water quality of Rameriz Creek. Therefore, the proposed project is not consistent with Sections 30250, 30231 and 30240 of the Coastal Act.

Visual and Landform Alteration

Section 30251:

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 collective division of many more parcels and buildout of these parcels within this canyon would result in massive landform alteration of the Canyon slopes. To develop the canyon slopes at a one acre parcel density would allow for the development of slopes which are 30% and greater. At this steepness, significant grading would be required to provide safe access roads and driveways, garages, fire department turn-around areas, and building pads. Grading for single family residences can vary from no grading to nearly 10,000 cubic yards of grading depending on the location. If an average or median figure of 3,000 cubic yards of grading was required for each additional residence, if the total potential 83 lots were built out, that would result in nearly 250,000 cubic yards of grading in Rameriz Canyon. That figure would not include any grading which has already occurred in the canyon.

In addition, this exorbitant amount of grading would result in a manufactured terraced landscape and would significantly alter the natural canyon landform. This type of manufactured terraced landscape will not be visually compatible with the surrounding area. Finally, this amount of grading and the resulting manufactured landscape would detract from the otherwise natural canyon topography of the area as seen from many scenic roads and trails. In this case, the Coastal Slope Trail traverses this Canyon and National Parkland is located at the far north end of the Canyon. The massive landform alteration which would result from the build out of this Canyon at a higher density would adversely impact the viewshed from the trail and National Park Lands. Therefore, the cumulative impacts resulting from the proposed project would not be consistent with the Sections 30250 and 30251 of the Coastal Act.

There are no feasible alternatives which would increase the allowable density and be consistent with the Coastal Act. In addition, the applicant has developed the site consistent with the allowable density under his previous coastal development permit.

The Commission finds that for the reasons cited above the proposed project is not consistent with Sections 30231, 30240, 30250, 30251, and 30253 of the Coastal Act.

E. Violation

The subdivision of Parcel 11 into two lots occurred in 1990, as evidenced by the date of recordation of the two Certificates of Compliance by the applicant. The Commission and the Attorney General's Office discovered this unpermitted subdivision during litigation of a Coastal Act violation case involving parcel 11 and the applicant (California Coastal Commission V. Tuchman, et al, Los Angeles Superior Court Case No. BC051929). Section C of the stipulated judgment indicates that settlement of the Commission's complaint embodied in BC051929 does not involve any settlement of any lot split or attempted lot split. BC051929 pertained to unpermitted grading and vegetation removal for the creation of a building pad. This earlier violation was resolved when the applicant filed and the Commission approved, subject to conditions, Coastal Development Permit 4-94-185 (Tuchman). Section C of the stipulated judgment ensured that the applicant was free to pursue a lot split subject to all appropriate regulatory approvals needed from local or state governmental agencies. Section C also ensured that the Commission was free to investigate whether or not a lot split has occurred and whether or not a coastal development permit was necessary for the lot split if it had in fact occurred.

Commission staff's investigation of the unpermitted lot split included contacting the applicant's representative and the applicant. In 1995, staff informed the applicant's representative of the level of documentation that would be necessary to demonstrate that the two lots had been legally created as evidenced in a letter to Steven Smith from Nancy Cave dated August 9, 1995 (Exhibit 13). As cited in Section B of this report, no evidence was submitted in the application which shows that the lots were legally created prior to the January 1, 1977 effectiveness date of the Coastal Act. Nor has staff investigation disclosed any such evidence. In fact, as noted above, all of the available evidence points to a lot split after the January 1, 1977 effectiveness date of the Coastal Act.

Finally, the Commission notes that 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.

F. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

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 Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

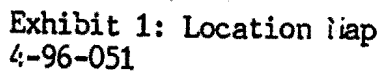
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project is not in conformity with the provisions of Chapter 3. As such, the proposed project will create adverse impacts and is found not to consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development will prejudice the City of Malibu's ability to prepare a Local Coastal Program and implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a), therefore, the project is denied.

G. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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.

Given that the maximum density for this parcel is one residential unit there are no feasible project alternatives which would increase the allowable density and be consistent with the Coastal act or CEQA. There is a feasible alternative, the applicant has the ability to keep the parcel as one parcel and develop the site with one residential unit under coastal development permit 4-94-185 (Tuchman). The Commission, therefore, finds that the proposed project is not the least environmentally damaging feasible alternative and can not be found consistent with CEQA and the applicable policies of the Coastal Act.

2102M



PROJECT 68-234, DATED 9-21-68

A

325

BEDROCK

200

275

ALLUVIUM

T-1

A-1

250

T-4

T-3

200

B-2

ARE PROPOSED

SUBJECT PROPERTY

R-9

EL. 141.6

Ramirez Canyon Road

Exhibit 2: Proposed site plan
4-96-051

RECEIVED
OCT 31 1994
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

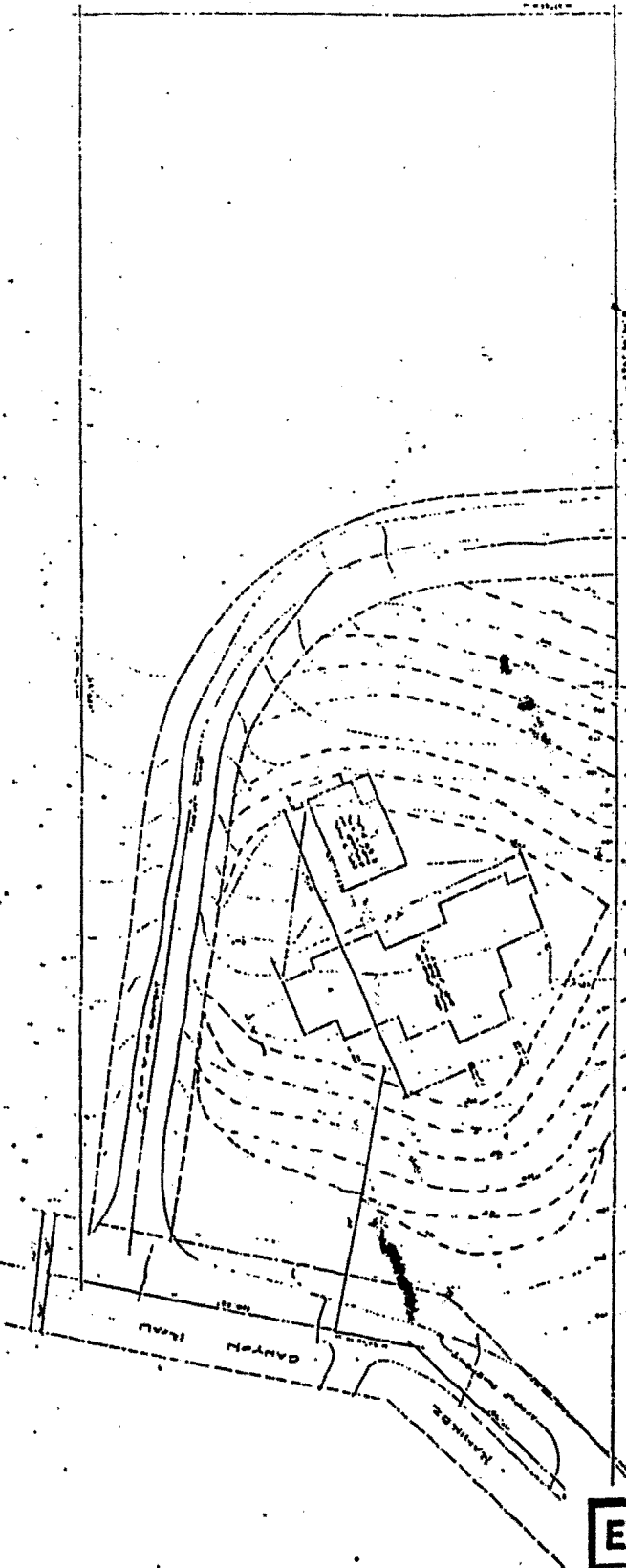
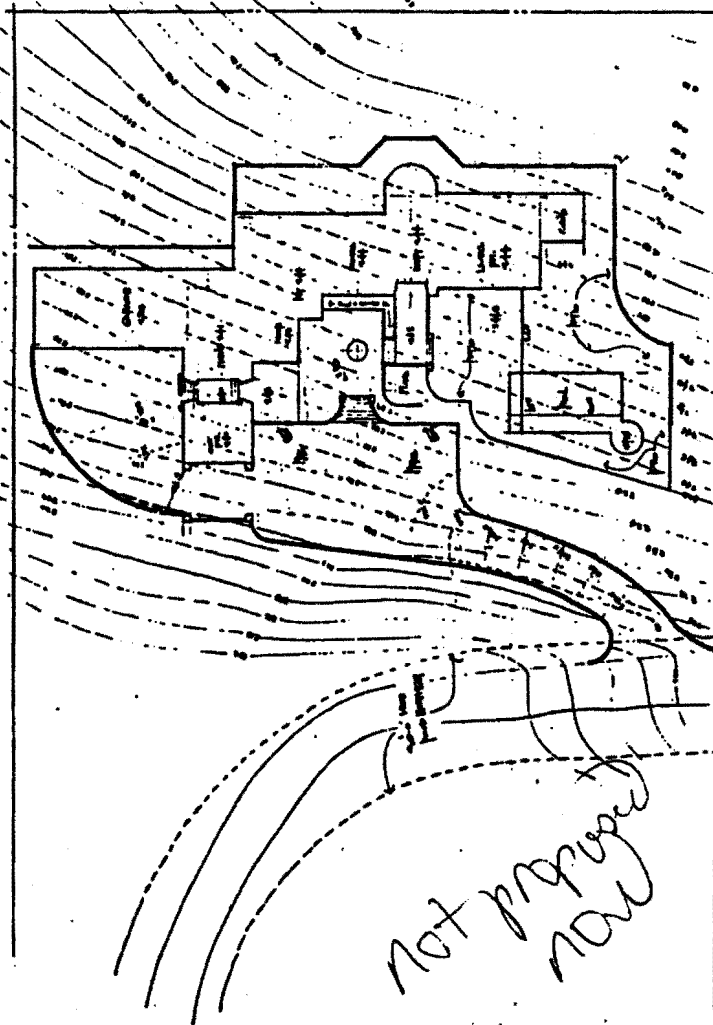


EXHIBIT NO. 2
APPLICATION NO.
4-94-135

Exhibit 3: Approved structure
4-96-051



Site Plan
4-96-051

Arch: Mike Tuchman
Engineer: Chris Hahn
Date: 9-11-2000

Level 1
Level 2

not proposed
now



City of Malibu

23555 Civic Center Way, Malibu, California 90265-4804

(310) 456-CITY Fax (310) 456-3356

DEPARTMENT OF PUBLIC WORKS

March 20, 1996

Susan Friend
California Coastal Commission
89 South California St., Suite 200
Ventura, CA 93001

Dear Ms. Friend:

Susan

RE: 5928 Rameriz Canyon Road - Lot Split
Coastal Violation File: V-4-MAL-96-002

I have reviewed the subject lot split which was approved by LA County in 1989. The split was reviewed by LA County and deemed exempt from the map requirements. The split was legitimized by Certificates of Compliance/Exemption (C.C.89-1634 & 1635). City staff will not require any additional permitting of this subdivision. I understand that no Coastal Development Permit was obtained at the time the split was approved and is presently being required. I assure you that the City would not approve a subdivision without a Coastal Permit whether it was deemed exempt from a map or not. For your information, our City's Subdivision Ordinance does not provide procedures for a map "waiver".

Please call me at (310) 456-2489, ext. 247 if you wish to discuss this further.

Sincerely,

Rick

Rick Morgan,
Deputy City Engineer

c: JPC
Joyce Parker

RECEIVED

MAR 22 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



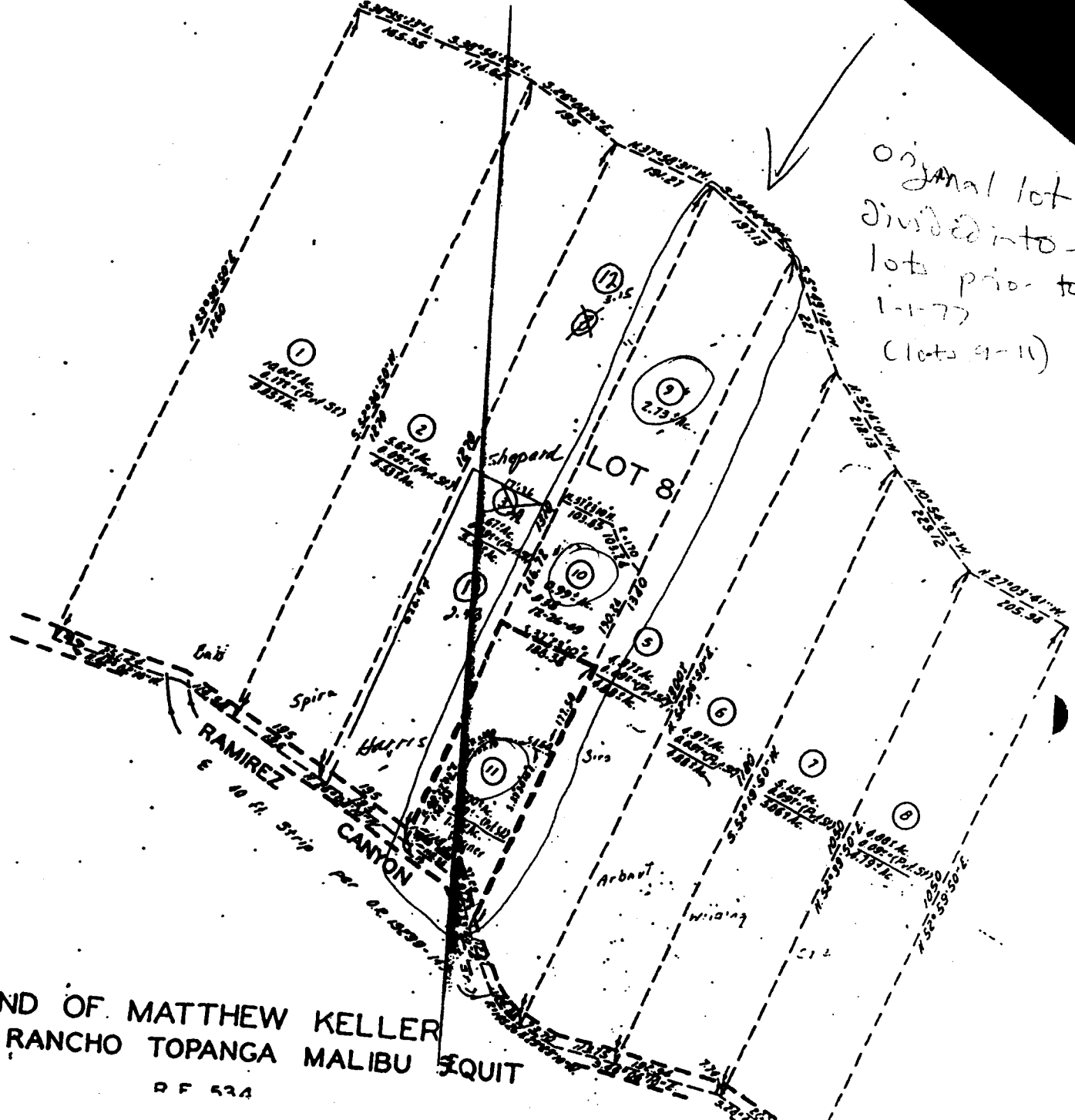
Exhibit 5: Letter from City
4-96-051

4467 7

SCALE 1" = 200'

1972

original lot
divided into 3
lots prior to
1-1-77
(lots 9-11)

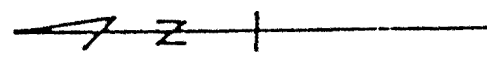


CODE
8635

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU EQUIT

R F 534

Exhibit 6: Assessor's map in 1972
4-96-051



(3)

(6)

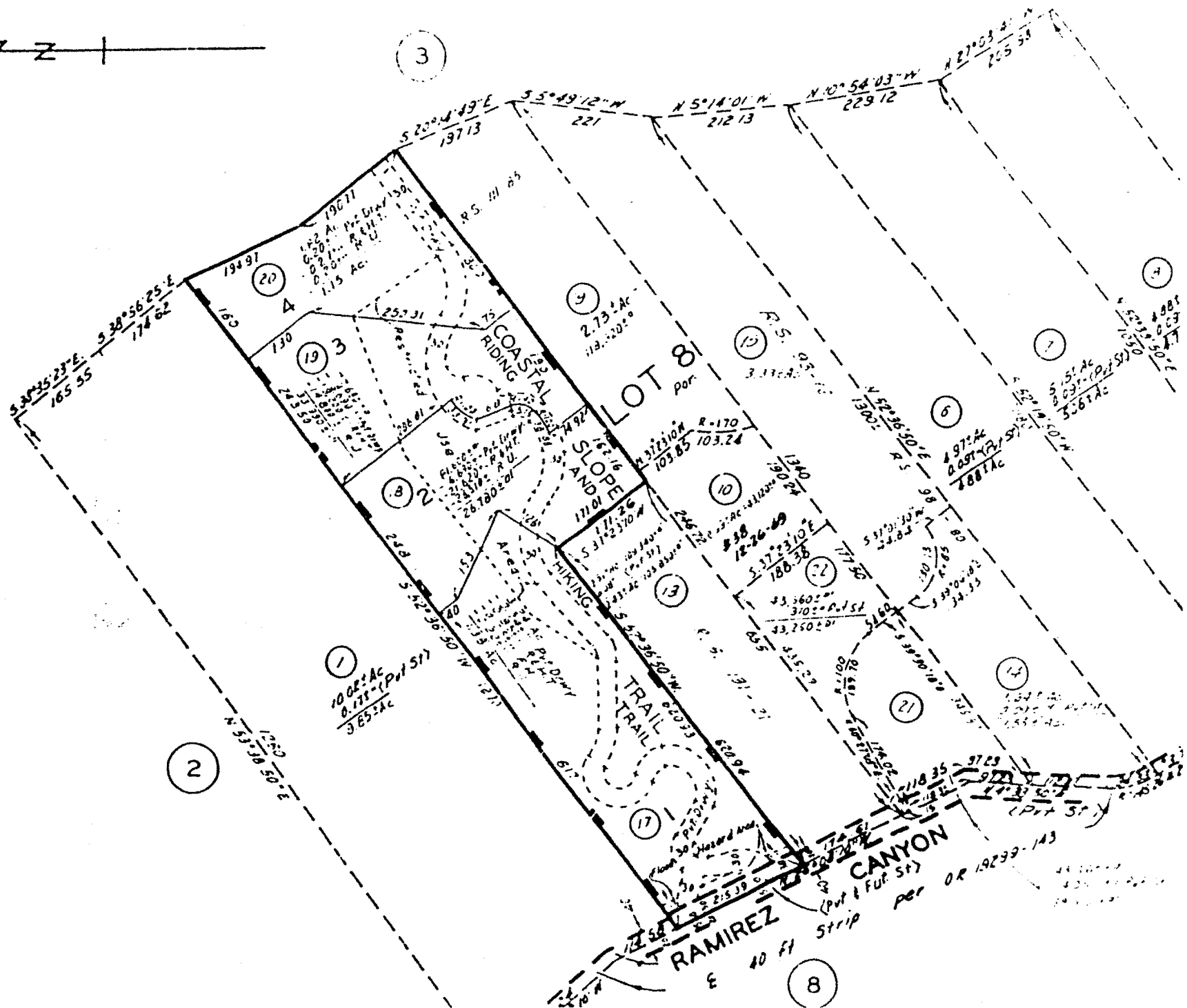
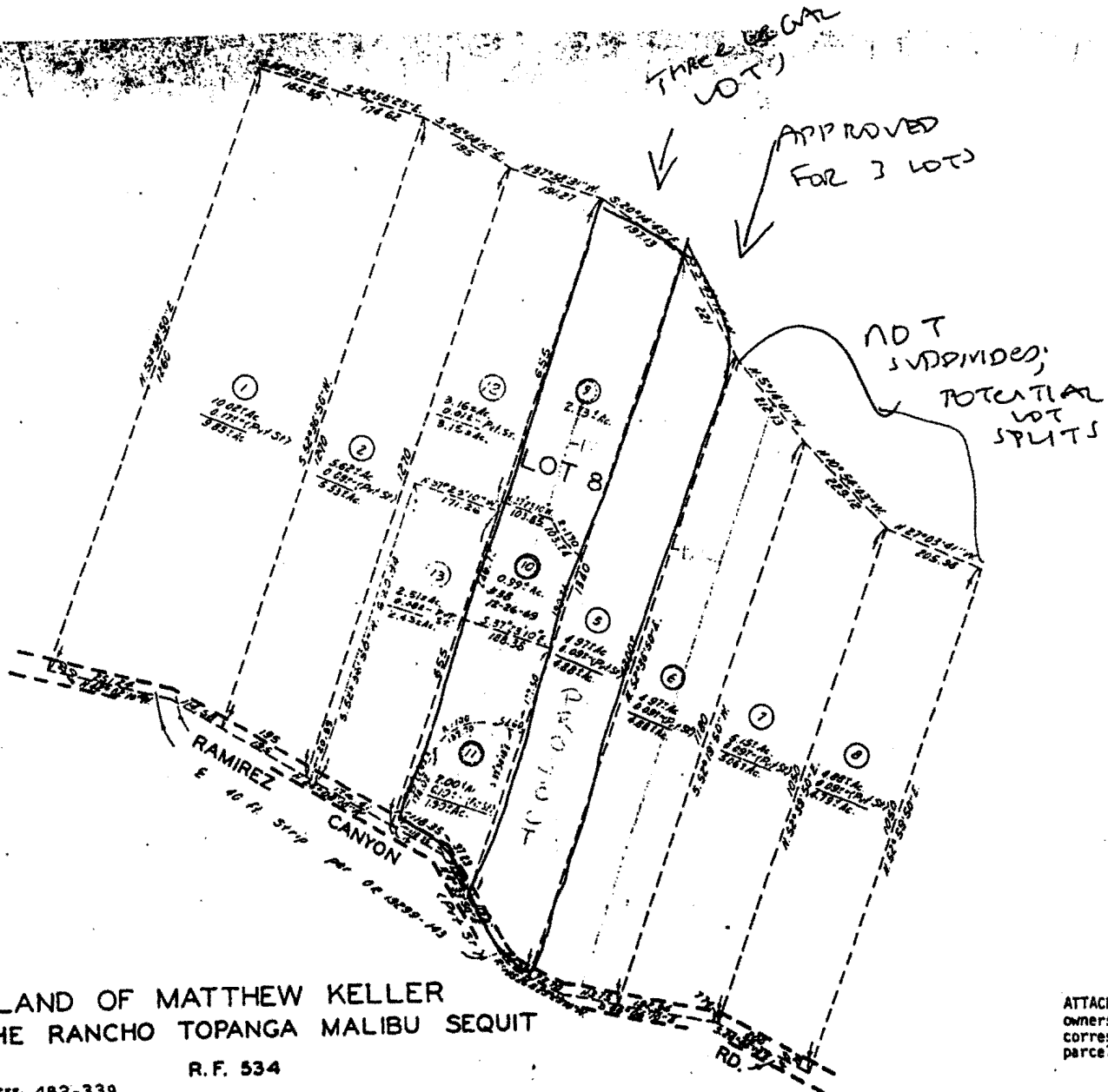


Exhibit 7: Assessor's Map in 1993
4-96-051

487 7
 SCALE = 200'



CODE
 8635

LAND OF MATTHEW KELLER
 IN THE RANCHO TOPANGA MALIBU SEQUIT

R.F. 534

FOR PREV. ASSMT. SEE: 482-339

ATTACHED
 owners at
 correspoi
 parcel n

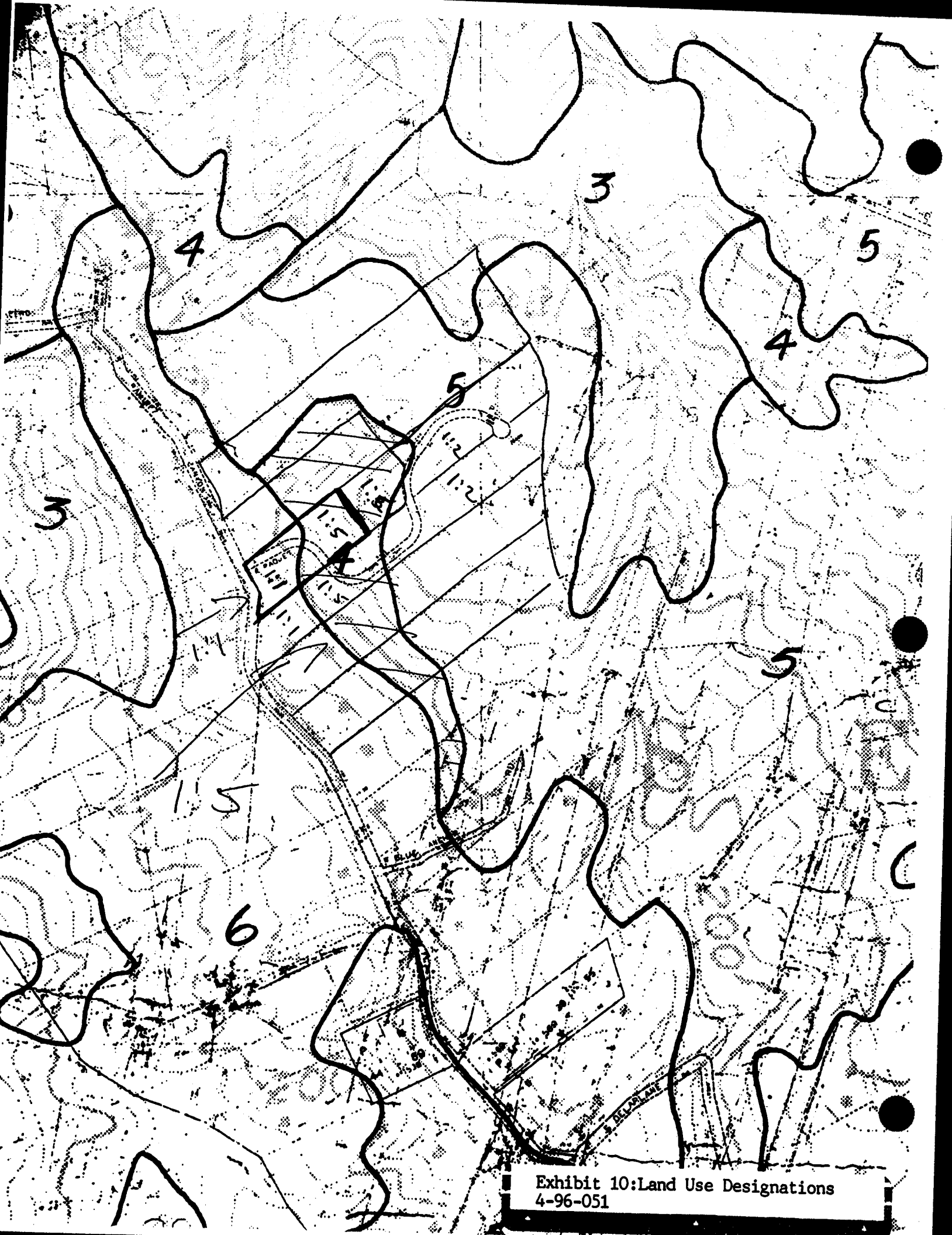


Exhibit 10: Land Use Designations
4-96-051

1993

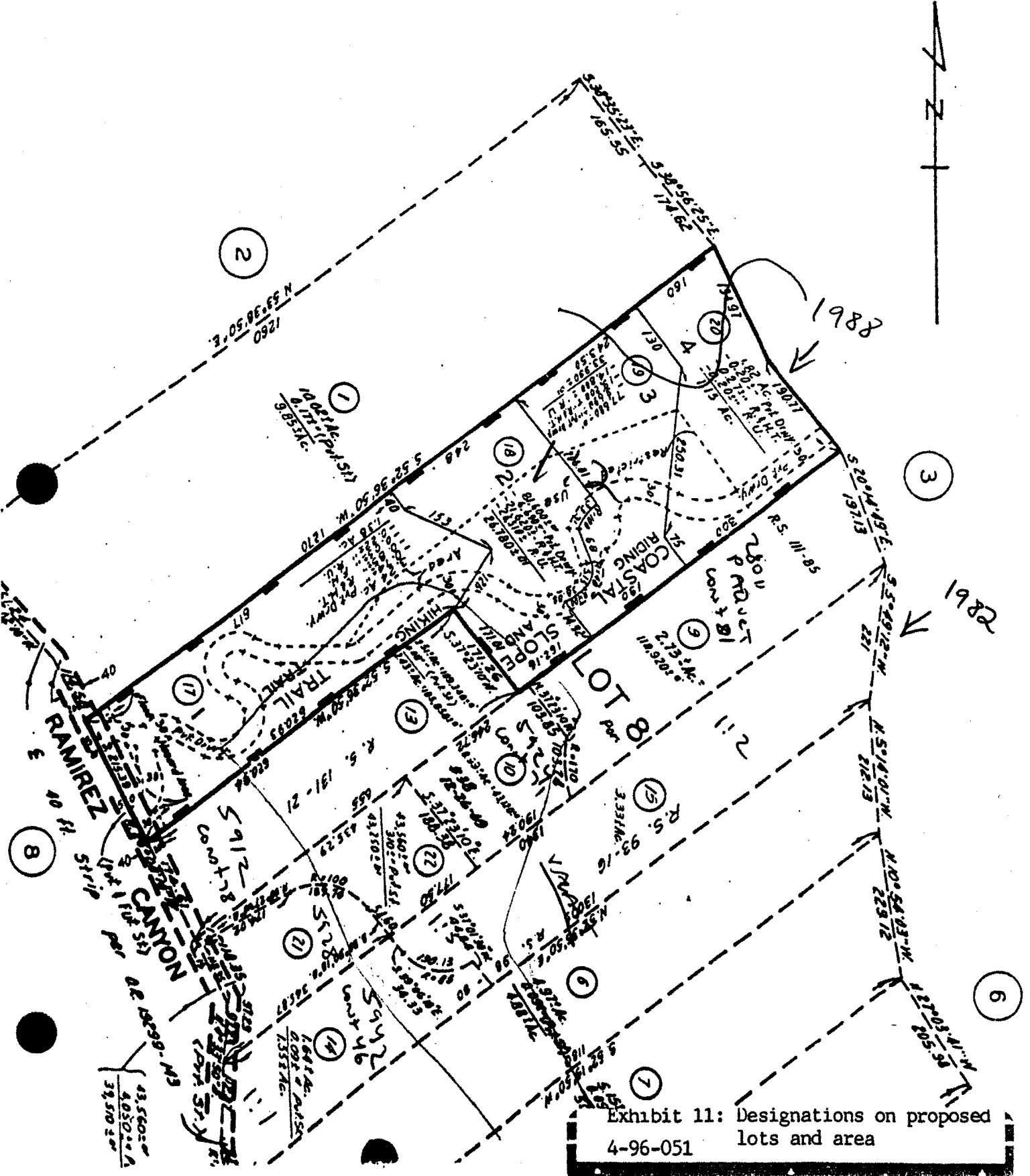


Exhibit 11: Designations on proposed lots and area
4-96-051

COUNTY OF LOS ANGELES FIRE DEPARTMENT
CONDITIONS OF APPROVAL FOR SUBDIVISIONS - UNINCORPORATED

Subdivision No. _____ Map Date _____
C.U.P. No. _____ Vicinity _____

- * [] Access shall comply with Title 21 (County of Los Angeles Subdivision Code) and Section 902 of the Fire Code which requires all weather access. All weather access may require paving.
- [] Fire Department Access shall be extended to within 150 feet distance of any exterior portion of all structures.
- [] Where driveways extend further than 300 feet and are of single access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed and maintained to insure their integrity for Fire Department use. Where topography dictates, turnarounds shall be provided for driveways which extend over 150 feet.
- [] The private driveways shall be indicated on the final map as "Private Driveway and Firelane" with the widths clearly depicted and shall be maintained in accordance with the Fire Code.
- [] Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested, and accepted prior to construction.
- [] This property is located within the area described by the Fire Department as "Very High Fire Hazard Severity Zone" (formerly Fire Zone 4. A "Fuel Modification Plan" shall be submitted and approved prior to final map clearance. (Contact Brush Clearance Office, Fire Station #181, 509 South Park Avenue, Pomona, CA 91766-3038, Phone (909) 622-8342 for details)
- [] Provide Fire Department or City Approved street signs and building access numbers prior to occupancy.
- [] Additional fire protection systems shall be installed in lieu of suitable access and/or fire protection water.
- [] The final concept map which has been submitted to this department for review has fulfilled the conditions of approval recommended by this department for access only.
- [] The Fire Department has no additional requirements for this division of land.
- [] These conditions must be secured by a C.U.P. and/or Covenant and Agreement approved by the County of Los Angeles Fire Department prior to final map clearance.

Comments: _____

REVIEWED BY _____ DATE _____
Inspector Mitch Diehl

Water, Subdivision & Access Unit - Fire Prevention Division - (213) 890-4243

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-8206



SENT VIA CERTIFIED MAIL
Z 778 712 282

August 9, 1995

Steven Smith
400 Lincoln Center Tower
10260 SW Greenburg Road
Portland, OR 97223-5575

Subject: Permit Application 4-94-185 (Tuchman)

Dear Mr. Smith:

I am writing in response to a phone conversation between you and Barbara Carey of our staff on August 1, 1995 concerning the pending permit application of your client, Michael Tuchman. You requested that we identify the information that we need to clarify the question of the legal status of the asserted subdivision of Mr. Tuchman's property. Mr. Tuchman maintains that he owns two parcels that have the assessor parcel numbers 4467-007-021 and 022. However, we have no evidence at present that these two lots were legally created. This letter serves to explain what we need and why.

The effective date of the California Coastal Act is January 1, 1977. Under the Coastal Act, a subdivision of land is considered "development" for which a coastal development permit must be approved. As such, for Mr. Tuchman's two lots to be considered legally created under the Coastal Act, one of two cases must be true: 1) a coastal development permit was approved by the Commission for the subdivision; or 2) the lot split occurred prior to 1977. Regarding the first case, we have no evidence in our files that a coastal development permit was ever approved by the Commission for the subdivision. It is possible that our records are incomplete. If you have evidence that the Commission has issued a permit for the subdivision, please submit it.

In the absence of a coastal development permit for the subdivision, the only other way the property may be considered legally subdivided for our purposes is if there was a lot split approved prior to 1977 (the second scenario). We have three Certificates of Compliance issued for the property in question: 1) CC1164, approved in October 1978; 2) CC89-1634, approved in February 1990; and 3) CC89-1635, approved in February

1990. It is important to note that the CC's are not themselves evidence of a legal lot split vis-à-vis the Coastal Commission, even though they may be accepted as a record of compliance with the Subdivision Map Act. Although CC's are helpful in assembling the lot creation picture of the property, they do not of themselves pinpoint the date or manner in which the lots were created. Nor do these particular CC's set forth or attach specific information concerning the date of the asserted split. With regard to the CC issued in 1978, we have some file notes apparently taken from the County's file on CC1164. These notes indicate the author's view that the lot in question was identified as assessor parcel number 4467-007-011, was approximately 2-acres in size, and may have been created in 1967. It is unclear from our files, however, on what evidence the author's assumptions were based. With regard to the other two CC's we have no file notes to indicate any parcel history. As Ms. Carey informed you in her August 1 phone conversation, the County staff indicated that they do not have the files and believe them to have been forwarded to the City of Malibu after its incorporation. The City of Malibu staff has searched for the two CC files and found them missing. As such, we do not, at this time, have adequate information to establish lot legality. In sum, we have no information of any kind showing the date of the asserted split. For these reasons we do not believe a legal land division has occurred prior to January 1, 1977.

Mr. Tuchman has asserted that the fact that the assessor's parcel map shows his property as two parcels is evidence that they are legally divided. We do not agree with this assertion for two reasons:

- 1) The assessor's parcel map first shows this property as two lots on the 1993 map. The 1992 map shows the property as one parcel (4467-007-011) of approximately 2-acres with a road easement through it. The 1993 map shows two parcels (4467-007-021 and 022) of approximately 1-acre each, divided by the road easement. Therefore, these maps do not constitute evidence of a pre-1977 split.
- 2) As an Attorney General's Opinion held, even though real property may be assigned separate parcel numbers by the County Assessor for purposes of administrative convenience, a property owner, for purposes of the Subdivision Map Act, may not rely upon the actions of the assessor as evidence that the lots are legally subdivided. (See 62 Cal.Op.Atty.Gen. 147 (1979).)

Therefore, additional information is necessary to provide evidence that Mr. Tuchman's property is legally subdivided. In order for us to determine lot legality, as discussed above, the one question that you need to answer, with documentary evidence, is when did the lot split occur?

The complete chain of title, including all grant deeds, for the property should provide the necessary information. As noted above, we do have notes from the County's file on CC1164 that indicate that parcel 4467-007-011 was created in 1967. The requested chain of title should go at least as far back as the predecessor grant to the owner that assertedly split the parcel in 1967. Additionally, we know that parcel 4467-007-011 was owned by George and Suzanne Wagner when they were granted CC1164 in 1978. The chain of title should include the deeds by which the Wagners acquired and later sold the property. Further, Mr. Tuchman submitted a Full Reconveyance with Permit Application 4-95-185. This document does not contain a legal description of the property, but does reference a deed of trust recorded September 3, 1987 as instrument 87-1423131. Is this the deed by which Michael Tuchman and Sally Scott first acquired title? The chain of title should include the deed by which Tuchman first acquired title to the property, and all other deeds in the chain, together with all legal description of the parcels conveyed.

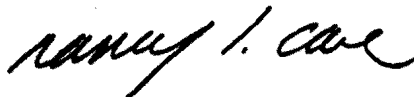
We expect that Mr. Tuchman's title company can be of assistance in providing this information. We would not anticipate that assembling the chain of title would take much time to accomplish. It would be extraordinarily helpful to our analysis if the legal descriptions for the pertinent deeds in the chain of title were also mapped. We will be happy to discuss which descriptions require mapping. We are aware of Mr. Tuchman's time constraints. When we receive the information, we will make every effort to analyze it for evidence of the date of lot creation as quickly as possible. However, amending the previously recorded deed restriction (Instrument # 95 767160, recorded May 11, 1995), showing the full legal description of parcels 1 and 2, as described on the Preliminary Title Report, dated June 30, 1995, will allow Mr. Tuchman to complete condition compliance for CDP 4-94-185, thus enabling him to obtain his permit. If the lot split is subsequently shown to have occurred prior to January 1, 1977, the Deed Restriction can be amended to return to the original property description. If you are in acceptance of this proposal, please contact Jeff Staben in our San Francisco office so that he may prepare the proper documents for recordation.

Your client has contended that language included in section C of a stipulated judgment entered on May 26, 1993, in the matter of *California Coastal Commission v. Tuchman, et al*, Los Angeles County Superior Court No. BCO51929, prevents the Coastal Commission staff from requiring a coastal development permit be obtained for a lot split or a land division at 5928 Ramirez Canyon Road, APN 4467-008-011. Commission staff emphatically disagrees with your client's contention. Section C of the stipulated judgment indicates that settlement of the Commission's complaint embodied in BCO51929 does not involve settlement of any lot split or attempted lot split. BCO51929 pertained to unpermitted grading and vegetation removal for the creation of a building pad. Section C ensures that your client was free to pursue a lot split (subject to all appropriate regulatory approvals needed from local or state governmental

agencies) and that the Commission was free to investigate whether or not a lot split had occurred and whether or not a coastal development permit was necessary for the lot split if it had in fact occurred.

If your client fails to resolve the current dispute regarding proper recordation of deed restrictions included as conditions of approval on Coastal Development Permit Application No. 4-94-185, the Commission can not issue CDP 4-94-185. Unless and until CDP 4-94-185 is issued, Mr. Tuchman has not resolved the initial violation of the Coastal Act concerning the grading and vegetation removal he performed when creating a building pad. Therefore we would ask that you or your client submit the requested information to me or Jeff Staben of our Legal Division no later than August 31, 1995. We understand that your client wants to resolve this issue quickly as he is concerned that his County issued grading permit might expire, so our suggested deadline should not be a problem. If you have any questions, please feel free to contact me.

Very Truly Yours,



NANCY L. CAVE
Supervisor,
State Enforcement Program

cc: Barbara Carey, Ventura Office

BCTUCH.DOC