

CALIFORNIA COASTAL COMMISSION  
South Central Coast Area  
89 S. Calif. Street, Ste 200  
Ventura, CA 93001  
(805) 641-0142

RECORD PACKET COPY

W25b

Filed: 6-3-96  
49th Day: 7-22-96  
180th Day: 11-30-96  
Staff: RR/SPF-VNT  
Staff Report: June 20, 1996  
Hearing Date: July 9-12, 1996  
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-94-195A3

APPLICANT: Barbara and Harold Eide AGENT: Philip Hess

PROJECT LOCATION: 1557 and 1561 N. Lookout Drive, Assessor Parcel Numbers  
4462-21-22, -23, and Yavapai Trail, Agoura; Los Angeles  
County;

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Combine three lots into 2 lots and construct two 2,741 sq. ft. residences; amended to transfer 2,400 sq. ft. of GSA credit (8 lots) to other designated small lot subdivisions in the Santa Monica Mountains.

DESCRIPTION OF AMENDMENT:

1) Modify special condition #1 (Deed Restriction and Scenic Easement) to allow the following development within 90 feet of the southern property line of parcels 4462-21-22 and -23: the construction of a 250 sq. ft., 12.5 ft. high play house (with electrical), patio and a 5 ft. high retaining wall with no more than 50 cu. yds. of grading; non-white fencing; landscaping; a stairway; and three retaining walls with minor grading.

2) Construction of a 250 sq. ft., 12.5 foot high, playhouse with 18 cubic yards of cut, a patio, a small retaining wall and a stairway; a pool, with a maximum of 117 cubic yards of excavation, on lot 4462-021-023; fencing up to the 90 foot contour line and landscaping on lots 4462-021-022, and -023; a portable spa and covered patio on parcel 4460-021-046; addition of a third retaining wall, and modification to the existing two retaining walls resulting in a total of 271 cubic yards of grading (136 cu. yds. cut, 152 cu. yds. fill) and a maximum height of eight feet on lots 4462-021-022, -023 -046 and Yavapai Trail. Also included are improvements to Yavapai Trail which include: the reconstruction of a driveway, landscaping; partial retention and partial removal of a drainage swale; and the construction of a fence.

3) After-the-fact approval of the changes to the size of the two single family residences from 2,741 sq. ft. (each) to 2,081 sq. ft. and 3,805 sq. ft. respectively, with the retirement of either one contiguous or two non-contiguous lots for GSA credit.

LOCAL APPROVALS RECEIVED: "Approval in Concept" from Los Angeles County Department of Public Works, Permit Division for the improvements and restoration work on Yavapai Trail.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan; Coastal Development Permit Appeal 158-78 (Eide); Coastal Development Permits P-78-2771 (Eide), CP-5-81 (California Coastal Conservancy), 4-92-124 (Eide), R-4-92-124 (Eide), 4-94-195A (Eide), R-4-94-195A (Eide), and 4-94-195A2 (Eide).

---

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. Admin. Code 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 with Conditions

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 standard and special conditions attached to the previous approved permit and subsequent amendments remain in effect. Special condition 1 of the appeal A-158-78 and all special conditions (1-4) of coastal development permit amendment 4-94-195A are modified in this amendment.

## 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 4462-21-01, -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 4462-21-22 and -23, the applicant shall be allowed to place the following backyard amenities: non-white fencing, landscaping, the existing retaining walls, the existing stairway, a playhouse without plumbing or a septic system but with electrical, and a swimming pool. Within the open space easement area, including the ninety foot segment, the applicant shall not be allowed to: 1) do any grading other than that which is necessary for the approved pool and playhouse and 2) construct any habitable structure of any height, or any non habitable structure exceeding twelve feet in height. No development shall occur farther than 90 ft. north of the southern property line on lots identified as Assessor Parcel Numbers 4462-21-22 and -23. Any future development or improvements on APN#s 4462-21-22 and -23 shall require a permit amendment or a new coastal development permit from the Coastal Commission or its successor agency.

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 shall 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 must 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, amendment 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. If the applicant demonstrates to the satisfaction of the Executive Director that two lots are not available within the Malibu Lakes Small Lot Subdivision, the applicant may retire the development rights in either the Malibu Lakes, El Nido, Las Flores Heights or Malibu Mar Vista 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 future increase in gross structural area of either home from the current sizes, shall pursuant to Section 13250 (b)(6) of the Regulations, not be allowed except in accordance with a further amendment of permit amendment 4-94-195A3 or a separate coastal development permit.

### 3. Future Development

Prior to the issuance of the coastal development permit amendment , the applicant shall execute and record two separate deed restrictions, one for each residential lot (APN 4462-021-045 and -046), in a form and content acceptable to the Executive Director, imposing the below requirement of paragraph two of this special condition against the applicants' properties. 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 either of the two houses located at 1557 and 1561 Lookout Dr. (APN/s 4462-21-45 and -46 respectively) and any future improvements or developments, except for the thinning of vegetation for fire protection 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. Removal of Excavated Material

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, the location of the disposal site of all cut or excavated material. No material may be used or stockpiled on site. If the export site is located within the Coastal Zone, the site must have a valid coastal development permit.

#### 5. Condition Compliance

The requirements specified in the foregoing conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit amendment must be met within 45 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.

#### 6. Timing of Completion of Work

The applicant shall complete the removal of development from the eastern half of Yavapai Trail within 90 days of the issuance of the permit. This restoration work, as shown on Exhibit 9, includes the realignment of the driveway for 1561 Lookout Drive, and the removal of the railroad ties and portions of the culvert and stone pathway within the eastern half of Yavapai trail.

### III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

#### A. Project Description

This amendment application contains three components of development. The first is to amend a deed restriction and scenic easement required to be recorded in the original coastal development permit A-158-78; the second is to develop a portion of the deed restricted area and Yavapai Trail; the third component is to authorize changes in the sizes of the two previously built residences and retire either one contiguous lot or two non-contiguous lots for GSA credit as mitigation for the combined over construction of the residences. The details of these developments are described below.

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. The deed restriction and scenic easement previously required to be recorded restricted, in part, the applicant from all development as defined in Public Resources Code Section 30106 and including the restriction of landscaping, vegetation removal (except that necessary for fire protection) and the placement of structures. The proposed changes to this restriction would allow the applicant to develop backyard amenities, such as non-white fencing, the existing retaining walls, landscaping, the existing stairway, a playhouse without plumbing or a septic system but with electrical, and a swimming pool.

The second portion of the project involves construction on APN lots 4462-022, -023 and -046, and Yavapai Trail. As depicted in Exhibits 7 and 8, the applicant is proposing the following improvements: non-white fencing; landscaping; a 250 sq. ft., 12.5 ft. high playhouse with electricity, a patio,

5 ft. high retaining wall and 18 cubic yards of cut; a pool with 117 cu. yds. (maximum) of excavated material; stairway; three existing 8 ft. high, 110 ft. long retaining walls with 10 ft. long return walls and 253 cubic yards of total grading (118 cubic yards of cut, 135 cu. yds. fill); portable spa; small stairway and a cover for the existing patio of the single family residence; swing set; concrete drainage swale; realignment of the driveway; removal of railroad ties and portions of the existing concrete drainage swale and pathway.

Finally, the amendment includes the after-the-fact request to allow for a smaller residence at 1557 Lookout Drive (APN 4462-021-045) and a larger residence at 1561 Lookout Drive (APN 4462-021-046); the original residences were approved under A-158-78. The house sizes proposed would change from 2741 to 2081 sq. ft. and 2741 to 3805 sq. ft. The applicant also proposes to retire either one contiguous lot or two non-contiguous lots for GSA credit.

Topographically, the subject 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 two residential lots are gently sloping and are each developed with a single family residence, septic system and private driveway. 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 small lot subdivision and only 198 of the lots lie within the coastal zone. The subdivision is adjacent to Malibu Lake and Malibu Creek State Park.

Yavapai Trail is a Los Angeles County owned unimproved paper road. The County has no plans to improve this road to service the area. Moreover, the road is not an equestrian or pedestrian trail. The applicant and several neighbors are currently in negotiations with the County of Los Angeles Department of Public Works Road Division, regarding the vacation of Yavapai Trail. If this paper road is vacated, the road will be split on the center line with each half to be added to the adjacent legal parcel (See Exhibit 9).

Until the road is vacated, the County maintains ownership and requires encroachment permits for any development. The County will not grant an encroachment permit to the applicant for developments on Yavapai Trail including the western half of the road east of lot 46 until the developments on the eastern half of the road, with the exception of the landscaping, are removed (See Exhibit 9). The County is requiring this action because if the road is vacated, the applicant will not have ownership over the eastern half of Yavapai Trail east of lot 46. Yavapai Trail makes a 90 degree turn at the top of lot 46 and as such is also between lots 22, 23, and 46. On this portion of Yavapai Trail the applicant will retain full ownership when the road is vacated.

Access to lots 22 and 23 for the proposed improvements is through tract lots 43 through 47 and 51 and 52 (See Exhibit 4). There is an existing road which traverses across tract lots 43 to 49; however there was no road leading from Lookout Drive to lot 43. The applicant illegally graded a road through tract lots 51 and 52 to access the upper road and then the site. Enforcement staff has notified the applicant of the need to obtain a coastal development permit to retain or restore the road. The applicant has stated that they will restore the road and a separate coastal development permit will be obtained for that activity. Thus, neither the minor grading of the road or the restoration is a part of this application.

Finally, it should be noted that this is an after-the-fact permit amendment application as the majority of the development has already occurred on site. The residences have been constructed at the proposed sizes; all the retaining walls except for thirty feet of one wall have been built as proposed. A total of 236 cubic yards of grading has already occurred for the construction of these walls, minor grading is still required for the backfill of the wall noted above. All improvements on Yavapai trail, with the exception of the fence have been completed.

#### B. Project Background

These lots have been the subject of Commission action on several occasions. Below is a brief summary of the past permit action.

##### P-78-2771

This permit involved the combination of three lots into two lots with the construction of two single family residences. This permit was approved by the South Coast Regional Commission without any conditions. The permit was appealed to the State Commission.

##### A-158-78

On appeal to the State Commission, the proposed project (P-78-2771) 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. The Commission approved the transferring of two development credits (TDCs) 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 on the seventeen vacant lots 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 4462-21-46). However, the remaining 8 lots were not deed restricted and authorization to commence construction on the second lot (4462-021-045) was never granted. In August of 1980, the Commission approved a one year extension of time.

##### 4-92-124

In 1992, coastal development permit 4-92-124 for the construction of two 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) on parcels 4462-021-022 and 23 was approved by the Commission. At the time of the submittal of the application, the work on the retaining walls had already begun. This permit was issued.

After this permit was issued, staff discovered that eight lots were supposed to have been deed restricted as open space pursuant to special condition #1 of permit A-158-78 prior to the issuance of authorization to commence construction of the second residence. Two of the eight lots, which the Commission required the applicant to deed restrict as open space, were the location of the approved retaining walls under CDP 4-94-124.

4-94-195A

On January 11, 1995 the Commission approved the amendment 4-94-195A to the original permit (A-158-78) which amended the deed restriction and scenic easement of the permit 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, in lieu of one TDC credit. The deed restriction was amended 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 to record a future improvements deed restriction on the subject sites.

In processing this amendment (4-94-195A), 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. The residence at 1557 Lookout Drive was 660 sq. ft. smaller than approved; the residence at 1561 Lookout Drive was 1064 sq. ft. larger than approved. 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). These figures were later corrected to reflect the actual size of the residences at 2081 sq. ft. and 3805 sq. ft. respectively. 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.

4-92-124A

This amendment was submitted to allow for the after-the-fact modification of the retaining walls and grading approved under 4-92-124. In 4-92-124, the Commission allowed for two walls varying in height from three to six feet with a maximum of 166 cubic yards of grading (See Exhibit 6). No flat pads were to be created as a result of these walls, pursuant to the findings of 4-92-124. Instead the applicant built three walls with flat areas built behind each wall. The walls that were built vary in height from three to eight feet above grade with an additional two feet below grade. The grading for the project was previously calculated wrong: a total of 236 cubic yards of grading, with balanced cut and fill occurred for the construction of the existing three walls. For the remaining wall to be constructed at the western end of lot 22, 17 cubic yards of additional fill is required.

On January 10, 1995, the applicant submitted the amendment request to permit 4-92-124 to allow for the revision of the retaining walls noted above. This application remained incomplete for months and could not be considered for hearing until such time that the open space deed restriction was modified to allow for the development. As explained below, in November of 1995, the Commission denied the proposed deed restriction amendment and the applicant subsequently withdrew amendment application 4-92-124A.



4-94-195A2

On November 14, 1995, the Commission denied the amendment proposal which involved changing the size of both single family residences and modifying special condition #1, the open space/scenic easement deed restriction. This second amendment application was denied by the Commission in November of 1995 based on the project's inconsistencies with Section 30250(a) of the Coastal Act.

R4-94-195A and R4-92-124

On November 14, 1995, a request for revocation of coastal development permit 4-92-124 and coastal development permit amendment 4-94-195A were denied by the Commission. Both denials were based on the Commission's findings that the requests for revocation did not meet the requirements of 14 CCR 13105(a) & (b).

4-94-195A3

The current amendment application before the Commission now is proposed to resolve the issues noted above concerning the construction of the residences and the retaining walls. This amendment application proposes revised language to the deed restriction and proposes the previously described developments to be allowed in the deed restricted area. Finally, this amendment application contains a proposal for both after-the-fact work on Yavapai Trail and the removal of unpermitted development on Yavapai Trail. Thus, this amendment application combines the proposals previously set forth in 4-95-195A2 and 4-92-124A and includes all unpermitted development on parcels 4462-021-022, -023, -045 and -046, and Yavapai Trail.

C. 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 SFR'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 (See Exhibit 5). (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 SFRs 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 SFRs 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 SFRs 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 SFRs 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 SFRs. 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. However, the applicant does have the option to sell all eight GSA credits and retire two non-contiguous lots in the small lot subdivisions noted in special condition 2 for GSA credit. 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 7). As proposed by the applicant, the construction of a 250 sq. ft., 12'6" high playhouse (to include electrical but not plumbing or a septic system) with a 15 ft. wide patio area, 5 ft. high retaining wall and 18 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 an imaginary line drawn ninety feet north of the southern boundary line. This is a modification to the original plan in which the applicant propose to fence the entire lot. 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). At a lower elevation, the fence would be blocked by the residences in the area. Therefore, the applicant agreed and the condition has not been modified further to restrict fencing to ninety feet north of the southern property line. As modified in Special Condition #1 and as described in the project description of this amendment, 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.

Finally, the Commission notes that the issuance of this amendment will legalize several unpermitted developments on site. In order to ensure that the permit is issued and the site brought into conformance with the policies of the Coastal Act, the Commission finds it necessary to require the conditions set forth in this permit amendment are met within 45 days of the Commission's approval of the permit amendment application, as noted in special condition 5.

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.

D. Landform Alteration and Visual Impacts

The developments proposed on site involve minor landform alteration through the construction of retaining walls, the construction of a playhouse, and improvements to two vacant lots for backyard amenities. The specific developments are described in detail in the preceding section. These developments are proposed on small lots within the Malibu Lake Small Lot Subdivision. Excessive development of these steep lots, including excessive grading, can create adverse environmental impacts. Moreover, as this subdivision is adjacent to Malibu Creek State Park, excessive landform alteration or building can create adverse visual impacts. Therefore, the proposed development must be reviewed against the Chapter Three Policies of the Coastal Act regarding visual impacts and landform alteration.

Section 30251 of the Coastal Act states:

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.

Section 30251 of the Coastal Act stresses that the scenic and visual qualities are a resource of public importance. Likewise, in approving the underlying permit for the development of the residences, the Commission required the applicant to deed restrict 17 lots, of which lots 21-23 are a part, for their scenic value, among other things.

The proposed development includes the construction of a 250 square foot, 12.5 foot high playhouse and fencing on the open space APN lots 22 and 23. In the deed restriction, the playhouse is limited in size to 250 square feet and 12.5 feet high, and is restricted to be placed below an imaginary line drawn ninety feet north of the southern property line (See Exhibit 7). Likewise fencing of the site is restricted to a line drawn parallel to and ninety feet above the southern property line.

In the original amendment, 4-94-195A, the Commission found that development above this ninety foot line would have significant visual impacts from Malibu Creek State Park. Above this ninety foot line, development on the hillside will be visible from nearby Malibu State Creek Park and create adverse visual impacts. At the ninety foot line, development will be in line with the structures on the lots below. Fencing would be partially screened and the playhouse will blend with the existing residences. In order to minimize the

adverse visual impacts associated with the buildout of lots, the Commission found in 4-94-195A that the size of the playhouse would need to be restricted to a size of 250 square feet to mitigate any visual impacts. The Commission further found that any fencing, even at the ninety foot contour line, must be of a non-white color. A white fence is highly visible; fencing of a natural or non-white color will blend with the surrounding area.

Originally, the applicant was proposing fencing at the top of the northern boundary line and the playhouse above the ninety foot line. The applicant agreed to modify the plans to limit development to at or below this ninety foot line. Non-white fencing is proposed at the ninety foot line and the playhouse is set below this line. The Commission finds it necessary to ensure that these developments are built as proposed. As such, the Commission has stated in the deed restriction and scenic easement, as noted in special condition 1, that no development may occur above the line drawn ninety feet north of the southern boundary line, that the playhouse must be restricted in size to 250 feet and 12.5 feet high, that the fencing not be white, and that any changes or additions to the developments require a future coastal development permit. The Commission finds that as conditioned, this portion of the development is consistent with Section 30251 of the Coastal Act.

The other portion of the proposed development includes the construction of retaining walls with grading. In 4-92-124 (Eide), the applicant proposed the construction of two parallel retaining walls with a total linear length of 192 feet, with minor grading to control drainage from the site. The applicant states that a future pool or other backyard amenities were also desired between the retaining walls, but were not proposed at the time. The retaining walls that were actually built include three semi-parallel walls which are approximately 110 ft. long. The walls contain return walls of less than 10 feet in length; the maximum height of the walls is eight feet (ten feet, including below grade).

Section 30251 of the Coastal Act calls for the minimization of the alteration of landforms. Significant landform alteration creates adverse visual impacts and can lead to erosion. Erosion results in increases in sedimentation in nearby streams. Sedimentation can adversely impact the biological productivity of streams and degrade important riparian habitats.

In 4-92-124, the Commission found that the proposed walls did not create a significant landform alteration and that the grading was not significant. Erosion from the site would be controlled and the project created no adverse visual impacts. The as-built project consists of three walls of 110 feet instead of two walls of 140 feet and 52 feet. The heights of the walls have been increased from a maximum of six feet to a maximum of eight feet. The grading was proposed at 166 cubic yards in the original permit; 236 cubic yards of grading was actually done. The changes to the topography are not significant, and do not create any visual cuts into the slope or man-made fill slopes. Moreover, the changes that occurred and the additional wall do not create any significant adverse visual impact and do not adversely affect the scenic quality of the area. The retaining walls do not create significant visible changes to the topography, and landscaping is proposed to mitigate the effects of the minor grading. Thus, this portion of the project will not create any adverse impacts either individually or cumulatively relative to landform alteration.



The remainder of the grading for the site includes 18 cubic yards of cut for the playhouse, 17 cubic yards of cut for the remaining portion of the wall to be completed and 117 cubic yards of excavated material for the swimming pool. The grading for the playhouse and remaining retaining wall balances that portion of grading on site and is considered minimal. However, the pool calls for 117 cubic yards of cut and the material is not needed on site. Any additional fill left on site would be subject to erosion. In order to keep the amount of grading on site to a minimum and thus avoid any adverse impacts resulting from sedimentation of nearby streams, the Commission finds it necessary to require the applicant to remove all excavated material from the site. The applicant shall notify the Executive Director of the location of the disposal site and if this site is within a the coastal zone, a coastal development permit for the disposal site will be necessary.

As stated in the preceding section, the issuance of this permit amendment will legalize the unpermitted developments on site, and thus the condition compliance condition outlined in special condition 5 is necessary for compliance of the project with Section 30251 of the Coastal Act. The Commission finds that as conditioned, the project is consistent with Section 30251 of the Coastal Act.

#### E. Geologic Hazards

Section 30253 of the Coastal Act states in part:

New development shall:

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

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

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. The applicant is proposing development on undeveloped parcels adjacent to single family residences. Any adverse geologic hazards on site could negatively affect off-site as well on on-site development.

In the previous permit 4-92-124, the applicant's consulting geologist confirmed that the proposed retaining walls would reduce the possibility of surficial instability and soil erosion. No landslides were found on the property, and the construction of the project was found feasible from a geologic standpoint. The applicant has received a letter from their consulting engineer with RJR Engineering Group, who surveyed the site recently. This letter (Exhibit 13) states that the proposed developments do not adversely affect the drainage conditions on site. The applicant has



installed drainage pipes in the retaining walls and is proposing the approval of an after-the-fact drainage swale on Yavapai Trail to direct water in a non-erosive manner off the site. The current plans, including the construction of the playhouse, have been reviewed, approved and stamped by the applicant's consulting engineer. Thus, the Commission finds that there are no adverse geologic hazards on site which have not been adequately mitigated.

The project also involves the removal of portions of the drainage swale, driveway and pathway which are located on the eastern half of Yavapai Trail (See Exhibit 9). The drainage swale on the western half of Yavapai Trail, as noted above, is effective in directing drainage off the site in a non-erosive manner. The removal of the encroachments on the eastern half of Yavapai Trail will not adversely affect the drainage of the site. Moreover, the applicant is proposing to retain the landscaping to mitigate erosion. Since this portion of the project calls for the removal of unpermitted development, the Commission finds it necessary to require the applicant to complete the removal of these structures in a timely manner. Condition 6 of the amendment requires the applicant to remove the developments which encroach onto the eastern half of Yavapai Trail within 90 days of the issuance of the permit. To ensure that the permit is issued in a timely manner condition 5 requires that the conditions set forth in the permit are met within 45 days of the Commission's approval of the permit amendment application.

The Commission finds that as conditioned, the project is consistent with Section 30253 of the Coastal Act.

#### F. Violation

Prior to the submittal of this application, the applicant built two homes on two separate parcels. One was built larger than proposed; the other smaller. In addition, the applicant failed to retire eight of the 17 lots required to be retired prior to the construction of both residences. The applicant also constructed two retaining walls larger and longer than approved, backfilled the walls, and constructed a third wall and a stairway. Some landscaping was done on the undeveloped lots. Finally, the applicant constructed improvements in Yavapai Trail without the benefit of a Coastal Development Permit or local approvals.

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.

#### G. 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, as conditioned, 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).

#### H. 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.

0128R

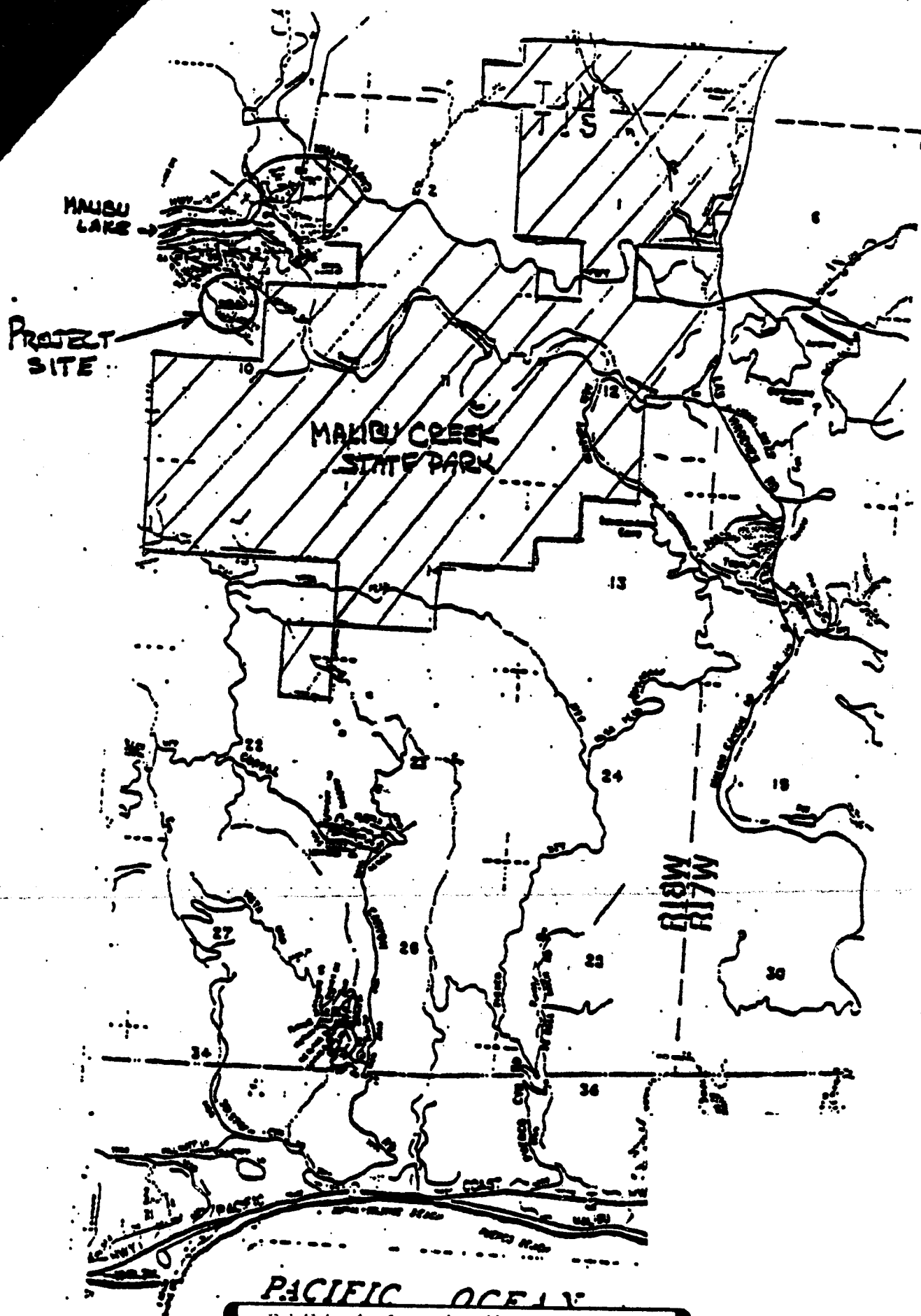


Exhibit 1: Location Map  
4-94-195A3

Commission's Conditions Prohibit  
Development on these Lots.

ORIGINAL  
PARCEL MAP

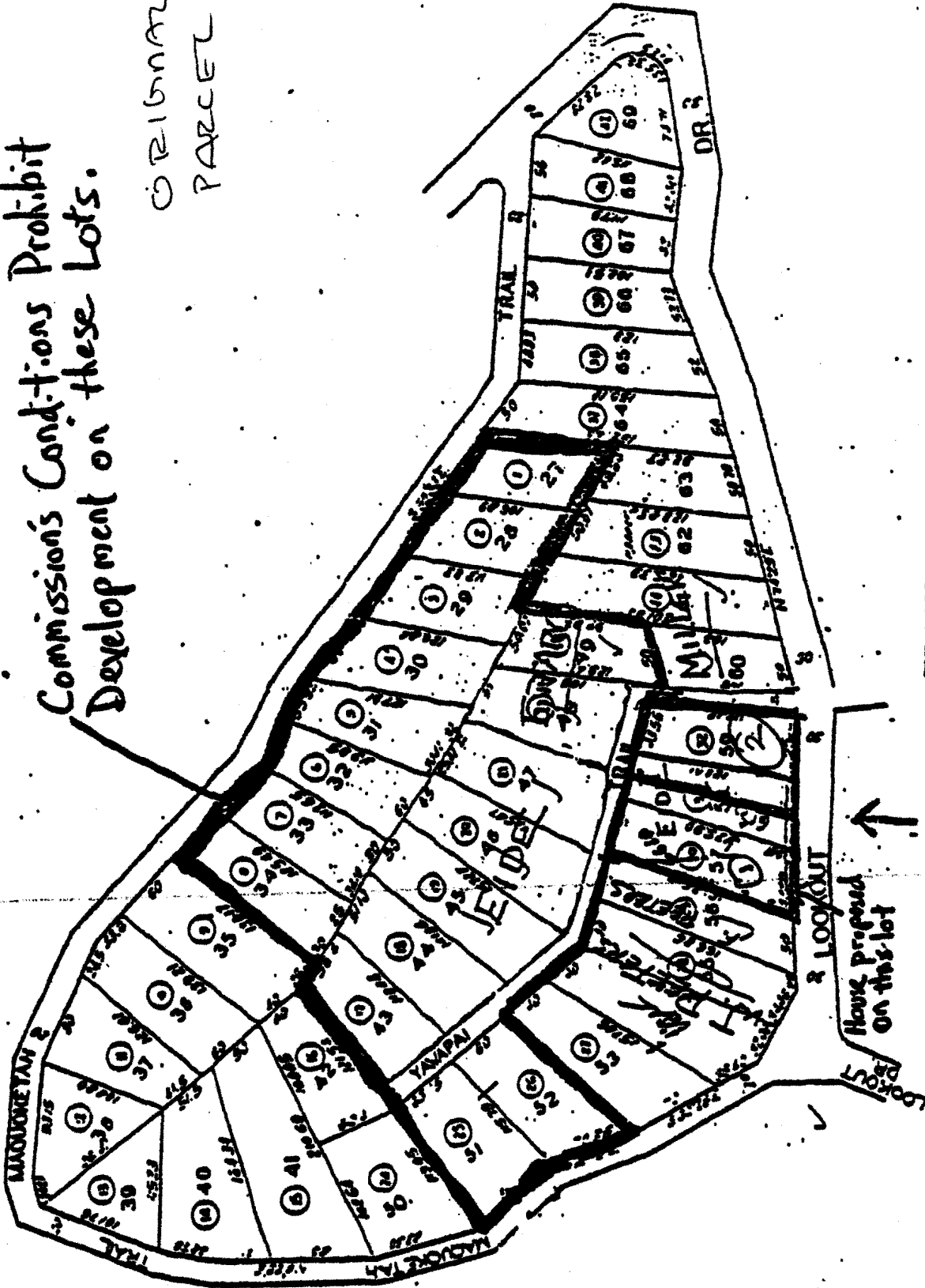


Exhibit 2: Original Parcel Map with  
4-94-195A3 lots for retirement

CORE  
4000

FOR FURTHER ASSESSMENT, SEE: 900-34835

TRACT NO 9757  
M.B. 188-38-39

PROJECT SITE

ASSISTANT'S MAP  
COUNTY OF LOS ANGELES

4462 | 21

SCALE 1" = 80'

OLD PARCEL MAP

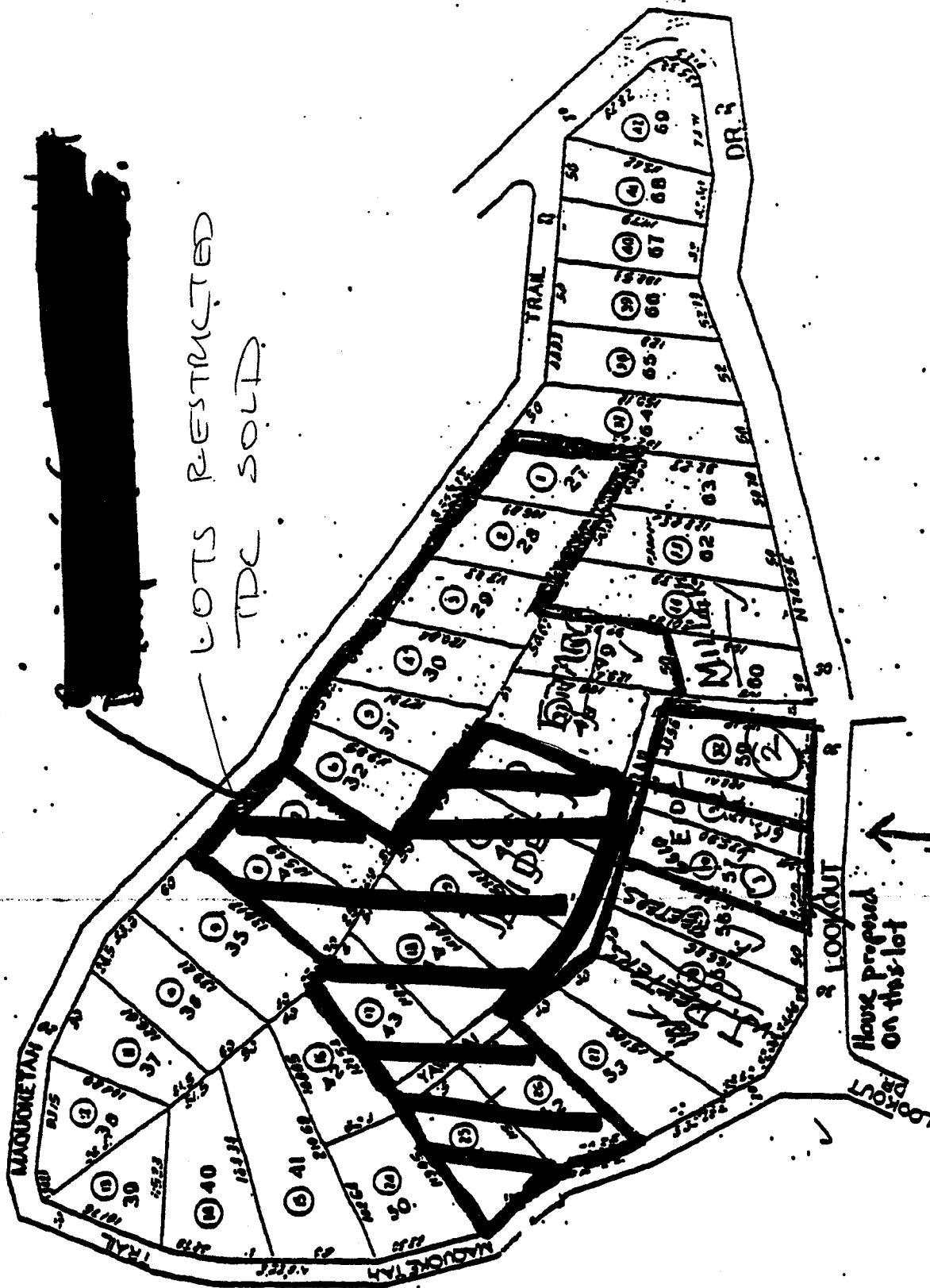


Exhibit 3: Lots retired for TDC  
4-94-195A3

TRACT NO 9757

M.B. 186-38-39

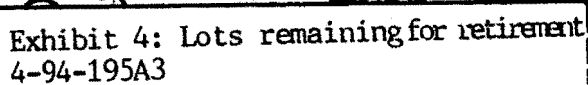
PROJECT SITE

FOR FURT. ASSAULT. SEE: 000-34835

ASSISTANT'S MAP  
COUNTY OF LOS ANGELES

EXHIBIT 3

REMAINING  
LOTS TO BE  
DEED RESTRICTED  
FOR GSA CREDIT



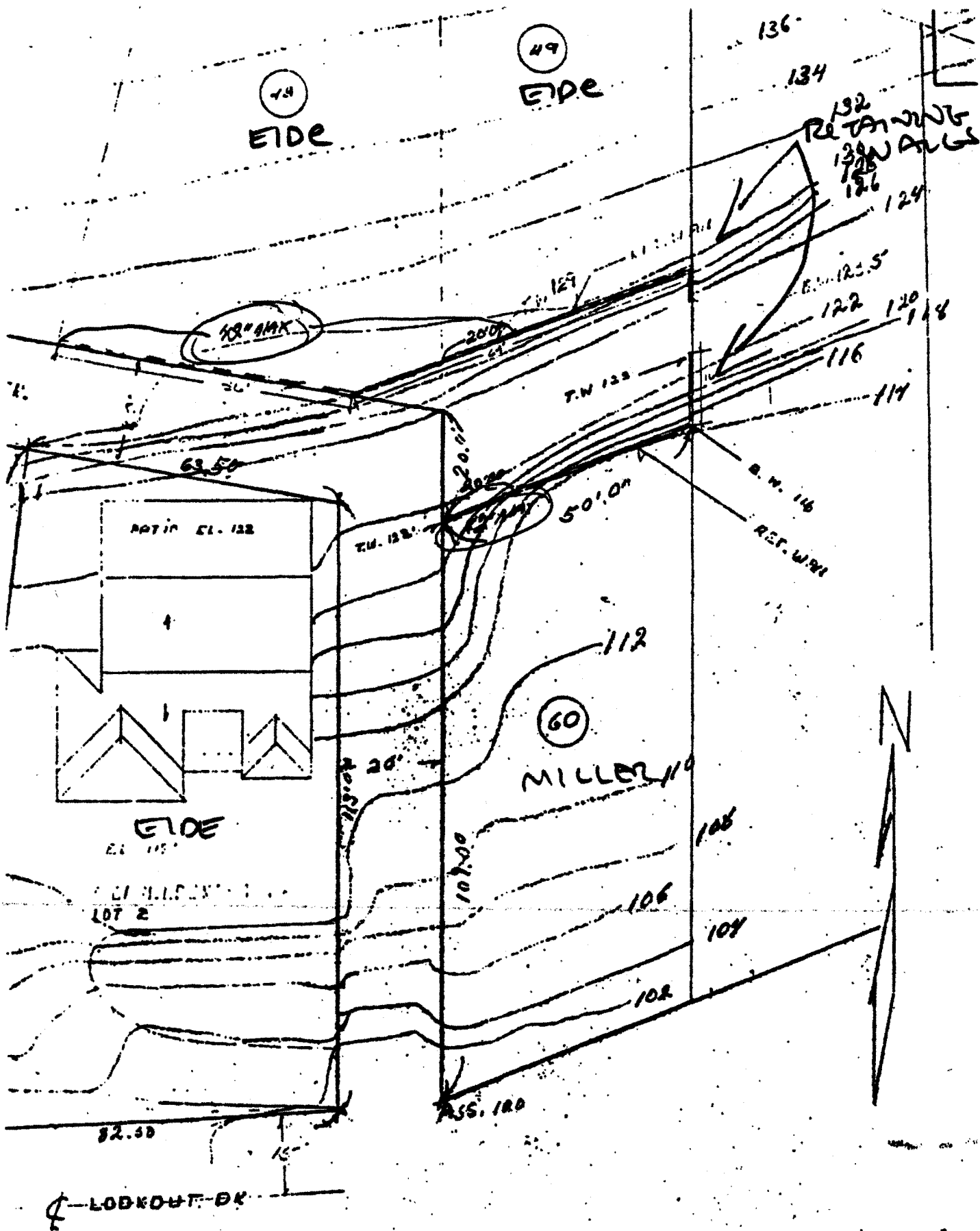
\* = small lot subdivisions

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

MAP #1- SUBDIVISION LOCATION MAP

Exhibit 5: Small lot Subdivisions for  
4-94-195A3 GSA Credit





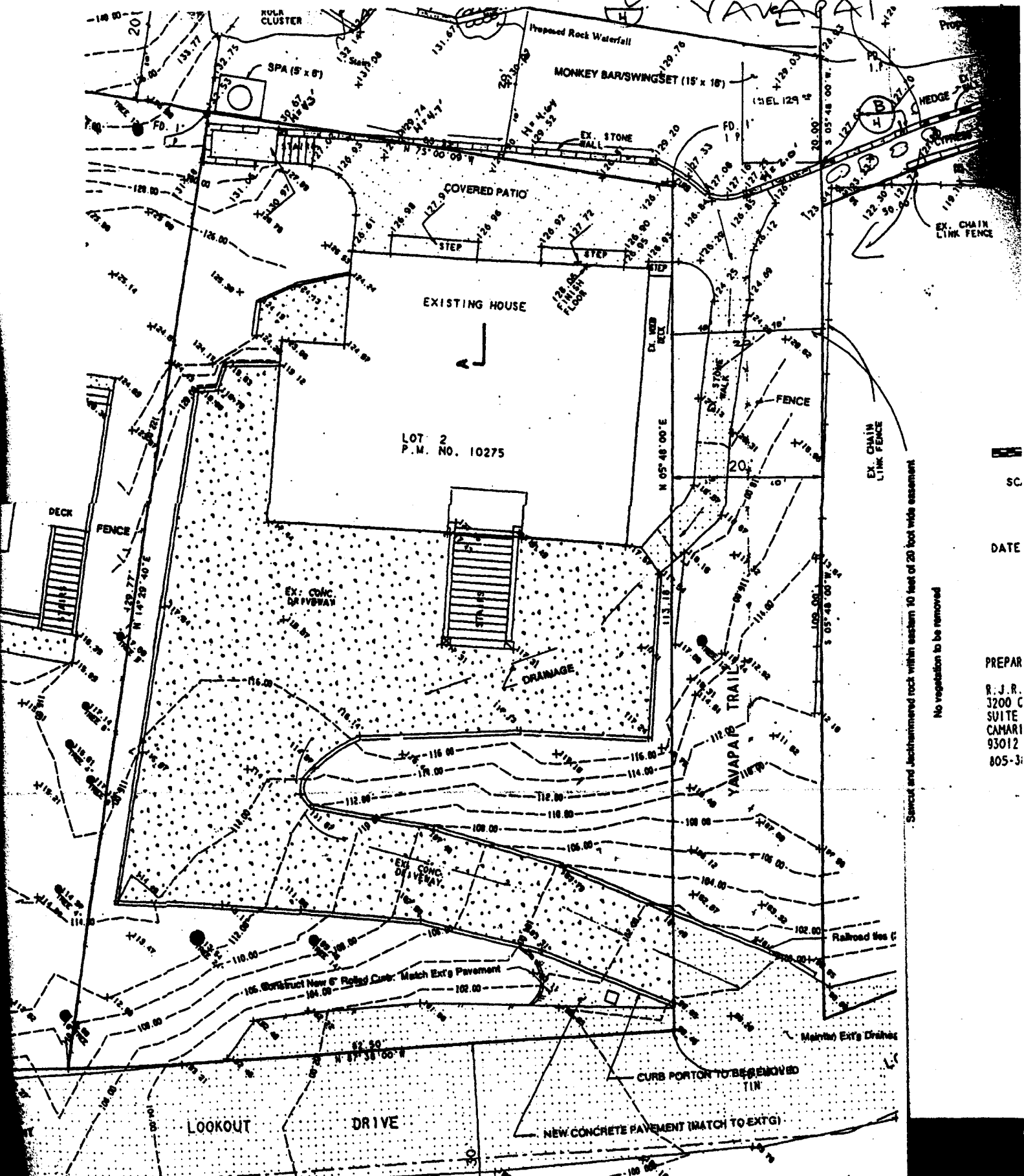
SCALE 1/16" = 1'

Exhibit 6: Plan approved under 4-92-124  
4-95-195A3





# DEVELOPMENT ON YAVAPAI



Sawcut and Jackhammered rock within eastern 10 feet of 20 foot wide easement

No vegetation to be removed

SC  
DATE  
PREPAR  
R. J. R.  
3200 C  
SUITE  
CAMARI  
93012  
805-31

Exhibit 8: Proposed development on Yavapai  
4-95-195A3

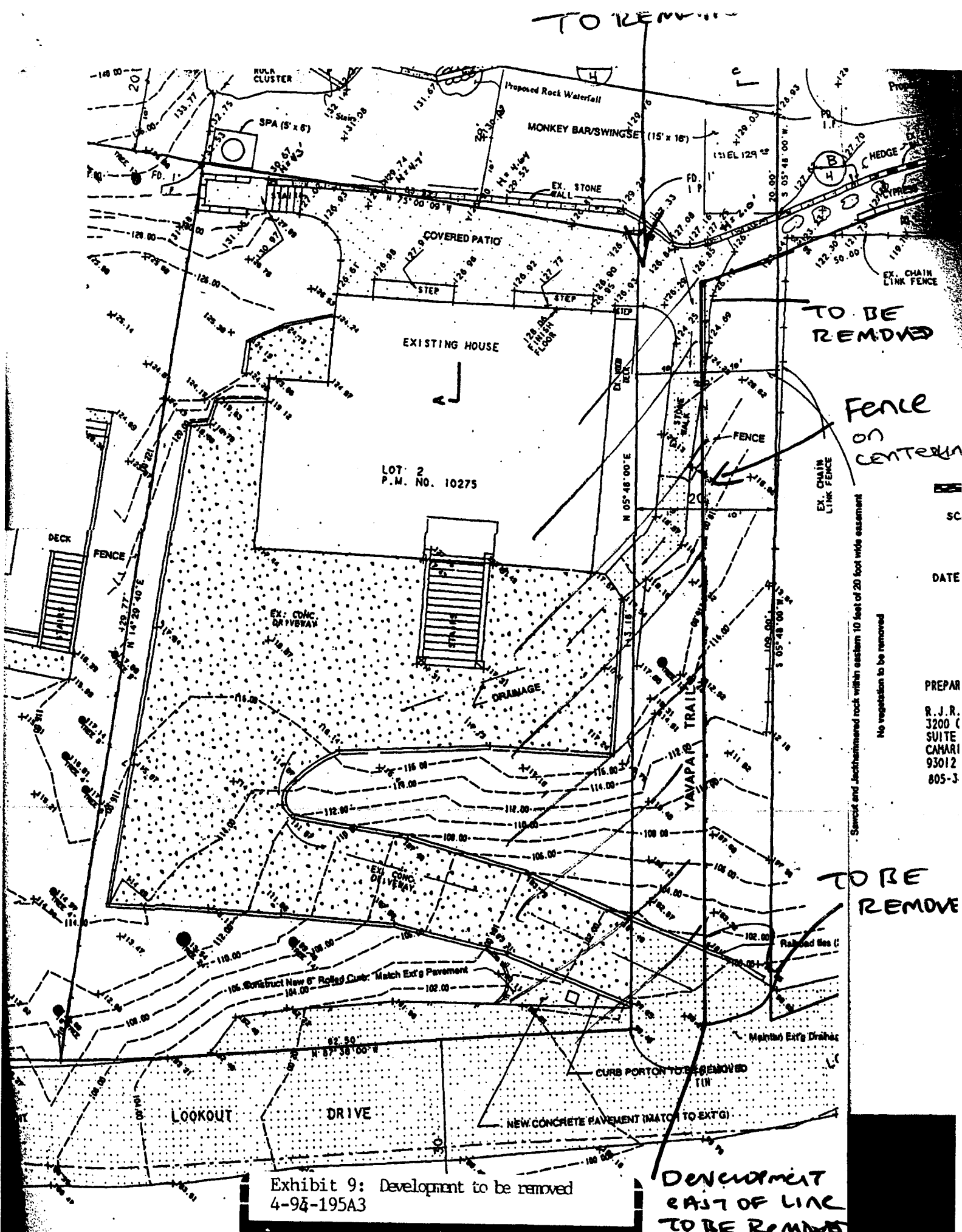


Exhibit 9: Development to be removed  
4-94-195A3



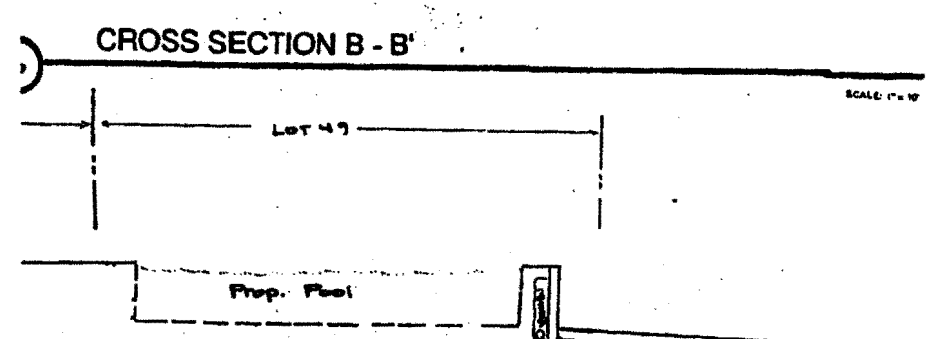
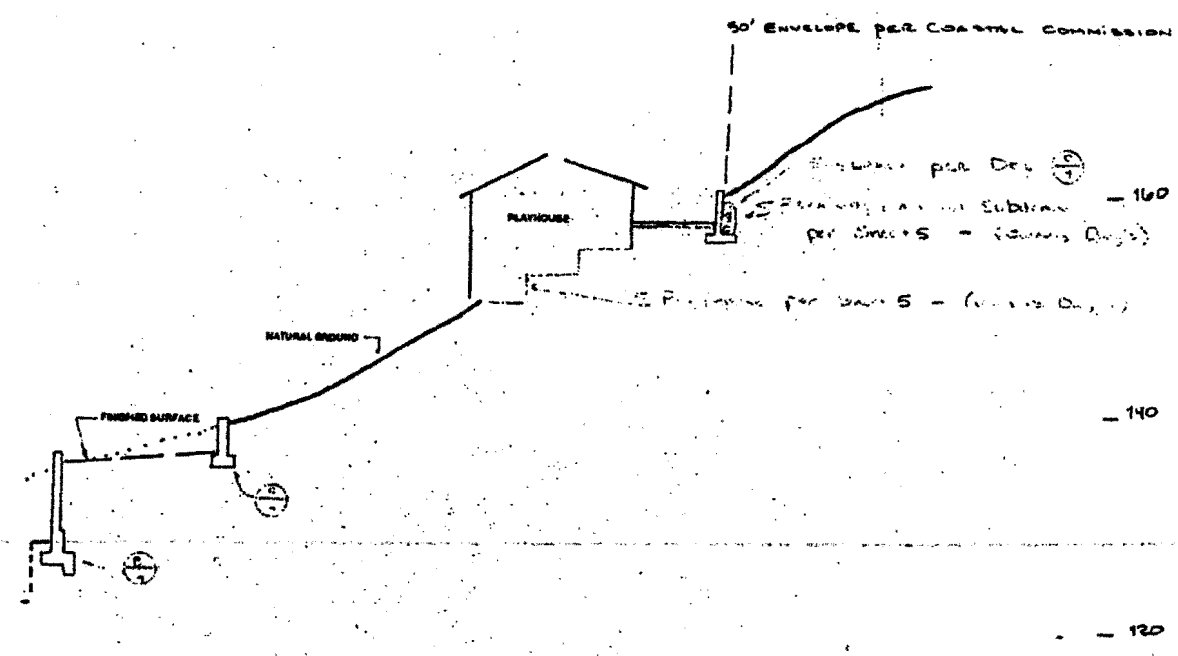
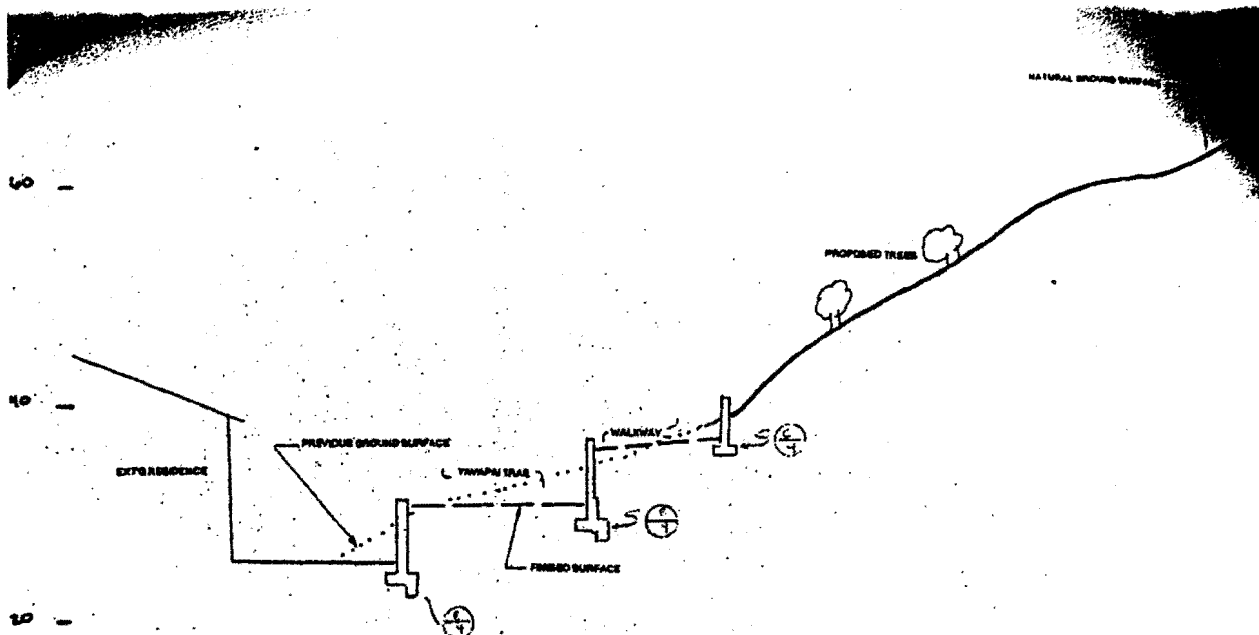


Exhibit 11: Cross Sections  
4-96-195A3



## ENGINEERING GROUP, INC.

### PROJECT DESCRIPTION EIDE PROPERTY LOTS 48 AND 49, TRACT 9757 AGOURA, CALIFORNIA

Proposed improvements to the site will entail the completion of a 3 to 4 foot high retaining wall on Lot 48 that is located above the existing wall on the north side of Yavapai Trail. The wall will extend approximately 29 feet as illustrated on the attached Site Plan. In addition, other improvements will entail the construction of a 15-1/2' by 22-1/2', playhouse (with electricity), with a 8' by 22-1/2' concrete patio. Other improvements will entail flagstone paths, walkways, a small rock waterfall (with a re-circulating pump) roses, cypress and birch trees, shrubs, grass areas, hedge, an electric spa, covered patio for house site at 1561 Lookout, and a pool at the southern end of Lot 49. Existing Other miscellaneous improvements are illustrated on the As-Built Grading Plan.

These improvements entailed the movement of approximately 118 c.y. of earthwork to construct the retaining walls. The additional extension of the upper wall is anticipated to involve less than 10 to 15 c.y. of earthwork. Proposed improvements will entail the movement of less than 50 c.y. of earthwork (estimated at 25 cubic yards). These estimates are based on the recent (December 6, 1995 As-Built survey).

Drainage at the site will be achieved by sheetflow from the existing natural slope to the existing retaining walls. All walls have been constructed with one (1) foot of freeboard and a graded earth swale. Drainage is diverted down to Yavapai Trail, which is the path of natural, historic drainage. Drainage is then conveyed along Yavapai Trail, via the graded topography, along the east side of the Eide Residence. Drainage is diverted onto the Eide Driveway, and down to North Lookout. Gradients along the earthen portion of Yavapia Trail (north of the residence) are gentle, and should inhibit erosive flow velocities. The existing and proposed improvements do not adversely affect the overall drainage conditions at the site. The existing and as-graded topography does not concentrate water onto adjoining properties, but rather diverts drainage as shown on the As-Built Plan down the driveway to North Lookout in a controlled manner to reduce the potential of any adverse affects of mudflows or erosion.

All construction and site improvements will be performed under the direction and observations of RJR Engineering Group, Inc., project civil and geotechnical engineers (Jerry Crowley, R.C.E. 23325), as well as, project geologist (Jim O'Tousa, C.E.G. 1393). At the completion of construction, RJR Engineering Group, Inc. will prepare a final report and "As-Built" drawings to reflect all improvements.

Exhibit 12: Letter from Engineer  
4-94-195A3

