

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:
7345A

STAFF REPORT: PERMIT AMENDMENT**W25c**

APPLICATION NO.: 5-90-525-A

APPLICANT: Fred Winograd

AGENT: David Leanse

PROJECT LOCATION: 6062 Trancas Canyon Road, Malibu, CA 90265

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Subdivision of a 20.8 acre parcel into seven residential lots with 57,810 cubic yards of grading and implementation of a landscaping and revegetation plan. Extend La Gloria Drive to provide road access to the site.

PROJECT DESCRIPTION: Amend Coastal Permit 5-90-525 to reduce the land division from seven (7) lots to five (5) lots, relocate entry roadway from La Gloria Drive to Trancas Canyon Road, and increase grading by 19,540 cubic yards to a total of 83,350 cubic yards of excavation and fill. The Open Space Easement recorded as special condition to coastal permit 5-90-525 is proposed to be modified to allow the construction of the relocated road through the easement area.

Lot Area	20.09 acres (gross) 18.31 acres (net)
Plan Designation	Mixed; Mountain Land (1 du/20 acres) Rural Land I (1 du/10 acres) Rural Land III (1 du/2 acres) Residential IIIA (2-4 du/acres)
Project Density	3.66 dwelling units/acre

LOCAL APPROVALS RECEIVED: Approval in Concept, Planning Department, City of Malibu, dated 3-7-96; Vesting Tentative Tract Map No. 46964, Revised 02/10/96; Settlement Agreement between Fred Winograd and the City of Malibu, dated December 29, 1995 and January 31, 1996, Winograd vs. City of Malibu, Los Angeles Superior Court Case Number BS020694 and Winograd vs. City of Malibu, Los Angeles Superior Court Case Number BS022391.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 5-88-300 Lachman, 5-88-600 Trancas Town, 5-88-938 Bennett, 5-89-872 Javid, 5-89-1149 Thorne, 5-90-058 Williams, 5-81-71 Honofed Development Corp, 5-90-525 Winograd.

SUMMARY OF STAFF RECOMMENDATION: The staff recommends that the Commission determine that the proposed amendment is consistent with the Coastal Act with two special conditions addressing: 1) a revised Tract Map and Grading Plan, and 2) cumulative impact mitigation. These conditions will bring the amendment into compliance with the Coastal Act relative to protecting and enhancing scenic resources, minimizing landform alteration and grading, and

reducing the need for cumulative impact mitigation. Special conditions 1, 3, and 5 of the original permit would remain in effect including the Conservation and Open Space Easement as originally approved, Plans Conforming to Geologic Recommendations, and Assumption of Risk. In 1991, the Commission found that a seven lot subdivision with roadway access provided through an extension of La Gloria Drive was consistent with the Coastal Act. The amended project now proposes a five lot subdivision with access to the subdivision from Trancas Canyon Road and a nearly 34 percent increase in total grading resulting solely from the relocated access road. This amendment is the result of the settlement agreement dated 1/31/96 between the City of Malibu and Mr. Winograd. Thus, staff recommends that this amended coastal permit be approved by extending La Gloria Drive as previously approved by the Commission.

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.

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 special conditions attached to the previous approved permit shall remain in effect. All standard conditions from the previous approved permit also remain in effect and are attached in Exhibit 17 and are incorporated herein by reference.

II. Special Conditions.

2. Revised Tract Map and Grading Plans

Prior to issuance of Coastal Development Permit Amendment the applicant shall submit, for the review and approval of the Executive Director, an appropriately revised Tentative Tract Map and Grading Plan approved by the City of Malibu consistent with the Vesting Tentative Tract Map dated 09/05/90

(Exhibit 3) and the Grading Plan received March 22, 1991 by the Coastal Commission, (pursuant to special condition 2, coastal permit 5-90-525) indicating no more than 57,810 cubic yards of total grading, excluding overexcavation. The intent of this condition is to provide access to the property through an extension of La Gloria Drive.

4. Cumulative Impact Mitigation

Prior to the issuance of the Coastal Development Permit Amendment, the applicant shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject amended development with respect to build-out of the Santa Monica Mountains are adequately mitigated in the following manner. Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on three (3) building sites in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

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

III. Findings and Declarations

The Commission hereby finds and declares:

A. Requested Amendment Description

The applicant proposes to amend coastal permit number 5-90-525 to reduce the subdivision from the approved seven (7) lots to five (5) residential lots and construct the access roadway to the subdivision directly from Trancas Canyon Road, rather than from La Gloria Drive. (Exhibits 1 - 4) The Commission approved access to the subdivision through an extension of La Gloria Drive, a public roadway. The two parcels totalling 20.09 gross acres or 18.31 net acres will be subdivided into five parcels ranging in size from 1.12 to 7.5 net acres.

The applicant proposes to increase the total grading for the subdivision by nearly 34 percent from the approved 57,810 cubic yards of material to 83,350 cubic yards, excluding 50,000 cubic yards for overexcavation, by relocating the access roadway. The additional grading, 19,540 cubic yards of excavation and fill, is proposed to create the relocated access roadway from Trancas Canyon Road; there is no change in the grading proposed to construct the reduced number of building pads, a total of 17,840 cubic yards. (Exhibits 5 and 6) The site also includes a total of 50,000 cubic yards of overexcavation, recompaction and remedial grading as recommended by the consulting geologist in 1990 and reconfirmed in the April 24, 1996 geology report.

B. Background

On March 14, 1991, the Coastal Commission approved a coastal permit for the subdivision of two parcels totalling 18.31 net acres into seven (7) residential lots with 57,810 cubic yards of grading, extending La Gloria Drive as the roadway access into the property, and completing a landscape and revegetation plan. The Commission's primary issues of concern were landform alteration, visual resources, geology stability, and cumulative impacts of new development. Given the applicant's then revised project which reduced the grading by nearly half (originally 123,810 cubic yards) and resolution of the above issues, the Commission approved the project with special conditions addressing, a conservation and open space easement, a revised tract map and grading plans, plans conforming to geologic recommendations, cumulative impact mitigation, and an assumption of risk.

As approved by the Commission, coastal permit 5-90-525 allowed the applicant to subdivide two parcels totalling 18.31 acres (net) into seven (7) residential lots, construct access roads and complete a landscaping and revegetation plan. (Exhibit 3) The lots vary in size from 1.27 to 7.5 net acres. Grading for access roads and building pads will total 54,810 cubic yards (30,640 cubic yards cut, 24,170 cubic yards fill). Of this total about 36,970 cubic yards (22,900 cubic yards cut, 14,070 cubic yards fill) of grading is required to construct access roads and 17,840 cubic yards (7,740 cubic yards cut, 10,100 cubic yards fill) of grading is necessary to construct the building pads. (See Table I below in D.1.b.) In addition, 3,000 cubic yards of fill will be required to construct a flood control debris basin and about 50,000 cubic yards of overexcavation will be required to stabilize an existing fill area which is not properly compacted and included vegetative materials. Total grading for the project excluding overexcavation is 57,810 cubic yards. The maximum height of proposed cut slopes is about 60 feet while the maximum proposed fill slope is about 40 feet. A retaining wall up to a maximum of 10 feet high is proposed along a section of one of the access roads.

Since the Commission's action, the applicant met the conditions, received the coastal permit on March 27, 1991 and submitted the Vesting Tentative Tract Map No. 46964 dated 09/05/90 (Exhibit 3) to the newly created City of Malibu to record the final map. Because the City of Malibu declined to record the tract map, two separate lawsuits were filed by Mr. Winograd against the City of Malibu. In December 1995, a settlement agreement was entered into between the City and Mr. Winograd to settle the litigation. The settlement contemplated revising the proposed subdivision in two ways that are different from the Commission approved tract map. (Exhibit 8) The settlement agreement proposed for revising the tract map to create five (5) residential lots with vehicular access for the subdivision provided by a new road directly from Trancas Canyon Road. A coastal permit is required to effectuate these proposed changes. The Coastal Commission was not a party to these lawsuits nor to the settlement agreement. As a result, the applicant is now proposing to amend coastal permit 5-90-525 to provide for the changes in the project now proposed in the settlement agreement.

The applicant also requests that a revised grading plan be approved to increase the grading by 19,540 cubic yards to a total of 83,350 cubic yards (56,510 cubic yard of cut and 7,840 cubic yards of fill) There are no changes in the grading required to create five lots rather than seven lots. See Table 1 below in Section D.1.b.

In an effort to help resolve the issue of additional grading required by the relocated road, after the applicant submitted this amendment application, staff sent a letter dated May 8, 1996 to the applicant which noted that the proposed access road from Trancas Canyon Road required substantially more grading than the extension of La Gloria Drive as approved by the Commission. (Exhibit 7, staff letter and coastal permit 5-90-525) Since the Commission was not a party to the Settlement Agreement between the applicant and the City of Malibu, staff suggested that the applicant return to the City to re-negotiate the route of the access road to the extension of La Gloria, thereby complying with the approved coastal permit 5-90-525.

At the request of the City of Malibu staff, Commission staff were invited to a site visit and meeting with the site's neighbors, the residents of the Malibu West residential area, on June 11, 1996. The residents discussed a number of issues, including safety, accidents, traffic, site distance on Trancas Canyon Road and its intersection with La Gloria Drive, grading, among others. All of the neighbors and residents attending were against extending La Gloria Drive. Most preferred direct access from Trancas Canyon Road to the property. No Coastal Act Policy reasons were heard to convince staff to change this staff recommendation. At this time, the City has not changed the settlement agreement and the applicant asks that the Commission consider this amendment application. The applicant's agent, Mr. David Lease, submitted two letters, dated June 11 and 12, 1996, addressing the schedule for Commission action and coastal issues. (Exhibits 12 and 13) Representing the City of Malibu, Joyce Parker-Bozylinski, Planning Director, submitted a letter dated June 14, 1996 with an attached memorandum from John Clement, Public Works Director, addressing coastal issues. (Exhibit 14) Representing the Malibu West Home Owners Association, Leslie Moss, President, submitted a letter dated June 14, 1996 addressing coastal issues. (Exhibit 15) Residents of La Gloria, Carrie and John F. Thie, submitted a letter dated June 14, 1996 addressing coastal issues. (Exhibit 16)

D. Project Location

The property is located about one half mile north of Pacific Coast Highway beyond the Malibu West residential subdivision between Trancas Canyon Road and Trancas Creek, in the City of Malibu, Los Angeles County. The 18.31 net acre site was approved with road access through an extension of La Gloria Drive. La Gloria Drive and Tapia Drive end at the property. (Exhibits 2 and 4) The irregular shaped parcels were previously graded in 1963 and 1964 as part of the Malibu West residential subdivision (Tract 26956). This grading involved creating large building pads by placing extensive fill from several excavated and cut slopes. This grading was completed after a colluvial mass (uncompacted fill and vegetation material) was removed and subdrains and horizontal drains were installed. Vegetation on the site consists of primarily grasses and some chaparral species. The surrounding area is developed with single family residences.

The certified Malibu/Santa Monica Mountains Land Use Plan (LUP) designates the site as a mix of land use densities; Mountain Land (1 du/ 20 acres), Rural Land I (1 du/ 10 acres), Rural Land III (1 du/ 2 acres), and Residential III (2 - 4 du/ one acre). About five acres has slopes less than 25%, 10.2 acres has slopes 25 - 50% and 4.8 acres has slopes greater than 50%. Based on the LUP and density restrictions for slopes greater than 25%, the maximum allowed density for the site is twelve lots. The site is not within an environmentally sensitive habitat area or a significant watershed, nor do any proposed or existing trails traverse the site as noted in the Malibu/Santa Monica Mountains Area Plan Trail System Map (dated June 1983 by the Los Angeles County Department of Parks and Recreation).

D. COASTAL ACT ISSUES

1. Landform Alteration and Scenic Resources

Section 30251 of the Coastal Act states that:

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

In addition, the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) includes the following policies regarding landform alteration and the protection and enhancement of visual resources which are applicable to the proposed development. These policies have been applied by the Commission as guidance in the review of development proposals in the Malibu area and Santa Monica Mountains.

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

P90 Grading plans in upland areas of the Santa Monica Mountains should minimize cut and fill operations in accordance with the requirements of the County Engineer.

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

P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.

P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding development.

P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:

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

minimize the alteration of natural landforms.

be landscaped to conceal raw-cut slopes.

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

P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

P135 Ensure that any alteration of the natural landscape from earthmoving activity blends with the existing terrain of the site and the surroundings.

In the review of this amendment, the Commission reviews a number of coastal issues. The primary coastal issue is identifying the feasible access route, consistent with the Coastal Act that minimizes landform alteration and enhances scenic and visual resources. A related issue is the amount of grading necessary to construct the amended project and whether there are alternatives to reduce the quantity of grading. A second issue is the publicly accessible locations where the development is visible to assess public visual impacts.

a. Commission action on Coastal Permit 5-90-525, Winograd, in 1991

In the approved project, the applicant originally proposed to grade 123,810 cubic yards of material (63,640 cubic yards of cut and 60,170 cubic yards of fill) to construct access roads and building pads. The applicant submitted two sequential revisions to the grading plans resulting in reducing the overall grading to 57,810 cubic yards (30,640 cubic yards cut, 27,170 cubic yards fill) for the construction of access roads and building pads. This second revised plan eliminated the flat pad design on the steeply sloping lots 1, 2, and 3, providing for future residences to be built along the existing sloping grade. (Exhibit 3) Grading for building pads on lots 4, 5, 6, and 7 totalled 17,840 cubic yards, averaging 4,460 cubic yards per lot. Grading for the proposed access roads extending from La Gloria total 36,970 cubic yards of material. The Commission found that these changes to the site plan minimized the proposed grading and landform alteration while providing for all of the proposed components of the site design. The applicant also proposed a detailed landscape and revegetation plan to soften and screen the visual impact of the project. To mitigate potential visual impacts of the proposed development and ensure no future development occurs on the site which would be inconsistent with visual resource policies of the Coastal Act and the Malibu Land Use Plan, the Commission found that it was necessary require a deed restriction for an open space easement over the portion of the property noted in Exhibit 10. The open space easement restricts all development within this area. The Commission found it necessary to require the applicant to submit a revised tract map and grading plan indicating no more than 57,810 cubic yards of grading, excluding overexcavation. Only as conditioned, the Commission found that the revised project was consistent with Section 30251 of the Coastal Act.

b. Landform Alteration Proposed by Amendment

The property has been greatly altered by past grading activities. In 1963 and 1964 the property was graded as part of the larger subdivision to the south, the Malibu West residential subdivision. The result of that grading created a large building pad area by excavating several cut slopes and placing extensive fill following the removal of a colluvial mass and installation of subdrains and horizontal drains. Past grading on this property has created a landscape that appears engineered or manufactured.

As noted above, the applicant now proposes to grade 83,350 cubic yards of material to construct the access roads and building pads for the five lot subdivision. The same approximate 50,000 cubic yards of overexcavation is proposed as remedial/recompaction grading as recommended by the consulting geologist to stabilize the building sites and a portion of the access road. The same 3,000 cubic yards is proposed to fill an existing debris basin. The differences in the quantities of grading approved in coastal permit 5-90-525 for the road access and building pads and now proposed in this amendment are listed in the Table 1 below.

TABLE 1

SITE GRADING (cubic yards)

	<u>PROPOSED AMENDMENT</u>		<u>APPROVED COASTAL PERMIT</u>
ROAD	Trancas Canyon Road		La Gloria Drive
Excavation/Cut	22,900		22,900
Fill	33,610		14,070
Total	<u>56,510</u>		<u>36,970</u>
Difference		+19,540	
BUILDING PADS	Five Lots		Seven Lots
Excavation/Cut	7,740		7,740
Fill	10,100		10,100
	<u>17,840</u>		<u>17,840</u>
DIFFERENCE		0	

This table indicates the relocating the access road from La Gloria to Trancas Canyon Road will result in an increase of 19,540 cubic yards, which is a nearly 53 % increase in the grading approved for the road access and nearly a 34 % increase of grading for the entire project, except for overexcavation. Exhibits 5 and 6 includes grading sections for these two alternative access routes. The grading sections indicate that substantial additional fill is required to create a roadway access from Trancas Canyon Road compared to La Gloria Drive.

This table also indicates that reducing the number of building pads from the approved seven lots to five lots will not change the quantities of grading. The approved lots 5, 6 and 7, (Exhibit 4) are now proposed to be combined into lot 5 at the same location and elevation without the need for any change in the amount of grading as proposed by the applicant.

c. Alternative Access Roads to the Project Site

1. Trancas Canyon Road

The applicant now proposes a new access road from Trancas Canyon Road. (Exhibit 9) The new access road is longer and narrower than the approved access road from La Gloria Drive. Although the new access road is narrower

(22 feet vs 36 feet), the new access road requires substantially more grading, nearly 53 percent more (55,510 cubic yards vs. 36,970 cubic yards) than the approved La Gloria Drive extension.

This alternative access road is inconsistent with Section 30251 of the Coastal Act and past Commission actions in the Malibu and Santa Monica Mountains area. As noted above, the natural landforms on the property have been greatly altered by past grading activities such that the landform appears engineered or manufactured. Coastal Act Section 30251 states: "Permitted development shall be sited and designed to protect minimize the alteration of natural landforms ... and, where feasible, to restore and enhance visual quality in visually degraded areas. The Malibu/Santa Monica Mountains Land Use Plan provides guidance in policies P82, P90, P91, P125, P129, P134, and P135 that grading minimize cut and fill operations, development minimize impacts and alterations of physical features, such as ravines and hillsides, and the alteration of natural landscape from earthmoving activity blends with the terrain of the site and surrounding area. Such a large amount of additional grading for a longer access roadway (about 625 feet vs. about 525 feet) leading diagonally across the property and above the property will appear as an unnatural land form (until the road reaches the cul-de-sac); a large road embankment high above the existing landform sloping down from Trancas Canyon Road to the property. (See Exhibits 5 and 6.) Such an unnatural landform is contrary with Section 30251 which requires permitted development, including the proposed roadway and new landform minimize the alteration of natural landforms, be visually compatible with the character of surrounding areas, and restore and enhance visual quality in visually degraded areas.

In addition, this proposed roadway will be visible to the public traveling along Trancas Canyon Road accessing the Santa Monica Mountains National Recreation Area, a substantial amount of recreation land in the Santa Monica Mountains, contrary to Section 30251 which requires scenic and visual resources be protected and that development be sited and designed to protect views to and along the coast.

As proposed, the amendment does not protect scenic and visual quality, is not sited and designed to protect views to and along the coast, minimize the alteration of natural landforms, be visually compatible with the character of surrounding areas, and restore and enhance the visual quality on the property. As noted below in section 3. c. below, another alternative reduces grading and landform alteration and restores and enhances the visual quality in this area. Therefore, the Commission finds that the Trancas Canyon Road accessway, as proposed, is inconsistent with Section 30251 of the Coastal Act.

2. Tapia Drive

Tapia Drive leads directly to the project site at the southeast corner of the property. Grading and landform alteration at this access site to the five parcels would be minimal due to the grade differential at this location. As noted on Exhibits 4 and 9, the centerline of Tapia Drive is about five feet above the centerline of the end of the proposed access road to the center of the site. Only limited grading would be necessary to access the site through this route. However, the applicant has not demonstrated the legal right to use Tapia Drive to access the property because Tapia Drive is a private street. This route is considered the environmentally preferred route, however, it is determined to be infeasible because the applicant has not demonstrated the ability to use it to access the property. If the applicant acquired the right to use Tapia Drive, this route would be preferred.

3. La Gloria Drive

The Commission has approved this access route extending La Gloria Drive to the site. (Exhibit 3) This access route requires 36,970 cubic yards of grading to construct, which is less than the 55,510 cubic yards proposed for access from Trancas Canyon Road. As viewed from Trancas Canyon Road, the extension of La Gloria Drive will also appear to be an unnatural landform, however, it will appear to be less so due to the reduced amount of grading as compared to Trancas Canyon Road. The extension of La Gloria Drive will further restore and enhance the visual quality in this visually degraded area as compared to Trancas Canyon road. (Exhibits 5 and 6) As another alternative, the approved width of the La Gloria extension could be reduced to the same 22 feet (as proposed for Trancas Canyon Road), thereby further reducing the quantity of grading. (Exhibit 11)

Because this route minimizes grading to the greatest extent feasible and minimizes the alteration of natural landforms, as compared to the Trancas Canyon Road, this route is considered consistent with past Commission action in the Malibu area, and Coastal Act Section 30251. The extension of La Gloria is also the environmentally preferred route and is considered feasible because La Gloria Drive is a public street, and is available to the applicant to access the property.

d. Prior Commission Actions

In many prior Commission action's on subdivisions, grading and development in the vicinity of the project site, the Commission has denied applications or conditioned the approval of the permit on reducing the amount of grading. In some projects, the applicant has agreed to reduce the proposed grading during the application process prior to Commission action.

In coastal permit application 5-89-872 (Javid), which is located less than a mile to the east of the proposed project, the applicant proposed to subdivide a 45 acre parcel into 25 lots and grade 345,000 cubic yards of material for pads and access roads off of Morning View Drive. The Commission denied the application even though the applicant reduced the grading to 186,000 cubic yards of material because the grading resulted in too much landform alteration and did not include adequate open space. The applicant re-applied in coastal permit 5-90-327 with a redesigned project for 19 lots clustered to increase open space, reduce total grading to 80,500 cubic yards by eliminating the upper road, reconfiguring the lots and deleting building pads for residential structures on each site. In effect, the Commission approved the redesigned project and required the applicant to cluster lots and eliminate all grading for building pads and limit all grading to amounts that were necessary to construct access roads and driveways. Future residential structures were required to be built to conform to natural grade. In coastal permit 5-90-058, Williams proposed to subdivide a 34 acre parcel into five lots off of Winding Way. The applicant originally proposed to grade 128,674 cubic yards of material to construct access roads and building pads. The applicant revised the project design to reducing overall grading to 24,390 cubic yards by using a split level pad design and eliminating grading on a prominent ridge, this project was approved by the Commission. In coastal permit 5-89-1149, Thorne proposed to subdivide 122 acres into 19 lots off of Latigo Canyon Road. The applicant originally proposed to grade 280,000 cubic yards of material to construct pad sites and access roads. The applicant revised the project design by reducing building pad sizes and overall grading to 158,000 cubic yards, this project was approved by the Commission. In coastal permit 5-88-300, Lachman/Preferred Financial proposed to subdivide a 6.5 acre parcel

and construct 38 condominiums units and a road access extension at the northeast corner of Lunita Road and Bailard Road. The original project proposed to grade 74,000 cubic yards to create one large building pad. The applicant revised the project design to step most units up and down the existing slopes to conform to the existing topography, reducing overall grading to 33,000 cubic yards. In coastal permit 5-88-600, Trancas Town Ltd. proposed to subdivide 35 acres on the west side of Trancas Canyon Road into 15 single family lots and 52 condominiums. The Commission required the applicant to reduce overall grading and landform alteration by eliminating four single family lots, redesign four other lots to place structures on multiple levels at the natural grade, and redesign four other lots to place structures on multiple levels at natural grade, and reduce pad sites to a maximum of 2,000 square feet and cut and fill slopes to a maximum of five feet. In coastal permit 5-88-938, Bennett proposed to subdivide 10 acres into four lots and grade 21,200 cubic yards for pad sites and an access road on Sea View Drive north of the subject site. The Commission required the applicant to modify the grading to restrict the pads to specific elevations on the site, limited pad size to 3,000 square feet and restricted the height of cut and fill slopes to five feet at 2:1 slope ratios and 10 feet for 3:1 slope ratios.

In many of these projects, the Commission found that substantial landform alteration through cut and fill grading was not consistent with Coastal Act policies addressing visual resources, land form alteration, stream alteration, environmentally sensitive habitat and cumulative impact policies of the Coastal Act.

e. Conclusion

A review of the three alternative access routes to the property indicates that extending La Gloria Drive, a public street, is the environmentally preferred and feasible alternative and was found consistent by the Commission in 1991 with the above Coastal Act Section. The property is visible from Trancas Canyon Road and La Gloria Drive. The Santa Monica Mountains National Recreation Area (SMMNRA) is located a short distance beyond a locked gate at the end of Trancas Canyon Road. The section of the SMMNRA includes a substantial number of square miles extending from Encinal Canyon on the west and north, Kanan Dume Road on the east, and the southern portion of the Santa Monica Mountains. The SMMNRA is accessed from Trancas Canyon Road, the Trancas Canyon Trail, and the Coastal Slope Trail. Therefore, the public traverses Trancas Canyon Road, including passing and viewing the subject property to gain access to the SMMNRA, a significant coastal recreation area.

All of the three alternative access routes will be visible from public locations on Trancas Canyon Road and La Gloria Drive. The public view of the Trancas Canyon Road access will be the most visible because the additional grading will create a large unnatural landform. The public view of La Gloria Drive extension will be less visible to the public because it will be further away, requires less grading, and will create a smaller unnatural landform for access to the property. It is not feasible to extend Tapia Drive, although its extension requires the least amount of grading and altering of landforms.

Further, as approved by the Commission in 1991, an extensive landscaping program was proposed on the descending slope below Trancas Canyon Road, to further restore and enhance the scenic and visual quality of the site. In addition, an open space easement recorded as a deed restriction was required to ensure that this area remain a protected visual buffer area. To protect the scenic and visual quality of the area, protect public views to and along the coast, minimize the alteration of natural land forms, be visually

compatible with the character of the surrounding area, and restore and enhance visual quality in degraded areas, the Commission finds it necessary to require the applicant to submit an appropriately revised tentative tract map relocating the road to La Gloria Drive and a grading plan indicating no more than 57,810 cubic yards of grading, excluding overexcavation. Special condition number two (2) provides for such a revised tract map and grading plan to bring the amendment into compliance with Section 30251 of the Coastal Act. Thus, the Commission finds that the proposed amendment, as conditioned by the relocated roadway to La Gloria Drive, is consistent with Section 30251 of the Coastal Act.

2. Geologic Stability

Section 30253 of the Coastal Act states in part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

In addition, the Malibu Land Use Plan contains the following policies regarding geologic stability:

- P147 Continue to evaluate all new development for impact on, and from, geologic hazard.
- P149 Continue to require a geologic report, prepared by a registered geologist, to be submitted at the applicant's expense to the County Engineer for review prior to approval of any proposed development within potentially geologically unstable areas including landslide or rock fall areas and the potentially active Malibu Coast-Santa Monica Fault Zone. The report shall include mitigation measures proposed to be used in the development.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The applicant has provided an report "Engineering Geologic Memorandum Review and Update, Vesting Tentative Tract Map N. 46964, 6062 Trancas Canyon Road, Malibu", dated April 24, 1996. The report states:

The revised tentative tract map consists of 5 lots which embrace the same + (or) - 20 acres site as the revision dated 9-05-90. However, the current map will utilize a new access road from Trancas Canyon Road about 125 feet west from La Gloria Drive. Associated grading to effect the new street is the principal difference in the maps.

It is the present finding of Geoplan, Inc. that Revised Vesting Tentative Tract Map No. 46964 is compatible with and implements geologic recommendations proposed by Geoplan. The revised map is acceptable from an engineering standpoint. Each of the proposed lots contains a safe building site free from hazard of landslide, settlement or slippage. Grading and development of these lots may be effected in compliance with plans and specifications which implement the appropriate sections of the Uniform Building Code (1994) and the recommendations of the project consultants. Implementation of the revised tentative tract map in compliance with this format will not affect neighboring property adversely.

Therefore, the Commission's consultant determined that the proposed project site and proposed amendment for five lots and access from Trancas Canyon Road is suitable from an engineering geologic standpoint for construction of future residences and road access. Thus, the Commission finds that the proposed amendment is consistent with Coastal Act section 30253.

3. Cumulative Impacts of New Development

Section 30250(a) of the Coastal Act states:

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 Malibu/Santa Monica Mountains Land Use Plan states in Policy 273d that:

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

Given the fact that the LUP is the most recent policy action taken by the Commission on development (including subdivisions) in the Santa Monica Mountains, the applicant must comply with Policy 273d of the LUP which the Commission found consistent with Section 30250(a) of the Coastal Act. In this situation, because the project site is located on the coastal terrace in an existing developed area the average lot size criteria provided in Section 30250(a) is not applicable.

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

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Combs). The TDC program resulted in the retirement from development of existing, poorly sited, and non-conforming parcels at the same time new parcels or units were created. The intent was to ensure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

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

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

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

The applicant proposes to amend the coastal development permit to subdivide two parcels into five (5) rather than the seven (7) approved parcels. The proposed five lots conform to the Land Use Plan designation on this site. The LUP with slope density restrictions would allow up to twelve (12) parcels. The subject parcels are included in the Malibu/Santa Monica Mountains build-out survey conducted in 1978 using the Los Angeles County Engineering Maps. The applicant has extinguished the development rights for residential use on five building sites in the Santa Monica Mountains Coastal Zone as a condition to the approval of coastal permit 5-90-525. Therefore, cumulative impact mitigation requirements have been completed for the original project.

As discussed above, the LUP contains six potential techniques to mitigate cumulative impacts, none can be implemented at this time. In the interim, the Commission has approved the applicant's proposed subdivision from two parcels to seven parcels and has purchased five TDC's as one of the alternative mitigation strategies. Because the applicant proposes to reduce the number of new parcels to five, only three (3) TDC's are required, as outlined in special condition number four (4), to mitigate cumulative impacts of the subdivision of this property. The Commission finds that this permit amendment, as conditioned, is consistent with Section 30250(a) of the Coastal Act.

4. 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 Chapter 3 (commencing with Section 30200) 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 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 amendment 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 amendment 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 and amendment, as conditioned, will not prejudice the City of Malibu's ability to prepare a Local Coastal Program for this area of Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

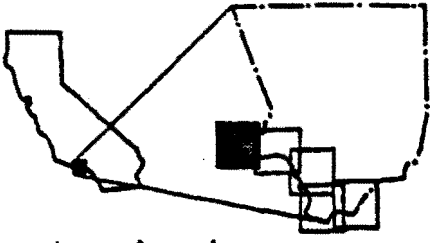
5. California Environmental Quality Act

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of 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 that would substantially lessen any significant adverse impacts that the activity may have on the environment.

As discussed above, the proposed project has not been mitigated to incorporate a road access route that minimizes landform alteration and quantities of grading. There are three alternative access routes to the subject property. One alternative is the proposed access from Trancas Canyon Road, which requires grading about 53% more material than alternative three, even though the roadway width is reduced to 22 feet. The second alternative is an access created by extending Tapia Drive across the site. This option would require limited grading because the northern terminus of Tapia Drive is only about five feet above the elevation of the end of the proposed roadway into the property (about 5 feet for Tapia, vs 32 feet for La Gloria, vs 40 feet for Trancas Canyon Road as measured from the centerline of the road entry point to the center of the cul-de-sac). Although an extension of Tapia Drive is the environmentally preferred alternative access route, it is not feasible because the applicant has not demonstrated the legal right to use it to gain access to the property. Tapia Drive is a private road. The third alternative is to gain access to this property from La Gloria Drive. As a public street, the extension of La Gloria Drive is feasible. This extension requires substantially less grading than the proposed Trancas Canyon Road access. Extending La Gloria Drive to the property, requires 36,970 cubic yards of grading for a 36 foot wide roadway. The extension of La Gloria Drive minimizes the alteration of natural landforms, protects public views to and along the ocean, is more visually compatible with the surrounding areas, can feasibly restore and enhance the visual quality in this visually degraded area on the subject property. Thus, as proposed in this amendment, there is a feasible alternative available, approved by the Commission in coastal permit 5-90-525, which would lessen any significant adverse impact that the activity may have on the environment. The proposed relocation of the road to Trancas Canyon Road is not the environmentally preferred alternative and cannot be found consistent with CEQA. Therefore, the Commission finds that the proposed amendment, as conditioned to relocate the access road to La Gloria Drive, will mitigate the identified impacts, and is the least environmentally damaging feasible alternative and is found to be consistent with the requirements of CEQA and the policies of the Coastal Act.

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Los Angeles

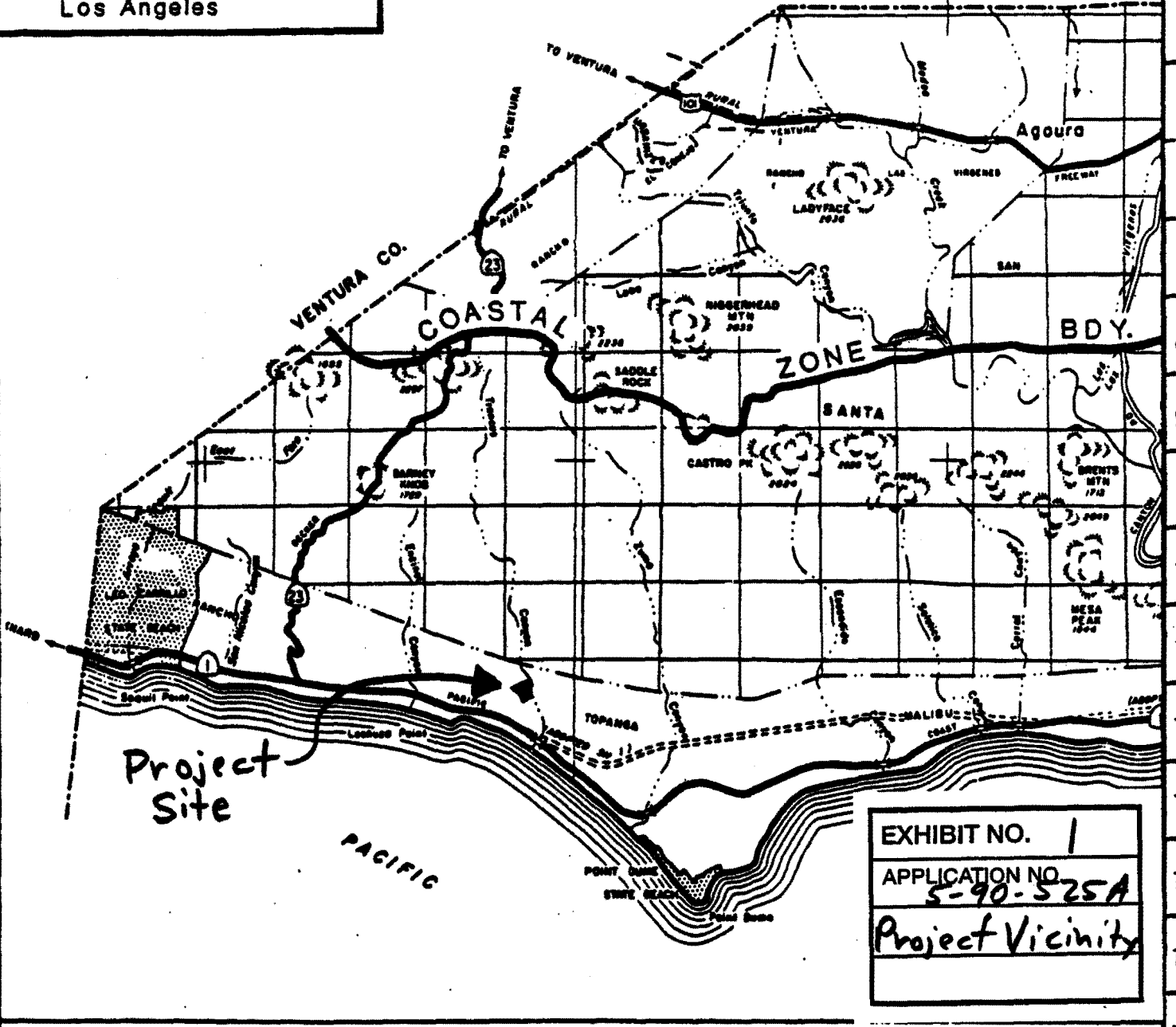


EXHIBIT NO. 1
APPLICATION NO. 5-90-525A
Project Vicinity



LOCATION MAP



County of Los Angeles

Sheet 1 of 5

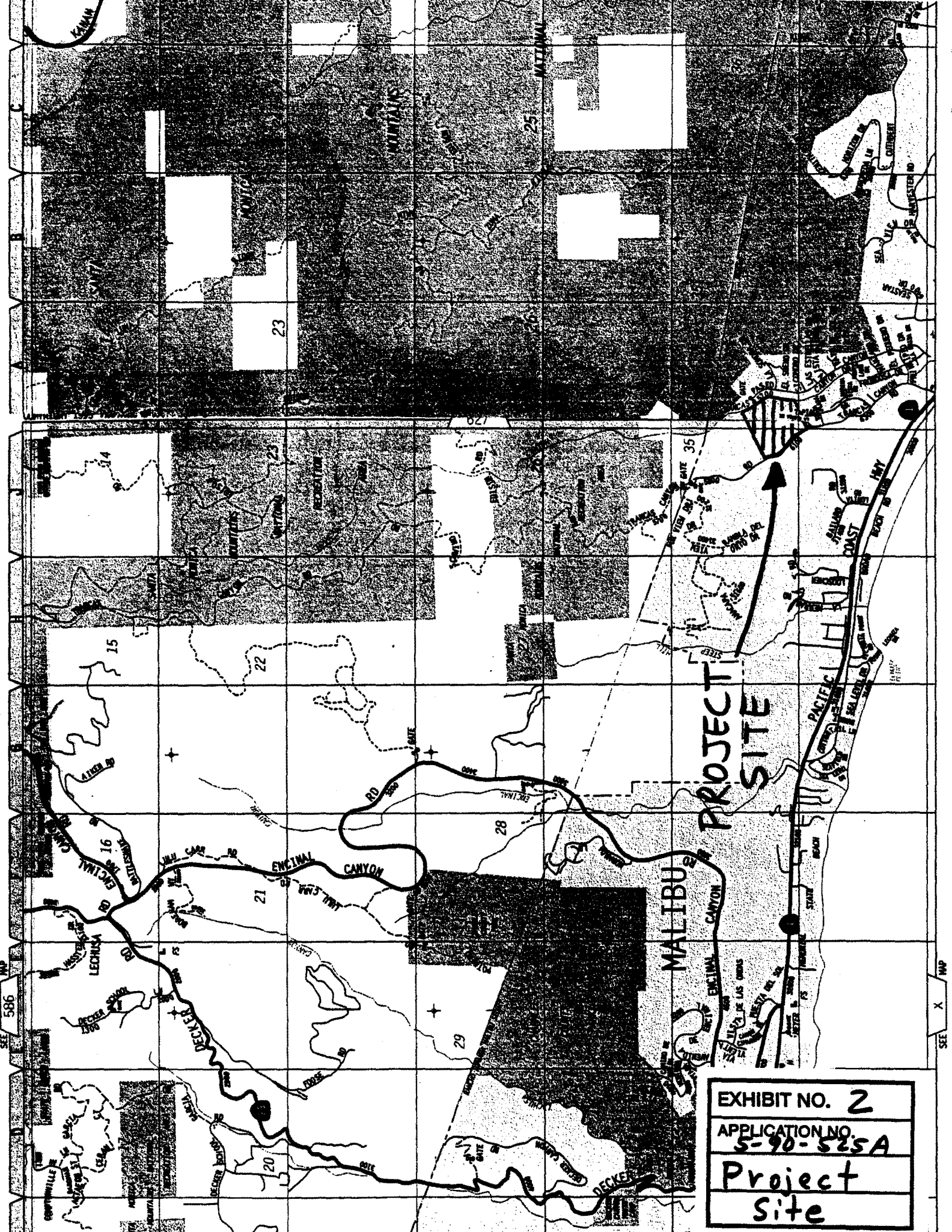


EXHIBIT NO. 2
APPLICATION NO. 5-90-525A
Project Site

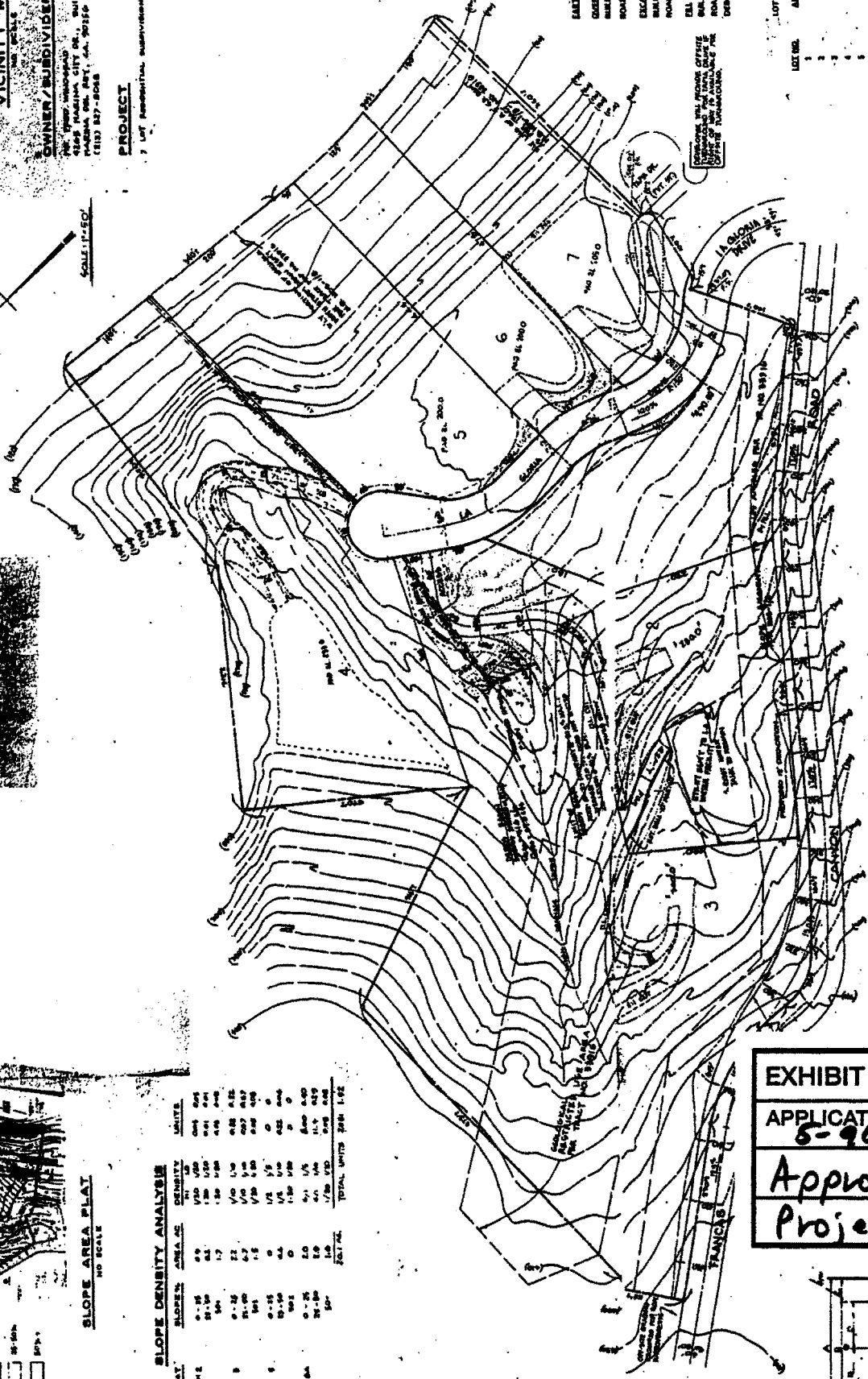
SEE 586 MAP

SEE X MAP

TENTATIVE TRACT MAP NO. 46964
REVISED 05/05/90

VICINITY MAP
 SCALE: 1" = 50'
OWNER/SUBDIVIDER
 THE HILL GROUP
 1835 MARINA CITY DR., SUITE 501
 PALMDALE, CALIF. 91364
 (818) 837-8088

PROJECT
 7 LOT SUBDIVISION



EXISTING

CONCRETE	1,000 C.Y.
GRAVEL	1,000 C.Y.
ROAD	1,000 C.Y.
EXCAVATION	2,000 C.Y.
PAVING	2,000 C.Y.
ROAD	2,000 C.Y.
ELL	2,000 C.Y.
PAVING	2,000 C.Y.
ROAD	2,000 C.Y.
DEMOLITION	2,000 C.Y.

LOT AREA CALCULATION

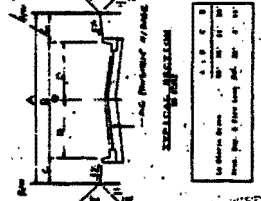
LOT NO.	AREA (ACRES)	AREA (SQ. FT.)
1	1.1	75,360
2	1.2	82,752
3	1.3	90,144
4	1.4	97,536
5	1.5	104,928
6	1.6	112,320
7	1.7	119,712
TOTAL	10.8	750,720

SLOPE DENSITY ANALYSIS

CAT.	SLOPE (%)	AREA (AC)	DENSITY (UNITS/AC)	UNITS
1	0-15	1.2	100	120
2	15-30	1.5	150	225
3	30-45	1.8	200	360
4	45-60	2.1	250	525
5	60-75	2.4	300	720
6	75-90	2.7	350	945
7	90-100	3.0	400	1,200
TOTAL		10.8		3,975

SLOPE AREA PLAT
 NO SCALE

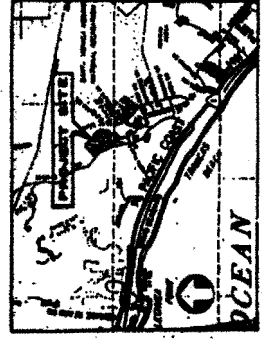
EXHIBIT NO. 3
APPLICATION NO. 5-90-525A
Approved Project



TENTATIVE TRACT MAP NO. 46964

REVISED 09/05/90

REVISED 02/10/96

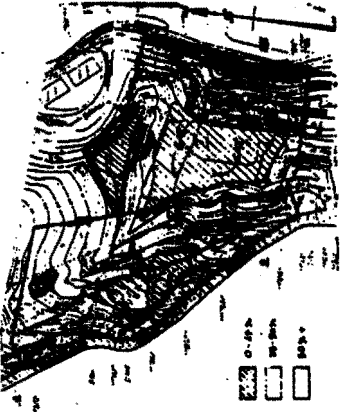


VICINITY MAP
FOR SCALE

OWNER/SUBDIVIDER
M.L. FERRER
3307 MADISON CITY BLVD., SUITE 400 WTS
PASADENA, CALIF. 91107
TEL: 818-797-8000

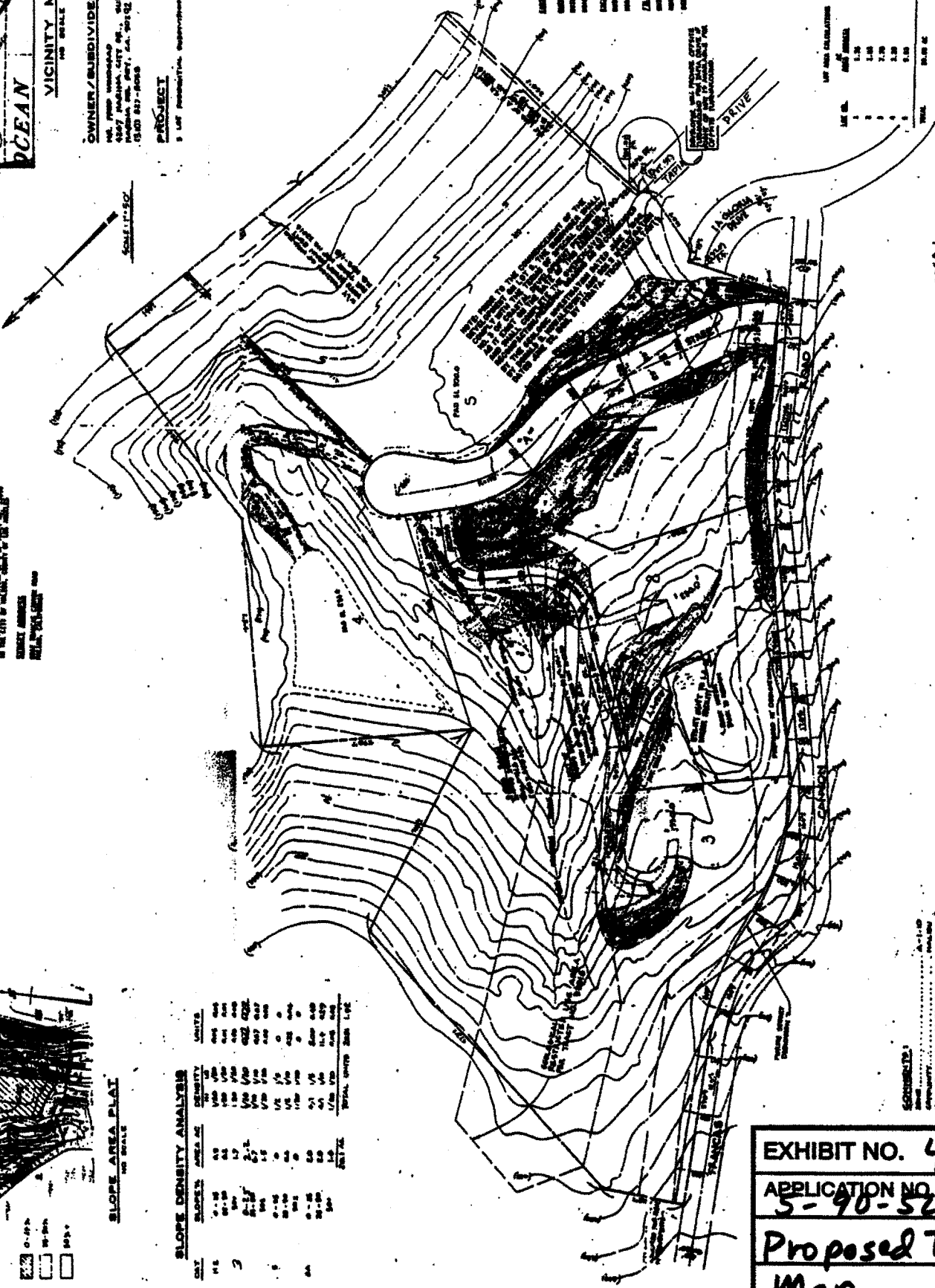
PROJECT
3 LOT RECONFIGURATION

LEGAL DESCRIPTION
TRACT 5, MAP 46964, CITY OF MALIBU, CALIF.



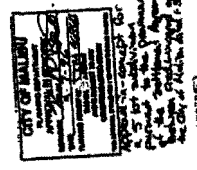
SLOPE AREA PLAT
FOR SCALE

LOT	SLOPE (%)	AREA (SQ FT)	DENSITY	UNITS
1	0-10	10,000	1.0	10,000
2	10-20	20,000	0.5	10,000
3	20-30	30,000	0.33	10,000
4	30-40	40,000	0.25	10,000
5	40-50	50,000	0.2	10,000
6	50-60	60,000	0.16	10,000
7	60-70	70,000	0.14	10,000
8	70-80	80,000	0.12	10,000
9	80-90	90,000	0.11	10,000
10	90-100	100,000	0.1	10,000
TOTAL				100,000



NAME	DATE	SCALE
OWNER	09/05/90	AS SHOWN
ENGINEER	02/10/96	AS SHOWN
CITY ENGINEER		

LOT NO.	AREA (SQ FT)	DENSITY	UNITS	
1	10,000	1.0	10,000	
2	20,000	0.5	10,000	
3	30,000	0.33	10,000	
4	40,000	0.25	10,000	
5	50,000	0.2	10,000	
6	60,000	0.16	10,000	
7	70,000	0.14	10,000	
8	80,000	0.12	10,000	
9	90,000	0.11	10,000	
10	100,000	0.1	10,000	
TOTAL				1,000,000



3-90-556A 1
CALIFORNIA COASTAL COMMISSION
PLANS APPROVED

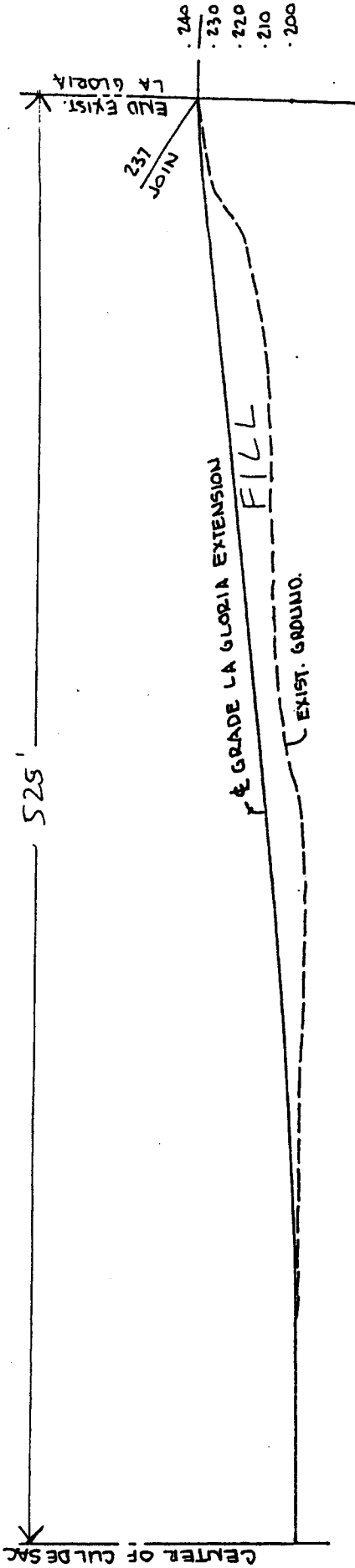
CONTRACT NO. 90-001
DATE OF APPROVAL: 09/05/90
DATE OF REVISION: 02/10/96
PROJECT: 3 LOT RECONFIGURATION

EXHIBIT NO. 4
APPLICATION NO. 5-90-525A
Proposed Tract Map

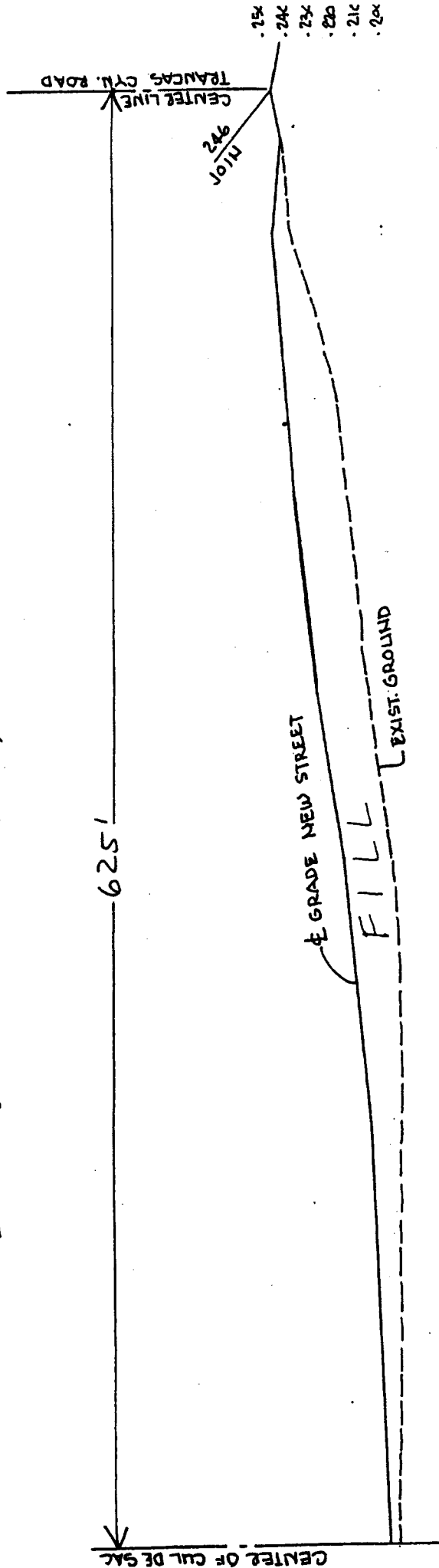
TTM 46964

CIVIL ENGINEER
PROJECT & PLANNING





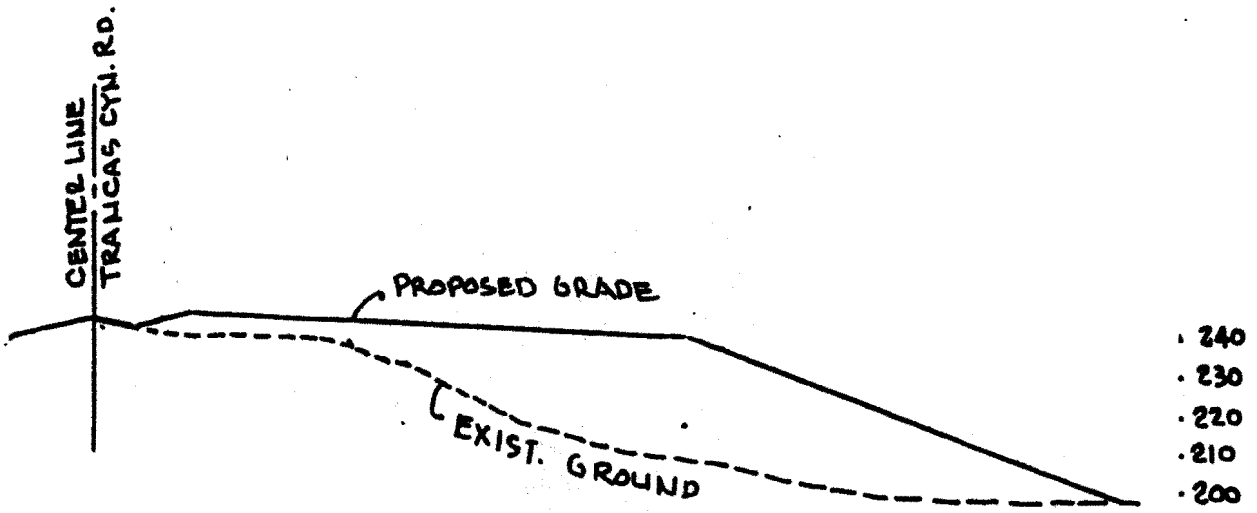
φ PROFILE (PARALLEL TO LA GLORIA EXTENSION)



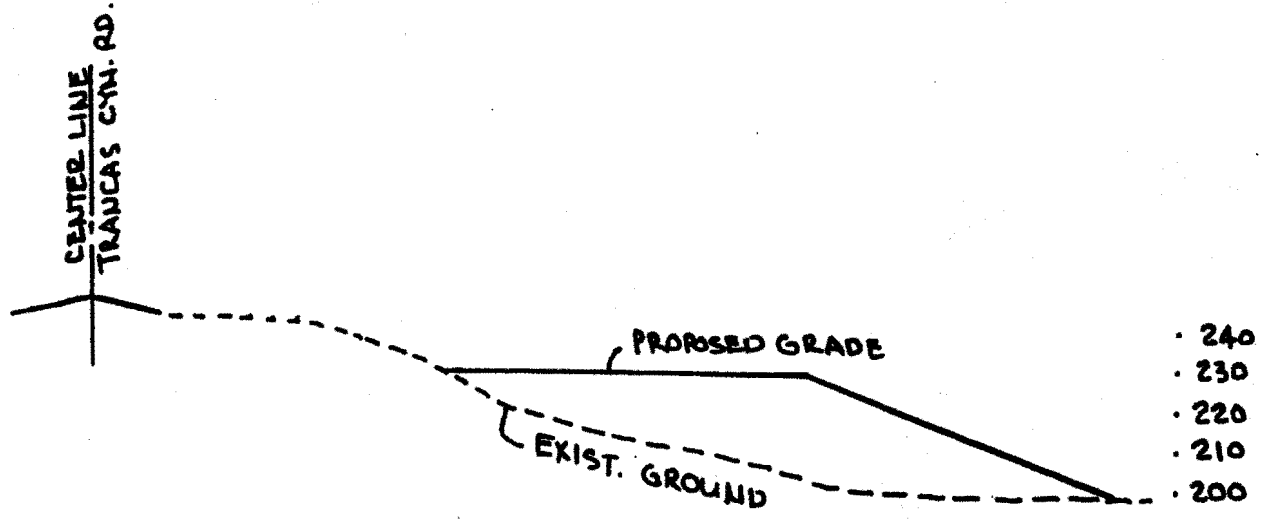
φ PROFILE (PARALLEL TO NEW STREET INT. WITH TRANCAS)

SCALES: HORIZ: 1" = 50'
 VERT: 1" = 50' (Reduced by 80%)

EXHIBIT NO.	5
APPLICATION NO.	5-90-525A
Road Sections	
Along Road	



SECTION A-A NEW ROAD
 SCALES HORIZ: 1"=50'
 VERT: 1"=50'



SECTION A-A LA GLORIA EXTENSION
 SCALES HORIZ: 1"=50'
 VERT: 1"=50'

EXHIBIT NO. 6
APPLICATION NO. 5-90-525A
Road Sections
Across Roads

ROBERT K. KAMEOKA
 REGISTERED CIVIL ENGINEER
 5011 ACACIA STREET
 SAN GABRIEL, CALIF. 91776

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 641-0142



May 8, 1996

David Leanse
 Shoop and Leanse
 23805 Stuart Ranch Road, Suite 210
 Malibu, CA 90265

RE: Application for an Amendment to Coastal Permit 5-90-525A, Winograd

Dear Mr. Leanse:

Staff has received on March 12, and April 1, 1996 your initial application materials for an amendment to coastal permit 5-90-525. This permit approved the subdivision of one parcel into seven residential lots with access provided by an extension of La Gloria Drive and grading limited to 57,810 cubic yards, excluding overexcavation. The amendment now proposes to subdivide one parcel into five residential lots, relocate the access to the subdivision to Trancas Canyon Road, and grade 83,350 cubic yards, excluding overexcavation. We understand that this amendment is the proposal of the 'Settlement Agreement' between the City of Malibu and Mr. Winograd; the Coastal Commission was not a party to this settlement.

Staff determined that the amendment application was incomplete on April 2, 1996 as noted in our letter. Staff received additional application materials on April 11, May 2, and May 3, 1996 for the amendment to the coastal permit. On April 29, 1996 staff determined that coastal permit 5-90-525 is valid and has not expired, as explained in the letter from Ralph Faust, Chief Counsel, and Catherine Cutler, Staff Counsel.

Now that we have resolved the question regarding the validity of the original coastal permit, we will be filing the amendment by May 10, 1996. However, staff has concerns that the subdivision's access road is proposed to be relocated from La Gloria Drive to provide direct access from Trancas Canyon Road. Our concern is based on the Coastal Commission's action to approve this subdivision with access provided by extending La Gloria Drive. The Commission approved this subdivision and access route with special condition number two, which required the applicant to submit a revised Tract Map and grading plan consistent with the final grading indicating no more than 57,810 cubic yards of total grading, excluding overexcavation. The proposed amendment to this coastal permit now proposes to increase the grading by nearly 34 percent or 19,540 cubic yards to a total of 83,350 cubic yards, to construct the relocated road access. This additional grading does not appear to be consistent with Coastal Act Public Resources Code Section 30251, which requires permitted development to be sited to minimize the alteration of natural land forms and be visually compatible with the surrounding areas. Thus, the additional grading does not meet the grading limitation approved by the Coastal Commission specified in special condition number two. See attached coastal permit 5-90-525.

EXHIBIT NO. 7
APPLICATION NO. 5-90-525A
Staff Letter
page 1 of 6

In order to facilitate our analysis of the proposed amendment we would appreciate submittal of: 1) two grading sections (parallel to the road and perpendicular to the road) for both the proposed Trancas Canyon Road access and the approved La Gloria access routes; and 2) an explanation regarding how the grading calculations are the same for reducing the number of lots from seven to five.

Staff is prepared to recommend approval to reduce the number of new lots from seven (as permitted by the Commission) to five, as now proposed. However, it is unlikely that staff can make a favorable recommendation on the proposed amendment as the proposed access road from Trancas Canyon Road requires substantially more grading, in conflict with the Coastal Commission's action on coastal permit 5-90-525. You indicated in your letter dated April 8 and received April 11, 1996, that "... Mr. Winograd would prefer to have La Gloria as apparently your staff does. If returning to La Gloria becomes a permit condition of the Coastal Amendment so be it. Mr. Winograd will be required to go back to the City and renegotiate the Settlement Agreement." Further, as you have requested, staff has discussed this concern with the City of Malibu staff and has verified that "Mr. Winograd is not pressing for Trancas Canyon access -- he will accede to either access."

Staff recommends that you and Mr. Winograd return to the City and re-negotiate the location of the access road to the approved extension of La Gloria Road to comply with the Coastal Commission's approved coastal permit 5-90-525 and the Coastal Act. If the proposed amendment is revised to comply with the Commission's previous action with regards to the access road, information item number 1 above is not needed. In this case, Staff would be prepared to recommend approval of the amendment.

If you have any questions regarding these requests, please contact James Johnson at the above telephone number.

Very truly yours,



Jack Ainsworth
Malibu Supervisor

Attachment; Coastal Permit 5-90-525
cc: Joyce Parker-Bozylinski
Vince Bertoni
Alan Block

7293A

EXHIBIT NO. 7
APPLICATION NO. 5-90-525A
Staff letter
page 2 of 6

RECEIVED

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA 90802-4416
(213) 590-5071

1991

CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

Page 1 of
Date: March 27, 1991
Permit No. 5-90-525



COASTAL DEVELOPMENT PERMIT

On March 14, 1991, the California Coastal Commission granted to

Fred Winograd

this permit subject to the attached Standard and Special conditions, for development consisting of

Subdivision of a 20.8 acre parcel into seven residential lots with 107,810 cu.yd. of grading and implementation of a landscaping and revegetation plan.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 6062 Trancas Canyon Rd, Malibu

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director

By: [Signature]
Title: Staff Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION C Admin. Code Section 13158(a).

3/27/91
Date

[Signature]
Signature of Permittee

EXHIBIT NO. 7
APPLICATION NO. 5-90-525A
Staff Letter
page 3 of 6

COASTAL DEVELOPMENT PERMIT

Page 2 of 4
Permit No. 5-90-525

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Conservation and Open Space Easement

Prior to the transmittal of the permit, the applicant as landowner shall map and record a deed restriction acceptable to the Executive Director which provides that the portion of the applicant's property generally depicted on Exhibit 5 will be precluded from future development for open space and visual resource protection. The restriction shall restrict the applicant or his successor in interest from grading, landscaping, and vegetation removal other than the minimum requirements of the Fire Department for fire protection..

The restriction shall be recorded free of prior liens except for tax liens and free of encumbrances which the Executive Director determines may affect the interest being conveyed. The restriction shall run with the successors and assigns of the applicant or landowner.

EXHIBIT NO. 7
APPLICATION NO. 5-90-525 A
Staff Letter
page 4 of 6

2. Revised Tract Map and Grading Plans

Prior to issuance of permit the applicant shall submit a revised Tract Map and grading plan approved by the County of Los Angeles consistent with the final proposed grading (as shown in the grading plan submitted to this office on 7/26/90) indicating no more than 57,810 cubic yards of total grading, excluding overexcavation.

3. Plans Conforming to Geologic Recommendations

All recommendations contained in the Geologic Investigation dated 6/11/90, by Donald B. Kowalewsky, and Soils Investigation dated 6/22/89, by Strata-Tech consultants, shall be incorporated into all final design and construction including grading, fault setback, overexcavation, septic systems, and drainage, all plans must be reviewed and approved by the consultant prior to commencement of development. Prior to the issuance of the coastal development permit, the applicant shall submit evidence for the review and approval of the Executive Director of the consultant's review and approval of all final design and construction plans.

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

4. Cumulative Impact Mitigation.

Prior to the issuance of the Coastal Development Permit, the applicants shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to issuance of this permit, the applicants shall provide evidence to the Executive Director that development rights for residential use have been extinguished on five (5) building site in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

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

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5. Assumption of Risk:

Prior to the issuance of the Coastal Development Permit, the applicant [landowner] shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from landslide and soil erosion, and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into as of December __, 1995, between Fred Winograd ("Winograd") and the City of Malibu, a municipal corporation (the "City").

RECITALS

A. Winograd owns two (2) legal lots totaling over twenty (20) acres of unimproved real property adjacent to Trancas Canyon, approximately one-half of a mile above Pacific Coast Highway, in the City (the "Property"), which is zoned for residential use.

B. Winograd has filed two (2) separate lawsuits against the City in *Winograd vs. City of Malibu*, Los Angeles Superior Court Case Number BS020694, filed on November 17, 1992, and *Winograd vs. City of Malibu*, Los Angeles Superior Court Case Number BS022391, filed on March 25, 1993 (the "lawsuits"). In said lawsuits, Winograd contends that the City abused its discretion by failing to review and approve for recording the final map for Vesting Tentative Tract Map No. 46964 for either six (6) or seven (7) lots. The City contends that it properly rejected the final map for Vesting Tentative Tract Map No. 46964. Judgments in the lawsuits have been entered in favor of the City, and Winograd has since filed appeals from both judgments.

C. In an effort to settle the lawsuits, and eliminate mutual uncertainty regarding the future use and development of the Property, the parties have agreed to a full and conclusive resolution of all issues raised in both lawsuits through the performance of this Settlement Agreement, including the approval of the final tract map for Vestin

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Tract Map No. 46964 for subdivision of the Property into five (5) lots.

D. Both parties believe and intend that this Agreement and the various actions and transactions it contemplates provide a fair, equitable, complete and permanent resolution satisfactory to Winograd and the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts and of the mutual covenants and conditions described below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Definitions** For purposes of this Agreement, the following terms shall have the meanings assigned to them:

1.1 Agreement - this Settlement Agreement.

1.2 City - the City of Malibu, a municipal corporation.

1.3 Winograd - Fred Winograd.

1.4 Modified Project - A five (5) lot subdivision to be developed at the Property and particularly described in the attached Exhibit A.

1.5 Original Approvals - Zone Change No. 88-553-4, Conditional Use Permit No. 88-J533-4, Vesting Tentative Subdivision Map No. 46964 and Coastal Development Permit No. 5-90-525.

1.6 Parties - the City and Winograd.

1.7 Project - the seven (7) lot subdivision as originally approved by the County of Los Angeles in vesting Tentative Tract Map No. 46964 and the California Coastal Commission in Coastal Development Permit No. 5-90-525.

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1.8 Property - Winograd's two (2) parcels of undeveloped property, located adjacent to Trancas Canyon, approximately one-half mile above Pacific Coast Highway, in the City of Malibu.

2. Administrative Action

2.1 Within sixty (60) days of the execution of this Agreement, the City, acting through its City Council, pursuant to the applicable provisions of the Subdivision Map Act, shall approve for recordation by the County Recorder for the County of Los Angeles the final map for Tract No. 46964, as revised for five (5) residential lots, with vehicular access for the subdivision provided by Trancas Canyon Road, as evidenced by Exhibit A attached hereto.

2.2 Prior to the commencement of development on Lot 5, as depicted in Exhibit A hereto, Winograd shall comply with the terms of Special Condition No. 3 of Coastal Development Permit No. 5-90-525 as it exists on the date of this Agreement, and shall complete the overexcavation/ recompaction/remedial grading as recommended by the Geologic Investigation dated June 11, 1990, by Donald B. Kowalewsky, and Soils Investigation dated June 22, 1989, by Strata-Tech consultants.

2.3 The City Engineer shall not forward the final map approved for Tract Map No. 46964 for five (5) lots to the County Recorder for the County of Los Angeles for recordation unless and until such time as Winograd specifically requests the City Engineer to do so in writing.

3. Entitlements

3.1 The Parties agree that approval of any future residences on the ^{five (5) lots} depicted on the final map for Tract Map No. 46964 shall be subject to the rec

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the City's then current zoning ordinance and the provisions of section 2.2 of this Agreement and further agree that the zoning ordinance shall not prohibit the construction of a single-family residence on any of the five (5) lots depicted on said final map.

3.2 Each of the parties agrees to execute and deliver such other instruments and perform such further acts, as may be appropriate or necessary to effectuate the agreements of the parties and purposes of this Agreement. In particular, and without limiting the generality of the preceding sentence, the City agrees that in the event that a determination is made by a Court having jurisdiction over the Property or any of the Parties hereto that any of the entitlements were invalidly issued, the City will, at Winograd's request, take such steps as are necessary in accordance with applicable procedures and law to expeditiously correct the deficiencies and to re-issue such entitlements. Winograd agrees to defend and indemnify the City in connection with any judicial proceeding brought to obtain such a determination.

4. *Suspension and Dismissal of Lawsuit*

4.1 The parties agree to suspend all proceedings in the lawsuits for a period of at least ninety (90) days following the date of this Agreement (or until the Agreement is terminated in accordance with its terms, whichever first occurs) and shall enter into appropriate stipulations, apply for continuances and take other reasonable measures to be agreed between the parties' respective counsel to carry out the purposes of this paragraph.

4.2 Following timely approval of the final map for Tract No. 46964 in accordance with the provisions of this Agreement, Winograd shall dismiss the lawsuits against the City with prejudice, and shall take all necessary steps to withdraw or abandon the appeals pending in the lawsuits.

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5. *Mutual Releases*

5.1 Except as otherwise expressly provided below, effective upon dismissal of the lawsuits with prejudice, the parties forever release and discharge each other, and their respective officers, directors, shareholders, agents, employees, attorneys and elected officials from any and all claims, demands, causes of action and other liability of every kind and description, whenever arising, known or unknown, that concerns the Project, the Original Approvals, Modified Project or land use regulations of the City now in effect and applicable to the Property, that have been or might have been asserted by either party in the lawsuits, whether by way of claim, defense, or counter-claim.

5.2 The parties reserve all claims concerning the performance and breach of this Agreement, and the granting of entitlements and other actions contemplated by this Agreement.

5.3 Both parties have been advised concerning Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time executing the release, which if known by him must have materially affected his settlement with the debtor."

The parties waive the protection of this statute, and any legal principles or doctrines of similar effect.

6. *Remedies*

6.1 The parties' performance of this Agreement shall be subject to the continuing jurisdiction of the Los Angeles County Superior Court.

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6.2 The parties agree that in the event of any breach of the provisions of this Agreement concerning entitlements, money damages would be an inadequate remedy. This Agreement may therefore be enforced by specific performance, or by a preliminary or permanent, mandatory or prohibitory injunction or other equitable order or decree. The City waives any defense based upon the amount, possibility of estimating, availability, adequacy or effectiveness of money damages.

6.3 In particular, and without limiting the generality of the preceding Section 6.2 if any entitlement contemplated by this Agreement is rescinded or changed by any act by the City Council other than a judicial invalidation of its issuance for failure to comply with applicable law, or if the City fails to issue such other permits and approvals as are consistent with such entitlements and necessary for their implementation and enjoyment, such actions shall constitute a material breach of this Agreement by the City, and Winograd may pursue all cumulative rights and remedies available at law and in equity including, without limitation, rescission, specific performance, injunctive relief and actual damages for breach of this Agreement.

6.4 In the event of any further proceedings to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs, in addition to other appropriate relief allowed by the court.

7. *Representations and Warranties*

7.1 Winograd represents and warrants to the City that this Agreement has been duly authorized, executed and delivered, and constitutes the legally binding obligation of Winograd, enforceable in accordance with its terms.

7.2 The City represents and warrants to Winograd that this Agreement

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duly authorized, executed and delivered in the manner required by law, that all official action necessary to authorize and approve this Agreement has been taken, and that the Agreement constitutes the legally binding obligation of the City, enforceable in accordance with its terms.

7.3 The persons signing this Agreement hereby warrant that they have full authority to sign the Agreement on behalf of the respective parties.

8. General Provisions

8.1 This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns (collectively, "successors") of the parties. Any successor (including any purchaser of all or a portion of the Property) shall be fully bound by each and every applicable term and condition of this Agreement, and entitled to enforce its provisions as though a signatory. Except as otherwise expressly provided above with respect to successors of the parties, this Agreement creates no right in or for any third parties, imposes no obligations for the benefit of any third party, and may not be enforced by any third party.

8.2 This settlement is a compromise of disputed claims, and the terms and conditions of this Agreement are not to be construed as an admission of liability or lack thereof on the part of any parties hereby released. In entering into this Agreement, the parties intend merely to avoid further litigation.

8.3 This Agreement contains the entire agreement between the parties concerning settlement of the lawsuits, and may not be modified without further written agreement of the parties.

8.4 Both parties have obtained the advice of their own legal counsel concerning the negotiation, terms and effect of this Agreement, which they intend to be a final

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and binding settlement that, when fully performed pursuant to the terms of this Agreement, will extinguish and release all obligations and claims respecting the development of the Property.

8.5 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.6 Any notice required or contemplated by this Agreement shall be given in writing by personal delivery, or by prepaid registered or certified mail, return receipt requested, and shall be effective upon receipt. Notice shall be given to the following addresses (which any party may change at any time by written notice):

To the City:

City of Malibu
23555 Civic Center Way
Malibu, California 90265
Attention: Christi Hogin, City Attorney

with a copy to:

Steven H. Kaufmann, Esq.
Richards, Watson & Gershon
333 South Hope Street, 38th Floor
Los Angeles, California 90071

To Winograd:

Fred Winograd
4267 Marina City Drive, Suite 600 WTS
Marina del Rey, California 90292

with a copy to :

Alan Robert Block, Esq.
Law Offices of Alan Robert Block
A Professional Corporation
1901 Avenue of the Stars, Suite 1901
Los Angeles, California 90067

8.7 If any term, covenant, condition or provision of this Agreement is invalidated or rendered unenforceable by a court, or by a federal or state law, regulation or

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remaining covenants, conditions and provisions of this Agreement shall remain in full force and effect.

8.8 No waiver of any provision of this Agreement shall be effective, or inferred by implication or operation of law, unless made in writing, and signed by an authorized representative of the party against whom enforcement of the waiver is sought. No waiver of any right or remedy in respect to any individual occurrence or event shall be deemed a waiver of any right or remedy in respect to any separate occurrence or event. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

8.9 This Agreement is deemed to have been prepared by all parties, so no uncertainty or ambiguity shall be interpreted against the presumed drafter, and all provisions shall be interpreted in accordance with the law applicable to interpretation of all contracts.

8.10 This agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original, and the counterparts shall constitute a single Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by each of them on the date set forth hereinabove.

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FRED WINOGRAD

**CITY OF MALIBU,
a municipal corporation**

By: *Fred Winograd*

By: *Joan House*

Name: *FRED WINOGRAD*

Name: *Joan House*

Title: **OWNER**

Title: *MAYOR*

Date: **DECEMBER 29, 1995.**

Date: *1-31-96*

Attest: *Lisa Pope*

City Clerk

FORM AND CONTENT APPROVED:

**LAW OFFICES OF ALAN ROBERT BLOCK
A Professional Corporation**

RICHARDS, WATSON & GERSHON

By: *Alan Robert Block*

By: *Steven H. Kaufmann*

**ALAN ROBERT BLOCK
Attorneys for Plaintiff
FRED WINOGRAD**

**STEVEN H. KAUFMANN
Attorneys for Defendant
CITY OF MALIBU**

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into as of December __, 1995, between Fred Winograd ("Winograd") and the City of Malibu, a municipal corporation (the "City").

RECITALS

A. Winograd owns two (2) legal lots totaling over twenty (20) acres of unimproved real property adjacent to Trancas Canyon, approximately one-half of a mile above Pacific Coast Highway, in the City (the "Property"), which is zoned for residential use.

B. Winograd has filed two (2) separate lawsuits against the City in *Winograd vs. City of Malibu*, Los Angeles Superior Court Case Number BS020694, filed on November 17, 1992, and *Winograd vs. City of Malibu*, Los Angeles Superior Court Case Number BS022391, filed on March 25, 1993 (the "lawsuits"). In said lawsuits, Winograd contends that the City abused its discretion by failing to review and approve for recording the final map for Vesting Tentative Tract Map No. 46964 for either six (6) or seven (7) lots. The City contends that it properly rejected the final map for Vesting Tentative Tract Map No. 46964. Judgments in the lawsuits have been entered in favor of the City, and Winograd has since filed appeals from both judgments.

C. In an effort to settle the lawsuits, and eliminate mutual uncertainty regarding the future use and development of the Property, the parties have agreed to a full and conclusive resolution of all issues raised in both lawsuits through the performance of this Settlement Agreement, including the approval of the final tract map for Vestin

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Tract Map No. 46964 for subdivision of the Property into five (5) lots.

D. Both parties believe and intend that this Agreement and the various actions and transactions it contemplates provide a fair, equitable, complete and permanent resolution satisfactory to Winograd and the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts and of the mutual covenants and conditions described below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Definitions** For purposes of this Agreement, the following terms shall have the meanings assigned to them:

1.1 Agreement - this Settlement Agreement.

1.2 City - the City of Malibu, a municipal corporation.

1.3 Winograd - Fred Winograd.

1.4 Modified Project - A five (5) lot subdivision to be developed at the Property and particularly described in the attached Exhibit A.

1.5 Original Approvals - Zone Change No. 88-553-4, Conditional Use Permit No. 88-J533-4, Vesting Tentative Subdivision Map No. 46964 and Coastal Development Permit No. 5-90-525.

1.6 Parties - the City and Winograd.

1.7 Project - the seven (7) lot subdivision as originally approved by the County of Los Angeles in vesting Tentative Tract Map No. 46964 and the California Coastal Commission in Coastal Development Permit No. 5-90-525.

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1.8 Property - Winograd's two (2) parcels of undeveloped property, located adjacent to Trancas Canyon, approximately one-half mile above Pacific Coast Highway, in the City of Malibu.

2. Administrative Action

2.1 Within sixty (60) days of the execution of this Agreement, the City, acting through its City Council, pursuant to the applicable provisions of the Subdivision Map Act, shall approve for recordation by the County Recorder for the County of Los Angeles the final map for Tract No. 46964, as revised for five (5) residential lots, with vehicular access for the subdivision provided by Trancas Canyon Road, as evidenced by Exhibit A attached hereto.

2.2 Prior to the commencement of development on Lot 5, as depicted in Exhibit A hereto, Winograd shall comply with the terms of Special Condition No. 3 of Coastal Development Permit No. 5-90-525 as it exists on the date of this Agreement, and shall complete the overexcavation/ recompaction/remedial grading as recommended by the Geologic Investigation dated June 11, 1990, by Donald B. Kowalewsky, and Soils Investigation dated June 22, 1989, by Strata-Tech consultants.

2.3 The City Engineer shall not forward the final map approved for Tract Map No. 46964 for five (5) lots to the County Recorder for the County of Los Angeles for recordation unless and until such time as Winograd specifically requests the City Engineer to do so in writing.

3. Entitlements

3.1 The Parties agree that approval of any future residences on the ^{final (5) lots} depicted on the final map for Tract Map No. 46964 shall be subject to the req

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the City's then current zoning ordinance and the provisions of section 2.2 of this Agreement and further agree that the zoning ordinance shall not prohibit the construction of a single-family residence on any of the five (5) lots depicted on said final map.

3.2 Each of the parties agrees to execute and deliver such other instruments and perform such further acts, as may be appropriate or necessary to effectuate the agreements of the parties and purposes of this Agreement. In particular, and without limiting the generality of the preceding sentence, the City agrees that in the event that a determination is made by a Court having jurisdiction over the Property or any of the Parties hereto that any of the entitlements were invalidly issued, the City will, at Winograd's request, take such steps as are necessary in accordance with applicable procedures and law to expeditiously correct the deficiencies and to re-issue such entitlements. Winograd agrees to defend and indemnify the City in connection with any judicial proceeding brought to obtain such a determination.

4. *Suspension and Dismissal of Lawsuit*

4.1 The parties agree to suspend all proceedings in the lawsuits for a period of at least ninety (90) days following the date of this Agreement (or until the Agreement is terminated in accordance with its terms, whichever first occurs) and shall enter into appropriate stipulations, apply for continuances and take other reasonable measures to be agreed between the parties' respective counsel to carry out the purposes of this paragraph.

4.2 Following timely approval of the final map for Tract No. 46964 in accordance with the provisions of this Agreement, Winograd shall dismiss the lawsuits against the City with prejudice, and shall take all necessary steps to withdraw or abandon the proceedings in the lawsuits.

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5. Mutual Releases

5.1 Except as otherwise expressly provided below, effective upon dismissal of the lawsuits with prejudice, the parties forever release and discharge each other, and their respective officers, directors, shareholders, agents, employees, attorneys and elected officials from any and all claims, demands, causes of action and other liability of every kind and description, whenever arising, known or unknown, that concerns the Project, the Original Approvals, Modified Project or land use regulations of the City now in effect and applicable to the Property, that have been or might have been asserted by either party in the lawsuits, whether by way of claim, defense, or counter-claim.

5.2 The parties reserve all claims concerning the performance and breach of this Agreement, and the granting of entitlements and other actions contemplated by this Agreement.

5.3 Both parties have been advised concerning Section 1542 of the California Civil Code, which reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time executing the release, which if known by him must have materially affected his settlement with the debtor."

The parties waive the protection of this statute, and any legal principles or doctrines of similar effect.

6. Remedies

6.1 The parties' performance of this Agreement shall be subject to the continuing jurisdiction of the Los Angeles County Superior Court.

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6.2 The parties agree that in the event of any breach of the provisions of this Agreement concerning entitlements, money damages would be an inadequate remedy. This Agreement may therefore be enforced by specific performance, or by a preliminary or permanent, mandatory or prohibitory injunction or other equitable order or decree. The City waives any defense based upon the amount, possibility of estimating, availability, adequacy or effectiveness of money damages.

6.3 In particular, and without limiting the generality of the preceding Section 6.2 if any entitlement contemplated by this Agreement is rescinded or changed by any act by the City Council other than a judicial invalidation of its issuance for failure to comply with applicable law, or if the City fails to issue such other permits and approvals as are consistent with such entitlements and necessary for their implementation and enjoyment, such actions shall constitute a material breach of this Agreement by the City, and Winograd may pursue all cumulative rights and remedies available at law and in equity including, without limitation, rescission, specific performance, injunctive relief and actual damages for breach of this Agreement.

6.4 In the event of any further proceedings to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs, in addition to other appropriate relief allowed by the court.

7. *Representations and Warranties*

7.1 Winograd represents and warrants to the City that this Agreement has been duly authorized, executed and delivered, and constitutes the legally binding obligation of Winograd, enforceable in accordance with its terms.

7.2 The City represents and warrants to Winograd that this Agreement

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duly authorized, executed and delivered in the manner required by law, that all official action necessary to authorize and approve this Agreement has been taken, and that the Agreement constitutes the legally binding obligation of the City, enforceable in accordance with its terms.

7.3 The persons signing this Agreement hereby warrant that they have full authority to sign the Agreement on behalf of the respective parties.

8. General Provisions

8.1 This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and assigns (collectively, "successors") of the parties. Any successor (including any purchaser of all or a portion of the Property) shall be fully bound by each and every applicable term and condition of this Agreement, and entitled to enforce its provisions as though a signatory. Except as otherwise expressly provided above with respect to successors of the parties, this Agreement creates no right in or for any third parties, imposes no obligations for the benefit of any third party, and may not be enforced by any third party.

8.2 This settlement is a compromise of disputed claims, and the terms and conditions of this Agreement are not to be construed as an admission of liability or lack thereof on the part of any parties hereby released. In entering into this Agreement, the parties intend merely to avoid further litigation.

8.3 This Agreement contains the entire agreement between the parties concerning settlement of the lawsuits, and may not be modified without further written agreement of the parties.

8.4 Both parties have obtained the advice of their own legal counsel concerning the negotiation, terms and effect of this Agreement, which they intend to be a final

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and binding settlement that, when fully performed pursuant to the terms of this Agreement, will extinguish and release all obligations and claims respecting the development of the Property.

8.5 This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.6 Any notice required or contemplated by this Agreement shall be given in writing by personal delivery, or by prepaid registered or certified mail, return receipt requested, and shall be effective upon receipt. Notice shall be given to the following addresses (which any party may change at any time by written notice):

To the City:

City of Malibu
23555 Civic Center Way
Malibu, California 90265
Attention: Christi Hogin, City Attorney

with a copy to:

Steven H. Kaufmann, Esq.
Richards, Watson & Gershon
333 South Hope Street, 38th Floor
Los Angeles, California 90071

To Winograd:

Fred Winograd
4267 Marina City Drive, Suite 600 WTS
Marina del Rey, California 90292

with a copy to :

Alan Robert Block, Esq.
Law Offices of Alan Robert Block
A Professional Corporation
1901 Avenue of the Stars, Suite 1901
Los Angeles, California 90067

8.7 If any term, covenant, condition or provision of this Agreement is invalidated or rendered unenforceable by a court, or by a federal or state law, regulation or

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remaining covenants, conditions and provisions of this Agreement shall remain in full force and effect.

8.8 No waiver of any provision of this Agreement shall be effective, or inferred by implication or operation of law, unless made in writing, and signed by an authorized representative of the party against whom enforcement of the waiver is sought. No waiver of any right or remedy in respect to any individual occurrence or event shall be deemed a waiver of any right or remedy in respect to any separate occurrence or event. The exercise of any remedy provided in this Agreement shall not be a waiver of any consistent remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other consistent remedies unless they are expressly excluded.

8.9 This Agreement is deemed to have been prepared by all parties, so no uncertainty or ambiguity shall be interpreted against the presumed drafter, and all provisions shall be interpreted in accordance with the law applicable to interpretation of all contracts.

8.10 This agreement may be executed in one or more counterparts. Each counterpart shall be deemed an original, and the counterparts shall constitute a single Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by each of them on the date set forth hereinabove.

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FRED WINOGRAD

**CITY OF MALIBU,
a municipal corporation**

By: *Fred Winograd*

By: *Juan House*

Name: *FRED W. WINOGRAD*

Name: *Juan House*

Title: **OWNER**

Title: *MAYOR*

Date: **DECEMBER 29, 1995.**

Date: *1-31-96*

Attest: *Lisa Pope*

City Clerk

FORM AND CONTENT APPROVED:

**LAW OFFICES OF ALAN ROBERT BLOCK
A Professional Corporation**

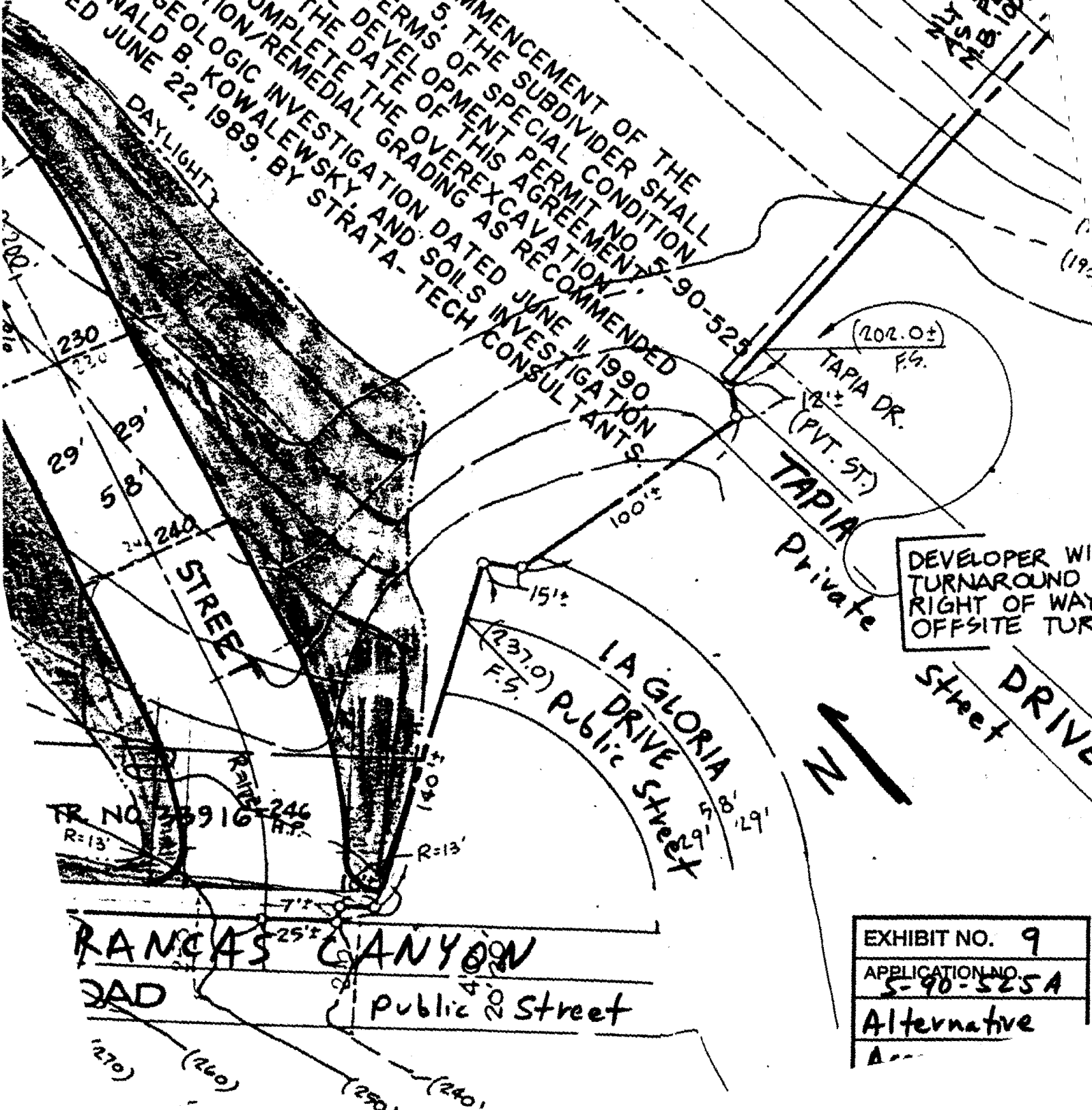
RICHARDS, WATSON & GERSHON

By: *[Signature]*
ALAN ROBERT BLOCK
Attorneys for Plaintiff
FRED WINOGRAD

By: *[Signature]*
STEVEN H. KAUFMANN
Attorneys for Defendant
CITY OF MALIBU

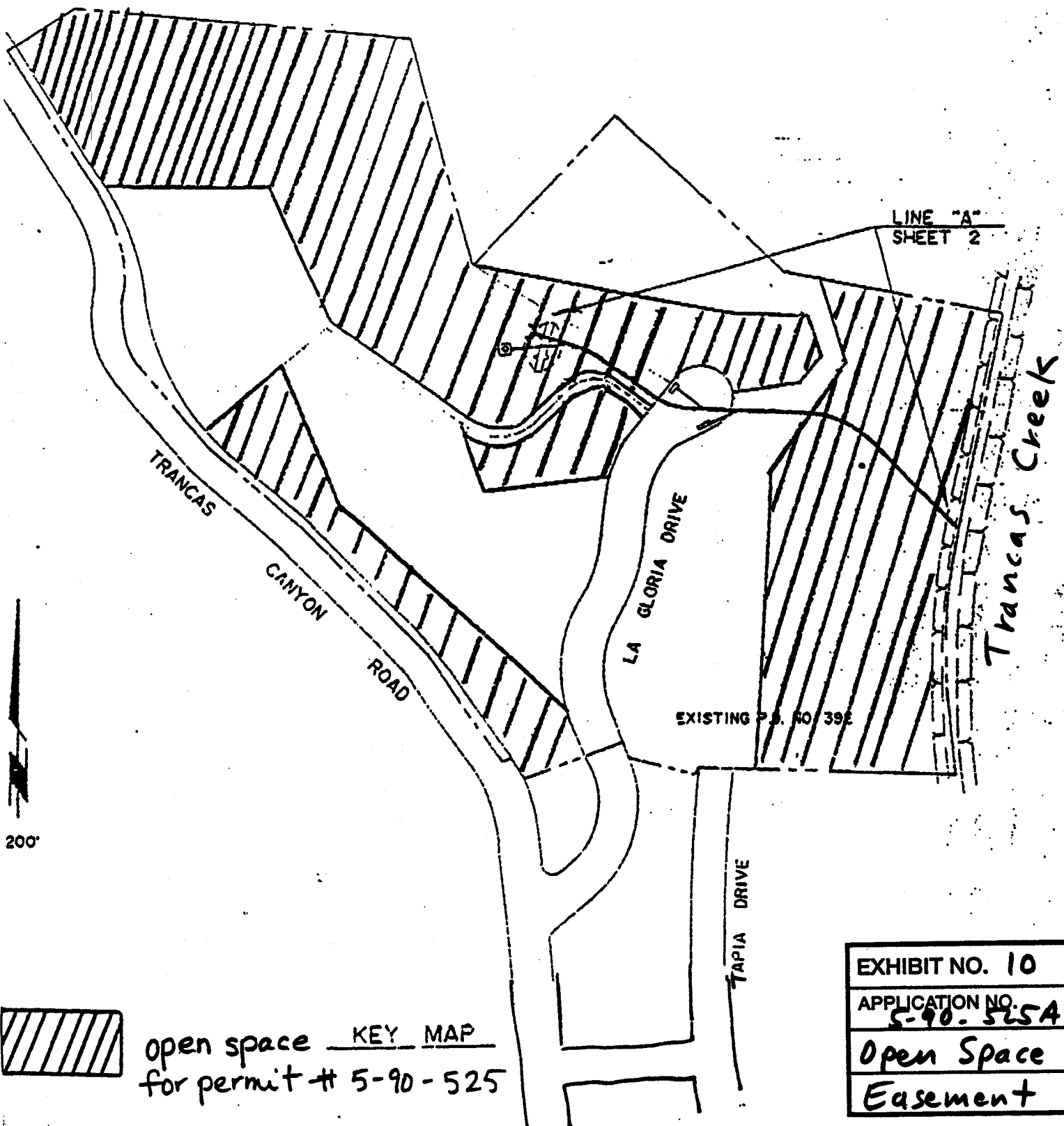
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Settlement Agent
pg 10 of 10

NOTE: PRIOR TO THE COMMENCEMENT OF THE DEVELOPMENT ON LOT 5, THE SUBDIVIDER SHALL COMPLY WITH THE TERMS OF SPECIAL CONDITION NO. 3 OF COASTAL DEVELOPMENT PERMIT NO. AS IT EXIST ON THE DATE OF THIS AGREEMENT AND SHALL COMPLETE THE OVEREXCAVATION RECOMPACT AND SHALL COMPLETE THE OVEREXCAVATION RECOMPACT AND SHALL COMPLETE THE OVEREXCAVATION RECOMPACT BY THE GEOLOGIC INVESTIGATION GRADING AS RECOMMENDED BY DONALD B. KOWALEWSKY AND SOILS INVESTIGATION DATED JUNE 11, 1990 BY DONALD B. KOWALEWSKY AND SOILS INVESTIGATION DATED JUNE 11, 1990 BY STRATA-TECH CONSULTANTS.



DEVELOPER WILL TURNAROUND RIGHT OF WAY OFFSITE TURN

EXHIBIT NO. 9
APPLICATION NO. 5-90-525A
Alternative
Ass



LINE "A"
SHEET 2

TRANCAS
CANYON
ROAD

LA GLORIA DRIVE

Trancas Creek

EXISTING P.S. NO 39E

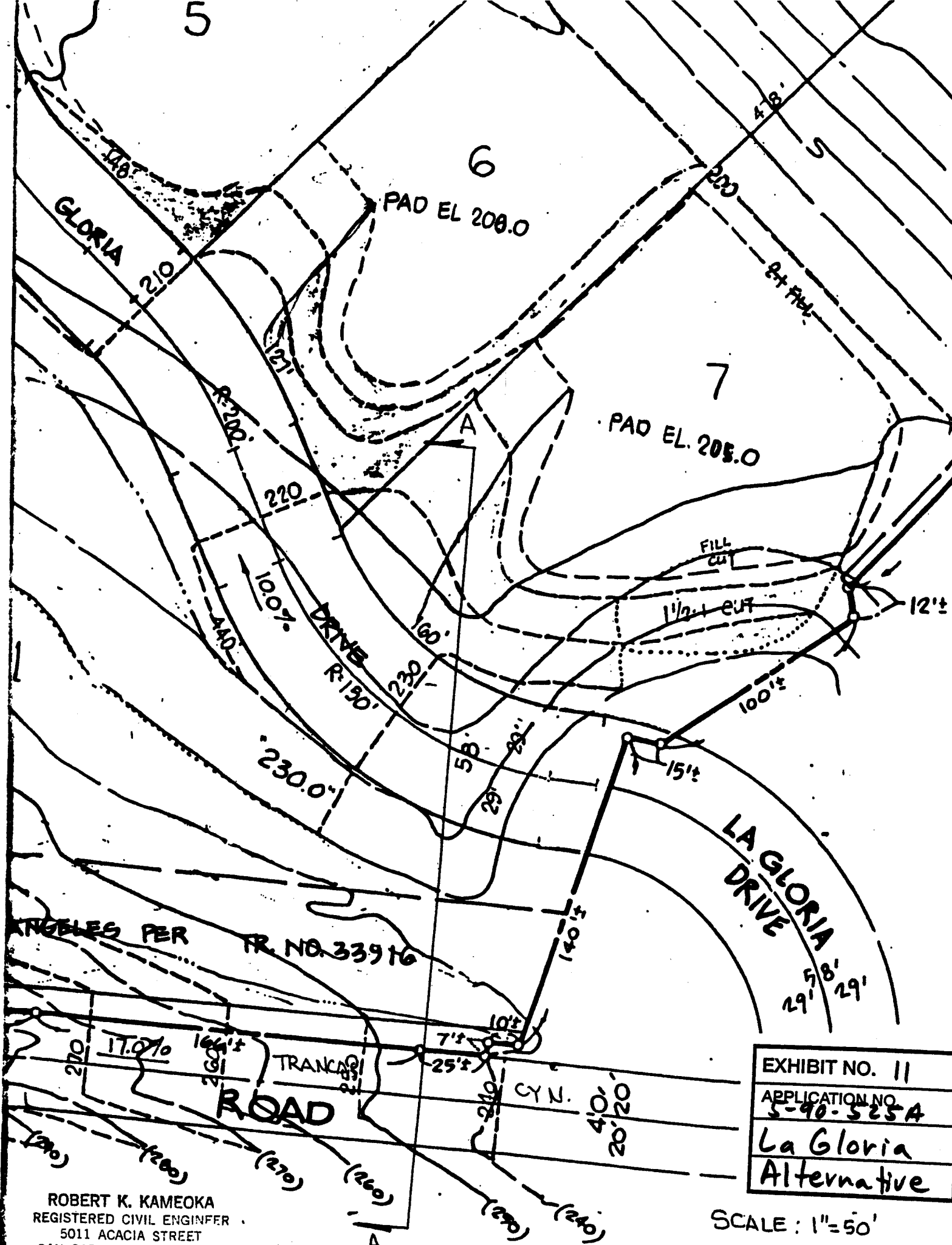
TAPIA DRIVE

200'



open space KEY MAP
for permit # 5-90-525

EXHIBIT NO. 10
APPLICATION NO. 5-90-525A
Open Space Easement



5

6

7

PAD EL. 208.0

PAD EL. 205.0

GLORIA DRIVE

DRIVE LANE
R-130'

FILL CUT

1 1/2' CUT

LA GLORIA DRIVE

ANGELES PER TR. NO. 33916

ROAD

CYN.

EXHIBIT NO. 11
APPLICATION NO. 5-90-525A
La Gloria Alternative

SCALE: 1"=50'

ROBERT K. KAMEOKA
REGISTERED CIVIL ENGINEER
5011 ACACIA STREET
SAN GABRIEL, CALIF. 91776

A

SHOOP & LEANSE

ATTORNEYS AT LAW

PAUL SHOOP

23805 STUART RANCH ROAD, SUITE 210
MALIBU, CALIFORNIA 90265
(310) 456-1957
FAX (310) 456-8109

DAVID V. LEANSE
OF COUNSEL

VIA FACSIMILE AND FIRST CLASS MAIL

June 11, 1996

Mr. Jack Ainsworth
Mr. James Johnson
California Coastal Commission
89 South California Street, 2nd Floor
Ventura, CA 93001

Re: Fred Winograd
Permit 90-5-525A (Winograd)

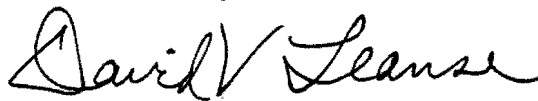
Dear Mr. Ainsworth and Mr. Johnson:

As I promised you today at the conference on La Gloria in Malibu, here is a copy of the Court Order dated May 17, 1996 signed by acting Presiding Judge Crosky which extends to August 30, 1996 the time in which Mr. Winograd must file a Reply Brief. The Order recites:

"No further extensions will be granted."

Accordingly, the application for amendment must be heard at the July, 1996 Huntington Beach meeting of the Commission so as to afford Mr. Winograd ample time to prepare and file his Reply Brief to demonstrate why Winograd should obtain 7 lots (as compared to the 5-lots he settled for in his deal with the City of Malibu.)

Sincerely,



David V. Leanse

RECEIVED

JUN 13 1996

DVL:ko

Enclosure

cc: Fred Winograd

CAI
COASTAL
SOUTH CENTR

EXHIBIT NO. 12
APPLICATION NO. 90-525A
Applicant Letter
Page 1 of 3

COPY

CONSOLIDATED CASES
CASE NO. B077876 AND CASE NO. B084833

IN THE COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

FRED WINOGRAD,)
)
Plaintiff/Appellant)
)
vs.)
)
CITY OF MALIBU, a municipal)
corporation,)
)
Respondent and Respondent.)

COURT OF APPEAL - SECOND DISTRICT

FILED

MAY 1990

JOSEPH A. LANE Clerk

/s/ THOMAS

APPEALS FROM THE LOS ANGELES SUPERIOR COURT
HON. DIANE WAYNE, JUDGE
HON. STEPHEN E. O'NEIL, JUDGE

APPLICATION FOR EXTENSION OF TIME
TO FILE APPELLANT'S REPLY BRIEF; ORDER

SHOOP & LEANSE
DAVID V. LEANSE
(State Bar No. 026298)
23805 Stuart Ranch Road, Suite 210
Malibu, CA 90265
(310) 456-1957

Attorneys for Petitioner and Appellant,
FRED WINOGRAD

EXHIBIT NO. 12
APPLICATION NO. 5-90-525A
Applicant letter
page 2 of 3

ORDER

Based upon the application of Appellant, and good cause appearing,
IT IS ORDERED that Appellant shall have an extension of time to and
including August 30, 1996, within which to file its Appellant's Reply Brief.

Dated: MAY 17 1996, 1996

CROSKEY

Acting PRESIDING JUDGE

No further extensions
will be granted.

EXHIBIT NO. 12
APPLICATION NO. 5-90-525A
Applicant letter
page 3 of 3

SHOOP & LEANSE

ATTORNEYS AT LAW

PAUL SHOOP

23808 STUART RANCH ROAD, SUITE 210
MALIBU, CALIFORNIA 90265
(310) 456-1657
FAX (310) 456-6108

DAVID V. LEANSE
OF COUNSEL

VIA FACSIMILE AND FEDERAL EXPRESS

June 12, 1996

Mr. Jack Ainsworth
Mr. James Johnson
California Coastal Commission
89 South California Street, 2nd Floor
Ventura, CA 93001

RECEIVED

JUN 14 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Fred Winograd, Permit 90-5-525A

Dear Mr. Ainsworth and Mr. Johnson:

The compelling reasons the staff and the Commission should approve the Winograd amendment with a Trancas Canyon Road access are threefold:

I Five homesites instead of seven serve the environment of the adjacent 400 person Malibu West neighborhood.

II The La Gloria residents will enjoy greater peace and tranquility.

III "Safety" as provided in the Coastal Act.

I Five homesites vs. seven homesites. Environmentally speaking the Trancas access grading differential pales into insignificance when compared to the benefits of having only 5 homes (built to City of Malibu's stricter codes and lower elevations, instead of 7 homes built to County of Los Angeles code affording larger area and 35' elevations. We must not trivialize the meaning and the blessing of a significantly downscaled project.

II The La Gloria "people" factor. Adding an access to the existing traffic pattern on Trancas Canyon Road is de minimus compared to the real intrusive burden imposed on the La Gloria owners and residents. Why not let them retain their peace -- it is really a local matter, not an earth-shattering Coastal issue/concern.

EXHIBIT NO. 13
APPLICATION NO. 5-98-325A
Applicant letter
page 1 of 4

Mr. Jack Ainsworth
Mr. James Johnson
June 12, 1996
Page 2

III **"Safety" provided in the Law -- The Coastal Act.** Staff and Commission are availed many provisions in the Coastal Act (Public Resources Code §§30600 et. seq.) which support Trancas Canyon access: e.g.

§30001. Value of coastal zone

"The Legislature hereby finds and declares:

(a) That the California Coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

... (c) That to promote the public safety, health, and welfare, and to protect ... private property, ... it is necessary to protect the ecological balance of the coastal zone ..." (emphasis supplied)

Comment: It was abundantly clear from the June 11, 1996 discussion by the La Gloria residents -- particularly Dr. Thie -- that ingress and egress on La Gloria has been extremely unsafe (two incidents of auto collisions within his own family.)

§30001.5. Basic goals

"The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect ... overall quality of the coastal zone environment ...

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people ..." (emphasis supplied)

Comment: The quality of the lives of the La Gloria and other nearby residents are to be protected and their social needs include the right to be safe on their streets.

EXHIBIT NO. 13
APPLICATION NO. 5-90-525A
Applicant letter
page 2 of 4

Mr. Jack Ainsworth
Mr. James Johnson
June 12, 1996
Page 3

§30004. Necessity for local and state involvement

"The Legislature further finds and declares that:

(a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement ..." (emphasis supplied)

Comment: It is evident the City of Malibu Planning Director, Joyce Parker and City Engineer, Rick Morgan and a majority of the City Council are urging Trancas Canyon Road instead of La Gloria.

§30006. Public participation

"The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal ... development; that achievement of sound coastal ... development is dependent upon public understanding and support ..." (emphasis supplied)

Comment: Mr. Ainsworth and Mr. Johnson personally witnessed the public participation by every single La Gloria resident, and other concerned Malibuites respecting the prudence of choosing Trancas Canyon Road as the access.

§30116. "Sensitive coastal resource areas"

[The Winograd development is clearly not in a "sensitive coastal resource area"].

EXHIBIT NO. 13
APPLICATION NO. 5-90-525A
Applicant letter
page 3 of 4

Mr. Jack Ainsworth
Mr. James Johnson
June 12, 1996
Page 4

Article 2.5
Fairness

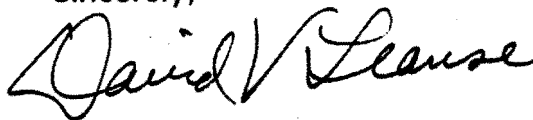
§30320. Findings and declarations

"(b) The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government ..." (emphasis supplied)

Comments: The word "fair" ceases to be an abstraction when we balance the equities respecting La Gloria vs. Trancas Canyon. What would be fair to all parties, including the State of California and the City of Malibu, would be to authorize the Trancas Canyon access.

The cumulative effect of the facts and the Law (the meaningful interpretation of the Goals and Values of the Coastal act) afford ample support for a staff finding and a Commission vote that Trancas Canyon (per applicant) is the most appropriate access.

Sincerely,



David V. Leanse, attorney and agent for
applicant Fred Winograd

DVL:ko

cc: Fred Winograd

EXHIBIT NO. 13
APPLICATION NO. 5-90-525A
Applicant letter
page 4 of 4



City of Malibu

23555 Civic Center Way, Malibu, California 90265-4804
(310) 456-CITY Fax (310) 456-3356
Planning Department

June 14, 1996

RECEIVED

JUN 14 1996

Mr. Jack Ainsworth
California Coastal Commission
89 S. California Street, Ste. 200
Ventura, CA 93001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Coastal Permit 5-90-525A, Winograd

Dear Mr. Ainsworth:

Thank you for visiting the site with City staff, residents and Mr. Winograd's representatives to discuss access to the subject tract map. As you are aware, the City Council approved a settlement agreement with Mr. Winograd that reduces the number of lots from seven (7) to five (5) and calls for access from Trancas Canyon Road in lieu of La Gloria Drive. The Council approved access from Trancas Canyon Road with full support of the affected residents and Mr. Winograd. In addition, they requested the City Engineer review the Trancas Canyon Road access for safety considerations. His memorandum is attached which indicates that he sees no sight distance, access, grading or drainage issues with the Trancas Canyon access.

Coastal staff has indicated that the reason they cannot support access from Trancas Canyon Road is because it would be inconsistent with Coastal Act Public Resources Code Section 30251 which requires permitted development to be sited to minimize the alteration of natural land forms and be visually compatible with the surrounding areas. A review of that section indicates that the purpose is to protect the scenic and visual qualities of coastal areas as a resource of public importance. Since the additional grading necessary to gain access from Trancas Canyon Road would not be visible from Pacific Coast Highway or to the general public since Trancas Canyon Road is not a through street, we believe that a finding can be made to approve the Trancas Canyon Road access and request that you reconsider your decision.

Please call me at (310) 456-2489 E. 227, if you have any questions or wish to further discuss this matter.

Sincerely,

Joyce Parker-Bozylinski
Planning Director

Enclosure

cc: City Council
David Leanse
Malibu West HOA

EXHIBIT NO. 14
APPLICATION NO. 5-90-525A
City of Malibu
page 1 of 2



City of Malibu

23555 Civic Center Way, Malibu, California 90265-4804
(310) 456-CITY Fax (310) 456-3356

WWW Site = <http://www.ci.malibu.ca.us> Email = jclement@ci.malibu.ca.us
John P. Clement, P.E., Public Works Director (CE 22578 & TRE 98)

MEMORANDUM

TO: Joyce Parker, Planning Director
FROM: John Clement, Public Works Director

Date Prepared: December 13, 1995

SUBJECT: Trancas Oaks Estates

RECOMMENDATION:

I have no professional objection to allowing Trancas Oaks Estates to take their access directly off Trancas Canyon Road in lieu of La Gloria.

DISCUSSION:

As a follow up to City Council direction of December 11, 1995 regarding the subject tract, I personally visited the site together with the appended exhibit on December 13, 1995.

I see no sight distance concerns, access concerns, grading issues, or drainage issues that would make the use of the direct Trancas Canyon access less desirable than La Gloria.

Attachments:
as - attachments related: Chris file
Subject file: NF
Computer file: trancas oak estate
trancas.oak

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JUN 1 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 14
APPLICATION NO. 5-90-525A
City of Malibu
page 2 of 2



**SWIMMING
CLUB**

30756 W. PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265 (213) 457-7725

June 14, 1996

Mr. Jack Ainsworth
Mr. James Johnson
California Coastal Commission
89 South California Street (2nd Floor)
Ventura, CA 93001

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JUN 14 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Re: Fred Winograd, Permit 90-5-525A

Gentlemen:

This is being written to you on behalf of the Board of Directors of the Malibu West Homeowners Association, which comprises 237 homeowners and more than 650 residents. Our homes are adjacent to Mr. Winograd's property.

We are vigorously supporting Mr. Winograd's application for an amended coastal permit which not only provides for a reduction from 7 permitted lots to 5, but also provides for an amendment to allow access to be made from Trancas Canyon Road, instead of La Gloria Drive, as previously required.

This change has been **unanimously** agreed to by the applicant, the Malibu City Council, and also all of the local residents. There is no conflict of any kind between all concerned and we are disappointed that the Coastal Commission staff is unwilling to recommend approval of this reasonable and mutually acceptable change, citing one partial aspect of Coastal Act Public Resources Code Section 30251.

This section requires, among a number of items, that "Permitted development shall be sited and designed . . . to minimize the alteration of natural land forms, . . . and to be visually compatible with the . . . surrounding areas." Because a change in the location of the access road will require a modest increase in grading, staff has resisted approval of the final permit.

We must point out that there are a number of compelling reasons for approval of this amendment, not the least of which is the overwhelming desire of the homeowners immediately adjacent to the area to avoid additional impact on their properties and indeed, their safety.

La Gloria Drive is a short and narrow street with a severely impacted view onto Trancas Canyon. Any additional traffic on La Gloria poses safety hazards - there have in fact been accidents in the past. In addition, water trucks fill up from a hydrant on La Gloria at least 15 times each week. These trucks then back out from the street.

EXHIBIT NO. 15
APPLICATION NO. 5-90-525A
Malibu West
page 1 of 2

Section 30253 of the Coastal Act further states that: "New development shall: (1) minimize risks to life and property in areas of . . . fire hazard." This area, of course, burned in the huge Trancas fire of 1978 (and the L.A. County Fire Department has advised the entire community that the area is long overdue for a major conflagration.) Section 30253 also states: "(2) Assure stability and structural integrity, and neither create nor contribute significantly to . . . geologic instability."

Homes on La Gloria already have foundation cracks due to geologic instability. They are sited on a slide-prone hillside, and any additional impact could be extremely harmful and potentially dangerous.

Creating an access road off Trancas Canyon will **in no way** be in conflict with "visual compatibility with the character of the surrounding areas" as required by Section 30251. On the contrary, this particular stretch of Trancas Canyon is virtually invisible from any inhabited part of the area, and is by no means a pristine piece of irreplaceable land. The additional grading required to complete this project will have absolutely no negative or visible impact on the area, within the clear-cut meaning and intent of the Coastal Act.

Local involvement in land use development is encouraged by the State Legislature, and here is a situation where **all** the parties involved locally are in agreement. It seems to be only reasonable and logical to support this most unusual kind of cooperation and agreement!

This permit request does, in fact, fully comply with the requirements of the Coastal Act, and therefore we urge staff and the members of the Commission to approve this amendment, so that the wishes of the applicant, the City of Malibu and the local residents most impacted may be realized in an orderly and amicable manner.

Sincerely,



Leslie Moss
President - Malibu West Home Owners Association

cc: David Leanse Esq.
Joyce Parker-Bozylinski - Planning Director, City of Malibu

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JUN 14 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 15
APPLICATION NO. 5-90-525A
Malibu West
page 2 of 2

Carrie Thie
John F. Thie DC
6162 La Gloria Drive
Malibu CA 90265
310 589 5269 FAX 310 589 5369

RECEIVED

June 14, 1996

JUN 18 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Mr. Jack Ainsworth
Mr. Jamaes Johnson
California Coastal Commission
89 south California Street, 2nd floor
Ventura, CA 93001

Re: Fred Winograd, Permit 90-5-525A

Dear Mr. Ainsworth and Mr. Johnson,

The compelling reasons the staff and Commission should approve the Winograd amendment with a Trancas Canyon Road access are two.

Section 30253 of the act requires a minimizing of risks to life. Using La Gloria would create a hazard and danger to the public safety. La Gloria is almost a blind intersection. This especially effects the visiting public who drive up Trancas Canyon to seek an alternate route to the valley when they are frustrated and tired during the peak traffic congestion on PCH. It would also endanger the residents and public who come to explore the beauty of the area. At present La Gloria is a very short dead-end street, but from Trancas it appears as a possibility for further exploration. Whereas the steep 8-10% grade of Trancas is signed not a through street. When the public discovers the dead end on La Gloria they immediately turn around and leave entering the hazardous intersection at very slow start up speeds. If La Gloria were to be extended the public not being familiar with the danger at the intersection would tend to enter it at normal driving speeds. This would occur because the public unaware of the hazardous conditions of the Trancas-La Gloria intersection could easily drive up from the Winograd project at much greater speeds. The dangers are created by the steep grade and drivers wanting to maintain speeds since they have a very clear view, except for La Gloria in either direction of travel, It is the traffic entering onto Trancas from La Gloria that has the responsibility for its own safety. In spite of our familiarity with this situation our family has experienced two auto accidents at this intersection .

The recommended access from Trancas gives a clear view in both directions of over 100 yards allowing a safe entrance and not interfering with the normal traffic flow.

Consideration of slowing the traffic on Trancas Canyon with speed reducing humps or stopping it altogether with Stop Signs in all three directions to make it more safe has been given. The addition fuel wasted and pollution created by both of these possibilities is not in the public interest. This would also cause considerable more traffic noise at all hours of the day and night which is not in the interest of the neighborhood. The homes have minimum setbacks.

EXHIBIT NO. 16
APPLICATION NO. 5-90-525A
La Gloria letter
page 1 of 2

The second reason for approving the Winograd amendment is that Section 30251 requires that the land be restored to enhance the visual quality of degraded areas. This area was originally used by the original developer 30 years ago, as a sales tool for selling Malibu West homes. It was severely degraded by grading and terracing (with cement drainage walks) to make a football field, a baseball diamond and an asphalt basketball court. When the developer went into bankruptcy, these recreational facilities were abandoned and no longer exist. Using the Trancas access would allow a more favorable restoration of the original natural land forms needing more yards of dirt be graded. The amount of grading is only one criteria. In this case the greater amount of grading will comply more fully with the intent of the Coastal Act Section 30251.

Since all impacted people will benefit from this approval, the City of Malibu, the public visiting the area covered by the Coastal Act, the developer, the public in the immediate neighborhood and they all agree on the Trancas Canyon access approval should be recommended. The reduction from 7 to 5 homesites and the above new information more than off-sets the insignificant additional grading.

Thank you both, for visiting the site and giving us a better understanding of the Coastal Act. We are confident that you will be able to make a favorable recommendation to the Commission based on the new information that you have received from the several parties.

Sincerely yours,



Carrie and John Thie

EXHIBIT NO. 16
APPLICATION NO. 5-90-525A
La Gloria Letta
page 2 of 2

Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

EXHIBIT NO. 17
APPLICATION NO. 5-90-525A
Standard
Conditions

