

**F 9a****CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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 Staff Report: 8/21/96  
 Hearing Date: 9/10-13/96  
 Comm. Action on Findings:  
 7446A

**RECORD PACKET COPY**STAFF REPORT: REVISED FINDINGS

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 77,350 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.

COMMISSION ACTION: Approval with Conditions

DATE OF COMMISSION ACTION: July 10, 1996

COMMISSIONERS ON PREVAILING SIDE: Commissioners Areias, Belgard, Calcagno, Flemming, Giacomini, Pavley, Randa, Rick, Staffel, Steinberg, Wear, and Wan.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following findings in support of the Commission's action on July 10, 1996 approving with conditions the permit amendment for a revised Tract Map and Grading Plan. All special conditions would remain in effect except for a revision of special condition number four, Cumulative Impact Mitigation. 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. This amendment application arises from the settlement agreement dated 1/31/96 between the City of Malibu and Mr. Winograd.

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 9 and are incorporated herein by reference.

II. Special Conditions.

Note: Special condition number four (4) has been revised to more specifically apply to a subdivision in the City of Malibu, since this site is no longer in the County of Los Angeles.

4. Cumulative Impact Mitigation (TDC City of Malibu)

Prior to the issuance of the Coastal Development Permit, the applicant 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 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) a TDC-type transaction, consistent with past Commission actions;

- b) 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.

### 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 77,350 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 was 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 (Exhibit 7) 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 January 1996, a settlement agreement was completed 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 to revise 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 77,350 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.

### C. 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. 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 77,350 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>
<u>ROAD ACCESS</u>	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		<u>+19,540</u>
<u>BUILDING PADS</u>	Five Lots	Seven Lots
Excavation/Cut	7,740	7,740
Fill	10,100	10,100
	<u>17,840</u>	<u>17,840</u>
DIFFERENCE		<u>0</u>

This table indicates that relocating the access road from La Gloria to Trancas Canyon Road will result in an increase of 19,540 cubic yards of grading. Exhibits 5 and 6 illustrate grading sections for these two alternative access routes. The grading sections indicate that additional fill is required to create a roadway access from Trancas Canyon Road as 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.

In conclusion, this proposed amendment reduces the number of lots created to five and relocates the access to Trancas Canyon Road. As noted above, the project site is highly disturbed and appears unnatural in appearance due to previous grading activities on the site. This past grading has created a landscape that is not a natural landform but rather appears to be engineered or manufactured. Although the amount of grading proposed is substantial, the proposed grading does not impact natural landforms, and it will be visually compatible with the character of the adjacent Malibu West subdivision. As proposed in this amendment, the road access and five lots are 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 will restore and enhance the visual quality of public views to the property. Therefore, the Commission finds that the proposed project, as proposed in this amendment, 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 Commission's standard of review for subdivisions is the Coastal Act. In this situation, because the project site is located on a 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).

In several permit actions in Los Angeles County prior to the City of Malibu's incorporation (5-86-592, Central Diagnostic Labs; 5-86-951, Ehrman and Coombs; 5-85-459A2, Ohanian; and 5-86-299A2 and A3, Young and Golling), the Commission found that until other mitigation programs were both in place and able to be implemented, 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 1986, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan, which is no longer legally binding within the City of Malibu. The Plan contained six potential mitigation programs that if in place would adequately mitigate the cumulative impacts of new development. However, in approving the above cited permit requests, the Commission found that none of the County's six mitigation programs were defined in the LUP as "self-implementing" or adequate to offset the impact of increased lots in the Santa Monica Mountains 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. 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 Commission has approved new subdivisions, but has continued to require purchase of TDC's as one of the alternative mitigation strategies. Staff review indicates that the incremental contribution to cumulative impacts would be the creation of three additional lots. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation would be associated with the development of the additional lots in this area. Therefore, the Commission determines that it is necessary to impose a requirement on the applicant, in order to insure that the cumulative impacts of the creating three additional legal buildable lots are adequately mitigated. 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. This permit has therefore been conditioned to require the applicant to mitigate the cumulative impacts of the subdivision of this property, either through the purchase of three (3) TDCs or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts equivalent to the number of potential building sites. The Commission finds that as conditioned, the permit 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

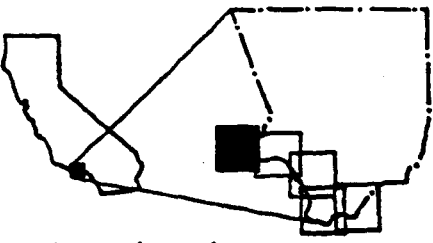
conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5 (d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impacts that the activity may have on the environment.

As discussed above, the proposed project does not substantially alter natural landforms, nor adversely impact public views, and will reduce cumulative impacts resulting from creating three new lots. Thus, as proposed in this amendment, the revised Tract Map will lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed amendment, as conditioned to reduce the cumulative impact mitigation for the revised and reduced number of new lots to a total of five 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.

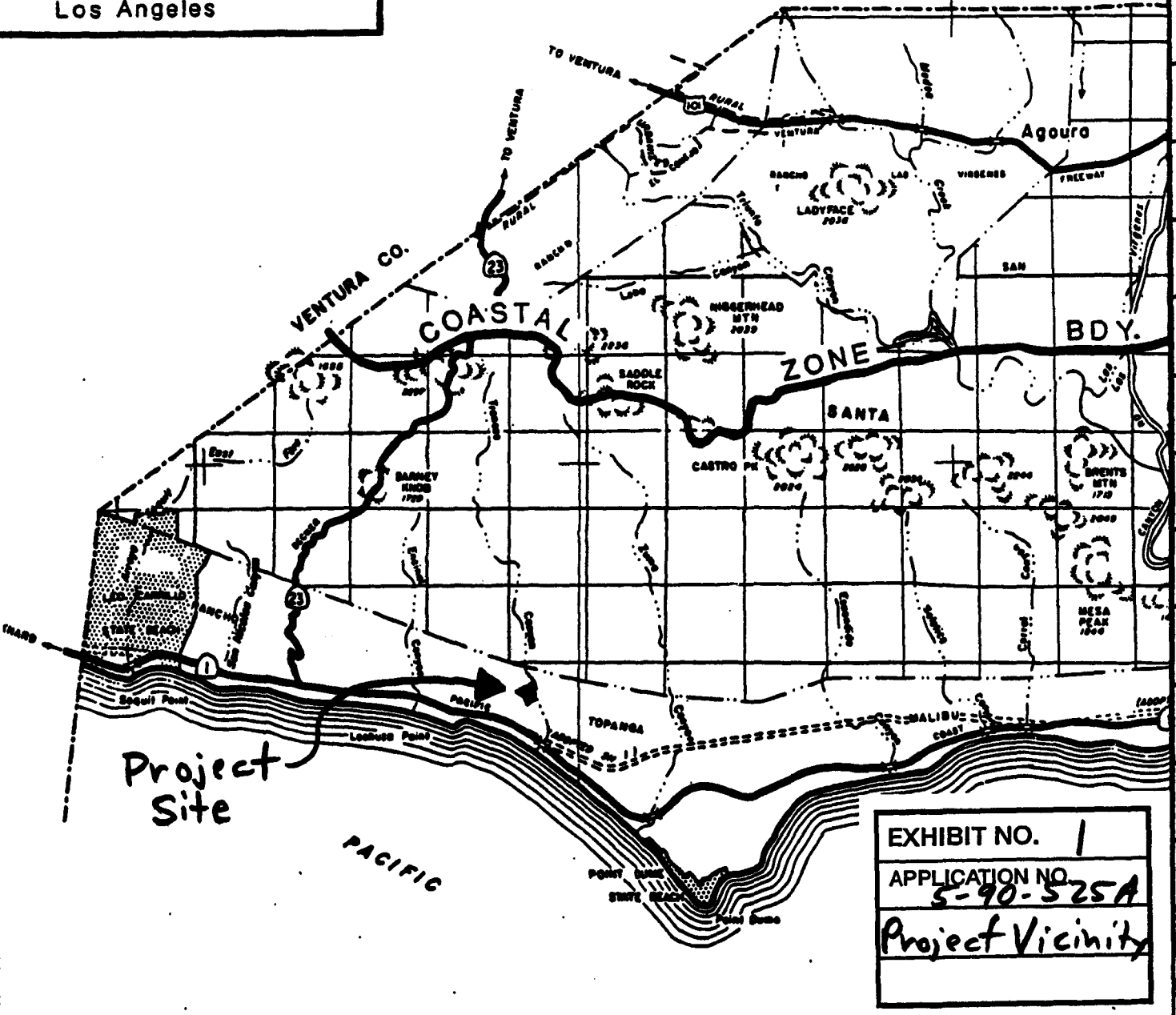
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Los Angeles



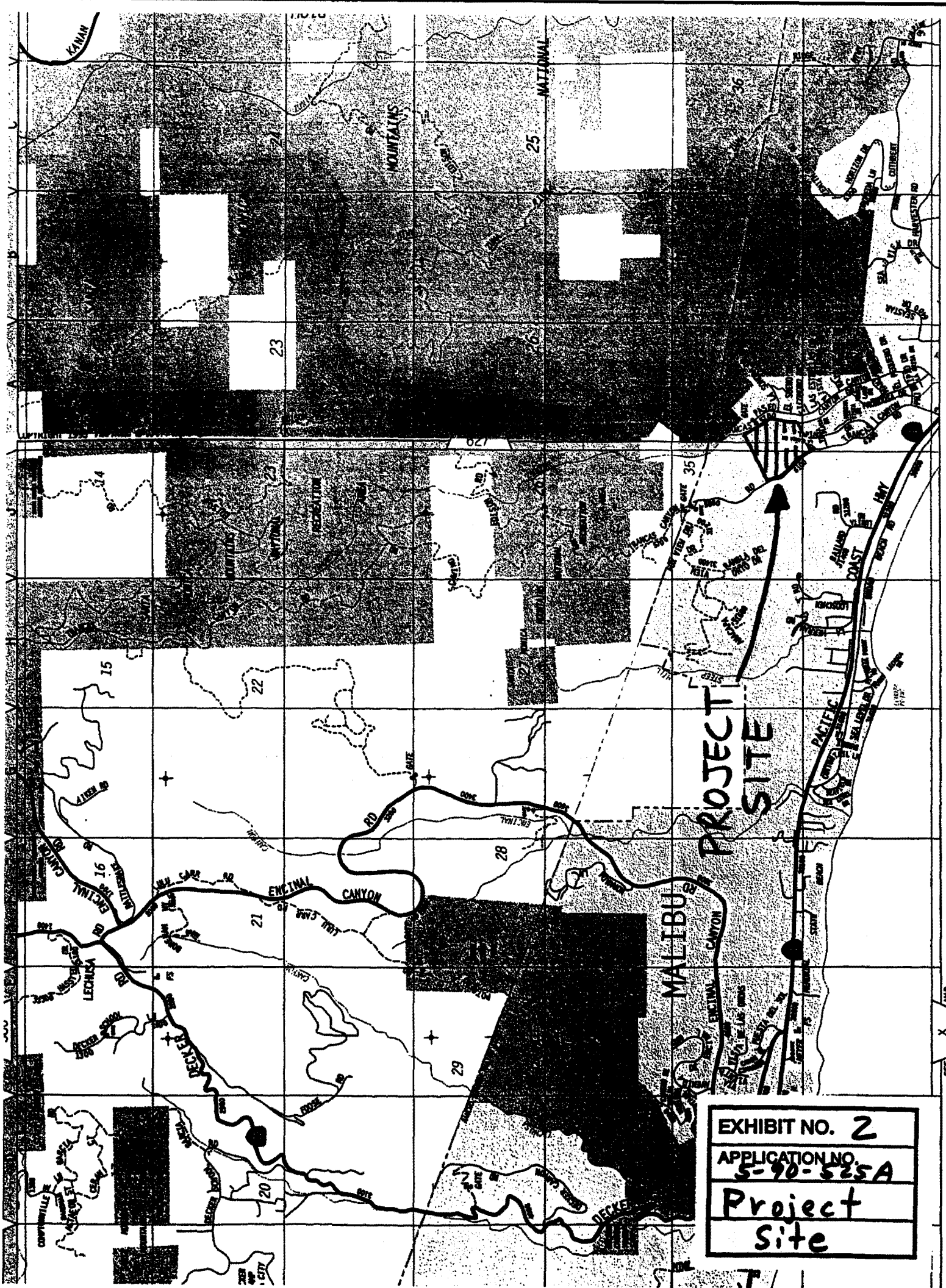
Project Site

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



# LOCATION MAP



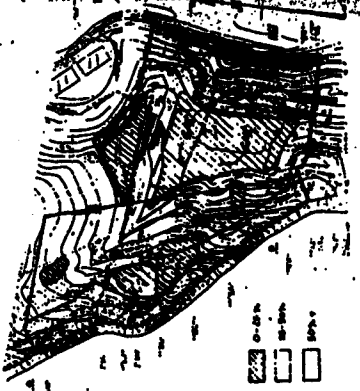


**PROJECT SITE**

EXHIBIT NO. 2
APPLICATION NO. 5-90-525A
<b>Project Site</b>

SEE X MAP

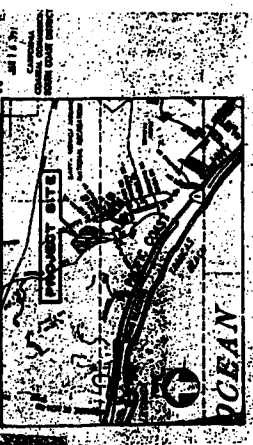
**TENTATIVE VESTING TRACT MAP NO. 46964**  
 REVISED 08/05/90



**SLOPE AREA PLAT**  
 1" = 100'

**SLOPE DENSITY ANALYSIS**

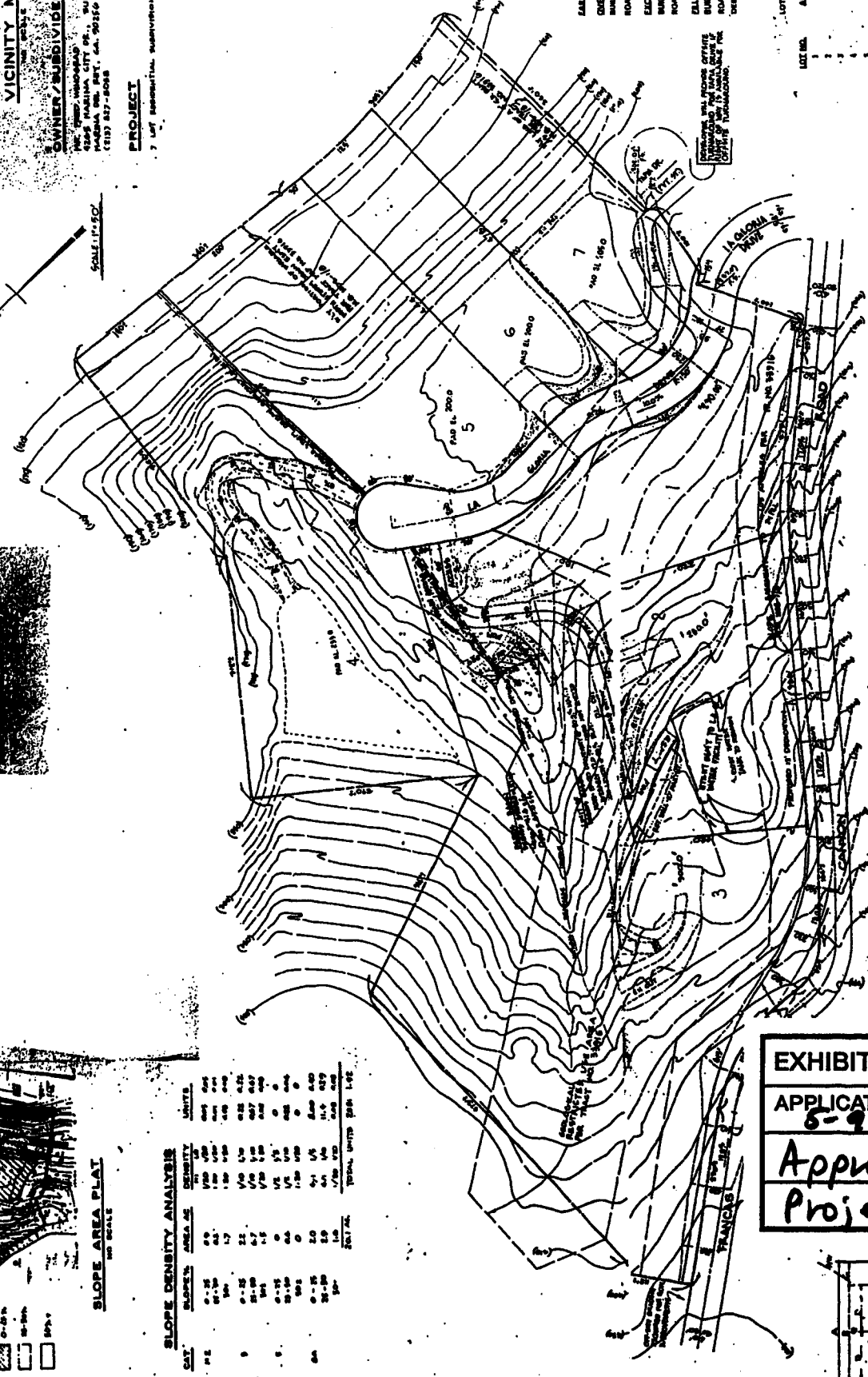
SLOPE	AREA AC	DENSITY	UNITS
0-15% <td>0.0</td> <td>1/20</td> <td>0.00</td>	0.0	1/20	0.00
15-25% <td>0.5</td> <td>1/10</td> <td>0.05</td>	0.5	1/10	0.05
25-35% <td>1.5</td> <td>1/5</td> <td>0.30</td>	1.5	1/5	0.30
35-45% <td>2.5</td> <td>1/3</td> <td>0.83</td>	2.5	1/3	0.83
45-55% <td>3.5</td> <td>1/2</td> <td>1.75</td>	3.5	1/2	1.75
55-65% <td>4.5</td> <td>1/1.5</td> <td>3.00</td>	4.5	1/1.5	3.00
65-75% <td>5.5</td> <td>1/1</td> <td>5.50</td>	5.5	1/1	5.50
75-85% <td>6.5</td> <td>1/0.5</td> <td>13.00</td>	6.5	1/0.5	13.00
85-95% <td>7.5</td> <td>1/0.25</td> <td>30.00</td>	7.5	1/0.25	30.00
95-100% <td>8.5</td> <td>1/0.1</td> <td>85.00</td>	8.5	1/0.1	85.00
TOTAL	45.0		157.38



**VICINITY MAP**

**OWNER/SUBDIVIDER**  
 Mr. and Mrs. [Name]  
 12345 Main St., Suite 801  
 Los Angeles, CA 90001  
 (213) 555-1234

**PROJECT**  
 7 LOT SUBDIVISION

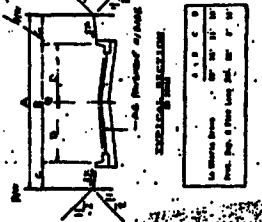


DESCRIPTION	AMOUNT
OVEREXCAVATION	14,000 C.Y.
BUILDING PADS	4,000 C.Y.
ROAD	1,000 C.Y.
EXCAVATION	26,000 C.Y.
BUILDING PADS	7,700 C.Y.
ROAD	22,000 C.Y.
ILL	27,770 C.Y.
BUILDING PADS	18,100 C.Y.
ROAD	14,870 C.Y.
OTHERS	4,800 C.Y.

**LOT AREA CALCULATION**

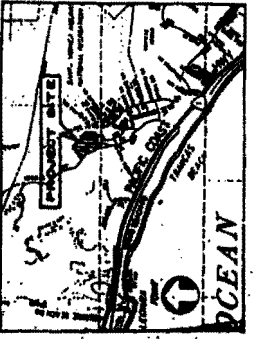
LOT NO.	AREA (SQ. FEET)	AREA (AC)
1	1,200	0.027
2	1,500	0.034
3	2,000	0.046
4	2,500	0.058
5	3,000	0.069
6	3,500	0.080
7	4,000	0.092
TOTAL	17,700	0.405

**EXHIBIT NO. 3**  
**APPLICATION NO. 6-90-525A**  
**Approved Project**



**LEGEND**

REVISED 08/05/90  
 REVISED 02/10/96



**OWNER/SUBDIVIDER**  
 THE TRUMP INTERNATIONAL  
 1527 MARINA CITY DR., SUITE 400 WTS  
 MARINA DEL REY, CA, 90292  
 (310) 837-1008

**PROJECT**  
 3 UNIT RESIDENTIAL DEVELOPMENT

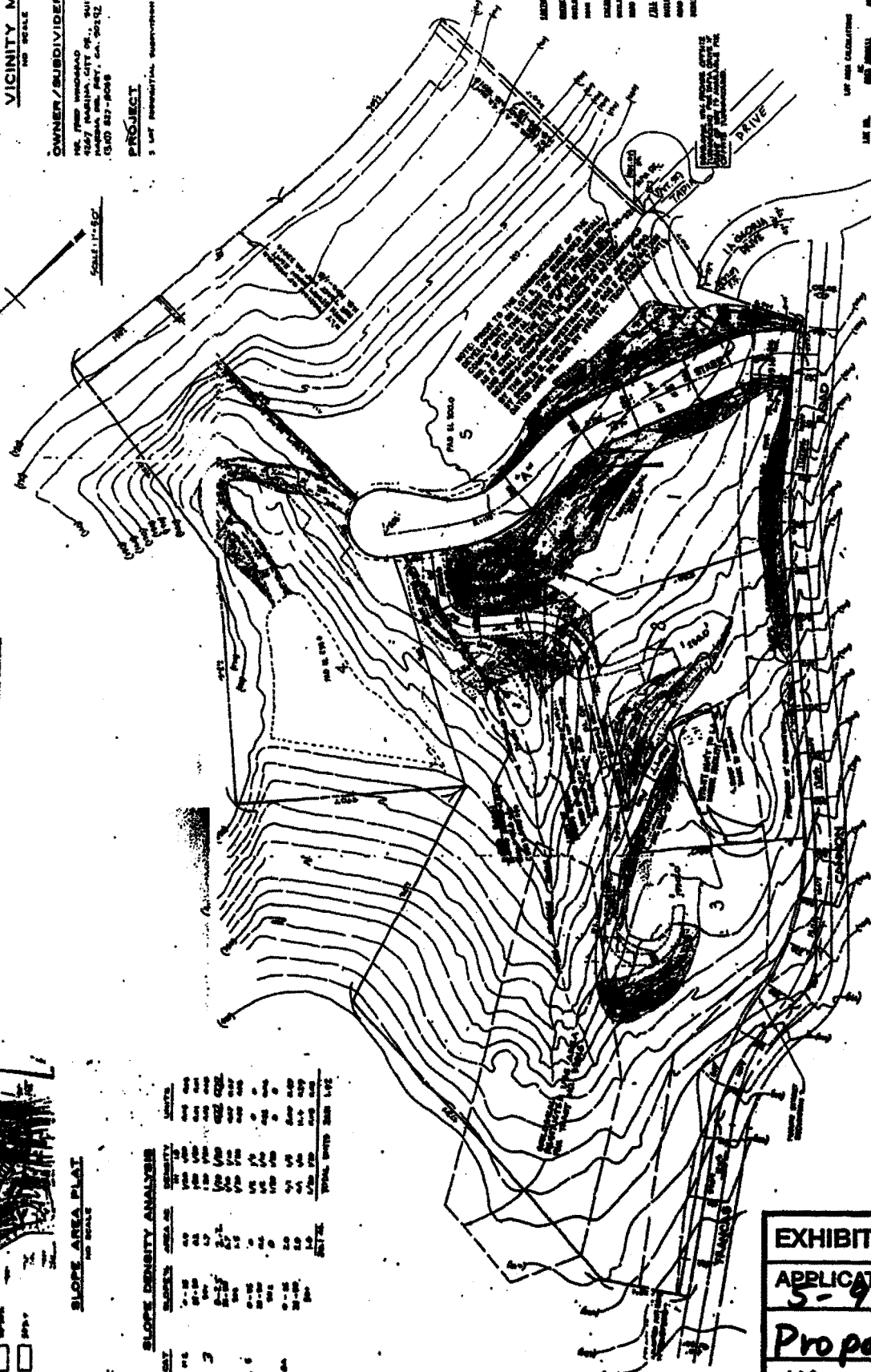
**LOCAL JURISDICTION**  
 CITY OF MALIBU, CALIFORNIA

**STREET ADDRESS**  
 1527 MARINA CITY DR.

**SLOPE AREA PLAT**  
 1/8" = 10' SCALE

**SLOPE DENSITY ANALYSIS**

NO.	AREA (SQ. FT.)	DENSITY	UNITS
1	100	1.0	100
2	200	2.0	200
3	300	3.0	300
4	400	4.0	400
5	500	5.0	500
6	600	6.0	600
7	700	7.0	700
8	800	8.0	800
9	900	9.0	900
10	1000	10.0	1000
TOTAL			5000



- 34,000 S.F.
- 34,000 S.F.
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- 34,000 S.F.
- 34,000 S.F.
- 34,000 S.F.

**UP AND CALCULATIONS**

NO.	AREA (SQ. FT.)	DENSITY	UNITS
1	100	1.0	100
2	200	2.0	200
3	300	3.0	300
4	400	4.0	400
5	500	5.0	500
6	600	6.0	600
7	700	7.0	700
8	800	8.0	800
9	900	9.0	900
10	1000	10.0	1000
TOTAL			5000

**CITY OF MALIBU**  
 CITY ENGINEER'S OFFICE  
 1527 MARINA CITY DR., SUITE 400 WTS  
 MARINA DEL REY, CA, 90292  
 (310) 837-1008

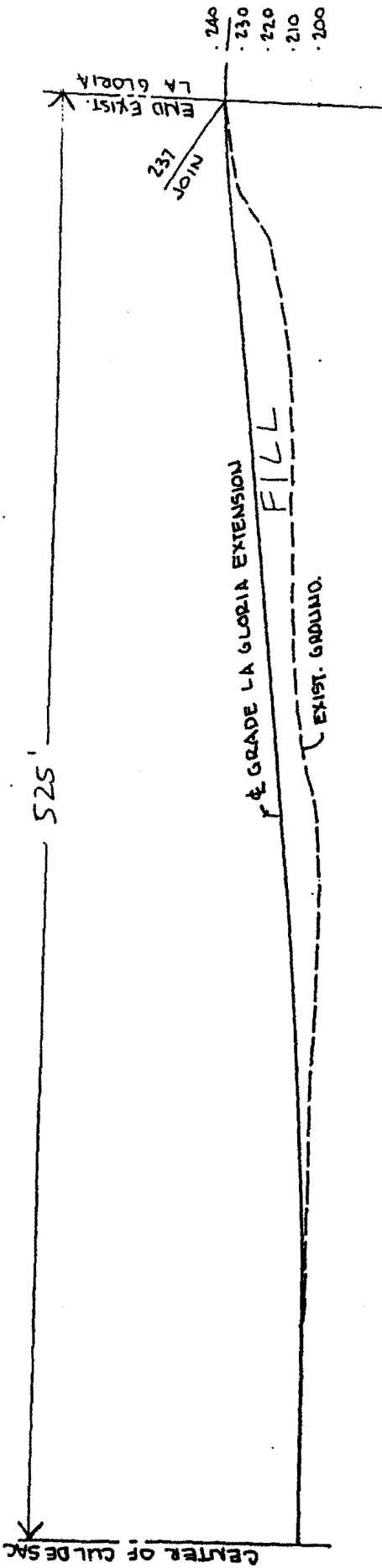
**5-90-525A-1**  
 CA COASTAL COMMISSION  
 PLANS APPROVED

**PREPARED BY**  
 CIVIL ENGINEERS  
 HARVEY S. PASTERNAK

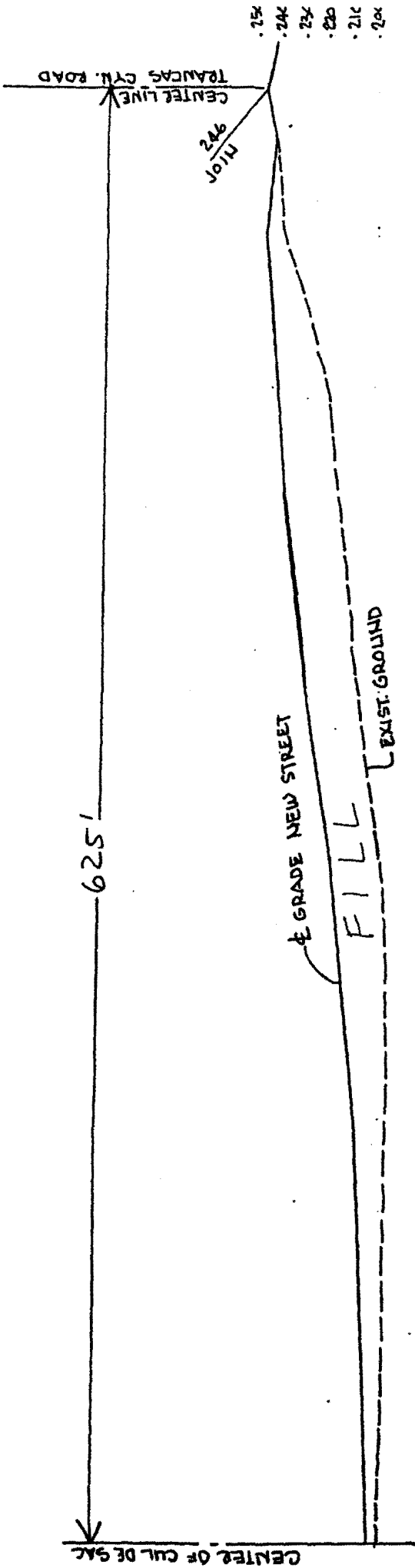
**TTM 4696A**

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





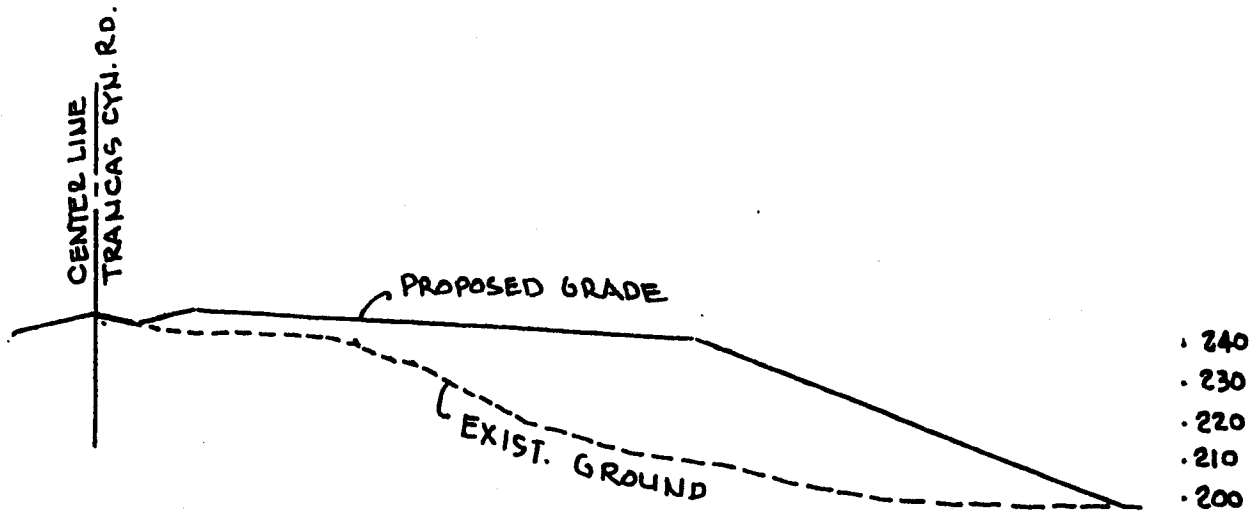
± PROFILE (PARALLEL TO LA GLORIA EXTENSION)



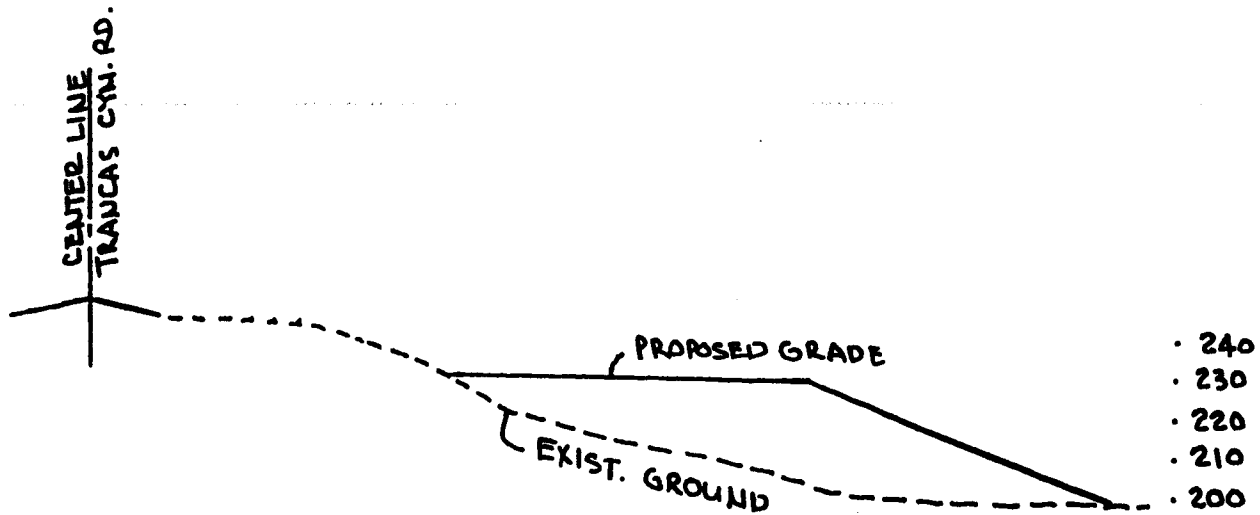
± PROFILE (PARALLEL TO NEW STREET INT. WITH TRANCAS)

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

## 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

PETE WILSON, Governor


STATE OF CALIFORNIA—THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA  
45 W. BROADWAY, STE. 380  
P.O. BOX 1450  
LONG BEACH, CA 90802-4416  
(714) 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:   
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).

Date 3/27/91


  
Signature of Permittee

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

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. 5-90-525A
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.

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

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.

8977D

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



## 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

EXHIBIT NO. 8
APPLICATION NO. 5-90-525A
Settlement Agrmt
Pg 1 of 10

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.

EXHIBIT NO. 8
APPLICATION NO. 5-90-525A
Settlement Agm
pg 2 of 10

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 <sup>five (5) lots</sup> depicted on the final map for Tract Map No. 46964 shall be subject to the req

EXHIBIT NO. 8
APPLICATION NO. 5-90-525A
Settlement Agrmt
pg 3 of 10

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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APPLICATION NO. 5-90-525A
Settlement Agmt
pg 4 of 10

**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.

EXHIBIT NO. 8
APPLICATION NO. 5-90-525A
Settlement Agmt
Pg 5 of 10

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

EXHIBIT NO. 8
APPLICATION NO. 5-90-525A
Settlement Agrmt
Pg 6 of 10

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

EXHIBIT NO. 8
APPLICATION NO. 5-90-525A
Settlement Agreement
Pg 7 of 10

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: *Jean House*

Name: *FRED WINOGRAD*

Name: *Jean 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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<i>Settlement Agent</i>
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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.

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Standard
Conditions

