

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
80 SOUTH CALIFORNIA ST., SUITE 200  
SANTA ANA, CA 93001  
(714) 641-0142

Filed: 7/17/97  
49th Day: 9/4/97  
180th Day: 1/13/98  
Staff: Betz-V  
Staff Report: 8/22/97  
Hearing Date: 9/12-15/96  
Commission Action:

STAFF REPORT: CONSENT

APPLICATION NO.: 4-97-138

APPLICANT: Dominic &amp; Luci Ricciardone AGENT: Clarence C. Rubenacker

PROJECT LOCATION: 5243 Horizon Drive, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Subdivide 2.81 acre parcel with existing single family residence, guest house and shed into two parcels of 1.79 gross acres (Parcel 1) and 1.02 gross acres (Parcel 2); conversion of guest house to primary dwelling unit on Parcel 1; create access easement over Parcel 2 for the benefit of Parcel 1. No grading or vegetation removal is proposed.

|                    |                            |
|--------------------|----------------------------|
| Lot Area           | 2.81 acres                 |
| Building Coverage  | 10,000 sq. ft. approximate |
| Pavement Coverage  | 3,000 sq. ft. approximate  |
| Landscape Coverage | 30,000 sq. ft. approximate |
| Zoning             | Residential I, 1du/ac      |
| Project Density    | 1 du                       |

LOCAL APPROVALS RECEIVED: Approval in Concept, Planning Department, City of Malibu, dated 6-9-97; Tentative Parcel Map No. 22218, Planning Commission, City of Malibu, for meeting dated May 27, 1997; Certificate of Compliance, Lot line adjustment, City of Malibu, dated 11-29-94 [for previous lot line adjustment, Clarence Rubenacker, Waiver # 4-94-150].

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan; Coastal Development Permit 4-96-124 (Gordon); Clarence Rubenacker, Waiver # 4-94-150; Ricciardone v. City of Malibu, Settlement Agreement and Decision, Case No. BC 095926, Superior Court for the County of Los Angeles, December 12, 1994.

SUMMARY OF STAFF RECOMMENDATION: The proposal will divide a 2.81 acre lot into two lots. An existing single family residence of approximately 8,200 sq. ft. in floor area and a shed would remain on parcel 2. A large guest house of approximately 1,800 sq. ft. on Parcel 1 will convert to a primary residence. Staff recommends approval of the proposed minor land division with a special condition addressing cumulative impact mitigation through a transfer of development credits.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves 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.

II. 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 Condition.

1. 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. 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 one (1) building site 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.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

1. Proposed Development

The proposal will subdivide a 2.81 acre parcel with the existing two story main single family residence (of approximately 8200 sq. ft. in floor area), a two story guest house (of approximately 1800 sq. ft. in floor area), and a shed into two parcels. The main residence is on proposed Parcel 2, of 1.79 gross acres in size, and the guest house is on proposed Parcel 1, of 1.02 gross acres in size. The proposal will result in conversion of the guest house on Parcel 1 into the primary dwelling unit.

Existing development is located on a pad at the approximate 770 ft. elevation and includes a main house, guest house, shed, driveway, parking, a septic system, walls and landscaping. The application notes that no physical improvements are proposed or anticipated.

No grading or vegetation removal is proposed. Further, there are no changes proposed in the septic system and the plans show separate systems for both prospective main residences.

The proposed land division is located on a parcel below Zuma Ridge, a northwest to southwest trending ridge overlooking the coast (Trancas and Zuma beaches) and the Pacific Coast Highway. The parcel itself has good coastal views to the south and southwest.

The parcel ranges from an elevation from 690 to 810 feet. The lowest point on the lot is the channel of a blue line stream which extends from just northwest of the parcel to Pacific Coast Highway. The blue line stream is not designated as an Environmentally Sensitive Habitat Area (ESHA).

The new parcel 1 is located on a cul-de-sac at the end of Horizon Drive and will have access to the cul-de-sac across parcel 2 through an easement. The proposal will create this access easement over Parcel 2 for the benefit of Parcel 1. Parcel 1 will be a polygon with about one half in the existing pad and development. Parcel 1 will have approximately one-half of its area in a steep hillside area of undisturbed native vegetation, extending down into a barranca containing a designated blue line stream and partially up the other side to approximately the 750 ft. contour. Parcel 2 will have a long strip of land extending to the north along the approximate 800 ft. contour and then down into the adjacent barranca. The strip of land will include the existing water tank within Parcel 2.

The area to the north and west is steep, brush covered hillside. A connector trail to the Zuma Ridge trail is located across the canyon approximately 500 ft. to the west of the project and the site is partially visible from this trail. The area to the south and east is residential single family development.

## 2. Background

The project area was previously exempt from requirement of a coastal development permit under the Calvo legislation, although the development appears to have predated the Coastal Act, as shown by the following. A review of assessor records indicates that the main house was constructed in 1972. No record was made of the guest house, although it is of similar design and materials and may date from the same time. The shed at the rear of the property appears to be much older, based on its condition.

The property was subject to Ricciardone v. City of Malibu, a Settlement Agreement and Decision, Case No. BC 095926, Superior Court for the County of Los Angeles, December 12, 1994. The Court found that there was no valid basis in fact for the City of Malibu application of RR-5 zoning to the subject property, identified as "the Horizon property" and a second property, which designation would have not allowed the proposed land division. The Settlement agreement stated that the agreement was null and void for subject parcel if the Coastal Commission subsequently denied the proposed land division. The proposed land division was thereafter approved under Tentative Parcel Map No. 22218, Planning Commission, City of Malibu, for the meeting dated May 27, 1997. The permit contained a condition which converted the guest house on Parcel 1 to a primary residence.

The 2.81 acre lot at 5243 Horizon Dr., the subject of this permit request, resulted from a waiver of coastal development permit for a minor lot line adjustment in 1994 (Clarence Rubenacker, Waiver # 4-94-150). (Exhibit III) That waiver resulted in subject 2.81 acre lot having its present configuration due to two adjustments. It removed a portion of the underlying parcel at 5243 Horizon Drive (approximately 70 ft. by 240 ft., at the western corner) and added it to the undeveloped parcel to the south. At the same time, a portion of the parcel to the south (approximately 20 ft. by 580 ft. along the northern boundary) was added to the parcel at 5243 Horizon Drive.

B. 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 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 the 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 applicant is proposing, as noted, to subdivide a 2.81 acre parcel with existing single family residence and guest house into two parcels of 1.79 gross acres (Parcel 1) and 1.02 gross acres (Parcel 2). The Commission is required to review the cumulative impacts of a land division pursuant to section 30250(a) of the Coastal Act. In this situation, because the project site is located 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 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 for cumulative impacts (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 & Coombs). 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 insure 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 applicants propose to subdivide one parcel of land into two residential lots. The proposed number of residential units is consistent with the character of the area. The subject parcel is an existing legal parcel. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit regarding the legality of the existing parcel.

Regardless, as discussed above, the Commission has approved new subdivisions, and has continued to simultaneously require purchase of TDC's as preferred among the alternative mitigation strategies. Staff review indicates that the incremental contribution to cumulative impacts would be the creation of one additional lot. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation would be associated with the development of the additional lot 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 creation of one additional legal buildable lot is adequately mitigated. This permit has therefore been conditioned to require the applicant to mitigate the cumulative impacts of the subdivision of this property, either through purchase of one (1) TDC or 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.

The Commission finds that as conditioned, the proposed project is consistent with Section 30250 of the Coastal Act.

### C. 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, which serves as guidance in the City area, contains the following policies regarding geologic stability: P147 -- evaluate all new development for impact on, and from, geologic hazard; P149 -- require a geologic report, prepared by a registered geologist, prior to approval of proposed 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 proposed land division has not been subject to geologic or geotechnical review as part of the local review process and no new development is proposed which would raise an issue under Section 30253. As noted by the City Tentative Parcel Map report:

The proposed project is located and designed so as to protect the safety of current and future community residents, and will not create significant threats to life, and/or property due to the presence of geologic, seismic, slope instability, fire, flood, mud flow, or erosion hazards. The proposed subdivision involves a parcel that is already fully developed and based on geotechnical and geologic review of the site, the subdivision will not impact existing structures on the site.

Any future development would be subject to review relative to geologic hazards. When these circumstances, i.e. lack of potential hazard, are considered in conjunction with the lack of proposed new development, the Commission finds that the proposed land division and conversion to primary residence of the guest house, is consistent with Coastal Act section 30253.

### D. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

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

The proposed development involves no creation of a septic system or modification to the existing systems. Separate systems are shown for the existing main house and guest house. The septic system remains as constructed under code requirements of the County of Los Angeles and is functioning at this time. Therefore, the proposed project is consistent with the plumbing code and will not adversely impact the biological productivity and quality of the coastal waters located west of the subject site.

Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

#### E. 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, 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).

#### F. California Environmental Quality Act

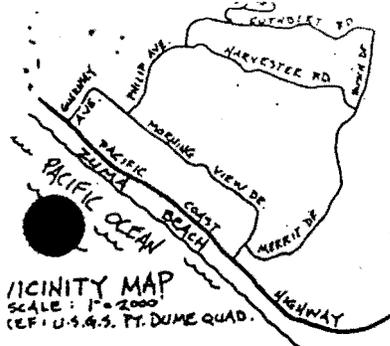
The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any 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.

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

8093A





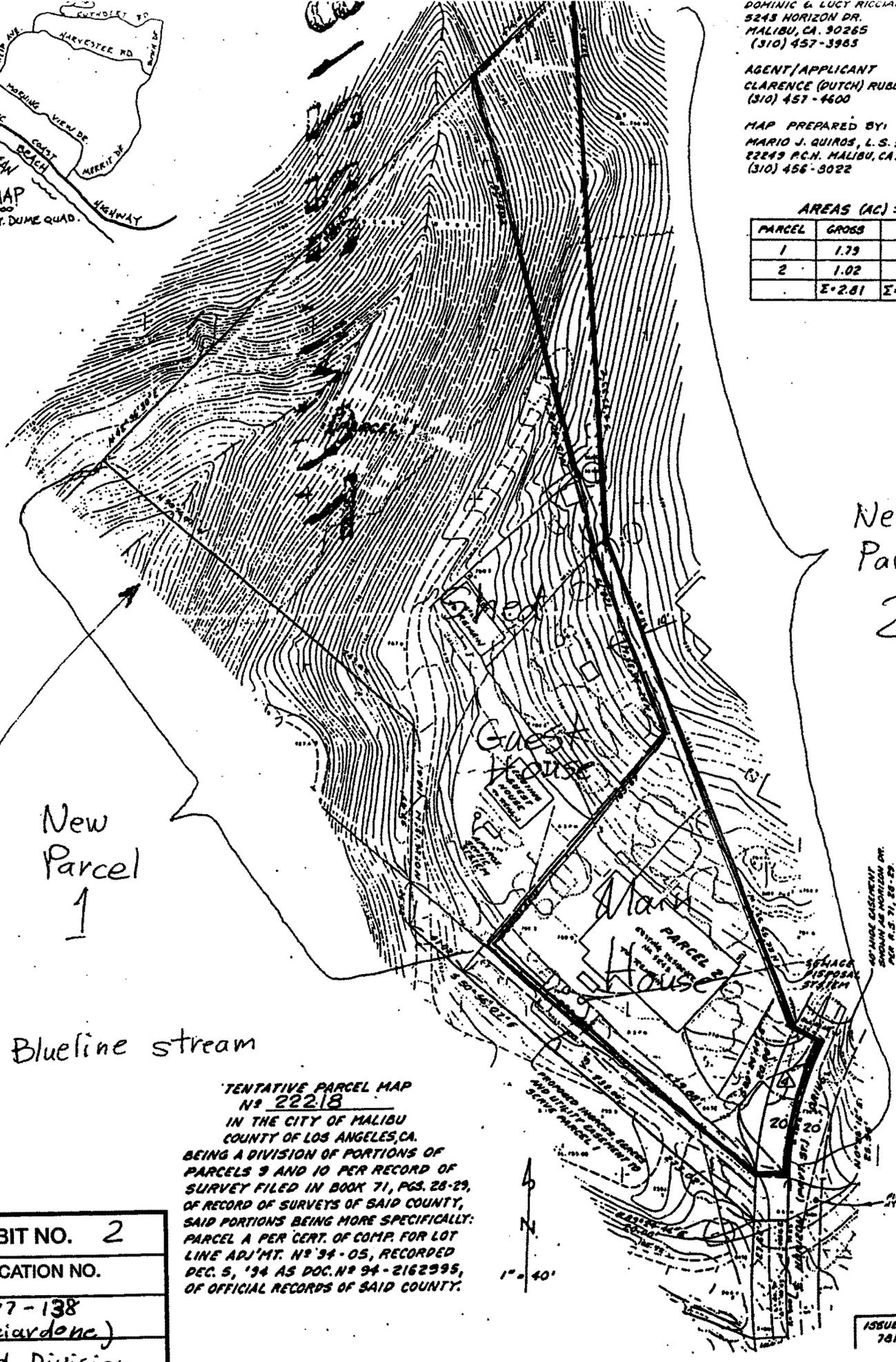
DOMINIC & LUCY RICCIARDONE  
5245 HORIZON DR.  
MALIBU, CA. 90265  
(310) 457-3985

AGENT/APPLICANT  
CLARENCE (DUTCH) RUBENACKER, P.E.  
(310) 457-4600

MAP PREPARED BY:  
MARIO J. QUIROS, L.S. 9029  
22249 P.C.H. MALIBU, CA. 90265  
(310) 456-3022

AREAS (AC) ±

| PARCEL | GROSS  | NET    |
|--------|--------|--------|
| 1      | 1.79   | 1.79   |
| 2      | 1.02   | 0.89   |
|        | E=2.81 | Σ=2.68 |



New Parcel  
2

New Parcel  
1

Blue line stream

TENTATIVE PARCEL MAP  
No 22218  
IN THE CITY OF MALIBU  
COUNTY OF LOS ANGELES, CA.

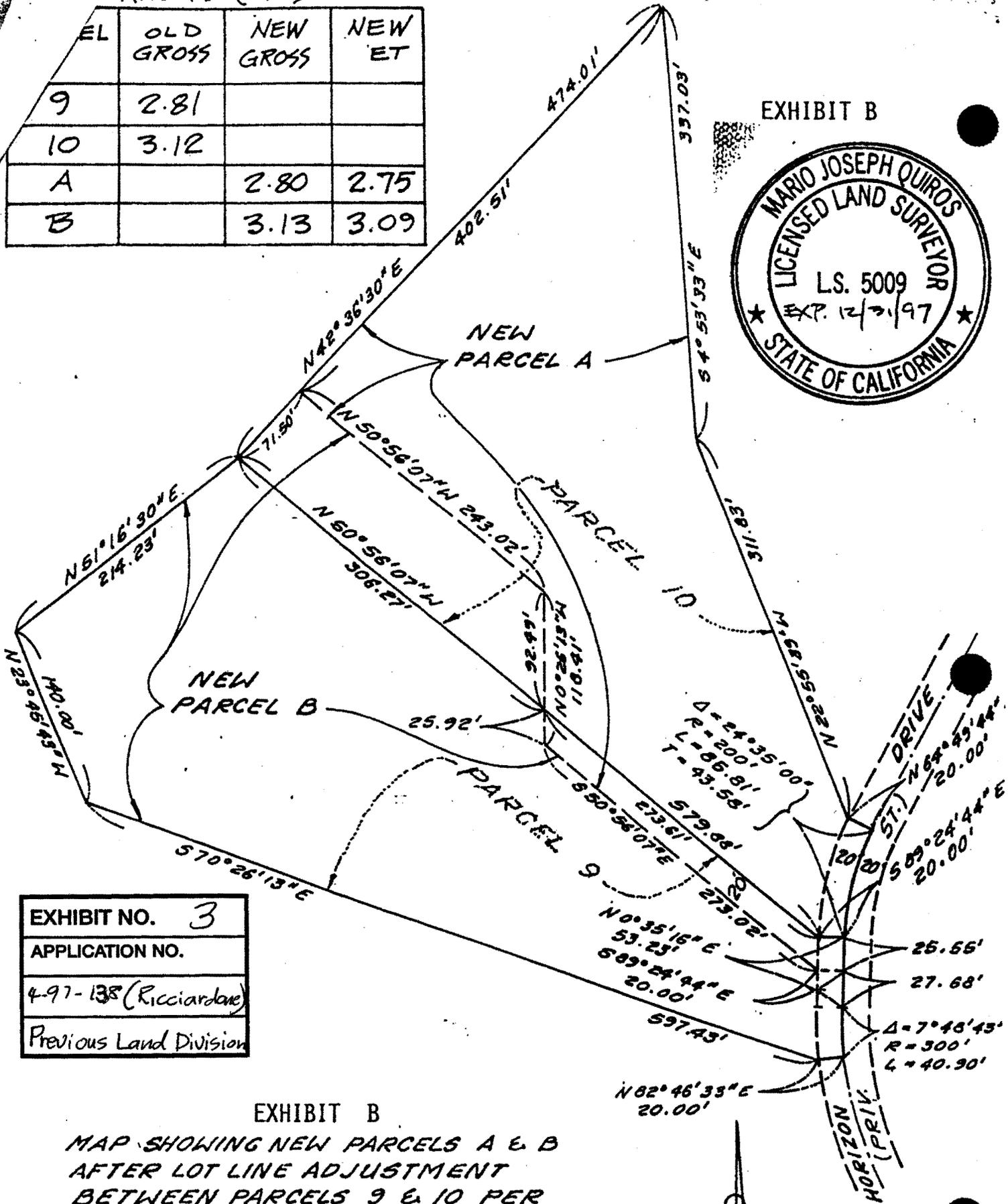
BEING A DIVISION OF PORTIONS OF  
PARCELS 9 AND 10 PER RECORD OF  
SURVEY FILED IN BOOK 71, PGS. 28-29,  
OF RECORD OF SURVEYS OF SAID COUNTY,  
SAID PORTIONS BEING MORE SPECIFICALLY:  
PARCEL A PER CERT. OF COMP. FOR LOT  
LINE ADJ'MT. No 34-05, RECORDED  
DEC. 5, '94 AS DOC. No 94-2162995,  
OF OFFICIAL RECORDS OF SAID COUNTY.

EXHIBIT NO. 2  
APPLICATION NO.  
4-97-138  
(Ricciardone)  
Land Division

ISSUE: NOV. 15, 1995  
781-24-C

| EL | OLD GROSS | NEW GROSS | NEW ET |
|----|-----------|-----------|--------|
| 9  | 2.81      |           |        |
| 10 | 3.12      |           |        |
| A  |           | 2.80      | 2.75   |
| B  |           | 3.13      | 3.09   |

EXHIBIT B



|                        |                        |
|------------------------|------------------------|
| EXHIBIT NO.            | 3                      |
| APPLICATION NO.        |                        |
|                        | 4-97-138 (Ricciardone) |
| Previous Land Division |                        |

EXHIBIT B

MAP SHOWING NEW PARCELS A & B  
 AFTER LOT LINE ADJUSTMENT  
 BETWEEN PARCELS 9 & 10 PER  
 R.S. 71, 28-29, RECORDS OF L.A. CO.  
 CITY OF MALIBU, CA.

PREPARED IN JUNE '94  
 BY: Mario J. Quiros  
 MARIO J. QUIROS  
 EXP 12/31/97

SCALE 1" = 100'

QUIROS FILE  
 781-23-A