

CALIFORNIA COASTAL COMMISSION

1000 SOUTH CENTRAL COAST AREA
 1000 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 641 - 0142



Filed: 11/18/98
 49th Day: 1/6/98
 180th Day: 5/17/99
 Staff: J. Johnson
 Staff Report: 1/13/99
 Hearing Date 2/4/99
 Commission Action:

STAFF REPORT: REGULAR CALENDAR ITEM Th 14 c.

APPLICATION NO.: 4-98-119

APPLICANTS: Mr. And Mrs. Helmut Korte and Mr. and Mrs. Miles Mogulescu **AGENTS: George Furst, Esq James Coane**

PROJECT LOCATION: 18456 and 18454 Clifftop Way, Malibu, Los Angeles County.

PROJECT DESCRIPTION: Proposed Lot Line Adjustment between two lots and a second Lot Line Adjustment "as recorded" in 1994 without a coastal development permit between the same two lots. No new lots are proposed to be created.

Lot 38 Area (Approx.)	
Existing (prior to 1994):	9,070 sq. ft.
Proposed:	9,235 sq. ft.
Lot 39 Area (Approx.)	
Existing (prior to 1994):	6,170 sq. ft.
Proposed:	6,010 sq. ft.
Building coverage:	
Lot 38:	2,053 sq. ft.
Lot 39:	1,872 sq. ft.
Land Use Designation:	Residential III A & B
Density Designation:	2 - 4, & 4 - 6 dwelling units/acre

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the two lot line adjustments between two existing lots. These lots are located within an existing residential subdivision developed prior to the effective date of the Coastal Act and are each developed with separate single family residences. Staff recommends approval of the proposed project as it is in conformance with the Coastal Act.

LOCAL APPROVALS RECEIVED: Los Angeles County Planning Department Approvals in Concept for proposed Lot Line Adjustment Map, dated 3/30/98; Certificate of Compliance No. 101303 for a Lot Line Adjustment recorded September 15, 1994.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan; Coastal Permit No. 4-97-113, Eisenstein; Coastal Permit No. 4-96-028, Gottlieb et. al.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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 effects 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 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 development during construction, 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

None.

IV. Findings and Declarations.

A. Project Description, Location, and History

The project site is located at 18456 and 18454 Clifftop Way, Malibu within a subdivision created in 1964 and developed with single family residences in the mid to late 1960's. (*Exhibits 1 and 2*) The site is located inland of Pacific Coast Highway about 1,200 feet within an area known as Parker Mesa at an elevation of about 350 feet above sea level. The subdivision is located between Topanga Canyon Boulevard on the west and Surfview Drive (near former Getty Museum) on the east. The applicants propose two Lot Line Adjustments among two existing lots, Lots 38 and 39 of Tract 26461. No new parcels are proposed. One Lot Line Adjustment is "after the fact" and "as recorded" on September 15, 1994 as Certificate of Compliance No. 101303. The applicants propose a second Lot Line Adjustment to further revise the size of the two lots to conform to Los Angeles County minimum lot size of 6,000 sq. ft. as required by the R-1 zone. Exhibit 3 identifies a composite of the two subject lots as they existed prior to 1994, as they were reconfigured in 1994 by Certificate of Compliance No. 101303, and as now proposed to be reconfigured again. The result of the "as recorded" and the proposed Lot Line Adjustments will be two lots, one with approximately 6,010 sq. ft., the other with approximately 9,235 sq. ft., each with an existing single family residence (*Exhibit 4*).

Exhibit 3 also identifies a small triangle of land that appears to be included by error in the Lot Line Adjustment recorded in 1994. This triangle of land is located on an adjoining property to the southeast next to the surveyor line labeled "N 51'26'17" E". This triangle of land is part of Assessor Parcel No. 4443-004-039 owned by Dundas Flaherty, lot 67 of Tract 26461 (*Exhibit 5*). The applicants have corrected this error by recording three Certificates of Compliance and two Grant Deeds correcting the legal descriptions to apply only to the two lots that are the subject of this application as noted in a letter dated November 10, 1998 from the applicant's attorney, George Furst (*Exhibit 6*).

The Los Angeles County Land Use Plan, certified by the Commission, designates the two subject lots in separate land use designations. The larger lot, Lot 38 is designated as Residential III A allowing a range of 2 – 4 dwelling units/acre. The smaller lot, Lot 39, is designated as Residential III B allowing a range of 4 – 6 dwelling units/acre.

B. Individual and Cumulative Impacts of Development

The Coastal Act requires that new development be located in areas with adequate public services where it will not have significant adverse effects on either an individual or cumulative basis on coastal resources. Section 30250(a) of the Coastal Act states in part:

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.

In addition in 1986, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan that included many policies. The LUP policies cited below addressing land divisions have been found consistent with the Coastal Act, and therefore may be looked to as guidance by the Commission in determining consistency of the proposed project with the Coastal Act.

The LUP provides guidance with a "New Development Policy" which states that new development in the Malibu Coastal Zone will be guided by the LCP Land Use Plan map and associated development standards and a program for the retirement of the development rights and mitigation of the effects of non-conforming parcels. LUP Policy 271 states in part that:

New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. ...

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with all policies and standards contained herein. Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments. (emphasis added)

The Malibu/Santa Monica Mountains Land Use Plan addresses land divisions in Policy No. 273 d. that states:

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

Coastal Act Section 30250 provides for three tests to determine whether new development is appropriately located from the standpoint of individual and cumulative impacts and when land divisions outside developed areas are appropriate. The first test is whether or not the proposed new development is located within, contiguous or in close proximity to an existing developed area. The second test is whether or not the location of the new development is in an area able to accommodate it or with adequate public services. The third test is whether or not the proposed project will or will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The new development proposed in this project consists of two Lot Line Adjustments between two lots each with a separate single family residence. The proposed project is located within an existing residential subdivision created in 1964 prior to the effective date of the Coastal Act. The subject lots are located on the western portion of this subdivision at the end of a cul-de-sac, on Clifftop Drive. The majority of the subdivision is developed with residential development. Because residences already exist on each of the subject two lots and the surrounding properties are already developed with residential development, the Commission finds that the new development proposed in this application meets the first test since it will be located within an existing developed area.

These two existing lots and residences are already provided with public services, (i.e. public road access, water, sewer, electricity, and telephone), therefore, the development meets the second test by being located in an area able to accommodate it.

The third test addressing whether or not the proposed project will have significant adverse effects, either individually or cumulatively, on coastal resources is discussed below. Potential individual impacts on coastal resources will be addressed first.

The Los Angeles County Land Use Plan, certified by the Commission, provides guidance for the Commission to consider in this application. The LUP includes a New Development Policy, which notes that new development in the Malibu coastal zone will be guided by the LCP Land Use Plan map and associated development standards and a program for the retirement of the development rights and mitigation of the effects of non-conforming parcels. The LUP land use designation for this site is Residential III A and B. The Residential III A and B designations apply to residential areas generally characterized by single-family development. In the Residential III A land use category, residential use is the principal permitted use at a density of 2 – 4 dwelling units per acre, while on the Residential III B category, residential use is the principal permitted use at a density of 4 – 6 dwelling units per acre. As an example, this means that one acre of land may be divided into up to 6 lots, each with a residential unit. However, as noted in LUP Policy 271 the residential density standards and other requirements of the plan shall not apply to lot line adjustments. Since the subject application is for two Lot Line Adjustments, the land use density standards are not applicable.

As noted above, the applicants propose two Lot Line Adjustments on two existing lots. Each lot includes an existing single family residence of about 1,872 and 2,053 sq. ft. in size, respectively. The result of the two Lot Line Adjustments will increase one parcel by about 165 sq. ft. which about the same square footage that will be removed from the other lot (identified as about 160 sq. ft. which may be the result of a surveying error). The purpose of these Lot Line Adjustments is to allow additional land on Lot 38 to accommodate an addition to the residence.

As part of these proposed Lot Line Adjustments, the applicants do not propose any grading, there are no designated environmentally sensitive resources on the site, and the site is not located within a sensitive watershed area. Regarding public visual issues, the existing residences are visible only to a very limited degree from the coast and do not appear to be visible from public trails located within Topanga State Park. Further, the proposed development to adjust lot lines, does not by itself, create any individual impacts on public views. Therefore, the Commission finds that the proposed project, to adjust lot lines, will not create impacts to coastal resources on an individual basis.

The Commission has repeatedly emphasized the need to address the cumulative impacts of new development on coastal resources in the Malibu and Santa Monica Mountains area in past permit actions. The Commission has reviewed land division applications to ensure that newly created or reconfigured parcels

are of sufficient size, have access to roads and other utilities, and contain an appropriate potential building pad area where future structures can be developed consistent with the resource protection policies of the Coastal Act. In particular, the Commission has ensured that future development on new or reconfigured lots minimize landform alteration, visual impacts, and impacts to environmentally sensitive habitat areas.

The Commission has found that minimizing the cumulative impacts of new development is especially critical in the Malibu/Santa Monica Mountains area because of the large number of lots which already exist, many in remote, rugged mountain and canyon areas. From a comprehensive planning perspective, the potential development of thousands of existing undeveloped and poorly sited parcels in these mountains would create cumulative impacts on coastal resources and public access over time. Because of the larger number of existing undeveloped parcels and potential future development, the demands on road capacity, public services, recreational facilities, and beaches is expected to grow tremendously.

Staff review indicates that there are no cumulative impacts resulting from these two minor Lot Line Adjustments as less than 200 sq. ft. of land will be adjusted between these subject lots which are graded flat. Therefore, the impacts such as additional traffic, sewage disposal, recreational use needs, visual scenic quality and resource degradation associated with these lot line adjustments in this area are not applicable in this case. The existing lots are already each developed with separate detached single family residences.

The Commission finds that the proposed project will not create impacts to coastal resources on an individual or cumulative basis, and therefore, the Commission finds the project meets the third test of Section 30250. Thus, Commission finds that the proposed project is consistent with the guidance provided in the Malibu/Santa Monica Mountains Land Use Plan and the three tests in Section 30250 of the Coastal Act.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

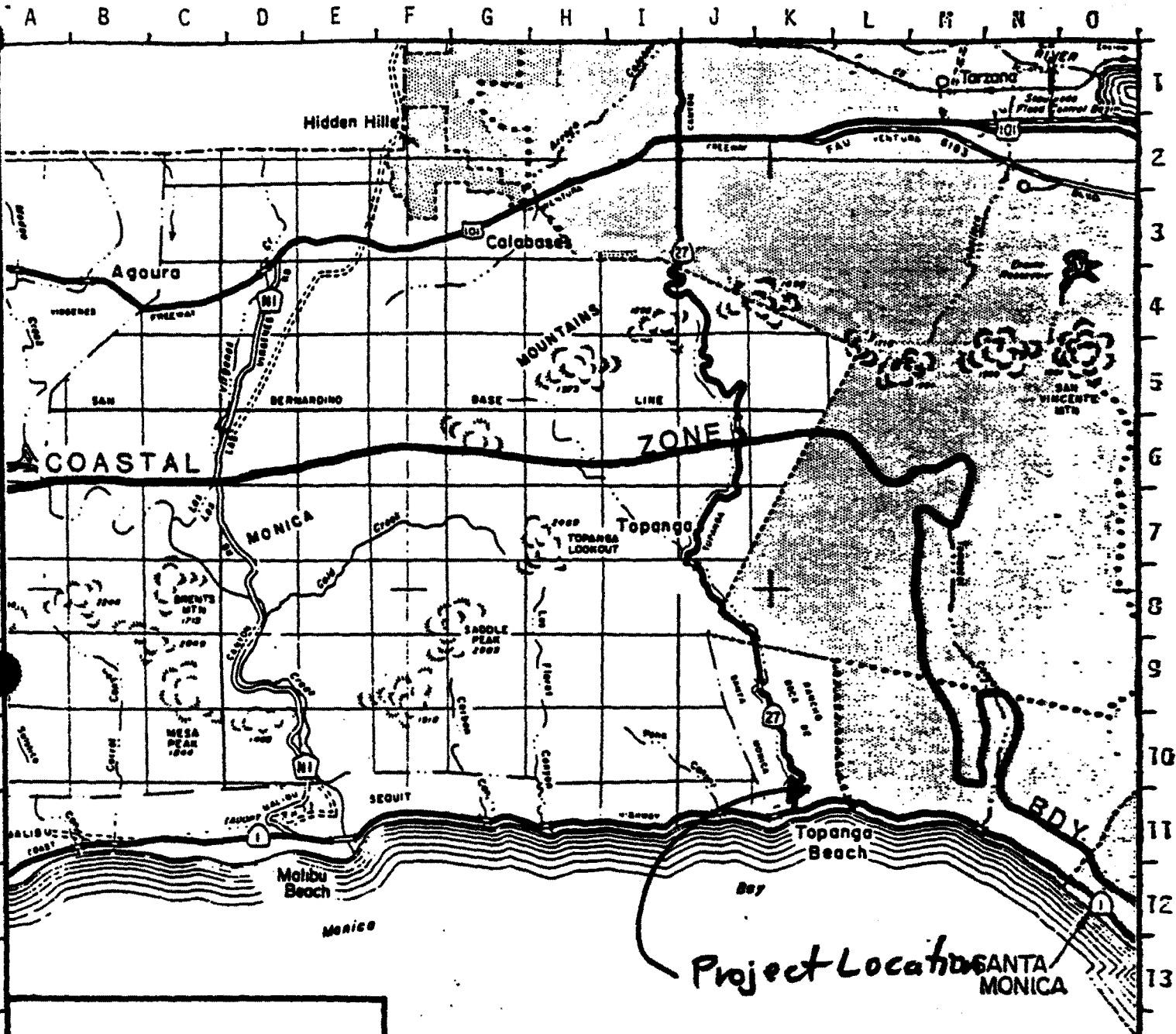
- a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 as proposed by the applicants. The proposed development will not create adverse effects and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development will not prejudice the County's ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

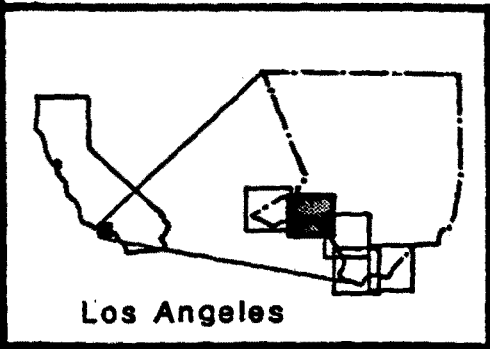
E. California Environmental Quality Act (CEQA)

The Coastal Commission's permit process has been designated as the functional equivalent of California Environmental Quality Act (CEQA). Section 13096(a) of the Commission's administrative 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 the CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

The Commission finds that, the proposed project will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the Commission finds that the proposed project is consistent with the requirements of CEQA and the policies of the Coastal Act.



Project Location SANTA MONICA



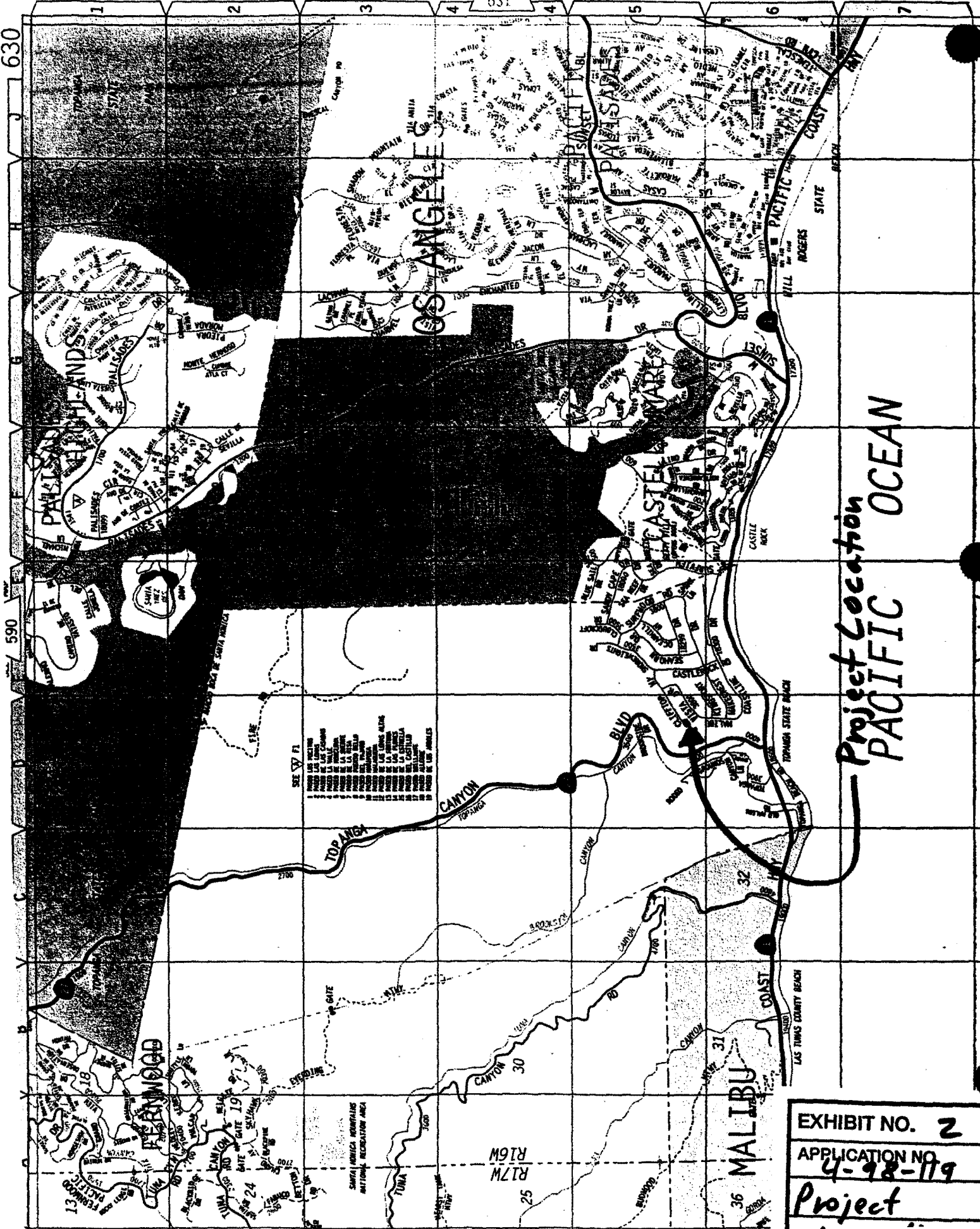
Los Angeles

EXHIBIT NO. 1
APPLICATION NO. 4-98-119
<i>Project Location</i>



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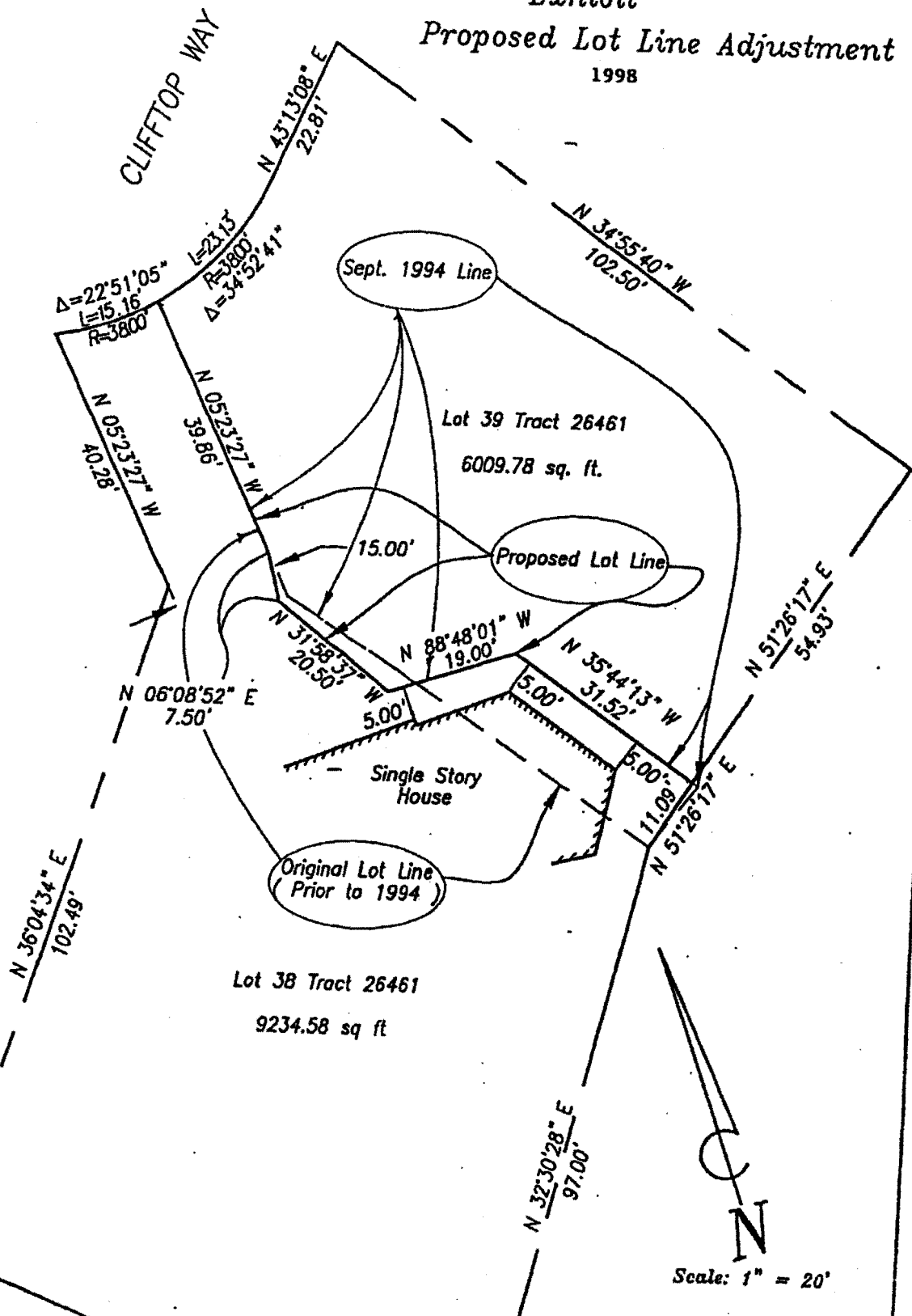
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Project Location
PACIFIC OCEAN

EXHIBIT NO. 2
 APPLICATION NO. 4-98-119
 Project

Lot Line Adjustment

Exhibit
Proposed Lot Line Adjustment
1998



ICLASED LAND SURVEY
MICHAEL J. AMOROS
EXP. 9/30/00

EXHIBIT NO. 3
APPLICATION NO. 4-98-119

Lot Line Adjustment

Proposed Lot Line

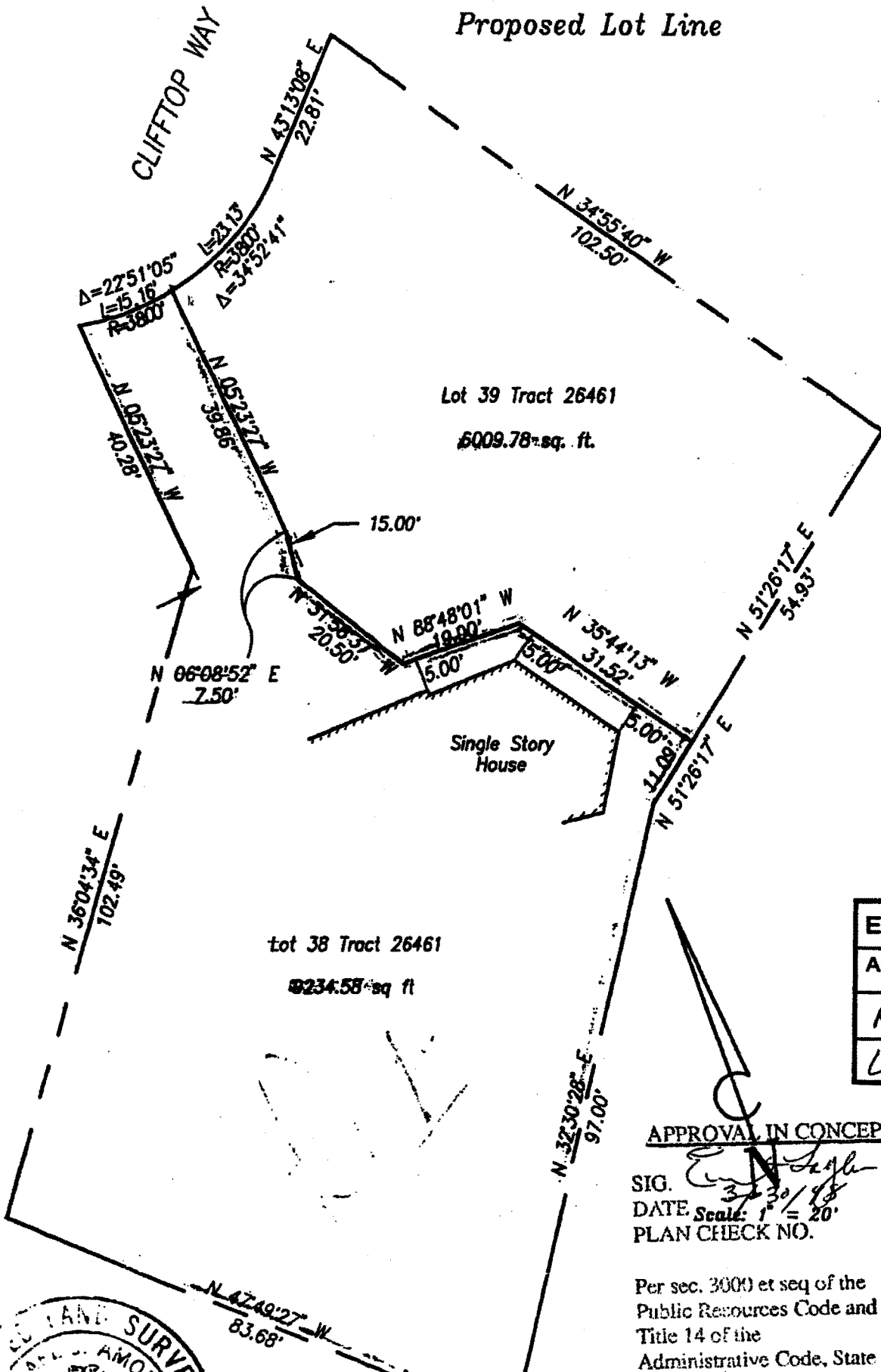


EXHIBIT NO. 4
APPLICATION NO. 4-98-119
Resulting Lot Line Adjustment

APPROVAL IN CONCEPT

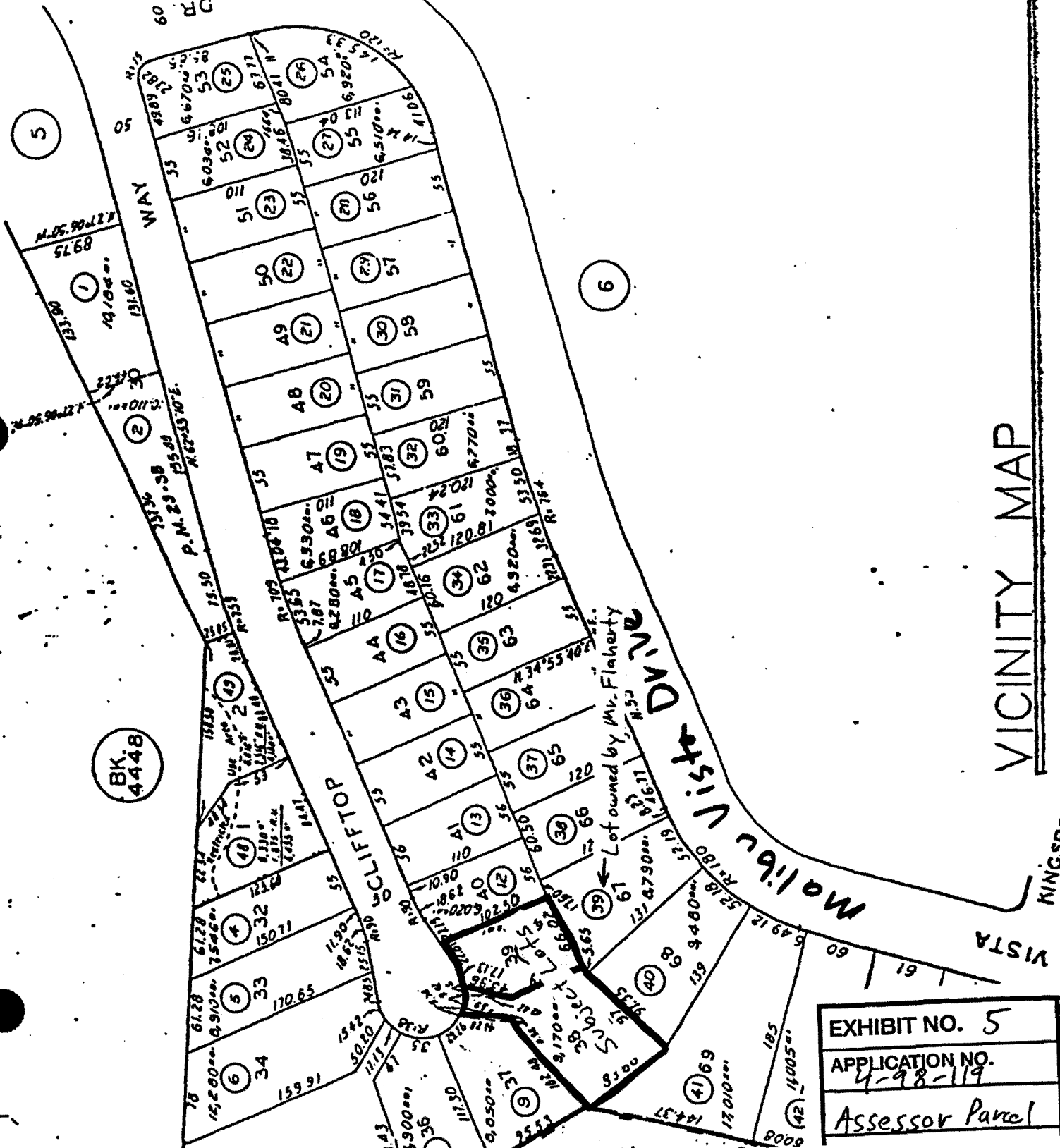
SIG. *[Signature]*
 DATE 3/30/18
 PLAN CHECK NO.

Per sec. 3000 et seq of the
 Public Resources Code and
 Title 14 of the
 Administrative Code, State



J.B. 06
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VICINITY MAP

EXHIBIT NO. 5
APPLICATION NO.
4-98-119
Assessor Parcel

Hughes Hubbard & Reed LLP

350 South Grand Avenue
Los Angeles, California 90071-3442
Facsimile: 213-613-2950
E-mail: furst@hugheshubbard.com

George A. Furst
213-613-2839

November 10, 1998

BY FEDERAL EXPRESS

6927.0100

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, California 93001

Attention: James Johnson,
Coastal Program Analyst

Re: Coastal Permit Application No. 4-98-119;
Korte and Mogulescu Project at
18454 and 18456 Clifftop Way, Malibu, California

Dear Mr. Johnson:

This letter supplements our letter dated October 19, 1998, in response to the matters raised in your letter dated October 2, 1998, to me. Following the action taken by the Los Angeles County Department of Regional Planning (the "Department") more particularly described below, we are able to respond definitively to the requests for information in numbered Paragraphs (1), (2) and (3) on Pages 2 and 3 of your letter.

In particular, we have now received and are enclosing conformed copies of the following instruments recorded on November 5, 1998, with the Los Angeles County Recorder's Office:

1. Certificate of Compliance recorded as Instrument No. 98-2035576 and correcting the legal description of the Korte Property and the Mogulescu Property in former Certificate of Compliance LLA101303 (the 1994 Lot Line adjustment originally recorded as Instrument No. 94-1699514 on September 15, 1994).
2. Certificate of Compliance recorded as Instrument No. 98-2035577 and correcting the legal description of the Korte Property in former Certificate of Compliance No. 98-0046 (the driveway adjustment originally recorded as Instrument No. 98-499005 on March 26, 1998).

RECEIVED
NOV 11 1998
Rec 11/13/98 JJ
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 6
APPLICATION NO. 4-98-119
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California Coastal Commission

November 10, 1998

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3. Certificate of Compliance recorded as Instrument No. 98-2035578 and correcting the legal description in former Certificate of Compliance 98-0047 of the Korte Property (the driveway adjustment originally recorded as Instrument No. 98-499006 on March 26, 1998).
4. Grant Deed recorded as Instrument No. 98-2035579 and correcting the legal description in the prior conveyance of the Mogulescu Property originally recorded as Instrument No. 97-1875839 on November 26, 1997.
5. Grant Deed recorded as Instrument No. 98-2035580 and correcting the legal description in the prior conveyance of the Korte Property originally recorded as Instrument No. 94-2038935 on November 10, 1994.

We are also enclosing a copy of a letter dated November 5, 1998, from the Department to Gary Timm of the Coastal Commission relating to the foregoing.

Please note the following with respect to the enclosed documents:

- (a) The 1994 Lot Line Adjustment reflected in the corrected legal description in the documents enumerated above does not affect (if it ever affected) any property owned by Mr. Flaherty (Assessor Parcel No. 4443-004-039). Accordingly, the letter of consent from Mr. Flaherty that you originally believed to be necessary is not necessary. (Paragraph (1) of your letter.)
- (b) Representatives of Los Angeles County have advised us repeatedly that the lot line adjustment effectuated through the Certificate of Compliance process does not require a record of survey for the area which was adjusted to accommodate the location of the driveway connecting Clifftop Way to the residence on the Korte Property or for any other area. Accordingly, no record of survey has ever been made. (Paragraph 2 of your letter.)
- (c) The Certificates of Compliance for the Mogulescu Property referenced in Paragraphs 1 and 3 above have both been signed and recorded by the County of Los Angeles. (Paragraph 3 of your letter.)

We believe that we have addressed all of the requirements that need to be satisfied for the Coastal Commission to approve the pending Application, both with respect to the issuance of a Coastal Development Permit for the 1998 Lot Line Adjustment and for the issuance of an exemption for the proposed addition to the Kortess' residence. Please schedule this matter for

Hughes Hubbard & Reed LLP

California Coastal Commission
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expedited treatment as a *de minimis* development as soon as possible so that the Kortes and the Mogulescus may at long last begin to enjoy the benefits of this project.

Please call me at your earliest convenience if you have any questions or require anything further with respect to the foregoing.

Very truly yours,

George A. Furst

George A. Furst
HUGHES HUBBARD & REED LLP

GAF:cd
enclosures

cc: Mr. and Mrs. Helmut Korte (w/o encl.)
Mr. James Coane (w/o encl.)