

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
MALIBU, CA 93001
(310) 641-0142

RECORD PACKET COPY



Th18a

Filed: 7/27/98
49th Day: 9/14/98
270th: 4/23/99
Staff: MB-Vta
Staff report: 3/26/99
Hearing Date: 4/13-16/99

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-96-189

APPLICANT: Lewis Flinkman

AGENT: Alan Block/Norman Haynie

PROJECT LOCATION: Abadie Lane south of Parkhouse Lane, west of Tuna Canyon Road, Malibu, Los Angeles County

PROJECT DESCRIPTION: Redivision of four (4) lots into four (4) lots and 14,049 cu. yds. of grading (9,276 cu. yds. of cut, 4,773 cu. yds. of fill) for the construction of four residential building pads, driveways and access road (Abadie Lane). Improve existing access road (Parkhouse Lane) including 1544 cu. yds. of grading (772 cu. yds. cut and 772 cu. yds fill), construction of 1.5 to 2 ft. high, 1700 foot long retaining walls, repair of a washout (1,523 cu. yds. of fill) and construction of a road drain and a rip-rap flow dissipater. Placement of asphalt paving on new access road (Abadie Lane) and a 900 foot long portion of the existing access road (Parkhouse Lane). Additionally, the applicant is proposing to offer to dedicate a 20 foot wide public hiking and equestrian trail easement.

Lot area: 120 ac.

Land use designations: Rural land 4, 1 du/5 ac; Rural land 3, 1 du/10 ac;
Mountain land, 1 du/20 ac

LOCAL APPROVALS RECEIVED: County of Los Angeles: Department of Regional Planning, Lot line adjustments 101456 and 101457, approval in Concept dated 8/19/96; Fire Department, Tentative Map Approval dated July 16, 1991 and June 26, 1994; Fire Prevention Division review letter dated August 6, 1997.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains certified Land Use Plan; Geoplan, Inc., Engineering Geologic Report, Tentative Tract 50456, October

Family Residential Development Tentative Tract No. 50456, November 21, 1991; Geoplan, Inc., engineering geologic letter, June 9, 1997; Strata-Tech, geotechnical update letter, May 12, 1997; Coastal development permits nos. A-42-80 (Levinson), 4-93-103 (Murphy-O'Hara), 4-96-28 (Harberger, et. al.), 4-95-115 (Lauber, et. al.), 4-96-150 (Rein, et. al.), 4-96-187 (Sohal), and 4-98-169 (Connolly).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the project with special conditions relating to: ***plans conforming to geologic recommendations, landscape and erosion control plans, building pad and access road drainage control, trail dedication, open space deed restrictions, removal of excavated material, and future land divisions.***

The proposed redivision will cluster residential development around a southerly extension of Abadie Lane on a relatively flat mesa area along a secondary ridgeline. Development of the lots in their existing configuration would have resulted in roads, building pads and residences located in very steeply sloping canyon areas adjacent to or within environmentally sensitive habitat areas. Development of these lots would have required massive grading for the construction of access roads and building pads. This type of massive grading would have substantially altered the exiting natural landforms, and required removal of significant areas of natural chaparral vegetation on steep slopes that provide a critical watershed function and habitat for this ecosystem. The loss of this vegetation, massive reconfiguration of the natural landforms and increase of impermeable surfaces in these steeply sloping areas would have resulted in a significant increase in a significant increase in erosion of the canyon slopes and sedimentation of adjacent streams, thereby degrading these ESHA areas. In addition, siting residential development on these remote lots in steeply sloping areas would have resulted in a significant fire hazard and emergency access problem.

The proposed redivision is a more appropriate lot configuration than the current lot configuration. It avoids development in steep canyon areas found on the underlying parcels. The proposal realigns parcel lines to concentrate development closer to developed areas and existing roads without introducing massive grading into undeveloped areas, contributing to fire safety hazards, altering natural landforms, degrading scenic and visual quality, degrading blue line streams, or creating adverse cumulative impacts on coastal resources. For these reasons the proposed project, as conditioned, is consistent with the Chapter Three policies of the Coastal Act.

STAFF NOTE:

The application was filed on July 27, 1998 and had been previously postponed to the January, 1999 meeting. Commission action is required at the April 13 - 16, 1999 meeting because of the need to complete action within 270 days as required by the State Permit Streamlining Act

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

1. Plans Conforming to Geologic Recommendations

Prior to the issuance of a coastal development permit the applicant shall submit, for review and approval by the Executive Director, evidence of the geology and geotechnical consultants' review and approval of all project plans. All recommendations contained in ; Geoplan, Inc., Engineering Geologic Report, Tentative Tract 50456, October 22, 1991; Strata-Tech, Preliminary Geotechnical Investigation for Proposed Single Family Residential Development Tentative Tract No. 50456, November 21, 1991; Geoplan, Inc., engineering geologic letter, June 9, 1997; and Strata-Tech, geotechnical update letter, May 12, 1997 shall be incorporated into all final design and construction plans including recommendations concerning keying and benching of fill and drainage. All plans must be reviewed and approved by the geologic consultants.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading 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. The Executive Director shall determine whether proposed changes are substantial.

2. Landscape Plans and Monitoring

(a) Landscaping Plan

Prior to issuance of a coastal development permit, the applicant shall submit landscape plans for review and approval by the Executive Director. The landscape plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall incorporate the following criteria:

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of completion of final grading. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa

Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. In addition, at the completion of final grading, all building pads shall be seeded with native grasses.

- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;

(b) Monitoring Report

Five years from the completion of final grading the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake development in accordance with the final approved plan. Any changes to the final approved plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

3. Drainage Control Plans/ Interim Erosion Control

(a) Drainage Control Plan

Prior to the issuance of the Coastal Development Permit, the applicant shall submit, subject to the review and approval of the Executive Director, a drainage plan designed by a licensed engineer or other qualified professional for the proposed improvements to Parkhouse Lane, Abadie Lane, all driveways, and all building pads. The drainage plan shall include, but not be limited to drainage

control features which ensure that all run-off from Parkhouse Lane, Abadie Lane, all driveways, and all building pads is collected and discharged in a non-erosive manner. Velocity reducing devices or structures shall be included to minimize erosion into adjacent canyons. Site drainage shall not be accomplished by sheet flow runoff. The final drainage plans shall be reviewed and approved by the Los Angeles County Department of Public Works.

The applicant or successor in interest shall agree to maintain the drainage devices on a yearly basis in order to insure that the system functions effectively. Should the device fail or any erosion result from drainage from the project, the applicant or successor interests shall be responsible for any necessary repairs and restoration.

(b) Interim Erosion Control during Rainy Season

Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps, and other interim erosion control measures) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill. In the event that grading operations are interrupted for a period of more than 30 days, regardless of the time of year, sediment retention and erosion control measures shall be implemented.

4. Trail Dedication

In order to implement the applicant's proposal of an offer to dedicate a 20 ft. wide public access hiking and equestrian trail easement for passive recreational use as part of this project, the applicant as landowner agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for public access and passive recreational use in the general location and configuration depicted in Exhibit 3. - The exact easement location shall be agreed upon by the Santa Monica Mountains Trails Council, the County of Los Angeles Department of Parks and Recreation, and the Executive Director of the Coastal Commission. The Executive Director shall determine which trail alignment is most feasible. In the event that the applicant is not in agreement with the Executive Director's determination, the trail alignment shall be reviewed and approved by the Coastal Commission.

The irrevocable offer shall be of a form and content approved by the Executive Director, free of prior encumbrances except for tax liens, providing the public the right to pass and repass over the noted route limited to hiking and equestrian uses only. The offer to dedicate may specify that the trail must be used by the public only between dawn and dusk. The dedicated trail easement shall not be open for public hiking and equestrian usage until a public agency or private association approved by the Executive Director agrees to accept responsibility for maintenance and liability associated with the trail easement. The offer shall run with the land in favor of the State of California binding successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of the recording.

5. Revised Open Space Deed Restrictions for TDC Lots

Prior to the issuance of the coastal development permit, the applicant shall execute and record open space deed restrictions as shown on Exhibit 4 (attached), in a form and content acceptable to the Executive Director, to replace the open space restrictions originally recorded in document entitled Irrevocable Offer to Dedicate Scenic Easement and Declaration of Restrictions for Permit No. A-42-80 recorded on March 27, 1981. The deed restriction shall include legal descriptions of the entire parcel (Lot 3) and the areas restricted as open space, as shown on Exhibit 4. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

6. Removal of Excavated Material

Prior to the issuance of the Coastal Development Permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material (2980 cu. yds) from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

7. Future Land Division of Lot 3

Prior to the issuance of the Coastal Development Permit, the applicant shall execute and record a deed restriction on Lot 3, as shown on Exhibit 3, in a form and content acceptable to the Executive Director, which states that approval of Coastal Development Permit 4-96-189 in no way commits or obligates the Coastal Commission or its successor to approve a future Coastal Development Permit for a land division on Lot 3. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

1. Project Description and Surrounding Area

The applicant proposes to redivide four lots into four reconfigured lots totaling 120 acres (Table 1), (Exhibit 2). The proposal includes 14,049 cu. yds. (9,276 cu. yds. cut, 4,773 cu. yds. fill) of grading for the construction of four building pads, driveways and access road (Abadie Lane). Abadie lane will be constructed to a paved width of twenty-six feet within an 60 foot right of way.

The proposal also includes improvements to portions of an existing 2/3 mile long private access road (Parkhouse Lane) consisting of widening segments of the road to twenty-five feet and installation of a 1.5 to 2 foot high retaining wall along seven sections of the road on the uphill side, totaling approximately 1700 feet. These improvements require 1544 cu. yds. of grading (772 cu. yds. cut and 772 cu. yds. fill). A portion of Parkhouse lane has been washout due to uncontrolled runoff. The applicant is proposing to repair the washout with 1,523 cu. yds. of grading (all fill). One drain and rip-rap velocity reducer is proposed travelling under Parkhouse Lane at a distance of approximately 800 feet west of the intersection with Saddle Peak Road. The applicant also proposes to pave a 900 foot long 25 foot wide unimproved section of Parkhouse Lane.

The applicant further proposes to offer a 20 foot wide offer to dedicate a trail easement as designated by the County subject to certain stipulations relative to time of operation and responsibility for any survey.

The following shows the parcels by size before and after the reconfiguration.

Table 1: Parcels Before and After Reconfiguration

<u>Before Reconfiguration</u>		<u>After Reconfiguration</u>	
<u>Parcel</u>	<u>Parcel Size</u>	<u>Parcel</u>	<u>Parcel Size</u>
A	109 Acres	1	1.60 Acres
B	5 Acres	2	9.60 Acres
C	1 Acres	3	103.27 Acres
D	5 Acres	4	5.43 Acres

Access to the subject lots as well as a number of other properties in this area is off of Saddle Peak Road via Parkhouse Lane. While the applicant has an ingress/egress easement over Parkhouse Lane to access his properties. Adjacent property owners have a fee interest in the land over which the road traverses. The applicant is proposing road improvements within the road easement on 4 adjacent properties not owned by the applicant. These property owners have been notified of this development pursuant to Section 30601.5 of the Coastal Act. Section 30601.5 states in part that: "All holders or owners of any interests of record in the affected property shall be notified in writing of the permit application and invited to join as Co-applicant." A total of four property owners were notified of the pending permit action under Section 30601.5, and one property owner responded to the notification but did not choose to join as a co-applicant.

Previous grading through cut and fill operations has have created eight building pads on the subject 120 acres. A review of aerial photos indicates that the pads or potential building sites may have existed prior to enactment of the Coastal Act. The extent of previously existing grading cannot be determined precisely because of the overgrowth of vegetation. This overgrowth of vegetation is noted in the 1991 Geoplan, Inc. report. The 1991 Strata-Tech report notes that the proposed development of existing pads requires grading to below bedrock area and refilling in accord with their recommendations. Staff has no evidence indicating these areas were graded after the effectiveness date of the Coastal Act.

The project area includes a mesa located on a secondary ridgeline and adjacent, undeveloped deep canyons to the east, west, and south. (Exhibit 3) Within the property encompassing the project site, the drop off into these canyons ranges from 700 to 1000 feet within an approximate quarter mile from the location of the proposed "cluster" of building pads. North of the project is a ridgeline extending east to west and reaching the 2268 ft. elevation, which defines the drainage boundary between Las Flores and Topanga Canyons.

Little Las Flores Canyon Creek is located at a distance of approximately 1000 ft. southeast of the proposed development. At a distance of approximately one eighth mile to the west is an unnamed tributary of Little Las Flores Creek. Both creeks are designated blue line streams, and as environmentally sensitive habitat areas in the land use plan (LUP) component of the Malibu/Santa Monica Mountains Local Coastal Program.

Adjacent development consists of single family residences along Parkhouse Lane and Little Las Flores Road to the north of the project location. The subject property is adjacent to at the southwest corner of undeveloped National Park Service land along Las Flores Canyon Creek. This land is located approximately one half mile to the west of the proposed "cluster" of residential development along Abadie Lane.

2. Project History

A review of application materials indicates that the underlying land had its origin in a plat recorded in 1896 and that the easement creating Parkhouse Lane dates from 1942.

The application was received on November 21, 1996. Because of a number of items missing, and/or requiring clarification, the application was found incomplete. There was a series of meetings with the project agent and correspondence requesting completion of the application (letters to applicant on December 5 and 11, 1996, March 25, 1997, August 25, 1997, and April 23, 1998, December 9, 1998). Principal items of discussion included local government approvals, grading plans, geologic review, percolation tests, land use designations, average lot size analysis, completeness of plans, application fees, etc. Staff subsequently met with the applicant's representatives on March 13, 1999 at which time the proposed project resulted after submittal of new material regarding the parcel configuration, pad location, offer of the trail easement, revised cut and fill numbers, a slope/lot size analysis relative to the County's non-urban hillside management program, elimination of previously proposed building pads, and reduced grading for building pads and driveways.

Originally the applicant was proposing to redivide six lots into six lots. In December of 1998 Commission staff discovered that the applicant had only four legal lots as opposed to six, discussed in detail below. In response to staff concerns regarding the legality of two of the lots involved in the redivision, the applicant modified the project description on March 22, 1999 from a six lot redivision to a four lot redivision.

Commission action is required at the April 13 - 16, 1999 meeting because of the need to complete action within 270 days as required by the Permit Streamlining Act

3. Current Status of the Subject Lots.

Staff notes that the applicant asserted at one juncture while this application was pending that the lots that are the subject of this permit are 6 separate legal parcels. The Commission staff has undertaken an independent, thorough investigation of the facts, the applicant's assertion and of the current status of the subject parcels and concludes that the subject parcels are, in actuality, only 4 in number. A detailed explanation of this conclusion follows below.

On June 18, 1980, the Commission granted Coastal Development Permit No. A-42-80 (Levinson) for a 19-lot subdivision. A copy of the staff report for that permit is attached as Exhibit 5. Special Condition No. 1 of that permit required the applicant, prior to permit issuance, to participate in the Commission's Transfer of Development Credits (TDC) program by restricting development of 17 parcels in the so-called Zone I Donor area

where the project was located. That condition stated, in relevant part, as follows: "the applicant shall record a deed restriction prohibiting residential development on and shall record an irrevocable offer to dedicate an open space easement over sufficient applicable lots to constitute a minimum of 17 transfer of development credits ... The lots to be dedicated shall be combined with each other such that they may be considered a single parcel for purposes of sale, transfer, development or encumbrance ..."

In March 1981, an amendment to CDP No. A-42-80 was granted by the Commission. (The relevant portion of the amendment staff report is attached as Exhibit 6) This amendment addressed the method by which the TDC requirement was to be satisfied. The amendment allowed use of large parcels outside the designated Zone I donor area for 8 of the 17 required TDC's. Special Condition No. 2 of the amendment required the applicant to record an irrevocable offer to dedicate an open space easement prohibiting residential development over 8 of the 17 parcels. The condition further required the 8 dedicated parcels to be combined with each other and combined with another, separate developed or developable parcel such that all of the parcels would then be considered a single parcel.

On March 27, 1981, the applicant satisfied the TDC condition of the permit, as amended, by recording an irrevocable offer to dedicate a scenic easement as Instrument No. 81-310530 over 8 TDC parcels. On the same date, as part of condition compliance, a declaration of restrictions was recorded as Instrument No. 81-310531 that recombined these 8 TDC parcels with other, then-separate parcels. The applicant chose to combine 7 of the TDC parcels with three existing separate, contiguous parcels. These three separate parcels are shown on Exhibit 7 as parcels A, B, and C. The 7 TDC parcels that were combined with parcels A, B and C are shown on Exhibit 8 as parcels D, E, F, G, H, I and J. These 7 TDC parcels were combined with the 3 then-separate parcels, creating one large recombined single parcel where there had been ten parcels before the recombination. (See Exhibit 9) Thus, parcels A through J became one parcel through this transaction. The location of all 10 separate parcels, before the recombination of March 1981 was accomplished, is shown in Exhibit 10. The new, recombined parcel that was created from the ten separate parcels A through J is shown on Exhibit 8. (The eighth required TDC parcel was restricted through a separate irrevocable offer to dedicate a scenic easement and was recombined with a different parcel that is not involved in the subject permit application. Thus, the eighth parcel is not shown on Exhibit 8)

The permit was then issued and the project site that was the subject of the permit was subdivided. Since that time, the Commission has never taken any action or issued any approvals that would have had the effect of redividing the 10 parcels that were combined.

The application that is now before the Commission involves four parcels, shown on Exhibit 10 as parcels 1, 2, 3, and 4. Parcel 1 is the large lot that was created in 1981 from 10 separate lots, as described above. In asserting that there are actually 6 lots

involved in this permit application, the applicant has asserted that parcel 1 is not one large lot, but in fact 3 separate lots. (See applicant's agent's letters to Commission, December 15, 1998 and March 8, 1999, Exhibits 11 and 12) The applicant has asserted that parcels A, B and C as shown in Exhibit 8 are still 3 separate parcels and that they were somehow mistakenly combined in 1981. The Commission notes, however, that, due to the noncontiguous nature and the particular physical configuration of the 7 TDC parcels combined in 1981, it is clear that all three then-separate parcels A, B and C as shown in Exhibit 8 needed to be used at that time in order to combine the 7 parcels into one single parcel, as the permit condition required, and that there was no mistake. (Parcel J could only be tied to parcel A; parcel I could only be tied to parcel B; and parcels D through H could only be tied to parcel C, as shown on Exhibit 8) All 7 TDC parcels could not physically have been combined with lot A, B or C standing alone. The Commission concludes, therefore, that these three lots are one parcel today, not three, as a result of the 1981 recombination described above. (See Commission's response letters to applicant, January 26 and 28, 1999, Exhibits 13 and 14)

As support for his assertion of the still-separate nature of parcels A, B and C as shown on Exhibit 8, the applicant has pointed to the issuance by Los Angeles County since 1981 of various certificates of compliance pursuant to the Subdivision Map Act relating to independent land transactions unrelated to the lot recombination of 1981. (See applicant's agent's letter, March 8, 1999, Exhibit 12) These certificates assertedly show the County's recognition of these three parcels as still separate. The Commission notes, however, that, an approval from the Commission would have been required if the three combined parcels were to have been redivided after 1981 and that the County's independent issuance of these other documents does not somehow "undo" the 1981 lot combination.

Therefore, this pending application No. 4-96-189 involves four separate parcels, as shown in Exhibit 10. These parcels consist of the single recombined parcel 1, together with three additional parcels 2, 3, and 4. For this reason, there are not 6 parcels involved in this application.

4. Comparison to Other Redivisions

A review of permit records indicates that the Commission has previously reviewed four redivision permit applications involving multiple parcels in the Santa Monica Mountains. Two recent applications which were denied by the Commission:

- Application 4-96-187 (Sohal) for the reconfiguration of eight lots of approximately 88 acres located in the Latigo Canyon area.
- Application 4-96-150 (Rein, et. al.) for reconfiguration of sixteen lots of approximately 92 acres in the Topanga Canyon area.

In both cases, the reconfiguration had received approval by the County as a lot line adjustment through a complex lot line adjustment which resulted in a redivision extending, in effect, small non-conforming into an adjacent larger parcels located in remote undeveloped or sparsely developed areas. The Coastal Commission denied both proposed reconfigurations. Similar reasons for denial were found in both Commission actions:

- The proposed lot location and sizes extended development into undeveloped areas unable to accommodate such development, or with adequate public services, in a manner inconsistent with PRC Section 30250(a).
- Provision of cut and fill slopes, retaining walls, access roads and building sites resulted in extensive alteration of natural landforms, disturbance of steep hillsides and undeveloped areas of undisturbed native vegetation, inconsistent with preservation of visual quality and the character of the surrounding area as required by PRC Section 30251.
- Fire hazard was not minimized in an area of high fire danger without adequate access for fire fighting equipment due to lack of a secondary access, narrow and winding roadways leading to the project area, and extension of long roads and drives onto the project site in a manner inconsistent with PRC Section 30253(1).
- Increased development in undisturbed, steep areas resulted in unacceptable levels of runoff, siltation and related water quality impacts due to increased volume and velocity of runoff and removal of native vegetation in a manner inconsistent with PRC Sections 30231, 30240, and 30253.

Further, the Sohal proposal would have resulted in development at an increased density in a designated significant watershed and therefore was found inconsistent with the policies governing such development as found in the certified Land Use Plan, as used as guidance in past Commission decisions.

In contrast, in application 4-96-28 (Harberger et. al.) the Commission approved a land division involving a lot line adjustment of two parcels and a redivision of three parcels totaling 25.5 acres in the Topanga Canyon area. The Commission found that the lot sizes after the redivision were similar to those before the division and that the visual impacts were minimal. No issues arose relative to fire safety and fire vehicle access.

In permit 4-93-103 (Murphy-O'Hara) the Commission approved a redivision of eight parcels into three parcels comprising 146 acres. That project involved a clustering concept by locating development close to an existing road and avoiding an environmentally sensitive habitat area. The Commission found that the project reduced fire risk, reduced the number of buildable sites, and reconfigured parcels to reduce resource impacts.

In summary, the above decisions show that the Commission has evaluated a number of land divisions including lot line adjustments or reconfigurations similar to the present proposal. Such land divisions have only been permitted where adequate fire access is available and where new development and increased densities has not extended into rugged, undeveloped areas in the Santa Monica Mountains. Such redivisions of lots could have been allowed where the resulting parcels were similar in size to the originating parcels and development was found consistent with LUP and Coastal Act policies. With these considerations, the three above described projects were found, when approved with conditions, to be consistent with Coastal Act policies.

B. Geologic and Fire Hazards

1. Coastal Act and LUP Policies

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.***

The Malibu/Santa Monica Mountains certified Land Use Plan also provides policy direction, in regards to geologic hazards, as follows:

- P147 Continue to evaluate all new development for impact on, and from, geologic hazard.***
- P148 Continue to limit development and road grading on unstable slopes to assure that development does not contribute to slope failure.***
- 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 Malibu/Santa Monica Mountains certified Land Use Plan also provides policy direction, in regards to fire hazards, as follows:

P 156 Continue to evaluate all new development for impact on, and from, fire hazard.

P159 Continue present requirements on all new development for emergency vehicle access and fire-flow water supply as determined by the Forester and Fire Warden until such time as alternative mitigation measures providing an equivalent degree of safety are developed and implemented.

2. Geology

As described under project description, the project proposes to recompact previously deposited fill in conformance with standards recommended by the geotechnical consultants, and create four building pads with a minimal amount of landform alteration. The landform alteration is discussed in further detail below in these findings under visual resources and landform alteration.

The project site is located on a flat mesa area of approximately fifty acres along a secondary ridge. This area of the subject property site is characterized by fill over bedrock composed of sandstone and mudstone. A number of rock masses are exposed at the surface.

The landform of the mesa is divided by a displacement by a west/southwest to east/southeast trending fault separating the southernmost building pad from the remainder. This fault line is evident in the alignment of adjacent drainage courses. The fault, as described in the geotechnical background material, is not a significant potential hazard to the proposed development.

The applicant has submitted several geologic and geotechnical engineering reports including: Geoplan, Inc., Engineering Geologic Report, Tentative Tract 50456, October 22, 1991; Strata-Tech, Preliminary Geotechnical Investigation for Proposed Single Family Residential Development Tentative Tract No. 50456, November 21, 1991; Geoplan, Inc., engineering geologic letter, June 9, 1997; Strata-Tech, geotechnical update letter, May 12, 1997. The 1991 Strata-Tech report notes that:

It is concluded that the proposed building sites are buildable and that they will be unaffected by landslide, slippage, or settlement, provided construction is conducted in accordance with the recommendations of the project consultants and the constraints of the applicable sections of the Building Code. No adverse affect upon adjoining properties will result.

Similar findings are contained in the 1991 report by Geotech, Inc. 1997 update letters to both reports have been provided which find no change in the previous findings.

Based upon review by the geotechnical engineers and engineering geologist, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as all recommendations regarding the proposed development are incorporated into the project plans. These recommendations will ensure that the proposed building pads and roads and drives are stable and do not contribute to hazards on the site or to the surrounding area. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting soils engineers and engineering geologist as conforming to their recommendations, as noted in *special condition number one (1)* for the final project plans for the proposed project. Approval with this condition ensures project is consistent with PRC Section 30253 because it will minimize risks to life and property in terms of geologic hazard, assure stability and structural integrity, and not contribute significantly to erosion, instability, or destruction of the site or the surrounding area.

3. Erosion

Surface drainage on site is predominately by sheet flow toward the southeast, toward Little Las Flores Canyon Creek at a distance of approximately 1000 ft., although some flow will take place toward the unnamed tributary to the west, at a distance of approximately one- eighth mile. Both creeks are designated as environmentally sensitive habitat areas in the land use component of the Malibu/Santa Monica Mountains Local Coastal Program.

The consulting engineering geologist has noted that the proposed cut slopes will be fairly resistant to erosional deterioration, but recommended that storm water from building sites and roadways be collected and controlled to flow to adjacent ravines. In past Commission decisions for similar projects involving cut and fill slopes, avoidance of concentration of runoff and erosion has been found necessary. The Commission has found that uncontrolled storm water runoff associated with the construction of projects such as the proposed project could create significant erosion and sedimentation impacts offsite.

If not controlled and conveyed off the site in a non-erosive manner, runoff will result in increased erosion on and off the site, which will adversely affect the stability of the building pads and roadways and driveways. In addition, erosion will increase sedimentation of the nearby streams, as discussed in greater detail below. The present washout on Parkhouse Lane, proposed for remediation by this project, is an example of the adverse impacts associated with uncontrolled drainage.

Erosion control devices are proposed for the main access road to the site, i.e. Parkhouse Lane. However, drainage control measures are needed to convey runoff off of all impermeable surfaces on the entire site. Paving of roadways and driveways including Abadie Lane and driveways to the individual building pads will significantly increase the amount of impervious surfaces which increases the volume and velocity of

storm water runoff. In addition, compacted fill and cut slopes increase the volume and velocity of runoff from the developed sites. Therefore, the Commission finds that it is necessary to require the applicant to submit detailed drainage plans which illustrate how drainage will be conveyed offsite in a non-erosive manner and that interim erosion control measures be implemented during the rainy season, as specified in *special condition number three (3)*.

Past Commission actions for similar development as well as the recommendations in this project's geotechnical reports indicate that landscaping can mitigate the adverse effects of erosion and runoff. Landscaping minimizes the potential for erosion of grading and disturbed soils and thereby ensures site stability. Therefore, the Commission finds it necessary to require the applicant to submit a detailed landscape and erosion control plan for the proposed development to ensure site stability. *Special condition number two (2)* provides for such a landscape/erosion control plan prepared by a licensed landscape architect, and review and approval of the plan by the consulting engineering geologist.

The Commission further notes that the amount of cut proposed by the applicant is larger than the amount of fill to be placed and will result in export of approximately 3,000 cu. yds. cu. yds. of excess excavated material. Excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site. To ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, *special condition six (6)* is necessary. This condition requires the applicant to remove all excavated material from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required. Act.

With these conditions, the project is consistent with PRC Section 30253 relative to minimizing the erosional effects affecting the stability of the site and the surrounding area.

4. Fire

The proposed development is located in the Santa Monica Mountains, an area 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 Coastal Act requires that new development minimize the risk to life and property in areas of high fire hazard. PRC Section 30253 states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard.

The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

Vegetation in the coastal areas of the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

The proposed development lies within the area of the November 3, 1993 firestorm. The project is located in an area of very high fire danger because of the steeply sloping topography. The proposed building sites are located on the more gently sloping to relatively level mesa area of the which a less hazardous area than the steeply sloping canyon areas of the site. This fire danger is also exacerbated when there is a lack of secondary access.

At the September 1998 meeting the Coastal Commission denied application 4-96-187 (Sohal), for reconfiguring nine lots totaling approximately 88 acres. The project was located on two ridges in the Santa Monica Mountains and was similar in size and number of parcels to the present project. Increase in the fire hazard due to inadequate access was a significant factor in Commission's denial of the Sohal application.

The Sohal application was inconsistent with PRC Section 30253(a) because it did not minimize the risks to life and property in an area of high fire hazard. A number of features of the Flinkman proposal avoid the following problems raised by the Sohal application. The Sohal redivision was located in a vacant undeveloped area on the opposite side of a small lot subdivision (Malibu Vista) from the main arterial providing potential access for fire suppression. Access to the Sohal site was also through a constricted intersection at Latigo Canyon Road, and then through a series of steep, winding streets with constricted intersections and a significant amount of on-street parking potentially interfering with public safety vehicles or evacuation of residents. The Sohal proposal also required new roadways and building sites extending approximately 1.5 miles into a remote undeveloped steeply sloping canyon and hillside area. The extension of development into a remote steeply sloping hillside and canyon area through

a single ingress and egress access point created a significant fire hazard and emergency access problem. The Commission found that the Sohal project did not minimize risks to life and property from fire hazard as is required under Section 30253 of the Coastal Act.

Problems similar to Sohal relative to fire safety were found in denial of application 4-96-150 (Rein et. al.) for a parcel reconfiguration in the Topanga Canyon area. In Rein, the Commission also found that the extension of development onto a remote ridgeline with a single access ingress and egress access point, which was further constrained by a narrow and steeply sloping access road, was not consistent with Section 30253 of the Coastal Act. In the Flinkman proposal, even though the building sites are within approximately 1.5 miles of Saddle Peak Road, the main arterial, there are several access points to the site including a turnoff off of Tuna Canyon Road and two turnoffs off of Saddle Peak Road. Abadie Lane can be approached from either Parkhouse Lane to the east or Little Las Flores Road to the west, whereas the Sohal site only could be approached from one road to the west.

In addition, the proposed redivision clusters building sites out of the steeply sloping and remote canyons closer to the existing roadways which enhances access to each site by fire safety vehicles. Fire safety vehicles will not have to travel great distances down long private driveways. Parking areas for fire safety vehicles would be available on the main roadway. The proximity of the main roadway also enhances the potential to evacuate residents and fire safety personnel. Such advantages would not be available if the building pads were not clustered, and especially if more remote building sites were proposed extending development off the mesa into adjacent canyons.

The Commission considers the expertise of the County Fire Department as part of analysis for conformity of the project with PRC Section 30253. The proposed project has been reviewed and conceptually approve by the County Fire Department. In their letter of August 6, 1997, Jesus Burciaga, Fire Marshall and Assistant Fire Chief, noted that the proposed project provides rights of way with 36 feet of pavement width on Abadie Lane, which meets the minimum Fire Department requirement. Other County Fire Department requirements include driveway widths of 20 feet with the any driveways over 150 feet in length requiring an approved fire turnaround. Staff has reviewed the project plans and determined that the lots either are close enough to Abadie Lane to afford room for fire service and have adequate room on the individually proposed pads for a fire vehicle turnaround area.

The Commission finds for the above reasons that the proposed project results in clustering of development with access to an adequate roadway system with multiple access to the main arterial and in a manner facilitating the efficiency and safety of fire fighting operations. Further, the project is consistent in terms of pavement widths, driveway widths and turnarounds with Fire Department standards for a project in an area of high fire hazard. The project avoids the problems of lack of secondary and/or constrained access to the extent that the Commission has denied similar proposals such as application 4-96-150 (Rein) and 4-96-187 (Sohal). The project therefore minimizes

threat to life and property in a high fire hazard area and is consistent with PRC Section 30253 requirements.

C. Visual Resources and Landform Alteration

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 LUP includes the following policies regarding protection of visual resources, which are used as guidance by the Commission in the review of development proposals in the Santa Monica Mountains.

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 land forms;***
- be landscaped to conceal raw-cut slopes;***
- be visually compatible with and subordinate to the character of its setting;***
- be sited so as not to significantly intrude into the skyline as seen from public viewing places.***

P131 *Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.*

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.

Section 30251 of the Coastal Act, cited above, requires that permitted development be sited and designed to protect views, minimize the alteration of natural landforms, and be visually compatible with the character of the surrounding area.

The applicant is proposing to create four six building pads clustered off Abadie Lane, make improvements to the existing access road (Parkhouse Lane), extend and improve Abadie Lane, and construct driveways to each building site. To assess any potential visual impacts of this project to the public, the Commission reviews the publicly accessible locations where the proposed development is visible, such as scenic highways, parks and trails.

The proposed building pads and access improvements are located on a mesa at the approximate 1700 ft. elevation on a secondary ridgeline. Adjacent, undeveloped deep canyons are found approximately one quarter mile from the location of the proposed "cluster" of building pads. North of the project is a ridgeline extending east to west and reaching the 2268 ft. elevation, which defines the drainage boundary between Las Flores and Topanga Canyons. The character of the surrounding area includes single family residences along Parkhouse Lane and Little Las Flores Road to the north of the project location as well as the undeveloped land in deep canyons to the east, west, and south.

The Commission typically examines any proposed grading to assess the visual impact of the proposed project. In this case the applicant has submitted revised plans which have reduced the size of each home site to a reasonable quantity of cut and fill, based on past Commission actions.

The following table indicates the proposed of cut and fill for the proposed parcels:

Table 2: Proposed Grading (in cubic yards)

Building Pad and Driveway Grading

<u>Lot Number</u>	<u>Cut</u>	<u>Fill</u>
1	1,803	214
2	277	3,259
3	444	315
4	3,652	33
<u>Subtotal*</u>	6,176	3,821

Access Road Grading

Abadie Lane	3,100	952
Parkhouse Lane	772	772
Parkhouse Washout Repair and Maintenance	0	1,523
<u>Subtotal</u>	3,872	3,247
<u>Total</u>	10,048	7,068

TOTAL GRADING (building pads, driveways and access roads) ----- 17,116 -----

*Included in the cut and fill for each lot is a total of 1,563 cu. yds. of grading for on-site driveway improvements (140 cu. yds. cut and 1,283 cu. yds. fill): Lot 1 – 21 cu. yds. cut and 0 fill; Lot 2 – 0 cut and 1,244 cu. yds. fill; Lot 3 – 52 cu. yds. cut and 39 cu. yds. fill; and Lot 4 – 67 cu. yds. cut and 0 cu. yds. fill.

Abadie Lane is presently unpaved and the project includes installation and grading of Abadie Lane with a paved width of twenty-six feet and a right of way of sixty feet. Abadie Lane will have grading consisting of 717 cu. yds. cut and 207 cu. yds. fill. The drives to

reach the individual building sites are proposed to have a paved width of twenty feet and will have grading of 140 cu. yds. cut and 1,283 cu. yds. fill.

The applicant originally submitted a proposal to create larger building pads than presently proposed. Staff expressed concern regarding the amount of landform alteration associated with the size of the proposed pad and grading and the applicant lowered the number of parcels proposed. The applicant originally proposed redivision to create six lots and six building pads requiring approximately 32,000 cu. yds. of grading for pads, roads and driveways.

The applicant has modified the proposed grading to delete any grading on the two pads not proposed for development (Exhibit 3). The two previously graded pads that are not proposed for development include: (1) the pad on Lot 2 east of the proposed building pad on new Lot 1; and (2) the pad on Lot 3 southeast of the the proposed pad on new Lot 2 and east of the proposed building pad on new Lot 3. The elimination of these pads will result in elimination of long driveways previously accounting for approximately 5000 cu. yds. of grading (3,600 cu. yds. cut and 1,400 cu. yds. fill) in addition to minor cut and fill for alteration of the existing pads. In addition, a previously proposed pad north of the proposed pad on Lot 3 has been eliminated, which eliminates the need to grade flat a small knoll. With reduction of grading to the amount shown, i.e. grading of approximately 17,100 total cu. yds, the project will be sited and designed to minimize the alteration of natural landforms and be compatible with the character of the surrounding area, as discussed in greater detail by the following.

The project grading is consistent with the visual resource policies of the Coastal Act (PRC Section 30231) for several reasons. The proposed access road, driveways and building pads are proposed on the previously described mesa area, which is relatively level and which minimizes the need for extensive landform alteration. Grading for the building pads does not result in large cut and fill slopes or otherwise significantly alter the existing natural landforms. Further, the proposed building pad sizes are not excessive in size, on the order of 15,000 to 20,000 sq. ft. per lot. Further, the large on proposed Lot 3 is existing and requires only minimal grading to level the building site.

The proposed redivision reconfigures the lots in a way that will significantly reduce or minimize grading, in comparison to development of the existing lot configuration, as discussed in greater detail below under Analysis of Cumulative Impacts. Three of the existing lots are located in remote canyon areas would require massive grading to accommodate access roads, driveways and building pads even for a modest sized residence. Clustering the development on this mesa area on relative level sites significant reduces the grading requirements for building pads, access roads and driveways.

Given the trail is located with the steep canyon well below the project site it is doubtful future residences would be visible from the proposed Trail Route, with the potential

exception of Lot 3. Future residences will have to conform with PRC Section 30251 and the issue of visibility of future residences from a future trail will be addressed at that time.

Off-site, nearby portions of the Tuna Canyon Trail route rises in elevation while traveling to the north. The proposed pads will be visible in an oblique view to the southeast at a distance of approximately one-mile southeast of the point where the Tuna Canyon Trail intersects with the Backbone Trail. The project location will also be visible at a distance of approximately two and one half miles from scenic features in the Saddle Peak area to the west because that area is at a generally higher elevation. In these cases, the impact on views is not significant because of topography and/or distance involved. The proposed development is not otherwise visible from any nearby scenic highways or viewpoints.

The Commission has found through past permit action that landscaping softens, screens and mitigates the visual impact of development. As recommended above, landscaping and erosion control is proposed to ensure site stability. These measures will also ensure that the project is visually compatible with the surrounding natural areas. Landscaping softens the impact of cut and fill slopes and makes the texture and color of disturbed areas blend in with the surroundings.

In summary, the proposed project, as conditioned, will not significantly change the natural landform, adversely impact the character of the surrounding areas or scenic public views in the Santa Monica Mountains. Thus, the Commission finds that the proposed project is consistent, as conditioned, with Section 30251 of the Coastal Act.

D. Public Access/Trails

The Coastal Act maximizes public access and recreational opportunities within coastal areas.

PRC Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

PRC Section 30212.5 states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the

impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

PRC Section 30213 states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

PRC Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

PRC Section 30252 states:

The location and amount of new development should maintain and enhance public access to the coast by...(6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Coastal Act sections 30210, 30212.5, 30223, and 30252 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Section 30213 mandates that lower cost visitor and recreational facilities, such as public hiking and equestrian trails, shall be protected, encouraged, and where feasible provided.

In the Malibu/Santa Monica Mountains area, the existing system of heavily used historic trails located on private property has been adversely impacted by the conversion of open lands to housing. In order to preserve and formalize the public's right to use these trails, a trail system map has been included as part of the certified Malibu/Santa Monica Land Use Plan (LUP).

The trail system is composed of the Backbone and Coastal Slope Trails in addition to several connector trails. The Backbone Trail is the primary hiking and equestrian trail leading from the Los Angeles metropolitan area through the Santa Monica Mountains to Point Mugu State Park in Ventura County. The trail network provides hikers and equestrians with a large number of varied destinations including such highly scenic locations as Escondido Falls or the Castro Crag area and historic sites including several motion picture locations and active film sets. Significant coastal views from this public trail system include panoramic views of the coastline, the Channel Islands, and mountain views.

The Tuna Canyon Trail is identified in the certified Malibu/Santa Monica LUP as a significant part of the trail system that provides access between the coastal terrace and the Backbone Trail. The certified Malibu/Santa Monica Mountains LUP designates a proposed segment of the Tuna Canyon Trail on the project site and links this route to the Backbone Trail which connects to the coast at the entrance to Tuna Canyon. The proposed development is clustered about 400 east and 800 feet north of the trail route.

This application includes the trail easement that the applicant is proposing to offer to dedicate for public access on the project site represents an important "missing" link that will further complete this trail (Exhibit 4). Such an offer requires formalization through a recorded, irrevocable offer to dedicate a route which is agreed to by the Executive Director and concerned agencies, and which specifies the hours of availability and provides for acceptance by a public agency or private association. Therefore, *special condition four (4)* has been included, consistent with the applicant's proposal, in order to implement the applicant's offer to dedicate a public hiking and equestrian trail easement prior to the issuance of the coastal development permit.

The above recommended condition will ensure that the trail is proposed in a location and design consistent with the pattern of trail routes and design parameters found in the certified LUP. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with PRC Sections 30210, 30212.5, 30213, 30223, and 30252.

E. Environmentally Sensitive Habitat Areas

1. Coastal Act and LUP Policies

PRC Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

PRC Section 30231 states:

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, and minimizing alteration of natural streams.

In addition, the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) contains policies that provide useful guidance in evaluating the consistency of the proposed development with the policies of the Coastal Act. These policies were been found by the Coastal Commission, in certifying the LUP, to incorporate the resource protection requirements of Coastal Act Sections 30240 and 30231 for application to specific sensitive resource areas in Malibu and, therefore, continue to serve as guidance in reviewing proposed development for consistency with Coastal Act policies.

Specifically applicable LUP policies addressing the protection of ESHAs and thereby incorporating the resource protection policies that are relevant to the proposed project include:

- P 74 New development shall be located as close as feasible to existing roadways, services, and existing development to minimize the effects on sensitive environmental resources.***
- P 81 To control runoff into coastal waters, wetlands and riparian areas, as required by Section 30231 of the Coastal Act, the maximum rate of storm water runoff into such areas from new development should not exceed the peak level that existed prior to development.***
- P 82 Grading shall be minimized for all new development to ensure the potential effects of runoff and erosion on these resources are minimized.***
- P 86 A drainage control system, including on-site retention or detention where appropriate, shall be incorporated into the site design of new developments to minimize the effects of runoff and erosion. Runoff control systems shall be designed to prevent any increase in site runoff over pre-existing peak flows. Impacts on downstream sensitive riparian habitats must be mitigated.***

P 87 Require as a condition of new development approval abatement of any grading or drainage condition on the property which gives rise to existing erosion problems. Measures must be consistent with protection of ESHAs.

P 89 In ESHAs and Significant Watersheds and other areas of high potential erosion hazard, require approval of final site development plans, including drainage and erosion control plans for new development prior to authorization of any grading activities.

P 91 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.

2. Analysis of Impacts

Surface drainage on site is predominately by sheet flow toward the southeast, toward Little Las Flores Canyon Creek at a distance of approximately 1000 ft. There will be some drainage to the west toward an unnamed tributary of Little Las Flores Creek from Abadie Lane from the pad proposed on Lots 3 and 4. This unnamed tributary is approximately 600 ft. to the west of these pads. Both creeks are designated blue line streams, and as environmentally sensitive habitat areas in the land use component of the Malibu/Santa Monica Mountains Local Coastal Program.

As discussed in greater detail in the hazards section above, the project area is fairly resistant to erosional deterioration. However, the soils on the steeply sloping canyon areas on the site are highly susceptible to erosion if disturbed or if vegetation is removed. The Commission has found that uncontrolled storm water runoff associated with projects such as this increase the volume and velocity of storm water runoff, which could create significant erosion and sedimentation impacts on and offsite and could affect site stability, unless controlled and conveyed in a non-erosive manner. In turn, the increase in erosion on and off the site may increase sedimentation of the nearby streams which are designated ESHAs. The Commission has found that sedimentation can result in degradation to riparian systems in the following manner:

- Eroded soil contains nitrogen, phosphorous, and other nutrients which, when carried into water bodies, trigger algal blooms that reduce water clarity and deplete oxygen which leads to fish kills and creates odors.
- Excessive deposition of sediments in streams blankets the bottom fauna, paves stream bottoms, and destroys fish spawning areas.

- Turbidity from sediment reduces in-stream photosynthesis, which leads to reduced food supply and habitats.
- Suspended sediment abrades and coats aquatic organisms.
- Erosion removes the smaller and less dense constituents of topsoil. These constituents, clay and fine silt particles and organic material hold nutrients that plants require. The remaining subsoil is often hard, rocky, infertile, and droughty. Thus, reestablishment of vegetation is difficult and the eroded soil produces less growth.

The proposal includes, as previously noted, remediation of a washout, and construction of building pads, access roads and drives and associated improvements to Abadie Lane and Parkhouse Lane. Drainage improvements are proposed for Parkhouse Lane including an energy dissipater and swales. Since, as previously noted, no plans have been submitted for additional necessary erosion control and drainage improvements to Parkhouse Lane, Abadie Lane or the proposed building pads and related driveways, additional drainage and erosion controls are necessary as recommended by *special condition three (3)*. These measures would incorporate the recommendations of the project engineer and may include swales, berms, energy dissipaters, subsurface drains, and the like for all roads, drives and building pads as necessary to avoid or mitigate potential erosion and sedimentation problems cited above. Such measures will minimize the effects on sensitive coastal resources such as the aforementioned streams by controlling the rate of storm water runoff.

In summary, the increase in disturbance to the natural terrain and creation of additional impermeable surfaces increases water velocity and sedimentation, with potential adverse impacts to nearby blue line streams and their associated riparian habitats. *Special condition three (3)* will control such runoff in a non-erosive manner to protect and enhance the biological productivity of downslope environmentally sensitive habitat stream corridors, consistent with the requirements of the Coastal Act. Therefore, the Commission finds that only as conditioned is the proposed project consistent with the habitat and coastal resource protection policies of Sections 30231 and 30240 of the Coastal Act.

F. Cumulative Impacts of Development

1. Coastal Act and LUP Policies

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.

In addition, the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) contains the following policies, used by the Commission for guidance in past permit decisions, regarding land divisions and new development. Policies 271 and 273 (d) address lot line adjustments and land divisions. 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. ... For those parcels not overlain 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.

Further LUP land division policies include:

P 273 Development shall conform to Chapter 3, as amended, of the Coastal Act.

P 273c On property encompassing stream courses, 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 sit a dwelling or other principal structure consistent with P79 and P80 regarding setbacks of new development from stream courses and all other policies of the LCP.

P 273d 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.

P 273f Issuance of a conditional certificate of compliance pursuant to Government Code Sec. 66499.35 (b) shall be subject to a coastal development permit which shall be approved, but shall be subject to conditions to implement all applicable policies of this LUP, including land division policies.

Although characterized as a lot line adjustment by the applicant, the proposed reconfiguration of the subject Lot is considered by the Commission as a division of land. Therefore, the proposed redivision must be reviewed against Section 30250 of the Coastal Act. The Commission reviews land divisions to ensure that newly created or reconfigured parcels are of sufficient size, have adequate road access and provision of other utilities, are geologically stable, and contain an appropriate potential building pad area where future structures can be developed consistent with the resource protection policies of the Coastal Act. The Commission has repeatedly emphasized the need to address the cumulative impact of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impacts problem stems from the existence of thousands of undeveloped and poorly sited parcels in parcels and/or residential units through subdivisions and multi-unit projects.

The Commission found, in past permit decisions and action certifying the Malibu/Santa Monica Mountain Land Use Plan, that minimizing the cumulative impacts of new development is especially critical in the Malibu/Santa Monica Mountains because of the large number of lots which already exist, of which many are in remote mountain and canyon areas. From a comprehensive planning perspective, the potential development of thousands of existing undeveloped and poorly sited parcels in this area creates potential cumulative impacts on coastal resources over time. Because of the large number of existing undeveloped parcels and potential future development, the demands on road capacity, public services, recreational facilities, and beaches can be expected to grow tremendously. In response to these concerns, the Commission has not allowed land divisions which would increase the number of residential units without requirement of a transfer of development credits (TDC) development rights so that the development potential of donor lots is extinguished in exchange for development potential created by the land division. In this case, the proposal is for the redivision of four lots into four lots. The number of residential lots is not increased in this case, therefore there is no basis for a TDC requirement.

In past Commission actions, most recently relative to application 4-96-028 (Harberger et. al.), a condition has been required to ensure continuity of past open space dedications i.e. that the land remains in open space in perpetuity. Nine separate portions of existing lots totaling fifty-nine acres were dedicated as open space through deed restrictions required by the Coastal Commission in coastal development permit A-42-80. Although these deed restrictions follow the land, *special condition five (5)* is necessary to ensure an open space easements are properly recorded. These open space deed restrictions are all located on the proposed lot three (3). The portion of proposed Lot 3 containing the open

space restrictions will remain dedicated as open space through these deed restrictions to ensure that the project, as conditioned, is consistent with PRC Section 30250.

2. Land Divisions under PRC Section 30250(a)

The criteria in PRC Section 30250 are applicable to this project because the division of land is located outside of the developed coastal terrace area. These criteria ensure that development is located in close proximity to existing development in areas, has adequate public services, and prevents development from leapfrogging into undeveloped areas where there may be significant adverse impacts on coastal resources. Consequently, a land division may only be permitted when: (1) 50 percent of the usable parcel in the area have been developed and (2) when the created parcels would be no smaller than the average size of the surrounding parcels.

In past permit decisions, the Commission has found that the "existing developed area" for the Malibu/Santa Monica Mountains area applies only to portions of the urbanized strip, or the coastal terrace, along Pacific Coast Highway, and does not apply to the interior of the Santa Monica Mountains coastal zone. The Commission further found that the area addressed by the 50% criterion was the "market area" which amounted to the entire Santa Monica Mountain area within the coastal zone. Within this area, a majority of the existing parcels are not yet developed and, consequently, all land divisions outside the coastal terrace failed the required test under Section 30250. The Commission instituted the TDC program to address both the cumulative impact problem represented by the large number of existing lots and the technical criteria of Section 30250. Under this program land divisions coupled with lot retirement do not increase the number of potentially usable parcels, the technical criterion of 30250(a) concerning 50% of the useable parcels in the area is, in effect met. In the case of the proposed project the number of usable parcels is not increased by the redivision of land, therefore the project conforms with the 50% criterion of Section 30250(a) of the Coastal Act is not applicable.

Section 30250(a) also states that land divisions outside of existing developed areas shall be permitted only where the parcels created are no smaller than the average size of surrounding parcels. In determining this in the Santa Monica Mountains, the Commission has considered the average and median lot sizes within one-quarter mile, taking into account major topographic and cultural features. In this case, the surrounding area is characterized by flat ridges and steep canyons extending for a greater distance to the south and west, making it difficult to create a defined geographical area as an alternative to the quarter mile distance.

The applicant has completed an analysis of average lot size within a quarter mile radius, except for two large parcels of respectively 320 and 400 acres to the south. Based on this information, the average lot size in the surrounding area has been calculated as 5 acres. The proposal will result in creation of Lot 1, which at 1.6 acres in size is below this criteria. The remaining lots at 9.6 acres (Lot 2), 103.37 acres (Lot 3), and 5.43 acres

(Lot 4) are consistent with this criteria. However, as discuss in greater detail below under Analysis of Cumulative Impacts, Lot 1 more in conformance with the LUP designations than the existing smaller lot configuration, the redivision results in a larger lot configuration overall and clusters development in a more appropriate area for development, and, therefore, the Commission finds that the reconfigured larger lot sizes are consistent with the density designations under the LUP used as guidance by the Commission.

However, the Commission has determined in past actions that a better indicator of the size of the surrounding parcels is the median lot size. Staff has reviewed the distribution of surrounding lots and has found that the median is 2.5 acres excluding the two large 320 and 400 acres parcels to the south, or approximately 3.8 acres if these two parcels are included. The proposed parcel sizes are above the median of surrounding parcels with the exception of Lot 1 at 1.6 acres in size. However, one of the existing lots is one acre in size, and therefore the reconfigured lot at 1.6 acres in size represents an increase in size and is more conforming with the median than the previousl configuration. Further, the Commission notes that the overall effect of the reconfiguration is to increase the size of the parcels and that the project will avoid or decrease potential cumulative impacts on the site and the surrounding area for the reasons noted elsewhere in these findings. For these reasons, the proposed lot sizes conform to the average lot size criteria in PRC Section 30250(a).

3. Analysis of Cumulative Impacts

The proposal includes reconfiguration of four lots in the Santa Monica Mountains ranging in size from 1 acre to 89.58 acres. In contrast to recent proposals such as 4-96-187 (Sohal) and 4-96-150 (Rein et al), which the Commission denied, the proposal does not involved reconfiguring a small lot subdivision and in effect extending smaller lot sizes out into a lower density, undeveloped area. In the case of this proposal, the proposed land division facilitates a more appropriate location for pads i.e. building sites in the area designated with the higher density category of Rural Land II, 1 dwelling unit per 5 acres minimum. The present application further has the effect of consolidating and concentrating previously allowed densities closer to existing development and roads and utilities.

The Commission has used in the past as the criteria in determining cumulative impacts of land divisions in the Santa Monica Mountains the consistency of the project with land use designations in the certified LUP. These land use designations determine what allowable densities and intensity of land use may be permitted in a particular area based on the topography of the land and other planning criteria in the LUP. Generally, steeper areas have lower density designations and more level or less steep areas have higher density designations. The land use configurations in the LUP for the project area concentrate development on the flatter or plateau areas above the steep canyons to conform to the

topography and place potential intensity of development in areas which can accommodate it while avoiding impacts on coastal resources. The map number key and LUP land use designations for the project site with minimum lot area per a housing unit are as follows: 4: Rural land II, 1 du/5 acres; 3: Rural land I, 1 du/10 acres; and Mountain Land: 1 du/20 acres. At a closer view, the proposed building pads for all lots are designated Rural land II, 1 du/5 acres.

A review of the proposed lot sizes and the LUP designations indicates that Lot 1 at 1.6 acres size would be non-conforming because the proposed parcel size would be lower than the minimum lot sizes per unit specified of respectively 5 acres. However, the 1.6 acre lot is larger than a existing one acre lot in the current configuration and is therefore more in conformance with the LUP designations than the existing smaller lot configuration. In addition, the existing one acre lot is located in a steep remote area designated in the LUP as 1 unit/20 acres. The proposed redivision results in a larger lot configuration overall and clusters development in a more appropriate area for development. Therefore, the Commission finds that the reconfigured larger lot sizes are more consistent with the density designations under the LUP which are used as guidance by the Commission.

The Commission must also consider, if as a result of the proposed redivision, residential densities could be further increased through additional land divisions of the redivided lots. In other words, could the redivision result in the potential for greater residential densities over and above the existing lot configuration. This is a concern in the Santa Monica Mountains because of the existing large number of undeveloped parcels and potential for future development which could overburden the existing infrastructure and result in adverse cumulative impacts, as discussed above. In order to address this concern the applicant calculated the maximum allowable residential density for the existing and proposed lot reconfigurations utilizing both the LUP designations and the County's Slope Density Formula required under County's Hillside Management Ordinance.

Under the existing parcel configuration the maximum number of allowable residential units or lots under the LUP and Slope Density Formula would be seven lots. The large existing 50 acre parcel could be divided into a maximum of four lots. The three smaller existing lots cannot be further divided. The potential four lots in addition to the three existing smaller lots, equal a total of seven possible lots. The maximum number of residential units under the proposed lot configuration would be six units. New lots 1,2 and 4 could not be further divided under the LUP density designations and County Slope Density formula. However, Lot 3 under the LUP Density designations and County Slope Density formula could be further divided into a maximum of three lots. It should be noted that although this lot is 109 acres in size only 44.7 acres are not restricted as open space. Based on 44.7 acres the maximum residential density on lot 3 would be three lots. The total maximum allowable residential density for the redivided area is six lots. Therefore, there is a net decrease the maximum number of allowable residential lots under the proposed redivision.

The Commission notes that these are maximum densities allowed under the LUP and County Slope Density formula and that any future subdivision of lot 3 would be reviewed for conformance with all other applicable Coastal Act and LUP policies. The Commission may determined that, based on the development policies of the Coastal Act and guidance policies of the LUP, a future subdivision of lot three is not consistent with these development policies and could deny a future subdivision proposal. Any future land division could only be approved if it was consistent with the resource protection policies of the Coastal Act or any subsequent LCP, including policies related to landform alteration and visual quality, fuel modification and vegetation clearance, fire hazards and vehicular access, and protection of coastal streams and other environmentally sensitive habitat areas. To ensure that the present and future property owners are aware that the approval of this permit does not commit or obligate the Commission to approve any future land division on Lot 3, the Commission finds it necessary to approve the project *with special condition number seven (7.)*

As noted previously, the proposal consolidates and concentrates development closer to existing development, roads and utilities. The proposal also concentrates development on the flatter or plateau areas above the steep canyons on the site and thus conforms to the topography considerations originally used in the formation of the LUP density designations.. The project is concentrated on previously disturbed building pads and uses previously disturbed road and drive routes. The proposed redivision is consistent with the lot size requirements of the LUP and Section 30250(a) of the Coastal Act. For these reasons, the Commission finds that the proposed development does not conflict with LUP lot size provisions and is consistent with PRC Section 30250(a).

Other lot line adjustments recently considered by the Commission such as the proposal in application 4-96-187 (Sohal), which did not result in an increase in number of lots, but still resulted in adverse impacts on coastal resources. In Sohal, the configuration resulted in introducing development into a larger area that was undeveloped in a manner inappropriate for the physical topography and biological values, creating significant adverse impacts on coastal resources.

In comparison to the Sohal proposal, the proposed redivision does not introduce development which increases risk to life and property in an area of high fire hazard, in conflict with the need to minimize risk under PRC Section 30253(a) and ensure adequate public services under PRC Section 30250(a). The present proposal, rather, clusters development away from where it would have greater effect on the resource values in undeveloped slopes and steep canyons. Related impacts that are avoided including impacts on visual resources, water quality and biological productivity, environmentally sensitive habitat areas, geologic hazards, and the like.

In summary, the proposed project is consistent with the Coastal Act requirement that new development be located in an area of adequate public services and does not have

adverse impacts, either individually or cumulatively, on coastal resources and is therefore consistent with PRC Section 30250(a) and 30253(a).

4. Project Alternatives/Development of Existing Configuration

The above cumulative impact analysis describes how the proposal is consistent with the allowable lot size criteria as used by the Commission in terms of LUP land use designations, the average and median lot size of surrounding parcels, and the County slope and lot size criteria. While the above findings show that the proposed lot line adjustment will decrease significant adverse effects on coastal resources through clustering development in a previously graded area, an analysis of project alternatives is necessary to determine if the proposed development is preferred. The following evaluates the proposal relative to the project alternative of development under the existing lot configuration.

The present lot pattern includes a broad range of lot sizes with little relation of the lot configuration to underlying topography and road patterns, as shown by Exhibits 2 and 3. Only one lot in the present configuration has the advantages of creating a potential building site off Abadie Lane. This lot straddles Abadie Road in a relatively flat area that is suitable for development. The remaining lots are in locations where development would require a massive amount of grading and significant alteration of natural landform. All are located in steep slope and canyon areas where new roads and drives and significant amounts of cut and fill would be required.

Further, one of these parcels (APN 448-25-24) is "landlocked" and has no road access. In addition, two of these parcels (APNs 448-25-24 and -32), require development of Las Flores Heights Road to be accessible. Las Flores Heights Road is presently a "paper street". Development of Las Flores Heights Road will in turn result in massive amounts of grading and landform alteration.

The surrounding area is characterized as development of flatter areas on minor ridges and plateau areas as opposed to development in canyons or on the side of steeper slopes. Development under the existing lot configuration would result in development in steeply sloping areas would be visible from surrounding areas, especially the proposed route of the Las Flores Canyon Trail. Consequently, there would be a significant effect on natural landform and an incompatibility with the visual quality of the surrounding area. For these reasons, development in the present configuration is inconsistent with PRC Section 30251.

Development in the existing configuration is a better alternative than development in nearby areas to the south and west introduces development into areas of steeper and potentially unstable slopes with softer material overlying bedrock, which is inherently unstable in steeper terrain. The submittal only includes detailed geologic mapping of the approximate northeast 50 acres which is where the building pads are proposed and

staff does include detailed information on potential geologic hazards in the surrounding area.

However, as noted in the geotechnical and geologic review, the proposal has an advantage over development of small lots in the surrounding area by being located on shallow overburden on a plateau over stable bedrock. The only disturbance is the minimum necessary to develop roads, drives and pads in previously disturbed areas with the minimum feasible grading or correct previous landform disturbance and improperly deposited fill, as discussed in the reference geotechnical reports. A review of general geologic mapping indicates that the surrounding area is generally of high relative instability, i.e. the highest category mapped on the County Engineer's map (undated) entitled Relative Slope Stability Map of the Santa Monica Mountains Development. For these reasons, development in the present parcel configuration would minimize risk in areas of high geologic hazard and assure stability the site and not contribute to erosion and instability of the site in a manner inconsistent with PRC Section 30253 (1) and (2).

The development of parcels in the existing configuration has further difficulties with respect to coastal policies relative to fire hazards. Such development would disperse the site location away from the roads providing safe access from Saddle Peak Road to more distant areas. It would also go beyond acceptable distances for fire safety (for residents and fire fighting vehicles) for travel on roads without secondary access, such as those published by the California Department of Forestry in their State Strategic Fire Protection Planning Guidelines. Further, Las Flores Heights Road is not planned as a through road connecting with Saddle Peak Road. Consequently, even if access were provided off of this route, it would still have a considerable distance from through routes without secondary access. In this case the nearest road with through access would be Las Flores Canyon Road.

In addition, construction of fire vehicle access on each site would be difficult because of the steep terrain and greater alteration of the natural terrain would be required above that necessary for normal vehicles because of the need for wider turns, passing areas and turnarounds for fire vehicles. As discussed in detail in the findings on application 4-96-187 (Sohal), the lack of secondary access and constrained primary access threatens the public and public safety personnel. As noted in those findings, extension of development into a more rugged area under these conditions is unacceptable.

Development of the existing configuration would also introduce development into steep slope and canyon areas will result in an increase in landform alteration, loss of natural groundcover and native vegetation, and the associated loss of natural absorption of runoff. Development of additional roads and drives in such areas will also result in the creation of a greater amount of impermeable surfaces in comparison to the proposed development and has the potential for greater erosion than the proposed configuration. Potential building sites under the existing parcel configuration are closer to the

environmentally sensitive habitat areas associated with the two blue line stream courses on the subject property.

Due to the increase in clearance and related impermeable surfaces, development in these areas would also result in loss of watershed cover and increases in runoff, siltation and sedimentation into the environmentally sensitive habitat areas associated with such stream areas. Further, there would be loss of undeveloped coastal sage scrub and chaparral areas due to clearance for building pads and access. Relative to the riparian areas, this would result in degradation of such systems through: introduction of nutrients; erosion of streambanks; deposition on stream bottoms; increased turbidity; impacts on aquatic organisms; removal of topsoil; as well as adverse impacts on marine waters.

In contrast, the proposed project as conditioned would minimize such impacts to the extent practicable and thus be consistent with PRC Section 30240 policy to prevent impacts which would significantly degrade stream and riparian areas and PRC Section 30231 policy which seeks to maintain their biological productivity.

In summary, the above shows that there are difficulties with Coastal Act policies through development of the present lot configuration are avoided by the proposed reconfiguration. Development in the area of steep slopes and canyons results in an increase in geologic and fire hazard contrary to the intent of PRC Section 30253. The resulting land disturbance results in significant alteration of natural landforms in conflict with the intent of PRC Section 30251. It further increases in runoff, erosion and sedimentation in comparison to the proposed reconfiguration. Consequently the proposal is the preferred alternative because it meets the intent of PRC Sections 30231 and 30240 to protect biological productivity of streams and coastal waters by locating development in appropriate areas capable of accommodating it without adverse effects on coastal waters. For these reasons, the proposed development is preferred.

G. 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.

PRC Section 30231 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 proposal includes an evaluation of the potential for each of the proposed lots to adequately accommodate a private sewage system (Geoplan, Inc., Engineering Geologic Report, Tentative Tract 50456, October 22, 1991 and Geoplan, Inc., engineering geologic letter, June 9, 1997). These evaluations assumed that the proposed lot reconfiguration had taken place and that the building pads were in the locations proposed by this application. Percolation tests for each lot confirmed that leach fields or leach trench types of private sewage disposal systems were feasible. Geoplan, Inc. found that septic systems were in compliance with the County Plumbing Code and County Health requirements will be capable of serving dwelling at the sites proposed. The installation of a private sewage disposal system was found not to create or cause adverse conditions to the site or adjacent properties.

Based upon the above assessment, the Commission finds that the installation of septic systems on the proposed lots will not contribute to adverse health effects and geologic hazards in the local area. The Commission has found in past permit actions that favorable percolation test results, in conjunction with adequate setbacks from streams and other water resources, and/or review by local health departments ensures that the discharge of septic effluent from the proposed project will not have adverse effects upon coastal resources. Therefore, the Commission finds that with regard to septic systems, the proposed project is consistent with PRC Section 30231.

H. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

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 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed

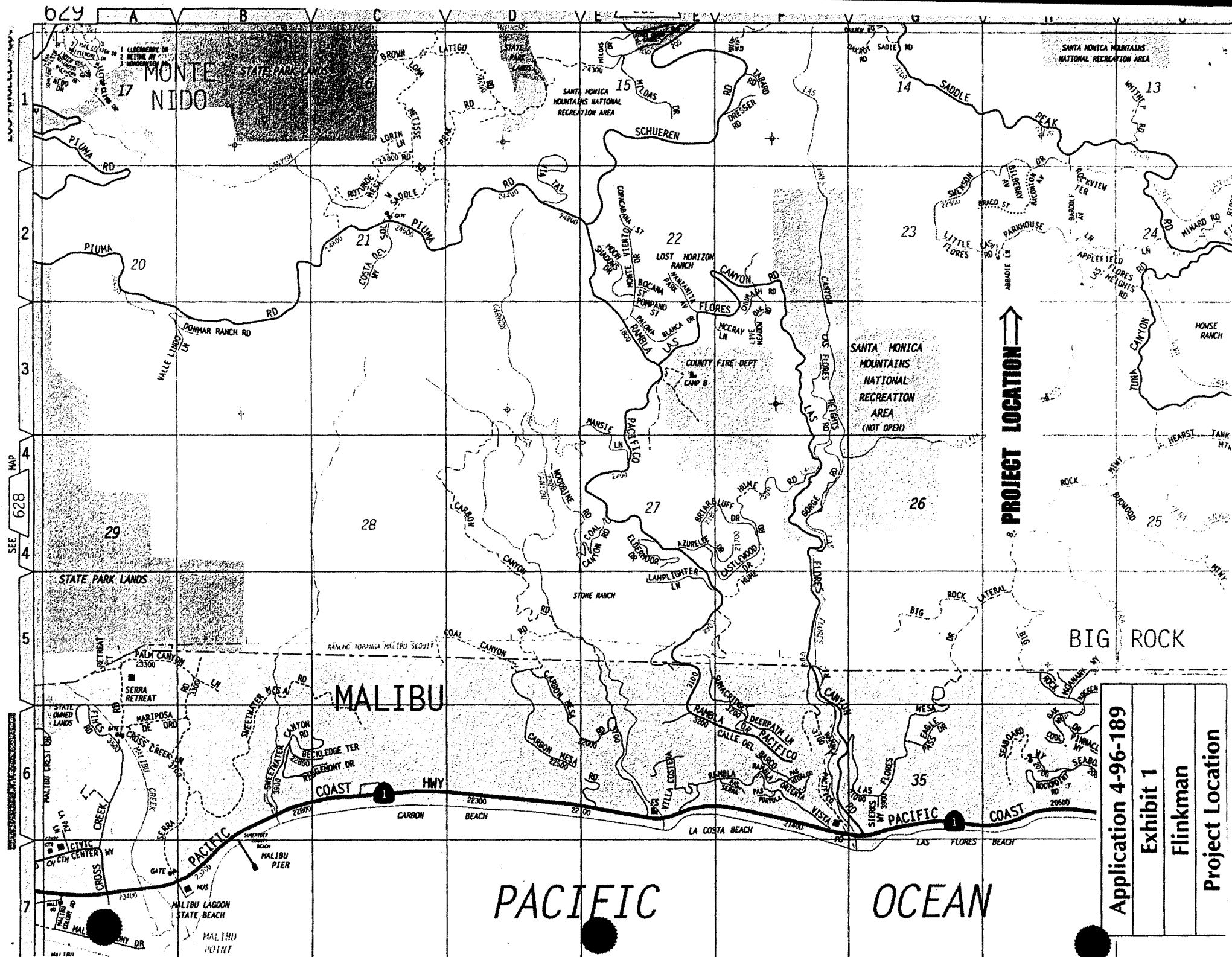
development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3.

Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

I. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (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 would have on the environment.

The proposed development would not cause significant, adverse environmental effects which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

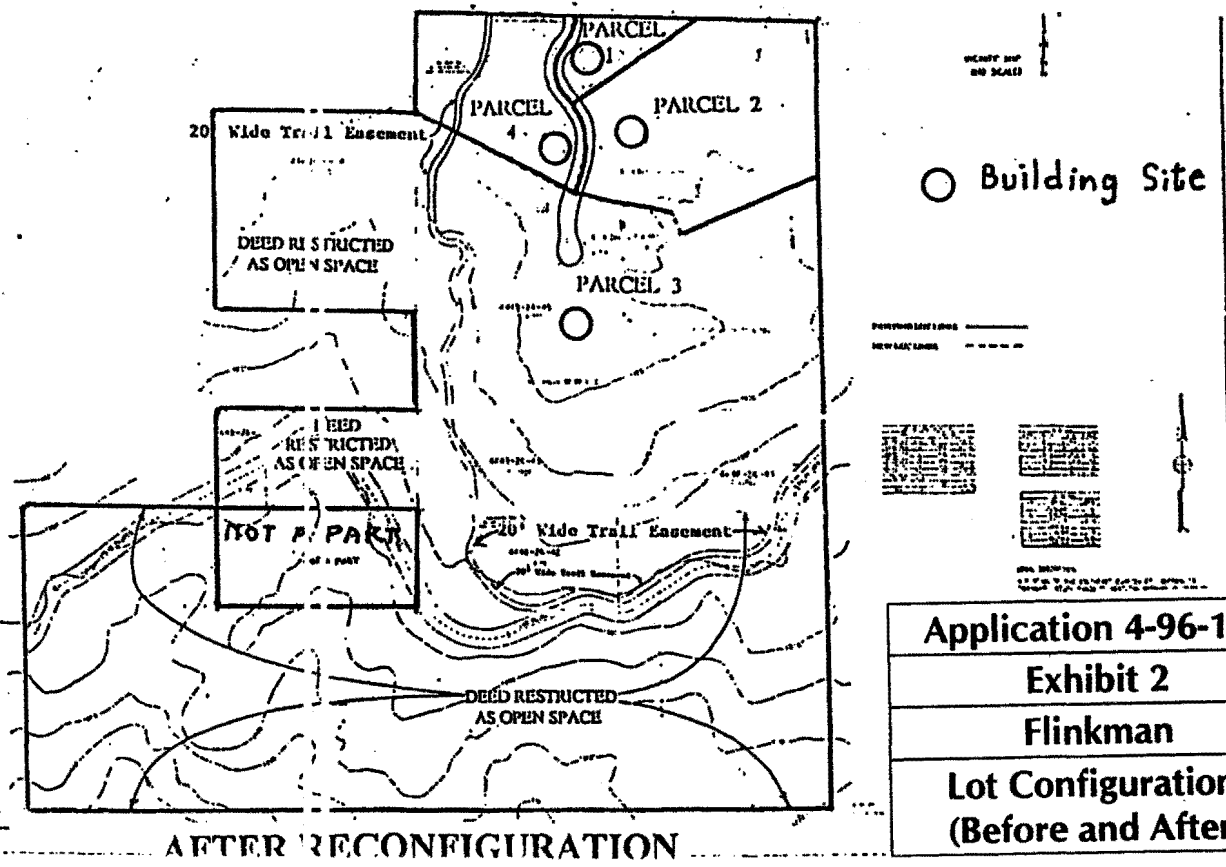
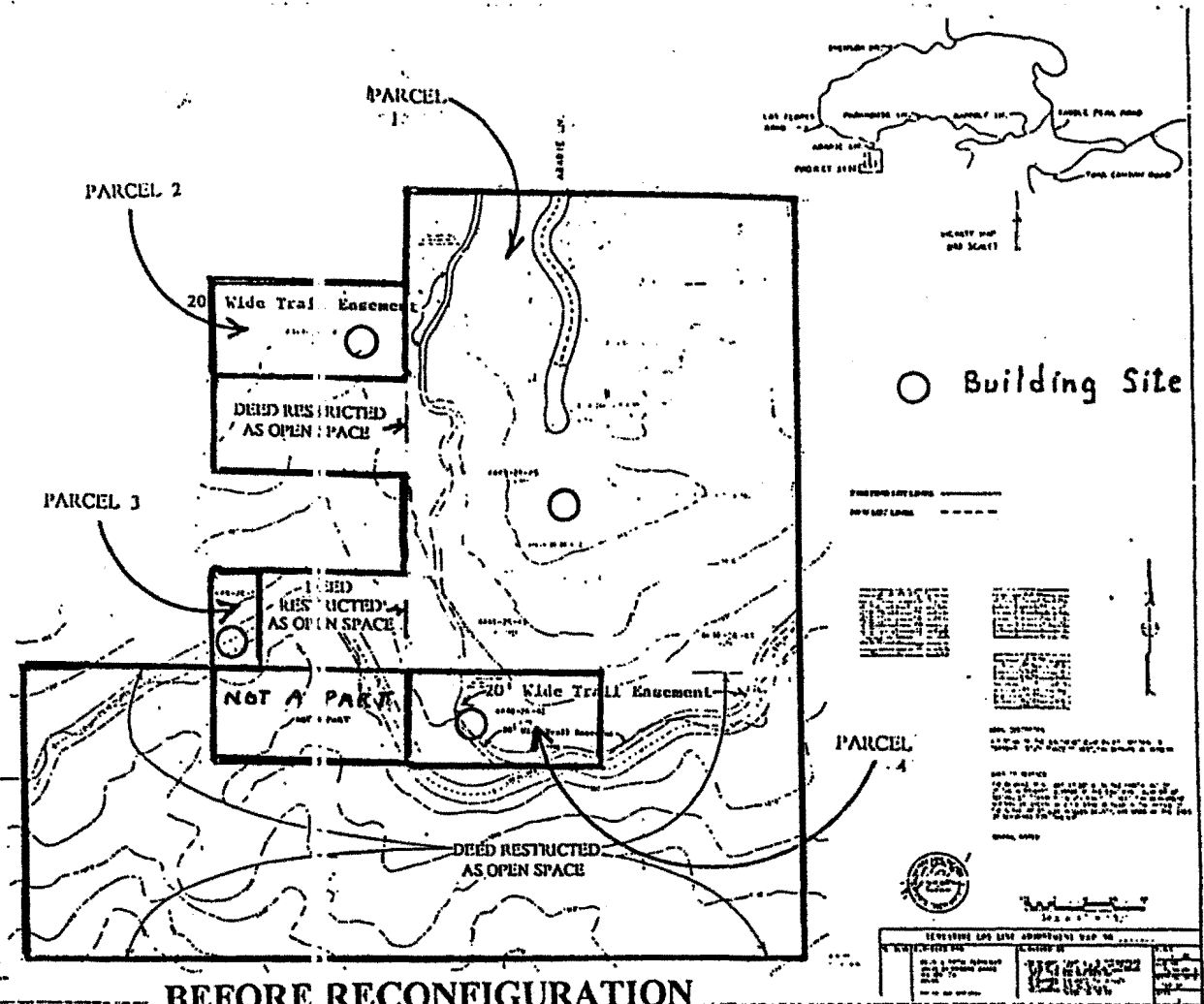


Application 4-96-189

Exhibit 1

Flinkman

Project Location



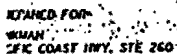
Application 4-96-189

Exhibit 2

Flinkman

Lot Configurations
(Before and After)

,143-45.



Building Sites

CALIFORNIA COASTAL COMMISSION
631 Howard Street, San Francisco 94105 — (415) 543-8555

Application 4-96-189
Exhibit 5, p 1 of 12
Flinkman
Appeal 42-80
Staff Recommendation

STAFF RECOMMENDATION

Appeal No. 42-80
(Levinson)
Hearing Opened: 4/16/80

DECISION OF

REGIONAL

COMMISSION: Permit granted with conditions by South Coast Regional Commission

PERMIT

APPLICANT: Albert Levinson

DEVELOPMENT

LOCATION: Immediately north of Ramirez-Mesa Drive, Paradise Cove/Point Dume area of Malibu, Los Angeles County (Exhibits 1 & 2)

DEVELOPMENT

DESCRIPTION: Division of 23.2-acre parcel into 22 lots, with related construction of roads, water lines, dry sewer lines, utilities and grading for building pads (Exhibit 3)

APPELLANTS: Malibu Villas Owners Association and Commissioners Lenard Grote and Lois Ewen

PUBLIC

HEARING: Hearing opened April 16, 1980 in Los Angeles

ADDITIONAL SUBSTANTIVE FILE DOCUMENTS:

1. Appeals No. 329-79 (Oxnard Shores), 266-79 (Harvey Pharmacies), 491-78 (Cyprus West), 419-78 (Palomares), 31-30 (Gunnar)

STAFF NOTES:

This appeal and the Tiffany appeal are the first large land division proposals in Malibu where no residential construction is proposed to be considered by the Commission since the adoption of the Malibu/Santa Monica Mountains Transfer of Development Credit program. The coastal issues raised are whether low and moderate income housing requirements should be imposed in approving and divisions where no residential construction is proposed, and the need to balance the Coastal Act's housing policies with the need to mitigate the other environmental concerns addressed by the Transfer of Development Credit program. Neither the Commission's housing guidelines nor the Commission's adopted Malibu guidelines specifically discuss housing requirements with regard to land divisions. These guidelines do recommend imposition of housing requirements in approving multi-family developments. The staff believes that residential subdivisions generate the same impacts as do multi-unit residential projects in terms of the availability of and need for housing for all economic segments of the community, and the staff therefore believes that residential subdivisions should be treated similarly to multi-unit construction projects. The staff recommends that land sufficient to provide 25% of the total number of lots proposed in a subdivision should generally be required to be dedicated for low and moderate income housing; several previous Commission actions

EX. 2 P. 1

discussed in the attached findings have established this precedent. In Malibu this requirement should be reduced to 15-20%, in accordance with the Commission's Malibu guidelines for multi-family development which state:

...because of environmental and service system constraints necessitating the use of the Transfer of Development Credit pilot program to mitigate cumulative impacts of higher density residential development, new multiple family development in the Malibu area may be subject to a lesser requirement.

Since the guidelines also indicate that development credits should not be required for units reserved for low and moderate income housing, the staff similarly recommends that development credits should not be required for lots reserved as low and moderate income housing.

The staff is therefore recommending conditions requiring the applicant to dedicate one acre within the project site for low and moderate income housing. The applicant will be required to apply to the County to rezone the dedicated lot to allow 4 units. A preliminary assessment by the County's planning staff indicates that such a rezoning appears feasible. If the rezoning does not occur, the applicant will be required to dedicate 2 additional on-site lots for low and moderate income housing. Thus, as conditioned, the project would provide land for 16-22% of the total number of lots proposed. The staff believes these conditions are necessary to bring the project into conformance with the housing policies of the Coastal Act. The staff also believes that with the conditions requiring development credits for the lots sold at market rate, the project as conditioned balances the need for housing with the need to mitigate environmental impacts and can be found consistent with the overall intent of the Coastal Act.

Because of the housing requirements being imposed, and because the applicant has experienced difficulty in quickly obtaining sufficient development credits due to a tight market for credits, the staff is recommending that the applicant not be required to identify and purchase the lots to be extinguished prior to the Commission vote on the project. This policy represents a departure in procedure from previous State Commission action and from the procedures outlined in the Malibu guidelines. The staff believes such a departure is warranted, but only if the credits will be obtained and the development potential of the lots extinguished within a short period of time; otherwise, the staff believes the administrative difficulties in enforcing the program will threaten the entire program. The conditions recommended by the staff therefore require that within 6 months of the final Commission vote, the applicant must identify and purchase, or enter into an escrow to purchase, those lots to be extinguished pursuant to the Transfer of Development Credit program.

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, 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 in conformity with the provisions of Chapter 3, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

EX-2 P-2

Application 4-96-189

Exhibit 5, p 3 of 12

Flinkman

Appeal 42-80

Staff Recommendation

II. Conditions

The permit is subject to the following conditions:

1. Transfer of Development Credits. Prior to issuance of permit the applicant shall record a deed restriction prohibiting residential development on and shall record an irrevocable offer to dedicate an open space easement over sufficient applicable lots to constitute a minimum of 17 transfer of development credits located in Zone 1 Donor areas in accordance with Section E of the Commission's adopted Malibu-Santa Monica Mountains Interpretive Guidelines. The form and content of the deed restriction and offer to dedicate shall be approved by the Executive Director of the Commission; both documents shall be recorded free of prior liens and encumbrances except tax liens, and shall run with the land, binding all successors and assigns of the applicant. The offer to dedicate shall run with the land for a period of 21 years running from the date of recordation.

The lots to be dedicated shall be combined with each other such that they may be considered a single parcel for purposes of sale, transfer, development or encumbrance, and the applicant shall EITHER combine those lots with a developed or developable parcel such that they may be considered a single parcel for all purposes, including sale transfer, development and encumbrance OR the applicant shall provide evidence for the review and approval of the Executive Director that the lots to be dedicated will not become a public burden in terms of maintenance and tax payments.

This permit shall take effect only after the Executive Director has confirmed in writing that all terms of this condition have been satisfied. This permit shall expire six months after the day of the final vote by the Commission, unless the applicant has entered into an escrow agreement in accordance with this condition and the Commission adopted Malibu guidelines. If the applicant is involved in a good faith effort to comply with this condition, the Executive Director may grant an additional 6-month extension to this expiration date. The applicant shall, upon requesting such an extension, notify all interested parties in the application.

2. Low- and Moderate-Income Housing. Prior to issuance of permit the applicant shall enter into an agreement with the California Coastal Commission providing the following dedication of land. This agreement shall bind the applicant and any successors in interest to the real property being developed and shall be recorded as a covenant to run with the land free of prior liens and encumbrances other than tax liens. This agreement shall provide that:

a. Prior to issuance of permit, the applicant shall record an offer to dedicate to the Coastal Conservancy or other appropriate agency approved by the Executive Director of the Commission, at least a one-acre portion of the project site. The offer of dedication shall run with the land, binding successors and assigns, shall be recorded free of all prior liens and encumbrances except for tax liens, and shall be insured by title insurance acceptable to the Executive Director. Prior to recordation, the applicant shall submit the documents conveying the offer of dedication to the Executive Director for his review and approval. The approved offer shall be recorded and evidence thereof submitted to the Executive Director.

b. The offer of dedication shall provide that as a condition of conveyance of fee title, the grantor agency or organization shall agree to accept the restrictions on the subsequent use of the land to be granted as limited to housing for persons of low and moderate income. Prior to the acceptance of the grant of fee title, the grantee shall submit to the Executive Director for his review and approval the documents containing the terms and conditions of the acceptance of the subject parcel or interest in parcel.

~~EX-203~~

Application 4-96-189
Exhibit 5, p 4 of 12
Flinkman
Appeal 42-80
Staff Recommendation

2. The applicant shall apply to the County to rezone the dedicated lot to allow at least 4 residential units on the lot. Until such rezoning occurs, two remaining 18 on-site lots shall not be sold and shall be retained as potential lots for low and moderate income housing. The lots to be retained shall be designated by the applicant subject to the approval of the Executive Director. If the rezoning does not occur within 2 years from the issuance of this permit, the lots retained shall be dedicated as low and moderate income housing subject to the provisions of paragraphs (a) and (b) above; in this event development credits shall not be required for lots dedicated as low and moderate income housing. If the rezoning does occur the applicant shall be released from the restrictions of paragraph (c) and may sell the two lots at the market rate.

3. Grading Plans. Prior to issuance of permit the applicant shall submit revised grading plans, for the review and approval of the Executive Director, which shall show a maximum of 1,000 cubic yards of grading for each approved lot, excluding grading for roads. The grading plans shall provide that no fill will be placed within 100 feet of any drainage course.

4. Landscaping Plans. Prior to issuance of permit the applicant shall submit a landscaping plan for the review and approval of the Executive Director, which shall integrate the proposed pad areas and street improvements with the surrounding area and which shall screen the visual impact of future development from views from Pacific Coast Highway. Landscaping shall be composed primarily of endemic vegetation, and the landscaping plans shall be implemented within six months after recordation of the final tract map.

5. Geologic Review. Prior to issuance of permit the applicant shall submit to the Executive Director of the Commission, for his review and approval, approval by the State Division of Mines and Geology of the final grading plans for the project and of plans for the septic systems which will be used to serve the proposed lots. The septic systems shall utilize seepage pits and shall assure that no water will enter the terrace deposits along the southern boundary of the site but rather will direct the water into the deeper Monterey formation.

III. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description. As originally proposed, the project would consist of the subdivision of a 23.2 acre parcel into 22 lots for single-family homes, including construction of roads, water lines, dry sewer lines, underground utilities and building pads. The project site is located immediately north of Ramirez Mesa Drive, in the Paradise Cove/Point Dume area of Malibu. The amount of grading as originally proposed would be 80,000 cu. yds. due to concern over this amount of grading expressed by the Regional Commission and its staff, the applicant submitted, on the day of the final vote by the Regional Commission, a redesign which would limit the number of parcels to 18 and substantially reduce the amount of grading proposed. Due to concern expressed in this appeal over low and moderate income housing issues, the applicant has submitted a further redesign which will create a 19th parcel to be used for low and moderate income housing.

The project area is generally zoned for low density residential use. Adjacent to the site to the south is the Malibu Villas Condominium site. Further south, across Pacific Coast Highway, is the Paradise Cove Trailer Park. The project site is located adjacent to an existing developed area, as designated by the Commission's adopted Malibu guidelines. The project site is visible from Pacific Coast Highway and is currently vacant. Slopes on the site range from gentle to moderately steep. The

EX-2-P-4

maximum difference in elevation of the site is approximately 120 feet. A small canyon with riparian vegetation borders the northwest portion of the site.

2. Concentration of Development. Section 30250(a) of the Coastal Act of 1976 provides:

New 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.

3. Cumulative Impacts and Extinguishing Development Potential. The Commission has consistently denied permits for land divisions in Malibu in the past finding that the combination of the adverse impacts resulting from buildout of existing but undeveloped lots with the cumulative effects of the development of building sites created by new land divisions, would threaten natural and recreational resources, and public access thereto, in the last relatively undeveloped area in the Los Angeles metropolitan region, and would therefore be inconsistent with the policies of the Coastal Act of 1976. (See Appeals Nos. 524-77, Schiff; 28-78, Brown; 509-78, Bel Mar Estates; and 463-78, Welles.) Recently, however, the Commission has approved several land divisions (Appeal Nos. 155-78 (Zal); 346-78 (Flood); and 119-79 (Markham), finding that a density transfer program should be tested in order to explore its worth as a method of implementing the resource protection policies of the Coastal Act, while more equitably distributing the burdens and benefits of land use regulation. The Commission finds that due to the location and nature of the proposed development, this project is appropriate for the purpose of implementing and further evaluating the pilot Transfer of Development Program.

This project proposes to divide 23 acres into 18 parcels with an additional low and moderate income housing parcel. However, the impacts will be offset by the transfer of the development potential from existing lots in designated small lot subdivisions in the greater surrounding area to the subject site. Such a transfer of development potential is consistent with the adopted Regional Interpretive Guidelines for the Malibu-Santa Monica Mountains. Those guidelines state that:

A basic goal of the Coastal Act is to concentrate development in or near existing developed areas able to accommodate it, thus promoting infilling and avoiding sprawl into areas with significant resource value. In general the Malibu-Santa Monica Mountain coastal zone is not able to accommodate substantially intensified development due to a constrained road network, severe geologic, fire and flood hazards, a large diversity of special and sensitive habitat areas and a growing importance as a recreational and scenic resource to the metropolitan Los Angeles area....

A result of transferring development potential for the Santa Monica Mountains to existing developed areas and appropriate expansions to those areas is that the potential for impacts on coastal resources is offset and possibly decreased. In general, the small lot subdivisions in the Santa Monica Mountains are steeper than the coastal terrace bordering the shoreline. If these small lot subdivisions were to be developed to the subdivided density, there would be a dramatic increase in erosion due to grading for roads, utilities, and building pads, increased degradation of ground and surface waters due to failing septic systems and increases in risk to life and property due to high geologic, flood and fire hazards common to the region. Furthermore, the public

FY 2 D 1

services in small lot subdivisions are often inadequate to serve the existing lot. In previous permit actions, the Commission has found that development in small lot subdivisions in the Santa Monica Mountains will cause severe adverse direct and cumulative impacts on the ability of Pacific Coast Highway and narrow trans-mountain roads to provide access to beach and mountain recreation areas.

The location of the project site, however, is far more desirable for development. The point Dume area containing the site is relatively level compared to the steep slopes comprising many of the small lot subdivisions. Approximately 1 mile to the west is a developed commercial cluster containing a grocery store, bank, and other commercial services. Adjacent to the site to the south is the high density Malibu Villas condominium development. Further south is the Paradise Cove Trailer Park. Due to the relatively gentle slopes, the availability of public services, and the proximity to existing developed areas, the project area was specifically designated as an appropriate site for the expansion of the existing developed areas in the adopted Malibu-Santa Monica Mountains Interpretive Guidelines (Exhibit 4).

These guidelines provide that "The decision of whether to allow the existing developed areas to expand into these potential expansion areas should be made on a permit by permit basis when considering land divisions pursuant to the transfer of development credit pilot program." The Commission finds that it can approve expansion of the adjacent existing development to include the project site at this time, given that: the site is near public and commercial services, which reduces the impact on coastal access roads; the site is adjacent to high density residential development; the project as conditioned will not contribute to geologic hazards; the project as conditioned will minimize the grading and visual impact; the project as conditioned will provide a public bonus in the form of low and moderate income housing; and the project as conditioned will mitigate the cumulative impacts of the proposed division by the extinguishment of development potential on sites less appropriate for development which would impact the same coastal resources and transportation network as the proposed development. Thus, because the Commission has found that the existing developed area can be expanded to include the project site, the technical criteria of Section 30250(a) do not apply. The Malibu Guidelines provide:

In order to concentrate development and encourage efficient use of lands within existing developed areas, the following provisions of these guidelines do not apply to development within existing developed areas or approved expansion thereto: ... (3) the size of new parcels are not limited by application of the technical criteria for land divisions.

Finally, the Commission finds that only as conditioned to mitigate the cumulative adverse effects by requiring development credits in accordance with the Malibu guidelines and the transfer of development credit program, can the project be found consistent with Section 30250(a) of the Coastal Act.

b. Density. The proposed division would result in 13 parcels on a 23 acre site; with the dedication of one additional lot to be used for 4 additional units of low and moderate income housing the total project would have a density of slightly less than one unit per acre. The existing zoning is R-1-1, requiring a one acre minimum lot size. A draft Land Use Plan developed by the Santa Monica Mountains Citizens Planning Committee for the entire Malibu-Santa Monica Mountains area designates most of the site for one acre minimum lot size, while the remainder of the site is designated for a 2 acre minimum lot size. Since the project site has been identified as an appropriate expansion area to an existing developed area, since the project provides substantial public benefits in the form of low and moderate income housing which could be used to justify granting a density "bonus", and since the project is substantially in conformance with the Citizens' Planning Committee draft Land Use Plan, the Commission finds that the proposed density on the project site is appropriate and would not prejudice future planning efforts regarding appropriate density for the surrounding area.

2

lots:
project area.

3. Low and Moderate Income Housing. One of the reasons this project was appealed was the failure of the Regional Commission to consider the issue of low and moderate income housing. Section 30213 of the Coastal Act provides:

...housing opportunities for persons of low and moderate income shall be..., where feasible, provided.....

The Southern California Association of Governments (SCAG) published a Regional Housing Allocation Model (April, 1977), which analyzes housing needs and summarizes fair share housing allocations by jurisdiction. The estimated existing need for lower income assisted housing in the Malibu/Santa Monica Mountains planning area is 2200 households. In contrast to other Los Angeles County planning areas, the need for low and moderate income housing in the Malibu/Santa Monica Mountains area is twice the number of existing lower income households. In addition, the Los Angeles County proposed General Plan projects that the population will increase 12% County-wide between 1975 and 2000; whereas the population of the Malibu/Santa Monica Mountains area will increase 30% during the same period. While the Commission recognizes that these are approximate figures, they do indicate a substantial need for low and moderate income housing in the project vicinity. Furthermore, the major issue in the Malibu/Santa Monica region is congestion on the primary traffic route and coastal access corridor, the Pacific Coast Highway. Lower income employees (e.g., gas station attendants, janitors, waiters, domestics) who cannot afford to live near their jobs must commute from areas where affordable housing is available, directly impacting traffic conditions on the Pacific Coast Highway.

Recognizing the need for low and moderate income housing in Malibu, the Commission's adopted Interpretive Guidelines for Malibu provide:

In order to provide lower cost housing opportunities for persons of low and moderate incomes, the Commission has as a general policy found that 25 to 35 percent of units in new multiple-family dwelling projects should be reserved for low and moderate income housing. However, because of environmental and service system constraints necessitating the use of the Transfer of Development Credit pilot program to mitigate cumulative impacts of higher density residential development, new multiple family development in the Malibu area may be subject to a lesser requirement. Therefore, in multiple-family projects of greater than 5 units, 15 to 20 percent of the units should be reserved for low and moderate cost housing opportunities as provided in programs described in the Statewide Interpretive Guidelines for Housing. Because of the substantial need for lower cost housing opportunities to serve persons working in Malibu but otherwise unable to afford housing in the area, projects which guarantee such housing opportunities, should be afforded the highest priority in the allocation of the area's limited service and environmental carrying capacity. Therefore, units reserved for low and moderate cost housing need not be offset by development credits.

The Commission followed these guidelines in approving a permit with conditions for a 14-unit condominium located to the west of the subject site in Malibu (Appeal No. 337-79, Lease). In that appeal, the Commission required both mitigation of environmental impacts through the use of the TDC program, as well as dedication of low and moderate income housing by providing 3 inclusionary units or land for 6 units off-site. The Commission subsequently approved an amendment to that permit allowing the applicant to meet the requirements for low and moderate income housing with an in-lieu-fee of 6%, based upon the Commission's housing guidelines which provide that in-lieu fees may be considered for projects of 5 to 15 units in size.

EX-2 P. 7

However, the subject project differs from the Leanse project, because, although the subject project is a multi-lot development, no actual residential construction proposed and the eventual construction would be for single-family homes rather than a multi-unit building. The Malibu Guidelines do not directly address situations such as the subject application where only the division of land is proposed. However, the State and Regional Commission's have on numerous occasions found that the low and moderate income housing provisions of the Coastal Act apply to land divisions where no residential construction was proposed, and to land divisions which also included the construction of single-family homes. In Appeal No. 329-79 (Oxnard Shores), the Commission granted a permit with conditions to divide a 30-acre parcel into 17 lots with related improvements. No residential construction was proposed, and the lots were to be developed with duplexes. The Commission required the applicant to dedicate land zoned to allow 10 units (13% of the proposed lots) to be used to provide low and moderate income housing within the coastal zone in Oxnard. The Commission also required the applicant to dedicate 19.6 acres of the site to the public for open space and dune habitat preservation. In Appeal No. 266-79 (Harvey Pharmacies), the Commission granted a permit to divide 63 acres into 47 lots in Pismo Beach. No residential construction was proposed, but the lots will be used for single-family homes. The Commission required the applicant to dedicate 4 of the lots plus an additional 2.5 acre lot to be used for low and moderate income housing. In Appeal No. 491-78 (Cyprus West), the Commission granted a permit to divide 61 acres into 227 lots in San Clemente. No residential construction was proposed; the lots will be used for single-family homes. The Commission required the applicant to dedicate land onsite and construct 57 units of low and moderate income housing. In Appeal No. 419-78 (Palomares), the applicant proposed to divide a 9 acre parcel into 26 parcels for single-family homes; no residential construction was proposed. After the County declined to rezone the project site to a greater density, the Commission approved the project at a density of 4.3 d.u./ac. and required the applicant to provide as low and moderate income housing 25% of the units that would eventually be developed. In Appeal No. 81-80 (Gunnar), the State Commission found no substantial issue raised on an appeal where the North Coast Regional Commission approved a permit to divide 4.26 acres into 14 lots in Fort Bragg. The lots were for single-family homes; no residential construction was proposed. The Regional Commission required low and moderate income housing, allowing the applicant several alternatives: 3 units on-site, 6 units off-site, or a dedication of land off-site for 6 units of low and moderate income housing. The Central Coast Regional Commission approved two permits to Half Moon Bay Properties (P-79-474 and P-79-449) to divide 2 parcels into 15 lots and 13 lots for single-family homes; no construction was proposed. The Regional Commission required a dedication of land in each project for low and moderate income housing. The San Diego Coast Regional Commission granted a permit to Time Investment Co. (#P8785) to divide 40 acres into 125 lots and construct single-family homes in the Tia Juana River Valley. The Regional Commission required the applicant to dedicate an 11 acre parcel offsite to be used for low and moderate income housing.

In addition to this established precedent, the State Commission's legal staff has written a memo discussing the relationship of the Coastal Act's housing policies to residential subdivisions (Exhibit 5). This memo states:

"...the application of Section 30213 and the Commission's housing guidelines to urban land divisions should require that such projects dedicate an amount of land sufficient to provide 25% of the number of units able to be constructed on the land being divided to the local housing authority, Coastal Conservancy, or other housing agency for use as low or low and moderate income housing.

The Commission finds that residential subdivisions generate similar impacts on the availability of housing for low and moderate income persons as do multi-unit residential construction projects. The Commission therefore finds that Section 30213 of

EX-2-P-8

Application 4-70-102
Exhibit 5, p 9 of 12
Flinkman
Appeal 42-80
Staff Recommendation

the Coastal Act and the Commission's adopted Housing Guidelines should be applied to residential subdivisions, even where no actual construction is proposed. Specifically for Malibu, the Commission finds that the Section of the Malibu guidelines which discusses the provision of low and moderate income housing in multiple-family dwelling projects should be applied to residential subdivisions. Because the added expense of mitigating the adverse environmental impacts through the Transfer of Development Credit program reduces economic feasibility for the applicant, these guidelines provide that the requirement for low and moderate income housing in Malibu should be reduced from 25% to 15-20%. The guidelines also provide that units reserved for low and moderate income housing need not be offset by development credits.

As approved by the Regional Commission this project would result in the creation of 12 parcels to be used for single family homes. The applicant has agreed to redesign the project creating one additional parcel which will be dedicated to the public to be used for low and moderate income housing. That additional parcel will be located along Rey de Copas Drive, adjacent to the Malibu Villas condominium site, which is zoned for high density residential development, both under existing zoning and the draft land use plan prepared by the Malibu/Santa Monica Mountains Citizens' Planning Committee. Since a zone change is necessary to increase the allowable density on the dedicated lot, the applicant has agreed to apply to the County to rezone the dedicated lot to allow 4 units on that lot. The County's planning staff has indicated that the County will be willing to consider an increase in density on the dedicated lot for low and moderate income housing purposes. The County's planning staff states that the site is suitable for a consideration of higher density because of the adjacent high-density development, that low and moderate income housing on this site would not be in conflict with the Superior Court injunction now in effect regulating land use decisions, and that while the County is now undergoing changes to its General Plan, the proposed General Plan will indicate a need for low and moderate income housing and the Planning Commission would not be precluded from considering rezoning the dedicated lot. The County's Planning staff notes, however, that only the Planning Commission can make the final decision on rezoning the property. Since the Commission has no assurances that the County will approve a rezoning of this lot, Condition 2(c) provides that if this rezoning does not occur the applicant will dedicate two of the remaining newly created lots to the public to be used for low and moderate income housing. As discussed in the Malibu guidelines, no development credits will be required for the lot or lots that are provided as low and moderate income housing. Thus, as conditioned, the project will provide land for 22% of the total number of units as low and moderate income housing; if the rezoning does not occur, 16% of the total will be provided. This amount is consistent with the Malibu guidelines which recommend that 15-20% of the units should generally be required as low and moderate income housing. The Commission finds that such a requirement is feasible, both economically and practically, and the Commission therefore finds the project as conditioned, consistent with Section 30215 of the Coastal Act.

4. Visual Impact. Section 30251 of the Coastal Act provides that new development shall protect views to and along the ocean and scenic coastal areas, shall minimize the alteration of natural land forms, and shall be visually compatible with the character of surrounding areas. The project site is not visible to westbound travellers on Pacific Coast Highway; however, it would be visible to eastbound travellers on Pacific Coast Highway. The applicant has reduced the number of lots proposed in order to minimize the alteration of natural landforms. The amount of grading proposed has been reduced from 80,000 to 45,000 cu. yds. Most of the grading will be for the road to serve the proposed lots, and the applicant states he will be able to reduce the grading for the building pads to the maximum of 1000 cu. yds. for each individual residential development as recommended in the Commission's adopted Malibu guidelines; Condition 3 assures conformance with this recommendation. Furthermore, by extinguishing the development potential of less buildable parcels in accordance with the Commission's transfer of development credit program, the project overall minimizes the alteration of natural

landforms. In addition, the views of the project site are already impacted by the high density residential development on the adjacent lot, Malibu Villas condominiums. Condition 4 requires the applicant to submit a landscaping plan designed to further minimize the visual impact and screen the project as viewed from Pacific Coast Highway. The Commission therefore finds the project, as conditioned, consistent with Section 30251 of the Coastal Act.

Application 4-96-189
Exhibit 5, p 10 of 12
Flinkman
Appeal 42-80
Staff Recommendation

5. Geologic Hazards. Section 30253 of the Coastal Act provides that:

New development shall:

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

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

One of the appellants, the neighboring property owners association, contends that the proposed project will exacerbate geologic instability by the use of septic system which will introduce additional water to the groundwater table. The appellant contends

The attached report of geologist Eugene D. Michael is substantial evidence that one very direct effect of the proposed project, i.e., sewage disposal, has not been carefully considered or planned for in light of the limited septic capacity of the soils in the immediate area. It is apparent that this significant waste water problem has not been sufficiently or accurately addressed in either the EIR or in the Applicant's geologist's report. Malibu Villas has been and is now experiencing substantial geologic and ground water problems which can only be exacerbated by the project as now proposed.

Mr. Michael's reports, both of which have now been submitted to the Commission raise serious questions addressed to both the Applicant's project's waste water capability and the direct adverse impact a deficient or poorly planned septic system will have on the already geologically strained adjacent parcel.

As was recommended by the appellant's geologist, the applicant has retained a hydrogeologist to analyze the impacts of the proposed project on the neighboring development. The applicant's hydrogeologist has concluded:

It is the opinion of the undersigned that the surficial distress exhibited in the apparently poorly reinforced wall along the northerly side of Pacific Coast Highway (marking the south boundary of Malibu Villas) as well as distress described by Eugene D. Michael (4/14/80) are not contributable to groundwater. ...Whatever the cause of wall failure and subsidence at Malibu Villas, it is the opinion of the undersigned that groundwater does not play a significant role in that distress.

In addition, the applicant's geologist states:

Effluent discharge from 22 dwellings within Tentative Tract 31666 cannot affect Malibu Villas. There will be no rise of ground water that does not exist. Geologic elements at Tentative Tract 31666 differ from those at Malibu Villas, and there is no reasonable expectation that its development can result in deterioration at Malibu Villas.

EX-2-P

The Commission has a contract with the State Division of Mines and Geology to review projects where geologic disputes are unresolved. The Division of Mines and Geology has reviewed all the geologic reports submitted by both the applicant and appellant and conducted several site visits. A preliminary assessment by the Division of Mines and Geology indicated it was concerned about additional water from septic systems entering the terrace deposits adjacent to the Malibu Villas condominium site; the Division stated that such additional water could lead to slope instability. The Division therefore recommended in its May 19 letter "...that no additional sewage effluent should be released in the terrace deposits." However, this letter also stated that the Division needed additional information before it could make a final conclusion as to the effect of the project on slope stability. After receiving additional cross sections and other data from the applicant's geologist and a final site visit, the Division of Mines and Geology has concluded that, with conditions requiring Division of Mines and Geology review of final grading plans and percolation tests for the septic systems that assure that sewage effluent will not enter the terrace deposits but will go deeper into the Monterey formation, the project would not contribute to geologic instability on the site or surrounding area, and would not adversely affect the adjacent condominium project. Condition 5 therefore requires the applicant to obtain Division of Mines and Geology approval of the final grading plans and septic systems, to assure conformance with its recommendations, and the Commission finds the project as conditioned consistent with Section 30253 of the Coastal Act.

Application 4-96-189
Exhibit 5, p 11 of 12
Flinkman
Appeal 42-80
Staff Recommendation

CALIFORNIA COASTAL COMMISSION

631 Howard Street, San Francisco 94105 — (415) 543-

STATE COMMISSIONERS

FROM: MICHAEL L. FISCHER, EXECUTIVE DIRECTOR

SUBJECT: PROPOSED AMENDMENT TO PERMIT NO. A-42-80 (LEVINSON)

STAFF NOTE

Application 4-96-189

Exhibit 6, p 1 of 4

Flinkman

Amendment to Appeal
42-80

Staff Recommendation

In the case of permits issued by the Commission under the Coastal Act of 1976, the Commission Regulations (Section 13166) permit applicants to request approval by the Commission of amendments to the project or permit conditions. The Commission may approve an amendment if it finds that the revised development is consistent with the Coastal Act. The following amendment request involves a variation of application of Transfer of Development Credit (TDC) Program undertaken by the Commission to mitigate impacts on coastal resources in the Malibu-Santa Monica Mountains area. The applicant seeks to use large parcels from outside the Zone I area (where the project is located) as donor parcels for 8 of the 17 development credits required by this project. These proposed donor parcels are the same parcels as were requested for use as TDC's in an earlier amendment on Permit A-66-80 (Tiffany Development Co.). The Tiffany Development Co. no longer seeks to use these parcels for its TDC condition. Because the Commission previously found that these parcels could be used for TDC purposes and because the Tiffany and Levinson projects are located near each other, staff believes that there is no reason to distinguish the projects for purposes of the adequacy of these parcels for mitigation pursuant to the TDC program. Although staff believes that large parcels such as these should not be used as TDC donor parcels in the future (as discussed in Issue Paper III of the recent staff report on the South Coast Regional Interpretive Guidelines for Transfer of Development Credits) staff also believes that because these parcels were previously approved for such use and because the owner had relied upon such approval, that the Commission can approve this amendment without setting an adverse precedent which would continue to dilute the effectiveness of the TDC program. In light of the unusual circumstances present in this case, staff recommends the Commission approve the requested amendment as consistent with the Coastal Act. The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, an amendment for the proposed development on the grounds that, as conditioned, the amendment 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 in conformity with 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. Conditions

The amendment is subject to the following conditions:

1. Effect. All conditions of the original permit not expressly altered by this amendment shall remain in effect.

2. Transfer of Development Credits. As an alternative to Condition 1 of the permit, the applicant may use the 8 parcels shown in Exhibit 2, located within T1S, R17 W, San Bernardino Meridian within the Las Flores Canyon watershed for up to 8 of the required development credits. The parcels shall constitute 8 transfer of development credits on the basis of one credit per parcel. If the applicant chooses such alternative, prior to issuance of the permit, the applicant shall record or cause to be recorded an irrevocable offer to dedicate an open space easement prohibiting residential development over those parcels. The form and content of the offer to dedicate shall be approved by the Executive Director of the Commission; both documents shall be recorded free of prior liens and encumbrances and shall run with the land, binding all successors of the applicant. The offer to dedicate shall run with the land for

period of 21 years from the date of recordation.

The lots shall be combined with each other such that they may be considered a single parcel for purposes of sale transfer, development, or encumbrance, and the applicant shall EITHER combine these lots with a developed or developable parcel such that they may be considered single parcel for all purposes, including sale transfer, development, and encumbrance OR the applicant shall provide evidence for the review and approval of the Executive Director of the Commission that these lots will not become a public burden in terms of maintenance and tax payments.

This permit shall take effect only after the Executive Director has confirmed in writing that all terms of this condition have been satisfied.

III. Findings and Declarations

The Commission hereby finds and declares as follows:

1. Project Description. The project consists of a 19-unit subdivision and site preparation for 18 market rate single-family dwellings. The 19th parcel would be dedicated for construction of a fourplex for low- and moderate-cost housing. The project is located immediately north of Ramirez Mesa Drive in the Paradise Cove/Point Dume area of Malibu, Los Angeles County.

The permit approval was subject to conditions requiring: (1) 17 Transfer of Development Credits (2) dedication of the low- and moderate-income housing site (3) revised plans for grading and landscaping, and (4) further geologic review.

2. Amendment Approval. As discussed in the Staff Note, the proposed amendment would allow substitution for 8 large parcels ($3\frac{1}{2}$ acres to 30 acres) located in Zone I in the Las Flores watershed for 8 of the 17 development credits required by this project. For the reasons discussed both in the attached findings for the Tiffany Development Co. amendment and the Staff Note, the Commission can find this amendment consistent with the policies of the Coastal Act. However, by this approval the Commission does not intend to establish policy which would allow other similar substitutions to occur on this or other projects and prejudice the comprehensive review of the Transfer of Development Credit program. This approval is limited to the rather unusual circumstances present due to the Commission's previous action regarding these 8 large parcels.

Application 4-96-189
Exhibit 6, p 2 of 4
Flinkman
Amendment to Appeal 42-80
Staff Recommendation

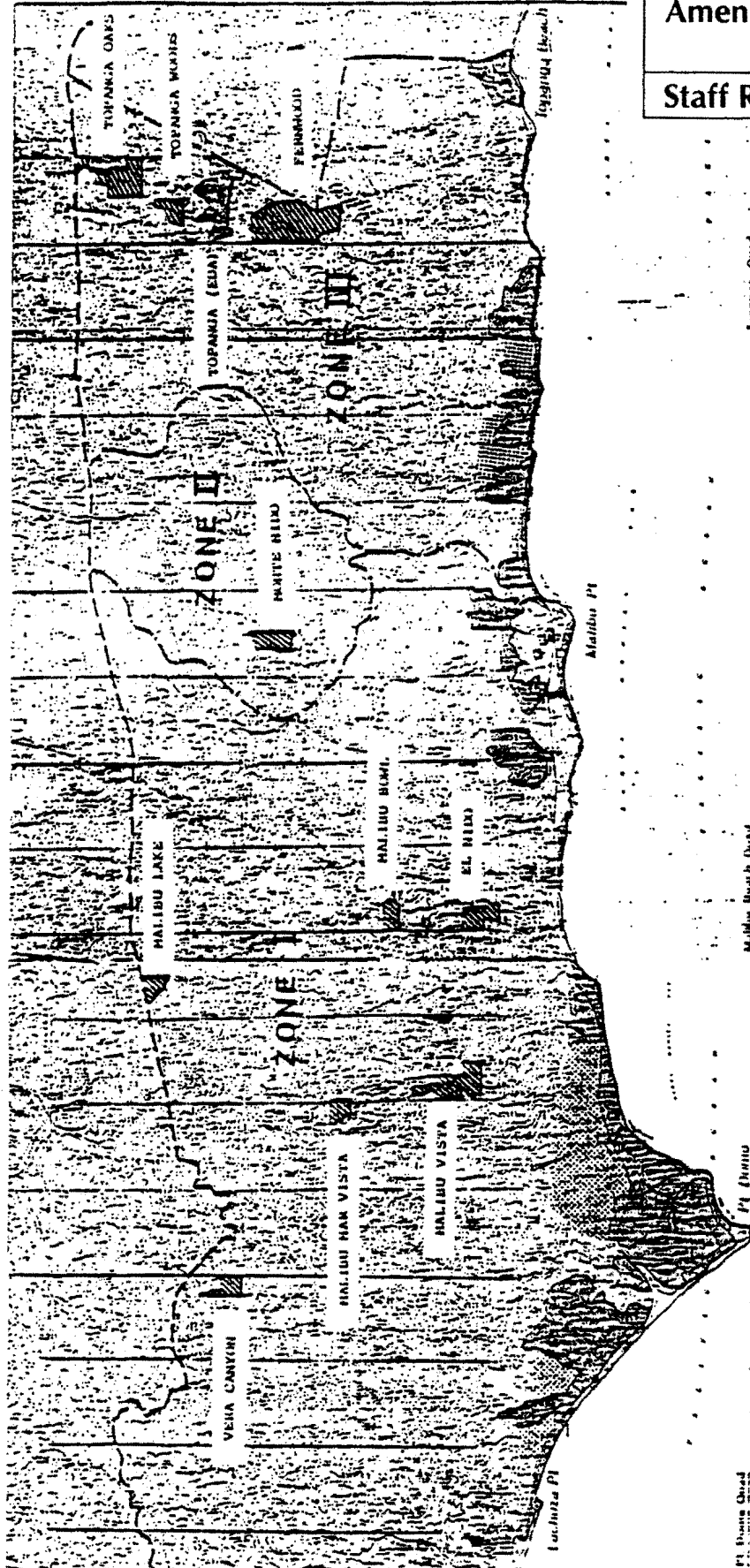
Application 4-96-189

Exhibit 6, p 3 of 4

Flinkman

Amendment to Appeal
42-80

Staff Recommendation



**TRANSFER OF DEVELOPMENT CREDIT
PILOT PROGRAM - SANTA MONICA MOUNTAINS**

Exhibit 1

23

25

7

27

LAS FLORES
HEIGHTS RD

30

DETAIL B
NO SCALE

All areas on this map are
not, except those listed

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CA

8 LOTS IN LAS FLORES CANYON

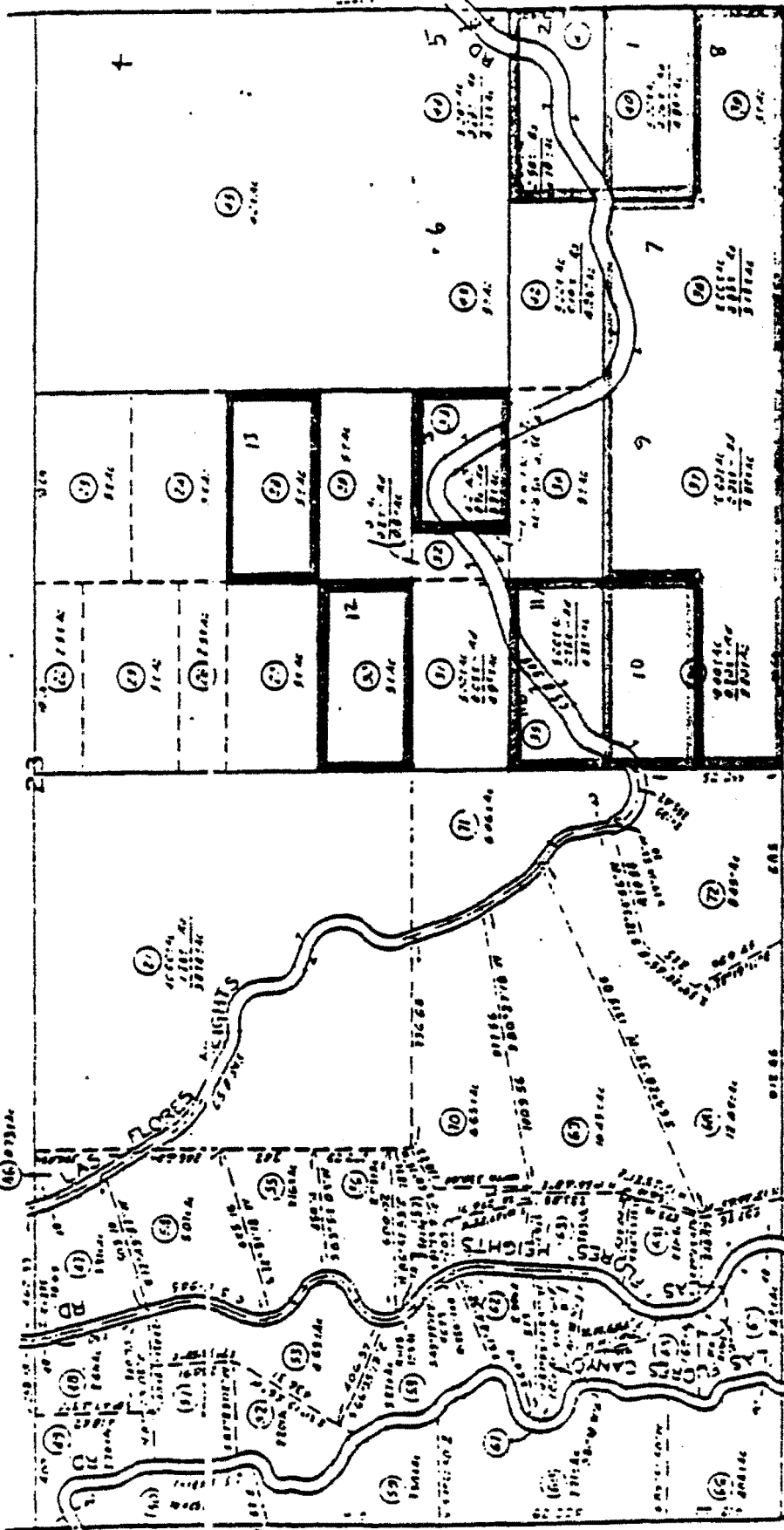
Application 4-96-189
Exhibit 6, p 4 of 4
Flinkman
Amendment to Appeal
42-80
Staff Recommendation

T.1S., R.17W

CODE
P.15

100' PMU
200' PMU

Exhibit 2

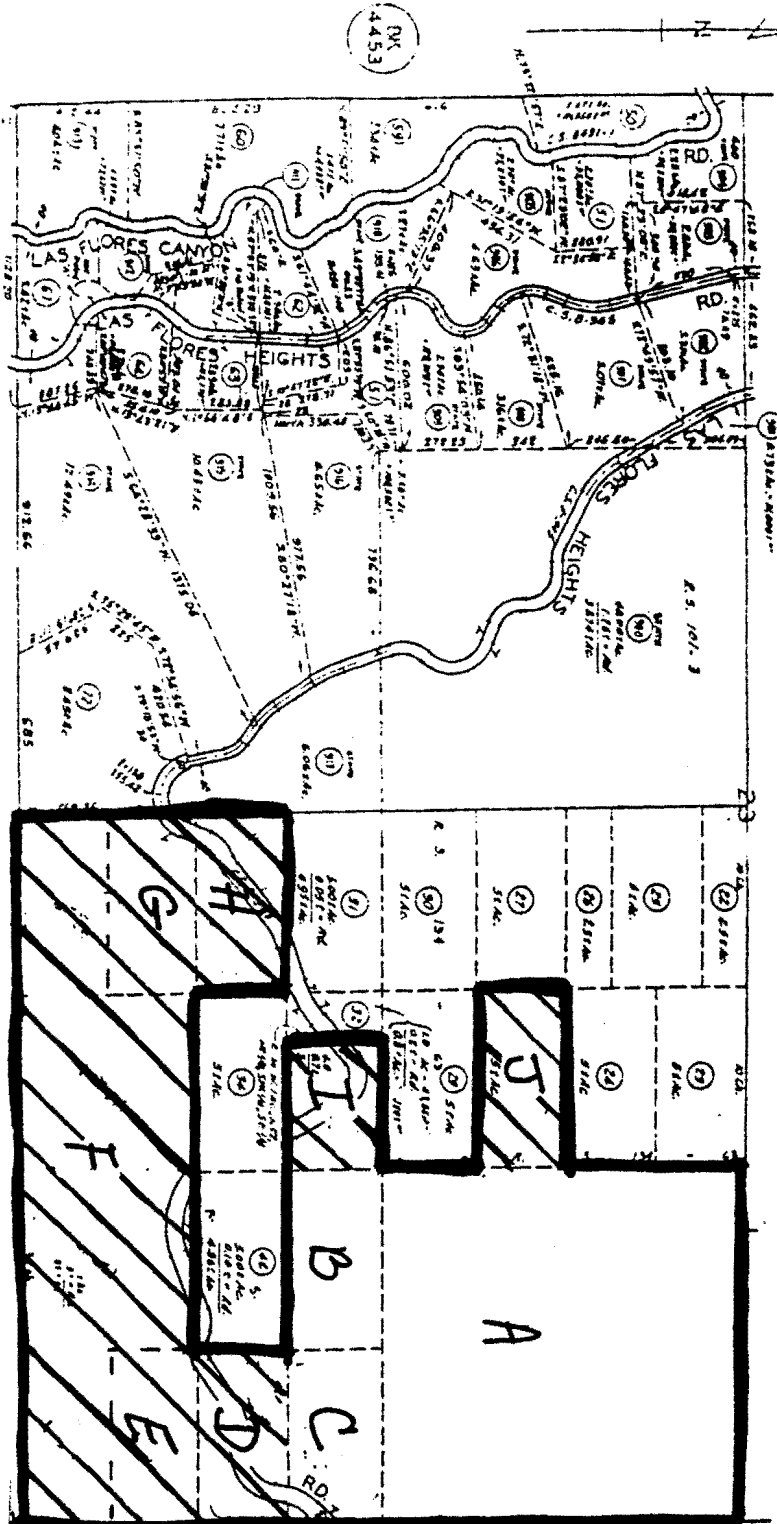


4448 26
SCALE 1" = 400'
1995

1981 TDC TRANSACTION

TDC LOTS

A, B, C RECOMBINATION LOTS



FOR PRELIMINARY SITE
4448-1

T.I.S., R.I.W.

DETAIL "B"
NO SCALE
OCT 20 1994
NO SCALE
[All areas on this page are
not, except those tabled.]
COUNT

Application 4-96-189
Exhibit 7
Flinkman
TDC Receiver Lots

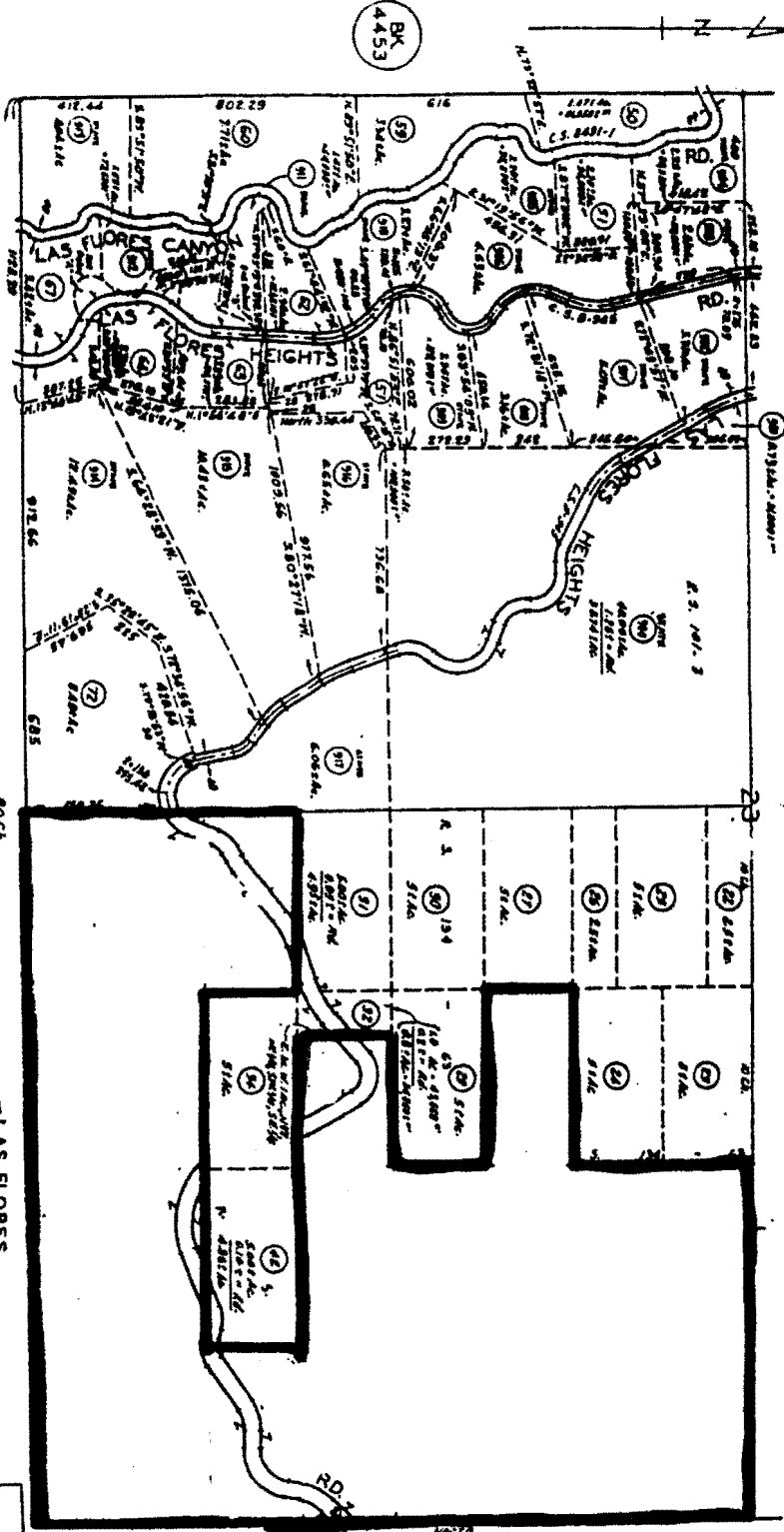
4448 | 26
SCALE 1" = 400'
1995

Recombined Single Parcel

FOR PREV. ASSMNT SEE:
4448-1

T.1S., R.17W.

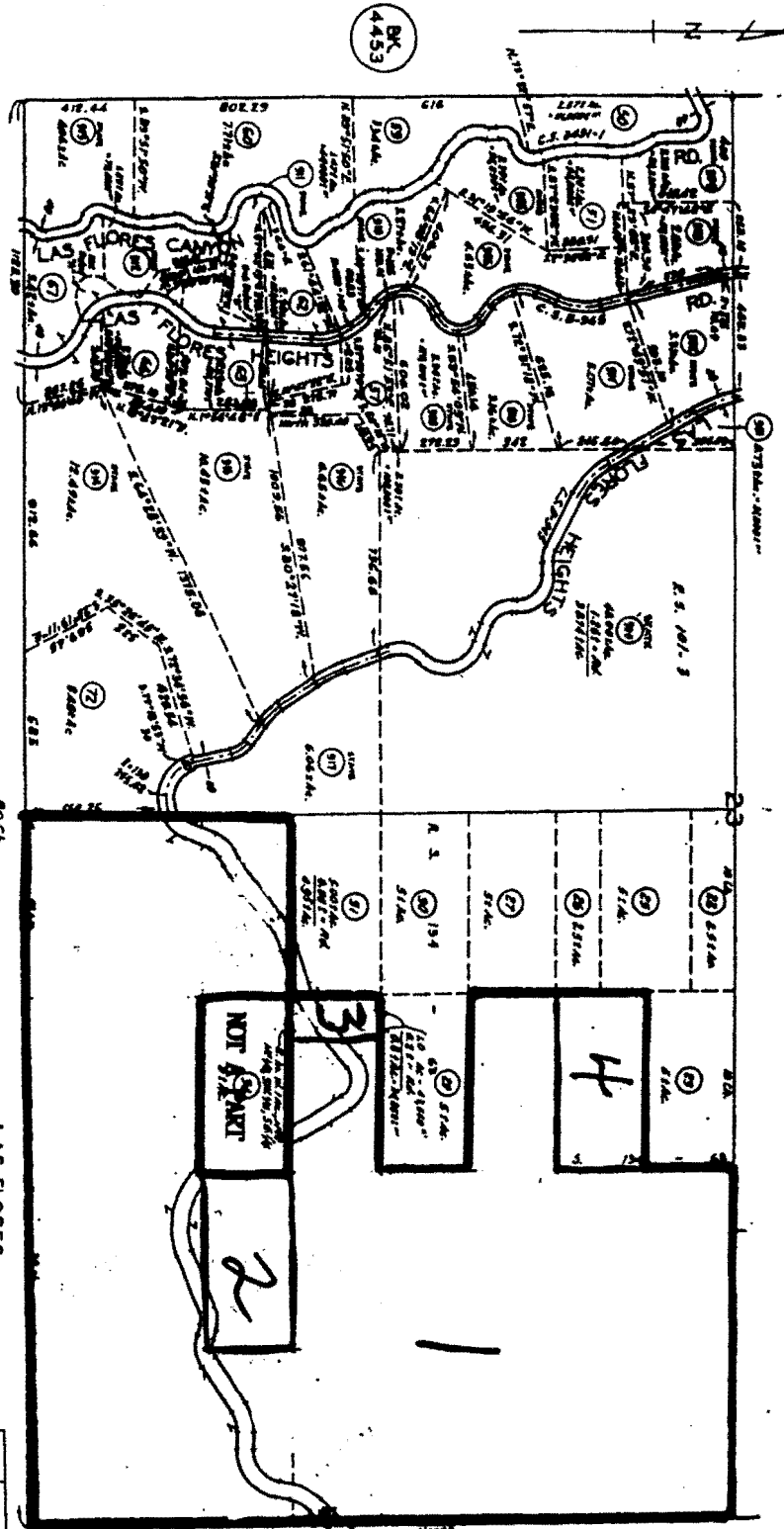
DETAIL "B"
NO SCALE
1001 20 1995
DET/ NO S
ALL areas on this page are
not, except those labeled.



Application 4-96-189
Exhibit 8
Flinkman
Recombined Single Parcel

4448 | 26
SCALE 1" = 400'
1995

Applicant's 4 Parcel Project Site



FOR PREL. ASSMNT SEE:
4448-1

T.S., R.17W.

DETAIL 'B'
NO SCALE
1:601 20 794
NO DE
NO
All areas on this map are
not, except those labeled.

Application 4-96-189

Exhibit 9

Flinkman

Existing Parcels

mission			

THE MALIBU VISTA PROFESSIONAL CENTER

BY FACSIMILE

December 15, 1998

Jack Ainsworth
California Coastal Commission
89 S. California St., Ste. 200
Ventura, CA 93001
Fax: 805-641-1732

RE: App. 4-96-189

Dear Jack:

During the frantic period of time when the T.D.C. program was first expanded to include large parcels of land in sensitive watershed areas for a developer that desperately needed the T.D.C.s, there were mistakes made in the legal descriptions of the parcels to be combined in an effort to satisfy the special condition that was stated in the Coastal Commission's approval of the "Levinson project." The mistake did not involve the condition that the eight specified parcels be deed restricted with a recorded offer to dedicate an open space easement; this was done properly as specified in the condition. The mistake was that the owner included the description of more "unrestricted" parcels than the condition required, or specified; three "nonrestricted" parcels were combined with the eight "restricted" parcels that the condition specified. This was simply a mistake on the part of the gentleman providing the T.D.C., i.e. me.

The above stated mistake can be easily rectified by voiding the recorded deed restriction that combines the subject lots at the same time as the documents are recorded that consummate the lot reconfiguration that is being requested by the subject Coastal Commission application.

By following this process, the result is that there continues to be only six legal lots and the building sites are clustered around the existing graded access street, and each lot contains a portion of property that was deed restricted with an offer to dedicate an open space easement covering exactly the same land as was required in the Levinson T.D.C.s. Thus, the intent of the Levinson permit condition remains satisfied, i.e. that eight lots are deed restricted, and combined with a buildable parcel in order to insure that they don't become a burden to the public relative to maintenance and taxes.

If you have any questions regarding the above, please call me immediately.

Sincerely yours,

Norman R. Haynie
Norman R. Haynie

Application 4-96-189

Exhibit 10

Flinkman

Letter of 12/15/98

LAW OFFICES

ALAN ROBERT BLOCK

A PROFESSIONAL CORPORATION

1901 AVENUE OF THE STARS, SUITE 1610
LOS ANGELES, CALIFORNIA 90067-6001E-MAIL: arblock@worldnet.att.net
TELEPHONE (310) 552-3336
TELEFAX (310) 552-1850

ALAN ROBERT BLOCK

OF COUNSEL
MICHAEL N. FRIDMANOF COUNSEL
MOSS, LEVITT & MANDELL, LLP

March 8, 1999

VIA FAX & FIRST CLASS MAILMs. Debra Bove
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Application 4-96-189

Exhibit 11, p. 1 of 8

Flinkman

Letter of 3/8/99

Re: CDP No. A-42-80 (Levinson)
CDP No. 4-96-189 (Flinkman)County of Los Angeles Assessor's Parcel Nos. 4448-026-043,
4448-026-044, and 4448-026-045

Dear Debra:

This letter is written as a follow-up to my letter to you dated February 19, 1999, regarding the above captioned CDP No. A-42-80 (Levinson). Because my client, Mr. Louis Flinkman, has been advised by South Central Coast staff that his pending application for CDP No. 4-96-189 cannot be acted upon until the Commission's legal staff makes a final determination regarding the validity of three (3) of his lots, Assessor Parcel nos. 4448-026-043, 4448-026-044, and 4448-026-045, I have also captioned his pending CDP and the subject assessor parcel numbers. This correspondence would have been forwarded to your attention earlier, but I was waiting for CDP No. A-42-80 to be retrieved from the Commission's archives, in order to review the same, and was only recently advised by South Central Coast staff that it is lost.

Nevertheless, Mr. Flinkman, based upon my review of numerous available documents, herein demands that the Coastal Commission promptly proceed with the processing of his pending application in that the subject deed restriction effecting the above-referenced assessor's parcels expressly permits those three legal lots to be developed. The County of Los Angeles issued Certificates of Compliance for each of the three lots, recorded in January 1994, thereby establishing their legality as separate and distinct lots. Given the foregoing, the Commission's refusal to process Mr. Flinkman's application is a violation of its mandate under the Coastal Act to process applications for coastal development permits, and the Commission's compliance with applicable law may properly be compelled by a traditional writ of mandate. Naturally, the applicant would prefer not to have to enforce compliance, and it is our belief that the legal staff's re-review of this matter, and the attached exhibits, will permit the application to proceed with a favorable staff recommendation.

Ms. Debra Bove
Re: CDP No. 4-96-189 (Flinkman)
March 8, 1999

Page 2

Application 4-96-189
Exhibit 11, p. 2 of 8
Flinkman
Letter of 3/8/99

BACKGROUND FACTS

On June 13, 1980, the Los Angeles County Department of Regional Planning recorded a Certificate of Compliance, No. 1868, in the office of the Los Angeles County Recorder, as document no. 80-577009. The Certificate of Compliance recites that the property described therein meets the requirements of the California Subdivision Map Act and may be sold, financed, leased or transferred. The real property described in the certificate is commonly referred to as Assessor's Parcel Nos. 4448-026-043, 4448-026-044 and 4448-026-045 (referred to herein as "Lots 43, 44 and 45" or "Parcel I"). The certificate notes, moreover, that "[d]evelopment of the portion of the subject property lying southerly of Las Flores Heights Road may not be permitted under current zoning regulations." A copy of the certificate of compliance is attached hereto as Exhibit A for your review.

On or about March 27, 1981, Mr. Norman Haynie, the owner of the subject property at that time, executed the Coastal Commission's form documents entitled "Offer To Dedicate Scenic Easement And Declaration of Restrictions," recorded as Los Angeles County Recorder document no. 81-310530, and "Declaration of Restrictions," recorded as Los Angeles County Recorder document no. 81-310531. In each of the foregoing documents, three developable lots were described together as Parcel I.

In the offer to dedicate, Parcel I (i.e., Lots 43, 44 and 45) is described in Exhibit A, which sets forth the "subject lands" referred to in the offer. Parcel I in Exhibit A describes Lots 43, 44 and 45 as a single parcel. Parcel I in Exhibit A has lines drawn through it and a notation next to the legal description states, "NOT A PART." Beneath this notation are the initials of Mr. Haynie, the grantor, and Mr. T. R. Gorman, on behalf of the grantee. Therefore, the three lots that comprise Parcel I were not dedicated as open space. A copy of the offer to dedicate is attached hereto as Exhibit B for your review.

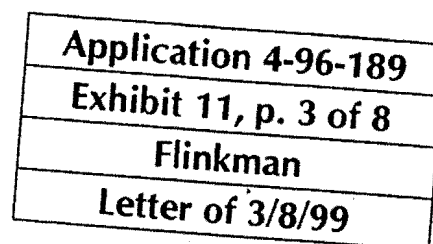
In the deed restriction, a copy of which is attached hereto as Exhibit C, Parcel I is again contained in Exhibit A, which is, again, a description of the "subject lands" referred to in the deed restriction. Unlike the offer to dedicate, Parcel I is not crossed out in Exhibit A. Instead, specific reference is made to Parcel I in the body of the deed restriction, typed immediately above the signature line for Mr. Haynie. The relevant language provides:

"Notwithstanding any of the foregoing, the owner of Parcel I, as said parcel is described in Exhibit A attached, shall maintain all rights to develop Parcel I and to divide said parcel in the future providing that said subdivision is approved by the governing governmental agencies."

On or about November 20, 1981, Mr. Haynie sold Lots 43, 44 and 45 to Stan and Ruth Flinkman (Louis Flinkman's parents), along with other real property adjacent thereto. The

Ms. Debra Bove
Re: CDP No. 4-96-189 (Flinkman)
March 8, 1999

Page 3



Flinkman's purchased the property with notice of the Offer to Dedicate Open Space Easement and Declaration of Restrictions, including the references made therein to Parcel 1.

In or about 1993, the Flinkmans began the process of applying for approvals to permit the development of the subject property, including Lots 43, 44 and 45. On January 20, 1994, the Los Angeles County Department of Regional Planning recorded a Conditional Certificate of Compliance, No. 93-0344, in the office of the Los Angeles County Recorder, as document no. 94-134007. The Certificate of Compliance recites that the property described therein meets the requirements of the California Subdivision Map Act and may be sold, financed, leased or transferred. The real property described in the certificate is commonly referred to as Assessor's Parcel No. 4448-026-043 *only*. A copy of the certificate for Lot 43 is attached hereto as Exhibit D. On the same date, the Los Angeles County Department of Regional Planning recorded a Conditional Certificate of Compliance, No. 93-0345, in the office of the Los Angeles County Recorder, as document no. 94-134008. The real property described in this certificate is commonly referred to as Assessor's Parcel No. 4448-026-044 *only*. A copy of the certificate for Lot 44 is attached hereto as Exhibit E. Each of the foregoing certificates recites, "[t]his Certificate of Compliance supersedes that certain Certificate of Compliance recorded as Instrument No. 80-577009 which contains erroneous legal descriptions."

Finally, on January 27, 1994, the Los Angeles County Department of Regional Planning recorded a Corrected Certificate of Compliance, No. 1868, in the office of the Los Angeles County Recorder, as document no. 94-188500. The certificate corrected the legal description contained in the 1980 certificate by referring only to the property commonly known as Assessor's Parcel No. 4448-026-045 *only*. A copy of the corrected certificate for Lot 45 is attached hereto as Exhibit F.

In 1996, after receiving local approval in concept, our client applied to the Coastal Commission for a coastal development permit, CDP No. 4-96-189. The application seeks, among other things, approval to construct single-family residences on Lots 43, 44 and 45. On or about November 30, 1998, the South Central Coast staff planner assigned to the application, Mr. Merle Betz, notified our client's agent, Mr. Haynie, of the Commission's concern about the effect of the deed restriction on the property proposed for development. Mr. Betz' letter of November 30, 1998, is attached hereto as Exhibit G.

Mr. Haynie responded in a letter to Jack Ainsworth, dated December 3, 1998. In said letter, Mr. Haynie states, "The 'Offer to Dedicate Scenic Easement and Declaration of Restrictions' that have been recorded against 59 acres of the total 120 acres involved in the lot line adjustment will remain in place and in a first priority position. Note: an easement can cross property lines and encumber more than a single parcel of land." Mr. Haynie's letter of December 3, 1998, is attached hereto as Exhibit H. On December 15, 1998, Mr. Haynie followed-up his first response letter with additional clarification. He states:

Ms. Debra Bove
Re: CDP No. 4-96-189 (Flinkman)
March 8, 1999

Page 4

Application 4-96-189
Exhibit 11, p. 4 of 8
Flinkman
Letter of 3/8/99

"During the frantic period of time when the TDC program was first expanded to include large parcels of land in sensitive watershed areas for a developer that desperately needed the TDC's, there were mistakes made in the legal descriptions of the parcels to be combined in an effort to satisfy the special condition that was stated in the Coastal Commission's approval of the 'Levinson project.' The mistake did not involve the condition that the eight specified parcels be deed restricted with a recorded offer to dedicate an open space easement; this was done properly as specified in the condition. The mistake was that the owner included the description of more 'unrestricted' parcels than the condition required, or specified, three 'non-restricted' parcels were combined with the eight 'restricted' parcels that the condition specified. This was simply a mistake on the part of the gentleman providing the TDC, i.e., me."

Mr. Haynie's letter of December 15, 1998, is attached hereto as Exhibit I.

On January 26, 1999, you responded to Mr. Haynie's letters. You stated, *inter alia*, that the recombination of lots involved combining eight TDC lots with three buildable sites, i.e., Lots 43, 44 and 45. You conclude, "Therefore, it appears that mistakes were not made in the legal description of the recombined lands as you stated in your letter. Rather, it was necessary to utilize all three buildable sites in order to recombine the subject TDC parcels with contiguous buildable sites." Your letter of January 26, 1999, is attached hereto for your convenience as Exhibit J.

LOTS 43, 44 AND 45 ARE LEGAL LOTS.

The issue raised by the foregoing facts is not whether or not mistakes were made in the preparation and execution of the Offer to Dedicate Open Space Easement and Declaration of Restrictions. Rather, to us, the issue is whether the Coastal Commission can refuse to recognize Lots 43, 44 and 45 as separate lots given the Certificates of Compliance recorded by the County of Los Angeles in 1994.

It should be undisputed that the Commission's stated intention was to permit the future subdivision of Parcel I if its owner obtained the necessary approvals and complied with applicable law. The Certificates of Compliance issued by the County of Los Angeles are conclusive evidence that the owner did comply with the subdivision map act and applicable law, and that Parcel I, as of 1994, is comprised of three legal lots. Surely, the Commission does not seek to challenge the County's five-year old determination. Our client has relied upon those Certificates of Compliance in deciding to proceed with the development of the subject property and in designing the subdivision.

Government Code §66499.35 provides:

Ms. Debra Bove
Re: CDP No. 4-96-189 (Flinkman)
March 8, 1999

Page 5

Application 4-96-189
Exhibit 11, p. 5 of 8
Flinkman
Letter of 3/8/99

"Any person owning real property or a vendee of that person pursuant to a contract of sale of the real property may request, and a local agency shall determine, whether the real property complies with the provisions of this division [Subdivision Map Act] and of local ordinances enacted pursuant thereto. Upon making the determination, the city or the county shall cause a certificate of compliance to be filed for record with the recorder of the county in which the real property is located. The certificate of compliance shall identify the real property and shall state that the division thereof complies with applicable provisions of this division and of local ordinances enacted pursuant thereto."

Moreover, Government Code §66499.37 provides:

"Any action or proceeding to attack, review, set aside, void or annul the decision of an advisory agency, appeal board or legislative body concerning a subdivision, or of any of the proceedings, acts or determinations taken, done or made prior to such decision, or to determine the reasonableness, legality or validity of any condition attached thereto, shall not be maintained by any person unless such action or proceeding is commenced and service of summons effected *within 90 days* after the date of such decision. Thereafter *all persons are barred* from any such action or proceeding or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations. Any such proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain and forcible entry and unlawful detainer proceedings." [Emphasis added]

Whether or not the Commission had actual knowledge of the County's issuance of the Certificates of Compliance is of no consequence since the patent legislative objective of Government Code §66499.37 is to insure that the judicial resolution of disputes under the Subdivision Map Act occurs as expeditiously as is consistent with the requirements of due process of law. Such expedition is necessary because delay in the resolution of these disputes is ultimately reflected in increased development and housing costs. *Hunt v County of Shasta* (1990) 225 Cal. App. 3d 432.

Based upon the foregoing, it is our belief that the Commission must accept the Certificates of Compliance for Lots 43, 44 and 45 as conclusive proof of the legality of the three lots. Therefore, the processing of our client's application should not be delayed as a result of the Commission's position you articulated in your correspondence that the three lots were recombined in 1981 and therefore currently constitute only one developable lot.

THE COUNTY'S 1980 CERTIFICATE OF COMPLIANCE WAS ERRONEOUS

We still firmly believe that Mr. Haynie and the Coastal Commission both relied upon the

Ms. Debra Bove
Re: CDP No. 4-96-189 (Flinkman)
March 8, 1999

Page 6

Application 4-96-189
Exhibit 11, p. 6 of 8
Flinkman
Letter of 3/8/99

admittedly erroneous 1980 Certificate of Compliance, which created a mistaken belief that these three lots were instead a single, developable lot. The reason this is important to us is that we respect the jurisdiction of the Coastal Commission and are not trying to take advantage of legal technicalities. Rather, we believe we are correcting an injustice.

Contrary to the position you take in your letter of January 26, 1999, it does not appear to us that it was necessary for Mr. Haynie to combine Lots 43, 44 and 45 in order to comply with Special Condition No. 2 of the Levinson permit amendment. Based upon the map you prepared, it was possible for Mr. Haynie to restrict Parcels F and J rather than Parcels C and D. This way, all of the TDC lots could have been combined with Lot 44 alone.

As stated above, the Coastal Commission's file regarding CDP No. A-42-80 is lost. Therefore, we may never know just what the Commission knew or did not know about Parcel I. However, there is no evidence in any of the staff reports regarding No. A-42-80 that we were able to obtain and review that the Commission believed that Parcel I was not a "single parcel." In all likelihood, the Commission, like Mr. Haynie, believed that Parcel I was a single parcel because the County of Los Angeles appeared to designate it as a single parcel in the 1980 Certificate of Compliance (See Exhibit A). However, the County's error was in not clearly designating that the certificate applied to three separate lots.

Government Code §66499.35 provides:

"Local agencies may process applications for certificates of compliance or conditional certificates of compliance concurrently and may record a single certificate of compliance or a single conditional certificate of compliance for multiple parcels. Where a single certificate of compliance or conditional certificate of compliance is certifying multiple parcels, each as to compliance with the provisions of this division and with local ordinances enacted pursuant thereto, the single certificate of compliance or conditional certificate of compliance shall *clearly identify, and distinguish between, the descriptions of each such parcel.*" [Emphasis added]

The legal description contained in the 1980 Certificate of Compliance fails to clearly identify, and distinguish between, the descriptions of each such parcel. To the contrary, it lumps them all together. We believe that this caused both Mr. Haynie and the Commission to reasonably believe that Parcel I consisted of a single lot, but that it could be developed in the future provided the owner complied with applicable law in subdividing the property.

Please ask yourself the following: If three developable lots were combined with 8 TDC lots (9 actually, as you point out in your letter of January 26, 1999,) how come the Commission did not count Lots 43 and 44 as TDCs? Likewise, why did Mr. Haynie have to offer to dedicate Parcels C

and D, if he was either expressly or impliedly offering to dedicate Lots 43 and 44?

We believe that it is manifestly unjust to hold that the owner of Lots 43 and 44 dedicated the same as open space for no apparent reason and without any consideration. Clearly, neither the Findings and Declarations of the subject Levinson Staff Report nor the applicable interpretive guidelines in existence at that time regarding the TDC program would support the Commission action. What makes this so unjust to us is that no one benefits from the Commission's position. Mr. Levinson built his subdivision. The development rights to an equal number of lots in the Santa Monica Mountains were extinguished as were created by the Levinson subdivision. The amendment gave one credit for each parcel extinguished. But for the fact that the County's Certificate of Compliance in effect at the time indicated that Parcel I consisted of one, rather than three, lots, we believe that the Commission would have, in all fairness, given credit for Lots 43 and 44, or would have permitted Parcels F and J to be restricted, rather than Parcels C and D, thereby allowing all parcels to be recombined with Lot 44 alone.

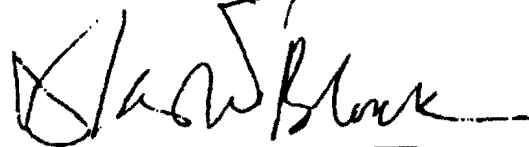
CONCLUSION

We have attempted to investigate this matter fully and regret that the Levinson permit file cannot be located. Nonetheless, our investigation has revealed that, in fact, the County's 1980 Certificate of Compliance was, indeed, in error. The County corrected that error in 1994 subsequent to the recordation of the Commission's Offer to Dedicate and Deed Restriction, thereby establishing the legality of Parcel I as three lots. Based upon the foregoing, we urge the Commission to proceed with its processing of our client's coastal permit application, No. 4-96-189, and acknowledge that Lots 43, 44 and 45 are legal, developable lots. In light of the fact that Mr. Flinkman has already waived the 180 day period in which to have the application heard, time is of the essence.

Please feel free to call me if you have any questions or additional comments.

Very truly yours,

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



ALAN ROBERT BLOCK

Ms. Debra Bove
 Re: CDP No. 4-96-189 (Flinkman)
 March 8, 1999

Page 8

cc: Mr. Louis Flinkman
 Mr. Norman Hayne
 John Bowers, Esq.
 Ralph Faust, Esq.
 Mr. Jack Ainsworth

Application 4-96-189
Exhibit 11, p. 8 of 8
Flinkman
Letter of 3/8/99

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



January 26, 1999

Norman R. Haynie
Malibu Vista Professional Center
22761 Pacific Coast Highway, Suite 260
Malibu, CA 90265

Re: CDP No. A-42-80 (Levinson)

Dear Norm:

This letter is in response to your letter to Jack Ainsworth dated December 15, 1998, regarding the 1981 TDC transaction related to the above-referenced permit. You assert in your letter that mistakes were made in the legal description of the recombining document. We have reviewed the related TDC documents and found that in order to tie each of the TDC parcels (the cross-hatched parcels on the attached assessor's parcel map), to a contiguous buildable site, as required under the Commission's TDC Program, the TDC parcels were recombined with assessor parcels 4448-026-043, 044 and 045.

This recombination may be viewed as one recombined parcel or as 3 recombined parcels, i.e., one buildable site or three buildable sites, as described below:

<u>TDC Parcels</u>	<u>Recombined With</u>
4448-026-028	4448-026-045
4448-026-033	4488-026-043
4448-026-035, 036, 037, 038, 039, 040&041	4448-026-044

Therefore, it appears that mistakes were not made in the legal description of the recombined lands as you stated in your letter. Rather, it was necessary to utilize all three buildable sites in order to recombine the subject TDC parcels with contiguous buildable sites.

You also stated that 8 lots were deed restricted. Although the lot lines were omitted and the lots were labeled A through H in the exhibit attached to the recorded declaration of restrictions, 9 lots (parcels 4448-026-028,033,035,036,037,038,039,040 and 041) were actually restricted and recombined with 3 buildable sites.

Sincerely,


Deborah Bove
Legal Assistant

Attachment

cc: John Ainsworth
Karen Brandstrader

Application 4-96-189

Exhibit 13

Flinkman

Letter of 1/28/99

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



January 28, 1999

Norman R. Haynie
Malibu Vista Professional Center
22761 Pacific Coast Highway, Suite 260
Malibu, CA 90265

Re: CDP No. A-42-80 (Levinson)

Dear Norm:

This letter responds to your letter dated January 27, 1999, regarding the recombination of TDC lots that transpired in the 1981 TDC transaction related to the above-referenced permit. You contend that the recombining of the TDC lots and the three buildable sites into one parcel was not necessary to satisfy the intent and objective of the Commission's approval. However, the language of the relevant condition to the permit, "The lots shall be combined with each other such that they may be considered a *single* parcel ..." (emphasis added), states clearly that recombination of the TDC lots into a single parcel was, in fact, a requirement of the permit.

Therefore, not only was it necessary to utilize all three buildable sites in order to recombine the subject TDC parcels with contiguous buildable sites, but the permit also required that the lots be recombined into a single parcel.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Bove".

Deborah Bove
Legal Assistant

cc: John Ainsworth
Karen Brandstrader

Application 4-96-18
Exhibit 12
Flinkman
Letter of 1/26/99