

**CALIFORNIA COASTAL COMMISSION**

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Filed: 3/25/2004  
49th Day: 5/13/2004  
180th Day: 9/21/2004  
Staff: PE-LB  
Staff Report: 6/22/04  
Hearing Date: 7/14-16/2004  
Commission Action:



# Th 20a

**STAFF REPORT: MATERIAL AMENDMENT**

**APPLICATION NUMBER:** 5-04-038-A2

**APPLICANT:** Norris and Debra Bishton **RECORD PACKET COPY**

**AGENT:** Archwest Developments, Inc. John Kilbane

**PROJECT LOCATION:** 1524 Lachman Lane, Lot 6 Tract 21601; Pacific Palisades, Los Angeles County

**DESCRIPTION OF PROJECT ORIGINALLY APPROVED (1979):** Subdivision of two tracts totaling 89.7 acres into 127 residential lots and a 3.6 acre open space lot, grading for streets and lots, installation of streets and utilities (with conditions reducing number of units to 66 units inside development limit line.)

**DESCRIPTION OF PREVIOUS AMENDMENT (1980):** Amend original permit to allow (1) an additional 3 lots for a total of 33 units to be created within the urban limit line defined in the July 1979 permit, (2) subdivision of a 6 acre "recreation lot" in Tract 30453 into 6 residential lots, and (3) subdivision of up to 65 residential lots on 31 graded acres over the 235 acre Tract 40432. This is a proposed increase over the July 1979 permit of 9 units on Tracts 30453 and 21601 but would represent a decrease of 35 units on the golf course site from what was found approvable in the findings of the July 1979 permit.

[Staff note: the amendment considered the remaining AMH ownership, land that was not addressed in the 1979 permit. The first page project description continued]: "The proposed changes would not significantly increase the amount of grading, and, like the July 1979 permit, would limit development to those areas substantially graded prior to the Coastal Act of 1976, thus preserving the ridge top knob on Tract 21601 and the Temescal Canyon drainage. To offset the adverse impacts of the traffic to be generated from the 40 units on the three tracts, the applicant would dedicate about 230 acres on tracts 320601 and 40432."

**CURRENT AMENDMENT REQUEST:** Perform 128 yards grading and construct six foot (maximum) high, 26 foot long retaining wall outside edge of an existing 11,120 sq. ft. graded pad on a 21,599.70 sq. ft. lot, lot 6, Tract 21601. Determining that the development limit line is located about 20 feet outside the edge of the existing graded pad at the toe of the fill slope would allow the applicant to backfill the existing pool and construct a pool, weir and patio that extend past the edge of the graded pad.

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**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending that the Commission determine that the development limit line is the edge of the originally graded pad, and that the grading and structural improvements outside the pad would be inconsistent with the conditions of the originally approved permit. In addition, although construction of a pool, spa, chimney and barbecue, also proposed by the applicant, would be exempt from coastal development permit requirements pursuant to Section 30610(a) in most circumstances, in this case, the permit that authorized the subdivision does not allow development past the development limit line. Therefore, a pool and deck that extend past the development limit line cannot be considered exempt. Since before the time the original permit was approved, Section 13250(b)(6) of the Commission's regulations (California Code of Regulations, Title 14) has allowed the Commission to designate otherwise-exempt improvements to single family residences as requiring a permit, thus negating the exemption. By restricting development to within the grading limit line in the 1979 permit, the Commission effectively negated the exemption for any additions that would go beyond that line. Thus, the terms and conditions of the permit for the subdivision (approved July 17, 1979) supersede the statutory exemptions under 30610 (a) for improvements for single-family houses. A subsequently issued Categorical Exclusion for the Pacific Palisades (Categorical Exclusion E-79-8, adopted in October, 1979) excludes single-family homes but is silent on pools, grading and retaining walls, which therefore continue to require coastal development permits unless statutorily exempt.

In sum, a coastal development permit is needed for the pool and deck because it is inconsistent with the underlying permit, it is not covered by Categorical Exclusion E-79-8, and also because it is associated with and dependent on development, a retaining wall, and grading that is not exempt under the statute or associated regulations. Moreover, if the pool were located outside the boundary of the originally approved pad it would also be inconsistent with the special conditions of the underlying permit. The applicant has therefore asked the Commission to consider his arguments concerning the location the development (grading) limit line. The Coastal Commission mapping staff, after considering the location of the grading limit line on a nearby lot, 15244 Lachman Lane, determined that the grading limit line on the plans, although drawn in advance of final grading, generally follows the edge of the pads in this tract.

For the same reasons that the Commission established the grading limit line where it did in the original permit, the proposed development beyond that line would similarly violate Chapter Three policies of the Coastal Act.

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**LOCAL APPROVALS RECEIVED:** Approval in Concept, City of Los Angeles**SUBSTANTIVE FILE DOCUMENTS:**

1. A-390-78 (AMH); A-390-78A (AMH); A-381-78 (Headlands/Pacific Highlands), A-381-78A. A-390-78-A2 has been renumbered as 5-04-038-A2 for record keeping purposes.
2. Categorical Exclusion E-79-8
4. 5-98-333 (Mera);
5. Pacific Soils Engineering, W.O. 10139-AB, Oct 23, 1998, Soils Engineering and Geologic Report for Proposed Bishton Residence.

**I. STAFF RECOMMENDATION:**

**MOTION:**     *I move that the Commission approve proposed amendment to Coastal Development Permit No. 5-04-038-A2 for the development as proposed by the applicant.*

**STAFF RECOMMENDATION OF DENIAL:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY THE PERMIT AMENDMENT:**

The Commission hereby **denies** the proposed amendment to the coastal development permit 5-04-038A2 (A-390-78-A2) on the grounds that the development as amended will not conform with the policies of Chapter 3 of the Coastal Act and will 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. Approval of the amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the amended development on the environment.

**II. FINDINGS AND DECLARATIONS.**

**A. PROJECT DESCRIPTION/APPLICANT'S ASSERTIONS.**

The applicant requests the Commission to determine that the development limit line established as a part of a special condition of a previously granted permit for the subdivision that created his lot is located at the toe of the fill slope that supports his house pad, rather than at the edge of the graded pad and to allow 128 yards grading and construction of an approximately 6 foot high (at the highest point) retaining wall at edge of an existing graded pad at 1524 Lachman Lane. The applicant also proposes a pool, spa, deck extension and fireplace. The pool, grading, retaining wall and deck extensions are

planned partially on and partially over the edge of a graded pad that was permitted as part of the underlying subdivision A-390-78A/5-04-038A (renumbered for record keeping purposes). The Executive Director has determined that the proposal is a request to amend a previously issued permit. The underlying permit A-390-78A/5-04-038A allowed grading and subdivision of 140 lots in three tracts, with conditions.

The Commission conditioned the permit for the underlying subdivision to establish a development limit line, at the edge of the permitted grading and confine most development inside that line. The Commission, at the time of the second amendment of the underlying permit, approved development of 140 single-family houses and all appurtenant structures inside the development limit line. The amended permit also included a requirement to dedicate major ridges, the knoll directly north of this site, and both the Las Pulgas and Temescal Canyon drainages to State Parks. The Commission imposed a special condition that restricted residential development outside the development limit line, which is depicted as the "grading limit line" on the exhibits attached to the staff report (Exhibits 15, 5,7) in order to protect habitat and vital resources of these canyons.

The original developer completed grading and installed roads and utilities; the developer and successors in interest constructed houses on the lots. On this block of Lachman Lane, all lots are developed. The applicant requests that the Commission determine that the development limit line is at the toe of the graded slope, rather than the top of the pad, as staff has determined, in order to be able to extend a pool out over the edge of the existing residential pad, construct a retaining wall, backfill the retaining wall with 128.5 cubic yards of earth. The applicant plans to extend the pool out over the edge of the pad by approximately 317 square feet and to extend a patio by about 1,200 square feet over the edge of the existing pad and place a weir and retaining structures on the fill slope.

The development limit line is the edge of the originally graded pad, and that the grading and structural improvements outside the pad would be inconsistent with the conditions of the originally approved permit. In addition, although construction of a pool, spa, chimney and barbecue, also proposed by the applicant, would be exempt from coastal development permit requirements pursuant to Section 30610(a) in most circumstances, in this case, the permit that authorized the subdivision does not allow development past the development limit line. Therefore, a pool and deck that extend past the development limit line cannot be considered exempt. Since before the time the original permit was approved, Section 13250(b)(6) of the Commission's regulations (California Code of Regulations, Title 14) has allowed the Commission to designate otherwise-exempt improvements to single family residences as requiring a permit, thus negating the exemption. By restricting development to within the grading limit line in the 1979 permit, the Commission effectively negated the exemption for any additions that would go beyond that line. Thus, the terms and conditions of the permit for the subdivision (approved July 17, 1979) supersede the statutory exemptions under 30610 (a) for improvements for single-family houses. A subsequently issued Categorical Exclusion for the Pacific Palisades (Categorical Exclusion E-79-8, adopted in October, 1979) excludes single-

family homes but is silent on pools, grading and retaining walls, which therefore continue to require coastal development permits unless statutorily exempt.

In sum, a coastal development permit is needed for the pool and deck because it is inconsistent with the underlying permit, it is not covered by Categorical Exclusion E-79-8, and also because it is associated with and dependent on development, a retaining wall, and grading that is not exempt under the statute or associated regulations. Moreover, if the pool were located outside the boundary of the originally approved pad it would also be inconsistent with the special conditions of the underlying permit, and would the impacts on resources that the imposition of the development limit line was intended to avoid. The applicant has therefore asked the Commission to consider his arguments concerning the location the development (grading) limit line. The Coastal Commission mapping staff, after considering the location of the grading limit line on a nearby lot, 15244 Lachman Lane, determined that the grading limit line on the plans, although drawn in advance of final grading, generally follows the edge of the pads in this tract. For the same reasons that the Commission established the grading limit line where it did in the original permit, allowing the proposed development beyond that line or allowing the development limit line to be mapped at the bottom of the fill slope would similarly violate Chapter Three policies of the Coastal Act.

In approving the underlying subdivision, the Commission required that all development and most grading occur inside the "development limit line", which it identified as the "grading limit" in an exhibit attached to the staff report. (See Exhibits 5, 15). The exceptions for "minor grading" were limited:

Condition 4.b of Permit A-390-78 states:

*4.b Subject to the review and approval of the executive director, in areas outside of the development limit line: minor grading may be performed to re-contour previously graded land; paved or unpaved pathways and other incidental improvements for low intensity recreation may be constructed; minor facilities to provide public or utility services which do not require significant grading may be installed if alternative locations are not feasible; vegetation within 100 ft. of any residential structure may be removed or altered for fire protection purposes. "*

After the Commission approved the subdivision, it issued a categorical exclusion that allowed future owners to construct houses on the approved lots. The houses in the subdivision were constructed on the basis of the related categorical exclusion (E-79-8).

The original approval for the subdivisions and a later amendment were approved based on a grading limit line, that would be reflected in a development limit line on the final approved permit. In approving the amendment, the Commission found that:

2. Resource Impacts. In the permit action, the Commission found that a total of 167 units could be approved on the three tracts, if they were located so as to minimize grading and the consequent impacts on scenic and habitat resources, and if the undeveloped area was

set aside for public recreational use to offset the impacts of the development on the ability of important coastal access routes (Sunset Blvd. and Pacific Coast Highway) to provide access for recreational use of beaches and mountain parks in western Los Angeles County. The changes proposed by this amendment would not increase the impacts on scenic and habitat resources since no greater area would be graded; furthermore the reduction of units to 140 would significantly reduce the amount of traffic generated by development of the three tracts. Because of the further reduction of impacts the Commission finds that the proposed amendment is consistent with the policies of the Coastal Act. Conditions on this approval are necessary to insure that the adverse impacts of the permitted development are offset by substantial public benefits in the form of the preservation and public recreational use of the undeveloped portions of the applicant's ownership adjoining Topanga State Park.

The applicant does not quarrel with the terms and conditions of the underlying permit. Rather, he argues that his development closely approximates it even though he proposes to extend the pad toward Las Pulgas Creek, a blue line stream that extends through the drainage at the toe of the slope below the ridge where the lot is perched. The applicant's engineer asserts that:

"While not exact, based on soils and geology investigations we did for the pool, the borings clearly show that the graded fill below the existing grade extends well beyond our proposed pool location. I have enclosed a copy of the section included in the soils report, which shows the fill to be up to 10 feet deep and extending over the slope. This clearly proves that the outer edge of the rough grading for the lot extended beyond where the new pool is proposed to be located." (John Kilbane, 2004,)

In a 1999 letter to the Chief of the Engineering Bureau of the City of Los Angeles Department of Building and Safety, the applicant argued that the City should not revoke building permits on a neighboring lot on Lachman Lane, based on a possible extension of a pool over the grading limit line. In support of continuing construction, the applicant argues that the "flat area on each lot and the easterly line of the flat areas is very similar to the dotted line on the drawing attached to the General Covenant (that recites the development limit line restriction.)" The applicant argues:

The lots in the Tract are subject to a General Covenant and Agreement which was recorded as Doc. No. 82-1146047. It provides that the developer agrees to "[r]estrict development in areas outside the permitted grading limit line, except as approved by the Executive Director of the California Coastal Commission." Attached to the General Covenant is a nonscale drawing of the Tract with dotted lines depicting what appears to be the flat areas of the 33 lots after grading. No line on the drawing is identified as the "grading limit line." No one could ever precisely locate the dotted line on the ground from the information provided even if it had been identified as the grading limit line. Moreover, no one connected with DBS or the Coastal Commission has ever been able to produce a scaled drawing of the Tract with a line identified as the grading limit line.

When I purchased 1524 Lachman Lane in 1985, I requested and obtained a copy of the "as built" grading plan. In my law practice, I had represented homeowners in lawsuits involving lots created by cut and fill which had given way. Consequently, I carefully



reviewed the soils reports and grading plans before I purchased 1524 Lachman. The grading plan which I obtained depicts the flat area on each lot and the easterly line of these flat areas is very similar to the dotted line on the drawing attached to the General Covenant. I have turned over to the Planning Department and to Pam Emmerson of the Coastal Commission a copy of the grading plan with the location of the home you approved located on the plan. I have met with Pam Emmerson and reviewed the plan. She indicated that the edge of the flat areas of the lots seems to conform to the dotted line on the drawing attached to the General Covenant and that is probably what was meant by the grading limit line. Solely for the purpose of discussion, I will refer to the dotted line and the line shown on the "as built" grading plan as the grading limit line (Norris Bishton to Victor Penner, November 7, 1999, Page 2, Exhibit )

The maps on file in the Commission offices support the conclusion that the development limit line is intended to follow the edge of the graded pads rather than the toe of the slopes. While the maps are at a difficult scale, the maps in the Commission's 1980 exhibits (A-390-78A, Exhibits 5, 15) show a development limit line approximate 120-125 feet easterly of the road, encompassing an area of the property where the older topographic map shows a flat and disturbed area close to the road, with a dotted angular line shortly outside that area. The applicant's engineer estimates that the actual graded pad extends approximately 120 feet from the street property line on the south side of the lot and 153 feet from the street property line on the northerly side of the lot. Marked grading maps in the file, which are approximate concerning the north/south edges (the sides) of the lots, show a dotted line that resembles the development limit line in its configuration, a line about 120 feet from the proposed road. While none of these maps are precise, staff has concluded that the development limit line follows the existing edge of the pads, and that the edge of the pad should be regarded as the development limit line. The Executive Director, in interpreting the underlying permit, has consistently indicated that grading beyond the edge of the pads would require an amendment to the underlying permit, concluding that absent other evidence, the edge of the pad is the development limit line.

## **B. AREA HISTORY**

The proposed project is located in Tract 21601, one tract in a three-tract subdivision approved by the Commission on appeal in 1979 (A-390-78 Watt/AMH, now re-numbered as 5-04-038 for record keeping purposes.) (Exhibit). The project is located in Pacific Palisades, a community located in the City of Los Angeles. Pacific Palisades is a mountainside bluff-top community located at the southeastern end of the Santa Monica Mountains, between the cities of Santa Monica and Malibu. The subdivision fell under the jurisdiction of the Commission in 1976, when the Coastal Zone was moved inland throughout the Santa Monica Mountains, including in this part of the City of Los Angeles. In these areas, the coastal zone was moved inland from one thousand yards from the mean high tide to the first ridgeline of the Santa Monica Mountains in order to aid in protecting watershed, habitat, views and recreational resources of the mountains. This

and the related "Headlands" or "Pacific Highlands" project included steep mountainous land that extended over lateral ridges and canyons to the central ridgelines of the mountains. This tract, (21601) was the upper tract of the AMH project and is downslope of and visible from Temescal Ridge. As part of this and related projects, Temescal Canyon Road was to be extended to the San Fernando Valley.

In 1976, the project had received approval from the City of Los Angeles, but development of the individual tracts had not commenced. In 1978 the Commission approved a portion of the project. In 1979, the Commission amended the project and approved additional lots and in additionally required extensive dedication of the steepest land –the ridges and drainages. The project, as ultimately approved, included a total of 140 lots: 33 lots in Tract 21601, 42 lots in Tract 30453 and 65 lots in Tract 40432.

The Commission's jurisdiction over this development and the adjoining "Headlands" project (A381-78) was subject to dispute. Some grading occurred after the Coastal Zone boundary moved, before the applicants of those projects agreed to apply for permits. After the Commission approved the developments with conditions that reduced the number of units, the developers petitioned the legislature to move the Coastal Zone boundary seaward to eliminate the Commission's jurisdiction. Although a bill advocating this change did not pass, the Commission and its staff agreed to negotiate with the developers so that the total number of units approved in the projects would be greater than as originally conditioned. The total number of lots approved in Tracts 21601 and 30453 in this project rose from 66 lots to 75 lots.

As part of the final approval, the original applicant (AMH) deeded approximately 236 acres to State Parks, extending from the eastern boundary of the lots to Temescal Ridge on the east and Pacific Highlands on the northwest. The Commission also established a development limit line on the individual lots that imposed a setback from the newly dedicated State Park and authorized the grading that had already been performed. This line restricted development, except with the approval of the Executive Director outside the development limit line. As noted above, in areas outside of the development limit line, the Executive Director could approve minor grading to re-contour previously graded land; paved or unpaved pathways and other incidental improvements for low intensity recreation, minor facilities to provide public or utility services which do not require significant grading, if alternative locations are not feasible; vegetation within 100 ft. of any residential structure may be removed or altered for fire protection purposes. (See excerpt of the Special Condition above, and Exhibit 3.) Grading for the subdivision created graded pads along an ascending ridge. The pads extended out above the canyons, which were dedicated to the park. The applicant (AMH) was required to record a deed restriction, binding on future owners of the property, assuring that no development except for the exceptions noted above would occur between the development limit line and the newly established State Park boundary (Exhibits 1(c) and 16 p5). The development limit line was also recorded as a CC and R with the subdivision.



The purpose of the condition was to limit landform alteration and preserve the visual and habitat resources of the area, including the new State Park lands. The Commission was also concerned that increased traffic generated by new residential development could overwhelm coastal access routes, to the detriment of public access to beaches and parks. The dedication was required, in part, to assure that the number of units permitted in this development would represent the build out of this part of the mountains.

As part of agreement with the applicant, American Mobile Homes (AMH), the Commission, in 1979 issued a categorical exclusion (E-79-8) allowing the City to authorize construction of single-family houses on the lots approved in the subdivision. The categorical exclusion) also authorized construction of houses on the newly subdivided lots of an adjacent subdivision (Pacific Highlands, approved as A-381-78 (Headlands), and of other residential and commercial structures on existing vacant subdivided lots throughout the Pacific Palisades district. A categorical exclusion does not exempt all development from coastal development permit requirements. A categorical exclusion only exempts certain categories of development described in the order. For example, grading was not a category of development that was excluded in the categorical exclusion, so that the construction of the houses on the pads on the newly created lots was exempted, but grading to extend the pads was not exempt. Pools and retaining walls were similarly not excluded.

The categorical exclusion was subject to six limitations. The limitations applying to single-family houses stated that the excluded houses must conform to the then-applicable City height and use requirements, without a variance. The City was also not permitted to approve development that was located closer than 100 feet from the State Park property line. The Commission retained permit jurisdiction over all development within 100 feet of the State Park boundary (Exhibit 15 page 3). This development is over 100 feet from the State Park boundary. The purpose of this limitation was to minimize conflicts between lot clearance for fire protection and the habitat protection goals of the State Park. Most of the lots along Lachman Lane clear or trim their entire lots down to the State Park boundary during fire season.

The limitations on the Categorical Exclusion were compatible with, but did not parallel, the limitations imposed on individual property owners with the respect to the development line.

As noted above, the coastal development permit established a "development limit line" based on the developer's depiction of already graded areas. In some instances, such as the present case, the development line was more than 100 feet from the State Park property line. In some cases, the categorical exclusion area where construction of a single-family house does not require a permit includes areas where the terms and conditions of the underlying permit still restrict development. Similarly while the Coastal Act exempts certain additions to single-family houses from permit requirements, the limitations in the permit prevail. Notice is given on the owner's deed restriction. Neither the categorical exclusion order nor the statutory exemption (30610(a)) supercedes the provisions of the underlying permit and the "development limit line" would govern.

**C. CONSISTENCY OF PRESENT PROJECT WITH UNDERLYING PERMIT A-390-78 (renumbered as 5-04-038).**

The present house is located on the third lot from the top of the subdivision. The park land is located adjacent to this lot on the east (downslope) side. A long arm of the park extends between the top lot of the subdivision and the lower lots in the related Headlands/Pacific Highlands (A-381-78) development. A foot trail and fire department access road connects the end of Lachman Lane to Headlands. If the Commission agrees that the development limit line is the toe of the fill rather than the edge of the graded pad, the applicant proposes to extend the pool and weir approximately 667 square feet outside the edge of the existing graded pad. The pool and weir will extend past the pad by eleven feet on the south side and 18 feet on the north side. The applicant also proposes to extend a patio 1,200 square feet over the edge of the existing graded pad. The patio extension will be supported by a retaining wall an average of approximately 15 feet past the edge of the existing pad/patio.

The applicant argues that the development limit line should follow the edge of the toe of the graded slope. Based on that idea, he argues that because the pool 1) is founded on fill, rather than natural soils, 2) is on the same level as the pad, 3) is supported by footings that do not extend more than ten feet down the slope, the pool should not be considered as moving the lien of development closer to the canyon that allowed in the permit. Therefore, he argues, the Commission should find the pool and deck consistent with the restrictions of the underlying permit and approve it (Exhibits 8, 9, exhibit 15, page 3).

In cases where the development proposed on lots subject to the restrictions of A-390-78 has been clearly consistent with the underlying permit and is otherwise exempt, pursuant to 30610(a) or the 30610(e) categorical exclusion order, the Executive Director has approved such development without requiring a coastal development permit. However, it is clear that because of its location outside of the pad, the Executive Director cannot find the pool and deck consistent with the deed restriction and the Commission's past action. (See above and Exhibits 5, 2, 3, 4, 15)

**Varying interpretations of the Categorical Exclusion by the City of Los Angeles have resulted in at least one development extending past the approved pad.** The applicant also points out that the owner of at least one neighboring house has constructed a pool and ancillary structures out over the slope, extending a lower level guest house out under the pad. The City of Los Angeles Planning Department administers both the categorical exclusion and statutory exemptions to the Coastal Act in Los Angeles. In this case, both of these exemptions would apply unless contradicted by a valid permit condition. In this case, the City staff was not initially aware of the limitations in Coastal Development Permit A 390-78, which allowed the subdivision. After several cases of development that was inconsistent with the permit were reported to Commission staff, the

City staff has begun to refer the issue to the Commission. If such development is determined to be inconsistent with the underlying permit, it has been referred to the enforcement division and does not constitute a precedent.

Even though several rear yard pools and decks were permitted along this row of houses without coastal development permits, by far the majority of owners have constructed the pools and decks on existing pads. Aerials provide by the applicant have shown fire clearance and minor planting and in some cases construction of trails and small viewing platforms lower on the slopes. Such recreational trails are consistent with the underlying permit. (Exhibit 15, page 3)

**Difficulty of plotting exact location of the development limit line.** The applicant indicates that it is difficult to plot the grading limit line in this subdivision, but argues that there is evidence that the slope below the yard area of his lot has been graded and disturbed. There is evidence that the slope below the yard supports the yard and is graded. On the other hand there is evidence submitted by the applicant when seeking approval of a pool on a nearby lot, that the development limit line is the same the edge of the top of the slope—the flat area created in the original grading. (See attached Exhibit 10.)

A grading plan from the original file shows the grading limit line in the approximate location of the edge of the top of the graded slope—the flat developable pad created for construction. However, this plan, which guided the Commission in its original approval, shows lot lines in slightly different locations than ultimately approved. In order to interpret the Commission's past action, it is important to consider the purpose of the limitation. The purpose as spelled out in the underlying permit was to limit and confine grading to the house pads<sup>1</sup> (Exhibit 7).

The findings of the original approval include concerns about the habitat and watershed value of the slopes, the visual and safety impacts of intense landform alteration, impacts on Las Pulgas Creek, a blue line stream lying to the east (downslope) of the lot, and the impacts of the loss of watershed cover on the downstream habitat of La Pulga canyon, which discharges into the Pacific Ocean from its location downslope of the lots in tract 21061. (See attached) Below the edge of the top of the slope, the lot slopes at approximately 2:1 to the upper drainage of Las Pulgas creek, a blue line stream. (Exhibit 15)

**Conclusion.** The Commission concludes that the proposed development extends past the development limit line identified in A 390-78, that this development is subject to the limitations imposed by the Commission in that permit.

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<sup>1</sup> (Exhibit 7 shows a 40-lot study. The Commission ultimately approved 33 lots and pulled development off the knoll, (see Exhibit 15)

## D. HABITAT

The Coastal Act of 1976 includes the following policies:

### LAND RESOURCES

#### **Section 30240 Environmentally sensitive habitat areas; adjacent developments**

(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.

#### **Section 30231 Biological productivity; water quality**

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.

The underlying permit identified the coastal sage scrub (CSS) of the Santa Monica Mountains as "habitat" and "watershed land" and attempted to protect that habitat and watershed by (1) consolidating development, (2) limiting grading and fire clearance by setting urban development well back from habitat areas and (3) requiring extensive dedications to State Parks.

Maintaining consolidated habitat areas has been shown in studies of CSS habitat to protect the function of the habitat by allowing movement corridors and protecting cover in subordinate drainages. Because of increasingly strict fire clearance standards (200 feet in the City of Los Angeles), it is important that development, when permitted adjacent to parks and environmentally sensitive habitat areas, be set back in order to accommodate a fire buffer without clearance on public land. Allowing subdivisions that permit houses closer to uncleared land impacts habitat and poses a danger to the structures. As matter of policy, the Department of Parks and Recreation does not allow clearance on its land; as a matter of practice, clearance adjacent to houses occurs. In this case, the setbacks seem to have worked as planned. The aeriels showed that in 2004 along this stretch of Lachman Lane, some owners had completely trimmed their own property, but none of them had extended clearance to public land.

While the pool will not burn, by establishing the pool and deck almost a thousand square feet square feet closer to the State Park, the line of human habitation is extended towards

the park. This extension is inconsistent with the permit's intent of protecting watershed land and habitat from grading and clearance. In considering the Commission's analysis of the "development" limit line, as opposed to the "grading" limit, it is clear that the Commission saw its action as establishing an area in which development could occur, and then limiting development to that area, to the pads that it had allowed to be graded. Allowing development to extend past the top of the created slope would create human traffic, combustible structures and a demand for fire clearance closer to the undisturbed area of the park.

## **E. PUBLIC RECREATION**

The Coastal Act of 1976 requires the Commission to protect upland recreational resources:

**Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals**

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

...

**Section 30222 Private lands; priority of development purposes**

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

**Section 30223 Upland areas**

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

This development is adjacent to and will be visible from the subordinate ridge trail of the State Park. Maintaining the setback of development of the structures along this subordinate ridge will maintain the setbacks from state park land. As part of the original permit, the owner was required to offer a trail through the draw at the eastern end of the lots and to offer this land and some land along the upper ridges to State Parks (Exhibit.) While this trail is not visible from the lots, maintaining the set back is important to reduce possible conflicts between trail users and the occupants of the houses. The houses are visible from Temescal Ridge.

The developer of the subdivision, AMH Development, was required under these sections of the law, to create new lots on the mountainside as long as it simultaneously reserved land for recreation. Maintaining the setback of private development and grading on this land was intended to protect the publicly dedicated recreational and habitat land from visual and fire clearance intrusions. Allowing the pad to extend toward the canyon is

inconsistent with that purpose, and with the public access and recreation sections of the Coastal Act.

## **F. PUBLIC VIEWS.**

Section 30251 of the Coastal Act states:

### **Section 30251 Scenic and visual qualities**

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.

Section 30250 of the Coastal Act states:

### **Section 30250 Location; existing developed area**

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30250 of the Coastal Act requires new development to occur in areas that are contiguous to previously developed areas. When it permitted this development, the Commission imposed a special condition limiting the extent of grading and of the associated single-family homes in order to protect the undeveloped portions of the watershed. The Commission did this by limiting development to areas that had already been rough graded for other purposes.

As part of both the underlying permit (A-390-78/5-04-038), and the related coastal development permit (A-381-78), ridgelines were protected and trails were routed along the ridges. The clustered houses are visible from the trails. Extending the line of development closer to the Las Pulgas Canyon drainage will result in an irregular line of



houses, decks and pools constructed closer to the public facilities. The Commission has addressed this issue in other public recreation areas, like beaches, where it has attempted to balance the interest of owners in enlarging the development on their lots with the need to maintain a buffer between private development and public access references such as beaches, and in this case parks. Houses and other private development closer to public parks are more obtrusive from the park. Less distance between private structures, even pools and guesthouse and publicly accessible areas also results in more conflict between visitors to the facilities and private owners.

The Commission has addressed this issue by establishing a stringline to limit the extension of development toward public areas. In this case, the edge of the flat pads, which is the top of the existing slope, is a convenient location to establish the string line, and reflects the existing pattern of development. According to the applicant, one owner along the 33 lots on Lachman Lane has constructed past the edge of the slope. Extending the pads toward the canyon so that the buildings and accessory structures extend to the toe of the fill will extend the average line of development at least twenty feet closer to the canyon if the applicant's engineer, Mr. Kilbane is correct in estimating that there is ten feet of fill, perched at a 2:1 slope. The one house that does extend to the toe of the slope represents an exception to this policy and is not consistent with the underlying decision, which is based in part on this section of the Coastal Act. Therefore extending the line toward the minor drainage is inconsistent with Sections 30250 and 30251 of the Coastal Act and with the underlying permit.

## **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 coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).*

In 1978, the Commission approved a work program for the preparation of Local Coastal Programs in a number of distinct neighborhoods (segments) in the City of Los Angeles. In the Pacific Palisades, issues identified included public recreation, preservation of mountain and hillside lands, grading and geologic stability. The continued use of Temescal Canyon as a recreation area was also an issue, because at that time the Canyon was in private hands. The underlying development included much of the upper watershed of both Temescal and Las Pulgas Canyons.

The City has submitted five Land Use Plans for Commission review and the Commission has certified two (Playa Vista and San Pedro). However, the City has not prepared a

Land Use Plan for Pacific Palisades. In the early seventies, a general plan update for the Pacific Palisades had just been completed. When the City began the LUP process, in 1978, with the exception of two tracts (a 1200-acre tract of land and an adjacent approximately 300-acre tract), which were then undergoing subdivision approval, almost all private lands in the community were subdivided and built out. The Commission's approval of those tracts in 1980 meant that no major planning decision remained in the Pacific Palisades. The tracts were A-381-78 (Headlands) and A-390-78 (AMH)(now 5-04-038A2). Consequently, the City concentrated its efforts on communities that were rapidly changing and subject to development pressure and controversy, such as Venice, Airport Dunes, Playa Vista, San Pedro, and Playa del Rey. Recent issues in the Pacific Palisades indicate that in the Pacific Palisades, planning will have to address the maintenance of the interface between residential development and public parks and open space areas

Because of the impacts the proposed development at the proposed location will have on public access and coastal views, development past the top of the slope must be denied. Denial of the proposed project will allow the City to prepare a certifiable Local Coastal Program that addresses the interface between developed and undeveloped areas and between parks and residential areas. The Commission, therefore, finds that the proposed project is not consistent with the provisions of Section 30604 (a) of the Coastal Act.

## **I. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of the California Code of Regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The Commission considered granting an exception and allowing the extension of the pool and deck and the additional grading. Such development would move the line of development closer to park and habitat areas, increase the visibility of development from those areas and is inconsistent with the adopted Coastal Development Permit A-390-78 that allowed the underlying subdivision. If the Commission determines that the development limit line is at the top of the graded pad, the development of the pool will require no grading past the original line of grading and no development of a pool past the line of decks and pools now constructed on the house pads. The applicant indicates that it is feasible to build the pool on the pad, but that it is less desirable in that location because if it is constructed closer to the house, the new pool will be more visible from the adjacent home. However, the applicant agrees that it is feasible to construct a pool on the existing pad.

There are two alternatives: First the applicant can leave the existing pool in place. There is an existing pool at this site, which the applicant has proposed to fill to create more patio area. The second alternative is to place the entire pool on the existing pad, and refrain from extending the patio. At a site visit, the applicant's representative agreed that it was feasible to build a new pool at the edge of the top of the pad, but state that they preferred to build over the edge of the pad to address privacy issues. Third, the applicant currently has a reasonable use of the parcel, which is a 2,669 sq ft. single-family house.

As proposed, the development will have significant cumulative and direct adverse impacts on the environment, in effect extending the line of development of 33 houses 20 or more feet toward Las Pulgas Canyon. Because the development proposed in this amendment to the permit will cause significant adverse impacts on the environment, the amendment must be denied. However, the Commission finds that there are feasible alternatives and additional mitigation measures available, such as following the present special conditions and limiting development to the development limit line, defined as the top of the slope supporting the existing pad, which would substantially lessen any significant adverse impact which the activity would have on the environment. For the reasons above, the application for amendment is not with the requirements of the Coastal Act to conform to CEQA and must be denied.



630

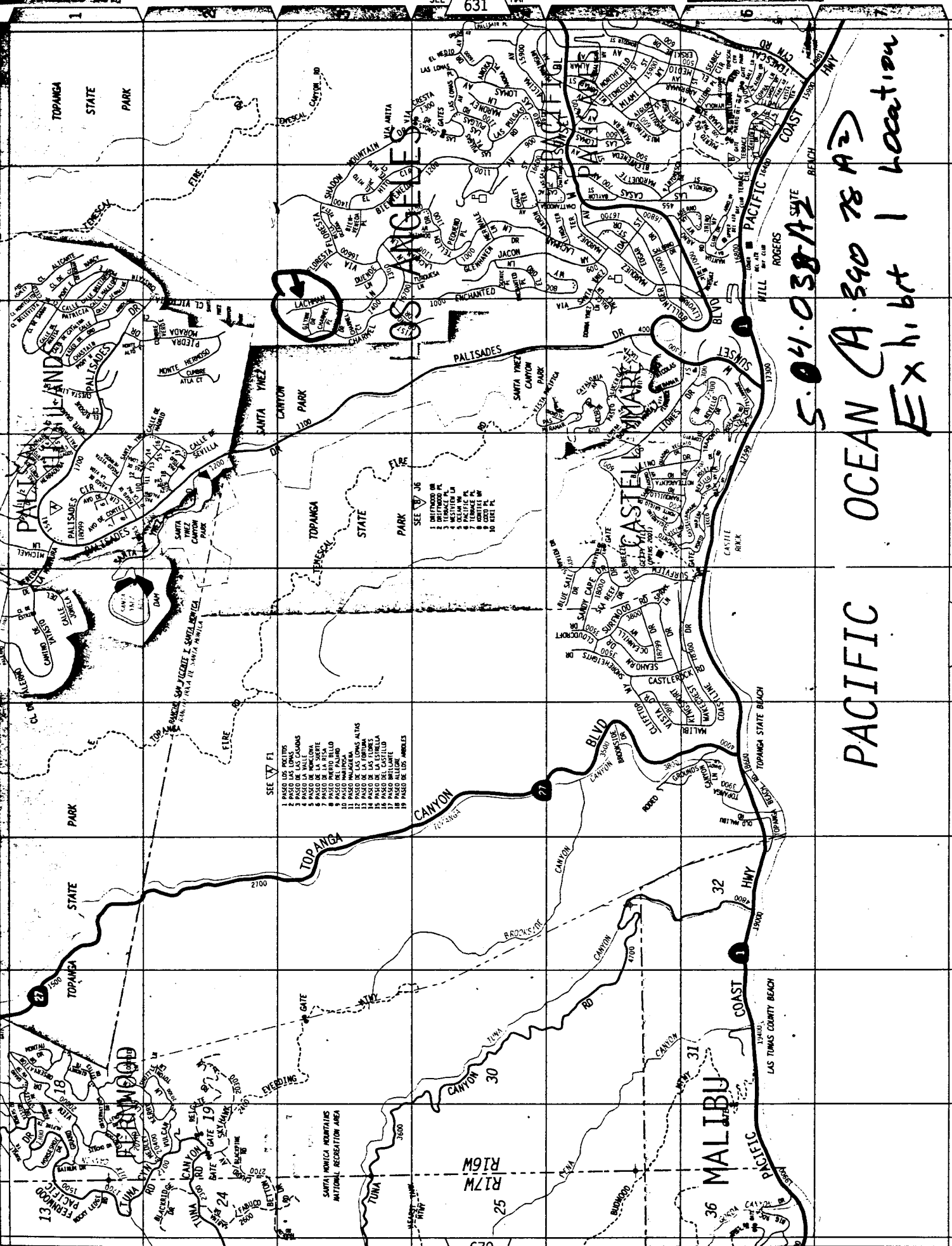
590

629

ANGELES CO.

SEE 631 MAP

MAP



5-04-038-A2  
OCEAN A-390 78 A2  
Exhibit 1 Location

PACIFIC

SEE V1 MAP

Thomas Bird Maps

Copyright 1998

SEE 629 MAP

NOTES: SITE PLAN SHEETS  
1. ALL WORK SHALL BE CONDUCTED IN ACCORDANCE WITH THE NEW YORK STATE EARTH MOVEMENT ACT AND THE NEW YORK STATE EARTH MOVEMENT REGULATIONS.  
2. THE EARTH MOVEMENT REGULATIONS REQUIRE THE SUBMITTER OF A SOIL REMEDIATION PROJECT TO OBTAIN A LICENSE FROM THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.  
3. ALL CONCENTRATED AREAS, INCLUDING ROOF WATER, SHALL BE COLLECTED, VIA GRADIENT, TO THE STREET OR AN APPROVED LOCATION AT AN INMEDIATE DRAINAGE TO BE SHOWN ON THE SITE PLAN.  
4. NEW YORK STATE EARTH MOVEMENT REGULATIONS REQUIRE THE SUBMITTER OF A SOIL REMEDIATION PROJECT TO OBTAIN A LICENSE FROM THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.  
5. NEW YORK STATE EARTH MOVEMENT REGULATIONS REQUIRE THE SUBMITTER OF A SOIL REMEDIATION PROJECT TO OBTAIN A LICENSE FROM THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

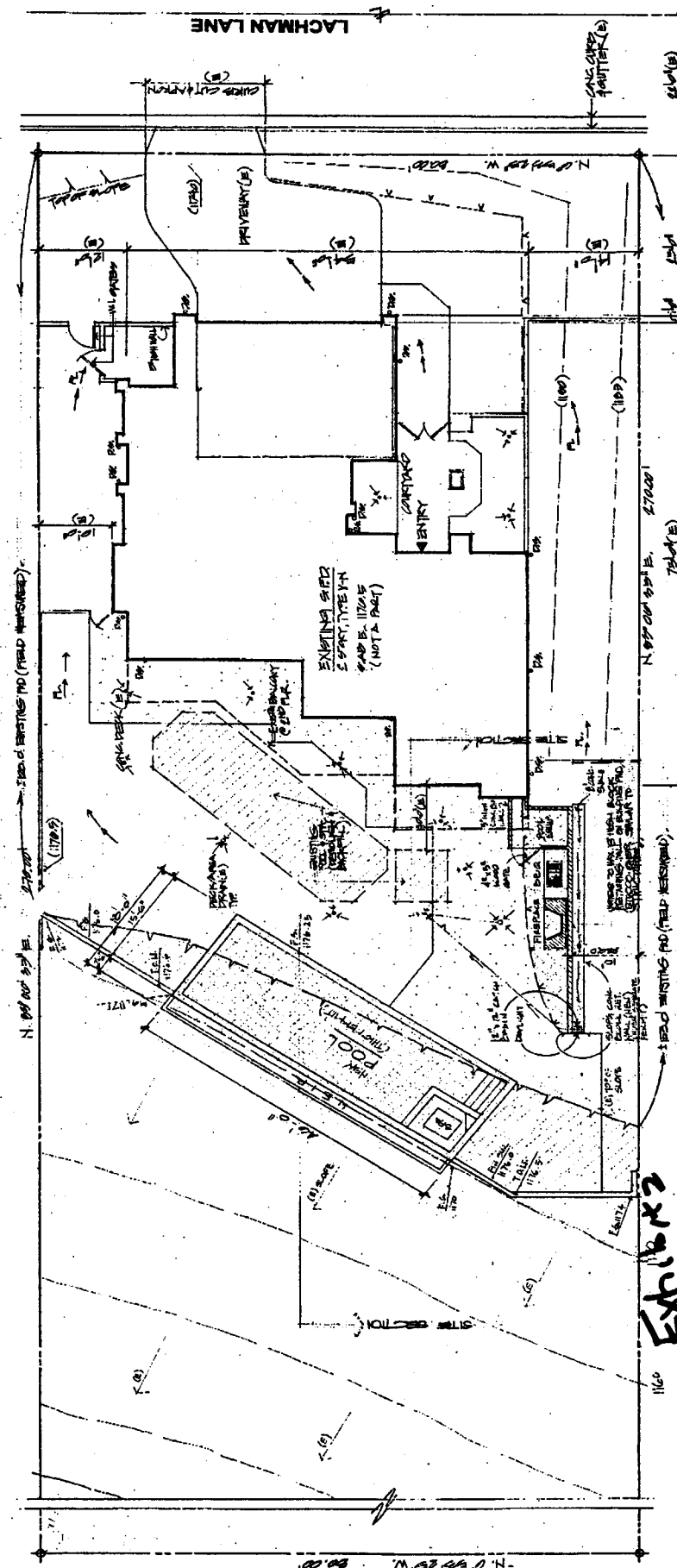
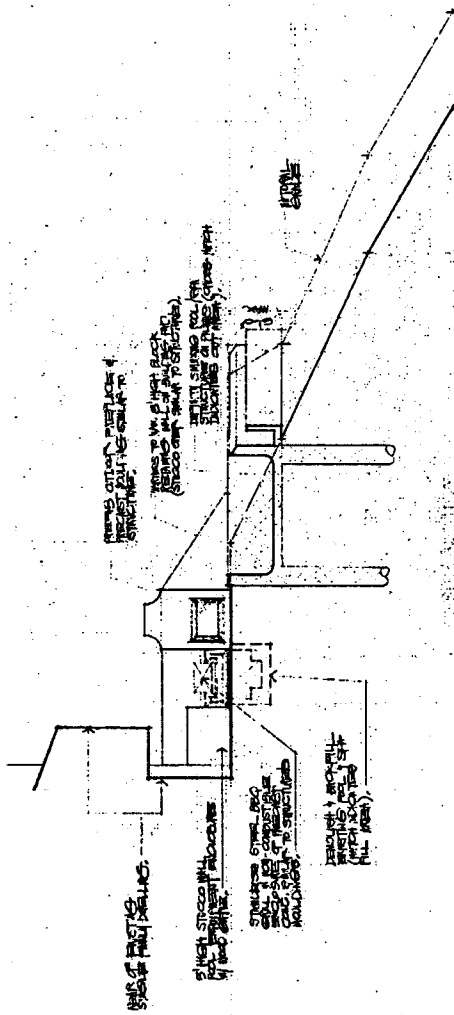


Diagram illustrating a grading calculation. The road width is 120 ft. The existing ground is 10 ft below the road level. The proposed grade is 10 ft above the existing ground. The existing ground is 10 ft below the road level. The proposed grade is 10 ft above the existing ground. The existing ground is 10 ft below the road level. The proposed grade is 10 ft above the existing ground.

ZONE: KRE 40-1-H  
STANFORD HILLS STREET 1500 S E 34TH AVENUE  
KYN 44 PT., KNOXWAY SUITE 200

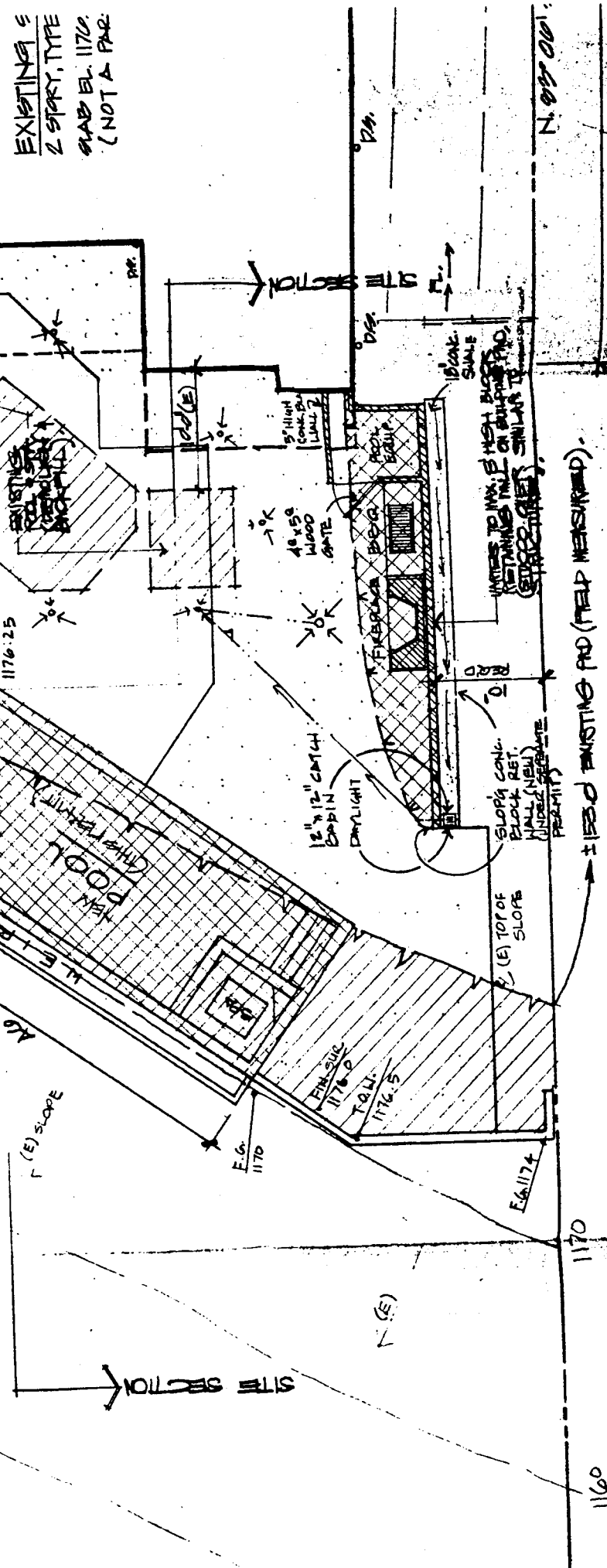
## SITE PLAN

Exhibit 2  
S. 011.038A2  
Site plan



EXHIBIT NO. 3
APPLICATION NO.
504 038 A2
Detail Site Plan

Existing Pad



EXISTING 5  
2 STORY, TYPE  
SLAB EL. 1170  
(NOT A PAD)

N. 037 00'

± 15.0' EXISTING PAD (FIELD MEASURED)

5 HIGH STREET, WIMBORNE, DORSET, BH20 1JH

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[illegible]

**EXHIBIT NO. 4**

**APPLICATION NO.**

6-04 035A2

Cross section

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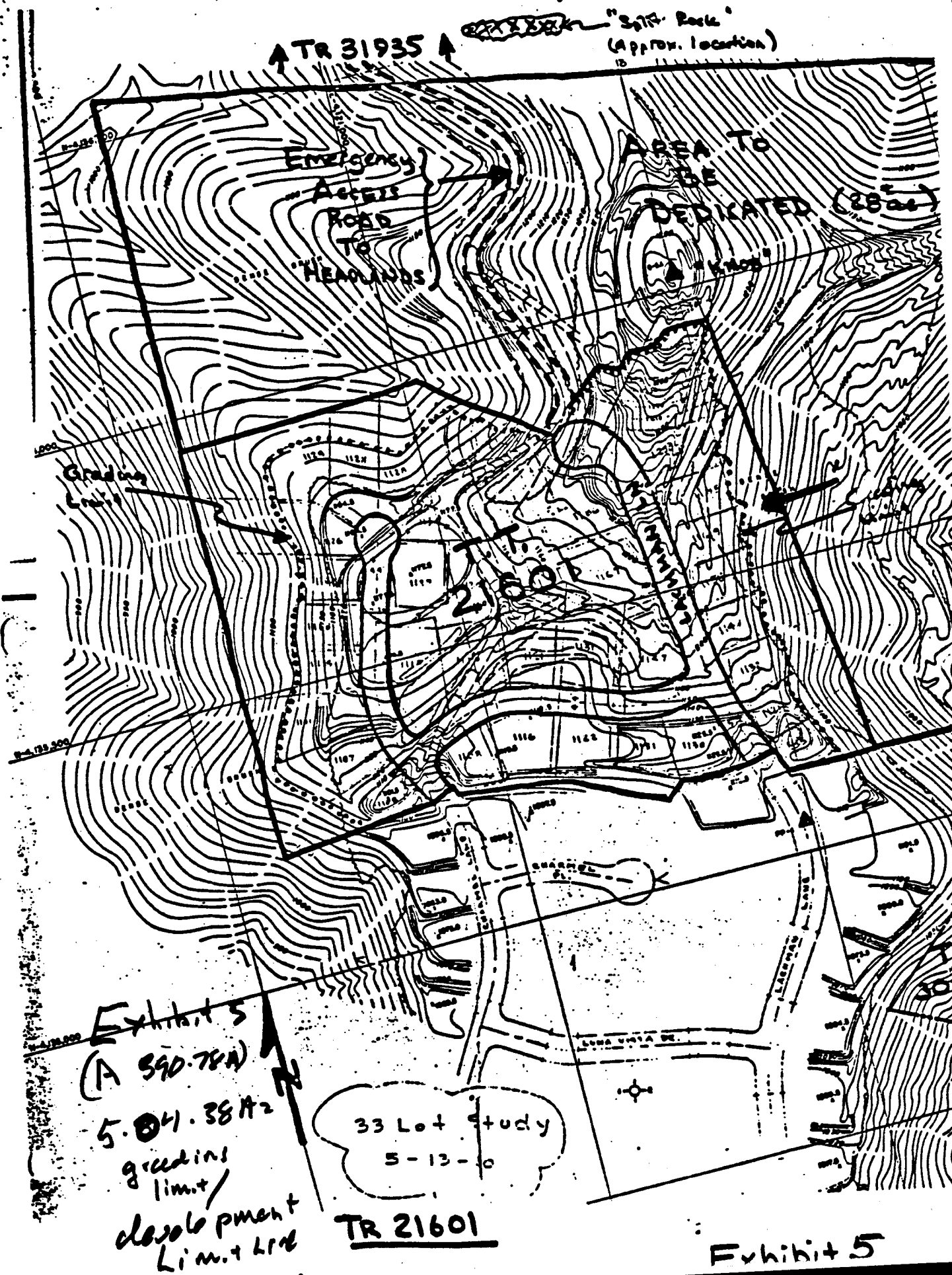


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THE NATIONAL ARCHIVES

RECEIVED FOR THE U.S. DEPT. OF AGRICULTURE  
WASHINGTON, D.C. 20250

THE UNIVERSITY OF CHICAGO PRESS

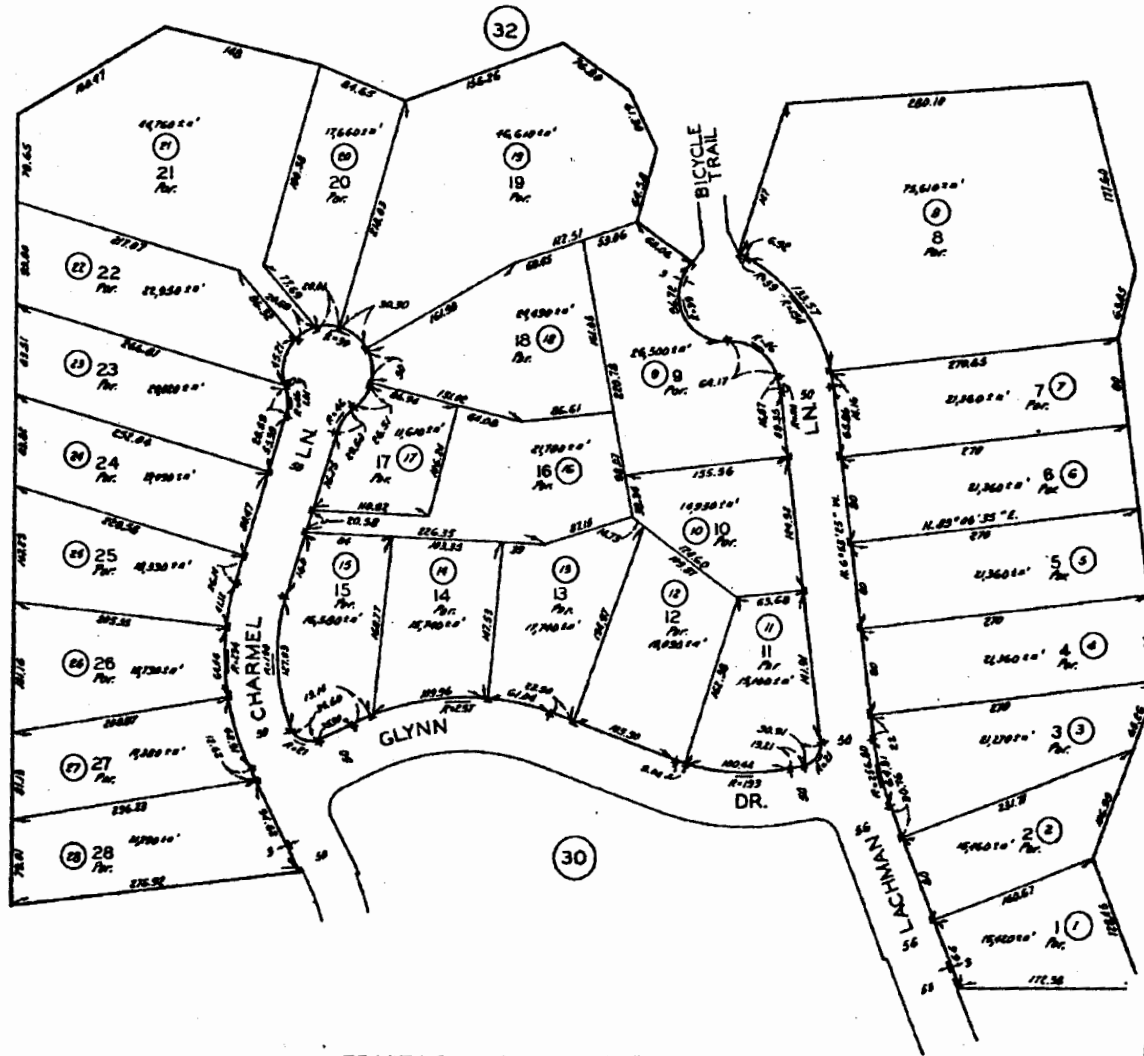


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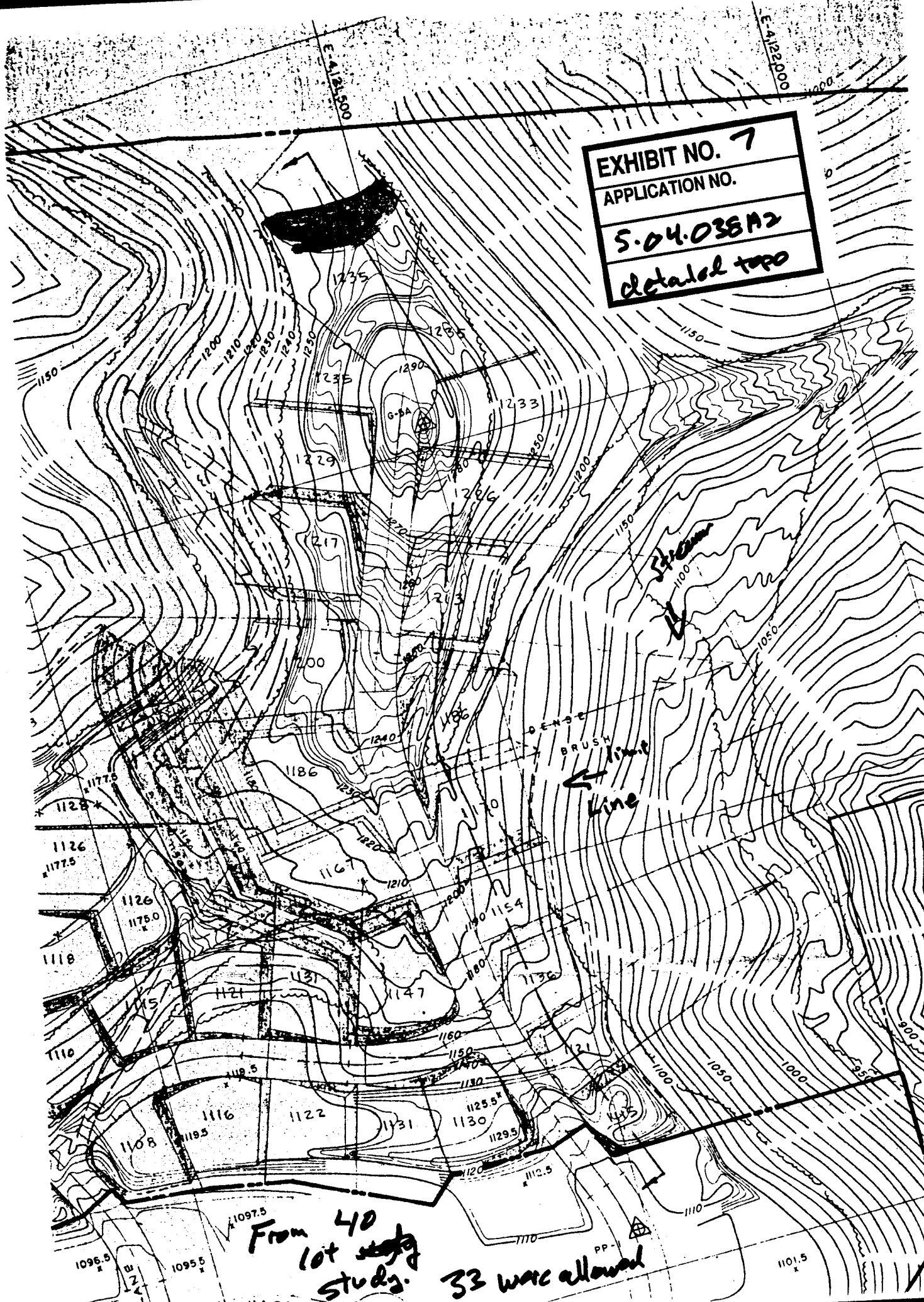
TRACT NO. 21601

M. B. 1011 - 34-39

4420-32

EXHIBIT NO. 6
APPLICATION NO.
504-035A2
tract

EXHIBIT NO. 7  
APPLICATION NO.  
S.04.038A2  
detailed topo



From 40 lot study  
33 were allowed

CHARMEL



<b>EXHIBIT NO. 8</b>
<b>APPLICATION NO.</b>
<b>6-04-038 A2</b>
<b>Applicant Memo</b>

MEMORANDUM

5-04-038

TO: Pamela Emmerson, Enforcement Supervisor  
California Coastal Commission

**RECEIVED**  
South Coast Region

FROM: Norris J. Bishton, Jr.

FEB 4 2004

DATE: February 3, 2004

CALIFORNIA  
COASTAL COMMISSION

RE: Application to Construct Retaining Wall and Pool - Lot 6, Tract No. 21601

Following is a summary of the situation with regard to Tract No. 21601 and the "grading limit line."

Eight lots were created in Tract No. 21601 along an east facing ridge line by the cut and fill method. In approving the development, the Coastal Commission specified that there would be no improvements beyond a "grading limit line." To the best of my knowledge, no such line was ever established. Neither you nor I have been able to locate a scaled drawing depicting an established "grading limit line." The document recorded for the purpose of requiring purchasers of the lots to abide by the restriction does not have an exhibit depicting where the line is located. From time to time, lines have been placed on scaled drawings indicating the easterly edge of the flat portion of each of the eight lots. The original grading actually extended further eastward. Fill was then used to taper a slope back to where the flat pads begin. Lots 1, 2, 4 and 5 have been improved with cantilevered swimming pools and decks built well down the slope below the pads. In the case of Lots 1, 2 and particularly Lot 4, the structures are clearly visible from the streets below, Via Floresta and Via Floresta Place. When Lot 9 was owned by Kobe Bryant, he obtained approval for a structure which was never completed. However, the Lot was excavated without regard to any "grading limit line."

Photographs accompanying this letter have been numbered in the upper left hand corner. Where appropriate, Lots 1 through 8 are indicated on the photographs. I have previously sent you photos of Lot 9.

Photo 1 depicts all eight lots as viewed from below. The swimming pool built on Lot 8 is not visible from below. See Photo 2. Photo 2 was taken from the cul-de-sac on Via Floresta Place, shooting upward. The Jacuzzi built on Lot 7 is not visible from below. Lot 6 is the applicant. Lot 5 has a cantilevered swimming pool visible from below. See Photo 3. However, efforts have been made, as can be seen in Photo 3, to shield the underside of the pool from view from below with vegetation.



Memorandum

February 3, 2004

Re: Application to Construct Retaining Wall and Pool – Lot 6, Tract No. 21601

Page 2

Lot 4 built a substantial improvement well down the slope. It is clearly visible from below. See Photo 4. Lot 3 has a low wall along the easterly edge of the flat pad area. See Photo 5. Lot 2 built a substantial improvement well down the slope. It is clearly visible from below. See Photo 6. Lot 1 also built a cantilevered pool visible from below.

Photo 7 depicts Lots 2 thru 6. Lot 6 has three easterly fences. The first has vegetation growing on it. The second fence depicted in the photo keeps the deer from eating the vegetation. The third fence on the lot line at the bottom of the slope is not visible in the photo. Lot 6 seeks to build a pool in the area west of the first fence. The pool is similar in design to the pool on Lot 8 and will **not** be visible from below.

Photo 8 depicts Lots 5 and 6. It is a closer view of the area where the pool would be located on Lot 6. Photo 9 is an even closer view. The pool will not extend eastward anywhere near as far as the improvements on Lots 4 and 5. Photo 10 was taken from the point where the southeast corner of the proposed pool would be located. The degree to which the improvements on Lots 4 and 5 project further to the east can readily be seen.

The proposed retaining wall is between Lots 6 and 7. The plan involves only a small amount of grading. As indicated on the plan, the total grading to be done is 128.05 cubic yards, for both the pool and the retaining wall. The soil removed will then be utilized to fill the existing pool and behind the proposed retaining wall. No soil will be hauled from the property.

NJB:cab

Attachments

5.04 038A  
Exhibit 8  
P2

# ARCHWEST DEVELOPMENTS, INC.

2716 OCEAN PARK BLVD., #2027, SANTA MONICA, CA 90405  
310/399-4116 FAX: 310/392-2117

---

May 28, 2004

**RECEIVED**  
South Coast Region

MAY 28 2004

COASTAL COMMISSION

Mr. & Mrs. Norris Bishton  
1544 Lachman Lane  
Pacific Palisades, CA 90272

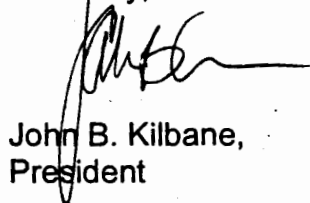
RE: Coastal Commission Application For Pool Permit  
1524 Lachman Lane, Pacific Palisades, CA.

Dear Mr. Bishton:

Based on research we did on this property and on your current residence two lots to the North, we are enclosing a drawing indicating where we believe the limit of the original grading was located. While not exact, based on the soils and geology investigations we did for the pool, the borings clearly show that the graded fill below the existing grade extends well beyond our proposed pool location. I have enclosed a copy of the section included in the soils report which shows the fill to be up to 10' deep and extending over the slope. This clearly proves that the outer edge of the rough grading for the lot extended beyond where the new pool is proposed to be located.

Please let me know if I can be of further assistance.

Sincerely,



John B. Kilbane,  
President

Encl.

Exh. 6.19

5.04.03842

engineer's  
letter

LAW OFFICES  
**BISHTON • GUBERNICK**  
SUITE 3210  
2029 CENTURY PARK EAST  
LOS ANGELES, CALIFORNIA 90067  
(310) 556-1801

NORRIS J. BISHTON, JR.  
JEFFREY S. GUBERNICK

FACSIMILE:  
(310) 556-1050

November 7, 1999

**VIA FACSIMILE AND U.S. MAIL**

Victor Penera  
Chief, Engineering Bureau  
Department of Building and Safety  
201 North Figueroa Street  
Los Angeles, CA 90012

Dear Mr. Penera:

RE: 1544 Lachman Lane, Lot 8 Tract 21601

My wife and I are the owners of the above indicated property.

We received a letter designated "Notice of Intent to Revoke Permits Issued for 1544 Lachman Lane" dated October 29, 1999 from you. I also received a copy of a letter to you from Gurdon Miller, Senior City Planner, referencing the building permits issued by DBS for 1544 Lachman Lane. The purpose of this letter is to reply to both letters.

We hereby demand that DBS take no action to revoke our building permits which were properly issued on February 5, 1999 after a long and careful review by DBS. Such action will only result in prolonged and costly litigation. DBS has already caused my wife and me substantial damage, to say nothing of the emotional distress, by refusing to inspect and thereby preventing my builder from completing the extensive concrete pour which he is poised to do.

We have expended hundreds of thousands of dollars on the construction of our home. The construction is at a critical point in the foundation stage. Substantial footings, some six feet deep, have been dug and lie exposed. The steel in the trenches will soon begin to rust and have to be removed and either cleaned or replaced. The trenches will have to be cleaned and possibly reexcavated. The stoppage of work is costing me thousands of dollars in direct construction costs, more in lost time, and thousands of dollars a month in interest costs. I may lose the services of my concrete contractor, which would require rebidding, greater expense and more time lost. Before DBS shut the project down, we were in position to complete the foundation before the rainy season. Every day of delay puts this in jeopardy. If we do not complete the foundation before the rainy season, we will be further damaged. We i

EXHIBIT NO. 10
APPLICATION NO.
5-0403872
App Letter
LA DBS

LAW OFFICES  
BISHTON • GUBERNICK

Victor Penera  
Chief, Engineering Bureau  
Department of Building and Safety  
November 7, 1999  
Page 2

and all of the persons and organizations who caused the ongoing damage we are suffering responsible.

Let's start with the facts.

We complied with every request of DBS before we were issued our permits. We asked for no variances. Our home is being built on a graded lot of a 33 lot development. Thirty of the lots have been previously developed, including 1524 Lachman where we built a house and have lived since 1985.

The lots in the Tract are subject to a General Covenant and Agreement which was recorded as Doc. No. 82-1146047. It provides that the developer agrees to "[r]estrict development in areas outside the permitted grading limit line, except as approved by the Executive Director of the California Coastal Commission...." Attached to the General Covenant is a nonscale drawing of the Tract with dotted lines depicting what appears to be the flat areas of the 33 lots after grading. No line on the drawing is identified as the "grading limit line." No one could ever precisely locate the dotted line on the ground from the information provided even if it had been identified as the grading limit line. Moreover, no one connected with DBS or the Coastal Commission has ever been able to produce a scaled drawing of the Tract with a line identified as the grading limit line.

When I purchased 1524 Lachman Lane in 1985, I requested and obtained a copy of the "as built" grading plan. In my law practice, I had represented homeowners in lawsuits involving lots created by cut and fill which had given way. Consequently, I carefully reviewed the soils reports and grading plans before I purchased 1524 Lachman. The grading plan which I obtained depicts the flat area on each lot and the easterly line of these flat areas is very similar to the dotted line on the drawing attached to the General Covenant. I have turned over to the Planning Department and to Pam Emmerson of the Coastal Commission a copy of the grading plan with the location of the home you approved located on the plan. I have met with Pam Emmerson and reviewed the plan. She indicated that the edge of the flat areas of the lots seems to conform to the dotted line on the drawing attached to the General Covenant and that is probably what was meant by the grading limit line. Solely for the purpose of discussion, I will refer to the dotted line and the line shown on the "as built" grading plan as the grading limit line.

Mr. Miller in his letter dated November 4, 1999 states that questions have been raised as to whether the development of Lot 8 is within the grading limit line. DBS issued our permits without requiring us to obtain a permit from the Coastal Commission with regard to the grading limit line for a very simple reason:

Exh. b. d 10  
P2  
5-04-036A2

LAW OFFICES  
BISHTON • GUBERNICK

Victor Penera  
Chief, Engineering Bureau  
Department of Building and Safety  
November 7, 1999  
Page 3

**WE ARE NOT BUILDING ANYTHING BEYOND THE GRADING LIMIT LINE AND  
WE HAVE NEVER PROPOSED BUILDING BEYOND THE GRADING LIMIT LINE.**

On November 5, 1999, when it had a chance to review our plans and the "as built" grading plan, the Planning Department determined it has no problem with our plans and has issued an Approval of Concept which we have delivered to the Coastal Commission.

Apparently, one or more persons or organizations have falsely charged that we are building beyond the grading limit line. Rather than find out the facts, DBS is using these false charges to shut down our project.

What action has DBS taken in the past with regard to the grading limit line? My present home, 1524 Lachman Lane is Lot 6, two lots south of Lot 8. Lots 1 through 5 are to the south along the same ridge line. After we bought Lot 6 in 1985, Lots 1 thru 5 were developed. What did DBS do with regard to the development of those lots? On four of the lots, Lots 1, 2, 4 and 5, DBS permitted the owners to build way beyond the edge of the flat area of each lot which we are assuming to be the grading limit line. I am informed by Pam Emmerson that none of the owners of the four lots obtained a permit from the Coastal Commission to build beyond the grading limit line. This is particularly galling to me because the construction on Lot 5 beyond the grading limit line cut off part of my view from my present house and necessitated my eliminating certain windows.

I am not building beyond the grading limit line on Lot 8, but you use false charges that I am to stop my project at a crucial stage, yet you permit four of my neighbors to build beyond the grading limit line.

In your letter you state that my building permit was issued by DBS "in error." Mr. Miller, in his letter, also states that the permits were issued "in error". If there was, in fact, an error, it was solely an error by DBS and Planning. Did DBS and Planning really make an error, or have they decided they made an "error" because of political pressure?

What DBS and Planning are now claiming to have been an error, instead represents a consistent interpretation by Planning and DBS of the Categorical Exclusion dated October 23, 1979 referenced by Mr. Miller in his letter.

Let's again start with the facts.

The Categorical Exclusion was issued in 1979, with the Tract in mind but before the Tract

5.041.038A: 5-5940X  
P 3  
Exhibit 10 EX 883

LAW OFFICES  
BISHTON • GUBERNICK

Victor Penera  
Chief, Engineering Bureau  
Department of Building and Safety  
November 7, 1999  
Page 4

was developed. IT IS NOT A RECORDED DOCUMENT. It was entered into as part of a "deal" with the owners of the seven referenced Tracts. It allowed the owners to proceed with the development of the seven tracts without having to get specific approval from the Coastal Commission. As part of the "deal", the owners agreed to give the land outside the developed lots to the State Parks System. It was understood by everyone that homes would be built with walls and fences and driveways on the lots. It was also understood that some of the lots would eventually be adjacent to State Park property after the excess land was deeded to and accepted by State Parks.

The Categorical Exclusion states that it shall not include "Developments on any lands within 100 feet of a State Park boundary." We will call this the "100 Feet Exception." This means that in a situation involving the 100 Feet Exception, a permit would have to be obtained from the Coastal Commission.

Does this mean "developments" on lands within 100 feet of a State Park boundary" as those boundaries existed in 1979? Or does it mean "developments" on lands within 100 feet of a State Park boundary after the boundaries were changed because the developers were required by the "deal" to deed the excess land surrounding the seven tracts to State Parks? I have been unable to locate any recorded document in connection with the Tract that indicated that this sentence was to be applied to the completed lots after the excess land was deeded to State Parks. Common sense would dictate that the Coastal Commission did not intend to grant an exclusion to the lots being developed and then at the same time intended to take the exclusion away when the lots were developed and the excess land was deeded to State Parks. In the past, DBS and Planning has consistently used common sense in interpreting the 100 Feet Exception.

Throughout the developments created pursuant to the Categorical Exclusion, there are walls, fences, driveways and structures within 100 feet of the boundary with State Parks created when the excess land was deeded to State Parks. No one has been able to point to even one instance where DBS has required that a permit be obtained because of proximity to the boundary with State Parks. In the past, DBS has interpreted the sentence as not requiring a Coastal Commission permit when the owner of a lot is building a house with its attendant driveways, fences, walls and structures on the lot created under the auspices of the Categorical Exclusion even though one or more of these developments might come within 100 feet of the new boundary with State Parks.

When we were issued our permits, DBS did not required that we obtain a Coastal Commission permit because some portion of what we were proposing to construct came within 100 feet of the new States Parks' boundary. This is consistent with what DBS has done with regard to the development that has occurred on other lots in the area. Now, DBS threatens to

S.03030A2  
Exhibit 10  
p4  
(S. 99408)  
EX 815



LAW OFFICES  
BISHTON • GUBERNICK

Victor Penera  
Chief, Engineering Bureau  
Department of Building and Safety  
November 7, 1999  
Page 5

revoke our permits because we did not obtain a Coastal Commission permit? The law requires that DBS interpret regulations in a consistent manner, not change its interpretation because of political pressure.

I supported the creation of the Coastal Commission. It is unfortunate that people use its regulations to harass developments they don't like.

Pam Emmerson requested that we file an application with the Coastal Commission so that she could deal with this situation in a formal way and we have done so. She understands the situation and is seeking to expedite a solution, but if a permit is required it could take up to eight weeks.

In the interim, our damages continue to mount because of DBS's refusal to allow us to complete the pending concrete pour. We hereby demand that DBS mitigate the damage by conducting the inspection we have repeatedly requested and allowing us to complete the pending concrete pour.

If DBS and Planning genuinely feels that their prior interpretation of the 100 Feet Exception was in error, it is still DBS's and Planning's error, not an error of myself and my wife that created this situation. We will obtain the Coastal Commission permit if that is deemed necessary by the Coastal Commission. We are seeking to do nothing but build our home on our property pursuant to permits we properly obtained.

It is in everyone's interest to resolve this problem as expeditiously as possible.

Very truly yours,

  
Norris J. Bishton, Jr.

NJB:ms

cc: Councilmember Cindy Miscikowski  
Kenneth G. Hahn, City Attorney  
Andrew Adelman, General Manager, Department of Building and Safety  
Robert Janovici, Chief Zoning Administrator  
Gurdon Miller, Senior City Planner

5.04 035 A2

P 5

Exh. 6. + 10

5-49 408 2  
E-885

LAW OFFICES  
BISHTON • GUBERNICK

Victor Penera  
Chief, Engineering Bureau  
Department of Building and Safety  
November 7, 1999  
Page 6

Andrew Montealegre, Planning Department Downtown Public Counter  
Pamela Emmerson, Enforcement Supervisor, California Coastal Commission  
Phillip K. Kaainoa, Office Manager, West District  
John Kilbane (Fax Only)  
Lawrence Holt (Fax Only)

PC  
Exhibit 10  
I.64 036A2

~~5-99406~~  
EX 9

Recorded at the request of and  
mail to:

82-1146047

RECEIVED  
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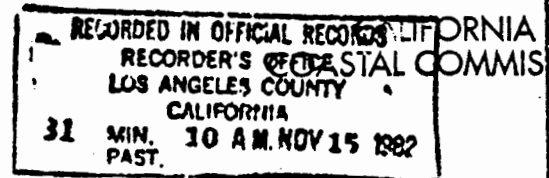
Palisades Ridge Co.

(Name)

1601 Palisades Dr.

(Address)

Pacific Palisades, CA 90272



Space above this line for Recorder's use

GENERAL COVENANT AND AGREEMENT

FEE  
\$5  
20

The undersigned hereby certify we are the owners of the hereinafter legally described real property located in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

Lots 1-33, Tract No. 21601 in the City of Los Angeles, County of Los Angeles, State of California as shown on map filed in Book 1011 pages 34 thru 39 of Maps in the office of the County Recorder of said County.

That in consideration of the granting by the California Coastal Commission of the Coastal development Permit A-390-78 and any and all amendments thereto, we do hereby promise, covenant and agree to and with the State of California to:

- (a) Restrict said Lots 1-33 from further subdivision for residential purposes, and
- (b) Restrict development in areas outside of the permitted grading limit line, except as approved by the Executive Director of the California Coastal Commission as provided for by Conditions B 4(a)(b) and (c) of said Permit A-390-78, and
- (c) Waive all claims against the public for damages due to flood, fire or geologic instability which may arise as a consequence of the approval for development of said Tract No. 21601.

This covenant and agreement shall run with all of the above described land and shall be binding upon ourselves, and future owners, encumbrancers, their successors, heirs or assignees and shall continue in effect until released by the authority of the California Coastal Commission of the State of California.

Dated this 6<sup>TH</sup> day of OCTOBER, 1981

PALISADES RIDGE CO., A GENERAL PARTNERSHIP  
(OWNER)

BY: WATT-NEU PARTNERSHIP, A GENERAL PARTNERSHIP  
(PARTNER OF PALISADES RIDGE CO.)

BY: WATT INTERESTS PARTNERSHIP, A GENERAL  
PARTNERSHIP (PARTNER OF WATT-NEU PARTNERSHIP)

BY: WATT INDUSTRIES INC., A CORPORATION  
(PARTNER OF WATT INTERESTS PARTNERSHIP)

BY: [Signature] PRESIDENT

BY: [Signature] SECRETARY

S.O. 038 AB  
Exh. 6.4 11  
P1

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES } SS

ON October 6, 1981, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED Angelo Adams KNOWN TO ME TO BE THE PRESIDENT, AND William Davis KNOWN TO ME TO BE THE General SECRETARY OF WATT INDUSTRIES INC., THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT, AND KNOWN TO ME TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF SAID CORPORATION, SAID CORPORATION BEING KNOWN TO ME TO BE A GENERAL PARTNER OF WATT INTERESTS PARTNERSHIP, A GENERAL PARTNERSHIP, SAID GENERAL PARTNERSHIP BEING KNOWN TO ME TO BE A GENERAL PARTNER OF WATT-NEU PARTNERSHIP, A GENERAL PARTNERSHIP, SAID GENERAL PARTNERSHIP BEING KNOWN TO ME TO BE A GENERAL PARTNER OF PALISADES RIDGE CO., THE GENERAL PARTNERSHIP THAT EXECUTED THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME PURSUANT TO ITS BYLAWS OR A RESOLUTION OF ITS BOARD OF DIRECTORS AS A GENERAL PARTNER OF WATT INTERESTS PARTNERSHIP THAT WATT INTERESTS PARTNERSHIP EXECUTED THE SAME AS A GENERAL PARTNER OF WATT-NEU PARTNERSHIP, THAT WATT-NEU PARTNERSHIP EXECUTED THE SAME AS GENERAL PARTNER OF PALISADES RIDGE CO., A GENERAL PARTNERSHIP AND THAT SAID LAST NAMED PARTNERSHIP EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL



SIGNATURE

Glennita O'Neil

S.04 038A2

Exh. b. 11  
p2

82- 1146047

BOARD OF  
BUILDING AND SAFETY  
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VICE-PRESIDENTCORINA R. ALARCON  
RODNEY DIAMONDCITY OF LOS ANGELES  
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MAYORDEPARTMENT OF  
BUILDING AND SAFETY  
301 NORTH FIGUEROA STREET  
LOS ANGELES, CA 90012ANDREW A. ADELMAN  
GENERAL MANAGERWALTER R. KRUKOW  
EXECUTIVE OFFICER

October 29, 1999

NJB Investments, Inc.  
2029 Century Park East  
Los Angeles, CA 90067

## NOTICE OF INTENT TO REVOKE PERMITS ISSUED FOR 1544 LACHMAN LANE

The Department of Building and Safety issued the following permits for 1544 Lachman Lane:

	<u>Permit No.</u>	<u>Date Issued</u>	<u>Project Description</u>
1.	98030-30000-02124	2/5/99	Site preparation
2.	98020-30000-02412	2/5/99	Retaining walls
3.	98020-30000-02412	2/5/99	New 3-story SFD w/attached garage

The Department of Building and Safety has determined that the first two (2) building permits listed above were not reviewed by the Department of City Planning prior to issuance of the permits for applicability of Los Angeles Municipal Code Section 12.20.2.1 with respect to Coastal Development Permits.

Furthermore, it has been brought to our attention that the Department of City Planning approval with respect to the Coastal Development Permit for the third (3<sup>rd</sup>) building permit listed above for a "new 3-story SFD w/attached garage" was issued in error.

Therefore, it is the intent of the Department of Building and Safety to revoke the above mentioned permits. The authority to revoke the permits is contained in Los Angeles Municipal Code Section 98.0601(a)2, which states:

*"The Department shall have the authority to revoke any permit, slight modification, or determination whenever such action was granted in error or in violation of other provisions of the code and conditions are such that the action should not have been allowed."*

If you want to discuss this matter before the Department takes its final action, please call Phillip Kaainoa, West Los Angeles District Office Manager, within 15 days of this letter at 310-575-8122.

  
VICTOR PENERA, Chief  
Engineering Bureau

File: 1544 Lachman Ln

Exh. b. t 12  
S.O. 4 038A2  
p. 1

City Engineer Notification  
4/2/99

BOARD OF  
BUILDING AND SAFETY  
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VICE-PRESIDENT

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FRANCISCO ARRIZON

BARBARA BOUDREAUX

CITY OF LOS ANGELES  
CALIFORNIAJAMES K. HAHN  
MAYOR

RECEIVED

DEC 15 2003

DEPARTMENT OF  
BUILDING AND SAFETY  
201 NORTH FIGUEROA STREET  
LOS ANGELES, CA 90012ANDREW A. ADELMAN, P.E.  
GENERAL MANAGERRAYMOND CHAN  
EXECUTIVE OFFICER

December 9, 2003

## APPROVAL LETTER

Log # 41831

SOILS/GEOLOGY FILE - 2

Mr. & Mrs. Bishton  
6710 Center drive west, Suite 925  
Los Angeles, CA 90045TRACT: 21601  
LOT: 6  
LOCATION: 1524 Lachman LaneCURRENT REFERENCE  
REPORT/LETTER(S)

Geology &amp; Soils Report

REPORT  
NO.

5466

DATE(S) OF  
DOCUMENT

09/10/2003

PREPARED BY

Ralph stone &amp; Co.

The above report concerning the proposed construction a retaining wall for the purpose of the rear yard area and to support the toe of the north side yard area has been reviewed by the Grading Section of the Department of Building and Safety. Friction piles founded in bedrock are recommended in the report for the proposed structural support. A reduced footing setback is recommended for the retaining wall due to the non habitable nature of the construction.

According to the report, the proposed retaining wall will be constructed into a 12 feet high south facing slope. The subsurface materials consist of up to 10 feet of fill over shale bedrock.

The report is acceptable, provided the following conditions are complied with during site development:

1. The geologist and soils engineer shall review and approve the detailed plans prior to issuance of any permits. This approval shall be by signature on the plans which clearly indicates that the geologist and soils engineer have reviewed the plans prepared by the design engineer and that the plans include the recommendations contained in their reports.
2. All recommendations of the report which are in addition to or more restrictive than the conditions contained herein shall be incorporated into the plans.
3. The applicant is advised that the approval of this report does not waive the requirements for excavations contained in the State Construction Safety Orders enforced by the State Division of Industrial Safety.
4. Existing uncertified fill shall not be used for support of footings, concrete slabs or new fill. (Code Section 91.7011.3 & 91.1806.1)



Page 2  
1524 Lachman Lane

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Exh. 6.1 13p2

5. The LABC Soil Type underlying the site is S.
6. All man-made fill shall be compacted to a minimum 90 percent of the maximum dry density of the fill material per the latest version of ASTM D 1557. (Code Section 91.7011.3)
7. The geologist and soil engineer shall inspect all excavations to determine that conditions anticipated in the report have been encountered and to provide recommendations for the correction of hazards found during grading. (Code Section 91.7008.3)
8. The proposed wall shall be supported on footings embedded into competent bedrock, as recommended.
9. Footings for the proposed wall adjacent to a descending slope steeper than 3:1 in gradient shall be a minimum distance of one-sixth the vertical height of the slope but need not exceed 20 feet measured horizontally from the face of the bedrock slope, as recommended. This footing setback is in lieu of the standard setback prescribed by the Building Code. (1806.5.6)
10. The proposed retaining wall shall be designed according to the recommendations provided on Plate 15 included in the report dated 09/10/2003.
11. All retaining walls shall be provided with a subdrain system to prevent possible hydrostatic pressure behind the wall. Prior to issuance of any permit, the retaining wall subdrain system recommended in the soil report shall be incorporated into the foundation plan which shall be reviewed and approved by the soil engineer of record. (7015.5 & 108.9)
12. Installation of the subdrain system shall be inspected and approved by the soil engineer of record and the City grading/building inspector. (7015.5 & 108.9)
13. Prefabricated drainage composites (Miradrain) (Geotextiles) may be only used in addition to traditionally accepted methods of draining retained earth.
14. All friction pile or caisson drilling and installation shall be performed under the inspection and approval of the Foundation Engineer. (Code Section 91.1807.1)
15. Pile and/or caisson shafts shall be designed for a lateral load of 1000 pounds per linear foot of shaft exposed to fill, soil and weathered bedrock. Information Bulletin P/BC2001-50 previously RGA 2-84.
16. The rear yard retaining walls shall be provided with a minimum freeboard of 2 feet, as recommended.
17. Temporary excavations up to 9 feet shall be sloped back at an angle not steeper than 80 degrees, and temporary excavations over 9 feet shall be sloped back at a gradient no steeper than 1:1, as recommended.
19. Grading shall be scheduled for completion prior to the start of the rainy season, or detailed temporary erosion control plans shall be filed in a manner satisfactory to the Department and the Department of Public Works, for any grading work in excess of 200 cu yd.



Page 3  
1524 Lachman Lane

20. All roof and pad drainage shall be conducted to the street in an acceptable manner.

ROBERT STEINBACH  
Chief of Grading Division

*Negishi H. Girmay*  
NEGISHI H. GIRMAY  
Engineering Geologist Associate II

*Raphael Cheng*  
RAPHAEL CHENG  
Geotechnical Engineer I

NHG/nhg/RHC:rhc  
LOG #41831  
(213) 482-0480

Ralph Stone & Company, Inc  
WLA District Office

5-04.038A2  
Exh. h + 13  
P 3

BOARD OF  
BUILDING AND SAFETY  
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CALIFORNIAJAMES K. HAHN  
MAYORDEPARTMENT OF  
BUILDING AND SAFETY  
201 NORTH FLOUEROA STREET  
LOS ANGELES, CA 90012ANDREW A. ADELMAN, P.E.  
GENERAL MANAGERRAYMOND CHAN  
EXECUTIVE OFFICER

January 23, 2004

## APPROVAL LETTER

Log # 42307

SOILS/GEOLOGY FILE - 2

Mr. & Mrs. Bishton  
6710 Center drive west, Suite 925  
Los Angeles, CA 90045TRACT: 21601  
LOT: 6  
LOCATION: 1524 Lachman LaneCURRENT REFERENCE  
REPORT/LETTER(S)  
Addendum ReportREPORT  
NO.  
5466DATE(S) OF  
DOCUMENT  
12/03/2003PREPARED BY  
Ralph Stone & Co.PREVIOUS REFERENCE  
REPORT/LETTER(S)  
Geology & Soils Report  
Approval LetterREPORT  
NO.  
5466  
Log #41831DATE(S) OF  
DOCUMENT  
09/10/2003  
12/09/2003PREPARED BY  
Ralph stone & Co.  
LADBS

The above current referenced addendum report concerning the proposed construction of a swimming pool and spa has been reviewed by the Grading Division of the Department of Building and Safety. The proposed construction is on top of a descending slope. Conventional footings and friction piles founded in bedrock are recommended in the report for supporting the proposed swimming pool. According to the addendum report, the existing pool will be abandoned and backfilled. Reports for the construction of a retaining wall on the property was previously approved by the Department on 12/9/03 (Log # 41831).

The current report is acceptable, provided the following conditions are complied with during site development:

1. All the conditions, except Conditions No. 8, 9, 10, 16, 17 and 20, of the Department's approval dated 12/9/03 (Log #41831) shall remain applicable.
2. All the recommendations of the report dated December 3, 2003, which are in addition to or more restrictive than the conditions contained herein shall be incorporated into the plans.
3. The proposed pool and spa shall be supported on footings embedded into competent bedrock, as recommended.
4. Footings for the proposed pool adjacent to a descending slope steeper than 3:1 in gradient shall be a minimum distance of one-sixth the vertical height of the slope but need not exceed 20 feet measured horizontally from the face of the bedrock slope, as recommended. This footing setback is in lieu of the standard setback prescribed by the Building Code. (1806.5.6)



Page 2

1524 Lachman Lane

5. Pool deck drainage shall be collected and conducted to an approved location via a non-erosive device. (7013.10).
6. The proposed swimming pool shall be designed for a freestanding condition.
7. The proposed pool wall shall be designed for a external minimum EFP of 35 pcf, as recommended.
8. A grading permit shall be obtained. (106.1.2)
9. Unsurcharged temporary excavations may be cut vertically up to a height of 5 feet. Portions of the excavation above this height shall be trimmed to no steeper than 1:1 (horizontal to vertical), as recommended.
10. When water over 3 inches in depth is present in drilled pile holes, a concrete mix with a strength of 1,000 psi over the design strength shall be tremied from the bottom up.
11. Prior to issuance of a permit involving dewatering as proposed in the report, clearances shall be obtained from: the Department of Public Works, and from the California Regional Water Quality Control Board. (Alt R, c160)

ROBERT STEINBACH  
Chief of Grading Division

*Negisti H. Girmay*  
NEGISTI H. GIRMAY  
Engineering Geologist Associate II

*Raphael Cheng*  
RAPHAEL CHENG  
Geotechnical Engineer I

NHG/RHC:nhg/rhc  
LOG #42307  
(213) 482-0480

cc: Ralph Stone & Company, Inc  
WLA District Office

5-041.38A2  
Exh. 6.4 14  
12

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



September 5, 2000

John Kilbane  
Archwest  
2716 Ocean Park Blvd. #1048  
Santa Monica, CA 90405

Re: A-390-78 Permit compliance: Request for Executive Director determination that construction of a pool past the grading limit line into area of "actual grading" at 1544 Lachman Lane, Pacific Palisades is consistent with the terms and conditions of permit A-390-78.

Staff has received your letter of August 21 regarding Mr. Bishton's pool and has reviewed the attached plans. After discussion, we have concluded that allowing the encroachment that you described over the grading limit line is NOT consistent with the conditions of the underlying permit, A-390-78. Therefore the staff is unable to approve the plans as you requested. If you have any questions concerning these issues, or to review the file, please contact Al Padilla at (562) 590-5071.

Thank you for your inquiry and your continued cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pam Emerson".

Pam Emerson  
Los Angeles Area Supervisor

Cc: Teresa Henry  
Deborah Lee  
Al Padilla  
Norris Bishton

5.04.038A2

Exh. h. + 15

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

TO: STATE COMMISSION

FROM: MICHAEL L. FISCHER

SUBJECT: AMENDMENT TO PERMIT NO. 390-78 (AMH CORPORATION)

5/20/80  
per staff  
YHT  
YHT  
N  
appeal

Procedures

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 Coastal Commission may approve an amendment if it finds that the revised development is consistent with the Coastal Act.

Development Description/Background

On July 17, 1979 the Commission granted Permit No. A-390-78 with conditions to the AMH Corp., which was requesting to subdivide two tracts to create 127 new residential building sites in the Santa Monica Mountains within the City of Los Angeles. As approved by the Commission the conditions allowed the applicant to create 36 lots in Tract 30453 as proposed, but limited development in Tract 21601 to creation of 30 additional building sites "... on the portion of the ridgetop site which was graded and is currently used for a horse corral and shed..." (Exhibit 1). In addition, the Commission's adopted findings and conditions were designed to guide future development proposed for the Headlands and AMH tracts, including defining an "Urban Limit Line" and limiting total buildout of the Headlands and AMH tracts to approximately 730 units. For AMH's remaining tract, the "golf course" site, the findings provided that 730 units could be developed on the site; the findings explained that this was a density bonus and provided that 1/3 of these units should be lower cost housing. The major issues which this appeal and the Headlands appeal raised were: the impact of additional traffic on recreational access, massive grading and its effect on scenic views and wildlife habitat, and the need to give guidance to the LCP in addressing future development proposals for buildout of the area.

Proposed Amendment

The applicant had originally requested an amendment to its permit to allow an additional 10 residential lots to be created along the ridgeline to the north of the urban limit line in Tract 21601. Since the April 15, 1980 hearing, the applicant has modified its requested amendment to allow (1) an additional 3 lots (for a total of 33 units) to be created within the urban limit line defined in the July 1979 permit (Exhibit 5); (2) subdivision of a 6 acre "recreation lot" in Tract 30453 into 6 residential lots (Exhibit 4); and (3) subdivision of up to 65 residential lots on 31 graded acres of the 235 acre Tract 40432 ("golf course" see Exhibit 3). This is a proposed increase over the July 1979 permit of 9 units on Tracts 30453 and 21601, but would represent a decrease of 35 units on the Golf Course site from what was found approvable in the findings of the July 1979 permit.

The proposed changes would not significantly increase the amount of grading, and, like the July 1979 permit, would limit development to those areas substantially graded prior to the Coastal Act of 1976, thus preserving the ridge-top knob on Tract 21601, Temescal Ridge and the Temescal Canyon drainage. To offset the adverse impacts of the traffic to be generated from the 140 units on the 3 tracts, the applicant would dedicate about 230 acres on Tracts 320601 and 40432 (Exhibits 3 & 5).

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Staff believes that the modest increase in density on Tracts 21601 and 30453 are readily offset by the larger decrease in density on Tract 40432, and that the proposed amendment is consistent with both the policies of the Coastal Act and the intent of the Commission's July 1979 permit action. Staff, therefore, recommends that the Commission adopt the following resolution:

I. Approval With Conditions.

The Commission hereby grants an amendment to the permit as described below, subject to the conditions below, 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 conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Conditions.

1. Scope. The following conditions shall replace the conditions Permit No. A-390-78 granted on July 1979 (Exhibit 6). Tract 21601 shall be limited to 33 lots to be located generally as shown in Exhibit 5. Tract 30453 shall be limited to 42 lots including the resubdivision of the 6 acre "recreation lot" into 6 estate lots generally as shown in Exhibit 4. Tract 40432 is approved for up to 65 single family residential lots to be located generally as shown in Exhibit 3. Prior to recordation of final maps for each tract the applicant shall submit final maps for the review of the Executive Director and his written certification that the maps conform to this approval. The Executive Director may approve minor modifications of the proposed tract provided that the changes do not either (1) increase the total density of the project, or (2) necessitate more extensive grading of undisturbed areas. Construction of a single family dwelling on each residential lot is authorized by this permit.

2. Development Limit Line. Prior to or concurrent with the recordation of each final map, the applicant shall record covenants running with the land of a form and content approved by the Executive Director. The instruments shall be recorded free of all prior liens and encumbrances except tax liens, shall be irrevocable, and shall bind the applicant and all successors in interest. The content of the covenants shall provide as follows:

- a. Prevent further division of the lands for residential purposes.
- b. Prevent development in areas outside of the grading limit line except as approved by the Executive Director as provided in the permit condition below.
- c. Waive all claims against the public for damages due to flood, fire, or geologic instability which may arise as a consequence of the approval of development of the Tracts.

3. Trail Easements. The applicant shall record an offer to dedicate trail easements to provide public access to Temescal Ridge over the existing trails and pathways on Lots 51 through 54 and Lot 65 of Tract 40453 (Exhibit 3). With the approval of the Executive Director, the applicant may relocate such trails where the existing alignment would interfere with residential development of the lots provided that such relocated trail is improved for continued use concurrent with grading of the lots. The offer to dedicate shall be of a form and content approved by the Executive Director; it shall be irrevocable for a period of 21 years, shall be made in favor of the State of California or other public or non-profit private associations approved by the Executive Director, and shall be recorded free of all prior liens and encumbrances.

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Ex 15 P

4. Revised Plans. Prior to recordation of final subdivision maps or start of construction, the applicant shall submit for the review and written approval of the Executive Director revised plans providing:

a. An emergency access road and pedestrian-bicycle path shall be provided as generally indicated in Exhibit 5, between the northern terminus of Iachman Lane serving Tract 21601 and the northern boundary of such tract. The road shall be designed and constructed so as to require the minimum amount of landform alternations and to provide an emergency entry to and exist from the Palisades Highlands development. The road shall be wide enough to accommodate two lanes of vehicles, and meet the minimum specifications of the City Fire Department but at no point should the roadway width exceed 18 ft. Cuts and fills required for construction of the road shall be the minimum required by City Engineering Department. Non-emergency use by vehicles shall be precluded by a service gate or other facility.

b. Subject to the review and approval of the Executive Director, in areas outside of the development limit line: minor grading may be performed to re-counter previously-graded land; paved or unpaved pathways and other incidental improvements for low-intensity recreation may be constructed; minor facilities to provide public or utility services which do not require significant grading may be installed if alternative locations are not feasible; vegetation within 100 ft. of any residential structure may be removed or altered for fire protection purposes.

c. Slope areas exposed by grading or other construction shall be revegetated with primarily endemic, drought- and fire-resistant vegetation. Landscaping shall be provided to screen future residential units from visibility from Topanga State Park.

5. Dedication. Prior to or concurrent with the recordation of final map for Tract 21601 the applicant shall record an offer to dedicate title to the approximately 25 acres northeast of the permitted residential lots on Tract 21601 (as generally shown in Exhibit 5). Prior to or concurrent with the recordation of a final map for Tract 40432, the applicant shall record an offer to dedicate title to the approximately 204 acres north east of the permitted residential lots off Tract 40432 (as generally shown in Exhibit 3). Both offers shall be of a form and content approved by the Executive Director. The offers shall be made in favor of the State of California, shall run with the land binding the applicant and all successors in interest, shall be irrevocable for a term of 21 years, and shall be recorded free of all prior liens easements and encumbrances except tax liens.

### III. Findings and Declarations.

The Commission finds and declares as follows:

1. Amendment Description. The applicant has proposed an amendment to Permit A-390-78 granted by the Commission in July of 1979. In that action the Commission approved subdivision of two tracts. Tract 30453 is a 30.6 acre site in a graded canyon below Tract 21601. The applicant proposed it for subdivision into 36 single family lots and a 6 acre recreation lots; the Commission approved it as proposed. Tract 21601 is a 59 acre site located along the ridge between Santa Ynez and Las Pulga canyon. The applicant proposed 90 units a 3 acre open space lot; the Commission approved 30 lots on a 10 acre site which had been substantially graded, and required preservation of the ungraded portions of the ridge. The major issues were density, traffic and access and grading as it affected scenic, habitat, and recreational resources. In the findings accompanying the approval, the Commission determined that development on the graded part the third tract, could also be approved.

S.OM 038A215 P3



The Commission found that about 100 lots could be created and developed on about 30 acres of the 235 acre Golf Course site (Now tentative Tract 40432). The Commission found that such development would be consistent with policies of the Coastal Act only if was offset by the dedication of the ungraded area for habitat and visual resource preservation and public recreation. The Commission noted that the decision was specifically intended to guide future permit applications and the Local Coastal Program so as to constitute a resolution of all the outstanding Coastal Act issues for the area.

In order to provide a greater return on the development of Tracts 21601 and 30453, not increase impacts identified in the Commission's action and to gain local support for Tract 40432, the applicant has proposed to reduce units on Tract 40432 to 65 units and increase the density in the other two tracts by 9 units. No greater amount of grading would be required, and all development would be located within the urban limit line specific in the Commission's conditions. (Exhibit 7).

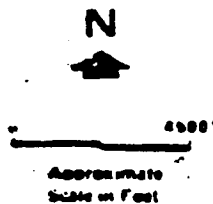
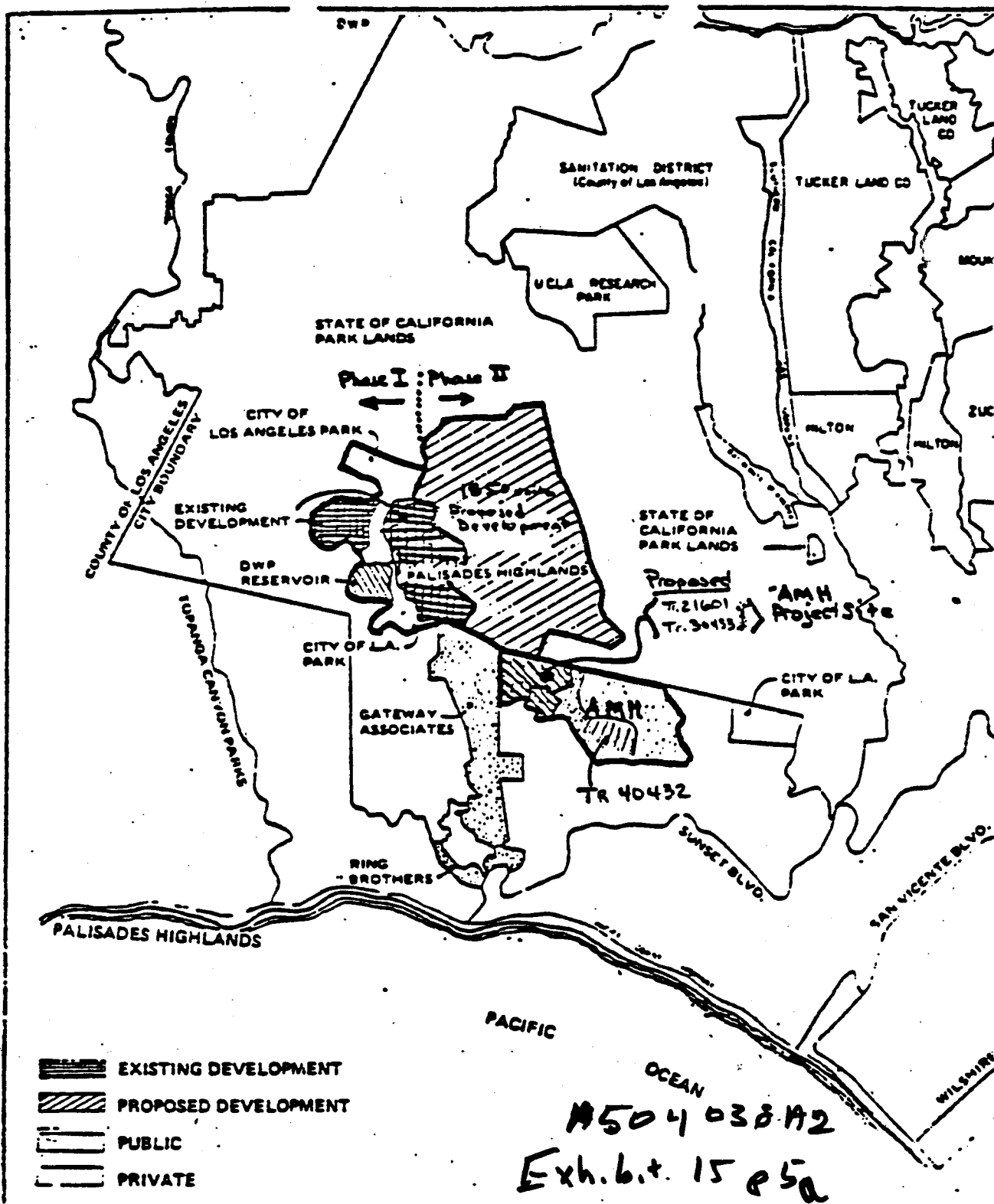
2. Resource Impacts. In the permit action the Commission found that a total of 167 units could be approved on the three tracts, if they were located so as to minimize grading and the consequent impacts on scenic and habitat resources, and if the undeveloped area was set aside for public recreational use to offset the impacts of the development on the ability of important coastal access routes (Sunset Blvd. and Pacific Coast Highway) to provide access for recreational use of beaches and mountain parks in western Los Angeles County. The changes proposed by this amendment would not increase the impacts on scenic as habitat resources since no greater area would be graded; furthermore the reduction of units to 140 would significantly reduce the amount of traffic generated by development of the three tracts. Because of the further reduction of impacts the Commission finds that the proposed amendment is consistent with the policies of the Coastal Act. Conditions on this approval are necessary to insure that the adverse impacts of the permitted development are offset by substantial public benefits in the form of the preservation and public recreational use of the undeveloped portions of the applicant's ownership adjoining Topanga State Park.

3. Tract 40432. The Commission, in approving this amendment, also approves development on the Golf Course Site — Tract 40432. The Brentwood — Pacific Palisades District Plan designates this entire site as "Recreation" in conformance with the City's pre-Coastal Act approval of a golf course on the site. Conditions on the City's permit require the construction of Temescal Canyon Road from Sunset Blvd. through the Temescal Canyon Significant Ecological Area (SEA) in order to reduce the traffic on Bienvenida Avenue. Some grading of presently undeveloped portions the site would be required to construct the golf course. As noted in the findings on the Commission's July 1979 permit, construction of Temescal Canyon Road in the SEA, and further grading in undeveloped areas would be inconsistent with Section 30240 of the Coastal Act. Moreover, this site is remote from main roads, and has very steep, rocky and generally difficult terrain, even where already graded, thus making it unsuitable for construction of a golf course. By contrast, the graded portions site as appropriate for residential development, which would require no significant expansion of the already graded area and would not necessitate the construction of Temescal Canyon Road. Because approximately 152 acres of the total 224 acres of the tract would be dedicated for recreational use as part of Topanga State Park an additional 40 acres would not be graded but would be left in private open space. The Commission can approve development of the graded 31 acres of the site consistent with the policies of the Coastal Act. The site plan provided by the applicant (Exhibit 3) provides adequate information for Commission action despite the lack of final local approvals for this tract.

EXHIBIT 15 P 4  
5.041 038 A2

4. Precedent. As the Commission noted in its findings in July of 1978, these tracts may be approved only because the significant impacts of buildout have been identified and mitigated to the maximum extent feasible, in a comprehensive review of all potential large scale development in Pacific Palisades. The Commission is fully aware that the scope of these approvals is one which is generally more appropriate to a Local Coastal Program. However, because of the already extensive planning and permit reviews of this project by the City of Los Angeles the City's reluctance to further review this area in its Local Coastal Program and the extent of mitigation as offered by the applicant and confirmed by the conditions, the Commission finds these projects may be approved prior to certification of the City's LCP. In conformance with Section 30625 of the Coastal Act, this decision shall guide preparation of the Local Coastal Program for this area.

Exhibit 15 ps  
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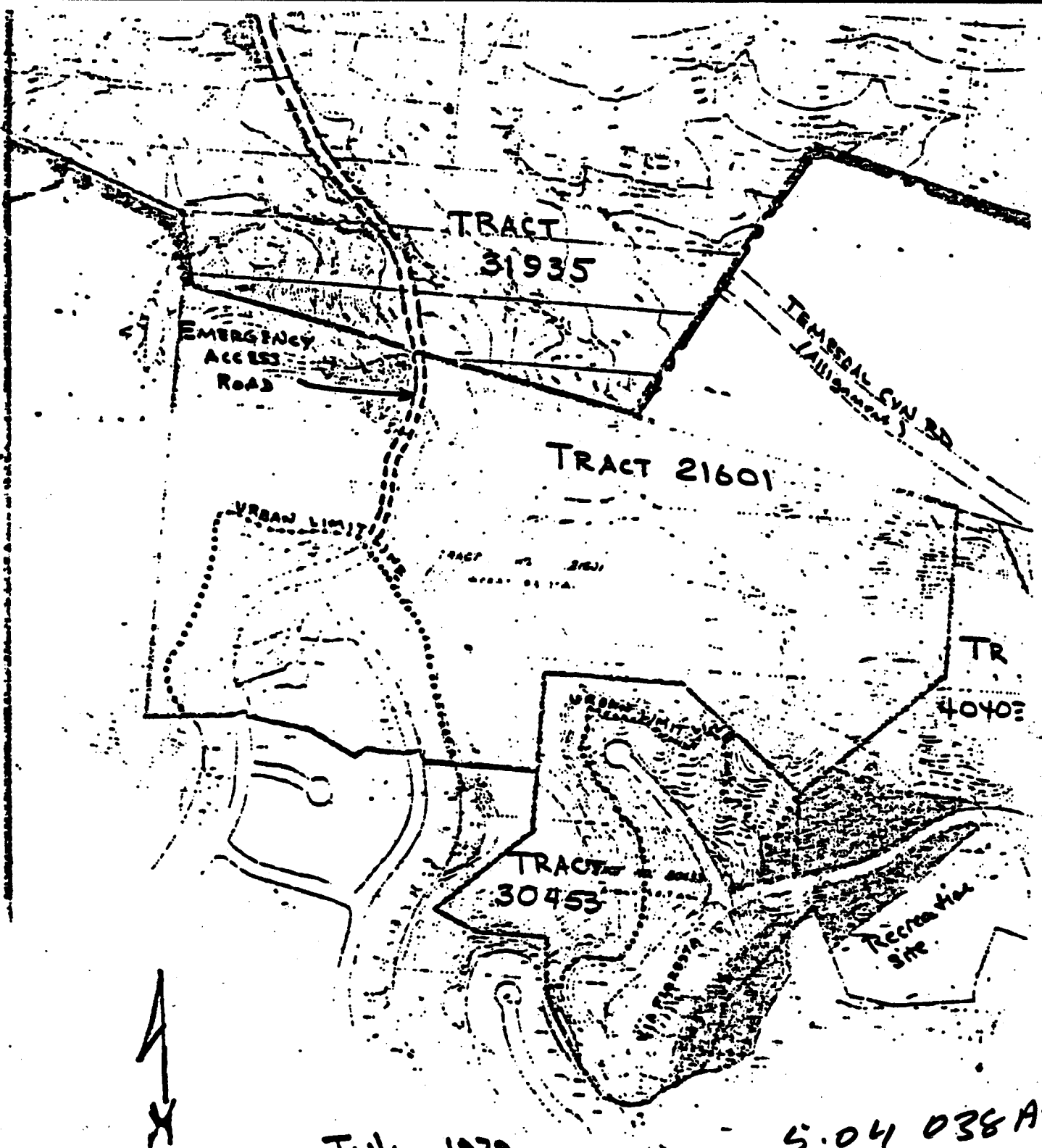


# OWNERSHIP OF MAJOR LANDHOLDINGS SURROUNDING PALISADES HIGHLANDS

Source: VTN - Van Nuys, California

Exhibit 1.





July 1979  
permit

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Exhib. 1/2  
P6

Exhibit 2

CD

5.04 D36A  
Exh. b. + 15  
P 7

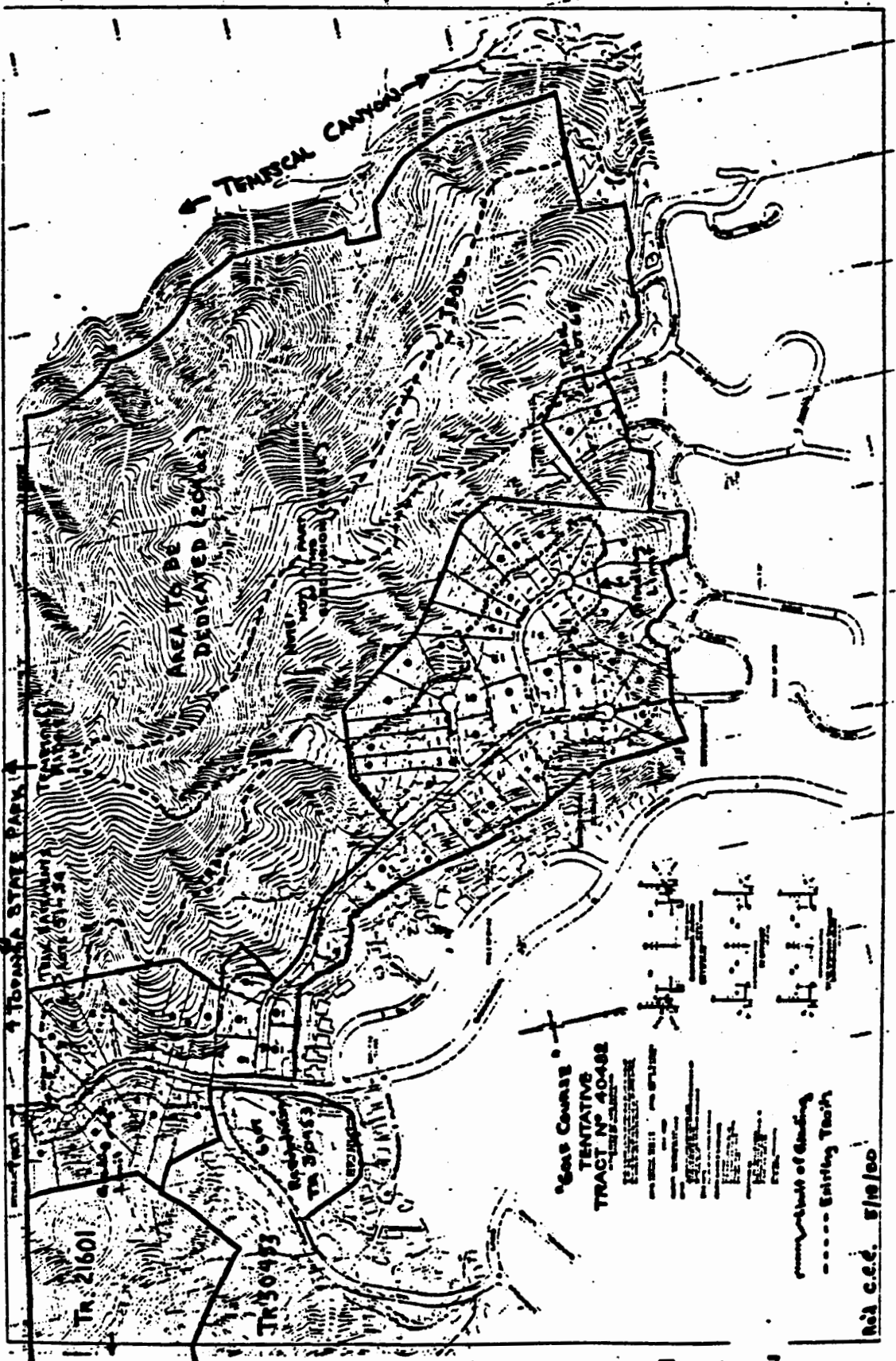


Exhibit 3

5-04 838A2  
Exhibit 15  
p8

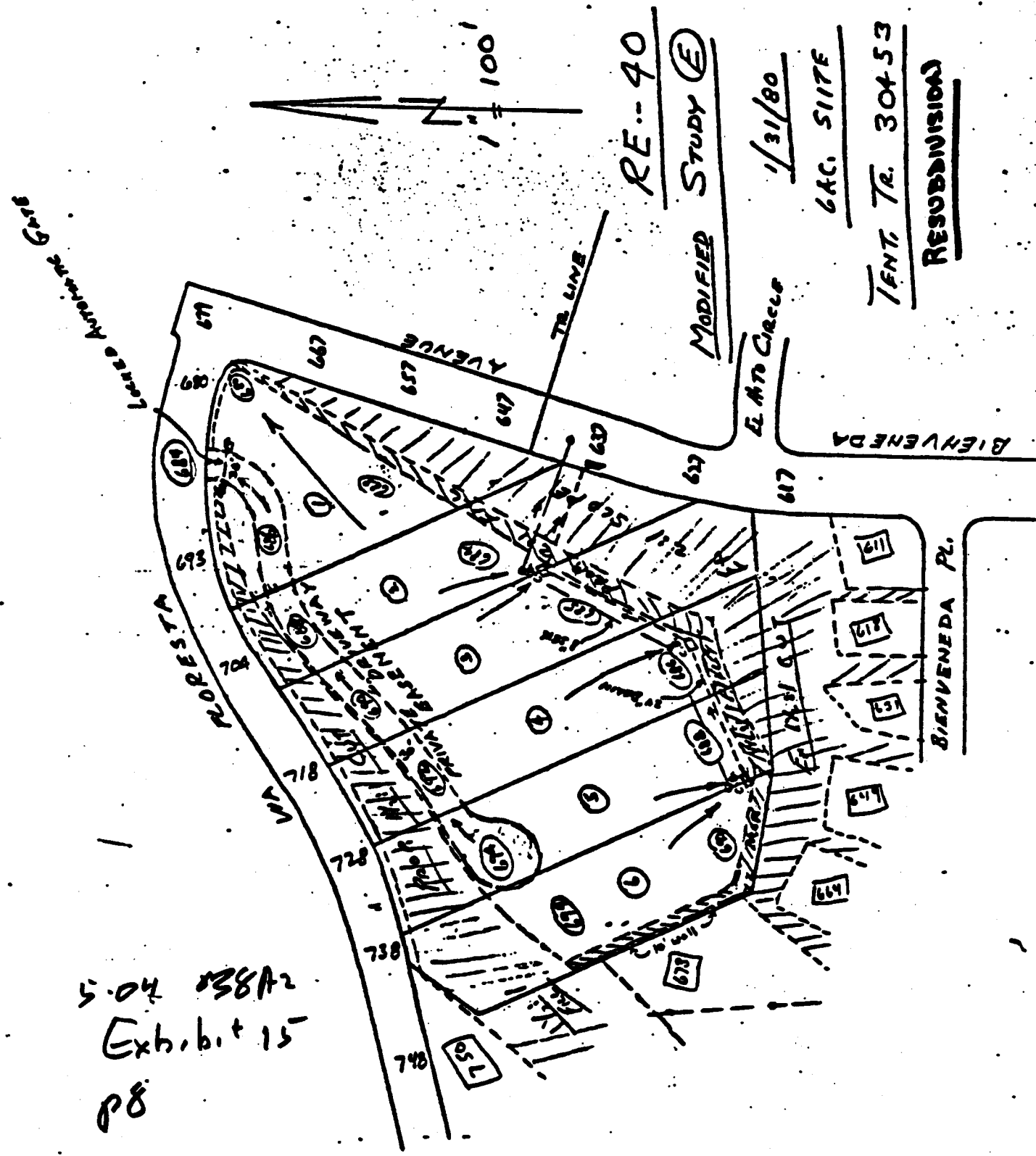


Exhibit 4

↑ TR 31935 ↑

~~XXXXXX~~ "Soft Rock"  
(Approx. location)

Emergency  
Access  
Road  
To  
HEADLANDS

AREA TO  
BE  
DEDICATED (28<sup>ac</sup>)

Grading  
Creek

Grading  
Creek

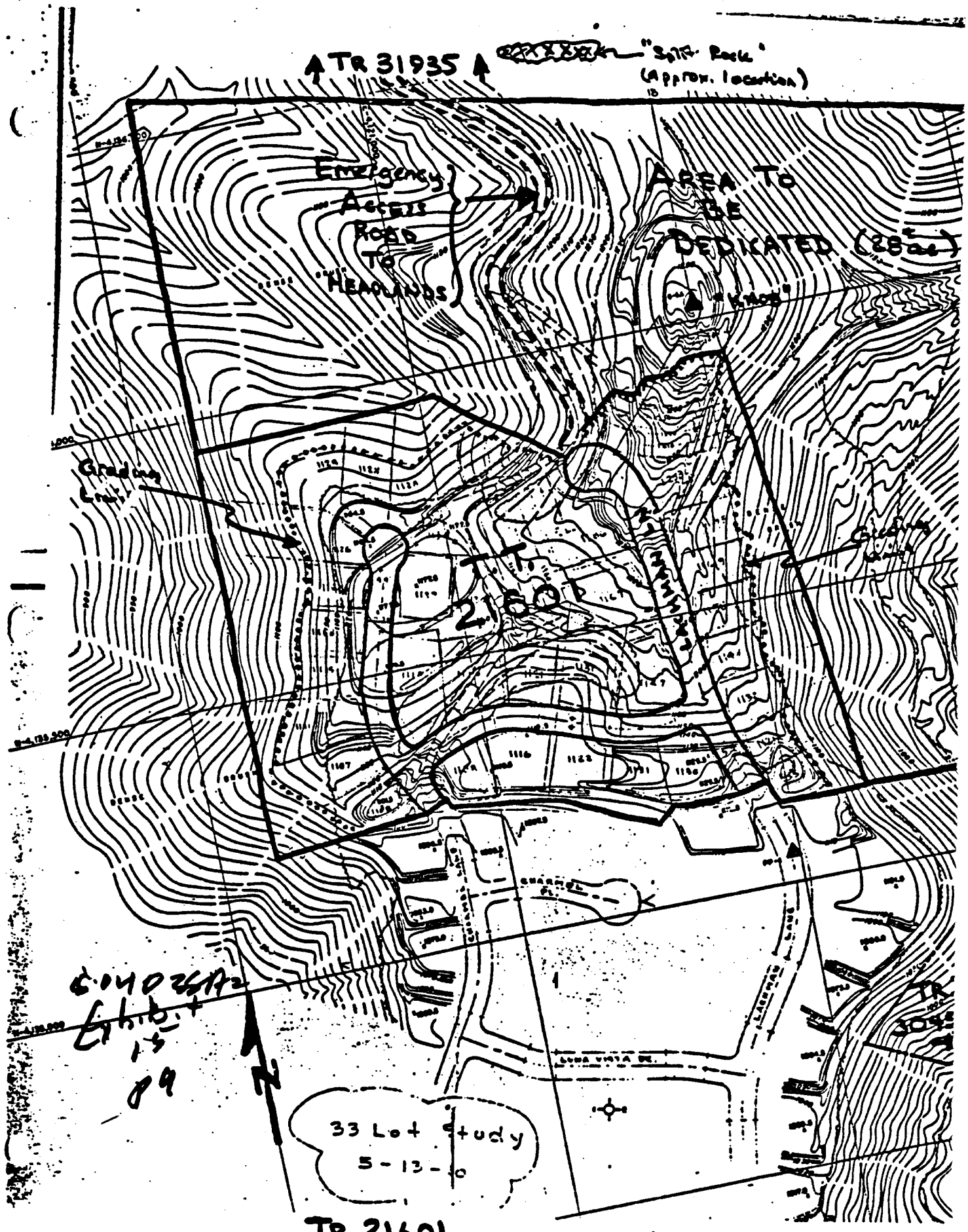
21601

60402672  
Exhibit  
15  
89

N

33 Lot Study  
5-13-0

TR 21601





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

REVISED STAFF RECOMMENDATION

Appeal No. 390-78  
(AMH Corporation)  
Hearing Opened: 11/17/78

DECISION OF  
REGIONAL  
COMMISSION:

Permit granted with conditions by the South Coast Regional Commission

PERMIT  
APPLICANT:

AMH Corporation

DEVELOPMENT  
LOCATION:

North of terminus of Lachman Lane, Charnel Lane, and Bienveneda Avenue,  
Pacific Palisades, City of Los Angeles (Exhibits 1, 2)

DEVELOPMENT  
DESCRIPTION:

Subdivision of two tracts totaling 89.7 acres into 127 residential lots  
and a 3.6-acre open-space lot, grading for streets and lots, installation  
of streets and utilities (Exhibit 4)

APPELLANTS:

Pacific Palisades Property Owners Association, Topanga Association for  
a Scenic Community, Temescal Canyon Association, David M. Brown

PUBLIC HEARING: Opened November 14, 1978, in Santa Barbara

STAFF NOTE:

The project proposed in this appeal would create 127 new residential building sites in the Santa Monica Mountains within the City of Los Angeles. In the vicinity of this project, there are subdivisions proposed which would create a total of 2,200 new residential units. In addition the area holds the potential for considerable new development on already subdivided and improved lots. The Commission has long been concerned over the impacts of creating new residential building sites in the area, an area which is of critical importance for access to coastal recreation areas, but which is served by roads which are at or over capacity at peak hours. Each year millions of people in the Los Angeles area use the Malibu beaches and the Santa Monica Mountains for recreation because the area is within an hour or two hour drive from their homes. The most severe bottleneck in the road network providing access to these recreation areas is in the vicinity of Pacific Coast Highway at Sunset Boulevard. This and similar projects proposed in the area would increase the local residential traffic burden at this bottleneck. As proposed, the project would involve massive amounts of grading, cutting as much as 120 ft. off ridges and filling canyons as deep as 150 ft. These landform alterations would have substantial adverse visual and habitat impacts. The project site is visible from the coastal areas of Santa Monica and Venice as well as from wilderness areas in Topanga State Park. Because of these impacts, the staff does not believe that the project, as proposed, could be approved as consistent with the Coastal Act.

However, the staff believes that a reduced project could be approved on a portion of the project site in the context of an overall reduction of the potential for new residential development in the area. Therefore, the staff is recommending approval of (1) all of Tract 30453 as proposed by the applicant to create 36 single-family resident

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Exh. 6.1 15 P 10

7/17-18/79

Exhibit 6

lots in the canyon area already substantially graded; (2) a portion of Tract 21601 to allow creation of 30 residential building sites on the portion of the ridgetop site which was graded and is currently used for a horse corral and shed, and; (3) grading and installation of subdivision improvements for these permitted tracts. The approval would not allow massive grading on the highly visible ridgelines of Tract 21601.

In addition to approval of 66 units in this project and a 180-unit project on Tract 31935 in Palisades Highlands (Appeal No. 381-78, Headlands), the staff recommends that the Commission adopt specific findings to guide the Local Coastal Program for the area; the proposed findings indicate that future development of tracts owned by AMH and Headlands should be limited to a total of about 500 dwelling units in order to preserve the public's ability to use Sunset Boulevard and Pacific Coast Highway for access to coastal recreation areas to limit landform alteration and to preserve the visual and habitat resources present in these areas.

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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 is in conform with the provisions of Chapter 3 of the Coastal Act, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Conditions

1. Prior to recordation of final subdivision maps or start of construction, the applicant shall submit for the review and written approval of the Executive Director revised plans providing:

a. A survey performed by a Licensed Surveyor or Registered Professional Engineer describing an urban limit line enclosing the areas in Tracts 30453 and 21601 approved for residential development as shown generally in Exhibit 10.

b. Tract 21601 shall be limited to lots for 30 single-family residential units with all graded building pads to be located within the urban limit line specified in 1a above. No grading or other development, except as provided below, shall be performed outside of the urban limit line.

c. An emergency access road and pedestrian-bicycle path shall be provided as generally indicated in Exhibit 10, between the northern terminus of public roadways serving Tract 21601 and the northern boundary of such tract. The road shall be designed and constructed so as to require the minimum amount of landform alterations and to provide an emergency entry to and exit from the Palisades Highlands development. The road shall be wide enough to accommodate two lanes of vehicles, but at no point

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Exh. 10 15 P"

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shall the graded width exceed 40 ft. Except as necessary to accommodate pedestrian and bicycle use, the road shall not be paved. Non-emergency use by vehicles shall be precluded.

d. Subject to the review and approval of the Executive Director, in areas outside of the urban limit line: minor grading may be performed to re-contour previously-graded land; paved or unpaved pathways and other incidental improvements for low-intensity recreation may be constructed; minor facilities to provide public or utility services which do not require significant grading may be installed if alternative locations are not feasible; vegetation within 100 ft. of any residential structure may be removed or altered for fire protection purposes.

e. Slope areas exposed by grading or other construction shall be revegetated with primarily endemic, drought- and fire-resistant vegetation. Landscaping shall be provided to screen future residential units from visibility from Topanga State Park.

2. All construction shall be in conformance with the approved plans. A Registered Professional Engineer or Licensed Engineering Geologist shall certify that all grading is in conformance with the approved plans.

3. Prior to recordation of final subdivision maps, the applicant shall record instruments in a form approved in writing by the Executive Director. Such instruments shall be considered covenants running with the land in favor of the People of the State of California, shall be recorded free of prior liens and encumbrances except tax liens, and shall bind the applicants and all successors in interest. The content of such instruments shall provide specifically as follows:

a. Prevent further division of lands for residential purposes within Tracts 30453 and 21601.

b. Prevent development in areas outside of the urban limit line except as approved by the Executive Director as provided in the permit conditions above.

c. Waive all claims against the public for damages due to flood, fire, or geologic instability which may arise as a consequence of the approved development of Tracts 30453 and 21601.

d. Offer to grant a scenic, conservation, or open-space easement to preserve the natural open space and scenic values on the undeveloped lands in Tract 21601, which are not within lots created for residential use. The offer shall be irrevocable for a term of 21 years and be made in favor of a public agency or private, non-profit association approved by the Executive Director.

e. Offer to grant easements to allow public recreational use of the emergency access roads in Tract 21601 and to allow public recreational use of a 10- to 25-ft.-wide corridor over lands owned by the applicant adjacent to Tract 21601, located between the northern terminus of Bienvenida Avenue and the southern boundary of Topanga State Park. The exact width and alignment shall be approved by the Executive Director. The offer shall be irrevocable for a term of 21 years and made in favor of a public agency or private association approved by the Executive Director.

Exhibit 15  
p 12  
S.01 D36 A-2

Exhibit 6