

Attachment D

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Recording Requested by and
When Recorded, Mail to:

Permit No.: LL90032/33
Applicant Name: Rothman
Project Planner: Bessire

Monterey County Planning and
Building Inspection Department
Post Office Box 1208
Salinas, CA 93902

09783

RECORDED AT REQUEST OF

NO FEE

COUNTY OF MONTEREY
FEB 4 8 25 AM '94

CONSERVATION AND SCENIC EASEMENT DEED

OFFICE OF RECORDER
COUNTY OF MONTEREY
SALINAS, CALIFORNIA

THIS DEED made this 21st day of September

by and between Marshal Rothman

as Grantor, and the COUNTY OF MONTEREY, a political subdivision
of the State of California, as Grantee,

WITNESSETH:

WHEREAS, said Grantor is the owner in fee of the real
property more particularly described in Exhibit "A" attached
hereto and made a part hereof, situated in Monterey County,
California (hereinafter "the property"); and

WHEREAS, the said land of said Grantor has certain natural
scenic beauty and existing openness; and

WHEREAS, the Grantor and the Grantee desire to preserve and
conserve for the public benefit the great natural scenic beauty
and existing openness, natural condition and present state of use
of said property of the Grantor; and

WHEREAS, the California Coastal Act of 1976, (hereinafter
referred to as the "Act") requires that any coastal development

permit approved by the County must be consistent with the provisions of the certified Local Coastal Program (LCP); and

WHEREAS, pursuant to the Act, and the LCP, Grantor applied to the County for a permit to undertake development as defined in the LCP; and

WHEREAS, a coastal development permit (Permit No. LL90032/33 and LL88010) was granted on October 29, 1993, by the County in accordance with the provisions of the Staff Recommendation and Findings, attached hereto as Exhibit "B" and hereby incorporated by reference, subject to the following condition(s):

"The owner shall grant a Scenic Easement to the County over those portions of the property within the Critical Viewshed and over existing vegetated areas without which future development of the theoretical building envelopes would be located within critical viewshed. Said area shall be defined by a licensed registered surveyor and shall be subject to the approval by the Director of Planning and Building Inspection. This requirement is consistent with the Monterey County Coastal Implementation Plan Section 20.145.030 subdivision A (g and h). (Planning and Building Inspection)

WHEREAS, the County, acting on behalf of the People of the State of California and pursuant to the Act, and in accordance with the findings contained in Resolution No. 92-67 attached hereto as Exhibit "C" and hereby incorporated by reference,

granted the permit to the Grantor upon condition (hereinafter the "Condition") requiring inter alia, that the Grantor record a conservation and scenic easement over the property as shown in Exhibit "D" attached hereto and hereby incorporated by reference, and agree to restrict development on and use of the property so as to preserve the open space, scenic, and/or natural resource values present on the property and so as to prevent the adverse direct and cumulative effects on coastal resources and public access to the coast which could occur if the property were not restricted in accordance with this easement; and

WHEREAS, the County has placed the Condition on the permit because a finding must be made under the law that the proposed development is in conformity with the provisions of the certified Local Coastal Program and that in the absence of the protections provided by the Condition said finding could not be made; and

WHEREAS, Grantor has elected to comply with the Condition and execute this easement so as to enable Grantor to undertake the development authorized by the Permit; and

WHEREAS, it is intended that this easement is irrevocable and shall constitute enforceable restrictions within the meaning of Article XIII, Section 8, of the California Constitution and that said easement shall thereby qualify as an enforceable restriction under the provision of the California Revenue and Taxation Code, Section 402.1; and

WHEREAS, the said Grantor is willing to grant to the County

of Monterey the scenic use as herein expressed of the said land, and thereby protect the present scenic beauty and existing openness by the restricted use and enjoyment of said property by the Grantor through the imposition of the conditions hereinafter expressed;

NOW, THEREFORE, for and in consideration of the premises, the Grantor does hereby grant and convey unto the County of Monterey an estate, interest, and conversation and scenic easement in said real property of Grantor of the nature and character and to the extent hereinafter expressed, which estate, interest, and easement will result from the restrictions hereby imposed upon the use of said property by said Grantor, and to that end and for the purposes of accomplishing the intent of the parties hereto, said Grantor covenants on behalf of itself, its heirs, successors, and assigns, with the said Grantee, its successors and assigns, to do and refrain from doing severally and collectively upon the Grantor's said property the various acts hereinafter mentioned.

A. LAND SUBJECT TO EASEMENT. The land of the Grantor hereinabove referred to and to which the provisions of this instrument apply is situated in the County of Monterey, State of California, and is particularly described in Exhibit "D", attached hereto, and made a part hereof.

B. RESTRICTIONS. The restrictions hereby imposed upon the use of said property by the Grantor and the acts which said Grantor shall refrain from doing upon the said property in con-

nection herewith are, and shall be, as follows:

1. That no structures will be placed or erected upon said described premises except such structures as may be permitted by governmental agencies having jurisdiction over subject property which can be proven to be out of the critical viewshed and do not require significant vegetation removal increasing exposure to the critical viewshed, any underground structures, gardens, patios, utility lines and septic systems

2. That no advertising of any kind or nature shall be located on or within said property except real estate sale signs in conformance with county regulations.

3. That the Grantor shall not plant nor permit to be planted any vegetation upon said premises, except _____

4. That, except for the construction, alteration, relocation and maintenance of public roads, public and private pedestrian trails, _____ the general topography of the landscape shall be maintained in its present condition and no excavation or topographic changes shall be made.

5. That no use of said described property which will or does materially alter the landscape or other attractive scenic features of said land other than those specified above shall be done or suffered.

C. EXCEPTIONS AND RESERVATIONS. The following are except-

ed and reserved to the Grantor:

1. The right to maintain all existing private roads, bridges, trails and structures upon said land, and the right to

2. The use and occupancy of said land not inconsistent with the conditions and restrictions herein imposed.

D. SUBJECT TO ORDINANCES. Land uses permitted or reserved to the Grantor by this instrument shall be subject to the ordinances of Grantee regulating the use of land.

E. BENEFIT AND BURDEN. This grant of conservation and scenic easement shall run with and burden the property, and all obligations, terms, conditions, and restrictions hereby imposed shall be deemed to be covenants and restrictions running with the land and shall be effective limitations on the use of the property from the date of recordation of this document and shall bind the Grantor and all of its successors and assigns. This grant shall benefit the County of Monterey and its successors and assigns forever.

F. RIGHT OF ENTRY. The Grantee or its agent may enter onto the property to ascertain whether the use restrictions set forth above are being observed at times reasonably acceptable to the Grantor. The public may enter onto the property for scientific research purposes at times reasonably acceptable to the Grantor.

G. ENFORCEMENT. Any act or any conveyance, contract, or authorization whether written or oral by the Grantor which uses

or would cause to be used or would permit use of the property contrary to the terms of this offer will be deemed a breach hereof. The Grantee may bring any action in court necessary to enforce this grant of easement, including, but not limited to, injunction to terminate a breaching activity and to force the restoration of all damage done by such activity, or an action to enforce the terms and provisions hereof by specific performance. It is understood and agreed that the Grantee may pursue any appropriate legal and equitable remedies. The Grantee shall have sole discretion to determine under what circumstances an action to enforce the terms and conditions of this grant of easement shall be brought in law or in equity. Any forbearance on the part of the Grantee to enforce the terms and provisions hereof in the event of a breach shall not be deemed a waiver of Grantee's rights regarding any subsequent breach.

H. MAINTENANCE. The Grantee shall not be obligated to maintain, improve, or otherwise expend any funds in connection with the property or any interest or easement created by this grant of easement. All costs and expenses for such maintenance, improvement use, or possession shall be borne by the Grantor, except for costs incurred by Grantee for monitoring compliance with the terms of this easement.

I. LIABILITY AND INDEMNIFICATION. This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees are to be

free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or property of any kind whatsoever and to whomsoever belonging, including Grantor, from any cause or causes whatsoever, except matters arising out of the sole negligence of the Grantee, while in, upon, or in any way connected with the property, Grantor hereby covenanting and agreeing to indemnify and hold harmless the Grantee, its agencies, departments, officers, agents, and employees from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses however occurring. The Grantee shall have no right of control over, nor duties and responsibilities with respect to the property which would be subject the Grantee to any liability occurring upon the land by virtue of the fact that the right of the Grantee to enter the land is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the land for the purposes of correcting any dangerous condition as defined by California Government Code Section 830.

J. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, exceptions, obligations, and reservations contained in this conveyance shall be binding upon and inure to the benefit of the successors and assigns of both the Grantor and the Grantee, whether voluntary or involuntary.

K. CONSTRUCTION OF VALIDITY. If any provision of this conservation and scenic easement is held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby

affected or impaired.

Executed this 1ST day of OCTOBER, 1993,
at MILL VALLEY, California.

Signed: _____

[Signature]
MARSHAL ROTHMAN
Type or print name of above
GRANTOR

Signed: _____

Type or print name of above
GRANTOR

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF MARIN) ss.

On this 1ST day of OCTOBER in the year 1993, before me,
MARY H. HERR, personally appeared MARSHAL ROTHMAN
, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument, and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Mary H. Herr
Mary H. Herr
Notary Public



This is to certify that the Conservation and Scenic Easement Deed set forth above is hereby acknowledged by the Board Chair on behalf of the Monterey County Board of Supervisors pursuant to the action of the Minor Subdivision Comm. when it granted Coastal Development Permit No. LL90032/33 & LL88010 on October 29, 1993 and the Monterey County Board of Supervisors consents to recordation thereof by its duly authorized officer.

DATED: February 1, 1994

Deborah M. ...
Chair, Monterey County Board
of Supervisors

ATTEST:

DATED: 2/1/94

Anne Arce
Clerk of Said Board

Document Form/Content Acceptable:

J.R. Ramos 10-19-93
County Counsel

RS
Department of Planning and
Building Inspection

STATE OF CALIFORNIA
COUNTY OF MONTEREY

)
) ss.

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On this 1st day of February, 1994, before me, Ernest K. Morishita, Clerk of the Board of Supervisors, in and for said County and State, personally appeared BARBARA SHIPNUCK, known to me to be the Chairperson of said Board of Supervisors of the County of Monterey, and known to me to be the person who executed the within instrument on behalf of said political subdivision, and acknowledged to me that such County of Monterey executed the same.

ERNEST K. MORISHITA, Clerk of the
Board of Supervisors of Monterey
County, State of California

By: Anne Arii
Anne Arii Deputy Clerk

EXHIBIT B

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EXHIBIT "A"

That certain real property situate in the County of Monterey, State of California, described as follows:

That area designated as "scenic easement" as shown on that certain map filed this _____ day of _____, 1994 in Volume 18 of Record of Surveys at Page 92, Monterey County Records.




EXHIBIT "B"
MONTEREY COUNTY
PLANNING AND BUILDING
INSPECTION DEPARTMENT

MEMORANDUM #5647

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DATE: October 19, 1992

TO: Minor Subdivision Committee

FROM: Anthony J. "Bud" Carney, A.I.C.P. 

SUBJECT: Public hearing to consider certification of the Environmental Impact Report (EIR #90-07) prepared for the Rothman project and approval of three major lot line adjustments and coastal development permits (LL88-10; LL90-32; LL90-33).

RECOMMENDATION: It is recommended that the Minor Subdivision Committee certify the Environmental Impact Report and approve all three major lot line adjustments and coastal development permits with the recommended findings, evidence, and conditions.

DISCUSSION: Three separate lot line adjustment applications (LL 88-10; LL 90-33; LL 90-32) have been submitted to accomplish a desired reconfiguration of 10 existing lots of record (See Exhibits "A-E"). This method of application is recognized as legal in an opinion written by County Counsel. All successive adjustments are between adjoining lots which will not result in additional lots.

The environmental impacts of the final lot line configuration (Exhibit "E") have been evaluated in an Environmental Impact Report. This document concludes that the proposed project is the environmentally superior alternative.

Comments (Exhibit "F") have been submitted by the applicant which suggest several revisions to the Final EIR. The consultant will advise the Committee on these comments, and those raised at the hearing, during the October 29, 1992 hearing.

Staff evaluated the proposed mitigation measures recommended by the EIR and has incorporated those applicable to the proposed project into this report as recommended conditions of approval.

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**RECOMMENDED FINDINGS FOR CERTIFICATION OF THE
ENVIRONMENTAL IMPACT REPORT**

1. **FINDING:** The decision to prepare this Environmental Impact Report was based upon an authorization by the applicant.
EVIDENCE: Letter from applicant dated September 12, 1990 contained in the original file (LL 88-10).

2. **FINDING:** A Notice of Preparation of the Environmental Impact Report was sent to:
 - (a) the State Clearinghouse; and
 - (b) each trustee agency;
 The Notice of Preparation describes the project, the location and the general impact sufficiently to permit a response.
EVIDENCE: EIR file No. 90-07.

3. **FINDING:** Prior to completing the draft EIR, the staff and the EIR consultant hired by the County contacted interested agencies, individuals, and jurisdictions to secure their input. These are listed in the EIR. The responses are also set forth in the EIR and are supported by empirical data, scientific authorities, and explanatory information which crystallizes issues and affords a basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.
EVIDENCE: EIR File No. 90-07.

4. **FINDING:** A Notice of Completion of the draft EIR was filed with the California Secretary for Resources and the County Clerk on April 10, 1992, briefly describing the project and its location and indicating that the draft EIR was available, where it was available and how long it was available for review, together with a deadline for review.
EVIDENCE: EIR File No. 90-07.

5. **EVIDENCE:** Public notice of the availability of the draft EIR was provided by mailing notice on April 10, 1992 to:
 - (a) organizations and individuals who previously requested such notice;
 - (b) Applicant/Property Owner
 - (c) publication in a newspaper of general circulation in the affected area.

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6. FINDING: Copies of the draft EIR were sent to the following for review for a 30 day review period:
- (a) State Clearinghouse for state agencies review with a 45 day review period;
 - (b) local libraries;
 - (c) County and local agency offices;
 - (d) citizen organizations and interested individuals.
- EVIDENCE: EIR File 90-07
7. FINDING: The County staff reviewed the comments on the draft EIR.
- EVIDENCE: EIR File No. 90-07 which contains correspondence among the consultant, planning staff, and other agencies as found in EIR; correspondence received from agencies together with written responses in the final EIR.
8. FINDING: The County through contract with the EIR consultant prepared a final EIR consisting of:
- (1) the draft EIR;
 - (2) comments received on the draft EIR beginning on page 5 of the EIR;
 - (3) a list of persons, organizations, and public agencies commenting on the draft EIR;
 - (4) the responses of the County as lead agency to significant environmental points, and to review and consultation process, as set forth on page 5 of the EIR.
- EVIDENCE: EIR File No. 90-07.
9. FINDING: The EIR focuses on the significant effects of the project on the environment. The scope of discussion of the significant effects is in proportion to the severity and probability of occurrence.
- EVIDENCE: Scope of Work contained in EIR File No. 90-07
- EVIDENCE: The Scope of Work was distributed to Trustee Agencies, individuals and organizations for input and comment during the EIR process.
10. FINDING: Notice of the October 29, 1992 meeting, at which the Minor Subdivision Committee was to recommend certification of the EIR, was given by mail to:
- (1) the applicant; and
 - (2) organizations who previously requested such notice.

Notice was also given by the following procedures:

EXHIBIT B

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- (1) publication in a newspaper of general circulation in the affected area;
- (2) posting on and off the project site by Planning and Building Inspection Department staff for at least 10 days prior to the hearing;
- (3) mailing to all property owners within a 300 foot radius of the property as shown on the latest equalized assessment roll.

EVIDENCE: EIR File No. 90-07.

**RECOMMENDED FINDINGS FOR APPROVAL OF THREE
MAJOR LOT LINE ADJUSTMENTS AND
COASTAL DEVELOPMENT PERMITS
LL 88-10; LL90-32; AND LL 90-33**

11. FINDING: That the three stage lot line adjustment is between 10 existing adjacent parcels.
EVIDENCE: The parcels have been determined to be legal lots of record through certificates of compliance and staff determination.
EVIDENCE: Only lots with common lot lines will be adjusted as shown by the maps contained in the separate files LL 88-10; LL 90-32; and LL90-33.
12. FINDING: A greater number of parcels than originally existed will not be created as a result of the lot line adjustments.
EVIDENCE: Ten lots of record exist prior to the adjustment and ten lots will exist after the lot lines are adjusted by the three step process.
EVIDENCE: Certificates of Compliance contained in the original file.
EVIDENCE: Maps showing the proposed adjustments contained in File No.'s LL 88-10; LL 90-32; and LL90-33.
13. FINDING: The parcels resulting from the lot line adjustments conform to County Land Use, Zoning and Building Ordinances.
EVIDENCE: The configuration of the resulting lots have been evaluated against the policies of the Big Sur Land Use Plan and Part 3 of the Coastal Implementation Plan "Regulations for Development in the Big Sur Coast Land Use Plan".
EVIDENCE: Consistency analysis beginning at page 111 of the EIR.
EVIDENCE: Staff review of the project against the Local Coastal Program.
EVIDENCE: Conditions of approval have been suggested to

EXHIBIT B

insure consistency with the County Land Use, Zoning and Building Ordinances.

13. FINDING: For purposes of the Fish and Game code, the project will have a potential for adverse impact on fish and wildlife resources upon which the wildlife depends.
- EVIDENCE: Analysis contained in the Environmental Impact Report prepared for this project and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. Pages 161 through 176 of the Environmental Impact Report discusses and identifies potential impacts to wildlife.
14. FINDING: The project, as approved by the Coastal Development Permit, is appealable to the Board of Supervisors and to the California Coastal Commission.
- EVIDENCE: Section 20.140.080 G and J of the Monterey County Coastal Implementation Plan.

RECOMMENDED CONDITIONS OF APPROVAL FOR THE
 ROCKY CREEK LOT LINE ADJUSTMENTS
 LL 88-10; LL90-32; LL90-33

1. Obtain a survey of the new lines and have the lines monumented. (Public Works)
2. File a Record of Survey showing new lines and their monumentation. (Public Works)
3. After filing of the Record of Survey, the owner shall have deeds prepared and recorded reflecting the lot line adjustment. (Public Works)
4. Prior to the recordation of the Record of Survey, a Homeowners Association shall be formed in order to comply with the mitigations suggested in the EIR. The covenant, conditions, and restrictions shall address all of the mitigation measures appropriate for the proposed development and shall be subject to the approval of the Director of Planning and Building Inspection and County Counsel. (Planning and Building Inspection)
5. Prior to recordation of the Record of Survey, the applicant shall agree in writing to construct a road which meets the standards set forth by the California Department of Forest-

EXHIBIT B

- ry. Said road shall obtain the required County permits and be constructed prior to construction of the first house on any of the ten lots. This condition is consistent with the Big Sur Coast Land Use Plan policy 5.4.3.k.3 and the regulations set forth by the California Department of Forestry (California Department of Forestry/Planning and Building Inspection)
6. The owner shall grant a Scenic Easement to the County over those portions of the property within the Critical Viewshed and over existing vegetated areas without which future development of the theoretical building envelopes would be located within critical viewshed. Said area shall be defined by a licensed registered surveyor and shall be subject to the approval by the Director of Planning and Building Inspection. This requirement is consistent with the Monterey County Coastal Implementation Plan Section 20.145.030 subdivision A (g and h). (Planning and Building Inspection)
 7. Prior to the recordation of the Record of Survey the owner shall request a rezoning of the portion of lot 1 containing the archaeological site. This condition is consistent with Monterey County Implementation Plan Section 20.145.120 subdivision D (2b). (Planning and Building Inspection)
 8. Prior to the recordation of the Record of Survey the archaeological site shall be placed in an archaeological easement. Prior to being accepted by the County, the proposed easement area shall be reviewed and verified as adequate to protect the resource by an archaeologist who has been selected from the County's list of archaeological consultants or who is a member of the Society of Professional Archaeologists. This condition is consistent with Monterey County Coastal Implementation Plan Section 20.145.120 subdivision D (2c). (Planning and Building Inspection)
 9. The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County Counsel or prior to the issuance of building permits or use of the property, whichever occurs first. (Planning and Building Inspection)
 10. Pursuant to the State Public Resources Code and the State

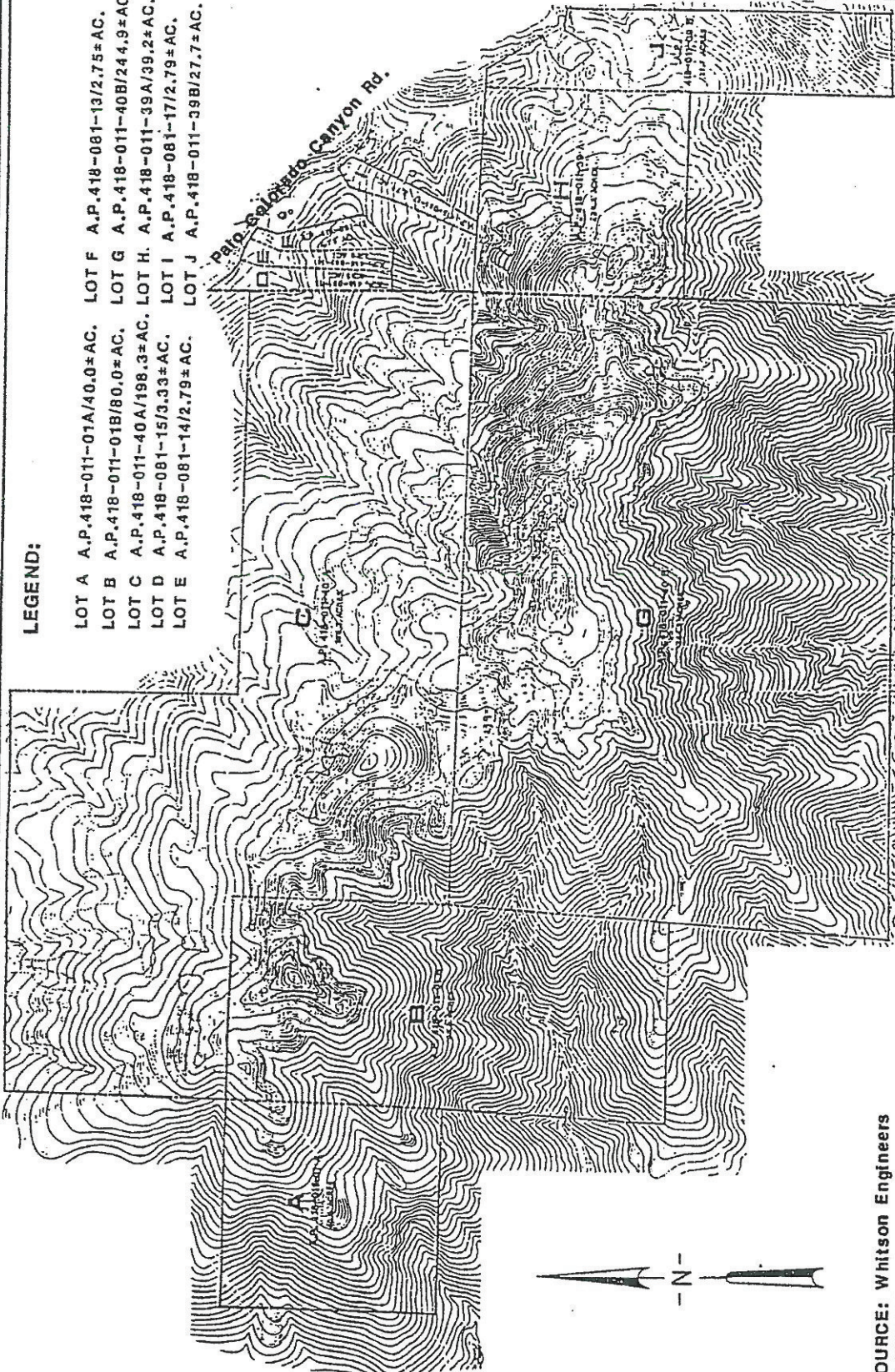
Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey for the amount of \$875. This fee shall be paid prior to filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to recording of a Record of Survey. (Planning and Building Inspection)

11. Prior to the recording of the Record of Survey a notice shall be recorded with the Monterey County Recorder which states: An Environmental Impact Report has been prepared for each of the parcels by Denise Duffy and Associates and is on record in the Monterey County Planning Library No. EIR 90-07.
12. That the applicant shall record a notice which states: "A permit (Resolution # _____) was approved by the Monterey County Minor Subdivision Committee for all 10 parcels. The permit was granted subject to 13 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)
13. Conditions 4 through 12 shall be complied with prior to submittal of the Record of Survey package to the Monterey County Public Works Department. (Planning and Building Inspection)

EXHIBIT BPAGE 19 OF 39 PAGES

LEGEND:

- LOT A A.P.418-011-01A/40.0±AC.
- LOT B A.P.418-011-01B/80.0±AC.
- LOT C A.P.418-011-40A/198.3±AC.
- LOT D A.P.418-081-15/3.33±AC.
- LOT E A.P.418-081-14/2.79±AC.
- LOT F A.P.418-081-13/2.75±AC.
- LOT G A.P.418-011-40B/244.9±AC.
- LOT H A.P.418-011-39A/39.2±AC.
- LOT I A.P.418-081-17/2.79±AC.
- LOT J A.P.418-011-39B/27.7±AC.



SOURCE: Whitson Engineers

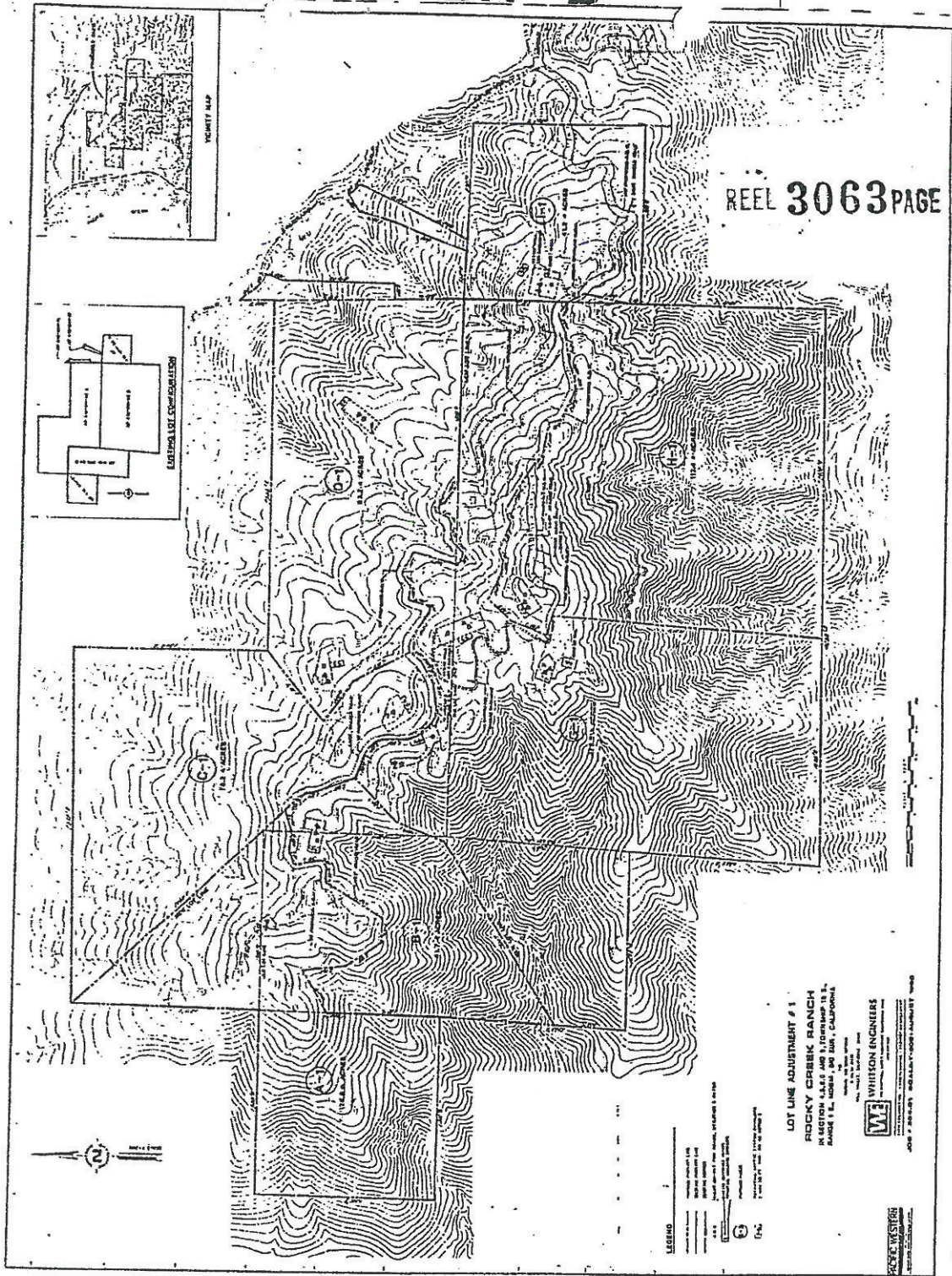
Figure 3

EXISTING LOT CONFIGURATION

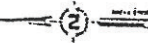
DENISE DUFFY & ASSOCIATES

EXHIBIT B

EXHIBIT "B"

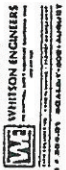


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LEGEND
--- Proposed
--- Existing
--- Easement
--- Right of Way
--- Survey Line
--- Contour
--- Spot Elevation
--- Bench Mark
--- Obstruction
--- Unsurveyed Area

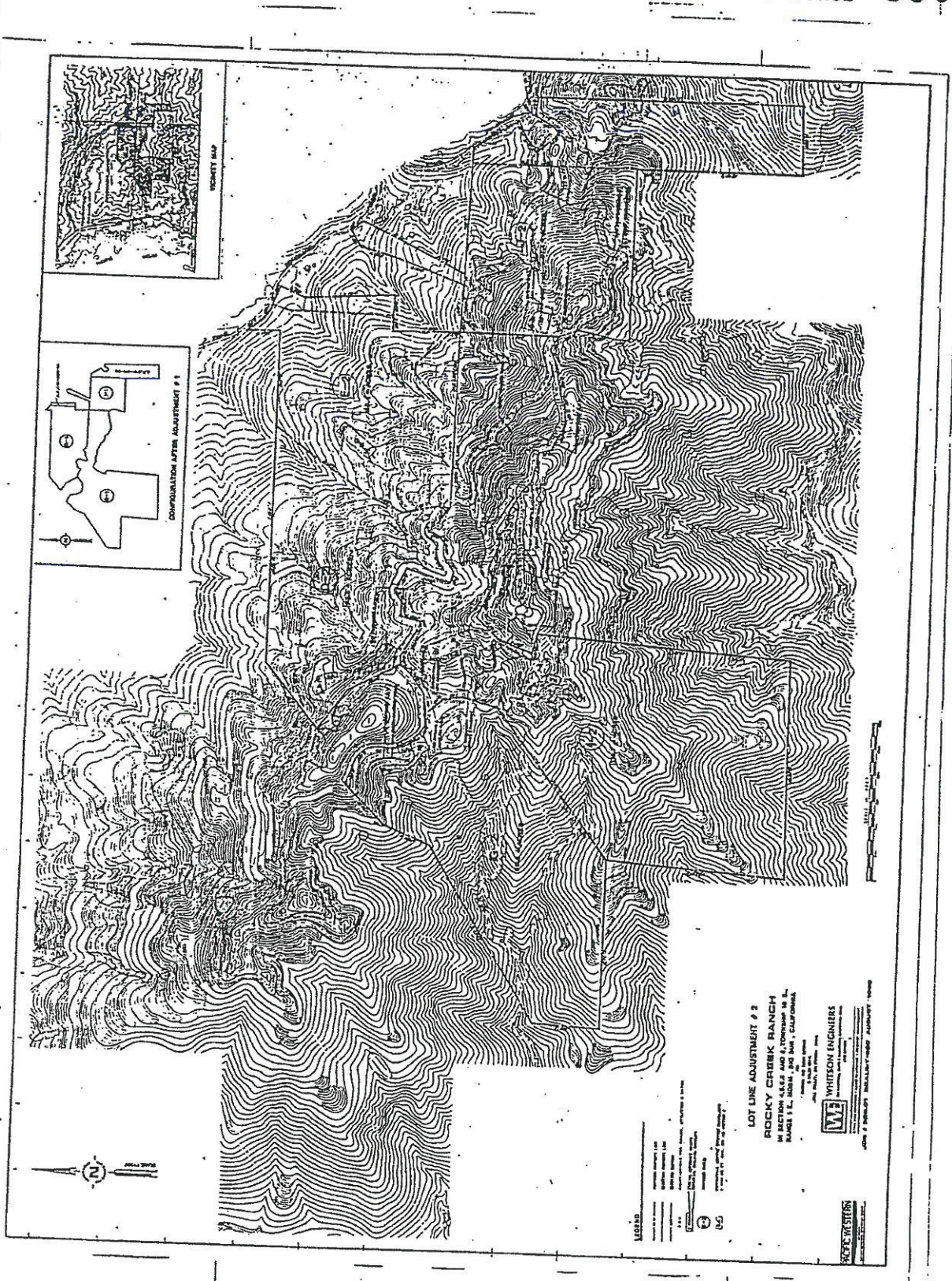
LOT LINE ADJUSTMENT # 1
ROCKY CREEK RANCH
SECTION 10, T12N, R10E, S44E
RANGE 10E, TOWNSHIP 12N, COUNTY OF SHERIDAN, WYOMING



WHITSON ENGINEERS
1000 WEST 10TH AVENUE
DENVER, COLORADO 80202
PHONE: 303.733.1111
FAX: 303.733.1112
WWW.WHITSONENGINEERS.COM

EXHIBIT "C"

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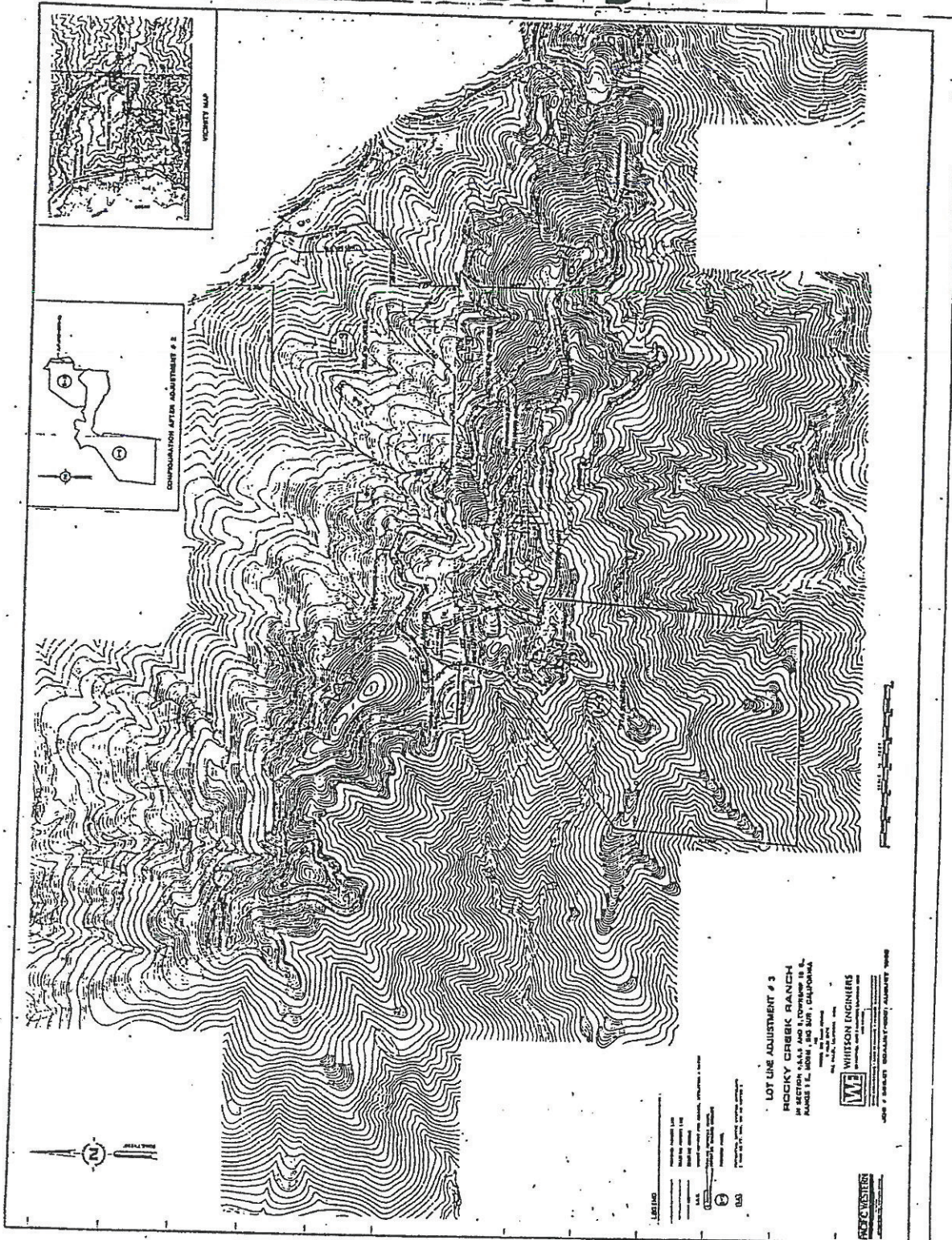
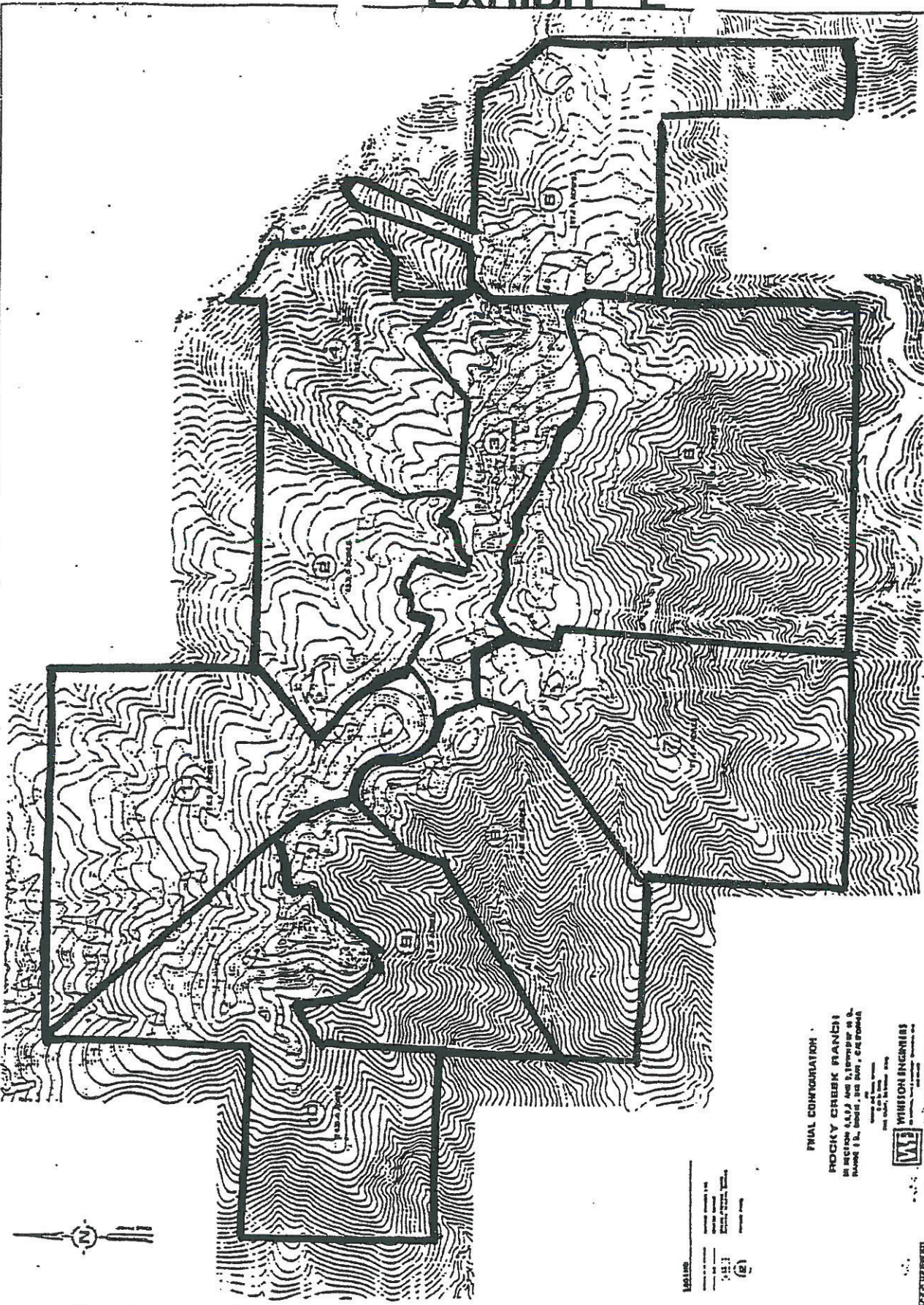


EXHIBIT "E"

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SCALE
1" = 100'
1" = 200'
1" = 400'

FINAL CONTOURING
ROCKY CREEK RANCH
IN SECTION 14, 17, AND 18, T17N, R10E, S12E,
PLANK 12, DISTRICT 100, DEER, CALIFORNIA



WINTON ENGINEERS
1000 1/2 STREET, SUITE 100
DUBLIN, CALIFORNIA 94568
TELEPHONE (415) 835-1100
FAX (415) 835-1101

ROCKE-WESTER
ENGINEERS

EXHIBIT "F"

Diamondite  Design

October 9, 1992

Monterey County Planning Dept.
P.O. Box 1208
Salinas, California 93902
Attention: Todd Bessire

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Re: Final EIR for the Rocky Creek Ranch

Dear Todd,

In reviewing the Final Draft of the EIR for the Rocky Creek Ranch, we noticed a few factual mistakes which should be corrected.

- Page 13 - Comment #3 states that the lower portion of the building envelope (#8) has not been determined to be suitable for sewage disposal.
This paragraph should state: "The lower portion of potential building envelope #8 could not be determined suitable for sewage disposal without percolation tests."
This should also be corrected on page 126, 2nd paragraph.
- Page 25 - Comment #13. Consultant states that he concurs, but no changes to the Draft EIR were made.
Potential Building envelope #5 is not situated on an open hillside nor is it visible from Garrapatos Road.
This also needs to be corrected on page 186, regarding #109 and page 193, last paragraph.
- Page 32 - Response to comment #3 states that portions of proposed lots #4 and #5 are within the critical viewshed.
This is incorrect. Lots #4 and #5 cannot be seen from Highway One.

page 1

EXHIBIT B

- Page 32 - Response to comment #8 states that driveways to potential envelope #3 and #5 exist, although obscured by vegetation. Policy K.1 clearly relates to new private roads.
Please delete the reference to driveways #3 and #5.
- Page 62 - Comment #35 states that building site #1 is on an open hillside. On page 122 in the "Changes" section of the Final EIR it says: "Parcel 1 is located on an open hillside and is expected to be seen from some residents to the north of Palo Colorado Canyon." This is incorrect. Potential building envelope #1 is facing south and cannot be seen from Palo Colorado Canyon.
This also needs to be corrected on page 105, fourth paragraph (Project Consistency Analysis), page 122, last paragraph (Viewshed) and page 124, fourth paragraph.
- Page 64 - Comment #57 states that the archaeological site is within the potential building envelope.
This is incorrect. The potential building envelope was modified in May of 1989 so that the archaeological site and the archaeological easement lie outside the potential building envelope.
- Page 75 - Response to comment #8 states "Furthermore, it is questionable from a legal point, if a lot line adjustment is required to determine if existing lots are buildable."
This is incorrect. The language in the Map Act is very clear and the interpretation is not questionable: "... A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to local zoning and building ordinances."
- Page 76 - Response to comment #14 states: "If the TDC were imposed and the lots listed were determined to be not buildable after the lot line adjustment approval, then the scenario outlined by the commenter could hold true."
This statement is inconsistent, since all consultant reports, including the EIR state that the potential building envelopes are consistent with County Ordinances. The lots listed have been determined to be buildable through this EIR process.

Page 77 - Response to comment #3. There is an unresolved difference between the consultants count of residences and the opponents count. We ask the Planning Department to please clarify this issue before the hearing.

Page 114 - last paragraph shall include building envelope #9, which has also been staked in 1989 as required by the Planning Department.

Page 118 - 2th paragraph states that "Two oak trees (13' and 18") and a cluster with oaks with diameters of 6 inches or less would be removed to accommodate this Construction."
This statement is incorrect, the diameters of the cluster are more than 6". This also needs to be corrected on page 169, last paragraph.

Page 122 - Policy A.4., Project Consistency Analysis refers in its last sentence to building envelopes which are in the Rocky Creek watershed. This statement is incorrect. There are no building envelopes in the Rocky Creek Watershed. Envelopes 5,4,2 and 3 are in the Palo Colorado watershed and envelopes 1,6,7,8,9, and 10 drain west into swales which directly drain into the ocean.

Pages 54, 55, 57, 67, and 71 refer to a required road width of 18 feet. Please note that CDF does not require all existing roads to be 18 feet wide. The only part of the road which could impact the critical viewshed is the driveway to potential building envelopes 9 and 10. George Haines from CDF will specify the exact requirements on a site visit on September 28, 1992.

In regards to the completeness of the EIR we would like to point out that the original agreement between the Monterey County Planning Department and the owner Marshal Rothman was to conduct a focused EIR which concentrates on 4 issues. These were delineated in the complete letter on September 7, 1990 (enclosed).

Since that time the scope of work has continually grown and the Final EIR, finished with one year delay, is a document which goes far beyond the original intent.

The main reason for this is the fact that you Todd are our third planner since we worked with Audry Loh on the original agreement to prepare the focused EIR.

The EIR clearly states that our proposal is the environmentally superior alternative. We have worked for over 5 years on this application and are looking forward to a recommendation for approval in your staff report.

If you have any questions please call us at 624 2304.

Sincerely,


Mary Ann Schicketanz

EXHIBIT "C"

MINOR SUBDIVISION COMMITTEE
COUNTY OF MONTEREY, STATE OF CALIFORNIA

RESOLUTION NO. 92-67

REEL 3063 PAGE 397

MINOR SUBDIVISION NOS. LL90032
LL90033
LL88010

A.P.# 418-081-13/14/15/17
418-131-30/31
418-011-01/40

FINDINGS AND DECISION

In the matter of the request of Marshal Rothman (LL90032, LL90033, LL88010)

for Certification of an Environmental Impact Report and three Combined Development Permits pursuant to regulations established by local ordinance and state law, to allow three Major Lot Line Adjustments; three Coastal Development Permits; located on Lots 11, 12 and 13, portion of Sections 4, 5, 6, 8, and 9, Range 1 East, Palo Colorado Area, fronting on and southerly of Palo Colorado Road, Coastal Zone, came on regularly for hearing before the Minor Subdivision Committee on October 29, 1992.

Said Minor Subdivision Committee, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

- 1. FINDING: The decision to prepare this Environmental Impact Report was based upon an authorization by the applicant.
EVIDENCE: Letter from applicant dated September 12, 1990 contained in the original file (LL 88-10).
- 2. FINDING: A Notice of Preparation of the Environmental Impact Report was sent to:
(a) the State Clearinghouse; and
(b) each trustee agency;
The Notice of Preparation describes the project, the location and the general impact sufficiently to permit a response.
EVIDENCE: EIR file No. 90-07.
- 3. FINDING: Prior to completing the draft EIR, the staff and the EIR consultant hired by the County contacted interested agencies, individuals, and jurisdictions to secure their input. These are listed in the EIR. The responses are also set forth in the EIR and are supported by empirical data, scientific authorities, and explanatory information which crystallizes issues and affords a basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives.
EVIDENCE: EIR File No. 90-07.
- 4. FINDING: A Notice of Completion of the draft EIR was filed with the California Secretary for Resources and the County Clerk on April 10, 1992, briefly describing the project and its location and indicating that the draft EIR was available, where it was available and how long it was available for review, together with a deadline for review.
EVIDENCE: EIR File No. 90-07.

5. EVIDENCE: Public notice of the availability of the draft EIR was provided by mailing notice on April 10, 1992 to:
- (a) organizations and individuals who previously requested such notice;
 - (b) Applicant/Property Owner
 - (c) publication in a newspaper of general circulation in the affected area.
6. FINDING: Copies of the draft EIR were sent to the following for review for a 30 day review period:
- (a) State Clearinghouse for state agencies review with a 45 day review period;
 - (b) local libraries;
 - (c) County and local agency offices;
 - (d) citizen organizations and interested individuals.
- EVIDENCE: EIR File 90-07
7. FINDING: The County staff reviewed the comments on the draft EIR.
- EVIDENCE: EIR File No. 90-07 which contains correspondence among the consultant, planning staff, and other agencies as found in EIR; correspondence received from agencies together with written responses in the final EIR.
8. FINDING: The County through contract with the EIR consultant prepared a final EIR consisting of:
- (1) the draft EIR;
 - (2) comments received on the draft EIR beginning on page 5 of the EIR;
 - (3) a list of persons, organizations, and public agencies commenting on the draft EIR;
 - (4) the responses of the County as lead agency to significant environmental points, and to review and consultation process, as set forth on page 5 of the EIR.
- EVIDENCE: EIR File No. 90-07.
9. FINDING: The EIR focuses on the significant effects of the project on the environment. The scope of discussion of the significant effects is in proportion to the severity and probability of occurrence.
- EVIDENCE: Scope of Work contained in EIR File No. 90-07
- EVIDENCE: The Scope of Work was distributed to Trustee Agencies, individuals and organizations for input and comment during the EIR process.
10. FINDING: Notice of the October 29, 1992 meeting, at which the Minor Subdivision Committee was to recommend certification of the EIR, was given by mail to:
- (1) the applicant; and
 - (2) organizations who previously requested such notice.

Notice was also given by the following procedures:

- (1) publication in a newspaper of general circulation in the affected area;
- (2) posting on and off the project site by Planning and Building Inspection Department staff for at least 10 days prior to the hearing;
- (3) mailing to all property owners within a 300 foot radius of the property as shown on the latest equalized assessment roll.

EVIDENCE: EIR File No. 90-07.

EXHIBIT B

PAGE 30 OF 39 PAGES

11. **FINDING:** That the three stage lot line adjustment is between 10 existing adjacent parcels.
EVIDENCE: The parcels have been determined to be legal lots of record through certificates of compliance and staff determination.
EVIDENCE: Only lots with common lot lines will be adjusted as shown by the maps contained in the separate files LL 88-10; LL 90-32; and LL90-33.
12. **FINDING:** A greater number of parcels than originally existed will not be created as a result of the lot line adjustments.
EVIDENCE: Ten lots of record exist prior to the adjustment and ten lots will exist after the lot lines are adjusted by the three step process.
EVIDENCE: Certificates of Compliance contained in the original file.
EVIDENCE: Maps showing the proposed adjustments contained in File No.'s LL 88-10; LL 90-32; and LL90-33.
13. **FINDING:** The parcels resulting from the lot line adjustments conform to County Land Use, Zoning and Building Ordinances.
EVIDENCE: The configuration of the resulting lots have been evaluated against the policies of the Big Sur Land Use Plan and Part 3 of the Coastal Implementation Plan "Regulations for Development in the Big Sur Coast Land Use Plan".
EVIDENCE: Consistency analysis beginning at page 111 of the EIR.
EVIDENCE: Staff review of the project against the Local Coastal Program.
EVIDENCE: Conditions of approval have been suggested to insure consistency with the County Land Use, Zoning and Building Ordinances.
14. **FINDING:** For purposes of the Fish and Game code, the project will have a potential for adverse impact on fish and wildlife resources upon which the wildlife depends.
EVIDENCE: Analysis contained in the Environmental Impact Report prepared for this project and the record as a whole indicate the project may or will result in changes to the resources listed in Section 753.5(d) of the Department of Fish and Game regulations. Pages 161 through 176 of the Environmental Impact Report discusses and identifies potential impacts to wildlife.
15. **FINDING:** The project, as approved by the Coastal Development Permit, is appealable to the Board of Supervisors and to the California Coastal Commission.
EVIDENCE: Section 20.140.080 G and J of the Monterey County Coastal Implementation Plan.

DECISION

THEREFORE, it is the decision of said Minor Subdivision Committee that the Environmental Impact Report be certified and that said Combined Development Permits be approved as shown on the attached sketch, subject to the following conditions:

1. Obtain a survey of the new lines and have the lines monumented. (Public Works)
2. File a Record of Survey showing new lines and their monumentation. (Public Works)

Marshal Rothman (LL90032, LL90033, LL88010)
Page 4

3. After filing of the Record of Survey, the owner shall have deeds prepared and recorded reflecting the lot line adjustment. (Public Works)
4. The applicant shall pay his proportionate share of left turn channelization on Highway One at Palo Colorado Road. (Public Works)
5. Prior to the recordation of the Record of Survey, a Property Owners Association shall be formed in order to comply with the mitigations suggested in the EIR. The covenant, conditions, and restrictions (C,C & Rs) shall give notice of all of the mitigation measures deemed appropriate for the proposed development, by the Planning Department, Public Works Department, Health Department, Water Resources Agency, and the Department of Forestry. The C,C & Rs shall also include the requirements for the monitoring program. (Planning and Building Inspection)
6. Prior to recordation of the Record of Survey, the applicant shall agree in writing to construct a road which meets the standards set forth by the California Department of Forestry. Said road shall obtain the required County permits and be constructed prior to construction of the first house on any of the ten lots. This condition is consistent with the Big Sur Coast Land Use Plan policy 5.4.3.k.3 and the regulations set forth by the California Department of Forestry (California Department of Forestry/Planning and Building Inspection)
7. The owner shall grant a Scenic Easement to the County over those portions of the property within the Critical Viewshed and over existing vegetated areas without which future development of the theoretical building envelopes would be located within critical viewshed. Said area shall be defined by a licensed registered surveyor and shall be subject to the approval by the Director of Planning and Building Inspection. This requirement is consistent with the Monterey County Coastal Implementation Plan Section 20.145.030 subdivision A (g and h). (Planning and Building Inspection)
8. Prior to the recordation of the Record of Survey the owner shall request a rezoning of the portion of lot 1 containing the archaeological site. This condition is consistent with Monterey County Implementation Plan Section 20.145.120 subdivision D (2b). (Planning and Building Inspection)
9. Prior to the recordation of the Record of Survey the archaeological site shall be placed in an archaeological easement. Prior to being accepted by the County, the proposed easement area shall be reviewed and verified as adequate to protect the resource by an archaeologist who has been selected from the County's list of archaeological consultants or who is a member of the Society of Professional Archaeologists. This condition is consistent with Monterey County Coastal Implementation Plan Section 20.145.120 subdivision D (2c). (Planning and Building Inspection)
10. The property owner agrees as a condition of the approval of this permit to defend at his sole expense any action brought against the County because of the approval of this permit. The property owner will reimburse the County for any court costs and attorneys' fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of any such action; but such participation shall not relieve applicant of his obligations under this condition. Said indemnification agreement shall be recorded upon demand of County

EXHIBIT

B

PAGE 32 OF 39 PAGES

Counsel or prior to the issuance of building permits or use of the property, whichever occurs first. (Planning and Building Inspection)

11. Pursuant to the State Public Resources Code and the State Fish and Game Code, the applicant shall pay a fee to be collected by the County of Monterey for the amount of \$875. This fee shall be paid prior to filing of the Notice of Determination. Proof of payment shall be furnished by the applicant to the Director of Planning and Building Inspection prior to recording of a Record of Survey. (Planning and Building Inspection)
12. Prior to the recording of the Record of Survey a notice shall be recorded with the Monterey County Recorder which states: An Environmental Impact Report has been prepared for each of the parcels by Denise Duffy and Associates and is on record in the Monterey County Planning Library No. EIR 90-07.
13. That the applicant shall record a notice which states: "A permit (Resolution #92-67) was approved by the Monterey County Minor Subdivision Committee for all 10 parcels. The permit was granted subject to 15 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)
14. Prior to the recordation of the record of survey, the applicant shall provide an analysis that demonstrates that water can be provided to each parcel, that does not conflict with the policy in the Big Sur Coastal Plan regarding the inter-basin transfer of water. (Water Resources Agency & Health Department)
15. Conditions 5 through 14 shall be complied with prior to submittal of the Record of Survey package to the Monterey County Public Works Department. (Planning and Building Inspection)

PASSED AND ADOPTED this 29th day of October, 1992, by the following vote:

Ayes: McKenna, McPharlin, Messenger, Naslund, Stewart, Walker
Noes: Orrett
Absent: Brandau

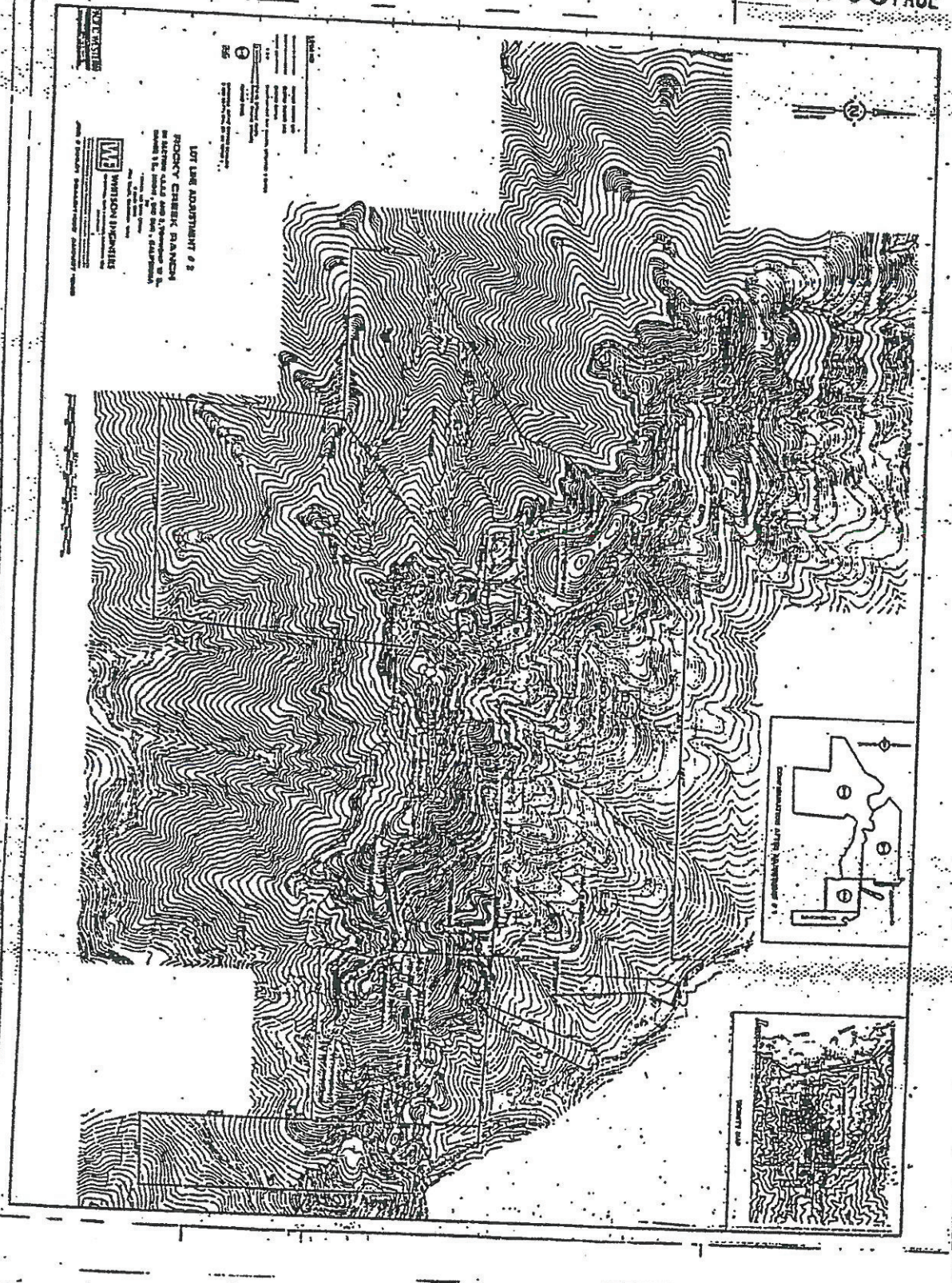

KATHRYN M. MCKENNA, SECRETARY

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON NOV 06 1992 .

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE NOV 16 1992 .

THIS APPLICATION IS ALSO APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE DECISION BY THE BOARD OF SUPERVISORS, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (408) 479-3511 OR AT 640 CAPITOLA ROAD, SANTA CRUZ, CA.

THIS PERMIT EXPIRES TWO YEARS AFTER THE ABOVE DATE OF GRANTING THEREOF.



NOTES

1. This map is a planimetric map and does not show vertical curves or grades.

2. The proposed lot lines are shown in solid lines and the existing lot lines are shown in dashed lines.

3. The proposed easements are shown in dotted lines and the proposed encroachments are shown in dash-dot lines.

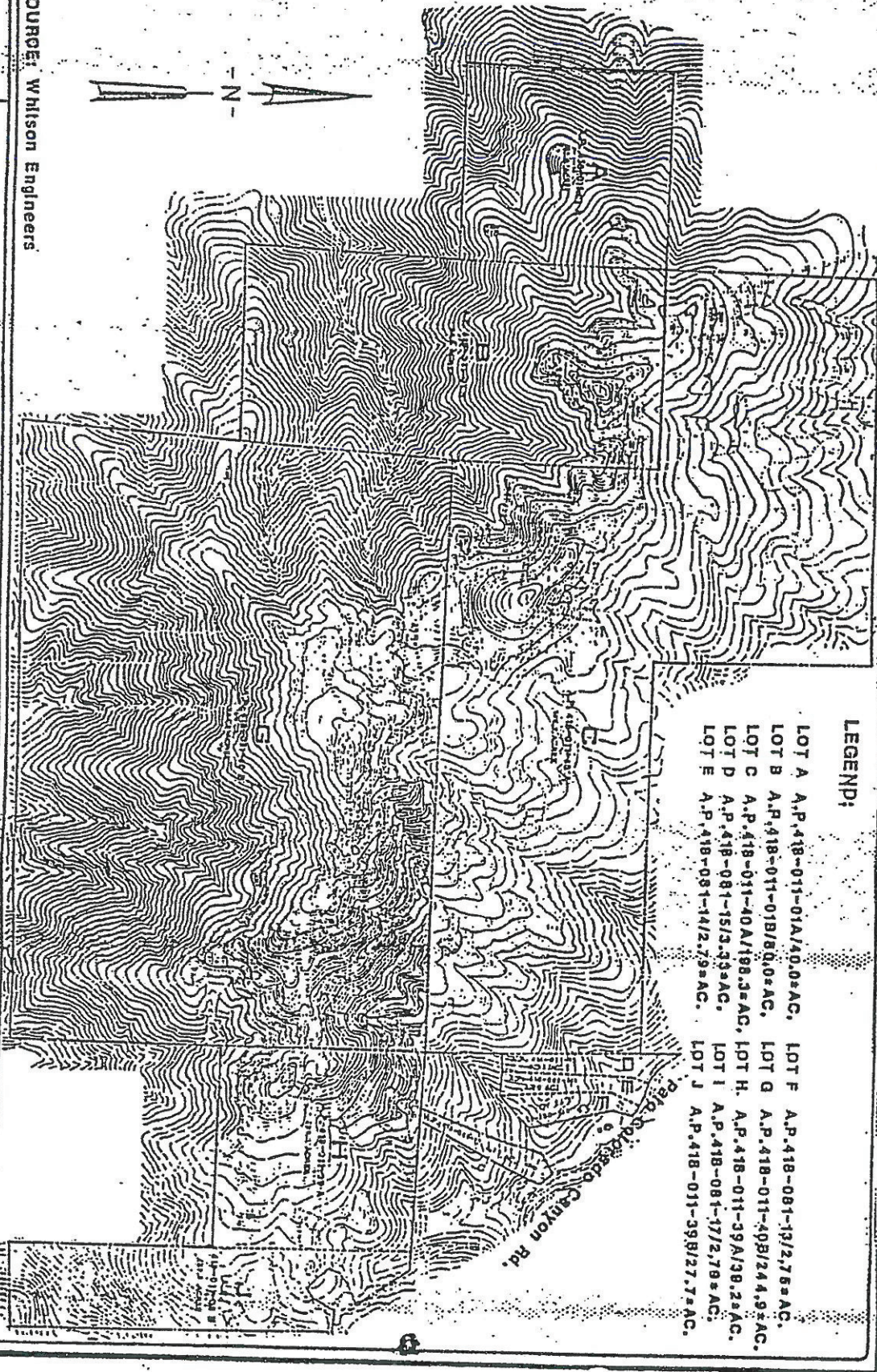
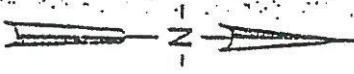
4. The proposed lot lines are shown in solid lines and the existing lot lines are shown in dashed lines.

5. The proposed easements are shown in dotted lines and the proposed encroachments are shown in dash-dot lines.

LOT LINE ADJUSTMENT #2
ROCKY CREEK RANCH
 SHOWING THE ADJUSTED AND EXISTING LOT LINES AND THE PROPOSED EASEMENTS AND ENCROACHMENTS.

WESTERN LAND SURVEYORS
 1000 1/2 AVENUE, DENVER, COLORADO

SOURCE: Whitson Engineers



LEGEND:

- LOT A A.P.418-011-01A/40.0±AC.
- LOT B A.P.418-011-01B/60.0±AC.
- LOT C A.P.418-011-40A/196.3±AC.
- LOT D A.P.418-081-15/3.3±AC.
- LOT E A.P.418-081-14/2.7±AC.
- LOT F A.P.418-081-19/2.7±AC.
- LOT G A.P.418-011-40B/244.9±AC.
- LOT H A.P.418-011-39A/39.2±AC.
- LOT I A.P.418-081-17/2.7±AC.
- LOT J A.P.418-011-39B/27.7±AC.

EXISTING LOT CONFIGURATION

Figure

3

EXHIBIT B

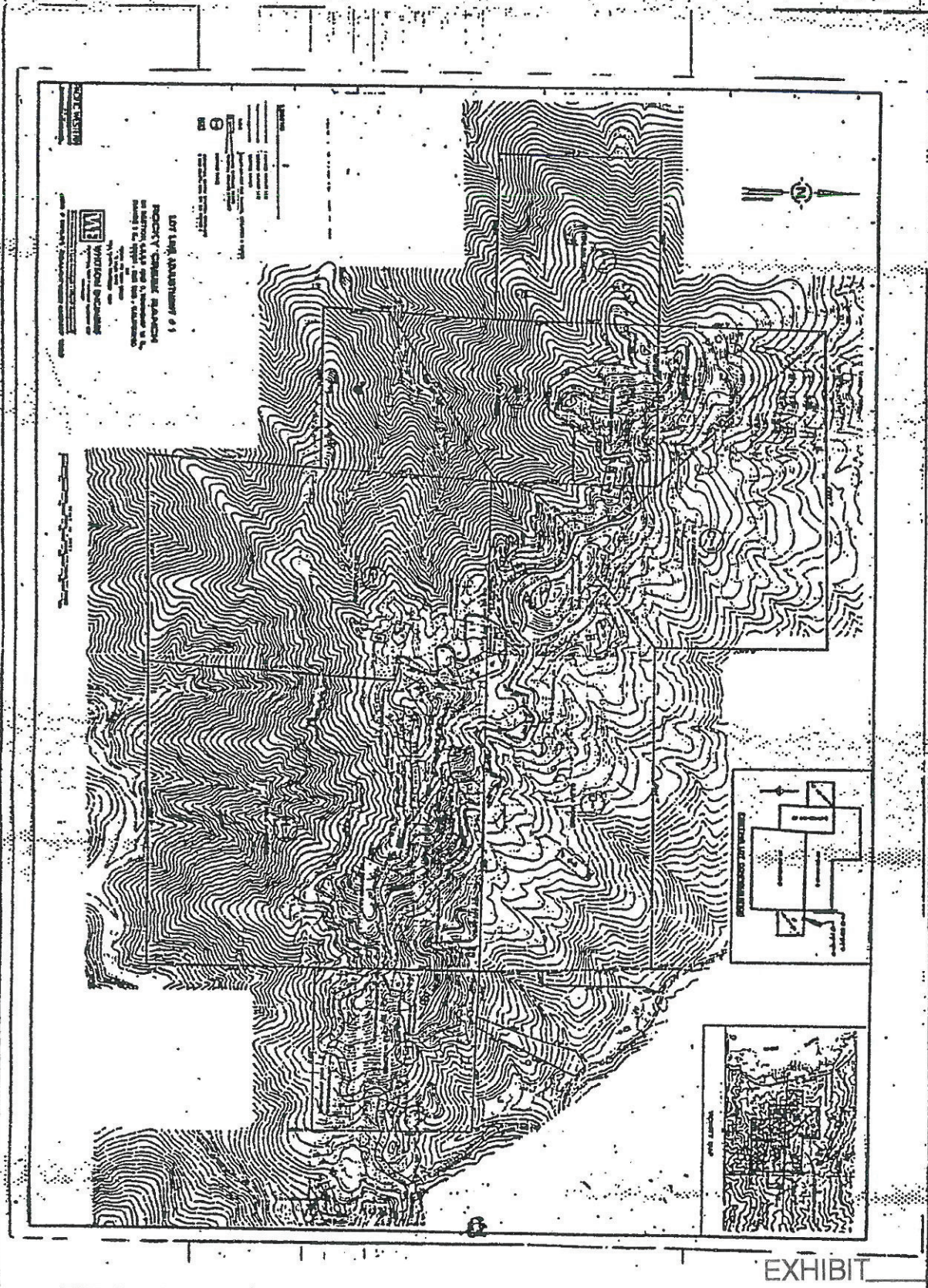


EXHIBIT B

Before the Board of Supervisors in and for the
County of Monterey, State of California

Authorize the Board Chairwoman)
to sign the Conservation and)
Scenic Easement Deed and)
Conservation and)
Archaeological Easement Deed)
with Marshall Rothman; Big Sur)
Area of the Coastal Zone)

REEL 3063 PAGE 407

Upon motion of Supervisor Perkins, seconded by
Supervisor Salinas, and carried by those members
present, the Board hereby authorizes the Chairwoman to sign the
Conservation and Scenic Easement Deed and Conservation and
Archaeological Easement Deed with Marshall Rothman.

PASSED AND ADOPTED on this 1st day of February, 1994,
by the following vote, to-wit:

AYES: Supervisors Salinas, Shipnuck, Perkins, Johnsen & Karas.
NOES: None.
ABSENT: None.

I, ERNEST K. MORISHITA, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that
the foregoing is a true copy of an original order of said Board Supervisors duly made and entered in the minutes thereof at
page 69 of Minute Book 69, on Feb. 1, 1994

Dated: Feb. 1, 1994

ERNEST K. MORISHITA, Clerk of the Board
of Supervisors, County of Monterey,
State of California.

By *Ernest K. Morishita*
Deputy

Order 02/01/94

EXHIBIT B

PAGE 39 OF 39 PAGES

END OF DOCUMENT

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