

**CALIFORNIA COASTAL COMMISSION**

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

Filed: 8/12/97  
 49th Day: 9/30/97  
 180th Day: 2/8/98  
 Staff: S. Hudson *jr.*  
 Staff Report: 8/21/97  
 Hearing Date: Sept. 9-12, 1997  
 Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 4-97-088

APPLICANT: John and Diane Hertz

AGENTS: Lorcan O'Herlihy  
Kimber Clark

PROJECT LOCATION: 28754 Grayfox Street, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Demolition of a 1957 sq. ft., one story, single family residence (SFR) and detached garage and the construction of a new 5265 sq. ft., one-story, SFR with detached garage, driveway, pool, septic system and a non-retaining privacy wall.

|                     |                |
|---------------------|----------------|
| Lot area:           | 50,191 sq. ft. |
| Building coverage:  | 5793 sq. ft.   |
| Pavement coverage:  | 5,540 sq. ft.  |
| Landscape coverage: | 28,000 sq. ft. |
| Parking spaces:     | 2              |
| Ht abv ext grade:   | 17'-10"        |

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept, Approval in Concept City of Malibu Health Department (Septic).

SUBSTANTIVE FILE DOCUMENTS: Addendum to Reconnaissance Engineering Geologic and Geotechnical Engineering Investigation by Donald B. Kowalewsky dated 4/3/97; Reconnaissance Engineering Geologic and Geotechnical Engineering Investigation by Donald B. Kowalewsky dated 9/17/95.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends approval of the proposed project with three (3) special conditions regarding landscaping and erosion control, plans conforming to geologic recommendations, and wildfire waiver of liability. The applicant is proposing the demolition of an existing SFR and detached garage and the construction of a larger SFR with detached garage, pool, driveway and a non-retaining garden wall. The western corner of the project site is located in an inland ravine which

summary continued

has been designated by the Malibu/Santa Monica Mountains LUP as a disturbed sensitive resource area. No development is proposed within the ravine or within 25 ft. of the top bluff edge.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions.**

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

**II. Standard Conditions.**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Conditions.

#### 1. Landscaping and Erosion Control Plan

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

(a) All disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

(b) All disturbed areas shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

#### 2. Plans Conforming to Geologic Recommendation

All recommendations contained in the Addendum to Reconnaissance Engineering Geologic and Geotechnical Engineering Investigation by Donald B. Kowalewsky dated 4/3/97 and the Reconnaissance Engineering Geologic and Geotechnical Engineering Investigation by Donald B. Kowalewsky dated 9/17/95, shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by the consultant. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants' shall require an amendment to the permit or a new coastal permit.

#### 3. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses, of liability arising out of the acquisition, design, construction, operations, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

#### IV. Findings and Declarations.

The Commission hereby finds and declares:

##### A. Project Description and Background

The applicant proposes to demolish a 1957 sq. ft., one story, single family residence (SFR) and detached garage and the construction of a new 5265 sq. ft., one-story, SFR with detached garage, driveway, pool, septic system and non-retaining privacy wall. The subject site is a 1.15 acre lot located on a relatively flat terrace within a built-out residential neighborhood in the Point Dume area of Malibu. The flat terrace extends approximately 90 ft. from the location of the proposed single family residence to a ravine edge where slopes descend at a variable gradient of 1:1 to 2 $\frac{1}{2}$ :1 (H:V) to the ravine bottom. The ravine slopes and bottom are designated as a disturbed sensitive resource area by the Certified Malibu/Santa Monica Mountains Land Use Plan (LUP). The proposed project, which is not visible from any public areas with the exception of Grayfox Street, is consistent with the surrounding development and will not result in any new impacts to visual resources.

##### B. Grading and Hazards

Section 30253 of the Coastal Act states in part that new development shall:

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

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

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission will only approve the project if the applicant assumes liability from the associated risks. Through the waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development, as incorporated by condition number three (3).

The applicant proposes to demolish a 1957 sq. ft., one story, single family residence (SFR) and detached garage and to construct a new 5265 sq. ft., one-story, SFR with detached garage, driveway, pool, septic system and non-retaining privacy wall. No grading is proposed or necessary. The applicant's geologic and engineering consultant has determined that the proposed

project site is suitable from a soils and engineering standpoint for construction of the proposed project. The applicant's Addendum to Reconnaissance Engineering Geologic and Geotechnical Engineering Investigation by Donald B. Kowalewsky dated 4/3/97, states that:

*Based upon the findings of our investigation, development of the proposed house and pool at the subject site is feasible from a geotechnical engineering viewpoint. The proposed house and pool will be safe from geologic hazards including landslide, detrimental settlement and slippage provided the recommendations of this report are properly incorporated into design and are implemented during construction.*

The geologic and engineering consultant has included a number of geotechnical recommendations which will increase the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical consultant are incorporated into the project plans, the Commission finds that it is necessary to require the applicant, as required by special condition two (2), to submit project plans certified by the consulting geotechnical engineer as conforming to their recommendations.

The Commission also finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to landscape all disturbed areas of the site with native plants, compatible with the surrounding environment. Therefore special condition number one (1) is required to ensure that all proposed disturbed areas are stabilized and vegetated.

The Commission finds that based on the findings of the geologic and geotechnical reports and other available evidence, and as conditioned to incorporate the recommendations of the geologic consultant, the proposed project is consistent with Section 30253 of the Coastal Act.

### C. Environmentally Sensitive Habitat Areas

Section 30240 of the Coastal Act states that:

*(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.*

The Certified Malibu/Santa Monica Mountains Land Use Plan, which is still used as guidance in the City of Malibu in evaluating a project's consistency with Coastal Act Policy, and through past permit actions has designated the slopes and bottom of the ravine, which is partially located on the project site, as a disturbed sensitive resource area. Existing residential development and their appurtenant structures and landscaping adjacent to the ravine have resulted in the disturbance of this portion of the canyon. Although this disturbed environmental resource area does not meet the technical definition of an environmentally sensitive habitat area, further degradation of a sensitive resource area should be avoided. Past Commission action has recognized the resource value of inland ravines and canyons and has discouraged new development within these areas. The

applicant is not proposing any new development to be located within the ravine. The pool is setback from the edge of the ravine by more than 25 ft. and the single family residence is setback from the edge of the ravine by more than 90 ft. All development will be located at least 150 ft. or more from the bottom of the ravine. As such, this project will have an adequate buffer zone and will not create any new environmental impacts to the disturbed environmental resource area within the canyon. The Commission finds that the project, as proposed, is consistent with Section 30240 of the Coastal Act.

#### D. Septic System

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

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

The proposed development includes the replacement of an existing septic system with a new septic system for the proposed residence to provide for adequate sewage disposal. The applicant has submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

#### E. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As

conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development as conditioned will not prejudice the City of Malibu's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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 proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

**SMH-VNT**

File: SMH1/4-97-088

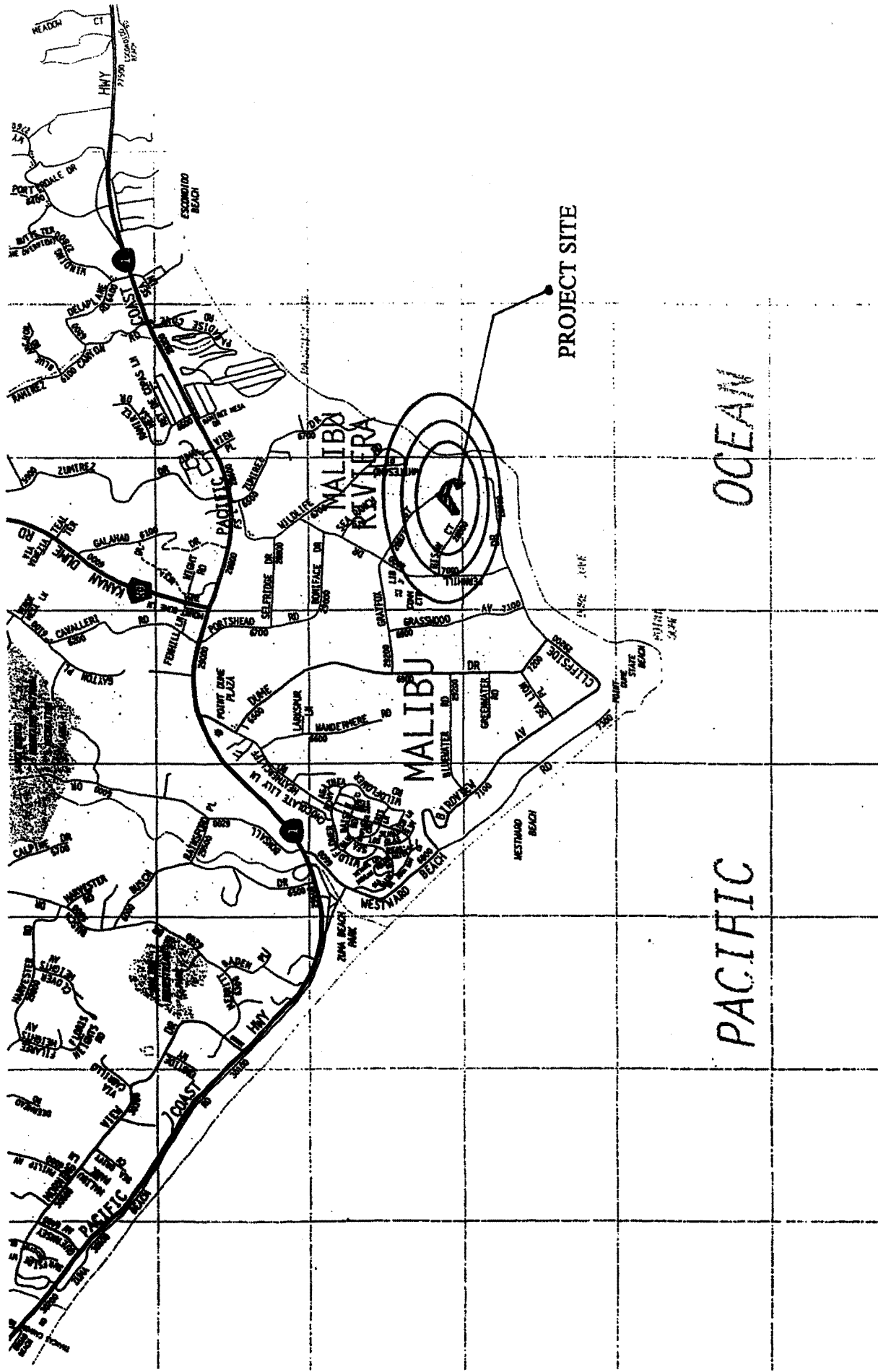


Exhibit No. 1: (4-97-088) Location Map



4466 11  
SCALE 1" = 150'

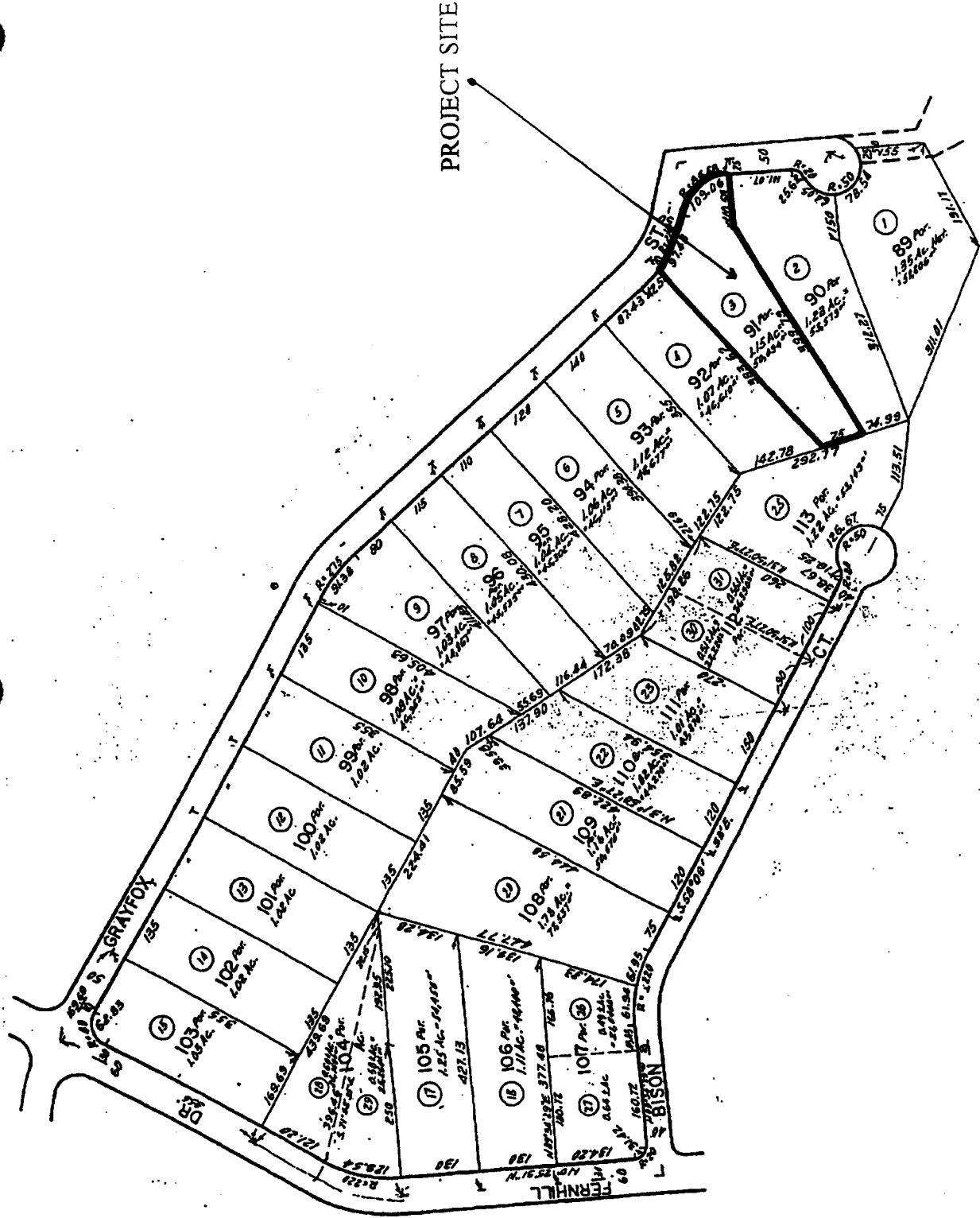
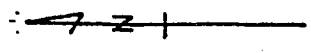
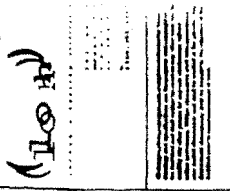
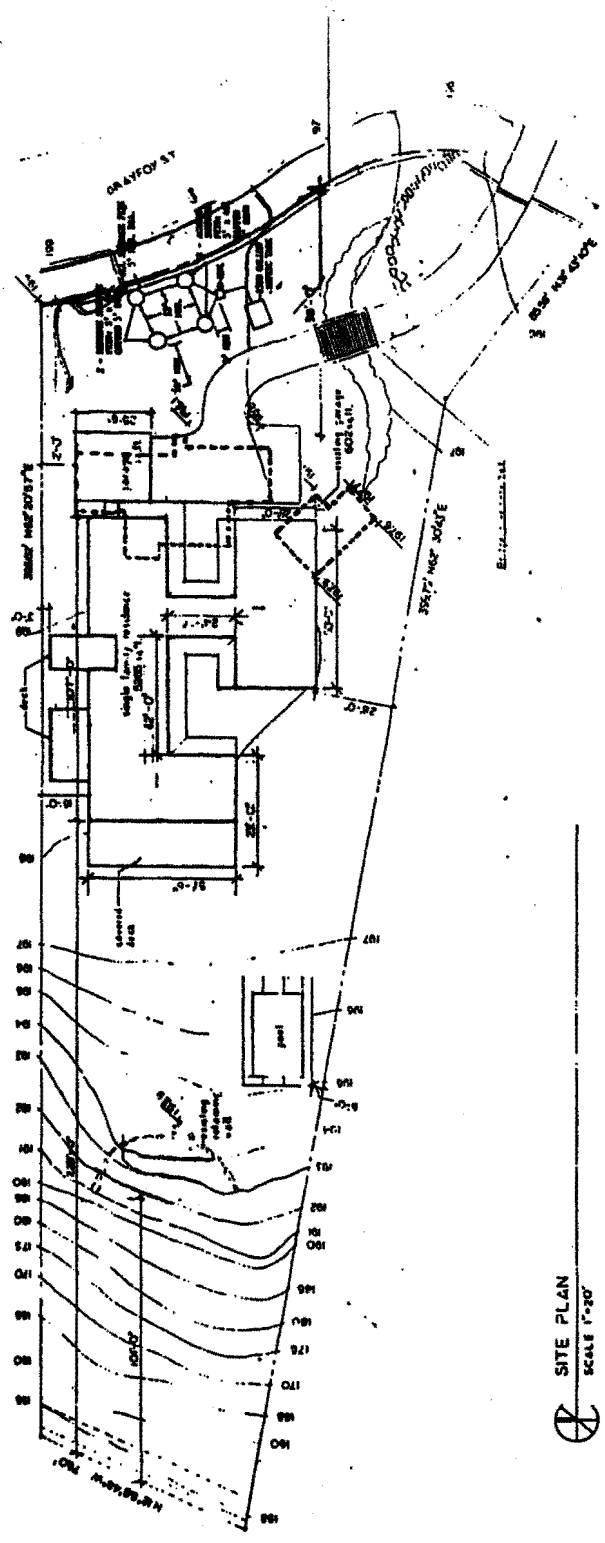


Exhibit No. 2: (4-97-088) Parcel Map for Project Site





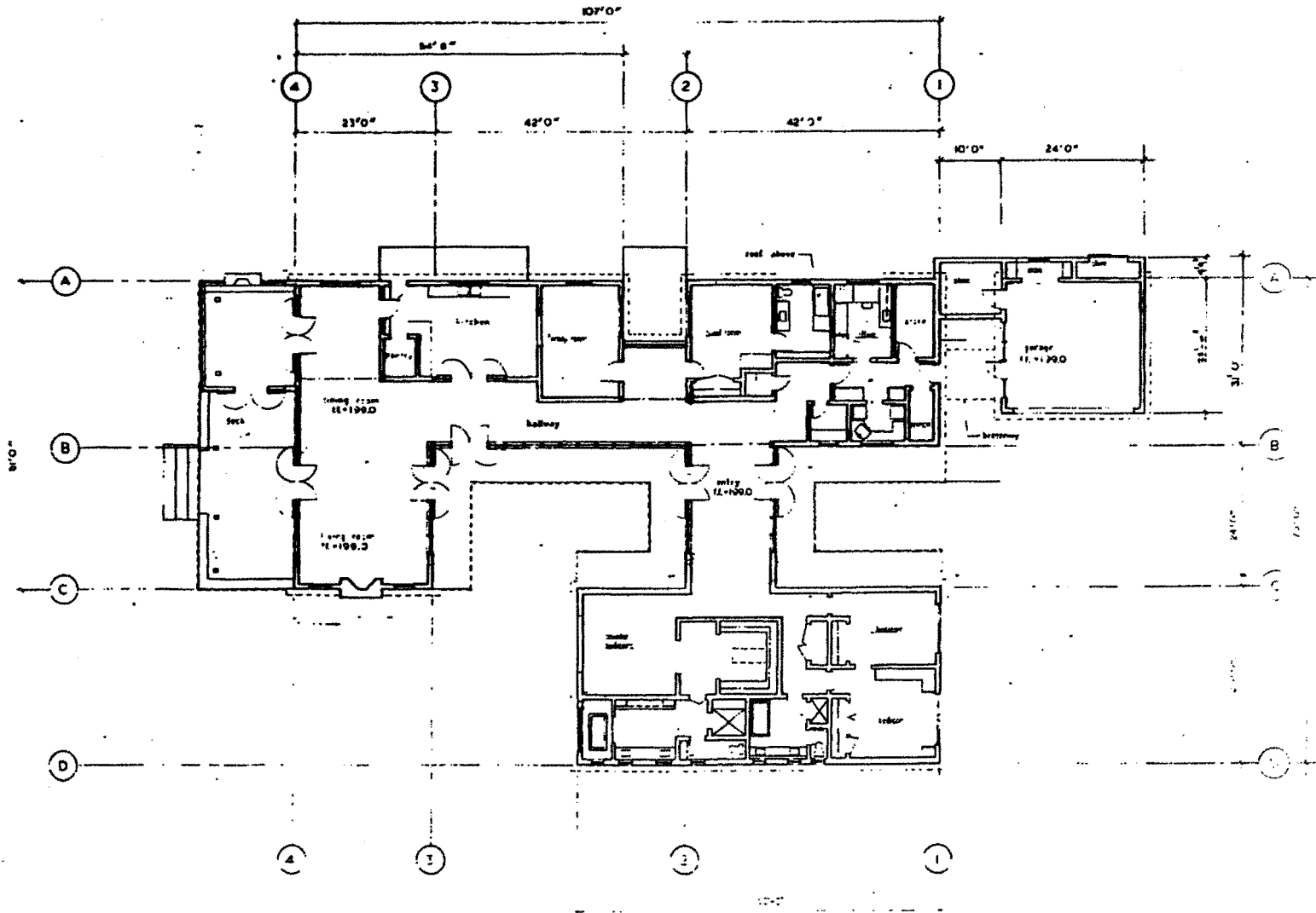
| GENERAL INFORMATION                | GENERAL NOTES                      |
|------------------------------------|------------------------------------|
| PROJECT NO. 44-088-014             | DATE 10/19/94                      |
| OWNER JOHN AND DIANE HERTZ         | DESIGNER J. L. WILSON & ASSOCIATES |
| DESIGNER J. L. WILSON & ASSOCIATES | PROJECT NO. 44-088-014             |
| DATE 10/19/94                      | SCALE 1/4" = 1'-0"                 |
| PROJECT NO. 44-088-014             | DATE 10/19/94                      |
| SCALE 1/4" = 1'-0"                 |                                    |



SITE PLAN  
SCALE 1" = 20'

Exhibit No. 3: (4-97-088) Site Plan for Proposed Project

(104)



FLOOR PLAN  
 SCALE 1/8" = 1'-0"

NOTES:  
 1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.  
 2. FINISHES TO BE DETERMINED BY ARCHITECT.  
 3. SEE SECTIONS FOR DETAILS.  
 4. SEE SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.

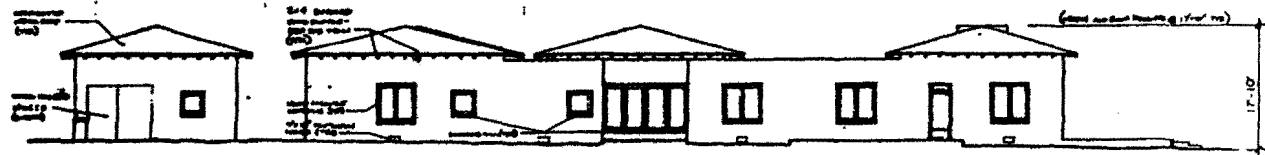
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FLOOR PLAN

HERTZ RESIDENCE

JOHN AND DIANE HERTZ  
 28754 GRAY FOX STREET  
 MALIBU, CALIFORNIA 90266

Exhibit No. 4: (4-97-088) Floor Plan for Proposed Single Family Residence



1 NORTH ELEVATION  
SCALE 1/8"=1'-0"



2 WEST ELEVATION  
SCALE 1/8"=1'-0"



3 SOUTH ELEVATION  
SCALE 1/8"=1'-0"



4 EAST ELEVATION  
SCALE 1/8"=1'-0"

(104)

DATE: \_\_\_\_\_  
DRAWN BY: \_\_\_\_\_  
CHECKED BY: \_\_\_\_\_

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HERTZ RESIDENCE ELEVATIONS

JOHN AND DIANE HERTZ  
28754 GRAYFOX STREET  
MALIBU, CALIFORNIA 90265

Exhibit No. 5: (4-97-088) Elevations for Proposed Single Family Residence