

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



STAFF REPORT: REGULAR CALENDAR

W22c

APPLICATION NO.: 4-95-243

APPLICANT: Vince and Pat Cortazzo AGENT: Lise Mathews

PROJECT LOCATION: 28867 Cliffside Drive, City of Malibu

PROJECT DESCRIPTION: Construction of a two-story 1,196 sq. ft. second unit and garage, with septic system on a 1.25 acre lot in the Point Dume area of the City of Malibu. The site is presently developed with a 2,772 sq. ft. single family residence, garage and septic system.

Lot area:	1.25 acres
Building coverage:	1,242 sq. ft.
Pavement coverage:	4,286 sq. ft.
landscape coverage:	31,138 sq. ft.
Parking spaces:	2
Ht abv fin grade:	22 ft. 6 in.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval in Concept, City of Malibu Geology Department Approval and City of Malibu Health Department Approval.

SUBSTANTIVE FILE DOCUMENTS:

1. Certified Malibu/Santa Monica Mountains Land Use Plan
2. City of Malibu Municipal Code
3. Pacific Coast Highway (ACR 123), California Department of Transportation, December, 1983
4. Coastal Development Permits: 4-95-054 (SAM Trust); 5-88-443 (O'Conner)
5. Local Coastal Program (LCP) Amendments: City of Encinitas LCP Amendment 1-95-B; Del Norte County LCP Amendment #1-95; Santa Barbara County LCP Amendment #3-93-B;.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed construction of a 1,196 sq. ft., 22 ft. 6 in. high second unit with a 2-car garage and septic system. As set forth in the subsequent text, the proposed second unit exceeds the 750 sq. ft. limit of second units/guesthouses approved by the Commission in the Malibu/Santa Monica Mountains area. Special condition #1 would give the

applicant the choice of either mitigating the size of the larger unit through the purchase of 1/3 Transfer of Development Credit (TDC) or revising the size of the proposed second unit from 1,196 sq. ft. to 750 sq. ft. As explained in the report, the TDC program in the Malibu Santa Monica Mountains area was created in 1978 to mitigate the impacts of land divisions which would generate increased residential units. The City of Malibu Approval in Concept for the second unit was granted pursuant to the City's adopted Municipal Code which allows both a second unit and guest house consistent with the maximum lot coverage as a permitted use in residential zones. The maximum allowable size of the units is 1,200 sq. ft. for the second unit and 750 sq. ft. for guest houses. Given that the City's Municipal Code and General Plan have not been subject to the Commission's review and certification, via the LCP process, staff has maintained that the size of second units and the proliferation of such ancillary structures should be limited by the Commission's past actions -- one 750 sq. ft. second unit or guest house. The 750 sq. ft. limit was certified by the Commission as a policy of the 1986 certified Malibu/Santa Monica Mountains LUP and has been upheld in over 1,000 permit actions. The intent of the second unit is typically to provide for guests, the elderly, a caretaker or farm laborers and inherently results in the construction of a small sized unit. A larger unit could accommodate a second family rental unit and thereby increase the density and intensity of development in the coastal zone. The Commission found that in the Malibu area the existing capacity of Pacific Coast Highway is limited and must continue to serve existing residential and commercial development as well as serve future development as contemplated by the current Land Use Plan density maps or the City's LCP which has yet to be certified. In addition Pacific Coast Highway must continue to serve Coastal Zone visitors. Additional infrastructure limitations dictate the size limitations of the second units. Absent any new data or information, these facts underscore the need to either limit the size of the units or, in the interim, allow for an increased unit size with mitigation in order to insure that the area infrastructure will accommodate the development and not prejudice the City's ability to prepare an LCP. Staff is recommending approval of the proposed project with special conditions pertaining to revised site plans/cumulative impact mitigation, future development, drainage plan and archaeological resources.

I. STAFF RECOMMENDATION

Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal program 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. Revised Plans/Cumulative Impact Mitigation

Prior to the issuance of the permit, the applicant shall comply with either section (a) or (b) of this special condition.

(a) Submit revised plans, subject to the review and approval of the Executive Director, which illustrate that the interior floor space of the proposed second unit does not exceed 750 sq. ft.; or

(b) Retire the development rights of one building site that is the equivalent to one third $1/3$ (at minimum) of a Transfer of Development Credit (TDC) within the Malibu/Santa Monica Mountains area as a method of mitigating the impacts of the proposed second residential unit. One entire parcel must be retired. Prior to the issuance of the Coastal Development Permit, the applicants shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated and that the development rights for residential use have been extinguished equivalent to one building site, equal to one third ($1/3$) of a TDC in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

- (i) a TDC-type transaction, consistent with past Commission actions;
- (ii) participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the applicable health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

2. Future Development:

Prior to the issuance of a coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 4-95-243, consistent with the applicant's choice in complying with 1a or 1b of Special Condition #1 above after such compliance has been accomplished; and that any future structures, additions or improvements to the property, including but not limited to clearing of vegetation and grading, that might otherwise be exempt under Public Resource Code Section 30610(a), will require a permit from the Coastal Commission or its successor agency. Removal of vegetation consistent with L. A. County Fire Department standards relative to fire protection is permitted. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

3. Drainage and Erosion Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the roof, patios, and all other impervious surfaces on the subject parcel are collected and discharged in a manner which avoids ponding on the pad area. Site drainage shall not be accomplished by sheetflow into the disturbed canyon area. Should the drainage structures fail or any erosion result from the drainage from the project, the applicant or successor in interest shall be responsible for any necessary repairs and restoration.

4. Archaeological Resources.

By acceptance of this permit the applicant agrees to have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation and site preparation that involve earth moving operations. The number of monitors shall be adequate to observe the activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological materials. In the event that an area of intact buried cultural deposits are discovered during operations, grading work in this area shall be halted and an appropriate data recovery strategy be developed, by the applicant's archaeologist, and the Native American consultant consistent CEQA guidelines and implemented, subject to the review and approval of the Executive Director.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

The applicant is proposing to construct a 1,196 sq. ft. second unit with a 700 sq. ft. 2-car garage and septic system. The 1.25 acre site is presently developed with a 2,772 sq. ft. single family residence, garage, driveway, septic system, and two storage sheds. Under the current Malibu LUP, which the Commission considers as guidance, the site is designated as a combination of Residential I (one dwelling per acre) and Rural Land II (one dwelling per two acres). Approximately one fourth of the site is designated as a Disturbed Significant Oak Woodland and Savannah. The project does not involve the removal of any oaks nor does it involve the intrusion into any riparian areas. The site is located in the Point Dume Community of the City of Malibu and is approximately 3/4 mile seaward (south) of Pacific Coast Highway. Further, the site is located approximately 1 mile east of Point Dume State Park.

B. Background

Staff notes that the issue of second units on lots with primary residences has been the subject of past Commission action in the certification of the Malibu Land Use Plan (LUP). In its review and certification of the LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that given the small size of the units (750 sq. ft.) and the fact that they are likely to be occupied by one or at the most two people, such units would have less impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints) than an ordinary single family residence would [Certified Malibu Santa Monica Mountains Land Use Plan 1986, pg. 29 and P.C.H. (ACR), 12/83 pg. V-1 - VI-1].

This issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different functions which in large part consist of: 1) a second unit with kitchen facilities (includes a granny unit, caretaker's unit and farm labor unit); and, 2) a guesthouse, without separate kitchen facilities. Past Commission action has consistently found that both second units and guesthouses inherently have the potential to cumulatively impact coastal resources. As such, conditions on coastal development permits and standards within LCPs have been required to lit the size and number of such units to insure consistency with the Chapter 3 policies of the Coastal Act (Certified Malibu Santa Monica Mountains Land Use Plan 1986, pg. 29).

C. Cumulative Impacts of New Development.

The proposed project involves the construction of a second unit which is defined under the Coastal Act as new development. New development raises issue with respect to cumulative impacts on coastal resources. In particular, the construction of a second unit on the site where a primary residence exists intensifies the use of a site and impacts public services, such as water, sewage, electricity and roads. Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new development.

Section 30250(a) of the Coastal Act states:

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

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Section 30252 of the Coastal Act discusses new development requiring that the location and amount of new development should maintain and enhance public access to the coast. The section enumerates methods that would assure the protection of access and states that such maintenance and enhancement could be received by (in part), "...providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads... and by, assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by..."

In addition, the certified Malibu LUP, which the Commission certified as consistent with the Coastal Act and now considers as guidance for implementing the Chapter 3 policies of the Coastal Act, contains policy 271 which states:

"In any single-family residential category, the maximum additional residential development above and beyond the principal unit shall be one guesthouse or other second unit with an interior floor space not to exceed 750 gross square feet, not counting garage space."

As explained in the preceding Background Section the issue of second units on lots with primary residences relative to consistency with the new development policies of the Coastal Act has been a topic of local and statewide review and policy action by the Commission. These policies have been articulated in both coastal development permit conditions and policies and implementing actions of LCPs. Further, the long-time Commission practice in approving development has upheld the policies, for example 750 sq. ft. size limit in the City of Malibu. This policy has been upheld in over 1,000 coastal development permit approvals.

To get greater understanding of the statewide practice regarding second units, an examination of Commission practice is in order. With respect to LCPs and subsequent amendments that have been certified by the Commission, other cities and counties have strictly defined the size, location and use of second

units. Staff review of LCP implementation policies indicates that typical limitations placed on their development include: a maximum size restriction; the allowance of no more than 1 (one) second unit; the location in proximity to the primary residence of less than 250 ft.; the approval of a conditional use permit; the use of sewer rather than septic system; and, the assurance that parking and circulation will not be adversely impacted (see Exhibit 5).

As reviewed by staff several LCPs have been amended to include revised provisions to the implementation component of the LCP. At the October 1995 hearing, the Commission approved revisions to the City of Encinitas (LCPA 1-95-B) and County of San Luis Obispo (LCPA 2-95) LCPs. Under the City of Encinitas LCP, second units were limited to 750 sq. ft. and guest houses were limited to 640 sq. ft. The City's LCP allows no more than 1 unit per site, where the minimum lot size must be greater than 10,000 sq. ft. This policy is more restrictive than the City of Malibu's in that the second unit potential for permanent occupancy is afforded an additional 110 sq. ft. (750 sq. ft.) and the guest house is limited to a smaller sized unit (640 sq. ft.). The approved County of San Luis Obispo amendment encouraged smaller detached units of 640 sq. ft. to 800 sq. ft. However, the amendment also allows structures up to 1200 sq. ft. in size providing that lots which are on private septic systems are a minimum of 1 acre in size. In the case of the larger second units, the LCP placed performance standards on such approvals and required that detached second units could only be approved on a 1 acre site or larger where the site is served by on-site septic system. Additionally, where the larger units are proposed on lots in a land use category other than residential, the site must be larger than five acres. In contrast to the City of Malibu, there are no lot size minimums and the geographic area contains a vast number of lots which are smaller than 1 acre.

Under Santa Barbara County's LCP amendment #3-93-B (certified by the Commission in 1994) there were revisions to the County's Housing Element programs that were located within the coastal zone. The amendment contained a number of components which included provisions for both attached and detached guest units. Specific review of policies pertaining to detached second units find that the County's certified LCP limits the size of second units to 1,000 sq. ft. and precludes the construction of second units within rural residential areas (such as Tecolote Canyon and Summerland) and within land use designations of Special Problem Areas or Special Treatment Areas. Furthermore, the total gross floor area of all covered structures, including the detached residential second units can not exceed 40% of the gross lot area. As such, the County estimated the total potential buildout of detached second units within the County Coastal Zone at only 49 units. This is in certifying this amendment, the Commission found that the limited number of second units would not compete significantly with Coastal Act priority land uses for limited public resources. In addition the Commission found that by limiting the location of the second units to existing residential developed areas where sufficient infrastructure was available to accommodate the increased demand further insured consistency with the applicable cumulative impact sections of the Coastal Act. Thus, 1,000 sq. ft. was appropriate where only 49 units were contemplated and where there was enough infrastructure. This is in contrast to the Malibu/Santa Monica Mountains area where 2,110 residential units are the maximum number of units which may be constructed prior to the construction of upgrades to the existing infrastructure (Policy 274 of the Malibu LUP, which is considered as guidance). This policy is based

on evidence that the area's infrastructure cannot support more development [Certified Malibu Santa Monica Mountains Land Use Plan 1986, pg. 29 and P.C.H. (ACR), 12/83 pg. V-1 - VI-1].

More recently in 1995, the Commission certified Del Norte County LCP amendment #1-95 which involved the establishment for a use permit procedure to allow (in part) for second units. The Commission found that the permanent and temporary placement of second units was consistent with the County's LCP based on modifications that insured that the second units were consistent with the allowable land use plan density and that the subject parcel was twice the minimum parcel size. In the case of granny units which were proposed for senior housing, the size of the units were limited to 700 sq. ft. As proposed by the County and modified by the Commission, second units were not allowed on all sites where the construction of such a unit would conflict with the maximum density under the LUP map certified by the Commission. Moreover, the Commission found that an increase in the County's existing densities, which were established in order to insure that adequate services were available to accommodate allowable future increases in development, would create adverse impacts on coastal resources. In comparison to Del Norte County, the Malibu area does not require a minimum lot size to construct a second unit. In addition, the size of the units are restricted to a maximum of 700 sq. ft. as opposed to the allowed 750 sq. ft. in the Malibu/Santa Monica Mountains area (or 1200 sq. ft. as proposed by the City). As set forth above, the Commission has certified policies and implementing measures that are at the present more restrictive than what is presently imposed in this area of the coast.

With respect to permit conditions, Commission action on second units and guesthouses has varied based upon such factors as the types of units proposed, the differences in conditions (or lack thereof) attached by local governments, and differences in the characteristics of the communities where such units are proposed. In the case of the City of Malibu and the unincorporated Santa Monica Mountains, limitations on the size of second units/guesthouses have historically been placed on their construction for several reasons still existent today. First, as stated in the previous section a second unit is normally characterized as a self-contained dwelling unit with kitchen facilities on a parcel that is developed with a single family residence. Second units as typically described would include a granny unit, caretaker unit or farm labor unit. In areas, such as the City of Malibu, where public service capacities are limited to support Coastal Act priority land uses (i.e. commercial visitor serving) and public access to the coast, the limit in size of the guest unit ensures against the potential for a large number of occupants. As such, the smaller number of occupants which would range from one to two persons ensures a limited impact on both traffic and sewage disposal. Second, the smaller sized second unit/guesthouse reduces the likelihood that these structures will become separate dwelling units. Third, as set forth in the Malibu LUP, the Commission has found limitations to the capacity of Pacific Coast Highway to serve additional development. Policy 274 of the LUP includes a cap on the number of residential units and commercial square footage which may be approved before improvements to Pacific Coast Highway are made. As stated in this policy, the second units/guesthouses are assigned a half residential unit allocation based on their small size and limited occupancy of these structures. The basis for imposing caps on the number of residential units and the square footage of commercial development

and the necessary improvements to the highway came from data designed to measure highway capacity produced by the California Department of Transportation (Certified Malibu/Santa Monica Mountains Land Use Plan 1986, pg. 29). To date, no improvements to the existing infrastructure has occurred and, therefore, there is no basis to alter the present policy, which limits development as certified by the Commission in certifying the LUP.

The Coastal Act requires that new development be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of second units on each existing lot within the Coastal Zone would create adverse cumulative impacts on coastal resources and public access.

Due to the fact that the applicant is proposing a 1,196 sq. ft. second unit, the Commission finds that the larger unit will have cumulative impacts, typical to those of a small house. Within the Malibu/Santa Monica Mountains area, the Commission has adopted several policies to ensure that the cumulative impacts of proposed development are adequately mitigated. One example is found in development approvals within the Small Lot Subdivisions. In these areas a small building site of 4,000 sq. ft., where utilities and access exist is afforded the minimum development of a 500 sq. ft. house. In order to build a structure larger than 500 sq. ft., the applicant is given the option of purchasing lots within the area to increase the square footage by 500 sq. ft. if the lots are contiguous or 300 sq. ft. if the lots are non-contiguous. In exchange for the increase in structural area, the lots must be deed restricted from future development and combined with the adjacent lot. As such, the cumulative impact of constructing residential structures on small lots is mitigated due to the capacity of the area to support it, by insuring that the intensity is proportionate to the density of the proposed development.

A second example is in response to the issue of build-out and potential subdivisions of existing legal lots. Here the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent was to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

In several recent permit actions in Los Angeles County prior to the City of Malibu's incorporation (5-86-592, Central Diagnostic Labs; 5-86-951, Ehrman and Coombs; 5-85-459A2, Ohanian; and 5-86-299A2 and A3, Young and Golling), the Commission found that until other mitigation programs were both in place and able to be implemented, it is appropriate for the Commission to continue to require purchase of TDC's as a way to mitigate the cumulative impacts of new subdivisions and multi-residential development. In 1986, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan, which is no longer legally binding within the City of Malibu. The Plan contained six potential mitigation programs that if in place would adequately mitigate the cumulative impacts of new development. However in approving the above cited permit requests, the Commission found that none of the County's six mitigation programs were defined in the LUP as "self-implementing" or adequate to offset the impact of increased lots in the Santa Monica Mountains and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique to retire development rights on selected lots, remained a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

A third example involves two projects similar to the project proposed under this application, which consisted of the construction of an approximate 2200 sq. ft. second residential unit on a 16 acre lot (5-88-443 O'Conner) and the construction of a 1,738 sq. ft. caretaker unit on a 2.74 acre lot (4-95-054 SAM Trust). The Commission approved the projects subject to participation in the Transfer of Development Credit (TDC) program as mitigation for the development of two residential units on one site. The Commission found that the size of the structures would likely have cumulative impacts typical to those of an average single family dwelling with the potential for the occupancy of an entire family in addition to the primary residence. In order to mitigate the cumulative impacts associated with the construction of these second residential units, the Commission required the purchase of one TDC (to retire the development rights of a building site elsewhere in the Malibu/Santa Monica Mountains coastal zone) and required through a deed restriction that any future subdivision proposals be held to a determination that two single family residences exist on the site.

As stated previously, the proposed project has received Approval in Concept from the City of Malibu. As asserted by the applicant this approval was granted based on consistency with the City of Malibu Municipal Code which allows for one second unit of up to 1200 sq. ft. and guest units up to 750 sq. ft. providing that proposed development is consistent with the maximum lot coverage. Staff notes that on July 12, 1995, the Coastal Commission's South Central Coast office submitted a comment letter on the Notice of Preparation of a Draft Environmental Impact Report from the City of Malibu for the City of Malibu General Plan and LCP. Further, on October 18, 1995, the Coastal Commission's South Central Coast office forwarded a comment letter regarding the City of Malibu's Draft Environmental Impact Report for the City of Malibu General Plan and LCP. As set forth in both letter, Commission staff raised concerns with the fact that the environmental impacts that would result from the proposed density and intensity of development, specifically the proliferation of large second units, within the City were not adequately addressed. Moreover, prior to the transmittal of both letters, Commission

staff had conducted several meetings with City staff specifically to discuss the creation of performance standards for approving second units/guesthouses to a size consistent with the intent of past Commission action.

As evidenced in other certified LCPs, the issue of second units relative to coastal zone resources and public access is unique to each coastal community. As such, the Commission finds that an expansion of the current second unit/guesthouse size limitation is not in order, given that the City has not produced any updated technical studies or new information since the 1986 Plan, which might support the applicant's applications. This planning issue, more appropriately, should be resolved in the LCP. In addition, the Commission staff does not have any evidence that the required infrastructure upgrades (as stated in Policy 274 of the certified Malibu LUP which is considered as guidance) are no longer necessary. Where modifications to past restrictions are proposed, it is incumbent upon the responsible jurisdiction to provide evidence and to outline some sort of "performance standards" to insure the second units would not do the following: 1) significantly out-compete Coastal Act priority land uses; 2) increase the demand on existing infrastructure in a way that would impact coastal resources; and, 3) inhibit public access to the coast. As stated above, the traffic and build-out study are outdated and new studies analyzing the necessary improvements to Pacific Coast Highway based on the potential residential and commercial development have not been conducted or submitted to the Commission for consideration. Therefore, the Commission has no new evidence shedding doubt on its earlier findings.

For all of the reasons stated above, a revision from the Commission's prior policy of limiting residential development to one SFD and one detached 750 sq. ft. second unit/guesthouse is not appropriate. Special Condition #1 has been drafted to require the applicant to revise the project plans to reflect a 750 sq. ft. second unit. Alternatively, the Commission finds that an interim policy relating to second units larger than 750 sq. ft. could be found consistent with Section 30250(a) and all other applicable Coastal Act policies if the larger unit were adequately mitigated. As required by Special Condition #1, if the applicant elects to choose this alternative, the approval would be subject to the retirement of development rights of one lot equivalent to one third (1/3) TDC value.

The Commission finds that the construction of a second unit greater than 750 sq. ft. or in this case approximately 1200 sq. ft., which is 450 sq. ft. larger than the maximum allowed unit, is similar to or the equivalent of developing one small lot with a 500 sq. ft. single family residence. In comparing the two developments, one 500 sq. ft. house and a second unit that is 450 sq. ft. over the maximum allowed structure size, a number of parallels may be drawn. For example, the 500 sq. ft. house would require a septic system, driveway, garage, fire clearance and site improvements. Similarly, a larger unit at 1200 sq. ft. is detached and sited away from the SFD and requires the construction of a larger septic system, a garage, a larger area of fire clearance, a separate driveway for access and additional site improvements.

In comparing the 1200 sq. ft. unit against a 750 sq. ft. unit, the 750 sq. ft. unit might also include a driveway, septic system, fire clearance, etc., however, the smaller unit would still be seen as an ancillary or accessory use to an existing SFD in that they typically do not become or have less potential to become full-time rental units. Although the increase in square footage may

only be 450 sq. ft., the cumulative impacts is much greater because the additional space results in a structure size that can contain two to three bedrooms, two baths and full kitchen and can become permanent rental or living quarters for a family of three to five. As such, the additional 450 sq. ft. that could accommodate a family of three to five would also typically result in two cars, a larger septic system, more visitors, and a greater number of vehicle trips than a smaller 750 sq. ft. structure. The smaller 750 sq. ft. structure which is typically not occupied full time would only be occupied by one or two persons with one car at most, less septic capacity, less visitors and a smaller number of vehicle traffic trips and, therefore, results in a less intense use of the site. Because of the smaller size of the unit, a separate driveway is not typically proposed and usually no garage is proposed (many 750 sq. ft. second units are sited above the existing garage and use the same driveway), the unit can use a small septic system with a leachfield common to the SFD or a reduced number of seepage pits, and area of total vegetation removal is minimized (given the unit's close proximity to the SFD). Additionally, a 750 sq. ft. guest house typically does not have kitchen facilities.

In this specific case, a separate driveway and two car garage is proposed along with the increased square footage which clearly has all the impacts of a bonafide permanent residential unit akin to splitting the lot, as opposed to the impacts of a typical 750 sq. ft. guest house/second unit. The proposed development clearly has an equal or greater impact than a 500 sq. ft. structure on a small lot.

In addition, the development of a larger unit would allow for permanent residency to be established on the site where one primary residence already exists and would thereby increase the traffic generation to the coastal zone. As such, the adverse environmental impacts of constructing a small house (500 sq. ft.) on an undeveloped lot would, in effect, equal or be similar to the impacts of constructing a large second unit (in excess of 450 sq. ft. of that allowed) on a lot developed with a primary residence. Under the current TDC program, the value of a 500 sq. ft. house in a small lot subdivision is equal to one third of a credit. This allowance is based on the requirement that where a small lot is qualified for a TDC, the lot must exceed 4,000 sq. ft. in size and be served by existing roads and water mains within 300 ft. of the property and not be located in an area of landslide or geologic hazard.

As explained above, the TDC program has been considered by the Commission as an effective tool for mitigating the adverse cumulative impacts of residential development where such development would result in an increase in the number of total residential units conceptualized in the 1978 Coastal Zone Build-Out assessment. As outlined in the 1981 Interpretive Guidelines adopted by the Commission, the TDC program does not prevent the development of one unit and, where feasible, one 750 sq. ft. second unit on each residential parcel. As such, the program is voluntary. Therefore, should the applicant exercise the option of building a larger (1,196 sq. ft.) unit, one lot which is the equivalent of one third TDC shall be retired.

The Commission notes that concerns about the potential future impacts on coastal resources and coastal access might occur with any further development of the subject property. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation would be associated with the development of the additional unit in this area. Therefore, the Commission finds it is necessary to require the applicant to

include a future improvements deed restriction that specifically limits the size of the second unit consistent with Special Condition #1. Thus the findings and special conditions attached to this permit will serve to ensure that the proposed development results in the development of the site that is consistent with and conforms to the Chapter 3 policies of the Coastal Act. In addition, the Commission notes that the City currently allows for a guest house and a second unit to be on the same parcel in addition to the SFD. Should the applicant comply with part (b) of Special Condition #1, the mitigation of the larger second unit would have no bearing on or be considered as mitigation for any future development proposals by the applicants or their successors in interest. The Commission finds that as conditioned, the proposed project is consistent with Section 30250(a) and with all the applicable policies of the Coastal Act.

D. Environmentally Sensitive Habitat/Geologic Stability

Section 30240 of the Coastal Act states:

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

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

Section 30253 of the Coastal Act states:

New development shall:

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

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

Section 30240 of the Coastal Act calls for the protection of environmentally sensitive habitat areas and Section 30253 requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The applicant is proposing the construction of a 1,196 sq. ft. second unit, with two-car garage and septic system

The applicant has submitted an approved Geologic Review Sheet from the City of Malibu which indicates that the proposed project is consistent with the safety standards and building codes. Drainage for the site would be down easterly slope surfaces which lead directly to the canyon area and beach. The Commission notes that erosion caused by proposed grading and development in close proximity to canyons, ESHAs and beaches is an area of concern. While the project site is greater than 200 ft. from the ESHA, there is clearly a

need to incorporate erosion control devices into the project plans in order to reduce the impact of site runoff into the canyon, ESHA and beach. Therefore, the Commission finds it necessary to condition the project to provide detailed drainage and erosion control plans.

As stated above, the applicant has submitted an approved Geologic Review Sheet from the City of Malibu which indicates that the proposed project is consistent with the safety standards and building codes. As such, the approval represents that the project will be constructed in a manner that will assure stability and structural integrity of the proposed development. The Commission finds that only as conditioned is the proposed project consistent with Section 30253 of the Coastal Act.

E. Archaeological Resources

Section 30244 of the Coastal Act states that:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Archaeological resources are significant to an understanding of cultural, environmental, biological, and geological history. The Coastal Act requires the protection of such resources to reduce potential adverse impacts through the use of reasonable mitigation measures. Archaeological resources can be degraded if a project is not properly monitored and managed during earth moving activities conducted during construction. Site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be lost. As so many archaeological sites have been destroyed or damaged as a result of development activity or natural processes, the remaining sites, even though they may be less rich in materials, have become increasingly valuable. Further, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites which remain intact. The greater province of the Santa Monica Mountains is the locus of one of the most important concentrations of archaeological sites in Southern California. Although most of the area has not been systematically surveyed to compile an inventory, the sites already recorded are sufficient in both number and diversity to predict the ultimate significance of these unique resources.

An Archaeological Assessment of the project site was prepared by Topanga Anthropological Consultants for the City of Malibu. The report concluded that the project site is not in a paleontologically sensitive area and that it would not directly impact any cultural remains. The consultants conducted archival research of known archaeological sites as well as an on-foot reconnaissance. The search of archaeological records for the area identified 3 known sites within a quarter-mile radius of the proposed project site.

The City archaeologist did a walk-over survey of the site and he identified no artifacts, shells, bones or altered soil indicating presence of pre-historic archaeological remains. The report states that, "My observations indicate that construction will not affect pre-historic site deposits." The consultant's report recommended that if archaeological resources were encountered during the project's construction work should be stopped and the City archaeologist and Chumash Cultural Resource Manager should be consulted to determine appropriate mitigation measures.

Based on the consultant's recommendations the Commission finds that, in this case, there is a known archaeological site near the project site, there is a potential for cultural resources to be present on the site where they could be disturbed by grading operations. In order to ensure that archaeological resources, if any, are properly identified and adequate mitigation measures are implemented, the Commission finds it necessary to require the applicant to have an archaeologist and Native American consultant on site during all grading operations. The Commission finds that the proposed project, as conditioned, is consistent with Section 30244 of the Coastal Act.

F. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. 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 applicant is proposing to install a new septic system, which would include a septic tank and two seepage pits. In addition, the applicant has submitted septic system "Approval" from the City of Malibu Department of Environmental Health. As reviewed by the City, the proposed project is consistent with the City's plumbing code and will not adversely impact the biological productivity and quality of the coastal waters located south of the subject site. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

G. 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's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. 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 that have not been adequately mitigated. 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.

0110R

EXHIBIT NO. I

APPLICATION NO.
4-95-243

area map



VICINITY MAP

CORTAZZO RESIDENCE
29867 CLIFFSIDE DR., MALIBU
APPLICANTS REPRESENTATIVE:
LISE MATTHEWS #A3200
1510 ABBOT KINNEY BLVD
VENICE, CA 90291
TEL. 310.399.7108

CORTAZZO
RESIDENCE
28867 CLIFFSIDE DR.
MALIBU, CA

APPLICANT'S REPRESENTATIVE
LISE MATTHEWS #A-152
1510 ABBOT KINNEY BLVD
VENICE, CA 90291
tel. 310.399.7108

OWNERSHIP MAP
(COMPOSITE OF TAX
ASSESSOR'S MAPS)

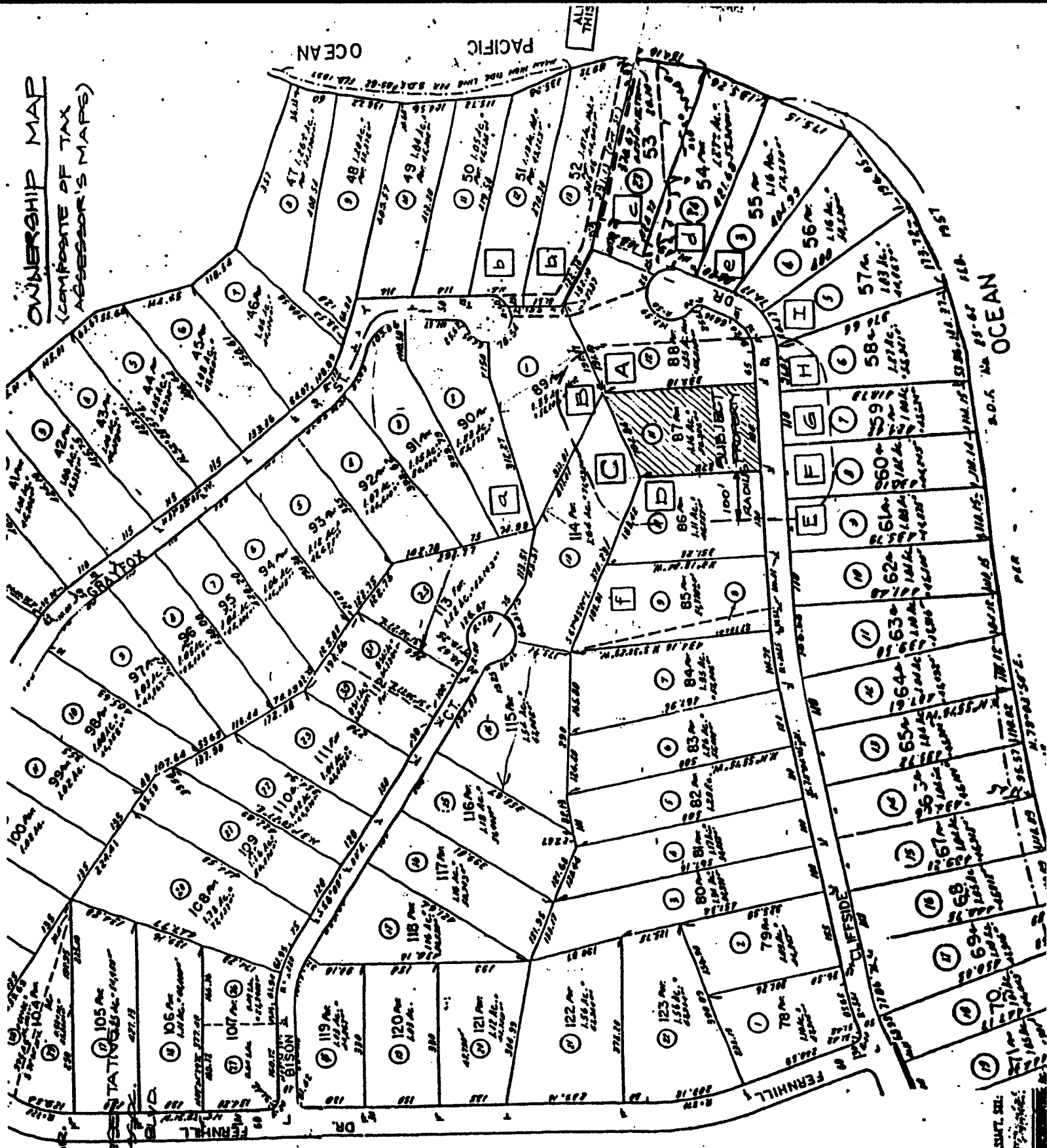


EXHIBIT NO. 2
APPLICATION NO.
4-95-243
parcel map

PROPOSED SITE PLAN

PROPERTY AREA DATA

Lot Area: 1.00 Acre
 Zoning: R-1
 Assessed Value: \$1,200,000
 Tax Map: 123456
 Parcel: 1234567890

TOTAL DEVELOPMENT AND MULTI-STORY CALCULATION

Development: 10,000 sq. ft.
 Multi-story: 20,000 sq. ft.
 Total: 30,000 sq. ft.

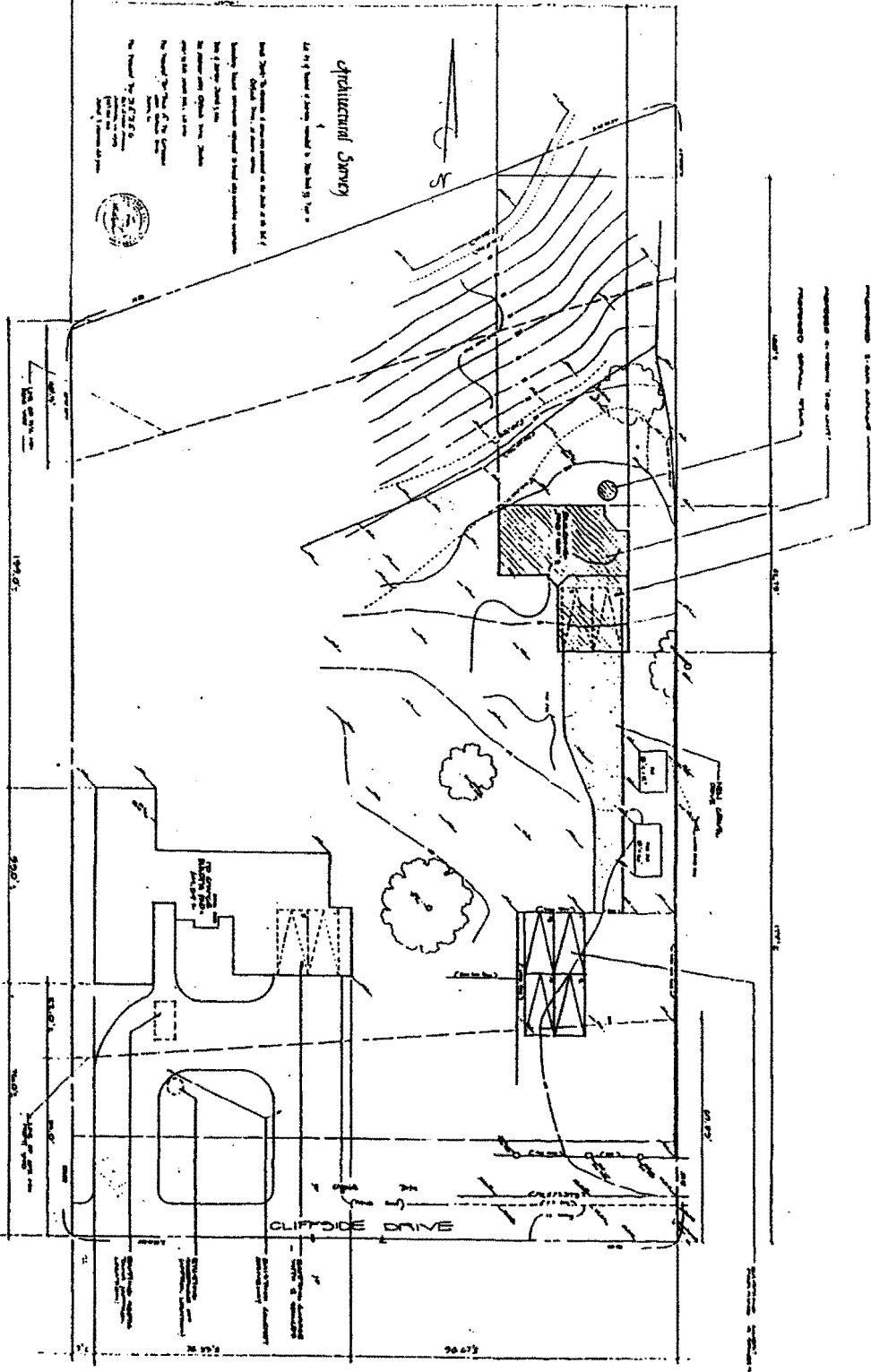


EXHIBIT NO. 3

APPLICATION NO.
 4-95-243

site plan

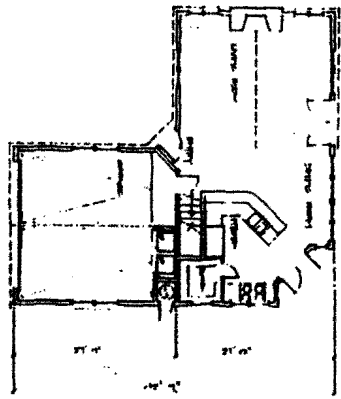
LISE
 MATTHEWS
 AIA

Cortazzo Residence
 2867 Cliffside Drive, Malibu, California 90265

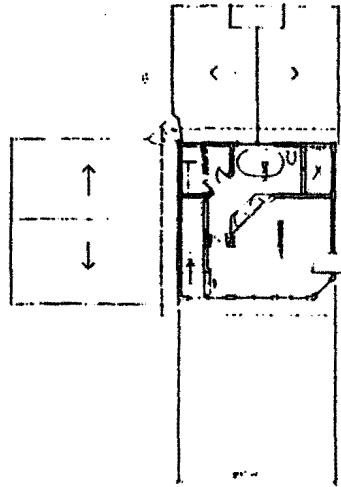
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DATE: 6-19-95

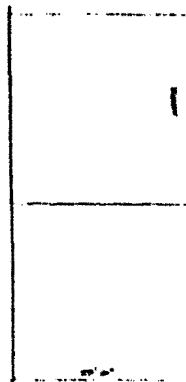
REVISION



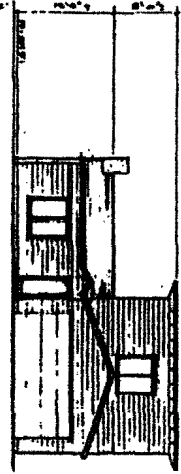
PROPOSED FIRST FLOOR PLAN 70' 0" x 11' 0" (approx.)



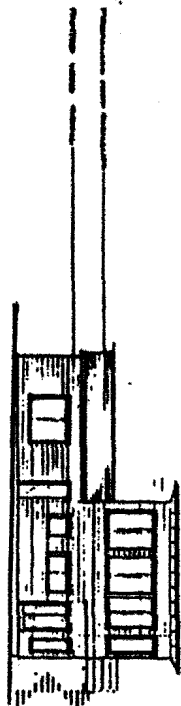
PROPOSED SECOND FLOOR PLAN 40' 0" x 40' 0" (approx.)



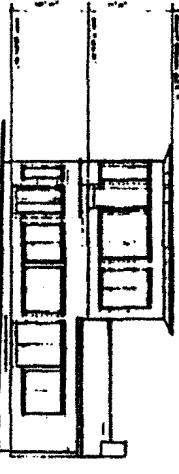
PROPOSED ROOF PLAN



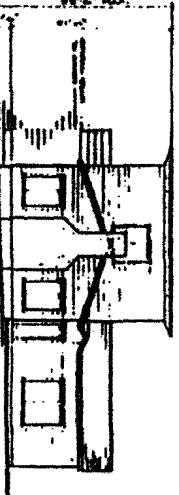
④ SOUTH ELEVATION



⑤ EAST ELEVATION



⑥ WEST ELEVATION



⑦ NORTH ELEVATION

EXHIBIT NO. 4
APPLICATION NO.
4-95-243
elevations

LISE
MATTHEWS
ARCHITECT
1111 14th Street
San Francisco, CA 94103
415.398.1111

Cortazzo Residence
2887 Cliffside Drive, Malibu, California 90265

A-2

DATE: 6.14.98
BY: JMT

REVISIONS

EXHIBIT NO. 5
APPLICATION NO. 4-95-243
<i>City of Malibu</i> Municipal Code

CHAPTER 9210

RURAL RESIDENTIAL ZONE (RR)

9210. Purpose

The RR District is intended for sensitively designed, large lot single family residential development, as well as agricultural uses and animal keeping which respects surrounding residents and the natural environment. This District incorporates a variety of natural resources and amenities.

9211. Permitted Uses

The following uses and structures are permitted in the RR District:

- A. One single family residence per lot.
- B. Small Family Day Care and residential care facilities serving 6 or fewer persons.
- C. Accessory uses and structures as follows:
 - 1. Accessory buildings customarily ancillary to single family residences including, but not limited to, guest units (750 sq. ft. maximum), detached garages, barns, pool houses, gazebos, storage sheds, and greenhouses (non-commercial). (Ord 93, 6/14/93)
 - 2. Recreational structures including, but not limited to, pools, spas, non-illuminated sports courts, and corrals.
 - 3. Domestic animals, kept as pets or for personal use. (Ord 93, 6/14/93)
 - 4. Raising of crops including, but not limited to, field, trees, bush, berry row and nursery stock, provided there is no retail sale from the premises.
 - 5. Raising of horses, sheep, goats, donkeys, mules and other equine cattle for personal use by residents on the premises, subject to the following conditions:
 - a. The subject property is a minimum of 15,000 sq. ft. in size.
 - b. The maximum number of animals listed above does not exceed one animal (over 6 months of age) for every 5,000 sq. ft. of lot area.

12. The following agricultural uses, provided that all buildings or structures used in conjunction therewith shall be located not less than 50 feet from any street or highway or any building used for human habitation:

1. The raising of horses and other equine, cattle, sheep and goats, including the breeding and training of such animals, on a parcel having an area of not less than one acre and provided that not more than eight such animals per acre of the total ground area be kept or maintained in conjunction with such use.
2. The grazing of cattle, horses, sheep or goats on a parcel with an area of not less than five acres, including the supplemental feeding of such animals, provided:
 - a. That such grazing is not a part of nor conducted in conjunction with any dairy, livestock feed yard, livestock sales yard or commercial riding academy located on the same premises.
 - b. That no buildings, structures, pens or corrals designed or intended to be used for the housing or concentrated feeding of such stock be used on the premises for such grazing other than racks for supplementary feeding, troughs for watering, or incidental fencing.
3. Raising of poultry, fowl, birds, rabbits, fish, bees and other animals of comparable nature, provided the subject parcel is a minimum of one acre in size.
4. The raising of hogs or pigs, provided:
 - a. That said animals are located not less than 150 feet from any highway and not less than 50 feet from the side or rear lines of any parcel.
 - b. That said animals shall not be fed any market refuse or similar imported ingredient or anything other than table refuse from meals consumed on the same parcel of land, or grain.
 - c. That no more than two weaned hogs or pigs are kept.
 - d. That the subject parcel is a minimum of one acre in size.

E. Manufactured homes, pursuant to Government Code Section 65852.3.

F. Second units, pursuant to Government Code Section 65852.2.

G. Large Family Day Care facilities (serving 7 to 12 persons), subject to the provisions of

MALIBU MUNICIPAL CODE

EXHIBIT NO.5
APPLICATION NO. 4-95-243
City of Malibu Municipal Code