

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 5/23/97
49th Day: 7/11/97
180th Day: 11/19/97
Staff: S. Hudson
Staff Report: 6/19/97
Hearing Date: July 8-11, 1997
Commission Action:



STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-97-086

APPLICANT: Peg Yorken

AGENTS: Jamie Harnish

PROJECT LOCATION: 21348 Pacific Coast Highway, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Demolition of an existing 2843 sq. ft., 1-story, single family residence and construction of a 7482 sq. ft., 2-story, 32'-6" in height, single family residence with an attached 2-car garage and septic system.

Lot area:	14,630 sq. ft.
Building coverage:	3,863 sq. ft.
Pavement coverage:	1,299 sq. ft.
Landscape coverage:	597 sq. ft.
Parking spaces:	4
Ht abv ext grade:	32'-6"

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

SUBSTANTIVE FILE DOCUMENTS: Geotechnical Engineering Report dated 2/29/96 by RJR Engineering Group, Inc.; Geotechnical Engineering Report Update and Addendum Letter dated 2/18/97 by RJR Engineering Group, Inc.; Wave Uprush Study dated 2/6/96 by Pacific Engineering Group.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with four (4) special conditions regarding plans conforming to geologic recommendations, construction responsibilities and debris removal, assumption of risk and wildfire waiver of liability.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Report dated 2/29/96 and the Geotechnical Engineering Report Update and Addendum Letter dated 2/18/97 by RJR Engineering Group, Inc., as well as, the Wave Uprush Study dated 2/6/96 by Pacific Engineering Group shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by both consultants. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants 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.

2. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. the permittee shall remove from the beach any and all debris that result from the construction period.

3. Assumption of Risk

Prior to permit issuance, applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: (a) the applicant understands that the site may be subject to extraordinary hazard from waves during storms or flooding, and the applicant assumes the liability from such hazards; and (b) the applicant unconditionally waives any claim of liability on the part of the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees relative to the California Coastal Commission's approval of the project for any damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

4. 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 an existing 2843 sq. ft., 1-story, single family residence and construct a 7482 sq. ft., 2-story, 32'-6" in height, single family residence with an attached 2-car garage and septic system. The subject site is a previously developed 14,630 sq. ft. lot located on the seaward side of Pacific Coast Highway in the La Costa Beach area. Elevations across the property range from approximately mean sea level near the southern boundary to 16 ft. near the northern boundary

The proposed project is located within a built-out section of Malibu consisting of numerous single family residences on the seaward side of Pacific Coast Highway and mixed commercial and residential uses on the landward side of the highway. Although the project site is located between Pacific Coast Highway and the sea, the proposed residence is consistent with the character of the area and will not result in any new significant adverse impacts on the viewshed from the highway.

B. Public Access and Seaward Encroachment

Coastal Act Section 30210 states that:

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

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Finally, Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

All beachfront projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30210, 30211, and 30212. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trusts thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use and cause adverse impacts on public access such as above.

In the case of the proposed project, the proposed residence will not extend development any further seaward than the existing structures on the upcoast and downcoast sides of the proposed project site. Further, the applicant does not propose the construction of any shoreline protective devices which could interfere with coastal processes and access along the beach. The proposed structure will be constructed on a caisson foundation. The applicants have submitted a Wave Uprush Study, dated February 6, 1996, prepared by Pacific Engineering Group. Based on their investigation of the proposed project site and proposed residence, the consultants conclude that:

The construction of a new single family residence on the subject property is feasible from a coastal engineering perspective provided that the following recommendations are complied with....

The construction of seawalls, bulkheads, revetments and other shoreline protective devices contribute to beach erosion downcoast of the structure, as well as, adversely impact public access. The applicant indicates that no protective device will be necessary. As such, the proposed project will have no individual or cumulative impacts on public access or beach erosion.

In addition, as a means of controlling seaward encroachment of residential structures on a beach to ensure maximum access, protect public views and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30251 and 30253, the Commission has developed the "stringline" policy to control the seaward extent of buildout in past permit actions. As applied to beachfront development, the stringline limits extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks.

The Commission has applied this policy to numerous past permits involving infill on sandy beaches and has found it to be an effective policy tool in preventing further encroachments onto sandy beaches. In addition, the Commission has found that restricting new development to building and deck stringlines is an effective means of controlling seaward encroachment to ensure maximum public access as required by Sections 30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

The applicant has submitted a stringline map which connects the proposed residence to those structures located both upcoast and downcoast of the project site. The proposed structure is located within the stringline drawn from the upcoast and downcoast structures and the proposed deck is located within the stringline drawn from the decks of the upcoast and downcoast structures. As such, the proposed project will not extend development further seaward than adjacent development, minimizing potential impacts to public access opportunities, public views and the scenic quality of the shoreline.

In addition, the applicant has also submitted evidence of the State Lands Commission review of the proposed project. This review resulted in State Lands presently asserting no claim either that the project intrudes into sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters

For all of these reasons, the Commission finds that the project would have no individual or cumulative adverse impacts on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, 30212 and 30251.

C. Geologic Stability 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. Fires in the Malibu area have also burned all the way to the ocean so even beachfront home are not immune to the risk of wildfire. Further, beachfront sites are also subject to flooding and erosion from storm waves.

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 four (4).

The applicant proposes the demolition of an existing 2843 sq. ft., 1-story, single family residence and construction of a 7482 sq. ft., 2-story, 32'-6" in height, single family residence with an attached 2-car garage and septic system.. 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 Geotechnical Engineering Report dated 2/29/96 by RJR Engineering Group, Inc., states that:

Based on the results of this investigation, the proposed construction of a single family residence at the subject property will be safe against geologic hazards from landslide, settlement or slippage and will not adversely affect adjacent property, provided our recommendations are followed during design and construction.

Both engineering consultants have included a number of geotechnical and engineering recommendations which will increase the stability and geotechnical safety of the site. To ensure that the recommendations of the engineering consultants are incorporated into the project plans, the Commission finds that it is necessary to require the applicant, as required by special condition one (1), to submit project plans certified by both RJR Engineering Group, Inc., and Pacific Engineering Group as conforming to their recommendations.

Even though the consultants have determined that the project site will be free of geologic hazards, the Commission cannot absolutely acknowledge that the proposed residence will be safe during all future storms or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach going public. The Commission acknowledges that many of the oceanfront parcels in Malibu such as the subject property are susceptible to flooding and wave damage from waves and storm conditions. Past occurrences have resulted in public costs (through low interest loans) in the millions of dollars in the Malibu area alone. Storms during the winter of

1982-83 caused over six million dollars in damage to private property in Los Angeles County and severely damaged existing bulkheads, patios, decks, and windows along the Malibu coastline.

The applicant may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, the Commission can only approve the project if the applicant expressly waives any potential claim of liability against the Commission, as required by special condition three (3), for any damage or economic harm suffered as a result of the decision to develop. This waiver of liability will take the form of an assumption of risk deed restriction recorded against the applicant's property.

Additionally, as noted above, the project involves demolition and construction on a beachfront lot subject to tidal influence. Construction equipment, materials and demolition debris could pose a significant hazard if used or stored where subject to wave action or situated in a manner that a hazard is created for beach users. Therefore, the Commission finds it necessary to require special condition two (2) to ensure that the applicant will not utilize construction equipment within the intertidal zone or to store materials or waste where it might be subject to wave action. 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 and ensure construction equipment and debris does not encroach into the intertidal zone, the proposed project is consistent with Section 30253 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 constructing a septic system for the new 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. In addition, the Wave Uprush Study dated 2/6/96 by Pacific Engineering Group states:

The seaward edge of the most seaward leach field (future field) is located approximately 17 feet from the right-of-way line of Pacific Coast Highway. At this location the leach fields require no uprush and scour protection...

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: SMH1/4-97-086

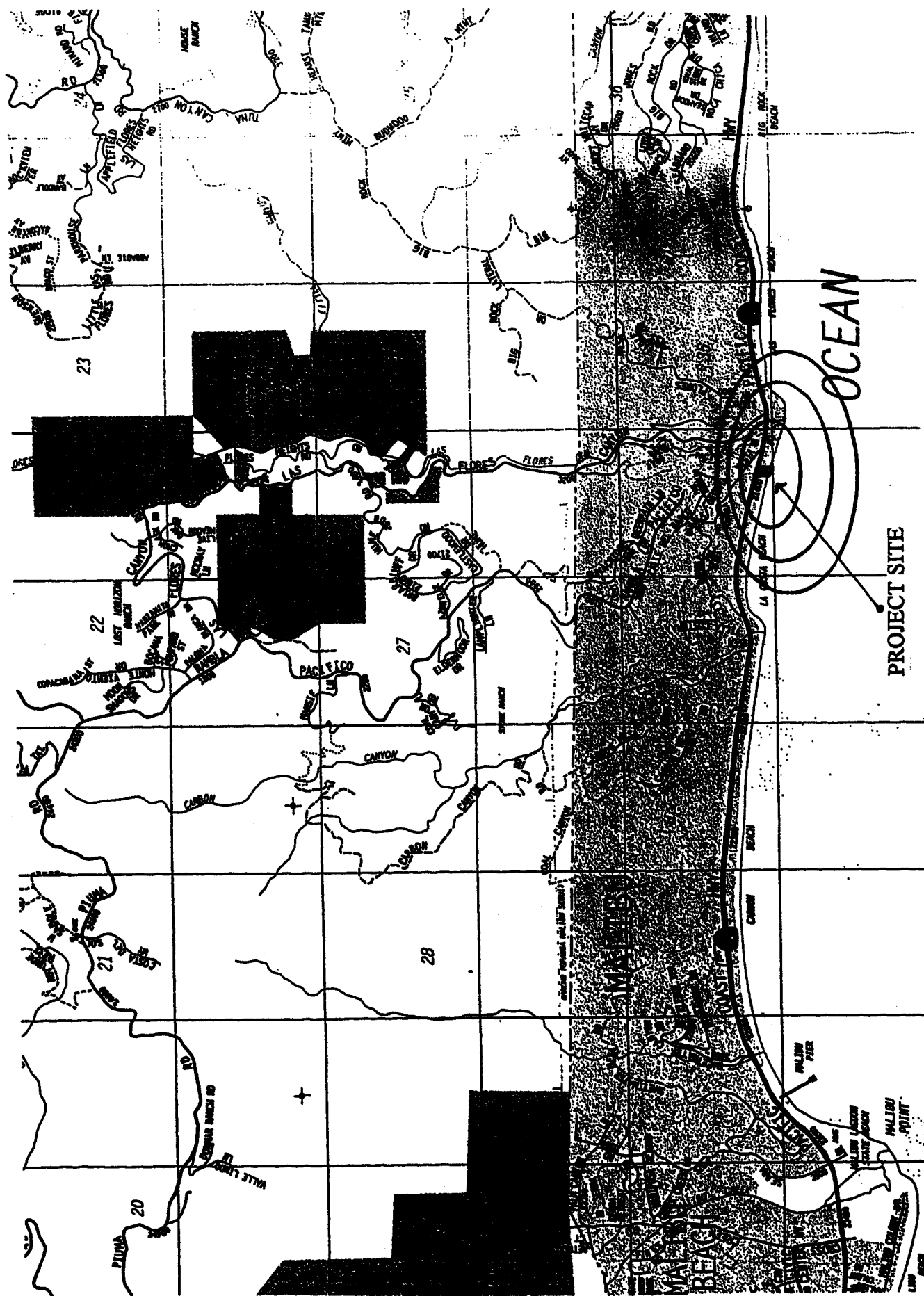


Exhibit No. 1: (4-97-086) Location Map

4451 | 1
SHEET 1
SCALE 1" = 100'

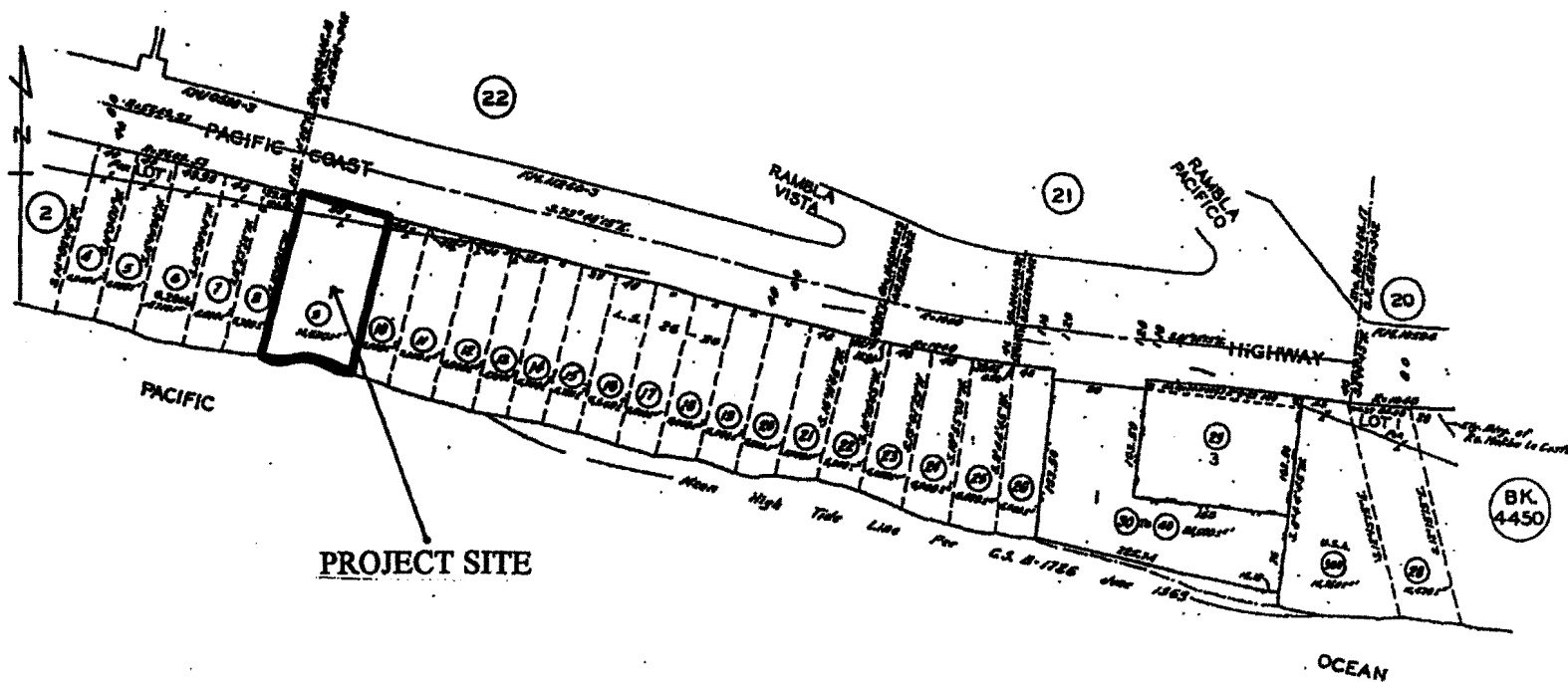


Exhibit No. 2: (4-97-086) Parcel Map for Project Site

MRY
Steve Rabe, Inc.
Architects & Planners
233 Pine Blvd.
Malibu, CA 90263
Phone: (310) 497-086
Fax: (310) 497-192

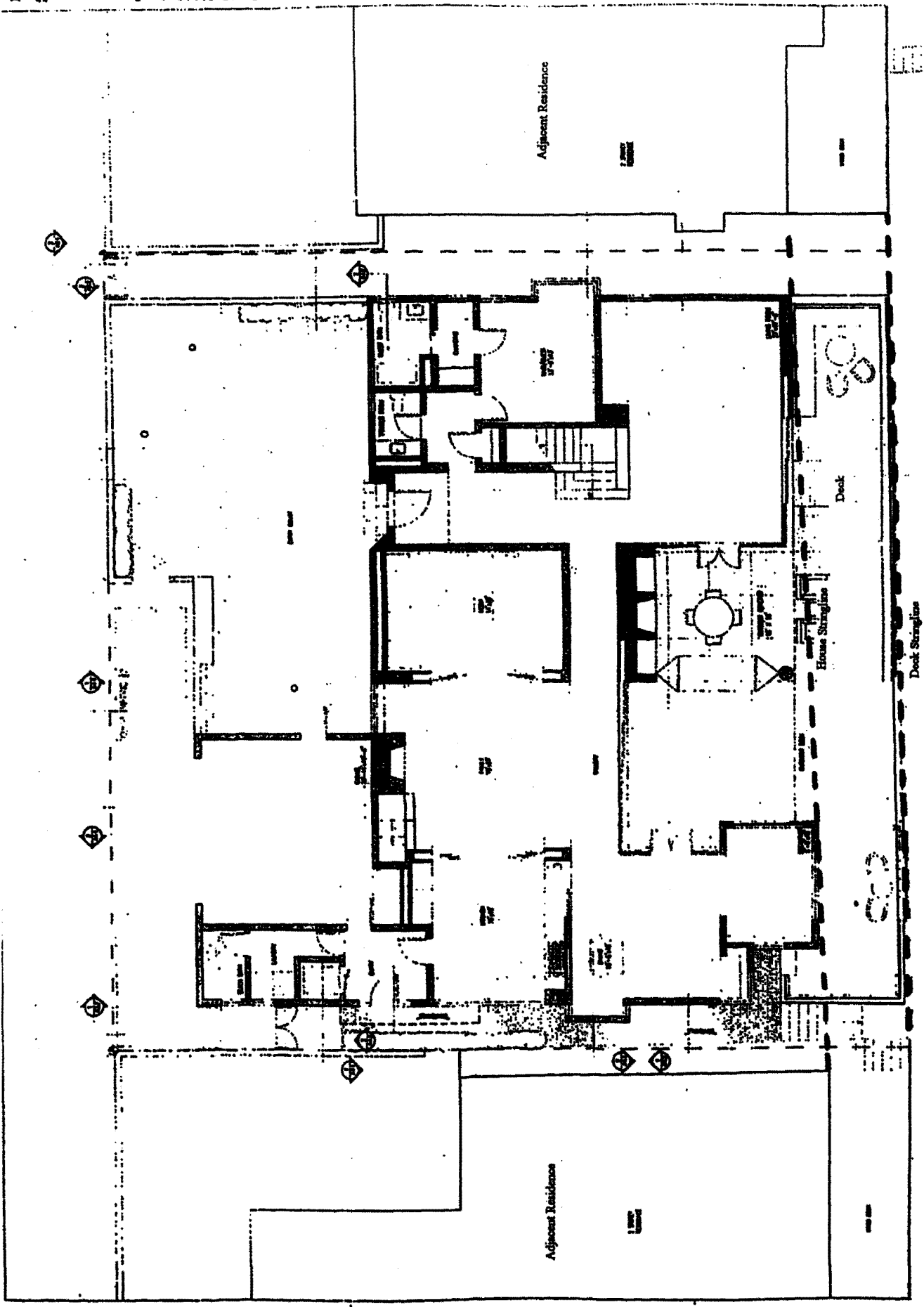


Exhibit No. 3: (4-97-086) Site Plan/Floor Plan (Proposed Structure)

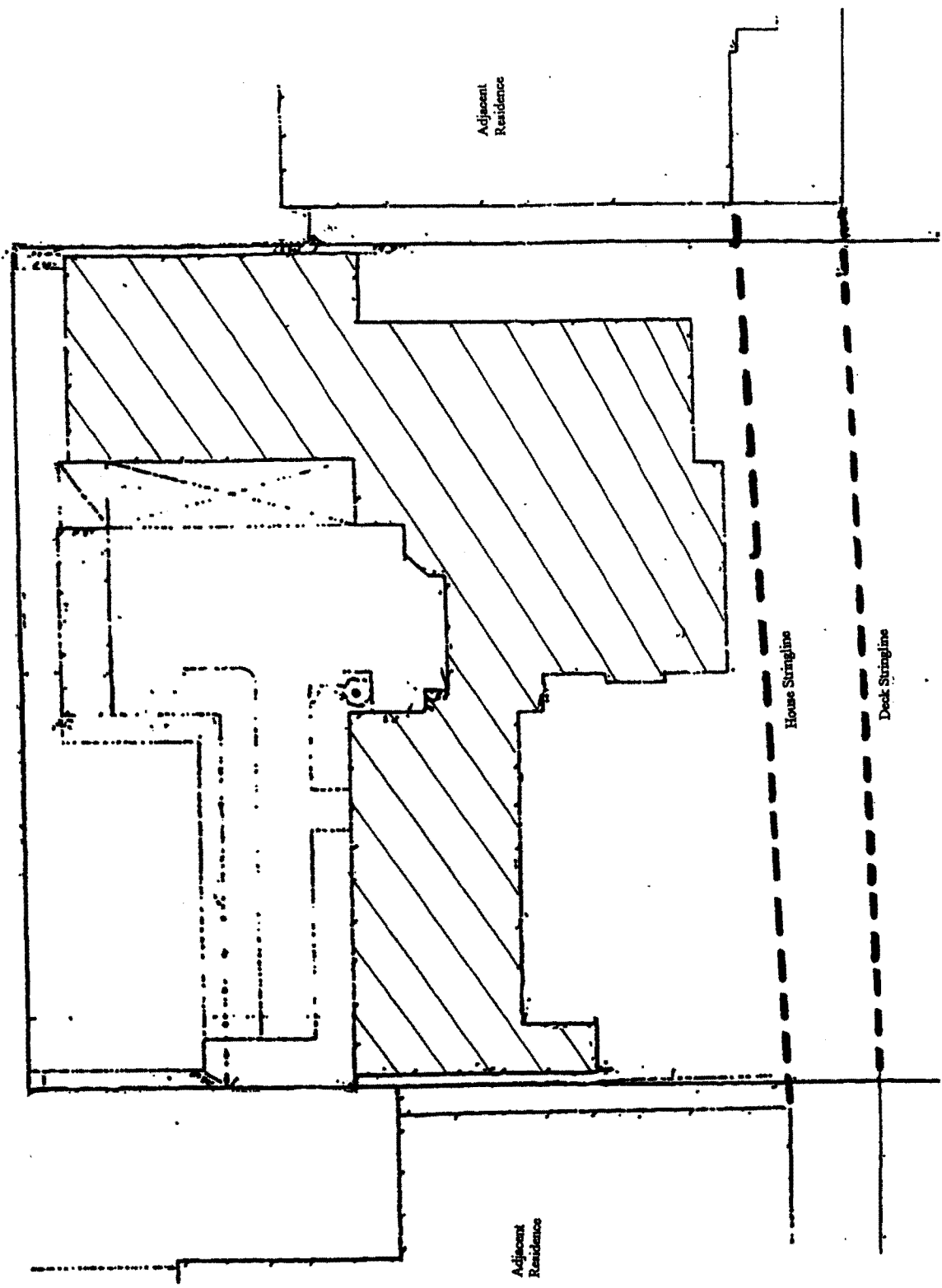


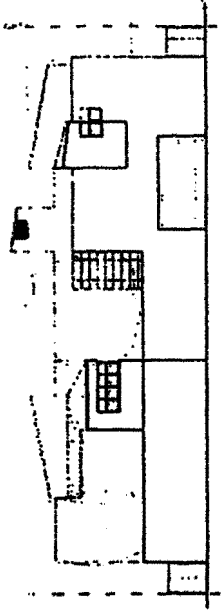
Exhibit No. 4: (4-97-086) Site Plan (Existing Structure to be Demolished)

YORKIN MALIBO
 2224 Pacific Coast Highway
 Malibu, California

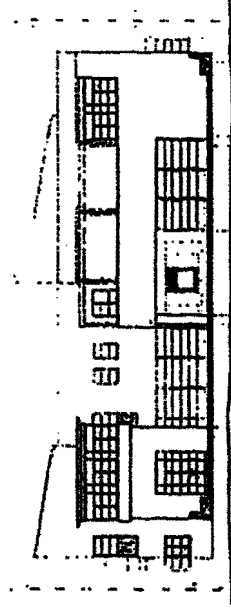
MRY
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Drawn by
 Date: 10/1/86
 Checked by: [Signature]

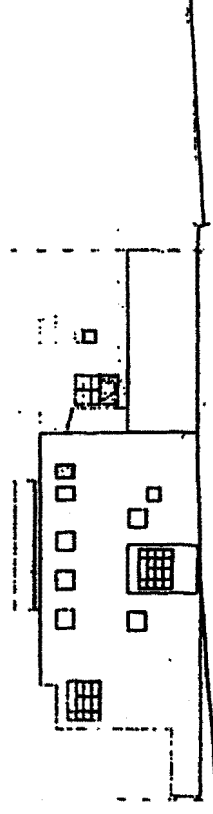
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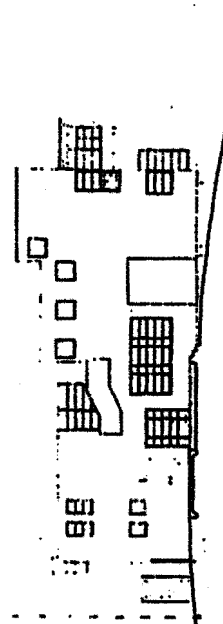
North Elevation - Pacific Coast Highway



South Elevation - Ocean



East Elevation



West Elevation

Exhibit No. 5: (4-97-086) Elevations of Proposed Project