

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 9/15/98
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Staff: S. Hudson *for*
Staff Report: 9/24/98
Hearing Date: October 13, 1998
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 4-96-193

APPLICANT: Red Oak Trust **AGENT:** Lynn Heacox

PROJECT LOCATION: 5968 and 5969 Zumirez Drive, City of Malibu; Los Angeles County.

PROJECT DESCRIPTION: The applicant is requesting approval for approximately 1,400 cu. yds. of grading (700 cu. yds. cut and 700 cu. yds. fill) and landscaping in follow-up to an emergency permit issued for slope restoration. The project also includes the installation of an irrigation system, chain link fence, surface and subsurface drainage system, and the removal of a partially completed foundation/concrete wall to below grade.

Lot area: 28,510 sq. ft.
Building Coverage: N/A

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval; City of Malibu Geologic Review Approval.

SUBSTANTIVE FILE DOCUMENTS: Compaction, Stabilization Fill, and Site Restoration Report by Miller Geosciences, Inc. dated April 22, 1997; Engineering Geologic Memorandum Report by Mountain Geology, Inc. dated November 15, 1996; Engineering Geologic Memorandum Report by Mountain Geology, Inc. dated November 11, 1996; Engineering Geologic Memorandum Report by Mountain Geology, Inc. dated November 6; Engineering Geologic Report by Mountain Geology, Inc. dated June 26, 1996.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with five (5) special conditions regarding the submission of a revegetation and erosion control plan, implementation and completion of the revegetation and erosion control plan, drainage plans, future removal of the fence, maintenance responsibility, and condition compliance. The applicant is requesting approval for approximately 1,400 cu. yds. of grading (700 cu. yds. cut and 700 cu. yds. fill) and landscaping in follow-up to an emergency permit issued for slope restoration. The project also includes the installation of an irrigation system, chain link fence, surface and subsurface drainage system, and removal of a partially completed foundation/concrete wall to below grade. All work has been previously carried out.

summary continued

A hiking and equestrian trail, designated as a portion of the Coastal Slope Trail by the Malibu/Santa Monica Mountains Land Use Plan, is located on and adjacent to the subject site. A building pad and partially completed foundation/concrete wall for a single family residence had been constructed on the subject site by the previous property owner without the required coastal development permit and subsequently abandoned in mid-construction. The proposed grading was required to remediate unsafe site conditions resulting from the uncompleted construction and to restore the project site to an approximation of its pre-development condition.

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. Revegetation 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 plans shall incorporate the following criteria:

(a) All graded and 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 cut and fill slopes shall be stabilized with planting. 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 or screening of the slope within three (3) years of completion of the initial planting. This requirement shall apply to all graded and disturbed soils. If ninety percent coverage is not achieved within three (3) years, then supplemental plantings and weeding shall be carried out until ninety percent coverage with native species on the subject site is achieved.

2. Implementation and Completion of the Revegetation and Erosion Control Plan

The applicant shall implement and complete the Revegetation and Erosion Control Plan required by Special Condition One (1) within 45 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

3. Drainage Plans and Maintenance Responsibility

With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

4. Future Removal of Fence

If in the future a public trail easement or offer to dedicate a public trail easement is required in a different location than the trail configuration as it currently exists on the subject site under the Malibu/Santa Monica Mountains Land Use Plan, and the chain link

fence is determined by the Commission to interfere with the new location of the trail easement that is offered to be dedicated, the chain link fence shall be removed by the applicant/land owner of the subject site or its successor(s) in interest. Nothing in this permit or condition shall be construed to constitute a waiver of any sort or a determination on any issue of prescriptive rights that may exist on the subject site or on the designated Coastal Slope Trail.

5. Condition Compliance

Within 90 days of Commission action on the permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to the issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is requesting approval for approximately 1,400 cu. yds. of grading (700 cu. yds. cut and 700 cu. yds. fill) and landscaping in follow-up to an emergency permit issued for slope restoration. The project also includes the installation of an irrigation system, chain link fence, surface and subsurface drainage system, and the removal of a partially completed foundation/concrete wall to below grade. All work has been previously carried out.

The subject site is a 28,510 sq. ft. vacant lot located on the east and downslope side of Zumirez Drive approximately one mile north of Pacific Coast Highway in a moderately developed hillside area (Exhibit One). All development is primarily located at 5968 Zumirez Drive with the exception of the replacement of an existing drainage ditch on the adjacent property to the east of the subject site at 5969 Zumirez Drive (the property owner has submitted a letter of permission dated July 1, 1998, for the applicant to carry out the proposed development on her property) and a short section of the proposed chain link fence on the vacant parcel to the south of the subject site which is also owned by Red Oak Trust. Slopes on site descend a total vertical height of 40 ft. over a linear distance of approximately 200 ft. from Zumirez Drive on the western boundary of the subject site to the single family residence located on the adjacent property to the east. Prior to the 1,400 cu. yds. of grading for emergency slope restoration, slope gradients on the subject site varied from nearly horizontal (where a building pad had been previously constructed) to nearly vertical (where an approximately 14 ft. high cliff had resulted from the uncompleted excavation for a retaining wall and residence foundation). The emergency slope restoration performed by the applicant included the removal of the partially constructed

building foundation/concrete wall to a minimum of 18 inches below grade and the restoration of the project site to a gently sloping approximation of its pre-development topography with slope gradients ranging from between 5:1 (11°) to 2:1 (26°).

A hiking and equestrian trail, designated as a portion of the Coastal Slope Trail by the Malibu/Santa Monica Mountains Land Use Plan, is located on and adjacent to the southern and western boundaries of the subject site. Although a public access easement has not yet been offered or recorded for the existing trail, the Commission notes that, based on staff's discussion with users of this particular trail and the well-worn nature of the trail itself, the existing hiking and equestrian trail is currently used by the public for such use.

This permit application is in follow-up to Emergency Coastal Development Permit 4-96-193-G issued on November 19, 1996, for 1,400 cu. yds. of restorative grading to remediate unsafe site conditions resulting from the partially completed foundation/concrete wall and grading activities for a single family residence. The partially completed construction activity was carried out by the previous property owner without the required coastal development permit between 1991 and 1996 and subsequently abandoned in mid-construction. A County of Los Angeles building permit application for the subject site dated January 29, 1991 (prior to the incorporation of the City of Malibu) indicates that the previous property owner believed the subject site to be within a "coastal exclusion" area. The Commission notes, however, that the subject site was not located within a designated coastal development permit exclusion area (or CALVO area) nor was it exempt from permit requirements under any section of the Coastal Act. Thus, a coastal development permit was required for the construction of a single family residence.

B. 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.

The applicant is requesting approval for approximately 1,400 cu. yds. of grading (700 cu. yds. cut and 700 cu. yds. fill) in follow-up to an emergency permit issued for slope restoration. The proposed grading was required to remediate unsafe site conditions resulting from the partially completed construction and grading activities performed without the required coastal development permit by the previous property owner that were subsequently abandoned in mid-construction. The emergency slope restoration performed by the applicant included the removal of the partially constructed building foundation/concrete wall to a minimum of 18 inches below grade and the restoration of the project site to a gently sloping approximation of its pre-development topography. The Engineering Geologic Report by Mountain Geology, Inc. dated June 26, 1996, describes the previously existing condition of the subject site prior to the remediative grading stating that:

The property has been partially graded which was associated with the initiation of residential development of the site. The project has been abandoned and left in an uncompleted state. Loose fill has been placed on the central portion of the lot. The fill is subject to creep and erosion. Vertical excavations have been created on the western portion of the lot for retaining wall construction. The wall construction has been halted, leaving the temporary excavations and Zumirez Drive unsupported. Existing partially constructed retaining and masonry walls for the residence and garage and the uncompleted grading (existing vertical excavations) are considered a safety hazard.

The Commission notes that the subject site has been restored to an approximation of its pre-development topography. In addition, a hiking and equestrian trail, designated as a portion of the Coastal Slope Trail by the Malibu/Santa Monica Mountains Land Use Plan, is located on and adjacent to the southern and western boundaries of the subject site. Although a public access easement has not yet been offered or recorded for the existing trail, the Commission notes that, based on staff's discussion with users of this particular trail and the well-worn nature of the trail itself, the existing hiking and equestrian trail is currently used by the public for such use. The Commission further notes that a portion of the existing hiking/equestrian trail had become undermined and was in danger of collapse as a result of the partially completed and abandoned construction work and that the proposed restorative grading was necessary in order to eliminate a potential safety hazard to trail users.

In past permit actions, the Commission has required that all final grading plans must be reviewed and approved by the applicant's geological consultant to assure the stability and geotechnical safety of the proposed project and project site. In this case, a special condition requiring such action is not necessary since the applicant has already submitted final grading plans that have been reviewed and approved by the geotechnical consultant as conforming to all recommendations contained in the Compaction, Stabilization Fill, and Site Restoration Report by Miller Geosciences, Inc. dated 4/22/97; Engineering Geologic Memorandum Report by Mountain Geology, Inc. dated 11/11/96; Engineering Geologic Memorandum Report by Mountain Geology, Inc. dated 11/6/96; and the Engineering Geologic Report by Mountain Geology, Inc. dated 6/26/96.

In addition, the applicant has submitted an Engineering Geologic Report by Mountain Geology, Inc. dated June 26, 1996, which states that:

Based upon our geologic investigation, the proposed grading will be free of geologic hazards such as landslide, slippage, faults, and settlement. The proposed grading will have no adverse effect upon the stability of the site or the adjacent properties.

Further, the Commission notes that the proposed project includes the installation of surface and subsurface drainage devices in order to maintain slope stability. The Engineering Geologic Report by Mountain Geology dated June 26, 1996, also states that:

All drainage devices should be checked for performance on a regular basis and repaired or replaced as necessary. Care should be taken not to over irrigate the slopes or yard. Sprinkler lines should be checked for leakage on a regular basis.

In order to ensure that the project's drainage structures are repaired should any of the surface and subsurface drainage structures fail in the future, Special Condition Three (3) requires that the applicant/landowner agree to perform any necessary repairs to the drainage structures and restoration of the eroded areas should the structures fail. Further, the Commission 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. The Commission notes that although the project site was hydroseeded after the proposed grading activity was completed, the applicant has indicated that it is not known whether the utilized seed mix consisted of native or non-native seed stock. The biologist for the City of Malibu has determined that the re-established vegetation on the subject site is primarily composed non-native species. Therefore, Special Condition One (1) requires that the applicant submit a landscaping and erosion control plan for the review and approval of the Executive Director which shall incorporate native plant species indigenous to the Santa Monica Mountains. In addition, in order to ensure that the project site is revegetated with native plant species, Special Condition Two (2) requires that the applicant implement and complete the Revegetation and Erosion Control Plan required by Special Condition One (1) within 45 days of the issuance of this permit.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Section 30253 of the Coastal Act.

C. Access and Visual Resources

The Coastal Act requires the Coastal Commission to provide the maximum public access for every project and to reserve lands suitable for coastal recreation for that purpose. Sections 30210, 30213 and 30251 of the Coastal Act require the Coastal Commission to provide for maximum public access and to reserve lands suitable for coastal recreation for that purpose, as well as, to protect public visual resources. As such, the protection of trails and access in the Santa Monica Mountains is a key concern of the Commission.

Section 30251 of the Coastal Act addresses the impacts of new developments. Section 30210 of the Coastal Act states:

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 30213 states in part:

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

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.

The project site is not visible from any designated public viewing areas or from Pacific Coast Highway. However, a hiking and equestrian trail, designated as a portion of the Coastal Slope Trail by the Malibu/Santa Monica Mountains Land Use Plan, is located on and adjacent to the southern and western boundaries of the subject site. Although a public access easement has not yet been offered or recorded for the existing trail, the Commission notes that, based on staff's discussion with users of this particular trail and the well-worn nature of the trail itself, the existing hiking and equestrian trail is currently used by the public for such use. The Commission further notes that a portion of the existing hiking/equestrian trail had become undermined and was in danger of collapse as a result of the partially completed and abandoned construction work on the subject site and that the proposed restorative grading was necessary in order to eliminate a potential safety hazard to trail users.

The applicant is also requesting approval for the placement of an irrigation system and a chain link fence. The Commission notes that the proposed irrigation system is not located within the existing trail configuration and will not result in any adverse impacts to the existing use of the Coastal Slope Trail by the public. The Commission also notes that the chainlink fence constructed along a portion of the southern and western boundary of the subject site is located adjacent to, but not within, the current existing trail configuration and

will not result in any adverse impacts to public access. Although the chainlink fence is visible from the existing trail, the Commission notes that the fence is open in nature (able to be seen-through) and will not result in a significant obstruction of public views.

In addition, the Commission notes that although there is not currently an offered or accepted public easement for the existing hiking and equestrian trail located on and adjacent to the subject site, any future development of the currently vacant subject site may require an offer to dedicate a public easement for the trail as a condition of Commission approval. As previously discussed, the Commission finds that the proposed fence does not encroach upon the existing configuration of the trail as designated by the Malibu/Santa Monica Mountains Land Use Plan. However, in the event that a future offer to dedicate a public trail easement is required in a different location than the currently existing trail configuration in connection with the approval of new development on site, the Commission finds it necessary to require Special Condition Four (4) to ensure that the chain link fence will be removed if the Commission determines that the fence interferes with the new location of the trail easement.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30211, 30213, and 30251 of the Coastal Act

D. Violations

The applicant is requesting approval for approximately 1,400 cu. yds. of grading (700 cu. yds. cut and 700 cu. yds. fill) and landscaping in follow-up to an emergency permit issued for slope restoration on the subject site. The project also includes the installation of an irrigation system, chain link fence, surface and subsurface drainage system, and the removal of a partially completed foundation/concrete wall to below grade. All work has been previously carried out. The proposed grading was necessary to remediate unsafe site conditions resulting from the partially completed construction and grading activities that were carried out without the required coastal development permit by the previous property owner. To ensure that this violation is resolved in a timely manner, Special Condition Five (5) requires the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, Special Condition Two (2) requires the applicant to implement the revegetation and erosion control plan required by Special Condition One (1) within 45 days of the issuance of the permit.

Consideration of this permit application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

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)(A) 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 effect which the activity may have on the environment.

The Commission finds that, 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

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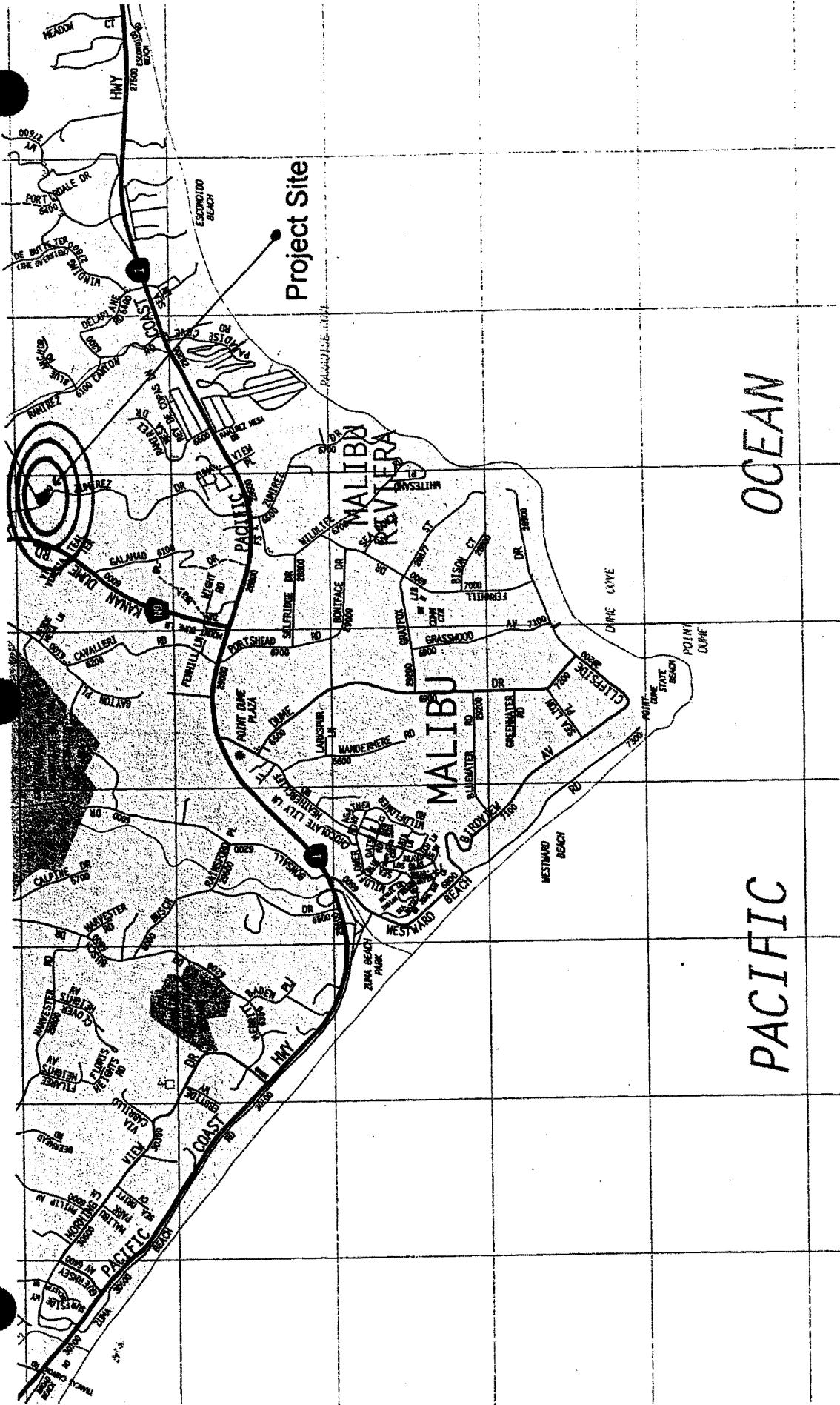
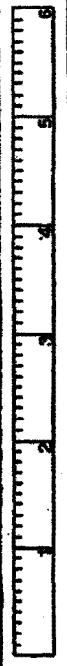


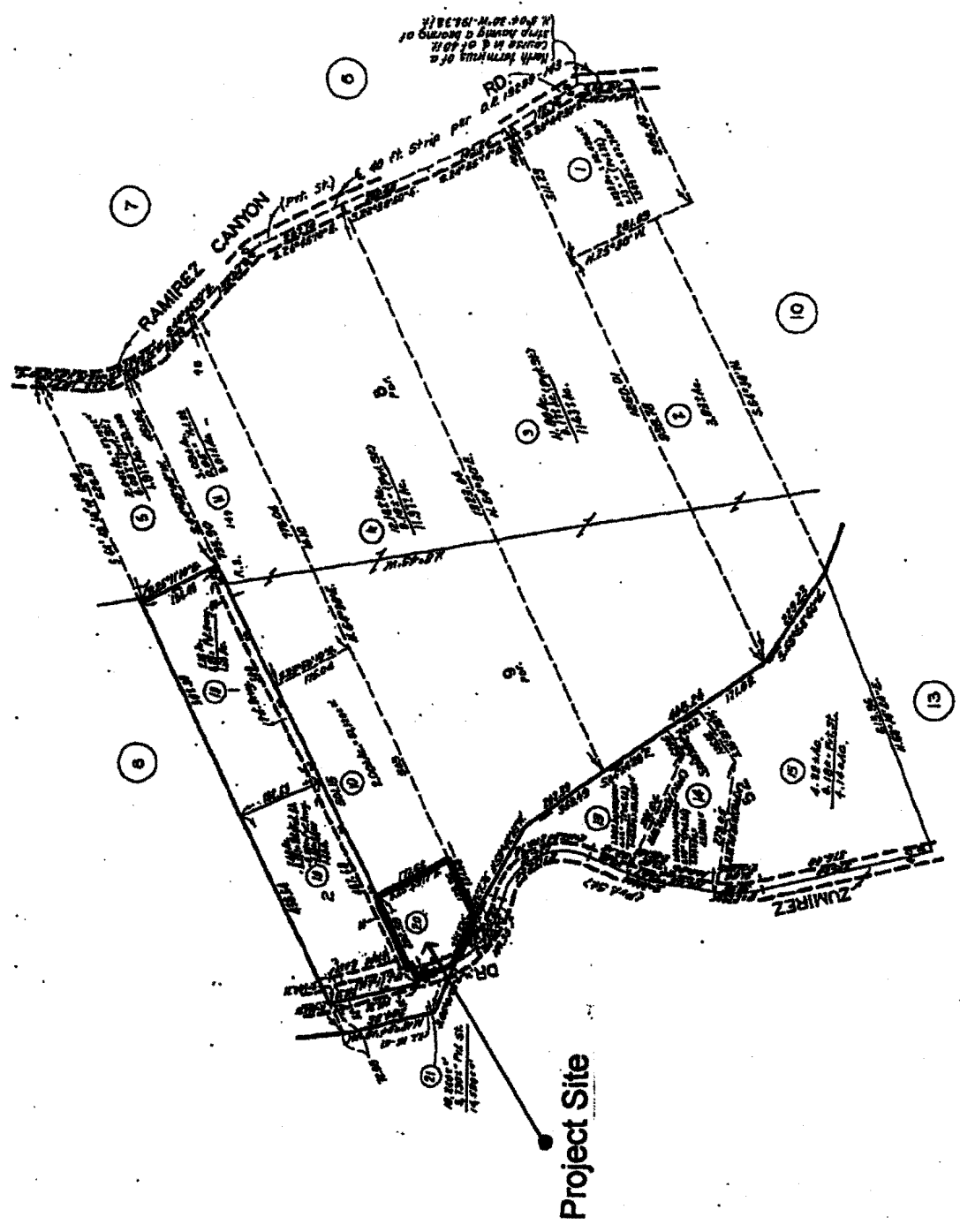
Exhibit No. 1: (4-96-193) Location Map

TRW-REDI
1-800-346-7334



SCALE IN 1/16 OF AN INCH

4467 9
SCALE - 200'



ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

Exhibit No. 2: (4-96-193) Parcel Map

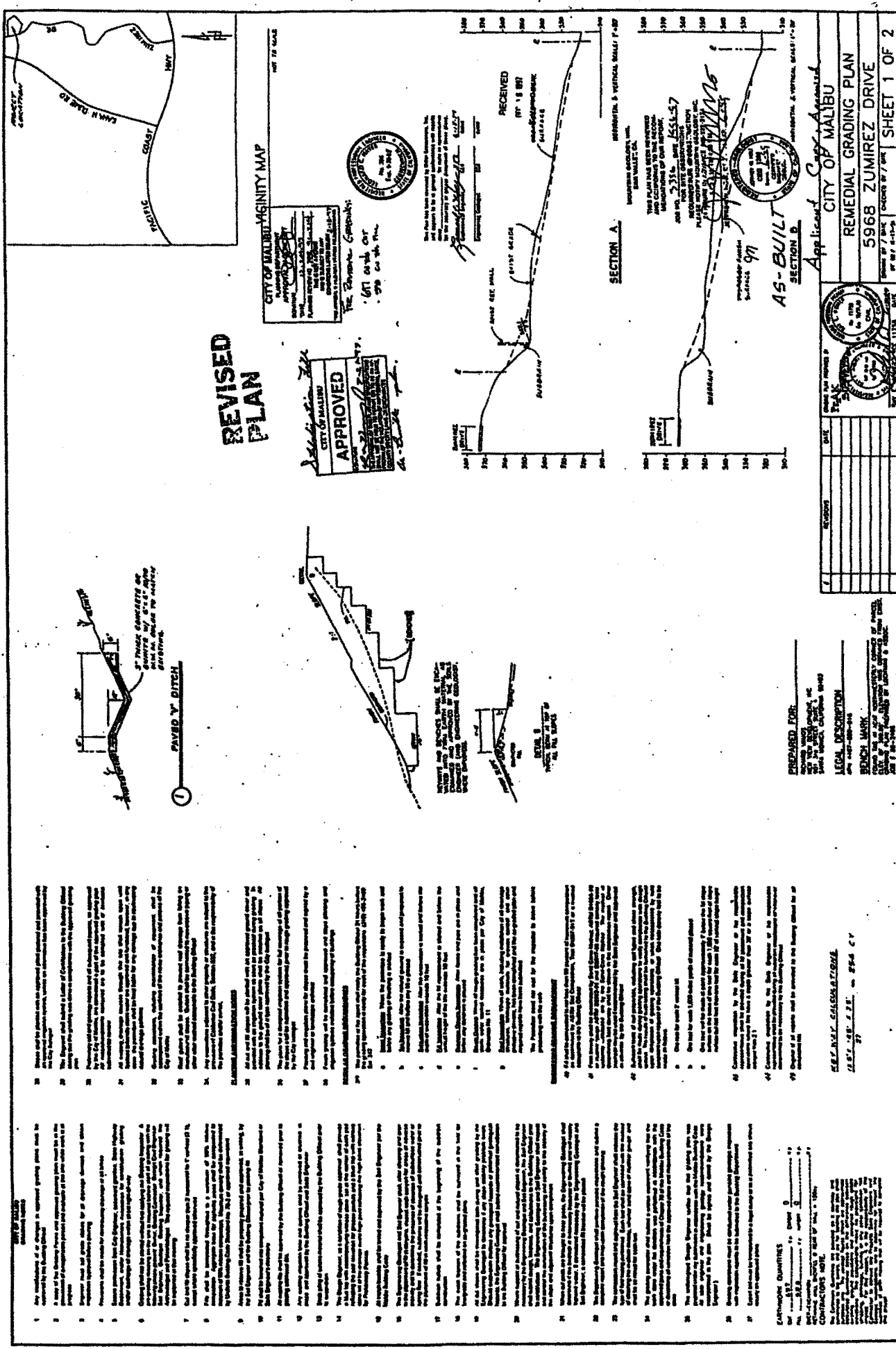


Exhibit No. 4: (4-96-193) Grading Plan Cross Sections and Details