

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Staff: S. Hudson  
Staff Report: 3/19/98  
Hearing Date: April 7-10, 1998  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NO.:** 4-97-077

**APPLICANT:** Eric and Barbara Linder

**AGENTS:** Sherman Stacey

**PROJECT LOCATION:** 33440 Pacific Coast Highway, City of Malibu; Los Angeles County

**PROJECT DESCRIPTION:** Removal of a horse corral, fence, gate, wooden retaining structures and water system, and the restoration and revegetation of a coastal bluff.

**LOCAL APPROVALS RECEIVED:** City of Malibu Approval in Concept.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit 5-85-057.

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval of the proposed project with five (5) special conditions regarding revised plans, monitoring program, implementation of the restoration plan, removal of unpermitted structures, and condition compliance. The applicant is proposing to remove a horse corral, fence, gate, wooden retaining structures and water system, and restore and revegetate a coastal bluff.

The project site is a blufftop lot located on the seaward side of Pacific Coast Highway on the western end of Malibu. The proposed project involves the restoration of a coastal bluff which is designated as an environmentally sensitive habitat area (ESHA) on which development has occurred without the benefit of a coastal development permit. In addition, previously issued Coastal Development Permit 5-85-057 required the recordation of a deed restriction which prohibited any development on the bluff face. As such, the applicant is now proposing to remove all unpermitted development and restore and revegetate the coastal bluff to its pre-development condition.

**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. Revised Bluff Restoration Plan**

Prior to the issuance of a coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised bluff restoration plan which utilizes only native drought resistant plants, endemic to coastal bluffs. The revegetation program shall use a mixture of seeds and container plants to increase the potential for successful revegetation.

#### **2. Monitoring Program**

(a) Prior to the issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a three (3) year Monitoring Program, prepared by a landscaping architect or resource specialist, which outlines revegetation performance standards to ensure that revegetation efforts at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the three (3) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation.

(b) The applicant shall submit, for the review and approval of the Executive Director, written annual reports, beginning after the first year following implementation of the restoration program and include recommendations for mid-program corrections, if necessary. At the end of a three (3) year period, a final detailed report shall be submitted for review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the performance standards outlined in the monitoring program, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental restoration program shall be processed as an amendment to this coastal development permit.

#### **3. Implementation and Completion of the Restoration Plan**

The applicant shall implement and complete the restoration and revegetation plans for bluff restoration and revegetation within 45 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

#### **4. Removal of All Unpermitted Structures**

The applicant agrees shall remove the corral, fence, gate, and any other development, including the wooden board retaining structures, with the exception of the water system, located on the bluff within 45 days of the issuance of this permit. All restorative grading shall be conducted with the use of hand tools only. The water system, including all pipes and faucets, shall be removed and/or capped below grade upon completion of the

three year revegetation monitoring period. The applicant shall submit proof of the removal of the water system as part of the final monitoring report required by special condition one (1).

#### **5. Condition Compliance**

The requirements specified in the foregoing special conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 45 days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause, will result in the nullification of this permit approval.

### **IV. Findings and Declarations.**

The Commission hereby finds and declares:

#### **A. Project Description and Background**

The applicant is proposing to remove a horse corral, fence, gate, wooden retaining structures and water system, and restore and revegetate a coastal bluff. The project site is a 1.14 acre lot located on the seaward side of Pacific Coast Highway, approximately 1/2 mile west of its intersection with Decker Road, in the western area of Malibu. The site has been previously developed with a single family residence. All work will occur on a small, relatively level, naturally occurring terrace on the face of the coastal bluff which is designated by the certified Malibu/Santa Monica Land Use Plan as an environmentally sensitive habitat area (ESHA).

This site has been the subject of past action by the Commission. Coastal Development Permit 5-85-057 was issued on March 13, 1985, for the construction of a two story single family residence subject to four special conditions regarding geologic stability, lateral access, revised plans, and a deed restriction prohibiting the construction of private stairways, structures or any alterations on or down the bluff or within 25 ft. of the bluff face. In addition, development has occurred on site without the benefit of a coastal development permit including the construction or placement of a horse corral, fence, gate, water pipes and faucet, wooden retaining boards, and minor grading. The applicant is now proposing to remove the corral, fence, gate, wooden retaining boards, and water system and to restore and revegetate the bluff.

#### **B. Environmentally Sensitive Habitat Areas**

Section 30230 of the Coastal Act states that:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic*

**significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.**

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, and minimizing alteration of natural streams.**

Section 30240 of the Coastal Acts 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.**

The proposed project site is located on a coastal bluff face which is designated by the certified Malibu/Santa Monica Land Use Plan as an environmentally sensitive habitat area (ESHA). In addition, environmentally sensitive kelp beds are located directly offshore. Coastal bluffs provide nesting, feeding and shelter sites for shore birds and remain a part of the shoreline ecosystem. Sections 30230 and 30231 of the Coastal Act requires that the marine resources, biological productivity and the quality of coastal waters be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas.

As discussed in the previous section, development has occurred on the bluff face, including the construction of a horse corral, without the benefit of a coastal development. The Commission has found in past permit actions that the minimization of non-point source pollutants from new development will help to maintain and enhance the quality of coastal waters, streams, wetlands, estuaries and lakes. Non-point source pollution is the pollution of coastal waters (including streams and underground water systems) which enters the waterway from numerous sources which are difficult to identify on an individual basis. Non-point source pollutants include suspended solids, coliform bacteria and nutrients. These pollutants can originate from many different sources such as overflow septic systems, storm drains, runoff from roadways, driveways, rooftops and horse facilities. Horse facilities are one of the most recognized sources of non-point

source pollutants since these types of developments entail large areas which are cleared of vegetation and have concentrated sources of animal wastes. Horse wastes contain nutrients such as phosphorous and nitrogen, as well as, microorganisms such as coliform bacteria. Excessive levels of nutrients can cause eutrophication and a decrease of oxygen levels in water ultimately resulting in clouding, algae blooms, fishkills/diseases, alteration of aquatic species composition and size, and destruction of benthic habitats. In the case of the subject site, the horse corral located on the ESHA bluff face does not have an adequate buffer zone to ensure that resulting contaminants would not adversely impact either the bluff ESHA or the sensitive offshore kelp beds.

In order to restore the bluff environment, the applicant proposes as part of this project to remove all unpermitted development from the bluff slope, conduct minor restorative grading with hand tools only, and revegetate with native species those areas of the bluff face disturbed by either the placement or removal of unpermitted structures. The proposed bluff restoration and revegetation will serve to restore and enhance the degraded bluff habitat.

The applicant has submitted a bluff restoration plan as part of this application. However, although the restoration plan makes use of plants that although native to the Santa Monica Mountain region, many of the intended plants are not endemic to coastal bluff habitat. As such, special condition (1) requires that the applicant submit a revised bluff restoration plan which utilizes only native drought resistant plants which are endemic to coastal bluff habitat. To ensure that the restoration and revegetation is successful, special condition two (2) requires that the applicant agree to monitor the site for a period of three (3) years as discussed in further detail below. Monitoring shall include the submittal of annual reports to the Executive Director which shall outline the progress of the restoration project and shall include any recommendations for modifications to the project if the initial restoration effort fails. In addition, to ensure that the restoration project is carried out in a timely manner, special condition three (3) and four (4) require that the applicant implement the restoration plan and remove all unpermitted structures within 45 days of the issuance of this permit.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230 30231 and 30240 of the Coastal Act.

### **C. Blufftop Development/Geologic Stability**

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.***

Section 30253 of the Coastal Act 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. Coastal bluffs, such as the one located on the subject site, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. As bluffs are highly erodible and geologically unstable, the Commission, in past permit actions, has consistently required a 25 ft. setback or compliance with a stringline, whichever is greater, for development located at the top of the bluff.

To assist in the determination of whether a project is consistent with section 30253 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, Policy 164, in concert with the Coastal Act, suggests that all new development be set back a minimum of 25 ft. from the top of a bluff. Policy 165, in concert with the Coastal Act prohibits the construction or placement of any new structures on a bluff face.

In the case of this project, the applicant is proposing to remove all unpermitted structures from the bluff face and to restore the site to pre-development condition. As the project site is located on a naturally occurring relatively level terrace on the face of the bluff, the amount of unpermitted grading which has occurred on site is minimal. Special condition four (4) has been required to ensure that any restorative grading which is required to remove the small wooden plank retaining structures shall be conducted with hand tools only in order to reduce additional disturbance to the bluff face. Special condition four (4) has also been required to ensure that all unpermitted structures are removed from the bluff face in a timely manner. To ensure that the restoration and revegetation is successful, special condition two (2) requires that the applicant agree to monitor the site for a period of three (3) years as discussed in further detail below. Monitoring shall include the submittal of annual reports to the Executive Director which shall outline the progress of the restoration project and shall include any recommendations for modifications to the project if the initial restoration effort fails. In addition, to ensure that the restoration project is carried out in a timely manner, special condition three (3) requires that the applicant implement the restoration plan within 45 days of the issuance of this permit.

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

#### **D. Violations**

Development has occurred on site without the benefit of a coastal development permit including the construction or placement of a horse corral, fence, gate, water pipes and

faucet, wooden retaining boards, and minor grading. In addition, Coastal Development Permit 5-85-057 required the recordation of a deed restriction which prohibited any development on the bluff face. The applicant is now proposing to remove all unpermitted development and restore and revegetate the coastal bluff. To ensure that the restoration project is carried out in a timely manner, special condition five (5) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 45 days of Commission action. In addition, special condition three (3) requires that the applicant implement the restoration plan within 45 days of the issuance of this permit.

Consideration of this 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. Public Access and Visual Resources**

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.

The applicant is proposing to remove a horse corral, fence, gate, wooden retaining structures and water system, and restore and revegetate a coastal bluff. In the case of the proposed project, the restoration of the coastal bluff and the removal of unpermitted structures will have no impacts on either public access. In addition, the project site is not directly visible either from Pacific Coast Highway or from the beach due to dense foliage and will have no impacts to visual resources.

As such, the Commission finds that the project would have no individual or cumulative adverse impacts on public access or visual resources. 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.

## **F. 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).

## **G. 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.

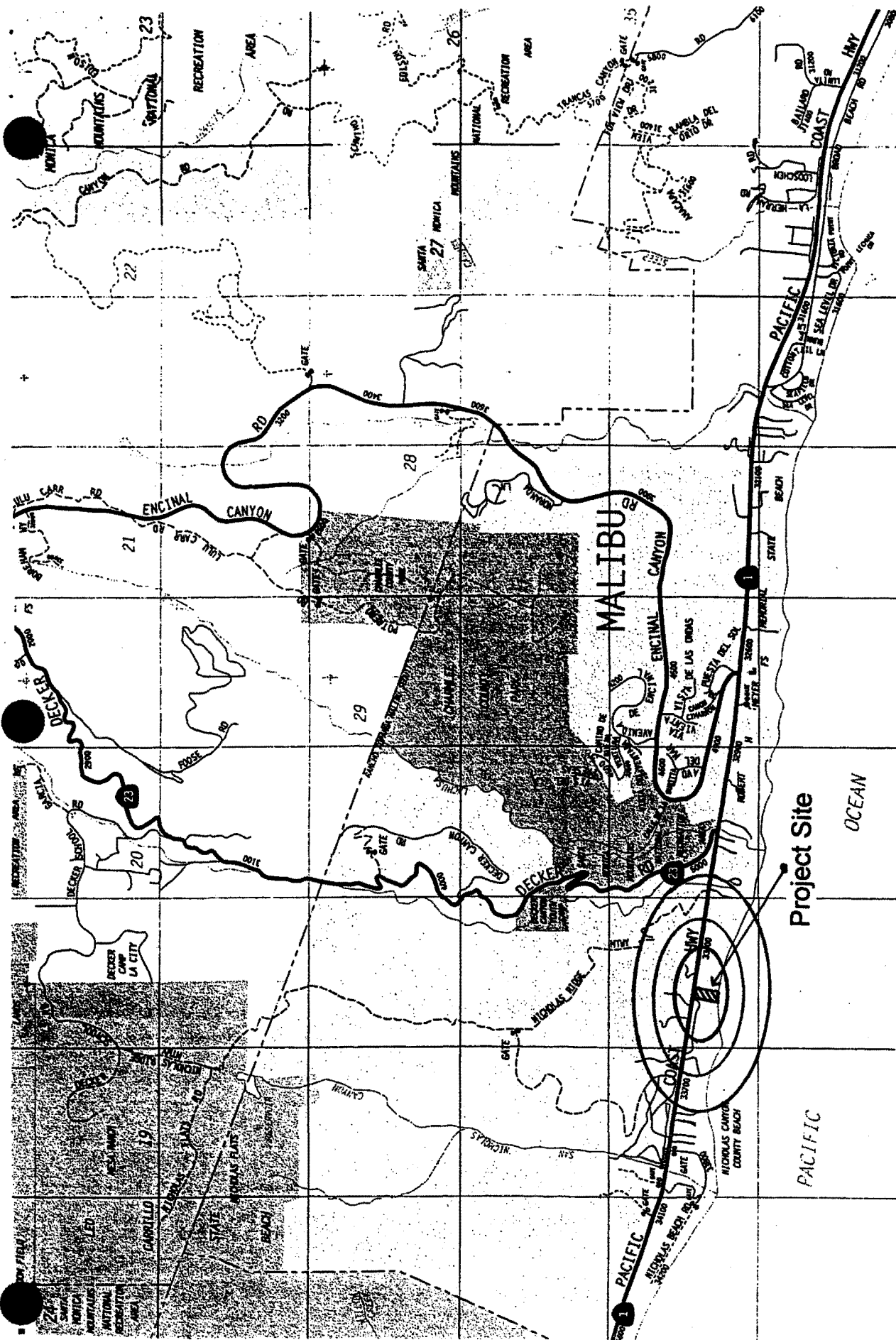


Exhibit No. 1: (4-97-077) Location Map

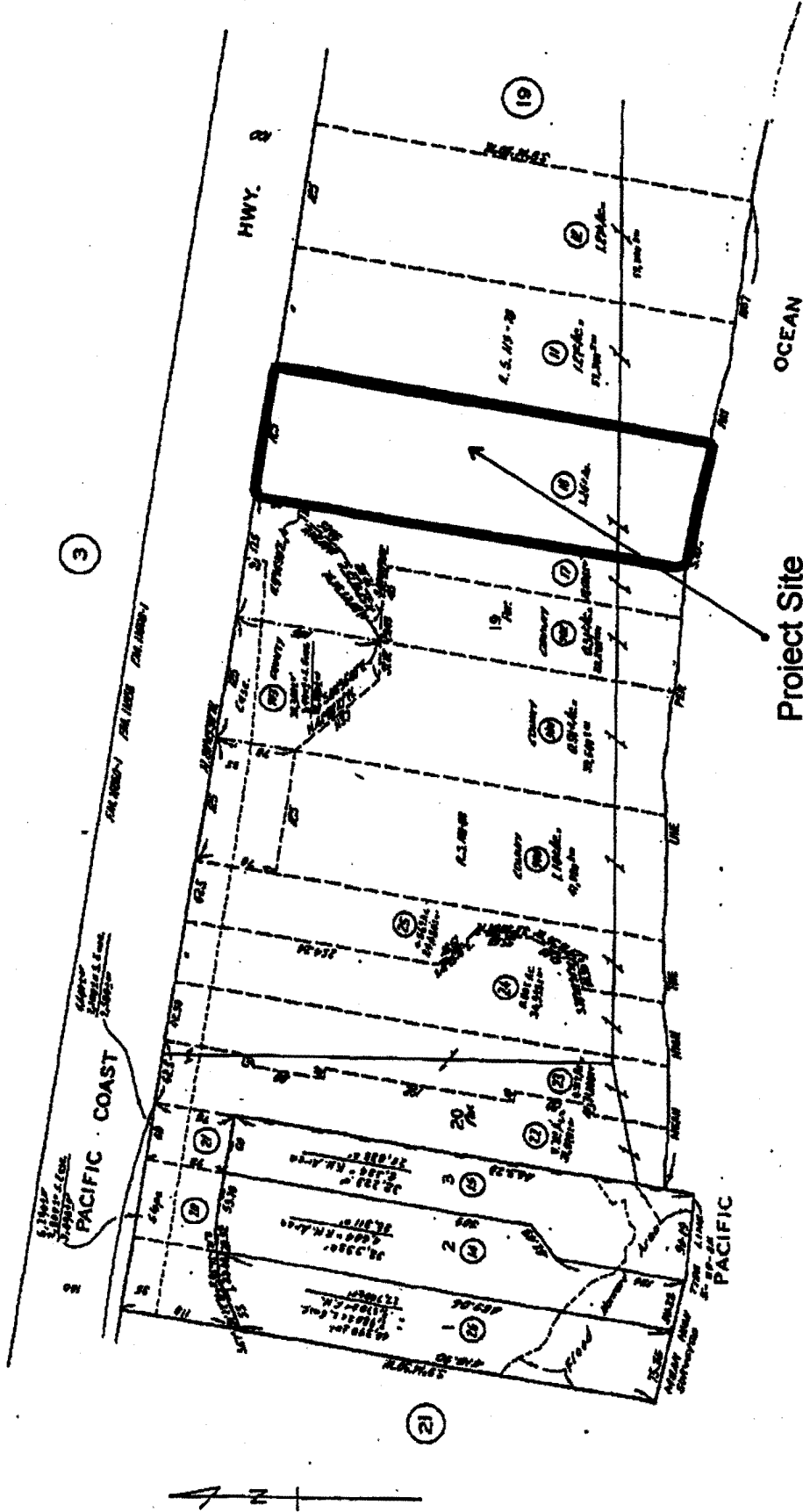


Exhibit No. 2: (4-97-077) Parcel Map

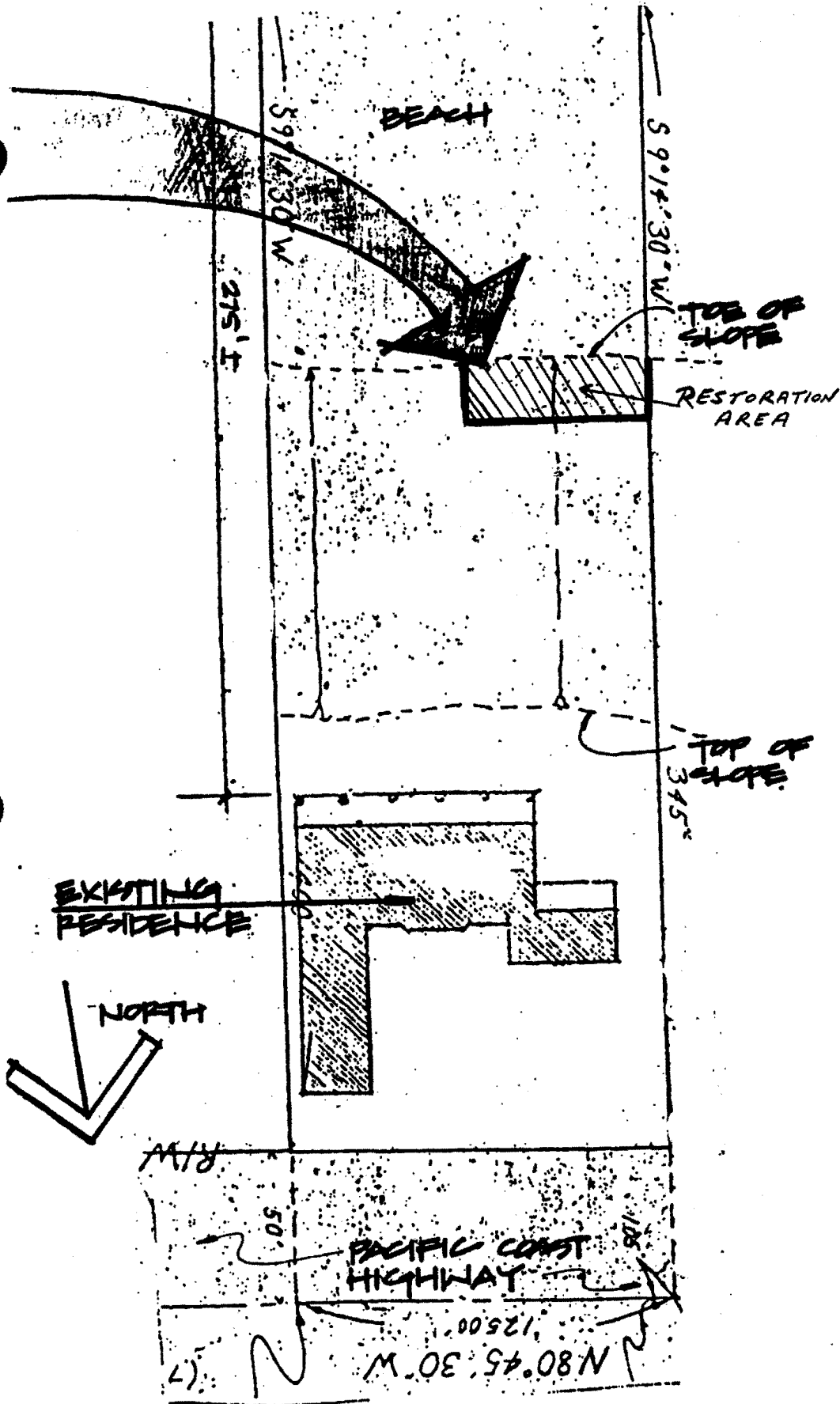


Exhibit No. 3: (4-97-077) Site Plan



CONTAINING AREA IN CONTAINER:

MR. & MRS. LINDER  
3000 PACIFIC COAST HIGHWAY, MAJESTY, CALIFORNIA 92007

PREPARED BY: PENNISI TURNER / LANDSCAPE ARCHITECT  
CALIFORNIA REGISTRATION # 17033

**Exhibit No. 4: (4-97-077) Bluff Restoration Plan**