

## CALIFORNIA COASTAL COMMISSION

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 Commission Action:



## STAFF REPORT: REGULAR CALENDAR

**APPLICATION NO.:** 4-97-174

**APPLICANT:** Rust Trust

**AGENTS:** Alan Block, Esq.

**PROJECT LOCATION:** 33526 Pacific Coast Highway, City of Malibu; Los Angeles County

**PROJECT DESCRIPTION:** The applicant is requesting "after the fact" approval for the unpermitted construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on a coastal bluff face.

Lot area:	31,020	sq. ft.
Building coverage:	3,365	sq. ft.
Pavement coverage:	9,053	sq. ft.
Landscape coverage:	18,022	sq. ft.
Parking spaces:	6	
Ht abv ext grade:	14 ft.	

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

**SUBSTANTIVE FILE DOCUMENTS:** Cabana Permit Considerations Letter by Coastline Geotechnical Consultants dated 3/12/98; Grading Quantity Letter by Coastline Geotechnical Consultants dated 12/12/97; Geologic and Geotechnical Report by Coastline Geotechnical Consultants dated 11/14/97; Report of Limited Engineering and Geologic Investigation by Pacific Geology Consultants dated 11/12/97; Geotechnical and Geologic Opinion Report by Coastline Geotechnical Consultants dated 2/16/96; Coastal Development Permit Staff Reports 5-85-758A (Norred), 5-89-1045 (Campa), 5-90-830 (Sprik), 5-90-1080 (Golod), 5-91-632 (Zal), 4-95-110 (Nichols).

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **denial** of the proposed project. The applicant is requesting "after the fact" approval for the unpermitted construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on a coastal bluff face.

The subject site is a bluff top lot located in the western portion of Malibu between Pacific Coast Highway to the north and the Pacific Ocean to the south. The bluff face where the proposed development is located is designated as an Environmentally Sensitive Habitat Area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan. In addition, offshore kelp beds, also designated as ESHA, are located along this portion of coast.

The properties on either side of the subject site have been developed with single family residences and cabanas. However, both cabanas which are located on the bluff slope of the two adjacent properties to the east and west of the project site were constructed prior to the Coastal Act and the Coastal Zone Conservation Act.

Staff analysis of aerial photographs indicates that the development proposed as part of this application was originally constructed by a previous property owner between 1975 and March 1977, without the required coastal development permit. The subject site was within the California Coastal Zone Conservation Commission's permit jurisdiction under the California Coastal Zone Conservation Act of 1972 when the proposed development was constructed and is within the Coastal Commission's permit jurisdiction under Section 30600 of the California Coastal Act of 1976. Thus, the construction of the proposed improvements requires a coastal development permit. In addition, the applicant has supplied no evidence that any local approval or permit from the County of Los Angeles was originally issued for the proposed development at the time of construction.

Due to geologic structure and soil composition, the bluff face on site is susceptible to potential surficial failure. Erosion and soil slippage has been documented on the bluff slope. These effects are expected to continue so long as the unpermitted structures remain on the bluff slope. While the proposed structures may be feasible from a geologic point of view, in order to maintain these structures, the applicant's geotechnical consultant has indicated that further improvements such as concrete block walls and/or other protective structures, in addition to the currently unpermitted retaining walls, may be necessary to ensure slope stability in the future. Development on bluff slopes alters natural landforms, exacerbates erosion, and adversely impacts public views from the beach. In addition, staff also notes that the property located to the west immediately adjacent to the project site (which also contains a pre-Coastal Act cabana, stairway, and retaining walls on the bluff face) has experienced severe bluff erosion and has submitted a coastal development permit application for bluff restoration.

In past permit actions, the Commission has required that new development be set back a minimum of 25 ft. from the seaward edge of the top of the bluff and that no new permanent structures be permitted on a bluff face. In the case of this project, all structures and grading proposed by the applicant are located on the bluff face itself.

In addition, the Coastal Act allows for development in areas that have been designated as environmentally sensitive habitat areas (ESHAs) only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value. In the case of this project, the proposed development is not dependent upon the habitat resources of the site.

### **STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

#### **I. Denial.**

The Commission hereby **denies** a permit for the proposed development, which is located between the sea and the first public road nearest the shoreline, on the grounds that the development would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, would result in continuing significant adverse effects on the environment within the meaning of the California Environmental Quality Act, and would 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.

#### **II. Findings and Declarations.**

The Commission hereby finds and declares:

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

The applicant is requesting "after the fact" approval for the unpermitted construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on a coastal bluff face.

The subject site is a 0.71 acre bluff top lot located in the western portion of Malibu between Pacific Coast Highway to the north and the Pacific Ocean to the south. Slopes descend from the existing single family residence at an average angle of 40 degrees to the beach. The bluff face where the proposed development is located is designated as an environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains

Land Use Plan. In addition, offshore kelp beds, also designated as ESHA, are located along this portion of coast.

The properties on either side of the subject site have been developed with single family residences and cabanas. However, the Commission notes that the two cabanas which are located on the bluff slope of the two adjacent properties to the east and west of the project site were constructed prior to the Coastal Act and the Coastal Zone Conservation Act.

In March 1997, staff became aware that development had occurred on the project site without the benefit of a coastal development permit. Staff analysis of aerial photography indicates that the development proposed as part of this application was originally constructed by a previous property owner between 1975 and March 1977, without the required coastal development permit. The subject site was within the California Coastal Zone Conservation Commission's permit jurisdiction under the California Coastal Zone Conservation Act of 1972 when the proposed development was constructed and is within the Coastal Commission's permit jurisdiction under Section 30600 of the California Coastal Act of 1976. Thus, the construction of the proposed improvements requires a coastal development permit. In addition, the applicant has supplied no evidence that any local approval or permit from the County of Los Angeles was originally issued for the proposed development at the time of construction.

In addition, during the course of processing this application, staff has discovered other development on the subject site which has also occurred without the required coastal development permit including the conversion of an existing non-habitable garage/studio with no plumbing into a habitable third residential unit with plumbing, installation of a 750 gallon septic tank, and a new detached garage. This additional unpermitted development is not included as part of this application and will require a future follow-up coastal development permit for retention of the structures or removal and restoration of the site to its pre-development state.

## **B. 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 30235 of the Coastal Act states:

*Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be*

***permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.***

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.

Section 30235 of the Coastal Act allows for the construction of a cliff retaining wall when necessary to protect existing development and coastal dependent uses only when required to serve coastal-dependent uses or to protect existing structures. In addition, 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 this one, 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. The bluffs along this section of the coast are not subject to substantial erosion from wave action due to the presence of volcanic rock which is exposed at the base of the bluff; however, these bluffs are subject to erosion from runoff at the top of the slope. Further, due to geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration.

The Geotechnical and Geological Report by Coastline Geotechnical Consultants dated February 16, 1996, states:

***The site displayed no evidence of large-scale, geologic instability during reconnaissance and mapping of the subject property...It is the opinion of the undersigned that the residence, studio and cabana appear to be suitable for continued residential occupancy from a geologic perspective.***

However, the Geotechnical Engineering Response Report by Coastline Geotechnical Consultants dated November 14, 1997, states:

***Surficial stability analysis was performed on the steepest terrace deposit slopes found on the property. The result of the analysis...indicates the factor of safety is below the normally accepted minimum for stable slopes.***

Further, the Geotechnical and Geological Report by Coastline Geotechnical Consultants dated February 8, 1996, also states that:

***The descending slope areas are prone to surficial instability during periods of intense storm activity. Evidence of past erosion and soil slippage was observed along slope***

*areas immediately above the cabana...Railroad tie walls, 3- to 5-feet in height, are situated at the toe of the slope north and east of the cabana. These walls locally lean to the south. An open, wood deck supported by pier footings is situated adjacent to and south-southeast of the cabana. Several of the pier footings have settled, noticeably tilt, and have been locally undermined.*

*In order to protect the cabana from future instability, consideration should be given to construction of a retaining/impact wall north of the structure. Additionally, deterioration of the railroad tie walls can be expected to occur over time. It may be necessary to replace these walls with concrete-block walls in the future.*

Staff notes that while the proposed structures may presently be feasible from a geologic point of view, in order to maintain these structures, further improvements such as concrete block walls and/or other protective structures, in addition to the currently unpermitted retaining walls, may be necessary to ensure slope stability in the future due to the observed surficial instability, erosion, and undermining of the cabana, retaining wall, and pier footings. Thus, the "after the fact" approval of the proposed development would "require the construction of protective devices that would substantially alter natural landforms along bluffs or cliffs" contrary to Section 30253(2) of the Coastal Act. New or additional retaining walls would result in further adverse impacts to natural landform alteration, shoreline sand supply, and visual resources from the public areas of the sandy beach. In past permit actions, the Commission has found that development on steep bluffs has been found to have the potential to significantly exacerbate the natural processes of erosion. Erosion rates are greater when structures are built on the bluff face. Rain water running off such structures over time tend to undercut and erode the area of the bluff immediately behind the structure. Additionally, the loss of vegetation through the altering of the natural landforms would increase the erosion potential. This process is occurring on site and will continue to occur as long the unpermitted structures remain in place on the bluff face. Staff also notes that the property located to the west and immediately adjacent to the project site (which also contains a pre-Coastal Act cabana, stairway, and retaining walls on the bluff face) has experienced severe bluff erosion and has submitted a coastal development permit application for bluff restoration.

Further, the proposed development includes the "after the fact" approval for the construction of wooden retaining walls on the bluff face to protect the unpermitted stairway and the construction of a concrete block retaining wall on the bluff face to protect the unpermitted cabana. Retaining walls or other structures which are located on coastal bluffs result in adverse impacts to the shoreline sand supply through the retention of beach sand material which would naturally be released to the littoral system. Section 30235 of the Coastal Act allows for the use of retaining walls only when required to serve coastal-dependent uses or to protect existing structures. In the case of this project, no evidence has been submitted by the applicant that the proposed retaining structures are necessary to protect an existing authorized structure or a coastal dependent use. As such, the Commission notes that the use cliff retaining walls to protect the proposed structures is not consistent with Section 30235 of the Coastal Act.

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property. 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. Due to the geologic instability of bluffs and their continuing role in the ecosystem, the certified LUP contains a number of policies regarding development on or near coastal bluffs. For instance, Policy 164, in concert with the Coastal Act, provides that new development shall be set back a minimum of 25 ft. from the seaward edge of the top of the bluff or a stringline drawn between the nearest corners of the adjacent structures, *whichever distance is greater*, but in no case less than would allow for a 75-year useful life for the structure. Policy 165, in concert with the Coastal Act provides that no new permanent structures be permitted on a bluff face. In the case of this project, the 25 ft. setback is the greater and proper setback distance, not the stringline measurement.

The applicant has asserted in a letter from Alan Block, Esq. to Commission staff dated January 22, 1998, that the cabana and deck on the subject site should be allowed to remain as they are "located within an existing stringline between two other cabanas..." Staff notes that the applicant has submitted a site plan which inaccurately depicts the structural stringline as being drawn from a structure located on a promontory two lots to the west of the subject site (rather than using the cabana located on the property immediately west of the subject site) to the cabana located to the east of the subject site (Exhibit 3). In addition, the deck stringline is also incorrectly depicted by the applicant as being drawn from the deck of the property located on a promontory two lots to the west of the subject site (rather than using the deck for the cabana located on the property immediately west of the subject site) to a second separated deck beyond the actual deck for the cabana located on the property to the east of the subject site. While the 25 ft. setback is the proper setback measurement in this case, not the stringline test, staff notes that the proposed structures are actually located seaward of the correct stringline which would be drawn from the corners of the *immediately* adjacent structures and deck located on the *neighboring* properties.

Further, the Commission notes that the use of a stringline measurement for the subject site, as depicted by the applicant, would not be appropriate in any event as the 25 ft. setback would still provide the greater setback distance. The Commission notes that all structures and grading proposed by this application are located on the bluff face itself and, therefore, are neither set back more than 25 ft. from the seaward edge of the top of the bluff, nor consistent with past Commission action.

Further, in past actions, the Commission has found that new development on a bluff face may potentially result in increased erosion and alteration of the bluff face and that such development is not consistent with the Coastal Act. Coastal Development Permit Application 5-97-300 (Nasr) for construction of a stairway and retaining wall on a coastal

bluff was denied. Coastal Development Permit Application 4-95-110 (Nichols) for restoration of a bluff and construction of a drainage swale/stairway on the bluff face was approved only with the condition that revised plans for the deletion of the stairway/drainage device be submitted. Coastal Development Permit Applications 5-89-1045 (Campa), 5-90-1080 (Golod), and 5-91-632 (Zal) for the placement of new stairs on bluff slopes were denied by the Commission. Coastal Development Permit Application 5-85-758A (Norred) for an increase in the size of a blufftop single family residence and the addition of an elevator shaft where such additions would encroach onto the bluff face was denied by the Commission. Coastal Development Permit Application 5-90-830 (Sprik) for the construction of a single family residence located on a bluff face was also denied. As such, the Commission finds that the proposed project is not consistent with past Commission action regarding blufftop development along coastal bluffs.

As such, the Commission notes that bluffs are unique coastal landforms that are inherently unstable due to steep slopes, groundwater seepage and surface runoff and that any development or disturbance on such a steeply sloping unstable landform will only serve to accelerate erosional processes. Further, the applicant's geotechnical consultant has indicated that additional improvements on the bluff face (such as new retaining walls) may be necessary in order to protect the proposed development from future instability. In addition, the certified Malibu LUP, which is used for guidance in determining specific standards along the Malibu coast, in concert with the Coastal Act as well as past Commission permit actions, provide that no new development should be allowed on a coastal bluff slope and that new development should be set back more than 25 ft. from the top of the bluff. Further, alternative locations exist on site which could accommodate a second residential unit (such as the studio/garage by the road which has been previously converted to a habitable third residential unit without the benefit of a coastal permit or above the second detached garage which was also constructed without the benefit of a coastal permit) which would be preferable from a geologic and environmental stand point. Therefore, for the reasons discussed above, the Commission finds that the proposed project is not consistent with Section 30253 of the Coastal Act.

### **C. Environmentally Sensitive Habitat Areas and Visual Resources**

Section 30230 of the Coastal Act states:

*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.*

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 subordinated to the character of its setting.*

Sections 30230 and 30231 require that the biological productivity and quality of coastal waters and the marine environment 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, and maintaining natural buffer areas. Further, Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

In addition, the Coastal Act defines Environmentally Sensitive Habitat Areas (ESHAs) as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. In 1979, the California State Water Resources Control Board designated the intertidal and offshore areas from Mugu Lagoon to Latigo Point in Malibu, which includes the proposed project site, as an Area of Special Biological Significance (ASBS). This designation is given to areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. Section 30240 of the Coastal Act permits development in areas that have been designated as ESHAs only when the

location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value.

As previously mentioned, the applicant is requesting "after the fact" approval for the unpermitted construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on a coastal bluff face. The proposed development is located on the face of a coastal bluff which is designated as Environmentally Sensitive Habitat Area (ESHA) by the certified Malibu/Santa Monica Mountains Land Use Plan. The coastal bluffs west of Point Dume, including the project site, provide habitat for a relatively rare and restricted plant community (Southern Coastal Bluff Scrub). Further, offshore kelp beds, also designated as ESHA, are located along this portion of coast. Although the bluff on the subject site has been substantially altered and primarily landscaped with horticultural species, these bluffs still provide nesting, feeding, and shelter sites for shore birds and remain an important part of the shoreline ecosystem.

To assist in the determination of whether a project is consistent with Section 30230, 30231, 30240, and 30251 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified 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, in concert with Sections 30230, 30231, and 30240 of the Coastal Act, Policy 98 of the LUP provides that development should have no significant adverse impacts on sensitive marine and beach habitat areas. Policy 99 provides that development in areas adjacent to sensitive beach and marine habitat areas be designed and sited to prevent impacts which could degrade the environmentally sensitive habitat areas. Policy 101 provides that only resource dependent uses be permitted in sensitive marine and beach habitat areas.

The proposed project includes significant development on a coastal bluff designated as ESHA. The coastal bluffs in the subject area have historically supported southern coastal bluff scrub, a rare and very threatened plant community. In addition to the unpermitted development, the planting of exotic and ornamental plant species on the bluff face over the years has further displaced the naturally occurring native bluff scrub species and degraded the unique bluff habitat. Any development on the bluff face removes vegetation and, therefore, removes nesting, feeding, and shelter habitat for shoreline animals which would result in a loss or change in the number and distribution of species. New development on bluffs also results in cumulative impacts to marine and bluff habitat. The existing unpermitted structures on the bluff face have contributed to these impacts which will continue to occur as long as the unpermitted structures remain in place. In addition, fire department fuel modification requirements for the proposed development would require that vegetation be thinned around the proposed structure. As the proposed cabana is located entirely within ESHA, the clearance of vegetation adversely affects the habitat value of the site. In addition, Section 30240 permits development in areas that have been designated as ESHAs only when the location of

the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value. Such uses could include a fish ladder in a stream, a public trail in park land, or restoration which would serve to enhance or restore an ESHA. Development on the subject bluff slopes has significantly degraded the habitat value of the bluff habitat. As such, the Commission notes that none of the proposed development is compatible with the continuance of such habitat. The Commission further notes that none of the proposed development is dependent upon the habitat resources of the site and that such development is, therefore, not consistent with Section 30240 of the Coastal Act.

Although the proposed bluff face development has been approved by the City of Malibu Environmental Review Board (ERB), staff notes that the ERB's findings for approval are based upon the incorrect assumption that the proposed existing structures on site were legally permitted and were pre-existing prior to coastal permit requirements. ERB Resolution No. 98-02 for the subject site states:

*The native vegetation characteristic of the bluff habitat has been eliminated by pre-Coastal Act development, illegal development, ornamental landscaping and invasion by exotic species. However, the climactic and geophysical characteristics of the coastal bluff environment which uniquely combine to support Southern coastal bluff scrub are still present and in the absence of such adverse impacts native vegetation could be re-established on the site.*

...

*The proposed project is located in an Environmentally Sensitive Habitat Area (ESHA) and has the following potential environmental impacts: degradation of sensitive habitat, landforms, visual and shoreline processes.*

Staff notes that the ERB's review of the subject site includes little analysis of the effects of the proposed structures on the ESHA. The ERB have provided no specific findings for their decision that the development on the subject site will not result in impacts on the ESHA except for their erroneous determination that the subject development was carried out prior to the coastal permitting requirements. However, as previously discussed, the development proposed as part of this application was originally constructed by a previous property owner between 1975 and March 1977 without the required coastal development permit. The subject site was within the California Coastal Zone Conservation Commission's permit jurisdiction under the California Coastal Zone Conservation Act of 1972 when the proposed development was constructed and is within the Coastal Commission's permit jurisdiction under Section 30600 of the California Coastal Act of 1976. Thus, the construction of the proposed improvements requires a coastal development permit and must be reviewed for its resultant effects upon the ESHA.

In addition, the proposed project includes "after the fact" approval for approximately 98 cu. yds. of grading, the placement of a concrete block retaining wall, wooden retaining walls, and stairs on a coastal bluff, portions of which would be visible from public viewing areas along the sandy beach. The Commission notes that the proposed project would not serve to protect views from the public areas of the sandy beach, minimize landform

alteration, or restore and enhance visual resources in a degraded area. As such, the proposed project is not consistent with Section 30251 of the Coastal Act.

Further, as discussed in detail in the previous section, in order to maintain these structures, further improvements such as concrete block walls and/or other protective structures, in addition to the currently unpermitted retaining walls, may be necessary to ensure slope stability in the future. The Geotechnical and Geological Report by Coastline Geotechnical Consultants dated February 8, 1996, and submitted by the applicant indicates that the subject site is prone to surficial instability and that evidence of bluff erosion, soil slippage, and damage to the retaining walls and pier footings for the cabana and deck is evident on the subject site. Staff also notes that the property located to the west and immediately adjacent to the project site (which also contains a pre-Coastal Act cabana, stairway, and retaining walls on the bluff face) has experienced severe bluff erosion and has submitted a coastal development permit application for bluff restoration. As noted previously, the Commission has found in past Commission action that development on a bluff face will result in a potential increase in erosion. In the case of the subject site, increased erosion of the bluff slope would result in increased sedimentation of coastal waters and adverse impacts to the offshore kelp beds which have also been designated as ESHA.

As such, the Commission notes that the proposed development would be located on a coastal bluff face, designated as ESHA, which has historically provided habitat for a relatively rare and restricted plant community (Southern Coastal Bluff Scrub). In addition, development on steep slopes, such as a bluff face, serves to accelerate erosional processes. Any increased erosion on the subject site would result in potential adverse impacts to the kelp beds which are located offshore from the project site and which are also designated as ESHA. Further, the Coastal Act allows for new development in ESHAs only when such development is dependent upon the habitat resources of that ESHA. In the case of this project, the proposed development is not dependent upon the habitat resources of the site and would result in the significant loss of coastal bluff habitat. The Commission also notes that portions of the development will be visible from the public areas of the sandy beach and that the applicant's geotechnical consultant has indicated that additional improvements on the bluff face (such as new retaining walls which would also be visible in part from the sandy beach) may be necessary in order to protect the proposed development from future instability. Further, alternative locations exist on site which could accommodate a second residential unit (such as the studio/garage by the road which has been previously converted to a habitable second residential unit without the benefit of a coastal permit or above the second detached garage which was also constructed without the benefit of a coastal permit) which would be preferable from a geologic and environmental stand point. Therefore, for the reasons discussed above, the Commission finds that the proposed project is not consistent with Sections 30230, 302321, 30240 or 20251 of the Coastal Act.

## **D. Second Residential Units**

Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new developments. Section 30250 (a) of the Coastal Act states:

*(a) 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 only 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 surrounding parcels.*

Section 30252 of the Coastal Act states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

New development raises coastal issues related to cumulative impacts on coastal resources. The construction of a second unit on the site where a primary residence exists intensifies the use of a parcel raising potential impacts on public services, such as water, sewage, electricity and roads. New development also raises issues regarding the location and amount of new development maintaining and enhancing public access to the coast.

Based on these policies, the Commission has limited the development of second dwelling units (the guest house) on residential parcels in the Malibu and Santa Monica Mountain areas. In addition, the issue of second units on lots with primary residences has been the subject of past Commission action in the certifying the Malibu Land Use Plan (LUP). In its review and action on the Malibu 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 the small size of units (750 sq. ft.) and the fact that they are likely to be occupied by one or at 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 such as water, sewage, electricity) than an ordinary single family residence.

(certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29 and P.C.H. (ACR), 12/83 page V-1 - VI-1).

The second unit 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 including 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 guest houses inherently have the potential to cumulatively impact coastal resources. As such, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29).

In past permit actions, the Commission has allowed a maximum of one 750 sq. ft. second dwelling unit on properties in the Malibu area. Although the proposed 330 sq. ft. second unit (cabana) located on the bluff face would be in conformance with the maximum size of 750 sq. ft. allowed by the Commission in past actions for second dwelling units in the Malibu area, the Commission notes that the proposed existing cabana located on the bluff face is not consistent with past Commission actions both for all of the reasons discussed in detail in the previous sections and also because the cabana, in addition to the studio/garage structure (which is not the subject of this application and has been converted to a potentially habitable unit with 1<sup>1/2</sup> bathrooms and a 750 gallon septic tank without the benefit of a coastal development permit as noted earlier) would result in the presence of two potential second residential units and would not be in conformance with past Commission action of allowing only one 750 sq. ft. second residential unit on a property. The existing development on the subject site will continue to be inconsistent with Commission restrictions on second residential units if the cabana remains. Therefore, the Commission finds that the proposed development is not consistent with past Commission action or Sections 30250 and 30252 of the Coastal Act.

### **E. 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 cabana utilizes a pump system in order to connect to the existing septic system for the existing single family 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. However, as discussed in detail in the previous sections, the Commission finds that development on the bluff face, including the placement of septic lines and pumping system for the cabana on the bluff face, is not consistent with past Commission action or other sections of the coastal act, including section 30231. Further, the adverse resultant effects of the unpermitted development will continue so long as the septic lines and pumping system for the cabana remain in place

#### **F. Violations**

Various developments have been carried out on the subject site without the required coastal development permits including the construction of a 330 sq. ft. cabana, a 580 sq. ft. wooden deck, a concrete block retaining wall for the cabana, a stairway, wooden retaining walls for the stairway, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on a coastal bluff face. The applicant has proposed to retain the above mentioned development as part of this permit application.

In addition, during the course of processing this application, staff has discovered other development on the subject site which has occurred without the required coastal development permit including the conversion of an existing non-habitable garage/studio with no plumbing to a habitable third residential unit with plumbing, installation of a 750 gallon septic tank, and a new detached garage. Such development is not included as part of this application. All unpermitted development not included as part of this application will be resolved through a follow-up coastal development permit for retention or removal of the structures or through an enforcement action if deemed necessary. In addition, if the development proposed as part of this application is not approved by the Commission, the applicant will be required to submit a follow-up coastal permit application for removal of all unpermitted structures and restoration of the bluff slope.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review 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.

## **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 would not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed development would result in adverse impacts and is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would 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).

## **H. CEQA**

Section 13096(a) of the Commission's administrative regulations requires Commission action on 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 effects which the activity may have on the environment.

The proposed project would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act.

**SMH-VNT**



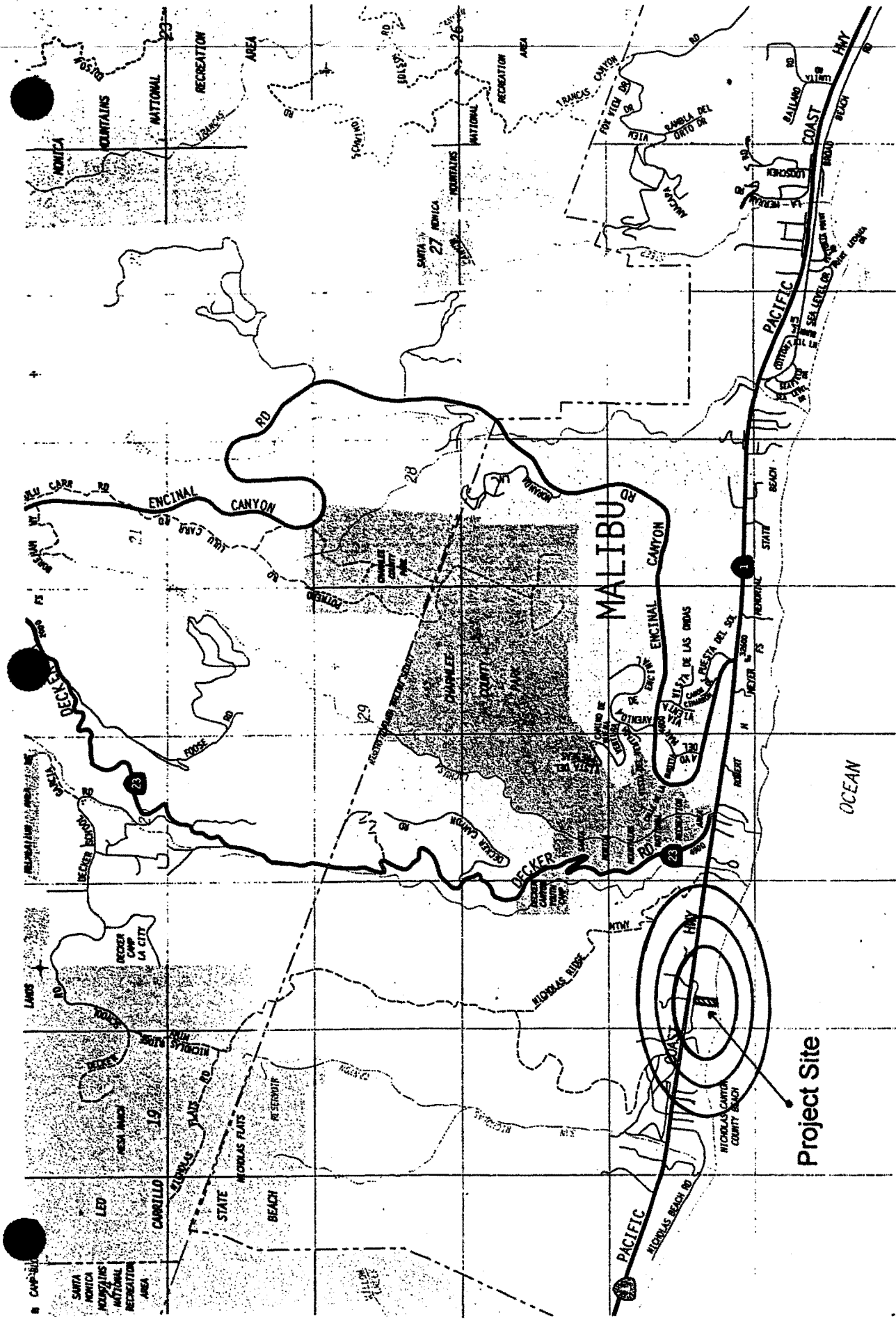


Exhibit No. 1: (4-97-174) Location Map

4473 | 20  
 SCALE 1" = 100'

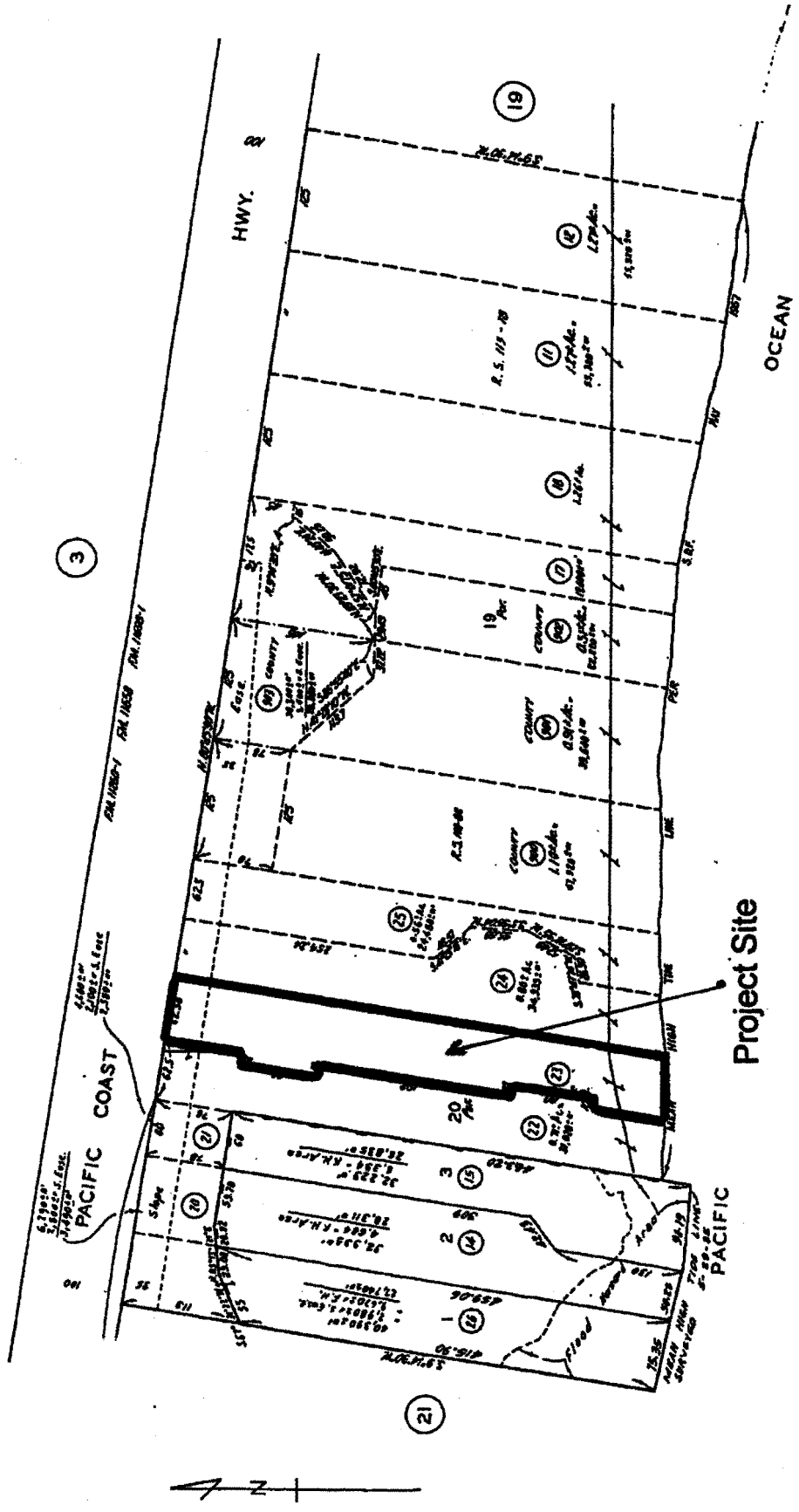
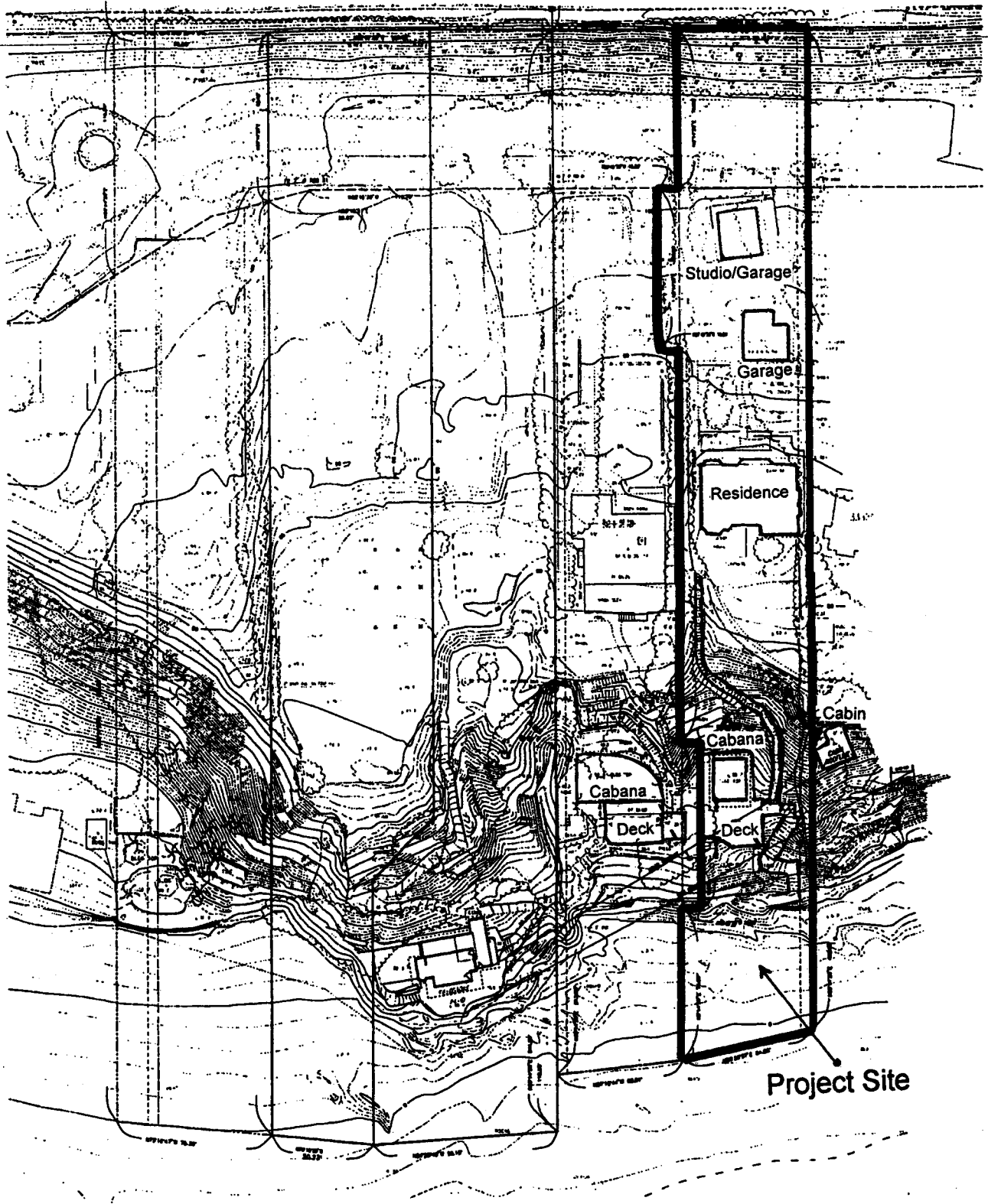
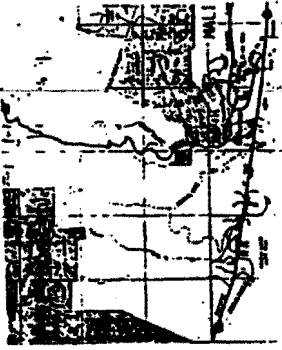


Exhibit No. 2: (4-97-174) Parcel Map



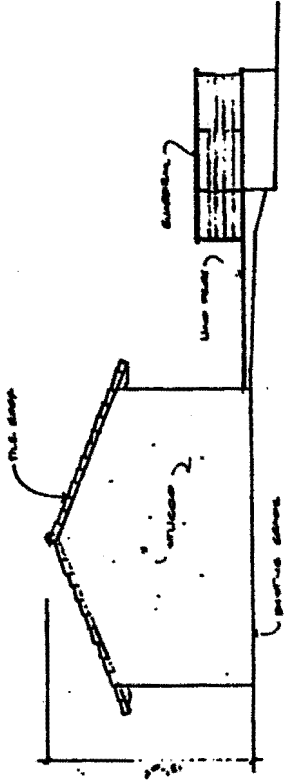
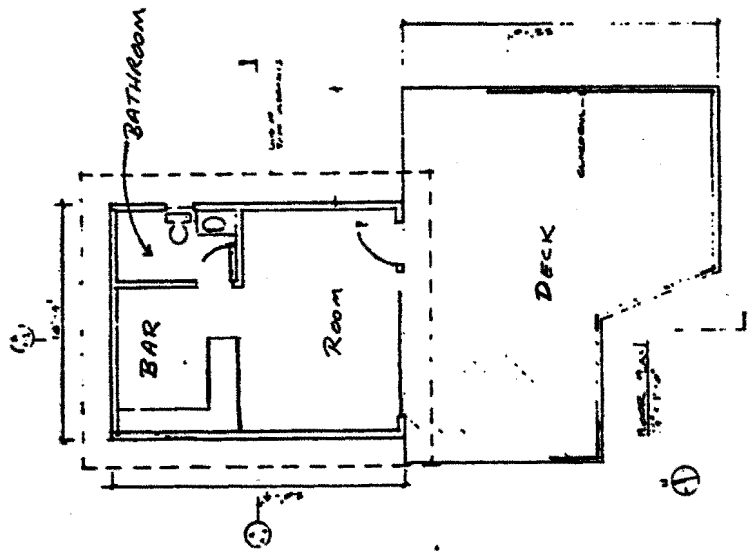
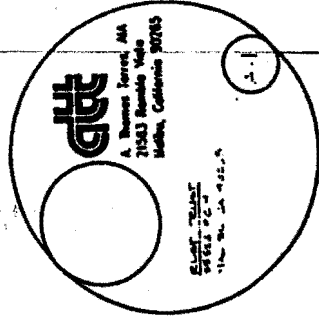
**Exhibit No. 3: (4-97-174) Site Plan**



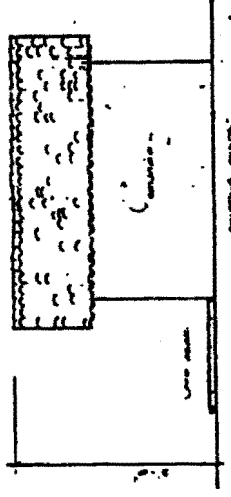
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PROJECT: 4-97-174

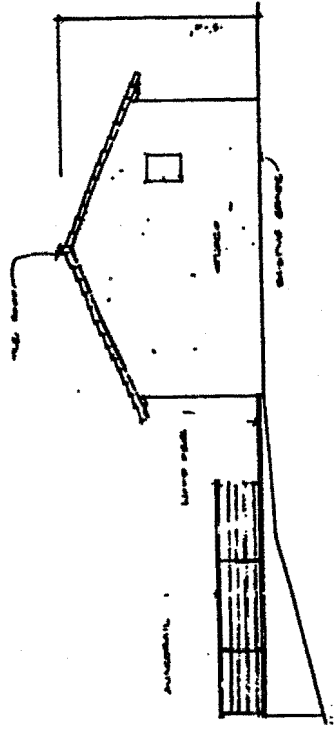
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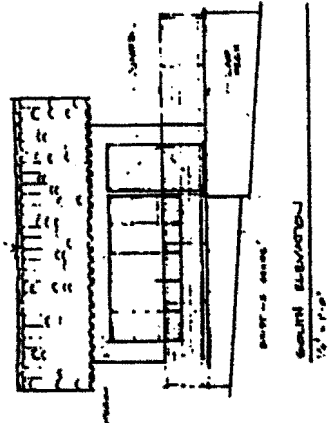
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 1/2" = 1'-0"



NORTH ELEVATION  
 1/2" = 1'-0"



EAST ELEVATION  
 1/2" = 1'-0"



SOUTH ELEVATION  
 1/2" = 1'-0"

Exhibit No. 4: (4-97-174) Cabana Floor Plans and Elevations