

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
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Filed: 4/1/99
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Staff: S. Hudson *jc*
Staff Report: 4/22/99
Hearing Date: May 11, 1999
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-97-061

APPLICANT: Lance and Aime Lindsay

PROJECT LOCATION: 6219 Porterdale Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: The applicant is requesting after-the-fact approval for the construction of a detached 1,000 sq. ft. 4-car garage with a 550 sq. ft. 2nd story office area, a detached 800 sq. ft. garden house, and a pool/spa. In addition, the proposed project also includes the removal of all existing plumbing fixtures (2 bathroom facilities) from the garage/office structure.

Lot area:	2.58	acres
Building coverage:	4,427	sq. ft.
Pavement coverage:	11,557	sq. ft.
Landscape coverage:	8,641	sq. ft.
Parking spaces:	6	
Ht. abv. ext. grade:	18 ft.	

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept, County of Los Angeles Approval.

SUBSTANTIVE FILE DOCUMENTS: Addendum Engineering Geologic Report #1 by Mountain Geology, Inc. dated 4/1/98; Update Engineering Geologic Report by Mountain Geology, Inc. dated 12/22/97; Soil Engineering Investigation and Percolation Testing by West Coast Soils dated 4/9/87; Coastal Development Permit 5-87-456 (Lindsay).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with five (5) special conditions regarding plans conforming to geologic recommendation, removal of unpermitted plumbing fixtures, future development, wildfire waiver of liability, and condition compliance. The applicant is requesting after-the-fact approval for the construction of a detached 1,000 sq. ft. 4-car garage with a 550 sq. ft. 2nd story office area, a detached 800 sq. ft. garden house, pool/spa. The proposed project also includes the removal of all unpermitted plumbing fixtures (2 bathroom facilities) from the garage/office structure. All development with the exception of the removal of the existing unpermitted plumbing fixtures has been previously carried out.

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, 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 and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Plans Conforming to Geologic Recommendation

All recommendations contained in the Addendum Engineering Geologic Report #1 by Mountain Geology, Inc. dated 4/1/98; Update Engineering Geologic Report by Mountain Geology, Inc. dated 12/22/97; Soil Engineering Investigation and Percolation Testing by West Coast Soils dated 4/9/87 shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by a geologic/geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

2. Removal of Unpermitted Plumbing Fixtures

In accord with the applicant's proposal, the applicant shall remove all unpermitted plumbing fixtures from the garage/office structure within 90 days of the issuance of this permit.

3. Future Development Deed Restriction

- A. This permit is only for the development described in coastal development permit No. 4-97-061. Pursuant to Title 14 California Code of Regulations section 13253(b)(6), the exemptions otherwise provided in Public Resources Code section 30610 (b) shall not apply to the garage/office structure or garden house. Accordingly, any future improvements to the permitted garage/office structure and garden house including, but not limited to, the conversion of either structure to a habitable unit or the installation of plumbing fixtures in either unit shall require an amendment to Permit 4-97-061 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development in the deed restriction and shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all

successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

5. Condition Compliance

Within 90 days of Commission action on this coastal development 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 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 after-the-fact approval for the construction of a detached 1,000 sq. ft. 4-car garage with a 550 sq. ft. 2nd story office area, a detached 800 sq. ft. garden house, and a pool/spa. In addition, the proposed project also includes the removal of all existing plumbing fixtures (2 bathroom facilities) from the garage/office structure. The project site is located near the terminus of Porterdale Drive approximately ½ mile north of Pacific Coast Highway (Exhibit 1). Slope gradients on the project site vary from nearly horizontal on the existing building pad to as steep as 1.5:1 (67°) on the slopes which descend to the south.

The project site has been the subject of past Commission action. Coastal Development Permit 5-87-456 was issued on October 15, 1987, for the construction of a two-story, 2,000 sq. ft. single family residence, garage, driveway, grading and a septic system subject to two special conditions regarding assumption of risk and cumulative impacts mitigation. A swimming pool/spa has also been installed on the subject site. Analysis

of aerial photographs indicates that between 1988 and 1995, the garage/office structure and the garden house structure were constructed without the required coastal development permits. All proposed development is located on the previously graded pad area and did not require grading. A section of the Coastal Slope Trail parallels Winding Way south of the project site; however, the proposed development, due to natural topography and neighboring development, is not visible from the trail/road area and will not result in any adverse effects to public views.

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.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission will only approve the project if the applicant agrees to indemnify the Commission from any liability associated with such risks. Through the waiver of liability, incorporated by Special Condition Four (4), the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development and agrees to indemnify the Commission for any liability arising out of the project.

The applicant has submitted an Update Engineering Geologic Report by Mountain Geology dated 12/22/97, which indicates that the subject site is relatively stable. In regard to the proposed detached garage/office structure, the report states that:

Based upon our investigation, future site improvements will be free from geologic hazards such as landslides, slippage, active faults, and settlement. Future site improvements...will have no adverse effect upon the stability of the site or adjacent properties provided the recommendations of the Engineering Geologist and Geotechnical Engineer are complied with during construction.

In addition, the Addendum Engineering Geologic Report #1 by Mountain Geology, Inc. dated 4/1/98 states that:

Based upon our investigation, the garden room and patio will be free from geologic hazards such as landslides, slippage, active faults, and settlement. The existing garden room and patio will have no adverse effect upon the stability of the site or adjacent properties provided the recommendations of the Engineering Geologist and Geotechnical Engineer are complied with.

The Addendum Engineering Geologic Report #1 by Mountain Geology, Inc. dated 4/1/98, Update Engineering Geologic Report by Mountain Geology, Inc. dated 12/22/97, and the Soil Engineering Investigation and Percolation Testing by West Coast Soils dated 4/9/87 include a number of geotechnical recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical engineering consultants have been incorporated into all after-the-fact development, Special Condition One (1) requires the applicant to submit project plans certified by the consulting geotechnical engineer as conforming to all recommendations by the consulting geotechnical engineer to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

The Commission also finds that minimization of site erosion will add to the stability of the site. In the case of the proposed project, all proposed development is located in the previously graded pad area approved by Coastal Development Permit 5-87-456 and within the existing landscaped areas of the property and will not result in any increased erosion on site. 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. Cumulative Impacts

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 a site where a primary residence exists intensifies the use of a parcel increasing impacts on public services, such as water, sewage, electricity and roads. New development also raises issues as to whether the location and amount of new development maintains and enhances public access to the coast.

Based on these policies, the Commission has limited the development of second dwelling units (including guest houses) on residential parcels in the Malibu and Santa Monica Mountain areas. The issue of second units on lots with primary residences has been the subject of past Commission action in the certification of the Santa Monica Mountains/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 would cause such units to have less impact on the limited capacity of Pacific Coast Highway and other roads (including 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 forms which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, or farm labor unit; and 2) a guesthouse, with or 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. Thus, 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 in this area (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29).

The applicant is requesting after-the-fact approval for the construction of a detached 1,000 sq. ft. 4-car garage with a 550 sq. ft., 2nd story office area, a detached 800 sq. ft. garden house, and pool/spa. In addition, the applicant is also proposing to remove all unpermitted plumbing fixtures from the garage/office structure. The Commission notes that the existing septic system is not adequate to provide for sewage disposal on site if the plumbing fixtures that have been installed in the garage/office structure were to be retained. The Commission further notes that if the plumbing fixtures that have been installed in the garage/office without a coastal permit were to be retained, then additional improvements to the existing septic system would be required to provide for adequate sewage disposal on the subject site. Therefore, Special Condition Two (2) has been required to ensure that all plumbing fixtures which have been previously installed without a coastal permit shall be removed from the proposed garage/office structure within 90 days from the date of permit issuance.

In addition, although no second residential unit is proposed as part of this project, the Commission notes that the conversion of either the proposed 800 sq. ft. garden house or the 1,550 sq. ft., two-story garage/office structure to a second residential unit or guest unit larger than the maximum 750 sq. ft. limit allowed by the Commission would be inconsistent with Section 30250 and 30252 of the Coastal Act for the reasons stated above. To ensure that any additions or improvements that could further intensify the use of the proposed structures will be reviewed by the Commission, Special Condition Three (3) requires that any future structures, additions, or improvements related to the proposed garden house or office/garage structure including, but not limited to, a change in use from a non-habitable to a habitable structure or the installation of plumbing, will require a permit or permit amendment. Therefore, the Commission finds that, as conditioned, the proposed development is consistent with Sections 30250 and 30252 of the Coastal Act.

D. Violations

Various developments have been carried out on the subject site without the required coastal development permits including the construction of a detached 1,000 sq. ft. 4-car garage with a 550 sq. ft. 2nd story office area and a detached 800 sq. ft. garden house. The applicant proposes to retain the above mentioned development with the exception of all plumbing fixtures (2 bathroom facilities) which have been previously installed in the unpermitted garage/office structure and which the applicant is now proposing to remove.

In order to ensure that the violation aspect of this project is resolved 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 90 days of Commission action.

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.

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

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

File:smivpermits/regular/4-97-061 Lindsay

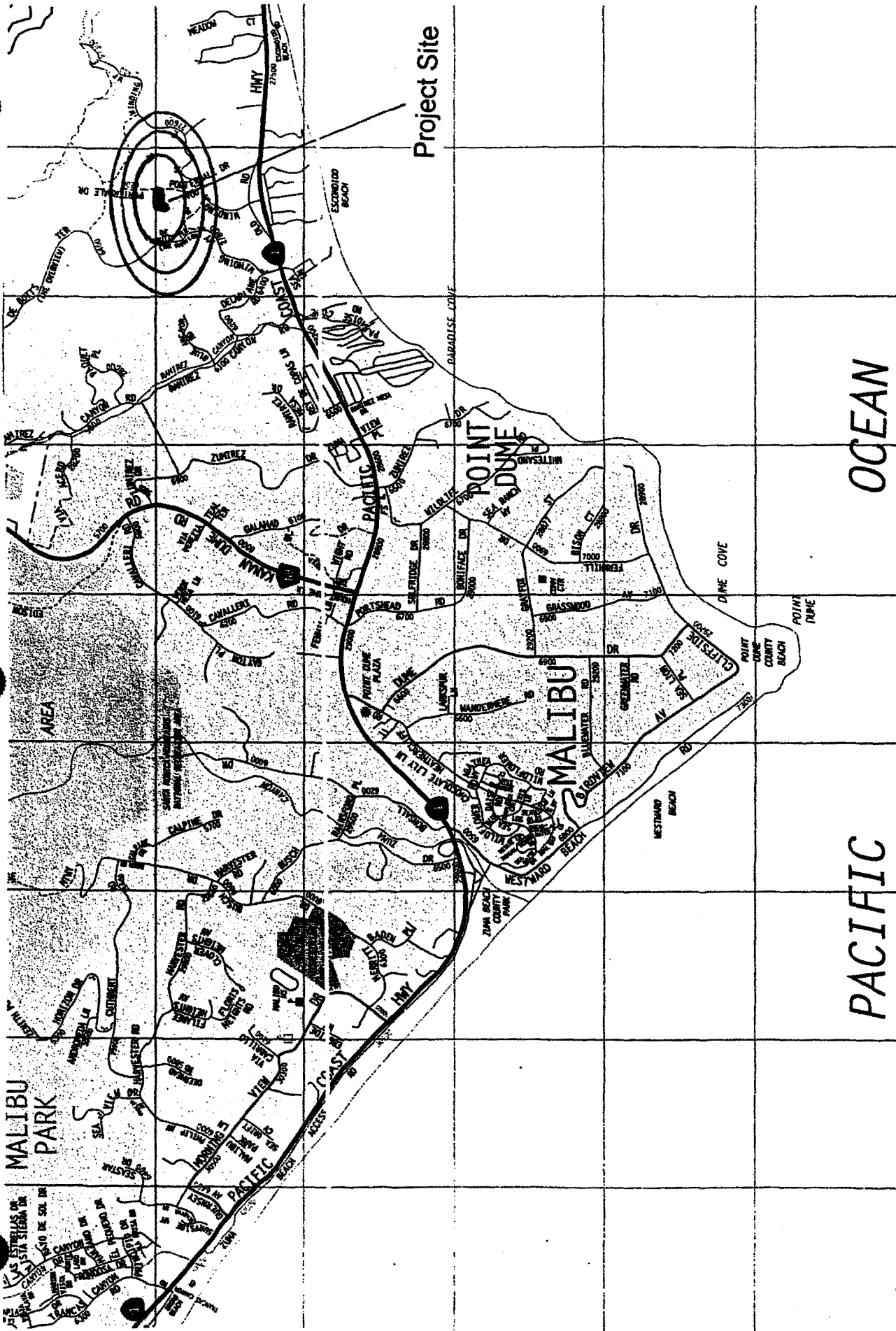


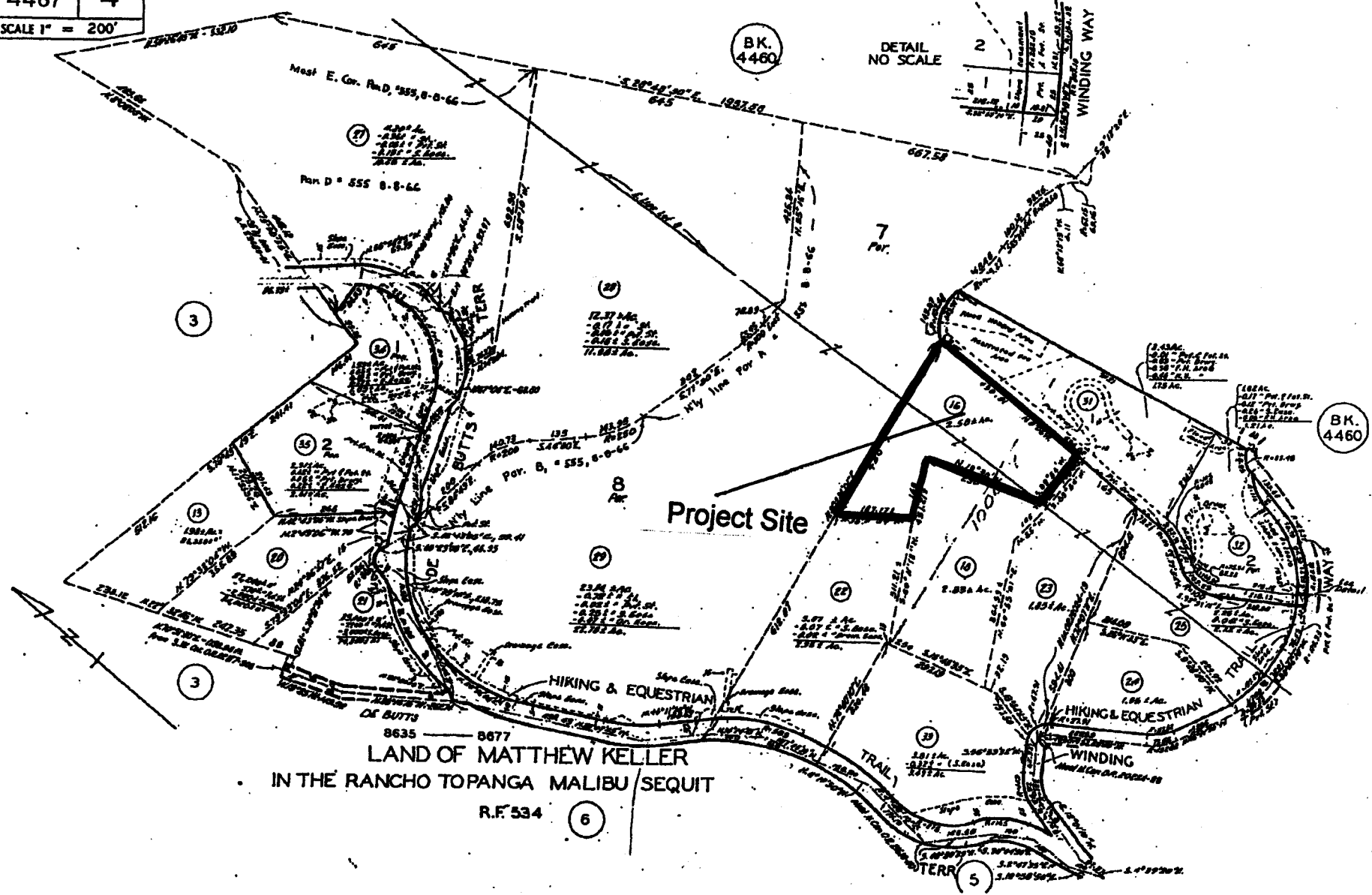
EXHIBIT 1
CDP 4-97-061 (Lindsay)
Location Map

4467 4

SCALE 1" = 200'

BK. 4460

DETAIL NO SCALE



Project Site

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT
R.F. 534

BK. 4460

EXHIBIT 2
CDP 4-97-061 (Lindsay)
Parcel Map

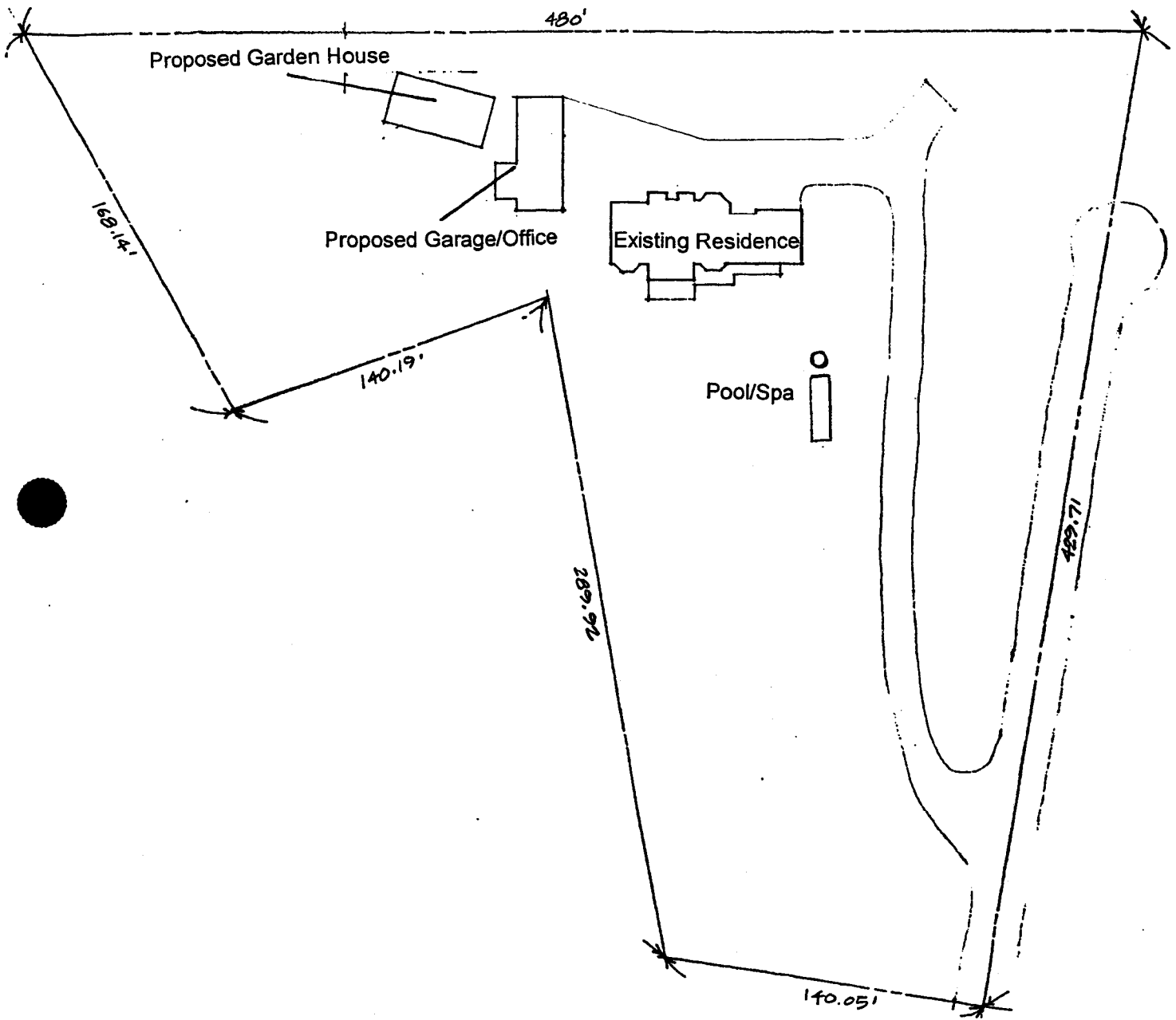
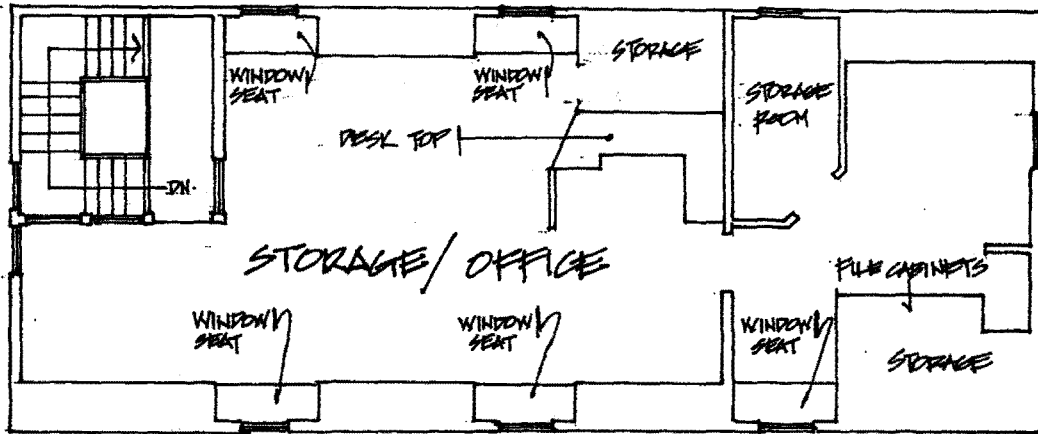
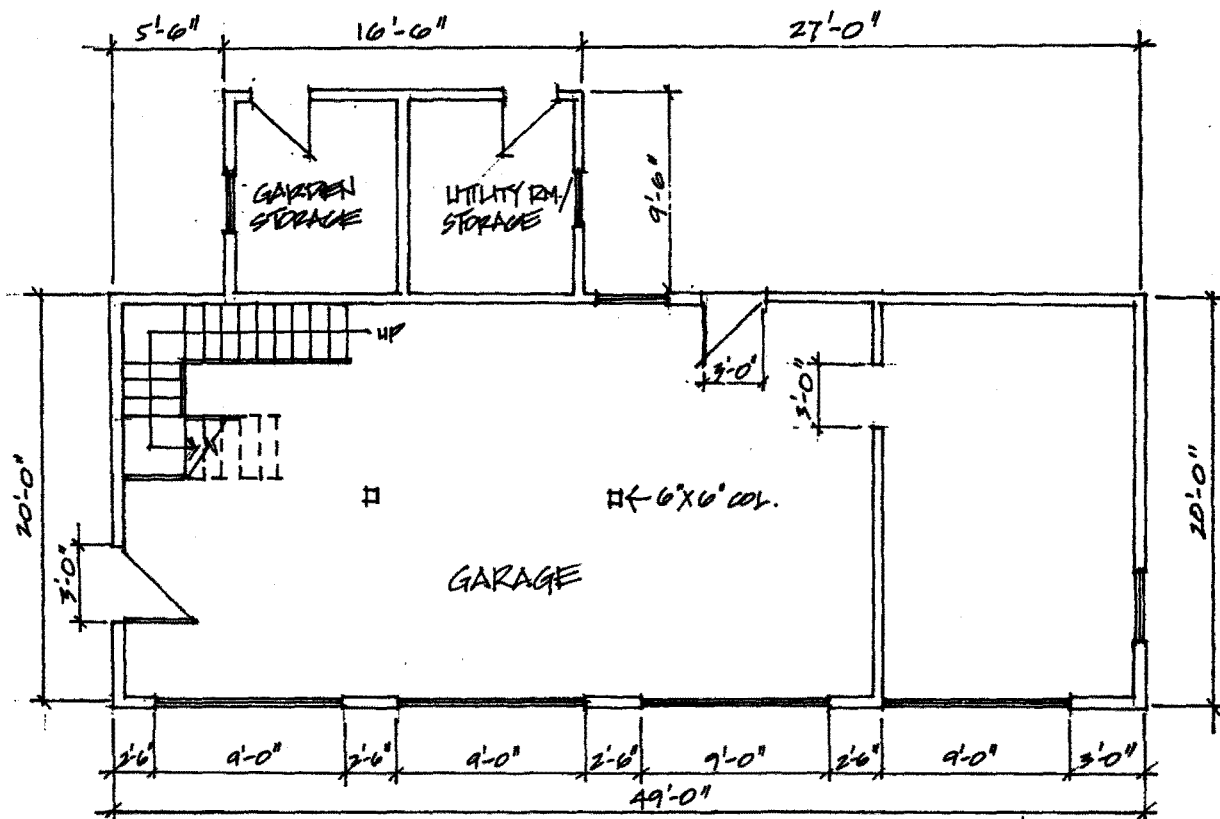


EXHIBIT 3
CDP 4-97-061 (Lindsay)
Site Plan



UPPER FLOOR PLAN



GROUND FLOOR PLAN

EXHIBIT 4

CDP 4-97-061 (Lindsay)

Garage/Office Floor Plan

SCALE: 1/4" = 1'-0"

