

CALIFORNIA COASTAL COMMISSION

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Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-98-202

APPLICANT: Rust Trust

AGENT: 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, a 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank, sewage ejector pump system, and approximately 116 cu. yds. of grading (58 cu. yds. cut and 58 cu. yds. fill). In addition, the applicant has offered to do the following if the above after-the-fact development is approved: (1) record a deed restriction to restrict the proposed cabana as a non-habitable structure and (2) purchase one-half of a Transferable Development Credit.

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), and 4-97-103 (Rust Trust).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission take one (1) vote adopting the following two-part resolution for the proposed project:

Part 1 to approve the request for after-the-fact approval of: (1) the conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, (2) the installation of a 750 gallon septic tank, (3) the construction of 528 sq. ft. garage, and (4) approximately 18 cu. yds. of grading with four special conditions regarding revised plans, future development deed restriction, wild fire waiver, and condition compliance.

Part 2 to deny the request for "after the fact" approval of (1) the construction of a 330 sq. ft. cabana, (2) a 580 sq. ft. wooden deck, (3) a concrete block retaining wall for the cabana, (4) a stairway, (5) wooden retaining walls for the stairway, (6) sewage ejector pump system on bluff face, and (7) approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on the bluff slope.

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 a portion of 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 and, therefore, did not need a permit at that time.

Commission staff has determined that the development proposed on the bluff face (cabana, deck, stairway, retaining walls, and sewage ejector pump system) 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 today under Section 30600 of the California Coastal Act of 1976.

In past permit actions in Malibu and other similar bluff areas, the Commission has consistently 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 development proposed by the applicant, with the exception of the detached garage, grading for the garage, septic system, and conversion of an existing studio to a second-residential unit, 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), such as the bluff slope located on the project site, only when the proposed development is dependent upon those habitat resources. In the case of this project, the proposed development that is located on the bluff face is not dependent upon the habitat resources of the site.

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART

Staff recommends that the Commission adopt the following two-part resolution. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. MOTION:

"I move that the Commission adopt the staff recommendation, by adopting the two-part resolution set forth in the staff report."

B. RESOLUTION:

Part 1: Approval with Conditions of a Portion of the Development

The Commission hereby **approves** a coastal development permit for the portion of the proposed project consisting of the after-the-fact construction of: (1) a 528 sq. ft. detached garage, (2) conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, (3) a 750 gallon septic tank, and (4) approximately 18 cu. yds. of grading (9 cu. yds. of cut and 9 cu. yds. of fill) for the detached garage, on the grounds that as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreational policies of Chapter 3 of the Coastal Act, 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.

Part 2: Denial of the Remainder of the Development

The Commission hereby **denies** a coastal development permit for the portion of the proposed development consisting of the "after the fact" construction of: (1) a 330 sq. ft. cabana, (2) a 580 sq. ft. wooden deck, (3) a concrete block retaining wall for the cabana, (4) a stairway, (5) wooden retaining walls for the stairway, (6) sewage ejector pump system, and (7) approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill) on the bluff slope on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is not in conformance with the Chapter 3 policies of the Coastal Act and would prejudice the ability of the local governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act; and

would result in 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. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans, prepared by a qualified civil engineer, which eliminate all proposed development located on the bluff slope including: 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, sewage ejector pump system, and approximately 98 cu. yds. of grading (49 cu. yds. cut and 49 cu. yds. fill).

2. Future Development Deed Restriction

- A. This permit is only for: (1) the construction of a 528 sq. ft. detached garage, (2) conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, (3) a 750 gallon septic tank, and (4) approximately 18 cu. yds. of grading (9 cu. yds. of cut and 9 cu. yds. of fill) for the detached garage as approved by Coastal Development Permit No. 4-98-202. 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 second residential unit permitted by Coastal Development Permit 4-98-202. Accordingly, any future improvements to the permitted second residential unit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), shall require an amendment to Permit 4-98-202 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.

3. 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.

4. 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 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, a 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank, sewage ejector pump system, and approximately 116 cu. yds. of grading (58 cu. yds. cut and 58 cu. yds. fill). The proposed project also includes an offer to record a deed restriction to restrict the proposed cabana as a non-habitable structure and the purchase of one-half of a Transferable Development Credit.

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. Observation of the subject site by staff has indicated that the bluff slope ESHA has been severely degraded due to development and the presence of ornamental and invasive plant species used for landscaping.

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 and, therefore, did not require a coastal permit.

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 located on the bluff face (cabana, deck, retaining walls, stairway, sewage ejector pump system, and approximately 98 cu. yds. of grading) was originally constructed by a previous property owner between 1975 and March 1977, without the required coastal development permit. The Commission notes that 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 now and also did then. 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. Further, during review of the applicant's original coastal permit application, staff discovered other development on the subject site which had 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. The conversion of the non-habitable studio to a habitable second residential unit was carried out by the applicant between 1996 and 1997. Although the applicant received a permit from the City of Malibu for the conversion, the applicant did not apply for or receive a coastal development permit. Analysis of aerial photography indicates that the proposed garage was constructed between 1988 and 1995.

Coastal Development Permit (CDP) Application 4-97-174 for the "after-the-fact" approval of the proposed cabana, wooden deck, stairway, retaining walls, and approximately 98 cu. yds. of grading on the bluff slope was previously submitted by the applicant on September 2, 1997. The application was scheduled for the May 1998 Commission hearing and a staff report was prepared which recommended denial of the proposed development; however, the application was withdrawn by the applicant on April 27, 1998, before being heard by the Commission. The other development which has occurred on site, including the conversion of a non-habitable studio to a second residential unit and the construction of a new detached garage were discovered by staff during the processing of CDP Application 4-97-174 and have now been included as part of the proposed development under this application.

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 along the Malibu coastline, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains area 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 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 Commission notes that the bluff slope located on the subject site has previously displayed evidence of slope instability. The Geotechnical and Geological Report by Coastline Geotechnical Consultants dated February 8, 1996, 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 underlined.

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.

The Commission notes that while the proposed structures located on the bluff slope 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, will very likely 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, "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. Staff visits have disclosed that this process is already occurring on site and is expected to continue to occur as long as the unpermitted structures remain in place on the bluff face.

The Commission notes that bluff slopes in the surrounding area of the project site have been subject to severe ongoing bluff erosion. The property located to the west and immediately adjacent to the project site at 33528 Pacific Coast Highway, which is also owned by the applicant, (and which contains a cabana, stairway, and retaining walls on the bluff face constructed prior to the California Coastal Zone Conservation Act of 1972) has experienced severe bluff erosion and that the Commission recently approved Coastal Development Permit 4-97-103 for bluff restoration in 1998. Further, the applicant has also submitted a new amendment application to Coastal Development Permit 5-86-500 for a different bluff top property located at 33550 Pacific Coast Highway, approximately 120 ft. to the west of the project site, to restore the bluff slope which has also been subject to severe erosion from past development.

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 slowly over time. 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 authorized

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 finds that the use of 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..." , The Commission notes that the use of a stringline measurement in relation to the proposed development is not appropriate, regardless of whether the development is located landward or seaward of such a line since Policy 164 of the LUP and past Commission action provide that a stringline or a 25 ft. setback from the blufftop, whichever is the greater distance, shall be used to determine the location of allowable development and that in this case the 25 ft. setback would provide the greater setback distance (Exhibit 3).

In regards to the site plan submitted by the applicant, the Commission notes that two different interpretations of the stringline are depicted: a City of Malibu stringline and a different stringline that is located further landward that meets the Commission's definition of a stringline. The Commission also notes that a 25 ft. setback from the top of the bluff is the appropriate setback for the proposed development, but that even if a stringline were to be used to determine the appropriate location for new development, the proposed structures would still extend seaward beyond the stringline. The Commission further notes that although the structures are located landward of the stringline shown on the site plan labeled "Malibu," that the "Malibu" stringline incorrectly 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 the cabana located on the property immediately west of the subject site, as would be usual) to the cabana located to the east of the subject site (Exhibit 4). In addition, the "Malibu" deck stringline is also depicted 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. The Commission notes that although the stringline labeled Coastal Commission Stringline is accurately drawn from the corners of the *immediately* adjacent structures and deck located on the *neighboring* properties, the use of a stringline, rather than a 25 ft. setback, is not appropriate in this case.

Further, the Commission also notes that even if a stringline were to be used in this case, the proposed structures would still be located seaward of the correct stringline. As mentioned above, the Commission finds that the use of a stringline measurement for the subject site would not be appropriate in any event since Policy 164 of the LUP and past Commission action provide that a stringline or a 25 ft. setback from the blufftop, whichever is the greater distance, shall be used to determine the location of allowable development. In the case of the proposed development, the 25 ft. setback would provide the greater setback distance. The Commission further notes that all development proposed by this application that is located on the bluff face itself (cabana, deck, stairway, retaining walls and grading) are not set back more than 25 ft. from the seaward edge of the top of the bluff and are not consistent with past Commission action.

In addition, 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.

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, the Commission notes that alternative locations exist on site which could accommodate a second residential unit or cabana (such as the studio/garage by the road which has already been converted to a habitable second residential unit without the required coastal permit would be preferable from a geologic and environmental stand point. The Commission notes that the proposed guest house/second residential unit and garage are located on the relatively flat pad area between the existing residence and Pacific Coast Highway and will not result in any adverse effects to the geologic stability of the bluff slope or the project site.

Therefore, for the reasons discussed above, the Commission finds that all development located on the bluff slope (the portion of the proposed project consisting of the "after the fact" 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, sewage ejector pump system, and approximately 98 cu. yds. of grading) is not consistent with Section 30253 of the Coastal Act. Therefore, Special Condition One (1) has been required to ensure that all development located on the bluff face shall be deleted from the approved project plans.

The Commission also notes that the portion of the proposed project that is not located on the bluff slope (the 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank, and approximately 18 cu. yds. of grading for the detached garage) will be located more than 25 ft. from the top of the bluff slope, and that such development will not result in adverse effects to the stability of site or increased erosion. However, Due to the fact that the proposed second residential unit and garage are located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the proposed second residential unit and the detached garage if the applicant assumes the liability from the associated risks as drafted in Special Condition Four (4). Through the waiver of liability the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Therefore, the Commission finds that the portion of the proposed development that is not located within 25 ft. of the top of the bluff slope, as conditioned, is 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. Observation of the subject site by staff has indicated that the bluff slope ESHA has been severely degraded due to development and the presence of ornamental and invasive plant species used for landscaping. 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, in part, "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 above mentioned 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, of which the subject site is a part, 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 of the LUP 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. The Commission notes that the ESHA resources on the bluff slope have been severely degraded due to the direct occupation of habitat area by the proposed cabana, deck, stairway, and retaining walls. In addition, the presence of ornamental and invasive plant species used for landscaping have further displaced the native vegetation endemic to coastal 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 adverse effects to marine and bluff habitat. The existing unpermitted structures on the bluff face have contributed to these adverse effects 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 for fire clearance will result in direct adverse effects to the surrounding ESHA. Further, 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. 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. The Commission notes that the proposed cabana, deck, stairway, sewage ejector pump, and retaining walls are not uses which are dependent upon the ESHA resources on site or compatible with the continuance of such habitat and that such development is, therefore, not consistent with Section 30240 of the Coastal Act. The portion of the proposed development that is not located on the bluff slope (the detached garage, the conversion of the existing non-habitable studio to a second residential unit, 18 cu. yds. of grading, and the installation of a 750 gallon septic tank) are located more than 150 ft. landward from the top of the bluff slope (landward of the existing single family residence) and will not be located within or near the area designated as ESHA. The Commission notes that the proposed garage and second residential unit will have an adequate buffer from the blufftop and ESHA (greater than the 25 ft. setback from the blufftop provided by Policy 164 of the LUP and past Commission action) and will not result in any adverse effects to ESHA resources on site.

Although the proposed bluff face development has been approved by the City of Malibu Environmental Review Board (ERB), the Commission 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.

The Commission notes that the ERB's review of the subject site was also based on the assumption that all existing development on the bluff slope had been carried out prior to coastal permitting requirements. However, as previously discussed, the development located on the bluff slope 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 Commission notes that the construction of the proposed improvements does require a coastal development permit and that such development has resulted in the displacement of ESHA due to the direct occupation of habitat area on the bluff slope by structures.

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 subject site is located approximately ¼ mile from Nicholas Canyon County Beach and that beachgoers who access the beach from Nicholas Canyon County Beach often walk along the shoreline passing directly in front of the subject site. The Commission notes that the portion of the proposed project that is located on the bluff face 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 portion of the proposed project located on the bluff face is not consistent with Section 30251 of the Coastal Act. However, the Commission also notes that the portion of the proposed development that is not located on the bluff slope (the detached garage, the conversion of the existing non-habitable studio to a second residential unit, 18 cu. yds. of grading, and the installation of a 750 gallon septic tank) are located more than 150 ft. landward from the top of the bluff slope and will not be visible from either Pacific Coast Highway, the beach, or from the ocean and will not result in adverse effects to public views.

Further, as discussed in detail in the previous section, in order to maintain the proposed structures located on the bluff face, further improvements such as concrete block walls and/or other protective structures, in addition to the currently unpermitted retaining walls, will very likely 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. The Commission also notes that the property located to the west and immediately adjacent to the project site (which contains a pre-Coastal Act cabana, stairway, and retaining walls on the bluff face) has experienced severe bluff erosion and that the Commission has recently approved a coastal development permit application in 1998 for restoration of the eroded bluff slope. In addition, the applicant has also submitted a new amendment application to Coastal Development Permit 5-86-500 for a different bluff top property located at 33550 Pacific Coast Highway, approximately 120 ft. to the west of the project site, to restore the bluff slope which has also been subject to severe erosion from past development. As noted previously, the Commission has found in past Commission action that development on a bluff face will result in a potential increase in the rate of erosion. In the case of the subject site, increased erosion of the bluff slope would result in increased sedimentation of coastal waters and adverse effects to the offshore kelp beds which have also been designated as ESHA.

The Commission notes that a portion of 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 standpoint. Therefore, for the reasons discussed above, the Commission finds that the portion of the proposed project located on the bluff slope is not consistent with Sections 30230, 302321, 30240 or 20251 of the Coastal Act. Therefore, Special Condition One

(1) has been required to ensure that all development located on the bluff face shall be deleted from the approved project plans. The Commission also finds that the portion of the proposed development that is not located on the bluff slope (the detached garage, the conversion of the existing non-habitable studio to a second residential unit, and the installation of a 750 gallon septic tank are located more than 150 ft. landward from the top of the bluff slope, as conditioned, will be 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. As proposed, the conversion of the 421 sq. ft. non-habitable studio to a second residential unit conforms to the Commission's past actions allowing a maximum of 750 sq. ft. for a second dwelling unit in the Malibu area. However, the Commission notes that any future additions to the proposed second residential unit may result in the construction of a second residential unit larger than the 750 sq. ft. maximum. To ensure that any future additions or improvements that could further intensify the use of this guest unit or second residential unit will be reviewed by the Commission as required by Special Condition Two (2).

In addition, 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 421 sq. ft. non-habitable studio located near Pacific Coast Highway, which the applicant is requesting after-the-fact approval for conversion to residential unit, 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 applicant has offered to deed restrict the proposed cabana as a non-

habitable structure. However, as discussed in detail previously, regardless of how the cabana is actually used, habitable or non-habitable, development on a bluff face and within an ESHA, such as the proposed cabana, is not consistent with the Chapter 3 policies of the Coastal Act. Therefore, the applicant's offer to restrict the use of the cabana has no bearing on the structure's consistency with the Coastal Act.

The Commission notes that the applicant has offered to purchase ½ of a Transferable Development Credit (TDC) to mitigate adverse effects resulting from the construction of the proposed development on the bluff face. The TDC program was first created by the Commission in 1979 to mitigate the cumulative adverse effects from new subdivisions and multi-family projects in the Santa Monica Mountains. The retirement of one TDC lot for each new lot created ensures that the overall number of parcels in the Santa Monica Mountains does not increase. The Commission notes that the proposed project is not a subdivision of an existing parcel and does not include the creation of a new lot and that, therefore, the purchase of ½ (or any quantity) of a TDC lot is not appropriate to mitigate adverse effects to ESHA, or provide for new development that would otherwise be inconsistent with the LUP and past Commission action, such as new development on a bluff face. The existing development on the subject site will continue to be inconsistent with Commission restrictions on second residential units if the cabana remains. The Commission notes that as a result of the denial of the proposed development on the bluff face, the proposed offer to deed restrict the unpermitted cabana as non-habitable and the offer to purchase ½ of a TDC to mitigate for the proposed construction on a bluff slope will not be implemented.

Therefore, the Commission finds that the proposed development on the bluff slope (including the cabana, cec, sewage ejector pump, retaining walls, stairway, and grading) for the reasons stated above, is not consistent with past Commission action or Sections 30250 and 30252 of the Coastal Act. Thus, Special Condition One (1) has been required to ensure that all development located on the bluff face shall be deleted from the approved project plans. The Commission also finds that the conversion of existing non-habitable studio to a second residential unit (located near Pacific Coast Highway), as conditioned, is consistent with 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 sewage ejector pump system in order to connect to the existing septic system for the existing single family residence to provide for adequate sewage disposal. The application also includes the installation of a new 750 gallon septic tank to provided for adequate sewage disposal for the proposed conversion of the existing non-habitable studio to a second residential unit. 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. The ejector pump system is only required to provide for sewage disposal for the unpermitted cabana located on the bluff face. 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. Therefore, the Commission finds that the portion of the proposed development consisting of the installation of sewage ejector pump system on the bluff face is not consistent with the Chapter 3 Policies of the Coastal Act. Therefore, Special Condition One (1) has been required to ensure that all development located on the bluff face, including the sewage ejector pump system, shall be deleted from the approved project plans. The Commission also finds that the portion of the proposed development not located on the bluff face, including the installation of the 750 gallon septic tank located more than 200 ft. landward from the top of the bluff slope, is consistent, as conditioned, with Section 30231 and the other applicable sections of the Coastal Act.

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, a 528 sq. ft. detached garage, conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, a 750 gallon septic tank and ejector pump system, and approximately 116 cu. yds. of grading (58 cu. yds. cut and 58 cu. yds. fill). The applicant has proposed to retain the above mentioned development as part of this permit application.

In order to ensure that the violation aspect of the portion of the project including development not located on the bluff face (conversion of the existing non-habitable studio to a second residential unit, construction of detached garage, new septic tank, and 18 cu. yds. of grading) is resolved in a timely manner, Special Condition Four (4) 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.

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 portion of the proposed project consisting of all development located on the bluff face (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, ejector pump system on bluff face, approximately 98 cu. yds. of grading, an offer to record a deed restriction to restrict the proposed cabana as a non-habitable structure, and the purchase of one-half of a Transferable Development Credit) 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).

In addition, the Commission also finds that the portion of the proposed project not located on the bluff face (the conversion of an existing 421 sq. ft. non-habitable studio

to a second residential unit, the installation of a 750 gallon septic tank, construction of a 528 sq. ft. detached garage, and 18 cu. yds. of grading), as conditioned, would not prejudice the City of Malibu's ability to prepare a Local Coastal Program and is 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 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 portion of the proposed project consisting of all development located on the bluff face (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, ejector pump system on bluff face, approximately 98 cu. yds. of grading, an offer to record a deed restriction to restrict the proposed cabana as a non-habitable structure, and the purchase of one-half of a Transferable Development Credit) would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the portion of the proposed project that includes all development located on the bluff face, is determined to be inconsistent with CEQA and the policies of the Coastal Act.

In addition, the Commission also finds that the portion of the proposed project not located on the bluff face (the conversion of an existing 421 sq. ft. non-habitable studio to a second residential unit, the installation of a 750 gallon septic tank, construction of a 528 sq. ft. detached garage, and 18 cu. yds. of grading), as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

SMH-VNT

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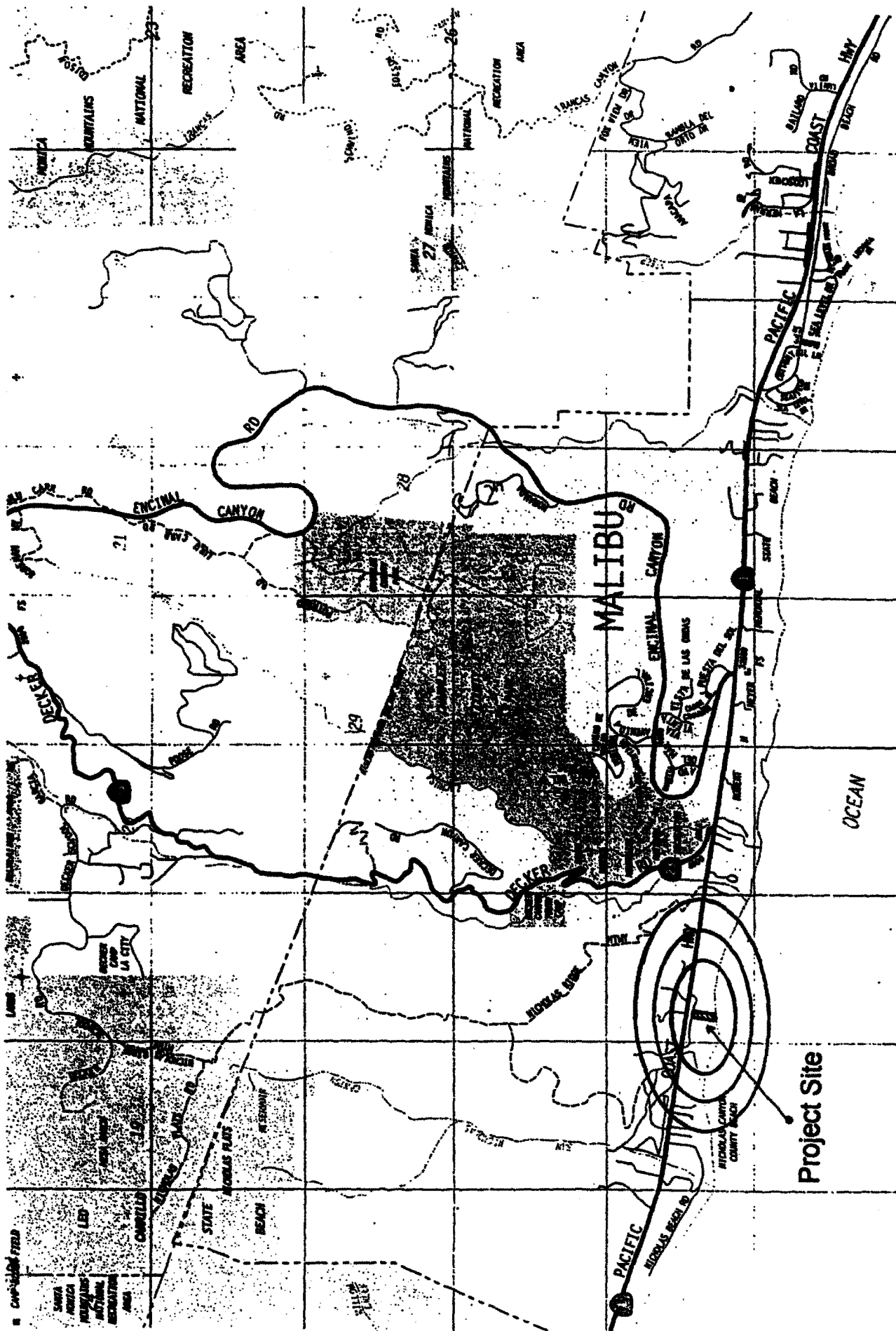


EXHIBIT 1

CDP 4-98-202 (Rust Trust)

Location Map

SCALE 1" = 100'

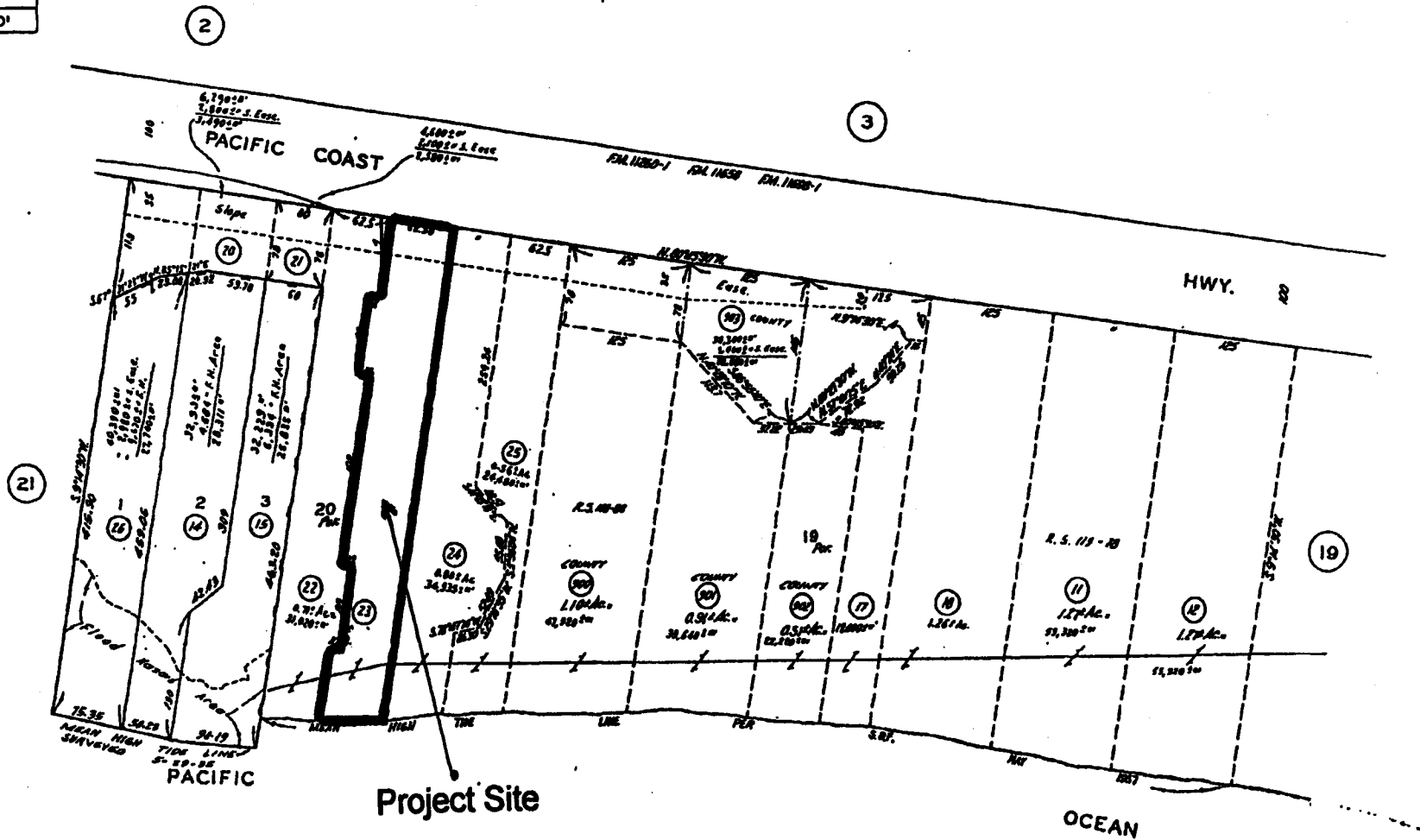


EXHIBIT 2
CDP 4-98-202 (Rust Trust)
Parcel Map

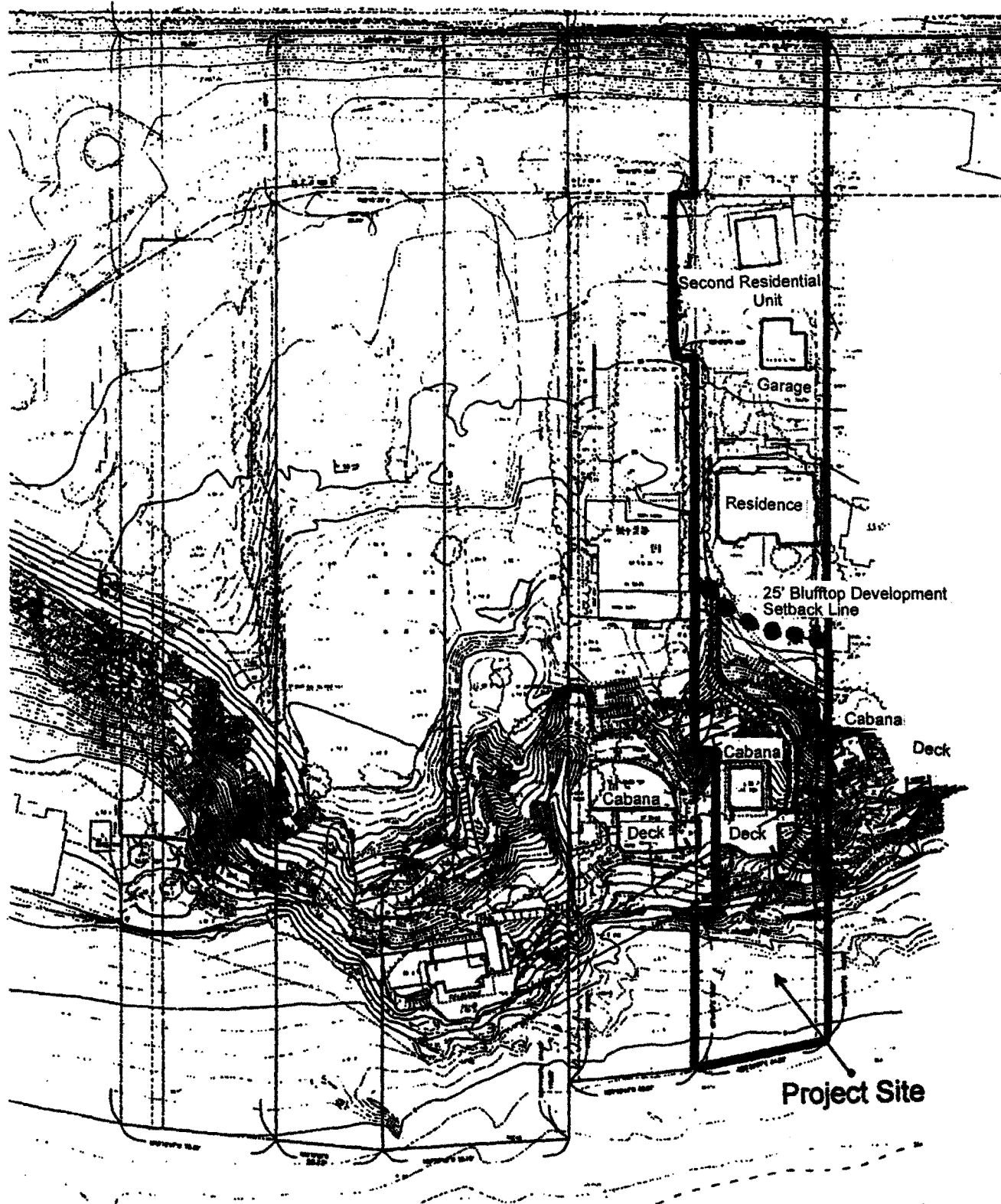
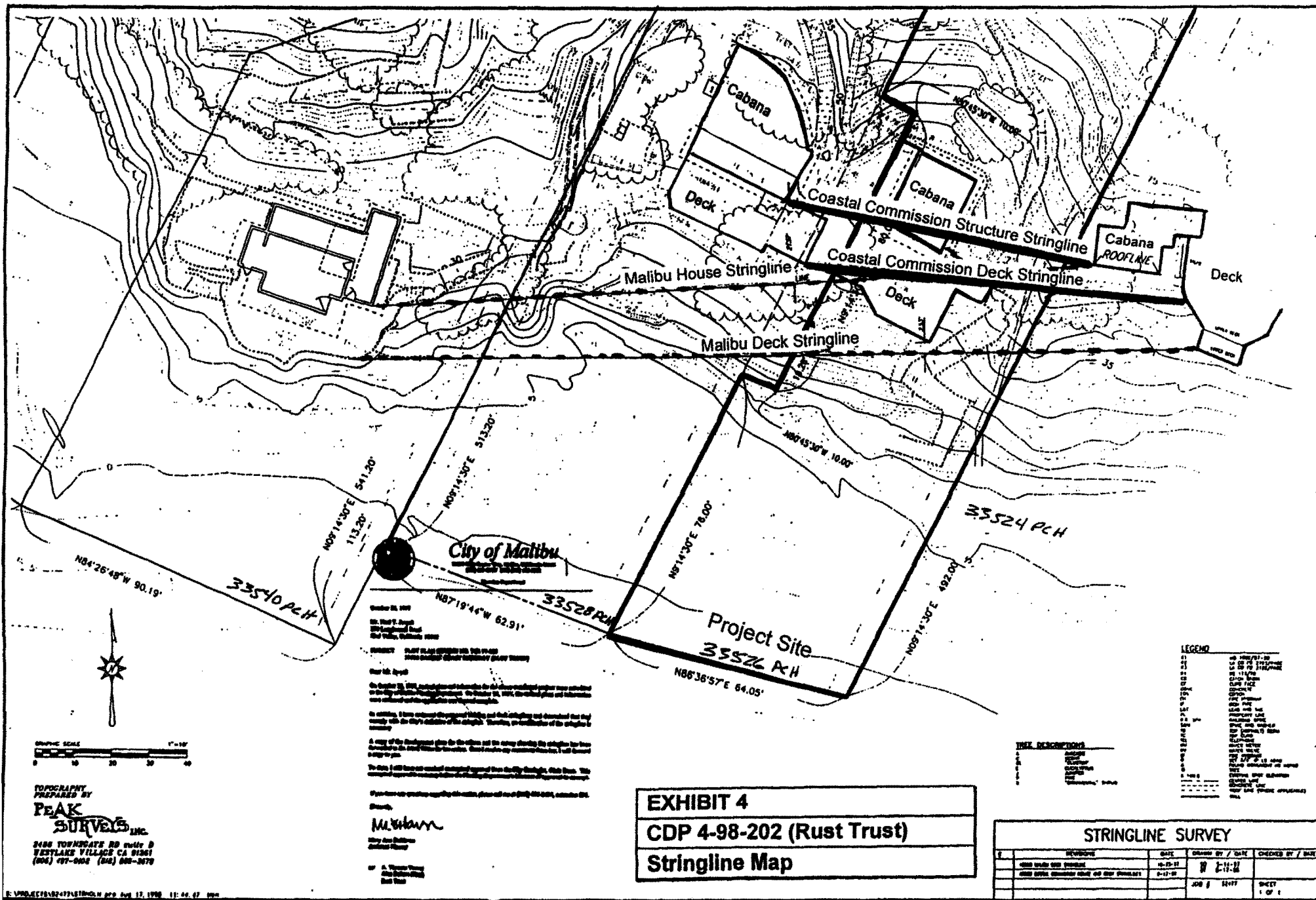
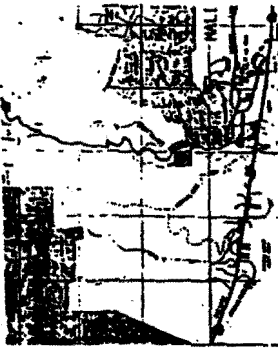


EXHIBIT 3

CDP 4-98-202 (Rust Trust)

Site Plan





ARCHIT. DESCRIPTION:
 1. Cabana
 2. 10' x 10' Deck
 3. 10' x 10' Deck

PROJECT SUMMARY:
 1. Cabana
 2. 10' x 10' Deck
 3. 10' x 10' Deck

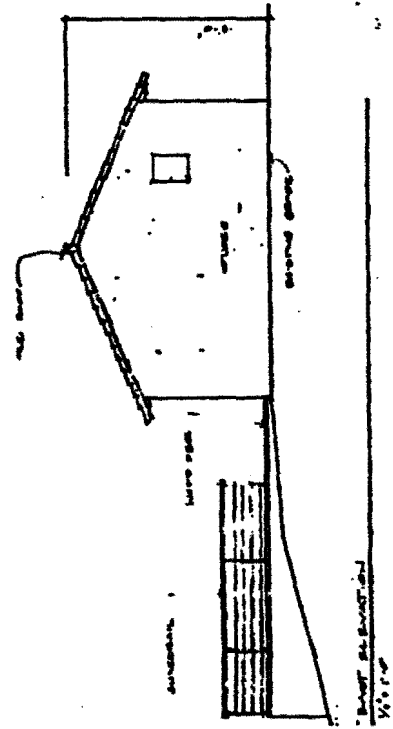
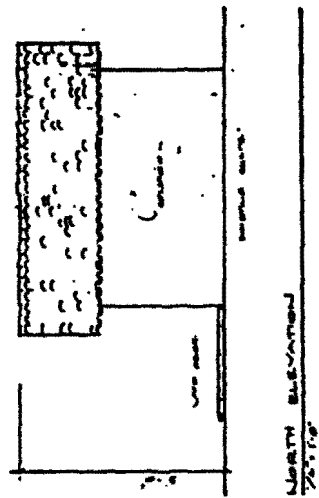
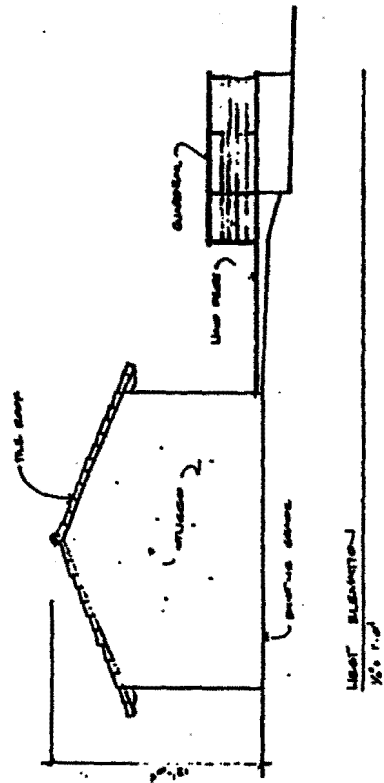
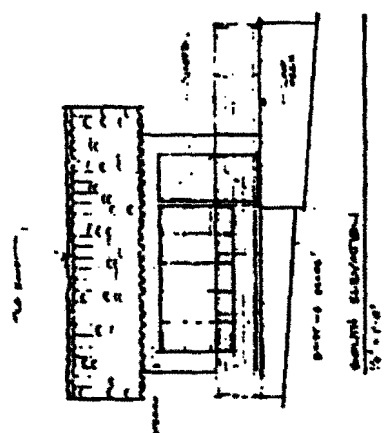
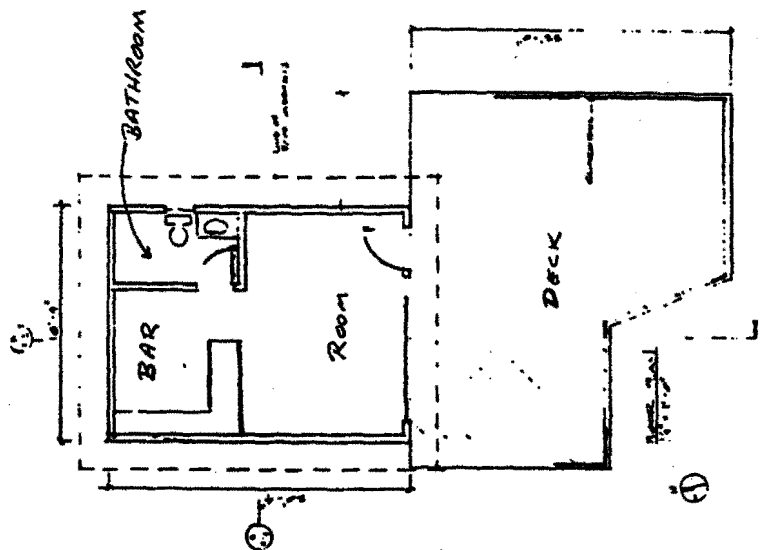
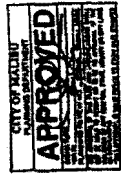


EXHIBIT 5
CDP 4-98-202 (Rust Trust)
Cabana Floor Plan/Elevations

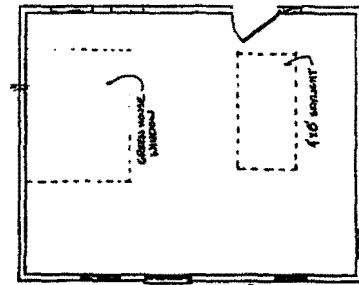
NOTES:

- 1) EXISTING SHED ROOF TO BE REMOVED AND REPLACED WITH NEW ROOF.
- 2) EXISTING 14' DIA. AND 14' DIA. TO BE REMOVED.
- 3) EXISTING 14' DIA. AND 14' DIA. TO BE REMOVED.
- 4) EXISTING 14' DIA. AND 14' DIA. TO BE REMOVED.
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- 6) EXISTING 14' DIA. AND 14' DIA. TO BE REMOVED.

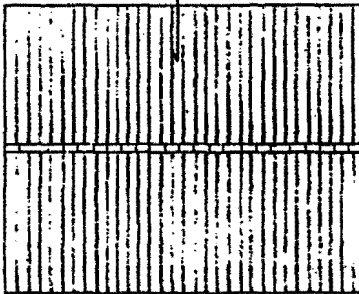
EXISTING 14' DIA. AND 14' DIA. TO BE REMOVED



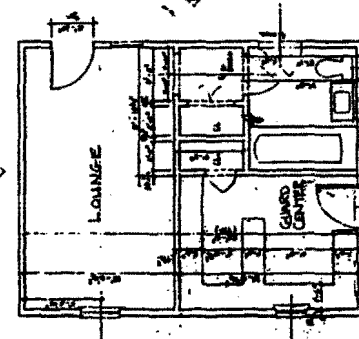
FOR USE OF THE CITY OF ALBANY
FOR THE DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
FOR THE CITY OF ALBANY
FOR THE DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT



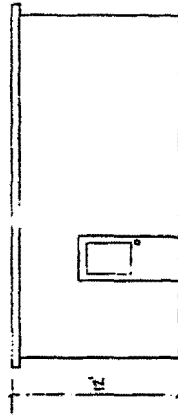
EXISTING STUDIO
14' x 10'



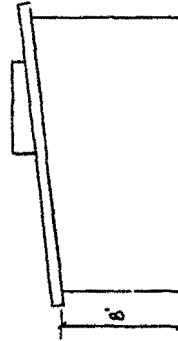
EXISTING STUDIO
14' x 10'



EXISTING STUDIO
14' x 10'



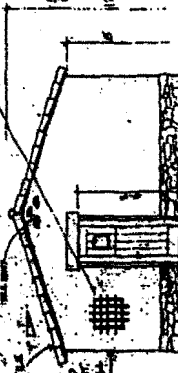
EXISTING EAST ELEVATION



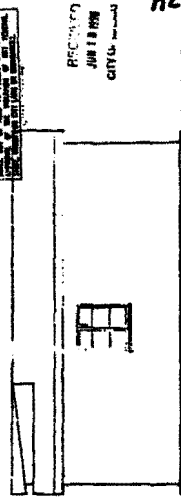
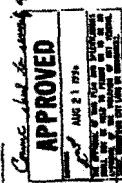
EXISTING SOUTH ELEVATION



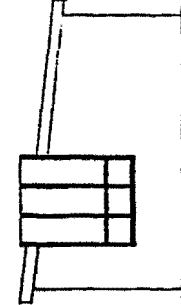
EXISTING WEST ELEVATION



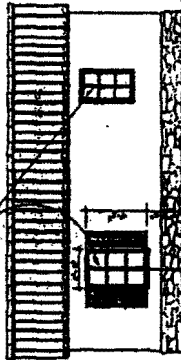
EXISTING NORTH ELEVATION



PROPOSED EAST ELEVATION



PROPOSED SOUTH ELEVATION



PROPOSED WEST ELEVATION



PROPOSED NORTH ELEVATION

PC # 6269-97

PPR # 96-124

EXHIBIT 6

CDP 4-98-202 (Rust Trust)

Second Residential Unit Plans

