

CALIFORNIA COASTAL COMMISSION

TH CENTRAL COAST AREA
OUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

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Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-00-175

APPLICANT: Rust Trust

AGENTS: Irwin Russel, Neal Jevyak, and Tom Torres

PROJECT LOCATION: 33528 Pacific Coast Highway, Malibu; Los Angeles County.

PROJECT DESCRIPTION: Construction of a 2,314 sq. ft. non-habitable accessory structure (a 478 sq. ft. office and a 679 sq. ft. garage above an 1,157 sq. ft. basement/mechanical room), retaining walls not to exceed 6 ft. in height, and 496 cu. yds. of grading (128 cut and 368 fill). In addition, the project also includes an offer to maintain a public view corridor from Pacific Coast Highway to the Pacific Ocean of a width equal to 20% of the lineal frontage of the project site.

Lot area:	31,200 sq. ft.
Building coverage:	3,360 sq. ft.
Pavement coverage:	3,327 sq. ft.
Landscape coverage:	15,228 sq. ft.
Parking spaces:	4

LOCAL APPROVALS RECEIVED: Approval in Concept City of Malibu Planning Department.

SUBSTANTIVE FILE DOCUMENTS: Third Updated Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/15/00; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 9/14/00; Second Geotechnical Engineering Updated Report by Coastline Geotechnical Consultants dated 4/9/99; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 3/31/99; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 11/2/98; Geotechnical Engineering Updated Report by Coastline Geotechnical Consultants dated 10/30/98; Geotechnical Engineering Investigation Report by Coastline Geotechnical Consultants dated 5/21/96; and Engineering Geologic Investigation Report by Pacific Geology Consultants dated 5/15/96.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with eight (8) special conditions as outlined on pages 3-8 of the staff report. The proposed project is for the construction of a non-habitable accessory structure on a previously developed parcel of land located between Pacific Coast Highway and the beach. Views of the ocean from the highway are currently blocked by existing landscaping improvements. The proposed project includes an offer to maintain a public view corridor from Pacific Coast Highway to the Pacific Ocean of a width equal to 20% of the lineal frontage of the project site in order to allow for public views of ocean from the highway.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-00-175 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
4. **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.
5. **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 plans which illustrate a public view corridor across the entire length of the lot from Pacific Coast Highway to the ocean of a width no less than 20% of the lineal frontage of the site.

2. Landscape and Erosion Control Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a landscaping and erosion control plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping plan shall identify all necessary irrigation improvements. The landscaping and erosion control plan shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A) Landscaping Plan

- 1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Vegetation on the seaward side of the main residence shall be limited to native plants endemic to coastal bluffs of the local area.
- 2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a

Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

- 5) Permanent irrigation improvements shall be designed to minimize groundwater infiltration and shall be primarily limited to drip irrigation systems.
- 6) Vegetation within the public view corridor, as consistent with Special Condition Five (5), shall be limited to no more than two feet in height adjacent to Pacific Coast Highway and the remaining area with the view corridor shall be limited to low lying plant species that will not block the view of the ocean as seen from Pacific Coast Highway. The use of any vegetation of greater height than otherwise provided for above may be allowed only if the Executive Director determines that such landscaping is consistent with the intent of this condition and will serve to minimize adverse effects to public views. Vegetation within the view corridor shall be maintained to ensure views of the ocean as seen from Pacific Coast Highway are not blocked.
- 7) Vegetation within 50 feet of the proposed structure may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed structure shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

B) Interim Erosion Control Plan

- 1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- 2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment

should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- 3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C) Monitoring.

Five years after the date of completion of construction, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Geologic and Engineering Recommendations

All recommendations contained in the Third Updated Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/15/00; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 9/14/00; Second Geotechnical Engineering Updated Report by Coastline Geotechnical Consultants dated 4/9/99; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 3/31/99; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 11/2/98; Geotechnical Engineering Updated Report by Coastline Geotechnical Consultants dated 10/30/98; Geotechnical Engineering Investigation Report by Coastline Geotechnical Consultants dated 5/21/96; and Engineering Geologic Investigation Report by Pacific Geology Consultants dated 5/15/96 shall be incorporated into all final design and construction plans.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans. The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

4. Drainage and Polluted Runoff Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

5. Public View Corridor

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, which provides that:

- (a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
- (b) No structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor.
- (c) Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of any fence shall be no more than 1 inch in thickness/width and shall be placed no less than 6 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (d) Vegetation within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation that will not block views of the ocean as seen from Pacific Coast Highway. Vegetation adjacent to Pacific Coast Highway shall be limited to two feet in height .

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Color Restriction

The color of the structures, roofs, retaining walls and driveway permitted hereby shall be restricted to a color compatible with the surrounding environment (white tones shall not be acceptable). All windows shall be comprised of non-glare glass.

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 restrictions stated above on the proposed development. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances 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.

7. Future Development Deed Restriction

- A. This permit is only for the development described in Coastal Development Permit 4-00-175. 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 proposed non-habitable accessory structure. Accordingly, any future improvements to the permitted 2,314 sq. ft. non-habitable accessory structure (a 478 sq. ft. office and a 679 sq. ft. garage above an 1,157 sq. ft. basement/mechanical room), including, but not limited to, repair and maintenance identified as requiring a permit in Public Resources section 30610(d) and Title 14 California Code of Regulations sections 13252(a)-(b), the conversion of the structure to a habitable unit, or the installation of plumbing fixtures within the structure shall require an amendment to Permit 4-00-175 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.

8. 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, operations, 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.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The proposed project is for the construction of a 2,314 sq. ft. non-habitable accessory structure (a 478 sq. ft. office and a 679 sq. ft. garage above an 1,157 sq. ft. basement/mechanical room), retaining walls not to exceed 6 ft. in height, and 496 cu. yds. of grading (128 cut and 368 fill). In addition, the project also includes an offer to maintain a public view corridor from Pacific Coast Highway to the Pacific Ocean of a width equal to 20% of the lineal frontage of the project site. The proposed garage/basement/mechanical room building will be a non-habitable structure and will not include any plumbing improvements.

The project site is on a developed parcel of land approximately $\frac{3}{4}$ of an acre in size located between Pacific Coast Highway and the beach. The neighboring parcels are developed with single family residences. The site is a rectangular bluff top parcel that has been previously graded and modified by past development. The site is currently developed with a 1,615 sq. ft. single family residence, an elevator, bluff slope retaining walls, a 400 sq. ft. cabana/guest unit, and a subterranean bombshelter/storage room. The existing residence is located on the flat graded pad located at the top of the bluff. The cabana/guest unit and subterranean bombshelter/storage room are located on the steep bluff slope. All three existing structures were constructed prior to the implementation of the Coastal Zone Conservation Act in 1972. The proposed project does not include any changes to any of the existing structures on site.

The bluff face on site, although significantly disturbed by "legal" (pre-Coastal Zone Conservation Act) development, is designated as an environmentally sensitive habitat area (ESHA) by the previously certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan. In the case of this project, the new proposed accessory structure will be located more than 120 ft. from the top edge of the bluff on the relatively flat portion of the site (landward of the existing residence. No development is proposed as part of this application on or near the bluff slope.

The project site has been subject to past Commission action. Coastal Development Permit 4-97-103 was issued by the Commission in 1999 for development consisting of bluff slope remediation, retaining walls, drainage device improvements, an elevator, and for the removal of an unpermitted addition to the to the existing bluff cabana/guest unit and restoration of the cabana/guest unit to its previously existing dimensions. In addition, one immaterial amendment to Coastal Development Permit 4-97-103 was also issued in 1999 for minor modifications to the previously approved elevator shaft.

B. Hazards

Section 30253 of the Coastal Act states in part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The project site is a rectangular bluff top parcel that has been previously graded and modified by past development. 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 resistant basaltic 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 Engineering Geologic Investigation Report by Pacific Geology Consultants dated May 15, 1996, states:

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 adjacent to the southern pad margin.

However, in the case of this project, no new development is proposed on or near the bluff slope. The new proposed accessory structure will be located more than 120 ft. from the top edge of the bluff on the relatively flat portion of the site (landward of the existing residence. The applicant's geotechnical consultants have indicated that the proposed site for the accessory structure is relatively stable and is not expected to be subject to geologic instability or landslide. The Updated Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/15/00 states:

Based on the findings summarized in this report, and our prior reports, and provided the recommendations of this report are followed, and the designs, grading and construction are properly and adequately executed, it is our opinion that construction within the building site, including grading, will not be subject to geotechnical hazards from landsliding, slippage, or excessive settlement. Further, it is our opinion that the proposed building and anticipated site grading will not adversely effect the stability of the site, nor adjacent properties, with the same provisos listed above.

As such, the Commission notes that the proposed project will serve to ensure general geologic and structural integrity on site. However, the Commission also notes that the submitted Updated Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/15/00; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 9/14/00; Second Geotechnical Engineering Updated Report by Coastline Geotechnical Consultants dated 4/9/99; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 3/31/99; Engineering Geologic Investigation Update Report by Coastline Geotechnical Consultants dated 11/2/98; Geotechnical Engineering Updated Report by Coastline Geotechnical Consultants dated 10/30/98; Geotechnical Engineering Investigation Report by Coastline Geotechnical Consultants dated 5/21/96; and Engineering Geologic Investigation Report by Pacific Geology Consultants dated 5/15/96, 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 are incorporated into all new development, Special Condition Three (3) requires the applicant to submit project plans certified by the consulting geotechnical engineer as conforming to all geologic and geotechnical recommendations, as well as any new or additional 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.

In addition, the Commission finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants compatible with the surrounding environment. In past permit actions, the Commission has found that invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foilage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize bluff slopes and bluff top areas and that such vegetation results in potential adverse effects to the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foilage weight but also by their low irrigation and maintenance requirements. Therefore, in order to ensure the stability and geotechnical safety of the site, Special Condition Two (2) requires that all proposed disturbed and graded areas on subject site are stabilized with native vegetation.

Further, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Four (4), to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. To ensure that the project's

drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Four (4) also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

In addition, 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 assumes liability from the associated risks. 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, as incorporated by special condition Eight (8).

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. Visual Resources

Section 30251 of the Coastal Act states:

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.

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.

The project site is located seaward of Pacific Coast Highway in western Malibu just west of Decker Canyon Road. Existing residential development and landscaping along this portion of Pacific Coast Highway, including the project site, has blocked the view of the ocean in this area. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the ocean and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or there is continuous large scale landscaping, such development creates a wall-like effect when viewed from Pacific Coast Highway. As such, the Commission notes that such development, when viewed on a regional

basis, will result in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

The Commission typically requires that new residential development on vacant bluff lots, where feasible, be sited and designed so as not to block views of the ocean as seen from Pacific Coast Highway. In this case, the applicant is proposing a new accessory structure on a site which is already developed with existing pre-Coastal Act structures, including a bluff top single family residence. The applicant is not proposing any changes to any of the existing structures on site. As such, the Commission notes that the existing site is extensively developed and includes existing landscaping which blocks views of the ocean as seen from Pacific Coast Highway. In past permit actions, the Commission has found that new residential development or redevelopment projects, should reserve a minimum of 20 percent of the linear frontage of the lot as visually open area to provide and maintain adequate public coastal views [CDP 4-99-154 (Montanaro), CDP 4-99-153 (Ioki), and CDP 4-99-155 (Ioki) and 4-00-057 (Morton)].

The Commission notes that the existing structures on site do not significantly obstruct views of the ocean from the highway due their location significantly downslope from the highway. In addition, the Commission also notes that the 17.5 ft. high accessory structure (which will be located on a portion of the site that is almost 40 ft. lower than the elevation of Pacific Coast Highway, will also not significantly intrude into the skyline or site or obstruct public views of the ocean from the highway. However, views of the ocean from the highway are almost completely blocked by the existing landscaping improvements (mature trees and large shrubs) which are located immediately downslope and adjacent to the highway.

The proposed project includes an offer by the applicant to maintain a public view corridor from Pacific Coast Highway to the Pacific Ocean of a width equal to 20% of the lineal frontage of the project site in order to allow for ocean views from the highway. The Commission notes that the subject site is approximately 63 feet in width and that a public view corridor of no less than 20 percent of the width of the site's lineal frontage would be 13 feet in width. As mentioned above, the proposed accessory structure and existing residence are below the elevation of Pacific Coast Highway and will not block views of the ocean within the proposed 13 ft. wide view corridor.

Section 30251 of the Coastal Act requires that, where feasible, views should be restored or enhanced in visually degraded areas. The Commission notes that the applicant's offer to maintain a public view corridor across the site will serve to enhance scenic coastal resources and increase public coastal view opportunities in an area where such views were previously degraded. Therefore, in order to ensure that the applicant's offer to maintain a public view corridor on the subject site and to ensure that public coastal views will be protected in the future, Special Condition Five (5) requires the applicant to execute and record a deed restriction that provides that no less than 20 percent of the lineal frontage of the project site shall be maintained as a public view corridor. No structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor. The Commission notes that certain types of visually permeable fencing,

including certain types of glass walls, may be allowed within a public view corridor if such structures do not interfere with public views of the beach and ocean from Pacific Coast Highway. Existing vegetation within the view corridor that is adjacent to the highway shall be removed if more than two feet in height. Although, portions of the existing residence and proposed accessory structure will be located within the view corridor, because these structures are both relatively low-lying and located on a relatively low portion of the site in relation to the highway and these structures will not significantly intrude into the skyline or adversely impact the public's ability to view the ocean.

However, although the proposed project includes an offer to maintain a public view corridor from Pacific Coast Highway to the Pacific Ocean of a width equal to 20% of the lineal frontage of the project site in order to allow for ocean views from the highway, the Commission notes that no plans illustrating such a view corridor have been submitted. Therefore, in order to ensure that the applicant's proposal to restore views of the ocean across a portion of the project site is implemented, Special Condition One (1) requires the submittal of revised project plans that illustrate a public view corridor across the entire length of the lot from Pacific Coast Highway to the ocean of a width no less than 20% of the lineal frontage of the site.

In addition, the Commission further finds the applicant must submit landscaping plans that include the removal of non-visually permeable fencing and existing vegetation within the view corridor and replant the area with low lying vegetation that will not block views of the ocean within this view corridor, as specified in Special Condition Two (2). The landscape plan shall specify that vegetation adjacent to Pacific Coast Highway shall not exceed two feet in height and the remaining or replacement vegetation shall be low lying and maintained to ensure the vegetation will not obscure or block views of the ocean as seen from Pacific Coast Highway. Further, in order to minimize the visual impact of the proposed development as seen from the highway, the Commission finds that it is necessary to require the applicant to finish the proposed structure and retaining walls in a color consistent with the surrounding natural landscape and the windows of the proposed structure be of a non-reflective nature as specified in Special Condition Six (6).

In summary, the proposed project, as conditioned, will not result in a significant adverse impact to the scenic public views or the character of the surrounding area in this portion of Malibu. Thus, the Commission finds that the proposed project is consistent, as conditioned, with Section 30251 of the Coastal Act.

D. 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:

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.

Pursuant to Coastal Act Sections 30250 and 30252 cited above, new development raises issues relative to cumulative impacts on coastal resources. The construction of any additional residential units on a site where a primary residence exists intensifies the use of the subject parcel. The intensified use creates potential additional demands on public services, such as water, sewage, electricity, and roads. Thus, second residential units pose potential cumulative impacts in addition to the impacts otherwise caused by the primary residential development.

Based on the requirements of Coastal Act Sections 30250 and 30252, the Commission has limited the development of second units on residential parcels in the Malibu and Santa Monica Mountain areas to a maximum of 750 sq. ft. In addition, the issue of second units on lots with primary residences has been the subject of past Commission action in 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 intended only for occasional use by guests,

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, and electricity) than an ordinary single family residence or residential second units. Finally, the Commission has found in past permit decisions that a limit of 750 sq. ft. encourages the units to be used for their intended purpose –as a guest unit- rather than as second residential units with the attendant intensified demands on coastal resources and community infrastructure.

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 LCPs 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).

Although the proposed 2,314 sq. ft. accessory structure (a 478 sq. ft. office and a 679 sq. ft. garage above an 1,157 sq. ft. basement/mechanical room) is not intended as a habitable structure, nor are any plumbing improvements for the new structure proposed as part of this application, the Commission notes that in the event that the proposed structure were to be converted to residential use in the future, such conversion would significantly intensify the use of this property and result in significant adverse cumulative impacts to coastal resources. In addition, because the proposed accessory structure is larger than 750 sq. ft. in size and because the site is already developed with an existing 1,615 sq. ft. single family residence and a 400 sq. ft. cabana as a second residential unit, the approval of any future conversion of the proposed accessory structure would not be consistent with past Commission action. Therefore, in order to ensure that any modifications or additions to the proposed accessory structure including, but not limited to, conversion of the structure to habitable space or the installation of plumbing improvements are reviewed by the Commission, Special Condition Seven (7) has been required. Special Condition Seven (7) requires the recordation of a future development deed restriction which requires the applicant to obtain an amended or new coastal permit if any additions or improvements to the proposed non-habitable 2,314 sq. ft. accessory structure on the property are proposed in the future.

Therefore, as conditioned to minimize the potential for cumulative impacts resulting from the proposed development, the Commission finds that the proposed project is consistent with Section 30250 and 30252 of the Coastal Act.

E. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. 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.

As described in detail above, the proposed project includes the demolition of an existing residence, guest unit, three out buildings and construction of a new residence with swimming pool and patios, two side by side two car garages, new guest unit, rock revetment, remodeled office/gym, parking/turnaround area and extensive landscaping plan utilizing native vegetation. As previously mentioned, the site has been extensively modified by past grading and intensive site development. The proposed project will result in a reduction of impervious surfaces on the site from 24,855 sq. ft. to 21,822 sq. ft.

The proposed development includes the construction of a new 2,314 sq. ft. structure and will result in the addition of impervious surface on site. The Commission notes that impervious surfaces result in increases to the volume and velocity of runoff. In addition, the runoff from these impervious surfaces can include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to

require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in Special Condition Four (4), and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that Special Condition Four (4) is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

F. Local Coastal Program

Section 30604 of the Coastal Act states that:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project

will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City'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).

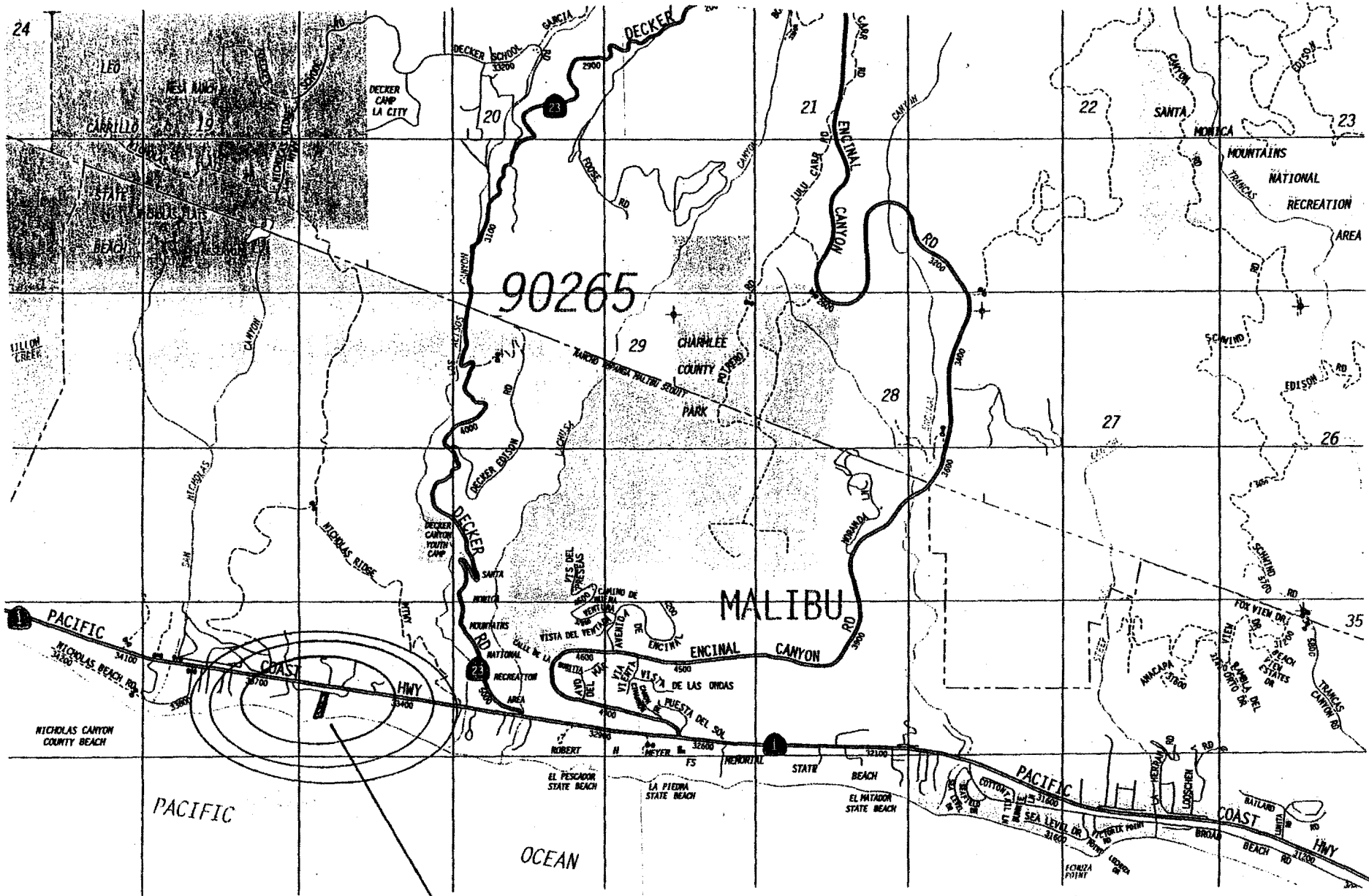
G. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(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 smh/permits/regular/4-00-175 rust trust report

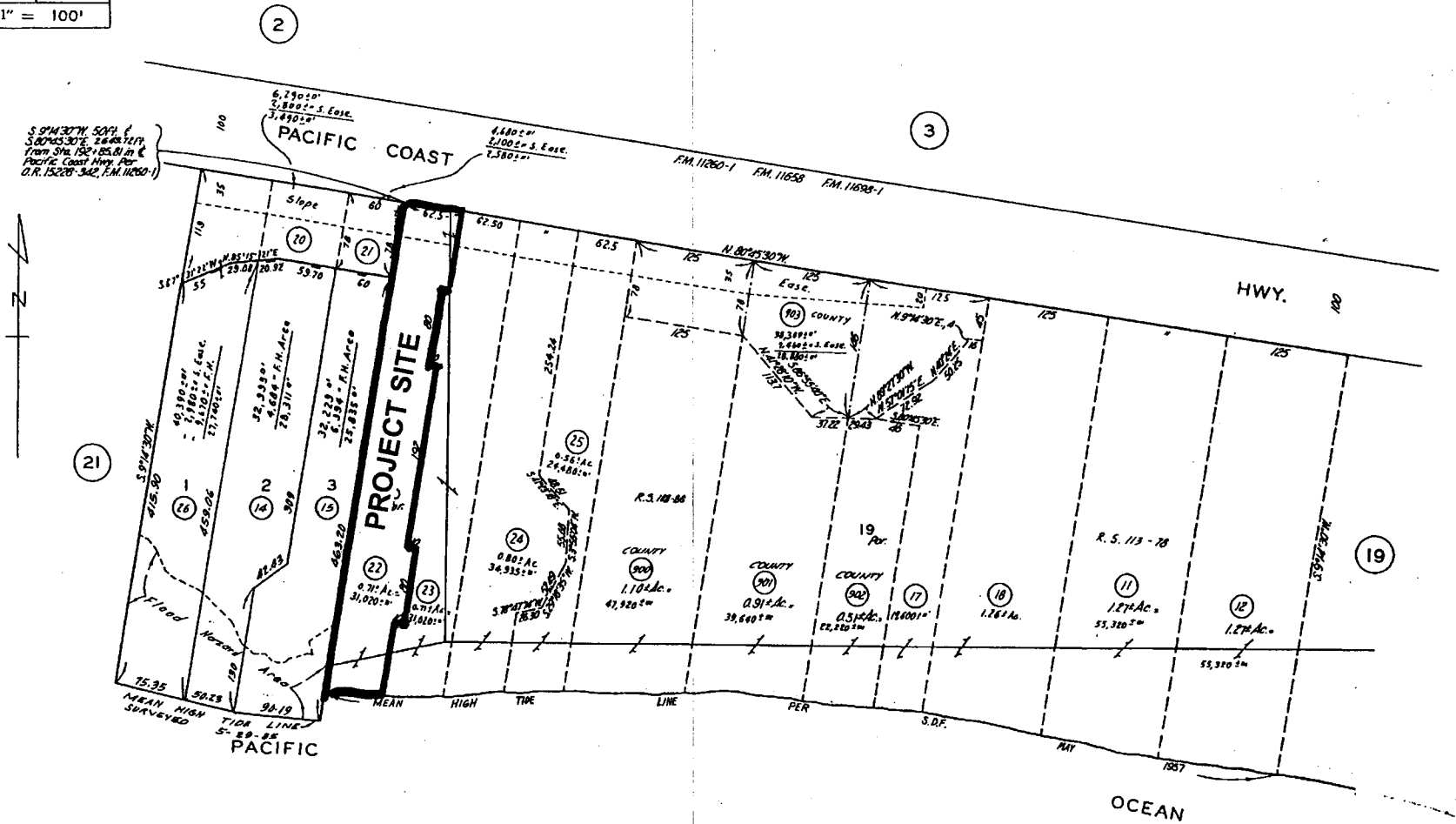


PROJECT SITE

EXHIBIT 1
CDP 4-00-175 (Rust Trust)
Location Map

4473 | 20

SCALE 1" = 100'

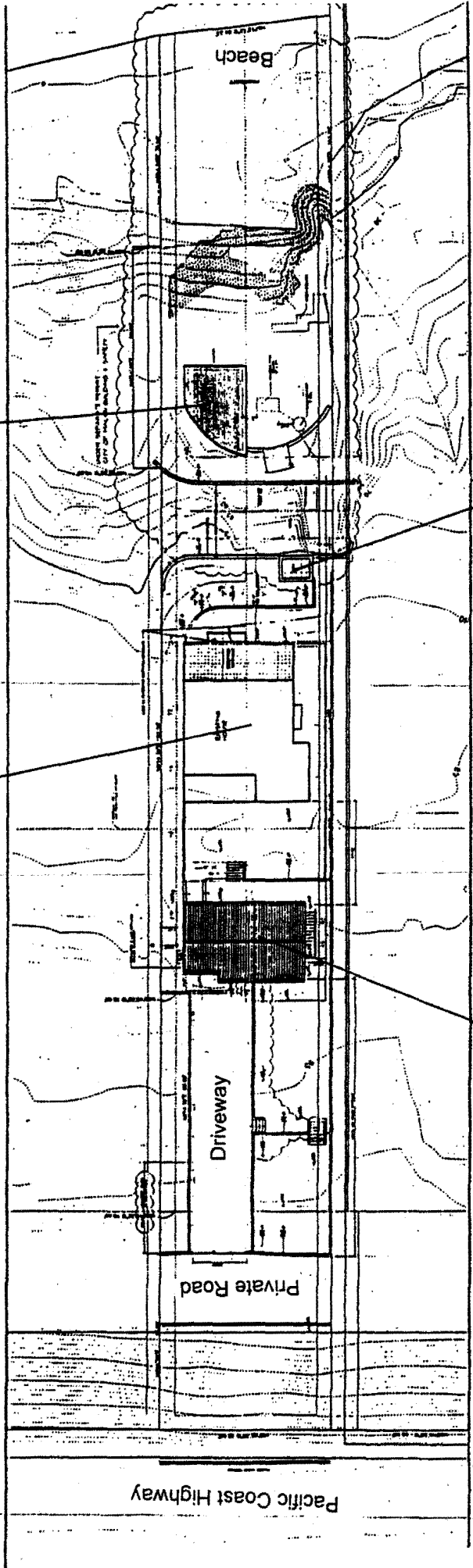


TRACT NO. 43599 M. B. 1060-87-90
 LAND OF MATTHEW KELLER IN THE RANCHO
 TOPANGA MALIBU SEQUIT R. F. 534

EXHIBIT 2
CDP 4-00-175 (Rust Trust)
Parcel Map

Existing Cabana

Existing Residence



Existing Elevator

Proposed Garage/Storage/Study

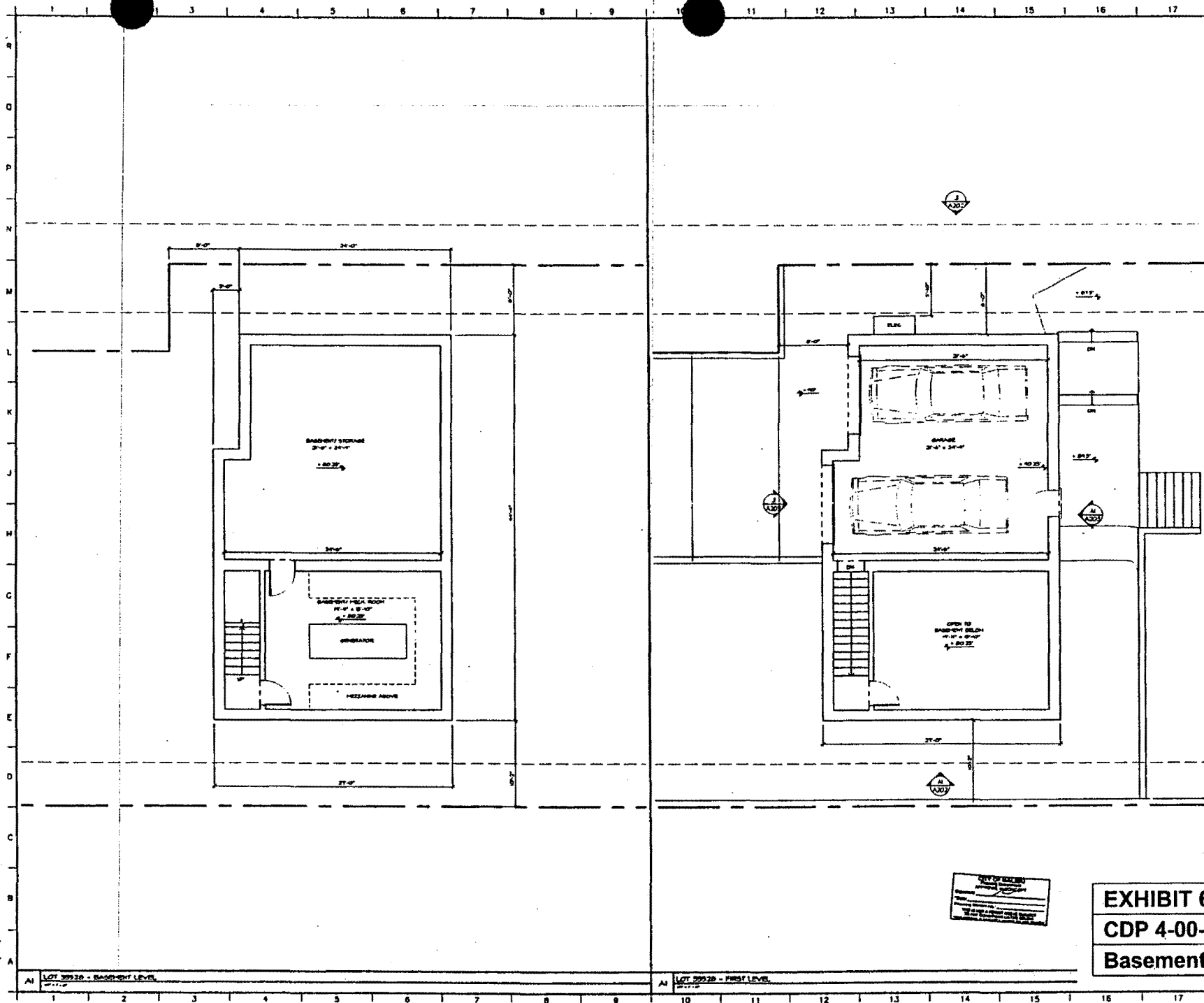
EXHIBIT 3
CDP 4-00-175 (Rust Trust)
Site Plan

Pacific Coast Highway

Private Road

Driveway

Beach



LEGEND

KEY PLAN

1	CONCEPT APPROVAL	08/18/08
2	CONNECTIONS FOR CONCEPT APPROVAL	08/21/08
3	CONNECTIONS FOR CONCEPT APPROVAL	12/11/08
4	REVISIONS FOR CONCEPT APPROVAL	10/26/08
5	CONNECTIONS FOR CONCEPT APPROVAL	04/02/09
6	FOR CONCEPT APPROVAL	12/04/08
7	DATE	DATE

THE RUST TRUST
 33528 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA

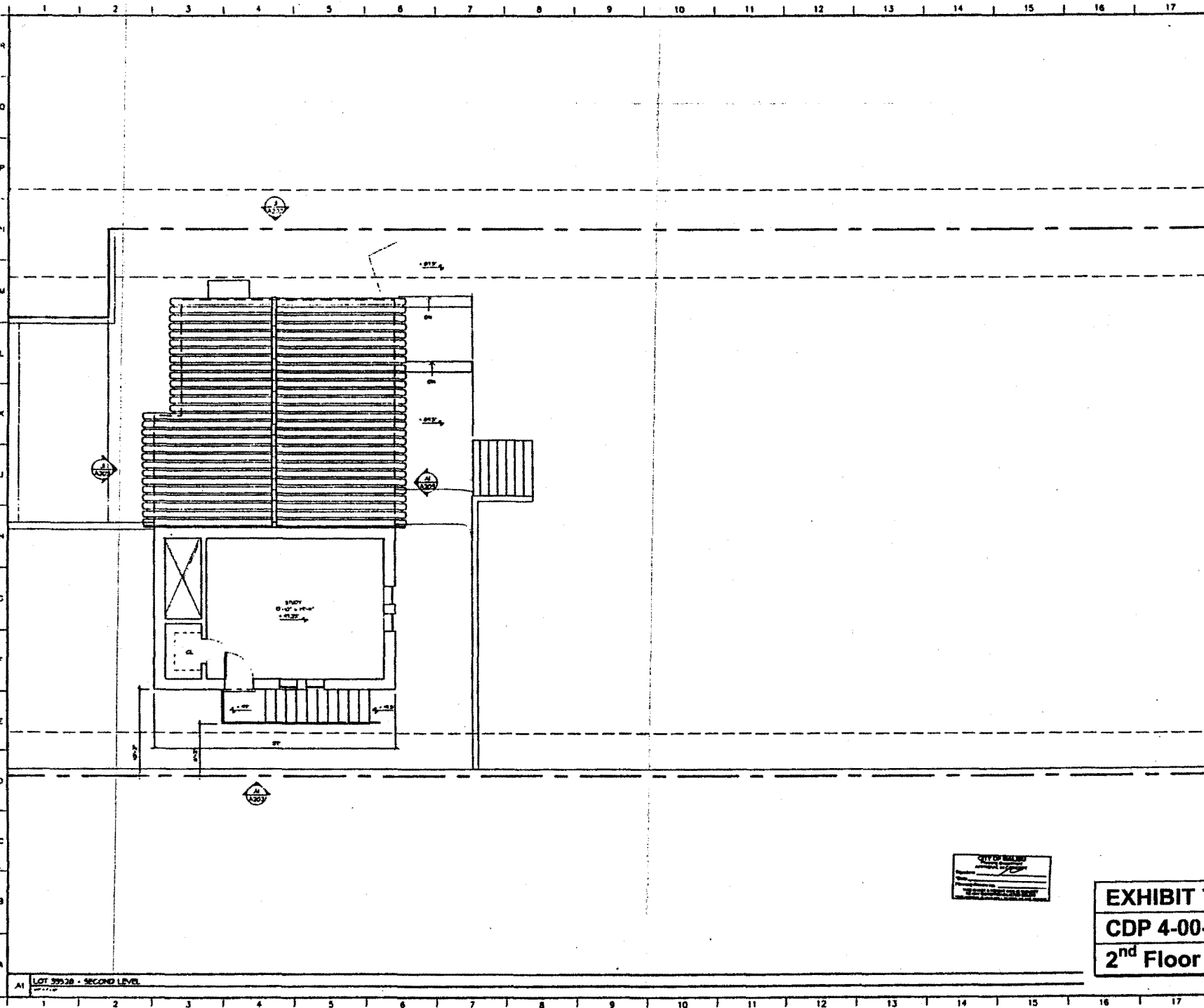
ROBERT A.M. STERN ARCHITECTS
 408 WEST 34th STREET, NEW YORK, NY 10018
 TEL: (212) 607-5140 • FAX: (212) 607-5888

EXHIBIT 6
CDP 4-00-175 (Rust Trust)
Basement/1st Floor Plans

NOT OF RECORD
 UNTIL APPROVED BY THE
 COUNTY CLERK OF LOS ANGELES COUNTY
 12/11/08

A1 LOT 3992B - BASEMENT LEVEL

A1 LOT 3992B - FIRST LEVEL



LEGEND

KEY PLAN

3	CONCEPT APPROVAL	06/28/76
4	CORRECTIONS FOR CONCEPT APPROVAL	11/21/76
J	FINAL FOR CONCEPT APPROVAL	04/28/76
5	CORRECTIONS FOR CONCEPT APPROVAL	04/28/76
6	FINAL CONCEPT APPROVAL	12/20/76
7	FINAL	8/87

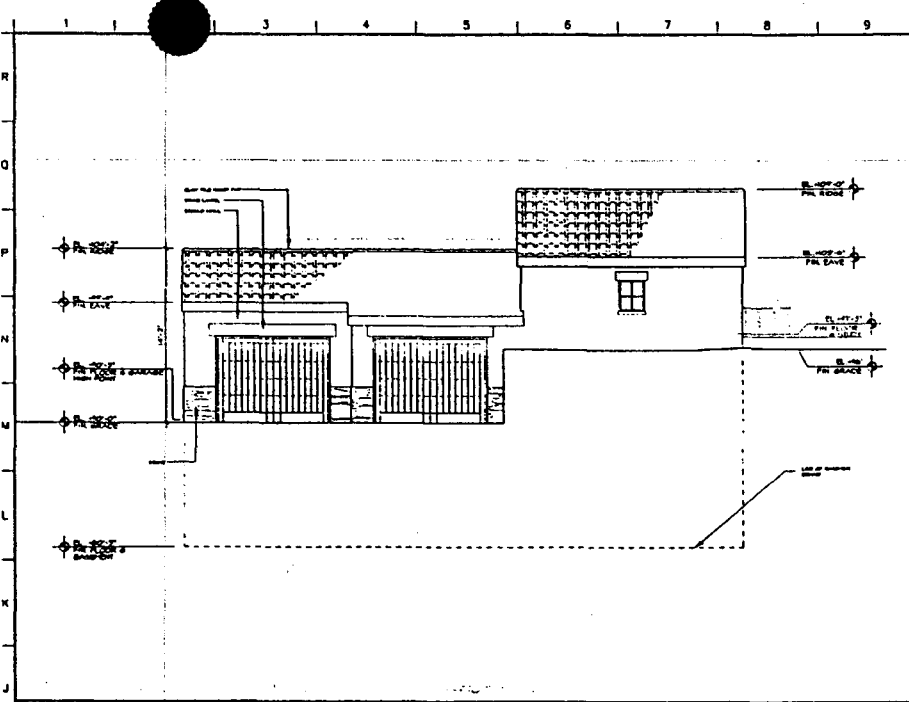
THE RUST TRUST
33528 PACIFIC COAST HIGHWAY
MALIBU, CALIFORNIA

ROBERT A.M. STERN ARCHITECTS
400 WEST 24th STREET, NEW YORK, NY 10011
TEL. (212) 867-5600 • FAX (212) 867-5600

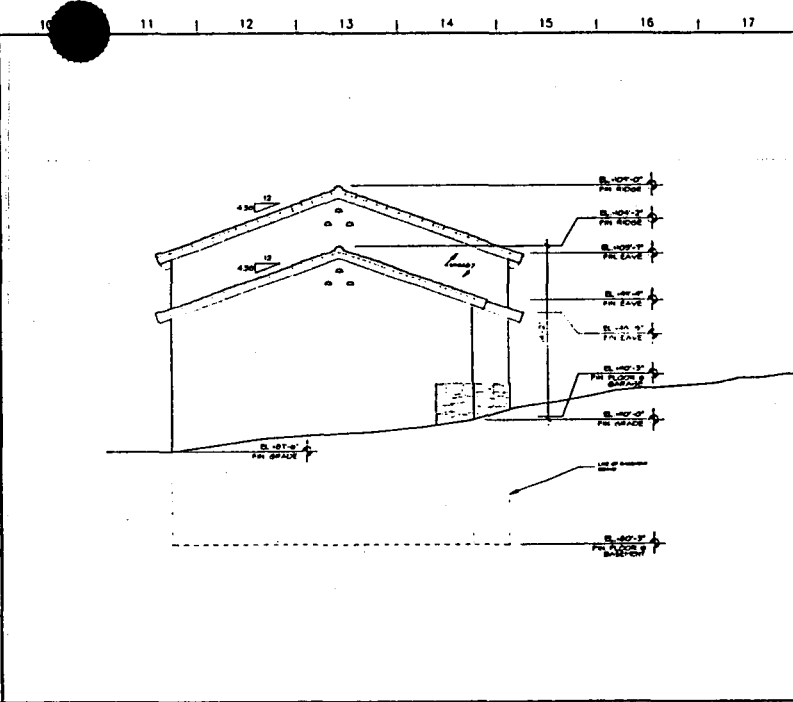
CITY OF MALIBU
APPROVED FOR THE CITY ENGINEER
DATE: 12/20/76
BY: [Signature]

EXHIBIT 7
CDP 4-00-175 (Rust Trust)
2nd Floor Plans

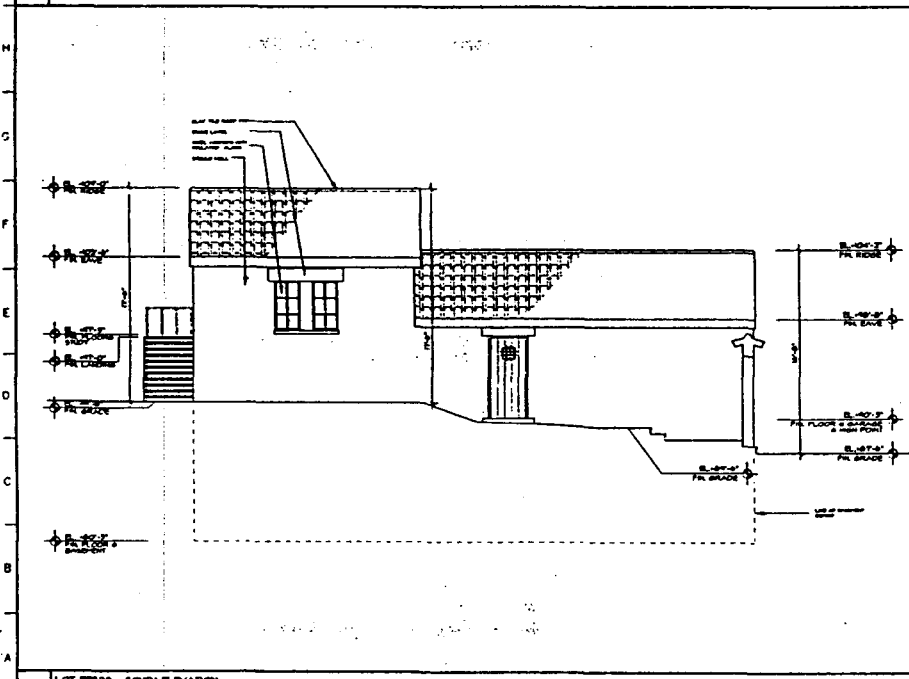
A1 LOT 39528 - SECOND LEVEL



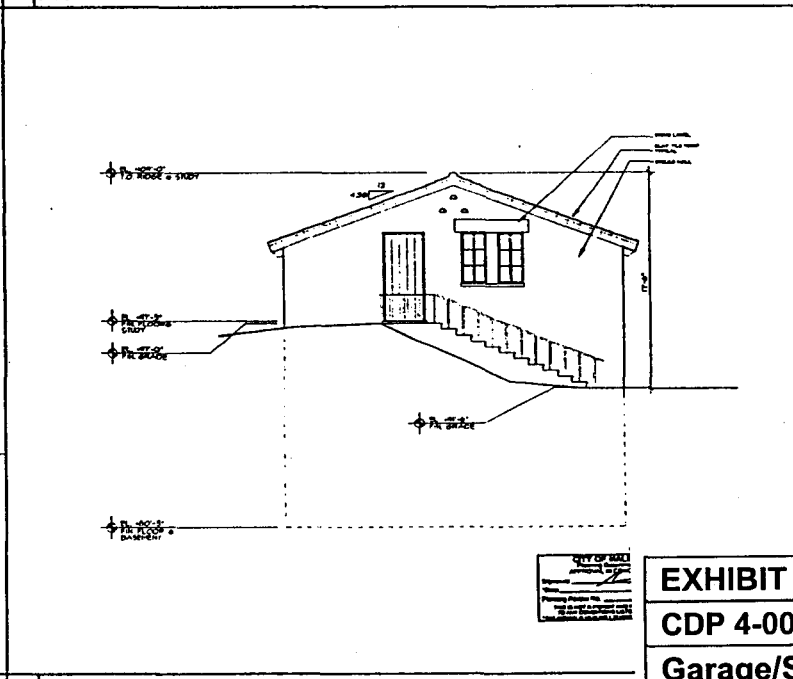
LOT 33528 - NORTH ELEVATION



LOT 33528 - EAST ELEVATION



LOT 33528 - SOUTH ELEVATION



LOT 33528 - WEST ELEVATION

LEGEND

KEY PLAN

3	CONCEPT APPROVAL	05/21/99
4	REVISIONS FOR CONCEPT APPROVAL	11/21/99
5	CDL FOR CONCEPT APPROVAL	04/26/99
2	CORRECTIONS FOR CONCEPT APPROVAL	04/26/99
1	FOR CONCEPT APPROVAL	12/04/98
0	DATE	

THE RUST TRUST
 33528 PACIFIC COAST HIGHWAY
 MALIBU, CALIFORNIA

ROBERT A.M. STERN ARCHITECTS
 400 WEST 200th STREET, 2ND FLOOR, ST. LOUIS
 TEL: (314) 997-8100 FAX: (314) 997-8000

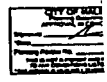


EXHIBIT 8
CDP 4-00-175 (Rust Trust)
Garage/Study Elevations

