

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-00-031

APPLICANT: Robert Kahan, Cliffside Drive Family Trust

AGENT: Alan Block

PROJECT LOCATION: 28980 Cliffside Drive, Malibu, Los Angeles County.

PROJECT DESCRIPTION: Construction of a 902 sq. ft. second story addition landward of existing single-family residence, addition of a lap pool above grade on seaward side of the residence, minor interior and roof remodel, and removal of unpermitted spa from the bluff edge, no grading proposed.

Lot area: 49,114 sq. ft.
Building coverage: 3,864 sq. ft.
Paved coverage: 3,004 sq. ft.
Landscaped coverage: 19,732 sq. ft.

LOCAL APPROVALS RECEIVED: City of Malibu, Planning Department, Approved In-Concept 1/10/00; City of Malibu, Geology and Geotechnical Engineering Review, Approval In-Concept 10/29/99.

SUBSTANTIVE FILE DOCUMENTS: Geologic and Soils Engineering Exploration, Proposed Second Story Addition and Pool, 6/25/99, by The J. Byer Group, Inc.; Addendum Geologic and Soils Engineering Report, 8/4/99, by The J. Byer Group, Inc.; Addendum Geologic and Soils Engineering Report #2, 10/6/99, by The J. Byer Group, Inc.; Additional Comments, Proposed Second Story Addition and Pool, 5/22/00, by The J. Byer Group, Inc.; Application for Building Permit, County of Los Angeles Department of County Engineer, Building and Safety Division, Plan Check Approvals dated 11/29/72-9/14/73; Certified County of Los Angeles Santa Monica Mountains/Malibu Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with **5 Special Conditions** regarding 1) Geologic Recommendations, 2) Pool Drainage, 3) Removal of Unpermitted Development and Restoration Plan, 4) Assumption of Risk, and 5) No Future Shoreline Protective Device.

The subject site is located on a bluff top lot on Cliffside Drive in the Point Dume area of the City of Malibu. The proposed project is for construction of a 902 sq. ft. second story addition to the landward side of an existing 5,816 sq. ft. single family residence, installation of a new septic system landward of the residence and adjacent to Cliffside Drive, and addition of a 4'4" x 8' lap pool above grade on the seaward side of the residence. No grading is proposed for the new construction. The project also includes the applicant's proposal to remove an unpermitted spa located at the bluff edge. Other development existing at the project site includes a bluff top wood deck or "boardwalk". The applicant has submitted substantial evidence in the form of original building permits and photographs which indicate that all development existing at the site, except the spa proposed to be removed, was included in the original development of the site that commenced in 1972. The proposed lap pool, which will constitute the most seaward extent of development at the site, will be located approximately 41.5 ft. landward of the bluff edge.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-00-031 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. **Geologic Recommendations**

All recommendations contained in the Geologic and Soils Engineering Exploration, Proposed Second Story Addition and Pool, 6/25/99; Addendum Geologic and Soils Engineering Report, 8/4/99; and Addendum Geologic and Soils Engineering Report #2, 10/6/99, by The J. Byer Group, Inc. shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and sewage disposal. Project plans must be reviewed and approved by the geologic consultants prior to commencement of development. 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 consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, drainage, and sewage disposal. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal permit.

2. Pool Drainage

Prior to issuance of the Coastal Development Permit, the applicant shall submit, for review and approval of the Executive Director, a written plan to mitigate the potential of leakage from the proposed swimming pool. The plan shall at a minimum: 1) provide a separate water meter for the pool to allow monitoring of water levels for the pool, 2) identify the materials, such as plastic linings or specially treated cement, to be used to waterproof the underside of the pool to prevent leakage, and information regarding past success rates of these material, and 3) identify methods to control pool drainage and to control infiltration and run-off resulting from pool drainage and maintenance activities. The applicant shall comply with the mitigation plan approved by the Executive Director.

3. Removal of Unpermitted Development and Restoration

Within 90 days of issuance of Coastal Development Permit 4-00-031, the applicant shall remove the spa located at the bluff edge at the site and provide evidence, for the review and approval of the Executive Director, that the unpermitted spa has been removed consistent with the terms and conditions of the subject Coastal Development Permit. The applicant shall restore any areas disturbed by removal of the spa and the restoration area shall be revegetated with locally native plant species appropriate to coastal bluff vegetation communities. Invasive, non-native plant species shall not be used in the restoration area. Any area disturbed by removal of the unpermitted development shall be revegetated with a mixture of seeds and container plants to increase the potential for successful revegetation. Such plantings shall be adequate to provide 90% coverage within two (2) years. All plantings shall be maintained in good growing condition throughout the life of the development and, whenever necessary, shall be replaced with new planting materials to ensure continued compliance with applicable landscape requirements. Supplemental irrigation requirements necessary to restore and re-establish the disturbed area shall be removed upon successful establishment of the subject plant species.

4. Assumption of Risk

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
- (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
- (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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, incorporating all of the above terms of this condition. The deed restriction shall include a legal description 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.

5. No Future Bluff or Shoreline Protective Device

- A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to **Coastal Development Permit 4-00-031** in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such device(s) that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development

from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

- C. **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. The deed restriction shall include a legal description 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.

6. 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 the 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 with respect to the development approved in this permit 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 proposing the construction of a second story, 902 sq. ft. addition to the landward side of an existing 5,816 sq. ft. single family residence, installation of a new septic system landward of the residence and adjacent to Cliffside Drive, and addition of a 4'4" x 8' lap pool at grade on the seaward side of the residence (Exhibits 3-7). No grading is proposed for the new construction. The applicant is also proposing to remove an unpermitted spa currently located at the bluff edge (Exhibit 3). Other development existing at the project site includes a bluff top wood deck or "boardwalk" (Exhibit 3). The applicant has submitted substantial evidence in the form of original building permits and photographs which indicate that all development existing at the site, except the spa proposed to be removed, was included in the original development of the site that commenced in 1972. As such, the existing residential development and blufftop boardwalk were constructed prior to the Coastal Zone Management Act of 1972 and the California Coastal Act of 1976. The proposed lap pool, which will constitute the most seaward extent of development at the site, will be located approximately 41.5 ft. landward of the bluff edge.

The project site is a 49,114 sq. ft. (approximately 1.10 acre) bluff top parcel located between Cliffside Drive and the bluff edge (Exhibit 2) in the Point Dume area of the City of Malibu (Exhibit 1). The project site consists of a very level pad area where it extends from Cliffside Drive toward the bluff edge. From the bluff edge the project site descends steeply at a 1/2:1 gradient down the sea cliff approximately 110 ft. to the beach below.

As mentioned, the proposed lap pool will constitute the most seaward extent of development at the site, which will be located approximately 41.5 ft. from the bluff edge. The location of the proposed lap pool is consistent with previous permit actions on similar bluff top projects in Malibu where the Commission has required a minimum set back for development of 25 ft. from the seaward edge of the top of bluff. Additionally, all portions of the proposed development will be constructed landward of the recommended geologic setback plane to ensure stability of the development. The proposed project does not include structural improvements on the bluff face or the area at the base of the bluff for the purposes of shoreline protection.

Vegetation at the project site consists predominantly of ornamental landscaping including vines and flowering plants, and several species of trees. The area constituting the top of bluff at the project site is mapped as a locally disturbed sensitive resource area in the certified Malibu/Santa Monica Mountains Land Use Plan (DSR, Exhibit 8). However, site visits to the project site confirm that no sensitive habitat area or resources exist on the building pad as it extends to the bluff edge. Some natural coastal bluff vegetation exists on the steep face of the bluff beyond the developable area of the site. The proposed development will be setback from the top of bluff approximately 41.5 ft. or more, therefore the proposed development will not encroach into the area mapped as DSR. The proposed pool will be located directly adjacent to the existing residence in an area previously disturbed with ornamental landscaping. As such, the proposed project will not result in the removal of natural vegetation or adversely impact sensitive habitat area.

The area surrounding the project site is characterized as a built-out portion of Malibu consisting of numerous single-family residences. Due to the secluded nature of the site the proposed development will not be visible from any inland public viewing area or scenic highway, and the new development proposed will have a sufficient setback from the bluff face and will therefore not be visible from the beach below. As mentioned, the project site is located on a steep bluff top lot above the sandy beach, therefore, the proposed project will not impede public access to or along the beach. As such, the proposed project will not have a significant impact on coastal scenic resources or public access.

B. Bluff Top Development and Hazards

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.

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

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood, and fire hazard, and to assure stability and structural integrity. Section 30235 of the Coastal Act mandates that shoreline protective devices be permitted only where necessary to serve coastal dependent uses or to protect existing development.

The proposed development is located on a bluff top along the Malibu coastline, an area that 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. Coastal bluffs, such as the one located at the subject site, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. In addition, due to their geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration.

Due to the geologic instability of coastal bluffs and their integral role in maintaining the ecosystem and shoreline processes, new development on bluff top lots may be found consistent with Sections 30235 and 30253 of the Coastal Act only when the development is sited to ensure geologic stability, and not to require construction of any protective devices which may potentially alter natural landforms and geomorphic processes of coastal bluffs. The certified Malibu/Santa Monica Mountains LUP contains a number of policies regarding development on or near coastal bluffs. Although the City of Malibu is now incorporated, these policies are still used as guidance by the Commission in order to determine the consistency of a project with Sections 30235 and

30253 of the Coastal Act. The Malibu/Santa Monica Mountains LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, Policy 164, in concert with the Coastal Act, provides that new development shall be set back a minimum of 25 feet 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 conjunction with the Coastal Act, provides that no new permanent structures be permitted on a bluff face.

In the case of the proposed project, the applicant is not proposing any habitable new building additions to the seaward side of the residence. The applicant is however, proposing to install a lap pool on the seaward side of the residence. Project plans illustrate that the lap pool will be located directly adjacent to the residence and will extend seaward 4 feet, 4 inches from an existing deck. Properties adjacent to the subject site are developed with residential structures with decks, as well as pool existing on the downcoast adjacent property, which are located at a more seaward position than the residence and the most seaward extent of the proposed pool at the subject site. As such, installation of the proposed pool will not extend beyond the deck stringline and will not result in the seaward extension of development beyond that existing on adjacent properties. Additionally, all portions of the proposed development will be setback a minimum of 41.5 ft. from the bluff edge and will be located landward of the geologic setback plane recommended by the project's consulting geologists. In addition, the project's consulting geologists have indicated that the proposed 41.5 ft. setback for the proposed pool is adequate to protect the development from the hazards of future natural coastal bluff erosion. The Additional Comments, Proposed Second Story Addition and Pool report dated 5/22/00 by The J. Byer Group, Inc. concludes :

At the subject site, the sea cliff consists primarily of sedimentary bedrock capped with a thin layer of terrace deposits. The referenced studies indicate that for well indurated sedimentary bedrock, the typical average sea cliff retreat is about two inches per year (about 17 feet over 100 years). The proposed pool is to be setback approximately 50 feet from the edge of the sea cliff. The proposed pool is setback beyond a 1:1 plane projected from the base of the sea cliff and is beyond the stability failure surface which has a factor of safety of 1.5. The proposed addition is to be setback over 100 feet from the top of the sea cliff. Therefore, it is the finding of The J. Byer Group that the proposed improvements will not require a shoreline protective device for their economic life of 75 to 100 years.

The geologic consultants conclude that the proposed development is setback sufficiently to ensure that bluff erosion will not jeopardize the development during its 75-100 year useful life without the need to construct protective devices. Therefore, the Commission finds that the proposed project will be setback so as not be subject to hazards associated with future coastal bluff erosion. The Commission further finds that, based on the findings of the applicant's consulting geologist, the proposed development

will not require construction of a shoreline protective device at the site to ensure geologic stability of the proposed development. Therefore, the Commission finds that the proposed development is sited to provide sufficient setbacks to facilitate geologic stability.

In addition, the applicant has submitted a Geologic and Soils Engineering Exploration, Proposed Second Story Addition and Pool, dated 6/25/99; Addendum Geologic and Soils Engineering Report, dated 8/4/99; and Addendum Geologic and Soils Engineering Report #2, dated 10/6/99; The Additional Comments, Proposed Second Story Addition and Pool dated 5/22/00, by The J. Byer Group, Inc, which evaluate the geologic stability of the subject site in relation to the proposed development. The consultants have found that the project site is adequate for the proposed development given that their recommendations are incorporated into the proposed project. The Additional Comments, Proposed Second Story Addition and Pool dated 5/22/00 by The J. Byer Group, Inc, concludes:

It is the finding of the J. Byer Group that following the implementation of the recommendations contained in the referenced reports, the proposed improvements will be free of potential geologic hazards such as landsliding, slippage, settlement, fault rupture, and liquefaction. The proposed development will not adversely effect the site or adjoining properties.

The geologic consultants have indicated that the bluff top area of the subject site, where the proposed development will be located, is relatively stable and suitable for the proposed additions. Further, the consultants have concluded that the proposed septic system will be adequate to serve the development and will not result in adverse geologic impacts. The Geologic and Soils Engineering Exploration, Proposed Second Story Addition and Pool, dated 6/25/99 states:

The use of a private sewage disposal system on the subject property should not adversely affect the stability of the site or adjoining properties.

The Geologic and Soils Engineering Exploration, Proposed Second Story Addition and Pool, dated 6/25/99; Addendum Geologic and Soils Engineering Report, dated 8/4/99; and Addendum Geologic and Soils Engineering Report #2, dated 10/6/99, by The J. Byer Group, Inc, include a number of recommendations to ensure the stability and safety of the site. Therefore, to ensure that the recommendations of the consulting geologists have been incorporated into all proposed development, **Special Condition One (1)** requires the applicant to submit project plans certified by the consulting geologists as conforming to all recommendations regarding 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, design, sewage disposal, and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

The proposed project is conditioned to incorporate the recommendations of the project's consulting geologists to assure stability of the site and adjacent properties. However, leakage or drainage of the proposed swimming pool, if not monitored and/or conducted in a controlled manner, may result in excess run-off and erosion on the bluff, which could potentially cause instability of the site. In addition, uncontrolled water loss from the proposed pool would result in excess water infiltration into the bluff top, thereby creating a condition in which the bluff would potentially be susceptible to subsurface failure. Therefore, the Commission imposes **Special Condition Two (2)** on the subject permit which requires the applicant to submit a written plan that includes measures to minimize potential water leakage from the pool and specific measures to be implemented during maintenance and drainage of the pool. Special Condition Two (2) requires the applicant to install a separate water meter for the pool to monitor water levels and therefore identify water leakage. The plan shall also include a description of the materials to be utilized to prevent leakage of the pool shell and shall identify methods to control infiltration and uncontrolled run-off from pool drainage and maintenance. Furthermore, excess water infiltration into the bluff top from effluent of the proposed septic system could potentially result in bluff instability if the system is not designed and located to ensure that effluent will not saturate the bluff, thereby creating the potential for subsurface failure. In the case of the proposed project, the Commission notes that the proposed septic system will be located as landward as feasible, landward of the residence and adjacent to Cliffside Drive. The proposed septic pits will be located more than 160 ft. landward of the top of bluff at the site, therefore percolation of septic effluents are not expected to daylight or adversely impact the bluff face or stability of the bluff top. Therefore, the Commission finds that the proposed septic system is designed and located to minimize potential adverse impacts on the stability of the subject site.

The proposed project involves bluff top development that includes a proposal by the applicant to remove an unpermitted spa from the bluff edge. In past permit actions, the Commission has found that soil disturbance on the edge of steep bluffs has the potential to exacerbate natural processes of bluff top erosion through removal of natural vegetation that serves to stabilize the bluff, and through exposure of bare soils to rain, run-off, and wind erosion. Therefore, in order to minimize erosion and ensure the stability of the site, **Special Condition Three (3)** requires that all disturbed areas on the subject site, which may result from removal of the spa, are revegetated and restored primarily with native vegetation. Exotic and invasive vegetation, or plant species that require a significant amount of supplemental irrigation, shall not be used to restore disturbed areas at the site.

The Commission finds 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. Non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize steep slopes, such as the slopes on the subject site, 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.

The Commission finds that potential risks associated with excessive water infiltration on a bluff top causing subsurface destabilization can be reduced by minimizing irrigation seaward of the residence. Percolation of irrigated water into the bluff can lead to destabilization of the bluff, and consequently pose a significant risk to existing and proposed development. There have been numerous incidents, where irrigation lines have burst, saturating the bluff and thereby subjecting bluff top development to hazardous conditions. The applicant is proposing the removal of a spa which exists seaward of the residence, and the Commission requires, through Special Condition Two (2) that the area be revegetated with native grass species or other native, drought tolerant vegetation. A such, Special Condition Two (2) also requires that supplemental watering features necessary to establish appropriate restorative vegetation will be removed from the restoration area of the bluff edge and that only drip or low flow irrigation will be permitted to maintain restored vegetation seaward of the residence.

Notwithstanding the project's consistency with adequate setbacks, and the Special Conditions imposed on this permit which will serve to minimize potential hazards, the Commission nevertheless finds that coastal bluff erosion is a dynamic, long-term process and that no structure situated on a coastal bluff can be completely free of hazard. Thus, the Commission finds that there remains an inherent risk in building on the subject site with the geologic conditions and constraints described in this section, and due to the fact that the project site is located in an area subject to an extraordinary potential for damage or destruction from wildfire. Typical vegetation in the Santa Monica Mountains consists predominantly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. Additionally, the typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Therefore, the Commission can only approve the project if the applicant assumes the responsibility and liability from the risks associated with developing the project as required by **Special Condition Four (4)**. This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site that may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same. Moreover, through acceptance of Special Condition Four (4), the applicants agree to indemnify the Commission, its officers, agents, and employees against any and all claims, demands, damages, costs, expenses, or 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 from geologic and wildfire hazard exists as an inherent risk.

It should be noted that an assumption of risk deed restriction for hazardous geologic conditions and danger from wildfire is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. The Commission has frequently required such deed restrictions for other development throughout the Malibu/Santa Monica Mountains region.

While the location of the proposed structures on the subject site may presently be feasible from a geologic point of view, further improvements such as concrete block walls and/or other protective structures may eventually be proposed by the applicant to maintain the development and ensure slope stability due natural coastal bluff erosion in the future. The applicant does not propose the construction of any shoreline protective device to protect the proposed development. The Additional Comments, Proposed Second Story Addition and Pool report dated 5/22/00 by The J. Byer Group, Inc. concludes :

At the subject site, the sea cliff consists primarily of sedimentary bedrock capped with a thin layer of terrace deposits. The referenced studies indicate that for well indurated sedimentary bedrock, the typical average sea cliff retreat is about two inches per year (about 17 feet over 100 years). The proposed pool is to be setback approximately 50 feet from the edge of the sea cliff. The proposed pool is setback beyond a 1:1 plane projected from the base of the sea cliff and is beyond the stability failure surface which has a factor of safety of 1.5. The proposed addition is to be setback over 100 feet from the top of the sea cliff. Therefore, it is the finding of The J. Byer Group that the proposed improvements will not require a shoreline protective device for their economic life of 75 to 100 years.

Though the project's consulting geologists find that the proposed setbacks will protect the development from the hazards of future natural bluff erosion for the next 75-100 years without a shoreline protective device, the Commission notes that many beach areas of Malibu have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future.

No shoreline protective device is proposed as part of this project, however, the Commission also notes that future construction of a shoreline protective device on the proposed project site would result in potential adverse effects to coastal processes, shoreline sand supply, the public's beach ownership interests, public access, and scenic resources. Shoreline protective devices alter and fix the shoreline slope profile,

which in turn alters beach width and the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. Additionally, such protective devices fix the shoreline and reduce the amount of natural shoreline retreat causing a progressive loss of sand and beach area, as shore material is not available to nourish adjacent beaches and the offshore sand bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore, where they are no longer available to nourish the beach. This affects public access by resulting in a loss of area between the mean high water line and the actual water. Shoreline protective devices, such as revetments and bulkheads, also cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline, eventually affecting the profile of a public beach. Furthermore, if not sited landward in a location that insures that the shoreline protective device is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In addition, Section 30235 of the Coastal Act allows for the construction of a shoreline protective device only when necessary to protect existing development or to protect a coastal dependent use. The Commission further notes that the approval of a shoreline protective device to protect new residential development, such as the proposed project, would not be consistent with Section 30235 of the Coastal Act. The construction of a shoreline protective device to protect a new residential development would also conflict with Section 30253 of the Coastal Act which states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Construction of a shoreline protective device to protect new residential development would also conflict with Section 30251 of the Coastal Act, which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a device. Thus, the Commission can only find the proposed project consistent with the applicable sections of the Coastal Act if the development as proposed, and the site as predicted to perform during the project's useful life (as determined by the project's consulting geologists), will not require the construction of a shoreline protection device. Therefore, to ensure that the proposed project is consistent with Sections 30235, 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Condition Five (5)** requires the applicant to record a deed restriction that would prohibit the applicant, or future landowners, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residential addition, septic system, driveway, patios or any other structure on the subject site.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30235 and 30253 of the Coastal Act.

C. Septic System

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality from septic system effluent. 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 above, the proposed project includes construction of a second story 902 sq. ft. addition, a new pool, and removal of an unpermitted spa. The proposed development also includes the installation of an on-site septic system with a 4,000 gallon septic tank to serve the existing residence and new additions. The applicant's geologic consultants performed infiltration tests and evaluated the proposed septic system. The report concludes that the site is suitable for the septic system and that no adverse impacts to the site or surrounding areas will result from the use of the septic system. Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of 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.

D. Violations

Unpermitted development has taken place prior to submission of this permit application, including installation of a spa at the bluff edge on the site. The applicants are proposing to remove the unpermitted spa as part of this permit application. In order to ensure that the unpermitted development is resolved in a timely manner, **Special Condition Six (6)** requires that the applicant satisfy all conditions of this permit which are a prerequisite to the issuance of this permit within 90 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

E. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned,

has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

MAP 627

667

90265

PROJECT SITE
28980 CLIFFSIDE DR NE

OCEAN

PACIFIC

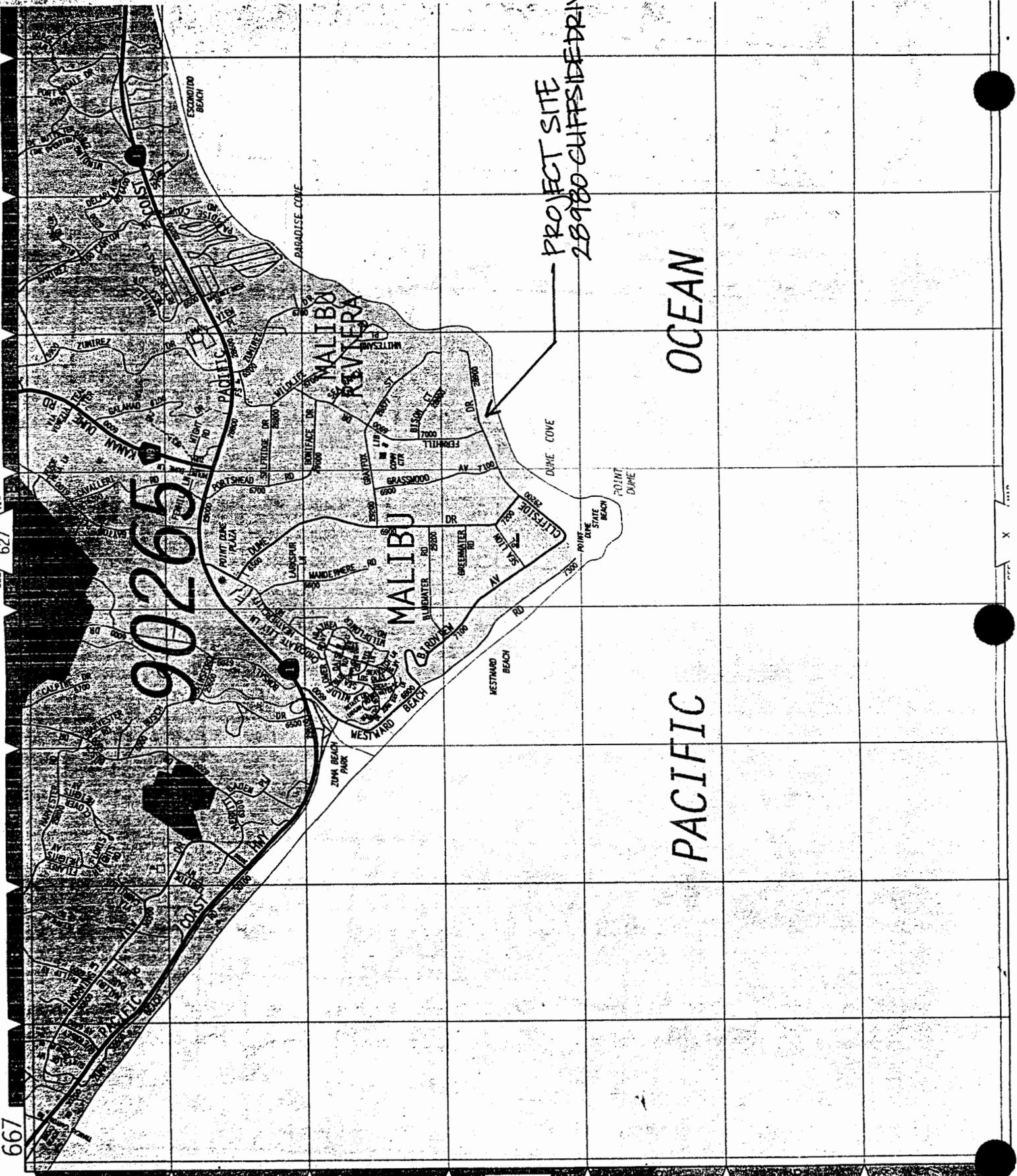


EXHIBIT 1
 CDP #4-00-031
 Vicinity Map

ESRI ArcExplorer 1.1

4-00-031 Kahan

laprcis

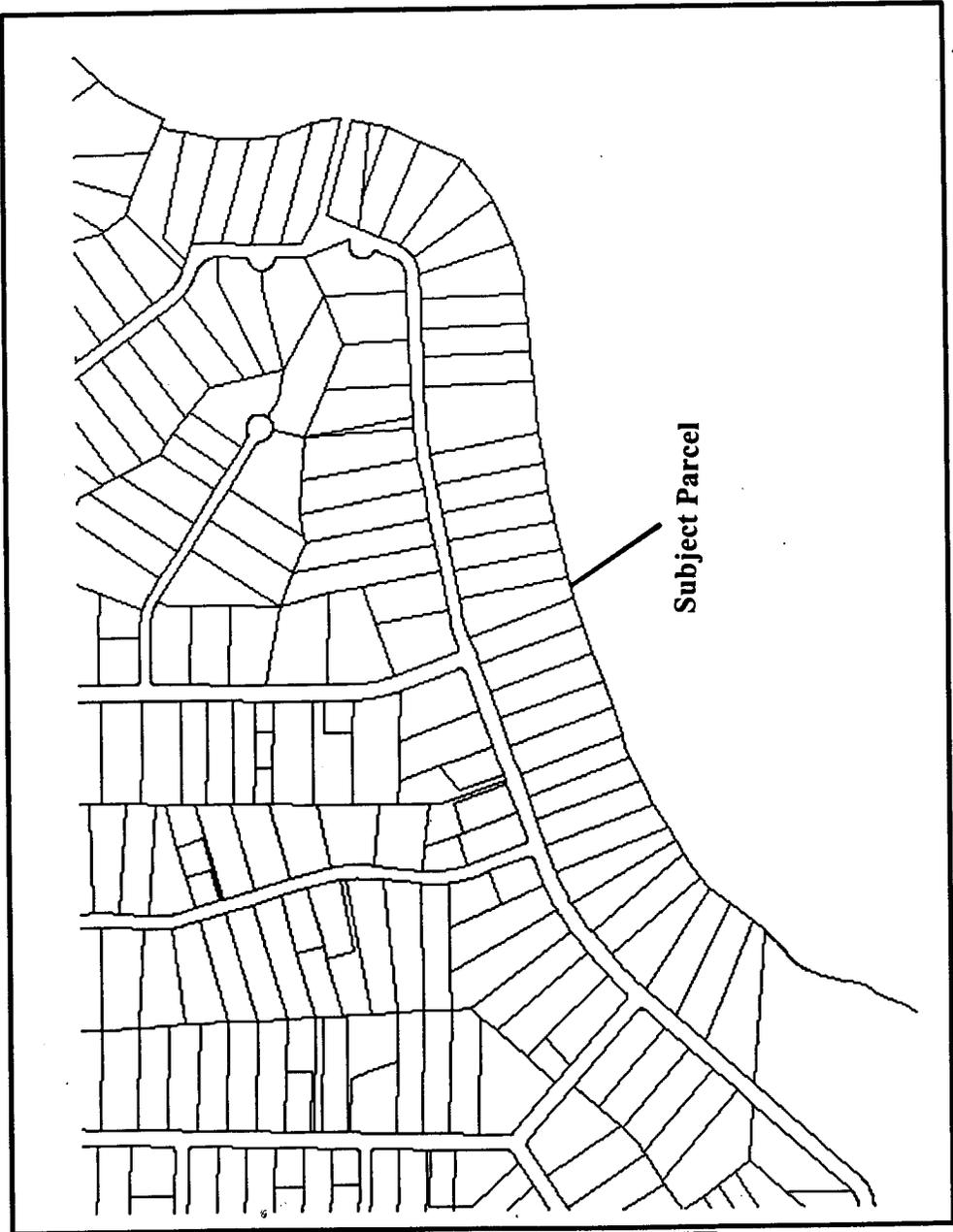
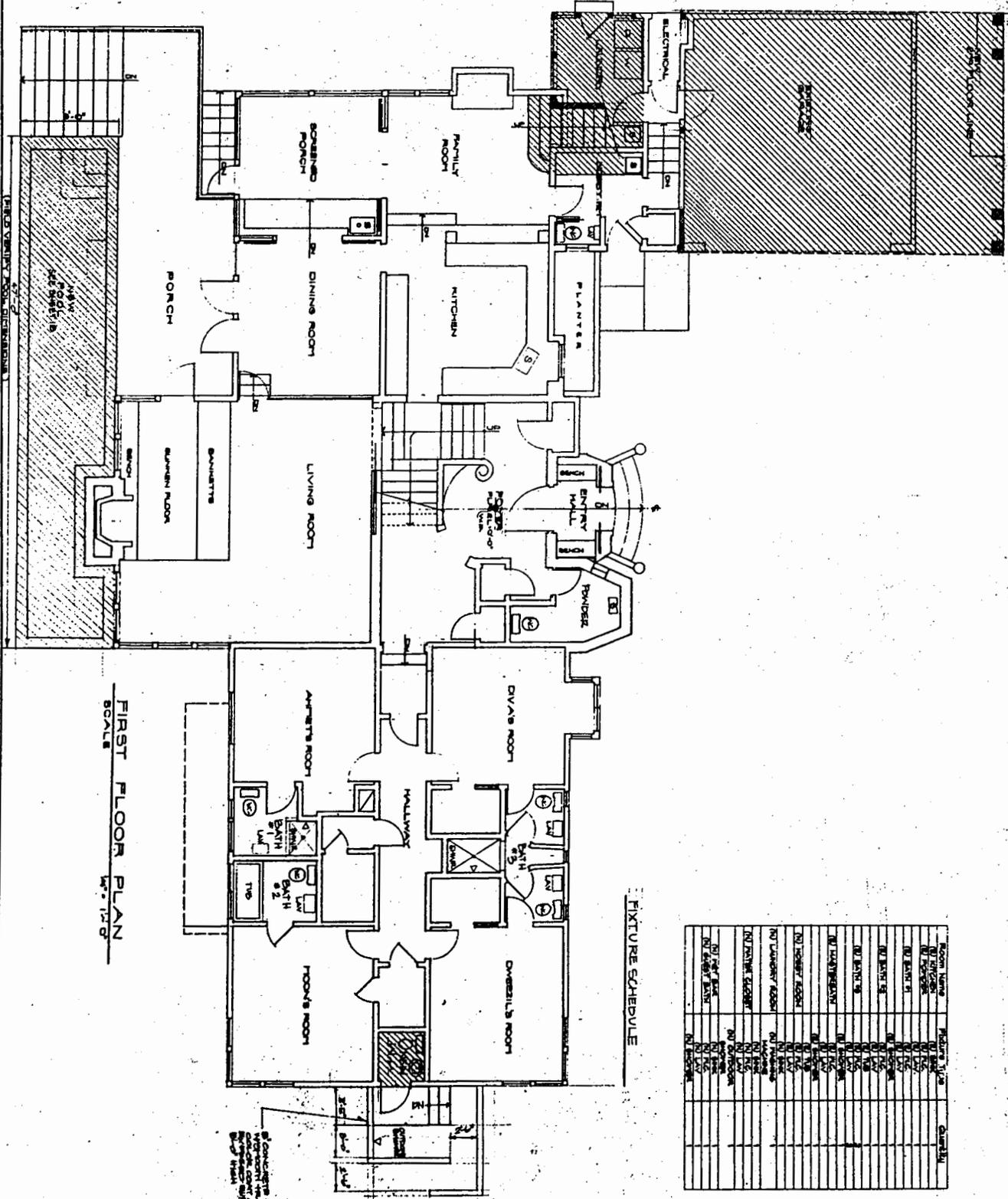


EXHIBIT 2
CDP # 4-00-031
Parcel Map



FIRST FLOOR PLAN
SCALE 1/8" = 1'-0"

FIGURE SCHEDULE

ROOM NAME	FIXTURE TYPE	QUANTITY
NO. 1	NO. 1	NO. 1
NO. 2	NO. 2	NO. 2
NO. 3	NO. 3	NO. 3
NO. 4	NO. 4	NO. 4
NO. 5	NO. 5	NO. 5
NO. 6	NO. 6	NO. 6
NO. 7	NO. 7	NO. 7
NO. 8	NO. 8	NO. 8
NO. 9	NO. 9	NO. 9
NO. 10	NO. 10	NO. 10
NO. 11	NO. 11	NO. 11
NO. 12	NO. 12	NO. 12
NO. 13	NO. 13	NO. 13
NO. 14	NO. 14	NO. 14
NO. 15	NO. 15	NO. 15
NO. 16	NO. 16	NO. 16
NO. 17	NO. 17	NO. 17
NO. 18	NO. 18	NO. 18
NO. 19	NO. 19	NO. 19
NO. 20	NO. 20	NO. 20
NO. 21	NO. 21	NO. 21
NO. 22	NO. 22	NO. 22
NO. 23	NO. 23	NO. 23
NO. 24	NO. 24	NO. 24
NO. 25	NO. 25	NO. 25
NO. 26	NO. 26	NO. 26
NO. 27	NO. 27	NO. 27
NO. 28	NO. 28	NO. 28
NO. 29	NO. 29	NO. 29
NO. 30	NO. 30	NO. 30
NO. 31	NO. 31	NO. 31
NO. 32	NO. 32	NO. 32
NO. 33	NO. 33	NO. 33
NO. 34	NO. 34	NO. 34
NO. 35	NO. 35	NO. 35
NO. 36	NO. 36	NO. 36
NO. 37	NO. 37	NO. 37
NO. 38	NO. 38	NO. 38
NO. 39	NO. 39	NO. 39
NO. 40	NO. 40	NO. 40
NO. 41	NO. 41	NO. 41
NO. 42	NO. 42	NO. 42
NO. 43	NO. 43	NO. 43
NO. 44	NO. 44	NO. 44
NO. 45	NO. 45	NO. 45
NO. 46	NO. 46	NO. 46
NO. 47	NO. 47	NO. 47
NO. 48	NO. 48	NO. 48
NO. 49	NO. 49	NO. 49
NO. 50	NO. 50	NO. 50

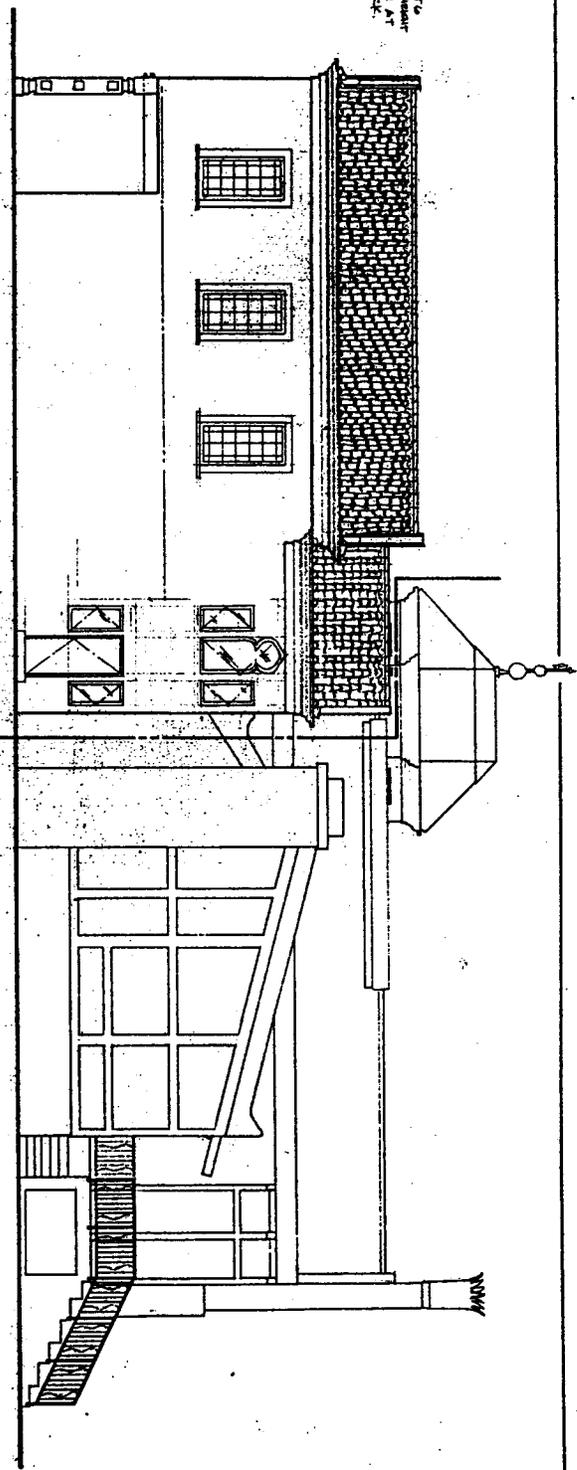
CONCRETE BLOCK WALL
W/OUT REINFORCING BARS
AND REINFORCING BARS
AND REINFORCING BARS
AND REINFORCING BARS

EXHIBIT 4
CDP # 4-00-031
First Floor Plan

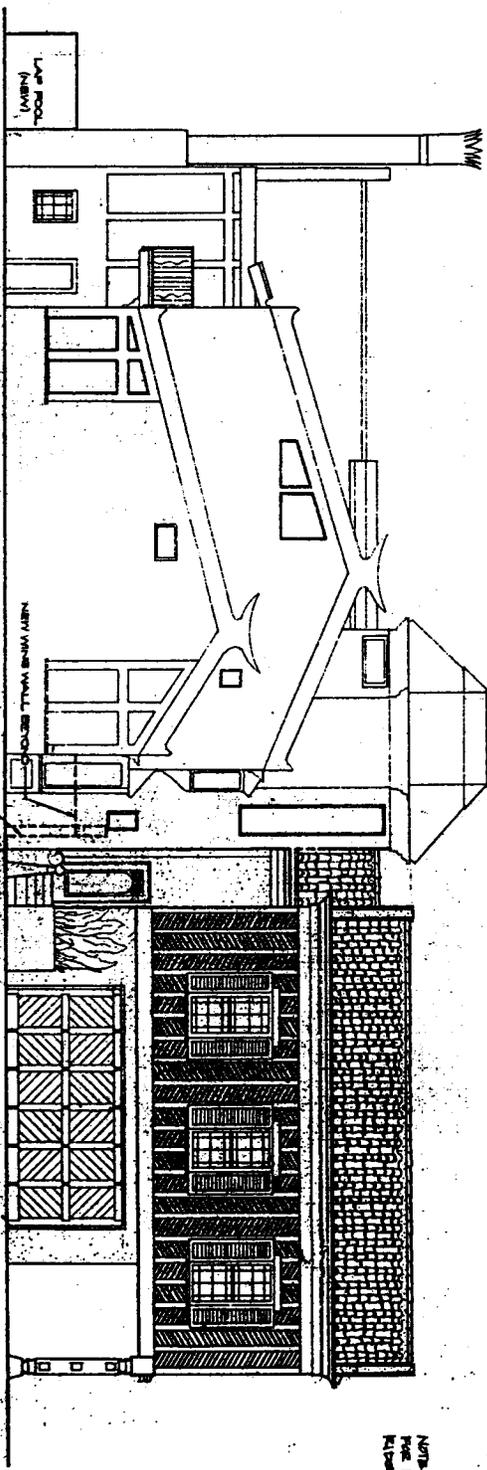
STAMPS
STAMPS
ATIONAL ARCHITECTURE,
GROUP AND GARDENS

262 PARKVIEW AVENUE
SOUTH BEND, INDIANA 46708
TELEPHONE 635-441-2600
FACSIMILE 635-441-0094

NOTE: SEE SHEET 6 FOR NEW HEIGHT OF EXISTING AT NEW WORK.



RIGHT-SIDE ELEVATION
SCALE 1/4"=1'-0"



LEFT-SIDE ELEVATION
SCALE 1/4"=1'-0"

NOTE: SEE SHEET 6 FOR NEW HEIGHT OF EXISTING AT NEW WORK.

RIGHT-SIDE ELEVATION
AND
LEFT-SIDE ELEVATION
PAGE 2

7

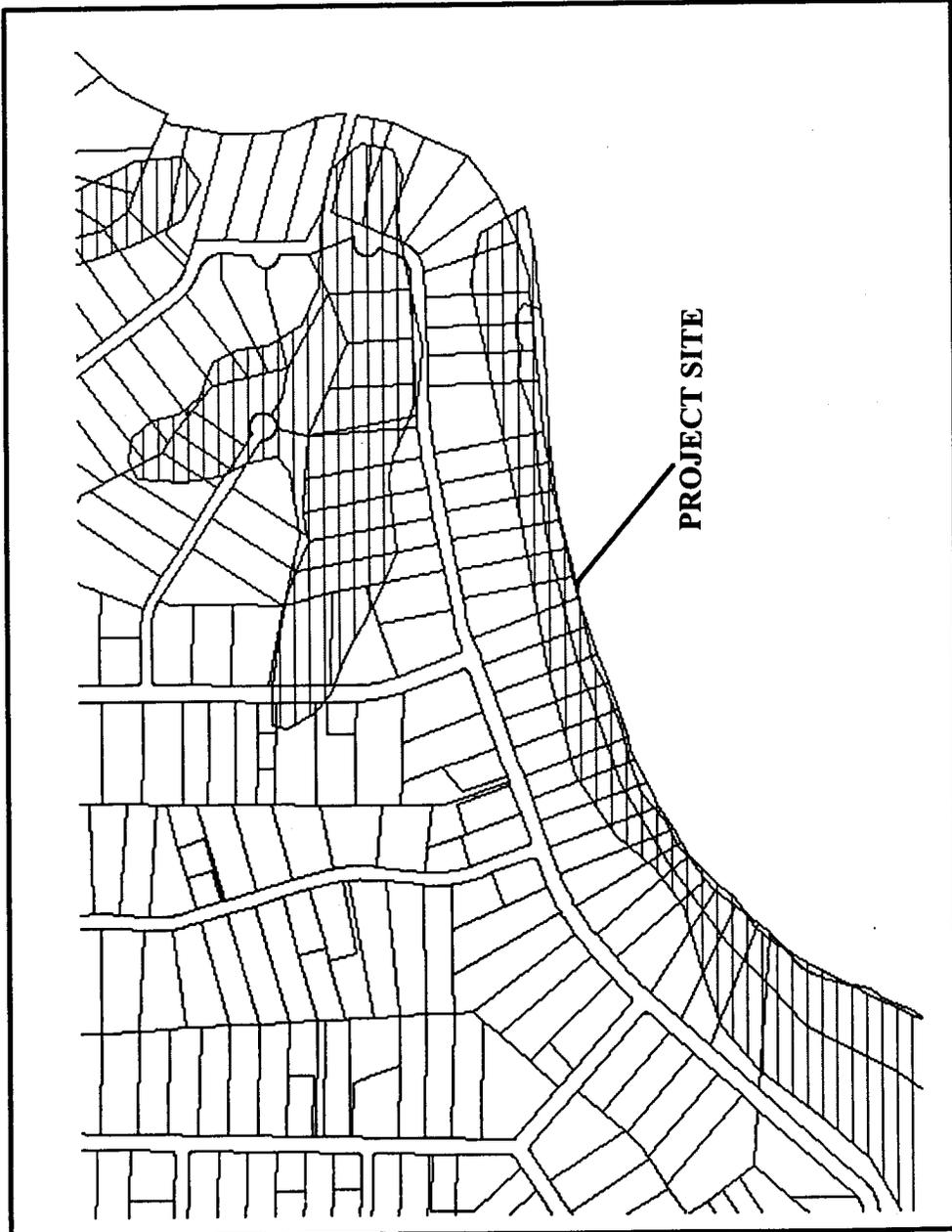
EXHIBIT 7
CDP # 4-00-031
Elevations

AMPS & AMPS
ARCHITECTURE
AND GARDENS

316 FAIRVIEW AVENUE
SOUTH PASADENA, CALIFORNIA 91106
TELEPHONE 626-441-2500
FACSIMILE 626-441-0094

ESRI ArcExplorer 1.1

4-00-031 Kahan



- laprcis
- esha (ESHA)
 - Coldcreek management area
 - inland
 - locally disturbed resources
 - oak woodlands and savannahs



EXHIBIT 8
CDP # 4-00-031
ESHA MAP

Thursday, Jun 14 2001

