

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
MANTONA, CA 93001
(805) 585-1800



Filed: 12/04/03
49th Day: 1/22/04
180th Day: 6/01/04
Staff: LKF-V
Staff Report: 3/25/04
Hearing Date: 4/14-16/04

RECORD PACKET COPY**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: 4-97-103-A2

APPLICANT: Irwin E. Russell, Trustee of The Rust Trust

AGENT: Neal Jevyak

PROJECT LOCATION: 33528 Pacific Coast Highway, City of Malibu (Los Angeles County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a new drainage system, a subterranean elevator shaft with interior stairway, a new sewage ejection pump system, two 6 ft. high retaining walls, 944 cu. yds. of grading (619 cu. yds. cut and 325 cu. yds. of fill) for bluff slope restoration, revegetation of the bluff slope and the removal of an unpermitted 30 ft. high crib wall on the bluff face, removal of two previously existing bluff face stairways and one unpermitted bluff face stairway, and the demolition and removal of 830 sq. ft. of unpermitted additions to the existing cabana/guest unit.

PREVIOUSLY AMENDED FOR (A1): Enlarge the proposed below grade elevator shaft from 6' x 7' to 7.5' x 10.5' in width, construct one 60 sq. ft. and one 90 sq. ft. subterranean mechanical room, raise the height of the subterranean elevator access tunnel by 6 inches, and decrease the total amount of proposed grading by 48 cu. yds. from 944 cu. yds. (610 cu. yds. cut and 325 cu. yds. fill) to 896 cu. yds. (698 cu. yds. cut and 196 cu. yds. fill).

DESCRIPTION OF AMENDMENT (A2): Demolition of a 400 sq. ft. cabana, patio areas, retaining walls, stairs, cistern, bomb shelter, and underground storage areas, construction of a 400 sq. ft. cabana, remodeling of a 1,230 sq. ft. patio, restoration of a 1,360 sq. ft. area to native bluff, and 30 cu. yds. of grading. All proposed development is located on the face of a coastal bluff.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval in Concept dated January 31, 2003.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu Local Coastal Program; Coastal Development Permit No. 4-97-103; Coastal Development Permit No. 4-97-103-A1; Letter from David Taubman and Associates, Inc., re: Cabana Foundations, 33528 Pacific Coast Highway, dated October 23, 2003; Letter from Thomas A. Zink, Soil Ecology and Restoration Group (SERG), San Diego State University, dated March 15, 2002; Declaration of Kerry O'Brien dated October 20, 2003; Declaration of Kerry O'Brien dated February 4, 1997.

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material (14 Cal. Code of Regulations Section 13166). In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect previously imposed special conditions required for the purpose of protecting coastal resources.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends denial of the applicant's proposal, including demolition of a 400 sq. ft. cabana, patio areas, retaining walls, stairs, cistern, bomb shelter, and underground storage areas, construction of a 400 sq. ft. cabana, remodeling of a 1,230 sq. ft. patio, restoration of a 1,360 sq. ft. area to native bluff, and 30 cu. yds. of grading. All proposed development is located on the face of a coastal bluff.

As detailed below, the proposed project is inconsistent with the bluff setback policies of the Malibu Local Coastal Program (LCP). The applicant is proposing to demolish an existing 400 sq. ft. cabana and construct a new 400 sq. ft. cabana on a bluff face. LCP Policy 4.29 specifies that no permanent structures may be allowed on bluff faces, except for engineered stairways or accessways for public access. The proposed project is also inconsistent with LCP policies that govern demolition and reconstruction of non-conforming structures. These policies prohibit demolition and reconstruction of non-conforming structures that result in demolition and/or replacement of more than 50% of the exterior walls unless the entire structure is brought into conformance with the policies and standards of the LCP. However, because LCP Policy 4.29 specifically prohibits permitting permanent structures on bluff faces, the proposed project does not conform to the LCP, as required.

Furthermore, feasible alternatives exist that would be consistent with the resource protection policies of the Malibu LCP. Therefore, staff is recommending denial of the proposed project.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit Amendment No. 4-97-103-A2 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT AMENDMENT:

The Commission hereby denies a coastal development permit amendment for the proposed development on the ground that the development will not conform to the policies of the City of Malibu Local Coastal Program (LCP). Approval of the permit amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicant seeks approval for demolition of a 400 sq. ft. cabana, patio areas, retaining walls, stairs, cistern, bomb shelter, and underground storage areas, construction of a 400 sq. ft. cabana, remodeling of a 1,230 sq. ft. patio, restoration of a 1,360 sq. ft. area to native bluff, and 30 cu. yds. of grading. The proposed cabana is located further landward, and only a small part would be within the footprint of the existing cabana that is proposed to be demolished. All proposed development is located on the face of a coastal bluff (**Exhibits 3 through 7**).

The project site is a 32,725 sq. ft. bluff top lot located in the western portion of the City of Malibu (**Exhibit 1**). The site is located south of Pacific Coast Highway and north of the Pacific Ocean, in an area developed with single-family residences. Development on the site includes a single-family residence, garage/office with basement, driveway, retaining walls, septic system, and landscaping on the bluff top. In addition, the 400 sq. ft. cabana, patio areas, retaining walls, stairs, cistern, bomb shelter, and underground storage areas are located on the bluff face. The site also contains a subterranean elevator that provides access to the bluff face improvements, and two subterranean mechanical rooms (**Exhibit 8**).

The bluff face consists of an approximately 2:1 slope above the cabana level, and an approximately 1.25:1 slope below. A natural basaltic rock outcropping is located at the base of the bluff, thus protecting the bluff from substantial undercutting due to wave action. The slope above the cabana was reconstructed as a condition of CDP No. 4-97-103. A vertical 30 ft. high cliff, the result of significant erosion from surface runoff and an inadequate drainage system constructed prior to the Coastal Act, existed prior to the slope restoration. Native vegetation on the bluff face is also being restored as a condition of CDP No. 4-97-103 (**Exhibit 9**).

B. Background

As noted above, there are several existing structures on the bluff face. These structures were constructed prior to the effective date of the Coastal Act, although the pre-Coastal Act design and precise location of the 400 sq. ft. cabana may have been different than that of the current cabana, which is the result of the removal of 830 sq. ft. of unpermitted improvements that had increased the structure's size to 1230 sq. ft.

Staff analysis of aerial photographs, in addition to signed declarations by a previous tenant of the cabana and by an adjacent neighbor, indicate that an existing 300-400 sq. ft. cabana/guest unit was located on the bluff slope prior to the Coastal Zone Conservation Act of 1972. Access to the existing cabana/guest unit was provided by a gunite stairway/drainage swale located between the top of the bluff and the cabana/guest unit with a second switchback stairway providing access from the cabana/guest unit to the beach. However, between 1975 and 1994, approximately 850 sq. ft. in additions to the cabana, an approximately 30 ft. high cribwall, and a switchback stairway between the top of the bluff and the cabana were constructed by the previous property owner without the required coastal development permits. In addition, the applicant has supplied no evidence that any local approval or permit from the County of Los Angeles was originally issued for the proposed developments at the time of construction.

The current applicant purchased the property in 1996. In 1998, the applicant received a coastal development permit (CDP No. 4-97-103) to remove the unpermitted additions to the cabana, as well as the cribwall and switchback stairway, and to construct a subterranean elevator to provide alternative access to the cabana level. The elevator was sited adjacent to a subterranean drainage shaft, thus avoiding visible development on the bluff face. The slope above the cabana was reconstructed and native vegetation is being restored under CDP No. 4-97-103. Special Condition Two (2) of CDP No. 4-97-103 required the applicant to remove all unpermitted development and restricted the cabana to 400 sq. ft. in size, and one story in height, as shown in plans submitted by the applicant and attached to the staff report as Exhibit No. 5. Thus the current development on the bluff face reflects, in general, the amount of development present prior to the effective date of the Coastal Act.

The unpermitted additions to the cabana, however, obscured the original design and location of the cabana. The applicant submitted, as part of their application for CDP 4-97-103, a signed declaration from Kerry O'Brien, a former tenant of the cabana, stating that its size was approximately 300-400 square feet. This approximate size was verified by staff review of aerial photographs, as was the approximate location of the cabana. As the cabana consisted, at the time of staff's review of CDP 4-97-103, of a 396 sq. ft. one story section, and an 834 sq. ft. two story section, it was reasoned that the two-story section represented the unpermitted addition. Therefore, the applicant's proposal to reduce the cabana to its pre-Coastal Act size involved demolition of the two-story section.

As part of the current application, the applicant has submitted an interpolation study performed by Peak Surveys, Inc., dated September 18, 2003, that shows the pre-Coastal Act cabana located largely outside the footprint of the current cabana (**Exhibit 2**). The applicant has also submitted a signed declaration from Mr. O'Brien stating that the cabana was not designed or located as currently, but was located as shown in the interpolation study. The location shown in the study is seaward of both the existing and the proposed cabanas.

The applicant asserts that the current location and massing of the cabana is unsympathetic and inconsistent with the protection of views from the beach. The applicant proposes to relocate the cabana further landward, by demolishing the existing structure and integrating a new cabana against an existing curved retaining wall on the bluff face. The proposed new cabana would be less prominent than the existing cabana when viewed from offshore, and would be invisible from the beach below, whereas the existing cabana is partially visible from the beach. As part of the relocation proposal, the applicant is proposing to remove much of the other existing development on the bluff face, including patio areas, retaining walls, stairs, a cistern, bomb shelter, and underground storage areas, and restore the recovered bluff area with native coastal bluff vegetation, thus further decreasing visual impacts.

C. Bluff/Shoreline Development

The proposed development is located on a bluff top/ beach property along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Coastal bluffs, such as the one located on 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. Further, removal of native vegetation and/or grading on bluffs increases the likelihood of slope instability.

The Malibu Local Coastal Program (LCP) contains the following development policies related to hazards and bluff/shoreline development that are applicable to the proposed development:

Sections 30235 and 30253 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that new development shall:

Section 30235:

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:

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, 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.***

In addition, the following LCP policies are applicable in this case:

- 4.2. *All new development shall be sized, designed and sited to minimize risks to life and property from geologic, flood, and fire hazard.*
- 4.15 *Existing, lawfully established structures, which do not conform to the provisions of the LCP, may be maintained and/or repaired provided that such repair and maintenance do not increase the extent of nonconformity of the structure. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements comply with the current standards and policies of the LCP and do not increase the extent of nonconformity of the structure. Substantial additions, demolition and reconstruction, that result in demolition and/or replacement of more than 50% of the exterior walls shall not be permitted unless such structures are brought into conformance with the policies and standards of the LCP.*
- 4.23 *New development on a beach or oceanfront bluff shall be sited outside areas subject to hazards (beach or bluff erosion, inundation, wave uprush) at any time during the full projected 100-year economic life of the development. If complete avoidance of hazard areas is not feasible, all new beach or oceanfront bluff development shall be elevated above the base Flood Elevation (as defined by FEMA) and setback as far landward as possible. All development shall be setback a minimum of 10 feet landward of the most landward surveyed mean high tide line. Whichever setback method is most restrictive shall apply. Development plans shall consider hazards currently affecting the property as well as hazards that can be anticipated over the life of the structure.*
- 4.27. *All new development located on a blufftop shall be setback from the bluff edge a sufficient distance to ensure that it will not be endangered by erosion for a projected 100 year economic life of the structure plus an added geologic stability factor of 1.5. In no case shall the setback be less than 100 feet which may be reduced to 50 feet if recommended by the City geologist and the 100 year economic life with the geologic safety factor can be met. This requirement shall apply to the principle structure and accessory or ancillary structures such as guesthouses, pools, tennis courts, cabanas, and septic systems etc. Ancillary structures such as decks, patios and walkways that do not require structural foundations may extend into the setback area to a minimum distance of 15 feet from the bluff edge. Ancillary structures shall be removed or relocated landward when threatened by erosion. Slope stability analyses and erosion rate estimates shall be performed by a licensed Certified Engineering Geologist or Geotechnical Engineer.*
- 4.29. *No permanent structures shall be permitted on a bluff face, except for engineered stairways or accessways to provide public beach access. Such structures shall be constructed and designed to not contribute to further erosion of the bluff face and to be visually compatible with the surrounding area to the maximum extent feasible.*
- 5.54 *Existing, lawfully established structures built prior to the effective date of the Coastal Act that do not conform to the provisions of the LCP may be maintained, and repaired. Except as provided below, additions and improvements to such structures may be permitted provided that such additions or improvements themselves comply with the current policies and standards of the LCP. Substantial additions to non-conforming structures on a blufftop or on the beach are not permitted unless the entire structure is brought into conformance with the policies and standards of the LCP. Demolition and reconstruction that results in the demolition of more than 50 percent of the exterior walls of a non-conforming structure is not permitted unless the entire structure is brought into conformance with the policies and standards of*

the LCP. Non-conforming uses may not be increased or expanded into additional locations or structures.

The Malibu LCP policies require that new development minimize risk to life and property in areas of high geologic, flood and fire hazard and assure stability and structural integrity. The LCP imposes a minimum 100 ft. setback (which may be reduced to 50 feet if specific geologic criteria are met) from bluff edges for all structures with the exception of ancillary structures such as decks, patios, and walkways, for which the setback is 15 feet. The LCP prohibits the construction of permanent structures on bluff faces, with the exception of stairways or other accessways that provide public access. The LCP allows existing non-conforming structures to be maintained, but prohibits substantial additions, or demolition and rebuilding of more than 50% of such structures on a blufftop or beach unless the entire structure is brought into conformity with the policies and standards of the LCP. The LCP prohibits the increase or expansion of non-conforming uses into additional locations or structures.

As noted above, coastal bluffs are unique geomorphic features that are characteristically unstable and subject to erosion from sheet flow runoff from the top of the bluff and from wave action at the base of the bluff. Bluffs that have been altered through past removal of natural vegetation, grading and/or other construction for development such as roads, paths, stairways, gazebos, cabanas, etc. are more susceptible to erosion and slope failure. Given that bluffs are by definition erosional features, development (with the exception of public accessways) on a bluff face is prohibited in the Malibu LCP. The LCP also prohibits development on a bluff face in order to protect visual resources, public access, and sensitive marine and coastal bluff habitats.

In this case, due to geologic structure and soil composition, the bluff face on site is susceptible to potential surficial failure. Erosion and soil slippage has been documented on the bluff slope. Surface runoff and an inadequate drainage system constructed prior to the Coastal Act resulted in significant erosion of the bluff slope and the creation of an approximately vertical 30 ft. high cliff between the top of the bluff and the cabana/guest unit located approximately midway down the bluff slope. The slope above the cabana was reconstructed, a new drainage system was installed, and the native plant community on the bluff face is undergoing restoration as a condition of CDP No. 4-97-103. However, although the potential for erosion presented by the current development has been minimized, the underlying geologic structure and soil composition remains vulnerable to surficial failure. In addition, further construction on the bluff face could increase the potential for erosion.

As noted above, there are several existing structures on the bluff face. These structures were constructed prior to the effective date of the Coastal Act, although the pre-Coastal Act design and exact location of the 400 sq. ft. cabana has been obscured by the unpermitted enlargement of the structure to 1230 sq. ft. in area. The current cabana is the result of the applicant's proposal to reduce the cabana back to its pre-Coastal Act size, which was permitted under CDP 4-97-103.

All of the structures on the bluff face are considered "non-conforming" structures because they do not comply with the LCP bluff setback policies, which specifically prohibit development on a bluff face. As noted above, the proposed development includes demolition of an existing 400 sq. ft. cabana and construction of a new 400 sq. ft. cabana landward, and partially within the footprint of the existing cabana that is proposed to be demolished. LCP Policy 4.29 specifically prohibits the permitting of permanent structures, with the exception of public stairways or accessways, on bluff faces. Therefore the proposed project is inconsistent with the LCP Policy 4.29.

The proposed project is also inconsistent with LCP Policies 4.15 and 5.54, which govern demolition and reconstruction of non-conforming structures. These policies prohibit demolition and reconstruction of non-conforming structures that result in demolition and/or replacement of more than 50% of the exterior walls unless the entire structure is brought into conformance with the policies and standards of the LCP. The proposed project involves demolition of the entire existing 400 sq. ft. cabana and reconstruction of a new 400 sq. ft. cabana. Under LCP Policies 4.15 and 5.54, the proposed project could only be permitted if the cabana was brought into conformance with all policies and standards of the LCP. However, because LCP Policy 4.29 specifically prohibits permitting permanent structures on bluff faces, except public stairways or accessways, the proposed project does not conform to the LCP as required by Policies 4.15 and 5.54.

The applicant asserts that the current location and massing of the cabana is unsympathetic and inconsistent with the protection of public views from the beach. The applicant proposes to relocate the cabana further landward, by demolishing the existing structure and integrating a new cabana against an existing curved retaining wall on the bluff face. The proposed new cabana would be less prominent than the existing cabana when viewed from offshore, and would be invisible from the beach below, whereas the existing cabana is partially visible from the beach. As part of the relocation proposal, the applicant is proposing to remove much of the other existing development on the bluff face, including patio areas, retaining walls, stairs, a cistern, bomb shelter, and underground storage areas, and restore the recovered bluff area with native coastal bluff vegetation, thus further decreasing visual impacts.

The proposed project would decrease impacts on public views from the adjacent beach and shoreline, and would offer the benefit of additional habitat restoration. However, the intent behind the "non-conforming" structure policies of the Malibu LCP is that as non-conforming structures are demolished and rebuilt, any structures that are built to replace them must conform with the bluff setback and shoreline development policies of the LCP to eliminate or minimize adverse impacts to shoreline processes, public views, bluff stability and sensitive shoreline and bluff habitats. In the long term, as properties are redeveloped in Malibu, non-conforming development would be removed from the shoreline and/or bluffs and those areas would be restored to a more natural condition. The elimination of non-conforming structures on the beach and bluffs in Malibu will eliminate the adverse impacts associated with these structures on shoreline processes, public access, public views, bluff stability and shoreline and bluff habitats. In this case, if the cabana and associated development were removed from the bluff face, the bluff would be returned to a more natural condition.

As noted above, the applicant proposes to remove much of the existing development on the bluff face, including patio areas, retaining walls, stairs, a cistern, bomb shelter, and underground storage areas, and restore the recovered bluff area with native coastal bluff vegetation. This part of the applicant's proposal is consistent with the policies and provisions of the LCP. However, in combination with the proposal to construct a new cabana, the Commission cannot find the proposed development consistent with the LCP.

Furthermore, feasible alternatives exist to the proposed project that are consistent with the LCP and the conditions of CDP No. 4-97-103. The applicant could continue to maintain and use the existing 400 sq. ft. cabana. Alternatively, the applicant could demolish the existing cabana, as well as the associated development, and construct guest quarters landward of the bluff edge in

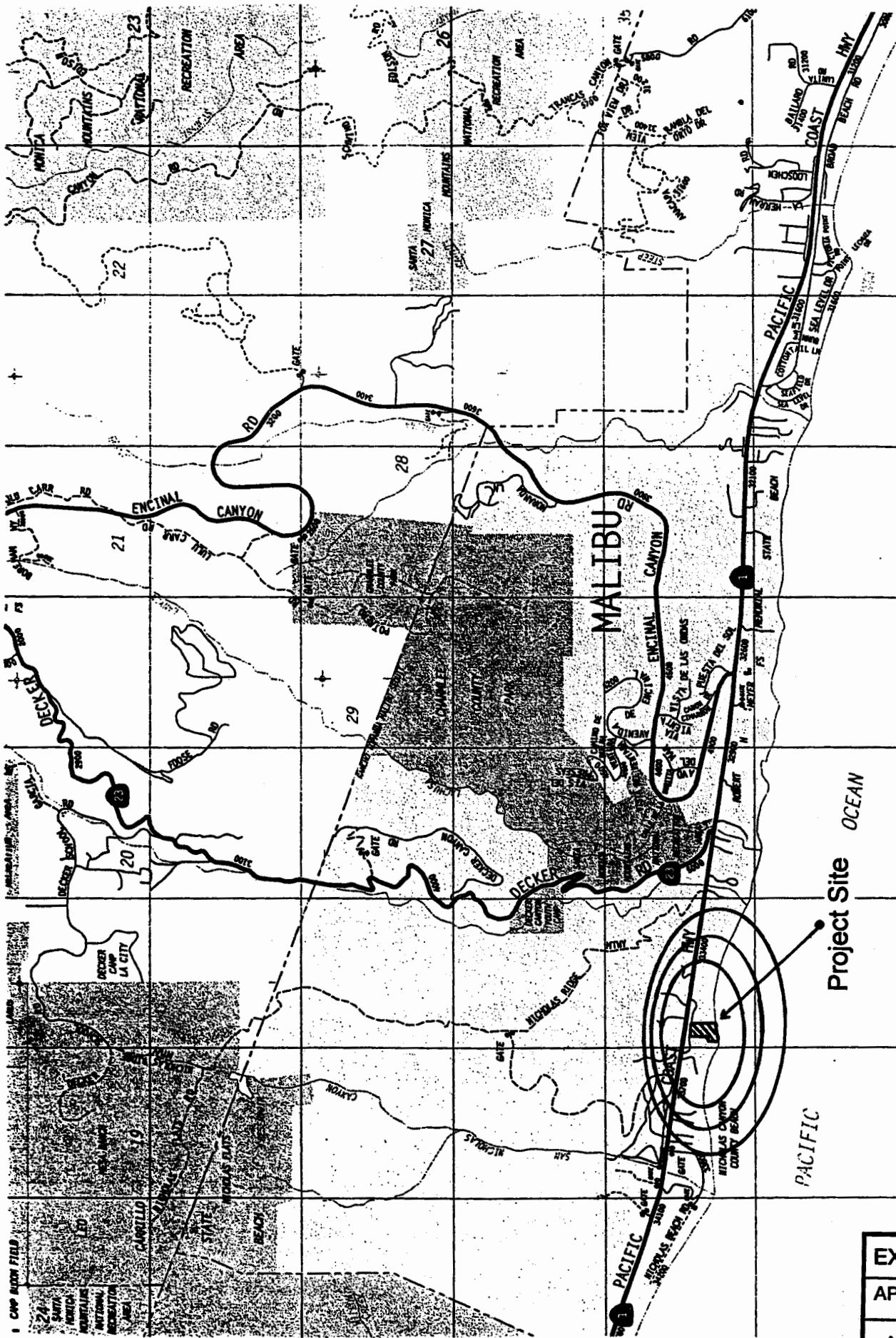
conformance with the LCP setback requirements and other policies. Therefore, the Commission finds there are feasible alternatives in this case that would be consistent with the LCP.

The Commission finds that based on the findings cited above the proposed project is not consistent with the blufftop setback policies of the Malibu LCP.

D. 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 that would substantially lessen any significant adverse effect that the activity may have on the environment.

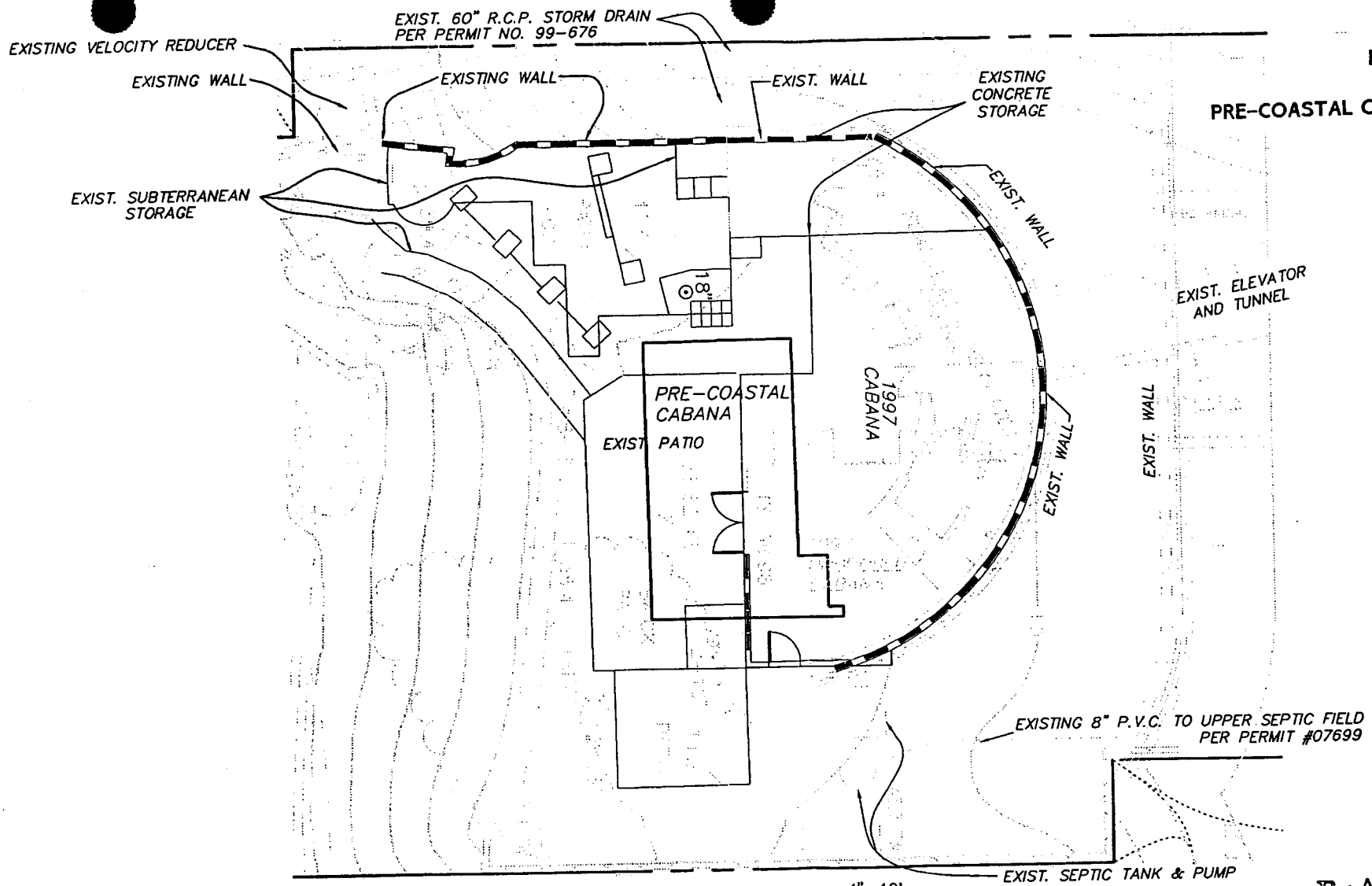
The Commission finds that the proposed project would result in significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project is determined to be inconsistent with CEQA and the policies of the Coastal Act. As noted previously, feasible alternatives exist which would not result in the significant, avoidable adverse impacts to coastal resources and public coastal views of this portion of the applicant's proposed project.



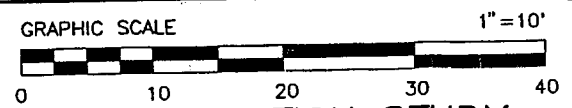
Project Site

EXHIBIT NO. 1
APPLICATION NO.
4-97-103-A2
VICINITY MAP

PRE-COASTAL CABANA FOOTPRINT



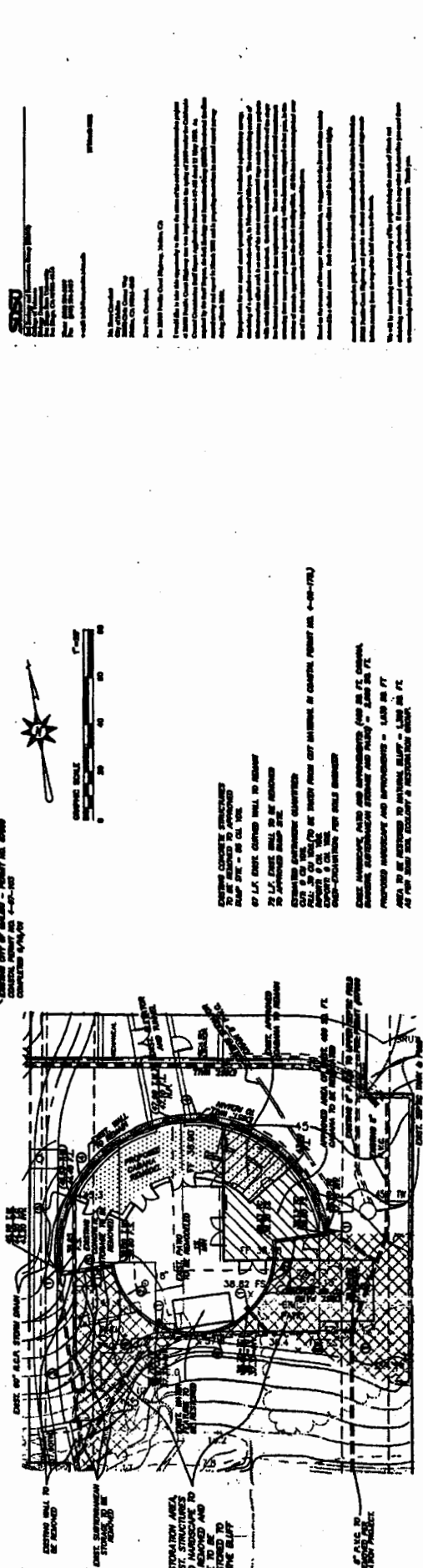
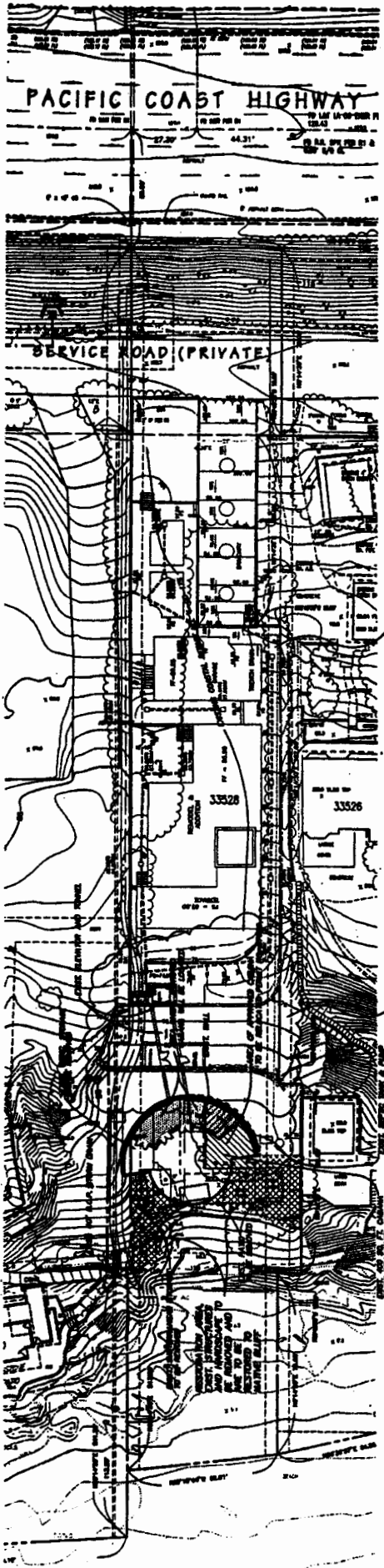
DETAIL



INTERPOLATION STUDY
 SEPTEMBER 18, 2003

PEAK SURVEYS INC.
 2488 TOWNSGATE RD suite D
 WESTLAKE VILLAGE CA 91361
 (805) 497-0102 FAX: (805) 495-7014
 WWW.PEAKINC.COM

EXHIBIT NO. 2
APPLICATION NO. 4-97-103-A2
INTERPOLATION STUDY



CITY OF MALIBU
 PLANNING DEPARTMENT
 APPROVED IN CONCEPT
 DATE: 11/11/19
 BY: [Signature]
 THIS IS SUBJECT TO ANY
 CHANGES LISTED BELOW

PREPARED FOR:
 THE CITY OF MALIBU

DATE: 11/11/19

BY: [Signature]

CONSTRUCTION NOTES

- CONSTRUCT OF 12" CATCH BASIN PER DETAIL 1, SH. 1
- CONSTRUCT OF CONCRETE CURB PER DETAIL 2, SH. 1
- 6" PVC @ 8' MIN. CONNECT TO 6" PVC.
- CONSTRUCT OF 4" DUCT PER DETAIL 3, SH. 1
- AREA OF RESTROOM SHALL TO BE AREA UNDER OTHER SUBSEQUENT WORKS IN THIS AREA AND BE REMOVED.
- 6" PVC @ 8' MIN. CONNECT TO EXISTING VELOCITY REDUCER.

CONTRACTOR'S NOTE:

THE CONTRACTOR HAS REVIEWED THE SITE PLAN AND FOUND IT TO BE COMPLETE AND ACCURATE. THE CONTRACTOR WILL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF MALIBU AND THE CALIFORNIA DEPARTMENT OF PUBLIC WORKS.

CITY OF MALIBU

CABANA REMODEL/BLUFF RESTORATION

33528 PACIFIC COAST HWY

SHEET 2 OF 2

DATE: 11/11/19

BY: [Signature]

APPROVED IN CONCEPT

DATE: 11/11/19

BY: [Signature]

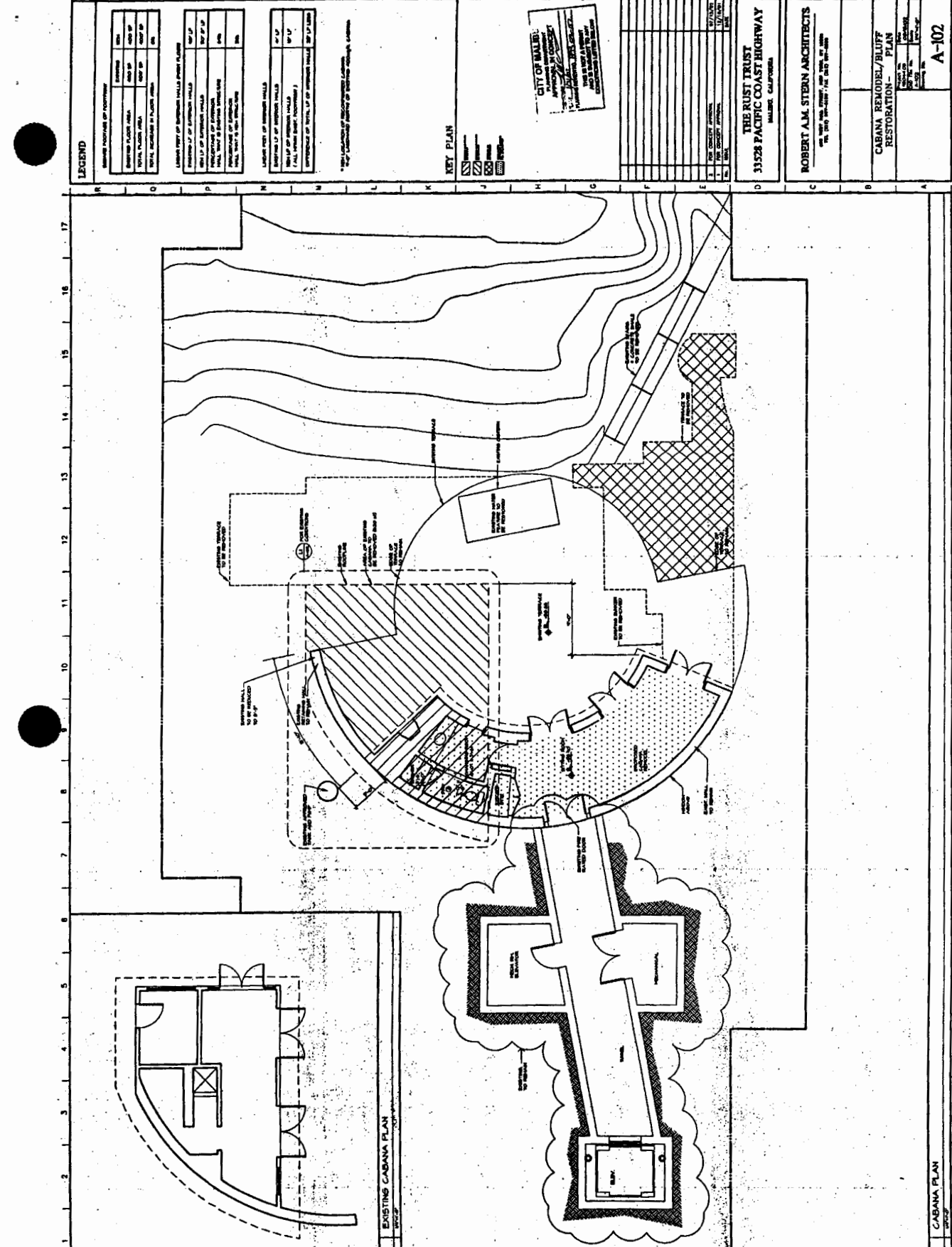
THIS IS SUBJECT TO ANY CHANGES LISTED BELOW

EXHIBIT NO. 3

APPLICATION NO.

4-97-103-A2

SITE PLAN



LEGEND

SHADE FOOTINGS OF FOOTINGS	
EXISTING	NEW
EXISTING	NEW
EXISTING	NEW
EXISTING	NEW

LIMITS OF EXISTING WALLS	
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EXISTING	NEW
EXISTING	NEW
EXISTING	NEW

LIMITS OF EXISTING WALLS	
EXISTING	NEW
EXISTING	NEW
EXISTING	NEW
EXISTING	NEW

KEY PLAN

CITY OF MALIBU	
APPROVED	APPROVED
APPROVED	APPROVED
APPROVED	APPROVED

THE RUST TRUST	
33528 PACIFIC COAST HIGHWAY	
MALIBU, CALIFORNIA	
ROBERT A.M. STERN ARCHITECTS	
1500 W. 10TH STREET, SUITE 200, LOS ANGELES, CALIF. 90024	
TEL: 213/981-1111 FAX: 213/981-1111	
CABANA REMODEL/BLUFF RESTORATION - PLAN	
DATE: 11/18/94	SCALE: AS SHOWN
DRAWN BY: J.M.S.	CHECKED BY: R.A.S.
PROJECT NO. 4-97-103-A2	SHEET NO. A-102

EXHIBIT NO. 4
APPLICATION NO.
4-97-103-A2
CABANA PLAN

3 4 5 6 7 8 9 10 11 12 13 14 15 16 17

LEGEND

CITY OF MA
PLANNING DEPARTMENT
APPROVED FOR CONCEPT APPROVAL
DATE: 12/15/03
PROJECT NO.: 03-22-03

THIS IS NOT A PERMIT
AND NOT A GUARANTEE OF
COMPLETION OF WORK

KEY PLAN

1	CONCEPT APPROVAL	07/14/03
2	FOR CONCEPT APPROVAL	07/14/03
3	DATE	
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THE RUST TRUST
33528 PACIFIC COAST HIGHWAY
MALIBU, CALIFORNIA

ROBERT A.M. STERN ARCHITECTS
1500 WEST WASHINGTON STREET, SUITE 200
LOS ANGELES, CALIFORNIA 90025
TEL: 310-441-0300 FAX: 310-441-0301

CABANA: REMODEL / BLUFF
RESTORATION - ELEVATION

DATE: 12/15/03
PROJECT NO.: 03-22-03

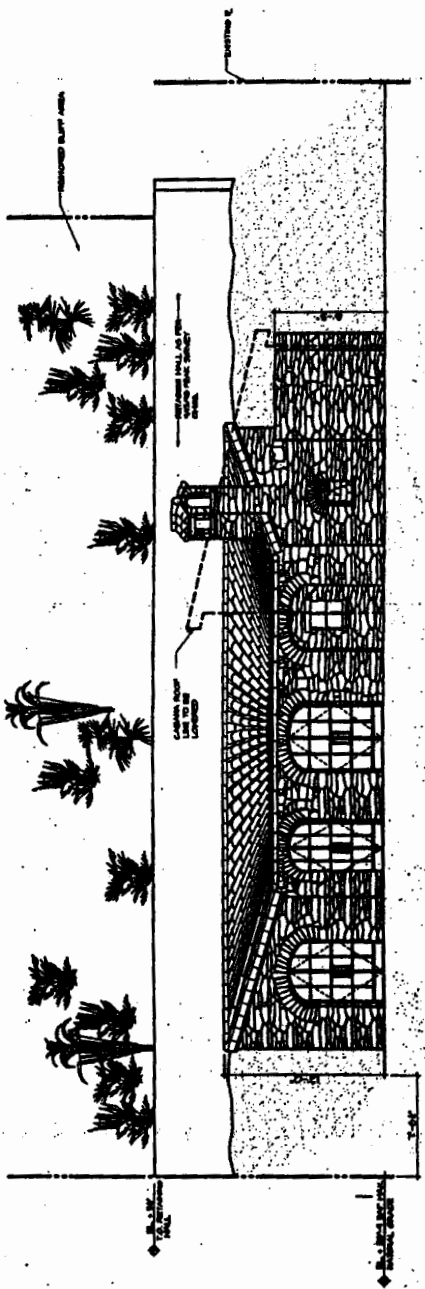


EXHIBIT NO. 5
APPLICATION NO.
4-97-103-A2
SOUTH ELEVATION

R	N	M	L	K	J	H	G	F	E	D	C	B	A
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KEY PLAN

2	FOR CONCEPT APP
1	FOR CONCEPT APP
1	NO. DATE

THE 33528 PACIFIC INC.

ROBERT A.M.
PROF. ARCH. CALIF.
 No. 12647-80

CABANA RESTORA

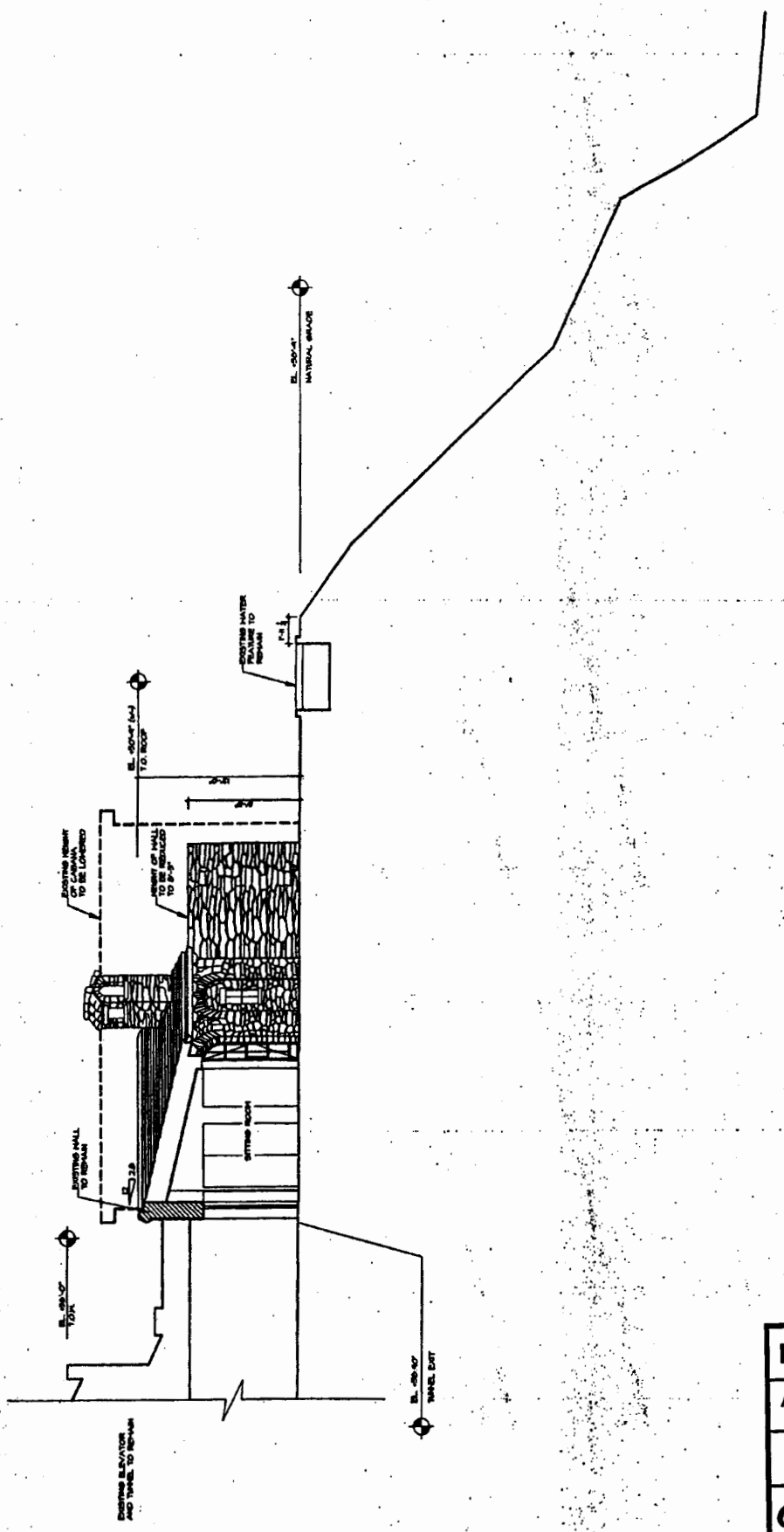
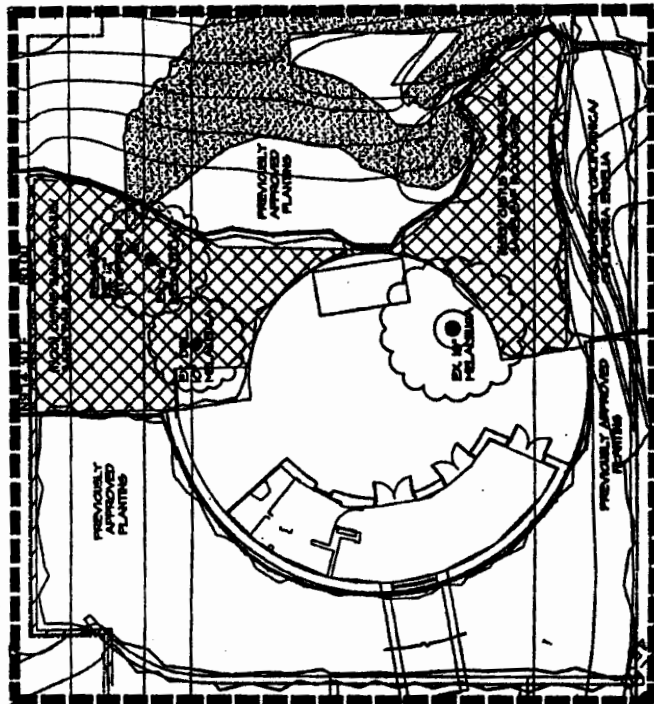


EXHIBIT NO. 6
APPLICATION NO.
4-97-103-A2
CABANA SECTION

LOT 2522 - GENERAL SITE PLAN



KEY

RESTORATION AREA
SEE CIVIL ENGINEER'S
CABANA RESTORATION PLAN

1) SLOPE AREA

PLANT LIST	BOTANICAL	CORRECTION NAME	SIZE	SPACING/DENSITY
CISTUS	SALVICOLLUM	ROCKROSE	NURSERY CONTAINER	1' O.C.
ENCZELIA	CALIFORNICA	ENCZELIA	NURSERY CONTAINER	1' O.C.
NURSERY CONTAINERS FOR NATIVE PLANTS TO BE SIZE AVAILABLE AT TIME OF PLANTING, I.E. HALF HIGH (6" TALL X 6" DIA), PLANT BAND (2' X 2' X 1 1/2')				

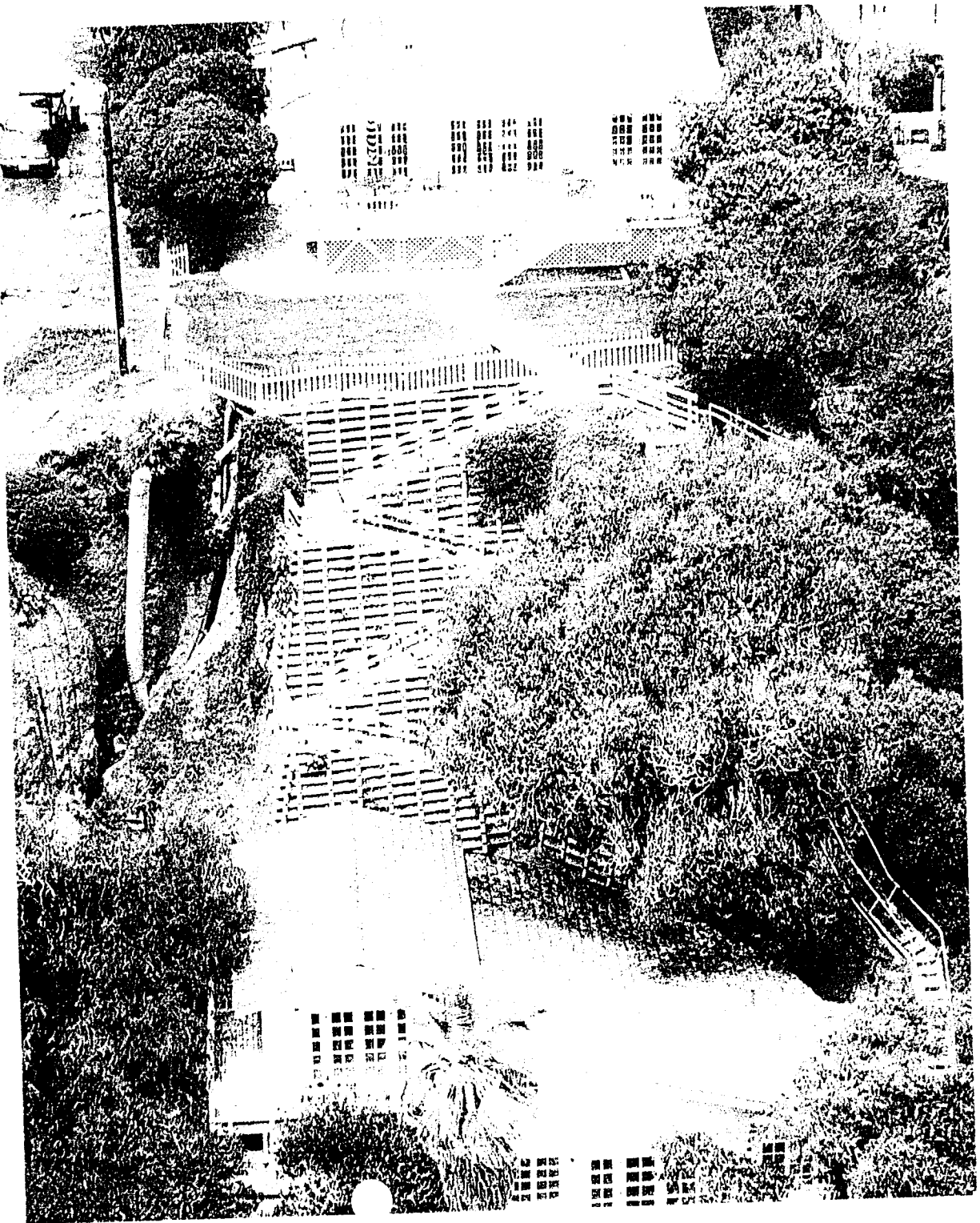
IRRIGATION
SHOULD BE DRIP IRRIGATION
DRIP LINES TO BE 24" O.C. MAX

NOTES

1. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION. REFER TO ARCHITECT'S PLANS OR ENGINEER'S PLANS FOR FINAL INFORMATION ON HALL LAYOUTS, HEIGHTS AND MATERIALS.
2. REFER TO CIVIL ENGINEER'S PLANS FOR GRADING INFORMATION.
3. SUBIRIGAS FOR IRRIGATION IS TO BE PROVIDED TO ALL PLANTERS AND PLANTED AREAS.
4. NO VINES ARE TO BE PLANTED ON STRUCTURES INCLUDING HALLS.
5. ALL REMAINING PALMS ARE TO BE SKINNED AND HAVE DEAD FRONDS REMOVED ANNUALLY BY JUNE 1.
6. NO HIGH INTENSITY LIGHTING OF THE SHORE SHALL BE PERMITTED.
7. NO INVASIVE PLANT SPECIES, AS DETERMINED BY THE CITY OF HALEHI HAVE BEEN USED.
8. VEGETATION PROVIDED FOR IN THE PLAN SHALL BE SITUATED ON THE PROPERTY SO AS NOT AT ANY TIME (GIVEN CONSIDERATION OF ITS FUTURE GROWTH) TO OBSTRUCT SIGNIFICANTLY THE PRIMARY VIEW FROM PRIVATE PROPERTY.
9. THE LANDSCAPE PLAN SHALL COMPLY WITH ALL SPECIAL CONDITIONS TO PRESERVE ARCHAEOLOGICAL RESOURCES.
10. THE USE OF BUILDING MATERIALS TREATED WITH TOXIC COMPOUNDS SUCH AS COPPER ARSENATE IS PROHIBITED.

CABANA DETAIL PLAN

EXHIBIT NO. 7
APPLICATION NO.
4-97-103-A2
RESTORATION PLAN



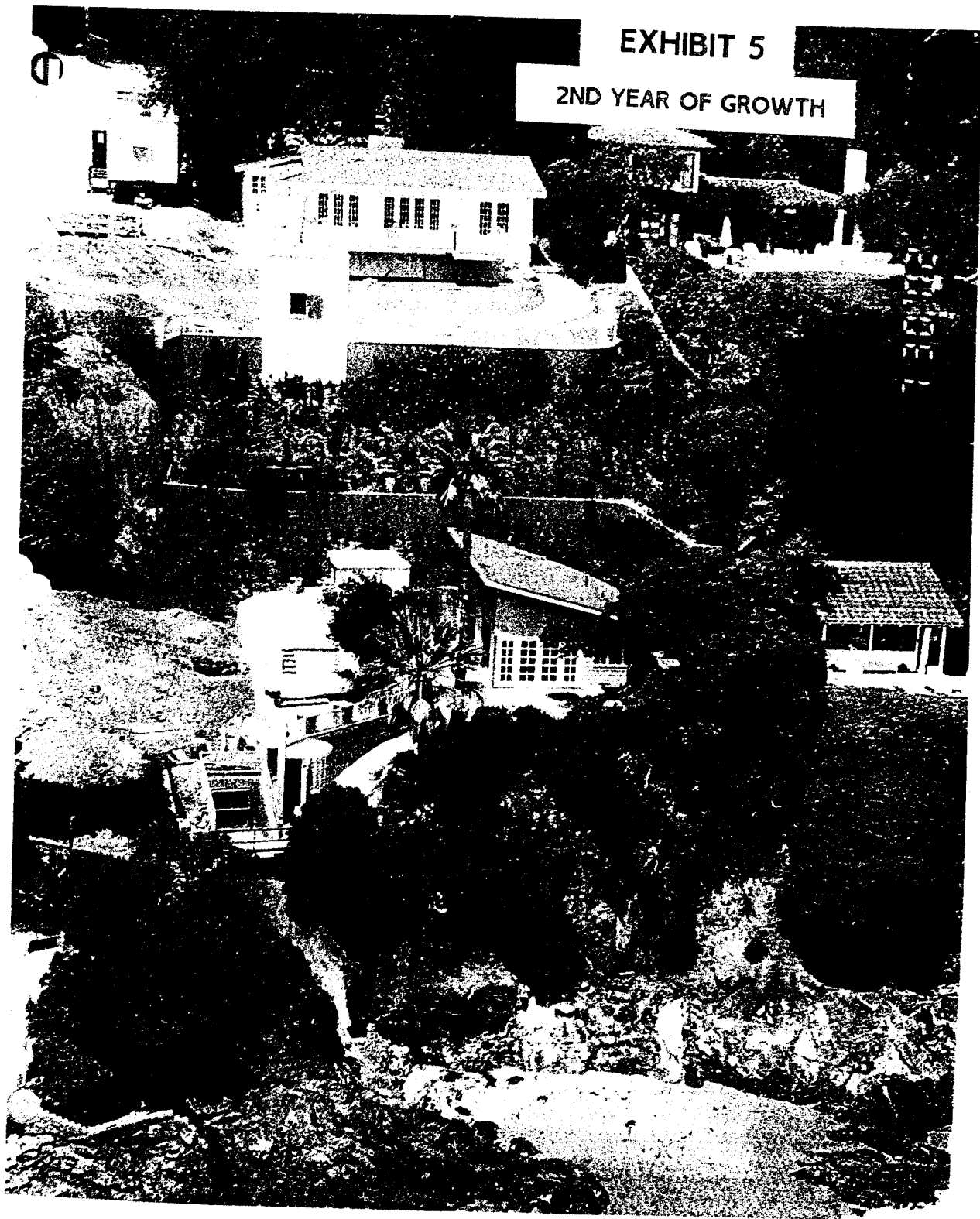
Project Site in 1998

EXHIBIT NO. 8

APPLICATION NO.

4-97-103-A2

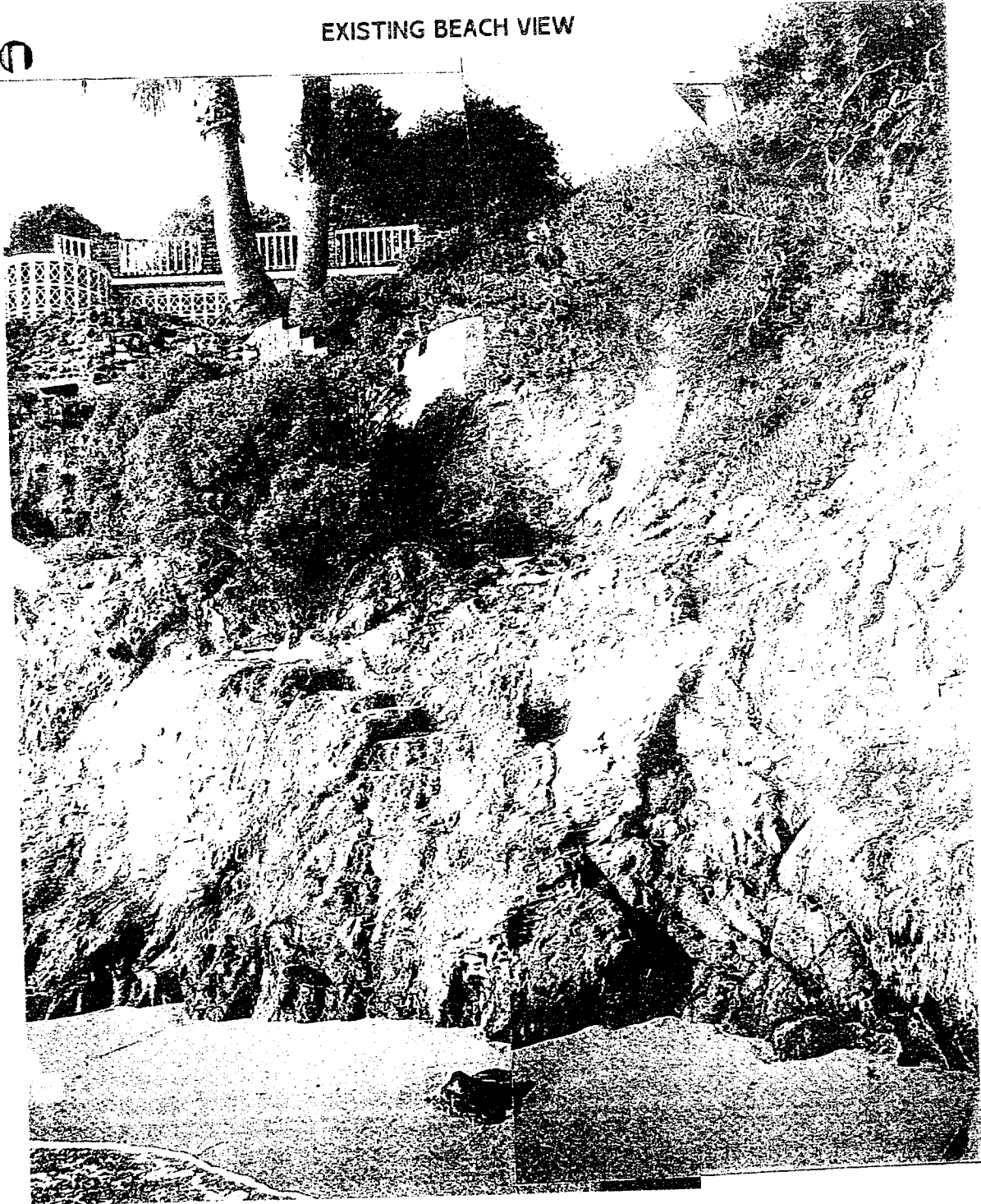
PHOTOS (3 PGS)



Project Site in 2002, showing existing development

EXHIBIT 6

EXISTING BEACH VIEW



Existing view from beach

CALIFORNIA COASTAL COMMISSION

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

Filed: 5/12/98
49th Day: 6/30/98
180th Day: 11/8/98
Staff: S. Hudson *ja*
Staff Report: 5/21/98
Hearing Date: June 9-12, 1998
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-97-103

APPLICANT: Irwin E. Russel, Trustee of The Rust Trust
AGENTS: Alan Block, Esq., Neal Jevyak, and A. Thomas Torres

PROJECT LOCATION: 33528 and 33550 Pacific Coast Highway, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: The construction of a new drainage system, a subterranean elevator shaft with interior stairway, a new sewage ejection pump system, two 6 ft. high retaining walls, 944 cu. yds. of grading (619 cu. yds. cut and 325 cu. yds. of fill) for bluff slope restoration, revegetation of the bluff slope and the removal of an unpermitted 30 ft. high crib wall on the bluff face, removal of two previously existing bluff face stairways and one unpermitted bluff face stairway, and the demolition and removal of 830 sq. ft. of unpermitted additions to an existing cabana/guest unit.

Lot area: 32,725 sq. ft.
Building coverage: 2,942 sq. ft.
Pavement coverage: 7,879 sq. ft.
Landscape coverage: 21,904 sq. ft.
Parking spaces: 4

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept, Approval in Concept City of Malibu Health Department (Septic), County of Los Angeles Fire Department Approval in Concept.

SUBSTANTIVE FILE DOCUMENTS: Structural Life of Buildings Report by Coastline Geotechnical Consultants dated 5/19/98; Preliminary Hydrology Study by Peak Surveys dated 5/98; Slope Stabilization Report by Coastline Geotechnical Consultants dated 1/21/97; Geologic and Geotechnical Letter by Coastline Geotechnical Consultants dated 9/20/96; Geotechnical Engineering Investigation Report by Coastline Geotechnical Consultants dated 5/21/96; Engineering Geologic Investigation Report by Pacific Geology Consultants dated 5/15/96.

EXHIBIT NO. 9
APPLICATION NO.
4-97-103-A2
STAFF REPORT 4-97-103

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project subject to eight special conditions listed on pages 5-7. The applicant is proposing to construct a new drainage system, a subterranean elevator shaft with interior stairway, a new sewage ejection pump system, two 6 ft. high retaining walls, 944 cu. yds. of grading (619 cu. yds. cut and 325 cu. yds. of fill) for bluff slope restoration, revegetation of the bluff slope and the removal of an unpermitted 30 ft. high crib wall on the bluff face, removal of two previously existing bluff face stairways and one unpermitted bluff face stairway, and the demolition and removal of 830 sq. ft. of unpermitted additions to an existing cabana/guest unit.

The subject site is a bluff top lot located in the western portion of Malibu between Pacific Coast Highway to the north and the Pacific Ocean to the south. All development is primarily located at 33528 Pacific Coast Highway with the exception of a portion of the two proposed 10 ft. high retaining walls, associated restorative slope grading, and a portion of the existing drainage system to be upgraded which will extend onto the neighboring parcel, which is also owned by the applicant, at 33550 Pacific Coast Highway. The bluff face where the proposed development is located is designated as an Environmentally Sensitive Habitat Area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan.

Although the site is not subject to substantial wave caused erosion due to the presence of basaltic rock located at the foot of the bluff, surface runoff and an inadequate drainage system constructed prior to the Coastal Act have resulted in significant erosion of the bluff slope and the creation of an approximately vertical 30 ft. high cliff between the top of the bluff and the cabana/guest unit located approximately midway down the bluff slope. Due to the history and potentially hazardous geologic conditions of this site, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by special conditions six (6) and seven (7).

Staff analysis of aerial photographs, in addition to signed declarations by a previous tenant of the cabana/guest unit and by an adjacent neighbor, indicate that an existing 300-400 sq. ft. cabana/guest unit was located on the bluff slope prior to the Coastal Zone Conservation Act of 1972. Access to the existing cabana/guest unit was provided by a gunite stairway/drainage swale located between the top of the bluff and the cabana/guest unit with a second stairway providing access from the cabana/guest unit to the beach. However, between 1975 and 1994, approximately 850 sq. ft. in additions to the cabana/guest unit, an approximately 30 ft. high cribwall, and a switchback stairway between the top of the bluff and the cabana/guest unit were constructed by the previous property owner without the required coastal development permits.

The applicant is proposing to remove all unpermitted structures (cribwall, switchback stairway, and approximately 830 sq. ft. of unpermitted additions to the existing cabana/guest unit), as well as the two existing pre-Coastal Act stairways (the gunite stairway/drainage swale which originally provided access from the top of the bluff to the cabana/guest unit and which has become unstable and the stairway leading from the cabana/guest unit to the sandy beach. In order to ensure that all unpermitted structures are removed as part of this project, special condition two (2) requires that the all unpermitted structures on site be removed

within 45 days of the issuance of this permit. Special condition five (5) has been required to ensure that any future additions or improvements to the cabana/guest unit will be reviewed by the Commission. In addition, the applicant is also proposing to conduct grading to restore the bluff slope to an approximation of its original pre-development topography, install a new drainage system, and to carry out a bluff slope revegetation plan. To ensure that the bluff restoration and revegetation plan is implemented as part of this project, special condition one (1) requires that the applicant implement the restoration plan within 90 days of the issuance of this permit. To ensure that all unpermitted development is removed in a timely manner, special condition eight (8) requires the applicant to satisfy all conditions of this permit which are prerequisite to the issuance of this permit with 45 days of Commission action.

The applicant is also proposing to construct an approximately 42 sq. ft. elevator shaft which would provide access from the bluff top to the cabana/guest unit pad located approximately midway down the bluff slope. The applicant is not proposing any elevator access to the beach. The elevator shaft will be the only method of access to the cabana/guest unit from the top of the bluff and will also contain a back-up generator and an interior spiral type staircase within the shaft. In addition, a second approximately 18 sq. ft. shaft, with no above ground structure, will be constructed adjacent to the elevator shaft which will house a 3 ft. diameter drainage pipe to replace the existing inadequate above grade 18 in. drainage pipe. The proposed elevator/drainage shafts will be located where the previously existing bluff has been completely eroded away and will not require any significant excavation in addition to the grading proposed as part of the slope restoration. After the installation of the elevator/drainage system is complete, the bluff slope will be reconstructed over the elevator/drainage shafts at a 2:1 (H:V) angle which will be more stable, natural looking, and conducive to the habitat value of the site than the current erosion caused vertical cliff. Access to the lower cabana/guest unit bluff pad from the elevator shaft will be by a tunnel entrance. The only visible component of the subterranean elevator will be the small 110 sq. ft. elevator house structure at the top of the bluff.

Although a new bluff face stairway would provide an alternative form of access to the existing cabana/guest unit, staff notes that, due to several unique site specific circumstances, a stairway located on top of the reconstructed slope would involve several switchbacks and would result in almost complete coverage of the slope by impermeable surface, approximately the same coverage as the unpermitted cribwall and stairway currently present on site. As such, for this particular site, the proposed elevator is the preferred alternative form of access. Special condition three (3) has been required to ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into the project plans. In order to ensure that the new drainage system functions properly and is repaired should the drainage system fail in the future, special condition four (4) requires that the applicant/landowner agree to be responsible for any repairs to the drainage system, as well as for restoration of the eroded areas, should the structures fail.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

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

III. Special Conditions.

1. Revised Bluff Restoration and Revegetation Plan

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised detailed bluff restoration and revegetation plan prepared by a qualified Landscape Architect, resource specialist or biologist. The applicant shall also submit evidence to the satisfaction of the Executive Director that the revegetation and irrigation plan, including the amount of water to be delivered to the bluff surface, has been reviewed and found consistent with the geologic engineering consultant's recommendations to ensure slope stability. The applicant shall implement the restoration and revegetation measures in accordance with the approved bluff restoration and revegetation plan. The plans shall include, but not be limited to, the following criteria:

(a) Provisions and specifications for removal of all non-native plants; the unpermitted crib wall, stairway, and cabana/guest unit additions within the timeline specified in special condition two (2) below.

(b) A bluff revegetation program which utilizes only native drought resistant plants, endemic to coastal bluffs. The revegetation program shall use a mixture of seeds and container plants to increase the potential for successful revegetation. No hydroseeding shall occur in areas of the bluff where native plant material is already established. A temporary irrigation system may be used until the plants are established, as determined by the consulting landscape architect or resource specialist, but in no case shall the irrigation system be in place longer than five (5) years. Disturbed slopes shall be planted within 30 days of disturbance to minimize erosion and bluff instability.

(c) Native plant species endemic to coastal bluffs which will grow to sufficient height to screen and soften visual impacts of the proposed development.

(d) The bluff restoration plan shall be implemented within 180 days of the issuance of this permit. The applicant may request an extension of time in order for revegetation to coincide with the 1998-1999 rain season. The initial planting shall be completed by March 1, 1999. Revegetation shall provide 90 percent coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. This time period may be extended by the Executive Director for good cause.

(e) The applicant shall implement the previously submitted five year monitoring and maintenance program as outlined by SDSU Soil, Ecology and Restoration Group dated March 17, 1997, to ensure the successful revegetation of the bluff. The applicant shall submit, for the review and approval of the Executive Director, written annual reports prepared by a landscaping architect or resource specialist, beginning after the first year following implementation of the restoration program and include recommendations for mid-program corrections, if necessary. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as

supplemental irrigation. At the end of the five (5) year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the performance standards outlined in the monitoring program, the applicant shall be required to submit a revised or supplemental program to remedy for those portions of the original program which were not successful. The revised or supplemental restoration program shall be processed as an amendment to the original coastal development permit.

2. Removal of All Unpermitted Structures

The applicant shall remove all unpermitted portions of the cabana/guest unit (approximately 830 sq. ft. including the entire second floor), cribwall, and switchback stairway within 45 days of the issuance of the permit. The resultant cabana/guest unit structure shall be no more than one story in height and no greater than 400 sq. ft. in total structural size as shown on Exhibit 5. This time period may be extended by the Executive Director for good cause.

3. Plans Conforming to Geologic Recommendation

All recommendations contained in both the Engineering Geologic Investigation by Pacific Geology dated 5/15/96 and the Geotechnical Engineering Investigation Report by Coastline Geotechnical Consultants dated 5/21/96 shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by the consultants as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes 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.

4. Drainage Structure Maintenance Responsibility

With acceptance of this permit, the applicant agrees that should the project's drainage structures fail or result in erosion of the bluff, the applicant shall be responsible for any necessary repairs and restoration.

5. Future Improvements

Prior to the issuance of a coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that any future structures, additions, or improvements related to the cabana/guest unit, approved under coastal development permit number 4-97-103, will require a permit or permit amendment from the Coastal Commission or from the appropriate local government with a certified Local Coastal Program. 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. Assumption of Risk

Prior to permit issuance, applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: (a) the applicant understands that the site may be subject to extraordinary hazard from landsliding and erosion, and the applicant assumes the risk from such hazards; and (b) the applicant unconditionally waives any claim of liability against the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees relative to the California Coastal Commission's approval of the project for any damage from such hazards. 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.

7. 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.

8. Condition Compliance

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the construction of a new drainage system, a subterranean elevator shaft with interior stairway, a new sewage ejection pump system, two 6 ft. high retaining walls, 944 cu. yds. of grading (619 cu. yds. cut and 325 cu. yds. of fill) for bluff slope restoration, revegetation of the bluff slope and the removal of an unpermitted 30 ft. high crib wall on the bluff face, removal of two previously existing bluff face stairways and one unpermitted bluff face stairway, and the demolition (Exhibit 3) and removal of 830 sq. ft. of unpermitted additions to the existing cabana/guest unit (Exhibit 5).

The subject site is a 32,725 sq. ft. bluff top lot located in the western portion of Malibu between Pacific Coast Highway to the north and the Pacific Ocean to the south. All development is primarily located at 33528 Pacific Coast Highway with the exception of the existing inadequate drainage system outlet to be replaced with a larger outlet located on the neighboring parcel at 33550 Pacific Coast Highway, which is also owned by the applicant, in order to utilize the natural basaltic rock outcropping located on that lot as a natural velocity reducer/outlet for the drainage system. Bluff slopes in the surrounding area generally descend at an average angle of 40 degrees to the beach; however, the subject site has experienced severe bluff erosion and the bluff slope descends for approximately 30 ft in elevation at a near vertical angle from the level pad for the existing single family residence located on the top of the bluff to the level pad for the existing cabana/guest unit located midway down the bluff slope. Finally, the slope continues to descend to the south approximately 30 ft. in elevation from the bluff cabana/guest unit pad to the beach at an average angle of 40 degrees. The proposed project is located on a bluff face which is designated as an environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan. In addition, offshore kelp beds, also designated as ESHA, are located along this portion of coast. The properties on either side of the subject site have been developed with single family residences.

Due to geologic structure and soil composition, the bluff face on site is susceptible to potential surficial failure. Erosion and soil slippage has been documented on the bluff slope. These effects are expected to continue so long as the unpermitted structures remain on the bluff slope. In addition, surface runoff and an inadequate drainage system constructed prior to the Coastal Act have resulted in significant erosion of the bluff slope and the creation of an approximately vertical 30 ft. high cliff between the top of the bluff and the cabana/guest unit located approximately midway down the bluff slope.

Staff analysis of aerial photographs, in addition to signed declarations by a previous tenant of the cabana/guest unit and by an adjacent neighbor, indicate that an existing 300-400 sq. ft. cabana/guest unit was located on the bluff slope prior to the Coastal Zone Conservation Act of 1972. Access to the existing cabana/guest unit was provided by a

gunitite stairway/drainage swale located between the top of the bluff and the cabana/guest unit with a second stairway providing access from the cabana/guest unit to the beach. However, between 1975 and 1994, approximately 850 sq. ft. in additions to the cabana/guest unit, an approximately 30 ft. high cribwall, and a switchback stairway between the top of the bluff and the cabana/guest unit were constructed by the previous property owner without the required coastal development permits. In addition, the applicant has supplied no evidence that any local approval or permit from the County of Los Angeles was originally issued for the proposed developments at the time of construction.

B. Blufftop Development/Geologic Stability

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

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

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

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

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 seven (7).

In addition, Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. Coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The bluffs along this section of the coast are not subject to substantial erosion from wave action due to the presence of 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 by Pacific Geology 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.

In addition, the Commission notes that development on steep bluffs serves to exacerbate the natural processes of erosion. Erosion rates are greater when structures are built on the bluff face. Rain water running off such structures over time tends to undercut and erode the area of the bluff immediately down slope of the structure. Additionally, the loss of vegetation through the altering of the natural landforms would increase the erosion potential. This process is occurring on site and will continue to occur as long the unpermitted structures remain in place on the bluff face.

The Slope Stabilization Report by Coastline Geotechnical Consultants dated September 20, 1996, also states that:

Further deterioration of the cribwall system is to be expected, and remedial measures must be taken before considering options for upgrading the property...Failure of the wall would jeopardize the guest house [cabana/guest unit], and could impact the main house...The cribwall was calculated to have a factor of safety of 1.26, as reported by this firm on May 21, 1996. Preliminary stability calculations of a plan for two retaining walls, each about six (6) feet in height, with a 2 to 1 (horizontal to vertical) between the walls, indicate the factor of safety against sliding would be above 1.5

Further, the Geotechnical Engineering Investigation Report by Coastline Geotechnical Consultants dated may 21, 1996, also states that:

The factor of safety for the fill slope is less than the normally accepted minimum for stable slopes. Hence, it is recommended that the existing cribwall and fill be removed and replaced by new retaining wall(s) and/or regraded slope(s).

The removal of the unpermitted 30 ft. high cribwall and switchback stairway in conjunction with the proposed restorative grading and construction of the two smaller 6 ft. high retaining walls will serve to restore the topography of the bluff between the upper residence pad and the lower bluff cabana/guest unit pad to an approximation of its pre-development state and minimize potential erosion while maintaining adequate protection

for the existing cabana/guest unit and the existing blufftop single family residence. In addition, the applicant also proposes to remove a second gunite stairway/drainage swale which has become unstable (located between the top of the bluff and the cabana/guest unit), as well as a third stairway (located between the cabana/guest unit and the beach), both of which have existed on site prior to the passage of the Coastal Act and the Coastal Zone Conservation Act.

Section 30235 of the Coastal Act allows for the construction of cliff retaining walls only when necessary to protect existing development. The Commission notes that the bluff slope on the subject site is prone to surficial instability. In the case of the proposed project, the construction of the two proposed 6 ft. high retaining walls, in conjunction with the proposed restorative grading and removal of the unpermitted bluff development, will serve to minimize onsite erosion and to protect the existing single family residence and cabana/second residential unit from damage and surficial slope failure. To ensure that the bluff restoration and revegetation plan is implemented as part of this project in a timely manner, special condition one (1) requires that the applicant implement the restoration plan within 180 days of the issuance of this permit. Further, special condition two (2) requires that the applicant remove all unpermitted structures on site, including the crib wall, switchback stairway, and all unpermitted additions to the cabana/guest unit within 45 days of the issuance of this permit.

The applicant is also proposing to construct an approximately 42 sq. ft. elevator shaft which would provide access from the bluff top to the cabana/guest unit pad located approximately midway down the bluff slope. The applicant is not proposing any elevator access to the beach. The elevator shaft will be the only method of access to the cabana/guest unit from the top of the bluff and will also contain a back-up generator and an interior spiral type staircase within the shaft. In addition, a second approximately 18 sq. ft. shaft, with no above grade components, will be constructed adjacent to the elevator shaft which will house a 3 ft. diameter drainage pipe to replace the existing inadequate above grade 18 in. drainage pipe. As discussed in detail above, coastal bluffs are characteristically unstable and are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. In past permit actions, the Commission has not ordinarily allowed for any new development, including the construction of elevator systems, on bluff slopes. However, the proposed project is unique for several site specific reasons.

Staff notes that unlike most coastal bluffs, the subject site is not subject to substantial erosion from wave action due to the presence of exposed volcanic rock at the base of the bluffs. The primary cause of bluff erosion on site is from drainage over the face of the bluff and the inadequate existing pre-Coastal Act drainage system which receives water from several different properties (including parcels located on the north side of Pacific Coast Highway, as well as Pacific Coast Highway itself) and which have resulted in significant erosion of the bluff slope and the creation of an approximately vertical 30 ft. high cliff between the top of the bluff and the cabana/guest unit located approximately midway down the bluff slope. The proposed project will serve to improve the existing and inadequate pre-Coastal Act drainage system and minimize future erosion of the bluff

slope through the replacement of the existing 18 in. drainage pipes with larger 3 ft. diameter pipes to be located below grade. The applicant has submitted hydrologic flow rate calculations prepared by a licensed engineer indicating that the new 3 ft. diameter pipes, located below grade, will provide adequate drainage. Staff notes that the proposed elevator/drainage shafts are located where the previously existing bluff has been completely eroded away. As such, no substantial grading or excavation will be necessary for the installation of the subterranean elevator or drainage shafts. After the installation of the elevator/drainage system is complete, the bluff slope will be reconstructed over the elevator/drainage shafts at a 2:1 (H:V) angle which will be more stable, natural looking, and conducive to the habitat value of the site than the current erosion caused vertical cliff. All portions of the elevator/drainage system will be below grade with the exception of the small 110 sq. ft. elevator house at the top of the bluff. Access to the lower cabana/guest unit bluff pad from the elevator shaft will be by a tunnel entrance.

In addition, the applicant has submitted a drainage plan and Hydrologic Study prepared by Peak Surveys which has been designed to minimize run-off and erosion of the bluff slope. As previously discussed, the existing drainage system is inadequate to handle the current capacity of runoff. The proposed drainage plan will include replacement of the existing system with larger pipes to be integrated as part of the proposed subterranean elevator shaft. The system will outlet onto the neighboring parcel at 33550 Pacific Coast Highway, which is also owned by the applicant, in order to utilize the natural basaltic rock outcropping located on that lot as a natural velocity reducer/outlet. Staff notes that the utilization of the natural basaltic outcropping as a velocity reducer/outlet for the proposed drainage system, rather than a constructed outlet with wing walls and rip rap velocity reducer, will serve to both minimize erosion, as well as adverse impacts to visual resources. In order to ensure that the new drainage system functions properly and is repaired should the drainage system fail in the future, special condition four (4) requires that the applicant/landowner agree to be responsible for any repairs to the drainage system, as well as for restoration of the eroded areas, should the structures fail. Therefore, as conditioned, the Commission finds that the proposed development is consistent with Section 30253 of the Coastal Act.

The alternative form of access from the top of the bluff to the cabana/guest unit on the bluff slope would involve the replacement of the existing destabilized pre-Coastal Zone Management Act stairway with a new stairway. In certain past permit actions, the Commission has allowed the replacement of existing stairways in kind and in the same locations on bluff slopes. However, in the case of the subject site, due to unique site specific circumstances, the construction of a replacement stairway on the bluff face (in conformance with current safety standards) would result in substantial adverse effects to the restored bluff slope. Due to the short distance between the existing upper pad area and the existing lower pad area (a change in elevation of approximately 30 ft. in a distance of 25 ft.) in order to meet current safety requirements, a stairway constructed on top of the reconstructed slope would involve several switchbacks and would result in almost complete coverage of the slope by impermeable material, approximately the same coverage as the unpermitted cribwall and stairway currently present on site.

Construction of the proposed elevator, however, will not result in the addition of any impermeable surface to the slope or any substantial excavation of the bluff slope. Due to unique site specific factual circumstances, staff notes that the construction of the subterranean elevator system will result in less adverse impacts to the bluff slope than either retaining the existing cribwall and stairway or the construction of a new above grade stairway on the reconstructed slope.

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property. To assist in the determination of whether a project is consistent with section 30253 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. Due to the geologic instability of bluffs and their continuing role in the ecosystem, the certified LUP contains a number of policies regarding development on or near coastal bluffs. For instance, Policy 164, in concert with the Coastal Act, provides that new development shall be set back a minimum of 25 ft. from the seaward edge of the top of the bluff or a stringline drawn between the nearest corners of the adjacent structures, *whichever distance is greater*, but in no case less than would allow for a 75-year useful life for the structure. Policy 165, in concert with the Coastal Act, provides that no new permanent structures be permitted on a bluff face.

In the case of the proposed project, no new structures are proposed on the bluff face with the exception of the two 6 ft. retaining walls which are required to protect the existing residence and cabana/guest unit. In addition, the project also includes the removal of all unpermitted development and pre-Coastal Act development on the bluff face between the upper and lower pads. Coastline Geotechnical Consultants have stated in Structural Life of Buildings Report dated May 19, 1998 that:

...based upon current knowledge of the property and past history, there is no reason to believe there should be any major change in the conditions of the slope or ground between the two buildings over 75 years if the crib walls and loose fills are removed, the two pile supported walls are constructed, and the slope is rebuilt with properly compacted fill...provided the recommendations of this report are followed, and the designs, grading, and construction are properly and adequately executed, it is our opinion that the construction within the building site would not be subject to geotechnical hazards from landslides, slippage, or excessive settlement

Further, the construction of the elevator shaft and 110 sq. ft. elevator building will serve to replace the pre-Coastal Act stairway which provided access from the top of the bluff to the lower pad. The Commission notes that the 110 sq. ft. elevator shaft building, which would be located within 25 ft. from the seaward edge of the top of the bluff, is a unique structure to be used for access purposes only as a replacement for the current existing stairway and will not in anyway affect any future structural or deck stringline measurements.

In addition, the geologic and geotechnical engineering consultants have included a number of geotechnical recommendations which will increase the stability and geotechnical safety of the site. To ensure that the recommendations of the geologic and geotechnical engineering consultants are incorporated into the project plans, the Commission finds that it is necessary to require the applicant, as specified by special condition three (3), to submit project plans certified by the consulting geologic and geotechnical engineering consultants as conforming to their recommendations.

Due to the history and potential hazardous geologic conditions of this particular site, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by special condition six (6). 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 and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

It should be noted that an assumption of risk deed restriction for hazardous geologic conditions 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 required such deed restrictions for other development throughout the Malibu/Santa Monica Mountains region.

As such, the proposed project will serve to improve the existing and inadequate pre-Coastal Act drainage system, restore the bluff slope to an approximation of its pre-development topography, and minimize the potential for future erosion of the bluff slope. In addition, due to unique site specific factual circumstances, the construction of the subterranean elevator system will result in less adverse impacts to the bluff slope than either retaining the existing bluff face development or the construction of a new above grade stairway. Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30253 and 30235 of the Coastal Act.

C. Environmentally Sensitive Habitat Areas and Visual Resources

Section **30230** of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 of the Coastal Acts states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.

Sections 30230 and 30231 require that the biological productivity and quality of coastal waters and the marine environment be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, and maintaining natural buffer areas. Further, Section 30251 of the Coastal Act requires that visual qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

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

areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. Section 30240 of the Coastal Act permits development in areas that have been designated as ESHAs only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value.

The bluff slope on the project site is designated as Environmentally Sensitive Habitat Area (ESHA) by the certified Malibu/Santa Monica Mountains Land Use Plan. The coastal bluffs west of Point Dume, including the project site, provide habitat for a relatively rare and restricted plant community (Southern Coastal Bluff Scrub). Although the bluff on the subject site has been substantially altered, these bluffs still provide nesting, feeding, and shelter sites for shore birds and remain an important part of the shoreline ecosystem. In addition, offshore kelp beds, also designated as ESHA, are located along this portion of coast.

As previously mentioned, the applicant is proposing the construction of a new drainage system, a subterranean elevator shaft with interior stairway, a new sewage ejection pump system, two 6 ft. high retaining walls, 944 cu. yds. of grading (619 cu. yds. cut and 325 cu. yds. of fill) for bluff slope restoration, revegetation of the bluff slope and the removal of an unpermitted 30 ft. high crib wall on the bluff face, removal of two previously existing bluff face stairways and one unpermitted bluff face stairway, and the demolition and removal of 830 sq. ft. of unpermitted additions to the existing cabana/guest unit.

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

The coastal bluffs in the subject area have historically supported southern coastal bluff scrub, a rare and very threatened plant community. In addition, the unpermitted development, planting of exotic and ornamental plant species on the bluff face and loss of habitat from significant erosion over the years has further displaced the naturally occurring native bluff scrub species and degraded the unique bluff habitat. The unpermitted existing development on the bluff face has resulted in the removal of vegetation, as well as nesting, feeding, and shelter habitat for shoreline animals. Impacts from the unpermitted development on the bluff face, if allowed to remain in

place, would result in cumulative impacts including the loss or change in the number and distribution of shoreline species.

In addition, Section 30240 permits development in areas that have been designated as ESHAs only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value. Such uses could include a fish ladder in a stream, a public trail in park land, or restoration which would serve to enhance or restore an ESHA. In this case, the bluff habitat has been severely degraded and the proposed project will serve to enhance and restore the degraded ESHA habitat. Surface runoff, an inadequate pre-Coastal Act drainage system, and unpermitted development including the construction of a 30 ft. high cribwall, stairway, and approximately 830 sq. ft. of additions to the cabana/guest unit have resulted in significant erosion of the bluff slope and the creation of an approximately vertical 30 ft. high cliff between the top of the bluff and the cabana/guest unit located midway down the bluff slope. The applicant is proposing to restore the slope to a more natural 2:1 (H:V) grade, remove all unpermitted structures on the bluff face, remove two additional pre-Coastal Act stairways, and conduct a bluff revegetation program which will serve to restore habitat value of the bluff slope. The bluff revegetation plan will include the removal of all non-native plants and unpermitted structures on site and subsequent revegetation of the bluff slope utilizing native drought resistant plants endemic to coastal bluffs in order to restore and enhance both the degraded ESHA and visual resources on site. As such, the Commission notes that the proposed restoration component of the development is compatible with Section 30240 of the Coastal Act. To ensure that the bluff restoration and revegetation plan is implemented as part of this project in a timely manner, special condition one (1) requires that the applicant implement the restoration plan within 180 days of the issuance of this permit. In addition, special condition one (1) also requires that the revegetation plan include a monitoring program for a period of five years to ensure successful revegetation. Further, special condition two (2) requires that the applicant remove all unpermitted structures on site, including the crib wall, switchback stairway, and all unpermitted additions to the cabana/guest unit within 45 days of the issuance of this permit.

As previously discussed, the existing drainage system is inadequate to handle the current capacity of runoff and has resulted in significant erosion of the bluff slope, the creation of a vertical cliff, and degradation to the aesthetic and ESHA values of the site. The proposed project includes the replacement of the existing system with larger pipes to be integrated as part of the proposed subterranean elevator shaft. The system will discharge onto the neighboring parcel at 33550 Pacific Coast Highway, which is also owned by the applicant, in order to utilize the natural basaltic rock outcropping located on that lot as a natural velocity reducer/outlet. Staff notes that the utilization of the natural basaltic outcropping as a velocity reducer/outlet for the proposed drainage system, rather than a constructed outlet with wing walls and rip rap velocity reducer, will serve to both minimize erosion, as well as adverse impacts to visual resources. The Commission notes that the proposed improvements to the existing drainage system will serve to reduce erosion and minimize impacts to the ESHA value of the site. In order to

ensure that the new drainage system functions properly and is repaired should the drainage system fail in the future, special condition four (4) requires that the applicant agree to be responsible for any repairs to the drainage system, as well as for restoration of the eroded areas, should the structures fail.

As previously discussed in detail, the applicant is also proposing to construct an approximately 42 sq. ft. elevator shaft which would provide access from the bluff top to the cabana/guest unit pad located approximately midway down the bluff slope. The applicant is not proposing any elevator access to the beach. In addition, a second approximately 18 sq. ft. shaft, with no above ground structure, will be constructed adjacent to the elevator shaft which will house a 3 ft. diameter drainage pipe to replace the existing inadequate above grade 18 in. drainage pipe. The proposed elevator/drainage shafts will be located where the previously existing bluff has been completely eroded away and will not require any significant excavation in addition to the grading proposed as part of the slope restoration. After the installation of the elevator/drainage system is complete, the bluff slope will be reconstructed over the elevator/drainage shafts at a 2:1 (H:V) angle which will be more stable, natural looking, and conducive to the habitat value of the site than the current erosion caused vertical cliff. Access to the lower cabana/guest unit bluff pad from the elevator shaft will be by a tunnel entrance. The only visible component of the subterranean elevator will be the small 110 sq. ft. elevator house structure at the top of the bluff.

Although a new bluff face stairway would provide an alternative form of access to the existing cabana/guest unit, staff notes that, due to several unique site specific circumstances, a stairway located on top of the reconstructed slope would involve several switchbacks and would result in almost complete coverage of the slope and a significant reduction in the area of bluff slope habitat which could be restored. Thus, for this particular site, the proposed elevator is the preferred alternative form of access.

In addition, although the degraded bluff face and unpermitted development currently on site are not visible from the public areas of the sandy beach due to the geomorphology of the bluff slope, this portion of the bluff face is visible to recreational watercraft on the ocean. The project includes the removal of all unpermitted development and the restoration and revegetation of the bluff slope. The replacement of the 30 ft. high unpermitted cribwall with two smaller 6 ft. high retaining walls in conjunction with restorative grading and a revegetation plan will serve to improve the aesthetic value of the project site. In addition, due to the unique factual circumstances of the project site, the construction of a subterranean elevator from the bluff face cabana/guest unit pad to the top of the bluff will not significantly impact public views or result in increased landform alteration since little or no grading in addition to that required for the slope restoration will be required. The only visible component of the subterranean elevator will be the small 110 sq. ft. elevator house structure at the top of the bluff. Special condition one (1) requires that the bluff revegetation plan incorporate vertical elements such as trees in order to screen and soften any visual impacts resulting from the elevator house or retaining walls. In addition, due to the unique nature of the site, staff notes that the elevator house will result in fewer adverse impacts to visual resources than the

construction of an above grade switchback style stairway which would occupy a substantial portion of the bluff face in order to conform to safety standards. Thus, the proposed project is consistent with Section 30251 of the Coastal Act as it will serve to minimize landform alteration, as well as to restore and enhance visual resources in a degraded area.

As such, the Commission notes that the proposed project will serve to improve the existing and inadequate pre-Coastal Act drainage system, restore and enhance the degraded habitat and visual resources value of the site, minimize erosion, as well as potential impacts to the offshore kelp bed ESHA from increased sedimentation resulting from onsite erosion. Therefore, for the reasons discussed above, the Commission finds that the proposed project is consistent with Sections 30230, 302321, 30240 or 20251 of the Coastal Act.

D. Second Residential Units

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

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30252 of the Coastal Act states:

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

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

location and amount of new development maintaining and enhancing public access to the coast.

Based on these policies, the Commission has limited the development of second dwelling units (the guest house) on residential parcels in the Malibu and Santa Monica Mountain areas. In addition, the issue of second units on lots with primary residences has been the subject of past Commission action in the certifying the Malibu Land Use Plan (LUP). In its review and action on the Malibu LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft.) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that the small size of units (750 sq. ft.) and the fact that they are likely to be occupied by one or at most two people, such units would have less impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints such as water, sewage, electricity) than an ordinary single family residence. (certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29 and P.C.H. (ACR), 12/83 page V-1 - VI-1).

The second unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different functions which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, and farm labor unit; and 2) a guesthouse, without separate kitchen facilities. Past Commission action has consistently found that both second units and guest houses inherently have the potential to cumulatively impact coastal resources. As such, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29).

Staff analysis of aerial photographs, in addition to signed declarations by a previous tenant of the cabana/guest unit and by an adjacent neighbor, indicate that an existing 300-400 sq. ft. cabana/guest unit was located on the bluff slope prior to the Coastal Zone Conservation Act of 1972. However, between 1975 and 1994, the existing cabana/guest unit was increased in size to a two-story, 1,230 sq. ft. structure by the previous property owner without the required coastal development permit. In addition, the applicant has supplied no evidence that any local approval or permit from the County of Los Angeles was originally issued for the proposed development at the time of construction or additions. Thus, the cabana/guest unit, as it currently exists on site, does not conform to the Commission's past actions allowing a maximum of 750 sq. ft. for a second dwelling unit in the Malibu area.

In addition, as previously noted in detail, the Commission, in past permit actions, has not typically allowed for new development on coastal bluff slopes or in environmentally sensitive habitat areas. The bluff slope on the project site is designated as Environmentally Sensitive Habitat Area (ESHA) by the certified Malibu/Santa Monica

Mountains Land Use Plan. As previously discussed, Section 30240 of the Coastal Act permits new development in areas that have been designated as ESHAs only when the location of the proposed development is dependent upon those habitat resources.

Further, as previously discussed, the Commission has looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance in past Malibu coastal development permit actions. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. Due to the geologic instability of bluffs and their continuing role in the ecosystem, the certified LUP contains a number of policies regarding development on or near coastal bluffs. For instance, Policy 164, in concert with the Coastal Act, provides that new development shall be set back a minimum of 25 ft. from the seaward edge of the top of the bluff or a stringline drawn between the nearest corners of the adjacent structures, *whichever distance is greater*, but in no case less than would allow for a 75-year useful life for the structure. Policy 165, in concert with the Coastal Act, provides that no new permanent structures be permitted on a bluff face.

As such, the additions to the previously existing 400 sq. ft. cabana/guest constitute new development on a bluff face, as well as within an ESHA, and, therefore, are not consistent with Section 30240 of the Coastal Act or past Commission action regarding development on bluff slopes. The applicant is proposing to remove all unpermitted additions and reduce the cabana/guest unit to its original pre-Coastal Act size of 400 sq. ft. The Commission notes that only if all unpermitted additions to the cabana/guest unit are removed and the structure is restored to its pre-Coastal Act size of 400 sq. ft. will the cabana/guest unit conform not only with the Commission's maximum limit of 750 sq. ft. for a second dwelling unit in the Malibu area but also with past Commission action regarding new development in ESHAs and bluff slopes. Therefore, in order to ensure that all unpermitted additions to the cabana/guest unit are removed and that the resultant structure shall be no greater than 400 sq. ft., special condition two (2) has been required. Further, staff notes that any additions or improvements to the reduced cabana/guest house would constitute new development on a bluff face and within an ESHA. In order to ensure that any additions or improvements that could further intensify the use of this guest unit or second residential unit, or would constitute new development on a bluff slope, will be reviewed by the Commission, special condition five (5) has been required. Therefore, the Commission finds that, as conditioned, the proposed development is consistent with Sections 30240, 30250 and 30252 of the Coastal Act.

E. Septic System

The Commission recognizes that the potential build-out of lots in Malibu and the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

At present, all effluent from the existing cabana/guest unit is disposed of through the use of the existing 750 gallon septic tank located on the bluff slope. The proposed development includes the installation of a new sewage ejection pump system in order to pump all effluent from the existing cabana/guest unit to the existing disposal pit and leach field for the single family residence (located on the northern portion of the site on the bluff top between the residence and Pacific Coast Highway) to provide for adequate sewage disposal. Staff notes that the proposed project would result in a significant improvement to the existing effluent disposal situation on site by eliminating effluent disposal on the bluff face. The applicant has submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

F. Violations

Various developments have been carried out by the previous property owner on the subject site without the required coastal development permits including the construction of an approximately 30 ft. high cribwall, switchback stairway, and the addition of approximately 830 sq. ft. (including the addition of a second floor) to the existing cabana/guest unit located on the bluff face. The applicant is now proposing to remove all unpermitted development and restore and revegetate the bluff face. To ensure that this violation is resolved in a timely manner, special condition eight (8) requires the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit with 45 days of Commission action on this application. In addition, special condition one (1) requires that the applicant implement the restoration plan within 180 days of the issuance of this permit. Further, special condition two (2) requires that the applicant remove all unpermitted structures on site, including the cribwall, switchback stairway, and the unpermitted additions to the cabana/guest unit structure within 45 days of the issuance of this permit.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver

of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

G. Local Coastal Program.

Section 30604 of the Coastal Act states that:

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

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

H. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission 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 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.

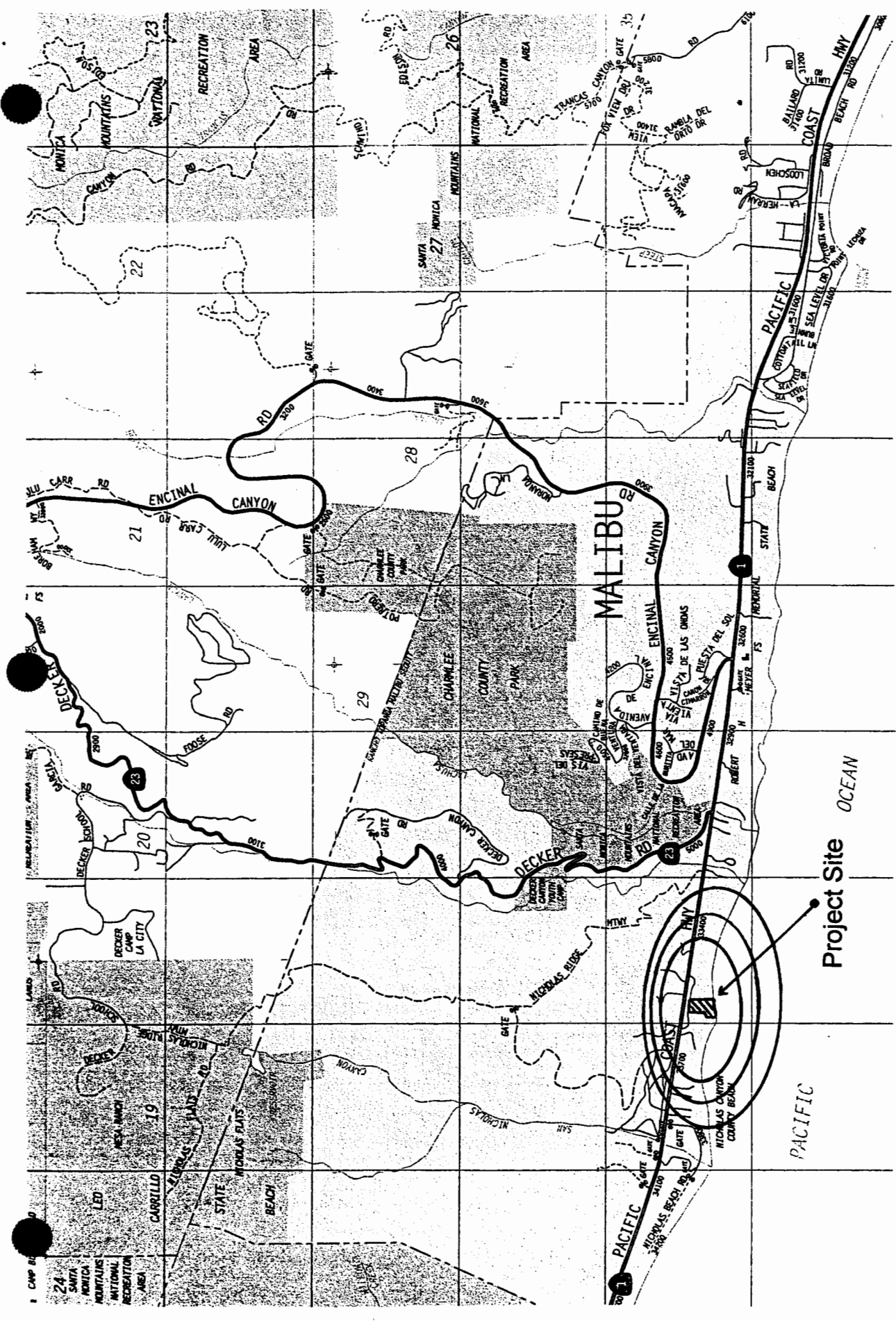


Exhibit No. 1: (4-97-103) Location Map

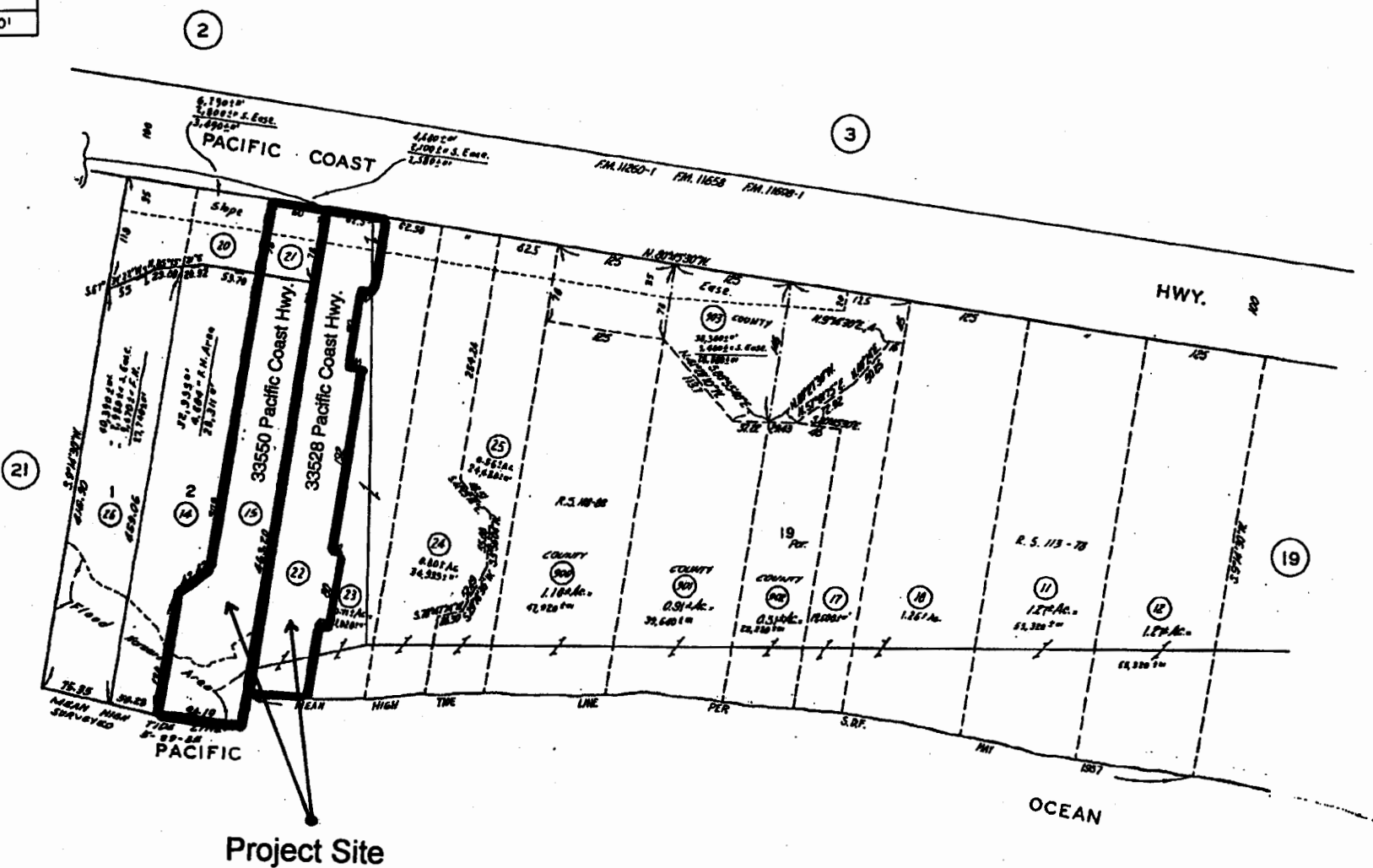


Exhibit No. 2: (4-97-103) Parcel Map

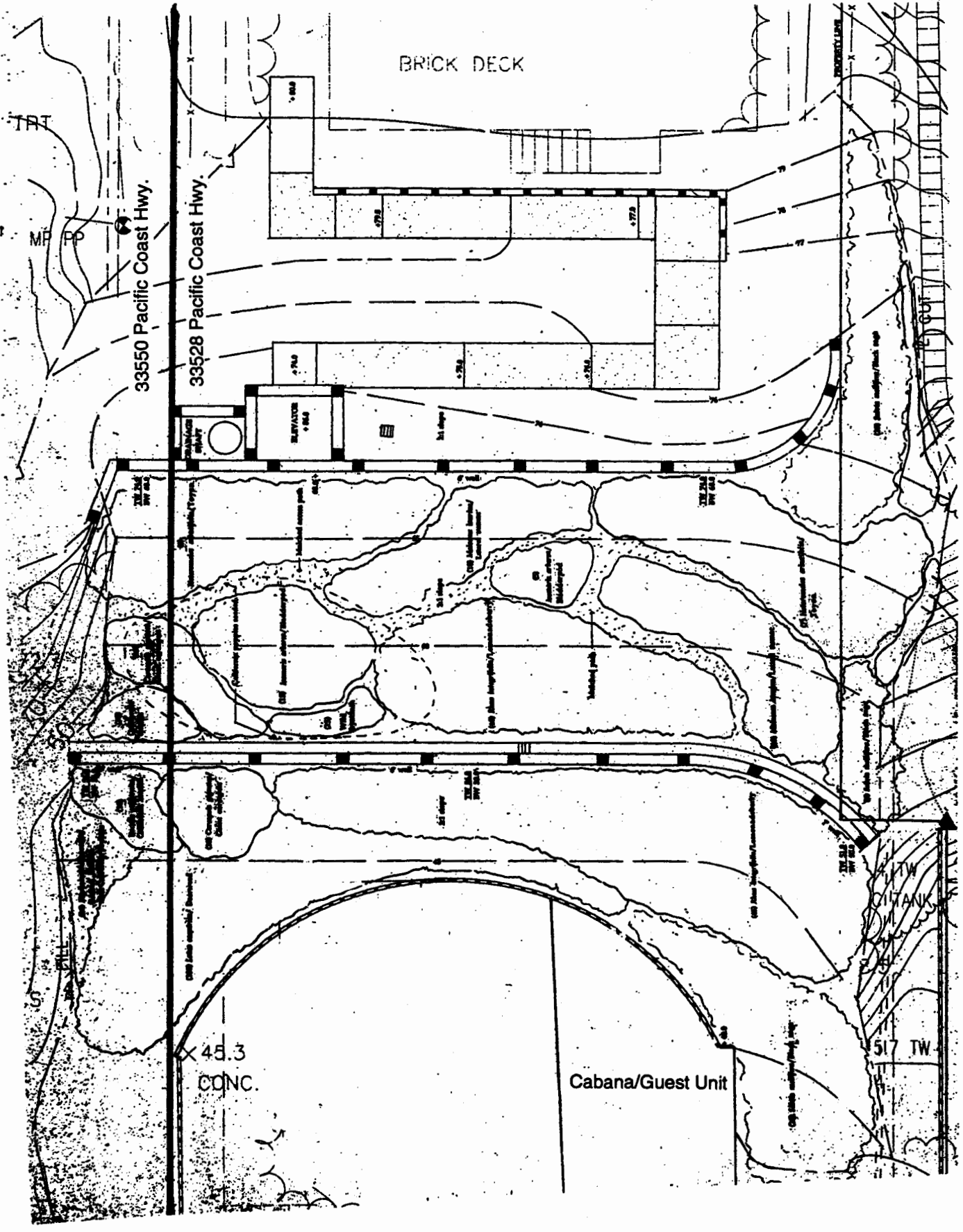
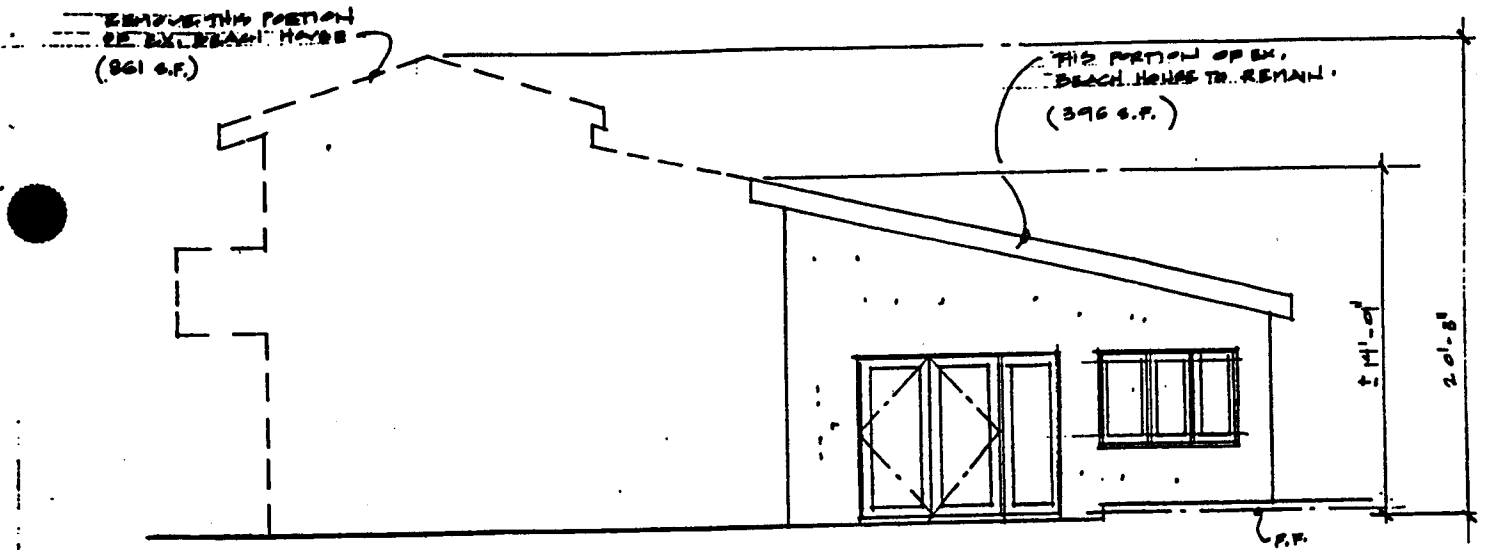


Exhibit No. 4: (4-97-103) Bluff Revegetation Plan



EXISTING BEACH HOUSE TO BE REDUCED IN SIZE - SOUTH ELEVATION

1/4" = 1'-0"
 33538 P.C.H. - MALIBU

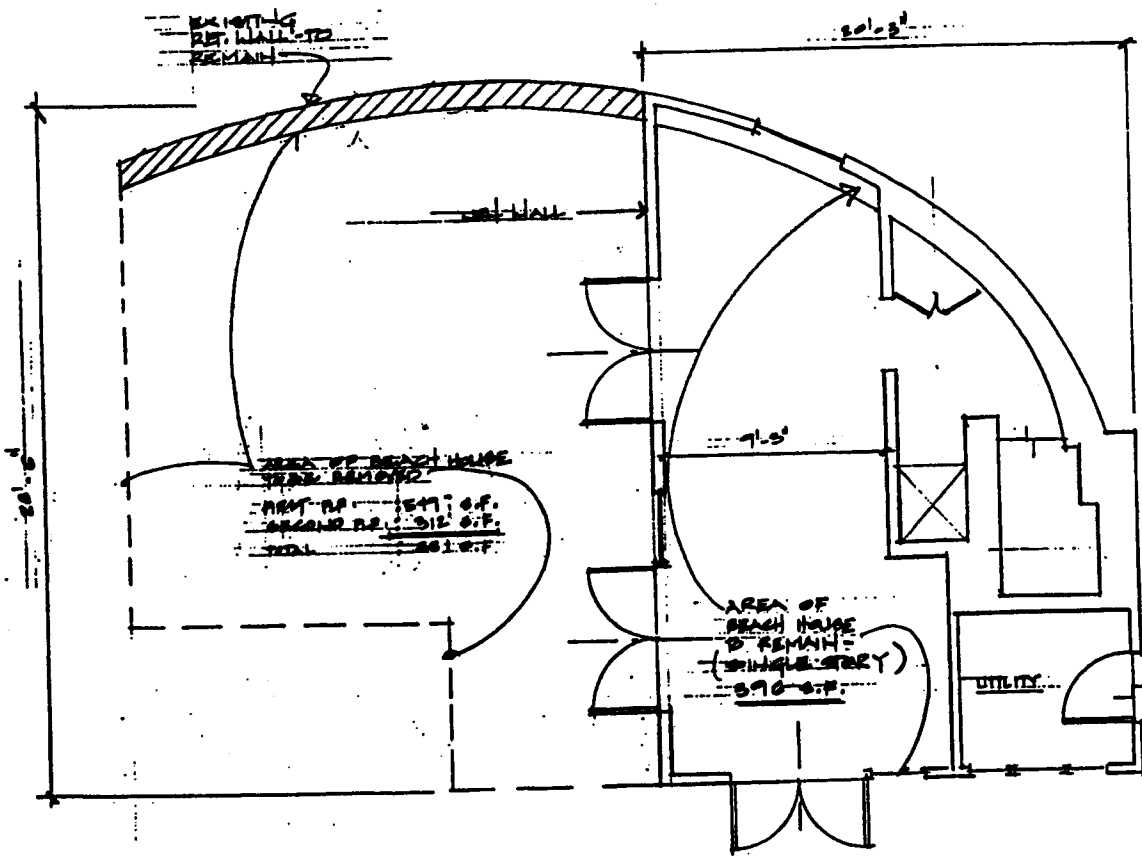


Exhibit No. 5: (4-97-103) Cabana/Guest Unit Floor Plan and Elevations

CALIFORNIA COASTAL COMMISSION

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



NOTICE OF INTENT TO ISSUE AMENDMENT
TO COASTAL DEVELOPMENT PERMIT

Date: December 22, 1998

Permit No: 4-97-103-A1 Issued to: Irwin E. Russel, Trustee of The Rust Trust

for: Construction of a new drainage system, a subterranean elevator shaft with interior stairway, a new sewage ejection pump system, two 6 ft. high retaining walls, 944 cu. yds of grading (619 cu. yds. cut and 325 cu. yds. of fill) for bluff slope restoration, revegetation of the bluff slope and the removal of an unpermitted 30 ft. high crib wall on the bluff face, removal of two previously existing bluff face stairways and one unpermitted bluff face stairway, and the demolition and removal of 830 sq. ft. of unpermitted additions to the existing cabana/guest unit.

at: 33528 and 33550 Pacific Coast Hwy., Malibu (Los Angeles County).

has been amended to include the following changes: Enlarge the proposed below grade elevator shaft from 6'x7' to 7.5'x10.5' in width, construct one 60 sq. ft. and one 90 sq. ft. subterranean mechanical room, raise the height of the subterranean elevator access tunnel by 6 inches, and decrease the total amount of proposed grading by 48 cu. yds. from 944 cu. yds. (610 cu. yds. cut and 325 cu. yds. fill) to 896 cu. yds. (698 cu. yds. cut and 196 cu. yds. fill).

This amendment was determined by the Executive Director to be immaterial, was duly noticed, and no objections were received.

The amendment is being held in the Commission office until fulfillment of Special Conditions 1-8, imposed by the Commission. Once these conditions have been fulfilled, the permit and amendment will be issued. For your information, all the imposed conditions are attached.

Sincerely,

PETER M. DOUGLAS
Executive Director

By: Steven M. Hudson
Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by its conditions and the remaining conditions of permit 4-97-103-A1

Date: 1/4/99

Signature: Irwin E. Russell

Trustee - M A T...T

EXHIBIT NO. 10
APPLICATION NO.
4-97-103-A2
CDP No. 4-97-103-A1