

CALIFORNIA COASTAL COMMISSION

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Filed: 10/25/03
180th Day: 04/22/04 (waived)
90 Day Extension: 6/24/04
Staff: JLA - Ven. *ja*
Staff Report 5/20/04
Hearing Date: 6/9/04

**STAFF REPORT: PERMIT AMENDMENT****APPLICATION NO.:** 4-95-105-A1**APPLICANT:** Beverly Higgins**PROJECT LOCATION:** 33406 Pacific Coast Highway, City of Malibu (Los Angeles County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 1,656 square foot addition to the existing single family residence, including an attached garage and enlarged second story, conversion of an existing carport area into living space, minor modification to the configuration of the existing exterior entry deck; and construction of a six foot high garden/entry wall.

DESCRIPTION OF AMENDMENT: Demolition and removal of an unpermitted 218 square foot deck enclosure attached to an existing single family residence and an unpermitted detached whale watching deck.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit Nos. 4-95-105 and 4-97-243; Agreement to Compromise and Settle Disputed Claims Mutual Release of Claims between the California Coastal Commission and Beverly Higgins.

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 applicants 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 approval of the amendment request pursuant to two special conditions related to: 1) landscaping the area disturbed by the removal of the whale watching deck; and 2) Revised Compliance Condition. In addition, staff is recommending deletion of Special Condition No. 5 to expedite the removal of the unpermitted deck enclosure and whale watching deck. This condition required that prior to issuance of the permit a related coastal development permit 4-97-243 for bluff stabilization on the property (rock revetment, retaining walls, and drainage system) must be issued and the stabilization work completed. The bluff stabilization work authorized under permit 4-97-243 must be completed pursuant to deadlines required as conditions of the permit. Deleting special condition 5 permit will allow for the removal of the deck enclosure and whale watching deck either before or concurrently with the bluff stabilization work. As conditioned, the proposed amendment, is consistent with the provisions of the City of Malibu Local Coastal Program

I. STAFF RECOMMENDATION

MOTION

I move that the Commission approve with special conditions Coastal Development Permit Amendment 4-95-105-A1 per the staff recommendation as set forth below.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

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

mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. SPECIAL CONDITIONS.

NOTE: All standard and special conditions attached to the previously approved permit (4-95-105) remain in effect, with the exception of Special Condition No. 5 which is deleted and Special Condition 6 (Condition Compliance) which has been revised and renumbered to Special Condition 5. Finally, a new Special Condition No. 6, Landscaping of Area Disturbed by Removal of Whale Watching Deck, is added.

~~5. Issuance of Coastal Development Permit 4-97-243 and Completion of Development Approved under Coastal Development Permit 4-97-243~~

~~Prior to issuance of the Coastal Development Permit, the applicant shall submit documentation that demonstrates to the satisfaction of the Executive Director that Coastal Development Permit 4-97-243 has been issued and that construction of the development approved under Coastal Development Permit 4-97-243 has been completed in accordance with the plans required pursuant to Coastal Development Permit 4-97-243.~~

5. Revised Condition Compliance.

- a. Within 180 days of Commission action on this coastal development permit amendment application, or within such 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. Governmental delays cause by no fault of the applicant shall be deemed to be good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
- b. Within 180 days of issuance of this permit the applicant shall remove the unpermitted deck enclosure and whale watching deck, as shown on Exhibit 3 and complete implementation of the landscaping plan required pursuant to Special Condition 7 of this permit within 10 days of the removal of the whale watching deck. The Executive Director may grant an extension of the above deadlines for good cause. Governmental delays cause by no fault of the applicant shall be deemed to be good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

6. **Landscaping of Area Disturbed By Removal Of Whale Watching Deck**

Prior to issuance of a coastal development permit, the applicants shall submit two sets of landscaping, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping shall be reviewed and approved by the geotechnical engineering and geologic consultant to ensure that the plans are in conformance with the consultant's recommendations. The plans shall incorporate the following criteria:

A. Plant Species

1. Plantings shall be native, drought-tolerant plant species, and shall blend with the existing natural bluff vegetation and natural habitats on the site. The native plant species shall be chosen from those listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996.
2. Invasive plant species, as identified by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996 and identified in the City of Malibu's Invasive Exotic Plant Species of the Santa Monica Mountains, dated March 17, 1998, that tend to supplant native species and natural habitats shall be prohibited.

B. Timing of Landscaping

1. The area disturbed by demolition of the whale watching deck be stabilized with landscaping within 10 days of the removal of the whale watching deck.

C. Landscaping Coverage Standards.

Landscaping or revegetation shall provide 90 percent coverage within five years, or that percentage of ground cover demonstrated locally appropriate for a healthy stand of the particular native vegetation type chosen for restoration. Landscaping or revegetation that is located within any required fuel modification thinning zone (Zone C, if required by the Los Angeles County Fire Department) shall provide 60 percent coverage within five years.

III. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant seeks approval for the demolition and removal of an unpermitted 218 square foot deck enclosure attached to the existing single family residence and demolition and removal of an unpermitted detached whale watching deck (Exhibit 3).

The applicant's proposed project site is located on the seaward side of Pacific Coast Highway in the Encinal Beach area of the City of Malibu (Exhibit 1). Encinal Beach is a narrow sandy beach backed by high, steep bluffs. The bluffs backing this beach contain areas of highly erodeable deposits, as well as bedrock outcrops of harder materials. This beach is located in an area between Nicholas Canyon County Beach and the three pocket beaches that make up the Robert H. Meyer Memorial State Beach (El Pescador, La Piedra, and El Matador Beaches).

The subject site is comprised of two parcels, which are shown on Exhibit 2. Access to the subject property is via a driveway, which descends from Pacific Coast Highway. Portions of both parcels contain coastal bluff top area and the southern portions of the site are also comprised of coastal bluff face. The western lot contains the applicant's residence, while the eastern lot is developed with a driveway, garden wall, septic system, and whale watching deck associated with the residence. In addition, the applicant owns three other parcels to the south of the two parcels making up the subject site that are vacant. Those three additional parcels to the south are comprised of bluff face and sandy beach areas. There is also a private beach access road traversing the applicant's parcels, which descends the bluff face to the sandy beach below.

On November 19, 2002, the Commission granted approval after-the-fact approval, under coastal development permit 4-95-105, for the construction of an as-built 1,656 square foot addition to the existing single family residence on the property. The applicant also requested after-the-fact approval for a 218 square foot as-built enclosed deck area on the seaward side of the residence at the edge of the coastal bluff and an as-built whale watching deck at the edge of a coastal bluff. The Commission approved the additions to the residence with the exception of the 218 sq. ft. deck enclosure and whale watching deck. The Commission denied the applicant's request for a permit for these developments because the development did not conform with minimum bluff setback requirements and therefore these components of the development could not be found consistent with geologic hazard policy of the Coastal Act.

The coastal development permit included a special condition requiring the applicant to submit revised project plans deleting the deck enclosure and whale watching deck from the project plans. In addition, the Commission and the applicant have entered into a settlement agreement to resolve litigation involving another coastal development permit (4-97-243) on adjacent properties owned by the applicant for bluff stabilization measures including, retaining walls to support the residence on the subject property, a rock revetment at the base of the bluffs, remedial grading on the

bluff and installation of a drainage system. The settlement agreement included a provision requiring the applicant to submit an amendment request for permit 4-95-105 to remove the unpermitted deck enclosure and whale watching deck.

B. 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 30253 of the Coastal Act, which are incorporated as part of the Malibu LCP, state in pertinent part that:

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.

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, the applicant is proposing to demolish and remove an unpermitted deck enclosure and whale watching deck that are not in compliance the bluff setback requirements Malibu LCP (Exhibits 3-6). The removal of the whale watching deck will result in the disturbance of this area and if this area is not stabilized with appropriate native landscaping this area could erode and destabilize the adjacent bluff. The Commission finds that the minimization of site erosion will add to the stability of the site. In addition, the Malibu LCP requires that graded and disturbed areas be revegetated to minimize erosion. Erosion can best be minimized by requiring the applicant to landscape all disturbed areas of the site with native plants compatible with the surrounding environment. In past permit actions, the Commission has found that invasive and non-native plant species are typically characterized as having a shallow root structure in comparison with their high surface/foilage weight and/or require a greater amount of irrigation and maintenance than native vegetation. The Commission notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize bluff slopes and bluff top areas and that such vegetation results in potential adverse effects to the geologic stability of the project site. In comparison, the Commission finds that native plant species are typically characterized not only by a well developed and extensive root structure in comparison to their surface/foilage weight but also by their low irrigation and maintenance requirements. Therefore, in order to ensure the geologic stability of the site, **Special Condition No. 6** requires that the area disturbed by the demolition and removal of the whale watching deck is stabilized with native vegetation. Revised **Special Condition No. 5 (part b.)** and **Condition 6 (part B.)** require the implementation of the landscaping plan within 10 days of the removal of the whale watching deck in order to ensure that surficial erosion of the site is minimized.

In addition, in order to expedite the removal of the unpermitted deck enclosure and whale watching deck staff is recommending deletion of **Special Condition No. 5. "Issuance of Coastal Development Permit 4-97-243 and Completion of Development Approved under Coastal Development Permit 4-97-243"**. This condition required the applicant to comply with the special conditions of coastal development permit 4-97-243 and implement the bluff stabilization measures authorized under this permit,

including the construction of a rock revetment, retaining walls and drainage system. The bluff stabilization measures are necessary to ensure the structural stability of the existing residence and the authorized after-the-fact additions. Coastal development permit 4-97-243 includes conditions requiring compliance with the special conditions of the permit and implementation provisions to ensure the work is completed in a timely manner. Therefore, Special Condition 5 of this permit is not necessary to ensure the bluff stabilization work is completed. In addition, the deletion of this condition will allow for the removal of the deck enclosure and whale watching deck either before or concurrent with the bluff stabilization work.

Therefore, the Commission finds that the proposed amendment, as conditioned above, is consistent with the applicable policies of the Malibu LCP.

C. Unpermitted Development

The proposed amendment request is for the removal of an unpermitted deck enclosure and whale watching deck. The Commission previously granted after-the-fact approval of a 1,656 square foot as-built addition to the existing single family residence, including an attached garage and enlarged second story, conversion of a existing carport area to living space and garden wall.

In order to ensure that the unpermitted development is resolved in a timely manner, revised **Special Condition 5 part a.**, requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 180 days of Commission action, or within such additional time as the Executive Director may grant for good cause. To ensure the applicant's proposal to demolish and remove the deck unpermitted deck enclosure and whale watching deck is implemented in a timely manner **Special Condition 5, part b.**, requires the applicant to implement the demolition and removal within 180 days of the issuance of the coastal development permit. In addition, **Special Condition 5, part b.**, requires the implementation of the landscaping plan required pursuant to Special Condition 7 within 10 days of removal of the whale watching deck.

Consideration of this amendment 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.

D. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a 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 Environmentally 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 that the activity may have on the environment.

The Commission finds that, the proposed amendment, as conditioned, will not have any 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 City of Malibu Local Coastal Program.

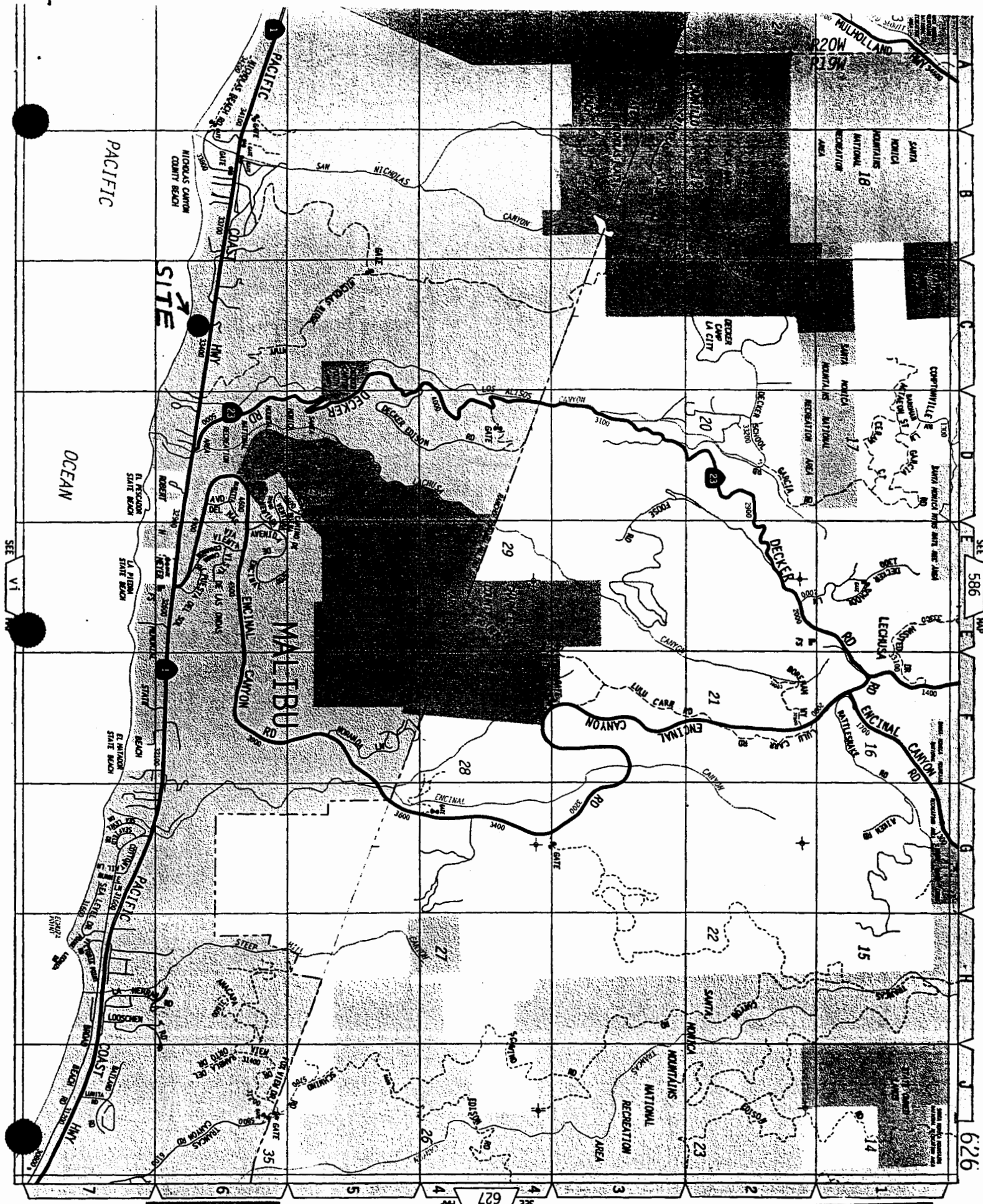
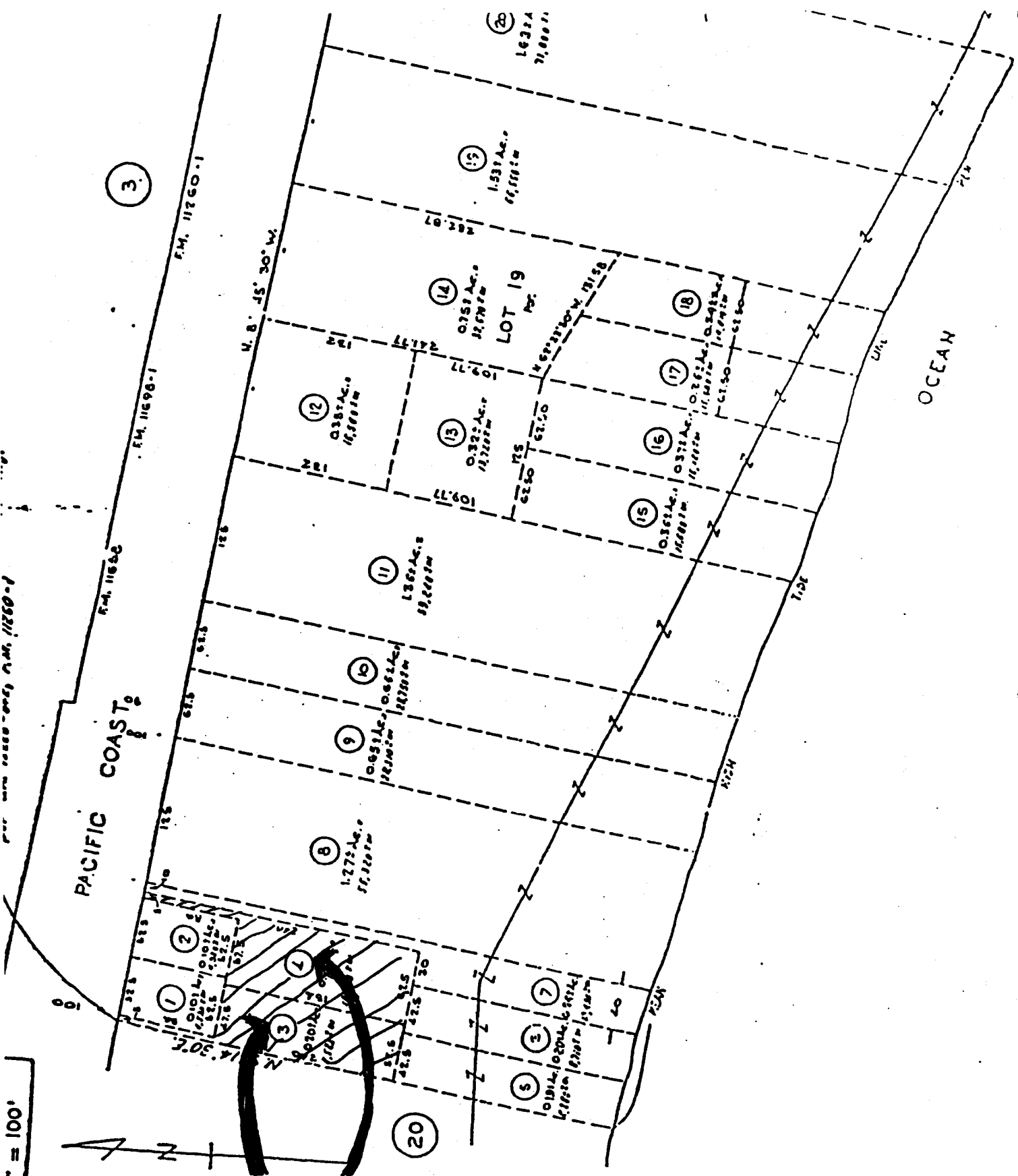


Exhibit 1
CDP 4-95-105-A1
Location Map

SCALE 1" = 100'

1-2321-1 11250-1 11250-1



SUBJECT PARCELS

Exhibit 2
CDP 4-95-105-A1
Parcel Map

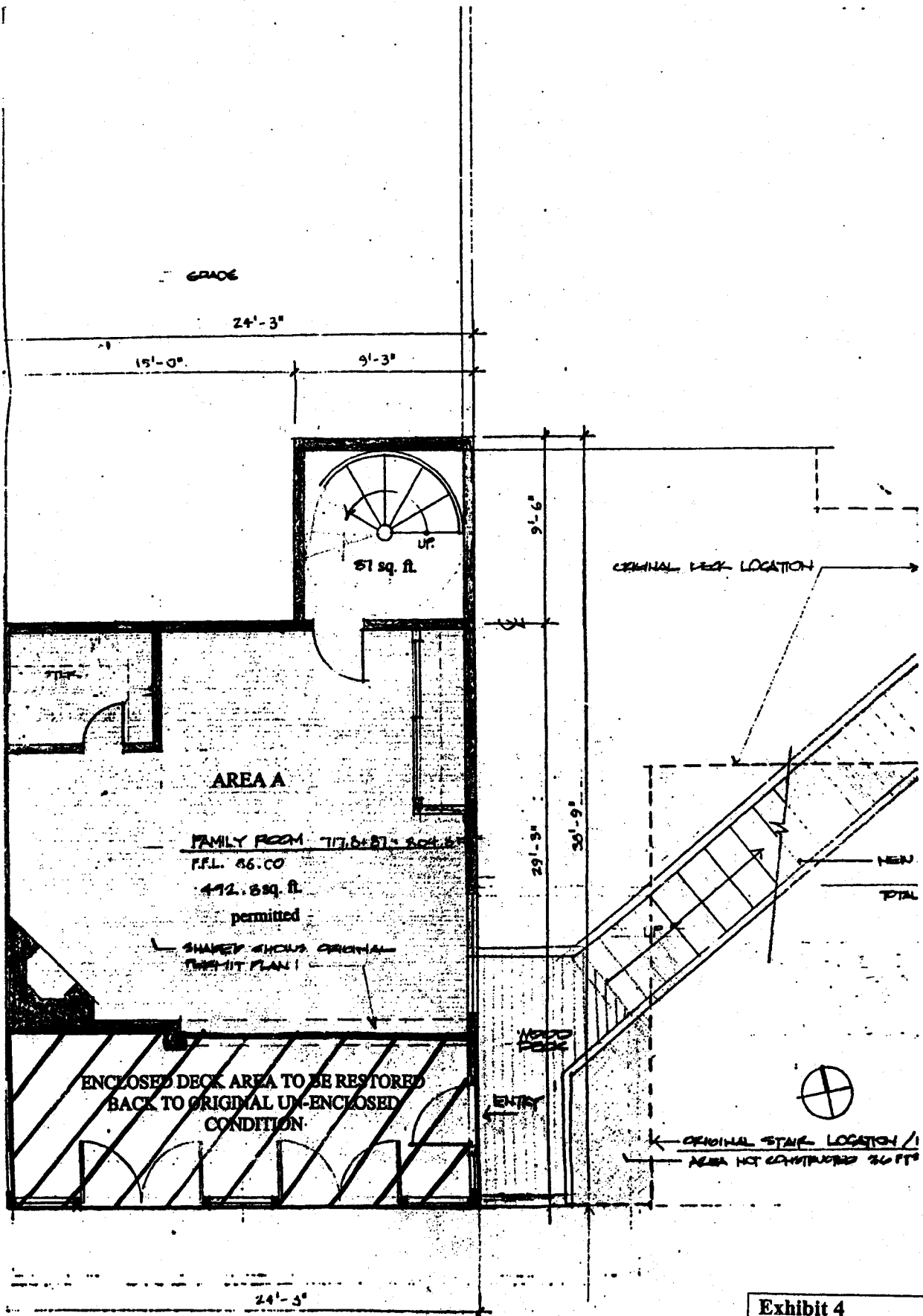
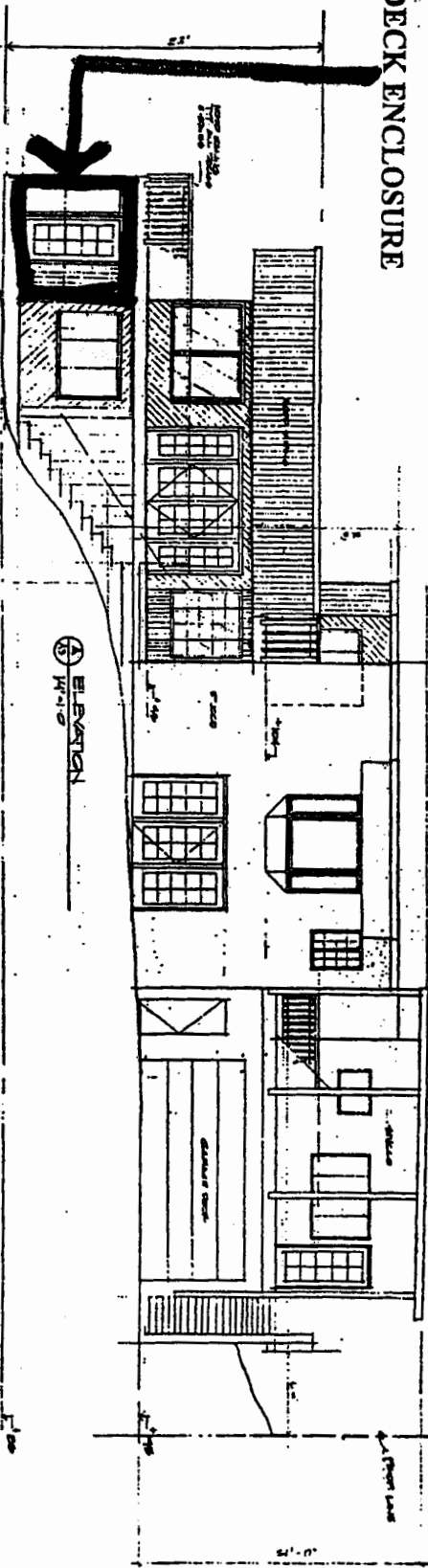
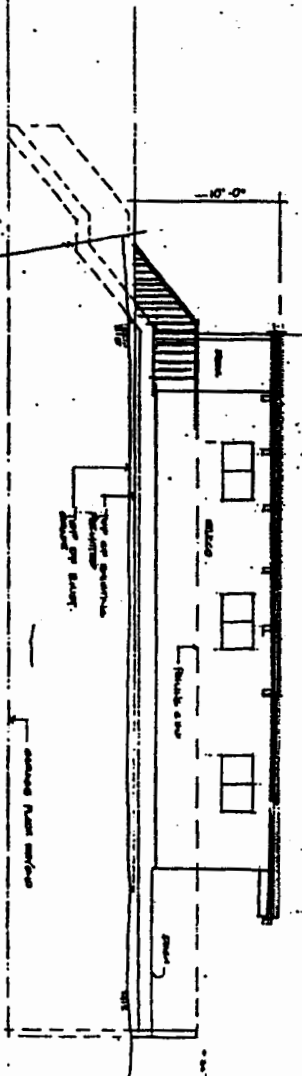


Exhibit 4
CDP 4-95-105-A1
Lower Floor Unpermitted Deck
Enclosure to be Removed

DECK ENCLOSURE



⑤ ELEVATION
W-10



⑥ ELEVATION
W-11

Exhibit 5

CDP 4-95-105A1

East Elevation of Residence &
Deck Enclosure

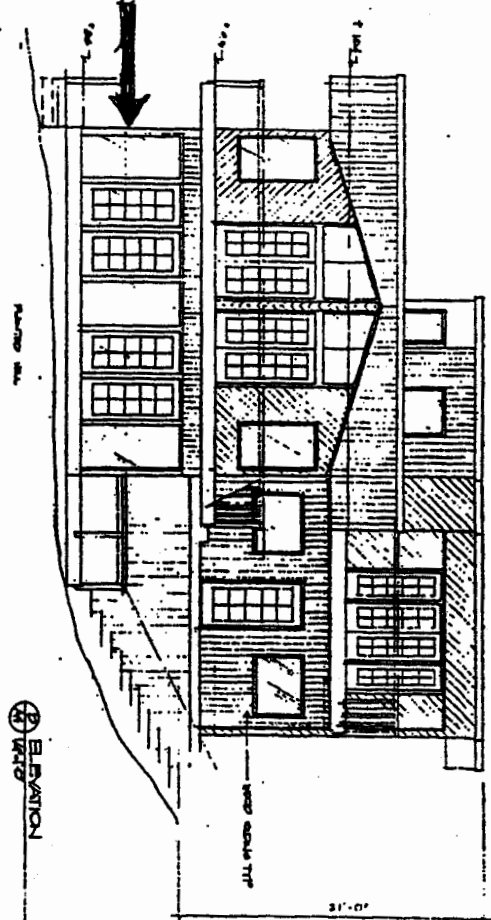
ELEVATIONS

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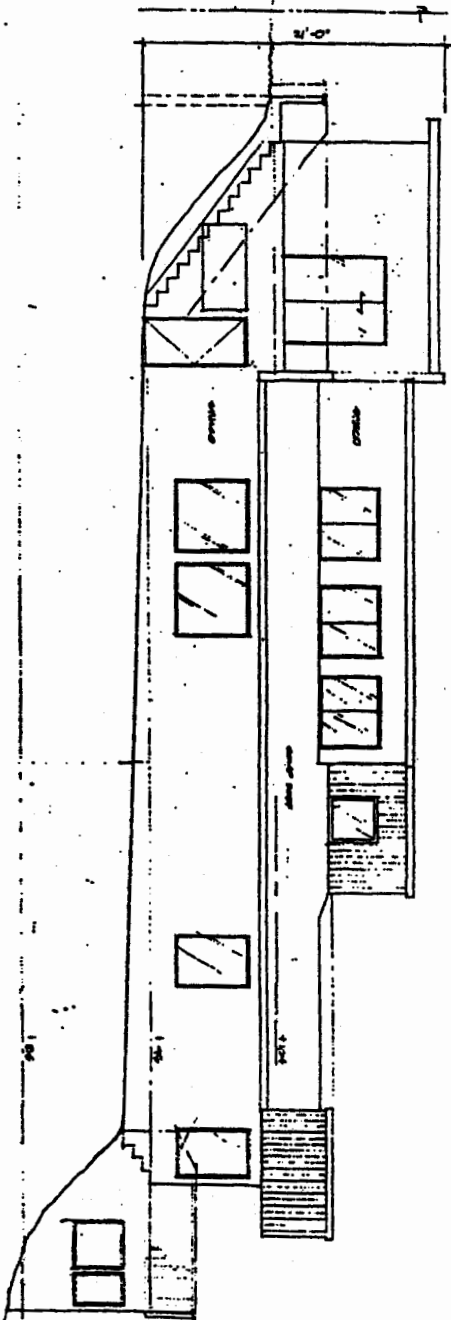
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DECK ENCLOSURE



ELEVATION
WEST



ELEVATION
EAST

AS-BUILT



<p>ARCHITECT</p> <p>DATE</p> <p>PROJECT</p> <p>CLIENT</p>	<p>ELEVATIONS</p>
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Exhibit 6
CDP 4-95-105-A1
West Elevation of Residence & Deck Enclosure