

**CALIFORNIA COASTAL COMMISSION**

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**WIOB**



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 Hearing Date: 4/9-12/96  
 Commission Action:

**STAFF REPORT: APPEAL**  
**SUBSTANTIAL ISSUE AND DE NOVO**

LOCAL GOVERNMENT: San Mateo County  
 DECISION: Approval With Conditions  
 APPEAL NUMBER: A-3-SMC-96-008  
 APPLICANT: **KATHLEEN MCKENZIE**  
 APPELLANTS: Mark Nolan  
 PROJECT LOCATION: 921 Pigeon Point Road, Pescadero, San Mateo County  
 PROJECT DESCRIPTION: 9 unit Bed and Breakfast with manager's office, 14 off-street parking spaces, and a domestic well; repair of an existing private stairway to the coastal bluff  
 SUBSTANTIVE FILE DOCUMENTS: San Mateo County Coastal Development Permit File No. CDP 95-0022; San Mateo County Certified Local Coastal Program

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**SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission, after the public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and then deny the coastal development permit, on the basis that as approved by the County of San Mateo, the project is not consistent with the policies and ordinances of the San Mateo County certified Local Coastal Program (LCP).

The appellant challenges the consistency of one of the County's conditions of approval with policies contained in the public access component of the San Mateo County LCP and Section 30212 of the Coastal Act. This contention raises a substantial issue because it identifies public access policies contained in the San Mateo County certified LCP that were not adequately analyzed by the County of San Mateo in its review of this project, and asserts that the County

action was not consistent with the public access policies of the Coastal Act (specifically PRC Section 30212).

Although the County appropriately evaluated the issue of an implied access dedication (i.e., prescriptive rights), based on a proposed settlement of a quiet title action, it did not adequately analyze other impacts of the development on public access and recreation opportunities, as required by the Coastal Act and the San Mateo County certified LCP. For example, the County did not analyze how the subject development, which will intensify the use of the site, will affect the adjacent State owned cove beach ("Whaler's Cove"), the number of people that can recreate on this beach and other adjacent beaches, or how the intensification of use may reduce the quality of the recreational experience currently available to the public. Such an analysis is required by LCP Policy 10.30. Because the County's record of approval does not provide evidence that the project is consistent with all elements of the Coastal Act and LCP access policies identified by the appellant, (other than those relating to implied dedications through historic use), the appeal raises a substantial issue.

With respect to the De Novo hearing on this project, the Commission must evaluate the project as a whole, and therefore analyze all elements of the project for conformance with the full range of applicable LCP requirements. In undertaking this analysis, many inconsistencies between the project and the LCP have surfaced, summarized in the following table.

As a result of these inconsistencies, which are too broadly based to be corrected by special conditions, the project must be denied on the basis that, in its current state, it can not be found to be consistent with the San Mateo County certified LCP. This denial does not imply that a visitor serving development can not be approved on the site, nor does it deny an economic use of the property; it is intended to identify the additional information and analyses which must accompany such an approval to ensure LCP consistency, as required by the Coastal Act. The additional information and analyses necessary to meet LCP and Coastal Act requirements are also identified on the following table, with the intention of informing the applicant and the County of San Mateo of the level of review necessary to grant a coastal development permit for a development project on the subject site consistent with LCP and Coastal Act requirements.

LCP Requirements	Project Inconsistencies	Additional Information Required
<p>Allowable density can not exceed maximum water use of 630 gallons per day for visitor serving use, 315 gallons per day for residential use (Policy 1.8) or other non-priority use</p>	<ul style="list-style-type: none"> <li>• Approved project exceeds allowable density for visitor serving uses based on anticipated maximum water use</li> <li>• Approved project could be used for residential use rather than visitor serving use</li> <li>• In addition to the 9 units approved, the project includes an 1,800 square foot "manager's office" which was not evaluated in the County's density analysis, and could be used as manager's residence</li> <li>• Density allocation was based on uncertified water study, not on certified LCP policies/ordinances</li> <li>• All water use on site was not factored into analysis</li> <li>• County's water use analysis characterized units as "hostelries"; the proposed 600-700 sq. ft. units with kitchenettes are more similar to 1 bedroom apartments</li> </ul>	<p>Project specific density analysis, based on maximum daily water use, which considers:</p> <ul style="list-style-type: none"> <li>• All sources of water use associated with the proposed project (e.g., landscaping, kitchenettes, manager's unit)</li> <li>• Maximum daily water use rather than average daily water use</li> <li>• Limits of stay in order to ensure visitor serving rather than residential use</li> <li>• Adequate plans to scale for all proposed development (i.e., floor plans, grading plan, landscaping plan, sign/lighting plan)</li> </ul>
<p>Demonstration of adequate on-site water source, which does not diminish agricultural water supplies, prior to approval (Policy 5.22)</p>	<ul style="list-style-type: none"> <li>• Project has been approved prior to demonstrating that an adequate water source is available on-site</li> <li>• Inadequate density/water use analysis does not ensure that agricultural water supplies will not adversely be affected</li> <li>• Approved project would utilize a 1,500 gallon septic tank, which may not be adequate to prevent groundwater contamination</li> </ul>	<ul style="list-style-type: none"> <li>• Analysis of water quantities available on site</li> <li>• Analysis of proposed well's ability to meet maximum daily water demand considering all sources of water use</li> <li>• Analysis of water well and septic system impacts to agricultural water supplies based on maximum daily water use/maximum occupancy</li> </ul>
<p>Protection of Marine Habitats (Policy 7.3 and 7.5)</p>	<ul style="list-style-type: none"> <li>• Approved project does not include drainage facilities and erosion controls necessary to ensure that development and operation of the project will not result in polluted runoff or sedimentation adversely affecting adjacent marine habitats</li> <li>• Approved project would utilize a 1,500 gallon septic tank, which may not be adequate to support nine 1 bedroom cabins or prevent contamination of adjacent marine habitats</li> <li>• County findings include no analysis of project impacts to sensitive habitats resulting from increased visitor use</li> </ul>	<ul style="list-style-type: none"> <li>• Drainage and erosion control plan that incorporate best management practices for minimizing sedimentation and pollution during and post project construction</li> <li>• Analysis of appropriate size and location of septic system necessary to serve project under maximum occupancy and prevent contamination of marine water quality</li> <li>• Analysis, and if necessary, appropriate conditions, regarding increased visitor use of habitat areas</li> </ul>

LCP Requirements	Project Inconsistencies	Additional Information Required
Protection of coastal views (Policies 8.4, 8.15, and 8.18)	<ul style="list-style-type: none"> <li>• Approved project does not provide mitigation for adverse impacts to significant coastal views</li> <li>• Project has not been analyzed for impacts to scenic coastal views available from Highway One or the adjacent County owned land east of the project</li> <li>• Preliminary plans indicate that the 9 units will be elevated above ground level, thereby increasing impacts to coastal views</li> <li>• Proposed new above ground water tank has not been evaluated for visual impacts</li> </ul>	<ul style="list-style-type: none"> <li>• Evaluation of all elements of proposed development for impacts to coastal views available from Highway One and adjacent County owned lands</li> <li>• Analysis of alternative siting and construction opportunities (e.g., at existing grade) to minimize visual impacts</li> <li>• Mitigation measures for all identified visual impacts</li> </ul>
New development shall neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding areas (Policy 9.8)	<ul style="list-style-type: none"> <li>• Approved project does not include measures necessary to ensure that the development will not result in increased erosion or geologic instability</li> </ul>	<ul style="list-style-type: none"> <li>• Drainage and erosion control plan which incorporate best management practices for minimizing sedimentation and pollution during and post project construction</li> <li>• Incorporation of geotechnical recommendations in conditions of project approval</li> </ul>
Provision of shoreline access (Policy 10.1) and public parking (Policy 10.22d.)	<ul style="list-style-type: none"> <li>• The County's approval of this project did not adequately analyze public access requirements other than the issue of implied dedication</li> <li>• The County has not analyzed the project's consistency with LCP requirements for the provision of public beach parking spaces</li> </ul>	<ul style="list-style-type: none"> <li>• Analysis of the projects impact to public access and recreation as a result of the intensification of use proposed</li> <li>• Mitigation measures compensating for any reduction in the quantity or quality of public access and recreation opportunities resulting from the intensification of use of the site</li> <li>• Evaluation of project impacts to public beach parking in determining the applicability of LCP requirements for public parking</li> </ul>
Zoning Requirements for the Repair of Non-Conforming Structure (Chapter 4 of San Mateo County Zoning Regulations)	<ul style="list-style-type: none"> <li>• No information regarding the extent of the repairs proposed for the existing non-conforming coastal bluff stairway has been provided</li> <li>• The County has not evaluated the proposed repair for consistency with LCP requirements regarding non-conforming structures</li> </ul>	<ul style="list-style-type: none"> <li>• Plans for, and detailed description of, proposed stairway repair, including the value of the existing structure and the cost of the repairs</li> <li>• Determination of whether the proposed repair constitutes a major or minor repair, remodel, or upgrade</li> <li>• Application of the appropriate zoning requirements based upon the extent of the proposed repair</li> </ul>

## I. APPELLANT'S CONTENTIONS.

The appellant contends that the County's approval of this project, specifically its condition of approval number 4, is inconsistent with provisions of the LCP's public access component, and with Section 30212 of the Coastal Act.

The County's Condition of Approval #4 referred to by the appellant states:

"Owner shall permit limited access as provided herein, to school groups and fisherman over the path designated by the owner on the owners property from Pigeon Point Road to the public beach, provided that any such group or fishermen have entered into a written agreement with the owner providing reasonable terms and conditions governing such access, including without limitation release of any liability of owner, reasonable insurance requirements, and regulations of hours of use and minimizing disturbance of project guests. No access shall be permitted when any pinnipeds are present on the beach. Owner shall not be required to permit access to more than one school group per week in months July through December and more than two school groups per week in months January through June. Fisherman shall be limited to launching portaged boats for pole and line fishing from the boats."

The appellant states that his reason for appealing this project is "to revise the language of Conditions of Approval #4 so that building permits will not be issued until the land owner enters into agreement with the school groups and fisherman". This reflects the fact that the appellant, Executive Director of an outdoor education program that frequently utilizes Whaler's Cove, has been unable to come to an access agreement with the landowner, and believes that this condition is not consistent with LCP and Coastal Act requirements regarding public access.

In support of this appeal, the appellant references Coastal Act Section 30212; San Mateo County LCP Policies 10.13, 10.30, and 10.31; and, Section 6269 of the San Mateo County Zoning Ordinance. The complete text of the appellant's contentions is attached as Exhibit A.

## II. LOCAL GOVERNMENT ACTION.

On December 13, 1995, the San Mateo County Planning Commission approved a Coastal Development Permit (File # CDP 95-0022) for the subject project with conditions (attached as Exhibit B), and adopted a Negative Declaration pursuant to the California Environmental Quality Act.

The adopted Negative Declaration contains 6 mitigation measures designed to reduce the project's environmental impact to an insignificant level. In summary, these mitigation measures provide for the protection of archaeological resources; requires the applicant to either provide for public access on the proposed beach stairway or remove the stairway from the plan; requires the provision of a public viewing point prior to the completion of Phase III of the project if the stairway is removed; calls for the control of runoff from the site and the review of drainage plans at the building permit stage; and, requires the applicant to record a "Right to Farm" statement prior to completion of Phase I of the project.

Two of these mitigation measures were not, however, reflected in the County's conditions of approval. One of the mitigation measures dropped was the requirement that the applicant either provide for public access on the proposed beach stairway or remove it from the plans. It appears that the requirement for public access was not included within the County's condition of approval because the applicant agreed to remove the stairs to the beach prior to the hearing, and instead, repair existing stairs that lead to the bluff top. Nevertheless, the only project plans contained in the County's file for this permit still include a private stairway to the beach. The other omitted mitigation measure required the development of a public viewing platform to mitigate view blockage by the Phase III units. There is no indication in the County's file why this requirement, intended to mitigate for the project's impact to visual resources, has been eliminated as a requirement for project approval. As a result, the coastal development permit approved by the County is inconsistent with the adopted Negative Declaration.

At the public hearing, in response to public testimony regarding public access issues, the applicant agreed to work out an access agreement with school groups and fisherman interested in using Whaler's Cove. This is reflected by Condition 4 of the County's approval, which requires the applicant to provide limited access to school groups and fisherman that have entered into written agreement with the applicant. The exact terms that such an agreement must contain are not specified by this condition. Because the appellant has not been able to reach an acceptable access agreement with the applicant, he has appealed this condition as being inconsistent with Coastal Act Section 30212 and the access policies contained within the San Mateo County certified LCP.

### III. Appeal Procedures.

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea. Furthermore, developments approved by cities or counties may be appealed if they are not the designated "principal permitted use" under the certified LCP. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by a city or county. (Coastal Act Section 30603(a)).

In this case, development of the subject site is appealable because it is located seaward of first public road, and because it is a conditional use in the Planned Agricultural Zoning District. The grounds for appeal are limited to the allegation that the development does not conform to the standards set forth in the certified LCP or to the Coastal Act's public access policies.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless a majority of the Commissioners determine that no substantial issue is raised by the appeal. If the staff recommends "substantial issue", and no Commissioner objects, the substantial issue question will be considered moot, and the Commission may proceed directly to a de novo public hearing on the merits of the project.

If the staff recommends "no substantial issue", or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of the Commissioners present to find that no substantial issue is raised. If substantial issue is found,

the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program and, in this case, the public access and recreation policies of the Coastal Act (PRC Sec. 30604).

The only persons qualified to testify before the Commission during the substantial issue stage of the hearing are the applicant, persons who opposed the application before the local government (or their representatives), and the local government; testimony from other persons must be received in writing. Any person may testify during the de novo stage of an appeal.

#### IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE.

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to PRC Section 30603.

MOTION. I move that the Commission determine that Appeal No. A-3-SMC-96-008 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

Staff recommends a NO vote on the motion. A majority of the Commissioners present is required to pass the motion.

#### V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATIONS.

The Commission hereby finds and declares that substantial issue exists with respect to the grounds on which the appeal has been filed, pursuant to Coastal Act Section 30603, for the following reason:

The appellant has identified public access standards contained in the San Mateo County certified LCP, as well as a public access policy contained in Chapter 3 of the California Coastal Act, which have not been adequately analyzed by the County in its approval of the subject project, as detailed on pages 11-19 of this staff report. Without such an analysis, the project approved by the County can not be found to be consistent with the San Mateo County certified LCP or the Chapter 3 policies of the Coastal Act. Therefore, the appeal raises a substantial issue.

#### VI. STAFF RECOMMENDATION ON THE PROJECT.

The staff recommends that the Commission adopt the following Resolution:

##### Denial

The Commission hereby denies a permit for the proposed development on the grounds that it would not be in conformity with the certified San Mateo County Local Coastal Program or the public access and recreation policies of the Coastal Act, and will have a significant impact on the environment within the meaning of the California Environmental Quality Act.

MOTION. I move that the Commission approve the project A-3-SMC-96-008 as approved by the County of San Mateo.

Staff recommends a NO vote on the motion. A majority of the Commissioners present is required to pass the motion.

## VI. FINDINGS AND DECLARATIONS.

### A. Project Description:

The subject project is described in County documents as a 9-unit Bed and Breakfast (or Country Inn) development with a  $\pm$  1800 square foot manager's office, 14 off-street parking spaces, a domestic well, and private stairs down to the coastal bluff.

Four existing buildings with a combined area of 7,659 square feet, originally constructed as an aquaculture development, currently occupy the 4.5 acre site. The proposed development would demolish 5,800 square feet of the existing buildings, described by the County as "warehouse space", and maintain approximately 1,800 square feet of one of the buildings for a "manager's office". No plans for remodeling the existing building for use as a Manager's Unit have been provided, nor is there any specific information regarding the allowable use of this building. In attempting to gather this information, the Commission staff has found conflicting information; the County asserts that the building is to be used for receiving and checking in guests and storage of materials (personal communication with Janice Jagelski), while the applicant's architect has stated that the building would be used only for storage of materials (personal communication with Richard Macias). The applicant has stated that the building will be used for both storage and guest reception (personal communication with Kathleen McKenzie). There are no approved floor plans depicting the  $\pm$  1,800 square foot building's internal layout and the County findings are silent on allowable uses of this structure. Resolution of this issue is critical in determining the allowable density of development at the subject site. Regarding the intent to provide breakfasts to the guests, the Negative Declaration for this project states that catered continental breakfasts prepared off-site would be delivered to each unit in the morning.

The County describes the development of the 9 individual 600-700 square foot bed and breakfast units, totaling 5,500 square feet, as being completed in three phases. The first two phases involve the construction of 6 units which would be in the general vicinity of the existing buildings. Phase III would consist of the development of the remaining 3 units, which would be located on the currently undeveloped eastern portion of the 4.5 acre site. With respect to the overall site plan, the County's record contains a "preliminary design", prepared by HOK Planning Group, dated May 1995 (Exhibit F); an elevation showing the view of the units from the beach (Exhibit F); and a prototype elevation for the proposed units (Exhibit H). Two preliminary drawings show the approximate location of the new well and the approximate locations of the proposed sewer and water lines and the expanded leach fields (Exhibits I and J).

As described in the Negative Declaration adopted by the County for this project, each of the 9 units would contain a bedroom, bathroom, and kitchenette. The extent of kitchen facilities that will be provided in each unit has not been defined, nor are there any floor plans for the proposed units contained in the County's record. This information is necessary to adequately



evaluate the water use associated with the proposed development, used in determining the allowable density of development. In addition, the County file does not contain any information regarding the maximum length of stay allowed at the proposed development, which has raised concerns that the self-sufficient units, similar in size and facilities to a one bedroom apartment, could be rented out as residences. Residential uses are not eligible for the 100% density bonus granted for visitor-serving projects. Thus, resolution of this issue is critical in determining the allowable density of development, which also relates to the impact that the development may have on public access and recreation opportunities.

The design of the units has been described as complimenting the style and size of the Pigeon Point Lighthouse caretaker's living quarters, located immediately west of the site. According to the Negative Declaration, the units would not exceed 16 feet in height; each unit would be close to natural grade; wood siding with a gray color is proposed as the exterior for each unit; and, private patios would extend from each unit and offer a view of the ocean. A drawing representing the view of the units from the beach contained in the County file, however, illustrates the units as being raised above the natural grade (Exhibit G). The project has been designed to minimize its visual impact on the adjacent Pigeon Point Lighthouse as viewed from Pigeon Point Road, but has not been analyzed for its visual impacts to views of the lighthouse available from Highway One, or for its impacts to views of the ocean from public roads.

Other important information regarding the proposed project which was not evaluated by the County in its approval of this project includes: the extent of grading necessary for the proposed development; the extent of landscaping proposed; the design or construction of the 14 off-street parking spaces; the methods of construction for the new units (e.g., foundation types, above or below ground electricity); the handling of stormwater and runoff from the site; the extent of repairs for the existing boardwalk/stairway; water storage facilities necessary to serve the proposed development; the adequacy of the proposed septic system ; and, lighting and signing the proposed development.

#### B. Project Location:

The subject 4.5 acre parcel at 921 Pigeon Point Road is directly adjacent to the eastern side of the Pigeon Point Lighthouse, on the west side of Highway One, in a rural area of the southern San Mateo County coastline (Exhibits C, D, and E), and is included within the State Scenic Highway Corridor. The adjacent Lighthouse is a State of California Historic Landmark, and is listed in the National Register of Historic Places. The Archaeological Reconnaissance Survey completed for this project indicates a rich history of maritime activities on the project site and within the project vicinity.

Pigeon Point, a small point jutting southwesterly into the Pacific Ocean, offers dramatic coastal views which are known to provide excellent opportunities to view migrating Gray whales and other marine life, and is rich in maritime and whaling history. The historic lighthouse on the point is known as one of California's most picturesque lighthouses. The existing ancillary buildings surrounding the lighthouse are currently used as a youth hostel , which provides overnight accommodations for up to 50 people. Other than limited local produce stands, the nearest place for visitor's to find food would be the Town of Pescadero, approximately 10 miles north of the site, or the City of Half Moon Bay (approximately 35 miles north of the site), or Santa Cruz (approximately 20 miles south of the site).

The subject parcel, on the southern portion of Pigeon Point east of the lighthouse, is approximately 875 feet long, and varies in width between approximately 120 feet and 300 feet, as defined by the coastal bluffs (Exhibit E). It is bounded on the south by a jagged shoreline with steep bluffs ranging in height from 35 to 40 feet. At the base of these bluffs are three small cove beaches, rocky shoreline, and the Pacific Ocean. The western most cove beach, closest to the proposed development, is known as Whaler's Cove, indicating its past use by the whaling industry. The parcel is bounded by Pigeon Point Road to the north, and undeveloped coastal land owned by San Mateo County to the east. The County owned land to the east of the subject site currently offers unimproved parking and an unofficial, somewhat hazardous accessway to the beach. Only during low tide can Whaler's Cove be reached from the adjacent unofficial County owned beach access.

Vegetation on the subject site includes native species of coastal strand habitat, as well as exotic species such as ice plant. Other than Monterey Pine planted amongst the existing buildings, there are no trees on the site.

The extreme western portion of the site is currently developed with 4 modular structures which cover approximately 7,700 square feet of land, and are surrounded by fences. The County staff report for this project states that the existing buildings, originally developed in the 1960's for aquaculture purposes, are currently used for private storage. This conflicts with information contained in the Archaeological Report stating that "the complex is currently occupied", as well as with correspondence received from an adjacent resident, indicating that a caretaker has been living in one of the existing buildings (Exhibit L), and with evidence that the existing development has been advertised as a lodging facility in the recent past (Exhibit K). Other existing development on this portion of the property includes a failing wooden walkway leading from the existing development to a promontory at the southwest property corner which then connects to a rickety stairway that leads down the bluff to a lower bluff; an underground water tank; two concrete pads between the buildings; a large black plastic water tank; a gravel driveway; planting areas; and an existing well on the south eastern portion of the property. A recent site visit by Commission staff indicates that the largest of the four existing buildings has already been demolished, prior to the effective date of coastal development permit for this development, in violation of LCP requirements.

To the east of the existing developments is an abandoned road, described as a "gully" in the County staff report, which leads from Pigeon Point Road to Whaler's Cove. Because this abandoned road serves as a primary drainage for the property, it has been deeply eroded. According to a settlement agreement reached between the State of California, the State Lands Commission, the Coastal Commission, and the property owners, this beach is owned by the State of California. Other than the abandoned road on the subject parcel, the only means of accessing this beach is by boat, or at low tides from County owned land south east of the property, which provides an unofficial, somewhat hazardous trail down to the intertidal area south east of Whaler's Cove. The County record for this project contains conflicting information regarding the fate of this abandoned roadway. The Negative Declaration states that "the applicant proposes to keep private access across the property to the bluffs (vertical access), with an existing informal trail through the manmade gully being blocked, and the gully restored with native vegetation". The response to comments on the Negative Declaration states "the applicant proposes to restore native vegetation on the sides of the gully while leaving an informal path down the center to allow for emergency access to the beach". According to the

County's Condition of Approval Number 4, the gully would remain available for limited public access to school groups and fisherman.

The Whaler's Cove beach, in addition to providing exceptional coastal views and containing important historical artifacts, is also used by pinnipeds as an occasional haul-out area. Another attraction which makes this beach a desirable destination for coastal recreation, especially during the spring and summer, is the fact that it is protected by from the predominantly strong north west winds. In letters received from fisherman, divers, school groups, and other members of the public, it has been expressed that the unique characteristics of this beach provide coastal access and recreation opportunities for the public that are unavailable elsewhere. Over 200 letters to the Commission and Commission staff, stressing the importance of public access to this beach, have been received (examples of which are attached to this report as Exhibit L).

C. Public Access and Recreation:

1. Background:

The project site is subject to a settlement agreement which resolves issues of implied dedication (i.e., whether the public, by virtue of historic use, has obtained an easement over some portion of the property), and what portion of the site is subject to the public trust. This agreement has been approved by all parties, and is currently awaiting the signature of the Governor to be finalized.

According to the terms of this settlement agreement, the beach area of the project site has been conveyed to the State of California, under the jurisdiction of the State Lands Commission. Regarding the issue of implied dedication relevant to the path across the subject property which leads to the beach, both the State of California and the County of San Mateo have acknowledged and agreed that they are precluded from finding that the existence or possible existence of implied dedication rights in the site constitute a basis for imposing any public access conditions.

The settlement agreement does not, however, bar the Coastal Commission or the County of San Mateo from considering other public access issues which are not, in whole or in part, based on any claim of implied dedication. In considering such non-implied dedication public access issues, the County and the Coastal Commission can impose appropriate public access conditions that are based on such non-implied dedication access issues.

This staff report has been prepared under the assumption that this settlement agreement will be finalized in its current form. This being the case, all elements of this staff report and permit are consistent with the terms of this settlement agreement.

2. Coastal Act Policies:

a. The appellant references Coastal Act Section 30212 in support of his appeal. This policy states in relevant part:

"(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:"

"(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,"

"(2) adequate access exists nearby, or"

"(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway".

Other Coastal Act access policies which apply to the subject project, but have not been identified by the appellant, include:

b. Section 30210, which states:

"In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse."

c. Section 30214, which states in relevant part:

"(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:"

"(1) Topographic and geologic site characteristics."

"(2) The capacity of the site to sustain use and at what level of intensity"

"(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to the adjacent residential uses."

"(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter."

"(b) It is the intent of the legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. ..."

3. LCP Requirements:

The appellant contends that as approved by the County, the project is inconsistent with the following LCP access policies:

a. Policy 10.13:

"Require the establishment and improvement of vertical (trails) and lateral (shoreline destinations) public access and parking consistent with Policy 10.22(e) as a condition of approval for obtaining a permit for commercial and industrial development along the shoreline, except where the establishment of access would disrupt activities which are essential to public safety."

note: Policy 10.22(e), referenced by the above policy, calls for the provision of trails linking parking facilities to nearby shoreline destinations that do not have existing parking facilities because such facilities would be inconsistent with other parking policies.)

b. Policy 10.30:

"Requirement of Minimum Access as a Condition of Granting Development Permits"

"a. Require the provision of shoreline access for any private or public development between the sea and the nearest public road."

"b. Base the level of importance and development of access support facilities at a site on the Locational Criteria and Development Standard Policies and the Site Specific Recommendation contained in Table 10.6."

note: Table 10.6 lists the subject site under "Beaches Along Pigeon Point Road", and contains the following site specific recommendations: "consolidate bluff trails"; "develop interpretive educational displays discussing the fragile nature of the tidepools at Pigeon Point and prohibiting removal of species"; "construct short staircases to beaches"; "landscape parking area at Yankee Jim Gulch"; and, "include public access in all plans for the development of Pigeon Point Lighthouse". This table also recommends, for special consideration, to "close Pigeon Point Road to vehicular traffic. Retain existing right of way for use by bicycles, hikers, and limited traffic to the lighthouse".

"c. Base the responsibility and requirements of the property owner for the provision of this access on: (1) the size and type of development, (2) the benefit to the developer, (3) the priority given to the type of the development under the Coastal Act and (4) the impact of the development, particularly the burden the development would place on the public right of access to and use of the shoreline. Determine the minimum requirements according to the following:"

"(1) For small non-agricultural developments (i.e., construction of non-residential structures 500 sq. ft. and smaller, fences, wells, placement of utility poles), require the retention of existing public access as defined in Policies 10.5 and 10.6, the posting of hazardous and environmentally sensitive areas, and pay an in-lieu fee of a minimal sum not to exceed 5 percent of the project cost to contribute to the provision of access elsewhere along the County shoreline."

"(2) For small to medium developments (i.e., single family residences, all minor land divisions, barns over 5,000 sq. ft., small greenhouses), not specifically exempted from shoreline access requirements by Policy 10.2, require the offering or granting of a vertical and/or lateral access consistent with the policies of this component, to either a public agency or private group acceptable to the County for improvement and maintenance."

"(3) For large agricultural and non-agricultural developments (i.e., developments of more than one single family house, major subdivisions, commercial and industrial developments, and large greenhouses and agricultural processing plants), require the property owner to provide, improve, and maintain shoreline access consistent with the policies of this component."

Note: Since the subject development constitutes a non-agricultural commercial development, part 3 of Policy 10.30c. applies to this project.

c. Policy 10.31:

"Requirement of Additional Access as a Condition of Granting Development Permits"

"Require additional access areas, improvements or operation and maintenance beyond the minimum when a project decreases the existing or potential public access to the shoreline by: (1) removing or infringing upon an area which has historically been subject to public use without permission or effective interference by the owner and/or (2) decreasing the amount of sandy beach by building seawalls, etc., and/or (3) removing future recreation opportunities by committing lands suitable for recreational development to uses which are not assigned priority for use of oceanfront land by Section 30222 of the Coastal Act."

Other public access policies contained in the LCP which apply to this project, but have not been identified by the appellant include:

d. Policy 10.1:

"Permit Conditions for Shoreline Access"

"Require some provision for shoreline access as a condition of granting development permits for any public or private development permits (except as exempted by

Policy 10.2) between the sea and the nearest road. The type of provision, the location of the access and the amount and type of improvements required shall be consistent with the policies of this component."

e. Policy 10.22:

"d. New commercial or industrial parking facilities of 10 or more spaces within 1/4 mile radius of an established shoreline access area shall designate and post 20% of the total spaces for beach user parking between 10:00 a.m. and 4:00 p.m."

4. Analysis:

a. Project Consistency with Coastal Act Access Policies:

Coastal Act policy 30212 requires that the subject project provide public access from the nearest public roadway to the shoreline and along the coast unless: such access would be inconsistent with public safety, military security needs, or the protection of fragile coastal resources; adequate access exists nearby; or because such access would adversely affect agriculture.

Sections 30210 and 30214 of the Coastal Act address the way in which these access requirements should be carried out. In summary, these policies call for the provision of maximum coastal access and recreational opportunities consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. To meet this objective, and consistent with legal precedents, the Coastal Act calls for an analysis of the facts and circumstances of each particular case. Section 30214 gives examples of the factors to be considered in such an analysis, such as topographic and geologic site characteristics, the fragility of the natural resources in the area, the proximity of the access area to the adjacent residential uses, the privacy of adjacent property, and the protection of aesthetic values of the area by providing for the collection of litter.

The common mandate in all of the applicable Coastal Act access policies is the intention to carry out Section 4 of Article X of the California Constitution in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access. In order to accomplish this, an in depth analysis of all the factors relating to the appropriateness of requiring or allowing public access must be undertaken. For example, as required by Section 30214, the capacity of the site to sustain use and at what level of intensity must be figured into the public access analysis. In the case of the subject development, an analysis of how the intensification of the use of the site will affect the public's ability to access the beach adjacent to the development, and how the intensified use will affect natural resources of the area, must be evaluated.

San Mateo County's record on the subject project contains very little information regarding the proposed projects conformance with Coastal Act access policies. There is no discussion of Coastal Act access requirements in the County staff report for this project. The only acknowledgment of these requirements in the County record is contained in one of the findings of permit approval, which states:

"...this project conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act (commencing with Section 30200 of the Public Resources Code) as follows:"

"a. Nollan v. California Coastal Commission, (1987) 107 S.Ct. 3141, sets forth the standard for evaluating the constitutionality of access dedication as a condition of a permit to develop. In Nollan, the court held that, in order to sustain a condition requiring dedication of access, a close "nexus" must exist between the dedication and the purpose advanced for imposing the condition, and that purpose or end sought must be significant enough to justify denying the project in its entirety. The Nollan court invalidated an access easement required as a condition of the development of a replacement single family residence. The Nollan court also noted, however, that assuming the protection of coastal views is a legitimate purpose, conditions limiting height, width or a ban on fences or even a requirement to provide a public viewing point would not constitute a taking."

The above statement, which inaccurately summarizes an important court decision<sup>1</sup>, and does not analyze its applicability to the subject project, is the only reference to Coastal Act access requirements in the entire County record for this project. Other areas of the County record imply that the County has no authority to require the applicant to construct or establish public access over this property because the proposed development is not blocking any existing public access.

This lack of analysis does not meet Coastal Act requirements because it does not provide evidence that the project, as approved by the County, is consistent with Coastal Act access provisions. It is not adequate to conclude that if a new development does not block an existing accessway, then it is consistent with Coastal Act access requirements. Before a conclusion can be made regarding the subject project's conformance with Coastal Act access policies, an in-depth, project specific access analysis must take place. Elements of this analysis should include an evaluation of the project's effect on public access and recreation opportunities as a result of the intensification of use of the site (e.g., will an intensified use of the site reduce the number of people that can access the adjacent beach, or reduce the quality of the public's recreational experience?). Such an analysis is directly related to the allowed density of development at the site. As presented in the findings of this staff report regarding allowable densities of development, the density issue must be resolved before an accurate analysis of the projects impacts to public access can take place.

Although the County has asserted that it has no legal ability to require that the development provide public access, a condition of approval, developed during the County's Planning Commission hearing on this project, states :

"Owner shall permit limited access as provided herein, to school groups and fisherman over the path designated by the owner on the owners property from Pigeon Point Road to the public beach, provided that any such group or fishermen have entered into a written agreement with the owner providing reasonable terms and conditions governing such access, including without limitation release of any liability of owner, reasonable insurance requirements, and regulations of hours of use and minimizing disturbance of project guests.

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<sup>1</sup> The applicable legal point made in the Nollan decision was that there needed to be a direct connection between the impact caused by a project and the mitigation proposed to address it.



No access shall be permitted when any pinnipeds are present on the beach. Owner shall not be required to permit access to more than one school group per week in months July through December and more than two school groups per week in months January through June. Fisherman shall be limited to launching portaged boats for pole and line fishing from the boats."

There is no information contained in the County record analyzing this condition for consistency with Coastal Act access policies, nor is there any finding which justifies this requirement. The intent of this condition was to resolve the public access issues raised at the hearing in a manner acceptable to all parties. However, as indicated by the appeal of this project, the appellant has been unable to come to an access agreement with the property owner, and has therefore challenged this condition as being inconsistent with Coastal Act and LCP access requirements.

Even if this condition was adequately supported by findings, it is unenforceable because it gives the ultimate authority regarding access agreements to the property owner. For example, fees for access, the length of time over which access agreements apply, and the number of students in a school group can be completely regulated by the landowner. Additionally, future property owners are not bound to honor such agreements. In this way, public access could be rendered infeasible by the terms of the agreements required by this condition.

The need to condition or modify the project to provide for public access across the subject property can not be determined until a thorough access analysis has taken place. The access condition adopted by the County and challenged by the appellant is not an appropriate solution to this issue as it is unenforceable, unfounded, and potentially unconstitutional.

b. Project Consistency with LCP Access Policies:

In summary, the applicable San Mateo County LCP public access policies previously identified require that new development along the shoreline provide for the establishment and improvement of vertical and lateral public access and parking as a condition of approval for obtaining a permit for development along the shoreline (Policies 10.1, 10.13, and 10.30). Implementation of this requirement must be based upon "the level of importance and development of access support facilities at a site" (Policy 10.30, cross-reference Table 10.6). Furthermore, the responsibility of the property owner to provide for such access improvements must be based upon "(1) the size and type of development, (2) the benefit to the developer, (3) the priority given to the type of the development under the Coastal Act and (4) the impact of the development, particularly the burden the development would place on the public right of access to and use of the shoreline" (Policy 10.30c.). According to Policy 10.30c.(3) the owner is required, at a minimum, "to provide, improve, and maintain shoreline access consistent with the policies of this component". Policy 10.22d. also requires new commercial or industrial parking facilities of 10 or more spaces within 1/4 mile radius of an established shoreline access to designate and post 20% of the total spaces for beach user parking between 10:00 a.m. and 4:00 p.m..

In addition to Policies 10.13, and, 10.30 summarized above, the appellant also identifies Policy 10.31 as supporting his appeal. This policy requires "additional access areas, improvements or operation and maintenance beyond the minimum when a project decreases the existing or potential public access to the shoreline by: (1) removing or infringing upon an area which has

historically been subject to public use without permission or effective interference by the owner and/or (2) decreasing the amount of sandy beach by building seawalls, etc., and/or (3) removing future recreation opportunities by committing lands suitable for recreational development to uses which are not assigned priority for use of oceanfront land by Section 30222 of the Coastal Act". Portions of this policy do not apply due to the fact that, according to the approved settlement agreement, the Commission has agreed to preclude themselves from finding that the existence or possible existence of implied dedication rights constitute a basis for imposing access conditions. The proposed project, at this time, does not include elements that would reduce the amount of sandy beach (such as a seawall), but, given the ambiguity of the County's approval, may result in the development of recreationally suitable lands for a non-priority development.

The appellant also asserts project inconsistency with Section 6269 of San Mateo County's certified Implementation Program. This section of the zoning ordinance, which establishes development standards within the Coastside Commercial Recreation (CCR) District, does not apply to the subject project which is within the Planned Agricultural District (PAD). The requirements of the PAD district are analyzed in the findings of this staff report regarding allowable density of development.

The County's staff report for this project contains only a brief analysis of the proposed project's consistency with the access component of the San Mateo County certified LCP. The entire access analysis, which was combined with a sensitive habitats analysis, states:

"Coastal Access and Sensitive Habitats"

"No sensitive habitats or rare and endangered species exist on this site; however, the parcel is located on a coastal cliff where the offshore water is designated within the Monterey Bay National Marine Sanctuary. Because no nesting or roosting activity has been identified on the site, stairway access to the beach is permitted if this access is available for public use, pursuant to LCP Policies 7.30.b (Permitted Uses), 7.31 (Development Standards). The existing stairs leading from the top of the bluff to a rocky outcrop on the beach are not in safe condition, and the applicant proposes to repair them. Because these stairs existed prior to the adoption of the Coastal Act, County Counsel has determined that they may be repaired without requiring public access pursuant to LCP Policy 8.4 (Bluffs and Cliffs)."

"LCP Table 10.6 (Site Specific Recommendations for Shoreline Destinations) encourages the consolidation of bluff top trails, the development of interpretive educational displays discussing the fragile nature of the tide pools at Pigeon Point and prohibiting the removal of species, and construction of short stairways to beaches. Pursuant to this policy, the applicant proposes the establishment of a public viewpoint that would be constructed prior to issuance of building permits for Phase III of the development. Because Phases I and II will not constitute an increase in site coverage or location of development from the existing warehouse structures, staff has not recommended a condition to require a viewpoint in until Phase III is constructed [sic]. Staff has recommended a condition of approval to require the applicant to establish and maintain a viewpoint area to accommodate a minimum of three cars prior to the issuance of the building permit for Phase III. The specific location for a viewpoint will be determined in the field after the new well is drilled. However, staff recommends that it be located at a point that provides optimal viewing of the lighthouse and coastal bluffs ...".

Besides containing misleading information, the above analysis does not provide the public access analyses required by the San Mateo County certified LCP for shoreline developments. These shortcomings are summarized as follows:

- There no analysis of the LCP requirements which apply to the repair of the existing bluff top stairway, which although preexisting, constitutes a non-conforming use. The proposed repair of the stairway must be analyzed for conformance with Chapter 4 of the San Mateo County certified Implementation Program (Zoning Regulations) regarding zoning nonconformities. In order to undertake such an analysis, specific information regarding the extent of the proposed repair must be provided. This information is not contained in the County record.
- The County relies on the provision of a 3 car public viewpoint as means to provide project consistency with the site specific access recommendations contained in Table 10.6, as required by LCP Policy 10.30. Not only has the requirement for the viewpoint eliminated from the County's final decision, but Table 10.6 requires interpretive educational displays, consolidation of bluff top trails, and the provision of beach stairways, not the provision of public viewpoints.
- The statement "because Phases I and II will not constitute an increase in site coverage or location of development from the existing warehouse structures, staff has not recommended a condition to require a viewpoint in until Phase III is constructed" implies that the first two phases of development will be within the same footprint of the existing buildings, and will not intensify use of the site. In fact, the six units proposed under Phases I and II are seaward of the existing buildings, and will increase the intensity of use of the site.
- There is no analysis of the impact of the development, particularly the burden the development would place on the public right of access to and use of the shoreline, in determining appropriate access conditions as required by Policy 10.30c. The increase in intensity of use of the site, which will also increase the intensity of use of the adjacent State owned beach, may reduce the number of people from the general public that access this beach, and adversely affect the quality of the public's recreational experience as well as sensitive natural resources. An analysis of this impact must be undertaken prior to finding that the proposed project is consistent with LCP access requirements.
- There is no analysis of the need to designate and post 20% of the total spaces for beach user parking between 10:00 a.m. and 4:00 p.m. as required by Policy 10.22d.

5. Conclusions:

The County of San Mateo has not undertaken the level of analysis necessary to ensure that the proposed project is consistent with the public access provisions of the California Coastal Act and the San Mateo County certified LCP. Because such an analysis must be based upon project specific information which is not contained in the County record, it is not possible for the

Commission to conclude what project modifications, if any, would be necessary to achieve LCP and Coastal Act conformance. Instead, the Commission has identified the additional information needed, and the additional analysis that must be undertaken, in order to gain project approval. In this way, the Commission's action of denial does not deny the property owners economic use of their property, and should not be construed to imply that a visitor serving development can not be developed on the site. Rather, this action is intended to inform the applicant and the County of San Mateo of Coastal Act and LCP requirements necessary to achieve a project which can truly be found to be consistent with the public access provisions of California Coastal Act and the San Mateo County certified LCP.

D. Density of Development:

1. Background:

The San Mateo County certified LCP establishes standards for development which regulate, among other things, the allowable density of development. The appropriate application of density standards is very important, especially in rural areas of the County, as it serves to limit non-agricultural development in order to preserve agricultural land and natural resources, ensure that development takes place consistent with public service capacities (e.g., water, sewer, roads), and to maintain the projected buildout figures contained in the certified LCP.

The density regulations contained in the San Mateo County LCP are based on the concept of density credits, which each parcel is assigned, based on a variety of factors. Every legal parcel is entitled to at least one density credit, which can be used to build a single family residence, or the equivalent thereof. In order to encourage Coastal Act priority uses, the LCP provides a 100% bonus for such development. For example, a visitor serving development equivalent to two single family residences could be built on a parcel with one density credit.

One of the problems associated with this system is the difficulty in establishing the equivalent of a single family residence. In developing the LCP, alternatives for objectively determining, on a quantifiable basis, the density of development equivalent for one density credit were evaluated. In considering elements of development which could provide a means for determining the allowable density of development per density credit, such as site coverage, traffic generation, or water use, the County chose water use.

Water use is thus simply a "yardstick" for determining the density of development equivalent to a single family home for the purpose of allocating the amount of use for one density credit. Water conservation is not the thrust of this policy. In fact, extreme water conservation would significantly increase density projected in the certified LCP. For example, extreme water conservation could allow three single family residences, rather than one, per density credit, thus tripling buildout and inflicting unknown impacts on resources and infrastructure. So far, water conservation has not been used as a tool to obtain additional single family residences on a site with one density credit. However, water conservation has been used as a tool to increase the allowable density of development for uses other than single family residences.

In order for the density formula contained in the certified LCP to work, non-residential density of development must, from a common sense view, be equated to the density of a single family residence. It is this density equivalency that is the issue, not the manipulation of water use to achieve a greater amount of non residential development. Proper analysis of the allowable

density of development according to the certified LCP must evaluate the maximum amount of daily water use based on normal water duties, not on water conservation. This is because the single family residence standard is based on typical water use, not on conservation schemes. To increase density in return for water conservation circumvents the point of the policy, and will cumulatively result in a substantial, unplanned increase in density in rural San Mateo County.

2. LCP Policies and Ordinances:

The following LCP Policies and ordinances regulate the allowable density of development at the project site:

a. Policy 1.8c.:

"Land Uses and Development Densities in Rural Areas"

"c." Require density credits for non-agricultural land uses in rural areas, including any residential use, except affordable housing ... and farm labor housing. One density credit shall be required for each 315 gallons maximum daily water use as a result of a land use. For purposes of this ordinance, a single family dwelling unit shall be deemed to use 315 gallons per day. In order to give priority to Public and Commercial Recreation land uses, one density credit shall be required for those uses for each 630 gallons of maximum daily water use. Water use shall be calculated on the best available information and shall include all appurtenant uses, e.g., landscaping, swimming pools, etc."

b. Section 6356 of the Zoning Regulations, states in relevant part:

"Maximum Density of Development."

"In order to equate the density credit accrued for different uses permitted in the PAD [Planned Agricultural District], one density credit shall equal 630 gallons/day of water Public and Commercial Recreation uses, and 315 gallons/day of water for all other uses. For the purpose of this ordinance, a single-family dwelling shall be deemed to use 315 gallons per day. Any uses requiring more than 315 or 630 gallons/day of water shall consume the number of additional whole credits needed. . Water use shall be calculated on the best available information and shall include all appurtenant uses, e.g., landscaping, swimming pools, etc. ..."

3. Project Consistency with LCP Density Regulations:

The subject project, as approved by the County includes nine 600-700 square foot "Bed and Breakfast" units, and a  $\pm$  1,800 square foot manager's "office". The County permitted this density based on the 100% density bonus granted to visitor serving uses, thus qualifying the project for a maximum daily water use of 630 gallons per day. However, there is no information contained in the County file which ensures that the development is in fact, or will remain as, a visitor serving use, and is therefore eligible to use a maximum of 630 rather than 315 gallons per day of water. The concern that the proposed project may be used for residential rather than visitor serving purposes is heightened by the following: the size and type of the proposed units

could easily be converted to residential units as they are completely self sufficient; the project lacks the typical Bed and Breakfast support facilities (e.g., laundry, manager's residence, dining facility, guest lounge) which is especially peculiar given its remote location; and, the County has not conditioned its project approval in a manner which ensures that the development can only be used for visitor serving purposes.

Assuming that the proper assurances are put in place to guarantee that the proposed project will in fact operate as a visitor serving development, an analysis demonstrating that the entire project will not consume more than 630 gallons per day of water must be provided. The County record for this project makes such an analysis impossible due to the fact that the entire project is not defined. For example, the project includes a  $\pm$  1,800 square foot "manager's office", the use of which has not been defined, and plans for which have not been provided. Because the project is in an isolated location, and because it has been described as a Bed and Breakfast, the potential is high that this "office" may be used as a manger's residence, for the preparation of meals, and/or for laundry facilities, thereby increasing the density of development and associated water use. Furthermore, the extent of the proposed landscaping has not been defined, which also prevents a determination of whether the project falls within the maximum daily water use of 630 gallons.

The analysis regarding the allowable density of development at the project site contained in the County staff report on this project states:

"Pursuant to the County's Rural Area Water Use Study, up to nine guest rooms can be established on this parcel with one density credit. Table 7.1 of the Rural Area Water Study establishes that small hostelrys with water conservation fixtures can support 9.33 units per density credit. Therefore, a condition has been recommended to require the applicant to install water conservation fixtures in each of the units."

This analysis, which is the only evaluation of the permitted density of development contained in the County record for this project, does not provide evidence that the project is consistent with policies and ordinances of the certified LCP regulating density of development for many reasons. These shortcomings are summarized as follows:

- The "County's Rural Area Water Use Study" referred to is, in fact, a water use study prepared by a consultant, which has not been adopted by the County or certified as a component of the LCP. It is inappropriate for the County to rely purely on an uncertified document, rather than undertaking a project specific analysis, in determining the allowable density of development.
- The County's use of the referenced table contained within this water study applies the maximum number of "hotel/motel rooms " per density credit based upon "average daily use with water conservation fixtures". The certified LCP requires that density be based upon maximum rather than average daily water use, and does not provide for additional density in return for water conservation. The table referenced by the County identifies that based on peak daily water use, without conservation fixtures, a maximum of 3.42 hotel/motel units can be developed within the parameters of one density credit. Other sections of this study, such as on page 22, state that "maximum daily water use by hotels and motels in rural San Mateo County is about 184 gallons per day per room" . Application of this figure would also result in a maximum number of 3.42 visitor serving units per density credit.

- The County's density analysis does not evaluate the maximum water use, including all appurtenant uses, associated with the proposed project. There has been no analysis of the water use associated with project landscaping (the extent of which is not defined in the County record), the  $\pm$  1,800 square foot manager's office (the allowed use of which has not been defined by the County record and plans for which have not been provided), or the kitchenettes proposed to be included in each unit (i.e., hotel/motel units do not include kitchenettes).
- The County evaluates the allowed density of development based upon an assumption that the proposed project is visitor serving, without any assurance that the development will not be used for residential purposes (e.g., long term rental units).

It is also noted that the County's conditions of approval for this project does not include the requirement for water conserving fixtures referenced in the County's density analysis. This, however, is a moot point due to the fact that the allowed density of development, according to the certified LCP, does not provide for increased density in return for water conservation.

#### 4. Conclusion:

As detailed in the above analysis, the County record for this project fails to provide the evidence necessary to ensure that the proposed development is consistent with LCP policies and ordinances regulating the maximum density of development. Furthermore, Commission review of the available information indicates that the density of the proposed project is inconsistent with these regulations. As a result, the Commission must deny the proposed project.

This analysis should not be construed to imply that development of the site, or economic use of the property, can not be achieved. Rather, it is intended to inform the applicant and San Mateo County of the requirements under the certified LCP necessary to establish the allowable density of development on the subject site.

It should also be noted that the issue of density is closely related to the access analysis required by Policy 10.30 of the County's LCP and Section 30214 of the Coastal Act, detailed on pages 15-19 of this staff report. The affect of the proposed development on public access and recreation is directly related to the extent to which the existing use of the site will be intensified. Therefore, it is recommended that the issue of the maximum density of development allowed at the project site be resolved prior to undertaking the access analysis required by the certified LCP and Coastal Act.

#### E. Visual Resources:

##### 1. Background:

The proposed project is directly adjacent to the Pigeon Point Lighthouse, which is described in National Register of Historic Places as a highly visible and important component in the development and heritage of the San Mateo County's coast. This lighthouse is one of the most picturesque in the State, and is a popular subject for artists and photographers. Based on the impact that the proposed development would have on the adjacent lighthouse, the County's

Historic Resources Board voted 5-3 to deny the project. As indicated in the County staff report for this project, the Historic Resources Board action did not have any impact upon the approval granted by the County Planning Commission, other than resulting in conditions of approval requiring the protection of archaeological resources.

The scenic qualities of this lighthouse are supplemented by the extensive views of rural coastline and open ocean which surround Pigeon Point. The vistas available from Pigeon Point are also known to provide excellent opportunities to view whales and other marine life. The significance of these views, and their accessibility by motorists and bicyclists traveling along Highway One, are evidenced by the fact that this area is included within the California State Scenic Highway Corridor.

The County staff report and Negative Declaration prepared for this project, indicated that visual impacts resulting from the proposed development were to be mitigated by the construction of a public viewing platform. This mitigation measure, however, is not reflected in the County's conditions of approval (attached as Exhibit B).

## 2. LCP Requirements:

The following policies contained in the San Mateo County certified LCP regulate the impact of new development on visual and scenic resources of the San Mateo County coastal zone and apply to the subject project:

### a. Policy 8.4:

"a. Prohibit development on bluff faces except public access stairways where deemed necessary and erosion control structures which are in conformity with coastal policies on access and erosion."

"b. Set back bluff top development and landscaping from the bluff edge (i.e., decks, patios, structures, trees etc.) sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline except in highly developed areas where adjoining development is nearer the bluff edge, or in special cases where a public facility is required to serve the public health, safety, and welfare."

### b. Policy 8.5:

"Minimize the number of structures located in open fields and grassland areas; require that structures be designed in scale with the rural character of the region, and that they be clustered near existing and natural or man-made vertical features."

### c. Policy 8.15:

"Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches."



d. Policy 8.18 requires, in part:

"b. That roads, buildings, and other structural improvements be constructed to fit the natural topography and to minimize grading and modification of existing landforms."

"d. That all development minimize the impacts of noise, light, glare and odors on adjacent properties and the community at large."

e. Policy 8.21 regulates the design and location of commercial signs.

f. Policy 8.22 requires new utility lines within State Scenic Corridors to be installed underground, unless a specific exception is granted by the Planning Commission on the basis of constraints posed by topographic features.

3. Project consistency with Visual Resource policies:

The analysis of the subject project's conformance with the visual resource policies of the LCP contained in the County's staff report states:

"As proposed, an existing private stairway down the bluff face to a lower bluff will be repaired. Pursuant to LCP Policy 8.4.a (Cliffs and Bluffs), development on the bluff faces, except for public access stairways is prohibited; however, it has been determined that this pre-existing stairway can be repaired. LCP Policy 8.4.b limits bluff top development from the bluff edge to ensure it is not visually obtrusive when viewed from the shoreline. The lodge units will be set back a minimum of 20 feet from the bluff top, a minimum required by the zoning regulations and supported by the geotechnical analysis which determined the cliffs on this portion of the parcel to be stable. The units would be clustered on the southwest side of the property, adjacent to the lighthouse development on the lot to the west. This location is acceptable, pursuant to LCP Policy 8.5 (Structures) which promotes the clustering of development in rural areas."

This analysis does not meet the requirements of the LCP policies previously identified, and contains incorrect information, as summarized below:

- The statement that "the units would be clustered on the southwest side of the property" does not acknowledge the fact that Phase III of the proposed development is located on the currently undeveloped eastern portion of the property, and is separated from the other six units by the abandoned roadway to the beach. Furthermore, this incorrect information is used to support the project as being consistent with the requirements of Policy 8.5, which requires clustering of development and minimizing the number of structures located in open space areas. In fact, phase III of the development will encroach into portions of the site which are currently open space, and Phase III will not be clustered with the remainder of the proposed development. Elsewhere in the staff report and Negative Declaration prepared for this project, the visual impact of Phase III is to be mitigated by the construction of a public viewing platform. However, implementation of this mitigation measure is not required by the County's conditions of approval. The findings for project approval contained in the County record acknowledge that Phase III of the project "will occur on a site that is not currently

developed, and thus will result in a blockage of views". No mitigation is provided for this impact.

- The statement that "it has been determined that this pre-existing stairway [down the bluff face to a lower bluff] can be repaired" pays no credence to zoning requirements of the certified LCP which regulate the repair of non-conforming structures. No description of the extent of these repairs (e.g., if they constitute replacement rather than repair), or plans for this "repair", needed to evaluate this element of the project with regulations governing non-conforming structures, have been provided in the County record.
- The above analysis implies that because the proposed structures will be set back a distance of 20 feet from the bluff edge (the minimum required under the applicable zoning regulations), they will not obstruct views from the shoreline, in accordance with Policy 8.4.b. However, an exhibit attached to the staff report showing the "view of the units from the beach side", illustrates the fact that the proposed development will be clearly visible from the beach.
- The County's analysis does not evaluate the project's impact on "views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches" as required by Policy 8.15. The Negative Declaration states that "the architect has carefully determined the visible lines of sight to preserve views of the lighthouse as seen from Cabrillo Highway and Pigeon Point Road", but no evidence is provided. The drawings contained in the County file intended to support this assumption are not explained, and do not provide adequate information in response to the requirements of Policy 8.15 as they only consider views of the lighthouse and not the ocean, and they do not evaluate impacts to coastal views available from Highway One, and County owned land adjacent to the project site.
- There is no analysis contained in the County record regarding the extent of grading required for the proposed development, and the signing and lighting of the project is to be evaluated at a later date by the Planning Director according to conditions of approval numbers 7 and 11, inconsistent with the analysis required prior to project approval by policies 8.18d. and 8.21.
- No information regarding the projects conformance with LCP Policy 8.22, requiring the new utilities to be placed underground, is contained within the County record.

#### 4. Conclusions:

As indicated by the above analysis, the County's approval of the subject project does not ensure that the proposed development will take place consistent with LCP standards protecting visual resources within the San Mateo County coastal zone. The limited information provided regarding the visual impacts of the project is contradictory, incomplete, and indicates that the project will impact coastal views in a manner inconsistent with LCP requirements. As a result, the Commission must deny the project as approved by the County.

This analysis, however, should not be interpreted to imply that development of the project site, or an economic use of the property, is not possible. The above analysis is intended to provide the County and the applicant with the level of information and analyses required to achieve a

project that can be found to be consistent with LCP requirements regarding the protection of visual resources.

F. Agricultural Resources:

1. Background:

The project site is zoned within the Planned Agricultural District (PAD) indicating the LCP's intent to preserve existing and potential agricultural operations on the site, and to minimize conflicts between agricultural and non-agricultural land uses within the project vicinity.

The project site has not been under agricultural development in recent history, but is located across Pigeon Point Road from an agricultural field typically farmed for Brussels sprouts. The project has received approval from the County's Agricultural Advisory Committee, and as approved by the County, the applicant is required to record a "Right to Farm" statement in order to minimize project conflicts with adjacent agricultural operations.

2. LCP Requirements:

LCP Policy 5.22a., protecting agricultural water supplies, requires that "before approving any division or conversion of prime agricultural land or other land suitable for agriculture, require that ... all non-agricultural uses permitted on a parcel demonstrate the existing availability of a potable and adequate on-site well water source".

3. Project Consistency:

The County record for this project does not provide evidence that an adequate well exists on-site to serve the proposed development. A letter received from a resident of the adjacent Youth Hostel (Exhibit L) asserts that the water supply at the subject site is lacking in quantity and quality, and that residents of the existing structures on the project site frequently obtain water from a lighthouse spigot because there was not enough water flow on-site to provide water for bathing, cooking, or drinking.

4. Conclusions:

The project can not be approved consistent with LCP requirements until it has been demonstrated that an adequate and potable water supply exists on site to serve the proposed development. Based upon the lack of this information regarding this requirement, denial of the subject project, as approved by the County, is necessary. The applicant maintains the opportunity to demonstrate that an adequate well exists on-site and pursue an economic use of the property accordingly.

G. Sensitive Habitats:

1. Background:

According to Policy 7.1 of the certified LCP, marine habitats and coastal tide lands are defined as sensitive habitats. Policy 7.22 specifically designates Pigeon Point as a marine and

estuarine habitat requiring protection. Because the subject project is directly adjacent to such habitat areas, LCP policies protecting sensitive habitat areas apply to the proposed development.

Whaler's Cove beach adjacent to the proposed project is used periodically as a seal haul-out area, and may also be used for pupping activities.

2. LCP Requirements:

a. Policy 7.3:

"Protection of Sensitive Habitats"

"a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas."

"b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats."

b. Policy 7.5:

"Permit Conditions"

"a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats..."

3. Project consistency:

The proposed project will bring significant numbers of visitors, and as noted in the County record, their canine pets, to the site. It is likely that most, if not all of the visitors will be attracted to the beach. The County record for this project does not analyze project impacts on adjacent marine, intertidal, and seal haul-out habitat areas resulting from the increased presence of humans and dogs on this beach, which may disturb or remove such resources. Nor does the County record evaluate impacts to sensitive habitats resulting from erosion, sedimentation, and urban runoff associated with project construction and operation, which have the potential to diminish water quality and biological productivity, as well as adversely affect sensitive habitats and marine resources.

The County has conditioned the project to require that people stay off the beach when seals are present. However, according to the County staff report addendum, enforcement of this condition will be left to the State after it takes ownership of the beach. As stated by the staff report addendum, "when the beach is transferred under state ownership, state law will prevail for access on the beach, and the property owner will not longer have the authority to enforce access restrictions". This addendum also states that the permit requirement to prohibit access to the beach when pinnipeds are present "would be enforced by State Laws after the beach is transferred to State ownership".

Clearly, the County condition is inadequate to protect the haul-out area habitat consistent with LCP Policy 7.22 calling for the protection of such habitats at Pigeon Point. A condition which places responsibility on the project proponent to ensure that their clientele does not adversely impact this habitat rather than relying on the adjacent landowner to mitigate the impact would not only be more effective, but also more consistent with the LCP and the California Environmental Quality Act.

The County has also conditioned its approval of the subject project in a manner which requires that "storm water runoff from the site shall be controlled so as not to increase the velocity of the runoff and to maintain the same or improved quality of the surface runoff from the site. Drainage improvements shall be assessed at the building permit stage." This condition is inconsistent with Policy 7.5 a, which requires the applicant to demonstrate that there will be no significant impact on sensitive habitats as part of the development review process (i.e., not the building review process). Given the increase in impervious surface and increased presence of automobiles on the site resulting from the proposed project, compliance with this condition may not be achievable. No provisions for monitoring or assuring such compliance has been built into the County's approval of this project.

The County file indicates that the entire project will be served by a 1,500 gallon septic tank. This size septic tank, typically used to serve a single family residence, may not be adequate to serve the proposed development, especially under high occupancy conditions. Undersized septic systems are more prone to failure. Failure of the septic system to function properly could adversely impact marine (and domestic) water quality, biological productivity, and marine resources adjacent to the project site. The County has conditioned the project to require review of the septic and water systems prior to issuance of the building permits, inconsistent with Policy 7.5a. requiring demonstration of no significant impacts to sensitive habitats as part of the development review stage.

#### 4. Conclusions:

As detailed by the above analysis, the County has not adequately analyzed the proposed project's impact to adjacent habitat areas, water quality, and biological productivity. Nor does the County's approval provided adequate assurances that the project will not significantly impact these habitat areas. As a result, the project approved by the County can not be found to be consistent with LCP requirements protecting sensitive habitats, and must therefore be denied.

This analysis does not imply that development of the site can not be accomplished consistent with the sensitive habitat standards contained in the San Mateo County LCP. It is intended to identify the additional information and analyses necessary to ensure that such development takes place consistent with the LCP requirements protecting sensitive habitat areas.

#### H. Hazards:

##### 1. Background:

A Geotechnical investigation of the project site and proposed developments was undertaken in September 1995, which found that coastal erosion in the area of the subject site has been very

limited, and that "it is unlikely that the property will experience significant coastal erosion during the design-life of the proposed project". This investigation did find, however, that "the soil that blankets the site is poorly consolidated" and as a result "is not suitable for support of the proposed structures".

The non-supportive soil was identified by the report as the primary geotechnical constraint to the proposed development. As a result, the investigation recommends that the proposed structures "be supported on drilled cast-in-place concrete friction pier and grade beam foundations bearing in the marine terrace deposits and sandstone bedrock". It also identifies that "control of surface drainage is critical to the successful development of the property" as "the results of improperly controlled run-off may include erosion, gully, ponding, and potential slope stability". The report recommends controlling drainage and surface runoff via closed conduit discharge system with an energy dissipater.

## 2. LCP Requirements:

Policy 9.8 contained in the Hazards Component of the San Mateo County LCP regulates development on coastal bluff tops. Part a. of this policy states:

"Permit bluff and cliff top development only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic life span of the development (at least 50 years) and if the development (including storm runoff, foot traffic, grading, irrigation, and septic tanks) will neither create nor contribute significantly to erosion problems or geologic stability of the site or surrounding area."

## 3. Project Consistency:

The County's analysis of the project's conformance with these requirements state:

"... a geotechnical report was submitted which ensures that the location of the units will be stable during the life of the project, a time span estimated to be fifty years. The geotechnical report determined the project site to be stable with evidence of little erosion from the bluff top during the last 50 years. The applicant proposes to replace existing ice plant that has spread over the project area with native landscaping and in time, conduct bluff top restoration projects on site."

This analysis contains misleading information, and does not meet the requirements of Policy 9.8a., for the following reasons:

- The statement that "the geotechnical report determined the project site to be stable" does not acknowledge the fact that the geotechnical report identified constraints to development including unconsolidated soils and the need to properly control runoff.
- The County has not evaluated all elements of the project affecting site stability and erosion, such as storm runoff, foot traffic, grading, irrigation, septic tanks, and landscaping.
- The local conditions of approval do not require compliance with the recommendations contained in the geotechnical report necessary to ensure structural integrity of the proposed development.

The County conditioned its approval of the subject project in a manner which requires the applicant to "submit a geotechnical report for review and approval by the Geotechnical Division to ensure the stability of the proposed construction prior to issuance of a building permit for this project". This condition only addresses the stability of the proposed construction, not the impact of the entire development on site stability and erosion. Furthermore, it is inappropriate to assume that later review by the Geotechnical Division will adequately analyze the planning considerations required by the LCP. Finally, this condition does not require compliance with the geotechnical recommendations required to ensure project consistency with LCP requirements, nor does it articulate what changes to these recommendations, or to the project, may be authorized by the Geotechnical Division without further coastal development permit review.

#### 4. Conclusions:

As the above analysis explains, the County has not adequately analyzed project conformance with LCP regulations regarding bluff top development, nor has it assured that the proposed development will take place consistent with these standards. Therefore, the project approved by the County can not be found to be consistent with the San Mateo County certified LCP, and on this basis, must be denied by the Coastal Commission.

This analysis does not indicate that some form of development on the subject site can not be achieved, but rather points out the additional information and analyses necessary to determine that such a project is consistent with LCP requirements.

#### I. California Environmental Quality Act (CEQA):

The County of San Mateo County adopted a Negative Declaration for the subject project on December 13, 1996. This Negative Declaration included six mitigation measures designed to ensure that the proposed development would not have a significant impact on the environment.

The County's approval of the coastal development permit for this project, however, does not incorporate, or require compliance with, two of the six mitigation measures. The mitigation measures that were eliminated by the County's approval, without explanation, include:

"3. The applicant shall either provide for public access on the proposed stairway to the beach, or the stairway shall be removed from the plan", and

"4. If the applicant eliminates the stairway to the beach, a public viewing point shall be established on-site prior to the completion of Construction of Phase III of the project".

The coastal development permit approved by the County is therefore inconsistent with the Negative Declaration prepared for the project and adopted by the County. As a result, it can not be found that the project approved by the County will not have a significant impact on the environment within the meaning of the California Environmental Quality Act.

In addition to the inconsistencies between the project approved by the County and the terms of the adopted Negative Declaration discussed above, the County failed to adequately review all

of the potentially adverse impacts to environmental resources that may result from project implementation, or identify project alternatives or mitigation measures that would avoid such impacts. These inadequacies are detailed throughout the findings of this staff report.

It is therefore concluded that the subject project, as approved by the County of San Mateo, is inconsistent with CEQA requirements as it has the potential to result in unmitigated significant adverse effects upon environmental resources, and because feasible alternatives which avoid such impacts have not been identified.

**J. Violations:**

Violations of the Local Coastal Program have taken place on the subject property in the recent past. These include:

- a. Erection of a fence without benefit of a coastal development permit;
- b. Use of the agricultural storage building as a guest residence/rental; and,
- c. Demolition of a building without benefit of a coastal development permit.

In response to the first two violations mentioned above, the County of San Mateo required the applicant to apply for coastal development permit for the fence, and to re-establish the agricultural storage building to its permitted use. An "after the fact" coastal development permit exemption was subsequently issued by the County for the fence.

With respect to the recent demolition of an existing building on the site, the County issued a demolition permit in January, 1996, but did not issue the required coastal development permit. This violation has yet to be resolved.

Although violations have taken place on the subject property prior to Commission review of this project, consideration of this project has been based solely on the project's conformance with applicable policies of the San Mateo County certified LCP and the Coastal Act. The Commission's action on this permit is without prejudice, as if the unpermitted development had not previously occurred. This action does not, however, constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.



APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

To revise the language of conditions of Approval #4 so that building permits will not be issued until the land owner enters into agreement with the school groups and fishermen. This appeal is supported by the Coastal Act section 30212 which requires public access in new development projects; San Mateo County LCP policy 10.23, 10.30, 10.31 also requiring public access in new developments and Section 6269 requiring new development in the CCR district comply with LCP. Shore line access easements right of way may be required.

Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Mark S. Poler  
Signature of Appellant(s) or Authorized Agent

Date 1/29/96

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date

EXHIBIT NO. A
APPLICATION NO. A-3-SML-96-08
McKenzie B+B
Appellant's Contentions

EXHIBIT NO. B
APPLICATION NO. A-3-SMC-96-08
Mckenzie B+B
Local Conditions

access to the beach area. The "gully," which lies between Phases I and II and Phase III of the project, and which has been the subject of claims of public and private access, will not be developed. The status of this "gully," and any other claims of implied access over the property, is the subject of an action to quiet title brought by the owners of the property against the State of California, the State Lands Commission, the Coastal Commission and the County of San Mateo. This lawsuit, entitled McKenzie v. County of San Mateo, et al., will resolve any claims of implied public access over the beach area and the upland property. If, for any reason, it is judicially determined that such rights exist, the proposed development would not impede such access. Further, the proposed development would not impede any private prescriptive rights that may be perfected in the future by private individuals or groups.

- c. Development of Phases I and II will not result in impacts to coastal views in that the site for these phases is currently developed with warehouse structures of the approximate size and location as the proposed development. For this reason, no conditions are necessary as to Phases I and II to protect coastal views. Phase III of the project, however, will occur on a site that is not currently developed, and thus will result in a blockage of coastal views.

Regarding Architectural Review:

8. Found that the project, as described in the application and accompanying materials and as conditioned, is in compliance with the Standards for Architectural and Site Control within the Cabrillo Highway State Scenic Corridor.

CONDITIONS OF APPROVAL

Planning Division

1. This approval is for the nine one-bedroom units, well, parking area and conversion of the warehouse unit into a manager's office, repair of a bluff top stairway and installation of utilities. Any major modifications to this project shall be subject to subsequent review and planning permits.
2. If any significant cultural materials are exposed or discovered during site clearing of site work, or during subsurface construction, operations shall stop within ten (10) feet of the find immediately and a qualified archaeologist retained for professional recommendations. Significant artifacts or features include, but are not limited to, aboriginal human remains, chipped stone, groundstone, shell and bone artifacts, concentrations of fire cracked rock, ash, charcoal, shell, and bone; and historic

Local Conditions of Approval

Exhibit B, p.1

A-3-SMC-96-08

features such as privies or building foundations. Appropriate mitigation of significant cultural resources may include the systematic scientific excavation and removal of the cultural resource. Any artifacts or samples collected, as part of the initial discovery, monitoring or mitigation phase must be properly conserved, cataloged, analyzed, evaluated, and curated along with associated documentation in a professional manner consistent with current archaeological standards. All artifacts and samples collected shall be submitted to the San Mateo County Historical Museum for curation. The project archaeologist shall submit all recommendations for mitigation to the Planning Division for review and approval. The Planning Division will require any recommended mitigation or conditions contained within the project archaeologist's report to be incorporated into the project. All documentation prepared during the initial discovery, monitoring, or mitigation phase shall be submitted to the Planning Division and the San Mateo County Historical Museum.

3. The applicant is required to retain the services of a qualified Archaeologist and to implement an archaeological monitoring program during the initial soil exposure after the following removal and prior to the issuance of any building permit(s): (1) vegetative removal, concrete pad(s) removal, existing building(s) removal, and parking and driveway encroachment areas for Phase I, (2) vegetative removal in the area proposed for Phase II building including the parking and driveway encroachment areas east of the main ravine on the property, and (3) waterline construction, to prepare a professional general reconnaissance report and recommended mitigation for archaeological resources for those areas identified above. All documentation prepared during the initial discovery, monitoring, or mitigation phase shall be submitted to the Planning Division and the San Mateo County Historical Museum. The project archaeologist shall submit the general reconnaissance report and recommended mitigation to the Planning Division for review and approval. The Planning Division will require any recommended mitigation or conditions contained within the project archaeologist's report to be incorporated into the project. All artifacts and samples collected shall be submitted to the San Mateo County Historical Museum for curations. If during this phase of monitoring and report preparation the project archaeologist determines the existence of significant cultural resource(s), the applicant shall retain the services of a qualified historian or historical archaeologist to prepare a focused historical research and report for the McKenzie Pigeon Point property to detail the history of land use on the property and the association with the significant cultural resource(s) as required by this condition.

4. Owner shall permit limited access as provided herein, to school groups and fishermen over the path designated by owner on the owner's property from Pigeon Point Road to the public beach, provided that any such group

Exhibit B, p-2  
A-3-SMC-96-08

or fishermen have entered into a written agreement with the owner providing reasonable terms and conditions governing such access, including without limitation release of any liability, reasonable insurance requirements, and regulations of hours of use and minimizing disturbance of project guests. No access shall be permitted when any planned signs are present on the beach. Owner shall not be required to permit access to more than one school group per week in months July through December and more than two school groups per week in months January through June. Fishermen shall be limited to launching portaged boats for sale and fishing from the boats.

5. Storm water runoff from the site shall be controlled so as not to increase the velocity of the runoff and to maintain the same or improved quality of the surface runoff from this site. Drainage improvements shall be assessed at the building permit stage.
6. Prior to completion of construction of Phase I of the project, the applicant shall record the "Right to Farm" statement, pursuant to Local Coastal Program Policy 5.15.a (Mitigation of Land Use Conflicts), on the deed for the property.
7. The applicant shall submit a night lighting plan of the site to the Planning Director for review and approval prior to installing outdoor lighting on this site. The outdoor lighting shall be designed to minimize glare and visibility from the right-of-way along Highway 1, and shall not directly illuminate areas beyond the project site. The lights shall be located as close to ground as possible with the use of motion sensitive lighting encouraged where necessary.
8. Prior to completion of the building permit, the applicant shall submit a sample of the exterior color and materials to be used on the units for review and approval by the Planning Director. No reflective or bright colors shall be permitted.
9. All landscaping installed by the applicant shall consist of native vegetation. Prior to issuance of the building permit for Phases I and II, the applicant shall provide a landscape plan for review and approval by the Planning Director. Landscaping shall be installed prior to completion of construction of Phases I and II.
10. Exterior trash receptacles shall be screened from view from off-site locations. Vegetation or fencing shall be employed to screen dumpsters and trash receptacles.
11. Prior to installation of signs on this site, the applicant shall submit a sign program to the Planning Director for review and approval.

Ms. Kathleen McKenzie  
January 12, 1996  
Page 6

12. The water storage tank shall be screened from public view. Prior to issuance of a building permit for the water storage tank, the applicant shall submit a screening plan consisting of either native vegetation or a wooden fence to screen the tank from public view.
13. The applicant shall be responsible for assuring that 1) all dogs outside of guest units on the site shall be leashed or contained; and 2) no people or their dogs shall be allowed access to the beach when marine mammals are present.
14. The applicant shall provide to guests, and prominently display in each unit, a "right to farm" notice which informs them of the inconvenience which may accompany residing adjacent to agricultural operations. This notice shall be to the satisfaction of the Planning Director.
15. If the applicant fences the property, open fencing shall be utilized around the perimeter of the site to allow visibility. Fencing around courtyards adjacent to units may be closed.

Department of Public Works

16. Prior to issuance of the building permit, the applicant will be required to provide payment of "roadway mitigation fees" based on the square footage (assessable space) of the proposed bed and breakfast operation per Ordinance #3277.
17. The provisions of the San Mateo County Grading Ordinance shall govern all grading on and adjacent to this site. Unless exempted by the Grading Ordinance, the applicant may be required to apply for a grading permit upon completion of the County's review of the development plans.
18. The applicant shall submit a driveway "plan and profile" to the Department of Public Works, showing the driveway access to the parking lot areas complying with County standards for driveway slopes (not to exceed 20%) and to County standards for the driveways (at the property line) being the same elevation as the center of the access roadway (Pigeon Point Road). The driveway plans shall also include and show specific provisions and details for handling both the existing and the proposed drainage.
19. No construction work within the County right-of-way shall begin until Public Works requirements for the issuance of an encroachment permit, including review of the plans, have been met and an encroachment permit issued.

Exhibit B, p.4  
A-3-SMC-96-08

Building Inspection Section

20. Fire sprinklers shall be required to be installed in each unit.
21. The applicant shall submit plans for review and approval of a demolition permit and building permit prior to commencement of demolition of existing structures or construction of new structures on site.
22. A survey of the site shall be required for a building permit.

Fire Marshal

23. Upon submittal of a final site plan and building plans, the Fire Marshal shall review the plans to establish a "fire lane" in the parking area serving six units.
24. Upon submittal of building plans, the Fire Marshal shall determine the quantity of water storage, the size of the water mains, location of hydrants and pressure pump requirements for fire suppression needs.
25. The applicant shall design emergency pedestrian access around the units to the satisfaction of the Fire Marshal.
26. All chimneys shall have an approved spark arresting device installed prior to final approval of the building permit to the satisfaction of the Fire Marshal.

Environmental Health Division

27. The applicant shall submit a plot plan showing the existing and proposed septic drainfield and water supply to the Environmental Health Division for review and approval prior to issuance of a building permit. The septic system shall be required to meet Environmental Health standards prior to issuance of the building permit.
28. The applicant shall submit water quality tests for the new and existing well to the Environmental Health Division for review and approval prior to issuance of the building permit.

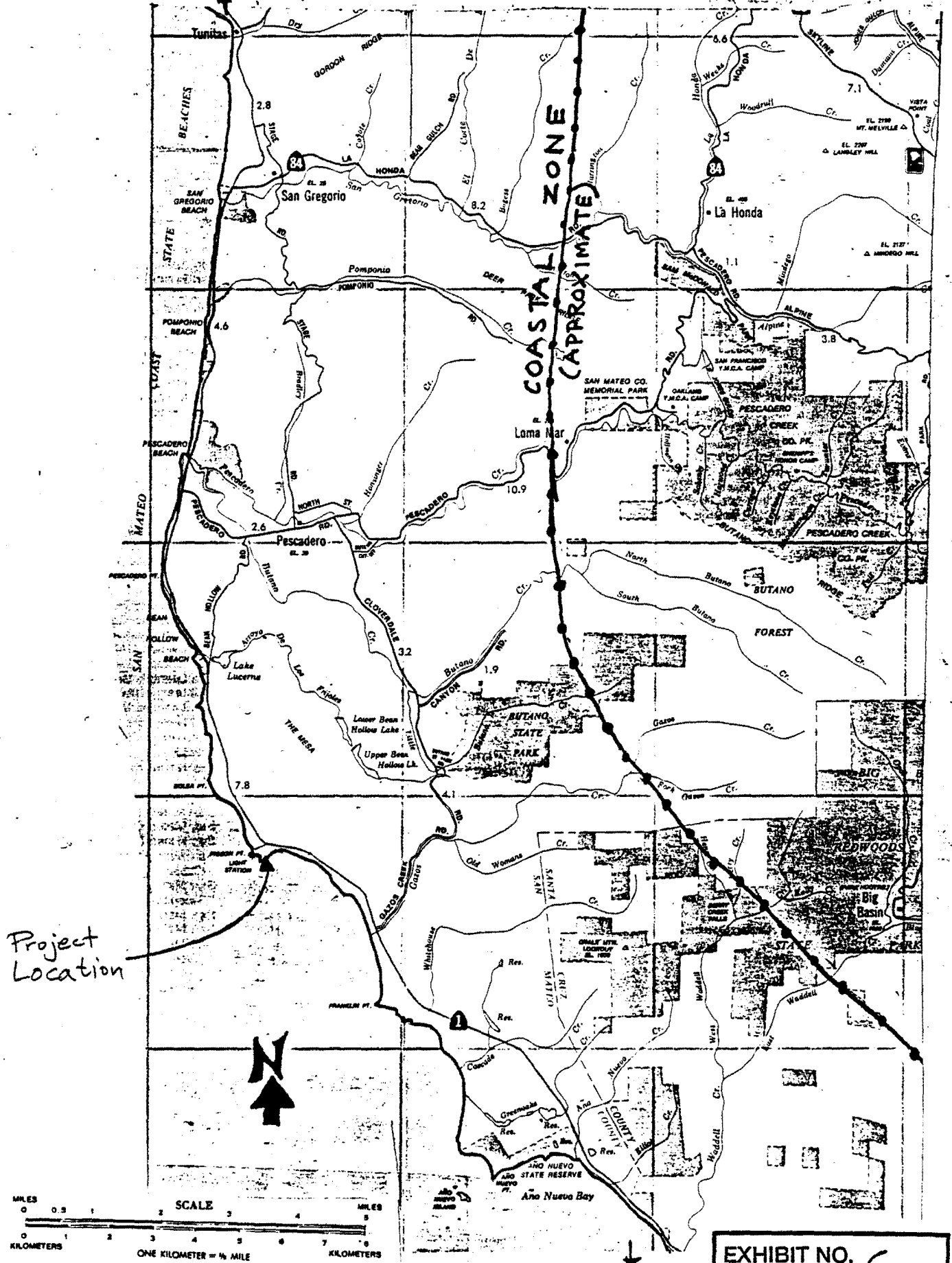
Geotechnical Division

29. The applicant shall submit a geotechnical report for review and approval by the Geotechnical Division to ensure the stability of the proposed construction prior to issuance of a building permit for this project.

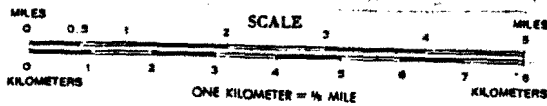
Any interested party aggrieved by the determination of the Planning Commission has the right of appeal to the Board of Supervisors within ten (10) days from

Exhibit B, p.5  
A-3-SMC-96-08

Half Moon Bay



Project Location



Santa Cruz

EXHIBIT NO. C
APPLICATION NO. A-3-SML-96-08
Mckenzie B+B
Location Map

SAN MATEO CO.- SOUTH

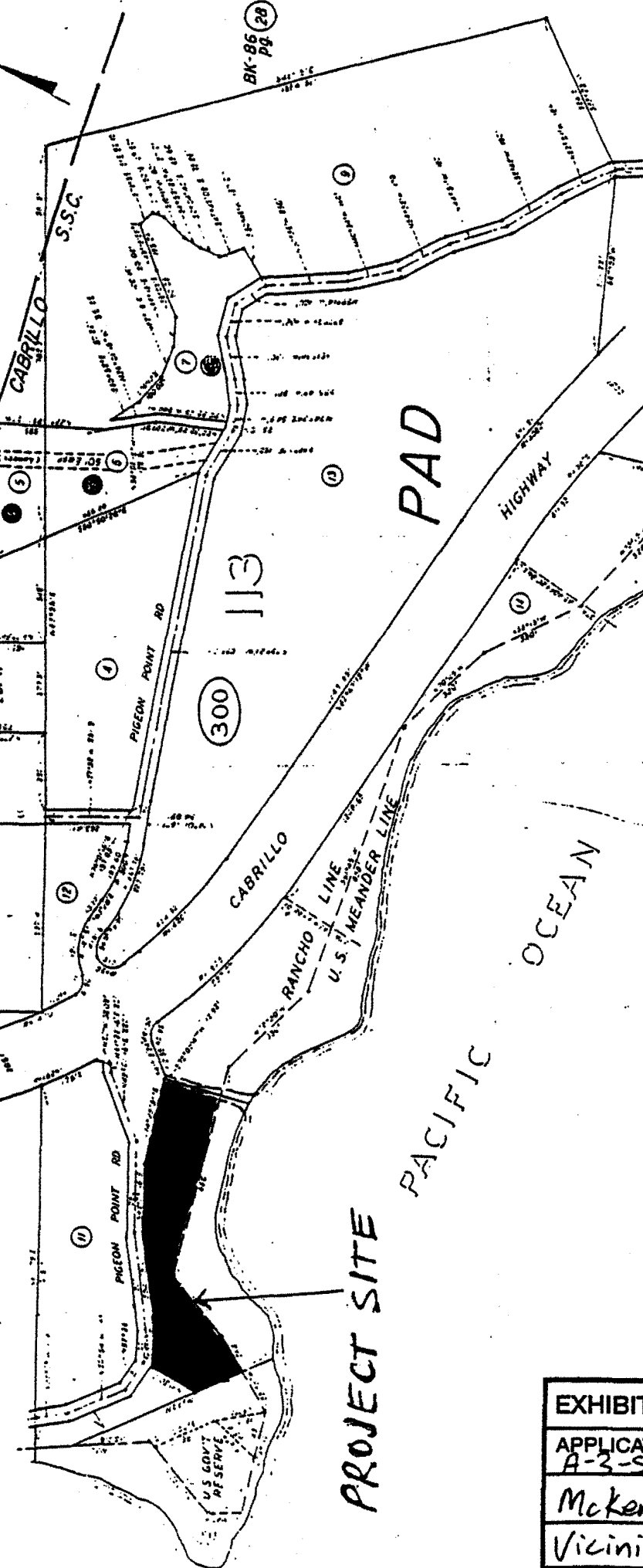
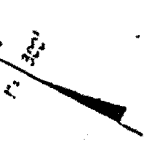
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Pg. 28

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RANCHO PUNTA DEL ANO NUEVO



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Pg. 28

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Pg. 31

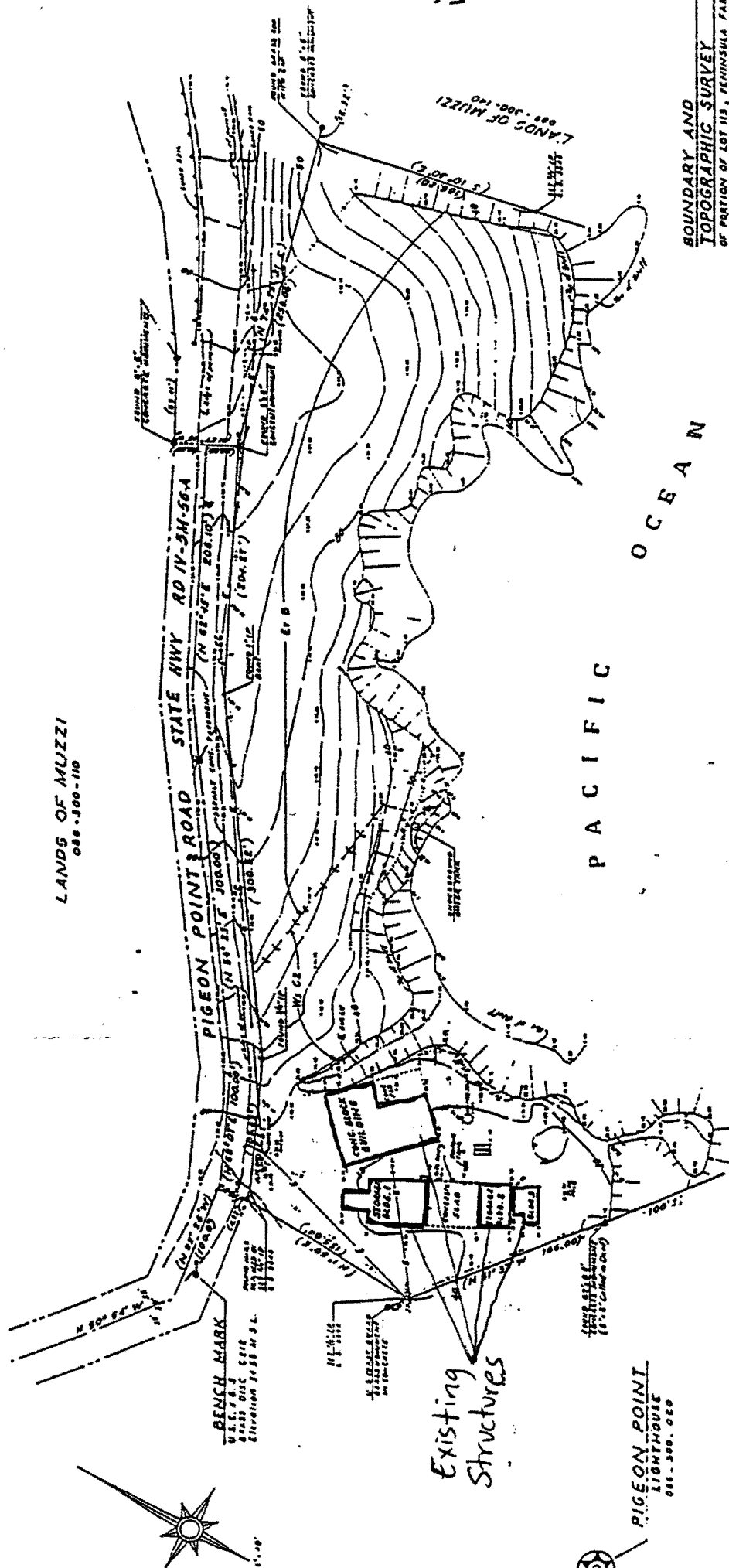
43.2

PROJECT SITE

PACIFIC OCEAN

EXHIBIT NO. D
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
Vicinity Map





LANDS OF MUZZI  
088-300-110

STATE HWY RD IV-5M-56A  
PIGEON POINT ROAD

PACIFIC OCEAN



Existing Structures

PIGEON POINT LIGHTHOUSE  
088-300-020

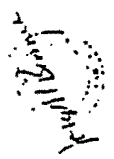
EXHIBIT NO. E
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
Site Map

- LEGEND:**
- FENCE
  - TOP OF BLUFF
  - TEE OF BLUFF
  - CENTERLINE
  - PROPERTY LINE
  - RIGHT OF WAY
  - WASHED ELECTRIC
  - E FLOW LINE
  - ( ) RECORD INFORMATION
  - o JOINT PILE
  - o CENTER POLE

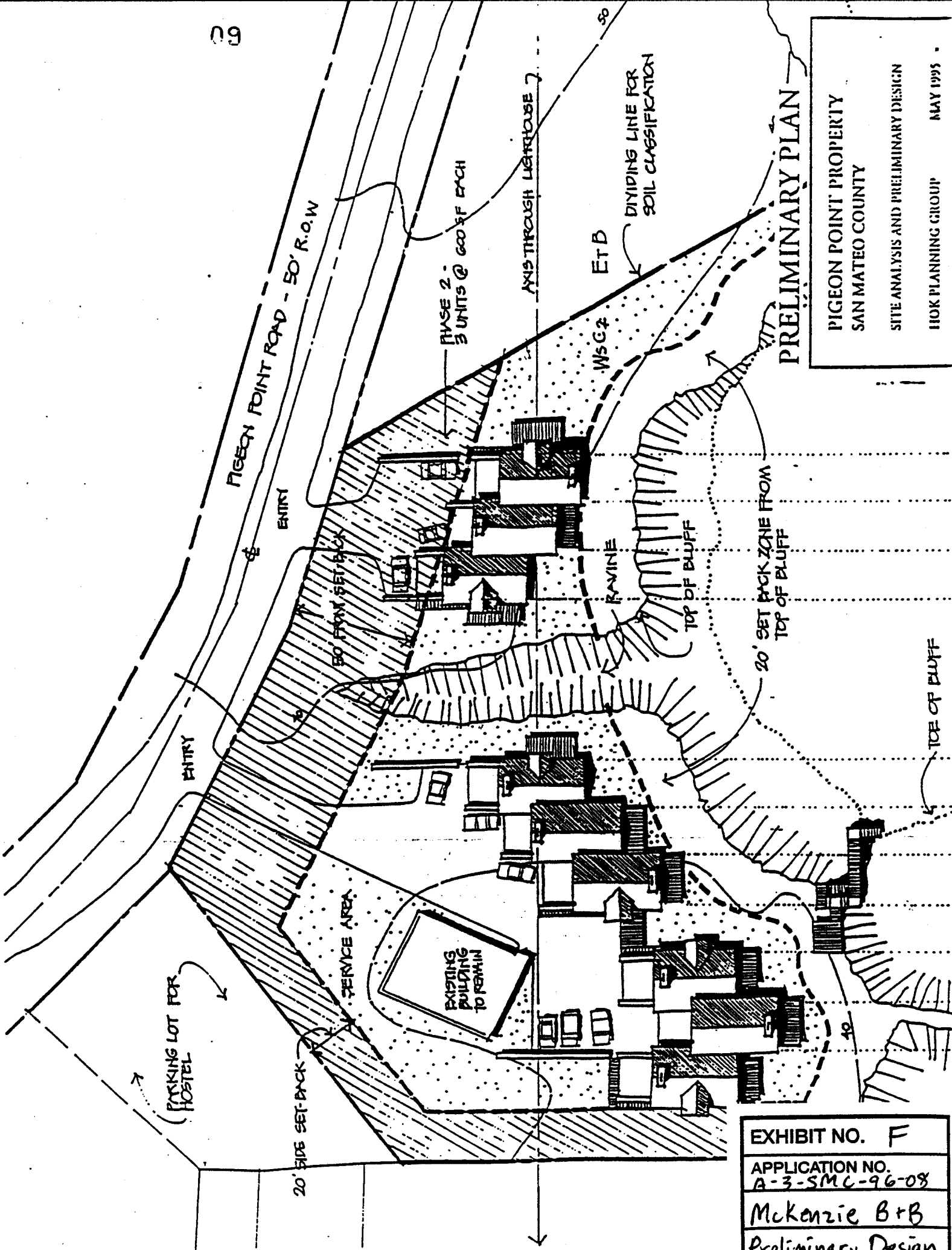
- NOTES:**
1. Topographic features accurate to two feet
  2. Contours accurate to one half contour interval.
  3. Er. B - Chaparral Sandy Loam Class B soil
  4. Wa. Ce. - Watanville Sandy Loam Class J soil
- Soil line interpolated from soil survey San Mateo Area, California Series 1256 No. 13, 1966, No. 45

**BOUNDARY AND TOPOGRAPHIC SURVEY**  
OF PART OF LOT 113 PENINSULA FARMS COMPANY'S SUBDIVISION NO. 2, VOLUME 11, MAPS 28 AND 23 DESCRIBED IN A. F. 11111, SAN MATEO COUNTY RECORDS, CALIFORNIA  
APN 088-300-030

FOR:  
JIM KEVIN  
212 37TH AVENUE  
SAN FRANCISCO, CA 94121  
(415) 668-7481



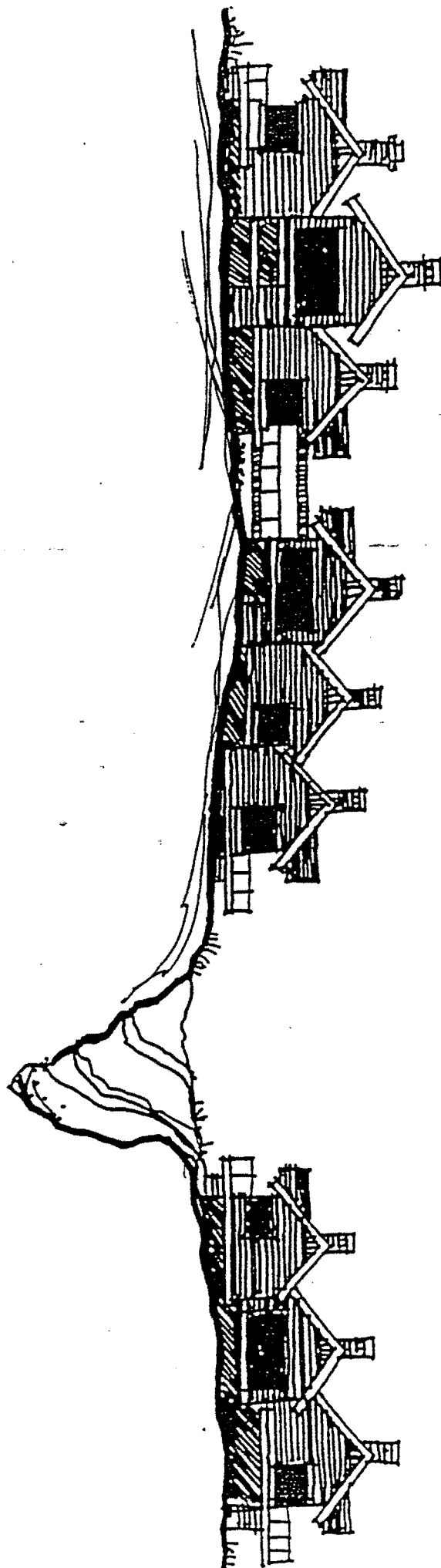
JOSEPH R. BENNIE  
LICENSED PROFESSIONAL SURVEYOR  
No. 10171  
CALIFORNIA  
EXPIRES 12/31/01



# PRELIMINARY PLAN

PIGEON POINT PROPERTY  
 SAN MATEO COUNTY  
 SITE ANALYSIS AND PRELIMINARY DESIGN  
 HOK PLANNING GROUP      MAY 1995

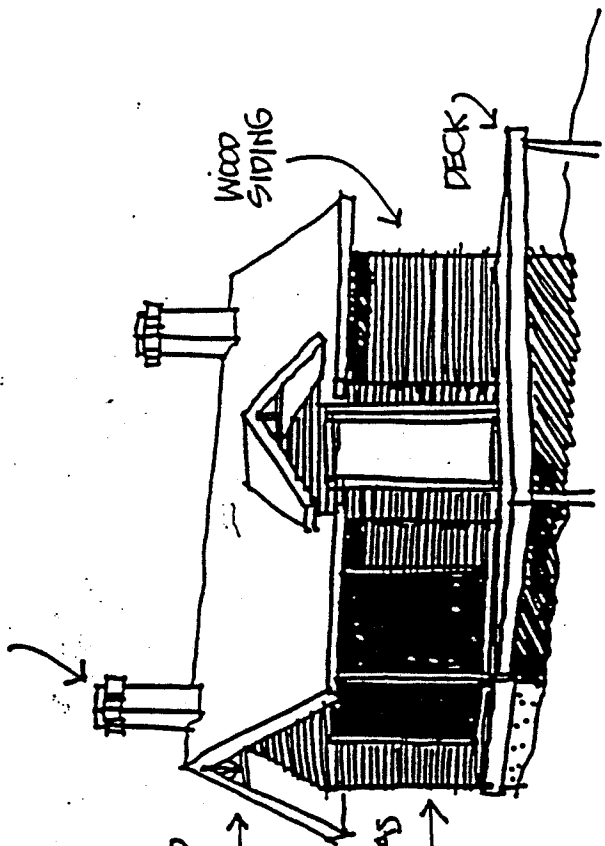
EXHIBIT NO. F  
 APPLICATION NO.  
 A-3-SMC-96-08  
 McKenzie B+B  
 Preliminary Design



VIEW OF UNITS FROM THE BEACH SIDE (SOUTH)

EXHIBIT NO. G
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
View of proposed development from beach

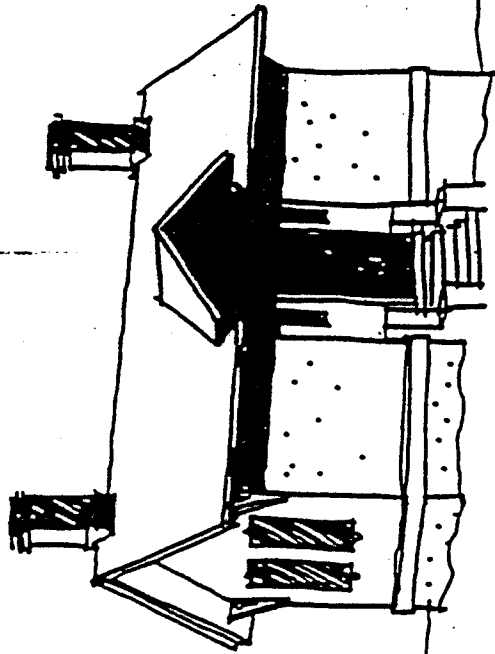
CHIMNEY DETAIL



PROTYPE FOR PROPOSED UNITS

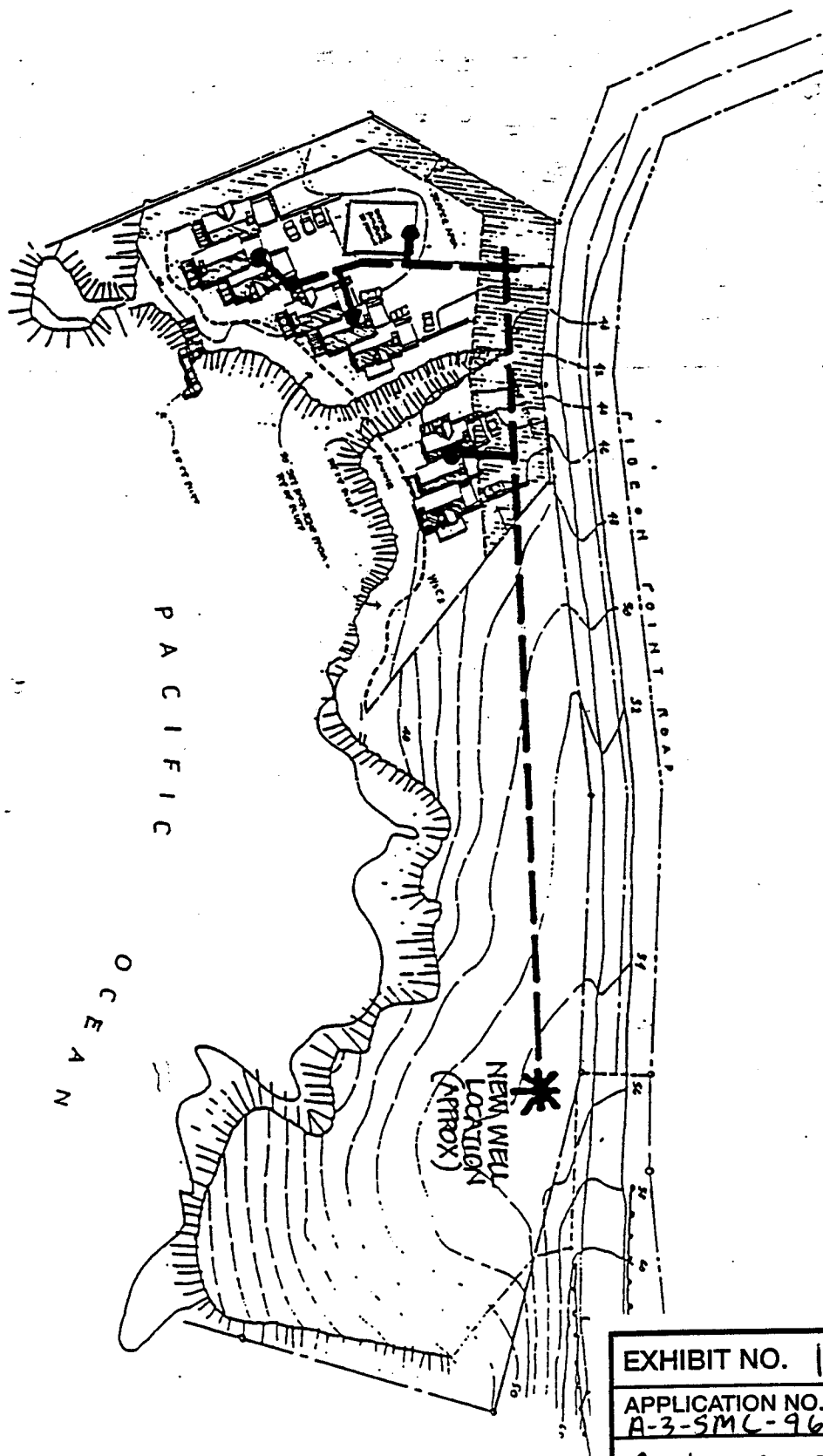
BARGE BOARD AND GABLE TRIM

LARGE AREAS OF GLASS



EXISTING LIGHTHOUSE BUILDING

EXHIBIT NO. 4
APPLICATION NO. A-3-SMC-96-08
Mckenzie B+B
Prototype Unit



UTILITIES - WATER

PIGEON POINT PROPERTY  
 SAN MATEO COUNTY  
 SITE ANALYSIS AND PRELIMINARY DESIGN  
 HOK PLANNING GROUP  
 MAY 1995

EXHIBIT NO. 1
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
Proposed water supply

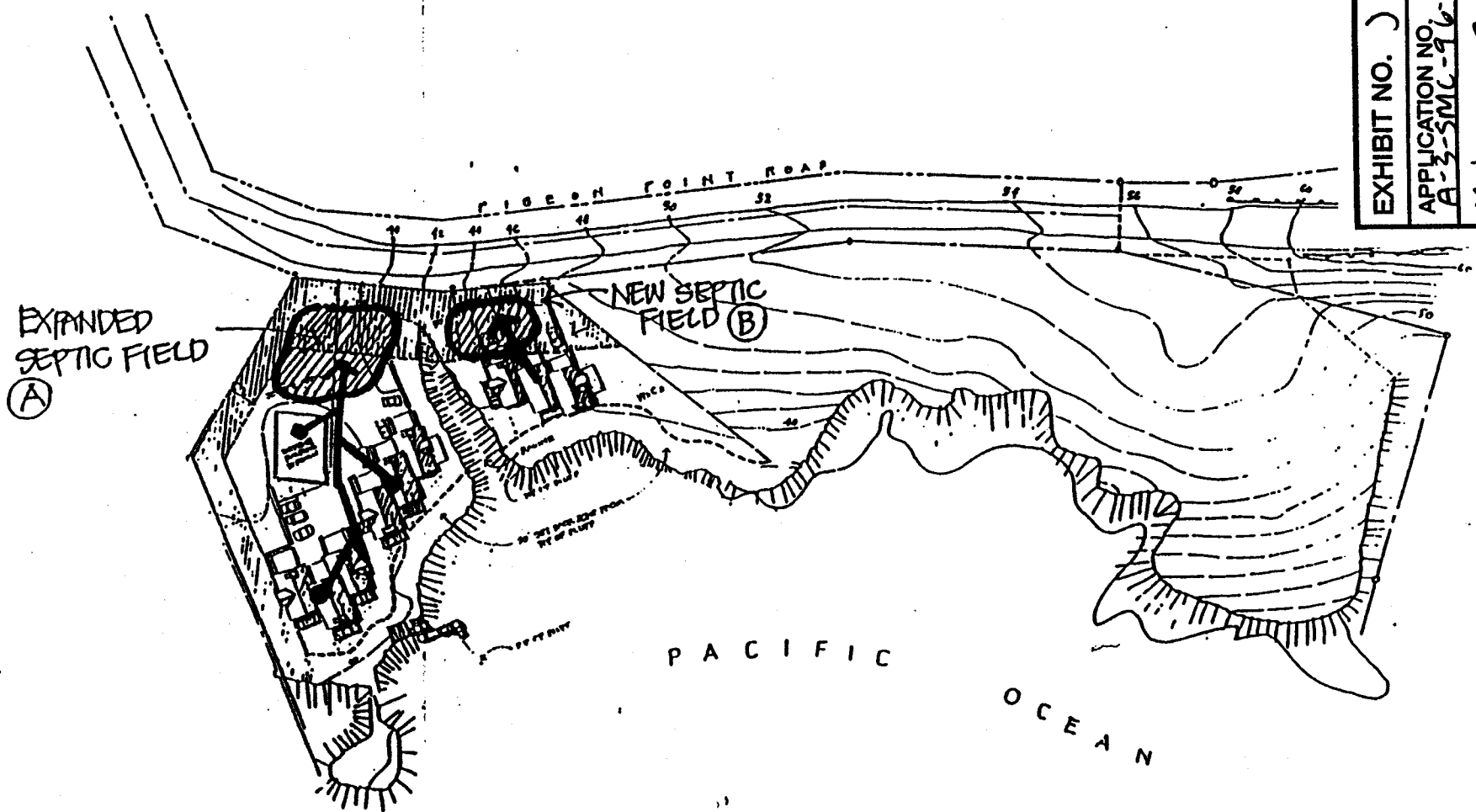


EXHIBIT NO. )
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
Proposed septic system

UTILITIES- SANITARY

PIGEON POINT PROPERTY  
 SAN MATEO COUNTY  
 SITE ANALYSIS AND PRELIMINARY DESIGN  
 HOK PLANNING GROUP      MAY 1995

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by Maria Goodavage

### The California Dog Lover's Companion

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EXHIBIT NO. K
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
Advertised listing

THE

# California Dog Lover's Companion



by Maria Goodavage

Foghorn  
Press   
BOOKS BUILDING COMMUNITY.

Exhibit K, P. 2  
A-3-SMC-96-08

**Pescadero State Beach 🐾🐾🐾 1/2**

There are three entrances to this two-mile beach and each one leads to a unique setting on the Pacific. The prime attractions at the southernmost entrance, on Highway 1 at Pescadero Road, are the small cliffs that hang over the crashing ocean. There are even a few picnic tables on the edges of the mini-cliffs, for those who like lunch with a built-in thrill. Hold onto your leash!

The middle entrance, reached from the small parking lot, will lead you to a secluded and untamed rocky area. Take one of the less steep trails down, and you'll find yourself in the middle of lots of rocks, rotting kelp, driftwood and a few small tidepools. This is an eerie place to come on a very foggy day. Joe loves it here during pea-soupers.

Perch atop the vista point at this central entrance and you'll get a great view of the Pescadero Marsh Natural Preserve, just across Highway 1. Unfortunately, you can't explore the preserve with your dog.

The north entrance is the only one that charges a fee for use—\$4 per car and \$1 per dog. But many people park beside the road and walk over the sandy dunes to escape the cover charge. This is the most civilized—and mundane—entrance, with a wide beach and lots of kite fliers. Dogs must wear leashes on all parts of the beach.

The south entrance is at Pescadero Road and Highway 1. Follow the signs to the north for the other entrances. (415) 726-6203. → See #16 on map p. 436.

**RESTAURANTS**

**Arcangeli Grocery Company:** There's always fresh-baked bread here—still hot—waiting for you after a cold day at the beach. We like to buy a loaf of steaming herb-garlic bread and eat it on the bench out front. 287 Stage Road; (415) 879-0147.

**Tony's Place:** For homemade pies, Greek food and french-fried artichokes, this diner with three big wooden tables outside is the best. If you tie your dog to a table with a short leash, she's welcome to join you. 1956 Pescadero Road; (415) 879-0106.

**PLACES TO STAY**

**McKenzie House:** Any dog who ever longed for his own comfy cottage by the sea, with his own private beach and fenced-in dog run, will howl with joy when he hears about this place. It's utterly spectacular. No wonder, since it was designed by owner Christie Keith with dog lovers in mind.

Inside the lone cottage, you're treated to a wood-burning stove and a Jacuzzi tub in the bathroom. But what's outside is the real

**jaw dropper:** Your backyard leads to a two-acre fenced-in bluff with a gazebo, overlooking two small private beaches to which you and your dog have access. Keith can also tell you about a couple of hush-hush, off-leash dog walks in the area, as well as some pleasant on-leash ones. The cabin rents for only \$75 a night, with weekly rates available. If you or your dog have been very good lately, you deserve a break here. To ensure privacy, the address is not advertised. But to get information or make reservations, you can call (415) 879-1240 or write to Keith at 443 Dearborn Park Road, Pescadero, CA 94060.

**PORTOLA VALLEY**

**PARKS, BEACHES & RECREATION AREAS**

**Windy Hill Preserve 🐾🐾🐾**

You can look out from the top of the first big hill you come to and see for miles all around—and though you're on the edge of the suburbs, you'll see hardly a house. This 1,130-acre preserve of the Midpeninsula Regional Open Space District has as many different terrains as it has views, including grassland ridges and lush wooded ravines with serene creeks.

There are more than three miles of trails that allow you and your leashed canine companion. But watch out for foxtails. The park is so dry that foxtails seem to proliferate all year.

Start at Anniversary Trail, to the left of the entrance. The hike is a vigorous three-quarters of a mile uphill, and that may be enough, especially when it's baking. But you can continue down the other side of the hill and loop right, onto Spring Ridge Trail. Near the end of this two-and-a-half-mile path, you'll come to a wooded area with a small, very refreshing creek. This is a good place to sit a spell before heading back.

Park at the lot on Skyline Boulevard, two miles south of Highway 84 and five miles north of Alpine Road. You'll see the big sign for the preserve and three picnic tables. (415) 691-1200. → See #17 on map p. 436.

**REDWOOD CITY**

No dogs are allowed in any of Redwood City's parks.

**RESTAURANTS**

**Cafe Figaro:** Polenta and risotto are big here. So is opera. From your table outside, you and your dog can feast your ears on recordings of some of the best vocal cords in the world. 2635 Broadway; (415) 365-1223.



**Note Regarding Exhibit L:**

The following letters have been selected from more than 200 letters Commission staff have received in support of this appeal. These example letters are representative of the variety of letters received.

The complete packet of all letters received will be available for review at the public hearing. Anyone interested in reviewing the complete file of these letters prior to the hearing may contact Steve Monowitz at the Central Coast Area Office ((408) 427-4863).

EXHIBIT L  
A-3-SMC-96-08  
McKenzie Bed and Breakfast  
Example Letters Received

March 9, 1996

Steve Monowitz  
California Coastal Commission  
725 Front Street  
Santa Cruz, CA 95060

RECEIVED  
MAR 11 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Dear Mr. Monowitz:

**Subject: Proposed Bed and Breakfast / Closure of Beach  
Access**

File no.: V94-0076; APN 086-300-030  
Location: 921 Pigeon Point Road, Pescadero.  
Owner: Kathleen McKenzie.

I would like to, once again, voice my opposition, to the closure of the access to the historic Whaler's Cove and, to the proposed nine unit Bed and Breakfast, located at 921 Pigeon Point Road.

Two years ago, April 1, 1994, a fence was erected by property owner, Kathleen McKenzie. At the time of construction no permits had been attained by, Ms. McKenzie. This fence was erected in order to close access to the bluff top area and to a trail which leads to the Historic Whaler's Cove. The access trail, which is located on, Ms. McKenzie's property, has been used by the public throughout the history of the Pigeon Point Ranch. More importantly, however, is the fact that it has been used as a public access throughout the entire duration of, Ms. McKenzie's ownership.

According to coastal law, the access shall remain public as long as the following elements have been established:

That the public has used the land:

- 1.) For a continuous period of five years as if it were public land,
- 2.) without asking or receiving permission from the owner,
- 3.) with the actual or presumed knowledge of the owner, and
- 4.) without significant objection or significant attempts by the owner to prevent or halt use.

I will attempt to provide the information that is necessary to of the above requirements have been established.

EXHIBIT NO. L
APPLICATION NO. A-3-SMC-96-08
McKenzie B+B
Example letters

I have lived at the Pigeon Point Lighthouse Hostel, since June of 1990. I began visiting the Pigeon Point area in 1988, due to the fact that I had friends whom resided at the hostel. I will never forget the first time that I walked down the trail, located just south of the Pigeon Point Lighthouse, on Ms. McKenzie's, unsigned trail and, was absolutely awestruck at the beauty of this spectacular cove. I felt as if I had found the treasure chest on the entire South Coast. The wind was blocked from the north and, the water was absolutely still. The peace and tranquility of this special place was astounding. I knew that I had just discovered something awesome. I, revisited the Whaler's Cove many times during the years of 1988-1990. In 1990, I was lucky enough to have the privilege to actually move to the Pigeon Point Lighthouse Hostel. Over the period of the next four years, I spent hours of every day in that cove. I even began to sea kayak as, I knew that Whaler's Cove was the place to launch small craft. I saw many people access Whaler's Cove with inflatable boats, aluminum boats and kayaks, by means of, Ms. McKenzie's property. Having had seven years to enjoy, and observe others enjoying this magical place, I can tell you that this access trail has been public and unposted, for at least five years. Many people, responded to the Coastal Commission questionnaire, dated May 5, 1995, Ms. Locklin, should have these on file. I would like to mention that the majority of the people that use the cove, do not necessarily live within the Pescadero community and, are difficult to locate for public comment.

I, never asked for, nor did I ever receive, permission from the owner, Kathleen McKenzie, her ex-husband, Emrys T. Hughes, whom has occupied a shack on 921 Pigeon Point road during the entire length of my habitation at the Pigeon Point Hostel, nor did I receive permission from her caretaker, William Owsten. I have been informed that, Ms. McKenzie, has acquired a legal deposition from, Mr. Owsten, stating that he gave myself and, others named in the document permission to us the access trail to Whaler's cove. I, however, have not seen this document nor have I been allowed to respond, in a legal fashion, to this declaration. I would like to declare, that, Mr. Owsten's, statement is false. If he were required to testify under oath to this statement, I am quite confident that his testimony would crumble under the scrutiny of a trial lawyer. We have all used the access to Whaler's cove without permission from anyone.

Exhibit L, cont'd  
A-3-SML-96-08

Between, 1989-1994, Emrys T. Hughes, and, Kathleen McKenzie, were co-owners of 921 Pigeon Point Road. Whether this is the current ownership status or not, I do not know. However, I do know that Mr. Hughes and Mr. Owsten were well aware of the fact that the public was using the trail access. Not once during this time period, did I ever experience or witness any objections to the use of the trail access. At one point, Ms. McKenzie, put the entire parcel up for sale. At that time a, Trespassing by Permission Only sign, was posted on an existing boundary fence, within proximity of the trail access. This sign was posted by, David Kline, a Realtor for Coldwell Banker, located in Half Moon Bay. To my recollection, this sign was posted no more than two and a half years prior to the actual closure of the access. The public continued to use the trail access without significant-objection or significant-attempts by the owner to prevent or halt use. The only significant attempt by, Ms. McKenzie, to halt the use of the access trail was on the day that the "illegal" fence was erected. Since that day in, April, 1994, the public continues to persevere in their fight for their coastal access rights.

I also have concerns about the proposed development of a Bed and Breakfast, located at 921 Pigeon Point Road. The concept of a Bed and Breakfast at this location is actually a good one. However, I have many viable concerns about the currently proposed project.

The proximity of the proposed Bed and Breakfast to the most photographed Historic Lighthouse on the West Coast, calls for a review on the aesthetic impact that the development will have upon the traveller's view from Cabrillo Highway 1. The enclosure of the entire blufftop, that also hosted a public trail, by a wire fence, mars the beauty of the exceptional view of Prisoner's Rock, which is located in the waters of Whaler's Cove. This wire fence is an eyesore, it has also blocked access to the thousands of people who stopped to take photographs and to paint both the Pigeon Point Lighthouse and Prisoner Rock. The bluffs are the only area of land that is not covered by sea fig or agriculture, in the entire Pigeon Point region. They are the habitat of many native California plant species, including Pigeon Point Coyote Brush, I have also encountered the endangered San Francisco Garter Snake on these bluffs. I believe that the impact of the proposed Bed and Breakfast would be detrimental to this fragile ecosystem which is slowly eroding due to natural causes.

Exhibit L, cont'd  
A-3-SMC-96-08

I'm concerned about the fact that, Ms. McKenzies, water supply is lacking in quantity and quality. Throughout my time ,at the Pigeon Point Hostel, I will testify to the fact that, Mr. Owsten, and, Mr. Hughes, ran out of water on a continual basis. There was not enough water flow to provide water for bathing, cooking, or drinking. When the two residents were present at the same time, it was always a significant problem. Both of the men used to fill their water containers at the spigot, located at the Pigeon Point Lighthouse Hostel. I would approximate that this would occur twice a week. And, in fact, the most recent occurrence was on, October 22, 1995, when, Mr. Hughes, asked permission of a staff member at the hostel, to fill his water containers, permission was granted.

The water source on the McKenzie property, is believed to be a horizontal well, that is located directly below an agricultural field. This field is sprayed with harmful pesticides on such a regular basis that, Ms. McKenzie, requested in the negative declaration, that she be notified, by the farmer, of the pesticide spraying. It is my understanding that, Ms. McKenzie, has no permit to serve water to the public, nor has the water been tested for nitrite, nitrate or asbestos.

I would like to request, that before any development be allowed, that, Ms. McKenzie, be required to provide proof of the amount of on site water and, that the San Mateo County Environmental Health Specialist, Ken Robinson, be contacted to do a complete water quality test analysis.

I, am also concerned about the septic situation and, would like to require that a perk test be provided, also that a septic tank and leach field be installed, in accordance with the San Mateo County Health Department, prior to the building of any structures.

I, am also concerned about the fact that the proposed Bed and Breakfast, along with the currently operating "illegal" Bed and Breakfast, has as its patrons, both humans and dogs. The McKenzie House, which is the current Bed and Breakfast, is advertised in the, DOG LOVER'S COMPANION book. (copy enclosed). It appears as if the entire motivation behind the fencing and the Bed and Breakfast, is to provide a place for dog owner's to overnight with their dogs. It's a nice concept, however, the current atmosphere must be taken into consideration. For one, the hostel with 52 overnight guests is located directly adjacent to the proposed project. The hostel provides a peaceful sanctuary to those escaping from their sensory overloaded world and, the sound of nine plus barking dogs will certainly effect all of those guests.

Exhibit L cont'd

A-3-SMC-96-08


The beach, "to which the dogs have access", is a sanctuary for an occasional Northern Elephant Seal, a Harbor Seal Rookery is located on the nearby rocks, and the cove is a haven for many species of coastal birds. The ocean is teeming with wildlife, in this cove area I often observe Sea Otters, Harbor Seals, California Sea Lions, Common and Bottlenose Dolphins, Harbor Porpoise and many species of shore birds. These animals are often just ten to twenty feet offshore. What will happen to the wildlife in this area, when a nine unit Bed and Breakfast, hosting at least eighteen humans and nine dogs per day are using this area(exclusively) ?

I, believe that over the past two years that, Ms.McKenzie, has used illegal means in which to close access to Whaler's Cove and, continues to operate an illegal Bed and Breakfast, located at 921 Pigeon Point Road. Ms. McKenzie, was also dishonest when she did not include the use of Whaler's Cove, the blufftops, and the Bed and Breakfast, as a recreational place for dogs, within the Negative Declaration. This will have a significant impact upon the natural environment, the noise level and the aesthetic quality of the Pigeon Point area.

I, strongly recommend that, Ms. McKenzie, be required by law, to remove the fence that is currently restricting access to the Historic Whaler's Cove and, that the proposed Bed and Breakfast project be denied, pending a comprehensive environmental impact report, that is inclusive of the impact that the dogs might have upon this fragile ecosystem.

If I may assist you in your endeavor, please feel free to contact me at (415) 879-0002. Thank you for your time in reviewing this matter.

Sincerely,

  
Janice Keen  
210 Pigeon Point Road  
Pescadero, CA 94060

cc. Ted Lempert, Supervisor, 3rd District  
Anna Eshoo, Representative, 14th District  
Terry Burnes, Planning Administrator  
Michael Murphy, Deputy County Counsel  
William Rozar, Development Review Manager  
Margaret Hernandez, Senior Code Compliance Officer

Exhibit L, cont'd  
A-3-SMC-96-08

On Sunday, October 22, 1995,  
Emrys T. Hughes, residing at  
921 Pigeon Point Road, came  
next door to 210 Pigeon Point  
Road, the Pigeon Point Lighthouse  
Hostel. He asked, Andrew Green,  
if he could fill his water jugs.  
Andrew allowed him to take  
the water. David Webb was  
a witness to this situation.

Janice Keen  
Janice Keen

RECEIVED  
MAR 11 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

To Whom It May Concern,

I was very upset when I heard that access to Whaler's Cove may soon be limited! It isn't fair that your taking something the people have used and want to use! Why is it you going to let people go to the Bed & Breakfast any time they'd like but Pigeon Point people only on certain days? If you put your Bed & Breakfast by the tidepools we won't be able to use them on fieldtrip. By the way, there are 34 kids in this class not 30!

My name is Danielle Despain, My School is Jack London Elementary School! I'm in 4<sup>th</sup> grade and am 10 years old! In 5 weeks my class is going to Pigeon Point! So please don't ruin it for us!

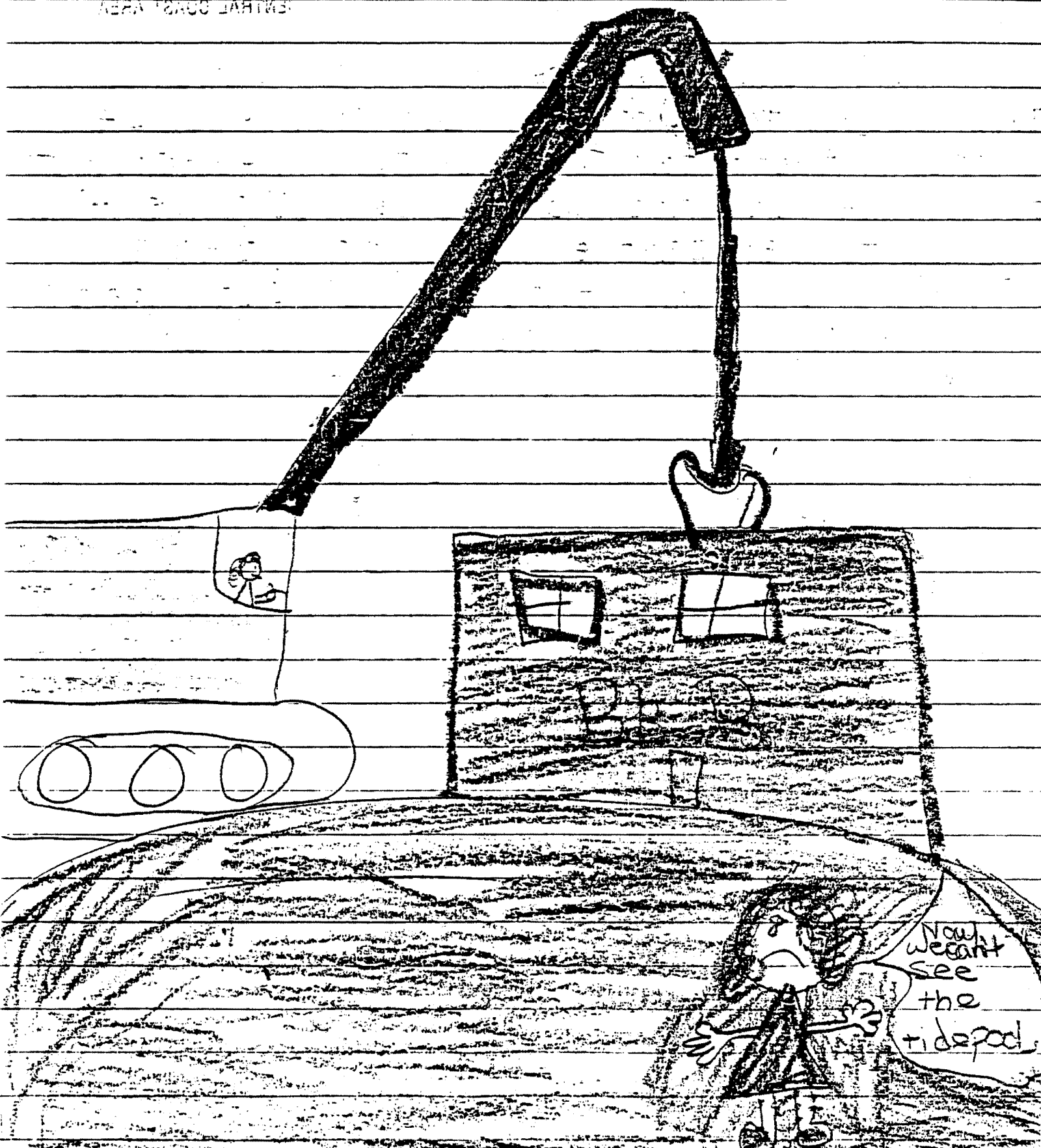
Pigeon Point Lover,  
Danielle Despain

P.S. I think I speak for my whole class when I say: "It makes us all want to cry!"



RECEIVED  
MAR 1 1966

CENTRAL COAST AREA  
COASTAL COMMISSION



Now we can't see the tide pool.

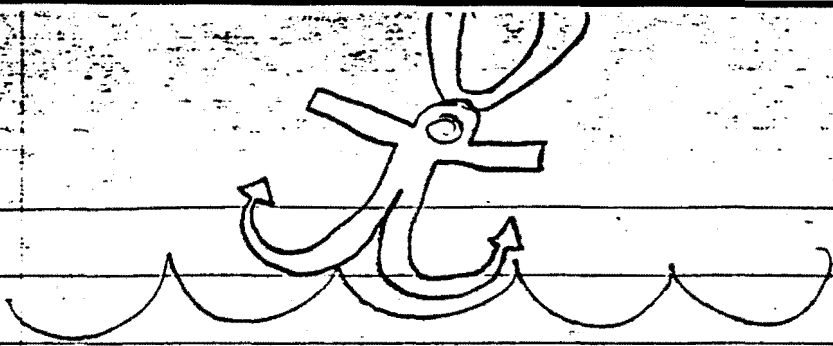
3/6/96

Dear Sir,

I'm a fifth grade student at Loma Prieta School and have just gotten back from Science Camp. It was a wonderful experience for me and it would be a shame to close off the beach. I would also like my brother to go. He is in the second grade and is so excited to be able to go when he is older. It would be a shame to close it off for him and many others for the Bed and Breakfast. It's important to keep the beach open to the public so many others can enjoy the beautiful sights of the beach and tide pools.

Sincerely yours,

Melissa  
Keeling



Canela  
1502 Cedar A  
San Leandro C  
94579

To whom it may concern;

Our fifth grade class went to Pigeon Point on January 29 thru February 2 1996. We were disappointed to find that "Whalers cove" was not open. We learned that the visitation times have been reduced dramatically. We feel that "Whalers cove" is of some historical and educational importance, and should be available for everyone to visit.

Please consider extending the visitation times so that Whalers Cove can be appreciated by the students of the Bay Area.

Sincerely

Canela MacLeod

**THE SUNSET GROUP**

- Financial Consulting
- Market Planning
- Business Development

March 10, 1996

VIA FACSIMILE TO 1-408-427-4877 - 1 PAGE TOTAL

Mr. Steven Monowitz  
California Coastal Commission  
725 Front St.  
Santa Cruz, CA 95060

Dear Mr. Monowitz,

I am writing regarding access to Whaler's Cove at Pigeon Point in San Mateo County, a subject for consideration at a Coastal Commission hearing on March 14.

I was the Manager of the Pigeon Point Lighthouse Hostel from 1984 to 1988. During that time, hundreds of school groups, along with thousands of adults from California and around the world, stayed at the youth hostel. One of the many visitor attractions was Whaler's Cove, for many years a coastal access point. At Whaler's Cove, young and old alike explored tidepools, beachcombed or fished, or just enjoyed the sand, cliffs and ocean. Unlike the beach on the north side of Pigeon Point, Whaler's Cove is protected from the prevailing north winds, which made it ideal for young children and school groups. Many, many times I witnessed schoolchildren at Whaler's Cove, so excited to discover the myriad of plant and animal life in the tidepools or learn about the unique history of the site.

I understand that the San Mateo County Planning Commission granted a permit for a 9-unit bed and breakfast on the property in December, subject to an agreement regarding access by fisherman and school groups. The terms of the current access proposal from the land owner are unacceptable, and will prevent the vast majority of potential visitors from enjoying Whaler's Cove. First, the times are so limited as to be useless for many visitors. Many school groups cannot plan their access to the times stated; many can afford only a one-day trip. Other groups can only come on weekends. Second, two hours on Tuesdays and Thursdays is not enough time to accommodate the many groups who wish to visit. Third, as you know many of California's classrooms are overcrowded, and 35 students per class is not uncommon. By limiting the number of visitors to 15 or 30, certain students would have to be singled out and not allowed to accompany their classmates to Whaler's Cove. In addition, a three-year agreement is clearly unacceptable, particularly if there is no reasonable provision for automatic renewal. I urge you to reconsider the bed and breakfast permit until an acceptable access agreement can be worked out.

I understand the need of the land owner to maintain a certain level of control over access to Whaler's Cove. However, the current proposal is unnecessarily restrictive and defeats the whole purpose of continuing coastal access to a beach that for decades was a joy to thousands of Californians and visitors from around the world. When I visit Pigeon Point now, I am dismayed that the access has been stopped, and today's visitors can only gaze from afar at Whaler's Cove.

Sincerely,

Anne P. Goldberg

1472 16th Avenue, Suite 120, San Francisco, CA 94122

Phone: 415-664-5339 Fax 415-664-3935  
sunsetgp@ix.netcom.com

Exhibit L, cont'd  
A-3-SMC-96-08

3/7/96

To: Steve Monowitz  
California Coastal Commission  
725 Front St  
Santa Cruz, CA  
95060

I am writing to comment on the proposed construction on and development of the McKenzie property adjacent to the Pigeon Pt Lighthouse.

Pigeon Point Lighthouse is a breathtaking sight from highway one and up close. It is one of the most photographed Lighthouses on the West Coast of America.

The development of the neighboring McKenzie property would have adverse effects on the aesthetic beauty Pigeon Pt Lighthouse and its surrounding landscape has offered thousands of people since the Lighthouse's original construction in 1871.

Already access to the historic whalers cove has been blocked off. This cove has been a part of Pigeon Pt Lighthouse's history since the 1800's. There are photographs on display in the Lighthouse museum that show historic use of this cove. A fence was erected  
Exhibit L, cont'd

recently to close off a trail to the cove <sup>(2)</sup> that has provided access to many people for years. many local people as well as Bay Area visitors, fishermen, painters, bird watchers, whale watchers, school field trips, families, kayakers, photographers, beachcombers have used the trail as access for generations.

I question this action of blocking access to Whalers Cove and I urge you the Coastal Commission to review the continuing development of this property with caution and scrutiny.

Pigeon Point Lighthouse is a part of our coastside California history and I believe development of the property adjacent to the lighthouse grounds would prove detrimental to the people of San Mateo and Santa Cruz Counties as well as the many tourist that visit the Lighthouse.

Sincerely,

Kathy Brazil

210 pigeon pt  
Pescadero, CA

Exhibit L, cont'd 9/4/11  
A-3-SMI'-91-08

Linda Collins  
4738 Mason Street  
Pleasanton, CA 94588

March 7, 1996

RECEIVED  
MAR 8 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Steven Monowitz  
California Coastal Commission  
725 Front St.  
Santa Cruz, CA 95060

Re: **PIGEON POINT EDUCATIONAL IMPORTANCE**

Dear Mr. Monowitz:

I have recently learned that children from our school district may not be able to enjoy the opportunity of visiting Pigeon Point in the future. I oppose this decision.

I am a concerned parent of two children who have been able to visit Whaler's Cove at Pigeon Point. My husband and I had the opportunity several years ago to attend with our son, Danny, and his class. Last year I attended the field trip with our daughter, Erin, and her class. I am saddened to learn that this wonderful experience may not be available for future classes.

I hope that the Commission will consider the unique educational opportunity that Pigeon Point provides to everyone, adults as well as children. To limit this experience in any way is not appropriate or justified. Please consider the concerns of the parents, educators, and children and continue to support this wonderful and important chance for children to appreciate and learn about marine life.

Thank you for your attention to this matter.

Sincerely,

*Linda Collins*

Linda Collins

cc: Mrs. Sueva Terry

Exhibit C, cont'd  
A-3-SMC-96-08



# SAN MATEO COUNTY OFFICE OF EDUCATION

Floyd Gonella, Ed.D., County Superintendent of Schools

Steven Monowitz  
California Coastal Commission  
725 Front Street  
Santa Cruz, CA 95060  
fax (408)427-4877

March 11, 1996

Dear Mr. Monowitz and the Coastal Commission,

The San Mateo County Office of Education operates the San Mateo Outdoor Education program for fifth and sixth graders of San Mateo County schools. I am writing to support efforts to maintain unrestricted access to the Pigeon Point coastal areas, as over 5300 students visit the tidepools of this area with our program annually. Limiting public coastal access would conflict with the educational opportunities which have been a vital part of our marine education program for the past 27 years. It is my understanding that due to pressure from a local private landowner, some restrictions on coastal access may be possible. We hope that the commission will block passage of any such restrictions that would prevent continued legal access to the coast in the Pescadero-Pigeon Point area.

If you have any questions regarding the importance of coastal access to our program please contact me at (415)802-5360.

Sincerely,

Lisa Glass  
Director, Outdoor/Environmental Education

Instructional Services Division  
Outdoor Education Program

Exhibit L, cont'd  
A-3-SMC-96-08





Lawrence Hall of Science  
University of California  
Berkeley, CA 94720

(510) 642-5008  
FAX (510) 642-1055

11 March, 1996

Steve Monowitz  
California Coastal Commission  
725 Front Street  
Santa Cruz, CA 95060

Dear Mr. Monowitz,

I am writing because of my concern that the Pigeon Point Environmental Education Program of Exploring New Horizons may lose its critical access to the shoreline around Whalers Cove at Pigeon Point for its education programs.

On the entire coast of northern California, there are only a small handful of places where school groups can easily access and interact with our spectacular rocky shoreline. Of these few places, even fewer have environmental or outdoor education programs available to guide students through truly meaningful observations of the natural world. For many years, the MARE program, along with many other science and environmental educators throughout northern California, have recognized the Pigeon Point Environmental Education Program as the finest field-based marine studies program available to schools. It is a premier program supported by a site that is without parallel. The site is unique both because of its natural history and its human history. It would be a tremendous loss to thousands of teachers and students, and to the marine education community if the program lost access to its rocky intertidal teaching site.

Clearly, in a coastal area that supports the highest rates of productivity anywhere in the world at similar latitudes, and simultaneously supports one of the largest and most diverse urban populations in the country, there is a tremendous need to educate the public, students and teachers about the protection and wise management of marine areas. As a marine science educator, I am constantly astonished and appalled that the public and our school children in the Bay Area are largely unaware that they live amidst three major National Marine Sanctuaries; that blue whales feed in nearshore waters off our coast all summer long; that a third of a million seabirds nest each summer 26 miles west of San Francisco on the Farallon Islands; or that the Golden Gate drains the sewers, pesticides and toxic street runoff from two-thirds of our state into this pristine wilderness area twice each day with the outgoing tides. Though we cannot easily take students to the Farallones, we can take them to a tidepool that is among the most abundant and colorful in the world. Allowing students to touch the marine environment is a critical and all too rare experience. It happens daily at Pigeon Point and it is magic. There is no better form of science education. There is no more effective and immediate vehicle for allowing students to develop their own set of environmental ethics and values.

Exhibit L, cont'd  
A-3-SMC-96-08



The MARE program alone works with over 350 whole-school staffs and student bodies. We recommend to them all that Pigeon Point is one of the best spots on the coast to consider for a rocky intertidal field trip, and the only spot to consider for an overnight, marine science outdoor education experience. We have just recently published, *The MARE Teacher's Guide to Marine Science Field Trips: Central California*, and Pigeon Point is featured. I hope you will do everything you can to allow the capable staff of Exploring New Horizons to continue to bring children to this exceptional site

I will follow with great interest the outcome of this process as it will directly impact the substance of our communications with teachers in the MARE program. I hope we will be able to tell teachers for many more years to call Mark Nolan at ENH for the best marine science field trip experience imaginable.

Sincerely,

Craig Strang  
Director, MARE  
Associate Director, Lawrence Hall of Science

Exhibit L, cont'd  
A-3-SMC-96-08

Patricia M. Thornhill  
20409 Pierce Rd.  
Saratoga, California 95070

March 11, 1996

Steven Monowitz  
California Coastal Commission  
725 Front St.  
Santa Cruz, California 95060  
Fax (408) 427-4877

Dear Mr. Monowitz;

I am writing to appeal the San Mateo Planning Commission's decision on December 13, 1995. The limitations on time frame, group size and only Tuesday and Thursday availability would so greatly reduce the actual number of children to experience this program that it is shameful. I would think that in a time when the education of our children is being diluted from all sides, that maintaining the tradition of the class trips to Piegon Point, which younger siblings look forward to and which encourages and enhances the desire to learn would be of utmost importance. Not to mention the wealth of Whaler's Cove as an educational and historic region, where the children can experience firsthand the environment and relive the history of Whaler's Cove. I would personally urge the California Coastal Commission to reassess this position and return ensured access to Whalers Cove for our school children. While the world of technology moves even more quickly into their lives, please don't deny them the ongoing opportunity to experience the "real" world around them!

Sincerely,

*Patricia M. Thornhill*

Patricia M. Thornhill

Exhibit L, cont'd  
A-3-SMC-96-08



March 11, 1996

Daniel E. White  
Steven Monowitz  
California Coastal Commission  
725 Front St.  
Santa Cruz, CA. 95060

Dear Mr. Monowitz,

On behalf of the four hundred and forty students of Sacramento Country Day School who have visited Whaler's Cove over the last eleven years, I request that the coastal commission ensure free access to Whaler's Cove by school children. Sacramento Country Day School has been sending sixth grade students to the Pigeon Point Environmental Education Program for over a decade. Our first classes arrived in the spring of 1985 and began our continued participation in an extraordinary educational experience.

The opportunity for children to live on Pigeon Point, study the migration of the passing whales and visit Whaler's Cove is an experience that brings to life the history of the past. While pondering the contrast between the needs of the whaling industry and our desire to protect the California Grey Whale, students develop problem solving skills in cooperative learning situations.

Our first classes of children to visit Whaler's Cove are now college graduates and students in colleges across the nation. I have seen students cry as they walked back up the trail from the closing ceremonies held at Whaler's Cove. I too, have had tears in my eyes at Whaler's Cove as the children quietly sang, "Come sail away with the California Grey," while a lone seal bobbed in the surf drawn into the cove by the sound of the soft, young voices. And, sometimes, a whale fluke rises out of the water in the distance. It is truly a magical place for children and their access should be preserved.

The impact of our state's children on Whaler's Cove is small. They are always well supervised. They stay less than one hour. They only come to the beach in good weather for evening campfires, and on their last day for a closing circle around noon. As the children prepare their own dinner at the youth hostel, small groups of ten children, always supervised by an adult, may come to the cove for a few minutes.

It is difficult for me to understand why there would be any question about providing public access to a historical sight in California. Our responsibility to the school children of California requires our diligence in protecting their opportunities, and providing excellence in education. Ensure access to Whaler's Cove.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Remington".

Nancy Remington  
Lower School Principal

Exhibit L, cont'd  
A-3-SML-96-08

RECEIVED  
MAR 7 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

March 5, 1996

Steven Monowitz  
California Coastal Commission

I teach 4th grade at Bollinger Canyon Elementary School in San Ramon, California. This is my ninth year of taking advantage of the Pigeon Point Environmental Education Program. I hope their program can remain intact. It is essential that the program has access to Whaler's Cove which provides experiences for students. There they can get a feel for what the Portuguese whalers went through in order to not only put to sea in their long boats, but to walk to the exact spot where the whale blubber was melted into oil.

I strongly urge you to keep the cove open.

Thank you,

*Bert Felton*

Bert Felton  
teacher  
Bollinger Canyon Elem.  
San Ramon, Ca.

*Exhibit L, cont'd  
A-3-SMC-96-08*

March 5, 1996

RECEIVED  
MAR 12 1996

Dear Coastal Commission Members,

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

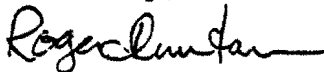
It is in a dual capacity that I wish to make my concerns known regarding the proposed 9 unit bed and breakfast next to the lighthouse at Pigeon Point. I am a teacher and a diver. I have spent much time along our beautiful coast abalone diving, SCUBA diving and teaching diving. This is a special area of the world that needs to remain open to all.

As a fifth grade teacher at Loma Prieta School in the Santa Cruz mountains, I have taken my class to the environmental/education program at the lighthouse for four years. We use the beach at Whaler's Cove for tidepooling, nature study, ocean ecology and to increase appreciation for nature in general and the ocean in particular. We also discuss the historic significance of the area and the cove and attempt to instill a respect for the natural environment of the coast.

Please, please keep access to this historical/educational area open to ALL! It deserves to remain a free area to all citizens and not become a private enterprise to be capitalized upon by a few.

I appreciate your willingness to consider this matter.

Sincerely,



Roger C Dunton  
335 Green Valley Road  
Scotts Valley, CA 95066

Exhibit L, cont'd  
A-3-SMC-96-08

March 4, 1996

Mr. Steven Monowitz  
California Coastal Commission  
725 Front St.  
Santa Cruz, CA 95060

RECEIVED  
MAR 11 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Dear Mr. Monowitz:

It is with deep concern that I must direct this letter to you. It is understood that Whalers Cove has been closed and that our children have been denied access to this historic educational site.

For more than eight years, children from our Donlon Elementary School, have been visiting Pigeon Point and greatly benefiting from their experiences there. It is difficult to accept that this may now be a thing of the past.

Our children, at this time of the year, begin their ocean unit. The culmination is our annual visit to Pigeon Point. The children anxiously await this trip, and many continue on with their interests in sealife. The closing would not only be a great disappointment to the children, but will also be a roadblock for teachers. The educational benefits that derive from these experiences are vast, and if you understand this, you WILL rethink your proposal.

The time parameters for visiting are not acceptable. What you propose denies convenience for teachers in team teaching efforts and the chances for more than one class per school visiting is almost nil. Some classes will simply be denied because of the school year time factor.

WE URGE YOU TO RECONSIDER YOUR STRATEGY, IF FOR NO OTHER REASON, BUT THAN FOR THE BEST ONE OF ALL.....THE CHILDREN.

They really enjoy Whalers Cove and all of the many wonders that are in store there. It would truly be a shame if you no longer allowed the children to learn about and explore the exciting ocean phenomena.

Thank you for your prompt attention to this matter.

Sincerely,

  
Concerned Parent/Donlon Elementary School

Exhibit L, cont'd  
A-3-SMC-96-08

March 8, 1996

Steven Monowitz  
California Coastal Commission  
725 Front Street  
Santa Cruz, CA 95060

Dear Mr. Monowitz,

I am a fifth grade teacher in Saratoga, Ca. I have been bringing my classes to Pigeon Point for the last eleven years. Please do not cut off access to Whaler's Cove. The educational and historical information that school children gain from direct experience at Whaler's Cove is immeasurable. Please keep this area open so our students today can learn about the past.

Sincerely,



Karen Pock  
Foothill Elementary School  
13919 Lynde Avenue  
Saratoga, CA 95070

RECEIVED  
MAR 11 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Exhibit L, cont'd  
A-3-SMC-96-08



Dear Steven Monowitz,

I am a student from Monroe School. I am in 5<sup>th</sup> grade and am 11 years old. Our class went to Pigeon Point in Feb. and thought it was very educational, fun, and beautiful. We think you should leave Whaler's Cove as it is. We also thought the Pigeon Point trip would not be the same without it. If you don't save the Whaler's Cove then who will.

Sincerely,  
Andrea Marymee

RECEIVED  
MAR 11 1996

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL-COAST AREA

Save  
Whaler's  
Cove  
Please!

Exhibit L, cont'd  
A-3-SMC-96-08

Dear Steve Monowitz,

I am a 4<sup>th</sup> grader who is dying to go to Pigeon Point next year in 5<sup>th</sup> grade. Think about how much 4<sup>th</sup> graders want to see animals and nice views.

What I really want to do there is to go up to the lighthouse and look at the beautiful views from up there.

I am writing this note to you because I want to Pigeon Point and I want to help other people in the grades lower than me. I would love you to always continue to welcome the kids that go there. When you finish my note, think about what I have said and then please continue... will you?

From,

RECEIVED  
MAR 11 1996  
S. Yeh

CALIFORNIA  
COASTAL COMMISSION  
CENTRAL COAST AREA

Exhibit L, cont'd  
A-3-SMC-96-08

Steve Mondowitz  
California Coastal Commission  
725 Front St.  
Santa Cruz, CA, 95060  
March 7, 1996

Dear Sir,

I am a student at Cathedral School for Boys, in San Francisco. My school has been going to Pigeon Point for the last 10 years. Whaler's Cove is a site of historical interest and a favorite among almost everyone who attended my school. The California Coastal Commission guarantees complete access to the public. When I heard of this I was very disappointed to hear that we could no longer attend Whaler's Cove. I hope that you will allow us and many other school children who attend Pigeon Point each year to visit Whaler's Cove.

Sincerely,

Chris Helwig

Exhibit L, cont'd  
A-3-SML-96-08

