

CALIFORNIA COASTAL COMMISSION
 NORTH COAST AREA
 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 (415) 904-5260



Th 6c

Filed: April 28, 1998
 49th Day: June 16, 1998
 Staff: SFScholl-SF
 Staff Report: May 22, 1998
 Hearing Date: June 11, 1998

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE

LOCAL GOVERNMENT: City of Trinidad

DECISION: Approval with Conditions

APPEAL NO.: A-1-TRN-98-40

APPLICANT: JIM & SANDRA CUTHBERTSON

PROJECT LOCATION: 840 Van Wycke Street, City of Trinidad,
 APN 042-081-42

PROJECT DESCRIPTION: Construction of a two-story, two bedroom plus
 office single family residence, with double car
 garage, storage and workshop underneath
 (including approximately 2,450 sq. ft. not
 counting the garage).

APPELLANTS: L.T. Talkington; Elizabeth Teig
 and Alan Crafts

AGENT: Nancy Diamond

**SUBSTANTIVE FILE
 DOCUMENTS:** City of Trinidad Local Coastal Program

Summary of Staff Recommendation on Substantial Issue

The staff recommends that the Commission find that the appeals raise **No Substantial Issue**. The appeals assert that the proposed project will significantly block views of Trinidad Harbor and the coastline. While the project will impinge to some extent on views from neighboring residences, it will have little or no effect on views from public places. One appeal also asserts that the on-site sewage disposal system is not in compliance with applicable law. The system was designed and approved by the Humboldt County Division of Environmental Health, and there is no evidence that it fails to meet applicable requirements.

Staff Notes

1. Appeal Process

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 (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea or within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff.

Furthermore, developments approved by counties may be appealed if they are not designated the "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 the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

The subject development is appealable to the Commission because the site is located between the sea and the first public road paralleling the sea.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised by the

appeal. Typically, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. Unless it is determined that there is no substantial issue, the Commission would continue with a full public hearing on the merits of the project, which may occur at a subsequent meeting. If the Commission were to conduct a de novo hearing on the appeal, the applicable test under 30604 of the Coastal Act for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program and with the public access and public recreation policies of the Coastal Act.

The only persons qualified to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing.

2. Filing of Appeal

Two appeals were timely filed with the Commission on April 28, 1998. One appeal was submitted by L. T. Talkington, and the second by Elizabeth Teig and Alan Crafts.

In accordance with the California Code of Regulations, on April 30, 1998 the staff requested all relevant documents and materials regarding the subject permit from the City, in order to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The City provided a copy of the file, as requested, on May 7, 1998.

Pursuant to Section 30261 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed.

I. Staff Recommendation on Substantial Issue

Pursuant to Section 30603 (b) of the Coastal Act and as discussed in the findings below, the staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeals have been filed. The appropriate motion is:

Motion:

I move that the Commission determine that Appeal No. A-1-TRN-98-040 raises **no substantial issue** as to conformity with the certified Local Coastal Program with respect to the grounds on which appeals were filed pursuant to Section 30603 of the Coastal Act.

Staff recommends a **yes** vote. To pass the motion, a majority vote of the Commissioners present is required. Approval of the motion has the effect that the City's decision of approval of the coastal permit is final.

II. Findings and Declarations

The Commission hereby finds and declares:

A. Appellants' Contentions

L. T. Talkington contends that the proposed residence will significantly block the appellant's view of Trinidad Harbor and coastline. The appeal contends further that a new hearing is warranted because it is not clear if the City's decision [of approval of the project] is consistent with Coastal Act Section 30251 that requires new development to be sited and designed to protect scenic coastal views. (See Exhibit 2)

Alan Crafts and Elizabeth Teig contend that:

- the development will significantly block views from viewpoints inside structures located uphill from the proposed development, in violation of the LCP;
- the proposed development violates requirements of the LCP in that its scale, bulk, and orientation are incompatible with the community;
- the proposed development violates the LCP as it is not limited to one story or moved elsewhere on the lot to avoid obstruction of important views;
- the proposed development violates the LCP in that no coastal development permit was obtained for on-site sewage disposal and the proposed on-site system is not in compliance with applicable law;
- the proposed development was approved in violation of CEQA. (Exhibit 3)

B. Local Government Action

The Trinidad Planning Commission/Design Assistance Committee visited the project site on February 23, 1998 and then approved a coastal development permit for the project, with conditions. The conditions required a minor redesign of the proposed dwelling, by reducing slightly the width and length of the house (Exhibit 5).

On March 4, 1998, the Planning Commission's action was appealed by L. T. Talkington, Elizabeth Teig, Alan Craft, and Chuck and Barbara Snell to the City Council. The City Council visited the project site on April 4 and then denied the appeal, thus upholding the Planning Commission's approval of the permit (Exhibit 6). The City Council adopted findings on April 13, 1998 in support of its action. The findings indicate that the Council determined that the scale and character of the structure would be compatible with the character of the community and the project would not significantly obstruct views of the harbor or Trinidad Head from public roads, trails, or vista points. Furthermore, the Council found that views from neighborhood residences would not be significantly blocked.

The Coastal Commission received notice of the City's Final Action on the coastal development permit on April 14, 1998, and the Commission's appeal period commenced on April 15. The two appeals discussed here were received timely within the 10-working-day appeal period.

C. Project Setting and Description

The project site is a residential parcel measuring approximately 80 feet by 120 feet, overlooking Trinidad Harbor. The site slopes toward the south, the direction of the harbor.

The proposed project is the construction of an approximately 2,450-square foot two-story single-family residence. The project plans dated April 14, 1998 indicate that the structure will include two bedrooms, an office, two bathrooms, kitchen, and living and dining rooms on the main (second) floor, with a total of 1822 square feet of space. On the ground floor below, the plans indicate an undifferentiated two-car garage/storage area and a half-bath, for a total of 1475 square feet of space. The City initially calculated the interior area of the dwelling at 2,695 square feet, apparently based on an earlier, larger house plan and including the entire second floor and ground floor but not the garage. As revised by the applicant following the City Council's approval on April 4 with a condition

requiring a minor reduction in the size of the house, the area of the house would be approximately 2,450 square feet, not counting some 846 square feet which can be allocated to the garage (as discussed further below).

The plans show a hipped roof with a shallow pitch and a maximum height of 21 feet 6 inches, when viewed from the front of the house facing Van Wycke Street. The average height of the structure above the sloping grade will be 17 feet (Exhibit 4).

The parcels on the west, north, and east sides of the project site are developed with existing single-family dwellings. The surrounding residences are mostly two-story structures, with low-pitched roofs. Information is not available to the Commission on the enclosed space within surrounding dwellings, but they appear to be generally comparable to the project which is the subject of this appeal.

D. Substantial Issue Analysis

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Three of the contentions raised in this appeal present potentially valid grounds in that they allege the project's inconsistency with requirements of the certified Local Coastal Program. Those contentions involve the blockage of public or private views by the project, the bulk and scale of the project, and the septic system approval status. The Commission finds that **no substantial issue** is raised by these contentions, for the reasons discussed below.

Two of the contentions do not present valid grounds for appeal. The first contention is that the project's approval by the City is inconsistent with the requirements of the California Environmental Quality Act. The second contention involves the project's consistency with Section 30251 of the Coastal Act. The Commission reaches no conclusion regarding these contentions, as they do not relate to the project's consistency with the certified Local Coastal Program or the public access and recreation policies of the Coastal Act.

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even where the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, section 1094.5

1) Visual Resources

Both appeals include the contention that the proposed project will block views of the shoreline, inconsistent with the LCP. One appeal also includes the contentions that the project violates LCP requirements regarding scale, bulk, and orientation and that the project violates LCP requirements to limit the development to one story or move it elsewhere on the site. These contentions

all involve the effect that the project will have on the visual resources of the area, and will be grouped here for purposes of analysis.

a) LCP Requirements

The LCP Zoning Ordinance provides how the height and bulk of buildings should be measured. The ordinance states that "heights of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point on the roof" (Section 17.56.100). Because the site slopes, the average height of the structure is not the same as the maximum height when viewed from the downhill side. Thus, although the applicant's plans indicate that the maximum height of the structure will be 21.5 feet when viewed from Van Wycke Street, the City determined that the average height of the structure will be 17 feet.

The Zoning Ordinance specifies that the floor area of a dwelling shall be measured to include the "enclosed area of a building measured from an exterior surface to exterior surface but excluding... balconies, garages and carports..." (Sec. 17.68.310) The ordinance apparently also excludes bathrooms from this calculation, but since the staff reports prepared for the Design Assistance Committee and the City Council apparently included the square footage of bathrooms, they are included here as well.

(The Commission notes that several different figures have been used in city staff reports and correspondence by the applicant's and appellants' attorneys regarding the floor area of the proposed project. The exact figure is not the controlling factor in the Commission's decision, however. Rather, the important factor to the Commission is the impact on public views, as discussed further below.)

The interior area of the proposed dwelling is approximately 2,450 square feet, not counting a portion of the downstairs allocated to the garage. For the purposes of reaching this figure, Commission staff included the upstairs and the entire downstairs area except the approximately 846 square feet of area which are directly in line with the two garage doors and which therefore could be used for parking vehicles. The remainder of the downstairs area (which is not proposed to be separated by walls from the garage) and including the downstairs bathroom, is included here in the 2,450 square-foot figure.

The Zoning Ordinance in Chapter 17.60: Design Review and View Preservation contains several substantive requirements regarding a project's height and bulk

and thus its potential impact on visual resources (Exhibit 7). This Chapter establishes a Design Assistance Committee, consisting of the Planning Commission plus one member of the City Council, to review new developments for their impact on the "character of the city" and "important vistas."

The Zoning Ordinance also includes both *Design Criteria* and *View Protection Criteria* for use by the Committee when reviewing developments. The *Design Criteria* include the following:

H. When reviewing the design of commercial or residential buildings, the committee shall ensure that the scale, bulk, orientation, architectural character of the structure and related improvements are compatible with the rural, uncrowded, rustic, unsophisticated, small, casual open character of the community. In particular:

- 1. Residences of more than two thousand square feet in floor area... shall be considered out of scale with the community unless they are designed and situated in such a way that their bulk is not obtrusive... (Sec. 17.60.040)*

The *View Protection Criteria* of the Zoning Ordinance include the following:

B. Structures... shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points, except as provided in subdivision 3 of the subsection. (Sec.17.60.050)

C. The committee shall recognize that owners of vacant lots in the SR and UR zones, which are otherwise suitable for construction of a residence, are entitled to construct a residence of at least fifteen feet in height and one thousand five hundred square feet in floor area, residences of greater height as permitted in the applicable zone, or greater floor area shall not be allowed if such residence would significantly block views identified in subdivision B of this subsection. Regardless of the height or floor area of the residence, the committee, in order to avoid significant obstruction of the important views, may require, where feasible, that the residence be limited to one story; be located anywhere on the lot even if this involves the reduction or elimination of required yards or the pumping of septic tank wastewater to an uphill leachfield, or the use of some other type of wastewater treatment facility; and adjust the length-

width-height relationship and orientation of the structure so that it prevents [sic] the least possible view obstruction." (Sec. 17.60.050(C))

b) Discussion

The proposed dwelling would be located on a parcel within an existing residential neighborhood. Most of the surrounding homes are of a two-story design which takes advantage of the natural slope. That is, like the proposed dwelling, some residences have a partial ground floor cut into the hill, with a full second floor above. Surrounding dwellings also generally have rooflines with a moderate pitch similar to that proposed by the applicant. The Commission lacks information regarding the exact interior size of neighboring dwellings, although the Cuthbertsons assert that the living area of appellant Talkington's house is 2,345 square feet. In any event, to an observer looking at the outside of existing houses and comparing to the Cuthbertson's proposed house plan, it appears that the proposed dwelling would be of a size and character that are comparable to other houses in the neighborhood.

From Van Wycke Street on which the project is located, there is a spacious view available of Trinidad Harbor and Trinidad Head. The proposed house would not affect that view because the house would be behind the viewer, as he or she faces the sea. The only other vantage points from which a person viewing Trinidad Harbor or Trinidad Head might possibly be affected by construction of the project are Edwards Street on the uphill side of the project and locations on neighboring private parcels, including those of the appellants.

Because of the slope and the existing residences on parcels on all sides of the proposed project, the view of someone on Edwards Street toward Trinidad Harbor and Trinidad Head would not be affected by the structure. Other than this road, there are no trails or vista points from which views of the harbor, Trinidad Head, or ocean would be "significantly blocked" by this project. Thus, the City's finding that the project would be consistent with the View Protection Criteria in the Zoning Ordinance in terms of potential impacts on public view is supported by the evidence.

The project will certainly have some degree of impact on views from neighboring residences. For instance, photos provided by Ronald J. Den Heyer of the Cuthbertson building mock-up suggest that the development will block all shoreline views from the first floor of the Crafts/Teig home and "significantly and substantially" block views from the second floor (Exhibit 10). The Cuthbertsons have questioned the accuracy of those photos and submitted their own (Exhibit

15), but in any event it is clear that some degree of view impairment for the neighbors will occur.

Appendix B of the City's General Plan includes guidance for the City to use in addition to the Zoning Ordinance language quoted above. That appendix was apparently intended in part, at least, to assist in the preparation of the Zoning Ordinance, since the General Plan was prepared first. The appendix includes the following statement:

Following are design guidelines suggested for consideration by the design assistance committee in establishing design criteria for the area west of the freeway...

4. Buildings, fences, paved areas, signs and landscaping and similar development shall not be allowed to significantly block views of the shoreline from key public viewing points or from view points inside structures located uphill from the proposed development. (emphasis added)

This appendix, which is part of the General Plan and therefore part of the LCP, appears to open the door to consideration by the City, and the Coastal Commission on appeal, of the protection of so-called private views, as opposed to views from streets, trails, and other public places. Nevertheless, for a couple of reasons, the Commission finds that this appeal raises no substantial issue.

First, the design guidelines cited above are intended to be just that: guidance. The word "suggested" establishes their character as goals, rather than outright requirements. In fact, the Planning Commission/Design Assistance Committee took into account the private views of the harbor and Trinidad Head when reviewing this project, and required the applicant to reduce the size of the project slightly. The City Council upheld that action. Both the Design Assistance Committee and the City Council visited the site before making their decision, and the City Council viewed the impact on the viewshed from the appellants' homes, utilizing a mock-up of the proposed Cuthbertson house. The City declined to take more drastic action to reduce the impact on private views, apparently (among other reasons) because the project intrudes on but does not eliminate such views, because the project is similar in size and character to the existing dwellings around it, and because options for resiting the house on the lot are limited because of its modest size and the need to locate an on-site sewage disposal system on the property.

Secondly, the Commission has consistently interpreted the requirements of Section 30251 of the Coastal Act that mandate protection of "views to and along the ocean and scenic coastal areas" to apply to public views, that is, views from parks, streets, and other public places. Although Section 30251 is not the standard of review for this coastal permit (the LCP is the standard), the way in which the Commission has interpreted that policy affects its determination of whether an impact on views in this instance is substantial. The Commission has intentionally not entered the arena of attempting to mediate among individual property owners by attempting to protect views of the sea from the windows of private homes or from other places where the public is not welcome to enter at will. While the approval of a new residence in an established neighborhood which enjoys spectacular views of the coastline undoubtedly raises a significant concern among those who stand to lose a bit of the view from their private property to which they have become accustomed, that concern is essentially a local matter. On the other hand, where the public at large stands to lose a view of the coastline, that loss is of regional or statewide concern. In this instance, the views at issue are not of regional or statewide significance. Consequently, the Commission finds that this appeal raises no substantial issue.

Appellants Craft and Teig assert that at seventeen feet in height, the structure would violate the LCP requirements to allow a height greater than 15 feet and floor area greater than 1500 square feet only if it would not block "important views." This section of the Zoning Ordinance does not specify what those important views consist of, but as noted above, the Commission has consistently determined that views requiring protection under Coastal Act policies are those available to the public, not those from private homes or yards. Certainly nothing in the Coastal Act prevents a local government from using its discretion to protect private and public views, whenever possible, but in reviewing appeals, the Commission continues to focus on public views.

Finally, the matter of the interior floor space of the project became an issue locally because of the Zoning Ordinance's presumption in Section 17.60.040(H)(1) that residences of more than 2,000 square feet are to be considered out of scale unless designed and situated so that their bulk is not "obtrusive." Using the City's own standard, it appears that the square footage of the dwellings will be over 2,000, although the applicant asserts that the square footage is 1,822 square feet (counting only the upstairs). Regardless of whether the residence is considered to be 2,450 or 1,822 square feet, however, the key factor is its potential impacts on neighborhood character and public views of the coastline. In these regards, the project simply does not raise a substantial issue.

2. Sewage Disposal

Appellants Crafts and Trigs assert that the development violates LCP provisions because no coastal development permit was obtained for the on-site sewage disposal system and that system is not in compliance with applicable law. The appellants further assert that required on-site soils testing was not done and that the system is designed to accommodate at most a two-bedroom house, although there are three rooms on the second floor that could be used as a bedroom, in addition to the storage area on the ground floor.

a) LCP Requirements

The UR zoning requirements applicable to this site require that there be a minimum area to accommodate an on-site sewage disposal system (Section 17.32.040, Exhibit 7B). Because of Trinidad's small size, review of environmental health issues is performed by staff of the Humboldt County Division of Environmental Health. Furthermore, upon request, that department will actually prepare a design for a system, pursuant to its own standards. In this case, County staff designed the system for the applicant.

b) Discussion

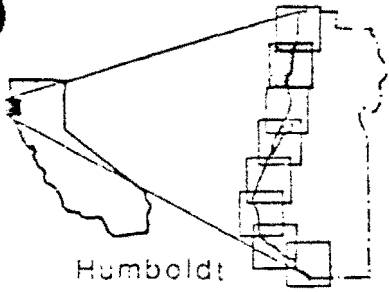
County Environmental Health staff member R. Charles Class states that the system he designed "complies with applicable law, regulations and policies of the City of Trinidad, Humboldt County Division of Environmental Health, and North Coast Regional Water Quality Control Board" (see letter of May 18, 1998, Exhibit 9). Mr. Class states that soils testing by the County occurred on the project site in 1982 and by Walter Sweet Engineers in 1996 and 1997. He states also that those tests indicate soils suitable for on-site wastewater disposal and no evidence of groundwater within 10 feet of the surface.

Mr. Class indicates that the system he designed is not an ordinary gravity system, but rather a pressurized system, which takes advantage of all potential treatment area. He indicates finally that the system is designed for a two-bedroom house. The determination that the house is a two-bedroom rather than a three-bedroom house was made by the County Building Department and the City of Trinidad. Mr. Class states that use of an accessory room as a permanent bedroom would place the owners in violation of their sewage disposal permit and subject them to enforcement actions by the County and the City.

In its action of February 23, 1998 approving the project, the Planning Commission/Design Assistance Committee applied several conditions to the coastal permit. One condition states that "Recommended conditions of approval by the County Health Department shall be required to be met as part of the building permit application submittal." In other words, the Planning Commission based its approval, in part, on the applicant's fulfillment of requirements already determined by the Division of Environmental Health to be necessary.

In sum, the system was designed by County staff to carry out County standards. Whether the project obtained a separate coastal permit or not, the Commission finds no basis to conclude that the system fails to meet "applicable law."

Based on the facts cited in Mr. Class's letter (facts which were part of the information available to the City when it made its decision) and the Planning Commission's action, the Commission finds that there is persuasive factual support for the City of Trinidad's decision that the development is consistent with the certified LCP, and thus the appeal raises no substantial issue.




Humboldt

EXHIBIT NO. 1A

**APPLICATION NO.
A-1-TRN-98-40**

CUTHBERTSON

 **Regional Location**
California Coastal Commission

Big Lagoon Park
Patricks Point State Park

TRINIDAD BEACH STATE PARK

Trinidad
TRINIDAD INDIAN RANCHERIA

Moonstone

LITTLE HOLE BEACH STATE PARK

LOCATION MAP



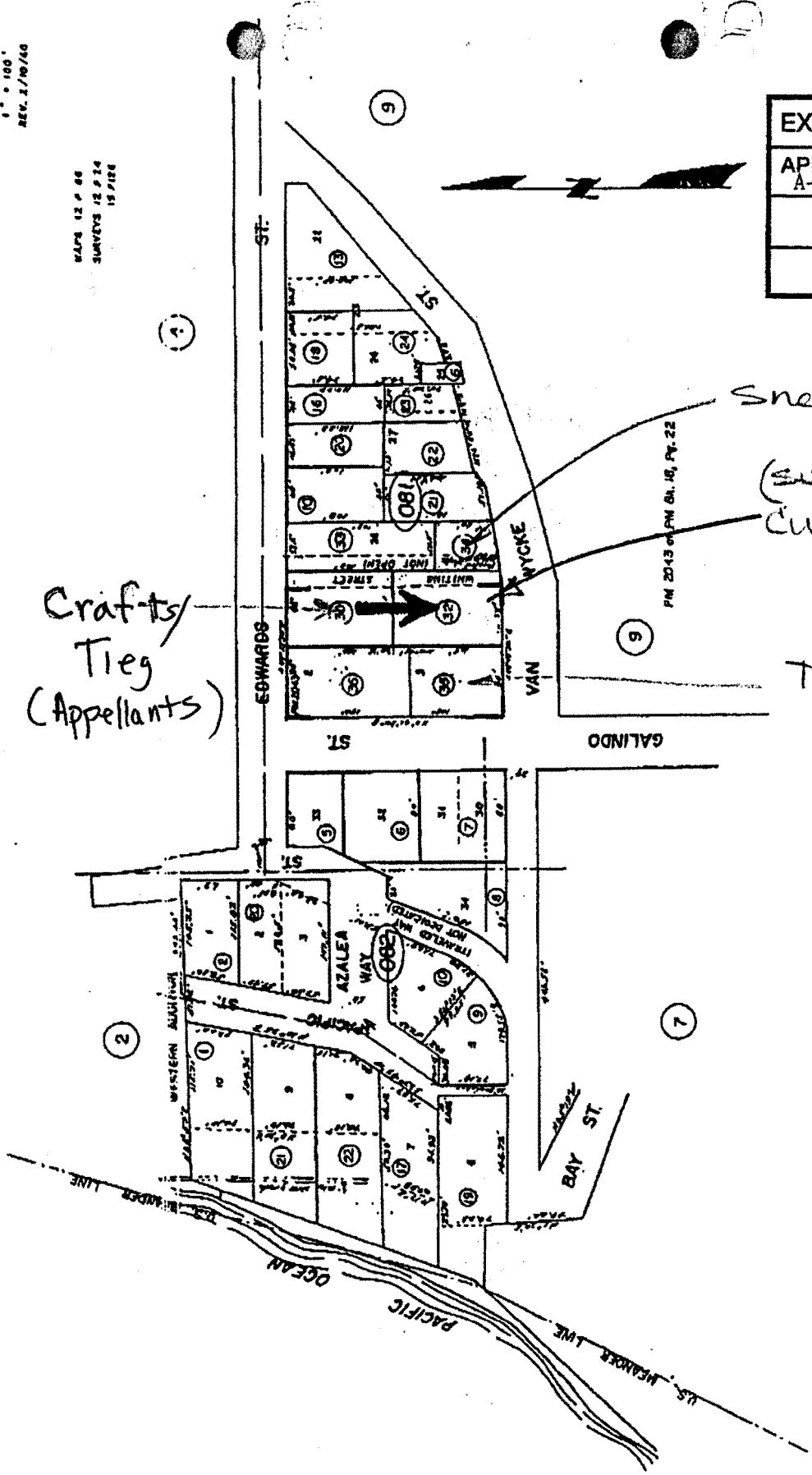
TOWN OF TRINIDAD

42-05

1" = 100'
REV. 2/10/40

MAPS 12 P. 88
SURVEYS 12 P. 24
15 P. 122

EXHIBIT NO. 1B
APPLICATION NO. A-1-TRN-98-40



Crafts Tieg
(Appellants)

Snell

(subject property)
Cuthbertson

Talkington

PM 2043 OF PM 58, 16, PY. 22

Larry D. Henderson

Planning and Development Services • 2103 Myrtle Avenue • Eureka, CA 95501 • Telephone (707) 442-6226 • Fax (707) 442-1507

April 27, 1998

North Coast Region
California Coastal Commission
Attn: Bob Merrill
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

RECEIVED
APR 28 1998
CALIFORNIA
COASTAL COMMISSION

Re: Appeal of City of Trinidad's Approval of Cuthbertson Residence Design

Dear Mr. Merrill:

Attached is the original appeal form submitted on behalf of L.T. Talkington to appeal the City of Trinidad's April 4, 1998 approval of the siting and design of the proposed residence for Jim and Sandra Cuthbertson on 840 Van Wycke Street, City of Trinidad (APN 42-081-32). A copy of the appeal form was faxed to you April 26, 1998. Following is a summary of the appeal.

Mr. Talkington and his wife, Epifania, own the property adjoining the Cuthbertsons' lot on the west (APN 42-081-35). The proposed residence will significantly block the Talkingtons' view of Trinidad Harbor and Coastline. They appealed to the City Council to disapprove the siting and design of the proposed residence. The grounds for the appeal to the City Council were as follow:

1. The proposed residence will significantly block the views of the harbor and coastline from the home owned by the Talkingtons.
2. There are reasonable and feasible alternatives that would reduce and minimize the blockage of the views.
3. For the above reasons, the siting and design of the proposed residence conflict with the City's zoning ordinance.
4. A categorical exemption cannot be used to exempt the proposed residence from the California Environmental Quality Act (CEQA), and an environmental study is required prior to final review and consideration of the residence.
5. Therefore, approval of the proposed residence would violate CEQA and the City's Coastal Program as certified by the California Coastal Commission.

EXHIBIT NO. 2

APPLICATION NO.
A-1-TRN-98-40

Talkington Appeal

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EXHIBIT NO.	2
APPLICATION NO.	A-1-TRN-98-40
Talkington Appeal	
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The City Council denied the appeal and approved the proposed residence with some minor modifications recommended by the City's Design Review Committee to help reduce the impact on the Talkington's view. As I understand the decision, the City Council determined that the resulting impact on the Talkington's view is not considered "significant" because the view is from inside a structure located on the side of the proposed residence, and not uphill from the residence. The explanation given prior to the decision is that because the City plan's "*design guidelines suggested for consideration . . . in establishing design criteria*" provide that "*Buildings . . . shall not be allowed to significantly block views . . . from view points inside structures located uphill from the proposed development,*" the protection of private views from other view points should not be given "*preferential consideration.*" [See Page 3 of the March 31, 1998 staff report to the City Council]

We believe the action taken by the City Council is not consistent with the provisions of the Coastal Act. Section 30251 of the Act provides in part that "*Permitted development shall be sited and designed to protect views to . . . the ocean and scenic coastal areas . . .*" In our opinion, the Coastal Act requires the City to consider and, where feasible, mitigate impacts on private views from view points from other locations than just "*uphill from the proposed development.*"

We are providing under separate cover photos showing the Talkingtons' views of the Trinidad Harbor and coastline that can be seen from their home. We will also provide photos and drawings showing how the proposed residence will significantly block these views.

We are also providing under separate cover information showing there are alternatives that would minimize significant obstruction of the Talkingtons' views. We will show that one feasible alternative is to locate the new house on the rear portion of the lot as stipulated with the lot's original subdivision map, and to limit the height to one story. Our preliminary investigation shows that a sewage disposal system (SDS) can be installed on the "front" portion of the lot to accommodate a one story residence on the "rear" of the lot, with a standard driveway accessing the home. There may be other alternatives involving the redesign and reorientation of the house to minimize encroachments into the Talkingtons' "view sheds."

The additional information will establish that the proposed residence is "too much" for the particular lot, and is not an appropriate or compatible development for that location.

The appellant is asking the Coastal Commission to disapprove the proposed

residence until serious consideration is given in the design and location of the new house to the protection of his views. Such consideration has not been given to date, and the appellant is frustrated because sufficient factual information has not been provided by the applicant for the City to seriously and rationally review the project.

In conclusion, the proposed blockage of the appellant's views is "significant," and there are "feasible" alternatives for the siting and design of the house to avoid or minimize the blockage. The Coastal Act requires the incorporation of appropriate mitigations to avoid or minimize the blockage. Without appropriate study of alternatives, and without the incorporation of appropriate mitigations, the City is prohibited from approving the project.

Respectfully yours,



Larry D. Henderson

cc: L.T. and Epifania Talkington

EXHIBIT NO.	2
APPLICATION NO.	A-1-TRN-98-40
Talkington Appeal	
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CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

45 FREMONT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT



Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

L. T. Talkington
P.O. Box 577
Trinidad, CA 95570 (707) 677-9337
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Trinidad

2. Brief description of development being appealed: Construction of a 2695 s.f. Two story, two bedroom/office single-family residence with double garage/storage underneath. (see attached)

Applicant is Jim and Sandra Cuthbertson.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 840 Van Wycke Street; Trinidad, APN 42-081-32. Humboldt County. (see attached)

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: ✓

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-TRN-98-040

DATE FILED: 4/28/98

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 2
APPLICATION NO. A-1-TRN-98-40
Talkington Appeal
Page 4 of 10

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

a. Planning Director/Zoning Administrator c. Planning Commission

b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: April 4, 1998

7. Local government's file number (if any): Cuthbertson # 98-03

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Jim and Sandra Cuthbertson
P.O. Box 1201
Trinidad, CA 95570

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal. In addition to Applicants:

(1) Elizabeth Teig and Alan Crafts
11 Bayipa
Trinidad, CA 95570

(2) Charles & Barbara Snell
P.O. Box 769
Trinidad, CA 95570

(3) Lucile Collins
P.O. Box 843
Trinidad, CA 95570

(4) Douglas Plrehn
833 Edwards Street
Trinidad, CA 95570

EXHIBIT NO.	2
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SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

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.)

The proposed residence will significantly block the Appellant's view of Trinidad Harbor and Coastline. However, the City says it is not required to protect the Appellant's view, and it approved the proposed residence without sufficient study of siting and design alternatives. The plan and zoning ordinance of the City's coastal program are vague. A new hearing is warranted because it is not clear if the City's decision is consistent with Coastal Act Section 30251 that requires new development to be sited and designed to protect scenic coastal views.

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.

Additional supporting information is being provided.

SECTION V. Certification

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

Larry D. Henderson
Signature of Appellant(s) or Authorized Agent

Date 4/25/98

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

Section VI. Agent Authorization

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

EXHIBIT NO. 2
APPLICATION NO. A-1-TRN-98-40
Talkington Appeal
Page 6 of 10

L. Z. Talbot
Signature of Appellant(s)
Date 4-26-98

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

SECTION I. Appellant

Name, mailing address and telephone number of appellant:

L. T. Talkington
P.O. Box 577
Trinidad, CA 95570 Phone No. (707) 677-9337

SECTION II. Decision Being Appealed

1. Name of local government: City of Trinidad
2. Brief description of development being appealed: Approval of the construction of a 2695 S.F. two story, two bedroom/office, single-family residence with double garage/storage underneath (see attached Notice of Action). The Applicant is Jim and Sandra Cuthbertson.
3. Development's location: 840 Van Wycke Street, Trinidad, APN 42-081-32, Humboldt County (see attached maps).
4. Description of decision being appealed:
 - a. Approval; no special conditions: _____
 - b. Approval with special conditions: ✓ _____
 - c. Denial: _____
5. Decision being appealed was made by (check one):
 - a. _____ Planning Director/Zoning Administrator
 - b. ✓ City Council/Board of Supervisors
 - c. _____ Planning Commission
 - d. _____ Other _____

EXHIBIT NO.	2
APPLICATION NO.	A-1-TRN-98-40
Talkington Appeal	
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EXHIBIT NO.	2
APPLICATION NO.	A-1-TRN-98-40
Talkington Appeal	
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6. Date of local government's decision: April 4, 1998
7. Local government's file number (if any): Cuthbertson #98-03

SECTION III. Identification of Other Interested Persons:

Give the names and addresses of the following parties.

a. Name and mailing address of permit applicant:

Jim and Sandra Cuthertson
P.O. Box 1201
Trinidad, CA 95570

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing (s). Include other parties which you know to be interested and should receive notice of this appeal. In addition to Applicant:

- (1) Elizabeth Teig and Alan Crafts
11 Rayipa
Trinidad, CA 95570
- (2) Charles and Barbara Snell
P.O. Box 769
Trinidad, CA 95570
- (3) Lucile Collins
P.O. Box 843
Trinidad, CA 95570
- (4) Douglas Ploehn
833 Edwards Street
Trinidad, CA 95570

SECTION IV. Reasons Supporting This Appeal:

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:

The proposed residence will significantly block the Appellant's view of Trinidad Harbor and coastline. However, the city says it is not required to protect the Appellant's view, and it approved the proposed residence without sufficient study of siting and design alternatives. The plan and zoning ordinance of the City's coastal program are vague. A new hearing is warranted because it is not clear if the City's decision is consistent with Coastal Act Section 30251 that requires new

development to be sited and designed to protect scenic coastal views. Additional supporting information is being provided.

SECTION V. Certification

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

S/S Larry D. Henderson

Signature of Appellant(s) or Authorized Agent

Date 4/25/98

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

Section VI. Agent Authorization

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

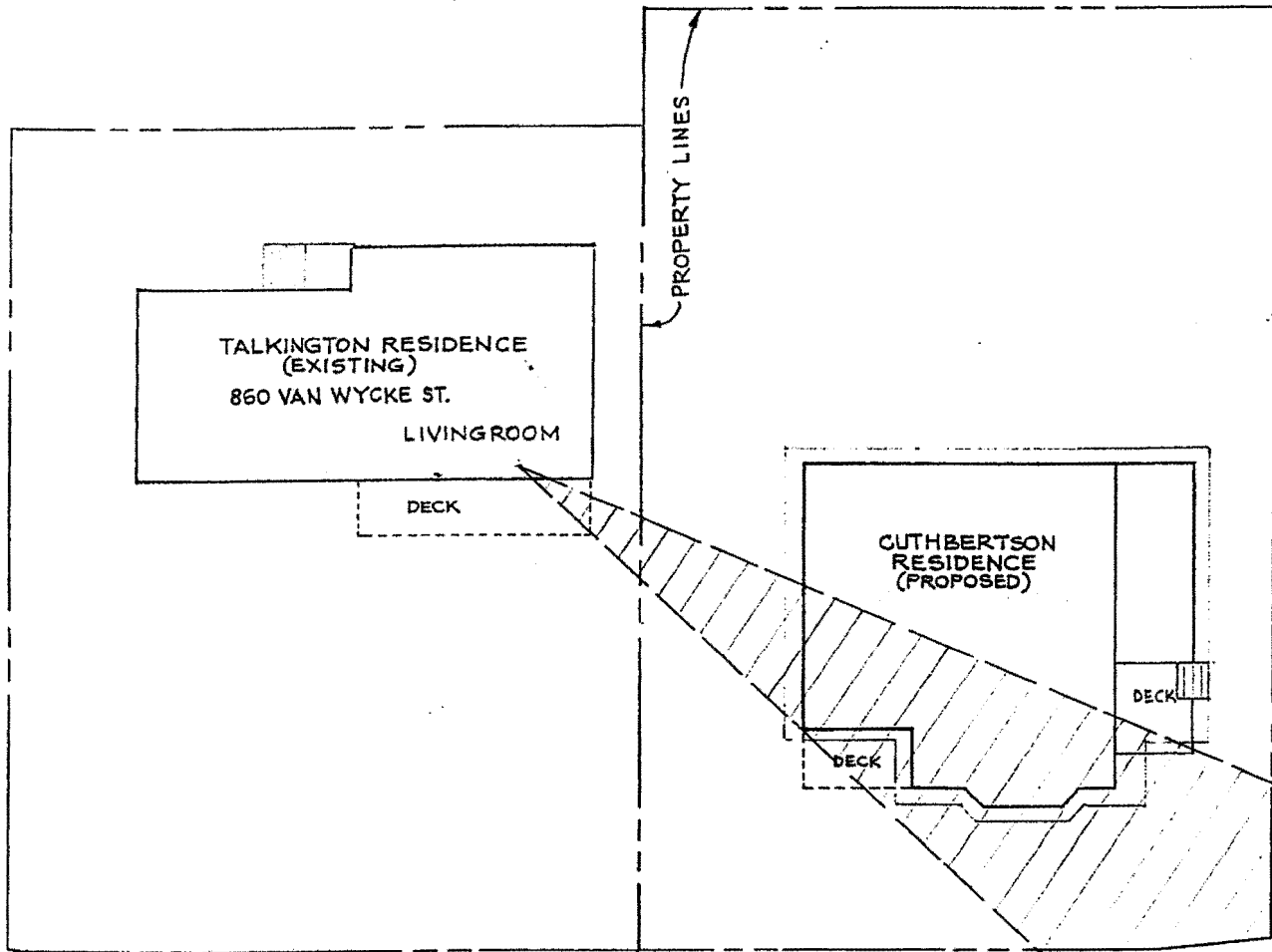
S/S L.T. Talkington

Signature of Appellant(s)

Date 4/26/98

EXHIBIT NO. 2
APPLICATION NO. A-1-TRN-98-40
Talkington Appeal
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GALINDO STREET



VAN WYCKE STREET



EXHIBIT NO.	2
APPLICATION NO.	A-1-TRN-98-40
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HARBOR VIEW

APPEALANT:
L.T. TALKINGTON
860 VAN WYCKE ST.
TRINIDAD, CA

CALIFORNIA COASTAL COMMISSION

NORTH COAST AREA

400 MOUNT, SUITE 2000

SAN FRANCISCO, CA 94105-2219

(415) 904-5260



APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s) Alan Crafts and Elizabeth Teig

Name, mailing address and telephone number of appellant(s):

c/o their attorney: Chris Johnson Hamer, Stokes, Steeves, Rowe & Hamer

P.O. Box 1109, Arcata, California 95518

(707) 822-1771

Zip

Area Code

Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: Trinidad City Council, Denial of Appeal of Action by Trinidad Planning Commission

2. Brief description of development being appealed: Upholding on appeal by Trinidad City Council of approval by the Trinidad Planning Commission of construction of an 1822 sq. ft., two story, two bedroom, single family residence with double car garage, storage and workshop underneath.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 840 Van Wycke, Trinidad, California, Humboldt County, APN 42-081-42

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: Reflected in Notice of Action taken re: 2/27/98 Planning Commission meeting

c. Denial: _____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-1-TRN-98-040

DATE FILED: 4/28/98

DISTRICT: North Coast

H5: 4/88

EXHIBIT NO. 3
APPLICATION NO. A-1-TRN-98-40
Crafts & Teig Appeal
Page 1 of 14

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

5. Decision being appealed was made by (check one):

- a. Planning Director/Zoning Administrator c. Planning Commission
- b. City Council/Board of Supervisors d. Other _____

6. Date of local government's decision: Vote 4/4/98, Findings 4/13/98
Application 1-TRN-98-037

7. Local government's file number (if any): _____

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Jim and Sandra Outhbertson
P.O. Box 1201
Trinidad, CA 95570

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Elizabeth Teig
11 Rayipa Lane
Trinidad, CA 95570

(2) L.T. Talkington
860 Van Wycke Street
Trinidad, CA 95570

(3) Alan Crafts
2401 Green Canyon Court
Riverside, CA 95570

(4) Larry Henderson
2103 Myrtle Avenue
Eureka, CA 95501

(5) Chris Johnson Hamer/Stokes, Steeves Rowe & Hamer
P.O. Box 1109
Arcata, CA 95518

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

EXHIBIT NO.	3
APPLICATION NO.	A-1-TRN-98-40
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Page 2 of 14	

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)

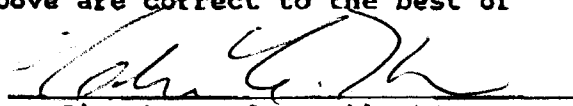
State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

(SEE ATTACHED)

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.



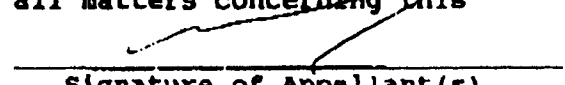
Signature of Appellant(s) or Authorized Agent

Date 4/27/98

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

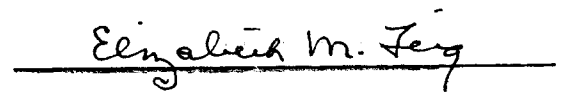
Section VI. Agent Authorization

I/We hereby authorize Chris Johnson Hamer to act as ~~my~~our representative and to bind ~~me~~us in all matters concerning this appeal.



Signature of Appellant(s)

Date April 23 1998



Dated: Apr 24 - '98

EXHIBIT NO. 3
APPLICATION NO. A-1-TRN-98-40
Crafts & Teig Appeal
Page 3 of 14

1 CHRIS JOHNSON HAMER (#105752)
2 Stokes, Steeves, Rowe & Hamer
3 P.O. Box 1109
4 Arcata, CA 95518
5 Tele: (707) 822-1771
6 Attorney for Appellants

EXHIBIT NO.	3
APPLICATION NO.	A-1-TRN-98-40
Crafts & Teig Appeal	
Page 4 of 14	

6 CALIFORNIA COASTAL COMMISSION

7 NORTH COAST AREA

9 JIM CUTHBERTSON and SANDRA) APPEAL NO:
10 CUTHBERTSON,)
11 Applicants,) APPEAL OF DENIAL OF APPEAL OF THE
12 vs.) GRANTING OF APPLICATION NO. 1-TRN-98-
13 ALAN CRAFTS and ELIZABETH TEIG,) 037 (JIM AND SANDRA CUTHBERTSON)
14 Appellants.)

15 Appellants Alan Crafts and Elizabeth Teig appeal the approval by the
16 Trinidad Planning Commission (AKA the Trinidad Design Assistance Committee)
17 and the upholding of that approval by the Trinidad City Council on appeal, of
18 Application No. 1-TRN-98-037, permitting the construction of what was
19 characterized as an 1822 square foot, two story, two bedroom/office single
20 family residence with double garage, storage and workshop underneath on the
21 grounds that the development does not conform to the standards set forth in
22 the Certified Local Coastal Program on each of the following bases:

23 1. The development will significantly block views from viewpoints
24 inside structures located uphill from the proposed development, in
25 violation of Appendix B to the Trinidad General Plan (entitled
"Community Design Considerations"), which comprises a portion of the
Local Coastal Program, as defined in Public Resources Code §§ 30108.6
and 30108.5, which provides as follows:

1 "4. Buildings . . . shall not be allowed to significantly block
2 views of the shoreline from . . . view points inside structures
located uphill from the proposed development."

3 In the memorandum from Robert Brown, City Planner, to the City of
4 Trinidad City Council, dated March 31, 1998, supplementing his staff report,
5 the City Planner admits that: "This is the section that has been applied in
6 the past for protecting private views (which is not common along the coastal
zone of California)."

7 Appellants' view has not, however, been protected. Appellants' house is
8 located directly uphill from the proposed development. The proposed
9 development will almost block all view of the shoreline from inside the
10 structure from all points on the structure's first floor, and will
11 significantly and substantially block views of the shoreline from view points
12 inside the second floor of appellants' house. Appellants' house is located on
13 parcel 42-081-36, directly uphill from Applicants' parcel 42-081-32, as shown
on the enclosed assessors parcel map.

14 The blockage is shown in the pictures and diagrams attached to the
15 Declaration of Ronald J. den Heyer (an engineer employed by appellants)
16 submitted in support of this appeal. The administrative record also contains
17 testimony by appellants and their representative as to the blockage, as well
18 as photographs with the "mock up" of the building erected by applicants
19 scanned in. Shortly before the appeal hearing without notice to appellants,
20 applicants changed the building plans and mock up. The attachments to Mr. den
Heyer's declaration reflect these changes.

21 The Local Coastal Program provides that the Design Assistance Committee
22 (which is the Trinidad Planning Commission plus one member of the City
23 Council) must approve all development. (Trinidad Local Zoning Ordinance,
24 Sections 17.60.010, et seq.) The General Plan is the document containing the
25 criteria and policies to be applied in approving or denying of applications

1 for permits; the Local Zoning Ordinance, discussed below, simply implements
2 the General Plan. (Zoning Ordinance §17.04.040.)*

3 2. The proposed development violates Section 17.60.040(H) of the
4 Trinidad Zoning Ordinance, in that it its scale, bulk, and orientation
5 are incompatible with, and out of scale with the community, in that the
6 proposed development is much larger than neighboring structures (2,695
7 square feet) and blocks the view of the shoreline, the harbor, and
8 Little Trinidad Head from inside the structure uphill (owned by
9 appellants) as well as the structures to the east and west of the
10 proposed development (co-appellants Talkington and Snell).

11 Section 17.60.040(H) provides, in pertinent part:

12 "When reviewing the design of . . . residential buildings, the
13 [design assistance] committee shall ensure that the scale, bulk,
14 orientation, architectural character of the structure and related
15 improvements are compatible with the rural, uncrowded, rustic,
16 unsophisticated, *small*, casual *open* character of the community."

17 The proposed residence is not compatible with the uncrowded, small and
18 open character of the community, as it is considerably larger than anything
19 around it, and crowds the lot.

20 The residence in question is comprised of 3,296 square feet, including
21 the garage and decks. This is far larger than any house around it, and this
22 proposed sizable residence is to be situated on a narrow, 9600 square foot
23 sloping lot, much of which is hillside. This is borne out in the declarations
24 of neighboring property owners (to be submitted) and in the house plans
25 submitted by applicants, which are in the administrative record.

The proposed residence will block the views of neighbors uphill, to the
east and to the west, which also makes it incompatible with the "uncrowded,
small and open character of the community". Views of uphill neighbors must be
protected, as provided in the Trinidad General Plan, quoted under Section 1

* The Local Zoning Ordinance and Appendix "B" to the General Plan are attached for the Commission's convenience.

1 of this brief. Section §17.60.040(H) of the Zoning Ordinance must be read as
2 implementing the policies of the Plan to protect views of uphill neighbors,
3 as the Local Zoning Ordinance simply implements the provisions of the General
4 Plan, as provided in Section 17.04.040:

5 "This title is based on, and is intended to be consistent with
6 the policies and programs and land use designations of the
7 Trinidad General Plan. If the Trinidad General Plan is amended
and is no longer consistent with this title, this title shall be
amended so that it is consistent with the policies, programs or
land use designations of the Trinidad General Plan".

8 Section 17.60.040 (H) (1) creates a *presumption* that residences of over
9 2,000 square feet of living area are out of scale with the community, and
10 provides that they will not be approved unless they are made unobtrusive.

11 Section 17.60.040 (H) (1) provides as follows, in pertinent part:

12 ". . . In particular:

- 13 1. Residences of more than two thousand square feet in
14 floor area . . . shall be considered out of scale with
the community unless they are designed and situated in
such a way that their bulk is not obtrusive."

15
16 The presumption applies the total living area is 2,695 square feet (the
17 second floor plus the first floor shop area). Applicants now claim (only
18 after challenge) that the presumption does not apply, as applicants' first
19 floor is allegedly not "living area" and thus, they argue, must be ignored in
20 the calculation. (The Local Zoning Ordinance defines "living area" to exclude
21 garages, decks, stairs and bathrooms.) Applicants claim the first floor
22 consists only of a garage, deck, full bathroom with a shower and stairs (a
23 total footprint of 1,475 square feet). They claim their second floor to be
24 their only "living area", consisting of 1,822 square feet, not including the
25 two bathrooms on that floor. (The total area is 3,297 square feet.)

1 This claim is clearly false, and contradicts applicants' earlier
2 representations to the Trinidad Planning Commission. Before the Planning
3 Commission (Design Assistance Committee), applicants admitted that they
4 intended to have a large workshop (i.e. living space) on the first floor, as
5 shown in the original plans which they submitted. For that reason, the
6 minutes from the first meeting of the Trinidad Planning Commission show it as
7 being a hearing on an application for approval of construction of "a 2,695
8 square foot, two story single-family residence with double garage, storage
9 and a workshop underneath." At that time, the living area was represented to
10 the Commission as being 1,932 square feet, not including the workshop. The
11 Commission, however, noted that "[t]he shop is included in the total living
12 space calculations, which puts it over the 2000 square foot maximum".

13 Between then and now, after appellants' challenge, applicants have
14 begun claiming that the whole first floor is not living area, and have denied
15 that it will be used as a workshop. However, the configuration of the
16 building has not changed from that presented originally. It is quite apparent
17 that there is still to be more than 2,000 square feet of living area. Hence,
18 the presumption of §17.60.040(H) applies, and the building cannot legally be
19 been approved unless it is made unobtrusive. It is not unobtrusive, as it
20 blocks its neighbors' views. Hence, the Local Coastal Program is again
21 violated.

22 Furthermore, even without applicants' prior contradictory
23 representations, their claim that the first floor contains no living area is
24 abundantly and evidently false. As engineer Ronald J. den Heyer states in his
25 declaration, it is apparent that approximately half of the first floor is to
be used as living space. If the first floor is garage, it is a five-car

1 garage, far in excess of what a normal residence would require. Half of the
2 first floor is not even accessible by vehicles. There are only two garage
3 doors, which are to the left. To the right, the wall is large windows which
4 will display the spectacular views of the Harbor, Little Trinidad Head and
5 the Shoreline that appellants, and the uphill neighbors, now enjoy. (These
6 are the views which will be blocked by the development if it is permitted to
7 proceed.) Half of the first floor is garage doors and half is large picture
8 windows. There is also a full bathroom with shower, toilet and sink and a
9 large open area not even accessible to vehicles. The large open area that is
10 not accessible to vehicles has windows and a full bathroom, which make it
11 evident that it is to be living space. It is obvious that the first floor is
12 to be used as living area, and is only being characterized as non-living area
13 at this time to avoid the presumption discussed above.

14 **3. The proposed development violates Section 17.60.050 of the Local**
15 **Zoning Ordinance as the development is not limited to one story or**
16 **moved elsewhere on the lot to avoid obstruction of important views.**

Section 17.60.050 subsection C provides in pertinent part:

17 "The committee shall recognize that owners of vacant lots in the
18 SR and UR zones, which are otherwise suitable for a residence,
19 are entitled to construct a residence of at least fifteen feet in
20 height and one thousand five hundred square feet in floor area,
21 **residences of greater height. . . shall not be allowed if such**
22 **residence would block views** identified in subsection 2 of this
23 subsection. [*Note: there is no subsection 2 of this subsection.]
24 *Regardless of the height or floor area of the residence, the*
25 *committee, in order to avoid blockage of important views, may*
require, where feasible, that the residence be located anywhere
on the lot even if this involves the reduction or elimination of
required yards or the pumping of septic tank wastewater to an
uphill leach field, or the use of some other kind of wastewater
treatment; and adjust the length-width-height relationship and
orientation so that it prevents the least possible view
obstruction."

Trinidad City Planner Robert Brown acknowledged in his Memorandum of
March 31, 1998, supplementing his staff report to the Trinidad City Council,

1 that the proposed development will block appellants' view of the harbor,
2 Little Trinidad Head and the shoreline from the first floor of their house
3 and will block much of the view from the second floor.

4 He did not recommend that the City Council require alternatives that
5 would prevent the least possible view obstruction because Mr. Brown stated:
6 "The applicant has provided information that his residence is under the
7 fifteen foot height criteria."

8 Applicants, however, admitted at the hearing before the City Council,
9 that their proposed residence would actually be approximately seventeen (17)
10 feet high from grade, two feet over the "fifteen foot criteria".

11 Accordingly, the proposed development again violates the Local Coastal
12 Program, as its construction could not be permitted as it will block
13 applicants' views, as well as those of the neighbors to the east and the
14 west, and it is to be of a height greater than fifteen feet.

15 If the proposed residence is reduced to fifteen feet in height, the
16 ordinance (when read with the General Plan) requires that the residence be
17 reduced to a single floor, to minimize blockage of the view of the uphill
18 neighbors, and/or moved to the extreme west of the lot, which would preserve
19 views of the harbor and shoreline. This was required by §17.60.050, as well
20 as Appendix B to the General Plan, which requires that views from inside
21 uphill structures not be blocked.

22 The Local Zoning Ordinance (including §17.60.050) must be read simply
23 as implementing the General Plan, as provided in Section 17.04.040:

24 "This title is based on, and is intended to be consistent with
25 the policies and programs and land use designations of the
Trinidad General Plan. If the Trinidad General Plan is amended
and is no longer consistent with this title, this title shall be

1 amended so that it is consistent with the policies, programs or
2 land use designations of the Trinidad General Plan".

3 Thus, the views from inside structures uphill from the proposed
4 development must be read as being the "important views" which must not be
5 blocked. The development blocks these views so it violates the Local Coastal
6 Program.

7 **4. The proposed development violates the Local Coastal Program and**
8 **the Coastal Act in that no coastal development permit was obtained for**
9 **the on site sewage disposal system and the on site sewage disposal**
10 **system is not in compliance with applicable law.**

11 An on site sewage disposal system requires a coastal development
12 permit, in addition to all other required permits, as provided in the Local
13 Zoning Ordinance. (§17.72.070, citing Pub. R. Code §30600; P.R. Code §29723
14 [definition of development].) Applicants never applied for a coastal
15 development permit for their on site sewage disposal system, although they
16 submitted it to the Humboldt County Department of Environmental Health for
17 approval. Hence, this development violates the Local Coastal Program.

18 Furthermore, as set forth in the Declaration by engineer Ronald J. den
19 Heyer, the permit which was granted was not in compliance with applicable law
20 and applicants have not demonstrated that the lot may even accommodate the
21 sewage system they have proposed without contaminating the groundwater,
22 contaminating the harbor with runoff from a failed system and without
23 contaminating the neighbors' property and causing foul smells.

24 The lot was created as part of a subdivision. Percolation tests were
25 done on each parcel to establish that it was buildable. The conclusion that
the lots were buildable explicitly assumed construction of tests assumed a

1 residence with no larger than a 1,000 square foot footprint. (The Cuthbertson
2 project has an approximately 1,500 square feet footprint.)**

3 Conditions of the approval of the subdivision map were that, when an on
4 site sewage disposal system was actually to be built, the owner would comply
5 with all regulations, laws and ordinances in effect at the time of the
6 construction and would do a site specific soils study.

7 No primary and reserve disposal field soil suitability tests were done.
8 No calculations were performed for sizing the system.

9 None of this was done. Ground water may not be within 12 ft. of the
10 bottom of trenches, per government regulations. Applicants did not observe or
11 even locate the ground water, delineate the soils profiles, or even dig holes
12 deep enough to determine this required information. From other information
13 provided, applicants apparently intend to run one or more of their leach
14 lines through fill containing construction debris, which is not permitted,
15 unless the fill was property prepared. Otherwise, regulations require that
16 leach lines be set back 25 ft. from fill - not run through it. The system is
17 also designed to barely accommodate a 2-bedroom house, although there are 3
18 rooms usable as bedrooms on the second floor, and the first floor could also
19 be used as a bedroom and the house is over 3,000 square feet. As it stands,
20 there is no assurance that the system will operate without failure, and that
21 the land, harbor, ground water and neighboring properties will not be
22 contaminated and that the neighbors and the public will not be exposed to the
23 foul smell of a failed septic system.

24
25

** See subdivision conditions, attached.

1 Appellants submit that the failure to require that applicants obtain a
2 coastal development permit for their on site sewage disposal system and the
3 proposed disposal system itself violates the standards of the Local Coastal
4 Program, the purpose of which is to protect the coastline and promote its use
5 and enjoyment by the public.

6 **5. The proposed development was approved in violation of CEQA.**

7 No environmental impact report was required for this development
8 (either the residence or the sewage disposal system), and neither a negative
9 declaration nor an order of exemption was issued by the City Council or the
10 Planning Commission. Accordingly, the development does not comply with the
11 standards set forth in the local certified coastal program, which include
12 protection of the environment.

13 Applicants claim they are subject to a categorical exemption. There has
14 been no order declaring such. In addition, it appears that this categorical
15 exemption (construction of a single family residence) is inapplicable as,
16 pursuant to Public Resources Code Section 21084 and Administrative Code
17 Section 15300.2, the categorical exemption is inapplicable where there is a
18 reasonable possibility that the activity will have a significant effect on
19 the environment due to unusual circumstances."

20 Here, as discussed above, the residence construction involves the
21 installation of an on site sewage disposal system without the proper testing
22 and without a determination of how close the leach lines will run to the
23 ground water table, the geologic character of the subsurface soils (in terms
24 of their ability to percolate), nor the effect of the system on the area,
25 which has been mapped as potentially unstable. These are unusual

1 circumstances, which may very well have a significant effect on the
2 environment.

3 The area of the building is also extremely large for the lot and for
4 the area (3,296 square feet) and contains 3 bathrooms, 3 rooms usable as
5 bedrooms (with closets and doors) and half of its first floor that is
6 apparently living space. Yet it is to have a sewage disposal system designed
7 as the minimum for a 2-bedroom house. It may very well be that the lot is of
8 insufficient size to accommodate the anticipated volume to be carried by the
9 system because of the size of the building.

10 Public Resources Code Section 30251 declares "The scenic and visual
11 qualities of Coastal areas shall be considered and protected as a resource of
12 public importance. The proposed residence will have a significant effect on
13 the environment due to unusual circumstances, which is the extraordinary view
14 of the harbor, shoreline and Little Trinidad Head now enjoyed by the
15 neighbors, which the proposed development will obliterate.

16 Additional evidence is to be submitted with this appeal on each of the
17 points set forth above.

18 Dated this 23rd day of April, 1998

STOKES, STEEVES, ROWE & HAMER

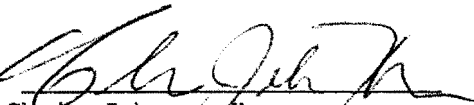
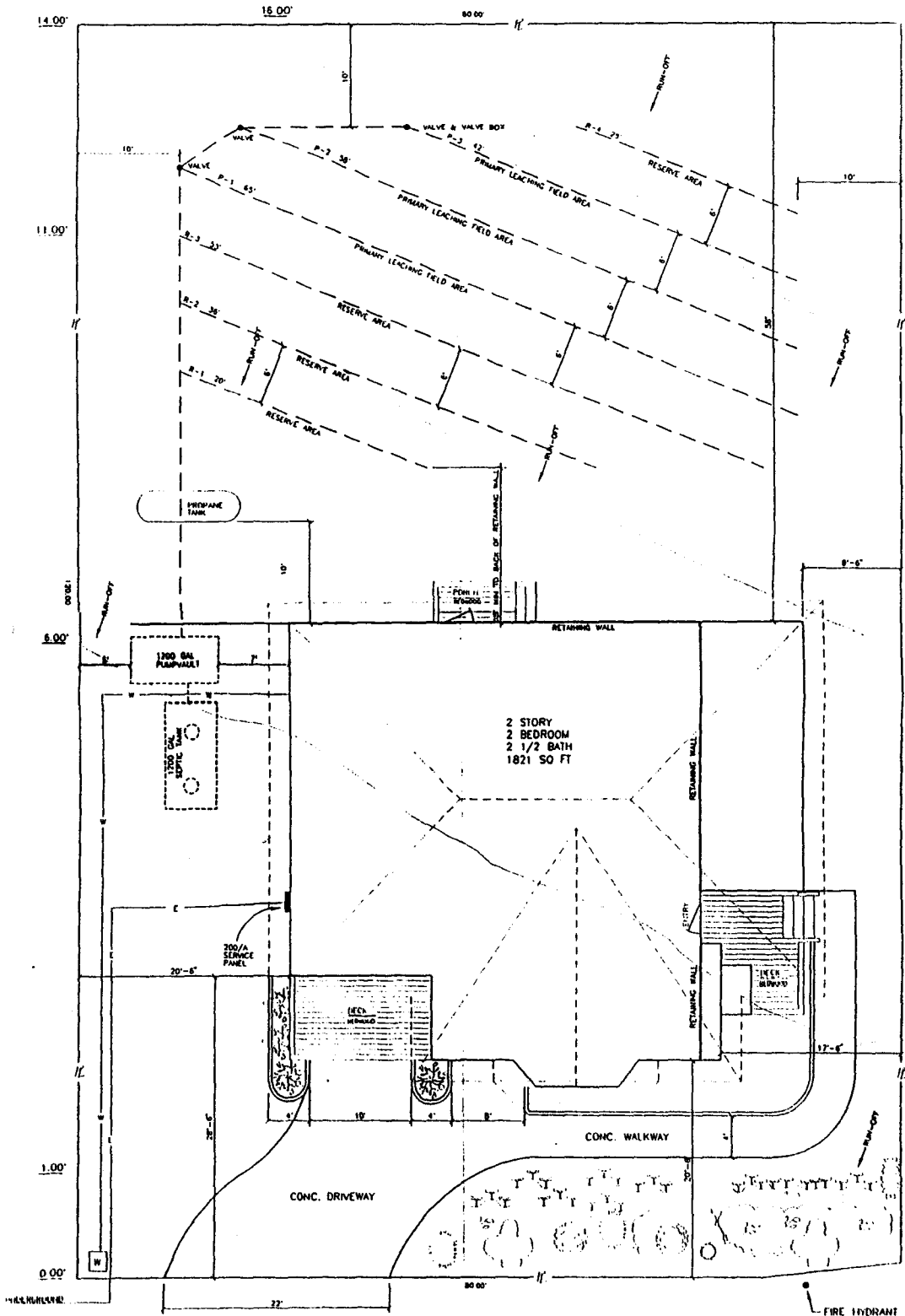
19
20 By 
21 Chris Johnson Hamer
Attorneys for Appellants

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← VAN WYCK STREET →

PLOT PLAN

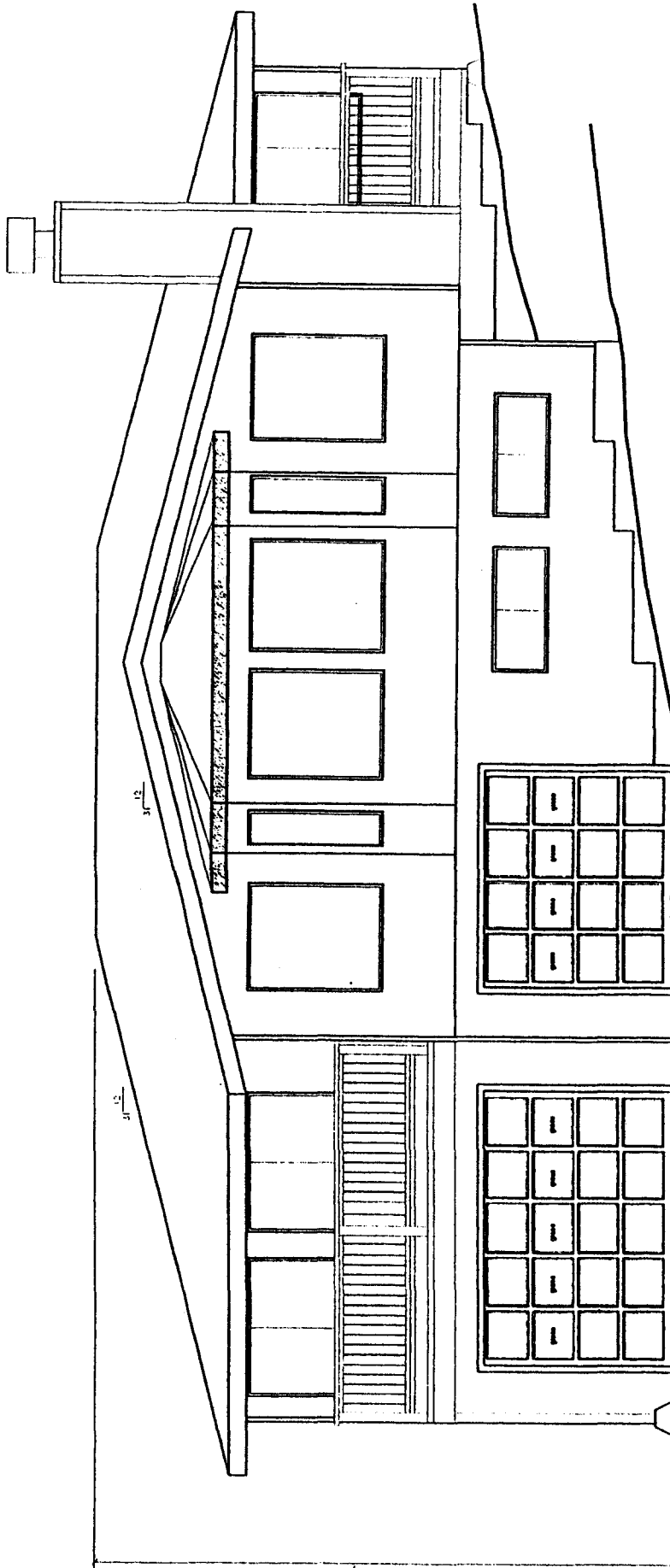
SCALE 1/8" = 1'-0"

REDUCED; NOT TO SCALE

①

4/19/98

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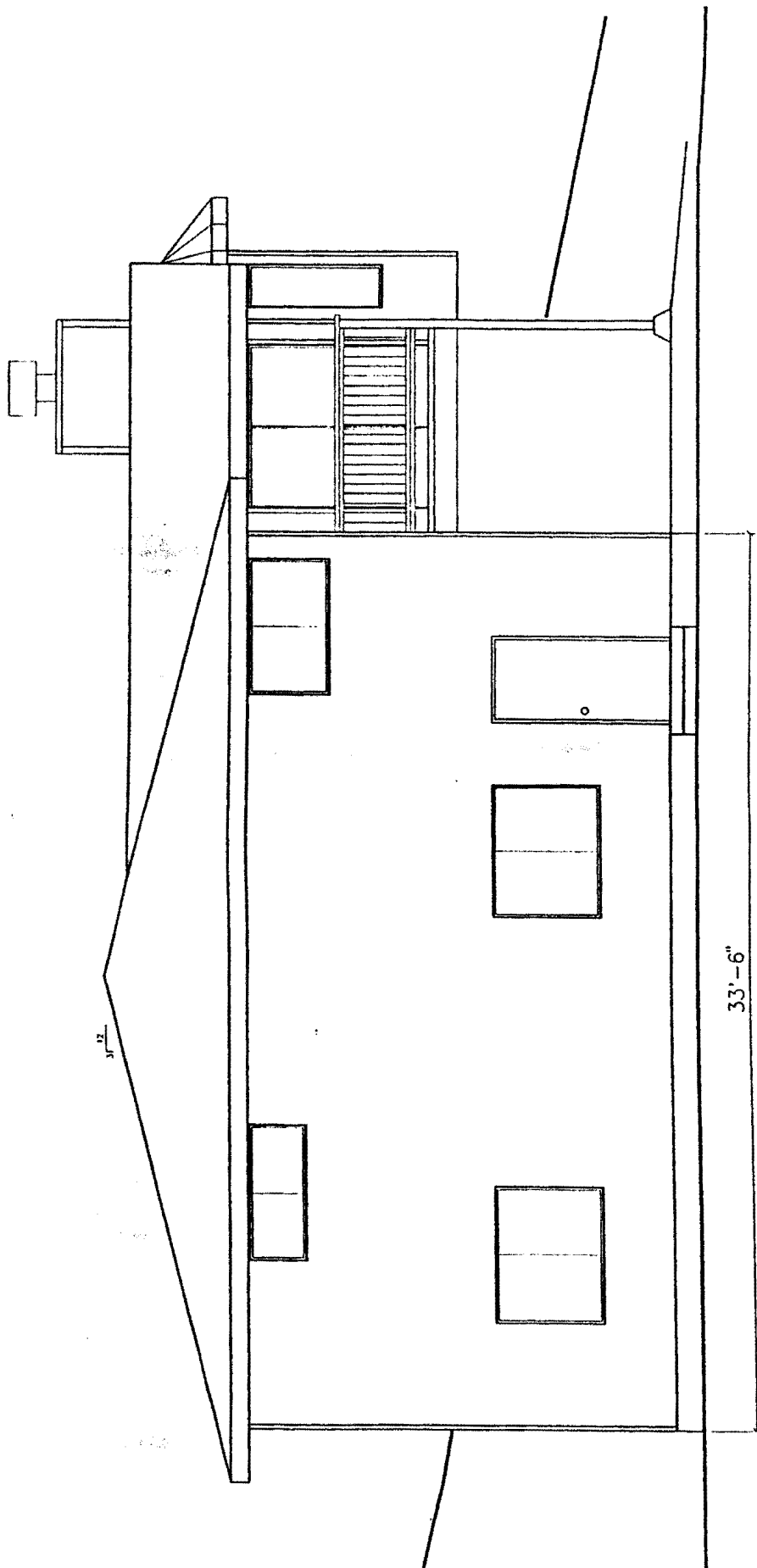
LOOKING NORTH ELEVATION

SCALE 1/4" = 1'-0"

REDUCED; NOT TO SCALE

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21-6 1/4"

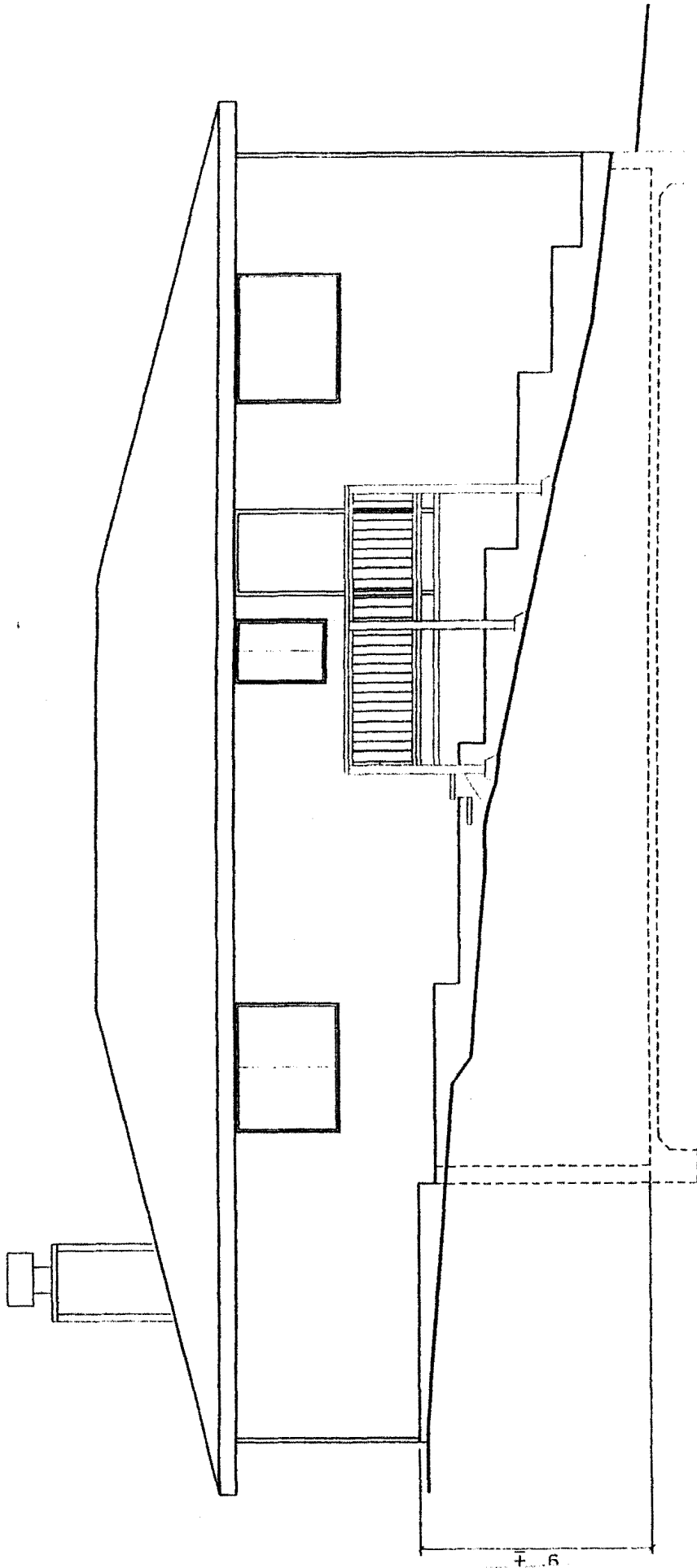


LOOKING EAST ELEVATION

SCALE 1/4"=1'-0"

REDUCED: NOT TO SCALE

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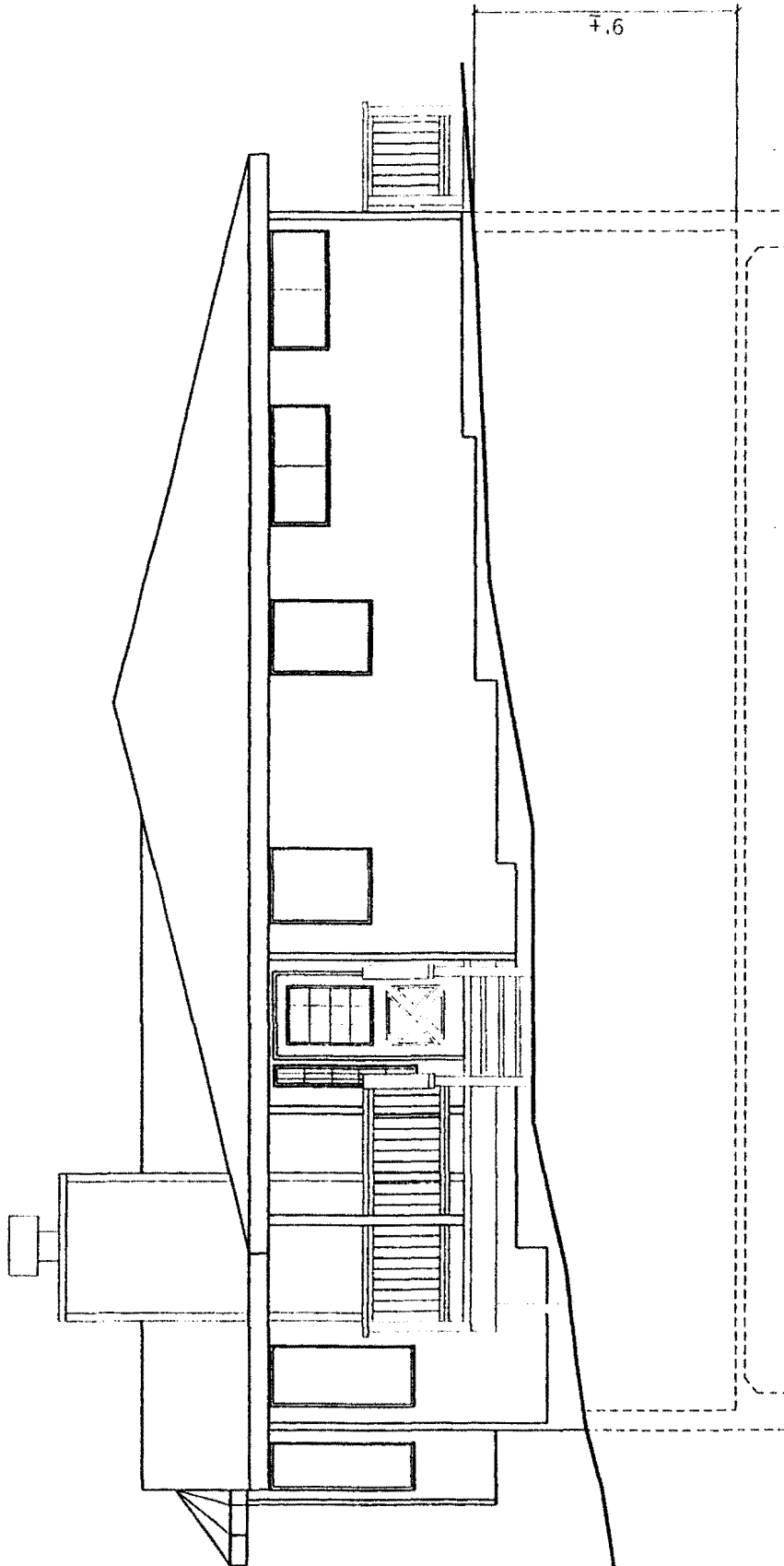


LOOKING SOUTH ELEVATION

SCALE 1/4"=1'-0"

REDUCED: NOT TO SCALE

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LOOKING WEST ELEVATION

SCALE 1/4" = 1'-0"

REDUCED; NOT TO SCALE

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**ACTION OF THE PLANNING COMMISSION/
DESIGN REVIEW COMMITTEE
February 23, 1998**

Cuthbertson Single Family Residence

Commissioner Bueche made the motion that "Based on information submitted in the application, included in the staff report and public testimony, I move to adopt the information and findings in this staff report and approved the project as modified on the plans submitted February 23, 1998; and with the condition that the width of the house be reduced by 6 inches, moving the residence that much further to the north. The length of the house be reduced by 2 feet and that the applicant attempt to cantilever the upstairs living space area to the north. Motion included the conditions of approval listed in the February 18, 1998 staff report. Motion was seconded by Design Review Committee member Dobrec. Motion passed 4 to 0.

Resulting Conditions of Approval

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application. *Responsibility: City Clerk at time building permits are issued.*
2. Based on the findings that community values may change in a year's time, design review approval is for a one-year period starting at the effective date and expiring thereafter unless an extension is requested from the Planning Commission prior to that time. *Responsibility: City Clerk at time building permits are issued.*
3. Recommended conditions of approval by the County Health Department shall be required to be met as part of the building permit application submittal. *Responsibility: City Building Official at time building permits are issued.*
4. Recommended requirements and issues of the City Building Official in his February 9, 1998 memorandum shall be required to be met as part of the building permit application submittal. *Responsibility: City Building Official at time building permit applications are submitted.*
5. Recommended conditions of approval included in the December 5, 1997 and February 9, 1998 geologic investigations prepared by Walter B. Sweet's office shall be required to be met as part of the building permit application submittal. *Responsibility: City Building Official at time building permit applications are submitted.*
6. Information shall be submitted indicating that the height and setback requirements of the Zoning Ordinance and Deed Restriction have been met. *Responsibility: City Planner at time building permit applications are submitted.*
7. The applicant is to submit revised plans (from those submitted and approved February 23, 1998) indicating the reduction in width of the residence by six (6) inches, moving the residence that much further to the north and the reduction in length by two (2) feet. *Responsibility: City Building Official at time building permits are issued.*

Note: The Committee requested that the applicant cantilever the upstairs living space to the north.

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STAFF REPORT**APPLICATION #:** 98-03**PROPERTY OWNER:** Jim and Sandra Cutbbertson**APPLICANT'S AGENT:** Stodder Properties**PROJECT DESCRIPTION:** Design Review/Coastal Development Permit for Construction of a 2695 s.f. two-story, Two Bedroom/Office Single-Family Residence with Double Garage, Storage and Workshop Underneath**PROJECT LOCATION:** 840 Van Wycke Street**ASSESSOR'S PARCEL NUMBER:** 42-081-32**ZONING:** UR (Urban Residential)**GENERAL PLAN DESIGNATION:** UR (Urban Residential)**ENVIRONMENTAL REVIEW:** Categorically exempt from CEQA per Section 15303 of the CEQA Guidelines exempting construction of single-family residences**APPEAL STATUS:**

Planning Commission action on a coastal development permit, a variance or a conditional use permit, and Design Assistance Committee approval of a design review application will become final 10 working days after the date that the Coastal Commission receives a "Notice of Action Taken" from the City unless an appeal to the City Council is filed in the office of the City Clerk within that time. Furthermore, this project X is is not appealable to the Coastal Commission per the requirements of Section 30603 of the Coastal Act.

DATE: February 1998**SITE CHARACTERISTICS:**

The site is currently an undeveloped lot off of Van Wycke Street. The site slopes towards the south. The lower portion of the lot is proposed to be cut to lower the overall height of the structure.

STAFF COMMENTS:

Because the project is located within the Coastal Zone, Design Review and View Protection Findings need to be made per Section 17.071 of the Zoning Ordinance. The applicant submitted application materials on January 21, 1998. Application materials show the project location, the plot plan for the proposed residence and septic leachfield system.

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Recommended Design Review/View Preservation Findings are written in a manner to allow approval; however, if public hearing information is submitted or public comment received indicating that views may be significantly impacted, the findings should be reworded accordingly.

ZONING ORDINANCE CONSISTENCY:

The property where this project is located is zoned UR - Urban Residential. Section 17.32.060 Urban Residential requires minimum yards of front 20', rear 15', side 5'. The plot plan indicates these have been met. Other Zoning Ordinance requirements have been met as well.

The submitted plan indicates some of the heights of the structure but not as defined by the Zoning Ordinance; however, the applicant's agent has indicated that it is 17 feet above the average ground level. The Zoning Ordinance Section 17.56.100 indicates that, "heights of buildings and structures shall be measured vertically from the average ground level of the ground covered by the building to the highest point on the roof." In addition, the property owner submitted information regarding a deed restriction regarding height limitation of 17 feet above the average elevation of the four property corners. The applicant's agent has indicated that the height is 17'. Information submitted with the building permit application will need to indicate compliance with height requirements.

Number of parking spaces in addition to the carport and garages are 2. Section 17.56.180(B)(2) of the zoning ordinance requires that 2 spaces in addition to any garage spaces are required. The spaces are proposed to be concrete.

The two-story, two bedroom residence is approximately 2,695 square feet in size when considering the second story (1,932 s.f.) and first story shop area (763 s.f.). Section 17.68.310 defines floor area as the "enclosed area of a building measured from an exterior surface to exterior surface but excluding.... balconies, garages and carports...." Design Criteria H requires a finding that residences greater than 2,000 s.f. in area are to be "designed and situated in such a way that their bulk is not obtrusive."

The Building Official in his February 9, 1998 memorandum discusses some requirements and concerns. The requirements address drainage and includes some of the items in Walter Sweet's letters. Furthermore, issues raised regarding the propane tank and septic tank/pump vault need to be resolved as part of building application submittal.

Zoning Ordinance Section 17-56-110 describes minimum yard requirements for certain architectural features such as bay windows, eaves which can extend a maximum four feet into the required front yard set back. The proposed set back is close to the maximum allowed. Information submitted with the building permit application will need to indicate compliance with minimum requirements.

Section 17.60.050(C) states that "The committee shall recognize that owners of vacant lots in the SR and UR zones, which are otherwise suitable for construction of a residence, are entitled to construct a residence of at least fifteen feet in height and one thousand five hundred square feet in floor area, residences of greater height as permitted in the applicable zone, or greater floor area shall not be allowed if such residence would significantly block views identified in subdivision B of this subsection. Regardless of the height or floor area of the residence, the committee, in order to avoid significant obstruction of the important views, may require, where feasible, that the residence be limited to one story; be located anywhere on the lot even if this involves the reduction or elimination of required yards or the pumping of septic tank wastewater to an uphill

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leachfield, or the use of some other type of wastewater treatment facility; and adjust the length-width-height relationship and orientation of the structure so that it prevents the least possible view obstruction."

SLOPE STABILITY:

The property where the proposed project is located is in an area of questionable stability based on Plate 3 of the Trinidad General Plan. A report was prepared by Walter Sweet's office dated December 5, 1997 (supplemented February 9, 1998) which includes recommendations. A condition of approval has been added which requires incorporation of these recommendations as part of building permit submittal.

Relying on the submitted reports, the Planning Commission can make the finding required in 17.28.090 that "the construction of the development will not significantly increase erosion and slope instability and that any potential adverse impacts have been mitigated to the maximum extent feasible.

SEWAGE DISPOSAL:

The proposed sewage disposal system is identified on the plot plan. The application submittal included approval of the design by the Department of Health Services. As part of the approval, a list of conditions was included. As such a condition of approval requires the applicant to meet those conditions at time of building permit application. As noted above, the Building Inspector's issues also similarly need to be met.

DESIGN REVIEW/VIEW PRESERVATION FINDINGS:

This project is subject to the Design Review and View Preservation criteria set by Zoning Ordinance Section 17.60. The following statements can be used to make the necessary findings per the worksheet handed out to the Commission:

Design Criteria

- A. "The alteration of natural landforms caused by cutting, filling and grading shall be minimal. Structures should be designed to fit the site rather than altering the landform to accommodate the structure." Grading will be necessary for footings and foundations as well as activity related to sewage disposal system construction. The proposed project requires grading in a manner that meets the height limitations of the project site. This is being done to minimize or reduce the overall height of the building on the property by lowering the foundation and minimizing potential view obstruction.
- B. The proposed project is not adjacent to an area zoned Open Space.
- C. Materials and colors used in construction are compatible with both the structural system of the building and the appearance of the building's natural and man-made surroundings. The project consists of wood siding, glass and standard roofing material. No specific colors are noted on the plans, but the applicant's agent indicated earth tones (probably green, blue or grey) would be utilized.
- D. No landscaping has been proposed as part of this project. None was found necessary to screen or soften the visual impact of the new development.
- E. No on-premise signs are proposed for the project.

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- F. The proposed project will require underground utility service connections.
- G. No off-premise signs are proposed as part of the project.
- H. The size of the proposed structure is approximately 2,695 s.f. Residences more than 2,000 s.f. in floor area are considered out of scale with the community unless they are designed and situated in such a way that their bulk is not obtrusive. The scale, bulk, orientation, architectural character of the structure and related improvements can be found to be compatible with the rural, rustic, uncrowded, unsophisticated, small, casual, open character of the community. This project meets that criteria.

View Protection

- A. The proposed improvements may be visible from portions of the beach and Trinidad Head. The proposed project does not result in significant changes from those viewpoints.
- B., C. The project does not significantly obstruct views of the Harbor, Little Trinidad Head, Trinidad Head, or the ocean from public roads, trails or vista points. As a result of information in the application package, site review and comments during the public hearing, views from affected residences have been determined not to be significantly blocked by the construction.
- D. No previous residence was removed or destroyed by fire.
- E. The proposed residence is not located within 100' of the Tsurai Study Area, Trinidad Cemetery, the Catholic church or the Memorial Lighthouse.

STAFF RECOMMENDATION:

Based on the above analysis, the proposed structure can be found to meet the Design Review/View Protection requirements. Provisions of the Zoning Ordinance and General Plan can be met. If the Planning Commission agrees with staff's recommendation, the proposed motion might be similar to the following:

Based on information submitted in the application included in the staff report and public testimony, I move to adopt the information and findings in this staff report and approve the project as conditioned below.

1. The applicant is responsible for reimbursing the City for all costs associated with processing the application. *Responsibility: City Clerk at time building permits are issued.*
2. Based on the findings that community values may change in a year's time, design review approval is for a one-year period starting at the effective date and expiring thereafter unless an extension is requested from the Planning Commission prior to that time. *Responsibility: City Clerk at time building permits are issued.*
3. Recommended conditions of approval by the County Health Department shall be required to be met as part of the building permit application submittal. *Responsibility: City Building Official at time building permits are issued.*

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4. Recommended requirements and issues of the City Building Official in his February 9, 1998 memorandum shall be required to be met as part of the building permit application submittal. *Responsibility: City Building Official at time building permit applications are submitted.*

5. Recommended conditions of approval included in the December 5, 1997 and February 9, 1998 geologic investigations prepared by Walter B. Sweet's office shall be required to be met as part of the building permit application submittal. *Responsibility: City Building Official at time building permit applications are submitted.*

6. Information shall be submitted indicating that the height and setback requirements of the Zoning Ordinance and Deed Restriction have been met. *Responsibility: City Planner at time building permit applications are submitted.*

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City of Trinidad

MOTION MADE BY THE TRINIDAD CITY COUNCIL AT THE APRIL 13, 1998
TRINIDAD CITY COUNCIL MEETING

A motion was made by Council member Nancy Hogan to adopt the findings of the City Council on the appeal of the Cuthbertson residence and confirm the action and vote taken at the April 4, 1998 City Council meeting. The motion was seconded by Council member Sisneros. The motion was approved by a three to zero vote, with Council member Dobrec abstaining.

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tpc4-98

**FINDINGS OF THE CITY COUNCIL
ON THE APPEAL OF THE CUTHBERTSON RESIDENCE**

Whereas the Design Assistance Committee of the City of Trinidad considered the above referenced project as described in the application materials, analysis in the staff report, and upon public testimony; and

Whereas the Design Assistance Committee, on February 23, 1998 visited the project site and viewed the project location and markers on the site from the Talkington residence, Tieg residence, and Snell residence; and

Whereas the Design Assistance Committee approved the project as modified on February 23, 1998 after reviewing all application materials, staff analysis, public hearing testimony and submittals, and viewing the proposed project and site. Approval by the Design Assistance Committee was conditioned as recommended in the staff report with additional conditions added; and

Whereas the appellants (Talkington, Tieg, Snell) filed a request for an appeal before the City Council on March 4, 1998, submitting information stating their basis for appeal; and

Whereas the City Council on March 11, 1998 set and noticed the public hearing on the appeal for April 4, 1998; and

Whereas the City Council held an appeal hearing, considering materials submitted by the appellants, the applicant and the memo dated April 3, 1998 (from the City Planner); and

Whereas the City Council on April 4, 1998 visited the project site as well as observed views of the site and markers on the property from the Talkington residence, Tieg residence, and Snell Residence; and

Whereas the City Council considered additional testimony and reviewed submittal information by the appellants or their representatives; and

Whereas the City Council open the public hearing to take any additional testimony, closing the public hearing after no additional testimony was offered; and

Whereas the City Council discussed the information submitted to them and obtained clarification of the City requirements, project description and appellants information from the City Planner.

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Therefore, the City Council finds that based on the fact that:

- 1) The project is categorically exempt from CEQA per Section 15303 of the CEQA Guidelines exempting construction of single-family residences; and
- 2) The Design Assistance Committee Action on the proposed project was correct and the proposed findings included in the staff report were correct and supported approval of this project; and
- 3) The scale, bulk, orientation, architectural character of the structure, and related improvements can be found to be compatible with the rural, rustic, uncrowded, unsophisticated, small, casual open character of the community; and that the project does not significantly obstruct views of the harbor, Little Trinidad Head, Trinidad Head, or the ocean from public roads, trails, or vista points. As a result of the information in the application package, site review, and comments during the public hearing, views from affected residences have been determined not to be significantly blocked by the project.

The City Council: a) upholds the findings and recommended approval with conditions stated by the Design Assistance Committee; b) adopts by reference those findings of the Design Assistance Committee as their own; c) approves the project with the conditions of approval imposed by the Design Assistance Committee; and d) denies the appeal.

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MEMO

tpc4-98

TO: City of Trinidad, City Council

FROM: Robert Brown, City Planner

RE: Appeal of the Planning Commission Decision Approving the Cuthbertson Residence

DATE: March 31, 1998

This memo supplements my March 5, 1998 memo regarding the appeal process and includes an evaluation of the information submitted by the appellants.

A. Process

In regards to process, the City Council has (as part of the record) the information that the Planning Commission utilized for their approval of this project. Of course, other than the summary provided in the minutes of those meetings, the City Council lacks the clarification regarding the project provided by staff as well as the public testimony provided both by the applicant and those expressing a concern about the project.

An appeal is a request to the City Council for reconsideration of the project. In addition to the materials mentioned above, the appellants have provided additional information "formalizing their complaint" and the reasons why they feel that the Planning Commission action is not appropriate. In essence, you have both sides of the story. In addition, this project has been noticed for a public hearing and the public has an opportunity to provide both written and verbal comments up through the public hearing portion of this process.

At some point in this process, you will have enough questions answered and information provided that will give you a clear picture of 1) the City's Zoning and General Plan requirements as it pertains to this project, 2) the applicant's project, and 3) the appellant's issues. At this point, it is recommended that the public hearing portion of this process be closed to allow a time for discussion and decision by the City Council. Even though the City Council may be taking one action on this project, in essence, you are deciding 1) whether the appellants raise concerns that

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need to be taken into further consideration and 2) whether the proposed project by the applicant is consistent with city requirements.

Attachment 1 to this memo is a list of the findings that need to be made as part of design review approval. They are taken directly from the Zoning Ordinance. The staff report to the Planning Commission includes the wording of these findings in a manner that supported approval of the proposed project. That staff report also included findings relative to the City's Zoning Ordinance requirements, slope stability, sewage disposal, etc.

In the past, it has been the City Council's policy that when action is taken on an appeal request that supporting findings be verbalized prior to that action. This will be noted by staff and at a subsequent City Council meeting (April 8th?) those findings will be provided in written form for approval by the City Council.

B. Appellant's Information

Information submitted as part of the appeal included two letters. The first is a March 18, 1998 letter from Larry Henderson. The second is a March 18, 1998 letter from Chris Johnson Hamer. Mr. Henderson's March 18, 1998 letter listed 5 points as "appellant's grounds for the denial". After listing these points, the letter lists several items which are to be provided later. Since they have not yet been provided, no analysis of this information can occur but the following lists some of those items.

Page 2, paragraph starting with "The total enclosed..."

This paragraph suggests a comparison with the scale, bulk and architectural character of surrounding residences. There was no information submitted in regards to their square footages, heights, architectural design, etc.

Page 2, paragraph starting with "We will provide photos..."

The only photos thus far provided have been from the Teig residence as part of a separate submittal. Mr. Talkington provided copies of photos during the Planning Commission hearing.

Page 3, paragraph starting with "There are alternatives..."

No alternatives have been submitted.

Page 3, paragraph starting with "Our testimony and evidence..."

No information submitted.

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Page 3, paragraph starting with "The appellants are..."

No alternative design or location has been submitted by the appellants.

Page 4, paragraph starting with "In particular..."

This suggests that the "appellants' testimonies... are evidence...". No information has been submitted.

Stated Grounds for Denial

In regards to the five grounds listed for denial, the following are comments regarding each of these grounds.

The first grounds for denial defines the grounds for denial as blockage of views from private residences. The design review findings are listed in Section 17.60.050(B)(C) [Note: The Old Zoning Ordinance Section 6.19]. Subdivision (B) discusses significantly blocking views "...from public roads, trails, and vista points...". Subdivision (C) references back to Subdivision (B) and therefore emphasizes the protection of views from public roads, trails, and vista points.

Appendix B of the City's General Plan titled "Community Design Considerations" discusses the establishment of a Design Assistance Committee. This was subsequently implemented and made more specific during the development of the zoning ordinance. Page B-2 states *"Following are design guidelines suggested for consideration by the design assistance committee in establishing design criteria for the area west of the freeway..."*

4. *Buildings, fences, paved areas, signs and landscaping and similar development shall not be allowed to significantly block views of the shoreline from key public viewing points or from view points inside structures located uphill from the proposed development."*

This has been the section that has been applied in the past for protecting private views (which is not common along the coastal zone of California). I do not know how much significance appendices of a General Plan have, especially when there is wording such as "suggested for consideration". I do not understand why the wording found in this appendix was not carried through in the zoning ordinance. However, at a minimum, protection of private views as described should be given some consideration by the Design Assistance Committee. The policy of the Committee has been to give some consideration of private views. If the committee was to give preferential consideration for protection of private views based on this section then note that this section specifies protecting view points inside structures located "uphill from the proposed development", limiting its applicability.

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The second grounds for denial discusses reasonable alternatives that would reduce and minimize the blockage of views. Several modifications and alternatives were discussed during the Planning Commission Meeting. Adjustments were made, but no submittal of an alternative plan that meets the criteria of the Zoning Ordinance has yet been submitted by the appellants. Until such time, this must be evaluated as speculation and cannot be grounds for appeal.

The third grounds for denial states that "the location, layout, and design of the proposed residence... conflict with the City's Zoning Ordinance". There is no specifics stated with this grounds of denial; however, the follow up information would suggest this refers to the design review findings as found in Section 17.60 in the Trinidad Municipal Code (or Section 6.19 in the old Zoning Ordinance numbering system). No other Zoning Ordinance Code conflicts have been mentioned in this letter or the appeal.

The fourth grounds for denial discusses the categorically exemption that was utilized for approving this project. This opinion, based on information followed in the letter, suggests that blockage of private views would result in a potential for a significant environmental impact. This is a finding that the City Council needs to decide in its evaluation of this project. Upholding the Planning Commission's decision would uphold the use of the categorical exemption. There is nothing incorrect with the procedure or use of this categorical exemption for this type of project. Its use has been consistently applied in the last ten years that I have served the City Planner for the City of Trinidad and has been upheld by the Coastal Commission in that they have not rejected the past use of this categorical exemption for this type of construction.

The fifth grounds for denial, more or less summarizes Items 3 and 4 above referencing that the City's ordinances are part of the local coastal plan certified by the Coastal Commission.

Other points in this letter discusses some of the application of the Design Review findings.

Page 2, paragraph starting "the total enclosed..." refers to "habitable floor area". The only definition of floor area utilized by the Zoning Ordinance is defined as "...the enclosed area of a building...but excluding the following:...garages and carports...". As so defined and applied to projects in the past, the proposed project is less than the 2,000 square feet specified in the Zoning Ordinance.

Page 2, paragraph starting with "Section 6.19...References 17.60.050(B)." This quote left out an important part of the finding that is "...from public roads, trails, and vista points". (emphasis added)

Page 3, paragraph starting "the appellants understand..." The sections referenced in bold in this paragraph are not from the Zoning Ordinance. Nowhere in the referenced sections is the phrase "significantly block public and private views".

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Page 4, paragraph starting with "In particular..." This paragraph discusses "unusual circumstances" and references important public and private vistas. This is the first time that public vistas comes up. All previous references were to private views. There is no description where these public vistas are and based on my knowledge of the area suggest there are no public vistas impacted by the proposed project. The relevancy of this paragraph to CEQA is questionable and in my opinion makes little sense.

The last paragraph "In conclusion..." suggests that the City Council should reverse the Planning Commission's decision based on information that has not been submitted.

The second letter of comments, submitted by Chris Johnson Hamer, represents Allen Crafts and Elizabeth Teig. This is the residence directly uphill of the propose Cuthbertson project and when considering Appendix B of the General Plan statement for protection of private views is the one that is applicable.

In a related matter which does not directly involve the City's decision but which involves the Teig residence as well as the Cuthbertson application is the deed restriction. The applicant submitted information regarding this 17 foot height restriction. This same restriction also applied to the adjacent Talkington residence. As I understand from the information that was submitted, shortly after the subdivision of the four lots the property owner at the time (Ed Collins) recorded a deed restriction for development of the lower two lots in favor of the uphill lots. My understanding is that this was to protect the value of the residences on the uphill lots, allowing the owners of those vacant lots an opportunity to know to what degree their views would be blocked and to allow construction of a residence accordingly. In essence, this is a view protection policy that was established as part of the subdivision. → *17ft height limit*

Having said this, the City's review criteria process is totally separate. The calculation of building height is different and the limitations and opportunities for total building height are defined in the Zoning Ordinance, not a private deed restriction. It is my opinion that the City is in no way bound by the deed restriction though it is one factor that can be considered.

With the attached letter were two pages of photographs. The second photograph shows a blocked out area where the residence would be built and this was determined by ridge poles place by the applicant's agent. It should be noted that the Planning Commission approval incorporated some modifications to the original design which amongst other things included a hip roof thereby reducing the blockage indicated in the photo. The letter does not refer to the location where photographs were taken, however, comparing photographs I took during the Planning Commission's site visit, these seem to be taken from the first floor of the two-story residence. Based on the photos submitted, the harbor and portions of the pacific ocean and little Trinidad head would be blocked. However, the photos show (and would be increased by the hip roof) that there are still views of the ocean, Little Trinidad Head, and Trinidad Head. The photographs taken from the second story which I will have at the meeting show that the view is much increased from the second story. The letter references Section 6.19 or Municipal Code Section 17.60.050

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which states that structures...shall not be allowed to significantly blocked views of the harbor, Little Trinidad Head, Trinidad Head, or the ocean from public roads, trails, and vista points..."

As discussed earlier, the appendix of the General Plan suggests that private views from uphill residences should also be considered. Part of the discretionary decision that is before the City Council (in which the Planning Commission also had to consider) is defining the word "significant". The appellant's letter suggests this as the location of where the photographs were taken which I presumed to be inside the residence on the first story. The City Council's decision on this project should be based in part on what the Council feels to be significant or not significant for this particular project. In the past, what has been considered sometimes included the total view from all windows of the residence that directly face the view. On the site visits that I have been on typically what is shown are the view from common use areas such as living rooms or family rooms. I cannot remember a time when anyone showed me the view from a bedroom which may help define what Subdivision (C) references as "obstruction of important views". Next - how much of the view is blocked? 20%?, 50%?, 70%? In this case, it would appear that the obstruction of view is less than 50% and that substantial views still remain. I do not believe you need to pick a specific number (i.e., 43%) to define significant but it can be based on judgement during the site visit and from submittal materials.

The second issue references Section 619 regarding buildings over 2,000 square feet. As mentioned previously, based on definition in the Zoning Ordinance, the proposed project is less than 2,000 square feet. Furthermore, the Planning Commission did find that it was designed in such a way that it was not obtrusive. The letter concluded with an alternative that the residence be limited to one-story in height and be cut back into the banks similar to the Talkington residence. When I first received the application request for this project, it was not clear to me the degree that the residence was going to be cut into the bank. Subsequent to this and during the Planning Commission hearing it was clarified that the back of the residence would be cut into the bank 9 feet. The project is therefore being cut into the bank as recommended and the maximum that is feasible.

The first recommendation is that the residence should be limited to one-story. This bring us to Section 17.60.050(C) which states that "the Committee shall recognized that owners of vacant lots in the...UR Zone, which are otherwise suitable for construction of a residence are entitled to construct a residence of at least fifteen feet in height and one thousand five hundred square feet in floor area. This phrasing has been noted as the "guarantee" for building on vacant lots and is reference as being an entitlement. This section continues suggesting that residences of greater heights or floor area shall not be allowed if the residence would significantly block views as noted in the previous section which defines public views.

The last half of this view protection criteria which is referenced in the appellant's letters states that "regardless of the height or floor area of the residence, the Committee, in order to avoid significant obstruction of the important views...". This provides an opportunity for the Committee and in this case the City Council to require changes to the applicant's layout, design

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and location of the residence. I do not believe this allows the Committee to require a residence of less than fifteen hundred square feet or fifteen feet in height as defined in the Zoning Ordinance. Otherwise, there would be no "entitlement". The applicant has provided information that his residence is under the fifteen foot height criteria. *height is actually 17 ft.*

The proposed residence as defined in the Zoning Ordinance is 1,822 square feet or 322 square feet more than the entitlement. Reducing the length of the house in such a manner as to bring the square footage to the fifteen hundred square feet would not significantly decrease the amount of view blockage by the uphill residence. However, the City Council could require the length of the house be shortened. In the same light though, the width of the house could be widened since this would not further obstruct the view from the residence uphill of the project. Moving the residence further back onto the hill without raising it in elevation begins to make the proposed project infeasible. Therefore, if the residence is moved back, it would increase in elevation and it would soon come to the point where it exceeds the 15 foot height as well as the deed restriction on the property. Moving the house forward, towards Van Wyke Street would not significantly change the view blockage from the residence uphill. If the City Council was to leave the residence at its present location and reduce the structure to one-story, then it would be depriving the applicant of the 15 foot height entitlement. If the City Council was to require the residence to be constructed further up the hill and be at one-story, the residence would not be able to be dug into the hill to the extent proposed and it could result in blocking the views to a similar degree to the uphill residence. This is further complicated by finding suitable sewage disposal areas, drive ways, etc. The appellants suggest that there are alternatives available which considers all these factors. None have been submitted to show that this is indeed true.

C. Staff Recommendation

It is my opinion that an alternative; 1) providing the minimal entitlement; 2) showing an approved sewage disposal system; 3) meeting other constraints of the parcel (i.e., indicating that the geologists recommendation still apply, etc.); and 4) have the design and layout meet other criteria of Section 17.60 should be required as a submittal by the appellant prior to considering that alternatives are available and not mere speculation. A quantified evaluation of the degree that views are blocked in comparison to what currently is proposed needs to be part of the submittal. This is the burden of proof I feel is necessary by the appellant to suggest such an alternative exists. As of this date, no such submittal has been made. Even if such a submittal was received the City Council would still need to find that the project approved by the Planning Commission was not consistent with the City's Zoning Ordinance and the required findings could not be met.

Based on the information thus far submitted by the appellants and by the analysis of the information stated herein, it is my opinion that significant obstruction of views as defined by the Zoning Ordinance, has not occurred. The proposed project has taken into consideration requirements of the Zoning Ordinance. The City Council should (1) uphold the findings and recommended approval with conditions stated by the Planning Commission and (2) deny the appeal.

point of clarification 7 of 7

new plans date mar 14, 1998

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Chapter 17.60

DESIGN REVIEW AND VIEW PRESERVATION

Sections:

- 17.60.010 Applicability.
- 17.60.020 Purpose.
- 17.60.030 Approval required for construction.
- 17.60.040 Design criteria.
- 17.60.050 View protection criteria.
- 17.60.060 Review procedures.

17.60.010 Design review and view preservation regulations. The following regulations in this chapter shall apply to all zones. (Ord. 84-180 §3(part), 1984: Ord. 166 §6.19(part), 1979)

17.60.020 Purpose. The small scale of the community and its unique townsite, affording spectacular views of the coastline and ocean horizon, define the character of Trinidad. Maintaining this character is essential to the continued desirability and viability of the city. A design assistance committee, consisting of the city planning commission and one member of the city council, is established to review new developments to ensure their consistency with the character of the city and minimize their impact on important vistas. (Ord. 84-180 §3(part), 1984: Ord. 166 §6.19(part), 1979)

17.60.030 Approval required for construction. Relocation, construction, remodeling or additions to structures, and alterations of the natural contours of the land shall not be undertaken until approved by the design assistance committee. Approval need not be obtained for remodeling that does not affect the external profile or appearance of an existing structure. Approval need not be required for exterior painting and maintenance, accessory structures of less than five hundred square feet in floor area and not less than fifteen feet in height, changes in landscaping, and site excavation or filling more than one hundred feet from any perennial stream or the mean high tide line which will not change the existing elevation more than two feet at any point, and if exempt from a coastal development permit as specified in Section 17.68.070 of the zoning title and pursuant to any applicable categorical exclusions. (Ord. 84-180 §3(part), 1984: Ord. 166 §6.19(part), 1979)

17.60.040 Design criteria. The design assistance committee shall be guided by the following criteria when evaluating land form alterations and construction of structure:

A. The alterations of natural land forms caused by cutting, filling and grading shall be minimal. Structures should be designed to fit the site rather than altering the land form to accommodate the structure.

B. Structures in, or adjacent to open space areas should be constructed of materials that reproduce natural colors and textures as closely as possible.

C. Materials and colors used in construction shall be selected for compatibility both with the structural system of the building and with the appearance of the building's natural and manmade surroundings. Preset architectural styles (e.g. standard fast food restaurant designs) shall be avoided.

D. Plant materials should be used to integrate the manmade and natural environments to screen or soften the visual impact of new development, and to provide diversity in developed areas. Attractive vegetation common to the area shall be used.

E. On-premises signs should be designed as an integral part of the structure and should complement or enhance the appearance of the surrounding area.

F. New development should include underground utility service connections. When above ground facilities are the only alternative, they should follow the least visible route, be well designed, simple and unobtrusive in appearance, have a minimum of bulk and make use of compatible colors and materials.

G. Off-premise signs needed to direct visitors to commercial establishments, as allowed herein, should be well designed and be clustered at appropriate locations. Sign clusters should have a single design theme.

H. When reviewing the design of commercial or residential buildings, the committee shall ensure that the scale, bulk, orientation, architectural character of the structure and related improvements are compatible with the rural, uncrowded, rustic, unsophisticated, small, casual open character of the community. In particular:

1. Residences of more than two thousand square feet in floor area and multiple family dwellings or commercial buildings of more than four thousand square feet in floor area shall be considered out of scale with the community unless they are designed and situated in such a way that their bulk is not obtrusive.

2. Residential and commercial developments involving multiple dwelling or business units should utilize clusters of smaller structures with sufficient open space between them instead of a consolidated structure. (Ord. 84-180 §3(part), 1984: Ord. 166 §6.19(part), 1979)

17.60.050 View protection criteria. The design assistance committee shall be guided by the following criteria

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when evaluating the impact of new development on public and private vistas of important scenic attractions:

A. Structures visible from the beach or a public trail in an open space area should be made as visually unobtrusive as possible.

B. Structures, including fences over three feet high and signs, and landscaping of new development, shall not be allowed to significantly block views of the harbor, Little Trinidad Head, Trinidad Head or the ocean from public roads, trails, and vista points, except as provided in subdivision 3 of this subsection.

C. The committee shall recognize that owners of vacant lots in the SR and UR zones, which are otherwise suitable for construction of a residence, are entitled to construct a residence of at least fifteen feet in height and one thousand five hundred square feet in floor area, residences of greater height as permitted in the applicable zone, or greater floor area shall not be allowed if such residence would significantly block views identified in subdivision 2 of this subsection. Regardless of the height or floor area of the residence, the committee, in order to avoid significant obstruction of the important views, may require, where feasible, that the residence be limited to one story; be located anywhere on the lot even if this involves the reduction or elimination of required yards or the pumping of septic tank wastewater to an uphill leach field, or the use of some other type of wastewater treatment facility; and adjust the length-width-height relationship and orientation of the structure so that it prevents the least possible view obstruction.

D. If a residence is removed or destroyed by fire or other means on a lot that is otherwise usable, the owner shall be entitled to construct a residence in the same location with an exterior profile not exceeding that of the previous residence even if such a structure would again significantly obstruct public views of important scenes, provided any other nonconforming conditions are corrected.

E. The Tsurai Village site, the Trinidad Cemetery, the Holy Trinity Church and the Memorial Lighthouse are important historic resources. Any landform alterations or structural construction within one hundred feet of the Tsurai Study Area, as defined in the Trinidad general plan, or within one hundred feet of the lots on which identified historical resources are located shall be reviewed to ensure that public views are not obstructed and that development does not crowd them and thereby reduce their distinctiveness or subject them to abuse or hazards. (Ord. 84-180 §3(part), 1984: Ord. 166 §6.19(part), 1979)

17.60.060 Review procedure. The committee shall prescribe application forms and information requirements for use by those proposing activities subject to design

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C. Side, ten feet. (Ord. 166 §4.05(C)(3), 1979)

17.28.070 Maximum building height. Maximum building height in the SR zone is twenty-five feet, except that the design assistance committee may require a lesser height as provided in Section 17.56.190. (Ord. 166 §4.05(C)(4), 1979)

17.28.080 Vegetation removal. Trees may be removed if they are deceased or pose an imminent danger to people or structures, subject to the approval of the city engineer. Vegetation shall not be removed from a proposed building site until the site is approved by the building inspector. The building inspector shall approve the proposed site only if it involves removal of the fewest number of trees over twelve inches DBH. The minimum number of trees and shrubs over eight feet in height may be removed for the purpose of improving private or public views, subject to the approval of the design assistance committee. (Ord. 166 §4.05(C)(5), 1979)

17.28.090 Required geologic study. Structures, septic disposal systems, driveways, parking areas, pedestrian trails and other improvements permitted in the SR zone shall only be permitted on lands designated as unstable or of questionable stability on Plate 3 of the general plan if analysis by a registered geologist or engineering geologist, at the applicant's expense, demonstrates to the satisfaction of the planning commission that construction of the development will not significantly increase erosion and slope instability and that any potential adverse impacts have been mitigated to the maximum extent feasible. The geologist's report shall conform to the requirements of Section 17.20.130. (Ord. 166 §4.05(C)(6), 1979)

Chapter 17.32

UR ZONE

Sections:

- 17.32.010 Established--Purpose.
- 17.32.020 Principal permitted uses.
- 17.32.030 Uses permitted with a use permit.
- 17.32.040 Minimum lot area.
- 17.32.050 Maximum density.
- 17.32.060 Minimum yards.
- 17.32.070 Maximum building height.
- 17.32.080 Vegetation removal.
- 17.32.090 Required geologic study.

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17.32.010 Established--Purpose. The urban residential zone is intended to be applied in areas designated as urban residential in the general plan. These areas are served by public water systems. This zone allows the highest density of residential use, taking into consideration neighborhood characteristics and soil capacity for wastewater leaching. The following regulations shall apply in all urban residential zones. (Ord. 166 §4.06(part), 1979)

17.32.020 Principal permitted uses. Principal permitted uses are:

A. Single-family dwelling, subject to the requirements of Section 17.32.090;

B. Home occupation, as provided in Section 17.56.060. (Ord. 166 §4.06(A), 1979)

17.32.030 Uses permitted with a use permit. Uses permitted with a use permit in the UR zone include:

A. Guest house; servant's quarters;

B. Removal of trees more than twelve inches DBH. (Ord. 167 §6, 1980; Ord. 166 §4.06(B), 1979)

17.32.040 Minimum lot area. When a septic tank is to be the means of wastewater disposal, new lots shall include sufficient area to accommodate required yards, the intended use, and primary and reserve septic leach fields as determined from requirements in the wastewater disposal regulations adopted by the city. In no case shall a lot be less than eight thousand square feet in area. (Ord. 166 §4.06(C) (1), 1979)

17.32.050 Maximum density. Maximum density in the UR zone is eight thousand square feet of lot area per dwelling, guest house or servants' quarters. (Ord. 166 §4.06(C) (2), 1979)

17.32.060 Minimum yards. Unless modified by the design assistance committee as provided in Section 17.56.190, minimum yards in the UR zone are:

A. Front, twenty feet;

B. Rear, fifteen feet;

C. Side, five feet. (Ord. 166 §4.06(C) (3), 1979)

17.32.070 Maximum building height. Maximum building height in the UR zone is twenty-five feet, except that the design assistance committee may require a lesser height as provided in Section 17.56.190. (Ord. 166 §4.06(C) (4), 1979)

17.32.080 Vegetation removal. Trees may be removed if they are diseased or pose an imminent danger to people or structures, subject to the approval of the city engineer. Vegetation shall not be removed from a proposed building

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site until the site is approved by the building inspector. The building inspector shall approve the proposed site only if it involves removal of the least number of trees over twelve inches DBH. The minimum number of trees and shrubs over eight feet in height may be removed for the purpose of improving private or public views subject to the approval of the design assistance committee. (Ord. 166 §4.06(C)(5), 1979)

17.32.090 Required geologic study. Structures, septic disposal systems, driveways, parking areas, pedestrian trails and other improvements permitted in the SR zone shall only be permitted on lands designated as unstable or of questionable stability on Plate 3 of the general plan if analysis by a registered geologist or engineering geologist, at the applicant's expense, demonstrates to the satisfaction of the planning commission that construction of the development will not significantly increase erosion and slope instability and that any potential adverse impacts have been mitigated to the maximum extent feasible. The geologist's report shall conform to the requirements of Section 17.20-.130. (Ord. 166 §4.06(C)(6), 1979)

Chapter 17.36

PD ZONE

Sections:

- 17.36.010 Established--Purpose.
- 17.36.020 Uses permitted with a use permit.
- 17.36.030 Minimum lot area.
- 17.36.040 Maximum density.
- 17.36.050 Minimum yards.
- 17.36.060 Maximum building height.
- 17.36.070 Open space.
- 17.36.080 Application procedure.

17.36.010 Established--Purpose. The planned development (PD) zone is intended to be used in areas designated as planned development in the general plan. These areas are either residential areas where limited commercial activity may be appropriate, subject to special integrating design, or they are areas where design flexibility is needed to adapt appropriate uses to the site and to surrounding uses. Limited commercial uses, including visitor accommodations, visitor services, recreational uses, offices, gift shops and personal services may be appropriate. The PD zone is not intended for campgrounds and recreational vehicle parks.

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Walter B. Sweet

CIVIL ENGINEER

P.O. BOX 636
760 FIFTEENTH STREET
ARCATA, CALIFORNIA 95518
PHONE (707) 822-2436
FAX (707) 822-2463
EMAIL: wbsweet@humboldt1.com

February 9, 1998

Mr. Jim Cuthbertson
P.O. Box 1201
Trinidad, CA 95570

Job No. 97-4636

Dear Mr. Cuthbertson:

re: Soils Investigation, Van Wycke Street, Trinidad-
APN 42-081-32-Our Report dated December 5, 1997

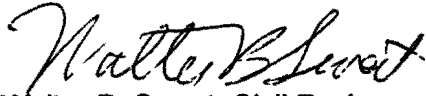
Our subject assignment addressed stability of the site for residential development, including relationships of slope soils to stability of the soils supporting your new residence. At that time our scope of services specifically excluded an assessment of leachfield suitability.

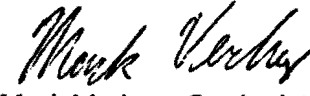
You have furnished us with data and Sheets 1, 2 and 3 of your plans for your residence and site sewage disposal. Foundations for the residence are located at and beyond the 70-foot setback discussed in our December 5, 1997, report.

To avoid potential for site drainage adversely affecting the slope, I recommend that all runoff from your parcel be controlled to reach (not bypass) the existing gutter and other drainage controls along the north side of Van Wycke Street. This recommendation includes installing perforated and then tight line pipes behind retaining walls to outlet as discussed above.

In our opinion, your site septic disposal system will not have an impact on the offsite southerly slope provided our recommendations on page four of the above report are implemented.

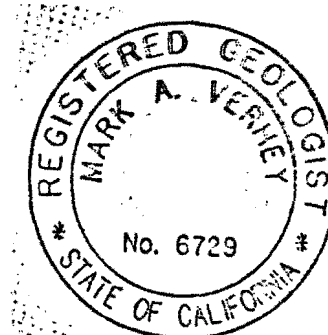
Very truly yours,


Walter B. Sweet, Civil Engineer
R.C.E. 13,184
License Expires 3-31-01


Mark Verhey, Geologist
R.G. 6729
License Expires 3-31-99

WBS:ecr(c:4636rec.doc)

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Applicant's Engineer	





**HUMBOLDT COUNTY
DEPARTMENT OF PUBLIC HEALTH
DIVISION OF ENVIRONMENTAL HEALTH
100 H STREET, SUITE 100, EUREKA, CA 95501**

(707) 445-6215

FAX (707) 441-5699

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May 18, 1998

FAXED
5-18-98
@ 1500+

Mr. Steve Scholl
Deputy Director California Coastal Commission
45 Fremont Avenue Suite 45
San Francisco, California 94105

Re: Jim and Sandra Cuthbertson CCC Appeal # A-1-TRN-98-40,
City Of Trinidad, CA AP# 042-081-32

Dear Mr. Scholl:

This letter serves to document the Humboldt County Division of Environmental Health (HCDEH) sewage disposal system design prepared and approved for the subject parcel and to address issues which were submitted in the Declaration of Ronald J. Den Heyer in support of the upholding of the granting of application no. 1-TRN-98-037.

The system designed complies with applicable laws, regulations and policies of the City of Trinidad, HCDEH and North Coast Regional Water Quality Control Board (RWQCB). The Cuthbertson's did hire the HCDEH to design their sewage disposal system (SDS) which is permitted in the City of Trinidad as well as throughout Humboldt County.

Legal conformance/compliance is evident by the issuance of an approved sewage disposal permit. The site soil conditions were previously investigated by the HCDEH on 3 February 1982 as well as on the adjacent parcels located to the north, west and northwest. At this time soil samples were collected and submitted to Winzler and Kelly Consulting Engineers for laboratory analysis. All eight soil samples indicated USDA Zone 2 soils (loam) which are considered acceptable by the HCDEH for onsite site sewage disposal.

Additional soils investigation was performed by Walter Sweet Engineering 8 August 1996 and 27 November 1997 which indicate soils suitable for onsite wastewater disposal and no evidence of groundwater within ten feet of the surface.

On 21 November 1997 HCDEH staff met with Mr. Cuthbertson and his agent Ted Stodder onsite to perform an evaluation of the site. It was concluded by HCDEH that the site conditions had not changed significantly since the site had been originally

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investigated and subsequently approved for subdivision. It was requested of the HCDEH that additional soil investigation occur to determine if a SDS could be placed in-between the upslope and downslope areas which were previously investigated and tested in 1982 so that a two-bedroom home could be constructed in the middle of the property.

A determination of site suitability is typically based on a field investigation (hand augured soil borings or backhoe test pits) in the proposed primary and reserve areas.

This site had extensive soils work performed in addition to the HCDEH investigation. Soils encountered by HCDEH consisted of loam to silty loam based on field textural analysis. There were no indications of seasonal high groundwater, perched groundwater table or an interface which would prevent vertical migration and thus treatment of effluent of the within nine feet of the soil surface in the two soil borings.

The RWQCB at this time requires a minimum of five feet of suitable soils below the trench bottoms and highest groundwater indications. This separation may be waived to two feet with justification based on site conditions if a pressure dosing system is used. Soil borings performed by the HCDEH in June of 1997 on the westerly adjacent parcel (Talkington parcel) did not indicate shallow groundwater on that parcel either.

Site soils were described as fill soils in the geologic investigation prepared by Walter Sweet Engineering. The shallow fill soils have been on the site since at least 1982 having settled for a minimum of seventeen hydrologic cycles. This is enough time to develop the necessary structure required for suitable sewage treatment. One square iron nail circa 1900's was encountered in one of my soil borings and no additional construction debris was encountered in the borings installed in the SDS areas.

Sewage disposal system calculations were performed by the HCDEH and are contained in the file for AP# 042-081-32. The calculations were based upon the HCDEH approved Design and Installation of Low Pressure Pipe Waste Treatment Systems and typical SDS requirements used in the City of Trinidad. Detailed soil borings logs were not completed to the file by the HCDEH because previous soils testing, boring logs and field investigations adequately described the sites soils. The HCDEH investigation was merely to verify that the conditions were suitable and did not change significantly in the proposed SDS areas.

The City of Trinidad SDS requirements call for a Class-D (single primary and reserve SDS areas) with 300 square feet of infiltrate sidewall below a gravity leachpipe per bedroom. This typically correlates to the installation of approximately 50 feet of conventional gravity disposal sewage line per bedroom. This type of conventional system works on the premise that an equal amount of wastewater flows into the septic tank as wastewater flows out into the drainfield. Often this type of system underutilizes the available sidewall area to effectively treat the wastewater do the lack of uniform distribution to all of the available treatment area.

The system which was designed by the HCDEH for the subject parcel is a pressurized (uniformly distributed) system and takes advantage of all of the potential treatment area

and allows a resting period between measured doses promoting a more aerobic environment which aids in treatment of wastewater. It is very unlikely this system would result in a threat to public health or the environment. Additionally, this type of system will require a twice a year inspection by the HCDEH or other qualified individual to certify that the system is functioning properly. The primary and reserve SDS designed and approved by the HCDEH meet the minimum sewage disposal requirements enforced in the City of Trinidad.

The SDS was designed for a two-bedroom houses estimated sewage disposal quantity of 300 gallons per day. The statement that the proposed house is a three bedroom house and that the HCDEH should have reviewed this is incorrect. We rely upon individual building departments (Humboldt County and City of Trinidad) to make the declaration of the number of bedrooms in an individual residence. If an accessory room was to be used as a permanent bedroom at this proposed residence the owner would be in violation of the sewage disposal permit and subject to enforcement actions by the HCDEH and City of Trinidad.

Please do not hesitate to call if you have any further questions regarding these matters. I may be reached at 707.441.5677.

Sincerely,



R. Charles Class, P.E., R.E.H.S.
Environmental Health Specialist

RCC/se

cc: Nancy Diamond

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1 CHRIS JOHNSON HAMER (#105752)
Stokes, Steeves, Rowe & Hamer
2 P.O. Box 1109
Arcata, CA 95518
3 Tele: (707) 822-1771

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4 Attorneys for Appellants

5
6 CALIFORNIA COASTAL COMMISSION
7 NORTH COAST AREA
8

9 JIM CUTHBERTSON and SANDRA) APPEAL NO:
CUTHBERTSON,)
10 Applicants,) DECLARATION ON RONALD J. DEN HEYER
11 vs.) IN SUPPORT OF APPEAL OF UPHOLDING OF
12 ALAN CRAFTS and ELIZABETH TEIG,) THE GRANTING OF APPLICATION
13 Appellants.) NO. 1-TRN-98-037 (JIM AND SANDRA
) CUTHBERTSON)
)
)

14
15 I, RONALD J. DEN HEYER, declare:

16 1. I am a civil engineer, duly licensed in the State of California,
17 formerly employed by LACO Associates, in Eureka, California, and now employed
18 by SHN Consulting Engineers & Geologists in Redding, California. A copy of my
19 resume is attached hereto as Exhibit "A" and is incorporated herein by
20 reference. The facts set forth herein are true of my own personal knowledge
21 and, if called as a witness, I could and would testify competently to these
22 facts.

23 2. I reviewed the administrative record (including the original and
24 revised building plans and on site sewage disposal system materials) and
25 viewed the site and building mock up which are the subject of Application No.

1 1-TRN-98-037 by Jim and Sandra Cuthbertson for approval of the construction
2 of what they characterize as "an 1822 square foot, two story, two bedroom
3 /office single family residence with double garage, storage and workshop
4 underneath". I am also familiar with the site and with the record and
5 applicable zoning ordinance and environmental health regulations, policies
6 and guidelines governing on site sewage disposal systems. I have viewed the
7 proposed building site from various locations on the first and second floor
8 of the two-story house owned by appellants Alan Crafts and Beth Teig, and
9 have taken pictures.

10 3. The house owned by Alan Crafts and Beth Teig is directly uphill
11 from the proposed Cuthbertson residence. The Crafts/Teig house is located on
12 parcel 42-081-36, directly uphill from the Cuthbertsons' parcel 42-081-32.
13 The first floor of the Crafts/Teig house consists of a home office, bathroom
14 and bedroom. The second floor consists of a kitchen, living room and bedroom.

15 4. As shown in the pictures and diagram which are attached hereto,
16 collectively, as Exhibit "B", Mr. Crafts and Ms. Teig presently enjoy an
17 unrestricted view of Trinidad Harbor, Little Trinidad Head and the shoreline.
18 The attached pictures were taken from the home office on the first floor, and
19 from the living room on the second floor in mid-April of 1998. The pictures
20 truly and accurately depict the way the property looked as of mid April of
21 1998.

22 5. If the proposed Cuthbertson residence is constructed, the
23 residence will obstruct views of Trinidad Harbor, Little Trinidad Head from
24 the first floor of the Crafts/Teig residence, and will substantially limit
25 the view of Trinidad Harbor, Little Trinidad Head and the shoreline from the

1 second floor of the Crafts/Teig residence, as shown in the pictures and
2 diagrams attached hereto collectively as Exhibit "C". The attached
3 photographs were taken at the same time and locations as those attached as
4 Exhibit "B", and truly and accurately depict the scene as it existed then,
5 together with indications of where the blockage will occur based upon the
6 wood and string "mock up" of the residence constructed by the Cuthbertsons'
7 agent.

8 6. Feasible alternatives exist for construction of a single-family
9 residence on the Cuthbertson property without significantly blocking the view
10 of the uphill neighbors, Alan Crafts and Beth Teig.

11 7. As shown in the diagrams attached hereto as Exhibit "D", one
12 alternative would be to reduce the residence from two floors to one floor,
13 keeping the same living area floor plan, with a 2 car garage and shop area.

14 8. The Cuthbertsons' current building plans show all the living area
15 as being on the second floor. As shown in the attached diagram, the floor
16 plan of the second floor, together with a 600 square foot two car garage and
17 a 600 square foot shop area, can all be placed on a single floor. (The house
18 has been turned 90 degrees, which causes one deck to be on the front and one
19 to be on the back. However, this is being submitted to show there is a
20 feasible alternative that would preserve the view for the uphill neighbors.
21 The Cuthbertsons could alter their room configuration so that both decks were
22 on the front, overlooking the harbor.) Under this alternative, the
23 Cuthbertsons would have the same living area as they claim to have in their
24 plans, and their residence would be kept in the same location as they have
25 designated. They would even retain shop space and standard two-car garage

1 space.

2 9. The reduced impact the one floor alternative would have on the
3 Crafts/Teig views is shown by the diagrams and photographs attached hereto
4 collectively as Exhibit "E" and incorporated herein by reference.

5 10. From my review of the Cuthbertsons' building plans and their mock
6 up of the site, it is my opinion that the proposed Cuthbertson development,
7 which is to have gross square footage of approximately 3,296 square feet,
8 will be much larger than neighboring structures.

9 11. I am also aware of Section 17.60.040(H) of the Trinidad Zoning
10 Ordinance that provides, in pertinent part:

11 "When reviewing the design of . . residential buildings, the
12 [design assistance] committee shall ensure that the scale, bulk,
13 orientation, architectural character of the structure and related
14 improvements are compatible with the rural, uncrowded, rustic,
15 unsophisticated, *small*, casual open character of the community."

16 Section 17.60.040 (H) (1) creates a presumption that residences of over
17 2,000 square feet of living area are out of scale with the community, and
18 provides that they will not be approved unless they are made unobtrusive.

19 12. The residence in question consists of total living area of 2,695
20 square feet. The first building plans which the Cuthbertsons submitted to the
21 Trinidad Planning Commission showed an 875 square foot shop on the first
22 floor, together with a 600 square foot garage. After challenge by the uphill
23 and adjoining neighbors, the Cuthbertsons submitted a second set of building
24 plans. The second set of plans label as all "garage" the area shown on the
25 first set of plans as being a "workshop". Only the label has changed; the
configuration of the first floor has not changed from the earlier plans,
which had labeled this 875 square feet as a shop.

1 13. As discussed below, it is evident that this 875 feet is still to
2 be a shop, which is technically "living area". On the second floor of the
3 revised plans, the Cuthbertsons show 1,821 square feet of "living area". This
4 second floor living area, together with the shop, aggregate a total of 2,696
5 square feet of living area. As the residence contains over 2,000 square feet
6 of living area, it is required to be made unobtrusive by the regulations set
7 forth above.

8 14. Even without the benefit of the first set of building plans, it
9 is evident that 875 square feet of the first floor is to be living area. The
10 first floor has large picture windows (unusual in garages), a full bathroom
11 with shower (also quite unusual in garages), and a large open area (875
12 square feet) which is not even accessible to vehicles. It is obvious that the
13 first floor is to be used as living area, and is only being characterized as
14 non-living area at this time because of appellants' challenge.

15 15. I have reviewed the Humboldt County Environmental Health file
16 with respect to the Cuthbertson project, much of which the Cuthbertsons
17 submitted to the Trinidad Planning Commission as part of their application. I
18 find nothing in the file showing that the proposed on site sewage disposal
19 system complies with applicable laws, regulations and policies of the
20 Humboldt County Department of Environmental Health, and I am informed and
21 believe and thereon allege that the Cuthbertsons actually hired the
22 Department of Environmental health to design their system, which it
23 accomplished without legal compliance. Unless the Cuthbertsons comply with
24 these regulations and policies, there will be no assurance that the system
25 will function and that neighboring property owners, the groundwater and the
harbor will be protected from the impact of a septic failure.

1 16. What is normally required for approval of an on site sewage
2 disposal system, and what is lacking from the Humboldt County Environmental
3 Health file are the following:

4 (a) There are no primary and reserve disposal field soil suitability
5 test results for the proposed site.

6 (b) There are no groundwater observations.

7 (c) There are no calculations demonstrating that the system proposed is
8 of a sufficient size to accommodate the anticipated effluent.

9 (d) There is no information demonstrating that there will be a minimum
10 of twelve (12) inches of usable soil between the bottom of the
11 leach line trenches and groundwater. Groundwater levels are
12 frequently near the surface on sides of hills such as this site.

13 (e) The report concerning ground stability submitted by Walter Sweet's
14 office (Mark Verhey) (December 1997) states that "there is an
15 approximately 5 foot package of soft, topsoil based fill blanketing
16 the site". This includes the disposal field sites. The area in
17 which leach lines are to be constructed is overlain by fill
18 contaminated with "cultural debris" such as nails and other
19 construction debris. Disposal fields are usually not permitted in
20 nonclassified fill soils (aka earth spoil and construction waste).
21 Humboldt County Sewage Disposal Regulations, Part II, Design
22 Criteria, Code and Non-Code, § A (5)(d), Table IV, states "trenches
23 shall be placed in natural earth or properly prepared earth fill...".
24 If it is necessary to place a disposal field in fill, the Sewage
25 Disposal Regulations and The Design and Installation of Low-
 Pressure Pipe Waste Treatment Systems require that the fill first

1 be properly prepared. There is nothing in the Environmental Health
2 file indicating any requirement that the fill first was properly
3 prepared as required or at least evaluated. Unless fill is properly
4 prepared, the Sewage Disposal Regulations require the leach lines
5 to be set back at least 25 feet from the fill, per tabulated value
6 in the Setback for Septic Tanks and Disposal Field table.

7 (f) The plot plan shows the reserve field to be bisected by the primary
8 field, which is unusual and not recommended. If the primary field
9 fails, that portion of the reserve field which is uphill from the
10 primary field most likely would also fail.

11 (g) The proposed development was misrepresented to the Health
12 Department as a two-bedroom house. The Humboldt County Department
13 of Environmental Health apparently did not examine the proposed
14 building plans because they are not in its file, and because the
15 Department approved the proposed system for a "two-bedroom
16 residence". The proposed building plans show three rooms meeting
17 what is defined per Table III of the regulations as "useable
18 bedrooms". "A useable bedroom is defined as a room with a door and
19 a closet." Considering that the private disposal system was
20 misrepresented and clearly not in compliance with county adopted
21 regulations and standard practice, the Health Department's "permit"
22 for this site should not be considered valid. It would be prudent
23 to have this sewage disposal system designed in accordance to
24 current regulations by a qualified third party.
25

1 I declare under penalty of perjury under the laws of the State of
2 California that the foregoing is true and correct. EXECUTED this 24 day of
3 April, 1998 at EUREKA, California.

4 
5 Ronald J. den Heyer
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RESUME'

Ronald J. den Heyer
3441 Zelia Court
Arcata, CA 95521
(707) 822-7244
ronald@humboldt1.com

WORK HISTORY

LACO ASSOCIATES CONSULTING ENGINEERS, Eureka, CA
1989 to present.

Civil Engineer Manager and Engineer, Member of the Board of Directors:

Project Manager and Engineer for variety of projects including: structural design for commercial, industrial and residential projects constructed of concrete, steel and timber; roadway design; municipal water system improvements; hazardous material release evaluation and workplans; soils and slope stability analysis; construction and land surveying (under a LS); construction management/inspection; experience in laboratory and field testing procedures and; expert witness. Responsible for insuring the quality and completion of drafting projects produced with AutoCAD (R-14) and Softdesk 8.

ADVANCO CONSTRUCTORS INC., Upland, CA
1986 to 1989

Project Engineer:

Project Engineer for an engineering contractor specializing in public works projects. Responsibilities include contractor coordination, materials accounting, cost analysis, pipeline and structures layout, concrete form design and construction crew supervision. Construction project value range up to twenty million dollars.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, Los Angeles, CA
1984 to 1986

Student Engineer:

Duties include laboratory and field testing of soils, aggregate and concrete; manufacture of reinforced concrete pipe inspection.

EDUCATION

BS, Civil Engineering, California State University Long Beach, CA
Emphases in structural design.
Chi Epsilon Honor Society for Civil Engineering

PROFESSIONAL AFFILIATIONS

Past Director of the North Coast Branch of the San Francisco Section of the American Society of Civil Engineers.

State of California Registered Disaster Service Worker (OES)

Compliance Certification, 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response Training.





CONSULTING ENGINEERS
& GEOLOGISTS

John R. Salvage, P.E.
Jeff Nelson, P.E.
Roland S. Johnson, Jr. C.E.G.

812 W. Wabash
Eureka, CA 95501-2138
(707) 441-8855
FAX (707) 441-8877

480 Hemsted Drive
Redding, CA 96002-0117
(530) 221-5424
FAX (530) 221-0135



Current second floor living room view.



Current first floor office view.

EXHIBIT
B



CONSULTING ENGINEERS
& GEOLOGISTS

John R. Selvage, P.E.
K. Jeff Nelson, P.E.
Roland S. Johnson, Jr. C.E.G.

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Eureka, CA 95501-2138
(707) 441-8855
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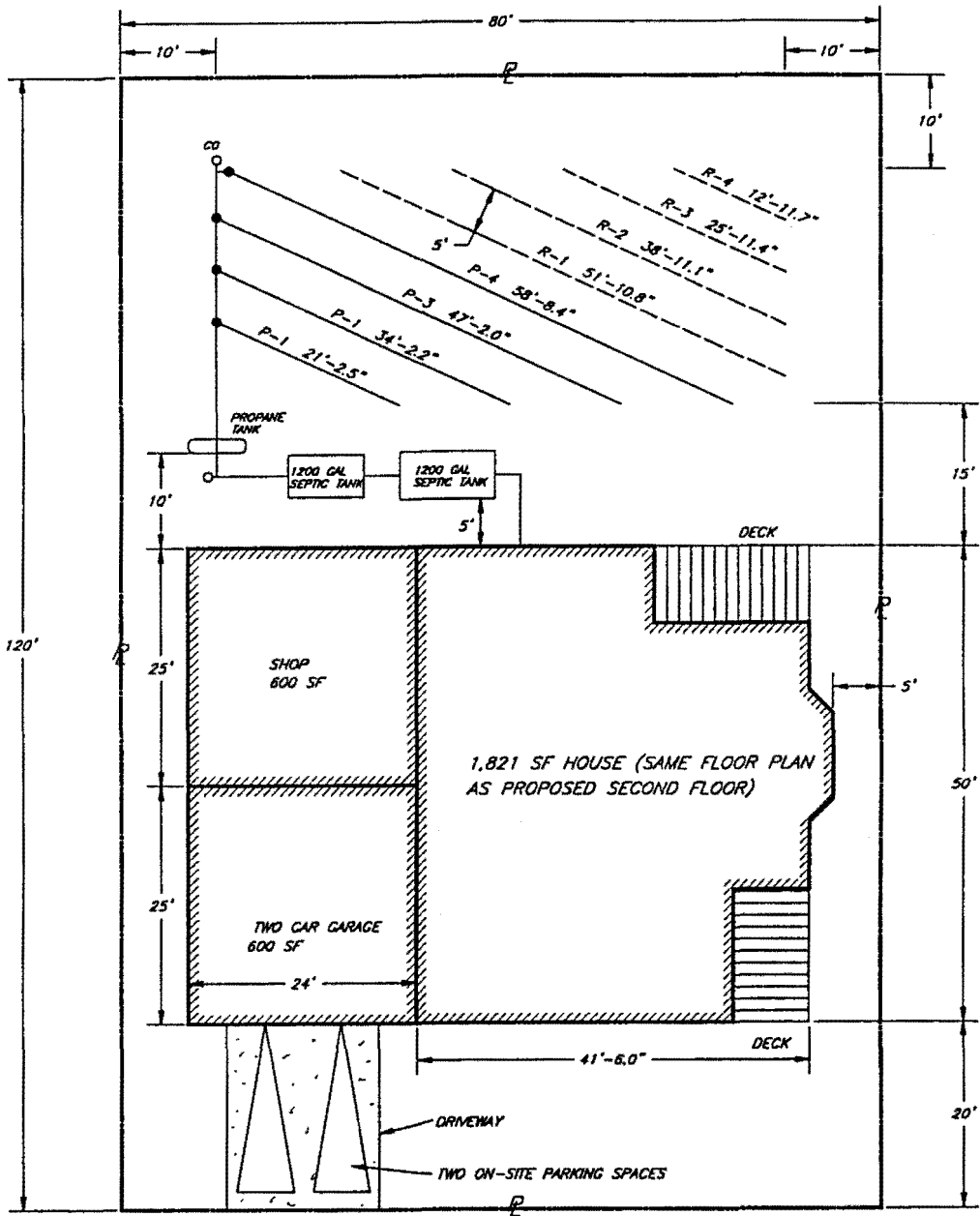


Second floor living room view after proposed development.



First floor office view after proposed development.

EXHIBIT
C



← VAN WYCKE STREET →

EXHIBIT
D

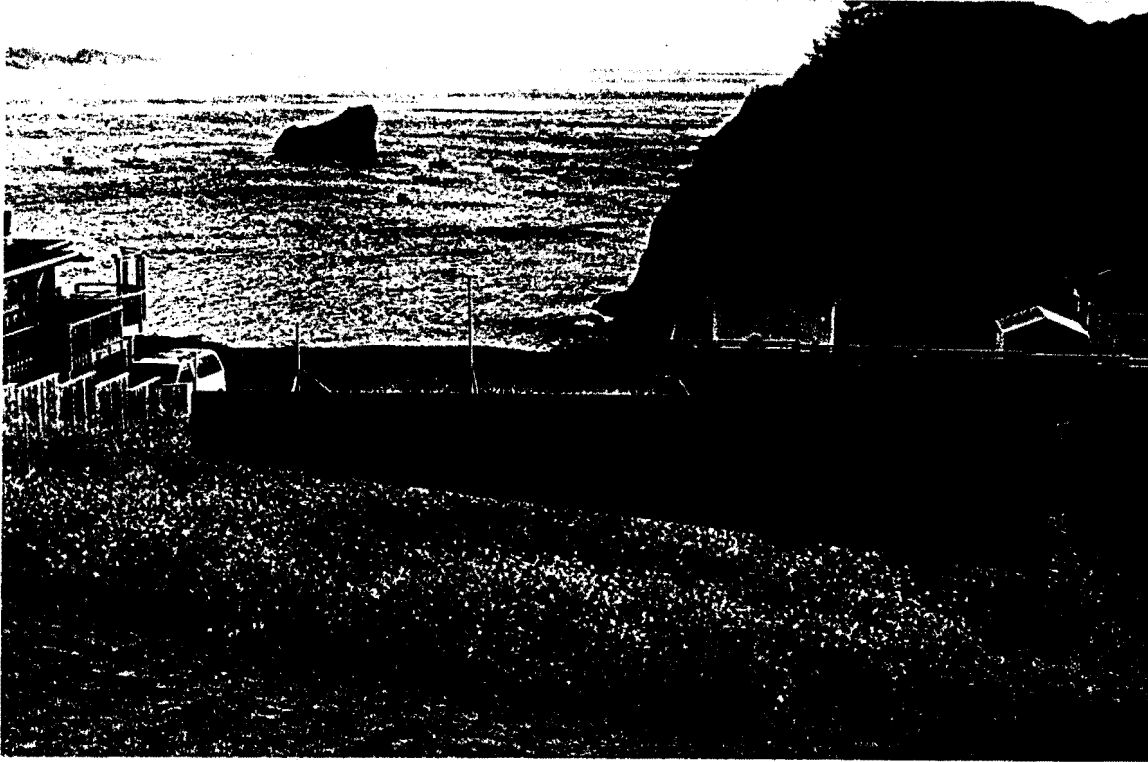


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(530) 221-5424
FAX (530) 221-0135



Approximate second floor living room view with a single story alternate.



Approximate first floor office view with a single story alternate.

EXHIBIT
E

1 CHRIS JOHNSON HAMER (#105752)
2 Stokes, Steeves, Rowe & Hamer
3 P.O. Box 1109
4 Arcata, CA 95518
5 Tele: (707) 822-1771

EXHIBIT NO. 11
APPLICATION NO.
A-1-TRN-98-40
Letter of Support
for Crafts/Teig
Page 1 of 3

6 Attorneys for Appellants

7 CALIFORNIA COASTAL COMMISSION
8 NORTH COAST AREA

9 JIM CUTHBERTSON and SANDRA
10 CUTHBERTSON,

11 Applicants,

12 vs.

13 ALAN CRAFTS and ELIZABETH TEIG,

14 Appellants.

) APPEAL NO:
)
) ELIZABETH TEIG
) DECLARATION OF AND ALAN CRAFTS
) IN SUPPORT OF APPEAL OF UPHOLDING OF
) THE GRANTING OF APPLICATION
) NO. 1-TRN-98-037 (JIM AND SANDRA
) CUTHBERTSON)
)
)
)

15 I, E Teig & A Crafts, declare:

16 1. The facts set forth herein are true of my own personal knowledge
17 and, if called as a witness, I could and would testify competently to these
18 facts.

19 2. I ^{own} live at 851 Edwards (insert
20 address). The Cuthbertsons' vacant lot on which they wish to build is located
21 directly down hill on Van Wycke (indicate where the lot is in
22 relation to your lot, e.g., uphill from my property) My property is assessors
23 parcel 42-081-30, as shown on the attached assessors parcel map, on
24 which the Cuthbertsons' lot is assessors parcel 42-081-32.

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3. My house has approximately 1800 square feet of living area,
not including garages, decks, stairs, or bathrooms. My house is a total of
1965 square feet and is 2 story/stories.

Dated this 27 day of April, 1998

E. Teig
SIGNED:

(Print Name: Elizabeth Teig)

EXHIBIT NO. 11
APPLICATION NO. A-1-TRN-98-40
Letter of Support for Crafts/Teig
Page 2 of 3

1 CHRIS JOHNSON HAMER (#105752)
Stokes, Steeves, Rowe & Hamer
2 P.O. Box 1109
Arcata, CA 95518
3 Tele: (707) 822-1771
4 Attorneys for Appellants

EXHIBIT NO. 12
APPLICATION NO. A-1-TRN-98-40
Letter of Support for Crafts/Teig
Page 1 of 3

5
6 CALIFORNIA COASTAL COMMISSION
7 NORTH COAST AREA
8

9 JIM CUTHBERTSON and SANDRA) APPEAL NO:
CUTHBERTSON,)
10 Applicants,) DECLARATION OF BARBARA SNELL
11 vs.) IN SUPPORT OF APPEAL OF UPHOLDING OF
12 ALAN CRAFTS and ELIZABETH TEIG,) THE GRANTING OF APPLICATION
Appellants.) NO. 1-TRN-98-037 (JIM AND SANDRA
CUTHBERTSON)
13)
14)

15 I, Barbara Snell, declare:

16 1. The facts set forth herein are true of my own personal knowledge
17 and, if called as a witness, I could and would testify competently to these
18 facts.

19 2. I live at 816 Van Wycke (insert
20 address). The Cuthbertsons' vacant lot on which they wish to build is located
21 East of lot/2nd house (indicate where the lot is in
22 relation to your lot, e.g., uphill from my property) My property is assessors
23 parcel 042-081-21, as shown on the attached assessors parcel map, on
24 which the Cuthbertsons' lot is assessors parcel 42-081-32.
25

1 CHRIS JOHNSON HAMER (#105752)
2 Stokes, Steeves, Rowe & Hamer
3 P.O. Box 1109
4 Arcata, CA 95518
5 Tele: (707) 822-1771

6 Attorneys for Appellants

EXHIBIT NO. 13
APPLICATION NO. A-1-TRN-98-40
Statement of Neighbor
Page 1 of 3

7 CALIFORNIA COASTAL COMMISSION

8 NORTH COAST AREA

9 JIM CUTHBERTSON and SANDRA
10 CUTHBERTSON,

11 Applicants,

12 vs.

13 ALAN CRAFTS and ELIZABETH TEIG,

14 Appellants.

) APPEAL NO:
) TOM AND
) DECLARATION OF ANNE ODOM
) IN SUPPORT OF APPEAL OF UPHOLDING OF
) THE GRANTING OF APPLICATION
) NO. 1-TRN-98-037 (JIM AND SANDRA
) CUTHBERTSON)
)
)
)

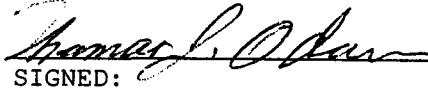
15 I, TOM & ANNE ODOM, declare:

16 1. The facts set forth herein are true of my own personal knowledge
17 and, if called as a witness, I could and would testify competently to these
18 facts.

19 2. I live at 881 VAN WYCKE AVE. (insert
20 address). The Cuthbertsons' vacant lot on which they wish to build is located
21 NORTH/EAST of us on VAN WYCKE OAVE. (indicate where the lot is in
22 relation to your lot, e.g., uphill from my property) My property is assessors
23 parcel 42-071-10, as shown on the attached assessors parcel map, on
24 which the Cuthbertsons' lot is assessors parcel 42-081-32.
25

1 3. My house has approximately 1500 square feet of living area,
2 not including garages, decks, stairs, or bathrooms. My house is a total of
3 1700 square feet and is 2 story/stories.(16 ft. high from Van Wycke)

4 Dated this 24 day of April, 1998

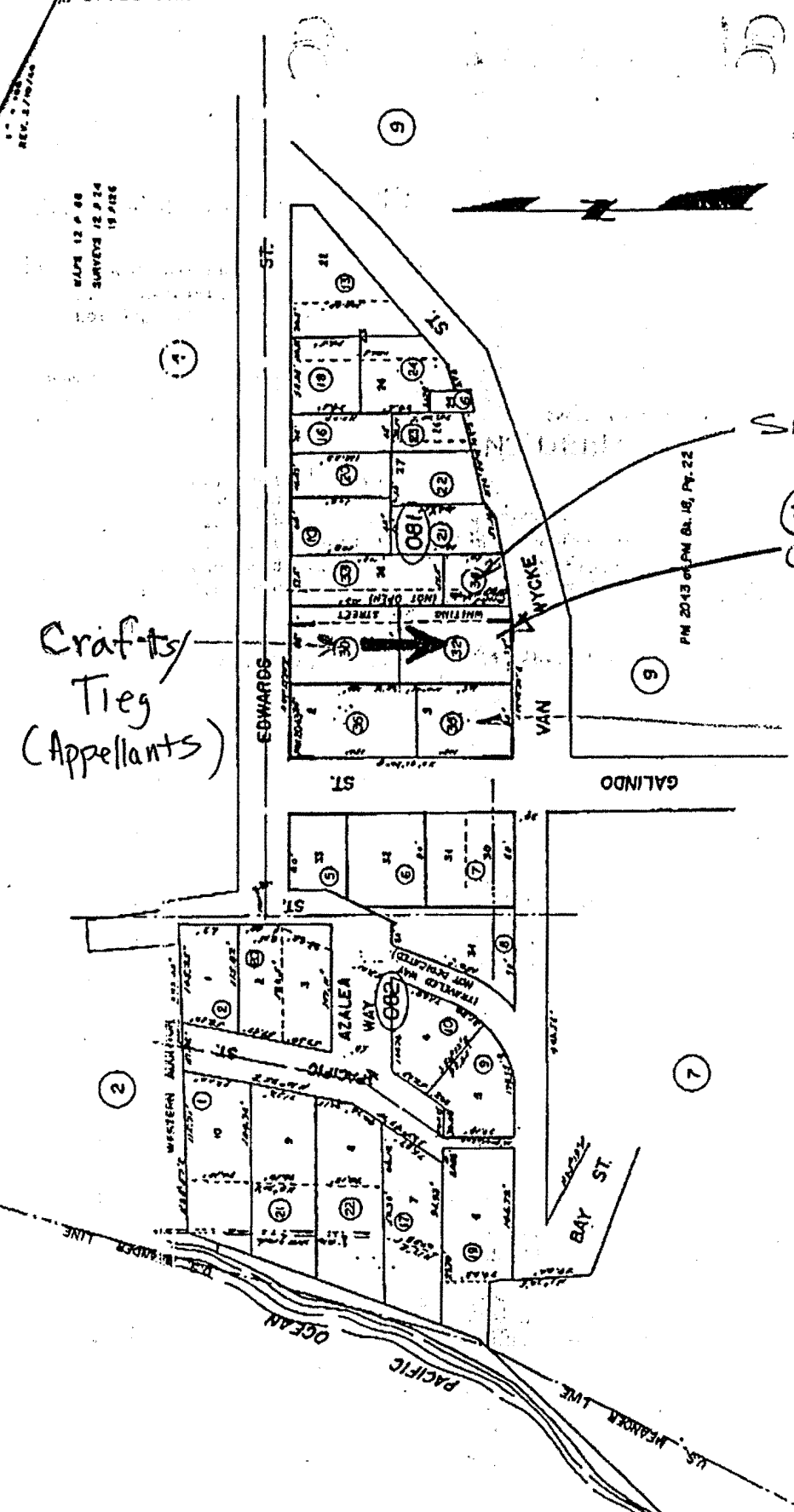
5 
SIGNED:

6
7 (Print Name: THOMAS J. ODOM)

8
9 Information given is an unbiased
10 opinion.
11 E. Feig
12
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EXHIBIT NO. 13
APPLICATION NO. A-1-TRN-98-40
Statement of Neighbor
Page 2 of 3

TOWN OF TRINIDAD



Crafts/Tieg (Appellants)

Snell
(Subject property)
Cuthbertson

Talkington

EXHIBIT NO.	13
APPLICATION NO.	A-1-TRN-98-40
Statement of Neighbor	
Page 3 of 3	

May 11, 1998

California Coastal Commission
North Coast Area
45 Fremont Street, Ste. 2000
San Francisco, Ca. 94105 - 2219

RECEIVED
MAY 13 1998
CALIFORNIA
COASTAL COMMISSION

Re: Jim and Sandra Cuthbertson - Appeal
Location: 480 Van Wycke Street, Trinidad
(Humboldt County) - APN 042-081-42

District Director, Steve Scholl

Dear Mr. Scholl:

On April 24, 1998, we received a visit from Elizabeth Tieg, with a request that she was obtaining information from "all" the surrounding neighbors, as to the square footage in each home and this information was in "NO" way to indicate our option in regards to the appeal of the proposed home to be built by Mr. Cuthbertson, at 480 Van Wycke St. Trinidad.

The complete survey WAS NOT completed as was indicated to us. The larger houses in the area are not mentioned and they are considerably larger than the proposed Cuthbertsons home.

We do not support the appeal and DID NOT sign any papers that would indicate such action and therefore would appreciate having our names removed from any documents that states otherwise.

We support the application of Mr and Mrs Cuthbertson as it was approved by the Trinidad Planning Commission on 2-27-98 and this decision was upheld by the Trinidad City Council on 4-13-98.

We look forward to having the Cuthbertsons becoming our neighbors.

Sincerely,

Tom & Anne Odom

cc: Chris Johnson Hamer (#305752)
Stokes, Steeves, Rowe & Hamer
P.O. Box 1109
Arcata, Ca. 95518

Jim & Sandra Cuthbertson
P.O. Box 1201
Trinidad, Ca. 95570

EXHIBIT NO.	14
APPLICATION NO.	A-1-TRN-98-40
Letter from Neighbor	

GAYNOR AND DIAMOND

Attorneys and Mediators

1160 G Street, Arcata, California 95521
Telephone: 707/826-8540 • Facsimile: 707/826-8541

Bryan W. Gaynor
Nancy Diamond

EXHIBIT NO.	15
APPLICATION NO.	A-1-TRN-98-40
Statement of Cuthbertson's Atty.	
Page 1 of 8	

May 14, 1998

California Coastal Commission
Attn: Steve Scholl, Deputy Director
North Coast Area Office
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Faxed to (415) 904-5400
and sent via U.S. Mail

Re: Appeal No. A-1-TRN-98-40
Application of Jim and Sandra Cuthbertson

RECEIVED
MAY 18 1998

Dear Members of the California Coastal Commission:

CALIFORNIA
COASTAL COMMISSION

This letter is submitted on behalf of Jim and Sandra Cuthbertson, applicants for a residential project to be located in Trinidad, California, and together with declarations of Jim Cuthbertson and Ted Stodder, constitutes their STATEMENT ON APPEAL.

1. Background.

The Cuthbertsons seek to build a modest home located at 840 Van Wycke Street, Trinidad. The Trinidad Planning Commission approved the project subject to modifications, including alteration of the roof to incorporate a lower-elevation hip-roof design, a reduction in the width of the house, and a reduction in the depth of the house. The result is a 1,822 square foot two-story residence. The first floor consists of a two-car garage, workshop and storage and a half bathroom. The second floor consists of the Cuthbertsons' living space: two bedrooms, one office, kitchen, living room and two bathrooms.

A sewage disposal system was designed and approved by the Humboldt County Department of Public Health, Division of Environmental Services. This system is considered to be a sophisticated, highly reliable system for the needs of the proposed project. It consists of a septic tank located at the southwest corner of the property, and a pressurized leach field at the north end of the property.

The proposed project was approved without modification by the City Council of the City of Trinidad.

The proposed residence is located on the last undeveloped tract of a four-parcel subdivision. This subdivision exists on a slope facing primarily southward toward Trinidad Head, Trinidad Bay and the southern Trinidad coastline. Viewshed to upslope parcels is protected by deed restrictions placed on the lower two parcels

EXHIBIT NO.	15
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Statement of Cuthbertson's Atty.	
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that limit the height of the residences to 17 feet, as measured from the average height of the property's four corners.

Two neighbors in the four-parcel subdivision appealed the Cuthbertsons' project. The Talkingtons are located immediately to the west in a home completed within the last six months. The Tieg/Crafts own but do not reside in a home on the parcel immediately uphill. Both appellants argue that the proposed project will significantly block views, that feasible alternatives exist, and that a CEQA categorical exemption is not applicable. The Tieg/Crafts additionally argue that the residence is obtrusive, and that the sewage disposal system has not been properly designed or located.

Appellants' arguments raise no substantial issue of consistency with the Trinidad Certified Coastal Plan. Rather, their arguments are based on misstatements of fact and misrepresentations of law. These issues will be taken up in turn.

2. The Proposed Development Does Not Significantly Block Views.

The Trinidad General Plan, at Appendix B, "Community Design Considerations," protects private viewsheds by recommending design guidelines to be considered by the Design Assistance Committee as the following:

4. Buildings, fences, paved areas, signs and landscaping and similar development shall not be allowed to significantly block views of the shoreline from key public viewing points or from viewpoints inside structures located uphill from the proposed development.

At the outset, it should be noted that this provision gives protection only to the uphill appellants, the Tieg/Crafts, and not the adjacent owner, the Talkingtons. Nonetheless, the Talkingtons rely on this provision to support their claim to viewshed protection.

Both appellants misrepresent the scale of the Cuthbertsons' proposed residence and its potential for blocking views in order to further their claims of significant view impairment. The Talkingtons submitted a drawing with their appeal purporting to show the scope of view to be blocked. The drawing, however, shows no dimensions and no scale: it is impossible, therefore, to determine if their drawing even approximates the real-life scenario proposed.

The Tieg/Crafts rely on photographs taken of the Cuthbertsons' building mockup, enhanced to show view blockage. These enhanced photographs, however, inaccurately depict the roofline as jutting to a high gabled point in the approximate middle of the house. In actuality, the gable would be lower in elevation than the hip roof.

EXHIBIT NO.	15
APPLICATION NO.	A-1-TRN-98-40
Statement of Cuthbertson's Atty	
Page 3 of 8	

Accurate, enhanced photos were prepared by the Cuthbertsons' builder/developer and were submitted to the City Council at the hearing on this matter. These photographs are attached to the Declaration of Mr. Ted Stodder filed in support herewith for the Commission's reference. Viewing the accurate enhanced photos, it is readily apparent that neither the Talkingtons' nor the Tieg/Crafts' view is significantly impaired. A clear, glorious view of the Trinidad Head, Trinidad Bay and southern Trinidad coastline remains.

Finally, the Planning Commission and Trinidad City Council each made site visits. The City Council viewed the potential impact on viewshed from the appellants' homes – utilizing a mockup placed on site by the Cuthbertsons' builder/developer. Based on the best evidence available, i.e. personal inspection, these public entities each concluded that viewshed was not significantly impaired. Great deference should be accorded to these on-site findings.

3. No Feasible Alternatives Exist.

To best protect their interests, the Talkingtons would place the Cuthbertsons' home at the uppermost portion of the lot.¹ This placement would maximize view impairment to the uphill Tieg/Craft house. In addition, this placement would require constructing a driveway over the septic leach field – a situation that the County may not approve.

To best protect their interests, the Tieg/Crafts would reduce the Cuthbertsons' residence to one story. A one-story home on this parcel would require constructing the back of the house underground four to five feet due to the hillside slope. Such construction would not permit the use of Uniform Building Code-required egress windows. Alternatively, to raise the house above ground would bring it to the elevation of the Cuthbertson's proposed home.

The Tieg/Crafts assert that a feasible alternative exists by simply rotating the Cuthbertsons' proposed footprint 90° and placing the garage and workshop adjacent to the western wall of the converted second floor, all on one floor. This is absurdity at its best. As previously discussed, the slope of the hillside is such that this design would place the master bedroom in an underground cave, in violation of the Uniform Building Code. The front door would be inaccessible to Mr. Cuthbertson, who cannot rely solely on stairs and needs a ramp or lift. Reduced setback would result on all adjoining parcels except that of the Tieg/Crafts, and would maximize the view impairment to the Talkingtons. Finally,

¹ The Talkingtons claim in their appeal that the original subdivision map limits construction on the Cuthbertsons' parcel "by stipulation" to the rear of the lot. The Cuthbertsons are unaware of any such stipulation. Deed restrictions pertain only to the height of the residence – the Cuthbertsons have satisfied this requirement.

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this plan reduces the size of the leach field, and there is no evidence that a sewage disposal system could be affordably designed and approved by the County with this reduced leach field.

4. The Proposed Residence Would Not Be Obtrusive.

Appellants argue that the proposed residence violates the zoning ordinance at Section 17.60.040(H) pertaining to scale, bulk, orientation and character. Specifically, Subsection (H)(1) of this provision creates a presumption that any residence greater than 2,000 square feet in floor area is considered out of scale unless designed and situated such that the bulk is not obtrusive. The Cuthbertsons' residence is only 1,822 square feet, and therefore the finding that it is not obtrusive does not need to be made. The square foot measurement is made in accordance with the zoning ordinance requirement that garages and decks are excluded. Only living space is included in this computation.

Appellants argue at great length that the downstairs workshop/storage area is actually going to be a bedroom, and must therefore be included in square footage calculation. In actual fact, the proposed windows in the workshop are too small to meet Uniform Building Code requirements for window egress in a bedroom. There is no plan to insulate and sheetrock any part of the room except the ceiling, and most importantly, there is no closet. The space is a workshop/storage area, and nothing else.

Furthermore, the proposed residence is simply not out of scale and character with the community. The Talkington residence immediately adjacent occupies a larger percentage of its parcel 18% than that proposed by the Cuthbertsons 16%. The living area of the Talkington home is greater than that of the Cuthbertsons at 2345 square feet compared to 1822. The appellants present a non-representational sampling of square footages of houses in the neighborhood to intentionally skew results in their favor.²

5. The Sewage Disposal System Was Designed Properly.

Appellants claim that the sewage disposal system was not designed in accordance with state and county regulations. This assertion is simply false. The sewage disposal system was designed by the County Department of Health, Division of Environmental Services, specifically, Mr. Doby Class of the County Environmental Health Division. Mr. Class works primarily in the Trinidad area and is extremely familiar with the different types of systems that can and cannot be used in that area. He designed a "high-end" system to accommodate the two-

² One of their Declarants, Mr. Odum, filed a letter with Mr. Steve Scholl of the Coastal Commission, dated May 11, 1998, indicating the misrepresentation of the purported survey made by the Teig/Crafts and requesting that his Declaration be withdrawn from consideration.

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bedroom, 2-1/2 bath house. His opinion is that the system designed and approved best meets the peculiar restraints of the property.³

6. A Categorical Exemption Applies.

The Planning Commission determined (and the City Council upheld) that the proposed residence is categorically exempt from CEQA under 14 Cal Code of Regulations §15303 (Class 3) categorical exemption for single-family residences. Where a project is categorically exempt, as here, such project is not subject to CEQA requirements and may be implemented without any further CEQA review.

Nonetheless, appellants argue that the categorical exemption does not apply in this instance because there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. The appellant bears the burden of proving that unusual circumstances exist. That is, appellants must produce substantial evidence that the proposed building has the potential for a substantial adverse environmental impact due to unusual circumstances. Appellants have not met and cannot meet this burden, and the City's determination that the categorical exclusion applies must therefore be upheld.

The law is clear that the types of unusual circumstances which may be considered when waiving the categorical exemption are those which affect the environment in general as opposed to particular persons. See Association for Protection of Environmental Values in Ukiah v. Ukiah (1991), 2 Cal.App.4th 718, 733, 3 Cal.Rptr.2nd 488, 496. Courts recognize that "All government activity has some direct or indirect adverse effect on some persons. The issue is not whether [the project] will adversely affect particular persons, but whether [the project] will adversely affect the environment of persons in general" (Topanga Beach Renter's Association v. Dept. of General Services (1976), 58 Cal.App.3d 188, 129 Cal.Rptr. 739 [emphasis added]). Thus, courts have held that height, view and privacy objections that impact only a few neighbors do not affect the environment and persons in general. Association for Protection of Environmental Values v. Ukiah, supra, at 2 Cal.App.4th 733.

In the present case, appellants argue very particularized circumstances in support of their claim that the categorical exemption does not apply. The circumstances are based on loss of potential view to the immediate neighbors' parcels. This is not an "unusual circumstance" within the meaning of CEQA and therefore, the Cuthbertsons' building permit is categorically exempt from further CEQA review.

³ Mr. Class is submitting a separate letter responding to the appellants' assertions that he did not design the sewage disposal system correctly.

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7. Regulatory Taking.

Recently the United States Supreme Court determined that where the regulation of property by government deprives the property owner of substantially all economically beneficial use, the government will be required to purchase the property. The case, Lucas v. South Carolina Coastal Council (1992) 505 U.S.1003, 112 S.Ct. 2886, is factually similar to the situation faced by the Cuthbertsons. Mr. Lucas had two residential lots on which he planned to build single family residences. However, South Carolina adopted a law which had the direct effect of barring all development of the Lucas property. Although the Lucas property could still be used for some purposes such as camping and related recreational uses, the court ruled that the South Carolina law amounted to a taking of "all economically beneficial use" of the Lucas property. As a result he was entitled to just compensation in the amount of the full market value of the property.

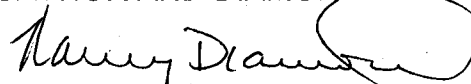
In the case of the Cuthbertson property, if the Commission denies the development permit so that the property may only be used for camping or recreational uses, or requires relocation of the house further upslope so as to require the construction of a cave-like structure that would be costly and unmarketable, the result is the same as in Lucas: the Cuthbertsons will have been deprived of "all economically beneficial use" of their property. As a result, they will be entitled to have the Commission purchase their property for its full market value.

8. Conclusion.

The Cuthbertsons have gone to great cost and inconvenience to design a home and modify that design to minimize its impact on neighboring properties. The topographic characteristics of this property and the 17-foot deed restriction have presented tremendous challenges and hurdles. In addition, Mr. Cuthbertson's health requires construction of a home that is fully handicapped-accessible. Nonetheless, the Cuthbertsons have dutifully accommodated these competing interests, have compromised some of their desires, and have proposed the best design to satisfy all needs while being consistent with the Certified Local Coastal Plan. The appellants' appeals must be denied.

Very truly yours,

GAYNOR AND DIAMOND



Nancy Diamond

California Coastal Commission
May 14, 1998

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cc: Jim and Sandra Cuthbertson
Ted Stodder, Builder/Engineer

cuthbertson/appeal.513

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In Re Appeal Number A1TRN98-40
Application of Jim and Sandra Cuthbertson

DECLARATION OF JIM CUTHBERTSON

I, Jim Cuthbertson, declare as follows:

1. I, together with my wife, Sandra, am the applicant for a proposed residence to be located at 840 Van Wycke Street, Trinidad, California.
2. The residence is to consist of a two story, 1,822 square foot home: The first floor will be used as a two car garage and workshop/storage area. I am a tinkerer and have always enjoyed a workshop space. We have no intention to convert the workshop into an additional bedroom.
3. The house has been designed for my special health needs, including a wheel chair lift from the garage and a ramp to the front door. I hope to be able to move into the house as quickly as possible because our present home is multi-leveled and stairs are becoming difficult and dangerous for me. Specifically, I have a deteriorating neurological condition that may require me to use a wheelchair in the future. I have been informed by my health care provider that I could not tolerate further reductions to the size of interior spaces beyond those made by the Trinidad Planning Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14 day of May, 1998, in ARCATA, California.


Jim Cuthbertson

In Re Appeal Number A-1-TRN-98-40
Application of Jim and Sandra Cuthbertson

DECLARATION OF TED STODDER

I, Ted Stodder, declare as follows:

1. I own and operate a building and developing company called Stodder Properties and have been a builder since 1986. I have been in construction since 1974.

2. I have worked closely with Jim and Sandra Cuthbertson to design the residence proposed to be located at 840 Van Wycke Street, Trinidad, California. I have participated at both the Planning Commission and City Council hearings on this matter.

3. I have reviewed the appeals filed by the Talkingtons and the Tieg/Crafts. In particular, I have reviewed the drawings and photographs they have each submitted supporting their positions that the Cuthbertsons' residence would significantly impair their views. With respect to the drawings submitted by the Talkingtons, it is impossible to tell if the drawing is accurate. The drawing shows no dimensions nor scale.

4. With respect to the photographs submitted by the Tieg/Crafts, these photographs incorrectly depict the proposed roof line of the Cuthbertsons' residence. In particular, they show that the gable would extend higher than the ridge line of the roof. In actuality, the gable, which will be in the front of the house, will be lower in elevation.

5. I have prepared photographs that show the extent of view blockage which I submitted to the Trinidad City Council. I attach copies of them additionally to my declaration for ease of reference. These drawings accurately depict the proposed roof line of the Cuthbertsons' property. There will be no significant impairment of the Talkington or Tieg/Crafts views.

6. The parcel on which the Cuthbertson residence is to be built has unique characteristics. In particular, the slope of the parcel is such that the building cannot be placed any higher (to the north) on the lot without requiring that there be substantial excavation into the hillside and the house be recessed into that excavation. This is because the property has a restriction that the building height be no greater than 17 feet as measured from the average height of the four corners of the property. We have therefore designed a building that meets the 17 foot height requirement as well as the slope restraints. This building will require some excavation of the hill, but a minimal amount as compared to a single floor design. In addition, this design incorporates a sewage disposal system that has been approved by the County.

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7. In the course of designing the Cuthbertsons' home, I have met on site with County Environmental Health Division representative Doby Class to discuss the sewage disposal system. Mr. Class designed a system that is best suited for the soil characteristics, topography and deed restrictions of the property. This system consists of a septic tank located in the southwestern portion of the property and a leach field on the higher north end of the property. The leach field is a pressurized system.

8. We have asserted from the beginning that the height of the roof would be approximately 17 feet above the average height of the four corners of the property. The Trinidad Planner, Mr. Bob Brown, did at one time make an error and assert that the height was 15 feet. However, he corrected his mistake at the hearing before the Trinidad City Council.

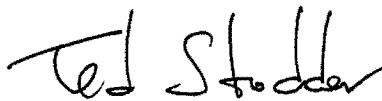
9. The first floor of the Cuthbertsons' house is designed to be a garage and workshop/storage space only. The workshop area will have windows in it; however, these windows are smaller than those required by the Uniform Building Code for a bedroom. In addition, there is no closet space provided in the workshop area, nor is there any plan to insulate or sheetrock the walls of the workshop. The ceiling will be insulated and sheetrocked because there is a second floor. All of these features are necessary for building a bedroom. It is clear that the space on the first floor is not intended for bedroom living space.

10. I have reviewed building plans of the Talkington residence, and determined that their residence contains a total living space of 2345 square feet. This occupies 18% of the total parcel on which the house sits.

11. In contrast, the Cuthbertsons' home would contain 1822 square feet of living space which occupies 16% of their parcel.

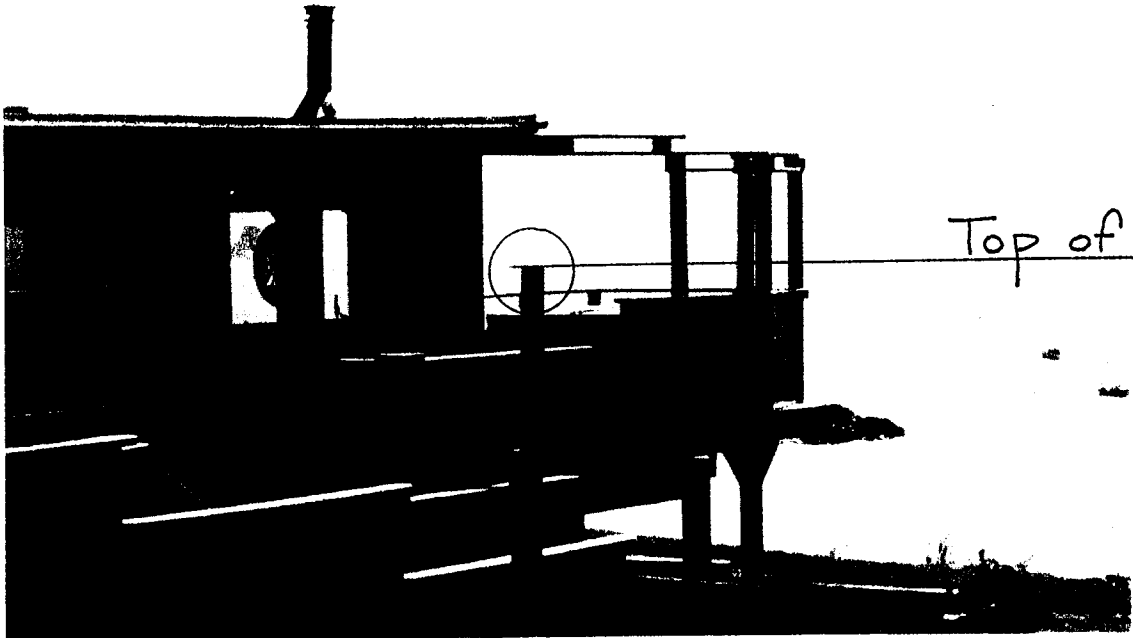
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15 day of May, 1998, in ARCATA, California.



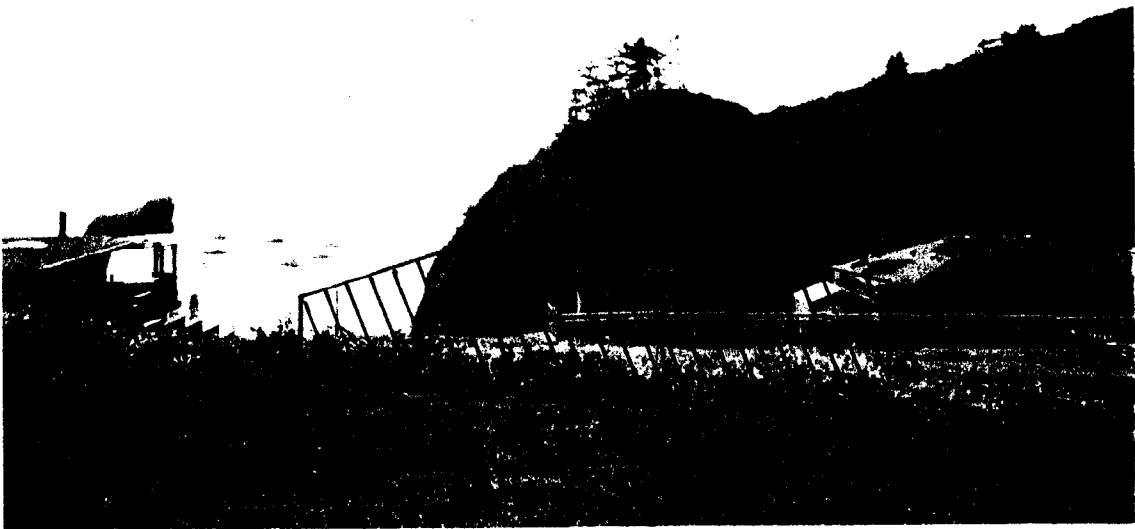
Ted Stodder

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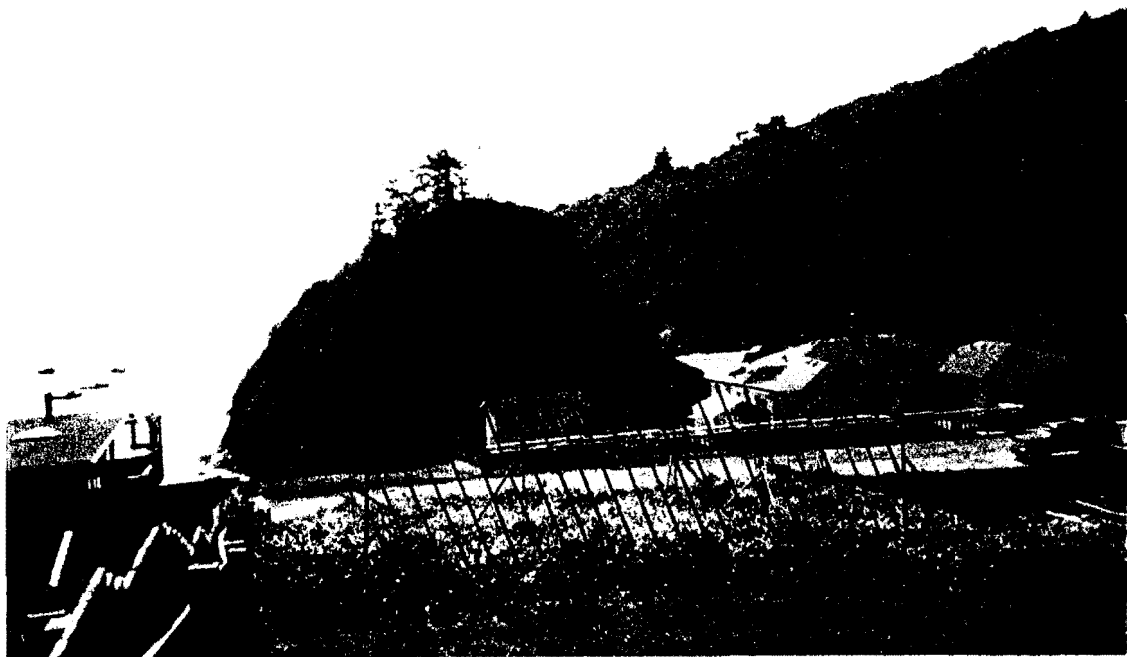
Top of wall

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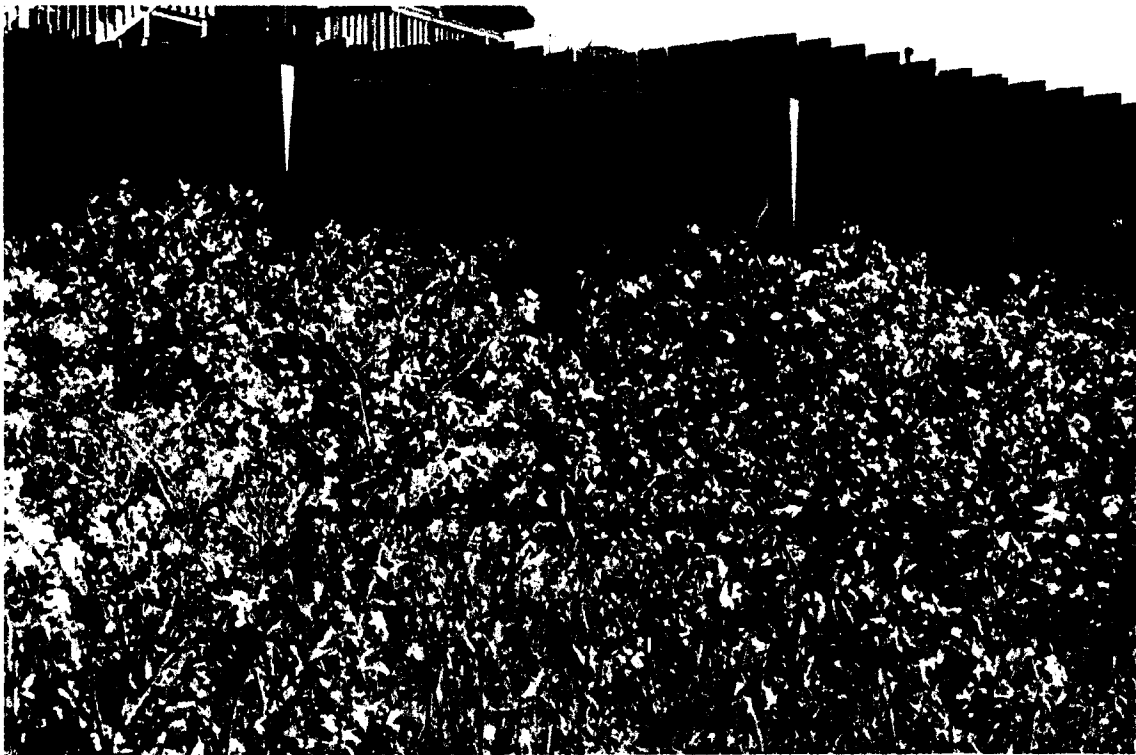
1st floor view

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View from about 8' above ground - about
6' below 2nd floor view

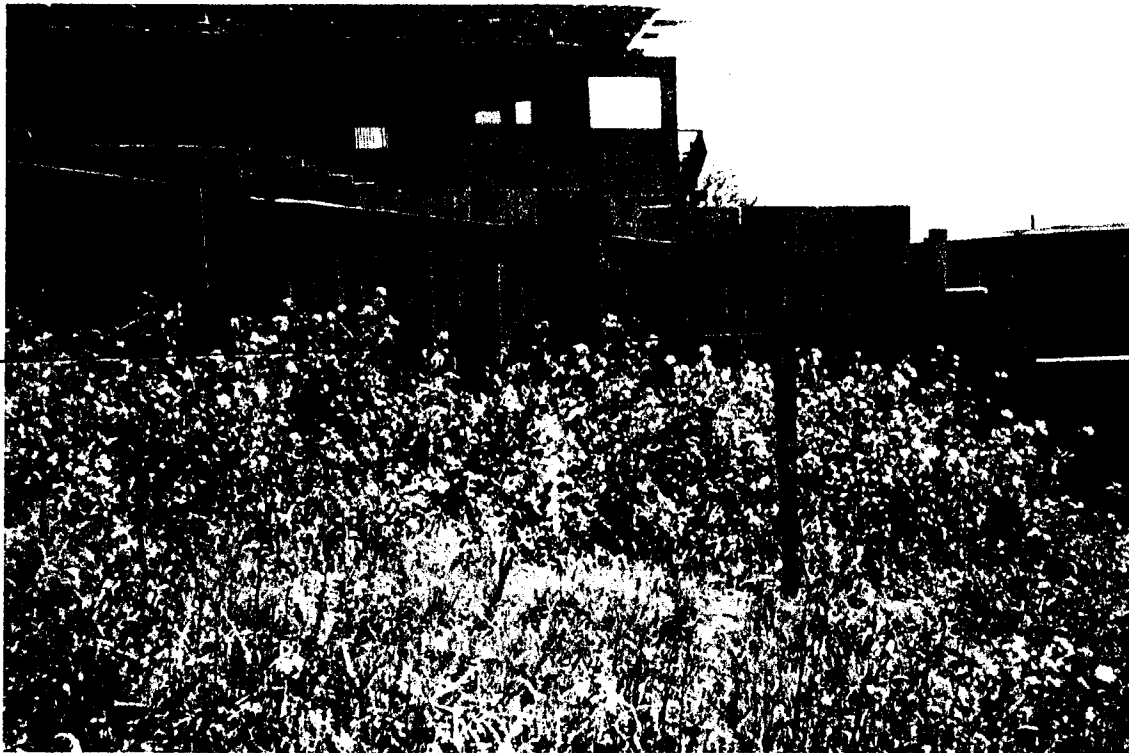
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Top of
wall

House in back of property
'REAR corner about 1' above ground

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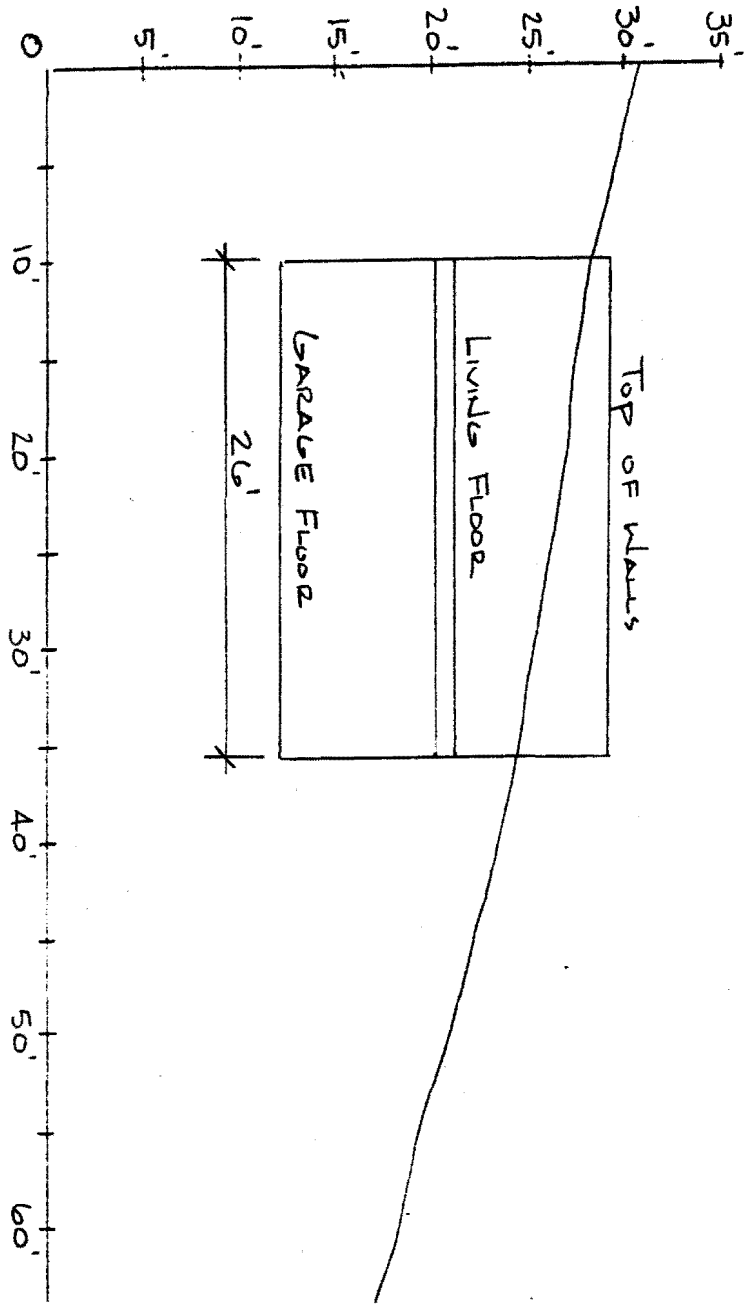


Top of
wall

House in back of property
FRONT corner about 4' above ground

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DEPTH OF PROPERTY



LENGTH OF PROPERTY

SECTION VIEW

SW