

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SAN CARLOS, CA 95060
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C.R.Z.
9/22/99



W14

STAFF REPORT:
**PERMIT REVOCATION
REQUEST**

Request Filed: 08/20/99
Staff: SG
Staff Report: 09/22/99
Hearing Date: 10/13/99
Commission Action:

REASON FOR REVOCATION REQUEST: The revocation of the granted permit is requested under Section 13105 (b) of the Commissions Regulations because, according to the Requestor, Susan Brandt-Hawley, neither she nor Joel Gambord, an interested party, received notification of the hearing.

APPLICATION NUMBER: R-3-99-035

PROJECT DESCRIPTION: Demolition of an existing 1,929 square foot two-story single family dwelling and construction of a new 2,285 square foot two-story single family dwelling with attached garage, including 186 yards of cut and 40 yards of fill.

PROJECT LOCATION: West side of San Antonio Avenue and east side of Scenic between 11th and 12th Streets, City of Carmel, Monterey County (APN 010-291-002), Block A-4, Lot 3 and portion of Lot 4.

PERSON REQUESTING REVOCATION: Susan Brandt-Hawley

APPLICANT: Ronald Donati

SUBSTANTIVE FILE DOCUMENTS: City of Carmel staff report (EA 98-01, RE 97-26, and DS 97-35) and City of Carmel Categorical Exclusion E-77-13.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the revocation request be **denied** for the reasons given below. The California Code of Regulations (CCR), Title 14 Section 13105 (b) state the grounds for revocation of a coastal development permit are as follows:



Grounds for revocation of a permit shall be:

- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission *and* could have caused the commission to require additional or different conditions on a permit or deny an application.

Staff recommends that the revocation request be **denied** because, 1) The applicant was not required to provide notice to Ms. Brandt-Hawley pursuant to CCR Title 14 Section 13054, 2) Ms. Brandt- Hawley received notice of the hearing and testified, both in writing and orally at the hearing 3) Consistent with Section 13054, the applicant submitted a stamped, addressed envelope for Mr. Gambord, notice was timely sent by Commission staff and the envelope was not returned 4) Neither Ms. Brandt- Hawley nor Mr. Gambord have offered any statements in their revocation request regarding information that they would have given the Commission which may have resulted in different conditions or a denial of the application.

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I. STAFF RECOMMENDATION

A. Motion

“I move that the Commission revoke permit number 3-99-035.”



Staff recommends a **NO** vote, which would deny the revocation request. An affirmative vote by a majority of the commissioners present is needed to pass the motion.

B. Resolution.

Staff recommends that the Commission adopt the following resolution:

Denial

The Commission hereby denies the request for revocation of Coastal Development Permit Number 3-99-035.

II. FINDINGS

A. Project Location and Description

The project is located on the west side of San Antonio Avenue and east side of Scenic between 11th and 12th Streets, in the City of Carmel-by-the Sea on the Monterey Peninsula, in Monterey County. Scenic Avenue lies between the site and the beach. While residential development in most of Carmel is excluded from the requirement for a coastal development permit by virtue of Commission Categorical Exclusion E-77-13, the parcels along Scenic Avenue are not included in the Categorical Exclusion due to their proximity to the beach and so development there requires a coastal development permit. Because the City of Carmel does not have a certified LCP, the coastal development permit must be issued by the Coastal Commission.

The approved project for which revocation is sought is the demolition of an existing 1929 square foot, two-story house and replacement with 2285 square foot, two-story house. The San Antonio elevation will be single story and the Scenic elevation will be two stories. The top of the roof of the proposed house would be about six feet lower than the top of the roof of the existing house. The proposed house would be set back from San Antonio Avenue about 12 feet more than is the existing house. The proposed house would be closer to Scenic than is the existing house, but would still be about 42 feet back from the property line at Scenic. The Commission conditioned approval of the project to require the applicant to offer the existing home for relocation for a period of 90 days.

B. Background

The proposal to demolish the existing house and construct a new house was first considered by the City of Carmel Planning Commission on November 12, 1997. At that meeting the Planning Commission approved the request to demolish the existing house and construct a new house. The Planning Commission's approval of the demolition and new construction was appealed to the City Council, based on a variety of issues including the project's impacts on significant



private coastal views, privacy of adjacent homes, and concern over possible loss of traditional community character if the house were to be demolished.

Prior to the Council hearing the appeal, the City received new information from the Carmel Preservation Foundation indicating that the existing house was a significant historical resource. Nonetheless, on January 6, 1998, the City Council upheld the Planning Commission's decision and denied the appeal. However, prior to the City Council adopting findings in support of its decision, the Carmel Preservation Foundation submitted a revised survey of historical information on the site. Then the Council, instead of adopting the findings supporting denial of the appeal, remanded the project back to the Planning Commission to consider the new information relative to the standards for approval of demolition applications and for its relevance to CEQA.

The City prepared an initial study and determined that the proposed demolition required a Negative Declaration and not an Environmental Impact Report. The City reviewed the historical information to determine if the house qualified as a historical resource under the Criteria for Determination of Significance contained in the City's Municipal Code (uncertified). Finding that the house did not qualify as a historical resource, the Planning Commission approved the proposal in May of 1998. The City Council, again on appeal, also approved the proposal, in July 1998. Subsequently, the Friends of Carmel Cultural Heritage (Friends) sued the City asking the court to require the City to prepare an Environmental Impact Report on the proposal. On May 3, 1999, the court denied the Friends petition for writ of mandate stating:

In sum, the court finds that there is not substantial evidence in the record to support a "fair argument" that the existing house is an historic resource. Since the house is not itself of historic or cultural significance, the City had no obligation to evaluate the impact this demolition would have on the "cumulative community character" of Carmel.

The claims of "historicity" as to this house, arose rather late in the application process. In fact, the claims first came to light after the Planning Commission had approved Real Parties applications. The record indicates the Donatis proceeded in good faith in their purchase of this property and in pursuing their project applications. They attempted to work with neighbors and the City to build a new home that was compatible with neighborhood character.

It is understandable that Petitioners and others in Carmel may be concerned about the gradual loss of Carmel's "older housing stock." That is an issue the city would be wise to carefully evaluate. But it would not be proper for the court to make policy in this area, at the expense of the Donatis, who purchased this home with the understanding that the house held no historic designation. (Friends of Carmel Cultural Heritage, et al., vs. City of Carmel-By-The-Sea, et al.)

An appeal was filed on September 14, 1999, by the Friends of Carmel Cultural Heritage and is currently pending.



The Commission staff report for application 3-99-035 summarized the progress of the application through the City process, including the criteria the City used to analyze the historical nature of the existing house and the lawsuit brought by the Friends of Carmel Cultural Heritage. The Commission did find that "the cumulative loss of many such structures and especially those that are more clearly part of the Carmel character could negatively impact the special character of Carmel. . . ." But in this case, the Commission also found that because

(1) the existing structure does not represent a single type of construction, but is rather more of a hybrid, (2) the existing structure has not been voluntarily designated as a historic resource (and, as such, is offered no special protection in the Carmel municipal code), and (3) the City's architectural review process has occurred and has resulted in and appropriately-designed replacement structure, the alternative of prohibiting the demolition of the existing house does not appear warranted.

C. Revocation Issue Analysis

1. Grounds for Revocation

According to Commission regulations Section 13105, the grounds for revocation of a permit are that there was

- (a) Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application;
- (b) Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the commission and could have caused the commission to require additional or different conditions on a permit or deny an application.

There has been no assertion that there was intentional inclusion of inaccurate, erroneous or incomplete information so (a) does not apply to this revocation request. Ms. Brandt-Hawley has also invoked the notice requirements of Section 13063 as part of the basis of her request for revocation. Section 13063 outlines the obligation of the Executive Director to provide notice to "All persons known or thought to have a particular interest in the application" as well as the owners and occupants of nearby properties specified in Section 13054. Section 13105(b) does not however include failure to notice pursuant to Section 13063 as a criterion for revoking a permit. Only a failure of the applicant to provide the notice required by Section 13054 may be considered grounds for revocation under the process laid out in the Commission's regulations.



2. Was There a Failure to Provide Notice as Required?

The revocation request is based on an assertion of failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission *and* could have caused the Commission to require additional or different conditions on the permit or deny the application. Thus the regulation requires that the applicant failed to meet his notice requirements under CCR Section 13054 and that because of this failure, the person who failed to receive the required notice was prevented from offering testimony to the Commission which could have affected the decision that was made.

Subsection (a) of Commission regulations Section 13054, Notification Requirements, requires the applicant to

provide notice to adjacent landowners and residents. . . .The applicant shall provide. . . a list of the addresses of all residences, including apartments and each residence within a condominium complex, and all parcels of real property. . . within one hundred feet of the perimeter of the parcel on which the development is proposed and the name and address of the owner of record. . . of any such parcel which does not have an address or is uninhabited. . . .The applicant shall also provide. . . stamped envelopes for all parcels described above.

Subsection (b) of Section 13054 requires that the applicant post the site with a notice of the proposed development. Subsection (b) states that

[a]t the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, notice that an application for a permit for the proposed development has been submitted to the commission. . . .If the applicant fails to so post the completed notice form and sign the declaration of posting, the executive director of the commission shall refuse to file the application, or shall withdraw the application from filing if it has already been filed when he or she learns of such failure.

Section 13054 therefore requires the applicant to undertake two kinds of notice 1) posting of the site; and 2) provision of stamped envelopes for Commission notice of the parties described in the regulation. The application material submitted by the applicant included application Appendix C, List of Property Owners and Occupants Within 100 Feet [of the project site] and their Addresses, as well as corresponding stamped, addressed envelopes. The revocation requester, Susan Brandt-Hawley, was not included on Appendix C because she is not a property owner within 100 feet of the project site. The adjacent property owner who Ms. Brandt-Hawley claims to not have received the mailed notice, Joel Gambord, was listed on Appendix C (it is unknown if Mr. Gambord, who did not sign the revocation request is represented by Ms. Brandt-Hawley). Notices of the July Commission hearing on the proposal were mailed to those listed on Appendix C on June 30, 1999. As of the date of writing of this staff report, only two mailed notices had



been returned to the Central Coast District Office by the Postal Service due to undeliverability. Neither of those two was addressed to Mr. Gambord.

Therefore, there was no failure on the part of the applicant to follow the proper notice requirements of Section 13054(a).

Section VII of the application form, Certification, includes a paragraph that states that the applicant or his representative has "completed and posted or will post the Notice of Pending Permit card in a conspicuous place on the property within three days of submitting the application to the Commission office." Appendix D of the application, Declaration of Posting, was not completed when the application was submitted on May 11, 1999. Through an oversight, staff filed the application on June 11, 1999, and proceeded to process the application. It was not until a final, pre-Commission meeting review of the file the week prior to the Commission meeting that it was discovered that a completed Declaration of Posting had never been received. Staff contacted the applicant who then submitted a completed declaration stating that the Notice of Pending Permit had been posted on July 9, 1999, five days before the Commission meeting. However, because notices had been mailed to all adjacent property owners and District Office staff had had phone conversations with the revocation requestor, who was the attorney for the Carmel Preservation Foundation, as well as a representative of the Carmel Preservation Foundation regarding the upcoming hearing, staff did not withdraw the application from filing.

The posting of notice at the site did not occur as required by Section 13054(b), however both Mr. Gambord and Ms. Brandt- Hawley had received actual notice of the hearing.

Section 13063 of the regulations requires that the Executive Director provide notice to all persons known or thought to have a particular interest in the application. Persons that could have been known or thought to have a particular interest in the application include the Carmel Preservation Foundation and Enid Sales, who had appealed the project at the local level and had sued the City on this project. Ms. Sales is also a member of the Friends of Carmel Cultural Heritage. District office staff did mail a staff report and hearing notice to Enid Sales on June 30, 1999, at the time of mailing of notices to the adjacent property owners. No notice or staff report was mailed to the revocation requestor, Susan Brandt-Hawley, however she is the attorney for the Friends of Carmel Cultural Heritage and Enid Sales. District office staff also had phone conversations with both Enid Sales and Susan Brandt-Hawley prior to the Commission meeting. It is therefore reasonable to assume that Ms. Brandt- Hawley received notice as the legal representative of the Friends of Carmel Cultural Heritage and Ms. Sales in the recent litigation on this project. In fact, Susan Brandt-Hawley appeared and spoke at the Commission hearing on the proposal and submitted a letter into the record.

Therefore, the Ms. Brandt- Hawley had notice of the hearing and appeared to testify on the item at the July meeting.



3. Could the views of the revocation requester have caused the Commission to require additional or different conditions on the permit or deny the application?

Although the preceding discussion indicates that the revocation requester, Susan Brandt-Hawley, and Mr. Gambord did in fact receive notice of the Commission hearing on the proposal, if it is assumed that neither she, nor Mr. Gambord, an adjacent property owner, received notification, then the second part of Section 13105(b) must be addressed. That is, would they have offered testimony that was not otherwise made known to the Commission and would this testimony have caused the Commission to apply different conditions or deny the application?

In her letter of July 14, 1999 (see Exhibit 2), which Commissioners had at the time the item came before them, the revocation requester discussed the "multiplying demolition's of the vintage houses which have long defined the unique character of Carmel-by-the-Sea." The revocation requester was concerned that Commissioners had not had a chance to read her letter and/or were not familiar with the situation in Carmel relative to historical buildings.

However, several Commissioners commented that they had read the material submitted and were indeed familiar with the situation in Carmel. Commissioner Potter stated

"There are four of us that sat here in excess of a year ago and dealt with the same thing in Carmel and it revolved around the issue of community character. . . ."

Commissioner McClain-Hill stated:

"I don't want you to think for a minute that we are unfamiliar, one, with the issue, or two, with the materials that have been submitted and the fact of the matter is when you referenced them at least two, maybe three Commissioners immediately retrieved your materials and went directly to the point in the transcript. . . that you were concerned about making sure that we saw. . . I do not believe that the project. . . violates the Coastal Act and on that basis I can't think of any reason to withhold approval."

Commissioners further indicated that while community character is a Coastal Act issue, determining just what constitutes community character in Carmel is the responsibility of the City.

In her letter requesting revocation, Ms. Brandt-Hawley fails to meet the second criteria which must be satisfied in order to revoke a permit under Section 13105 (b) because she does not offer any new information that could have caused the Commission to apply different conditions or deny the permit.

Based on the foregoing discussion, it is clear that even if notice was not adequate, the views of the revocation requester were known to the Commission and that no new information is being offered that would have caused the Commission to apply different conditions or deny the application.



4. Conclusion

Notices of the Commission hearing on the proposal were mailed to all property owners within 100 feet of the project site, as required by Commission regulations Section 13054(a). Although one property owner contends that he never received notice, his name is on the list of adjacent property owners and no notice addressed to him has been returned to the Commission office by the Postal Service. Therefore, it must be assumed that there was compliance with the notice requirements of Section 13054(a).

The notice required by Section 13054(b) to be posted on the site at the time of submittal of the application was not posted until the week before the hearing. However, as discussed above, adjacent property owners and interested parties did receive notice and the revocation requester did make her views known to the Commission. Therefore, although the notice required by Section 13054(b) was, technically, defective, both constructive and actual notice occurred.

Notice was also mailed to Enid Sales, an interested party, as required by Section 13063. Ms. Sales was represented by the revocation requester in the lawsuit brought against the City of Carmel. District Office staff had multiple telephone conversations about the pending hearing with both Ms. Sales and Susan Brandt-Hawley, the revocation requester, prior to the Commission meeting. Therefore, the requestor's contention that she did not receive notice of the hearing is unsupported by the facts.

5. Denial of Revocation Request

Based on the preceding discussion, the Commission finds as follows:

1. That no effective failure of notice occurred,
2. That even if actual notice was in some way defective, the revocation requester did receive notice, did appear and speak at the Commission hearing, and did enter information into the record, thereby making her views known to the Commission,
3. That the revocation requester has not provided any new information that would have caused the Commission to apply different conditions to the project or deny the application and,

Therefore, the request to revoke the coastal development permit is denied.



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Susan Brandt-Hawley
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AUG 13 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA
Legal Assistant
Sara Hews

RECEIVED

AUG 12 1999

CALIFORNIA
COASTAL COMMISSION

August 6, 1999

Peter M. Douglas
Executive Director
California Coastal Commission
45 Fremont Street
Suite 2000
San Francisco, CA 94105-2219

Re: Donati Demolition
Permit 3-99-035

Dear Mr. Douglas:

As authorized by the Commission's regulations, §§ 13105 and 13063, I am writing to follow up on the objections which I expressed to the Commission at its meeting on July 14, 1999. I represent the Friends of Carmel Cultural Heritage, which group is in the midst of litigation against the City of Carmel regarding the Donati demolition. The Commission's staff report referenced this litigation, although only a one-sided report of the status was given; I had also communicated with staff about the litigation during 1998. There is no question that the Commission staff, and the applicant and his attorney, knew of the great interest that I and the Friends of Carmel Cultural Heritage have in this matter.

Neither I or my client was given notice of the Commission meeting. I have also been informed by adjacent neighbor Joel Gambord that he received no notice and is willing to file a sworn statement to that effect. I have informed the Central Office staff and the applicant's attorney of my concern about notice, and they have confirmed that they did not send either me or my client notice of this proceeding. I learned of the meeting a few days before it occurred, when I was out of my office on another case, and had no time to adequately prepare a presentation for the Commission's

EXHIBIT 1

R-3-99-035

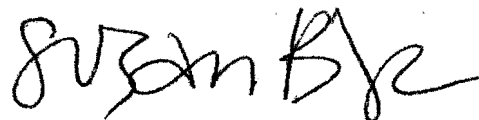
Peter M. Douglas
August 6, 1999
Page 2

consideration. I rushed to prepare a letter on the date of the hearing, but could not present an adequate factual or legal basis for opposition to the permit without more time. The Commission's apparent belief that the community character issues presented in this case are only "local" issues not under the jurisdiction of the Coastal Act is without foundation, and my client should have the opportunity to carefully explain why. Adding to the problem of lack of notice is the blatant lack of due process afforded when the Commission considered this item after twelve long hours of hearing, eight hours after its last meal break. The transcript will show that the Commissioners were tired, hungry, and understandably inattentive.

To remedy this lack of process, pursuant to § 13105 I request that the Donati coastal development permit be revoked, and that this matter be set on the Commission agenda so that views of the Friends of Carmel Cultural Heritage and Joel Gambord may be fully presented to urge the Commission to deny the permit.

Thank you very much.

Sincerely,



Susan Brandt-Hawley

cc: Lee Otter
Steve Guiney

EXHIBIT 1 p2
R-3-99-035

RECEIVED

LAW OFFICES OF
HORAN, LLOYD, KARACHALE, DYER, SCHWARTZ,
LAW & COOK
INCORPORATED

SEP 03 1999

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September 2, 1999

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OUR FILE NO. 3072.01

VIA FACSIMILE AND REGULAR MAIL

California Coastal Commission
Central Coast District
725 Front Street
Suite 300
Santa Cruz, CA 95060

Attn: Steve Guiney

Re: Ronald H. and Alexis J. Donati
Application No. 3-99-035

Dear Mr. Guiney:

This firm represents Ronald H. Donati and Alexis J. Donati. Our clients own a residence in the City of Carmel-by-the-Sea, which fronts on San Antonio Road. Mr. and Mrs. Donati are the holders of a coastal development permit which was granted by the Coastal Commission at the Commission's meeting in San Rafael on July 14, 1999. Mr. Joel Gambord owns a home which adjoins the southern boundary of the Donati property and also faces San Antonio Road.

We are in receipt of a letter dated August 20, 1999 from Charles Lester. With his letter, Mr. Lester forwarded correspondence dated August 6, 1999 from Susan Brandt-Hawley to Peter Douglas in which Ms. Brandt-Hawley states that she is writing on behalf of the Friends of Carmel Cultural Heritage ("FCCH"). In her letter, Ms. Brandt-Hawley claims the FCCH did not receive notice of the July hearing on the Donati application and she requests revocation of the permit that has been issued to our clients. Ms. Brandt-Hawley also states that Mr. Gambord did not receive any notice of the hearing. Her letter does not address whether Mr. Gambord became aware of the July hearing by any other means or when Mr. Gambord first knew that the Commission would be holding a hearing on the Donati application.

Preliminarily, we point out that even if Mr. Gambord or the FCCH did not actually receive a copy of the notice, that circumstance would not invalidate the permit so long as the applicants complied with the notice requirements in the Coastal Commission Regulations and there

EXHIBIT 2
R-3-99-035

are no other grounds for revocation under Section 13105 of the Regulations.

We respond to counsel's request with the following comments:

Notice to Joel Gambord

Staff has confirmed that Mr. Gambord is on the list of persons to whom notice of the hearing was to be sent. The applicants' representative (Gene T. Takigawa) provided a stamped envelope addressed to Mr. Gambord when the Donati application was delivered to the Central Coast District office. We understand that Lynn Meyer of the California Coastal Commission staff mailed the notice of the July hearing to Mr. Gambord and the envelope containing that notice has not been returned to the Commission. Thus, the applicants have complied with Section 13054(a) of the Coastal Commission Regulations.

We have enclosed copies of photographs (which were taken on August 30, 1999) that confirm notice of the hearing was posted on our clients' garage. These photographs clearly show that the notice is visible from San Antonio Road - the street which Mr. Gambord's home also faces. Therefore, the applicants have complied with Section 13054(b) of the Coastal Commission Regulations.

Until Mr. Lester forwarded Ms. Brandt-Hawley's letter, we were not aware that Mr. Gambord had any further interest in the project which is the subject of our clients' application. Mr. Gambord had initially appeared to voice his opposition to the Donati project at a November, 1997 Planning Commission hearing in the City of Carmel. At that time, Mr. Gambord argued that a new residence would impair the view of the ocean from his home. He then appealed the Planning Commission's decision to the Carmel City Council - asserting that the house on the Donati property was "historic" because the building had been constructed by M. J. Murphy (a prominent builder who was responsible for developing certain building styles in Carmel) and the property had been owned by a former City librarian. After the applicants proved that neither of these claims was true, Mr. Gambord asserted that the house was historic on other grounds. (A summary of this second argument about the alleged "historical" or "cultural" pedigree of the house appears on page 8, in Part II.C.1 of the Staff Report to the Coastal Commission.) In May, 1998, Mr. Gambord appeared to oppose the project at a second hearing before the Carmel Planning Commission, at which time he was represented by Robert D'Isidoro. However, Mr. Gambord did not appeal from the Planning Commission's decision to the Carmel City Council. Moreover, Mr. Gambord was not a named party in litigation that Ms. Brandt-Hawley subsequently filed

EXHIBIT 2 ,²
R-3-99-035

in the Monterey County Superior Court on behalf of the FCCH and Enid Sales to challenge the permits which the City of Carmel had issued for this project. Mr. Gambord has not communicated with this firm or our clients during the last fifteen months and we are not aware that he has had any communication with any public agency concerning the Donati application during that period.

Mr. Gambord has not appeared in this matter. Ms. Brandt-Hawley's correspondence of August 6, 1999 does not set forth that she represents Mr. Gambord as an individual, although her letter indicates that she has some line of communication with him. Therefore, it is not clear whether Ms. Brandt-Hawley has any standing to raise a claim of a notice defect on behalf of Mr. Gambord.

Notice to the FCCH

Ms. Brandt-Hawley claims that no notice was sent to the FCCH. Despite Ms. Brandt-Hawley's contention, Section 13054 of the Coastal Commission Regulations does not require that an applicant give notice to interested parties who are not "adjacent landowners or residents" or to the attorney for such interested parties. In fact, our clients notified the Commission about the Monterey County litigation in which Ms. Sales and the FCCH were the petitioners. (I delivered a copy of Judge O'Farrell's Intended Decision in that lawsuit to the district office in Santa Cruz on May 11, 1999.) Indeed, when I spoke with Ms. Brandt-Hawley on July 29, 1999, she stated that "I don't blame you" for not having been sent a notice of the meeting in San Rafael.

We understand that before the July hearing, Lynn Meyer of the Coastal Commission Staff received a telephone call from Enid Sales. We further understand that during the ensuing conversation, Ms. Sales told Ms. Meyer that she had received a notice of the July hearing and a copy of the Staff Report on the Donati application. In addition, Ms. Meyer apparently received "a few calls" from Ms. Sales subsequent to that conversation, but prior to the July hearing. The Petition which Ms. Brandt-Hawley filed challenging the permits issued by the City of Carmel sets forth that Ms. Sales is a member of the FCCH. (We have enclosed a copy of that Petition for your review.) Therefore, if Ms. Meyer's information (viz, Ms. Sales received the notice of the Coastal Commission hearing) is accurate, then notice was given to the FCCH by delivery to a member of that organization.

We received a copy of the Intended Decision in the Monterey County litigation on May 5, 1999. Other than exchanges of correspondence about the Court's Statement of Decision and the form of the Judgment which was to be entered, our firm had no communication

EXHIBIT 2 ,^s

R-3-99-035

with Ms. Brandt-Hawley's office until I spoke with her at the Commission's hearing in San Rafael. We had no insight that the FCCH had a continuing interest in the Donati project until I spoke with Lee Otter of the Commission Staff late in the afternoon on July 13, 1999.

Finally, Ms. Brandt-Hawley's letter does not set forth whether she requested that the Commission give her special notice of the hearing, although Section 13059 of the Coastal Commission Regulations contemplates a procedure whereby persons requesting copies of application summaries may deliver self-addressed stamped envelopes for that purpose.

Obviously, the FCCH had notice of the hearing on the Donati application before the Commission's meeting in San Rafael. Ms. Brandt-Hawley appeared at the hearing on July 14th, and she brought with her a six-page letter to the Commission (including six exhibits). In her correspondence, Ms. Brandt-Hawley stated she was appearing on behalf of the FCCH and she argued against the application when the item was called on the agenda. Although Ms. Brandt-Hawley stated she had only recently become aware of the hearing on the project, counsel did not object to the Commission's consideration of the Donati application once the hearing began.

Lack of Grounds for Revocation

Apparently, Ms. Brandt-Hawley does not contend there is a basis to set aside the permit approval under Section 13105(a) of the Regulations. She has not asserted that "inaccurate, erroneous, or incomplete" information was submitted with the Donati application.

The second and only other ground for revocation of a permit is when a failure to comply with the notice requirements results in a situation where (1) the views of the person not notified were not otherwise made known to the Commission and (2) communication of those views could have caused the Commission to require additional or different conditions on a permit or deny an application. Section 13105(b) of the Regulations.

The administrative record of the proceedings before the City of Carmel evidences that Mr. Gambord's primary concern was that if the existing house on the Donati property were demolished and a new home were built, there would be an impact on his view of Carmel Beach and portions of Carmel Bay. The Staff Report to the Coastal Commission refers to Mr. Gambord's concern about impacts on his view. See Staff Report, Section I.D on page 10. However, the Staff Report also notes that "the Coastal Act does not protect privacy or private views".

EXHIBIT 2 14

R-3-99-035

Therefore, even if there had been a failure to provide notice to Mr. Gambord, communication of Mr. Gambord's concerns about his own personal view would not have caused the Commission to require additional or different conditions on the Donati permit or to deny our clients' application.

Further, even if the FCCH is one of those persons to whom notice is required under Section 13054 of the Coastal Commission Regulations, the views of the FCCH were made known to the Commission. The Staff Report (beginning in Part II.B on page 6 and continuing through the top of page 10) summarizes Ms. Brandt-Hawley's arguments about the "special character of Carmel" and how that bears on the Coastal Act. Ms. Brandt-Hawley placed her correspondence of July 14, 1999 which addressed these issues in the record at the public hearing on our clients' application. Moreover, counsel argued the FCCH's position when the hearing was opened on the Donati application. Therefore, the second prong of the test for revocation under Section 13105 of the Coastal Commission Regulations is not satisfied either.

Ms. Brandt-Hawley also argues that there was "a blatant lack of due process". She claims the Commissioners were "inattentive" to the issues. We strongly disagree. The Commissioners were clearly prepared and they assured Ms. Brandt-Hawley that they had read her correspondence. Several members of the Commission asked questions during the hearing.

In that regard, the Commission is reminded that this project was unanimously approved by the Carmel City Planning Commission twice. It has gone through judicial review by a Court, which concluded there was "nothing historic" about the existing house on the Donati property. Nevertheless, Staff recommended a condition (which our clients have accepted) preventing any action being taken with respect to the demolition of the improvements on the Donati property for a period of ninety days from issuance of the coastal development permit. Over half that period has now elapsed and no one has contacted Mr. and Mrs. Donati or their representatives, to express interest in moving the home.

With respect to Ms. Brandt-Hawley's concerns about the loss of "community character" in Carmel, the Commissioners should be aware that the City is moving ahead with a program to select an environmental consultant to look at possible revisions to the City's Historic Preservation Ordinance. In the interim, the City has adopted a series of protocols governing the processing of applications for demolition of structures that are claimed to be "historic" resources. According to the City's Community Planning and Building Department, the City has received nineteen (19) applications for demolition of

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single family residences during calendar year 1999. After a threshold review, eleven (11) of these applications were found not to involve potentially historical resources. To date, the City has approved only two (2) of the nineteen (19) applications that have been filed.

On this record, it would be patently unfair to set aside a permit three months after the date it was granted when all required notices were given and the only party objecting to the permit is one that has appeared through experienced counsel who argued the merits of her client's position at the public hearing.

Very truly yours,


Stephen W. Dyer

SWD/cbl

Enclosures (sent by mail only)

cc: Mr. and Mrs. Ronald H. Donati (w/o encls.)
Gene T. Takigawa, A.I.A. (w/o encls.)
Susan Brandt-Hawley, Esq. (w/encls. - photographs only)
Donald G. Freeman, Esq. (w/o encls.)

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Susan Brandt-Hawley
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Legal Assistant
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July 14, 1999

Received at Commission
Meeting

JUL 14 1998

From: _____

Hon. Sara Wan and Commissioners
California Coastal Commission
Central Coast Area Office
725 Front Street, Suite 300
Santa Cruz, CA 95080

Re: Donati Demolition, Carmel
Permit 3-99-035

Dear Chairperson Wan and Commissioners:

On behalf of the Friends of Carmel Cultural Heritage, I ask the Commission to deny this permit request.

This demolition is characteristic of multiplying demolitions of the vintage houses which have long defined the unique character of Carmel-by-the-Sea. The Coastal Commission should not be party to the accelerating, unstudied cumulative loss of Carmel's cultural resources. The evocative 1924 Craftsman home which the Donati family purchased simply to demolish now contributes to Carmel's dwindling community character.

The cultural resource impacts of numerous demolitions designed simply to make way for oversized construction on Carmel's admittedly valuable residential lots in the Coastal Zone have been decried by the State Office of Historic Preservation, the City's Historic Preservation Committee, the Carmel Preservation Foundation, concerned members of the public, the Carmel City Council, and Coastal Commission staff. Carmel City Councilmember Livingston stated at a public hearing regarding this demolition project:¹

It is sad but true that people in Carmel are buying lots, not houses, and I just don't think that we can bury our heads in Carmel and not come

¹ Attached to this letter are copies of all quoted letters and testimony.

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to grips with this . . . we are losing our houses one by one . . . By the year 2016, we will be without any character in our residential neighborhoods . . . 'No place that has no history has character.' . . . So I am waiting for that day in Carmel history when we will start saving our buildings. They mean very much to us. The character of our town depends upon those old historic buildings built in the 20's.

City Councilmember Hydorn agreed:

. . . in Carmel . . . many houses are trophy houses that are built just to astound and stun visitors with the wealth that has been poured into them. Unfortunately, that particular area of Scenic Drive is the biggest target receiving those arrows . . . I feel [the Donati house] is part of that historic tapestry that is woven into the City of Carmel and which is a good part of its character . . . It is . . . important to have a house that aids and abets and enriches the historical context of the neighborhood, and all of Carmel which is a number of neighborhoods . . . I think it is a shame to lose some of these houses which . . . all contribute in their own way with their own individual styles to that tapestry of Carmel that we all love so well.

Councilmember Livingston recalled that "many times quite often from in the community people have said to me, why is it we cannot protect our older houses? . . . They are not saying 'historic', but our 'older' houses. I hear often that we are losing the character of Carmel."

Lee Otter, Coastal Commission planner, in a letter to the City of Carmel in June 1998 expressed agreement that Carmel's community character is threatened by demolitions of its homes:

We have become increasingly worried about the continuing trend of demolish-and-rebuild projects in Carmel . . . the demolition of those earlier, often smaller residences which are so characteristic of Carmel's special community character. This historic character is part of what makes Carmel an important visitor destination . . . we continue to be deeply concerned about proposed projects which will erode the essential and authentic character of Carmel-by-the-Sea.

California Coastal Commission
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Page 3

Despite its acknowledgment of cumulative City problems posed by demolitions, and its regret at the loss of the lovely Donati house, the City Council majority balked at requiring an environmental impact report (EIR) for demolition of an individual home, and allowed the demolition. While my clients understand the City's reluctance to require one property owner to prepare an EIR addressing Carmel's extant cumulative demolition problem, CEQA requires it because Carmel has not chosen to address the issue on its own and needs environmental review of cumulative demolition impacts. In light of the scores of demolitions in recent years, the City needs to take steps to preserve its community character and assess cumulative impacts.

As noted in your staff report, the Friends of Carmel Cultural Heritage filed a legal mandate action against the City last year, requesting an EIR for the Donati demolition project and also requesting declaratory relief to stop Carmel's "pattern and practice" of approving demolitions without looking at cumulative impacts on aesthetics and cultural resources. The trial court denied the EIR issue, and that decision will now be appealed to the Court of Appeal, while the related declaratory relief cause of action remains pending in the Superior Court. Although denying the request for an EIR, the trial court nonetheless noted in its decision that .

it is understandable that Petitioners and others in Carmel may be concerned about the gradual loss of Carmel's 'older housing stock.' That is an issue the City would be wise to carefully consider.

The City's request to remove this language from the ruling was denied.

This request to raze the house long known as the "Nelson" house is typical of demolition requests now escalating into the hundreds in Carmel. I have learned that in the last month, eighteen new demolition requests were submitted. The Nelson house is especially important in light of its location on the highly-visible Scenic Road view corridor adjacent to Carmel Beach.

An official State Department of Parks and Recreation Primary Record survey form 523A, prepared for the property by the Carmel Preservation Foundation, describes it in relevant part:

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This unusual house faces San Antonio Street and is a familiar U-shaped board and batten Craftsman beach house. The roofs are gabled and cross gabled . . . There are two chalk rock chimneys, the windows are wooden sliders and the doors are multipaned French . . . The siting is unique with an apparent one story house on one street and an impressive two story edifice on the other street. There is a formal garden on the Scenic side with brick walks and low-lying junipers and rather tall rock gate posts with inset oriental tiles. The entrance on San Antonio repeats the chalk-rock gate posts and also paths of the same material, with attractive low, formal planting.

The description concludes by stating that "because of its high visibility this house has been a landmark for the last 73 years."

Dan Carl, coastal planner for this Commission, wrote to the City regarding the Donati demolition and urged review of cumulative impacts:

Accordingly, as you move forward with additional project analysis and environmental review, the next related step in the analytical process will be to evaluate the proposed project in terms of its effect, individually and cumulatively, on the overall community character of Carmel . . . we believe that the special style and character of Carmel is dependent in large part on its residential housing stock and its historical associations. **Therefore, we would encourage you to explore not only the historical pedigree of the structure proposed for demolition, but also to examine its relationship to the observed community character of Carmel -- particularly given its location within the highly visible Scenic Road view corridor adjacent to Carmel Beach.**

The City has not yet undertaken a study of the threats of ongoing demolition to its community character, and possible solutions. It is currently considering review of its historic preservation policies and ordinances, and may take action on various proposals this summer. In the meantime, the demolitions continue, apparently driven by very high property values.

As your staff report confirms, Carmel needs to complete a Local Coastal Plan which takes preservation of community character into account

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as required by Coastal Act §§ 30251 and 30253. As noted in the staff report, "[t]hese Coastal Act sections as they apply to the proposed project require the protection of the unique community and visual character of Carmel." Staff did not approve a CDP waiver for this demolition, although such waivers are often approved, because of the controversy over this project both on its own merit and in conjunction with the ongoing problems in Carmel regarding loss of its residentially-based character.

The staff's assessment of the structure as "not historically compelling" is not in line with the facts and documented importance of the house, including the findings of the appointed Carmel Historic Preservation Committee, and the professional reports submitted to this Commission from the Carmel Preservation Foundation. The house appears to be eligible for the California Register of Historic Places.

As stated by Carmel City Councilmember Hydorn:

There are houses . . . which are representative of the very best, exemplary representatives of Carmel's design character and valuable assets of the neighborhoods in which they are located. Those can't be just thrown away. We had an opportunity to tour the [Nelson/Donati] house, actually just the living room and I was astounded that someone would want to tear that house down. Anyone of us in this room would love to move into that house as it is today. To tear it down is a waste of valuable resources . . . And frankly if you go up and down Scenic you will find most houses there, the new houses that are being built, belong in Malibu or Zuma Beach or someplace like that. They don't belong in Carmel . . . Carmel is not Rodeo Drive, it is not Malibu, it deserves to be carried on the tradition of housing that we have. . . this was one, the . . . house was an excellent house . . . it really is a crime to tear that house down . . .

As explained in the staff report, the entire City of Carmel falls within the coastal zone. In the 1980's, the Commission certified part of the LUP but suggested modifications to protect the City's cultural resources. The City did not accept the modifications, so that the LUP is still not approved. Similarly, the Implementation Plan remains unapproved. The staff report

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indicates that the City is working on a new LUP and IP submittal. The City is also discussing completing its inventory of significant buildings, which has never been done; the fact that the Nelson/Donati house is not on the prior list is inconclusive of its importance.

The approval of demolitions of Carmel's vintage housing stock, in ever-increasing numbers over the last five years, continues to erode community character. A comparison with the situation in Pacific Grove, which has protected its resources and submits almost no demolition requests to the Commission, is telling. As stated in a 1997 letter to the Coastal Commission staff from the California Office of Historic Preservation regarding another Carmel demolition, the office "concur[s] with the Coastal Commission staff" and is concerned that loss of each vintage home will "negatively impact the special character of Carmel" and that "the cumulative impact of such loss could adversely impact the historic character and integrity of the city."

The Friends of Carmel Cultural Heritage therefore respectfully suggest that the Commission require completion of a coastal program to address Carmel's eroding community character through development of policies and restrictions, prior to approving waivers or demolition permits, including the proposed demolition permit before you today. This will effect compliance with the Coastal Act.

The Nelson/Donati house is structurally sound and historically important, and is undeniably part of the cumulative fabric defining the special community character of Carmel-by-the-Sea. Denial of this needless demolition request pending establishment of urgently needed studies and protective policies in a coastal plan will leave the applicants with use of a viable, beautiful, and important resource.

Please deny this demolition permit. Thank you very much for your consideration of this important issue.

Sincerely,


Susan Brandt-Hawley

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City Council Transcript
6 January 1998

Re: Ron Donati
RE 97-26/DS 97-25
E/s Scenic Road - W/s San
Antonio between 11th and 12
Avenues
Block A4, Lot 3 and portion of 4

Mayor White: Consideration of an appeal of a decision of the Planning Commission approving the demolition of an existing structure and construction of a new building on a property located on the W/s of San Antonio between 11th and 12th Avenues, that is Block A4, Lots 3 and part of 4. The property is owned by Mr. and Mrs. Ronald Donati and the appellants are Mr. and Mrs. Joel Gambord and Mr. and Mrs. Michael Lach. The Council visited the site yesterday on a regular site visit and viewed the area where the application stems from and the adjoining properties. Staff report.

Senior Planner Rick Tooker: Thank you Mr. Mayor and members of the Council. The project plans are on the rear wall behind the screen, I will lift the screen as the Council deliberates on this issue. The issue under consideration on appeal is whether or not the Planning Commission erred in approving the application for demolition and for the construction of a new home on this project site which fronts both on Scenic Road and on San Antonio. The applications were reviewed by the Planning Commission on November 12, 1997 the demolition request was approved on the Consent Calendar without opposition by neighbors, by the general public or by the Planning Commission. The basis for the decision by the Planning Commission to approve the demolition was two-fold. One: the dwelling did not provide affordable housing opportunities and that the residence previous to the application date was not in need of affordable housing or of low income. Secondly, that the structure was not designated as a community historic, archeological or cultural resource.

It would be appropriate at this time to note for the record that new information has been submitted, however, that there may be historic elements attributable to the project site. Whether or not that information is determined to be important enough to send this back to the Planning Commission for consideration is strictly to the Council at this time. However, it is the staff's recommendation that although information does show that there is potentially historic elements to this site, they do not have bearing on whether or not demolition should be approved. Again, there are only two standards that relate to demolitions. That is was the structure deemed affordable housing prior to the date of application and secondly, was it a designated historic structure. The new information that

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Tooker: In our position, yes that is true it has to be a designated structure in order to interrupt demolition.

Fischer: So it really doesn't matter whether the Preservation Society thinks the building should be saved or not. Right now, the existing Code says that they cannot have any reflection on that property without approval of the owner.

Tooker: That is correct.

Mayor White: Councilman Hydorn.

Hydorn: Thank you Mr. Mayor. This brings up a very interesting set of questions because at the present time we have gone through considerable expense and time and energy to devise new guidelines, we are going through that process right now, to protect Carmel's design character. I am grateful for this case being brought before us because it gives a good chance to take an introspective look at ourselves here. We are not going nearly far enough with our present guidelines about demolitions, how they are carried out and what the guidelines for demolition are.

There are houses that don't fit into the architectural distinction, cultural or affordable housing categories which are representative of the very best, complementary representatives of Carmel's design character and valuable assets to the neighborhood's in which they are located. Those can't be just thrown away, we had an opportunity to tour the Boekenooen house, actually just the living room and I was astounded that someone would want to tear that house down. Any one of us in this room would love to move into that house as it is today. To tear it down is a waste of valuable resources. Think about the people who are homeless in this country today and then you think about people tearing down beautiful homes like this and throwing all that beautiful redwood lumber that is no longer available away. I think that in the future, I know we can't do anything about this case as Councilman Fischer said, but we now need to give the tools to the Planning Commission to prevent demolitions or at least to discuss these demolitions before they are given license to be demolished. We need to develop tools so that the Planning Commission will have these issues brought before them, not just approved over the counter. That is part of the things we can do in Phase II and III of the Design Guidelines Tradition Project and I think we should remember this particular instance as an example. Furthermore, to carry a little

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bit further, we should be concerned not just for the demolition of the building as it exists, but what is going into that space. Is it going to be appropriate to Carmel? Will it follow the design character of Carmel? And frankly if you go up and down Scenic you will find most houses there, the new houses that are being built, belong in Malibu or Zuma Beach or someplace like that. They don't belong in Carmel. We have got a lot of horrible examples in new housing going in there and Carmel is not Rodeo Drive, it is not Malibu, it deserves to be carried on the tradition of housing that we have. That doesn't mean we have to have terrible houses, we have some lovely houses...this was one, the ... house was an excellent house. I would have loved to have raised my family there and it is really a crime to tear that house down but I realize that we don't have the tools at the present time to implement these things but I think it is something we have to give alot of thought to.

Mayor White: Councilmembers, it falls to me to remind you that there seems two issues that have been approached on the table today. The agenda item is a specific appeal and the second question is our preservation methods and rules. I suggest we may want to move forward on the agenda item and conclude that. At the end of that if the Council wishes to make some suggestions that we put on the next agenda that we put on some more specific items with regard to preservation I think it would be appropriate to do it that way. We should finish the agenda item first if it is OK. Any other comments or questions of staff at this point?

Councilman Hazdovac: I am just curious, yesterday when we did go through the house, there was beautiful stone work and alot of nice redwood up on the ceiling and on the walls in the living room. Are there any plans to recycle that material by the present owner of the house?

Tooker: That was brought up yesterday and I think the answer was yes. Maybe it would be appropriate for the project applicants to expand on that, I know they will want to speak.

Hazdovac: Great, thanks.

Mayor White: OK, I think we are ready to move to the public portion of the meeting, public comment...the appellants are given 10 minutes, I understand there are two parties. Each of them have appealed together so there is one 10 minute block of time.

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City Council transcript
July 14, 1998

Re: Ron Donati
RE 97-26/DS 97-25
E/s Scenic Road - W/s San
Antonio between 11th and 12th
Avenues
Block A4, Lot 3 and portion of 4

Mayor White: Page 101, Item C, Consideration of an appeal of the decision of the Planning Commission granting a Negative Declaration and Design Review for the demolition for an existing structure and construction of a new building on property located on the west side of San Antonio between 11th and 12th, Block A4, Lots 3 and part of 4 owned by Mr. and Mrs. Ronald Donati and the appellant is Susan Brandt-Hawley for the Friends of Carmel Cultural Heritage. I understand from the City Attorney that you would like us to do both of these appeals at once.

City Attorney Freeman: As long as there is no objection from either attorney or either representative, I would recommend we do them both because they both deal with the same subject matter.

Mayor White: OK, before we read Number D, page 110 does either attorney have any concerns about this procedure? We would hear everybody at once. Everybody is OK? All right, then Item D, Page 110 consideration of an appeal of a decision of the Planning Commission failing to find that the proposed demolition and rebuilding of a single-family residence located on the west side of San Antonio between 11th and 12th Avenues, Block A4, Lots 3 and portion of 4 is not categorically exempt. The appellants are Mr. and Mrs. Ronald Donati and owners of the property. We need a staff report at this time.

Council member McCloud: May I just clarify the process? We are having two staff reports at the same time and then we will vote on them separately but at the same time?

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Ron Donati
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Livingston: A disagreement...

Brandt-Hawley: The disagreement among experts?

Livingston: Right. I would like that statement please.

Brandt-Hawley: Just to clarify, that is not when CEQA is triggered, it is when an EIR is required, just so you understand what I am speaking about, which is the issue before you. This is a long section, but what I read was the last part of it. If there is disagreement among expert opinion, supported by facts over the significance of an effect on the environment, just on the side CEQA from its very beginning has included historic qualities as part of the environment, the lead agency, the City, shall treat the effect as significant and shall prepare an EIR. Your City Attorney I am sure has a copy of that which is 15064H. It is part of the law, that is the crux of our argument. We have the Preservation Foundation and the Committee as well as the Office of Historic Preservation and the Coastal Commission saying that there is a question about the cumulative impact as well as the local group saying that this property, itself, is a resource and the staff is saying otherwise. We are saying its a dispute among experts.

Livingston: I have a question of staff. First of all, I have heard many times quite often in the community people have said to me, why is it we cannot protect our older houses. They are not saying historic, but our older houses. I hear often the comment that we are losing the character of Carmel. I don't think it is coming from one particular person. The bottom line for me is that I would like to save the house. My question to staff is, is there any way that this can be done. Have we done everything there is to preserve the house and keeping in mind that there is an organization in town which seeks to preserve old housing stock, can this house be moved to another location? The owners are going to have to pay to demolish the house if that is allowed. Would they use that money to move it? Could the owner or the City advertise for someone who would want the house for a Carmel property?

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Tooker: To answer that directly, there are anyone of alternatives such as moving the house if you have someone who is willing to receive the house on the property as we know with the Doorhouse that was recently done. The Doorhouse was not listed on the California Register if I recall, so there are a lot of alternatives that can occur, and certainly the applicant has the right to pursue those or don't unless an EIR is required to study those as alternatives. I think with regard to the first comment prior to the question, the question of older housing being applicable here verses historic housing, even the Historic Preservation Committee has agreed in public hearing, the same individual in this particular case that the protection of older Carmel houses is not what they are seeking. They recognize that you can't through the historic preservation efforts protect every old house and they admitted during the hearing itself that just because this house was old was not why they were protecting it. Their argument was that because of certain criteria that we have listed on the board is why that want to protect it. Staff believes that the Council's decision really here is to key on those elements and say either yes or no because of those elements or any one of those elements, that this is important enough to require an EIR, not simply because it is old.

Mayor White: Councilman Hydorn.

Hydorn: Thank you. I don't feel this house is historic in any way. However in passing it for many years I have always had a warm feeling passing it because I always thought it was a very pleasant house, a family house. This is something that we are beginning to go astray from I think the family housing in Carmel doesn't exist anymore, that is in new housing and many houses are trophy houses that are built just to astound and stun visitors with the wealth that has been poured into them. Unfortunately that particular area of Scenic Drive is the biggest target receiving those arrows. What I propose it that although the house isn't historic, I feel it is a part of that historic tapestry that is woven into the City of Carmel and which is a good part of its character. So what I would like to see when a house like this is proposed for demolition, I would like the City of Carmel to say first we want to see what is going to replace it, we want to make sure it isn't something from Rodeo Drive or Malibu. Something that will fit into the character of the City and I think possibly for this particular application it is to

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City Council Transcript

Ron Donati

14 July 1998

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late to think of things like that now. The Donatis had to operate under the impression that the City had everything in hand and they relied upon the City regulations that were in effect at that time. I don't think it would be wise or fair to deny them the right to demolish the house at this time but what I would like to see would be a Planning Commission review, a re-review of the approved drawings in the light of what I have just spoken so that we can be sure. I don't remember those drawings, I didn't see them for any length of time but I would like to take a look at them now and see whether or not they are possibly inappropriate for that setting. The other house fit comfortably into the neighborhood and when we talk about history and relate it to Carmel, or individual houses, the house that Jack London lived in or George Sterling doesn't really apply I feel in the situation we are talking about here. It is more important to have a house that aids and abets and enriches the historical context of the neighborhood and of all of Carmel which is a number of neighborhoods. So that is my feeling, it is very subjective I know but I think it is a shame to lose some of these houses which are not historically valuable possibly but have, they all contribute in their own way with their own individual styles to that tapestry of Carmel that we love so well.

Mayor White: Councilman McCloud.

McCloud: Taking off where Marshall left off, expanding, there are really two questions, one is the larger context in which we are reviewing the specific issue and I would comment on that first contrary to a couple speakers I think the City has put the money where its mouth is in spending as they heard earlier today \$2,000 out of the discretionary funds to sponsor with the other cities in the Peninsula a historic preservation meeting next month and also the fact that we are pouring in almost \$80,000 to the Design Traditions Project, a large portions of which deal with the character, historically, of the village. So that is, those are, addressed at getting at the issue. Clearly what is pointed out today is that there in an urgency with which we grapple with a competent study of our historic process (change of tape) in town than it is to push it forward in the expo facto nature of going back over this application. I don't see anything historic in the particular house, it is a shame that and we have noted repeatedly that we have decried the nature by which our town is changing by losing the older homes

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and the older character. I have been in this house, I grew up with somebody in that neighborhood, I have played in the house of one of the appellants as well as this house and the one next door so I have personal and very fond memories of that house when the tree used to be in the middle of the street one house down and when you used to drive two ways on Scenic. I regret that we don't still have that ability but I think in this case when you get down from the broad picture to the narrow picture which is, is this house historic, I do not see that it is.

Mayor White: Council Member Livingston

Livingston: I believe there is criteria that tells us that this is an historic house on page 104 we have the criteria: Heritage, Architectural Distinction, Architectural Detail, Architectural Innovation, Unique Site. So I think there is evidence here to make the case that this house is historic. It is sad but true that people in Carmel are buying lots not houses and I just don't think that we can bury our heads in Carmel sand and not come to grips with this, we have been talking about this along time and we are losing the houses one-by one. It is said that the greatest loss of architectural resources in the United States has been in the last hundred years. By the year 2016 we will be without any character in our residential neighborhoods. Historian David McCullough wrote a paper for the National Preservation Conference in 1994 and just excerpting from it he says "we don't want to tear down that significant house, not just because of the house but because of the story. No place that has no history has character. That is it, destroy the past, abuse the past, turn your back from the past, you are turning your back on destroying the past and all we have is the past. Every time we do something to save what is worthwhile in our civilization we are doing something positive, we are not against things we are for something and when we succeed to save something of consequence, something of value then we will be known by that." So I am waiting for that day in Carmel history when we will start saving our buildings, they mean very much to us, the character of our town depends upon those old historic buildings built in the 20's.

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STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
 75 FRONT STREET, SUITE 300
 SANTA CRUZ, CA 95060
 (408) 427-4855
 FAXING IMPAIRED (415) 904-9100

PETE WILSON Governor



June 24, 1998

Planning Commission
 City of Carmel-by-the-Sea
 P.O. Box CC
 Carmel-by-the-Sea, CA 93921

RE Proposed Demolition of Moores (Hudgins) Complex (3 Residences, 2 Garages)
 (Application No. RE-78-5)

Dear Commissioners,

We have become increasingly worried about the continuing trend of demolition-and-rebuild projects in Carmel. Often, what we are being asked to approve (or waive) is the demolition of those earlier, often smaller residences which are so characteristic of Carmel's special community character. This historic character is part of what makes Carmel an important visitor destination. The Coastal Act, in Public Resources Code Section 30253(5), specifically requires the protection of such special coastal communities and their unique characteristics.

What prompts this letter is that it has come to our attention that, because we did not submit a written response to the subject draft Negative Declaration, our staff is somehow perceived to have tacitly approved the conclusions of the draft Negative Declaration (and by inference, the proposed demolition). This is absolutely not true. Our non-response is a symptom not of concurrence, but of our seriously limited staff resources which would be required for thoughtful review and timely response.

Instead, it should be understood that: 1) we appreciate the effort to conform with the CEQA-mandated steps required for review of projects involving potentially historic structures; 2) we don't understand, in this case, in light of the information provided by the Historical Survey, how it was concluded that a Negative Declaration is warranted; and, 3) we continue to be deeply concerned about proposed projects which will erode the essential and authentic character of Carmel-by-the-Sea. Our expectation is that you will be taking a careful approach to the subject project. We know that such deliberations are not easy, and wish you the best.

Sincerely,

Lee Otter
 District Chief Planner
 Central Coast Area Office

cc: Brian Roseth, Planning Director
 State Historic Preservation Office

EXHIBIT 2 p21

R-3-99-035

PRIMARY RECORD

Primary # _____
HRI # _____
Trinomial _____
NRHP Status Code 551

Other Listings LOCAL
Review Code _____ Reviewer _____ Date 1/1

Page 1 of 2

*Resource Name or #: AP#10 291 02 James & Alice Nelson

P1. Other Identifier: Carmel Historic Survey

*P2. Location: Not for Publication Unrestricted a. County Monterey

b. USGS 7.5' Quad _____ Date _____ T _____ R _____ 1/4 of _____ 1/4 of Sec _____ B.M.

c. Address WSan Antonio thru to E Scenic bet 11th & 12th City Carmel, CA Zip 93921

d. UTM: (Give more than one for large and/or linear feature) Zone _____ mE/ _____ mN

e. Other Locational Data: (e.g. parcel #, legal description, directions to resource, elevation, additional UTMs, etc. as appropriate)

Block A4, Lots 3&4

*P3a. Description: (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries.)

This unusual house faces San Antonio Street and is a familiar U-shaped board and batten Craftsman beach house. The roofs are gabled and cross-gabled. The gables are jergin-headed or clipped at the ends. There are two chalk-rock chimneys, the windows are wooden sliders and the doors are multipaned French. The rear of the building has, untypically, two stories following the grade levels, very large for this familiar house style. This facade has three matched three light windows on the upper floor and three unmatched windows on the lower level.

The siting is unique with an apparent one story house on one street and an impressive two story edifice on the other street. There is a formal garden on the Scenic side with brick walks and low-lying junipers and a rather tall rock gate posts with inset oriental tiles. The entrance on San Antonio repeats the chalk-rock gate posts and also paths of the same material, with attractive low, formal planting. Because of its high visibility this house has been a landmark for the last 73 years.

*P3b. Resources Attributes: (List attributes and codes) HP2. Single Family Property

*P4. Resources Present: Building Structure Object Site District Element of District Other (Isolates, etc.)



P5b. Description of Photo: (View, date, etc.)

*P6. Date Constructed/Age and Sources:
 Prehistoric Historic Both
1924

*P7. Owner and Address:
Ernest Boekenogon
3261 Pope Ave.
Sacramento, CA 95821
P--Private

*P8. Recorded by: (Name, affiliation, address)
Carmel Preservation Foundation
P.O. Box 3959
Carmel, CA 93921
Sally McPhail

*P9. Date Recorded: 02/09/1998

*P10. Survey Type: (Describe)
Volunteer

Comprehensive Survey

Report Citation: (Cite survey report/other sources or "none") Leslie Heumann/Glory Ann Laffey

Historic Context Statement

*Attachments: NONE Location Map Sketch Map Continuation Sheet Building, Structure and Object Record
 Archaeological Record District Record Linear Feature Record Milling Station Record Rock Art Record Artifact Record
 Photograph Record Other: (List) _____

EXHIBIT 2
R-3-99-035

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
5 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(8) 427-4863
HEARING IMPAIRED (415) 904-5200



May 12, 1998

Rick Tooker, Senior Planner
City of Carmel-by-the-Sea
Community Planning and Building Department
Post Office Drawer G
Carmel-by-the-Sea, CA 93921

Subject: *Proposed Negative Declaration for the Demolition of the Donati Residence
(State Clearinghouse Number 98041057)*

Dear Mr. Tooker,

Thank you for the opportunity to comment on the above-referenced CEQA document. We have reviewed the findings of the proposed negative declaration and, in general, we believe that the proposed Negative Declaration satisfactorily explores the historical issues involved with the Donati demolition. As you know, historical resources are not explicitly protected by the California Coastal Act. The Coastal Act does, however, protect the community character of special communities such as Carmel -- and historic resources are generally a cornerstone component of what makes a community "special". Sections 30253 and 30251 of the Coastal Act state, in applicable part:

30253(5): New development shall where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality on visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Accordingly, as you move forward with additional project analysis and environmental review, the next related step in the analytical process will be to evaluate the proposed project in terms of its effect, individually and cumulatively, on the overall community character of Carmel. The City of Carmel is a very popular visitor destination as much for the scale and distinctive character of its residential architecture as its renowned commercial shopping area and white sand beaches. In fact, we believe that the special style and character of Carmel is dependent in large part on its residential housing stock and its historic associations.

EXHIBIT 2 p. 23 00 440
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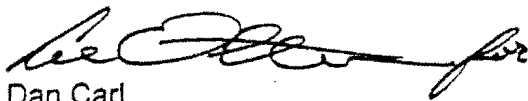
Rick Tooker, City of Carmel Community Planning and Building Department
SCH # 98041057 (Donati Demolition)
May 8, 1998
Page 2

Therefore, we would encourage you to explore not only the historical pedigree of the structure proposed for demolition, but also to examine its relationship to the observed community character of Carmel — particularly given its location within the highly visible Scenic Road view corridor adjacent to Carmel Beach. We can assure you that the Coastal Commission will do the same when this project is brought before them through the subsequent coastal permitting process.

Thank you for the opportunity to comment on the proposed negative declaration. Please be advised that due to its location, this project is not covered within the City of Carmel's Categorical Exclusion. As such, a coastal development authorization from the Coastal Commission will be required for the **whole** project (i.e., both the demolition and rebuild). If the applicant has yet to be made aware of this requirement, please inform them as soon as possible. As always, if you should have any questions regarding this matter, please contact us at (408) 427-4863.

Sincerely,

Lee Otter
District Chief Planner



Dan Carl
Coastal Planner

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cc: Chris Belsky, State Clearinghouse (SCH # 98041057)

00 411

OFFICE OF HISTORIC PRESERVATION
 DEPARTMENT OF PARKS AND RECREATION
 P.O. BOX 942834
 SACRAMENTO 94296-0001
 (916) 223-4824
 FAX (916) 228-4824

October 31, 1997

TW 9B

Dan Carl, Coastal Planner
 California Coastal Commission
 Central Coast Area Office
 726 Front St., Suite 300
 Santa Cruz, CA 95060

Subject: Permit Action 1-97-066 Demolition of single-family dwelling; 2 Delores St. Carmel, Monterey County

Dear Mr. Carl:

The above referenced project has come to the attention of the State Office of Historic Preservation because the property in question has been identified as a property significant in the history of the City of Carmel. The OHP disagrees with portions of the Coastal Commission staff analysis and the conclusion that the proposed project does not have any significant adverse impact on the environment within the meaning of CEQA. Further, we believe that the City of Carmel is in error in finding the proposed project to be categorically exempt from CEQA.

The State Office of Historic Preservation has broad authority for the implementation of both federal and state programs for historic preservation in California. The SHPO makes determinations of eligibility for listing on the National Register of Historic Places and the California Register of Historical Resources. The State Office is mandated under Public Resources Code section 5024.6(j) to review and comment on the impact on historical resources of publicly funded projects and programs undertaken by state and local agencies.

Historical Status of the Property

The staff report indicates that the property is identified as significant in the City of Carmel Historic Survey (1993), but is not a city designated structure due to owner objection to such listing, and is therefore not protected under the Carmel Municipal Code.

While the property may not be offered any special protections under the local code, it may well be entitled to protection under CEQA as a property eligible for listing on the California Register of Historical Resources (PRC 5024.1). The California Register is an authoritative guide to be used by state and local

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agencies, private groups, and citizens to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change. Properties which may be eligible for the California Register include locally significant historical resources identified in historical resource surveys which are evaluated as having a significance rating of Category 1-5 on a DPR Form 523 (PRC 5024.1 (e) (3), (g); see Primary Record Form, Exhibit No. D-2). The California Register recognizes properties eligible for listing, but not listed because of owner objection.

It would appear to this office that the McDougal cottage may be eligible for listing in the California Register as indicated above, and the staff report should specifically address this issue.

The staff report further asserts that the existing structure has been substantially altered and was mostly replaced in 1975. The evidence offered in support of this contention is the statement of the owner (Letter, August 29, 1997, Exhibit No. E), who also is the demolition permit applicant. However, the evidence in the record would support the opposite conclusion. In 1993 the house was surveyed by a professional architectural historian as a part of the City of Carmel historic resource survey. This survey found the house to be historically significant and to retain a sufficient degree of integrity that it is able to convey its historical significance. The city in adopting the survey apparently concurred with the architectural historian's finding that the property is historically significant. Under PRC section 21084.1 a property identified in a historic resource survey as locally significant is "presumed to be historically or culturally significant [for purposes of CEQA], unless a preponderance of the evidence demonstrates that the resource is not historically or culturally significant." The SHPO does not believe that anything presented in the staff report or in the attached exhibits meets this standard.

Impact on the Environment

In PRC 5020.1(q) "substantial adverse change" is defined as demolition, destruction, relocation or alteration such that the significance of the historical resource would be impaired. A project that would cause such substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment (PRC 21084.1).

While a newly constructed residence consistent with City Design Guidelines that maintains the special character of the city may satisfy Coastal Act requirements to maintain the city as a "special visitor destination," it does not mitigate the physical impact on the environment of the loss of a significant, and irreplaceable historic building under CEQA. In *League for the Protection of Oakland's Architectural and Historic Resources v. City of Oakland* (1997) Cal. App. 4th 896 the court held that the effects of the demolition of an historically significant building are not "reduced to a level of insignificance by a proposed new

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building with unspecified design elements which may incorporate features of the original architecture...."

Further, while OHP concurs with the Coastal Commission staff report conclusion that the continued loss of such structures as the McDougal cottage could negatively impact the special character of Carmel, we would also add that the cumulative impact of such loss could adversely impact the historic character and integrity of the city, and this should be addressed consistent with CEQA.

The OHP would conclude that the demolition of the McDougal cottage would be a substantial adverse change in the significance of an historical resources which would not be mitigated by design review control of new construction. The project would therefore cause a significant adverse impact on the environment within the meaning of PRC 5020.1(q) and 21084.1

Local Review

The OHP believes that the City of Carmel is in error in issuing a categorical exemption for the project. While the property may not be entitled to any special protection under local code, as the lead agency under CEQA the city should evaluate the significance of the resource under the appropriate criterion (the California Register), and assess the impact of demolition as defined in the Public Resources Code. Section 21084 (e) specifically prohibits the use of a categorical exemption for projects which would cause a substantial adverse change in an historical resource. In the view of the OHP the city should prepare an EIR in which alternatives to the proposed project which would be less damaging to the environment could be considered.

In light of the above, the OHP requests that the Coastal Commission not approve the demolition permit and that the matter be reconsidered through further staff review and local CEQA action.

Thank you for the opportunity to comment on the above project. If you have any questions please contact Carol Roland (916) 653-9514 of the OHP staff.

Sincerely,


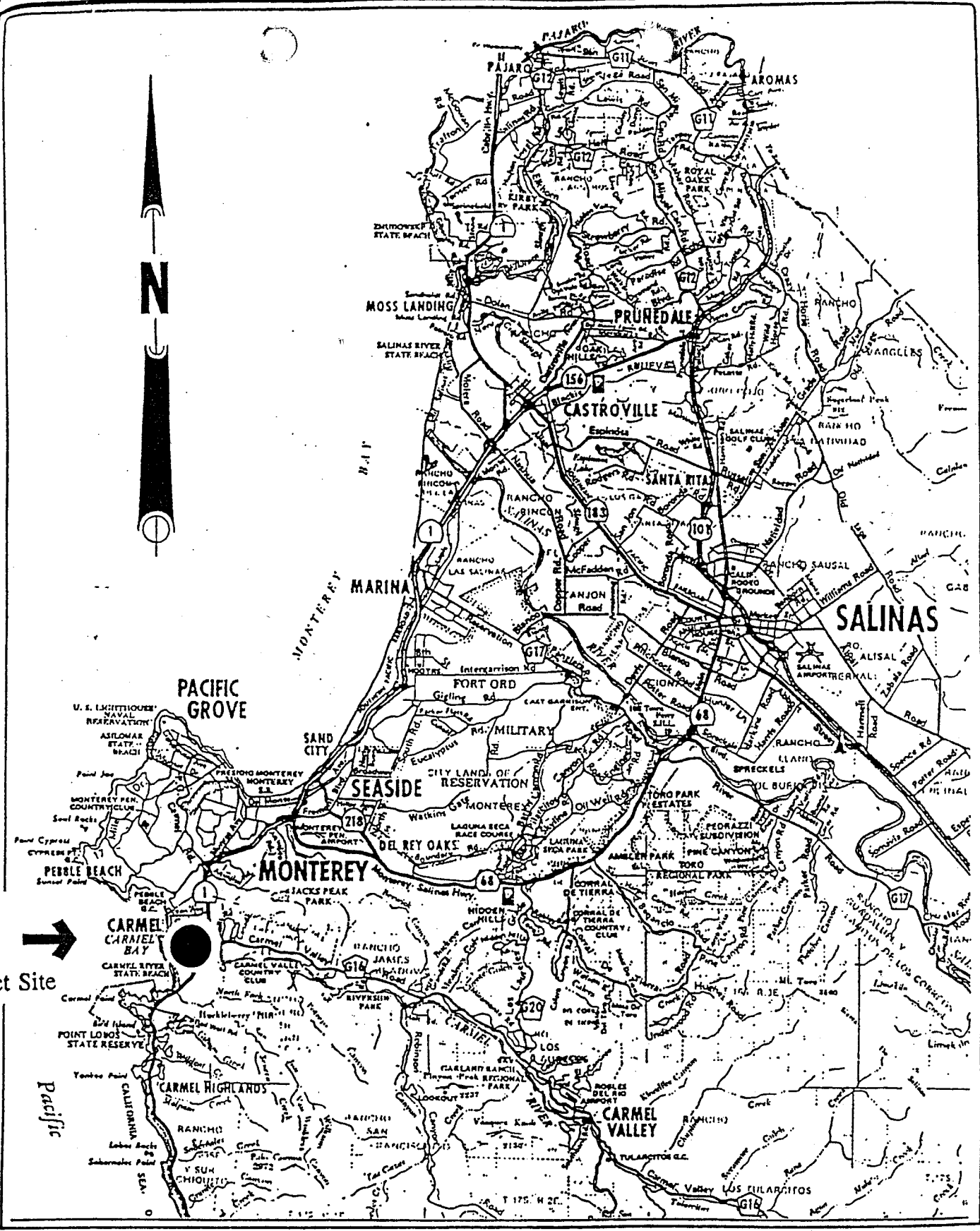

Cheryl Widell
State Historic Preservation Officer

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Project Site

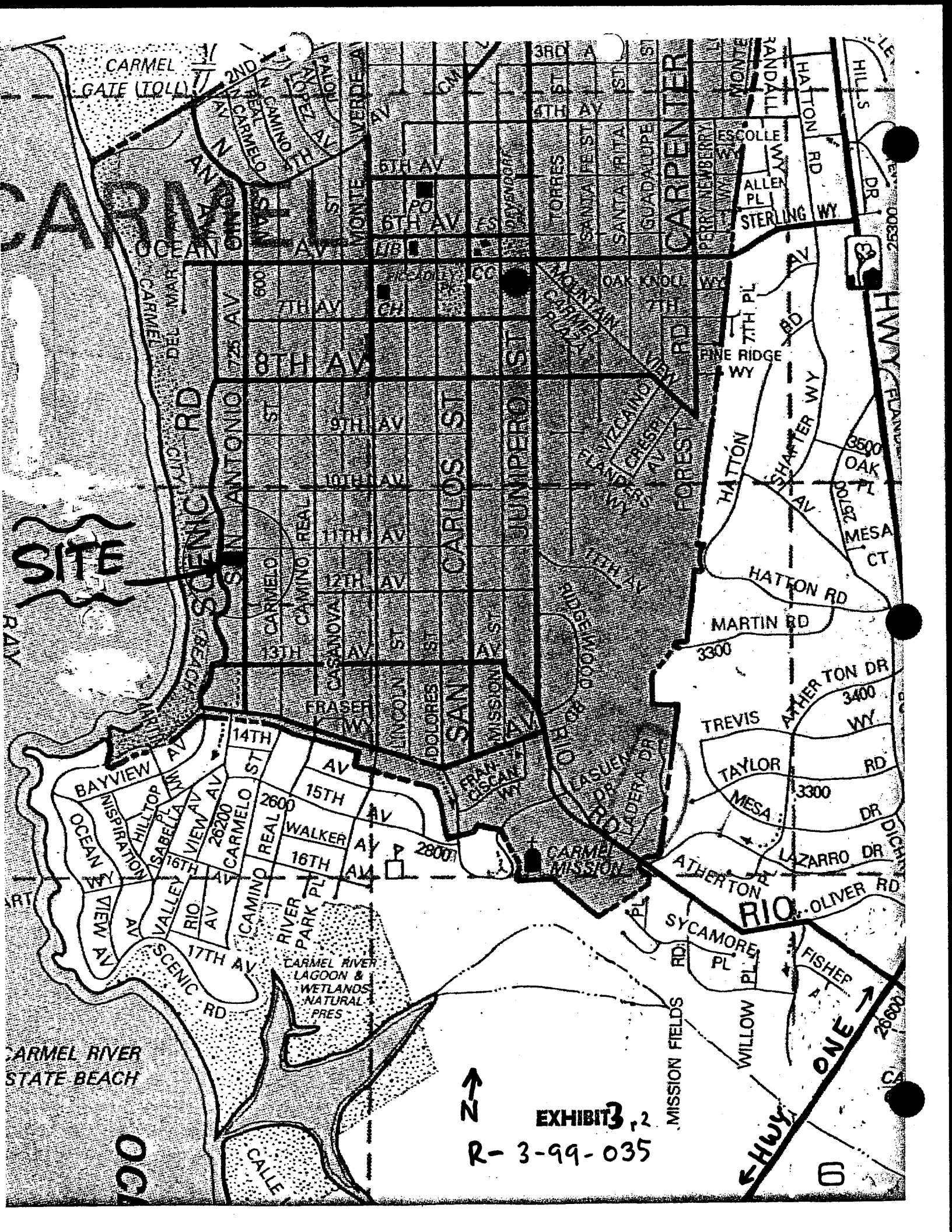


REGIONAL LOCATION

Figure 1

EXHIBIT 3

R-3-99-35



CARME

SITE

CARMEL RIVER STATE BEACH

OCEAN

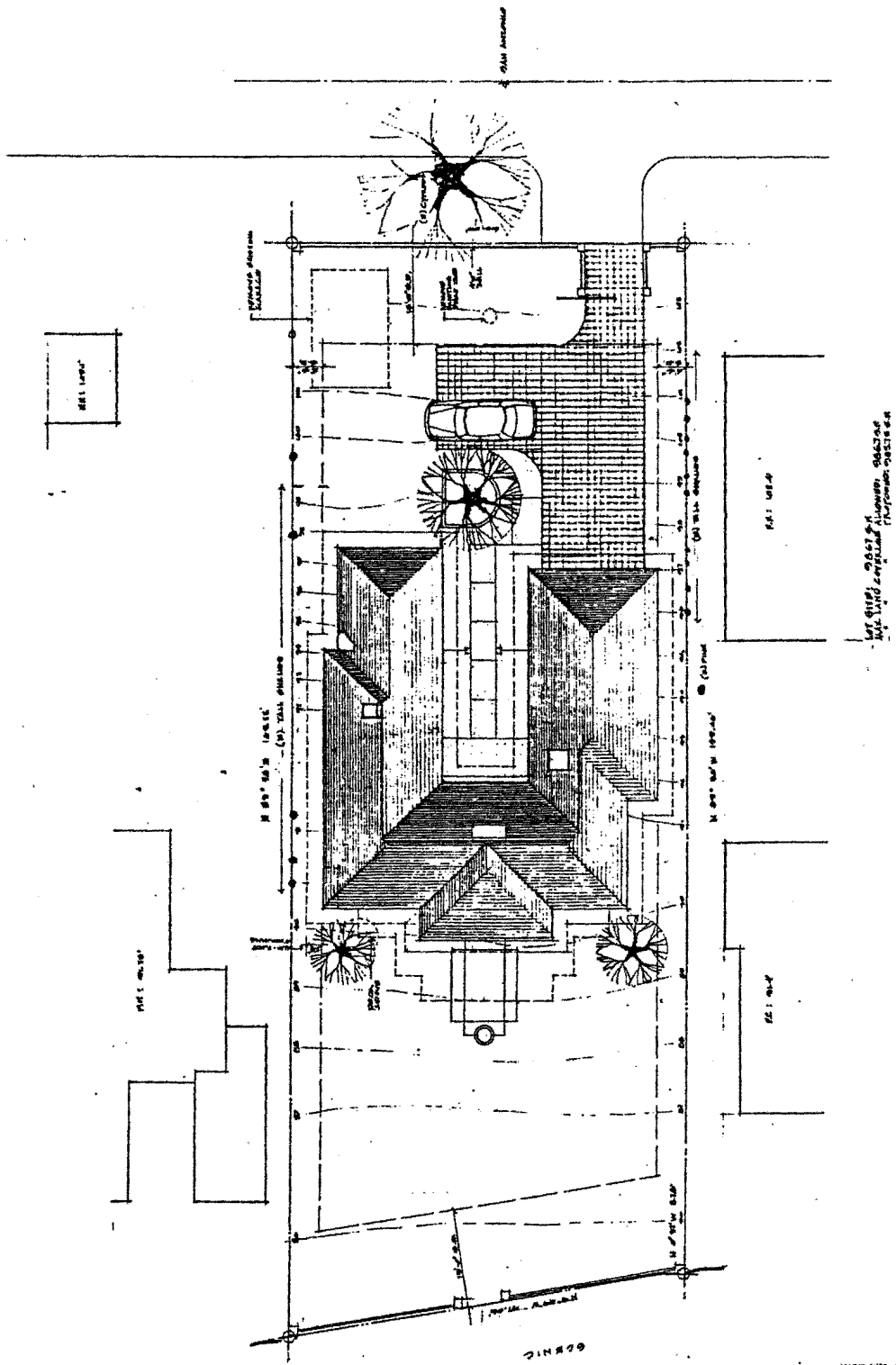


EXHIBIT 3, 2

R-3-99-035

HWY ONE

CA



RESIDENCE FOR MR. & MRS. KON DONATI

SCALE: 1/8" = 1'-0"

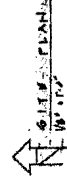
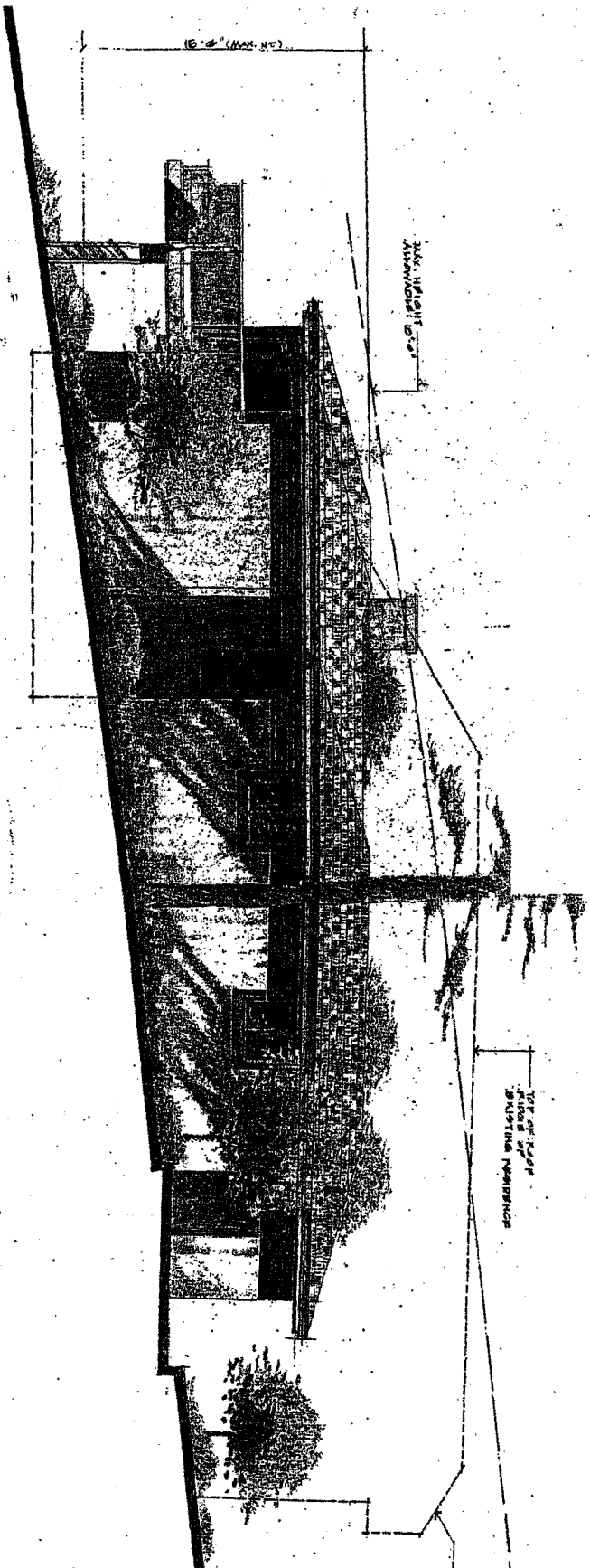


EXHIBIT 3
R-3-99-035

BEACH

SOUTH ELEVATION



R-3-99-035

EXHIBIT 3, 2

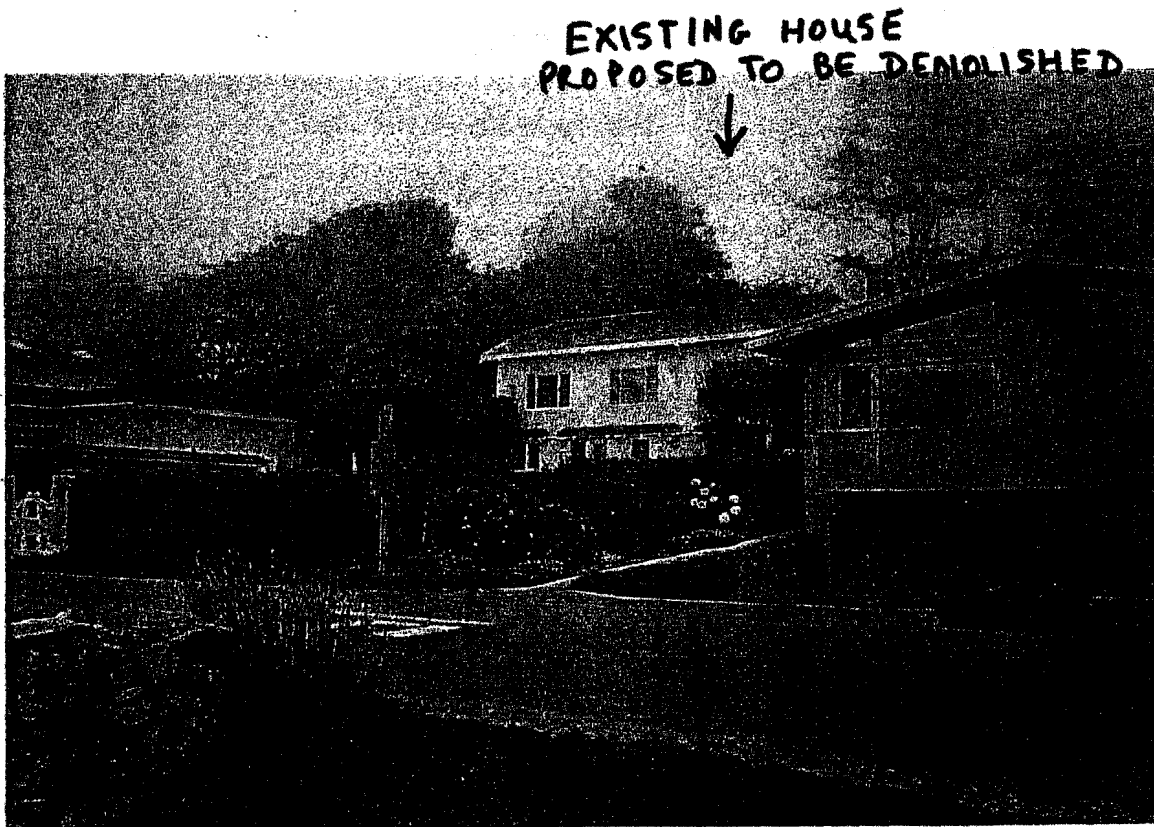


EXHIBIT 3 , 3

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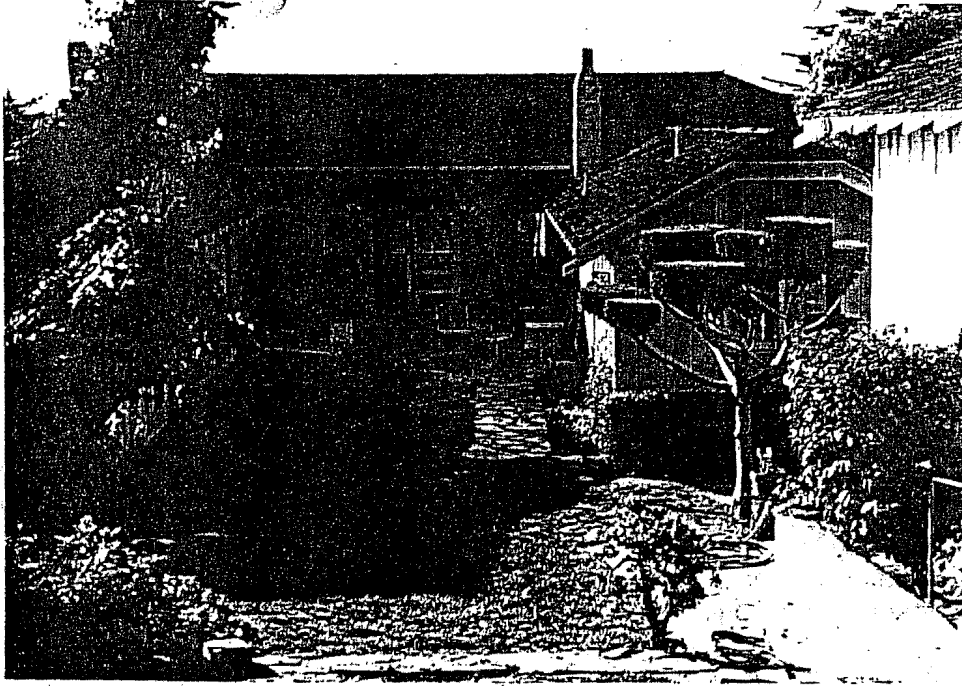
SAN ANTONIO AVE.



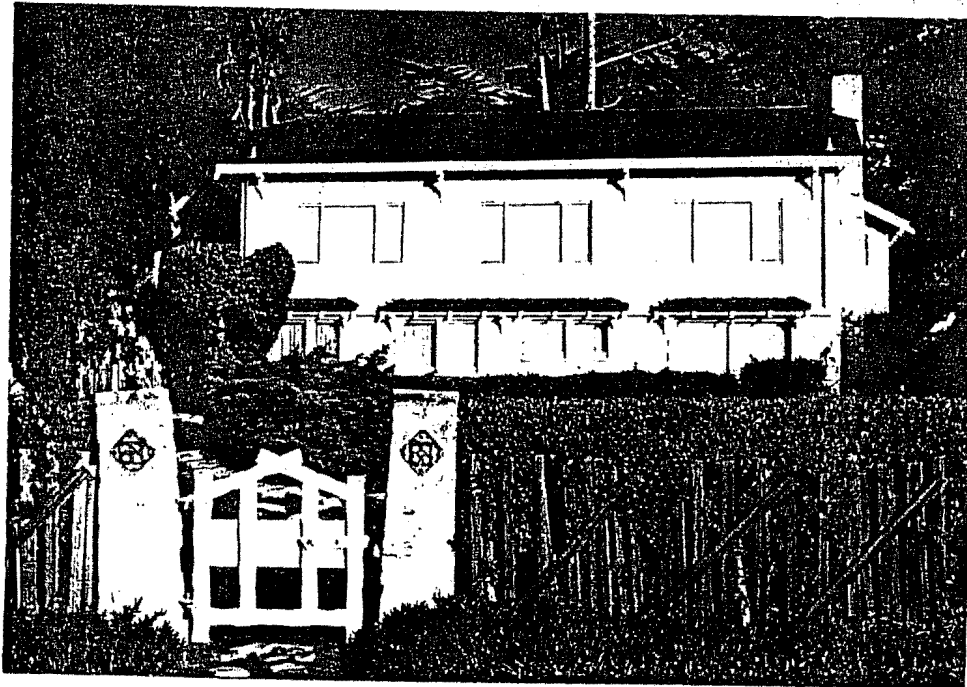
SCENIC ROAD

EXHIBIT 3

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Front - San Antonio



Back - Scenic

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