

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(831) 427-4863



W 20a

Request filed: 9/10/99
Staff: R Hyman
Staff report: 10/14/99
Hearing date: 11/3/99

STAFF REPORT REQUEST FOR RECONSIDERATION

Application Number A-3-MCO-99-036-R

Applicants..... Richard and Marsha CAIN

Project location..... 30830 Aurora Del Mar (Lot # 12 Otter Cove), west side of Highway 1, Big Sur Coast, Monterey County; AP# 243-351-01

Project description 1,552 square foot second story addition, 180 sq. ft. breezeway enclosure, and a 900 square foot garage addition to an existing 3,317 square foot single story single family residence (see Exhibit 3 of Exhibit B).

Commission Action Second story addition **denied** and breezeway enclosure and garage addition **approved with conditions**. August 11, 1999.

Procedural Note:

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Sections 13109.1 et seq.).

The regulations state further that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627 which states in applicable part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

Summary of Staff Recommendation:

Staff recommends that the Commission deny the reconsideration request. The Commission approved a permit for only part of the requested addition. The Commission made clear and supportable findings as to why the second story was inconsistent with Monterey County's local coastal program. The applicants argue that there are errors of fact and law. Staff has reviewed each of these contentions and could find no such errors. Furthermore, the primary reason that the second story was denied was because of its visual impact. Even if the applicants' contentions were all true, this substantive basis for denial of the second story would remain.

Applicants' Contentions

The applicants contend that "The Coastal Commission's decision was based on several factual errors and misrepresentations which were contained in the staff report," namely:

1. "The Commission based its decision on incorrect information from the staff that an alternative location existed on-site to accommodate the Cains' addition."
2. "The proposed addition is fifteen and one-half (15 1/2) feet above natural average grade, which has the visual effect of a one-story structure, as seen from Highway One."
3. "Staff's statement that Commission approval of the Cain addition would have a precedential effect on the remaining homes along the Big Sur coast is an error of fact."
4. "Staff's interpretation and application of the critical viewshed policy on the Cain parcel is an error of law."

Each of these claims is examined in detail in the findings below. The full text of the Applicants' reconsideration request is attached as Exhibit A.

Staff Recommendation

The staff recommends that the Commission **DENY** the request for reconsideration.

I. Motion and Resolution:

The staff recommends that the Commission vote "**NO**" on the following motion and adopt the following resolution.

"I move that the Commission grant a reconsideration of the conditional approval of coastal permit A-3-MCO-99-038."

A majority of Commissioners present is needed to pass the motion.

DENIAL: The Commission hereby denies the request for reconsideration of the proposed project on the grounds that no new relevant evidence has been presented nor has there been an error of fact or law with the potential of altering the Commission's initial decision.

II. Findings and Declarations:

The Commission finds and declares as follows:

A. Background:

The applicants applied to Monterey County for an addition to a house that had been originally been permitted in 1992 and subsequently constructed as a one-story structure. The Zoning Administrator approved the coastal permit, which was appealed by two Coastal Commissioners. The Commission found "substantial issue" and then conditionally approved a scaled-down project, requiring that there be no second story. The project is located in the Otter Cove tract on

A-3-MCO-99-036 Cain house addition reconsideration

the Big Sur Coast where scenic resource protection has been an on-going concern. The basis for denial of the second story addition was its adverse visual impact. The Commission's findings cited provisions of the Monterey County local coastal program in support of its decision. The Commission-adopted staff report for coastal development permit (CDP) A-3-MCO-99-036 is attached in full as Exhibit B. For any references below to the Commission's August 11, 1999 findings on this project, please refer to Exhibit B.

B. Contentions and Responses:

1. Applicants' First Claim Of Factual Error

a. Text of Applicants' Claim:

THE COMMISSION BASED ITS DECISION ON INCORRECT INFORMATION FROM THE STAFF THAT AN ALTERNATIVE LOCATION EXISTED ON-SITE TO ACCOMMODATE THE CAINS' ADDITION.

The staff report stated: "It appears possible to add on to the front of the house even further than proposed without increasing visibility. This would be in the area that is now the courtyard and may involve some realignment and redesign of the garage and driveway. " (Staff report, page 21.) It is impossible, however, to construct this addition on this portion of the property.

The Carmel Highlands Fire Protection District has strict fire access requirements for driveways exceeding one hundred fifty (150) feet in length. The Fire Department has reviewed our request to consider allowing the addition for the project to be built in the required fire apparatus turnaround. As reflected in the attached letter, the Fire Department insists the project conform to the initial building plans, which were reviewed on October 14, 1988. These plans designate the area in front of the house as a fire access turnaround.

The remainder of the Cain property is either encumbered by scenic easements or contains the septic system for the home. Contrary to staff's representation, there is no alternative on the property to locate this proposed addition. Due to this error of fact in staff's recommendation, we respectfully request a reconsideration of the coastal development permit application on behalf of Richard and Marsha Cain.

Staff's representation is an "error of fact" which warrants reconsideration of the Commission's decision. Staff's presentation to the Commission mistakenly assumed that the project could be redesigned and constructed in a manner that would be consistent with Fire District regulations.

b. Commission's Response:

The applicants claim an "error in fact" because they assert that it is impossible to add on to the front of the house but that the Commission's staff report stated that it is, in fact, possible to do

so. However, there is no error in fact.

First, the Commission's findings do not state that there **can** be an addition in front of the house, but only that it "appears possible" to add on to the front of the house. In addition, the adopted conditions of approval specifically address the need for future review of revised addition designs. Thus, the findings and conditions implicitly and explicitly acknowledge that any one of several factors, including fire protection requirements, may not allow such a design, but that this question would be subject to further review.

Indeed, the typical course of action in cases where the Commission denies a project alternative because another alternative appears feasible is that the project returns to its original forum (in this case Monterey County) where it can be reviewed on its merits with all of the facts presented. In this case, in an effort to save the applicants some time and expense, the Commission specifically provided for its own Executive Director to be able to approve an alternative addition upon review of revised plans (see Condition #1). The conditions of approval also note a third course of action, which is to bring the matter of an addition back to the Commission if there were to be a dispute with the Executive Director's sign-off of an alternative addition. In short, the Commission's findings are not factually erroneous because they (1) clearly acknowledge alternative designs as a "possibility"; and (2) explicitly establish a process for evaluating alternative addition designs.

It should also be noted that faced with the staff recommendation, the applicants could have asked to have the original matter before the Commission continued so that alternative addition designs could have been explored. The applicants did not choose to avail themselves of this opportunity; they requested and received a vote on their originally proposed project.

Second, the applicants' assertion that it is impossible to construct an alternative addition in front of the house due to fire protection requirements is itself based on an incorrect reading of the Fire Protection District's requirements. The reconsideration request interprets an attached letter from the Fire Protection District as "insist[ing that] the project conform to the initial building plans." However, the last paragraph of the Fire District's letter states, in part, "...we need to maintain our turnaround as originally required when the initial building plans were reviewed on October 14, 1988 and as required by Monterey County General Plan and Monterey County Ordinance 3600." According to Assistant Chief Cindy Nagai of the Fire Protection District, as long as the turnaround requirements are met, the building configuration can change (Personal communication, Cindy Nagai to Rick Hyman, 10/5/99).

The Commission has reviewed the turnaround requirements in effect for both for the original permit and for current projects. They are very similar. Exhibit C1 contains the fire department requirements in effect in 1988 for the original house permit, and Exhibit C2 contains the fire department requirements attached to the Cain addition application in 1998. The Commission notes that the requirements (either version) can potentially be met in a different site configuration than currently exists on the applicants' site, potentially leaving room for a house addition. In other words, if an addition is constructed, then a commensurately revised driveway turnaround (i.e., the driveway terminus) would be installed as well (see Exhibit D for an example). The Commission recognizes that complementary work may be necessary such as regrading the driveway, relocating the septic system, and/or changing the garage location and design. Nonetheless, the Fire District's requirements may be potentially met, and the Fire District's letter is not evidence that is impossible to construct an alternative addition, as the reconsideration request asserts.

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Furthermore, there is no obligation for the Commission's findings to state that there **can** be an addition. The Commission approved part of the applicants' request and denied part on the merits of the case, not primarily on whether there was an alternative available. The findings clearly indicate that there is no Constitutional nor other right entitling the applicants to all the square footage for which they have applied.

In conclusion, the Commission finds that the Applicants' first claim of factual error, that "the Commission based its decision on incorrect information from the staff that an alternative location existed on-site to accommodate the Cains' addition," is not supported by the information in the record nor by that submitted by the applicants.

2. Applicants' Second Claim Of Factual Error

a. Text of Applicants' Claim:

THE PROPOSED ADDITION IS FIFTEEN AND ONE-HALF (15 1/2) FEET ABOVE NATURAL AVERAGE GRADE, WHICH HAS THE VISUAL EFFECT OF A ONE-STORY STRUCTURE, AS SEEN FROM HIGHWAY ONE.

Staff asserts that the project consists of a one thousand five hundred fifty-two (1,552) square foot "second story" addition. However, after construction, the proposed addition will only be fifteen and one-half (15 1/2) feet above natural average grade, fourteen and one-half (14 1/2) feet below the maximum height allowed in Otter Cove. The house is substantially lower than fifteen and one-half (15 1/2) feet in appearance from Highway One because the topography of the Cain site slopes upward towards the highway. Typically, the height of a two-story structure on a level surface is twenty-five (25) to thirty (30) feet. The visual effect of the proposed addition from the highway would be that of a one-story structure and, as viewed from Highway One, is only ten and one-half (10 1/2) feet high. Staff's description of the home as a two-story addition when viewed from Highway One is also an error of fact which warrants reconsideration of the Commission's decision.

b. Commission's Response:

First, there is no error in fact in stating that the proposed addition is "two-story." The Commission possesses and reviewed a set of plans that accompanied the application to the County. They show a "new second story." If this description is erroneous, then the error lies with the applicants, not with the Commission. In addition, the applicants' submitted elevations clearly show two stories. The County permit consistently described the project as a "second story addition."

Second, the applicants' reconsideration request statement that the effect of the proposal on the Highway One view will be of a one-story may well be true, but it is an irrelevant point. One story houses can vary greatly in height; so can two-story homes. The issue is not the number of stories, but rather its height and impact. In its review of the original application, the Commission clearly had the height information and visual representations available in making its decision.

The adopted findings were based on the impacts of the proposed addition design on sensitive coastal resources (critical viewshed).

In conclusion, the Commission finds that the Applicants' second claim of factual error, that "the proposed addition is fifteen and one-half (15 1/2) feet above natural average grade, which has the visual effect of a one-story structure, as seen from Highway One." is not a factual error. Because the effect was not characterized in a certain way is not an error in fact.

3. Applicants' Third Claim Of Factual Error and Error in Law

a. Text of Applicants' Claim:

STAFF'S STATEMENT THAT COMMISSION APPROVAL OF THE CAIN ADDITION WOULD HAVE A PRECEDENTIAL EFFECT ON THE REMAINING HOMES ALONG THE BIG SUR COAST IS AN ERROR OF FACT.

The Appeal states that by allowing the Cain addition, there will be "enormous pressure" on the "80 to 100 houses elsewhere along the Big Sur coast" to construct larger, more visible homes. The Appeal further states that the approval of the Cain application would result in an adverse precedential effect of allowing visible additions (Staff Report, page 20). These statements are entirely untrue and constitute an error of fact and law.

In fact, the Cain parcel is located in the Otter Cove exception area along the Big Sur Coast. The only other exception area within the Big Sur Coast Land Use Plan boundaries is a similarly sized residential enclave known as Rocky Point, which is already developed. The Coastal Commission's approval of an addition in the Otter Cove exception area will not result in an "adverse precedential effect" on parcels in the "critical viewshed" areas because those parcels are subject to the development restriction that prohibits development which may be visible from Highway One and its turnouts. Other parcels within the two exception areas are subject to the stringent development criteria for each respective exception area.

b. Commission's Response:

There is no error in fact nor in law from stating that the Cain second story addition will have a precedential effect on future additions. The applicants state that the parcel is located within the Otter Cove exception area. As explained in finding 4 below, the applicants are confusing and misrepresenting the terms "critical viewshed" and "exception." The Commission literally reads and has found the local coastal program house addition policy as applying to all additions and the exception policy as not applying to additions. Based on this reading, there is no error in fact in its finding regarding precedent. The Commission notes that its appellant authority is limited, not all additions in the viewshed are even appealable, and of those that are, the County still has initial decision-making authority. Therefore, the Commission's decisions in this regard can be seen to be precedential.

A-3-MCO-99-036 Cain house addition reconsideration

However, even if the applicants are correct in their policy interpretation, the policy to which they refer applies to the 17 lots in Otter Cove plus the 25 lots in Rocky Point which, although not literally 80 to 100, represents a substantial number of potential residential additions. Thus, there would still not be an error in finding an adverse precedent from approving a second story addition.

Finally, whether or not and to what extent the Commission's decision would be precedential was not the main factor in its decision. The Commission denied the second story addition foremost on the basis of its adverse visual impact.

In conclusion, the Commission finds that the Applicants' third claim of error in fact and in law, that "staff's statement that Commission approval of the Cain addition would have a precedential effect on the remaining homes along the Big Sur coast is an error of fact," is not supported by the information in the record nor by that submitted by the applicants.

4. Applicants' Fourth Claim Of Error in Law

a. Text of Applicants' Claim:

STAFF'S INTERPRETATION AND APPLICATION OF THE CRITICAL VIEWSHED POLICY ON THE CAIN PARCEL IS AN ERROR OF LAW

Staff contends that the "project site is located in Big Sur Coast's critical viewshed" (Staff report, page 15). According to staff, the proposed addition violates Policies 3.2.3. A. and 3.2. 1. of the Big Sur Coast Land Use Plan. Staff dismissed the "Otter Cove" exception which dictates development of the Cain parcel.

The Cain property is located in Otter Cove, an area of Big Sur which was specifically excluded from the critical viewshed policy of the Big Sur Coast Land Use Plan. Staff's application of the critical viewshed policy on the Cain property is an error of law that warrants reconsideration of the development permit.

b. Commission's Response:

There is no error in law in applying the critical viewshed policy to the Cain project. First, the parcel is in the critical viewshed, according to the *Big Sur Coast Land Use Plan* and the County staff report. If the applicants believed that the parcel is not in the critical viewshed, then they should have appealed the County's decision asserting that it was in the viewshed.

Second, the referenced exception policy does not apply to additions, which the subject project was. The applicants disagree and made this disagreement known to the Commission. The Commission based its decision on what the policy literally says, not on the applicant's selective interpretation of the policy. Thus, there is really no question of interpretation of what policy to apply. However, for the sake of argument, assuming there was a difference in policy interpretation, where there is a difference in policy interpretation, it is the Commission's duty, through the appeal process, to resolve the interpretation question. Since, that is what the

Commission's findings have done, there is no error in law, rather the Commission has followed the proper procedures.

Third, although the Commission disagreed with the applicants' interpretation, Commissioners nonetheless examined this argument thoroughly. The policy cited by the applicants does not exempt developments from having to comply with the policy, as the reconsideration request would have one believe, it simply sets standards to be followed, different than standards applied elsewhere in the critical viewshed. The Commission found that were these different standards to apply, they would not have affected the Commission's decision; in other words, the Commission's decision complies with the standards that the applicants think govern in this case.

In conclusion, the Commission examined all of the applicants' claims according to the appeal process established in by law. The Commission adopted findings drafted by its staff addressing all of the points that this reconsideration addresses. **Therefore, the Commission finds that the Applicants' fourth claim of error in law, that "staff's interpretation and application of the critical viewshed policy on the Cain parcel is an error of law," is not supported by the information in the record nor by that submitted by the applicants.**

Exhibits

Exhibit A: Applicants' request for reconsideration

Exhibit B: Commission-adopted A-3-MCO-99-036 staff report

Exhibit C Driveway turnaround requirements: 1988 and current

Exhibit D Illustration of alternative addition

Anthony L. Lombardo
Jeffery R. Gilles
Derinda L. Messenger
Timothy J. Minor
James W. Sullivan
Jacqueline M. Zischke
Vanessa W. Vallarta
Wendy R. Elliott
Todd D. Bessire
Joseph M. Karnes
Steven D. Penrose
Lynne M. Nottoli
Jason S. Retterer

Edward G. Bernstein
Of Counsel

RECEIVED
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A PROFESSIONAL LAW CORPORATION
Attorneys At Law

SEP 10 1999
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

September 8, 1999

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VIA FACSIMILE

RECEIVED

SEP 9 1999

CALIFORNIA
COASTAL COMMISSION

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

Re: Richard and Marsha Cain Request for Reconsideration
(Appeal No. A-3-MCO-99-036)

Dear Mr. Douglas:

On behalf of our clients, Richard and Marsha Cain, we respectfully request a reconsideration of the Coastal Commission's decision to deny the Cains' proposed second-story addition to a home in the Otter Cove subdivision within the Big Sur Coast area.

This request for reconsideration is being made pursuant to Public Resources Code §30627 and California Code of Regulations, Title 14, Chapter 5, §§ 13109.1 through 13109.6. The Cains request a reconsideration of the terms and conditions of the Coastal Development Permit that has been granted (Public Resources Code §30627(a)(2)). The Commission's final decision on the Cains' coastal development permit application should be reconsidered because an "error of fact or law" has occurred and the circumstances demonstrate the potential of altering the Commission's initial decision (Public Resources Code §30627(b)(3)). The Coastal Commission's decision was based on several factual errors and misrepresentations which were contained in the staff report.

THE COMMISSION BASED ITS DECISION ON INCORRECT INFORMATION FROM THE STAFF THAT AN ALTERNATIVE LOCATION EXISTED ON-SITE TO ACCOMMODATE THE CAINS' ADDITION.

The staff report stated: "It appears possible to add on to the front of the house even further than proposed without increasing visibility. This would be in the area that is now the

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EXHIBIT NO. A
APPLICATION NO. A-3-MCO-99-36-B
Reconsideration Request

Mr. Peter Douglas
Executive Director
California Coastal Commission
September 8, 1999
Page 2

courtyard and may involve some realignment and redesign of the garage and driveway." (Staff report, page 21.) It is impossible, however, to construct this addition on this portion of the property.

The Carmel Highlands Fire Protection District has strict fire access requirements for driveways exceeding one hundred fifty (150) feet in length. The Fire Department has reviewed our request to consider allowing the addition for the project to be built in the required fire apparatus turnaround. As reflected in the attached letter, the Fire Department insists the project conform to the initial building plans, which were reviewed on October 14, 1988. These plans designate the area in front of the house as a fire access turnaround.

The remainder of the Cain property is either encumbered by scenic easements or contains the septic system for the home. Contrary to staff's representation, there is no alternative on the property to locate this proposed addition. Due to this error of fact in staff's recommendation, we respectfully request a reconsideration of the coastal development permit application on behalf of Richard and Marsha Cain.

Staff's representation is an "error of fact" which warrants reconsideration of the Commission's decision. Staff's presentation to the Commission mistakenly assumed that the project could be redesigned and constructed in a manner that would be consistent with Fire District regulations.

THE PROPOSED ADDITION IS FIFTEEN AND ONE-HALF (15½) FEET ABOVE NATURAL AVERAGE GRADE, WHICH HAS THE VISUAL EFFECT OF A ONE-STORY STRUCTURE, AS SEEN FROM HIGHWAY ONE.

Staff asserts that the project consists of a one thousand five hundred fifty-two (1,552) square foot "second story" addition. However, after construction, the proposed addition will only be fifteen and one-half (15½) feet above natural average grade, fourteen and one-half (14½) feet below the maximum height allowed in Otter Cove. The house is substantially lower than fifteen and one-half (15½) feet in appearance from Highway One because the topography of the Cain site slopes upward towards the highway. Typically, the height of a two-story structure on a level surface is twenty-five (25) to thirty (30) feet. The visual effect of the proposed addition from the highway would be that of a one-story structure and, as viewed from Highway One, is only ten and one-half (10½) feet high. Staff's description of the home as a two-story addition

Mr. Peter Douglas
Executive Director
California Coastal Commission
September 8, 1999
Page 3

when viewed from Highway One is also an error of fact which warrants reconsideration of the Commission's decision.

STAFF'S STATEMENT THAT COMMISSION APPROVAL OF THE CAIN ADDITION WOULD HAVE A PRECEDENTIAL EFFECT ON THE REMAINING HOMES ALONG THE BIG SUR COAST IS AN ERROR OF FACT.

The Appeal states that by allowing the Cain addition, there will be "enormous pressure" on the "80 to 100 houses elsewhere along the Big Sur coast" to construct larger, more visible homes. The Appeal further states that the approval of the Cain application would result in an adverse precedential effect of allowing visible additions (Staff Report, page 20). These statements are entirely untrue and constitute an error of fact and law.

In fact, the Cain parcel is located in the Otter Cove exception area along the Big Sur Coast. The only other exception area within the Big Sur Coast Land Use Plan boundaries is a similarly sized residential enclave known as Rocky Point, which is already developed. The Coastal Commission's approval of an addition in the Otter Cove exception area will not result in an "adverse precedential effect" on parcels in the "critical viewshed" areas because those parcels are subject to the development restriction that prohibits development which may be visible from Highway One and its turnouts. Other parcels within the two exception areas are subject to the stringent development criteria for each respective exception area.

STAFF'S INTERPRETATION AND APPLICATION OF THE CRITICAL VIEWSHED POLICY ON THE CAIN PARCEL IS AN ERROR OF LAW.

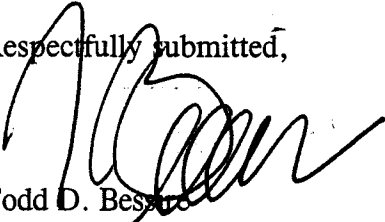
Staff contends that the "project site is located in Big Sur Coast's critical viewshed" (Staff report, page 15). According to staff, the proposed addition violates Policies 3.2.3.A. and 3.2.1. of the Big Sur Coast Land Use Plan. Staff dismissed the "Otter Cove" exception which dictates development of the Cain parcel.

The Cain property is located in Otter Cove, an area of Big Sur which was specifically excluded from the critical viewshed policy of the Big Sur Coast Land Use Plan. Staff's

Mr. Peter Douglas
Executive Director
California Coastal Commission
September 8, 1999
Page 4

application of the critical viewshed policy on the Cain property is an error of law that warrants reconsideration of the development permit.

Respectfully submitted,


Todd D. Besore

TDB::ncs

Enclosure

cc: Ms. Cynthia McClain-Hill
Ms. Sara Wan
Ms. Cecilia Estolano
Ms. Christina L. Desser
Mr. Pedro Nava
Ms. Paula Daniels
Ms. Nancy Flemming
Mr. Mike Reilly
Mr. Dave Potter
Ms. Shirley Dettloff
Ms. Christine Kehoe
Ralph Faust, Esq.
Amy Roach, Esq.
Richard and Marsha Cain

**CARMEL HIGHLANDS FIRE PROTECTION DISTRICT
73 FERN CANYON ROAD
CARMEL, CALIFORNIA 93923
(831) 624-2374 EMERGENCY: DIAL 9 1 1**

August 13, 1999

Lee Otter
California Coastal Commission
725 Front Street
Santa Cruz, California 95062

Re:Cain Project, 30830 Aurora Del Mar-Carmel, AP#243-351-001/PL#980245

Dear Mr. Otter:


We have been asked to consider allowing the addition for the above project to be built in our required fire apparatus turnaround.

The Monterey County requirements for driveways exceeding 150 feet in length is to provide a "turn-out" near the mid point of the driveway and a "turnaround" at the dead-end of the driveway. The three main purposes for this requirement are: to allow access & egress on the driveway during emergency situations where incoming emergency vehicles need to respond in a timely fashion and outgoing residents are trying to escape the emergency; to allow the emergency vehicles, once at the building site, to turnaround and leave in a timely fashion should the emergency escalate; to prevent fire apparatus from having to back up a long narrow driveway with grade. By building in the turnaround, our hose lines would be inadequate to provide proper extinguishment of a fire putting our personnel as well as the property at great risk.

To provide for the life & safety of not only the residents but that of the fire personnel, we need to maintain our turnaround as originally required when the initial building plans were reviewed on October 14, 1988 and as required by Monterey County General Plan and Monterey County Ordinance 3600.

Sincerely,

Cindy Nagai, Assistant Chief
Fire Prevention Officer

cc: A.Lombardo, Attorney at Law
file 

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
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W6c

ADOPTED

Filed: 5/21/99
Hearing Open: 6/8/99
49th day: 7/9/99
180th day: 11/17/99
Staff: R. Hyman
Staff Report: 7/21/99
Hearing Date: 8/11/99

STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE DETERMINATION & COASTAL PERMIT

LOCAL GOVERNMENT: MONTEREY COUNTY

LOCAL DECISION: Approved with conditions (see Exhibit 2)

APPEAL NUMBER: A-3-MCO-99-036

APPLICANT: Richard and Marsha CAIN

APPELLANTS: Commissioners Sara Wan and Pedro Nava

PROJECT LOCATION: 30830 Aurora Del Mar (Lot # 12 Otter Cove), west side of Highway 1, Big Sur Coast, Monterey County; AP# 243-351-01 (see Exhibit 1)

PROJECT DESCRIPTION: 1,552 square foot second story addition, 180 sq. ft. breezeway enclosure, and a 900 square foot garage addition to an existing 3,317 square foot single story single family residence (see Exhibit 3).

FILE DOCUMENTS: County coastal permit file PLN980245; *Big Sur Coast Land Use Plan; Monterey County Coastal Implementation Plan (Title 20 of County Code)*; Monterey Coastal permit PC6761 to Nagoa.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed, and that the subsequent permit be **approved**, if conditioned to protect visual resources, adhere to fire safety recommendations, protect any archaeological resources, and control grading and drainage.

EXHIBIT NO. B
APPLICATION NO. A-3-MCO-99-36-R
Commission adopted
Staff Report

The County's project approval is clearly inconsistent with a threshold policy for protecting public views along the Big Sur Coast. This policy prohibits additions to existing structures, where such additions would result in increased visibility from Highway 1. The project is an addition to an existing residence, located in plain sight on the coastal terrace between Highway 1 and the sea, in the Critical Viewshed as defined in the *Big Sur Coast Land Use Plan* (LUP). Moreover, the potential cumulative effect of allowing such approvals would be substantial, especially when the entire length of the Big Sur Coast is considered.

The lot does fall within the Otter Cove residential enclave, where special standards apply, but only to existing vacant lots. In 1992 the County approved a substantial house on the lot, but at one story tucked into the terrace with a flat roof. Its visibility is minimized, as it blends into the terrain. The proposed second story addition would increase the profile of the residential structure as seen against the bluewater background. This is inconsistent with the policy governing additions in the critical viewshed because they are not allowed to result in an increased visibility to the public. The proposed 900 square foot addition and 180 square foot breezeway enclosure would conform to local coastal program policies and are not at issue.

In recommending that this policy inconsistency raises a "substantial" issue, several factors have been taken into consideration:

- The applicable viewshed protection policy is a cornerstone of the *Big Sur Coast Land Use Plan*;
- It is feasible to minimize viewshed impacts while still allowing significant development, which is the standard of the LCP. At least two components of the proposed project can be approved and a further structural addition (at ground level) is also approvable through design that does not increase the visibility of the structure as seen from Highway One;
- There are an estimated 80-100 other developed parcels located in Big Sur's critical viewshed. The cumulative impact on Big Sur's critical viewshed and hence the enjoyment of millions who drive down Highway One would be substantial if each existing viewshed residence were allowed to expand in the manner approved by the County;
- There is no Constitutional "takings" issue involved because a house already exists on the property.

As noted, two elements of the proposed project, the garage and the breezeway, do not present a substantial issue in themselves and, hence, form the basis for an approvable project. The 1992 County coastal permit for the original home established a building envelope and a scenic easement. There is room within the building envelope for the proposed 900 square foot garage add-on as well as a one-story addition. Therefore, staff recommends conditional approval of a modified project for a residential addition that does not include a second story.

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EXHIBITS

- 1. LOCATION MAPS
- 2. COUNTY PERMIT FINDINGS AND CONDITIONS
- 3. SITE PLANS AND ELEVATIONS

I. COMPLETE TEXT OF APPELLANTS WAN AND NAVA'S CONTENTIONS

Commissioner Appellants contend in full:

The County's approval of this permit will allow a second story addition of 1,552 square feet to a residential structure on the coastal terrace, in public view between Highway 1 and the sea. This increased visual impact is inconsistent with the scenic resource protection policies contained in the Big Sur Coast Land Use Plan (LUP) portion of the Monterey County Local Coastal Program. Specifically, by failing to consider reasonable alternatives and mitigation measures the County's decision is not consistent with LUP Policy 3.2.3.A.7 (which requires that enlargements not increase the visibility of the structure), LUP Policy 3.2.3.A.3 (modifications required for design, size, siting, etc., so that new development will be subordinate to and blend with its environment) and hence key policy 3.2.1.. The findings erroneously say that the parcel is exempt from the Big Sur critical viewshed policies. However, the exemption only applies to existing vacant residential parcels. The Commission devoted an

exceptionally great amount of effort to ensuring that development in the Otter Cove tract be as inconspicuous as possible in approving the homes there in the 1970's and early 1980's. Subsequent certification of the Otter Cove exemption policy was never intended to undo the Commission's previous decisions and hence was for vacant lots only. This position was just reaffirmed in the two appeals A-3-MCO-99-001 and A-3-MCO-98-109 (Callahan and Leslie). Furthermore, even if the exemption policy were to apply to this situation, it would not allow the proposed project because it does not allow for the blocking of ocean vistas as seen from Highway One (policy 3.2.5.G, also policy 3.2.4.A.3)

II. LOCAL GOVERNMENT ACTION

The Monterey County Planning Commission approved a coastal permit for the proposed Cain project with 21 conditions on March 25, 1999 (see Exhibit 2). The final action notice was sent to the Coastal Commission on May 10, 1999. During the appeal period of May 11 through 24, 1999 the County approval was appealed. The Commission's hearing on this item was opened and continued on June 8, 1999 in order to have time to receive the complete administrative record from the County.

III. STANDARD OF REVIEW FOR APPEALS

Coastal Act section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea.

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a *de novo* coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under section 30604(b), if the Commission conducts a *de novo* hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the first public road and the sea, which is the case with this project.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeals were filed pursuant to Coastal Act Section 30603.

MOTION : Staff recommends a "NO" vote on the following motion:

"I move that the Commission determine that Appeal No. A-3-MCO-99-036 raises **no** substantial issue with respect to the grounds on which the appeal has been filed."

A majority of the Commissioners present is required to pass the motion.

V. STAFF RECOMMENDATIONS ON COASTAL PERMIT

The staff recommends that the Commission, after public hearing **approve** the Cain permit with conditions.

MOTION : Staff recommends a "YES" vote on the following motion:

"I move that the Commission **APPROVE** coastal development permit A-3-MCO-99-036, subject to the conditions below."

A majority of the Commissioners present is required to pass the motion and adopt the following resolution.

RESOLUTION :

The Commission hereby **grants** a permit for the proposed development as conditioned below, on the grounds that, as conditioned, it will be in conformity with the certified Monterey County Local Coastal Program, that it is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, and that there are no additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).

VI. RECOMMENDED CONDITIONS FOR CAIN PERMIT A-3-MCO-99-036

A. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent,

acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

Note: The following special conditions supercede those of Monterey County's coastal administrative permit and design approval PLN980245. County officer approvals, document recordings, and related procedural aspects of conditions imposed by the local government pursuant to an authority other than the Coastal Act that do not change the substance of the following conditions (e.g., Design Approval, Building and Grading permit requirements) are not affected by this Commission action. Any required County sign-offs related to these conditions of approval must be obtained before condition compliance is submitted to the Coastal Commission's Executive Director.

1. Revised Final Plans:

Prior to Issuance of the Coastal Development Permit, the applicant shall submit a revised set of site, building and landscaping plans for Executive Director review and approval to comply with all of these conditions. These plans shall not contain any second story addition. A ground level house addition (in addition to the breezeway enclosure and garage addition) may be substituted provided it is limited to one story no higher than the existing home and within the previously approved

building envelope. If the applicant chooses to include such an addition on the final plans, then they must be accompanied by photographic representations produced after field staking with story poles, demonstrating that the "enlargement does not increase the visibility of the structure" as seen from Highway One. In the event of a dispute as to whether such a further addition meets this condition, the matter shall return to the Commission for resolution.

2. **Landscaping:**

a. The landscaping materials shall be native to the Carmel Sur Subdivision (Otter Cove) and shall include appropriate species of trees and shrubs and ground cover planted in such a manner as to ensure long term screening of the addition(s) from Highway 1 without obstructing ocean vistas and consistent with fire safety requirements (see Condition #4). The landscaping plan (see condition # 1) shall also be consistent with the recommendations of the biological report for the site (dated September 12, 1988 by Richard Robinson). The landscaping plan shall be prepared by a professional certified landscape architect to include a statement providing evidence of how the screening will be accomplished consistent with these conditions. This plan shall also include the appropriate level of long term maintenance and monitoring required. The landscaping shall be permanently maintained by the property owner so as not to exceed the height and depth of the home and, hence, not to increase the amount of bluewater view blockage as seen from Highway One, including pull-outs. The intent of this condition is to provide for landscaping and re-landscaping in the vicinity of the authorized additions and the submittal shall be in the form of a revision to the previously required site landscaping plan (condition #1 of County permit PC6761 to Nagoa).

b. All landscaped areas and/or fences shall be continuously maintained by the applicant. All plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition.

c. **Prior to the Issuance of the Coastal Development Permit**, the applicant shall execute and record with the Monterey County Recorder's office a deed restriction in a form and content acceptable to the Executive Director that states "All landscaping shall be installed and maintained pursuant to the approved landscaping plan. Landscaping that exists or is approved, shall not be removed unless subsequently approved by the Coastal Commission. If removal or excessive trimming occurs, the owner shall be responsible for replacing the vegetation." The deed restriction shall include a legal description of the applicant's parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this permit unless the Executive Director determines that no amendment is required.

3. Future Development:

No use or construction other than that specified by this permit is allowed unless separately authorized. Any future additions, including but not limited to decks, antennas, satellite dishes, towers, utility poles or fencing within view of Highway 1 or other public viewpoint shall require a separate permit, or amendment to this permit, unless waived by the Executive Director or preempted by Federal law.

4. Fire Safety:

The following requirements of the Carmel Highlands Fire Protection District must be followed:

- a. The grade for the driveway shall not exceed 15%.
- b. Vehicular clearance shall not be less than 12 feet wide unobstructed. The driveway itself shall be kept as narrow as possible and shall avoid paving where practical.
- c. Size of letters, numbers, and symbols for addresses shall be a minimum of 3 inch letter height, 3/8 inch stroke, contrasting with the background color of the sign.
- d. All buildings shall have a permanently posted address, which shall be placed at driveway entrance and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter, and the address shall be visible and legible from the road on which the address is located.
- e. Remove flammable vegetation from within 30 feet of structures. Limb trees 6 feet up from ground. Remove limbs within 10 feet of chimneys. This condition does not authorize vegetation removal on adjacent parcels and shall only be implemented pursuant to an approved landscape plan (see condition #2).
- f. The building(s) (including all additions) shall be fully protected with automatic fire sprinkler system(s). Accessible storage spaces in attics must also be sprinklered. The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with applicable National Fire Protection Association and/or Uniform Building Code Standards, the editions of which are followed by Monterey County.
- g. Roof construction shall be a Class A or Class B, with fire resistive materials.

5. **Stormwater Run-off:**

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit for Executive Director review and approval, a drainage plan prepared by a registered civil engineer or architect addressing on site and off-site impacts. Stormwater runoff from impervious surfaces or construction activities shall not be allowed to flow uncontrolled over the edge of the bluff, but shall be controlled in lined channels, flumes, pipe or other erosion preventing installation.

6. **Water Conservation:**

The applicant shall comply with Ordinance No. 3539 of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:

a. All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.

b. Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices.

7. **Grading:**

No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Executive Director in consultation with the County Director of Planning and Building Inspection. All cut and fill slopes exposed during the course of construction shall be covered, seeded or otherwise treated to control erosion. If excavated spoils are to be exported from the site to other locations within the Coastal Zone, consent of the Executive Director is required **prior to transport**. No dirt or other excavated material will be placed on the site outside of the immediate building location. Dumping of construction debris, excavated materials or any portion of the structure authorized for demolition, over the coastal bluff is expressly prohibited.

8. **Exterior Lighting:**

a. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. **Prior to the Issuance of the Coastal Development Permit**, the applicant shall submit an exterior lighting plan which shall indicate the location, type and wattage of all light fixtures and include catalogue sheets for each fixture for the

review and approval of the Executive Director. Exterior light sources shall be prohibited if such light source would be directly visible from Highway 1 or other major public viewing area as defined in Section 20.145.020 V of the County Zoning Ordinance. Additionally, no such artificial lighting shall be directed onto environmentally sensitive habitats, including the shoreline and the adjacent sea within the Monterey Bay National Marine Sanctuary.

b. **Prior to the Issuance of the Coastal Development Permit**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director which states that exterior light sources shall be prohibited if such light source would be directly visible from Highway One or other major public viewing area and that no lights shall be directed onto the shoreline or the sea. The deed restriction shall include a legal description of the applicant's parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this permit unless the Executive Director determines that no amendment is required.

9. **Archaeology:**

If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Coastal Commission and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. The mitigation plan shall be prepared pursuant to standards of the State Historic Preservation Office. This mitigation plan shall then be approved by the State Historic Preservation Office and the Executive Director of the Coastal Commission and fully implemented by the property owner.

In addition the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director which states that for purposes of protecting archaeological resources, development can only be undertaken according to the provision of the approved archaeological mitigation plan. The plan must be recorded concurrently with the deed restriction as an exhibit. The deed restriction shall include a legal description of the applicants' parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this permit.

VII. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description and Location

The subject site is located on the coastal terrace between Highway One and the sea, along the Big Sur coast. It is located on Lot 12 of the Carmel Sur Tract 588, commonly known as the Otter Cove tract. The site is about 1.32 acres and contains an existing, permitted one-story house, with a coverage of 3,317 square feet. The site is accessed from a driveway off Aurora del Mar. A scenic easement already is on the parcel, defining the building envelope. The existing house was approved by the County in 1992 under coastal permit PC6761 to Nagoa.

The proposed project consists of a 1,552 square foot second story addition, a 900 square foot below grade garage addition, and a 180 square foot breezeway enclosure (see Exhibit 3).

The Otter Cove subdivision consists of 17 residential lots along the shoreline, on the coastal terrace between Highway One and the ocean, generally between one and 1.5 acres in size. The subdivision was approved prior to the Coastal Act. Given the topography, all of these lots are in the critical viewshed. A few had houses built on them before the Coastal Act came into effect. Following the Coastal Act, the Coastal Commission generally refrained from approving additional visible homes along the Big Sur Coast. But because there were already these 17 existing lots in Otter Cove, some visible homes were approved. Each project was reviewed on a case-by-case basis. Differing, topography, lot size and configuration, and tree cover along the 0.6 mile frontage of the Otter Cove tract resulted in various designs and amounts of visibility.

Much time was spent on the design of the homes. Many original proposals were modified before they were approved; some projects were denied and then new designs later approved. The overall goal was to minimize visibility as much as possible while allowing modest sized homes to be built. Over the years the sizes of the homes proposed and approved has increased; original approvals in the 1970's were generally for homes in the range of 2,000 square feet. However, greater size does not necessarily equate with greater visibility, although the most visible among the homes are among the largest. With the approval of the *Big Sur Coast Land Use Plan* an exception policy was included to allow development on the remaining two *vacant* lots at Otter Cove.

The result of the Commission's actions and (since 1987) the County's coastal permitting under its local coastal program has not been uniform with regard to the ultimate visibility of the approved homes, with the one adjacent to the north of the Cain property turning out to be the most visible (3-86-124 to the Colos). However, the Commission found that approval of that "project should not be construed as a precedent for approvals on the remaining two lots in the Otter Cove tract [i.e., lot 13 and the subject lot 12]. Each must be judged

individually on what measures will be necessary to reduce beach and Highway 1 viewshed impacts to the maximum extent possible." And, the County at one point even interpreted the exception policy as applying to a vacant property immediately to the south of the Otter Cove Subdivision's 17 lots.

Now, only one vacant parcel remains at Otter Cove. It is on the adjacent Lot 13 and is currently in the County process for a coastal permit. A previous coastal permit was granted in 1987 by the Coastal Commission to Mr. and Mrs. Hu for a one-story, recessed 4,124 square foot home on Lot 13—but this approval has since expired.

B. Analysis of Consistency with Local Coastal Program and Coastal Act

1. Appellant's Contentions:

Appellants Wan and Nava contend in full:

The County's approval of this permit will allow a second story addition of 1,552 square feet to a residential structure on the coastal terrace, in public view between Highway 1 and the sea. This increased visual impact is inconsistent with the scenic resource protection policies contained in the Big Sur Coast Land Use Plan (LUP) portion of the Monterey County Local Coastal Program. Specifically, by failing to consider reasonable alternatives and mitigation measures the County's decision is not consistent with LUP Policy 3.2.3.A.7(which requires that enlargements not increase the visibility of the structure), LUP Policy 3.2.3.A.3 (modifications required for design, size, siting, etc., so that new development will be subordinate to and blend with its environment) and hence key policy 3.2.1.. The findings erroneously say that the parcel is exempt from the Big Sur critical viewshed policies. However, the exemption only applies to existing vacant residential parcels. The Commission devoted an exceptionally great amount of effort to ensuring that development in the Otter Cove tract be as inconspicuous as possible in approving the homes there in the 1970's and early 1980's. Subsequent certification of the Otter Cove exemption policy was never intended to undo the Commission's previous decisions and hence was for vacant lots only. This position was just reaffirmed in the two appeals A-3-MCO-99-001 and A-3-MCO-98-109 (Callahan and Leslie). Furthermore, even if the exemption policy were to apply to this situation, it would not allow the proposed project because it does not allow for the blocking of ocean vistas as seen from Highway One (policy 3.2.5.G, also policy 3.2.4.A.3)

2. Local Coastal Program Provisions

Governing Provisions: The local coastal program that governs the subject site includes the *Big Sur Coast Land Use Plan (LUP)*. With respect to this appeal, the most important policy is 3.2.3.A.7:

The general policy concerning replacement of structures shall be to encourage resiting or redesign in order to conform to the Key Policy. Replacement or enlargement of existing structures...within the critical viewshed shall be permitted on the original location on the site, provided no other less visible portion of the site is acceptable to the property owner, and provided the replacement or enlargement does not increase the visibility of the structure...

Further guidance is provided by policy 3.2.3.A.3:

...changes in the design, height, or bulk of proposed structures will be required where this will result in an approvable project.

The referenced Key Policy is 3.2.1, which states in part:

Recognizing the Big Sur coast's outstanding beauty and its great benefit to the people of the State and Nation, it is the County's objective to preserve these scenic resources in perpetuity and to promote the restoration of the natural beauty of visually degraded areas wherever possible. To this end, it is the County's policy to prohibit all future public or private development visible from Highway 1 and major public viewing areas [i.e., the critical viewshed]...This applies to all structures, the construction of public and private roads, utilities, lighting, grading and removal or extraction of natural materials.

The next *Plan* policy 3.2.2 defines "critical viewshed" as "everything within sight of Highway 1 and major public viewing areas including turnouts, beaches..." Within the critical viewshed, "ocean views from Highway 1 shall not be obscured by artificial berming/mounding or landscaping" under policy 3.2.3.B; and, *County Code* Section 20.145.030.A.1.b. Section 20.145.030.A2.d reinforces this:

Landscaping, berming, or mounding shall not be utilized to screen development which would otherwise be within the critical viewshed.

As background, the Commission and County have had a long history in protecting the Big Sur Coast viewshed. The agreed upon method was to limit visibility of man-made structures from Highway One and other public viewing points – i.e., within the "critical viewshed." For vacant lots in the viewshed, the policy is generally to prohibit development

that would be visible in public view. This policy is backed by a transfer of development program which gives two residential credits in exchange for retiring a lot which can not be developed because of its location in the viewshed. It has also been supported through various acquisition efforts, including a County program funded by Proposition 70 to purchase viewshed lots.

The subject parcel is zoned RDR/40(CZ). The 40 refers to a minimum 40 acre parcel size for new lots (existing lots smaller than the minimum can have one house). This district allows a maximum of 25% structural coverage, which would equate to 14,372 square feet allowed on this site absent any public viewshed limitations.

Exception Provisions: When the Local Coastal Program was approved, some carefully crafted exceptions to the critical viewshed building prohibition were included. One exception (policy 3.2.5.G) applies to vacant lots in the Otter Cove Subdivision, but not to the subject site because it is already developed:

Existing vacant residential parcels in the critical viewshed in the Otter Cove Subdivision seaward of Highway 1, south of Malpaso Creek, shall be permitted to be used for residential purposes subject to the policies of Section 3.2.4 of this plan.

Additional standards shall include keeping driveways as narrow as possible, avoiding paving where practical and consolidation of driveways, the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment; the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from highway 1; prohibiting the dumping of excavated materials over the coastal bluff, and additions, antennae, night flood lighting, or other improvements in view of Highway 1 without separate permit consideration; and dedication of scenic easement over undeveloped portion of lot. (policy 3.2.5.G; corresponding Code section is 20.145.030.B.7)

Other standards for the Otter Cove tract vacant lots include:

- ...the design and siting of structures... shall not detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline (3.2.4.A.1; corresponding Code section is 20.145.030.C.2.a).
- new structures are to be located on that portion of a parcel least visible from public viewpoints and where existing topography or trees provide natural screening (3.2.4.A.2; corresponding Code section is 20.145.030.C.2.b).

- new development should be subordinate and blend with its environment, using materials or colors that will achieve that effect. Where necessary, appropriate modifications will be required for siting, structural design, size, shape, color, textures, building materials, access, and screening. (3.2.4.A.3; corresponding Code section is 20.145.030.C.2.c)

3. Local Government Action:

Monterey County's Zoning Administrator approved a coastal permit for the proposed Cain addition on March 25, 1999. The County made the following findings (# 2-6) with regard to the crucial issue of visual impact (see Exhibit 2 for full findings):

- "The project is briefly visible [from] different locations on Highway One and turnouts."
- "The proposed project is located in the Otter Cove area of the Big Sur Coast Land Use Plan which is located with the critical viewshed. Section 20.145.030(B)(&) of the CIP and Policy 3.2.5.G of the Big Sur Coast Land Use plan exempts development on existing Otter Cove area parcels with the "RDR" (Rural Density Residential) zoning district for residential purposes from the LCP policies and development standards prohibiting development in the Critical Viewshed, subject to the development standards of 20.145.030.C2 and 20.145.030.B.7. The Cain project is located in this exemption area.
- The project has been designed to reduce the visual impacts from Highway one to conform to Section 20.145.030.B.7, which requires design modifications to reduce impacts.
- "The project would not adversely impact ocean views from Highway One" consistent with Section 20.1345.030.C2a

Permit conditions somewhat related to visual issues include:

- # 11 requiring the owners to record a deed restriction subjecting future changes to design approval,
- #16 requiring approval for appurtenances;
- # 17 requiring unobtrusive exterior lighting,
- # 12 and 14 requiring landscape maintenance;
- # 13 and 14 requiring landscaping plan with screening vegetation

4. Substantial Issue Analysis and Conclusion

Impact of the Proposed Project on the Public Viewshed: The project site is located in Big Sur Coast's Critical Viewshed. Part of the project will encroach on public views from Highway One to the sea, by increasing the amount of visible structure as compared to the existing residence. This is because one element of the proposed addition is a second

story. The project site was staked with story poles and photographed. From these photos, Commission staff has concluded that the horizontal impact of building profile resulting from the proposed second story addition, as seen against the ocean ("bluewater") background, will increase compared to the existing residence. The net total for the new addition will approximately double the view blockage of the existing residence. This addition would intrude into the bluewater view presently available to the public. This view is seen from Highway 1 and a long, unpaved turnout, perpendicular to and to the south of the parcel.

The Commission notes that part of the project involves a 900 square foot garage addition, at ground (and even below ground) level that would not further block any ocean views. There is also a proposed small breezeway enclosure. These parts of the project are not at issue and will not be further discussed. They are illustrative of the technique that has been often used in the Otter Cove tract to minimize visibility.

Applicable Criteria for Achieving Policy Conformance: As discussed above, the relevant criteria for this site are land use plan policies 3.2.1, 3.2.3.A.7; 3.2.3.A.3; 3.2.3.B and implementation sections 20.145.030.A.1.b and 20.145.030.A.2.d. Most important is the requirement that enlargement of structures in the critical viewshed not increase the visibility of structures from Highway One or major public viewing areas. Because the parcel in question is already developed, the project does not fall under the Otter Cove exception policy 3.2.5.G. That policy is carefully worded to apply to "**existing vacant lots.**" In other words, in certifying the Big Sur Land Use Plan viewshed protection policies, the Commission recognized that there were certain circumstances, such as vacant lots where development could not occur at all if the critical viewshed policy were applied, where deviation from this key policy would be warranted.

Thus, an owner of a vacant parcel in Otter Cove has a one-time opportunity to build under the "exception" policy 3.2.5.G. Once built, though, the basis for the initial exception (potential prohibition of any development) no longer exists. Again, the parcel in question here is not vacant. The opportunity for development under the viewshed exception policy was exercised in 1992, when the County approved a coastal development permit for a single family home. Thus, the policies that govern structural additions in the critical viewshed, not the exception policy, apply in this case. The Commission recently affirmed this policy in an appeal involving the Rocky Point enclave (which has an almost identical exception policy), where the Commission found, "existing vacant parcels are understood to be those which were not developed prior to 1977 nor subsequently pursuant to an approved coastal development permit." To be sure, if the exception policy were found to apply to vacant lots in Otter Cove for all time, even after a lot was no longer vacant, then the very purpose of the critical viewshed policy would be undermined, as properties could continually redevelop without attention to the key policy.

Compliance with LCP Standards: The proposed project is not in compliance with the governing standards for additions in the critical viewshed. As noted above, the proposed second story addition increases the visibility of the home as seen from Highway One. This

does not conform with policy 3.2.3.A.7's prescription to "not increase the visibility of the structure." In addition, the LCP requires that projects be redesigned if this will result in an approvable project (3.2.3.A.3), which is the case here (see below for more detail).

The approved project also conflicts with the landscaping policies of the LCP. Reliance on new landscape screening that blocks ocean views is prohibited (policy 3.2.3.B and *County Code* Sections 20.145.030.A.1.b and 20.145.030.A2.d). (In distinction, a reading of all the policies together applicable to additions in the critical viewshed would seem to allow more screening if the screening material did not result in any additional view blockage; in fact this would appear desirable where a visible house existing in the critical viewshed could be made less visible through screening as part of a permit to allow an addition.)

There is little discussion in the County file regarding landscaping. However, there is a condition (# 14) requiring landscaping with materials "to ensu[r]e long term screening of the addition from Highway 1 while ensuring the maximum feasible ocean views." Such a condition to rely on landscaping to hide the second story addition would clearly violate policy 3.2.3.7. Furthermore, such a condition seems impossible to implement in the context of the approval. Implementation would require somewhat tall trees. Given setbacks, fire standards limiting vegetation near structures, and the lot size, it is not clear that there would be any place on the subject site to plant screening vegetation to achieve this purpose. Furthermore, planting screening trees would have the effect of blocking more ocean views than the addition would block.

Finally, the Commission also finds that even if the project were to fall under the exception policy 3.2.5.G for vacant lots, the project would not comply with the standards of that policy. In other words, the application of either the critical viewshed or the exception policies (which the County erroneously used) lead to the same conclusions concerning appropriate design of additions to the existing home. Under the exception policy, one is required to look to "other measures designed to minimize views of structures without blocking ocean vistas seen from Highway 1." In this case, the other measures would be to build at ground and even below grade level at one story. Under the policy for additions in critical viewshed, one would design an addition in such a way that it does not increase the visibility of structure. And while the vacant lot exception policy explicitly allows additional landscape screening, it does not allow additional screening if it will block more ocean views, as neither does the policy that applies to additions in the critical viewshed. The exception standards state that berming and other measures shall be used to minimize views of structures without blocking ocean vistas seen from Highway 1 (*Code* Section 20.145.030.B.6.b.)

Problems with County Analysis: There are three related problems with the County's analysis as embodied in the findings and conditions for approval (see Exhibit 2).

First, the County does not make clear which LCP policies apply to project or why the policies that are cited do apply. The County acknowledges that the project is located in the critical viewshed in Finding #3. Yet they cite the exception policy 3.2.5.G as applying.

They do not discuss why they came to this conclusion; i.e., why they are ignoring the operative word "vacant." They then selectively discuss compliance with Sections 20.145.030.B.7.f and 20.145.030.C2b. Omitted from this discussion is compliance with other sections such as 20.145.030.B.7.c. The County also omits any discussion of the prohibition on installing new landscaping as a means of allowing increased development in the Big Sur critical viewshed (Policy 3.2.3.B).

Second, the County findings (as cited above) do not provide a clear rationale as to how the project complies with the Local Coastal Program provisions that they do cite. The only real evidence concerning policy compliance that is offered in the findings is that there was a modified design from the original proposal that reduced impacts. However, that is not even the sole objective test of the exception policies that they are erroneously applying. Section 20.145.030.B.7.f, which they cite, states that "design of structures shall be modified as necessary in order to reduce the visual impact of development."¹ A project may be redesigned to reduce impacts, but still may not fit the other applicable standards of the local coastal program, which is the case with this application. If the County allowed this policy to operate literally and in isolation, then applicants could propose grossly inconsistent designs, next slightly modify them to reduce impacts, and claim that the modified project then must be approved. It is unclear from their very brief findings as to how the County concluded that the project did meet the standards that they cite. Unfortunately, a review of the staff report does not illuminate the issue, because staff had recommended "denial." Thus we must look to conditions and correspondence from the applicant's representative indicating why he thought that the project met standards.

Third, there is no credible evidence that the proposed project does comply with the cited policies. Even in the event that there was a future local coastal program amendment or legal interpretation that Otter Cove was not in the critical viewshed, and hence the cited Section 20.145.030. C.2 standards were somehow found applicable, the conclusions of this analysis would not materially change. As noted, the County has conditioned the project to provide landscape screening. It is true that the exception policies also allow landscape screening but only where needed to mitigate a development's visual impacts. "Needed" is the key standard in this policy. Further screening is not needed in this case because following the other standards (as well as the operative standards) dictates either no addition or a re-sited addition.

The applicant's main argument is that because the proposed addition falls within the already approved building envelope and does not block additional "shoreline" as opposed to ocean view the project in full conformance with the cited exception policies (Lombardo to Ellis 2/24/99). This argument is not evidence of compliance with the cited policies. If one were to rely solely on the basis of the previous approval, one could just as well conclude that no additional development should be allowed beyond that approved.

¹ The operative policy for additions in the critical viewshed is actually very similar. Section 20.145.030.A.2.c states; "Development proposals shall be modified for design, height, and/or bulk, or shall be resited, where such modifications will result in a project which does not intrude on the critical viewshed."

Indeed, if exception policy 3.2.5. G and the policies that it references were to govern, then the analysis should consider the whole project, i.e., assume that the existing house with the proposed addition came in for approval together. Again, the conclusion should be that there should be no second story.

The bottom line of this entire discussion is that whichever of the LCP standards one chooses to apply, be they the ones that govern this project or not, *there is a less visually intrusive alternative*. Any of these policies would mandate that such a less intrusive project should be the one that is approved. The policies all lead to the conclusion that the project should not have been approved as it was proposed.

As to any equity arguments that may arise, the subject property is being treated equitably in comparison with similar parcels. With regard to sizes of homes in the Otter Cover tract, there had been a trend over time toward bigger houses. The applicants included in the County file evidence of larger homes nearby and that they needed something larger (than the current 3317 sq. ft home) to be able to live there year round. Even if application of the policy for additions meant that the subject property could not have a house as large as other homes in the area, there would be no legal justification for not following the policy. This is because there is an existing structure on the property, previously permitted by the County.

Thus, there is no constitutional entitlement to have a larger structure approved. The policy has been in place for almost 15 years, so that any prospective owners can easily have been made aware of it before they purchase property in this location. Both the Commission, when it was reviewing coastal applications under the Coastal Act and the County in its local coastal program have to date rejected a maximum size limitation for Otter Cove (or elsewhere in Big Sur) in favor of project review on a case-by-case basis taking individual site characteristics into consideration. Where the visual impacts could be lessened on one site, that has been required, even if the impacts were greater on an adjacent site; in other words the guiding principle with respect to public view protection has been to do the best one can on each individual site.

Policy Inconsistency Is Substantial: Given the significance of the circumstances in this case, the inconsistency of the County decision with the certified LCP is substantial. First, the policy being violated is one of the "Critical Viewshed" policies, which in turn is based on the "Key Policy" of the *Big Sur Coast Land Use Plan*. This policy is derived from an important Coastal Act policy, Section 30251, protection of scenic and visual qualities (requiring new development in highly scenic areas to "be subordinate to the character of its setting"). The Big Sur Coast, of course, is one of the most scenic sections of the California coast, and is a resource of national significance.

Second, the impact on the viewshed while not as severe as several neighboring houses, will nonetheless adversely affect public views to the sea. This impact is compounded by the inappropriate architectural design. The proposed addition's stark angles, glass and

metal surfaces present an effect evocative of an industrial structure. Such design is clearly not in keeping with the traditional homespun character of the Big Sur Coast.

Third, the LCP viewshed policies do not prohibit rebuilding and additions; they merely restrict design by not allowing an "increase [in] the visibility of the structure." In this case, there are feasible alternatives to increase residential floor area without blocking a greater percentage of public views.

Fourth, there is a potential adverse cumulative impact in the Otter Cove enclave. It is true that there are visible structures in the Otter Cove area and some, including the one on the subject property, block some ocean views, as does some permitted berming and landscaping. However, this does not obviate the fact that the limitations in place in the Land Use Plan can and should be followed to ensure that the visual resource does not further deteriorate. If the policies are not strictly enforced, there would potentially be a continuing escalation of view blockage as each subsequent applicant applied for just a little bigger house in a visually prominent location. The intent of the policies is to minimize visual impacts, to insure that future development in the Otter Cove area will in fact be subordinate to the character of the landscape (rather than coming to resemble a typical suburb). The exception policy is clear in that Otter Cove is not an any-design-goes area. And while previous landscaping, if left unchecked, may continue to block more ocean views, allowing and requiring more view-blocking landscape screening is not the desired intention of the Land Use Plan. The open terrace and ocean views of Otter Cove should not be replaced by an introduced forest. All the lots but one in the Otter Cove enclave are now developed. If the policy is not honored, then more such proposals will likely follow and the character of the Otter Cove area will undoubtedly change for the worse.

Finally, there are some 80-100 houses elsewhere along the Big Sur coast within the critical viewshed. The majority of these were built before the Coastal Act and can be considered small by today's standards. The Commission notes that while the size of Big Sur homes that were approved in the early 1980's was in the range of 2,000 to 2,500 square feet, the County is now routinely approving houses **double** this size. Thus, there will be pressure to add on to existing structures or tear down and rebuild with bigger homes. Approval of these permits would set an adverse precedent for allowing visible additions to those homes (or tear downs and rebuilds) that individually and cumulatively will adversely affect the treasured Big Sur viewshed.

In conclusion, a substantial issue is raised by this appeal. The permit is inconsistent with policies 3.2.3.A.7 and 3.2.1. The latter is the key policy of the *Big Sur Coast Land Use Plan*. Thus, this inconsistency is clearly substantial, especially for the adverse precedent that it will set and the potential for adverse cumulative impacts on the Big Sur Coast viewshed that will follow.

6. De Novo Coastal Permit Findings for Conditional Approval

a. Visual Resources

As noted in the findings for substantial issue, the proposed project as approved by the County is inconsistent with *Big Sur Coast Land Use Plan* policy 3.2.3.A.7 and by extension with Key Policy 3.2.1.

The project, however, could be made consistent with policy 3.2.3.A.7. This simply means that the new design should not increase the visibility of the structure and should not rely on any additional landscaping or berming that blocks any more ocean views. Actually, two parts of the proposed project are consistent with these policies. These are a 900 square foot garage addition and 180 square foot breezeway enclosure. There is no less visible portion of the site for relocation of the house itself. It appears possible to add on to the front of the house even further than proposed without increasing visibility. This would be in the area that is now the courtyard and may involve some realignment and redesign of the garage and driveway.

Accordingly, this permit is conditioned to require submittal of revised plans which allow for a ground level addition beyond the 900 square feet proposed accompanied by a demonstration that the proposed development will not result in any greater structural intrusion into the critical viewshed. Likewise, submittal of landscaping plans that demonstrate no increase in landscape screening which would block ocean views, will be required. Although the proposed project is an addition to a residence previously approved with a required landscape plan, a revised landscape plan is required for three reasons. The Commission did not review the previous landscape plan, the additional work will impact some landscaping, and the fire safety recommendations regarding flammable vegetation need to be taken into account. Similarly, it is necessary to include driveway standards, since the driveway may be altered to accommodate the authorized addition. A condition is also required to prohibit visually intrusive exterior lighting. Therefore, as conditioned, the project will conform with the applicable Local Coastal Program (LCP) visual resources protection policies, particularly the Big Sur Coast Land Use Plan's Critical Viewshed policies.

b. Environmentally Sensitive Shoreline and Ocean Habitat

The sea-cliffs that bracket Otter Cove are home to cormorants and other sea bird species. The ocean below is richly endowed with kelp beds, productive rockfish habitat, and an abundance of sea otters. It was near this area that the California sea otter population, once thought extinct, was rediscovered following Highway 1's completion. When the California Sea Otter State Fish and Game Refuge was first established, the Otter Cove area was placed within the original boundaries. Now, this is one of the most spectacular underwater environments within the Monterey Bay National Marine Sanctuary.

Recently, concern has been raised about the proliferation of intrusive commercial and residential outdoor lighting along the Big Sur Coast. Such lighting includes floodlights directed onto both the rocky cliffs and onto the surface of the sea itself. Not only is such lighting visually jarring and out of character with Big Sur's rural character, but it also can have adverse impacts on the environmentally sensitive shoreline and marine habitats identified above. Such artificial lighting can disturb a host of different species and disrupt natural cycles by creating, in effect, "artificial day".

Section 3.3.2.7 of the *Big Sur Coast Land Use Plan* requires that land uses adjacent to environmentally sensitive habitats must "incorporate all site planning and design features needed to prevent significant habitat impacts." And, Section 3.3.2.3 of the *Big Sur Coast Land Use Plan* requires that protective deed restrictions be recorded where new development is proposed.

A particular concern along these high bluffs is that the temptation to jettison construction or demolition debris, grading spoils, and so on directly over the side is great. Unfortunately, such actions directly impact and pollute the tidepools and ocean environment below. Similar concerns apply with respect to poorly controlled surface runoff from the site.

The proposed addition to the residence may feature some form of exterior lighting, at least for security purposes. To insure compatibility with the adjacent sea-cliff and marine habitats, this permit is conditioned to prohibit such lighting from being directed onto these environmentally sensitive areas. These restrictions will run with the land, thereby alerting future owners. Therefore, the potential impacts of floodlighting or spotlighting that might otherwise emanate from the permitted residential development will be averted. Likewise, this permit is conditioned to preclude uncontrolled runoff, demolition debris or grading spoils from being dumped on the cliffs and marine environment below this site. Accordingly, compliance with the above-cited LCP policies will be achieved with respect to environmentally sensitive shoreline and marine habitats.

c. Public Access

The site is located between the nearest through public road along the coast and the sea. Coastal Act Section 30604(c) requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline. Because the proposed project is an addition to an existing dwelling and thus has no new impacts on public access, no dedication of public access easement is required by this permit.

d. Other Issues/ Conclusion

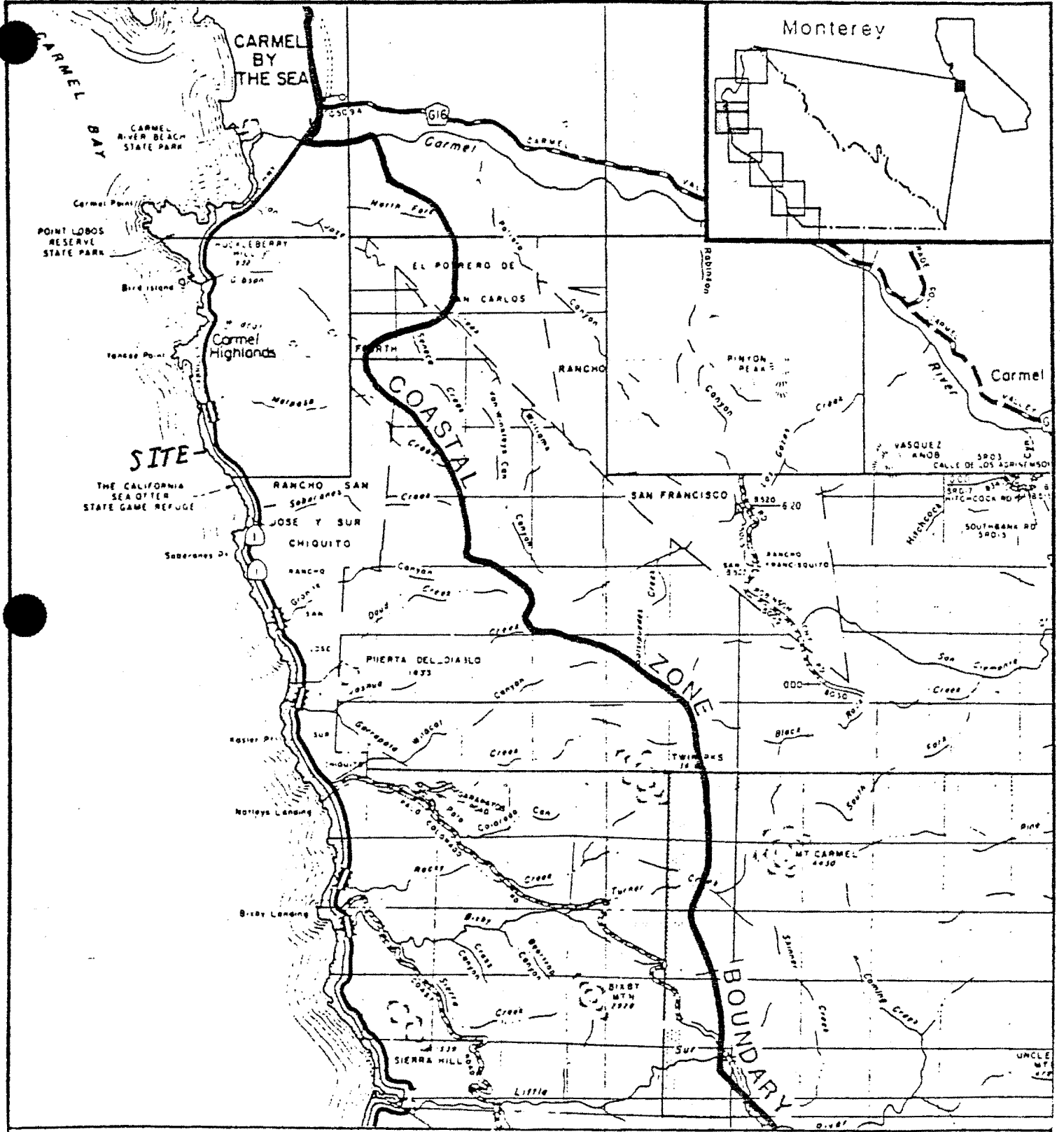
Since the site is located in a high fire hazard area, compliance with County Coastal Implementation Section 20.145.080.C.1.a requiring adherence to Fire District standards is required. The Carmel Highlands Fire Protection District's recommendations are shown in condition #4. Compliance with County grading and erosion control provisions of the local coastal program found in Implementation Chapters 16.08 and 16.12 is also required. These are addressed by conditions #5 regarding drainage and # 7 regarding land clearing. As the site is in an area of high archaeological sensitivity and further excavation will be occurring for at least the garage addition, compliance with Implementation Section 20.145.120 is required. Condition #9 addresses this issue. *Big Sur Coast Land Use Plan* policy 3.2.4.5 requires water conservation. Condition #6 addresses this mandate.

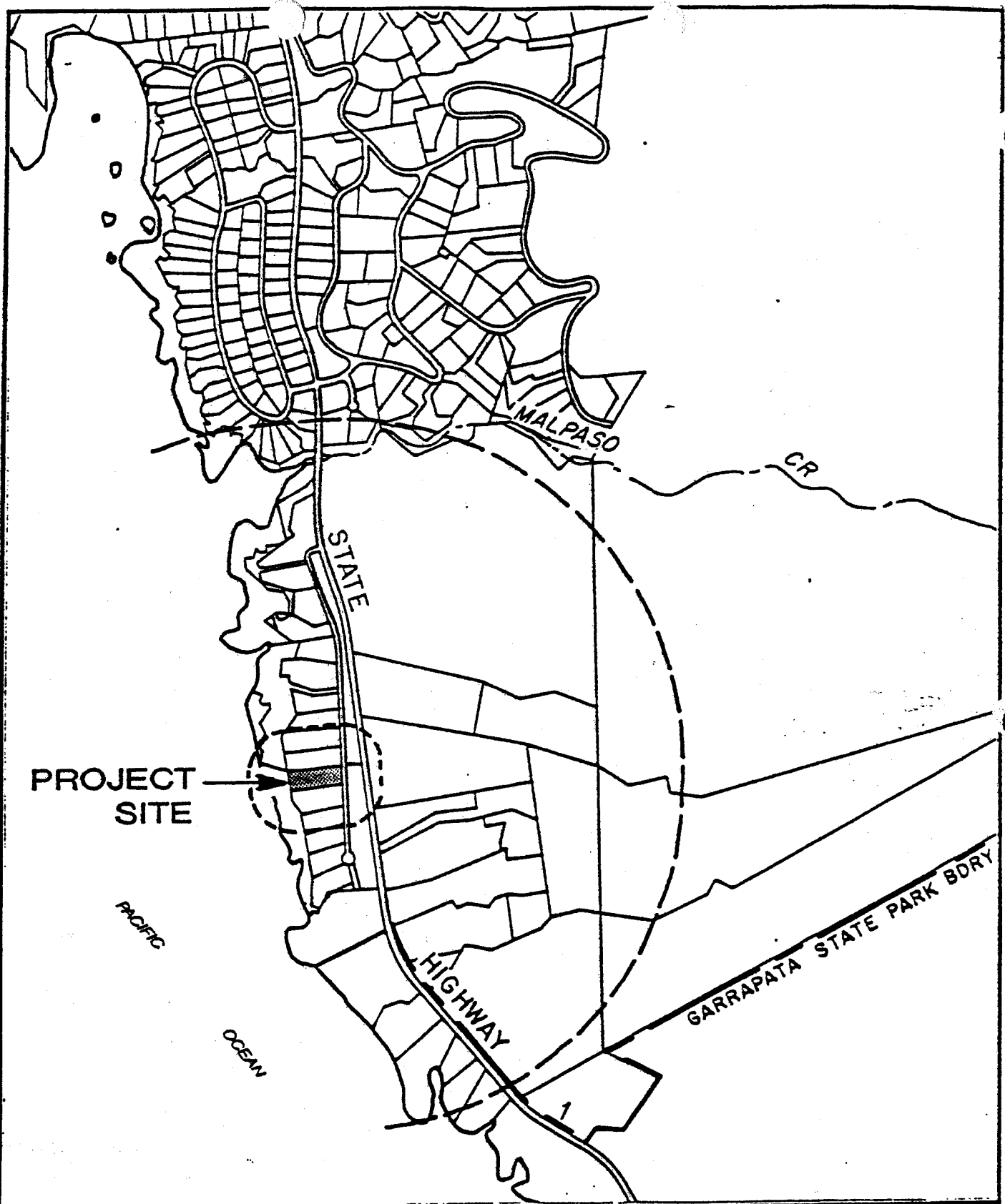
Other conditions and parts of conditions that the County imposed can remain in effect under authorities other than the Coastal permit. These are shown in italics in the list of special conditions. These are not part of the coastal permit issued by or enforced by the Coastal Commission.

As conditioned in all the ways mentioned, the proposed project is consistent with the Monterey County Local Coastal Program and Coastal Act Chapter 3 Access and Recreation policies.

C. California Environmental Quality Act (CEQA)

The County determined that this permit was exempt from CEQA review. However, this report has identified and discussed certain additional potential adverse impacts (visual and habitat) not fully addressed by the local government. Conditions have been attached to this permit to address these. Without these conditions, the project would not be the least environmentally damaging feasible project that could occur on the site. There are no additional feasible mitigation measures that would lessen any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).





APPLICANT: NAGOA

APN: 243-351-01

P.C.# 08761

300' LIMIT

2,500' LIMIT



500' 1000'
SCALE IN FEET

DATE: 5/27/92

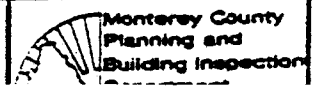


EXHIBIT NO. 1 con

APPLICATION NO.

CAIN

A-3-MCO-99-36

Location Map

DALE ELLIS, AICP
ZONING ADMINISTRATOR

STATE OF CALIFORNIA
COUNTY OF MONTEREY

NO. 980245

A.P.# 416-011-017-000

In the matter of the application of
Richard and Marsha Cain (980245)

FINDINGS & DECISION

for an Coastal Administrative Permit in accordance with Title 20 (Zoning) Chapter 20.76 (Coastal Administrative Permits) of the Monterey County Code, to allow a 1,552 square foot second story addition with breezeway enclosure and a 900 square foot garage addition to an existing 3,317 square foot single family dwelling; Design Approval, located at 30830 Aurora Del Mar, Otter Cove area, Big Sur, Coastal Zone, came on regularly for meeting before the Zoning Administrator on March 25, 1999.

Said Zoning Administrator, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

1. **FINDING:** The application for a Coastal Administrative Permit and Design Approval would allow for the construction of a 1,552 square foot second story addition, a breezeway enclosure, and a 900 square foot garage addition to an existing single story single family dwelling. The project site is located at 30830 Aurora Del Mar, Otter Cove in the Big Sur Area of the Coastal Zone. The site is zoned "RDR/40(CZ)" or Rural Density Residential, 40 acres per unit.

EVIDENCE: The application and plans submitted for the Coastal Administrative Permit and Design Approval as found in Planning File No. 980245 of the Monterey County Planning and Building Inspection Department.

2. **FINDING:** The proposed project was evaluated in terms of impacts upon the viewshed from public viewing areas along Highway One and turnouts. Based on the staking, as required by Section 20.145.030 of the Coastal Implementation Plan, the project is briefly visible different locations on Highway One and turnouts.

EVIDENCE: Staff site visit, pursuant to Section 20.145.030 of the Coastal Implementation Plan.

EVIDENCE: Photographs as found in Planning file 980245.

3. **FINDING:** The proposed project is located in the Otter Cove area of the Big Sur Coast Land Use Plan, which is located within the Critical Viewshed. Section 20.145.030(B)(7) of the CIP and Policy 3.2.5.G of the Big Sur Coast Land Use Plan exempts development on existing Otter Cove area parcels within the "RDR" (Rural Density Residential) zoning district for residential purposes from the LCP policies and development standards prohibiting development in the Critical Viewshed, subject to the development standards of 20.145.030.C.2 and 20.145.030.B.7. The Cain project is located in this exemption area.

EVIDENCE: Chapter 20.145.30. of the CIP and Chapter 3.2 of the Big Sur Coast Land Use Plan.

EVIDENCE: Application and site plan, as found in Planning file 980245.

4. **FINDING:** The proposed project is consistent with the development standards that requires modification to projects in order to reduce visual impacts of the development. Specifically, Section 20.145.030.B.7.f of the CIP, which states that the design of structures shall be

EXHIBIT NO. 2
APPLICATION NO. <u>CAIN</u>
<u>A-3-MCO-99-36</u>
<u>County Findings + Conditions</u>

modified as necessary in order to reduce the visual impact of development. Based on the staking and photos in the file, the project has been designed to reduce those impacts from Highway One.

EVIDENCE: The project has been redesigned from its original proposal to reduce its height and breadth thereby minimizing its impacts on views from Highway One.

EVIDENCE: Staff site visit, pursuant to Section 20.145.030 of the CIP.

EVIDENCE: Photographs as found in Planning file 980245.

5. FINDING: The project is consistent with Section 20.145.030.C.2.a of the CIP, which states that "All structures, whether residential, commercial, agricultural, or public, and access thereto, shall be design and sited so as not to detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline". Based on staff's site visit, and staking, and subsequent redesign, the proposal would not adversely impact ocean views from Highway One..

EVIDENCE: Staff site visit, pursuant to Section 20.145.030 of the CIP.

EVIDENCE: Photographs as found in Planning file 980245.

6. FINDING: The project is consistent with Section 20.145.030.C.2.b of the CIP, which states that "building shall be located so as to minimize their visual impact upon public views as well as the views and privacy of neighbors. New structures shall be located on that portion of a parcel least visible from public views." The development proposed is an addition to an existing structure, not a new structure. The development proposed is located on the only available portion of the property. The balance of the property is taken by scenic easement which was required to mitigate the potential visual impacts of the impact the existing residence. Other development alternatives would require alteration to that scenic easement. Further, neither the critical viewshed exemption policy or the development standards prohibits additions to existing structures which may be visible.

EVIDENCE: Staff site visit, pursuant to Section 20.145.030 of the CIP.

EVIDENCE: Photographs as found in Planning file 980245.

7. FINDING: The project, is appealable to the Board of Supervisors and to the California Coastal Commission.

EVIDENCE: Sections 20.86.070 and 20.86.080 of the Monterey County Coastal Implementation Plan.

8. FINDING: The site is suitable for the use proposed.

EVIDENCE: There has been no testimony received either written or oral, during the course of public hearings to indicate that the site is not suitable for the project. Necessary public facilities are available for the use proposed. The project has been reviewed by the Monterey County Planning and Building Inspection Department, North County Fire Protection District, Public Works Department, Parks Department, Environmental Health Division and Water Resources Agency. There has been no indication from these agencies that the site is not suitable. There are no environmentally sensitive habitats, or similar areas that would indicate the site is not suitable for the use proposed.

EVIDENCE: The Big Sur Advisory Committee has recommended approval of the proposed development.

EVIDENCE: There has been no opposition or concern expressed by the public through the public hearing processes relating to this application.

ex 2 cont
CAIN

3-99-36-R EX B P 27

DECISION

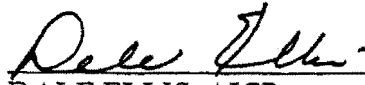
THEREFORE, it is the decision of said Zoning Administrator, that said application for a Coastal Administrative Permit be granted as shown on the attached sketch and subject to the following conditions:

1. The subject Coastal Administrative Permit and Design Approval allows a 1,552 square foot second story addition, a breezeway enclosure addition, and a 900 square foot garage addition to an existing single story single family dwelling. The site is located at 30830 Aurora Del Mar (Assessor's Parcel Number 243-351-001-000) in the Otter Cove Area of Big Sur in the Coastal Zone. Neither the use nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or constructions other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities (Planning and Building Inspection Department)
2. The grade for all roads, streets, private lanes and driveways shall not exceed 15%. (Carmel Highlands Fire Protection District)
3. Driveways shall not be less than 12 feet wide unobstructed. (Carmel Highlands Fire Protection District)
- Size of letters, numbers and symbols for addresses shall be a minimum of 3 inch letter height, 3/8 inch stroke, contrasting with the background color of the sign. (Carmel Highlands Fire Protection District)
5. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and shall be maintained thereafter, and the address shall be visible and legible from the road on which the address is located. (Carmel Highlands Fire Protection District)
6. Remove flammable vegetation from within 30 feet of structures. Limb trees 6 feet up from ground. Remove limbs within 10 feet of chimneys. (Carmel Highlands Fire Protection District)
7. The building(s) (including all additions) shall be fully protected with automatic fire sprinkler system(s) as per NFPA 13D. Accessible storage spaces in attics must also be sprinklered. The building shall be fully protected with an automatic fire sprinkler system. Installation, approval and maintenance shall be in compliance with applicable National Fire Protection Association. Four (4) sets of plans for fire sprinkler systems must be submitted and approved prior to installation. Rough-in inspections must be completed prior to requesting a framing inspection. (Carmel Highlands Fire Protection District)
8. Roof construction shall be a class A or Class B, with fire resistive materials as approved by the Reviewing Authority. (Carmel Highlands Fire Protection District)
9. A drainage plan shall be prepared by a registered civil engineer or architect addressing on-site and off-site impacts, to include dispersal of impervious surface storm water runoff onto non-redouble surfaces below the bluff. (Water Resources Agency)

10. The applicant shall comply with Ordinance No. 3932, or as subsequently amended, of the Monterey County Water Resources Agency pertaining to mandatory water conservation regulations. The regulations for new construction require, but are not limited to:
 - a) All toilets shall be ultra-low flush toilets with a maximum tank size or flush capacity of 1.6 gallons, all shower heads shall have a maximum flow capacity of 2.5 gallons per minute, and all hot water faucets that have more than ten feet of pipe between the faucet and the hot water heater serving such faucet shall be equipped with a hot water recirculating system.
 - b) Landscape plans shall apply xeriscape principles, including such techniques and materials as native or low water use plants and low precipitation sprinkler heads, bubblers, drip irrigation systems and timing devices. (Water Resources Agency)
11. The applicant shall record a deed restriction, prior to issuance of building or grading permits, stating "Because of the visual sensitivity of the area, all landscaping shall be approved by Zoning Administrator. All exterior design changes, including color changes associated with repainting, re-roofing, exterior lighting changes and changes to the landscape plan pursuant to condition 13 shall be approved through the design approval process." The deed restriction shall be subject to the approval of the Director of Monterey County Planning and Building Inspection Department prior to recordation. (Planning and Building Inspection)
12. That all landscaped areas and/or fences shall be continuously maintained by the applicant and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. (Planning and Building Inspection)
13. At least three weeks prior to occupancy, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. An \$84 landscape plan review fee is required for this project. Fees shall be paid at the time of landscape plan submittal. The landscaping plan shall be in sufficient detail to identify the location, specie, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before occupancy, landscaping shall be either installed. (Planning and Building Inspection)
14. The landscape materials shall be native to the Carmel Sur Subdivision (Otter Cove) area and shall include appropriate species of trees and shrubs planted in such a manner as to ensue long term screening of the addition from Highway 1 while ensuring the maximum feasible ocean views. The landscape plan shall be prepared by a professional certified landscape architect to include a statement providing evidence of how the screening will be accomplished consistent with these conditions. This plan shall also include the appropriate level of long term maintenance and monitoring required. The landscaping shall be permanently maintained by the property owner so as not to exceed the height and depth of the home. (Planning and Building Inspection)
15. No land clearing or grading shall occur on the subject parcel between October 15 and April 15 unless authorized by the Director of Planning and Building Inspection. (Planning and Building Inspection)
16. The location, type and size of all antennas, satellite dishes, towers, and similar appurtenances be approved by the Director of Planning and Building Inspection. (Planning and Building Inspection)

7. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. That the applicant shall submit 3 copies of an exterior lighting plan which shall indicate the location, type, and wattage of all light fixtures and include catalog sheets for each fixture. The exterior lighting plan shall be subject to approval by the Director of Planning and Building Inspection, prior to the issuance of building permits. (Planning and Building Inspection)
18. If, during the course of construction, cultural, archaeological, historical or palentological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (150 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., and archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (Planning and Building Inspection)
19. The applicant shall record a deed restriction which states: "The parcel is located in a high fire hazard area and development may be subject to certain restrictions required as per Section 20.146.080.D.3 of the Coastal Implementation Plan and per the standards for development of residential property" prior to the issuance of building or grading permits. (Planning and Building Inspection)
20. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (Planning and Building Inspection Department)
21. The applicant shall record a notice which states: "A permit (Resolution 980245) was approved by the Zoning Administrator for Assessor's Parcel Number 243-351-001-000 on March 25, 1999. The permit was granted subject to 21 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (Planning and Building Inspection)

PASSED AND ADOPTED this 25th day of March, 1999.



DALE ELLIS, AICP
ZONING ADMINISTRATOR

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON MAY - 6 1999

THIS PROJECT IS APPEALABLE TO THE BOARD OF SUPERVISORS AND THE CALIFORNIA COASTAL COMMISSION.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK OF THE BOARD OF SUPERVISORS ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE MAY 16 1999

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning and Building Inspection Department office in Salinas.

2. This permit expires two years after the above date of granting thereof unless construction or use is started within this period.

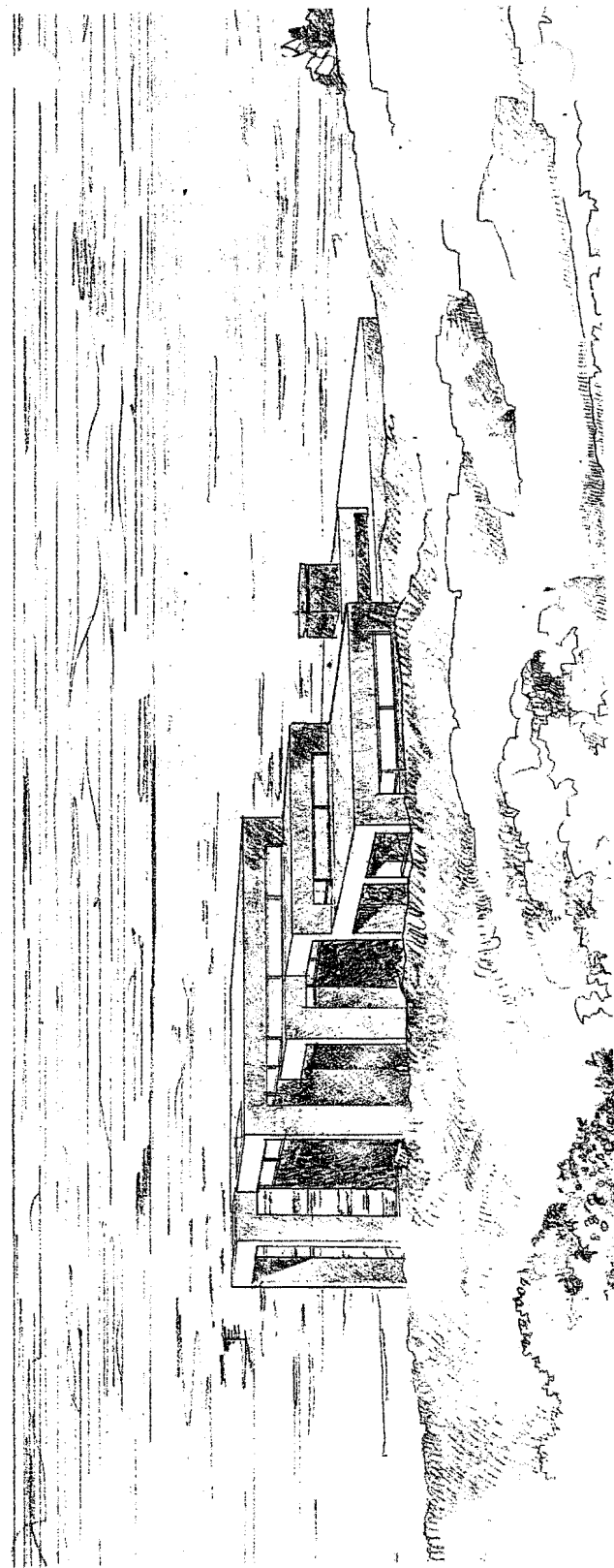
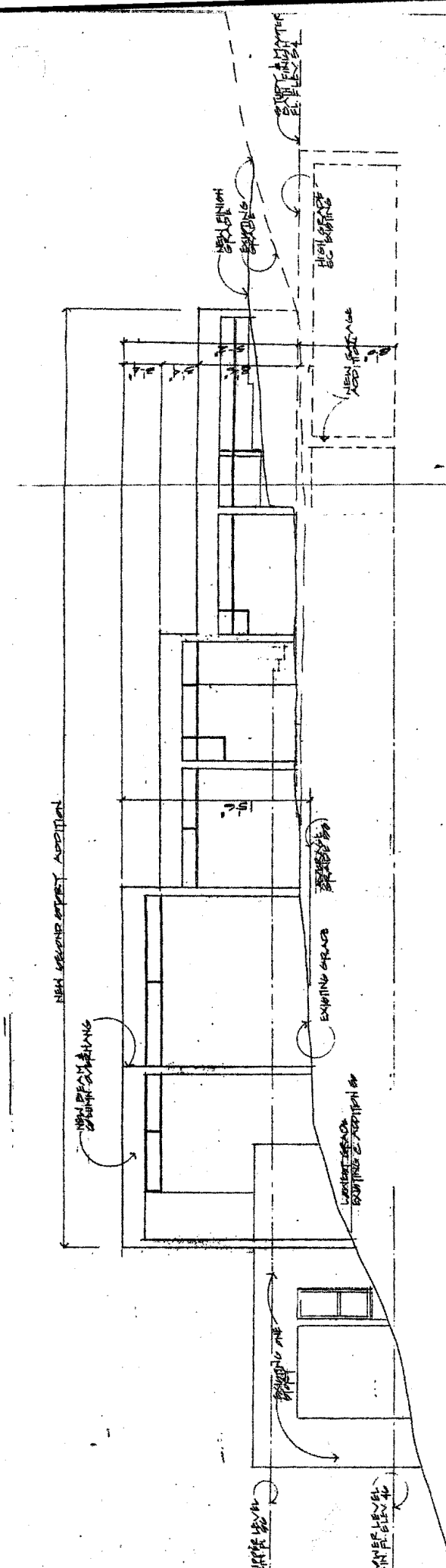
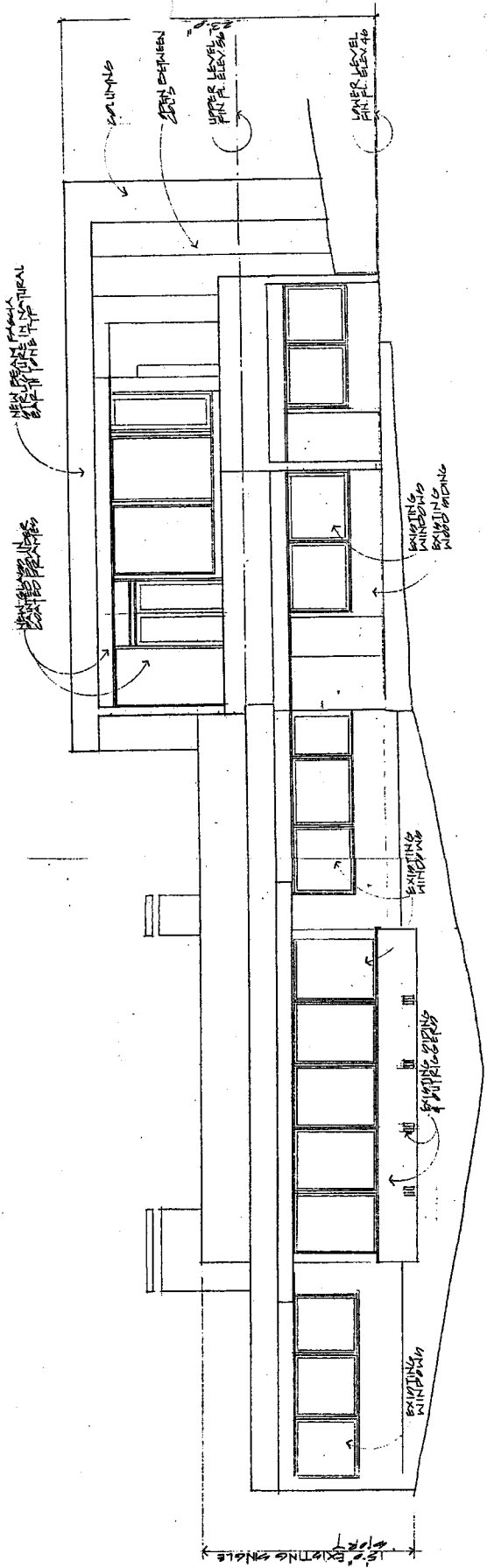


EXHIBIT NO. 3
APPLICATION NO. CAIN
A-3-MCO-99-26
Rendering



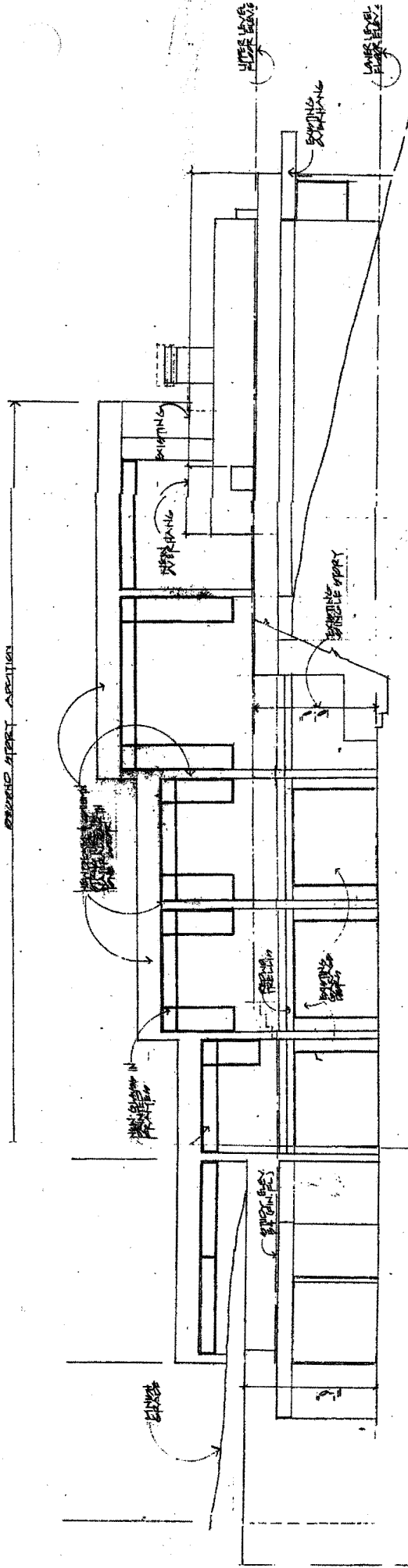
SOUTH ELEVATION PROPOSED

EXHIBIT NO. 3 cont
APPLICATION NO. CAIN
A-3-MCO-99-36
Elevations
3-99-36-R EXB # 37



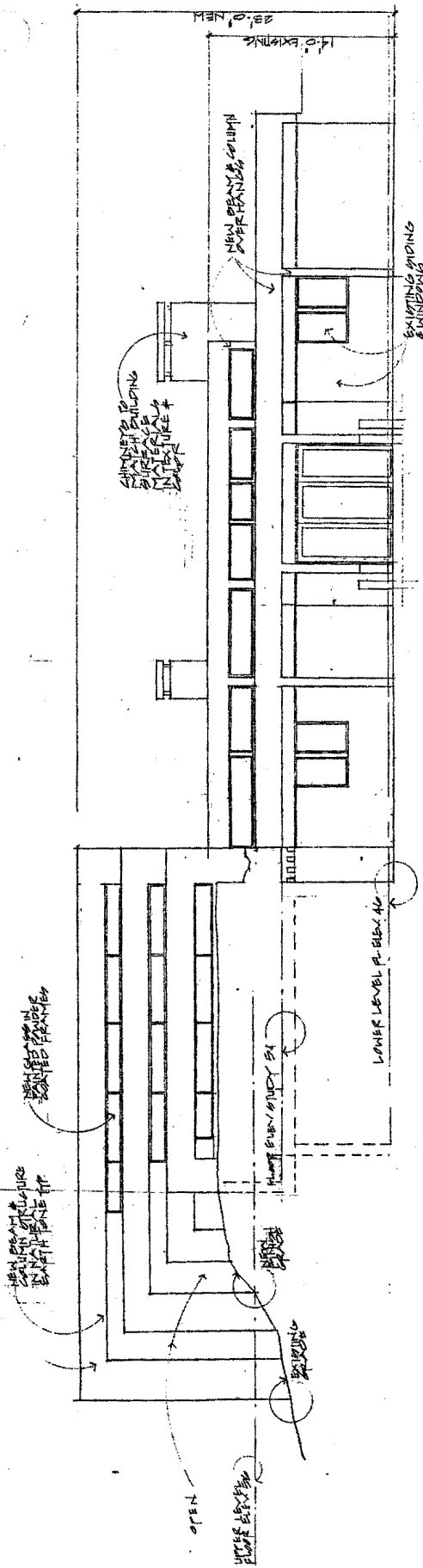
WEST ELEVATION PROPOSED

EXHIBIT NO. 3 cont
 APPLICATION NO. **CAIN**
A-3-MCO-99-36
 Elevations



NORTH ELEVATION PROPOSED

EXHIBIT NO. 3
APPLICATION NO. CAIN
A-3-MCO-99-36
elevations
3-99-76-R EXB P 35



EAST ELEVATION PROPOSED

1/10/00

EXHIBIT NO. 3 cont
APPLICATION NO. CA1N
A-3-MCO-99-36
elevations

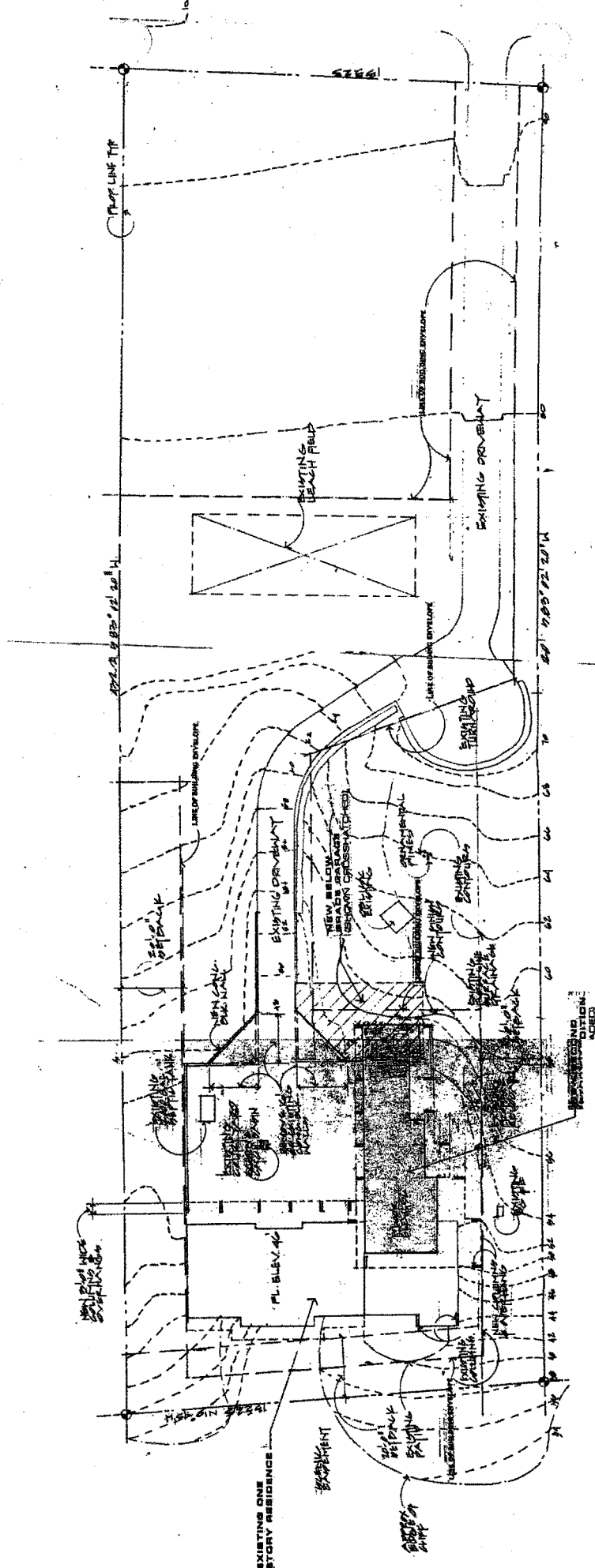
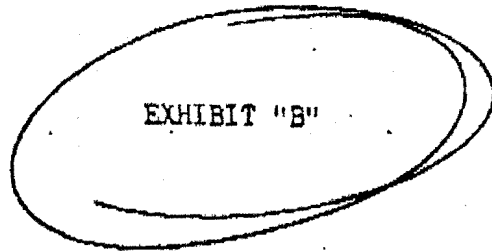
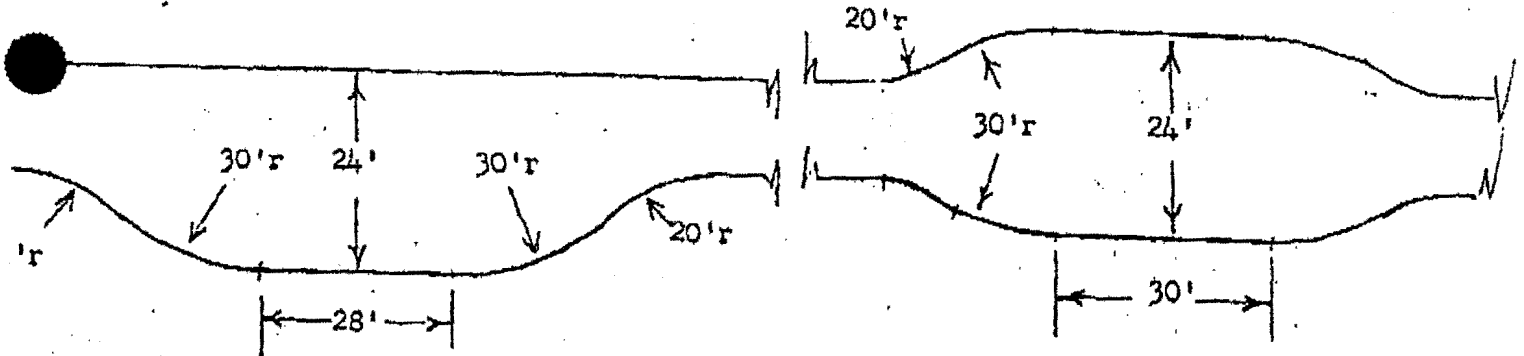


EXHIBIT NO. 300
APPLICATION NO. CAIN
A-3-MCO-99-36
site plan
3-99-36.R EX.B P57

EXHIBIT "A"



Turn-around @
residence

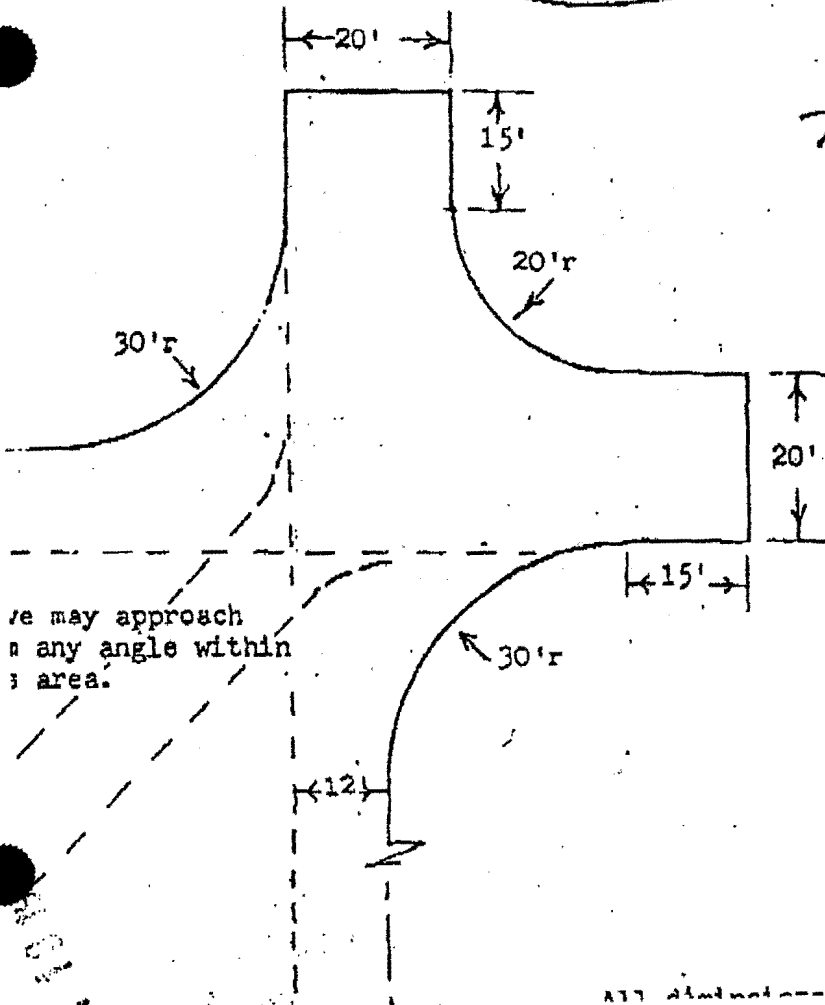
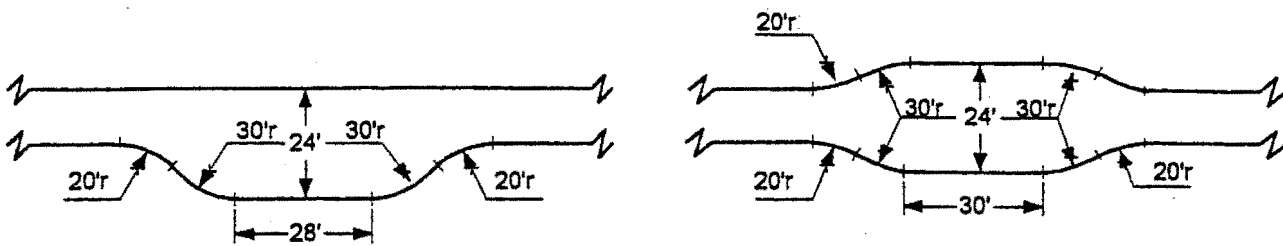


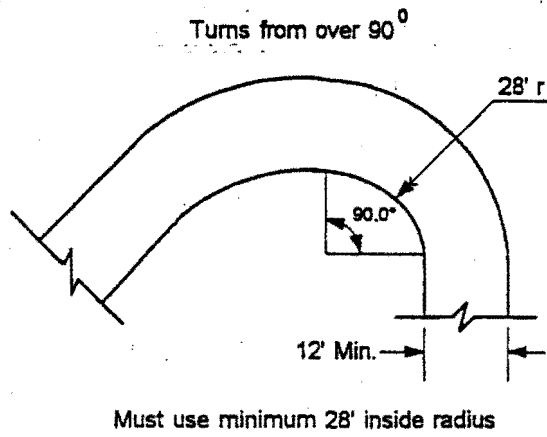
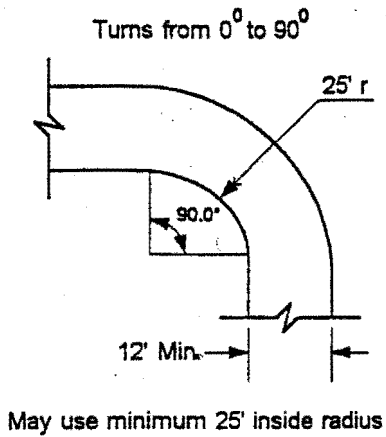
EXHIBIT NO. C-1
APPLICATION NO. A-3-MCO-99-36-R
Driveway turn-around requirements for house 1788

EXAMPLE A Driveway Turnouts

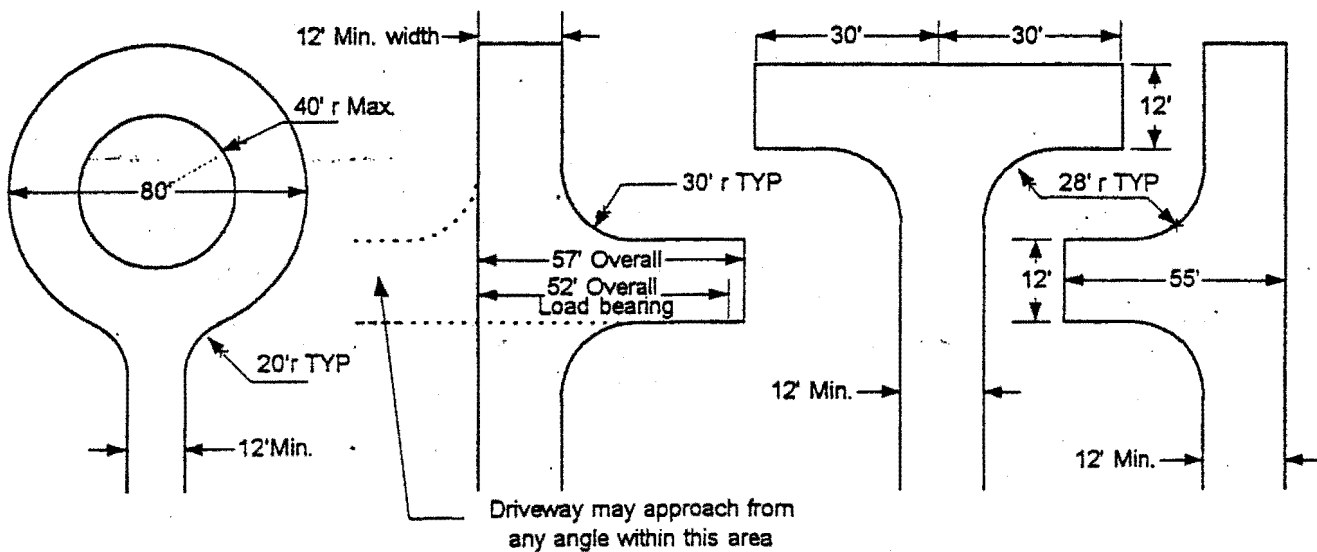
Form # 1 (MCFPOA) Revised 1/30/97



EXAMPLE B Driveway Turning Radii



EXAMPLE C Driveway / Road Turnaround



The local fire jurisdiction will consider designs other than those shown above.

EXHIBIT NO. C-2
APPLICATION NO. A-3-MCO-99-36-R
Driveway Turnaround Requirements 1998

SITE PLAN

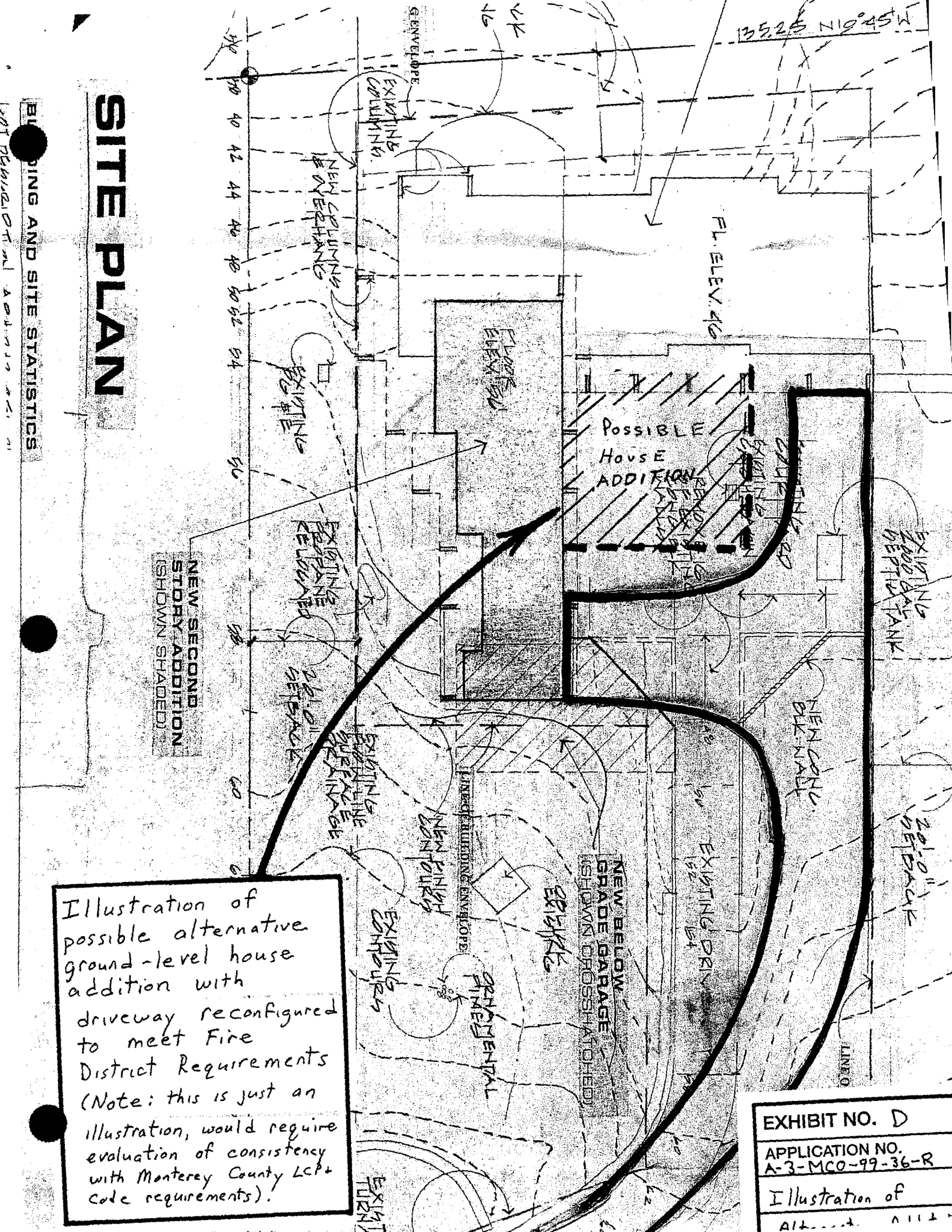


Illustration of possible alternative ground-level house addition with driveway reconfigured to meet Fire District Requirements (Note: this is just an illustration, would require evaluation of consistency with Monterey County LCP & Code requirements).

EXHIBIT NO. D
APPLICATION NO. A-3-MCO-99-36-R
Illustration of

