

CALIFORNIA COASTAL COMMISSION

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

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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION & DE NOVO HEARING

Appeal number A-3-CAP-99-023, Swenson Residence Capitola

Applicant Green Valley Corporation dba Barry Swenson Builder (Agent: Tom Nelson)

Appellants Commissioners Sara Wan & Dave Potter

Local government City of Capitola

Local decision Approved with conditions, 1/7/99

Project location 4840 Cliff Drive, Capitola, Santa Cruz County (APN: 034-081-02).

Project description Construct new single family dwelling.

File documents City of Capitola certified Local Coastal Program; City of Capitola permit file 98-54; *Geologic Report Swenson Property 4840 Cliff Drive Capitola, California* (Rogers E. Johnson & Associates, August 3, 1998 update); *Geotechnical Investigation for Proposed Residential Structure 4840 Cliff Drive* (Haro, Kasunich and Associates, Inc., April 1998); coastal development permit files 3-84-18 and 3-95-59.

Staff recommendation ... **Substantial Issue Exists; Approval with Conditions**

Summary: This is the substantial issue determination and de novo hearing for appeal number A-3-CAP-99-023 (the Commission previously opened and continued the substantial issue hearing for this matter on April 14, 1999). Staff recommends that the Commission find that a substantial issue exists with respect to this project's conformance with the certified City of Capitola Local Coastal Program (LCP) and take jurisdiction over the project. Staff subsequently recommends that the Commission approve the project subject to special conditions designed to bring the project into conformance with the certified LCP.

The Commissioner Appellants raise substantial issues concerning the consistency of the City's approval of the proposed project with LCP blufftop setback policies. Under the LCP, approved development must be set back sufficient distance from the bluff edge to assure stability and structural integrity for the expected life of the development. The LCP identifies 50 years as the minimum economic lifetime to be



California Coastal Commission
July 14, 1999 Meeting in San Rafael

Staff: D. Carl Approved by:

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considered when developing such blufftop setbacks.

In this case, the City of Capitola approved residential development on a blufftop lot which directly abuts the identified minimum 50 year bluff edge retreat line (an approximate 38 foot setback). Should the bluff retreat according to this 50 year prediction, the approved dwelling would be endangered by bluff retreat in advance of the 50 year minimum LCP requirement because its stability and structural integrity would be threatened before the bluff edge was allowed to retreat to its footings. As such, a shoreline protective device would be required to maintain stability and structural integrity before the end of the project's expected economic lifetime. The Applicant's geotechnical reports identify a "geologically suitable building envelope" which is approximately 50 feet from the bluff edge at its closest point. The City's approval does not limit the proposed dwelling's economic lifetime to fifty years and does not restrict future construction of a shoreline protective device. Because structural stability (without reliance of a shoreline protective device) has not been assured for even the LCP minimum of fifty years, the project is inconsistent with LCP blufftop setback policies and raises a substantial LCP conformance issue.

In order to bring this project into conformance with LCP blufftop setback policies, this approval requires the Applicant to set the proposed residential structure back an additional 15 feet from the 50 year bluff edge retreat line consistent with the recommendations of the project geotechnical reports. The Commission's staff engineer reviewed these geotechnical reports and likewise concluded that there was a high probability that the proposed structure would be safe, without reliance upon shoreline armoring, for the LCP minimum fifty years with this additional setback. To implement this setback and insure that the remaining bluff area is not subject to future alteration or destabilization inconsistent with the LCP, this approval also requires an open space deed restriction over the area seaward of the approved residential structure. In recognition of the identified bluff retreat and coastal erosion hazards of the subject site, this approval also requires the Applicant to assume all risks for developing at this precarious blufftop location.

Finally, although the current proposal does not involve the sandy beach portion of the property, future development may eventually impact this publicly utilized lateral access area. Accordingly, this approval is conditioned to make it clear that the Commission's authorization of this permit shall not constitute a waiver of any public rights which may exist on the property.

Only as modified and conditioned by this permit can the proposed project be considered consistent with the requirements of the certified City of Capitola LCP and the access and recreation policies of the Coastal Act.



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1. Local Government Action

On January 7, 1999, the proposed project was approved by the City of Capitola Planning Commission by a vote of 5 to 0. This action was not appealed to the Capitola City Council. Adequate notice of this City of Capitola final local action was received in the Commission's Central Coast District Office on Friday, March 5, 1999. See Exhibit A for the City's findings and conditions on the project. The Commission's ten-working day appeal period for this action began on Monday, March 8, 1999 and



concluded at 5:00 P.M. on Friday, March 19, 1999. One valid appeal (see below) was received during the appeal period.

2. Appeal Procedures

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 of its location between the sea and the first public road paralleling the sea and its location within 300 feet of the top of the seaward face of the coastal bluff.

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 nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and thus, this additional finding must be made in a de novo review in this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

3. Appellant Contentions

The two Commissioner Appellants contend in full (see Exhibit B for the complete appeal document):

The City of Capitola approved the Swenson single-family dwelling with a ± 35 foot setback from the edge of the coastal bluff. This setback places the proposed structure immediately on top of the "50 year bluff edge retreat line" identified by the project



geologist. The following LCP policies are among those which address blufftop setbacks for the Swenson development.

LUP Policy VII-7. Bluff and cliff top development shall be approved only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic lifetime (at least 50 years) of the development and if the development (including storm runoff, foot traffic, grading, and irrigation) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. This policy shall be carried out by requiring geologic reports as per Policy VII-8.

LCP Zoning Section 17.48.080 Development Standards. The development standards in the GH district shall be the same as the basic zoning district except in those instances when more restrictive standards are necessary to provide assurance that stability and structural integrity can be maintained for the economic life of the project (fifty years).

LCP Zoning Section 17.48.100(A) Bluff and Cliff Area Regulations (in the GH district). Bluff and cliff top development shall be permitted only if the design and setback provisions are designed to assure stability and structural integrity for the expected life of the development (at least fifty years) and if the development (including storm runoff, foot traffic, grading and irrigation) will neither create nor contribute significantly to erosion problems or geological instability of the site and surrounding areas.

The LCP requires approved development to be set back sufficient distance from the bluff edge to assure stability and structural integrity for the expected life of the development. The LCP identifies 50 years as the minimum economic lifetime to be considered when developing such blufftop setbacks. In this case, the City of Capitola approved development which directly abuts the identified minimum 50 year bluff edge retreat line. Should the bluff retreat according to this 50 year prediction, the approved dwelling would be endangered by bluff retreat in advance of the 50 year minimum LCP requirement because its stability and structural integrity would be threatened *before* the bluff edge was allowed to retreat to its footings.

Moreover, the City-approved project does not contain any assurance that the stability of the development has been tied into its expected economic lifetime. Even if the ± 35 foot setback were sufficient to maintain the stability and structural integrity of the dwelling for 50 years, there are no provisions limiting the proposed dwelling's economic lifetime to fifty years, nor is there a provision restricting future construction of a shoreline protective device. The economic lifetime of coastal development is generally much longer than fifty – or even one-hundred – years. Lacking a provision limiting the economic life of the project to 50 years, and given the 0.1 to 1 foot per year bluff retreat rate identified for the



property, a shoreline protective device would be required to maintain stability and structural integrity *before* the end of the project's expected economic lifetime.

In sum, the proposed project is not consistent with the LCP's blufftop setback requirements cited above. Contrary to these requirements, it appears likely that a shoreline protective device will be required to assure the project's stability and structural integrity sooner than 50 years. Also, it appears certain that shoreline protection would be necessary before the end of the project's economic lifetime.

4. 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 appeal was filed. Staff recommends a **NO** vote on the following motion:

***Motion:** I move that the Commission determine that appeal number A-3-CAP-99-023 raises no substantial issue with respect to the grounds on which the appeal has been filed.*

A no vote would result in a finding of substantial issue and bring the project under the jurisdiction of the Commission for hearing and action. A majority of the Commissioners present is required to pass the motion.

5. Staff Recommendation on Coastal Development Permit

The staff recommends that the Commission, after public hearing, **approve** the proposed project subject to the standard and special conditions below. Staff recommends a **YES** vote on the following motion:

***Motion:** I move that the Commission approve Coastal Development Permit Number A-3-CAP-99-023 subject to the conditions below and that the Commission adopt the following resolution:*

***Approval with Conditions.** The Commission hereby grants a permit for the proposed development, as modified by the conditions below, on the grounds that the modified development will be in conformance with the provisions of the City of Capitola certified Local Coastal Program (LCP), is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and recreation policies of the California Coastal Act of 1976 (Coastal Act), and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act (CEQA).*

A yes vote would result in approval of the project as modified by the conditions below. The motion passes only by affirmative vote of a majority of the Commissioners present.



6. Conditions of Approval

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 on which the Commission voted on the application. 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

1. **Revised Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit revised plans to the Executive Director for review and approval. The revised plans shall show all development within the geologically suitable building envelope for the site (as defined on *Plate 1, Geologic Map, Swenson Property* dated revised July 31, 1998 from *Geologic Report Swenson Property 4840 Cliff Drive Capitola, California* by Rogers E. Johnson & Associates, August 3, 1998 update) as shown in Exhibit F except for:
 - a. In the front yard (the area between the geologically suitable building envelope and Cliff Drive), a driveway, landscaping, walkways, drainage and erosion control lines, and a front entry porch (which can extend toward Cliff Drive an additional 4 feet pursuant to LCP Zoning Section



17.15.120);

- b. In the side yards (the area between the geologically suitable building envelope and adjacent properties), landscaping, walkways, drainage and erosion control lines, and side yard fencing; and
- c. In the back yard bluff (the area between the geologically suitable building envelope and the blufftop edge), protective bluff edge fencing, landscaping, and drainage and erosion control lines.

Revised plans will include revised grading, drainage, and erosion control plans which show all drainage from the site directed away from the bluff edge and collected in impermeable gutters or pipes and carried to the City's storm drain system on Cliff Drive consistent with the recommendations of the geologic report for the site (*Geologic Report Swenson Property 4840 Cliff Drive Capitola, California* (Rogers E. Johnson & Associates, August 3, 1998 update).

Revised plans shall include revised landscaping and irrigation plans which clearly identify the type, size, extent and location of all plant materials, the proposed irrigation system and other landscape features for the entire site.

All plans shall be submitted with documentation from a licensed geologist and/or geotechnical engineer that the plans are consistent with the recommendations contained in *Geologic Report Swenson Property 4840 Cliff Drive Capitola, California* (Rogers E. Johnson & Associates, August 3, 1998 update) and *Geotechnical Investigation for Proposed Residential Structure 4840 Cliff Drive* (Haro, Kasunich and Associates, Inc., April 1998).

All plans shall be submitted with evidence of review and approval by the appropriate City of Capitola official.

The Permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

2. **Open Space Deed Restriction.** No development, as defined in Capitola LCP zoning section 17.46.030I, shall occur in the blufftop area seaward of the geologically suitable building envelope for the site (as defined on *Plate 1, Geologic Map, Swenson Property* dated revised July 31, 1998 from *Geologic Report Swenson Property 4840 Cliff Drive Capitola, California* by Rogers E. Johnson & Associates, August 3, 1998 update) as shown in Exhibit G except for the following as shown on the final approved plans pursuant to Special Condition 1 of this approval: (a) protective bluff edge fencing; (b) landscaping; and (c) drainage and erosion control lines. This designated open space area refers only to the area on the top of the bluff; as the bluff edge retreats towards the geologically suitable building envelope, the seaward edge of the open space area will likewise retreat inland.



Should any of the improvements allowed within the open space area be threatened by bluff retreat or coastal erosion, the threatened improvements shall be relocated inland away from the blufftop edge; the improvements shall not in any event qualify as "existing development" within the meaning of Capitola LCP zoning section 17.48.090 for allowing shoreline armoring at the site. Prior to relocating any of the improvements allowed within the open space area that may be threatened by bluff retreat or coastal erosion, the Permittee shall submit specific construction plans for review and approval by the Executive Director; such plans shall be submitted with evidence of review and approval by both the City of Capitola and a licensed geologist or geotechnical engineer. If, upon review of any construction plans so submitted, the Executive Director determines that an amendment to Coastal Development Permit A-3-CAP-99-023 is necessary to authorize the development described by the submitted plans, the permittee shall submit an amendment request upon notification of this determination.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space. The deed restriction shall include legal descriptions of both the Permittee's entire parcel and the open space area. 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 Commission amendment to this coastal development permit.

3. **Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the Permittee acknowledges and agrees: (a) that the site is subject to hazards from episodic and long-term bluff retreat and coastal erosion; (b) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (c) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (d) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the Permittee's entire 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 Commission amendment to this coastal development permit.

4. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of



any public rights which may exist on the property. The Permittee shall not use this permit as evidence of a waiver of any public rights which may exist on the property.

5. **City of Capitola Conditions.** All previous conditions of approval imposed on the project by the City of Capitola pursuant to an authority other than the California Coastal Act remain in effect (City of Capitola Application Number 98-54).

7. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location & Description

The proposed project is located on a blufftop lot situated on the northern Monterey Bay coastline in the City of Capitola. This general area consists of relatively flat upland coastal marine terraces along the southwestern flank of the Santa Cruz Mountains. This specific section of the coastline is characterized by high bluffs broken by the floodplain of Soquel Creek opening up to Capitola City Beach. From Capitola City Beach, the bluff rises rapidly to a height of 60 – 70 feet and continues upcoast (southwest) for approximately 2 miles where it drops into the Moran Lake drainage, and downcoast (northeast) approximately 1 mile to New Brighton State Beach.

The Applicant's parcel is located approximately one-third of a mile upcoast (southwest) of Soquel Creek on a relatively flat blufftop plateau approximately 65 feet above the Monterey Bay and beach environs below. The subject parcel is one of a series of parcels situated between the road and the ocean extending from the neighboring adjacent parcel (to the northwest of the Applicant's parcel) to 41st Avenue (in unincorporated Santa Cruz County). This area is known locally as the Opal Cliffs area. The subject parcel is the only remaining vacant parcel along this stretch of coastline; the remainder of the Opal Cliffs area is characterized primarily by large residential structures between the public road and the bluff edge. The overwhelming majority of this stretch of coast, including parcels immediately up and down coast, has been armored with an assortment of revetments and vertical seawalls. The subject parcel is framed by an existing 3-story condominium building to the west and a 2-story residential structure directly to the east. The subject parcel is not currently armored.

See Exhibit C for project location maps and Exhibit D for photos of the site.

The Applicant proposes to construct an approximately 3,400 square foot, two-story single-family residential structure extending to within approximately 38 feet of the edge of the bluff at this location. This blufftop setback corresponds to a "50 year bluff edge retreat line" identified for the site by the Applicant's consulting engineering geologist (see *Geologic Report Swenson Property 4840 Cliff Drive Capitola, California*, Rogers E. Johnson & Associates, August 3, 1998 update).

See Exhibit E for site plans and elevations from the City-approved project.



B. Analysis of Project Consistency with Local Coastal Program

1. Applicable LCP Policies

The subject parcel is located in the City's Geologic Hazard (GH) district and the following LCP policies are among those which address blufftop setbacks for the proposed development:

LUP Policy VII-7. Bluff and cliff top development shall be approved only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic lifetime (at least 50 years) of the development and if the development (including storm runoff, foot traffic, grading, and irrigation) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. This policy shall be carried out by requiring geologic reports as per Policy VII-8.

LCP Zoning Section 17.48.080 Development Standards. The development standards in the GH district shall be the same as the basic zoning district except in those instances when more restrictive standards are necessary to provide assurance that stability and structural integrity can be maintained for the economic life of the project (fifty years).

LCP Zoning Section 17.48.100(A) Bluff and Cliff Area Regulations (in the GH district). Bluff and cliff top development shall be permitted only if the design and setback provisions are designed to assure stability and structural integrity for the expected life of the development (at least fifty years) and if the development (including storm runoff, foot traffic, grading and irrigation) will neither create nor contribute significantly to erosion problems or geological instability of the site and surrounding areas.

These LCP policies require approved development to be set back sufficient distance from the bluff edge to assure stability and structural integrity for the expected life of the development. The LCP identifies 50 years as the minimum economic lifetime to be considered when developing such blufftop setbacks.

2. City-Approved Project

The proposed project changed several times over the course of the City's review. The original design reviewed by the City's Architectural and Site Review Committee on July 22, 1998 was for a 2,717 square foot, two-story residence set back an additional 15 feet from the parcel's identified 50 year bluff edge retreat line. Such a project was within the confines of the geologically suitable building envelope defined for the site by the consulting engineering geologist. Subsequently, on August 6, 1998, the City's Planning Commission interpreted the City's blufftop setback policies to allow for blufftop development within the City to directly abut any 50 year setback line established by site specific geology reports. Following this new interpretation, the Applicant modified the proposed project to directly abut the 50 year setback line for the site (approximately 34 feet from the bluff edge) and to increase overall square footage to 3,944 square feet. Over the course of several public hearings, the project was subsequently reduced in scale. Ultimately the City approved a 3,427 square foot, two-story residence set back



approximately 38 feet from the bluff edge (see Exhibit E). The City's approval did not limit the proposed dwelling's economic lifetime to fifty years and did not restrict future construction of a shoreline protective during the project's economic lifetime.

See Exhibit A for the City's findings and conditions.

3. Substantial Issue Determination

The Commissioner Appellants contend that the project raises substantial issues concerning the consistency of the City's approval of the proposed project with LCP blufftop setback policies. Under the LCP, approved development must be set back sufficient distance from the bluff edge to assure stability and structural integrity for the expected life of the development. The LCP identifies 50 years as the minimum economic lifetime to be considered when developing such blufftop setbacks. See Exhibit B for the full text of the appeal.

The City-approved development would be sited directly adjacent to the 50 year bluff edge retreat line identified by the consulting engineering geologist. This City-approved footprint is approximately 15 feet closer to the blufftop edge than the distance recommended by the consulting engineering geologist due to ongoing and active site bluff retreat. In fact, the project geologist identified a "geologically suitable building envelope" for the site that has not been utilized in the City's approval (see Exhibit F). As stated in the project geologic report:

It is our opinion that the bluff top will continue to retreat at a variable rate of 0.1 foot to 1 foot per year for different portions of the property, if no erosional protection is constructed at the toe of the bluff. Bluff retreat on the subject property is the controlling factor for our recommended building envelope...it is our opinion that development of the subject property is geologically suitable, provided our recommendations are followed. ... We recommend that construction of a single family residence be restricted to the area labeled "Geologically Suitable Building Envelope."

The geologically suitable building envelope is likewise the basis for the project's geotechnical report, the scope of which was limited to the building envelope area exclusively (*Geotechnical Investigation for Proposed Residential Structure 4840 Cliff Drive*, Haro, Kasunich and Associates, Inc., April 1998).

Should the bluff retreat according to the 50 year prediction for the site, the City-approved dwelling would be endangered by bluff retreat well in advance of the 50 year minimum LCP requirement because its stability and structural integrity would be threatened before the bluff edge was allowed to retreat to its footings (i.e., the 50 year line). Although it is conceivable that a property owner would wait until zero blufftop remained before pursuing shoreline armoring at this location, it is highly unlikely. As such, a shoreline protective device would be required to maintain stability and structural integrity before 50 years had elapsed. This is inconsistent with City LCP policies requiring setback provisions designed to assure stability and structural integrity for the economic life of the structure (a minimum of fifty years).



Conditions of approval that limit the proposed dwelling's economic lifetime to fifty years, or which restrict future construction of a shoreline protective devices, are other tools which were available to the City to address LCP setback policy conformance issues. However, the City did not apply any such conditions to the proposed project.

Because structural stability has not been assured for even the LCP minimum of fifty years, the project is inconsistent with LCP blufftop setback policies and raises a substantial LCP conformance issue. **Therefore, the Commission finds that the proposed residential project raises a substantial issue in terms of its conformance with the blufftop setback policies of the certified City of Capitola LCP. Specifically, the project is inconsistent with LUP Policy VII-7, LCP Zoning Sections 17.48.080 and 17.48.100(A).**

D. Coastal Development Permit Determination

By finding a substantial issue in terms of the project's conformance with the certified LCP, the Commission takes jurisdiction over the coastal development permit for the proposed project. The substantial issue discussion above is incorporated herein by reference.

1. Geologically Suitable Building Envelope and Setback

Though a large parcel, the subject property is heavily constrained by the reality of an actively eroding bluff. In fact, of the half-acre parcel, only about one-half of this area is blufftop land (the remainder being bluff face, rocky tidal ledge, and sand beach); only about 10% of this blufftop space (or approximately 1,350 square feet) is within the geologically suitable building envelope identified for the site by the consulting engineering geologist. With these site constraints, the proposed 3,400 square foot structure is overly ambitious.

However, it is conceivable that a residential structure could be developed within the site's geologically suitable building envelope that was sensitive to this blufftop perch. Such a structure would clearly need to be reduced in scale from the proposed residence. If the structure were to be confined to the identified geologically suitable building envelope, and built with a drilled pier and grade beam foundation (as recommended in the project geotechnical report), then it is likely that 50 years of structural stability can be assured. The Commission's staff engineer has reviewed the project geology and geotechnical reports and has concluded that there is a high probability that such a residential structure could be safe for 50 years within this envelope without shoreline armoring. The Applicant has generally indicated that this is the direction that they would like to proceed (see Exhibit I).

While such a design would likely provide the LCP minimum 50 years of site stability without reliance on shoreline armoring, the LCP standard is more specifically tied to the "expected economic lifetime of the development" (LCP Policy VII-7, LCP Zoning Section 17.48); fifty years is identified as the LCP *minimum* economic lifetime to be considered. The 50 year time frame used for establishing setbacks in Capitola is lower than the time frame utilized by many coastal jurisdictions statewide. In fact, almost one-half of local governments utilizing such time frames use either 75 or 100 years. For comparison, the



Santa Cruz County LCP requires a 100 year setback from the blufftop edge: Santa Cruz County jurisdiction begins just two parcels to the southwest of the subject parcel.

More importantly, it has been the Commission's experience that the lifetime of coastal development is much longer than fifty years. In fact, the economic lifetimes of many coastal zone developments do not come to an end, in the sense that coastal parcels become "undeveloped." Once structures have been constructed, those structures, with limited exceptions, are typically there to stay. The Applicant in this case is not proposing an end date for the economic lifetime of the proposed structure (i.e., the date at which the structure would be abandoned, removed, et cetera). Accordingly, if the Commission is to take the 'expected economic lifetime of the development' question seriously with this project, it should be assumed that the proposed residential economic lifetime is much longer than 50 years.

With this in mind, it would be reasonable to specify a larger setback for the proposed project in light of the identified long-term stability threat for the parcel. However, the site is constrained on its inland side by Cliff Drive. In fact, there is only about an average of 35 feet between the inland road right-of-way and the 50-year stability building envelope defined for the site. If a larger setback than the 'geologically suitable building envelope' setback (an approximate 45 to 60 foot setback from the bluff edge) were prescribed for this parcel, it is doubtful that any development would be possible on this site.

If development is not to be precluded, it would also be reasonable to consider other options such as limiting the economic lifetime of development to that which the site can support without reliance on shoreline armoring; in this case, based upon the site geology and geotechnical reports, 50 years. Such options might include temporary development that could easily be removed after fifty years (for example, a mobile-modular home) and/or enforceable restrictions to prohibit future shoreline armoring and require the removal of structure(s) as necessary as the bluff continues to naturally erode.

2. Future Shoreline Armoring Issues

A greater setback, restrictions on future armoring, removal of development after 50 years; these are all appropriate tools for the Commission to consider in this case. However, there are certain other factors which are also important to consider. It is highly likely that shoreline armoring will be pursued at this location regardless of whether or not the proposed development goes forward.

First, it is likely that the adjacent condominium development to the west of the subject site will eventually be threatened by bluff erosion taking place at the subject parcel. This is because the bluff is not linear at this location, but rather wraps around a headland on the south end of the subject parcel and forms a kind of bay fronting the side lot-line of the adjacent condos (see Exhibit D, pages 1 and 2). It is likely that the bluff at this 'bay' will continue to erode towards the condominiums. In fact, the bluff at this section of the subject parcel retreated approximately 10 feet from the time of the first geologic survey (March 1997) to the updated geologic survey date (July 1998) (see Exhibit F). The blufftop edge at this location is currently approximately 30 feet from the patios of the condos. The condominium property is currently armored with a combination of a vertical seawall and upper bluff gunnite along its southern property line.



Second, the adjacent residential structure to the east is armored with a vertical concrete seawall extending approximately 200 feet from the Applicant's property line towards Soquel Creek. Past this, the City of Capitola maintains a revetment at the base of Cliff Drive extending to Capitola City Beach. See pages 1 and 2 of Exhibit D for air photos of the site showing the adjacent shoreline armoring structures. The adjacent seawall was approved by the Commission in 1995 (Coastal Development Permit Number 3-95-59, Colt Properties). This seawall currently shows signs of being outflanked by bluff erosion on the Applicant's parcel. With continued natural erosion of the bluff at the Applicant's parcel, it is likely that this adjacent seawall will require end walls or other remediative efforts to insure its continued stability. Such remediative efforts might involve proposals to armor portions of the Applicant's property. Moreover, the residential structure being protected by the existing seawall is setback zero feet from the near vertical bluff edge and is situated approximately ten feet from the Applicant's property line (see Exhibit D). Portions of the residence have been lost over the bluff due to continuing bluff retreat. As the upper bluff continues to naturally erode back, upper bluff protection (e.g., gunnite) may also be proposed for this adjacent site.

Finally, Cliff Drive (on the north property line of the subject parcel) is the primary through coastal road into the village of Capitola. Access to this special community from upcoast would be heavily compromised if this stretch of road were ever to be lost. A circuitous half-mile route inland would be the other option should Cliff Drive ever to be impassable at the Applicant's property. It is likely that before coastal erosion were to compromise this through public road, shoreline armoring would be pursued for the stretch of coast fronting the Applicant's property.

In fact, in 1984 the Commission approved a coastal development permit for a rip-rap revetment which would have extended from the adjacent condominium property around the headland and across the Applicant's property; conditions were never satisfied and this permit authorization has since expired (application number 3-84-18). For this previous armoring application, the Commission found that:

While Section 30235 limits shoreline structures to protect existing development this project may be found consistent as the undeveloped parcel [Applicant's parcel] is intervening between two developed parcels with some level of shoreline protection on either side and is part of a broader project area.

As discussed earlier, the Opal Cliffs area is a heavily armored section of urban coastline. Armoring extends several hundred yards up and down coast of the subject vacant parcel (see page 3 of Exhibit C). Although shoreline armoring is not part of the current application before the Commission, potential future armoring is the larger context within which the current residential structure must be considered.

Because of these site specific factors, it appears likely that some type of armoring will eventually be pursued on the subject parcel. Most likely such armoring would take the form of a request for a vertical seawall which extended the adjacent concrete seawall (to the east, fronting the existing single-family dwelling) to a terminus on the Applicant's property. Although the southward-extending headland on the subject parcel is more protected from surf erosion by the presence of a rocky ledge, it may be that such a



future armoring request would also include some type of connection around the headland to the condominium seawall/gunnite to the southwest. The exact contour of any such future request will depend on the nature of eventual bluff retreat at the site.

3. Setback Conclusion and Conditions

In order to maintain minimum consistency with the certified LCP, the proposed residential structure must be constructed within the identified geologically suitable building envelope for the site (set back an additional 15 feet from the location approved by the City of Capitola). The Commission's staff engineer has indicated that there is a high probability that such a residential structure could be safe for 50 years within this envelope without shoreline armoring. Special Condition 1 of this approval describes the required setback parameters. The Applicant has indicated that they are in agreement that the building's footprint be moved inland to the geologically suitable building envelope (see Exhibit I). In order to implement this setback and insure that the remaining bluff area is not subject to future alteration or destabilization inconsistent with the LCP, this approval is conditioned for a open space deed restriction over that portion of the subject property seaward of the geologically suitable building envelope (see Special Condition 2).

In addition, because the bluff at the site is actively eroding at a variable rate of 0.1 foot to 1 foot per year, the Applicant is knowingly choosing to develop in a high geologic hazard area. This area is within the LCP-mapped geologic hazards (GH) district. As stated in the LCP (LCP Zoning Section 17.48.030):

The GH district is designed to inform property owners and potential property owners of lands which are located in areas containing geological hazards, including, but not limited to, floodplains, fault zones, known landslide areas, bluffs, tsunamis, inundation areas, and high liquefaction areas.

The experience of the Commission in evaluating the consistency of proposed developments with LCP and Coastal Act policies regarding development in areas subject to problems associated with geologic instability, flood, wave, or erosion hazard, has been that development has continued to occur despite periodic episodes of heavy storm damage, landslides, or other such occurrences. Oceanfront development is susceptible to bluff retreat and erosion damage due to storm waves and storm surge conditions. Past occurrences statewide have resulted in public costs (through low interest loans and grants) in the millions of dollars. As a means of allowing continued development in areas subject to these hazards while avoiding placing the economic burden on the people of the state for damages, the Commission has regularly required that Applicants acknowledge site geologic risks and agree to waive any claims of liability on the part of the Commission for allowing the development to proceed. Accordingly, this approval is conditioned for the Applicant to assume all risks for developing at this precarious blufftop location (see Special Condition 3).

Finally, the Applicant's June 21, 1999 correspondence also proposes a separate option involving a cantilevered foundation system that would extend approximately 7 feet into the Special Condition 1-required setback area. Under this scenario, the structure would eventually hang over the bluff edge were



the bluff to erode as predicted over the next 50 years. Notwithstanding whether such a system would be geotechnically feasible (the current geology and geotechnical reports do not consider such an option), such a cantilevered system would raise similar issues as the proposed development (i.e., the property owner would likely pursue shoreline armoring before the bluff had eroded to the slab foundation; before 50 years) and would raise additional LCP consistency issues in terms of natural landform alteration, coastal views, and public safety. It is possible that the Applicant could design a deep piered foundation system that would remain stable should the blufftop erode around it in 50 years. However, such a system would inevitably require shoreline armoring to maintain its precarious perch over its economic lifetime contrary to LCP blufftop setback policies.

The Commission finds that only as modified by Special Conditions 1, 2, and 3 of this approval can the proposed project be found consistent with the blufftop setback requirements of the certified City of Capitola LCP.

4. Public Access and Recreation

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3." Because this project is located seaward of the first through public road (Cliff Drive), for public access and recreation issues the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act.

Coastal Act Sections 30210 through 30214 and 30220 through 30224 specifically protect public access and recreation. In particular:

30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

30214(a): The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case...



30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Likewise, LUP Policies II-1 through II-18 protect public access and recreation. LUP Policy II-1 states:

It shall be the policy of the City of Capitola to maintain and expand its commitment to provide safe and adequate pedestrian access to and along the shoreline as designated in the Shoreline Access Plan (see Maps II-1, 2, & 3)

The project site is seaward of the first public road nearest the shoreline. However, the City's approval lacks the required specific public access findings and it does not contain an equivalent discussion or determination (see Exhibit A).

There are two portions of the subject vacant lot that must be considered for access and recreation purposes: (1) the upper blufftop portion and (2) the beach portion.

The blufftop plateau area of the parcel has been vacant for years. This area had been infrequently utilized by the public as a blufftop viewing area prior to the Applicant installing a fence along the Cliff Drive property frontage in 1995. It is possible that some occasional use of the property persists despite the presence of the fence. In any event, there is not currently any data showing a preponderance of such public use at this location. The LCP does not show this location as a shoreline access point (LCP Map II-2), nor is this location described as such in LCP policies or text. Although formalization of such a blufftop viewing platform may be desirable were this land to be in public ownership, and zoned for parks and open space, there is currently little data which would support such a requirement in this case.

The primary benefit of this vacant blufftop area has been as a through visual access corridor from Cliff Drive through to the Monterey Bay. This visual corridor provides a brief blue water view for motorists, bicyclists, and pedestrians moving along the public street. This existing through view is somewhat blocked by existing site vegetation and trees, and somewhat impaired because Cliff Drive itself slopes slightly down towards its inland edge (see page 4 of Exhibit D). In any event, view corridors would be provided along either side of the proposed structure. Though these side yard view corridors would be smaller than the existing view corridor, Cliff Drive opens up to a wide coastal panorama with a public parking bay directly downcoast towards Capitola (just past the neighboring residential property).

The area of the lot between the existing fence and the Cliff Drive road right-of-way also provides some informal on-street parking. Though this area would be developed by the Applicant, the City has required curbs, gutter, and a sidewalk to formalize the street edge (see Condition 6 of the City's approval; Exhibit A). There will be sufficient space between the curb and the travel lanes of Cliff Drive to continue to



accommodate this informal on-street parking. Therefore, there would be no loss of on-street public parking at this location.

The beach portion of the subject lot has been historically utilized for some public beach access. This beach use primarily involves lateral access across the parcel as opposed to this area being a recreational destination. Located approximately half way between the Hooper Beach section of Capitola City Beach and Opal Cliffs Hidden (or Key) Beach to the southwest, the parcel's beach area is part of the lateral beach access available at low tides along this half-mile stretch of coast in between (see Exhibit C). This is not a heavily used access trail as portions of this stretch of lateral access are only passable at extremely low tides, and can involve scrambling over rip-rap boulders in sections. Users can also be trapped at the toe of the bluffs if caught unawares of incoming tides.

In any event, because all development proposed is on the blufftop, the current proposed project will not impact any ongoing public use of this sandy beach area and there is no public access impact due to the proposed project. However, future development may eventually impact this lateral access area. As discussed above, applications for some manner of shoreline armoring along this stretch of coast (whether for this parcel or for neighboring parcels) seem imminent. As such, it needs to be made clear that the Commission's authorization for the proposed residential structure (as conditioned) does not in any way waive any public rights that may exist on the parcel. Special Condition 4 of this approval clarifies this fact.

The Commission finds that only as modified by Special Condition 4 of this approval can the proposed project be found consistent with the access and recreation policies of the certified City of Capitola LCP and the Coastal Act.

5. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Capitola issued an Initial Study/Negative Declaration for the project on November 2, 1998. Commission staff commented on the Initial Study/Negative Declaration on December 4, 1998 and informed the City that siting the proposed structure immediately adjacent to the 50 year bluff retreat line left little margin for error and could lead to demand for shoreline armoring sooner than the 50 year minimum economic lifetime required by the LCP. Commission staff further informed the City that greater setbacks and deed restrictions prohibiting future shoreline protective structures were both available tools for geologically constrained vacant parcels such as the subject site. See Exhibit H for these Commission staff CEQA comments. Subsequently, the project was approved by the City directly adjacent to the 50 year bluff edge retreat line and the Negative Declaration was adopted when the project



was approved by the City's Planning Commission on January 7, 1999.

The issues previously forwarded to the City by Commission staff, as well as others that have become apparent since the Negative Declaration, have been discussed in this staff report and appropriate mitigations have been developed to supplement the City of Capitola approval of the proposed project. Accordingly, the project is being approved subject to conditions which implement the mitigating actions required of the Applicant by the Commission (see Special Conditions). **As such, the Commission finds that only as modified and conditioned by this permit will the proposed project not have any significant adverse effects on the environment within the meaning of CEQA.**



RECEIVED

MAR 29 1999

*** REVISED PERMIT ***

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Application #98-54

DATE: March 3, 1999

TO: Green Valley corporation dba Barry Swenson Builder
701 N. First St.
San Jose CA 95112

RE: 4840 Cliff Drive – New Single Family Residence

This revised permit is being sent to you in response to a "Notification of Deficient Notice" received from the California Coastal Commission dated March 3, 1999 (attached).

The above matter was presented to the Planning Commission on January 7, 1999 and was **approved**, with the following conditions and findings. No appeal was filed with the City Council.

Since this application includes a Coastal Permit that is appealable to the California Coastal Commission, the permit will become effective after a 10-working day appeal period has expired. The appeal period shall begin on the day after receipt by the Coastal Commission of this notice. Should you have any questions regarding the Coastal Commission appeal period/process, contact Dan Carl at (831)427-4863.

CONDITIONS

1. Prior to issuance of a building permit, the applicant shall retain a certified arborist to oversee hand-trenching in the area where the foundation is adjacent to the Sycamore tree at the front of the residence. The applicant shall provide Planning Staff with the written results of the trenching exercise, including any recommendations for the type of foundation system to be used to minimize damage to tree roots. Final building plans shall incorporate the arborist recommendation for the foundation.
2. Prior to issuance of a building permit, the applicant shall submit documentation confirming that a qualified geotechnical consultant has been retained to ensure that the recommendations contained in the geotechnical report have been properly implemented.
3. Prior to issuance of a building permit, the applicant shall provide evidence that a qualified geologist has certified that the grading, drainage and erosion control plans have been prepared in accordance with the recommendations contained in the geological report prepared for the project.

**EXHIBIT A - CITY OF CAPITOLA FINDINGS & CONDITIONS
(1 OF 3 PAGES)**

4. Prior to issuance of a building permit, the applicant shall submit a final landscape plan for approval by the City's Landscape Architect. The landscape plan shall include plants to be installed along the east and west elevations that will effectively soften the appearance of the two elevations. All landscaping shall be installed prior to final inspection of the building permit.
5. A note shall be placed on the final building plans indicating that the utilities shall be underground to the nearest utility pole in accordance with Public Works Department requirements.
6. Final improvement plans shall include the installation of curbs, gutters and sidewalk along Cliff Drive and shall be approved by the Public Works Director.
7. The applicant shall obtain an encroachment permit from the Public Works Department for any work within the Cliff Drive right-of-way.
8. If any upgrade modifications to the plans are desired by the applicant (i.e. windows, materials, colors, etc.), the changes may be approved by the Planning Department. Other changes may require Planning Commission approval.
9. Prior to final inspection of the building permit, the applicant shall provide certification that development has occurred in accordance with the geotechnical report prepared for the project.

FINDINGS

- A. The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.
- B. The application will maintain the character and integrity of the neighborhood.
- C. Because of special circumstances applicable to the subject property, including size, shape, topography or surroundings, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. Approval of the variance would allow a reduction in first and second floor side yard setback requirements. The special circumstances that support the granting of a variance include the triangular shape of the lot, as well as the limited area upon which to develop, as identified by a geologist.

The R-1 Zoning District requires that new single family residences provide side yard setbacks to be no less than 10% of the lot width on the first floor and 15% of the lot width on the second floor. Because the lot is more triangular than rectangular in shape with the shortest side at the front of the lot, an average of the shortest and longest sides is taken resulting in a required setback of 10.5 feet on the first floor and 16 feet on the second floor. Further, the lot is constrained by the existence of a coastal bluff. City Ordinances

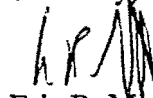
EXHIBIT A
(2023)

require that new development provide a 50-year design setback in accordance with recommendations from a geologist. This requirement moves development toward the narrow front lot line, which is only 51 feet wide, necessitating the grant of first and second floor side yard setback variances.

- D. The granting of a variance for a reduction in first and second floor side yard setback requirements would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated in that the adjacent residence to the south encroaches on the required side yard.

Should you have any questions on this matter, please call the Planning Department.

Sincerely,



Eric R. Marlatt
Associate Planner

Copies To:

Dan Carl, Coastal Commission (w/o attachment)
Thomas Nelson c/o Barry Swenson Builder

EXHIBIT A
(30F3)

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE

725 FRONT STREET, SUITE 300

SANTA CRUZ, CA 95060

(831) 427-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

Please review attached appeal information sheet prior to completing this form.

SECTION I. Appellant(s):

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

Commissioner Sara J. Wan, California Coastal CommissionCommissioner Dave Potter, California Coastal Commission45 Freemont Street, Suite 2000San Francisco, CA 94105-2219(415) 904-5200SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Capitola

2. Brief description of development being appealed:

Construction of a new single family residence.

3. Development's location (street address, assessor's parcel number, cross street, etc.):

4840 Cliff Drive, Capitola, Santa Cruz County APN 034-081-02

4. Description of decision being appealed:

a. Approval; no special conditions: _____

b. Approval with special conditions: X

c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:APPEAL NO: A-3-CAP-99-023DATE FILED: 3/19/99DISTRICT: Central Coast

EXHIBIT B - APPEAL OF COMMISSIONERS
WAN & POTTER
(10 OF 5 PAGES)

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

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

a. ☐ Planning Director/Zoning
Administrator

c. ☒ Planning Commission

b. ☐ City Council/Board of
Supervisors

d. ☐ Other: _____

6. Date of local government's decision: January 7, 1999

7. Local government's file number: 98-54

SECTION III Identification of Other Interested Persons

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

a. Name and mailing address of permit applicant:

Green Valley Corporation dba Barry Swenson Builder
701 N. First Street
San Jose, CA 95112

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

(1) Tom Nelson, Barry Swenson builder

829 Front Street
Santa Cruz, CA 95060

(2) Eric Marlatt, Associate Planner, City of Capitola

420 Capitola Avenue
Capitola, CA 95010

(3) _____

(4) _____

SECTION IV. Reasons Supporting This Appeal

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

EXHIBIT B
(20F5)

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

SEE ATTACHED

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

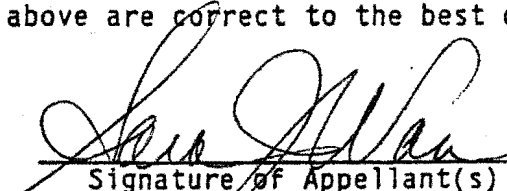
SECTION V. Certification

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

RECEIVED

MAR 18 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA



Signature of Appellant(s) or
Authorized Agent

Date 3/18/99

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

Section VI. Agent Authorization

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

EXHIBIT B
(30F5)

Signature of Appellant(s)

Date _____

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

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

SEE ATTACHED

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

SECTION V. Certification

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

RECEIVED

MAR 18 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dave Polth

Signature of Appellant(s) or
Authorized Agent

Date 3/18/99

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

Section VI. Agent Authorization

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

EXHIBIT B
(40FS)

Signature of Appellant(s)

Date _____

Attachment: Reasons For This Appeal

The City of Capitola approved the Swenson single-family dwelling with a ± 35 foot setback from the edge of the coastal bluff. This setback places the proposed structure immediately on top of the "50 year bluff edge retreat line" identified by the project geologist. The following LCP policies are among those which address blufftop setbacks for the Swenson development.

***LUP Policy VII-7.** Bluff and cliff top development shall be approved only if design and setback provisions are adequate to assure stability and structural integrity for the expected economic lifetime (at least 50 years) of the development and if the development (including storm runoff, foot traffic, grading, and irrigation) will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding area. This policy shall be carried out by requiring geologic reports as per Policy VII-8.*

***LCP Zoning Section 17.48.080 Development Standards.** The development standards in the GH district shall be the same as the basic zoning district except in those instances when more restrictive standards are necessary to provide assurance that stability and structural integrity can be maintained for the economic life of the project (fifty years).*

***LCP Zoning Section 17.48.100(A) Bluff and Cliff Area Regulations (in the GH district).** Bluff and cliff top development shall be permitted only if the design and setback provisions are designed to assure stability and structural integrity for the expected life of the development (at least fifty years) and if the development (including storm runoff, foot traffic, grading and irrigation) will neither create nor contribute significantly to erosion problems or geological instability of the site and surrounding areas.*

The LCP requires approved development to be set back sufficient distance from the bluff edge to assure stability and structural integrity for the expected life of the development. The LCP identifies 50 years as the minimum economic lifetime to be considered when developing such blufftop setbacks. In this case, the City of Capitola approved development which directly abuts the identified minimum 50 year bluff edge retreat line. Should the bluff retreat according to this 50 year prediction, the approved dwelling would be endangered by bluff retreat in advance of the 50 year minimum LCP requirement because its stability and structural integrity would be threatened *before* the bluff edge was allowed to retreat to its footings.

Moreover, the City-approved project does not contain any assurance that the stability of the development has been tied into its expected economic lifetime. Even if the ± 35 foot setback were sufficient to maintain the stability and structural integrity of the dwelling for 50 years, there are no provisions limiting the proposed dwelling's economic lifetime to fifty years, nor is there a provision restricting future construction of a shoreline protective device. The economic lifetime of coastal development is generally much longer than fifty – or even one-hundred – years. Lacking a provision limiting the economic life of the project to 50 years, and given the 0.1 to 1 foot per year bluff retreat rate identified for the property, a shoreline protective device would be required to maintain stability and structural integrity *before* the end of the project's expected economic lifetime.

In sum, the proposed project is not consistent with the LCP's blufftop setback requirements cited above. Contrary to these requirements, it appears likely that a shoreline protective device will be required to assure the project's stability and structural integrity sooner than 50 years. Also, it appears certain that shoreline protection would be necessary before the end of the project's economic lifetime.

EXHIBIT B
(50FS)

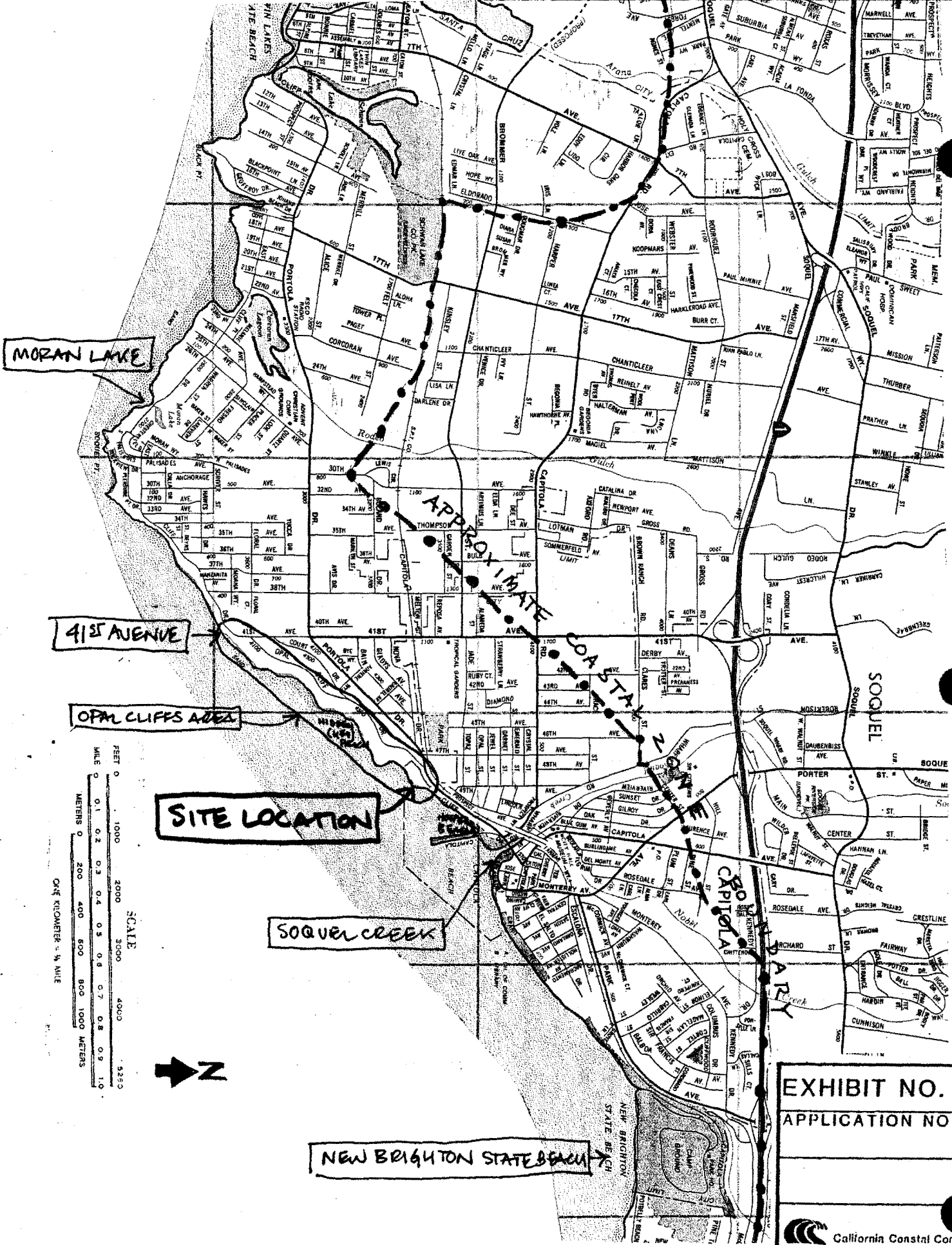


EXHIBIT NO.
APPLICATION NO.



LIVE OAK - CAPITOLA

EXHIBIT C
(20F4)

Shoreline Coastal Development Permits LIVE OAK, Santa Cruz County 1983-1993

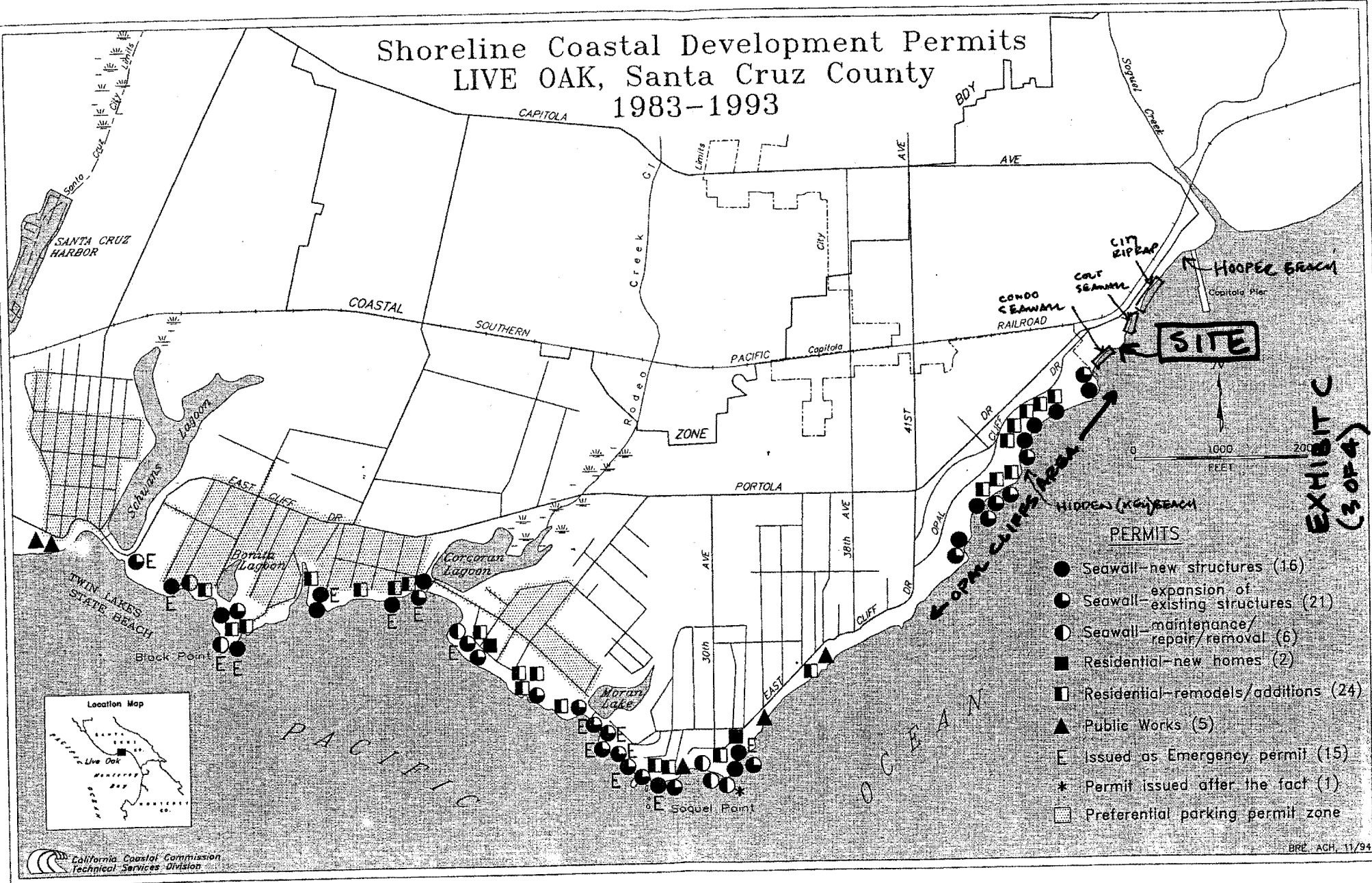
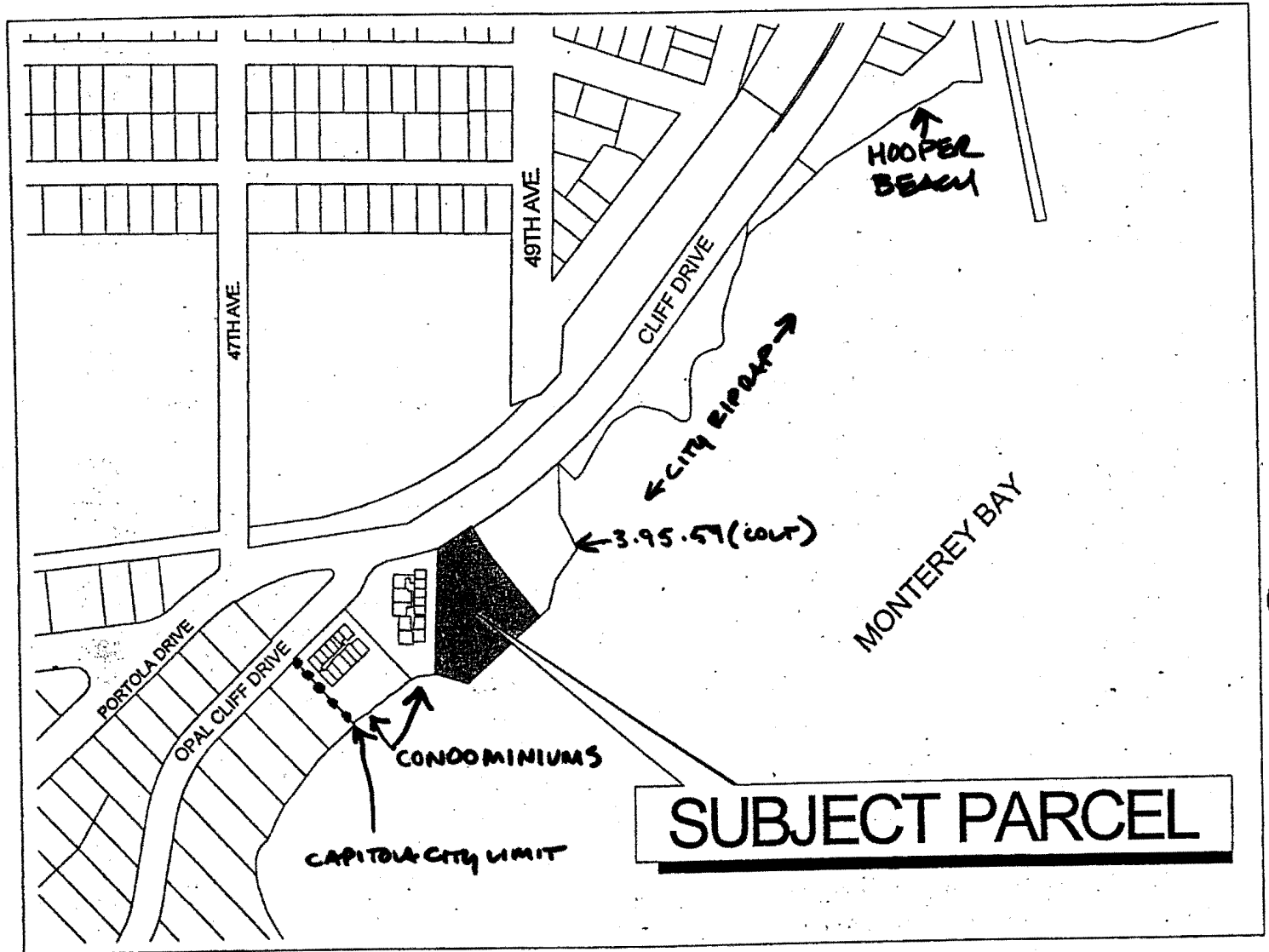


FIGURE 1 - VICINITY MAP



200 0 200 400 Feet

Application #: 98-54
Applicant: Tom Nelson
Address: 4840 Cliff Drive
A.P.N.: 034-081-02

EXHIBIT C
(4 OF 4)

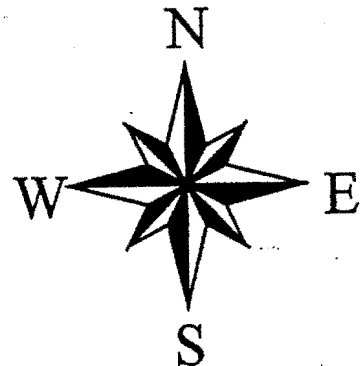




EXHIBIT D - PHOTOS OF SITE
(1 OF 4 PAGES)

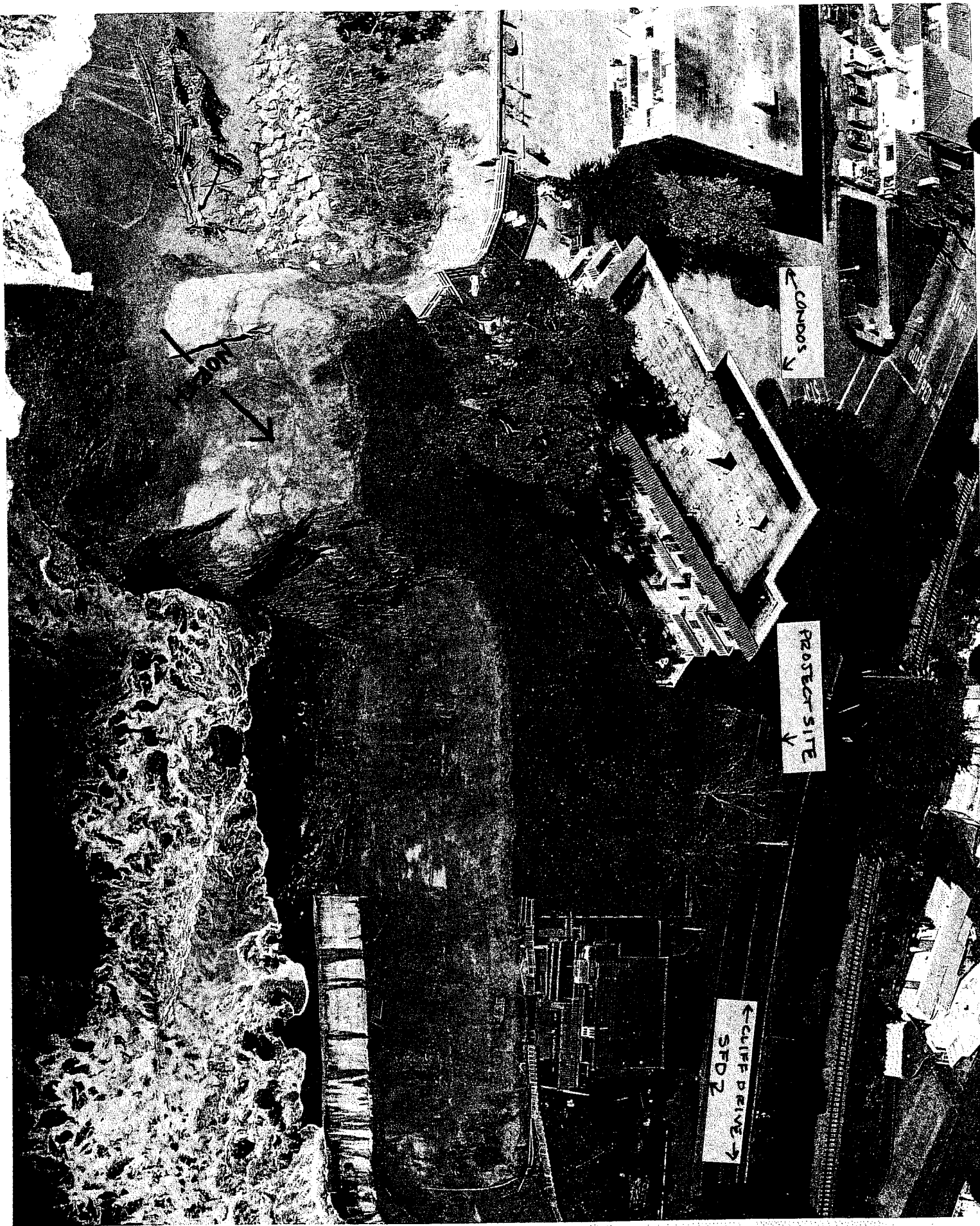
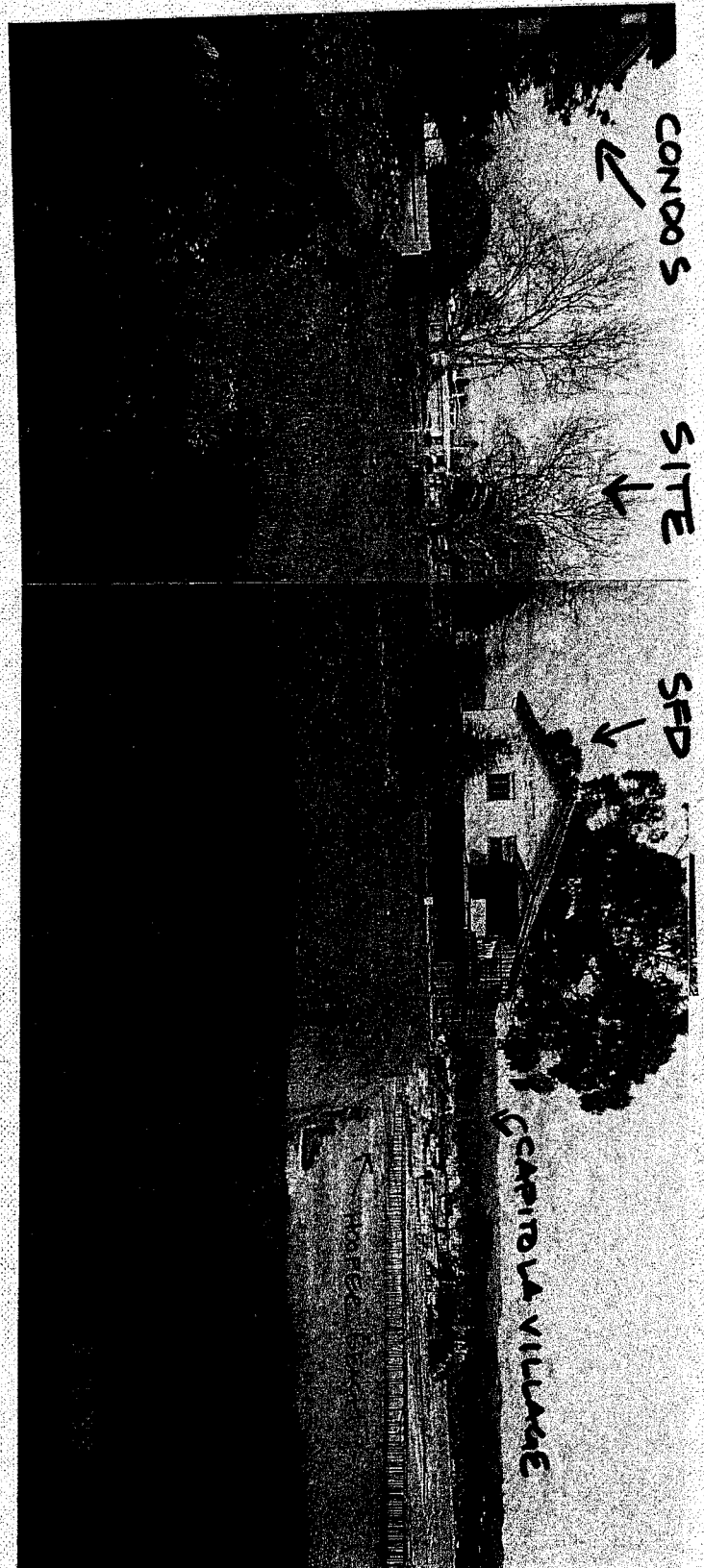


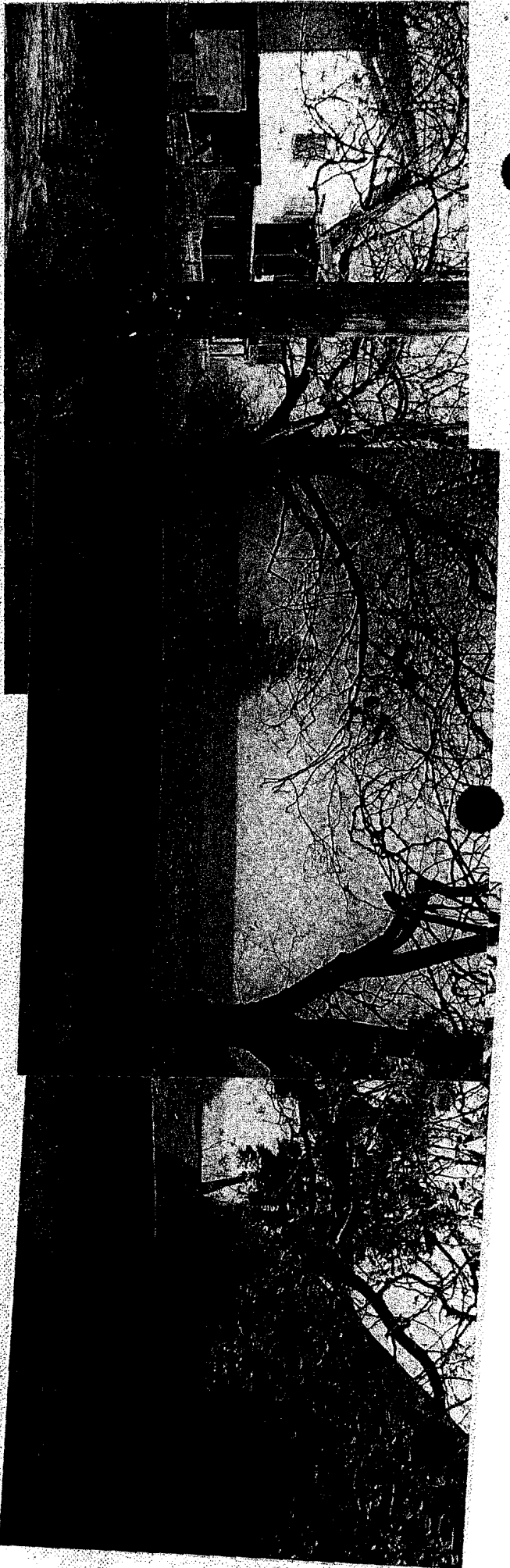
EXHIBIT D
(20F4)

LOOKING NORTH
TOWARDS CLIFF
DRIVE FROM
BUFFTOP EDGE



LOOKING SOUTH
TOWARDS BUFFTOP
EDGE FROM
CLIFF DRIVE





SFPA ↓

SITE ↑

CONDO'S ↑

↑ VIEW FROM EASTBOUND (TOWARD CAPITOL) LANE ↓

VIEW CORRIDOR
AS SEEN FROM
CLIFF DRIVE



SFPA ↓

SITE ↑

CONDO'S ↑

↑ VIEW FROM WESTBOUND (AWAY FROM CAPITOL) LANE ↓

EXHIBIT D
(40P4)

Mar 29 1999

(E) MULTI-UNIT RESIDENTIAL BLDG.

WINDOWS & PATTEN DOORS ALL ALONG THIS SIDE

-(b) ATTROS W/VIEW TO OCEAN, THIS AREA

41° 03' 00" N 100.97° W

'50 YEAR' BLUFF RETREAT LINE

10

(b) Trees 5' in diameter

PROPOSED SITE PLAN

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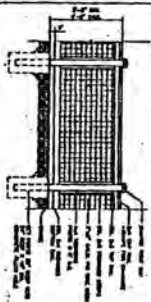
142. PROPOSED SITE PLAN (Sheet 142 of 142)

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SHEET INDEX

- 1 SITE PLAN, VICINITY MAP & INFO.
- 2 FIRST FLOOR PLAN
- 3 SECOND FLOOR PLAN
- 4 EXTERIOR ELEVATIONS
- 5 EXTERIOR ELEVATIONS
- 6 CONCEPTUAL GRADING, DRAINAGE
- 7 LANDSCAPE PLAN
- 8 STREETSCAPE ELEVATION
- 9 TOPOGRAPHIC MAP
- 10 DETAIL CROSS SECTION

① FENCE AT BLUFF EDGE



VICINITY MAP

4000 OPAI COURT DRIVE
CHATTOKA, GA.

APN: 004-00-102

10

150



EXHIBIT E - SITE PLAN & ELEVATIONS
(1043) FROM CITY-APPROVED PROJECT

MONTEREY BAY

98-54
REV H3

NEW RESIDENCE FOR: The Swenson Family

10 OPAL CLIFF DRIVE, CAPITOLA, CA

APN: 034-08-102

SITE PLAN,
VICINITY MAP
INFO.



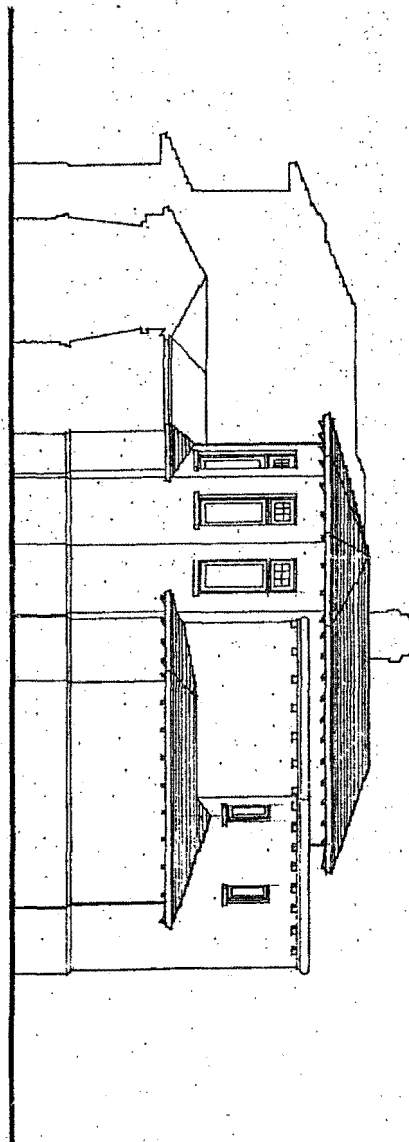
BARRY SWENSON BUILDER

ARCHITECTURAL
2015-2016 Design Year Book CA 2015

404 287 2042 Fax 044 799 1729

Pete Miller

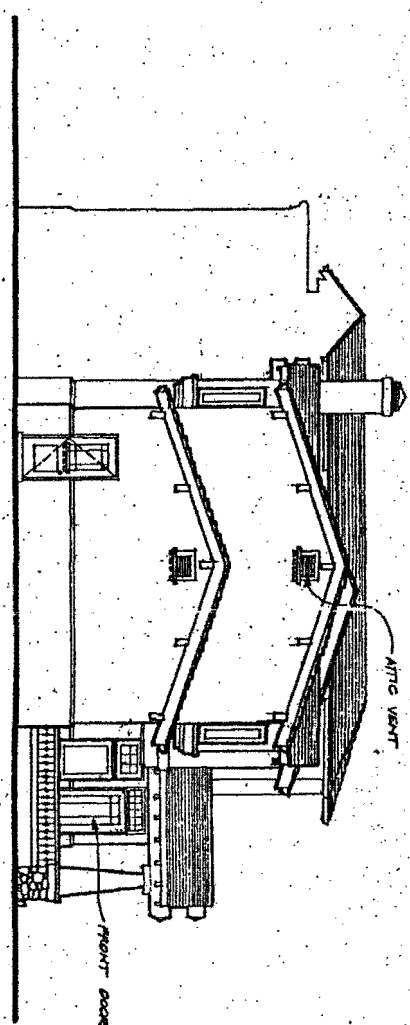
64



WEST ELEVATION (RIGHT SIDE)

Scale 1/4" = 1'-0"

NOTE: SEE SHEET 4 FOR TYPICAL NOTES



EAST ELEVATION (LEFT SIDE)

Scale 1/4" = 1'-0"

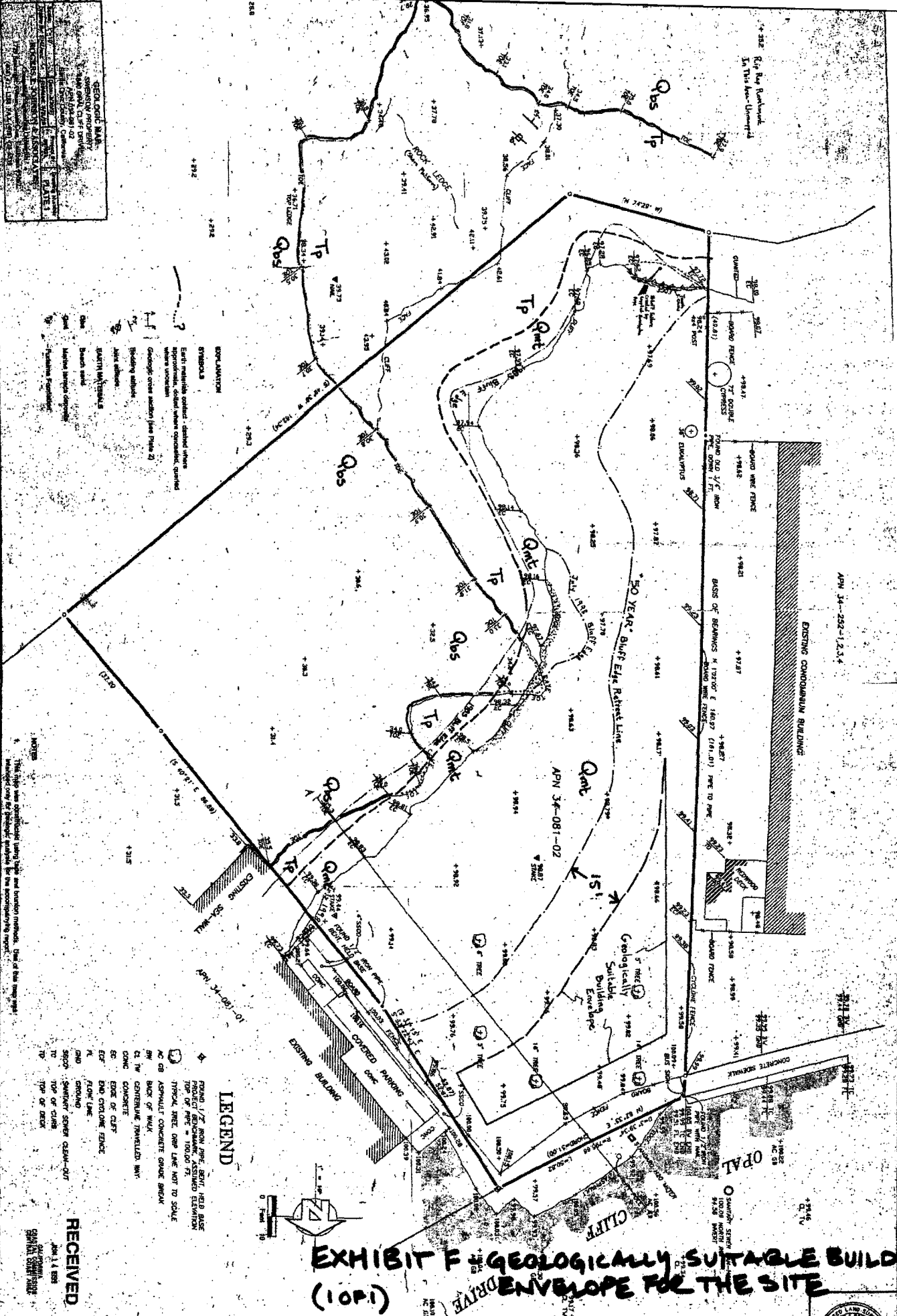
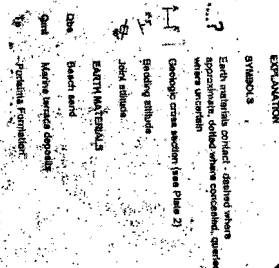


EXHIBIT F - GEOLOGICALLY SUITABLE BUILDING ENVELOPE FOR THE SITE (10P.1)



**NOTE: SEAWARD EDGE
OF AREA RETREATS
INLAND AS BLUFFTOP
EDGE RETREATS
INLAND.**

SEAWARD EDGE

SEWARD GOBE

APN 34--252-1,2,3,

EXISTING CONDOMINIUM BUILDING

OPAL

LETTER

LEGEND

RECEIVED

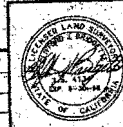
EXHIBIT G OPEN SPACE DEED RESTRICTION
(10F1)

BRIDGETTE LAND SURVEYING
PROFESSIONAL LAND SURVEYORS
1205 LINCOLN STREET
WATSONVILLE, CA.

TOPOGRAPHIC MAP
4840 OPAL CLIFF DRIVE, CAPITOLA, CA / A.P.N. 34-081-02

PREPARED FOR:
BARRY SWENSON BUILDER
701 NORTH FIRST STREET
SAN JOSE, CA. 95112

DATE: FEB. 1997
DRAWN: MJB
CHECKED: CJB
SCALE: 1" = 10'



CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
(408) 427-4863
HEARING IMPAIRED: (415) 904-5200



December 4, 1998

Eric Marlatt, Planner
City of Capitola
Planning Department
420 Capitola Avenue
Capitola, CA 95060

Subject: SCH 98112026 Swenson (#98-54), Construct House, 4840 Cliff Drive, Capitola;
Comments on Initial Study and Negative Declaration.

Dear Eric:

Thank you for recommending continuance of the Capitola Planning Commission hearing to assure that the City decision on this project was not made until after close of the State Clearinghouse comment period for the Initial Study and Mitigated Negative Declaration.

As reported in the Initial Study construction of a residence on a coastal bluff which is subject to cliff retreat is a potentially significant geological impact. The Commission's Technical Services Division has completed review of the geology report (Rogers E. Johnson and Associates, March 30, 1997) and the geotechnical investigation (Haro, Kasunich and Associates, Inc. April 1998) for the site. In general our staff review found the evaluations to be complete and well done.

Nevertheless, issues that may need further examination are the lack of margin for error in the site planning. The geology report identifies a building envelope behind a setback line from the bluff edge that allows for an estimated 50 years of erosion. The applicant's site plan shows the building footprint at the 50 year setback line, 34 feet at the closest point from the vertical bluff edge. Commission experience has shown that a 50 year setback which is presumed to provide safety for the life of the structure has not been fully successful. As reported in the geologic investigation given the episodic nature of shoreline erosion in this area several feet could fall within a single year which could lead to a demand for shoreline structures much sooner than the 50 year time period.

The Capitola Local Coastal Program Zoning Ordinance Section 17.48.100 provides that "bluff and cliff top development shall be permitted only if the design and setback provisions are designed to assure stability and structural integrity for the expected life of the development (*at least 50 years*)... (Emphasis added.) Hence, the LCP provides the latitude to apply a greater setback. For a brand new residence, the City would reasonably specify a longer project life. Compare, for example, the similarly situated blufftop development in Pismo Beach, where the City's LCP specifies a 100 year period. For development on vacant parcels where the geologic hazard is high, the Commission itself has required both greater setbacks and applied deed restrictions that prohibit the construction of shoreline protective structures for the project life.

Thank you for your consideration. Please call Dan Carl, staff analyst, if you have any questions.

Sincerely,


Lee Otter
District Chief Planner

cc: Toby Holmes, SCH

EXHIBIT H - COMMISSION STAFF CEQA COMMENTS
(1 of 1)

BARRY SWENSON

BUILDER

3 FRONT STREET • SANTA CRUZ, CALIFORNIA 95060 • (408) 425-5736 • FAX (408) 425-0129

CONTRACTORS LIC. 342751

June 21, 1999

RECEIVED

California Coastal Commission
Central Coast District Office
Attn: Dan Carl
725 Front St., Suite 300
Santa Cruz, CA 95060

JUN 21 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: Appeal #A-3-CAP-99-023 (Swenson) -- 4840 Opal Cliff Dr., Capitola, CA

Dear Dan,

Per our conversation, I would like to have the following letter and diagram added to our report for the above referenced appeal, slated for the July hearings in Marin County. It is important that these items be addressed then, so that we have some direction for the future.

Following your advice, we have decided to move the footprint of the house back to the area where our geologist identified as being a "geologically suitable envelope". Pursuant to this, please note the drawing I've included of a cantilevered foundation system. This system would encroach into the setback area, without affecting the integrity of the foundation. In theory, this portion of the house would hang over the cliff if it were to erode below. I have seen this done in many places along the coast, mostly with decks. The City of Capitola has conceptually agreed to such an idea.

Additionally, I know that the Commission does not look favorably upon seawalls. However, the dynamics of this site dictate the inevitability of some form of future armorment. Our proposed house, even with the cantilevered idea, will be built under the premise that such protectionary action is not necessary. Unfortunately, I can not say the same for our neighbors on either side. It only takes one look at the site and the conditions present to see that something must be done soon, especially for the house to our immediate south. I think it is best to get the dialogue started sooner, rather than later.

In closing, I appreciate all of your help and assistance in resolving this matter. I wish I would have included the Commission sooner, rather than later. Hopefully, this letter is a step in the right direction.

Sincerely,

Barry Swenson Builder



Tom Nelson

Project Manager

**EXHIBIT I - CORRESPONDENCE FROM
(10F2) APPLICANT**

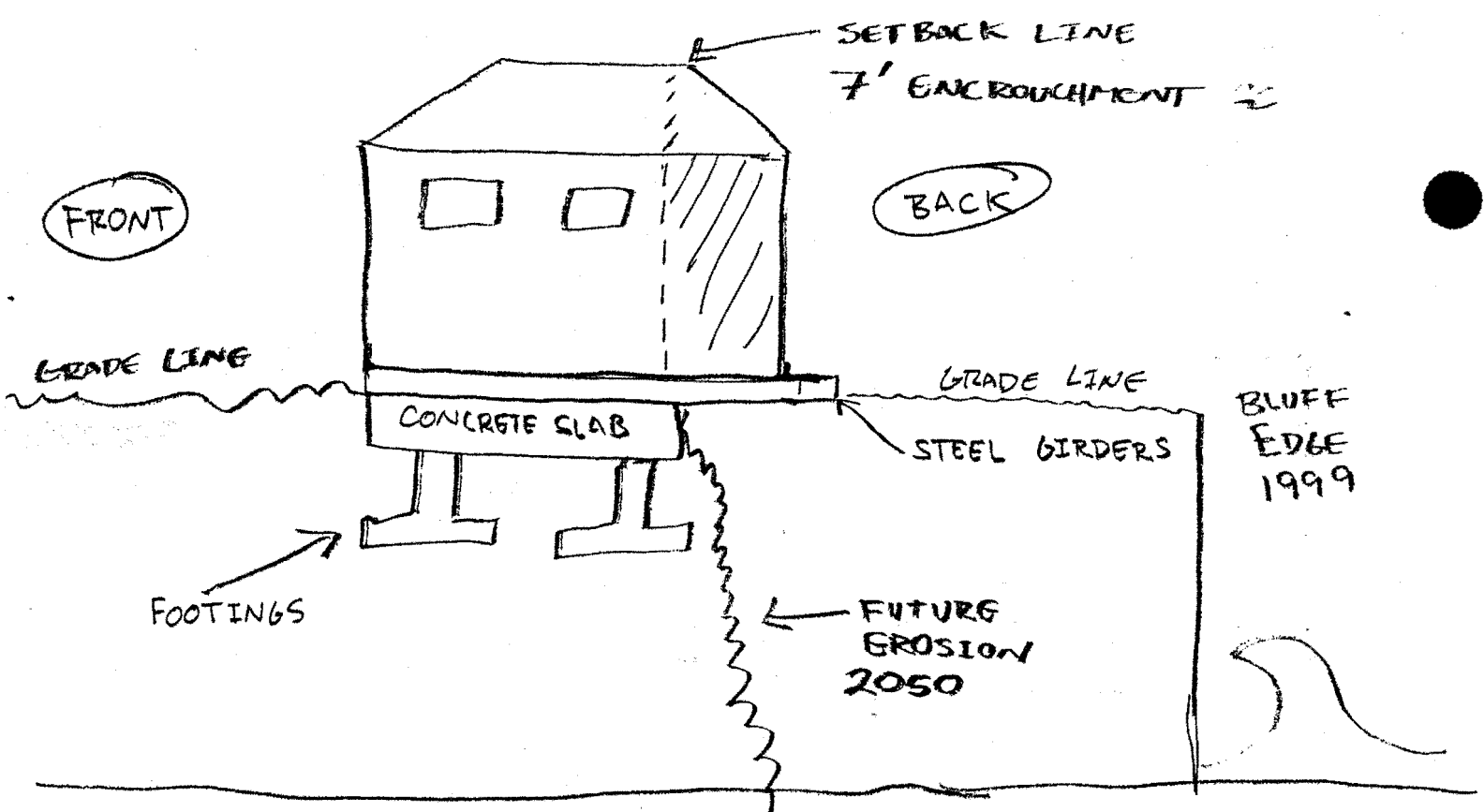
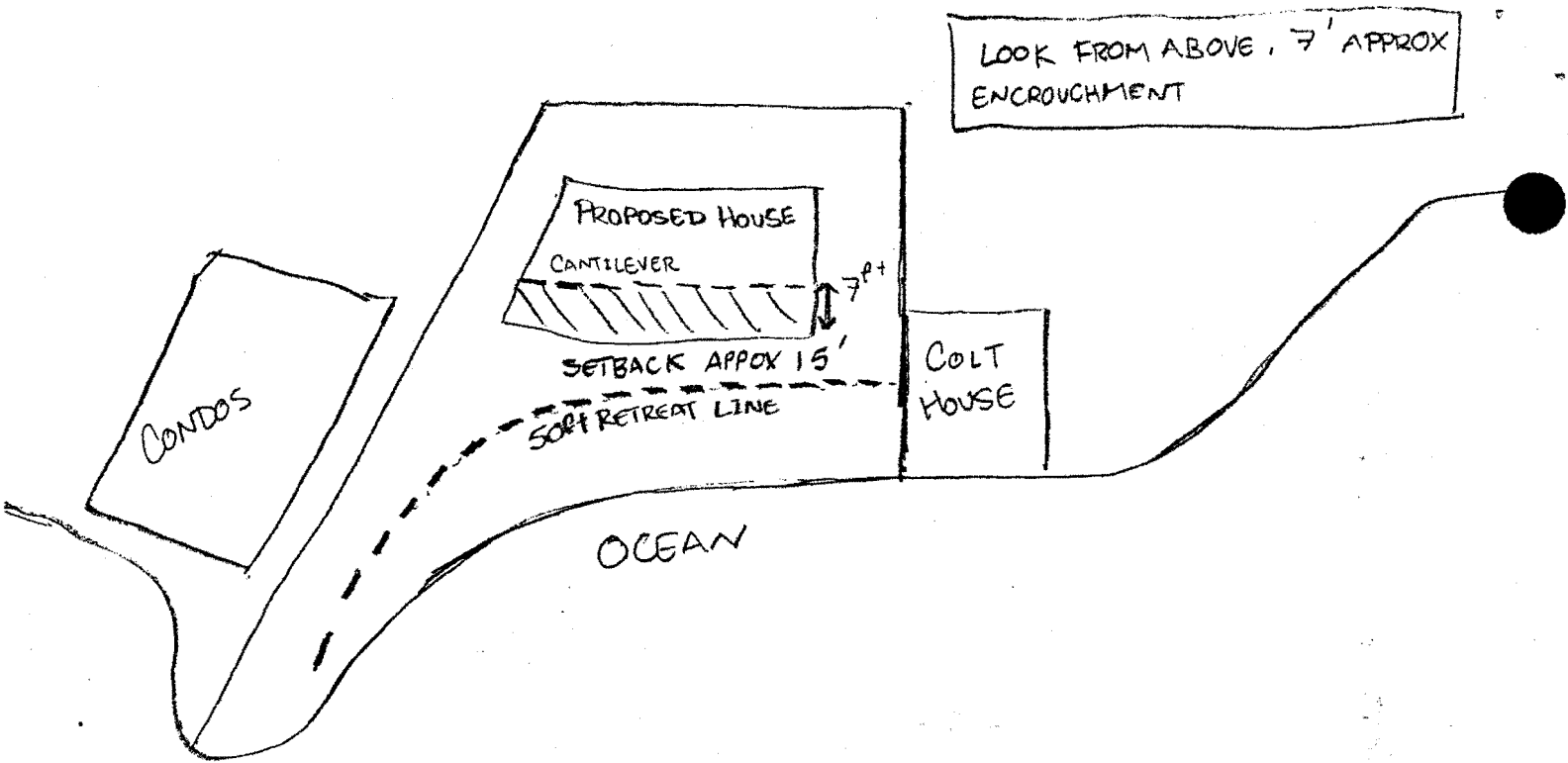


EXHIBIT I
(20F2)