

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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C.F.L.
6/24/99

**W13d****STAFF REPORT:
REGULAR**

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Staff report: 06/24/99
Hearing Date: 07/14/99
Commission Action

Application Number..... 3-99-035

Applicant..... Ronald Donati

Agent..... Gene T. Takigawa

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

Project Description..... Demolition of an existing 1,929 square foot two-story single family residence and detached garage and construction of a 2,285 square foot two story single family dwelling with attached garage, including 186 yards of cut and 40 yards of fill.

Local Approvals Received..... RE 97-26 (demolition of existing dwelling), DS 97-35 (design review of the new house), and EA 98-1 (negative declaration).

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

Staff Recommendation..... Approval with Conditions

Staff Summary

Staff recommends approval subject to standard conditions and special conditions that would impose a 90 day period subsequent to Commission action during which no work approved by this permit could be started, except for work related to moving the house to another site. This 90 day period would allow for an interested party to purchase the existing house and move it to a vacant parcel elsewhere.

The main issue with this proposed demolition and new house construction is preserving the community character of Carmel consistent with the Coastal Act, which protects this special visitor destination. The house is listed on the Inventory of Notable Buildings prepared by the Carmel Preservation Foundation, but has not been formally designated as historic by the City of Carmel. Information about the historical nature of the house includes the following. The contractor who built the house in 1924 was a Percy Parkes who built many buildings in Carmel. He was also active in local organizations, was a nephew of the Earl of Gloucester, and was married to Jeanette Hoagland who danced with the San Francisco Ballet and was active in dance instruction locally and in local plays. She was the niece of Saidee Van Brower who kept the City records between 1920 and 1947 and who was of royal lineage. The City prepared a negative declaration and found an Environmental Impact Report was not warranted and that the information bearing on the possible historic nature of the house was not significant and that there were no historic reasons to protect the house. The City was then sued, with the court finding that "there is not substantial evidence in the record to support a 'fair argument' that the existing house is an historic resource." While the building's scale, design, and general historical association may contribute somewhat to the overall, if somewhat elusive, Carmel character, there is nothing especially historically compelling about the house. Furthermore, the City has applied its rigorous design review procedures for new construction to the proposed house which will not detract from the community and visual character of Carmel.

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I. STAFF RECOMMENDATION

A. Approval with Conditions

Staff recommends that the Commission, after public hearing, approve the proposal as conditioned.

MOTION: *I move that the Commission approve Coastal Development Permit 3-99-035, subject to the conditions below and that the Commission adopt the resolution of Approval with Conditions.*

Staff recommends a **YES** vote on the preceding motion. This would result in approval of the project as conditioned. A majority of the Commissioners present is required to pass the motion and adopt the following resolution:

The Commission hereby grants a coastal development permit subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformance with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the City of Carmel to develop and implement a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

B. 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.

C. Special Conditions

1. Authorized Project

This approval authorizes the demolition or removal of the existing structure and construction of a new single family residence according to the project plans and description.

2. Opportunity for Relocation

No work authorized by this permit shall commence until the existing structure is relocated, with any necessary discretionary governmental approvals, from the subject site to another site, or until 90 days after the effective date of this permit, whichever comes first. This prohibition does not apply, however, to the necessary work needed to effectuate the relocation. If the existing house is to be relocated within the coastal zone, permittee shall submit to the Executive Director for review a copy of the necessary governmental approvals, PRIOR TO RELOCATION OF THE HOUSE. Upon receipt of such documents, the Executive Director shall then determine whether a separate coastal development permit, amendment to this permit, or waiver is needed to establish the historic structure at its new location.

II FINDINGS AND DECLARATIONS

A. Project Location and Description

The project is located on the west side of San Antonio Avenue and east side of Scenic between 11th and 12th Streets, in the City of Carmel-by-the Sea on the Monterey Peninsula, in Monterey County. Scenic Avenue lies between the site and the beach. The lot, which is about 160 feet long, slopes seaward from San Antonio Avenue to Scenic at about a 12 – 13 percent grade. The overall change in elevation is about 20 feet. While residential development in most of Carmel is excluded from the requirement for a coastal development permit by virtue of Commission Categorical Exclusion E-77-13, the parcels along Scenic Avenue are not included in the Categorical Exclusion due to their proximity to the beach and so development there requires a coastal development permit. Because the City of Carmel does not have a certified LCP, the coastal development permit must be issued by the Coastal Commission.

The proposal is to demolish the existing 1929 square foot, two-story house and replace it with a 2285 square foot, two-story house. The San Antonio elevation would be single story and the Scenic elevation would be two story. The top of the roof of the proposed house would be about six feet lower than the top of the roof of the existing house. The proposed house would be set back from San Antonio Avenue about 12 feet more than is the existing house. The proposed house would be closer to Scenic than is the existing house, but would still be about 42 feet back from the property line at Scenic.

B. Background

The lot and house were purchased by the applicant in May of 1997. This proposal to demolish the existing house and construct a new house was first considered by the City of Carmel Planning Commission on November 12, 1997. At that meeting the Planning Commission approved the request to demolish the existing house and construct a new house. The Planning Commission also denied a variance request to increase the allowed land coverage by 256 square feet for the purpose of a guest parking and driveway turn around area. The Planning Commission's approval of the demolition and new construction was appealed to the City Council, based on a variety of issues including the project's impacts on significant private coastal views, privacy of adjacent homes, and concern over possible loss of traditional community character if the house were to be demolished.

Prior to the Council hearing the appeal, new information was received from the Carmel Preservation Foundation indicating that the existing house was a significant historical

resource. On January 6, 1998, the City Council upheld the Planning Commission's decision and denied the appeal based on findings that the proposed new house would not inequitably block any existing significant views from other properties in the neighborhood, that the design would respect the privacy of neighbors on adjoining properties, and that the existing house was not historically significant. However, prior to the City Council adopting findings in support of its decision, the Carmel Preservation Foundation submitted a revised survey of historical information on the site. The Council, instead of adopting the findings, then remanded the project back to the Planning Commission to consider the new information relative to the standards for approval of demolition applications and for its relevance to CEQA.

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

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

C. Historical Significance and Community Character

Sections 30253 and 30251 of the Coastal Act address the issue of preserving the community character of special communities such as Carmel:

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

30251: *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual*

quality on visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

These Coastal Act sections as they apply to the proposed project require the protection of the unique community and visual character of Carmel. The City of Carmel is a very popular visitor destination as much for its quaint residential architecture as its renowned commercial shopping area and white sand beaches. Carmel is made special by the style and character of development within City limits. In particular, as a primarily residential community, residential development in Carmel plays a key role in defining the special character of the area.

The Executive Director has typically approved coastal development permit waivers for residential demolitions in Carmel. However, in this case, the proposed demolition has experienced more than the customary controversy engendered by demolitions and a routine waiver was judged not appropriate by Commission staff. In order to minimize any risk to the special community character of Carmel, and to provide the opportunity for full public participation on this matter, this application is before the Commission.

While the building's scale, design, and general historical association may contribute somewhat to the overall, if somewhat elusive, Carmel character, there is nothing especially historically compelling about the house. The most interesting feature are the stone pillars, two at the front of the property and two at the rear (see Exhibit 4). These pillars are proposed to be incorporated into the new construction, although they may have to be rebuilt as they are unstable.

While the house proposed for demolition is listed on the Inventory of Notable Buildings prepared by the Carmel Preservation Foundation, the property owner has not proposed to volunteer the structure for designation. In Carmel, structures which have been voluntarily designated as a historic resource enjoy certain protections from demolition. Without such voluntary consent, as is the case with this application, the subject site is not offered any special protection by the Carmel Municipal Code.

1. City Action

The City reviewed the proposal to determine if the house should be considered a historical resource by reason of its Cultural Heritage, Architectural Distinction and Notable Construction, Unique Site Conditions, or relationship to an Important Person. These criteria are contained in the City's Municipal Code (uncertified) and are used to determine the significance of potentially historic structures. The following is the City's review of these criteria, paraphrased and summarized from the City staff report.

Cultural Heritage: The contractor who built the house in 1924 was a Percy Parkes who built many buildings in Carmel. He was also active in local organizations, was a nephew of the Earl of Gloucester, and was married to Jeanette Hoagland who danced with the San Francisco Ballet and was active in dance instruction locally and in local plays. She was the niece of Saidee Van Brower who kept the City records between 1920 and 1947 and who was of royal lineage.

Architectural Distinction: The information submitted by the Carmel Preservation Foundation (CPF) indicated that the site embodied the distinguishing characteristics of the Craftsman architectural style, but that the two large stories on the west end of the house are "untypical for this familiar house style."

Notable Construction: According to the information provided by CPF, Percy Parkes, the builder, was one of a number of others who helped create much of Carmel's important early development and his houses were characteristic of the times and tended to reflect the Craftsman architectural style (simple charm, gabled-end roofs, U-shape, natural material, etc.)

Important Person: See Cultural Heritage and Notable Construction.

Unique Site Conditions: The information submitted by CPF states that the site is unique with apparent one-story house visible from San Antonio Avenue and an impressive two-story edifice visible from Scenic Road. In addition, the house has been a "landmark" for several decades because of its high visibility.

2. Lawsuit and Court Action

After the City Council approved the project, the Friends of Carmel Cultural Heritage (Friends) sued the City in Monterey County Superior Court, asking the court to issue a writ of mandate to require the City to prepare an Environmental Impact Report on the proposed demolition to analyze cumulative impacts to the City character. According to the court

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

The claims of "historicity" as to this house, arose rather late in the application process. In fact, the claims first came to light after the Planning Commission had approved Real Parties applications. The record indicates the Donatis proceeded in good faith in their purchase of

this property and in pursuing their project applications. They attempted to work with neighbors and the City to build a new home that was compatible with neighborhood character.

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

3. Alternative of Relocating the House

Although the house holds no official historic designation, it is not devoid of character. The California Environmental Quality Act requires that feasible mitigation measures be applied to projects. Here, a feasible mitigation measure to demolition is relocation of the house. The existing structure could conceivably be relocated from its present location to a vacant lot elsewhere. One way of providing for this while not prohibiting demolition is to require a waiting period after approval of this permit before any demolition work could commence. This would allow an interested party time to make arrangements for relocating the structure from its present site to another suitable location. In order to provide for the possibility of relocation of the existing house, this permit is conditioned to require that work on demolition not commence for a period of 90 days following the effective date of this permit, i.e., the date of Commission action on the application.

4. Conclusion

Although the existing house is not historically compelling and doesn't clearly add to the special character of Carmel, over time, the cumulative loss of many such structures and especially those that are more clearly part of the Carmel character, could negatively impact the special character of Carmel contrary to Coastal Act Sections 30251 and 30253. The City of Carmel has a rigorous design review procedure, the purpose of which is to ensure that new residential structures continue the special community character of residential Carmel. The City has applied that design review to the proposed replacement structure.

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

provide an opportunity for relocation does appear to be a reasonable measure. Therefore, the proposed demolition (as conditioned to provide such a waiting period) and new construction are consistent with sections 30253 and 30251 of the Coastal Act.

D. Views and Privacy

The Coastal Act protects significant public views through section 30251.

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

The public views in this case are those that exist from and along Scenic at the west end of the parcel. Public views of the coast and adjacent structures will not be infringed upon by the proposed demolition and new construction. The proposed house will be over 40 feet back from Scenic, at least 20 farther back than the existing houses on each side. The site location is not at a bend in the road where a house might obstruct views along the street and coast. Although the house as seen from Scenic will be two story and present a larger elevation than the houses on either side, again because of the distance back from the street, it will not appear imposing.

Concerns have been expressed about possible loss of or infringement on private views and privacy from and on neighboring properties. The roof of the proposed house will be up to six feet lower than that of the existing house. The footprint of the proposed house will be moved downslope about 15 feet from that of the existing house. Furthermore, the City has applied its rigorous design review procedures for new construction to the proposed house which includes consideration of private views. It does not appear that the proposed new house will affect the privacy of adjoining properties. Setbacks and landscape screening will provide adequate privacy. Given these factors, the new house should not infringe on privacy or private views. These issues have been dealt with through the City's design review. In any event, the Coastal Act does not protect privacy or private views.

Based on the foregoing, the Commission finds that the proposed demolition and new construction is consistent with Coastal Act Section 30251.

E. City of Carmel Local Coastal Program

Section 30604 of the Coastal Act states in part that a coastal development permit shall be granted if the Commission finds that the development will not prejudice the local government's ability to prepare a Local Coastal Program (LCP) in conformity with the resource protection policies of the Coastal Act. The entire City of Carmel falls within the coastal zone, although most development is excluded from the requirement for a coastal development permit by Categorical Exclusion E-77-13.

On April 1, 1981, the Commission certified part of the LUP as submitted and part of the LUP with suggested modification regarding beach-fronting property. The City resubmitted an amended LUP which fixed the beach-fronting properties provisions, but which omitted the previously certified portion of the document protecting significant buildings within the City. On April 27, 1984, the Commission certified the amended LUP with suggested modifications to reinstate provisions for protecting significant structures. However, the City never accepted the Commission's suggested modifications. The result was that the City's entire LUP effectively became decertified. The City is currently working on a new LUP submittal.

The zoning or Implementation Plan (IP) was certified with suggested modifications on April 27, 1984. The City did not accept the suggested modifications and so the IP remains uncertified. The City is presently working on a new IP submittal.

The City's "decertified" LUP contains a proposed list of significant buildings (LUP Appendix 1) but the project site is not found on this list. Given that the proposed site is not found on this list and that the replacement structure is in keeping with the Carmel character (by virtue of the City's design review process), approval of the proposed project will not prejudice the ability of the City to complete its LCP in accordance with Coastal Act requirements.

F. 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)(i) 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 Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under

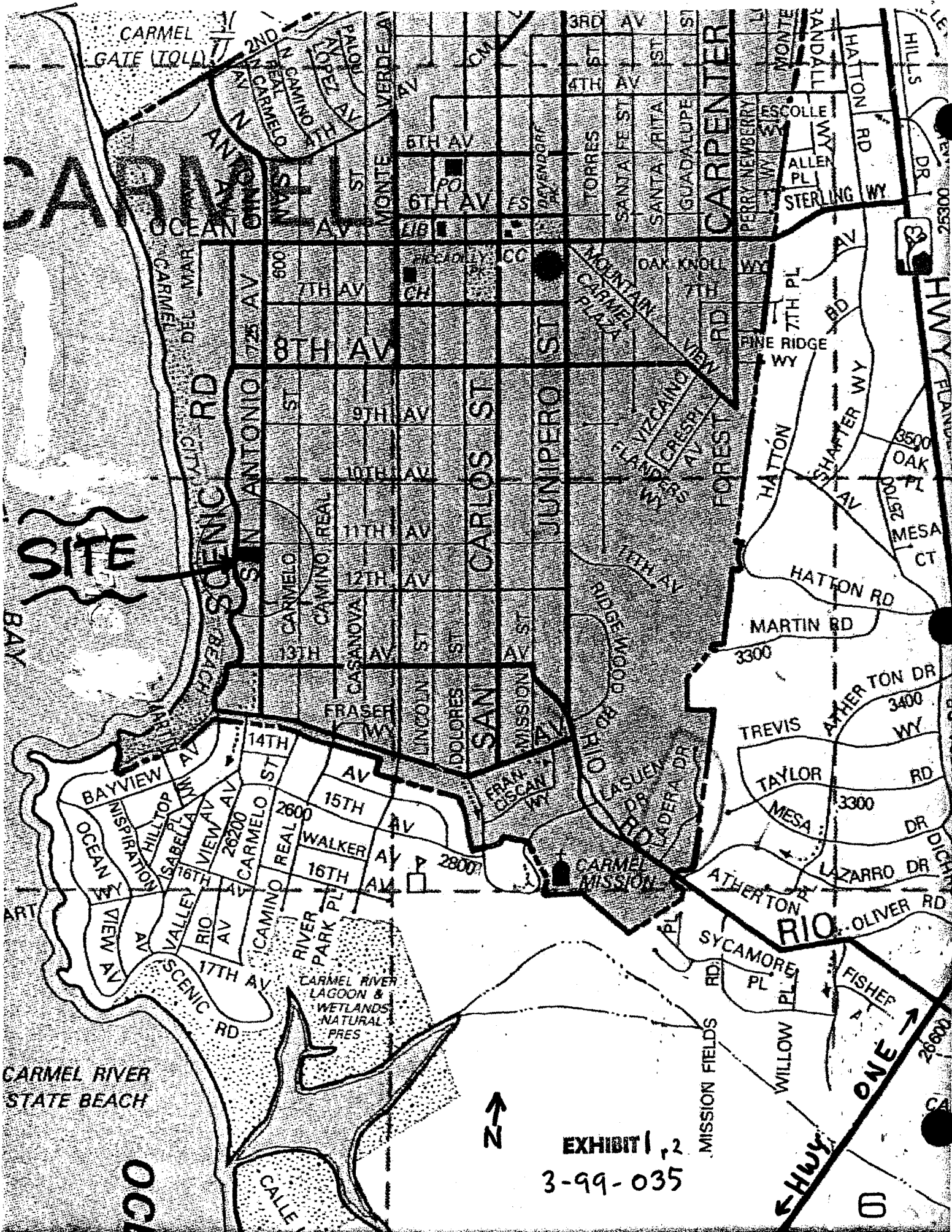
CEQA. This report has examined the relevant issues in connection with the environmental impacts of this proposal. The Commission finds that, for the reasons stated above, the proposed project as conditioned will not have any significant adverse effects on the environment within the meaning of CEQA.

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Figure
1

EXHIBIT 1
3-99-35



CARMEL GATE (TOLL)

CARMEL

SITE

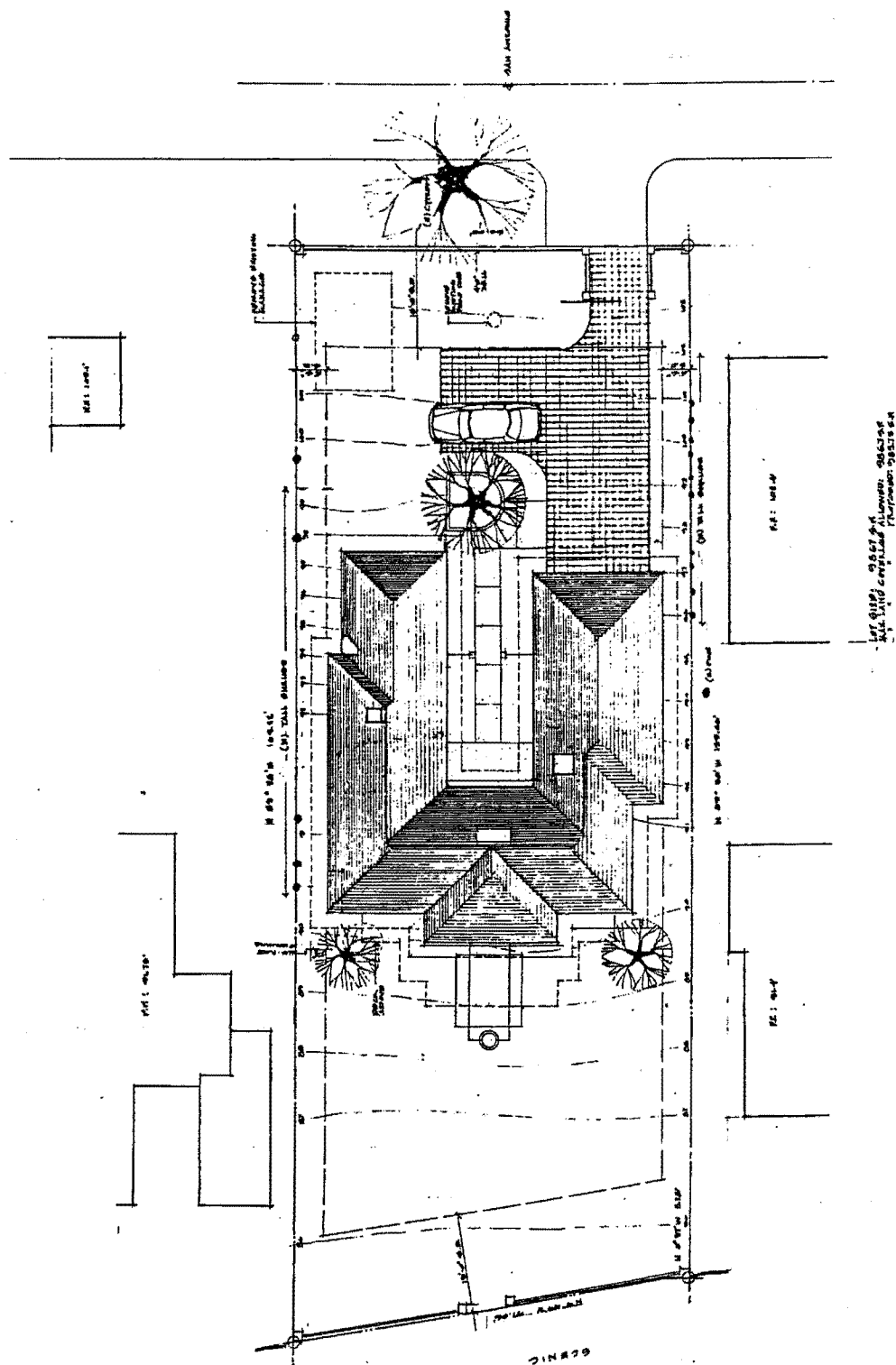
CARMEL RIVER STATE BEACH

OCEAN

EXHIBIT 1, 2
3-99-035

HWY ONE

GENE T. TAKIGAWA



RESIDENCE FOR MR. & MRS. RON DONATI

EXHIBIT 2
3-99-035

SEARCH

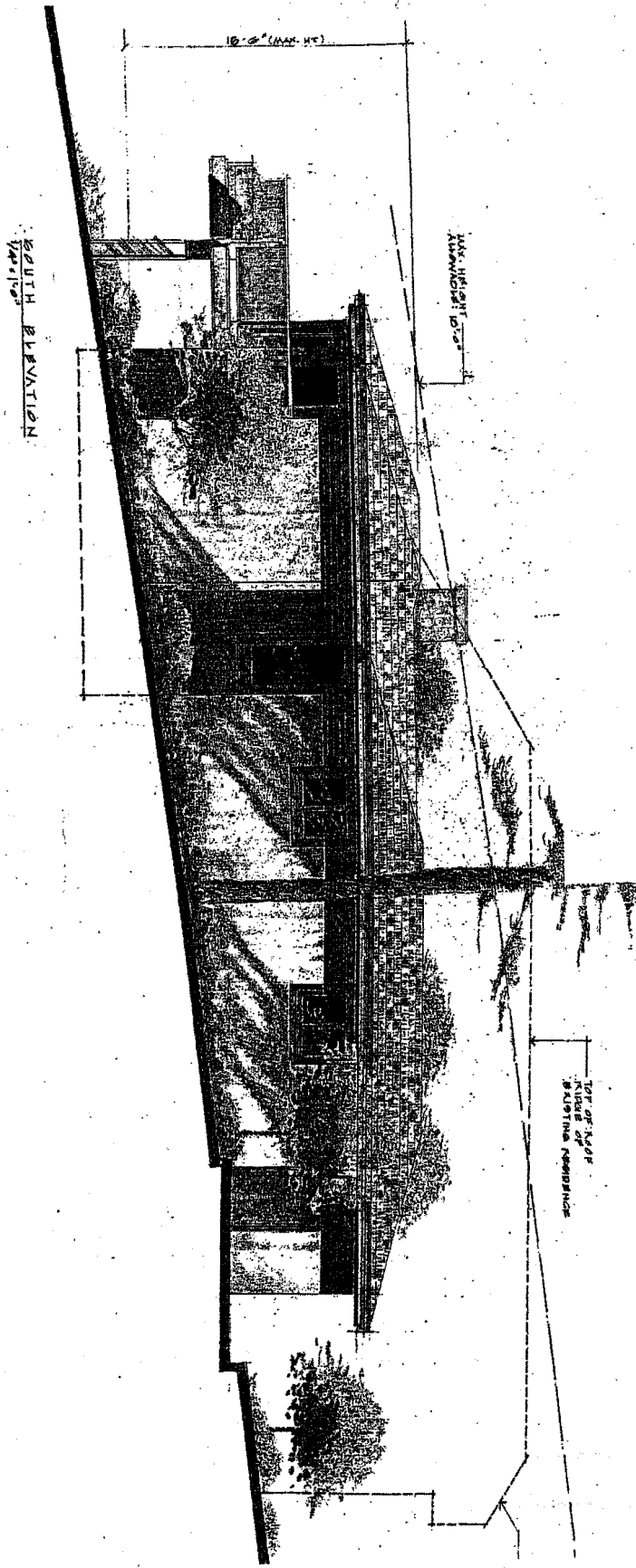


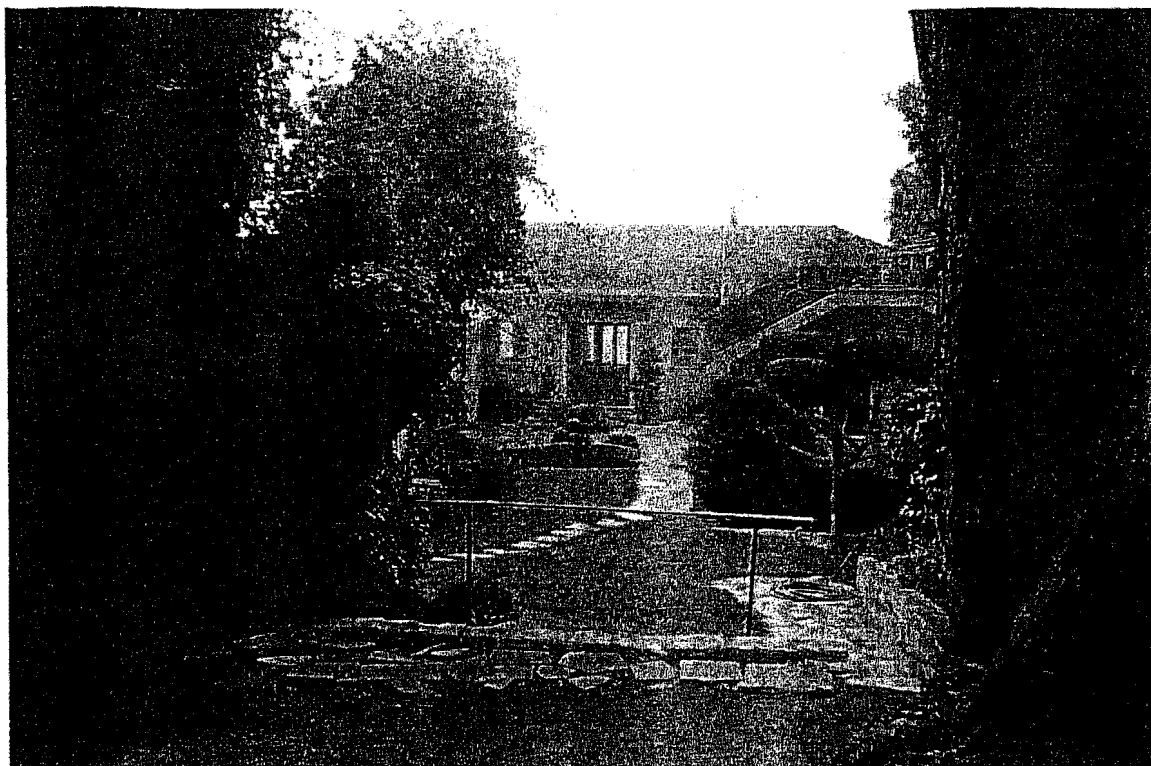
EXHIBIT 3

3-99-035



EXHIBIT 3, 2

3-99-035



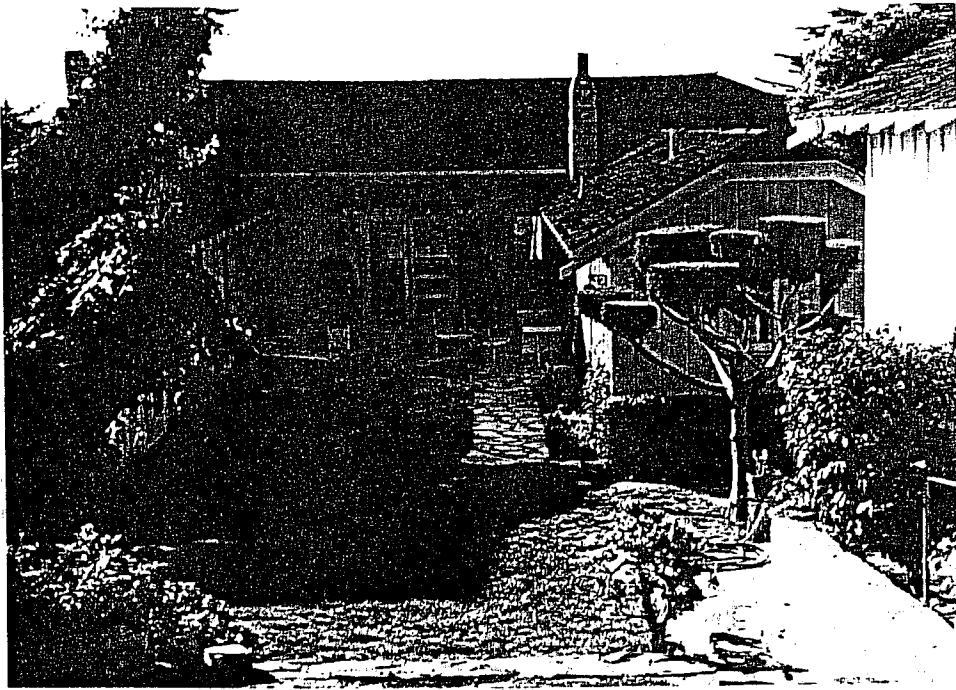
SAN ANTONIO AVE.



SCENIC ROAD

EXHIBIT 4

3-99-035



Front - San Antonio



Back - Scenic

EXHIBIT 4 p 2

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