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STAFF REPORT: DITTRICH APPEAL SUBSTANTIAL ISSUE DETERMINATION

APPEAL NUMBER: A-3-MCO-99-099, Dittrich

LOCAL GOVERNMENT: MONTEREY COUNTY

DECISION: Approved with conditions, 11/16/99

APPLICANT: Frank and Loretta Dittrich

APPELLANTS: Paul Ernest

PROJECT LOCATION: 46 Yankee Point Drive, Carmel Highlands Area
 (Monterey County) APN 243-141-015-000

PROJECT DESCRIPTION: Four-tiered concrete retaining wall (partially completed) to stabilize a washed out slope.

FILE DOCUMENTS: Monterey County Certified Local Coastal Program, Carmel Area Land Use Plan; Administrative Record for County Permit PLN990307, Planning Commission Resolution 99056, Board of Supervisors Resolution 99-423.

EXECUTIVE SUMMARY

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. Staff has determined that Resolution 99-423, which includes special conditions established by the Planning Commission, Department of Fish and Game and the County Board of Supervisors, conforms to the standards set forth in the Monterey County Certified Local Coastal Program, which includes the Coastal Implementation Plan Part 4 - Regulations for Development in the Carmel Area Land Use Plan.

The project is the construction of a four tiered concrete retaining wall to stabilize a washed-out slope located on the property of Frank and Loretta Dittrich at 46 Yankee Point Drive in the Carmel Highlands area in Monterey County (project location maps and a site parcel map are shown in Exhibits A and B, respectively). The retaining walls are to be built to engineering

standards and are to include compacted backfill to match adjacent slope contours. The slope is to be planted with native vegetation appropriate to this location in order to blend in to the surrounding site (McLean Creek ravine). The plantings will also help to mitigate the effect of the development on public views between Yankee Point Drive and the Pacific Ocean.

The appellant contends that the project does not comply with the Monterey County Local Coastal Program (LCP) in regards to environmentally sensitive habitat areas, riparian corridors and protection of public views within the viewshed. The full appeal is attached as Exhibit F.

As discussed in the substantial issue section of this report, the approved project is consistent with applicable regulations for development as established by the Monterey County Local Coastal Program.

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I. LOCAL GOVERNMENT ACTION

The Monterey County Planning Commission issued a Coastal Development Permit and Design Approval to Frank and Loretta Dittrich for the construction of a four-tiered concrete retaining wall on a washed out slope located at 46 Yankee Point Drive on September 8, 1999. During review of the proposed project, County Planning staff received recommendations from California Coastal Commission and Department of Fish and Game staff regarding protection of the natural resources on the site (i.e., Monterey Pines and riparian vegetation of McLean Creek ravine). County Planning staff included recommendations from the Forest Management Plan (submitted by Ray Sumida) and Department of Fish and Game as special conditions of project approval. The Monterey County Planning Commission heard and approved the permit (Resolution # 99056) on September 8, 1999. The Planning Commission's Resolution # 99056 was appealed to the Board of Supervisors by Mr. Harold Seyferth of 50 Yankee Point Drive on October 6, 1999.

The Monterey County Board of Supervisors conducted a *de novo* hearing on November 16, 1999, to consider Mr. Seyferth's appeal, as well as all written and documentary information, staff reports, oral testimony and other evidence presented before the Board. Following the *de novo* hearing, the Board of Supervisors denied the Appeal of Mr. Seyferth and thereby approved the Coastal Development Permit and Design Approval for the project under their Resolution # 99-423, which contains 23 special conditions of approval. In addition to the special conditions placed on the project by Planning Commission staff and the Department of Fish and Game Section 1603 Lake and Streambed Alteration Permit, the Board of Supervisors added three conditions (regarding slope restoration and protection of visual resources) to their approval. A list of all permit conditions approved by the County is attached in Exhibit F.

Resolution # 99-423 was subsequently appealed to the Coastal Commission by Mr. Paul Ernest of 66 Yankee Point Drive on December 14, 1999.

II. APPEAL PROCEDURES

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. The project is located between the sea and the first public road paralleling the sea, and is within 100 feet of a stream (McLean Creek) in the Carmel Highlands area of the Monterey County Coastal Zone.

III. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No A-3-MCO-99-099 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a Yes vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO FIND NON-SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. *A-3-MCO-99-099* does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

IV. RECOMMENDED FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Location and Description

The project is located on an eroded slope located at 46 Yankee Point Drive in the Carmel Highlands area of Monterey County (project location maps and a site parcel map are shown in Exhibits A and B, respectively). The 0.42 acre parcel (APN 243-141-015), located westerly of Yankee Point Drive, lies in an area designated by the LCP as LDR/1 (CZ) "Low Density Residential, one unit per acre."

The parcel contains an existing 2-story single family dwelling, with adjoining cantilevered deck, both of which are located at the top of a ravine on the north side of McLean Creek (Exhibit C). Steep slopes of the ravine, which characterize more than 36 percent of the southern portion of the property, descend down to McLean Creek, an intermittent stream that flows along the base of the ravine. The existing house and adjoining cantilevered deck are both within the County's established 50-foot setback for intermittent streams.

The proposed project is the construction of a four-tiered concrete block retaining wall along the ravine slope immediately south of the existing residence, where the slope was washed out by early 1998 storms. Two of the proposed four tiers were partially constructed between February and April of 1998, prior to obtaining the required building permits.

The Board of Supervisors Resolution # 99-423 (Exhibit D), approving the project after-the-fact, notes that the retaining walls are proposed to prevent slope failure at the ravine area of the subject property. The Board of Supervisors Decision acknowledges that the project will be located within the 50-foot setback area required by the Carmel Land Use Plan for intermittent streams. The Decision states that according to recommendations from a consulting biologist, consulting engineer and Department of Fish and Game representative, the project is necessary to protect the natural resources at the site (i.e., McLean Creek and the natural vegetation existing in the ravine).

Approval of the project has been conditioned to require (among other things) compacted backfill against the retaining walls to match the adjacent slopes and, with the aid of jute netting, to be revegetated with native plants appropriate to the site. According to the Board's decision, this restoration is apparently intended as mitigation for encroachment into the setback.

McLean Creek ravine also provides visual access to the Pacific Ocean from Yankee Point Drive. Although the project is located along the ravine slope within this public view corridor, construction activities are considered temporary, and as conditioned to include slope restoration and appropriate revegetation, the project is expected to have only temporary visual impacts on the public viewshed.

B. Project Background

A portion of the upper slope of the McLean Creek ravine was washed out on the subject property following heavy El Nino rains in February of 1998 (see photos; Exhibit G). Following this event, the applicant apparently allowed a contractor to begin repair of the washout because of fears that further slides might jeopardize the foundation of his home. In a written response to the appellant (Exhibit H) the applicant claims the contractor told him that four-foot walls could be built without a permit. However, the applicant built an earlier, three-tiered retaining wall (designed with four-foot eight-inch high walls) in 1996 west of the current project site following slope erosion caused by 1995 winter storms. That three-tiered retaining wall was also constructed without proper coastal development and building permits and therefore found to be in violation of building requirements. The earlier three-tiered retaining wall was later approved by the County as an after-the-fact development, along with expansion of the deck area and removal of one Monterey Pine (PC93108; Resolution 96020, dated February 28, 1996). Conditions of the 1996 permit required (among other things) erosion control measures, replanting of exposed slope areas with native vegetation and tree replacement for trees removed or damaged during construction.

A portion of the currently proposed four-tier retaining walls were constructed sometime between February 2nd and April 24, 1999, at which date the Planning and Building Inspection Department

halted construction of the project by posting a stop work order at the site. The Building Inspector's field report noted that the project was red tagged for construction without a building permit.

On May 19th, 1999, a letter was sent to the Building Inspector from the Consulting Soils Engineer, Mr. Richard Dante, regarding review of the retaining wall design and construction. In the letter, Mr. Dante stated that he had inspected the partially constructed retaining walls, reviewed construction photographs for steel placement and footing excavations, and certified that the retaining walls were constructed as shown by design calculations and calculation cross section for each wall (see Exhibit H). Mr. Dante's letter indicated that his calculations for walls A, B, and C show that they are stable and properly constructed. His letter also noted that Retaining Wall D is planned to be constructed along the top level according to design calculations.

Frank and Loretta Dittrich submitted an application for a Combined Coastal Development Permit and Design Approval for the project to the Monterey County Planning and Building Inspection Department on July 7, 1999.

A letter was subsequently submitted to the Monterey Planning and Building Inspection Department by the Biological Consultant, Mr. Jud Vandevere, July 20, 1999, regarding a site visit of the Dittrich property conducted July 16, 1999. Mr. Vandevere noted that while many exotic plant species existed near the site, no animal or plant species of concern were found on the site other than two Monterey pines (*Pinus radiata*), which are growing on either side of the partially completed retaining walls. He notes that the roots of these trees were cut during excavation for the project and that the pine closest to the driveway appears to be seriously affected by pitch canker (*Fusarium subglutinans* forma specialis *pini*). The other pine on the west side of the wall is healthy but is quite mature. The Biologist's letter suggests that both trees may be replaced some day with canker resistant pines when such plant materials (hopefully) will be available. The Biologist's letter does not specifically establish a measured setback distance, but does opine that no biological harm will occur when work on the retaining wall is completed.

As part of the County's project review process, the proposed project was reviewed by the Carmel Unincorporated/Highlands Land Use Advisory Committee August 2, 1999. The Land Use Advisory Committee recommended Denial of the project as designed (Exhibit E), finding that the project is located in an area "...designated as riparian corridor ...[in which] no grading or construction should be allowed...." The Land Use Advisory Committee also recommended that the slope be restored with "...proper vegetation that is typical of this creek slope," and suggested that the County ascertain whether the applicant has been in compliance with grading and erosion control policies required by earlier permit conditions.

A letter from the Consulting Soils Engineer, Mr. Richard Dante, dated August 30, 1999, states that "...the retaining walls below the balcony on the southerly side of the residence are necessary to stabilize the slope and protect the balcony and building structure from settlement or failure." The letter also noted that storm water discharge from a Monterey County culvert outfall set high up on the ravine slope contributed to erosion along the bank of the ravine and siltation in the

ravine bottom during periods of high flow.

Planning Commission's Resolution # 99-056 approved a permit for construction of the four-tiered retaining wall on September 8, 1999. The County Planning Commission Staff Report (PLN990307) noted that the four retaining walls were proposed to: "...(1) ensure the stability of the slope upon which pier footings supporting a cantilevered single family dwelling are situated, (2) to provide erosion control and thereby prevent siltation into a streambed, and (3) to provide the conditions for re-vegetating the entire slope with native plants." As approved by the Planning Commission, the four tiered concrete retaining walls were conditioned to be faced with stone (as required for the earlier, three-tiered retaining walls on the same slope).

The Planning Commission's Resolution # 99-056 was appealed to the Board of Supervisors by Mr. Howard Seyferth, based on contentions that construction of the partially completed retaining walls were not necessary to stabilize the slope and that emergency conditions did not exist.

Following a de novo hearing on November 16, 1999, the Board of Supervisors denied Mr. Seyferth's appeal and approved a permit for the construction of the four-tiered retaining wall, subject to twenty-three conditions of approval (Exhibit D). In addition to the 17 special conditions established by the Monterey County Planning Commission, the Board of Supervisors' Decision included the following conditions.

Conditions Placed upon the Project Pursuant to the Department of Fish and Game "1603 Lake and Streambed Alteration Permit":

1. That construction shall be completed while the work site is dry
2. That cement shall not be allowed to come in contact with creek water during the concrete pour for a 30-day curing period following the concrete pour.
3. That the Department of Fish and Game "1603 Lake and Streambed Alteration Permit" shall expire on December 31st, 1999.

Conditions Placed upon the Project Pursuant to Approval of the Project by the County Board of Supervisors on November 16th, 1999:

1. That the finished project match the existing, adjacent contours of the slope by placing compacted fill against the slope, covering the four retaining walls. With the aid of jute netting, the applicant shall plant appropriate native vegetation on the compacted fill covering the disturbed slope in order to return McLean Creek to a more natural viewscape.
2. That all site runoff be channeled away from the slope, including building gutters, deck and other impermeable surfaces, so as not to erode the slope.
3. That the applicant and/or staff report back to Supervisor David Potter when the project is completed.

C. Unpermitted Development

As described above, a portion of the currently proposed four-tier retaining walls had been constructed on the site (sometime between February 2nd and April 24, 1999) without necessary coastal and building permits. Section 20.90 of the Monterey County LCP contains policies regarding enforcement, administrative and legal procedures, and penalties for building in violation of coastal permits. According to the LCP, the County may issue a stop work order, require permit application and require a fee of twice the amount normally charged for such application for construction in violation of the County's Zoning Ordinances (Title 20). In this case, a "Stop Work Order" was placed on the construction of the proposed retaining wall by Mr. David Gran, Monterey County Building Inspector, on April 24, 1999. The Building Inspector's field report noted that the project was red tagged for construction without a building permit. Monterey County Planning and Building Inspection Department required the applicant to obtain a permit for this project to correct the violation, and the appropriate fees were required. The applicant has subsequently applied and has been granted approval of a Coastal Development Permit (Resolution # 99-423) which is the subject of this appeal. The County thereby remedied the violation by these actions and the conditioned approval of Resolution # 99-423.

Consideration of the proposed four-tiered retaining wall in this staff report is based solely upon the policies contained in the County's LCP and the Coastal Act's public access and recreation policies as applicable, as if the project had not yet been installed. Commission action on this appeal does not constitute an admission as to the legality of any development undertaken on the subject site without benefit of a coastal development permit and shall be without prejudice to the California Coastal Commission's ability to pursue any legal remedy available under Chapter 9 of the Coastal Act. In other words, this approval for the four-tiered retaining wall and slope restoration does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred here.

D. Substantial Issue Analysis – Consistency with Local Coastal Program

Appellant's Basis for Appeal

The appellant contends that the project does not comply with the Local Coastal Program in that approval of the project is contrary to Sections 20.146.040 B.8; C.2.c and C.2.d of the Coastal Implementation Plan. These policies deal with environmentally sensitive habitat development standards, specifically removal of indigenous vegetation and land disturbance in or adjacent to environmentally sensitive habitat areas, riparian plant communities and riparian corridors. A complete copy of the appellant's appeal is included in Exhibit F.

1. Land Disturbance in or Adjacent to Environmentally Sensitive Habitat Areas

A. Appellant's Contention

The appellant contends that the Board of Supervisors Resolution 99-423 is contrary to LCP Section 20.146.040 B.8. Section 20.146.040 is intended to protect the environmentally sensitive

habitats of the Carmel Coastal zone and subordinates all categories of land use, both public and private, to the protection of environmentally sensitive habitat areas. The appellant suggests that the County's decision that the area is not an environmentally sensitive habitat area is incorrect.

B. Relevant LCP Policy

Section 20.146.040 B.8 of the Monterey County Coastal Implementation Plan states:

Removal of indigenous vegetation and land disturbance (grading, excavation, paving, etc) in or adjacent to environmentally sensitive habitat areas shall be restricted to only those amounts necessary for structural improvements (Ref Policy 2.3.3.7)

Other relevant LCP policies include Section 20.146.040 B.6, which states:

For projects in or adjacent to environmentally sensitive habitat areas, the County shall refer projects to the California Department of Fish and Game for evaluation of impacts from development and suggested mitigations for those impacts. ...Recommendations from the California Department of Fish and Game shall be included as conditions of project approval.

Definitions for Environmentally Sensitive Habitat and Riparian Corridor are given in Section 20.146.020 as follows:

K. Environmentally Sensitive Habitat ... An area in which plant or animal life or their habitats are rare or particularly valuable because of the special nature or role in an ecosystem. Environmentally sensitive habitats are also areas susceptible to disturbance or degradation by human activities and developments. Examples are riparian corridors and Areas of Special Biological Significance...

L. Riparian Corridor... The zone of water-associated vegetation occurring in proximity to a river, stream or other watercourse...

C. County Actions

Finding # 4 (pg 5 of Resolution # 99-423) notes that, according to the consulting biologist, Jud Vandevere, both the current project and the earlier three-tiered retaining walls are located in an area that is not considered to be environmentally sensitive. Coastal Commission staff confirmed with the County Planner (David Lutes, 1/21/200) that this determination was based on the Biologist's July 20, 1999 letter (included in Exhibit H) and numerous phone conversations the County Planner had with the Biologist. The Biologist's letter indicates that no environmentally sensitive species were found on the site other than two Monterey Pines (*Pinus radiata*), which are listed as CNPS Class 1B species. According to the County Planner, the biologist did not consider the project to be within a riparian corridor because it lacked appropriate riparian vegetation. This has been confirmed directly with the Biologist (staff ph.con., 1/25/00).

Finding # 4, as referenced above also notes the fact that an earlier three-tiered retaining wall on the same slope was found not to have a significant environmental impact. File documents for this earlier permit (Planning Commission Resolution # 96-020; PC93108) authorizing

construction of the three-tiered retaining wall, indicated that the site did not contain environmentally sensitive habitat and stated that the diversity of plant and animal species on the site was very limited.

D. Analysis

The County's determination that the site is not an environmentally sensitive habitat is based on biological information that describes the plant and animal life present on the site. This information includes the Biologist's July 20, 1999 letter and subsequent phone conversations with the Biologist, the Forest Management Plan prepared by Ray Sumida (included in the Planning Commission's staff report PLN 990307), and file documents from the previous three-tiered retaining wall permit (PC93108). Photographs have also been taken of the project area and the ravine showing the slope before and during construction of the retaining walls (Exhibit G).

As defined, riparian corridors are considered environmentally sensitive habitats. For the site to be considered a riparian corridor, the presence of riparian vegetation, i.e., woody vegetation adapted to a moist or wet substrate is required. The biologist's July 20 letter does not note whether or not any riparian vegetation is present. However, as described above, the Biologist indicated in phone conversations that the area lacked the indicative riparian species. The Biologist's letter noted that of the 26 additional plant species found near the project, many were exotic species and none were species of concern. Furthermore, none of the four animal species observed on the site were species of concern.

The 1995 Forest Management Plan lists plant material on site such as: *Echium fastuosum*, *Pinus radiata*, Poison Oak, Pampas grass, and Ice Plant. None of these plants are considered to be characteristic riparian plant species. Although Poison Oak can grow in riparian environments, it is also found in drier, upland habitats; Pampas grass and Ice plant are both considered exotic pest species. The Forest Management Plan contains management measures that include taking care to remove and avoid introduction of particular exotic pest species (listed as Pampas grass, Genista, Gorse and Eucalyptus), and recommendations that include removing all pampas grass and ice-plant from the ravine.

Photographs taken following construction of the three-tiered retaining wall (Exhibit G) show that much of the existing slope had been cleared of exotic plants prior to failure of the slope in 1998. More recent photographs of the site show that vegetation has filled in along the western portion of the slope following restoration activities to mitigate for invasive plant removal and other prior construction activities. No description is available on what plant types are located at the bottom of the ravine and along much of the rest of the ravine slopes adjacent to the subject property (get list from biologist).

E. Conclusions

The County's determination that the site is not an environmentally sensitive habitat is based on information currently available that indicates no rare plants or animals are found on the site. The appellant's contention that the County's determination is wrong is not supported by the available evidence and therefore does not raise a significant issue. Furthermore, retaining wall

construction and revegetation of the site are intended to stabilize the slope and thereby minimize further erosion that would degrade riparian vegetation located at the base of the ravine. No indigenous vegetation removal has been permitted; only those improvements necessary for the structural improvements have been allowed; and recommendations made by the Department of Fish and Game have been included as conditions of project approval.

2. Development in Riparian Corridors

A. Appellant's Contention

The appellant contends that the Board of Supervisors Resolution 99-423 is contrary to LCP Section 20.146.040 C.2.c and C.2.d. These sections provide specific development standards for riparian corridors and other terrestrial wildlife habitats. The appellant contends that the project is completely within the 50-foot setback for intermittent streams and that development within the riparian corridor is prohibited by the LCP.

B. Relevant LCP Policy

Section 20.146.040 C.2.c of the Monterey County Coastal Implementation Plan states:

Riparian plant communities shall be protected by establishing setbacks consisting of a 150 foot open space buffer zone on each side of the bank or perennial streams and 50 feet on each side of the bank of intermittent streams or the extent of riparian vegetation, whichever is greater. The setback requirement may be modified if it can be demonstrated that a narrower corridor is sufficient to protect existing riparian vegetation. Staff may require that this determination of the setback and/or extent or riparian vegetation be made by a qualified biologist.

Section 20.146.040 C.2.d of the Monterey County Coastal Implementation Plan states:

No new development, including structural flood control projects, shall be allowed within the riparian corridor. Improvements to existing dikes and levees are allowed if riparian vegetation damage can be minimized and at least an equivalent amount and quality of replacement vegetation is planted....

C. County Actions

Finding #1 (pg 2 of Resolution # 99-423) acknowledges that the project is within the 50 foot setback for intermittent streams. Although not explicitly stated, the County apparently allowed the setback requirement to be modified based on the Consulting Biologist's determination regarding the appropriate width for the setback and/or extent of riparian vegetation. Coastal Commission staff spoke with the County Planner regarding the riparian setback determination over the phone (1/21/2000). The County planner confirmed that both the Biologist's July 20, 1999 letter, stating that no biological harm would occur, and additional phone conversations with the biologist convinced the County that a narrower corridor was sufficient to protect existing riparian vegetation. The County also sought advice from the Department of Fish and Game, who determined that the project was required to protect the natural vegetation existing in the ravine.

The Board's Resolution # 99-423 does not specifically define the setback established by the Biologist, nor does it include a map showing the extent of the riparian vegetation. However, it does condition approval of the project to include measures to minimize damage to existing riparian vegetation and also requires restoration of the ravine slope using native plants appropriate to the site.

D. Analysis

In 1993, the County originally granted Frank and Loretta Dittrich a Combined Coastal Development Permit to construct an addition to the existing single family dwelling, and variance for reduction in side yard setback requirements and addition to lot coverage requirements (Planning Commission Resolution # 93-201). In the Findings for the Variance Portion of the Combined Development (Finding #2, pg 3 of Resolution # 93-201), the County found that due to the physical and topographic constraints of the property (i.e., the septic system on the north and the ravine on the south side of the property) "no other area exists to develop on the site that would not encroach on required setbacks or septic system." The County determined that because the dwelling was built prior to current requirements and encroaches within the required setbacks, special circumstances existed to grant the variance. The County also noted that, as evident from Building Inspection files, similar variances had been granted for other parcels on the same block as that occupied by the subject parcel.

As described above, "riparian corridors" are defined as the zone of water-associated vegetation occurring in proximity to a river, stream or other watercourse. The Streambed Alteration notification, completed by the Biologist, distinguishes the site's watercourse as a "drainage ditch." A "ditch" is a long narrow channel dug from the earth, thereby connoting the idea that it is manmade. The watercourse at the base of the ravine, known as McLean Creek, flows intermittently through the natural drainage established by the existing topography and hydrology of the area. The creek appears to originate at a spring near Coast Ridge Road, inland from Highway 1; archaeological evidence supports its existence from pre-European times (staff field observations, c. 1974).

While the creek can therefore be considered a natural watercourse or drainage corridor, the lack of appropriate riparian vegetation in the project site, as determined by the Consulting Biologist and the Forest Management Plan, indicates that by definition it should not be considered a riparian corridor. The lack of riparian vegetation in this area may be due to such causes as competition by invasive species or an inadequate water supply required for the establishment of riparian plant species.

On the other hand, where it has been determined that riparian vegetation is present within the ravine, the riparian corridor would be defined by the extent of riparian vegetation present. As described above, the project has been determined to lie outside of the extent of any riparian vegetation, and therefore lies outside of any riparian corridor. Additionally, the County has included specific recommendations made by the Department of Fish and Game and the Forest Management Plan as conditions of approval. These conditions, along with conditions requiring

restoration of the slope with the use of native plants, are intended to provide erosion control and thereby minimize any impacts to riparian vegetation in the ravine.

The County notes (on pg of Resolution # 99-423) that the consulting soil engineer has conceded that there is not an immediate danger to the existing dwelling at the site which sits cantilevered on underground piers. The County notes however, (in Finding 2) that the consulting engineer "considers that slope restoration cannot take place without the proposed retaining wall to insure slope stabilization." The Department of Fish and Game has determined that construction of the retaining walls is required to minimize siltation into the streambed.

Construction of the four-tiered retaining walls is an improvement to the existing structures on the site because it reduces the chance of further slope failure and potential damage for the existing structure, in addition to minimizing further degradation of McLean Creek.

E. Conclusions

The appellant's contention that the project is within the 50-foot setback requirement for intermittent streams does not raise a substantial issue. The County's action to modify the setback requirement was consistent with LCP Section 20.146.040 C.2.c, which allows such a determination based on observations by a qualified biologist. Construction of the proposed four-tiered retaining walls is considered by the Biologist, Soils Engineer, and Department of Fish and Game as necessary to protect the natural resources of the site. The County has conditioned the project to require restoration of the slope using native plants appropriate to the site, and to minimize any impacts to riparian vegetation in the ravine. The successful completion of these activities should serve to protect the natural resources of the site.

3. Visual Resource Protection

A. Appellant's Contention

The appellant refers to Section 20.146.030 C.1.c and, by stating that the protection of visual access is misrepresented, apparently infers that the project does not comply with the visual resource protection policies of the LCP. Visual resource development standards are intended to protect the scenic resources of the Carmel (unincorporated) Area and to insure that new development will be subordinate to the natural scenic character of the area. This policy requires that "structures located in a public viewshed shall be designed to minimize visibility and to blend into the site and site surroundings."

The appellant apparently does not agree with the finding that the retaining walls, if built as proposed with stone fascia, will blend into the surrounding environment. The appellant supports this contention by noting that the stone facing of the three-tiered retaining walls to the west of the project site (built in 1996) are still clearly visible and therefore have not blended into the site surroundings. The appellant notes that without the conditions added by the Board of Supervisors requiring compacted backfill to reestablish a 1:1 slope, the approved stone-faced retaining walls would be the most visually intrusive design possible.

The appellant also contends that the Planning staff did not consider other alternatives to the project and describes, as an example, the non-structural approach used by Caltrans along Highway 1 in the Carmel Highlands (see Exhibit F).

B. Relevant LCP Policy

Section 20.146.030 C.1.c of the Monterey County Coastal Implementation Plan states:

Structures located in the public viewshed shall be designed to minimize visibility and to blend into the site and site surroundings. The exterior of buildings should give the general appearance of natural materials (e.g., buildings are to be of weathered wood or painted in earth tones). The height and bulk of buildings shall be modified as necessary to protect the viewshed.

C. County Actions

Finding #3 (pg 4 of Resolution # 99-423) acknowledges that the project, located between Highway 1 and Yankee Point Drive, is in the public viewshed and is therefore in an area where visual access to the shoreline and ocean must be protected. The Planning Commission therefore conditioned the project to use materials, such as stone fascia and native vegetation, to minimize visibility of the walls and allow the project to blend in and become subordinate to the view. Conditions 7, 8, 9 and 10 are intended to protect existing indigenous vegetation, stabilize the bank, and cover the slope using appropriate native plants that will ameliorate the visual impact of the project.

To ensure that revegetation of the site is successful, Resolution # 99-423 includes additional conditions (15, 16, and 17) requiring biological monitoring of the site for three years or "until assurance that the plants are established", long-term maintenance of all landscaped areas, and conformance with previous outstanding conditions of approval required under Resolution # 93-201, except as modified by Resolution #99-423.

Condition 14, requiring that planting of the subject area be completed before December 31, 1999, or before winter rains is no longer entirely meaningful due to the timing of this appeal.

The Board of Supervisors further modified the proposed design to include compacted backfill atop the retaining walls to establish a vegetated 1:1 slope that would match existing contours of the ravine. The Board also required that all site runoff be channeled away from the slope to protect it from subsequent erosion caused by runoff, and the applicant to report back to Supervisor David Potter when the project is complete (Exhibit D).

D. Analysis

The project as proposed was to include stone fascia and revegetation of the slope in order to give the retaining walls the general appearance of natural materials as required by Section 20.140.030 C.1.c of the LCP. Stone fascia would provide a more aesthetic, natural appearance to the retaining walls than would walls made solely of concrete blocks. Once appropriate vegetation were allowed to grow over the walls, in time it is likely that, if adequately maintained, the walls would become subordinate to the larger view of the ravine and distant ocean.

The Board of Supervisor's design modifications (requiring compacted backfill on top of the retaining walls) was apparently intended to return McLean Creek to a more natural veiwscap and thereby further protect the viewshed by establishing a vegetated slope that would match the existing slopes elsewhere in the ravine. The Board's requirement that the applicant and/or staff report back to Supervisor Potter also indicates that this Board member has taken a direct interest in successfully resolving the issues surrounding this project.

The Consulting Soils Engineer, Mr. Dante, has questioned the feasibility of using compacted backfill to reestablish and stabilize a 1:1 slope as required by Resolution # 99-423. The Engineer notes that it is not feasible to restore a 1:1 slope with an earth fill. He also notes that placing unsupported fill in front of the bottom retaining wall would have a very high potential for slope failure, could undermine the lower retaining wall and could lead to successive failures in each of the higher retaining walls. The Engineer recommends that a better solution for a stable slope restoration would be to require more planting with native species on the terraces adjacent to each of the retaining walls in order to screen the retaining walls from view.

The Coastal Commission's Staff Engineer reviewed the project, specifically with regard to the issue of adding compacted backfill atop the retaining walls, and has provided review comments (Exhibit H). The Coastal Commission's Staff Engineer concurs that such backfill would have a high potential for erosion and slope failure, and recommends either that Condition 1 be modified to require monitoring of a vegetation plan that would screen the four retaining walls, or complete redesign of the slope stabilization, if possible. The Coastal Commission Staff Engineer also notes that the proposed retaining wall seems to be a reasonable and judicious application of armoring to ensure foundation stability.

If the project were to refrain from requiring compacted backfill to reestablish the 1:1 slope, it is still feasible that a vegetation plan that would screen the four walls could be accomplished using native shrubs and trailing plants that would, over time, fill in and substantially hide the stone covered retaining walls. The Engineer indicated in a response to an earlier appeal of the project, that the reason the three-tiered walls are still visible is because planting could not be undertaken until retaining wall construction is completed (see Exhibit H). This statement apparently infers that planting has not yet been undertaken in either the three or four-tiered retaining walls because final construction is not yet completed.

With regard to project alternatives, Coastal Commission staff found no documents in the project file regarding whether alternative slope stabilization methods have been suggested for this site or reviewed by the County. However, staff has determined that the proposed project is not inherently contrary to LCP requirements and that the County dealt with LCP visual resource requirements by including mitigation measures as conditions for approval. A permit amendment request would have to be submitted to, and approved by, the County in order to remove the condition requiring compacted backfill. Such an amendment would also be required to go through a similar County review process and would again be open to public review and appeal. However, if such an amendment were approved, it is still possible that the County could condition the project to contain adequate vegetative screening to keep the project in conformance with LCP visual resource protection policies.

E. Conclusions

The appellant's contention that the project does not comply with the visual resource protection policies of the LCP does not raise a significant issue because the County has included appropriate mitigation measures to ensure that the project will blend into the surroundings of the site and be subordinate to views of the ravine and the Pacific Ocean from Yankee Point Drive. The County has also made reasonable attempts to ensure successful restoration of the ravine by including biological monitoring, long-term maintenance, and conformance with previous outstanding permit requirements as conditions of approval. (Though not specifically stated, it is assumed that conformance with outstanding conditions of approval under Resolution # 96-020, except as updated by Resolution # 99-423, are also required since the former resolution was approved as an amendment to Resolution # 93-201.)

The applicant's contention that the County has not considered alternative approaches to bank stabilization and erosion control at the site does not raise a significant issue because the LCP does not contain policies requiring the County to do so. Additionally, it has been determined that the project as conditioned will not have any significant adverse impacts on the environment.

4. California Environmental Quality Act (CEQA) Consistency

A. Appellant's Contention

The applicant disputes that emergency conditions warranted CEQA exemptions, as described in Finding # 4 (pg 5 of Resolution # 99-423). The applicant contends that there was and is not now any emergency that endangers the structural support of the dwelling.

B. Relevant CEQA Policy

Section 13096 of the California Code of Regulations requires that a specific finding be made that Coastal Development Permit applications are consistent with the California Environmental Quality Act (CEQA).

Section 21080.5 (b) (4) exempts "Specific actions necessary to prevent or mitigate an emergency."

C. County Actions

Monterey County determined that a Categorical Exemption from environmental review of this project was warranted under the emergency conditions that were considered to prevail at the time. Slope failure occurred following 1998 winter storms that undermined a pier footing on an existing residence and allowed eroded sediment to deposit into an adjacent creek.

D. Analysis

Documents contained in the file indicated that the proposed retaining wall was necessary to stabilize the failed slope and protect the existing residence. While the Consulting engineer later conceded that there is not an immediate danger to the residence, the Commission's review of this appeal has not identified any environmental impacts that have not been appropriately resolved by the project and the County's conditions of approval. Thus, the project will not have any significant adverse impact on the environment within the meaning of the California

Environmental Quality Act.

E. Conclusions

While CEQA is not the standard of review for an appeal to the California Coastal Commission, it has been determined that the appellant's contention regarding CEQA does not raise a significant issue because, as conditioned the project will not have any significant adverse impact on the environment as protected by the Local Coastal Program.

5. Other Appellant Contentions

A. Appellant's Contentions

The appellant is clearly disturbed by the applicant's activities with regard to construction of this project and the earlier three-tiered retaining walls. The appellant contends that by starting construction activities prior to obtaining building permits the applicant had been in violation of building regulations, and that no revocation or legal action has been taken.

The appellant contends that undermining of the southeast footing was the result of construction activities atop the ravine ("pushing excess 'spoils' over the top of the embankment"), inadequate maintenance of slope revegetation efforts following construction of the westerly three-tiered retaining wall, roof and deck runoff, and excavation and construction of the first two tiers of the proposed retaining walls after El Nino rains of February 1998.

The appellant notes that the Carmel Unincorporated/Highlands Land Use Advisory Committee had discussions, heard public comments and voted to deny this project on August 2, 1999, with a vote of 4 to 0 with 1 abstention (not 2 abstentions as described in the Board's Finding #2). The appellant included a list of public comments made during the meeting (see Exhibit F), and noted that the statement "...that conditions of approval for the pervious permit (PC96020) be in compliance with grading and erosion control policies" in the second "Evidence" paragraph in Finding #2, was "never mentioned or even alluded to at the meeting."

B. Conclusions

As described above, the grounds for appeal under Coastal Act 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.

While projects are sometimes begun or even completed without adequate building permits issued by the County, penalty fees for building code violations can be enforced by the County. Additionally, Planning Commission, and if necessary Board of Supervisors, hearings provide full review of the project, including the potential for public participation and appeal.

With regard to the appellant's contentions as to the cause of slope failure, while these contentions have been taken into consideration, our review of the project, as required under Coastal Act Section 30603 and described above, has been limited to determining whether the County actions described by the appellant conform to the standards set forth by the LCP.

With regard to the appellant's contention that Finding #2 (pg 3 of Resolution # 99-423) misrepresented recommendations made by the Carmel Unincorporated/Highlands Land Use Advisory Committee, it appears that this statement is incorrect. Review of the exhibits included in Resolution # 99-423 would indicate that the County apparently took this information directly from the Advisory Committee's written recommendations as submitted to the Planning and Building Inspection Department (see Exhibit E).

E. Substantial Issue Analysis – Conclusions

In conclusion, the appeal does not raise a substantial issue in terms of compliance with the LCP ordinances related to environmentally sensitive habitat, riparian corridor, and visual resource protection policies. As conditioned, Resolution # 99-423 conforms with LCP policies and as modified by the Department of Fish and Game and the Board of Supervisors, protects the natural resources of the Carmel Highlands area as required by the Monterey County Certified Local Coastal Program, including the Carmel Area Land Use Plan.

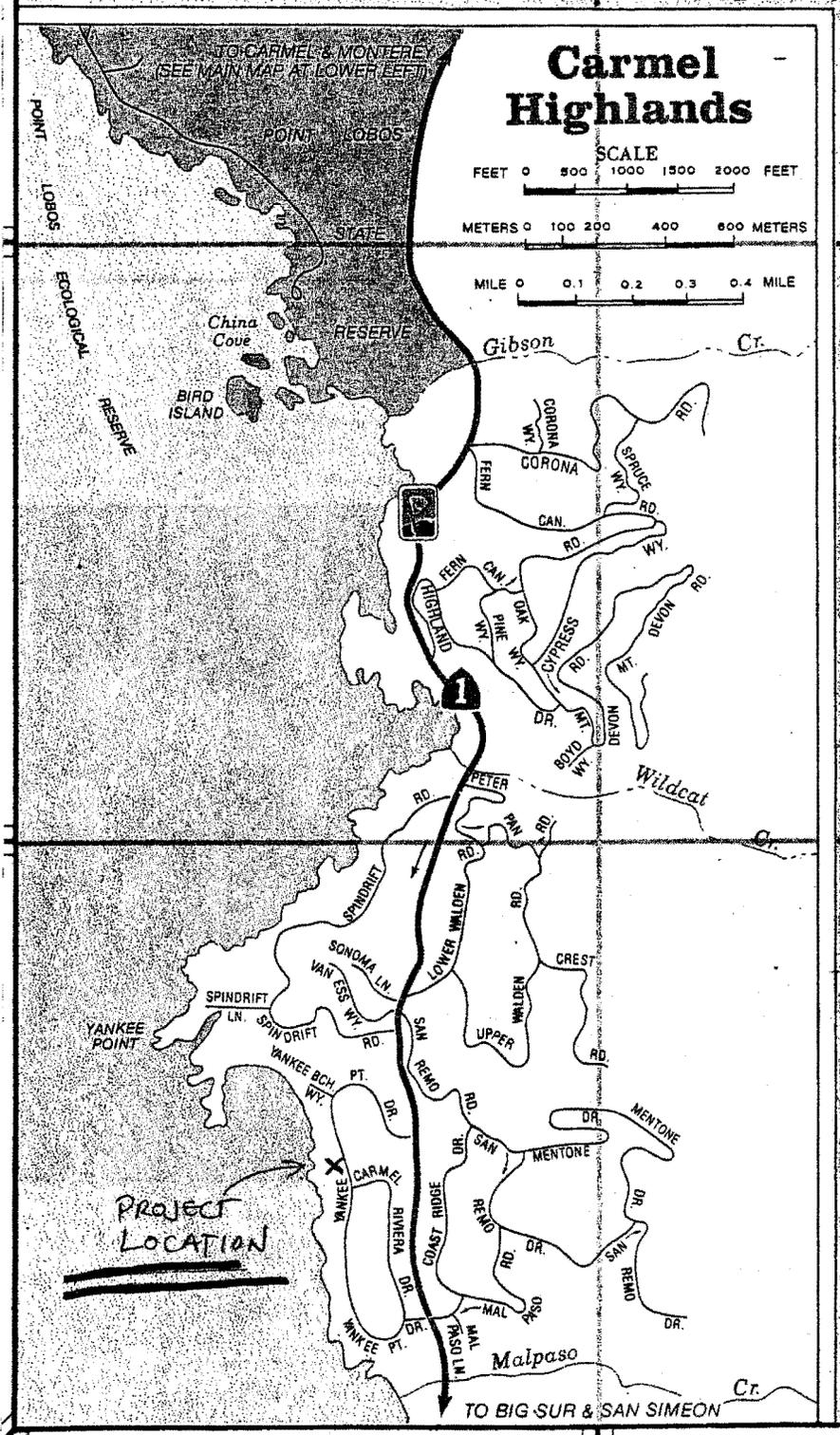
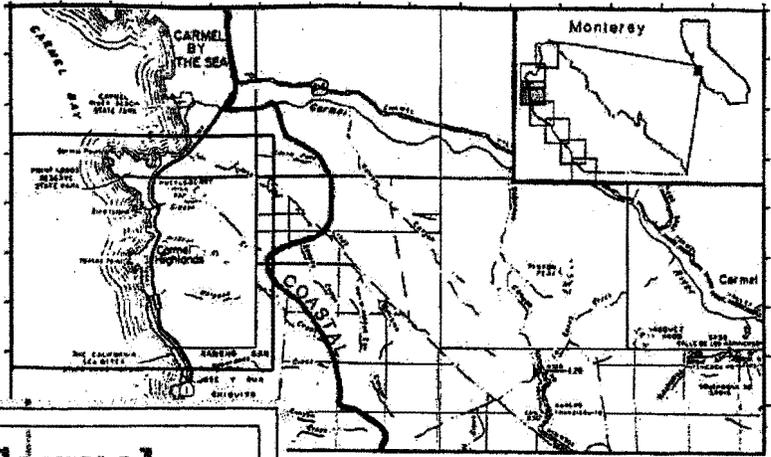
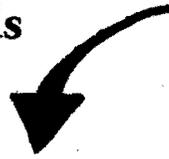
V. EXHIBITS

EXHIBIT A

Project Location Maps

A-3-MCO-99-099

**Inset of
Carmel Highlands
Area**



**A-3-MCO-99-099
Exhibit A (Pg 1 of 2)
Dittrich Appeal
Project Location Map**

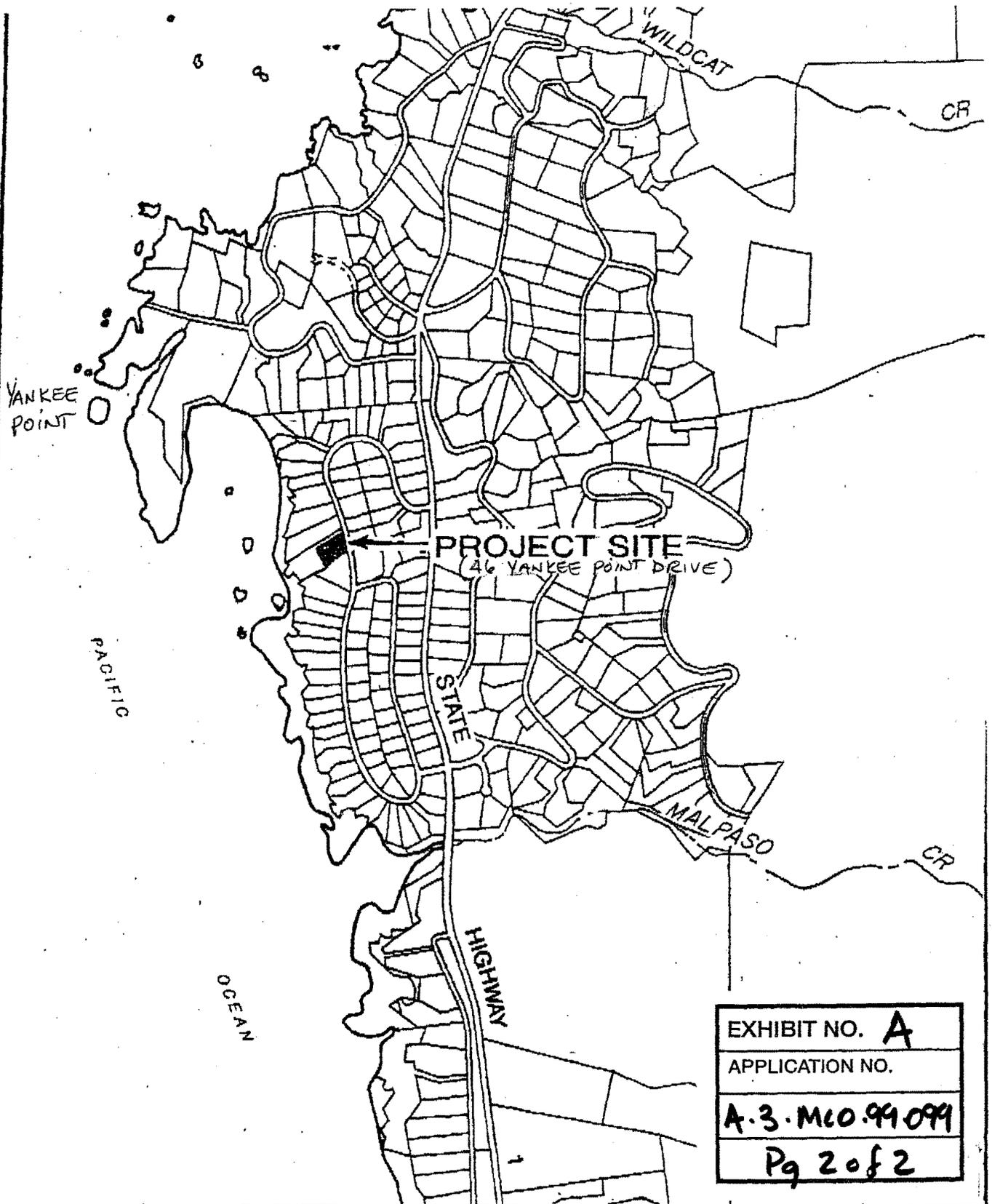
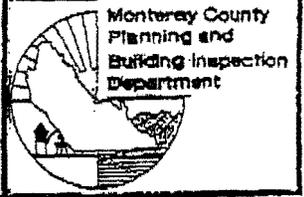
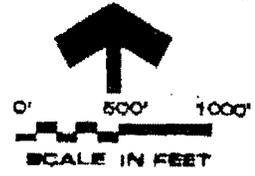


EXHIBIT NO. A
APPLICATION NO.
A-3-M10-99-099
Pg 2 of 2

APPLICANT: DITTRICH	
APN: 243-141-015-000	P.C.# 93108
300' LIMIT 	
2,500' LIMIT 	



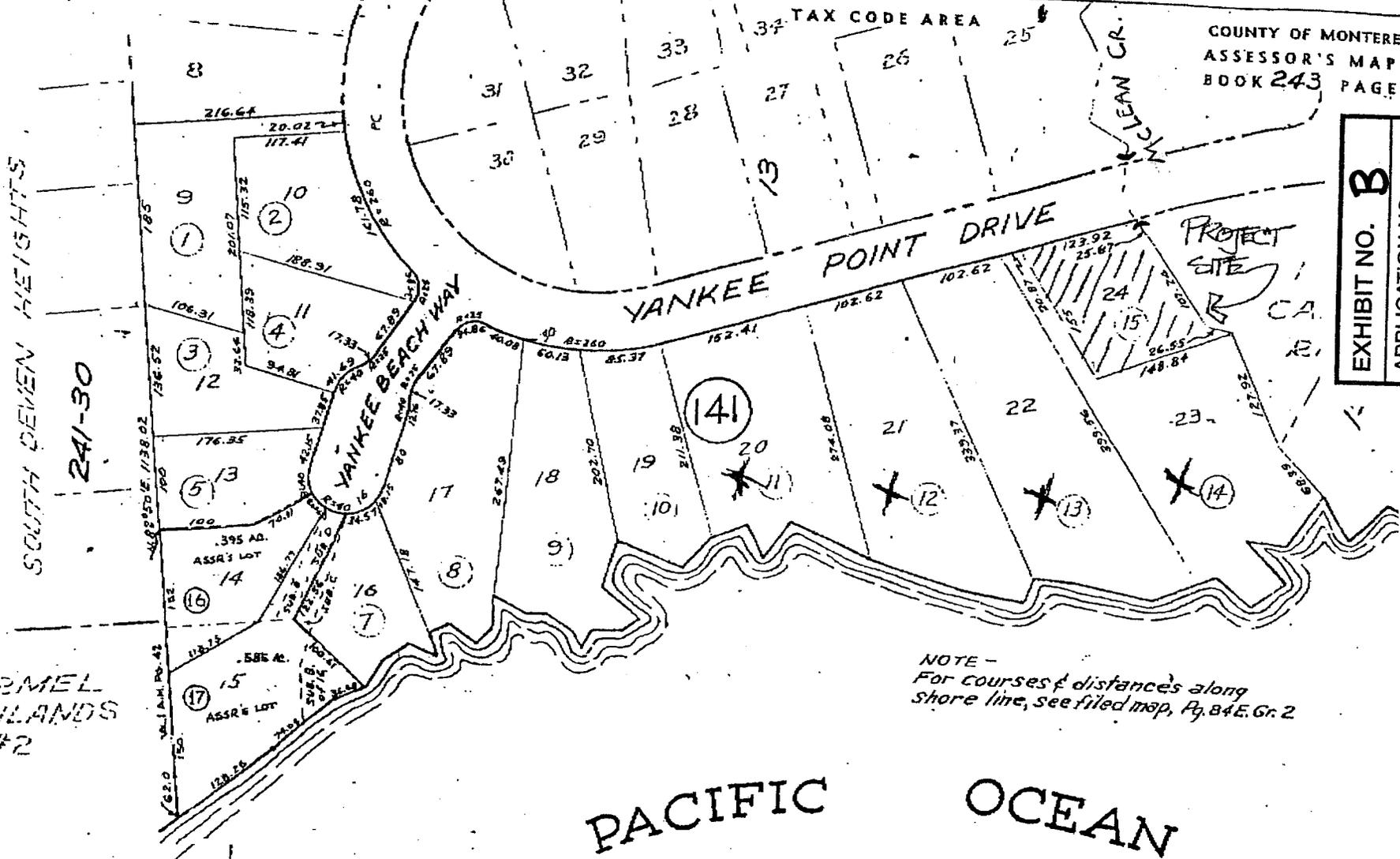
DATE: 11/17/93

EXHIBIT B

Project Parcel Map

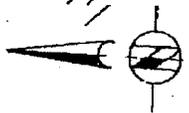
COUNTY OF MONTEREY
ASSESSOR'S MAP
BOOK 243 PAGE 1

EXHIBIT NO. **B**
APPLICATION NO.
A-3-MC-99-099
Pg 1 of 1



NOTE -
For courses & distances along
shore line, see filed map, Pg. 84 E. Gr. 2

PACIFIC OCEAN



Scale bar: 1" = 100'

"THIS MAP MAY OR MAY NOT BE A SURVEY OF THE LAND
DEPICTED HEREON. YOU SHOULD NOT RELY UPON IT FOR
ANY PURPOSE OTHER THAN ORIENTATION TO THE GENERAL
LOCATION OF THE PARCEL OR PARCELS DEPICTED. FIRST
AMERICAN EXPRESSLY DISCLAIMS ANY LIABILITY FOR
ALLEGED LOSS OR DAMAGE WHICH MAY RESULT FROM
RELIGANCE UPON THIS MAP."

Co. SAN JOSE Y SUE CHIQUITI
YANKEE POINT ACRES
1999

SOUTH DEVEN HEIGHTS
241-30
CARMEL HIGHLANDS #2

EXHIBIT C

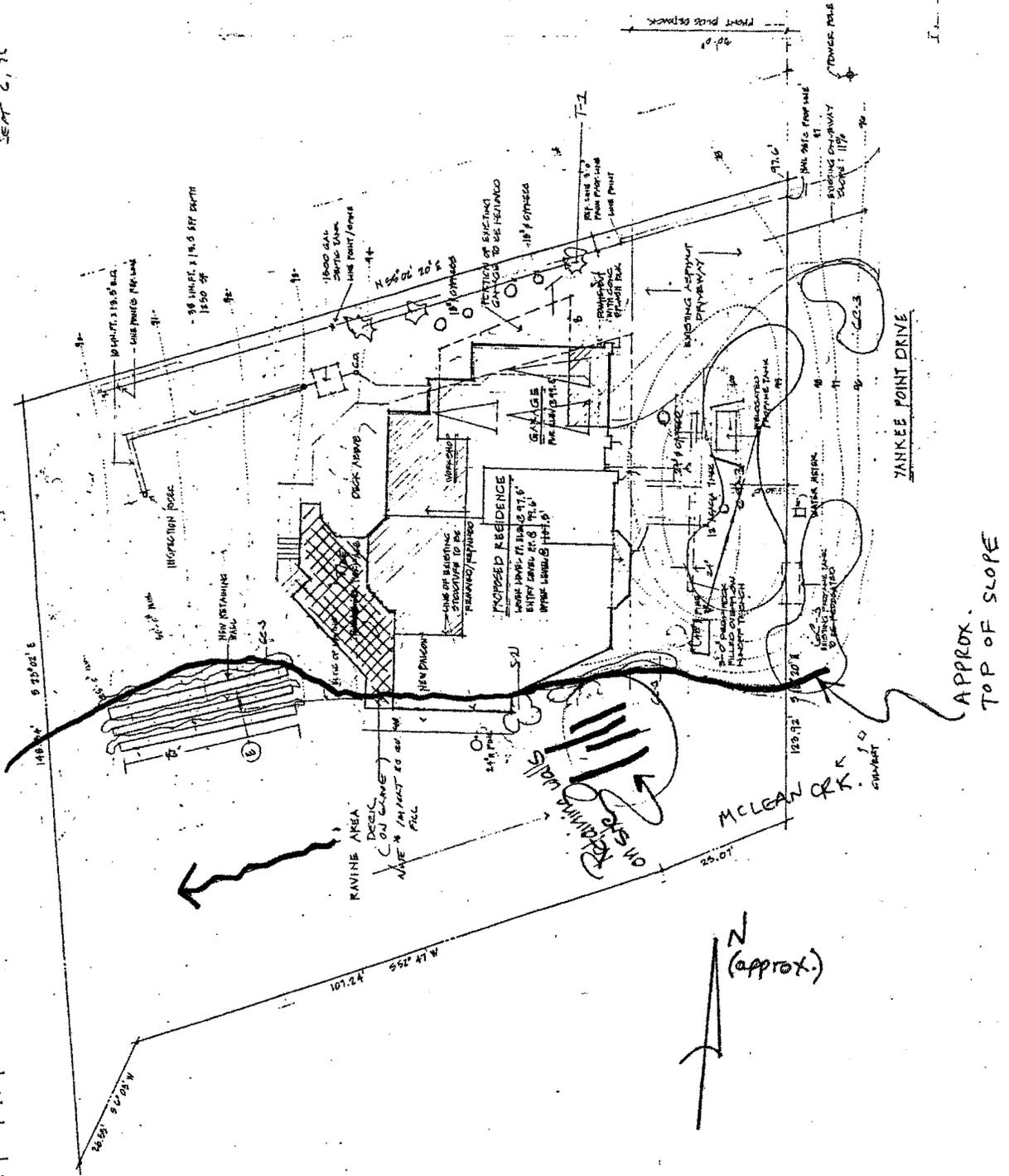
Project Plans

DR. FRANK A. DITTMER
 76 WAUKEE ST.
 CARMEL HIGHLANDS, CA

REVIEWS: JAN. 24, '96
 APR. 14, '96
 APR. 11, '96
 JULY 25, '96
 SEPT. 2, '96

AP 243-141-015

EP. MARS DIAGRAM
 659-9419



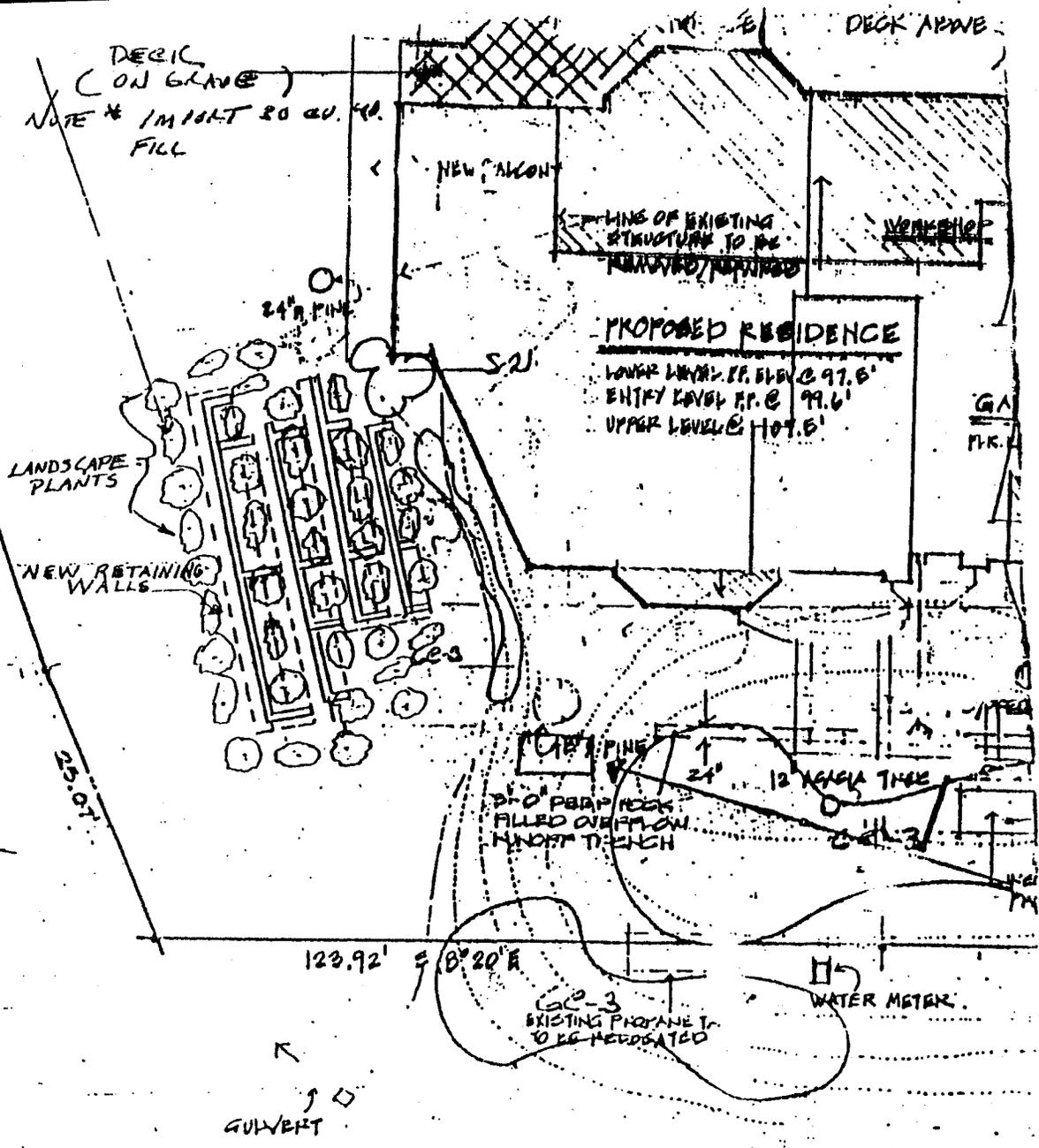
N
 (approx.)

APPROX.
 TOP OF SLOPE

EXHIBIT NO. C
APPLICATION NO.
A.3.MCO.99.099
Pg 1 of 2

LEGEND:

-  ARCTOSTAPHYLO DENSIFLORA (MANZANITA) - 20 EA.
 -  CEANOTHUS HORIZONTALIS - 20 EA - 1 GALLON (CARMEL CREEPER)
- USE 1 GALLON SIZED PLANTS - 40 REQUIRED:
 ALTERNATE VINE HILL MANZANITA PLANTS
 WITH CARMEL CREEPER PLANTS



SCALE 1" = 10'

SOIL SURVEYS INC.
 103 CHURCH ST.
 SALINAS CA 93901
 (831) 757-2172

EXHIBIT NO. C
APPLICATION NO.
A.S.M.C. 99.099
Pg 2 of 2

LANDSCAPING PLAN FOR RETAINING WALLS

YANKEE

EXHIBIT D

Resolution # 99-423 Findings/Conditions

Before the Board of Supervisors in and for the
County of Monterey, State of California

Resolution No. 99-423)
Resolution to deny the Appeal of Harold)
Seyferth from the decision of the Planning)
Commission approving a Coastal)
Development Permit and Design Approval for)
Frank and Loretta Dittrich for the)
construction of four tiered concrete retaining)
walls on a washed-out slope located at 46)
Yankee Point Drive, fronting on and westerly)
of Yankee Point Drive in the Yankee Point)
area of the Coastal Zone.)

FINAL LOCAL ACTION NOTICE
REFERENCE # <u>3-MCO-99-141</u>
APPEAL PERIOD <u>12/9-12/22/99</u>

(PLN 990307)

WHEREAS, the Planning Commission of the County of Monterey on September 8th, 1999 heard the findings and evidence for a proposed four tiered concrete retaining wall to stabilize a washed-out slope located on the property of Frank and Loretta Dittrich at 46 Yankee Point Drive in the Yankee Point Area of the Coastal Zone.

WHEREAS, the Planning Commission approved said findings (Resolution #99056) with conditions for approval of the project in concert with application for a Streambed Alteration Permit from the California Department of Fish and Game.

WHEREAS, the California Department of Fish and Game did grant a "1603 Lake and Streambed Alteration Permit" to complete construction of the partially completed retaining walls between October 8 and October 15, 1999, with the permit expiring on December 31, 1999.

WHEREAS, the California Department of Fish and Game did note appropriate project review under the California Environmental Quality Act and accepted Planning Commission Resolution #99056 with additional conditions of approval; namely, (1) that construction shall be completed while the work site is dry, and (2) that cement shall not be allowed to come in contact with creek water during the concrete pour for a 30 day curing period following the concrete pour.

WHEREAS, the consulting civil engineer, Richard Dante, did concede that there is not an immediate danger to the well-constructed, cantilevered structure resting on underground piers adjacent to the bank of MacClean Creek and that jute netting serves temporarily to stabilize the slope along with the partially completed retaining walls and modification to the down drain from Yankee Point Drive.

WHEREAS, California Coastal Commission staff state that pursuant to State Law and the County Local Coastal Program, the Department of Fish and Game recommendations should be followed, but only after careful County consideration of the project and consideration that temporary measures have been taken to assure that no immediate danger is present to the

APPLICATION NO <u>A.3.MCO.99.099</u>
EXHIBIT D
<u>Pg 1 of 11</u>

structures at the site.

WHEREAS, Harold Seyferth did file a timely appeal from the decision of the Planning Commission to approve the completion of the retaining walls as proposed.

WHEREAS, the appeal from Mr. Seyferth was submitted to the Board for a decision on November 17th, 1999, and the matter was considered as a hearing de novo.

NOW, THEREFORE, having considered all the written and documentary information submitted, the staff reports, oral testimony, and other evidence presented before the Board of Supervisors, the Board now renders its decision to deny the appeal and approve the following findings, evidence and conditions in support of the Dittrich Coastal Development Permit and Design Approval as follows:

RESOLUTION NO. 99056
APN # 243-141-015-000

FINDINGS AND DECISION

1. FINDING: The Coastal Development Permit and Design Approval allows for a four-tiered, concrete block retaining wall on a washed-out slope to provide soil support and slope stabilization for the pier footings of an existing single family dwelling. The parcel is located westerly of Highway 1, fronting on and westerly of Yankee Point Drive at 46 Yankee Point Drive (Assessor's Parcel Number 243-141-015-000), Yankee Point area in the Coastal Zone. The development will occur on a 0.42 acre parcel zoned Low Density Residential, one unit per acre ("LDR/1 (20) (CZ)"). The project as described with the accompanying materials contained in the application file, and as conditioned, is consistent with the plans, policies, requirements and standards of the Carmel Local Coastal Program, the Carmel Coastal Implementation Plan (Part 4) and the Monterey County Coastal Implementation Plan (Part 1).

EVIDENCE: Staff reviewed the project as contained in the application and accompanying materials for consistency with:

- 1.) The certified Carmel Area Land Use Plan.
- 2.) Chapter 20.146 of the Monterey County Coastal Implementation Plan (Part 4)-Regulations for Development in the Carmel Area Land Use Plan Area; and in particular Section 20.146.040 C. 2. c. requiring setbacks from riparian plant communities. This section states that determination of a setback and/or extent of riparian vegetation is made by a qualified biologist. Also, advice from the Department of Fish and Game has been sought. A representative of Fish and

APPLICATION NO. A.3.MCU.99.099
EXHIBIT D
Pg 2 of 11

Game has classified the ravine as a streambed and that places the project within the minimum 50' setback of an intermittent stream bank (Section 20.146.040 C. 2. of the Coastal Implementation Plan). Yet, the consulting biologist, consulting engineer and Fish and Game representative all consider the project necessary to protect the natural vegetation existing in the ravine.

3.) The certified Monterey County Coastal Implementation Plan (Part 1)-Regulations for Low Density Residential Zoning Districts or "LDR (CZ)" Districts.

EVIDENCE: Plans and materials contained in File Nos. PC93108 and PLN 990307.

2. FINDING: The parcel is located in a Design Control or "D" District which requires action by the Planning Commission pursuant to Chapter 20.44 of the Monterey County Coastal Implementation Plan (Part 1). The Planning Commission is provided the opportunity to suggest any changes in the plans of the proposed retaining walls deemed necessary to accomplish the purpose of the aforementioned Chapter. To this end, the applicant has provided the Planning Commission with a Design Approval Request and a statement of materials to be used.

EVIDENCE: Consulting soils engineer, Richard Dante, specifies that the four-tiered concrete walls shall be faced with stone as was approved for the other, three-tiered retaining walls on the same slope (see File No. PC93103). This requirement has been since modified by the Board of Supervisors to require compacted backfill against the retaining walls to match the adjacent slopes (see Finding and Evidence no. 8 below). Appropriate native planting will be allowed to grow over the walls in order to subordinate the visual impact of the walls to the larger view of the ravine and distant ocean.

EVIDENCE: The Carmel Unincorporated/Highlands Land Use Advisory Committee recommended denial of the project with a vote of 4 to 0 with 2 abstaining on August 2nd, 1999. Comments stated by Committee members and neighbors in attendance include the following: (1) that the partially completed wall should be removed as designed and the slope returned to a natural state with proper vegetation that is typical of this creek slope; and (2) that conditions of approval for the previous permit (PC96020) be in compliance with grading and erosion control policies.

EVIDENCE: Consulting soils engineer, Richard Dante of Soil Surveys, Inc., considers that slope restoration cannot take place without the proposed retaining wall to insure slope

APPLICATION NO. A-3-MCO-99-099
EXHIBIT D
Pg 3 of 11

stabilization. Staff is responding to the Advisory Committee concerns by recommending Conditions Nos. 4, 7, 8, 10, 12, 15, 16, and 17 requiring that the slope be restored with appropriate native vegetation. To be consistent with previous conditions of approval, it was recommended that the proposed concrete block walls be faced with stones or alternative stone "sculpting" to better harmonize with the existing slope. This condition has been further modified by the Board of Supervisors to require compacted backfill against the retaining walls to match the adjacent slopes (see Finding and Evidence no. 8 below). It is recommended further that ceanothus cultivars be planted so as to allow vegetation to cover the compacted backfill in order to restore the slope to a more natural vegetated condition.

3. FINDING: The project is consistent with the Visual Resource Development Standards of the Coastal Implementation Plan (Part 4). Pursuant to Section 20.146.030, the project was evaluated in terms of the impact on the public viewshed from Highway 1 and Yankee Point Drive. The project is located in an area where visual access to the shoreline and ocean must be protected. The proposed retaining walls are within and along the perimeter of the ravine that provides public views of the shoreline and the Pacific Ocean from Yankee Point Drive. Although the project is located within this sensitive visual access area, construction of the walls will be subordinate to and will blend into the surrounding environment, thereby ensuring that visual access, rather than physical access, is emphasized. Conditions of project approval have been incorporated herein ensuring that existing visual access from scenic viewing corridors along the project frontage of Yankee Point Drive is permanently protected. The project will utilize native planting to restore the vegetated slope.

EVIDENCE: Section 20.146.030 C.1.c. of the Coastal Implementation Plan (Part 4) states that structures in the viewshed be designed to minimize visibility and blend into the site and surroundings.

EVIDENCE: Plans and photographs taken of the partially completed project as found in File No. PLN990307 and attached to this report.

EVIDENCE: Condition numbers 2, 4, 8, 15 and 17 which require retaining walls to be constructed, but with the added Board of Supervisor's conditions (Conditions 1, 2 and 3 on page 11) that the retaining walls be covered with compacted backfill to match the adjacent contours of the slope.

APPLICATION NO. A.S. MCO. 99.099
EXHIBIT D
Pg 4 of 11

4. **FINDING:** A Categorical Exemption from environmental review of this project is declared under the emergency conditions stated in the California Environmental Quality Act (CEQA).
- EVIDENCE:** California Environmental Quality Act ("CEQA") Guidelines, Section 21080 (b) (4) and Section 15269 (c), "Specific actions necessary to prevent or mitigate an emergency." The heavy 1998 winter rains washed out a portion of the slope that exposes a pier footing and endangers structural support of the single-family dwelling.
- EVIDENCE:** Letter from consulting engineer, Richard Dante of Soils Survey, Inc.
- EVIDENCE:** The former Coastal Development Permit (PC93108) for a three-tiered retaining wall on the same slope just westerly of the current project was not considered to have a significant environmental impact. The area in which both projects are located is not considered to be environmentally sensitive according to consulting biologist, Jud Vandevere.
5. **FINDING:** The project is consistent with the Archaeological Resources Development Standards of the Implementation Plan (Part 4). Pursuant to Section 20.146.090, the earlier project (93108) required an archaeological report because the project site is located in a high archaeological sensitive area. An archaeological survey was conducted on the project site by *Archaeological Consulting* on December 17, 1992. The materials observed appear to represent deposits related to the site CA-MNT-1331, recorded immediately west of the subject parcel. However, the deposits on the subject parcel are sparse and have already been disturbed by existing development. Nonetheless, a condition has been placed on the project to stop further work on the project site in the event that archaeological resources are found during construction.
- EVIDENCE:** Plans, materials, and Archaeological Report prepared by *Archaeological Consulting* on December 17, 1992 contained in File No. PC93108 and Condition No. 11.
6. **FINDING:** The establishment, maintenance, or operation of the project applied for will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.
- EVIDENCE:** The project as described in the application and accompanying materials contained in the application file was

APPLICATION NO. A.3.MCO.99.099
EXHIBIT D
Pg 5 of 11

reviewed by the Department of Planning and Building Inspection, the Division of Environmental Health, the Carmel Highlands Fire Protection District, Public Works Department, Water Resources Agency, the Carmel Highlands Fire Protection District and the Carmel Unincorporated/Highlands Land Use Advisory Committee. The preceding agencies have recommended conditions where appropriate to ensure the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood or the County in general. The California Department of Fish and Game has determined that the project will protect the environment from potential erosion.

Opposition to the project has been expressed by those in attendance at the Carmel Unincorporated/Highlands Land Use Advisory Committee (see recommendation from the Committee under Finding no. 2 above). Coastal Commission staff has expressed concern that slope restoration be done in a timely manner.

7. FINDING: The Coastal Development Permit, as approved by the Planning Commission, is appealable to the Board of Supervisors and the Coastal Commission.
- EVIDENCE: Sections 20.86.070 and 20.86.080 of the Monterey County Coastal Implementation Plan (Part 1).
8. FINDING: Upon the appeal of the project to the Monterey County Board of Supervisors on November 16th, 1999, the project was approved with three additional conditions of approval, namely: (1) that the finished project shall be made to match the contours of the adjacent slope by placing compacted fill against the retaining walls, and with jute netting to hold the soil in place, plant appropriate native vegetation on the slope to cover the disturbed slope; (2) that all site runoff shall be channeled away from the slope so as not to erode the slope; and (3) that the applicant report back to Supervisor David Potter as to the status of the project when completed.
- EVIDENCE: Duplicated tape recording of the County of Monterey Board of Supervisors meeting of November 16th, 1999 at 11:15AM: the Frank Dittrich Coastal Development Permit and Design Approval, PLN990307.
- EVIDENCE: Follow-up phone call to Supervisor David Potter by staff to confirm the intent of his motion for approval with three added conditions.
- EVIDENCE: Further conditions placed on the project pursuant to

APPLICATION NO. A.S.MCO.99.099
EXHIBIT D
Pg 6 of 11

approval of the project by the County Board of Supervisors on November 16th, 1999, shown below as Conditions 1, 2 and 3 on page 11 of this Resolution.

DECISION

1. The Coastal Development Permit and Design Approval allows for the completion of the four-tiered concrete block retaining wall to prevent slope failure at the ravine area of the subject property. The Board of Supervisors approval is conditioned upon the placement of compacted backfill against the walls to match the existing adjacent slopes. After placement of jute netting on the compacted backfill, the applicant shall revegetate the slope using appropriate native plant cultivars as recommended by both the consulting biologist and soils engineer, Jud Vandevere and Richard Dante, respectively. The parcel is located easterly of Highway 1 fronting on, and westerly of Yankee Point Drive 46 Yankee Point Drive (Assessor's Parcel Number 243-141-015-000), Yankee Point area in the Coastal Zone.

The proposed project does encroach on the 50-foot setback from a wetland area, but according to the recommendation from a consulting biologist, consulting engineer and a representative from the State Department of Fish and Game, is necessary to protect the natural resources at the site. Apart from encroachment upon the streambed area requiring mitigating conditions established by the consulting biologist and State Department of Fish and Game, the project is consistent with County ordinances and land use regulations subject to the following terms and conditions.

Neither the uses nor the construction allowed by this permit shall commence unless, and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless the appropriate authorities approve additional permits. (Planning and Building Inspection)

Prior to the issuance of Building Permit:

2. The property owner shall provide certification from a registered civil engineer that the retaining walls and planting have been constructed according to plans provided by Richard Dante of Soil Surveys, Inc. (Water Resources Agency & Planning and Building Inspection)
3. The property owner shall apply for a "Streambed Alteration Agreement"

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with the Department of Fish and Game to assure that the slope restoration plans protect the natural resources of the site. The property owner shall provide evidence that the Department of Fish and Game approves the proposed conditions of approval for the County's Coastal Development Permit plus any additional conditions required by said Department prior to issuance of a building permit. (Planning and Building Inspection)

4. The owner of the property shall record a deed restriction indicating that "All exterior design changes to the retaining walls be approved by the Director of Planning and Building Inspection." This condition serves to make the present owner of the property aware of Monterey County's concerns related to design changes within the public and scenic viewshed, and serves as a notice to any subsequent owners of the property of the aforesaid concerns. This deed restriction shall be recorded prior to issuance of building or grading permits. (Planning and Building Inspection)
5. The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (Planning and Building Inspection)
6. The applicant shall record a notice, which states: "A permit (Resolution #990307) was approved by the Monterey County Planning Commission for Assessor's Parcel Number 243-141-015-000 on September 8th, 1999. The permit was granted subject to 23 conditions of approval, which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice

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shall be furnished to the Director of Planning and Building Inspection prior to issuance of building or grading permits. (Planning and Building Inspection)

7. Native trees which are located close to the construction site shall be protected from inadvertent damage from construction equipment by wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the feeding zone or drip line of the retained trees. Said protection methods shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. (Planning and Building Inspection)
8. The entire disturbed slope of the property, including all bare areas on the slope of the ravine and the tiers between the retaining walls, shall be landscaped in accordance with the recommendations of the consulting biologist and soils engineer. A primary factor in review of a planting plan will be to stabilize the bank and cover the slope. Appropriate native plants that serve to grow over compacted backfill placed against the retaining wall to visually subordinate the wall to the natural vegetated ravine shall be required. The applicant shall provide evidence that the consulting biologist and soils engineer have reviewed the planting plans for the slope and approve of the location, size, genus and species of the plants chosen. At least three weeks prior to final inspection, three copies of a landscaping plan shall be submitted to the Director of Planning and Building Inspection for approval. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed landscaping materials and shall be accompanied by a nursery or contractor's estimate of the cost of installation of the plan. Before issuance of a final building permit, landscaping shall be installed. (Planning and Building Inspection)
9. Landscape plans shall apply xeriscape principles, including such techniques and materials as native plants and drip irrigation systems and timing devices. (Water Resources Agency)

During Construction:

10. That all cut and fill slopes exposed during the course of construction be covered, seeded, or otherwise treated to control erosion, subject to the review and approval of the Planning and Building Inspection Department prior to final inspection. (Planning and Building Inspection)

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11. If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until it can be evaluated by a qualified professional archaeologist. The Monterey County Planning and Building Inspection Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (Planning and Building Inspection Department)
12. All areas on the parcel immediately outside of the project site shall be adequately screened from workers and equipment during construction. Said protection method shall be demonstrated prior to issuance of building permits subject to the approval of the Director of Planning and Building Inspection. (Planning and Building Inspection)
13. That all pampas grass and ice plant is removed from the ravine area on the property as was required by the Forest Management Plan prepared by Ray Sumida as found in Planning and Building Inspection File No 93108 and required by the Board of Supervisors on appeal on April 23rd, 1996. (Planning and Building Inspection)
14. Planting of the subject area shall assure establishment of the plants before December 31st, 1999, or before winter rains. (Planning and Building Inspection)

Continuous Permit Conditions:

15. A consulting biologist or horticulturist shall be retained to monitor the growing condition of the plants to assure the coverage of the slope and walls to harmonize with the natural vegetated ravine. The consultant biologist shall provide an annual report for a three-year period, or until assurance that the plants are established. (Planning and Building Inspection)
16. The applicant shall continuously maintain all landscaped areas and/or fences and all plant material shall be continuously maintained in a litter-free, weed-free, healthy, growing condition. (Planning and Building Inspection)
17. The applicant shall remain subject to outstanding conditions of approval placed on the Coastal Development Permit approved by Resolution 930201, Planning and Building Inspection file number PC93108, except as updated by the current permit approved by Resolution 990307, Planning and Building Inspection file number PLN990307, as it relates to the restoration of the subject slope. (Planning and Building Inspection)

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Further Conditions Placed Upon the Project Pursuant to the Department of Fish and Game "1603 Lake and Streambed Alteration Permit":

1. That construction shall be completed while the work site is dry.
2. That cement shall not be allowed to come in contact with creek water during the concrete pour for a 30 day curing period following the concrete pour.
3. That the Department of Fish and Game "1603 Lake and Streambed Alteration Permit" shall expire on December 31st, 1999.

Further Conditions Placed Upon the Project Pursuant to Approval of the Project by the County Board of Supervisors on November 16th, 1999:

1. That the finished project match the existing, adjacent contours of the slope by placing compacted fill against the slope, covering the four retaining walls. With the aid of jute netting, the applicant shall plant appropriate native vegetation on the compacted fill covering the disturbed slope in order to return McLean Creek to a more natural viewscape. (Planning and Building Inspection)
2. That all site runoff be channeled away from the slope, including building gutters, deck and other impermeable surfaces, so as not to erode the slope. (Planning and Building Inspection)
3. That the applicant and/or staff report back to Supervisor David Potter when the project is completed. (Planning and Building Inspection)

Upon motion of Supervisor Potter, seconded by Supervisor Calcagno, and carried by those members present, the Board of Supervisors approves the Combined Development Permit, by the following vote, to wit:

AYES: Supervisors Salinas, Pennycook, Calcagno, Johnsen & Potter.

NOES: None.

ABSENT: None.

I, SALLY R. REED, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board Supervisors duly made and entered in the minutes thereof at page of Minute Book 70, on November 16, 1999

Dated: November 16, 1999

SALLY R. REED, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By Nancy Lakesell

Deputy

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EXHIBIT E

Land Use Advisory Committee Recommendations

Action by Land Use Advisory

Planning & Building Inspection Department
Monterey County Courthouse
240 Church Street
Salinas, California
(831) 755-5025

Advisory Committee: Carmel Unincorporated/Highlands

Please submit your recommendations for this application by Monday, August 02, 1999.

The Decision Making Body is: _____

Project Title: DITTRICH FRANK A & LORETTA E
File Number: PLN990307
File Type: PC
Planner: LUTES
Location: 46 YANKEE POINT DR CARMEL

Project Description:

A Coastal Development Permit and Design Approval for the construction of four-tiered concrete retaining walls (already partially completed without permit) on washed-out slope. The project amends a previously approved project for a three-tiered retaining wall now constructed at a more westerly location on the same slope from the current proposal. The property is fronting on and westerly of Yankee Point Drive, located at 46 Yankee Point Drive (APN 243-141-015-000) in the Yankee Point area of the Coastal Zone.

Committee Action
(Recommendation):

Denial

Ayes: 4 Noes: 0 Abstain: 2

Reasons for Recommendation: Retaining walls as proposed are located in area designated as riparian corridor of intermittent stream (Mc Clean Creek). No grading or construction shall be allowed in this particular area. Earlier grading

~~Recommended Conditions:~~ when new residence was built evidently could have been cause for erosion and need for retaining walls.

Recommended Conditions:

Please have planner review earlier conditions on previous permits to ascertain if applicant has been in compliance with grading and erosion control policies. Motion by P. Davis was for denial of retaining walls as presently designed, and require slope to be returned to a natural state with proper vegetation that is typical of this creek slope.

Was Applicant Present at Meeting? Yes: ___ No: X

Signature: B. Davis or Secty Date: 8-2-99

Date Printed: 7/22/1999

EXHIBIT F

Appellant's Contentions

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
725 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
831) 427-4863

HEARING IMPAIRED: (415) 904-5200

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

RECEIVED



DEC 20 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

SECTION I. Appellant(s)

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

PAUL H. ERNEST
66 YANKEE POINT DR.
CARMEL, CA. 93923 (831) 625-5092
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government: COUNTY OF MONTEREY - BOARD OF SUPERVISORS

2. Brief description of development being appealed: FOUR-TIER CONCRETE BLOCK RETAINING WALL IN THE RAVINE OF MCLEAN CREEK (INTERMITTENT STREAM). TWO-TIERS BUILT (ILLEGALLY) WITHOUT PERMIT (MARCH AND APRIL 1998) AND RED-TAGGED 4/27/98.

3. Development's location (street address, assessor's parcel no., cross street, etc.): 46 YANKEE POINT DR. CARMEL, CA, 93923 AP# 243-141-015 WESTERLY OF CALIF. HIGHWAY 1, APPROXIMATELY 200' NORTHWEST OF INTERSECTION WITH CARMEL RIVIERA DR.

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
 - b. Approval with special conditions: 3 " 17 CONDITIONS BY PLANNING STAFF BY DEPT. OF FISH AND GAME (*) BY BOARD OF SUPERVISORS (*)
 - c. Denial: _____
- (*) = ADDED

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-MCO-99-099

DATE FILED: 12/20/99

DISTRICT: Central Coast

H5: 4/88

EXHIBIT NO. <u>F</u>
APPLICATION NO.
<u>A-3-MCO-99-099</u>
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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:

NOV. 16, 1999 (HEARING DATE) BUT DISTRIBUTION HELD UP TO MAKE SURE CONDITIONS ADDED BY BD. OF SUPV. WERE CORRECTLY STATED TO ACCURATELY REFLECT THE ACTUAL INTENT. FINALLY MAILED TO ME 12/2/99 AND RECEIVED 12/3/99.

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

PLN 990307 PLANNING COMMIS RESO. #99056
BOARD OF SUPERVISORS " #99423

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:

DR. FRANK AND LORETTA DITTRICH
3900 MARSALA WAY
MODESTO, CA. 95356-0364

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

(1) MR. HAROLD H. SEYFERTH
50 YANKEE POINT DR.
CARMEL, CA. 93923

(2) MR. WILLIAM KONRAD
42 YANKEE POINT DR.
CARMEL, CA. 93923

(3) MRS. SAMUEL (LENA) BELL
P.O. BOX 223508 ADDRESS - 47 YANKEE POINT DR.
CARMEL, CA. 93922

(4) MRS. THOMAS (VIRGINIA) ROBERTSON
35 YANKEE POINT DR.
CARMEL, CA. 93923

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.

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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.)

DECISION CONTRARY TO COASTAL IMPLEMENTATION PLAN (PART 4)
SECTION 20.146.040 B.8, C.2.C. AND C.2.d

FINDING #1 - THERE IS NO "WASHED OUT SLOPE"

UNDERMINING OF PIER FOOTINGS (ONLY ONE) WAS THE RESULT OF PUSHING EXCESS "SPOILS" (DIRT AND ROCK) OVER THE TOP OF THE EMBANKMENT, WHICH KILLED THE ORIGINAL PLANTS. SPOTTY MAINTENANCE OF A REVEGETATION EFFORT (DIRECTED BY A PREVIOUSLY ADDED CONDITION FROM MONTEREY COUNTY) KILLED THE NEW PLANTS. ROOF AND DECK RUNOFF AND THE ILLEGAL EXCAVATION AND CONSTRUCTION OF THE FIRST TWO TIERS OF THE PROPOSED RETAINING WALL AFTER EL NIÑO RAINS OF FEBRUARY 1998 CAUSED ANY LOSS OF SUPPORT FOR THE PIER.

FINDING #2 - AT THE ADVISORY COMMITTEE HEARING, BOTH PUBLIC COMMENT AND COMMITTEE DISCUSSION AND VOTE WERE MISREPRESENTED, PUBLIC COMMENTS WERE;

1) THE NUMBER OF RED-TAGS ON THIS PROJECT AND THE FACT THAT IF ONE WANTS SOMETHING, JUST BUILD IT. IT WILL MOST LIKELY BE BLESSED AFTER THE FACT (WITH DOUBLE FEES) - BUT YOU GET WHAT YOU WANT. (CONTINUED - OTHER SIDE)

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.

Paul H. Ernest

Signature of Appellant(s) or
Authorized Agent

Date DECEMBER 14, 1999

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.

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Signature of Appellant(s)

Date

FINDING #2 - (CONTINUED)

- 2) THAT A PREVIOUSLY ADDITIONAL CONDITION REQUIRED REVEGETATION OF THE RAVINE'S NORTH SLOPE, BUT INCONSISTENT MAINTENANCE DOOMED IT AND THERE WAS NO COUNTY FOLLOWUP.
- 3) ANOTHER INTERMITTENT STREAM AND RIPARIAN CORRIDOR ABOUT 200 YARDS TO THE NORTH (MC DOUGAL CREEK), WITH A PRETTIER STREAMBED, HAS BEEN DESTROYED. (THE STREAM IS NOW UNDERGROUND, IN A PIPE) AND NEIGHBORS FEARED THIS RAVINE WOULD SUFFER FROM MORE INTRUSIVE ROCK FACED RETAINING WALLS DETRACTING FROM THE OCEAN VIEW AND NOT BLENDING INTO THE VEGETATION.
- 4) THAT THE ILLEGAL RETAINING WALLS NOT BE APPROVED BECAUSE THAT SENDS THE WRONG MESSAGE, (IF YOU GO BY THE RULES, IT WILL TAKE LONGER WITH MUCH MORE \$\$\$ AND YOU OFTEN GET LESS THAN THOSE WHO BREAK THE RULES.)
- 5) THE OTHER THREE HOUSES BUILT ON LOTS THAT INCLUDE THIS INTERMITTENT STREAM ARE ALL BUILT BACK AND HAVE NO EROSION PROBLEMS.

THE ADVISORY COMMITTEE ALSO TOUCHED ON SOME OF THE POINTS RAISED IN PUBLIC COMMENTS AND ITS FIVE MEMBERS VOTED FOR DENIAL 4 TO 0 WITH 1 ABSTENTION. IT SHOULD BE NOTED THAT THE APPLICANT WAS AT HIS HOUSE EARLIER IN THE DAY BUT DID NOT ATTEND THE MEETING TO DEFEND THE PROJECT OR RESPOND TO THE NEIGHBORS CONCERNS, WHAT WAS NEVER MENTIONED OR EVEN ALLUDED TO WAS ITEM "2)" OF THE SECOND "EVIDENCE" PARAGRAPH!

FINDING #3 - THE PROTECTION OF VISUAL ACCESS IS MISREPRESENTED. THE FINDING STATES

"... WALLS... WILL BLEND INTO THE SURROUNDING ENVIRONMENT..." SINCE WHEN DO FOUR-TIERED RETAINING WALLS FACED WITH LARGE ROCKS LOOK LIKE PLANTS AND SHRUBS? THERE IS NOT ONE WORD OF DIFFERENCE IN FINDING #3 AS FOUND IN THE RESOLUTION OF THE PLANNING COMMISSION AND THE RESOLUTION OF THE BOARD OF SUPERVISORS ALTHOUGH THE LATTER CHANGED THE CONFIGURATION BY ADDING BACKFILL TO EACH TIER TO REPLICATE THE ADJACENT SLOPE, HOWEVER, THE STONE FACING OF THE THREE-TIERED RETAINING WALLS TO THE WEST ARE STILL CLEARLY VISIBLE AND WILL REMAIN SO FOR THE FORESEEABLE FUTURE, SO MUCH FOR PROTECTING VISUAL ACCESS.

FINDING #4 - CLAIMED "EMERGENCY CONDITIONS" WERE FALSELY USED.

THERE WAS NOT AND IS NOT NOW ANY EMERGENCY, BUT BY CLAIMING AN EMERGENCY, ACTIONS THAT MIGHT OTHERWISE BE REJECTED, MAY BE APPROVED WITH LESS THAN ADEQUATE OR THOUGHTFUL REVIEW. THE FIRST "EVIDENCE" QUOTES TWO CEQA SECTIONS - "SPECIFIC ACTIONS NECESSARY TO PREVENT OR MITIGATE AN EMERGENCY." THE TWO-TIERS OF THE ILLEGAL RETAINING WALLS WERE COMPLETED PRIOR TO 4/26/98 WHEN THE PROJECT WAS "RED-TAGGED". THE MINOR EROSION IN THE BOTTOM OF THE RAVINE OCCURRED AT THE END OF FEBRUARY 1998. IF THIS WAS SUCH AN EMERGENCY THAT "... ENDANGERS STRUCTURAL SUPPORT OF THE... DWELLING." WHY DID THE APPLICANT WAIT MORE THAN A YEAR (THROUGH ANOTHER RAINY SEASON) BEFORE HE SECURED A CIVIL ENGINEER TO PREPARE PLANS (DATED 5/19/99) FOR A FOUR-TIERED RETAINING WALL? THEN ANOTHER 3 1/2 MONTHS PASSED BEFORE IT CAME BEFORE THE ADVISORY COMMITTEE, LOOKING AT A SITUATION THAT "... ENDANGERS STRUCTURAL SUPPORT..." OF HIS HOUSE, MOST APPLICANTS WOULD HAVE RESPONDED MUCH MORE QUICKLY AND FORCEFULLY!

I WAS VERY SURPRISED TO READ IN RESOLUTION #99-423 (APPROVED BY THE BOARD OF SUPERVISORS) ON THE FIRST PAGE, THE FIFTH "WHEREAS".

"THE CONSULTING ENGINEER... DID CONCEDE THAT THERE IS NOT AN IMMEDIATE DANGER TO THE WELL CONSTRUCTED, CANTILEVERED STRUCTURE RESTING ON UNDERGROUND AYCERS ADJACENT TO THE BANK OF MACCLEAN CREEK..."

THIS REMARK WAS NOT MADE AT THE DE NOVO HEARING BEFORE THE BOARD OF SUPERVISORS NOR DOES IT SHOW UP ON THE TAPE OF THE HEARING BEFORE THE PLANNING COMMISSION. ALSO, IT WAS NOT MENTIONED BY THE PROJECT PLANNER AT EITHER OF THE NOTED HEARINGS. HEARINGS ARE TO BE OPEN TO THE PUBLIC AND THIS CONCESSION IS VERY SIGNIFICANT. IT MIGHT HAVE CHANGED THE WHOLE APPROACH TO THIS PROJECT. I WOULD LIKE TO KNOW WHEN THIS INFORMATION BECAME AVAILABLE TO THE COUNTY AND WHY THIS "EMERGENCY" CHARADE WAS INCORPORATED INTO THE FINAL RESOLUTION OF THE BOARD OF SUPERVISORS.

FINDING #6 - THE EVIDENCE DOES NOT SUPPORT THE PROJECT, AS PROPOSED. THE DEPT. OF FISH AND GAME "... DETERMINED THAT THE PROJECT WILL PROTECT THE ENVIRONMENT FROM POTENTIAL EROSION." THE COASTAL COMMISSION STAFF "... EXPRESSED CONCERN THAT SLOPE RESTORATION BE DONE IN A TIMELY MANNER." THE LATTER IS QUESTIONABLE CONSIDERING MORE THAN A YEAR PASSED (INCLUDING THE WINTER RAINS OF 98/99) BETWEEN THE RED-TAG AND THE SUBMISSION OF THE ENGINEERING PLANS, AND MORE THAN SIX MONTHS HAS PASSED SINCE THEN, WITH ANOTHER RAINY SEASON UPON US.

FINDING #6 - (CONTINUE)

THE FORMER STATEMENT MAY BE TRUE, DEPENDING ON WHAT IS DONE IF THE OTHER TWO-TIERS ARE COMPLETED. BUT IF THIS ILLEGAL PROJECT HAD NEVER BEGUN, REPLANTING WITH A COVERING OF JUTE MATS OVER STRAW, WOULD PROBABLY HAVE PREVENTED EROSION. THAT IS WHAT THE CALIFORNIA DEPT. OF TRANSPORTATION USED IN FERN CANYON AT HIGHWAY 1 IN THE CARMEL HIGHLANDS AFTER THE WASHOUT FOLLOWING EL NIÑO. THE PLANNING STAFF, IN THEIR PRESENTATIONS, MADE NO REFERENCE TO CONSIDERING ANY OTHER POSSIBILITIES THAN THE ONE PRESENTED BY THE APPLICANT, WHICH, WITHOUT THE CONDITIONS ADDED BY THE BOARD OF SUPERVISORS, WAS THE MOST VISUALLY INTRUSIVE OF ANY POSSIBLE SOLUTIONS. ALSO, THE PLANNING STAFF NEVER CONSIDERED THE CONTINUING PROBLEM OF WATER RUNOFF FROM THE HOUSE AND DECK. THANKFULLY, THE BOARD OF SUPERVISORS DID!

ADDRESSING THE CONDITIONS OF RESOLUTION #99-423 FROM THE BOARD OF SUPERVISORS THERE ARE NUMEROUS EXAMPLES OF ERRORS OR INCONSISTENCIES. UNDER CONDITION #1 I'LL LIST THREE. OTHER MATERIAL, TO POSSIBLY INCLUDE PHOTOS, WILL BE PRESENTED AT THE HEARING.

FIRST PARAGRAPH, LAST SENTENCE, THIRD LINE FROM BOTTOM: "THE PARCEL IS LOCATED EASTERLY OF HIGHWAY 1,..." WESTERLY IS OBVIOUSLY THE CORRECT WORD.
SECOND PARAGRAPH, FIRST SENTENCE: "THE PROPOSED PROJECT DOES ENCR OACH ON THE 50-FOOT SETBACK FROM A WETLAND AREA BUT ACCORDING TO "... A CONSULTING BIOLOGIST, ... AND A REPRESENTATIVE FROM THE STATE DEPARTMENT OF FISH AND GAME, IS NECESSARY TO PROTECT THE NATURAL RESOURCES AT THE SITE." FINDING #4, THIRD (LAST) "EVIDENCE", LAST SENTENCE: "THE AREA ... IS NOT CONSIDERED TO BE ENVIRONMENTALLY SENSITIVE ACCORDING TO CONSULTING BIOLOGIST, ...". IS THE VEGETATION IMPORTANT OR NOT?
THIRD PARAGRAPH, SECOND AND THIRD SENTENCES: THIS WHOLE PROJECT HAS BEEN A LITANY OF JUST SUCH ACTIONS AS DESCRIBED THEREIN. BUT EACH PERMIT HAS BEEN "MODIFIED" BY A NEW PLANNING FILE NUMBER TO COVER THE IRREGULARITIES OR ILLEGAL ACTS, NO "REVOCATION", NO "LEGAL ACTION," JUST-OK, PAY THE EXTRA FEES AND DON'T DO IT AGAIN!

IN A NUMBER OF PLACES UNDER "EVIDENCE" SOMETHING THAT VIOLATES A REGULATION IS CITED AS A REASON TO PERMIT THAT VIOLATION!

"... SECTION 20,146.040 C.2.C. (OF THE MONTEREY COUNTY COASTAL IMPLEMENTATION PLAN (PART 4)) REQUIRING SETBACKS FROM RIPARIAN PLANT COMMUNITIES." THE PROJECT IS WITHIN THE SETBACK.

FINDING #1
FINDING #1

THE INTRUSION INTO "... THE MINIMUM 50' SETBACK OF AN INTERMITTENT STREAM BANK (SECTION 20,146.040 C.2. ...) (AS CLASSIFIED BY A REPRESENTATIVE OF THE DEPT. OF FISH AND GAME). THE PROJECT IS COMPLETELY WITHIN THE SETBACK.

FINDING #3

"SECTION 20,146.030 C.1.C. ... STATES THAT STRUCTURES IN THE VIEWSHED BE DESIGNED TO MINIMIZE VISIBILITY AND BLEND INTO THE SITE AND SURROUNDINGS." THE ORIGINAL DESIGN APPROVED BY THE PLANNING STAFF AND COMMISSION WAS ONE THE MOST INTRUSIVE DESIGNS POSSIBLE.

FINDING #3

"PLANS AND PHOTOGRAPHS TAKEN OF THE PARTIALLY COMPLETED PROJECT,..."

FINDING #4

"CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") GUIDELINES, SECTION 21080 (b)(4) AND SECTION 15269 (c) "SPECIFIC ACTIONS NECESSARY TO PREVENT AN EMERGENCY, WHERE IS THE EMERGENCY?" THE FIFTH "WHEREAS" READS: "...CONSULTING ENGINEER, ... DID CONCEDE THAT THERE IS NOT AN IMMEDIATE DANGER TO THE WELL CONSTRUCTED, CANTILEVERED STRUCTURE RESTING ON UNDERGROUND PIERS ADJACENT TO THE BANK OF MCLEAN CREEK,..."

MY REQUEST;

- 1) THAT RESOLUTION NO. 99-423 BE REVERSED,
- 2) THE APPLICANT BE REQUIRED TO REMOVE THE PREVIOUSLY CONSTRUCTED ILLEGAL RETAINING WALLS (2),
- 3) THE SLOPE BE RESTORED TO MATCH THE MOSTLY BARE AREA IMMEDIATELY TO THE WEST,
- 4) BOTH SLOPES BE COVERED WITH JUTE MAT OVER STRAW AND PLANTED WITH NATIVE PLANTS AND
- 5) THE NEW PLANTS BE WATERED, MAINTAINED AND MONITORED BY THE COUNTY UNTIL THE PLANTS ARE ESTABLISHED.

EXHIBIT G

Photographs



Photo 1. (August 1992) McLean Creek ravine and existing structure at 46 Yankee Point Drive, which was purchased by Frank and Loretta Dittrich in summer of 1992. Existing slope below residence is covered with rocks, pine needles and pampas grass but no evidence of riparian vegetation. (Photo submitted by applicant.)

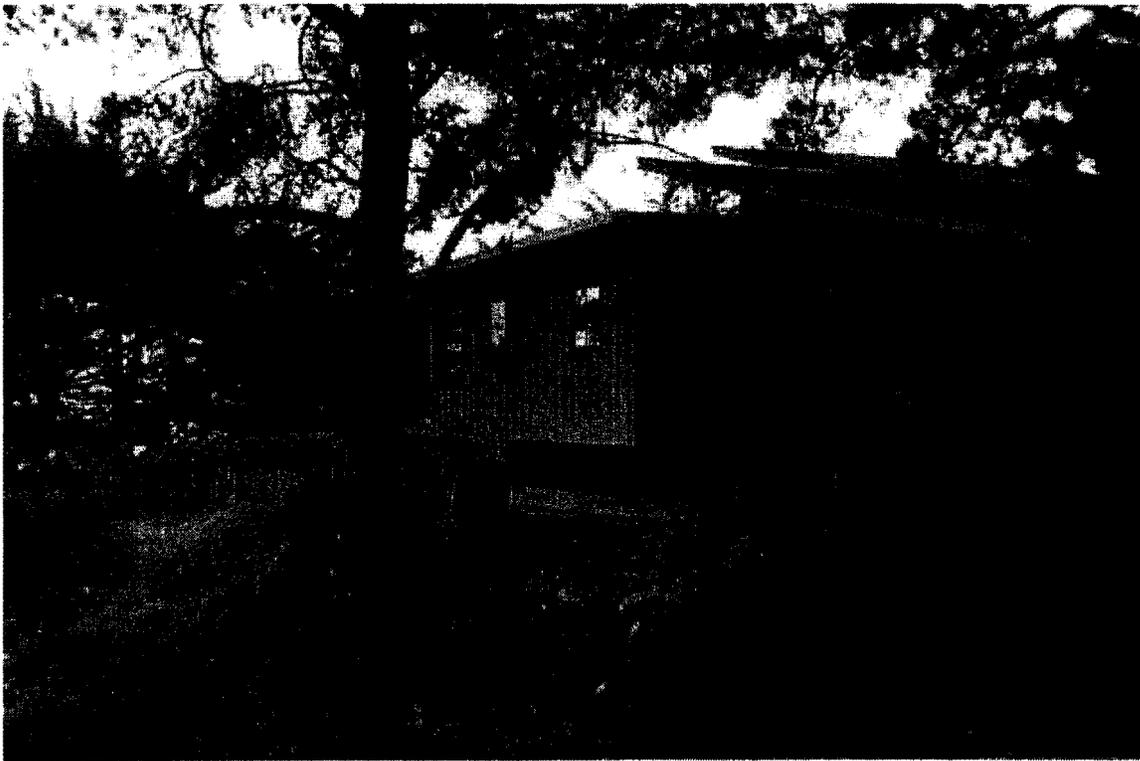


Photo 2. (August 1992) Existing residence at top of ravine. Existing slope cover includes rock debris and pine needles and sparse vegetative cover. (Photo submitted by applicant.)

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Photo 3. (February 1996) View of slope during construction of (addition/remodel) of Dittrich residence approved by previous coastal permit. Applicant notes that no dirt or debris was pushed over the bank. Rocks shown in this photo had existed on slope prior to construction as shown in 1992 photos. (Photo submitted by applicant.)

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Photo 4. Pre-February 1998 photo of Dittrich Property, showing earlier retaining wall on south western end of property and jute netting used for revegetation of ravine slope. (Photo from project file.)

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Photographs of MacLean Creel
1998 Storm 2-2-98



1. MacLean Creek West of Yankee Point Drive



2. MacLean Creek East of Yankee Point Drive

EXHIBIT NO. G
APPLICATION NO.
A-3-MCO-99-099
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Photographs of MacLean Creek
1998 Storm 2-2-98



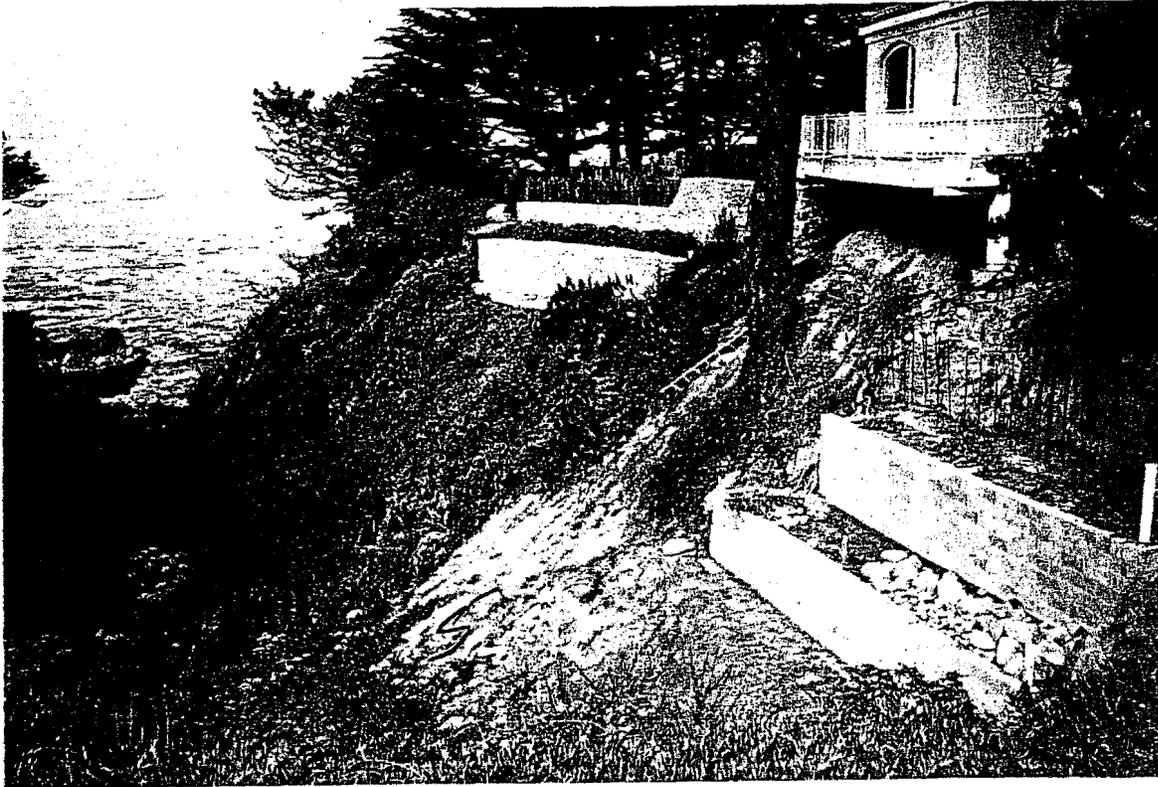
3. McLean Creek. Water coming out of culvert under Yankee Point Drive. Note dead vegetation.



4. McLean Creek flowing to sea eroding Irmas property.

EXHIBIT NO. G
APPLICATION NO.
A-3-MCO-99-099
Pg 5 of 6

Photographs of MacLean Creek
[Post-] 1998 Storm 2-2-98



5. Showing subject from Yankee Point Drive. Note Irmas regrowth of natural vegetation.



6. Showing subject damage and lack of vegetation.

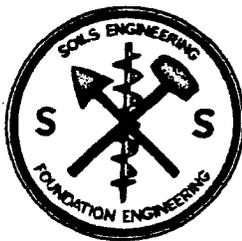
EXHIBIT NO. 6
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EXHIBIT H

Relevant Project Correspondence

A-3-MCO-99-099

SOIL



SURVEYS INC.

103 CHURCH ST. • SALINAS, CALIFORNIA 93901 • TELEPHONE (408) 757-2172

May 19, 1999

Building Inspector
Monterey County Department of Building Inspection
1200 Aguajito Road
Monterey CA 93940

RE: Calculations and Plan For Multi-Level Retaining Walls For Residence at 46 Yankee Point Drive

Dear Inspector:

I have inspected retaining walls at this project which are partially constructed and are identified as Retaining Walls A, B and C on the attached Plan and on the structural calculations; I have also reviewed construction photographs for steel placement and footing excavations. From my inspections and field measurements I certify that the partially completed retaining walls are constructed as indicated by the design calculations and the calculation cross section for each wall; the calculations show that each of these walls is stable and is being properly constructed.

Retaining Wall D is a new retaining wall to be constructed along the top level per the design calculations for this wall.

These retaining walls will help provide soil support for the pier footings near the front of the building and will stabilize the slope below the front and side of the existing building. The retaining walls are to be faced with rock (similar to the rear yard retaining walls) for esthetic purposes.
If you have any further questions regarding this certification, please contact me.

Very truly yours,

SOIL SURVEYS, INC.

Richard E. Dante, P.E.



RED/red

c.c. Dr. and Mrs. Frank Dittrich
Mr. Bill Callahan, Contractor

EXHIBIT NO. **H**

APPLICATION NO.

A.3.MCD.99.099

Pg 1 of 14*

* STAFF NOTE : 16 PAGES OF
DESIGN CALCULATIONS
ATTACHED TO ORIGINAL ; AVAILABLE IN FILE.

Jud Vandevere
Biological Consulting
93 Via Ventura
Monterey, CA 93940
 20 July 99

David Lutes
 Monterey County Planning and Building Inspection Department
 P. O. Box 1208
 Salinas 93902

Re: Retaining wall at 46 Yankee Point Drive, Carmel Riviera- Dittrich.

Dear Mr. Lutes:

As you know, on 16 July 99, I visited the site of a partially completed retaining wall on the Dittrich property, at 46 Yankee Point Drive, in the Carmel Riviera. The only species of concern that appears to be affected by the project is Monterey pine, *Pinus radiata*, CNPS List 1B. Two mature trees are growing on each side of the wall. The pine between the wall and the Drive appears to be seriously affected by pitch canker, *Fusarium subglutinans* forma specialis *ptri*. The pine on the ocean side of the wall does not seem to be afflicted.

Although healthy, the pine on the ocean side of the wall is mature. Monterey pines are among the fastest growing and shortest lived of all pines. The trees on either side of the wall could be replaced some day with canker resistant pines, when they are developed. Some of the roots of these trees were cut in excavating for the project.

A planted ceanothus cultivar is above and on the drive side of the wall.

* If requested, I could prepare a list of the 26 additional plant species near the project. Many are exotic and none are taxa of concern.

Four animal species were observed, none are species of concern.

In my opinion, no biological harm will occur when the work is completed.

Jud Vandevere

* STAFF NOTE -
 SEE ATTACHED LIST

EXHIBIT NO. H
APPLICATION NO.
A-3-MCO-99-099
Pg 2 of 14

DITTRICH PROPERTY, 46 YANKEE PT. DRIVE, CARMEL RIVIERA
List of Species Encountered in Mc Clain Creek on 16 July 99:

Trees:

Pinus radiata Monterey pine (roots of 2 nearby)

Shrubs, Subshrubs and Woody Vines:

<i>Ageratina adenophora</i>	sticky ageratina
<i>Ceanothus (hybrid)(planted)</i>	ceanothus
<i>Echtum sp.</i>	tower of jewels
<i>Genista monspessulana</i>	French broom
<i>Mimulus aurantiacus</i>	sticky monkey flower
<i>Rubus urstrus</i>	California blackberry
<i>Solanum douglasii</i>	Douglas' nightshade
<i>Toxicodendron diversilobum</i>	poison oak

Herbaceous Species:

<i>Avena barbata</i>	slender wild oat
<i>Bromus diandrus</i>	ripgut grass
<i>Calystegia macrostegia ssp. cyclostegia</i>	coast morning-glory
<i>Carpobrotus chilensis</i>	sea fig
<i>Cicuta douglasii</i>	western water hemlock
<i>Conium maculatum</i>	poison hemlock
<i>Cyperus eragrostis</i>	tall cyperus
<i>Epilobium ciliatum</i>	California willow-herb
<i>Eriophyllum staechadifolium</i>	lizard-tail
<i>Foeniculum vulgare</i>	sweet fennel
<i>Geranium dissectum</i>	cut-leaved geranium
<i>Leymus condensatus</i>	giant ryegrass
<i>Lobularia maritima</i>	sweet alyssum
<i>Mimulus guttatus</i>	common monkey flower
<i>Raphanus sativus</i>	wild radish
<i>Rumex salicifolius</i>	willow dock
<i>Senecio mikanoides</i>	Cape ivy
<i>Sonchus oleraceus</i>	common sow thistle
<i>Urtica dioica ssp. holosericea</i>	hoary nettle

Animals:

<i>Corvus brachyrhynchos</i>	American crow
<i>Zonotrichia leucophrys</i>	white-crowned sparrow

Jud Vandevere, Consulting Biologist

EXHIBIT NO. H
APPLICATION NO.
A-3-MCO-99-099
Pg 3 of 14

PLANNING COMMISSION HEARING
SEPT. 8th 1999
10:50 am
ITEM # 7
EXHIBIT "F"

SOIL



SURVEYS
INC.

103 CHURCH ST. • SALINAS, CALIFORNIA 93901 • TELEPHONE (408) 757-2172

August 30, 1999
Job #1988

Mr. David Lutes, Planner
Monterey County Department of Planning and Building Inspection
County Courthouse
Salinas CA 93901

Re: New Retaining Walls on Dittrich Property for Residence at 46 Yankee Point Drive

Dear Mr. Lutes:

In my opinion the subject retaining walls below the balcony on the southerly side of the residence are necessary to stabilize the slope and protect the balcony and building structure from settlement or failure. The slope has already slid and eroded from the heavy rainfall of February 1998 causing an unstable condition next to the building structure. In my opinion that slope can not be properly restored and stabilized any other way without causing undue risk to the building structure. Without those retaining walls, which are under construction, the potential risks for erosion, soil slippage and siltation in the creek are very high.

It is also my opinion that water discharging from the Monterey County culvert (beneath Yankee Point Drive) at this location also contributed to the erosion along the bank of the ravine and siltation in the ravine bottom. The culvert discharges water high up on the ravine slope, and the discharged water washes heavily against the bank during periods of high flow. I have observed very little problem during periods of low culvert flow; however high flows from a full pipe are another matter; substantial bank erosion does occur during periods of high culvert discharge. I recommend that the County should install a culvert elbow and extend the culvert pipe to the bottom of the ravine and install a suitable energy dissipator at the discharge point.

If you have any questions regarding the new retaining walls or prior erosion, please contact me.

Sincerely,

Soil Surveys, Inc.

Richard E. Dante, P.E.

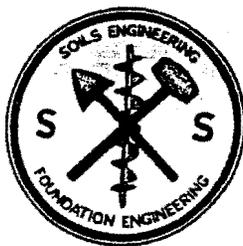
RED/red

c.c. Dr. Frank Dittrich



EXHIBIT NO. H
APPLICATION NO.
A-3-MCO-99-099
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SOIL



SURVEYS INC.

103 CHURCH ST. • SALINAS, CALIFORNIA 93901 • TELEPHONE (408) 757-2172

October 21, 1999
Job #1988

Mr. David Lutes, Planner
Monterey County Department of Planning and Building Inspection
County Courthouse
Salinas CA 93901

Re: Response To Appeal of Retaining Wall Permit For Dittrich Property at 46 Yankee Point Drive

Dear Mr. Lutes:

I have reviewed Mr. Harold Seyferth's appeal of the Planning Commission's approval of the retaining walls at the subject property; following are my comments regarding the allegations made in that appeal:

1. Regarding Finding #1 on Page 2 of Mr. Seyferth's appeal letter, Mr. Seyferth claims that the subject slope was "not A washed out slope until Dr. Dittrich excavated to put in the illegal two (2) tiers already in place." This statement is absolutely untrue. Several pictures (including pictures taken by Mr. Seyferth) clearly show the slope washed out prior to any retaining wall construction. No one—especially Dr. Dittrich— wanted to or planned to construct these retaining walls; the retaining wall excavation and construction was begun only after the slope was severely damaged and washed out in early February 1998 in order to stop the slope erosion and stabilize what was left of the slope.
2. Mr. Seyferth states that the home itself and the deck on the south side are cantilevered from sunken piers and the one visible pier at the southeast corner of the deck is not required to support the cantilevered deck. This observation is true; however if the undermined slope is not stabilized and protected, the continuing slope erosion would eventually undermine the support piers from which the deck is cantilevered and, in my opinion, would result in damage to the building structure.
3. Regarding Finding #2, Mr. Seyferth asks what difference it makes whether the walls are faced with stone since the walls are supposed to eventually be covered by native planting. In our opinion the walls will be aesthetically more pleasing and will have an appearance more suited to the area with the stone facing; some sections of the walls may be visible between plants. I believe the Planning Commission made Finding # 2 for good reason. Mr. Seyferth further states that the planting in the three tiered wall has not covered the previous walls and asks what confidence do we have that the planting will cover the walls.

EXHIBIT H
A-3.MLO.99.099
Pg 5 of 14

Mr. David Lutes
10-21-99
Page 2

The planting can not properly take place until the retaining wall construction is completed. Otherwise landscape plants would be damaged or destroyed by the construction activity.

4. On the last page of the appeal Mr. Seyferth comments on the third "evidence" paragraph and states that "the original bank did not contain a retaining wall. Therefore slope stabilization 'restoration' should be without a retaining wall." The original bank had not been washed out by El Nino generated discharge through the County culvert. When washed out, a steep slope can not be restored back to its original condition without major stabilization procedures. In my opinion the retaining walls are needed to stabilize and restore the washed out slope.

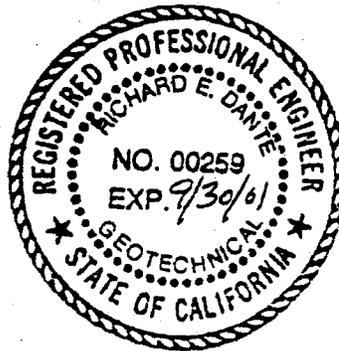
If you have any questions regarding my analysis of the appeal letter or my comments, please contact me.

Sincerely,

Soil Surveys, Inc.



Richard E. Dante, P.E.



RED/red
c.c. Dr. Frank Dittrich

EXHIBIT NO. H
APPLICATION NO.
A-3-MCO-99-099
Pg 6 of 14

David Lutes

SOIL



SURVEYS
INC.

RECEIVED

103 CHURCH ST. • SALINAS, CALIFORNIA 93901 • TELEPHONE (408) 757-2172

JAN 06 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

December 8, 1999
Job #1988

Supervisor Dave Potter
1200 Aguajito Road
Suite 001
Monterey, CA 93940

Re: File #990307-Frank and Loretta Dittrich-46 Yankee Point Drive-Carmel-APN 243-141-015

Dear Supervisor Potter:

I have read a summary of the Board of Supervisor's action--taken upon your recommendation--of November 14, 1999, to screen four terraced retaining walls at the subject Dittrich property; the summary was prepared by County Planner, David Lutes. The Board's action, as I understand the summary, would require that a soil fill be placed on each terrace between the retaining walls--from the top of one retaining wall to the top of the next higher wall--to restore the natural slope. Each of the fills placed on the terraces between the subject retaining walls would be 1:1 or slightly steeper. You stated that this type of slope restoration is often done as a Coastal Commission requirement, especially in Santa Monica.

I point out that the failed slope at Yankee Point Drive was originally 1:1 (100%) or slightly steeper. While it may be feasible to restore less steep slopes in the manner described by you, it is, in my opinion, not feasible or reasonable to hope to properly restore a 1:1 slope with an earth fill. It would be impossible to properly compact a fill on a 1:1 slope let alone to try to stand on such a slope to work, and erosion control planting on that steep a slope would probably not be successful. Such steep fill slopes would have a high potential for erosion and slope failure on each of the terraces between the retaining walls.

It would be especially risky to try to pile soil up against the bottom retaining wall; the soil would have to be placed on a narrow, unsupported soil bench below the retaining wall, and the finished slope would range from 1/2:1 to 3/4:1; such an unsupported fill slope would have a **very high potential** for slope failure, and slope failure could undermine the retaining wall footing and cause the bottom retaining wall to overturn. If the bottom retaining wall fails, we could expect successive failures in each of the higher retaining walls. If no soil is placed on the bench below the bottom retaining wall(as should be the case) the bottom retaining wall would take the full force of the 1:1 fill slopes on each of the overlying terraces; that retaining wall is **not** designed to withstand such a surcharge force. Slope or retaining wall failures would lead to severe siltation of the stream bed, an ugly failed slope, and possibly damage to the building structure.

In my opinion the recommended earth restoration of the steep slope is a bad solution for screening the retaining walls; a much better solution for a stable slope restoration would be to require more planting with native species on the terraces adjacent to each of the retaining walls in order to screen the retaining walls from view.

EXHIBIT NO. H
A.S.MC.99.099
Pg 7 of 14

Supervisor David Potter
12-8-99
Page 2

In Dr. Dittrich's behalf, I ask that you reconsider the prior Board action of November 14, 1999.

If you have any questions regarding my analysis of the recommended slope restoration or this letter, please contact me.

Very truly yours,

SOIL SURVEYS, INC.



Richard E. Dante, P.E.



RED/red

c.c. Dr. Frank Dittrich
Mr. David Lutes, County Planner

EXHIBIT NO. H
APPLICATION NO.
A.S.MCO.99.099
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RECEIVED

DEC 23 1999

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

CALIFORNIA COASTAL COMMISSION
Central Coast Area Office
725 Front Street Suite 300
Santa Cruz, CA 95060

December 21, 1999

EXHIBIT NO. H

A-3-MCO-99-099

Pg 9 of 14

Re: Appeal from coastal permit decision of local government regarding ravine repair at 46 Yankee Point Drive, Carmel Highlands.

Sirs:

I am responding to the appeal by Paul H. Ernest of 66 Yankee Point Drive. I could not in good conscience allow the allegations contained in the appeal to go unaddressed. In the first place much of the appeal is not pertinent to the proposed ravine repair. Secondly much of which is stated is either half truths or totally untrue.

The following numbered statements correspond to the numbers on the appeal.

1- No so-called "spoils" were pushed over the embankment during the building of the home. The area of the washout is a considerable distance from the home itself. The cause of the washout has been attested to by three separate entities: the soil engineer Richard Dante, the California Dept. of Fish and Game and tacitly by the Monterey County Highway Dept.

The Cause of the washout was the tremendous runoff from the hills through the culvert under the roadway which was placed too high above the stream bed and was angled toward the North bank. The Highway Dept has agreed to rectify the problem by adding an elbow to the culvert to redirect the flow.

We were required during construction to remove from the ravine all non-native plants including Pampas Grass, Poison Ivy and Ice Plant, which we did. We also (as per conditions) netted the whole ravine bank, planted approved native plants and put in a drip irrigation system, all of which was inspected and approved by the County.

2. Other than the red tag on this repair project, to my knowledge there was only one other red tag ; that primarily for a design change to the home.

4) I allowed my contractor to begin the repair of the washout because of fear of further slides which may have jeopardized the home foundation. I was told by him that four foot walls could be built without a building permit. I admit to being naive about this.

5) The Carmel Highlands Land Use Advisory Committee in their

Response to appeal to the Coastal Commission (con't)

recommendations cite no expertise, only an untutored opinion. A mention is made that I was at the property the day of the meeting and did not deign to attend. This statement is not true. The meeting was on a week night and I was at my home in Modesto 110 miles away.

3. The conditions under which the existing retaining wall was built do not require that vegetation cover the walls. For that matter it could hardly be argued that the South bank of the ravine is visually agreeable, with dead trees, trees that cry for trimming and two rickity wood staircases down into the ravine and the ocean that I dare say would not be allowed to be built today.

4. We tried to get approval under emergency conditions but were denied. I have documentation that we tried time and again to get the Engineer to finish the plans but he was swamped with other "El Nino" projects and we didn't get our plans for over a year. In addition the plans sat on a planners desk for at least three weeks with nobody looking at them. Numerous calls to untold numbers of people finally got them to assign Mr. David Lutes to the Project. (he has been quite helpful incidentally.) I consider it lucky that we had as much of the retaining wall completed as we did to retard further erosion.

6. This "finding" is incoherent and I feel it does not warrant comment.

Finally This person's suggested remedy would only result in more washout and erosion with resultant siltation of the stream bed.

Thank You,


Frank Dittrich

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APPLICATION NO.
A-3-MCO-99-099
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January 21, 2000

TO: Kelly Cuffe

FROM: Lesley Ewing (CCC. STAFF ENGINEER)

SUBJECT: 46 Yankee Point Dr., Carmel Highlands: Dittrich Appeal

I have reviewed the Monterey County Planning Commission, Planning and Building Inspection Department staff report and conditions. The proposed project is the construction of four short retaining walls on a steep (approximately 1:1) slope. This slope washed out during storms in February 1998. The four retaining walls have been proposed to: "(1) ensure the stability of the slope upon which pier footings supporting a cantilevered single family dwelling are situated, (2) to provide erosion control and thereby prevent siltation into a streambed, and (3) to provide the conditions for re-vegetating the entire slope with native plants." I am slightly concerned by the County's acceptance that hard structures may have water quality benefits. Streams have conveyed sediment to the coast for millennia. When we armor a streambed to prevent excess runoff from increasing erosion over "natural" levels, we are treating the symptom, not the root problem. Generally, the symptoms will appear further downstream, and since earlier armoring "cured" the upstream concern, there is often a logical progression of armoring further and further downstream. I recognize that streambed armoring is an accepted Hydromodification BCP; however, I hope it will be applied judiciously.

That said, I believe the main issue at this site is the need to protect the foundation of the dwelling from further erosion. The retaining walls seem to be a reasonable and judicious application of armoring to ensure foundation stability.

You have asked my professional opinion on Condition #1, requiring that compacted fill be placed against the slope, covering the four retaining walls and that this fill then be vegetated. There was an assertion that this has been done successfully in the Santa Monica Mountains. I am not aware of any projects in the Santa Monica Mountains where 1:1 slopes have been constructed over retaining walls. The Uniform Building Code recommends that constructed fill slopes be no steeper than 1.5:1 and areas, such as LA County, are requiring 2:1 slopes in most situations.

It would be possible to construct a steep earthen slope to cover the retaining walls, but this cover material would not be stable and vegetation could not assure long-term stability of such a slope. The only method I know of that could reconstruct a slope at this steepness is a reinforced earth process. This process would require that the washout area be cleared and a level base be established. (I believe the base would need to be about 15 feet deep, but will check on this more if you want to pursue this as an option.) The reinforced earth system is a horizontal layering of reinforcing (usually geotextile material) and small earth lifts (8 inches to 1 foot). The reinforcing material must be anchored into the slope and it holds the layers of earth in place. Because of the reinforcing, the earth slope can be steeper than the natural angle of repose of a compacted

EXHIBIT NO. H
A-3-M10-99-099
Pg 11 of 14

fill. For a 1:1 slope, the face of the slope may require an application of shotcrete to prevent surficial erosion. I have seen steep reinforced earth slopes that have been vegetated and they can look "softer" than a wall or flat shotcrete surface. There may not be sufficient area on this site to create a base for building this type of slope or for anchoring the reinforcing. (The submitted material did not provide any cross sections of the slope so I am not certain how much area is available for slope reconstruction.) This option, if appropriate for the site, would require that the constructed walls all be removed. Based on the provided material, it does not seem that the removal of the installed walls would destabilize the site. They could be removed at the same time that the reinforced earth system was installed.

I am not recommending the reinforced earth system. My reason for presenting it is to provide you with an option that might make it possible to establish a vegetated 1:1 slope at this location. A stable, compacted earth slope, without any reinforcing or shotcrete, could not be re-established at this site.

The applicant's engineer has provided a letter requesting reconsideration of this condition, stating that this fill could be risky and would have a high potential for erosion and slope failure. I concur with this conclusion and recommend either that Condition 1 be modified to require monitoring of a vegetation plan that would screen the four retaining walls, or complete redesign of the slope stabilization, if possible.

EXHIBIT NO.	H
APPLICATION NO.	
A.S.MCO.99.099	
Pg 12 of 14	

EXHIBIT NO. H
APPLICATION NO.
A.3.MCO.99.099
Pg

3 JAN 24 11:52AM '00

3900 Marsala Way
Modesto, CA 95356
January 24, 2000

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

Re: Appeal A-3-MCO-99-099/Frank and Loretta Dittrich 46 Yankee Pt. Dr. Carmel

Dear Members of the Coastal Commission,

My name is Loretta Dittrich. My husband and I own 46 Yankee Point Drive. I would like to address the issues brought forth in the Appeal of our permit by Mr. Ernest. The issues stated in the appeal are either assumptions, half-truths or absolutely untrue. This is very distressing to me and I will briefly address the issues Mr. Ernest has raised. I have documentation and photos to support my statements and I will be forwarding them to you as soon as possible.

Mr. Ernest states in his appeal that we pushed "spoils" over the bank which killed plants and that is what washed away. This is absolutely not true. We did not push dirt over the bank. During construction of the home we were required to remove all non-native plants and cover the slope with jute netting, new plants and a drip watering system which we did. What caused the washout of the slope was the tremendous run-off of El Nino storm rainwater from the hillsides and through the culvert under the roadway. The soil engineer and the State Dept. of Fish and Game have identified this as the cause of the slope failure. In addition, the Monterey County Department of Public Works is in agreement and have contacted us in regard to the correction of the culvert.

When the slope failure occurred during the '98 El Nino storms we feared for more damage to the property and even to the house, therefore we hired a contractor to assess and repair the problem. He assured us that a permit would not be required because retaining walls less than 4 feet tall did not require one. We trusted him and allowed the repair to begin. It was approximately one month into the repair (and approx. \$25,000.00) that the repair was red tagged.

If we had known for one second that our slope repair required a permit we would have never started without. We have been paying for our mistake in trusting the contractor for the past two years; anguish, grief, and profound worry that further slope failure and erosion will occur and possible further damage the land and our house.

Mr. Ernest states that we did not attend the neighborhood advisory committee meeting even though we were at our Yankee Point home. This is absolutely untrue. We live in Modesto, 110 miles

A.3.MCO.99.099

Exhibit H
Pg 13 of 14

from Carmel. My husband has a solo medical practice in Modesto and was working on the day of the meeting. Comments like these are attempts by Mr. Ernest to make us appear to be cavalier about our desire to repair the slope. He has no idea how worried we have been or how hard we have been trying to repair the slope in a functioning yet pleasing manner. Mr. Ernest assumes that because it was May 1999 when we were finally able to deliver the engineered plans to the county, that we didn't care about the slope failure, this is absolutely untrue! We were waiting and waiting for our plans from the soil engineer. He was overwhelmed with work from all the damage in the county following the El Nino storms of 1998. We had to wait "in line" for our completed engineered plans along with many others. I am sending a copy of the phone log my husband kept when after waiting months for completion of the plans he began documenting his frantic phone calls with the soils engineer. When the engineered plans for the retaining walls were completed they were taken to the Monterey County Building Department as soon as possible.

Regarding Mr. Ernest's concerns as to the structural integrity of the two retaining walls that are completed, I have copies of photos I am sending to you so you can see how they are built. The soil engineer also stated that these two were built appropriately for our original plan of terraced, rock-faced retaining wall that will allow plants to grow over. I will also send you photos of the slope in question, in 1992 when we initially purchased the property so you have an idea what it was like then.

It was our dream to build our home and live a happy life with our children on Yankee Point but that dream has turned into a living nightmare. For the past two years we have wanted to repair and protect our property from further erosion and damage. We had a plan that would stabilize the slope, control erosion and be appropriate to the view-scape. We had experts and county agencies who said the repair is necessary and our plan appropriate. Mr. Ernest and the neighborhood advisory committee are not experts in engineering and erosion control. Yet they are attempting to force their unqualified opinions upon anyone who does not agree with them. I realize Mr. Ernest has a right to appeal to your commission, but don't we have the right to protect our property by repairing it in a manner that has been approved by certified experts and the governing agencies? Please help us and allow us to repair our property.

Sincerely,



Loretta E. Dittrich
Owner

EXHIBIT NO. H
APPLICATION NO.
A-3-MCO-99-099
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EXHIBIT I

Forest Management Plan

590 PERRY LANE • MONTEREY, CA. 93940
PHONE (408) 373-1625

C-27 NO. 397964

FOREST MANAGEMENT PLAN
FOR RESIDENTIAL PARCEL

Prepared by: Ray T. Sumida C.C.N.
Cypress Garden Nursery Inc.
590 Perry Lane
Monterey, California 93940

SITE DESCRIPTION:

Location: 46 Yankee Point Drive, Carmel Highlands, Ca.
Lot #24, Tract #181, A.P. # 243-141-15

Ownership: Dr. Frank A. Dittrich

Architect: Allan Turpen

Lot Size: 0.426 acre

Primary Use: Single Family Home

Vegetation: The dominant forest cover is of Monterey
Cypress. Plant material on site such as:

Echium fastuosum
Pinus radiata
Poison oak
Pampus grass
Ice Plant

Scenic Features: This particular area of Carmel, known
as Carmel Highlands is one of the most
desirable areas of the Monterey County.

EXTRACTS FROM CENTRAL COAST REGIONAL COMMISSION FOREST MANAGE
MENT REQUIREMENTS:

Definitions:

Landmark Tree: Any living native tree more than 24"
in diameter.

Significant Tree: Any living tree more than 12" in
diamteter except where found to be
diseased or dangerous in accordance
with the management measures of this
plan.

EXHIBIT NO. F
A.S.M.C.O. 99.099
Pg 1 of 6

590 PERRY LANE • MONTEREY, CA. 93940
PHONE (408) 373-1625

C-27 NO. 397964

Definitions:

- Retained Tree: Any significant tree not shown for removal on approved final site plan submitted in compliance with coastal development permit.
- Diameter: Thickness of main trunk of tree as measured at 4 feet above average ground surface at base of tree (diameter at breast height or "d.b.h.")
- Dripline: The outer edge of the area beneath the crown of the tree. If tree is not a rounded, balanced shape, then 15 times the trunk diameter at ground level in all directions.
- Feeding Zone: The outer two-thirds of the root radius as defined above under "Dripline".

OBJECTIVES OF THE PLAN:

- Minimize erosion: (In order to prevent soil loss and ultimately, siltation of downstream storm drains, drainage channels and wetlands.
- Preserve natural habitat: (Includes native forest species understory vegetation, and associated wildlife on site).
- Prevent forest fire: (That is, uncontrolled fires).
- Preserve scenic forest canopy: (As viewed from major roadways and the Monterey Peninsula shoreline).
- Preserve landmark Trees: (If any).

MANAGEMENT MEASURES: We agree to carry out the following management measures on this parcel:

- Tree Removal: No significant tree will be removed, except as designated for removal on an approved coastal development permit tree removal or site plan, or as otherwise provided by this plan.

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Diseased or dangerous

Trees: It is understood that the Executive Director of the Coastal Commission may find that certain trees over 12" D.B.H. are non-significant, and upon such a finding will not require a Coastal Development Permit to be obtained in the following instances (opinion of qualified forester may be requested in border line cases).

- (1) Removal of diseased tree(s) which threaten to spread contagion to nearby healthy trees and
- (2) Removal of dangerous tree (s) which present a clear and imminent threat to human life or property.

Landmark Trees: All landmark trees will be protected from damage if not required to be removed under the above instances.

Dead Trees: Because of their great value for wildlife habitat (particularly as nesting sites for birds), large dead trees away from the house will normally be left in place. Smaller dead trees will normally be removed in order to reduce fire hazard. Because no Coastal Development Permit is needed for their removal, dead trees may be removed at the convenience of the owner.

Thinning: Non-significant trees, where weak, diseased or overcrowded, may be thinned to promote the growth of neighboring trees. Where the trunks of significant trees of the same species are within 30 feet of each other, significant trees, other than landmark trees, may be removed for the same purpose.

Replacement Trees: Wherever a significant gap develops between tree's (i.e., 30 feet or more between driplines), a seedling Monterey Pine or Coast Live Oak or Monterey Cypress will be planted in the clearing except where clearings presently exist. Exceptions will be made where a suitable seedling already exists, in forested garden and lawn areas. Every effort will be made to secure seedlings from the nearby forest rather than nursery stock of unknown origin.

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Protection of Trees: All significant and replacement trees, other than those approved for removal, shall be retained and maintained in good condition. Trimming where not injurious to the health of the tree (s) may be performed where-ever necessary in the judgement of the owner, particularly to reduce personal safety and fire hazards.

Retained trees which are located close to the construction site will be protected from inadvertent damage by construction equipment by wrapping of trunks with protective materials, bridging or tunneling under major roots where exposed in foundation or utility trenches, and other measures appropriate and necessary to protect the well-being of the retained trees.

Fire Protection: In addition to any measures required by local or California Department of Forestry fire authorities, owner will:

- a. Maintain spark arrester screen on chimney.
- b. Maintain spark arresters on gasoline powered equipment.
- c. Break-up and clear away any dense accumulations fo dead or dry under brush orplant litter, especially near land mark trees.

Use of Fire for Clearing: Open fires within the forest will be set or allowed only as a forest management tool under the direction of Department of Forestry authorities pursuant to local fire ordinances and directives.

Clearing Methods: Brush and undergrowth if removed, will be cleared with methods which will not materially disturb the ground surface. Hand grubbing, crushing andf mowing will normally be the methods of choice. Use of fire and herbicides will be subject to the limitations listed elsewhere in this plan.

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Erosian Control: Areas laid bare by clearing, other than fire breaks, will be sown with annual rye grass (if nothing else is to be planted in the area). Sowing of cleared areas will be completed prior to the onset of the winter rainy season.

Irrigation: In order to avoid further depletion of groundwater resources, prevent root disease and otherwise maintain favorable conditions for the native forest, the forest will not be irrigated except for cultivated garden and lawn areas.

Exotic Plants: Care will be taken to eradicate, and to avoid introduction of the following pest species:

- a. Pampus grass
- b. Genesta
- c. Gorse
- d. Eucalyptus

RECOMMENDATIONS:

1. That all pampus grass and ice-plant be removed from the ravene area south of the residence.
2. That the Monterey Cypress tree at the east entrance to the residence be removed because of severe damage to the root system.
3. That soil to be removed from the crown of the 36" Monterey Pine tree at South-East side of property.
4. That the 36" Monterey Pine tree at South end of property be inspected yearly because of beetle damage. This tree is a potential risk and should be felled in the near future.
5. That all bare area's in ravene area be planted with more echium fastuosum and native ground cover so as to stabilize the bank. Erosian netting and drip irrigation should also be included.
6. That 1-24" box Monterey Pine or Monterey Cypress and 3-15 gallon Monterey Pine or Monterey Cypress be planted to replace the Monterey Cypress to be removed and for the Monterey Pine that will soon be dying.

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AMMENDMENTS:

It is understood that the executive director of the California Coastal Commission may, in consultation with the California Department of Forestry approve ammendments to this plan, provided that such ammendments are consistent with the provisions of the Coastal Development Permit.

COMPLIANCE:

It is further understood that failure to comply with this plan will be considered a failure to comply with the conditions of the Coastal Development Permit cited above.

TRANSFER OF RESPONSIBILITY:

This plan is intended to create a permanent forest managemtn ment program for the site. It is understood, therefore, that in the event of change of ownership this plan shall be as binding on the new owner (s) as it is on the present owner. To this end, this plan will be conveyed to the future owner upon sale of the property.

SUBMITTED BY:

Ray T. Sumida C.C.N.
590 Perry Lane
Monterey, California
93940

Date: 10/2/85

Signed: Ray Sumida

ACCEPTED BY:

Date: _____

Signed: _____

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