

CALIFORNIA COASTAL COMMISSION

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Filed:	7/11/00
49th day:	8/29/00
180th day:	1/07/01
Staff:	K. Colin
Staff report:	8/24/00
Hearing date:	9/14/00

SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-CAP-00-105, Tomaselli Relocation & Remodel

ApplicantBob & Pam Tomaselli

AppellantTim Ryan

Local governmentCity of Capitola

Project location402 Grand Avenue, Capitola (Santa Cruz County) (APN 036-133-09)

Project descriptionRelocate an existing residence away from edge of coastal bluff; incorporate a single apartment unit into existing residence; and convert 3-unit apartment building into one apartment unit.

File documentsCity of Capitola Certified Local Coastal Program; local permit file (00-02); Geologic Report by Rogers E. Johnson & Associates dated August 30, 1995; Geologic Report Addendum by Rogers E. Johnson & Associates dated November 13, 1999.

Staff recommendationNo Substantial Issue

Summary of Staff Recommendation

Staff recommends that the Commission, after public hearing, determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed, and as a result, that the Commission decline to take coastal development permit jurisdiction over this project. The applicant proposes to relocate an existing single family residence away from the bluff top edge in order to bring development into conformance with the LCP bluff top setback requirement. Other components of the project include the conversion of an existing three unit apartment building into one apartment unit and the incorporation of one apartment unit into the single family residence. Once completed, development at the site would consist of one 2,633 square foot single family residence and one 1,464 square foot apartment. (project plans attached as Exhibit D). Additionally, the project as conditioned by the City includes a requirement for the applicant to obtain a revocable encroachment permit in order to address the applicant's existing wall and hedge within the public right-of-way (ROW).

The proposed project is located on an approximate 6,263 square foot bluff top lot situated on the northern Monterey Bay coastline in the City of Capitola. The Applicant's parcel is located approximately



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September 14, 2000 Meeting in Eureka
Staff: K. Colin Approved by: *TC 8/24/00*

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one-third of a mile downcoast (northeast) of Soquel Creek on a relatively flat bluff top plateau approximately 90 feet above the Monterey Bay and beach environs below. Grand Avenue separates the subject parcel from the bluff edge. Once a public street open to vehicular traffic, now, largely because of bluff retreat, only about half of the original width of Grand Avenue remains today and access is limited to pedestrian traffic. The majority of residences fronting Grand Avenue include improvements that encroach into the public ROW to varying degrees. The remaining width available for public access varies between approximately 4 to 20 feet.

The appellant contends that the applicant's two foot high stone wall and adjoining hedge encroaches into the public ROW and decreases the public's ability to gain lateral access at this location, the LCP required 50 year bluff erosion setback was not adequately implemented, the Coastal Act does not allow this new construction to be eligible for future shoreline protection structures, and structures located on the property should not be permitted to remain as nonconforming. These contentions raise no substantial issue because the project approval, as conditioned by the City, ensures adequate lateral access by requiring the applicant to obtain a revocable encroachment permit prior to issuance of a building permit. The LCP bluff setback was adequately implemented and the proposed project is not new development that is precluded from future proposals for shoreline protection. Finally, allowing a nonconforming density of two units is consistent with LCP policies. (see Exhibit A for the complete appeal document)

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1. Appellants' Contentions

In summary, the Appellant contends that:

1. The two-foot high stone wall and adjoining hedge encroaching 4 to 6 feet within the public right-of-way (ROW) should be removed because it decreases the public's ability to gain lateral access at this location.
2. The LCP required 50-year bluff erosion setback was not adequately implemented. The Coastal Act does not allow this new construction to be eligible for future shoreline protection structures.
3. Structures located on the property should not be permitted to remain as nonconforming (see Exhibit A for the complete appeal document).

2. Local Government Action

On June 1, 2000 the Planning Commission approved a coastal permit, architectural and site review, and variance to the first and second floor side and rear yard setbacks for the project, with conditions, for the relocation of the existing residence away from the bluff top, incorporation of a single apartment unit into the residence, and the conversion of an existing three unit apartment building into one apartment unit at 402 Grand Street, City of Capitola (Santa Cruz County) (APN 036-133-09). Adequate notice of this City of Capitola final local action was received in the Commission's Central Coast District Office on Tuesday, June 27, 2000. See Exhibit C for the City's findings and conditions on the project. The Commission's ten-working day appeal period for this action began on Wednesday, June 28, 2000 and concluded at 5:00 P.M. on Wednesday, July 12, 2000. One valid appeal was received during the appeal period.

The Commission notes that the Planning Commission previously approved a nearly identical project at this location on November 7, 1996. This previous approval was not appealed to the City or Commission; and subsequently expired for unknown reasons.

3. Appeal Procedures

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

The grounds for appeal under section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified local coastal program or the public access policies of



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the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter Three of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea and thus, this additional finding needs to be made in a de novo review in this case.

4. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which the appeal was filed. A finding of no substantial issue would not bring the project under the jurisdiction of the Commission for hearing and action.

***Motion.** I move that the Commission determine that Appeal Number A-3-CAP-00-105 raises no substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

***Staff Recommendation of Substantial Issue.** Staff recommends a yes vote. Passage of this motion will not result in a de novo hearing on the application, and will result in the adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue 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 Substantial Issue.** The Commission hereby finds that Appeal Number A-3-CAP-00-105 presents no 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 the public access and recreation policies of the Coastal Act.*

5. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Background

Project Location & Setting

The proposed project is located on a bluff top lot situated on the northern Monterey Bay coastline in the City of Capitola. This general area consists of relatively flat upland coastal marine terraces along the southwestern flank of the Santa Cruz Mountains. This specific section of the coastline is characterized by high bluffs broken by the floodplain of Soquel Creek opening up to Capitola City Beach. From Capitola City Beach, the bluff rises rapidly to a height of 60 – 90 feet and continues upcoast (southwest) for approximately 2 miles where it drops into the Moran Lake drainage, and downcoast (northeast)



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approximately 1 mile to New Brighton State Beach.

The Applicant's parcel is located approximately one-third of a mile downcoast (northeast) of Soquel Creek on a relatively flat bluff top plateau approximately 90 feet above the Monterey Bay and beach environs below. Grand Avenue fronts the bluff top edge and separates the project site from the Monterey Bay. The bluff underlying Grand Avenue is actively eroding at a rate of about 0.86 feet a year. To date, this erosion has completely removed or undermined significant portions of the street. At most 30 feet of the ROW remains on top of the bluff. The subject parcel is but one of a series of parcels fronting the rapidly eroding Grand Avenue. Access along the remaining width of Grand Avenue is currently limited to pedestrian traffic. This area is known locally as the Depot Hill area. The majority of residences fronting Grand Avenue have improvements that encroach into the public ROW to varying degrees. Including these encroachments, the remaining width available for public access is between 4 to 20 feet. The type of encroachment also includes small landscaping or picket fences, as well as more permanent structures such as small stone walls. Development that the applicant has constructed within the public ROW consists of an approximately 2-foot high stone wall and accompanying 4-foot high hedge. These improvements encroach about 4 to 6 six feet into the public access area.

At its closest point, development on the applicant's parcel currently lies approximately 39 feet from the bluff edge. Once relocated, the primary residence would be located approximately 58 feet from the bluff edge. The subject parcel and surrounding properties are not currently protected by shoreline structures.

Existing development at the project site does not conform to the maximum habitable unit requirement of the R-1 zoning district. While the R-1 allows for one family dwelling unit per lot, the property is developed with five separate units. The project proposes to reduce the number of dwelling units to two units.

Project Description

The applicant proposes to relocate an existing residence nineteen additional feet away from the coastal bluff. The purpose of relocating the structure is to bring it into conformance with the bluff top setback requirements of the LCP. In order to accomplish this, the City granted variances to the side and rear yard setbacks. At its closest point, the residence currently lies approximately 39 feet from the bluff edge. The project proposes a new bluff setback of approximately 58 feet.

There are currently three independent structures on the property. A three-unit apartment building is located at the rear of property, a single apartment unit lies at the center, and a single-family residence lies at the front. Under the proposed project, the single-family residence would be relocated away from the bluff and incorporated into the existing single unit apartment. The remodeled structure would result in a residence approximately 2,633 square feet in size. In addition, the project proposes to consolidate the three independent apartment units at the rear of the site into a single unit totaling approximately 1,464 square feet.



B. Analysis of Project Consistency with Local Coastal Program

B.1 Public Access and Recreation

Appellant Ryan contends that the public's ability to gain lateral access in front of the applicant's property is restricted by private encroachments into the public right-of-way (ROW). In addition, appellant Ryan asserts that the applicant has placed gravel on the portion of the ROW fronting the applicant's parcel, and that this gravel limits the ability of all members of the public to gain safe lateral access here.

City Action

On June 1, 2000 the Planning Commission approved a coastal permit, architectural and site review, and variance to the first and second floor side and rear yard setbacks for the project, with conditions, for the relocation of the existing residence away from the bluff top, incorporation of a single apartment unit into the residence, and the conversion of an existing three unit apartment building into one apartment unit at 402 Grand Street, City of Capitola (Santa Cruz County) (APN 036-133-09).

Conditions of the local coastal permit require the applicant to obtain a revocable encroachment permit from the City's Public Works Department prior to issuance of a building permit.

Standard of Review

Coastal Act § 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3." Although Grand Avenue did at one time function as the first public road between the project site and the sea, this function is no longer provided due to erosion of the bluff. As such, because the proposed project is located seaward of the first through public road (El Salto Drive-Hollister Avenue-Oakland Avenue), for public access and recreation issues, the standard of review is not only the certified LCP but also the access and recreation policies of the Coastal Act.

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

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

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

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



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

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

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

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

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

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

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

Substantial Issue Determination on Impacts to Public Access

The LCP describes existing access in the City of Capitola as follows,

The land adjacent to Capitola's shoreline is densely developed with residential development along the Cliff Drive and Grand Avenue bluffs, as well as a mixture of residential and commercial uses in Capitola Village adjacent to Capitola Beach. Vertical access to the sea from Cliff Drive and Grand Avenue is virtually impossible due to the height of the cliff and substantial continuing erosion. Users of the Capitola shoreline typically gain access from the Esplanade, the wharf area or from New Brighton beach.

In addition, the LCP comments on the history of Grand Avenue by stating,

At the turn of the century, access along the top of the cliff was a tree-lined public path known as Lover's Lane, on the Ocean side of Grand Avenue. Lover's Lane was lost in the 1930's because of cliff erosion.

Grand Avenue currently serves only as a local pedestrian travel corridor. Remnants of Grand Avenue currently hang over the bluff edge and, at most, only half of its width remains today. In general, the remaining width of Grand Avenue decreases from west to east. For example, nearly all of Grand Avenue has fallen into the Monterey Bay east of Sacramento Avenue resulting in no possible lateral bluff top



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access, but up to twenty feet of pathway exists east of Oakland Avenue. Irrespective of these losses to bluff erosion, however, lateral access is still currently possible along a significant portion of Grand Avenue's remaining western length. Overall, the current width of the public pathway along Grand Avenue varies between 4 to 20 feet. The width of the pathway fronting the applicant's property is approximately 6 feet (see Figure 1 below).



Figure 1. Existing public pathway fronting applicant's property.

Grand Avenue functions as both an important public access and recreation corridor and also as a platform for expansive views of the Monterey Bay. The LCP affords protection of these functions by designating Grand Avenue as a pedestrian access path and viewing platform in Figures II-1 and II-2. However, while the LCP identifies these important functions of Grand Avenue, it is clear that over the long term they are in jeopardy of disappearing by natural causes (i.e. bluff erosion). Thus, absent some type of future development of shoreline protection along the length of Grand Avenue, lateral bluff top access will only exist for a finite period of time. According to the project geologic report, this time period could extend up to ten years. To date, the City has not expressed an interest in proposing shoreline protection for Grand Avenue.

The proposed project raises an issue in terms of the restriction of lateral access caused by the applicant's development within the public ROW. In total, the current width of the public ROW fronting the applicant's property is approximately 20 feet. Approximately 8 feet of the ROW fronting the cliff edge is fenced off for public safety purposes. Landward of this fence lies an approximate six-foot wide paved public pathway and abutting this pathway is the applicant's small stone wall and hedge. The City did not



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require a formal survey to determine the degree of encroachment caused by the stone wall and hedge. As such, the actual dimension of encroachment is unknown. However, Commission staff estimates that, judging from the location of telephone poles along Grand Avenue, the applicant's wall and hedge encroach approximately 4 to 6 feet into the public ROW. The City's staff report notes that these encroachments have been in place for a long time. See Exhibit E for project location maps and Figure 1 above for photo of public pathway in front of the applicant's property.

While the Commission acknowledges that the LCP affords some protection of the public's ability to gain access along Grand Avenue, it also observes that natural erosion is causing Grand Avenue to erode into the sea. This is particularly evident east of Sacramento Avenue, as at most only 10 feet of the original public ROW remains. As such, it is evident that public access may be a temporary feature along Grand Avenue. Such a scenario of lost public access by bluff erosion has already occurred at the far eastern extent of Grand Avenue.

The LCP indirectly acknowledges the issue of bluff erosion at Grand Avenue and does not designate it as the main lateral coastal access route. Instead, the LCP designates the inland routes of Park Avenue and the Southern Pacific Railroad Right-of-way as the lateral coastal access between Capitola and New Brighton State Beach. Nevertheless, it is likely that the public can continue to enjoy lateral access in front of the applicant's parcel for a period of perhaps ten more years. In order to accomplish this, it will be necessary to remove the applicant's encroachments at some point in time as the bluff erodes. Given this situation, the City would have to reclaim the public ROW here and reestablish the pathway landward of its current location.

In approving the proposed project, the City implemented a mechanism to reclaim the public ROW here by requiring the applicant to obtain a revocable encroachment permit. City imposed condition 5 requires that,

A Revocable Encroachment Permit shall be obtained for all encroachments from the Public Works Department prior to the issuance of the Building Permit. The Revocable Encroachment Permit may be revoked for purposes of health, safety and maintenance.

By this condition, the City required the applicant to formally acknowledge the public's ownership of the ROW. The revocable encroachment permit contains the requirement that the applicant remove encroachments when ordered to do so by the City, at his/her expense. If the applicant does not comply with any such future order, then the City may remove all encroachments and impose a lien upon the property for costs incurred. City staff has indicated that, as the bluff retreats further inland and jeopardizes portions of the bluff top pathway, the removal of encroachments will be pursued.¹ Furthermore, City staff feels that the removal of the applicant's encroachments right now would not substantially improve the functioning width of the public pathway because adjacent encroachments would still limit public access. In other words City staff is of the position that, as the bluff erodes over time, encroachments caused by multiple adjacent landowners should be removed to create a linear pathway that does not zigzag along the bluff.

¹ August 16, 2000 correspondence with Eric Marlatt, Planner (City of Capitola).



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Users of the Grand Avenue pathway originate primarily from adjacent neighborhoods. However, visitors venturing off from the more popular and easily accessible areas such as the Capitola Village and Beach may occasionally find their way to Grand Avenue. Consequently, the level of use of the Grand Avenue pathway is not very intense and consists mostly of passive recreational activities. At most one generally observes no more than a hand-full of users at any given time enjoying expansive views of Monterey Bay while taking a casual stroll along the bluff top.

At this time the current pathway width fronting the applicant's property is of sufficient width to permit public access. Furthermore, the Commission notes that, were only the applicant's encroachments to be removed, a substantial improvement to the functioning width of the public pathway would not be accomplished. Again, this is largely because adjacent property owners also encroach into the public ROW. In order to improve the pathways functional width, private encroachments along Grand Avenue from Oakland to Hollister Avenue would have to be removed to improve circulation at the eastern extent of Grand Avenue.

In this case, the requirement for obtaining a revocable encroachment permit is sufficient to protect public access at this location for the remaining life expectancy of the Grand Avenue. The City can require removal of the applicant's encroachments at any time. As mentioned, this would most logically occur in concert with adjacent landowner's encroachments as the bluff erodes further inland. Such an approach would be preferable to improve the overall functioning width of the public pathway here. While the Commission notes that the applicant's improvements in the ROW raise an issue in terms of its consistency with Coastal Act and LCP public access and recreation policies, this issue does not rise to the level of being substantial given the requirement for the applicant to obtain a revocable encroachment permit.

As mentioned, appellant Ryan also contends that the applicant placed gravel on the public ROW and that this restricts the ability of some members of the public to gain access here. Specifically, appellant Ryan asserts that rollerbladers, skateboarders, and the elderly have difficulty traversing the path here.

Staff has confirmed that the applicant has placed gravel over the northern extent of the pathway in order to cover large cracks and holes in the pavement (See Figure 1 above). Were this gravel to be removed then the pathway would be equally inaccessible to rollerbladers and skateboarders. Although gravel may not permit travel by all forms of transportation, the applicant has to a certain degree improved the safety of a portion of the path by filling large cracks and holes in the pavement. At least one half of the pathway remains paved and open to travel by skateboarders and rollerbladers.

The Commission notes that this gravel is not located upon the project area that is the subject of the coastal permit. The gravel was placed upon the public ROW and the City is the responsible for maintaining these areas. As such, if the appellant's disagrees with the placement of gravel here then he should contact the City and not the Commission to seek a resolution on the matter. Therefore, in light of the circumstances discussed above, the Commission finds that the issue of gravel placed upon the pathway raises no substantial issue.

Therefore, the Commission finds that the proposed project raises no substantial issue in terms of its conformance with the public access and recreation policies of the certified City of Capitola



LCP and Public Access and Recreation policies of the Coastal Act.

B.2 Bluff-Top Setback & Future Shoreline Protection

Appellant's Contention

Appellant Ryan questions whether the LCP required bluff setback has been adequately implemented in this case. In addition, Appellant Ryan questions whether there is a section of the Coastal Act that establishes a standard for determining "new development" and in which cases a shoreline protection structure shall not be allowed to protect such development.²

City Action

On June 1, 2000 the Planning Commission approved a coastal permit, architectural and site review, and variance to the first and second floor side and rear yard setbacks for the project, with conditions, for the relocation of the existing residence away from the bluff top, incorporation of a single apartment unit into the residence, and the conversion of an existing three unit apartment building into one apartment unit at 402 Grand Street, City of Capitola (Santa Cruz County) (APN 036-133-09).

The City's approval accepts the conclusions drawn by the applicant's geologist in order to determine the required bluff setback. The applicant's geologist estimated that an erosion rate of 0.86 feet per year is applicable to the bluff. Given this rate, the estimated 50-year setback would be 43 feet. However, for an added safety factor, the City required an additional 15 feet be added to the 50 year setback, of which results in a bluff top setback of 58 feet.

Standard of Review

The following LCP policies are among those that address bluff top setbacks and "new development" for the proposed project.

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

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

LCP Zoning Section 17.48.100(A) Bluff and Cliff Area Regulations (in the GH district). Bluff and cliff top development shall be permitted only if the design and setback provisions are designed to assure stability and structural integrity for the expected life of the development (at

² See Exhibit B for Appeal Addendum.



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least fifty years) and if the development will neither create nor contribute significantly to erosion problems or geologic instability of the site or surrounding areas.

Definition: "New Development": For purposes of implementing the public access requirements of Public Resources Code Sections 30212 and of this title, "new development" includes "development" as defined above except the following:

1. Structures destroyed by natural disaster[..].
2. Demolition and reconstruction: the demolition and reconstruction of a single family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than ten percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.
3. Improvements: improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height or bulk of the structure [..].
4. Repair and maintenance. [..]
5. Reconstruction and repair. Repair or maintenance activity which, pursuant to Public Resources Code Section 30610, requires no permit [..].

Definition: "Development": "Development means any of the following, whether on land or in or under water:

1. The placement or erection of any solid material or structure; [..]
6. Construction, reconstruction, demolition or alteration in the size of any structure, including any facility of any private, public or municipal utility;

Substantial Issue Determination on Bluff-Top Setback and Future Shoreline Protection

Adequacy of Bluff-top Setback

The appellant questions whether the appropriate bluff top setback was implemented in this case. The LCP requires approved development to be set back a sufficient distance from the bluff edge to assure stability and structural integrity for the expected life of the development. The LCP identifies 50 years as the minimum economic lifetime to be considered when developing such bluff top setbacks. In this case, the City of Capitola found that 58 feet was an adequate setback to assure structural stability and structural integrity for 50 years.

On the whole, the proposal to relocate the residence is desirable when viewed in light of the policies of the Coastal Act. Specifically, the proposed relocation is advantageous because it is an alternative to shoreline protection structures, although the applicant is not proposing any such structures at this time. Nevertheless, the proposed project will delay the amount of time before shoreline protection may be proposed. However, irrespective of all this, the appellant has called into question the adequacy of the bluff top setback.



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The City relied upon a geologic investigation by *Rogers E. Johnson & Associates* (dated August 30, 1995), as well as an addendum to the investigation (dated November 13, 1999), in order to evaluate the project for consistency with the bluff top setback policies. The project geologist utilized historical, as well as site specific geology, to determine an average bluff retreat rate of 0.86 feet/year. This retreat rate equates to a bluff setback of 43 feet for the project site. However, the project geologist recommends the addition of 15 feet to the 50-year setback, resulting in a total setback of 58 feet. Given the establishment of a 50-year bluff setback, the geologist recommends further that the existing structures be moved to conform to the 58-foot setback or that a shoreline protection structure be constructed to retard erosion. In this case, the applicant has chosen to relocate structures away from the bluff.

Overall, the contents of the geologic reports are adequate and thorough in their explanation and evaluation of the coastal processes affecting the bluff fronting Grand Avenue. They utilize a sufficient time period (142-year photo & aerial photo analysis) with which to establish the long-term average erosion rate and factor in the possibility of future episodic events in calculating the bluff setback figure. The reports also take into account seismicity and historical storm figures, as well as many other variables in their conclusions. Consequently, the Commission finds that the 50-year setback determined by these reports is adequate for the purposes of determining the project's consistency with LCP policies addressing required bluff-top setbacks. Therefore, the Commission finds that an appropriate bluff top setback was implemented in this case and that the proposed project raises no substantial issue in this regard.

Future Shoreline Protection Structures

Appellant Ryan asserts that the Coastal Act does not allow future shoreline structures to protect new construction proposed by the applicant. However, the standard of review on this issue is the LCP and not the Coastal Act.

The applicant proposes to relocate and remodel existing structures at the project site. The proposed project will not increase lot coverage, square footage, or floor area. The proposed project will reduce the number of habitable units from 5 to 2. In addition, the height and overall mass or bulk of structural development will not increase. As proposed, the intensity of development would remain the same, while the intensity of use would actually decrease. As such, the Commission finds that the proposed project does not constitute new development under the LCP.

Furthermore, the applicant proposes to relocate existing development so that it conforms to the bluff setback requirements of the LCP. The Commission concurs that the bluff setback established by the project geologist is consistent with the requirements of the LCP. As discussed, proposals to relocate primary structures away from the bluff edge are desirable when viewed in light of the policies of the Coastal Act. Overall, the proposed development will delay the amount of time before shoreline protection may be proposed.

Given the above reasons, the Commission finds that no substantial issue is raised in this regard because the proposal to relocate and remodel existing development is not considered new development under the LCP and the relocated development would conform to the bluff setback policies of the LCP, and as such, the LCP does not prohibit future proposals for shoreline protection in this case.



Therefore, the Commission finds that the proposed project raises no substantial issue in terms of its conformance with the bluff top setback and shoreline protection policies of the certified City of Capitola LCP. Specifically, the proposed project is consistent with LUP Policy VII-7, LCP Zoning Sections 17.48.080 and 17.48.100(A).

B.3 Nonconforming Development

Appellant's Contention

Appellant Ryan asserts that, after construction, the remodeled structures should not be allowed to remain in nonconforming status at this site.

City Action

On June 1, 2000 the Planning Commission approved a coastal permit, architectural and site review, and variance to the first and second floor side and rear yard setbacks for the project, with conditions, for the relocation of the existing residence away from the bluff top, incorporation of a single apartment unit into the residence, and the conversion of an existing three unit apartment building into one apartment unit at 402 Grand Street, City of Capitola (Santa Cruz County) (APN 036-133-09).

The property is currently nonconforming with the density standard of the R-1 (Single-Family Residential) zoning district, which allows for one unit. The City's approval observes that with the conversion of the property from 5 to 2 units, the property would still be nonconforming but that at this new density the nonconforming development would be allowed to remain in perpetuity. However, staff is unable to find a section of the LCP that allows nonconforming structures to remain indefinitely.

Standard of Review

The following LCP policies addressing the issue of nonconforming structures are applicable in this case.

Implementation Section 17.72.060. Nonconforming activities and structures on improved R-1 parcels.

- a) Amortization. Non-conforming activities in the R-1 zones must be discontinued on June 26, 2019 or 50 years from the date the activity first became non-conforming, whichever is later, except as provided in subsections B and C below:*
- b) Duplex Activity. Nonconforming duplex activities may continue indefinitely but the structures cannot be enlarged. They may be structurally altered or rebuilt only as allowed under Sections 17.72.070 and 17.72.080.*
- c) Residential projects with more than two (2) units. Owners of parcels having more than two dwelling units which are nonconforming only because they exceed the current density standard may apply to the City Council for extensions of the 50-year amortization period. The City Council shall only grant an extension if able to make findings that: in this particular situation, the appearance, condition, and management of the property is such that the property is not greatly detrimental to the single family residential character of the neighborhood in which it is located; the extension is necessary in order to prevent a major*



economic loss to the property owner and to lessen deterioration; and that all reasonable conditions have been imposed for the purpose of repairing dilapidation and bringing, or keeping, the property up to neighborhood standards. At no time shall an extension give a non-conforming use in a single family neighborhood a life of less than 15 years or longer than 50 years from the date the application is filed.

17.03.490 Nonconforming activity. *"Nonconforming activity" is defined [..]. In residential zones it also means having a greater density of dwelling units than is presently allowed in the district.*

Substantial Issue Determination on Nonconforming Status

The proposed project would result in development that is nonconforming to the density requirements of the R-1 district. The property currently contains 5 separate habitable units. The maximum density standard for the R-1 zoning district is one unit per lot. Under the proposed project the nonconforming status of the lot would be reduced from 5 to 2 units. Appellant Ryan contends that a nonconforming density of two units should not be permitted here.

Under the policies of the LCP, nonconforming structures or uses in the R-1 zoning district must be discontinued or removed by June 26, 2019 or fifty years from the date the activity or structure first became nonconforming, whichever is later. According to the applicant, the existing residence and single unit apartment were constructed in 1968, while the three apartment units at the rear of the property were constructed in the early 1950's. Under the proposed project the remodeled apartment unit at the rear of the property would be nonconforming to the density requirement. According to the IP Section 17.72.060, this nonconforming apartment can remain on the site until 2025 since the development first became nonconforming in 1975.

Therefore, the Commission finds that the proposed project raises no substantial issue in terms of its consistency with the IP Section 17.72.060 of the certified City of Capitola LCP.

6. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary for Resources as being the functional equivalent of environmental review under CEQA. Accordingly, the Commission finds that as conditioned the proposed project will not have significant adverse effects on the environment within the meaning of CEQA; that there are no feasible alternatives which would significantly reduce any potential adverse effects; and, accordingly, the proposal, as conditioned, is in conformance with CEQA requirements.



STATE OF CALIFORNIA - THE RESOURCES AGENCY

Gray Davis, Governor

CALIFORNIA COASTAL COMMISSION

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



*Hard copy

to follow

RECEIVED-D

APPEAL FROM COASTAL PERMIT
DECISION OF LOCAL GOVERNMENT

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

JUL 18 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREASECTION I. Appellant(s):

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

Tim Ryan
P.O. Box 192
Soguel, Ca 95073
(931) 476-6550
Zip Area Code Phone No.

SECTION II. Decision Being Appealed

1. Name of local/port government:

City of Capitola

2. Brief description of development being appealed:

Coastal permit & variance to reduce 1st & 2nd
Floor side & rear yard setbacks & relocate
existing residence away from edge of coastal
bluff

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

402 Grand Ave. / Oakland
APN 036-133-09

4. Description of decision being appealed:

- a. Approval; no special conditions: _____
b. Approval with special conditions: X _____
c. Denial: _____

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: _____
DATE FILED: _____
DISTRICT: _____

EXHIBIT NO. A

APPLICATION NO.

A-3-CAP-00-105

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

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

- a. ☐ Planning Director/Zoning Administrator
- b. ☐ City Council/Board of Supervisors
- c. ☒ Planning Commission
- d. ☐ Other: _____

6. Date of local government's decision: 6/1/00

7. Local government's file number: 00-02

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:


Bob Tomaselli
402 Grand Ave.
Capitola, Ca 95010

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

- (1) Wayne Miller
c/o 402 Grand Ave
Capitola, Ca. 95010
- (2) _____
- (3) _____
- (4) _____

SECTION IV. Reasons Supporting This Appeal

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

EXHIBIT NO. <u>A</u>
APPLICATION NO.
<u>A-3-CA?-00-105</u>
 California Coastal Commission

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.)

*please see attached
sheet.*

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.

VR

Signature of Appellant(s) or Authorized Agent

Date *7/9/00*

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.

Signature of Appellant(s)

Date _____

EXHIBIT NO. A

APPLICATION NO.

A-3-CAP-00-105

APPEAL OF BUILDING PERMIT @ 402 GRAND AVE., CAPITOLA

I am appealing the approval of the building permit for 402 Grand Ave. on the grounds that the present two foot high stone wall encroaches 4 to 6 feet into the scenic public walkway. This wall was constructed without permits on the public walkway to increase the front yard of the property. In front of this wall is another 1 to 2 feet of gravel which further decreases the public walkway area to less than 4 feet. (Please see enclosed pictures). Roller skaters or skate-boarders can't use it and many elderly residents now choose to take another path out of safety concerns. This raises the question of whether it is ADA compliant?

The city response to this is to have the owner obtain a revocable encroachment permit, which would let the wall stay on public property.


This project raises other issues, which may or may not fall within your jurisdiction:

1. Is the 50 year life setback from the edge of cliff to the property line or the structure and does the zoning setbacks add to this setback?
2. How do you relocate a house, which is on a concrete slab without doing a major remodel?
3. This project of relocating the house is a smoke screen so the owner will be allowed to increase the size of the primary residence, be granted at least two variances and continue to keep the property non-conforming to current zoning laws.

I would like to have this project looked at closer by the Coastal Commission as the public is losing more scenic walkway that is being incorporated into the property owners land.

Thank you,

Tim Ryan

EXHIBIT NO. A
APPLICATION NO.
A-3-CA? -00-105
 California Coastal Commission

Greetings Kevin;


In response to your questions;

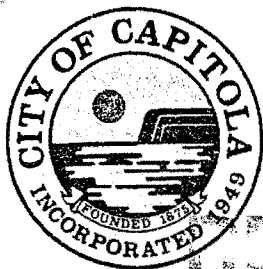
- 1) Where does the 50 year setback start from, the edge of the cliff? Then do you add Capitola's front yard setback to this to determine the distance from the cliff edge? Is the setback right for this project?
- 2) Since this house sits on a slab foundation, to move this would mean extensive remodeling. Therefore, it seems logical that this should fall in the range of new construction (and meet all the requirements for one) as opposed to simple relocation/remodel.
This is basically a smoke screen to build a new house without going through the proper process and keeping the property as non-conforming.
- 3) Is there a section of the Coastal Act, which addresses new construction or a 10% increase in improvement value, that a coastal protection device shall not be allowed?
- 4) There is no emergency to move this house back yet it is granted hardship standards because the owner chooses to relocate so he can remodel.
- 5) I was walking last night and I noticed two people in wheel chairs along Grand Ave. They wheeled all the way along Grand Ave. except when they arrived at the subject property and turned up Oakland Ave. (the street next to the subject property), as it was too hard to go in front of this house. Doesn't the Coastal Act address ADA requirements?

In summary, this property should not be allowed to encroach into the limited public right away, remove the stone wall and gravel and make this portion of Grand Ave. accessible to all. This house should go back before the planning commission as a new project not simply as one that was approved in 1998 and was renewed in 2000 without closer scrutiny.

Sincerely,

Tim Ryan

EXHIBIT NO. B
APPLICATION NO.
A-3-CA?-00-105
 California Coastal Commission



RECEIVED

JUN 27 2000

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

420 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-7300
FAX (831) 479-8879

**FINAL LOCAL
ACTION NOTICE**

REFERENCE # 3CAP-00-328
APPEAL PERIOD 6/28-7/2/00

**NOTICE OF APPROVAL OF
PERMIT APPLICATION**

DATE: June 26, 2000

TO: Bob & Pam Tomaselli
402 Grand Ave.
Capitola Ca 95010

RE: Notice of Final City Action on Application #00-02:

ARCHITECTURAL AND SITE REVIEW, COASTAL PERMIT AND VARIANCE TO REDUCE FIRST AND SECOND FLOOR SIDE AND REAR YARD SETBACKS TO RELOCATE AN EXISTING RESIDENCE AWAY FROM THE EDGE OF A COASTAL BLUFF AND TO CONVERT AN EXISTING 3-UNIT APARTMENT BUILDING INTO ONE APARTMENT UNIT REDUCING THE NONCONFORMING DENSITY ON THE PROPERTY FROM 5-UNITS TO 2-UNITS. THE PROPERTY IS LOCATED AT 402 GRAND AVENUE IN THE R-1 (SINGLE FAMILY RESIDENCE) ZONING DISTRICT. APN 036-133-09.

The above matter was presented to the Planning Commission on June 1, 2000 and was **approved**, with the following findings and conditions. Any modifications to the staff report (dated May 26, 2000, previously distributed) are indicated below in ~~strikeout~~ and underline notation.

Please note that this project includes a coastal development permit, which is appealable to the Coastal Commission pursuant to Coastal Act Section 30603 and City Zoning Ordinance Section 17.46.110. **The coastal development permit will not be effective until after the Coastal Commission's 10 working day appeal period has expired and no appeal has been filed.** The Coastal Commission's appeal period begins the first working day after receipt by the Coastal Commission of adequate notice of this final City action. Any such appeal must be made directly to the California Coastal Commission's Central Coast District Office in Santa Cruz; there is no fee for such an appeal. Should you have any questions regarding the Coastal Commission appeal period or process, please contact Kevin Colin at (831) 427-4863.

EXHIBIT NO. C

APPLICATION NO.

A-3-CA?-00-105

CONDITIONS

1. If any upgrade modifications to the plans are desired by the applicant (i.e. windows, materials, colors, etc.), the changes may be approved by the Planning Department. Other changes may require Planning Commission approval.
2. Prior to issuance of a building permit, the applicant shall submit documentation confirming that a qualified geotechnical consultant has been retained to ensure that the recommendations contained in the geotechnical report have been properly implemented.
3. Prior to final inspection of the building permit, the applicant shall provide certification that development has occurred in accordance with the conditions of the geological investigation prepared for the project.
4. The final building plans shall include a drainage plan prepared by a registered civil engineer, that directs stormwater runoff away from the coastal bluff along Grand Avenue. All drainage improvements shall be installed prior to final inspection of the building permit.
5. A Revocable Encroachment Permit shall be obtained for all encroachments from the Public Works Department prior to the issuance of the Building Permit. construction of the driveway The Revocable Encroachment Permit may be revoked or modified for purposes of health, safety and maintenance.
6. All curbs, gutters and sidewalks damaged during construction shall be repaired and/or replaced, subject to approval of the Public Works Director.
7. All landscaping shall be installed prior to final inspection of the building permit.
8. The property owner shall comply with the Building Official requirements for bringing the structure into conformance with the current building code requirements.

FINDINGS

- A. **The application, subject to the conditions imposed, will secure the purposes of the Zoning Ordinance, General Plan, and Local Coastal Plan.**

Planning Department Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project. The Planning Commission has made findings for approval of the variances (see findings "E" and "F" below). The nonconforming structure, with the proposed reduction from five to two units, brings the property more into conformance with all of the development standards of the R-1 (Single Family Residence) Zoning District and Parking Ordinance. The proposed structure conforms with all other development standards of the R-1 (Single Family Residence) Zoning District, as articulated in the Planning Commission Staff Report. Conditions of approval have been included to carry out the objectives of the Zoning Ordinance, General Plan and Local Coastal Plan.

- B. **The application will maintain the character and integrity of the neighborho**

EXHIBIT NO. C

APPLICATION NO.

A-3-CA2-DD-105

Planning Department Staff, the Architectural and Site Review Committee, and the Planning Commission have all reviewed the project and recommended conditions of approval to ensure that the project maintains the character and integrity of the neighborhood.

- C. **This project is categorically exempt under Section 15301(k)(2) of the California Environmental Quality Act and is not subject to Section 753.5 of Title 14 of the California Code of Regulations.**

This project involves relocation of an existing structure from a coastal bluff and conversion from five to two habitable units on a lot that is considered infill development. Section 15301(k)(2) of the CEQA Guidelines exempts the elimination of up to six units in urbanized areas.

- D. **Because of special circumstances applicable to the subject property, including lot size, existing density and geotechnical constraints of the coastal bluff, the strict application of this title is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.**

Approval of the variances allow the relocated structure to encroach into the first floor and second floor side yard setback and rear yard setbacks. Because of special circumstances applicable to the subject property, including size, density, and location on a coastal bluff, the strict application of the zoning ordinance would deprive subject property of a use that would be supported by the City for other similarly situated properties in the vicinity and under identical zone classification. The reduction of overall density closer to the zoning designation, as proposed with this application, would be encouraged for any similarly situated property in the area. Relocation of an existing structure to achieve a 59 foot front yard setback is necessary due to geotechnical constraints. Other standard single family residences are required to have a 15 foot front yard setback, and the greater setback requirement which applies to this property due to its location on a coastal bluff creates constraints for the development on the property.

- E. **The granting of the above-mentioned variance(s) would not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.**

Approval of the variance(s) allow the relocated structure to encroach into the first floor and second floor side yard setback and rear yard setbacks. This type of structure encroaching on the side yard and rear yard setbacks would be the same as what has historically taken place on other properties in the Depot Hill neighborhood (404 and 406 Grand Avenue).

If you have any questions, please do not hesitate to call the Capitola Planning Department at (831) 475-7300.

Sincerely,


Eric Marlatt

Zoning Administrator

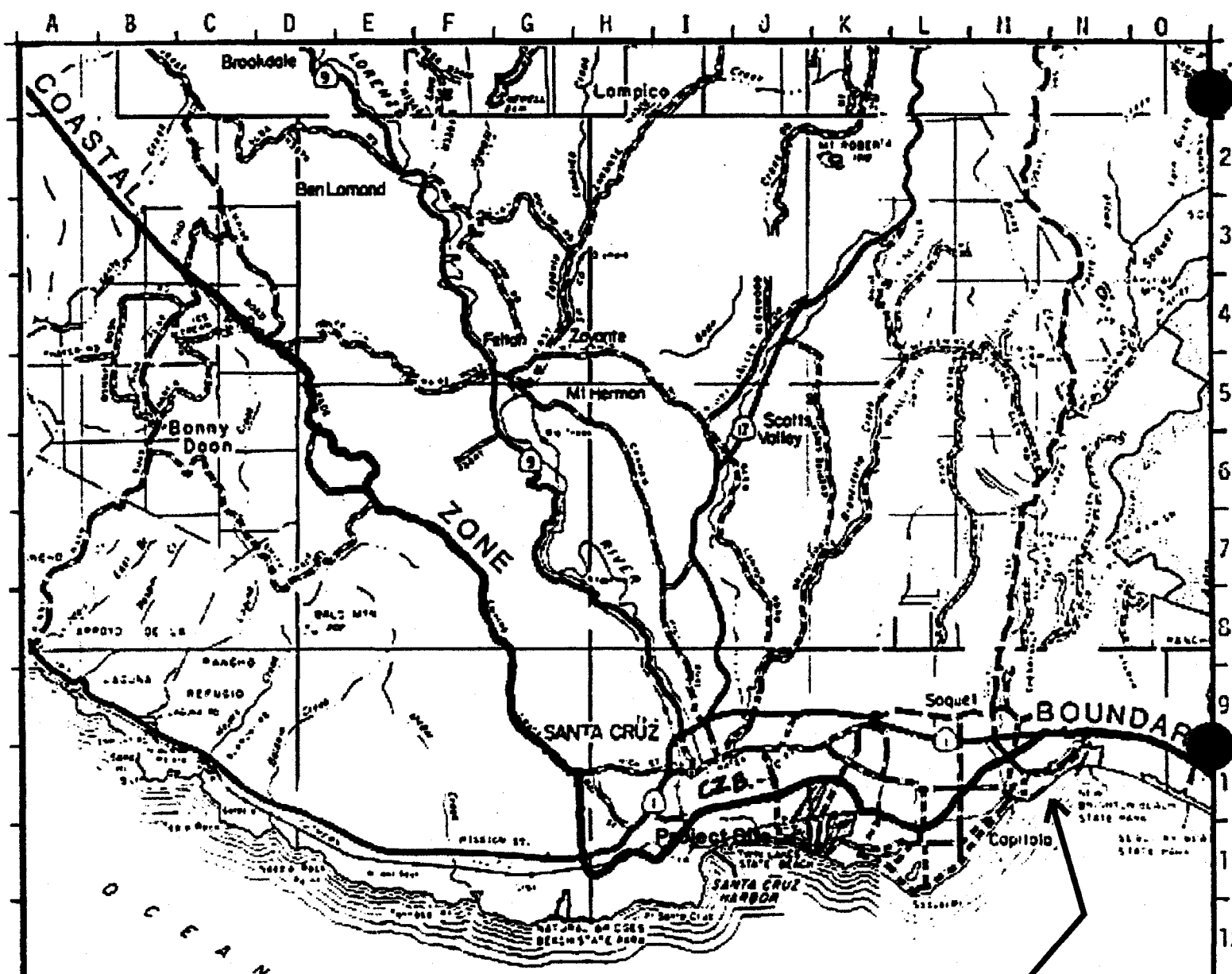
cc: Wayne Miller
California Coastal Commission

EXHIBIT NO. C

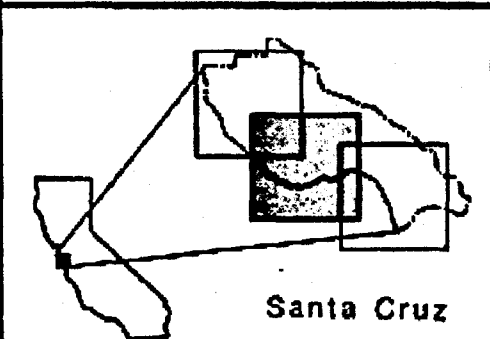
APPLICATION NO.

A-3-CAP-00-105

 California Coastal Commission



Project Site



LOCATION MAP

California Coastal Commission

County of Santa Cruz



EXHIBIT NO. P
APPLICATION NO.
A-3-CA2-00-105

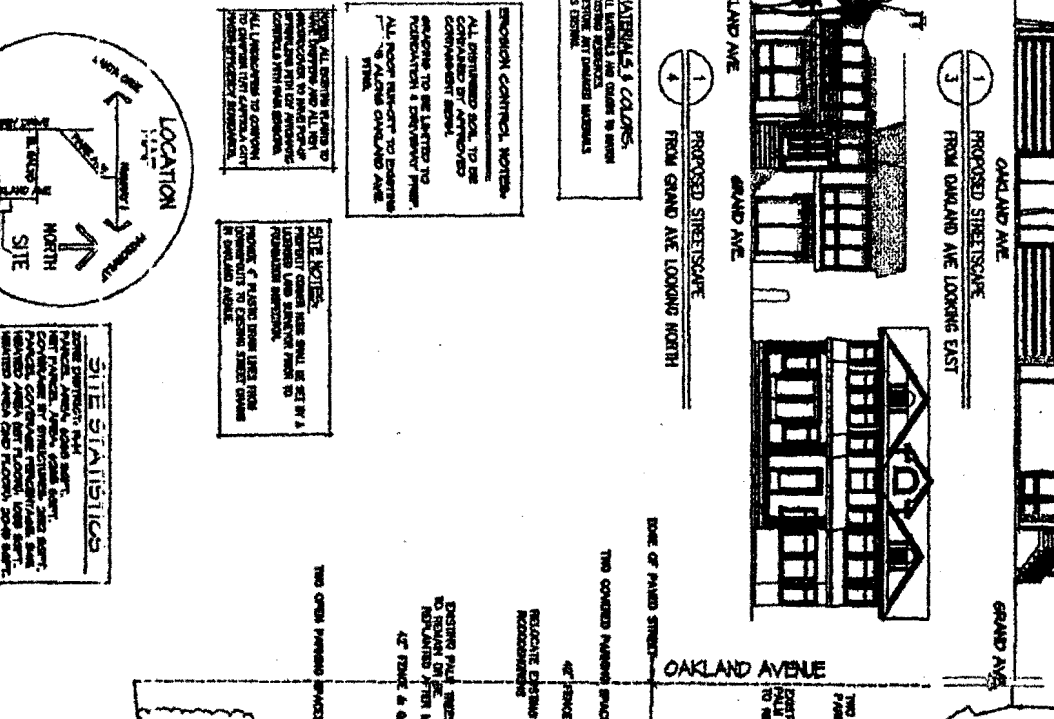
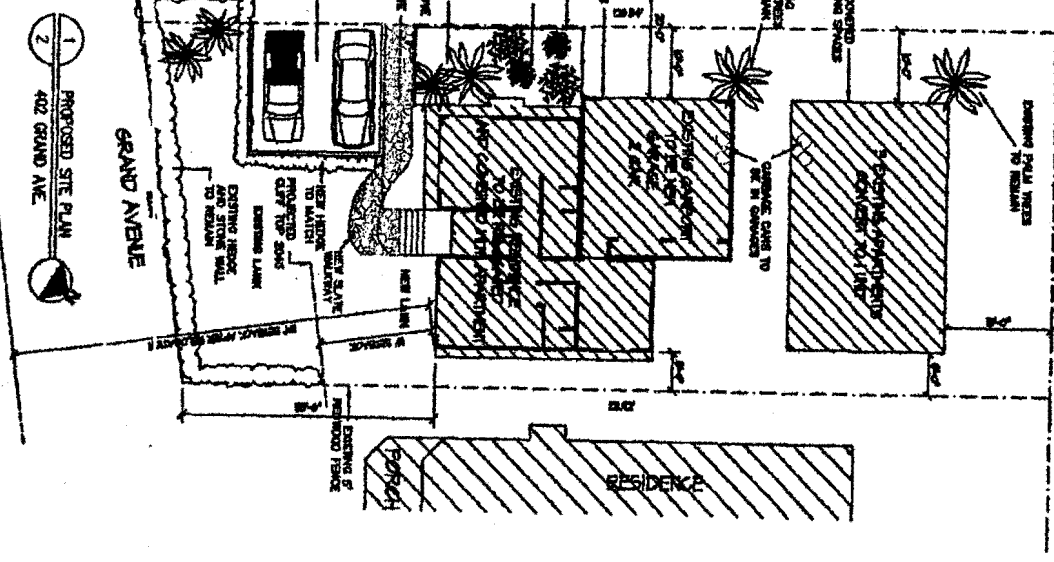
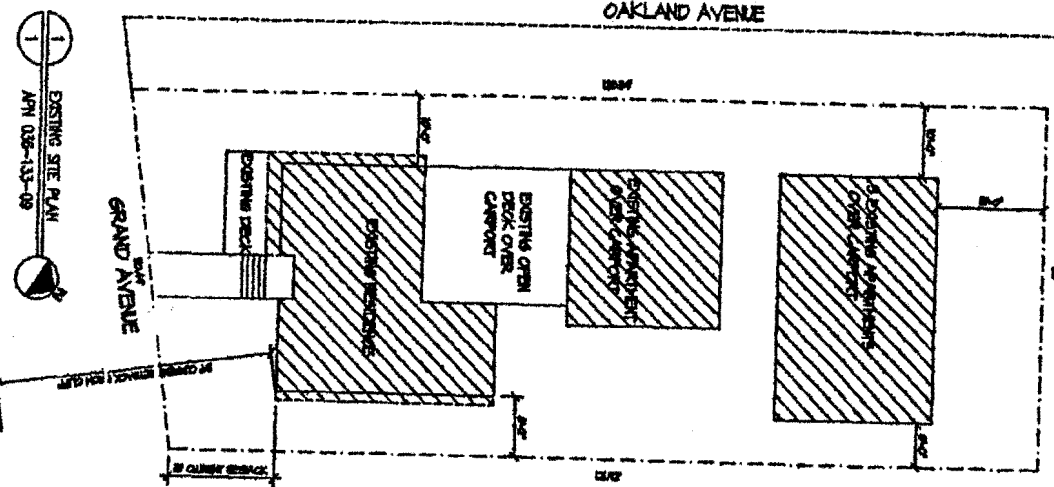
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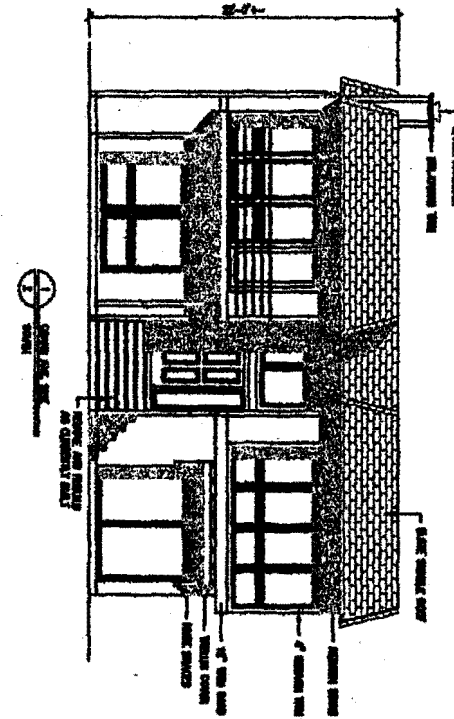
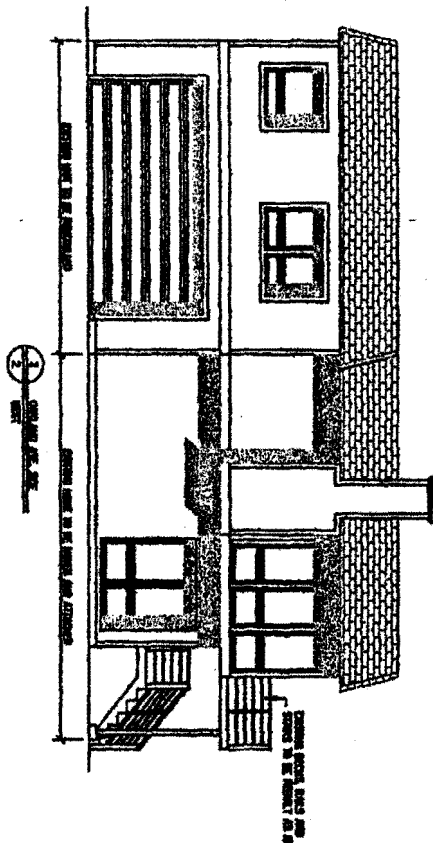
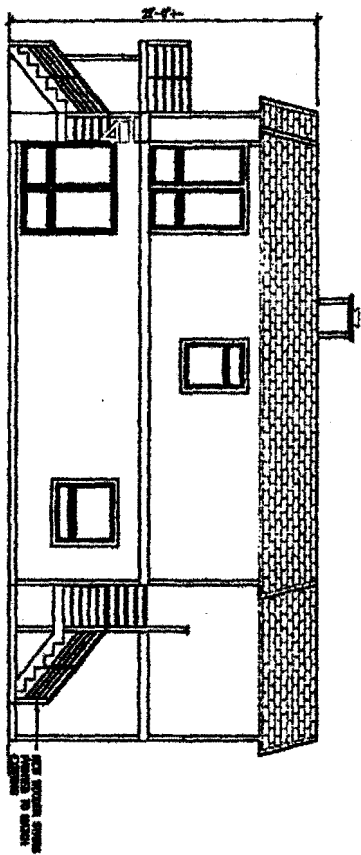
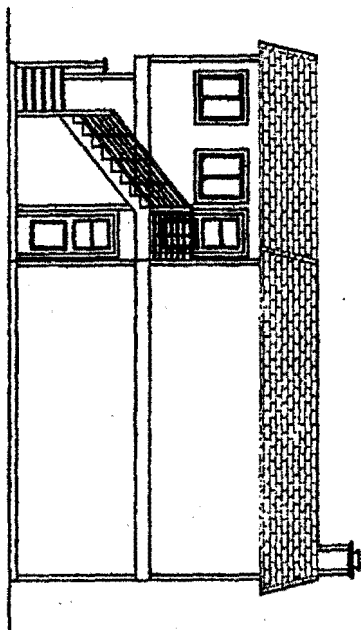
EXHIBIT NO. 2
 APPLICATION NO.
 A-3-CAP-00-105
 California Coastal Commission

DESIGNED BY
 WAYNE MILLER
 P.O. BOX 590
 SHORELINE, CA 94062
 PHN 616-4320

BOB & PAM TOMASELLI RESIDENCE
 REMODEL
 402 GRAND AVENUE
 CAPITOLA CA 95010

44000
 10-11-07
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OML
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 08/06/02

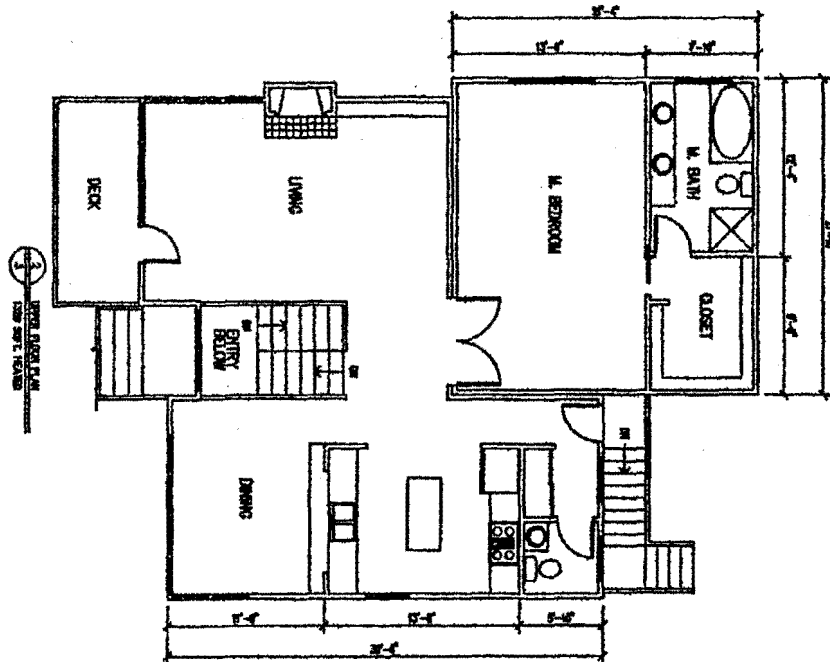
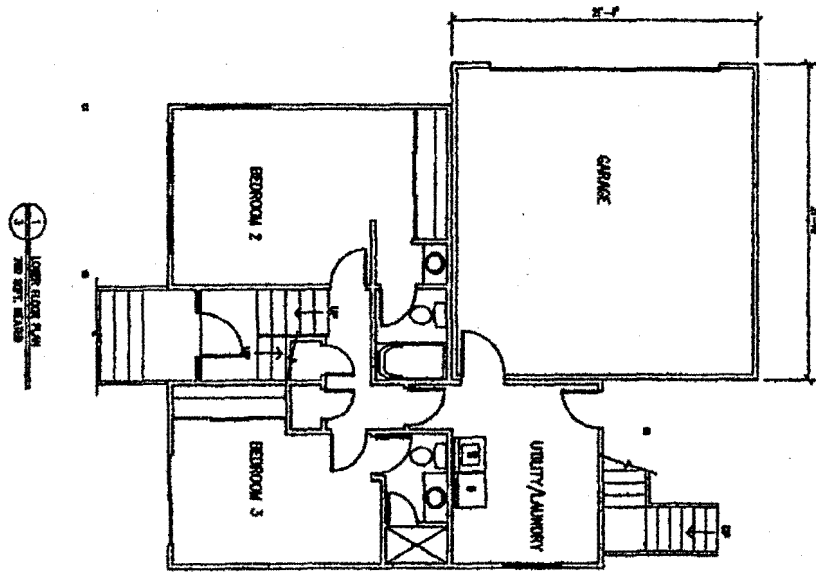
BOB & PAM TOMIASELLI RESIDENCE
 REMODEL
 402 GRANI AVENUE
 CAPITOLA, CA 95010

DESIGNED BY
 WAYNE MILLER
 P.O. BOX 1305
 SHINGLES SPRING, CA 95062
 (916) 678-1830



EXHIBIT NO. E
 APPLICATION NO.

A-3-CA2-00-105



BOB & PAM TOMASELLI RESIDENCE
REMODEL
402 GRAND AVENUE
CAPITOLA, CA 95010

DESIGNED BY
WAYNE MILLER
P.O. BOX 1365
GRAND SPRINGS, CA 95082
(916) 878-1420



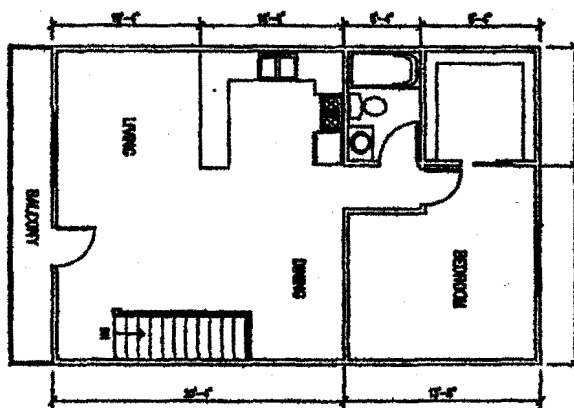
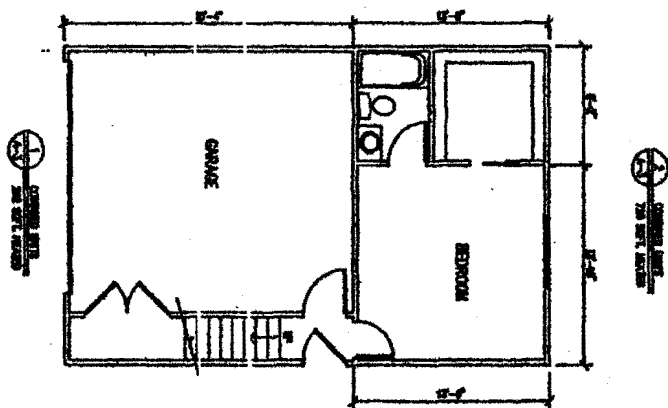
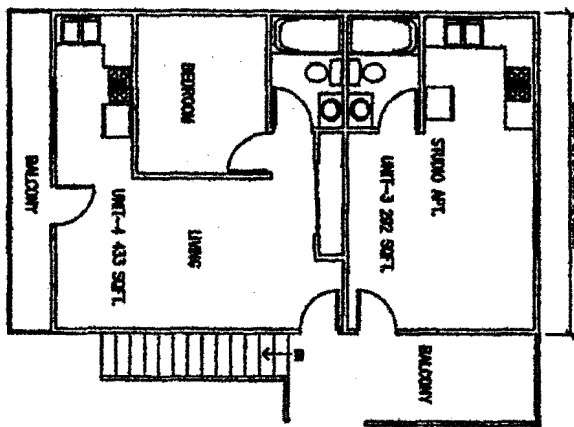
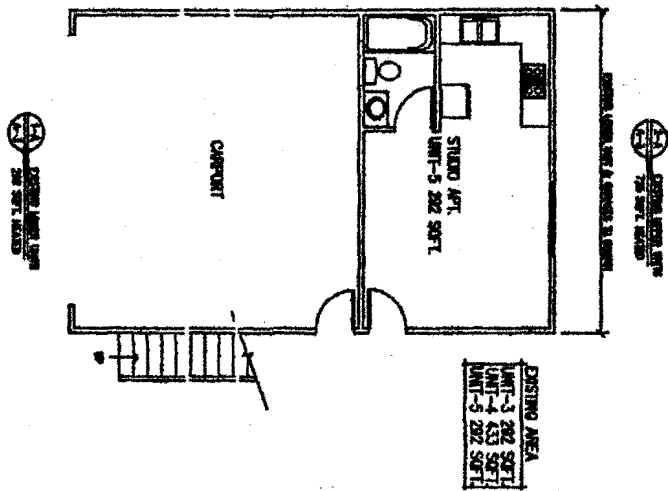
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APPLICATION NO.

A-3-CA8-00-105

California Coastal Commission

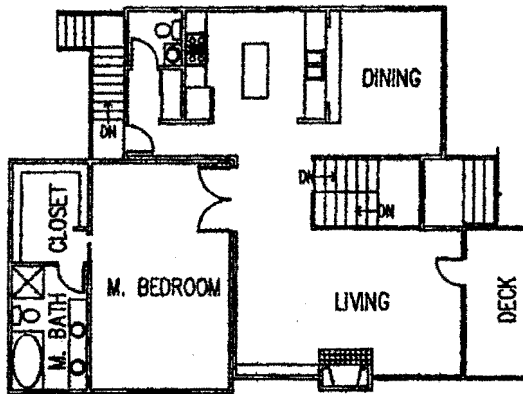
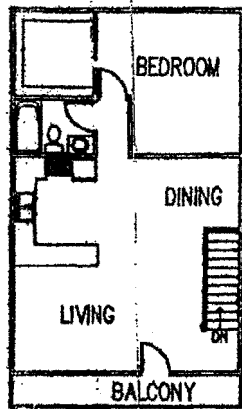
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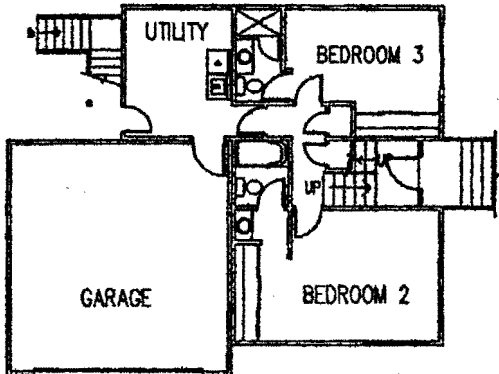
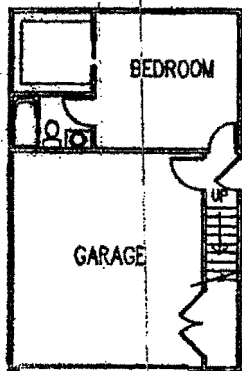


BOB & PAJ TOWASELLI RESIDENCE CONVERSION OF 3 APARTMENT UNITS TO 1 APARTMENT 402 GRAND AVENUE CAPITOLA, CA 95010		DESIGNED BY WAYNE MILLER P.O. BOX 1306 SHIPLEY SPRINGS, CA 95082 (916) 870-1888		
A-3	1/8" = 1'-0"	3/25/96	EXHIBIT NO. E APPLICATION NO. A-3-CAP-00-105	

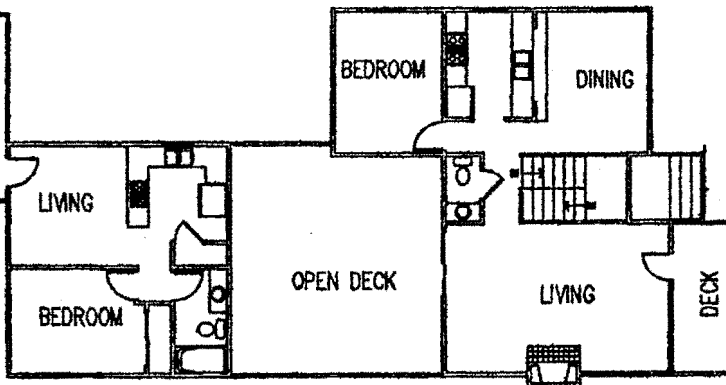
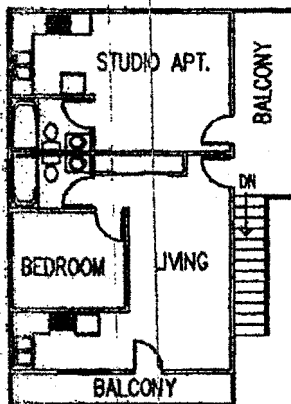
California Coastal Commission



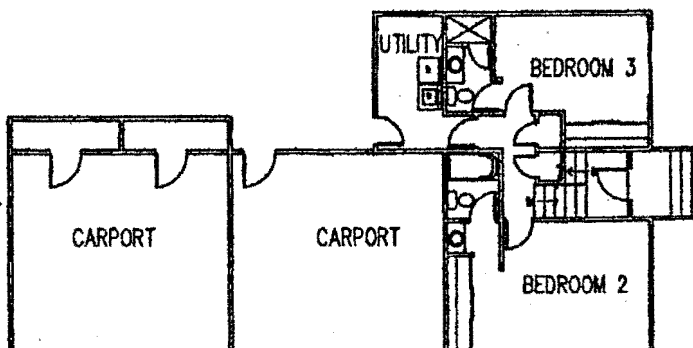
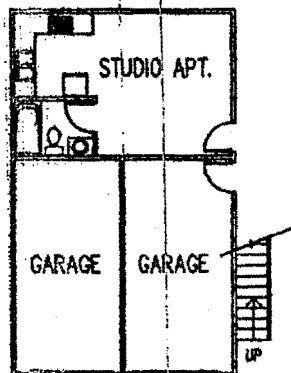
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1 PROPOSED LOWER FLOOR PLANS
P-1 1002 SQFT. HEATED



2-E EXISTING UPPER FLOOR PLANS
P-1 2045 SQFT. HEATED



1-E EXISTING LOWER FLOOR PLANS
P-1 1002 SQFT. HEATED

WAYNE MILLER
DESIGNER

DESIGNED BY
WAYNE MILLER
P.O. BOX 1395
SHINGLE SPRINGS, CA 95962
(916) 678-1620

BOB & PAM TOMASELLI RESIDENCE
CONVERSION OF 3 APARTMENT UNITS TO 1 APARTMENT & COMBINING W/RESIDENCE
402 GRAND AVENUE
CAPITOLA, CA 95010

EXHIBIT NO. E

APPLICATION NO.

A-3-CAP-00-105

California Coastal Commission

