

CALIFORNIA COASTAL COMMISSION

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REGULAR COASTAL DEVELOPMENT PERMIT

Application number3-00-020 (V-3-98-031)

ApplicantAlex Stackpole and Spencer Harte Morgan Stackpole

RepresentativeMark Blum, Attorney

Local governmentMonterey County

Project location112 Yankee Point Drive, Carmel Area, Monterey County (APN 243-161-017 and 243-161-018).

Project descriptionAfter-the-fact installation of 195 linear feet of 6-ft high metal fence along Yankee Point Drive and first 18 feet of coastal accessway leading to Malpasos Beach, 255 linear feet of 4-ft high wood and wire fence along coastal accessway, and installation of landscaping, irrigation and pathways on western parcel.

File documentsCoastal Permit files: P-77-596 (LaMonica), P-80-421 (Schraeder fence), V-3-98-031 (Stackpole Violation), 3-00-020 (Stackpole), Carmel Area Land Use Plan.

Staff recommendationApproval with Conditions

Summary of Staff Recommendation

Staff recommends that the Commission approve the Coastal Development Permit, subject to conditions included herein and find that the project is in conformance with the Coastal Act. Approval has been conditioned to protect scenic views from Highway One, public access from Yankee Point Drive to Malpasos Beach, and potential archeological resources onsite. The project site is located on two parcels that front Yankee Point Drive, in the Carmel Highlands area of Monterey County. The two parcels are located immediately north of Malpasos Creek, and a coastal access trail to Malpasos Beach is located at the western property boundary. Malpasos Creek Bridge also provides coastal views of the creek and coastal bluffs from Highway One.

The Coastal Commission and the County have had a long, continuous commitment to preserving scenic resources and coastal access in this area. The Commission has previously required that development adjacent to Malpasos Creek use a "stringline method" to preserve scenic resources and views from Highway One to the coast. Most recently, the Commission approved the development of



California Coastal Commission *RS4*

a residence on the parcel adjacent to the subject site by limiting development north of the "line of sight 'Y'" which was established from the south side of the Malpas Creek Bridge and previously existing development at that time.

The same "line of sight 'Y'" stringline has been applied in this case to limit development and preserve scenic blufftop views. The subject project is requesting an after-the-fact permit for construction of perimeter fencing across both parcels along Yankee Point Drive and along the western property boundary of the western parcel. The project also includes landscaping and irrigation improvements that have been constructed on the previously undeveloped western parcel. The permit has been conditioned to protect visual resources in this area by providing a scenic protection area within the Malpas Creek viewshed and does not allow any development to be located in this area. The permit has also been conditioned to protect public access to Malpas Creek and to mitigate for any archaeological impacts that may occur.

Staff therefore recommends approval of the project with findings that, as conditioned, there would be no adverse impacts to coastal resources or public access and the amendment request is consistent with the Chapter 3 policies of the Coastal Act.

Staff Report Contents

1. Staff Recommendation on Amendment.....	3
2. Conditions of Approval.....	3
Standard Conditions.....	3
Special Conditions.....	4
3. Recommended Findings and Declarations.....	6
A. Project Location and Description.....	6
Project Location.....	6
Project Description.....	6
C. Coastal Act Issues.....	7
1. After-the-Fact Development.....	7
2. Scenic Resources.....	7
3. Public Recreation and Access.....	10
4. Hazards.....	11
D. California Environmental Quality Act (CEQA).....	13
4. Exhibits	
A. Regional Location Map	
B. Project Vicinity Map	
C. Parcel Map	
D. "Line of Sight 'Y'" Stringline used in previous Coastal Development Permits	
E. Project Plans, Landscaping Plans and Trail Usage Notice	
F. Carmel Area Land Use Plan Viewshed Map	
G. Photos of Existing Structures on Site	
H. Conditions of Previous Permit P-77-596	



1. Staff Recommendation on Permit

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

***Motion.** I move that the Commission approve the Coastal Development Permit Number 3-MCO-00-020 pursuant to the staff recommendation.*

***Staff Recommendation of Approval.** Staff recommends a **YES** vote. Passage of this motion will result in approval of that permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.*

***Resolution to Approve a Coastal Development Permit.** The Commission hereby approves the coastal development permit on the ground that the development, subject to conditions included herein, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment.*

2. Conditions of Approval

Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit amendment is not valid and development shall not commence until a copy of the permit amendment, signed by the permittee or authorized agent, acknowledging receipt of the permit amendment and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.



Special Conditions

1. **Condition Compliance for After-the-Fact construction.** Within 90 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all prior-to-issuance requirements specified in the conditions below. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.
2. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the plans submitted to the Commission (titled "Revised Fence and Landscape Plan" by Thomas S. Deyerle, ASLA, last dated revised April 2001; dated received in the Commission's Central Coast District Office May 3, 2001) but shall show the following changes to the project:
 - (a) **Landscaping in Area between Scenic Preservation Area and Yankee Point Drive.** Plans shall clearly identify the type, size, extent and location of all plant materials, any proposed irrigation system, walkways, drainage improvements, and other landscape features for the area located between the Scenic Preservation Area and Yankee Point Drive. All plants to be used should be drought tolerant, non-invasive, native plant species appropriate to the site. Landscaping shall not include any plantings that would substantially block existing views across the parcel (i.e., hedges or dense shrubs or trees that substantially block the public view from Yankee Point Drive shall not be allowed). No plantings shall be allowed in the area directly adjacent to Yankee Point Drive on current Assessor Parcel Number 243-161-017 except for low growing (less than one foot tall) groundcovers and/or shrubs.
3. **Trail Sign.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall record the approved revised Trail Usage Notice, submitted May 2, 2001, with the Office of the Recorder of the County of Monterey and shall submit a copy of the recorded document for Executive Director review. The approved revised Trail Usage Notice shall not be altered without a Commission amendment to this coastal development permit unless the Executive Director determines in writing that no amendment is necessary upon notification from the Permittee of a proposed change to the approved revised Trail Usage Notice.
4. **Deed Restriction for Scenic and Public Access Protection.**
 - (a) **Scenic Preservation Area.** The area defined as follows shall be known as the Scenic Preservation Area: the area of current Assessor Parcel Numbers 243-161-018 and 243-161-017 to the south of a straight line of sight established by the following two points: (1) the south end of the Highway One bridge over Malpas Creek; and (2) the extent of residential development on current Assessor Parcel Number 243-161-015 (see Exhibit D). No development, as defined in Section 30106 of the Coastal Act, shall occur in the Scenic Preservation Area except for (1) installation of drought and salt-water resistant, non-invasive native shrubs and grasses with maximum heights of 4 feet or less indicative of the Malpas Creek coastal terrace area, and (2) installation and subsequent removal of a temporary drip



irrigation system needed (if any) to establish the approved plantings in the Scenic Preservation Area, as identified on the approved Revised Project Plans (see Special Condition 1).

- (b) Old Coast Road Trail.** The area defined as follows shall be known as the Old Coast Road Trail: the existing trail that extends from Yankee Point Drive through to Malpasos Beach along current Assessor Parcel Numbers 243-161-017 and 243-161-015 roughly identified on Exhibit D. The Old Coast Road Trail area shall be kept free of structures that would hinder the ability of the public to use said trail access (see Exhibit G Photos). No development as defined in Section 30106 of the Coastal Act, including but not limited to gates, fences, signs, hedges, or plants, shall occur in the existing trail area except for the installation of the approved Revised Trail Usage Notice required by Special Condition 2 of this approval.

By acceptance of this permit, the Permittee acknowledges and agrees to 4a and 4b, above.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall execute and record a deed restriction in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition for the purpose of protecting scenic resources and public access. The Scenic and Public Access Protection Deed Restriction (Deed Restriction) shall apply to the Scenic Preservation Area and the Old Coast Road Trail (Deed Restricted Area) and shall include a legal description and site plan of: (1) current Assessor Parcel Numbers 243-161-018 and 243-161-017; (2) the Scenic Preservation Area; and (3) the Old Coast Road Trail. The Deed Restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. The Deed Restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

5. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the current Assessor Parcel Numbers 243-161-018, 243-161-017, and 243-161-015. The Permittee shall not use this permit as evidence of a waiver of any public rights that may exist on these properties.
6. **Archaeological Resources.** Should archaeological resources be discovered at the project site during any phase of construction allowed by this permit, the Permittee shall stop work within 150 feet of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, an appropriate mitigation plan shall be prepared and implemented by a qualified professional archaeologist.
7. **Previous Conditions.** Unless specifically altered by this coastal development permit, all previous conditions of approval attached to Coastal Development Permit P-77-596 (Exhibit H) shall remain in full force and effect.



3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

Project Location

The project site is located on two parcels that front Yankee Point Drive, in the Carmel Highlands area of Monterey County (see Exhibit A Regional Location Map). The two parcels (APN 243-161-017 and 243-161-018) are located immediately north of Malpas Creek, and a coastal access trail to Malpas Beach is located at to the western property boundary (see Exhibit B Vicinity Map and Exhibit C Parcel Map).

The subject parcel is located in an area at the northern edge of Monterey County's Big Sur Coast planning area where special care has been undertaken to avoid development which could impact coastal views from State Highway One. In this area, the Highway One Malpas Creek Bridge provides coastal views of the creek and coastal bluffs. The Commission has therefore conditioned previous developments on adjacent properties to retain native bluff-top vegetation, provide scenic easement across the blufftop, and to restrict fencing and landscaping impacts on the visual resources.

Although Monterey County has a certified local coastal program, the subject sites are located in an area of deferred certification. There are unresolved public access issues in this enclave of five private parcels and the parcel on which Malpas Beach is located. Therefore, the Coastal Commission retains coastal permit jurisdiction over the two subject sites, and the standard of review for coastal development permits in this area is the Coastal Act.

Project Description

The project involves the after-the-fact construction of perimeter fencing along Yankee Point Drive (across both APN 243-161-108 and 243-161-017) and along the western property boundary of the western parcel (APN 243-161-017). A two-story single family dwelling has been previously approved by the Commission in June of 1977 (CDP P-77-596). This residence has since been constructed on the eastern parcel (243-161-018). The western lot (APN 243-161-017) has not been previously developed, however the project includes after-the-fact landscaping and irrigation improvements that have been constructed on this western parcel. The fencing and landscaping improvements that are part of this project are shown in Exhibit E.

As shown in the site plans, the proposed fencing includes a 100 foot long, 6-foot high metal fence along Yankee Point Drive (approximately 55 linear feet across parcel 243-161-018 and approximately 45 linear feet across parcel 243-161-018), approximately 18 linear feet of the same fencing along the public accessway that leads to Malpas Beach, and a 225-foot long, 4-foot high



wood-and-wire fence that extends the rest of the length along the public accessway, along the west side of parcel 243-161-017. The metal and wood-and-wire fencing located along the west side of parcel 243-161-017 have been placed five feet east of the property boundary, which, along with a 5-foot dedicated easement on the adjoining parcel (APN 243-161-015), provides a 10-foot wide accessway to the beach. The project will, therefore, not impact public access along the existing trail. To ensure that this public access shall remain, the applicants have also posted a statutory notice for public right to pass through that part of the public accessway owned by the applicants.

C. Coastal Act Issues

1. After-the-Fact Development

Although "development," described as "installation of perimeter fencing, gates, irrigation and landscaping," has occurred prior to submission of the coastal permit application for this project, the Coastal Commission review of this application is based on conformance with Chapter 3 policies of the Coastal Act. This application is to retain the fencing, irrigation and landscaping; the gate has been removed and is not included in this application. Review of this permit request does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission acts on this application without prejudice and acts on it as if the existing development had not previously occurred. However, since development has occurred in violation of the Coastal Act, conditions are also included to resolve the violation through mitigating impacts that have occurred.

2. Scenic Resources

The main issue involved with this permit application is protection of public coastal views and scenic resources. Coastal Act section 30251 governs:

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

Although not the standard of review, the Carmel Area Land Use Plan (LUP) offers guidance with regards to visual resources. The Carmel Area LUP visual resource policies¹ require that development be designed and sited so that it does not detract from the natural beauty of the scenic shoreline within the public viewshed (2.2.3.1) and that structures be subordinate to and blended into the environment using appropriate materials that will achieve that effect (2.2.3.6). The applicants'

¹ These policies are cited for illustrative purposes. They are certified as applying to the Carmel Area, but not to the subject sites, because the sites are in an area of deferred certification, due to unresolved public access issues.



site includes two of the three lots with frontage on Malpas Creek, which are located within the public viewshed as mapped by the County LCP (and shown in Exhibit F). Thus the project site forms a significant part of the viewshed north of Malpas Creek.

The Coastal Commission and the County have had a long, continuous commitment to preserving the scenic resources in this area, pursuant to the Coastal Act directives of Section 30251. The Commission has previously required that development within the Malpas Creek viewshed use a "stringline method" to preserve scenic resources and views from Highway One to the coast. Most recently, the Commission approved the development of a residence on the parcel adjacent to the subject site by limiting development north of the "line of sight 'Y'" stringline, which was established from the south side of the Malpas Creek Bridge and previously existing development at that time (as shown in Exhibit D).

The same "line of site 'Y'" stringline should be applied in this case to limit development and preserve scenic blufftop views within the public viewshed. The proposed project currently includes fencing and landscaping that extend south of the "line of sight 'Y'" stringline, which detract from the natural beauty of the scenic shoreline within the public viewshed and may introduce invasive non-native plant species into the native coastal sage scrub habitat. Therefore, this permit has been conditioned to require the removal of both fencing and hedging constructed south of the "line of sight 'Y'" stringline. Any landscape plantings allowed south of the "line of sight 'Y'" stringline will be restricted to native, drought tolerant species with growth habits under four (4) feet in height that require no additional water once established.

The applicants installed and originally requested County design approval for a vertical split rail metal fence. The Carmel Area Advisory Committee noted the importance of retaining views and so recommended the metal fencing be approved and that landscaping be provided along the Yankee Point frontage to soften the appearance of the metal fence. However, the County's design Approval was granted for a solid wooden fence to replace the metal fence that had been installed. Thus the applicants' plans show either a metal fence (sheet 2A of 2) or a solid redwood fence (2B of 2).

However, since a solid 6-foot high wooden fence would block coastal views currently provided across the western parcel from Yankee Point Drive, the vertical split rail metal fence, which provides greater visual coastal access toward and across Malpas Creek, is the preferable design. This permit therefore requires that the existing metal fence design be retained and that only low-growing plantings that would not block views across the parcel be allowed between the Yankee Point Drive and the line of sight "Y". Landscape screening is also provided along the metal and wood-and-wire fencing located along the western boundary, but as described above, will not be allowed to extend south of the "line of sight 'Y'" stringline.

This permit application was originally scheduled for a Commission hearing in February of 2001, with a previous staff report prepared 1/25/01. The Commission hearing on this item, however, was postponed at the request of the applicant. The applicants have subsequently submitted revised fencing and landscaping plans (dated revised April 2001, and stamped received by Central Coast District office May 3, 2001) that generally conform to the recommended conditions of the previous



staff report, except for proposed plantings located near Yankee Point Drive that have the potential to block public views. More specifically, the revised plans conform to the following portions of recommended Special Condition #2 of the 1/25/01 staff report:

2. **Revised Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit Revised Project Plans to the Executive Director for review and approval. The Revised Project Plans shall be substantially in conformance with the plans submitted to the Commission (titled "Fence and Landscape Plan" by Neill Engineers Corp., last dated revised September 2000; dated received in the Commission's Central Coast District Office December 3, 2000) but shall show the following changes to the project:

(a) **Scenic Preservation Area.** Plans shall include identification of a Scenic Preservation Area. The Scenic Preservation Area shall be defined as the area of current Assessor Parcel Numbers 243-161-018 and 243-161-017 to the south of a straight line of sight established by the following two points: (1) the south end of the Highway One bridge over Malpas Creek; and (2) the extent of residential development on current Assessor Parcel Number 243-161-015. See Exhibit D.

(b) **Extent of Fencing.** Fencing shall not be allowed in the Scenic Preservation Area. Plans shall show all fencing removed from this area.

(c) **Type of Fencing.** All fencing along the street frontage of Yankee Point Drive shall be see-through wrought iron no higher than six (6) feet as measured from existing grade. All fencing extending to the south perpendicularly from Yankee Point Drive for a total distance of 18-20 feet shall be see-through wrought iron no higher than 6 feet as measured from existing grade. All fencing extending to south from a point roughly 18-20 feet from Yankee Point Drive to a point intersecting the Scenic Preservation Area shall be wire mesh and wood poles no higher than 4 feet as measured from existing grade. See Exhibit E.

(d) **Landscaping in Scenic Preservation Area.** Landscaping located in the Scenic Preservation Area shall be drought and salt-water resistant, non-invasive native shrubs and grasses with expected maximum heights of 4 feet or less indicative of the Malpas Creek coastal terrace area. All Hakea plants shall be removed from the plans. Plans shall clearly identify the type, size, extent and location of all plant materials and any temporary drip irrigation system needed (if any) to establish the plantings. A schedule for removal of any temporary drip irrigation system after the plants have successfully established shall be provided.

(e) **Landscaping in Area Between Scenic Preservation Area and Yankee Point Drive.** Plans shall clearly identify the type, size, extent and location of all plant materials, any proposed irrigation system, walkways, drainage improvements, and other landscape features for the area located between the Scenic Preservation Area and Yankee Point Drive. No plantings shall be allowed in the area directly adjacent to Yankee Point Drive on current Assessor Parcel Number 243-161-017 except for low growing (less than one foot tall) groundcovers and/or shrubs.

All landscaping shall be installed within 30 days of Executive Director approval of the Revised Project Plans.



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

The revised landscaping and fencing plans (dated revised April 2001), however, also currently include non-native plantings between Yankee Point Drive and the Scenic Preservation Area that have the potential for blocking views across the parcel. This permit has, therefore, been conditioned to require revised landscaping plans that do not include any plantings that would substantially block existing views across the parcel. Following conversation with Commission staff, the applicants submitted a handwritten revision of the landscape plan that conforms to this condition, and notes that the existing *Myoporum*, *Acacia* & *Olea* plantings would be replaced with *Ceanothus* "Yankee Point," *Artemesia californica* and *Arctostaphylos* spp. (low, native types).

As conditioned, the project is consistent with the local LCP policies for development in the public viewshed and is consistent with Coastal Act Section 30251 protecting scenic and visual resources.

3. Public Recreation and Access

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."

The Coastal Act protects public access to the sea with the following policies:

Section 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.*

Section 30212 (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby...*

The project is located seaward of Yankee Point Drive, and so is located between the nearest public road and the sea. Public access to the shoreline at Malpasos Beach is currently provided along a path that extends from Yankee Point Drive, along the western edge of the western parcel (243-161-017) toward the bluff edge, where it bends east and drops down to Malpasos Creek. A five-foot wide easement has been provided on the adjacent parcel (243-161-015) through an irrevocable offer to dedicate vertical coastal access to Malpasos Beach. On the subject property, the fence has been set back five feet from the western property line, providing an additional five-foot width to the trail for a total 10-foot wide coastal accessway. The applicants originally offered to post a notice granting the public the right to pass along this portion of the accessway during daylight hours. The project as currently revised, does not include any gate across the accessway that would limit public use. The



proposed location of the fence at the edge of the pathway, the recording of a revised Trail Usage Notice, and the fact that no gate currently blocks the accessway nor is requested are positive attributes of this project. However, to ensure that there are no further unpermitted efforts to block the accessway in the future, it is important to memorialize these through a deed restriction. Additionally, since the public right to pass notice should reflect no limitations on the public's ability to use the accessway (i.e., no restrictions for use to daylight hours only), a revised Trail Usage Notice was submitted (with correspondence dated May 2, 2001) which does not include the "daylight hours" use restriction (Exhibit E7). This permit has been conditioned to require the recordation of this notice with the Monterey County Recorder's office.

The Commission notes that the Coastal Act allows restrictions on access where it is shown to be inconsistent with public safety or the protection of fragile coastal resources. The County local coastal program, which remains uncertified for this area and hence not applicable, has a general provision requiring access management plans for accessways to be open to the public. In the future, as part of certification of the LCP for this area, or as part of a public agency accepting the offer to dedicate on the adjacent parcel (the Coastal Conservancy has been authorized to accept, but has not yet done so); and/or as part of a future offer to dedicate the trail on the subject parcel to the public, a reevaluation of possible limitations on the times that public access is allowed would be appropriate. For now, however, this coastal permit simply seeks to preserve the status quo of an open, unrestricted historic trail (once the County's original coast road). As so conditioned, the proposed project is consistent with Section 30604 and the cited public access policies of the Coastal Act.

Also, as noted, the proposed project site is in an area of deferred certification. The Coastal Commission found the public access provisions (and lack thereof) of the *Carmel Area Land Use Plan* inconsistent with the Coastal Act and thus did not approve the LUP as applying to this subject enclave at Malpasos Beach. It is thus necessary at a minimum to preserve the existing access opportunities that have been available to the public in this (and any) coastal permit application so as to avoid prejudicing completion of the LCP. As conditioned to do so, the proposed project will not prejudice completion of a local coastal program for this area of deferred certification that is consistent with the Coastal Act.

4. Hazards

The Coastal Act Section 30253 requires that:

Section 30253. *New development shall:*

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*



The proposed development is not expected to create or contribute significantly to erosion, geologic instability or destruction of the site or surrounding area, and will not substantially alter natural coastal landforms. The proposed fencing has already been installed, and occupies a minimum of space on the gently sloping lot. As landscaping has been conditioned to require the use of native drought tolerant species, irrigation needs are expected to be minimal and so should not create any significant erosion.

Therefore, the Commission finds that, as conditioned, the requested amendment is consistent with the hazard protection policies of the Coastal Act.

5. Archeological Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

No archaeological surveys were conducted prior to construction of the perimeter fencing and landscaping on site. Archaeologically sensitive resources have been found on the adjacent parcel (APN 243-161-015), and are known to occur on this site as well. The previous staff report (dated 1/25/01) therefore included the following condition to determine if any archaeological resources had been impacted by the unpermitted development that had occurred (i.e., from excavations/installation of fence posts, irrigation lines and grading):

2(f) Archaeological Evaluation. Plans shall include an Archaeological Evaluation of current Assessor Parcel Numbers 243-161-018 and 243-161-017 conducted by a qualified professional archaeologist that shall identify: (1) the extent of archaeological resources present; (2) the extent to which construction activities that have already occurred without benefit of a coastal development permit impacted any archaeological resources present; (3) the extent to which proposed construction activities would impact any archaeological resources present; and (4) recommended mitigation measures for any identified impact to archaeological resources.

The Archaeological Evaluation and mitigation plan shall be submitted to the Executive Director for review and approval prior to implementation; if the Executive Director determines that a Commission amendment to this coastal development permit is necessary to implement the archaeological mitigation plan, the Permittee shall submit an application to amend this coastal development permit within 30 days of said Executive Director determination.

All mitigation measures identified by the approved Archaeological Evaluation shall be shown on the Revised Project Plans. Plans shall include plan notes that indicate that should archaeological resources be discovered at the project site during any phase of construction allowed by this permit, the Permittee shall stop work within 150 feet of the find until it can be evaluated by a qualified professional archaeologist. If the find is determined to be significant, an appropriate



mitigation plan shall be prepared and implemented by a qualified professional archaeologist.

The Revised Project Plans shall be submitted with evidence of review and approval (or evidence that none is necessary) from: (1) the appropriate Monterey County official(s); and (2) the qualified professional archaeologist who conducted the Archaeological Evaluation.

The applicant subsequently submitted a letter from a qualified archaeological consultant, Mr. Gary S. Breschini (dated March 18, 2001), stating that an archaeological evaluation of the site was conducted and that it appears that no damage has occurred to the archaeological resources located on site. The archaeological consultant further indicated (pers. comm. 5/22/01) that no revised plans or archaeological mitigation measures are necessary with regards to protecting known archaeological resources since the extent of the archaeological site is limited to a small portion of the property outside the area of any previous or proposed construction activities.

However, since any future construction activities may disturb additional undiscovered archeological resources, the permit still requires that should archaeological resources be discovered at the project site during any phase of construction allowed by this permit, work will be halted within 150 feet of the find until it can be evaluated by a qualified professional archaeologist, and a mitigation plan developed if the find is deemed significant.

Therefore, as conditioned to protect archaeological resources that exist or may be found to exist onsite, the project is consistent with Coastal Act policy 30244.

D. 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 that the activity may have on the environment. The Secretary for Resources has certified the Coastal Commission's review and analysis of land use proposals 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 that would significantly reduce any potential adverse effects; and, accordingly, the proposal, as conditioned, is in conformance with CEQA requirements.



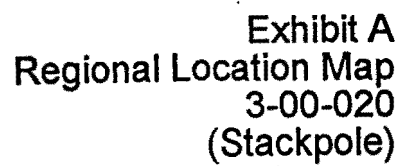


Exhibit A
Regional Location Map
3-00-020
(Stackpole)

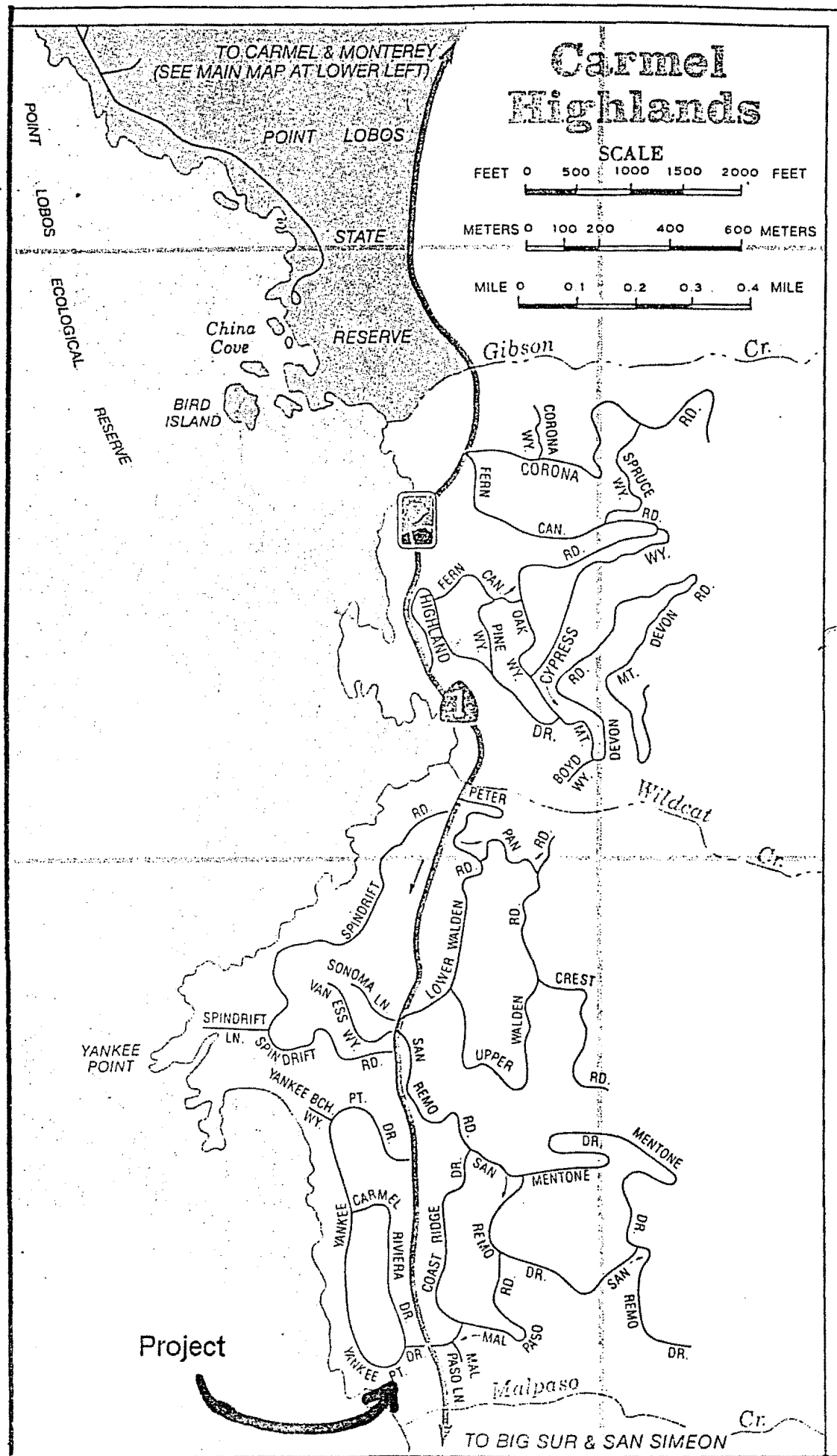
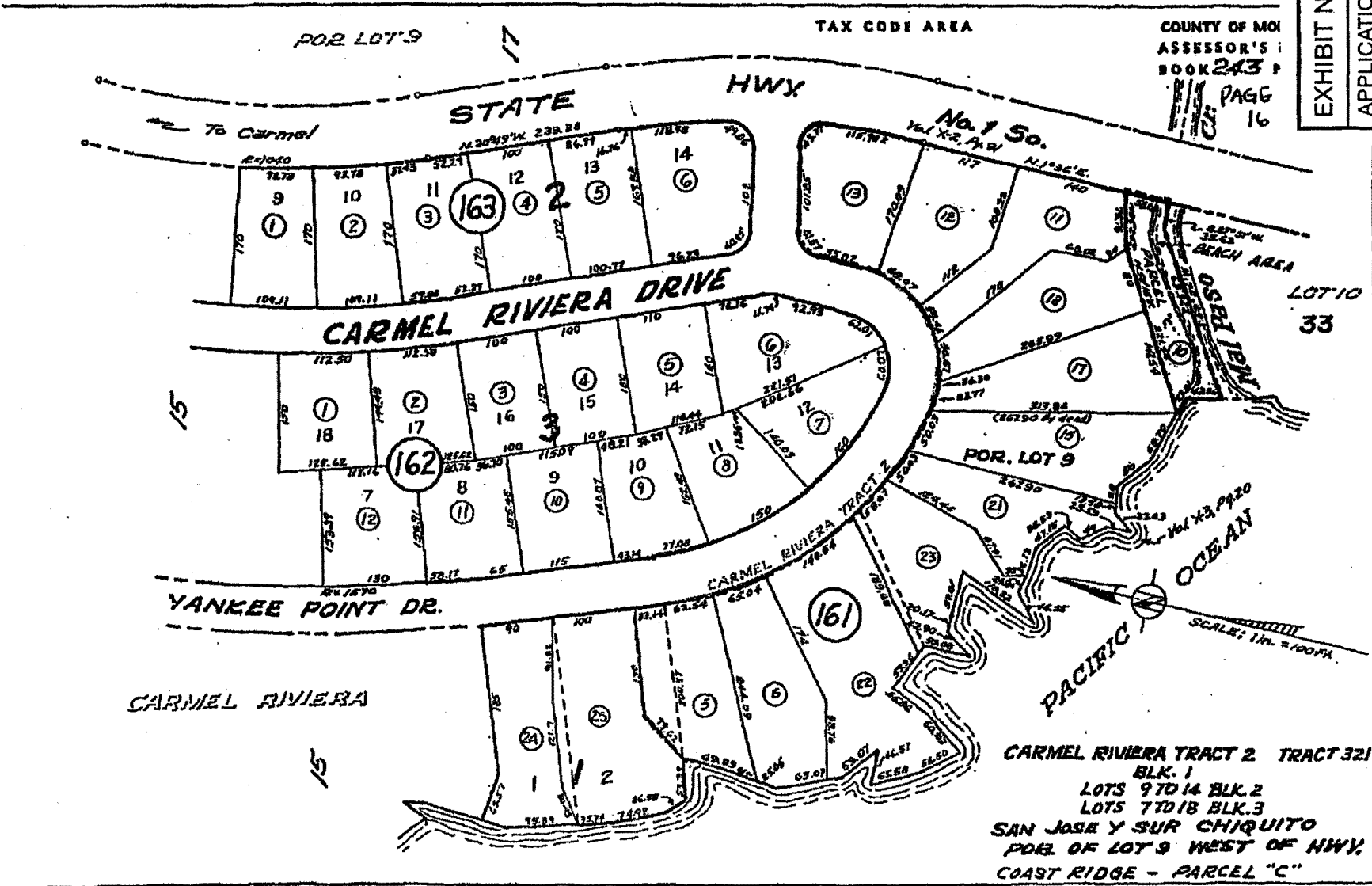


Exhibit B
Vicinity Map
3-00-020
(Stackpole)

EXHIBIT NO. **C**
APPLICATION NO. **3-00-020**
ASSESSOR'S **PARCEL MAP**
COUNTY OF MONTEREY
ASSESSOR'S BOOK **243** PAGE **16**
California Coastal Commission

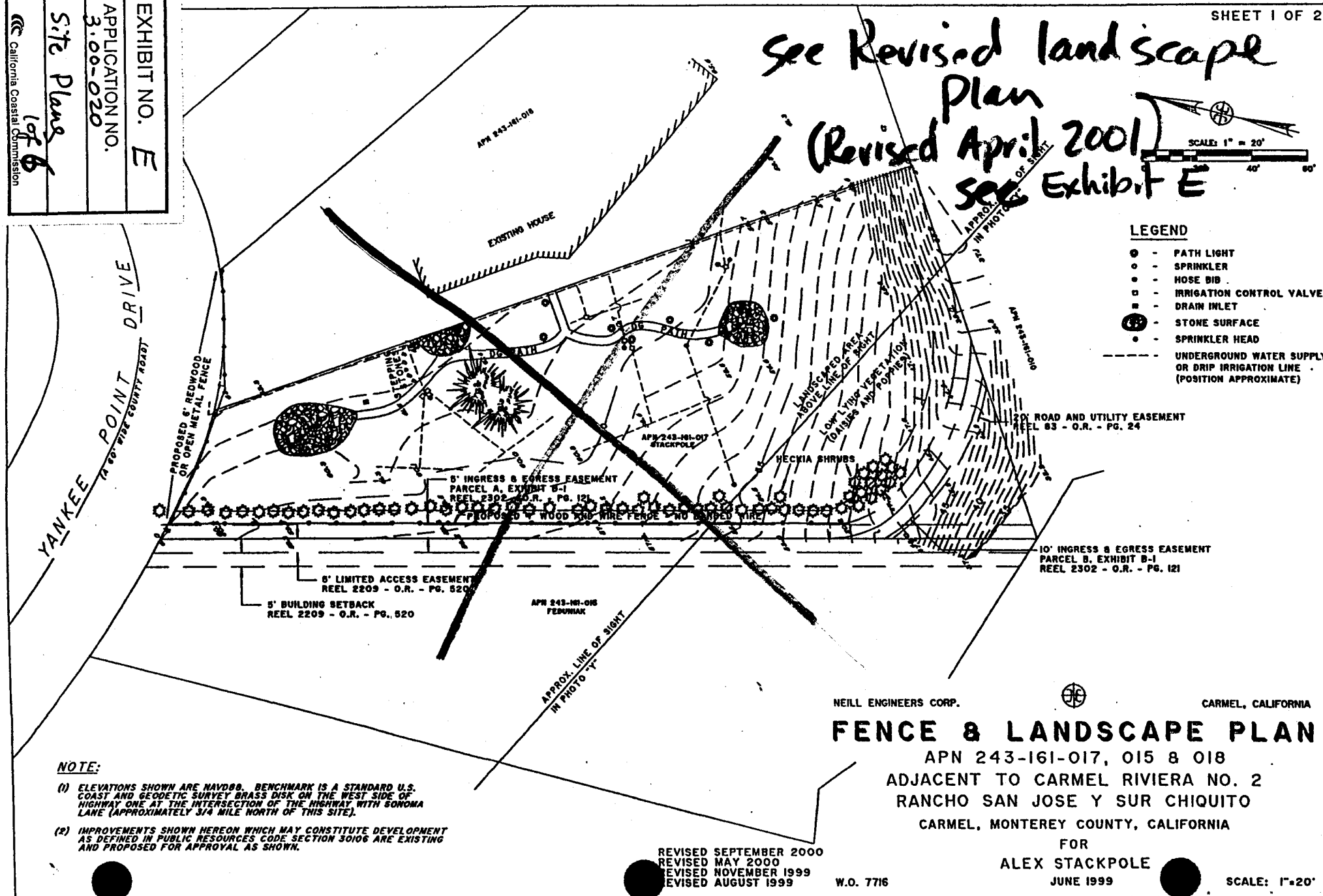


SUBJECT PROPERTY
PROPERTY WITHIN 100 FEET

See Revised landscape
Plan
(Revised April 2001)
SEE Exhibit E



- - PATH LIGHT
- - SPRINKLER
- - HOSE BIB
- - IRRIGATION CONTROL VALVE
- - DRAIN INLET
- - STONE SURFACE
- - SPRINKLER HEAD
- - UNDERGROUND WATER SUPPLY OR DRIP IRRIGATION LINE (POSITION APPROXIMATE)



NEILL ENGINEERS CORP.

CARMEL, CALIFORNIA

FENCE & LANDSCAPE PLAN

APN 243-161-017, 015 & 018
ADJACENT TO CARMEL RIVIERA NO. 2
RANCHO SAN JOSE Y SUR CHIQUITO
CARMEL, MONTEREY COUNTY, CALIFORNIA

FOR
ALEX STACKPOLE

REVISED SEPTEMBER 2000
REVISED MAY 2000
REVISED NOVEMBER 1999
REVISED AUGUST 1999

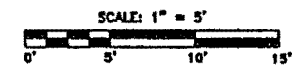
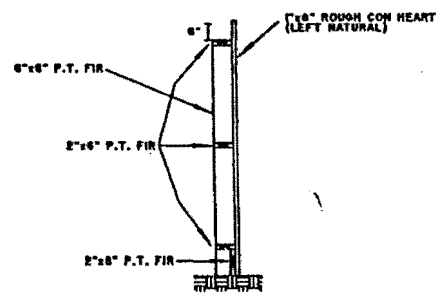
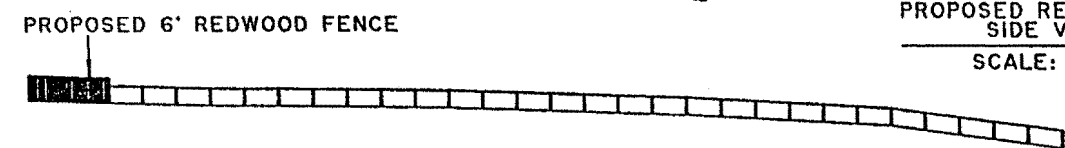
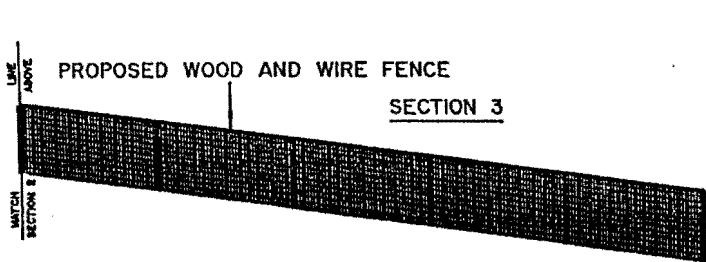
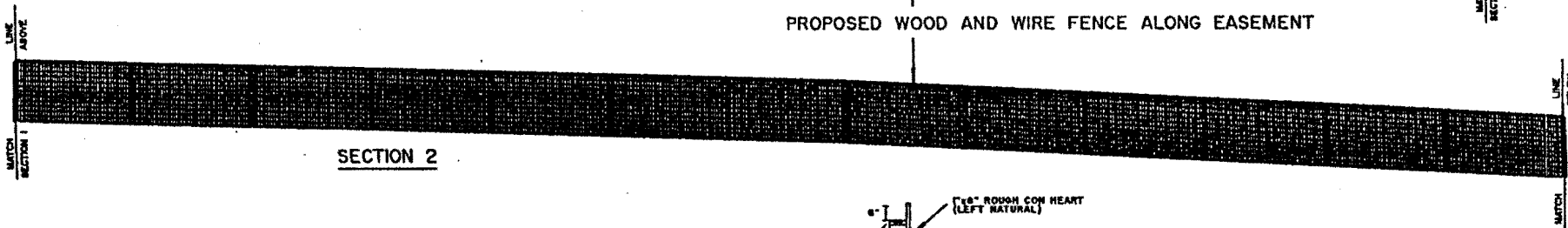
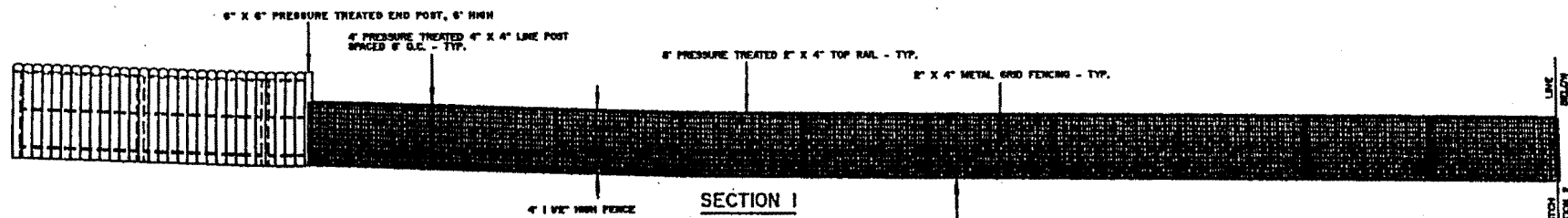
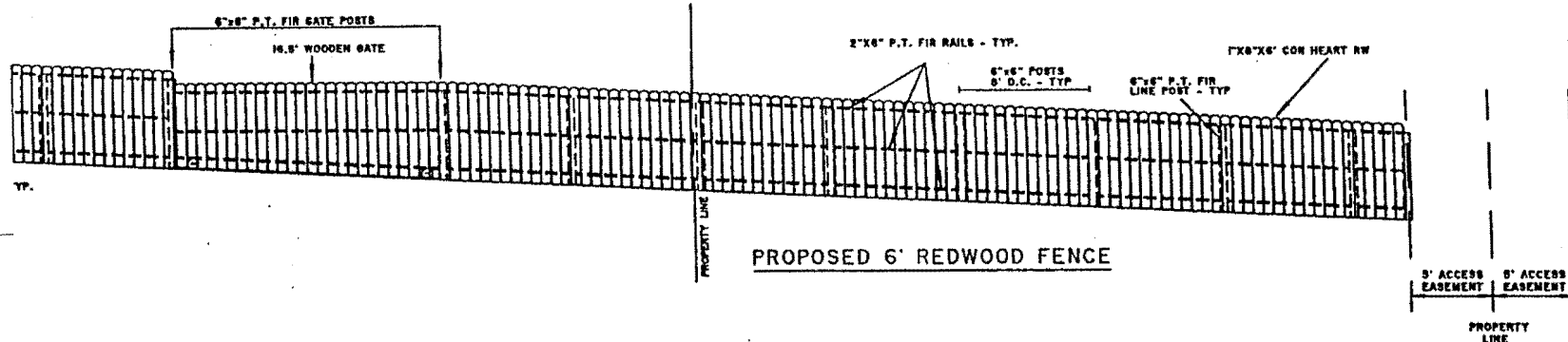
W.O. 7716

JUNE 1999

SCALE: 15-20'

EXHIBIT NO. E 246
 APPLICATION NO.
 3-00-020
 SITE PLANS &
 ELEVATIONS
 California Coastal Commission

SHEET 2A OF 2

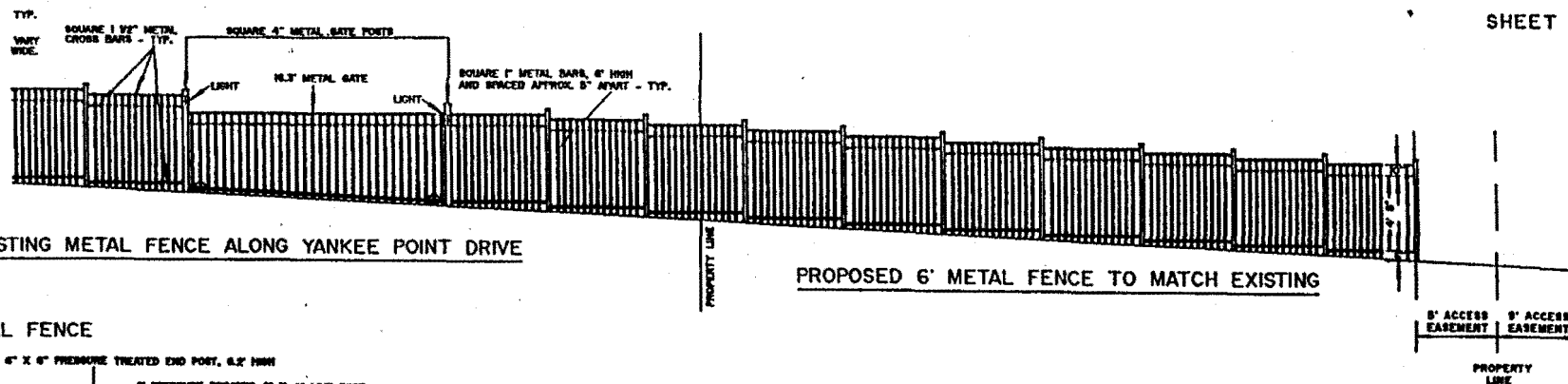


NEILL ENGINEERS CORP.
 CARMEL, CALIFORNIA
FENCE & LANDSCAPE PLAN
 APN 243-161-017, 015 & 018
 ADJACENT TO CARMEL RIVIERA NO. 2
 RANCHO SAN JOSE Y SUR CHIQUITO
 CARMEL, MONTEREY COUNTY, CALIFORNIA
 FOR
 ALEX STACKPOLE
 JUNE 1999
 SCALE: 1"=5'

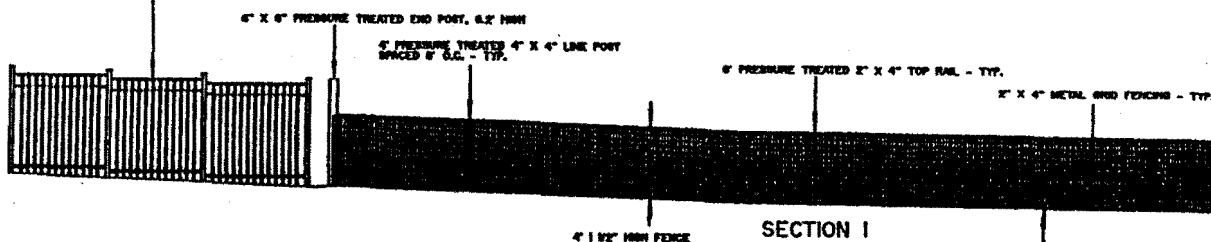
REVISED MAY 2000
 REVISED AUGUST 1999
 W.O. 77168

EXHIBIT NO. **E 346**
 APPLICATION NO. **3-00-020**
SITE PLANS
ELEVATIONS
 California Coastal Commission

SHEET 2B OF 2



PROPOSED 6' METAL FENCE



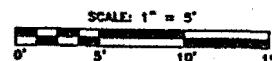
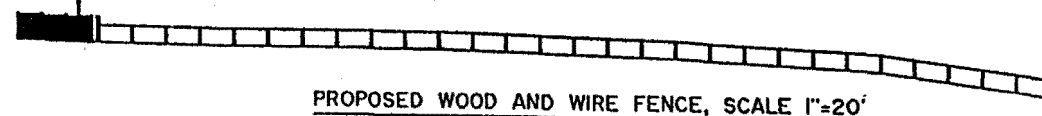
PROPOSED WOOD AND WIRE FENCE ALONG EASEMENT

SECTION 2

PROPOSED WOOD AND WIRE FENCE

SECTION 3

PROPOSED 6' METAL FENCE



NEILL ENGINEERS CORP.



CARMEL, CALIFORNIA

FENCE & LANDSCAPE PLAN

APN 243-161-017, 015 & 018

ADJACENT TO CARMEL RIVIERA NO. 2

RANCHO SAN JOSE Y SUR CHIQUITO

CARMEL, MONTEREY COUNTY, CALIFORNIA

FOR

ALEX STACKPOLE

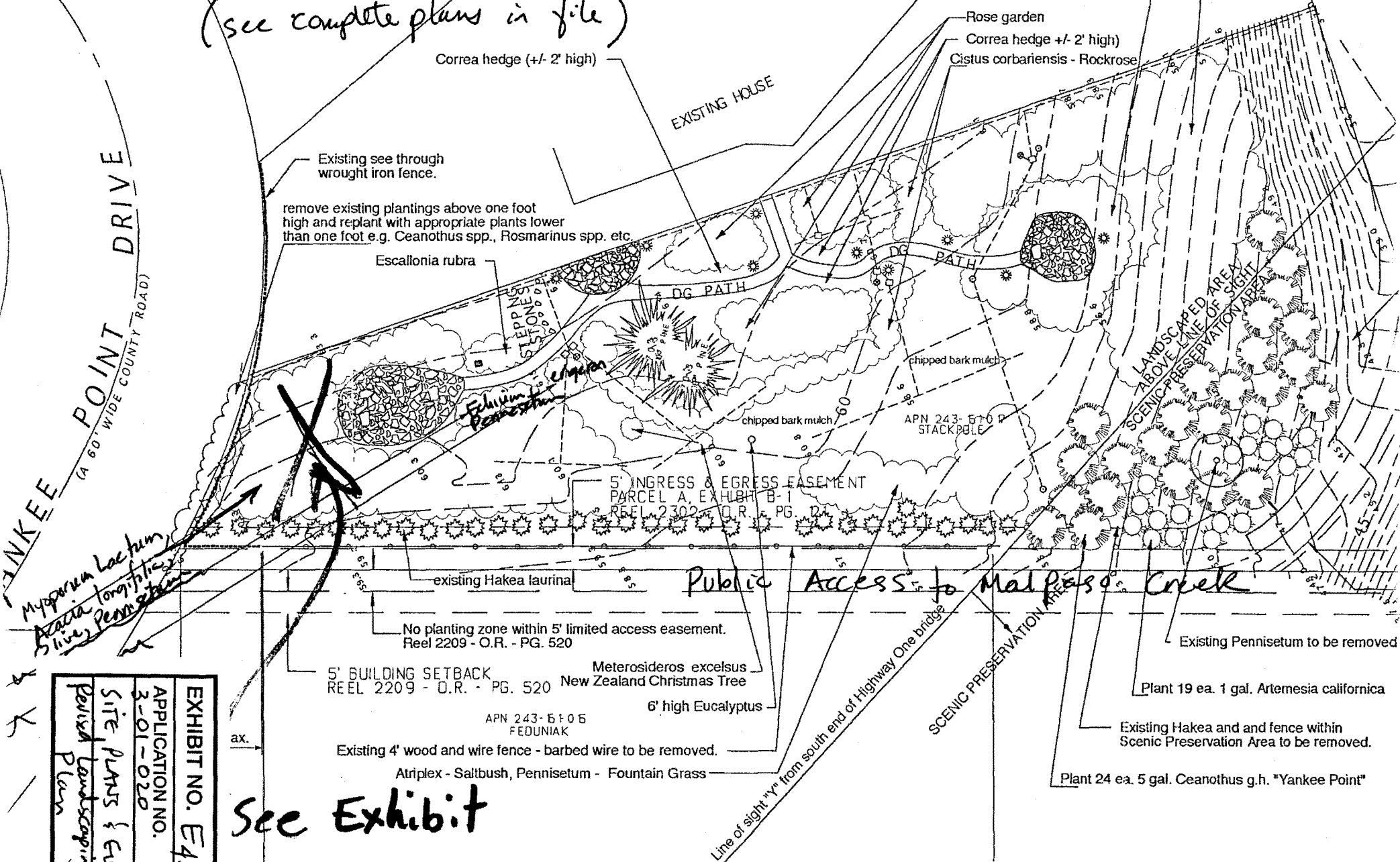
JUNE 1999

REVISED MAY 2000

W.O. 77168

SCALE: 1"=5'

From - Revised Fence & Landscape Plan - Stackpole Residence
 111, 112 Yankee Point
 Revised April 2001 - Thomas S. Dyerle, ASLA
 (see complete plans in file)



See Exhibit

EXHIBIT NO. E456
APPLICATION NO. 3-01-020
SITE PLANS & GEN PERIOD LANDSCAPING PLAN

EXHIBIT NO. E 5066
APPLICATION NO. 3-01-020
Revised Landscaping Plans

Landscaping in this area should be primarily low growing, native shrubs, plants or scattered trees appropriate to the site. Landscaping should not include any plantings that would block existing public views.

Myoporum laetum, Acacia longifolia - Sydney Golden Wattle, Olea - Olive, Pennisetum - Fountain Grass

Echium and Pennisetum

Erigeron - Santa Barbara Daisy

These are all non-native shrubs & trees that can grow to 30' h & 20' w and so would block coastal views currently provided across the western parcel from Yankee Dr..

YANKEE POINT DRIVE
(A 60' WIDE COUNTY ROAD)

20' max.

remove existing plantings above one foot high and replant with appropriate plants lower than one foot e.g. Ceanothus spp., Rosmarinus spp. etc.

Escallonia rubra

Correa hedge (+/- 2' high)

EXISTING HOUSE

Existing see through wrought iron fence.

APN 243-6108

Rose gar
Correa h
Cistus corb.

chipped bark mulch

chipped bark mulch

APN 243-6108 STACKABLE

5' INGRESS & EGRESS EASEMENT
PARCEL A, EXHIBIT B-1
REEL 2302 - O.R. - PG. 21

existing Hakea laurina

No planting zone within 5' limited access easement.
Reel 2209 - O.R. - PG. 520

5' BUILDING SETBACK
REEL 2209 - O.R. - PG. 520

Metrosideros excelsus
New Zealand Christmas Tree

6' high Eucalyptus

APN 243-6108
FEDUNIAK

Existing 4' wood and wire fence - barbed wire to be removed.

South end of Highway One bridge

SCENIC PRESERVATION

~~Plan~~ - modified from
Revised Fence & Landscape Plan
(Revised April 2001)

* SEE REVISION BELOW

Myoporum laetum, Acacia longifolia - Sydney
Golden Wattle, Olea - Olive,
Pennisetum - Fountain Grass

Echium and Pennisetum

Erigeron - Santa Barbara Daisy

YANKEE

20' max.

4' W

* REPLACE EXISTING PLANTINGS
OF MYOPORUM, ACACIA &
OLEA WITH CEANOTHUS
"YANKEE POINT", ARTEMESIA CALIFORNICA, &
ARCTOSTAPHYLOS SP. (LOW, NATIVE TYPES).
FOUNTAIN GRASS TO REMAIN. ANY FUTURE
REPLACEMENTS SHALL BE PRIMARILY LOW
GROWING, NATIVE SHRUBS, PLANTS OR SCATTERED
TREES APPROPRIATE TO THE SITE

NOTE:

- (1) ELEVATIONS SHOWN ARE NAVD88. BENCHMARK IS A STANDARD COAST AND GEODETIC SURVEY BRASS DISK ON THE WEST SIDE OF HIGHWAY ONE AT THE INTERSECTION OF THE HIGHWAY WITH S LANE (APPROXIMATELY 3/4 MILE NORTH OF THIS SITE).
- (2) IMPROVEMENTS SHOWN HEREON WHICH MAY CONSTITUTE DEED AS DEFINED IN PUBLIC RESOURCES CODE SECTION 30.06 ARE AND PROPOSED FOR APPROVAL AS SHOWN.

* Revisions dated 5/23/01
RECEIVED

MAY 23 2001

EXHIBIT NO. E 6 d b

APPLICATION NO.

3-01-020

Most Recent Revision
to Landscape
Plans

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXHIBIT I

NOTICE

RECEIVED

MAY 03 2001

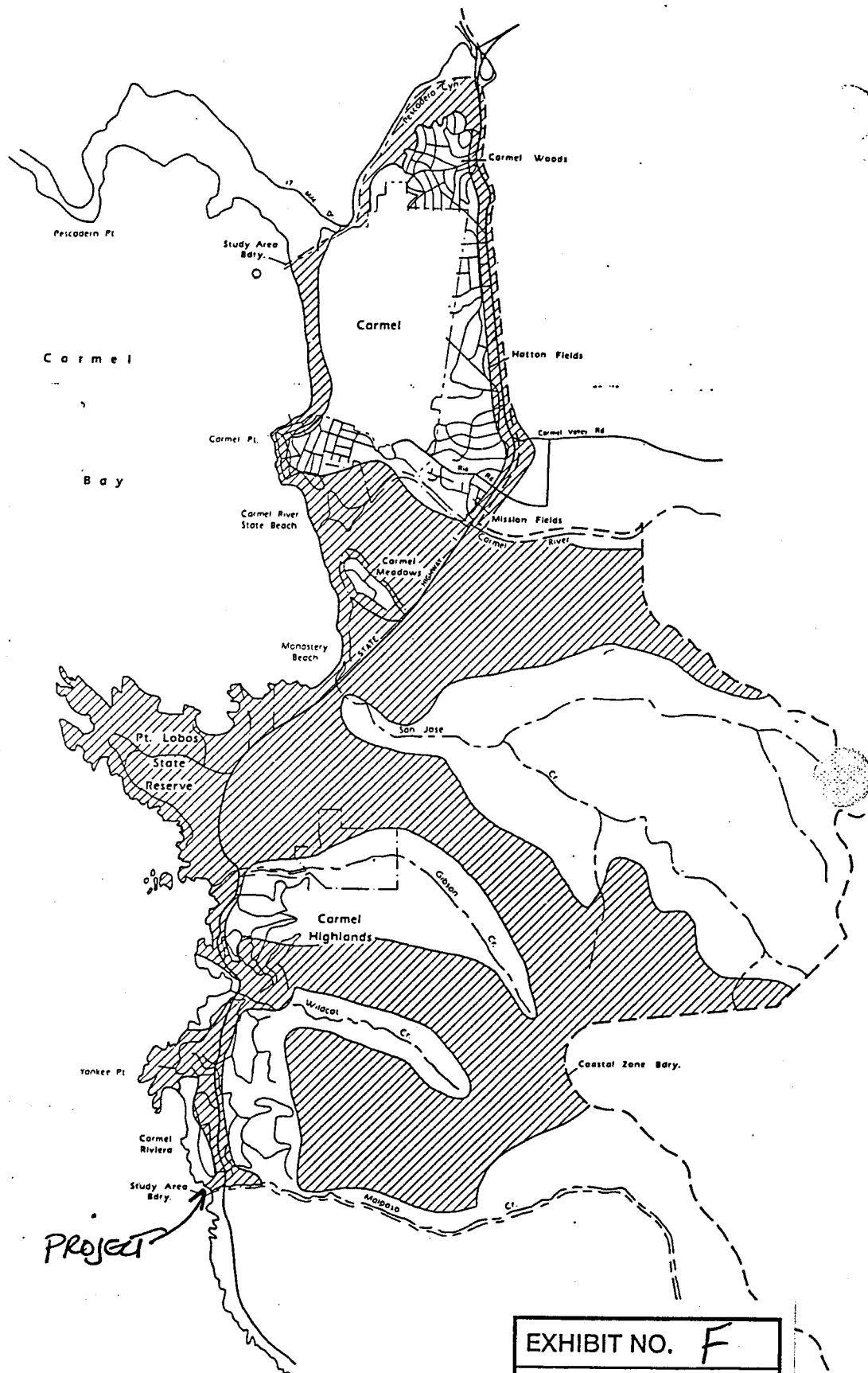
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Right to pass by permission, subject to control of owner: Section 1008, Civil Code.

Permission of the public or any person to pass is subject to the following conditions:

- Right to pass is limited to the existing trail to the beach. Straying off the trail constitutes a trespass and such trespass will be vigorously prosecuted.
- Respect the landowner's right to quiet enjoyment by keeping noise to a minimum.
- Right to pass is for pedestrian use only.

EXHIBIT NO. E7
APPLICATION NO. 3-01-020
Trail Usage Notice



MAP A

ILLUSTRATIVE ONLY



VIEWSHED - As Seen From:
 • Highway 1 corridor and turnouts
 • Scenic Road
 • Public lands, within the Carmel segment, and Carmel City Beach

Source: Monterey County Planning Department, 1980.

CARMEL AREA
 LOCAL COASTAL PROGRAM

GENERAL VIEWSHED



0 1000 2000
 SCALE IN FEET



Source: U.S.G.S 7.5 minute quads & Monterey

EXHIBIT NO. F

APPLICATION NO.
 3-00-020

Carmel Area LWP
 Viewshed Map

California Coastal Commission



Photo 1. View of ocean and coastal bluff prior to development on adjacent parcel (243-161-015). Note natural coastal sage scrub vegetation on blufftop.



Photo 2. Same view following installation of fencing and landscaping on subject parcels (APN 243-017 and 243-018). Both Photo 1 and 2 taken from south end of Highway One Bridge. Malpaso Creek and Malpaso Beach in foreground.



Photo 3. Six-foot high metal fence fronting Yankee Point Drive and accessway, and four-foot high wood-and-wire fence along accessway (on Parcel APN 243-161-017).



Photo 4. View looking down coastal accessway leading to Malpaso Beach. (APN 243-161-017 on left, APN 243-161-015 on right side of 4x4 post).



Photo 5. Photo of landscaping and path on Parcel APN 243-161-017.



Photo 6. Photo of landscaping on Parcel 243-161-017 and wood-and-wire fence along coastal access trail (on right).

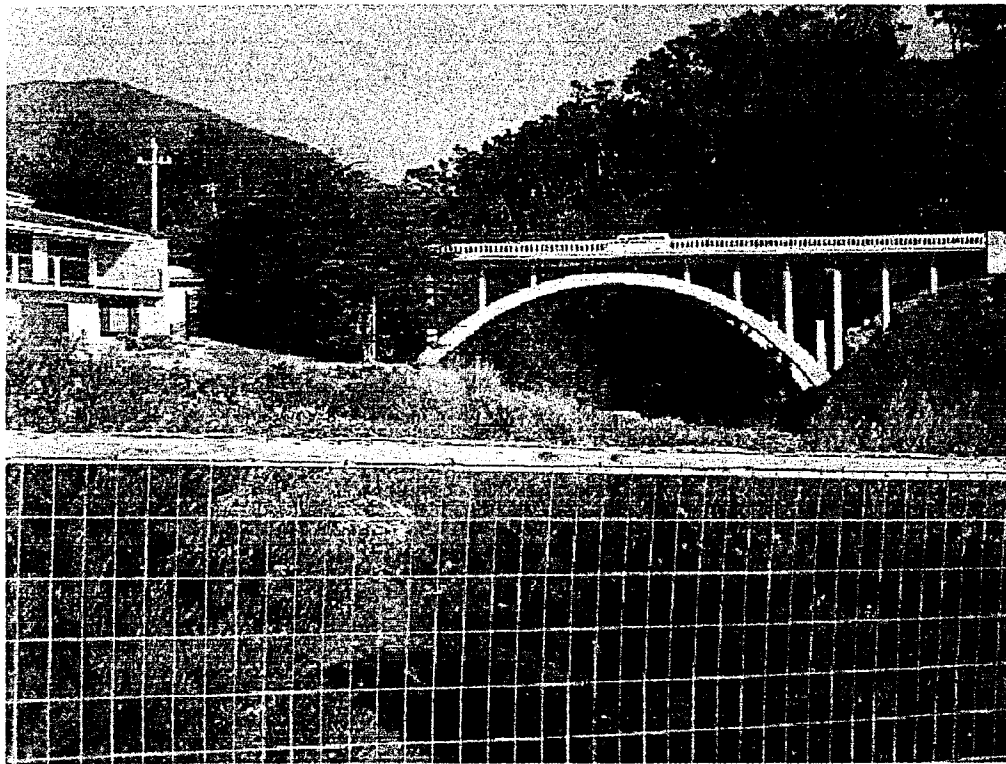


Photo 7. Photo of Highway One Bridge looking across Parcel APN 243-161-017 and 243-161-018.



Photo 8. Photo of coastal access trail leading down to Malpaso Creek and Malpaso Beach.

Executive Director's Recommendation

P-596 Frank La Monica: SFD, Yankee Point Dr. (APN 243-161-018), Carmel Highlands.

Recommendation:

ADOPTED

We recommend adoption of the following findings and approval of a permit for the development as conditioned below.

Findings:

Concentra-
tion of
Development

1. The proposed split-level SFD is located on the generally level portion of a bluff front lot above the mouth of Malpas Creek. This area (Carmel Riviera) was subdivided in the 1950's and 1960's, and is 60-70% built out on 1/2 acre lots between Highway One and the Pacific Ocean. The subject lot is one of five contiguous separately-owned, undeveloped lots at the southern end of the subdivision which fronts on the beach-bluff. This portion of the Carmel Highlands area is served by public roads, a mutual water company (Carmel Riviera), and individual septic systems.

The proposed dwelling represents continuation of the subdivision build-out adjacent to similarly developed residences and, as conditioned to recognize special public concerns in this area of the subdivision, is consistent with Coastal Act policy 30250.

Land
Resources,
Hazards and
Water Quality

2. The site is located in a Monterey pine grove which covers two lots of the five remaining. These trees are the southwesternmost within the native range for this tree in Monterey County. Mature trees show the great girth and low, spreading profile typical for their exposed location, and form a scenic and environmental point of interest. Some lower limbs of the largest pine (48" diameter) will have to be removed to accommodate the driveway, and three young pines (4"-6" will be removed for the house location. The bluff-front site is also within the "Area of Demonstration" of geologic stability required by Commission Interpretive Guidelines. Foundations or septic systems located near the bluff could adversely affect water quality and bluff stability.

While location of the leach fields close to Yankee Point Drive will reduce the potential of effluent emerging from the bluffs (as has been observed elsewhere in Carmel Riviera), no guarantee against possible septic failures can be made. The size of the bluff-top portion of the lots (less than 1/2 acre) is below Monterey County and RWQCB standard minimums, and septic failures have occurred on other Carmel Riviera lots. Final soil and percolation tests are being conducted on the subject site.

As conditioned to limit vegetative disruption in the pine grove and on the bluff, to locate the septic system away from the bluff, to require a statement from a registered sanitarian documenting soil boring and percolation test results necessary for a successful septic system, to setback the house from the bluff, and to require a professional judgement of structural stability, the proposed development will be consistent with Sections 30240(a), 30253(2) and 30231 of the Coastal Act.

Public Access
and
Recreation

3. The site is located between Yankee Point Drive and the sea, and contains a portion of a dirt footpath connecting the street with the beach and shoreline at Malpas Creek, an area where no official public access exists although customary access has been observed. The site itself does not provide direct access to the shoreline without traversing other privately-owned property, but both such adjacent properties ("Old Highway One" and North half of Malpas Beach, APN 243-161-17 and 243-161-10) may contain public prescriptive rights of access to the shoreline. Since the existing customary access is posted as private property, it cannot constitute "adequate access to the shoreline and along the coast" in the terms required by Section 30212 of the Coastal

EXHIBIT NO. H 1 of 3
APPLICATION NO. 3-00-020
Previous Permit 3
Conditions (P-77-596)
California Coastal Commission

P-77-596

Act. In addition, if any prescriptive rights exist to use access paths across applicant's property, development could abridge them. As conditioned, however, to provide for an easement recordable for public access when it can be managed by the State, public rights are not abridged and a safe accessway more compatible with adjacent uses is encouraged, and the development will be consistent with Section 30210 through 30212 of the Act.

Visual
Resources

4. Applicant's site is highly visible from northbound Highway One against a background of the Carmel Riviera subdivision, and will be seen by visitors walking to Malpaso Beach and future users of state-owned easements for a coastal trail in Otter Cove to the south. As proposed, it contains a two-level 26 ft. glass-fronted facade facing south. Nestled in a pine grove, however, using natural materials and colors and non-glare glass, and further screened with native vegetation, the proposed dwelling can become no more obtrusive than an older home in the same subdivision surrounded by mature landscaping. If the structure itself is set back away from the exposed bluff into the trees, and if reduced somewhat in height, it will thus protect the open space feeling of views from the beach.

As conditioned, the development will be consistent with the protection of coastal scenic and visual qualities in a scenic area of the shoreline just north of the Big Sur planning area. (Section 30251).

Coastal
Program
Options

5. Because this site is part of a recorded, largely built-up subdivision, relatively few options exist for its use under the local coastal program. They might include public acquisition of the adjoining vacant lands to provide beach access, upland support, and scenic open space; Coastal Conservancy action to transfer development to less sensitive areas of the vicinity while retaining public values; or designation of "upland support" uses for the adjoining sites. To the extent that the proposed residence would reduce a potential public acquisition project, it would limit local planning options. It appears, however, that the small size of Malpaso Beach and fragility of the surrounding environment require relatively little upland support area (access, parking). The remaining open lands on both sides of the creek appear to offer an adequate reservation of land for planning for public needs in this area, and the site's location in the pine grove both conceptually separates it from the flat benchland adjacent to it, and provides screening separating any ultimate use other than residential from the homes. Such screening and physical separation is not now adequate for the lots adjoining the pine grove to the north, should the grove be reserved for non-residential use.

The proposed development will not imply that buildout of the adjacent vacant lands will not conflict with the access and upland support policies of the Coastal Act. Any development on those sites must be considered on their own merits. And therefore, the proposed development will not prejudice the preparation of a conforming local coastal program by the County of Monterey.

CEQA and
Required
Finding

6. The proposed development as conditioned will have no significant adverse impacts as identified by CEQA, is consistent with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the County of Monterey to prepare a local coastal program which would conform to the policies of Chapter 3 of the Coastal Act.

ADOPTED

EXHIBIT NO. H 2 of 3
APPLICATION NO. 3-00-020
Previous Permit 3
Conditions (P-77-596)
California Coastal Commission

P-77-596

Conditions:

- ADOPTED**
1. Applicant shall, prior to commencement of construction, submit copies of final plans for review and approval by the Executive Director, including the following:
 - a. An engineered foundation plan accompanied by a statement from a registered engineering geologist that the proposed structure will not contribute to instability of the bluff and that the foundation will be sufficient to provide the structure with a 50 year life given existing erosion rates, soil composition, and geology.
 - b. A revised site plan and building plan showing an adequate setback of at least twenty feet from the bluff to protect views, allow room to plant trees (see condition 1c), and ensure geologic stability.
 - c. A landscaping plan retaining native brush in the bluff area, and all trees on the site other than those specifically designated for removal by the plans submitted with the permit application. In addition, applicant shall plant at least six 5-gallon-or-larger native trees (Monterey Pine or Cypress) and maintain them to maturity. Placement of the trees shall be reviewed and approved by the Executive Director with the specific intent of screening public and potential public views of the structure.
 - d. A septic system plan approved by Monterey County which locates all leaching areas (including 100% expansion) north and east of the proposed structure, and a copy of the final soil boring and percolation tests by a registered sanitarian.
 2. Prior to commencement of construction, applicant shall conditionally grant a recordable public access easement to the State of California for a strip 5 ft. in width along the western property line from Yankee Point Drive to the southwest property corner. The grant shall provide that the easement may be exercised by the grantee by recording it at any time within 10 years if the "north half of Malpas Beach" passes to public ownership or use and the grantee is prepared to accept liability and maintenance responsibility for it, and that applicant shall bear no obligation to grant such easement after the 10-year period. It shall also provide that the grant can be rejected by the grantee at any time prior to the close of the 10 year period if the California Coastal Commission finds that alternative and sufficient public access to the shoreline at Malpas Beach exists elsewhere.
 3. No part of the structure shall rise above 22 ft. from natural grade. All glazing on the south facade shall be non-glare tinted glass.
 4. Any future additions to the proposed structures or additional development for the site (e.g. fences, storage sheds) shall require a separate permit (or an amendment to this permit) from the Commission.

EXHIBIT NO. # 343
APPLICATION NO. 3-00-020
Previous Permit #
Conditions (P-77-596)
California Coastal Commission

P-77-596