

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

W-18a



RECORD PACKET COPY

Request Filed: December 10, 2001
Staff: SLB
Staff Report: December 20, 2001
Hearing Date: January 9, 2002

STAFF REPORT: REQUEST FOR RECONSIDERATION

APPLICATION NO.: 2-01-022-A1-R

APPLICANTS: Gerry and Kathryn Cirincione-Coles

PROJECT LOCATION: 12990 Sir Francis Drake Blvd., Inverness, Marin County, APN 112-042-07 (formerly 112-042-03).

PROJECT DESCRIPTION: Request for the reconsideration of the approval with conditions of an amendment to CDP 250-79 to convert the storage space above an existing attached garage into one bedroom with a bathroom and a separate storage room, and after-the-fact authorization for the addition of 120 square feet of storage space and a stairway.

COMMISSION ACTION: Proposed project approved with conditions on November 14, 2001, by a vote of 9 to 0.

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

1.0 EXECUTIVE SUMMARY

1.1 Procedural Note

Consistent with Section 30627 of the Coastal Act, the Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Section 13109.1 et.seq.).

The regulations provide that the grounds for reconsideration of a permit action shall be as stated in Coastal Act Section 30627:

"The basis of the request for reconsideration shall be either that there is relevant new information which, in the exercise of due diligence could not have been presented at the hearing on the matter or that an error in fact or law occurred which has the potential of altering the initial decision."

Section 30627(b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration." Section 30627(c) provides that a decision to grant a reconsideration request is not subject to appeal.

On December 10, 2001, Kathryn and Gerry Cirincione-Coles submitted a request for reconsideration of the Commission's decision to approve their proposed development with conditions. This request was timely made within 30 days following the Commission's vote on the application on November 14, 2001. As summarized below, the applicants contend that the Commission made three errors of fact or law that have the potential to alter the Commission's decision. If a majority of the Commission votes to grant reconsideration, the permit application will be scheduled for a subsequent meeting at which the Commission will consider it as a new application (CCR Title 14, Section 13109.5(d)). If the Commission does not grant reconsideration, the November 14, 2001, decision to approve the project with conditions will stand.

1.2 Summary of Applicant's Contentions

The request for reconsideration is based on the assertion that the Commission's decision is based upon an error of fact or law which has the potential of altering the Commission's initial decision in that: (1) the applicants' rights for equal protection under the law have been violated through the imposition of Special Condition 1, which requires septic system monitoring and reporting; (2) the applicants' rights under a 1990 Litigation Settlement Agreement with the California Coastal Commission have been violated by the imposition of special conditions and through the requirement that they apply for an amendment to their 1979 permit under the original jurisdiction of the California Coastal Commission; and (3) the California Coastal Commission lacks jurisdiction to impose special conditions and require an amendment to the applicants' original permit because the Commission is unconstitutionally structured and violates the separation of powers clause of the constitution (Exhibit 1).

1.3 Summary of Staff Recommendation

Staff recommends that the Commission deny the request for reconsideration because the applicants' claims do not constitute valid grounds for reconsideration as provided by Coastal Act Section 30627(b)(3), and because no error of fact or law has been identified that has the potential to alter the Commission's decision.

2.0 STAFF RECOMMENDATION

2.1 Motion

I move that the Commission grant reconsideration of Coastal Development Permit No. 2-01-022-A1.

2.2 Staff Recommendation

Staff recommends a **NO** vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

2.3 Resolution to Deny Reconsideration

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. 2-01-022-A1 on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

3.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

Note that the Commission-adopted findings for 2-01-022-A1 are attached in full as Exhibit 2. For any references below to the Commission's November 14, 2001, findings on this project, please refer to Exhibit 2.

3.1 Permit History and Background:

In 1979 the Coastal Commission approved Coastal Permit 250-79 for construction of a single-family residence with 2,140 square feet of internal floor space, a septic system and a drainage trench (Exhibit 2). In 1981, the Commission approved a time-extension request to extend the period of time during which the project could be commenced.

In 1981 the Commission certified the Southern Marin County (Unit 1) LCP and the County assumed permit-issuing authority for that portion of its coastal zone. In 1982 the Commission certified the Northern Marin County (Unit 2) LCP and the County assumed coastal permit-issuing authority for that portion of its coastal zone; the subject property is located within Unit 2.

In July of 1984, the Commission approved CDP 2-84-09 for construction of a berm for flood control protection involving placement of 3,000 cubic yards of fill on the subject site.

In April of 1985, the Marin County Planning Commission approved with conditions Coastal Permit No. 84-54/Design Review No. 84-128 to allow the removal of an existing accessory structure and the construction of a new accessory structure to be used as a studio-workshop and storage building, as well as Use Permit No. 85-10 to allow the detached accessory structure to exceed the 15-foot (one story) height requirement of the Marin County Code, but not to exceed two stories or 24'6". The accessory structure is two stories, 24'6" in height, and comprises 2,034 square feet.

In 1990, a Litigation Settlement Agreement was reached between the applicants, the State Lands Commission, the Coastal Commission, and Marin County. As part of this agreement, the applicants agreed to grant approximately one acre of their property to State Lands in fee. This portion of the site contained a public access easement offered pursuant to Coastal Permit 250-79 and accepted for management by the County.

Sometime in 1993, without benefit of a coastal development permit, the applicants converted the storage space above the attached garage to two guest units, constructed an additional 120 square feet of storage space and a stairway, and converted the existing residential use of the property to commercial, visitor-serving use. There were a total of three guest units on the site—two above the garage, and one in the main residence—along with a bedroom for the owners' use. The site was known as the Sandy Cove Inn.

The applicants applied to the Commission for an amendment to CDP 250-79 in September of 2000, seeking after-the-fact authorization for (1) remodeling of the storage space above an existing attached garage into two guest units; (2) the addition of 120 square feet of storage and a stairway; (3) conversion from residential use to commercial, visitor-serving use of the residence; plus (4) construction of a new, expanded septic system. The applicants subsequently withdrew this amendment request in May of 2001 and ceased to operate the Sandy Cove Inn.

The applicants submitted a new permit amendment application on August 31, 2001 to convert the storage space above the existing attached garage that had previously been converted to two guest units into one bedroom with a bathroom and a separate storage room as well as after-the-fact authorization for the addition of 120 square feet of storage space and a stairway (Exhibit 2).

On November 14, 2001, the Commission approved the permit amendment with conditions to mitigate impacts related to water quality, environmentally sensitive habitat areas, and geologic hazards.

On December 10, 2001 the Commission received a timely request for reconsideration of the Commission's action on the Coastal Development Permit amendment. The applicants' request for reconsideration asserts that errors of fact and law have occurred which should alter the Commission's decision to include special conditions as part of the permit amendment 2-01-022-A1.

3.2 Grounds for Reconsideration:

Pursuant to Section 30627(b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall decide whether to grant reconsideration of any decision to deny an application for a coastal development permit or any term or condition of a coastal development permit which has been granted. The application requests that the Commission's conditional approval of the permit be reconsidered (Exhibit 1).

Section 30627(b)(3) states in relevant part that the basis for a request for reconsideration shall be either that an error in fact or law occurred which has the potential of altering the initial decision or that new information has come to light that could not have been produced at the hearing. If the Commission votes to grant reconsideration, it will consider the permit application as a new application at a subsequent hearing.

3.3 Issues raised by the Applicants

The applicants' request for reconsideration asserts that the Commission's decision is based upon an error of fact or law in that: (1) the applicants' rights for equal protection under the law have been violated through the imposition of Special Condition 1, which requires septic system monitoring and reporting; (2) the applicants' rights under a 1990 Litigation Settlement Agreement with the California Coastal Commission have been violated by the imposition of special conditions and through the requirement that they apply to the Commission for an amendment to their 1979 permit, under the original jurisdiction of the California Coastal Commission, instead of applying to the County for a new permit; and (3) the California Coastal Commission lacks jurisdiction to impose special conditions and require an amendment to the applicants' original permit because the Commission is unconstitutionally structured and violates the separation of powers clause of the constitution.

3.3.1 Applicants' First Contention

"Our rights for equal protection under the law have been violated. The special conditions imposed would make us the only owners of a remodeled property in Marin County required to submit an engineered individual waste water monitoring plan for review, approval and monitoring by the Executive Director of the California Coastal Commission."

The applicants assert that their rights for equal protection under the law have been violated because the special conditions imposed on CDP 2-01-022-A1 would cause them to be the only owners of a remodeled property in Marin County required to submit an engineered individual waste water monitoring plan for review, approval, and monitoring by the Executive Director of the Commission. This claim does not allege that an error in fact or law occurred that has the

potential of altering the Commission's decision on the permit amendment application and is not a valid ground for a request for reconsideration.

The applicants' contention does not allege that the Commission has erred in its interpretation or application of the policies of the Marin County certified LCP in its action on the subject permit amendment application. In fact, the applicants make no claim that the Marin County LCP does not require monitoring of alternative septic systems such as the system that serves their development. Nor do the applicants claim that the policies of the LCP that require such monitoring do not apply to their development. Rather, the applicants object to the Commission's imposition of Special Condition 1 because they claim that the Commission has not imposed the same monitoring requirement on other property owners in Marin County. Notwithstanding the response to this contention provided below, this objection is not a valid ground for a request for reconsideration as provided under Coastal Act Section 30627(b)(3). Thus, the Commission finds that the applicants' contention that no other owners of remodeled property in Marin County are required to submit an individual wastewater system monitoring plan for the review and approval of the Executive Director, even if true, does not allege or demonstrate that an error in fact or law occurred that has the potential of altering the Commission's decision on the permit amendment application.

Although the applicants' claim is not a valid ground for reconsideration, the Commission nevertheless finds its action on CDP 2-01-022-A1 does not warrant reconsideration based on the applicants' contention. The Commission's action on the subject permit amendment application did not in any way rely on a finding that the Commission had imposed similar conditions requiring monitoring of septic systems through its action on other permit or permit amendment applications in Marin County. Pursuant to Section 30604 of the Coastal Act, the Commission reviews any application for a coastal development permit or permit amendment on a case-by-case basis applying the applicable Coastal Act and/or LCP policies that form the standard of review for the particular development before it. In this case, the Commission found that policies of the Marin County certified LCP require monitoring of alternative septic systems such as the system that serves the approved development. Whether or not the Commission had previously imposed similar monitoring requirements for other developments in Marin County does not govern the Commission's consideration of the conformity of the approved development with the policies of the Marin County LCP.

In addition, for an individual's rights to equal protection to be violated is to say that this individual would have been treated differently than all other similarly situated individuals. In the applicants' case, this group of similarly situated individuals is likely very small because the circumstances related to the applicants' project are unusual. The applicants received their original permit from the North Central Coast Regional Commission for a two-bedroom single-family residence, mound septic system (considered an alternative system), and drainage trench in 1979 (CDP no. 250-79). The applicants also received approval for the alternative septic system from the Regional Water Quality Control Board. At the time of approval, the standard of review

for the coastal development permit was the Coastal Act, which does not contain specific provisions for sewage disposal. Subsequently, the Commission certified the Marin County Unit II Local Coastal Program on May 5, 1982, which does include specific provisions for sewage disposal. However, only the Commission can amend a previously granted Commission permit; thus, the Commission retains jurisdiction over any amendments to the original CDP 250-79.

Thus, from the above description of the permit and project site history, the criteria for similarly situated individual would be: (1) the applicants received their original permit from California Coastal Commission or Regional Commission before May 5, 1982; (2) the project site is located in Marin County's primary permitting jurisdiction where the Unit II LCP is the standard of review; (3) the proposed project needs to involve an enlargement or change in the type or intensity of use of an existing structure; and (4) the applicants must have an alternative septic system. The criteria can be expanded to also include appeals on a coastal development permit approved by Marin County that meets the above criteria two through four. Staff conducted a search for past coastal development permits that met the above criteria and found none.

Moreover, whether or not the Commission imposed monitoring requirements on other applicants, the Commission was correct in its application of the sewage disposal policies of the Marin County Unit II LCP and the imposition of Special Condition 1 in this case. As discussed in the adopted findings for 2-01-022-A1, the applicants' property is located approximately 500 feet from the shoreline of Tomales Bay. According to the Marin County LCP, the shoreline of Tomales Bay is perhaps the most sensitive area with development potential in the Unit II Coastal Zone. The LCP further states that widespread use of septic systems along these shorelines and within the watershed of Tomales Bay contributes to significant water quality problems in the bay. Sewage disposal for all shoreline lots is provided by septic systems, holding tanks, or other means. Most lots cannot support on-site sewage disposal in a manner consistent with the County's septic system standards and the standards of the Regional Water Quality Control Board. At the time of LCP certification, 740 residential units from Inverness Park to Seahaven were developed and zoning at the time would allow 420 additional units to be built. The LCP states that buildout in this area could have many significant adverse environmental impacts, including impacts to the water quality and marine resources of Tomales Bay.

The LCP contains policies on sewage disposal to ensure that adequate services will be available for new development and to minimize individual and cumulative impacts to water quality. LUP Public Services Policy 3(a)(2) requires that where a project involves the enlargement or change in the type or intensity of an existing structure, that the existing or enlarged septic system meet the Minimum Guidelines of the Regional Water Quality Control Board, or the County's revised septic system code as approved by the Regional Board. Zoning Code Section 22.56.130(B)(3) requires that where a CDP is needed for the enlargement or change in the type of intensity of use of an existing structure, the project's septic system be determined consistent with the current Guidelines of the Regional Water Quality Control Board or such other program standards as adopted by the County of Marin. The Unit II LCP also includes Zoning Code Section 22.56.130

(b)(2), which requires that alternate waste disposal systems shall be approved only where a public entity has formally assumed responsibility for inspecting, monitoring and enforcing the maintenance of the system in accordance with the criteria adopted by the Regional Water Quality Control Board. Marin County's revised septic system code as approved by the Regional Board includes regulations for alternative septic systems, which require monitoring of alternate waste disposal systems specified under Zoning Code Section 22.56.130(B)(2).

In order for the Commission to find the project consistent with LUP Public Services Policy 3(a)(2) and Zoning Code Section 22.56.130(B), the septic system must meet County standards as approved by the Regional Board. The monitoring required by Special Condition 1 is mandatory pursuant to the above-cited policies of the Marin County LCP. As the Commission found in its action on CDP 2-01-022-A1, the LCP contains policies that specifically require monitoring of alternative septic systems such as the applicants'. However, even if the LCP did not so specifically mandate monitoring, monitoring of the applicants' septic system would still be required to find the approved development consistent with the Marin County LCP. As the Commission noted in its action on CDP 2-01-022-A1, the applicants' property is approximately 500 feet from Tomales Bay and adjacent to Chicken Ranch Beach, a popular swimming beach. The applicants' mound system, installed approximately 20 years ago, is immediately adjacent to a drainage channel that flows across the property into the Bay. The property has a history of flooding, due in part to a shallow groundwater table. In fact, the use of a mound system was necessary on this property instead of a standard leach field because of the shallow groundwater table. In addition to the specific policies requiring monitoring of alternative septic systems the LCP also contains more general policies requiring the protection of water quality and human health. Under these water quality policies, the Commission, in order to approve the subject permit amendment, must find that the expanding use of the applicants' septic system would not result in adverse impact to coastal water quality or human health. Given the problematic nature of the applicants' septic system, and in particular, the proximity of the mound to a drainage channel, requiring monitoring is the minimum the Commission could do to address the significant water quality and human health impacts that could result from the expanded use of the applicants' septic system. Alternatively, the Commission could have denied the applicants' amendment application or required the septic system to be modified to meet current standards, including relocating the mound at least 50 feet from the drainage. Instead, the Commission approved the development with a condition requiring the same type of routine monitoring that the County requires for all new alternative septic systems. Requiring Special Condition 1 is not an error of fact or law, but quite the contrary, was required to find the project consistent with the Marin County Unit II LCP water quality and sewage disposal policies.

Therefore, for all of the above reasons, the Commission finds that the reconsideration request must be denied.

3.3.2 Applicants' Second Contention

"Our rights under a 1990 Litigation Settlement Agreement with the California Coastal Commission have been violated by these special conditions, as well as by the demand that we apply for an amendment to our 1979 permit, under the original jurisdiction of the California Coastal Commission, instead of applying for a new permit. The California Coastal Commission has failed to update its maps after the 1990 Litigation Settlement Agreement and has ignored its covenant with us under that 1990 Agreement that our lands would no longer be within its original jurisdiction. The 1990 Litigation Settlement Agreement may not be changed without the consent of all parties. The imposing of these special conditions is coercion abuse of power in a blatant attempt by the California Coastal Commission to undermine its contractual obligations to us."

The applicants' contention does not assert that there was an error of fact or law that has the potential of altering the initial decision as required by Coastal Act Section 30627 and is not a valid ground for reconsideration. An example of an error of fact or law that constitutes a basis for which to grant reconsideration would be if the Commission committed an error of fact or law in its application of the policies of the Coastal Act or the applicable certified LCP. The applicants' contention was not that the Commission made an error of fact or law in its application of the Marin County Unit II LCP policies on CDP permit action 2-01-022-A1, but rather that the Commission committed an error of law because it does not have jurisdiction to be reviewing and taking action on their proposed development. Asserting that the Coastal Commission does not have permitting authority is not a valid ground for reconsideration. Therefore, the Commission finds that the applicants' contention does not allege or demonstrate that an error of fact or law occurred that has the potential of altering the Commission's decision on the permit application.

However, even if the applicants' claim did allege an error of fact or law that has the potential of altering the initial decision as required by Coastal Act Section 30627, the adopted findings from the November 14, 2001 Commission action on Coastal Development Permit 2-01-022-A1 accurately discuss the basis on which the applicants were required to obtain a coastal development permit amendment from the Coastal Commission, rather than a new CDP from Marin County. The development approved by CDP 2-01-022-A1 is located between the first public road and the sea, in an area where permit jurisdiction was delegated to the county of Marin under its certified Local Coastal Program (LCP) in 1982 (Exhibit 2). Pursuant to the 1990 Litigation Settlement Agreement, the Cirincione-Coles property is not tidelands or lands within the public trust and will not be considered within the original jurisdiction of the Coastal Commission. Thus, according to Section 30519 of the Coastal Act, any new coastal permit for development at this location would be considered by the County (and appealable to the Commission). However, the approved project will modify a development approved by the Coastal Commission prior to the certification of the LCP (CDP 250-79). Section 30519 of the Coastal Act does not delegate permit authority to the local government over proposed changes to

previously approved development, only to new development. Modifying an existing development previously permitted by the Commission does not constitute new development requiring a new CDP; rather it is a change to previously permitted development requiring an amendment to the originally issued permit. The transfer of permit authority over new development proposals mandated under Section 30519 does not suggest or imply the right or ability to release individuals and entities from contractual obligations owed to the Commission.

Since the terms and conditions of CDP 250-79 approved by the Coastal Commission were agreed to by the applicants, and since development was undertaken pursuant to those terms and conditions, there is a binding contract between the applicants, any successors in interest, and the Coastal Commission. Any request to amend this contractual agreement can only be acted upon by the Coastal Commission. The Cirincione-Coles application came before the Commission and not the County because the development constitutes an amendment to a Coastal Commission issued permit, and only the Commission can amend a previously granted Commission permit.

The 1990 Litigation Settlement Agreement supports this finding because it provides that the Agreement shall not affect the authority of any agency having jurisdiction based on statute, administrative regulation, or law.

Section 3.3.9 of the 1990 Litigation Settlement Agreement specifically states that:

The findings by SLC are not intended to and do not affect the authority or jurisdiction or extent of regulation or control, if any, of any agency having authority or jurisdiction over the settlement area based on statute, administrative regulation, or law.

Section 0.23.5 states in relevant part that:

Within the Cirincione-Coles' Fee, the Cirincione-Coles will be able to accomplish all activities that are consistent with the Marin County Local Coastal Program Unit II and all other applicable local, state and federal statutes, rules or regulations.

Section 11.1 of the Litigation Settlement Agreement also states in relevant part that:

It is also expressly understood and agreed that this Agreement shall not be construed and is not intended to affect the powers, authority or jurisdiction or extent of regulation or control of any other regulatory agency having power, authority or jurisdiction over the settlement area based on statute, administrative regulation or law.

Thus, the Settlement Agreement provides for the review of permit amendment 2-01-022-A1 by the Coastal Commission and the imposition of conditions as needed to protect state coastal resources consistent with Marin County's certified LCP in accordance with the authority granted

to the Commission under the Coastal Act, and the Commission expressly found so in its action of November 14, 2001 (pages 2-4).

Therefore, the Commission finds that the reconsideration request must be denied.

3.3.3 Applicants' Third Contention

"The California Coastal Commission lacks jurisdiction to impose these special conditions, as well as to require an amendment to our original permit because the California Coastal Commission is unconstitutionally structured and violates the separation of powers clause of the constitution."

The applicants assert that the Coastal Commission is unconstitutionally structured, violates the separation of powers clause of the constitution, and thus, lacks the jurisdiction to require an amendment to their original permit and impose special conditions on the permit amendment. As with the applicants' other contentions discussed above, the applicants' third contention does not allege an error of fact or law that has the potential of altering the initial decision as required by Coastal Act Section 30627 and is not a valid ground for reconsideration. The applicants' contention is not that the Commission made an error of fact or law in its application of the Marin County LCP in its action on CDP 2-01-022-A1, but rather that the Commission lacks jurisdiction over the development because it is unconstitutionally structured. This is not a valid ground for reconsideration.

However, even if the applicants' contention did claim an error of fact or law that has the potential of altering the initial decision as required by Coastal Act Section 30627, no such error occurred. In May of 2001, a trial court concluded that the Coastal Commission is unconstitutional because its appointment structure violates the separation of powers provision of the state constitution (*Marine Forest Society vs. California Coastal Commission*). The Sacramento Superior Court issued an order that directed the Coastal Commission to cease and desist in issuing permits. However, the order specifically included a stay pending completion of all appeals in this case. Thus, there is no order in effect that deprives the Commission of its jurisdiction. Pending the exhaustion of all appeals, the Commission continues to issue permits according to the provisions of the Coastal Act and California Code of Regulations. Thus, the Coastal Commission does not lack jurisdiction as the applicants assert.

At the time of Commission action on Coastal Development Permit 2-01-022-A1, the Commission was aware of: (1) the *Marine Forest Society vs. California Coastal Commission* trial court ruling; (2) that the decision was not yet binding; and (3) that it is was to continue reviewing and issuing permits. Therefore, there is no basis for the Commission to alter its decision to conditionally approve a permit amendment to CDP 250-79. Individuals are required by law to obtain coastal development permits to perform or undertake any development in the coastal zone (Coastal Act Section 36000(a)). In the applicants' case, the proposed development required an

amendment to a coastal development permit originally issued by the Commission, which as discussed in Section 3.3.2 only the Commission can amend. According to Coastal Act Policies 30621, 30625 and California Regulation 13062, the Commission must schedule the application for hearing within 49 days of filing, unless the applicant waives his right in writing. Under the Permit Streamlining Act, the decision on the application must occur within 180 days of lead agency action or coastal development permit application completion (Gov. Code secs. 65943, 65952, 65950). This 180-day time limit may be extended for 90 days upon consent of applicant and the Commission (Govt. Code 65957). The Coastal Act and Permit Streamlining Act prevent the Commission from arbitrarily halting the review and issuance of coastal development permits. Thus, according to the law, the Cirincione-Coles were responsible for obtaining a coastal development permit for their proposed development and the Commission was responsible for processing and taking action on the permit amendment within 180 days. The Commission would have taken the same action on the permit amendment, even if it were unaware of the Marine Forest Society vs. California Coastal Commission ruling.

Therefore, the Commission finds that the reconsideration request must be denied.

3.4 Summary

As discussed above, the issues presented in the applicants' request for reconsideration do not compromise errors of fact or law as used in Coastal Act section 30627, and therefore are not valid grounds for reconsideration. Even if the applicants' contentions did represent valid grounds for reconsideration, they do not present any errors of fact or law that have the potential of altering the Commission's initial decision. In addition, the applicants did not assert that new evidence had arisen. Therefore, neither of the requirements for reconsideration have been met, and the reconsideration request must be denied.

EXHIBITS

1. Applicants' request for reconsideration
2. October 25, 2001 staff report for 2-01-022-A1

APPENDIX A:

SUBSTANTIVE FILE DOCUMENTS

Marin County Certified Local Coastal Program
Coastal Permit No. 84-54/Design Review No. 84-128/ Use Permit No. 85-10
CDP File 250-79
CDP No. 2-84-09 (Cirincione-Coles)
CDP No. 2-00-01 (Marin Co. Dept. of Parks, Open Space & Cultural Services)
Litigation Settlement Agreement from 1/31/90 between CCC, State Lands Commission, County of Marin, and Cirincione-Coles.

Telephone: 415.669.1233
Fax: 415.669.7511

Email: Kathy & Gerry @sandycove.com

Cirincione-Coles
P.O. Box 869
Inverness, CA 94937

RECEIVED

DEC 10 2001

CALIFORNIA
COASTAL COMMISSION

November 29, 2001

Sarah Borchelt, Coastal Program Analyst
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, California 94105-5200

Dear Sarah:

This letter confirms our request for a reconsideration appeal of the special conditions to our permit granted earlier this month: No. 2-01-022-A1/CDP 250-79.

We believe that the following errors of fact and law have occurred which should alter the Commissions decision to include these special conditions.

1) Our rights for equal protection under the law have been violated. The special conditions imposed would make us the only owners of remodeled property in Marin County required to submit an engineered individual waste water monitoring plan for review, approval and monitoring by the Executive Director of the California Coastal Commission.

2) Our rights under a 1990 Litigation Settlement Agreement with the California Coastal Commission have been violated by these special conditions, as well as by the demand that we apply for an amendment to our 1979 permit, under the original jurisdiction of the California Coastal Commission, instead of applying for a new permit. The California Coastal Commission has failed to update its maps after the 1990 Litigation Settlement Agreement and has ignored its covenant with us under that 1990 Agreement that our lands would no longer be within its original jurisdiction. The 1990 Litigation Settlement Agreement may not be changed without the consent of all parties. The imposing of these special conditions is coercion and abuse of power in a blatant attempt by the California Coastal Commission to undermine its contractual obligations to us.

3) The California Coastal Commission lacks jurisdiction to impose these special conditions, as well as to require an amendment to our original permit because the California Coastal Commission is unconstitutionally structured and violates the separation of powers clause of the constitution.

Sincerely,

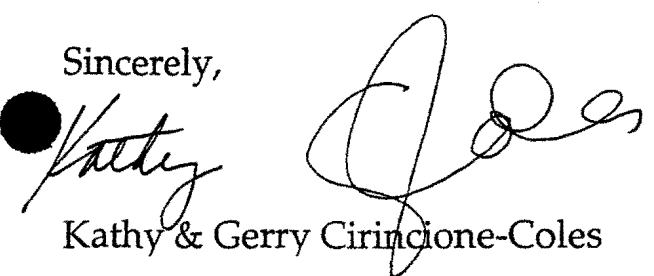

Kathy & Gerry Cirincione-Coles

EXHIBIT NO.	1
APPLICATION NO.	2-01-022-A1-R
CIRINCIONE-COLES	
Request for	
Reconsideration	

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

W-21a

Date Filed: October 19, 2001
49th Day: December 7, 2001
180th Day: April 14, 2002
Staff: SLB
Staff Report: October 25, 2001
Hearing Date: November 14, 2001

STAFF REPORT: PERMIT AMENDMENT

EXHIBIT NO.	2
APPLICATION NO.	2-01-022-A1-R
CIRINCIONE-COLES 10/25/01 staff report for 2-01-022-A1 (page 1 of 36)	

APPLICATION NO.: 2-01-022-A1

APPLICANTS: Gerry and Kathryn Cirincione-Coles

PROJECT LOCATION: 12990 Sir Francis Drake Blvd., Inverness, Marin County, APN 112-042-07 (formerly 112-042-03).

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a two-bedroom single-family residence, septic system, and drainage trench.

DESCRIPTION OF AMENDMENT: Applicants request an amendment to CDP 250-79 to convert the storage space above an existing attached garage into one bedroom with a bathroom and a separate storage room, and after-the-fact authorization for the addition of 120 square feet of storage space and a stairway.

LOCAL APPROVALS RECEIVED: Marin County Local Agency Review approval.

SUBSTANTIVE FILE DOCUMENTS: See Appendix A

1.0 EXECUTIVE SUMMARY

The staff recommends that the Commission approve with conditions the requested coastal development permit amendment. Gerry and Kathryn Cirincione-Coles seek an amendment to Coastal Development Permit No. 250-79, which authorized construction of a two-story, two-bedroom single-family residence on Sir Francis Drake Boulevard in Inverness in Marin County.¹ The amendment request seeks authorization to convert the storage space above the existing

¹ CDP file No. 250-79 has been renumbered to 2-01-022 for record keeping purposes. Thus, the amendment to CDP No. 250-79 has been assigned the number 2-01-022-A1.

Special Condition No. 1 of the permit, and accepted for management in 1983 by the County of Marin, was rescinded, as the easement was located on the property granted to State Lands.

The proposed development is located between the first public road and the sea, in an area that is within Marin County's primary permit jurisdiction under its certified Local Coastal Program (LCP) (Exhibit 1). Pursuant to the 1990 Litigation Settlement Agreement, which established that the Cirincione-Coles property does not constitute tidelands or lands within the public trust, the site is not within the original jurisdiction of the Coastal Commission. Thus, any coastal permit for new development at this location would be considered by the County (and appealable to the Commission). However, the proposed project seeks to modify a development approved by the Coastal Commission prior to the certification of the LCP, and thus constitutes an amendment to the original coastal development permit, rather than a permit for new development. The project is therefore before the Commission and not the County because only the Commission can amend a previously granted Commission permit.

The applicants have questioned the Commission's authority to administer a coastal permit amendment for development on their property, since the Litigation Settlement Agreement states that their property is not within the original jurisdiction of the Coastal Commission. However, the Litigation Settlement Agreement also provides that the Agreement shall not affect the authority of any agency having jurisdiction based on statute, administrative regulation, or law.

Section 3.3.9 of the 1990 Litigation Settlement Agreement specifically states that:

The findings by SLC are not intended to and do not affect the authority or jurisdiction or extent of regulation or control, if any, of any agency having authority or jurisdiction over the settlement area based on statute, administrative regulation, or law.

Section 0.23.5 states in relevant part that:

Within the Cirincione-Coles' Fee, the Cirincione-Coles will be able to accomplish all activities that are consistent with the Marin County Local Coastal Program Unit II and all other applicable local, state and federal statutes, rules or regulations.

Section 11.1 of the Litigation Settlement Agreement also states in relevant part that:

It is also expressly understood and agreed that this Agreement shall not be construed and is not intended to affect the powers, authority or jurisdiction or extent of regulation or control of any other regulatory agency having power, authority or jurisdiction over the settlement area based on statute, administrative regulation or law.

Thus, the Settlement Agreement provides for the review of the proposed permit amendment by the Coastal Commission in accordance with the authority granted to the Commission under the

3. 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.
4. Interpretation. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
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.

5.0 SPECIAL CONDITIONS

All previous permit conditions of CDP 250-79 remain effective and unchanged. The Commission adds four new special conditions, as described below.

The Commission grants this permit amendment subject to the following additional special conditions:

1. Septic System Monitoring and Reporting

- A. *Prior to issuance of the coastal development permit amendment*, the applicants shall submit, for the review and approval of the Executive Director, an Individual Wastewater System Monitoring Plan. The plan shall be prepared by a qualified professional and shall provide for annual inspection and testing of the wastewater treatment system to ensure that the system is functioning properly to protect the biological productivity of Tomales Bay and public health and safety. The plan shall provide for the following:
 1. Recording of wastewater flow based on water meter readings, pump event counters, elapsed time meters or other approved methods;
 2. Inspection and recording of water levels in monitoring wells in the disposal field;
 3. Water quality testing of selected water samples taken from points in the treatment process, from monitoring wells, or from surface streams or drainages; typical water quality parameters to be analyzed for may include total and fecal coliform, nitrate, biochemical oxygen demand (BOD), and suspended solids;
 4. Inspection and observation of pump operation or other mechanical equipment; and,
 5. General inspection of treatment and disposal area for evidence of seepage, effluent surfacing, erosion or other indicators of system malfunction.
- B. The permittee shall ensure that monitoring is conducted annually. However, the Executive Director may require an increase to the monitoring frequency if the Executive

Executive Director, reflecting the above restrictions on development. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. Assumption of Risk, Waiver of Liability, and Indemnity Agreement.

- A. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agent, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. *Prior to issuance of the coastal development permit amendment*, the applicants as landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, incorporating all of the above terms in subsection A of this condition. The deed restriction shall include a legal description of the applicants' entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Condition Compliance.

Within 90 days of Commission action on this CDP amendment, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

In April of 1985, the Marin County Planning Commission approved with conditions Coastal Permit No. 84-54/Design Review No. 84-128 to allow the removal of an existing accessory structure and the construction of a new accessory structure to be used as a studio-workshop and storage building, as well as Use Permit No. 85-10 to allow the detached accessory structure to exceed the 15-foot (one story) height requirement of the Marin County Code, but not to exceed two stories or 24'6". The accessory structure is two stories, 24'6" in height, and comprises 2,034 square feet.

In 1990, a Litigation Settlement Agreement was reached between the applicants, the State Lands Commission, the Coastal Commission, and Marin County. As part of this agreement, the applicants agreed to grant approximately one acre of their property to State Lands in fee. This is the portion of the site that contained the public access easement offered pursuant to Coastal Permit 250-79 and accepted for management by the County; the offer has since been rescinded.

Sometime in 1993, without benefit of a coastal development permit, the applicants converted the storage space above the attached garage to two guest units, constructed an additional 120 square feet of storage space and a stairway, and converted the existing residential use of the property to commercial, visitor-serving use. There were a total of three guest units on the site—two above the garage, and one in the main residence—along with a bedroom for the owners' use. The site was known as the Sandy Cove Inn.

The applicants applied for an amendment in September of 2000, seeking after-the-fact authorization for (1) remodeling of the storage space above an existing attached garage into two guest units; (2) the addition of 120 square feet of storage and a stairway; and (3) conversion from residential use to commercial, visitor-serving use of the residence; plus (4) construction of a new, expanded septic system. The applicants subsequently withdrew this amendment request in May of 2001 and ceased to operate the Sandy Cove Inn.

The applicants submitted a new permit amendment on August 31, 2001 to convert the storage space above the existing attached garage that had previously been converted to two guest units into one bedroom with a bathroom and a separate storage room as well as after-the-fact authorization for the addition of 120 square feet of storage space and a stairway (Exhibit 9).

6.3 Environmentally Sensitive Habitat Areas and Water Quality

The project site is located approximately 500 feet from Tomales Bay. Tomales Bay is within the Gulf of the Farallones National Marine Sanctuary, one of four national marine sanctuaries in California and one of thirteen in the nation. The Sanctuary was designated in 1981 to protect and manage the 1,255 square miles encompassing the Gulf of the Farallones, Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Bay, Estero San Antonio, Estero de Americano, Duxbury Reef, and Bolinas Lagoon. The Marin LCP emphasizes the importance of Tomales Bay on many levels. It provides important habitat for birds, marine mammals and over 1,000 species of invertebrates.

LUP Public Services Policy 3(a)(2) states:

Expansions or alterations. Where a coastal development permit is necessary for an enlargement or change in the type or intensity of an existing structure, the existing or enlarged septic system must meet the Minimum Guidelines of the Regional Water Quality Control Board, or the county's revised septic system code as approved by the Regional Board, before a permit for such enlargement or change can be granted.

Zoning Code Section 22.56.130(B) states in relevant part:

Septic System Standards: The following standards apply for projects which utilize septic systems for sewage disposal.

- 2) Alternate waste disposal systems shall be approved only where a public entity has formally assumed responsibility for inspecting, monitoring and enforcing the maintenance of the system in accordance with the criteria adopted by the Regional Water Quality Control Board.*
- 3) Where a coastal project permit is necessary for the enlargement or change in the type of intensity of use of an existing structure, the project's septic system must be determined consistent with the current Guidelines of the Regional Water Quality Control Board or such other program standards as adopted by the County of Marin.*

Residential septic systems are designed according to the number of bedrooms to be served. Exceeding a septic systems design capacity may result in hydraulic or nutrient overload causing the septic system to fail, and resulting in ground water and/or surface water contamination. The development authorized by CDP 250-79 included installation of a septic system to serve the approved two-bedroom residences. Although CDP 250-79 authorized the construction of a two-bedroom home, the approved septic system was designed to serve up to three bedrooms. Thus, as approved in 1979, the system would be capable of serving the future addition of a third bedroom. Both the Marin County Department of Public works and the Regional Water Quality Control Board (RWQCB) approved the system. The RWQCB approval was contingent on changing the septic system design to meet the following three conditions:

1. The design should be modified to provide an impermeable barrier to possible horizontal flow of wastewater to the proposed subdrain. The barrier should extend to a depth at least two feet below the bottom of the subdrain.
2. The down hill slope shall be modified to extend the toe of the fill to a point an additional ten feet further out, with the top of mound to be left unchanged.
3. The design should extend the french drain pass by the replacement leach field on the uphill side of the mound.

septic system for the life of the development. In accordance with this condition, the applicants must submit for the Executive Director's review and approval, and prior to issuance of the permit amendment, an Individual Wastewater System Monitoring Plan. The monitoring plan must provide for regular monitoring of the system at the applicants' expense to ensure to the satisfaction of Executive Director that wastewater generated by the development does not contaminate surface or ground waters on or off of the project site. The Commission finds that **Special Condition 1** is necessary to prevent adverse impacts to the water quality of Tomales Bay as required by the Marin County LCP for the protection of marine biological resources and human health. As conditioned, the Commission finds that the proposed development is consistent with the water quality policies of the Marin County LCP.

Any future addition to the residence or conversion of internal floor space to provide for an additional bedroom could exceed the capacity of the existing septic system resulting in significant adverse effects to Tomales Bay and public health. Under certain circumstances, such development may be exempt from the need to obtain coastal development permits pursuant to Section 30610 of the Coastal Act. Accordingly, pursuant to Section 30610 of the Coastal Act, the Commission would not normally be able to review such development to ensure that impacts to sensitive habitat and/or public health and safety are avoided.

To avoid such impacts to coastal resources from the development of otherwise exempt additions to existing residences, Coastal Act Section 30610(a) requires the Commission to specify by regulation those classes of development that involve a risk of significant adverse environmental effects and require that a permit be obtained for such improvements. Pursuant to Section 30610(a) of the Coastal Act, the Commission adopted Section 13250 of Title 14 of the California Code of Regulations. Section 13250(b)(6) specifically authorizes the Commission to require a permit for additions to existing single-family residences that could involve a risk of adverse environmental effects by indicating in the coastal development permit issued for the original structure that any future improvements would require a coastal development permit. As noted above, certain additions or improvements to the approved residence could involve a risk of adverse impacts to the water quality and biological productivity of the water of Tomales Bay. In order for the Commission to find the proposed amendment consistent with the septic system policies and zoning codes of the LCP, the Commission must ensure that future improvements to the development authorized by CDP 2-01-022 as amended, such as the conversion of the storage room to a bedroom, would require review and approval by either the Commission or the County through either a permit amendment or new permit. Therefore, in accordance with provisions of Section 13250(b)(6) of Title 14 of the California Code of Regulations, the Commission imposes **Special Condition 2** to require a coastal development permit or a permit amendment for all future development on the project site that might otherwise be exempt from coastal permit requirements. This condition will allow future development to be reviewed by the Commission or the County to ensure that future improvements will not be sited or designed in a manner that would result in significant adverse environmental impacts. **Special Condition 2** also requires recordation of a deed restriction to ensure that all future owners of the property are aware of the

6.5 Public Access

The project site is located between the first public road and the sea. In accordance with Coastal Act Section 30604(c), development located between the first public road and the sea that is within the coastal development permit jurisdiction of a local government is subject to the coastal access policies of both the Coastal Act and the LCP.

Coastal Act Sections 30210, 30211, and 30212 require the provision of maximum public access opportunities, with limited exceptions. Section 30210 states that maximum public access and recreational opportunities shall be provided consistent with public safety needs and the need to protect public rights, the rights of private property owners, and natural resource areas from overuse. Section 30211 states that 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 states that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, adequate access exists nearby, or agriculture would be adversely affected.

The Marin County LUP for Unit 2 includes policies regarding standards for providing and maintaining public access. Policy No. 3(a)(1) in the Public Access section specifically discusses public access in the area from Tomales Bay State Park to Chicken Ranch Beach, which encompasses the subject site. This policy states that "An offer of dedication of an easement was required as a condition of permit approval by the Regional Coastal Commission for AP #112-042-03 (the subject parcel, now 112-042-07), which abuts Chicken Ranch Beach," and recommends that agricultural use of the public trust portion of AP #112-042-03, included in the offered easement, should be permitted to continue until such time as the public access offer is accepted and opened for public use.

In addition, the Marin County Zoning Code Section 22.66.130(E) states that all coastal development permits shall be evaluated to determine the project's relationship to the maintenance and provision of public access and use of coastal beaches, waters, and tide lands.

As noted above, CDP 250-79 required an offer of dedication of a public access easement, which was accepted for management in 1983 by Marin County. Subsequent to the 1990 Litigation Settlement Agreement between the applicant, the State Lands Commission, the Coastal Commission, and the County, the applicant deeded approximately one acre of the subject parcel to State Lands in fee; this portion of the parcel contained the access easement, which was thus rescinded.

In May, 2000, the Commission approved CDP 2-00-001, authorizing the Marin County Department of Parks, Open Space, and Cultural Services to construct a public access trail

The Commission incorporates its findings on conformity of the permit amendment with the certified LCP and the Coastal Act at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. The proposed development has been conditioned to be found consistent with the policies of the certified LCP and public recreation and public access policies of the Coastal Act and to minimize all adverse environmental effects. Mitigation measures have been imposed to prevent impacts related to water quality, environmentally sensitive habitat areas, and geologic hazards. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed development with the proposed amendment, as conditioned to mitigate the identified impacts, can be found consistent with Coastal Act requirements to conform to CEQA.

EXHIBITS

1. Location Map
2. Vicinity Map
3. Project site
4. Garage Structure
5. Upper Floor Plan (One bedroom with bathroom, and a storage room)
6. Lower Floor Plan Garage Structure
7. Proposed Stair/Storage addition
8. Staff Report for CDP 250-79
9. Photographs of additional storage and stairway, west and south sides of garage structure.
10. Letter from Marin County Department of Environmental Health Services

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Marin County Certified Local Coastal Program
Coastal Permit No. 84-54/Design Review No. 84-128/ Use Permit No. 85-10
CDP File 250-79
CDP No. 2-84-09 (Cirincione-Coles)
CDP No. 2-00-01 (Marin Co. Dept. of Parks, Open Space & Cultural Services)
Litigation Settlement Agreement from 1/31/90 between CCC, State Lands Commission, County of Marin, and Cirincione-Coles.

EXHIBIT

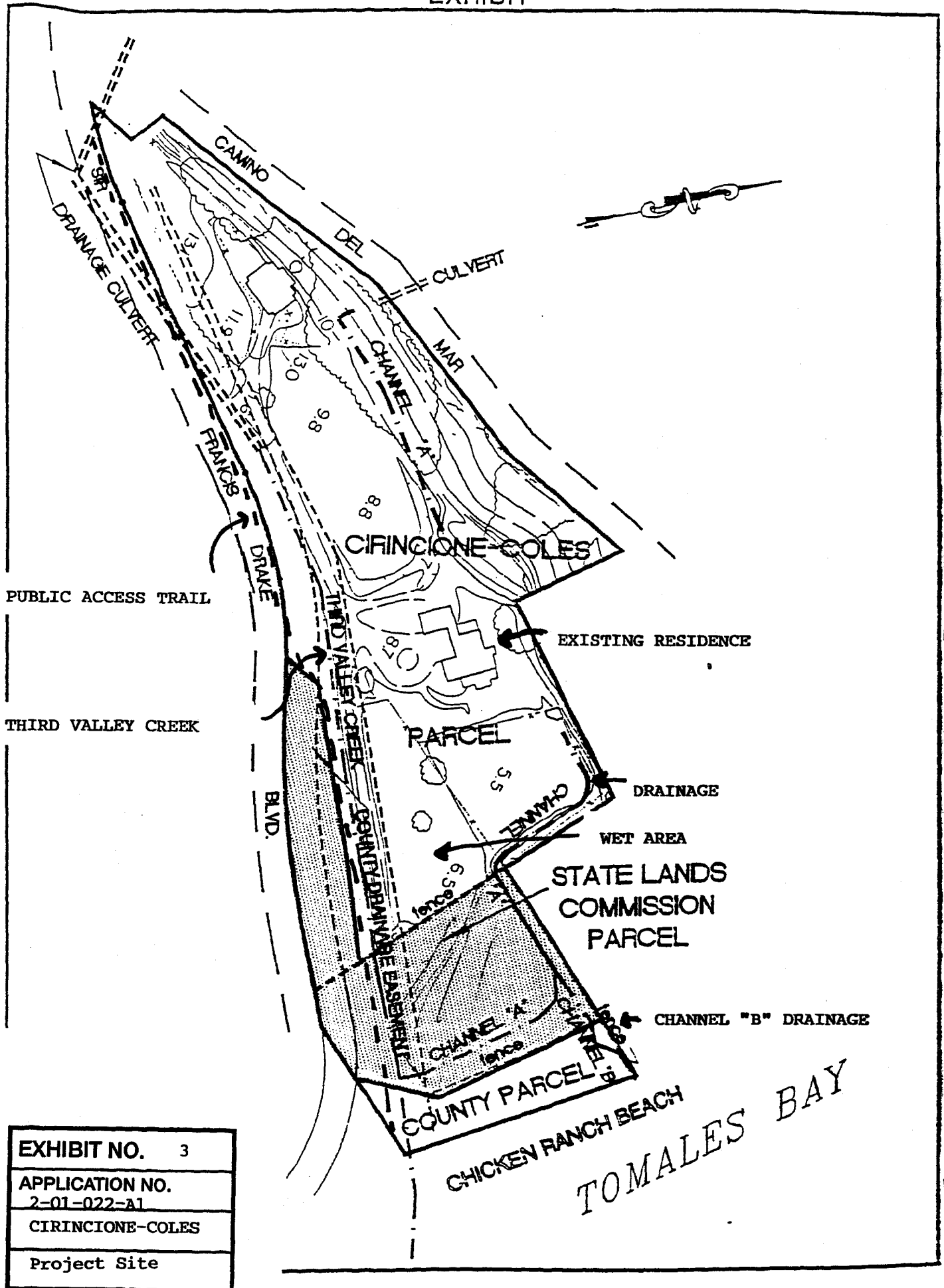


EXHIBIT NO. 3

APPLICATION NO.
2-01-022-A1

CIRINCIONE-COLES

Project Site

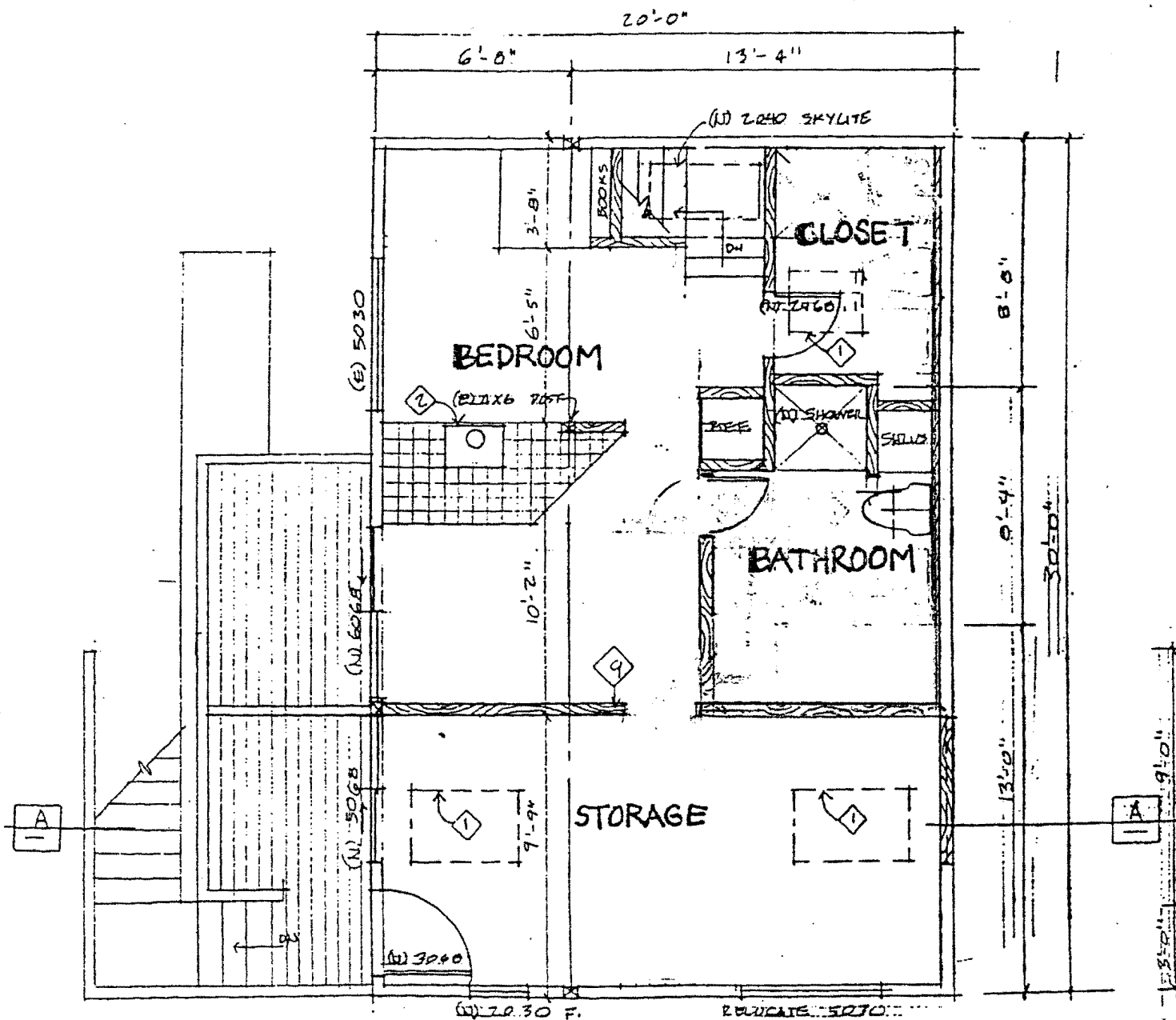
CIRINCIONE -COLES
Upper Floor Plan
(bedroom, bathroom
& storage room)

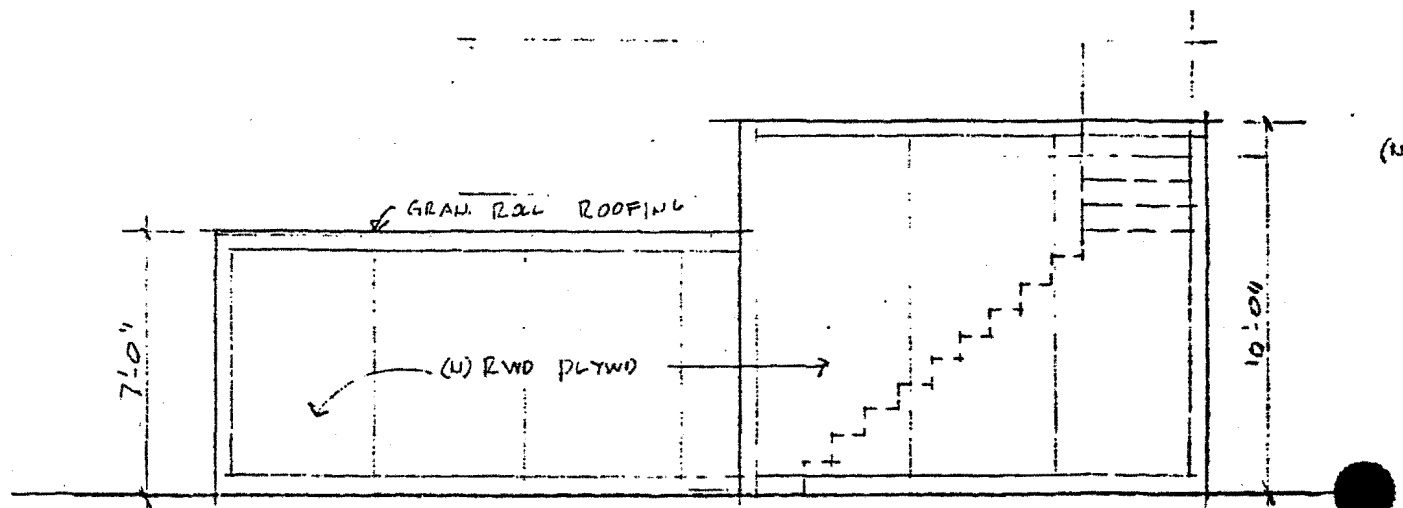
PROPOSED

UPPER FLOOR PLAN

ONE BEDROOM

STORAGE ROOM





STAIR & STORAGE WALLS

EXHIBIT NO. 7

APPLICATION NO.

2-01-022-A1

CIRINCIONE-COLES

Proposed stairway &
storage addition

Conditions:

Exhibit B (2 of 2)

1. Prior to the issuance of a permit, the applicants shall execute and record a document irrevocably offering to dedicate to an agency approved by the Executive Director, an easement for public access over public trust lands on the subject property.

This easement shall be for limited public use as defined below. The offer shall run with the land free and clear of any prior liens or encumbrances except for tax liens. Upon acceptance of the offer, the subject public trust land shall be opened to public access and passive recreational use. Furthermore, the fence that currently separates Chicken Ranch Beach from the contiguous public trust land shall be dismantled, and no further development shall occur upon this public trust land. The types of use shall be limited to passive recreational types such as exploring, hiking and sunbathing. Recreational support facilities such as picnic tables and bathrooms shall be prohibited. If the State Lands Commission changes the public trust boundary line, the easement boundary shall also be changed to conform to this alteration.

Should the certified Local Coastal Plan adopt any other use of this public trust property, and/or the State Lands Commission issue a waiver allowing agricultural use, the applicant may request an amendment of this condition from the Commission or successor agency.

2. Prior to the commencement of construction, the applicant shall submit for the Executive Director's approval landscape plans to mitigate the visual impact of the development from the county beach.
3. The applicant shall conform to the following recommendations of the California Regional Water Quality Control Board for the proposed septic system:

1. The design should be modified to provide an impermeable barrier to possible horizontal flow of wastewater to the proposed subdrain. The barrier should extend to a depth at least two feet below the bottom of the subdrain.
2. The downhill slope shall be modified to extend the toe of the fill to a point an additional ten feet farther out, with the top of mound to be left unchanged.
3. The design should extend the french drain to pass by the replacement leach field on the uphill side of the mound.

4. All utility connections shall be underground.
5. The applicant shall install water saving devices meeting the following requirements: All faucets and showerheads shall be fitted with flow control devices that restrict flow to a maximum of approximately 3 gallons per minute.
6. Construction pursuant to this permit must be commenced within 12 months and completed within 18 months of the date of Commission action. A copy of the Notice of Completion shall be submitted within 18 months from the date of Commission action. Construction subsequent to such period shall require a new or extended coastal permit.

EXHIBIT NO.	8
APPLICATION NO.	2-01-622-A
CIRINCIONE-COLES	Staff report for
CDP 250-79	Page 2 of 10

Page 2.
Permit #250-79
Kathy and Gerry Cirincione-Coles

EXHIBIT NO. 8

APPLICATION NO.
2-01-022-A1
CIRINCIONE-COLES
Staff report for
CDP 250-79
Page 4 of 10

The State Lands Commission has a public trust easement on approximately 1/3 of the applicants parcel. The easement limits private development rights on this land unless a waiver is obtained from the State Lands Commission. No such waiver has been obtained and no development is proposed on the public trust land. However, there is a horse riding rink within the easement area. This rink contains no structures and has been used in the past by private parties. A fence along the eastern boundary of the public trust lands has prohibited public entry or use of the property.

Project Description

The applicant proposes a two-story two bedroom single-family dwelling with 2,140 square feet of floor space. The land coverage of this home would be 1.8 percent of the total parcel. Its maximum height would be approximately 26 feet and would be located along the border of the State Lands jurisdiction.

The proposed septic system is unique and specially designed for this parcel. Because of the high water table the leachfield would be placed on a mound built up against the toe of a hill at the northern portion of the property. This would raise the leachlines the required 3 feet above the groundwater table. A french drain (trench filled with gravel) will be placed on the up-hill side of the leachfield to intercept hillside drainage from entering the leachfield. An impermeable barrier will be placed between the french drain and the leachfield to prevent horizontal wastewater flow into the drain. This system has approval from Marin County Department of Public Works and the Regional Water Quality Control Board.

The project is located in the service area of the Inverness Water Company. This proposal will utilize the 10th of the 11 existing water meters.

Another consideration of this application is approval for the drainage trench which was dug in April of 1979 (details discussed in violation section). If the trench did not exist, water would drain onto the property from the Camino Del Mar culvert, collect in low elevations and create small ponds. Some of the water would flow into the man-made creek and down into the brackish marsh located at the north east corner of the parcel. The applicant intends to fill this currently open trench with gravel or lay a culvert as a safety measure against people falling into it. Without this drainage trench the proposed septic system would not drain as effectively.

Coastal Issues

1. Will the proposed development infringe upon the scenic and visual qualities of coastal areas, considered as a resource of public importance? Will the development be sited and designed in a manner to protect views along the ocean and scenic coastal areas (Coastal Act Section 30251)
2. Will the proposed development impact the quality of environmentally sensitive habitat areas on or near the subject parcel? (Coastal Act Section 30240)

Page 4.

Permit #250-79

Kathy and Gerry Cirincione-Coles

EXHIBIT NO. 8
APPLICATION NO. 2-01-022-A1
CIRINCIONE-COLES
Staff report for CDP 250-79
Page 6 of 10

Past recreational use on the public trust land has been limited because of a fence that runs along the eastern public trust boundary and separates the park from the subject parcel.

Because of the proximity of the public trust lands on this property to the county park and its suitability for recreational use - the dedication of an easement over these trust lands and removal of the existing fence which now obstructs the public's exercise of the trust, will facilitate public use of the land consistent with both public trust doctrine and Section 30221 of the Coastal Act.

Recreational use should be limited to passive types of recreation (exploring, hiking, and sunbathing). Intensive recreational use may impose harmful effects on the ecology of the riparian and marsh habitats. Therefore no recreational support facilities (bathroom, picnic tables, etc.) should be located in this area and all intensive types of recreation should be prohibited.

Continued use of the existing horse rink should not be allowed. Trampling of vegetation and nitrogen pollution from horse feces could impact the ecological vitality of the area.

NOTE: The applicant is currently trying to obtain a waiver for agricultural use of the public trust lands from the State Lands Commission. This waiver would allow the applicant to leave the existing fence which separates the public trust lands and the county beach intact. The Commission should allow the applicant six months to try and acquire this waiver, as agricultural use of the property would be an alternative to public use which would be consistent with Coastal Act policies. If he does not succeed he should be required to offer a dedication of an easement on the public trust lands.

Findings:

- a. The proposed development is a single-family dwelling, septic system and drainage trench on a parcel located between the first public road (Sir Francis Drake Blvd.) and the sea (Tomales Bay). There are adequate public services to serve the development. The location of the proposed development has required a permit review. The result of the review revealed that the proposal is consistent with Section 30250.a. and other Coastal Act policies pertaining to location of development.
- b. The development will be visible from public viewing points. The visual impact is only a minor concern, however, and can be mitigated by an appropriately designed landscaping plan. With said mitigation, the project is consistent with Section 30251.
- c. The project will not significantly impact the brackish marsh areas located on adjacent public trust lands. It is therefore consistent with Section 30240 and other Coastal Act policies concerning environmentally sensitive habitats.

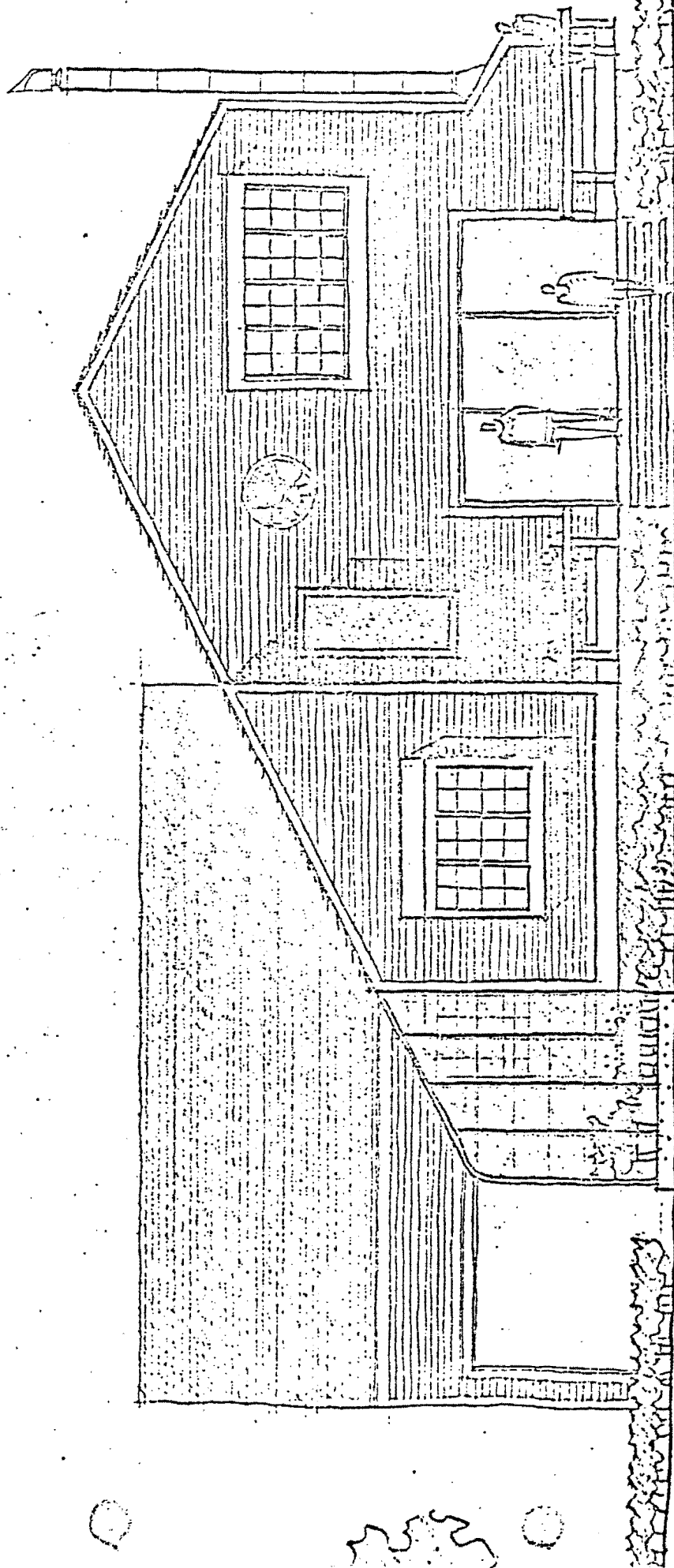
EXHIBIT NO.	8
APPLICATION NO.	2-01-022-A1
CIRINCIONE-COLES	
Staff report for	
CDP 250-79	
Page 8 of 10	

Page 6.
Permit #250-79
Kathy and Gerry Cirincione-Coles

further development shall occur upon this public trust land. The type of recreational use shall be limited to very passive types of use such as exploring, hiking and sunbathing. Recreational support facilities such as picnic tables, and bathrooms shall be prohibited.

2. Prior to the commencement of construction, the applicant shall submit for the Executive Director's approval landscape plans to mitigate the visual impact of the development from the county beach.
3. The applicant shall conform to the following recommendations of the California Regional Water Quality Control Board for the proposed septic system:
 1. The design should be modified to provide an impermeable barrier to possible horizontal flow of wastewater to the proposed subdrain. The barrier should extend to a depth at least two feet below the bottom of the subdrain.
 2. The downhill slope shall be modified to extend the toe of the fill to a point an additional ten feet further out, with the top of mound to be left unchanged.
 3. The design should extend the french drain to pass by the replacement leach field on the uphill side of the mound.
4. All utility connections shall be underground.
5. The applicant shall install water saving devices meeting the following requirements: All faucets and showerheads shall be fitted with flow control devices that restrict flow to a maximum of approximately 3 gallons per minute.
6. Construction pursuant to this permit must be commenced within 12 months and completed within 18 months of the date of Commission action. A copy of the Notice of Completion shall be submitted within 18 months from the date of Commission action. Construction subsequent to such period shall require a new or extended coastal permit.

Commission meeting
of November 15, 1979



This elevation will be
exposed to the County
beach, Bay and Hwy 1
across the Bay

EAST ELEVATION

EXHIBIT NO. 8

APPLICATION NO.
2-01-022-A1

CIRINCIONE-COLES
Staff report for

CDP 250-79
Page 10 of 10



COUNTY OF MARIN
ENVIRONMENTAL HEALTH SERVICES

Community Development Agency

August 27, 2001

3501 Civic Center Drive, Rm 236
San Rafael, CA 94903
(415) 499-6907 FAX (415) 507-4120
www.co.marin.ca.us/ehs

J.D. Stroeh
C.S.W. Stuber/Stroeh
790 DeLong Ave #1
Novato, CA 94945

Dear Dietrich:

This letter is in response to your letter to Phil Smith dated July 19, 2001.

In this letter you proposed to make some changes to the existing residence floor plan that would allow the Coles to use their existing sewage disposal system.

The proposed changes are as follows:

- The two bedrooms on the second floor over the garage would be remodeled so that the final floor plan would result in one bedroom one bathroom with an opening that would lead to a storage room.
- The wood burning stove will be removed along with all the furniture.
- The existing study in the main residence on the second floor will be opened up and the door would be removed. The total existing square footage would be 2800 or less.

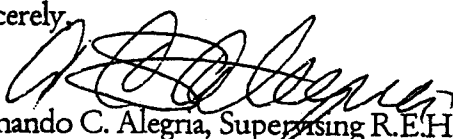
On August 7th we met at the Coles residence for a walk through along with Debbie Poiani of Code Enforcement.

After discussing this meeting with Mr. Phil Smith, our office would approve your request with following conditions.

- 1) The openings for the storage and study rooms would need to comply with the architectural features addressed in the regulations. (An arched door way leading into an entryway of activity area, etc.)
- 2) The storage room on the second floor over the garage will need to have deed recording that this room is not to be used habitable space or as a bedroom.

We hope this answer your question regarding your request. If you have any further questions please contact your office.

Sincerely,


Armando C. Alegria, Supervising R.E.H.S.

C: Gerry Coles, PO Box 869, Inverness CA 94937

EXHIBIT NO.	10
APPLICATION NO.	2-01-022-A1
Cirincione-Coles Letter from Marin	
County Department of Env. Health Serv.	