

**CALIFORNIA COASTAL COMMISSION**

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

**TH11a****RECORD PACKET COPY**

Filed: 06/17/02  
Staff: SAM-SC  
Staff report prepared: 07/24/02  
Hearing date: 08/08/02

**STAFF REPORT: REQUEST FOR RECONSIDERATION**

**Application number** .....3-01-013-A1-R

**Applicant**.....Paul Baldacci

**Project location**.....1687 Sunset Drive in the Asilomar Dunes neighborhood of the City of Pacific Grove, (Monterey County) APN 007-041-028.

**Project description** .....Request for the reconsideration of the denial of an amendment to a Coastal Development Permit to raise the floor and roof level of the 1,126 sq. ft. garage portion of an approved house by 2.8 feet.

**Local approval**.....Architectural Review Board approval on 1/8/02 (AA#2600-99), Pacific Grove City Council approval 2/6/02.

**File documents**.....Permit File 3-01-013-A1 and Reconsideration Requests dated June 17, 2002 and July 11, 2002.

**Staff recommendation** ...Staff recommends that the Commission **deny** the request for reconsideration.

**PROCEDURAL NOTE:** The Commission's regulations provide that at any time within thirty days following a final Commission action on a permit, the applicant may ask the Commission to reconsider all or a portion of their action. (CCR, Title 14, Section 13109.2 ) The grounds for reconsideration are provided in Coastal Act Section 30627, which states in part: "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 of fact or law occurred which has the potential of altering the initial decision" (Public Resources Code, Section 30627 (b) (3)).

**EFFECT OF DENYING THE RECONSIDERATION:** If the Commission determines that grounds for reconsideration of the June 2002 action do not exist, the initial decision to deny the project stands.

**I. Summary**

The Commission denied an amendment to a previously approved coastal development permit application to raise the floor and roof level of the 1,126 square foot garage portion of the approved home by 2.8 feet at its June 13, 2002 meeting in Long Beach. The primary basis for the denial was the project's potential



California Coastal Commission

August 2002 Meeting in San Luis Obispo

Staff: Stephanie Matraw Approved by: *S.T.Z.* 7/24/02

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for impacts on the area's significant visual resources, although the amendment request also raised questions regarding additional alternatives that might be pursued in lieu of raising the roof of the garage. In the reconsideration request, received on June 21, 2002 and filed on July 17, 2002, the applicant contends that the Commission's prior denial (3-01-013-A1) was based on unfair treatment, lack of staff preparation, that there is relevant new evidence that was not available at the hearing, and that errors of fact and law which affected the Commission's original decision occurred (see Exhibits A and B, letters requesting reconsideration). To summarize the contentions:

1. Commission staff did not allow the item to be moved to the consent calendar for the June meeting.
2. There is relevant new evidence, which, in the exercise of reasonable diligence, was not available at the hearing, because:
  - a) Staff neglected to bring all visual exhibits the applicant submitted to the hearing; and
  - b) Staff did not emphasize a support letter from a member of the public.
3. The applicant was not given adequate time for a rebuttal of the opposition's material.
4. Staff did not submit to the Commission all public comment on the project, specifically a letter written by the applicant, and a comment letter by a Pacific Grove City Council member.
5. The Commission based its determination on errors of fact and law.
  - a) Commission decision was based in part on the understanding that alternatives to the raised elevation are available;
  - b) The only issue raised by staff is conformance with Coastal Act visual policies;
  - c) Commission did not weigh competing interests of protection of visual resources and minimization of landform alteration; and
  - d) Commissioner Potter misstated staff's recommendation when calling for a vote and confused other Commissioners who had spoken in favor of the amendment.

Each of these contentions is discussed in detail in the Findings. Staff did not find merit to the claims of the existence of relevant new evidence, or errors in fact and law, and is recommending that the request for reconsideration be denied.

If the Commission determines that grounds for reconsideration of the June 2002 action do not exist, the initial decision to deny the project stands. If the Commission determines that grounds for reconsideration exist, the request should be approved and a new hearing on whether to approve an amendment to the previously approved coastal development permit for the project will be scheduled for a subsequent Commission meeting.



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## II. Staff's Recommendation

**MOTION: I move that the Commission grant reconsideration of Coastal Development Permit No. 3-00-082-R.**

**STAFF RECOMMENDATION TO DENY RECONSIDERATION:** 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.

**RESOLUTION TO DENY RECONSIDERATION:** The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit number 3-01-013-A1-R 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.



### **III. Findings and Declarations**

#### **A. Permit History and Background:**

The applicant submitted an application for an amendment to a previously approved coastal development permit to construct a house in the Asilomar dunes neighborhood of Pacific Grove. The amendment request involved raising the floor and roof level of the garage portion of the approved house by 2.8 feet. The application was heard at the Commission's June 13, 2002 hearing in Long Beach. Although Staff had recommended approval, the Commission denied the application. The primary basis for the denial was that the proposed increase in height of the structure would have an adverse impact on visual resources in a scenic area that could be avoided through a design change not involving an increase in structure height (See *Revised Findings*, Agenda Item TH10a on August 8, 2002).

#### **B. Request for Reconsideration**

The Commission's Regulations provide that at any time within 30 days of the Commission's action on a permit, the Applicant may ask the Commission to reconsider all or a portion of its' action. (CCR Title 14, Section 13109.2) In order to file a request for reconsideration, the Applicant must submit a fee as required by CCR Title 14, Sections 13055(a)(11) or (12) and the public noticing materials described in Section 13109.5(a). The grounds for reconsideration are provided in Coastal Act Section 30627 which states in part:

*"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 of fact or law occurred which has the potential of altering the initial decision."*

In this case, the applicant is contending that relevant new evidence that was not available at the hearing, despite reasonable diligence, and that various errors of fact and law were made that would, if corrected, have the potential to alter the Commission's action on this initial item. Each of these contentions, presented in six categories, is discussed in the following sections of these findings.

##### **1. Due Process Oversight**

Applicant raises concerns about the Executive Director's decision to hear the amendment on the regular permit amendment calendar rather than the consent calendar. He cites language in the Commission's meeting notice that states:



*An amendment below may be moved to the Consent Calendar for this area by the Executive Director when, prior to taking up the Consent Calendar, Staff and the applicant are in agreement on the Staff recommendation.” (Exhibit A, p. 2)*

The applicant asserts that the Executive Director did not afford the applicant the opportunity to be moved to the Consent Calendar, and that this is a due process oversight to which the applicant was entitled (see Exhibit A, pp. 1-2).

**Analysis:** In deciding on which hearing agenda calendar to place the amendment request, Commission staff, including the Acting District Director for the Central Coast District, acted on behalf of the Executive Director and reviewed the Applicant’s request to be placed on the consent calendar. Article 15, Section 13100 of the California Code of Regulations provides the following guidance:

*Permit applications which, as submitted or as recommended to be conditioned, in the opinion of the executive director do not raise significant issues with respect to the purposes and objectives of the Coastal Act, **may** be scheduled for one public hearing during which all such items will be taken up as a single matter. This procedure shall be known as the Consent Calendar. (Emphasis added)*

This regulation is also reflected in generic language on the Commission’s agenda headings for Permit Amendments, which states:

*An Amendment below **may** be moved to the Consent Calendar . . . by the Executive Director when, prior to taking up the Consent Calendar, staff and the applicant are in agreement on the staff recommendation [emphasis added].*

Thus, removal of an item to the Consent Calendar is a clearly a discretionary decision; the Executive Director is not required to move items scheduled for the Regular Permit Amendment Calendar to the Consent Calendar. Concomitantly, there is no entitlement to have an item placed on the Consent Calendar.

In this case, given the nature of the amendment request, which proposed an increase in structure height in a sensitive visual area along the Pacific Grove shoreline, the Executive Director was within his discretion to keep the amendment item on the regular permit amendment calendar. As a consequence, no error of fact or law occurred. Thus, the request for reconsideration should not be granted based on this contention.

## **2. Relevant evidence not presented at hearing.**

The Applicant makes various contentions concerning the evidence presented to the Commission. First, Applicant contends that the “Commission did not have an opportunity to consider relevant new evidence”. The applicant contends that Staff neglected to provide all the exhibits submitted by the applicant at the public hearing, and thus that the presentation was inadequate:



*Much of the relevant evidence was not made available to the Commission members, resulting in the Commission having inadequate and incorrect information before them when they voted on the Amendment application. (See Exhibit B, p.4 )*

Second, the applicant contends that he was misled by staff with respect to exhibits and that their exclusion from the public hearing undermined his presentation to the Commission.

*This lack of detailed displays of site circumstance, to and including a detailed topographical map of view shed analysis, defeated and undermined applicant's presentation to Commission. Staff had lead applicant to understand, that all exhibits, given by applicant, to Staff, would be present at Commission meeting; and it was not necessary for applicant to provide duplicates. (Exhibit A, p.2 )*

Third, the applicant contends that "staff was not prepared to make corresponding adequate presentation" (Exhibit A, p. 2).

Finally, the applicant also contends in two separate submittals that staff did not emphasize a letter of support from a member of the public (See Exhibit B. p. 3):

*... Staff should have emphasized the April 26, 2002 letter from Pacific Grove City Council member Morris Fisher supporting the height modification and action of the City Design Review Board.*

And:

*Most importantly, Staff did not include additional statement supplied by applicant to Staff, for inclusion in package sent to Commission members on the Amendment; or the Member of the Pacific Grove City Council, Morris G. Fisher's letter of April 26, 2002 outlining the extensive procedures, review and approvals supplied by Local controls to applicant application before it was forwarded on to Commission (see also, Exhibit A, p. 4).*

**Analysis:** There is no error in fact or law with respect to the various applicant claims concerning evidence presented to the Commission. First, while it is true that staff did not bring to the hearing every exhibit pertaining to this project that was submitted by the applicant, all exhibits submitted were thoroughly evaluated and analyzed, and were considered in the preparation of the staff's original recommendation of approval.

Second, the staff recommendation included adequate description of the proposed amendment, and analysis of the impact. In addition, the staff recommendation included exhibits depicting the project location, site plans, elevations, the original project conditions, photographs of the site, correspondence received on the proposed height change. Finally, along with an oral presentation of the amendment request, photographs of the site, including a photograph with an illustration of the proposed change in structure height, were presented at the public hearing by Commission staff (Exhibit D). In short, the



Commission was provided with adequate and substantial evidence upon which to base its decision, and no error in fact or law occurred (see *Revised Findings*, Agenda Item TH10a on August 8, 2002).

With respect to the "one of a kind scaled topographical map of view shed analysis," the model to which the applicant refers was created for the original approval of the house, and does not illustrate the effect of the proposed amendment. Thus, even if it had been available at the Commission hearing, it would not have altered the decision. Thus, the request for reconsideration should not be granted based on this contention.

Staff also addressed the applicant's question regarding the submission of exhibits by stating that all material submitted to staff would be reviewed, analyzed and considered during formation of the staff recommendation. Due to travel constraints and overall number of exhibits received for each application, staff did not agree to bring all exhibits to the public hearing as it is not customary to do so. With respect to the staff statement that the applicant need not provide duplicates, this statement was made regarding the submission of a letter in support of staff's original recommendation of approval by the applicant, not the physical model of the site. Public comment received after staff reports are mailed is included in the District Director's report, as was the case with the applicant's comment letter. Staff therefore informed the applicant that sending duplicates to individual Commissioners was not necessary. Because all exhibits were analyzed, and this analysis presented in the staff report, there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, and thus the request for reconsideration should not be granted based on this contention.

Finally, Commission staff presents all public comment relevant to an application for Commissioner review pursuant to Section 13060 of the California Coastal Commission Regulations. With respect to the applicant's claim that Morris G. Fisher's letter was not submitted to the Commission, it was attached as Exhibit I, pp. 1-6 of the staff report dated 05/23/02.<sup>1</sup> The applicant also had the opportunity at the public hearing in June to emphasize any public comment letters received pertaining to his project, and did in fact mention Mr. Fisher's letter. Additionally, staff is not required to emphasize one public comment letter over another. With respect to the applicant's own statement concerning the amendment, dated June 4, 2002, it was received after staff reports had been mailed out to the public, and was thus included in the District Director's report, on page 275, for the Commission's consideration. The District Director's report is submitted to the Commissioners the day before the hearing. In summary, this contention presents no error in fact or law, nor the existence of any relevant new evidence not presented at the original hearing, and thus, the request for reconsideration should not be granted based on this contention.

### **3. Insufficient Rebuttal Time**

The applicant asserts that he was not allowed enough rebuttal time after the opposition's presentation, and that he could not thoroughly examine the exhibits they presented. He also expresses concern that he was misled by staff concerning the nature of the issue raised by the amendment (See Exhibit A, p. 3).

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<sup>1</sup> As a point of clarification, Mr. Fisher's letter was sent on April 26, 2002, but erroneously dated March 26, 2002.



**Analysis:** The applicant was given and used a full 12 minutes to make his initial presentation and two minutes to provide a rebuttal to the opposition's contentions, consistent with Section 13066(2), which states, "The chairperson may allow rebuttal testimony in accordance with Public Resources Code section 30333.1(a)" (Emphasis added). Thus, the Chairperson is not required to allow rebuttal. Page 2 of the Meeting Notice gives guidance to the public with respect to time limits, stating that they are indicated on the speaker sign-up forms. The Meeting Notice also states that the Chairman will determine the time limits for each speaker at the beginning of the public hearing. Mr. Baldacci took advantage of the entire time allotted to him, both to present his case and to rebut the opposition's contentions. He was not treated unfairly and was afforded an opportunity to rebut.

Staff did make Mr. Baldacci aware from the beginning of the amendment process that the main issue in the Sunset Drive area of the Asilomar Dunes neighborhood, with respect to the amendment, is one of impact to visual resources. The staff report that was sent to Mr. Baldacci focused on this very issue. The amendment request involved an additional visual imposition on a very sensitive scenic area. With respect to retaining wall design, as pointed out by the applicant, this alternative had been discussed at the local level and, as discussed below, was ultimately identified by the Commission as a more appropriate alternative that would avoid the visual impact of an increase in structure height.

In sum, the applicant was provided with rebuttal time, consistent with Section 13066(2) of the Commission's Regulations, and with respect to relevant Coastal Act issues he was not misled by staff. As a consequence, no error of fact or law occurred and no new relevant information has been presented. Thus, the request for reconsideration should not be granted based on this contention

#### **4. Alternatives Analysis**

The applicant claims that the Commission's June 13, 2002 decision was based in part on an understanding that alternatives to the raised elevation are available, and that this is an error of fact (Exhibit B, p. 4).

**Analysis:** In considering whether to approved a specific development (in the case an increase in structure height), the Commission must consider the environmental impact and feasibility of various alternatives. As discussed in the Revised Findings for the amendment, the Commission's denial of the proposed amendment was based on the fact that raising the roof of the garage will have an impact on sensitive visual resources, coupled with the availability of a feasible alternative to address the applicant's concern (taller retaining wall). Contrary to applicant's assertion, the Commission was provided with alternative analysis in the staff report, and Exhibit I, p. 3 provide a copy of a memo from the City of Pacific Grove to Commission staff that specifically mentions the retaining wall option. Although the City determined that the increase in structural height was the preferred option to address the applicant's planning errors, the Commission, in exercising its coastal development permit authority, must make an independent determination concerning the impact of a proposed development, and the feasibility and environmental impacts of various alternatives. In this case, the Commission determined that the retaining wall option was a feasible alternative that would avoid the visual impact of the proposed increase in structure height (see *Revised Findings*, Agenda Item TH10a on August 8, 2002).





## 5. Competing Concerns of Coastal Act not Weighed

The applicant asserts that the Commission did not weigh the competing concerns viewshed protection and landform alteration as mandated by the Coastal Act; and that the Commission did not adequately consider the impacts of alternatives to landforms on the site (Exhibit B, p. 6). The applicant suggests that in not following the staff recommendation of approval, that the Commission made a clear error of fact and law.

**Analysis:** The Commission staff report of May 23, 2002, raised the issue of conformance of the project with Coastal Act Section 30251, which protects scenic and visual qualities of coastal areas. The Commission is not required to adopt a staff recommendation, and it must make an independent decision based on its assessment of the evidence presented. The Commission found that the proposed amendment would have adverse impacts on visual resources, and that a feasible alternative existed that was less environmentally damaging. The Commission was aware that the entire project involved substantial grading in a sensitive dune environment. There was also a retaining wall already included in the project design. Thus, the Commission necessarily balanced the additional grading impacts of a revised retaining wall (if any) with the visual impacts of the proposed increase in structure height when it made its decision. This claim does not present any basis for an error in fact or law, thus, the request for reconsideration should not be granted based on this contention.

## 6. Mis-statement of Staff Recommendation

The applicant contends that Commissioner Potter misstated staff's recommendation when calling for a vote and confused other Commissioners who had spoken in favor of the amendment (Exhibit B, p. 6).

**Analysis:** California Coastal Commission Regulations Section 13092(a) outlines the effect of vote under various conditions.

*Section 13092(a) "Votes by the commission shall only be on the affirmative question of whether the permit should be granted; i.e., a "yes" vote shall be to grant a permit and a "no" vote to deny..."*

A motion was made by Commissioner Potter and seconded by Commissioner Woolley at the June 13, 2002 hearing, in the affirmative, subject to Section 13092(a) of California Coastal Commission Regulations. Therefore, because the Commissioners made the motion in compliance with Section 13092(a) of the Coastal Commission Regulations, the applicant's contention presents no error of fact or law, and thus, the request for reconsideration should not be granted based on this contention.



## IV. Conclusion

Coastal Commission Regulation Section 13109.4 outlines the grounds for reconsideration as provided in Public Resources Code Section 30627 (See Exhibit Xx). This Section of the Coastal Act provides for a reconsideration based on either:

- 1: relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter; or
- 2: that an error of fact or law has occurred which has the potential of altering the initial decision.

The applicant has made numerous claims that his project was not fairly evaluated or presented; that relevant new evidence was not available at the hearing; and that errors of fact and law that affected the Commission's original decision occurred. The above analysis has discussed each of the applicant's claims. Overall, there is no merit to the claims of omission of relevant new evidence, or the existence of errors in fact or law. Thus, the request for reconsideration is denied



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COASTAL COMMISSION

**Paul R. Baldacci, Jr.**  
**12885 Alcosta Blvd., Suite A**  
**San Ramon, CA 94583**  
Ph: 925-328-1000 Fax: 925-242-8100

June 17, 2002

**Peter M. Douglas, Executive Director**  
**California Coastal Commission**  
**Central Coast District Office**  
**45 Fremont Street, Suite 2000**  
**San Francisco, CA 94105-2219**

**Sara Wan, Chair**  
**California Coastal Commission**  
**Central Coast District Office**  
**22350 Carbon Mesa Rd.**  
**Malibu, CA 90265**

**RE: Item 11a – Thursday, June 13, 2002; Agenda, California Coastal Commission Meeting Permit No. 3-01-13-A Request by Paul and Betty Baldacci to Raise Garage Floor Elevation 2.8 Feet at 1687 Sunset Drive, Pacific Grove, CA; Monterey County**

**Dear Chairperson and Executive Director:**

This is a request to reconsider the above referenced matter, at the next regularly scheduled meeting of the Coastal Commission, on August 6-9, 2002.

At the June 13<sup>th</sup> meeting, it came as a surprise to the undersigned, to learn and discover, that the Commissioners perhaps work longer and harder, than any other similar Commission in the State of California.

Nevertheless, at the June 13, 2002 meeting the administration, application and perhaps acceptable norms of established procedures were not properly applied to Amendment application 3-01-13-A.

Therefore, this is a request to reconsider the above referenced matter on the Central Coast Agenda for the regularly scheduled meeting of August 6-9, 2002 for reconsideration.

The reasons for this request are as follows:

1) On page sixteen of California Coastal Commission meeting notice Thursday June 13, 2002 is a provision entitled "Permit Amendment." The provision reads:

EXHIBIT NO. A

APPLICATION NO.

3-01-013-A-R

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An Amendment below may be moved to the Consent Calendar for this area by the Executive Director when, prior to taking up the Consent Calendar, Staff and the applicant are in agreement on the Staff recommendation.

Additionally, page two of IMPORTANT PUBLIC HEARING NOTICE – PERMIT AMDNDMENT – dated May 24, 2002 provides identical instructions. This procedure was not afforded the undersigned by the Executive Director; despite repeated request by applicant. (i.e. Executive Director Douglas referred the undersigned to Assistant Executive Director Lester, who refused). This was a due process oversight to which applicant was entitled. Unless, Executive Director had inside knowledge, that was not shared with applicant.

2) In the subsequent Commission hearing, the Staff did not bring to the meeting, the extensive engineering exhibits and displays provided to Commission by applicant, to and including; a one of a kind scaled topographical model of the immediate surrounding area. This lack of detailed displays of site circumstance, to and including a detailed topographical map of view shed analysis, defeated and undermined applicant's presentation to Commission. Staff had lead applicant to understand, that all exhibits, given by applicant, to Staff, would be present at Commission meeting; and it was not necessary for applicant to provide duplicates.

3) Staff was not prepared to make corresponding adequate presentation, to substantiate recommendation made to Commission, when called upon to do so. This omission, coupled with lack of exhibits Staff should have had in possession further adversely and detrimentally influenced applicant's presentation to Commission.

When the matter returned to Commission, for consideration, Commission unilaterally deferred to Commissioner Potter for direction. The Commission found it necessary to do so, because of the lack of factual educational exhibits; provided to Staff for overview; were not present. To adequately inform Commission, of the true facts available for consideration. Whether Commissioner Potter's actions were subjectively political, biased, or otherwise in his directions to the Commission, are not the issue at this time.

Exhibit A  
3-01-013-ATR  
p. 2 of 3

Additionally, applicant was not allowed enough rebuttal time to examine the exhibits presented by opposition. To refute any misinformation as may have been presented in those exhibits. Applicant, from the start, was led by opposition and Staff to believe the matter was a view shed issue and not one of retaining wall design. That issue had already been addressed in detail by Pacific Grove Architectural Review Board, in extensive detail.

Most importantly, Staff did not include additional statement supplied by applicant to Staff, for inclusion in package sent to Commission members on the Amendment; or the Member of the Pacific Grove City Council, Morris G. Fisher's letter of April 26, 2002 outlining the extensive procedures, review and approvals supplied by Local controls to applicant application before it was forwarded on to Commission.

In Summary, the applicant made an extensive and detailed submission of site illustrations, models and engineering designs to the Commission through the Central Coast Staff.

Despite advising applicant otherwise, Staff neglected to provide the Commission with these presentations, and thereby adversely influenced, Commissions perception of the issues, in applicant's presentation. The refusal by Mr. Lester to place the matter on Consent Calendar as procedurally provided, was a biased denial of applicant's rights, and an unequal administration of published process that was made available to others.

Accordingly, we ask again, under the circumstances, that the matter be immediately rescheduled for August 6<sup>th</sup>, 2002 California Coastal Commission meeting, and the proper administration in presentation to Commission, be received by the undersigned applicant as others have been afforded.

Thank you for your time and attention to this matter.

Very truly yours,

*Paul and Betty Baldacci*

Paul & Betty Baldacci

H:\Paul\Correspondence\228

EXHIBIT NO. A

APPLICATION NO.

3-01-013-A1-R

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SAMI  
cc: DL/CL

**SHEPPARD MULLIN**  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
ATTORNEYS AT LAW

SEVENTEENTH FLOOR  
FOUR EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111-4106  
TELEPHONE 415-434-9100  
FACSIMILE 415-434-3947  
WWW.SHEPPARDMULLIN.COM

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Tom Roth  
(415) 774-2976

Our File Number  
0100-092575

July 11, 2002

**VIA FACSIMILE AND OVERNIGHT COURIER**

Mr. Charles Lester  
Acting Deputy Director  
Ms. Diane Landry  
District Manager  
California Coastal Commission  
Central Coast District  
725 Front Street, Suite 300  
Santa Cruz, California 95060

Re: Supplemental Information in Support of Request for  
Reconsideration of Commission Denial of Permit Amendment  
for 1687 Sunset, Pacific Grove, California, Permit No. 3-01-13-A

Dear Mr. Lester and Ms. Landry:

We have been retained by Mr. and Mrs. Paul and Betty Baldacci (the "Baldaccis") to assist them with their request for reconsideration of the Coastal Commission's denial of their application for a permit amendment (Permit No. 3-01-13-A).

Contrary to Staff's recommendation, the Commission denied the permit amendment which would have allowed an increase in the elevation of the garage portion of their single family home in Pacific Grove by slightly more than 2 ½ feet. Reconsideration of this application is warranted because relevant new evidence was not available at the hearing, despite the exercise of reasonable diligence, and an error of fact and law which affected the Commission's original decision has occurred

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namely that the Commission failed to use the proper legal standard and factual predicate when making its initial decision.

Immediately after the Commission's denial of the permit amendment application at the Long Beach proceedings on June 13, the Baldaccis submitted a request for reconsideration on June 17, 2002. In light of your letter dated July 8, 2002, we respectfully submit this supplemental information in support of that request for reconsideration.

We also have enclosed a check in the amount of \$200 for the reconsideration application fee; a list of the names and addresses of the requested addressees; envelopes for these addressees; and a copy of Mr. Baldacci's authorization for me to represent him before the Commission.

**A. Background.**

The Commission previously approved Permit No. 3-01-13-A on May 7, 2001 to allow construction of a single-family house in Pacific Grove (the "Permit").

In November 2001, the City of Pacific Grove issued a building permit for the residence. When grading was undertaken, it became apparent that the approved grading plans contained an error in the base elevations. Over the long term, grading in accordance with the approved plans could potentially threaten a neighboring property's retaining wall. To remedy this situation, the Baldaccis applied to the City of Pacific Grove for permission to increase the floor elevation of the garage portion of the home by 2.8 feet (2 feet 10 inches).<sup>1</sup> This was done to ensure that the retaining wall at issue would remain stable. In January and February 2002, the City approved the request.

With this approval, the Baldaccis, on February 25, 2002, also requested an amendment to the Coastal Commission Permit (the "Amendment"). In the comprehensive May 23, 2002 report ("Staff Report"), Commission Staff recommended

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<sup>1</sup> The elevation of the rest of the home would remain unchanged. (Staff Report at 4.)

EXHIBIT NO. <b>B</b>
APPLICATION NO.
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that the application be approved. (Staff Report at p. 1.) According to the Staff Report, the Amendment "is consistent with Coastal Act Section 30521, which provides for the protection of visual resources," (*id.*), as well as the City of Pacific Grove's certified Land Use Plan ("LUP"). (*Id.* at 6.) "The amendment, to raise the roof of the garage portion of the approved house by 2.8 feet, will not by itself add significantly to the visual impact of the approved house." (*Id.* at p. 5.) "The approved house was designed and sited to comply with LUP policy 2.5.5.4, and the amendment does not significantly alter the design or profile of the approved house. Additionally, the amendment is consistent with LUP policy 2.5.5.4 as the raised garage roof does not exceed 18 feet above the natural grade. Thus the amendment is also consistent with the City's certified Land Use Plan." (*Id.*)

The Amendment "will not be a significant change over what has already been approved . . . ." (*Id.* at 5.) The Staff also found that the Amendment would create "no adverse impacts to coastal resources or prohibit public access and that [it] . . . is consistent with Chapter 3 of the Coastal Act." (*Id.* at pp. 1,3.)

Finally, the Staff evaluated several alternatives and concluded that they were infeasible or resulted in other aspects of the home not meeting zoning and safety requirements, or in more significant impacts to coastal resources. (*Id.* at p. 6.) These findings were supported by an independent finding of the City of Pacific Grove, which determined that of the alternatives, "the proposed height change was the least disruptive to the site."<sup>2</sup> (February 13, 2002 Memorandum from S. Rideout, City of Pacific Grove to C. Kelly Cuffe, Coastal Commission ("Rideout Memo") at p.1.)

**B. Request for Reconsideration (Supplement and Restatement of June 17, 2002 Request).**

In accordance with Pub. Res. Code § 30627 and 14 CCR §§ 13109.1-13109.5, we submit this supplemental request for reconsideration.<sup>3</sup> The basis for this

<sup>2</sup> The Amendment was originally considered "immaterial," but was placed on the Commission's agenda in order to allow public comment.

<sup>3</sup> The arguments set forth herein are in addition to those presented to the Commission by the Baldaccis in their June 17, 2002 request.

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request is that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing and that an error of fact and/or law has occurred which had the potential of altering the Commission's initial decision. (Pub. Res. Code § 30627(b)(3).)

1. *The Commission Did Not Have an Opportunity to Consider Relevant New Evidence.*

Much of the relevant evidence was not made available to the Commission members, resulting in the Commission having inadequate and incorrect information before them when they voted on the Amendment application.

First, the Baldaccis submitted extensive materials, including detailed engineering drawings, exhibits, and displays, to the Commission Staff in the Amendment application. However, the Staff did not bring these materials to the Commission hearing in Long Beach, or they were unable to present them and thus the materials were not available to the Commission members when they were considering the Amendment application. The Baldaccis had understood that the Staff would bring and present these materials to the Long Beach hearing and relied upon that understanding. But for this understanding, the Baldaccis would have gladly made duplicates of these materials available at the hearing. These materials related directly to the issues and concerns discussed at the hearing. It is likely that if the Commission members had these materials before them that they would have agreed with the Staff analysis and approved the Amendment application as consistent with the Coastal Act.

Second, the Staff should have emphasized the April 26, 2002 letter from Pacific Grove City Council member Morris Fisher supporting the height modification and action of the City Design Review Board.

Third, the Commission apparently based its decision in part on the understanding that alternatives to the raised elevation are available. This is factually and legally in error. The City of Pacific Grove undertook extensive analysis to ascertain whether feasible alternatives are available. As information provided to the Commission Staff in the initial Amendment application demonstrates, several alternatives were considered and rejected. In each case, the proposed alternative was not feasible, or would result in greater impacts to coastal resources. Again, it appears that the Commission members did not have this information before them when

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considering this application even though it had previously been provided to the Staff in a timely fashion. Indeed, Staff reviewed and evaluated this information and adopted these same conclusions in their final Staff Report.<sup>4</sup>

Accordingly, we request that the Commission reconsider its denial in light of this information. We will provide this information to the Commission members at the hearing.

2. *The Commission Based Its Determination on Errors of Fact and Law.*

A principal goal of the California Coastal Act is to "assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state." (Pub. Res. Code § 30001.5(b).) The social and economic needs of the State include the construction of homes built in accordance with the Coastal Act. In 2001, the Commission granted a permit for the Baldaccis' home at 1687 Sunset in Pacific Grove, finding that it was in accordance with the Coastal Act.

The proposed Amendment to that permit does not alter the Commission's previous analysis or findings. The only issue raised by the Commission Staff, or by other members of the public, was whether the proposed 2 ½ foot increase in elevation of the garage conformed with Pub. Res. Code Section 30251 concerning the protection of scenic and visual qualities of the coast. (Staff Report at p. 4.) Staff, after careful analysis and consideration of public comments, concluded categorically that such a small increase in elevation, for only part of the home, could not be considered a significant visual impact. They expressly found that the Amendment would be "in conformance with Section 30251 of the Coastal Act." (Staff Report at p. 5.)

Section 30251 requires that "scenic and visual qualities of coastal areas" be considered and protected . . . . The Staff considered these qualities and

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We note that a transcript from the Commission's June 13 denial is not yet available. Accordingly, we reserve the right to provide additional information or argument once the transcript becomes available and we have an opportunity to review it.

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determined that they would continue to be protected, as the Commission had determined when it granted the original permit application. Section 30251 further provides that "permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas . . . ." Commission Staff also determined that the Amendment would not significantly change the views of the ocean. Common sense suggests that raising part of a roof by 2 ½ feet would not ruin ocean views. The Staff, however, considered not only common sense, but detailed viewshed drawings, photographs and analysis that showed that the additional impact is virtually nonexistent.

Section 30251 also mandates that the proposed development "minimize the alteration of natural land forms." The Staff Report noted that alternatives such as moving the bottom story of the garage, or other redesigns of the house, would increase the amount of alteration to natural dune topography, or result in code violations. (Staff Report at p. 6.) This determination is supported by detailed information submitted by the City of Pacific Grove. The City found that the proposed increase in elevation "requires no additional alteration to the topography of the site and is consistent with LUP policies . . . ." (Rideout Memo at p.1.) By contrast, the alternatives – including a longer, taller retaining wall across the site, relocation of the house, relocation of some parts of the house and modifications to plate heights – were all more disruptive to the site, i.e., the topography. (Id.)

Given the competing mandates of Section 30251 – protection of visual resources, on the one hand – and minimization of natural land forms, on the other, the Staff's determination correctly ensured protection of both coastal resources. Conversely, in reaching its determination, the Commission did not weigh these competing concerns as mandated by the Coastal Act. It did not adequately consider the impacts of alternatives to the natural land forms. The Commission considered only visual resources. Moreover, it considered them in an arbitrary manner by denying the Amendment application in the face of clear evidence that the proposed increase of 2.8 feet did not significantly impact views of the ocean. This is a clear error of fact and law that compels reconsideration and reversal of the Commission's June denial.

Finally, the hearing tapes indicate that Commissioner Potter mis-stated the Staff's recommendation when calling for a vote. Commissioner Potter moved the Amendment application and "pursuant to the Staff recommendation," he recommended

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a "no" vote. The Staff recommended approval or a "yes," vote. This is mis-statement is a clear error that likely confused fellow Commissioners. The comments by other Commissioners just prior to the vote confirms that they were favorably inclined to approve the amendment, but voted against it. This error also requires reconsideration of the vote.

**C. Conclusion**

Pursuant to our telephone conversation, we respectfully request that this matter be placed on the agenda and heard at the August 6-9, 2002 proceedings in San Luis Obispo. The Baldaccis have worked diligently through the process before the City and the Commission for the past seven months to obtain approval for a change to the permit that Commission Staff agrees is insignificant. We request that this item be heard at the August meeting to avoid further costs and delays. We also request a copy of the staff report which will be prepared for this request for reconsideration as soon as it is prepared.

This request has been submitted within 30 days of the denial, as specified by the Coastal Act.

If you have any questions or concerns, please contact me at the above telephone number. Thank you for your consideration of this matter.

Sincerely,




Tom Roth

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Attachments

cc: Mr. and Mrs. Paul and Betty Baldacci

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Section 30627

(a) The commission shall, by regulation, provide procedures which the commission shall use in deciding whether to grant reconsideration of any of the following:

- (1) Any decision to deny an application for a coastal development permit.
- (2) Any term or condition of a coastal development permit which has been granted.

(b) The procedures required by subdivision (a) shall include at least the following provisions:

- (1) Only an applicant for a coastal development permit shall be eligible to request reconsideration.
- (2) The request for reconsideration shall be made within 30 days of the decision on the application for a coastal development permit.
- (3) The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

(4) The commission shall have the discretion to grant or deny requests for reconsideration.

(c) A decision to deny a request for reconsideration is not subject to appeal.

(d) This section shall not alter any right otherwise provided by this division to appeal an action; provided, that a request for reconsideration shall be made only once for any one development application, and shall, for purposes of any time limits specified in Sections 30621 and 30622, be considered a new application.

(Added by Ch. 919, Stats. 1979.)

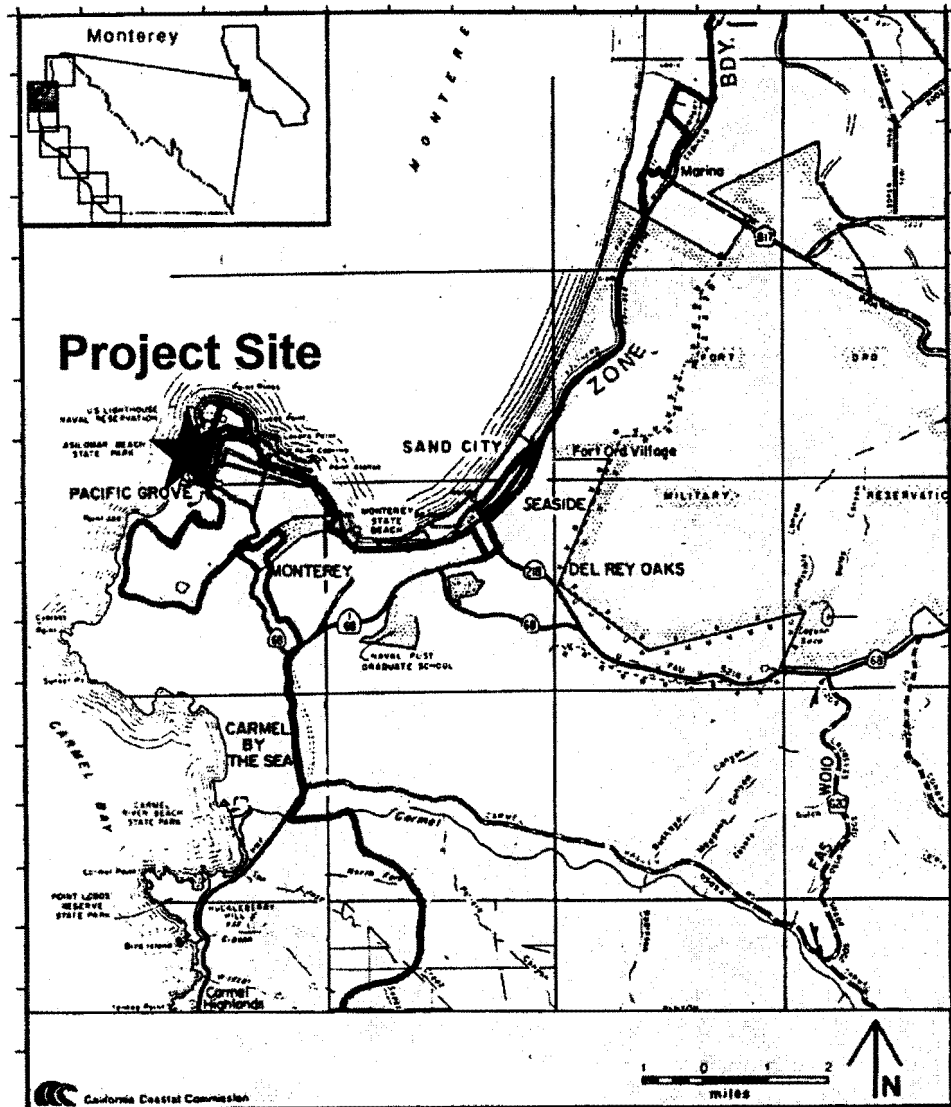
(Amended by Ch. 285, Stats. 1991.)

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Item TH11a

3-01-013-A

Baldacci Amendment



**J. Miller**

**Baldacci**

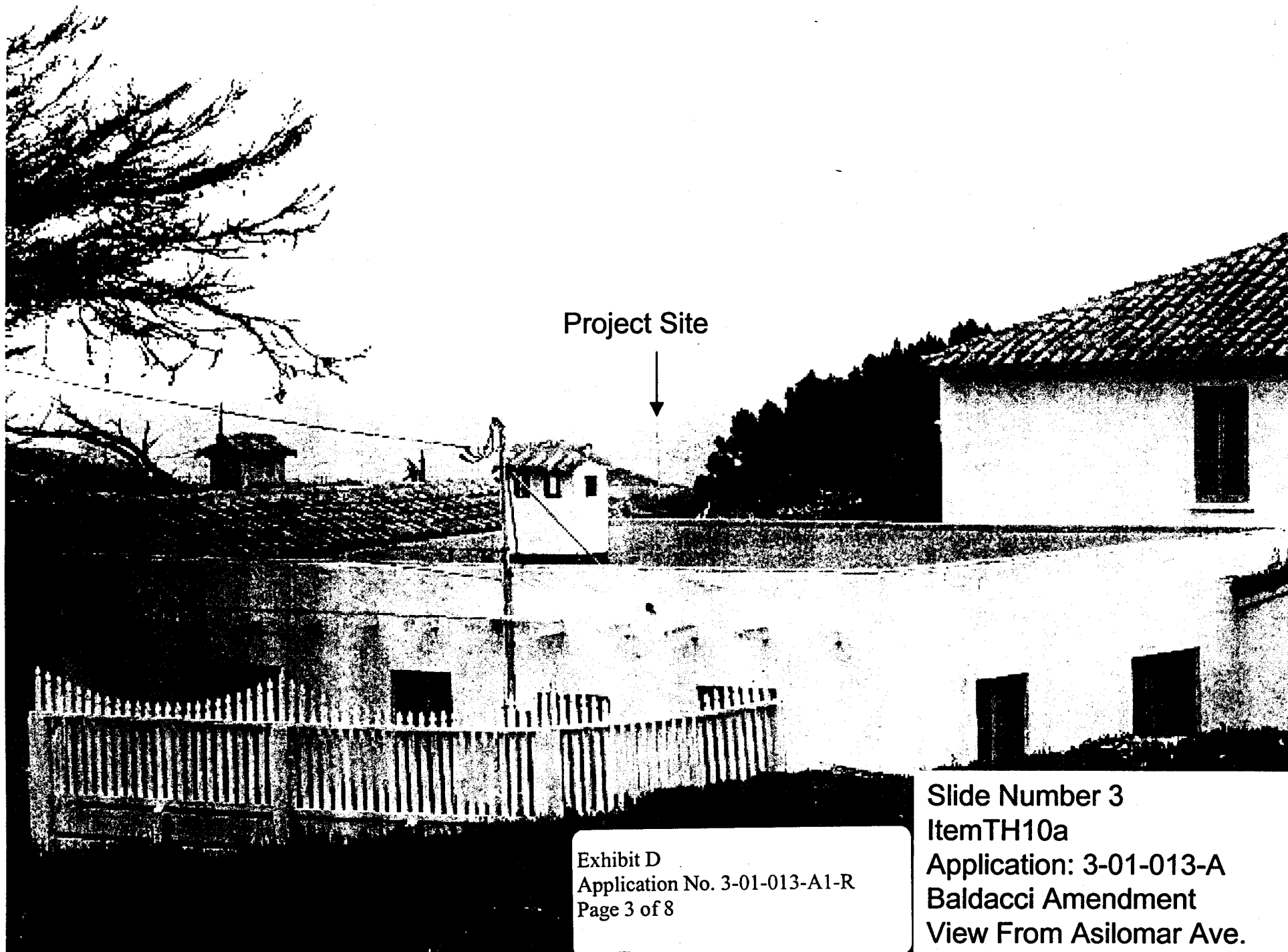
**Archibald**

**Knight**



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Aerial Photograph

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Project Site

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Slide Number 3  
Item TH10a  
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Baldacci Amendment  
View From Asilomar Ave.

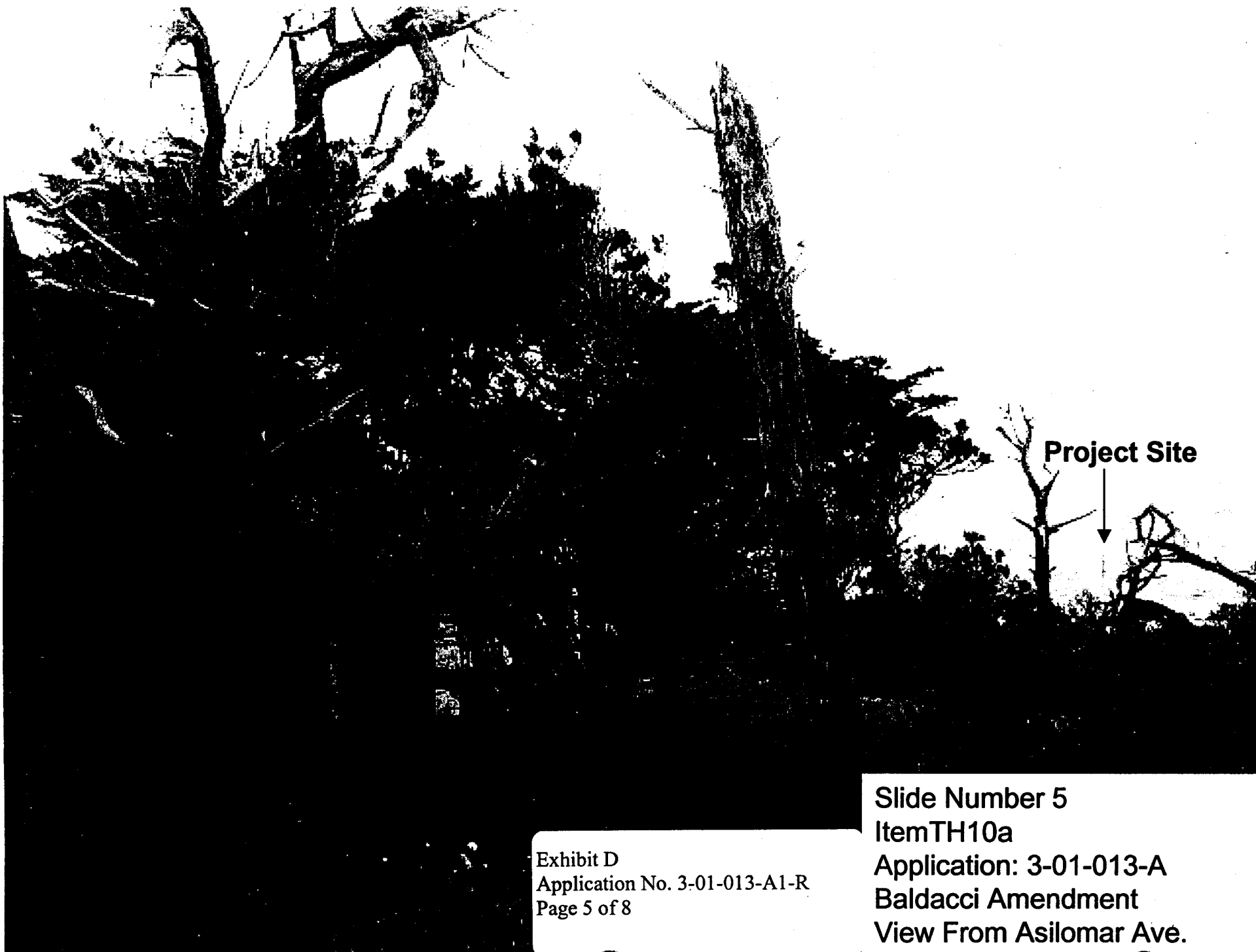




**Project Site**

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Slide Number 4  
Item TH10a  
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Baldacci Amendment  
View From Asilomar Ave.



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View From Asilomar Ave.



**Project Site**

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Slide Number 6  
Item TH10a  
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Baldacci Amendment  
View From Asilomar Ave.

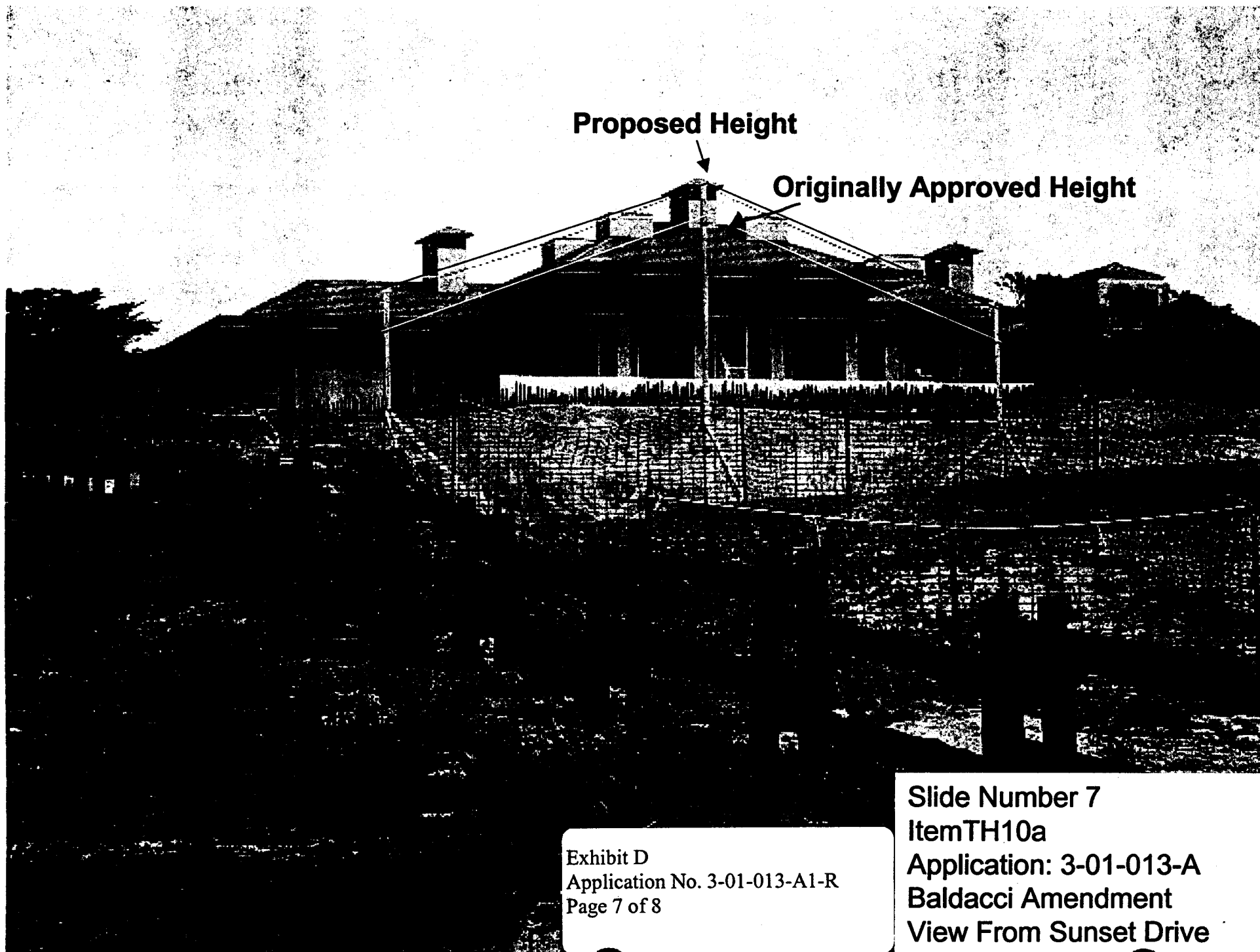


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Slide Number 7  
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Baldacci Amendment  
View From Sunset Drive




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View Along Sunset Drive

