

CALIFORNIA COASTAL COMMISSION

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MEMO

April 28, 2004

TO: Commissioners and Interested Persons

FROM: Peter Douglas, Executive Director

RE: Protecting Views from the Ocean Under the Coastal Act

INTRODUCTION: The Commission has asked for a summary review and discussion of actions protective of scenic coastal resources and specifically the protection of views from the ocean to the land. The protection of scenic values along the California coast, together with public access, is a principal driver underlying continuing strong public support for effective coastal management.¹ The premiere objective of the California Coastal Plan called for in the California Coastal Zone Conservation Act of 1972 (Proposition 20 – a citizen's initiative) was: *The maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.*² The "coastal zone" was defined in the initiative as extended from three miles at sea inland to a specifically delineated boundary.

The California Coastal Act of 1976 made permanent the Coastal Commission and established the conservation and use policies guiding planning and regulation of land and water areas in the new coastal zone established by that law. Specifically, relative to the protection of scenic values, the Act provides that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, [emphasis added] to minimize the alteration of natural land forms, to be visually

¹ See Public Policy Institute of California Statewide Survey: Special Survey of Californians and the Environment, November 2003 (this survey focused on public attitudes toward and support for coastal protection)

² Section 27302 (a) Public Resources Code (repealed January 1, 1977 and replaced by the Coastal Act).

*compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas....*³

Section 30009 PRC requires that "[The Coastal Act] shall be liberally construed to accomplish its purposes and objectives."

The Coastal Commission has implemented scenic resource protection policies primarily by focusing on land-based scenic views from public parks, trails, roads and vista points. Over the years however, and in recognition of changing recreational use patterns and input from the boating community, the Commission began calling for protection of landscape views from state ocean waters (3 miles) in rural areas of the coast that are essentially devoid of development as well as other areas having unique landforms even in built environments. This position takes into account the fact that boating is and will continue to be an increasingly important form of coastal recreation that is also called out for protection in the Coastal Act. (See section 30224 PRC.) The conceptual basis for this position is quite simple: Like scenic vistas from upland public places, the enjoyment of uncluttered views from the ocean to and along California's magnificent coastline is a public resource and aesthetic value of importance to substantial numbers of current and future coastal users. It is an important public interest – a coastal resource worthy of protection.

Protecting views from the ocean: While the primary focus of the Commission's application of the scenic resource protection policies of the Coastal Act has been from the edge of the sea along the coast and inland, as well as other vistas in the coastal zone, views from the ocean to the land have also been taken into account. Viewsheds include views from a particular place on land to and along the ocean and scenic coastal areas as well as from the ocean toward the land and along scenic coastal areas. Generally, viewsheds from the ocean toward land that have been considered important enough to warrant protection through siting, design, landscaping and other measures have most often included geographic reaches of coast that are rural in character and relatively unaltered by human activity. However, in some unique situations scenic values as enjoyed from coastal waters have also been taken into consideration and protected in urban areas such as Marina Del Rey and Point Loma in San Diego.

The protection of scenic values in unique geographic places on the planet is receiving increased attention from government as population grows and tourism becomes a greater part of national and local economies. Because increasing numbers of people enjoy scenic vistas from places on or in the water (i.e., coastal ocean waters, seas, lakes, rivers, great ponds, estuaries, etc.), protecting such public values and resources has become a recognized and legitimate land and water use planning and regulation objective. A recent court decision upholding rules designed to protect views from the waters of lake Tahoe

³ Section 30251 PRC.

illustrates the recognition of the importance of such vistas as scenic resources worthy of protection.⁴ Another example is the state of Maine, which last year amended its coastal management program to include specific scenic resource protection policies including protection of views from bodies of water toward land.⁵

Recreational boating and other recreational water uses (i.e., paddle sports, surfing, diving) along the California coast are becoming more popular as population increases and interest in and opportunities for such outdoor recreation correspondingly increase. Sailing, motor boating, sea kayaking and sport fishing all involve uses of the coastline where the quality of the recreational experience is affected by aesthetics involving the nature and character of views from the water toward the land. (This summary report is not intended to explore the intangible elements of scenic values and the human psyche important to the perception of aesthetic quality of coastal recreational experiences.) Given the way the Coastal Act has been implemented over time, planning and regulatory decisions relative to the protection of coastal scenic resources are made on a case-by-case basis. This approach allows the Commission and local governments carrying out local coastal programs to be adaptive as public needs, information and circumstances change. This flexibility is a hallmark of California's coastal management program. Additionally, if the Commission adopts a categorical or mandatory policy of general application on the subject it would need to go through the rule-making process and review by the Office of Administrative Law resulting in the adoption of inflexible regulations.

Examples of prior actions:

Los Angeles County LCP for Santa Catalina Island (1983): This LCP, approved twenty years ago, contains several policies specifically calling for the protection of views from the water toward the land. (LUP certified in 1983. LCP ordinances certified with modifications in 1989.)

CDP 6-94-159: City of San Diego, Metropolitan Wastewater Department. This project was for the construction of a new 7,030 square foot pump station. Potential adverse scenic impacts for boaters using offshore waters were addressed through landscaping and design conditions.

CDP 6-95-103: City of San Diego, Metropolitan Wastewater Department. The project included a new control building, digester tanks, holding tank, retaining walls, and landscape berming. Because the project would impact offshore views, special conditions relating to landscaping and color treatment were imposed by the Commission.

⁴ *The Committee for Reasonable Regulation of Lake Tahoe v. Tahoe Regional Planning Agency*, U.S. District Court for Nevada (March 29, 2004).

⁵ See Attachment A

Marina del Rey Land Use Plan (County of Los Angeles, February 8, 1996): In approving this land use plan portion of the County's LCP, the following policy was adopted:

***Main Channel View Corridor.** To preserve views of the Santa Monica and San Gabriel Mountains from the main channel, [emphasis added] no structure over 40 feet in height shall be constructed on the eastern-most 300 feet of parcel 125, or on parcels 129, 130, 131, and the panhandle portion of parcel 132, or along Admiralty Park (parcels RR and SS).)*

CDP 6-96-45: City of San Diego, Metropolitan Wastewater Department. This project involved construction of shoreline protection (rock revetment), bluff-face stabilization work, and new parking facilities. Offshore visual impacts were addressed through project design features and special conditions.

CDP Appeal: A-2-Mar-02-024 (Hansen and Brubaker). Although the project was withdrawn after the Commission's staff report was published and the Commission never had the opportunity to act on this appeal, a major issue in the staff report dealt with the adverse visual impacts the project would have on views both from nearby public parklands as well as from the waters of Tomales Bay. Public opposition also focused on these impacts, as did that of the National Park Service and State Parks.

The proposed project was for a one story, 23-foot high, 3,113-square-foot single family residence, 336-square-foot detached guest house, 937-square-foot detached garage and a garden storage building and 26.5-foot high, 1,920-square-foot detached barn/equipment storage building on a 207 acre parcel. The Commission received two appeals of the County's approval of the proposed development contending, among other issues, that the approved development is inconsistent with local coastal plan visual resource protection policies because it is sited in a visually prominent location on the parcel, is not compatible with the character of the surrounding natural environment, and obstructs significant views as seen from public viewing places, including the waters of Tomales Bay. The staff recommended denial because of the project's adverse impacts on scenic resources and recommended that the project be redesigned and the structures resited in a less visually prominent location of the property. After the staff report was published, the applicant dropped the project.

CDP Appeal: A-3-SLO-99-014 and A-3-SLO-99-032 (Morro Bay Limited, a.k.a. Sea-West Ranch). This project involved lot reconfiguration and the development of 8 large residential structures on 746 acres of agricultural land on the rural relatively undeveloped Harmony coast in San Luis Obispo County. (See description relative to the Schneider appeal below.) The Commission approved the project, requiring resiting and

redesign to protect scenic resources, including views from state waters (from shoreline to 3 miles offshore). The adopted summary findings supporting the Commission's action included the following:

All future development will need to comply with siting and design criteria to protect views from public viewing areas, including state waters. Specifically, development must be designed to blend in with and be subordinate to the natural landscape, including limiting height and vertical features above ridgelines; using earthtones and non-reflective materials; and limiting exterior lighting (see Condition 3i for more detail).

CDP Appeal: A-3-SLO-00-040 (Schneider). The proposed project application on 40.6 acres of the seaward facing coastal terrace of the rural Harmony coast was for a 10,000 square foot single-family residence, a 2,500 square foot barn and improvement of a 1.25 mile access road. The adopted report describes the area and issue relative to scenic resource protection as follows:

...The Harmony coastline is characterized by wind swept hills and wide coastal terraces dropping off dramatically to the rocky shores of the Pacific Ocean below. Because the surrounding Harmony coast area is substantially undeveloped rural open space, any development in this area poses the potential for adverse impacts in terms of protecting the areas valuable scenic qualities.

There is no question that the current development proposal would significantly impact the scenic quality of the rural Harmony coast. ...[T]he proposed development would be located on the flat undeveloped marine terrace typical of this stretch of coastline. The potential for similar proposals immediately to the north and south of the project site raises concerns about the cumulative impacts of development and its associated landscaping and landform alteration on the coastal terrace. The limited developments that can be seen in this general area (Abalone Farm and Williams residence) provide evidence of the visual impacts that can result from inappropriately designed development in this sensitive area. Moreover, given the scenic nature of this stretch of coast, it is that much more important to limit any additional development that would break up the expansive views of the grassy marine terraces and coastal hills and incrementally degrade the rural agrarian character of the Harmony coast. Thus, the greatest possible effort must be made to safeguard this area from the intrusion of unsightly new development.

The project poses adverse impacts to visual and scenic resources through development of a 1.25-mile access road, a 2,500 square foot barn, and 10,000 square foot residence on the undeveloped coastal terrace and hillsides of the Harmony coast. These developments are visible, depending on the viewpoint, from public viewing areas. The access road is visible from Highway One,

offshore areas, [emphasis added] and from other inland vantage points. The large residence and barn are visible from coastal waters [emphasis added] and inland vantage points upcoast from the project site, particularly the 746-acre SeaWest Ranch recently purchased by the American Land Conservancy for resource conservation and public open space.

Policy 2 for Visual and Scenic Resources addresses site selection for new development. The policy serves to protect the unique qualities of scenic areas and prohibits the siting of development, where possible, in areas visible from public view corridors. In addition to the scenic views from Highway One and other inland areas, Policy 2 protects views from near-shore waters. In other words, the views of fishers, boaters, kayakers, surfers, et cetera who may be present at different times in the water should also be considered. [emphasis added] Because of the sheer cliff edge and the relatively flat marine terrace, the proposed development (i.e. residence, lounge, barn, access road improvements, water tanks, etc.) would be highly visible, particularly from near-shore waters. [emphasis added] The windswept ridges and flat marine terrace area is covered with dry grasslands and some maritime chaparral at higher elevations, limiting the amount of natural screening available to shield the development from public view

As described, the project also includes improvements to a dirt jeep trail that traverses three other parcels extending from Highway One over the coastal range to the marine terrace site. The road generally follows the route of the existing dirt jeep trail, however a portion of it deviates from the route in high hazard and sensitive resource areas. The County approval includes a variance because the access road will require grading on slopes greater than 30 percent. The existing dirt jeep trail in this area would be widened and paved, as CDF requires roads to be paved that have a slope greater than 12%. Travelers in both directions on Highway One will see the paved road as it ascends the inland side of the coastal range to the top of the ridgeline. As evidenced in visual simulations, the large cutslopes necessary to support a road on the steep hillside will also be highly visible from the ocean. [emphasis added]. ...

Following concerns raised by the Commission with respect to site selection, a series of visual resource studies were conducted to evaluate the project impacts of the residence and barn on public view corridors.⁶ A number of alternative building sites were evaluated on both the ridgetop and the marine terrace. A variety of different public viewpoints were evaluated. At all ridgetop locations evaluated, the residence and barn silhouetted against the skyline in clear view from major public viewing areas, particularly along Highway One. Based on the visual simulations, it was concluded that the marine terrace portion of the

⁶ Visual Analysis (Cannon Associates, October 2000 and May 2003) and (Sheppard Mullin, August 2002).

property was the least visible portion of the property. Thus, in terms of site selection, the Commission can concur that the location of the homesite on the general marine terrace area is preferred.

However, as required by Policy 4 for Visual and Scenic Resources, "new development shall be sited to minimize its visibility from public view corridors" and the structures in that area "shall be designed to be subordinate to, and blend with, the rural character of the area." In addition, Policy 1 for Visual and Scenic Resources requires that the scenic rural landscape of the Harmony coast be preserved and protected. Policy 4 also allows for the use of native vegetative screening to shield development so long as it does not obstruct major public views, but only after all efforts have been exhausted to site the development outside of public view corridors (including views from offshore). ... [emphasis added]

There is no question that Visual and Scenic Resource Policy 4 of the LCP sets a high standard for protection of the extreme sensitivity of the Harmony Coast. The controlling objective of Policy 4 is to design new structures as to be subordinate to and blend with the rural character of the landscape. There are at least two general themes to test for consistency in this case: 1) compatibility with the surrounding built environment, namely the immediately surrounding large agricultural parcels with farm buildings and individual residences; and 2) compatibility with the overall open space environs of the larger Harmony coast area.

Consistency with the character of the built environment can be evaluated primarily on architectural style and overall mass/scale. In terms of architectural style, although it might be argued that the modern residential style of the Schneider project is quite architecturally interesting, it could not be said to be similar to the existing character of development in the area. The Schneider project has angular corners, large paned glass windows, an indoor swimming pool, spiral stairs leading to rooftop viewing areas, and pyramid like skylights that would be unlike any other farm buildings or residences in the immediate area. Moreover, the proposed Schneider house would be substantially larger; at least twice or three times the square footage of the largest neighboring home. As such, its large overall square footage raises an issue in terms of compatibility with the surrounding built environment. In fact, the proposed structure would be one of the largest, if not the largest, residence on the entire San Luis Obispo County coastline.

In terms of compatibility with the larger rural agricultural Harmony coast, such large residential development is distinctly counter to the character of this greater area. While a limited number of residences have been developed on the terrace well to the north of this area, this particular stretch of the Harmony coast

surrounding China Harbor and Point Estero is largely undeveloped. From offshore, the downcoast commercial abalone farm is clearly visible. As shown in the applicant's visual resource analysis, a mix of machinery, discharge pipes, growing pens, outbuildings, equipment and roads visually mar the marine terrace area to the detriment of the rural coastal aesthetic (See Exhibit 4). The presence of this unsightly development provides a reference point for understanding how the construction of buildings along the Harmony blufftop can change the rural open space character of this stretch of coastline.

In order to find the project consistent with the LCP's visual and scenic resource protection policies, the project must be modified. Every reasonable effort must be made to assure that new development in this area is truly subordinate to, and blends with the rural landscape. In light of the extreme visual sensitivity of the Harmony coast, the Commission finds that the residence must be relocated and reduced in size and scale to meet the high standards of the LCP (see Special Condition 2).

Special Condition 2 will help address multiple issues at once. First, it will reduce the length of the improved access road/driveway by around 1,100 feet, thereby minimizing the amount of cut and fill on the visible hillside.... Second, it will reduce the amount of ground disturbance by at least 20,000 square feet. Third, it will reduce the scale and mass of the residential structure to that more nearly approximating an agricultural residence. Fourth, eliminating the barn (which serves no agricultural function) from the project will help reduce the visual impacts of multiple structures loosely arranged along the marine terrace. Finally, Special Condition 2 limits the height of the residence to a maximum of 12 feet as measured from average natural grade to reduce the visible profile of the residence. Building materials must be non-reflective and use only earth-toned colors. No exterior lighting is allowed other than the minimum mount necessary for pedestrian and vehicular safety.

The LCP requires that landform alteration be minimized; however, it does allow such alteration if done in a way to blend with adjacent natural terrain (Visual Policy 5). Siting and design options that rely on natural looking berms, rather than vegetative screening alone best meet the intent of the LCP Visual Resource policies for this particular portion of the Harmony coast. Thus, Special Condition 2(f) requires the Applicant to install a low berm (ranging from two to three feet in height) directly adjacent to the residence. The berm shall be vegetated with low stature native grasses and forbs to mimic the surrounding landscape. This requirement, combined with the reduction in structural height, will reduce the visibility of the residence within the viewshed to roughly 10 feet above the top of the berm.

As proposed, the project does not meet the visual and scenic resource protection standards of the LCP because additional measures can be taken to make the development subordinate to, and blend with, the rural character of the area. The conditions of approval bring the proposed project into compliance with these LCP policies and recognize the need to protect the rural open space landscape of the Harmony coast....

Periodic Review of Monterey County's LCP (Big Sur) (March 2004): The Coastal Act requires periodic review by the Commission of previously certified LCPs to ensure they are being carried out in a manner consistent with contemporary public needs taking into account changed circumstances and new information. Notwithstanding requirements of law, due to lack of resources and the absence of meaningful measures in the Coastal Act to ensure implementation of recommended changes to an LCP that derives from such review, the Commission has only undertaken five periodic reviews (dozens are past due for review). Although the staff completed a preliminary review of Monterey County's LCP, this review has not been acted on by the Commission. The staff report, presented to the Commission at its March meeting in Monterey, generated considerable public testimony – much of it focused on the recommended policy modifications calling for the protection of scenic resources viewed from the ocean.

The following is a summary of the staff's report and recommendation relative to the Monterey County local coastal program. Ocean views are discussed under the section entitled "Other Visual Resource Issues"⁷:

Commission experience with County permitting also indicated that while the County does consider views from some beaches (those in North County and throughout Big Sur Coast), it generally has not considered views from vantage points located along the shoreline or offshore. Recommendations have thus been made for requiring consideration of these views where warranted.

Recommendation about views from offshore areas are excerpted from Appendix A, part 2 (see Appendix A for specific Land Use Plan and Implementation Program recommended changes):

ISSUE SR-4: Views from Offshore -Ensure that important views from the beach and ocean are protected.

⁷ For more information on protecting the Big Sur Critical Viewshed, see pages 29-30; also see Chapter 7 in Draft Findings staff report of 11.26.03 for background info. All documents regarding Periodic Review can be found on the Commission's website at: <http://www.coastal.ca.gov/recap/rctop.html>

Summary Comment: The current Local Coastal Program has many viewshed protection policies. However, they do not specifically identify the ocean waters as vantage points in applying these policies. Only North County and Big Sur and to some extent Carmel identify beaches as vantage points. Thus, there could be some development approved that would be intrusive to beach goers or ocean users.

Recommendation Summary: Adopt policy to protect views from the beach and ocean.

Federal Consistency Reviews: The Commission has unique authority to review federal activities that could affect coastal resources. These reviews involve evaluating federal activities to ensure that they are consistent with California's federally approved Coastal Management Program (CCMP).⁸ In these reviews, coastal views from the ocean have been considered scenic resources warranting protection pursuant to the CCMP. Summarized below are five cases (this is not an exhaustive listing) in which the Commission considered potential adverse impacts on views from ocean waters.⁹

CD-31-03, Army Corps, East Cliff Drive, Santa Cruz:

The proposed project by the ACOE involves installation of a large shoreline protective structure, removal of the abandoned restroom, covering the existing bluff (and the cribwalls) with sculpted concrete, and removal of the rubble and rip-rap strewn across the beach. Although this will help improve the viewshed in part (e.g., removal of rip-rap and rubble), and although the project would be made to mimic natural bluffs, it would still introduce a concrete and artificial structure into the significant public recreational viewshed, replacing the natural landform with an artificial one. Public views from the beach, from offshore, and from East Cliff Drive would be negatively affected....

...This bi-level path modification would accomplish several coastal resource objectives. First, the railing's prominence in the beach and offshore viewshed would be reduced because it would be seen against the backdrop of the grade separation and vegetation that would be located between the two components of the recreational trails. Second, the view of the ocean from the paved recreational trail as well as from East Cliff Drive itself would be enhanced because the railing would be lowered out of it, thus reducing view blockage and clutter. Third, the overall extent of seawall would be reduced by 3 feet along the top of the seawall – eliminating 3,300 square feet artificial concrete "bluff" from the overall viewshed

⁸ The enforceable policies of the California Coastal Act constitute the applicable CCMP policies.

⁹ CD-31-03, Army Corps, East Cliff Drive, Santa Cruz; CD-25-01, Navy tower, Point Loma; CD-74-00, Army Corps Breakwater, Palos Verdes; CC-42-94, Air Force/ Western Commercial Space Center, Vandenberg Air Force Base; CD-19-93, Air Force, Hardware Storage Facility, Vandenberg Air Force Base

beach and offshore viewshed, and reducing its impact. Fourth, the grade separated pathway would provide better user separation to help avoid conflicts between faster moving wheeled users (in the paved portion above) and slower moving pedestrians (in the lower portion below). Fifth, the grade separation would provide a more interesting character and aesthetic (than would a relatively flat Parkway area) that would be more in keeping with the Pleasure Point's community character. And finally, there appears to be adequate blufftop space available to accomplish such a design change in the project area.

CD-25-01 Navy tower, Point Loma: Naval Base Point Loma, near Cabrillo National Monument, southern end of Point Loma peninsula, San Diego - Construction of 100 ft. high steel communications tower to support combat system testing and training:

The project site is a federally-owned, previously-disturbed site which has been used for various military purposes since World War II. However, being located near a heavily used visitor center and historic lighthouse ("Old Lighthouse") at the Cabrillo National Monument, and on a high promontory overlooking the Pacific Ocean and San Diego Bay, it is a highly scenic site. The National Park Service describes the views from the nearby Cabrillo National Monument as "commanding," stating in its General Management Plan:

From its 420 foot elevation, the monument offers a commanding view of San Diego and its bay and adjacent cities to the north, east, and south; Mexico to the far south; and the Pacific Ocean to the west.

The National Park Service has expended considerable efforts to redesign its facilities to improve the aesthetics in the project area and increase the scenic qualities of the public views available at the Monument (see ND-46-00). The project site is located 1672 ft. (0.3 mi.) south of the historic, publicly accessible Old Lighthouse, at a ground level elevation just over 100 ft. lower than the lighthouse. Nevertheless, due to the 100 ft. height of the tower, and the topography of the area, the project would be visible from the lighthouse, as well as a number of other publicly accessible locations, including the road down the western slopes to the tidepools, the nearby Whale Overlook (located south of Old Lighthouse), the southernmost portions of the hiking trail leading from Old Lighthouse down the eastern slopes of the end of the Point Loma peninsula (Humphrey Rd./Sylvester Rd.), and from the Pacific Ocean and San Diego Bay on three sides of the Point Loma promontory (i.e., from coastal waters to the west, south, and east). [emphasis added] In essence, the same Navy needs for unobstructed lines of communications between the tower and ships at sea are the reasons for its visibility from a large number of surrounding locations. Thus, particular care needs to be taken to site and minimize the tower's impact on scenic public coastal views.

CD-74-00 Army Corps Breakwater, Palos Verdes:

Offshore of Portuguese Bend cove, Palos Verdes Peninsula, City of Rancho Palos Verdes. The shoreline around the Palos Verdes Peninsula is a highly scenic area. It consists of rolling hills with dramatic cliffs and bluffs at the shoreline. The visual character of the area is appreciated from both public areas on land and boats viewing the area from offshore. [emphasis added] The proposed project would add a major human development in the offshore area. The proposed dike would be approximately a half-mile long and 24 feet above mean lower low water and very visible from upland and offshore areas. [emphasis added] Since the bluffs and beaches in this area are relatively undeveloped, this massive dike would not be subordinate to the natural coastal character of the area.

In its EIS, the Corps concludes that the project's visual impacts are not significant because of the offshore turbidity and scarred nature of the bluffs caused by the landslide. The Commission disagrees with this conclusion.

CC-42-94, Air Force/ Western Commercial Space Center, Vandenberg Air Force Base:
The project consisted of construction and operation of a commercial spaceport within and adjacent to the existing launch facility, SLC-6:

The project will be visible from offshore areas. [emphasis added] but since the project will be located adjacent to an existing much larger launch facility, the project is consistent with character of the surrounding area. Therefore, the Commission finds that the proposed launch facility is consistent with the visual resource policies of the CCMP.

CD-19-93, Air Force, Hardware Storage Facility, Vandenberg Air Force Base:

The project may be visible from offshore areas. [emphasis added] However, the site is already visually degraded because it has been previously disturbed and it is used to store equipment and material. Additionally, this area of the base is developed with several launch and launch support facilities. The proposed development is consistent with the existing development in the vicinity. Therefore, the Commission finds that the project is consistent with the visual resource policy of the CCMP.

Conclusion: The examples summarized above do not include all actions by the Commission and staff pursuant to the Coastal Act that are protective of scenic coastal resources relative to the protection of views from coastal waters. Nor do they include

actions taken by local government pursuant to their LCP protective of views from the ocean. The point is that the Commission has a history of expressing concern for and being proactive in protecting scenic resources that involve views from coastal waters.

Coastal recreation comes in many forms, as do uses of coastal waters. The Commission is well aware that ocean recreational uses are increasing as population grows and the technology relating to water sports equipment advances (e.g., paddlecraft, wet suits, wind surfing, kite surfing, surfing) as more people turn to the ocean for water oriented recreational activities. The Commission has long been pro-active in promoting sailing and boating opportunities for people who cannot afford their own boats through community sailing and boating programs for all ages.¹⁰ This policy is consistent with Coastal Act provisions calling for the protection and expansion of lower cost recreational opportunities.

Like hikers and other landside visitors to the coast, people who come down to the seashore to be on the water are a community of users whose enjoyment of the coast for recreation, to find solace and inspiration, or to be with wild nature is also deserving of careful stewardship. While the quality of a sojourn at land's edge, whether on land or sea, is subjective and immeasurable, it marks the spirit and is integral to how people value their experience. Protecting special seascapes by minimizing the intrusion of human works, particularly along rugged reaches of rural coast, is a powerful objective of worth and value to current and future generations.

Attachment A: State of Maine Scenic Protection Policies

¹⁰ Earlier this year at the national convention of the United States Sailing Association, the Commission received a special award for "preserving California's coastline, providing public access to the waterways, developing marine environmental education, and supporting community sailing."

Chapter 315: ASSESSING AND MITIGATING IMPACTS TO EXISTING SCENIC AND AESTHETIC USES

SUMMARY: This chapter describes the process for evaluating impacts to existing scenic and aesthetic uses resulting from activities in, on, over, or adjacent to protected natural resources subject to the Natural Resources Protection Act, pursuant to 38 M.S.R.A. § 480-D (1).

1. **Introduction.** In the Natural Resources Protection Act (NRPA), 38 M.R.S.A. §§ 480-A through Z, the Legislature has found and declared that Maine's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands, and sand dune systems are resources of state significance. Section 480-A states that these resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical, and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources. The Legislature's recognition of the scenic beauty of these protected natural resources through statute distinguishes the visual quality of those resources and its value to the general population.

Applicants for permits under the NRPA are required to demonstrate that a proposed activity meets the standards of the NRPA that have been established by the Legislature. Standard 1 in Section 480-D of the NRPA requires an applicant to demonstrate that a proposed activity will not unreasonably interfere with existing scenic and aesthetic uses.

2. **Purpose.** This rule specifies State regulatory concerns, defines visual impacts, establishes a procedure for evaluating visual impacts generated from proposed activities, establishes when a visual assessment may be necessary, explains the components of a visual assessment when required, and describes avoidance, mitigation, and offset measures that may eliminate or reduce unreasonable adverse impacts to existing scenic and aesthetic uses.
3. **Applicability.** This rule applies to the alteration of a coastal wetland, great pond, freshwater wetland, fragile mountain area, river, stream, or brook, as defined in 38 M.S.R.A. § 480-B of the Natural Resources Protection Act (NRPA), that requires an individual permit or is eligible for Tier 3 review. This rule does not apply to an activity that is exempt from permit requirements under the NRPA or that qualifies for a Tier 1 or Tier 2 permit. This rule does not apply to a Permit by Rule unless the Department exercises its discretionary authority to require an individual permit as described in Chapter 305, Section 1 (D). In the review of an application for a permit, the Department must evaluate the potential for unreasonable adverse visual impacts resulting from a proposed activity located in, on, over, or adjacent to a protected natural resource.
4. **Scope of Review.** The potential impacts of a proposed activity will be determined by the Department considering the presence of a scenic resource listed in Section 10, the significance of the scenic resource, the existing character of the surrounding area, the expectations of the typical viewer, the extent and intransience of the activity, the project purpose, and the context of the proposed activity. Unreasonable adverse visual impacts are those that are expected to unreasonably interfere with the general public's visual enjoyment and appreciation of a scenic resource, or those that otherwise unreasonably impair the character or quality of such a place.

5. **Definitions.** As used in these rules, the following terms have the following meanings. Other terms used in these rules have the meanings set forth at 38 M.S.R.A. § 480-X and Chapter 310, the Wetlands and Waterbodies Protection Rules.
- A. **Adverse visual impact.** The negative effect of a regulated activity on the visual quality of a landscape.
 - B. **Composition.** The arrangement of the component parts of a landscape. Component parts are objects or activities usually described in terms of color, texture, line, form, dominance, and scale.
 - C. **Contrast.** Comparing the component parts of a landscape in terms of form, line, color, texture, dominance, or scale.
 - D. **Existing uses.** The current appearance and use of the landscape, considering previous human alterations.
 - E. **Landscape.** An area characterized by its geology, landform, biota, and human influences throughout that area.
 - F. **Mitigation.** Any action taken or not taken to avoid, minimize, rectify, reduce, or eliminate actual or potential adverse environmental impact, including adverse visual impact.
 - G. **Practicable.** Available and feasible considering cost, existing technology and logistics based on the overall purpose of the activity.
 - H. **Scenic Resource.** Public natural resources or public lands visited by the general public, in part for the use, observation, enjoyment, and appreciation of natural or cultural visual qualities. The attributes, characteristics, and features of the landscape of a scenic resource provide varying responses from, and varying degrees of benefits to, humans.
 - I. **Viewshed.** The geographic area as viewed from a scenic resource, which includes the proposed activity. The viewshed may include the total visible activity area from a single observer position or the total visible activity area from multiple observers' positions.
 - J. **Visual Quality.** The essential attributes of the landscape that when viewed elicit overall benefits to individuals and, therefore, to society in general. The quality of the resource and the significance of the resource are usually, but not always, correlated.
6. **Application submissions.** An applicant is required to demonstrate that the proposed activity will not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource listed in Section 10. Basic evidence must be provided to ensure that visual concerns have been fully addressed in each application. The applicant must describe the location of the activity and provide an inventory of scenic resources within the viewshed of the proposed activity by completing the MDEP Visual Evaluation Field Survey Checklist (doc. #DEPLW0540) provided in the application. The applicant must describe the activity relative to its location and scale within the viewshed of any scenic resource, including a description of the existing visual quality and landscape characteristics. The applicant may request a pre-application meeting during which

the Department can provide guidance for determining the location of the activity relative to scenic resources in the vicinity of the applicant's parcel.

7. **Visual impact assessments.** The Department may require a visual impact assessment if a proposed activity appears to be located within the viewshed of, and has the potential to have an unreasonable adverse impact on, a scenic resource listed in Section 10. An applicant's visual impact assessment should visualize the proposed activity and evaluate potential adverse impacts of that activity on existing scenic and aesthetic uses of a protected natural resource within the viewshed of a scenic resource, and to determine effective mitigation strategies, if appropriate. If required, a visual impact assessment must be prepared by a design professional trained in visual assessment procedures, or as otherwise directed by the Department.

In all visual impact assessments, scenic resources within the viewshed of the proposed activity must be identified and the existing surrounding landscape must be described. The assessment must be completed following standard professional practices to illustrate the proposed change to the visual environment and the effectiveness of any proposed mitigation measures. The radius of the impact area to be analyzed must be based on the relative size and scope of the proposed activity given the specific location. Areas of the scenic resource from which the activity will be visible, including representative and worst-case viewpoints, must be identified. Line-of-sight profiles constitute the simplest acceptable method of illustrating the potential visual impact of the proposed activity from viewpoints within the context of its viewshed. A line-of-sight profile represents the path, real or imagined, that the eye follows from a specific point to another point when viewing the landscape. See Appendix A for guidance on line-of-sight profiles. For activities with more sensitive conditions, photosimulations and computer-generated graphics may be required.

A visual impact assessment must also include narratives to describe the significance of any potential impacts, the level of use and viewer expectations, measures taken to avoid and minimize visual impacts, and steps that have been incorporated into the activity design that may mitigate any potential adverse visual impacts to scenic resources.

8. **Mitigation.** In the case where the Department determines that the proposed activity will have an adverse visual impact on a scenic resource, applicants may be required to employ appropriate measures to mitigate the adverse impacts to the extent practicable. Mitigation should reduce or eliminate the visibility of the proposed activity or alter the effect of the activity on the scenic or aesthetic use in some way. The Department will determine when mitigation should be proposed and whether the applicant's mitigation strategies are reasonable. The Department may require mitigation by requesting that the applicant submit a design that includes the required mitigation or by imposing permit conditions consistent with specified mitigation requirements.

In its determination whether adverse impacts to existing scenic and aesthetic uses are unreasonable, the Department will consider whether the applicant's activity design is visually compatible with its surroundings, incorporating environmentally sensitive design principles and components according to the strategies described below.

- A. **Planning and siting.** Properly siting an activity may be the most effective way to mitigate potential visual impacts. Applicants are encouraged, and may be required, to site a proposed activity in a location that limits its adverse visual impacts within the viewshed of a scenic resource.

- B. **Design.** When circumstances do not allow siting to avoid visual impacts on a scenic resource, elements of particular concern should be designed in such a way that reduces or eliminates visual impacts to the area in which an activity is located, as viewed from a scenic resource. Applicants should consider a variety of design methods to mitigate potential impacts, including screening, buffers, earthen berms, camouflage, low profile, downsizing, non-standard materials, lighting, and other alternate technologies.
 - C. **Offsets.** Correction of an existing visual problem identified within the viewshed of the same scenic resource as the proposed activity may qualify as an offset for visual impacts when an improvement may be realized. Offsets may be used in sensitive locations where significant impacts from the proposal are unavoidable or other forms of mitigation might not be practicable. An example of an offset might be the removal of an existing abandoned structure that is in disrepair to offset impacts from a proposal within visual proximity of the same scenic resource. Offsets can also include visual improvements to the affected landscape, such as tree plantings or development of scenic overlooks.
9. **Determination.** It is the responsibility of the applicant to demonstrate that the proposed design does not unreasonably interfere with existing scenic and aesthetic uses, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic resource, and that any potential impacts have been minimized.

The Department's determination of impact is based on the following visual elements of the landscape:

- A. **Landscape compatibility**, which is a function of the sub-elements of color, form, line, and texture. Compatibility is determined by whether the proposed activity differs significantly from its existing surroundings and the context from which they are viewed such that it becomes an unreasonable adverse impact on the visual quality of a protected natural resource as viewed from a scenic resource;
- B. **Scale contrast**, which is determined by the size and scope of the proposed activity given its specific location within the viewshed of a scenic resource; and
- C. **Spatial dominance**, which is the degree to which an activity dominates the whole landscape composition or dominates landform, water, or sky backdrop as viewed from a scenic resource.

In making a determination within the context of this rule, the Department considers the type, area, and intransience of an activity related to a scenic resource that will be affected by the activity, the significance of the scenic resource, and the degree to which the use or viewer expectations of a scenic resource will be altered, including alteration beyond the physical boundaries of the activity. In addition to the scenic resource, the Department also considers the functions and values of the protected natural resource, any proposed mitigation, practicable alternatives to the proposed activity that will have less visual impact, and cumulative effects of frequent minor alterations on the scenic resource. An application may be denied if the activity will have an unreasonable impact on the visual quality of a protected natural resources as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation. An

"unreasonable impact" means that the standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met.

10. **Scenic resources.** The following public natural resources and public lands are usually visited by the general public, in part with the purpose of enjoying their visual quality. Under this rule, the Department considers a scenic resource as the typical point from which an activity in, on, over, or adjacent to a protected natural resource is viewed. This list of scenic resources includes, but is not limited to, locations of national, State, or local scenic significance. A scenic resource visited by large numbers who come from across the country or state is generally considered to have national or statewide significance. A scenic resource visited primarily by people of local origin is generally of local significance. Unvisited places either have no designated significance or are "no trespass" places. Sources for information regarding specific scenic resources are found as part of the MDEP Visual Evaluation Field Survey Checklist (doc. #DEPLW0540) provided in the application.
- A. National Natural Landmarks and other outstanding natural and cultural features (e.g., Orono Bog, Meddybemps Heath);
 - B. State or National Wildlife Refuges, Sanctuaries, or Preserves and State Game Refuges (e.g., Rachael Carson Salt Pond Preserve in Bristol, Petit Manan National Wildlife Refuge, the Wells National Estuarine Research Reserve);
 - C. A State or federally designated trail (e.g., the Appalachian Trail, East Coast Greenway);
 - D. A property on or eligible for inclusion in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (e.g., the Rockland Breakwater Light, Fort Knox);
 - E. National or State Parks (e.g., Acadia National Park, Sebago Lakes State Park);
 - F. Public natural resources or public lands visited by the general public, in part for the use, observation, enjoyment and appreciation of natural or cultural visual qualities.(e.g., great ponds, the Atlantic Ocean).

STATUTORY AUTHORITY: 38 M.R.S.A. § 480-A

ADOPTED DATE:
June 5, 2003

EFFECTIVE DATE:
June 29, 2003 - filing 2003-198

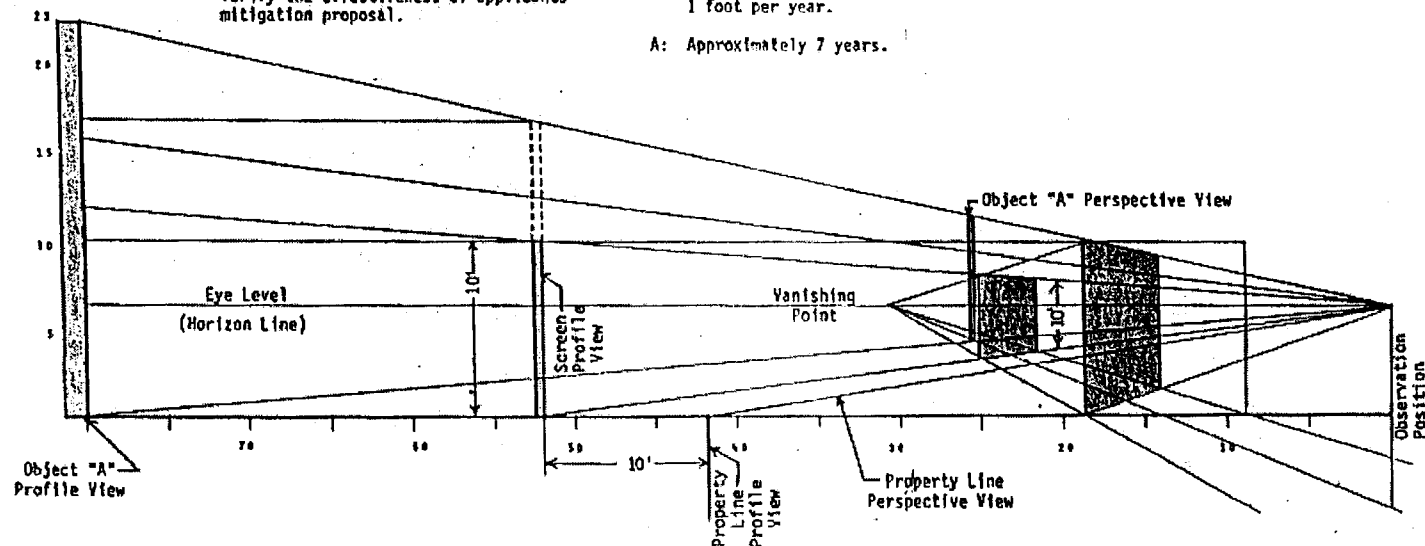
APPENDIX A

GUIDANCE FOR THE PREPARATION OF LINE-OF SIGHT-PROFILES

SCREENS

THE RELATIONSHIP BETWEEN SCIENTIFIC PERSPECTIVE AND A LINE OF SIGHT PROFILE.

Scientific or linear perspective is a geometric procedure that projects space onto a plane. This technique provides the analyst with a simplified way to verify the effectiveness of applicants mitigation proposal.



USE THE DIAGRAM BELOW TO ANSWER THESE SAMPLE QUESTIONS

Q: At what height should a screen be constructed to completely conceal a 23 foot object from an observer standing 80 feet from the object?
Constraint: Screen must be located 10 feet inside property line.

A: About 17 feet.

Q: What is the maximum height of an object to be concealed behind a 10 foot screen that is located 80 feet from an observer?
Constraint: The observer is standing about 18 feet behind the screen.

A: About 23 feet.

Q: In approximately how many years would a vegetative screen 6 feet in height planted on a berm 4 feet in height completely conceal a 23 foot object?
Constraints: Berm must be located 10 feet inside property line; object is 80 feet from observer; expected vegetation growth rate of approximately 1 foot per year.

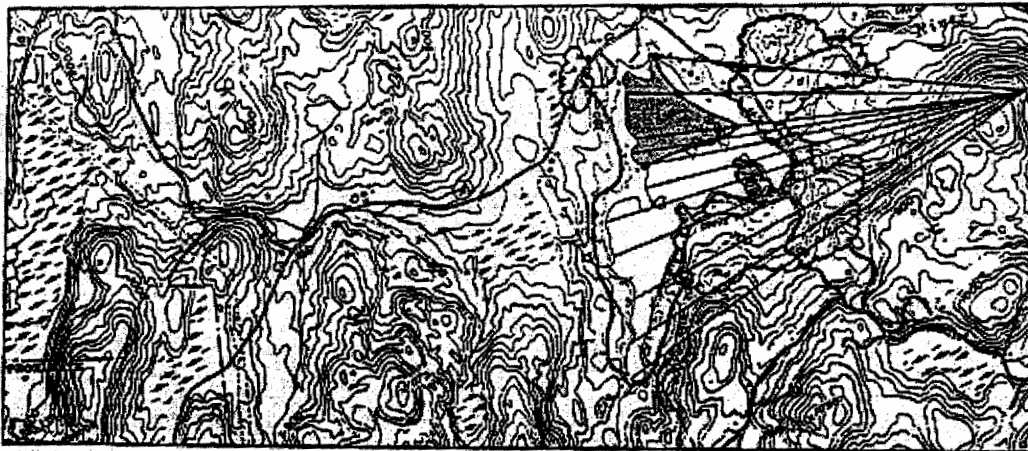
A: Approximately 7 years.

VIEWSHEDS

For illustrative purposes only, a "partial" viewshed has been constructed below. A partial viewshed is distinguished from a full viewshed in that it only shows a selected area from which an object may be seen. A full viewshed shows all such areas.

The shaded area in the northwest corner of the lake is the only area within the lake that a hypothetical object 100 feet in height and situated at A (where the profile radii converge) may be seen.

The defined viewing area has been constructed by connecting each point along each profile where a viewer just begins to see the hypothetical object. To add realism to the viewshed, 40' vegetation has been factored into the lines of sight. The vegetation alters the viewing angle and hence the initial viewpoint indicated by the large black dots at the intersection of the shaded area with each profile radii.



LEGEND



VIEWSHED

(Area within lake from which a hypothetical 100 foot object located at "A" may be seen)

↑
N
SCALE 1" = 2,000'

PROFILES

To construct a profile, first position the graph paper parallel and contiguous to the horizontal alignment of the desired profile (indicated by line A-B). Proceed by extending vertical lines (indicated by dashed lines) to the correct height according to any selected convenient vertical scale (in this case 1" = 100'). This must be done from each spot where the horizontal alignment crosses a contour line. It is the elevation of the intersected contour that determines the height of each vertical line. Then, simply connect the top of each vertical line to form the profile (indicated by line C-D). The profile C-D depicts the depressions and elevations one would encounter walking a straight path from Point A to B on the plan map. To add realism add vegetation at the proper locations at the proper height (in this case 40').

Sample Questions and Answers

According to the profile:

Q. Can an observer at location "Z" see the east shore of the lake?

A. No

Q. At what point will the observer no longer be able to see object "X"?

A. At point "Y".

Q. What is the visible portion of object "X" to an observer at location "Z"?

A. About 20 feet.

