

CALIFORNIA COASTAL COMMISSION

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REGULAR COASTAL DEVELOPMENT PERMIT

Application number 3-04-052

Applicant..... Witter Family Trust, Attn Dean & Rebekah F. Witter, III

Local government..... Monterey County

Project location..... 112A Yankee Point Drive, Carmel Area, Monterey County (APN 243-161-017).

Project description Construction of a one-story, 2,232 square foot single family residence (modular home) with attached 440 sf garage, flagstone patio, concrete driveway and parking area, landscaping (including at least 1500 sf of hardscaping and 700-sf synthetic turf putting green), septic system, drainage system, and extension of existing wood and wire fencing along public access trail between Yankee Point Drive and Malpas Creek Beach.

Local Approvals Monterey County Resolution No 04-155 for Variance from 20-foot side-yard setback, and Design Approval (PLN030102)

File documents..... Coastal Permit files: P-77-596 (LaMonica), P-80-421 (Schraeder fence), 3-00-020 (after-the-fact CDP for Stackpole fence and landscaping), Carmel Area Land Use Plan.

Staff recommendation Approval with Conditions

Summary of Staff Recommendation

Staff recommends that the Commission approve the Coastal Development Permit, subject to conditions included herein and find that the project is in conformance with the Coastal Act. Approval has been conditioned to protect scenic views from Highway One, public access from Yankee Point Drive to Malpas Creek Beach, and potential archeological resources onsite. The project site is located on one of two parcels owned by the Witters that front Yankee Point Drive, in the Carmel Highlands area of Monterey County. The two parcels, one of which is already developed with a single-family dwelling, are located within the scenic viewshed of Highway One, immediately north of Malpas Creek. A coastal access trail, which provides vertical access to Malpas Beach, extends



California Coastal Commission
May 2005 Meeting in Palo Alto

Staff: K. Cuffe Approved by:

from Yankee Point Drive to the blufftop along the western property boundary and then across the southern portion of the subject parcel, where it traverses down the bluff face to the beach. Malpaso Creek Bridge, located southeast of the site, provides coastal views of the ocean, creek and coastal bluffs from Highway One. Malpaso Creek marks the southern limit of the Carmel Land Use Area; the Big Sur Coast Land Use Area begins immediately south of Mal Paso Creek.

This parcel is located in an area of deferred certification, and so remains within the Commission's original jurisdiction, where the Coastal Act is the standard of review. While policies in the County's Carmel Area LUP do not govern development in this area of deferred certification, they do include specific resource protection policies for the Yankee Point Drive area and Carmel Highlands Riviera, and so may serve as guidance to the Commission. Although the Carmel Area LUP does not have a critical viewshed policy, similar to that in Big Sur, with which the Commission is familiar of late, it does require protection of scenic resources located in the public viewshed west of Highway One.

The Coastal Commission and the County have had a long, continuous commitment to preserving scenic resources and coastal access in this area. The Commission has previously required that development adjacent to Malpaso Creek use a "stringline method" to preserve scenic resources and views from Highway One to the coast, beyond existing development. The Yankee Point Drive area is approximately 98% built out, with only about 2 or 3 parcels remaining vacant.

The Commission previously approved development of a residence on the parcel immediately west of the subject site (the Feduniak property) by establishing a stringline, or line of sight, that extends from the south end of the Highway One Bridge over Malpaso Creek to and beyond the seaward extent of other residential development that existed at that time. This stringline method thus established a line of sight to the ocean, south and seaward of which development would be prohibited by means of a scenic easement, in order to preserve views of the coastal bluffs and ocean. The stringline used for the adjacent (Feduniak) parcel was referred to as the "line of sight 'Y'", and the area south and seaward of the "line of sight 'Y'" has been preserved through the recording of a scenic conservation easement, which prohibits development within the scenic preservation area.

The same "line of sight 'Y'" stringline was later applied to the subject parcel, when the previous property owners (Stackpoles) applied for an after-the-fact permit (CDP 3-00-020) to install a 6-foot high metal vertical split rail fence along Yankee Point Drive and a portion of the public accessway that leads to Malpaso Beach, a 4-foot high wood and wire fence along 255 feet of the remaining accessway to the top of the bluff, and landscaping. In that case, the Commission also required that no development be allowed in the scenic preservation area seaward of the line of sight Y other than installation of native drought tolerant landscaping with a maximum height of 4 feet and temporary drip irrigation, to minimize irrigation on the blufftop parcel. And, since the lot had no residence on site at the time, and still provided views from both Highway One and Yankee Point Drive across the parcel to the ocean, the Commission also required that landscaping between the Scenic Preservation area and Yankee Point Drive use drought tolerant, non-invasive native plant species appropriate to the site, and not include any plantings that would substantially block existing views across the parcel.



As required by the Stackpole ATF permit (CDP 3-00-020), an Open Space Deed Restriction was recorded on February 26, 2002, establishing the scenic preservation area on the southwestern corner of the property, seaward of the "line of sight 'Y'", and a 5-foot wide "Old Coast Road Trail" easement. The recorded Open Space Deed Restriction prohibits development in the scenic preservation area as required by CDP 3-00-020.

The current property owners (Witters) are now requesting to develop a one story, 2,232 square-foot single-family dwelling, with attached 440 sf garage, 616 sf patio (with flagstone set in concrete), and landscaping, which includes at least 1,500 sf of additional hardscaping (flagstone set in decomposed granite), and at least 700 sf (approximately 15-foot diameter) synthetic turf putting green, that has already been constructed on the property without benefit of a permit. The project also proposes to extend the existing 4-foot high wood and wire fence that is set 5 feet east of the western property boundary along the existing Old Coast Road trail that serves as a vertical accessway from Yankee Point Drive to Malpasos Beach.

While development of the new house will block ocean views from Yankee Point Drive, the public can walk along the existing trail to the bluff to get views of the blufftop and ocean. The plans show that the proposed house has been sited well landward of the "line of sight 'Y'" stringline that the Commission has used to permit other development in this area of deferred certification, and so does not extend beyond other residential development permitted by the Commission in this area, and will not block primary public views across the parcel of the blufftop and ocean from Highway One.

However, extension of the fence would require that it be located in the Scenic Preservation Area. Based on the definition of development given in Coastal Act Section 30106 (which includes placement or erection of any solid material or structure), a fence is considered development, and would not be allowed under the existing recorded Open Space Deed Restriction. The applicants have thus requested an amendment to the previous Stackpole permit requirement prohibiting development in the deed restricted scenic preservation area, in order to allow for construction of a 4-foot high open wire fence (with 2x4 top rail and framing) and gates along the landward side of the public accessway that crosses the site, as part of the new residential development proposed as part of this current application.

While a fence by itself would detract from the scenic character of the blufftop parcel, the applicants have indicated that they would be willing to screen any new fencing with vegetation, to obscure the view of the fencing and eliminate the visual impact of such development. If conditioned so that the design, planting and maintenance of the vegetation effectively obscured visibility of the fencing (i.e., so that it was mostly covered/screened by native shrubs and vines, planted in a way so it didn't just look like a straight line hedge), it would look similar to a bramble of bushes along the edge of the existing trail, and blend in to the character of the setting, thus preserving the open space character of the site. Provided the fence was conditioned to incorporate the integral landscaping into the design, it is possible that such fence would be no more visually obtrusive than similar vegetation along the edge of the trail might appear. Thus a low (no more than 4-foot high), vegetatively screened fence, if adequately designed, screened and maintained, could be found to be consistent with the intent of the restrictions placed on the property by approval of CDP 3-00-020, provided the Commission



approves the Witter's pending amendment to revise the existing deed restriction (amendment application 3-00-020-A1). Installation of the new fencing can not occur however, until the applicant has accepted and the Executive Director has issued the amended permit (CDP 3-00-020-A1), if approved by the Commission, after recordation with the County of Monterey of a revised deed restriction pursuant to CDP 3-00-020-A1.

Additionally, proposed landscaping plans for that portion of the site outside the Scenic Preservation Area currently include non-native groundcovers (gazania and lantana) on the blufftop, which while drought-tolerant, are not consistent with previous permit requirements that allowed only native plants in this area, and include large areas of gravel and flagstone paving, and a putting green, which are inconsistent with Carmel Area LUP guidance for protecting visual resources in the Yankee Point/Carmel Highlands-Riviera area.

Therefore, in order to protect scenic resources consistent with Coastal Act policies, LCP guidance, and the existing Open Space Deed Restriction, special conditions require that project plans be redesigned to remove the proposed fence extension and gates from the scenic preservation area, and that the landscaping plan be revised to maintain as much of the existing native landscaping as possible on the seaward side of the house, by limiting the amount of new hardscaping, between the house and the scenic preservation area to 850 sf (which would allow for the proposed 620 sf flagstone-and-concrete patio and an additional 230 sf of flagstone and gravel hardscaping), and limiting the putting green to its existing size, location, and use of synthetic turf. Furthermore, the permit has been conditioned to require that low-lying shrubs (with a maximum growth habit of no more than 4-feet high) be planted around the perimeter of the putting green and hardscaped areas, in order to at least partially screen them from view from the Highway One Bridge. All plantings on the site shall use only drought tolerant, non-invasive native plant species indicative of the coastal blufftop setting.

None of the major structural elements of the proposed design, as shown on the project plans dated 7/14/03, would affect physical access along the Old Coast Road trail, which provides vertical access between Yankee Point Drive and Malpas Creek Beach. However, to ensure that shoreline pedestrian access remains available, special conditions require that the location of the western fence line cannot be changed and no gates or other structures that would block public access along the trail may be installed without a new coastal development permit or an amendment to this permit.

The permit has also been conditioned to protect archaeological resources, which exist onsite, outside of the proposed development.

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



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1. Staff Recommendation on Permit

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

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



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

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

2. Conditions of Approval

Standard Conditions

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

Special Conditions

1. **Condition Compliance for After-the-Fact Construction.** Within 90 days of Commission action on this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all prior-to-issuance requirements specified in the conditions below. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.



- 2. Final Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the Permittee shall submit two sets of the following plans to the Executive Director of the Coastal Commission for review and approval. The permittee shall undertake development in accordance with the final plans approved by the Executive Director pursuant to these special conditions.

a. Revised Final Site Plans. The final site plan and elevations shall demonstrate the following:

i. The site plan (labeled Sheet 1, and dated 7/14/03) has been further modified, so that no portion of the proposed fencing is located in the scenic preservation area, as defined by the recorded deed restriction, and shown in Exhibit J, unless allowed pursuant to an approved amendment of the earlier Stackpole permit (CDP 3-00-020). Without such amendment, this permit allows only for a 4-foot high wood and wire fence, designed consistent with Special Condition 2c below, may be located landward of the scenic preservation area.

ii. The septic leachfield area (shown on Sheet 1) has been further modified so that no portion of the septic system leachfield is located in the scenic preservation area, consistent with the revised Septic System Design, prepared by Nolan, Zinn and Associates, dated revised 10/2/04.

b. Landscaping Plans. Landscaping plans (dated 7/14/04) shall be revised to show the following:

i. Landscaping in Area between Scenic Preservation Area and Yankee Point Drive.

(A) Proposed landscaping maintains as much of the existing native landscaping as possible on the seaward side of the house, by limiting the amount of new hardscaping, between the house and the scenic preservation area to 850 sf (which may include the proposed 620 sf flagstone-and-concrete patio and up to an additional 230 sf of semi-permeable hardscaping).

(B) The putting green constructed on site with synthetic turf, and requiring no irrigation, shall be limited to its existing size (approximately 700 sf) and location, in substantial conformance with landscaping plans dated 7/14/04 submitted as part of the application process for this project. Any change in the type of turf used on the putting green would require an amendment to this permit, however, any turf that would include non-native plant species or additional irrigation is prohibited.

(C) Low-lying shrubs (with a maximum growth habit of no more than 4-feet high) shall be planted around the perimeter of the putting green and hardscaped areas, in order to screen them from view from the Highway One Bridge. If the applicant can not sufficiently screen the putting green as required, they shall be required to remove the putting green turf (taking necessary action to avoid further damage of the site) and to restore the area with native plantings. All plantings on the site shall use only drought tolerant, non-invasive native plant species indicative of the coastal blufftop setting.



(D) The landscaping plans shall specify procedures for erosion control and maintenance of native plant cover; and proposed native plant species for any additional plantings. No interference with public views through the planting of trees or other landscaping shall be allowed. The landscaping plan shall provide for the removal of all non-native invasive plants, include only native, non-invasive, drought tolerant plants suitable to the area's blufftop habitat, and allow only drip irrigation for the first two years following installation to allow the native plants to become established on the site. Any other surface or subsurface irrigation measures shall not be allowed, and if found to exist on site shall be disconnected and capped. The landscaping plan shall be in sufficient detail to identify the location, species, and size of the proposed native plants and landscaping materials and shall provide that landscaping shall be installed prior to occupancy.

ii. Landscaping in the Scenic Preservation Area. Plans shall clearly indicate that no development, as defined in Section 30106 of the Coastal Act, shall occur in the Scenic Preservation Area except for: (1) installation of drought and salt-water resistant, non-invasive native shrubs and grasses with maximum heights of 4 feet or less indicative of the Malpas Creek coastal terrace area; (2) installation and subsequent removal of a temporary drip irrigation system needed (if any) to establish the approved plantings in the Scenic Preservation Area, as identified on the approved landscaping plans for CDP 3-00-020 for the previous owners; and (3) other minor repair and maintenance activities provided for by the existing Open Space Deed Restriction recorded February 26, 2002, unless otherwise provided for by approval of pending amendment 3-00-020-A1.

- c. Fencing.** Both Site and Landscaping plans shall clearly show the location of any new fencing to be constructed on the subject parcel (APN 243-161-017). New fencing shall be no more than four-feet high, shall be constructed in similar fashion to that currently existing on site (i.e., as an open wire field fence, with 2x4 top rail and framing). Any fencing visible within the public viewshed shall be vegetatively screened, using native plants appropriate to the coastal blufftop setting. Only native vines and shrubs/perennials with a maximum natural growth height of 5 feet or less shall be allowed for screening purposes. New fencing shall not be allowed in the Scenic Preservation area unless specifically allowed for by an approved amendment of the previous Stackpole permit (CDP 3-00-020). Installation of fencing proposed within the Scenic Preservation Area can not occur until the applicant has accepted and the Executive Director has issued the amended permit (CDP 3-00-020-A1), if approved by the Commission, after recordation with the County of Monterey of a revised deed restriction pursuant to CDP 3-00-020-A1. The vegetative screening for any new fencing allowed in the scenic preservation area, pursuant to the revised deed restriction, shall be designed, planted and maintained in such a way as to ensure that the portion of the fence located within the Scenic Preservation area shall visually blend in with the open space, coastal bluff character of the area and not detract from the scenic beauty of the area. Any new fencing to be located along the public accessway that crosses the parcel shall be set at least 3 feet landward of the edge of the trail in order to allow landscape screening, using native plants appropriate to the site, to be planted on both sides of the fencing. Any fencing



not consistent with this permit condition shall be required to be removed at the applicants' expense, and enforcement measures may be taken. This permit does not authorize the construction of any additional fencing on the adjacent property currently owned by the Witters (APN 243-161-018).

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

3. **Relationship to Previous Permit (CDP 3-00-020).** The previous permit (3-00-020) remains in effect, except as modified by any approved permit amendment, and with the exception that the new site and landscaping plans, as conditioned herein, can supercede the previously approved plans (dated May 24, 2001), provided development authorized by this new permit is designed and implemented in compliance with all conditions contained herein.
4. **Geotechnical Review.** In order to assure that construction activities are consistent with the Geotechnical Report prepared by Rock Solid Engineering, Inc., dated June 14, 2004, the applicant shall contract the services of a qualified geotechnical engineer to implement all of the geotechnical recommendations made therein.
5. **Public Rights.** The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that may exist on the current Assessor Parcel Numbers 243-161-018, 243-161-017, and 243-161-015. The Permittee shall not use this permit as evidence of a waiver of any public rights that may exist on these properties.
6. **Exterior Lighting.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit an exterior lighting plan which shall indicate the location, type and wattage of all light fixtures and include catalogue sheets for each fixture for the review and approval of the Executive Director. All exterior lighting shall be unobtrusive, harmonious with the local area, and constructed or located so that only the intended area is illuminated and off-site glare is fully controlled. Additionally, no artificial lighting shall be directed onto environmentally sensitive habitats, including the shoreline and the adjacent sea within the Monterey Bay National Marine Sanctuary.
7. **Archaeological Resources.** Should archaeological resources be discovered at the project site during any phase of construction, the permittee shall stop work until a mitigation plan, prepared by a qualified professional archaeologist and using accepted scientific techniques, is completed and implemented. Prior to implementation, the mitigation plan shall be submitted for review and approval by the State Historical Preservation Office and for review and approval by the Executive Director of the Commission. The plan shall provide for reasonable mitigation of the archaeological impacts resulting from the development of the site, and shall be fully



implemented. A report verifying compliance with this condition shall be submitted to the Executive Director for review and approval, upon completion of the approved mitigation.

8. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) has imposed the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.
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3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

Project Location

The project is located at 112A Yankee Point Drive (Assessors Parcel Number 243-161-017) in the Carmel Highlands area of Monterey County (see Exhibit A Regional Location Map, Exhibit B Project Vicinity Map, and Exhibit C Parcel Map). The property is located approximately 4.5 miles south of Carmel, in a residential enclave west of Highway One, between Wildcat Creek and Malpaso Creek.

The subject parcel is located within the Carmel Land Use Plan area, and immediately north of the Big Sur Coast Land Use Plan area, with Malpaso Creek serving as the dividing line between the Carmel and Big Sur Coast planning areas. This portion of the Carmel Highlands area, located west of Highway One, may also be referred to as the Carmel Highlands Riviera.

The subject property is one of two blufftop parcels owned by Mr. And Mrs. Dean Witter (APN 243-161-017 and 243-161-018), located immediately north of Malpaso Creek (see Exhibit C Parcel map), and within the public viewshed visible from the Highway One Bridge over Malpaso Creek (Exhibit D Carmel Area LUP Viewshed Map). The subject parcel (APN 243-161-017) is located between two already developed residential parcels that front the shoreline along Yankee Point Drive. The



eastern parcel (APN 243-161-018) owned by the Witter's includes a residence, to which the subject parcel has served as additional yard space. Thus, while the subject parcel is generally vacant, it has been improved by the previous owners (pursuant to CDP 3-00-020; attached as Exhibit L) with native landscaping, stone footpaths, and fencing constructed along the street and along a portion of the coastal access trail that occupies a portion of the subject parcel (see Exhibit G: Previously Approved Landscape plans). The coastal access trail, known as the Old Coast Road Trail since it follows the historic route of the Old Coast Road, occupies a 5-foot wide right-of-way along the western property line, and extends south from Yankee Point Drive to the top of the bluff, and then crosses the southwestern corner of the subject property, as it heads eastward and down the bluff face to reach Malpas Creek Beach¹ (see Exhibit B: Vicinity Map and Exhibit C: Parcel Map).

Although Monterey County has a certified local coastal program, the subject parcel is one of five residential parcels located in an area of deferred certification, due to public access issues that were unresolved at the time of certification. Therefore, the Coastal Commission retains coastal permit jurisdiction over this area of deferred certification, and over the proposed project. Thus the standard of review for coastal development permits in this area is the Coastal Act. While policies in the County's Carmel Area LUP do not govern development in this area of deferred certification, they do include specific resource protection policies for the Yankee Point Drive area and Carmel Highlands Riviera, and so may serve as guidance to the Commission.

Project Description

The project involves development of a one story, 2,232 square-foot single-family dwelling (modular home), with attached 440 sf garage, 620 sf patio (with flagstone set in concrete), and landscaping, which includes at least 1,500 sf of additional hardscaping (flagstone set in decomposed granite), and at least 700 sf (roughly 15-foot diameter) synthetic turf putting green, that has already been constructed on the property without benefit of a permit (see Exhibit E: Site Plans and Exhibit F: Proposed Landscape Plan).

Although the parcel is located in an area of deferred certification, and so not part of the certified Local Coastal Plan (LCP), the County's zoning of the parcel is "LDR/1-D [20][CZ]" or Low Density Residential, 1 acre per unit, in a design control district of the coastal zone, which has a maximum structural height limit of 20 feet. The subject parcel is 0.65 acres in size (or 28,500 sf), and so is a legal nonconforming lot. The residence will have a maximum height of 20 feet above existing natural grade. The modular home will be set on the existing grade, so no grading is proposed. However, the proposed plans require that much of the native plant landscaping put in by the previous owners be removed for construction of the proposed new development (residence, garage, driveway, patio, additional hardscaping, and putting green). Residential development of the site also includes installation of septic system, and drainage improvements to collect surface runoff (from the roof,

¹ The Old Coast Road trail is actually approximately 10-feet wide between Yankee Point Drive and the blufftop, occupying a 5-foot wide strip located along the western edge of the subject property (APN 243-161-017) and a 5-foot wide strip along the eastern edge of the adjacent (Blair/Feduniak) parcel (APN 243-161-015)



driveway, and patio areas), and direct it away from the coastal bluff and toward the street where it can be discharged into the existing storm-water system.

The project also proposes to extend the existing 4-foot high wood and wire fence that is set 5 feet east of the western property boundary along the existing Old Coast Road trail that provides vertical access from Yankee Point Drive to Malpas Creek Beach. As shown on the plans (Exhibit E), a 4-foot high wood-and-wire fence extends most of the length along the public accessway (previous permit allowed for 225 foot long fence), along the west side of the subject parcel 243-161-017. The fencing has been placed five feet east of the western property boundary, which, along with a 5-foot dedicated easement on the adjoining parcel (APN 243-161-015), provides a 10-foot wide accessway to the blufftop. The trail narrows down to five feet wide as it crosses the southwestern corner of the property. The current project proposes extending this wood and wire fencing along the remaining length of the trail where it would extend to the blufftop, and then across the southern portion of the property, where the trail traverses the site and slopes down across the bluff face to reach Malpas Creek Beach. As shown on the site plans, the fence would include new access gates along the western fence line and at the southern property boundary, where the Old Coast Road trail exits the parcel.

C. Coastal Act Issues

1. After-the-Fact Development

The previous property owners (Stackpole) installed fencing along the front of the property and across the trail entrance, blocking the public accessway, and also landscaped the subject parcel, all without benefit of a permit and in violation of Coastal Act resource protection and public access policies. To resolve the violation, the Commission required the applicants to obtain an after-the-fact coastal development permit (CDP 3-00-020) for the fence and landscaping. The Commission ultimately approved the project and issued a permit (see Exhibit L) with conditions that prohibited fencing or any other structures blocking the Malpas Creek Beach accessway, required recordation of a deed restriction for a scenic preservation area on the southwestern corner of the parcel that lies seaward of the "line of sight 'Y'" stringline (see Exhibit H), allowed fencing along the street front and along the access trail outside of the scenic preservation area, and limited landscaping on the site to drought tolerant, non-invasive species appropriate to the site. The approved landscaping plan for CDP 3-00-020 thus includes only native plants, chipped bark mulch, decomposed granite footpaths, and three small areas with stone surfacing.

While much of the landscaping approved by this earlier permit remains in place, aerial photos show that a portion of the site has been modified from the approved plans and now includes a putting green, which was installed without the benefit of a permit (see Exhibit I). Therefore in addition to the current application for the new single-family dwelling, garage, patio, drainage improvements and septic system, the current application also seeks after-the-fact approval of the putting green, which is approximately 700 sf in area, and has been constructed using synthetic turf that requires no irrigation.



Review of this permit request does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred. The Commission acts on this application without prejudice and acts on it as if the existing development had not previously occurred. However, since development has occurred in violation of the Coastal Act, conditions are also included to resolve the violation through mitigating impacts that have occurred.

2. Development

The project proposes to construct a new residential structure on an existing vacant lot in a residential enclave located in the Yankee Point area, also known as the Carmel Highlands Riviera.

The Coastal Act requires that new development be located in existing developed areas able to accommodate it by means of existing infrastructure and utilities.

Coastal Act Section 30250 requires that:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it ...

While the Carmel Area LUP is not the standard of review (because this parcel is in an area of deferred certification), its policies can, nonetheless, serve as guidance in this area.

The Carmel LUP requires that

4.3.1. Objectives for Different Planning Units of Carmel Area. Existing Developed Areas. It is the County's objective to promote the continued "infilling" of vacant parcels of record in all subdivided areas, namely, Carmel Woods, Hatton Fields, ... Carmel Highlands, and the Riviera. Existing recreational and visitor-serving facilities located within the residential communities are considered desirable uses and should be continued where potential or existing conflicts with the surrounding residential community can be adequately mitigated.

...4.4.2.6. New...development of undeveloped parcels south of the Carmel River shall be permitted only if the following principal criteria can be fully met in addition to other applicable policies of this plan:

- Structures can be located, designed or screened to be outside the public viewshed.*
- ...Roads and structures can be sited to avoid disruption or degradation of riparian corridors and other sensitive plant and wildlife habitats*
- ...Development would be in keeping with the present rural character of the area*
- ...Adequate sewer service or adequate sewage disposal area that qualifies under county standards is available*



- Adequate water supply is available.

4.4.3.E.1 (Specific Policies for Residential Development) Infilling of existing residential areas according to the resource and scenic protection standards set forth in this plan is preferred over new residential development elsewhere.

4.4.3.E.5 Low-density residential development shall generally be located in rural areas where an essentially residential character exists – i.e., the Carmel Highlands-Riviera. Vacant lots in this area should continue to be developed to the extent that site and resource protection constraints allow. Housing densities and lot sizes shall be consistent with the ability of septic systems to dispose of waste without contamination of coastal streams or creation of hazards to public health...

4.4.3.E.11. Existing parcels less than the minimum parcel size required for new subdivisions are considered legal parcels and are suitable for development of those uses consistent with the land use plan designation, provided that all resource protection policies can be fully satisfied.

The project site is an existing, legal lot of record in the Carmel Highlands-Riviera, designated for residential use (low-density residential 1-unit per acre, design control, max height limit of 20 feet). The lot is the last vacant lot located in this residential enclave west of Highway One, where adequate infrastructure, including roads, water and electricity already exists. County approvals for the project indicate that adequate areas exists for septic system to dispose of waste, outboard of the 50 foot bluff top setback and with the ability for a future 100% leachfield expansion area if necessary. Water will be served to the property by the Carmel Riviera Mutual water company (pers comm. Pia Garnout, Carmel Lahaina Utility Services, operations and management firm for CRMWC, 1/26/05). Thus the project proposes new residential development in an existing developed area, where infill development is allowed, and that is able to accommodate it, and so is consistent with Coastal Act policy 30250.

3. Scenic Resources

The subject parcel is located in the coastal viewshed as seen from Highway One (see Exhibit D: Carmel Area LUP Viewshed Map). Some elements of the proposed development on the lot will be visible from Highway One at the Malpas Creek Bridge (e.g., portions of the proposed hardscaping, putting green and wood and wire fence extension), and may affect scenic views of the coast and shoreline in this area. Thus the main issue involved with this permit application is protection of public coastal views and scenic resources.

Coastal Act section 30251 governs:

Section 30251. *The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding*



areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Although not the standard of review, the Carmel Area Land Use Plan (LUP) offers guidance with regards to visual resources. Relevant scenic resource protection policies of the Carmel LUP require² that:

2.2.3.1. The design and siting of structures, whether residential, commercial, agricultural, or public, and the access roads thereto, shall not detract from the natural beauty of the scenic shoreline and the undeveloped ridgelines and slopes in the public viewshed.

2.2.3.4. The portion of a parcel least visible from public viewpoints and corridors shall be considered the most appropriate site for the location of new structures. Consistency with other plan policies must be considered in determining appropriate siting.

2.2.3.6. Structures shall be subordinate to and blended into the environment, using appropriate materials that will achieve that effect. Where necessary, modification of plans shall be required for siting, structural design, color, texture, building materials, access and screening.

2.2.3.8. Landscape screening and restoration shall consist of plant and tree species consistent with the surrounding vegetation. Screening on open grassy slopes and ridges should be avoided.

2.2.3.9. Landowners will be encouraged to donate scenic easements to an appropriate agency or nonprofit organization over portions of their land in the viewshed, or, where easements already exist, to continue this protection. Viewshed land protected by scenic easements required pursuant to Coastal Permits shall be permanently free of structural development unless specifically permitted at the time of granting the easement.

2.2.4.10. The following siting and design control measures shall be applied to new development to ensure protection of the Carmel area's scenic resources, including shoreline and ocean views:...

c. Structures located in the viewshed shall be designed so that they blend into the site and surroundings. The exterior of buildings must give the general appearance of natural materials (e.g., buildings should be of weathered wood or painted in "earth" tones). The height and bulk of buildings shall be modified as necessary to protect the viewshed.

d. Exterior lighting shall be adequately shielded or shall be designed at near-ground level and directed downwards to reduce its long-range visibility.

² These policies are cited for illustrative purposes. They are certified as applying to the Carmel Area, but not to the subject sites, because the subject parcel is in an area of deferred certification, due to unresolved public access issues.



e. Existing trees and other native vegetation should be retained to the maximum extent possible both during the construction process and after the development is completed. Landscape screening may be used wherever a moderate extension of native forested and chaparral areas is appropriate. All new landscaping must be compatible with the scenic character of the area and should retain existing shoreline and ocean views.

2.2.5.2To ensure that new development in the Yankee Point area remains subordinate to the visual resources of the area, and to ensure that visual access from Highway 1, Yankee Point Drive, and Mal Paso Road is protected, the height limit in the Yankee Point area of Carmel Highlands-Riviera, for all properties seaward of Yankee Point Drive, and for properties with frontage along the east right of way line of Yankee Point Drive that face such properties seaward of Yankee Point Drive, shall be 20 feet. The height limit for all other properties in the area shall be 26 feet.

In addition to such height limits, new development shall be subject to design guidelines to be adopted by the Planning Commission for the Yankee Point area. Such guidelines shall affect the visibility and design of structures in a manner so as to preserve and protect, to the maximum extent feasible, public visual resources and access described herein.

The applicants' site is one of the three lots located seaward of Yankee Point Drive that front Malpasos Creek and are located within the public viewshed mapped by the County LCP (as shown in Exhibit D; see also Exhibit K). The shoreline along Malpasos Creek is an area where special care has been undertaken to avoid development that could otherwise impact public views of the coast and ocean available from Highway One, across the Malpasos Creek Bridge, and the Coastal Commission and the County have had a long, continuous commitment to preserving the scenic resources in this area, pursuant to the Coastal Act directives of Section 30251.

In order to preserve views of the coastal bluffs and ocean visible from the Highway One Bridge in this area of deferred certification, the Commission has consistently used the "stringline method" to establish a line of sight between the Highway One Bridge over Malpasos Creek and the seaward extent of other pre-existing development on the blufftop north of Malpasos Creek, south and seaward of which development is prohibited through conditions that require the recordation of a scenic easement (see Exhibit H). The Commission also conditioned development on these residential parcels to retain native bluff-top vegetation, that new landscaping use only native, drought-tolerant species suitable to the site in order to maintain the scenic character of the area and minimize irrigation on the blufftop, and to restrict fencing and landscaping impacts within the viewshed.

The stringline method has thus been applied on all five residential parcels located in the area of deferred certification, including the Blair (now Feduniak) residence located on the adjacent parcel west of the subject site, approved in July 1986, and most recently for after-the-fact approval of fencing and landscaping installed on the subject parcel by the previous property owners (Stackpole) in June 2001. The stringline used in these earlier coastal development permits was established as the line of sight (referred to as the "line of sight 'Y'") between the southern end of the Malpasos Creek



Bridge, and the seaward extent of pre-existing residential development on the blufftop north of Malpas Creek (please see Exhibits H).

The same "line of sight 'Y'" stringline was used on the subject parcel, to resolve the after the fact development that had occurred on site (as described above). In that case, the Commission prohibited fencing or any other structures blocking the Malpas Creek Beach accessway, required dedication of a scenic preservation area across the southwestern corner of the parcel, south and seaward of the "line of sight 'Y'", and prohibited development in the scenic preservation area other than installation of native drought tolerant landscaping with a maximum height of 4 feet and temporary drip irrigation, in order to protect the scenic character of the area and to minimize irrigation on the blufftop parcel.

Additionally, since the lot had no residence on site at the time, and still provided views from both Highway One and Yankee Point Drive across the parcel to the ocean, the Commission specifically required that landscaping already installed between the Scenic Preservation Area and Yankee Point Drive be modified as necessary to use only drought tolerant, non-invasive native plant species appropriate to the site, and not include any plantings that would substantially block existing views across the parcel. To minimize visual impacts in the viewshed, the Commission also recommended that the proposed wood and wire fence not extend into the Scenic Preservation Area. The landscaping plans were thus revised to show use of native plants that would not block views and that all fencing proposed to be located in the Scenic Preservation Area had been removed from that area, consistent with visual resource protection policies (see Exhibit G: Previously Approved (Stackpole) Landscape Plans, and Exhibit K: Photos of site).

As required by the Stackpole ATF permit, an Open Space Deed Restriction was recorded on February 26, 2002, establishing the Scenic Preservation Area on the southwestern corner of the property, seaward of the "line of sight 'Y'", and a 5-foot wide "Old Coast Road Trail" easement (see Exhibit J). Consistent with the requirements of CDP 3-00-020, the recorded Open Space Deed restriction prohibits development in the Scenic Preservation Area (as shown in Exhibit J) except for (1) installation of drought and salt-water resistant, non-invasive native shrubs and grasses with maximum heights of 4 feet or less indicative of the Malpas Creek coastal terrace area, (2) installation and subsequent removal of a temporary drip irrigation system needed (if any) to establish the approved plantings in the Scenic Preservation Area, as identified on the approved landscaping plans, and (3) other minor repair and maintenance activities provided for by the existing Open Space Deed Restriction.

As described previously, the current property owners (Witter) are now requesting to develop a one story, 2,232 square-foot single-family dwelling, with attached 440 sf garage, 620 sf patio (with flagstone set in concrete), and landscaping, which includes at least 1,500 sf of additional hardscaping (flagstone set in decomposed granite), and at least 700 sf (roughly 15-foot diameter) putting green, that has already been constructed on the property without benefit of a permit. The project also proposes to extend the existing 4-foot high wood and wire fence that is set 5 feet east of the western property boundary along the existing Old Coast Road trail that serves as a vertical accessway from Yankee Point Drive to Malpas Beach.



While development of any new house would block ocean views from Yankee Point, the proposed house has been sited in the least visible location on the parcel, relative to the main public views taken from the Highway One Bridge over Malpas Creek. The proposed house has also been sited well landward of the "line of sight 'Y'" stringline, and so does not block views of the ocean or blufftop from Highway One beyond any other previously existing development. However, proposed extension of the fence would require that it be located in the scenic preservation area, which, as described above, is prohibited by the existing Open Space Deed restriction.³

The applicants have thus requested an amendment to the previous Stackpole permit requirement prohibiting development in the deed restricted scenic preservation area, in order to allow for construction of a 4-foot high open wire fence (with 2x4 top rail and framing) and gates along the landward side of the public accessway that crosses the site, as part of the new residential development proposed as part of this current application.

While a fence by itself would detract from the scenic character of the blufftop parcel, the applicants have indicated that they would be willing to screen any new fencing with vegetation, to obscure the view of the fencing and eliminate the visual impact of such development. If conditioned so that the design, planting and maintenance of the vegetation effectively obscured visibility of the fencing (i.e., so that it was mostly covered/screened by native shrubs and vines, planted in a way so it didn't just look like a straight line hedge), it would look similar to a bramble of bushes along the edge of the existing trail, and blend in to the character of the setting, thus preserving the open space character of the site. Provided the fence was conditioned to incorporate the integral landscaping into the design, it is possible that such fence would be no more obtrusive than similar vegetation along the edge of the trail might appear. Thus a low (no more than 4-foot high), vegetatively screened fence, if adequately designed, screened and maintained, could be found to be consistent with the intent of the restrictions placed on the property by approval of CDP 3-00-020, provided the Commission approves the Witter's pending amendment to revise the existing deed restriction (amendment application 3-00-020-A1). Installation of the new fencing can not occur however, until the applicant has accepted the amended permit (CDP 3-00-020-A1), if approved by the Commission, and has complied with the conditions of that permit, and provides evidence that the revised deed restriction has been amended pursuant to CDP 3-00-020-A1 and recorded with the County of Monterey.

Additionally, while the proposed landscaping plan (dated 7/14/04; see Exhibit F) retains all of the existing native vegetation located within the Scenic Preservation Area, construction of the house, driveway, patio, putting green and installation of proposed landscaping and additional hardscaping would require removal of much of the existing native landscaping required by CDP 3-00-020 and installed by the previous owners between Yankee Point Drive and the Scenic Preservation Area. The proposed landscaping plan for the area between Yankee Point Drive and the Scenic Preservation Area does incorporate native plants into the design, and includes non-native groundcovers (e.g., gazania and lantana) on the blufftop, which while drought-tolerant, are not consistent with previous

³ Based on the definition of development given in Coastal Act Section 30106 (which includes placement or erection of any solid material or structure), a fence is considered development, and thus would not be allowed within the scenic preservation area.



permit requirements that allow only native plants in this area, and are not consistent with LCP guidelines, e.g., Carmel LUP Policy 2.2.3.10.e, which requires that native vegetation be retained to the maximum extent possible, and that all new landscaping must be compatible with the scenic character of the area.

The proposed landscape plan (in Exhibit F) includes large areas of gravel and flagstone paving, and a putting green made of synthetic turf, which, while landward of the scenic preservation area, are still located in the viewshed and so would remain partly visible from the Highway One Bridge across Malpas Creek. While these hardscaping areas help to minimize irrigation on the blufftop, they also require the removal of a large area of existing native landscaping, and replace it with features that would stand out rather than blend in to the surrounding environment and so detract from the natural beauty and scenic character of the coastal bluff and shoreline. Again, such development would be inconsistent with LCP guidelines as described above.

Therefore, in order to protect scenic resources consistent with Coastal Act policies, LUP guidance, and the existing Open Space Deed Restriction, special conditions of this permit require that project plans be redesigned to remove the proposed fence extension and gates from the scenic preservation area, unless allowed pursuant to an approved amendment of the earlier Stackpole permit (CDP 3-00-020). Without such amendment, this permit allows only for a 4-foot high wood and wire fence, to be located landward of the scenic preservation area, and requires that any such fence include landscape screening designed, planted and maintained in such a way as to blend in with the open space character of the blufftop parcel, similar to that described above, and consistent with Special Condition 2c.

Additionally, in order to maintain the scenic character of the coastal blufftop consistent with LCP guidance for this area, and to provide a transition between the native blufftop setting and the residential use on site, special conditions require that the landscaping plan be revised to maintain as much of the existing native landscaping as possible on the seaward side of the house. This can be achieved by limiting the amount of new hardscaping, between the house and the scenic preservation area to 850 sf (which would allow for the proposed 620 sf flagstone-and-concrete patio and an additional 230 sf of flagstone and gravel hardscaping), and limiting the putting green to its existing size, location, and use of synthetic turf. Furthermore, because a putting green is not consistent with the natural setting of the coastal blufftop, the permit has been conditioned to require that low-lying shrubs (with a maximum growth habit of no more than 4-feet high) be planted around the perimeter of the putting green and hardscaped areas, in order to at least partially screen these features from view from the Highway One Bridge. If the applicant cannot sufficiently screen the putting green as required, they shall be required to remove the putting green turf (taking necessary action to avoid further damage of the site) and to restore the area with native plantings. All plantings on the site shall use only drought tolerant, non-invasive native plant species indicative of the coastal blufftop setting.

Thus, only as conditioned, can the project be found consistent with the local LCP policies for development in the public viewshed and is consistent with Coastal Act Section 30251 protecting scenic and visual resources.



3. Public Recreation and Access

Coastal Act § 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea “shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3.”

Coastal Act policies require that the public access to the sea and coastal recreation be maximized consistent with public safety, resource protection and private property rights. The Coastal Act protects public access to the sea and coastal recreation with the following policies:

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

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

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

Section 30214.

(a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*

(1) *Topographic and geologic site characteristics.*

(2) *The capacity of the site to sustain use and at what level of intensity.*

(3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*

(4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

(b) *It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section*



4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

Again, since the project is located in an area of deferred certification, the Coastal Act is the standard of review; however, the Carmel LUP provides helpful guidance for this area of the coast. Relevant public access requirements for the Carmel Highlands-Riviera area include the following:

5.3.1 Key Policy. Public access shall be protected and provided where consistent with public safety needs and the need to protect the rights of private property owners and natural resource areas from overuse.

5.3.2.5. Bluff-top access and lateral access along or near the shoreline is appropriate along the coast. These types of access shall be protected for long-term public use, subject to adequate management programs.

5.3.3.5.a. New development shall not encroach on well-established accessways nor preclude future provision of access. New structures shall be set back and buffered from access paths to prevent use conflicts.

The project is located west of Highway One and seaward of Yankee Point Drive, and so is located between the nearest public road and the sea. Public access to the shoreline at Malpaso Creek Beach is currently provided along a path that follows the historic route of the Old Coast Road (see Exhibit I and K). This public access extends south from Yankee Point Drive across the bluff top, and then bends eastward and down the face of the bluff to reach Malpaso Creek Beach. The trail is approximately 10 feet wide between Yankee Point Drive and the blufftop, occupying a 5-foot wide strip located along the western edge of the subject parcel (243-161-017) and a 5-foot wide strip along the eastern edge of the adjacent (Blair/Feduniak) parcel (243-161-015), and then narrows to 5 feet wide where it bends east across the subject property and drops down the face of the bluff to reach Malpaso Creek Beach. The Malpaso Creek Beach accessway (also referred to as the Old Coast Road Trail) on the adjacent (Blair/Feduniak) parcel has been protected through the recording of an irrevocable offer to dedicate vertical coastal access to Malpaso Beach. Once the OTD is accepted (expires in 2009), this vertical accessway on the adjacent parcel will be permanently protected.

An Open Space Deed Restriction was recorded on the subject parcel on February 26, 2002, which included recordation of a 5-foot wide trail along the western property boundary and across the southwestern corner of the parcel, which provides vertical access between Yankee Pint Drive and Malpaso Creek Beach along the Old Coast Road Trail (see Exhibit J). As provided for in the Open Space Deed Restriction, the only development allowed in the Old Coast Road Trail easement is the posting of a recorded Trail Usage Notice, which indicates that the public has a right to pass on the existing trail by permission, subject to control of owner. The notice also includes conditions that limit the right to pass to the existing trail and beach and indicates that trespassing off path would be vigorously prosecuted; requires users to keep noise to a minimum in respect of property owners; and specifies that the right to pass is for pedestrian use only.



As required by the existing Open Space Deed Restriction, the Old Coast Road Trail area shall be kept free of structures that could hinder the ability of the public to use the trail access. No development as defined in Section 30106 of the Coastal Act, including but not limited to gates, fences, signs, hedges, or plants, shall occur in the existing trail area except for the previously approved Trail Usage Notice. As such, the location of the western fence line cannot be changed and no gates or other structures that would block public access along the trail can be installed without a new coastal development permit or an amendment to this permit.

The current plans for the proposed development (dated 7/14/03; see Exhibits E and F) continue to use the existing western fence line (which is set 5 feet in from the western property boundary) to enclose their property. The plans also identify the existing beach access trail across the property, and specifically note the 5-foot wide right-of-way for the existing beach access trail across the subject parcel. None of the major structural elements of the proposed design, as shown on the project plans dated 7/14/03, would affect physical access along this trail. However, to ensure that shoreline pedestrian access remains available, special conditions require that the location of the western fence line cannot be changed and no gates or other structures that would block public access along the trail may be installed without a new coastal development permit or an amendment to this permit.

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

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

4. Archeological Resources

Section 30244 of the Coastal Act states:



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

The Carmel LUP also requires that

2.8.3.4. When developments are proposed for parcels where archaeological or other cultural sites are located, project design shall be required which avoids or substantially minimizes impacts to such cultural sites. To this end, emphasis should be placed on preserving the entire site rather than on excavation of the resource, particularly where the site has potential religious significance.

2.8.4.6. When other site planning constraints do not permit avoidance of construction on archaeological or other types of a cultural sites, adequate preservation measures shall be required. Mitigation shall be designed in accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.

As a result of the previous permit experience on the adjacent (Blair/Feduniak) parcel to the west, and the subject site (as part of the fencing and landscaping performed by the previous owners) archaeologically sensitive resources are known to be located on the adjacent parcel to the west (APN 243-161-015), as well as on the subject site, itself.

In response to questions about whether the landscaping and fencing installed by the previous owners had impacted existing archaeological resources located on site, Mr. Gary Breschini, a qualified archaeological consultant, submitted a letter (dated March 18, 2001), which stated that while the subject parcel contains a portion of an archaeological site (CA-MNT-95), the archaeological site is located at the extreme southern end of the parcel. The letter also stated that while the previous owners had installed landscaping along the fence line near the western property boundary, an archaeological evaluation of the site had been conducted and it appeared that no damage had occurred to the archaeological resources located on site. The archaeological consultant further indicated (pers. comm. 5/22/01) that the extent of the archaeological site was limited to a small portion of the property outside the area of construction activities associated with the landscaping installed by the previous owners. Since the current project, as conditioned, will not include any development in the area referenced by the archaeological consultant, it is expected that the project as conditioned will not have any impacts on archaeological resources on site.

However, since the proposed development includes installation of a new septic system, which will involve minor excavation, it is possible that this activity may disturb additional, as-yet undiscovered archaeological resources. This permit has, therefore, been conditioned to require that should archaeological resources be discovered at the project site during any phase of construction allowed by this permit, work will be halted within 150 feet of the find until it can be evaluated by a qualified professional archaeologist, and a mitigation plan developed if the find is deemed significant.

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



D. California Environmental Quality Act (CEQA)

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



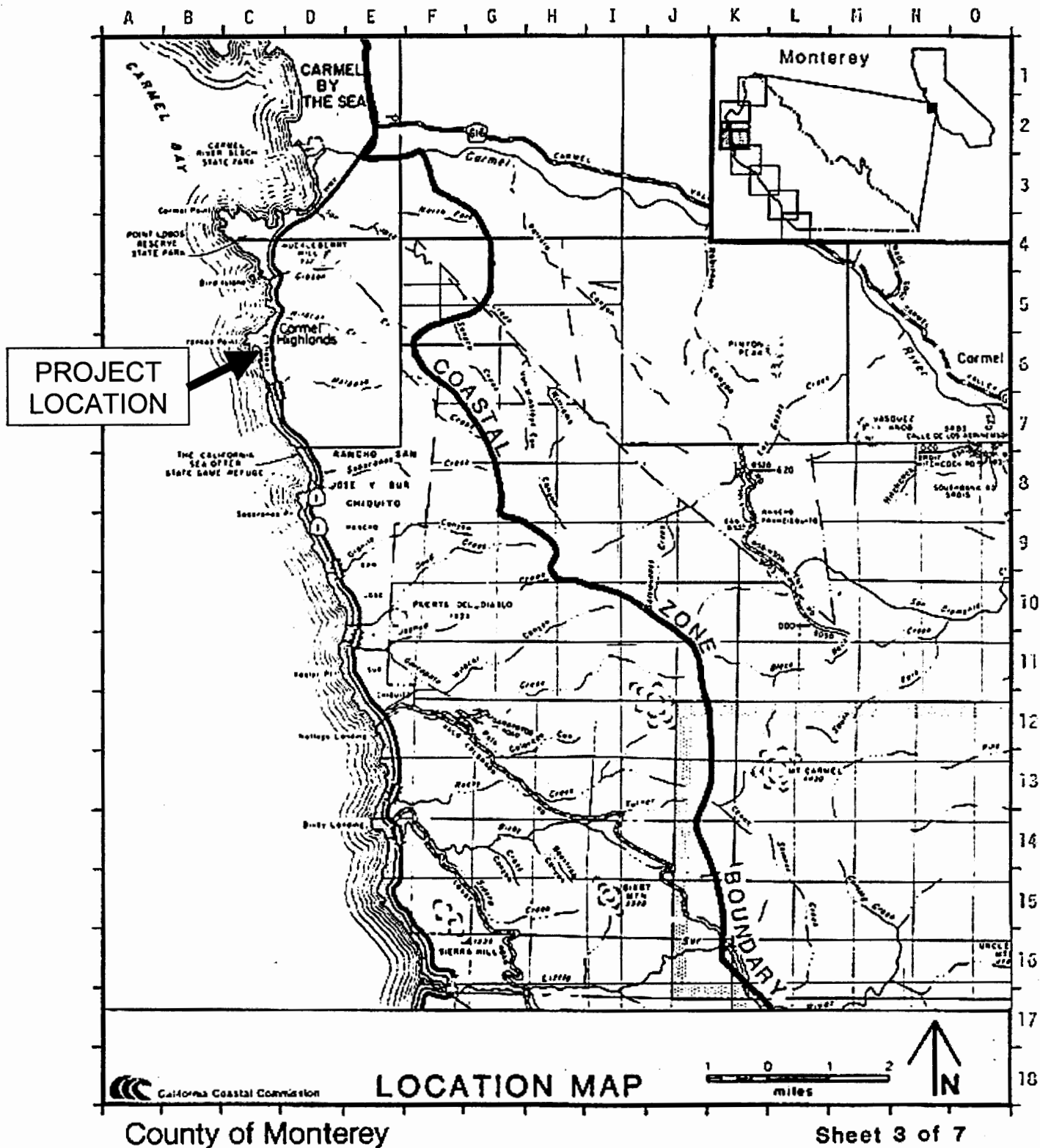
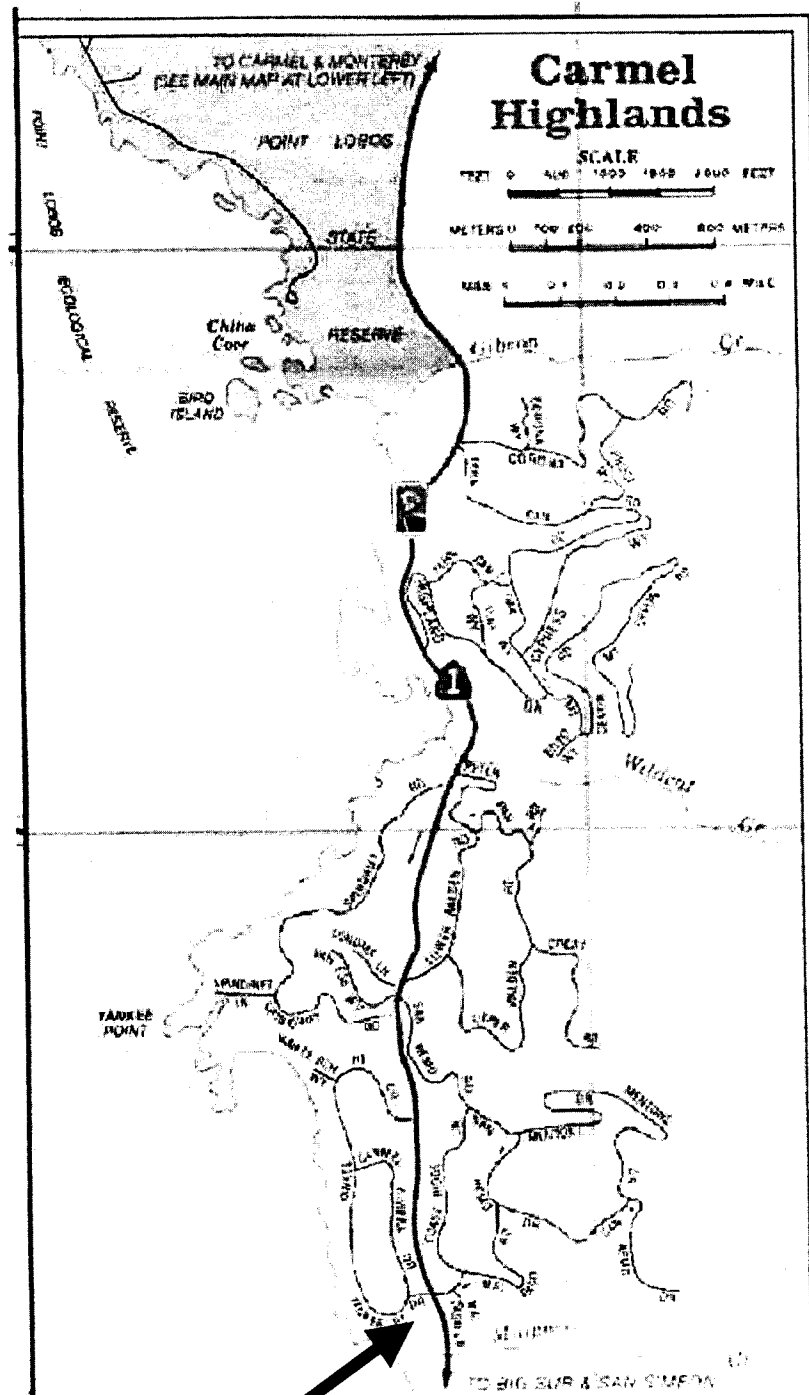


Exhibit A
Regional Location Map: Yankee Point and Carmel Highlands Riviera





Project Location


Exhibit B
Project Vicinity – Yankee Point and Carmel Highlands Riviera



California Coastal Commission

3-04-052
Witter SFD

ILLUSTRATIVE ONLY

 **VIEWSHED**—As Seen From:

- Highway 1 corridor and turnouts
- Scenic Road
- Public lands, within the Carmel segment, and Carmel City Beach

Source: Monterey County Planning Department, 1980.

**CARMEL AREA
~~LOCAL COASTAL PROGRAM~~
GENERAL VIEWSHED**

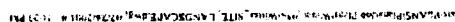


Source:
U.S.G. 15 minute Quad & Mahanoy County base map. Dec 1979

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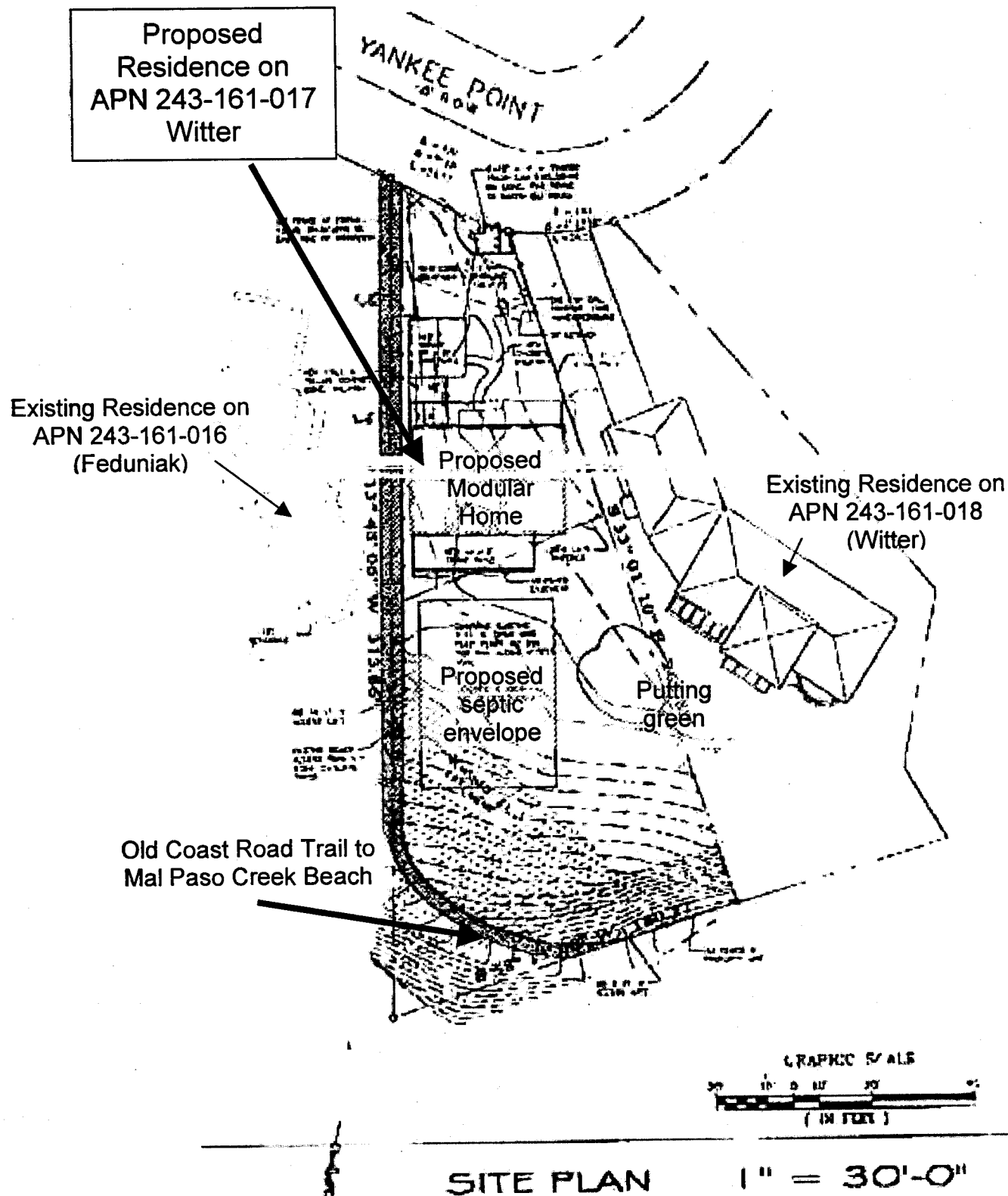


Exhibit E - pg. 2 of 5
Proposed Site Plans

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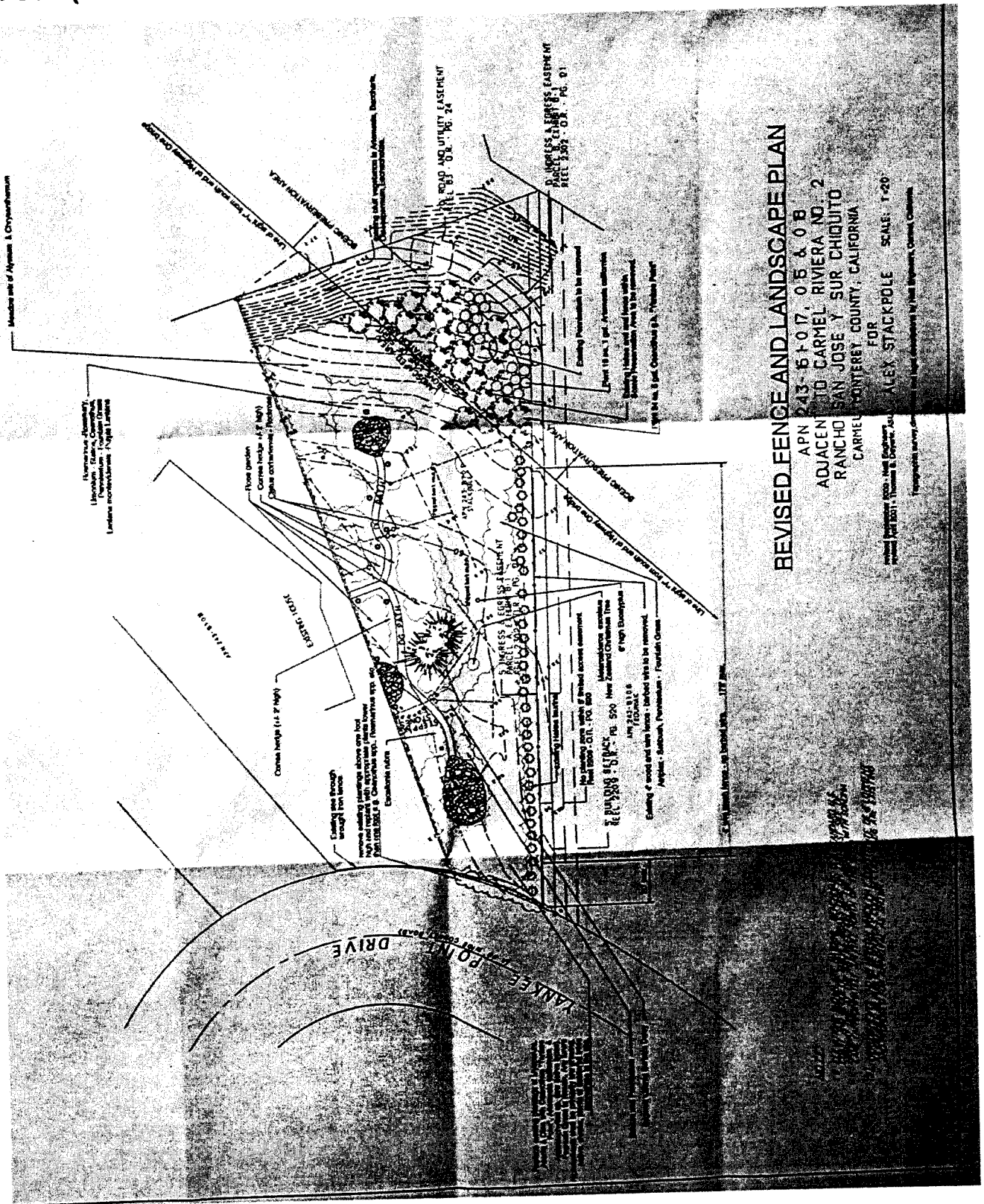


Exhibit G
Previously Approved (Stackpole) Landscape Plans
(required pursuant to CDP 3-00-020; dated revised May 24, 2001)

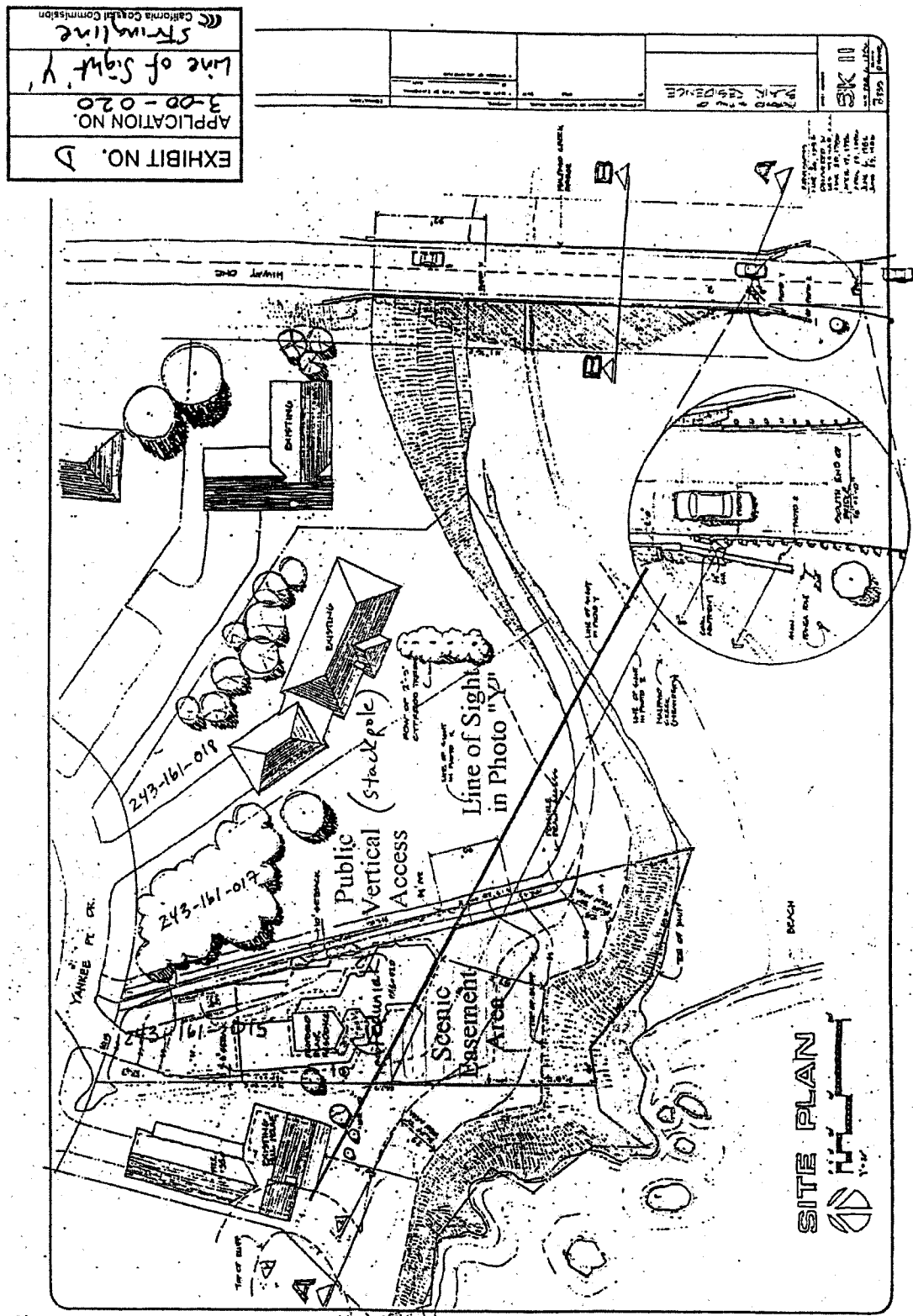


Exhibit H

“Line of Sight ‘Y’” Stringline

(Used previously for CDP 3-00-020 on subject parcel)

3-04-052

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Exhibit I

Oblique aerial Photo with approximate location of "Line of Sight 'Y'" Stringline
(Photo ©California Coastal Records Project, Image #200402364, dated 10/11/04)

3-04-052

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California Coastal Commission

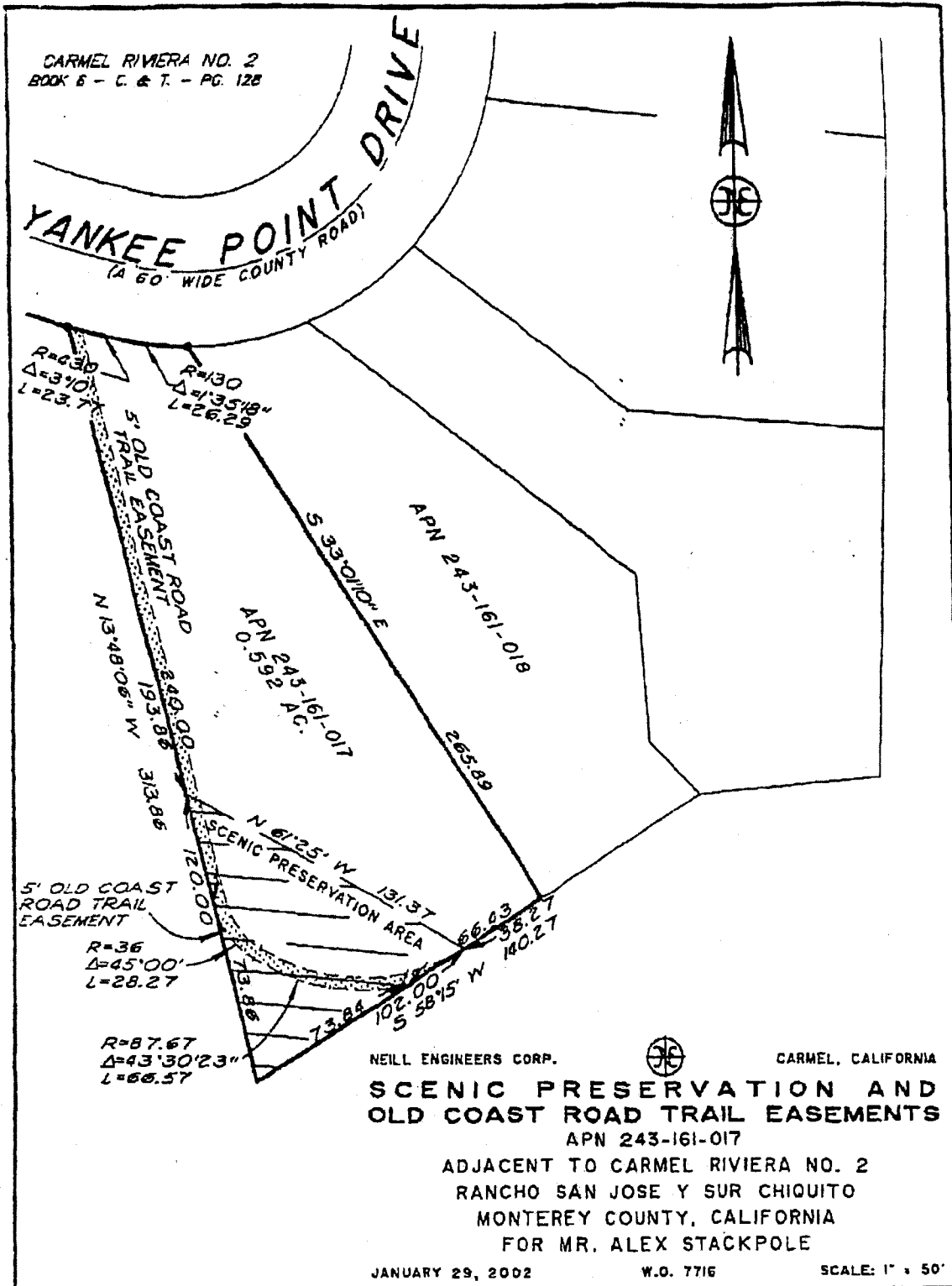


EXHIBIT D

Page 1 of 3

Exhibit J - pg 1 of 3

Scenic Preservation and Old Coast Road Trail Easements (recorded on 2/26/02 as part of Deed Restriction - pursuant to CDP 3-00-020)



California Coastal Commission

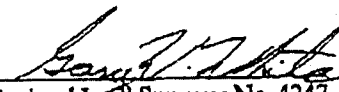
3-04-052
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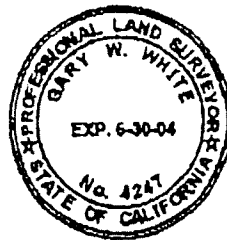
5' OLD COAST ROAD TRAIL EASEMENT DESCRIPTION

All that certain real property situate in the Rancho San Jose Y Sur Chiquito, Monterey County, California, being a portion of that certain 0.592 acre parcel of land described in that certain document recorded May 4, 1998 in Document No. 98-27193, records of Monterey County, California, being also a strip of land 5 feet in width, abutting and lying northeasterly of the following described line:

BEGINNING at the northwest corner of the above said 0.592 acre parcel of land; and running thence

1. S. $13^{\circ} 48' 06''$ E., 240.00 feet; thence, tangentially,
2. 28.27 feet along the arc of a curve concave to the northeast having a radius of 36 feet through a central angle of $45^{\circ} 00'$ (long chord bears S. $36^{\circ} 18' 06''$ E., 27.55 feet); thence, tangentially,
3. 66.57 feet along the arc of a curve concave to the northeast having a radius of 87.67 feet through a central angle of $43^{\circ} 30' 23''$ (long chord bears S. $80^{\circ} 33' 18''$ E., 64.98 feet) to a point on the southeast boundary of the above said 0.592 acre parcel of land which bears N. $58^{\circ} 15'$ E., 73.84 feet from the southwest corner thereof.


Professional Land Surveyor No. 4247
January 29, 2002



Page 2 of 3

Exhibit J - pg 2 of 3
Scenic Preservation and Old Coast Road Trail Easements (recorded on 2/26/02 as
part of Deed Restriction - pursuant to CDP 3-00-020)




California Coastal Commission

3-04-052
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SCENIC PRESERVATION AREA EASEMENT DESCRIPTION

All that certain real property situate in the Rancho San Jose Y Sur Chiquito, Monterey County, California, being a portion of that certain 0.592 acre parcel of land described in that certain document recorded May 4, 1998 in Document No. 98-27193, records of Monterey County, California, lying southwesterly of the following described line:

BEGINNING at a point on the southeast boundary of the above said 0.592 acre parcel of land which bears S. 58° 15' W, 38.27 feet from the most southeasterly corner thereof, and running thence N. 61° 25' W., 131.37 feet to a point on the southwest boundary of the above said 0.592 acre parcel of land which bears S. 13° 48' 06" E., 193.86 feet from the northwest corner thereof.


Professional Land Surveyor No. 4247
January 29, 2002



END OF DOCUMENT

Page 3 of 3

Exhibit J - pg 3 of 3

Scenic Preservation and Old Coast Road Trail Easements (recorded on 2/26/02 as part of Deed Restriction - pursuant to CDP 3-00-020)



California Coastal Commission

3-04-052
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Photo 1. View of ocean and coastal bluff prior to development on adjacent parcel (243-161-015). Note natural coastal sage scrub vegetation on blufftop.



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

Exhibit G (pg 1 of 4)
Project Photographs
3-00-020
Stackpole

Exhibit K

Photos of site before development on adjacent (Feduniak) property, and after installation of landscaping on subject property approved pursuant to CDP 3-00-020.



California Coastal Commission

3-04-052
Witter SFD

CALIFORNIA COASTAL COMMISSION

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

Adopted

Filed:	1/04/00
49th day:	2/22/01
180th day:	7/3/01
49-day waiver:	2/9/01
Staff:	K.Cuffe
Staff report:	5/24/01
Hearing date:	6/13/01

REGULAR COASTAL DEVELOPMENT PERMIT

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

Applicant..... Alex Stackpole and Spencer Harte Morgan Stackpole

Representative Mark Blum, Attorney

Local government..... Monterey County

Project location..... 112 Yankee Point Drive, Carmel Area, Monterey County (APN 243-161-017 and 243-161-018).

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

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

Staff recommendation Approval with Conditions

Summary of Staff Recommendation

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

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



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

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

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

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1. Staff Recommendation on Permit

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

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

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

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

2. Conditions of Approval

Standard Conditions

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



Special Conditions

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



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

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

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

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

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



3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

Project Location

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

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

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

Project Description

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

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



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

C. Coastal Act Issues

1. After-the-Fact Development

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

2. Scenic Resources

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

3. Public Recreation and Access

Coastal Act § 30604(c) requires that every coastal development permit issued for new development between the nearest public road and the sea "shall include a specific finding that the development is in conformity with the public access and recreation policies of [Coastal Act] Chapter 3."

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

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

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

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



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

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

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

4. Hazards

The Coastal Act Section 30253 requires that:

Section 30253. New development shall:

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



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

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

5. Archeological Resources

Section 30244 of the Coastal Act states:

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

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

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

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

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



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

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

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

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

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

D. California Environmental Quality Act (CEQA)

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



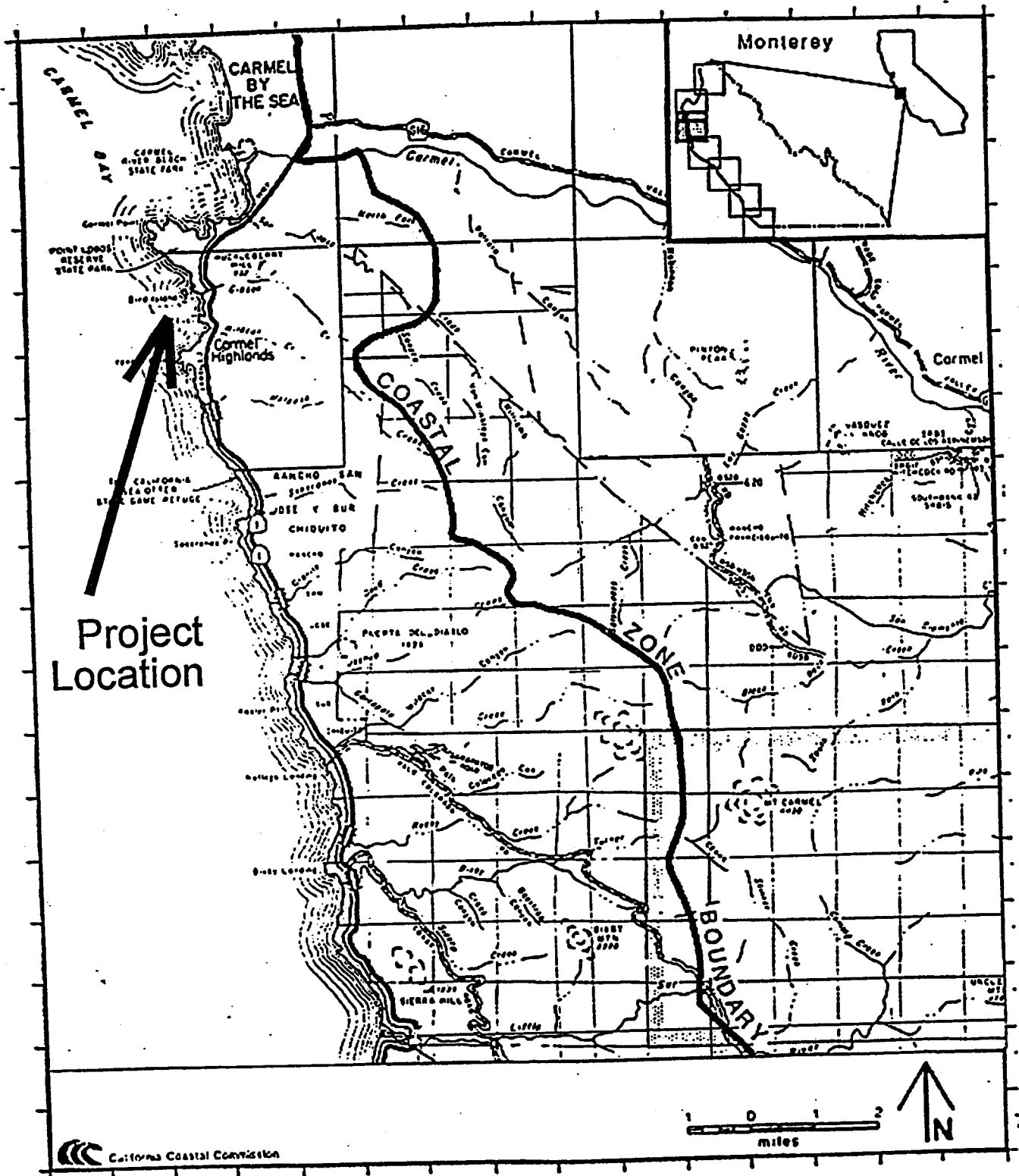


Exhibit A
Regional Location Map
3-00-020
(Stackpole)

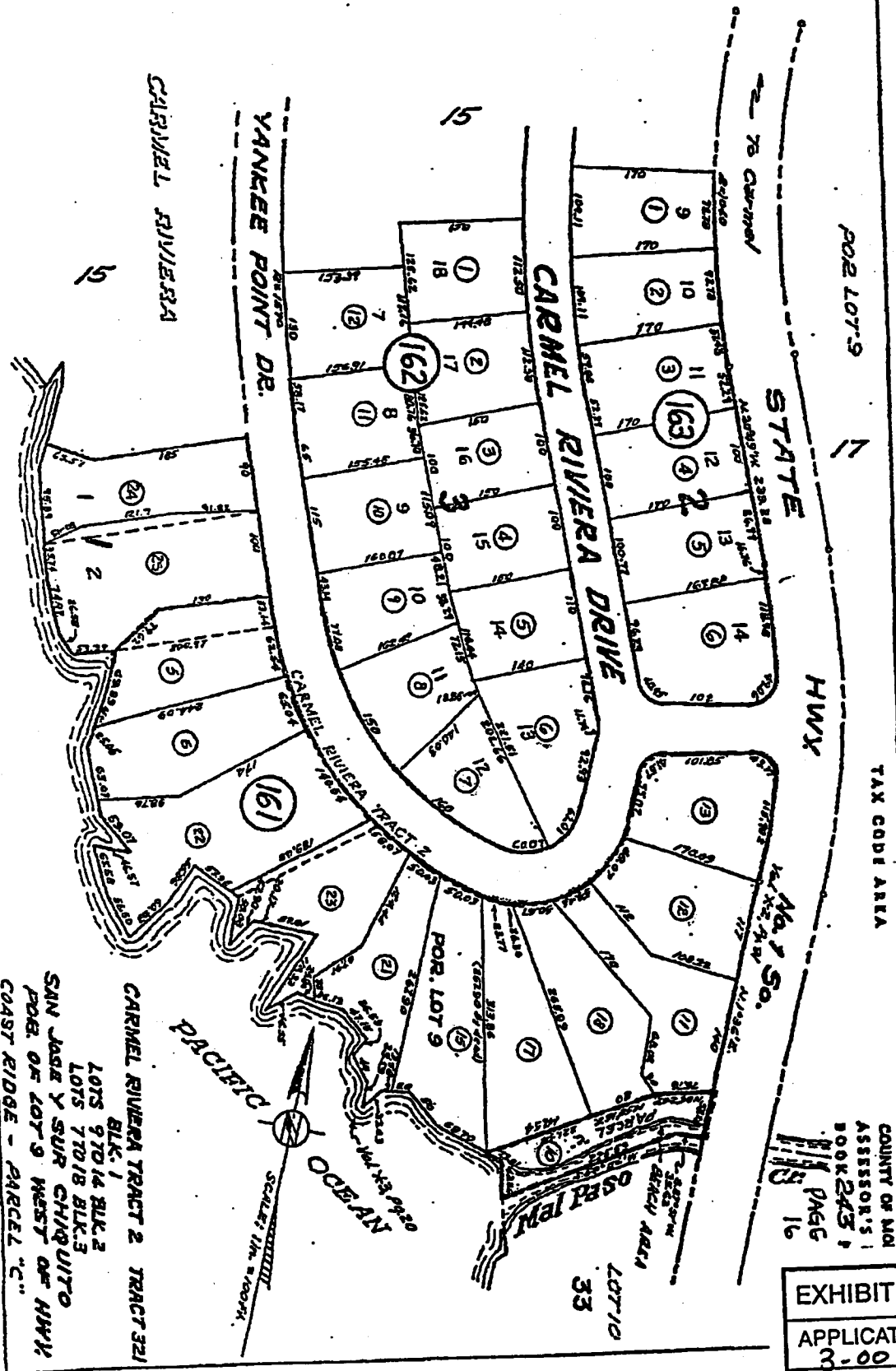


EXHIBIT NO. E

APPLICATION NO.
3.00-020

Site Plans
1 of 6

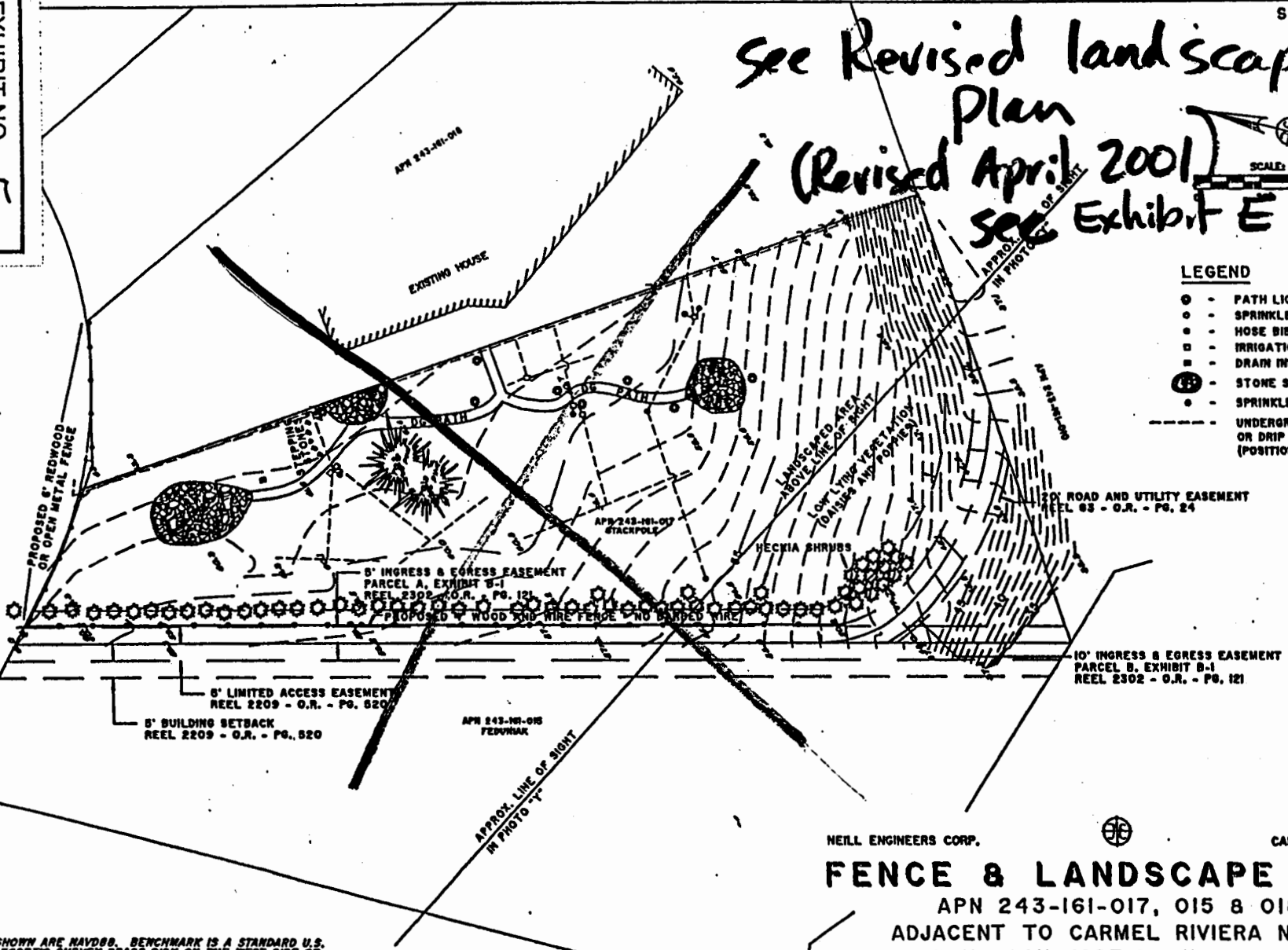
California Coastal Commission

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



LEGEND

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



NOTE:

- (1) ELEVATIONS SHOWN ARE NAVD83. BENCHMARK IS A STANDARD U.S. COAST AND GEODETIC SURVEY BRASS DISK ON THE WEST SIDE OF HIGHWAY ONE AT THE INTERSECTION OF THE HIGHWAY WITH SONOMA LANE (APPROXIMATELY 3/4 MILE NORTH OF THIS SITE).
- (2) IMPROVEMENTS SHOWN HEREON WHICH MAY CONSTITUTE DEVELOPMENT AS DEFINED IN PUBLIC RESOURCES CODE SECTION 30106 ARE EXISTING AND PROPOSED FOR APPROVAL AS SHOWN.

NEILL ENGINEERS CORP.



CARMEL, CALIFORNIA

FENCE & LANDSCAPE PLAN

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

FOR
ALEX STACKPOLE

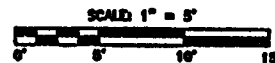
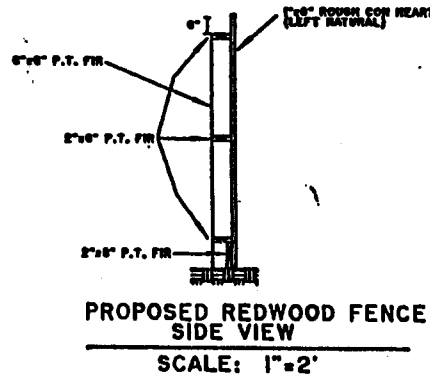
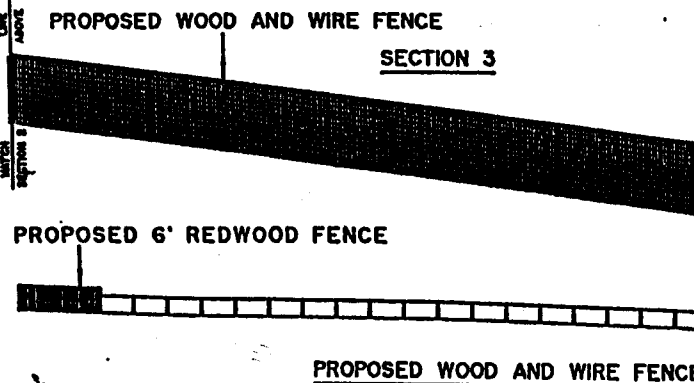
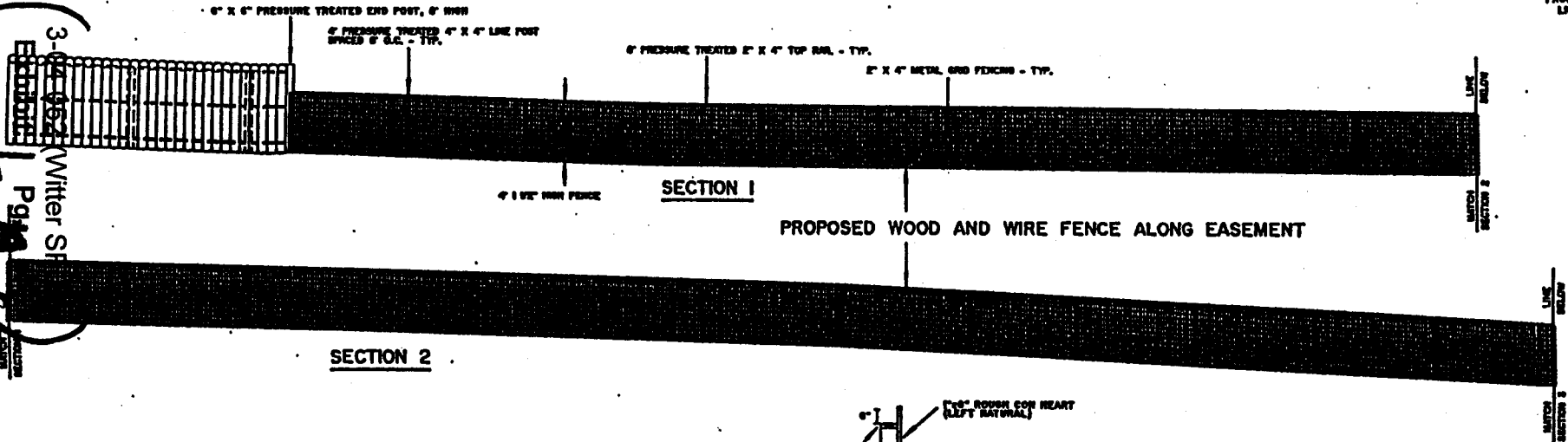
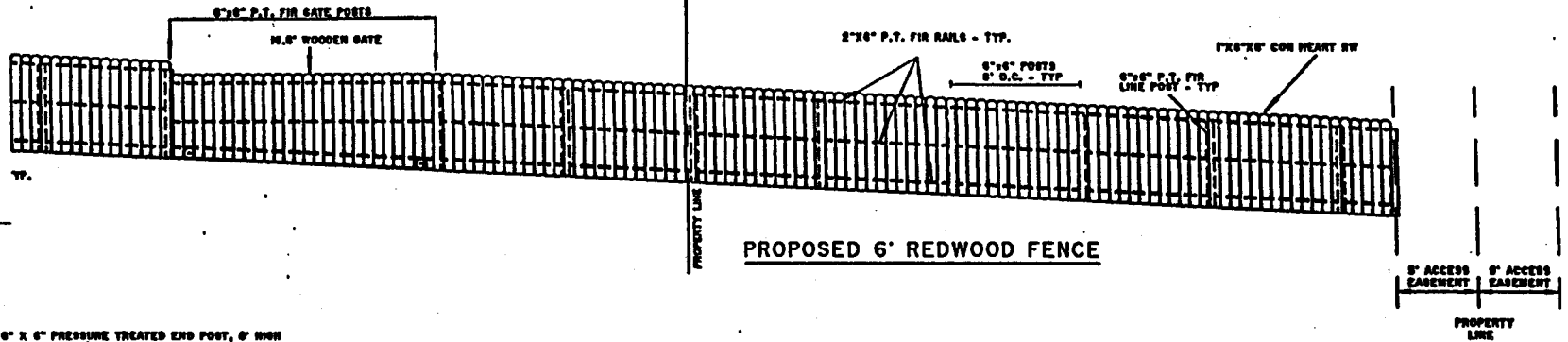
REVISED SEPTEMBER 2000
REVISED MAY 2000
REVISED NOVEMBER 1999
REVISED AUGUST 1999

W.O. 7716

JUNE 1999

SCALE: 1"=20'

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



NEEL ENGINEERS CORP.



CARMEL, CALIFORNIA

FENCE & LANDSCAPE PLAN

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

FOR
ALEX STACKPOLE

REVISED MAY 2000
REVISED AUGUST 1999

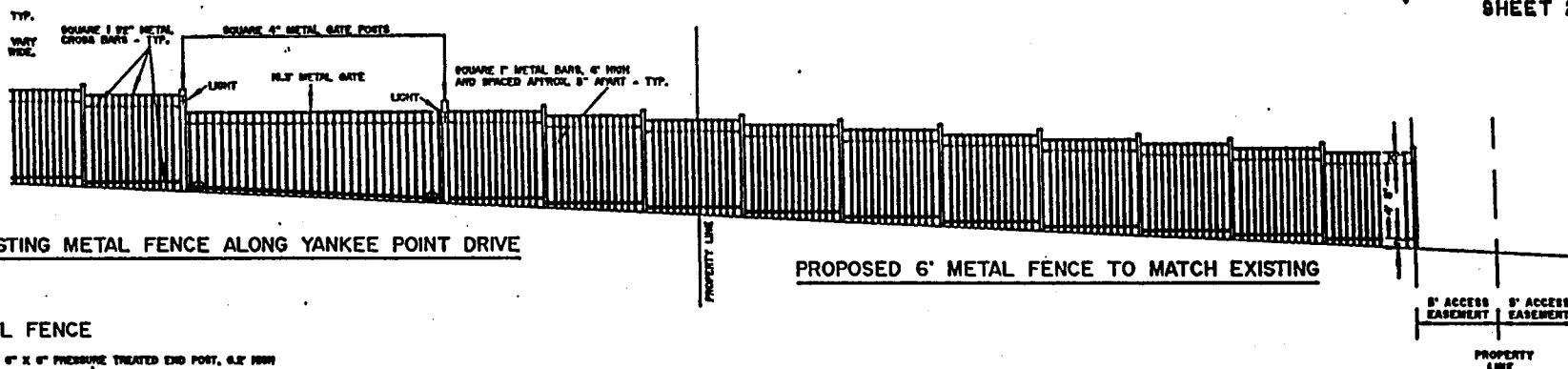
W.O. 77168

JUNE 1999

SCALE: 1"=5'

ELEVATIONS California Coastal Commission	EXHIBIT NO. E 346
	APPLICATION NO. 3-00-0228
	SITE PLANS 1

SHEET 28 OF 2



PROPOSED 6' METAL FENCE

6" X 6" PRESSURE TREATED END POST, 6 1/2' HIGH

6" PRESSURE TREATED 4" X 4" LINE POST SPACED 6' O.C. - TYP.

6" PRESSURE TREATED 2" X 4" TOP RAIL - TYP.

1" X 4" METAL GRID FENCING - TYP.

6" 1 1/2" HIGH FENCE

SECTION 1

PROPOSED WOOD AND WIRE FENCE ALONG EASEMENT

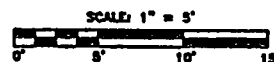
SECTION 2

PROPOSED WOOD AND WIRE FENCE

SECTION 3

PROPOSED 6' METAL FENCE

PROPOSED WOOD AND WIRE FENCE, SCALE 1"=20'



NEILL ENGINEERS CORP.



CARMEL, CALIFORNIA

FENCE & LANDSCAPE PLAN

APN 243-161-017, 015 & 018

ADJACENT TO CARMEL RIVIERA NO. 2

RANCHO SAN JOSE Y SUR CHIQUITO

CARMEL, MONTEREY COUNTY, CALIFORNIA

FOR

ALEX STACKPOLE

JUNE 1999

SCALE: 1"=5'

REVISED MAY 2000

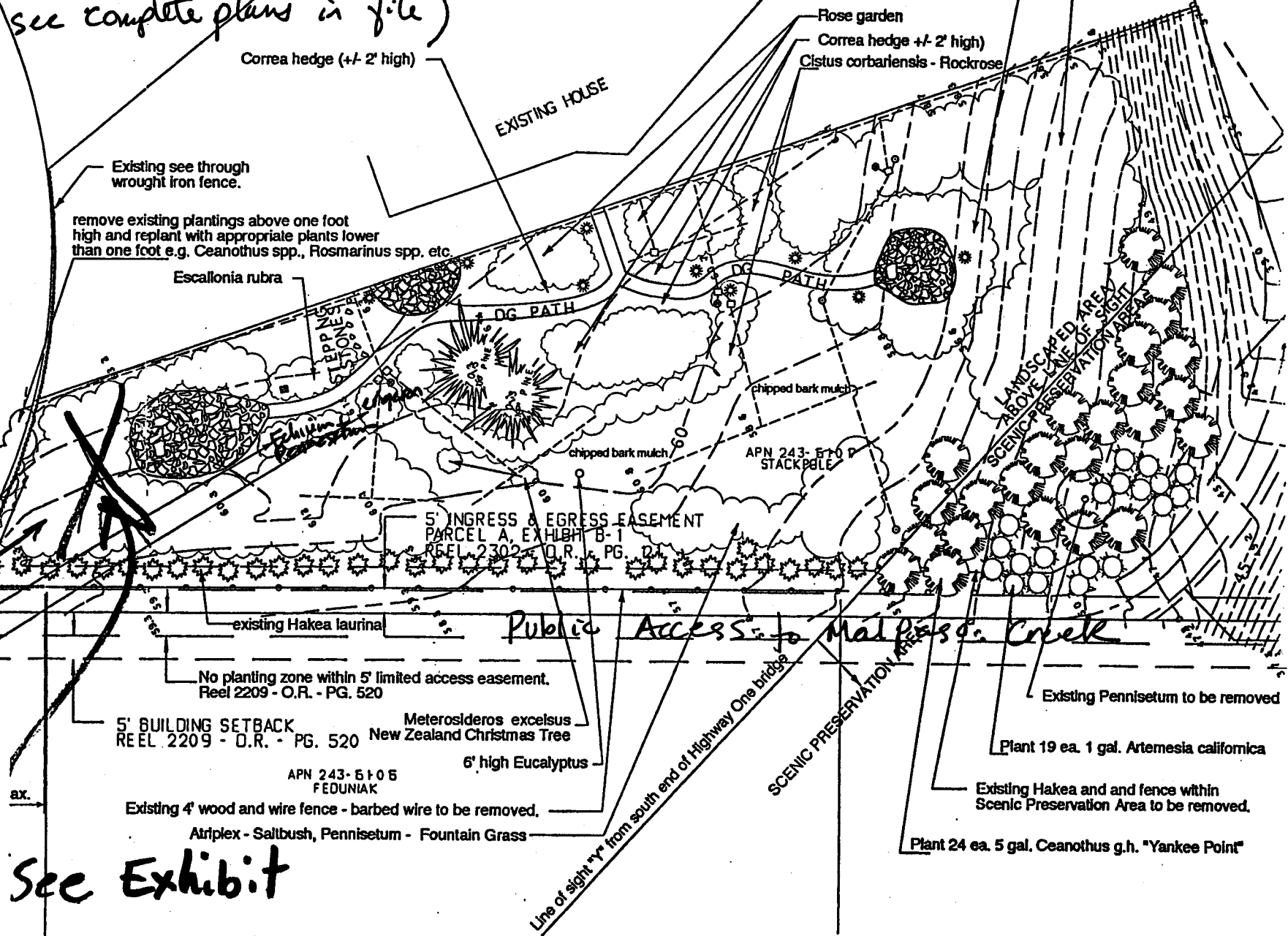
W.O. 77168

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

3-04-052 (Witter SFD)
 Exhibit Pg 21 of 32

YANKEE POINT
 WIDE COUNTY ROAD

EXHIBIT NO. E446
 APPLICATION NO. 3-01-020
 SITE PLANS & GROUND PLANS
 LANDSCAPING



See Exhibit

3-04-052 (Winter 5/12)
Exhibit 1

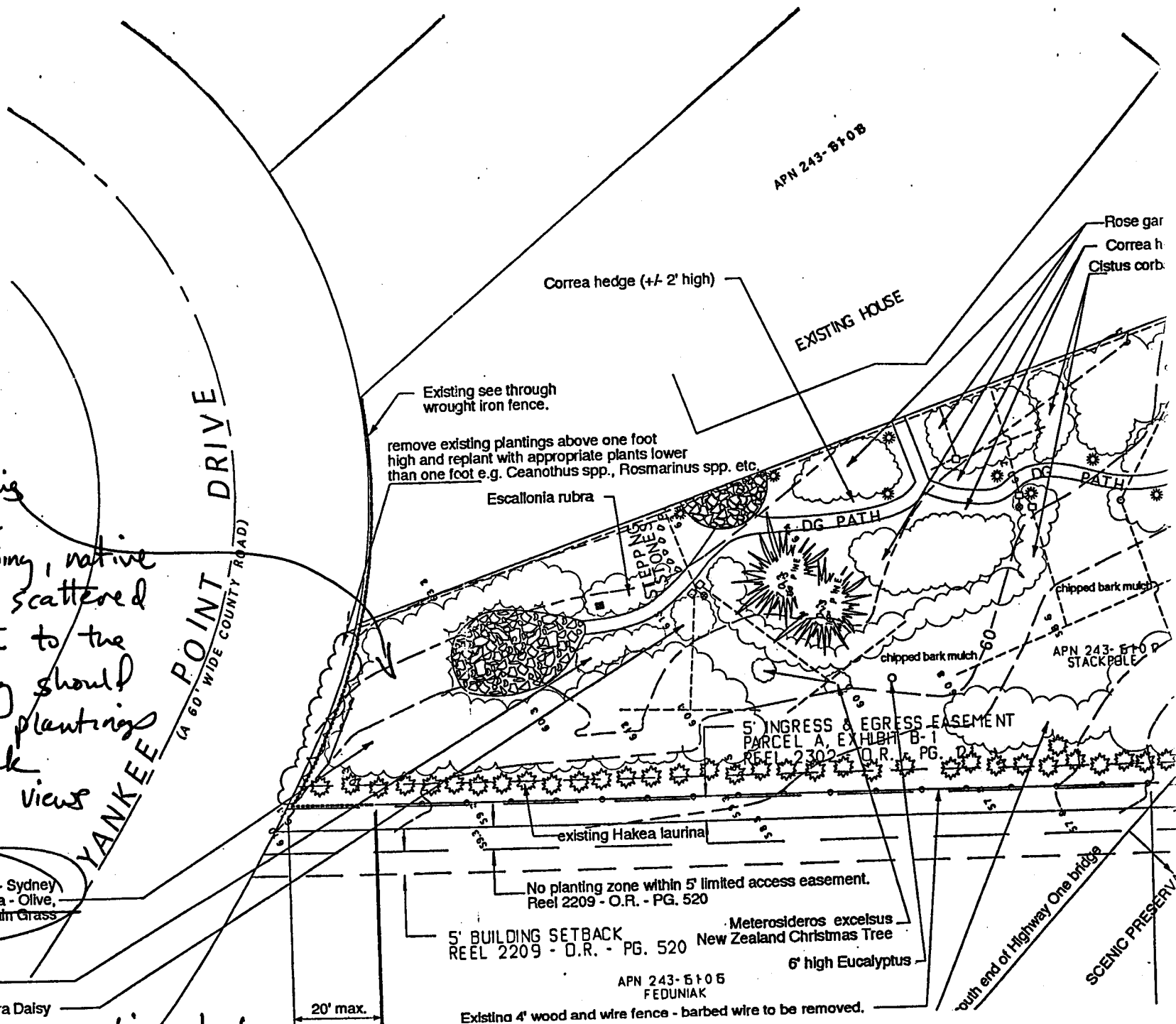
EXHIBIT NO. E 5066
APPLICATION NO. 3-01-020
Revised Landscaping Plans Pg 22 of 32

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

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

Echium and Pennisetum
Erigeron - Santa Barbara Daisy

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



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

* SEE REVISION BELOW

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

Echium and Pennisetum

Erigeron - Santa Barbara Daisy

20' max.

4' W

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

NOTE:

- (1) ELEVATIONS SHOWN ARE NAVD88. BENCHMARK IS A STANDARD COAST AND GEODETIC SURVEY BRASS DISK ON THE WEST SIDE OF HIGHWAY ONE AT THE INTERSECTION OF THE HIGHWAY WITH S LANE (APPROXIMATELY 3/4 MILE NORTH OF THIS SITE)
- (2) IMPROVEMENTS SHOWN HEREON WHICH MAY CONSTITUTE DE, AS DEFINED IN PUBLIC RESOURCES CODE SECTION 3006 ARE AND PROPOSED FOR APPROVAL AS SHOWN.

* Revisions dated 5/23/01
RECEIVED

MAY 23 2001

EXHIBIT NO. E 6 d/b
APPLICATION NO. 3-01-020
Most Recent Revision to Landscape Plans

3-04-052 (Witter SFD)
Exhibit L Pg 23 of 32

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

EXHIBIT I

NOTICE

RECEIVED

MAY 03 2001

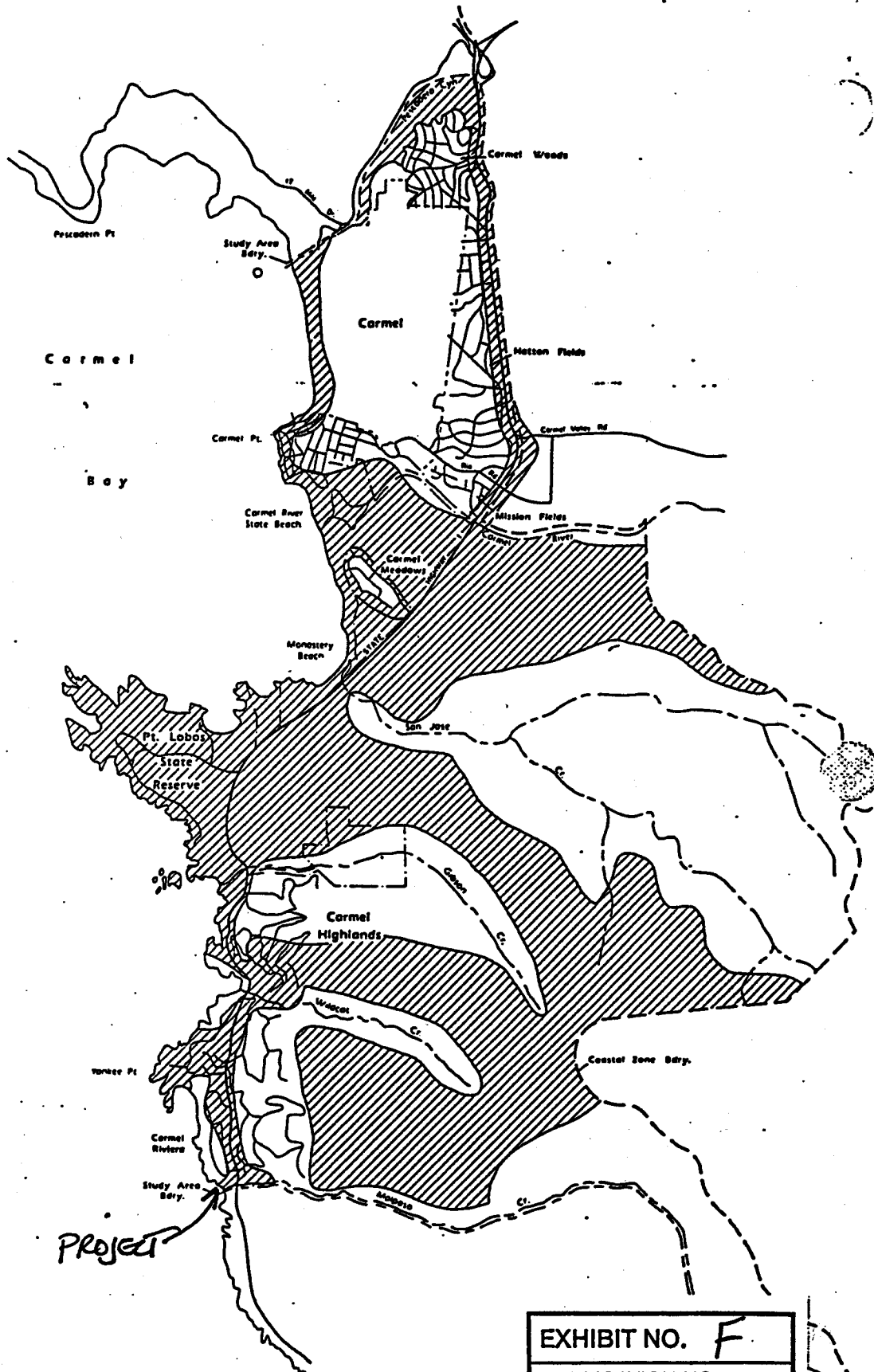
CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

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

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

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

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



MAP A

ILLUSTRATIVE ONLY



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

Source: Monterey County Planning Department, 1980.

**CARMEL AREA
 LOCAL COASTAL PROGRAM
 GENERAL VIEWSHED**



SCALE IN FEET



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

EXHIBIT NO. **F**

APPLICATION NO.
3-00-020

**Carmel Area LWP
 Viewshed Map**

California Coastal Commission

3-04-052 (Witter SFD)

Exhibit **L** Pg **25** of **32**

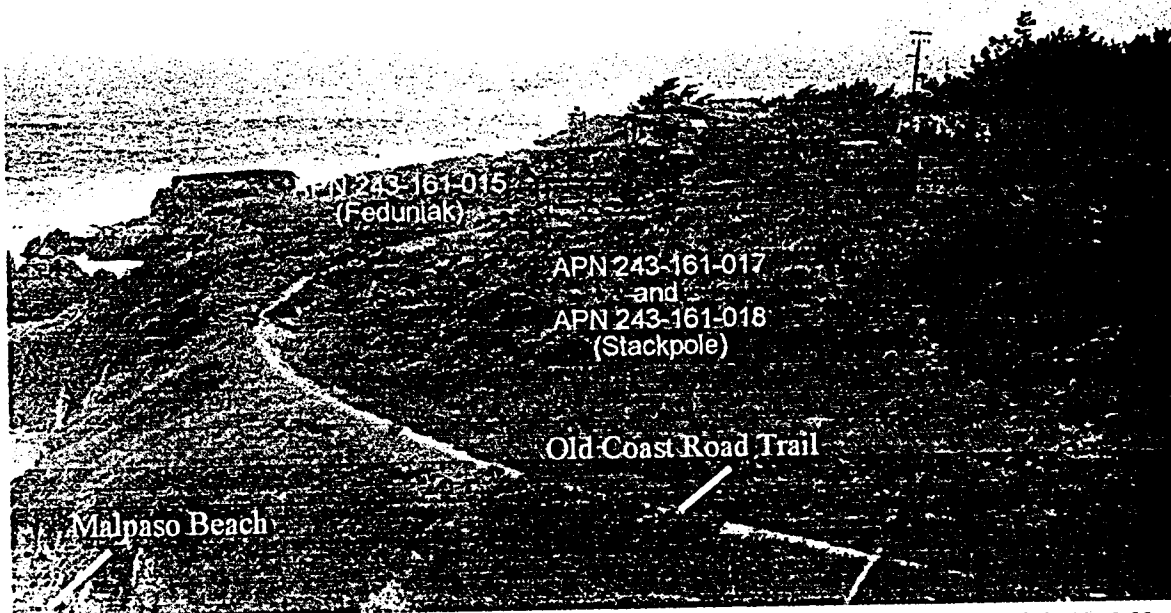


Photo 1. View of ocean and coastal bluff prior to development on adjacent parcel (243-161-015). Note natural coastal sage scrub vegetation on blufftop.

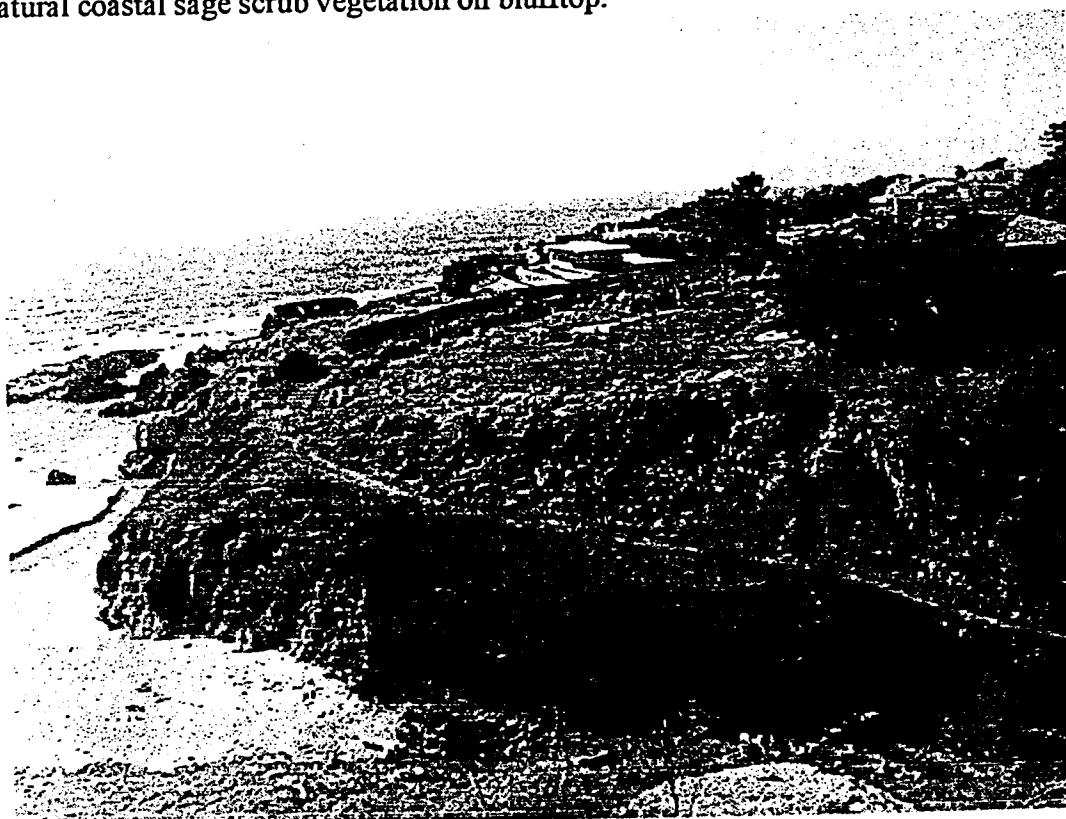


Photo 2. Same view following installation of fencing and landscaping on subject parcels (APN 243-017 and 243-018). Both Photo 1 and 2 taken from south end of Highway One Bridge. Malpaso Creek and Malpaso Beach in foreground.

Exhibit G (pg 1 of 4)
Project Photographs
3-00-020
Stackpole



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



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



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

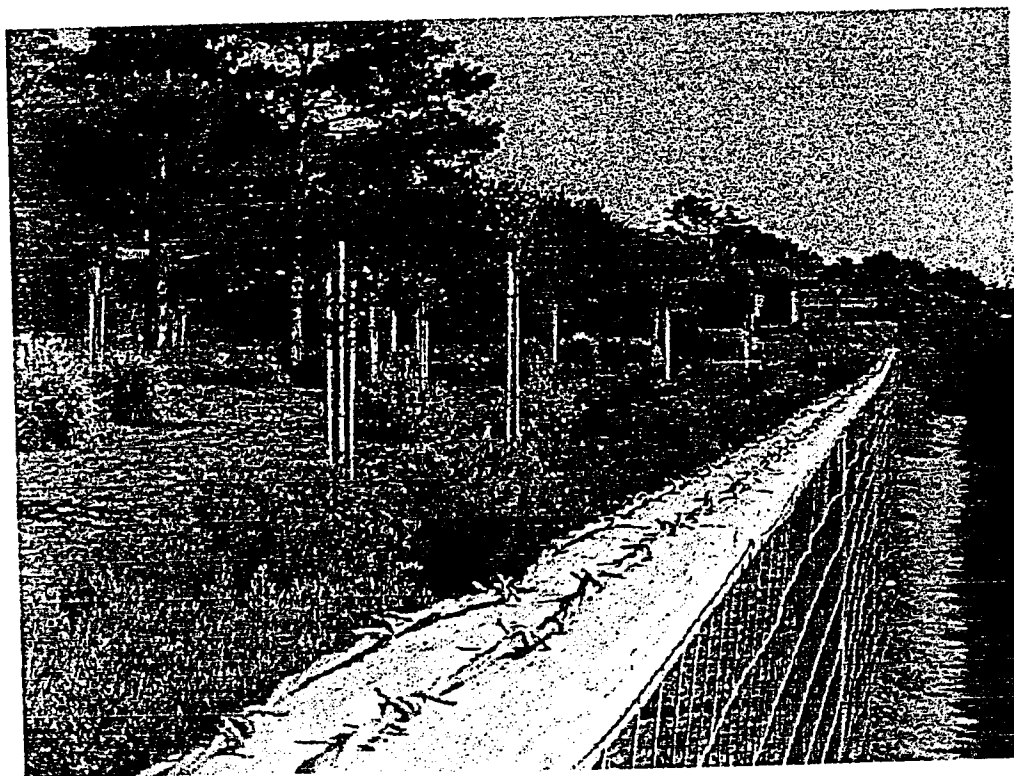


Photo 6. Photo of landscaping on Parcel 243-161-017 and wood-and-wire fence along coastal access trail (on right).

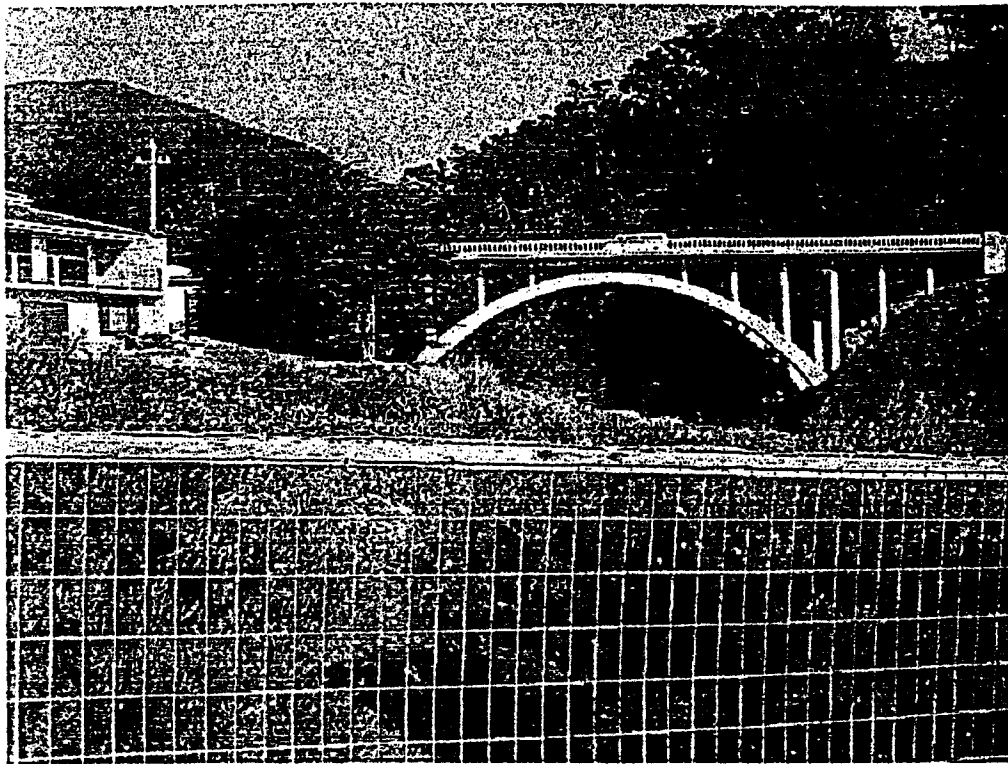


Photo 7. Photo of Highway One Bridge looking across Parcel APN 243-161-017 and 243-161-018.



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

Executive Director's Recommendation

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

Recommendation;

ADOPTED

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

Findings:

Concentration of Development

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

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

Land Resources, Hazards and Water Quality

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

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

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

Public Access and Recreation

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

P-77-596

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

3-04-052 (Witter SFD)

Exhibit L Pg 30 of 32

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

Visual
Resources

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

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

Coastal
Program
Options

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

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

CEQA and
Required
Finding

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

EXHIBIT NO. H 2043
APPLICATION NO. 3-00-020
Previous Permit 3
Conditions (P-77-596)
California Coastal Commission

ADOPTED

P-77-596

3-04-052 (Witter SFD)

Exhibit L Pg 31 32

Conditions:**ADOPTED**

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

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

P-77-596

(3-04-052 (Witter SFD)

Exhibit L Pg 32 of 32

