

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: AMENDMENT

Application Number3-00-020-A1 (Witter Amendment)

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

Project Location112A Yankee Point Drive, Carmel Area, Monterey County (APN 243-161-017).

Amendment Description: Applicant is requesting an amendment to a previous permit requirement prohibiting development in deed restricted scenic preservation area, to allow for construction of wood and wire fence and gate(s) as part of new residential development of modular single family dwelling on site (under CDP 3-04-052).

File documents.....Coastal Permit files 3-04-052 (Witter SFD), 3-00-020 (Stackpole after-the-fact construction of fencing and landscaping), P77-596 (LaMonica SFD), P-80-421 (Schrader fence); Monterey County LCP including Carmel Area Land Use Plan.

Staff recommendation ...Approval with Conditions

Summary of Staff Recommendation

The project is located in the unincorporated Carmel Area of Monterey County (project vicinity map is shown in Exhibit A). 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. Therefore, the Coastal Commission retains coastal permit jurisdiction over this area, and over the proposed amendment. The subject property (APN 243-161-017) is one of two blufftop parcels owned by Mr. and Mrs. Dean Witter, located immediately north of Malpas Creek (see Exhibits C & D), and within the public viewshed visible from the Highway One Bridge over Malpas Creek (Exhibit E Carmel Area LUP Viewshed Map). On February 16, 2005, the Coastal Commission conducted a hearing on an application for residential development on the subject property (CDP 3-04-052) that included development of fencing in the area currently prohibited by an existing deed restriction. The Commission continued the hearing on the proposed residential development to consider a request for amending the deed restriction to allow the proposed fencing if it could be found consistent with scenic



California Coastal Commission
May, 2005 Meeting in Palo Alto

Staff: K. Cuffe Approved by: *[Signature]*

⁴¹ resource protection requirements for the area. The applicants are thus requesting an amendment to the previous permit requirement prohibiting development in the deed restricted scenic preservation area, 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 new residential development of modular single family dwelling on site (under CDP 3-04-052).

Based on previous discussions and review of permit history research on the five parcels in this area of deferred certification, the Commission has attempted to preserve views of the coastal bluffs and ocean visible from the Highway One Bridge in this area by applying the "stringline method" to restrict development within a portion of the viewshed through permit conditions that require the recordation of a deed restriction (e.g., Stackpole) or scenic easement (e.g., Schrader, Blair, Hull) that prohibits development in these areas (see Table 1). The Commission has also conditioned development on these residential parcels to: 1) provide adequate setbacks to protect views, provide room for landscape screening and assure geologic stability; 2) retain native bluff-top vegetation to the maximum extent; 3) require that new landscaping use only native, drought-tolerant species suitable to the site in order to maintain the scenic character of the area; 4) minimize irrigation on the blufftop; 5) restrict fencing and landscaping impacts within the viewshed; and 6) require applicants to obtain a separate permit or amendment for any future additions or additional development on site (e.g., fences, storage sheds, tree cutting, antennae).

Revision of the deed restriction to allow fencing that would be visible in the scenic viewshed would weaken the intent of protecting scenic views across the bluff, and would be inconsistent with the intent of the existing permit (CDP 3-00-020) and recorded deed restriction. However, the applicants have indicated that they would be willing to screen the fence 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 will 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, and 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 and could be approved.

Staff therefore recommends that the Commission approve the proposed amendment, which allows modifying the existing deed restriction to provide an exception for construction of a fence design, which, as conditioned to preserve the open space character of the site (pursuant to Special Condition 4 as amended by this amendment, 3-00-020-A1), would be consistent with scenic resource protection policies of the Coastal Act and would be consistent with resource protection policies of the Carmel Area LUP, which serves as guidance in this case, for parcels located in the area of deferred certification in the Yankee Point area.



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Table 1. Previously Approved Projects in Yankee Point Area of Deferred Certification.

Exhibits

- A. Regional Location Map
- B. Project Vicinity – Yankee Point and Carmel Highlands Riviera
- C. Parcel Map Showing Project Location
- D. Parcel Map Showing Project Location Within Area Of Deferred Certification
- E. Carmel Area Land Use Plan Viewshed Map
- F. Previously approved (Stackpole) Landscape Plans (required pursuant to CDP 3-00-020; dated revised May 24, 2001)
- G. “Line of Sight ‘Y’” Stringline (used in previously for CDP 3-00-020 on subject parcel)
- H. Oblique aerial photo with approximate location of “Line of Sight ‘Y’” Stringline
- I. Scenic Preservation Area and Old Coast Road Trail Easements (recorded on 2/26/02 as part of Deed Restriction pursuant to CDP 3-00-020)
- J. Photos of site before development on adjacent (Feduniak) property, and after installation of landscaping on subject property approved pursuant to CDP 3-00-020.
- K. Recent Staff Photos Of Existing Blufftop At Subject Site.
- L. Adopted staff report for CDP 3-00-020 (Stackpole)



I. Staff Recommendation on Amendment 3-00-020-A1

The staff recommends that the Commission approve Amendment 3-00-020-A1 as conditioned .

MOTION: Staff recommends a YES vote on the following motion:

“I move that the Commission approve the proposed amendment 3-00-020-A1 pursuant to the staff recommendation.”

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. Passage of this motion will result in approval of the proposed amendment as conditioned, and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves Amendment 3-00-020-A1 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of the Del Monte Forest LCP, which is a segment of the Monterey County LCP, and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Conditions of Approval**A. Standard Conditions**

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit 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.

B. Special Conditions

All conditions of permit 3-00-020 remain the same except for Special Condition number 4 (Deed Restriction for Scenic and Public Access Protection), which is superceded by this permit and revised as follows:

4. Deed Restriction for Scenic and Public Access Protection.

- (a) **Scenic Preservation Area.** The area defined as follows shall be known as the Scenic Preservation Area: the area of current Assessor Parcel Numbers 243-161-018 and 243-161-017 to the south of a straight line of sight established by the following two points: (1) the south end of the Highway One bridge over Malpas Creek; and (2) the extent of residential development on current Assessor Parcel Number 243-161-015 (see Exhibit D). No development, as defined in Section 30106 of the Coastal Act, shall occur in the Scenic Preservation Area except for (1) installation of drought and salt-water resistant, non-invasive native shrubs and grasses with maximum heights of 4 feet or less indicative of the Malpas Creek coastal terrace area, and (2) installation and subsequent removal of a temporary drip irrigation system needed (if any) to establish the approved plantings in the Scenic Preservation Area, as identified on the approved Revised Project Plans (see Special Condition 4 2), and (3) a four-foot high vegetatively screened open wire field fence, with 2x4 top rail, located at least 3 feet inboard of the landward edge of the access trail that extends across the property and down to Malpas Creek Beach.

...

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 also provide that vegetative screening



for fence 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. Only native vines and shrubs/perennials with a maximum natural growth height of 5 feet or less shall be allowed for screening purposes. The Deed Restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Location

The site 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 Malpaso 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

¹ The Old Coast Road trail is actually approximately 10-foot 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)



residential parcels located in an area of deferred certification. Therefore, the Coastal Commission retains coastal permit jurisdiction over this area, and over the proposed amendment. 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.

The applicants are requesting an amendment of a previous permit (CDP 3-00-020 - the previous Stackpole permit - that was granted for after-the-fact approval with conditions for fencing and landscaping). The applicants are requesting to amend previous permit requirements prohibiting any development in the recorded deed restricted scenic preservation area, to allow a 4-foot high open wire fence (with 2x4 top rail and framing) and gate(s) along the landward side of the public accessway that crosses the site. The fencing was originally proposed as part of an application currently pending before the Commission for residential development of this site (Witter CDP 3-04-052), that can not be allowed without an amendment to the earlier Stackpole permit.

B. Coastal Development Permit Amendment Determination

1. Scenic Resources

A. Regulatory Provisions

As discussed in the Adopted Findings for the Stackpole CDP, the site is located in the Carmel Highlands Riviera, immediately north of Malpaso Creek in an area of Deferred Certification. As such the Coastal Act is the legal standard of review, however, regulations and policies of the Monterey County LCP, including policies in the Carmel area LUP, can serve as guidance.

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.*

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 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.



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.

2.2.3.6. 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.

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.

B. Scenic Resources Analysis and Conclusion

The applicants' site is one of the three lots located seaward of Yankee Point Drive that front Malpaso 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 Malpaso Creek is an area where special care has been undertaken to avoid development that could impact public views of the coast and ocean available from Highway One. 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.

Based on previous discussions and permit history research on the five parcels in this area of deferred certification, the Commission has attempted to preserve views of the coastal bluffs and ocean visible from the Highway One Bridge in this area by applying the "stringline method" to restrict development



within a portion of the viewshed through permit conditions that require the recordation of a deed restriction (e.g., Stackpole) or scenic easement (e.g., Schrader, Blair, Hull) that prohibits development in these areas (see Table 1). The Commission has also conditioned development on these residential parcels to: 1) provide adequate setbacks to protect views, provide room for landscape screening and assure geologic stability; 2) retain native bluff-top vegetation to the maximum extent; 3) require that new landscaping use only native, drought-tolerant species suitable to the site in order to maintain the scenic character of the area; 4) minimize irrigation on the blufftop; 5) restrict fencing and landscaping impacts within the viewshed; and 6) require applicants to obtain a separate permit or amendment for any future additions or additional development on site (e.g., fences, storage sheds, tree cutting, antennae).

The subject parcel is located in the coastal viewshed as seen from Highway One (see Exhibit D: Carmel Area LUP Viewshed Map). As a result of un-permitted development by the previous owner (Stackpole), an after-the-fact permit was approved which required the previous owners to record a deed restriction defining a "Scenic Preservation Area" south and seaward of a sight line referred to as the "line of sight Y." This deed restriction prohibits development, including fences and gates, within the scenic preservation area. As shown on the site plans prepared for the Witter's proposed residential development of the site, dated 7/14/03, a portion of the proposed new fencing (i.e., that portion that would be located adjacent to the existing public accessway) would extend across the scenic preservation area, inconsistent with the language of the existing recorded deed restriction.

Revision of the deed restriction to allow fencing that would be visible in the scenic viewshed would weaken the intent of protecting scenic views across the bluff, and would be inconsistent with the intent of the existing permit (CDP 3-00-020) and recorded deed restriction. However, the applicants have indicated that they would be willing to screen the fence 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 will 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 and could be approved.

The Commission therefore finds that amending the deed restriction to provide an exception for construction of a fence design as conditioned, would be consistent with scenic resource protection policies of the Coastal Act and would be consistent with LUP policies for the Carmel Area. Please see Special Condition #1.

C. California Environmental Quality Act (CEQA)

Section 13096 of the Commission's administrative 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 that would substantially lessen any significant adverse effect that the activity may have on the environment.

The environmental review of the proposed amendment conducted by commission staff involved the evaluation of potential impacts to relevant coastal resource issues, in this case, scenic and visual resource protection. This analysis is reflected in the findings that are incorporated into this CEQA finding.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the amendment is approved subject to conditions that implement the mitigating actions required (see Special Conditions). As such, the Commission finds that only as modified and conditioned by this permit will the proposed amendment not have any significant adverse effects on the environment within the meaning of CEQA.



Table 1. Previously Approved Projects in Yankee Point Area of Deferred Certification.

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
<p>Prevo/York CDP# P-77-768 (approved 9/12/77) (APN 243-161-011)</p>	<p>First residential permit approved in area of deferred certification</p>	<p>4. Visual Resources Recommendation: Applicant's site is highly visible from northbound Highway One against a background of the Carmel Riviera subdivisions. It also will be seen by visitors to Malpaso Beach and future users of state-owned easements for a coastal trail in Otter Cove to the south. Partially nestled in a pine grove, however, using natural materials and colors 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. To allow for screening, reduce the house's visibility, and protect the open space feeling of views from the beach, the house must be located away from the bluff, not at the edge of the bluff as proposed.</p>	<p>Conditions require: 1b) revised site and building plans to show an adequate setback of at least 20 feet from the bluff to protect views, allow room to plant trees, and assure geo stability; 1c) landscaping plan retaining native brush in the bluff area, and all trees on the site other than those specifically designated for removal...plant at least twelve 5-gallon or larger native trees & maintain to maturity, with specific intent of screening public and potential public views of structure...3) any future additions or additional development on site (e.g., fences, storage sheds) shall require a separate permit or amendment</p>
<p>LaMonica (later Schrader) 112 Yankee Pt Dr CDP# P77-596 (approved 6/5/78) (APN 243-161-018)</p>	<p>Notes existing house on lot 23- - draft conditional grant of easement required OTD public easement – 5' strip along w'ly property line – w acceptance w/in 10 years – if N half of Mal Paso Beach public ownership or use w/in 10 yrs – w/consent of Commission, the easement may be transferred from said property to easterly property line of APN 243-</p>	<p>Visual Resources Finding: Applicant's site is highly visible from northbound Highway One against a background of the Carmel Riviera subdivisions, and will be seen by visitors walking to Malpaso Beach and future users of state-owned easements for a coastal trail in Otter Cove to the south. ... 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</p>	<p>Conditions require: 1b) revised site and building plans showing an adequate setback of at least 20 feet from the bluff to protect views, allow room to plant trees, and assure geo stability; 1c) landscaping plan retaining native brush in the bluff area, and all trees on the site other than those specifically designated for removal...in addition, applicant shall plant at least six 5-gallon or larger native trees & maintain to maturity. ... with specific intent of</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
	<p>161-015 – AG letter says no longer has easement - Schrader P-80-421 staff report notes that LaMonica never recorded the dedication of easement on property, and so Commission required when Schrader applied for fence. (Schrader permit infers that residence had already been developed prior to request for fence.)</p>	<p>same subdivision surrounded by mature landscaping. If the structure itself is setback 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.</p>	<p>screening public and potential public views of structure...2) grant a recordable public access easement to the State for a 5 foot wide strip along western property line from Yankee Point Drive to sw property corner; 3)22 ft height limit, all glazing on south façade shall be non-glare tinted glass; and 4) any future additions or additional development on site (e.g., fences, storage sheds) shall require a separate permit or an amendment to this permit.</p>
<p>Schrader (formerly LaMonica) 112 Yankee Pt Dr Violation (APN 243-161-018) (corresp re 4/27/83)</p>		<p>AG letter from Joseph Barbieri dated April 27, 1983 notes that the Commission filed an action alleging that E.W. Schrader violated the Coastal Act by erecting a fence in the coastal zone without a permit. While the action was pending, Schrader applied for a permit that would allow the fence construction. the Commission granted the permit but included a condition that Schrader dedicate an access easement on his property. This was the same easement that the Commission had required that Frank LaMonica dedicate at the time that the Commission approved LaMonica's application to construct the House. LaMonica, however, never fulfilled this condition and later sold the house to Schrader. Schrader had the choice of complying with the permit or removing the illegal development. He chose to remove the</p>	

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
		fence and pay a \$1,500 fine in settlement of the violation. AG letter states Scharader paid fine of 1,500 and removed fence to Commission satisfaction (see note from Ed Brown dated 12/178/83)	
<p>Schrader (formerly LaMonica) 112 Yankee Pt Dr CDP# P80-421 Amendment request (approved 4/20/81) (APN 243-161-018)</p>	<p>Proposed 5 ft high chain link fence along south and west sides and a 6 ft high redwood fence along north and east sides of parcel. – used fence stringline between existing fences (cinderblock fence and existing fence on lot #23 – findings note that chainlink fence extends beyond stringline, but proposed approval, with future additions or changes requiring amendment. Schrader was granted approval for fence and conditioned to provide same easement as required of LaMonica – but Schrader chose not to provide access, and so had to remove fence that he had already built without benefit of a permit</p>	<p>Scenic Resources findings note that as proposed, fence will intrude into the public viewshed from Hwy 1. Exhibit A shows a line drawn between the southern end of existing cinder block wall and seaward end of existing fence on lot #23, which represents a stringline approach in terms of fences (rather than buildings) and would appear to be an acceptable basis for defining the limits for such accessory structures. In order to prevent further intrusions into the scenic viewshed, it is appropriate to require a scenic easement over all portions of the lot, south of the existing building.</p>	<p>Conditions: 2) prior to issuance of permit, permittee shall submit a scenic/open space easement, for recording... easement shall cover the southern portion of the lot, beginning at the rear of the existing home; 3) ...permittee shall execute and record a document...irrevocably offering to dedicate ...an easement for public access to the shoreline... shall be 5 feet wide along the western property line... 5) unless waived by the ED, any future additions to the permitted structures or additional development on the site (eg., fences, storage sheds, tree-cutting) shall require a separate coastal development permit (or an amendment to this permit); 7)... permittee... understands that it will be his/her responsibility to remove any portion of the permitted development that may not conform with the above conditions</p>
<p>Schrader (formerly LaMonica) 112 Yankee Pt Dr CDP# (no number)</p>	<p>60 sf addition to existing 3,882 sf SFD for solarium</p>	<p>NA</p>	<p>NA</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
Waiver/no permit reqd. (approved 12/12/86) pre-LCP (APN 243-161-018)			
Stackpole (formerly Shrader) 112 Yankee Point Drive CDP# 3-00-020 (approved 6/13/01) post-LCP, but in area of deferred certification. (APN 243-161-018, -017)	<p>After-the-fact construction of perimeter fencing along Yankee Point Drive (across both APN 243-161-108 and 243-161-017) and along western property boundary of the western parcel (-017) – permit application was submitted to resolve violation from constructing fencing without permit and blocking accessway entrance at Yankee Point Road, in violation of Coastal Act.</p> <p>A 2-story SFD had already been developed on eastern parcel (LaMonica CDP P-77-596) but no previous development had been permitted on western lot. However, the project includes after-the-fact landscaping and irrigation improvements that have been constructed on this western parcel.</p> <p>Applicants had originally proposed a 6-foot high</p>	<p>Visual Resources findings note that the CCC and County have had a long, continuous commitment to preservation of scenic resources in this area; notes previous use of stringline methods to limit development and preserve scenic blufftop views within the public viewshed, and most recent use of line of sight Y on adjacent parcel. During County design approval review, Carmel Area LUAC noted importance of retaining views and so recommended metal fencing be approved and landscaping to soften the look of the metal fence. Findings note that 6 foot high wooden fence would block coastal views from Yankee Point Drive and so required metal fence design and low growing landscaping that would not block views across the parcel, between Yankee Pt Drive and the line of sight Y. Findings also note that proposed fencing and landscaping along western property line would extend south of the line of sight y stringline and detract from natural beauty of scenic shoreline and could introduce invasive plant species into native coastal sage scrub habitat, so required removal of both fencing and hedging construced south of line of</p>	<p>Conditions: 1) compliance for after-the-fact development gave 90 days to satisfy all PTI requirements; 2a) revised plans shall show that landscaping in area between scenic preservation area and Yankee point 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, plantings along Yankee Point Drive had to be low growing (<1' tall); 4) Deed Restriction for Scenic and Public access protection 4a) scenic preservation area seaward of line of sight Y, no development allowed except for specific items, 4b) Old Coast Road Trail – deed restriction to define area as Old Coast Road Trail, and required it be kept free of structures that would hinder access; changes to deed restriction not allowed without an amendment to this permit</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
	<p>vertical metal rail fence, but County design approval was granted for a 6-foot high solid redwood fence along street front and part way along accessway, and then a 4.5-foot high wood and wire fence along accessway to point where trail bends across property (i.e., beyond "line of sight Y" stringline). After discussion with Commission staff, applicants revised plans to include either the solid redwood or metal fence along street front, and partway along accessway (about 18 linear feet), and a 225-foot long 4-ft high wood and wire fence to extend the rest of the length along the public accessway. Fencing was placed 5 feet east of western property line, and so it would not affect public access along existing trail.</p>	<p>sight Y, and required that landscape plantings south of line of sight Y be restricted to native, drought tolerant species under 4ft high that require no additional water once established. Findings note that revised landscaping plans would be necessary since plans to date had included non-native plantings between Yankee Point Drive and the Scenic Preservation area that could block views across the parcel.</p>	

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
Witter (formerly Stackpole) 112 A Yankee Pt Dr. CDP# 3-04-052 (pending) (APN 243-161-017)	Pending	Pending	Pending
LaMonica Denied – would have been 111 Yankee Pt Dr. CDP# P77-1170 (denied) (APN 243-161-015)	Was found inconsistent with scenic resource protection policies – also problems with access - Also notes that the State Commission interpretive guideline #2 – Stringline Method of preventing beach encroachment – in a developed area where new construction is generally infilling and is otherwise consistent with CA policies, no part of a proposed new structure, including decks, shall be built farther onto a beachfront than a line drawn between the most seaward portions of the adjoining structures	Visual Resources Finding - notes Route 1 at the location where the subject site is seen, is a designated State Scenic Hwy. A particular open view of the ocean, bluff, rocks, and beach is afforded, especially to vehicles traveling north on the Hwy....The house as proposed, and in fact any house built on the lot, will be plainly visible from all the other mentioned points – as are several existing houses and possible future houses on the adjacent lots [so that] hiding the house is impossible. The most relevant design consideration thus seems to be siting development in and behind the line of sight from the bridge to the already existing house nearby (see Exhibit 1). This concept allows retention of an undisturbed view corridor and partial maintenance of the open space qualities the bluff area currently offers. Further design considerations include non-glare glass, earth-tone colors, judicious tree planting, retention of native vegetation, unobtrusive fencing, no protruding accessory structures...Because the above mentioned criteria could apply	Denied – so no conditions.

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
		as well to the adjacent vacant parcels within the view corridor, any proposed development on them would also be expected to conform to these criteria.	
<p>Blair (formerly LaMonica property – see denial - later Feduniak) 111 Yankee Pt Dr. CDP# 3-86-9 (approved 7/8/86) pre-LCP (but Carmel Area LUP had been certified) (APN 243-161-015)</p>	<p>Property west of Old Coast Road Trail- 3,306 sf sfd, (bldg covg 3,306 sf, paving 2,500 sf, ls 3000 sf) proposed with 18 ft height Findings regarding project history that site has been subject of previous coastal permit applications, commission decisions and litigation. A permit application for a residence on this parcel was denied in 1978 (LaMonica CDP P-77-1170). Reasons cited were potential use of site for public recreation and/or upland support (i.e., public parking); inconsistency with scenic viewshed policies; prejudice to prepare MCO LCP for Carmel area. After remand to Commission and amendment of findings, the denial was upheld in Superior Court. Subsequently the Commission has twice denied certification of</p>	<p>Scenic Resources findings: note that Route 1 near the subject site is a designated State Scenic Highway. As part of the spectacular Big Sur Coast drive between Carmel and San Simeon, this area has been reported as experiencing on the order of 3 million visits per year. Notes that for southbound visitors entering Big sur Coast, Malpaso Beach area represents the first unobstructed shoreline view after emerging from the Carmel Highlands-Carmel Riviera residential community...better view[s] of the scenic beach, bluffs and canyon [are obtained] from the south abutment of the Malpaso Crk bridge [where] an informal pull-out is available on the southbound shoulder of the highway. Northbound travelers may also enjoy excellent views of forest, canyon, ocean and [sometimes] beach. Additional potential public viewpoints include blufftop pedestrian overlooks on both sides of Malpaso Beach as well as from the beach itself. Accordingly, as emphasized in previous coastal Commission decisions, the visual corridor at Malpaso Creek is considered a highly scenic area. As such, new development must be subordinate to</p>	<p>Conditions: 2) final plans with surface materials and colors to minimize visibility of str as seen from Hwy1; 2b) drainage plans to collect runoff and discharge to prevent erosion ; 2c) landscape plans showing retention of bluff-top native vegetation, specifying planting adjacent to access route, limits vegetation disturbance during construction, in no event shall any portion of the blufftop within 30 feet of top of bluff (shown on revised site plan dated 6/23/86) be disturbed; 4) easement for vertical and lateral shoreline access ...5 ft in width... shall extend along easterly boundary, and any beach area on parcel, terms shall specify an additional 5-foot building setback. Easement shall be limited to pedestrian use...; 5)easement for protection of scenic resources...shall encompass those portions of site sea3ard of line of sight Y...shall include provisions to prohibit future development (including fences, guesthouses or other structures), to prevent disturbance of native groundcover and</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
	<p>LUP for the subject and adjacent parcels because the LUP failed to provide adequate public beach access. After submittal of application to CCC, plans were substantially amended to meet visual resource protection concerns.</p>	<p>the character of its setting...previously approved homes adjacent to the Malpaso Creek view corridor have emphasized materials and designs which harmonize with the blufftop setting. Low angle pitched roofs, weathered wood and shingle exterior materials, relatively low profiles and compact dimensions prevail....to the extent that the constraints of individual lots allowed, new development has been restrained from extending into the open view corridor as seen from Highway 1. Open space and scenic easements have been recorded to protect the undeveloped portions of such lots.. these measures have succeeded in maintaining an open view corridor from Highway 1 to the sea, including foreground views of undeveloped blufftop on the north side of Malpaso beach....</p> <p>Findings note that previous permit efforts demonstrated that a sfd could be developed without protruding forward of a line of sight drawn between adjacent existing houses...The current proposal, while not set as far back as the line of sight between existing homes, would still preserve the view corridor as seen from the south abutment of Malpaso Creek bridge. ...by setting the house behind a line of sight drawn from the northernmost safe pedestrian vantage point, to the existing Hull residence ([as shown by line of sight Y]...secondly, the siting</p>	<p>wildlife, ...because of the potential for blockage to public views toward the sea, the easement shall specify that no trees be planted within the easement area. The easement shall provide specific exceptions for the beach access trail (pursuant to cond 3); fencing parallel to such public access route (provided no interference with public views from Hwy1 results); ...[approved plans do not show any fencing, but approved Feduniak landscaping plan required to resolve violation V-3-99-061 shows existing fencing along eastern property boundary]; 6) no vehicles of any kind shall pass over areas to be left in their natural state; 11) a separate CDP or amendment shall be required for any additions to permitted development within view of state Hwy Rounte 1 or the shoreline</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
		<p>and roofline are designed so that no additional ocean area will be blocked as seen from the vantage point (even though a portion of the structure will extend 4 feet above the 14 foot high main story)...Approval of the proposed residence ...represents a departure from previous siting criteria used in the area ..referred to a stringline drawn between existing residences, in the manner detailed by CCC adopted interpretive guidelines... nonetheless the design is sufficiently set back from the bluff edge and is sufficiently low in profile to avoid obstruction of the highly scenic view corridor as seen from the most critical public vantage points.</p> <p>Conditions are attached to permanently protect the scenic and visual qualities of the Malpasos Beach area scenic corridor, including: use of surface materials and colors to minimize visibility of structure; retention of the native bluff-top vegetation; dedication of a scenic easement over the area within the public view corridor (including appropriate restrictions on fencing and landscaping); undergrounding of utility lines; no exterior landscape lighting in view of Hwy 1; any additions would need amendment; would have to remove any portions of structure not in accord with approved plans.</p>	
Feduniak (formerly	Violation for grading and	NA	NA

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
Blair) 111 Yankee Pt Dr. Violation	removal of native vegetation in scenic and archaeological easement area inconsistent with requirements of CDP 3-86-009- enforcement action required them to remove non-native plants, restore landscaping using native plants, disconnect irrigation and fix drainage		
Hull 110 Yankee Pt Dr. CDP# P80-380 (denied 2/2/81) (APN 243-161-021)	Letter from Ed Brown, dated 2/3/81, states Regional Commission denied application for SFD on 2/2/81 – Staff report 7/7/81 recommends approval - project was later appealed by Sierra Club to State Commission as A-163-81	NA	NA
Hull 110 Yankee Pt Dr. CDP# A-163-81 Appeal of P80-380 to State Commission (approved 7/7/81) (APN 243-161-021) Changed to CDP# 3-87-112	Permit for construction of one-story sfd with septic system on a blufftop parcel – findings note with detached garage/artist studio and septic system permit issued 10/16/81 - vertical access condition allows that in the event that a final alignment of a vertical accessway to Malpasos Beach is located on another site, and after the dedication of this alternative accessway is	Revised proposed findings in appeal staff report A-163-81 opened 7/7/81, and voted on 10/6/81, with revisions dated 12/1-2/81 – Notes that parcel is near the entrance of the Big sur Range...spectacular views of the coastline are available from both the vacant parcels and from Hwy 1...Scenic resources findings notes that hwy 1 is designate a state scenic hwy.... Travelers going north by the subject site enjoy a particularly open view of the ocean, bluffs and beach areas on this stretch of Hwy 1. Additionally there are several other	Conditions: 1) revised plans ...shall show the re-location of the proposed residence, not including the floor level deck, as depicted in Exhibit 1A....septic field system [relocated] to a portion of the site where it will not conflict with vertical access dedication required in #3; 2) percolation and drainage plans... shall assure that collected or concentrated run-off from rooftops and other impervious areas shall be discharged ...to prevent erosion and promote on-site percolation; 3) vertical

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
	<p>formalized, the offer of dedication required in this condition shall, up on approval of the ED and the accepting agency, be terminated.</p> <p>Figure 3 shows separate easement areas – for open space seaward of stringline, and vertical easement and parking area north of stringline (stringline from LaMonica P77-596 and existing house immediately west of Hull parcel)</p>	<p>existing and potential public view location sin the area: pull outs off Hwy 1, Malpaso Bridge, Malpaso Beach, Yankee Pt Dr, trail from Otter Cove, and trail from Yankee Pt Drive. Proposed residential development will be plainly visible from all of the above-mentioned points with the exception of Malpaso Beach, as are existing residential development on adjacent lots to west and east of vacant three parcels. In accordance with the Commission's interpretive guidelines concerning blufftop development, the commission finds that the proposed residential development should be sited in and behind the line of sight from the bridge. This siting concept ensures the retention of an undisturbed view corridor from Hwy 1 and partial maintenance of the open space qualities the bluff area currently offers in an undeveloped state.</p>	<p>access...execute and record a document.... Irrevocably offering to dedicate ...a [5-foot wide] easement for public access along the eastern border of the subject parcel as depicted in Exhibit 3... include a 25x25' area along Yankee Pt Dr; 4) open space scenic easement...shall execute and record a document...an open space easement over the bluff top area of the subject parcel as depicted in Exhibit 1A [area seaward of house and deck area, access, and parking area].. shall prohibit any new residential development seaward of the developable area shown on Exhibit 1A and shall include... grading or vegetation removal activities; 5) shall require a separate CDP or amendment to this permit... for any additions to permitted development, including placement of antennas or minor structures above the roof level of permitted structures, or elsewhere within view of state Hwy 1 or the shoreline.</p>
<p>Hull 110 Yankee Pt Dr. CDP# 3-87-112-A Amendment Amended following court remand (approved 9/9/87)</p>	<p>Addition of sunroom, bay window, and decking – requires revision of scenic easement condition pursuant to Court Remand of CDP P-80-380-R Staff report notes that</p>	<p>Scenic resources findings note primary consideration in approval of CDP P-80-380R (now renumbered to 3-87-112) was the protection of public views seaward from State Hwy Route 1. Accordingly, the permit was conditioned to require the dedication of</p>	<p>Conditions: 1) ...permittee shall submit ...the amended open space scenic easement shall protect open space and public views within al portions of permittees parcel seaward of line described as line of sight Y in CDP 3-86-009 (Hull)</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
(APN 243-161-021)	<p>permit previously numbered P-80-380R - approx existing bldg covg of 2180 ft, proposed add 166 sf for sunroom, 112 sf for deck</p>	<p>an Open Space Scenic easement over the bluff-top area of permittees parcel on the north side of Malpasos Beach. The easement was executed and accepted by the Coastal conservancy. Subsequently, CDP 3-86-009 (Blair) was approved by the CCC. As part of the consideration for approval.... A new line of sight from Hwy 1 Malpasos Creek Bridge was established for the protection of public views (termed "line of sight y"). Construction of Blair house between Hull house and Hwy 1 has proceeded...as a result, a small portion of the existing scenic easement on the Hull parcel is now hidden, rendering pointless the now-obscured portion of the easement....this permit amendment will allow amendment of the existing scenic easement as necessary to construct a small 12x14 foot sun room addition...an increased deck area and a bay window. Coastal conservancy staff has indicated their willingness to recommend approval of such an amended easement (see Exhibit C)....As conditioned in accordance with coastal conservancy staff recommendations, public views will be protected in an equally effective manner as presently provided for...</p>	<p>and shown on attached Exhibit D... shall in all other respects be consistent with the existing recorded easement; 2) ...permittee shall submit evidence of recording...approved amendment to the open space easement as executed by the Executive Officer of State Coastal Conservancy and the property owner</p>
<p>Hull 110 Yankee Pt Dr. CDP# 3-97-008-W waiver</p>	<p>26 sf addition for woodstove alcove</p>	<p>NA</p>	<p>NA</p>

Name & Permit Number	Comments	Visual Resources Findings	Visual Resource Conditions
(approved 2/6/97) (APN 243-161-021)			
Hull 110 Yankee Pt Dr. CDP# (no number) waiver (approved 6/27/94) (APN 243-161-021)	396 sf 2 nd story addition for artists studio over existing garage and workshop	NA	NA

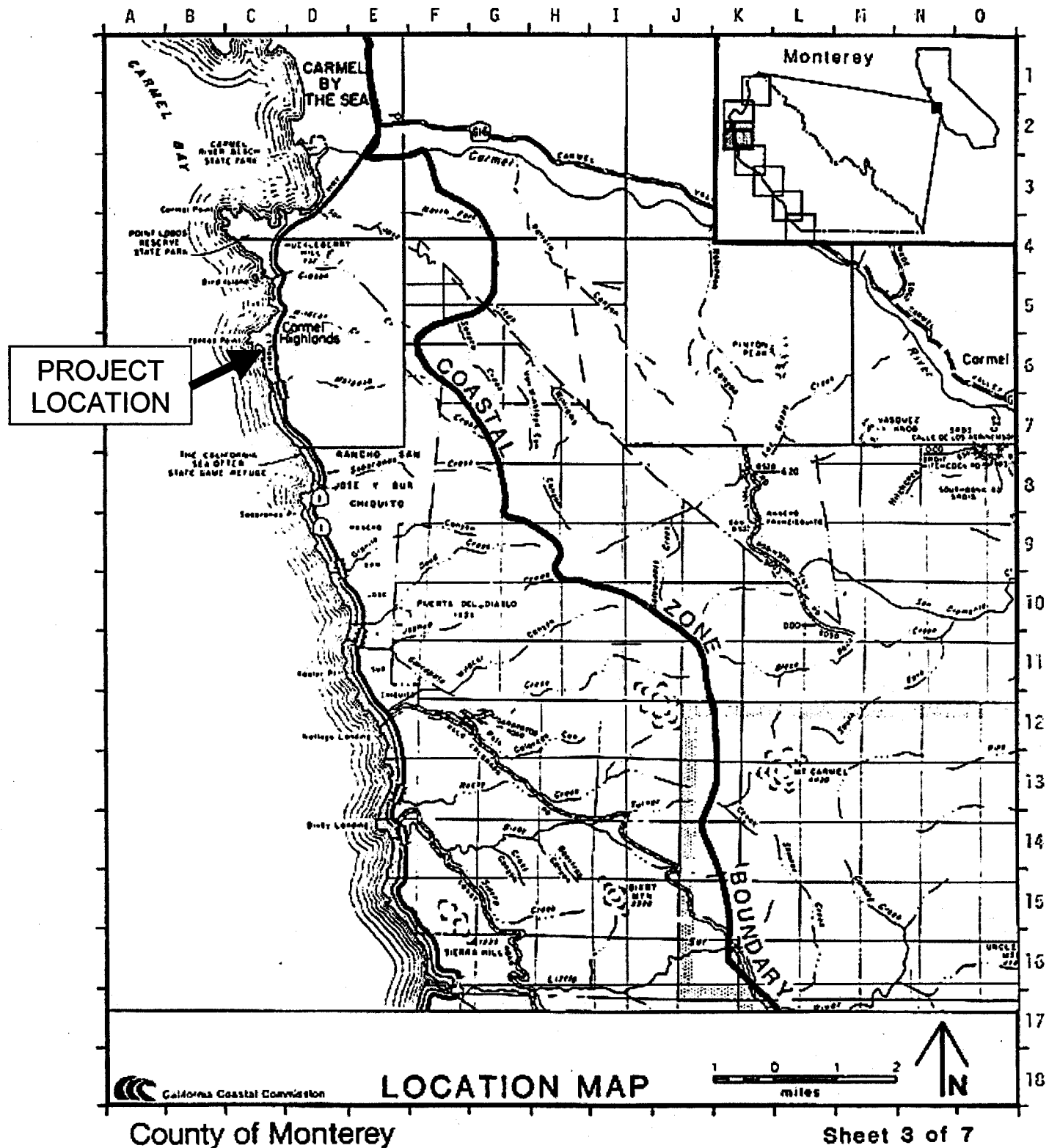
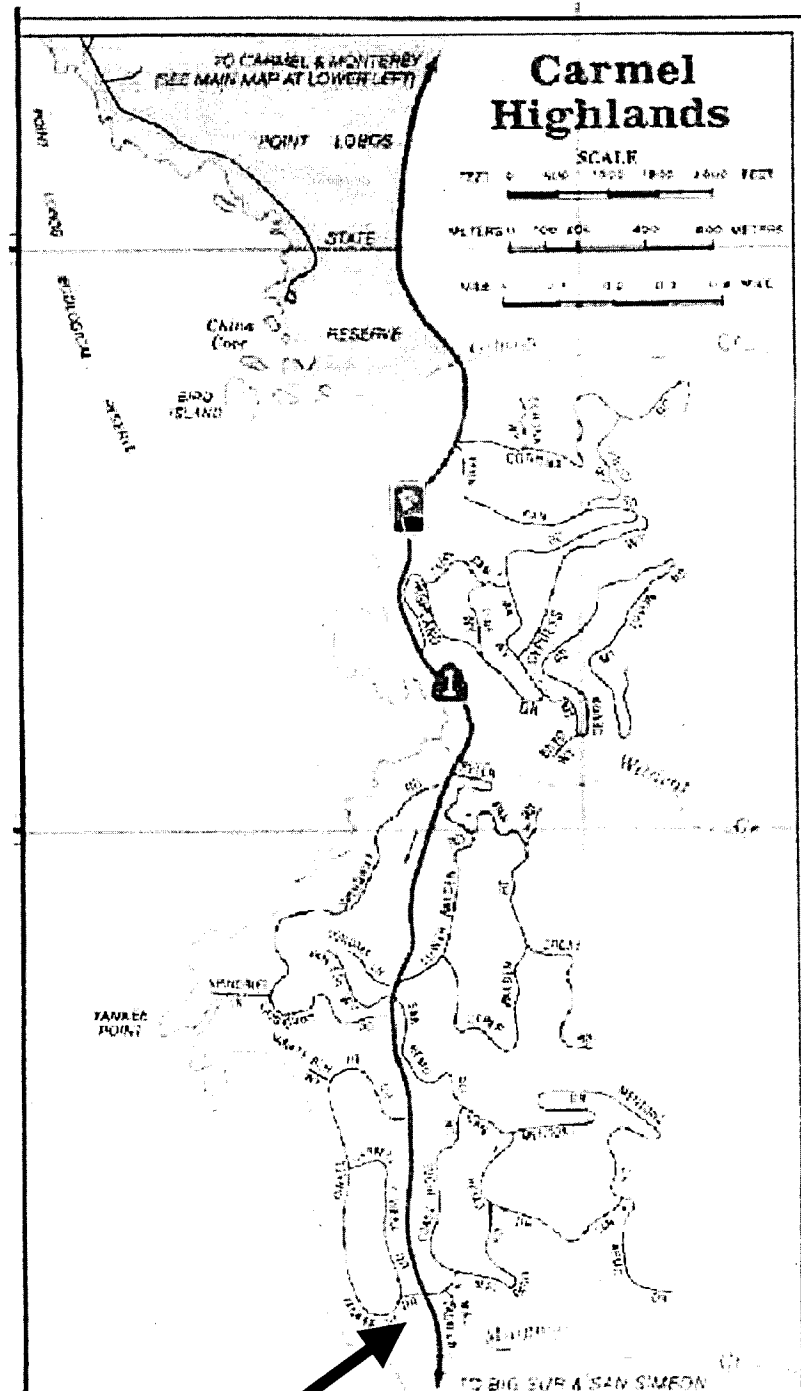


Exhibit A
Regional Location Map: Yankee Point and
Carmel Highlands Riviera



Project Location

Exhibit B
Project Vicinity – Yankee Point and Carmel Highlands Riviera



California Coastal Commission

3-00-020-A1
Witter Amendment

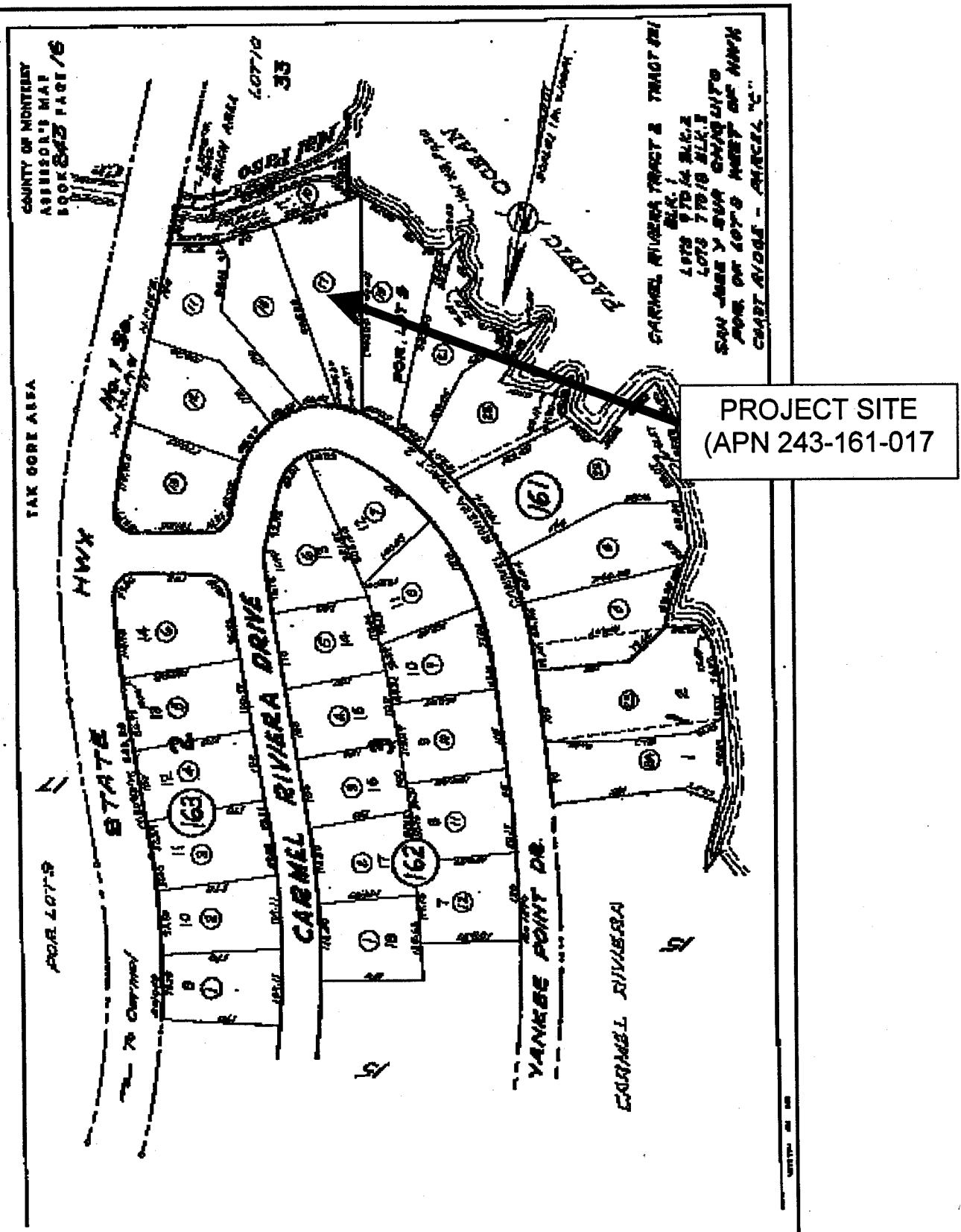


Exhibit C
Parcel Map showing Project Location

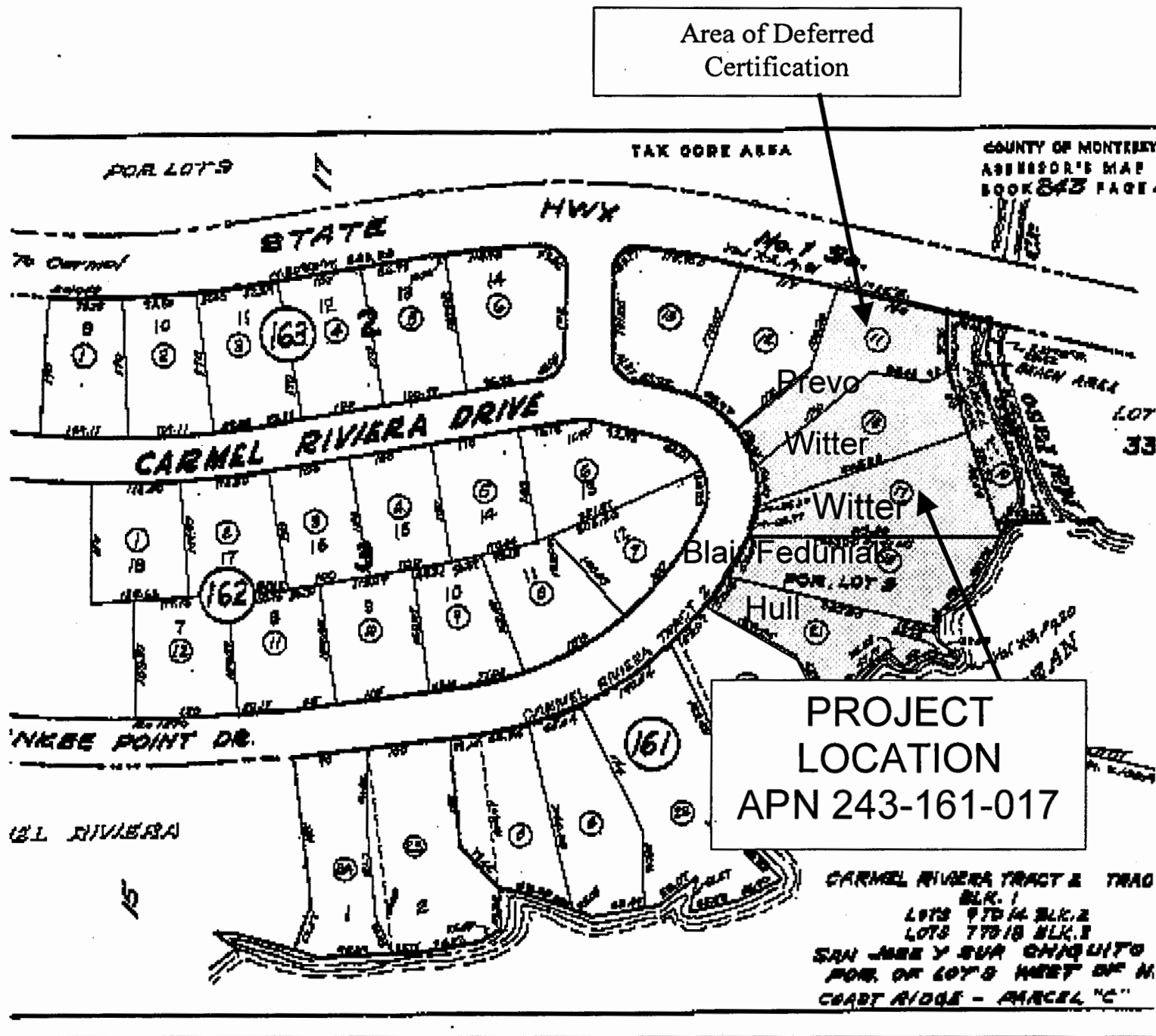


Exhibit D
Parcel Map showing Project Location Within Area
of Deferred Certification

3-00-020-A1
Witter Amendment



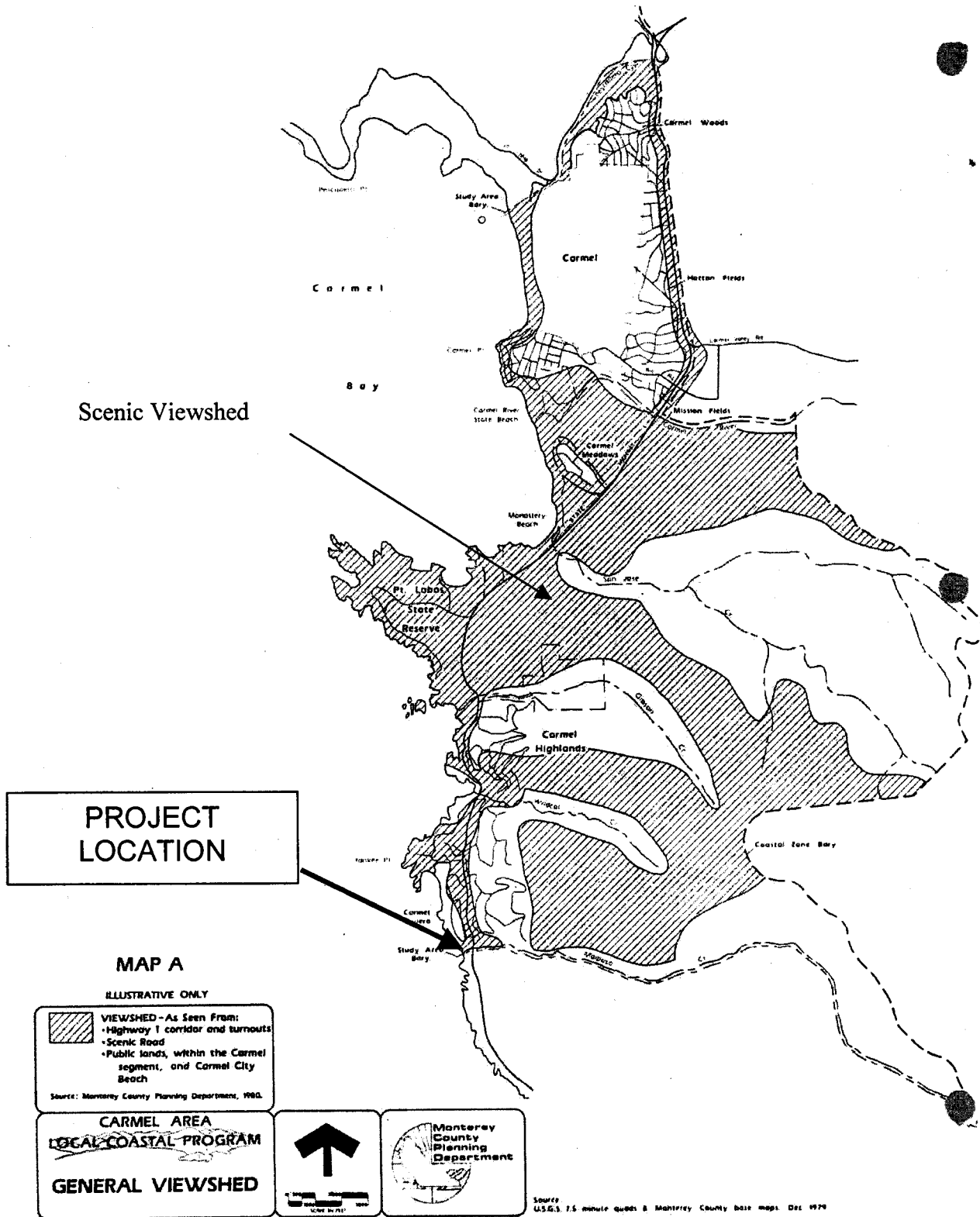
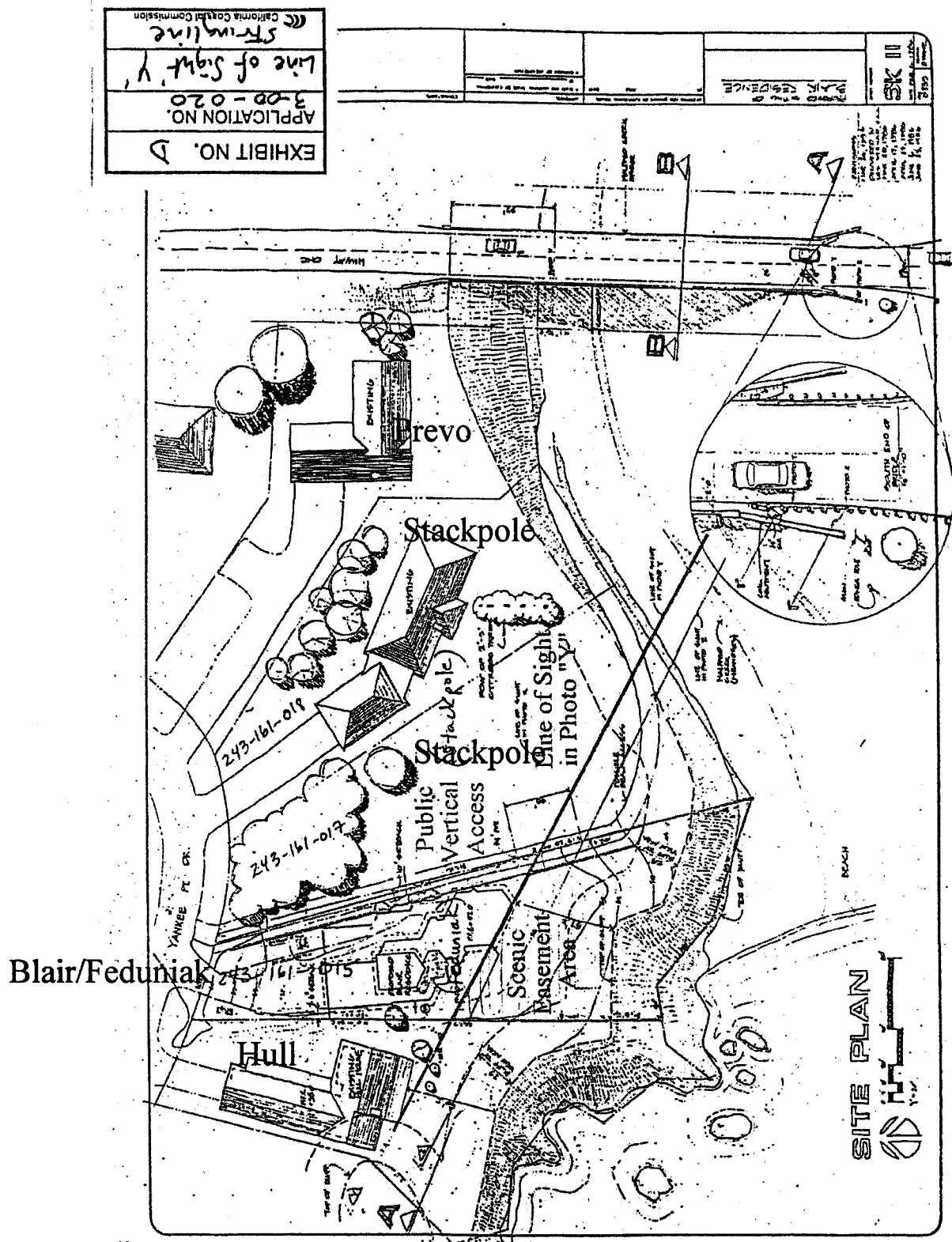


Exhibit E
Carmel Area Land Use Plan Viewshed Map

3-00-020-A1
Witter SFD

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



Blair/Feduniak

Exhibit G
 "Line of Sight 'Y'" Stringline
 (Used previously for Stackpole CDP 3-00-020 on subject parcel)
 3-04-052
 Witter SFD



Exhibit H

Oblique aerial Photo with approximate location of "Line of Sight 'Y'" Stringline , and currently unpermitted putting green.

(Photo ©California Coastal Records Project, Image #200402364, dated 10/11/04)



California Coastal Commission

3-00-020-A1
Witter SFD

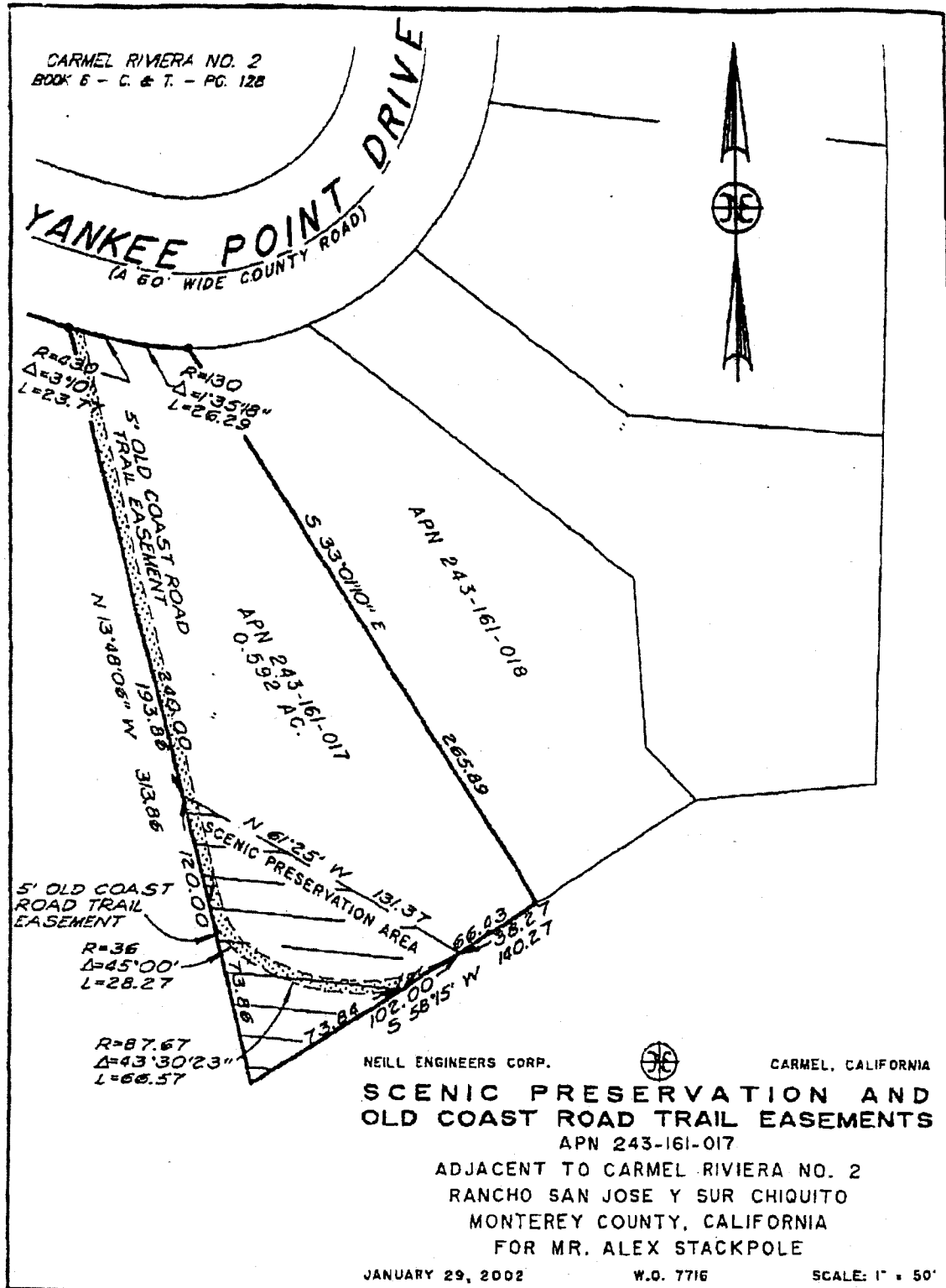


EXHIBIT D

Page 1 of 3

Exhibit I - 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**

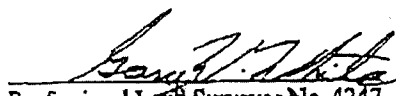
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Witter SFD

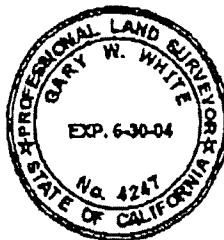
5' OLD COAST ROAD TRAIL EASEMENT DESCRIPTION

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 I - 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)



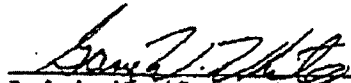
California Coastal Commission

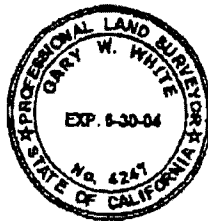
3-00-020-A1
Witter Amendment

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 I - 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

3-00-020-A1
Witter Amendment



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 J

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

3-00-020-A1
Witter Amendment

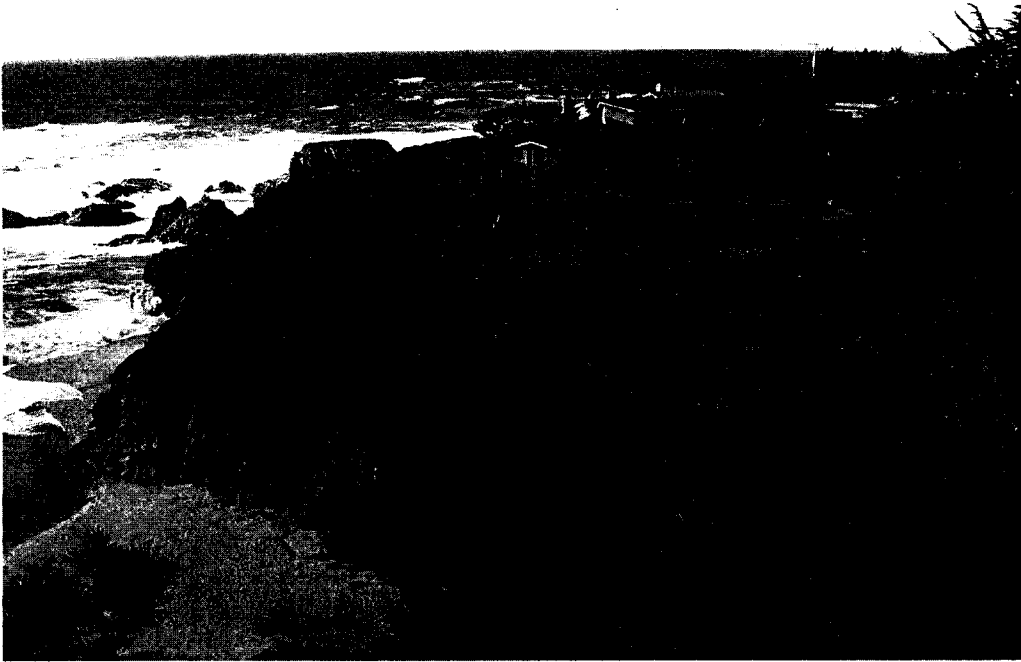


Photo 3. View of coastal blufftop across Witter (formerly Stackpole) properties – view taken from south end of Malpas Creek Bridge. Old coast Road Trail and Malpas Creek Beach in the foreground.



Photo 4. Zoom of same view of coastal blufftop across Witter (formerly Stackpole) properties – view taken from south end of Malpas Creek Bridge.

Exhibit K

Recent staff photos of existing blufftop across Witter site. (photos show unpermitted putting green, which is subject of related application for Witter SFD CDP 3-04-052).



California Coastal Commission

3-00-020-A1
Witter Amendment

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 Malpas Creek Bridge and previously existing development at that time.

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

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

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H. Conditions of Previous Permit P-77-596	



1. Staff Recommendation on Permit

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

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

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

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

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

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



3. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Location and Description

Project Location

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

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

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

Project Description

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

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



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

C. Coastal Act Issues

1. After-the-Fact Development

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

2. Scenic Resources

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

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

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

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



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

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

The same "line of sight '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 Malpas 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 Malpas 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 Malpas 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.

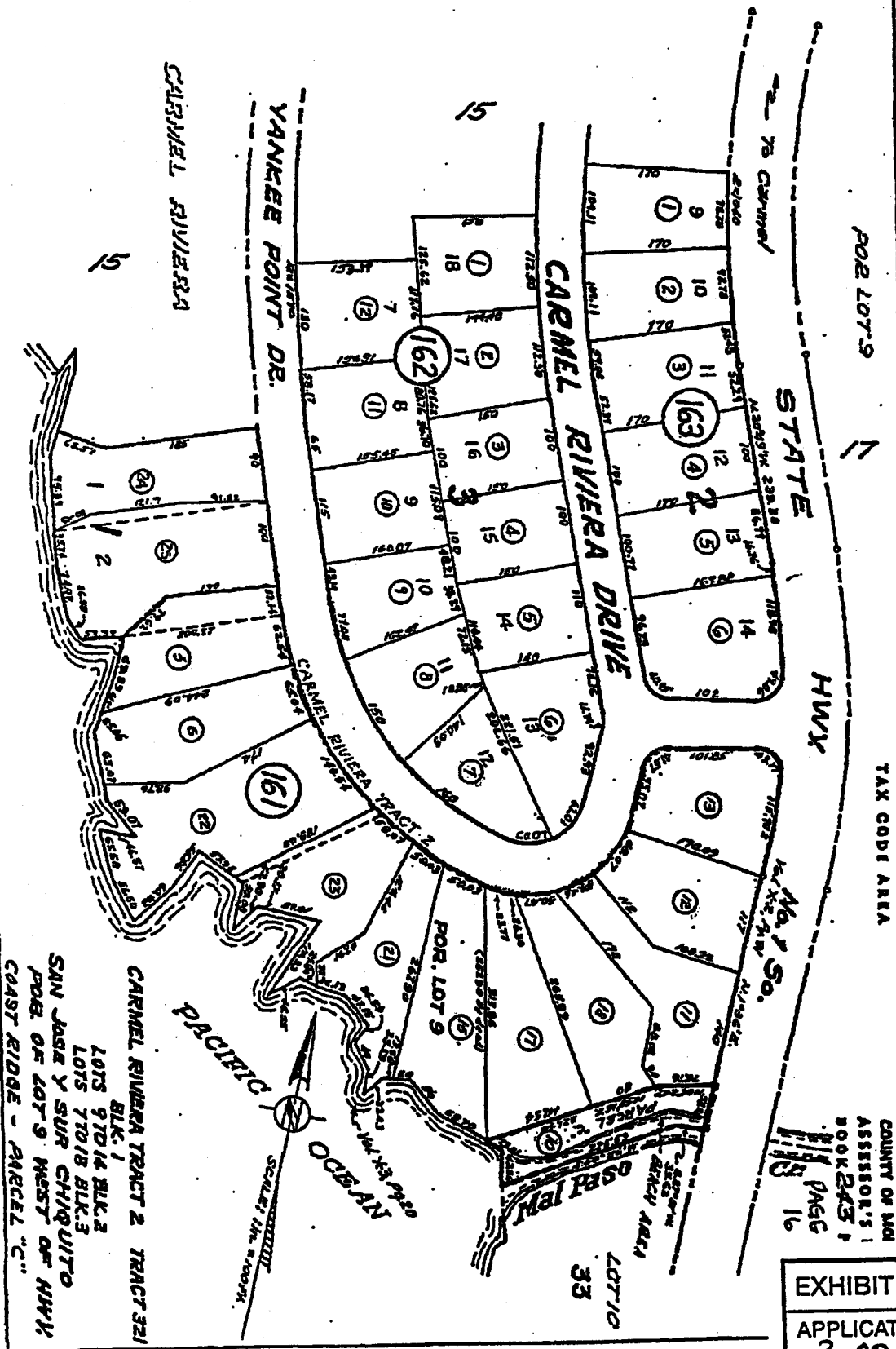
However, since any future construction activities may disturb additional undiscovered archeological resources, the permit still requires that should archaeological resources be discovered at the project site during any phase of construction allowed by this permit, work will be halted within 150 feet 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.

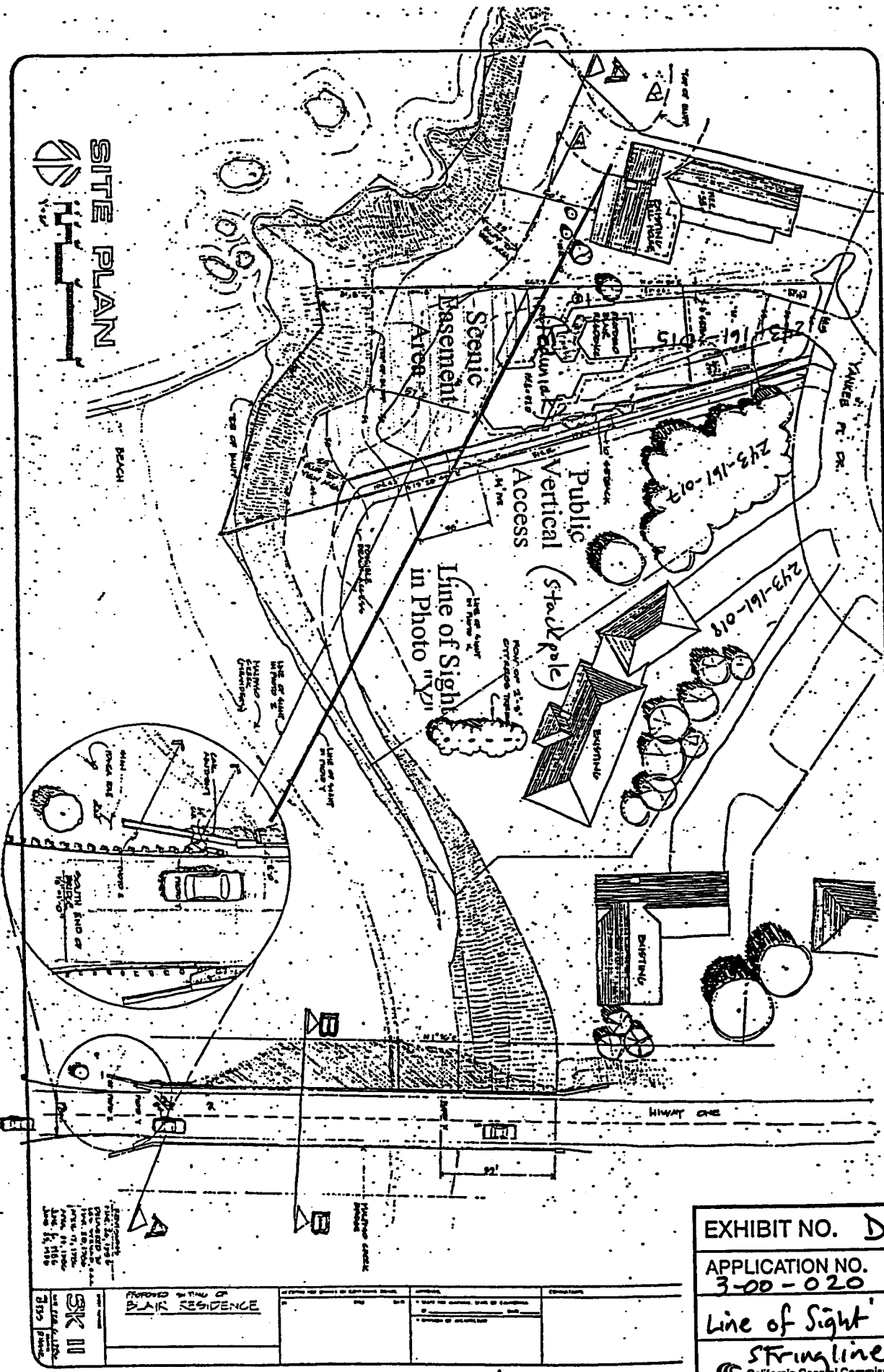
D. California Environmental Quality Act (CEQA)

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.





SUBJECT PROPERTY
PROPERTY WITHIN 100 FEET



SITE PLAN

EXHIBIT NO. D
APPLICATION NO. 3-00-020
Line of Sight 'Y'
SFrangline California Coastal Commission

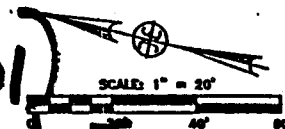
APPROVED BY THE CITY OF BLAIR RESIDENCE	DATE	APPROVED BY THE COUNTY OF CALIFORNIA	DATE
SK II			

EXHIBIT NO. E

APPLICATION NO.
3.00-020Site Plans
of 6

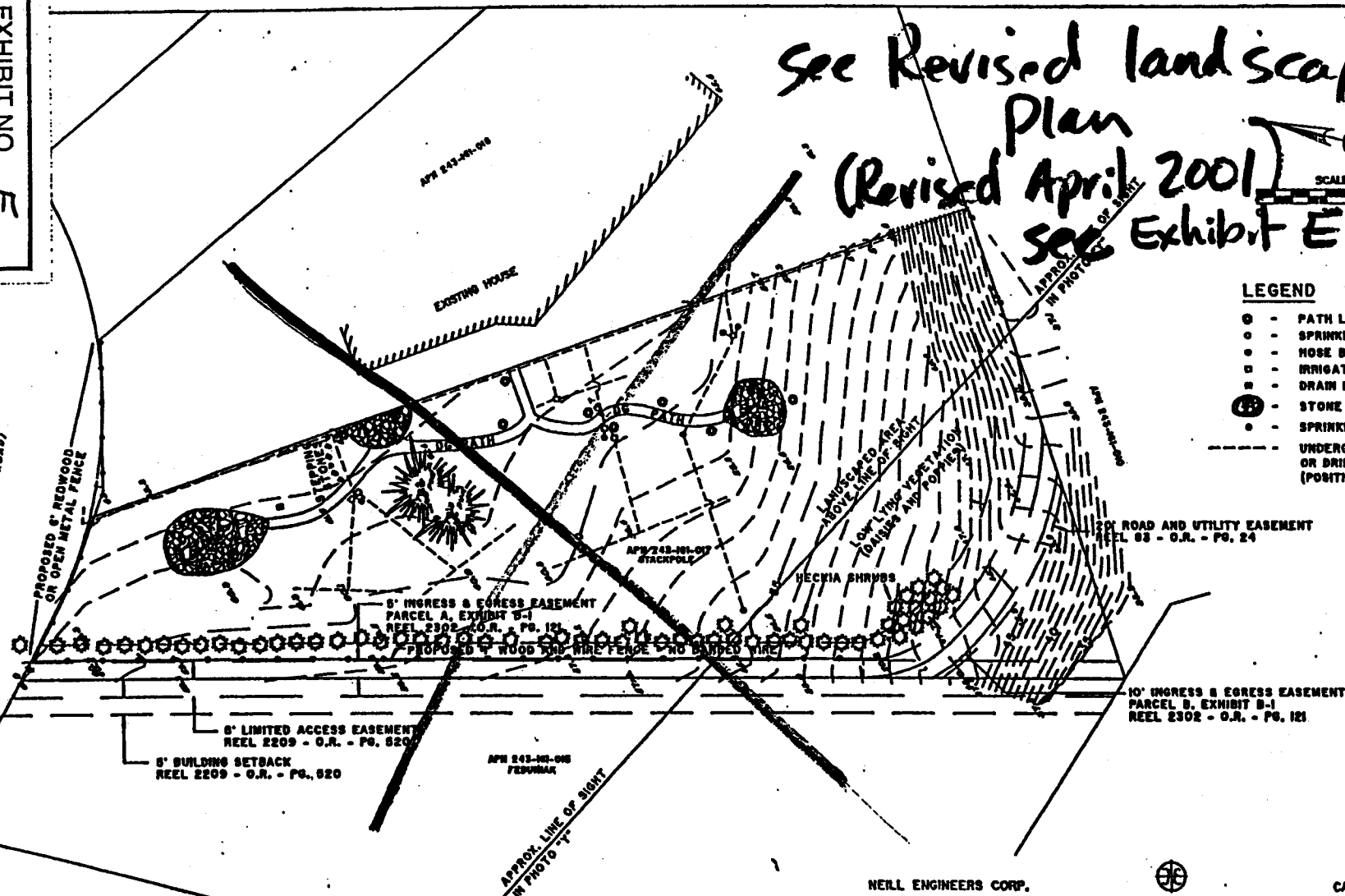
California Coastal Commission

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

JUNE 1999

SCALE: 1"=20'

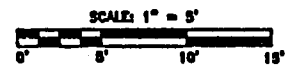
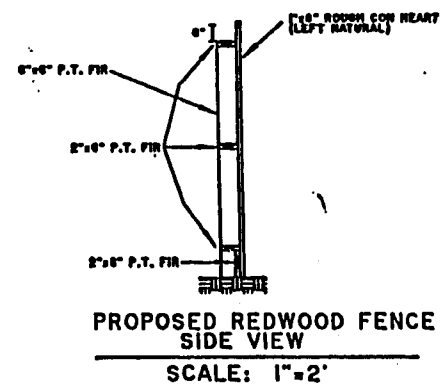
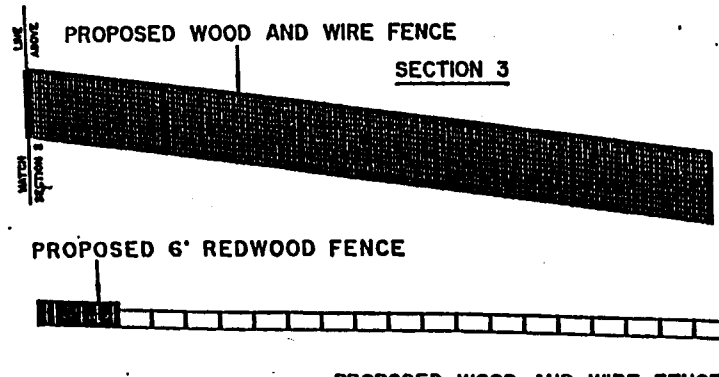
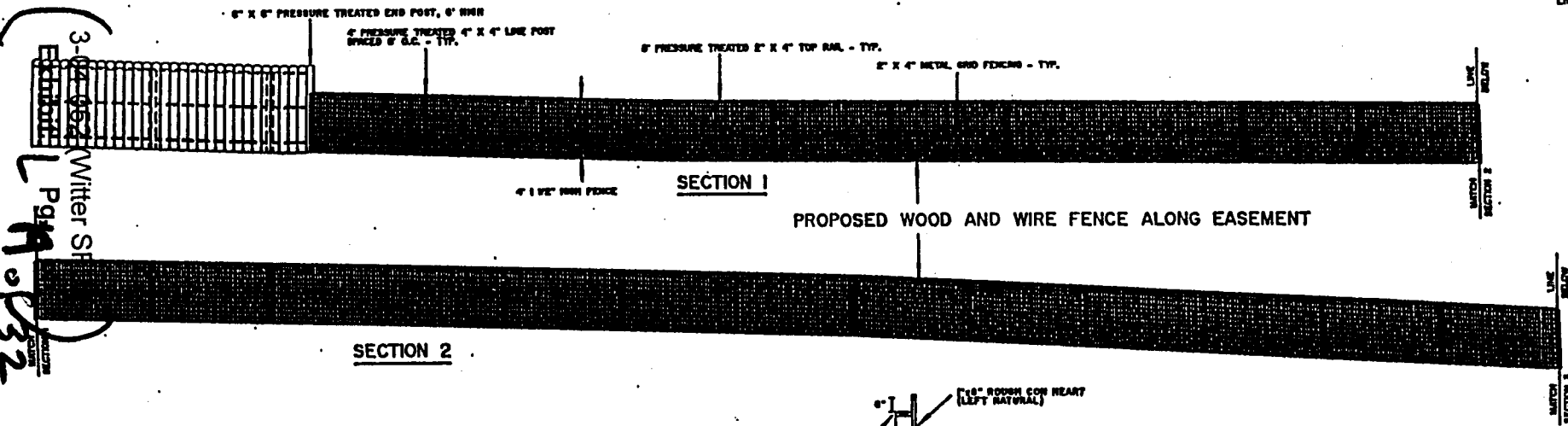
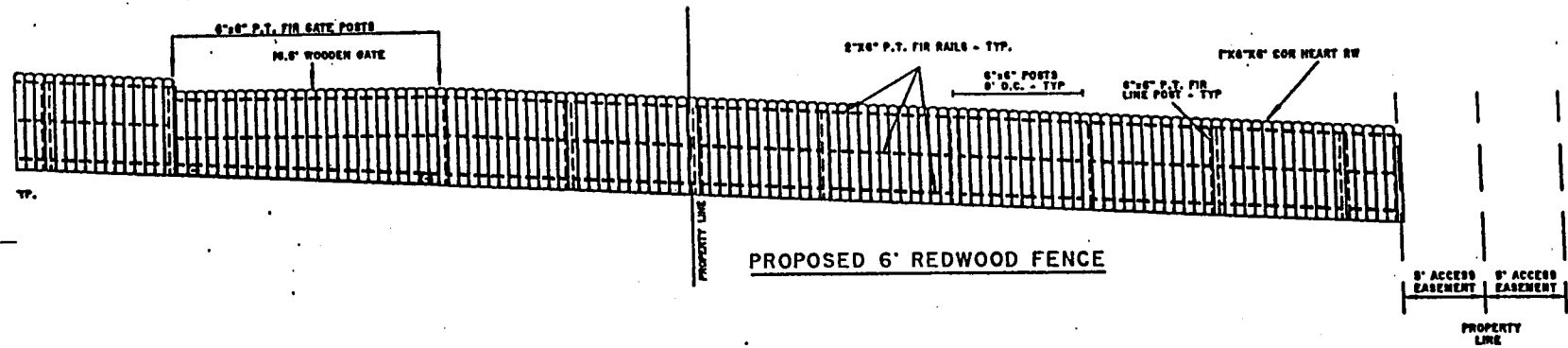
REVISED SEPTEMBER 2000
REVISED MAY 2000
REVISED NOVEMBER 1999
REVISED AUGUST 1999

W.O. 7716

3-04-052 (Witter SFD)
Exhibit C Pg 18 of 3

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

SHEET 2A OF 2



NEILL ENGINEERS CORP. CARMEL, CALIFORNIA
FENCE & LANDSCAPE PLAN
 APN 243-161-017, 015 B 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'

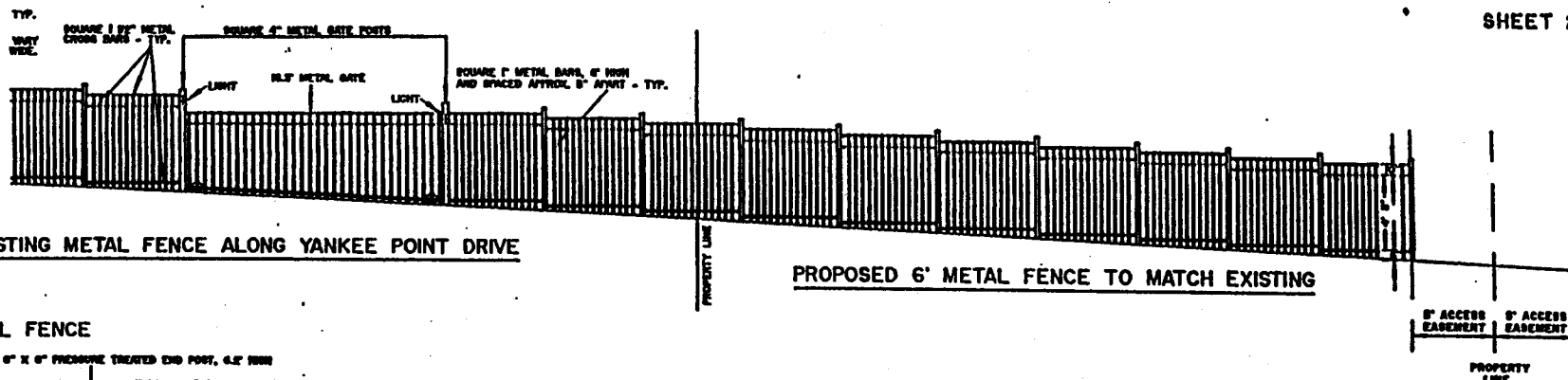
PROPOSED WOOD AND WIRE FENCE, SCALE 1"=20'

REVISED MAY 2000
 REVISED AUGUST 1999

W.O. 77168

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

SHEET 28 OF 2



EXISTING METAL FENCE ALONG YANKEE POINT DRIVE

PROPOSED 6' METAL FENCE TO MATCH EXISTING

PROPOSED 6' METAL FENCE

6" X 6" PRESURF TREATED END POST, 6' HIGH

4" PRESURF TREATED 4" X 4" LINE POST
SPACED 8' O.C. - TYP.

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

6" X 4" METAL ROD FENCING - TYP.

4" X 4" WOOD FENCE

SECTION 1

PROPOSED WOOD AND WIRE FENCE ALONG EASEMENT

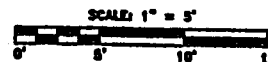
SECTION 2

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

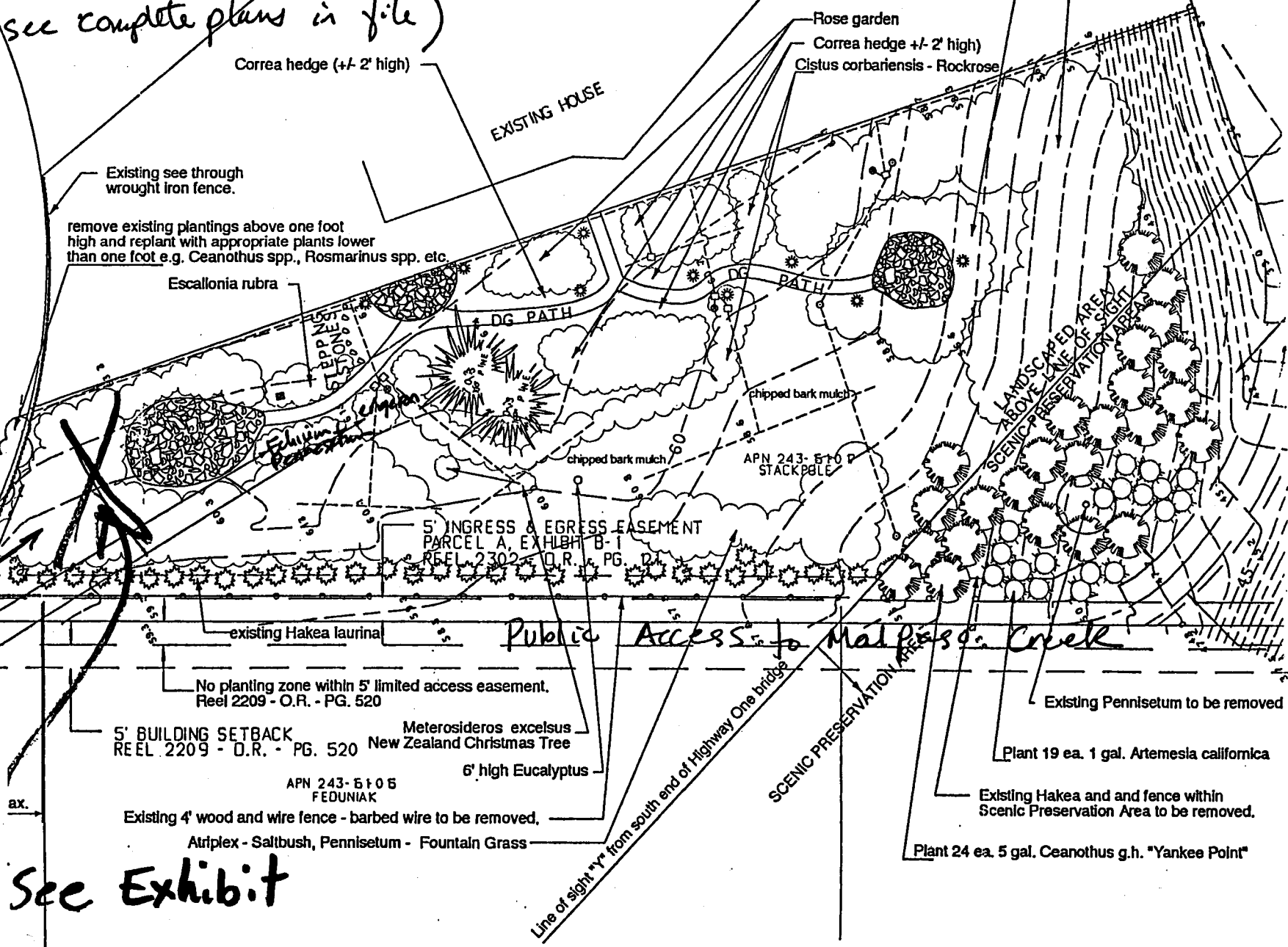
W.O. 77168

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

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

YANKEE POINT
 1/2 MILE WIDE COUNTY ROAD

Asplenium laetum
Asplenium longifolium
Living Pennisetum



See Exhibit

EXHIBIT NO. E486
APPLICATION NO. 3-01-020
SITE PLANS & CIVIL
PAVING & LANDSCAPING

3-04-052 (Winter 5/93)
Exhibit L

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

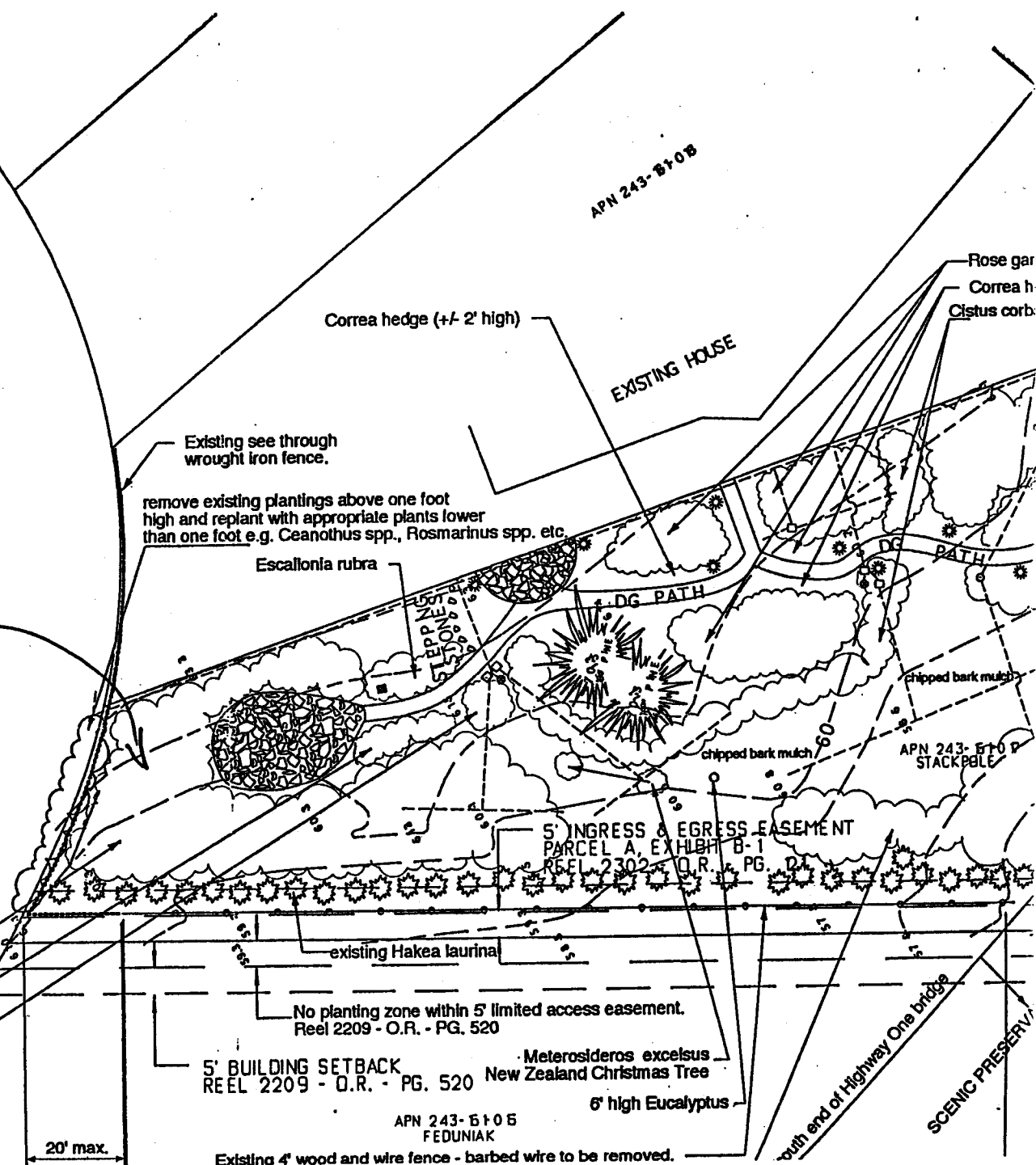
Landscaping in this area should be primarily low growing, native shrubs, plants or scattered trees appropriate to the site. Landscaping should not include any plantings that would block existing public views.

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 the view currently provided across the western parcel from Yankee Pt. Dr.

YANKEE POINT DRIVE
A 60' WIDE COUNTY ROAD



~~Exhibit~~ - 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, &
ARCTOSTAPHYLOS sp. (LOW, NATIVE TYPES).
FOUNTAIN GRASS TO REMAIN. ANY FUTURE
REPLACEMENTS SHALL BE PRIMARILY LOW
GROWING, NATIVE SHRUBS, PLANTS OR SCATTERED
TREES APPROPRIATE TO THE SITE

NOTE:

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



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).

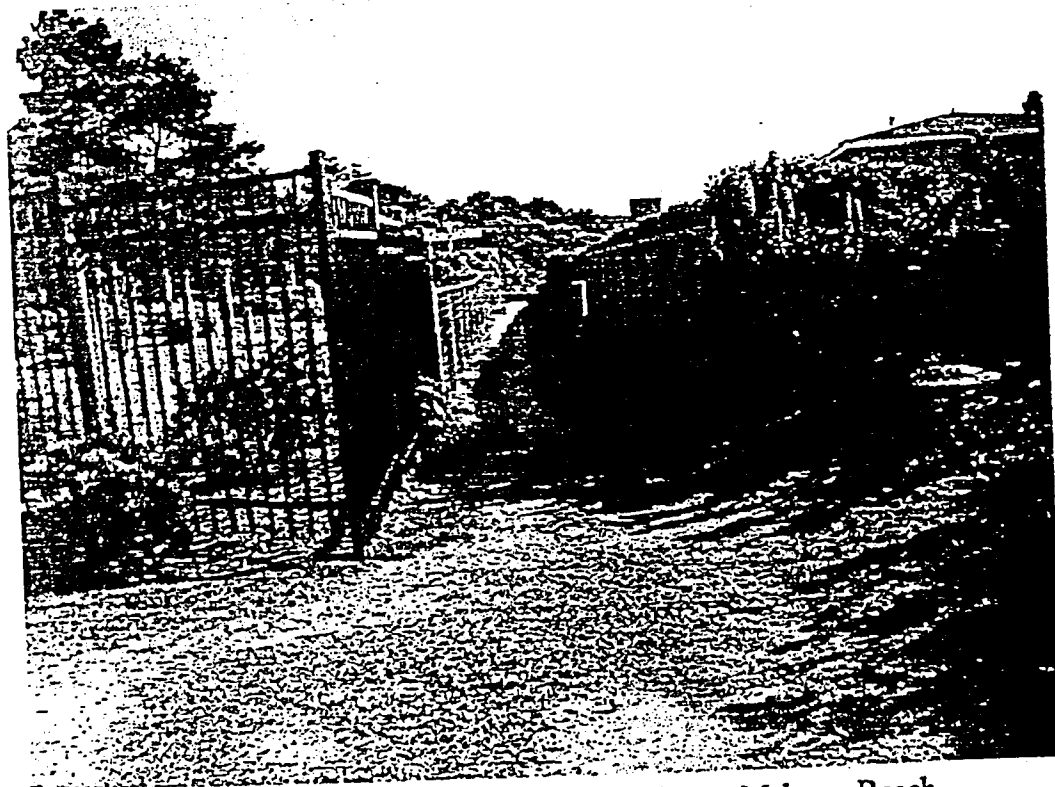


Photo 4. View looking down coastal accessway leading to Malpaso Beach. (APN 243-161-017 on left, APN 243-161-015 on right side of 4x4 post).

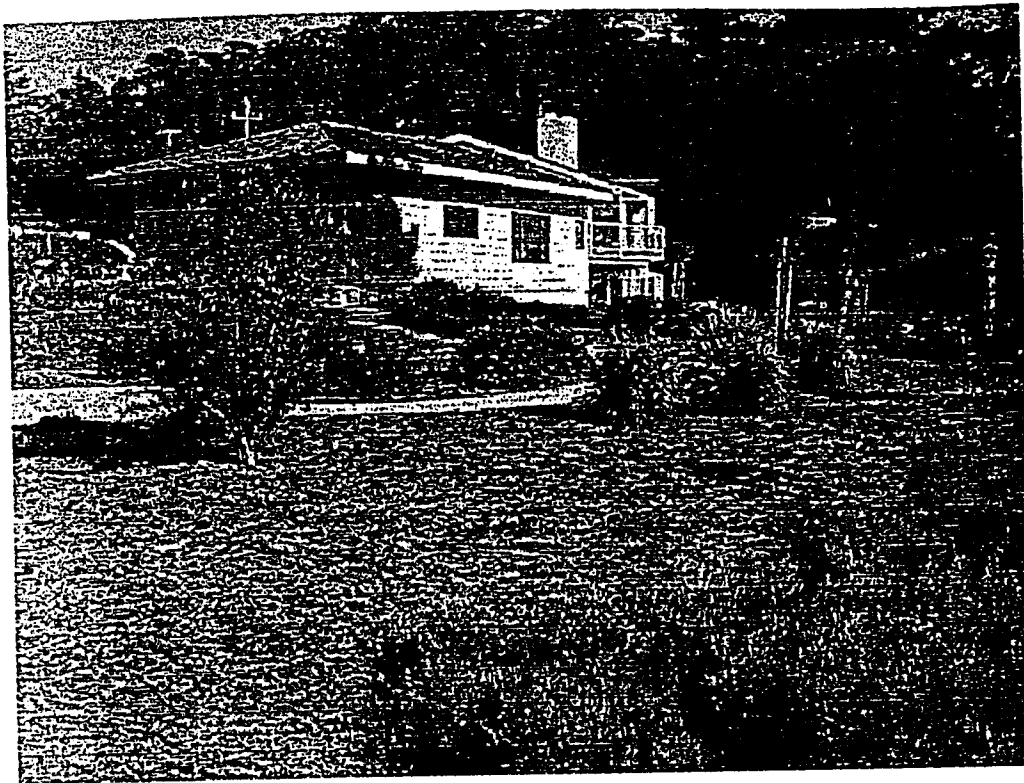


Photo 5. Photo of landscaping and path on Parcel APN 243-161-017.

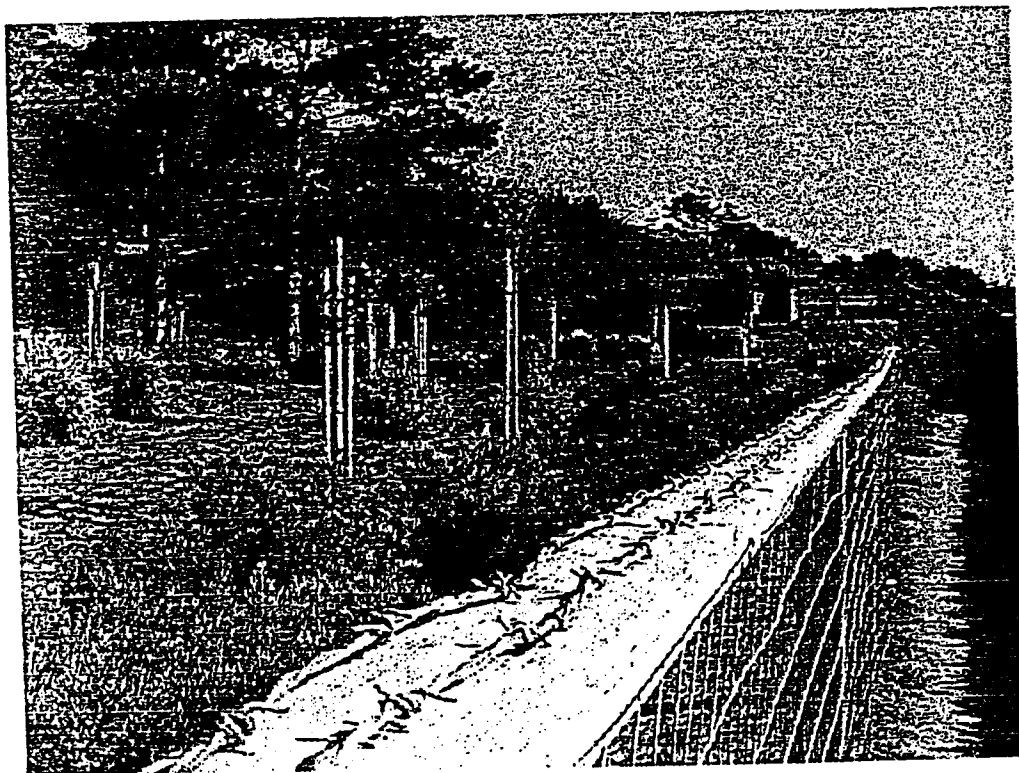


Photo 6. Photo of landscaping on Parcel 243-161-017 and wood-and-wire fence along coastal access trail (on right).

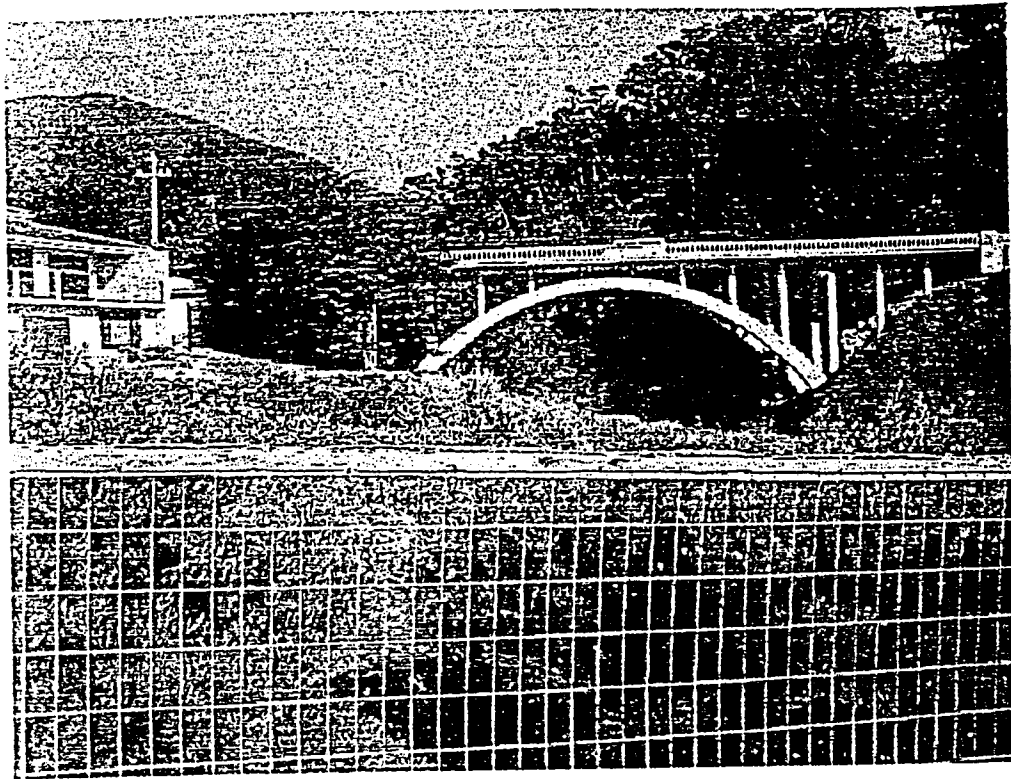


Photo 7. Photo of Highway One Bridge looking across Parcel APN 243-161-017 and 243-161-018.

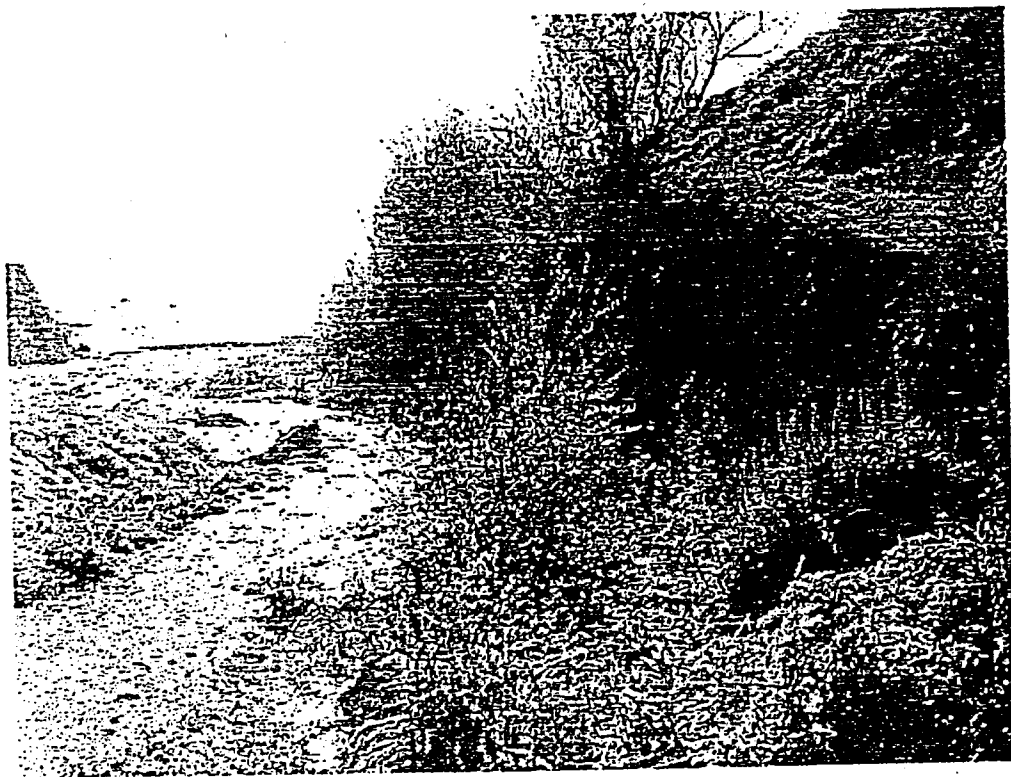


Photo 8. Photo of coastal access trail leading down to Malpaso Creek and Malpaso Beach.

Date Heard: 7-25-77, 8-1, 8-22
Hearing Closed: 8-1-77
Prepared on: 8-30-77
Prepared by: MM

Executive Director's Recommendation

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

Recommendation:

ADOPTED

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

Findings:

Concentra-
tion of
Development

1. The proposed split-level SFD is located on the generally level portion of a bluff front lot above the mouth of 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

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

P-77-596

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.

ADOPTED

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

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

P-77-596

(3-04-052 (Writer SFD)

Exhibit **L Pg 32 of 32**