

**CALIFORNIA COASTAL COMMISSION**

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**W19b**

**Prepared December 6, 2011 (for December 7, 2011 hearing)**

**To:** Coastal Commissioners and Interested Persons

**From:** Charles Lester, Executive Director  
Ruby Pap, District Supervisor

Click here to go  
to the original staff report.

**Subject: STAFF REPORT ADDENDUM for Item W19b**  
**Appeal no. A-2-MAR-09-010 (Crosby)**

The purpose of this staff report addendum is to add findings responding to the Appellants' letters dated November 11 and 30, 2011 [*See attachment to this addendum to the staff report*]. Additions to the Staff Report are shown in underline.

Staff continues to recommend that a substantial issue has been raised with regard to Marin County's approval of the proposed project as discussed in the November 18, 2011 staff report.

*Add the following findings to page 5 of the Staff Report:*

Appellants' Request Disqualification of Commissioner

The appellants have requested that Commissioner Kinsey be disqualified from participating in any aspect of the appeal now pending before the Commission. They assert that Commissioner Kinsey is biased in favor of the applicant and cite to: (a) rules applicable to hearings governed by the Administrative Procedures Act; and (b) statements made by Commissioner Kinsey in his capacity as a Supervisor for the County of Marin. The appellants' concerns focus specifically on bias in favor of the applicant. The appellants' concerns are not based on the fact that Commissioner Kinsey would be participating as a Commissioner on a matter he had voted on as a county supervisor when the matter came before the County of Marin, as this action is expressly authorized by Coastal Action section 30318.

The appellants' citation to rules applicable to hearings governed by the Administrative Procedures Act is not relevant to the Commission's action on this appeal because the Commission's hearing procedures are governed by its regulations; the Commission is not an agency that conducts its hearings pursuant to the Administrative Procedures Act.

Regarding the appellants' assertions of bias, due process requires that decision makers be impartial, regardless if their hearings are governed by the Administrative Procedures Act. In an administrative setting such as the Commission's hearing process, actual bias of an administrative adjudicator must be shown except in situations where the allegation regards a financial or personal interest of the adjudicator, in which case even a probability of bias will suffice to make the administrative procedure unfair under due process. *Gai v. City of Selma (1998) 68*

Cal.App.4<sup>th</sup> 213, 219-220, 79 Cal.Rptr.2d 910.

There is no evidence of a financial or personal interest on the part of Commissioner Kinsey nor have the appellants shown “concrete facts” giving rise to an unacceptable probability of actual bias. The appellants point only to statements made by Commissioner Kinsey in his capacity as a Supervisor when the matter was heard by the County of Marin. [See attachment to this addendum to the staff report.]

Since there is no more evidence of bias or the risk of bias or prejudgment than statements made by Commissioner Kinsey in a public hearing wherein Commissioner Kinsey weighed factors for and against approval of the project, there is no unacceptable risk of bias, and the record does not show circumstances to overcome a presumption of honesty and integrity in those serving as adjudicators.

W196

November 11, 2011

5 Ahab Drive  
Muir Beach, CA 94965

Mary K. Shallenberger  
Chair  
California Coastal Commission  
P.O. Box 354  
Clements, CA 95227-0354

Re: Timothy Crosby Application for Coastal Development Permit  
A-2-MAR-09-010, on remand to California Coastal  
Commission pursuant to Writ of Mandate in *Hyman, et al*  
*v. California Coastal Commission* CIV 094682.

Dear Commissioner Shallenberger,

I am writing to you to request that Commissioner Steve Kinsey be disqualified from participating in the above case on remand on account of bias. Every litigant is entitled to a hearing before a fair and impartial decision maker. We are convinced that we cannot receive a fair hearing from Commissioner Kinsey. We have requested Commissioner Kinsey to disqualify himself voluntarily and he has refused to do so. This request is supported by the declaration of Richard S. Kohn as required by Government Code Section 11512(C).

### **Statement of the Case**

The application for a Coastal Development Permit filed by Timothy Crosby for 9 Ahab Drive in Muir Beach was the subject of a hearing before the Board of Supervisors, including Supervisor Steve Kinsey, on March 31, 2009. The Board of Supervisors voted to grant the permit with conditions. Following that determination, the California Coastal Commission held that our appeal of the approval of the permit application did not raise a substantial question. Subsequently, the Marin County Superior Court issued a Writ of Administrative Mandate requiring the Coastal Commission to vacate its decision and remanding the case to the Coastal Commission to reconsider the matter in light of the Court's written decision dated February 3, 2011. By agreement of the parties, the remand is to be considered at the Commission's December meeting in San Francisco. In the meantime, Supervisor Kinsey has been appointed to the Coastal Commission.

### **Legal Framework**

Public Resources Code Section 30318 provides that "*Nothing in this division precludes a county supervisor from participating as a coastal commissioner in the same case that he took part in as a member of the Board of Supervisors after it is appealed to the*

Coastal Commission. The California Coastal Act is Division 20 of the Public Resources Code. Thus, section 30318 does not address issues of bias. These are governed by Government Code Section 11512(C) and Government Code Section 11425.40. While the instant proceeding is not under the APA, these provisions are obviously relevant by analogy. See California Administrative Hearing Practice (2d ed.) Section 6.27 at p. 284. Because bias goes to the issue of fairness and due process, Public Resources Code Section 30318 is not dispositive of the matter.

The courts have held that the word bias refers to the mental attitude or disposition of the officer towards a party to the litigation. *Andrews v. Agricultural Labor Relations Board* (1981) 28 Cal.3d 781, 790; *Evans v. Superior Court* (1930) 107 Cal. App. 372,380.

As explained by the court in *Evans v. Superior Court, supra*,

“Funk & Wagnall’s Standard Dictionary defines ‘bias’ as ‘a mental predilection or prejudice.’ Webster’s New International Dictionary gives this definition: ‘A leaning of the mind; propensity of prepossession toward an object or view, not leaving the mind indifferent; bent; tendency; inclination; prejudice.’ ‘Bias’ is a particular influential power which sways the judgment—the inclination of mind toward a particular object—and is not synonymous with ‘prejudice.’ A man cannot be prejudiced against another without being biased against him, but he may be biased without being prejudiced.” *Id.* 380.

### **Supervisor Kinsey’s Statements Reveal Bias**

To put this in context, at the Board of Supervisor’s hearing, Timothy Crosby testified that he had begun the process of obtaining a permit in July 2008 and had spent over \$150,000 on architectural fees, surveys and permits up to that time. Kohn Decl. Par. 6. In summarizing his position, Supervisor Kinsey acknowledged that the view in question was “absolutely a spectacular jewel of a view.” Nevertheless, he believed that Mr. Crosby should not be held accountable even though his architect, Richard Beckman, had “missed an opportunity to protect this jewel of a view” and that a “sensitive architect should have done that,” and because the approval of other projects in Muir Beach “suggested otherwise.” He was also influenced by the fact that the Planning Commissioners had approved the project by a 7-0 vote. See Kohn Declaration Par. 8. This statement shows a bias in favor of the developer based upon his investment of time and money in the project that has nothing to do with the relevant law and facts of the case. Thus, there is concrete evidence, and not just supposition, of his bias in favor of the developer and against the appellants.

When Supervisor Kinsey's statement is examined, his bias is apparent.

First, Supervisor Kinsey's job was to enforce the provisions of the LCP designed to protect visual resources, not protect Mr. Crosby from his architect's mistakes.

Second, the fundamental issue in the case was whether the project violated the visual resources provisions of the LCP. Supervisor Kinsey had served as an alternate on the coastal commission and should be presumed to have been aware of the visual resource provisions of the LCP for Unit 1. In fact, he read the LCP policy into the record at the hearing. Live Video Broadcast 00.57.07 through 00.57.58. Having acknowledged that the view was "absolutely a spectacular jewel of a view" and that the applicant's architect had "missed an opportunity to protect that jewel of a view", that should have ended the matter unless the applicant could show, "to the maximum extent feasible," that there was no way to change the design to preserve the view. Instead, Supervisor Kinsey embraced the applicant's contention that the county had allowed other projects to proceed that also blocked views. Obviously, by this logic, no permit could ever be denied until all of the coastal views in Muir Beach were destroyed. Anyone who has ever tried to talk a traffic cop out of a speeding ticket knows that the defense of "but everyone else was speeding" never works.

Third, Supervisor Kinsey obfuscated the issue of visual resource protection by conflating issues of size, character and scale into his discussion. He also stated that the project was "consistent with our ordinances" as though technical compliance with local zoning requirements could justify the destruction of a "jewel" of a coastal view.

Finally, the fact that the Planning Commission had voted 7-0 in favor of the applicant was completely irrelevant. The hearing before the Board of Supervisors was supposed to be *de novo* —In other words, the supervisors were supposed to conduct an independent review of the record and reach their own conclusions.

In the final analysis, Supervisor Kinsey bent over backwards to excuse the applicant from any accountability so that he could avoid "sending the project all the way back through the process." The issue was not—as Supervisor Kinsey said— whether the destruction of the view of Muir Beach cove was "enough of a violation of the community to justify holding Mr. Crosby accountable." The issue was whether the proposed addition to 9 Ahab Drive violated the visual resources provisions of the LCP. As evidenced by his statements at the supervisors' hearing, his 'leaning of the mind' is to protect the investment made by the developer in his project and not make him go all the way through the process again.

Mary K. Shallenberger  
November 11, 2011  
Page 4.

There is no requirement that a coastal commissioner must explain his vote. When it comes time to cast his vote, Commissioner Kinsey may vote out of his previously expressed sympathy for Mr. Crosby's perceived plight. And, of course, Mr. Crosby has a greater investment of time and money in the project now than he did in March 2009.

### **Disqualification Procedure**

In the absence of specific procedures to raise issues of bias, APA procedures in Government Code Section 11512(C) provide a useful model. California Administrative Hearing Practice Section 627. Pursuant to Section 11512(C), the issue of disqualification should be decided by the other members of the Commission.

This is not a case in which Commissioner Kinsey's participation is indispensable. See, *Aluisi v. County of Fresno* (1960) 178 C.A.2d 443, 452. In *Aluisi*, the court rejected a disqualification motion because the commission was the only body with authority to pass on the matter and there were no substitutes. The "rule of necessity" under which commission members' participation in the first hearing did not disqualify them in a second hearing ordered by the court is inapplicable because, unlike the situation in *Aluisi*, Commissioner Kinsey has an alternate.

Therefore, we request that you notify the other members of the Commission that this request for recusal has been made and place the matter on the Commission's agenda to be considered in December.

Thank you for your consideration.

Very truly yours,

Richard S. Kohn

Edward J. Hyman

Brenda F. Kohn

Deborah A. McDonald

cc. Joseph C. Rusconi  
David Zaltsman  
Reuben J. Becker, Esq.  
Charles Lester, Executive Director  
Chris Pederson, Esq.  
Supervisor Steve Kinsey

## **CALIFORNIA COASTAL COMMISSION**

Re: Timothy Crosby Application for Coastal Development Permit  
A-2-MAR-09-010, on remand to California Coastal Commission  
Pursuant to Writ of Administrative Mandate in *Hyman, et al v.*  
*California Coastal Commission, Marin County Superior Court,*  
CIV 094682

### **Declaration of Richard S. Kohn**

I, Richard S. Kohn, declare:

1. I am one of the appellants in this matter.
2. On March 31, 2009, the Board of Supervisors voted to grant Applicant Timothy Crosby's application for a Coastal Development Permit with conditions. The appellants appealed that decision to the Coastal Commission, which held that the Appellant's appeal did not raise a substantial issue. Appellants filed a Petition for Writ of Administrative Mandamus in the Marin County Superior Court. The court found in favor of the Appellants. It issued a writ of mandamus directing the Coastal Commission to vacate its decision and to hold a new hearing on the question of whether the appeal raised a substantial question.
3. In the meantime, Supervisor Steve Kinsey was appointed to the Coastal Commission. Appellants have filed a request, contemporaneous with this declaration, that Commissioner Kinsey be disqualified from participating in the remand of the Crosby matter due to bias.
4. The hearing before the Board of Supervisors was transcribed by audio video recording and may be viewed in its entirety at [www.co.marin.ca.us/bos](http://www.co.marin.ca.us/bos) Live Video Broadcast meeting archives for 2009, video March 31, 2009, Item No. 13. There is no written transcript of the hearing.
5. What follows is my transcription of testimony from the Live Video Broadcast of the Board of Supervisors' hearing that I regard as relevant to our request to disqualify Supervisor Kinsey from participating in his role as a Coastal Commissioner on the remand of these proceedings from the Superior Court.
6. Applicant Tim Crosby testified as follows: "As stated in the staff report, the original plans I submitted in July of 2008 were completely in compliance with all zoning and planning requirements. As a property owner, I think I'm within my rights to expect such conforming plans to be approved, or at least substantially approved. I have spent over

\$150,000 on architectural fees, surveys and permits up to this point. So, I have a lot invested in this project." Live Video Broadcast 00.23.25.

7. Supervisor Steve Kinsey's statement begins at 00.50.05 of the Live Video Broadcast. It is not feasible for me to transcribe his entire discursive monologue. However, the Appellants' assertion that Supervisor Kinsey should be disqualified because he is biased in favor of Mr. Crosby and against the appellants is based upon this verbatim transcription of his own summation of his position as follows, beginning at 01.00.42 on Live Video Broadcast:

8. "So, in the end, where we stand here is this: I think that this is absolutely a spectacular jewel of a view. But it is one of many jewels in this remarkable community, a community that was designed, I think, as a point of reference for all of us to include a public pathway throughout the community—and what an asset that is—what a treasure to be able to walk around Muir Beach by foot and not by car—so many communities have lost that opportunity and Muir Beach retains it in fact and celebrates it in so many ways including the trail across Mr. Crosby's property that leads to the beach.

I believe that Mr. Beckman missed an opportunity to protect that jewel, as a sensitive architect-someone in the community, he should have done. It really comes down to the issue of is it enough of a violation of the community to justify holding Mr. Crosby accountable for that when so many other projects that we've seen, that he has provided us examples of, suggest otherwise. Also, a project that 7 out of 7 planning commissioners found a way to get comfortable with. So, where I stand right now is my sense is that this needs to be a wakeup call but it can't be the clarion call for change. That we need to alert the community that this is the direction your community is headed. This is in many respects consistent with our ordinances with the unique decision about whether that one location to observe that one remarkable view is worthy of sending the project all the way back through the process. And I just am struggling and I'm unable to overcome the recommendation of the Community Development Agency, the 7-0 Planning Commission in this regard. And in fact the other projects that have been approved in recent years that do in fact have impacts both in terms of community character and scale for the project. And so-- I did speak with Mr. Crosby--I would dearly love for him and his architect to revisit this and see what they can do to be good neighbors but in all fairness, and I think that this is what it comes down to, the fairness in how decisions have been made in recent years by the county I am going to be moving that we deny the appeal and sustain the Planning Commission's action."

Subscribed and sworn to under the penalty of perjury this 11th day of November 2011 at Muir Beach, California.

Richard S. Kohn



November 30, 2011

5 Ahab Drive  
Muir Beach, CA 94965

W19b

Charles Lester  
Executive Director  
California Coastal Commission  
45 Fremont Street  
Suite 2000  
San Francisco, CA 94105-2219

Re: Appeal A-2-MAR-09-010 (Crosby, CP 09-3), 9 Ahab Drive, Muir Beach, Marin County. December 7, 2011 hearing, Agenda Item W19b.

Dear Mr. Lester,

I would appreciate it if you would consider the following procedural comments regarding the hearing scheduled for December 7, 2011.

*(a) Disqualification Request*

Please confirm that the Commission has received the appellants' request that Supervisor Kinsey be disqualified from participating in any aspect of the case on remand from the Superior Court. We would also appreciate it if you would respond to my November 14 letter regarding how the Commission plans to proceed with the recusal request. Please advise by e-mail to [brendkohn@aol.com](mailto:brendkohn@aol.com).

*(b) The motion should be stated in the affirmative*

Since the staff is recommending that the appeal raises a substantial issue, a yes vote should signify agreement with the staff's recommendation. Instead, the staff has proposed a motion where a "no" vote means that a substantial issue has been raised and a "yes" vote means the opposite.

Apparently, the staff has adopted the same motion that it asked the commissioners to adopt at the August 12, 2009 hearing when the staff was recommending finding of "no substantial issue." This makes no sense and is an invitation to confusion and an invalid vote. The language of the motion should be redrafted in favor of language that is simple, understandable and consistent with the staff's recommendation.

*(c) Lack of a Deadline*

The staff report is completely open-ended as to when the applicant would have to submit alternative plans. Meanwhile, no final decision on whether to grant or deny the permit can be made. Essentially, the Commission is ceding control of the time schedule for resolving this matter to the applicant. The Commission should establish a deadline by which the applicant must submit any new material.

Thank you for your consideration.

Very truly yours,

*Signature on file*

Richard S. Konn

cc. Mary K. Shallenberger, Chair  
Chris Pederson, Esq.  
Joseph C. Rusconi

David Zaltsman  
Reuben J. Becker, Esq.  
Supervisor Steve Kinsey

W19b

REVISED LETTER

Hank Gehman  
5 Canyon Rd.  
Berkeley, CA 94704

Agenda #: W19b  
Application #: A-2-MAR-09-010  
Hank Gehman  
OPPOSE PROJECT  
December 1, 2011

RECEIVED

DEC 02 2011

CALIFORNIA  
COASTAL COMMISSION

Dear California Coastal Commissioners,

I love the oceans and the landscapes that are created where the land and the sea come together. I have visited many of these landscapes-the beaches, mountains, cliffs and their oceans-and I have been moved by many. But of all, I think that Muir Beach is the most sublime, uniquely beautiful and uniquely balanced with the natural and man-made blending together.

I don't live at Muir Beach but for many, many years I have been coming to the beach from San Francisco and Berkeley, alone and with friends from near and far. I could more easily park in the parking lot below but ever since I discovered the trail built from Ahab Drive down to Muir Little Beach, I have stopped on Ahab just so I could savor again the experience of the unique beauty of the trail. And the most beautiful and moving view is right at the top of the trail, on Ahab Drive where there is a wide viewing platform.

This is the most beautiful view I known of at Muir Beach. From the platform you look through a frame of trees, down the hillside of rocks and grass, out across the ocean, to the waves breaking on the beach and then on to a backdrop of craggy hills behind. My eyes never know where to stop.

I wish that the commissioners could come and experience this. I also hope that in the future, others will also be able to come and share this experience.

But when I visited there when the storey poles were up, I saw that, if this house was expanded as proposed, that view would be extinguished. And I was determined to be heard on this.

This view from the platform, I feel, is exactly what the Coastal Act was intended to preserve. It is a view that was intentionally selected for public viewing. The Coastal Act limits development where it denies the public an already existing opportunity to enjoy and participate in the beauty of the California coast.

There's a lot of money in Muir Beach now. And people with a lot of money don't like to be told what they can and can't do with their money. As I understand this project, the proposed expansion could be accomplished by building on the downslope, preserving the view. But the owner has fought hard to assert his prerogative to build what he wants where he wants. Clearly the owner agrees that the view is spectacular. The problem is that he wants it to be his view.

I'm very afraid of the impact on future development if this project is found to not be in conflict with the letter and goals of the Coastal Act. Not only will the public lose this view, but development will rocket forward at Muir Beach and up and down the coast. The wrong-headed reasoning of the Marin County Commission will be seized on and expanded by every lawyer and what was once public will quickly become private. The Coastal Act will be end up being twisted into a legal weapon to enable California's coast to be turned into a gated community--"Blackhawk-by-the-Sea".

I ask this Commission to sustain the current staff report establishing that the Crosby project raises a substantial issue and subsequently, to deny approval for this project and to reject in no uncertain terms the specious reasoning that has allowed this project to get this far.

Thank you for your consideration,

*Signature on file*

Hank Gehman

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
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# W19b



Date: November 18, 2011

To: Coastal Commissioners

From: Charles Lester, Executive Director  
Ruby Pap, North Central Coast District Supervisor

Re: **Appeal A-2-MAR-09-010** (Crosby, CP 09-3), 9 Ahab Drive, Muir Beach, Marin County. Filed: April 24, 2009. 49 Days: Waived

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**Recommendation:** Staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which appeal A-2-MAR-09-010 was filed and that the Commission hold the de novo portion of the appeal hearing at a subsequent meeting.

Staff recommends a **NO** vote on the following motion & resolution:

**Motion & Resolution.** *I move that the Commission determine and resolve that: Appeal Number A-2-MAR-09-010 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Coastal Act Section 30603 regarding consistency with the certified Local Coastal Program and/or the public access policies of the Coastal Act.*

Following the staff recommendation by voting “no” will result in the Commission conducting a de novo review of the application and adoption of the following findings. Passage of this motion and resolution via a “yes” vote, thereby rejecting the staff recommendation, will result in a finding of No substantial issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

The Coastal Act presumes that an appeal raises a substantial issue of conformity of the approved project with the certified LCP, unless the Commission decides to take public testimony and vote on the question of substantial issue.

**IMPORTANT NOTE:**

THE COMMISSION WILL NOT TAKE PUBLIC TESTIMONY DURING THE  
SUBSTANTIAL ISSUE PHASE OF THE APPEAL HEARING UNLESS  
THREE COMMISSIONERS REQUEST IT.

Coastal Act section 30625(b) requires the Commission to hear an appeal unless it determines that no substantial issue exists with respect to the grounds on which the appeal has been filed.<sup>1</sup> Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its de novo review at the same or subsequent meeting. The Commission will not take public testimony during this phase of the appeal hearing unless three Commissioners request it.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellant and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless it is determined that there is no substantial issue, the Commission will proceed to the de novo portion of the appeal hearing which will occur at a subsequent meeting. Oral and written public testimony will be taken when the Commission reviews the merits of the proposed project at the subsequent meeting.

**Hearing on Remand.** On August 12, 2009, the Commission determined that the appeal of the local government's decision raised no substantial issue of conformity of the approved project with the certified LCP. The appellants subsequently filed a petition for administrative mandamus seeking to reverse the Commission's decision to dismiss the appeal. On Feb. 3, 2011, the County of Marin Superior Court granted the appellant's petition for a writ of mandate finding that the Commission's determination of No Substantial Issue was not supported by the evidence (Exhibit 5). The relief sought in the petition for writ of administrative mandate was an order for the Commission to set aside its decision, obtain a new staff recommendation, and hold a new hearing on the question of whether the appeal raises a substantial issue in accordance with the views expressed in the court's opinion. An order was issued to that effect. This staff report and Commission hearing is in response to the Court's order to hold a new hearing on the question of whether the appeal raises a substantial issue of conformity of the approved project with the certified LCP.

## **Findings**

On March 31, 2009 the Marin County Board of Supervisors approved Coastal Permit CP 09-3 with conditions for the construction of a 1,589 square foot addition to an

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<sup>1</sup> The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. In previous decisions on appeals, the Commission has generally been guided by the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues, or those of regional or statewide significance.

## **A-2-MAR-09-010 (Substantial Issue)**

**Timothy Crosby**

Page 3 of 5

existing 2,058 square foot single-family residence on a 1.03-acre, steeply sloping lot, resulting in an 8% Floor Area Ratio (FAR). The addition would be in three sections and would extend from east, south, and west sides of the existing residence. The approved addition would have a maximum height of 25 feet as measured from grade, consistent with the maximum height requirement for Muir Beach. The site is not visible from Highway 1. The minimum setbacks from corresponding property lines would be as follows: 30 feet front (north), 26 feet side (west), 20 feet side (east), and 138 feet rear (south). The addition would match the exterior of the existing residence with Cedar shingle siding and dark-brown and light-brown speckled composition shingle roofing. The approval also includes a new Advantex septic system and a 5,000 square foot geothermal energy storage field (Exhibits 1 and 6). Pursuant to Coastal Act section 30603, this approval is appealable to the Commission because the development that was approved is located between the sea and the first public road paralleling the sea.

A drainage easement and pathway with wooden stairs set into the hillside runs downhill through trees along the western edge of the property and provides intermittent coastal views to Muir Beach (Exhibit 3 and 6). The pathway is maintained by the Muir Beach Community Services District (MBCSD) and is mostly used by local residents to connect to other stairways that eventually reach Muir Beach. The stairway path is not identified by signs but it connects a narrow side-street (Ahab Drive) with a narrow private street (Sunset Way), both of which are cul-de-sacs.

Appellants Dr. Edward Hyman, Dr. Deborah McDonald, Brenda Kohn and Richard Kohn claim that the approval is inconsistent with the certified LCP (Unit 1) requirements on protection of visual resources. Appellants also allege procedural violations by the County's Deputy Zoning Administrator and the Planning Commission (Exhibit 2).

On August 12, 2009, the Commission found that no substantial issue exists with respect to the grounds on which appeal A-2-MAR-09-010 was filed. In finding "No Substantial Issue," the Commission determined that no LCP-protected views would be obstructed by the approved development. The County of Marin Superior Court disagreed with the Commission's determination. Based on the record in front of it, the Marin County Superior Court found that the Commission's decision was not supported by the evidence because it determined that: (1) the LCP provision prohibiting the obstruction of significant views from public viewing places applied to the approved development; and (2) the view impacted by the approved development was significant

Commission staff has visited the site and analyzed the County's Notice of Final Local Decision for the development (Exhibit 1), the local record, appellants' claims (Exhibit 2), the relevant requirements of the LCP, and the findings of the Court.

The appeal of the approved project raises a substantial issue of conformity with the certified LCP in regards to visual resources because a Marin County Superior Court has determined, on the basis of the record in front of it, that a significant visual resource is obstructed by the County approval, inconsistent with the provisions of the certified LCP.

LCP Visual Resources

The appellants claim that the approved development is inconsistent with LCP visual resources policies because the approved development would impair a significant public view of Muir Beach as seen from both the pathway (described above) and Ahab Drive.

Certified zoning section 22.56.130(O) "Visual Resources and Community Character" states:

*"3) The height, scale and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places."*

Therefore, in addition to requiring that approved development be compatible with the character of the surrounding area, the LCP requires that approved development not obstruct significant views as seen from public viewing places. The Marin County Superior Court has determined, on the basis of the record in front of it, that the view of Muir Beach as seen from Ahab Drive and the public stairway that is maintained by MBCSD is significant. The approved addition to the existing single family residence obstructs these views. Therefore, the appeal of the approved development raises a substantial issue of conformance with certified LCP provisions that require that development not obstruct a significant view from public viewing places.

**Information Needed for De Novo Review of Application**

As stated above, Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which an appeal has been filed. Section 30621 of the Coastal Act instructs the Commission to provide for a de novo hearing on all appeals where it has determined that a substantial issue exists with respect to the grounds on which an appeal has been filed. If the Commission finds substantial issue as recommended above, staff also recommends that the Commission continue the de novo portion of the appeal hearing to a subsequent date. The de novo portion of the appeal hearing must be continued because the Commission does not have sufficient information to determine how development can be approved consistent with the certified LCP.

Given that the project the Commission will be considering de novo has come to the Commission after an appeal of a local government action, the Commission has not previously been in the position to request information from the applicant needed to determine if the project can be found to be consistent with the certified LCP. Following is a discussion of the information needed to evaluate the development.



Alternatives Analysis

In order for the Commission to evaluate the proposed addition for consistency with LCP, an alternatives analysis is required. This analysis should present alternative designs and sites for the proposed addition, and evaluate whether, (1) The height, scale and design of each alternative would be compatible with the character of the surrounding natural or built environment; (2) whether the alternative would be designed to follow the natural contours of the landscape; and (3) whether significant views as seen from public viewing places would be obstructed.

The alternatives analysis should include architectural drawings, and visual simulations. If a preferred alternative is selected by the Applicant, storey poles erected at the site may be required.

Exhibits

1. Notice of Final Local Decision
2. Appeal
3. Staff photographs of the project site
4. Staff photographs of the project site from PowerPoint presentation
5. Writ of mandate
6. Project Plans



# MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY

2 - MAR - 08 - 114

BRIAN C. CRAWFORD, DIRECTOR

## NOTICE OF FINAL LOCAL (BOARD OF SUPERVISORS) DECISION

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and LCP Policy and/or Implementation Plan Section

SENT BY CERTIFIED MAIL

April 10, 2009

California Coastal Commission  
45 Fremont Street, #2000  
San Francisco, CA 94105

Attention: Coastal Planner

Applicant's Name: Timothy Crosby  
9 Ahab Drive  
Muir Beach, CA 94965

Coastal Permit Number: CP 09-3

Assessor's Parcel Number: 199-283-09

Project Location: 9 Ahab Drive, Muir Beach

Determination: Denied Appeal  
(Resolution of the March 31, 2009 Board of Supervisors' hearing  
are attached specifying action and applicable Conditions 1 - 35.)

Decision Date: March 31, 2009

County Appeal Period: 5 working days

Local review is now complete.

This permit IS appealable to the California Coastal Commission (see Marin County Code Section 22.56.080 attached); please initiate the California Coastal Commission appeal period.

If you have any questions regarding this project, please contact Neal Osborne at 415-499-7173.

Sincerely,

Judy Arnold  
President Pro Tem, Board of Supervisors

Attachments

**22.56.080 APPEALS TO THE CALIFORNIA COASTAL COMMISSION**

**For those coastal project permits which are approved for developments defined as "appealable" under California Public Resources Code, Section 30603 (a), an appeal may be filed with the California Coastal Commission by: (1) an aggrieved party; (2) the applicant; or (3) two members of the coastal commission. Such appeals must be filed in the office of California Coastal Commission not later than 5:00 p.m. of the tenth working day following the date of action from which the appeal is taken. In the case of an appeal by an applicant or aggrieved party, the appellant must have first pursued appeal to the county appellate body (or bodies) as established in Section 22.56.074 of the Marin County Code to be considered an aggrieved party.**

**RESOLUTION NO. 2009-26  
RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS  
DENYING THE KOHN, HYMAN, AND McDONALD APPEAL,  
SUSTAINING THE PLANNING COMMISSION'S GRANT IN PART  
OF THE KOHN, HYMAN, AND McDONALD APPEAL FROM  
THE DEPUTY ZONING ADMINISTRATOR'S DECISION,  
AND APPROVING THE CROSBY COASTAL PERMIT  
WITH CONDITIONS**

**ASSESSOR'S PARCEL 199-283-09**

**9 AHAB DRIVE, MUIR BEACH**

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**SECTION 1: FINDINGS**

- I. WHEREAS, Timothy Crosby submitted an application for Coastal Permit for a proposal to construct 1,589 square feet of additional floor area to an existing 2,058 square foot single-family residence on a 1.03-acre lot. The residence would have 3,647 square feet of floor area, resulting in an 8% Floor Area Ratio (FAR). The proposed additions would have a maximum height of 25 feet as measured from grade. The additions would have the following minimum setbacks from corresponding property lines: 30 feet front (north), 26 feet side (west), 20 feet side (east), and 138 feet rear (south). The additions would match the exterior of the existing residence with Cedar shingle siding and dark-brown and light-brown speckled composition shingle roofing. The proposal includes a new Advantex septic system, and a 5,000 square foot geothermal energy storage field. The subject property is located at 9 Ahab Drive, Muir Beach, and is further identified as Assessor's Parcel 199-283-09.
- II. WHEREAS, the Marin County Deputy Zoning Administrator held a duly noticed public hearing on December 11, 2008, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS, the Marin County Deputy Zoning Administrator determined the project would meet the requirements of development with the Local Coastal Program Unit I that is in effect in Muir Beach, made affirmative findings for a Coastal Permit, and approved the project with modified conditions of approval to eliminate the clerestory windows and lower the roof ridge along an approximately 25-foot portion of the western addition approximately 4.5 feet in height to minimize visual effects.
- IV. WHEREAS, on December 17, 2008, Brenda F. Kohn, Richard Kohn, Edward J. Hyman, and Deborah A. McDonald filed a timely Petition for Appeal from the Deputy Zoning Administrator's conditional approval asserting that the project would severely impair public viewsheds, that proper public notice and consideration of vacation plans was not provided, that the decision-making was arbitrary and capricious, and that inadequate visual analysis was provided in the staff report as paraphrased below:

- A. The project would result in extensive and injurious visual impacts to the Muir Beach viewsheds. These viewsheds are extremely important ones historically - viewsheds treasured by thousands of visitors every year. The viewsheds impacted by this project are the primary viewsheds in the Seacape and Ahab corridor that are popular with the public seeking egress from the Mt. Tamalpais area to Muir Beach and the Pacific Ocean, and from the ocean to Mt. Tamalpais. To approve this project as modified by the Deputy Zoning Administrator would render these viewsheds impaired or destroyed permanently. On December 15, 2008, a review of the new story poles constructed to show the 4.5-foot height reduction mandated by the Deputy Zoning Administrator's decision, demonstrate that the project would still result in profound impacts to the public views of Muir Beach itself, the Muir Beach cove, and a good portion of the viewshed of the hillside abutting Muir Beach, as well as other spectacular viewsheds currently available from that locale.
- B. The landscaping plan should require removal of non-natives, replacement with low-lying natives that preserve views, and include maintenance and monitoring provisions.
- C. Procedural objection due to belated or absent public notices was provided with belated or absent notification procedures. On November 26, 2008, the Kohns received a notice of public hearing concerning the Crosby Coastal Permit application. In a discussion regarding the project with Brenda Kohn, Deborah McDonald alleged that neither she nor her husband, Edward J. Hyman, had received any official notice of the project, despite living less than 100 feet from the project site.
- D. The decision-making by staff and the Deputy Zoning Administrator was arbitrary and capricious. The public notification procedures and subsequent decision-making raise the question of compliance with applicable Administrative Law, which on its face was violated by failure of due diligence once the Kohn, and McDonald-Hyman photographs were submitted, graphically demonstrating the visual impact of the project. Further, since the Kohns had received notice so late, and Drs. McDonald and Hyman not at all, their and other members of the public's further input into the hearing process was substantially eclipsed. It was an abuse of discretion not to delay the hearing so that the Kohns, who were on vacation from December 8, 2008 through December 18, 2008, including the day of the Deputy Zoning Administrator's hearing, but had expressed keen concern about the project by submitting two letters to the Deputy Zoning Administrator outlining some of their objections, could participate in person. Since the Kohns had been notified so late and because they could not attend the December 11, 2008 hearing, the Kohns requested a postponement of the hearing. That postponement was denied by staff, and then denied by the Deputy Zoning Administrator based on statutory limits. However, the Deputy Zoning Administrator had the power to continue the hearing to establish the impact of his revisions, had he proposed them at the December 11, 2008 hearing, but then postponed the final decision to the next regularly scheduled hearing date so that he and staff could consider the impact after the construction of revised story poles, without which no one understood the impact of the Deputy Zoning Administrator's revision. Since the Deputy Zoning Administrator failed to do so, and in so failing, failed to exercise

due diligence considering the major impact of the project on the public. After the December 11, 2008 project modifications made by the Deputy Zoning Administrator, the hearing should have been continued to remand the matter to staff so that staff could be provided the opportunity to determine due diligence whether or not the modification had eliminated the obstructions to the public views about which the Deputy Zoning Administrator expressed concern, and to amend the report accordingly.

- E. The staff report was substantially completed before construction of the story poles on November 26, 2008, and therefore the staff analysis in the staff report could not properly evaluate the potential visual effects of the proposal.
- V. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on February 9, 2009, to consider the merits of the Kohn, Hyman, and McDonald Appeal and the project, and hear testimony in favor of, and in opposition to, the Appeal and the project.
- VI. WHEREAS, the Marin County Planning Commission, with a 7 to 0 vote, granted the Kohn, Hyman, and McDonald Appeal in part, and approved the Crosby Coastal Permit based on findings that the project's design and location, as modified by conditions of approval, would not result in adverse effects to the surrounding neighborhood including public views of the coastline at Muir Beach cove.
- VII. WHEREAS, on February 17, 2009, Timothy Crosby filed a timely Petition for Appeal of the Planning Commission's decision asserting that the Planning Commission allowed for some additional roof height to accommodate head clearance in the proposed staircase, but this was not included in the draft Resolution made available for review during the 5 day appeal period. However, upon a detailed review of the video recording, it was confirmed that the Planning Commission did allow for some additional height, if necessary, for the ceiling height of the staircase, and upon adoption of the minutes and final Resolution including this allowance, Timothy Crosby requested withdrawal of his appeal. The Crosby Appeal was formally withdrawn on March 16, 2009.
- VIII. WHEREAS, on February 17, 2009, Richard and Brenda Kohn, Edward Hyman, and Deborah McDonald filed a timely Petition for Cross-Appeal of the Planning Commission's decision asserting that the Planning Commission made incorrect findings in approving the modified project. The appeal also asserts:
  - A. That even with the modifications imposed by the Planning Commission and Deputy Zoning Administrator to reduce the height of the additions, the project would still significantly and permanently impair the view of Muir Beach cove, the beach, and the Pacific Ocean from public rights-of-way;
  - B. The Planning Commission findings rely on improper standards for determining significant adverse view impairment that thwart, rather than further, the purposes of the Coastal Act and the Local Coastal Program;
  - C. The Planning Commission improperly determined that interim zoning regulations take precedence over the Coastal Act and the LCP insofar as the zoning regulation provides that coastal views are protected from development only when viewed from "public viewing areas", which the Planning Commission interpreted as signed vista points, platforms, or overlooks;

- D. The Planning Commission improperly interpreted the phrase "public viewing areas" to mean signed vista points, platforms, and overlooks as opposed to being a shorthand phrase for "public roads, beaches, trails, and vista points" as provided in the LCP;
  - E. The landscape plan ordered by the Planning Commission does not undo the irreparable damage to the coastal views caused by the development;
  - F. There are feasible alternatives that, if implemented, would not have a significant adverse impact on the views; and
  - G. Procedural violations at the hearing before the DZA render the initial granting of the Coastal Permit void ab initio or require that the entire process be invalidated as violating due process of law.
- IX. WHEREAS, on February 25 and 26, 2009, Timothy Crosby submitted revised plans to the Planning Division staff for consideration of substantial conformance with the design changes to the roof height and landscaping as determined by the Planning Commission conditions of approval. The revised landscape plan includes removal of some of the senescent Monterey Pine trees, and selective thinning of branches of other trees along Ahab Drive and along the public trail to improve public views of the coastline while still maintaining visual screening of the residence with new and existing landscaping.
- X. WHEREAS, the Marin County Board of Supervisors held a duly noticed public hearing on March 31, 2009, to consider the merits of the Kohn, Hyman, and McDonald Appeal, the project proposal, and hear testimony in favor of, and in opposition to, the appeal and the project.
- XI. WHEREAS, the Marin County Board of Supervisors finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15302, Class 2 of the CEQA Guidelines because it entails the addition of a large floor area equivalent to the replacement or reconstruction of an existing single-family residence, and installation of a new alternative septic system that would not result in significant visual impacts, grading or other adverse impacts on the environment.
- XII. WHEREAS, the Marin County Board of Supervisors finds that the proposed project is consistent with the mandatory findings for Coastal Permit approval pursuant to the requirements and objectives of the Local Coastal Program, Unit I (§22.56.1301 of the Marin County Code) as described below.
- A. Water Supply:

The Muir Beach Community Services District will be able to serve water to the additions to the residence on the subject property, and has reviewed and recommended approval of the proposed project.
  - B. Septic System Standards:

Marin County Environmental Health Services regulates individual sewage disposal systems in the area of the subject property. Marin County Environmental Health Services has reviewed and recommended approval of the proposed project with a new Advantex system including abandonment of the existing concrete septic tank,

installation of three fiberglass tanks, and multi-zone waste-flow pressure compensating looped dripline.

C. Grading and Excavation:

The subject property is 21% slope to 59% slope. The minor excavation for utility lines, foundation footings, piers, the septic system, and retaining walls would result in less than 100 cubic yards of excavation and fill. All grading and excavation work would be subject to the review and approval of the Department of Public Works, Land Use and Water Resources Division, to ensure consistency with Marin County requirements of Best Management Practices.

D. Archaeological Resources:

Review of the Marin County Archaeological Sites Inventory indicates that the subject property is located in an area of archaeological sensitivity. However, the minor excavation proposed would not likely disturb cultural resources because most of the site has previously been developed. Project approval requires that in the event cultural resources are discovered during construction, all work shall be immediately stopped and the services of a qualified consulting archaeologist shall be engaged to assess the value of the resource and to develop appropriate protection measures.

E. Coastal Access:

The project is located more than ¼-mile inland of the Pacific Ocean at an elevation of approximately 210 feet above sea level and would not impede coastal access.

F. Housing:

The proposed project would result in the addition of floor area to an existing single-family residence and would not result in removal of a building that provides housing opportunities for people of low or moderate income, and would not affect the availability of housing stock within the Muir Beach community.

G. Stream Conservation Protection:

The project site is not located near a creek or in an area subject to the streamside conservation policies of the Marin Countywide Plan or Local Coastal Program.

H. Dune Protection:

The project site is not located in a dune protection area as identified by the Natural Resources Map for Unit I of the Local Coastal Program.

I. Wildlife Habitat:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is located in an area of sensitive wildlife resources. Also, review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is located adjacent to the habitat area for the federally listed endangered Monarch Butterfly (Danaus plexippus). However, the project will have minimal impact to the value of the known habitat area because it involves the construction of additions to a single-family residence within the existing developed area of Muir Beach more than ½-mile from known nesting trees.



J. Protection of Native Plant Communities:

The Natural Resources Map for Unit I of the Local Coastal Program indicates that the subject property is not located in an area containing rare plants. A review of the California Natural Diversity Data Base, prepared by the State Department of Fish and Game, indicates that the subject property is not located in the habitat area for rare, threatened, or endangered plant species. In addition, the relatively small-scale project on previously disturbed property would not have an adverse impact on the habitat of native plant communities.

K. Shoreline Protection:

The subject property is not adjacent to the shoreline, and the proposed project would not result in adverse effects to the shoreline. The project would not require additional shoreline protection.

L. Geologic Hazards:

The project site is located within 3 miles of the San Andreas Fault Zone and would be subjected to strong ground shaking during a proximate seismic event. The Marin County Community Development Agency - Building Inspection Division will determine seismic compliance with the Uniform Building Code. In addition, as a condition of project approval, the applicant shall execute and record a waiver of liability holding the County, other governmental agencies and the public, harmless of any matter resulting from the existence of geologic hazards or activities on the subject property or in the region.

M. Public Works Projects:

The proposed project does not entail expansion of public roads, flood control projects, or utility services.

N. Land Division Standards:

No land division is proposed as part of this project.

O. Visual Resources:

The project would be located in the upper portion of the property and would not result in adverse visual effects. The exterior materials would be unobtrusive brown natural cedar siding and trim, Forest Green and Chellea Blue window casing and door paint, and brown and tan speckled composition roof shingles. The lighting of the exterior would be of minimal lumen intensity for safety purposes only, and would be directed downward and hooded.

P. Recreation/Visitor Facilities:

The project site is not governed by VCR (Village Commercial Residential) zoning regulations, that would allow for a mixture of residential and commercial uses, and the project would have no effect on recreation or visitor facilities.

Q. Historic Resource Preservation:

The existing residence on the subject property was constructed within the last 30 to 40 years and is not historically significant.

- XIII. WHEREAS, the Marin County Board of Supervisors finds that the bases for the Kohn, Hyman, and McDonald Appeal cannot be sustained and that the Planning Commission acted appropriately in approving the Crosby Coastal Permit with conditions based on the following factors:

Bases of Appeal:

As stated in Section VIII above, the appeal alleges that the location and design of the proposed residential development proposed for the Crosby property would not fit into the historic scenic qualities of the neighborhood along Ahab Drive, and would impair views from the public beach access trail that connects the Mt. Tamalpais environs to Muir Beach. The view from the public trail is a unique and important view of Muir Beach cove, the beach, and the Pacific Ocean. The project would severely impair the public views to the beach along the frontage of the Crosby lot and from the public trail along the west side property line. The appeal asserts that even with the modifications imposed by the Planning Commission to reduce the height of the additions, the project would result in significant impairment of views of Muir Beach cove, the beach, and the Pacific Ocean from public rights-of-way. Additionally, the appeal asserts that the Planning Commission relied on improper standards for determining significant adverse view impairment that thwart, rather than further, the purposes of the Coastal Act and the Local Coastal Program (LCP). The Planning Commission improperly determined that interim zoning regulations take precedence over the Coastal Act and the LCP regarding the requirement to protect coastal views only when viewed from "public viewing areas" such as signed vista points, platforms or overlooks; rather than "public roads, beaches, trails, and vista points" as provided in the LCP. The landscape plan required by the Planning Commission would not undo the irreparable damage to the coastal views caused by the development. There are feasible alternatives that, if implemented, would not have a significant adverse impact on the views. Finally, procedural violations at the DZA hearing render the initial granting of the Coastal Permit invalid from the outset, or require that the entire process be invalidated as violating due process of law.

Response to Appeal:

The bases of appeal are without merit because the project would not result in substantial adverse impacts to public views.

- A. The development project would be consistent with the policies and goals in the Local Coastal Program Unit I because the additions would not substantially impair coastal views from public vantage points. The additions would have minor visual effects along a small view window along Ahab Drive and along the public trail. However, the visual effects are not considered substantial because the effects are relatively small in relationship to the overall panoramic views available to the public from the street and the trail. The public vantage points are from public rights-of-way where people are typically in motion to reach a destination, and consequently the proposed additions would only temporarily affect views. The view impacts would be fleeting and soon disappear as a person moves further along the public way to reach their destination. The transitory and short-term visual effect is acceptable within the

residential community of the Seacape Subdivision, and not considered to be a substantial view impact to public views.

- B. The Planning Commission made its decision to grant the appeal in part, and approve the project with design modifications required as conditions of approval based on factual evidence in the administrative record and affirmative Coastal Permit findings that, as modified to further reduce the height of the proposed additions to the single-family residence, the project would not result in substantial impairment of public views of the coastline. The Planning Commission made an informed decision after review of the administrative record, including the Deputy Zoning Administrator's conditional approval of the project, additional correspondence, and public testimony. The Planning Commission determined that the visual effects of the project would not substantially affect public views of the scenic coastline. The additions to the residence would meet the code requirements for location by clustering development on the sides of the existing residence within the prescribed C-RA:B4 building envelope, and a minimum of 30 feet from the front property line along Ahab Drive. The design of the residential additions to the existing residence would result in minor effects to the surrounding community and properly balance private property rights with public and neighborhood community rights.
- C. The design of the residence would meet the code requirements for location and design with minor effects to the surrounding community. The location 30 feet from the Ahab Drive, 26 feet from the west side property line, and 20 feet from the east side property line on a very steep 50% slope downhill lot would minimize grading and site disturbance. The project would comply with the intent of the Single-family Residential Design Guidelines for a hillside lot. The maximum height of 25 feet would comply with the 25-foot height limit and would not substantially obstruct important public scenic views in the neighborhood because the maximum height is a ridge parallel to the contours near Ahab Drive. The residence would have relatively small amount of bulk downslope on the lot as a result of the location that maintains a compact building footprint on essentially the same contours as the existing residence. The conformance with these yard standards would provide ample coastal views for the public along the trail through the central and lower portions of the site.
- D. As a condition of approval, a Landscape Plan shall be prepared, and upon review and approval by Planning Division staff, implemented by the applicant to preserve views from Ahab Drive and the public trail through selective pruning and removal of the existing trees that currently impair coastal views. A condition of approval requires that no new landscaping, structures, or fences that would obstruct coastal views shall be constructed or planted along the entire length of the public trail stairs and along Ahab Drive.
- E. The visual effects of the project would be typical of a moderate to large size single-family residence in the Muir Beach community along Ahab Drive without adverse visual, privacy, light, air, or slope stability effects to surrounding properties. The two-story design is well articulated and steps down the slope, minimizing the overall footprint of site disturbance and impermeable surface areas in relation to the overall floor area of the residence.

- F. All the required findings for Coastal Permit can be made for the proposed 1,589 square feet of additional floor area to an existing 2,058 square foot single-family residence for a 3,647 square foot single-family residence at 9 Ahab Drive. The size is comparable and compatible with neighboring single-family residences in the vicinity with an 8% Floor Area Ratio. Substantial panoramic scenic views of the coastline and hills would be maintained for the public traveling along Ahab Drive and along the public trail on the west side of the site. The project is consistent with the intent of the Local Coastal Program Unit I and Titles 22 and 24 of Marin County Code.
- G. Proper procedures were followed by staff and the Deputy Zoning Administrator with decisions made supported by findings of fact based on evidence in the administrative record, site inspections for visual and scenic quality analysis, discussions with a neighbor at their property, review of e-mail, telephone calls, and other correspondence from neighbors, agencies, and interested parties. The 1,589 square feet of additions proposed on the sides of the existing residence would match the design of the existing residence with articulated forms with a variety of roof elements, decks, three dimensional forms, and roof heights that minimize the overall bulk of the structure, and minimizes site disturbance and the visual appearance of the development on a steep lot downslope of Ahab Drive.

## **SECTION 2: CONDITIONS OF PROJECT APPROVAL**

NOW, THEREFORE, LET IT BE RESOLVED, that the Board of Supervisors denies the Kohn, Hyman, and McDonald Appeal, and sustains the Planning Commission's approval of the Crosby Coastal Permit application subject to the following modified conditions:

1. Pursuant to Marin County Coastal Zoning Code Section 22.56.130I, this Coastal Permit approval permits the construction of 1,589 square feet of additional floor area to an existing 2,058 square foot single-family residence on a 1.03-acre lot. The residence would result in 3,647 square feet of floor area with an 8% Floor Area Ratio (FAR). The approval permits a residence with a maximum height of 25 feet as measured from finished exterior average grade (an elevation of 240 feet asl). The approval permits additions with the following minimum setbacks from corresponding property lines: 30 feet front (north), 26 feet side (west), 20 feet side (east), and 138 feet rear (south). The approval permits additions that would match the exterior of the existing residence with Cedar shingle siding and dark-brown and light-brown speckled composition shingle roofing. The approval permits a new Advantex septic system and a 5,000 square foot geothermal energy storage field. The subject property is located at 9 Ahab Drive, Muir Beach, and is further identified as Assessor's Parcel 199-283-09.
2. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit revised plans to the Director for review and approval that indicate elimination of the entire clerestory window area from the western addition to reduce the maximum height of this portion of the western addition approximately 4.5 feet, except where additional roof height is necessary to provide interior headroom above the staircase in compliance with the California Building Code. The revised plans shall also delete the dormer from the eastern addition.

3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a Landscape Plan to the Director for review and approval that indicates preservation of views from Ahab Drive and the public trail through selective pruning of the existing trees. No new landscaping, structures or fences that would obstruct coastal views shall be constructed or planted along the entire length of the public trail stairs and along Ahab Drive.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, these Conditions of Approval shall be recorded on the Title of the subject property to alert future owners of the conditions for preservation of public views.
5. Except as modified herein, plans submitted for a Building Permit for the approved project shall substantially conform to plans on file in the Marin County Community Development Agency, Planning Division, identified as Exhibit A, "Alterations and Additions to a Residence for Tim Crosby" consisting of 19 sheets prepared by Richard M. Beckman, Architect and Eckman Environmental, Corp., date stamped October 17, 2008; and Exhibit B, "Exterior Building Material Samples".
6. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Coastal Permit Conditions of Approval as notes.
7. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall record a Waiver of Public Liability holding the County of Marin, other governmental agencies, and the public harmless because of loss experienced by landslides, earthquakes, and other geologic actions. The Waiver of Public Liability shall be submitted to the Director for review and approval before recordation.
8. BEFORE ISSUANCE OF A BUILDING PERMIT for any of the work identified in Condition 1 above, the applicant shall install temporary construction fencing around the dripline of the existing trees to be saved in the vicinity of any area of trenching, excavation, grading, construction, materials storage, soil stockpiling, materials storage, or other construction activity. The construction fence is intended to protect existing trees during construction and shall remain in place until all construction activity is complete. To verify compliance with this condition, the applicant shall submit a copy of a plan of the temporary tree protection fence design and location, and site photographs confirming installation of the fencing to the Community Development Agency, Planning Division for review and approval.
9. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a signed Statement of Conformance demonstrating that the project qualifies for a "Certified" or better rating under the Marin Green Home: New Green Building Residential Design Guidelines. The Building Permit shall include specifications demonstrating compliance with all construction-related measures that are used to meet the "Certified" or better rating.
10. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall have a licensed land surveyor or civil engineer with proper certification conduct a survey of the front (north) property line and install property line markers that can be readily verified by the Building and Safety Inspection staff to verify building locations and submit a written (stamped) confirmation to the Planning Division confirming that the staking of the property lines has been properly completed. The requirement for new survey markers may be waived if proper survey markers already exist at the site and can be used by the Building and Safety Inspection staff to definitively measure building locations in relationship to property lines.

11. BEFORE APPROVAL OF THE FRAMING INSPECTION, the applicant shall have a licensed land surveyor or civil engineer with proper certification submit a written (stamped) building height survey confirming that the building additions conform to the maximum roof ridge elevations (240 feet above sea level [asl]), and the reduced height of the western addition pursuant to Condition of Approval 2 above, as shown on the approved Building Permit plans and based on a benchmark that is noted on the plans.
12. BEFORE FINAL INSPECTION, the applicant shall submit a signed Statement of Completion confirming that the project has been constructed in compliance with all of the measures that were used to meet the "Certified" or better rating under the Marin Green Home: New Green Building Residential Design Guidelines.
13. All flashing, metal work and trim shall be an appropriately subdued, non-reflective color and all exterior lighting shall be the minimum lumen intensity for safety purposes only, downward directed, and hooded.
14. During construction, the applicant shall take all appropriate measures, including watering of disturbed areas and covering the beds of trucks hauling fill to or spoils from the site, to prevent dust from grading and fill activity from depositing on surrounding properties.
15. All soil disturbed by development of the project shall be reseeded with native, non-pyrophytic, groundcover or adequately stabilized with approved Best Management Practices to prevent soil erosion.
16. The applicant shall be responsible for ensuring that the number of construction vehicles shall be limited to the minimum number necessary to complete the project.
17. No trees, except those approved for removal with this project, shall be removed except to comply with local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, and to prevent safety hazards to people and property.
18. Any new utilities proposed to serve the approved project shall be underground.
19. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources. Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.

20. All construction activities shall comply with the following standards:
- a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
  - b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
21. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul an approval of (1,589 square feet of additional floor area to an existing 2,058 square foot single-family residence on a 1.03-acre lot, resulting in a 3,647 square foot residence with an 8% Floor Area Ratio [FAR]), for which action is brought within the applicable statute of limitations.
22. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
23. A defensible space zone (minimum of 30 feet to 100 feet) and Vegetation Management Plan (VMP) pursuant to the Wildland Urban Interface Ordinance is required. At a minimum, the VMP must contain a site plan showing the existing vegetation (including existing trees) and those proposed to be added and/or removed, the proposed structures with their defensible space zone delineated, plant types, and spacing. The VMP must also contain a list of proposed plants that are consistent with an approved (non-pyrophytic) plant list. Please see the Marin County Fire Department Prevention Bureau Defensible Space Standard, which may be downloaded from our web site ([www.marincountyfire.org](http://www.marincountyfire.org)).
24. The defensible space stipulated in the Vegetation Management Plan must be provided and annual maintenance is required. Trees shall not be planted in a location that, when mature, said trees will contact overhead power lines. No pyrophytic plants shall be planted within 30 feet of the structure.
25. During the fire season, firewood must be stored inside a fully enclosed structure, or stored a minimum of 30 feet away from any building.



26. The LPG tank location must be approved by the Fire Department. Seismic bracing, seismic shutoff device or excess flow device per Marin County Building and Safety Division standards is required and must be maintained. The minimum defensible space requirement must be maintained – no combustible materials within 15 feet of any part of the tank.
27. Residential Sprinkler System (design approval and site inspection by the Marin County Building and Safety Division). As part of the sprinkler system installation, a spare sprinkler head cabinet containing two spare sprinkler heads, and the applicable sprinkler head wrench will be required prior to final approval of the sprinkler system.
28. Class "A" roofing design approval and site inspection by the Marin County Building and Safety Division.
29. Smoke detectors shall be installed in accordance with the Uniform Building Code.

Department of Public Works, Land Use and Water Resources

30. All Improvements shall conform to Title 24 of the Marin County code or as approved by DPW and the Fire Department.
31. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall fulfill the following requirements:
  - a. The plans shall be reviewed and approved by a Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer. Certification shall be either by the engineer's stamp and signature on the plans, or by stamp and signed letter.
  - b. A registered Engineer shall design all new site/driveway retaining walls, drainage, and grading plans. Plans must have the engineer's signature and stamp.
  - c. A separate Building Permit is required for site/driveway retaining walls with a height more than 4 feet (or 3 feet when backfill area is sloped, or has a surcharge).
  - d. Submit an Erosion and Siltation Control Plan. The Plan shall indicate the total acreage of site disturbance.
  - e. Plans must show any site work, such as grading, retaining walls, and drainage plan.
  - f. An Encroachment Permit shall be required for work within the road right-of-way.

Marin County Environmental Health Services

32. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall satisfy requirements of Chapter 18.06 in County of Marin Code to obtain an on-site sewage disposal construction permit from Environmental Health Services that is adequate for the proposed project pursuant to Septic Permit 08-14A.





**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE

45 FREMONT STREET, SUITE 2000

SAN FRANCISCO, CA 94105-2219

VOICE (415) 904-5260 FAX (415) 904-5400

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT****Please Review Attached Appeal Information Sheet Prior To Completing This Form.****SECTION I. Appellant(s)**

Name: Dr. Edward J. Hyman, Dr. Deborah A. McDonald / Brenda Kohn, Richard Kohn

Mailing Address: 39 Seacape Drive (Hyman-McDonald) 5 Ahab Drive (Kohns)

City: Muir Beach Zip Code: 94965-9760 Phone: 4153884479/ 3838220

**SECTION II. Decision Being Appealed****RECEIVED**

APR 24 2009

CALIFORNIA  
COASTAL COMMISSION

1. Name of local/port government:

Marin County Board of Supervisors

2. Brief description of development being appealed:

Application of Timothy Crosby for a Coastal Permit to construct 1589 sq. feet of additional floor area to an existing 2058 sq. foot single family residence on a 1.03 acre lot.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

9 Ahab Drive, Muir Beach, CA 94965 / Assessor's Parcel Number 199-283-09.

4. Description of decision being appealed (check one.):

- ☐ Approval; no special conditions
- ☒ Approval with special conditions:
- ☐ Denial

**Note:** For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

**TO BE COMPLETED BY COMMISSION:**

APPEAL NO:

A-2-MAR-09-010

DATE FILED:

April 24, 2009

DISTRICT:

North Central Coast Dist

**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 2)**

5. Decision being appealed was made by (check one):

- ☐ Planning Director/Zoning Administrator  
☒ City Council/Board of Supervisors  
☐ Planning Commission  
☐ Other

6. Date of local government's decision: March 31, 2009

7. Local government's file number (if any): Application No. CP09-3

**SECTION III. Identification of Other Interested Persons**

Give the names and addresses of the following parties. (Use additional paper as necessary.)

a. Name and mailing address of permit applicant:

Timothy Crosby, 9 Ahab Drive, Muir Beach, CA 94965

b. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

(1) Lonna Richmond, 45 Sunset Way, Muir Beach, CA 94965

(2) James L. Auchincloss, 707 Benjamin Court, Ashland, OR 95720-1699

(3) Jagjit S. Sekhon, Esq., 5112 Churchill Avenue, Westminster, CA 92683

(4) Jeffrey Roven, 780 Crystal Lane, Santa Cruz, CA 95062

**Section IIIb Identification of other Interested Persons, continued:**

- (5) Gary Friedman and Patricia McCall, 175 Sunset Way, Muir Beach, CA 94965
- (6) Brad and Lisa Eigsti, 27 Starbuck Drive, Muir Beach, CA 94965
- (7) Rene Boeche and Bob Bowyer, 34 Seacape Drive, Muir Beach, CA 94965
- (8) Harvey Pearlman, 160 Pacific Way, Muir Beach, CA 94965
- (9) Lynda Grose Silva and Matthew Silva, 190 Sunset Way, Muir Beach, CA 94965
- (10) Robert Wynn, 21 Ahab Drive, Muir Beach, CA 94965
- (11) Michael Moore, 51 Seacape Drive, Muir Beach, CA 94965
- (12) Marilyn Laatsch, 180 A Sunset Way, Muir Beach, CA 94965
- (13) Dan Fitzpatrick, 200 Sunset Way, Muir Beach CA 94965
- (14) Linda Hulley and Stephen Hulley, 54 Seacape Drive, Muir Beach, CA 94965
- (15) Pam Barlow and Bruce Barlow, 105 Sunset Way, Muir Beach, CA 94965
- (16) Christine Curtis, P.O. Box 296, Mill Valley, CA 94942
- (17) Maury Ostroff, Muir Beach CSD, 19 Seacape Drive, Muir Beach, CA 94965
- (18) Elizabeth Benedict, 17 Ahab Drive, Muir Beach, CA 94965
- (19) Gail Falls, 33 Ahab Drive, Muir Beach, CA 94965
- (20) Richard Beckman, 1506 Komedal Road, NE, Bainbridge Island, WA 98110
- (21) Sierra Club–Marin Group, P.O. Box 3058, San Rafael, CA 94912
- (22) Hank and Mariatite Gehman, 5 Canyon Road, Berkeley, CA 94705
- (23) John Radu, Rodica Radu, Emmanuel Radu, Daniel Radu, Naomi Radu, and Cristina Radu, 4913 Melvin Drive, Carmichael, CA 95608
- (24) Adina Caza, Roger Caza, Paul Caza, Simina Caza, Lillian Ruth Caza, 5191 64<sup>th</sup> Street, Sacramento, CA 95820

- (25) Oana M. Gavrilescu, 7724 36<sup>th</sup> Avenue, Sacramento, CA 95823
- (26) Iosif Caza, 1767 Tribute Road, Suite F, Sacramento, CA 95815
- (27) Kathy Sward, 200 Pacific Way, Muir Beach, CA 94965
- (28) David Gilbert, P.O. Box 1009, Tiburon, CA 94920
- (29) David Gilbert, 10 Beach Road, Belvedere, CA 94920
- (30) Bill Shideler, 21 Melville Avenue, San Anselmo, CA 94960
- (31) Barbara Schoenfeld, 55 Seacape Drive, Muir Beach, CA 94965
- (32) Bob and Dee Hayden, 35 Seacape Drive, Muir Beach, CA 94965

## **APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)**

### **SECTION IV. Reasons Supporting This Appeal**

#### **PLEASE NOTE:**

- Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section.
- State briefly **your reasons for this appeal**. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)
- This need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

#### **INTRODUCTION**

This appeal will determine whether the Coastal Act and the LCP which implements it have effectively been repealed in Marin County. Directly at stake in this case is whether a spectacular coastal view of Muir Beach cove, Big Beach, the ocean and adjacent viewsheds visible from public roads and trails will be destroyed forever by the Crosby project. Attachment 1, Exh.A. But the real issue is what standard of review is required by the Coastal Act and the LCP.

The Marin County Planning Staff invented, out of thin air, illegal and outcome-determinative criteria that thwart, rather than advance, the objectives of the Coastal Act. These standards were adopted by the Planning Commission, and then ratified by the Board of Supervisors. The decision-making was fatally infected from the beginning. If the correct and lawful criteria are applied, the Crosby permit would be denied because the proposed project has a significant adverse impact on a spectacular view from public roads and trails and because the project has not, to the maximum extent feasible, sought to preserve that view. If, on the other hand, this permit is granted, the Coastal Act and LCP would be toothless and no coastal permit could ever be denied, no matter how destructive of coastal views. This is a landmark case.

1. This appeal raises substantial issues under the Coastal Act and the Marin County LCP (Unit 1)

Pursuant to Section 30604(b) of the California Coastal Act, "a coastal development permit shall be issued if the issuing agency or the commission on appeal finds that the proposed development is in conformity with the certified local coastal program." The importance of this appeal lies in the fact that it addresses what are the proper criteria to be utilized in applying this standard of review.

For example, does the Coastal Act only protect visual coastal resources that are visible from public vantage points such as designated overlooks and viewing platforms? What constitutes a significant impairment? If there are other panoramic views in the area, does that justify obliterating a view of singular beauty that can only be enjoyed by the public from one place on the adjacent public road or trail? Does the Coastal Act or LCP support a theory that obliterating such a view is acceptable if the obstruction is only transitory as a person proceeds to her ultimate destination? (The Marin County Planning Commission and the Board of Supervisors answered these questions in the affirmative). Or, as the Appellants contend, does *LT-WR, L.L.C. v. California Coastal Commission*, 60 Cal. Rptr. 3d 417, 437-440 (Cal. App.2d Dist. 2007), prescribe the proper approach to determining whether a proposed development project conforms to the visual resource provisions of the California Coastal Act? (Under

California law, lower courts and agencies are required to follow decisions of the state courts of appeal unless they are appealed to the California Supreme Court).

This matter was heard by the Marin County Board of Supervisors (4 of 5 present) on March 31, 2009. The supervisors affirmed action taken by the Marin County Planning Commission granting a coastal development permit (CDP) with conditions, and made no changes. The supervisors adopted a Resolution reiterating language identical to that in which the Planning Commission set forth the improper standards to be used in determining whether a proposed development meets the requirements of the Coastal Act and other applicable law. (Par 8C of the Resolution adopted by the Planning Commission now appears as Par.XIIIA of the Resolution adopted by the Board of Supervisors). If not repudiated, these illegal and result-oriented standards will completely eviscerate the Coastal Act and the LCP which implements it in Marin County.

In addition to applying incorrect legal standards, the Board of Supervisors applied improper and legally irrelevant considerations. For example, Supervisor Kinsey voiced his concern that the Applicant should not be held accountable even though his architect, Richard Beckman, had "missed an opportunity to protect this jewel of a view" and that a "sensitive architect should have done that." If the architect failed to apprise the Applicant that his design would present problems under the Coastal Act, that proper recourse for Mr. Crosby is his architect's malpractice insurance, not violating the requirements of the Coastal Act.

Supervisor Kinsey thought it was significant that other projects in Muir Beach, cited by the Applicant, had been approved in the past. In fact, none of these projects eclipsed a stunning view of the coast, as the Crosby project does. He believed that decisions such as this one should be decided by the Muir Beach community in the context of its Community Plan, totally ignoring the fact that the Coastal Act has declared California's scenic coastal resources to be a matter of statewide and nationwide concern. Calif. Coastal Act Sec. 30001(b).

Both Supervisor Kinsey and Supervisor Adams felt that they could not second-guess the decision made by the Planning Commission, ignoring the fact that de novo review means taking a fresh look at the law and the facts. In refusing to take that fresh look, the Board of Supervisors perpetuated the same mistakes made by the Planning Commission. If you apply the wrong standards, you are bound to reach the wrong result, which is what happened here.

In addition, as reported in the April 9, 2009 edition of the West Marin Citizen, Supervisor Kinsey said in an interview about this case that "[t]he language of the law does not provide for the protection of 'micro' views." Attachment 2. What is the legal authority for such a statement? Neither the Coastal Act nor the LCP distinguish between 'micro' and 'macro' views: they protect all views to scenic resources within the coastal zone.

The foregoing examples are illustrative of arbitrary and capricious decision-making at its worst. It now lies with the California Coastal Commission to apply the Coastal Act and the LCP as it was intended to be applied by the legislature and to strip away the misconceptions and irrelevant and improper considerations that fatally tainted the proceedings below. This appeal presents the Commission with a clear record and a perfect opportunity to resolve these critical interpretive issues. The outcome will determine the meaning of the Coastal Act not only in Marin County but throughout the State of California, since whatever the Commission decides will become the applicable statewide standard.

## II. This appeal lies within the jurisdiction of the California Coastal Commission

This appeal directly implicates the California Coastal Act, the Marin County LCP (Unit 1), related ordinances and the Muir Beach Community Plan. To avoid having to restate those provisions, we have attached the first six pages of the written argument that Appellants submitted to the Marin County Board of Supervisors summarizing the Issues Presented by the appeal and the relevant statutes and other legal authority on which this appeal is based. See Attachment 1. These materials are expressly incorporated by reference as though fully set forth herein.

The issues Appellants present for review to the Coastal Commission are the same as those presented to the Marin County Planning Commission and the Marin County Board of Supervisors, and are based on the same legal authority. See, Attachment 1 pp. 3-4. In this connection, in addition to the issues and authority cited in Attachment 1, pp. 3-6, Appellants contend that the proposed development violates the Muir Beach Community Plan which states: "We are concerned with the often destructive effects of new construction and remodeling of homes which are not consistent with the small-scale residential character of the old community. Future construction and remodeling should be consistent with surrounding residences and show consideration for neighboring views and privacy. Existing ordinances must be strictly construed." The Planning Department ruled that the Muir Beach Community Plan was not incorporated into the LCP but further research has convinced the Appellants that this is not the case. This additional issue and authority were presented to both the Planning Commission and the Board of Supervisors and thus has been preserved for review.

In addition, Appellants now wish to raise an issue that arose for the first time before the Board of Supervisors. That issue is whether the Marin County Planning Department violated elementary principles of administrative law by providing the Board of Supervisors with only an abbreviated administrative record. This was prejudicial to the Appellants. For example, eight of ten letters in opposition to the proposed project, many of them from visitors to Muir Beach, were not forwarded to the Board of Supervisors and were never seen by them. If this issue lies outside the jurisdiction of the California Coastal Commission, then it is our intent to preserve it for eventual judicial review if that should become necessary. We respectfully request the Coastal Commission to require the Planning Department to forward the entire administrative record to it in connection with this appeal so that the Commission may be fully informed.

## CONCLUSION

This appeal lies squarely within the jurisdiction of the California Coastal Commission and raises relevant and substantial issues of profound importance regarding the application of the California Coastal Act and of the Marin County LCP (Unit 1). We urge the Commission to make a finding that this appeal raises substantial issues, accept jurisdiction, and, after due consideration, deny the Crosby application for a coastal development permit.

To support our appeal request, we will submit in early May additional materials containing a comprehensive discussion of the issues that we raise in this matter.



**BEFORE THE MARIN COUNTY BOARD OF SUPERVISORS**

**Appeal from the Planning Commission's Decision re: Timothy  
Crosby Application for a Coastal Development Permit  
Application No. CP09-3**

**Hearing Date: March 31, 2009**

**Argument on behalf of Appellants Richard and Brenda Kohn,  
Dr. Edward Hyman and Dr. Deborah McDonald**

**INTRODUCTION**

This appeal raises two of the most important questions to arise under the Coastal Act since its inception in 1976: (1) whether the protections of the Act extend only to scenic views from designated and signed public viewing sites like overlooks and (2) what constitutes a *significant* impairment of a scenic view under the Act and the Local Community Plan Unit 1 (LCP) that implements it.

What is at stake in this particular case is a view of unparalleled beauty of Muir Beach cove, Big Beach and the Pacific Ocean. (EXH. A) If permitted, the development will extinguish that view permanently, certainly until long after everyone connected with this controversy has passed on. But the ramifications go far beyond that one view. Any similar issue coming before the Marin County Planning Commission will be judged by incorrect standards that were applied in this case, and, one by one, the coastal views from public-rights-of-way will vanish.

The Appellants contend that an impairment is significant if it blocks a scenic coastal viewshed from public rights-of-way such as public roads, beaches and trails, as well as designated vista points. The Planning Commission held that only views from a public vantage point, viewing platform or overlooks are protected. The Commission adopted a Resolution which states that views from public rights-of-way are only transitory and short term as a person proceeds to her ultimate destination and, therefore, are unworthy of protection. The Commission also held that a view is not significantly impaired if there are other panoramic viewsheds in the area. Two commissioners believe that only views of natural resources that have been specifically designated as scenic resources in the LCP are protected. If these standards are not decisively repudiated, the Coastal Act and its purpose of protecting scenic coastal views will be utterly meaningless.

The Planning Commission applied the wrong legal standards and reached the wrong result. They went astray because there is a direct conflict between the Land Use Plan of the LCP and the Interim Zoning Ordinance regarding visual resources, and they failed to heed the advice of their own staff, Tom Lai, that in the event of a conflict, the LCP governs. If the correct legal standards

are applied, the Appellants will prevail and views of unique quality and character will be maintained. That would be good public policy because it will preserve the scenic coastal views for present and future generations of visitors to Muir Beach, as well as residents of the community. It will also ensure that future permit applications that interfere with coastal views in Marin County will be properly evaluated applying correct legal standards.

There are only three questions:

- (1) Does the project impair the view from public streets or trails? Yes.
- (2) Is the impairment substantial? Yes.
- (3) Does the design, to the maximum extent feasible, preserve the view? No.

For the reasons stated herein, we respectfully urge the Board of Supervisors to deny the coastal permit for this development. The Applicant may then submit a new application, if he so desires, that is compatible with the Coastal Act and the LCP.

## **PROCEEDINGS BELOW**

### ***The Staff Report***

This proposed development would add 1589 square feet of additional floor area to an existing 2058 square foot single family residence. The original staff report, written prior to the erection of story poles, stated that "The height of the residence would not block any public views of the Pacific Ocean or other significant viewsheds in, and around, Muir Beach." Once story poles were erected, it was obvious that the development would eclipse a stunning view of Muir Beach cove, beach, hillside and ocean from Ahab Drive and from the top of the public easement that parallels the Crosby lands and leads down to Big Beach.

### ***The DZA Decision***

The hearing before the Deputy Zoning Administrator (DZA) was not duly noticed. In addition, a request by the Kohn appellants for a continuance was denied in violation of the applicable regulations. At the hearing, which took place without the participation of the Kohns, the DZA ordered the Applicant to eliminate the clerestory windows on the western side thereby lowering the 33 foot roofline by 4 ½ feet. Based upon a representation by the Applicant's architect that this would necessitate redesigning an interior staircase, the DZA said that he would allow them 8 lineal feet at the higher elevation. Photographs taken after the erection of new story poles revealed that the public view from Ahab Drive and the top of the public easement continued to be substantially impaired. Appellants appealed to the Planning Commission.

### ***The Planning Commission Decision***

All of the Commissioners who visited the site agreed that the view of Muir Beach cove and

environs would be impaired by the development. But they did not agree that the impairment of the view was a significant one. They adopted the following standard:

“The development project would be consistent with the policies and goals in the Local Coastal Program Unit 1 because the additions would not substantially impair coastal views from public vantage points. The additions would have minor visual effects along a small view window along Ahab Drive and along the public trail. However, the visual effects are not considered substantial because the effects are relatively small in relationship to the overall panoramic views available to the public from the street and trail. The public vantage points are from public rights-of-way where people are typically in motion to reach a destination, and consequently the proposed additions would only temporarily affect views. The view impacts would be fleeting and soon disappear as a person moves further along the public way to reach their destination. The transitory and short-term visual effect is acceptable within the residential community of the Seacape Subdivision, and not considered to be a substantial view impact.”

In spite of this, the Planning Commission granted the appeal in part. It imposed new conditions on the permit. The Commission ordered that the dormer window on the east side be eliminated. With respect to the need for additional height on the west side, after reviewing the plans and hearing from the Applicant's architect, Chairman Dickenson stated that he was “absolutely convinced” that the clerestories were not necessary. However, the Applicant was given permission to submit revised design plans. The issue of the west side clerestory windows was delegated to staff, and no revised plan has yet been submitted by the Applicant. The Commission rejected the Appellants' request that the permit be denied and refused to consider Appellants' procedural objections on the ground that their review was *de novo*.

### **ISSUES PRESENTED**

1. Even after modifications imposed by the DZA and the Planning Commission, the development still significantly and permanently impairs the view of Muir Beach cove, the beach, the hillside and the Pacific Ocean from Ahab Drive and the top of the public easement leading to the Pacific Ocean.
2. The Resolution adopted by the Planning Commission applies improper standards for determining significant adverse impairment that thwart, rather than further, the purposes and objectives of the Coastal Act and the LCP. These improper considerations are found in Section VIII C of the Resolution and in statements made by the commissioners during the hearing on Feb. 9, 2009.

3. The Planning Commission improperly determined that interim zoning regulations take precedence over the Coastal Act and the LCP insofar as the zoning regulation provides that coastal views are protected from development only when viewed from “public viewing places”, which the Planning Commission interpreted as signed vista points, viewing platforms or overlooks.
4. The Planning Commission improperly interpreted the phrase “public viewing places” to mean signed vista points, viewing platforms and overlooks as opposed to being a shorthand phrase for “public roads, beaches, trails and vista points” as provided in the LCP.
5. The landscape plan ordered by the Planning Commission does not undo the irreparable damage to the coastal views caused by the development.
6. There are feasible alternatives that, if implemented, would not have a significant adverse impact on the views.
7. Procedural violations at the hearing before the DZA render the initial granting of the coastal permit void ab initio or require that the entire process be invalidated as violating due process of law.

#### **PERTINENT STATUTES AND OTHER AUTHORITY**

Section 22.56.0951 of the Marin County Code states that “A coastal project permit shall be approved only upon findings of fact establishing that the project conforms to the requirements and objectives of the local coastal program.”

The “Local Coastal Program” (LCP) is a “local government’s (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions which, when taken together, meet the requirements of, and implement the provisions and policies” of [the Coastal Act] at the local level.”

The Introduction to the Marin County LCP Unit 1 provides, in relevant part:

“This document is the Land Use Plan for the Local Coastal Program (LCP) for Unit 1 of the Coastal Zone of Marin County.....”

\*\*\*\*\*

“The purpose of the Local Coastal Program is to ensure that the Local government’s development plans, policies, *and ordinances* conform to the policies of the Coastal Act of 1976. The Act’s goals are to protect and conserve the State’s coastal resources and to maximize public use and enjoyment of them. The policies of the Coastal Act, Chapter 3, have

formed the basis for the policies contained within this document. Where any question is raised concerning the interpretation of policies within the LCP, Chapter 3 of the Coastal Act may be used to provide clarification of LCP policies. In preparing the ordinances that will implement this LCP, *minor* modification to a small number of policies has been made. The implementing ordinances shall be used to provide clarification of policies as necessary.”

LCP p.1 (emphasis added).

The Section of the LCP captioned Visual Resources, states:

Coastal Act policies on visual quality, found in Section 30251, require the protection of scenic and visual resources of coastal areas. Visual resources, including beaches, wetlands, and other natural as well as manmade features, are vulnerable to degradation through improper location of development, blockage of coastal views, ....*The primary concern of the Coastal Act is to protect views to scenic resources from public roads, beaches, trails and vista points..*

LCP. p.56 (emphasis added)

Section 30343 of the Coastal Act states, in part:

“The Legislature hereby finds and declares that *the coastal zone is one of its most precious natural resources*, rich in diversity of living and nonliving resources and in the wide range of opportunities it provides for the use and conservation by the people of this state and nation.....” (Emphasis added)

Section 30001 of the California Coastal Act states, in part:

“The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural source of vital and enduring interest to all the people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state’s natural and scenic resources is a paramount concern to present and future residents of the state and nation.”

Section 30251 of the California Coastal Act, cited by the LCP, states, in part:

“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 LCP further provides,

“21. Existing development standards and the design review ordinance (Chapter 22.82) shall continue to be enforced. The following explicit standards shall apply to selected areas and projects:

\* \* \* \* \*

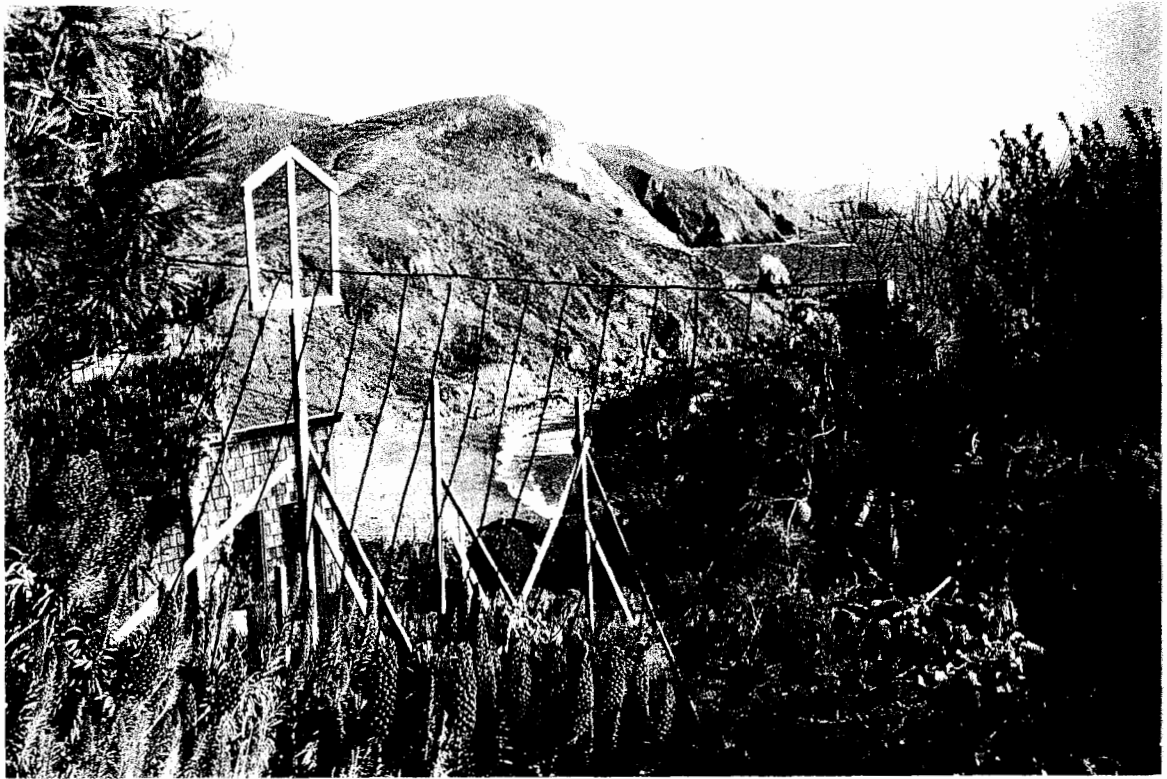
To the maximum extent feasible, new development shall not impair or obstruct an existing view of the ocean, Bolinas Lagoon, or the national or State parklands from Highway 1 or Panoramic Highway.”

LCP p.65.

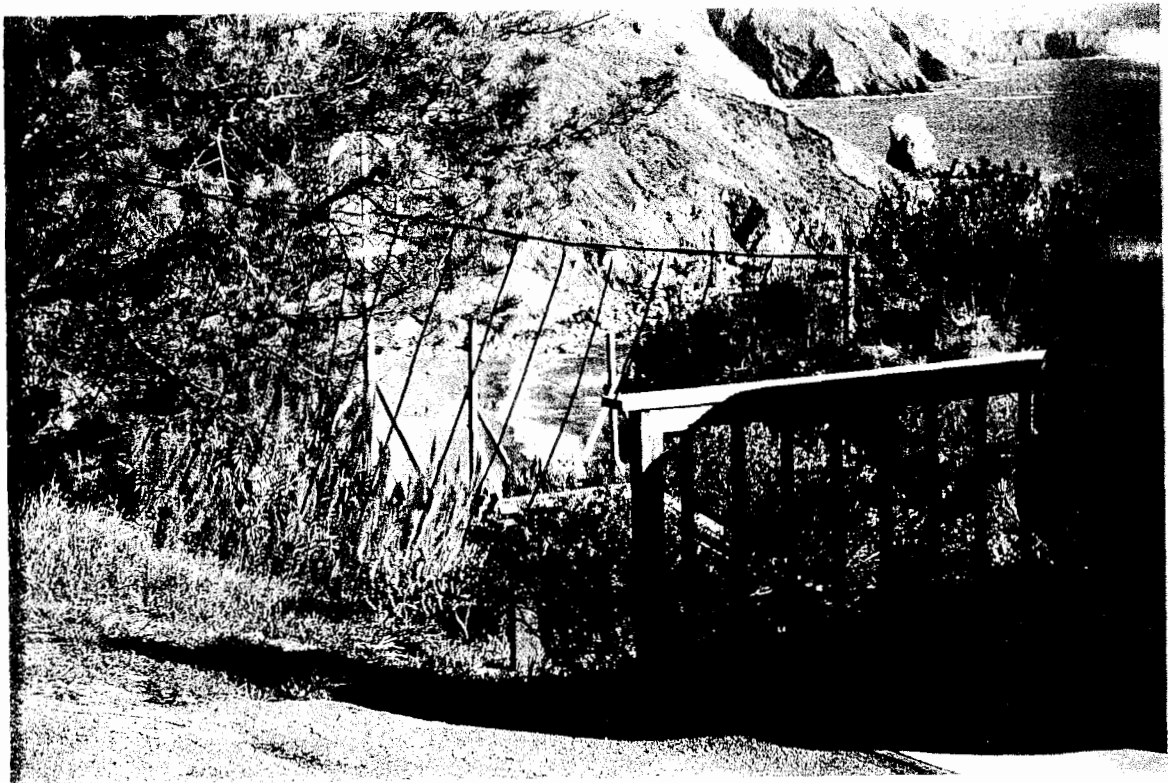
Title 22.56.130I(O) of the Interim Zoning Ordinance is entitled “Visual Resources and Community Character.” Paragraphs 2 and 3 state:

“2. To the maximum extent feasible, new development shall be designed and sited so as not to impair or obstruct existing coastal views from Highway 1 or Panoramic Highway.”

“3. The height, scale and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen *from public viewing places.*” (Emphasis added)



Taken from the top of the public easement



Taken from Ahab Drive



# News

## MUIR BEACH

### Neighbors see larger issue in lost appeal

By John Tornes

County supervisors last week upheld the planning department's approval of a 1,589-square-foot addition to a 2,058-square-foot home on an acre lot overlooking Muir Beach, and the neighbors are none too happy about it.

"The issue in the Crosby appeal is not a dispute among neighbors," Crosby's neighbor at 39 Seascape, Dr. Edward Hyman said. "Tim Crosby is a fine neighbor. The issue is the maintenance of public viewsheds in the coastal region and the stewardship both of the very unique area of Muir beach cove and of West Marin in general."

In December county planners approved the project at 9 Ahab Drive with the caveat that the new roofline be lowered by four feet, a reduction that the home owner, Tim Crosby, described as punitive due to the costs and delays the change would effect. Neighbor Richard S. Kohn said while the change was helpful, it did not entirely address his concern that the house would block views.

The roofline change was not enough for Hyman and Deborah McDonald, who said that even at the lowered height, the house would still block their primary view of the beach. More important, they argued, the house would block public views of the beach from both Ahab Drive as well as from a public access trail.

Hyman and McDonald, as well as neighbors Brenda and Richard Kohn, have made this point at three county hearings on the house, and have indicated they may do so again at the state level. The neighbors made their case initially to county planning staff when they first considered the permit in December. The

county deputy zoning administrator upheld that decision, so the neighbors appealed to the county planning commission in February, and took the appeal to county supervisors last week.

County planner Jeremy Tjerian, who as the deputy zoning administrator upheld county planner Neal Osborne's initial approval of the project, maintains that the house construction would not degrade important public views of the beach.

"When Neal Osborne recommended approval, after reviewing the plan and site I thought there would be a marginal impact to public views and [so I] made a modest change to the [addition's] roof lines. The planning commission accepted and furthered this modification I approved and added [a requirement of tree] trimming to open up more views. They appealed to the board [of supervisors,] which made a unanimous decision in support of it."

Crosby's neighbors were particularly critical of Steve Kinsey, the supervisor representing West Marin, in their comments after the board voted.

"This was a defining moment for Supervisor Kinsey," Kohn said after the hearing on Tuesday. "This is a critically important case under the Coastal Act. He had the opportunity to step up to the plate and defend the Act. In choosing not to do so he showed his true colors. It is hard to square his action with the fact that he recently sought a seat on the Coastal Commission and that, (as reported in the Citizen), in congratulating Supervisor Mirkarimi on his appointment, he said he was sure that Mirkarimi would protect the coast. By his action, Supervisor Kinsey has forfeited the support of

anyone who cares about our beautiful coastal views or the environment."

"I've long been a strong supporter of Steve Kinsey but I believe he and the other supervisors dropped the ball on West Marin, on our environment and on Muir Beach," Hyman said. "Their vote, if followed in the Crosby matter, would eviscerate the Coastal Act in its entirety. The story poles are up - if you [look at] what this guy wants to eliminate, you'd understand the significance of this decision."

"I thought long and hard about this decision," Kinsey said. "This is about the character of the villages of West Marin. I see a slow evolution to larger homes that are not sensitive to the landscape. At the same time, the zoning did not require design review, just a coastal permit. The language of the law did not provide for the protection of 'micro' views. Also, planning commission approved the project in a seven to zero vote."

"I see this as a shot across the bow for Muir Beach and similar villages to use the Local Coastal Plan update process to make clear with the county what it is they want to define, whether it is the size of houses or the protection of views," Kinsey continued. "I appreciate the interest in protecting the character of Muir Beach."

Kinsey mentioned that there were numerous letters in support of the house as well, designed by an architect who had worked in the community before.

Crosby's neighbors have one final opportunity to stop the construction by filing an appeal with the California Coastal Commission, but have not said for certain whether or not they would be doing so.

Money for outle

essential to evaluate the population

Attachment 2



**APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)**

**SECTION V. Certification**

The information and facts stated above are correct to the best of my/our knowledge.

*Richard S. Kohn*  
*Brenda F. Kohn*

*[Signature]*  
Signature of Appellant(s) or Authorized Agent

Date

:

*April 23, 2009*

**Note:** If signed by agent, appellant(s) must also sign below.

**Section VI. Agent Authorization**

I/We hereby authorize \_\_\_\_\_  
to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

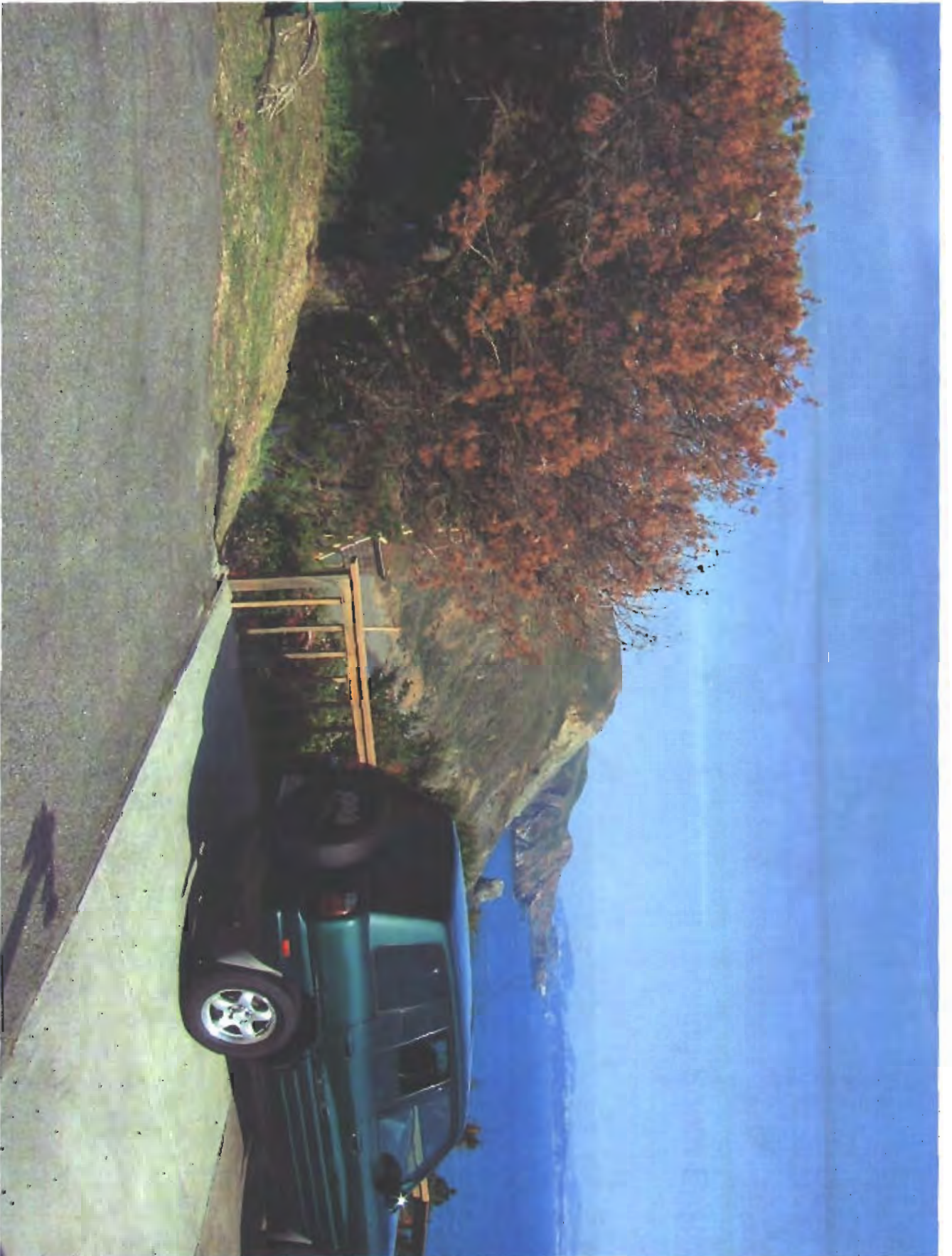
Date

:



Exhibit No. 3  
A-2-MAR-09-010 (Crosby)  
Staff photographs of the project site  
(Page 1 of 1)





SLIDE 1: A-2-MAR-09-010 (Crosby) - View From Ahab Drive Looking South-East



SLIDE 2: A-2-MAR-09-010 (Crosby) - View From Ahab Drive Near Top Of Stairs Looking South





SLIDE 3: A-2-MAR-09-010 (Crosby) - View From Ahab Drive Near Top Of Stairs Looking South-East



SLIDE 4: A-2-MAR-09-010  
(Crosby) -  
View From Top Of Stairs  
Looking South-East  
Towards Western Addition





SLIDE 5: A-2-MAR-09-010 (Crosby) - View From Top Of Stairs Looking South-East Towards Western Addition



SLIDE 6: A-2-MAR-09-010 (Crosby) - View From Top Of Stairs Looking South-East Towards Western Addition





SLIDE 7: A-2-MAR-09-010 (Crosby) - Looking South-East Towards Eastern Addition



SLIDE 8: A-2-MAR-09-010 (Crosby) - View From Muir Beach Community Center – Public Access Parking At Left





SLIDE 9: A-2-MAR-09-010 (Crosby) - View From Muir Beach Community Center - Public Access Parking At Left

1 Dr. Edward J. Hyman  
2 Dr. Deborah A. McDonald  
3 39 Seacape Drive  
4 Muir Beach, CA 94965-5009  
5 (415) 388-4479  
6 FAX (415)388-5009

7 IN PRO PER

8 Richard S. Kohn  
9 Brenda F. Kohn  
10 5 Ahab Drive  
11 Muir Beach, CA 94965  
12 (415)383-8220

13 IN PRO PER

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF MARIN**

16 **DR. EDWARD J. HYMAN, et al**

17 **CASE NO. CIV094682**

18 **Petitioners,**

19 **PEREMPTORY WRIT OF**  
20 **ADMINISTRATIVE MANDATE**

21 **vs.**

22 **CALIFORNIA COASTAL COMMISSION**

23 **Respondent**

24 **and**

25 **TIMOTHY CROSBY, COUNTY OF MARIN**

26 **and MARIN COUNTY COMMUNITY**

27 **DEVELOPMENT AGENCY**

28 **Real Parties in Interest**

Date: January 21, 2011

Time: 8:30 a.m.

Dept. K

Judge: Hon. Faye D'Opal

Trial Date: January 21, 2011

Action filed: September 14, 2009

1 The People of the State of California

2 To: California Coastal Commission, Respondent:

3 WHEREAS, ON February 5, 2011, judgment having been entered in this action,  
4 ordering that a peremptory writ of administrative mandate be issued from this court,

5  
6 YOU ARE HEREBY COMMANDED immediately upon receipt of this writ, to set aside  
7 your decision of August 12, 2009 in the administrative proceedings entitled "Timothy Crosby,  
8 Muir Beach Area, Item 19.a. Appeal No. A-MAR-09-010", which proceedings are hereby  
9 remanded to you, to obtain a new staff recommendation, and hold a new hearing on the  
10 question of whether the petitioners' appeal raised a substantial issue, in the light of this court's  
11 "Rulings on Petitioners' Request for Judicial Notice, Petitioners' Motion to Deem Facts  
12 Admitted, Request to Strike Unverified Crosby Answer and Augment the Record and the  
13 Petition for Writ of Mandate", which was signed and filed on February 3, 2011, and to take any  
14 further action specially enjoined on you by law; nothing in this writ shall limit or control the  
15 discretion legally invested in you.  
16  
17

18 YOU ARE FURTHER COMMANDED to pay to the petitioners the costs of these  
19 proceedings as set forth in the Judgment.

20 YOU ARE FURTHER COMMANDED to make and file a return to this writ on or before  
21 July 1, 2011, setting forth what you have done to comply.  
22



MAR - 2 2011

CLERK OF THE SUPERIOR COURT  
by *Joy R. Dale* J. DALE

000279

### General Notes

Boundary, and easement, lines shown hereon are based upon a field survey performed by Adobe Associates, Inc., on Aug. 22, 2007 and are based upon found iron pipe monuments and record information from that map titled "Parcel Map Lands of Donald H. Kase, Marin County, California" recorded in Volume 7 of Parcel Maps of Page 41, Marin County Records.

Features shown hereon are existing as of the date of the field survey performed by Adobe Associates, Inc.

Utilities shown hereon are based upon physical features observed at the time of this survey, such as point markings, overhead wiring, utility poles, and utility boxes. For the location of under ground utilities, a subsurface utility locating company should be contacted.

Contours shown hereon are a 2' (two foot) vertical interval and are shown based upon a field survey performed by Adobe Associates, Inc., on Aug. 22, 2007.

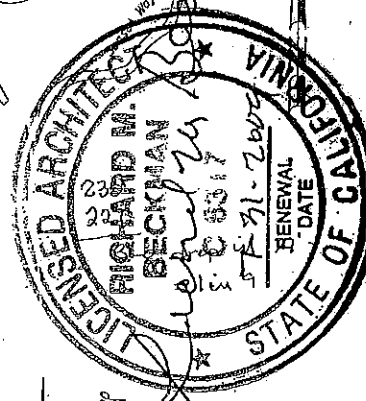
**Bench Mark:** A set Spike Nail & Plastic Cap, marked "Adobe Associates Control Point" near the edge of pavement at the top of stairs to 9 Ahab Drive. Elevation = 236.0' This elevation is on an assumed datum.

### Location Map

not to scale

Muir Beach

Site



Graphic Scale: 1"=20'

### Legend:

- AC Asphaltic Concrete
- Thresh Threshold
- FS Finished Surface
- SSCO Sanitary Sewer Cleanout
- SDMH Storm Drain Manhole
- WM Water Meter
- TELE Telephone
- Utility Vaults
- Water Meter Box
- Storm Drain Manhole
- Found Distribution Monument

- Utility Pole
- Drillpipe of trees
- Adobe Associates Control Point

PC ATTACHMENT #8

## Site Topography

The Lands of Crosby  
9 Ahab Drive, Muir Beach, CA  
Assessor's Parcel Number 199-293-09

ALTERATIONS AND ADDITIONS TO A RESIDENCE FOR

TIM CROSBY

9 Ahab Drive, Muir Beach, CA 94965 A.P. # 199-293-09

Richard M. Beckman, Architect

15006 Komedal Road, N.E. Bainbridge Island, WA 98110 <beckmanrichard@hotmail.com> (206) 780 1029

Checked by: ARS

Job No. 07174